(Relevant paragraphs containing result/directions issued)

4566. In the light of the above and considering overall findings of this Court on various issues, following directions and/or declaration, are given which in our view would meet the ends of justice:

(i) It is declared that the area covered by the central dome of the three domed structure, i.e., the disputed structure being the deity of Bhagwan Ram Janamsthan and place of birth of Lord Rama as per faith and belief of the Hindus, belong to plaintiffs (Suit-5) and shall not be obstructed or interfered in any manner by the defendants. This area is shown by letters AA BB CC DD is **Appendix 7** to this judgment.

(ii) The area within the inner courtyard denoted by letters B C D L K J H G in Appendix 7 (excluding (i) above) belong to members of both the communities, i.e., Hindus (here plaintiffs, Suit-5) and Muslims since it was being used by both since decades and centuries. It is, however, made clear that for the purpose of share of plaintiffs, Suit-5 under this direction the area which is covered by (i) above shall also be included.

(iii) The area covered by the structures, namely, Ram Chabutra, (EE FF GG HH in Appendix 7) Sita Rasoi (MM NN OO PP in Appendix 7) and Bhandar (II JJ KK LL in Appendix 7) in the outer courtyard is declared in the share of Nirmohi Akhara (defendant no. 3) and they shall be entitled to possession thereof in the absence of any person with better title.

(iv) The open area within the outer courtyard (A G H J K L E F in Appendix 7) (except that covered by (iii) above) shall be shared by Nirmohi Akhara (defendant no. 3) and plaintiffs (Suit-5) since it has been generally used by the Hindu people for worship at both places.

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

(v) The land which is available with the Government of India acquired under Ayodhya Act 1993 for providing it to the parties who are successful in the suit for better enjoyment of the property shall be made available to the above concerned parties in such manner so that all the three parties may utilise the area to which they are entitled to, by having separate entry for egress and ingress of the people without disturbing each others rights. For this purpose the concerned parties may approach the Government of India who shall act in accordance with the above directions and also as contained in the judgement of Apex Court in **Dr. Ismail Farooqi (Supra)**.

(vi) A decree, partly preliminary and partly final, to the effect as said above (i to v) is passed. Suit-5 is decreed in part to the above extent. The parties are at liberty to file their suggestions for actual partition of the property in dispute in the manner as directed above by metes and bounds by submitting an application to this effect to the Officer on Special Duty, Ayodhya Bench at Lucknow or the Registrar, Lucknow Bench, Lucknow, as the case may be.

(vii) For a period of three months or unless directed otherwise, whichever is earlier, the parties shall maintain status quo as on today in respect of property in dispute.

4571. In the result, Suit-1 is partly decreed. Suits 3 and 4 are dismissed. Suit-5 is decreed partly. In the peculiar facts and circumstances of the case the parties shall bear their own costs.

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(From the Judgment of Hon'ble Mr. Justice Sudhir Agarwal)

FINDINGS ON ISSUES

Suit-4

1. Issue 1 (Suit-4) is answered in favour of plaintiffs.
2. Issue 1(a) (Suit-4) is answered in negative. The plaintiffs have failed to prove that the building in dispute was built by Babar or by Mir Baqi.
3. Issues 1(b), 6, 13, 14 and 27 (Suit-4) are answered in affirmative.
4. Issue 1-B(a) (Suit-4) is answered in affirmative and it is held that the fact that the land in dispute entered in the records of the authorities as Nazul plot would make things difference.
5. Issue 1-B(b) (Suit-4) is not answered being irrelevant.
6. Issue 1-B(c) (Suit-4)-It is held that building in question was not exclusively used by the members of muslim community. After 1856-57 outer courtyard exclusively used by Hindu and inner courtyard had been visited for the purpose of worship by the members of both the communities.
7. Issue 2 (Suit-4) is answered in negative, i.e., against the plaintiffs.
8. Issue 3 (Suit-4) is answered in negative, i.e., against the plaintiffs. It is held that Suit-4 is barred by limitation.
9. Issue 4 (Suit-4)-At least since 1856-57, i.e., after the erection of partition wall the premises in outer courtyard has not been shown to be used/possessed by muslim parties but so far as the inner courtyard is concerned it has been used by both the parties.
10. Issue 5(a) (Suit-4) is answered against the plaintiffs.
11. Issue 5(b) (Suit-4) is answered in favour of defendants and Hindu parties in general.
12. Issues 5(c), 7(c), 8, 12, 22 (Suit-4), are answered in negative.
13. Issue 5(d) (Suit-4) is not pressed by the defendants, hence not answered.
14. Issue 5(e) (Suit-4) is decided in favour of plaintiffs subject to that issue 6 (Suit-3) is also decided in favour of defendants (Suit-3).
15. Issue 5(f) (Suit-4) is answered in negative, i.e., in favour of plaintiffs and against the defendants.
16. Issue 7(a) (Suit-4) is answered in negative. It is held that there is nothing to show that Mahant Raghubar Das filed Suit-1885 on behalf of Janamsthan and whole body of persons interested in Janamsthan.
17. Issue 7(b) (Suit-4) is answered in affirmative, i.e., in favour of plaintiffs (Suit-4).
18. Issue 7(d) (Suit-4) is answered in negative to the extent that there is no admission by Mahant Raghubar Das plaintiff of Suit-1885 about the title of Muslims to the property in dispute or any portion thereof. Consequently, the question of considering its effect does not arise.
19. Issues 10 and 15 (Suit4) are answered in negative, i.e., against the plaintiffs and muslims in general.
20. Issue 11 (Suit-4)-It is held that the place of birth as believed and worshipped by Hindus his the area covered under the central dome of the three domed structure, i.e., the disputed structure in the inner courtyard in the premises of dispute.
21. Issue 16 (Suit-4)-No relief since the suit is liable to be dismissed being barred by limitation.
22. Issue 17 (Suit-4) is answered in negative holding that no valid notification under Section 5(3) of U.P. Act No. 13 of 1936 was issued.
23. Issue 18 (Suit-4)-It is held that the decision of the Apex Court in **Gulam Abbas Vs. State of U.P. and others, AIR 1981 SC 2199** does not affect findings on issue 17 (Suit-4) and on the contrary the same stand supported and strengthen by the said judgment.
24. Issue 19(a) (Suit-4)-It is held that the premises which is believed to be the place of birth of Lord Rama continue to vest in the deity but the Hindu religious structures in the outer courtyard cannot be said to be the property of plaintiffs (Suit-5).
25. Issue 19(b) (Suit-4) is answered in affirmative to the extent that the building was land locked and could not be reached except of passing through the passage of Hindu worship. However,

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this by itself was of no consequence.

26. Issue 19(c) (Suit-4)-It is held that Hindus were worshipping at the place in dispute before construction of the disputed structure but that would not make any difference to the status of the building in dispute which came to be constructed at the command of the sole monarch having supreme power which cannot be adjudicated by a Court of Law, came to be constituted or formed much after, and according to the law which was not applicable at that time.
27. Issue 19(d) and 19(e) (Suit-4) are answered in favour of the plaintiffs.
28. Issue 19(f) (Suit-4)-In so far as the first part is concerned, is answered in affirmative. The second part is left unanswered being redundant. In the ultimate result the issue is answered in favour of plaintiffs (Suit-4).
29. Issue 20(a) being irrelevant not answered.
30. Issue 20(b) (Suit-4)-It is held that at the time of attachment of the building there was a Mutawalli, i.e., one Sri Javvad Hussain and in the absence of Mutawalli relief of possession cannot be allowed to plaintiffs who are before the Court in the capacity of worshippers.
31. Issue 21 (Suit-4) is decided in negative, i.e., in favour of the plaintiffs. The suit is not bad for non-joinder of deities.
32. Issues 23 and 24 (Suit-4) are held that neither the Waqf Board is an instrumentality of State nor there is any bar in filing a suit by the Board against the State. It is also not a 'State' under Article 12 of the Constitution and can very well represent the interest of one community without infringing any provision of the Constitution.
33. Issues 25 and 26 (Suit-4)-Held that as a result of demolition of the disp0uted structure it cannot be said that the suit has rendered not maintainable. Nothing further needs to be answered.
34. Issue 28 (Suit-4)-It is held that plaintiffs have failed to prove their possession of the disputed premises, i.e., outer and inner courtyard including the disputed building ever.

Suit-1

1. Issue 1 (Suit-1)-It is held that the place of birth, as believed and worshipped by Hindus, is the area covered under the central dome of the three domed structure, i.e., the disputed structure in the inner courtyard in the premises of dispute.
2. Issue 2 (Suit-1)- It is held that the idols were kept under the central dome of the disputed structure within inner courtyard in the night of 22nd/23rd December, 1949 and prior thereto the same existed in the outer courtyard. Therefore, on 16.01.1950 when Suit-1 was filed the said idol existed in the inner courtyard under the central dome of the disputed structure, i.e., prior to the filing of the suit. So far as the Charan Paduka is concerned, the said premises existed in the outer courtyard. Since Suit-1 is confined only to the inner courtyard, question of existence of Charan Paduka on the site in suit does not arise.
3. Issues 3 and 4 (Suit-1)-It is held that plaintiffs have right to worship. The place in suit to the extent it has been held by this Court to be the birthplace of Lord Rama and if an idol is also placed in such a place the same can also be worshipped, but this is subject to reasonable restrictions like security, safety, maintenance etc.
4. Issues 5(a), 5(c), 5(d), 9(c) and 11(a) (Suit-1) are answered in negative.
5. Issue 5(b) (Suit-1)-Held, the Suit 1885 was decided against Mahant Raghubar Das and he was not granted any relief by the respective courts, and, no more.
6. Issue 6 (Suit-1) is answered in negative. The defendants have failed to prove that the property in dispute was constructed by Shahanshah/Emperor Babar in 1528 AD.
7. Issue 7 (Suit-1) is decided in negative, i.e., against the defendants muslim parties.
8. Issue 8 (Suit-1) is answered in negative. Suit is not barred by proviso to Section 42 of Specific Relief Act, 1963.
9. Issue 9 (Suit-1) is decided in favour of plaintiffs (Suit-1).
10. Issue 9(a) (Suit-1) is answered in favour of plaintiffs (Suit-1).
11. Issue 9(b) (Suit-1) is answered against the plaintiffs.
12. Issue 10 (Suit-1) is answered in negative, i.e., in favour of plaintiffs of Suit-1.

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13. Issue 11(b) (Suit-1) is answered in affirmative.
14. Issue 12, 13, 15, 16 and 21 (Suit-1) are answered in negative, i.e., in favour of the plaintiffs (Suit-1).
15. Issue 14 (Suit-1) has become redundant after dismissal of Suit No. 25 of 1950 as withdrawn.
16. Issue 17 (suit-1)-The plaintiffs is declared to have right of worship at the site in dispute including the part of the land which is held by this Court to be the place of birth of Lord Rama according to the faith and belief of Hindus but this right is subject to such restrictions as may be necessary by authorities concerned in regard to law and order, i.e., safety, security and also for the maintenance of place of worship etc. The plaintiffs is not entitled for any other relief.

Suit-3

1. Issue 1 and 16 (Suit-3) are answered in negative.
2. Issue 2, 3, 4 and 9 (Suit-3) are answered in negative, i.e., against the plaintiffs.
3. Issue 5 (Suit-3) is answered in negative. The defendants have filed to prove that the property in dispute was constructed by Shahanshah/Emperor Babar in 1528 AD.
4. Issue 6 (Suit-3) is not proved hence answered in negative.
5. Issue 7(a) and 7(b) (Suit-3) are answered in negative, i.e., in favour of plaintiffs and against the defendants in Suit-3.
6. Issue 8 (Suit-3) is decided in negative.
7. Issue 10 (Suit-3) is decided in favour of plaintiff. It is also held that a private defendant cannot raise objection of maintainability of suit for want of notice under Section 80 CPC.
8. Issue 11 and 12 (Suit-3) are decided in negative, i.e., in favour of plaintiffs.
9. Issue 13 (Suit-3)-The plaintiff is not entitled for any relief in view of the findings in respect of issues 2, 3, 4, 14 and 19.
10. Issue 14 (Suit-3) is answered in affirmative. It is held that the suit as framed is not maintainable.
11. Issue 15 (Suit-3) is answered in affirmative, i.e., in favour of plaintiffs (Suit-3).
12. Issue 17 (Suit-3) is decided in favour of plaintiffs. Nirmohi Akhara is held a Panchayati Math of Ramanandi Sect of Bairagi, is a religious denomination following its religious faith and pursuit according to its own customs. However, its continuance at Ayodhya is found sometime after 1734 AD and not earlier thereto.

Suit-5

1. Issue 1 (Suit-5) is answered in affirmative. Plaintiffs 1 and 2 both are juridical persons.
2. Issue 2 (Suit-5) is not answered as it is not necessary for the dispute in the case.
3. Issue 3(a) (Suit-5) is answered in affirmative. The idols were installed under the central dome of the disputed building in the early hours of 23rd December, 1949.
4. Issue 3(b), 3(d), 5, 10, 11, 14 and 24 (Suit-5) are answered in affirmative.
5. Issues 3(c), 7, 19, 23 and 28 (Suit-5) are answered in negative.
6. Issue 4 (Suit-5) is answered in negative. The idol in question kept under the Shikhar existed there prior to 6th December, 1992 but not from time immemorial and instead kept thereat in the night of 22nd/23rd December, 1949.
7. Issue 6 (Suit-5) is decided in negative, i.e., in favour of plaintiffs (Suit-5).
8. Issue 8 (Suit-5) is answered against the defendant no. 3, Nirmohi Akhara.
9. Issue 9 (Suit-5) is answered against the plaintiffs.
10. Issue 13 (Suit-5) is answered in negative, i.e., in favour of plaintiffs. It is held that suit is not barred by limitation.
11. Issue 15 (Suit-5)-It is held that the muslims atleast from 1860 and onwards have visited the inner courtyard in the premises in dispute and have offered Namaj thereat. The last Namaj was offered on 16th December, 1949.
12. Issue 16 (Suit-5)-Neither the title of plaintiffs 1 and 2 ever extinguished nor the question of reacquisition thereof ever arise.

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13. Issue 18 (Suit-5) is answered in negative, i.e., against the defendants no. 3, 4 and 5.

14. Issue 20 (Suit-5) is not answered being unnecessary for the dispute in the case in hand.

15. Issue 21 (Suit-5) is answered in negative, i.e., against the defendants no. 4 and 5.

16. Issue 22 (Suit-5)-It is held that the place of birth as believed and worshipped by Hindus his the area covered under the central dome of the three domed structure, i.e., the disputed structure in the inner courtyard in the premises of dispute.

17. Issue 25 (Suit-5) is answered in affirmative. It is held that the judgement dated 30.03.1946 in Suit No. 29 of 1949 is not binding upon the plaintiffs (suit-5).

18. Issues 26 and 27 (Suit-5) are answered in negative, i.e., in favour of plaintiffs (Suit-5).

19. Issue 29 (Suit-5) is answered in negative, i.e., in favour of plaintiffs.

20. Issue 30 (Suit-5)-The suit is partly decreed in the manner the directions are issued in para 4566.

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Gist on some point

1. The area covered under the central dome of the disputed structure is the birthplace of Lord Rama as per faith and belief of Hindus.

2. Disputed structure was always treated, considered and believed to be a mosque and practised by Mohammedans for worship accordingly. However, it has not been proved that it was built during the reign of Babar in 1528.

3. In the absence of any otherwise pleadings and material it is difficult to hold as to when and by whom the disputed structure was constructed but this much is clear that the same was constructed before the visit of Joseph Tieffenthaler in Oudh area between 1766 to 1771.

4. The building in dispute was constructed after demolition of Non-Islamic religious structure, i.e., a Hindu temple.

5. The idols were kept under the central dome of the disputed structure in the night of 22nd/23rd December 1949.

Other Original Suits no. 3 of 1989 and 4 of 1989 are barred by limitation.

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ISSUES FRAMED

Suit-4 :

Issue No. 1:- Whether the building in question described as mosque in the sketch map attached to the plaint (hereinafter referred to as the building) was a mosque as claimed by the plaintiffs? If the answer is in the affirmative-

(a) When was it built and by whom-whether by Babar as alleged by the plaintiffs or by Meer Baqi as alleged by defendant no.13?

(b) Whether the building had been constructed on the site of an alleged Hindu temple after demolishing the same as alleged by defendant no.13? If so, its effect?

Issue No. 1-B(a) :-Whether the building existed at Nazul plot no. 583 of the Khasra of the year 1931 of Mohalla Kot Ram Chandra known as Ram Kot, City Ayodhya (Nazul Estate) Ayodhya? If so its effect thereon?

Issue No. 1-B(b) :-Whether the building stood dedicated to almighty God as alleged by the plaintiffs?

Issue No. 1-B(c) :-Whether the building had been used by the members of the Muslim community for offering prayers from times immemorial? If so, its effect?

Issue No. 2 :- Whether the plaintiffs were in possession of the property in suit upto 1949 and were dispossessed from the same in 1949 as alleged in the plaint?

Issue No. 3 :- Is the suit within time?

Issue No. 4 :- Whether the Hindus in general and the devotees of Bhagwan Sri Ram in particular have perfected right of prayers at the site by adverse and continuous possession as of right for more than the statutory period of time by way of prescription as alleged by the defendants?

Issue No. 5 :- (a)Are the defendants estopped from challenging the character of property in suit as a waqf under the administration of plaintiff no.1 in view of the provision of 5(3) of U.P. Act 13 of 1936?

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(b) Has the said Act no application to the right of Hindus in general and defendants in particular, to the right of their worship?

(c) Were the proceedings under the said Act conclusive?

(d) Are the said provision of Act XIII of 1936 ultra-vires as alleged in written statement?

(e) Whether in view of the findings recorded by the learned Civil Judge on 21.4.1966 on issue no.17 to the effect that "No valid notification under section 5(1) of the Muslim Waqf Act (No. XIII of 1936) was ever made in respect of the property in dispute", the plaintiff Sunni Central Board of Waqf has no right to maintain the present suit?

(f) Whether in view of the aforesaid finding, the suit is barred on account of lack of jurisdiction and limitation as it was filed after the commencement of the U.P. Muslim Waqf Act, 1960?

Issue No. 6 :- Whether the present suit is a representative suit, plaintiffs representing the interest of the Muslims and defendants representing the interest of the Hindus?

Issue No. 7 :- (a) Whether Mahant Raghubar Dass, plaintiff of Suit No. 61/280 of 1885 had sued on behalf of Janma Sthan and whole body of persons interested in Janma-Sthan?

(b) Whether Mohammad Asghar was the Mutwalli of alleged Babri Masjid and did he contest the suit for and on behalf of any such mosque?

(c) Whether in view of the judgment in the said suit, the members of the Hindu community, including the contesting defendants, are estopped from denying the title of the Muslim community, including the plaintiffs of the present suit, to the property in dispute? If so, its effect?

(d) Whether in the aforesaid suit, title of the Muslims to the property in dispute or any portion thereof was admitted by plaintiff of the that suit? If so, its effect?

Issue No. 8 :- Does the judgment of case No. 6/281 of 1881, Mahant Raghubar Dass Vs. Secretary

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of State and others operate as res judicata against the defendants in suit?

Issue No. 9 :- Deleted vide order dated May 22/25, 1990

Issue No. 10 :-Whether the plaintiffs have perfected their rights by adverse possession as alleged in the plaint?

Issue No. 11 :-Is the property in suit the site of Janam Bhumi of Sri Ram Chandraji?

Issue No. 12 :-Whether idols and objects of worship were placed inside the building in the night intervening 22nd and 23rd December 1949 as alleged in paragraph 11 of the plaint or they have been in existence there since before? In either case, effect?

Issue No. 13 :-Whether the Hindus in general and defendants in particular had the right to worship the Charans and 'Sita Rasoi' and other idols and other objects of worship, if any, existing in or upon the property in suit?

Issue No. 14 :-Have the Hindus been worshipping the place in dispute as Sri Ram Janam Bhumi or Janam Asthan and have been visiting it as a sacred place of pilgrimage as of right since times immemorial? If so, its effect?

Issue No. 15 :-Have the Muslims been in possession of the property in suit from 1528 A.D. continuously, openly and to the knowledge of the defendants and Hindus in general? If so, its effect?

Issue No. 16 :-To what relief, if any, are the plaintiffs or any of them, entitled?

Issue No. 17 :-Whether a valid notification under Section 5(1) of the U.P. Muslim Waqf Act No. XIII of 1936 relating to the property in suit was ever done? If so, its effect?

Issue No. 18 :-What is the effect of the judgment of their Lordships of the Supreme Court in Gulam Abbas and others vs. State of U.P. and others, AIR 1981 Supreme Court 2198 on the finding of the learned Civil Judge recorded on 21st April, 1966 on issue no. 17?

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Issue No. 19(a) :-Whether even after construction of the building in suit Deities of Bhagwan Sri Ram Virajman and the Asthan, Sri Ram Janam Bhumi continued to exist on the property in suit as alleged on behalf of defendant no.13 and the said places continued to be visited by devotees for purposes of worship? If so, whether the property in dispute continued to vest in the said Deities?

Issue No. 19(b) :-Whether the building was land-locked and cannot be reached except by passing through places of Hindu worship? If so, its effect?

Issue No. 19(c) :-Whether any portion of the property in suit was used as a place of worship by the Hindus immediately prior to the construction of the building in question? If the finding is in the affirmative, whether no mosque could come into existence in view of the Islamic tenets at the place in dispute?

Issue No. 19(d) :-Whether the building in question could not be a mosque under the Islamic Law in view of the admitted position that it did not have minarets?

Issue No. 19(e) :-Whether the building in question could not legally be a mosque as on plaintiffs' own showing it was surrounded by a graveyard on three sides?

Issue No. 19(f) :-Whether the pillars inside and outside the building in question contain images of Hindu Gods and Goddesses? If the finding is in the affirmative, whether on that account the building in question cannot have the character of Mosque under the tenets of Islam?

Issue No. 20(a) :-Whether the Wqaf in question cannot be a Sunni Waqf as the building was not allegedly constructed by a Sunni Mohammedan but was allegedly constructed by Meer Baqi who was allegedly a Shia Muslim and the alleged Mutwallis were allegedly Shia Mohammedans? If so, its effect?

Issue No. 20(b) :-Whether there was a Mutwalli of the alleged Waqf and whether the alleged Mutwalli not having joined in the suit, the suit is not maintainable so far as it relates to relief for possession?

Issue No. 21 :-Whether the suit is bad for non-joinder of alleged Deities?

Issue No. 22 :-Whether the suit is liable to be dismissed with special costs?

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Issue No. 23 :-Whether the Waqf board is an instrumentality of State? If so, whether the said Board can file a suit against the State itself?

Issue No. 24 :-If the Waqf Board is State under Article 12 of the Constitution? If so, the said Board being the State can file any suit in representative capacity sponsoring the case of particular community and against the interest of another community?

Issue No. 25 :-Whether demolition of the disputed structure as claimed by the plaintiff, it can still be called a mosque and if not whether the claim of the plaintiffs is liable to be dismissed as no longer maintainable

Issue No. 26 :-Whether Muslims can use the open site as mosque to offer prayer when structure which stood thereon has been demolished

Issue No. 27 :-Whether the courtyard contained Ram Chabutara, Bhandar and Sita Rasoi If so, whether they were also demolished on 6.12.1992 along with the main temple?

Issue No. 28 :-Whether the defendant no.3 has ever been in possession of the disputed site and the plaintiffs were never in its possession?

Suit-1 :

Issue No. 1 :- Is the property in suit the site of Janam Bhumi of Sri Ram Chandra Ji?

Issue No. 2 :- Are there any idols of Bhagwan Ram Chandra Ji and are His Charan Paduka situated in the site in suit?

Issue No. 3 :- Has the plaintiff any right to worship the 'Charan Paduka' and the idols situated in the site in suit.

Issue No. 4 :- Has the plaintiff the right to have Darshan of the place in suit?

Issue No. 5(a) :-Was the property in suit involved in Original Suit No. 61/280 of 1885 in the court of Sub -Judge, Faizabad, Raghubar Das Mahant Vs. Secretary of State for India and others?

5(b) Was it decided against the plaintiff?

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5(c) Was the suit within the knowledge of Hindus in general and were all Hindus interested in the same?

5(d) Does the decision in same bar the present suit by principles of res judicata and in any other way?

Issue No. 6 :- Is the property in suit a mosque constructed by Shanshah Babar commonly known as Babri Mosque, in 1528 A.D.?

Issue No. 7 :- Have the Muslims been in possession of the property in suit from 1528 A.D. continuously, openly and to the knowledge of plff and Hindus in general? If so, its effect?

Issue No. 8 :- Is the suit barred by proviso to Section 42 Specific Relief Act?

Issue No. 9 :- Is the suit barred by provision of Section 5(3) of the Muslim Waqfs Act (U.P. Act 13 of 1936)?

9(a). Has the said Act no application to the right of Hindus in general and plaintiff of the present suit , in particular to his right of worship?

9(b). Were the proceedings under the said Act, referred to in written statement para 15, collusive? If so its effect?

9(c) Are the said provisions of the U.P. Act 13 of 1936 ultra vires for reasons given in the statement of plaintiff's counsel dated 9.3.62 recorded on paper no. 454-A?

Issue No. 10 :-Is the present suit barred by time?

Issue No. 11 :-(a) Are the provisions of section 91 C.P.C. applicable to present suit? If so, is the suit bad for want of consent in writing by the Advocate General?

(b) Are the rights set up by the plaintiff in this suit independent of the provisions of section 91

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CPC? If not, its effect.

Issue No. 12 :-Is the suit bad for want of steps and notice under Order 1, Rule 8 CPC? If so, its effect?

Issue No. 13 :-Is the suit no. 2 of 50 Shri Gopal Singh Visharad Vs. Zahoor Ahmad bad for want of notice under Section 80 CPC.

Issue No. 14 :-Is the suit no. 25 of 50 Param Hans Ram Chandra Vs. Zahoor Ahmad bad for want of valid notice under section 80 CPC?

Issue No. 15 :-Is the suit bad for non-joinder of defendants?

Issue No. 16 :-Are the defendants or any of them entitled to special costs under Section 35-A C.P.C.

Issue No. 17 :-To what reliefs, if any, is the plaintiff entitled?

Suit-3:

Issue No. 1 :- Is there a temple of Janam Bhumi with idols installed therein as alleged in para 3 of the plaint.

Issue No. 2 :- Does the property in suit belong to the plaintiff no.1?

Issue No. 3 :- Have plaintiffs acquired title by adverse possession for over 12 years?

Issue No. 4 :- Are plaintiffs entitled to get management and charge of the said temple?

Issue No. 5 :- Is the property in suit a mosque made by Emperor Babar known as Babari Masjid?

Issue No. 6 :- Was this alleged mosque dedicated by Emperor Babar for worship by Muslims in general and made a public waqf property?

Issue No. 7 :- (a) Has there been a notification under Muslim Waqf Act Act No. 13 of 1936) declaring this property in suit as a Sunni Waqf?

(b) Is the said notification final and binding? Its effect?

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Issue No. 8 :- Have the rights of the plaintiffs extinguished for want of possession for over 12 years prior to the suit?

Issue No. 9 :- Is the suit within time?

Issue No. 10 :-(a) Is the suit bad for want of notice u/s 80 C?

(b) Is the above plea available to contesting defendants?

Issue No. 11 :-Is the suit bad for non-joinder of necessary defendants?

Issue No. 12 :-Are defendants entitled to special costs u/s 35 CPC?

Issue No. 13 :-To what relief, if any, is the plaintiff entitled?

Issue No. 14 :-Is the suit not maintainable as framed?

Issue No. 15 :-Is the suit property valued and court fee paid sufficient?

Issue No. 16 :-Is the suit bad for want of notice u/s 83 of U.P. Act 13 of 1936?

Issue No. 17 :-Whether Nirmohi Akhara, plaintiff, is Panchayati Math of Rama Nand sect of Bairagis and as such is a religious denomination following its religious faith and persuit according to its own custom?

Suit-5:

Issue No. 1 :- Whether the plaintiffs 1 and 2 are juridical persons?

Issue No. 2 :- Whether the suit in the name of Deities described in the plaint as plaintiffs 1 and 2 is not maintainable through plaintiff no.3 as next friend?

Issue No. 3 :- (a) Whether the idol in question was installed under the central dome of the disputed building (since demolished) in the early hours of December 23, 1949 as alleged by the plaintiff in paragraph 27 of the plaint as clarified in their statement under Order 10 Rule 2 C.P.C.

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(b) Whether the same idol was reinstalled at the same place on a Chabutara under the canopy?

(c) Whether the idols were placed at the disputed site on or after 6.12.1992 in violation of the courts order dated 14.8.1989 and 15.11.91?

(d) If the aforesaid issue is answered in the affirmative, whether the idols so placed still acquire the status of a deity.

Issue No. 4 :- Whether the idol in question had been in existence under the "Shikhar" prior to 6.12.92 from time immemorial as alleged in paragraph 44 of the additional written statement of defendant no.3?

Issue No. 5 :- Is the property in question properly identified and described in the plaint?

Issue No. 6 :- Is the plaintiff no.3 not entitled to represent the plaintiffs 1 and 2 as their next friend and is the suit not competent on this account?

Issue No. 7 :- Whether the defendant no.3 alone is entitled to represent plaintiffs 1 and 2, and is the suit not competent on that account as alleged in paragraph 49 of the additional written statement of defendant no.3?

Issue No. 8 :- Is the defendant Nirmohi Akhara the "Shebait" of Bhagwan Sri Ram installed in the disputed structure?

Issue No. 9 :- Was the disputed structure a mosque known as Babri Masjid?

Issue No. 10 :-Whether the disputed structure could be treated to be a mosque on the allegations contained in paragraph 24 of the plaint?

Issue No. 11 :-Whether on the averments made in paragraph 25 of the plaint, no valid waqf was created in respect of the structure in dispute to constitute it as a mosque?

Issue No. 12:- Deleted vide order dated 23.02.1996.

Issue No. 13 :-Whether the suit is barred by limitation?

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Issue No. 14 :-Whether the disputed structure claimed to be Babri Masjid was erected after demolishing Janma Sthan temple at its site.

Issue No. 15 :-Whether the disputed structure claimed to be Babri Masjid was always used by the Muslims only regularly for offering Namaz ever since its alleged construction in 1528 A.D. to 22nd December 1949 as alleged by the defendants 4 and 5?

Issue No. 16 :-Whether the title of plaintiffs 1 and 2, if any, was extinguished as alleged in paragraph 25 of the written statement of defendant no.4? If yes, have plaintiffs 1 and 2 reacquired title by adverse possession as alleged in paragraph 29 of the plaint?

Issue No. 17:- Deleted vide order dated 23.02.1996.

Issue No. 18:-Whether the suit is barred by section 34 of the Specific Relief Act as alleged in paragraph 42 of the additional written statement of defendant no.3 and also as alleged in paragraph 47 of the written statement of defendant no.4 and paragraph 62 of the written statement of defendant no. 5?

Issue No. 19 :-Whether the suit is bad for non-joinder of necessary parties, as pleaded in paragraph 43 of the additional written statement of defendant no.3?

Issue No. 20 :-Whether the alleged Trust creating the Nyas , defendant no.21, is void on the facts and grounds stated in paragraph 47 of the written statement of defendant no.3?

Issue No. 21 :-Whether the idols in question cannot be treated as Deities as alleged in pragraphs 1,11,12,21,22, 27 and 41 of the written statement of defendant no.4 and in paragraph 1 of the written statement of defendant no.5?

Issue No. 22 :-Whether the premises in question or any part thereof is by tradition, belief and faith the birth place of Lord Rama as alleged in paragraphs 19 and 20 of the plaint? If so, its effect?

Issue No. 23 :-Whether the judgment in suit no. 61/280 of 1885 filed by Mahant Raghubar Das in the Court of Special Judge, Faizabad is binding upon the plaintiffs by application of the principles of estoppel and res judicata as alleged by the defendants 4 and 5?

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Issue No. 24 :-Whether worship has been done of the alleged plaintiff Deity on the premises in suit since time immemorial as alleged in para 25 of the plaint?

Issue No. 25 :-Whether the judgment and decree dated 30th March 1946 passed in Suit No. 29 of 1945 is not binding upon the plaintiffs as alleged by the plaintiffs?

Issue No. 26 :-Whether the suit is bad for want of notice under section 80 C.P.C. as alleged by the defendants 4 and 5?

Issue No. 27 :-Whether the plea of suit being bad for want of notice under Section 80 CPC can be raised by defendants 4 and 5?

Issue No. 28 :-Whether the suit is bad for want of notice under Section 65 of the U.P. Muslim Waqfs Act, 1960 as alleged by defendants 4 and 5? If so, its effect.

Issue No. 29 :-Whether the plaintiffs are precluded from bringing the present suit on account of dismissal of suit no. 57 of 1978 (Bhagwan Sri Ram Lala Vs. State) of the Court of Munsif Sadar, Faizabad?

Issue No. 30 :-To what relief, if any, are plaintiffs or any of them entitled?

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AFR
Court No. 21
Reserved on 26.07.2010
Delivered on 30.09.2010

Other Original Suit No. 4 of 1989

(Regular Suit No. 12 of 1961)

1. The Sunni Central Board of Waqfs U.P. Lucknow, Moti Lal Bose Road. P.S. Kaiserbagh, City Lucknow through Shah Ghyas Alam, Secretary.

[2. Molvi Mohammad Qasim, aged about 53 years, S/o Sheikh Abdul Razzaq, General Secretary, Jamiutul Ulami Hind, U.P Bagh Gunge Nawab, P.S KaiserBagh, Lucknow] **(Deleted)**

2/1. Mohd. Siddiq alias Hafiz Mohd. Siddiq. aged about 46 years S/O Late Haji Mohd. Ibrahim, R/o Lalbagh Moradabad, General Secretary, Jamuatul Ulemai Hind, U.P, Jamiat Building, B.N. Verma Raod (Katchehry Road) Lucknow.

3. Haji Mohammad Ehtram Ali, aged about 70 years, S/o Munshi Mohammad Ehtisham Ali, R/o Khayaliganj. P.S Kaiserbag City Lucknow. (Deceased)

[4. Molvi Mohammad Faiq aged about 55 years, S/o Haji Ramzan R/o Mohalla Tehri Bazar, Ayodhya, pargana Haveli Avadh District Faizabad] **(Deleted)**

[5. Molvi Mohammd Naseer aged about 58 years, S/o Ashiq Ali, R/o Village Ponthar Pargana Tanda Tahsil Tanda District Faizabad] **(Deleted)**

[6. Shahabuddin aged about 42 years, S/o Haji Munney Sahib, R/o Angoori Bagh, City Faizabad] **(Deleted)**

6/1 Ziauddin aged about 46 years, S/o of Haji Shahabuddin

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(deceased) R/o Mohalla Angoori Bagh, pargana Haveli Oudh, City and District Faizabad.

6/1/1. Misbahuddeen aged about 39 years, S/o Ziauddin, R/o Mohalla Angoori Bagh, Awadh City Tahsil and District Faizabad.

7. Mohammad Hashim aged about 40 years, S/o Karim Bux, R/o Mohalla Kutya, Panji Tola, Ajodhiya Pargana Haveli Avadh, Distt. Faizabad.

[8. Vakiluddin aged about 55 years, S/o Ismail, R/o Madarpur, Pargana and Tahsil Tanda District Faizabad] **(Deleted)**

8/1. Maulana Mahfoozurahman aged about 52 years, S/o Late Maulana Vakiluddin, R/o Village Madarpur, Pargana and Tahsil Tanda, Faizabad.

9. Mahmud Ahmad aged about 30 years S/o Ghulam Hasan. R/o Mohalla Rakabganj, City Faizabad.

[10. Zahoor Ahmad, S/o Noor Mohd. aged about 80 years, R/o Mohalla Nau Ghazi Qabar, Ayodhya, Faizabad District] **(Deleted)**

10/1. Farooq Ahmad, S/o Sri Zahoor Ahmad, R/o Mohalla Naugazi Qabar, Ayodhya City, Ayodhya, Distt. Faizabad.

Vs.

[1. Sri Gopal Singh Visharad, aged about 53 years, S/o Thakur Girdhari Singh, R/o Sargaddwar, Ajodhiya, District Faizabad] **(Deleted)**

2. Sri Param Hans Ram Chander Das, R/o Ajodhya, Faizabad. (Deceased)

2/1 Mahant Suresh Das aged about 55 years, Chela of Sri Param Hans Ram Chandra Das, R/o Digambar Akhara, City Ayodhya District Faizabad.

3. Nirmohi Akhara Situate in Mohalla Ram Ghat City

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Ajodhiya, District Faizabad, through Mahant Rameshwar Das Mahant Sarbarakar, R/o Nirmohi Akhara Mohalla Ramghat, City Ajodhya District Faizabad.

4. Mahant Raghunath Das Chela Mahant Dharam Das Mahant and Sarbarakar Nirmohi Akhara Mohalla Ram Ghat, City Ajodhiya, District Faizabad.
5. The State of U.P. through Chief Secretary to the Sate Govt. of U.P. (corrected under Court's order dated 30-01-62)
6. The Collector, Faizabad.
7. The City Magistrate, Faizabad.
8. The Superintendent of Police Faizabad.
9. B. Priya Dutt S/o R.B. Babu Kamlapat Ram, R/o Rakabganj, Faizabad.
10. President, All India Hindu Maha Sabha, Read Road New Delhi.
11. President, Arya Maha Pradeshik Sabha Baldan Bhawan, Shradhanand Bazar, Delhi
12. President, All India Sanatan Dharm Sabha, Delhi.

13/1. Dharam Das alleged Chela Baba Abhiram Das. R/o Hanuman Garhi, Ayodhya, Faizabad.

14. Pundrik Misra, age 33 years, S/o Raj Narain Misra R/o Balrampur Sarai, Rakabganj, Faizbad.
15. Sri Ram Dayal Saran, Chela of late Ram Lakhan Saran, R/o Town Ayodhya, District Faizabad.

[16. Shab Narain Das Chela of late Baba Badri Das Ji Sankatwali, R/o Sri Hanuman Garhi, Ayodhya Faizabad] ***(Deleted)***

17. Ramesh Chandra Tripathi aged about 29 years, S/o Sri Parsh Rama Tripathi, R/o Akbarpur, Distt. Faizabad.
18. Mahant Ganga Das aged about 45 years (Chela) Mahant

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Sarju Dass R/o Mandir Ladle Prasad, City Ayodhya Faizabad.

19. Sri Swami Govindacharya, Manas Martand Putra Balbhadar Urf Jhallu, R/o Makan No. 735, 736, 737 Katra Ayodya, Pargana Haveli Audh Tahsil and Zila Faizabad.
20. Madan Mohan Gupta, Convener of Akhil Bhartiya Sri Ram Janam Bhoomi Punarudhar Samiti, E-7/45 Bangla T.T. Nagar, Bhopal.
21. Prince Anjum Qadar, President All India Shia Conference, Registered, Qaumi Ghar, Nadan Mahal Road, F.S. Chowk, Lucknow. (Died on 23.7.1997)
22. Umesh Chandra Pandey, S/o Sri R.S. Pandey R/o Ranupalli, Ayodhya, District Faizabad.

With

Other Original Suit No. 1 of 1989

(Regular Suit No. 2 of 1950)

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Sri Gopal Singh Visharad aged about 42 years S/o Thakur Girdhari Singh, Mohalla Saragdwar City Ayodhya, Pargana Haveli, Tahsil and District Faizabad. (deceased)

Rajendra Singh age 46, S/o Sri Gopal Singh Visarad, current address State Bank of India Branch Gonda.

Vs.

[1. Zahoor Ahmad aged about 69 years S/o Laamaaloom Mohall Bada Bazar] (Deceased)

1/1 Farooq Ahmad S/o Zahoor Ahmad R/o Tedi Bazar Ayodhya Faizabad.

[2. Haji Fenku aged about 65 years S/o Laamaaloom Mohalla Tedi Bazar] (Deceased) **(Deleted vide order dated 17.1.1962)**

[3. Mohd. Faiq aged about 45 years S/o Laamaaloom Mohalla

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Tedi Bazar] (Deceased)

[4. Mohd. Shami Chudiwala aged 45 years S/o Laamaaloom Mohalla Ram Ganj] (Deceased) **(Deleted vide order dated 17.1.1962)**

[5. Mohd. Achhan Mia aged 45 years S/o Laamaaloom Mohalla Katra] (Deceased)

(1 To 5) City Ayodhya Pargana Haveli Oudh, Tahsil and District Faizabad.

6. Uttar Pradesh State, Lucknow.
7. Deputy Commissioner Faizabad.
8. City Magistrate Faizabad.
9. Superintendent of Police Faizabad.
10. Sunni Central Waqf Board U.P. Lucknow Moti Lal Bose Road P.S. Kaiserbagh, Lucknow through Secretary.
11. Nirmohi Akhara Ayodhya Haveli Awadh, District Faizabad through Sarpanch Ram Swaroop Das, Upsarpanch Mahant Bhaskar Das and Panch Raja Ram Chandracharya.

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With

Other Original Suit No. 3 of 1989

(Regular Suit No. 26 of 1959)

Nirmohi Akhara Situate in Mohalla Ramghat City Ayodhya through Mahant Jagan Nath Das aged about 54 years chela of Mahant Vaishnab Das R/o Nirmohi Bazar, Reg. Ramghat Haveli Oudh Ayodhya City.

Vs.

1. Sri Jamuna Prasad Singh Receiver, R/o of Deo Kali Road. City Faizabad.
2. State of U.P.
3. Deputy Commissioner, Faizabad.

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4. City Magistrate, Faizabad.

5. Superintendent of Police, Faizabad.

[6. Haji Phekku aged 70 years son of unknown R/o of Mohalla Terhi Bazar] (Deceased)

6/1 Haji Mehboob (adult)

6/2 Haji Abdul Ahed both R/o Mohalla Terhi Bazar Bazar City Ayodhya Tahsil and District Faizabad.

7 Mohd. Faiq aged 50 years S/o Haji Ramzan R/o Terihi Bazar

8. Mohd. Achhan Mian aged about 55 years son of unknown R/o Mohalla Katra.

(6 to 8) City Ayodhya Pargana Haveli Oudh Tahsil and district Faizabad on behalf of themselves and all other members of the Muslim Community.

9. U.P. Sunni Central Board of Waqfs through its secretary, Lucknow.

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10. Umesh Chandra Pandey aged 34 years S/o Sri Ram Shanker Pandey R/o Rampali Ayodhya City Dist. Faizaba. (Haveli Oudh).

11. Mohd. Farooq S/o Zahoor Ahamad R/o Singarhat Ayodhya, District Faizabad.

With

Other Original Suit No. 5 of 1989

(Regular Suit No. 236 of 1989)

1. Bhagwan Sri Ram Virajman at Sri Rama Janam Bhumi, Ayodhya, also called Bhagwan Sri Rama Lala Virajman represented by next friend, Sri Triloki Nath Pandey aged about 65 years, S/o Late Askrut Pandey, R/o Karsewak Puram District Faizabad.

2. Asthan Sri Rama Janam Bhumi, Ayodhya, represented by

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next friend, Sri Triloki Nath Pandey aged about 65 years, S/o Late Askrut Pandey, R/o Karsewak Puram District Faizabad.

3. Triloki Nath Pandey aged about 65 years, S/o Late Sri Askrut Pandey, R/o Karsewak Puram District Faizabad.

Vs.

1. Sri Rajendra Singh, adult, son of late Sri Gopal Singh Visharad, at present residing at Gonda, care of the State Bank of India, Gonda Branch Gonda.
2. Param Hans Mahant Ram Chandra Das of Digambar Akhara, Ayodhya.

2/1. Mahant Suresh Das aged about 55 years Chela Late Mahant Param Ramchandra Das.

3. Nirmohi Akhara Mohalla Ram Ghat, Ayodhya through its present Mahant Jagannath Das, aged about 54 years, Chela of Vaishnav Das Nirmohi R/o Mohalla Ram Ghat Nirmohi Bazar Pargana Haveli Awadh, Ayodhya, District Faizabad.
4. Sunni Central Board of Waqfs U.P. having its office at Moti Lal Bose Road, Lucknow.
5. Sri Mohammad Hashim, Adult, S/o Sri Karim Bux R/o Mohall Sutahti Ayodhya.
6. Sri Mahmud Ahmad, adult S/o Sri Ghulam Hasan, R/o Mohalla Rakabganj, Faizabad.
7. State of U.P. through the Secretary, Home Department, Civil Secretariat , Lucknow.
8. The Collector and District Magistrate, Faizabad.
9. The City Magistrate, Faizabad.
10. The Senior Superintendent of Police, Faizabad.
11. The President, All India Hindu Mahasabha, New Delhi.

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12. The President, All India Arya Samaj, Dewan Hall Delhi.
13. The President, All India Sanatan Dharma Sabha Delhi.
14. Sri Dharam Das adult, Chela Baba Abhiram Das R/o Hanuman Garhi, Ayodhya.
15. Sri Pundarik Misra, Adult S/o Sri Raj Narain Misra, R/o Baham Pur Sarai, Rakabganj, Faizabad.
16. Sri Ram Dayal Saran Adult, Chela Ram Lakhan Saran, R/o Ramcharit Manas Bhawan, Mohall Ramkot, Ayodhya.
17. Sri Ramesh Chandra Tripathi Adult, S/o Sri Parash Ram Tripathi, R/o village Bhagwan Patti, Pargana Minjhaura, Tahsil Akbarpur, District Faizabad.

[18. Mahant Ganga Das adult Chela Sarju Das, R/o Mandir Lalta Prasad, Ayodhya] **(Deleted)**

[19. Swami Govindacharya Manas Martand, adult, S/o Sri Balbhadar alias Jhallu R/o Ayodhya] **(Deleted)**

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20. Sri Umesh Chandra Pandey Adult S/o Sri Uma Shanker Pandey, Advocate, R/o Ranopali, Ayodhya.
21. Sri Rama Janam Bhumi Nyas, a Trust having its office at Sankat Mochan Ashram, Sri Hanuman Mandir, Rama Krishan Puram, Sector VI, New Delhi, through Sri Ashok Singhal, Managing Trustee.
22. Shia Central Board of Waqfs. U.P. Lucknow.

[23. Sri Javvad Husain, adult, R/o village Sahanwa P.O. Darshan Nagar, District Faizabad] **(Deleted)**

[24. Prince Anjum Quder, President All India Shia Conference, Qaomi Ghar, Nandan Mahal Road Lucknow] **(Died on 23.7.1997 and ordered to be deleted on 10.11.1997)**

[25. All India Shia Conference through Sri S. Mohammad Hasnain Abidi, Honorary General Secretary, Qaomi Ghar Nadan Mahal Road, Lucknow] **(Deleted vide order dated**

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10.11.1997)

26. Hafiz Mohd. Siddiqui, aged about 46 years S/o Late Haji Mohd. Ibrahim, R/o Lalbagh Moradabad. General Secretary, Jamaitul Ulema Hind U.P. Jamait Building B.N. Verma Road, Kutchery Road Lucknow.
27. Vakeeluddin aged about 55 years, S/o Ismail, R/o Madarpur Pargana and Tehsil Tanda District Faizabad

Counsels for parties :

Suit-4 :

Counsel for Plaintiffs : Sri Zafaryab Jilani, Sri M.A. Siddiqui, Sri S.I. Ahmad and Sri C.M. Shukla, Advocates.

Counsel for Defendants : Sri S.P. Srivastava, Addl. Chief Standing Counsel (for State-defendants no. 5, 6, 7 and 8); Sri Ravi Shankar Prasad, Senior Advocate and Sri M.M. Pandey, Advocate (for defendant no. 2/1, Mahant Suresh Das); Sri R.L. Verma and Sri Tarunjeet Verma, Advocates (for defendant no. 3, Nirmohi Akhara); Sri Hari Shankar Jain, Advocate (for defendant no. 10, All India Hindu Maha Sabha); Sri P.R. Ganpathi Ayer, Senior Advocate, and Sri Rakesh Pandey, Advocate (for defendant no. 13/1, Dharam Das); Sri R.K. Srivastava, Advocate (for defendant no. 17, Ramesh Chandra Tripathi); and Sri P.N. Mishra, Amitabh Shukla and Sushri Ranjana Agnihotri, Advocates (for defendant no. 20, Madan Mohan Gupta, Convener of Akhil Bhartiya Sri Ram Janam Bhoomi Punarudhar Samiti).

Suit-1 :

Counsel for Plaintiffs : Sri Ajay Kumar Pandey, Sri D.P. Gupta and K.G. Mishra, Advocates.

Counsel for Defendants : Sri S.P. Srivastava, Addl. Chief Standing Counsel (for State-defendants no. 6, 7, 8 and 9); Sri Zafaryab Jilani, Advocate (for defendant no. 10, Sunni Central

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Waqf Board) and Sri R.L. Verma and Sri Tarunjeet Verma, Advocates (for defendant no.11, Nirmohi Akhara).

Suit-3 :

Counsel for Plaintiff : Sri R.L. Verma and Sri Tarunjeet Verma, Advocates

Counsel for Defendants : Sri S.P. Srivastava, Addl. Chief Standing Counsel (for State-defendants no. 2, 3, 4 and 5); Sri Syed Irfan Ahmad and Sri Fazle Alam, Advocates (for defendants no. 6/1, Haji Mehboob and 6/2, Haji Abdul Ahad) and Sri Zafaryab Jilani (for defendant no. 9, Sunni Central Board of Waqfs).

Suit-5 :

Counsel for Plaintiff : Sri K.N. Bhat, Senior Advocate and Sri Ved Prakash, Madan Mohan Pandey and Ajay Kumar Pandey, Advocates.

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Counsel for Defendants : Sri S.P. Srivastava, Addl. Chief Standing Counsel (for State-defendants no. 7, 8, 9 and 10); Sri D.P. Gupta and Sri K.G. Mishra, Advocates (for defendant No.1, Rajendra Singh); Sri R.L. Verma and Sri Tarunjeet Verma, Advocates (for defendant no. 3, Nirmohi Akhara); Sri Zafaryab Jilani, Advocate (for defendant no. 4, Sunni Central Board of Waqfs); Sri M.A. Siddiqui, Advocate (for defendant no. 5, Mohammad Hashim); Sri Hari Shankar, Advocate (for defendant no.11, President All India Hindu Mahasabha); Sri P.R. Ganpathi Ayer, Senior Advocate, and Sri Rakesh Pandey, Advocate (for defendant No.14, Dharam Das); Sri Ramakant Srivastava, Advocate (for defendant no.17, Ramesh Chnadra Tripathi) and Sri Irfan Ahmad and Sri C.M. Shukla, Advocates (for respondent no.26, Hafiz Mohd. Siddiqui).

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Hon'ble S.U. Khan, J.
Hon'ble Sudhir Agarwal, J.
Hon'ble D.V. Sharma, J.

(Delivered by Hon'ble Sudhir Agarwal, J.)

नासदासीन्नो सदासीत् तदानी नासीद्रजो नो व्योमा परो यत्।
किमावरीवः कुह कस्य शर्म न्नम्भः किमासीद्महनं गभीरम् 1

''प्रलयावस्था में (न असत् आसीत् न सत् आसीत्) न सत् था और न असत् था, (तदानीं) उस समय (न रजः आसीत्) न लोक था और (व्योमा परः यत् न) आकाश से परे जो कुछ है वह भी नहीं था। उस समय (आवरीवः किं) सबको ढकनेवाला क्या था? (कुह कस्य शर्मन) कहां किसका आश्रय था? (गहनं गंभीरं अम्भः किं आसीत्) अगाध और गम्भीर जल क्या था?

(प्रलयावस्था में पंचभूतादि सत पदार्थ ही थे, न कुछ अभावरूप असत्ही था, न आकाश था, न लोकही थे। फिर किसने किसको ढका? कैसे ढका? किससे ढका? यह सब अनिश्चित ही था।)'' (Hindi Translation)

''During the Dissolution, there was neither existence nor non-existence, and at that time neither Lok (world) was there nor was anything beyond the space. What encompassed all at that time ? Where was the abode and of whom ? What was the unfathomable and deep water ?'' (English Translation)

न मृत्युरासीद्मृतं न तर्हि न रात्र्या अह्न आसीत् प्रकेतः।
आनीद्वातं स्वधया तदेकं तस्माद्धान्यन्न परः किं चनास 2

''(तर्हि) उस समय (न मृत्युः न अमृतं आसीत्) न मृत्यु थी न अमृत था, (रात्र्याः अह्नः प्रकेतः न आसीत्) सूर्यचन्द्र के अभाव से रात्री और दिन का ज्ञान भी नहीं था। उस (अ–वातं) वायु से रहित दशा में (एकं तत्) एक अकेला वह ही ब्रह्म (स्वध्या) अपनी शक्ति के साथ (आ नीत्) प्राण ले रहा था। (तस्मात् पर अन्यत् किंचन न आस) उससे परे या भिन्न और कोई वस्तु नहीं थी।

(मृत्यु, अमृत भी कुछ नहीं था, और सूर्य चन्द्रमा न होने से दिन रात का भेद भी मालूम नहीं होता था। पर एक ब्रह्म ही ऐसी दशा में विद्यमान था।)''

''At that time there was neither death nor immortality, and there was also no knowledge of day and night in absence of the Sun and the Moon. In that stage of vacuum, Brahm (the Supreme Being) alone was imbibing life from His own power. There was

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nothing beyond or distinct from Him."

तम आसीत् तमसा गूळहमग्रे ऽप्रकेतं सलिलं सर्वमा इदम्।
तुच्छयेनाभ्वपिहितं यदासीत् तपसस्तन्महिनाजायतैकम् 3

"(अग्रे) सृष्टि से पूर्व प्रलय दशा में (तमः आसीत्) अन्धकार था, (तमसा गूळह) सब अन्धकार से आच्छादित था, (अप्रकेतं) अज्ञात दशा में और (इदं आः सर्व सलिलं) यह सब कुछ जल ही जल था और (यत् आसीत्) जो कुछ था, वह (आभु तुच्छयेन अपिहितं) चारों ओर होने वाले सदसद्विलक्षण भावसे आच्छादित था और (तत् एकं) वह एक ब्रह्म (तपसः महिना अजायत) तपके प्रभाव से हुआ।

(प्रलयावस्था में चारों ओर अंधकार फैला हुआ था, अतः कुछ भी ज्ञान नहीं होता था। और जो कुछ था वह भी बड़ा अजीब था।)"

"Prior to Creation, in the stage of Dissolution, there was darkness, everything was covered with darkness in an unknown state and this was all water and whatever existed, was covered all around with remarkable attributes of existence and non-existence and this was possible due to the effect of great austere practice."

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को अद्धा वेद क इह प्र वोचत् कुत आजाता कुत इयं विसृष्टिः।
अर्वाग्देवा अस्य विसर्जनेना ऽथा को वेद यत आबभूव। 6

"(कः अद्धा वेद) कौन मनुष्य जानता है, और (इह कः प्रवोचत्) यहां कौन कहेगा, कि (इयं विसृष्टिः कुतः कुतः आ जाता) यह सृष्टि कहां से और किस कारण उत्पन्न हुई। क्योंकि (देवाः) विद्वान् या दूरदर्शी भी (अस्य विसर्जनेन अर्वाक्) इस सृष्टि के उत्पन्न होने के बाद ही उत्पन्न हुए हैं, (अथ) इसलिए यह सृष्टि (यतः आ बभूव) जिससे उत्पन्न हुई उसे (कः वेद) कौन जानता है।

(इस सारी सृष्टि की उत्पत्ति कैसे और कहां से हुई, यह कोई नहीं जानता, क्योंकि उस रहस्य को जानने वाले विद्वानों की उत्पत्ति भी बाद में हुई।)"

"None knows and none can tell as to from where and how the Creation took place, because even the scholars or those having foresight, were born after the Creation. Hence, none knows the source of this Creation."

इयं विसृष्टिर्यत आबभूव यदि वा दधे यदि वा न।
यो अस्याध्यक्षः परमे व्योमन् त्सो अंगः वेद यदि वा न वेद 7

"(इयं विसृष्टिः यतः आ बभूव) यह सृष्टि जिससे पैदा हुई वह इसे (यदि दधे यदि

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वा न) धारण करता भी है या नहीं, इसको हे (अंग) विद्वन (सः वेद) वही जानता है (यः परमे व्योमन् अस्य अध्यक्षः) जो परम आकाश में रहता हुआ इस सृष्टि का अध्य क्ष है (यदि वा) अथवा सम्भवतः वह भी (न वेद) नहीं जानता हो।

(इस सृष्टि को पैदा करने वाला इसका अध्यक्ष परमब्रह्म इस सृष्टि का धारक है। और वही इस सृष्टि को पूर्णतया जानता है।)''

"O scholar, whether the Creation is sustained by the Creator or not, is known only to Him, who superintends this Creation from the supreme space or it may not be known even to Him."

(Rig-Veda X.129.1-3, 6, 7, Sanskrit)
(Hindi version from Rig Veda Ka Subodh-Bhasya Mandal 9-10 translated by Dr. Sripad Damodar Satvalekar published in 1985 and English translation by the Court)

1. Sixty years and more since the first Suit was filed in the Court of Civil Judge, Faizabad, twenty one years and more before a Full Bench of this Court (on transfer of the suits from the Court of Civil Judge Faizabad), 533 exhibits; 87 witnesses deposing in about 13990 pages; more than a thousand reference books on various subjects like History, Culture, Archaeology, Religion etc. and in different languages like Sanskrit, Hindi, Urdu, Persian, Turkish, French etc.; innumerable archaeological artifacts kept in the record room; dozens of C.Ds. and other record; and, the period of events ranging from crores to more than 550 years; religious faith, sentiments and pathos of millions of people of not only this Country but abroad also, give some indication towards length, width and depth of the dispute before us.

TOPOGRAPHY

2. The entire dispute in these four suits relates to the land situate in village Kot Rama Chandra (Ramkot at Ayodhya), Pargana Haveli Avadh, Tehsil Sadar, District Faizabad. At the disputed site there was an old structure--centre of controversy

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among two major communities of this country, i.e., Hindus and Muslims. Amongst Hindus also a religious sect known as "Ramanandi Vairagis" has an independent and separate claim. It is claimed by Hindus in general that the disputed site is the place where Lord Rama was born and it is his birthplace. There existed a Rama temple at the site which was demolished in 1528 by Mir Baqi, a Commander of Babar, and, he constructed the said disputed structure which the Muslims claimed to be "Babari Mosque". The claim of Hindus is that there cannot be another birthplace of Lord Rama. Therefore, by its very nature they cannot give away such a unique and singular pious place. Ramanandi Vairagis, however, claim that the structure was not a mosque but continued to be a "Rama temple" throughout and worshipped as such, it belongs to them, and they were/are in continuous possession and management thereof till December' 1949, i.e. the date of attachment. They, however, are in agreement with the orthodox Hindus' general belief that the site in dispute is the birthplace of Lord Rama.

3. On the eastern and southern side of the structure there was open land. On the northern and western side there was a public road and public pathway. Beyond the road, in the north, there was again open land and beyond the pathway in the west there is a deep slope.

4. The disputed structure was demolished on 6.12.1992 but its topography before its demolition has been noticed in this Court's judgment dated 11.12.1992 in **Writ Petition No. 3540 (MB) of 1991, Mohammad Hashim Vs. State of U.P. and others.** In the judgmdent of Hon'ble S.C. Mathur, J. details of the site is described as under:

"The aforesaid structure is divisible into three parts.

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(1) the main roofed structure, (2) the inner courtyard, and (3) outer courtyard. The public road is to the north of the structure. Immediately adjoining the roofed structure to the east is the inner courtyard. To the east of this courtyard is the outer courtyard. On the outer courtyard there is a Chabutara which has been in possession of the Hindus. There are other signs on this courtyard which are objects of reverence or worship to the Hindus, like Sita Rasoi and Charan. To the east of the outer courtyard is a boundary wall having a gate. It is this gate which provides entry first to the outer courtyard, then to the inner courtyard and lastly to the roofed structure."

5. In view of the decision of the Apex Court in **Dr. M. Ismail Faruqui etc. Vs. Union of India and others 1994 (6) SCC 360= AIR 1995 SC 605,** the area of land in dispute, which is to be adjudicated by this Court is now restricted to what has been referred to in para 4 above, i.e. main roofed structure, the inner courtyard and the outer courtyard. In fact, the area under the roofed structure and Sahan, for the purpose of convenience, shall be referred hereinafter as "inner courtyard" and rest as the "outer courtyard". Broadly, the measurement of the disputed area is about 130X80 sq. feet.

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Disputed Structure

6. Though the disputed structure was demolished on 6th December, 1992 but it would be necessary to have a broad idea of the above structure which is the bone of contention in all theses cases. It was situated on the north-east corner of the mound or plateau, about 30' – 40' higher than the level of Highway. It was a three-arched structure having three broad but pointed arches on the facade. The *liwan* (sanctuary) which stood

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on a low plinth was composed of three square bays, roofed by three single broad and high domes. The skeleton mainly built of brick and mortar. **The enclosing wall through which the entrance given is said to have been constructed in the middle of nineteenth century.** It had twelve corner pillars on the angles of six main piers which make up the nave or the central or the main bay of the mosque. These small pillars were of black stone of the family of "schist" polished and commonly called as "*Kasauti"* stone. These pillars did not support the main load of the ceiling which passed down to the main columns of the ground floor, but only carried the lintels of the opening extensions. The pillars were not load bearing but simply strengthened the piers at their corners. The three domes appeared to be disproportionate. They were allegedly repaired, restored or renovated from time to time. In 1949/1950 when the present dispute arose, there were three inscriptions. One is a Persian epigraph of 8 verses, carved in relief in 4 lines in Naskh, above the *chhajja* on the central arch. Below the Chhajjas, Quranic verses from Chapter-CXII were carved. Two other inscriptions are said to have lost in 1934 riots but were replaced. One was on the southern side of the pulpit and another was on the right hand of the pulpit. The contents of those inscriptions would be dealt with and reproduced later on while dealing with the relevant issue. A photograph of the disputed building published in 1902 in the book "Tarikh-E-Ajudhya" is appended to this judgement as Appendix '1'. This is the oldest photograph of the building made available to the Court.

Suits--pleadings--in brief :

O.O.S. No.1 of 1989 (earlier registered as Regular Suit no. 2 of 1950)

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7. Regular Suit No. 2 of 1950 was filed in the Court of Civil Judge, Faizabad by Sri Gopal Singh Visharad on 16.1.1950 impleading Sri Zahoor Ahmad, Hazi Phenku, Hazi Mohd. Fayaq, Mohd. Shami and Mohd. Achhan Mian as defendants no. 1 to 5. Uttar Pradesh State, Lucknow, Deputy Commissioner, Faizabad, City Magistrate, Faizabad and Superintendent of Police, Faizabad were impleaded as defendants no. 6 to 9. During the pendency of the Suit, Sri Gopal Singh Visharad died and was substituted by his son Sri Rajendra Singh pursuant to Court's order dated 22.2.1986. Defendants no. 1 to 5 also expired in the meantime. No substitution except Plaintiff no. 1, has been sought in place thereof. Vide Court's order dated 7th January 1987, Sunni Central Waqf Board, U.P., Lucknow through its Secretary was allowed to be impleaded as defendant no.10. Similarly vide Court's order dated 23.8.1990, Nirmohi Akhara, Ayodhya through its Sarpanch Ram Swarup Das, Deputy Sarpanch M. Bhaskar Das and Panch Raja Ramachandracharya has been impleaded as defendant no. 11. So, presently, in effect, the parties to the suit consist of Rajendra Singh, the plaintiff and six defendants, i.e., defendants no**.** 6 to 11. On transfer to this Court vide order dated 10.7.89, the aforesaid suit was re-registered as O.O.S. No. 1 of 1989 (hereinafter referred to as “Suit-1”).

Reliefs

8. The reliefs sought in Suit-1 (duly amended pursuant to the Court's order dated 7.1.1989) are: a declaration that the plaintiff is entitled to offer worship without any obstruction according to rites and tenets of his religion at the birth place of Lord Shri Ram Chandra, described at the foot of the plaint and defendants no. 1 to 10 and their substitutes have no authority to create any

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hindrance/obstruction in the aforesaid right of the plaintiff, a permanent prohibitory injunction against defendants no. 1 to 10 and their substitutes not to remove the idols of Lord Shri Ram Chandra situated at the place of birth described at the foot of the plaint, neither obstruct ingress and egress to the aforesaid place or at the entry point nor create any obstruction in worship and Darshan *(Pooja and Darshan*). The cost of suit and any other relief which may justifiably be granted are also prayed.

Plaint (Suit-1)

9. The case set up by the plaintiff is that he is a religious person, resident of Ayodhya and used to worship the idols of God according to customs of his religion (*Sanatan Dharma*). He has also been offering worship to idol and *Charan Paduka* (wooden sleeper) of Lord Shri Ram Chandra at his birth place, details whereof are given at the foot of the plaint and is entitled to continue such worship without any hindrance at the aforesaid place in future also. The plaintiff was ill for some time and when on 14.01.1950 he went to offer worship at the birth place of Lord Shri Ram Chandra, defendant no. 6 along with employees of the State restrained him from approaching the place at which the idol of Lord Shri Ram Chandra was situated. On enquiry he came to know that defendants no. 1 to 5 and 6 through its employees i.e. defendants no. 7 to 9 were depriving Hindu public from offering their lawful right of worship at the aforesaid place. Defendant no.6 on account of *mala fide* of defendants no. 1 to 5 had also made it open that in future also Hindu public would be continuously deprived of such right. This unjustified and illegal action has damaged the plaintiff's basic right which he has been exercising throughout. The present plaintiff also apprehends every possibility of

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continuance of such deprivation of his religious rights by the defendants. Defendant no. 6 through its employees and defendants no. 7 to 9 are exercising undue pressure upon Hindu public to remove the idols of Lord Shri Ram Chandra from the present place and other defendants are cooperating with them. In this way, the defendants are determined to continue with their illegal and unjust activities. The aforesaid action of defendants is illegal, unjustified and collusive, infringing the fundamental rights of the plaintiff and cannot be accepted by the plaintiff. Deprivation of such right by defendants no. 6 to 9 is illegal, *ultra vires* and against the provisions of the Government of India Act, 1935 (hereinafter referred to as "GOI Act, 1935"). The cause of action is said to have arisen on 14.1.1950 within the jurisdiction of Civil Judge, Faizabad when the plaintiff was deprived of exercising his religious rights. After the death of the plaintiff Gopal Singh Visharad his son has also similar right and is entitled to pursue the aforesaid suit. The plaint is signed and verified by the plaintiff on 13.1.1950.

10. The place of dispute has been described at the foot of the plaint as under:

East:	Janam Bhumi, Bhandar and Chabutara (Birth Place, Store and platform)
West:	Parti (Vacant land)
North:	Sita Rasoi (Kitchen of Goddess Sita)
South:	Parti (Vacant Land)

11. A temporary injunction was granted on 16.1.1950 which was modified on 19.1.1950 on an application filed by District Magistrate/Deputy Commissioner, seeking clarification/ modification of the earlier order. Thereafter a receiver was appointed by order dated 3.3.1950 who continued till a Civil

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Court's Receiver was appointed. In 1993 the property was acquired and now the "Authorised Person" i.e. Commissioner, Faizabad Division, Faizabad, a statutory authority is looking after the same.

Written statement of Defendants no. 1 to 5 (Jahoor Ahmad, Hazi Phenku, Hazi Mohd. Phayak, Mohd. Shami and Mohd. Achchhan Miya) (Suit-1)

12. Written statement dated 21.2.1950 filed on behalf of defendants no. 1 to 5 states that the disputed site is not a birth place. A mosque was constructed thereat by Emperor Babar Shah. The suit has been filed by giving wrong facts with an intention to mislead the Court and to obtain an order against the defendants which would be contrary to law. All the averments made in the plaint are denied. The plaintiff is not entitled to any relief. The additional pleas are that in the year 1528 Emperor Babar visited Ayodhya after conquering Hindustan and through its Minister/Commander Mir Baqi got a mosque constructed called 'Babari Masjid' and made it open to all Muslims for offering prayer through a general Waqf (Waqf-e-Aam). He also provided Rs. 60/- per annum for maintenance, repairs etc. of the aforesaid mosque, which was paid from the Government Treasury. The aforesaid amount was continuously paid by subsequent Mughal Rulers. Even Nawab Awadh continued with the said grant and, in fact, increased the amount to Rs. 302, 3 Annas and 6 paise per annum. This grant was maintained by British Government also. In 1885, Raghubar Das, Mahant, Janamsthan Ayodhya filed a suit against the Secretary of State for India in Council and Mohd. Asghar, Mutvalli/caretaker, Babari Masjid, in the Court of Sub Judge, Faizabad. He also filed a map showing the existence of mosque at the place in dispute and nobody disputed the same. He sought relief in

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respect to one *Chabutara* (platform) only. Now the claim of the plaintiff that the entire building is a birth place temple is incorrect and without any basis. The suit has been filed dishonestly and mala fide. The Court of Sub Judge, Faizabad vide judgment dated 24.12.1885 dismissed the suit of Raghubar Das, Mahanth.The said judgment was maintained in appeal. Though the suit was only in respect of right on a *Chabutara*, but that too was rejected by trial court as well as the appellate courts. The aforesaid case at that time was very sensitive. Many Mahanths and other followers of Hindu community pursued the aforesaid suit. Everybody was well informed of the aforesaid suit.

13. The written statement further says that pursuant to U.P. Waqf Act no. 13 of 1936 (hereinafter referred to as "1936 Act"), a Chief Commissioner of Waqf was appointed who made a spot inspection and on verification held that the place in dispute is 'Babari Masjid' constructed by Emperor Babar who was a Sunni. The mosque in question was held a "Sunni Waqf" and accordingly issued notification. The Muslim people have possession over the land in question as Waqf Babari Masjid since 1528 till date. Even if the plaintiff or any other Hindu prove that prior to construction of Babari Masjid there existed some temple, though it is not acceptable to the defendants, yet, for the last almost 400 years and above, the Muslims are in possession over the land in question and have completed their right of adverse possession being there for more than 12 years. The plaintiff and any other Hindu therefore have no right on the place in dispute. The plaintiff neither had any possession nor other kind of right in past, present or future. The suit is not maintainable in view of Section 42 of Specific Relief Act. It is

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barred by limitation. The plaintiff has neither shown any personal right on the building at the site nor otherwise has any ownership or other right on the property in question. The suit is liable to be dismissed. The plaintiff has not filed any application under Order 1, Rule 8 of the Code of Civil Procedure (hereinafter referred to as "C.P.C.") and, therefore, the suit cannot be treated to be in representative capacity filed on behalf of entire Hindu public and, hence not maintainable. The suit is bad for want of notice under section 80 C.P.C. against defendants no. 6 to 9. It is further said that the defendants are not aware of existence of idol in the property in question, i.e., Babari Masjid and till 16.12.1949 Namaz was offered therein. No idol existed thereat till 16.12.1949. If anybody has put idol in the mosque subsequently with bad and dishonest intention, i.e., only to damage the sacred place, i.e., the mosque, such attempt is a criminal and illegal act. If anybody wants to enter a mosque with an intention for idol worship, he deserves to be punished in law and no such permission can be granted. The plaintiff has not disclosed as to how and in what manner defendants no. 6 to 9 prevented him from exercising his alleged right and details are lacking. It is also not explained as to which employees of defendants no. 6 restrained plaintiff and in what capacity. So far as the defendants are aware, defendant no. 9 initiated proceedings under section 145 of the Code of Criminal Procedure (hereinafter referred to as "Cr.P.C.") in respect of Babari Masjid and pursuant thereto some action was taken by defendants no.7 and 8. Though the defendants are not accepting the proceedings initiated under Section 145, Cr.P.C. but the same being legal proceedings, no suit for injunction would lie so long the said proceedings are pending. Besides, in Ayodhya

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there is a temple known as "Birth Place of Lord Shri Ram Chandra" at a different place whereat idols of Lord Ram Chandra also exist. The present suit with an intention to call the "mosque" as "birth place of Lord Shri Ram Chandra" is a misleading attitude of the plaintiff and his instigators, and, may be an attempt to gain some advantage in election. It is also contrary to the principle of a secular State. The suit has been filed to harass the defendants and, therefore, they are entitled to costs.

Replication to W.S. of Defendants no. 1 to 5 (Jahoor Ahmad, Hazi Phenku, Mohd. Phayak, Mohd. Shami and Mohd. Achchhan Miya) (Suit-1)

14. The plaintiff filed replication dated 5.12.1952 denying the existence of Babari Masjid and Waqf created by Babar as also the right of Muslims to offer prayers at the place in dispute. Denying issuance of notification, if any under 1936 Act, he claims to be unaware of the said proceedings and thus not bound by the same. He has individual right of worship and, therefore, is entitled to claim the relief as prayed. Order 1 Rule 8 C.P.C. would not come in his way. Since 1934 Namaz has not been offered at the place in dispute. The idols of Lord Shri Ram Chandra exist on the disputed site and this fact is well known to defendants no.1 to 5. The temple of Lord Shri Ram Chandra Janamsthan, existence whereof has been set out in written statement, is a different temple and boundaries of the said temple are as under:

North:	Ahata. Parti and temple in possession of Kallu Mahapatra
South :	Pitch Road
East :	Road, Sahan and a well
West :	Hata and Parti (Compound and vacant land)

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15. He also said that in Ayodhya almost every temple has idol of Lord Shri Ram Chandra which has nothing to do with the site in dispute and reference to election etc. is wholly irrelevant. The plaintiff is an Advocate practising before the local Indian Rulers (Deshi Rajware) in the earlier times and has a lot of own property. After constitution of Indian Union, he has now a right to practice. Even if there existed Babari Masjid as claimed by the defendants, yet it is a fact that since 1934 Muslims have neither entered the said premises nor offered Namaz or prayer thereat. Since then the place in dispute is in possession of Hindu people who visit the said place continuously treating it to be a temple. Any proceeding initiated by the Muslims collusively in any Court is all fictitious and not binding either on Hindu public or on plaintiff in particular.

Written statement dated 25.4.1950 of Defendant no. 6 (United Provinces, Uttar Pradeh State, Lucknow) (Suit-1)

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16. On behalf of defendant no. 6 a separate written statement dated 25.4.1950 has been filed denying allegations made in the plaint and raising objection of want of notice under Section 80 C.P.C., non-description of the property in dispute properly, lack of cause of action and under-valuation. It is also averred that property in suit is known as Babari Masjid and has been in use as a mosque for worship by Muslims. It has not been used as a temple of Lord Shri Ram Chandra Ji. In the night of 22.12.1949 idols of Lord Shri Ram Chandra Ji were surreptitiously and wrongly put inside it. Apprehending disturbance of public peace and tranquility, the authorities intervened and passed an order under Section 144 Cr.P.C. on 23.12.1949 prohibiting carrying of firearm, swords, etc. and assemblance of more than five persons within the limits of Faizabad and Ayodhya municipalities. On 29.12.1949 Sri Markandey Singh, the then Additional City

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Magistrate on police report and other information passed an order under Section 145 Cr.P.C., calling upon the claimants of the premises in question to appear and file their written statement by 17.1.1950 in his Court. The said Magistrate also formed an opinion of emergency, attached the said property and appointed Sri Priya Dutt Ram, Chairman, Municipal Board, Faizabad, Ayodhya as Receiver of the said property, authorizing him to take care thereof and also to submit a scheme for its management. The authorities have acted in accordance with law fraught with a situation of serious danger to public peace and tranquillity. The Court has no jurisdiction to grant any injunction causing interference in the performance of public duty by a department of the Government.

Written statement of Defendants no. 8 and 9 (Sri Markandey Singh, Additional City Magistrate, Faizabad and Sri Ram Kripal Singh, Superintendent of Police, Faizabad) (Suit-1)

17. Defendants no. 8 and 9 have filed written statements separately but the contents thereof are similar to the written statement of defendant no.6.

Written statement dated 24.2.1989 of Defendant no. 10 (U.P. Sunni Central Waqf Board) (Suit-1)

18. After impleadment, defendant no. 10, U.P. Sunni Central Waqf Board also filed a separate written statement dated 24.2.1989. The pleadings are similar as those in the written statement of defendants no. 1 to 5, and thus, are not being detailed herein but may be referred as and when occasion arises.

O.O.S. No. 3 of 1989 (earlier registered as Regular Suit No. 2 of 1959)

19. This suit was filed on 17.12.1959 by Nirmohi Akhara through its Mahant Raghunath Das (now substituted by Jagannath Das) and another in the Court of Civil Judge, Faizabad. It was registered as R.S. No. 26 of 1959. However,

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after transfer to this Court it has been re-registered as O.O.S. No. 3 of 1989 *(hereinafter referred to as "Suit-3")*. Initially, when it was filed, Nirmohi Akhara and Mahant Raghunath Das were plaintiffs. Sri Babu Priya Dutt Ram, Receiver as well as the State of Uttar Pradesh and its authorities were impleaded as defendants no. 1 to 5. Three persons from Muslim community were impleaded as defendants no. 6 to 8 as representatives of the Muslim community. Subsequently, however, from time to time the array of parties has undergone amendments on various dates due to death etc. Presently plaintiffs are, Nirmohi Akhara through Mahant Jagannath Das (plaintiff no. 1) and Mahant Jagannath Das (plaintiff no. 2). The defendants are as follows :

> "1. Sri Jamuna Prasad Singh, 2. State of Uttar Pradesh, 3. Deputy Commissioner, Faizabad, 4. City Magistrate, Faizabad, 5. Superintendent of Police, Faizabad, 6. Haji Mehboob, 7. Haji Abdul, 8. Mohd. Faiq, 9. U.P. Sunni Central Board of Waqfs through its Secretary, Lucknow, 10. Umesh Chandra Pandey and 11. Mohd. Farook."
>
> (The defendants no. 9, 10 and 11 were impleaded on their application allowed by the Court vide orders dated 23.8.1989, 28.1.1989 and 3.12.1991 respectively).

20. The plaintiffs have sought relief of grant of a decree for removal of defendant no. 1 from the management and withdrawal of charge of the temple of Janam Bhumi and to deliver the same to the plaintiffs through Mahant and Sarbarahkar Mahant Jagannath Das.

Plaint (Suit-3)

21. The case set out in the plaint dated 17.12.1959 is that since the days of 'Yore' there exists an ancient Math or Akhara of "Ramanand Bairagis" called 'Nirmohis' with its seat at

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"Ramghat" known as "Nirmohi Akhara". Plaintiff no. 1, Nirmohi Akhara is a religious establishment of a public character and plaintiff no. 2 is the present Head as its Mahant and Sarbarahkar. The Janam Asthan commonly known as 'Janam Bhumi', the birth place of Lord Ram Chandra at Ayodhya always belong to plaintiff no. 1 who through its reigning Mahant and Sarbarahkar has ever since been managing it and receiving offerings made thereat in the form of money, sweets, flowers, fruits, other articles and things. The said Asthan of Janam Bhumi is of ancient antiquity. It is existing since before the living memory of men and lies within the boundaries shown by letters "A B C D" in the sketch map appended with the plaint within which there stands a temple building of Janam Bhumi marked by letters "E F G K P N M L E". The building denoted by letters "E F G H I J K L E" is the main temple of Janam Asthan wherein the idol of Lord Ram Chandra is installed with Lakshamanji, Hanumanji and Saligramji. The said temple has ever been in the possession of plaintiff no. 1 and none others, but Hindus have ever since been allowed to enter or worship therein and make offerings in various forms which were received by plaintiffs through their Pujaris. Nirmohi Akhara is a "Panchayati Math" of "Ramanandi sect of Vairagies" and as such is a "religious denomination" following its own religious faith and pursuit according to its own customs prevalent in Vairagies sect of Sadhus. The customs of Nirmohi Akhara have been reduced in writing on 19.03.1949 by a registered deed. The plaintiff, Nirmohi Akhara owns several temples and manages all of them through Panch and Mahants of Akhara. The temples and properties vest in Akhara being a Panchayati Math. It acts on a democratic pattern. The management and right of management

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of temples and Akhara vest absolutely with the Panch. No Mohammadan could or ever did enter the said temple/building. Even if it is attempted to prove that any Mohammadan ever entered it, at least from 1934 none has been allowed to enter or even attempted to enter the said premises. In 1950, City Magistrate, Faizabad (defendant no. 4) without any lawful cause, with the active connivance of defendants no. 2, 3 and 5 and on wrong persuasion of defendants no. 6 to 8 who claimed themselves to be the representatives of Muslim community, attached the main temple shown by letters E F G H I J K L E in the said sketch map with all the articles mentioned in list 'A' appended with the plaint in a proceeding under Section 145 Cr.P.C. and placed the temple and articles under charge of defendant no. 1 as Receiver on 05.01.1950. The plaintiffs claim to have been wrongfully deprived of charge and right to manage the said temple. The attachment is continuing with the connivance of all the defendants. There is no likelihood of early revival of charge since defendant no. 4, in connivance with other defendants, has refused to handover charge and management of the temple to the plaintiffs and, therefore, filing of the suit became inevitable. The plaintiffs are entitled for delivery of charge and management of the temple from defendant no. 1. Defendants no. 6 to 8 alleging themselves to be the representatives of Muslim community are exercising undue influence on defendants no. 1 to 5 to continue with the charge of temple and management in the hands of Receiver. They are being sued in representative capacity on behalf of entire Muslim community with the permission of the Court. The cause of action arose on 05.01.1950 when defendant no. 4 appointed defendant no. 1 as Receiver, and management and charge of the

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temple alongwith articles as stated was entrusted to him. A notice under Section 80 C.P.C. was given to defendants no. 1 to 5. It was delivered on 06.10.1959 and 12.10.1959 and replied by them through defendant no. 3, intimating their decision to defend the suit.

22. After demolition of the disputed building on 06.12.1992, the plaint was amended and now it has been stated that on 06.12.1992 the temples of Nirmohi Akhara were also demolished by some miscreants who have no religion, caste or creed. The main temple was demolished on 06.12.1992.

Written statement dated 28.3.1960 of Defendants no. 6 to 8 (Hazi Phenku, Hazi Mohd. Fayaq and Mohd. Achhan Mian) (Suit-3)

23. On behalf of defendants no. 6 to 8, a written statement dated 28.03.1960 has been filed. The allegations of the plaint in general are denied. In defence it is said that Shahanshah-E-Hind 'Babar' got constructed a building known as 'Babari Masjid' which is the property in dispute over which claim has been staked by the plaintiffs. The aforesaid building was constructed by Shahanshah Babar through its Wazir Mir Baqi in 1528 and made a Waqf-E-Aam for Muslims who got a right to offer prayers in the said building. For repairs and maintenance of the said building Shahanshah Babar provided Rs. 60/- per annum as grant from Royal Treasury which, since then, was being received continuously. Nawab Oudh not only continued the grant but also increased the amount to Rs. 302, 3 Anna and 6 Pai per annum. This grant was continued by British Government. In 1885 Mahant Raghubar Das of Janam Asthan Ayodhya filed a suit against Secretary of State in the Court of Sub-Judge, Faizabad wherein he also filed a map of the premises in question. The existing Masjid was shown very clearly and it was

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never disputed. The relief claimed therein was confined to a "Chabutara". It is incorrect and without basis that the said building is a temple of Janam Bhumi. The suit has been filed falsely and with dishonest intention. The suit of Mahant Raghubar Das was dismissed on 24.12.1885 and the judgement was confirmed in appeal. The Sub-Judge in his judgement also rejected the claim of the said plaintiff in respect of Chabutara. The said finding was confirmed in appeal. In the aforesaid suit various Mahants of Ayodhya and general Hindu public were very much interested. At that time the suit was very sensational and pursued by Hindu public in general. They had, therefore, knowledge of the said proceedings. Under U.P. Muslims Waqf Act, 1936 (hereinafter referred to as "UP Act, 1936"), a Chief Waqf Commissioner was appointed who made spot inspection and concluded that the building in question was Babari Masjid. Since Babar was a Sunni, therefore, it was held to be a "Masjid" belong to Sunni Waqf Board. A notification in this regard was also issued which has attained finality. The Muslims have possession over Babari Masjid since 1528 till date. Even if it is proved by the plaintiffs or any other Hindu that there existed any temple before construction of Babari Masjid, though it is denied, still for the last more than 400 years Babari Masjid exists on the place, maturing the rights of Muslims at the said premises by "adverse possession". The plaintiffs have no right or possession over the premises in dispute at any point of time. They have not given any notice under Section 80 C.P.C. to defendants no. 1 to 5. The existence of idol inside Babari Masjid is denied. On 16.12.1949 Namaz was offered and till then no idol existed therein. If subsequently somebody has placed any idol with a bad intention, it is an offence and contrary to Muslim

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religion and rights. Any such action would not confer any right upon the plaintiffs to claim interest in a Muslim religious place i.e. Masjid. As per the knowledge of defendants no. 6 to 8, defendants no. 1 to 5 initiated proceedings under Section 145 Cr.P.C. and passed order appointing a Receiver at the premises in dispute which was in collusion with some Hindu people. At Ayodhya there exist a temple of Lord Ram Chandra. Mandir Janam Asthan is separate from the premises in question. The placement of idols at Babari Masjid and claim thereon by the plaintiffs is a collusive act on their part with an intention to get certain advantage in elections. The site mentioned in the appended copy is wrongly shown and is incorrect. There does not exist any “Shankar Chabutara” or “Sita Koop” or “Lomas Chaura” nor there exists any idol of Hanuman or Varah Bhagwan. The claim is fictitious and arbitrary having been made with mala fide. The plaintiffs have not shown as to how they got interest in the premises in question. One suit has been filed by one Sri Gopal Singh 'Visharad' and another by Param Hans Ram Chandra Das claiming their rights on Babari Masjid and, therefore, they are also liable to be impleaded in this suit. Building in question is clearly a Masjid. Government and everyone has always accepted and treated the same as such. The orders impugned have been issued under Section 145 Cr.P.C. and, therefore, the suit is not maintainable and liable to be dismissed. The plaintiffs have not impleaded the real persons who would have effectively represented the entire Muslim community. The defendants are not appropriate persons to represent the entire community. They have been impleaded only with an intention to harass them.

Replication to written statement of Defendants no. 6 to 8 (Hazi Phenku, Mohd. Fayak and Mohd. Achhan Mina) (Suit-

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24. The plaintiffs' replication states that the property in suit is neither a mosque nor is known as Babari Mosque. It was not built by Emperor Babar through Mir Baqi nor made a Waqf. The property in suit is a temple of Janam Bhumi. Janam Asthan is a different temple unconnected with the temple of Janam Bhumi. The temple of Janam Asthan is situated to the north of the temple of Janam Bhumi across the road passing between Janam Bhumi and Janam Asthan. The plaintiffs are not aware of the suit said to have been filed by Mahant Raghubar Das. The Chief Commissioner of Waqf has no jurisdiction to declare the temple Janam Bhumi as mosque. The declaration is a nullity and has no effect in law. The plaintiffs were never intimated of any such proceedings held by the Chief Commissioner regarding temple Janam Bhumi building and if any proceedings were conducted separately, they have no effect in law. Notification, if any, is neither final nor binding on the plaintiffs. The Muslims were never in possession of the building in suit. The allegations regarding perfection of their right over the building by adverse possession is purely fictional and concocted. The plaintiffs have always been in peaceful possession of the building and there is no question of expiry of the period of limitation in this regard. The defendants have no right to take the plea of want of notice under Section 80 C.P.C. The Muslims and the entire community including the defendants know that the idols of Deity are installed in the building in suit i.e. in the temple of Janam Bhumi and regular Pooja of the idol is performed under the receivership of the defendant. No prayers were ever offered by any Muslim in the said building and suggestion otherwise of the defendants is false. The building is not a mosque. The relief sought is within the competence and jurisdiction of civil court.

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The proceedings under Section 145 Cr.P.C. were initiated in respect of Janam Bhumi temple and not of any mosque. It is admitted that the proceedings under Section 145 Cr.P.C. were illegal since the plaintiffs have right of management of the said temple and defendants have no interest in the building in suit. No question of invasion of rights of defendants, therefore, arises. It is the plaintiffs who have suffered on account of appointment of Receiver since it is their right of management which has been impaired by appointment of Receiver. The old temple built on the sacred place at Ayodhya, admitted on the part of defendants is to create a confusion by referring the temple Janam Asthan and identifying it with the temple of Janam Bhumi is illegal. The defendants are encouraged by the proceedings under Section 145 Cr.P.C. so as to set up their claim over the land and building in dispute. The description of property has been correctly made in the plaint. The sketch map is absolutely correct. The plaintiffs are in possession and management of the temple Janam Bhumi since living memory of men and it belongs to them who are managing it through its Mahant. Non acknowledgement by the Government of the temple Janam Bhumi is simply preposterous and collusive. The plaintiffs are in possession from time immemorial. The evidence of construction of temple by plaintiff no. 1 through Mahant Sarbarahkar, may not be traced due to lapse of immemorial age and for want of written record. The plaintiffs have acquired title by open and adverse possession for a period, larger than living memory of men.

Additional written statement dated 24.8.1995 of Defendant no. 9 (U.P. Sunni Central Board of Waqfs) (Suit-3)

25. Defendant no. 9 has filed an additional written statement dated 24.8.1995 disputing the assertions of amended plaint as

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contained in paragraphs 4-A, 4-B, 4-6 XI and XII and 10. It is said that since the plaint is not with respect to Chabutara, its demolition does not give any cause of action to the plaintiffs.

Written statement dated 21.10.1991 of Defendant no. 10 (Umesh Chandra Pandey) (Suit-3)

26. In the written statement dated 21.10.1991 filed by Umesh Chandra Pandey, defendant no. 10, it is said that Janam Asthan is a holy place of worship and belong to Deity of Bhagwan Shri Ram Lala Virajman. Neither it ever belong to nor could have belonged to plaintiff no. 1 and assertion of managing it at any point of time is denied. The holy Janam Asthan or Janam Bhumi is actually a very old temple while the Akhara of plaintiffs owes its existence for about 200 years. The correctness of sketch map and boundaries of the temple are not disputed. However, it is said that the main presiding Deity of the temple is Bhagwan Shri Ram, although there are several other idols of other deities termed as "Ram Darbar" and are worshipped. Besides, there are other symbols such as, "Charan", "Sita Rasoi" etc. through whereof the Deity of Bhagwan Shri Ram is worshipped. Shri Ramjanambhumi is in addition to the Asthan of Shri Ramjanambhumi which by itself is a Deity and worshipped as such. A Hindu temple is deemed to be possessed and owned by a Deity. The principal Deity of Shri Ramjanambhumi is Bhagwan Shri Ram. Any offering must have been received by the Manager of the same from time to time. It appears that in the first war of independence in 1857 AD, the Britishers, to divide Hindus and Muslims, acted mala fide and divided the said Asthan creating an inner enclosure, describing the boundary within the inner enclosure as a mosque. No Muslim who is a true Muslim would ever visit such a place for offering Namaz since it is prohibited by Shariyat. Even Aurangzeb issued a

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mandate known as Fatwa-E-Alamgiri, prohibiting offering of Namaz by Muslims at such places. Moreso, the "Kasauti pillars" and the carvings of Gods and Goddesses clearly show that this place could not be used by a true Muslim for offering his prayer thereat. The place was wrongly alleged as mosque. It is land-locked by Hindu temples where the worship of Deities was going on. Entry to this inner enclosure was also prohibited. The Britishers tried to set up the descendants of Mir Baqi, a Shiya Muslim, as Mutwalli, but they denied the Taulkat and never looked after the disputed place in any capacity. The building was attached and Receiver was appointed by order dated 29.12.1949 by the Court of Additional City Magistrate, Faizabad in proceedings under Section 145 Cr.P.C. Since the proceedings were initiated at the behest of Muslims represented by defendants no. 6 to 8 who have died, no cause of action survives and the suit stands abated. The suit is barred by time. The plaintiffs did not file any revision against the order of attachment and appointment of Receiver in proceedings under Section 145 Cr.P.C. No individual Muslim came to contest the suit as representative of Muslim community. Defendants no. 6 to 8 are Sunnis and cannot represent Shiya community of Mohammadans and their representative capacity for Muslims is also denied. The permission granted to defendants no. 6 to 8 to represent all Muslims in representative capacity is bad. The suit is bad for mis-joinder and non-joinder and barred by time. The suit i.e. regular Suit No. 12 of 1961 is already pending involving similar issues wherein the plaintiffs are also parties and they can get their relief in the said suit.

Replication dated 8.11.1991 to written statement of Defendant no. 10 (Umesh Chandra Pandey) (Suit-3)

27. The replication dated 8.11.1991 states that defendant no.

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10 has been used as a tool and lever by certain group of persons to defeat the claim of plaintiffs. Giving the history of the origin of "Nirmohi Akhara" it is said that its origin is more than 500 years ago. The entire hierarchy of persons has been mentioned. There was a great religious preceptor Shankaracharya at the end of 7th Century AC who established for the first time "Hindu Maths" in four corners of India i.e. Goverdhan Math at Puri, Jyotir Math at Badrinath, Saroda Math at Dwarka and Sringeri Math at Tungabhadra. The said practice was followed by other religious teachers and first in time was "Shri Ramanujacharya" followed by "Shri Ramanand". Shri Ramanand founded a sect of Vaishnavas known as "Ramats" which contains a large element of aesthetic population found in Banaras and Ayodhya. Ramanand established several Maths. Ramanadi Maths consist only of celibates. They obey no caste rules and admit even Sudras in their brotherhood. The "Ramats" worship one God in the form of 'Rama' and they call themselves "Dass" (servants of Lord). About 500 years ago, Shri Swami Brijnand Ji and Sri Balanand Ji, of Ramanandi Sect of Vairagies, established three Annis known as (1) Nirmohi, (2) Digamber and (3) Nirwani for protection and improvement of "Chatuha Rama Nandi Sampradaya". This comprised of seven Akharas namely, (1) Sri Panch Ramanandi Nirmohi Akhara, (2) Sri Panch Ramanandi Nirwani Akhara, (3) Sri Panch Ramanandi Digambari Akhara, (4) Sri Panch Ramanandi Santoshi Akhara, (5) Sri Panch Ramanandi Khaki Akhara, (6) Sri Panch Ramanandi Niralambi Akhara and (7) Sri Panch Ramanandi Maha Nirwani Akhara.

28. The Akharas as "Panchayati Maths" act on democratic pattern and real power vests in Panch. The appointment of Mahant is through election by Panchayat. The Mahant is the

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formal head of institution. The Nirmohi Akhara, being a Panchayati Math, own several temples and one of such is Ram Janam Asthan i.e. birth place of Lord Rama. Plot No. 163 of first regular settlement of 1861 has been a very big plot having 5 Bighas and 19 Biswas of land but when in the year 1895, amended map was prepared, a road bifurcated Janam Asthan. Sita Rasoi of Gudar Das Ka Asthan was separated. "Ram Janam Asthan" now known as "Ramjanambhumi" lies towards south of the road whereas "Janam Asthan of Gudar Dass" lies towards north side leading from Hanuman Garhi to Janam Bhumi Road shown in the last settlement of 1937 AD by Kistwar No. 159 and 160 (Appendix-1A, B to this judgment). At the time of attachment of main building, outer enclosure comprised of Ram Chabutara where Deity of Bhagwan Ram Lala Ji and Shatrughan Ji in a cage (Gufa) situate alongwith Sri Hanuman Ji. The said outer enclosure had Panchmukhi Shanker Ji, Ganesh Ji etc., with Chhatti Pujan Asthan where Holy Footprints of Lord Ram (Charo Bhaiya) exist which are perennial source of worship by followers of brotherhood of Rama Nandi Vairagies. This outer enclosure was in possession of Nirmohi Akhara as depicted by the Fard of 145 Cr.P.C. proceedings itself prior to attachment in February 1982. This attachment order was passed by Shree Pati, the then City Magistrate, Faizabad in the case under Section 145 Cr.P.C. Against final order of attachment dated 06.03.1982, Criminal Revision No. 60 of 1982, Dharam Das Chela Abhiram Das Vs. Sri Panch Rama Nandi Akhara was preferred which was dismissed on 13.05.1983 by IV Additional Sessions Judge, Faizabad. "Nirmohi Akhara" is a religious denomination. It had been maintaining and managing the disputed temple since long. Baba Baldeo Das was Pujari. His

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disciple Bhaskar Das now Up-Sarpanch and general agent of Nirmohi Akhara was there with him discharging the duties of Pujari. According to customs of Nirmohi Akhara, 5 Sadhus, 3 Pujaries, 2 cooks and one Panch always used to live at Shri Ramjanambhumi. Building certificate for outer enclosure has always been made in the name of Mahant Raghunath Das of Akhara. Idol of Lord Ram Chandra installed in main temple belong to Panchayati Math of Nirmohi Akhara. The big Deity of Lord Ram Chandra installed therein is Achal Deity. A small Ram Lala Ji, as called, which according to custom prevalent in Vairagi sect of Sathus in Ayodhya, is used to discharge certain outside ceremonies like Sharad Puno etc. Besides, there are six Shaligram Bhagwan. There are two Singhasans (Thrones) of Silver, one idol of Hanuman Ji and other Parshads as detailed in para 3 of the plaint. The Panch of Nirmohi Akhara and Nirwani Akhara fought together against many evil forces to save Hanuman Garhi and Ramjanambhumi. Hanuman Garhi belong to Panch Rama Nandi Nirwani Akhara. Similarly Shri Ramjanambhumi belong to Panch Ramanandi Nirmohi Akhara and same custom/riwaz/Parampara is applicable to Hanuman Garhi used to be observed for Darshan by Hindu public at large and by Nirmohi Akhara prior to attachment. In the year 1967 outer enclosure was released by Court of City Magistrate, Faizabad in favour of Ram Lakhan Das, a Panch of Nirmohi Akhara. Again in 1973, Regular Suit No. 9 of 1973 was filed in the Court of Civil Judge, Faizabad and several disputes inter se were raised which continued upto Regular Suit No. 39 of 1982. The judicial record and its decision are in favour of Nirmohi Akhara proving its title and possession. Since 1982 the outer enclosure is in possession of the Receiver appointed by the

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Court in Regular Suit No. 39 of 1982 pending in the court of Civil Judge, Faizabad. The Nirmohi Akhara vehemently fought proceedings under Section 145 Cr.P.C. and has filed affidavits in its favour. Defendant no. 10 has been utilised by Vishwa Hindu Parishad only as a lever for some ulterior motive.

O.O.S. No. 4 of 1989 (earlier registered as Regular Suit No. 12 of 1961)

29. The aforesaid suit was initially registered as regular Suit No. 12 of 1961 in the Court of Civil Judge, Faizabad and after transfer to this Court has been re-registered as OOS No. 4 of 1989 *(*hereinafter referred to as "Suit-4"*).*

30. It was filed by the Sunni Central Board of Waqfs, U.P., Lucknow *(hereinafter referred to as "Sunni Board")* through Shah Ghyas Alam, it's Secretary and nine others, namely, Molvi Mohammad Qasim, Haji Mohammad Ehtaram Ali, Molvi Mohammad Faiq, Molvi Mohammad Naseer, Shahabuddin, Mohd. Hashim, Vakiluddin, Mahmud Ahmad and Zahoor Ahmad who were impleaded as plaintiffs no. 2 to 10 respectively. During the pendency of this suit, Haji Mohammad Ehtaram Ali, Molvi Mohammad Faiq and Molvi Mohammad Naseer died and not substituted. Therefore, their names have been struck off/deleted under the orders of this Court. Plaintiff no. 2, Molvi Mohammad Qasim, plaintiff no. 6, Shahabuddin, plaintiff no. 8, Vakiluddin and plaintiff no. 10, Zahoor Ahmad have also died and in their place Mohd. Siddiq, Ziauddin, Maulana Mahfoozurahman and Farooq Ahmad have been impleaded as plaintiffs no. 2/1, 6/1, 8/1 and 10/1 respectively. Accordingly, besides Sunni Central Waqfs Board, presently, there are only six more plaintiffs.

31. Similarly, 10 defendants were impleaded initially but

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thereafter many have been added, substituted and deleted. Presently the defendants in the suit are as under:

2. Mahant Suresh Das, 3. Nirmohi Akhara, 5. The State of Uttar Pradesh, 6. The Collector, Faizabad, 7. The City Magistrate, Faizabad, 8. The Superintendent of Police, Faizabad, 9. B. Priya Dutt, 10. President, All India Hindu Maha Sabha, 11. President, Maha Pradeshik Sabha, 12. President, All India Sanatan Dharm Sabha, 13/11. Dharam Das, 14. Pundrik Misra, 17. Ramesh Chandra Tripathi, 18. Mahant Ganga Das, 19. Shri Swami Govindacharya, 20. Madan Mohan Gupta and 22. Umesh Chandra Pandey. (in all 17 defendants)

32. The relief sought is :

"(a) A declaration to the effect that the property indicated by letters A B C D in the sketch map attached to the plaint is public mosque commonly known as 'Babari Masjid' and that the land adjoining the mosque shown in the sketch map by letters E F G H is a public Muslim grave yard as specified in para 2 of the plaint may be decreed.

(b) That in case in the opinion of the Court delivery of possession is deemed to be the proper remedy, a decree for delivery of possession of the mosque and graveyard in suit by removal of the idols and other articles which the Hindus may have placed in the mosque as objects of their worship be passed in plaintiff's favour, against the defendants.

(bb) That the statutory Receiver be commanded to hand over the property in dispute described in the Schedule 'A' of the Plaint by removing the unauthorised structures erected thereon.

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(c) Costs of the Suit be decreed in favour of the plaintiffs.

(d) Any other or further relief which the Hon'ble Court considers proper may be granted."

Plaint (Suit-4)

33. The case of the plaintiffs is that at Ayodhya, Pargana Haveli Oudh there exists an ancient historic mosque commonly known as 'Babari Masjid' built by Emperor Babar about 433 years ago, after his conquest of India, and occupation of the territories including Ayodhya town. The said mosque was for the use of Muslims in general as a place of worship and performance of religious ceremonies. In the sketch map attached alongwith the plaint the construction of the mosque has been shown by letters A, B, C and D and the land adjoining the mosque in the east, west, north and south is the ancient graveyard of Muslims who lost their lives in the battle between Emperor Babar and the rulers of Ayodhya. The mosque and graveyard vest in the Almighty. The mosque since the time of its construction has been in use of Muslims for offering prayers, and, graveyard is used as such. It is situated in Mohalla "Kot Ram Chander" also known as "Ram Kot", Town Ayodhya. Khasra numbers of the mosque and graveyard are shown in Schedule-A appended to the plaint i.e. 238, 579-588, 590, 593, 595, 603, 606, 607, 610, 619, 620, 621 and 628, Ram Kot Ayodhya (Nazool Estate, District Faizabad). A cash grant used to be received from the Royal Treasury for maintenance of the mosque and other connected expenses. The grant was continued by the Emperors of Delhi and thereafter by Nawab Saadat Ali Khan and Nawab Wazir of Oudh. After annexation of Oudh, British Government also continued it till 1864 and thereafter the

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cash *Nankar* grant was substituted by granting revenue free land in Village Sholapur and Bahoranpur (situate in the vicinity of Ayodhya). In the mosque, but outside the main building thereof, a Chabutara, size 17 feet/21 feet, existed. There was a small wooden structure in the form of a tent. In 1885 one Mahant Raghubar Dass instituted a suit (OS No. 61/280 of 1885) alleging himself to be the Mahant of *Janam Asthan*. The said suit was filed against the Secretary of State for India in Council and Mohammad Asghar, Mutawalli of Babari Masjid for permission to build a temple on the Chabutara size, 17"/21". The aforesaid suit was dismissed by the Sub Judge, Faizabad and appeal being Civil Appeal No. 27/1885 was also dismissed by the District Judge. In the aforesaid suit a sketch map was filed alongwith the plaint wherein the entire building with the exception of Chabutara 17"/21" was admitted to be a mosque and was shown as such. The cause of action for the said suit arose due to refusal to grant permission to Mahant Raghubar Dass, Mahant of *Janam Asthan* for construction of a temple by Deputy Commissioner, Faizabad on the representation of some Muslims on the ground that a temple could not be permitted to be built on a land adjoining the mosque i.e. Babari Masjid. The aforesaid suit was filed by Mahant Raghubar Dass on behalf of himself, *Janam Asthan* and the whole body of persons interested in *Janam Asthan* impleading Mohammad Asghar, Mutawalli of Babari Masjid, as defendant. The suit was contested by the aforesaid Mutawalli stating that the land on which temple is sought to be built is neither the property of Mahant nor *Janam Asthan* but the said land lies within the Ahata of Babari Masjid and is property of Muslims. The issues directly and substantially in the aforesaid suit were about the existence of Babari Masjid

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and the rights of Hindus to construct temple on land adjoining Masjid. The existence of mosque was admitted by the said plaintiff. The suit was dismissed, besides others, on the ground of public policy also. The decision of the aforesaid suit operate as "resjudicata" against the present suit for the reason that the construction was admitted to be a mosque therein. It was a sensational case wherein the entire Hindu Public and more specially all Mahants of Ayodhya and other respectable Hindus of Faizabad were deeply interested. In 1934 there was a communal riot in Ayodhya when a portion of Babari Masjid was damaged. However, it was rebuilt at the cost of Government through a Muslim Thekedar. In 1936, U.P. Act 1936 was enacted. The Commissioner of Waqfs made an inquiry and held that Babari Masjid was built by Emperor Babar who was a Sunni Mohammadan and that the mosque was a public Waqf. The report was forwarded by the State Government to the Sunni Waqfs Board who published the same in the official gazette dated 26.02.1944. The said report was not challenged by any person on the ground that it was not a Muslim Waqf but a Hindu Temple. The Muslims have been in peaceful possession of the aforesaid mosque and used to recite prayer therein till 23.12.1949 when a large crowd of Hindus with a mischievous intention of destruction and damage, defiled the mosque and to insult Muslim religion entered and desecrated it by placing idols inside the mosque. The aforesaid conduct of Hindus amount to an offence punishable under Section 147, 295 and 448 I.P.C. Even if it is assumed that at one point of time, there existed a Hindu Temple as alleged by defendant-representatives of Hindus, at the site where Emperor Babar built the mosque about 433 years ago, the Muslims by virtue of their

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long, exclusive and continued possession, beginning from the time the mosque was constructed and continuing up to the time when some mischievous persons entered the mosque, have perfected their title by "adverse possession". The right, title or interest of the temple and of Hindu public, if any, extinguished. The incident that occurred on 23.12.1949 was reported by the Constable on duty (Mata Prasad) at Police Station, Ayodhya and the Sub-Inspector registered a report and proceeded to make inquiry on the spot. The City Magistrate, Faizabad cum Ayodhya initiated proceedings under Section 145 Cr.P.C. By order dated 29.12.1949 he attached the mosque premises and handed over possession to Sri Priya Dutt Ram, defendant no. 9 as Receiver who continued to be in possession. The Muslims thus are deprived of their legal and constitutional rights of offering prayers in the said mosque. The action of City Magistrate, Faizabad is illegal, fraught with injustice to the plaintiff and has the effect of depriving large Muslim citizens in India from exercising their legal right guaranteed under the Constitution. On 16.01.1950 defendant no. 1 filed Regular Suit No. 2 of 1950 (Suit-1) in the Court of Civil Judge, Faizabad in his personal capacity for declaration and injunction on false allegation that the building in suit was a temple and deities are installed in it. After sometime defendant no. 2 also filed Suit No. 25 of 1950 in the Court of Civil Judge, Faizabad against the same set of defendants with identical relief. The only difference was that first suit was filed without notice under Section 80 C.P.C. to the State Government and its officers but the second suit was filed after giving the aforesaid notice. Another Suit No. 26 of 1959 (Suit-3) was filed by Nirmohi Akhara and Mahant Raghunath Dass, defendants no. 3 and 4 against defendants no.

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5 to 9 and certain Muslim persons under Order 1 Rule 8 C.P.C. seeking removal of defendant no. 9 from the management of building which the Hindu public call temple of *Janam Asthan* and for delivery of possession to defendant no. 4 i.e., Mahant Raghunath Dass. On the application of plaintiff in Suit No. 2 of 1950 (Suit-1) a temporary injunction was graned restraining defendants of that suit from removing idols from the mosque in dispute and from interfering in Pooja etc. of Hindus as a result whereof the learned Civil Judge while permitting Hindus to perform their religious rights namely, Pooja of the idols placed by them in the mosque, has denied to the Muslims even entry in the mosque. The Muslims thereby are deprived of their just and legal rights and are disallowed even entry to the mosque constructed about 433 years back, declared to be a public Waqf and used as such by generations of Muslims. The order of injunction thus has caused injustice and this has necessitated the filing a suit by Muslim public under Order 1 Rule 8 C.P.C. against the Hindu public so that the decision may be binding on the Hindu community at large. The suit is being filed by plaintiffs in representative capacity for the benefit of the entire Muslim community alongwith an application for necessary permission under Order 1 Rule 8 C.P.C. The defendants are shown as representing the entire Hindu community and for that purpose also an application seeking permission under Order 1 Rule 8 C.P.C. has been filed alongwith the plaint. The building in suit claimed by plaintiffs as Muslim Waqf is in the possession of the Receiver holding for the real owner and is liable to be released in favour of the plaintiffs in case their suit succeeds, but, if for any reason, the Court finds it necessary that there ought to be a suit for possession, the plaintiffs, in the

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alternative, pray for delivery of possession. A notice under Section 80 C.P.C. sent to defendants no. 5 to 9 by registered post on 19.06.1961, was delivered to defendants no. 5 to 8 on 20.06.1961. Defendant no. 9 has refused to take delivery of notice on 23.06.1961. The suit has been filed after expiry of 2 months period of notice.

34. During the pendency of Suit-4, on 06.12.1992, the building in dispute was demolished. Thereafter by way of an amendment the plaintiffs got inserted paragraphs 21-A to 21-C pleading the following facts.

35. On 06.12.1992, in violation of interim orders dated 03.02.1986, 14.08.1989 and 07.11.1989 of this Court, and the order dated 15.11.1991 of the Apex Court, Babari Masjid in question was demolished, idols wrongly placed in the night of 22-23.12.1949 were removed, and thereafter an illegal structure was created on 07.12.1992. These acts of demolition and destruction were carried out by the miscreants and criminals with the connivance of the then State Government of Bhartiya Janta Party and in defiance of various Court's order. The plaintiffs, therefore, are entitled for restoration of building as it existed on 05.12.1992. Under the Muslim Law, a mosque is a place where prayers are offered publicly as a matter of right. It neither requires any structure nor any particular mode of structure is provided. Even on an open place prayers may be offered and it would be a mosque. Thus despite demolition of mosque building by miscreants, the land over which building stood is still a mosque and Muslims are entitled to offer prayers thereon. On 07.01.1993, vide Ordinance No. 8 of 1993 (replaced by Central Act No. 33 of 1993) the land of the mosque and the entire land appurtenant thereto including the land in suit was

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acquired by the Central Government. However, a writ petition challenging vires of the aforesaid Statute was filed. The Hon'ble Apex Court vide judgement dated 24.10.1994 has held Union of India to be a statutory Receiver of the land covered by the said mosque and has further provided that the land appurtenant and adjacent shall be provided for enjoyment of the crucial area of the mosque portion as per requirement in accordance with the judgement of the suits. The Commissioner, Faizabad is presently working as Authorised Person on behalf of the Government. Valuation of the suit is 22,000/-, whereon Court fees has been paid. The cause of action arose on 23.12.1949 at Ayodhya, District Faizabad when the Hindus unlawfully entered and desecrated the mosque by placing idols causing obstruction and interference with the rights of Muslims in general of offering prayers. They are also causing obstruction to the Muslims going to the graveyard and recite Fatiha to the dead persons buried thereat. The aforesaid injury is continuing. It arose against the defendants no. 5 to 9 on 29.12.1949 on which date the defendant no. 7 attached the mosque in suit and handed over possession to defendant no. 9 (Receiver) who assumed charge on 05.01.1950. The State Government and its official defendants no. 6 to 8 have failed in their duty to prosecute offenders and safeguard the interest of Muslims.

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Written statement dated 12.3.1962 of Defendant no. 1 (Gopal Singh Viscera) (Suit-4)

36. Defendant no. 1 in his written statement dated 12.3.1962 while generally denying the averments of the plaint, said that no battle took place between Babar and Ruler of Ayodhya nor any graveyard or mosque was built as dictated by Babar. He filed case against a few Muslims and certain Government Officials for injunction and declaration and defendant no. 2 also filed a

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suit. Hindus perform pooja in “Janam Bhumi Temple” and Muslims are not allowed to go near that temple. They (Muslims) wrongly and maliciously describe the said building as mosque. The plaintiffs have no right to treat the defendants as representing the entire Hindu community, which extends from Madras to Kashmir and from Dwarika to Calcutta. None of the defendants represents all the Hindus of India. “Janam Bhumi Temple” is a public charitable institution and defendant no. 1 contests the suit as well as the previously instituted suit in his individual capacity. The suit is barred by time. Muslims are not in possession of the property in dispute since 1934 or even earlier. The suit deserves to be dismissed. In additional pleas, it is said that the Muslims were never in possession of the temple of Ramjanambhumi. In the alternative, if they were in possession of the so-called Babari mosque, the same ceased to be since 1934 and since then Hindus are having possession over the temple which has ripened into statutory adverse possession since 1934. Prior to 1934, continuous daily pooja in that temple was performed by Hindus. Muslims have never offered prayer since 1934 in the temple falsely described as Babari mosque. The temple in dispute is a public charitable institution and do not belong to any sect, group, Math or individual or Mahant or any Akhara and is a public place of worship open to all Hindus. No individual Hindu or Mahanth can be said to represent the entire Hindu community so far as the said ancient temple is concerned. The suit is time barred as no action was taken in time commencing from the order of the City Magistrate under Section 145, Cr.P.C. The suit is time barred as the plaintiffs were never in possession over the temple in dispute since 1934. Hindus are holding it adversely, to them (plaintiffs) overtly and

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to their knowledge. On equitable ground also, the suit deserves to be rejected since Hindu pooja is going on in the said temple from the past at least 28 years, i.e., from 1934, and, admittedly from January, 1950 when the City Magistrate directed defendant no. 9 to carry on pooja as usual in the said temple. The suit deserves to be stayed since same issues are being tried in suits no. 2 of 1950 and 25 of 1950 between the same parties. Suit under Order 1 Rule 8 C.P.C. is bad as no one, representing the Hindu community, has been made a defendant and is also liable to be dismissed with special cost since plaintiffs, knowing that defendants no. 1 to 4 and 9 do not represent the Hindu community, have impleaded them though only their individual interest is involved.

Additional written statement dated 31.10.1962 of Defendant no. 1 (Gopal Singh Visharad) (Suit-4)

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37. An additional written statement dated 31.10.1962 has also been filed by defendant no. 1 stating that U.P. Act, 1936 is ultra vires of Government of India Act, 1935 *(hereinafter referred to as "GOI Act, 1935")* as it does not come under any of the items of the List-II of Provincial list or List-III. Even on principles of pith and substances, the aforesaid legislation can not sustain. It cannot be validated under Section 80 (3) of the former Government of India Act, 1919 after the repeal of the said Act by Section 478 of the GOI Act, 1935. Even otherwise, the suit not being one relating to the administration of Waqf, taking of accounts, appointment and removal of Mutwallies, putting the Mutwallies in possession or settlement or modification of any scheme of management for which powers and duties have been specified under Section 18(2)(e) of the Act No. XIII of 1936, is misconceived and not maintainable having been filed on behalf of plaintiff no. 1, who can perform only such duties and

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functions as are permitted under the Act. Section 5(3) of the Act is hit by Article 14 and 16 of the Constitution. The above Act has been repealed by U.P. Act 16 of 1960 vide Section 85(2). The saving clause in the subsequent enactment only saves the operation of the repealed Act in regard to any suit or proceeding pending in any Court or to an appeal or application in revision against any order that may be passed in suit or proceeding subject thereto anything done or any action taken in exercise of powers conferred by or under those Acts unless expressly required by any provision of later enactment. Since, there is no saving with respect to decisions under Section 5(3) in proviso to Section 85(2) of the Act, the finality attached by Section 5(3) vanished after the repeal of the former enactment. The building on land in suit lie in the Province of Oudh and subject to Lord Canning's proclamation, all previous rights became non est. Since no fresh grant in respect of the property in suit has been made after proclamation, the plaintiffs or the Muslim community have no right to sue. The Commissioner of Waqfs under the Act has limited right of making enquiry about the number of Waqfs of Shia and Sunni in the District, nature of Waqfs, gross income from property transferred to the Waqfs, the revenue, expenses and whether it is deposited under Section 2. The Commissioner has only to see whether any transaction is Waqf or not, to which sect the Waqf belongs, whether such Waqf is or not exempted under the Act. It has to do everything in accordance with Section 3 (1) of UP Act, 1936. The finality attached to such order of the Commissioner would not confer jurisdiction to decide the question of title against non Muslims. Section 5 (2) of the Act nowhere provides that the Court shall take judicial notice of the report of the Commissioner of Waqfs

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and shall regard them as conclusive evidence that the Waqfs mentioned in such report are Muslim Waqfs as was done in Section 10 of the O.E. Act. There is no legal publication of alleged report and hence, no question of finality arises. The purpose of publication is to show as to which sect the Waqf belong. It does not call upon objection or suit by a person not interested in what is held to be a 'Waqf' or not viz. non Muslims.

Written statement dated 25.1.1963 of Defendant no. 2 (Sri Paramhans Ram Chander Das) (Suit-4)

38. The written statement dated 25.1.1963 of defendant no. 2 is more or less similar to the written statement and additional written statement dated 31.10.1962 filed by defendant no. 1 except of certain additions, namely, that the earlier suits were neither filed in representative capacity nor they represent all Hindus and, therefore, would not bind the defendants or other Hindus, who are not party therein. Similarly, the defendants of the earlier suit neither represent the Muslims nor the Sunnis in general and the plaintiffs of the suit cannot be legally considered as claiming through the defendants in that suit. The issue in question nowhere directly or substantially arose therein and there is no res judicata or constructive res judicata. The Hindus are worshipping the land in dispute (site of Janam Bhumi) from time immemorial and they are entitled to continue worship. It was not a matter in dispute in earlier case.

Replication dated 11.9.1963 to written statement of Defendants no. 1 and 2 (Gopal Singh Visharad and Paramhans Ram Chander Das) (Suit-4)

39. Replication dated 11.9.1963 of the plaintiffs in reply to the written statements of defendants no. 1 and 2 states that the Hindu community never held the mosque and Ganje-Shahidan in their possession nor performed pooja therein since 1934 as alleged by them. It is also said that the property has not been a

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temple as alleged by the defendants and, on the contrary, the Muslim public has been in possession for the last 450 years when it was constructed. The property has been placed in possession of a Receiver appointed by the Court of City Magistrate-1st Class, Faizabad. It is also denied that the Hindu public took possession of the property in question in 1934, holding the same since then, and, has completed title by adverse possession. The possession of the Muslim community continued since ever and they have been offering prayer in the mosque as such. Hindu public in 1934 did some mischief to destroy the mosque and damage was caused to some extent, which got repaired by the Government at its own cost and the Hindu Public was charged with punitive tax. The Hindu public never came in possession, much less peaceful possession of the property in suit. The Muslim public as representative of the Waqf has been in continuous possession of the property in suit for the last 450 years, i.e., since the time the mosque was constructed. Even if the Hindu public had any interest whatsoever in the property in suit before the said period, the Muslim public representing the Waqf perfected its title to the property in suit by their long undisturbed open possession against the interest of Hindu public which amounts to adverse possession and thus title or interest, if any, of Hindu public has extinguished.

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Written statement dated 22/24.8.1962 of Defendants no. 3 and 4 (Nirmohi Akhara and Mahant Raghunath Das) (Suit-4)

40. The defendants no. 3 and 4 have filed their separate written statement dated 22/24.8.1962 through Mahant Raghunath Dass. While denying generally the allegations made in the plaint, they have said that there did not exist any mosque known as Babari Masjid in Ayodhya nor any mosque was built

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by Emperor Babar more than 460 years ago, as alleged, nor did Babar conquest or occupy any territory in India at the time alleged in the plaint. The story of the mosque as set up in para 1 of the plaint is purely fictitious. The sketch map is entirely false, imaginary and outcome of plaintiffs' fancy. On the khasra numbers mentioned in the plaint, no mosque or graveyard exist. The story of the alleged battle between Babar and previous ruler of Ayodhya, whose name has not been mentioned in the plaint, is a pure canard. Neither did any Muslim lost his life in a battle on the land of the said khasra numbers nor there is any grave or graveyard of Muslim. No question, therefore, arises of any mosque or graveyard having been vested or vesting in the Almighty. The allegations of Muslims with respect to offering payer or using the land covered by the said Khasra numbers as graveyard are altogether false and concocted. The real facts are that the said Khasra numbers pertain to the 'Temple of Janam Bhumi' and other land appurtenant thereto. Since no mosque exists, the question of its upkeep and maintenance does not arise. The existence of mosque is denied as well as that of Chabutra. The defendants have also denied knowledge of any suit filed by a person known as Mahant Raghubar Dass styled as Mahant of Janam Asthan. The Janam Asthan is situated in north of temple of Janam Bhumi across the road passing between Janam Bhumi and Janam Asthan. Any map filed by Raghubar Dass along with the alleged plaint would be false, fictitious and is not binding on defendants 3 and 4. The existence of alleged Babari Mosque is denied. The alleged damage, rebuilding or reconstruction at anybody's cost or through any Thekedar (contractor) is denied and is fictitious. Even if any communal riot is proved to have occurred in Ayodhya in 1934, no mosque

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whatsoever was damaged. Enactment of UP Act, 1936 is admitted. Any enquiry or report in pursuance thereto and publication thereof in the Gazette is denied. It is also said that even if such enquiry is proved and its report was published, the same was ex parte, having been made secretly and surreptitiously, without any intimation or information to the said defendants and, thus, is not binding on them. Since the defendants were not aware of any such enquiry report, the question of challenging the same in a suit would not arise and absence thereof would not convert a Hindu temple in a Muslim Mosque. The mosque never existed and, hence, the question of a Muslim or the Muslim community in peaceful possession thereof and reciting prayers till 23.12.1949 would not arise. The building has been wrongly described as 'Babari mosque' since it has always been the temple of Janam Bhumi with idols of Hindu Gods installed therein. The allegation regarding placement of idols inside the mosque is false. No such incident, as stated in para 12 of the plaint ever took place and if any report was made by any Constable, the same is mischievous and in connivance of plaintiffs. The proceedings under Section 145 Cr.P.C. initiated by City Magistrate are not disputed but it is said that he passed an order attaching the temple of Janam Bhumi and placing it under the custody of defendant no. 9 as Receiver, who still continues as such and performs pooja at the premises. The Muslims have no right to offer prayer in the said temple.

41. By amendment of the written statement (allowed by the Court's order dated 21.8.1995) paragraphs no. 13 A, B and C have been inserted. It is said that on 7/10 October 1991, the U.P. Government issued a notification for acquisition of the property in dispute, the details whereof are as under :

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Settlement Plot nos.	Area (in acres)	Village
159 (Part)	0.3600	Kot Ramchandra, Pargana Haveli Awadh, Distt. Faizabad.
160 (Part)	1.0706	- do -
171 (Part)	0.4375	- do -
172 (Part)	0.9063	- do -
Total	2.7744 Acres	

42. On 22.3.1992, the B.J.P. Government in U.P. with the active connivance of local administration demolished the temples knows as Sumitra Bhawan etc. Bhagwan Ramlala Birajman in temple known as Sita Koop carries the Deity of Bhagwan Ramlala and prayer is being offered from time beyond the human memory. Bhagwan Ramlala Birajman at Mandir Loomarsh Chabutra is situated in plot no. 160 and part of plot no. 159. A big plateaxi known as 'Laxman Thekri' also exists over the disputed property. According to customs of Ramanandiya Akhara, Panch of Nirmohi Akhara used to live in vicinity of "Janam Bhumi Temple" and that is why these Holy places like Sumitra Bhawan, Sita Koop, Laxman Tekri, Loomarsh Chabutara which were in existence from time immemorial, before demolition, were all places of worship and situate within the disputed property marked by letters "E F G H I" of the sketch map filed along with the written statement of defendants no. 3 and 4. The notification of acquisition was struck down by this Court on 11.12.1992 and, therefore, the act of demolition by B.J.P. Government was wholly illegal. Before the judgment on 11.12.1992, the temple of Nirmohi Akhara along with Chatti Pujan Asthan and Panch's residential place were demolished on 6.12.1992 by some miscreants having no religion, caste or creed. The temple Ram Chabutra had a history

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of judicial scanning since 1885 and its existence and possession over temple Ram Chabutra ever since was with Nirmohi Akhara. No other but Hindus were allowed to enter and worship there and put offerings in the form of money, sweets, fruits, flowers etc., which have always been received by Panch of Nirmohi Akhara. The Muslims are not entitled to exercise any right in respect of the temple of Janam Bhumi. The defendants, being not party in the suit referred to in para 15 of the plaint, are not aware of any such suit. However, it is correct that the building in the present suit is a temple. Similarly, in respect of the suit referred to in para 16 of the plaint, the defendants are not parties and hence not aware of such facts. Suit no. 25 of 1950 has been filed against the entire Muslim community under Order 1 Rule 8 C.P.C. and not against certain individuals of Muslim community. The building in question in that suit is, in fact and in reality, the temple of Janam Bhumi. The defendants are not aware of the proceedings in Suit No. 2 of 1950 as they are not party in that suit and are also not aware of any order of injunction or result thereof. It is denied that the temple of Janam Bhumi is under attachment and in the custody of Receiver. Pujaries of the defendants only are allowed to enter the inner compound of the Temple which is guarded by armed police. The Muslims have no right to enter the temple. The assertions of building being a mosque, its construction, declaration as public waqf and use of it by Muslims as a mosque for prayer, are denied. The Sunni Board cannot represent the Shia community and the suit contemplated under Order 1 Rule 8 C.P.C. is misconceived. All the individual plaintiffs are Sunnis and cannot represent the Shia Community. Babar was a Shia and not a Sunni. The custody and management of the temple of Janam

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Bhumi, at present, by a Receiver is admitted. Knowledge of any notice served upon other defendants is denied. The existence of Mosque and graveyard is denied. There is no cause of action.

43. In the additional pleas, the details given in the sketch map attached to the plaint are denied and the sketch map appended to the written statement of the said defendants is claimed to be correct. There exists in Ayodhya since the days of Yore, an ancient Math or Akhara of Ramanand Vairagis called 'Nirmohis' with its seat at Ramghat known as "Nirmohi Akhara", which is a "religious establishment" of public character. Defendant no. 4 is Mahant and Sarbarahkar thereof. The temple in question is known as Janam Bhumi, the birth place of Lord Ram Chandra, situated in Ayodhya. It belong to defendant no. 3 who through its reigning Mahant and Sarbarahkar has ever since been managing and receiving offerings made thereat in the form of money, sweets, flowers and fruits etc. The said Asthan of Janam Bhumi is of ancient antiquity and is existing since before the living memory of men and lies within the boundaries shown in sketch map (Annexure-A to the written statement) within which stands the temple building of Janam Bhumi. Within temple premises, there installed are idols of Lord Ram Chandra with Lakshmanji, Hanumanji and Shaligramji. The said temple has ever since been in possession of defendant no. 3. None other but the Hindus have ever since been allowed to enter or worship therein and make offerings like money, sweets, flowers and fruits etc. No Mohammedan could or ever did enter the said temple building. Even if some attempt is proved, no one has entered at least since 1934. In 1950, the City Magistrate, Faizabad without any lawful cause, and, with active connivance of defendants no. 5, 6 and 8, and wrong persuasion by some of

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the plaintiffs, attached the main temple of Janam Bhumi in a proceeding under Section 145 Cr.P.C. and placed it with all the articles mentioned in List B, appended with the plaint under the charge of defendant no. 9 as Receiver on 5.1.1950. The defendants have wrongly been deprived of their management and charge of the said temple for delivery of which they filed suit no. 25 of 1959 by removing the Receiver. The aforesaid suit of defendants has been filed against Muslim public under Order 1 Rule 8 C.P.C. The suit is time barred. The Muslim community or any of its members have never been in possession within limitation over the property in dispute. Even if the plaintiffs succeed in showing that any Muslim ever offered prayers in the building in question or used the same as a Mosque for sometime, but since 1934 no one has ever entered therein and, therefore, defendants, being in possession thereof, have matured their title by adverse possession.

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Additional written statement dated 25.01.1963 of Defendants no. 3 and 4 (Nirmohi Akhara and Mahant Raghunath Das) (Suit-4)

44. One additional written statement dated 25.1.1963 has been filed stating that even if it is proved that any person known as Mahant Raghubar Dass made any admission or statement or averment in the said suit, the same is not binding upon the defendants and would not affect the title and interest of the said defendants in the temple of Janam Bhumi in any manner. The building in dispute is certainly a temple, not a mosque and the decision in respect thereto, in the alleged suit filed by Sri Raghubar Dass, cannot and would not operate as res judicata nor the said decision has any evidentiary value in the present suit. The building is Janam Bhumi and not a mosque. The defendants are not bound by the proceedings of suit no. 61/280 of 1885.

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IInd Additional written statement dated 28/29.11.1963 of Defendants no. 3 and 4 (Suit-4)

45. Another written statement dated 28/29.11.1963 has been filed alleging that Babar never built mosque as alleged by the plaintiffs and Muslims were never in possession of building in question. The allegation that some mischievous persons entered the mosque and demolished it, is incorrect. No question of Muslims perfecting their title by adverse possession or by extension of right, title or interest in the temple of Hindu public at all arises as the Muslims were never in possession.

IIIrd Additional written statement W.S. dated 21.08.1995 of Defendant No. 3 (Suit-4)

46. Additional written statement dated 21.8.1995 filed on behalf of defendant no. 3 says that plaintiffs were not in possession of property in dispute either on the inner side or the outer side. The narration of Receiver's possession is only with respect to inner disputed site, i.e., main temple bound by letters "B, B1, B2, B3, D2, D1" and letters "D, C, B" shown in Annexure 'A' attached to the written statement. The outer part of the disputed site comprised of Shri Ram Chabutara temple, Chhatti Pujan Sthal, Panch Mukhi, Shanker Ganesh Ji Kirtan Mandap, Bhandar, House of Panch of Nirmohi Akhara, all belong to Nirmohi Akhara and have ever been in the possession of Nirmohi Akhara through Panch from before the human memory, and even on the date of attachment, when order dated 29.12.1949 was passed. The real facts regarding Shri Ram Chabutara temple, Chhatti Pujan etc. have been concealed and purposely not adverted in para-21 A of the amended plaint. The facts in this regard are that the Sub Judge, Faizabad, held that Charan (feet) is embossed on the Chabutara which is being worshipped, whereover Idol of Thakurji is installed, which is in

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possession of defendant no. 3, Nirmohi Akhara. The District Judge, held that it is most unfortunate that a Masjid should have been built on a land specially held sacred by Hindus. Regular Suit No. 256 of 1922 was contested between Mahant Narottam Das and Mahant Ram Swaroop Das with regard to realising dues from hawkers in the area belong to the parties, the statement made by counsel on behalf of Mahant Narottam Das was as under :

> *"The land marked red in the map was all along parti land till the defendant made the constructions in dispute. The land belongs to the Nazul and the plaintiff as Mahant of the Janam Asthan and his predecessor have all along been in possession and has basis of his title on possession. No lease from Nazul has been taken. They have been holding the land under an Iqrarnama from the Shahi times. There has been no settlement decree."*

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47. The defendant's pleader in suit of 1922 admitted the said averments and said that the land never belong to Nazul Department. In suit no. 95 of 1941 between Mahant Nirmohi Akhara, namely Ram Charan Das and Raghunath Das, a commission report was prepared wherein at item no.-2 description of temple Ramjanambhumi belong to Nirmohi Akhara was specifically mentioned. At Item no. 3, name of Sita Koop belong to Nirmohi Akhara was also mentioned. The main temple of Shri Ramjanambhumi has always been surrounded by the Holy and pious places like Sumitra Bhawan temple, Sita Koop temple etc. and Holy water has always inspired religious faith. Muslims had no way to access the inner structure of suit property since long back. The temple of Shri Ram Chabutara, Chhatti Pujan, Gufa temple of Chabutara shown in the map, in

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the outer part of disputed site, with main structure were demolished by miscreants and it is only defendant no. 3, who is entitled to get it restructured as it existed on 5.12.1992 and is also entitled to restore other pious places of temple of defendant no. 3, which were demolished on 22.3.1992 by U.P. Government. Denying para 21-B of the amended plaint, it is alleged that full description of the outer courtyard has not been given by the plaintiff purposely. "Nirmohi Akhara" is a Panchayati Math of Rama Nandi sect of Vairagies and, as such, is a religious denomination following its own religious faith and pursuit according to its own customs prevalent in Vairagies sect of Sadhus. The customs of Nirmohi Akhara have been reduced in writing on 19.3.1949 by a registered deed. The Akhara owns several temples and manages them through Panch and Mahant of Akahra. The whole property vests in Akhara. On 23.2.1992, the State of U.P. illegally demolished various temples including Sumitra Bhawan Temple, Lomash Chabutara temple and Sita Koop temple surrounded on eastern and southern places to main Ramjanambhumi Temple. Shri Ram Chabutara temple belong to Nirmohi Akhara who filed contempt petition in High Court. On 6.12.1992, the outer portion which included Chabutara Ram temple, Chhatti Pujan, Sita Rasoi and Bhandar Grih of Nirmohi Akhara were also demolished along with main temple.

Replication dated 11.09.1963 to written statement of Defendants no. 3 and 4 (Nirmohi Akhara and Mahant Raghunath Das) (Suit-4)

48. Replication dated 11.9.1963 to the written statement of defendants no. 3 and 4 has been filed by plaintiffs reiterating that the map attached to the plaint is correct; property in suit is not a temple and has never been in possession of the defendants and the Muslim public have always been offering prayers and

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visiting the mosque and Ganje-Shahidan which is the property in suit for the last 450 years, when the mosque was built. Attachment of the mosque under Section 145 Cr.P.C. is admitted and appointment Sri Priya Dutt Ram as Receiver is also not disputed. It is said that he still continues as the Receiver. The defendants were never in possession or in-charge of the property in suit. The matter pending before the Additional Civil Judge, Faizabad has already been transferred to the High Court. The plaintiffs and Muslims were in possession of the property in question for the last 450 years. In 1934, the Hindu public and others, out of some mischief, attempted to destroy the mosque at places which was repaired by the Government on its own expenses and Hindu public was penalized by punitive tax. The Muslims remained in possession till December 1949 when Hindu public forcibly entered the mosque by breaking open the lock of the mosque and desecrated the mosque by placing idols inside therein. Pursuant thereto, proceedings under Section 145 Cr.P.C. were drawn resulting in appointment of a Receiver. The interest, if any, of Hindus in the property in suit prior to last 450 years has extinguished since Muslim public is in possession for the last 450 years as representative of waqf and has perfected title to the property in suit by virtue of adverse possession thereof.

Application dated 21.4.1962/28.5.1962 of Defendants no. 5 to 8 (State of Uttar Pradesh, Collector, Faizabad, City Magistrate, Faizabad and Superintendent of Police, Faizabad) (Suit-4)

49. On behalf of defendants no. 5 to 8, an application dated 21.4.1962/28.5.1962 has been filed stating that they are all State officials and State Government is not interested in the property in dispute and as such, they do not propose to contest the Suit. The State officials had taken a bonafide action in respect of the

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property in dispute and in due discharge of their official duty. Therefore, they be exempted from the cost of the suit.

Written statement dated 27/28.7.1962 of Defendant no. 9 (Priya Dutt Ram, Receiver) (Suit-4)

50. On behalf of the defendant no. 9, i.e., the Receiver, a written statement dated 27/28.7.1962 has been filed wherein he has admitted the factum about his appointment as Receiver and said that the tent shaped structure as alleged in para 5 perhaps refers to small temple with idols installed belong to Nirmohi Akhara which stands outside the walls of the building in dispute and its existence is admitted.

Written statement dated 16.2.1990 of Defendant no. 10 (President, All India Hindu Maha Sabha) (Suit-4)

51. Defendant no. 10 has filed written statement dated 16.2.1990 wherein general contents of plaint are denied stating that U.P. Act, 1936 was an atrocity committed by the British Rulers and after regaining independence, when two nations theory was accepted, the part of India, now known as 'Bharat' is Hindu nation in which no such Act is ever acceptable unless adopted by a lawfully constituted Government of Union of India. After independence, all the old Hindu laws are revived and Country is to be ruled totally according to Hindu laws and canons and Hindu jurisprudence. The question of alleged legal constitutional right of plaintiffs does not arise.

52. In the additional pleas, it is said that the plaintiffs were never in possession of the property in dispute nor had any right to take possession thereof or make any construction thereon under the law of the Country. The property in dispute has been throughout in uninterrupted possession of Hindu Community as a whole and in the ownership of Lord Shri Ram. The plaintiffs have no concern with the property in dispute. They have no

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locus standi to file the suit. It is bad for non joinder of necessary parties and barred by limitation. Suit is undervalued and no proper Court fee has been paid for the reliefs claimed. Community of Hindus is being harassed by the plaintiffs for no fault. The dispute can be settled by the Union of India represented by a lawfully constituted Government only by enacting a law and is beyond the scope of jurisdiction of the Court. The President of India promulgated Ram Janma Bhumi-Babri Masjid (Acquisition of Area) Ordinance, 1990 (Ordinance No. 9 of 1990) and the consequences followed are:

i. That the First Ordinance was implemented fully.

ii. That the land in question vested in the Government and the same was freed and discharged from any trust obligation, mortgage, charge, lien and all other encumbrances affecting them.

iii. That any order of attachment, injunction, decree or any order of court restricting the use of such property in any manner and also the order appointing the receiver in respect of the whole or any part of such property were withdrawn.

iv. That with the commencement of the First Ordinance, the pending suits, appeals or any other proceedings of whatever nature in relation to the property in question pending before any Court stood abated.

v. That the Central Government took the management of the property in question and also appointed authorised person who took charge of the property in question under Section 7 of the First Ordinance.

vi. That the Commissioner of Faizabad Division was

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appointed as authorised person to take possession of all the properties in question under Section 7 of the First Ordinance as also the entire management from the Receiver and in consequence of that, the possession as well as the management of the property in question was taken over by and on behalf of the authorised person.

53. However, subsequently the said Ordinance was withdrawn under pressure of certain fundamentalists and the issues kept alive so as to utilise them as a weapon in the election, by a second Ordinance, i.e., Ram Janam Bhumi-Babri Masjid (Acquisition of Area) Withdrawal Ordinance, 1990 (Ordinance No. 10 of 1990). Thereafter, property was sought to be restored though it could not have been restored once it stood transferred to the Government. Once the property vests in the Government, it cannot be re-transferred to original owner or owners specifically when the owners have not been named in the Ordinance. The Court neither can pass a judicial order restoring the suits and the proceedings which have abated as a consequence of acquisition of the property in dispute nor can revive the interim orders passed earlier by the Court. The Parliament cannot revive a matter once abated and, therefore, the President also could not have issued an Ordinance exercising co-extensive power with the Parliament since the power to issue an Ordinance is legislative. The revival of the proceedings etc. is illegal. The Ordinance issued by the President is an example of misuse of power. The second Ordinance hits the basic structure of the Constitution. The first Ordinance has been repealed by the second Ordinance which has been withdrawn. There is a difference between repeal and withdrawal. The suit

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filed by the Sunni Board having already been abated, cannot be revived by operation of law. The suit is not maintainable as Section 92 C.P.C. and Section 14, Religious Endowments Act have not been complied with. The plaint has not been verified by person of Waqf Board and has been verified by plaintiff no. 4 without any sanction, authority or power from the Waqf Board. Under Section 64 of the Waqf Act, only Waqf Board can file a suit. The suit has not been filed by Waqf Board as the same has not been verified by any authorised person of the Waqf Board. Waqf Board cannot file suit with private persons nor can it file suit against the State being an instrumentality of the State. No State authority can file suit against any particular community in respect of communal activities. Waqf Board is not a person within the meaning of Order 1 Rule 8 of C.P.C. and, therefore, cannot file the suit. It is time barred. No specific prayer has been made.

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Replication dated 18.11.1991 to written statement of Defendant no. 10 (President, All India Hindu Maha Sabha) (Suit-4)

54. The plaintiff has filed replication dated 18.11.1991 to the written statement of defendant no. 10 stating that the land in dispute including the mosque could not have been acquired. The property never stood transferred to the State or its authorities. The property in question, in fact, was not acquired by the first Ordinance. Similarly, in the second Ordinance also the same was left untouched. Since the property was not covered by first Ordinance, the question of its acquisition, transfer, vesting or divesting does not arise. The suit had never abated as a result of promulgation of first Ordinance and, therefore, question of its revival also would not arise. The suit always remained to be pending before the competent Court.

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Supplementary Replication dated 27.11/3.12.1991 to amended written statement of Defendant no. 10 (President, All India Hindu Maha Sabha) (Suit-4)

55. It is said that the State cannot interfere with the rights of parties as guaranteed under Article 25 of the Constitution and, therefore, if the Ordinance by the President has any such effect, the same would be violative of Articles 25 and 26 of the Constitution of India.

Additional written statement dated 12.9.1995 of Defendant no. 10 (President, All India Hindu Maha Sabha) (Suit-4)

56. Defendant no. 10 in additional written statement dated 12.9.1995 states that no Masjid or Babari Masjid existed over the land in question and, therefore, no question of its demolition on 6.12.1992 arises. Idols were in existence at the place since time immemorial and it is incorrect to say that the idols were placed only in the night of 22/23.12.1949. Babar was an invader and had no legal authority to construct Masjid at the sacred place of Hindus, i.e. the birth place of Lord Shri Ram. Mugal invader Babar through his commander Mir Baqi tried to demolish the old glorious temple of Lord Shri Ram at the place in question but could not succeed in its mission. After the riot in 1934, three domes of the temple were damaged. Prior to that date, the outlook of the building was of pure Hindu temple, but while carrying out repair works, the Britishers tried to give it the shape of a mosque and three domes were constructed over Kasauti pillars which were of temple. The Hindus have all along been in possession over the entire area of Shri Ramjanambhumi. The land in question has all along been in possession of Hindus and devotees of Lord Shri Ram. The worship of Lord Shri Ramlala Virajman is going on since the time immemorial. With a view to renovate the old temple and to construct a new one, Kar Sewa was performed and the said action was not in

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violation of any order passed by any Court. There was no order in force against Hindus in respect of the temple property/structure. The Hindus have never been fanatic. They allowed every religion to flourish in Bharatvarsh. There is no evidence in history to show that the Hindus ever demolished any mosque or place of worship of any other religion. On the contrary, every Mughal invader and ruler from Mohammad-bin-Quasim to Aurangzeb and even thereafter demolished, destroyed and looted the temples of Hindus. The plaintiffs never had any concern with the land in question and are not entitled for restoration of the building or its possession. Muslim law in India is subject to the Constitution. Muslims cannot use open place of land in question for offering prayers. They also cannot encroach upon the land of religious places of Hindus. Under Shastrik law applicable to Hindus, the property once vested in the Deity continues to remain of the Deity. The entire property in question belongs to Shri Ramlala Virajman who is in existence from the time immemorial and is being worshipped by His devotees at the place in question without any interruption till date. The place of dispute has got no significance for the plaintiffs as they can offer prayer at any place. It would be appropriate and in consonance with the principles of 'secularism' that the Muslims do not offer prayers within the vicinity of the birth place of Lord Shri Ramlala Virajman, which is sacred for Hindus and offer their prayers beyond the area of Panchkoshi Parikrama. That will create brotherhood and peace. Over the land in question, no mosque ever existed and the Muslims are not entitled to encroach upon the land in question or offer prayer at that place. The Apex Court has never held that the land covered by the Act No. 33 of 1991 belong to any mosque or that

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the adjacent area will be provided for enjoyment of the crucial area of mosque portion as per requirement. The property in dispute has not been described in Schedule-A to the plaint since its dimensions, width, survey number etc. are not mentioned for the purpose of identification. The plaintiffs are not entitled for possession of the structure standing at the site as the land in question and the adjacent area belong to Hindus and devotees of Lord Shri Ram. In the additional pleas, it is said that Bharatvarsh was divided on the basis of the religion. Pakistan was created for Muslims and the rest part of Bharatvarsh remained for Hindus. Consistent with Vedic scriptures, secularism was adopted in the Constitution. The rights of other religions, groups or community are subject to rights of Hindus. Lord Ram, Lord Krishna and Lord Shiva are cultural heritage of India which has been recognized by the Constituent Assembly. In the original Constitution signed by the members, pictures of recognized cultural heritage exist which include scene from Ramayana (conquest over Lanka and recovery of Sita by Lord Ram). Thus the citizens of Country are entitled to pay homage to their Lord at His birth place. Being sacred place for Hindus it cannot belong to Muslims or any other community or religious group. Therefore, the claim of Muslims over the land in question is unconstitutional and is also against Islamic laws. The plaintiffs cannot claim themselves to be Muslims entitled to file suit. Even if it is correct that Hindus came into possession of the disputed structure on 22/23.12.1949 and placed idols, the act is not wrong. The Hindus have rectified the curse of Mughal slavery before the commencement of the Constitution. The action of invaders had no sanction of law and after independence, it is the right of citizens to nullify every misdeed

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and wrong action of the invaders. The entire area including the place in question belong to Deity Lord Shri Ramlala Virajman and His devotees. The worshippers are entitled to offer prayers, Pooja, Arti, Bhog etc. and to pray their great Lord. They also have a right to construct a glorious temple. Under the debris of demolished temple structure, a lot of signs and material concerning temple was found. A very big Chabutara beneath the present structure exists which also reveals that there existed a glorious and big temple of Lord Shri Ram. There is no evidence, sign or material at all to show that there was any mosque. The State has not been arrayed as a party to the suit and, as such, plaintiffs cannot claim any relief against the Receiver. The Sunni Waqf Board has no legal authority to file the suit. The suit is time barred. Amended relief cannot be granted. The suit has to be decided on the principles of justice, equity and good conscience. Prayer of injunction deserves to be refused as it does not come within the four corners of the principles of injunction.

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Written statement dated 20.7.1968 of Defendant no. 13 and 14 (Baba Abhiram Das and Pundarik Misra) (Suit-4)

57. Baba Abhiram Das, defendant no.13, and Pundarik Misra, defendant no.14 filed their common written statement dated 20.7.1968. It is said that neither any battle took place between Babar and the Ruler of Ayodhya nor any graveyard or mosque was built by Babar. The Muslims wrongly described the building in question as mosque. They were not allowed to go near the temple where Hindus performed Pooja etc. on the Janam Bhumi temple. The plaintiffs have no right to make defendants to contest suit in a representative capacity as a self-appointed representative of Hindu community which extends from Madras to Kashmir and Dwarika to Calcutta. None of the

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defendants can represent all Hindus in India. Janam Bhumi Temple is a public charitable institution and the aforesaid defendants contest the suit in individual capacity. The other averments of the plaint are generally denied. The suit is barred by time. Muslims are not in possession of the property in dispute since 1934 and earlier.

58. In additional pleas it is said that the Hindu community from time immemorial has been worshipping the site of Janama Bhumi upto this time by virtue of their rights. Muslims were never in possession of the temple called "Ramjanambhumi". If ever, they were interrupted in possession of the falsely called "Babri Mosque". The same ceased on/in 1934 and since then Hindus are holding the temple in their possession and their possession has ripened in statutory adverse possession. Even prior to 1934 continuous daily Pooja by Hindus had been performed in the said temple. The Muslims never offered prayer in 1934 in the temple falsely described as "Babri Mosque". The temple being a public charitable institution no individual belong to any sect, group, Math or otherwise has any right to represent all Hindus as it is a public place of worship open to all the Hindus. In any case, from January 1950 when the City Magistrate directed defendant no. 9 to carry on Pooja as usual in the said temple, it is being performed by Hindus without any interference by Muslims. The suit under Order 1, Rule 8 C.P.C. is bad as no one representing Hindu community has been made defendant and also for the reason that the plaintiffs have impleaded defendants no.1 to 4 and 9 knowing fully well that they do not represent Hindu community but have their individual interest only. The plaintiffs' claim based on U.P.Act No. 13 of 1936 is baseless for the reason that (a) the aforesaid

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Act is ultra vires; (b) the Government of India Act 1935 came into force before passing of the above Act; it does not come under any of the items of List 2 of the Provincial List or list 3 of the Concurrent list. Item no.9 of the Concurrent List or item no. 34 of the Provincial List cannot save the above legislation on the principle of pith and substance. Item no. 28 of list 3 of the Constitution has been remodelled. Any sanction under sub-section 3 of Section 80-A of the former Government of India Act will not validate legislation after the repeal of the said Act by Section 321 of Government of India Act 1935. Even if the Act is treated to be *intra* vires, the suit is not related to administration of Waqf , taking of accounts, appointment and removal of Mutwallis, putting Mutwallis in possession or settlement or modification of any scheme of management for which powers and duties have been specified under section 18 (2) of the Act. The suit on behalf of the plaintiffs is not maintainable. The Act containing privileges based on classification of Waqf on the ground of religion, particularly, Section 5(2) is hit by Articles 14 and 19 of the Constitution. After the enforcement of U.P. Act of 16 of 1960, the suit in question is not one which is saved under section 85(2) of the said Act. Further Section 9(2) of the said Act would not save the finality of the decision of the Commissioner of Waqfs from being affected by provisions of Chapter I of Act 16 of 1960, particularly when there is no saving clause with respect to decision under Sections 5(2) and 9(2). The finality attached by Section 5(3) will vanish after the repeal of the enactment. The building and land in question lying in the Province of Oudh became subject of Lord Canning's proclamations and all previous rights became non est. No fresh grant in respect of

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property in suit having been made after the proclamation, the plaintiffs or Muslim community have no right to sue. The Commissioner of Waqfs only had to make an inquiry about the number of Shia and Sunni Waqfs in the District, the nature of each waqf, the Government revenue, expenses and whether it is one exempted under Section 2. The Commissioner had only to see as to whether any transaction is Waqf or not; as to which sect the Waqf belong and whether such Waqf is or is not exempted by Section 2 of the Act. He had to discharge above duties in accordance with definition of Waqf in Section 3(1) of Act No. 13 of 1936. The Act exclusively is meant for certain classes of Muslim Waqfs. It does not confer any power to decide the question of title against non-Muslims. Section 5(3) nowhere says that the Court shall take judicial notice of the report of the Commissioner of Waqfs and shall record it as conclusive evidence. Moreover, there has been no legal publication of the said report, hence, there is no question of its finality. The capacity of plaintiffs as well as defendants acting as representatives of Hindu and Muslim in general is denied. Any judgment between some individuals or group of individuals would not be binding on others, and, therefore, there is no question of res- judicata. The land in question is being worshipped from time immemorial as site of Janam Bhumi and they are entitled to worship thereat. The issues involved in the present case were not those involved in earlier suits, therefore, the question of *res judicata* or constructive *res judicata* does not arise.

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Written statement dated 4.12.1989 of Defendant No.13 (Dharam Das) (Suit-4)

59. Defendant no. 13 Dharam Das has filed a very detailed written statement dated 4.12.1989 which was also amended

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subsequently. The defence taken is that Babar was not a fanatic but a devout Muslim who did not believe in destroying Hindu temples. It was Mir Baqi who was a Shia and commanded Babar's orders, who demolished ancient Hindu temple of the time of Maharaja Vikramaditya at Shri Ramjanambhumi and tried to raise a mosque like structure in its place with its material. Babar was not an emperor. He was a marauder. What was constructed was not a mosque nor it was constructed for use of Muslims in general. It was not known as Babri Masjid but described as Masjid Janamsthan in British times. The objective evidence of demolition of ancient temple and attempted construction of mosque at Ramjanambhumi existed in the form of 14 Kasauti pillars, sandal wood beams and other structural features of the building. Mir Baqi did so on account of his superstitious influence of so called "Faqir Fazal Abbas Qalandar" who had demanded destruction of ancient temple at Shri Ramjanambhumi and construction of a mosque for him thereat to offer prayers. The aforesaid act, however, is opposed to the tenets of Islam as disclosed by holy "Quran" and *Fatwas* issued by Muslim theologians. The sketch map attached to the plaint is disputed. It is said that there is no graveyard anywhere at Shri Ramjanambhumi nor any existed within 12 years of the institution of the suit. Neither any mosque nor a graveyard existed which might have vested in the almighty of Muslims namely, Allah. According to Islamic faith as explained in Fatwa-E-Alamgiri Volume VI, page 214, it is not permissible to build a mosque on an unlawfully acquired land. There may be many forms of unlawful acquisition, namely, if some people forcibly take somebody's house or land and build a mosque or even Jama Masjid. Namaz in such a mosque will be against

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Shariat. The assertion with respect to loss of many lives appears to be with reference to the battle fought between Babar's hordes led by Mir Baqi and the Ruler of Ayodhya relating to demolition of ancient Hindu temple at Shri Ramjanambhumi and hence not disputed. The assertion that graves of Muslims who lost their lives in that battle more than 450 years ago situated on or near Janam Bhumi is denied. Mosque and graveyard according to the tenets of Muslims cannot go together. Offering of prayer except funeral prayer on the death of a person buried is prohibited to be made at a graveyard. Khasra numbers of the alleged mosque at graveyard are imaginary, fictitious and not identifiable at the site. There was no mosque, hence the question of its upkeep and maintenance does not arise. There is no evidence of any expenditure from the alleged grant on the upkeep or maintenance of the building alleged to be “Babri Masjid”. The alleged grant if any, in cash or by way of revenue free land described as “Nankar” must have been for personal services rendered or promised to be rendered by the grantee to the British in enslaving India for suppressing the First War of Independence of 1857 miscalled as “Sepoy Mutiny”. The existence of Chabutara within the premises of building is admitted but the facts about its construction as stated in para 5 are denied. It is said that it was a temple of Bhagwan Shri Ram Lala. Originally, there was a temple erected at that place after the demolition of ancient temples of Maharaja Vikramaditya's time. No Muslim ruler could have permitted raising of temple in the premises which would have been a mosque. On demolition of that temple by Aurangzeb, the worship of Bhagwan Ramlala was carried on at that Chabutara. There was a small temple existing thereon and not merely a wooden structure

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in the form of tent. The Deity stalled therein had been continuously worshipped without any break or interruption and the place is called Ram Chabutara. Filing of suit by Mahant Raghubar Das against the Secretary of State is not denied but rest of the facts are incorrect. The suit was for permission to erect a permanent temple in place of the then existing structure at Ram Chaubtara. It is denied that the alleged mosque at Janamsthan was a mosque or that Mohd. Asghar was its Mutwalli. He was added later as a defendant on his own request. The plaintiffs' suit and result thereof is wholly irrelevant for the present suit and is not binding either on the answering defendant or the Hindus in general or worshippers of Bhagwan Shri Ramlala Virajman at Shri Ramjanambhumi in particular. The Sthan of Shri Ramjanambhumi called as Janamsthan is a sacred place of Hindu worship of Bhagwan Shri Ram being incarnation of Lord Vishnu and symbolised by the existence of objects of worship like Sita Rasoi, Charans and the idols of Bhagwan Shri Ramlala Virajman at Chabutara within the precincts of the building at Janamsthan alleged to be a mosque. There was no access to the said place except through the place of worship of Hindus by which it was landlocked. Such a building could not be a mosque according to the tenets of Islam. The UP Act, 1936 as such is not disputed but the report of inquiry alleged to have been made by the Commissioner of Waqfs is disputed and is an ex parte affair not binding on Hindus. The Muslims were never in possession of the alleged mosque nor they ever recited any prayer therein and at least till 23.12.1949 or on any date even remotely within 12 years of the institution of the suit. The construction of mosque by Babar at a place where the ancient Hindu temple existed is denied. It is also denied that he was an

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Emperor. The possibility of the building in question to be a mosque is also disputed. The question of possession of property in question by Muslims does not arise since the Hindus considered it to be a place of worship. Shri Ramjanambhumi by itself is an object of worship, it has the status of juridical person in the eyes of law. The act of demolition of temple and entering thereupon was a wrongful act of trespass impermissible under the tenets of Islam. Allah does not accept waqf of any property or thing taken by force or by illegal act. The attempt to raise a mosque like structure failed and no mosque deemed to be Waqf according to Muslim law, ever came into existence. The act of Mir Baqi was a fleeting act of trespass and not an act of entering into adverse possession by a person claiming ownership. No Muslim by an act of trespass or its repetition could confer any right, title or interest in the nature of Waqf in favour of Allah for the purpose of mosque. According to the Muslim Law, Allah alone is the owner in possession of all Waqf property. A Mutwalli is a mere manager and neither the Mutwalli nor the beneficiaries of a Muslim Waqf can claim or have any right of ownership or possession as an owner for and on behalf of Allah. Title by way of a Muslim Waqf cannot, therefore, be acquired by adverse possession for Allah through an artificial act of adverse possession. Ramjanambhumi being itself a deity and worshipped as such since ever, has a juristic personality of its own, continued to own and possess the property rights of ownership and possession of the space at Ramjanambhumi at Ayodhya without any dent by any such act of trespass or demolition of temple or attempt to raise a mosque like structure thereat. The act of installation of Deity of Bhagwan Ram under central dome of the building at Shri Ramjanambhumi in the

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form of idol of Bhagwan Shri Ramlala by his worshippers led by others namely, defendants Guru Baba Abhiram Das, was not a mischievous act but a perfectly lawful exercise of their right and that of Hindus to worship the Deity. The Muslims did not get any title by adverse possession and the pre-existing right, title and interest of the defendants continue to exist uninterrupted and unaffected by such act of Mir Baqi. The Hindus' act on *Pausa Shukla 3, Vikram Samvat* 2006 was in furtherance and re-assertion of pre-existing property right of the Deity and their own right of worship. It was an act of manifestation of Bhagwan Shri Ram himself. Even the Muslim Havaldar Abdul Barkat who kept guard at the police outpost experienced manifestation by its grace. Since then, this day is celebrated as “Prakatya Divas” every year at Ayodhya. Muslims, in any case, have lost any right or interest. The alleged report with respect to incident of 23.11.1949 is not disputed. The proceedings under section 145 Cr.P.C. are also admitted. The order allowed Sri Priya Dutt Ram Receiver to worship the Deity of Bhagwan Shri Ram Lala Virajman, meaning thereby the Muslims were prohibited from entering the building premises and the surrounding area at Shri Ramjanambhumi. They had no right to offer Namaz in the building or doing anything else at that place. The action of City Magistrate was illegal. If the plaintiffs claim that the said order affected them by ousting entry, they ought to have challenged the same. Since the order was passed before the enforcement of the Constitution, it cannot be said that the order of the Magistrate is unconstitutional. Filing of suit by Sri Gopal Singh Visharad is not disputed. Representation by the plaintiffs of the entire Muslim community is disputed. In the civil suit, an injunction

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was granted which was confirmed in appeal upto the High Court vide judgment dated 26.4.1955. Filing of suit no. 25 of 1950 is not disputed. The earlier suit no. 2 of 1950 and the latter one, both were consolidated. Similarly, filing of suit no. 26 of 1959 is not disputed. The suit for possession over a mosque can only be filed by a Mutwalli and no others. The plaintiffs neither claim themselves to be Mutwallis nor, in fact, so, hence, the suit is not maintainable and is stillborn. It is barred by limitation.

60. In the additional pleas, it is said that in history, there was an ancient temple of Maharaja Vikramaditya's time at Shri Ramjanambhumi which was demolished by Mir Baqi. The dominant motive of iconoclast was the prejudice born of ignorance/misconception that Hindu temples were places of idolatory which was condemned by Quran. As per Quran, a mosque cannot be built on the place of a Hindu temple and that too after forcible demolition. Allah does not accept Namaz offered at a place taken by force or in a mosque built on a land obtained by Gasba or forcibly taken without title. The structure was never intended to be used as a mosque and never used as such. It was with an objective of putting down idolatry. From the public records and relevant books of authority it is established that the premises in dispute is a place where Bhagwan Shri Ram manifested himself in human form as incarnation of Bhagwan Vishnu according to traditions and faith of Hindus. According to Hindu faith Ganga originates from the nail of the toe of Bhagwan Vishnu and cleanses and purifies whatever is washed by or dipped into its water. Bhagwan Vishnu having manifested himself in human form of Maryada Purshottam Shri Ram Chandra Ji Maharaj at Shri Ramjanambhumi, those who touch the earth or footprints of

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Bhagwan Shri Ram symbolised by Charans at that place are cleansed of their sins and get purified. The earth at Shri Ramjanambhumi could not have acted differently towards Muslims who went there. They were also cleansed and purified by the touch of Bhagwan Shri Ram's footprints, which, like the water of Ganga purify all without any discrimination. The place like water of Ganga remains unsullied. It has been an object of worship with a juridical personality of its own as a Deity distinct from juridical personality of the presiding Deity of Bhagwan Shri Ram installed in the temple thereat. It has existed since ever, even before the construction of first temple thereat and installation of the idol therein. It is the Divine spirit which is worshipped. An idol is not indispensable. There are Hindu temples without any idol. The Sthan Shri Ramjanambhumi has existed immovable through the ages and has ever been a juridical person. The actual and continuous performance of Pooja at Shri Ramjanambhumi was not essential for the continuous existence and presence of Deity at that place. They have continued to remain present and shall continue to remain present so long as the place lasts since the land is indestructible. Deities are immortal being the Divine spirit or Atma and may take different shapes and forms as idols or other symbols of worship according to faith and aspiration of the devotees. Indisputably there was an ancient temple of Maharaja Vikramaditya's time at Shri Ramjanambhumi, Ayodhya. It was partly demolished and was attempted to be constructed a mosque by Mir Baqi, Commander of Babar's hordes. He was a Shia. Although demolition of a temple for constructing a mosque is prohibited by Islam, he attempted to do so under the superstitious influence of so called Faqir named, Fazal Abbas

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Qalander. He, however, could not succeed. As the story goes, whatever was constructed during the day fell down during the night and it was only after making certain material concessions in favour of Hindus for continued preservation of the place, as a place of Hindu worship, that the construction of three dome structure was somehow completed. The construction of minarets and certain other features of a public mosque were not undertaken. The facts which would show that the three domed structure raised by Mir Baqi was not a mosque are:

(a) Allah does not accept dedication of property for purposes recognised as pious and charitable like Waqf from a person who is not its rightful owner, like Allah would not accept stolen property from a thief. The act of trespass supported by violence for erecting a mosque on the site of ancient Hindu temple at Sthan Shri Ramjanambhumi after demolishing it by force of arms, Mir Baqi violated all the true tenets of Islam. It was a highly un-Islamic action. Allah did not forgive him and in the ensuing battle he was killed without mercy. The whole history of rise and fall of Mughal empire in India stand testimony to it. Babar who did not believe in iconoclasm founded the rule of Mughals in India. Akbar his grandson by tolerance and secularism expanded it on all sides and converted the Mughal Rule into an Empire. Auranzeb, the iconoclast fanatic, destroyed the Empire which was at the pinnacle of its glory when deposed and imprisoned his own father Shahjahan to grab the crown.

(b) Despite what Mir Baqi did with the temple, the space always continued to be in possession of Deity of Bhagwan Shri Ram Virajman and the Sthan Shri Ramjanambhumi.

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The worshippers continued to worship through such symbols as the Charans, Sita Rasoi and the idol of Bhagwan Shri Ramlala Virajman on Chabutara, called Ram Chabutara. No one could enter the three domed structure except after passing through the aforesaid places of Hindu worship. According to tenets of Islam, there could be no idol within the precincts of a mosque. The passage to a mosque must be free and unobstructed, open to the faithful at all times. It can never be landlocked by a Hindu place of worship. There can be no co-sharing in the title or possession with Allah particularly in the case of a mosque. His possession must be exclusive.

(c) A mosque which is a public place of worship for Muslims must have a minaret for calling Azan. According to 'Baillie', a prayer without Azan is private instead of public and the place could not be a Masjid. According to P.R. Ganapathi Iyer's "Law relating to Hindu and Mahomedan Endowments", (2nd Edition, 1918, Chapter XVII, at p. 388), after first half century from the Flight, there has been no mosque without a minaret.

(d)There was no arrangement for storage of water for Vazoo and there were Kasauti pillars with the figures of Hindu Gods inscribed on them. The sandalwood beam were there. Such a place can never be a mosque.

(e) In Faizabad Gazetteer, it is mentioned that 75 Muslims were buried at the gate of Janamsthan and the place was known as "Ganje Shahidan" after the battle of 1855 between the Hindus and Muslims in which Hindus succeeded and resumed control over the premises including the three domed structure. There is no graveyard

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anywhere near the building or its precincts or the area appurtenant thereto or surrounding it for the last 50 years at least. If the building was surrounded by a graveyard soon after the annexation of Oudh by the British, the building could not be a mosque and could not be used as a mosque for offering prayers or Namaz except funeral prayers.

61. The worship of Bhagwan Shri Ram Virajman thus continued through the ages at Shri Ramjanambhumi, Ayodhya. The space belongs to Deities. No valid Waqf was or could ever be created at Shri Ramjanambhumi or any part of it in view of the title and possession of the said Deities thereon, which has all along been pervasive and continuous. No person living or juridical was there to claim ownership or possession as owner of the said premises or any part thereof. Occasional act of trespass by iconoclasts were successfully resisted and repulsed by the Hindus from time to time. There had been no blemish or dent in the continuity of the title and possession of the said Deities over Shri Ramjanambhumi. No title could or did vest in Allah over any part of Shri Ramjanambhumi by adverse possession. Neither Allah nor any person on His behalf had any possession over any part of the premises at any point of time. Muslims never acquired any right to worship at the place as a mosque by adverse possession because the consequence of violation of any injunction of Quran could not be worked out by lapse of time howsoever long, as per the Muslim Law. So far as the right of prayer is concerned, every single Muslim has a right to pray in a mosque in his own independent and individual character. He does not derive that right from anyone else. Such rights are similar to all Muslims independent of each other. Even duly

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converted Muslim gets that right on conversion although none of his ancestors or members of his family had any such right. It is impossible to say in law that those who have a right to pray in a mosque are in possession of that right in the mosque as a community. Fluctuating body of individual Muslims have this right as individual to go into the mosque and pray therein but only so long as the mosque continues to exist as a mosque. This right to pray cannot be tagged on by a Muslim to the similar right of another Muslim and cannot form the basis of any adverse possession in law or acquisition of title of land by prescription as a Waqf for the mosque. The body of worshippers is only an undulating, ever changing body of individuals and not a corporation. The claim of right to worship by going to a place as a mosque is not a claim of right to possession of the place as its owner. The factum of occupation of a place without any claim to title as owner cannot clothe the occupier with the ownership of the place. The true owner's title remains unaffected by any such occupation, howsoever long it may be. A place can become a mosque only when Namaz is offered there with the permission of the owner and publicly in a group after calling of the Azan. After the annexation of Oudh and the First War of Independence miscalled as 'Sepoy Mutiny' by the British, an inner enclosure for the three domed structure was created by raising a boundary wall with iron gratings in the courtyard of the building which separated Ram *Chabutara*, the Charans and the Sita Rasoi from the building and divided the courtyard in two parts. The inner part in which the three domed structure situated was landlocked by all sides by the outer part in which the Ram Chabutara, the Charan and Sita Rasoi situated. The British thus tried to confine the Hindus to worship their

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Deities in the outer part of the courtyard, but no Muslim could enter the inner part of the courtyard or the three domed structure within it, without passing the outer courtyard which had Hindu places of worship and was in their exclusive and constant occupation. This laid the seeds of trouble off and on whenever any Muslim wanted to go inside. The result was that no Namaz was offered inside the three-domed structure, despite attempt of the British Government to induce the Muslims to do so by raising the inner boundary wall. This was a calculated attempt by the Britishers to encourage the Muslims to use the abandoned place as a 'Mosque', and create differences between their Hindu and Muslim subjects with the object of maintaining their power particularly in the context of the First War of Independence in which Hindus and Muslims had fought with the British power neck to neck as brothers. This attempt failed. There was overwhelming number of Hindus living all around the place and local Muslims knowing that it was not a place for offering Namaz, Hindus never left the place and continued to worship Charan Sthan, Sita Rasoi and idols of Bhagwan Shri Ramlala Virajman on the Ram Chabutara within its precincts. The attempt of Britishers to reconstruct damaged structure in 1934 at the cost of the then Government was another attempt to create rift in the two communities. It appears that there was no Mutwalli otherwise he would have taken care of the said building. The Britishers were in fact sowing the seeds of the two nation theory which ultimately led to the partition of India. However, despite the British efforts, no prayers were ever offered in the three domed structure at Shri Ramjanambhumi even after its reconstruction and renovation since the Muslims knew that the building was not a mosque for offering Namaz. In

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1936, U.P. Muslim Waqfs Act was passed whereby two Central Boards of Waqfs, one for Sunni and other for Shia were established to supervise and control Muslim Waqfs. No notification was issued in respect of the building in question declaring it to be a Waqf. The plaintiff Waqf Board has no jurisdiction in respect of the premises even if it were a mosque. It took no action or positive steps for the custody or the care of the building or its establishment as a mosque. No one was appointed or acted as its Mutwalli, or Mauazzinn or Imam, or Khatib or Khadim. The descendant of Mir Baqi sought to be set up as Mutwalli by the British was an opium addict. He denied that the grant of revenue free land was for the purposes of the mosque. On the contrary, he claimed that it was his Nankar for services rendered to the British and he never looked after the alleged mosque at all. At the time of independence, acting upon the two nations theory resulting in partition, Baba Abhiram Das, Guru of the answering defendants concerned alongwith Paramhans Ram Chandra Das, defendant no.2 and Sri Gopal Singh Visharad, defendant no.1 and several others resolved to restore the sacred Janamsthan of Ramjanambhumi to its pristine glory, in particular by removing the three-domed structure raised thereat by Mir Baqi which was an object of national shame for the Hindus. Pursuant to such resolution they took collective vow at a public meeting held on 2.10.1949, which was the day in that year, of Vijyadashami, for restoration of Ramjanambhumi as the first step towards fulfilment of dream of Mahatma of establishing Rama Rajya in Bharatvarsha after independence from British bondage. First they cleared up the scattered mounds of earth which the Muslims claimed to be their graves, in the areas around Shri Ramjanambhumi. This

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followed up by Navahna Pathas, Japa and Sankirtan at Shri Ramjanambhumi. The first batch of 108 Navahna Pathas commenced on 16.10.1949 which was followed by 1108 batches of Navahna Pathas. Japa and Sankirtan performed continuously. They continued in and outside the three domed building, within its precincts and on the adjacent land all around, unabated, resulting in the great manifestation of Bhagwan Shri Ram Lala within the three-domed building, under its central dome, to be more precise, by the installation of idol of Bhagwan Shri Ram Lala with all due ceremony at the auspicious hour of Brahmamuhurta during Shrawan Nakshatra and Tula Lagna in the most auspicious constellation of the planets, named, Harshan Yoga, on Thursday, Pausha Shukla 3 of Vikram Samvat 2006. At that time although the planet Sun was Dakshinayana but Sanyasis and Vairagis are permitted by the Shastras to instal a Deity even during Dakshinayan. The idol of Bhagwan Shri Ram Lala is Chala and seated on a silver Singhasan (throne). Akhand Sankirtans and Japa have continued ever since without any break for the last about 40 years at Shri Ramjanambhumi. The suit is bad and not maintainable in law inasmuch as the Deity of Bhagwan Shri Ram Lala Virajman under the Central dome of the building on the Ram Chabutara with such symbols of worship as the Charan and Sita Rasoi have not been made parties to the suit. It is also bad for want of Mutwalli of the alleged Waqf. The Sunni Central Board of Waqfs, U.P. has no jurisdiction or competence to meddle with the alleged waqf or the alleged mosque or to sue in respect thereof for want of proper and valid notification in its favour under section 5 of the U.P. Muslims Waqfs Act 1936. The notification dated 26.2.1944 having already been held to be invalid by the Court's finding on

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issue no.17, has become final and irreversible between the parties. Even otherwise, the suit when filed in 1961 was barred by the provisions of U.P. Muslim Waqfs Act, 1960 and the civil court had no jurisdiction to entertain it. The suit is incompetent and not maintainable under Order 1, Rule 8 C.P.C. The permission granted by the Court to the plaintiff to sue in the representative capacity for all the Muslims is liable to be revoked, particularly because the plaintiffs are all Sunnis, while the Shias did not claim the alleged mosque and waqf to be a Shia Waqf. The defendants named in the suit cannot represent various sects of Hindus in India. None of the plaintiffs has any right to sue for possession over the alleged mosque. The relief for possession by removal of the idols and other articles of Hindu worship is, in fact and in law, a relief for mandatory injunction and is barred by six years' limitation prescribed by Article 120 of the Schedule to the Indian Limitation Act, 1908. Even otherwise, a person other than Mutwalli of a mosque cannot sue for its possession and can sue only for a declaration that it is a mosque and if it is out of possession or dispossessed, that its possession be made over to the Mutwalli. To such suit also Article 120 applied and not Article 142 or 144 of the Schedule, Limitation Act 1908. Even otherwise, the suit is barred by Article 14 of the Schedule, Indian Limitation Act 1908. It is not a case of continuing wrong within the meaning of Section 23 of the Limitation Act and, therefore, the suit is barred by limitation. It is in the interest of parties that this matter be decided at the earliest. The defendant is willing to arrive at a negotiated settlement with the Muslim community under the supervision or mediation of the Court. The mosque building may be shifted since place of birth of Lord Rama cannot be

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changed. There are no Muslims residing anywhere near the place who may require a mosque there for offering prayers. The number of existing mosques at Ayhodhya is so large as compared to the need for them that some of them have fallen due to disrepair and have ruined for want of maintenance. Such a statement was made by Prince Anjum Qader, the President of All Indian Shia Conference and a descendent of Nawab Wajid Ali Shah who ruled Avadh when it was annexed by the British, in reply to the suit no. 236 of 1989 filed on behalf of the Deities in the Court of Civil Judge, Faizabad, now re-registered as O.O.S. No. 5 of 1989 in this Court.

62. On 27th July 1937 Mahatma Gandhi also expressed similar views that it is great sin to occupy by force any religious building of worship. During Mughal time due to religious fanaticism, Mughal Rulers had occupied many such Hindu religious places which were sacred places of worship for the Hindus. Many of them were looted and destroyed and many of them were given shape of a mosque. Although a temple and a mosque are both sacred places for worship of God and there is no difference between them but the traditions and forms of worship of Hindus and the Muslims are different from each other. From the religious point of view, a Muslim can never tolerate placing of an idol by a Hindu in his mosque where he has been worshipping Khuda and in the same way, a Hindu will not suffer demolition of a temple where he has been regularly worshipping Rama, Krishna, Shankar, Vishnu and Devi and construction of a mosque in its place and, therefore, both should try to resolve all such disputes by returning such places to each other. The three domed structure excluding the Kasauti columns and sandalwood beams can be constructed near the Mazar of

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Mir Baqi at village Sahanwa, or at any other place where the Muslims have sizeable population and agree to its re-erection on the land provided by them. In view of the Apex Court's decision dated 24th October 1994 the acquisition of the area excluding the one described by the Apex Court as Ramjanambhumi-Babri Masjid, situated in a part of plots no. 159 and 160 of village Kot Ram Chandra Ayodhya by Ayodhya Act 1993, was absolute. There is no cause of action. In any case, after demolition of the three domed structure, no cause of action survies. Sunni Central Board of Waqfs has not been constituted for the past many years validly and as such it has no right to file the suit. Sunni Board or the Shia Central Board of Waqf cannot represent the entire Muslims generally and more particularly, when the mosque claimed is a Shia Mosque and, therefore, they cannot file the present suit in representative capacity.

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Additional written statement dated 29.8.1995 of defendant no. 13 (Mahant Dharam Das) (Suit-4)

63. An additional written statement dated 29th August 1995 has been filed by defendant no.13 Mahant Dharam Das replying the amended paragraphs of the plaint. It is said that the building which was demolished on 6.12.1992 was not a mosque and could not be called “Babri Masjid”. Demolition of structure did not constitute violation of any order of the Court. No relief for restoration of building can be granted to the plaintiffs. Correct details for identification of the land in question have not been provided. The suit is rendered infructuous and even otherwise is not maintainable.

Additional written statement dated 14.9.1995 of defendant no. 17 (Ramesh Chandra Tripathi) (Suit-4)

64. It says that allegation of placement of idols in the night of 22nd/23rd December, 1949 is false. On the contrary, they existed

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at the place in question from time immemorial. Babar was an invader. He had no legal authority to construct a Masjid at the sacred place of Hindus, i.e., the birth place of Lord Shri Ram. Mughal invader Babar through his Commander Mir Baqi tried to demolish the old glorious temple of Lord Shri Ram at the place in question but could not succeed in his mission. Some further details have been given in additional pleas of the written statement of respondent no. 17 similar to that contained in written statement filed on behalf of defendant no.13, therefore, we are not repeating the same and shall refer later as and when the occasion arises.

Written statement dated 18/19.7.1969 of defendant no. 18 (Mahant Ganga Das) (Suit-4)

65. A separate written statement dated 18/19th July 1969 has been filed by defendant no.18. Damage to the building allegedly called Babri Masjid in 1934 has been denied in para 8 of the written statement. The report, if any, with respect to Waqf is ex parte and not binding upon the defendants. The capacity of Sunni Board to represent the entire Muslim community including Shia is disputed. In the additional pleas, it is said that sketch map was totally incorrect and misleading. The temple in question is known as Janam Bhumi, the birth place of Lord Ramachandra situate in Ayodhya and belong to defendant no.3. The defendant-3 has been doing Darshan and Pooja at the place in question for the last 30-32 years.

Written statement dated 5.11.1989 of defendant no. 20 (Madan Mohan Gupta) (Suit-4)

66. He has filed written statement dated 5.11.1989. Any battle between Babar and the then Ruler of Ayodhya has been denied. Existence of graveyard or mosque is also denied. Sketch map said to have been filed by Raghubar Das is not binding on the

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defendants. The building in question is a temple and not a mosque. The decision of earlier suit is not binding or would not operate as res judicata. Neither the defendant nor Hindu public in general derive any title from the said Mahant Raghubar Das or his representatives and are neither bound by any of his action or conduct, nor the decision in Suit no. 61/280 of 1985 is binding on them. Inquiry, if any, by the Waqf Commissioner is ex parte and not binding on Hindus as such. The building throughout has been Ramjanambhumi Temple with idols of Hindu Gods throughout. The Muslims have no legal or constitutional right of offering prayer at the site of Ramjanambhumi since the building was a temple. Installation of deities in the temple as alleged in para 15 of the plaint is denied. In the additional pleas it is said that Lord Shri Ram an incarnation of God, took birth thousands of years ago in Ayodhya. His birth place is known as Ramjanambhumi or Ram janam Sthan. This birth place is worshipped for the last many thousand years by Hindu public who believe in Divine presence at Ramjanambhumi in Ayodhya and have a devout faith that by offering worship at that place, they are recipients of the bounties and blessings of God, which constitute the features of a temple in Hindu religion. A holy temple stood at that place in ancient times. Later on Maharaja Vikramaditya reconstructed and resuscitated Ramjanambhumi temple. For Hindus, it is a spiritual base of Hindu religion. According to Hindu scriptures and traditions, Lord Ram was born in between the end of Treta Yuga and beginning of Dwapar Yuga. The span of Dwapar Yuga was about eight Lac years. He was God incarnate and took birth in human form to protect the saints, to destroy evils, to establish Dharma and save the world. Since then, from time

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immemorial, He is being worshipped by Hindus with highest devotion and reverence. The literature is full with the narration of ideal life lived by Lord Ram on this earth, beginning with Ramayana of sage 'Valmiki', who according to the evidence in the treatise was a contemporary of Ram. Thereafter, the sage 'Vyasa' mentioned Ram at many places in 'Mahabharat' and has written a summary in his holy Biography in 'Ramopakhayan Parva', which is part of 'Bara Parva'. 'Purans', 'Arthshastras of Kautilya', 'Raghubansh of Kalidas', 'Satrabandha of great Bhakta King Prabarsein' and multitudes of other books in many languages of India describe the life of Ram. In all this literature, Ayodhya and its sanctity is repeatedly described. In 'Uttarkand' of 'Ramcharitra Manas' written by 'Goswami Tulsidas' (1497-1623 AD) who was a contemporary of four Mughal Emperors viz., Babar, Humayun, Akbar and Jahangir, the devotion with which the functions of Ram Janam (birth of Ram) were celebrated in Ayodhya is described. Not a single word is to be found in this great treatise about the existence of Babri Masjid or performance of Namaz at Ramjanambhumi. Ram is most renowned and respected incarnation born in India. He was born on Navami in the month of Chaitra according to Hindu calendar which is popularly known as 'Ramnavami'. He killed devil 'Ravana' and the entire episode is celebrated every year as 'Dushera' in every part of India. After the conquest of Lanka when Ram returned to Ayodhya, the said occasion was celebrated with great enthusiasm and 'Diwali' was celebrated, which is still continuing and participated by members of all religions, communities and sects. The father of Nation Mahatma Gandhi was a devotee of Lord Ram. In an ancient book known as 'Ayodhya Mahatamya' (a Guide for travellers), (the original

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of which is in Sanskrit, but its translation by Ram Narain has been published in the journal of the 'Asiatic Society of Bengal', Volume 54, Part I, Chapter I-C-4-1875,Calcutta 1875), it is said that all the four sons of Emperor Dashrath were born in the palaces of their respective mothers. At one place, it is described that Sita Rasoi is in Kaushalya Bhawan, the Janamsthal. The researchers have concluded that this ancient book appears to have come into existence during the period of Emperor Akbar. There is no description of so called Babri Masjid alleged to have been constructed by Emperor Babar. 'Faizabad Gazetteer', Volume 43, of the District Gazetteer of the United Provinces of Agra and Avadh, compiled by Sri 'H.R. Nevill', ICS, published by Government Press in 1905 under the topic 'Directory' while dealing with Ayodhya at page 12-F, affirmed that Janamsthan was in Ramkot and marked the birth place of Lord Ram. Later on it is said that the mosque has two inscriptions, one on the outside and the other on pulpit and both are in Persian bearing the date 935 Hizri. On the authenticity of the inscriptions there can be no doubt but no record of visit of Babar has been found by Muslim historians. It must have occurred about the time of his expedition to Bihar. There is nothing to show about the visit of Babar to Ayodhya. Only on the basis of these two inscriptions, the conclusion is being drawn all around that the mosque was built by Babar. It is very doubtful that it was so built. It appears to be a creation of Britishers sometimes in 19th Century in order to create hatred between the two communities of India, viz. Hindus and Muslims and thereby implement the policy of communal disharmony and create problems of law and order effectively so that their annexation of Avadh may be justified on moral grounds. The script of the outer inscription of

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mosque is pretty bold and more artistic, a style which was developed sometimes in the middle half of the 19th century while the inner inscription is very fine and thin, a style developed in the latter half of the 19th century. It is, therefore, absolutely certain that on the basis of these two inscriptions it cannot be concluded that either the mosque was built in 1528 AD or in 935 Hizri or it was built by 'Emperor Babar' or his Governor 'Mir Baqi' as stated therein. “U.P. District Gazetteer Faizabad” published in 1960 by the U.P. Government and edited by Smt. Esha Basanti Joshi, at page 47, quotes the inscription inside the mosque and relies on it for the purpose of date of construction of the mosque. To determine the year of construction and the authority who got it constructed, only these inscriptions are being relied and nothing else. In the 'Babarnama' translated by 'Annette Susannah Beveridge', Volume II, published by Sayeed International, New Delhi in Appendix 'U', the heading is “The inscriptions of Babar's Mosque in Ayodhya (Avadh)”. While reproducing the inscription inside the mosque and translating it at page XXVIII, after quoting the couplets and giving its translation and working out the number 935 to identify the year, the author at the bottom appended a note creating doubt. For the first time, a book was published in 1813 by Leyden and known as “Memoirs of Zahiruddin Mohd. Babar, Emperor of Hindustan” and for the first time therein it was said that in March 1528 Babar passed through Ayodhya. Even though Leyden did not mention anything about the demolition of Hindu temples in Ayodhya and building of mosque in their place, yet the British Rulers gave currency to this false news that Babar demolished Ramjanambhumi Mandir and constructed Babri Masjid thereat. The translated 'Babarnama' published

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thereafter has mentioned that Babar never interfered with the religion of others and he visited various Hindu temples and appreciated their archaeological beauties. There is no evidence of Babar ever having arrived at Ayodhya and demolished Hindu temple. Claim of construction of mosque 400 years ago by Babar is wholly wrong. In Faizabad Gazetteer of 1960 at page 352 it is said that at the time of Muslim conquest there were three important Hindu shrines (Ayodhya) and little else, the Janamsthan temple, the Swargadwar and the Treta Ke Thakur. The Janamsthan was in Ramkot and marked the birth place of Ram. Till 1855 also there was no mosque. It is established from Faizabad Gazetteer 1960 at page 63. In Faizabad Gazetteer 1905 at page 174 it is said that the desecration of the most sacred spot in the city caused great bitterness between the Hindus and Musalmans. On many occasions the feelings led to bloodshed and in 1855 an open fight occurred. The Musalmans occupied Janamsthan by force and thence making a desperate assault on the Hanumangarhi. They charged up the steps of the temple but were driven back with considerable loss. It resulted in death of seventy five Mussalmans who were buried at the spot called 'Ganje Shahidan'. In A-in-i Akbari also there is no mention of the existence of Babari Masjid. In Faizabad Gazetteer of 1960 at pages 351 and 352 it is said that with the departure of the Court, the Hindus were left to themselves and numerous temples and monasteries sprang into existence. Naval Rai, Deputy of Nawab Safdar Jung built a fine house in Ayodhya which still stands on the river front. Probably this rise in importance was due to the popularity gained of Ramcharitra Manas of Tulsidas. The progress of this place became more rapid after annexation of Avadh by the British. Before the middle of nineteenth century

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Ayodhya was regarded as a stronghold of Hinduism.

67. There are some more facts to establish that neither the mosque in dispute was built by Babar in 1528 nor is it a mosque at all:

i. The tomb of the disputed Masjid if looked from behind would show that it is not in the style developed by Turks during fifteenth century, nor the Mehrab of Masjid in that style is to be found. There is no tomb in the disputed Masjid as is found in other mosques generally.

ii. On the north door, in the front, facing each other, there are two tigers. They are in the style of taking leap and their tails are just in the same style when a tiger takes leap. Between these two tigers there is a peacock. This is not a characteristic of a mosque.

iii. Various Hindu idols are painted or their inscriptions are to be found in the disputed mosque.

iv. There is no provision for reciting Namaz. To this day it has no minarets and no place for storage of water for Vazoo.

v. The Muslim Faith as adumbrated in Holy 'Quran' does not permit construction of a mosque at the site of temple after demolishing it.

vi. Babar never dedicated property of disputed mosque to Allah. Even supposing without admitting that Babar constructed the disputed mosque, yet as it has been done by committing trespass by demolishing the temple, the abode of God, either by Babar or at his instance by Mir Baqi , the Governor of Oudh, the dedication is wholly invalid and void. The material of the old temple was largely employed in building the mosque and a few of the

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original columns are still in good preservation. They are of close grained black stone (Kasauti) bearing various Hindu Vase-reliefs. The outer beam of the main structure being of sandalwood, the height of the columns is 7 to 8 ft., the shape of the vase, the middle section and the capital is square, the rest being round or octagonal. There are two inscriptions in Persian. One on the outside and the other on pulpit bearing the date 935 Hizri. Subsequently, Auranzeb also desecrated the shrines of Ayodhya which led to prolonged bitterness between Hindus and Musalmans. Latter also occupied Janamsthan by force and also made an assault on Hanumangarhi. Attacks and counter attacks continued under the leadership of 'Maulvi Amir Ali' (See page 353 of Faizabad Gazetteer 1960).

vii. A mosque must be built in a place of peace and quiet and near a place where there is a sizeable and large number of Muslim population. According to the tenets of Islam, a mosque cannot be built at a place which is surrounded on all sides by temples where the sound of music of Conch Shells or Ghanta Ghariyals always disturb the peace and quiet of the place.

viii. A mosque must have a minaret for calling Azan. According to 'Baille', an assembly of worshippers pray in a Masjid with permission, i.e., delivery. But it is a condition that prayers be with Azan or the regular call and be public and not private, for though there should be an assembly yet if it is without Izah and the prayers are private instead of public, the place is not a Masjid according to the true disciples. Indeed there has been no mosque without a minaret after the first half century fight.

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(See Ganpathi Iyer's law relating to Hindu and Muhammadan Endowments 2nd Edition 1918 Chapter XVII, page 388).

ix. According to the claim laid by Muslims in the present suit, the building is surrounded on sides by a graveyard known as Ganje Shahidan. There is a mention in the Faizabad Gazetteer also of the burial of seventy five Muslims at the gate of Janamsthan and the place being known as Ganje Shahidan after the battle of 1855. Although there are no graves anywhere near the building of Shri Ramjanambhumi or in its precincts or in the area appurtenant thereto for the last more than 50 years and if the building was surrounded by a graveyard during the British times, soon after the annexation of Oudh by them, the building could not be a mosque and could not be used as a mosque for offering prayers except funeral prayers.

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68. Mere displacement of a part of the ancient Hindu temple of Ramjanambhumi Sthan will not take away the religious sanctity of the temple and the site, inasmuch as, the Hindu religion believes the presence of the Divine spirit at Ramjanambhumi Sthan. The act of vandalism perpetrated either by Babar or by any other person after him would neither take away the religious sanctity of the place nor destroy the religious belief of Hindus attached to that place nor the place as such would be deemed out of possession of the Hindus as such. It is a place of great antiquity and Hindus have always been worshipping through the ages and always remained in possession thereof. Babri Masjid is a Sunni Waqf, but its Mutwallis being the descedants of Mir Baqi were Shia Muslims, and this itself demolishes the case of the plaintiffs. In any case,

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it was inter se dispute between Shia and Sunni, Hindus were not party. Upto middle of the 19th century, Ayodhya was regarded as a stronghold of Hindus. Ramjanambhumi was at all material time accessible to Hindus. In 1949 some Muslim members tried to raise a dispute resulting in proceedings under section 145 Cr.P.C. and thereby also Hindus were allowed to continue worship and Muslims were restrained from entering the building. Faizabad Gazetteer 1960 has recorded an important fact at page 50 as under:

> *"William Finch, the English merchant, who travelled through the Mughal Empire (1608-1611) says that Avadh is "a citie of ancient note, and seate of Potan King, now much ruined; the castle built foure hundred yeeres agoe. Heere are also the ruines of Ranichand(s)[3] castle and houses, which the Indians acknowledge for the great God, saying that he tooke a flesh upon him to see the tamasha of the world. In these ruines remayne certaine Bramenes who record the names of all such Indians as wash themselves in the river running thereby; which custome they say, hath continued foure lackes of yeeres (which is three hundred nintie foure thousand and five hundred yeeres before the world's creation)."*
>
> At the footnote against the number (3) which is indicated in the citation against the word '*Rani Chand*' it is explained as follows :-
>
> *"Ram Chandra, the Hero of Ramayan. The reference is to the mound known as Ram-kot or fort of Rama."*

69. Even from the above, it is evident that during the time of Emperor Akbar, Ramjanambhumi Sthan was worshipped by Hindus which was noticed by the English Traveller as well. The

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temple and the Sthan has always been the public religious worship place for the last several years and the alleged act of Babar could not take away its spirituality. The presence or absence of idols would neither in any way affect the right, title and interest of Hindus over the Sthan and the temple in dispute nor will it affect in any way the religious character of Ramjanambhumi as a place being a part of Hindu religion. For example, Lord Krishna left this world at the place near Somnath in the State of Gujarat. The place is known as Prabhas Patan (Somnath) but at this place there is no idol of Lord Krishna. Yet the place is a very holy place for Hindus and is worshipped. The Hindus firmly believe that worship at that place would be conducive to their spiritual well being and peace. In the present case, what is of the maximum religious importance for Hindus is the birth place of Lord Ram, i.e. the Janamsthan. The presence of idols on the place are of later origin when Vikramaditya repaired and resuscitated the temple for the benefit of the worshippers who subsequently started imagining a particular image in which God Ram is manifesting himself as a Divine person to them. It is said that ouster of Hindu community from Ramjanambhumi never took place. Hindus have always been and are still today in lawful possession over the site in dispute. Alternatively, even otherwise, they have regained possession by exercising their right of worship peacefully, and to the knowledge of the plaintiffs for more than twelve years and thus have perfected their title in the eyes of law. The suit is barred by limitation. Babar is alleged not to have made any endowment or waqf, nor he could. An emperor does not *ipso facto* become the true owner of the whole earth of which he may be a Ruler. There is no such concept that the Ruler becomes the true owner

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of all the land in his kingdom ipso facto. The site in dispute admittedly belongs to Hindus for the last thousands of years. The Ruler might have a superior right to levy taxes etc. but could not be deemed to be the actual owner. In the circumstances, the claim of the plaintiffs that Babar by annexation, which is emphatically denied, as there was no annexation as such, became the owner and made a waqf. There was no battle between Babar and Raja of Ayodhya and no question of annexation of territories arose. The general religious notions of Hindu community prior as well as subsequent to Babar have always been that the temple and the Janam Bhumi sthan, i.e., Ramjanambhumi, the birth place of the Creator Lord Ram are and have always been for religious benefit of the Hindus, for the benefit of the truth and good as against evils and vices and the worship for which the place was used and stood dedicated had at no time been taken away. Neither the plaintiffs nor the Muslims acquired the right, title or interest in the suit property. Babar had no right to give religious place of Ramjanambhumi of Hindus in perpetuity to Muslims or create any right in favour of Muslims over the religious place of Hindus, which is against all canons of justice, morality and good conscience. Moreover, a place already dedicated cannot be re-dedicated. The birth place of Lord Ram is located at a particular spot in Ayodhya. It cannot be shifted to any other place in the world. It is of the same status for Hindus as Mecca for Muslims. As Mecca cannot be shifted, so Ramjanambhumi cannot be shifted. On the basis of national policy, while assigning the weightage to a particular place of a particular religion or a particular community, the belief and religious feelings of Hindus in this regard be given supreme importance. A mosque

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can be built in any other part. Following the same, the Government of India under the regime of Pt. Jawahar Lal Nehru and Sardar Patel permitted reconstruction of Somnath Temple in Gujarat inspite of opposition of some Muslims fundamentalists. Likewise, the claim of Christian fundamentalists on Vivekanand rock was brushed aside and the Government of India okayed the construction of Vivekanand Mandir near Kanya Kumari. The plaintiffs have no right to maintain the suit and the same is liable to be dismissed.

Additional written statement dated 17.10.1995 of defendant no. 20 (Madan Mohan Gupta) (Suit-4)

70. An additional written statement dated 17th October 1995 says that Babar when invaded India and sought to construct a mosque at Ayodhya, he partly destroyed the said temple. He is said to have constructed a mosque by keeping the lower structure as such and only constructed the upper structure with the *malba* (debris) of the temple. Pillars of the temple were also used in its construction and the figures of Hindu Deities and holy signs over the pillars were the evidence that Hindu temple was not completely destroyed. Thus the temple structure existed and it is wrong to claim that a new mosque was constructed by Babar and handed over to Muslim community. Due to engraved figures of Hindu deities on the pillars of the disputed structure, the Muslims were not offering prayer therein. It is denied that the Muslims offered Namaz for the last more than 46 years. The nature of Ramjanambhumi will never be changed and it shall always remain Ramjanambhumi even if Muslims have offered Namaz therein at some point of time. In case the court directs for reconstruction of demolished structure, it is necessary that it should be built in the original shape and model having 14 pillars with the figures of Hindu Deity, lotus, Swastik, Ram Chabutara,

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Sita Rasoi and temple of Ram Lala. Babar never became an Emperor of India. He was only an invader. However, no King or Government had a right to hand over or give religious land to any person, as such, Babar had no right to construct a mosque over Ramjanambhumi and give it to Muslims, nor Muslims have any right to claim Ramjanambhumi.

O.O.S. No. 5 of 1989 (earlier registered as Regular Suit No. 236 of 1989)

71. The aforesaid suit was filed in the Court of Civil Judge, Faizabad on 1.7.1989 by three plaintiffs namely, (1) Bhagwan Shri Rama Virajman at Shri Rama Janam Bhumi, Ayodhya, represented by next friend Sri Deoki Nandan Agarwala, (2) Asthan Shri Rama Janama Bhumi, Ayodhya represented by next friend Sri Deoki Nandan Agarwala and (3) Sri Deoki Nandan Agarwala himself. It was registered as Original Suit No. 236 of 1989 but after transfer to this Court has been renumbered as O.O.S.No. 5 of 1989 (hereinafter referred to as "Suit-5"). Initially there were 27 defendants but for one or the other reasons some of the defendants have been deleted or substituted and presently, the defendants are as under (not arranged according to the serial number of the defendants' arrays)

1. Sri Rajendra Singh
2. Param Hans Mahant Ram Chandra Das of Digambar Akhara, Ayodhya
3. Nirmohi Akhara Mohalla Ram Ghat, Ayodhya through its present Mahant Jagannath Das
4. Sunni Central Board of Waqfs, U.P.
5. Sri Mohammad Hashim
6. Sri Mohammad Ahmad
7. State of U.P. through the Secretary, Home Department, Civil Secretariat, Lucknow.

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8. The Collector and District Magistrate, Faizabad

9. The City Magistrate, Faizabad

10. The Senior Superintendent of Police, Faizabad

11. The President, All India Hindu Mahasabha, New Delhi.

12. The President, All India Arya Samaj, Dewan Hall, Delhi.

13. The President, All India Sanatan Dharma Sabha, Delhi

14. Sri Dharam Das, Chela Baba Abhiram Das

15. Sri Pundarik Misra

16. Shri Ram Dayal Saran

17. Shri Ramesh Chandra Tripathi

18. Sri Umesh Chandra Pandey

19. Shri Ram Janam Bhumi Nyas,

20. Shia Central Board of Waqfs, U.P. Lucknow.

21. Prince Anjum Quder, President All India Shia Conference,

22. All India Shia Conference, through Sri S.Mohammad Hasnain Abidi, Honorary General Secretary

23. Hafiz Mohd. Siddiqui, General Secretary Jainaitul Ulema Hind, U.P.

24. Vakeeluddin.

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Reliefs (Suit-5)

72. The reliefs sought in the suit are (a) a declaration that the entire premises of Shri Ramjanambhumi at Ayodhya, as described by Annexures I, II and III belong to plaintiff Deities and (b) a permanent injunction against the defendants prohibiting them from interfering with or raising any objection to, or placing any obstruction in the construction of the new Temple building at Shri Ramjanambhumi, Ayodhya.

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Plaint dated 1.7.1989 (Suit-5)

73. The case set up by the plaintiffs in the plaint is that plaintiffs no.1 and 2 are juridical persons with Bhagwan Shri Ram as the presiding Deity of the place, namely, Shri Ramjanambhumi, Ayodhya. Plaintiff no.3 is a Vaishnav Hindu and seeks to represent the Diety and the Sthan as the next friend. The site of Shri Ramjanambhumi building premises and that of adjacent area of Shri Ramjanambhumi is as per the site plan, prepared by Sri Shiv Shankar Lal, Pleader, in discharge of his duty as Commissioner appointed by the Court of Civil Judge, Faizabad in O.S. No. 2 of 1950 (O.O.S. no.1/1989), alongwith report dated 25.5.1950 filed as Annexures no.1 and 2 to the plaint. Suit No. 2 of 1950 (Suit-1) mentioned above was filed on 16th January 1950 by Sri Gopal Singh Visharad impleading five individuals as defendants no.1 to 5, the State of U.P. and its officials as defendants no.6 to 9. The plaintiff Gopal Singh Visharad died and was substituted by his son, who has been impleaded as defendant no.1. Defendants no. 1 to 5 of suit no. 2 of 1950 have also died and, therefore, their names have been struck off under the orders of the Court in the aforesaid suit. Those persons have not been substituted by anyone. Defendants no.6 to 9 of Suit No. 2 of 1950 have been impleaded as defendants no.7 to 10 in the present suit. A similar suit being O.S. No. 25 of 1950 (Suit-2) was filed after few months of filing the earlier suit no. 2 of 1950 by Paramhans Ramchandra Das who has been impleaded as defendant no.2 in the present suit. Defendants no.1 to 5 in the aforesaid suit were the same persons who were impleaded as defendants no.1 to 5 in O.S. No. 2 of 1950 and, being dead, have not been impleaded in the present suit. The third suit namely, O.S. No. 26 of 1959 (Suit-3) was

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filed in the Court of Civil Judge, Faizabad by Nirmohi Akhara, Ayodhya who has been impleaded as defendant no.3 in the present suit. Defendants no.2 to 5 of the said suit are already impleaded as defendants no.7 to 10 in the present suit. Defendant no.1 therein was the Receiver appointed in proceedings under Section 145 Cr.P.C. Rest of the defendants have already died and, therefore, there is no occasion to implead them in the present suit. Then there is fourth suit also, being O.S. No. 12 of 1961 (Suit-4) filed by Central Sunni Board of Waqfs and 8 other Sunni Muslims. Central Sunni Board of Waqfs is being impleaded as defendant no.4 and the remaining surviving plaintiffs no.7 and 9 of the the said suit are already impleaded as defendants no. 5 and 6 in the present suit. Rest of the defendants are other defendants of the said suit and are impleaded as defendants no. 1, 11 to 19.

74. By an order dated 4.8.1951 of the Civil Judge, Faizabad, Suits no. 2 and 25 of 1950 were consolidated. Later on by order dated 6.1.1964, all the four suits were consolidated making suit no. 12 of 1961 as leading case. In suit no. 2 of 1950 an interim injunction was granted on 16.1.1950 permitting continuance of Pooja, etc; the parties were restrained from removing idols in question from the site in dispute and the same is continuing till date. Initially, Sri Babu Priya Dutt Ram, was appointed as Receiver but later on replaced by Sri K.K. Ram Verma in 1970. Thereafter Sri L.P.N. Singh was appointed Receiver and thereafter by order dated 22.11.1988 Sri Jamuna Prasad Singh was appointed Receiver. The suits remained pending for almost two and half decades and could not be decided. The worshippers, however, continued to be prevented from a closer Darshan of the Deity. Hence, an application was filed, which

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was rejected by the Court of Munsif, Sadar, but in appeal, vide order dated 1.2.1986, the then District Judge, Faizabad directed the authorities to remove the barrier by opening the locks on the gates 'O' and 'P' of the map annexed as Annexure-1 to the present suit. The plaintiff Deities and their devotees are extremely unhappy with the prolonged delay in disposal of the suits and deteriorating management of the affairs of the Temple and are desirous of having a new Temple constructed, befitting to its pristine glory, after removing the old structure at Shri Ramjanambhumi, Ayodhya. In order to improve the temple administration and to reconstruct a new Temple, the duty of management and performance of religious functions, like Sewa, Archana and Pooja etc., by an unanimous public opinion, was entrusted to Jagadguru Ramanandacharya Swami Shivaramacharya of Kashi who was the Head of the Ramananda Sampradaya to which most of the Sadhus and Vairagis of Ayodhya belong. The trust so reposed in him by the Hindu public was formally declared by him by Deed of Trust dated December 18, 1985, registered on the same day with the Sub Registrar, S.D. No.1, at Delhi, vide no. 16510 in Additional Book No.4, Volume 1156, pages 64 to 69. Besides the aforesaid named Shankaracharya, who declared himself to be the first Trustee for life and Pramukh and Dharmakarta of the Trust, other persons were also appointed as Trustees for life, whose names are mentioned in para 16 of the plaint. Shri Ramjanambhumi Nyas (Trust) is directly interested in the Sewa, Pooja and other affairs of the plaintiff Deities and is impleaded as defendant no.21 in the present suit.

75. The four suits were pending for long. Since they did not result in settlement of the dispute, it led to various

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complications. Besides, there are some technical defects also, namely, the Presiding Deities who are juridical persons and others were not impleaded. Plaintiffs have been advised to file a fresh suit of their own for proper adjudication of the dispute relating to Ramjanambhumi, the land and the building appurtenant thereto.

76. The facts stated in the plaint are virtually repetition of the defence taken by defendant no.13 in his written statement and additional written statement filed in Suit-4 but since they are assertions made in the plaint of a suit separately filed on behalf of Deities, we are mentioning the same in brief though it may appear to be more in the nature of repetition.

77. It is averred that from the public record of unimpeachable authority, it is established manifestly that the premises in dispute is the place where Maryada Purushottam Shri Ramchandra Ji Maharaj was born as the son of Maharaja Dashrath of Solar Dynasty. According to the traditions and faith of devotees of Bhagwan Shri Ram, it is the place where he manifested himself in human form as an incarnation of Bhagwan Vishnu. The place has since ever been called Shri Ramjanambhumi by all and sundry through the ages. The place itself has been the object of worship as a Deity by the devotees of Bhagwan Shri Rama as it personifies the spirit of Divine, worshipped in the form of Shri Ramlala or Lord Ram, the child. The Sthan was thus deified and has a juridical personality of its own even before the construction of a Temple building or the intallation of idol of Bhagwan Shri Rama thereat. Hindus do not worship the stone or the metal shaped into the form of their Ishta Deva or the stone of Saligram which has no particular shape at all. They worship the Divine, which has no quality or

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shape or form, but can be known only when it manifests itself in the form of an incarnation and, therefore, adopt the form of his incarnation as their Ishta Deva. Some persons meditate upon formless and shapeless Divine and aspire for knowledge of him through his grace. It is the spirit of the Divine which is worshipped by most Hindus and not its material form or shape of an idol. The spirit of Divine in an idol is invoked by the ritual of Pranpratistha. The spirit of Divine is indestructible and ever remains present everywhere at all times for anyone to invoke it in any shape or form in accordance with his own aspiration. Different persons are at different levels of realization of reality. Some find it helpful to pursue a particular set of rituals for their spiritual uplift. A large section of Hindus follow Bhakti Marga, and Bhagwan Shri Rama or Bhagwan Shri Krishna is their Ishta Deva. According to faith of the devotees of Bhagwan Shri Rama Lala, it is the **spirit of Bhagwan Shri Ram as the Divine child which resides at Sthan Shri Ramjanambhumi** and can be experienced by those who pray there and invoke that spirit for their spiritual uplift. **That spirit is the Deity**. An idol is not necessary for invoking Divine Spirit. Another example of such Deity is Kedar Nath where there is no idol in the temple. It is the undulating surface of stone which is worshipped there as the Deity. Another example is the Vishnupad Temple at Gaya where too there is no idol. The place is believed to have borne the footprints of Bhagwan Vishnu which is worshipped as Deity. Similarly, at Ayodhya, the very Sthan Shri Ramjanambhumi is worshipped as a Deity through such symbols of the Divine Spirit as the Charan and the Sita Rasoi. The place is a Deity. It exists in this immovable form through the ages and has ever been a juridical person. Actual and

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continuous performance of Pooja of such an immovable Deity by its devotees is not essential for its existence as a Deity. The Deity continues to exist so long as the place exists and being land, it is indestructible. The Sthan Shri Ramjanambhumi is an indestructible and immovable Deity who has continued to exist through the ages. Books of history and public record of unimpeachable authenticity establish undisputably that there was an ancient Temple of Maharaja Vikramaditya's time at Shri Ramjanambhumi, Ayodhya. That Temple was destroyed partly and an attempt was made to raise a mosque thereat by force of arms of Mir Baqi, a Commander of Babar's hordes. The material used was almost taken from the Temple including its pillars of Kasauti or touchstone with figures of Hindu Gods and Goddesses carved on them. There was great resistance by the Hindus and many battles were fought from time to time by them to prevent the completion of the mosque. Presently, it has no minarets and no place for storage of water for Vazoo. Many lives were lost in these battles. The last battle occurred in 1855. The building and the place was in possession and control of Hindus at that time.

78. According to Faizabad Gazetteer published by the Government Press, U.P. (at page 179), Ayodhya is pre-eminently a city of temples. It is locally affirmed that at the time of the Musalman conquest there were three important Hindu shrines at Ayodhya and little else. These were the Janamsthan temple, the Swargadwar and the Treta-Ka-Thakur and each was successively made the object of attention of different Musalman rulers. The Janamsthan was in Ramkot and marked as the birthplace of Lord Ram. In 1528 Babar came to Ayodhya and halted there for a week. He destroyed the ancient temple and at

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its site built a mosque, still known as Babar's mosque. The material of the old structure was largely employed and many of the columns are in good preservation. They are of close-grained black stone, called by the natives 'Kasauti' and carved with various devices. Their length is from seven to eight feet, and the shape square at the base, centre and capital, the rest being round or octagonal. The mosque has two inscriptions, one on the outside and the other on the pulpit, both are in Persian and bear the date 935 Hijri. In the same Gazetteer (at page 180), it is mentioned as under:

> *"This desecration of the most sacred spot in the city caused great bitterness between Hindus and Musalmans. On many occasions the feeling led to bloodshed, and in 1855 an open fight occurred, the Musalmans occupying the Janamsthan in force and thence making a desperate assault on the Hanuman Garhi. They charged up the steps of the temple, but were driven back with considerable loss. The Hindus then made counter-attack and stormed the Janamsthan, at the gate of which seventy-five Musalmans were buried, the spot being known as the Ganj Shahidan or the martyrs' resting-place. Several of the king's regiments were present, but their orders were not to interfere. Shortly afterwards Maulvi Amir Ali of Amethi in Lucknow organised a regular expedition with the object of destroying the Hanuman Garhi, but he and his forces were stopped in the Bara Banki district (Gazetteer of Barabanki, p. 168). It is said that upto this time both Hindus and Musalmans used to worship in the same building; but since the mutiny an outer enclosure has been put in front of the mosque and the Hindus, who are forbidden access to the*

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inner yard, make their offerings on a platform which they have raised the outer one."

79. Such a structure cannot be a mosque having been made after destroying the temple using its material including Kasauti pillars with figures of Hindu Gods carved thereon. Despite the Britishers treated it as a mosque but it could not become so. Some of the reasons for not treating the building as a mosque are that it is not in accordance with the Tenets of Islam, some of which are stated in para 24, sub paras (A) to (G) which are similar as we have already reproduced while noting down the pleadings in the written statement of defendant no.13 in Suit-4. The plaintiff Deities have continued to be worshipped since ever throughout the ages at Shri Ramjanambhumi. The place belongs to the Deities. No valid Waqf was ever created or could have been created at that place or any part of it, in view of the title and possession of the plaintiff Deities thereon, contrary to the Islam religion. No prayer was ever offered thereat. Treating it a Waqf under U.P. Act No. 13 of 1936, is also illegal for the reasons stated in detail in paras 25 and 26 which are similar to the additional written statement of defendant no.13 in Suit-4. After independence from British Rule, the Vairagis, Sadhus and the Hindu public, dug up and levelled whatever graves had been left in the area surrounding Ramjanambhumi Sthan and purified the place by Akhand Patha and Japa by thousands of persons all over the area. Ultimately, on the night between the **22nd and 23rd December, 1949, the idol of Bhagwan Shri Rama was installed with due ceremony under the central dome of the building**. Since there was no Muslim residing anywhere near the place, no resistance was put by any Muslim to those acts. However, the local authorities acting with *mala fide* lodged a

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first information report of their own resulting in initiation of proceedings under Section 145 Cr.P.C. and issuance of preliminary order dated 29.12.1949. The aforesaid attempt was a device to take over the administration of Janambhumi Mandir by the Government by appointing a Receiver which had continued thereafter, though the City Magistrate had dropped the proceedings under Section 145 Cr.P.C. by order dated 30.7.1953 with the finding that there was no apprehension of breach of peace any longer. The appointment of Receiver however continued thereafter under order passed by the Civil Court in pending suits. Plaintiff Deities were not parties in any of the earlier four suits filed by different parties in which the order of appointment of Receiver was passed. The Receiver derived power solely from the orders of the Court and was not authorised to remove any person from the possession or the custody of the premises. In fact, he never interfered with the possession of plaintiff Deities. The Receiver acted like a Shebait and did not disturb the possession of plaintiff Deities. The period of possession of the plaintiffs over the building in question since the installation of Deities, i.e., since the intervening night of 22nd and 23rd December, 1949, is admitted by all concerned parties. Thus, independent of original title of the plaintiff Deities, which continued all along, the admitted position of their possession places the matter of their title beyond any doubt or dispute. Even if any person is claiming title to the property in dispute adversely to the plaintiff Deities, that would have extinguished by their open and long adverse possession which created positively and affirmatively a proprietary title to the premises in the plaintiff Deities.

80. Hindu public and devotees of plaintiff Deities are keenly

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desirous of restoring Janamsthan to its pristine glory. A plan to this effect has already been drawn and the active movement is planned to commence from September 30, 1989. Foundation stone shall be laid down on November 9, 1989. The plaintiff Deities not being a party to any of the suits pending in the Courts were not bound or affected by anything which may be decided or not decided in any of the four suits pending as aforesaid for the last so many years. Plaintiff no.3 felt that the pendency of the said suits may present a hindrance, inasmuch as, a declaration has been sought by the Sunni Board frivolously in suit no. 12 of 1961 that the building at Shri Ramjanambhumi, Ayodhya is a mosque known as 'Babri Mosque' and that the adjacent land is a Muslim Public graveyard, known as 'Ganje Shahidan' and the Court had permitted the plaintiffs of that suit to sue the defendants no.1 to 4 thereof as representatives of the entire Hindu community. The plaintiffs of that suit cannot represent the entire Muslim community as they are all Sunnis and thus only a segment of the Muslim population who have wide ranging differences with other sects of Muslims, particularly, the Shias. Similarly, defendants no.1 to 4 are also not capable of representing the entire world of Hindus. Defendants no. 1 and 2 of that suit have categorically stated that they do not represent anyone else except themselves. The defendant no. 3 has put forward a personal interest in the management of the plaintiff Deities. In the circumstances, the plaintiff no.3 has been advised to file this suit as the next friend for and on behalf of the Deities against all the contending parties. According to the case taken up by defendants no. 4, 5 and 6 and the documents filed by them or on their behalf, the Babri Masjid was a Sunni Waqf but its Mutwallis, being the

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descendants of Mir Baqi were Shia Muslims. A judgment dated 30.3.1946 of Sri S.Hasan, Civil Judge, Faizabad in suit no. 29 of 1945 where Shia Central Board of Waqfs U.P. was plaintiff and the Sunni Central Board of Waqfs U.P. was the defendant, has been produced in this context although the judgment has not been relied on or referred in the plaint of suit no. 12 of 1961 to show that Waqf of Babri Masjid was a Sunni Waqf and its Mutwallis were Shias. This position is incomprehensible in law. The waqf created by a Shia Waqif would be a Shia Waqf and could not be a Sunni Waqf. Admittedly, as per their case, the mosque was built by Mir Baqi who was a Shia and that he being a Waqif his heirs were the Mutwallis one after the other, but the Shia Central Board of Waqfs U.P. did not agitate the case any further either because of negligence or collusion in those difficult days of communal conflict immediately before the partition. In any case, the judgment is not binding. According to the report dated 10.12.1949 of Mohd. Ibrahim, Waqf Inspector and an office note signed by the Secretary, Sunni Central Board of Waqfs, U.P. dated 25.11.1948, Sri Javed Husain, the Numberdar of village Sahanwa and in the line of descendants of Mir Baqi was the Mutwalli of the Waqf though he did not act and submit to the jurisdiction of the Waqf Board. Shia Waqf Board and Sri Javed Hussain are also impleaded as defendants no. 22 and 23. Prince Anjum Qader, who is the President of All India Shia Conference has also been impleaded as defendants no. 24 and 25 in the suit.

81. The entire premises of Shri Ramjanambhumi,Ayodhya, besides Deity of plaintiff no.1, has other idols of Deities, i.e., Ram *Chabutara*, the Charan and the Sita Rasoi etc alongwith the

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yards, enclosures and buildings, including Sita Koop and all that constitute one integral complex. They have a single identity. The claim of the Muslims represented by defendants no. 4, 5 and 6 is confined to the building and the area enclosed within the inner boundary wall, erected after annexation of Avadh by the British. The rest of the area has not been claimed as Babri Masjid. The claim that the surrounding area is a Qabristan known as Ganj Shahidan is vague and unidentified. There are no graves anywhere for the last fifty years at least. The claim of the aforesaid defendants is hollow and even otherwise they do not represent the entire Muslim community. Defendant no.23, the present Mutwalli of the Babri Masjid since before 1948 had not joined as plaintiff or defendant in Suit No. 12 of 1961 despite well established position in law that only a Mutwalli of a mosque can sue for its possession and even when a worshipper sues in respect of an existing mosque, he must sue for possession being delivered to the Mutwalli and that he cannot ask for possession being delivered to him. Some of the Muslims tried to settle the dispute suggesting for removal of mosque to a suitable place. Though the plaintiffs do not admit that the building at Ramjanambhumi or any part of its precincts had ever been mosque, they are not averse to the proposal of removal of mosque building except the Kasauti pillars. The building will in any case have to be demolished for construction of a new Temple which they propose to construct at the place. The situs of Shri Ramjanambhumi cannot be changed considering the nature and significance of the 'Sthan' as the birth place of Lord Ram. On the other hand, under the tenets of Islam a mosque can be shifted under certain circumstances and its shifting would not in any way be contrary to Islamic tenets.

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82. In view of later events, major amendments made in the plaint. It says that due to long delay in disposal of the matter, the Hindu saints from time to time resolved to take steps for construction of a Temple and in a meeting held at Ujjain during May 1992 resolved to start Kar Sewa for the construction of a New Temple. On 9.7.1992, in their assembly at Ayodhya, the resolution was reaffirmed. The entire building was brought down by Kar Sewaks with their bare hands in just about five hours after 11 A.M. on 6.12.1992. The debris was collected and carried away by the Kar Sewaks as holy momentos leaving the place where the Deity of Bhagwan Shri Rama Lala was installed under the central dome of the demolished structure flat in the form of *Chabutara* on which the Deity was immediately reinstalled. The place was enclosed by a brick boundary wall and a canopy was also erected for the protection of the Deity and *Pooja* was continued as of yore. The then Chief Misnister of U.P., owning the entire responsibility resigned from his office in the evening of 6.12.1992 and the President imposed President's Rule in the State in the midnight. On 7.1.1993 the President promulgated the "Acquisition of Certain Area at Ayodhya Ordinance" (No. 8 of 1993) and simultaneously referred the matter to the Hon'ble Apex Court under Article 143(1) of the Constitution the following question:

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

83. The object and purpose of both the said measures adopted by the President was to settle the long-standing dispute relating

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to the structure. The reference shows that the area in which the structure stood, is located in Revenue Plot Nos. 159 and 160 in Village Kot Ramchandra. The said Ordinance was replaced and re-enacted as Parliament's Act No. 33 of 1993 and came into force w.e.f. 7.1.1993. The plaintiff Deities who are juristic person in law could not, nor do they appear to have been acquired under the said enactment. The rights of Hindus in general and the devotees of Shri Ram in particular, to worship the said Deities also could not have been acquired or taken away. Right to manage their property includes the arrangement to be made for maintaining their worship on the Shebaiti rights which in themselves constitute heritable property under the Hindu Law. The same seems to be taken away and entrusted for the time being to the Commissioner, Faizabad Division, Faizabad, (*ex offico)* under Section 7 of the said Act. The validity of the said Act was challenged in several writ petitions in this Court which were withdrawn by the Supreme Court for hearing and decision alongwith the hearing of the preliminary objection to the maintainability of the Presidential Reference under Article 143(1) of the Constitution of India. The said Act was also sought to be challenged in Connected O.O.S. No. 3 and 4 of 1989 in this Court as well but proceedings were stayed by the Apex Court while withdrawing the writ petition against acquisition from this Court for hearing and decision. Vide judgment dated 24.10.1994, a three Judges Bench of the Apex Court in **Dr. M. Ismail Faruqui (supra),** declared sub-section (3) of Section 4 of Act No. 33 of 1993 unconstitutional and invalid but upheld the validity of other provisions thereof subject to the interpretation put thereon by the Apex Court and the Reference was returned unanswered to the President of

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India. The cause of action for filing the suit accrued day today, particularly recently when the plan of Temple reconstruction is sought to be obstructed by violent action from the side of certain Muslim communalists.

Written statement dated 14.8.1989 of Defendant no. 3 (Nirmohi Akhara) (Suit-5)

84. Defendant no.3 Nirmohi Akhara has filed its written statement dated 14.8.1989 reserving its right to file a supplementary written statement on the ground that due to paucity of time, it could not collect entire material. It is said that the suit is malicious and designed to damage the title and interest of the defendant. Plaintiff no.3 has no right to act as next friend of plaintiffs no.1 and 2. Plaintiffs are not even a juridical person nor have any personal right to file the suit. It is denied that Bhagwan Shri Ram is also called Ram Lala Virajman. Impleadment of plaintiff no.1 is also said to be wrong. Bhagwan Shri Ram is said to have been installed not at Janambhumi but in the Temple known as Janambhoomi Temple for whose delivery of charge and management, the defendant had filed suit no. 26 of 1959 (Suit-3). Virajman is said to be neither a name or title of any Deity and is wholly vague. Sthan Shri Ramjanambhumi, Ayodhya is also said to be a meaningless phrase as 'Sthan' simply means a place and not a juridical person. It is also denied that plaintiff no.3 (Deoki Nandan Agarwal) is a Vaishnavite. He is not even a worshipper of the Deity installed in Shri Ramjanambhumi Temple and has no right to sue, nor can he represent the Deity or the so-called Sthan. He is not at all interested in the welfare of the Deity in question. He lives in Allahabad and is not at all interested in Shri Ramjanambhumi Temple but to obtain cheap popularity, maliciously, by raising a slogan of constructing a new Temple

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has arranged to spend Rs. 25 Crores. The temple belongs to defendant no.3. However, the birth place of Lord Ram is not disputed. The whole world knows that his birth place is in Ayodya where the Temple Ram Janambhumi stands in Mohalla Ramkot, Ayodhya which is in dispute in various suits transferred to this Court. Muslims claim thereat a mosque while defendant no. 3 claims it to be a Temple of Bhagwan Shri Ram under the charge and management of Nirmohi Akhara as Shebait of Bhagwan Shri Ram. Annexures I, II and III to the plaint are incorrect. Many important places of the temple have not been shown in the said annexures. They pertain to another suit and have no evidentiary value. It is said that Nirmohi Akhara alone has right to control, supervise and repair or even to reconstruct the temple, if necessary. Knowledge of any trust is denied. It is said that the Trust has no relevance at all to the dispute. Inclusion of the name of Mahant Ramkewaldas as Trustee would not make any difference so far as the rights of defendant no.3 are concerned. Relevance and continuity of the Trust of the disputed property is denied. It is, however, not disputed that no prayers have ever been offered by any Muslim in the Ramjanambhumi Temple which is claimed by some Muslims as mosque though it never was. The idol of Bhagwan Ram is said to have always existed over there. Proceedings under Section 145 Cr.P.C. were initiated illegally affecting the rights of defendant no.3. There was no movement for construction of a new Temple in place of the present temple nor anyone else has a right to construct a new temple in its place. The plaintiffs have no real title to sue. They have wrongly been advised to file the suit only to harass defendant no.3 and try to encroach upon its rights of management of the temple. The

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entire premises belong to Nirmohi Akhara. There is no question of any mosque as Babri Masjid or any Qabristan thereat.

Additional written statement dated 20.4.1992 of Defendant no. 3 (Nirmohi Akhara) (Suit-5)

85. An additional supplementary written statement dated 20.4.1992 has also been filed stating that site plan annexure II to the plaint does not bear any plot number nor is it bounded so as to give definite identity of the property. The Temple Shri Vijay Ragho Ji Sakshi Gopal has never been subject matter of any of the suit i.e., O.O.S. Nos. 3 of 1989 or 4 of 1989, pending before this Court. Sumitra Bhawan is another temple shown in the site plan, which is the temple of Sheshawatar Laxmanji Maharaj which has been in possession of Mahant Raj Mangal Das, one of the Panch of Nirmohi Akhara. Nazul Plot no.588 measuring 1-6-13-15 Kachwanceis of Mohalla Ram Kot is recorded with Deity Laxamanji Maharaj through Ramdas Nirmohi who is Guru of Raj Mangal Das. Mahant Ramdas is recorded in settlement plot no. 168 to 174 as Qabiz of Sumitra Bhawan. Similarly, Lomash Chaura Mandir, Sita Koop Mandir, Kuti shown in the said map have distinct Deity of Bhagwan Ram Lalaji managed by other Panches of Nirmohi Akhara, namely, Mahant Dwarika Das, Mahant Naval Kishore Das and Ram Gopal Das. Sankatmochan Mandir has been omitted in the map whereas it did exist on the date of filing of suit. It has its Deity Sankatmochan Hanuman Ji and Thakur Ram Janki represented by Sarbarakar Ram Dayal Saran, Chela of Ram Lakhan Saran, who was Naga Chela of Golaki Ram Lakhan Das one of the old panch of Nirmohi Akhara. The outer Sahan carried a small temple of Bhagwan Ramlalaji alongwith other place, regularly worshipped according to prevailing customs amongst Ramanandi Vairagies. The outer part of the temple Ram Lalaji and Deities have always

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been in management and charge of Nirmohi Akhara as Shebait till this outer portion with Bhandar was attached under Section 145 Cr.P.C. A Receiver was appointed in Suit No. 239 of 1982, Shri Ram Rama Nandi Nirmohi Akhara Vs. K.K. Ram Verma etc. due to lootpat committed by Dharam Das. Plaintiff no.3 has himself named Dharam Das as witness. The suit by plaintiffs no.3 is not maintainable for want of possession and is also barred by Section 34 of Specific Relief Act. The outer portion consists of Bhagwan Ram Lala on Shri Ram *Chabutara* along with other Deities, "Chhathi Pujan Sthan" and 'Bhandar' (store) with eastern outer wall carrying engraved image of Varah Bhagwan with southern and northern wall and also western portion of wall carrying the present municipal nos. 10/12/29 old 506, 507 and older 647 of Ram Kot Ward of Ayodhya City, which have been referred in many litigations since 1885 till Regular Suit No. 239 of 1982 in the Court of Civil Judge, Faizabad. The suit is bad for want of necessary party, as "Nirmohi Akhara" was also held in possession and management of the temple in every case. Bhagwan Ramlalaji installed by it on the Ram *Chabutara* is a distinct legal entity owned by defendant no.3. Attachment of the property was wholly illegal and bad. Plaintiff no.3 is an office bearer of V.H.P. and is also a member of defendant no.2, the alleged Nyas (Trust), who has no concern with the matter. They are trying to usurp the property of defendant no.3. Outer portion with surrounding temples, were illegally acquired by VHP backed by B.J.P. Government, vide notification dated 7.10.1991, which is under challenge in a writ petition. However, it is void and illegal in view of section 52 of the Transfer of Property Act.

IInd additional written statement dated 13.5.1994 of Defendant no. 3 (Nirmohi Akhara) (Suit-5)

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86. The second additional written statement dated 13.5.1994 has been filed on behalf of defendant no.3 challenging the very existence of alleged Trust. It is illegal and void. Jagadguru Ramanand himself had condemned the alleged Trust. The disputed property belongs to Nirmohi Akhara and the Trust is a non-constitutional body devoid of any title of disputed property.

Written statement dated 26/29.8.1989 of Defendant No. 4 (Sunni Central Board of Waqfs) (Suit-5)

87. The defendant no. 4 has filed a very detailed written statement dated 26/29.08.1989. Denying the claim of the plaintiffs about being juridical persons, it is said that neither of the plaintiffs are juridical persons nor there is any presiding deity of Shri Ram Chandraji at the place in dispute nor the plaintiff no. 3 has any locus standi or right to represent the so called and alleged deity and Asthan as next friend. The plaintiffs no. 1 and 2 have no right to file this suit as they are not legal personalities. It is denied that there has been any installation of deity within the premises of the disputed place of worship known as Babri Masjid. The idol in question, it is said, was stealthily and surreptitiously kept inside the mosque in the night of 22/23.12.1949 by some mischief-mongers against whom a first information report was lodged at Police Station Ayodhya on 23.12.1949. Plan and report submitted by Sri Sheo Shanker Lal, Commissioner made part of the plaint do not depict the correct position of the spot hence cannot be relied upon for identification and description of the property in suit. The plaintiffs are obliged to give correct boundaries of the property in suit and the plaint is defective in this respect.

88. Filing of Suit-1 by Sri Gopal Singh Visharad and Zahoor Ahmad is not disputed but rest of the contents of para 3 of the plaint are denied. It is denied that the original plaintiff of the

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said suit has died recently. It is said that in fact he had expired several years ago and no application for substitution was filed within the prescribed time hence the suit stood abated much before 1986. The order of substitution passed in favour of the defendant no. 1 is illegal and improper. The names of Muslim defendants of the said suit is said to have been wrongly struck off. The heirs of the Muslim defendants were liable to be substituted in place of the original Muslim defendants. For verification of the contents, the record of the aforesaid suit itself may be perused.

89. Similarly, filing of Suit No. 25 of 1950 (Suit-2) is not disputed but the rest of the contents of para 5 may be verified from the plaint of the suit. The Suit No. 25 of 1950 (Suit-2) also suffers from the defects as in Suit-1.

90. The filing of Suit-3 is also not disputed but in respect to the averments contained therein it is said that the same may be verified from the plaint of the suit. The idols of Shri Ram Chandraji were never installed in the premises of Babri Masjid which has wrongly been described as Janam Bhumi. The suit is defective and not maintainable. Heirs of Muslim defendants have not been substituted though the cause of action survives against them and all of them ought to have been impleaded. The property in suit is a mosque and it has never been admitted that the said building was a temple.

91. Filing of Suit No. 12 of 1961 (Suit-4) by defendant no. 4 and some other Muslims is also not disputed but for the reliefs claimed therein it is said that the plaint of the suit itself may be perused. Any defect in the suit is denied. The Suit-4 has been filed in representative capacity. The application for permission to sue in representative capacity was allowed by the Court.

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92. All the four suits have been consolidated and Suit-4 is the leading suit. There is no question of Pooja or Sewa in the premises in question since the alleged deities did not exist in the building in question and the idols kept therein could not be treated as deities. Only a restricted Pooja was carried on 16.01.1950 which cannot be treated as Sewa and Pooja of the alleged deity. There is no likelihood of the suits being decided in a manner that a close Darshan of the idols would be permissible. Defendant no. 20 had no right to title or locus stand to move the application for opening of the gate of the mosque for close Darshan. He was not a party in any of the aforesaid two suits and had no *locus standi*. The District Judge, Faizabad illegally passed order dated 01.02.1986 whereagainst two writ petitions are pending in this Court. The building in dispute is not Janambhumi of Shri Ram Chandraji and no idols of Shri Ram Chandraji were installed therein, hence, there arises no question of right or claim of defendant no. 20 or anyone else to perform Pooja or Darshan thereover. The fact is that the property in dispute is an old mosque known as Babri Masjid, constructed during the regime of Emperor Babar. There is no question of construction of any new temple over the site of Babri Masjid. The plaintiff or anyone else has no right or locus standi to claim removal of old structure of mosque. Prior to 22/23.12.1949, no idols were kept in the said mosque. It was never used for performing Pooja and Darshan etc. prior to the aforesaid date. Due to unnecessary and unusual delay in disposal of the suits and continuance of the order of attachment of the mosque for the last about 39 years condition of the building has also deteriorated. The Receiver appointed by the Court is not taking proper interest in maintenance of the building. Despite Court's

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order, no repairs of the buildings has been undertaken for the last several years. The alleged desire of removing the structure of mosque and construction of a new temple on the site is wholly uncalled for, unwarranted and mischievous. Any such attempt is fraught with very dangerous consequences besides being an offence and also in violation of the restraint order of this Court in Writ Petition No. 746 of 1986, Mohd. Hashim Vs. State of U.P. and others. Since there existed no temple, the question of improvement in the administration or reconstruction thereof or managing performance of alleged Sewa and Pooja does not arise. Since there is no deity, the question of protection, renovation, reconstruction and development of alleged temple premises does not arise. The building in question being a mosque, the occasion for creation of any Trust does not arise. The entire exercise is based on imaginary concept of Ramjanambhumi Temple though no such temple ever existed over the premises in question. The so called Ramjanambhumi Nyas has no connection with the building in dispute. It is not a legal person and there is no question of impleadment of the Trust as defendant no. 21. Even the idol surreptitiously placed on 22/23.12.1949, has not been installed in accordance with the traditions and rituals of Hindu Law. The ceremony prescribed by Hindu Law for installation of Idols has not been observed. The idols kept in mosque are not legal entity and question of their impleadment does not arise. The suit is barred by time having been filed after more than 39 years after the attachment of the property in suit and, therefore, is not maintainable. There is no public record, much less any record of unimpeachable authority, showing that the premises in dispute is the place of birth of Shri Ram Chandraji. There is no historical or judicial

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record to testify the said fact. The religious books as well as the writings of Hindu Scholars make it very doubtful whether the personality of Shri Ram Chandraji is historical personality. There are several versions about the place of birth of Shri Ram Chandraji. It is not at all settled even amongst the Hindu Scholars as to where and in what period such a religious leader known as Shri Ram Chandraji was born. The booklets circulated at Ayodhya by Vishwa Hindu Parishad and other Hindu organisations as well as other books of Hindu mythology describe the period of Shri Ram Chandraji as that of Treata Yug, meaning thereby that he was born more than nine lakh years ago. According to Hindu mythology there were three Maha Pralayas during which period the entire earth got submerged into water. Accordingly, as per Hindu Mythology itself no specific place can be said to be the birth place of Shri Ram Chandraji. The greatest author in the recent history on Shri Ram Chandraji is Goswami Tulsidas who has written Ramcharitmanas during the regime of Mughal Emperor Akbar, the grandson of Mughal Emperor Babar. The said book was composed by Goswami Tulsidasji at a place known as “Datun Kund” situate at a distance of about 1 km. from Ayodhya in District Faizabad. Had there been any birth place of Shri Ram Chandraji in Ayodhya, Goswami Tulsidasji must have specifically mentioned about the same in his book Ramcaritmanas. As a great devotee of Shri Ram Chandraji, Goswami Tulsidas cannot be expected to have skipped over, concealed or kept quiet over such an important fact of life history of Shri Ram Chandraji. If there would have been any iota of truth about the story of Shri Ramjanambhumi Temple at Ayodhya at the site of Babri Masjid during the regime of

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Emperor Babar or prior thereto, and, had there been any incident of demolition of such temple and construction of Babri Masjid over the same, it would have been mentioned by Goswami Tulsidas in his book. He also would have taken up this matter in the Court (Darbar of Emperor Akbar) who must have undone the alleged wrong. The Court of Emperor Akbar was full of advisers, counsellors and ministers of Hindu community and his own Queen was Jodha Bai, a Hindu lady. Even the location of present Ayodhya does not tally with the location of Ayodhya as given in Valmiki Ramayan. This creates doubt about there being any place of birth at the present Ayodhya situate in District Faizabad. According to Valmiki Ramayan, Ayodhya was situated about a distance of one and half Yojan (equivalent to about 14-1/2 miles) from river Saryu flowing East to West which is presently running quite adjacent to the present Ayodhya from West to East. It is incorrect that any historical or other evidence exists to the effect that Shri Ram Chandraji manifested himself in human form at the place where idols are kept presently in the mosque in question. Prior to December, 1949, the place known as Babri Masjid was never called as Shri Ramjanambhumi. In 1885, Mahant Raghubar Das, Mahant of Janam Asthan of Ayodhya, filed a suit against Secretary of State for India in Council and Mohd. Asghar, Mutawalli of the mosque in the Court of Sub-Judge, Faizabad. He annexed a site plan alongwith plaint wherein the mosque in question was specifically mentioned in the western side of Chabutra in respect whereof the suit was filed seeking permission to erect temple over the said Chabutra but could not succeed as the suit was dismissed on 24.12.1885 by Sub-Judge, Faizabad. The first appeal was dismissed by District Judge, Faizabad and second

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appeal was dismissed by the Judicial Commissioner of Oudh. The suit was filed in representative capacity on behalf of other Mahants and Hindus of Ayodhya and Faizabad. The plaintiff, therefore, cannot claim that any portion of Babri Masjid has been deified or has become a juridical personality by the name of Asthan Ramjanambhumi. There is no installation of any deity at the premises in question. The plaintiffs are estopped from claiming the mosque in question as Janam Bhumi of Shri Ram Chandraji. The predecessors of the plaintiffs namely, Mahant Raghubar Das confined his claim to Chabutra (platform) of 17 ft. x 21 ft. outside the mosque as being Janam Asthan of Shri Ram Chandraji. There already exists another temple known as Janam Asthan Temple at a distance of 100 yards only from Babri Masjid and from its southern side. Mythological concept of incarnation etc. is irrelevant for the purpose of suit in question. A Hindu Officer himself has lodged first information report about surreptitious placement of some idols in the mosque in the night of 22/23.12.1949 by some mischievous elements, which resulted in registration of a criminal case as also initiation of proceedings under Section 145 Cr.P.C. due to communal tension flared up in the area concerned. The building was attached on 29.12.1949. A Supurdagar/ Receiver was appointed for its care and custody who drew a scheme of management which was submitted to the Court on 05.01.1950. The spirit of Shri Ram Chandraji as the divine child cannot be said to reside at any place or in the idol kept inside the mosque. No idol or place of mosque can be said to be Deity. There is no comparison of Kedarnath or Vishnupad Temple of Gaya with the Babri Masjid. There is no Charan or Sita Rasoi within the premises of Babri Masjid. The place known as “Sita Rasoi” is

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situate outside the premises of the mosque. No Pooja was ever performed inside the mosque at any time prior to 23.12.1949. There was no temple of Maharaja Vikramadittya's time at the site of Babri Masjid. No authentic book of history or public record of unimpeachable authenticity is citable in this respect. The averment of construction of mosque in question at the site of temple or after destruction of any temple by force or arms is incorrect. Use of material after alleged destruction in the construction of mosque is also denied. It is also denied that the pillars of the mosque were brought out of Kasauti or touchstone with figures of Hindu God and Goddess carved on them. Such pillars are available at some other places also. The alleged resistance put up by Hindus or battle fought from time to time to prevent construction of mosque is also denied. Regarding the shape, it is said that there is no requirement of any specific type of construction or structure for a mosque. Existence of minarets or domes is not at all required for any mosque. There is no necessity of any place for storage of water for Vazoo. In the close vicinity of Babri Masjid a well is there for taking out water for Vazoo. There are several other mosques in India and even in Faizabad which have no minarets or domes. One of such mosques is situate within the premises of Dargah Hazrat Jahangir Samdani in Kachaucha Shareef, District Faizabad in which there are no domes or minarets. Another is in District Lucknow in which there are five domes but no minarets. No life was lost in any battle fought in respect of Babri Masjid and no battle had taken place in respect thereto till 1885. The place in question was not in possession and control of Hindus since the date of its construction during Babar's time. The facts contained in Faizabad Gazeteer are based on hearsay and is not true. They

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are incorrect and are unreliable piece of evidence. Bitterness had been created between Hindus and Muslims in respect of the mosque situate inside Hanuman Garhi. It was on the report of the demolition of that mosque that some muslims tried to take up arms under the command of Maulvi Ameer Ali but they could not succeed on account of the army of Nawab as well as British posted for facing such challenge. The expedition of Maulvi Ameer Ali has no concern with Babri Masjid. The observations to the contrary in the Gazeteer of Faizabad and Barabanki are incorrect and unreliable. At no point of time Hindus and Muslims both worshipped at the place known as Babri Masjid. Had it been so, it would have been mentioned by Mahant Raghubar Das in his plaint of Original Suit No. 61/280 of 1885. The quotation of Quran in para 24(A) is totally out of context and it is said that it is not even correct and complete. The land in question undoubtedly belong to the State when the mosque in question was constructed on behalf of State and as such it cannot be said that it could not be dedicated for the purpose of mosque. Emperor Babar was a "Sunni Muslim". The Babri Masjid was built on the vacant land in the State territory of Emperor Babar. It did not belong to anyone and could very well be used by his officers for the purpose of mosque specifically so when the Emperor Babar himself consented and gave approval for the purpose of construction of mosque. The site in question was never the site of any temple and no temple was destroyed by Meer Baqi. Had any such incident taken place, the same would have been reported in the authentic books of Mughal history. It is denied that the entry of mosque would not be possible except after passing through the place of Hindu worship. The concept of mosque has wrongly been described

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and, therefore, denied. There is no such condition that the mosque should be constructed at a place of peace, quiet and near a place having sizable Muslim population. It is also incorrect that the mosque cannot be built in a place surrounded by the temple where the sound of music and Konch shell, Ghanta Ghariyal would disturb the site of peace of that place. There is no specific shape of building of a mosque and no mandatory requirement of minarets. There is also no requirement of any specific place for calling the "Azan". The contents in para 24(E) of the plaint are incorrect. Non existence of graves near the building of the mosque is denied. The graves were existing in Ganj-Shaheedan but have been mostly demolished by Bairagis and that is how they are now not visible. The mosque in question was used for offering regular five times prayer (namaz) up to 22.12.1949 and even Friday prayer was offered therein till 16.12.1949. The Imam of the said mosque who used to lead prayers in 1949 namely, Maulvi Abdul Ghaffar son of late Mohd. Abdul Qadir has filed his affidavit in Writ Petition No. 746 of 1986, Mohd. Hashim Vs. District Judge, Faizabad and others. It is denied that no valid Waqf of the mosque was ever created. The possession of Muslims remained uninterrupted and continuous from the date of construction of the mosque till 22.12.1949. The alleged right or title, if any, of anyone else stands extinguished on account of adverse possession of Muslims for more than 420 years. The alleged communal riot of 1934 has nothing to do with Babri Masjid. However, some Bairagis damaged a portion of the mosque. The District Magistrate, Faizabad got the same repaired through a Muslim contractor. It is incorrect to say that after 1934 no one dared to offer Namaz in the said mosque. It is denied that there was no

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Mutawalli or Moazzim or Imam or Khatib or Khadim of the said mosque. The Mutawalli of the mosque finds mention even in the Gazette of 1944 declaring the said mosque as Waqf. Even at present there is a Committee of Management of the said mosque appointed by defendant no. 4. The graves existing near Babri Masjid were dug-up and levelled mainly after 1949 and not just after independence. In the night of 22/23.12.1949 some Bairagis forcibly and illegally entered the mosque and kept idols therein below the middle dome of the mosque. Some of the culprits are named in the first information report. It is incorrect that no Muslim has been residing near Babri Masjid and no resistance was offered by them. In fact Muslims reside not only behind the mosque but also in the localities situated in the southern and eastern side of the mosque. Since no one was aware of the incident which took place in the late hours of the night, hence could not offer resistance at that time. On 23.12.1949 they came to know of the said incident, collected and insisted for offering Friday prayers in the said mosque but the District Magistrate present over there persuaded them not to offer prayer and assured that the idols stealthily kept in the mosque would be removed by the next Friday. In the circumstances, the Muslims exercised restraint being law abiding citizens and started pursuing legal remedies. This resulted in the proceedings under Section 145 Cr.P.C. which were not dropped but has been consigned to record due to filing of civil suit and were likely to be revived after decision of the civil suit. The idols were kept in connivance of some district officials, the then District Magistrate, Sri K.K. Nayyar. The then Prime Minister and Chief Minister asked the District Magistrate, Faizabad to get the idols removed from the mosque. One Akshay Bramhachari, the then

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President of the District Congress Committee, Faizabad went on fast to press his demand for removal of idols from the said mosque but deferred the same on the assurance given by the then Chief Minister, Pt. Govind Ballabh Pant. The proceedings under Section 145 Cr.P.C. were dropped on 30.07.1953 after recording the finding that there was no apprehension of breach of peace of any order any longer. Due to the injunction order restraining removal of idols, the same could not have been removed. It is incorrect to say that the Receiver acted like a Shebait. There is no question of creating any right in favour of the plaintiffs due to alleged long adverse possession. The theory of restoration of the alleged Janam Asthan is wholly imaginary. Mahatma Gandhi never considered or treated Babri Masjid to be Janam Asthan of Shri Ram Chandraji. His disciples have also disapproved the forcible placement of idols in the mosque. The demand of demolition of mosque and construction of a new grand temple of Shri Ram Chandraji is being raised by some disgruntled elements having vested interest and they are misleading the large number of persons as if the said Babri Masjid is the birth place of Shri Ram Chandraji. The alleged wide ranging differences amongst Shias and Sunnis sects of the Muslims in respect of mosque in question is incorrect. The Shia sect has nothing to do with the Waqf of mosque in question and this matter has already been settled by Civil Judge, Faizabad in 1946 holding that the Babri Masjid is a Sunni Waqf. It is incorrect that Mutawallis of mosque in question were Shia Muslims or the distant relatives of Mir Baqi. The judgement dated 30.03.1946 in Suit No. 27 of 1945 given by Civil Judge, Faizabad in this respect is final. There is no legal bar in appointment of a Shia Mutawalli to a Sunni Waqf or vice versa.

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A person who constructs a mosque or under whose supervision a mosque is constructed does not become a Wakif of the said mosque ipso facto specially when an Officer or General of a Army of a King constructs a mosque on behalf of the King. The Waqf would be said to have been created by the Emperor and not by the Officer. From the record of Sunni Waqf Board it is not borne out that Sri Jawwad Hussain was ever recorded a Mutawalli of the said Waqf. He is wrongly impleaded as the defendant in suit. Similarly, defendants no. 22, 24 and 25 have also been wrongly impleaded. The suit is bad for misjoinder of parties. The alleged Charan and Sita Rasoi do not constitute one integral complex having a single identity. Defendant no. 23 is not admitted to be the present Mutawalli of Babri Masjid since before 1948. At present the mosque in question has got a Managing Committee appointed by defendant no. 4. It is incorrect that a Mutawalli of the mosque can sue for its dispossession. The "Board" is a statutory body created by U.P. Muslim Waqf Act, 1936 and is continuing under the U.P. Muslim Waqf Act, 1960. Under Section 19 the Board has general powers of supervision of all the Waqfs, institute and defend suit and proceedings in any Court of Law relating to all Waqfs etc. It is denied that Anjum Qudar, defendant no. 24, or any sensible and sizeable section of the Muslim community would not approve the course adopted by defendants no. 4 to 6. Any responsible Muslim has not made any suggestion of removal of mosque to any other place. The concept of removal of the structure of mosque to any other place is quite foreign to the Muslim law and there is no possibility of any such course being accepted by the Muslims in respect of the mosque in question. The concept of mosque is that the entire area below as

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well as above the portion of the mosque remains dedicated to God Almighty. It is not the construction or structure of a mosque alone which is important but more important is the land on which mosque stands constructed because the land also stands dedicated to God Almighty and the same cannot be removed. If any person bearing the Muslim name makes any suggestion for removal of mosque to any other place, that is of no value and significance as the principles of Islamic law do not permit any such removal. It is also preposterous to suggest that the building in question will have to be demolished for construction of a temple in place thereof. While making such a statement, the plaintiffs do not appear to be conscious about the grave and disastrous consequences that will follow, if any such proposal is given effect to. The Muslims will never tolerate demolition of mosque for construction of a temple at the site thereof. There is no dispute that all human beings including Muslims and Hindus are creation of one and the same God. The plaintiffs of Suit-4 as well as other Muslims also believe in the policy of living in amity and goodwill with members of all communities and religious denominations. That, however, does not mean that the gesture of goodwill and amity should be shown to such persons, who are bent upon demolishing mosque. The site in question has nothing to do with the place of birth of Shri Ramchandraji, and, as such, the same has got no significance of the alleged Asthan Shri Ramchandra Janam Bhumi. The entire propaganda and publicity in this respect is being carried out by Vishwa Hindu Parishad, Ramjamanbhumi Yagya Samiti, their associates and allied bodies and it is nothing but sheer concoction. It is being done with vested interests and political ambitions. It is not at all difficult for the plaintiffs of

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the suit as well as for the defendants of Regular Suit No. 12 of 1961 to abandon their claim over the mosque in question and to construct magnificent and grand temple of Shri Ramchandraji at any other free site which may not be property of any other person or community. It is incorrect that under the tenets of Muslim law, a mosque can be shifted under certain circumstances. No cause of action accrued to the plaintiffs as they were never associated with the management and administration of the property in question. Even if any cause of action in respect of the property in suit can be said to have accrued to plaintiff no. 3, the same must be deemed to have accrued in December, 1949, when the property in question was attached and when the Muslims had categorically denied the alleged claim of Hindus to perform Pooja in the mosque in question and that being so, the present suit is highly barred by limitation. Plaintiff no. 3 is required to give specific date, month and year when the alleged cause of action accrued as no such description has been given. The averment of cause of action is incomplete and defective. The plaint is liable to be rejected as there is no cause of action. The suit is not properly valued. The Court fee paid is insufficient. The plaintiffs are not entitled to any relief.

93. In the additional pleas, it is said that plaintiffs no. 1 and 2 are neither Deities nor can be treated as juristic person. Plaintiff no. 3 cannot claim himself to be the next friend of Bhagwan Shri Ram. None of the plaintiffs has any right to file the suit. The plaint lacks the material facts and particulars. Notice under Section 80 C.P.C. was not given to the defendants no. 7 to 10. The property in question is a Waqf property registered as a Waqf in the Register of Waqfs maintained by Sunni Waqf

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Board under Section 30 of the Waqf Act. A Gazette notification of this effect was issued by the State Government in 1944, and even in the revenue and other Government records, the same stands recorded as a mosque. The State Government and its officers also have accepted it as mosque in their written statement filed in Suit 1 and 2. Even the reports of Archaeological Experts have been to the effect that there appear to be no symptoms of human habitation in the present Ayodhya of more than 700 B.C. There also appears to be no symptom of any Fort or Palace or old temple at the site of Babri Masjid. The suit is barred by Section 34 of Specific Relief Act as well as mis-joinder and non-joinder of parties.

Written statement dated 14/21.8.1989 of Defendant no. 5 (Sri Mohammad Hashim) (Suit-5)

94. Defendant no. 5 has filed a separate written statement dated 14/21.8.1989 and basically the averments therein are similar to that contained in the written statement of defendant no. 4. The additional averments, contained therein, are that existence of mosque as Babri Masjid is established by records-historic, judicial and revenue. There is no evidence, historic or otherwise, to indicate that Shri Ram Chandraji was born at the place in dispute. It is all a later concoction and there is no question of devotees. The so called Asthan is not a juristic person, hence, the suit is not maintainable. The concept of Hindu religion as well as philosophical and spiritual elements sought to be invoked by the plaintiffs in para 21 and 22 are irrelevant. The quotation of Quran in para 24 is incorrect. There is no evidence of demolition of any temple. The entire complex belongs to the waqf Babri Masjid. According to inscriptions in the mosque, the BabriMasjid was constructed by Mir Baqi, one of the Commanders of Babar in 1528 and since then it has been

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in use as mosque. The Muslims always regularly offered namaz in it till the attachment. Some averments of the plaint contain a threat and constitute contempt of courts of law including an excitement to violence and disregard for the rule of law. Lord Rama, in whose name controversy in question has been created, according to authoritative text of the historians and other scholars of Hindu religion is mere an epic, an imaginary figure and never existed in fact. There have been authoritative pronouncements by various historians that Lord Rama never existed. It is mere an epic. Besides above, no period and place could be fixed till date. After long research Holy Barahmins have come to conclusion that it is all mere an epic and legend. As per Valmiki's Ramayan, which is supposed to be the only authoritative source of Lord Rama, the city Ayodhya, where the property in question situate, is not the place described in that book. It is incorrect that there existed any temple which was demolished at the behest of Babar and at that site Babri Masjid was constructed. Shri Tulsidas, author of Ramcharitmanas has elevated the status of Lord Rama from Maryadapurushottam to Bhagwan in his book, which was written after construction of Babri Masjid, at Datoon-Kund in Ayodhya itself which situates at a short distance from the Babri Masjid. Before Tulsi's Ramcharitmanas, there were no temples of Lord Rama in any part of India and instead there were temples of other Gods and Goddesses. The contention, therefore, regarding demolition of Ram Mandir is baseless, designed to thatch up communal disharmony and hatred between the two communities. Recent scientific investigations and C-14 test, which is a radio carbon dating method, have revealed that the stones used in the building in question are less than 500 years in age. The claim that the

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temple was demolished and same material was used to build the mosque, therefore, stands falsified. The property in question is continuously recorded in revenue records from prior to first settlement and the said entry remained unchallenged and is final. Notification under the Waqf Act, 1936 was issued after due enquiry and survey. The same has not been challenged. The mosque, since very beginning, was receiving grant from Emperor Babar, which was continued by the British regime also. Suit No. 57 of 1978 filed on behalf of and in the name of alleged Deity for the very property has been dismissed by the Court of Munsif, Faizabad and the said order has not been set aside by any other Court and, hence, it operates as res judicata. Suit on behalf of a Deity cannot be filed through next friend and, therefore, is not maintainable. No period of birth of Ram Lala has been given. Lord Rama, Janki or any person having faith in them has no concern with the land in question over which Babri Masjid exists and the adjoining area of graveyard. The mosque and the graveyard cannot be the subject matter of any other type of Pooja. Practice and Astha could not give a right of demolition of mosque. Manifestation in human form is beyond comprehension and vague. Property, once vested in the God, becomes "Waqf property" and cannot be divested.

Additional written statment dated 22.8.1995 of defendants no. 4 and 5 (Sunni Central Board of Waqfs and Mohammad Hashim) (Suit-5)

95. It contains reply to the amended paragraphs added in the plaint, i.e., paragraphs no. 35-H to 35-U. Demolition of Babri Masjid is a pre-planned, deliberate and intentional act on the part of miscreants and criminals. So called construction of make-shift temple and placement of idols therein can not be described as Deity under Hindu law. Most of the paragraphs of

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the amended plaint have been denied being irrelevant, vexatious and frivolous and it is said that the plaintiffs have no right, title or claim over the property in suit. It is also said that on removal of the idols on 6.12.1992 from the site, the claim, if any, stood extinguished.

Written statement dated 21/22.8.1989 of Defendant no. 6 (Mahmood Ahmad) (Suit-5)

96. Defendant no. 6, Mahmood Ahmad, vide his application dated 21/22.8.1989 has adopted the written statement of defendant no. 5 and has said that he does not propose to say anything further.

Written statement of Defendant no. 11 (President, All India Hindu Maha Sabha) (Suit-5)

97. It has supported the case of the plaint and said that the All India Hindu Mahasabha is cooperating for construction of new Ram temple at the site in question for performing Pooja etc.

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Written statement dated 14.8.1989 of Defendant no. 17 (Ramesh Chandra Tripathi) (Suit-5)

98. Similarly, defendant no. 17, vide his written statement dated 14.8.1989 has supported the plaint in its entirety.

Written statement dated 18.9.1989 of Defendant no. 23 (Sri Javed Husain) (Suit-5)

99. Defendant no. 23, though has filed his separate written statement dated 18.9.1989 disputing the claim of the plaintiffs, but its reply is virtually similar to that as given in the written statement of defendant no. 4.

Written statement dated 4.9.1989 of Defendant no. 24 (Prince Anjum Quder) (Suit-5)

100. The written statement dated 4.9.1989 of defendant no. 24, while denying the claim of the plaintiffs, states that the holy Deity and Asthan cannot be made party to the suit. Plaintiff no. 3 has not secured any authority to file suit on behalf of plaintiffs no. 1 and 2. The defendant considers Lord Ram above the

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jurisdiction of the Court and it is sacrilege to drag the name of Lord Ram into these mundane proceedings. Plaintiff no. 3 has impleaded plaintiff no. 1 to ensure his victory since Lord Ram cannot be defeated and this attempt cannot be allowed to succeed. The defendant has no knowledge of Shri Ramjanambhumi by which it meant the exact spot of birth of Lord Ram. As per his version, there are at least three spots in Ayodhya claimed as the exact spots where Lord Ram was born :

1. The spot being presently claimed by the plaintiffs known as Ram Janam Bhumi only since 22.12.1949.

2. The Ram Chabutra, in the court-yard outside the Babri Masjid structure, is known as Ramjanambhumi only since 1855.

3. The Janamsthan site Rasoi Mandir, facing the Babri Masjid across the street, is traditionally known as Ramjanambhumi since time immemorial.

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101. The items at (b) and (c) are the spots, which have not been abandoned by believing devotees in Ayodhya. Reference to various suits is not within his knowledge since he (defendant no. 24) was not a party in those cases, but in his view, this matter should be decided without any further delay. Against the order dated 1.2.1986 of District Judge, Faizabad, the writ petition, which is pending before this Court should also be disposed of simultaneously with the pending suits. The structure popularly known as Babri Masjid cannot lawfully be removed to make way for a Mandir. Formation of a Trust comprising the disputed property is illegal so long as the dispute pertaining to ownership etc. in the pending suits is not decided. The act of plaintiff no. 3 is collusive since he is one of the trustees, yet has impleaded the Trust as defendant no. 21 and, therefore, he represents both the

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plaintiffs as well as defendants. The defendants and the Muslims of India have highest regard for Lord Ram. These sentiments of Muslims are best reflected in the poem entitled "Ram" composed by the greatest Muslim thinker of India, namely, Muhammad Iqbal, and one verse of the long poem shows what Muslims of India think of Shri Ram Chandraji:

"Hae Ram ke wajood pe Hindostan ko naaz
Ahl-e Nazar Samajht-e-hein usko Imam-e-Hind."

102. The meaning of the said verse is that the India is proud of the existence of Ram. The intelligentia consider him as the leader of India. The defendant think if Lord Ram himself could help it, he could not have been dragged into this unseemly and undignified controversy. Impleadment of the great names of plaintiffs no. 1and 2 is unauthorised and unwarranted. Plaintiff no. 3 has not obtained consent to make the Deity and Asthan as plaintiffs no. 1 and 2 from the said plaintiffs nor has been authorised by them. Politicians and communal minded fundamentalists have set up plaintiff no. 3 to file this frivolous suit in the name of the Asthan and Bhagwan Shri Ram to serve their own narrow political and selfish ends. Lord Ram would not have subordinated himself, the way, his devotees have done him. It is denied that Lord Ram was born at the premises in dispute. Such belief came into existences only on 22.12.1949. If any documentary or recorded evidence is produced by plaintiff no. 3 establishing beyond doubt that the present belief existed before 22.12.1949 also, this defendant will surrender all his opposition. When the Babri Mosque was being constructed in 1528, no such belief existed in Ayodhya or elsewhere that the place where the mosque was built was Ramjanambhumi. Goswami Tulisdar has also not made any such complaint in his

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epic biography "Ramcharitmanas" written about the year 1558. Balmiki also did not identify the present contentious spot as Ram Jaman Asthan. In none of the other Ramayans written in several other languages, the spot in question is mentioned as place of birth of Lord Rama. The averments in para 12 of the plaint are strongly contested. The idea of Ram Janamasthan was first floated by British East India Company's agents in 1855 in order to destabilise the regime of this defendant's forebear, the King of the realm, Wajid Ali Shah. At that time, a spot outside the structure of the Babri Masjid, in a corner of the court-yard was claimed as Ram Janam Asthan. But the King settled the dispute by partitioning out the plot 17 ft. X 12 ft. naming it as Ram Chabutara, by giving it to Hindus to do "Paaths" of Ramayana and peace was then restored. Again for the first time on 22.12.1949, the Ram Jamanasthan claim was shifted from Ram Chabutara to right inside the mosque just beneath the main large dome of the Babri Masjid. Prior to 1855, the undisputed Ram Janamasthan was the old Janam Asthan, Sita Rasoi Mandir, across the street on a mound facing Babri Masjid. The first two sentences of paragraph 23 of the plaint are the most important. All the Muslims of India are willing that the issue be decided and the dispute be settled one or the other way. The plaintiffs has relied on a Faizabad Gazetteer, 1928 Edition and the story mentioned therein about the visit of Emperor Babar to Ayodhya and destruction of ancient temple at Janamsthan to build Babri Mosque, but it is a well known fact of history that Emperor Babar never came to Ayodhya. Babri Mosque was made by Mir Baqi and not by Babar. In Babarnama, a daily diary, Babar has not mentioned about Ayodhya visit, destruction of Mandir or building of mosque thereat, although in other

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pages of Babarnama, many things adverse are also mentioned. Faizabad Gazetteer of 1877 does not contain any mention of destruction of any Mandir and building of Babri or any Masjid on the Mandir land. Out of the two Gazetteers, the one contemporary and more near to the date concerned will have to be relied on. District Gazetteers of the British Government, as is well known, are not work of history. They only reflect the policy of the alien Government to divide the vast population of India by creating conflicts such as the present one and to perpetuate minority rule of the foreign imperialist power. All the aforesaid and other conflicting facts need to be investigated by this Court or by a Commission of Experts of history and archaeology to arrive at the truth. It is submitted that if it is proved that a Mandir was demolished and Babri Masjid was built on the Mandir land, the defendant and all other Muslims will gladly demolish, shift the mosque and return the land for building of Mandir thereon and if it is not a fact, then the BabriMasjid must in all fairness be returned to Muslims. Jagad Guru Shankeracharya, Swami Swaroopananda Saraswati in a quotation published in national newspaper on 14.5.1987 stated that an Authority should be constituted to resolve Ramjanambhumi-Babri Masjid tangle. He also said that if Mandir was demolished for construction of the mosque, Hindu must get it otherwise it must be given to Muslims. Same is the statement given by Muslim historian and scholar Maulana Syed Sahabuddin Abdur Rahman in his well known treatise "Babri Masjid" at page 5. In the monumental theological work Fatawa-e-Alamgiri, Volume 6 Page 214, the following ruling is given :

> *"It is not permissible to build mosque on unlawfully acquired land. There may be many forms of unlawful*

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acquisition. For instance, if some people forcibly take somebody's house (or land) and build a mosque or even Jama Masjid on it, then Namaz in such a mosque will be against Shariat."

103. Plaintiff no. 3 is not competent to interpret Quran, Islamic Shariat and Islamic customs and practices as referred to in para 24 and the defendant contests the same and submits that the same is wholly irrelevant. Emperor Babar or Mir Baqi did not destroy or demolish any Mandir. The mosque was not constructed on the land or on the ruins of any Mandir. It was built on a vacant land. Sanctity of Babari mosque was not affected by creation of Ram Chabutara in the courtyard or by the mosque being surrounded by Mandirs. There is no tenet of Islam against existence of a mosque in a noisy place or in a non-Muslim locality. Minaret is not an essential part of a mosque. Non existence of a water reservoir would not effect the status of a mosque. Friday Namaz used to be regularly held in Babri Masjid and the last Namaz was held on 22.12.1949. The Imam who led the prayers regularly till 22.12.1949, was Maulana Haji Abdul Gaffar and he is alive and lives at Mohalla Qaziana, Ayodhya, District Faizabad. What happened in the night between 22/23.12.1949 is best narrated by the then Deputy Commissioner of Faizabad himself in an affidavit filed by him on behalf of the State in Regular Suit no. 25 of 1950, the relevant portion whereof is annexed as Annexure 'A' to the written statement. The destruction of the graveyard was an act of sacrilege and was illegal. Protection of religious rights of all communities is the constitutional obligation of the Government. The claim of adverse possession in respect of religious places like Babri Masjid is unjustified and illegal. The defendant

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believes that the Hindu population of India has always been, by and large, secular, when a small minority amongst Hindus are those who believe and think like defendant no. 3 though they do not represent even one or two per cent of Hindus. The Hindus will never commit an act of Adharma by demolishing Babri Masjid and constructing a Mandir over it by illegal means particularly when this Court is seized of the matter. The present suit is nothing but an attempt to cover the shortcomings of other original suits. For the purpose of Namaz, both Shia and Sunni Muslims used to offer Namaz in Babri Masjid. Every mosque is a public property and all Muslims regardless of their sect are beneficiaries. Every member of the Muslim community has right to represent the case of a mosque. The Sunni Central Waqf Board has full support of Shias represented by All India Shia Conference. The defendant is deadly against any form of sacrilegious action. No place of worship of any religion should be destroyed and no place of worship should be constructed on the ruins of the destroyed one. The defendant firmly believes that the Babri Masjid was certainly not built after destroying Vikramaditya Mandir or any other temple. However, if any such thing is proved, or if it is proved that the site where the Babri Masjid existed was a place known as Ram Janamasthan spot then the defendant will withdraw his opposition. Once it is admitted that the mosque was built hundreds of years ago and used as such, it became waqf by user irrespective of the fact whether or not legal formalities for creating a Waqf were observed. The suit is barred by limitation and the claim is also barred by principle of estoppel.

Written statement dated 16/18.9.1989 of Defendant no. 25 (All India Shia Conference) (Suit-5)

104. A separate written statement dated 16/18.9.1989 has been

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filed by defendant no. 25, but substantially it contains similar defence as has been given in the written statement of defendant no. 4 as well as 24 and, therefore, is not being given in detail, but wherever necessary, shall be referred later on.

PROGRESS OF THE SUITS - JOURNEY IN THE LAST MORE THAN 61 YEARS AND SOME IMPORTANT STAGES - A BRIEF RESUME

105. Proceeding under Section 145 Cr.P.C.: First we propose to have a bird eye view of the proceedings relating to Section 145 Cr.P.C.

106. The present chain of litigation resulting in the suits in question commenced on 22/23.12.1949 when a First Information Report *(in short 'FIR')* was lodged by Sub-Inspector, Ram Dev at Police Station Ayodhya alleging that as per information received from Constable, Mata Prasad, certain persons broke open the lock of the inner courtyard of disputed building and placed the idols of Lord Ram in the disputed structure beneath the central dome in the night of 22/23.12.1949 after tresspassing the inner courtyard.

107. Sri Markandey Singh, the then Additional City Magistrate, First Class, Faizabad-cum-Ayodhya issued a preliminary order dated 29.12.1949 in purported exercise of powers under Section 145 Cr.P.C. stating that the dispute between Hindu and Muslims over the disputed structure raising question of right of proprietorship and worship is likely to lead a breach of peace and accordingly he directed the parties to appear before him on 17.01.1950 at 11.00 a.m. at Ayodhya Police Station in person or through pleader and put in written statement of their respective claim with respect to the facts of actual possession of the subject of dispute. He described the parties as follows:

1. The Muslims who are bona fide residents of

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Ayodhya or who claim right of proprietorship or worship in the property in dispute;

2. The Hindus who are bona fide residents of Ayodhya or who claim right of proprietorship or worship in the property in dispute;

108. Recording his satisfaction of the case being one of emergency, he directed for attachment of the said building pending decision. He further directed that the attachment would be carried out immediately by Station Officer, Police Station, Ayodhya, who would then place the attached property in the charge of Sri Priya Dutt Ram, Chairman, Municipal Board, Faizabad-cum-Ayodhya who would thereafter be the "Receiver" of the said property and would arrange for care of the property in dispute. He also directed the Receiver to submit a scheme for management of the property in dispute for approval during attachment and the cost of management was to be defrayed by the parties to the dispute in proportions as may be fixed from time to time. The order was directed to be published in three newspapers for giving information to parties besides affixing the same on the walls of the building in dispute and the notice board at Ayodhya Police Station.

109. The Receiver, Priya Dutt Ram took charge of the premises on 05.01.1950 and executed a Supurdaginama (Inventory) verifying the following items he received/attached :

"1. मूर्ती ठाकुर जी 1–(अ) श्रीराम ललाजी दो मूर्ती एक बड़ी एक छोटी
(ब) श्री शालीगराम जी की 6 मूर्ती।

"1. Idols of Thakur Ji

1-(a) Two idols of Sri Ram LalaJi, one big and another small.

(b) Six idols of Sri Shaligram Ji.

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2. सिंघासन चांदी दो फीट ऊचा एक।

2. A two feet high silver throne.

3. मूर्ती हनुमान जी की एक।

3. One idol of Hanuman Ji.

4. (a) गिलास जर्मन सिलवर का एक।

(a) One glass of German Silver.

(b) गिलास चांदी का छोटा एक।

(b) One small glass of silver.

(c) गिलास चांदी का बड़ा एक।

(c) One big glass of silver

5. गरूड़ घंटी एक।

5. One Garun bell.

6. धूपदानी एक।

6. One incensory.

7. आरती एक।

7. One Arti vessel.

8. दीवट एक

8. One lamp stand

9. हुरसा व चंदन एक।

9. 'Hursa' and one sandal.

10. फोटू बड़ी राम जानकी की दो।

10. Two big photographs of Ram Janki.

11. गमला चार।

11. Four flower pots.

12. फोटू बद्रीनाथ जी (छोटा) एक।

12. One (small) photograph of Badrinath Ji.

13. फोटू राम चन्द्र जी छोटा एक।

13. One small photograph of Ramchandra Ji.

14. भगवान के आभूषण

दो टोपी राम लला जी और एक हनुमान जी की टोपी।

तथा भगवान के वस्त्र आठ लगा

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14. *Ornaments of Deity*

Two caps of Ramlala and one cap of Hanuman Ji. And eight robes of Deity.

15. *इमारत – तीन गुम्बद दार इमारत मै सहन के तथा चहार दीवार जिसकी चौहद्दी नीचे लिखी है।*

उत्तरः– हाता छट्टी आंगन और निर्मोहीं अखाड़ा

दक्षिणः– आराजी परती व परिक्रमा

पूरबः– चबूतरा मन्दिर राम जी का ममलूक निर्मोही अखाड़ा व सहन मन्दिर हाता

पश्चिमः– परिक्रमा

15. *Building- Three domed building with courtyard and boundary wall, which is bounded as under.*

North- Premises comprising Chhathi courtyard and Nirmohi Akhara.

South-Vacant land and 'Parikrama' (circumambulation path)

East- 'Chabutara' (platform) of Ram temple under possession of Nirmohi Akhara, and courtyard of temple premises.

West- Parikrama' (circumambulation path)

16. *छोटा पीतल का गिलास*

16. *Small brass glass*

17. *चन्दन की फूल की कटोरी एक।*

17. *One bowl of 'Phool' (an alloy) for sandal.*

18. *पंज्च पस तथा थाली पीतल की एक।*

18. *'Panch Pas' and one brass plate.*

19. *तशतरी पीतल की छोटी एक।*

19. *One small brass plate.*

20. *छोटा पटरा लकड़ी का एक।"*

20. *One small wooden board."*

(English Translation by Court)

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110. One Sri Anisur Rahman son of Maulvi Waziruddin filed an application dated 17.01.1950 before the Addl. City Magistrate stating that he proposed to move an application of transfer in the High Court and, therefore, proceedings be stayed, to enable him to move the said transfer application. The Addl. City Magistrate on the same date passed an order staying the case subject to furnishing of personal bond of the applicant to the effect that he will put in transfer application in the High Court before 15.02.1950. Sri Anisur Rahman furnished the aforesaid bond on the same date.

111. Sri Anisur Rahman thereafter filed Criminal Transfer Application No. 208 of 1950 in this Court under Section 526/528 Cr.P.C. on 02.02.1950 seeking transfer of the said case from the Court of Addl. City Magistrate, Faizabad to some other Court of competent jurisdiction outside the District Faizabad and also prayed for stay of the proceedings in the meanwhile.

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112. This Court (Hon'ble Raghubar Dayal, J., as His Lordship then was) stayed further proceedings on 03.02.1950 and passed the following order:

> *"Issue notice. Stay meanwhile. A copy of the order may be handed over to the learned counsel on payment of the necessary charges."*

113. The then District Magistrate, Faizabad, Sri K.K. Nayar was changed meanwhile and in his place one Sri J.N. Ugra took over charge on 14.03.1950 (afternoon). He brought this fact to the notice of this Court vide his letter dated 06.04.1950.

114. The Transfer Application came up for hearing before Hon'ble V. Bhargava, J. (as His Lordship then was) on 30.05.1950. Considering the fact that the allegations against the City Magistrate were not substantiated and those made against

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the District Magistrate, Sri Nayar were of no help since the officer had changed in the meanwhile, this Court rejected the Transfer Application observing as under:

> *"The allegations have been made without giving grounds on which they are based. These allegations are denied by the learned Magistrate who is trying the case. There were specific allegations against Shri K.K.K. Nayar who was District Magistrate, Faizabad at the time when this transfer application was presented. It now appears that he has since been transferred and another District Magistrate has taken over charge. These specific allegations against Shri Nayar need not, therefore, be considered at all, as whatever apprehensions could have arisen on account of those circumstances have now disappeared with the change of the District Magistrate.*
>
> *There is nothing at all in the circumstances appearing within would show that the case would not be tried impartially by the learned Magistrate before whom it is pending. This application for transfer is rejected."*

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115. It appears that a number of affidavits were filed before the City Magistrate by certain individual Muslims stating that since 1934, 1935 and 1936, Muslims have not offered any prayer in the disputed building and it is in possession of Hindus since then, and, they have no objection if the disputed premises be allowed to remain in possession of Hindus.

116. Sri Anisur Rahman, however, filed his objection dated 08.07.1950/29.12.1950 stating that Namaz had been offered in the disputed premises till 16.12.1949 and some miscreants have kept idols illegally in the night of 22/23.12.1949 in respect whereto a first information report has been lodged. The building

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in dispute is a mosque and is registered as Waqf with the Sunni Board hence its possession be handed over to him after removal of idols from the disputed premises. He also said that the building in dispute was constructed by Emperor Babar in 1528 who made a Waqf in favour of Muslims for offering prayer therein and since then it is in possession of Muslims.

117. Some other objections were filed, by Baba Abhiram Das on 29.12.1950, Baba Baldev Das on 27.12.1950/29.12.1950, Sri Salar Mohammad and Sri Srivastava N.P. Singh etc on other dates.

118. Since in the meantime Suit 1 was filed by Sri Gopal Singh Visharad wherein interim injunction was granted on 16.01.1950 as modified on 19.01.1950 and 03.03.1951, consequently, Sri Prem Shanker, the then City Magistrate, Faizabad passed an order on 30.07.1953 the relevant extract whereof is as under :

> *"The disputed property i.e. Babri mosque/Janmabhumi premises are already in possession of the receiver. Sri Priya Dat Ram appointed by the Additional City Magistrate under his order dated 29th December, 1949 referred to above and the said receiver has been looking after the property since 5.1.1950, the date of assuming charge. As the finding of the civil court will be binding on the criminal court it is no use starting proceedings in this case under Sec. 145 Cr.P.C. and regarding evidence specially when a temporary injunction stands, as it cannot be said what may be the finding of this court after recording the evidence of parties. From the administrative point of view the property is already under attachment and no breach of peace can occur.*
>
> *I therefore order that the file u/s 145 Cr.P.C. be consigned*

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to records as it is and will be taken out for proceeding further when the temporary injunction is vacated."

119. The office of the City Magistrate thought that the proceedings have been finalized and, therefore, the record may be weeded out. Consequently, an application dated 22.07.1954 was filed by Sri Gopal Singh Visharad, plaintiff (Suit 1), requesting that since certified copies of about 20 affidavits filed in the case under Section 145 Cr.P.C. were obtained and filed in the pending civil suits, and, the file itself may be required by the Civil Court, therefore, the record may not be weeded out. He pointed out therein that besides Suit 1 another suit i.e. Suit 2 has also been filed and both have been consolidated on the application of Muslim defendants and are being heard together.

120. It appears that thereafter when the suits from the Trial court were transferred to this Court, the record of the case under Section 145 Cr.P.C. was also summoned by this Court and received vide letter dated 22.11.1991 of the City Magistrate, Faizabad.

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SUIT 1- (FROM 16.1.1950 TO 1963)

121. Suit 1 was presented before the Court of Civil Judge, Faizabad on 16.01.1950 alongwith an application under Order 39 Rule 2 and Section 151 C.P.C. It was registered on the same date and notices were issued to the defendants. An interim injunction in the meanwhile, as prayed, was granted on 16.1.1950 fixing 18.02.1950 for disposal of injunction application.

122. The prayer in the application for ad interim injunction was as under:

"Therefore, the applicant prays that a temporary injunction be issued against the defendants to the effect that they

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should not remove the idols of Shri Bhagwan Ram Chandra and others from Asthan Janam Bhumi, the details of which are given in the plaint, till the decision of the case, and they further be ordered not to close the Pravesh Dwar and other passages of ingress and egress to the visitors and also that they should not place any obstacle in the Pooja and Darshan."

123. On 19.01.1950 the Civil Judge modified the injunction order dated 16.1.1950, on an application filed on behalf of defendants no. 7 to 9, in the following manner:

"The opposite parties are hereby restrained by means of a temporary injunction to refrain from removing the idols in question from the site in dispute and from interfering with "Puja" etc. as at present carried on. The order dated 16.01.1950 stands modified accordingly."

124. An objection dated 13.02.1950 was filed on behalf of defendants no. 1 to 5. It alleged that the disputed site was part of the Babri Mosque which was built by Emperor Babar and it had been in the use of Muslims as a Mosque ever since. Hindus never worshipped or performed any Pooja thereat. The idols at the site in question were recently planted.

125. On 25.03.1950, after hearing the parties on the objections filed against ex parte injunction dated 16.1.1950, the Civil Judge decided to get a map of the locality and building prepared through a Commissioner and ordered accordingly. One 'Shri Shiv Shanker Lal, (Vakil)', was appointed 'Commissioner' to prepare the map and one 'Shri Bashir Ahmad, Vakil' was appointed as 'Commissioner' to take photographs.

126. On 25.05.1950 Shri Shiv Shanker Lal, Commissioner submitted his report and map. Shri Bashir Ahmad, however,

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sought some more time for photographs. Ultimately, on 3.8.1950 Shri Bashir Amhad filed 13 photographs of the disputed building alongwith his report.

127. The parties filed objections to the above reports of the Commissioners which were dealt with by the Civil Judge vide order dated 20.11.1950. He observed as under:

> *"The defendants 6 to 9 object to the commissioner's report on the grounds that the learned commissioner has used wrong and erroneous nomenclature in* ***describing the gates, images and foot prints****. It is further objected that the learned commissioner has erred* ***by naming certain structures as Samadhi, Chaura and Chabutra****. It is also disputed that there is any pucca path round the building in dispute.*
>
> *It should be noted that* ***the existence of gates, images and foot print in the premises in dispute are not disputed****. Certainly the nomenclature given to these things by the learned commissioner is a matter of evidence. It will be open to the parties to prove the nomenclature by means of reliable evidence independent of the commissioner's report. As to certain structures being named Samadhi, Chaura and Chabutra I am of opinion that it is also a matter of evidence and that the learned commissioner's report on this point is not final. Nor can the Commissioner's report regarding the existence of so called Parikarma be held to be final. If the commissioner's report contains any irrelevant material, it will not certainly be considered to that extent.*
>
> *The defendants 1 to 5 object that the commissioner has prepared plan no. 2 beyond the terms of his*

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commission. If that is so, the plan no. 2 will not be considered. Whether a portion shown outside the yellow portion in plan II is a graveyard or not is clearly a question of evidence and it will be considered in the present case, only if it is found relevant and proved. It will be open to the parties to adduce evidence on this point, if relevant.

It is further objected that the defendants were not allowed to enter the disputed building. The commissioner's report shows that they reached the spot rather too late. If the defendants want to enter the building for the purpose of pointing out any particular thing there, it is open to them to apply to the Court accordingly.

Any opinion expressed or the nomenclature given by the learned commissioner can be disputed by the parties by adducing evidence. As already pointed out, the commissioner's report regarding the names of the images is nothing better than hearsay. The objectors contend that the images referred to in the report are the images in dispute and they were surreptitiously installed in December, 1949. ***If the learned commissioner has failed to show anything pointed out by the objectors, they can apply to the Court to inspect the building and then show these things to the Court****.*

The rest of the objections relate to questions of facts. As already stated, the learned commissioner's report on those points is not final. It will be open to the parties to substantiate their objections by relevant and independent evidence.

The plaintiff objects to Sri Bashir Ahmad's report dated 3.8.50 on the ground that it contains personal

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observations. In my opinion the learned commissioner's report is relevant only to the extent to which it helps in explaining the photographs for which he was appointed. Any opinion expressed by the learned commissioner is not final.

Defendants 1 to 5 also object to certain extent to Sri Bashir Amhad's report and photographs. As already pointed out, the learned commissioner's report is not final. The parties may apply to the Court for further photographs, if they think that any more photographs are needed for clear decision of the case.

Fix 09.12.1950 for disposal of the application for injunction."

128. The objections to the ex-parte injunction dated 16.01.1950, modified on 19.01.1950 came to be considered on 03.03.1951. The trial court passed a detailed order and confirmed interim injunction. Relevant extract of the order is as under:

"For the purpose of these proceedings, it has to be seen whether the plff has a fair question to raise as to the existence of the right alleged, whether he is in danger of losing that right, and whether irreparable injury or inconvenience is likely to result to him, in case the injunction order is withdrawn. ***It is conceded on all hands that the idols in-question were on the disputed site before the filing of the suit.*** *It further* ***appears from the copies of a number of affidavits of certain Muslim resident of Ayodhya that at least from 1936 onwards the Muslims have neither used the site as a mosque nor offered prayers there and that the Hindus have been***

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performing their Pooja etc. on the disputed site. Nothing has been pointed out to discredit these affidavits*, which, along with the existence of the idols on the disputed site, clearly show that the plff has got a fair case to go to the trial. The defts 1 to 5 rely on a number of documents to show that the building in dispute has always been a mosque. It is not possible at this stage to anticipate any decision on this point, because it will have to be decided after considering all the oral and documentary evidence that may be adduced by the parties in this case. The undisputed fact remains that on the date of this suit the idols of Shri Bhagwan Ram Chandra and others did exist on the site and that worship was being performed by the Hindus including the plff, though under some restrictions put by the executive authorities.* ***This coupled with the affidavits referred to above*** *does make out a prima facie case in favour of the plaintiff.*

As to the balance of convenience, it is obvious that the affect of vacating the interim injunction at this stage is likely to deprive the plff of the right claimed by him in this suit. Moreover, it is a matter of admission between the parties that there are several other mosques in the mohalla in question. The local Muslims will not, therefore, be put to much inconvenience, if the interim injunction remains in force during the pendency of the case.

Order

The interim injunction order dated 16.1.50 as modified on 19.1.50 shall remain in force until the suit is disposed of."

129. On 15.09.1951 the Court recorded statement/answer of the

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plaintiff's counsel to certain questions put in by the Court, as under:

> *"Q. In what capacity does the plff. seek to exercise the relief which he seeks in the plaint.*
>
> *Ans. In my individual capacity.*
>
> *Q. What is your individual capacity.*
>
> *Ans. My individual capacity is distinct from public capacity and in this matter an idol worshipper.*
>
> *This shows that the plff counsel is not in a position to answer the Court question. The plff. must present himself personally in Court on the date fixed.*
>
> *Q. Has your client any religion.*
>
> *Ans. the plff is a Sanatan Dharmi Hindu."*

130. Defendants no. 1 to 5 filed an application praying that the suit be treated as representative suit under Order 1 Rule 8 C.P.C. which was opposed by the plaintiff. The application was rejected on 27.10.1951.

131. Suits 1 and 2 both having been clubbed, a preliminary issue was framed on 08.01.1957 with respect to sufficiency of Court fees as under:

> *"1. Whether the valuation for purposes of jurisdiction and court-fees is insufficient as alleged on behalf of the defendants?"*

132. For adjudication of the said preliminary issue an assessment from Public Works Department was sought vide Court's order dated 14.02.1958.

133. The assessment was made for Rs. 135265/- in respect whereto the Draftsman/Computer, Shri Zulfikar Ahmad son of Shri Ali Mirza was examined and cross-examined by the parties. The said issue was decided finally by order dated 21.01.1959

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holding that the Court fee paid is sufficient.

134. Two defendants, namely, Hazi Fenku and Mohammad Sami having died, applications filed for substitution of their legal heirs were, however, rejected by learned Civil Judge on 17.01.1962 and he directed that names of the said defendants be deleted from the array of the defendants in the two suits i.e. Suit No. 1 and 2.

SUIT-2

135. Another Suit no. 25 of 1950 (on transfer to this Court, re-registered as O.O.S. No. 2 of 1989) was filed by Paramhans Ramchandra Das vide plaint dated 5.12.1950, seeking an injunction restraining the defendants from interfering in the worship of Lord Ramachandra at the place 'Janambhumi' details whereof are given at the end of the plaint and further not to disturb or remove the said idols from the place they are kept on that date nor to create obstruction in the worship of the idols. It was admitted on the same date, i.e., 5.12.1950 by the order of Civil Judge, Faizabad and on 01.02.1951 it was consolidated with Suit-1. Suit-2 since has been dismissed as withdrawn in 1990, we are not giving any further details in respect thereof.

SUIT-3 (FROM 1959 to 1963)

136. Nirmohi Akhara filed Original Suit No. 26 of 1959 which was registered as Suit-3 on transfer to this Court. It was filed on 17.12.1959 and was registered on the same date. On 21.12.1959 the Civil Judge allowed the plaintiffs to sue defendants no. 6 to 8 in representative capacity. It appears that on 07.01.1961 the District Judge stayed further proceedings in Suit-3 and thereafter stay order continued pursuant to this Court's order which was vacated and communicated to the trial court on 02.05.1962. This suit was clubbed with other suits on

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06.01.1964.

SUIT-4 (FROM 9.12.1961 TO 1962)

137. Suit-4 was filed on 18.12.1961. It was admitted and registered by the Court of Civil Judge, Faizabad by order dated 18.12.1961. On plaintiff's application for permitting them to pursue the suit in representative capacity, by order dated 8.8.1962 the Court allowed the plaintiffs to represent the entire Muslim community against defendants no. 1 to 4 representing the entire Hindu community.

138. On an application filed on behalf of defendant no. 1 in Suit-4, by order dated 20.3.1963 Civil Judge, Faizabad allowed impleadment of defendants no. 10 to 12.

SUIT 1 TO 4 (FROM 6.1.1964 TO 10.7.1989)

139. On 06.01.1964 all the parties in Suit-1, 2,3 and 4 filed joint application requesting the trial court to consolidate the aforesaid suits and hear those matters collectively and jointly. The trial court allowed the application with the consent of learned counsels for the parties on the same date consolidating all the suits and to treat Suit-4 as leading case.

140. On 20.1.1964, the Civil Judge recorded statement of plaintiff's counsel Mohd. Ayub in the leading case under order X Rule 2 C.P.C.

141. On 5.3.1964, 16 issues were framed by the Civil Judge and vide order dated 17.07.1965, an additional issue was also framed. All the said issues framed initially by the learned Civil Judge, read as under:

Issue No. 1:-

Whether the building in question described as mosque in the sketch map attached to the plaint (hereinafter referred to as the building) was a mosque as

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claimed by the plaintiffs? If the answer is in the affirmative-

(a) When was it built and by whom-whether by Babar as alleged by the plaintiffs or by Meer Baqi as alleged by defendant no.13?

(b) Whether the building had been constructed on the site of an alleged Hindu temple after demolishing the same as alleged by defendant no.13? If so, its effect?

Issue No. 1-B(a) :-

Whether the building existed at Nazul plot no. 583 of the Khasra of the year 1931 of Mohalla Kot Ram Chandra known as Ram Kot, City Ayodhya (Nazul Estate) Ayodhya? If so its effect thereon?

Issue No. 1-B(b) :-

Whether the building stood dedicated to almighty God as alleged by the plaintiffs?

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Issue No. 1-B(c) :-

Whether the building had been used by the members of the Muslim community for offering prayers from times immemorial? If so, its effect?

Issue No. 2 :-

Whether the plaintiffs were in possession of the property in suit upto 1949 and were dispossessed from the same in 1949 as alleged in the plaint?

Issue No. 3 :-

Is the suit within time?

Issue No. 4 :-

Whether the Hindus in general and the devotees of Bhagwan Sri Ram in particular have perfected right of prayers at the site by adverse and continuous possession as

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of right for more than the statutory period of time by way of prescription as alleged by the defendants?

Issue No. 5 :-

(a)Are the defendants estopped from challenging the character of property in suit as a waqf under the administration of plaintiff no.1 in view of the provision of 5(3) of U.P. Act 13 of 1936?

5(b) Has the said Act no application to the right of Hindus in general and defendants in particular, to the right of their worship?

5(c) Were the proceedings under the said Act conclusive?

5(d) Are the said provision of Act XIII of 1936 ultra-vires as alleged in written statement?

5(e) Whether in view of the findings recorded by the learned Civil Judge on 21.4.1966 on issue no.17 to the effect that "No valid notification under section 5(1) of the Muslim Waqf Act (No. XIII of 1936) was ever made in respect of the property in dispute", the plaintiff Sunni Central Board of Waqf has no right to maintain the present suit?

5(f) Whether in view of the aforesaid finding, the suit is barred on account of lack of jurisdiction and limitation as it was filed after the commencement of the U.P. Muslim Waqf Act, 1960?

Issue No. 6 :-

Whether the present suit is a representative suit, plaintiffs representing the interest of the Muslims and defendants representing the interest of the Hindus?

Issue No. 7 :-

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(a) Whether Mahant Raghubar Dass, plaintiff of Suit No. 61/280 of 1885 had sued on behalf of Janma Sthan and whole body of persons interested in Janma-Sthan?

(b) Whether Mohammad Asghar was the Mutwalli of alleged Babri Masjid and did he contest the suit for and on behalf of any such mosque?

(c) Whether in view of the judgment in the said suit, the members of the Hindu community, including the contesting defendants, are estopped from denying the title of the Muslim community, including the plaintiffs of the present suit, to the property in dispute? If so, its effect?

(d) Whether in the aforesaid suit, title of the Muslims to the property in dispute or any portion thereof was admitted by plaintiff of that suit? If so, its effect?

Issue No. 8 :-

Does the judgment of case No. 6/281 of 1881, Mahant Raghubar Dass Vs. Secretary of State and others operate as res judicata against the defendants in suit?

Issue No. 10 :-

Whether the plaintiffs have perfected their rights by adverse possession as alleged in the plaint?

Issue No. 11 :-

Is the property in suit the site of Janam Bhumi of Sri Ram Chandraji?

Issue No. 12 :-

Whether idols and objects of worship were placed inside the building in the night intervening 22nd and 23rd December 1949 as alleged in paragraph 11 of the plaint or they have been in existence there since before? In either case, effect?

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Issue No. 13 :-

Whether the Hindus in general and defendants in particular had the right to worship the Charans and 'Sita Rasoi' and other idols and other objects of worship, if any, existing in or upon the property in suit?

Issue No. 14 :-

Have the Hindus been worshipping the place in dispute as Sri Ram Janam Bhumi or Janam Asthan and have been visiting it as a sacred place of pilgrimage as of right since times immemorial? If so, its effect?

Issue No. 15 :-

Have the Muslims been in possession of the property in suit from 1528 A.D. Continuously, openly and to the knowledge of the defendants and Hindus in general? If so, its effect?

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Issue No. 16 :-

To what relief, if any, are the plaintiffs or any of them, entitled?

Issue No. 17 :-

Whether a valid notification under Section 5(1) of the U.P. Muslim Waqf Act No. XIII of 1936 relating to the property in suit was ever done? If so, its effect?

142. As agreed by learned counsels for the parties, issue No. 17 was taken up as a "primary preliminary issue" and vide judgment dated 21.04.1966 the Civil Judge, decided the same against plaintiffs (Suit 4) and in favour of the defendants therein. The Civil Judge, after reading the definition of 'Waqf' and 'Waqif' as contained in Section 3(1) of 1936 Act, held that whenever the word 'waqf' is conveyed to any person, it must necessarily convey simultaneously the idea or description or a

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tangible connotation about the existence of "any property" covered or included in the 'Waqf". Meaning thereby, if someone wants another to know that a particular property is waqf, it would be necessary for him to mention simultaneously the description of atleast tangible connotation about the identity of the property of the waqf. After perusing the alleged notification dated 26.2.1944 said to have been published under Section 5 of 1936 Act, the Court found that Item 26, at which the alleged Waqf of Waqif Badshah Babar was mentioned, was blank in its last column and consequently it did not give any idea of the property of which Waqf was created. It held that the alleged Government notification at Item no. 26 was meaningless. Meeting the argument that the notification if not challenged within one year by the Hindus or defendants of the leading case would result in rendering the said notification to be final and conclusive, the Civil Judge held that the said principle would follow when a valid notification of the proposed Waqf property is made under 1936 Act. Since in his opinion, it was not a valid notification at all, failing to convey the idea or identity of necessary particulars about the property proposed by the Waqf Commissioner to be enlisted as Sunni Wqaf property dedicated by Badshah Babar, there was no question of rendering the said notification final and conclusive qua the property in dispute. He also held that; mere mention of the name of Badshah Babar as "Waqif" of a property in “Faizabad District” is not enough to convey the identity of the property in dispute since Badshah Babar was the Emperor of the Mughal Empire in India, who never resided in Faizabad District according to the pages of history of which a judicial notice can be taken by the Court; it is not known as to how many waqfs were created by Badshah

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Babar in various parts of Faizabad District; in Column-3, Item No. 26 of the notification, the Name of Mutwalli mentioned as Syed Mohammed Zaki, Mutwalli Masjid Babari, Qasba Shah Nawa, Dak-khana Darshan Nagar; judicial notice of the fact that qasba Shah Nawa lying within the jurisdiction of Post Office Darshan Nagar is at a distance of about 8 to 10 mile from Ayodhya was taken; and, therefore, the aforesaid entry shows on its face that the Mosque referred to therein is built by Emperor Babar in Qasba Shah Nawa, post office Darshan Nagar; it is not the case of the plaintiffs of the leading case that the property in suit was originally a temple, which was ever conquered by Emperor Babar, who got it remodelled in the shape of a mosque; the case of the aforesaid plaintiffs as contained in the plaint of the leading case, as well as in the statement of the plaintiffs' learned counsel made under order X, rule 2 C.P.C. on 10.1.64, at paper No. 187A, is that the property in suits was originally mosque, which was built for the first time at its place, by Emperor Babar in 1528 AD in the shape of a mosque which he had dedicated to the followers of Islam thereafter; the knowledge of the educated persons regarding the conquest of Emperor Babar derived from the pages of popular history books cannot profitably be utilised by the plaintiffs of the leading case because according to the plaintiffs' own case, the property in suits was not a conquered property but a property which was originally and for the first time built at its place by Emperor Babar for use of the Muslim public.

143. There were two more issues namely, issues No. 5(a) and 5(c) in Suit-4. In view of the findings recorded in respect to issue No. 17, the Civil Judge held that issues No. 5(a) and 5(c) also stand answered against the plaintiffs (Suit-4).

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144. There was another issue No. 5(d). Pursuant to the findings on issue No. 17, the defendant's counsel made a statement on 21.4.1966 that it is not necessary to press issue No. 5(d) (Suit-4) and the said stand was endorsed by other counsels also.

145. Two applications i.e. paper no. 132-C dated 15.10.1962 and 271-C dated 08.08.1966 relating to appointment of another Survey Commissioner came to be considered by learned Civil Judge on 26.08.1966 and the Court held :

> *"The property in suit is admittedly situate on* ***specific plots which have been detailed in the plaint****. There is, therefore, no need for demarcation of those plots on a map by the Commissioner after survey. Whatever structures exists on the said plot are in dispute in these cases. The parties have already named them in their pleadings and statements under Order X Rule 2 CPC. The map of the Commissioner prepared earlier is already on record which gives an idea about the location. Consequently at this stage when the parties are required to establish their cases by their evidence there is no occasion or need to issue a fresh Commission."*

146. He also held that in case after recording evidence of both the parties, if necessary, the Court may decide to issue a Commission suo motu or otherwise or itself make local inspection and get necessary objects or sites or structures in suit photographed at the instance of any or both the parties. Besides, a large number of documents were also filed by the parties. The Court directed parties to endorse the said papers whether they admit or deny the same as early as possible.

147. Thereafter in the year 1970 a number of applications were filed seeking appointment of Civil Court Receiver and the same

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were decided by order dated 17.11.1970 whereagainst FAFO 389 of 1970 was filed in which this Court granted an interim order. The FAFO was decided on 20.03.1974 and the matter was remanded to the court below.

148. An order dated 18.3.1975 was passed by the Civil Judge under Order 40 Rule 1 with respect to appointment of Receiver whereagainst again FAFO No. 81 of 1975 (renumbered as 17 of 1977) was filed wherein a stay order was passed on 9.5.1975 by this Court.

149. Though this Court had stayed the order dated 18.03.1975 of the Civil Judge but it appears that the trial court misread the order as if further proceedings in pending suit was stayed, and, did not proceed but simply adjourned the cases from time to time. In the circumstances no progress is shown from May, 1975 till January 1986. An application was filed in January, 1986 before Munsif Sadar, Faizabad by one Sri Umesh Chandra Pandey, Advocate in Suit 1 stating that the authorities are violating injunction order by not permitting unobstructed worship. The learned Munsif on 21.01.1986 referred to the interim order of this Court in F.A.F.O. 17 of 1977 and directed the parties to inform the latest position about the continuance of the said interim order and fixed 01.02.1986. It appears that another application was filed by Sri Umesh Chandra Pandey, Advocate seeking a direction to defendants no. 6 to 9 (Suit-1) not to create any obstruction in Darshan, Pooja etc. by keeping the premises under lock and key. On said application, the learned Munsif on 25.01.1986 directed District Government Counsel to file objections and fixed the matter for 28.01.1986.

150. On 28.01.1986 the District Government Counsel informed that the High Court by interim order dated 09.05.1975 has only

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stayed the order dated 18.03.1975 and there is no order staying further proceedings. He further pointed out that the defendants no. 6 to 9 (Suit-1) were not creating any obstruction in the matter. However, the learned Munsif deferred the matter observing that the original record of the leading suit had already been summoned by the High Court and in the absence thereof it is not proper to pass any order on the said application.

151. Thereafter a revision was filed before the District Judge, Faizabad who treated the same as Misc. Appeal and passed order dated 01.02.1986 directing to open the locks placed on the gate of the inner courtyard. Challenging the order dated 01.02.1986, **Writ Petition No. 746 of 1986** was filed by Mohd. Hashim. Another **Writ Petition No. 3106 of 1986** was filed by the U.P. Sunni Central Board of Waqf.

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152. In the Writ Petition No. 746 of 1986 an interim order was passed by this Court on 03.02.1986 to the following effect:

> *"Until further orders of this Court the nature of property in question as existing today shall not be changed."*

153. The Writ Petition No. 3106 of 1986 filed by Sunni Central Board of Waqf on 12.05.1986 was connected with the earlier one. Both are still pending.

154. The F.A.FO. No. 17 of 1977 was decided on 23.3.1987. This Court directed that record of all the four suits pending in the lower Court be placed before the District Judge, Faizabad, who will arrange to transfer all the suits to an Additional District Judge, Faizabad who may not be transferred out of Faizabad for about 18 months and that Addl. District Judge shall try these suits as early as possible. The stay orders in those suits were vacated. However the site position continued as such in view of

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interim order dated 3.2.1986 passed in Writ Petition No. 746 of 1986 by this Court.

155. The State Government on 15.12.1987 moved an application no. 29 of 1987 under Section 24 read with 151 C.P.C. requesting this Court to withdraw all the suits pending in the Court below at Faizabad for trial and disposal by this Court. Another Application No. 11 of 1989 for similar relief was filed in February 1989 on the administrative side requesting for early disposal of the applications filed under Section 24 C.P.C. The Government said that though the dispute is purely of civil nature but it has assumed importance in the context as it sometimes excites religious sentiments and generates tension between two communities. Since the State was concerned in preserving amity and brotherly relations between the two communities and, therefore, early disposal was necessary. These two applications were taken up for hearing on 23.2.1989 but could not be concluded.

156. When the said matter was pending, Suit-5 was filed as a fresh suit on 1.7.1989 in the Court of Civil Judge, Faizabad. The plaintiff (Suit-5) of the said suit also moved an application under 24 C.P.C. for transfer of all suits to this Court.

157. All the aforesaid applications were allowed on 10.7.1989 by a Division Bench of this Court comprising of Hon'ble Mr. U.C. Srivastava and Hon'ble S.H.A. Raza, JJ. This Court withdrew all the aforesaid suits from the Court of Addl. District Judge, Faizabad and Civil Judge, Faizabad for trial. The Court also observed that the historic city of Lucknow is famous throughout the world for its composite culture, softness and sweetness of its language, mild, tender and suave manners, has since centuries been free from communal hatred, bias or

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prejudices and, therefore, the congenial, peaceful and amicable atmosphere of this City is best suited for the trial of such cases. The Court also requested the Hon'ble Chief Justice to nominate a third Judge so that a Full Bench may hear these matters.

158. On 21.07.1989 the Hon'ble Chief Justice constituted a Special Bench consisting of three judges.

159. On an application of the State of U.P. this Court passed an interim order dated 14.08.1989 directing the parties to maintain status quo with respect to property in dispute.

160. On 20.09.1989 the Court ordered Suit-5 to proceed ex parte against defendants no. 1, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 20 and 21 who despite service failed to file their written statement.

161. The defendants no. 2 and 13 (Suit-4) moved Application No. 14(o) of 1989 in Suit-4 under Order 7 Rule 11 for rejection of plaint as barred by law and in particular clause (d) of Rule 11 Order 7 C.P.C. 1908. This Court vide order dated 23.10.1989 rejected the aforesaid application by two separate but concurrent judgments.

162. On Application No. 5(o) of 1989 of the State of U.P. filed under Order 39 Rule 1 and 2 read with Section 94 C.P.C., vide order dated 23.10.1989 the Court directed to maintain *status quo* until further orders in all the five connected suits and also for not changing the nature of the property in question. This Court also expressed its doubt about some of the questions involved in the suit, if soluble by judicial process.

163. By order dated 24.10.1989 this Court stayed proceeding of Suit-5 till the final disposal of four previously instituted suits on the application of the defendants no. 4, 5 and 6 (Suit-5) and as agreed by one of the plaintiff also. However, the said order was

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recalled on 05.02.1992 on the application made by plaintiff no. 3 (Suit-5) and the Court directed that the aforesaid suit shall proceed alongwith Suit-4 and other connected suits.

164. On Application No. 48 of 1989 of the State of U.P., vide order dated 07.11.1989 the Court clarified that its order dated 14.08.1989 was in respect of the entire property mentioned in the suit including plot no. 586 in so far included within the boundary described by letters E F G H in the site plan.

165. Defendant No. 2 (Suit-4) filed Application No. 18(o) of 1989 under Order 14 Rule 2(2)(b) and Section 151 C.P.C. stating that in view of the findings recorded by the Civil Judge, Faizabad vide order dated 21.04.1966 on issue No. 17, the suit is liable to be dismissed without considering other issues.

166. The plaintiffs (Suit-3) were allowed by order dated 21.12.1989 to sue the defendants (Muslims) in representative capacity under Order 1 Rule 8 C.P.C..

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167. It appears that the defendants (Suit-4) aggrieved vide order dated 23.10.89 passed in Application No. 14(O) of 1989 filed Special Leave Petition No. 14891 of 1989 which was disposed of vide order dated 12.01.1990 (clarified vide order dated 13.03.1990) by the Apex Court. The ultimate result was that no relief in effect was granted to the defendants (Suit-4) and the order dated 23.10.1989 remained intact.

168. Counsel for the plaintiffs also requested, accompanied by some respondents that issues No. 3, 5(b), 5(e), 5(f), 6, 18, 19(d), 19(e), 20(b) and 21 be heard and decided as preliminary issues. The said issues read as under:

"Issue No. 3- Is the suit within time?

Issue No. 5(b)- Has the said Act (U.P. Act No. XIII of 1936) no application to the right of Hindus in general and

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defendants in particular to the right of their worship?

Issue No. 5(e)- Whether in view of the findings recorded by the learned Civil Judge on 21.04.1966 on issue No. 17 to the effect that "no valid notification under Section 5(1) of the Muslim Waqf Act (No. XIII of 1936) was ever made in respect of the property in dispute", the plaintiff Sunni Central Board of Waqfs has no right to maintain the present suit?

Issue No. 5(f)- Whether in view of the aforesaid finding the suit is barred on account of lack of jurisdiction and limitation as it was filed after the commencement of the U.P. Muslim Waqf Act, 1960?

Issue No. 6- Whether the present suit is a representative suit, plaintiffs representing the interest of the Muslims and defendants representing the interest of the Hindus?

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Issue No. 18- What is the effect of the judgment of their Lordships of the Supreme Court in Ghulam Abbas and others Vs. State of U.P. and others, A.I.R. 1981 S.C. 2198 on the finding of the learned Civil Judge recorded on 21.04.1966 on Issue No. 17?

Issue No. 19(d)- Whether the building in question cannot be a mosque under the Islamic Law in view of the admitted position that it does not have minarets?

Issue No. 19(e)- Whether the building in question cannot legally be a mosque as contained vide order dated 23.08.1990 on order sheet on plaintiffs' own showing it is surrounded by a grave-yard on three sides?

Issue No. 20(b)- Whether there was a Mutawalli of the alleged Waqf and whether the alleged Mutawalli not

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having joined in the suit, the suit is not maintainable so far as it relates to relief for possession?

Issue No. 21- Whether the suit is bad for non-joinder of alleged deities.?"

169. This Court vide order dated 22.08.1990 rejected the aforesaid application.

170. On 07.10.1990 the State of U.P. acquired certain land as described hereunder vide notification issued under Section 4(1) read with 17(4) of the Land Acquisition Act, 1894:

"Settlement of Plot number	*Area in acres*	*Village*
159 (Part)	*0.3600*	*Kot Ramchandra, Pargana Haveli Oudh, District Faizabad.*
160 (Part)	*1.0706*	*-do-*
171 (Part)	*0.4375*	*-do-*
172 (Part)	*0.9063*	*-do-*
Total :	*2.7744 Acres"*	

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171. Another notification dated 10.10.1991 was issued under Section 6 of the Land Acquisition Act, 1894. The purpose of acquisition as disclosed in the notification was "development of tourism and providing amenities to pilgrims at Ayodhya, District Faizabad".

172. On 16.10.1991, Writ Petition No. 3540 of 1991 (M/B) was filed by Mohd. Hashim assailing the aforesaid notification. A Division Bench of this Court directed it to be placed before the Special Bench. On 25.10.1991 after hearing the parties, this Court passed an interim order. In the meantime, two more Writ Petitions No. 3541 (M/B) of 1991, Panch Ramanandi Nirmohi Akhara and others Vs. State of U.P. and others and 3542 (M/B) of 1991, Khalid Yusuf Vs. Union of India and others were filed wherein also the said interim order was extended. Later on Writ

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Petitions No. 4183 (M/B) of 1991, Mohd. Aslam Vs. Union of India and others; 4184 (M/B) of 1991, Mohd. Aslam Vs. Union of India and others; 4185 (M/B) of 1991, Nabib Yar Khan Vs. State of U.P. and others; and, 4201 (M/B) of 1991, Jama-e-tul Ulma-e-Hind and others Vs. State of U.P. and others were also filed which were also connected with the leading case of Mohd. Hashim (supra). The aforesaid Writ Petitions were decided vide judgment dated 11.12.1992 and this Court struck down the aforesaid notifications of acquisition of land measuring 2.7744 acres.

173. On 19.10.1990, the Ramjanambhumi Babri Masjid (Acquisition of Area) Ordinance, 1990 (Ordinance No. 3 of 1990) was promulgated by the President of India in exercise of its power under Article 123 of the Constitution of India whereby all the pending suits were declared 'abated' and the property in dispute declared to be vested in the Government of India. However, on 23.10.1990 i.e. just within four days the aforesaid ordinance was repealed by Ramjanambhumi Babri Masjid (Acquisition of Area) Withdrawal Ordinance, 1990 (Ordinance No. 10 of 1990) and it further provided that all the pending suits etc. shall stand revived and continue as they were.

174. The State Government vide Application No. 3(O) of 1991 sought permission to carry out certain repairs in the disputed building which was damaged in October 1990. This Court in its order dated 3.9.1991 observed that the property is admittedly of religious significance and, therefore, the State Government's offer for maintaining the building should not reasonably be objected as the party which would succeed in the suit will be ultimate beneficiary. This Court, thus allowed repairs with further clarification that no addition or alteration to the property

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shall be made and the property shall be restored only to its former position.

175. Application No. 18(O) of 1991 of defendant No. 10 (Suit-4) seeking framing of additional issues was rejected on 30.09.1991.

176. Application No. 32(O) of 1991 in Suit-4 was filed on behalf of defendant no. 10, stating that the constitution of the Full Bench was not in accordance with law as the matter is cognizable by a Single Judge and evidence should also be recorded by only a Single Judge so as to protect the time of two other Hon'ble Judges. This application was taken up by the then Hon'ble the Acting Chief Justice (Hon'ble P.S. Gupta, J.) and vide order dated 17.12.1991 it was disposed of observing that the constitution of Full Bench was in accordance with law and further that the evidence shall also be recorded by the Full Bench.

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177. Vide order dated 15.04.1992 this Court also allowed the defendants no. 4, 5, 6, 22, 24, 25, 26 and 27 to defend Suit-5 as representatives of Muslim community. Application for review of the said order filed by plaintiff no. 3 (Suit-5) was rejected on 02.09.1992.

178. An application filed under Para 14 of U.P. High Court's Amalgamation Order, 1948 seeking transfer of the aforesaid suits from Lucknow to Allahabad by plaintiff no. 3 (Suit-5) was dismissed on 6.8.1992 by Hon'ble the Chief Justice (Hon'ble M.K. Mukharjee, CJ, as His Lordship then was).

179. Vide order dated 02.09.1992 this Court allowed plaintiffs (Suit-5) to abandon the suit against defendants No. 1, 2, 11, 12, 13, 14, 17 and 21 and allowed deletion of paragraphs no. 15, 16 and 17 of the plaint but rejected the prayer for deletion of the

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names of the aforesaid defendants from the array of parties.

180. On 06.12.1992 the disputed structure namely, Temple Ramjanambhumi/ Babri Masjid was demolished. On 07.12.1992 a temporary structure was created where the worship and Pooja of Lord Ram/Ram Lala and other Deities continued by the Hindus. This resulted in substantial change in the situation, causing various amendments in the pleadings, which were allowed by this Court, as found fit. We are not giving details thereof to avoid volume though wherever necessary it would be referred later on.

181. The Central Government in its attempt to get the matter settled amicably out of Court, sought to acquire certain land including the land over which the disputed structure existed and consequently enacted Acquisition of Certain Area of Ayodhya Act, 1993 (Act No. 33 of 1993) *(hereinafter referred to as the "Ayodhya Act")*

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182. The Ayodhya Act was published in the Gazette of India, Extraordinary, Part II-Section 1 dated 3rd April, 1993 and vide Section 1(2) it came into force with effect from 7th January 1993. It has, in all, 13 Sections and a Schedule.

183. The statement of object and reasons contained in the said enactment is as under:

> *"WHEREAS there has been a long-standing dispute relating to the structure (including the premises of the inner and outer courtyards of such structure), commonly known as the Ram Janma Bhumi-Babri Masjid, situated in village Kot Ramchandra in Ayodhya, in Pargana Haveli Avadh, in tehsil Faizabad Sadar, in the district of Faizabad of the State of Uttar Pradesh;*
>
> *AND WHEREAS the said dispute has affected the*

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maintenance of public order and harmony between different communities in the country;

AND WHEREAS it is necessary to maintain public order and to promote communal harmony and the spirit of common brotherhood amongst the people of India;

AND WHEREAS with a view to achieving the aforesaid objectives, it is necessary to acquire certain areas in Ayodhya;"

184. The word 'area' is defined in Section 2(a) and reads as under:

(a) "area" means the area (including all the buildings, structures or other properties comprised therein) specified in the Schedule;"

185. Section 3 of the said Act provides for acquisition of area in Ayodhya and Section 4 gives the general effect of vesting and the same reads as under:

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*"**3.** On and from the commencement of this Act, the right, title and interest in relation to the area shall, by virtue of this Act, stand transferred to, and vest in, the Central Government.*

***4.**(1) The area shall be deemed to include all assets, rights, leaseholds, powers, authority and privileges and all property, movable and immovable, including lands, buildings, structures, shops of whatever nature or other properties and all other rights and interests in, or arising out of, such properties as were immediately before the commencement of this Act in the ownership, possession, power or control of any person or the State Government of Uttar Pradesh, as the case may be, and all registers, maps, plans, drawings and other documents of whatever nature*

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relating thereto.

(2) All properties aforesaid which have vested in the Central Government under section 3 shall, by force of such vesting, be freed and discharged from any trust, obligation, mortgage, charge, lien and all other encumbrances affecting them and any attachment, injunction, decree or order of any court or tribunal or other authority restricting the use of such properties in any manner or appointing any receiver in respect of the whole or any part of such properties shall cease to have any effect.

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

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186. The total area sought to be acquired was 67.703 acres of land.

187. Section 5 of the Ayodhya Act provides for the duty of the person or State Government in charge of management of the area, to deliver all assets etc. Section 6 deals with the power of the Central Government to direct vesting of the area in another authority or body or trust. Section 7 deals with the management and administration of property. Section 8 deals with the miscellaneous provisions regarding payment of amount and Section 9 gives overriding effect to the provisions of the said Act over any other law inconsistent therewith for the time being in force including any instrument having the effect by virtue of any law other than the said Act or any decree or order of any Court, Tribunal or other authority. It is important to notice that Section 4(3) provides that any suit, appeal or other proceedings

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in respect to rights, title and interest relating to any property vested in Central Government under Section 3, if pending on the commencement of the Ayodhya Act before any court, Tribunal or other authority, the same shall abate.

188. The immediate result of the said enactment was that all the four suits pending before this Court, by operation of law, stood abated.

189. The President of India in the meantime also made a special reference to the Apex Court under Article 143(1) of the Constitution of India on 7.1.1993 on the following question.

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

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190. *Vires* of Ayodhya Act was assailed before this Court by filing certain writ petitions under Article 226 as well as before the Apex Court under Article 32. The Apex Court got the petitions filed before this Court transferred, heard all the matters collectively along with the reference made under Article 143 (1) of the Constitution and decided vide its judgment dated 24.10.1994, **Dr. M. Ismail Faruqui (Supra)**.

191. The Apex Court considered and decided the question of maintainability of said Special Reference also in its judgment dated 24.10.1994, **Dr. M. Ismail Faruqui (supra).** The majority judgment was delivered by Hon'ble J.S. Verma, J. for himself and on behalf of Hon'ble M.N. Venkatachaliah, C.J. and Hon. G.N. Ray, J. The majority view recorded its conclusion in para 98 as under:

"*Conclusions*

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98. As a result of the above discussion, our conclusions, to be read with the discussion, are as follows :

(1)(a) Sub-section (3) of Section 4 of the Act abates all pending suits and legal proceedings without providing for an alternative dispute resolution mechanism for resolution of the dispute between the parties thereto. This is an extinction of the judicial remedy for resolution of the dispute amounting to negation of rule of law. Sub-section (3) of Section 4 of the Act is, therefore, unconstitutional and invalid.

(1) (b) The remaining provisions of the Act do not suffer from any invalidity on the construction made thereof by us. Sub-section (3) of Section 4 of the Act is severable from the remaining Act. Accordingly, the challenge to the constitutional validity of the remaining Act, except for sub-section (3) of Section 4, is rejected.

(2) Irrespective of the status of a mosque under the Muslim Law applicable in the Islamic countries, the status of a mosque under the Mahomedan Law applicable in secular India is the same and equal to that of any other place of worship of any religion; and it does not enjoy any greater immunity from acquisition in exercise of the sovereign or prerogative power of the State, than that of the places of worship of the other religions.

(3) The pending suits and other proceedings relating to the disputed area within which the structure (including the premises of the inner and outer courtyards of such structure), commonly known as the Ram Janma Bhumi-Babri Masjid, stood, stand revived for adjudication of the

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dispute therein, together with the interim orders made, except to the extent the interim orders stand modified by the provisions of Section 7 of the Act.

(4) The vesting of the said disputed area in the Central Government by virtue of Section 3 of the Act is limited as a statutory receiver, with the duty for its management and administration according to Section 7 requiring maintenance of status quo therein under sub-section (2) of Section 7 of the Act. The duty of the Central Government as the statutory receiver is to hand over the disputed area in accordance with Section 6 of the Act, in terms of the adjudication made in the suits for implementation of the final decision therein. This is the purpose for which the disputed area has been so acquired.

(5) The power of the courts in making further interim orders in the suits is limited to, and circumscribed by, the area outside the ambit of Section 7 of the Act.

(6) The vesting of the adjacent area, other than the disputed area, acquired by the Act in the Central Government by virtue of Section 3 of the Act is absolute with the power of management and administration thereof in accordance with sub-section (1) of Section 7 of the Act, till its further vesting in any authority or other body or trustees of any trust in accordance with Section 6 of the Act. The further vesting of the adjacent area, other than the disputed area, in accordance with Section 6 of the Act has to be made at the time and in the manner indicated, in view of the purpose of its acquisition.

(7) The meaning of the word 'vest' in Section 3 and Section 6 of the Act has to be so understood in the different

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contexts.

(8) Section 8 of the Act is meant for payment of compensation to owners of the property vesting absolutely in the Central Government, the title to which is not in dispute being in excess of the disputed area which alone is the subject-matter of the revived suits. It does not apply to the disputed area, title to which has to be adjudicated in the suits and in respect of which the Central Government is merely the statutory receiver as indicated, with the duty to restore it to the owner in terms of the adjudication made in the suits.

(9) The challenge to acquisition of any part of the adjacent area on the ground that it is unnecessary for achieving the professed objective of settling the long-standing dispute cannot be examined at this stage. However, the area found to be superfluous on the exact area needed for the purpose being determined on adjudication of the dispute, must be restored to the undisputed owners.

(10) Rejection of the challenge by the undisputed owners to acquisition of some religious properties in the vicinity of the disputed area, at this stage is with the liberty granted to them to renew their challenge, if necessary at a later appropriate stage, in case of continued retention by Central Government of their property in excess of the exact area determined to be needed on adjudication of the dispute.

(11) Consequently, the Special Reference No. 1 of 1993 made by the President of India under Article 143(1) of the Constitution of India is superfluous and

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unnecessary and does not require to be answered. For this reason, we very respectfully decline to answer it and return the same.

(12) The questions relating to the-constitutional validity of the said Act and maintainability of the Special Reference are decided in these terms."

192. The result of declaration of Section 4(3) unconstitutional was that the suits in question continued as if nothing had happened in the meanwhile and this Court accordingly proceeded to consider the same on merits, but with one distinction, i.e., it had reduced the area of dispute now to be considered in all these suits. The disputed area now is confined to the area within which the structure (including the premises of the inner and outer courtyards of such structure) existed. The land beyond the above is out of the scope of these suits having been validly acquired under Section 3 of the Ayodhya Act, though the said vesting has also been made limited. The claim over the area beyond inner and outer courtyard is now not open for adjudication in these suits.

193. Further pursuant to Ayodhya Act the Commissioner, Faizabad Division, Faizabad is the 'authorized person', a statutory Receiver of the disputed area vide Section 7 of the said Act. He is also responsible for preservation of artefacts etc. and to maintain accounts of the property including moveable and liquid assets.

194. Since the Apex Court also allowed the parties to seek amendment in their pleadings, a number of applications were filed seeking amendments in the pleadings and also for impleadment of Union of India etc. This Court, by various orders, after hearing the parties, allowed necessary amendments

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as found fit and rejected the rest. It however rejected impleadment of Union of India. It allowed the State of U.P. to withdraw its application to file written statement, which right the State of U.P. had already surrendered in Suit-4 as long back as on 28.05.1962 by filing an application that it does not propose to file any written statement.

195. Since this Court in presenti is considering the pleadings as they stand amended at the time of hearing, it is not necessary to refer such applications and the orders passed thereon in detail. We only reiterate that the disputed area which this Court has to consider has shifted and confined to inner and outer courtyard only.

196. This Court time and again also considered various applications seeking dismissal of one or the other suit on various technical grounds and it took considerable time in disposing/dismissing the same after hearing long drawn arguments of the parties.

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197. Time and again this Court also expressed its desire of early disposal of the matters. It also did not hesitate in placing its anguish on record as is evident from the order dated 21.08.1995, the very opening paragraph :

> *"In a suit filed in 1961 and drawn to this Court in 1989, we are even this day considering only amendment of pleadings. This stares on its face, speaks volume of lethargy, the approach of parties, the procedural wrangles, not the least the sensitive issues, the causes for which this case is crawling. Pleading though could be amended at any stage including appellate but the farthest so far it has gone was only framing issues, when on account of changed circumstances we are back to this stage. This reflects on*

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our judicial system not that it has any infirmity but only projects the image of the way of working or contribution of all who are involved in the administration of justice. We have all to trigger and shake up our very approach of finding the truth by awakening our awareness with our deep-rooted conscience. The procedures are only in aid not hurdles in delivering justice. Any delay prolongs agony, aggravates sensitivities leading to further consequential inevitable damages, changing circumstances, giving rise to a party to amend its pleadings. If any example is to be placed, there could not be more glaring than the present and other connected suits. Present application is also in the same direction."

198. However, it appears that the parties were more interested in either delaying the proceedings or to get the suits disposed or dismissed on some technical reason instead of having a verdict on merits and this is how the aforesaid suits have travelled and continued for more than 61 years.

199. It would however be useful to refer the order dated 08.05.1996, noticing that there was no issue between the parties about the fact that Lord Ram is cultural heritage of India, and, the citizens of country have a right to pay homage to his birth place and in this admitted factual state of affairs, issue No. 14 as proposed at that time, was rejected. The relevant observations are as under:

"It is not in issue between the parties whether L. Ram is cultural heritage of India and the citizen of this country has a right to pay homage to his birth place. When this has not been challenged it has got no connection with the facts in issue we do not consider that any decision in

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this regard is required to be taken by this Court and, accordingly, it has rightly been rejected as it has got no relevance with the present controversy."

200. The Court referring to its earlier orders and reasons, reiterated the same while rejecting review application filed on behalf of defendants no. 10 to 17.

201. The recording of oral evidence commenced on 24.07.1996. On behalf of plaintiffs (Suit 4) statement under Order 18 Rule 2 C.P.C. was made on 23.04.1996 and thereafter they proceeded to examine their witnesses on various issues and statement of 16 witnesses was recorded.

202. An objection was raised by Sri V.K.S. Chaudhary, Advocate in Suit-5 that it was only connected with other suits and not consolidated. This Court to avoid any technical objection, clarified by order dated 26.8.1996 that Suit-5 be also treated, connected and consolidated with Suit-4 and said:

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"Sri D.N. Agarwal one of the plaintiffs also agrees to which other learned counsel have no objection that all the proceedings here-in-before including the examination of this witness P.W.1 be also treated to be as if this consolidation was made since here-in-before. This agreed as to eliminate any possible technical objection."

203. Defendant no. 24 (Suit-5) died on 23.07.1997 and, therefore, CMA No. 8(O) of 1997 was filed by the plaintiffs (Suit-5) for deletion of defendants no. 24 and 25 (Suit-5) which was allowed vide order dated 10.11.1997.

204. CMA No. 19(O) of 1999 was filed by the plaintiffs (Suit-5) for recording statement of Sri Paramhans Ram Chandra Das of Digamber Akhara, Ayodhya through commission due to his old age, which was allowed vide order dated 04.09.1999

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directing Sri Hari Shanker Dube, Additional District Judge, Faizabad to examine him in the Civil Court Room at Faizabad.

205. CMA No. 18(O) of 2000 was filed by the plaintiffs (Suit-4) purporting to be under Order 18 Rule 3 read with Section 151 C.P.C. praying for permission to reserve their right to produce evidence on issues No. 1(b), 4, 11, 13, 14, 19(a) and 19(c) by way of answer to the evidence that may be produced by the defendants. This Court examined the matter in detail by its order dated 19.10.2000 and rejected the same observing :

> *"However, in case this Court finds at a later stage that the plaintiffs' interest is likely to be prejudiced by production of such evidence by the other party which the plaintiffs could have neither imagined nor had the opportunity to rebut, the inherent powers of the Court may be invoked under Section 151 CPC and the Court may pass fresh orders as may be necessary in the ends of justice.*
>
> *The crux of the matter is that since the plaintiffs have not exercised their option of keeping their right reserved to make statement and lead evidence in rebuttal at the time of making their statement under Order 18 Rule 2 CPC i.e. before they started leading evidence, they cannot now be permitted to exercise that option at this stage and reserve their right to lead evidence in rebuttal under Rule 3 of Order 18.*
>
> *In the result, the C.M. Application No. 18(o) of 2000 is hereby rejected."*

206. Again for recording statement of Sri Deoki Nandan, plaintiff no. 3 (Suit-5) and one Sri Swaraj Prakash Gupta, resident of B-17, Kutub Institutional area, New Delhi through commission, Application No. 9(O) of 2001 was allowed vide

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order dated 23.05.2001 permitting recording of statement of Sri Agrawal at Allahabad and Sri Gupta at Gautambudh Nagar through commission.

207. Sri Agraw0al, plaintiff no. 3 (Suit-5), however, died on 08.04.2002 and thereafter vide order dated 25.4.2002 Dr. Thakur Prasad Verma was appointed as next friend of plaintiffs no. 1 and 2 in the said suit and allowed to pursue the same on their behalf. Now Dr. T.P. Verma has also been replaced by Sri Triloki Nath Pandey vide Court's order dated 18.3.2010.

208. This Court on 4.5.2002 also visited not only the disputed site, but also Ram Katha Kunj where certain artefacts/material, said to have been discovered from the disputed area were collected.

209. The evidence of the plaintiffs (Suit 4) closed on 30.7.2002. Thereafter the evidence of defendants commenced. There appears to be some dispute as to the order in which evidence was to be produced after close of the evidence of plaintiffs (Suit-4). This aspect was clarified by Court's order dated 31.07.2002 while disposing C.M.A. No. 34 (O) of 2002. It directed the parties to adduce the evidence in the following manner :

> *"1) The plaintiffs of OOS No. 5 of 1989 shall lead the evidence as they are not defendants in OOS No. 4 of 1989. The plaintiffs in OOS No. 5 of 1989 have already begun their evidence. They have already produced the evidence of Sri Deoki Nandan Agarwal and Dr. S.P. Gupta (his cross-examination has yet not completed). It may be that they were originally examined on Commission on their application on the ground that they were aged and suffering from*

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ailment. It may be so but as they have already filed documentary evidence and proceeded with the evidence, they may produce the evidence and thereafter,

2) The plaintiff of OOS No. 1 of 1989 shall lead evidence as he is not a defendant in OOS No. 4 of 1989. The pleadings of OOS No. 1 of 1989 are almost similar to that of OOS No. 5 of 1989 claiming the right of worship and, therefore, he may be permitted to lead the evidence after OOS No. 5 of 1989, and thereafter,

3) The plaintiffs of OOS No. 3 of 1989 shall lead evidence. Nirmohi Akhara, plaintiff, is also defendant No. 3 in OOS No. 4 of 1989, and thereafter,

4) The remaining contesting defendants of OOS No. 4 of 1989 shall lead their evidence in seriatum,

5) The contesting defendants in OOS No. 1 of 1989, OOS No. 3 of 1989 and OOS No. 5 of 1989 shall lead evidence thereafter in seriatum (if they were not parties in other suits).”

210. On 1.8.2002, this Court invited views/suggestions of the parties in the suits with regard to excavation of disputed site to find out as to whether there existed foundation of Hindu Temple or any Hindu religious structure prior to demolition of the disputed structure. Without understanding the said order, it appears that several persons, in one or the other way, expressed their views in different ways and this was also given a wide publicity in print media. When this was brought to the notice of this Court, an order was passed on 20.8.2002, operative part whereof is as under :

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"If the newspapers publish opinion of the parties or any other person threatening the Court from passing the order, it amounts to contempt of the Court by the press as it conveys threat of the parties or any other person from passing an order, which they do not wish to be passed. The party or any other person, who expresses opinion pending proceeding, is also guilty of contempt of Court as it interferes in the administration of justice.

The Editors take the responsibilities for whatever is published in the newspapers. If anything is published, which hampers fair trial or poisons public mind it is contempt by the press. We are of the opinion that the publication in the newspapers regarding the opinion by the parties, counsel for the parties and any other person in the pending matter amounts to contempt of Court. However, instead of issuing show cause notice we, at present, warn them that in future they shall not publish :-

1. *any opinion of the parties or their counsel or any other person in regard to the pending dispute before us otherwise it shall be treated as contempt of Court.*
2. *They are further restrained from publishing any article in regard to the merit of the case as it may affect public mind in regard to which the Court is yet to take decision on the basis of the evidence, which parties may produce in the Court.*
3. *We have come to know that the TV Channels are taking interview of the counsel of the parties or other persons in regard to the matter, which is pending in the Court. Television interview, at a time, when the matter is still pending in the Court, may affect the*

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mind of the public and it also undermines the judicial authority and thwarts the majesty of the Court while the Court has yet to take decision in the matter on the evidence, which may be produced by the parties. This will amount to interference in the administration of justice. The TV Channels are prohibited from televising interviews in respect of the Ayodhya matter, which is still subjudice.

The registry is directed to send copy of this order to the Editors of all the newspapers, Press Trust of India and all the TV Channels forthwith."

211. Thereafter, an application for review/recall of the order dated 20.8.2002 was filed on behalf of National Union of Journalists (India). After hearing them and other concerned parties, this Court says "it is true that Press is a limb of the State and watchdog of the democracy and freedom. An independent Press is essential and integral part of the democracy. The Press/Electronic Media, however, should remain cautions while publishing the proceedings of the Court. It should not publish the opinion of a person or a party or his counsel if the matter is subjudice and the Court has yet to take a decision in the matter. The expression of the opinion by a person about the correctness of the wisdom of the Court, in regard to pending case, may be taken as contempt of Court. The newspapers are not to take upon themselves to publish material expressing opinion of the persons in regard to the pending matters. It is called "Trial by Newspapers" in contradiction of the "Trial by the Courts". It interferes in the administration of justice and also influences the public mind." Considering matter from various angles thereafter, the Court clarified its earlier order dated 20.8.2002

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vide order dated 21.02.2003 and issued following directions:

> *"1. The Press/Electronic Media is entitled to publish a fair and accurate report of the proceedings of the Court.*
>
> *2. The report about an order should be made after obtaining the true copy of the order and the headnote of the reporting should not be misleading.*
>
> *3. The Press/Electronic Media should not publish any article on any matter, which is pending before the Court for adjudication.*
>
> *4. The statement of witness be not reproduced as his statement is to be scrutinized and assessed by the Court. The Press can report as to which person appeared in Court as a witness.*
>
> *5. The Electronic Media should not interview any person in regard to the merit of the case.*
>
> *6. It should not express its opinion in editorial notes or express opinion of any person including any party or his counsel."*

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<u>Excavation of the Site by Archaeological Survey of India</u>

Excavation Report of Archaeological Survey of India and objections thereon :

212. On 1.8.2002, this Court referring to Issues No. 1(b) (Suit-4), 14 (Suit-5) and the Reference made to the Hon'ble Supreme Court by the President of India, noticed that one of the basic issue engaging attention of the Court in these suits is "whether there was a Hindu temple or any Hindu religious structure existed or the alleged Babari masjid was constructed after demolishing temple at the site in dispute." Considering the observations of Sri D. Dhaneshwar Mandal, Archaeologist in his Book "Ayodhya-Archaeology After Demolition" that sufficient

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archaeological material is available regarding temple-mosque issue prompting need for further excavation at Ayodhya, this Court required the parties to give their views/suggestions, why the disputed land be not allowed to be excavated by Archaeological Survey of India (hereinafter referred to as 'ASI'). Further, till decision in this respect, the Court directed ASI to get the disputed site surveyed by Ground Penetrating Radar or Geo-Radiology (hereinafter referred to as 'GPR') and obtain report.

213. Almost all the parties, namely plaintiffs, defendants no. 2, 3, 4, 20 and 22 (Suit-4) and State Government filed their objections in one or the other manner. However, except defendant no. 2, others did not raise any specific objection regarding survey of the disputed site by GPR. Sri Jilani, learned counsel for plaintiffs in Suit-4 in fact made a statement before the Court that he has no objection on G.P.R. survey of the disputed site.

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214. The objections were considered and decided by Court's order dated 23.10.2002. The relevant extract thereof is as under :

> *"Having heard the learned counsel for the parties, we are of the opinion that we should get a report in regard to foundations, if any, of any structure at the site in question. One of the issues in the suit is whether there was any Hindu temple or any Hindu religious structure existed and the alleged Babri Masjid was constructed after demolishing such temple/structure at the site in question.*
>
> *The nature of super structure to a great extent is related to the foundations. In 'History of Mughal Architecture' Vol. I, filed as paper no. 197C-2/1 to 197C-2/8, Shri R. Nath has expressed the view that the*

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Muhammadans have no written text as to the construction of their sacred mosques, but, on the other hand, the Hindu temples are constructed on the principles for the construction of temple detailed in various text books. The view expressed by him is as follows:-

> ***"It is surprising that though they built large and magnificent mosques in Syria, Iraq, Iran, Turkey, Egypt and Spain, the Muhammedans have no written text as to the construction of their sacred architecture. Except the universal law that the congregation would face the Ka'ba (in Mecca) in accordance with the Quranic injunction and the Qiblah would mark its direction, there are no prescribed rules and absolutely no norms for its making. The Hindus, on the other hand, were very particular in this matter. The 'sastra' (theory) closely followed the standardised form of 'prayoga' (practice) in India and they laid down principles for the construction of temple (prasada) in minutest details, in numerous types and varieties, from the Gupta age to the beginning of the Mughal period. Iconography similarly dealt with the subject of image-making in exhaustive details. Such grand treatises as the Brhat-Samhita, Sukra-Niti-Sara, Hayasirasa Pancharatra, Agni-Purana, Visnu-Dharmottara-Purana, Kasyapa Silpa, Mayamatam, Manasollasa, Manasara, Samarangana-Sutradhara, Aparajita-Prchchha, Silpa-Ratnam, Visvakarma-Prakasa, Pramana-Manjari, Vastu-Sara-Prakarana, Prasada-***

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Mandana and some 15th century texts on Silpa (combining all the applied fine arts, viz. Architecture, sculpture, iconography, iconometry and painting) are available to us."

If any foundations is existing of any construction, it may throw light as to whether any structure existed and if so what would have been the possible structure at that time.

The plaintiffs of O.O.S. No. 5 of 1989 have themselves relied upon archaeological evidence that the Court may draw an inference whether that temple existed on the site. The archaeological evidence, according to the plaintiffs of O.O.S. No.5 of 1989, relates to three places:

i. The excavation in the area located in close proximity to the southern wall of the alleged mosque. It is alleged that two trenches were laid and pillar bases were found;

ii. Two trenches were laid at the back side of the alleged mosque on the western side;

iii. Two pits located at a distance of about 8.80 meters south to the alleged mosque. The discovery was alleged to be made during the land levelling operation and from there big hoard of stone sculptures were found and some structural remains were also located at a distance of roughly 9 meters south-east to the alleged mosque.

The plaintiffs of O.O.S. No. 4 of 1989 have led evidence to prove that these excavations do not prove that any temple existed on the site in question. We are not going to assess the evidence at this stage regarding rival

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contentions of the parties and evidence led by them on the record. It is, however, clear that none of the above excavations were made on the disputed site. The excavation of the site in question would have been more relevant to one of the issues involved in the suit. We have passed the order asking the parties to give their suggestions in regard to excavation at the disputed site and till any excavation is done, without disturbing the nature of the land, we directed that the area in question can be surveyed by Ground Penetrating Radar or Geo-Radiology system which is now a developed science and can trace out the foundation without disturbing the nature of the land.

By adopting Ground-Penetrating Radar/Geo-Radiology system and also with the help of magnetometer the archaeologists can map archaeological foundations of any structure. It is also possible for them to draw a plan with enough accuracy to make out/create a case for excavation at the disputed site. The archaeologists, if they feel so, have to dig the place/site where they consider to excavate the site but they are handicapped for two reasons, first, they do not really know whether to dig the area to its hilt; and second, once they have dug, the area it is destroyed. Both these problems can be solved by adopting Ground-Penetrating Radar/ Geo-Radiological technology. In this technology of Ground-Penetrating Radar/ Geo-Radiology, magnetometer can also be used to trace out the foundations of any structure without destroying anything on the ground.

The question is whether the Court has power to take this course without any of the parties requesting the Court

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for tracing out the foundations of any structure on the disputed site. The Code of Civil Procedure itself gives power to the Court to suo motu summon any witness to record evidence, to summon any document from any person, to make local inspection or to appoint a commission for investigation, if it thinks necessary or expedient in the interest of justice.

Order XVI Rule 14 of C.P.C. provides that where the Court at any time thinks it necessary to examine any person including a party to the suit and not called as a witness by a party to the suit, the Court may, of its own motion, call such person to be summoned as witness to give evidence, or to produce any document in his possession. This provision envisages that when none of the parties produce as witness, the Court has power to suo moto summon the witness if it thinks necessary or direct any person to produce any document in his possession. It clearly contemplates a situation where none of the parties desire to produce witnesses or documents, for any reason, the Court in the interest of justice can call the witness to give evidence or to produce documents in his possession. It is to find out the truth which is integral part of justice.

In ***R.M.Seshadri Vs. G. Vasantha Pai and others, A.I.R. 1969 S.C. 692****, where neither of the parties examined the witness which the Court found to have been examined, summoned such witness and his evidence was taken into account while recording the finding. The Apex Court held that the Court had power to summon him as the Court witness if it thinks that the ends of justice require or that the case before it needs that kind of evidence. The*

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Court observed as under :

> *"The power of a Civil Court to summon court witnesses is contained in Order XVI, Rule 14 of the Code of Civil Procedure. Now the Representation of the People Act enjoins that all the powers under the Code can be exercised and all the procedure as far as may be applicable to the trial of civil suits may be followed in the trial of election petitions. It would appear therefore that in the absence of any prohibition contained in the law, the Court has the power to summon a court witness if it thinks that the ends of justice require or that the case before it needs that kind of evidence."*

In ***Shaikh Mahamad Umarsaheb Vs. Kadalaskar Hasham Karimsab and others, AIR 1970 SC 61****, the Apex Court upheld the order of the Trial Judge summoning a person as a Court witness. It is, however, a matter of discretion when it is to be exercised. The Court is not obliged to summon a person as a Court witness. It is the discretion of the Court to exercise its discretion in the facts and circumstances of each case as observed in* ***Khaje Khanavar Khadarkhan Hussain Khan Vs. Siddavanahalli Nijalingappa and another, AIR 1969 SC 1034*** *and* ***Bishwanath Rai Vs. Sachhidanand Singh, A.I.R. 1971 S.C. 1949****.*

The principle laid down for obtaining the evidence by the Court suo moto can also be applied for obtaining the report through scientific investigation.

The Court has further power under Order XVIII Rule 18 C.P.C. to inspect any property or thing concerning

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which any question may arise at any stage of the suit. It is also not dependent on any application being filed by any of the parties in this respect. It is for the satisfaction of the Court to find out the truth for which the Court takes burden of making local inspection under Order XVIII Rule 18 C.P.C.

The Court has further power under Section 151 C.PC. to pass any appropriate order in the interest of justice provided such power is not in conflict with what has been expressly provided in the C.P.C. or against the intention of legislation vide ***Ram Chand and Sons Sugar Mills Pvt. Ltd. Vs. Kanhaya Lal Bhargava and others, AIR 1966 SC 1899****, where the Court struck the defence under Section 151 C.P.C. on the ground that the Court has inherent power to strike the defence of the defendant if he does not comply with the order of the Court.*

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The Court has thus a power applying principle of Order XVI Rule 14 C.P.C. to obtain a report through the Archaeological Survey of India in respect of a matter which is one of the important issues involved in the suit. The Court has further power under Order XVIII Rule 18 C.P.C. to inspect any property or thing concerning which any question may arise at any stage of the suit. It is also not dependent of any application being filed by any of the parties in this respect. It is for the satisfaction of the Court to find out the truth for which the Court takes burden of making local inspection under Order XVIII Rule 18 C.P.C.

The Court has been conferred power under Order XXVI Rule 10A CPC to issue commission for scientific investigation which reads as under :-

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"10A. Commission for scientific investigation.-(1) Where any question arising in a suit involves any scientific investigation which cannot, in the opinion of the Court, be conveniently conducted before the Court, the Court may, if it thinks it necessary or expedient in the interests of justice so to do, issue a commission to such person as it thinks fit, directing him to inquire into such question and report thereon to the court.

(2) The provisions of rule 10 of this Order shall, as far as may be, apply in relation to a Commissioner appointed under this rule as they apply in relation to a Commissioner appointed under rule 9."

The second question is why the Court should exercise its power suo moto in the matter. The reasons are two fold- firstly, to remove any suspicion or doubt as to the facts of the case which is in dispute and secondly, to find out the truth in regard to the contentious issues raised by the parties. As noted above, the plaintiffs of O.O.S. No. 5 of 1989 have themselves relied upon the evidence in regard to excavation, levelling and trenches laid near the site of the disputed area. It would be appropriate that the matter may be thoroughly investigated to find out the truth.

The third question is why the Court should exercise its power at this stage when the evidence of all the parties have not closed as yet. The plaintiffs in O.O.S. No. 4 of 1989 have closed its evidence. The plaintiffs of O.O.S. No. 5 of 1989 have examined seven witnesses by this time including Dr. S.P. Gupta, Archaeologist, as one of the witnesses, O.P.W. 8 is being examined. None of the parties

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has filed application for excavation at the disputed site. It is not suggestion of the objectors that they would move an application for excavation at a later stage. In our view, this is a proper stage for obtaining the report of GPR/Geo-Radiology without disturbing the nature of the land which will throw light in the matter.

Lastly, it is contended that the report, if obtained, may not be very accurate and the exercise will be futile. It is an assumption by the objectors. The Survey through GPR/Geo-Radiology is a scientific investigation. It is after the report is submitted, the Court can examine such report. This objection at the present moment is unfounded.

In view of the above, we do not find any substance in the objections raised by learned counsel appearing for defendant no. 2 and defendant no. 22 in O.O.S. No. 4 of 1989.

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As regards clarification sought for surveying the area, we clarify that the area in question will be surveyed by the agency as under :-

1. The area shown in the report of the Commissioner submitted in Suit No.2 of 1950 (O.O.S. No. 1 of 1989) covering an area of approximately 100 x 100 shown in the map plan no. 1 referred to by letters A,B,C,D,E,F and thereafter northern portion up to the end of the raised platform and further to the west, south and east to the said site to the extent of 40 feet so that the position may be clarified regarding excavation alleged to have already been done earlier,

2. The agency conducting GPR/Geo-Radiological test shall not disturb any area where the idol of Shri Ram

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Lala has been installed and approximately 10 feet around it.

The objections in regard to GPR/Geo-Radiology are disposed of accordingly."

215. ASI initially showed its reluctance in getting the survey of the disputed area done by GPR and submitted that no agency in the Country was found competent to undertake the said work. Sufficient time was consumed by various applications filed before this Court and their disposal on GPR survey. Ultimately, by order dated 26.11.2002, the Court permitted M/s Tojo Vikas International (Pvt.) Ltd. (hereinafter referred to as 'Tozo') to visit the site and submit report by 12.12.2002. M/s Tozo submitted a site inspection report after visiting the site in question on 9.12.2002. It was considered on 13.12.2002 and then the Court directed M/s Tozo to undertake the project of GPR survey at the disputed site as early as possible but latest by first of January, 2003 and complete the work and submit report by 26.1.2003. M/s Tozo constituted a team consisting of (1) Mr. Manoj Kumar, Deputy General Manager and Team Leader, (2) Mr. Sudhir Chauhan, Senior Geophysicist, (3) Mr. Shakti Singh Mittal, Geophysicist, (4) Mr. S.A.H. Jaffari, Senior Land Surveyor and (5) Mr. Vobhor Mittal, Land Surveyor. The aforesaid team was assisted by Mr. Claude Robillard from Canada, an expert in the work of survey interpretation etc. The survey report was submitted by M/s Tozo ultimately through ASI on 17.2.2003 reporting its conclusions as under:

1. In General terms, the main georadar features detected by the present survey are "anomaly alignments" across the main platform, north and south of the Sanctum Sanctorum extending to the Ram Chabutra area, the high

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amplitude "ringy sequence" towards the south, and the mound structures to the east.

2. In their cross-section appearance and the areal pattern, the "anomaly alignments" may correspond to a wall foundation of some sort. In the Rama Chabutra area, the crossing patterns of those alignments and the different stratigraphic units from where they ((emerge)) suggest that they belong to successive construction periods rather than being contemporary to one another. As mentioned earlier, similar indications of successive structures are shown in other areas of the site such as shown on the example radar cross section 2 (Annex D).

3. The (ringy and high amplitude)) sequence in the southern portion of the Ram Chabutra area extends across the fences to the east to the main platform area to cover a rather large area. This sequence may be indicative of a flooring structure of some sort, possibly stone slabs if its origin is ancient.

4. A third type of buried structures covers the entire eastern boundary of the site. It consists of buried mound structures with some internal texture or structure indicative of collapsed material. Similar types of anomalies have been detected to the southwest area just before the terrain slopes down.

5. Many small discrete anomalies have been detected at various depths- from 0.5 to 5.5 meters. Some of those anomalies appear to line up in some directions but could not be detected on some survey lines between them. As such they have been referred to "discontinuous alignment" on the geophysical interpretation map of Annex A. They may

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correspond to pillars alignment, broken up sections of wall foundations or fortuitous patters of independent objects of natural features.

6. In the zones of reworked material or rubbles indicated on the map, little penetration was achieved as the signal was severely scattered in those units. It is possible that some of the trends or alignments stopping in those zones actually also extend further.

7. In the slope area to the west, which is undulating, filled with rubbles and steeply dipping, only small anomalies were detected at relatively shallow depths. They appear to line up somewhat as indicated on the map; however, the wider line spacing and the poor data quality, on account of ground conditions in this area, due to bad coupling of the antenna with the ground, makes this interpretation difficult. This area as explained earlier is a debris zone where heterogeneous material was apparently dumped from the upper platform and the origin of those detected anomalies could also be debris.

8. We are also showing some indications on the map relative to the radar signal that are most probably related to geological factors such as dipping layers, recent fill sequence and zones of higher soil conductivity. They are part of the geophysical interpretation.

9. In conclusion, the GPR survey reflects in general a variety of anomalies ranging from 0.5 to 5.5 meters in depth that could be associated with ancient and contemporaneous structures such as pillars, foundations walls slab flooring, extending over a large portion of the site. However, the exact nature of those anomalies has to

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be confirmed by systematic ground truthing, such as provided by the archeological trenching.

216. The said report was considered by the Court after permitting parties to file their objections and the same were disposed of by order dated 5.3.2003 directing ASI to go ahead with the excavation of the disputed site. The relevant extract of the order is as under :

"Considering the entire facts and circumstances, the Archaeological Survey of India is directed to get the disputed site excavated as under:-

(1) The area shown in the report of the Commissioner submitted in Suit No. 2 of 1950 (O.O.S. No. 1 of 1989) covering an area of approximately 100x100 shown in the map plan no. 1 referred to by letters A, B, C, D, E, F and thereafter northern portion up to the end of the raised platform and further to the west, south and east to the said site to the extent of 50 feet.

(2) If it is necessary to excavate towards north or any area more than 50 feet to the disputed area, it can do so to find out the true position as regards to any foundation.

(3) It is made clear that the Archaeologists (Excavators) shall not disturb any area where the idol of Shri Ram Lala is existing and approximately 10 feet around it and they shall not affect the worship of Shri Ram Lala and thus, status quo as regards His Puja and worshippers' right of Darshan shall be maintained."

(4) The excavation shall be done by Excavation Branch concerned specialized in excavation work

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within a period of one month from today. If they are engaged in other work it shall be suspended till the excavation in question is complete. If any additional staff is required the Archaeological Survey of India and Central Government shall provide it.

(5) Tojo-Vikas International (Pvt.) Limited which has surveyed the site in question by GPR etc. shall assist the excavators by providing technical assistance at the time of excavation.

(6) The work will commence within one week from today. The report will be submitted within one week from the date of completion of the excavation.

(7) The Archaeological Survey of India shall intimate the date of the commencement of the work to the Officer on Special Dutuy, Ram Janma Bhumi-Babri Masjid. On receiving such information he shall intimate the date to the parties who can watch the excavation work.

(8) Learned counsel for the parties can also appoint nominee including Archaeologist to watch the excavation work. It is made clear that only one nominee of each contesting party at one time shall be entitled to remain present.

Put up on 24th March 2003 by which date the Archaeological Survey of India shall intimate to the Court of the progress made by it in regard to excavation."

217. The Director General, ASI constituted a 14 members team consisting of the following :

1. Dr. B.R. Mani, Suptdg. Archaeologist
2. Shri C.B. Mishra, Dy. Suptdg. Archaeologist
3. Shri A.A. Hashmi, Astt. Archaeologist

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4. Shri D.K. Singh, Asstt. Archaeologist
5. Shri N.C. Prakash, Asstt. Archaeologist
6. Shri Samir Dewan, Astt. Archaeologist
7. Shri Prabash Sahu, Astt. Archaeologist
8. Shri Bhuwan Vikram, Asstt. Archaeologist
9. Shri S.K. Gulrande, Photographer
10. Shri S.M. Khairkar, Photographer
11. Shri Teja Singh, Photographer
12. Shri H.R. Barapatare, Senior Artist
13. Shri R.G. Kasbi, Draftsman
14. Shri R.G. Nangulwar, Surveyor

218. He also directed for engagement of 80 local labourers to help the excavation team in the field work. The ASI team reached Ayodhya in the night of 10.3.2003, carried out its general survey of the site and lay out of the trenches on 11.3.2003.

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219. On the application of the counsels for the parties, this Court gave certain more direction on 11.3.2003 so that excavation by ASI would proceed keeping intact the confidence of the parties in the above proceeding etc. The directions are :

"1. The general survey of the site and layout of the trenches if already done shall be done again in presence of the contesting parties or their counsel or nominees.

2. It should commence from 12.03.2003 at 10.00 a.m.

3. The excavation work should be done from 10.00 a.m.

4. List containing names and addresses of all persons including labourers engaged in excavation process be submitted to the Hon'ble Court for record.

5. Names of the equipments and tools likely to be used in excavation work may also be submitted.

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6. Videography if being done may be kept in tact and under sealed cover.

7. Materials likely to be recovered may also be kept in sealed cover/bundles and may be preserved in some near by located building under lock and seal.

8. The Authorised person/Director A.S.I./Team Leader A.S.I. Excavation Team, Ayodhya should submit periodical progress report of the work to the Hon'ble Court and they should not make any briefing/disclosure to the media.

9. Transparency should be maintained."

220. In compliance of the above directions, Director General, ASI submitted list of its officials engaged in the excavation branch (located at Delhi and Patna, i.e. the Northern Region) vide its letter dated 13.3.2003. Along with letter dated 20.3.2003, he supplied a list of 14 member team as well as the labourers engaged in the excavation work and the equipments likely to be used therein.

221. A brief note on the excavation work carried out from 12.3.2003 to 16.3.2003, prepared by Sri R.C. Mishra, Addl. Director General on 20.3.2003, was also submitted showing that the actual excavation started in the first half of 12.3.2003 itself. The note contained the following information :

"As per the court directives, the excavation was started in the area indicated in the report of the Commissioner submitted in Suit No. 2 of 1950 (O.O.S.No. 1 of 1989) shown in the map plan no. 1 and referred to by letters A, B, C, D, E, F. The excavation methodology consists of laying out square trenches measuring 4 X 4 m each in the entire area which are marked by numbers written on wooden pegs for reference and taking readings.

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A site plan is also prepared indicating the number of trenches laid out with the peg numbers clearly indicated therein.

Four trenches (4 X 4 m each) with numbers J3, J4, J5, J6 were initially taken up for excavation (Plan enclosed). After a dig of nearly 5-14 cm depth, a cement floor was encountered in all the trenches. This cement floor was encountered with squarish and rectangular impressions of stone slabs/ tiles, very similar to that found extant in situ in marble and incised, datable to the second half of the 20th century A.D. As the cement floor was encountered in all the above four trenches, the excavation area was shifted to the east of above with numbers K3, K4, K5, K6. All these trenches show high intensity of signals of anomalies as per Tojo-Vikas International Pvt. Ltd. The excavation revealed four formations, two oblong, one circular and last roughly circular which is partly in section. The oblong formations have edges of burnt clay and some ash is also noticed within these formations. The irregular circle formation was plastered entirely with lime and filled with brickbats, few bone pieces and shreds of red ware. Here red ware was obtained with shapes of pots, vases and basins. A wall in two phases was exposed in K3 up to a depth of 75 cm with the associated finds consisting of red ware having bowls, dishes and basins as the prominent shapes. Due to intervening structures and floors, in many areas working area is reduced very much. In one trench a modern brick pavement was removed to obtain more space. The other finds include terracotta head of an animal figurine."

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222. The plaintiff (Suit-4) filed civil misc. application no. 18 (O) of 2003, praying for review and recall of the order dated 5.3.2003, contending that the report submitted by M/s Tojo has not been approved, no order was passed on the admissibility of the said report, hence direction for excavation by ASI was not justified and must be reviewed. This application was rejected by order dated 26.3.2002 holding that all the objections have already been considered and decided and no case for review is made out.

223. Another application was submitted on behalf of plaintiffs (Suit-4) being CMA No. 19 of 2003 (Suit-4) making the following complaints :

> *"A- Stratigraphic context is a Key issue in the interpretation of the excavation. Therefore there should be accurate noting of position (i.e. of the layer) of each find of whatever nature (potsherds, seeds, bones, other organic material, bricks or brickbats, mortar bonded rubble, loose debris fragments , stones, boulders and the like) and the record of the same has to be maintained and preserved with the signatures of the parties/ counsels/ nominees taken on the said report/ Register on day to day basis. The top and bottom of each layer and the edges of pits may be marked on all relevant Section (S) with the use of Section labels, of paper or aluminum, in indelible ink.*
>
> *Recording of the identification of Strata and features like walls, floors and pits as well as objects like pottery etc. should be done immediately as they are identified or found. The discovery/ recovery of objects should be noted in Both, i.e, the trench notebook / diary, as well as in the register of finds (simultaneously), at the time when these Discoveries*

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are made.

B- In order to ensure that observers/ person watching, are not distracted, not more than 2 Trenches should be excavated at one time, after the completion of work in the Trenches already being excavated, and out of these Trenches also, actual digging should be carried out only in 2 Trenches at one time.

C- After the noting by the A.S.I. team, the Archaeologists nominated by the parties should be allowed to enter the trenches to observe the stratification of the A.S.I. (and its Section labels) and in order to do this they may be allowed to scrape the Sections. This may be allowed at the end of each day or every few days, after the A.S.I.'s work is over for the day. Without being allowed to scrape the Sections, Archaeologists will not be able to verify the stratification.

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D- The details about each find and the strata identified should be noted in the site note book/ register (with rough sketches of Sections and the plans of walls, pits and other features) to be maintained regarding day to day excavation work and one copy of the same be supplied to each side of the contesting parties by the A.S.I. team, on day to day basis. As the relative dates of all the walls are important, the floors and foundation pits associated with those walls may be clearly specified on the trench sections and / or plans.

E- The copies of colour photographs of all the important objects, trenches, features and Sections may be supplied to the contesting parties on payment of necessary charges so that there may remain no apprehension or

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doubt about the introduction of any external material or about Interpolation/ Destruction/ substitution of any find.

F- The Antiquity Register should be maintained making specific mention of the bones and glazed ware etc. on day to day basis and the same be sealed in the presence of the parties/ counsels or their nominees.

4. That the site notebooks and other records including Video-tapes, diagrams, plans and Section drawings, on which the Archaeological Survey of India may prepare the report, should be preserved and be made available for Inspection to the parties immediately after completion of the report.

5. That Archaeological Survey of India is an organization under the direct control of the B.J.P. MINISTER of the government of India, who is an associate of the Vishwa Hindu Parishad etc. in the matter in issue and as such the exercise of political influence in the preparation of report of the excavation can not be ruled out. Hence it is all the more essential and in the ends of justice that the parties to the suits and specially the Muslim Parties/ their nominees must have access to all those materials in their original forms including the excavated trenches, drawings of their plans and Sections, and all finds labelled with their stratum provenance, upon which the Archaeological Survey of India would be basing its conclusions and interpretation.

6. That the depth below present surface, upto which digging has to be done, may be specified by the court and the same may be at the most 5-6 feet (1.5 or 2 meter) as the Issue regarding which the order of excavation has been

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passed, relates to the alleged demolition of temple (though denied) said to have been made in 1528 A.D. and as such the present excavation is not all concerned with anything of any period earlier than 16th century.

7. That plaintiff of O.O.S. No. 4 of 89 having filed the suit as the representatives of the Muslim community and the suit being contested also as a representative suit and the nature of the dispute also being very sensitive, it was not only desirable but rather necessary that the persons engaged by the A.S.I. in the entire process of excavation, should belong to both the communities in equal proportion, so that there may not remain any feeling among any community that any favour was being shown to any one side or that more importance was being given by the A.S.I. to the members of one community as against the other. In this respect the conduct of the A.S.I., even from 8-3-03 to 17-3-03, has been giving strength to all kinds of apprehensions and speculations of partiality and biased attitude. The letters dated 8-3-03 and 10-3-03 sent by the Director of A.S.I. and Excavation Team Leader of A.S.I. describe the O.S.D. of this court as the "O.S.D., Ram Janam Bhoomi" while the O.S.D. has never described himself as O.S.D. of Ram Jaman Bhoomi only but he always describes himself as O.S.D. (R.J.B. -B.M.) or O.S.D. of Ayodhya Bench or O.S.D. of special Full Bench hearing Ayodhya Matters. Similarly the appointment of only one Muslim in a team comprising of 14 persons can also not be said to be an impartial constitution of the excavation team. So also the engagement of all labourers of one community cannot be treated to be an impartial and

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justified action and inclusion of 3 Muslims only in a team of more than 50 labourers on 17/2/03, even after written demand made by the plaintiffs' counsels, shows their reluctance to act in an independent and impartial manner. True copy of the said representation dated 15.3.03 is filed herewith as ***ANNEXURE No.-1***.

It is therefore, not only desirable, but necessary, in order to create confidence about the impartiality of the excavation work, that the A.S.I. be directed to include at least half of the members of Excavation Team and labourers from among the Muslims and 5 eminent Archaeologists (Excavators) and an observer be also appointed by this Hon'ble court with the consent of the parties, as per order dated 1-8-2002."

224. The plaintiffs (Suit-4) also filed a copy of their letter dated 18.3.2003 along with the said application wherein they had requested Sri B.R. Mani, Team Leader, ASI Excavation Team to include appropriate number of muslims labourers so as to inspire confidence in the community. The aforesaid application was opposed by the other side.

225. A brief report was also submitted by Sri B.R. Mani, Superintendent (Archaeology) and Team Leader, ASI on 23.3.3003 through the Director General ASI, and the relevant extract thereof is as under :

*"**II. Planning and Progress of Excavations***

The present excavation undertaken by the ASI under the Hon'ble High Court's direction at the disputed site of Ayodhya is of a very special nature well defined objective. All precautions have been taken to plan it in such a way that the work could be taken up and completed as per the

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directions of the Court. In planning the excavation, following strategy is adopted-

II 1. In place of general practice of lay out of 10 x 10 m squares divided into four quadrants of 4.25 x 4.25 m separated by 0.50 m baulk all-around,the latest technique of lay out trenches at sires where limited spaces are available was adopted. Accordingly, page were fixed at every 5 m in both north-south, and cast-west orientation with cutting area of 4 x 4 m leaving 0.5 m baulk all around, which in contiguous trenches effectively left a space of 1 m in between two cutting for the movement of archaeologists and labourers. One meter wide baulk was specially provided considering the fact that due to modern fillings and debris, etc. the trench may collapse due to the earth pressure in a most sensitive area.

II 2. To avoid any confusion and for the better understanding of even layman instead of the X, Y and Z areas of traditional layout with central point at the highest part, the initial peg 'A1' was fixed at the north-west corner of the site and accordingly A, B, C, D letters were put to denote the trenches in west to east direction and numerals 1, 2, 3, 4, etc. in the north to south direction.

II 3. Full attention was given to the report and GPR drawing submitted by the Tojo-Vikas International (Pvt.) Ltd. And the matter regarding anomalies shown in their drawings were discussed with Shri Manoj Kumar, Dy. G.M. TVIPL and his representative Mr. Shakti Singh at several occasion and accordingly decision was taken to start the excavation at first to the north of Ram Chabutra and also to its adjoining areas where greater signals have

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been detected by the GPR survey.

II 4. As the work of excavation is required to be completed as a time bound programme, the archaeological documentation including drawing and photography of the structural remains and pottery and antiquities are arranged to be done simultaneously.

II 5. Arrangements have also been made to collect the samples of soil, mortar, carbon (for C^{14} dating), pottery (for Thermoluminiscence dating), grains and pollens (for palaco botanical studies) and bone (for study of faunal remains). Although these samples would have to be sent for laboratory testing and scientific studies to the scientists in the survey and outside agencies, who may take some time to study and submit their findings.

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II 6. Trenches have been laid in the entire disputed area on all sides excepting the area of the makeshift structure where Ram Lala is enshrined along with its periphery having brick wall and the surrounding sand bag-mound covering an area of approximately 400 square metres. The excavation work has also been planned in phased manner in particular areas as per significant signals for anomalies pointed out by the GPR survey.

II 7. The excavation work was started as per Hon'ble High Court's order from 12.03.2003. Holidays were observed on Muharram (14.03.2003) and Holi (18.03.2003) and non-field day would be observed on Mondays (this Monday being 24.03.2003). No labourers came for work on 19.03.2003 although the team was present at the site and worked for documentation. Thus from the beginning of the work till 24.03.2003, i.e. the day of hearing of the case by

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the Hon'ble High Court only 9 days would be utilized for excavation purpose. There also since the work is starting at 10 am one hour of work is being lost for which the Director General has been approached by the team leader to request the Hon'ble High Court through Sr. Standing Counsel to allow the team to start the work at 9 am so that the work may continue till 6 pm with one hour usual break for lunch.

II 8. Huge chunks of masonry blocks and other architectural members are lying on the western slope of the mound of the disputed area. They require shifting to facilitate surface study and planning of excavation in that area. These masonry blocks can either be broken into pieces and then shifted or lifted through crane and kept aside. Preferring the second alternative the Authorized Person has been requested to arrange a crane for the job.

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III. The Present Wrok

III 1. After layout of trenches excavations were started initially in four trenches on the first day itself, i.e. 12.03.2003. These four trenches J3, J4, J5 & J6 laid bare cement floors, brick impressions of 1924 and cement mortar put over the lime floor for fixing votive slabs (marble)/tiles. Some of the extent marble slabs are inscribed with date as late as 1968-69 A.D. A request was made to the Director General to inform the team whether these floor remains could be cut or is there any direction from the Hon'ble Court in this regard.

III 2. In the meantime four adjoining trenches K3, K4, K5 & K6 were taken up for excavation which revealed the lowest portion of the eastern enclosure wall of the disputed

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structure.

III 3. Two more trenches were taken up to the east and south-east of the so called Ram Chabutra at K7 & K8 where more space was found to go further deep.

III 4. It is noticed that in almost entire area of the disputed structure, the floor of it still remains at most of the places, which has to be necessarily cut through to make further space and correlation possible.

III 5. An interesting feature has been noticed in trench K4 in which the eastern enclosure wall constructed of brick bats was found over riding another earlier wall of the same width (1.04 m) but made of comparatively fuller bricks (which are not lakhauri bricks), the earlier wall is found resting on a still earlier lime floor which extends beneath it and also spreads on the other side (outer side) of it. All together, the two walls and the lower floor point towards three distinct structural phases.

III 6. Some structural activity during the part was also noticed outside the eastern enclosure wall.

III 7. The pottery and other deposits from the above 10 trenches is mixed deposit and cannot be categorized as a habitational deposit of successive phases. Pottery yield also is a mix of ancient black slipped ware, red ware medieval red ware, glazed ware, celadon were and modern red ware and other material. The antiquities like human head and human foot of Kushan style, two copper coins of medieval period, beads of stone, glass and terracotta; pieces of glass bangles, animal figurines and such other objects have come from the mixed deposit 27 of such antiquities have been found so far from these deposits in

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different trenches.

III 8. An interesting surface investigation was made towards north-west side of the disputed area in the trenches C1, C2, D1 & D2 where only the surface cleaning provided evidence of at least three structural phases- the top being the floor and its connected structure of the disputed structure, below which is an evidence of four courses of calcrete stone blocks which rest over a brick structure having no less than twenty five courses of bricks of various shapes and sizes. Only further careful digging in the area may show the details of structural activities.

III 9. Digging has been done in at least four trenches upto the depth of 1.50 metres. A total area of about 250 square metres comprising 10 trenches have been put to excavation at present and an area of 100 square metre is under surface investigation in four trenches.

Since utmost care is to be given to the site so that all the relevant details could be recorded and in haste nothing should escape unnoticed and nothing may get damaged, the work is taking the required time and therefore, extension for at least two months more for excavation and 15 days further for writing the report may please be sought from the Hon'ble High Court.

Submitted to the Director General, Archaeological Survey of India, Janpath, New Delhi."

226. Another report dated 21.3.2003 showing some findings of ASI in the excavation work carried out till that date is as under :

"BRIEF REPORT-21.03.2003

"The excavations continued for the eighth day in K4, K6, K7 & K8, while trench nos. C1, C2, D1 & D2, situated

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on the northern side of the western slope of the mound were cleaned of bushes and other smaller loose debris.

K4 In the eastern half of the trench excavation continued down to the depth of 80 cm without encountering any structural activity. In the western part the cement floor was removed after proper recording and the area was sunk to the depth of 80 cm where a lime plastered surface was touched along side the wall.

K6. 95 cm wide portion between the two almost parallel walls was further dug down to the depth of 95 cm. The wall to the east stopped after running into 5 courses, while the thicker wall to the west still continues. A lime floor was reached at a depth of 95 cm. A small foot of a human figurine was found from the floor which on stylistic basis shows affinity to the Kushan type.

K7. The same eastern half was further deepened to the depth of 90 cm. While the concrete piling still continues in the west. No structural activity in the part was noticed. However, the dark loose earth yielded large amount of potsherds of mainly red ware with sprinkling of other early and late wares.

K8 Eastern part of the northern half of the trench was subjected to further excavation down to the depth of 110 cm. The concrete piling in the west still continues. The wall running north-south stopped at five courses and the east-west running wall along the northern section went down to four courses. The pottery yield is of mixed ware including mainly red ware but also having few sherds of glazed ware with TC core, celadon ware, etc. A moulded human head in terracotta found from this trench appears to be of Kushan

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period.

Trench No.	*Antiquity Description*
K6	*Foot of a human figurine, TC*
K7	*Knob (?)/Terracotta object*
K7	*Cylindrical TC object*
K7	*Knob(?)/Terracotta object*
K7	*Knob (?)/ Terracotta object*
K7	*Bangle fragment, Glass.*
K7	*Open ended ring, Copper*
K7	*Cylindrical TC object*
K8	*Iron hook*
K8	*Bead, quartzite*
K8	*Ball, TC*
K8	*Moulded head of a human figurine, TC*

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K3 was photographed after detailed subject preparation. Detailed drawing in J4 is still in progress.

Note:

Several points regarding signals for anomalies were discussed with Shri Manoj Kumar, Dy. G.M., TVIPL, when he visited the site at the starting of the excavation. He has further confirmed through e-mail that floor like anomalies could not be detected. However, it seems strange that though the GPR survey line passed through the eastern half of the K6, but it failed to locate the wall which runs at a depth of 45 cm from the surface and is no less than of five courses down to 85 cm. Similarly in the area where trench

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K7 is located the area of 4x2 m towards eastern half has only earth filling noticed upto the depth of 80 cm, which is mentioned in the map of GPR survey report as zone of strong amplitude and rangy signals from flat reflection upto 2m depth. The enclosure wall being 104 cm thick is also not noticed by the present GPR survey. Thus the present GPR survey seems to be contradictory at certain points and creates confusions also."

227. From the aforesaid, it is evident that during the course of excavation, it does not appear that any objection was raised before the members of ASI team or the Team Leader himself that certain material like bones etc. are not being preserved but are being thrown away. For the first time, before this Court, a complaint was made vide application no. 9 (O) of 2003 dated 20.3.2003. Sri B.R. Mani, Team Leader, ASI, gave reply pointwise to the said application vide his letter dated 23.3.2003 with respect to the engagement of the labourers pointing out that the ASI has no role therein. The entire labour force at Ayodhya was engaged, at the request of ASI, by District administration, after verification of their characters and antecedents in view of security perception at the site in dispute. He also said that the parties having been permitted to remain present through their counsels/nominees and the labourers being subject to various checking at the time of entry and exist, there is hardly any scope for placing of anything in trenches in presence of ASI staff as well as the learned counsels/nominees.

228. After hearing the parties, some further directions were given by this Court on 26.3.2003, the relevant extract whereof is as under :

"The applicant has sought further directions in the

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matter. We deal with each of the points raised and suggestions made by the applicant and parties as under :-

1. It is suggested that each find of whatever nature (potsherds, seeds, bones, other organic material, bricks or brickbats, mortar bonded rubble, loose debris fragments, stones, boulders and the like), be accurately noted and the positions i.e. of the layer be also noted and the signatures of the parties/counsel, nominees be taken on the record. Considering the matter following directions are given in this regard:-

(i) ASI team shall note down in its own register to be maintained (in respect of recovery of finds) the depth in meter/feet of the trench where it is found. It may also note down the layer of the strata according to its own interpretation.

(ii)The signatures of either the contesting parties or their counsel may be obtained.

(iii) The register should further specify the nature of the finds i.e. bones and glazed ware etc.

(iv) The finds shall be sealed in the presence of the parties/counsel and signatures of either the contesting party or his/their counsel shall also be obtained who are present on the spot.

(v) If the nature of the finds is not certain, a noting may be made accordingly and when it is unsealed, its nature may be verified after the Court permits to do so.

2. The photographs (color/Black and white) of all the finds/objects, trenches, features and sections may

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be taken. The photographs may be prepared from the negatives and signatures of either of the contesting parties or their counsel may be taken. The copies of such photographs etc. shall, however, not be supplied to them or any one else unless they are filed in the Court and made part of the record. If they are made part of the record, the Court may consider the prayer of the parties concerned to provide their copies.

3. ASI team shall prepare a register of day today work, which shall be opened for inspection to the parties and the contesting parties or their counsel shall be permitted to put their signatures on such register.

4. It is suggested by Sri Jilani, learned counsel for the Sunni Central Board of Waqfs, that not more than two trenches should be excavated at one time after the completion of work in the trenches already being excavated for the reason that the parties or their counsel may not be able to observe the excavation of the trenches at one time.

Sri B.R. Mani, Superintending Archaeologist and team leader has submitted a report dated 22.3.2003 stating that it has carved out various trenches of area 4 x 4 meters leaving 0.5 meter balk all around. If the trenches are adjoining to each other, it can be observed by the contesting parties or their counsel and their nominees. We have permitted for each of the contesting parties to observe with their counsel as alleged their nominees (one nominee at one time). The result is that for each of the

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contesting parties, there are three observers. If the distance is too much and it is difficult to observe another trench by any of them, they can legitimately raise grievance in this respect. It may be noted that the ASI team should ensure confidence of the parties and their counsel in the matter of excavation. It is, however, to be kept in mind that we have directed for expeditious excavation and for that purpose if necessary and without loosing the confidence of the parties more than two trenches may also be laid by the ASI team.

5. The applicant has suggested that there should be adequate representation of the Muslim community in ASI team as also in engagement of the labours for excavation work.

Archaeology is a Science and every Archaeologist has to perform excavation and related work in a scientific manner on the principles laid down for excavation. When he acts as Archaeologist to prefix the word denoting his religion is not a correct description of such Scientist, e.g. a doctor may have any religious faith but he cannot be described by prefixing the word 'Muslim', 'Hindu', 'Christian' etc. It is his performance of work is relevant. It will amount to tarnishing of a Scientist, Archaeologist or any person engaged in excavation. Even the plaintiffs of O.O.S. No. 4 of 1989 (Sunni Central Board of Waqfs, U.P. And others Vs. Gopal Singh Visharad (now dead) and others had produced Suraj Bhan and B. Mandal who are non Muslims.

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They have also nominated some non-Muslim Archaeologists as their observers at the time of excavation.

It is, however, to maintain faith of both the communities. In the facts and circumstances, it is desirable that adequate representation of both the communities may be maintained in respect of the functioning of the ASI team and engagement of the labours.

We have been informed that Authorised Person seeks assistance of P.W.D. to engage the labours. He may take the help of P.W.D. or any agency, which adequately represents the labourers of Muslim community. Sri Jilani, learned counsel for the applicant submitted that if an Authorised Person is unable to get Muslim labourers, he can help him. We direct the Authorised Person to see that the labourers belonging to Muslim community may be engaged by any agency and if any agency is unable to find out such labourers, he can seek assistance of the counsel for the applicant.

As regards the ASI team, Sri A.A. Hashmi, Assistant Archaeologist has been included in the list. In our view out of 8 Archaeologists engaged in the team, at least two more Archaeologists can be included for which ASI shall take necessary steps.

The ASI team is further directed to submit the list of the names of the persons in the excavation trenches of various religious in India.

6. On behalf of Archaeological Survey of India in

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Civil Misc. Application No. 21 (O) of 2003 it has been requested that the daily working time be changed. It is suggested that excavation work may start from 9.00 A.M. in the morning to 6.00 P.M. in the evening with one hour of lunch from 1.00 P.M. to 2.00 P.M. The changing of the time is not opposed by any of the parties and the direction in regard to the time earlier is modified accordingly.

7. The grievance of the applicant is that when the plaintiff-applicant submits the application to the leader of ASI Excavation Team Ayodhya, he does not take into account and pass any appropriate order. It is made clear that the ASI team is not authorised to pass any order on any application. If any of the parties wants to seek any direction of the Court, he can move an application before the OSD Ram Janam Bhumi-Babari Masjid on which the Court will issue necessary instructions.

8. It is suggested to maintain transparency at least two observers be appointed for maintaining transparency of the excavation work. Learned counsel for the applicant suggested the names of Sri Hari Shanker Dubey, additional District Judge, Faizabad and Sri Masood Ali Siddiqui, Additional District Judge, Faizabad. As regards their names, none of the parties have any objection. As they are working as Additional District Judge in district Faizabad, Hon'ble the Chief Justice is requested to pass appropriate order considering the situation for relieving them for the period the excavation work is

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being done by ASI team which is expected to be completed within two months.

9. The applicant has sought further two directions which are not related to the transparency of excavation but they are in respect of the nature of excavation.

The first direction sought is that the depth below present surface, upto which digging has to be done, may be specified by the Court and the same may be done at the most to the extent of 5-6 feet (1.5 or 2 meters). It is contended that the order of excavation has been passed relating to demolition of the temple (though denied) said to have been made in 1528 AD and as such the present excavation is not at all concerned with any thing of any period earlier than 16 Century. The depth, upto which the excavation is to be done, is not to be decided on the basis of any period. If the anomalies are existing or any foundation of any wall etc. is there, the excavation can be made accordingly. It is a matter of argument ultimately when the case is to be decided taking into account the stratification of trenches etc. At present we do not confine ourselves directing the ASI team to excavate only to a particular depth.

The second direction sought is that no excavation be done on the area covered by cement floors. It may be noted that Tojo Vikas International Pvt. Ltd. has submitted its report. It has prepared a detailed map indicating various anomalies. Those anomalies are to be verified by actual digging. The

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digging has to be done on the basis of the principles of excavation. The ASI team shall excavate in phases keeping in view the said report and the principles governing excavation.

The application is disposed of with the above direction/observations."

229. ASI submitted an application no. 27 (O) of 2003 on 7.4.2003 requesting for extension of two months' time for excavation and 15 days' thereafter for preparing report. Objection to the said application was filed on behalf of plaintiffs (Suit-4) on 8.4.2003 besides application no. 28(O) of 2003 complaining non observance of Court's order dated 26.3.2003 in the following manner :

"3. That in spite of specific directions contained in the order dated 26.3.2003 the following directions have not yet been fully complied with:-

(A) Authorized person has not so far taken necessary steps to ensure that adequate representation of the Muslim Community is maintained among labourers engaged for the excavation work and the following figures, gathered by the applicant, indicate the aforesaid position:-

(i) 27.3.2003–Total labourers 44 – Muslims 7.

(ii) 28.3.2003–Total labourers 45 – Muslims 3.

(iii) 29.3.2003– Total labourers 53 – Muslims 5.

(iv) 30.3.2003– Total labourers 66 – Muslims 5.

(v) 01.4.2003– Total labourers 77 – Muslims 5.

(vi) 02.4.2003– Total labourers 83 – Muslims 7.

(vii) 03.4.2003– Total labourers 85 – Muslims 11.

(viii) 04.4.2003– Total labourers 89 – Muslims 9.

(B) That in spite of clear-cut directions given in para 1

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(iii) on page 2 of the order dated 26.03.2003, Archaeological Survey of India Excavation Team is not mentioning the number of bones and glazed wares etc. in the Register of Day to Day work, being maintained by them, although the bones and glazed wares etc. are being found in sufficient numbers almost daily, during the excavation and hardly 20-25% finds of this type are being recorded while the others are being mixed up with general pottery. Moreover they are recording bones and glazed ware etc. without giving any number and size of the same on the said register and that too only in respect of some the trenches.

(C) That consequently the glazed wares and bones etc. are not being sealed also and there is every possibility of the said bones and glazed ware etc. being removed from the site, as one such incident has already taken place on 3.4.2003 when a labourer was found taking away a glazed ware from the pottery yard and on being picked up, the matter was reported also to a member of Archaeological Survey of India, Team.

(D) That the measurements and weights of antiquity are also not being recorded on the Antiquity register.

3. That in order to ensure the correct periodization of different layers it was necessary that the antiquity being found from different layers be measured and weighed properly and entry of the same be made on the register to be maintained for this purpose.

4. That at the pottery yard, the classification of potsherds Terracota, moulded tiles and other clay objects is not being done in a proper and scientific manner and the

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periodization of the same should be done for Mughal period, Sultanate period and then Kushan period separately.

5. That members of the Archaeological Survey of India Team should be instructed through their leader, that no one of their team should give a wrong description about the identity of any particular find and if something is beyond identification in terms of function or otherwise, then the safe method of describing it by Morphology (face impression) of the artefact or antiquity, should be adopted; for example, a broken piece of stone, measuring about 8 inch in length and 4 inch in width, should not have been described as "broken pillar" but rather the same should have been described as "curved stone" or "dressed stone".

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6. That samples of Lime plaster floors should be taken and sealed in the presence of the parties/counsels/nominees and the same be sent for chemical analysis in order to determine the material and age of the same as well as for dating of the floor. The sample should specify the depth also from where the sample was taken. The samples, if any, taken behind the back of the parties should be ignored and be not taken into account."

230. Both these applications were disposed of by our order dated 10.4.2003 as under :

"The submissions are summarized and dealt with as under:

(1) It is alleged that ASI, excavation team, is not mentioning numbers on bones and glazed wares etc. in the register of day to day work being maintained by them,

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although the bones and glazed wares etc. are being found in sufficient numbers almost daily during excavation and hardly 20-25% finds of those type are being recorded while the others are being mixed up with the general pottery and secondly, they record bones and glazed wares etc. without giving any number and size in the register and that too only in respect of some trenches.

We had already given direction in para 1 (iii) of our order dated 26.3.2003 that ASI team shall specify the natures of the finds i.e. bones, glazed wares etc. If the glazed wares etc. are found they should be recorded in the register of day to day work.

As regards giving the number and size of bones and glazed wares etc., if those items are sealed in presence of the parties and duly numbered, it may not be necessary to give the size and number. It is, however, open to the ASI team to make specification of the finds by measurement or size if there is no difficulty.

As regards the grievance that the bones and glazed wares which are found are not recorded, it is open to the applicants to submit their objection before the observers appointed by this Court. The observers can make inquiry from the leaders of the ASI team or such person who is in-charge of the excavation at the relevant time and take his view in the matter and note down on the application/objection of the objector.

(2) Another objection is that glazed wares and bones etc. are not being sealed and such bones and glazed wares are being removed from the site. The applicants have referred to some incident alleged to have taken place on 3.4.2003

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when a labourer was found taking away glazed ware from the pottery yard and on being picked up and the matter was reported also to a member of the ASI team. The applicants have not given the details about the incident nor have prayed for any investigation of the matter. It is, however, open to the applicants to submit application before the observers who shall, on application being filed, make inquiry from ASI team and in case ASI team complies with any objection raised by the applicants or it has any difficulty or express any view in the matter it shall be noted by the observers.

(3) Another grievance is that measurements and weights of antiquity is also not being recorded in the antiquity register. It is made clear if any antiquity is found and such antiquity is sealed, it may not be necessary to register its measurement and wight. If, however, it is not sealed and its specification is necessary, the necessary description by measurement/weight etc. be made by ASI team in respect of such antiquity.

(4) Another prayer is that ASI team be directed that the antiquity being found from different layers be measured and weighed properly and entry of the same be made in the register meant for this purpose. We have already, in our order dated 26.3.2003, directed in Para 1 (i) that ASI team shall note down in its register in respect of recovery of finds both in meter/feet of the trench where it is found. It may also note down the layer and strata according to its own interpretation.

(5) Another grievance of the applicants is that at the pottery yard, the classification of potsherds Terracotta,

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moulded tiles and other clay objects is not being done in a proper and scientific manner and the periodization of the same should be done for Mughal period, Sultanate period and Kushan period separately. We have already directed that if any finds are recovered the ASI team shall note down both in meter/feet of the trench where it is found and may also note down the layer and strata according to its own interpretation. It is for the parties to submit their views as to what period the objects belong. The views of the ASI team at this stage as to the period is not required to be noted in the register.

(6) The applicants have further sought direction that ASI team should not give a wrong description about the identity of a find and if something is beyond identification in terms of function or otherwise, then the safe method of describing it by Morphology (face impression) of the artefact or antiquity should be adopted. It may be noted that the description given by ASI team may not be conclusive and if the applicants find that the description is not correct, it will be open to them to file objection to such entry at a proper stage in regard to description made by the ASI team in the register.

(7) The applicants have sought that a direction be given to the ASI team that samples of lime plaster floor should be taken in presence of parties/counsels/nominees and the same be sent for chemical analysis in order to determine the material and age of the same as well as for dating of the floor, it is further stated that the sample should specify the depth also from where the sample was taken.

The ASI team shall take samples of lime plaster

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floors in presence of parties/counsels/nominees specifying the depth from where it was taken and it shall be sealed. As regards it being sent for chemical analysis, if in view of the ASI team the chemical examination is necessary it shall send to the appropriate person for such examination and it does not think proper, prayer of the applicants for chemical examination shall be considered later on.

(8) Another prayer is that the observers appointed by this Court be authorized to ensure compliance of observations and directions of this Court.

The applicants or any of the parties or their counsels are entitled to submit application/objection before the observers. The observers can make inquiry from the ASI team and if the ASI team agrees to comply with the objection raised by the party, then the observers will note it down on their application and if the ASI team submits their views for non-compliance or puts forward difficulty, it shall be noted by the observers on the objection of the parties/counsels. The observers will then forward the objections with their report to the O.S.D., Ram Janm Bhumi – Babri Masjid, which will be subject to the final decision of this Court. But, it is made clear that the process of the objections being raised and decision taken will be resorted to in the manner that the functioning of the ASI team is not in any way hampered with.

(9) The applicants have further complained that adequate representation of Muslim labourers has not been made in excavation work. In this respect we have issued direction on separate application filed by the applicants.

(10) The applicants have further prayed that they may be

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permitted to note down the strata/layer of trenches. The parties can do so provided the excavation of such trench is complete. The ASI team shall submit report by 28.4.2003 as to how many trenches have been completely excavated.

(11) The ASI has filed application for grant of two months' time and two weeks' further time for submitting report. The excavation work should be done expeditiously. Keeping in views the importance of the matter we grant five weeks' time for excavation work. It may engaged additional staff, superintending/ Assistant Archaeologists/ labourers for the purpose.

(12) The observers are directed to ensure that this Court's instructions/directions are carried out in letter and spirit."

231. Along with an application No. 33 (O) of 2003, ASI submitted the interim project report upto 23.4.2003. The relevant extract thereof is as under:

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"In the true spirit of carrying out the instruction/ directions of the Hon'ble High Court in letter and spirit and to do the work of excavation expeditiously, the excavation team which got enlarged to almost double of its original size with more archaeologists and technical staff made available to it selected further areas in the already laid out demarcations of trenches around the disputed structure. The basis of selecting further trenches for excavation was the Ground Penetrating Radar Survey carried out at the site by the Tojo Vikas International (Pvt.) Ltd.

Full attention was given to study the anomaly alignments which could correspond to a wall foundation of some sort and to strong amplitude and ringy signal from

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flat reflection or weaker amplitude zones and also to small and discrete anomalies which may correspond to discontinuous alignments and detected at various levels of depths from 0.5 to 5.5 meters.

With the help of technical staff of the Tojo-Vikas International (Pvt.) Ltd., the team got the excavation trenches superimposed on their GPR Survey's Geophysical Interpretation Map. In another map the contour drawing of the disputed area was prepared on which the trenches for excavation were superimposed in order to easily understand the various levels in relation to the contour of the mound of the disputed area.

Till 31.03.2003 ten trenches were put to excavation. But during the month of April till 24.04.2003 thirty three trenches have been excavated fully or partly upto various depth as per requirement in view of collecting relevant evidence. As the objective of the excavation is very clear, emphasis has been given to excavate only upto a certain depth although the deposits at the mound seems to be more than 8.0 m at some points. Most of the trenches, thus, have not been excavated beyond 2 meters depth. Even the depths mentioned in the GPR Survey was considered for probing the anomalies.

Most of the anomalies and anomaly alignments were noticed in the J and K series of trenches, 11 of which were excavated down to various depths. A sub zone of weaker amplitude was marked in the GPR Geophysical Interpretation Map which is located in the centre of the zone of strong amplitude and ringy signals from flat reflection upto 2 m depth. This part is known as 'Ram

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Chabutra'. Though the sub-zone of weaker amplitude was not found exactly at the place where it is marked in the map but it was noticed a little towards its east. Interestingly, after excavating five levels of the structure, each comparing a flat surface of lime-surkhi mortar having calcrete blocks below it, a squarish block of the same material component but with well polished surface measuring 1.55 m in north-south x 1.48 m in east-west orientation protruding out of the fifth level was found and after cutting the fifth level a chamber was noticed over whose projecting western part the above mentioned block was found fixed, probably indicating some place of importance. Towards north of the 'Ram-Chabutra' the floor of the outer courtyard of the disputed structure within the outer enclosure was exposed having a platform attached to it in the western side which was approached through a step. Remains of brick structures, floors and working levels below it were encountered. It seems that the area, particularly in the north eastern side of the disputed structure was low lying and therefore, it was filled up with debris to nearly 4 metres deep to reclaim the part for eastern extension. Stratified deposits were found below this filing which belong to the early two or three centuries of the Christian era.

Diagonally continued anomaly alignments coming from north east and south-east respectively and converging in the centre of the trench J5 and moving towards the sanctum sanctorum of the make-shift structure has also been marked on the GPR map which is being probed. A6 x 2 m trench is proposed to be taken beyond the gangway

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towards west to check this anomaly and other discontinuous anomaly alignments. The local administration has been requested to make arrangements for vacating this place and to ensure the security of the area from any damage.

Towards south of the disputed structure 14 trenches have been exposed, mostly in parts, after shifting of the security sheds and such other installations. During this course the foundation walls and floors of the southern chamber of the disputed structure were brought to light. It was observed that the foundation wall was constructed of mainly calcrete stone block veneer on both the faces with brickbats filled inside. However, a few sandstone blocks have also been found re-used, of which one is a decorated piece. This foundation wall lies over a brick wall having sixteen courses of bricks with decorated stone blocks used in its foundation. Another alignment of stone block with brickbats filling in its core was observed lying below the brick wall.

The appearance so far of eleven squarish of circular structural bases having brickbats at the base with two rectangular blocks of calcrete stone over three or four courses of brickbats are significant as some of which are sealed directly by the original floor attached to the disputed structure. The same type of the structural bases, with a sandstone block at their top having encasing of sandstone slabs/pieces on its four sides, were found in the northern area also, where eight trenches have been opened up so far. An interesting feature of these structural bases is that each one of it is located at a distance of 3.30 to 3.50 m

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(from centre to centre). Three discontinuous alignment of anomalies were marked in the GPR map which are being checked and as a result the structural bases have been located along with floor levels sealing them and also contemporary to them. Their further alignments are being checked towards north and also towards west.

The large size masonry blocks and stone blocks from the western slope of the disputed structure have been carefully removed to a safer place towards further west with the help of a crane so that they may not get damaged. This has been done in order to carrying out surface study of the slopes where if required a few trenches can be laid out.

The excavation work gets suspended in some trenches temporarily for want of further connecting evidence and as such till now the team has now neither reached to the level of the natural soil in any of the trenches, nor it has completely closed work in any trench."

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232. This project report was also opposed by plaintiffs (Suit-4) vide objection date 1.5.2003. Another application No.35 (O) of 2003 was also filed by plaintiffs (Suit-4) praying for a direction to ASI to complete excavation work by 10.5.2003. It also appended the extent to which various trenches were digged by ASI till 28.3.2003 which is as under :

"DETAILS ABOUT EXCAVATION WORK (Tentative Information)

Trenches in Eastern Side of the Mosque:-

S.N.	***Trench***	***Depth***	***S.N.***	***Trench***	***Depth***
1	*J-3*	*7.10 meter*	*2*	*J-4*	*0.72 meter*
3	*J-5*	*2.40 meter*	*4*	*J-6*	*2.40 meter*
5	*J-7]*	*1.12 meter*	*6*	*J-8]*	

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7	*K-3*	*0.66 meter*	*8*	*K-4*	*0.80 meter*
9	*K-5*	*0.78 meter*	*10*	*K-6*	*1.40 meter*
11	*K-7*	*4.04 meter Balk being removed (covered by iron grill)*	*12*	*K-8*	*3.60 meter*
13	*H-5*	*2.28 c.m.*			

Trenches in Southern Side of the Mosque:-

S.N.	***Trench***	***Depth***	***S.N.***	***Trench***	***Depth***
14	*E-6*	*0.63 meter*	*15*	*E-7*	*2.27 meter*
16	*E-8*	*2.80 meter*	*17*	*E-9*	*0.98 meter*
18	*D-6*	*1.80 meter*	*19*	*D-7*	*1.70 meter*
20	*D-8*	*0.98 meter*	*21*	*F-7*	*0.60 meter*
22	*F-8*	*1.10 meter*	*23*	*F-9*	*1.90 meter*
24	*G-7*	*2.27 meter*	*25*	*G-8*	*0.98 meter*
26	*G-9*		*27*	*H-7*	*0.50 meter*

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Trenches in Northern Side of the Mosque:-

S.N.	***Trench***	***Depth***	***S.N.***	***Trench***	***Depth***
28	*H-1*	*1.10 meter] Balk being removed*	*29*	*H-2*	*0.40 meter]*
30	*ZH-1*	*1.73 meter*	*31*	*ZH-2*	*0.61 meter*
32	*ZH-3*	*2.00 meter*	*33*	*F-1*	*1.32 meter*
34	*ZF-1*	*0.25 meter*	*35*	*ZE-1*	*0.55 meter*

Trenches in Western Side of the Mosque:-

S.N.	***Trench***	***Depth***
36	*C-1*	*1.20 meter (on the slope behind the mosque)*

233. The above applications of ASI and plaintiffs (Suit-4) were disposed of by order dated 22.5.2003 observing as under :

"Sri Jilani, learned counsel for the plaintiffs

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submitted that while the team leader has submitted progress report, he has expressed opinion in regard to the merit of the matter which, according to him, is unwarranted. We clarify that we had only asked for the progress report in the sense as to what extent excavation work has been done to assess as to when the work may be completed.

(1) We are not taking into consideration any opinion expressed in regard to the merit of the matter. This report will not be taken as a substantive evidence in the case. It is only the final report that will be taken as an evidence on record which will be subject to the objection and evidence which may be led by the parties.

(2) The second contention is that this Court may specify the depth, upto which the excavation work is to be done. We have earlier, while disposing of the objection, made it clear that this Court will not determine as to the depth of the excavation of the trenches. The ASI, in para 10 of the parawise comments, has stated that no trench is completely excavated until the natural soil is reached or correlation with other trenches is done. So far natural soil has not been reached in any of the trenches opened till date nor have they been completely correlated to one another. We cannot give specific directions in this respect. It is for the Archaeologists to determine in regard to the depth.

(3) Learned counsel for the plaintiffs further submitted that the excavation be done within a specified time.

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This Court had itself directed that the excavation should be done expeditiously and in that respect the time was granted to complete the excavation within the time frame. It is, however, made clear that the work is to be completed as per our directions given in our order dated 5.3.2003. In para 12 of the application, the plaintiff No. 1 has stated that the excavation does not appear to have been completed even in 1/3rd of the trenches. There is no allegation that the ASI team is either negligent or not doing the work expeditiously. We are extending the time only with a view that the work may be completed.

(4) A prayer has been made for our visit on the site. The Court may consider such prayer at a later stage but not at this time. The ASI team is directed to complete the excavation expeditiously, if not completed by 10.5.2003, it may be completed by 15.6.2003 and the final report be submitted by 30.6.2003.

With the above observations, the applications are disposed of accordingly."

234. Sri Mani, on 3.5.2003, requested the Observer, Archaeological Excavation, Ayodhya to permit him to open sealed packets for preparation of final report, their study, drawing and detailed photography etc. since the packets containing 'finds' were sealed everyday in presence of the parties and their counsels but needs to be unsealed and opened for further study etc. The said request was opposed by various parties before the Observer contending that the said permission cannot be granted at the level of Observer unless the order is given by the Court. Consequently we considered this application

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on 22.5.2003 and disposed the same with the following order :

"Considering the prayer by the A.S.I. Team Leader and the suggestions made by the plaintiffs noted above, we pass the following order:-

1. *The sealed packets containing archaeological finds be opened in presence of either counsel of the parties or parties themselves or any nominee of the parties present there;*
2. *The sealed packets once opened shall be again sealed in presence of either counsel of the parties or parties themselves or any nominee of the parties;*
3. *The items taken out of the said sealed packets be not taken outside the room where the packets are lying and if any item is required to be sent for some sort of technical/chemical examination or test, the same be taken out after proper note of the antiquity register and the said note be got signed by either counsel of the parties or parties themselves or any nominee of the parties;*
4. *If the packets are opened, photographs of such finds, if not already taken at the time of sealing, shall be taken and such photographs shall bear the signatures of either counsel of the parties or parties themselves or any nominee of the parties;"*

235. Another application was filed by defendant no. 3 (Suit-4), i.e., CMA No. 41(O) of 2003 seeking some clarifications whereupon this Court passed an order on 22.5.2003 observing that the District administration shall not raise any construction at the site in question without permission of the Court and shall also not interfere in the work of ASI. We further directed :

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"The A.S.I. Team Leader submitted a map indicating that seven trenches have been completed but final drawing and photographs remains to be done. About forty trenches have been excavated but they are incomplete. According to the map of the survey site and also the area specified in the order passed by this Court on 5th March 2003, more than 150 trenches have been shown.

It is not necessary to comment much upon the work of the Team Leader of A.S.I. For the last more than two months. We think it proper that another Team Leader should be appointed by the Director General, Archaeological Survey of India. However, Dr. B.R. Mani shall also continue to work in the team.

It may further be noted that the trenches may be carved out and their numbers be given on the basis of area as given in the site plan of Tojo-Vikas International (Pvt.) Ltd. with its report. The trenches which are incomplete should be completed as early as possible. The Team Leader shall excavate first those trenches where anomalies have been shown in the map submitted by the Tojo-Vikas International (Pvt.) Ltd. and thereafter other trenches, if necessary.

In our last order on 2nd May 2003 we had directed that the excavation be completed by 15th June 2003 and the report be submitted in the first week of July 2003 but number of trenches completed are only seven. It is expected that incomplete trenches and other trenches which require excavation be completed at an early date. However, if for any good reasons the work is not completed, the A.S.I. Team Leader may seek extension by moving an application

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before this Court in its next sitting. But till the next date of sitting the application is filed and disposed of, the excavation work will continue.

The final report shall be submitted after completion of digging of the trenches. The A.S.I. shall submit progress report every two weeks and such report shall indicate (1) the trenches in which the digging was done (2) the depth of digging in each such trenches, and (3) the items found in such trenches."

236. The plaintiffs (Suit-4) filed an application no. 43 (O) of 2003 seeking permission to inspect the trenches and check the stratification given by ASI, which was allowed vide order dated 22.5.2003 but they were not permitted to make any scrapping, section etc. of the trenches.

237. Vide application no. 48 (O) of 2003, interim project report of the excavation from 22.5.2003 to 5.6.2003 was submitted by Sri Hari Manjhi, Team Leader, as under :

"Upto 21.05.2003, in total 52 trenches were excavated fully or partly and a request was made to the observers and the authorized person for allowing the ASI to excavate 10 trenches partly on the raised platform. Accordingly as per the instruction of the Hon'ble High Court the following 30 trenches having cutting area of 4x4 mt. were partly excavated on the raised platform and in the area where anomalies or anomaly alignments were shown in the site plan received from Tojo-Vikas International Pvt. Ltd. in connection with GPR Survey, viz.B2, B3, B4, B5, B7, B8, B9, C3, C4, C6, C8, D6, E2, E6, F2, F3, F6, F8, G5, G7, G9, J1, K6, K8, L1, L3, L4, L7, ZCI and ZJ2.

Among these 30 trenches, 18 new trenches viz. B2,

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B3, B4, B5, B7, B9, C3, C4, C6, E2, F2, F3, G5, L1, L3, L4, L7 and ZJ2, have been excavated partly, while the work continued in the 9 old trenches viz. B8, C8, G7, G9, J1, K8, K6, ZC1 and F8. The un-excavated portion in the 3 old trenches viz. D6, E6 and F6 have also been taken up for excavation during the period under review. The details of the depth and finds in each trenches has been tabulated as under:

S. No	*Trench No.*	*Max. Depth (in metres)*	*Structure*	*Items found Other finds*
1	*B2*	*0—1.70*	*Nil*	*Moulded brick fragments, Terracotta (TC) wheel, Stone architectural fragments and TC architectural fragments*
2	*B3*	*0—1.30*	*Nil*	*Nil*
3	*B4*	*0—1.20*	*Nil*	*Nil*
4	*B5*	*0—1.60*	*Nil*	*Nil*
5	*B7*	*0—1.60*	*Nil*	*Nil*
6	*B8*	*0—1.20*	*Nil*	*Nil*
7	*B9*	*0—1.60*	*Nil*	*Decorated stucco fragment and stone architectural fragment.*
8	*C3*	*0—1.30*	*Nil*	*Glazed tile fragment.*
9	*C4*	*0—1.50*	*Nil*	*Stone architectural fragment*
10	*C6*	*0—1.60*	*Nil*	*Glazed tile fragment.*
11	*C8*	*0—5.00*	*Brick-bats wall in east-west*	*TC animal figurine, TC sling ball*

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			orientation	
12	*D6*	*0—1.15*	*Calcrete stone masonry wall*	*Nil*
13	*E2*	*0—2.75*	*Brick wall in east-west orientation facing north over which another brick wall running north-south facing west; Floor 1 in the south-east corner; Floors 1 and 2 in the north-west corner; and a triangular shaped buttress.*	*Glazed tile fragment and decorated stucco fragments.*
14	*E6*	*0—2.60*	*"L" shaped calcrete stone block wall in the east-west and north-south orientation raised on a brick wall running north-south; a tiered brick structure abutting the brick wall; two brick walls running east-west which are parallel and adjacent to*	*Fragments of glazed tiles.*

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			each other; and successive layers of floor 1, 2, 3 and 4.	
15	*F2*	*0—2.53*	*Brick wall orientation east-west which is continued from trench E2, another adjacent brick wall oriented east-west and decorated coloured floor and successive layers of floor 1*	*Nil*
16	*F3*	*0—3.08*	*"L" shaped calcrete stone block structure in east-west and north-sought orientation; decorated and coloured floor and successive layers of floor 1; circular pillar base of brick bats below "L" shaped wall.*	*Fragments of moulded bricks; 1.64 mt. high decorated black stone pillar (broken) with Yaksha figurines on four corners, glass bangle fragment.*
17	*F6*	*0—2.38*	*Two squarish brick pillar*	*Broken TC animal figurine, cut brick*

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			bases; stone masonry wall running east-west and north-south; and floor 2 and 3	*fragment, moulded brick fragment and TC hopscotch.*
18	*F8*	*2.60—2.65*	*Two brick wall running north-south parallel and adjacent to each other and two brick structures in the southern part of the trench.*	*Nil*
19	*G5*	*0—2.60*	*Successive layers of floor I; brick pillar base and floors 2 and 3.*	*Broken TC bird figurine, TC animal figurine (Broken), Moulded brick fragments, Iron nails, TC human hand, glass bangle fragment, incised decorated object, TC human hand, TC broken human leg and TC tile fragment; Arabic inscription of holy verses on stone, decorated architectural fragments.*
20	*G7*	*2.80—4.40*	*Brick Pillar base and floor 2.*	*Copper coin, glazed tile fragment, iron nails, Iron pointed blade, razor human head, human figurines, bird figurine,*

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				pestles, animal figurine, lamp, bead, perforated disc, seal with worn out character and an unidentified object all in terracotta; Carved stone piece, grooved brick fragment, decorated stucco fragment, bone point and engraver.
21	*G9*	*0—0.60*	*Circular pillar base.*	*Glazed tile fragments.*
22	*J1*	*1.06—1.55*	*Squarish pillar base.*	*Glazed tile fragments, iron nail and hexagonal short bead.*
23	*K8*	*3.90—5.12*	*Calcrete stone block structure and floors 4 to 10.*	*Nil*
24	*K6*	*3.45—4.55*	*Floor 3 and brick wall running east-west*	*Dressed stone fragment, circular flat stone slab, glass bangle fragment, stone fragment with srivatsa pattern; TC balls, areca nut-shaped beads, bi-conical bead, pestles, leg part of animal figurine and an object with rim (all in terracotta).*
25	*L1*	*0—.75*	*Lime floor.*	*Carnelian bead, animal head on glazed TC and ball*

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				of terracotta
26	*L3*	*0—2.55*	*Brick on edge floor and brick wall in south-north orientation.*	*Copper coin, glass piece, fragments of TC ball and bead; and glazed tile fragment.*
27	*L4*	*0—2.05*	*Brick bat paving and "L" shaped brick bat foundation*	*Copper coin, copper button, bangle piece, TC wheel and glazed tile fragments.*
28	*L7*	*Nil*	*Nil*	*Copper coin, broken copper ring, copper fragment, broken glass bangle, white stone piece, TC ball, TC bead, TC ring, TC decorated plate (broken), glazed tile fragment and stone bead.*
29	*ZC1*	*0—2.70*	*Brick bat wall (retaining wall)*	*Glazed tile fragments, potsherd showing Svastika, and sand-stone architectural fragment.*
30	*ZJ2*	*0—0.40*	*Lime floor with burials.*	*TC disc and Iron nail.*

However while checking the anomalies indicated in the GPR Survey Report, anomalies were confirmed/partly confirmed in trenches F3, F6, F8, G9, J1, K8, L3 and ZC1 whereas no anomalies were reported in trench E6. In trenches D6, E2, F2, G5 and L1 anomalies could not be confirmed due to structural activities at the upper levels. However no structural activities were noticed at the spots

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of reported anomalies in trenches B2, B3, B4, B5, B7, B8, C3, C4, C6, C8, G7, K6, L4 and L7. Trench ZJ2 was not surveyed."

238. The aforesaid interim report was also objected by the plaintiffs (Suit-4), which was disposed of by Court's order dated 3.7.2003 stating that the ASI need not submit any further project report but may submit final report.

239. ASI's application no. 53 (O) of 2003 seeking further time, was also opposed by the Plaintiffs (Suit-4), but we permitted ASI to submit its final report on or before 27.8.2003 by order dated 3.7.2003.

240. After completion of the excavation work, but before preparation of the final report, this Court, after hearing the parties, gave certain further directions on 8.8.2003, as under :

"*Having heard all of them and considering their views, we issue the following directions:*

(1) The ASI Team shall be permitted to visit the site for excavation upto 22nd August, 2003.

(2) As there is unanimity amongst all the counsel for the parties, all the trenches should be kept in tact as exist on date so as to facilitate the ASI Team to study the excavation site and submit their report until further orders of this Court.

(3) Although there is 'Shamiyana' over all the trenches yet further precaution may be taken to protect them from any damage or alteration. If needed, the trenches may be covered by plastic sheets or any other materials as the authorized person in consultation with the ASI Team and the Chief Engineer of PWD may deem it proper.

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(4) No one except the ASI Team, the two observers, Chief Engineer, PWD, learned counsel for the parties, shall be permitted to enter the site in question without prior permission of this Court.

(5) The Archaeological finds and other materials found during excavation shall be so preserved that the same may be made available whenever needed by the orders of this Court.

(6) The authorised person shall also ensure that the right of Darshan of the devotees is not in any way interfered with, as directed earlier.

(7) The authorised person in consultation with the ASI Team and the Chief Engineer of PWD as also the observers may provide support to the walls of the trenches/boxes likely to collapse or get damaged during the current rainy season by putting sand/earth bags so that such bags which may be removed as and when required for the purpose of study of such trenches/boxes. In short, all steps should be taken to protect and preserve the make shift the temple as well as trenches.

(8) The ASI Team shall prepare 15 copies with drawings and maps in original showing colours. If more copies will be required by the parties, the same may be provided on payment of costs. For that purpose, learned counsel for the parties shall move an application for providing extra copies before the OSD of this Court within 48 hours from the date of submission of the final report by the ASI Team.

(9) The report alongwith number of copies, as indicated

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above, shall be submitted by the ASI Team in the sealed cover before this Court and after necessary order the copies should be provided to the parties concerned.

(10) Until the report is submitted before this Court, the ASI Team shall not divulge its contents to any one even on the terms of the anonymity."

241. Ultimately, ASI submitted final report on 22.8.2003. Besides, ASI also submitted the following record :

Sl.No.	Date	Description of document
1.	02.09.2003	1. Field Note Book. Total No. 47 2. Drawing/Maps 182. 3. Negatives, (A) Colour-7777, (B) Black & white-1510 4. Photographs in 46 Albums 4293 5. Video Cassettes 10
2.	16.10.2003	Ten sets of CDs (A set of 29 CDs kept in 10 separate plastic boxes) made out of 11 Video Cassettes of Ayodhya Excavation
3.	11.11.2003	1. Register of excavated pottery and unsealed boxes 2. Register of Architectural members stored in the tin shed at excavated site Ayodhya 3. List of boxes containing antiquity, boxes, glazed wares and other samples in the sealed bags. 4. Register containing antiquity packets. 5. Letter dated 22.9.2003 received from Birbal Sahni Institute of Palaeobotany 6. 13 Digital Cassettes and ten sets of their CD's
4.	08.12.2003	1. Packet 'D' containing 3 Registers including day to day Register 2. Packet A containing 753 slides 3. One set of 13 CDs

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		4. Trench wise index of Drawings 5. 45 site note books and two registers 6. Day to day register in two volumes and 5 xerox copy. 7. Three Registers-List of the potteries and bones kept in 9 boxes, list of artifacts kept in tin shed 8. Trench wise index of drawing and list of figures along with five sets of xerox copy 9. Xerox copy of site note books Sl. No. 1-45 along with two registers
5.	16.12.2003	Three sets of slides
6.	05.01.2004	13 CDs from Dr. B.R. Mani, Former Team Leader
7.	19.01.2004	45 sets note books, a chemical Register and a documentation registers
8.	30.01.2004	Brief summery of hard disc of Laptop 16 items
9.	30.01.2004	Laptop, Power Adopter, CD RW/DVE Drive, Floppy Drive, Password
10.	11.03.2004	Ten sets of compact discs containing data of hard disc of the Laptop
11.	29.03.2004	CDs and Bromide prints of the maps/Drawings of Ayodhya excavation
12.	17.05.2004	One set each of bromide prints and CDs of map and drawings of Ayodhya excavation
13.	14.07.2004	Enlarged copy of Fig. 3A of ASI Report along with 15 copies of the same

242. The ASI report came up before the Court on 25.8.2003. Supplying copies of the report to the learned counsels for the parties, they were permitted to file objections thereto. At this stage, we are not giving details of ASI report etc. as this would

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be dealt with later on at the appropriate stage. Suffice is to mention that the ASI report was objected mainly by Sunni Central Board of Waqfs, Mohd. Hashim (defendant no. 5, Suit-5), Mahmood Ahmad (plaintiff no. 9, Suit-4) and the defendants no. 6/1 and 6/2 (Suit-3), who raised mainly the following objections :

"1. That the report is one sided and is greatly influenced by certain preconceived theory of nations;

2. that ASI has adopted a biased and selective approach, as is evident from the fact that importance and impact of presence of several animal bones having cut marks, recovered from different floor levels of the respective trenches, has purposely and designedly been kept out of consideration and had the same been scientifically studied and the result taken into consideration, it would have not been possible for ASI to opine that things found were indicative of remains which are distinctive features found associated with temples of north India;

3. that in spite of clear cut directions of this Court to file all the papers-documents relating to the excavation, the ASI not only delayed the filing of certain relevant documents, but also destroyed the notes prepared by it at the time of study/analysis of various finds/architectural objects, which raises a grave doubt about the veracity of report;

4. that while the names of the authors of chapter I to IX are mentioned; but it is not known as to who authored chapter X captioned "summary of results" and so the whole of Chapter X deserves to be scored out from the

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report and cannot be allowed to form part of the evidence;

5. that on complaint, this Court directed that Sri B.R. Mani should not head the excavation teach and in compliance of those orders Sri Hari Manjhi was deputed to head the team, but it is not known as to how Sri B.R. Mani continued his association with the task of excavation and how he co-authored the report;

6. that periodization done by ASI in Chapter III captioned "Stratigraphy and Chronology" (Pages 37 to 47 of Vol 1) has no scientific basis:

7. that in absence of concordance of different layers/floors of respective trenches with each other, the basis of the report itself becomes doubtful;

8. that the report is full of inconsistencies and discrepancies and the conclusions therein appear to have been tailored to support a particular theory;

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9. that theory of existence of massive structure on wall-16 and the 50 pillars, as shown in figure 23-B page 42-C of Volume I, is a concoction and unacceptable for the reasons inter alia that there were no pillar bases and the same had not alignment with each other nor were at the same level nor had capacity to support load bearing pillars;

10. that theory of massive structure is totally ill-founded because ASI report is silent on the point as to where were the remaining three walls of that structure, if wall 16 was one of the walls;

11. that so called "circular shrine" (which according to ASI, had a waterchute in the north and could be associated with Lord Shiva) could also be a structure relating to Budhism or Jainism, as considering the thin passage and

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little diameter, it was not possible for even a single person to enter and offer "Abhishekha";

12. that ASI has, without any firm basis, characterized mutilated stone sculpture (plates 235 of Vol II of the report) as 'divine couple' and appears to have invented it at some later stage, as reference to it does not find in corresponding Site note-book or Day to Day Register;

13. that pillar door jam, octagonal shaft of pillars, amalka, divine couple stone with Srivastsa motif, lotus medallion, which ASI has taken into consideration for saying that there were remains of temple on the site in question, were of not significance as the same had been recovered from debris;

14. that alleged Srivatsa (see Plate No. 88) could equally be associated with Jainism and lotus with Buddhism and Islamic religion;

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15. that terra-cotta figurines (62 human & 131 animal) discovered from different trenches, belong to ancient period and had no relevance;

16. that glazed- wares and glazed- tiles so recovered during the course of excavation spoke against the theory of existence of temple as all these were found below floor No. 4 relating to Medieval Sultanat period;

17. that in view of what has been written by S.K. Meermira in his book "Indian Pottery" glazed tiles were proof of Muslim habitation;

18. that wall-16 had niches (mehrab) on the inner side which are distinctive features of Islamic building and even if it is accepted that the same existed prior to construction of Babri Masjid, the same could have been a Idgah or

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Kanati (roofless mosque);

19. that no idol, or statute of any Hindu deity and no object of Hindu worship was found on the site so as to entitle the ASI to say that there were remains of existence of temple of north India;

20. that how the conclusions of ASI came in the Indian Express in its issue of 13.8.2003, much before 22.8.2003, when the report was filed in Court and that indicates that ASI tailored the report on the lines given in S.P. Gupta's book titled "Auodhya Puratatve Evam Itihas".

243. Besides, the defendant no. 3 (Suit-3) filed his objection contending that some more area towards east of trenches number G-3, G-4 and G-5 should have been excavated so as to reach a correct conclusion.

244. This Court after hearing the parties, vide its order dated 3.2.2005 held that the objections are basically such which can be considered and decided in the light of other evidence, which may come up before the Court. The objections against the report have to be considered before ASI report is acted upon but that situation will arise only when the Court would decide the matter finally. Therefore, the Court held that the ASI report shall be subject to the objections and evidences of the parties in the suit and all this shall be dealt with when the matter is finally decided.

245. An application was filed by plaintiffs (Suit-5) requesting to examine Dr. Bhuvan Vikram Singh and, accordingly, he was summoned to depose his statement. He filed an application no. 25(o) of 2006 requesting that he may be summoned as a Court's witness and not that of any party since he was a party to the excavation team and the said excavation was conducted under

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the order of this Court, hence he was not willing to depose his statement as a witness of any party to the suit. This application was not opposed by the plaintiffs (Suit-5) and in fact, learned counsel made a statement that he does not propose to examine Dr. Bhuvan Vikram Singh as witness of plaintiffs (Suit-5). He, however, insisted that Dr. Bhuvan Vikram Singh should be treated as a Court's witness and be allowed to be examined accordingly. This question was considered by this Court vide order dated 4.12.2006 and it was observed that this Court has discretion to call any witness and examine him as Court's witness but that situation cannot be imposed upon the Court by a party to the suit by filing an application requesting to summon a witness and then to press to treat the witness as Court's witness. Whenever the Court shall feel it expedient or necessary it may exercise its power by summoning a witness as a Court's witness but such a discretion cannot be fastened upon the Court by a party to the suit. Since the plaintiffs (Suit-5) was also not inclined to examine Dr. Bhuvan Vikram Singh as its witness, the said witness was discharged without recording his deposition.

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Details of Impleadment Applications rejected

246. Several applications were filed by many persons, legal/juristic, seeking impleadment in the proceedings on one ground or the other. We do not propose to discuss the matter in detail where applications have been rejected by the Court finding impleadment of the person/s unwarranted or otherwise but suffice to give only the brief description of those persons for ready reference as under :

Sl. No.	C. M. Appl. No.	Moved on	By	Rejected on
01.	465C	25.10.68	Mahant Raghubar	30.04.69

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			Prasad	
02.	477C	27.01.69	Sri R.N. Verma and Sri Har Prasad	30.04.69
03.	553C & 556C	30.01.71	Sri Prem Singh Sri Uma Dutt Mishra	13.02.71
04.	In Suit-4 [786 Ka]	08.11.88	Kashiteesh Chandra Mishra	19.11.88
05.	788 Ka 808 Ka	19.11.88 24.12.88	Sri Chhitij Chandra Mishra Ad. Sri Ashok Kumar Pandey Ad.	09.01.89
06.	25 (O) 1989 In Suit-5	14.08.89	Farooque Ahmad	14.08.89
07.	24 (O) 1989 In Suit-5	11.08.89	Molana Sajjad Ahmad	19.08.89
08.	In Suit-4 [877 Ka]	10.05.89	Sri Ram Janambhumi Sewa Samiti	23.10.89
09.	32 (O) 1989 In Suit-3	25.08.89	Sri Sri Mandir Raksha Samiti	23.10.89
10.	31 (O) 1989 In Suit-3	25.08.89	Sri Prem Chandra Gupta	23.10.89
11.	36 (O) 1989 In Suit-5	25.08.89	Mandir Raksha Committee & Sri Bal Krishna Sharma	23.10.89
12.	35 (O) 1989 In Suit-5	25.08.89	Sri Prem Chandra Gupta	23.10.89
13.	3 (O) 1990 In Suit-4	09.01.90	Hindu Mahasabha to implead Union of India as Party	09.01.90
14.	55 (O) 1990 In Suit-5	13.12.90	Buddhist	17.01.91

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15.	01 (O) 1991 In Suit-4	04.12.90	Sri Brahmajeet S/o Nihal	17.01.91
16.	27 (O) 1991 In Suit-4	12.08.91	Maharshi Awadhesh	30.09.91
17.	670 / 1/Ka/1	20.02.88	Sri Ram Bhadra Pathak	09.12.91
18.	838 Ka	27.03.89	Sri Ramjan Armatandavi	09.12.91
19.	In Suit-4 [672A]	16.04.88	Sarpanch Ramswaroop Das Chela Raghubar Das, Panch Bhaskar Das and Rajaram	09.12.91
20.	In Suit-4 [4Ka]	07.04.78	Sri Ram Janambhumi Dharmarth Prabandhkari 'Samiti' Sri Ram Janambhumi Ramkot Ayodhya and Sri Raghunandan Saran	09.12.91
21.	39 (O) 1992 In Suit-1	31.03.92	S.C. Pandey Adv.	31.03.92
22.	41 (O) 1992 In Suit-4	31.03.92	Maharshi Awadhesh	07.04.92
23.	32 (O) 1992 In Suit-4	02.02.92	Gopi Nath	15.04.92
24.	41 (O) 1992 In Suit-4	31.03.92	Maharshi Awadhesh	20.04.92
25.	66 (O) 1992 In Suit-5	06.05.92	Maharshi Awadhesh founder President of Rashtriya Party	07.05.92
26.	21 (O) 1995 In Suit-4	03.01.95	President, R.N. Nationalist Party and Avami Leeg of Nation	28.03.95
27.	3 (O) 1993	05.02.93	Moved by Different Parties at various dates	25.05.95

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	4 (O) 1995 9 (O) 1995 In Suit-4 2 (O) 1993 7 (O) 1995 In Suit-3 6 (O) 1995 1 (O) 1989 8 (O) 1994 In Suit-5	18.01.95 15.01.93 03.01.95 03.01.95 25.07.89 12.12.94	for impleadment of Union of India as Party in Different Suits pending before this Court	
28.	10 (O) 1995 in Suit-4	20.01.95	Maharshi Awadhesh President, Rashtriya Party	25.05.95
29.	25 (O) 1995 & 34 (O) 1995 In Suit-4	13.02.95	Maharshi Awadhesh	02.08.95
30.	55 (O) 1995 In Suit-5	09.10.95 for transposing Defendants 2, 14, 21 as Plaintiffs No. 4, 5 & 6 respectively	Sri Ram Janam Bhumi Nyas through Ashok Singhal	19.03.96
31.	26 (O) 1996 In Suit-4	26.08.96	Dr. Mohd.Ismail Farooqui	27.11.96

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32.	34 (O) 1996 In Suit-5	07.10.96	Sri Ismail Farooqui	27.11.96
33.	11 (O) 2003 In Suit-5	18.02.03	Sri Rajeshwari Sri Sita Ram Waqts through Manager Kunwar Shivendra Pratap Sahi	18.02.03
34.	26 (O) 2003 In Suit-4	04.04.03	Buddha foundation through Udai Raj	07.04.03
35.	31 (O) 2003 In Suit-1	21.04.03	Sri Akhil Bhartiya Chhatriya Mahasabha	29.04.03

Statements of party/party's counsel (under Order 10 Rule 2 C.P.C.)

247. Statement of Chaudhari Kedarnath in Suit-1 (Recorded on 15.09.1951) :

*"**Q**. In what capacity does the plaintiff seek to exercise the relief which he seeks in the plaint.*

***Ans**. In my individual capacity.*

***Q**. What is your individual capacity.*

***Ans**. My individual capacity is distinct from public capacity and in this matter an idol worshipper.*

(This shows that the plff's counsel is not in a position to answer the Court question. The plaintiff must present himself personally in Court on the date fixed.)

Q. Has your client any religion.

Ans. The plaintiff is a Sanatandharmi Hindu."

248. Statement of P.D. Goswami (Recorded on 13.1.1960) :

"Sri Goswami States ABCDEF is the land and building in suit as indicated in the map of the Commissioner Sri Shiva Shanker Lal dated 25.5.50. It is the temple since 1934. Deities installed are Sri Sri Ram. The building existed prior

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to 1934. The plaintiff can't say for how long it have been existing. The plaintiff can't say who built it and what it was prior to 1934. Sri Gopal Singh Visharad came in on about 1934 to Ajudhya. He saw the मूर्ति there, and began to worship them. Sri Paramhans instructs that the मूर्ति were there from before 1934. Whenever he saw it was a temple. It has always been a temple. He can't say who got it constructed and dedicated it.

The plaintiff do not admit that at any time the building was used for prayer or as a Mosque by the Mohammaden community. Babar never built it. He was never emperor of India. I deny that it was ever used as a mosque.

The plaintiffs confine their case to the construction shown by letters ABCDLKJPOHNGA as shown in the map of the Commissioner dated 25.5.50. The Chabutra and Mandir shown in the map of the Commissioner as "Ram Chabutara" and "Bhandar" are the same as those described in the eastern boundary of the temple in question in the plaint.

The replication para 31 filed in suit no. 25 of 1950 by Paramhans does not refer to the litigation mentioned in para 14 of the map filed by Zahur Ahmad and others. The proceedings mentioned in the last part of para 31 of the replication relate to those cases and proceedings which were between Mohammedans- sunnies & shias and others i.e. relating to suit no. 29 of 1945 of the Court of Civil Judge Faizabad."

249. Statement of Gopal Singh Visharad and Param Hans Ram Chandra (Recorded on 07.03.1962 in Suits-1 and 2) :

"Plaintiff Gopal Singh Visharad and Sri Param Hans Ram

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Chandra plffs of both the suits no.2/50 and 25 of 1950 accompanied by their counsel state that they do not want any relief with regard to constructions or structures indicated in the map of the Commissioner Sheo Shanker Lal dated 25.5.50. by the terms 'Sita Rasoi' 'Bhandar' and 'Ram Chabootra' . They say that the reliefs are asked for only with regard to property enclosed in the said map by letters A. B. C. D. L. K. J. P. O. H. N. G. A.

They further add that the term 'Janam Bhumi' used in the plaint refers to Janam Bhumi of Sri Ram Chandra Ji and according to the plff's belief the property in suit is the site of the same.

They add that there is no footprints carved over on any stone or any stone image of any Charan Paduka (Charan Paduka) referred to in para 2 of the plaint.

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According to them at the place in suit near the idol of Bhagwan Ram Chandra Ji, are kept wooden sandals or Charan Paduka and also a small pair of silver Charan Paduka. They are not fixed to any stone, structure or floor but are placed loose near the idol.

They add that the idol of Bhagwan Ram Chandra Ji at the place in suit is an Achal (Achal) idol.

They add that the plffs claim right of worship with regard to the said idol and also with regard to the 'Charan Paduka'.

The plffs also claim a right to worship all the deities and idols situated in the in the property in suit besides that of Bhagwan Ram Chandra Ji as for example, Laxman Ji, Hanuman Ji, Sita J, Saligram Ji, etc. They also claim a right to worship and have Darshan of these as well as they

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have a ***right to have Darshan of the site in question as according to their belief it is the birth place of Sri Ram Chandra Ji."***

250. Statement of Sri Mohd. Ayub Advocate (Recorded on 07.03.1962 in Suits-1 and 2) :

"Sri Mohd. Ayub Advocate for the defdts states that the decision referred to in para 11 to 14 of the W.S. was in original suit no. 61/280 of 1885 in the Court of Sub-Judge, Faizabad, Raghubar Dass Mahanth versus Secretary of State for India and others. He adds that this decision bars the present suit by principle of Res-judicata and estoppel."

251. Statement of Sri P.D. Goswami, Advocate (Recorded on 08/09.03.1962 in Suits-1 and 2) :

"Sri P.D. Goswami advocate for the plffs state that the report of the commissioner spoken of in para 15 of the W.S. has no effect on the rights of the plff nor do the provisions of Sec 5(3) of U.P. Act 13 of 1936 apply to the present suits as they are based on a right of worship of plff who is a Hindu. According to him the provisions of this Act are applicable to the property and the rights of the Muslims only.

He does not give up the plea taken by him in the replication in that connection.

According to him the said Act has been repealed by U.P. Act 16 of 1960. He further adds that in case the said Act be considered applicable to the present suits it is ultra vires the provisions of the Govt of India Act 1935 and is in conflict with the Ancient Monuments Preservation Act (Act No. VII of 1904). "

252. Statement of Sri Mohd. Ayub, Advocate (Recorded on

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09.03.1962 in Suits-1 and 2) :

"Sri Mohd. Ayub Advocate for the defdts states that under para 15 of the W.S. in suit no.2 of 1950, the defdts plead that the suit is barred by provisions of Sec. 5(3) of Muslim Waqf Act 1936(U.P. Act No. 13 of 1936).

He adds that by the plea set up in para 19 of the W.S., it is meant that the suit is bad for want of consent in writing of the Advocate General and other provisions of Sec. 91 C.P.C.

He adds that from para 9 of the W.S. the plea arises that Almighty God in whom the property in suit vests duly represented by some authorised persons should have been made a party to the suit and the suit is bad for non-joinder of parties. He adds that the Muslims in general or the mutwalli of the said waqf or Sunni Central Board as waqf should also have been made defdts in this suit.

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He adds that the present suit being a suit for injunction is barred by time under Article 120 of the Indian Limitation Act."

253. Statement of Mohd. Ayub, Advocate (Recoded on 08.08.1962 in Suit-4)

"Sri Mohd. Ayub Advocate for the plffs states that the property in suit is the property dedicated to Almighty God and is a mosque for the use of the entire Muslim community at large. He adds that Shias & Sunnis have the interest in the same. ''

254. Statement of Sri Sarab Jeet Lal, Advocate (Recorded on 17.05.1963) (Counsel for plaintiff in Suit-3)

"Present Sri Sarab Jeet Lal for plff
& Sri Mohd. Ayub Advocate for defdts 7 to 8.

Sri Sarab Jeet Lal Advocate states as follows:

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The plff claims that this property in suit is believed to be the birth place of Lord Ram Chandra and so there is a temple of Lord Ram Chandra on it. The plff claims that this temple is in the management and control of the plff. It is further clarified that this property is not dedicated to the idol ***although the temple is made on the land which is the birth place of Lord Ram. It is owned by the plff and the temple was made by the plff.*** *It is added that the present suit is confined to property shown by letters E F G H I J K L although the entire area shown by letters E F G H P N M L E belongs to the plff."*

255. Statement of Mohd. Ayub, Advocate (Recorded on 28.08.1963 in Suit-4) :

"Sri Mohd. Ayub states that the ***mosque lies in A B C D as shown in the plaint map*** *(sketch map) and the land around A B C D is graveyard of the Muslims as shown in it. "*

Sri Mohd. Ayub states that the plaintiff pleads in the alternative that even if the defdts have any rights in the property in suit the same have been extinguished by lapse of time.

He clarifies that the same amounts to adverse possession and the rights of the defts have extinguished by it and the plff has acquired title by adverse possession."

The taking of these pleas of title by adverse possession and extinction of title of defdts by oral statement is strongly opposed from the side of the defts.

Let the plff therefore take up proper pleas in proper way, by amendment of plaint or replication as the case may be. Plff to move for the same within 15 days.

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Put up for orders on 28.9.63 in this respect whereafter issues will be framed."

256. Statement of Mohd. Ayub, Advocate (Recorded on 20.01.1964 in Suit-4)

*"Sri **Mohd. Ayub Advocate Wadigan Ne Bayan Kiya Ki** Zaydad Nijai Me Babri Masjid Va Uski Chahardiwari Se Mila Hua Qabristan Janib Poorab, Uttar Dakkhin Hai. Paschim Taraf Qabristan Nahi Hai. Babri Masjid Ko Shahansah Babar Ne 1528 AD me Ekdam Naye Sire Se Banaya Tha. Jis Jagah Par Babri Masjid Bani Hai Us Jagah Par Uske Banane Ke Pahle Hinduvon Ka Kisi Tarah Ka Koi Mandir Ya Dev Sthan Ya Koi Tameer Nahi Thi. Babri Masjid Ke railing Ke Bahar Aur Sadar Phatak Ke Boundary wall Ke Andar Poorab Dakhin Ki Taraf Ek 17 Feet X 21 Feet Ka Chabutara Hai Jis Par Lakadi Ke structure Ka Ek wooden temple Bana Hai. Us me Koi Bhi Hindu Ki Murtiyan Na Kabhi Thi Na Ab Tak Hai. Vah Jagah Bhi Musalmano Ki mosque Ka Hissa Hai, Mujhe Nahi Maloom Ki Vah Jagah Aaj Tak Kabhi Bhi Hinduvon Ke Istemal Me Aai hai Ya Nahi. Yeh Bhi Nahi Maloom Ki Vah Jagah Kabhi Bhi Musalmano Ke Istemal Me Rahi Hai Ya Nahi. Jab Se Yani December 1949 Isvi Se Musalman Log 145 Jabta Phaujdari Ke Mokadme Me Babri Masjid Ke Karib Jane Se Rok Diye Gaye Hain Tab Se Us Jagah par Agar Koi changes Kisi Ne Kiya Ho To Uske Bare Me Mujhe Koi Ilam Nahi hai. Babri Masjid Ke Sadari Phatak Se Andar Dakhil Hone Par Uske Dahini Taraf Jo Bhi Tamirat Hai Vah December 1949 Ke Pahale Vahan Par Kabhi Nahi Thee. Unhe December 1949 I. Ke Bad Kisi Ne Tameer Kar Liya Hoga. Babri Masjid Ko main building Ke Uttar Taraf Chahardiwari Ke Andar Bhi December*

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1949 I. Tak Kabhi Koi Tamirrat Varakam Imarat Ya Chabutara Vagaraih Ke Kabhi Nahi Rahe. Us Jagah Par Jo Chabutara Sita Rasoi Ke Naam Se Muddalehum Kahte Hai use December 1949 I. Ke Bad Hi Muddalehum Ne Ya Kisi Ne Banaya Hai. Babri Masjid Ke Samne Ki compound wall Me Jo main gate hai Usme Do Khambhe Khasauti Patthar Ke Lage Hai Jo Babri Masjid Ke Shuru me Banane Ke Waqt Se Lage Hai Aur Babri Masjid Me main building Ke Andar Bhi Barah Khambhe Kasauti Patthar Ke Lage Hai. Yeh Bhi Shuru Se Lage Hai. In Chaudaho Khambho Me Koi Bhi Muratiyan Ya inscription, indication of Hinduism Nahi Khudi Hai."

(Sri Mohammad Ayub, Counsel for Plaintiffs stated that the disputed property included Babri mosque and a graveyard adjoining to its boundary and facing east, north and south. There is no graveyard towards west. Emperor Babur built Babri mosque afresh in 1528 AD. **Prior to the Babri mosque, no temple or worship place or any other construction of Hindus existed at the site where the Babri mosque was built.** On the outer side of railing of Babri mosque and inside the boundary of main gate towards south-east, there is a platform measuring 17x21 feet over which a wooden temple is built in wooden structure. No idols of Hindus ever existed nor exist inside the same. That place is also a part of mosque of Muslims; I do not know whether that place had ever been in use of Hindus or not; it is also not known to me whether this place had ever been in use of Hindus or not; it is also not **known to me whether this place had ever been in use of Muslims or not.** I have no knowledge about changes

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effected, if any, at that place since December, 1949 AD when the Muslims were restrained from going near Babri mosque in a criminal case under Section 145 Cr.P.C. On entering through the main gate of Babri mosque, the constructions lying on right side, were never in existence prior to December, 1949. The same must have been constructed by someone after December1949. Towards north of main building of Babri Mosque inside the boundary wall, upto December 1949 A.D. there was never any construction or building or Chabutara etc. Over that place, the Chabutara termed as Sita Rasoi by the defendants has been constructed either by defendants or someone else after December 1949. There are two pillars of Kasauti stone in the main gate of the compound wall of Babri Mosque, which were affixed at the time of construction of the Mosque and 12 Kasauti pillars are affixed in the main building of Babri Mosque as well. They have also been affixed since very beginning. These 14 pillars do not carry any idols or inscription, indication of Hinduism.)" *(E.T.C.)*

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257. Statement of Sri Lal Surendra Nath Singh Advocate (Recorded on 24.04.1964 in Suit-4)

"Sri Lal Surendra Nath Singh Vakil Prativadi No. 1 Va 2 Ne Bayan Kiya Ki Tankeeh no. 5 (d) of the leading case Ke Silsile Me Bayan Tahriri Muddalehum no. 1 Va 2 Ke Para 32 Ke sub para (a), (b) Aur (d) Ko Hi press Karta Hun. Bayan Tahriri Mazkoor Ke Dafa 5 Ke Baqi Sub paras Ko Tankihat Ke Silsile Me Press Karunga."

(Sri Lal Surendra Nath Singh, counsel for defendants no. 1 and 2 stated that in respect of issue no. 5(d) of the leading

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case, he presses only sub paragraphs (a),(b) and (d) of paragraph 32 of the written statement of defendants no. 1 and 2. He will press the remaining sub- paragraphs of paragraph 5 of the said written statement for framing issues." *(E.T.C.)*

258. Statement of Sri Mohd. Ayub, Advocate (Recorded on 17.07.1965 in Suit-4)

"Sri Mohd. Ayub Vakil Wadi Ne u/order X rule 2 CPC Bayan Kiya Ki Jaydad Nijai Ka Jo notification under Section 5(1) of U.P. Muslim Waqf Act 13 of 1936 Huva Tha, Vah Uski Sahi Naqal Kagaj No. 243/Ga Va 243/1Ga Me page no.11 Ke serial no.26 Babat Zila Faizabad Par Jaydad Nijai Ka notification Mazkoor Chhapa Hai. Iske Alawa Jaydad Nizai Ka under section 5(1) of U.P. Act 13 of 1936 Ka Aur Koi notification Nahi Hai. Sunkar Tasdeek Kiya."

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(Mr. Mohd. Ayub counsel for the plaintiff stated under Order X Rule 2 C.P.C. that true copy of the Notification published under section 5(1) of U.P. Muslim Waqf Act 13 of 1936 with respect to property in suit is Paper No. 243/Ga and 243/1 Ga wherein notification with regard to disputed property pertaining to District Faizabad is published at page 11, serial no. 26. Except it, there is no other notification under Section 5(1) of U.P. Act 13 of 1936 in respect of the disputed property. Verified after hearing." (E.T.C.)

"Sri Mohd. Ayub Vakil Wadi Ne Bayan Kiya Ki Basilsile Tankeeh No. 17 Kagzat Mundarza Jail Par rely Karta Hun. Unke Alava Tankeeh Mazkoor Ke Silsile me Aur Koi Oral Ya documentary evidence nahi Dena Hai. Sunkar Tasdeek Kiya.

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(Plaintiff's counsel Mr. Mohd. Ayub stated that in relation to issue no.17, he places reliance on the following documents and except those, he does not propose to adduce any oral or documentary evidence in respect of issue under consideration. Verified after hearing." (E.T.C.)

1. *Kagaj No.73/Ka Morkha 16.9.38 (Paper No. 73/Ka dated 16.9.38)*
2. *Kagaj No. 74/Ka Morkha 8.2.41 (Paper No. 74/Ka dated 8.2.41*
3. *Mashkula Missil Moqdma No. 2 Sa. 50 Gopal Singh Vs. Zahoor Ahmad. (file of suit no. 2 of 1950 Gopal Singh Vs. Zahoor Ahmad)*

259. Statement of Sri Sarvjeet Lal Verma and Lal Surendra Nath Singh, Advocates (Recorded on 17.07.1965 in Suit-4)

"Sri Sarvjeet Lal Verma Va Lal Surendra Nath Singh Bakaul Prativadi Ne Bayan Kiya Ki Basilsile Tankeeh no. 17 Mujhe Koi Shahadat Nahi Deni Hai.

(Sri Sarvajeet Lal Verma and Sri Surendra Nath Singh in the capacity of counsel for defendants stated that regarding issue no.17 I do not propose to adduce any evidence.) (E.T.C.)

260. Statement of Sri Deoki Nandan Agarwal (Recorded on 30.04.1992 in Suit-5)

"At the instance of Sri R.L. Varma, Sri Deoki Nandan Agarwal makes the following clarification under Order 10 Rule 2 C.P.C.

.....

"In the early hours of December 23, 1949, the idol of Bhagwan Sri Ram Lala, which was already on Ram Chabutra was transferred to the place where He presently sits, that is, under the central dome of the disputed building. I was not personally present at that time at the

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place. This information was conveyed to me by Paramhans Ram Chandra Das of Digamber Akhara. This transfer of the idol was done by Paramhans Ram Chandra Das and Baba Abhi Ram Das and certain other persons whose names I do not remember at the moment. I will have to look into the record to give their names.

The idol is Chal Vigraha (moveable idol)

Paramhans Ram Chandra Das had informed me that all the due ceremonies were performed when the idol was transferred.

Presently, the property in suit is bounded on three sides by a wall constructed by the State Government recently and on the north by public road.

The entire area enclosed by the aforesaid wall belongs to the Deity."

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261. Statement of Sri Jafaryab Jilani, Advocate for the plaintiff (Recorded on 11.01.1996)

" That the mosque was situate on an Nazul Plot no. 583 of the Khasra of 1931 of Mohalla Kot Ramchandra known as Ramkot at Ayodhya."

262. Statement of Sri Jafaryab Jilani, Counsel for plaintiff in Suit-4 (Recorded on 22.4.2009) :

"For the purposes of this case there is no dispute about the faith of Hindu devotees of Lord Rama regarding the birth of Lord Rama at Ayodhya as described in Balmiki Ramayana or as existing today. It is, however, disputed and denied that the site of Babri Masjid was the place of birth of Lord Rama. It is also denied that there was any Ram Janam Bhoomi Temple at the site of Babri Masjid at any time whatsoever.

The existence of Nirmohi Akhara from the second

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half of Nineteenth Century onwards is also not disputed. It is, however, denied and disputed that Nirmohi Akhara was in existence and specially in Ayodhya in 16th Century A.D. or in 1528 A.D. and it is also denied that any idols were there in the building of the Babri Masjid up to 22nd December, 1949. "

263. Statement of Sri Mustaq Ahmad Siddiqui, counsel for plaintiff in Suit-4 (Recorded on 22.4.2009)

"For the purposes of this case there is no dispute about the faith of Hindu devotees of Lord Rama regarding the birth of Lord Rama at Ayodhya as described in Balmiki Ramayana or as existing today. It is, however, disputed and denied that the site of Babri Masjid was the place of birth of Lord Rama. It is also denied that there was any Ram Janam Bhoomi Temple at the site of Babri Masjid at any time whatsoever.

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The existence of Nirmohi Akhara from the second half of Nineteenth Century onwards is also not disputed. It is, however, denied and disputed that Nirmohi Akhara was in existence and specially in Ayodhya in 16th Century A.D. or in 1528 A.D. and it is also denied that any idols were there in the building of the Babri Masjid up to 22nd December, 1949. "

264. Statement of Sri Syed Irfan Ahmad, Counsel for Defendants No. 6/1 and 6/2 in Suit-3 (Recorded on 22.4.2009) :

"For the purposes of this case there is no dispute about the faith of Hindu devotees of Lord Rama regarding the birth of Lord Rama at Ayodhya as described in Balmiki Ramayana or as existing today. It is, however, disputed and denied that the site of Babri Masjid was the place of birth of Lord Rama. It is also denied that there was any Ram

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Janam Bhoomi Temple at the site of Babri Masjid at any time whatsoever.

The existence of Nirmohi Akhara from the second half of Nineteenth Century onwards is also not disputed. It is, however, denied and disputed that Nirmohi Akhara was in existence and specially in Ayodhya in 16th Century A.D. or in 1528 A.D. and it is also denied that any idols were there in the building of the Babri Masjid up to 22nd December, 1949."

COMMISSIONER/RECEIVER APPOINTED FOR THE DISPUTED SITE :

265. Initially Sri Priya Dutt Ram, Chairman, Municipal Board, Ayodhya was appointed Receiver by order dated 29.12.1949 passed by the Addl. City Magistrate under Section 145 Cr.P.C. The said Receiver took charge on 5.1.1950. Sri Priya Dutt Ram continued as Receiver till 8.8.1970, i.e., upto the date of his death. Swami Govindacharya, defendant no. 19 (Suit-4) filed application dated 20.8.1970, requesting for appointment of a Civil Court Receiver. However, the City Magistrate appointed Sri K.K. Ram Verma as Receiver on 20.10.1970. Some more applications were filed requesting for appointment of Civil Court Receiver. By order dated 17.11.1970, Civil Judge, Faizabad appointed one Sri Ram Mishra as Receiver. The said order dated 17.11.1970 was assailed before this Court in FAFO No. 389 of 1970 filed by Pundreek Mishra, defendant no. 14 (Suit-4). The Court allowed the appeal vide judgement dated 20.3.1974. It held that the Civil Court is competent to appoint Receiver in place of the Criminal Court Receiver. It also noted that the Sunni Central Board of Waqf, plaintiff (Suit-4) had no objection to the appointment of Court Receiver. However, it

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found that the question who should be appointed as Receiver needs to be considered again. The matter was ultimately remanded with the following order :

> *"The case is remanded and the Court below is directed to re-consider the question of appointment of Receiver and appoint a suitable person on such terms and conditions as it deems fit.*"

266. This led to filing of a series of applications for appointment of Receiver. Some applicants requested to allow Sri K.K. Ram Verma to continue as Receiver, but some opposed it. In some applications, names of some other persons were recommended. Ultimately vide order dated 18.3.1975, the Civil Judge, Faizabad appointed one Sri Madan Mohan Dubey as Receiver whereagainst FAFO No. 181 of 1975 was filed in this Court at Allahabad which was admitted and an interim order was passed on 9.5.1975 staying the order dated 18.3.1975. This Court further directed Sri K.K. Ram Verma, Receiver appointed by the Criminal Court to continue to function as such. Sunni Central Board of Waqf as well as Mohd. Hashim filed stay vacation applications. Another stay vacation application was filed by one Abhiram Das. A Single Judge of this Court by order dated 25.10.1977 directed the District Judge, Faizabad to make an enquiry and submit report since allegations were made against Sri K.K. Ram Verma. In the meantime, while the said report was awaited, the appeal was transferred from Allahabad to Lucknow and re-registered as FAFO No. 17 of 1977. The District Judge, Faizabad submitted his report on 19.7.1978 and the appeal was decided vide judgment dated 23.7.1987 remanding the matter to Civil Court, requesting it to consider again the names of suitable persons for appointment as Receiver

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and till then Sri K.K. Ram Verma was allowed to continue. Sri Verma functioned as Receiver till 24.08.1988. On 25.08.1988 one Sri L.P.N. Singh was appointed as Receiver, who was replaced by Sri Jamuna Prasad Singh appointed on 22.11.1988 and died on 20.02.1992 whereafter Sri U.C. Tiwari was appointed as interim Receiver and was replaced by Sri R.K. Sarkar on 28.08.1992. Sri Sarkar continued till he was replaced by authorised person under the provisions of Ayodhya Act i.e. on 03.04.1993 and the Commissioner, Faizabad Division, functioning as Authorised Person, is managing the site in dispute as its Receiver since then.

ISSUES

267. In Suit-1 issues were framed on 09.03.1962, in Suit-3 the same were framed on 17.05.1963 and in Suit-4, the Civil Judge, Faizabad framed issues on 05.03.1964. Thereafter issue no. 17 (Suit-4) was taken up as preliminary issue and was decided by the Civil Judge, Faizabad vide judgment dated 21.04.1966 along with which issues no. 5(a), 5(c) and 5(d) (Suit-4) also stood decided.

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268. After transfer of the aforesaid three Suits to this Court, pursuant to the Court's Order dated 10.07.1989, various issues were recast/added on 22.05.1990, 25.09.1990 and 04.12.1990. In Suit-5 issues were framed on 30.04.1992 and 07.05.1992. After demolition of the disputed structure and the decision of the Apex Court in **Dr. Ismail Farooqui (Supra),** various issues were re-examined/ modified/deleted/re-framed after considering the submissions of all the parties as well as the pleadings and finalized on 23.02.1996 which read as under, suit-wise:

269. Suit-4 :

Issue No. 1:-

Whether the building in question described as mosque in the sketch map attached to the plaint

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(hereinafter referred to as the building) was a mosque as claimed by the plaintiffs? If the answer is in the affirmative-

(a) When was it built and by whom-whether by Babar as alleged by the plaintiffs or by Meer Baqi as alleged by defendant no.13?

(b) Whether the building had been constructed on the site of an alleged Hindu temple after demolishing the same as alleged by defendant no.13? If so, its effect?

Issue No. 1-B(a) :-

Whether the building existed at Nazul plot no. 583 of the Khasra of the year 1931 of Mohalla Kot Ram Chandra known as Ram Kot, City Ayodhya (Nazul Estate) Ayodhya? If so its effect thereon?

Issue No. 1-B(b) :-

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Whether the building stood dedicated to almighty God as alleged by the plaintiffs?

Issue No. 1-B(c) :-

Whether the building had been used by the members of the Muslim community for offering prayers from times immemorial? If so, its effect?

Issue No. 2 :-

Whether the plaintiffs were in possession of the property in suit upto 1949 and were dispossessed from the same in 1949 as alleged in the plaint?

Issue No. 3 :-

Is the suit within time?

Issue No. 4 :-

Whether the Hindus in general and the devotees of Bhagwan Sri Ram in particular have perfected right of

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prayers at the site by adverse and continuous possession as of right for more than the statutory period of time by way of prescription as alleged by the defendants?

Issue No. 5 :-

(a)Are the defendants estopped from challenging the character of property in suit as a waqf under the administration of plaintiff no.1 in view of the provision of 5(3) of U.P. Act 13 of 1936?

(b) Has the said Act no application to the right of Hindus in general and defendants in particular, to the right of their worship?

(c) Were the proceedings under the said Act conclusive?

(d) Are the said provision of Act XIII of 1936 ultra-vires as alleged in written statement?

(e) Whether in view of the findings recorded by the learned Civil Judge on 21.4.1966 on issue no.17 to the effect that "No valid notification under section 5(1) of the Muslim Waqf Act (No. XIII of 1936) was ever made in respect of the property in dispute", the plaintiff Sunni Central Board of Waqf has no right to maintain the present suit?

(f) Whether in view of the aforesaid finding, the suit is barred on account of lack of jurisdiction and limitation as it was filed after the commencement of the U.P. Muslim Waqf Act, 1960?

Issue No. 6 :-

Whether the present suit is a representative suit, plaintiffs representing the interest of the Muslims and defendants representing the interest of the Hindus?

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Issue No. 7 :-

(a) Whether Mahant Raghubar Dass, plaintiff of Suit No. 61/280 of 1885 had sued on behalf of Janma Sthan and whole body of persons interested in Janma-Sthan?

(b) Whether Mohammad Asghar was the Mutwalli of alleged Babri Masjid and did he contest the suit for and on behalf of any such mosque?

(c) Whether in view of the judgment in the said suit, the members of the Hindu community, including the contesting defendants, are estopped from denying the title of the Muslim community, including the plaintiffs of the present suit, to the property in dispute? If so, its effect?

(d) Whether in the aforesaid suit, title of the Muslims to the property in dispute or any portion thereof was admitted by plaintiff of the that suit? If so, its effect?

Issue No. 8 :-

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Does the judgment of case No. 6/281 of 1881, Mahant Raghubar Dass Vs. Secretary of State and others operate as res judicata against the defendants in suit?

Issue No. 9 :-

Deleted vide order dated May 22/25, 1990

Issue No. 10 :-

Whether the plaintiffs have perfected their rights by adverse possession as alleged in the plaint?

Issue No. 11 :-

Is the property in suit the site of Janam Bhumi of Sri Ram Chandraji?

Issue No. 12 :-

Whether idols and objects of worship were placed inside the building in the night intervening 22nd and 23rd

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December 1949 as alleged in paragraph 11 of the plaint or they have been in existence there since before? In either case, effect?

Issue No. 13 :-

Whether the Hindus in general and defendants in particular had the right to worship the Charans and 'Sita Rasoi' and other idols and other objects of worship, if any, existing in or upon the property in suit?

Issue No. 14 :-

Have the Hindus been worshipping the place in dispute as Sri Ram Janam Bhumi or Janam Asthan and have been visiting it as a sacred place of pilgrimage as of right since times immemorial? If so, its effect?

Issue No. 15 :-

Have the Muslims been in possession of the property in suit from 1528 A.D. continuously, openly and to the knowledge of the defendants and Hindus in general? If so, its effect?

Issue No. 16 :-

To what relief, if any, are the plaintiffs or any of them, entitled?

Issue No. 17 :-

Whether a valid notification under Section 5(1) of the U.P. Muslim Waqf Act No. XIII of 1936 relating to the property in suit was ever done? If so, its effect?

Issue No. 18 :-

What is the effect of the judgment of their Lordships of the Supreme Court in Gulam Abbas and others vs. State of U.P. and others, AIR 1981 Supreme Court 2198 on the finding of the learned Civil Judge recorded on 21st April,

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1966 on issue no. 17?

Issue No. 19(a) :-

Whether even after construction of the building in suit Deities of Bhagwan Sri Ram Virajman and the Asthan, Sri Ram Janam Bhumi continued to exist on the property in suit as alleged on behalf of defendant no.13 and the said places continued to be visited by devotees for purposes of worship? If so, whether the property in dispute continued to vest in the said Deities?

Issue No. 19(b) :-

Whether the building was land-locked and cannot be reached except by passing through places of Hindu worship? If so, its effect?

Issue No. 19(c) :-

Whether any portion of the property in suit was used as a place of worship by the Hindus immediately prior to the construction of the building in question? If the finding is in the affirmative, whether no mosque could come into existence in view of the Islamic tenets at the place in dispute?

Issue No. 19(d) :-

Whether the building in question could not be a mosque under the Islamic Law in view of the admitted position that it did not have minarets?

Issue No. 19(e) :-

Whether the building in question could not legally be a mosque as on plaintiffs' own showing it was surrounded by a graveyard on three sides?

Issue No. 19(f) :-

Whether the pillars inside and outside the building in

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question contain images of Hindu Gods and Goddesses? If the finding is in the affirmative, whether on that account the building in question cannot have the character of Mosque under the tenets of Islam?

Issue No. 20(a) :-

Whether the Wqaf in question cannot be a Sunni Waqf as the building was not allegedly constructed by a Sunni Mohammedan but was allegedly constructed by Meer Baqi who was allegedly a Shia Muslim and the alleged Mutwallis were allegedly Shia Mohammedans? If so, its effect?

Issue No. 20(b) :-

Whether there was a Mutwalli of the alleged Waqf and whether the alleged Mutwalli not having joined in the suit, the suit is not maintainable so far as it relates to relief for possession?

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Issue No. 21 :-

Whether the suit is bad for non-joinder of alleged Deities?

Issue No. 22 :-

Whether the suit is liable to be dismissed with special costs?

Issue No. 23 :-

Whether the Waqf board is an instrumentality of State? If so, whether the said Board can file a suit against the State itself?

Issue No. 24 :-

If the Waqf Board is State under Article 12 of the Constitution? If so, the said Board being the State can file any suit in representative capacity sponsoring the case of

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particular community and against the interest of another community?

Issue No. 25 :-

Whether demolition of the disputed structure as claimed by the plaintiff, it can still be called a mosque and if not whether the claim of the plaintiffs is liable to be dismissed as no longer maintainable

Issue No. 26 :-

Whether Muslims can use the open site as mosque to offer prayer when structure which stood thereon has been demolished

Issue No. 27 :-

Whether the courtyard contained Ram Chabutara, Bhandar and Sita Rasoi If so, whether they were also demolished on 6.12.1992 along with the main temple?

Issue No. 28 :-

Whether the defendant no.3 has ever been in possession of the disputed site and the plaintiffs were never in its possession?

270. Suit-1 :

Issue No. 1 :-

Is the property in suit the site of Janam Bhumi of Sri Ram Chandra Ji?

Issue No. 2 :-

Are there any idols of Bhagwan Ram Chandra Ji and are His Charan Paduka situated in the site in suit?

Issue No. 3 :-

Has the plaintiff any right to worship the 'Charan Paduka' and the idols situated in the site in suit.

Issue No. 4 :-

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Has the plaintiff the right to have Darshan of the place in suit?

Issue No. 5(a) :-

Was the property in suit involved in Original Suit No. 61/280 of 1885 in the court of Sub -Judge, Faizabad, Raghubar Das Mahant Vs. Secretary of State for India and others?

5(b) Was it decided against the plaintiff?

5(c) Was the suit within the knowledge of Hindus in general and were all Hindus interested in the same?

5(d) Does the decision in same bar the present suit by principles of res judicata and in any other way?

Issue No. 6 :-

Is the property in suit a mosque constructed by Shanshah Babar commonly known as Babri Mosque, in 1528 A.D.?

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Issue No. 7 :-

Have the Muslims been in possession of the property in suit from 1528 A.D. continuously, openly and to the knowledge of plff and Hindus in general? If so, its effect?

Issue No. 8 :-

Is the suit barred by proviso to Section 42 Specific Relief Act?

Issue No. 9 :-

Is the suit barred by provision of Section 5(3) of the Muslim Waqfs Act (U.P. Act 13 of 1936)?

9(a). Has the said Act no application to the right of Hindus in general and plaintiff of the present suit , in particular to his right of worship?

9(b). Were the proceedings under the said Act,

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referred to in written statement para 15, collusive? If so its effect?

9(c) Are the said provisions of the U.P. Act 13 of 1936 ultra vires for reasons given in the statement of plaintiff's counsel dated 9.3.62 recorded on paper no. 454-A?

Issue No. 10 :-

Is the present suit barred by time?

Issue No. 11 :-

(a) Are the provisions of section 91 C.P.C. applicable to present suit? If so, is the suit bad for want of consent in writing by the Advocate General?

(b) Are the rights set up by the plaintiff in this suit independent of the provisions of section 91 CPC? If not, its effect.

Issue No. 12 :-

Is the suit bad for want of steps and notice under Order 1, Rule 8 CPC? If so, its effect?

Issue No. 13 :-

Is the suit no. 2 of 50 Shri Gopal Singh Visharad Vs. Zahoor Ahmad bad for want of notice under Section 80 CPC.

Issue No. 14 :-

Is the suit no. 25 of 50 Param Hans Ram Chandra Vs. Zahoor Ahmad bad for want of valid notice under section 80 CPC?

Issue No. 15 :-

Is the suit bad for non-joinder of defendants?

Issue No. 16 :-

Are the defendants or any of them entitled to special

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costs under Section 35-A C.P.C.

Issue No. 17 :-

To what reliefs, if any, is the plaintiff entitled?

271. Suit-3 :

Issue No. 1 :-

Is there a temple of Janam Bhumi with idols installed therein as alleged in para 3 of the plaint.

Issue No. 2 :-

Does the property in suit belong to the plaintiff no.1?

Issue No. 3 :-

Have plaintiffs acquired title by adverse possession for over 12 years?

Issue No. 4 :-

Are plaintiffs entitled to get management and charge of the said temple?

Issue No. 5 :-

Is the property in suit a mosque made by Emperor Babar known as Babari Masjid?

Issue No. 6 :-

Was this alleged mosque dedicated by Emperor Babar for worship by Muslims in general and made a public waqf property?

Issue No. 7 :-

(a) Has there been a notification under Muslim Waqf Act Act No. 13 of 1936) declaring this property in suit as a Sunni Waqf?

(b) Is the said notification final and binding? Its effect?

Issue No. 8 :-

Have the rights of the plaintiffs extinguished for want

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of possession for over 12 years prior to the suit?

Issue No. 9 :-

Is the suit within time?

Issue No. 10 :-

(a) Is the suit bad for want of notice u/s 80 C?

(b) Is the above plea available to contesting defendants?

Issue No. 11 :-

Is the suit bad for non-joinder of necessary defendants?

Issue No. 12 :-

Are defendants entitled to special costs u/s 35 CPC?

Issue No. 13 :-

To what relief, if any, is the plaintiff entitled?

Issue No. 14 :-

Is the suit not maintainable as framed?

Issue No. 15 :-

Is the suit property valued and court fee paid sufficient?

Issue No. 16 :-

Is the suit bad for want of notice u/s 83 of U.P. Act 13 of 1936?

Issue No. 17 :-

Whether Nirmohi Akhara, plaintiff, is Panchayati Math of Rama Nand sect of Bairagis and as such is a religious denomination following its religious faith and persuit according to its own custom?

272. Suit-5 :

Issue No. 1 :-

Whether the plaintiffs 1 and 2 are juridical persons?

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Issue No. 2 :-

Whether the suit in the name of Deities described in the plaint as plaintiffs 1 and 2 is not maintainable through plaintiff no.3 as next friend?

Issue No. 3 :-

(a) Whether the idol in question was installed under the central dome of the disputed building (since demolished) in the early hours of December 23, 1949 as alleged by the plaintiff in paragraph 27 of the plaint as clarified in their statement under Order 10 Rule 2 C.P.C.

(b) Whether the same idol was reinstalled at the same place on a Chabutara under the canopy?

(c) Whether the idols were placed at the disputed site on or after 6.12.1992 in violation of the courts order dated 14.8.1989 and 15.11.91?

(d) If the aforesaid issue is answered in the affirmative, whether the idols so placed still acquire the status of a deity.

Issue No. 4 :-

Whether the idol in question had been in existence under the "Shikhar" prior to 6.12.92 from time immemorial as alleged in paragraph 44 of the additional written statement of defendant no.3?

Issue No. 5 :-

Is the property in question properly identified and described in the plaint?

Issue No. 6 :-

Is the plaintiff no.3 not entitled to represent the plaintiffs 1 and 2 as their next friend and is the suit not competent on this account?

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Issue No. 7 :-

Whether the defendant no.3 alone is entitled to represent plaintiffs 1 and 2, and is the suit not competent on that account as alleged in paragraph 49 of the additional written statement of defendant no.3?

Issue No. 8 :-

Is the defendant Nirmohi Akhara the "Shebait" of Bhagwan Sri Ram installed in the disputed structure?

Issue No. 9 :-

Was the disputed structure a mosque known as Babri Masjid?

Issue No. 10 :-

Whether the disputed structure could be treated to be a mosque on the allegations contained in paragraph 24 of the plaint?

Issue No. 11 :-

Whether on the averments made in paragraph 25 of the plaint, no valid waqf was created in respect of the structure in dispute to constitute it as a mosque?

Issue No. 12:- *Deleted vide order dated 23.02.1996.*

Issue No. 13 :-

Whether the suit is barred by limitation?

Issue No. 14 :-

Whether the disputed structure claimed to be Babri Masjid was erected after demolishing Janma Sthan temple at its site.

Issue No. 15 :-

Whether the disputed structure claimed to be Babri Masjid was always used by the Muslims only regularly for offering Namaz ever since its alleged construction in 1528

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A.D. to 22nd December 1949 as alleged by the defendants 4 and 5?

Issue No. 16 :-

Whether the title of plaintiffs 1 and 2, if any, was extinguished as alleged in paragraph 25 of the written statement of defendant no.4? If yes, have plaintiffs 1 and 2 reacquired title by adverse possession as alleged in paragraph 29 of the plaint?

Issue No. 17:- Deleted vide order dated 23.02.1996.

Issue No. 18:-

Whether the suit is barred by section 34 of the Specific Relief Act as alleged in paragraph 42 of the additional written statement of defendant no.3 and also as alleged in paragraph 47 of the written statement of defendant no.4 and paragraph 62 of the written statement of defendant no. 5?

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Issue No. 19 :-

Whether the suit is bad for non-joinder of necessary parties, as pleaded in paragraph 43 of the additional written statement of defendant no.3?

Issue No. 20 :-

Whether the alleged Trust creating the Nyas , defendant no.21, is void on the facts and grounds stated in paragraph 47 of the written statement of defendant no.3?

Issue No. 21 :-

Whether the idols in question cannot be treated as Deities as alleged in pragraphs 1,11,12,21,22, 27 and 41 of the written statement of defendant no.4 and in paragraph 1 of the written statement of defendant no.5?

Issue No. 22 :-

Whether the premises in question or any part thereof is

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by tradition, belief and faith the birth place of Lord Rama as alleged in paragraphs 19 and 20 of the plaint? If so, its effect?

Issue No. 23 :-

Whether the judgment in suit no. 61/280 of 1885 filed by Mahant Raghubar Das in the Court of Special Judge, Faizabad is binding upon the plaintiffs by application of the principles of estoppel and res judicata as alleged by the defendants 4 and 5?

Issue No. 24 :-

Whether worship has been done of the alleged plaintiff Deity on the premises in suit since time immemorial as alleged in para 25 of the plaint?

Issue No. 25 :-

Whether the judgment and decree dated 30th March 1946 passed in Suit No. 29 of 1945 is not binding upon the plaintiffs as alleged by the plaintiffs?

Issue No. 26 :-

Whether the suit is bad for want of notice under section 80 C.P.C. as alleged by the defendants 4 and 5?

Issue No. 27 :-

Whether the plea of suit being bad for want of notice under Section 80 CPC can be raised by defendants 4 and 5?

Issue No. 28 :-

Whether the suit is bad for want of notice under Section 65 of the U.P. Muslim Waqfs Act, 1960 as alleged by defendants 4 and 5? If so, its effect.

Issue No. 29 :-

Whether the plaintiffs are precluded from bringing

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the present suit on account of dismissal of suit no. 57 of 1978 (Bhagwan Sri Ram Lala Vs. State) of the Court of Munsif Sadar, Faizabad?

Issue No. 30 :-

To what relief, if any, are plaintiffs or any of them entitled?

273. It is worthy to mention that after submission of ASI report neither the pleadings were got amended nor any new issue sought to be framed. The parties also did not find any reason or justification for requesting this Court for addition or alteration in the existing issues though arguments have been advanced and evidence also led. We may specifically place it on record that no issue has been framed whether Lord Ram existed or born in Ayodhya or that the present location of Ayodhya is the same as it was in the olden days and in particular at the time when Hindu believe that Lord Ram was born thereat. Further there is also no issue whether there existed any Islamic religious structure, building etc. at the disputed site before the construction of the disputed building or whether there existed a 'Kanati Masjid' or 'Eidgah' or 'other Muslim religious building' at the site in dispute before erection of the disputed structure. There is also no issue whether the temple if any, demolished for raising construction of the disputed building was constructed by Maharaja Vikramaditya or by Kings of Gahadwal Dynasty and regarding the shape, size etc. thereof. It is well settled and need no authority that the matter in respect whereof issues are not framed, should neither be allowed to be raised nor be examined by the Civil Court and it should confine adjudication in respect of the matter covered by the issues framed before it. (See **Mohd. Saleh vs. Ram Ratan AIR 1924 Nagpur 156** and **Suraj Bhan vs. Harchandgir 1954 PEPSU 65 (DB).** We, therefore confine ourselves, in the present cases, only to the issues raised before us and not otherwise.

EVIDENCES ADDUCED-In Brief

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274. (1) Oral Depositions : Parties to these suits produced 88 witnesses, who deposed on one or the other subject. Broadly, these witnesses are categorized as under:

275. (a) Witnesses produced in Suit-4 by Plaintiff :

(I) Witness of facts :

1. P.W. 1 Sri Mohd. Hashim
2. PW 2 Hazi Mahboob Ahmed
3. PW 3 Farooq Ahmad
4. PW 4 Mohd. Yasin
5. PW 5 Sri Abdul Rehman
6. PW 6 Mohd. Yunus Siddiqui
7. PW 7 Sri Hashmat Ullah Ansari
8. PW 8 Sri Abdul Aziz
9. PW 9 Syeed Akhlak Ahmad
10. PW 10 Mohd. Idris
11. PW11 Mohd. Burhanuddin
12. PW 12 Ram Shanker Upadhyay
13. PW 13 Suresh Chandra Mishra
14. PW 14 Jalil Ahmad
15. PW 21 Dr. M. Hashim Qidwai
16. PW 23 Mohd Qasim Ansari
17. PW 25 Mohd. Sibte Naqvi

(II) Expert Witnesses (Historian)

18. PW 15 Sushil Srivastava
19. PW 18 Prof. Suvira Jaiswal
20. PW 20 Prof. Shirin Musavi

(III) Expert Witnesses (Archaeologist)

21. PW 16 Prof. Suraj Bhan
22. PW 24 Prof. D. Mandal
23. PW 27 Dr. Shereen F. Ratnagar

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24. PW 28 Dr. Sita Ram Roy
25. PW 29 Dr. Jaya Menon
26. PW 30 Dr. R. C. Thakran
27. PW 31 Dr. Ashok Datta
28. PW 32 Dr. Supriya Verma

(IV) Private Commissioner

29. PW 17 Zafar Ali Siddiqui

(V) Expert Witnesses (Religious Matters)

30. PW 19 Maulana Atiq Ahmad
31. Pw 22 Mohd. Khalid Naqui
32. PW 26 Kalbe Jawed

276. (b) Witnesses produced in Suit-5 by Plaintiff :

(I) Witness of facts :

1. OPW 1 Mahant Paramhans Ram Chandra Das
2. OPW 2 Sri D.N. Agarwal
3. OPW 4 Harihar Prasad Tewari
4. OPW 5 Ram Nath Mishra alias Banarsi Panda
5. OPW 6 Hausila Prasad Tripathit
6. OPW 7 Sri Ram Surat Tewari
7. OPW 8 Ashok Chandra Chatterjee
8. OPW 12 Kaushal Kishor Misra
9. OPW 13 Narad Saran

(II) Expert Witnesses (Archaeologist)

10. OPW 3 Dr. S.P. Gupta
11. OPW 14 Dr. Rakesh Tewari
12. OPW 17 Dr. R. Nagaswami
13. OPW 18 Sri Arun Kumar Sharma
14. OPW 19 Sri Rakesh Dutta Trivedi

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(III) Expert Witness (Epigraphist and Historian)

15. OPW 9 Dr. T.P. Verma

(IV) Expert Witnesses (Epigraphist)

16. OPW 10 Dr. Voluvyl Vyasarayasastri Ramesh
17. OPW 15 Dr. M.N. Katti

(V) Expert Witnesses (Historian)

18. OPW 11 Dr. Satish Chandra Mittal

(VI) Expert Witnesses (Religious Matters)

19. OPW 16 Jagadguru Ramanandacharya Swami Ram Bhadracharya

277. (c) Witnesses produced in Suit-1 by Plaintiff :

(I) Witness of facts :

1. DW 1/1 Sri Rajendra Singh
2. DW 1/2 Sri Krishna Chandra Singh
3. DW 1/3 Sri Sahdeo Prasad Dubey

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278. (d) Witnesses produced in Suit-3 of 1989 by Plaintiff :

(I) Witness of facts :

1. DW 3/1 Mahant Bhaskar Das
2. DW 3/2 Sri Raja Ram Pandey
3. DW 3/3 Sri Satya Narain Tripathi
4. DW 3/4 Mahant Shiv Saran Das
5. DW 3/5 Sri Raghunath Prasad Pandey
6. DW 3/6 Sri Sita Ram Yadav
7. DW 3/7 Mahant Ramji Das
8. DW 3/8 Pt. Shyam Sundar Mishra @ Barkau Mahraj
9. DW 3/9 Sri Ram Ashrey Yadav
10. DW 3/11 Sri Bhanu Pratap Singh
11. DW 3/12 Sri Ram Akshaibar Pandey

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12. DW 3/13 Mahant Ram Subhag Shashtri
13. DW 3/15 Narendra Bahadur Singh
14. DW 3/16 Sri Shiv Bhikh Singh
15. DW 3/17 Sri Mata Badal Tewari
16. DW 3/18 Sri Acharya Mahant Bansidhar Das @ Uriya Baba
17. DW 3/19 Sri Ram Milan Singh
18. DW 3/20 Mahant Raja Ramchandr--acharya

(II) Others :

19. DW 3/10 Sri Pateshwari Dutt Pandey
20. DW 3/14 Jagad Guru Ramanandacharya Swami Haryacharya

279. (e) Witnesses produced by Defendant 2/1 in Suit-4 :

(I) Witness of facts :

1. D.W.2/1-3 Mahant Ram Vilas Das Vedanti

(II) Others :

2. D.W.2/1-1 Sri Rajendra.
3. D.W.2/1-2 Sri Ram Saran Srivastava

280. (f) Witnesses produced by Defendant 13/1 in Suit-4 :

(I) Expert Witness (Historian) :

1. DW 13/1-3 Dr. Bishan Bahadur

(II) Others :

2. DW 13/1-1 Mahant Dharam Das
3. DW 13/1-2 Mahant Awadh Bihari Das Pathak

281. (g) Witnesses produced by Defendant 17 in Suit-4 :

(I) Witness of facts :

1. DW 17/1 Sri Ramesh Chandra Tripathi

282. (h) Witnesses produced by Defendant 20 in Suit-4 :

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(I) Witness of facts :

1. DW 20/1 Sri Shashi Kant Rungta
2. DW 20/4 Sri M.M. Gupta

(II) Expert Witnesses (Religious Matters)

3. DW 20/2 Swami Avimukteshwaran and Saraswati
4. DW 20/3 Bramchari Ram Rakshanand

(III) Expert Witness (Archaeologist)

5. DW 20/5 Sri Jayanti Prasad Srivastava

283. (i) Witnesses produced by Defendant 6/1 in Suit-3 :

(I) Expert Witness (Archaeologist) :

1. DW 6/1-2 Sri Mohd. Abid

(II) Others :

2. DW 6/1-1 Sri Haji Mahboob Ahmad

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284. The statement of DW13/1-2 Mahant Awadh Bihari Das Pathak, could not be concluded due to his death in the meantime. Therefore, neither in law nor otherwise the same is admissible at all and to this effect the parties are also in agreement. Similarly, the statement of OPW 2, Deoki Nandan Agarwal could not be concluded since during the course of cross examination by Sri Jilani, he fell ill and ultimately died. Therefore, in view of Section 32 of the Evidence Act, the above statement of OPW 2 is also not admissible. However, Counsel for plaintiff (Suit-5) sought to advance his argument on this aspect is that to the extent some of the parties have completed their cross examination, the statement of OPW 2 can be read and, therefore, at this stage with regard to statement of OPW 2 we are not giving any final opinion and shall deal with it subsequently at appropriate stage.

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285. The above witnesses have deposed to support the case of the respective parties. As noticed already, a large number of them are experts in different disciplines i.e. History, Archaeology, Epigraphy, Palaeontology, etc. They have deposed to give their opinion in the field of their expertise. Broadly and briefly, the facts in support whereof the above witnesses have been produced may be categorized as under:

A. <u>Existence of Mosque, continuous prayer by Muslims etc. (On behalf of Plaintiffs in Suit-4)</u>

286. The witnesses of facts produced on behalf of Muslim parties are to prove that up to the date of attachment or till 22/23.12.1949 Muslims had offered prayer regularly in the disputed structure, the same was always treated, used and practiced to be a 'Mosque', there was no idol of Lord Ram herein in the inner courtyard or under the central dome of three domed structure. These witnesses are, PW 1-Sri Mohd. Hashim; PW 2- Hazi Mahboob Ahmed; PW 3-Farooq Ahmad; PW 4-Mohd. Yasin; PW 5-Sri Abdul Rehman; PW 6-Mohd. Yunus Siddiqui; PW 7-Sri Hashmat Ullah Ansari; PW 8-Sri Abdul Aziz; PW 9-Syeed Akhlak Ahmad; PW 14-Jalil Ahmad; PW 21-Dr. M. Hashim Qidwai; PW 22-Mohd. Khalid Naqui; PW 23, Mohd. Qasim Ansari and PW 25-Sibte Mohd. Naqvi. (Total 14)

B. <u>Birthplace of Lord Ram; continuous worship by Hindus; No Namaz, no mosque etc.</u>

287. The Hindu parties on the contrary have produced witnesses to prove that Lord Ram was born at the disputed site as per the faith and belief of Hindus; the site in dispute was always worshiped as birthplace of Lord Ram; the Muslims never and at least since 1934 have offered prayer (Namaz) at the disputed site; the site in dispute had a massive temple of Lord Ram which was demolished/damaged by Emperor Babar

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through Mir Baqi, a Commander of Babar in 1528; he constructed a Mosque which could not be completed or even if completed but was never practiced as Mosque since no prayer (Namaz) could be offered by Muslims thereat; the building constructed by Babar/Mir Baqi continued to be a temple of Lord Ram and worshiped by Hindus as such; throughout the Hindus are worshiping the place as the site of birth of Lord Ram, there was no mosque at all etc. These witnesses are DW 1/1-Sri Rajendra Singh; DW 1/2-Sri Krishna Chandra Singh; DW 1/3-Dr. Sahdeo Prasad Dubey; DW 2/1-1-Sri Rajendra Singh; DW 2/1-2-Sri Ram Saran Srivastava; DW 2/1-3-Mahant Ram Vilas Das Vedanti; DW 3/1-Mahant Bhaskar Das; DW 3/2-Sri Raja Ram Pandey; DW 3/3-Sri Satya Narain Tripathi; DW 3/4-Mahant Shiv Saran Das; DW 3/5, Raghunath Prasad Pandey; DW 3/6-Sri Sita Ram Yadav; DW 3/7, Mahant Ramji Das; DW 3/8-Pt. Shyam Sundar Mishra @ Barkau Mahraj; DW 3/9-Sri Ram Asrey Yadav; DW 3/11-Sri Bhanu Pratap Singh; DW 3/12-Sri Ram Akshaibar Pandey; DW 3/13-Mahant Ram Subhag Shastri; DW 3/14-Jagadguru Ramanandacharya Swami Haryacharya; DW 3/15-Sri Narendra Bahadur Singh; DW 3/16-Sri Shiv Bhikh Singh; DW 3/17-Sri Mata Badal Tewari; DW 3/18-Sri Acharya Mahant Bansidhar Das @ Uriya Baba; DW 3/19-Sri Ram Milan Singh; DW 3/20-Mahant Raja Ramchandracharya; DW 13/1-1-Mahant Daram Das; DW 17/1-Sri Ramesh Chandra Tripathi; DW 20/1-Sri Shashi Kant Rungta; DW 20/2-Swami Avimukteshwaranand Saraswati; and DW 20/3-Bramchari Ram Rakshanand; OPW 1-Mahant Paramhans Ram Chandra Das; OPW 2-Sri Deoki Nandan Agarwal; OPW 4- Sri Harihar Prasad Tewari; OPW 5-Sri Ram Nath Mishra alias Banarsi Panda; OPW 6-Sri Hausila Prasad

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Tripathi; OPW 7-Sri Ram Surat Tewari; OPW 12-Sri Kaushal Kishor Misra; OPW 13-Sri Narad Saran. (Total 38)

C. <u>Temple (Existence and demolition):</u>

288. The third set of witnesses are those experts who have deposed about the existence or non existence of temple, its demolition; construction of mosque in 1528 A.D. etc., in support of one or the other party. The witnesses who have said that there existed no temple when the mosque in question was constructed in 1528 A.D. by Mir Baqi and that there was no evidence that the site in dispute was a birthplace of Lord Ram are, PW12- Sri Ram Shanker Upadhyay; PW 13-Sri Suresh Chandra Mishra; PW 15-Sri Sushil Srivastava; PW 16-Prof. Suraj Bhan; PW 18-Prof. Suvira Jaiswal; PW 20-Prof. Shirin Musavi; PW 24- Prof. D. Mandal; PW 27-Dr. Shereen F. Ratnagar; and PW 28-Dr. Sita Ram Roy. The witnesses who have deposed otherwise are OPW 3-Dr. Swaraj Prakash Gupta; OPW 9-Dr. Thakur Prasad Verma; OPW 11-Dr. Satish Chandra Mittal; OPW 16-Jagadguru Ramanandacharya Swami Ram Bhadracharya; DW 13/1-3-Dr. Bishan Bahadur; and DW 20/4-Sri Madan Mohan Gupta. (Total 12)

D. <u>ASI Report:</u>

289. The ASI has submitted its report giving its opinion that there was a massive structure beneath disputed building which had continued till the disputed building was constructed and in view of the various artefacts etc. it resembles religious structure of Northern India. On behalf of Muslim parties, expert witnesses have deposed to contradict the said report while on behalf of Hindu parties the witnesses have deposed supporting the view of ASI. On behalf of Muslim parties, PW 16-Prof. Suraj Bhan; PW 24-Prof. D. Mandal; PW 29-Dr. Jaya Menon; PW 30- Dr. R. C.

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Thakran; PW 31-Dr. Ashok Datta, PW 32 Dr. Supriya Verma, DW 6/1-1 Sri Haji Mahboob Ahmad and DW 6/1-2 Sri Mohd. Abid have deposed their statements; while on behalf of Hindus, OPW 17-Dr. R. Nagaswami; OPW 18-Sri Arun Kumar Sharma; OPW 19-Sri Rakesh Dutta Trivedi; and DW 20/5-Sri Jayanti Prasad Srivastava have deposed their statements. (Total 12)

E. Characteristics of Mosque:

290. About the characteristics of a mosque, on behalf of Muslims, some witnesses claiming expert in religious matters (Islamic Law) have been produced i.e. PW 10-Mohd. Idris; PW 11-Mohd. Burhanuddin; PW 19-Maulana Atiq Ahmad; PW 22-Mohd. Khalid Nadvi; PW 25-Sibte Mohd. Naqvi; and PW 26-Kalbe Jawed. (Total six)

F. Sanskrit Inscriptions found in 1992:

291. In reference to the aforesaid inscription and its transliteration three witnesses have been produced i.e. OPW 8-Sri Ashok Chandra Chatterjee; OPW 10-Dr. Voluvyl Vyasarayasastri Ramesh; and OPW 15-Dr. M.N. Katti. (Total three)

G. Artefacts in Debris:

292. Certain artefacts were recovered from debris which were taken over by the Government and to prove the same OPW 14-Dr. Rakesh Tewari has been produced.

H. **Commissioner/Survey Report:**

293. A Court Commissioner was appointed in some other matters in 1973 and to prove his report DW 3/10- Sri Pateshwari Dutt Pandey has been produced. A private survey of the area in dispute and nearby is said to have been made on behalf of Muslim parties and to prove the same PW 17- Zafar Ali Siddiqui has been produced.

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(Note – There are four witnesses who are mentioned in two categories. They are PW 14, 16, 22 and 25)

294. At this stage, we propose to notice the gist of the statement in chief of the above witnesses to the facts they intend to prove.

(A) <u>WITNESSES OF FACTS -ON BEHALF OF PLAINTIFFS (SUIT 4)</u>

295. As noticed above PWs 1 to 9, 14, 21, 22, 23 and 25 have been produced in the above matter and they have deposed their statements in Hindi.

296. **<u>PW 1 Mohd. Hashim,</u>** 75 years old (in July 1996). He is plaintiff no.7 in Suit-4 and defendant no. 5 in Suit-5/89. He was cross examined on :

(a) 24/25/26.07.1996, 01/05/06.08.1996 -by Sri R.L.Verma, Advocate on behalf of Nirmohi Akhara, defendant no. 3 (p. 6-76)

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(b) 06/07.08.1996-by Sri Ved Prakash, Advocate, on behalf of defendant no.13 (p. 76-90)

(c) 20/21.08.1996-by Sri Vireshwar Dwivedi, Advocate, for Sri Umesh Chandra, defendant no. 22 (p. 91-110)

(d) 21/22.08.1996-by Sri Madan Mohan, Advocate, for Paramhans Ramchandra Das, defendant no. 2 (p. 110-128)

(e) 22/23.08.1996-by Sri Harishankar Jain, Advocate, for Hindu Mahasabha, defendant no. 10 and adopted by defendant no. 17 (p. 128-146)

(f) 23/26.08.9196-by Sri Gopal Singh Visharad, plaintiff in Suit-1 through Sri P. L. Mishra, Advocate (p. 146-164)

(g) 26/27/29.08.1996-by Sri Deoki Nandan Agarwal, plaintiff no.3 in Suit-5 (p. 164-192)

297. He is a tailor by profession, resides at Mohalla Kothia,

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Ayodhya, district Faizabad. His father late Karim Bux died in 1932 at the age of 85 years who was also a tailor. Since generations, he is residing at Ayodhya. He has an ancestral house. His residence falls in Mauza Jalwanpur, owned by Rais Dula Ram who permitted Peer Bux (grandfather of PW 1) to construct a house in the said area. His tailor's shop is in Mohalla Shringhar Hat. He studied upto Class V in Madarsa Islamia, Mohalla Kaziana and passed out Class V in 1936. He knows only Urdu. His residence is about three furlongs away from the disputed site. He was taught Quran Sharif by Maulvi Abdul Gaffar. He went to offer Namaz in Babri mosque for the first time in 1938. At that time, Friday's Namaz used to be performed in two mosques but Taravi Namaz (Special prayer/namaz performed after Isha Namaz during the pious month of Ramzan) used to be performed only in Babri mosque in the month of Ramzan. The prayer (Namaz) used to be offered five times in a day in Babri mosque. Then said that sometimes Namaz was offered five times besides Friday's and Taravi Namaz. The water (wazoo) used to be arranged in big pitchers. Imam of the mosque was Maulvi Abdul Gaffar who had died. Moazzim (a person calling Azan loudly) was Ismail. He last offered Namaz on 22.12.1949. From the night of 22/23rd December 1949, the Government imposed prohibition. Idols were placed inside by Abhay Ram Das, Dharam Das and many others. There was a large gathering. In the morning when he went for Namaz, Cops were present there. Ramdeo Dubey and Mata Prasad, Constables, were there who told that Dharam Das, Abhay Ram Das and many others have placed idols inside and he should keep patience. Consequently, he could not offer Namaz as the same was not allowed. Later on, Daroga told that he had lodged

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FIR and the mosque had been attached. In 1954 he and many others attempted to offer Namaz thereat for which the Government was also put on notice but could not offer. He and many others, i.e. 100 boys were imposed fine of Rs. 500/- each and six months imprisonment for committing breach of Section 144 Cr.P.C. In appeal the punishment was reduced to two months imprisonment and fine of Rs. 50/-which they underwent. When he went to offer Namaz, many persons, namely, Mohd. Kashim, Mohd. Ekhlaq, Jaan Mohammad, Rajjab Ali and many others accompanied him. The arrangement of mosque used to be made by Mutawalli Zaki Sahab and Zabbar who were brothers. After placing the idols a suit was filed by Gopal Singh Visharad. The witness was not a party. He was pursuing proceedings under Section 145 Cr.P.C. wherein other parties were Hazi Mohd. Fayaq, Mohd. Sami, Zahoor Ahmad, Ahmad Hussain @ Achchan and Sunni Board. He verified the following photographs with the details as mentioned hereunder:

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(i) Photograph No. 1 (Paper No. 154/4): Main gate of Babari Mosque.

(ii) Photograph No. 2 (Paper No. 154/5): Stairs from North to South, Babari Mosque.

(iii) Photograph No. 4 (Paper No. 154/7): Western portion of the back of Babari Mosque.

(iv) Photograph No. 1 (Paper No. 154/4): Front portion of the place where Imam stands while offering Namaz.

(v) Photograph No. 9 (Paper No. 154/12): Upper portion of the place where Imam stands while offering Namaz.

(vi) Photograph No. 10 (Paper No. 154/13): The place where the Imam delivers Katwa.

(vii) Photograph No. 13 (Paper No. 154/6): Internal

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urinal in the premises of Babari Mosque.

298. PW 1 further deposed that Ganj-E-Shahidan is in the east of the mosque. On the northern side there is a road and beyond that is a temple Janam Asthan. A signboard is also affixed at Janam Asthan. On the southern side of the mosque is a graveyard. Leaving the western side of the mosque, on all sides there is a graveyard in 9½ Bighas. There were several graves in 1949 which were adjacent and large in number. There was a gate each on northern and eastern side of the mosque. The northern gate opened on the road while the eastern side did not join with any passage but was connected with a brick road. Entry was mostly from the eastern gate of the mosque. In the way there was no restriction/obstruction from entering the mosque through the gate. Earlier when they used to enter **from the eastern gate there used to be a Chabutara whereupon sometimes the priest used to sit.** This Chabutara was about ten steps away from the passage and covered by thatch. **Near the northern gate of the mosque there was a Chulha used to be called "Sita Rasoi".** No obstruction caused while entering from that side due to Rasoi. There was a wall in front of Sita Rasoi. When the crowd swell, the northern gate used to be opened for passage. The northern and eastern gates were surrounded by a boundary wall. There was another wall of the mosque where there was main door which was locked. This lock was put on the date when the mosque was attached. No idols were placed inside the mosque upto 22.12.1949. No worship (Pooja) was performed inside the mosque ever. Therein Namaz used to be offered. It was a mosque and never a temple. Had Babur constructed the mosque after demolishing the temple, no Muslim would have offered Namaz therein. The suit plaint was

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prepared by Sri Ayub Sahib (Vakil). PW1 besides Mohd. Kashim, Maulana Nasir, Maulana Vakulddin, Athar Ali, Zahoor Ahmed, Fayaq, Mahmood and Shahabuddin also used to go for preparation of the case. The notice of the suit was given by Sri Ayub to the officers of Faizabad, Government and the Receiver Priya Dutt Ram. Notice meant for Receiver returned unserved. He verified the signature of Ayub on paper no. 44 Ka-1, (Ex. 56-Suit-4). Papers no. 33 Ga (Ex. 57), 35Ga (Ex. 58), 37Ga (Ex. 59), 39Ka (Ex. 60) and 41 Ka-1 (Ex. 61) in Suit-4 are the acknowledgments received after service of notice. The building of the mosque was demolished on 6.12.1992 and a boundary wall has been constructed. The building was demolished by Kar Sewaks, many of whom belong to Bajarang Dal, Shiv Sena and RSS. The demolition took place in presence of the officers and Force. After demolition of the building, idols kept therein as well as bricks were taken away by the people. New idols kept inside the boundary wall constructed on 7.12.1992. On the outer side of the mosque, there is a Chabutara in respect whereto Mahant Raghubar Das filed a suit in 1885 but he lost that case throughout from Faizabad to Lucknow.

299. **P.W. 2, Haji Mahboob Ahmad**, 58 years of age (in September, 1996). He was cross examined as under :

(a) 17/18/19.09.1996-by Nirmohi Akhara, defendant no. 3 through Sri R.L. Verma, Advocate (p. 2-63)

(b) 20.09.1996-by Sri Dharmdas, defendant no. 13, through Sri Ved Prakash, Advocate (p. 64-71)

(c) 20.09.1996- by Sri Umesh Chandra Pandey through Sri Vireshwar Mishra, Advocate (p. 72-82)

(d) 23.09.1996-by Sri Paramhans Ramchandra Das through Sri M.M. Pandey, Advocate (p. 83-92)

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(e) 23/24.09.1996-by Sri Rajendra, son of Sri Gopal Singh Visharad, through Sri P.L. Verma, Advocate (p. 92-106)

(f) 24.09.1996-by Sri Deoki Nandan Agarwal, plaintiff himself and next friend to other plaintiffs in Suit-5 (p. 106-112)

(g) 07.10.1996- by Hindu Mahasabha and Sri Ramesh Chandra Tripathi through Sri Hari Shankar Jain, Advocate (p. 113-119)

300. He is a graduate of 1967, did his High School in 1961 at the age of about 21 years, date of birth mentioned in High School certificate is 1944; is resident of Tedhi Bazar, Ayodhya, district Faizabad and his house is situated about three furlongs away from mosque (Babari mosque). He had offered Namaz in Babari mosque hundreds of times. Besides Friday Namaz he used to offer five times Namaz thereat till 22.12.1949. In 1949, Friday Namaz and Taravi Namaz used to be offered in Ayodhya only in two mosques. The main gate was in the east of the mosque whereafter there was a lawn and again a gate, then a courtyard and then the mosque. Outside the main gate of the mosque there was a graveyard. There was no obstruction in visiting the mosque for offering Namaz. He never saw any worship (Pooja) etc. being performed inside the mosque. His father used to take interest in the arrangement of the mosque and was plaintiff also in the suit. By profession he was a Zamindar-farmer. He possessed 200 Bighas of agricultural land and died in 1960. PW 2 used to visit mosque for Namaz alongwith his father. He had seen many people offering Namaz therein. Out of those persons, Hashim, Abdul Ahaq, Hazi Fayaq, Rajjab Ali, Ashraf Ali and Ekhlaq are the names he could recollect. Besides, many others also used to perform Namaz. Haji Gaffar

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was Imam of the mosque. Water used to be arranged in big pitchers. There was a well outside wherefrom water used to be brought. There was adequate arrangement for Wazoo. PW 1 is the President of Mukabir Masajid Committee. The incident of 6.12.1992 took place in his presence. He saw demolition of mosque from the roof of his house. He talked with Kumar Manglam, at that time a Minister in the then Central Government. He also talked with the Prime Minister and sent a telegram. He heard the noise shouting "demolish the mosque" (Masjid Gira Do). The voice was mainly of Km. Uma Bharti who was a leader of Vishwa Hindu Parishad. In the night of 6/7th December 1992 after constructing a Chabutara, some idols kept thereat and rest of the place is vacant. He heard that old idols got broken and the people took away the same. New idols were kept thereat. His own house, the entire building and factory were set ablaze in this incident for which a compensation of Rs. 10,000/- was offered which he refused to accept. He is still residing at the same residence where he was on 6.12.1992.

301. **PW 3-Farooq Ahmad**, son of Zahoor Ahmad, aged about 90 years (in October 1996). He was cross examined as under :

(a) 07/08/10.10.1996-by Nirmohi Akhara through Sri R.L. Verma Advocate (p. 1-33)

(b) 11/14/15.10.1996-by Sri Dharmdas through Sri Ved Prakash, Advocate (p. 34-69)

(c) 15/16.10.1996-by Sri Umesh Chandra Pandey through Sri Vireshwar Dwivedi, Advocate (p. 69-91)

(d) 16.10.1996-by Sri Paramhans Ramchandra Das through Sri Madan Mohan, Advocate (p. 91-98)

(e) 16.10.1996- by Hindu Mahasabha and Sri Ramesh Chandra Tripathi through Sri Hari Shankar Jain, Advocate

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(p. 98-102)

(f) 16/17.10.1996-by Sri Rajendra Singh, son of Sri Gopal Singh Visharad through Sri P.L. Mishra, Advocate (p. 103-108)

(g) 17.10.1996-by Sri D.N. Agarwal on behalf of himself and other 2 plaintiffs in Suit-5 (p. 108-117)

302. He is a shopkeeper by profession and resides at Mohalla Naugaji, Ayodhya, district Faizabad. His predecessors are old residents of Ayodhya, for the last about 700 years. He used to offer Namaz in Babari mosque besides Friday Namaz. Last time, he offered Namaz in December 1949. After Isha Namaz, Daroga Ramdeo told his father that there is apprehension of something untoward and therefore, the premises be locked. He himself locked it and key was handed over to his father. A report was also lodged. After offering Isha Namaz in the last of December they went to their house. Namaz used to be offered by him along with others like, Hazi Faiku, Hashim and Kasim etc. Photographs no. 83 and 84 (Black and White Photographs Album prepared by the Department of U.P. State Archaeological Association are that of Babari Mosque and its floor. Inside there was a Mehrab (arches) and rows (Safai) where the people used to offer Namaz.

303. **PW4-Mohd. Yaseen**, aged about 66 years (in October 1996). He was cross examined in the following manner ;

(a) 29/30.10.1996-by Nirmohi Akhara through Sri R.L. Verma, Advocate started (p. 3-25)

(b) 31.10.1996-by Sri Dharmdas through Sri Ved Prakash, Advocate (p. 26-46)

(c) 01.11.1996-by Sri Umesh Chandra Pandey through Sri Vireshwar Dwivedi, Advocate (p. 47-54)

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(d) 01.11.1996- by Sri Paramhans Ramchandra Das through Sri Madan Mohan Pandey, Advocate (p. 54-57)

(e) 01.11.1996- by Hindu Mahasabha and Sri Ramesh Chandra Tripathi through Sri Harishankar Jain, Advocate (p. 58-65)

(f) 01/05.11.1996-by Sri Rajendra Singh, son of Sri Gopal Singh Visharad through Sri P.L. Mishra, Advocate (p.65-70)

(g) 05.11.1996-by Sri Deoki Nandan Agarwal, plaintiff himself and next friend to other plaintiffs in Suit-5 (p. 70-79)

304. He is a shoe-maker residing in Mohalla Raiganj Gudiana, Ayodhya District Faizabad. He is acquainted with the disputed place. The building was Babri mosque and the adjacent area a graveyard which was on three sides of the mosque. No graveyard on the west side. The Babari mosque, he has learnt, is about 475 years old and was being used for offering Namaz. He has seen it clearly and himself used to offer Friday Namaz regularly. No other Namaz had been offered by him except Friday Namaz. Last time he offered Friday Namaz about 47 years ago. In the night intervening 22/23 December, 1949, idols were placed inside on account whereof Namaz could not be offered. He started offering Namaz since the age of eight years but on attaining majority started offering daily Namaz. Earlier he did not offer five times Namaz. Before attaining majority, he used to offer Fazir Namaz and sometimes Magrib Namaz. He used to offer Friday Namaz since the age of about twelve years. He offered Friday Namaz at Babri mosque which is a congregational Namaz and offered by the entire city. He used to meet Mohd. Hashim, Mahboob, Kashim, Hidaytullah, Safi

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Ullah, Rutmallu alias Abdulla of Suthati mohalla. Ekhlakh of Durohi Kunwa is alive who met frequently. Regarding the inside topography of the mosque, he said:

''इस मस्जिद का निकास पूरब की तरफ और उत्तर की तरफ था। मस्जिद में वजू का इन्तजाम भी था। पानी का इन्तजाम मुतवल्ली कराता था मस्जिद के सामने कुऑ था। वजू मस्जिद में दक्खिन की तरफ होता था। चटाई, बदना के अलावा पेशाबघर का भी वहॉ इन्तजाम था। मस्जिद में अजान भी होती थी। दक्खिन की तरफ साईड में थोड़ा सा ऊॅचा चबूतरा था उस पर खड़े होकर मुअज्जिम अजान देता था पेशाब घर के थोड़ा फासले पर मस्जिद के ऊपर जाने के लिए जीना भी था यह अजान वाला चबूतरा जीने से अलग था। मस्जिद में जहॉ अन्दर नमाज पढ़ी जाती थी वहॉ सफों की लकीरें बनी थी। मस्जिद में काले पत्थर भी लगे थे। लेकिन उन पर कोई देवी देवताओं की तस्वीरें नहीं थी। उन पर गमलों की शक्ल में फूल पत्तियॉ बनी थी।''

''The exit of this mosque was in the east and north. There was arrangement for Vazu in the mosque. The arrangement of water was made by the Mutwalli. There was a well in front of the mosque. The Vazu took place in south of the mosque. Apart from mat and broom, there was provision of urinal at that place. Ajaan also was given from the mosque. There was a slightly higher platform on south of the mosque. The Muajjim used to give the Ajaan call from that platform. There was a staircase to go up in the mosque, at a short distance from the urinal. This Ajaan platform was different from the staircase. Lines from pages were present inside the mosque, at the place where Namaz was offered. Black stones had also been installed in the mosque but they did not contain any picture of Gods and Goddesses. They had pictures of flowers and leaves in form of pots.'' (English Translation by Court, now referred as 'E.T.C.')

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305. **P.W. 5 Abdul Rehman**, son of Saiuddin, 71 years of age (in November, 1996). His cross examination followed as under :

(a) 05/06.11.1996-by Nirmohi Akhara through Sri R.L. Verma, Advocate (p. 2-32)

(b) 07.11.1996-by Dharamdas through Sri Ved Prakash, Advocate (p. 33-37)

(c) 07.11.1996- by Sri Umesh Chandra Pandey through Sri Vireshwar Dwivedi, Advocate (p. 37-44)

(d) 07.11.1996- by Rajendra Singh, son of Gopal Singh Visharad through Sri P.L. Mishra, Advocate (p. 44-45)

(e) 07.11.1996- by Sri Deoki Nandan Agarwal, plaintiff himself and next friend to other plaintiffs in Suit-5 (p. 45-49)

(f) 08.11.1996-by Hindu Mahasabha and Sri Ramesh Chandra Tripathi through Sri Hari Shankar Jain, Advocate (p. 50-53)

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(g) 28.11.1996-by Sri Paramhans Ramchandra Das through Sri Madan Mohan, Advocate (p. 54-64)

306. He is Hafiz Quran and is a resident of Ibrahimpur Pargana Mangalsi, Tahsil and District Faizabad. He started education at Jaganpur which is a nearby village of his residence, whereafter went to Madarasa Aliya Furkania situated at Chowk, Lucknow and completed his education thereat. He got certificate from the said institution. He remembers the entire Quran Sharif and that is why he is called 'Hafiz'. He deposed about offering of Namaz in the disputed mosque prior to 1949 as under:

''मैं रमजान तराबी मे कुरान शरीफ सुनाता हूँ। पहले पहल मैंने कुरान शरीफ तराबी में मशकगंज लखनऊ में सुनाया था। जिस गांव में मैं रहता हूँ वहॉ भी मस्जिद है। उस गांव की मस्जिद में भी तराबी में मैंने कुरान शरीफ सुनाया है। इसके अलावा भी और बहुत से जगह मैंने कुरान शरीफ सुनाया है। 1945 और 46 में तो मैंने बाबरी मस्जिद में भी कुरान

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शरीफ सुनाया था। यह बाबरी मस्जिद अयोध्या में थी। मैंने कई साल तक बम्बई में भी कुरान शरीफ सुनाया है। अयोध्या हमारे गांव से तकरीबन 18–19 किमी0 दूर है। मैंने अयोध्या में पूरा कुरान शरीफ सुनाया था। दोनों साल में पूरा सुनाया था। मुझे वहां पर हाजी फेकू ने बुलाया था। जिस रोज कुरान शरीफ पूरा सुना दिया गया था उसके बाद मुझे शहनवा से आये हुए मुतव्वली ने जिसका नाम मुझे अब याद नहीं दस रूपये बतौर नजराना भी दिया था। यह नजराना दोनों दफे दिया गया था। बावजूद मेरी इनकारी के। मुतवल्ली सहनवा के रहने वाले थे । जब मैं अयोध्या कुरान शरीफ सुनाने जाता था तो उन दिनों में जुम्मे की नमाज मैं बाबरी मस्जिद में पढ़ता था। जब मैं कुरान शरीफ सुनाता था तो तराबी की नमाज भी पढ़ाता था। तराबी की नमाज में कुरान शरीफ सुनाया जाता है। इसके अलावा मेरा अयोध्या कम जाना होता था। कभी जाता था तो बाबरी मस्जिद में नमाज पढ लेता था।''

"I pronounce the holy Quran in Remzan Tarabi. I had pronounced the holy Quran in Tarabi for the first time at Mashakganj, Lucknow. There is a mosque as well in the village, in which I reside. In the mosque of that village also, I have pronounced the holy Quran in Tarabi. I have pronounced the holy Quran at many places, other than the above. In 1945 and 46, I had pronounced the holy Quran in the Babri mosque. This Babri mosque was in Ayodhya. I have pronounced the holy Quran in Bombay for many years. Ayodhya is about 18-19 Km. from my village. I had pronounced the complete holy Quran in Ayodhya. Complete pronouncement took place in both years. I had invited there by Hazi Faiku. The day on which I pronounced the complete holy Quran, a Mutwalli from Shahanwa whose name I do not remember, had given me Rs. 10/- as gift. This gift was given to me on both the occasion despite my refusal. The Mutwalli belonged to Shahanwa. Whenever I went to Ayodhya to pronounce the

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holy Quran, I used to offer the Namaz of Jumma at the Babri mosque. Whenever I pronounced the holy Quran, I used to read out the Namaz of Tarabi. The holy Quran is read out in Namaz of Tarabi. Apart from this, my visits to Ayodhya were few. Whenever I visited, I used to offer Namaz at the Babri mosque." (E.T.C.)

307. **P.W. 6, Mohd. Yunus Siddiqi**, son of late Hafiz Ahmad, resident of Mohalla Reedhganj, district Faizabad, was aged about 63 years (in November, 1996). His Examination-in-chief commenced on 28.11.1996 and cross examination followed as under :

(a) 29.11.1996-by Nirmohi Akhara through Sri R.L. Verma, Advocate (p. 4-24)

(b) 02.12.1996-by Dharamdas through Sri Ved Prakash, Advocate (p. 25-29)

(c) 02/03.12.1996- by Sri Umesh Chandra Pandey through Sri Vireshwar Dwivedi, Advocate (p. 29-48)

(d) 03.12.1996- by Sri Paramhans Ramchandra Das through Sri Madan Mohan Pandey, Advocate (48-56)

(e) 03/04.12.1996-Hindu Mahasabha and Sri Ramesh Chandra Tripathi through Sri Hari Shankar Jain, Advocate (57-65)

(f) 04.12.1996- by Sri Rajendra, son of Sri Gopal Singh Visharad, through Sri P.L. Verma, Advocate (p. 65-70), Sri Deoki Nandan Agarwal, plaintiff himself and next friend to other plaintiffs in Suit-5 (p. 70-84)

308. He was enrolled as pleader on 9th July, 1955 at Lucknow and joined as trainee, the chamber of Sri Shyam Lal Mishra, Advocate, (working on Criminal side), Sri Kohli (a Tax Consultant) and Sri Ram Gupta (practicing in Sales Tax). He

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left Lucknow and came to Faizabad in 1956 and started practicing Law on criminal side. Presently he is practising mainly in sales tax matters. He did High School in 1948, Intermediate in 1950 from Government Inter college, Faizabad, Graduation from Lucknow University in 1952 and M.A. and LL.B from Aligarh Muslim University in 1954. He was counsel of the plaintiffs though presently he is not looking after this matter. He left pairavi of the case since 1965. He also verified that the disputed building was known as Babri mosque where he had gone and offered Namaz. For the first time, he offered Namaz in the night of Shabbe-Raat. His deposition about the location, inside and adjacent of the disputed building is as under:

"इमारत मुतदाविया बाबरी मस्जिद के नाम से जानी जाती थी। और मैं इसमें गया हुआ हूँ। वहाँ मैंने नमाज भी पढ़ी थी। मैं जब 12–13 साल की उम्र का था तो पहली मर्तबा अपने भाई साहब के साथ शब्बेरात की रात को इस मस्जिद में गया था। उसके बाद हर साल शब्बेरात की रात को मैं इस मस्जिद में जाया करता था। मैं वहाँ दिन में भी गया हुआ हूँ। मैंने वहाँ पर दिन में सिर्फ एक नमाज पढ़ी है बाकी शब्बेरात के मौके पर नफलें पढ़ी हैं। मैंने दिन की नमाज इस मस्जिद में सिर्फ उस वक्त पढ़ी थी जब वहाँ बुत रखा गया तो उससे पहले जुम्मे के रोज जो नमाज जमाती तौर पर हुई थी। बुत रखने के बाद मैं इस जगह पर एक तो सर्वे के वक्त गया था और एक बार 1991 में रात के वक्त जब तोड़ फोड़ हुई तो मुझे कमिश्नर साहब ने भेजा था। यह तोड़फोड़ दिन में हुई थी। कमिश्नर साहब ने मुझे रात को भेजा था। जब शब्बेरात की रात को वहाँ नमाज पढ़ने जाते थे तो फातिया भी पढ़ते थे। फातिया पढ़ने का ही असली मकसद उस नमाज पर होता है। फातिया बाबरी मस्जिद के गंजे शहीदा पर और अगल बगल की कब्रिस्तान पर, ख्वाजा हट्टी के मजार पर, शाह इब्राहिम साहब के मजार पर, नौगजी कब्र पर, शीश पैगम्बर की कब्र पर जहाँ उनकी दरगाह है पर फातिया पढ़ता था। इन जगहों पर मैं पिछले पांच सात साल में अपनी निजी मजबूरियों की वजह से नहीं जा सकता वरना 1949 के बाद सिवाय बाबरी

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मस्जिद के इन सब जगहों पर मैं फातिया पढ़ने जाता रहा हूँ।

1949 में जब मूर्तिया मस्जिद में रखी गयी तो उससे पहले हमने इस जगह पर कभी कोई मूर्ति नहीं देखी।

1949 तक मैंने मस्जिद या इसके अहाते में कभी हिन्दुओं को कोई पूजा दर्शन करते नहीं देखा। 22 दिसम्बर 1949 तक इस मस्जिद में नमाज पढ़ने पर कभी कोई किसी तरह की रूकावट नहीं आयी।''

''The disputed building was known as Babri mosque and I have been there. I have even offered Namaz there. When I was about 12-13 years old, I had gone to this mosque for the first time along with my brother in the night of Shabbe-Raat. I have been there during day time as well. I have offered Namaz only once at that place during day time and on remaining occasions I had read 'Nafle' on Shabbe-Raat. I had offered Namaz during day time in this mosque only at time of the collective Namaz of Jumma prior to installation of idol at that place. After installation of the idols, I had once been to that place at time of survey and once in 1991, the Commissioner had sent me in the night when the demolition took place. This demolition had taken place during day time and the Commissioner had sent me in the night. Whenever I went in the night of Shabbe-Raat to offer Namaz, I used to read 'Fatiya' (prayers for the dead). Reading of Fatiya is the main purpose of that Namaz. I used to read the Fatiya at the 'Ganje Shahinda' of Babri mosque, adjoining graveyard, tomb of Khwaja Hatti, tomb of Shah Ibrahim, grave of Naugji, grave of Shish Prophet. I have not been able to visit these places for last 5-7 years due to my personal problems otherwise after 1949 I had been visiting these places except for Babri mosque, to read Fatiya.

Prior to the placement of idols in the mosque in

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1949, I had not seen any idol at that place.

Till 1949 I had not seen any Hindu perform worship in the mosque or within its premises. There was no obstruction for offering Namaz in this mosque upto 22nd December, 1949." (E.T.C.)

309. **P.W. 7 Hasmat-ulla-Ansari**, son of Sri Niyamat Ulla, resident of Mohalla Kajiyana, Ayodhya, district Faizabad was aged about 65 years (in December, 1996). His Examination-in-chief commenced on 05.12.1996 and cross examination followed as under :

(a) 05/06.12.1996- by Nirmohi Akhara through Sri R.L. Verma, Advocate (p. 2-36)

(b) 09.12.1996- by Dharamdas through Sri Ved Prakash, Advocate (p. 37-51)

(c) 09/10.12.1996- by Sri Umesh Chandra Pandey through Sri Vireshwar Dwivedi, Advocate (p. 51-68)

(d) 10.12.1996- by Sri Paramhans Ramchandra Das through Sri Madan Mohan Pandey, Advocate (p. 68-76)

(e) 14.01.1997- by Sri Deoki Nandan Agarwal, plaintiff himself and next friend to other plaintiffs in Suit-5 (p. 77-81), Hindu Mahasabha and Sri Ramesh Chandra Tripathi through Sri Hari Shankar Jain, Advocate (p. 82-90)

(f) 15.01.1997-by Sri Rajendra Singh, son of Sri Gopal Singh Visharad through Sri Hari Shankar Jain, Advocate (p. 91-94)

310. By profession a typist, he was born in 1932 and educated upto High School. However, his High School certificate mentions his date of birth as 8.1.1934, but he claims it to be wrong and says that his correct year of birth is 1932. He was admitted in class VIII by his brother-in-law (bahnoi) who got

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his date of birth recorded in the school. Prior thereto he passed middle school at Katra which is near Suthati, Ayodhya. There he studied for about 1½ years. He verified the identity of the disputed building as "Babri mosque" and said that he had offered Namaz thereat hundreds of times commencing from 1943 and had gone thereat till 1949. He also claimed that it was never a temple and no Hindu offered worship thereat till 22.12.1949. The relevant extract of his statement in chief is as under:

"मुझे मालूम है कि यह मुकदमा बाबरी मस्जिद के बाबत चल रहा है। वहां पर मैंने नमाज पढ़ी है। सैकड़ो बार पढ़ी है। सबसे पहले मैंने वहॉ पर नमाज 1943 में पढ़ी थी। ***जब बुत रखा गया उसके एक हफ्ता पहले तक मैं वहॉ मुतवातिर नमाज पढ़ता था।*** *यह बुत 22–23 दिसम्बर 1949 की दरिम्यानी रात को रखा गया था। यह मस्जिद में रखा गया था।* ***उसके दो दिन पहले मैंने नमाज पढ़ी थी*** *लेकिन उसके बाद नमाज कभी नहीं पढ़ी।* ***22 दिसम्बर 1949 तक उस मस्जिद में नमाज पढ़ी गयी है।***

मौलवी अब्दुल गफ्फार साहब इस मस्जिद के इमाम थे। मस्जिद में जुम्मे की नमाज भी होती थी और पांचों वक्त की नमाज भी होती थी। रमजान में ताराबी की नमाज भी वहां हुआ करती थी। 1949 में तराबी की नमाज सिर्फ बाबरी मस्जिद में होती थी। जुम्मे की नमाज या तो बाबरी मस्जिद में होती थी या केवड़ा की मस्जिद में होती थी। जहूर के लड़के फारूख, मो0 हाशिम, हाजी महबूब उसके बड़े भाई हाजी अब्दुल अहद उन लोगों में से हैं जो मेरे साथ वहां नमाज पढ़ा करते थे और अभी तक जिन्दा हैं। ***22 दिसम्बर 1949 तक मैंने इस मस्जिद में न कभी कोई मूर्ति देखी न किसी को पूजा पाठ करते देखा।*** *हमने कभी वहॉ हिन्दुओं को दर्शनों के लिए आते भी नहीं देखा। 22 दिसम्बर 1949 तक इस मस्जिद का इंतजाम या तो हाजी फेंक्कू करते थे या जहूर अहमद करते थे।"*

"I know that this case is pending regarding Babri mosque. I have offered Namaz there on hundreds of

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occasions. I had offered Namaz there for the first time in 1943. ***I used to offer Namaz continuously there upto one week before the installation of the idols.*** *These idols had been placed in the intervening night of 22-23 December, 1949. They had been placed in the mosque.* ***I had offered Namaz just two days before that****, but never thereafter.* ***Namaz had been offered in that mosque till 22nd December, 1949.***

Maulvi Abdul Gaffar was the Imam of this mosque. The Jumma Namaz was also offered in this mosque, besides the five times Namaz. In 1949, only the Tarabi Namaz was offered in the Babri mosque. The Jumma Namaz was offered either in Babri mosque or in Kewra mosque. Zahoor's son Farookh, Mohd. Hashim, Hazi Mahboob, his elder brother Hazi Abdul Ahad were amongst such person who used to offer Namaz at that place along with me and are still alive. ***Till 22nd December, 1949 I had neither seen any idol in that mosque nor had seen anybody perform worship****. I had never seen Hindus visiting that place for worship. Till 22nd December, 1949, the management of this mosque was under Hazi Faiku or Zahoor Ahmad." (E.T.C.)*

311. **P.W. 8 Abdul Ajij**, son of Hasan Mohammad, aged about 70 years (in January 1997), resident of Shahjahanpur, Faizabad. His Examination-in-chief commenced on 20.01.1997 and cross examination followed as under :

(a) 21/22.01.1997- by Nirmohi Akhara through Sri R.L. Verma, Advocate (p. 2-40)

(b) 24/27.01.1997-by Dharamdas through Sri Ved Prakash, Advocate (41-53)

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(c) 27.01.1997-by Sri Umesh Chandra Pandey through Sri Vireshwar Dwivedi, Advocate (p. 53-64)

(d) 27/28.01.1997-by Sri Paramhans Ramchandra Das through Sri Madan Mohan Pandey, Advocate (p. 64-72)

(e) 28.01.1997-Hindu Mahasabha and Sri Ramesh Chandra Tripathi through Sri Hari Shankar Jain, Advocate (p. 72-77), by Sri Rajendra Singh, son of Sri Gopal Singh Visharad through Sri P.L. Mishra, Advocate (p. 77-78), by Sri Deoki Nandan Agarwal, plaintiff himself and next friend to other plaintiffs in Suit-5 (p. 78-82)

312. He was born around 1926 and started offering Namaz at the age of 8 years. He studied upto Class IV which was completed in 1942 when he was also issued certificate. Engaged in the business of making shoes, he married firstly in 1947 and his second marriage solemnized in 1951, had six children including two married sons. His eldest son is aged 43 years, whose eldest son (grandson of PW 8) is about 15-16 years. His sons have a shoe factory. He also deposed about the identity of disputed building as a mosque and said that he had offered prayer therein till the idols were kept therein in 1949. His statement regarding the said facts is as under:

''मै बाबरी मस्जिद को जानता हूँ। मैंने वहॉ पर नमाज पढ़ी है। जब मैंने पहली दफा वहॉ पर नमाज पढ़ी तो मेरी उम्र तकरीबन 10 साल रही होगी। मैंने सैकड़ो बार वहॉ नमाज पढ़ी होगी। मैंने जुम्मे की नमाज भी वहॉ पढ़ी है। इसके अलावा जोहर की और असर की नमाजें वहॉ पढ़ी है शब्बे बारात में भी वहां पर नमाजें पढ़ी हैं। वहॉ पर मूर्ति रखने के बाद हमारा नमाज पढ़ना बंद हो गया। मूर्ति 1949 में रखी गयी थी।''

''I know Babri mosque. I have offered Namaz there. When I first offered Namaz there, I was aged about 10 years. I must have offered Namaz at that place on hundreds of occasions. I have offered Jumma's Namaz at that place,

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besides the Namaz of Zohar and Asar. I have offered Namaz at that place in Shabbe-Raat as well. My offering of Namaz was stopped after installation of idols at that place. The idols had been placed in 1949." (E.T.C.)

313. **P.W. 9 Saiyed Ekhalaq**, S/o Syed Haji Abdul Sattar, aged about 60 years (in February 1997), a resident of Mohalla Doraha Kuan, Ayodhya, Faizabad. His Examination-in-chief commenced on 18.02.1997 and cross examination followed as under :

(a) 19.02.1997- by Nirmohi Akhara through Sri R.L. Verma, Advocate (p. 21-39)

(b) 20.02.1997- by Sri Deoki Nandan Agarwal, plaintiff himself and next friend to other plaintiffs in Suit-5 (p. 40-52)

(c) 20/21.02.1997- by Dharamdas through Sri Ved Prakash, Advocate (p. 52-63)

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(d) 21/25/26.02.1997- by Sri Umesh Chandra Pandey through Sri Vireshwar Dwivedi, Advocate (p. 63-92)

(e) 26.02.1997- by Sri Paramhans Ramchandra Das through Sri Madan Mohan Pandey, Advocate (p. 92-106)

(f) 27.02.1997- by Hindu Mahasabha and Sri Ramesh Chandra Tripathi through Sri Hari Shankar Jain, Advocate (p. 107-116)

(g) 27/28.02.1997- by Sri Rajendra Singh, son of Sri Gopal Singh Visharad through Sri P.L. Mishra, Advocate (p. 116-132)

314. By profession he is a Transporter. He is Hafiz of Quran Sharif and succeeded the office of Khan Ka Shah Muzaffar Kudasirarhu. He has also deposed that the disputed building was known as "Babri mosque" and he used to offer Namaz therein

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prior to 1949 when the idols were placed and thereafter he ceased to offer prayer therein. He also gave some topography, inside and outside of the disputed building, and said as under:

''झगड़े वाली जायदाद जिसकी बाबत मैं गवाही देने आया हूँ, बाबरी मस्जिद कही जाती थी। मेरा मकान इससे तकरीबन एक फर्लांग के फासले पर वाका है। मैंने इस मस्जिद में नमाज पढ़ी है। मैंने इसमें जुम्मे की नमाज भी पढ़ी है और पंचवक्ता की नमाज भी पढ़ी है। मेरे अपने मकान के दालान (आहाता) में एक मस्जिद है। उस मस्जिद में 1949 से पहले जुम्मे की नमाज नहीं होती थी। ***1949 से पहले जुम्मे की नमाज मैं बाबरी मस्जिद में पढ़ता था। कभी–कभी मुस्तकिल तौर से मैंने पांच वक्त की नमाज भी बाबरी मस्जिद में पढ़ी है।*** *हमारे अपने अहाते की मस्जिद में जुम्मे की जमाती नमाज नहीं होती थी, लेकिन दूसरी नमाज वहॉ भी पढ़ लेता था। हमारे यहां अपनी इस मस्जिद में जमाती नमाज पंचवक्ती नहीं होती थी। उस जमाने में मौलवी अब्दुल ग़फ़्फार साहब बाबरी मस्जिद में इमामत करते थे। मियां ईस्माइल उस वक्त वहॉ पर मोअज्जिम थे। वह हमारे ही कैम्पस में रहते थे। और लोग भी नमाज पढ़ने के लिए बाबरी मस्जिद में जाते थे। उन लोगों में से जो अब तक जिन्दा हैं मोहम्मद अमीर, मल्हू, नूर मोहम्मद और कुछ फैजाबाद के लोग भी, जिनसे कभी कभी मुलाकात हो जाती थी, अभी तक हैं। शाहजहॉपुर के लोग भी इस मस्जिद में आते थे। यह जुम्मे की नमाज की लिए आते थे।*

22–23 दिसम्बर 1949 के बाद मैंने वहॉ पर नमाज नहीं पढ़ी है। *क्योंकि वहॉ पर बुत रख दिया गया था और मस्जिद नमाज के लिए बंद कर दी गयी थी।*

जिन लोगों के नाम मैंने ऊपर बतलाये हैं और जो इनमें से अयोध्या के रहने वाले हैं, वह इस मस्जिद में जुम्मे की नमाज भी पढ़ते थे और पंचवक्ती नमाज भी पढ़ते थे कभी–कभी। जहां पर इमाम साहब खड़े होते थे वह एक खास जगह मेहराब टाइप की दीवार में बनी हुई थी। एक मेम्बर था, जिस पर इमाम साहब खुतबा देते थे। मस्जिद में वजू का इंतजाम था, मटके रखे जाते थे, जिनमें पानी भरा होता था। उनके अलावा बढ़ने थे जिनके जरिये मटकों से पानी निकाला जाता था। आम नमाजियों के लिए मस्जिद के अंदरूनी हिस्से में खाकी पत्थर पर काले पत्थर का बार्डर था

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और और सफें बनी हुई थीं। मस्जिद में पेशाबखाना भी बना हुआ था। दक्खिन की तरफ एक जीना बना हुआ था, कभी जीने पर से और कभी उसकी नजदीक की जमीन से अजान दी जाती थी।''

''The disputed property, about which I have come to give evidence, is called the Babri mosque. My house is situated a furlong from it. I have offered Namaz in this mosque. I have offered Jumma's Namaz as well as five time Namaz in it. There is a mosque within the campus of my house. The Jumma Namaz was not offered in that mosque prior to 1949. ***Prior to 1949, I used to offer Jumma's Namaz in the Babri mosque. Occasionally, I have offered five times Namaz in Babri mosque on regular basis.*** *The collective Jumma's Namaz was not offered in the mosque within my campus, but other Namaz were offered. The collective Namaz was not offered five times in this mosque of mine. In those days, Maulvi Abdul Gaffar was the Imam of Babri mosque. Miyan Ismile was the Muajjim at that time. He used to reside in my campus and they also used to go the Babri mosque for offering Namaz. Few of them still alive are Mohd. Amir, Mallhu, Noor Mohammad and few persons of Faizabad, and they come across occasionally. The people of Shahjahanpur also visited this mosque for Jumma's Namaz.*

I did not offer Namaz at that place after 22-23 December, 1949, *because idols had been installed there and the mosque had been closed for Namaz.*

The persons named above, who are residents of Ayodhya, used to offer Jumma's Namaz in this mosque and occasionally even the five times Namaz. The place where the Imam used to stand, was a special place like Meharaab in the wall. There was a member, for whom the Imam used

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to give 'Khutba' (recitation). Arrangement was also made in the mosque for Vazu, pots full of water were kept. Apart from them, there were 'Badhne' for taking out water from the pots. There was border of black stone on brown stones in the inner portion of the mosque, for common Namazists and 'Sarf' had been marked. Urinal had also been provided in the mosque. There was a staircase to the south. Sometimes, the Ajaan was called out from the staircase and sometimes from its adjoining land." (E.T.C.)

315. **P.W. 14 Jalil Ahmad** son of Sri Mohd. Yakoob, aged about 78 years (in February 1999) was a resident of Kheerwali Gali in Faizabad, and engaged in the business of cloth and shoes. His Examination-in-chief commenced on 16.02.1999 and cross examination followed as under :

(a) 16/17/18.02.1999-by Nirmohi Akhara through Sri R.L. Verma, Advocate(p. 2-38)

(b)18/19.02.1999- by Dharamdas, defendant no. 13, through Sri Ved Prakash, Advocate (p. 38-44)

(c)19/20.02.1999-by Sri Umesh Chandra Pandey, defendant no. 22 through Sri Vireshwar Dwivedi, Advocate (p. 44-64)

(d)17.03.1999- Sri Paramhans Ramchandra Das, defendant no. 2, through Sri Madan Mohan Pandey, Advocate, (p. 65-79)

(e)17.03.1999-by Sri Rajendra Singh, son of Sri Gopal Singh Visharad through Sri P.L. Mishra, Advocate (p. 79-85)

(f)18.03.1999- Hindu Mahasabha and Sri Ramesh Chandra Tripathi through Sri Hari Shankar Jain, Advocate (p. 85-87)

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(f)18.03.1999-by Sri Deoki Nandan Agarwal, plaintiff himself and next friend to other plaintiffs (Suit-5) (p. 87-89)

316. He also deposed about the identity of the disputed building as "Babri mosque" and that he offered Namaz therein for a long time; and said as under:

"मै अयोध्या में बाबरी मस्जिद को जानता हूँ मैं वहां गया हूँ और मैने उसमें नमाज भी पढ़ी है। ***मैंने आखिरी बार इस मस्जिद में नमाज इसमें बुत रखने के पहले जुम्मा पर पढ़ी थी।*** *मैंने उस मस्जिद में ईशा व जुमा दोनों की नमाजें पढ़ी हैं। मैंने फैजाबाद में नियावां मोहल्ला में स्थित जिन्नाती मस्जिद की देख रेख भी करता हूँ। मैं यह देख रेख इस मस्जिद की 35–36 वर्ष से कर रहा हूं। जिन्नाती मस्जिद में पांचों वक्त की नमाज होती है। तरावी की नमाज भी होती है। ईद और बकरीद की भी नमाज होती है। मैं हाफिज अब्दुल रहमान को जानता हूँ। जो इब्राहिमपुर गांव तहसील सदर जिला फैजाबाद की निवासी है। हाफिर अब्दुल रहमान साहब ने इस जिन्नाती मस्जिद में तरावी की नमाज करीब 30 वर्ष पहले पढ़ायी थी उनको इस नमाज को पढाने के लिये मैने बुलाया था।"*

"I know Babri mosque in Ayodhya. I have been there and have even offered Namaz. ***My last Namaz in this mosque was the Jumma preceding the installation of idol therein.*** *I have offered both Isha and Jumma Namaz in this mosque. I take care of the Jinnati mosque situated in Niyawan locality of Faizabad. I have been taking this care for the last 35-36 years. Five times Namaz is offered in the Jinnati mosque. Tarabi's Namaz is also offered. The Namaz of Id and Bakra-id are also offered. I know Hafiz Abdul Rehman, who is resident of Village-Ibrahimpur, Tahsil- Sadar, District-Faizabad. Hafiz Abdul Rehman had pronounced the Tarabi Namaz in this Jinnati mosque, some 30 years ago. I had called him to pronounce this Namaz."*

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(E.T.C.)

317. **P.W. 21 Dr. M.Hashim Qidwai**, a retired teacher, son of Late Abdul Majid Qidwai, aged about 80 years (in November 2001), a resident of HIG-1, ADA Flats, Sir Syed Nagar, Aligarh. His Examination-in-chief commenced on 22.11.2001 and cross examination followed as under :

(a) 22/23/24-11-2001, 12-12-2001- by Nirmohi Akhara through Sri R.L. Verma, Advocate(p. 4-44)

(b) 12/13-12-2001-by Dharamdas, defendant no. 13, through Sri Ved Prakash, Advocate (p. 44-55)

(c) 13/14-12-2001, 07-01-2002-by Sri Umesh Chandra Pandey, defendant no. 22 through Sri Vireshwar Dwivedi, Advocate (p. 55-78)

(d) 07-01-2002- by Sri Paramhans Ramchandra Das, defendant no. 2. through Sri Madan Mohan Advocate (p. 78-85)

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(e) 07/09-01-2002-by Sri Rajendra Singh, son of Sri Gopal Singh Visharad, plaintiff (Suit-1) through Sri P.L. Mishra, Advocated (p. 85-97)

(f) 09-01-2002- Hindu Mahasabha, defendnat no. 10 and Sri Ramesh Chandra Tripathi, defendant no. 17, through Sri Hari Shankar Jain, Advocate, and plaintiffs (Suit-5) through Sri A.K.Pandey, Advocate adopted the cross examination already done by other defendants (p. 98)

318. His father was Deputy Collector in U.P. Government Service. His schooling commenced in Basti whereafter his father was posted at Saharanpur wherefrom the witness started his political life. He did High School from Sitapur and Intermediate from Christian College, Lucknow, and B.A. (Honours) and M.A. from Lucknow University. His father was

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transferred to Faizabad in July 1939 when he was a student. Thereafter was transferred to Lucknow in 1941 as Additional City Magistrate. His father resided at Faizabad from July 1939 to October 1941 in Cantonment Area. During this period, during holidays, the witness used to visit Faizabad and offered Namaz at the disputed site He deposed as under :

''पहली मर्तबा मै दिसम्बर 39 में फैजाबाद गया। दिसम्बर सन् 39 में मैं अपने परिवार के सदस्यों के साथ बाबरी मस्जिद देखने गया और वहीं पर मगरिब की नमाज पढ़ी उसके बाद मैं बराबर मई सन् 41 तक हर छुट्टी में फैजाबाद जाता रहा। ***इस दौरान मैंने 15–20 बार मगरीब की नमाज़ और चार–पांच बार असिर की नमाज और दो तीन जुमे की नमाज बाबरी मस्जिद में पढ़ी।*** *जब जब मैंने मगरिब की नमाज बाबरी मस्जिद में पढ़ी तब तब तकरीबन 100 आदमी होते थे असिर की नमाज में 40 व 50 के बीच लोग नमाज पढ़ते थे। जुमे की नमाज करीब 250–300 लोग पढ़ते थे। जब जब मैंने नमाज पढ़ी जमात से पढ़ी और मेरे नमाज पढ़ने के समय हमेशा एक ही इमाम जहां तक याद पड़ता है मिलते थे। मौलाना अब्दुल माजिद दरियाबादी मेरे चचा और ससुर भी थे उनके साथ भी बाबरी मस्जिद में मेरा जाना हुआ। उन्होंने करीब 80 किताबें उर्दू जुबान ओर अंग्रेजी में लिखी है खाशतौर पर अंग्रेजी जुबान में उनकी कुरान शरीफ की तफसीर है।''*

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''I visited Faizabad for the first time in December, 1939. In December, 1939 I had gone to see the Babri mosque along with my family members and had offered the Magrib Namaz there. Thereafter, in every holiday I regularly visited Faizabad till the year 1941. ***In this period I offered the Magrib Namaz for 15-20 times, the Asir Namaz for 4-5 times and 2-3 Jumma Namaz, in the Babri mosque****. Whenever I offered the Magrib Namaz in the Babri mosque, there were approximately 100 people present. In the Asir Namaz, about 40-50 persons offered Namaz. In the Jumma Namaz, about 250-300 persons*

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offered Namaz. Whenever I offered Namaz, it was collective and so far as I remember, the Imam was the same at time of offering of all the Namaz by me. Maulana Abdul Majid Dariyabadi was my uncle as well as the father-in-law. I also happened to visit Babri mosque along with him. He has written about 80 books in Urdu and English, particularly his explanation of the holy Quran in English." (E.T.C.)

319. PW 21 further said that he was appointed as Lecturer (Political Science) in 1948 while doing research at Lucknow University. From 1948 to 1982 he had been at Aligarh Muslim University and retired from the post of Reader. He became Reader in 1961. He participated in strike in Government School, Saharanpur after the sacrifice of Shaheed Bhagat Singh in 1931 and for that reason he was failed in Class V. His statement about his active political career is as under :

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"मुस्लिम यूनिवर्सिटी में अपनी सेवा के दौरान प्रशासनिक पदों पर हास्टल का वार्डन हाल का प्रोवोस्ट और यूनिवर्सिटी के प्राक्टर के पद पर काम किया। उपरोक्त के अलावा मैं स्टाफ एसोसयेशन का अध्यक्ष भी रहा और एक्जीक्यूटिव कौंसिल व कोर्ट का एलेक्टेड मेम्बर भी रहा। अलीगढ़ मुस्लिम यूनिवर्सिटी की लाइब्रेरी जिसे मौलाना आजाद लाइब्रेरी कहा जाता है के लाइब्रेरियन प्रो0 नुरूल हसन से भी वाकिफ हूँ। मैं उन्हें सात आठ वर्ष से जानता हूँ। मैंने उनको लिखते पढ़ते देखा है और उनके दस्तखत भी पहचानता हूँ। गवाह को प्रार्थना पत्र सं031/2001 दिनांक 19–11–2001 के साथ दाखिल कागजात सं01,3,5,7,8,9 को देखकर कहा वाद सं04/89 देखकर कहा कि इन पर प्रोफेसर नुरूल हसन के दस्तखत हैं जिन्हें मैं पहचानता हूँ। मेरी सियासी जिन्दगी का आगाज सन् 30 से शुरू हुआ था। जब नमक आन्दोलन चल रहा था। बावजूद इसके मेरे वालिद सरकारी सेवा में डिप्टी कलेक्टर थे मैंने कांग्रेस का झंडा फहराया। सन् 1931 में शहीद भगत सिंह को फांसी पर लटकाये जाने के बाद हमारे सहारनपुर के गर्वनमेंट स्कूल में हड़ताल हुई थी जिसमें मैंने शिरकत की थी

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उसी की वजह से पॉचवी क्लास में फेल कर दिया गया था। इसके बाद सन् 1936 में क्रिश्चियन कालेज लखनऊ में जब आल इण्डिया स्टूडेन्ट फेडरेशन का पहला जलसा हुआ तो उसमें मैंने बहैसियत डेलीगेट शिरकत की थी इसके बाद लखनऊ स्टूडेन्ट फेडरेशन का जनरल सेक्रेटरी रहा इसके बाद आल इण्डिया स्टूडेन्ट का भी मेम्बर रहा जब मैं इन्टरमीडियट का स्टूडेन्ट था तब मैंने कांग्रेस पार्टी की सदस्यता ग्रहण की थी। 1951 में लखनऊ में बाबरी मस्जिद में मूर्ति रखे जाने के खिलाफ एक आल इण्डिया कान्फ्रेंस लखनऊ में हुई थी और उसमें हिस्सा लिया था और इस कान्फ्रेन्स का नाम कौमी एकता कान्फ्रेन्स था उस कान्फ्रेन्स में जो प्रमुख लोग हिस्सा लिये थे आचार्य जुगुल किशोर तत्कालीन यू0पी0कांग्रेस पार्टी के अध्यक्ष फिरोज गांधी, मिसेस उमा नेहरू, गोविन्द सहाय, राम कुमार शास्त्री, पं0 श्रीकृष्ण दत्त पालीवाल, जो उस वक्त के0एम0पी0पी0 (किसान मजदूर प्रजा पार्टी) के अध्यक्ष थे डा0 जेड ए अहमद कम्यूनिस्ट लीडर गोपाल नाराण सक्सेना, इस कांफ्रेन्स मे श्री चन्द्रशेखर जो बाद में भारत के प्रधानमंत्री हुए भी भाग लिये प्रो0 महेश दत्त शर्मा और प्रो0 रामआसरे ने भी इस कान्फ्रेन्स में भाग लिया था। इस कान्फ्रेन्स में यह प्रस्ताव पारित हुआ कि बाबरी मस्जिद में जो मूर्तिया गलत तरीके से रखी गयी थी उन्हें हटाया जाय और यू0पी0 गवर्नमेंट से फौरी कार्यवाही को कहा गया। इसी कान्फ्रेन्स में एक कौमी एकता मण्डल के नाम से एक संगठन बनाया गया जिसके एक्जीक्यूटिव का मैं मेम्बर था। इस अधिवेशन को बुलाने में अहम भूमिका श्री अक्षय ब्रह्मचारी ने निभाई थी वो उस समय फैजाबाद जिला कांग्रेस के सचिव थे और उन्होंने इसी सिलसिले में अनशन भी किया था। मैं सन् 1984 में कांग्रेस पार्टी के उम्मीदवार के रूप में राजसभा का सदस्य चयनित हुआ था और मैं 6 साल तक.राज्य सभा का मेम्बर रहा।''

''During my service in the Muslim University, I worked on the Administrative post of Hostel Warden, Hall Provost and University Proctor. Apart from the above, I was also the President of Staff Association and was elected member of Executive Council and Court. I know Prof. Nurul Hasan, Librarian of the library of Aligarh Muslim University known as Maulana Azad Library. I know him for 7-8 years. I have seen him read and write and I recognize

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his signature as well. On seeing paper nos. 1,3,5,7,8,9 filed along with application no. 31/2001 dated 19.11.2001 in Suit no. 4/89, the witness said they bore the signature of Prof. Nurul Hasan, which I recognize. My political career started in the year 1930, when the Salt Movement was in progress. Despite the fact that my father was Deputy Collector in Government service, I hoisted the Congress flag. After the execution of martyr Bhagat Singh in 1931, there was a strike in my Government School at Saharanpur in which I had participated, due to which I was failed in Class-V. In the year 1936, when the first function of All India Student Federation took place in Christian College, Lucknow I had participated in it as a delegate. Thereafter, I became General Secretary of Lucknow Student Federation and then a member of All India Student. When I was a student of Intermediate, I took the membership of Congress party. In 1951, an All India Conference was held at Lucknow in opposition of installation of idols in the Babri mosque and the said conference was named 'Quami Ekta Conference'. The main persons who participated in that conference were- Acharya Jugul Kishore, erstwhile President of U.P. Congress party Sri Firoz Gandhi, Mrs. Uma Nehru, Govind Sahai, Ramkumar Shastri, Pt. Srikrishna Dutta Paliwal, erstwhile President of K.M.P.P. (Kisan Majdoor Praja Party), Dr. Z.A. Ahmad, Communist leader, Gopal Narayan Saxena. Sri Chandra Shekhar, who subsequently became Prime Minister of India, also participated in this conference. Prof. Mahesh Dutta Sharma and Prof. Ram Asrey also took part in this conference. In this conference it was resolved that the idols

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placed wrongly in the Babri mosque, be removed and the U.P. Government was asked to take immediate action. In this very conference, an organization named 'Quami Ekta Mandal' was also announced and I was made a member of its executive. An important role was played by Sri Akshay Brahmchari in convening this conference, who was the Secretary of Faizabad District Congress at that time, and he had even gone on fast in this behalf. In the year 1984, I was elected member of Rajya Sabha as a candidate of Congress party and I remained a Rajya Sabha member for six years." (E.T.C.)

320. He (PW-14) further said that there was a grave of Qazi Kidwa near Babri mosque, ancestor of Qidwais. Photographs no. 154/4 and 154/16 submitted by the Commissioner alongwith his report in Suit -1, are of Babari mosque wherein he offered Namaz in 1939-40.

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321. **P.W. 22, Mohd. Khalid Nadvi**, 48 years of age (in January' 2002) by profession is a Teacher and resident of Nadava College, Lucknow. His Examination-in-chief commenced on 9/10.01.2002 and cross examination held as under :

(a) 09/10-01-2002-by Nirmohi Akhara through Sri R.L. Verma, Advocate(p. 3-13)

(b) 11-01-2002-by Dharamdas, defendant no. 13, through Sri Ved Prakash, Advocate (p. 14-19)

(c) 11-01-2002- by Sri Paramhans Ramchandra Das, defendant no. 2. through Sri Madan Mohan Advocate (p. 20-28)

(d) 11/14/15-01-2002- by Sri Umesh Chandra Pandey, defendant no. 22 through Sri Vireshwar Dwivedi,

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Advocate (p. 29-47)

(e) 15-01-2002- Sri Rajendra Singh, son of Sri Gopal Singh Visharad, plaintiff (Suit-1) through Sri P.L. Mishra, Advocate, plaintiffs (Suit-5) through Sri Vireshwar Dwivedi, Advocate, and Hindu Mahasabha, defendant no. 10 and Sri Ramesh Chandra Tripathi, defendant no. 17 through Sri Hari Shanker Jain, Advocate, adopted cross examination already done by other defendants (p. 48)

322. His statement is mainly in relation to characteristics of mosque in Islam and shall be dealt with in detail in the category of "Characteristics of Mosque" later on, but he has also said about the construction of mosque by Babar and offering of prayer (Namaz) therein. In this regard, his deposition is :

"*इस मुकदमें से* ***संबंधित मस्जिद को सन् 1528 ई0 में बाबर के गर्वनर मीर बाकी असफहानी ने तामीर करायी थी जो अयोध्या में थे।*** *हजरत बिलाल मोहम्मद साहब के सहाबी थे और मोहम्मद साहब ने पॉच वक्त की अजान देने के लिए उनको मुनतखिब किया था। हजरते बिलाल भी मस्जिद में कभी अन्दर और कभी बाहरी मुकाम से अजान दिया करते थे। उनके द्वारा छत पर चढ़कर अजान देने का कोई तजकिरा नही मिलता है।*"

*"**The mosque concerned with this case was built in 1528 AD by Mir Baqi Asafhani, the Governor of Babar, who was in Ayodhya**. Hazrat Bilal was the 'Sahabi' of Prophet Mohammad who had appointed him for calling out the Ajaan for all five Namaz. Hazrat Bilal also used to call out the Ajaan from outside and inside of the mosque. No reference is found about his calling out the Ajaan from roof top." (E.T.C.)*

323. Rest of statement-in-chief pertains to the characteristics of mosque and Islam and shall be dealt with later.

324. **PW 23, Mohd. Qasim Ansari,** aged about 74 years (as per

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his affidavit dated 16.01.2002), son of late Sri Karim Bux Ansari is resident of Mohalla Kutiya, Ayodhya, District Faizapur. His Examination-in-chief commenced on 16.01.2002 and cross examination followed as under :

(a) 16-01-2002- by Umesh Chandra Pandey, defendant no. 22 through Sri Vireshwar Dwivedi, Advocate (p. 3- 18)

(b) 17-01-2002- by Dharamdas, defendant no. 13, through Sri Ved Prakash, Advocate (p. 19-32)

(c) 17/18-01-2002- by Sri Rajendra Singh, son of Sri Gopal Singh Visharad through Sri P.L. Mishra, Advocate (p. 32-40)

(d)18-01-2002- by Sri Paramhans Ramchandra Das, defendant no. 2. through Sri Madan Mohan Advocate (p. 40-43)

(e) 18-01-2002, 04.02.2002- by Nirmohi Akhara through Sri R.L. Verma, Advocate (p. 43-70)

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(f) 06-02-2002- Hindu Mahasabha, defendnat no. 10 and Sri Raesh Chandra Tripathi, defendant no. 17, through Sri Hari Shankar Jain, Advocate (p. 71-81)

(g) 06-02-2002 - Plaintiffs (Suit-5) through Sri Vireshwar Dwivedi, Advocate, (adopted cross examination by the defendants) (p. 81)

325. By profession he is a motor mechanic and claims to have offered Namaz in the disputed building for about 8-9 years before its attachment in 1949. He has denied existence of any idol when he offered Namaz and also denied worship by Hindus in the said building. His statement runs as under:

"जिस जायदाद से संबंधित यह मुकदमा चल रहा है उसको मैं जानता हूं इसका नाम बाबरी मस्जिद है। बाबरी मस्जिद मेरे घर से 3 फर्लांग पर है। मैंने उस मस्जिद में पचासों बार नमाज पढ़ी है। मैंने वहां फजिर, जोहर, असिर, मग़रिब, ईशा और तरावी की नमाज पढ़ी थी। फिर

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कहा कि जुमा की भी नमाज पढ़ी थी। ***आखरी मर्तबा वहां मैंने सन् 1949, 22 दिसम्बर को नमाज पढ़ी थी। 22 दिसम्बर सन् 49 को ईशा की नमाज पढ़कर जब मैं घर वापस आया तो वहां काफी हल्ला हो रहा था और ऐसा लग रहा था कि बलवा हो जायेगा।*** *जब मैं सुबह उठा तो मेरे भाई साहब ने बताया कि वहां मस्जिद में मूर्ति रख दी गयी है और पुलिस का पहरा लग गया है और अब शायद वहां नमाज न हो पाये। उस वाक्या के 4 साल बाद मुसलमानों ने एक नोटिस शासन को दिया कि वह लोग वहां अर्थात बाबरी मस्जिद में अलविदा की नमाज़ पढ़ेगे। हम लोग नमाज पढ़ने अलविदा की जब जा रहे थे तो पुलिस ने रोका व पकड़ लिया। और मजिस्ट्रेट के सामने ले गये। उस कार्यवाही में मजिस्ट्रेट साहब ने 6 माह कैद की सजा सुनाई और 500 रूपये जुर्माना की सजा सुनाईं जब मैं जुर्माना नहीं दे पाया तो हमारा घर और दुकान दोनो ही कुर्क कर लिया। मजिस्ट्रेट साहब की सजा सुनाने के बाद मैं करीब 1 माह 23 दिन बस्ती जेल में रहा। उसके बाद फिर नमाज पढ़ने की हमने वहां कोशिश नहीं की। क्योंकि मस्जिद भी कुर्क हो गयी थी। मस्जिद सन् 1949 में ही इस वाक्या के बाद से कुर्क हो गयी थी। मैंने उस मस्जिद में लगभग 8–9 साल तक नमाज पढ़ा था। मैं जब नमाज पढ़ने जाता था तो हमारे साथ अयोध्या के और लोग भी नमाज पढ़ते थे जिसमें हबीउल्ला, फारूक, हशमत उल्ला, हाजी महबूब, हाफिज अखलाक अहमद, चून्नू, बरकत उल्ला वगैरह वगैरह थे, जिनका नाम इस समय याद है। बाबरी मस्जिद में अयोध्या से बाहर के लोग भी नमाज पढ़ने आया करते थे खास कर जुमा की नमाज में बहुत से बाहर के लोग आते थे चूंकि वह जामा मस्जिद भी थी। अयोध्या में बाबरी मस्जिद के अलावा केवडे की मस्जिद में भी जुमा की नमाज होती थी। मैंने जब तक वहां नमाज पढ़ा उस समय तक वहां पर कोई मूर्ति नहीं रखी गयी थी। उस समय तक वहां हिन्दू लोग मस्जिद में पूजा करने नहीं आते थे। बाबरी मस्जिद की इमारत अब नहीं है। फैजाबाद के युनूस सिद्दीकी साहब को मैं जानता हूं। उनको भी मैंने कई बार बाबरी मस्जिद में नमाज पढ़ते देखा था।'' (पेज 1–2)*

"I know the property about which this case is pending, its name is Babri mosque. Babri mosque is at a distance of 3 furlongs from my residence. I have offered

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Namaz at the said mosque number of times. I have offered Fazir, Jauhar, Asir, Magrib, Isha and Tarawih Namaz over there. Then stated that I had also offered the Jumma Namaz. ***I last offered Namaz over there on 22 December, 1949. When I returned home on 22 December, 1949, after offering Isha Namaz, there was much noise over there and it appeared as if a riot would break out.*** *When I got up in the morning, my brother told me that idols had been installed in the mosque and police had been deputed and now Namaz may possibly not be offered over there. Four years after that episode, the Muslims gave a notice to the Government that they would offer Alvida Namaz over there i.e. at Babri mosque. When we were going to offer Alvida Namaz, the police stopped and apprehended us and produced us before the Magistrate. The Magistrate pronounced a sentence of six months and fine of Rupees five hundred in that proceeding. When I failed to deposit the fine, my house and shop were both attached. After awarding of sentence by the Magistrate, I remained confined at Basti prison for about 1 month 23 days. Thereafter, we made no attempts to offer Namaz over there because the mosque had also been attached. The mosque had been attached in the year 1949, after this incident. I had offered Namaz in that mosque for about 8-9 years. Whenever I went to offer Namaz, other persons of Ayodhya also accompanied me and offered Namaz, who included Habibullah, Farooq, Hashmat Ullah, Haji Mahbub, Hafiz Akhalaq Ahmad, Chunnu, Barkat Ullah and others, whose names I do not remember as of now. Many persons from outside Ayodhya, used to come to offer Namaz at Babri*

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mosque, especially during the Jumma Namaz because it was Jama mosque as well. Besides Babri mosque, the Jumma Namaz was also offered at Kevra mosque in Ayodhya. As long as I offered Namaz over there, no idol had been installed over there. By that time the Hindus did not come to offer prayer at the mosque. The building of Babri mosque no longer exists. I know Mr. Yunus Siddiqui of Faizabad. On number of occasions I had seen him, as well, offering Namaz at the Babri mosque." (E.T.C.)

326. **P.W. 25 Sibte Mohammad Naqvi**, aged about 76 years (in March 2002) is a politician, writer and resident of Mohalla Miranpur, Qusba Akbarpur, District Ambedkar Nagar, but at the time of his statement in chief, he gave his current address as Imambara Gufran Mayab, Maulana Kalbe Husain Road, Lucknow. His Examination-in-chief commenced on 5/6.3.2002 and cross examination followed as under :

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(a) 06-03-2002- by Nirmohi Akhara through Sri R.L. Verma, Advocate (p. 6-21)

(b)01-04-2002- by Sri Paramhans Ramchandra Das, defendant no. 2. through Sri Madan Mohan Advocate (p. 22-26)

(c) 01-04-2002- by Dharamdas, defendant no. 13, through Sri Ved Prakash, Advocate (p. 27-33)

(d) 01/02-04-2002- by Umesh Chandra Pandey, defendant no. 22 through Sri Vireshwar Dwivedi, Advocate (p. 33-49)

(e) 02-04-2002-by Sri Rajendra Singh, son of Sri Gopal Singh Visharad through Sri P.L. Mishra, Advocate (p. 49-51)

(f) 02.04.2002-Hindu Mahasabha, defendnat no. 10 and

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Sri Ramesh Chandra Tripathi, defendant no. 17, through Sri Hari Shankar Jain, Advocate adopted the cross examination already done by other defendants (p. 51)

(g) 02.04.2002- Plaintiffs (Suit-5) through Sri Vireshwar Dwivedi advocate adopted the cross examination already done by the defendants (p. 51)

327. About his residence and education etc. he has deposed as under :

''मैं अकबरपुर में अपनी पैदाइश से अब तक रहा हूँ। . . . . . मेरी तालीम शुरू में मेरे घर पर हुई और बाद में लखनऊ के मदरसे में हुई। मैंने आखिरी सनद लखनऊ के जामिया सुल्तानिया से ''सनदुल अफाजिल'' हासिल की। इसके बाद मैंने लखनऊ यूनिवर्सिटी से फाजिले तफसीर की डिग्री हासिल की।''

"I have been residing till now at Akbarpur since my birth. . . . . My initial education was at my home and thereafter in Madarsa at Lucknow. I obtained my last degree of 'Sandul Afazil' from Jamia Sultania of Lucknow. Thereafter, I obtained the degree of Fazile Tafsil from Lucknow University." (E.T.C.)

328. He has written the following books :

''1. डा0 राम मनोहर लोहिया एक झलक,

2. मसऊद हसन रिज़वी – फर्द और फनकार

3. अमजद अली शाह

4. अफकार व आलाम

5. रेख़ती

6. हाजी जलालुद्दीन हैदर की खुदनवित सवानेह उमरी

7. मताये ़फिक्रो नजर।''

"1. Dr. Ram Manohar Lohia- Ek Jhalak,

2. Masaud Hasan Rizvi-Fard aur Fankar,

3. Amzad Ali Shah,

4. Afquar ve Aalaam,

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5. *Rekhti,*
6. *Hazi Jalaluddin Haider Ki Khudnavit Savaneh Umari,*
7. *Matae Fikro Nazar." (E.T.C.)*

329. Besides, PW-25 has also written some articles published in news papers and journals and some are unpublished. About his religious faith and political carrier, he said :

"मै शिया मत का हूँ। मैंने शिया फिक्हा पर कुछ किताबों का अध्ययन किया है। . . . शिया फिक्हा को फिकहे जाफिरिया भी कहा जाता है।

राजनीति में मेरा ताल्लुक राजनीतिक दलों से रहा है। शुरू में मैं महीना दो महीना कांग्रेस में फिर सोशिलष्ट ग्रुप ने अपने आपको कांग्रेस पार्टी से अलग कर लिया तो मैं सोशलिस्ट पार्टी में आया गया और तब से मैं राजनरायण जी के साथ लगा रहा, राजनारायण जी की मृत्यु के बाद से मैं मुलायम सिंह जी की पार्टी में तीन चार साल पहले तक रहा। मैं अकबरपुर नगर निकाय का प्रधान रहा हूँ। मैं वहां की आखिरी टाऊन ऐरिया कमेटी का चेयरमैन रहा हूँ और पहली नगर परिषद का भी चेयरमैन रहा हूँ। मैं एक इन्टर कालेज और एक हाईस्कूल का प्रबंधक हूँ। ये दोनों जिला अम्बेदकरनगर में हैं। . . . मैं 1990 में अल्प संख्यक वित्त एवं विकास निगम उ0प्र0 का चेयरमैन रहा हूँ।

मैं आल इंडिया शिया कान्फ्रेस की सेन्ट्रल कमेटी का बहुत दिनों तक मेम्बर रहा हूँ।"

"I am of Shia faith. I have read certain books on Shia Fiquah..... Shia Fiquah is also called Fiquahe Zafiria.

In politics I had contacts with political parties. Initially in Congress for a month or two. Then the Socialist group separated itself from the Congress party then I joined the Socialist party and since then I remained with Sri Raj Narayan. After the death of Sri Raj Narayan I was in the party of Sri Mulayam Singh till three to four years back. I was the Chairman of Akbarpur Municipal body. I

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was the Chairman of its last town area committee and the Chairman of its first Municipal board. I am the manager of one Intermediate college and one High school. Both of them are in District Ambedkar Nagar..... In 1990 I was the Chairman of Minorities Finance and Development Corporation U.P.

I was member of central committee of All India Shia Conference for many days." (E.T.C.)

330. About the disputed site, its being a mosque and offering of Namaz therein, PW-25 stated as under :

"मैंने विवादित ढांचे, जिसके संबंध में यह मुकदमे चल रहे हैं को दूर से देखा है। उसे बाबरी मस्जिद कहा जाता है। . . . मैं 1948 व उसके बाद अयोध्या में आता जाता रहा हूँ और ***1948 से ही मैंने नमाज़ियों को नमाज़ पढ़ने के लिए बाबरी मस्जिद जाते देखा है। नमाज़ पढ़ते नहीं देखा।*** *फिर बाद में उसमें नमाज़ पढ़ना बंद हो गया क्योंकि उसमें मूर्ति रख दी गयी और वह जगह विवादित होने के नाते कुर्क कर ली गयी। . . . . उस वक्त मूर्ति रखने के खिलाफ मुसलमानों के तरफ से कम प्रतिरोध (प्रोटेस्ट) हुआ परन्तु स्वामी अक्षय ब्रहमचारी जी आगे आये और उन्होंने प्रतिरोध किया और उन्होंने मरण ब्रत भी रखा और उन्होंने आमरण अनशन किया। . . . जब से मैंने होश संभाला तब से उसमें सुन्नी इमाम ही होते थे।*

इस्लाम में मस्जिद का स्वामित्व अल्लाह में निहित होता है। मस्जिद में किसी मसलक का अर्थात शिया और सुन्नी मुसलमान नमाज पढ़ सकता है। बाबरी मस्जिद को जिसे मैंने बखूबी देखा है वह मुकममल मस्जिद थी।"

"I have seen the disputed structure, about which the present cases are pending, from distance. It was called Babri mosque..... I have been visiting Ayodhya in 1948 and afterwards and ***since 1948 I have seen Namajists going to Babri mosque to offer Namaz. I had not seen them offer Namaz.*** *Subsequently offering of Namaz therein*

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was stopped because idol had been installed and the place had been attached on account of being disputed. ..... At that time there was little protest from the Muslims against installation of the idol but Swami Akshay Brahmchari came forward and opposed and even went on fast unto death. ..... Since my memory, there were only Sunni Imams in it.

In Islam, the ownership of mosque vests in Allah. The Muslim of any sect i.e. Shia or Sunni, can offer namaz in mosque. I have very well seen Babri mosque. It was a complete mosque." (E.T.C.)

"शिया फिरके में मौलाना कल्बे सादिक, मौलाना कल्बे जव्वाद और मौलाना हमीदुल हसन सफे अव्व्ल लीडर हैं। शिया फिरके की बहुत बड़ी अक्सरियत बाबरी मस्जिद को मस्जिद मानती है।"

"Maulana Kalbe Sadique, Maulana Kalbe Javvad and Maulana Hamidul Hassan Safe are top level leaders of Shia sect. Majority of Shia sect believes Babri mosque to be a mosque." (E.T.C.)

"मैंने ऐसा सुना है कि सन् 1948 के पहले भी बाबरी मस्जिद में नमाज हुआ करती थी।"

"I have heard that Namaz was offered in Babri mosque even before year 1948." *(E.T.C.)*

331. About the characteristics of mosque also he has made some statement which we shall consider later at the relevant stage.

B. Birthplace of Lord Ram, continuous worship by Hindus, No namaz etc. :

332. D.W. 1/1 Rajendra Singh is the son of Late Gopal Singh Visharad, plaintiff (Suit-1) and after the death of his father on 28.12.1985, his substitution application was allowed on 22.2.1986 and he was substituted as plaintiff (Suit-1). He has

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filed his statement in chief through an affidavit dated 22.7.2003 followed by his cross-examination as under :

(a) 22.07.2003-by Nirmohi Akhara, defendant no. 11 through Sri R.L. Verma, Advocate (p. 10-20)

(b) 23.07.2003- by Sri Faruq Ahmah, defendant no. 1/1 through Sri Abdul Mannan, Advocate (p. 21-22)

(c) 23/24/25.07.2003-by defendant no. 10, Sunni Central Waqf Board, through Sri Zafaryab Jilani, Advocate (p. 22-53)

(d) 25.07.2003- by plaintiff no. 7 (Suit-4) and defendant no. 5 (Suit-5) through Sri Mushtaq Ahmad Siddiqui, Advocate (p. 55-59)

(e) 25.07.2003- defendant no. 26 (Suit-5) through Sri Sayad Irfan, Advocate and defendants no. 6/1 and 6/2 (Suit-3) through Sri Fazale Alam, Advocate adopted the cross examination already done by Sri Abdul Mannan, Sri Zafaryab Jilani and Sri Mushtaq Ahmad Siddiqui, Advocates (p. 59)

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333. He is 65 years of age at the time of swearing of the affidavit and has given his residential address as Tulsi Park, Balrampur, District Balrampur. In para 1 and 2, he has given the details of Suit-1, the reliefs sought therein and the boundary of the disputed site mentioned in the plaint (Suit-1). Para 3 and 4 of the affidavit mention about the death of his father and his own substitution. He has verified signature of Late Gopal Singh Visharad being well acquainted with his hand writing and signature. In para 5 he has adopted averments contained in the plaint and replication and in para-6 he has verified the report of the Advocate Commissioner Sri Shiv Shanker Lal, the map, i.e. paper no. 137C-1–6 and also the location of premises mentioned

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therein. Para 8, 9 and 10 refers to his and family's religious following and also about his birth, education and service particulars. His family is a Sanatan religion follower. His father used to reside at Swargdwar, Ayodhya and used to worship idols according to the tenets of his religion, which is being followed by him also. He was born on 11.1.1939 at Ayodhya and his childhood passed in Ayodhya itself. He passed High School and Intermediate from Maharaja Higher Secondary School, Ayodhya in 1955 and 1957 respectively and then was appointed in State Bank of India, Faizabad in 1959. He was transferred to the branch situated at Tahsil Akbarpur, District Faizabad where he worked till April 1970 and, thereafter, on promotion went to Faridpur, District Bareilly. In the year 1970, he was transferred to main branch of the Bank at Lucknow where he worked for four years and, thereafter, in 1974 transferred to Balrampur where he worked till 1994 and proceeded on voluntary retirement in January, 1994. Since then he is residing at Balrampur itself. In para 11 to 21 he has stated about Ayodhya as religious place, incarnation of God as Lord Ram, existence of temple at the disputed site, birth of Lord Ram at the disputed site, existence of temple of Lord Ram at the disputed site etc. His deposition in this regard is as under :

> *''11. अयोध्या भारतवर्ष की प्राचीनतम तीर्थस्थली है, जहॉ भगवान श्रीराम ने मनुष्य रूप में अवतार लिया है। अयोध्या नगरी की पवित्रता उसके उत्तर में बहने वाली सरयू नदी है तथा अनेकानेक धार्मिक स्थानों तथा मन्दिरों के कारण विश्वविख्यात है। अयोध्या के रामकोट मोहल्ले में भगवान श्रीराम की जन्मभूमि व जन्म स्थान है, जिसे हिन्दू धर्मावलम्बी तथा भगवान श्रीराम में आस्था रखने वाले कोटि–कोटि मनुष्य जन्मभूमि व जन्म स्थान में आस्थापूर्वक श्रद्धावनत होकर पूजा व दर्शन करते हैं।''*
>
> ''11. *Ayodhya is the oldest pilgrimage of India, where Lord Rama had incarnated in human form. The*

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auspiciousness of Ayodhya lies in Saryu river flowing in its north and many of the religious places and temples are famous in the world. The Janmbhumi(birth area) and Janmsthan (birth place) of Lord Rama are in Ramkot locality of Ayodhya, which are worshipped devotionally by great number of Hindu religion followers and devotees of Lord Rama." (E.T.C.)

"12. यह कि मैं, अपने बाल्यकाल से ही अपने माता–पिता के साथ निरंतर अयोध्या स्थित मंदिरों में दर्शन व पूजा करने जाता था। अयोध्या में प्रमुख रूप से हनुमान गढ़ी, कनक भवन तथा जन्मभूमि स्थित मन्दिर का दर्शन व पूजन प्रायः नित्यप्रति करता था। मेरे पिता श्री गोपाल सिंह विशारद जन्मभूमि मन्दिर के अनन्य उपासक थे उनका यह दैनिक कार्यक्रम था कि वे स्नान करने के पश्चात् नित्य जन्मभूमि मन्दिर पर दर्शन व पूजा करने जाते थे। सायंकाल को भी आरती व भोग के समय सपरिवार अन्य मन्दिरों के साथ–साथ जन्मभूमि मन्दिर में भी पूजा व दर्शन करते थे व बिना किसी रोकटोक के गर्भगृह तक जाकर पूजा व दर्शन करते थे। ***वर्ष 1950 की मकर संक्रान्ति से कुछ पहले मेरे पिता स्वर्गीय श्री गोपाल सिंह विशारद अस्वस्थ हो जाने के कारण मन्दिरों में दर्शन व पूजा करने नहीं पहुंच पाये। स्वस्थ होने पर मकर संक्रान्ति को जब वे पूजा व दर्शन करने हेतु जन्मभूमि पर गये तो राज्य सरकार के कर्मचारियों ने उन्हें भीतर जहां श्री रामचन्द्र आदि की मूर्ति विराजमान थीं, जाने से रोक दिया। मेरे पिता जी द्वारा पता करने पर यह ज्ञात हुआ कि मूल प्रतिवादी संख्या–1 से 5 तथा उनके अन्य सहधर्मियों के निराधार तथा असत्य दुराग्रह से प्रभावित होकर प्रतिवादी नम्बर 6 ने अपने कर्मचारियों प्रतिवादी नम्बर 7 से 9 के द्वारा हिन्दू जनता को उनके पूजा व दर्शन सम्बन्धी न्यायपूर्ण उचित अधिकार से वंचित कर रक्खा है।*** *और प्रतिवादी नम्बर 6 प्रतिवादी नम्बर 1 लगायत 5 आदि के दुराग्रह के कारण यह घोषणा करते हैं कि भविष्य में भी हिन्दू जनता को इसी प्रकार उनके उपर्युक्त अधिकारों से वंचित रखेंगे। इस अन्यायपूर्ण कार्य से वादी के स्वत्वक अधिकार जिसे उन्होंने तथा करोड़ों हिन्दू जनता ने उपयोग किया था, उन सभी धार्मिक*

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अधिकारों के प्रयोग में प्रतिवादीगण द्वारा अनुचित व अवैध हस्तक्षेप की पूर्ण सम्भावना थी, प्रतिवादीगण द्वारा भगवान श्री राम चन्द्र आदि की मूर्तियों को उनके स्थान से हटा देने की आशंका उत्पन्न हो गई ऐसी परिस्थिति में अपने धार्मिक अधिकारों तथा समस्त हिन्दू जनता एवं करोड़ों राम भक्तों के धार्मिक अधिकारों के संरक्षण हेतु उपरोक्त वाद प्रस्तुत किया था। ***वर्तमान वादी यानी मेरे धार्मिक अधिकारों यानी विवादित सम्पति में स्थित भगवान श्री राम चन्द्र आदि की मूर्तियों की पूजा व दर्शन में व्यवधान उत्पन्न हुआ*** *इसीलिये मैंने श्री गोपाल सिंह विशारद मूलवादी की मृत्यु के बाद उन्हीं धार्मिक अधिकरों के संरक्षण हेतु इस वाद के वादपत्र को वादी बनकर अंगीकृत किया है।''*

''12. That since my childhood I regularly visited the temples in Ayodhya along with my parents to offer prayer and worship. In Ayodhya, I almost everyday used to offer my prayer and worship at the temples at Hanumangarhi, Kanakbhavan and Janmbhumi. My father Sri Gopal Singh Visharad was a devoted worshipper of Janmbhumi temple. It was his daily routine to offer prayer and worship at the Janmbhumi temple after taking bath. In the evening also, he along with family used to offer prayer and worship at time of ' Aarti' and 'Bhog' and used to offer prayer in the 'Garbh-grih' (sanctum sanctorum) without any obstruction. ***Prior to the Makar Sankranti of 1950, my father late Sri Gopal Singh Visharad fell ill and was unable to offer prayers at the temple. After recovery, when he went to offer prayer at the Janmbhumi on Makar Sankranti, the official of the State Government stopped him from going inside, where the idol of Lord Rama etc. were present. On enquiry by my father, it was found that influenced by the baseless and false prejudice of the plaintiff nos. 1 to 5 and their other associates, the defendant no. 6 through its officials defendant nos. 7 to***

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9, had deprived the Hindu public from its legal justified right of prayer and worship, *and in view of bias of defendant nos. 1 to 5, the defendant no. 6 declared that in future also the Hindu public would be deprived of its aforesaid rights in the same manner. In view of this illegal act regarding the rights of the plaintiff and crores of Hindus, there was every probability of illegal and improper interference by the defendants in the exercise of their religious rights and there was apprehension of the idols of Lord Rama etc. being removed and as such in order to protect the religious rights of himself, of the entire Hindu community and of crores of devotees of Rama, the above suit was filed. Since* ***interference arose in the religious rights of the present plaintiff viz. myself, in offering prayer at the idols of Lord Rama etc. in the disputed structure,*** *I adopted this plaint as plaintiff after the death of my father Sri Gopal Singh Visharad, the original plaintiff for protection of those very religious rights." (E.T.C.)*

13. वादपत्र के अन्त में जो चौहद्दी दर्शायी गई है उस चौहद्दी के अन्दर भगवान श्री राम चन्द्र आदि की मूर्तियां भवन के मध्य शिखर के नीचे गर्भगृह में विराजमान रही हैं, जिनकी पूजा व दर्शन सदैव से मूल वादी तथा वादी एवं करोड़ों हिन्दू जनता व राम भक्तों द्वारा निर्बाध रूप से सहस्त्रों वर्षो से होती चली आ रही हैं समस्त हिन्दू जनता और राम भक्त तथा मूल वादी व वादी स्वयं इसे श्री रामचन्द्र जी की जन्मभूमि मानते चले आ रहे हैं। जन्मभूमि परिसर का वन्दन और नमन करने के उपरान्त समस्त परिसर की परिक्रमा करके अपने को धन्य मानते हैं। मूल वादी तथा वादी ने भी लगातार जन्मभूमि पर आकर जन्मभूमि का नमन व वन्दन किया है तथा लगातार वर्षो तक भगवान श्री राम चन्द्र आदि की विराजमान मूर्तियों का दर्शन करने के उपरान्त स्वयं वादी ने भी जन्मभूमि परिसर की परिक्रमा असंख्य बार की है। विवादित परिसर में स्थित गर्भगृह में 12 कसौटी के

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पत्थरों के खम्भे लगे हैं, जिनपर भी देवी देवताओं की मूर्तियां उत्कीर्ण हैं।''

''13. In the boundary given at the foot of the plaint, the idols of Lord Ramchandra etc. were present in the 'Garbh-grih' below the mid dome of the structure, whose worship etc. was all along carried out uninterruptedly for thousand of years by the original plaintiff, plaintiff and crores of Hindu public and devotees of Rama. The entire Hindu public, devotees of Rama, the original plaintiff and the plaintiff have all along considered it to be the birth place of Lord Rama. They consider themselves to be fortunate on circumambulating the entire campus after offering prayer and worship. The original plaintiff and the plaintiff have also regularly visited the Janmbhumi and prayed and worshipped at the Janmbhumi and for years have circumambulated the Janmbhumi campus on innumerable occasions after offering prayer at the idols of Lord Rama etc. There are 12 touch stone pillars in the 'Garbh-grih' situated within the disputed structure, on which the idols of Gods and Goddesses have been carved out." (E.T.C.)

''14. यह कि विवादित परिसर में प्रवेश के लिये पूर्व की ओर हनुमतद्वार था, जहां पर द्वार के दोनों ओर कसौटी के खम्भे लगे थे, जिनकी संख्या 2 थी, इन पर भी देवी देवताओं की मूर्तियां उत्कीर्ण थीं। वाद पत्र में वर्णित ***विवादित सम्पत्ति के उत्तर की ओर सीता रसोई स्थित थी।*** *वहां जाकर भी वादी उसका दर्शन करता रहा है।* ***विवादित सम्पत्ति के पूरब जन्मभूमि का भण्डार व राम चबूतरा स्थित था*** *जहां बड़ी संख्या में साधू व भक्तगण राम संकीर्तन व रामनाम का पाठ करते रहते थे। सीता रसोई के उत्तर सिंह द्वार था, जिस मार्ग से होकर परिसर के उत्तर की ओर जाया जाता था। विवादित सम्पत्ति के दक्षिण व पश्चिम की ओर परती जमीन पड़ी थी, जिसमें से होकर श्रद्धालु पूरे जन्मभूमि परिसर की परिक्रमा करते रहे हैं।''*

''14. "That there was Hanumatdwar on the east for

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entering the disputed structure, and there were touch stone pillars on both side of the gate, which were two in number. The idols of Gods- Goddesses had been carved on them. ***The Sita Rasoi was situated to the north of disputed structure*** *detailed in the plaint. The plaintiff had been worshipping at that place also.* ***The store of Janmbhumi and Ramchabutara were situated to the east of the disputed structure,*** *where a large number of saints and devotees offered their prayers. To the north of Sita Rasoi was the Singhdwar, through which lay the route to north of the premises. Vacant land was lying to the south and west of the disputed structure, though which the devotees circumambulated the Janmbhumi campus." (E.T.C.)*

''15. अयोध्या में ऐसे तो प्रत्येक दिन हजारों राम भक्त भारत के कोने–कोने तथा विश्व के अन्य देशों से भी निरन्तर आते है जो पवित्र सरयू नदी में स्नान करते हैं तथा अयोध्या में स्थित हजारों मन्दिरों में दर्शन पूजन करते हैं, जिनमें विशेष रूप से हनुमान गढ़ी, कनकभवन, जन्म स्थान व जन्मभूमि के मन्दिरों में दर्शन व पूजन करते है। जन्मभूमि पर विशेष रूप से हजारों श्रद्धालुजन नित्य प्रति दर्शन नमन करते हैं और नतमस्तक होकर जन्मभूमि की पवित्र रज मस्तक से लगाते हैं और पूरे जन्मभूमि परिसर की परिक्रमा करते हैं।''

''15. Usually thousands of devotees of Rama visit Ayodhya everyday from different corners of India and other countries of the world. They bathe in the sacred Saryu river and offer prayers at thousands of temples in Ayodhya, particularly the temples at Hanumangarhi, Kanakbhavan, Janmsthan and Janmbhumi. Thousands of devotees offer prayers daily specially at the Janmbhumi and apply the sacred earth on their forehead and did circumambulation of the entire Janmbhumi premises." (E.T.C.)

''16. प्रत्येक वर्ष अयोध्या में सावन मेला के अवसर पर लाखों हिन्दू

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जनता एवं रामभक्त श्रद्धालुओं का मेला लगता है। श्रद्धालु सावन माह की प्रतिपदा से आना प्रारम्भ कर देते हैं और यह क्रम रक्षाबन्धन पर्व तक चलता रहता है। आने वाले समस्त श्रद्धालु राम भक्त नियमित रूप से सरयू स्नान, मन्दिरों में दर्शन व पूजा तथा विशेष रूप से जन्मभूमि परिसर में स्थित भगवान श्रीरामचन्द्र व अन्य देवी देवताओं की मूर्तियों का दर्शन व पूजन करने के उपरान्त जन्मभूमि की परिक्रमा कर अपने को धन्य मानते हैं।''

''16. ''Every year a fair of lacs of Hindus and devotees of Rama is held at Ayodhya on the occasion of Sawan fair. The devotees start visiting the Sawan fair from 'Pratipada' (first day of a lunar fortnight) and it continues upto the festival of Rakshabandhan. The devotees of Rama regularly bathe in the Saryu, offer prayers in the temples, specially the idols of Lord Ramchandra and other Gods- Goddesses in the Janmbhumi premises and consider themselves to be fortunate after circumambulating the Janmbhumi.'' (E.T.C.)

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*''17. अयोध्या में प्रत्येक वर्ष कार्तिक मास में कार्तिक मेला होता है जो कार्तिक शुक्ल एकादशी से कार्तिक पूर्णिमा तक रहता है। इस मेले में भी लाखों की संख्या में हिन्दू जनता व श्रद्धालु राम भक्त अयोध्या में एकत्रित होते हैं इस अवसर पर श्रद्धालु रामभक्त पंचकोसी व चौदहकोसी परिक्रमा करते हैं। श्रद्धालु भक्तजन भारत के कोने–कोने से व विदेश से भी इस अवसर पर आते हैं। सरयू स्नान कार्तिक मेले का मुख्य आकर्षण होता है श्रद्धालु राम भक्त पवित्र सरयू में स्नान करने के उपरान्त दर्शन व पूजन करते हैं। **श्रद्धालु रामभक्त जन्म स्थान आकर जन्मभूमि मन्दिर तथा उसमें विराजमान भगवान श्री रामचन्द्र यानी रामलला का दर्शन व पूजन करते हैं व श्रद्धावनत होकर जन्मभूमि की रज मस्तक से लगाते हैं** तथा जन्मभूमि की परिक्रमा करके अपने को धन्य मानते हैं।*

''17. Every year in the month of 'Kartika'(Eight lunar month of Hindu calendar), the 'Kartika' fair is held at

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Ayodhya between 'Kartika Shukla Ekadashi'(the 11th day of moonlit half of Kartika month) to 'Kartika Purnima'(day of full moon). Lacs of Hindus and devotees of Rama assemble in this fair at Ayodhya. On this occasion, the devotees take five 'Kos' (distance of two miles) and fourteen 'Kos' circumambulation. The devotees assemble from various parts of India and abroad. The Saryu bath is the main attraction of the 'Kartika' fair. After taking a dip in the sacred Saryu, the devotees of Rama offer their prayers and worship. ***The devotees of Rama visit the Janmsthan and offer their prayer and worship to Lord Rama present there i.e. the Ramalala and apply the earth of Janmbhumi on their forehead out of devotion*** *and consider themselves to be fortunate after circumambulating the Janmbhumi." (E.T.C.)*

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"18. अयोध्या में प्रत्येक वर्ष रामनवमी के अवसर पर चैत्रशुक्ल नवमी को भगवान श्री रामचन्द्र का जन्मोत्सव धूमधाम से मनाया जाता है। इस अवसर पर समस्त अयोध्या और उसमें स्थित चौदहकोसी एवं पांचकोसी क्षेत्र राममय हो जाता है। समस्त मन्दिरों में राम जन्मोत्सव का आयोजन होता है विशेष रूप से कनक भवन व जन्मभूमि में विशेष आयोजन होता है जिसमें लाखों श्रद्धालु जन भगवान श्री राम चन्द्र जी का जन्मोत्वस मनाते हैं इस अवसर पर अयोध्या में श्रद्धालु भक्तों की संख्या लाखों में होती है। जो भारत के कोने कोने व विदेश से भी आते हैं। श्रद्धालु रामभक्त जन्म स्थान आकर जन्मभूमि मन्दिर तथा उसमें विराजमान भगवान श्री रामचन्द्र यानी रामलला का दर्शन पूजन करते हैं व श्रद्धावनत होकर जन्मभूमि की रज मस्तक से लगाते हैं तथा जन्मभूमि की परिक्रमा कर अपने को धन्य मानते हैं।"

"18. The birth function of Lord Rama is celebrated with fanfare at Ayodhya every year on the occasion of 'Chaitra (first month of Hindu calendar) Navami (ninth day of lunar month)'. On this occasion, the entire Ayodhya and the area

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of 'Panchkosi' (cirumambulation of ten miles) and 'Chaudahkosi' (cirumambulation of twenty eight miles), is gripped in the fervour of Rama. The festival of birth of Rama is held in all the temples, specially in Kanakbhawan and Janmbhumi, where special celebrations are held, and which are attended by lacs of devotees of Rama. The number of devotees present on this occasion runs into lacs, who come from abroad and different corners of India. The devotees of Rama visit the Janmbhumi temple and offer their prayers and worship to Lord Ramachandra or Ramalala present there and apply the earth of Janmbhumi on their foreheads out of devotion and consider themselves to be fortunate after completing circumambulation of the Janmbhumi." (E.T.C.)

"19. अयोध्या तीर्थस्थली अन्य तीर्थस्थलों से सर्वोपरी है क्योंकि यहां भगवान श्री राम ने स्वयं अवतार लेकर समस्त मानव जाति का कल्याण किया है। भगवान श्री राम चन्द्र जी और अयोध्या में स्थित उनकी जन्मभूमि कोटि–कोटि भारतीयों व श्रद्धालु रामभक्तों की श्रद्धा व आस्था एवं विश्वास का प्रतीक है। वादी भी इसी श्रद्धा, विश्वास व आस्था को मानकर भगवान श्री रामचन्द्र जी व जन्मभूमि में विराजमान उनकी मूर्ति व अन्य देवी देवताओं की मूर्तियों का दर्शन व उनका पूजन करता चला आ रहा है और सदैव करता रहेगा।"

"19. Ayodhya is the topmost pilgrimage place amongst other pilgrimage places, because Lord Rama had Himself appeared here as God incarnate and did welfare of the human kind. Lord Rama and His Janmbhumi at Ayodhya, signifies the devotion, belief and faith of numerous Indians and devotees of Rama. It was under this very devotion, faith and belief that the plaintiff has been offering prayer and worship to Lord Rama and the idols of Him and other Gods- Goddesses present at the Janmbhumi and will

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always continue to do so." (E.T.C.)

''20. यह कि 6 दिसम्बर 1992 को भवन जहां भगवान श्री राम चन्द्र जी महाराज विराजमान थे भवन के गिर जाने के उपरान्त भी उसी स्थान पर भगवान श्री रामचन्द्र जी विराजमान हैं और उनका पूजा व दर्शन निरंतर श्रद्धालु रामभक्त व वादी स्वयं करता चला आ रहा है।''

''20. That even after collapse of the building in which Lord Rama was present, on 6th December, 1992, Lord Rama is still present at that very place and prayers and worship are regularly being offered to Him by the devotees of Rama and the plaintiff himself." (E.T.C.)

''21. यह कि जन्म स्थान व जन्मभूमि परिसर तथा उसमें विराजमान भगवान श्री रामचन्द्र जी महाराज व अन्य देवी देवताओं का दर्शन, पूजा, आराधना व आरती तथा परिक्रमा में व्यवधान डालने का अधिकार किसी भी प्रतिवादी को प्राप्त नहीं है तथा दावा वादी पूर्णरूपेण डिग्री होने योग्य है।''

''21. That none of the defendant has got the right to create any hindrance in prayer, worship, 'Aarti' and circumambulation of the Janmsthan, Janmbhumi premises and Lord Rama and other Gods-Goddesses present there and the suit of the plaintiff fully deserves to be decreed." (E.T.C.)

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334. **D.W. 1/2 Krishna Chandra Singh**, son of late Chhedi Singh alias Mritunjay Singh, aged about 79 years (in July 2003) has given his statement by way of an affidavit sworn on 28.7.2003 followed by his cross examination as under :

(a) 28.07.2003-by Nirmohi Akhara, defendant no. 11 through Sri R.L. Verma, Advocate (p. 7-22)

(b)29.07.2003- by defendant no. 1/1 through Sri Abdul Mannan, Advocate (p. 23-28)

(c) 29/30/31.07.2003- by defendant no. 10, Sunni Central Waqf Board, through Sri Zafaryab Jilani, Advocate (p. 28-60)

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(d) 31.07.2003, 01/04.08.2003-by plaintiff no. 7 (Suit-4) and defendant no. 5 (Suit-5) through Sri Mushtaq Ahmad Siddiqui, Advocate (p. 60-91)

(e) 04.08.2003- defendant no. 26 in Suit-5 through Sri Sayad Irfan, Advocate and defendants no. 6/1 and 6/2 (Suit-3) through Sri Fazale Alam, Advocate adopted the cross examination already done by Sri Abdul Mannan, Sri Zafaryab Jilani and Sri Mushtaq Ahmad Siddiqui, Advocates (p. 91)

335. He is resident of Haripur Jalalabad, Tahsil Sohawal, District Faizabad. After obtaining primary education in a nearby village Rampur, he studied in Government Model School, Haiderganj, Faizabad upto middle level and passed High School in 1945 from Manohar Lal Moti High School, Faizabad. He did intermediate from Allahabad and then graduation in Arts from Saket College, Faizabad. After completion of his education, he was appointed as a Teacher in 1956 R.D. Inter College, Suchitaganj, Faizabad wherefrom he retired in 1985. In para 4 of the affidavit, he says that his family belongs to Vaishnava sect and worship Lord Ram. He and his family has offered Darshan and Pooja at the birth place of Lord Ram at Ayodhya from time to time. Thereafter, in para 6 to 20, he has given statement about the continuous worship at the disputed site, that it is a temple throughout, the topography of the disputed site as well as the nearby area, and said as under :

''6. उपर्युक्त विशेष अवसरों पर अयोध्या में देश विदेश से लाखों लोग आते हैं और पूरी अयोध्या सीताराम के जयकारों से गुंजायमान हो जाती है। प्रत्येक रास्ते–गली, मंदिर आदि रामभक्तों, तीर्थयात्रियों एवं दर्शनार्थियों से भर जाते हैं। घण्टे–घडियाल, शंख की ध्वनियॉ चारों तरफ सुनायी देती हैं।''

''6. Lacs of people from India-abroad visit Ayodhya on

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the above special occasions and the entire Ayodhya gets filled up from religious calls of 'SitaRam'. Every lane, road, temple is flooded with devotees of Rama, pilgrims and spectators. The sounds of bells, gongs, conches are heard every where." (E.T.C.)

"7. मैंने अपने पिता जी के साथ सरयू स्नान करने के पश्चात् नागेश्वरनाथ, हनुमान गढ़ी, कनकभवन, बड़ी छावनी और श्रीराम जन्मभूमि का दर्शन अनेको बार लगातार किया है।"

"7. I along with my father, have regularly offered prayer and worship at Nageshwarnath, Hanumagarhi, Kanakbhawan, Badi Chhawani and Sri Ram Janmbhumi on number of occasions after taking a dip in the Saryu." (E.T.C.)

"8. सन् 1932 में जब मैं थोड़ा बड़ा हो गया और कुछ समझदार हुआ तो मैंने अपने पिता जी से मंदिरों के बारे में अधिक जानकारी प्राप्त की। सन् 1932 में श्रीरामविवाह के अवसर पर अपने पिता जी के साथ अयोध्या आया था और सरयू स्नान करने के बाद सर्व प्रथम श्रीराम जन्मभूमि का दर्शन करने गया तो ***मेरे पिता जी ने बताया कि तीन शिखर वाले भवन के बीच वाले शिखर के नीचे की भूमि पर हमारे आराध्य भगवान श्रीराम का अवतार हुआ था और यही श्रीराम जन्मभूमि है।"***

"8. In 1932 when I was a bit grown up and developed some understanding, I obtained more information about temples from my father. I had visited Ayodhya along with my father in the year 1932 on the occasion of 'Sri Ram Vivah' and after taking a dip in the Saryu I went to offer prayer at SriRam Janmbhumi for the first time, when ***my father told me that the incarnation of our revered Lord Rama took place at the land beneath the mid dome of the three dome building, and this was SriRam Janmbhumi.*** *" (E.T.C.)*

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''9. श्रीराम जन्मभूमि पर जाने के लिए पूरब की ओर मुख्यद्वार था जो हनुमतद्वार के नाम से विख्यात है इसमें काले कसौटी पत्थर के दो खम्भे लगे हुए थे जिनमें जय–विजय की खण्डित मूर्ति बनी हुई थी हनुमतद्वार पर ही एक पत्थर और लगा हुआ था जिस पर संख्या–1 और ''जन्मभूमि नित्य यात्रा'' लिखा हुआ था।''

''9. There is a main gate on the east to enter the SriRam Janmbhumi, which is famous as 'Hanumatdwar'. It has two pillars of black touch stone, which contain the broken idol of Jai-Vijai. There is another stone at the 'Hanumatdwar', which has number '1' and 'Janmbhumi Nitya Yatra' written on it." (E.T.C.)

''10. मुख्य प्रवेशद्वार हनुमतद्वार से दक्षिण तरफ वाराह भगवान की एक मूर्ति दीवार में ही लगी हुई खण्डित अवस्था में थीं हनुमत द्वार से अन्दर जाने पर ***बायें यानी दक्षिण तरफ राम चबूतरा था*** *जिस पर राम दरबार के विग्रह तथा श्रीरामलला की मूर्ति विराजमान थी। उसके दक्षिण पश्चिम कोने पर नीम व पीपल का पेड़ एक ही में लगा हुआ था जहॉ अधगोलाकार चबूतरा था चबूतरे पर शिव, पार्वती, गणेश, कार्तिकेय, शिवजी का अर्धानन्दी की मूर्तियॉ विराजमान थी।''*

''10. An idol of Lord Varah is installed in the wall to the south of main entrance gate 'Hanumatdwar', which was in a broken state. After entry through the Hanumatdwar, ***there was the Ramchabutara on the left i.e. towards south,*** *over which the 'Vigrah' (individual form or shape) of 'Ram Durbar(Court)' and the idol of Sri Ramlala were present. To its south-west corner, Neem and Pipal trees were planted together. There was a semi-circular platform over which the idols of Shiva, Parvati, Ganesh, Kartikey and Shivji's 'Ardhanandi' were present." (E.T.C.)*

''11. हनुमतद्वार के दाहिने अर्थात् उत्तर की ओर भण्डारगृह था जिसमें अन्न, बर्तन आदि रखे जाते थे और साधु–वैरागी रहते थे। श्रीराम जन्मभूमि पर साधु–वैरागी प्रत्येक समय रहते थे और अखण्ड कीर्तन चौबीसों घण्टे

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चलता रहता था।''

''11. To the right of 'Hanumatdwar' i.e. towards north, was the store room where food grains, utensils etc. were kept and saints-recluses used to live. Saints-recluses were always present at SriRam Janmbhumi and the 'Akhand Kirtan' (Non-stop prayer) continued round the clock.'' (E.T.C.)

''12. श्रीराम जन्मभूमि पर उत्तर की ओर भी एक द्वार था जिसको **सिंहद्वार कहा जाता था सिंहद्वार के ऊपर दो शेरों की मूर्तियॉ तथा उसके बीच में गरूण की एक मूर्ति बनी हुई थी।''**

''12. There was also a gate towards north of SriRam Janmbhumi, which ***was called 'Singhdwar'. The statues of two lions and one 'Garun' (mythological carrier of Lord Vishnu) in between, were there at the 'Singhdwar'.''*** *(E.T.C.)*

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''13. सिंहद्वार से अन्दर जाने पर सीता रसोई जिसको कौशल्या रसोई अथवा छठीपूजन स्थल भी कहा जाता है, था वहां चौका बेलन, चूल्हा और चरण चिन्ह बने हुए थे।''

''13. ***On entry through the 'Singhdwar' fell the 'Sita Rasoi', which is also called 'Kaushalya Rasoi' or 'Chhati Pujan Sthal'. The symbols of 'Chauka- Belan' (utensils used in Indian kitchen), hearth and feet existed there****.'' (E.T.C.)*

''14. रामचबूतरा के पश्चिम एक दीवार थी जिसमें लोहे के बड़े–बड़े जंगले लगे हुए थे जिसको सींकचें वाली दीवार कहा जाता था। सींकचे वाली दीवार में दो दरवाजे लगे थे। एक दरवाजा हनुमत द्वार के सामने पड़ता था दूसरा उससे थोड़ा उत्तर हटकर था। इन्हीं दरवाजों से होकर अन्दर जाने पर तीन शिखरों वाला भवन श्रीराम जन्मभूमि था। **जिसके मध्य वाले शिखर के नीचे की भूमि ही वह भूमि है जो परम्परागत आस्था एवं विश्वास के अनुसार भगवान**

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श्रीरामचन्द्र जी की जन्मभूमि मानी जाती है।''

''14. To the west of Ramchabutara was a wall with large iron grills, and was called grill wall. There were two gates in the grill wall. One gate faced the Hanumatdwar and the other was a bit away on the north. These gates were the entry points to the three dome building, SriRam Janmbhumi, ***under the middle dome of which is the land, which on the basis of customary faith and belief is considered to be the birthplace of Lord Rama****.'' (E.T.C.)*

''15. तीन शिखर वाले भवन के मध्य वाले प्रवेशद्वार में काले कसौटी के चार खम्भे लगे हुए थे और मध्य शिखर वाले भाग से दक्षिण वाले शिखर में जाने के लिए जो प्रवेशद्वार था उसमें भी काले कसौटी पत्थर के चार खम्भे लगे थे तथा मध्य शिखर वाले भाग से उत्तर के शिखर वाले भाग में जाने के लिए जो प्रवेश द्वार था उसमें भी काले कसौटी पत्थर के चार खम्भे लगे हुए थे इस प्रकार कुल 12 खम्भे लगे हुए थे जिन पर कलश, फूलपत्ती, देवी–देवताओं की मूर्तियाँ, ताण्डव मुद्रा, पद्मासन मुद्रा में थी।''

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''15 There were four black touch stone pillars at the middle gate of the three dome building, and there were four black touch stone pillars at the gate for entry to the southern dome side from the middle dome side and there were four black touch stone pillars at the gate for entry to the northern dome side from the middle dome side. As such there were 12 pillars in all, over which the 'Kalash' (pot), flowers-leaves, idols of Gods-Goddesses in 'Tandav' pose, 'Padmasan' pose were present.'' (E.T.C.)

''16. परम्परागत आस्था एवं विश्वास के कारण हिन्दू श्रद्धालु रामभक्त तथा मेरे परिवार के लोग और मैं भी उस स्थल को जहॉ भगवान श्रीराम का जन्म अनादिकाल से माना जाता रहा है उसे ***स्वयंभू देव मानकर दर्शन–पूजा, साष्टांग प्रणाम करते हैं*** *तथा पूरे परिसर की परिक्रमा अयोध्या में रहने वाले तथा देश–विदेश से अयोध्या आने वाले दर्शनार्थी–तीर्थयात्री करते हैं।''*

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"16. Out of customary faith and belief, the Hindu devotees of Rama, my family members and myself offer prayer and worship at the place which is considered from time immemorial as the birthplace of Lord Rama. ***(We) perform darshan-worship, offer prostration by considering it to be self-originating God*** *and the Ayodhyaites and the devotees-pilgrims from country- abroad circumambulate the entire premises." (E.T.C.)*

"17. मैंने भी अनेकों बार जन्मभूमि का दर्शन–पूजा अर्चना तथा परिक्रमा किया है। वर्ष 1934 में अयोध्या में हिन्दू–मुसलमानों के मध्य दंगा हुआ था। क्योंकि फैजाबाद तथा बाहर के बहुत से मुसलमान रामजन्मभूमि पर कब्जा करने के उद्देश्य से इकट्ठे हुए थे। जन्मभूमि पर हजारों हिन्दू श्रद्धालु रामभक्तों तथा वैरागी साधुओं ने उन्हें मारपीट कर भगा दिया था। सरकार ने अयोध्यावासी हिन्दू जनता पर दण्डस्वरूप दंगा टैक्स भी लगाकर हजारों रूपया वसूल किया था।"

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"17. I have offered prayer and worship at the Janmbhumi on numerous occasions and have also circumambulated around it. In 1934 a riot had broken out between Hindus-Muslims in Ayodhya because number of Muslims of Faizabad and other places, had gathered with the intention of capturing the Ramjanmbhumi. Thousands of Hindu devotees of Rama and recluse saints beat and drove them away. The Government imposed riot tax on the Hindu public of Ayodhya as a punishment, and recovered tax to the tune of thousands of rupees." (E.T.C.)

"18. सन् 1932 के बाद कभी भी कोई मुसलमान जन्मभूमि परिसर में नहीं जा पाया उस परिसर में नमाज पढ़ने का सवाल ही नहीं पैदा होता क्योंकि वैरागियों के डर व दहशत के कारण कोई भी मुसलमान जन्मभूमि के निकट रामकोट मोहल्ले में जाता ही नहीं था।"

"18. After 1932 no Muslim was ever able to enter the Janmbhumi premises and as such there is no question of

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offering of Namaz in that premises because on account of fear and terror of the recluses, no Muslim went to the Ramkot locality near the Janmbhumi." (E.T.C.)

"19. यदि भूले भटके कोई मुसलमान श्रीराम जन्मभूमि परिसर की ओर आते हुए दिखायी भी दे जाता था तो भी साधु–वैरागी उसे मारने के लिए दौड़ा लेते थे और उन्हें भगा देते थे। सन् 1932 से सन् 1949 तक कभी भी किसी मुसलमान को श्रीराम जन्मभूमि परिसर की ओर आते जाते भी नहीं देखा। साधु–वैरागियों के डर ओर दहशत के कारण मुसलमान श्रीराम जन्मभूमि परिसर की ओर आता ही नहीं था।"

"19. If by mistake any Muslim was spotted coming towards the SriRam Janmbhumi premises, then also the saints- recluses used to chase and drive them away. I never even saw any Muslim coming towards the SriRam Janmbhumi premises from 1932 to 1949. No Muslim came towards the SriRam Janmbhumi premises due to fear and terror of saints-recluses." (E.T.C.)

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"20. इसी प्रकार सन् 1949 से फरवरी 1986 यानी श्रीराम जन्मभूमि का ताला जिला जज फैजाबाद के आदेश से खोले जाने तक न तो मैंने किसी मुसलमान को श्रीराम जन्मभूमि परिसर की ओर आते हुए देखा न ही सुना और न ही मुसलमानों द्वारा श्रीराम जन्मभूमि परिसर या उसके आस–पास नमाज पढ़ने का प्रश्न ही पैदा नही होता है।"

"20. Similarly, from the year 1949 to February, 1986 i.e. till the opening of lock of SriRam Janmbhumi under order of District Judge, Faizabad, I neither saw nor heard about any Muslim going towards the SriRam Janmbhumi premises and there is no question of Muslims offering Namaz at or near the SriRam Janmbhumi premises." (E.T.C.)

336. **D.W. 1/3 Dr. Sahdev Prasad Dubey**, aged about 74 years in August 2003, is resident of village and post Khirauni, Tahsil and District Faizabad. His Examination-in-chief by way of

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affidavit dated 04.8.2003 followed by cross-examination is as under :

(a) 04.08.2003- by Nirmohi Akhara, defendant no. 11, through Sri R.L. Verma, Advocate (p. 10-20)

(b) 05/06.08.2003- by defendant no. 11 through Sri Abdul Mannan, Advocate (p. 21-36)

(c) 06/07/11/13/14.08.2003-by defendant no. 10, Sunni Central Waqf Board, through Sri Zafaryab Jilani, Advocate (p. 36-110)

(d) 14/19/21.08.2003- by plaintiff no. 7 (Suit-4) and defendant no. 5 (Suit-5) Sri Mohd. Hashim, through Sri Mushtaq Ahmad Siddiqui, Advocate (p. 110-140)

(e) 21.08.2003-defendant no. 26 (Suit-5) through Sri Sayad Irfan, Advocate and defendants no. 6/1 and 6/2 in Suit-3 through Sri Fazale Alam, Advocate adopted the cross examination already done by Sri Abdul Mannan, Sri Zafaryab Jilani and Sri Mushtaq Ahmad Siddiqui, Advocates (p. 140)

337. He did High School in 1950, Intermediate in 1952, Graduation in 1955 from Subhash National Degree College, Unnao affiliated to Agra University, B.Ed. and M.Ed. in 1956-57 and 1962-63 respectively from Lucknow University, M.A. from Awadh University, Faizabad in 1977 and Ph.D. in 1981 from the same University. The subject of research was "*Ram Kavya Parampara Mein Vaidehi Vanvas*". He was appointed as Teacher in R.D. Inter College, Suchitaganj, District Faizabad in 1958, promoted in Lecturer's grade (Education) in 1963, worked as Principal of the said College from September 1984 to February 1985, and on attaining the age of superannuation, retired on 30.6.1990. He is also a follower of Sanatan religion

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having faith in God and Goddess and perform Darshan and Pooja (worship) in accordance with religious tenets. He also stated about his special study on the literature and religious books etc. giving details thereof in para 10 of his affidavit dated 4.8.2003 and said as under :

''10. मैंने भी भगवान श्री राम की प्रेरणा व आर्शीवाद से ''राम काव्य परम्परा में वैदेही वनवास का विशिष्ट अध्ययन'' नामक शोध प्रबन्ध अवध विश्व विद्यालय, फैजाबाद से अपने आराध्य एवं प्रभु श्री राम के आर्शीवाद से 1981 में पूर्ण किया। इस शोध कार्य में मैंने लगभग 127 हिन्दी ग्रन्थों जिनमें अंगद पैज, अग्निपरीक्षा, अधखिला फूल, अलंकार मंजूषा, अशोकवन, अष्टयाम, अष्टयाम पूजा विधि, आंजनेय, उर्मिला, कल्पलता, भूमिजा, कैकेयी, प्रियप्रवास, बरवे रामायण, बालिवध, भक्ति का विकास, भूमिजा, मझली रानी, मानस का हंस, मानस अष्टयाम, मेघनाद, रसकलस, रसिक रहस्य, राजरानी सीता, रामकथा (उत्पत्ति एवं विकास), रामकथा और तुलसी, राम की शक्ति पूजा, राम चन्द्रिका, राम की सवारी, रामचन्द्रोदय काव्य, रामचरित मानस, रामचरित चिंतामणि, राम रसायन, रामराज्य, रामस्वयंवर रामाश्वमेध, रामरक्षा स्त्रोत्र, रामजन्म, रामभजनमंजरी आदि प्रमुख हैं एवं अन्य सम्बन्धित पुस्तकों का समीक्षात्मक अध्ययन किया।

संस्कृत ग्रन्थों में मैंने लगभग 56 संस्कृत ग्रन्थों जिनमें अग्निपुराण, अर्थववेद, अद्भुत रामायण, आध्यात्म रामायण, आनंद रामायण, अष्टयाम, उदारराघव कल्कि पुराण, कालिकापुराण, नृसिंह पुराण, पद्मपुराण, ब्रह्मपुराण, यर्जुवेद, रघुवंश, कालिदास कृत रामचरित, ऋग्वेद, वाराह पुराण आदि हैं तथा 3 पाली ग्रन्थों अनामकम जातकम, दशरथ कथानम व दशरथ जातकम व 5 प्राकृत ग्रन्थों 1. पउमारियं 2. राम ललनचरियं 3. कलावली 4. सीयाचरियं 5. रामलखनचरियं तथा 3 अपभ्रन्श ग्रन्थ 1. पउमाचरिउ (स्वयंभू) 2. पउमाचरिउ (पुष्पदन्त) 3. पद्म पुराण (बलभद्र पुराण) रइथू: के अध्ययन के अतिरिक्त डा0 ग्रियरर्सन लिखित ''लिग्विष्टिक सर्वे आफ इण्डिया को अंग्रेजी में पढ़ा एवं मनन किया है।''

''10. In 1981, I completed my research work on ''Ram Kavya Parampara Mein Vaidehi Vanvaas Ka Vishisht Adhayayan'' from the Awadh University Faizabad with the inspiration and the blessings of Lord Sri Rama. For this

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research work I made a critical study of 107 Hindi treatises, mainly including Angad Paij, Agnipariksha, Adhkhila Phool, Alankar Manjoosha, Ahsok Van, Ashtyaam, Ashtyaam Poojavidhi, Aanjneya, Urmila, Kalplata, Kaikeyi, Priyaprawas, Barwai Ramayana, Balivadh, Bhakti Ka Vikas, Bhumija, Majhli Rani, Manas Ka Hans, Manas Asthyaam, Meghnad, Raskalash, Rasik Rahasya, Raj Rani Sita, Ramkatha (Utpatti Evam Vikas), Ram Katha Aur Tulsi , Ram Ki Shakti Pooja, Ramchandrika, Ram Ki Sawari, Ramchadrodaya Kavya, Ram Charit Manas, Ram Charit Chitnamani, Ram Rasayan, Ram Rajya, Ram Svyamvar, Ramashwamedh, Ram Raskha Strotra, Ramjanam, Rambhajanmanjari, etc., and also of other relevant books.

Apart from nearly 56 Sanskrit treatises including Agnipurana, Atharva Veda, Adbhut Ramayana, Aadhyatm Ramayana, Anand Ramayana, Ashtyaam, Udaar Raghav, Kalki Purana, Kalika Purana, Nrisingh Purana, Padm Purana, Brahm Purana, Yajurveda, Raghuvansh, Kalidas written Ram Charit, Rigveda, Varah Purana, etc. and three Pali treatises – Anamakam Jatakam, Dashrath Kathanam and Dashrath Jatakam - and 5 Prakrit treatises – 1- Paumariyam 2- Ram Lalanchariyam 3- Kalawati 4-Siya Chariyam and 5- Ramlakhanchariyam – and three Upbhransh works – 1-Paumachariu (Swayambhoo) 2- Paumachariu (Pushpdant) 3- Padma Purana (Balbhadra Puranah Raithooh) – I also studied "Linguistic Survey of India" by Dr, Grierson in English and meditated upon it." (E.T.C.)

338. About his knowledge regarding birth of Lord Ram and his

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birthplace as well as the existence of temple at the disputed site, DW 1/3 said in paras 6, 7, 8, 9, 11, 12, 13, 14, 15, 16, 17 and 18 of the affidavit as under:

''6. हमारा परिवार सनातन धर्मी है तथा समस्त देवी–देवताओं में आस्था रखता है। मैं भी जन्म से ही सनातनधर्मी हूं तथा देवी–देवताओं में आस्था रखता हूं एवं उनका दर्शन व पूजन करता हूं।''

''6. My family is an orthodox (sanatandharmi) family and believes in all gods-goddesses. I am also an orthodox since birth and believe in gods-goddesses and offer my prayer-worship to them.'' (E.T.C.)

*''7. अयोध्या विश्व का महानतम तीर्थस्थल है और अयोध्या के आस–पास का समस्त क्षेत्र ''अवध'' के नाम से जाना जाता है। मैं इसी अवध क्षेत्र के जनपद फैजाबाद के ग्राम खिरौनी का स्थायी निवासी हूं जहां हमारे पूर्वज रहते रहे हैं। अयोध्या का महात्मय इसलिये है कि यह मर्यादा पुरूषोत्तम भगवान राम की पावन जन्म स्थली है जिसके उत्तर में पवित्र सरयू नदी बहती है। पौराणिक ग्रन्थों व लाखों वर्षो की आस्था के अनुसार अयोध्या के रामकोट मोहल्ले में जन्मभूमि व जन्म स्थान अवस्थित है। यों तो समस्त अयोध्या क्षेत्र ही मर्यादा पुरूषोत्तम श्री राम की जन्म स्थली के रूप में देवतुल्य पूज्य है किन्तु जिस स्थान को शास्त्रों ने श्री राम की जन्मस्थली माना है उसकी महिमा का बखान धार्मिक, साहित्यिक, व ऐतिहासिक पुस्तकों में किया गया है। **इनके अतिरिक्त जनमानस की आस्था व विश्वास के आधार पर रामकोट स्थित जन्मभूमि मन्दिर, जिसे विवादित कर दिया गया है वही मर्यादा पुरूषोत्तम श्री रामचनद्र जी की जन्मभूमि मानी जाती है, जिसे चिन्हित कर भव्य मन्दिर का निर्माण आदिकाल में हुआ था।** जबसे निरंतर उस स्थान तथा वहां विराजमान एवं स्थापित भगवान श्री राम की मूर्ति का दर्शन–पूजन एवं जन्मस्थान की परिक्रमा होती चली आ रही है।''*

''7. Ayodhya is the greatest pilgrimage on earth and Ayodhya along with its entire adjoining area is known as Oudh. I am a native of village Khirauni, district Faizabad of this very Oudh area, and my ancestors had also resided

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there. The importance of Ayodhya is in view of the fact that it is the sacred birthplace of Lord Rama, to the north of which flows the holy river Saryu. As per the religious treatises and faith of lakhs of years, the Janmbhumi and the birthplace are situated in Ramkot locality of Ayodhya. Although the entire Ayodhya is worth reverence as the birthplace of Maryada Purshottam Sri Rama, but the greatness of the place, which has been considered as the birthplace of Sri Rama in the Shastras, has been described in the religious, literary and historical books. ***Besides these, the Janmbhumi temple situated at Ramkot as per the faith and belief of general public,which has been made subject matter of dispute, has been considered as the janmbhumi (birthplace) of Maryada Purshottam Sri Ramchandra and after identifying the same, a grand temple was built there in early ages.*** *Since then, the prayer-worship of the deity of Lord Sri Rama present over there as well as the circumambulation of the Janmsthan has been performed." (E.T.C.)*

"8. पौराणिक तथा समस्त सनातनधर्मावलम्बी जनमानस की आस्था एवं विश्वास के अनुसार इस स्थान पर जन्मभूमि के प्रतीक स्वरूप मन्दिर की स्थापना असंख्य वर्षों पूर्व हुई थी तथा कालान्तर में महान पराक्रमी राजा विक्रमादित्य का शासनकाल जो कालगणना के अनुसार वर्तमान समय से 2060 वर्ष पूर्व माना जाता है और इसी कालगणना को विक्रम संवत के नाम से जाना जाता है। उन्होंने उक्त स्थान पर भव्य मन्दिर का निर्माण किया।"

"8. According to the religious treatises and faith and belief of orthodox general public, a temple was built at this place innumerable years ago as symbol of Janmbhumi. With passage of time a grand temple was built at the said place during the reign of great emperor Vikramaditya, which is believed to have existed about 2060 years ago and

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this very period is known as Vikram Samvat. He had built a grand temple at that place." (E.T.C.)

"9. भारतीय कालगणना के अनुसार इसे चार युगों में बांटा गया है जिन्हें सतयुग, त्रैता, द्वापर व कलयुग के नाम से जाना जाता है, जिसका प्रारम्भ आज से पांच शताब्दी पूर्व अर्थात पांच हजार वर्ष से कुछ अधिक से माना जाता है। भारतीय पंचांग की इसी कालगणना के अनुसार त्रेता युग में चैत्र शुक्ल नवमी को मर्यादा पुरूषोत्तम भगवान श्री राम का जन्म अवध के महाराजा दशरथ के जयेष्ठ पुत्र के रूप में हुआ, चैत्र शुक्ल नवमी को मर्यादा पुरूषोत्तम भगवान श्री राम चन्द्र का जन्म होने के कारण इसे रामनवमी कहा जाता है। मर्यादा पुरूषोत्तम भगवान श्री रामचन्द्र जिनके बालरूप का वर्णन धार्मिक एवं साहित्यिक ग्रन्थों में हुआ है तथा हजारों वर्षो के ज्ञात इतिहास में प्रत्येक वर्ष विक्रमी संवत् के अनुसार चैत्रशुक्ल राम नवमी के दिन के 12 बजे मर्यादा पुरूषोत्तम श्री रामचन्द्र जी का जन्मोत्सव प्रत्येक सनातनधर्मी रामभक्त परिवार में तथा मन्दिरों में मनाया जाता है। मन्दिरों में जाकर रामभक्त आराधन, दर्शन, पूजन, आरती व विराजमान श्रीराम के विग्रह की परिक्रमा कर अपने को धन्य मानते हैं।"

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"9. According to the Indian system of period calculation, it has been divided in four Yugas (periods) known as Satyug, Treta, Dwaper and Kalyug, which began about five centuries ago i.e. a bit more than five thousand years. As per this calculation of period of the Indian Panchang, Maryada Purshottam Lord Sri Rama was born on Chaitra Shukla Navami (ninth day of lunar fortnight commencing from no moon night of the month of chaitra)in the Treta Yuga, as the eldest son of king Dashrath. Since Maryada Purshottam Lord Sri Rama was born on Chaitra Shukla Navami, it is known as Ramnavami. The descriptions of the childform of Maryada Purshottam Lord Sri Rama, are found in religious and literary works and in the known history of thousand years, the birth celebration of Maryada Purshottam Sri Ramchandra takes place at 12 noon on

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Chaitra Shukla Navami every year in the Vikrama era, in every orthodox family and temples. The devotees of Rama go to temples to offer prayer, worship, arti and consider themselves to be fortunate by performing circumambulation of the deity of Sri Rama present over there." (E.T.C.)

''11. अयोध्या स्थित रामकोट मोहल्ले में ***श्री राम जन्म भूमि मन्दिर एक ऊँचे टीले पर अवस्थित है जिसके नीचे धरातल तक प्राचीन मन्दिरों के अवशेष विद्यमान हैं*** *जिनका निर्माणकाल कई शताब्दियों के अन्तराल पर हुआ है क्योंकि मन्दिरों का पुनरूद्धार एवं पुनर्निर्माण आवश्यकतानुसार किया जाता रहा है। 6 दिसम्बर 1992 को मन्दिर का जो भवन गिर गया है* ***उसके नीचे बारहवीं शताब्दी के मन्दिर के अवशेष विद्यमान हैं जिसका निर्माण गहरवार वंशीय राजा ने ग्यारहवीं शताब्दी के आसपास किया था।''***

''11. The ***Sri Ramjanmbhumi temple in Ramkot locality of Ayodhya, is situated over a high mound, beneath whose floor are present the remains of ancient temples****, which had been built at intervals of many centuries because the temples were renovated and re-built as per requirement. The building of temple, which collapsed on 6th December, 1992,* ***had the remains of a 12th century temple beneath it, which had been built by a Gaharwal dynasty king around 11th century.''***

''12. राम जन्मभूमि मन्दिर 6 दिसम्बर 1992 को विद्यमान भवन के गिर जाने के बाद भी भगवान श्री राम उसी पहले वाले स्थान पर विराजमान हैं और उनकी पूजा अर्चना आरती, परिक्रमा निरंतर श्रद्धालु भक्तगण व शपथी स्वयं भी करता चला आ रहा है।''

"12- Even after the collapse of existing building of Ramjanmbhumi temple on 6th December, 1992, Lord Sri Rama is still present at the earlier place and His prayer-worship, arti, circumambulation are regularly being

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performed by the devotees as well as the deponent." (E.T.C.)

*''13. श्री राम जन्मभूमि स्थित मन्दिर में प्रवेश के लिये पूर्व दिशा में हनुमत द्वार 6 दिसम्बर 1992 के पूर्व था, द्वार के दोनों ओर कसौटी के खम्भे लगे थे जो गिनती में दो थे इन पर देवी देवताओं की मूर्तियां उभरी थीं। **उत्तर की ओर सीतारसोई व इसके पूर्व में जन्मभूमि मन्दिर का भण्डारगृह व राम चबूतरा था,** सीतारसोई के उत्तरी दिशा में सिंहद्वार था दक्षिण व पश्चिम दिशा में परती जमीन थी जिसके भक्तगण मन्दिर परिसर अर्थात राम जन्म भूमि स्थित मंदिर की परिक्रमा करते थे।''*

*''13. Prior to 6th December, 1992 Hanumatdwar existed in east for entry to the temple situated at Sri Ramjanmbhumi. There were touchstone pillars on both sides of the gate, which were two in number with deities of Gods-Goddesses engraved over them. **There was Sita rasoi in the north and to its east were the store room of the janmbhumi temple and Ramchabutara.** To the north of the Sita rasoi, was the Singhdwar and vacant land in south and west, over which the devotees used to perform circumambulation of the temple premises i.e. the temple situated at Ramjanmbhumi." (E.T.C.)*

''14. अयोध्या में नित्य हजारों रामभक्त विश्व के सभी देशों एवं देश के प्रत्येक भाग से निरंतर आते रहते हैं जो सरयू में स्नानोपरान्त अयोध्या स्थित हजारों मन्दिरों में दर्शन–पूजन, आराधना करते हैं जन्म स्थान एवं जन्मभूमि मन्दिर, हनुमान गढ़ी, कनक भवन प्रत्येक रामभक्त एवं आराधक विशेष रूप से जाता एवं वहां का दर्शन कर अपने को सौभाग्यशाली मानता है।''

''14. Thousands of devotees of Rama from within the country and abroad used to visit to Ayodhya everyday and after having a dip in the Saryu, they used to have prayer-worship at thousands of temples situated in Ayodhya. Every

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devotee and worshipper of Rama particularly visited the Janmsthan, Janmbhumi temple, Hanumangarhi, Kanak Bhawn and after having a darshan over there, used to consider himself to be fortunate." (E.T.C.)

"15. हर साल ***सावन मेला के अवसर पर अयोध्या असंख्य रामभक्तों से पट जाती है।*** *श्रद्धालु रामभक्त श्रावण माह की प्रतिपदा से आना आरम्भ कर देते हैं और रक्षाबन्धन तक भक्तों का आना निरंतर बना रहता है आने वाला प्रत्येक श्रद्धालु रामभक्त सरयू स्नान, अयोध्या स्थित मन्दिरों का दर्शन व पूजन एवं आराधना, जन्मभूमि परिसर व जन्मभूमि परिसर मन्दिर में विराजमान रामलला का दर्शन, पूजन व आराधन व परिक्रमा कर अपने जीवन को सार्थक मानता है।"*

"15. Every year ***Ayodhya was flooded with innumerable devotees of Rama on the occasion of Shravna (a lunar month of Hindu calender) fair****. The devotees started visiting from the Pratipada (first day of a lunar month) of the month of Shravna and kept coming till Rakshabandhan. Every visitor devotee of Rama used to consider his life to be worth-while on having dip in Saryu, offering prayer-worship at the temples situated at Ayodhya and performing the darshan, prayer-worship, circumambulation of the Janmbhumi premises and Ramlala present in the temple at the Janmbhumi premises." (E.T.C.)*

"16. प्रत्येक वर्ष ***कार्तिक मास में अयोध्या में कार्तिक मेला होता है*** *इसमें भी विश्व के अधिकांश देशों व भारत के कोने कोने से लाखों की संख्या में श्रद्धालु व रामभक्त अयोध्या में एकत्र होते हैं सरयू स्नान कार्तिक मेले का मुख्य पर्व होता है श्रद्धालु रामभक्त पंचकोसी एवं चौदहकोसी परिक्रमा के उपरान्त सरयू नदी के पवित्र जल में स्नान के बाद राम राम जन्मभूमि परिसर स्थित मन्दिर तथा इसके उपरान्त अयोध्या स्थित अन्य मन्दिरों में दर्शन, पूजन व अर्चन कर प्रभु श्री राम के चरणों में अपनी आस्था निवेदित करते हैं।"*

"16. Every year ***in the month of Kartika (a lunar month***

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of Hindu calender), a Kartika fair is held at Ayodhya. *It was also attended by lacks of devotees and followers of Rama both from within and outside the country. The Saryu Snan was the main occasion of the Kartika fair. After performing Panch kosi (distance of five kose, one kose being equal to two miles) and chaudah kosi (distance of fourteen kose) circumambulation, the devotees of Rama used to take dip in holy water of river Saryu followed by prayer-worship at the temple situated at the Ramjanmbhumi premises and other temples situated at Ayodhya and used to pay their reverence at the feet of their Lord Sri Rama." (E.T.C.)*

"17. अयोध्या में ***चेत्रशुक्ल नवमी अर्थात रामनवमी को भी प्रत्येक वर्ष भगवान श्री रामलला का जन्मोत्सव बड़ी धूमधाम व श्रद्धा एवं विश्वास के साथ मनाया जाता है*** *इस पुनीत अवसर पर भी विदेश से एवं देश के कोने कोने से असंख्य श्रद्धालु रामभक्त अयोध्या आकर जन्मभूमि परिसर स्थित मन्दिर, कनक भवन, व अयोध्या स्थित अन्य मन्दिरों में एकत्र होकर पूरी निष्ठा एवं भक्ति के साथ भवबन्धन से पार लगाने वाले परमपूज्य श्री भगवान श्रीराम का जन्मोत्सव मनाते एवं बाद में अन्य राम नगरी अर्थात अयोध्या स्थित मन्दिरों का दर्शन कर उनमें पूजन, आराधन कर अपने व अपने परिवार पर श्री राम प्रभु का वरदहस्त बने रहने की कामना करते हैं।"*

"17. ***The birth function of Lord Sri Ramlala is also celebrated every year at Ayodhya on Chaitra Shukla Navami or Ramanavami, with great pomp and show and faith and belief****. Innumerable devotees of Rama from abroad and various corners of the country, used to visit Ayodhya on this pious occasion and gather at the temple situated at the Janmbhumi premises, the Kanak Bhawan and other temples at Ayodhya and used to celebrate the birth function of their revered Lord Sri Rama with full*

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devotion. Thereafter, they had the darshan at various temples situated at Ayodhya and after offering their prayer-worship, they used to pray for the blessings of Lord Sri Rama for themselves and their families" (E.T.C.)

''18. अयोध्या तीर्थस्थली अन्य सभी तीर्थस्थलों में प्रमुख रूप से मानी जाती है क्योंकि यहां ही मर्यादा पुरूषोत्तम भगवान श्री राम ने मानव रूप में अवतार लेकर समस्त मानव जाति के लिये कल्याणकारी काम किये हैं। भगवान श्री राम और अयोध्या में स्थित उनकी जन्मस्थली जिसे रामजन्म भूमि मन्दिर व परिसर के रूप में कोटि–कोटि भारतीय व रामभक्त श्रद्धा, विश्वास व आस्था का पुंज मानकर पूजा करता चला आ रहा है। शपथी भी इसी श्रद्धा, विश्वास एवं आस्था से अभिभूत भगवान श्री राम व उनकी जन्मभूमि व परिसर की वन्दना, अर्चना व उसमें पूजा करता चला आ रहा है व आजीवन करता रहेगा।''

''18. Ayodhya is considered to be the main pilgrimage amongst all the other pilgrimages, because Maryada Purshottam Lord Sri Rama had incarnated here in human form and had carried out welfare acts for the human kind. Lord Sri Rama and His birthplace at Ayodhya known as Ramjanmbhumi temple and premises, have been revered by crores of Indians and devotees of Rama as the source of faith, devotion and belief. The deponent has also been offering his prayer-worship to Lord Sri Rama, His birthplace and premises out of this very devotion, faith and belief and would continue to do so in my whole lifetime." (E.T.C.)

339. **D.W. 2/1-1, Rajendra Singh** is 60 years of age (at the time of swearing of affidavit dated 1.12.2004). He was cross examined in the followed manner :

Part-I:(a) 01.12.2004- by Nirmohi Akhara, plaintiff (Suit-3) through Sri R.L. Verma, Advocate (p. 13-19)

(b) 02.12.2004- by Mohd. Faruk, defendant no. 11 (Suit-3)

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through Sri Abdul Mannan, Advocate (p. 20-28)

(c/1) 02/ 03/ 07/ 08/ 09/ 10/ 14/ 15.12.2004- by Sunni Central Waqf Board, defendant no. 9 through Sri Zafaryab Jilani, Advocate (p. 28-102)

Part-II:(C/2) 16/ 17/ 20/ 21/ 22/ 23.12.2004, 03/ 04/ 05/ 06/ 07/ 10.01.2005- by Sunni Central Waqf Board, defendant no. 9 through Sri Zafaryab Jilani, Advocate (p. 103-221)

(d) 10/ 11/ 12/ 13/ 17/ 18/ 19/ 20.01.2005- by defendant no. 7 (Suit-4) through Sri Mustaq Ahmad Siddiqui, Advocate (p. 222-308)

(e) 20.01.2005- defendant no. 6/1 (Suit-3) through Sri Irfan Ahmad, Advocate and defendant no. 6/2 (Suit-3) through Sri Fazale Alam, Advocate and defendant no. 26 (Suit-5) through Sri C.M. Shukla, Advocate adopted the cross examination already done by Sri Abdul Manna, Sri Zafaryab Jilani and Sri Mustaq Ahmad Siddiqui, Advocates (p. 308)

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340. He is resident of 293, Sector-16, Faridabad, Haryana. He passed Higher Secondary in 1962 from Government Higher Secondary School, Kalka Ji, New Delhi, obtained technical training in the Trade 'Miller' from I.T.I., Arab Ki Sarai, New Delhi in 1963 and training in Tool and Cutter Grinding from S.I.S.I., Okhla, New Delhi in 1963-64. He also got training in 'Blue Printing' in 1965 from the above institution. He is a Sikh and follows the religious cultural tenets thereof, has studied religious cultural and historical literature of Sikhism since his childhood and has always made efforts to collect maximum information and knowledge of Sikhism. He is engaged in writing work since 1967. He is author of several articles published in

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provincial and national level journals and papers from time to time, editing a quarterly magazine "Vishvakarma Sangh" since 1987, has studied several books on Sikh faiths and history which includes :

1. Adi Sakhian
2. Puratan Janam Sakhi Sri Guru Nanak Dev Ji Ki
3. Pothi Janamsakhi : Giyan Ratnawali
4. Sri Guru Nanakdev Ji Di Janamsakhi
6. Sachkhand Pothi : Janamsakhi Sri Guru Nanak Dev Ji
8. Guru Nanak Bans Prakash
9. Sri Guru Tirath Sangrahi
10. Tvarikh Guru Khalsa : Bhag 1

341. Based on the aforesaid studies etc., he says in para 5 of the affidavit as under :

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"5. ***इन ग्रन्थों से प्राप्त जानकारी से यह पूर्णतः प्रमाणित होता है कि विवादित भूमि भगवान् श्री रामचन्द्र जी की जन्मस्थली है तथा श्री गुरू नानकदेव जी ने अयोध्या जाकर श्री राम जन्मभूमि मन्दिर के दर्शन किये थे।*** *इन्हीं ग्रन्थों से यह भी प्रमाणित होता है कि कालान्तर मे श्री गुरू तेग बहादुर और उनके पुत्र श्री गुरू गोविन्द सिंह ने भी अयोध्या जाकर श्रीराम जन्मभूमि मन्दिर के दर्शन किये थे।"*

"5. ***From knowledge acquired from these treatises it is absolutely proved that the disputed land is the birth place of Lord Sri Rama Chandra and that Sri Guru Nanak Dev went to Ayodhya and had darshan of Sri Rama Janam Bhumi temple.*** *From these very treatises it is also established that Guru Teg Bahadur and his son, Sri Guru Govind Singh, also visited Ayodhya and had darshan of Sri Ram Janam Bhum temple later on." (E.T.C.)*

342. In paras 6 and 7 DW 2/1-1 gives certain details of the

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contents of some books and then says that from the aforesaid, it is evident that Sri Guru Nanak Dev Ji visited the most pious and religious place Ayodhya. In paras 8 to 13, he refers to some other books and contents thereof and then in para 14, he says that from the study of those books and according to his research, he is clearly of the opinion that the disputed place is the birth place of Lord Ram and has been treated as such traditionally. In para 15, again referring to certain books, he says that Babar was a cruel invader, not only murdered Hindus but also damaged several temples. The averments in para 6 to 16 of the affidavit are as under :

''6. यह कि ''जनमसाखी भाई बाला'' (रचनाकाल : 1715 विक्रमी = 1658 ईसवी, डा0 गुरबचन कौर द्वारा सम्पादित, भाषा विभाग, पंजाब, पटियाला, 1987 ईसवी, पृष्ठ 172) के अनुसार श्री गुरू नानकदेव तलवण्डी राय भोए भट्टी नामक नगर के निवासी मेहता श्री कालू बेदी और माता तृप्ता जी के घर कार्तिक पूर्णिमा 1526 विक्रमी = 20 अक्टुबर 1469 ईसवी के शुभ दिन अवतरित हुए थे। सोढ़ी मनोहर दास मेहरबान कृत ''सचखण्ड पोथीः जनमसाखी श्री गुरू नानकदेव जी'' (रचनाकाल : लगभग 1669 विक्रमी = 1612 ईसवी, प्रो0 कृपाल सिंह द्वारा सम्पादित, खालसा कालेज, अमृतसर, 1962 ईसवी, पृष्ठ 89) से ज्ञात होता है कि सुल्तानपुर में नवाब दौलत खां लोदी के मोदीखाने में मोदी के रूप में कार्यरत श्री नानकदेव जी को काली वेंई नदी में स्नान करते समय भाद्रपद पूर्णिमा 1564 विक्रमी = 1507 ईसवी के शुभ दिन परमेश्वर के दर्शन हुए थे। तब उन्होंने तीर्थयात्रा पर जाने का शुभ संकल्प किया (पृष्ठ 111) उक्त पुस्तकों के संदर्भित अंशों की छायाप्रति इस शपथ पत्र का संलग्नक 1 व 2 है।''

''6. That as per ''JanamSakhi Bhai Bala'' (Time of composition : 1715 Vikrami = 1658 AD, edited by Dr. Gurbachan Kaur , Language Department, Punajb, Patiala, 1987 AD, page 172), Sri Guru Nanak Dev appeared on the auspicious day of Kartik Poornima 1526 Vikrami, i.e. 20th October, 1469 at the house of Sri Kalu Bedi (father) and

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Tripta (mother), residents of Talvandi Rai Bhoye Bhatti town. From Sodhi Manohar Das Meharban written "Sach Khand Pothi : Tanam Sakhi Sri Gurunanak Dev Ji"(Time of composition : circa 1669 Vikrami = 1612 AD, edited by Prof Kripal Singh, Khalsa College, Amritsar, 1962 AD, page 89), it is known that Sri Nanak Dev, working at the grocery of Nawab Dailat Khan Lodi in Sultanpur, had darshan of God on the auspicious day of Bhadrapad Poornima 1564 Vikrami i.e. 1507 AD while taking a dip in Kali Venyee river. Then he resolved to go on a pilgrimage (page 111). Photocopies of referred portions of the said books are enclosed with this affidavit and are marked as annexures 1 and 2." (E.T.C.)

''7. यह कि ''आदि साखीआं'' (रचनाकाल : 1758 विक्रमी =1701 ईसवी, डा0 प्यार सिंह द्वारा सम्पादित, लाहौर बुक शाप, लुधियान, 1983 ईसवी, पृष्ठ 168) में लिखा है : ''फेरि बाबा जी अगलिआ तीरथा नो चलिआ। गंगा गुदावरी गइआ। पिराग बनारसी गोमती अजुधिआ दुआरका जगंनाथ उडीसा अठसठ तीरथ कीए। सभना का फलु लीआ। असनानु कीआ सभ धरती देखी।''

इसी प्रकार पुरातन जनमसाखी श्री गुरू नानकदेव की (रचना काल : 1791 विक्रमी =1734 ईसवी, श्री शमशेर सिंह अशोक द्वारा सम्पादित, धर्म प्रचार कमेटी, श्री अमृतसर, 1969 ईसवी, पृष्ठ 64) में भी लिखा है: ''फेर बाबा अगलिआ तीरथा नू चलिआ। गंगा, गुदावरी गइआ, पिरागु, गोमती, अजुधिआ, दुआरका, जगननाथि, उड़ीसा, अठसठ तीरथ कीए। सभना का फलु लीआ। इसनानु कीआ, सभु धरती देखी।''

*उपरोक्त उद्धरणों से यह ज्ञात होता है कि **श्री गुरू नानक देव ने पावन तीर्थस्थली अयोध्या की भी यात्रा की थी।** उक्त पुस्तकों की संगत पृष्ठ की दायाप्रति इस शपथ पत्र के संलग्नक 3 व 4 है।''*

"7. That in "Adi Sakhian" (Time of composition : 1758 Vikrami = 1701 AD, edited by Dr. Pyar Singh , Lahore Book Shop, Ludhiana, 1983 AD, page 168), it is written :

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"Feri Baba Ji agliya tiratha no chaliya. Ganga Gudavari gaiya. Pirag Banarasi Gomti Ajudhiya Duarka Jagannath Udisa athsath tirath kiye. Sabhna ka falu liya. Asnanu kia sabh dharati dekhi." " Similarly, in "Janamsakhi Sri Guru Nanak Dev Ki" (Time of composition : 1791 Vikrami = 1734 AD, edited by Sri Shamsher Singh Ashok, Dharm Prachar Committee, Sri Amritsar, !969 AD, page 64) also, it is written: "Fer Baba agliya tiratha nu chaliya. Ganga Gudavari gaiya, Piragu, Gomti Ajudhiya Duwarka Jagannath Udisa athsath tirath kiye. Sabhna ka falu liya. Isnanu kia sabhu dharati dekhi."

From the afore-said quotatons it is known that ***Sri Guru Nanak Dev also travelled to the pious site of pilgrimage called Ayodhya.*** *Photocopies of relevant pages from the said books are enclosed with this affidavit and are marked as annexures 3 and 4." (E.T.C.)*

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"8. यह कि "पोथी जनम साखी : गिआन रतनावली" (रचनाकाल : लगभग 1787 विक्रमी =1730 ईसवी आज्ञानुसार मीयां चरागदीन स्राज दीन, मुसतफाई छाया खाना, पत्थर छापा संस्करण, 1947 विक्रमी =1890 ई0 पृष्ठ 213) में श्रीगुरू नानकदेव द्वारा अयोध्या दर्शन के संदर्भ में लिखा है : "तब बाबा जी अयुधिया को जात भए अर कहा कि मरदानिआ! एह अजुधिया नगरी श्री रामचन्द्र जी की है। सोचल इसका दरसन करीए। तब बाबा जी नदी ते जाई उतरे।" उक्त पुस्तकों की छाया प्रति इस शपथ पत्र का संलग्नक 5 है।"

"8. That in "Pothi Janam Sakhi : Gian Ratnavali" (Time of composition : 1787 Vikrami = 1730 AD, edited by Dr. Gurbachan Kaur , Musatfai Chayakhana, Patthar Chhapa Sanskaran, 1947 Vikrami = 1890 AD, page 213), it is written in reference to visit to Ayodhya by Sri Guru Nanak Dev: " Tab Baba ji Ayudhiya ko jat bhaye ar kaha ki Mardaniya eh Ajudhiya Nagari Shri Ram Chandra Ji ki

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hai. Sochal iska darshan kariye. Tab Babaji nadi te jai utare." The photocopies of the said books form annexure 5 to this affidavit." (E.T.C.)

''9. यह कि श्री गुरू नानक देव द्वारा अयोध्या दर्शन के अभिप्राय का रहस्य खोलते हुए भाई बाले वाली ''जनमसाखी'' (प्रकाशक : भाई चतरसिंह –जीवन सिंह, बाजार भाई सेवा, अमृतसर, 1940 विक्रमी = 1883 ई0 पृष्ठ 261) में बताया गया है: ''गुरू जी अयुधिया को गए। श्री गुरू नानकदेव जी ने कहा : भाई बाला इह भी नगरी श्री रामचन्द्र जी की है। ऐथे श्री रामचन्द्र जी ने अवतार धार के चरित्र कीते हन सो देख के ही चलीए। तां श्री गुरू जी सरजू नदी के किनारे पर जाई बैठे।'' उक्त पुस्तक की छायाप्रति इस शपथ पत्र का संलग्नक 6 है।''

"9. That unravelling the mystery of Ayodhya darshan by Sri Guru Nanak Dev, Bhai Bole written "Janam Sakhi" (Publisher : Bhai Chatar Singh 7 Jeevan Singh, Bazar Bhai Seva, Amritsar, 1940 Vikrami i.e. 1883 AD, page 261) says : "Guru Ji Ayudhiya Ko Gaye". Sri Guru Nanakdev Ji said: "Bhai Bala Ieh Nagari Sri Ramchandra Ji ki hain aithe Sri Ramchandra Ji ne avtaar dhaar ke charitra kite han so dekh ke hi chaliye. Ta Sri Guru Ji Sarju nadi ke kinare par jai baithe." The Photocopy of the said book is enclosed with this affidavit as annexure no. 6." (E.T.C.)

''10. यह कि उपरोक्त धारा 8 और 9 में वर्णित दोनों ''जनमसाखियों'' के सम्मिलित पाठ से स्पष्ट हो जाता है कि अयोध्या दर्शन से श्री गुरू नानकदेव का अभिप्राय श्री राम के सभी लीला स्थलों के दर्शन करना था। अयोध्या में श्रीराम लीलास्थलों में सर्वाधिक महत्वपूर्ण लीलास्थल था: श्रीराम जन्मभूमि मन्दिर। इसी महत्वपूर्ण लीला स्थल पर अवतार धारण करके श्रीराम ने अपनी बाल–लीलाएं की थी जिसे देख के ही चलने की बात श्री गुरू नानकदेव ने दृढ़तापूर्वक कही है। ऐसे दृढ़ निश्चयी गुरूजी के कनिष्ठ पुत्र श्री लक्ष्मीचन्द के आठवें वंशज बाबा सुखबासी राम बेदी अपनी रचना ''गुरू नानक बंस प्रकाश'' (रचनाकाल : 1886 विक्रमी=1829 ई0, डा0 गुरमुख सिंह द्वारा सम्पादित, पंजाबी यूनीवर्सिटी, पटियाला, 1986 ईसवी,

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पृष्ठ 151) में बताते हैं:

''चले तहां ते सतिगुरू मरदाना ले संगि। आए अउध पुरी बिखे सरजू नदि जिह संगि।।

सरजू जल मंजन कीआ दरसन राम निहार। आतम रूप अनंत प्रभ चले मगन हितु धार।।''

उपरोक्त छन्द में ''दरसन राम निहार'' शब्द यह भली भॉति स्पष्ट कर देते हैं कि अयोध्या में श्रीराम जन्मभूमि मन्दिर नामक लीलास्थल में सुप्रतिष्ठित ''राममूर्ति'' के श्री गुरू नानकदेव ने निहार कर अर्थात् ध्यानपूर्वक दर्शन किए थे। इससे यह सिद्ध होता है कि महत्वपूर्ण लीलास्थल ''श्रीराम जन्मभूमि मन्दिर'' के रूप में श्री गुरू नानक के प्रारम्भिक तीर्थयात्रा काल में विद्यमान था। उक्त पुस्तक के संगत पृष्ठ की छायाप्रति इस शपथ पत्र का संलग्नक 7 है।''

''10. That from the combined reading of both ''Janam Sakhis'' mentioned in the afore-said paras 8 and 9, it transpires that by Ayodhya darshan Sri Guru Nanak Dev meant 'having darshan of all Leela Sthals of Sri Rama' (places where Rama performed His roles in a human form). The most important Leela Sthal of Sri Rama in Ayodhya was : Sri Ram Janam Bhumi temple. Sri Rama incarnated himself at this very important Leela Sthal and acted as a child. Sri Guru Nanak Dev has asserted to have darshan of it. Baba Sukhvasi Ram Bedi, 8th lineal descendent of Sri Laxmi Chandra, younger son of so resolute Guru Ji, in his work 'Guru Nanak Vans Prakash' (Time of composition : 1886 Vikrami = 1829 AD, edited by Dr. Gurumukh Singh, Punajbi Unversity Patiala, 1986 AD, page 151) says :

"Chale tahan te Satiguru Mardana le sangi. Aaye Awadh Puri bikhe Sarju nadi jih sangi.

Sarju jal manjan kiya darsan Ram nihar. Aatam roop anant Prabhu chale magan hitu dhaar."

The expression ''Darshan Ram Nihar'' in the afore-said

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verse duly shows that Sri Guru Nanak Dev had a close darshan of 'Ram Murti' (idol of Rama) installed on the Leela Sthal named Sri Ram Janam Bhumi temple in Ayodhya. It goes to prove that the important Leela Sthal existed in the shape 'Sri Ram Janam Bhumi temple at the time of the first pilgrimage of Sri Guru Nanak Dev. Photocopy of the relevant page of the said book is enclosed with this affidavit and is marked as Annexure no. 7." (E.T.C.)

"11. यह कि भाद्रपद पूर्णिमा 1564 विक्रमी=1507 ईसवी के शुभ दिन अपने हृदय में परमेश्वर का प्रकाश पाकर श्री गुरू नानकदेव जी तीर्थयात्रा पर जाने के लिए उद्यत हुए। तब वे सुल्तानपुर से चल कर दिल्ली, हरिद्वार इत्यादि स्थानों से होते हुए अयोध्या पहुंचे। इस यात्राकाल में लगभग 3–4 वर्ष व्यतीत हुए। ***इस प्रकार 1567–1568 विक्रमी=1510–1511 ईसवी में श्री गुरूनानक देव ने श्रीराम जन्मभूमि मन्दिर के दर्शन किये थे।*** *यह उल्लेखनीय है कि इस समय तक भारत वर्ष पर आक्रान्ता बाबर का आक्रमण नहीं हुआ था।"*

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"11. On the auspicious day of Bhadrapad Poornima 1564 Vikrami = 1507 AD, Sri Guru Nank Dev was prompted to go on a pilgrimage on his heart being illumined with the light of God. Then he proceeded from Sultanpur and reached Ayodhya through Delhi, Hardwar, etc. This journey lasted nearly 3-4 years. ***In this way Sri Guru Nanak Dev had darshan of Sri Rama Janam Bhumi temple in 1567-1568 Vikrami i.e. 1510-1511 AD****. It is pertinent to mention that by that time invader Babur had not invaded India." (E.T.C.)*

"12. यह कि सोढ़ी मनोहरदास मेहरबान की रचना "सचखण्ड पोथीः जनमसाखी श्री गुरू नानकदेव जी (रचनाकालःलगभग 1667 विक्रमी=1610 ईसवी, प्रो0 कृपाल सिंह द्वारा सम्पादित, खालसा कालेज, अमृतसर, 1962 ईसवी, पृष्ठ 186–187, 190) में लिखा है : "तब गुरू बाबा नानकु उसु नगर

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ते उसु पटेल कंउ नामु दिड़ाई करि पूरब की धरती नगरि अजोधिआ में जाई बसे। . . . तब अजोधिआ बिखे गुरू बाबा नानकु बैठा भगति करता है। . . . तब बाबा नानकु जुहदी अजोधिया महि बैठा परली दखण की तरफ, एकु पंज तीरथी थी उसके ऊपर एक मटु था, उस ही महि बैठा नामु सिमरनु करता था।''

यहॉ अयोध्या में दक्षिण दिशा की ओर पंचतीर्थो के ऊपर एक मठ में श्रीगुरू नानक द्वारा तपस्या करने की बात ज्ञात होती है। स्कन्दमहापुराण, वैष्णवखण्ड, अयोध्यामाहात्म्य के पहले दो अध्यायों में वर्णित पंचतीर्थो के नाम हैः चक्र, ब्रह्मकुण्ड, ऋणमोचन, पापमोचन और सहस्रसार। सहस्रसारतीर्थ से दक्षिण दिशा में चक्रतीर्थ की ओर जाते हुए चौथे स्थान पर ब्रह्मकुण्डतीर्थ पड़ता है। इसी ब्रह्मकुण्डतीर्थ के पास वह मठ था जहॉ बैठकर जुहदी=तपस्वी नानक जी ने तपस्या की थी। श्री गुरू नानकदेव की इस पावन तपस्थली के ठीक सामने सड़क के दक्षिण में ''गुरूद्वारा ब्रह्मकुण्ड साहिब'' बना हुआ है जो श्रीराम जन्मभूमि से लगभग 150–200 गज की दूरी पर स्थित है।

सोढ़ी मनोहरदास मेहरबान कृत ''सचखण्ड पोथीः जनम साखी श्री गुरू नानकदेव जी'' (पृष्ठ 187, 191–197, 198–99) के अनुसार अयोध्या में इस पावन तपस्थली पर रहते हुए श्री गुरू नानक देव जी ने पॉच शबदों (पदों) की संगीतबद्ध रचना की, भक्तजनों में उनका गायन किया और भावार्थ समझाया। इससे प्रभावित होकर अनेक श्रद्धालु लोग श्री गुरू जी के सिक्ख हुए और नानकपन्थी बने। उक्त पुस्तक के संगत पृष्ठ की छायाप्रति इस शपथ पत्र का संलग्नक 8 व 9 है।''

''12. That in the work of Sodhi Manohar Das Meharban ''Sach Khand Pothi : Janam Sakhi Sri Guru Nanak Dev Ji'' (Time of composition : circa 1667 Vikrami i.e. 1610 AD, edited by Prof Kripal Singh, Khalsa College, Amritsar, 1962 AD, pages 186-187 and 190), it is written :

"Tab Guru Baba Nanaku usu nagar te usu Patel kau namu didai kari purab ki dharti nagari Ajodhiya mein jai base. . . . . Tab Ajodhiya bikhe Guru Baba Nanaku baitha bhagati karta hai. . . .. . Tab Baba Nanaku juhdi Ajodhiya mahi baitha parli dakhad ki taraf, eku panj teerathi thi uske upar

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ek matu tha, us hi mahi baitha namu simaranu karta tha."
It comes to knowledge that Sri Guru Nanak Dev performed 'tapasya' (practice of austerities) in a monastery above Panchteertahs in the north here in Ayodhya. Names of Panchteerthas mentioned in the first two chapters of Skandha-Mahapurana, Vaishnavakhand, Ayodhya-Mahatmya are : Chakra, Brahmakund , Rinmochan, Paapmochan, Sahasrasar. While going towards Chakrateertha to the south of Sahasrasar-Teertha, we find Brahmakund Teertha at the fourth place. Near this very Brahmakund was a monastery where ascetic Nanak Ji seated himself and practised austerities. In the south of the road exactly opposite to Sri Guru Nanak Dev's pious site of austerity stood"Gurudwara Brahmakund Sahib", which is nearly 150-200 yards away from Sri Ram Janam Bhumi.

As per Sodhi Manohar Das Meharban's work "Sachkhand Pothi : Janam Sakhi Sri Guru Nanak Dev Ji" (pages 187, 191-197, 198-199), Sri Guru Nanak Dev Ji while staying on this pious site of austerity in Ayodhya composed a musical composition of five verses, and sang it in the midst of devotees and made them understand its meaning. Impressed by it many devotees became Sikhs as disciples of Sri Guru Ji and adopted the Nanak-Panth. The photocopy of the relevant page of the said book is enclosed with this affidavit and is marked as Annexures 8 and 9." (E.T.C.)

''13. यह कि इतिहासकार ज्ञानी ज्ञान सिंह के विद्यागुरू पण्डित तारा सिंह नरोत्तम (1879–1948 विक्रमी=1822–1891 ईसवी) की रचना ''श्री गुरू तीरथ संग्रहि'' (मूल रचनाकालः1941 विक्रमी=1884 ईसवी, श्री निर्मल पंचायती अखाड़ा, कनरवल, द्वितीय संस्करण 1975 ईसवी, पृष्ठ 121, 130) में पृष्ठ 121 पर श्री गुरू तेगबहादुर के अयोध्या आने का उल्लेख करते हुए

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आगे पृष्ठ 130 पर लिखा है कि श्री गुरू गोविन्द सिंह ''इहां आपणी कुल के ब्रिध पुरख राम के जनम थान में आए।''

ज्ञानी ज्ञान सिंह अपनी प्रसिद्ध रचना ''तबारीख गुरू खालसाःभाग 1'' (गुरू गोबिन्द सिंह प्रेस, सियालकोट, 1948 विक्रमी=1891 ईसवी, पृष्ठ 283–284) में लिखते हैं कि गुरू गोविन्द सिंह ने ''शहर काशी रामनगर दा सैल प्रदक्खणा कीती। एथों चल मिरजापुर आदिक नगरा नूं देख दे होए अजुध्या जी बसिष्ट कुण्ड, जो बसिष्ट जी दा घर ते होम करण दी जगा है, जा ठहिरे। फिर सूरजकुण्ड, हनुमानगढ़ी, रामचन्द्र दे मन्दर, सीता दी रसोई आदिक अस्थान देखे ते स्वरगद्वारी गुप्तारघाट सरजू दे इशनान दान कीते।'' उक्त पुस्तक के संगत पृष्ठ की छायाप्रति इस शपथ पत्र का संलग्नक 10 व 11 है।''

"13. That in his book "Sri Guru Teerath Sangrahi" (origianally written in 1941 Vikrami i.e. 1884 AD, Sri Nirmal Panchayati Akhada, Kanarval, second edition 1975 AD, pages 121 and 130), Pt. Tara Singh Narottam (1879-1948 Vikrami i.e. 1822-1891 AD), teacher of historian Gyani Gyan Singh, has on page 121 made mention of Sri Guru Teg Bahadur's pilgrimage to Ayodhya and has on page 130 further written that Sri Guru Govind Singh "Ehan apadi kul ke bidh purkha Ram ke janam than mein aaye."

Gyani Gyan Singh in his famous work "Tabarikh Guru Khalsa : Part I" (Guru Govind Singh Press, Sialkot, 1948 Vikrami = 1891 AD, page 283-284) writes that Guru Govind Singh "Shahar Kashi Ramnagar da sail pradakhana kiti. Aitho chal Mirjapur aadik nagara nu dekh de hoya Ajudhya Ji Bashitha Kund, jo Bashistha Ji da ghar te hom karan di jaga hai, ja thahire. Fir Surajkund, Hanumangarhi, Ramchandra de mandar, Sita di Rasoi aadik asthan dekhe te swargdwari Guptarghat Sarju de ishnan dan kite." The photocopy of the relevant page of the said book is enclosed here with and is marked as

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Annexures 10 and 11." (E.T.C.)

''14. यह कि उपरोक्त पुस्तकों के अध्ययन व अपने शोध के आधार पर मेरा यह निश्चित मत है कि विवाद ग्रस्त भूमि ही भगवान श्री रामचन्द्र जी की जन्मस्थली है, जो परम्परागत रूप से उसी रूप में मानी जाती रही है।''

"14. That from the study of the afore-said books and on the basis of my research I am of a definite view that the disputed land itself is the birth-place of Lord Sri Ram Chandra which has been traditionally taken to be such." (E.T.C.)

''15. यह कि उपरोक्त वर्णित पुस्तकों में से ''आदि साखीआं'', ''पुरातन जनमसाखी श्री गुरू नानकदवे जी की'' और ''सचखण्ड पोथी : जन्मसाखी श्री गुरू नानक देवजी के अध्ययन से यह भी ज्ञात होता है कि आक्रान्ता बाबर ने भारतवर्ष पर अपने तीसरे आक्रमण में, जब वह सियालकोट को विजित करता हुआ आया, तब उसने 1578 विक्रमी=1521 ईसवी में सैदपुर के ग्रामों को तबाह कर डाला, पुरूषों का कत्लेआम किया, स्त्रियों को बन्धक बनाया, और लोगों के घरों को लूटा। ये ही ग्रन्थ यह भी बताते हैं कि इन विपदा भरी घटना के प्रत्यक्षदर्शी स्वयं गुय नानकदेव जी थे। उन्होंने इस दुर्भाग्यपूर्ण घटना पर गहरा दुख प्रकट करते हुए चार शब्दों (पदों) की रचना की जिनमें बाबर को साक्षात् शैतान और उसकी सेना को पाप की बारात बताया है। श्री गुरू ग्रन्थ साहिब जी में उनके ये चार शब्द पृष्ठ 722–23, 417–18 और 360 पर प्राप्त होते हैं। श्री गुरू ग्रन्थ साहिब जी, आसा महला 1 पृष्ठ 418 पर श्री गुरू जी बताते हैं कि इस क्रूरतापूर्ण आक्रमण के अवसर पर आक्रान्ता बाबर ने सैदपुर के थानों को, मुकामों को और वज्र के समान सुदृढ़ मन्दिरों को जला दिया और राजकुमारों को काट–काट कर धूल में रूला दिया।''

"15. That from the study of "Adi Sakhian" , "Puratan Janam Sakhi : Sri Guru Nanak Dev Ji Ki", and "Sach Khand Pothi : Janam Sakhi Sri Guru Nanak Dev Ji Ki", it also transpires that in his third invasion on India, invader Babur, after having conquered Sialkot, reached Saidpur in 1578 Vikrami i.e. 1521 AD and devastated its villages, slew

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men, held women hostages and plundered the houses of the people. These very treatises also reveal that Guru Nanak Dev Ji himself was an eyewitness to this calamitous incident. Expressing his deep anguish over this unfortunate incident, he composed four verses describing Babur as a manifest demon and his army as a Barat (party) of sinners. These four stanzas of Sri Guru Granth Sahib are available on pages 722-723, 417-18 and 360. Sri Guru Ji in his book "Sri Guru Granth Sahib Ji, Asa Mahla 1, page 418 says that in this cruel attack, invader Babur gutted the police stations, halts and steely temples of Saidpur, and decimated the princes and brought them to dust." (E.T.C.)

''16. यह कि संलग्नक 1 ता 11 में उद्धृत मूल पुस्तकों को मैंने पढ़ा है जो मेरे पास उपलब्ध है।''

"16. That I have read the original books quoted in Annexures 1 to 11and they are available with me." (E.T.C.)

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343. **DW 2/1-2, Ram Saran Srivastava**, aged about 68 years (vide affidavit dated 20.01.2005). He was cross examined in the following manner:

(a) 20/24.01.2005- by Nirmihi Akhara, plaintiffs (Suit-3) through Sri Tarunjeet Verma abd Sri R.L. Verma, Advocates, Advocate (p. 7-24)

(b) 25/31.01.2005, 01.02.2005- by Mohd. Faruk, defendant no. 11, through Sri Abdul Mannan, Advocate (p. 26-44)

(c) 01/02/03/04/07/08/09/10/11.02.2005- by plaintiffs no. 1, 6/1, 8/1 Sunni Central Board of Waqf, Jiyauddin and Maulana Mahafujurrhman through Sri Zafaryab Jilani, Advocate (p. 45-150)

(d) 11/15/16.02.2005- by plaintiff no. 7 (Suit-4) through Sri Mustaq Ahmad Siddiqui, Advocate (p. 150-183)

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(e) 16.02.2005- defendant no. 6/1 (Suit-3) through Sri Irfan Ahmad, Advocate and defendant no. 6/2 (Suit-3) through Sri Fazale Alam, Advocate and defendant no. 26 (Suit-5) through Sri C.M. Shukla, Advocate adopted the cross examination already done by Sri Abdul Manna, Sri Zafaryab Jilani and Sri Mustaq Ahmad Siddiqui, Advocates (p. 184)

344. He is M.Com. L.L.B. and worked as 'Teacher' for about two years, wrote a book "Ankechar Parichay" published in 1959. He was selected and appointed as District Industry Officer, and worked as such for one year, whereafter selected in U.P. Provincial Civil Service in 1961, promoted in Indian Administrative Service in 1984. He worked during his tenure (as a member of Indian Administrative Service) as District Magistrate, Hardoi, Faizabad and Kanpur, Special Secretary in Public Works Department, Education and Social Welfare and Director, Department of Government Estate and retired on 31.03.1994. He joined as District Magistrate at Faizabad on 19.07.1987 and remained thereat for about three and half years. Claiming to have studied the dispute minutely in his capacity as District Magistrate, Faizabad, he said in paras 7, 8 and 9 about the sources from which he got knowledge as under:

''7. मैंने श्रीराम जन्म भूमि विवाद के सम्बन्ध में उपलब्ध गजेटियर तथा राजस्व अभिलेखों का कई बार अध्ययन किया तथा वहां के स्थानीय सभी संवर्ग के लोगों से हर प्रकार की जानकारी के साथ ही विवाद से संबंधित पक्षों से भी समय–समय पर जानकारी प्राप्त करता रहा।''

''7. On number of occasions, I have studied the gazetteers available in context of Sri Ramjanmbhumi dispute as well as the revenue records, and also gathered all kinds of information from local people of all class besides the concerned parties to the dispute.'' (E.T.C.)

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"8. मैंने अपने जिलाधिकारी के कार्यकाल के दौरान प्रश्नगत प्रकरण के संबंध में स्थानीय हिन्दू व मुसलमान बन्धुओं से तथा संत महात्माओं, विद्वानों एवं उलेमाओं से भी समय–समय पर बातचीत की।"

"8. During my tenure as District Magistrate, I had discussions from time to time with local Hindus, Muslims, Saints, Scholars and Ulemas in reference to the dispute in question." (E.T.C.)

"9. मेरे कार्यालय में प्रश्नगत प्रकरण राष्ट्रीय व अन्तराष्ट्रीय स्तर पर काफी संवेदनशील मुद्दा था जिस जिस क्रम में विभिन्न पक्षो व संवर्गों से संबंधित इतिहासकार, पुरातत्ववेत्ता विद्वान आदि से भी मेरा सम्पर्क होता रहा तथा उनसे विभिन्न प्रकार की जानकारियॉ मिलती रही । संवेदनशील प्रकरण होने के कारण देश–विदेश के पत्रकारों, विद्वानों व धर्मगुरुओं से भी इस प्रकरण में बात–चीत करने का अवसर मिला तथा मैंने स्वयं उपलब्ध जानकारी व सन्दर्भ के आधार पर इस विषय का अध्ययन किया।"

"9. The matter in question was a very sensitive matter of my office at National and International level and in this behalf I entered into contact with Historians, Archaeologists, Scholars etc. concerned with different parties and classes and gathered different kinds of information. As the matter was sensitive, I had the opportunity to discuss this matter with journalists of country-abroad, scholars and religious teachers and on basis of available information and references, I myself studied this matter." (E.T.C.)

345. DW 2/1-2 claims to have written a book titled as "Sri Ram Janam Bhoomi/Babri Masjid Vivad-Ek Drishtikon" published in 1997. In para 11 of the affidavit he says that the information contained in this book is based on the knowledge he gathered during his tenure as District Magistrate, Faizabad through government record, available evidence, information, his own view etc. He claims to have studied the following

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gazetteers/settlement reports:

1. A Gazetteer of the Territories under the Government of East India Company by Edward Thornton published in 1858 and republished in 1993.
2. Historical Sketch of Faizabad with the Old Capital of Ajudhia and Faizabad by P. Cargegy, Officiating Commissioner and Settlement Officer, published in 1870.
3. Gazetteer of the Province of Awadh, 1877.
4. Imperial Gazette of India-United Province of Agra and Awadh-Faizabad Division.
5. District Gazetteer, Barabanki, 1902 Edition, Vol. 48.
6. Faizabad Gazetteer, 1902 Edition, Vol. 43.
7. District Gazetteer of united Provinces of Agra and Awadh, 1905.

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346. Based on his study of the above Gazetteers, DW 2/1-2 states in para 16 as under:

*'16. **उपरोक्त गजेटियर के अध्ययन से स्पष्ट होता है कि विवादित स्थल हिन्दुओं के आराध्य भगवान श्रीराम की जन्मस्थली है** जहां हिन्दुओं द्वारा सदैव से अपने आराध्य भगवान श्रीराम की जन्मभूमि के रुप में पूजा की जाती रही है तथा **इसी स्थल पर श्रीराम जन्मभूमि मंदिर पूर्व काल में भी स्थित था जिसे 1528 ई0 में ध्वस्त करके विवादित ढांचा बाबर के आदेश पर मीरबाकी द्वारा बनाया गया।''*

*"16. **From the study of aforesaid gazetteer, it is apparent that the disputed site is the birthplace of Hindus' revered Lord Sri Rama**, which was continuously worshiped by Hindus as the birthplace of their revered Lord Sri Rama, and the **Sri Ramjanmbhumi temple had existed at this site in earlier times as well, and after***

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demolishing the same, the disputed structure was built in the year 1528 AD by Mir Baqi under order of Babar." *(E.T.C.)*

347. He claims to have inspected the revenue and nazul record of the disputed land. Virtually there are three settlements (revenue settlements) i.e., 1861, 1893-94 and 1936-37. The revenue and nazul record of the land in District Faizabad was corrected accordingly. Regarding preparation of revenue records, in para 18 he said:

'18. फैजाबाद के राजस्व अभिलेखों के समबन्ध में विशेषतः नजूल सम्पत्तियों, उनके रख–रखाव, व्यवस्था व इन्द्राजात आदि के संबंध में जे0 डब्लू0 होज तत्कालीन कलेक्टर द्वारा विस्तृत आख्या तैयार की गई है तथा उसी संबंध में तत्कालीन कमिश्नर एवं सेटिलमेंट आफिसर श्री पी0 कार्नेगी ने भी विस्तृत व्यवस्था दी है।''

"18. J.W. Hodge, erstwhile Collector had prepared a detailed report regarding the revenue records of Faizabad particularly the Nazul properties, their management, arrangement and entries etc.. The erstwhile Commissioner and Settlement Officer Sri P. Cornegi had also given a detailed report in that behalf." (E.T.C.)

348. The conclusion drawn by DW 2/1-2, based on the study of the above settlements and revenue records, is mentioned in paras 19, 20 and 21 as under:

''19. सन् 1861 ई0 के सेटिलेमेंट के मुताबिक जन्मस्थान व उससे संबंधित भूखण्डों को मौजा कोट रामचन्द्र मुख्यतः आबादी के रुप में प्रदर्शित किया गया है और इसी क्रम में संबंधित मौजे के खसरा किस्तवार में भी जन्मस्थान का उल्लेख किया गया है।''

"19. As per the settlement of the year 1861, the Janmsthan and the plots related thereto, have been shown mainly as inhabitation in village Kot Ramchandra and in this continuation the Janmsthan has been mentioned in the

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Khasra Kistwar of the concerned village." (E.T.C.)

'20. मैंने अपने कार्यकाल में श्रीराम जन्मभूमि/बाबरी मस्जिद विवाद के संबंध में राजस्व अभिलेखागार फैजाबाद तथा तहसील सदर फैजाबाद में उपलब्ध सभी अभिलेखों को कई बार देखा तथा इस संबंध में सभी संबंधित राजस्व अधिकारियों से जानकारी प्राप्त की। सभी अभिलेखों का सूक्ष्म अध्ययन करने के बाद यह स्पष्ट हुआ कि विवादित स्थल राजस्व व नजूल अभिलेखों में जन्म–स्थान के रुप में अंकित है।''

"20. During my tenure, I saw all the records available in Revenue Record Room Faizabad and Tehsil Sadar Faizabad, concerning the Sri Ramjanmbhumi/ Babri mosque dispute, on number of occasions and also obtained information in this behalf from all concerned Revenue Officers. After careful study of all the records it became clear that the disputed site was entered in the revenue and nazul records as Janmsthan." (E.T.C.)

''21. शिलान्यास के समय भी सभी अभिलेखों का निरीक्षण करने के पश्चात प्रश्नगत भूखण्ड जन्मस्थान के रुप में होना प्रमाणित हुआ था तथा इस संबंध में संगत सूचना राज्य व केन्द्र सरकार को समय–समय पर दी जाती रही है।''

"21. On the occasion of 'Shilanyas' (laying of foundation stone) also, the plot in question had been established as Janmsthan from inspection of all the records and the necessary information in this behalf was furnished to the State and Central Government from time to time." (E.T.C.)

349. Regarding the place in dispute and other facts, in paras 22, 23 and 24, DW 2/1-2 said as under:

''22. मुझे अपने कार्यकाल में जो भी तथ्य उपलब्ध हो सके, उनके आधार पर तथा मेरी स्वयं की जांच तथा विभिन्न एजेंसियों द्वारा प्राप्त सूचनाओं के आधार पर यह निष्कर्ष निकाला कि ***प्रश्नगत स्थल पर हिन्दुओं के आराध्य भगवान श्रीराम का जन्म स्थान है जहां पर श्रीराम जन्मभूमि मंदिर था जिसे बाबर द्वारा अपने आक्रमण काल में***

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अपने प्रतिनिधि सेनापति मीरबाकी द्वारा ध्वस्त कराकर उसी स्थान पर विवादित ढांचा (जो अब ध्वस्त हो चुका है) बनाया गया था।''

"22. On the basis of the facts ascertained during my tenure and further on basis of my own inquiry and the information received from various agencies, (I) derived the conclusion that ***the site in question was the birthplace of Hindus' revered Lord Sri Ram and that Sri Ram Janmbhumi temple existed there, which was got demolished by Babar, during his invasion period, through his representative Mir Baqi and the disputed structure (which has now been demolished) was built at that very place.*** *" (E.T.C.)*

'23. विवादित स्थल पर जो ढांचा था उसमें मेरी स्वयं अध्ययन व जानकारी के अनुसार वर्ष 1934 ई0 के पश्चात कभी नमाज नहीं पढ़ी गई है, न ही उसका प्रयोग मुस्लिम सम्प्रदाय द्वारा सामूहिक अथवा व्यक्तिगत रुप से ही नमाज पढ़ने के लिए हुआ।''

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"23. As per my studies and information, Namaz was never offered after the year 1934 AD in the structure at the disputed site, nor was it used by the Muslim community either collectively or individually to offer Namaz." (E.T.C.)

''24. विवादित ढांचें में लगे काले पत्थर के खम्भों पर, कलश, आम के पल्लव, कमल, देवी–देवताओं एवं मानव आकृतियां स्पष्ट थीं तथा उसी परिसर में सीता रसोई, चरण–चिन्ह, चौका–बेलन, चूल्हा, रामचबूतरा था । उक्त स्थल हिन्दुओं के पूज्य स्थली के रुप में था एवं विवादित स्थल सदैव से भगवान राम के जन्मस्थल के रुप में पूज्य था।''

"24. The pitcher, mango leaves, lotus and figures of God-Goddesses and human beings, were clear over the black stone pillars in the disputed structure and within the same premises, were the Sita Rasoi, footmarks, 'Chauka-Belan' (utensils used in Indian kitchen), stove and Ramchabutara.

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The above place was a worship place of Hindus and the disputed site was always revered as birthplace of Lord Rama." (E.T.C.)

350. DW 2/1-3, Mahant Ram Vilas Das Vedanti is aged about 51 years (as per his affidavit dated 16.02.2005). He was cross examined in the followed manner :

(a) 16/17/18.02.2005-by Nirmohi Akhara, plaintiff (Suit-3) through Sri Tarunjeet Verma, Advocate (p. 12-46)

(b) 18/21.02.2005- by plaintiff no. 9 and 10/1 Mahmood Ahmad and Mohd. Faruk Ahmad through Sri Abdul Mannan, Advocate (p. 47-63)

(c) 21/23/24/25/28.02.2005, 01/02/03/04/07/09.03.2005-by plaintiffs no. 1, 6/1, 8/1 Sunni Central Board of Waqf, Jiyauddin and Maulana Mahafujurrhman through Sri Zafaryab Jilani, Advocate (p. 63-204)

(d) 09.03.2005- by plaintiff no. 7 (Suit-4) through Sri Mustaq Ahmad Siddiqui, Advocate,who also adopted the cross examination done by Zafaryab Jilani, Advocate (p. 204-205)

(e) 09.03.2005- defendant no. 6/1 (Suit-3) through Sri Irfan Ahmad, Advocate and defendant no. 6/2 (Suit-3) through Sri Fazale Alam, Advocate and defendant no. 26 (Suit-5) through Sri C.M. Shukla, Advocate adopted the cross examination already done by Sri Abdul Manna, Sri Zafaryab Jilani and Sri Mustaq Ahmad Siddiqui, Advocates (p. 205)

351. He is resident of Vashistha Bhawan, Hindu Dham, Naya Ghat, Ayodhya, District Faizabad and claims to be Mahant and Sarvarahkar, Vashistha Pithadhishwar of Vashistha Bhawan, Naya Ghat, Ayodhya. Born in District Riwa (Madhya Pradesh)

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he is residing permanently at Ayodhya since 1968. He passed Shastri examination in the subject of Grammar from Varanasi Sanskrit Vishvavidyalaya and was conferred the degree of Vedantacharya in 1979-80 in the subject "Sri Ramanuj Vedant". He completed Ph.D. in 1982 from Sampurnanand Sanskrit Vishvavidyalaya, Varanasi in the subject of "Valmikiya Ramayane Dharm Niti". He claims to have studied from student's life about Lord Ramchandra Ji and Sri Krishna, read several religious, literary books, legends etc. and still continuing with the same, was elected as member of Parliament from Machchalishahar and Pratapgarh constituencies in 11th and 12th Parliamentary Elections. He claims to have regularly visited the disputed site, a birthplace of Lord Ram and has performed Bhajan, Pujan, Parikrama etc. thereat since 1968. He has given details of location and construction of the disputed site and its vicinity in paragraphs 10, 11, 12, 13, 14, 15, 16 and 18 of the affidavit as under:

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''10. यह कि श्रीराम जन्मभूमि परिसर में विवादित ढांचा गिरने के पूर्व प्रवेश हेतु मुख्यद्वार पूरब से था जिसे हनुमान द्वार के रूप में जाना जाता था। मुख्य द्वार पर दोनों ओर काले कसौटी के दो खम्भे लगे हुए थे, जिन पर फूलपत्ती, जय विजय के चित्र उकेरे गये थे। जिस प्रकार के कसौटी के खम्भे बाहर मुख्य द्वार पर थे उसी प्रकार के 12 काले कसौटी के खम्भे अन्दर मुख्य भवन में भी लगे थे। जिन पर घट, पल्लव, अमृत कलश, स्वास्तिक, फूल पत्ती, मोर, देवी–देवताओं के चित्र उकेरे गये थे।''

''10. That prior to the demolition of the disputed structure at the SriRam Janmbhumi premises, the main gate for entry was in the east, which was called the 'Hanumatdwar'. Two black touch stone pillars were standing on both sides of the main gate, over which the pictures of flowers-leaves, Jai-Vijai had been carved out. 12 black touch stone pillars similar to the ones at the main gate, were there inside the

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main building, over which the picture of 'Ghat' (pitcher), 'pallav' (leaf), 'Amrit Kalash' (pot of nectar), flower-leaf, peacock, God-Goddess had been carved out." (E.T.C.)

"11. यह कि प्रश्नगत ढांचे के मुख्य द्वार से अन्दर जाने पर दक्षिण की तरफ एक चबूतरा था जो राम चबूतरा के नाम से जाना जाता था। जहॉ भगवान राम, लक्ष्मण, सीता आदि की मूर्तियॉ थी जिनकी भी नियमित पूजा अर्चना हिन्दू दर्शनार्थियों द्वारा की जाती थी। राम चबूतरे के नीचे गुफा मन्दिर था। राम चबूतरा के दक्षिण पूरब कोने पर एक पीपल का पेड़ था, जिसके नीचे गणेश जी, शंकर जी, कार्तिकेय जी आदि की मूर्तियॉ और पिण्डी थी। जिसे भी दर्शनार्थियों द्वारा दर्शन पूजन किया जाता था। मुख्यद्वार से अन्दर उत्तर तरफ संत निवास के रूप में टीन शेड था, जिसमें कुछ सन्त स्थायी रूप से रहते थे तथा बाहर से आने जाने वाले सन्त भी ठहरते थे। उसी के एक अंश में अनाज, बर्तन आदि रखा जाता था।"

"11. That on entry in the disputed structure through the main gate, there was a platform towards south called Ramchabutara, where the idols of Lord Ram, Laxman, Sita etc. were present and were worshipped regularly by Hindu devotees. Below the Ramchabutara, was the 'Gufa' (cave) temple. There was a Pipal tree to the south east corner of the Ramchabutara, under which were the idols of Lord Ganesh, Lord Shankar, Lord Kartikey, which were also worshipped by the devotees. To the north of the main gate, was a tin shed as residence of saints, in which some saints used to live permanently and the visiting saints of other places also used to stay there. In a portion of the same, the food grains, utensils etc. were stored." (E.T.C.)

"12. यह कि रामचबूतरा व मण्डप के पश्चिम मुख्य परिसर के सामने एक सींकचों वाली दीवार थी एवं अन्दर भगवान श्रीराम का जन्म स्थान जिसे सनातन धर्मी हिन्दू धार्मिक परम्परानुसार गर्भगृह कहते थे, बीच वाले गुम्बद के नीचे स्थित था। मुख्य परिसर में स्थित ढॉचा तीन गुम्बद वाला था जिसमें मध्य वाले गुम्बद के नीचे की भूमि पर भगवान श्रीराम का जन्म हुआ

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था, ऐसी परम्पर आस्था एवं विश्वास हिन्दू जनमानस का है तथा वेदों, धर्मशास्त्रों, पुराणों आदि के अनुसार भी यह सिद्ध है। इसी आस्था एवं विश्वास के आधार पर परम्परागत ढंग से देश विदेश के असंख्य हिन्दू रामभक्त व जन सामान्य द्वारा विवादित स्थल को भगवान श्रीराम की जन्मस्थली व जन्मभूमि मन्दिर मानते हुए पूजन, दर्शन करता चला आ रहा है तथा शपथकर्ता भी उसे उसी रूप में अति पवित्र एवं भगवान राम की पूज्य जन्मस्थली मानता है।''

''12. That there was a grill wall opposite the main premises and to the north of the Ramchabutara and the 'Mandap', and inside it and below the mid dome, was the birthplace of Lord Rama, which is customarily called 'Garbh-grih' by the orthdox Hindus. The structure standing within the main premises, was of three dome and according to the customary faith and belief of Hindus and as proved by Vedas, Dharmshastras, Puranas etc., Lord Rama was born on the land below the mid dome, It is on basis of this very faith and belief that the prayer and worship of Lord SriRama's birthplace and Janmbhumi temple has been customarily continuing through innumerable Hindu devotees of Rama and general public of country-abroad and the deponent also adheres to the Janmbhumi as a very sacred worship place of Lord Rama.'' (E.T.C.)

''13. यह कि श्रीराम जन्मभूमि परिसर में प्रश्नगत ढॉचा गिरने के पूर्व उत्तर की ओर भी एक प्रवेश द्वार था जिसे सिंह द्वार कहा जाता था। सिंहद्वार के ऊपर बीचो बीच में गरूण देव तथा उनके दोनों तरफ दो सिंह बने हुए थे। सिंहद्वार से अन्दर जाने पर तीन गुम्बद वाले भवन के उत्तर अर्थात् परिसर के उत्तर पश्चिम कोने पर सीता रसोई थी, जहॉ चौका बर्तन, चूल्हा, चरण चिन्ह आदि थे, जिनकी दर्शन पूजन भी दर्शनार्थी करते थे, तथा वहीं हवन कुण्ड भी था।''

''13. That prior to the demolition of the disputed structure

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within the SriRam Janmbhumi premises, there was an entry gate towards the north east, which was called the 'Singhdwar'. Above the 'Singhdwar' was the 'Garundev' in centre with two lions on both sides. After entry through the 'Singhdwar' there was the Sita Rasoi in the north of the three dome building or to the north east corner of the premises, where there were symbols of kitchen utensils, stove, feet etc., and prayer and worship was offered there by the devotees. A 'Hawan Kund' (prism shaped vessel used in ceremony for offering oblations to the fire God)." (E.T.C.)

"14. यह कि मध्य वाले गुम्बद के नीचे स्थित स्थल पर ही सनातन धर्मी हिन्दू मतावलम्बियों की प्राचीन परम्परा एवं प्रथा तथा उनकी आस्था एवं विश्वास के अनुसार महाराज दशरथ के पुत्र भगवान श्रीराम का जन्म हुआ था, इसलिए यह स्थल अति पवित्र एवं पूज्य है एवं इसी आस्था एवं विश्वास के आधार पर अनादिकाल से करोड़ों सनातन धर्मी हिन्दू अयोध्या आकर श्रीराम जन्मभूमि स्थल का दर्शन पूजन एवं परिक्रमा करते चले आ रहे हैं। मुख्य प्रवेश द्वार पर एक पत्थर लगा हुआ था, जिस पर "जन्मभूमि नित्य यात्रा" लिखा था।"

"14. That according to ancient traditions, customs, faith and belief of orthodox Hindus, king Dashrath's son Lord Sri Rama was born at the very place below the middle dome, so this place is most sacred and revered and on the basis of this faith and belief from time immemorial crores of orthodox Hindus have been visiting Ayodhya and performing 'Darshan', worship and circumambulation of birthplace of Lord Rama. On the main gate of entry a stone was installed with 'Janmbhumi Nitya Yatra' (daily visit of birthplace) written thereon." (E.T.C.)

"15. यह कि विवादित स्थल के दक्षिण पूर्व कोने पर लगभग 200–300 फुट की दूरी पर दक्षिण पूरब कोने पर "सीता कूप" नामक प्रसिद्ध एवं

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पवित्र कूप था, जिसका जल तीर्थयात्री पीते थे और सिर पर रखते थे एवं प्रसाद स्वरूप घर ले जाते थे।'' (पेज– 5)

''15. That at a distance of about 200-300 feet on the south east corner of the disputed site, was a famous and sacred well called Sita 'Koop' (well), whose water was drunk and applied on head by the pilgrims and was also taken home by them as blessings.'' (E.T.C.)

''16. यह कि श्रीराम जन्मभूमि परिसर के अन्दर मध्य वाले गुम्बद में काली कसौटी के 12 खम्भे लगे हुए थे, उन पर कलश, फूल–पत्ती, यक्ष – यक्षिणी, घट–पल्लव, देवी–देवताओं की आकृतियॉ, अमृत कलश एवं स्वास्तिक पत्थर में ही उकेरी गयी थी।''

''16. That there were 12 black touch stone pillars in the middle dome inside the SriRam Janmbhumi premises and the pictures of 'Kalash', flower-leaf, 'Yaksha-Yakshani', 'Ghat-Pallav', Gods-Goddesses, 'Amrit Kalash', 'Swastik' had been carved out over the stone.'' (E.T.C.)

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''18. यह कि विवादित परिसर जहॉ स्थित है उसके चारो ओर हिन्दुओं के प्रतिष्ठित तमाम मन्दिर हैं जिसमें जन्म स्थान सीता रसोई, कनक भवन, वेद मन्दिर, विश्वामित्र आश्रम, सियापिया केलिकुन्ज, मत्त गजेन्द्र, कोटेश्वर महादेव, राम खजाना मन्दिर, लोमस आश्रम, सुग्रीव किला, गोकुल भवन, रंग महल, लवकुश मन्दिर, वशिष्ठ कुण्ड, कुबेर टीला, ब्रह्मकुण्ड गुरूद्वारा आदि हैं।''

''18. That the disputed premises is surrounded on all sides by many reputed temples of Hindus including 'Janmsthan, Sita Rasoi, Kanak Bhawan, Veda temple, Vishwamitra Ashram, Siyapiya Kelikunj, Matt Gajendra, Koteshwar Mahadev, Ram Khajana temple, Lomus Ashram, Sugriv Kila, Gokul Bhawan, Rang Mahal, Luv Kush temple, Vashishta Kund, Kuber mound, Brahm Kund, Gurudwara' etc.'' (E.T.C.)

352. In paragraphs 9 and 19 he has said that Hindus in the

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country and abroad, traditionally and culturally, believe and have faith that the disputed site is birthplace of Lord Ram, and, are worshipping the said place accordingly, in para 17 he has said that no Muslim has ever offered any Namaz (Prayer) thereat and atleast from 1934 :

''9. यह कि विवादित स्थल देश विदेश के असंख्य हिन्दुओं द्वारा भगवान श्रीराम चन्द्र की जन्मभूमि के रूप में प्रथागत, परम्परागत आस्था एवं विश्वास से अनादि काल से पूजित होता चला आ रहा है। हिन्दू सनातनधर्मी विवादित स्थल को अपने आराध्य भगवान श्रीराम चन्द्र जी की जन्म स्थली व जन्मभूमि मन्दिर के रूप में पूजते हैं।''

''9. That out of customary faith and belief, the disputed site has been worshipped by innumerable Hindus since ancient times as the birthplace of Lord SriRamchandra. The orthodox Hindus have worshipped the disputed site as birthplace and Janmbhumi temple of Lord Rama.'' (E.T.C.)

''17. यह कि विवादित परिसर मे कभी कोई मुसलमान नहीं जाता था, और न ही किसी मुसलमान द्वारा वहॉ नमाज पढ़ी जाती थी, मेरी जानकारी के अनुरूप वर्ष 1934 के बाद श्रीराम जन्मभूमि परिसर की तरफ अगर कोई मुसलमान दिखाई पड़ गया तो साधू वैरागी उसे लाठी डण्डा से दौड़कर मारते पीटते थे। भयवश कोई मुसलमान परिसर की ओर नहीं जाता था। तथा 1934 से विवादित स्थल पर कभी नमाज नहीं पढ़ी गई और न ही कोई इस्लाम मजहब का अनुयायी अन्दर गया।''

''17. That neither any Muslim ever went inside the disputed premises nor offered Namaz there. According to my information if any Muslim was spotted towards the SriRam Janmbhumi premises after the year 1934, he was chased away by the saints- recluses. No Muslim used to go towards the premises out of fear and after 1934 Namaz was never offered at the disputed site and no follower of Islam went inside.'' (E.T.C.)

''19. यह कि मेरे अध्ययन व जानकारी के अनुसार अयोध्या स्थित

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विवादित स्थल ही भगवान श्रीराम चन्द्र जी की जन्मभूमि है। अयोध्या में भगवान श्रीराम का जन्म राजा दशरथ के पुत्र के रूप में होना सर्वविदित एवं सर्वमान्य है एवं विवादित स्थल सनातन धर्मी हिन्दुओं द्वारा भगवान श्रीराम की जन्मस्थली के रूप में अनन्तकाल से धार्मिक आस्था, परम्परा, प्रथा एवं विश्वास के अनुसार मान्यता प्राप्त है, जो उसी रूप में अनन्त काल से पूजित होती चली आ रही है। हिन्दू धर्मशास्त्र के अनुसार मूर्ति एवं स्थल समान रूप से पूज्य होते हैं, जिसकी पूजा अर्चना से मनुष्य को मोक्ष की प्राप्ति होती है।''

''19. That according to my studies and information, the disputed site at Ayodhya is the birthplace of Lord Sri Ramchandra. The birth of Lord Rama as son of king Dashrath is universally known and accepted and since ancient times, the disputed site has been recognized by the orthodox Hindus as the birthplace of Lord Sri Ram on basis of religious faith, custom, tradition and belief. According to Hindu religious books, the idol and place are equally worshipable, by worship of which a person attains 'Moksha' (salvation)." (E.T.C.)

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353. In paragraphs 20 to 27 DW2/1-3 he has referred to certain literature claiming that the same referred to the place of birth of Lord Ram at the disputed site and therefrom it can be ascertained that the disputed site is a place of birth of Lord Ram, as under:

'20. यह कि बाल्मीकि रामायण, अथर्ववेद, यजुर्वेद, स्कन्द पुराण एवं गोस्वामी तुलसीदास जी के साहित्य में अयोध्या में विवादित स्थल पर भगवान श्रीराम के जन्म होने का विवरण मिलता है। ***तुलसी दास द्वारा रचित तुलसी दोहा शतक में भी बाबर के आदेश पर मीर बाकी द्वारा श्रीराम जन्मभूमि मन्दिर ध्वस्त कर मस्जिद बनवाने का उल्लेख है।*** *गोस्वामी तुलसी दास कृत कवितावली में भी मुगलकालीन शासकों के कुकृत्यों एवं अत्याचार का उल्लेख है तथा उनकी कृति दोहावली में तत्कालीन सामाजिक, राजनैतिक स्थितियों का वर्णन*

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किया गया है।''

''20. That in the literature of Valmiki Ramayan, Atharva Veda, Yajur Veda, Skanda Purana and Goswami Tulsidas, description is found about the disputed site in Ayodhya being the birthplace of Lord SriRama. ***Even in the 'Tulsi Doha Shatak' of Tulsi Das, there is mention about construction of mosque by Mir Baqi after demolishing the Sri Rama Janmbhumi temple on the command of Babar****. The 'Kavitavali' composed by Goswami Tulsidas contains references of the excesses and atrocities committed by the Mughal emperors and the 'Dohawali' composed by him gives a clear picture of the then social and political situation." (E.T.C.)*

''21. यह कि बाल्मीकि रामायण हिन्दुओं का अति प्राचीन एवं मान्यता प्राप्त ग्रन्थ है जिसकी रचना भगवान श्रीरामचन्द्र जी के समय की है। बाल्मीकि रामायण के बालकाण्ड के सर्ग 18 में भगवान श्रीराम चन्द्र जी के जन्म का विवरण देते हुए उनके जन्म का समय ऋतु ग्रहण नक्षत्र आदि का महर्षि बाल्मीकि द्वारा वर्णन किया जाता है एवं उसी क्रम में महर्षि बाल्मीकि ने विवादित स्थल को भगवान राम की जन्मस्थली मानते हुए उस स्थल को ''सर्वलोक नमस्कृतम्'' शब्द से व्यक्त किया है। भगवान श्रीराम की जन्मस्थली के सम्बन्ध में बाल्मीकि रामायण में निम्नलिखित स्पष्ट वर्णन है–

ततो यज्ञे समाप्ते तु ऋतुनां षट समत्ययुः।
ततश्च द्वादशे मासे चैत्रे नावमिके तिथौ।।
नक्षत्रेऽदिति दैवत्ये स्वोच्च संस्थेषु पंचसु।
ग्रहेषु कर्कट लग्ने वाक्याताविन्दुना सह।।
प्रोद्यमाने जगन्नाथं सर्वलोक नमस्कृतम्।
कौशल्या जनपद् रामं दिव्य लक्षण संयुतम्।।''

''21. That Valmiki Ramayana is a very old and recognized treatise of the Hindus, composed during the times of Lord Rama. In 'Sarg' (chapter) 18 of 'Balkaand' of Valmiki Ramayana, Maharshi Valmiki has described the birth of

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Lord Sri Ramchandra along with the relevant time of birth, season, planet position etc. and in that continuation Maharshi Valmiki has referred the disputed site as the birthplace of Lord Rama and has described it by the term 'Sarvlok Namaskritam' (revered by all). The Valmiki Ramayana contains following specific descriptions about the birthplace of Lord Rama:

> *After conclusion of king Dashrath's 'Putreshti Yagya' (a sacrifice/ceremony for acquiring a son) and on expiry of 6 seasons, on the ninth day of 'Chaitra' 'Shukla Paksh'(moonlit fortnight) in the 12th month thereafter in 'Punarvasu Nakshtra', 'Kark Lagna' when the Sun, Mars, Saturn, Jupiter and Venus all the five planets were in their respective higher place along with Moon were looking, at that time and place. Kaushalya gave birth to Lord Rama, who incarnated with divine virtues at that very place, and is the master of the entire world and revered by all." (E.T.C.)*

"22. यह कि भगवान श्रीराम का अयोध्या में महाराजा दशरथ के यहॉ मां कौशल्या के गर्भ से जन्म, अयोध्या में महाराज दशरथ का राज्य, भगवान राम का राज्याभिषेक, बनगमन आदि का विस्तृत वर्णन करते हुए अयोध्या हिन्दुओं की मुख्य तीर्थ स्थलों के रूप में वर्णित है।"

"22. That describing about the birth of Lord Rama in the palace of king Dashrath at Ayodhya through mother Kaushalya, the kingdom of king Dashrath in Ayodhya, the enthroning of Lord Rama, exile in forest etc., Ayodhya has been described as the main pilgrimage of Hindus." (E.T.C.)

"23. विवादित स्थल भगवान राम के जन्मस्थल के रूप में वर्णित है। धर्मग्रन्थ पूर्व राम तापयोपनिषद व वेद–वेदांगों में भगवान राम के धाम

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के रूप में जन्मभूमि का वर्णन है।''

''23. The disputed site has been described as the birthplace of Lord Rama. In the treatises, 'Purva Rama Tapyopnishad' and 'Veda- Vedangas' the Janmbhumi has been described as pilgrimage of Lord Rama." (E.T.C.)

''24. यह कि हिन्दुओं के प्रसिद्ध ग्रन्थ स्कन्द पुराण के वैष्णव खण्ड में अयोध्या महात्म्य का वर्णन है जिसमें विवादित भूमि को भगवान श्रीराम की जन्मभूमि के रूप में स्पष्टतः वर्णित किया गया है। वैष्णव खण्ड के अयोध्या महात्म्य की संगत पंक्तियॉ निम्नलिखित हैं–

संपूज्य विधिवत्तस्या दर्शनं कार्यामादरात्।
सर्वकामार्थसिद्वय्यर्थमुत्सवोअपि शुभप्रदः।
कर्तव्यः सुप्रयत्नेन गीतवादित्रसंयुतैः। *।। 10 ।।*
नवरात्रे तृतीयायां यात्रा सांवत्सरी भवेत
सर्वदा सुखसंतानसिद्वये परमार्थदा
नानासंगीतवादित्रनृत्योत्सवमनोहरा *।। 11 ।।*
एवं कृते न संदेहः सर्वदा रक्षितों भवेत् *।। 12 ।।*
एतत्पश्चिमदिग्भागे वर्तते परमो मुने
पिंडारक इति ख्यातो वीरः परमपौरूषः
पूज्यनीयः प्रयत्नेन गंधपुष्पाक्षतादिभिः *।। 13 ।।*
यस्य पूजावशान्नृणां सिद्वयः करसंश्रिताः
तस्य पूजाविधानेन कर्तव्यं पूजनं नरैः *।। 14 ।।*
सरयूसलिले स्नात्वा पिंडारकं च पूजयेत्
पापिनां मोहकर्तारं मतिदं कृतिनां सदा *।। 15 ।।*
तस्य यात्रा विधातव्या सपुष्या नवरात्रिषु
तत्पश्चिमदिखाभागे विघ्नेशं किल पूजयेत् *।। 16 ।।*
यस्य दर्शनतो पृणां विघ्नलेशो न विद्यते
तस्माद्विघ्नेश्वरः पूज्यः सर्वकामफलप्रदः *।। 17 ।।*
र्तस्मात्स्थानत ऐशाने रामजन्म प्रवर्तते
जन्मस्थानमिदं प्रोक्तं मोक्षादिफलसाधनम् *।। 18 ।।*
विघ्नेश्वरात्पूर्वभागे वासिष्टादुत्तरे तथा
लौमशात्पश्चिमे भागे जन्मस्थानं ततः स्मृतम *।। 19 ।।*
यदृष्टा च मनुष्यस्य गर्भवासजयो भवेत

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बिना दानेन तपसा बिना तीर्थैर्बिना मखैः ।। 20 ।।
नवमीदिवसे प्राप्ते व्रतधारी हि मानवः
स्नानदानप्रभावेण मुच्यते जन्मबन्धनात ।। 21 ।।
कपिलागोसहस्त्राणि यो ददाति दिनेदिने
तत्फलं समवाप्नोति जन्मभूमेः प्रदर्शनात् ।। 22 ।।
आश्रमे वसतां पुंसां तापसानां च यत्फलम्
राजसूयसहस्त्राणि प्रतिवर्षाग्निहोत्रतः ।। 23 ।।
नियमस्थं नरं दृष्टा जन्मस्थाने विशेषतः
मातापित्रोर्गुरूणां च भक्ति मुद्वहतां सताम् ।। 24 ।।
तत्फलं समवाप्नोति जन्मभूमे प्रदर्शनात् ।। 25 ।।''

(Hindi translation of the above Shloka hereunder as appended by the witness himself along with his affidavit)

''सम्पूर्ण कामनाओं की सिद्धि के लिये विधि पूर्वक आदरपूर्वक, तस्यायाः=अयोध्यायाः राम जन्मभूमौ अर्थात राम जन्मभूमि का आदरपूर्वक पूजन करके दर्शनम् कार्ययम्=दर्शन करना चाहिए। और वहॉ पर=राम जन्मभूमि पर आपि=भी विधिवत पूजन करने से शुभ अर्थात पुण्य की प्रदः–प्राप्ति होती है।'' (10)

''चैत्र शुक्ल पक्ष नवरात्रि में तृतीया के दिन वर्ष में यात्रा कर्तव्यः=यात्रा करनी चाहिए और सुन्दर प्रयत्नपूर्वक गीत वादन से युक्त होकर इसे मनाना चाहिए। सभी अवसरों पर परमार्थ को प्रदान करने वाले सुख और सन्तान की प्राप्ति के लिए अनेक संगीत वादन और नृत्य पूर्वक मनोहर उत्सव मनाना चाहिए।'' (11)

''इस प्रकार उपर्युक्त रीति से कार्य कने पर हमेशा रक्षा होती है इसमें कोई भी सन्देह नहीं है।'' (12)

''एतत्=राम जन्मभूमि के पश्चिम दिशा में पिण्डारक इस नाम से ख्यातो=प्रसिद्ध परम पुरूष बीर परम मुनि का स्थान वर्तते=हैं। उस पूज्यनीय स्थान का गन्ध पुष्प अच्क्षत आदि से प्रयत्नपूर्वक पूजन करना चाहिए।'' (13)

''जिसके पूजन के कारण मनुष्यों के हाथ में सिद्धि प्राप्त हो जाती है। इसलिए उसकी पूजा मनुष्यों को विधि पूर्वक

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करना चाहिए।'' *(14)*

''सरयू जल में स्नान करके पिण्डारक की पूजा करनी चाहिए। मतिमंद मोह से ग्रसित पापियों को सदा करना चाहिए।'' *(15)*

''उसकी यात्रा नवरात्रि के पुष्य नक्षत्र में करनी चाहिए। तत्=राम जन्मभूमि के पश्चिम दिशा के भाग में विध्न को दूर करने वाले श्रीगणेश जी का पूजन करना चाहिए।'' *(16)*

''जिसके दर्शन से मनुष्यों का विघ्न=कष्ट, दुःख थोड़ा भी नहीं रहता इसलिए विध्नेश्वर सम्पूर्ण कामनाओं के फल को प्रदान करने वाले पूज्यायः=पूज्यनीय हैं।'' *(17)*

''उस स्थान के ईशान कोण पर राम जन्मभूमि है (जहॉ पर इस समय राम लला) विराजमान हैं। इदम्=इसी राम जन्मभूमि को जन्म स्थान=राम जन्मभूमि स्थान के नाम से प्रामृमं–जाना जाता है अथवा उक्त प्रकार से व्यक्त किया गया है जो मूक्षादि फल को देने वाला है।'' *(18)*

''विध्नेश्वरात्=विध्न को दूर करने वाले गणेश जी के पूर्व भाग में तथा वशिष्ठकुण्ड के उत्तर भाग में, लोमश के पश्चिम भाग में जन्म स्थानं=जन्मभूमि का स्मृतम्=स्मरण करना चाहिए।'' *(19)*

''जिस राम जन्मभूमि पर विराजमान श्रीराम लला का दर्शन करने के बाद मनुष्य को पुनर्जन्म से मुक्ति मिल जाती है। बिना दान, बिना तपस्या और बिना यज्ञ के ही केवल राम जन्मभूमि के दर्शन मात्र से ही मुक्ति प्राप्त हो जाती है अर्थात् फिर से गर्भ में जन्म नहीं लेना पड़ता।'' *(20)*

''जो मनुष्य नवमी तिथि को व्रत धारण करता है और सरयू में स्नान और अयोध्या में दान करता है उसके प्रभाव से जन्मबन्धन से मुक्ति मिल जाती है।'' *(21)*

''एक हजार कपिला गाय जो प्रतिदिन दान करता है उस दान का जो फल मनुष्य को मिलता है वही फल श्रीराम जन्मभूमि के दर्शन करने से प्राप्त होता है।'' *(22)*

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''आश्रम में निवास करने वाले मनुष्यों को और तपस्वियों को जो फल प्राप्त होता है, एक हजार राजसूय यज्ञ करने वालों को और प्रति वर्ष अग्निहोत्र में हवन करने वालों को वो फल प्राप्त होता हैं।'' *(23)*

''नियम में स्थित रहकर जो मनुष्य विशेष रूप से जन्मस्थाने=श्रीराम जन्मभूमि पर स्थित राम जी के दर्शन से प्राप्त होता है। माता–पिता गुरूओं और सज्जनों की भक्तिपूर्वक सेवा करने से जो फल प्राप्त होता है वहीं फल रामजन्मभूमि के दर्शन से प्राप्त होता है।'' *(24)*

''वही फल श्रीराम जन्मभूमि का एवं श्रीरामजन्मभूमि मे विराजमान भगवान रामलला के दर्शन से प्राप्त होता है।'' *(25)*

(English Translation)

"24- That the importance of Ayodhya has been mentioned in 'Vaishnava' part of 'Skanda Purana', famous treatise of Hindus, wherein categorical descriptions are contained about Lord Rama's birthplace. The relevant verses of 'Vaishanava' part relating to importance of Ayodhya, are as under:

"For fulfillment of all desires, we should have Darshan of Ayodhya-situated Ram Janam Bhumi worshipping it duly and respectfully. By duly worshipping Ram Janam Bhumi located there we can attain good results." *(10)*

"On the third day of Chaitra Shukla Navaratri we should make a kartavya yatra (journey of duties) and should celebrate it singing and playing instruments in a beautiful manner and with efforts. On all the occasions we should observe several fascinating celebrations coupled with singing, playing instruments and

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dancing, for attainment of great bliss and also of children." *(11)*

"In this manner, a man is always protected by working in the afore-said manner. There is no doubt in it." *(12)*

"On the west of Ram Janam Bhumi lies a place of Pindara, a famous and great sage and great human being. We should worship this adorable place with scent, flowers, rice-grains, etc." *(13)*

"Due to that worship human beings can attain Siddhi(accomplishment). Hence, human beings should duly worship it. *(14)*

"After taking a dip in the water of Saryu one should worship Pindarak. The sinners suffering from weak understanding and from attachment should always do the said worship." *(15)*

"Journey to it should be done in the Pushpa Nakshatra of Navratri. In the west part of Ram Janam Bhumi, we should worship Ganesha Ji, remover of obstacles." *(16)*

"As a result of whose darshan human beings do not have any obstacle and pain, even a little sorrow such Vighneshwar is worthy of worship as provider of results of all desires." *(17)*

"On the north-east of that place lies Ram Janam Bhumi (where at present Ram Lala is presiding). The same Ram Janam Bhumi is known as Ram Janam Bhumi Sthan or expressed in the said manner and it is a

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provider of liberation, etc." *(18)*

"We should remember Janam Bhumi as located in the east part of 'Ganesha Ji' , remover of obstacles, and in the north part of Vashishtha Kunda and in the west part of Lomash." *(19)*

"After having darshan of Sri Ram Lala presiding at that very Ram Janam Bhumi one is liberated from rebirth. Even without making any gift, without practising austerities and without making sacrifices, one attains liberation only with darshan of Ram Janam Bhumi, that is to say, one does not have to take birth from mother's womb again." *(20)*

"One who keeps fast on the ninth day, has a dip in Saryu and offers gifts in Ayodhya, gets liberated from the bondage of birth." *(21)*

"The darshan of Sri Ram Janam Bhumi provides the same results that a man may have by gifting one thousand Kapila cows everyday." *(22)*

"The result that hermits and ascetics residing in Ashrams have, is the same that people have on performing one thousand Rajsuya Yajnas have and on offering 'havans' in fire-pits." *(23)*

"From the darshan of Ram Janam Bhumi one may get the same results as one may get from having darshan of Ram Ji particularly at Sri Ram Janam Bhumi or from rendering

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dedicated service to parents, teachers and gentle persons." (24)

"One may get the same results from darshan of Lord Ram Lala presiding at Sri Ram Janam Bhumi." (25)

(E.T.C)

''25. यह कि अथर्ववेद में अयोध्या को देवी देवताओं की पुरी के रूप में संबोंधित किया गया है जो निम्न प्रकार से हैः–

''पुरं यो ब्रहाणो वेद यस्याः पुरूष उच्यते । 28 ।
यो वै तां ब्रहणों वेदामृते पावृतां पुरम्
तस्मैं ब्रहमास्ख चक्षुः प्राणम् प्रजां ददुः । 29 ।
न वै तं चक्षुर्जजहाति न प्राणोजरसः पुरा
पुरं यो ब्रह्मणो वद यस्याः पुरूष उच्यते । 30 ।
अष्टचक्रा नवद्वारा देवानां पुरीयोध्या
तस्यां हिरण्ययः कोशः स्वर्गो ज्योतिषावृतः । 31 ।''

(Hindi translation of the above Shloka hereunder as appended by the witness himself alongwith his affidavit)

''उस ब्रम्ह् पुर को जिस ब्रम्ह् पुर में ब्रम्ह् शयन् करते हैं अर्थात उस अयोध्यापुरी में जिसमें श्रीराम निवास करते हैं। वह पुरूषार्थ के भागी होते हैं।'' (28)

''जो ब्रम्ह्पुर अर्थात–अयोध्यापुर वेदों में जाना जाता है वह पुरी अमृत से आवृत है=परिपूर्ण है। वैदिक देवता उसे चक्षु प्राण, प्रजा अर्थात् सन्तान प्रदान करते हैं।'' (29)

''ब्रम्ह्पुर अयोध्या को जानता है उसको भी चक्षु एवं ज्ञान –विज्ञान नहीं त्यागते अति वृद्धावस्था के पूर्व प्राण उसको नहीं त्यागते जिसके कारण ब्रम्ह् पुरूष हो जाता है अर्थात् उस पुर को=अयोध्या को जानने वाला तथा उस अयोध्या के पुरूष श्रीराम को जानने वाला चक्षुस्मान दीर्घायु एवं प्रजावान होता है।'' (30)

''जो आठ चक्रों से युक्त नौ द्वारों वाली देवादिदेव भगवान राम की अयोध्या पुरी है उस अयोध्यापुरी में वह स्वर्णमय शेषागार जहॉ ज्योति से सम्पन भगवान श्रीराम प्रथम बार

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बालक बनकर पधारे थे उस मंत्र में हिरण्यमयः कोशः स्वर्गः शब्द से भगवान श्रीराम के जन्मभूमि का स्पष्ट संकेत किया गया है। इस मंत्र में हिरण्यः कोशः स्वर्गः इन तीन शब्दों से भगवान श्रीराम लला की जन्मभूमि का स्पष्ट संकेत है।''

(31)

"25. That Atharva Veda addresses male and female deities of Ayodhya as 'Puri' in the following manner:-

"People living in that Brahmapur where Brahma takes rest, that is to say, those living in Ayodhyapuri where Sri Rama resides, attain 'prusharthas'(objectives of life)." *(28)*

"The Brahmapur, that is, Ayodhya Pur, known in the Vedas, is filled with nectar. The Vedic deities provide eyes, souls and subjects, that is, progenies." *(29)*

"One who knows Brahmapur, that is, Ayodhya does not lose eyes and knowledge – special knowledge. Such a person does not lose his soul before getting extremely old due to which he becomes a Brahma-Purush. That is to say, such a person – knower of Ayodhya or knower of Ayodhya's Purush Sri Rama – is blessed with eyes, long life and subjects/progenies."

(30)

"With eight wheels and nine gateways, there is Ayodhyapuri of the most revered deity of deities, Lord Rama, which has a 'Sheshagaar' of gold, where Sri Rama, scintillating with light, appeared as a child for the first time. The words "Hiranyamay krodhah swargah" occurring in that hymn, clearly points to the

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birthplace of Lord Sri Rama. These three words "Hiranyamay krodhah swargah" in the hymn, clearly refers to the birthplace of Sri Ram Lala." *(31)*

(E.T.C)

''26. यह कि हिन्दू धर्म के प्रसिद्ध ग्रन्थ ''रूद्रयामल'' के अध्याया 30 श्लोक 54 में अयोध्या पुरी को सप्त प्रमुख पुरी के रूप में वर्णित करते हुए अयोध्या को सभी तीर्थो का मस्तक कहा गया है तथा ''वशिष्ठ संहिता'' नामक प्रसिद्ध धर्म ग्रन्थ में 'अयोध्या नगरी नित्या सच्चिदानन्दरूपिणी' के सम्बोधन के द्वारा साक्षात् सतचित आनन्द रूपी भगवान का स्वरूप एवं विग्रह रूप में परिभाषित करते हुए अयोध्या को गो लोक एवं वैकुण्ठ से भी अधिक प्रतिष्ठित माना गया है। इसी प्रकार का विवरण गोस्वामी तुलसीदास कृत रामचरित मानस में भी है।''

"26. That the famous treatise of Hinduism titled "Rudryamal" in verse 54 of chapter 30 depicts Ayodhyapuri as one of the seven main 'puris' (towns) and terms it as the head of all sites of pilgrimage. In the famous religious treatise titled "Vashishtha Samhita", Ayodhya Nagari is addressed as 'Nitya Sachchidanand-rupini' and is defined as the form and individual shape of God, a manifestation of existence, consciousness and bliss, and is regarded as more revered than even 'Go Lok' and 'Vaikuntha'(abodes of God). The same type of description also occurs in the Ram Charit Manas composed by Goswami Tulsidas." (E.T.C.)

''27. यह कि 'रूद्रयामल' हिन्दुओं का अति प्राचीन आध्यात्मिक धर्म ग्रन्थ है जिसमें विवादित स्थल को भगवान श्रीराम की जन्मभूमि को स्पष्ट रूप से वर्णन किया गया है तथा इसी ग्रन्थ में अयोध्या को भगवान वासुदेव, ब्रह्माजी व रूद्र का रूप माना गया है। उक्त ग्रन्थ की संगत पंक्तियॉ निम्न प्रकार है:

अकारो वासुदेवस्यात् यकारस्य ते प्रजापतिः

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ऊँकारो रूद्र रूपस्य तु, ताम ध्यायन्ति मुनीश्वरः। ''

(Hindi translation of the above Shloka hereunder as appended by the witness himself alongwith his affidavit)

''इस श्लोक में अयोध्या शब्द का अर्थ बताया गया है। अकार, यकार, ऊँकार और ध्या की व्याख्या है। अकार=वासुदेव, वासुदेव=राम कण–कण में निवास करने वाले राम। यकार का अर्थ प्रजापति ब्रम्ह्मा से है और ऊँकार का अर्थ रूद्र रूप से है=शंकर रूप से है तथा ध्या शब्द का अर्थ मुनीश्वर लोग इन तीनों देवताओं का ध्यान करते हैं अर्थात् इसका भावार्थ यह है कि अयोध्या=ब्रम्ह्मा, विष्णु, महेश तीनों का रूप जिसे मुनीश्वर लोग=साधू, संत महात्मा लोग अयोध्या में सदा इन तीनों देवताओं का ध्यान करते रहते हैं।''

''27. That 'Rudryamal' is a very ancient spiritual religious treatise of Hindus which clearly depicts the birth place of Lord Sri Rama at the disputed site and this very treatise regards Ayodhya as the form of Lord Vasudeva, Brahma Ji and Rudra. The relevant lines of the said treatise are as follows:

"This verse gives the meaning of the word Ayodhya. it explains 'Akar, Yakar, Omkar, and Dhya'. Akar stands for 'Vasudeva', that is, Vasudeva-Rama who pervades every atom. Yakar means Brahma, creator of the world, and Omkar means Rudra, i.e. Shankara, and Dya stands for sages who meditate about these Trinities. That is to say, it means that Ayodhya is the manifestation of Trinities-Brahma, Vishnu and Mahesh–whom sages, ascetics and saints keep meditating about these Trinities in Ayodhya." (E.T.C.)

354. He claims in para 28 of the affidavit that Muslims and

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Hindus both live together cordially in Ayodhya and Faizabad, and local Muslims except of a very few believe that the disputed site is the birthplace of Lord Ram and in support thereto has referred to the response given by some of Muslims in Section 145 Cr.P.C. proceedings initiated in 1949. Further in para 30 he says that neither the disputed site had any characteristics or requirement necessary for making it a mosque nor the Muslims in general treat it as such and since time immemorial it is most pious place of Hindus worshipped as birthplace of Lord Ram. Paragraphs 28 and 30 of the affidavit reads as under:

''28 यह कि अयोध्या फैजाबाद में स्थानीय तौर पर सदैव से साम्प्रदायिक सद्भाव रहा है तथा दोनों वर्गो में परस्पर सहयोग तथा मधुर सम्बन्ध रहे हैं तथा आज भी दोनों वर्गो में अत्यधिक सौहार्द है। स्थानीय मुसलमान (केवल कुछ गिने चुने निहित स्वार्थी कट्टरपन्थी मुसलमानों को छोड़कर) विवादित स्थल को हिन्दुओं के आराध्य भगवान श्रीराम की जन्मभूमि मानते हैं तथा विवादित स्थल को मस्जिद के रूप में कभी मानने को तैयार नहीं हैं।''

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''28. That communal harmony has always prevailed at local level in Ayodhya, Faizabad and the relations between both the communities have always remained cordial and cooperative and even today, there is great harmony between the two communities. Local Muslims (except for few orthodox Muslims with vested interests) consider the disputed site to be the birthplace of Lord Rama, the ideal deity of Hindus and are not prepared to treat the disputed site as a mosque.'' (E.T.C.)

''30. यह कि शपथकर्ता के अब तक के सामाजिक, धार्मिक, राजनीतिक जीवन में तमाम इस्लाम मजहब के अनुयायी, उनके उलेमाओं तथा विद्वानों से बातचीत हुयी। वे सब लोग विवादित स्थल को इबादत गाह के रूप में स्वीकार नहीं करते उनका यह भी मानना है कि मस्जिद में मीनार व वजू के लिए समुचित व्यवस्था होना आवश्यक है। विवादित स्थल पर स्थित ढॉचा में न तो मीनारें थी, और न ही वजू की कोई व्यवस्था थी। विवादित

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स्थल भगवान श्रीराम की जन्मभूमि है जो धर्म शास्त्रों जनश्रुतियों प्रथाओं आदि के आधार पर प्रमाणित है तथा अनादि काल से उस स्थान को भगवान श्रीराम की जन्मभूमि के रूप में पूजित किया जाता चला आ रहा है।''

''30. That in the till date social, religious and political career of the deponent, he had discussions with a number of followers of Islam, their Ulemas and scholars. They all do not accept the disputed site as 'Ibadatgah' (Muslim place of worship). It is also their belief that a mosque must have minarets and proper arrangement for Wazoo. In the disputed structure over the site, neither there were any minarets nor any arrangement for Wazoo. The disputed site is the birthplace of Lord Rama which is proved by scriptures, hearsay, traditions etc. and from time immemorial that place has been continuously worshipped as the birthplace of Lord Rama." (E.T.C.)

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355. DW 3/1, Mahant Bhaskar Das, 75 years of age (as per affidavit dated 29.08.2003), He was cross examined in the following manner :

(a) 29.08.2003- by Ramesh Chandra Tripathi, defendant no. 17 and Umesh Chandra Pandey, defendant no. 22 (Suit-4) through Sri Vireshwar Dwivedi, Advocate (p. 30-35)

(b) 01.09.2003- by plaintiffs (Suit-5) through Sri Ved Prakash, Advocate (p. 36-44)

(c) 01.09.2003- by Ramjanam Bhumi Punruddhar Samiti, defendant no. 20, through Km. Ranjana Agnihotri, Advocate (p. 44-47)

(d) 01/02.09.2003- by defendant no. 11 through Sri Abdul Mannan, Advocate (p. 47-58)

(e) 02/03/04/05/08/09/10/11/12/15/16/17/18.09.2003- by

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Sunni Central Board of Waqf, defendant no. 9, through Sri Zafaryab Jilani, Advocate (p. 58-234)

(f) 18/19/22.09.2003- by plaintiff no. 7 (Suit-4) and defendant no. 5 (Suit-5) Mohd Hashim through Sri Mustaq Ahmad Siddiqui, Advocate (p. 234-268)

(g) 22.09.2003- defendants no. 6/1 through Sri Irfan Ahmad, Advocate and and defendant no. 6/2 through Sri Fazale Alam, Advocate adopted the cross examination already done by Sri Abdul Manna, Sri Zafaryab Jilani and Sri Mustaq Ahmad Siddiqui, Advocates (p. 268)

356. He is resident of Hanumangarhi Naka Muzaffara, Pargana Haveli Awadh, District Faizabad. He is Sarpanch of Sri Manch Ramanandiya Nirmohi Akhara, Ram Ghat, Ayodhya, plaintiff (Suit-3). Para 2, 5, 6, 7, 13, 14, 40, 41, 42, 43, 44, 56 and 75 of the affidavit basically relates to the details of Nirmohi Akhara, about its formation, constitution, tenets, traditions of working, property it possess etc. and, therefore, shall be referred separately while considering the relevant issue no.17 (Suit-3) pertaining to the constitution and status of Nirmohi Akhara.

357. He (DW 3/1) came to Ayodhya in 1946 at Hanuman Garhi. At that time Sri Baldev Das was Mahant of hanuman Garhi and Panch Nirmohi Akhara Ramghat, Ayodhya. He was also priest of Sri Ramjanambhumi, Ayodhya. He became pupil of Mahant Baldev Das after performing Manch Sanskar. He claim that the disputed premises is believed to be the birthplace of Lord Ram throughout the world and said :

'8. विवादित मंदिर, प्राचीन नाम रामजन्मस्थान रहा। शुरु में इसी नाम से प्रचलित रही है, लेकिन सामान्यतः पूरे संसार में रामजन्मभूमि के नाम से प्रसिद्ध है। रामजन्मभूमि का वैदिक व सनातन महत्व हिन्दू धर्म के अनुसार इसलिए बहुत ज्यादा है कि विष्णु अवतार भगवान रामचन्द्र का जन्म व अवतार इसी स्थल पर हुआ। इस आस्था का प्रमाण मुझे बाल्मीकि रामायण,

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स्कन्द पुराण, रुद्रयामल, तुलसीकृत रामचरितमानस और विभिन्न ऐतिहासिक व साहित्यिक ग्रन्थों में है, जिसका विवरण आगे दूँगा।''

''8. The ancient name of the disputed temple was Ramjanmsthan. Initially it was famous by this name, but usually is famous as Ramjanmbhumi in the whole world. The Vedic and Sanatan importance of Ramjanmbhumi is even more on the ground that Vishnu incarnate Lord Ramchandra had been born or descended at this place. The evidence of this belief has been found by me in Valmiki Ramayana, Skand Purana, Rudrayamal, Tulsidas composed Ramcharit Manas and other historical and literary works, which shall be referred by me later.'' (E.T.C.)

358. The Ramjanambhumi Temple and the premises was in possession and ownership of plaintiff, Nirmohi Akhara and in paras 9, 15, 16, 29, 30, 31, 32 and 35 DW 3/1 has said as under:

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''9. मुख्य व रामलला, लक्ष्मणजी, हनुमानजी, सालिगराम भगवान विवादित मंदिर श्रीराम जन्मभूमि व उसके इर्द–गिर्द जितने छोटे–बड़े मंदिर व धार्मिक स्थल हैं, जैसे–छठी पूजा स्थल, रामचबूतरा मंदिर स्थान, षष्टमुखी शंकर भगवान, गणेशजी, सीताकूप मंदिर, गुफा मंदिर, सुमित्रा मंदिर, लोमस समाधि आदि जितनी जायदाद हैं, ये सब मिल्कियत वादी निर्मोही अखाड़ा है और उसके कब्जे व इन्तजाम में कई सौ साल पहले से कुर्की और अधिग्रहण के समय तक बराबर रही है बहैसियत सर्वराकार महन्त निर्मोही अखाड़ा पंचों की राय से देखते रहे हैं। इस मंदिर में विराजमान भगवान रामलला के प्राण–प्रतिष्ठा, मानव स्मृति के पहले निर्मोही अखाड़े के किसी महन्त ने कराई थी, और ऐसे ही रामचबूतरे पर भगवान रामलला की मानव स्मृति के पहले निर्मोही अखाड़े के किसी महन्त ने रामचबूतरे पर भी प्राण–प्रतिष्ठा कराई थी। वह भी वैदिक रीति से हुई थी। और इसी प्रकार छठी स्थल पर चारों भाइयों की चरण–चिन्ह की प्रतिष्ठा मानव स्मृति के पहले निर्मोही अखाड़े के किसी महन्त ने कराई थी।''

''9. The main disputed Sri Ramjanmbhumi temple,

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Ramlala, Laxman ji, Hanuman ji, Saligram, all the big-small temples and religious places in the vicinity viz. Chhathi worship place, Ramchabutara temple, six faced Lord Shankar, Ganesh ji, Sitakoop temple, cave temple, Sumitra temple, Lomash Samadhi etc., were all the ownership of plaintiff Nirmohi Akhara and till the attachment and acquisition it has been under its control and management for hundreds of years in the capacity of Sarvrakar Mahant Nirmohi Akhara on advice of Panch. The 'Pran Pratishtha' of Lord Ramlala present in this temple, had been carried out by some Mahant of Nirmohi Akhara in period beyond human memory. Similarly, the 'Pran Pratishtha' of Lord Ramlala at Ramchabutara had been carried out by some Mahant of Nirmohi Akhara in period beyond human memory. It had also been carried out as per Vedic rites. Similarly, the 'Pratishtha' of footmarks of the four brothers at Chhathi place had been carried out by some Mahant of Nirmohi Akhara in period beyond human memory." (E.T.C.)

'15. 10 मार्च, 1949 के दस्तावेज में मंदिर रामजन्मभूमि का पूरा विवरण दिया गया है।

1. एकदम बाहरी दीवाल लगभग 135–140 फिट होगी। बीचोबीच में गेट है।

2. सीखचे वाली दीवाल भी लगभग 100 फिट लम्बी है।

3. सीखचे वाली पूर्वी दीवाल में दो दरवाजा रहे हैं।

4.दोनों दरवाजे बराबर थे, जो आपस में 90 या 92 फिट के फासले पर थे।"

"15. In the record dated 10th March, 1949, the complete description of Ramjanmbhumi temple has been given.

1. The immediate outer wall would be about 135-140 feet. There is a gate at the centre.

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2.The grill wall is also about 100 feet long.

3.There were two gates in the eastern grill wall.

4.Both the gates were equal at a distance of about 90 or 92 feet from each other." (E.T.C.)

'16. मुख्य मंदिर के सामने सहन है सीखचे वाली दीवाल है और उसके बाद बाहरी भाग में रामचबूतरा मंदिर दक्षिण पूर्व कोने पर हाते के अन्दर शिव दरबार पीपल के पेड़ के नीचे स्थित है, और छठी स्थल सीखचे वाली दीवाल के उत्तर है। बाहरी भाग में सीखचे वाली दीवाल के पूर्व रामचबूतरा मंदिर के उत्तर निर्मोही अखाड़े का कोठार व भण्डार है व साधुओं के रहने के स्थान थे। भीतरी व बाहरी भाग सदैव निर्मोही अखाड़े के कब्जे में रहा है। बाहरी भाग में उत्तरी दीवाल है जो लगभग 2 फुट चौड़ी है बाहरी और भीतरी भाग में प्रवेश के लिए पहला दरवाजा उत्तर तरफ सिंहद्वार कहलाता है सिंहद्वार से थोड़ा उत्तर पूर्व हटकर सीढ़ियां बनी थीं। इसके अलावा भीतरी–बाहरी भाग का एकदम बाहर से कोई दरवाजा नहीं है। विवादित मंदिर के पीछे परिक्रमा मार्ग है, जो लगभग 5 या 6 फिट चौड़ा है। परिक्रमा मार्ग के पश्चिम व थोड़ी दूर दक्षिण ढाई तीन फुट उॅची एक फुट चौड़ी मुंडेरी बनी थी। मुंडेरी से पश्चिम 25 से 30 फिट का दुकान है। उत्तर दरवाजा टिन का था जो कि अक्सर बन्द रहता था अयोध्या में प्रसिद्ध तीन मेला चैत्र राम नवमी के दिन कार्तिक पूर्णिमाा व परिक्रमा में लगभग 15 दिन और सावन झूला में 15 दिन दर्शनार्थी बढ़ने के कारण खोला जाता था। पूर्व दरवाजे में फाटक नहीं था वह खुला रहता था। लेकिन उस दरवाजे से भी केवल हिन्दू दर्शनार्थी ही प्रवेश पाते थे क्योंकि रामजन्मभूमि की नित्य यात्रा होती है जिसमें दर्शनार्थी आते–जाते थे। रंगीन एलबम चित्र नं0 69.70 छट्ठी पूजा बेलना, 104 से 108, से 114 तक कसौटी पत्थर है, से 127 तक तथा 136 से 138 से 144 तक तथा 144 से 147 तक, 152 व 156 खम्भा कसौटी मय घण्टा टंगा है। 160 से 162 तक कसौटी खम्भा है। 181 से 186 कसौटी खम्भा मयचित्र के 187 से 198 मय चित्र के, 193 से 200 तक खम्भा पूर्व वाले दरवाजे के अगल–बगल कसौटी पत्थर के दो खम्भे लगे थे।''

"16. Opposite the main temple, is the courtyard, the grill wall and thereafter is the Ramchabutara temple in the south east corner of the outer part and the Shiv Darbar is

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situated below the Pipal tree inside the premises. The Chhathi place is to the north of grill wall. The granary and store room and saints' accommodation of Nirmohi Akhara is situated in north of the Ramchabutara temple to east of the grill wall in the outer part. The inner and outer part always remained in possession of Nirmohi Akhara.In the outer part, is the northern wall which is 2 feet wide. The first gate in the north for entering the inner and outer part, is called Singhdwar. There were steps a bit away from the Singhdwar in the north east. Apart from this there was no immediate gate from outside leading to the inner-outer part. Behind the disputed temple, is the circumambulation path about 5-6 feet wide. To the west of the circumambulation path and at a short distance in south, there was a 2 ½ – 3 feet high and 1 foot wide 'Munderi'. There was a shop at a distance of 25-30 feet to the west of the 'Munderi'. The northern gate was of tin, which mostly remained closed and was opened due to increase in number of devotees on the occasion of three main fairs of Ayodhya viz. 'Chaitra Ramnavami', for 15 days during Kartik Purnima and circumambulation and 15 days during Sawan Jhula. There was no door in the eastern gate and it remained open. However, the Hindu devotees entered through that gate as well because devotees used to visit on occasion of 'Nitya Yatra' of the Ramjanmbhumi. The photograph nos. 66, 70 of the coloured album are 'Chhathi Puja Belna', nos. 104 to 108, to 114 are touchstones, and the touchstone pillar with gong is from (-) to 127, from 136 to 138, to 144 and from 144 to 147, 152 and 156. The touchstone pillar is from 160 to 162. From 181 to 186

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touchstone pillar along with picture from 187 to 198 along with picture, pillar from 193 to 200. On sides of the eastern gate were two pillars of touchstone." (E.T.C.)

"29. रामचबूतरा के उत्तर बाहरी भाग में हाते के अन्दर टिनशेड डालकर बाहरी दीवाल से सटे कोठार निवास, धूनी व जल पिलाने के लिए बना हुआ था जो प्राचीनकाल से कायम चला आ रहा था मेरे वहां जाने से पहले से कायम था, यह बात ***मुझे मेरे गुरुजी ने बताई थी।"***

"29. In the northern outer part of Ramchabutara, the granary, accommodation, smoke-fire and watering place existed inside the premises by putting a tin shed, which existed since ancient times. It was there before I visited that place, and ***this was told to me by my master****." (E.T.C.)*

"30. अन्दर वाले भाग में गर्भगृह है, जिसमें ऊपर तीन शिखर बने थे, जो गोल थे, मंदिर में गोल शिखर भी होते हैं और भीतरी भाग के बाहर अन्दुरुनी सहन में सीखचे वाली दीवाल तीन तरफ हैं। उत्तर और पूर्व पूरी हैं। लेकिन दक्षिण तरफ थोड़ा सीखचे वाला बाकी दीवाल से बन्द हैं। सीखचे वाली दीवाल से गर्भगृह जाने के लिए सीखचे वाली उत्तरी दीवाल के उत्तर छठी पूजन स्थल है जो पहले बयान कर चुका हूँ। जो मेरे वहां जाने के पहले से है, ***जिसको मेरे गुरुजी ने बताया है।"***

"30. The 'Garbh-grih' existed in the inner part, over which there were three domes round in shape. Round domes are found in temples as well. The grill wall exists on three sides in the inner courtyard outside the inner part. However, the southern direction is bounded a bit by the grill wall and rest by wall. As already stated, the 'Chhathi' worship place is to the north of the northern grill wall leading to the 'Garbh-grih'. It existed there prior to my visit, and ***was told to me by my maste****r." (E.T.C.)*

'31. जब कुर्की की कार्यवाही हुई तो 145 का मुकदमा मेरे गुरु बाबा बल्देव दास जी निर्मोही अखाड़ा की तरफ से पैरवी करते थे, मैं भी बराबर

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साथ जाता था और फर्द बनी कुर्की की मय दो अष्टधातु की भगवान रामलला एक बड़ी एवं एक छोटी छः भगवान सालिक राम, चॉदी के सिंहासन पर दो फिट ऊॅचे पर विराजमान थे। एक मूर्ति हनुमान जी की पाषाण की है, दो चित्र पर रामजानकी, एक छोटी फोटो बद्रीनाथ, एक छोटी फोटो रामजानकी की, इसके अलावा पार्षद भगवान के वस्त्र और जेवरात हैं। कुर्की मात्र भूगर्भ वाले भाग व भीतरी भाग का हुआ जिसकी फर्द में चौहद्दी निम्नलिखित तौर पर है। उत्तर हाता, छट्ठी चरण चिन्ह निर्मोही अखाड़ा, दक्षिण परती जमीन परिक्रमा मार्ग, पूरब चबूतरा मंदिर रामजी बाकब्जा निर्मोही अखाड़ा, पश्चिम परिक्रमा। इस कुर्की में मंदिर पूजन छठी पूजन स्थल, मंदिर रामचबूतरा, कोठार संत निवास, षष्टमुखी भगवान यानी हाते के अन्दर का समस्त बाहरी भाग कुर्की में नहीं था। ये समस्त हाते के अन्दर का बाहरी भाग यानी रामचबूतरा छठी पूजन स्थल, कोठार भण्डार, षष्टमुखी भगवान निर्मोही अखाडा के कब्जे में चिरकाल से चला आ रहा था।''

''31. At time of the attachment, the case under section 145 was being pursued by my master Baba Baldev Das on behalf of Nirmohi Akhara. I always accompanied him . A memo of attachment was prepared which included two, one big and one small Ashtadhatu idol of Lord Ramlala, six Salikram present over two feet tall silver throne, one stone idol of Hanuman ji, two photographs of Ram Janki, one small photograph of Badrinath, one small of Ram Janki and attire and jewellery of Parshad Bhagwan. The attachment was carried out only of the ground part and inner part, whose boundary was given in the memo as under. North-courtyard, Chhathi footmark Nirmohi Akhara, South-vacant land, circumambulation path, East-

Chabutara temple of Rama ji under possession of Nirmohi Akhara, West- circumambulation. The temple worship, Chhathi worship place, Ramchabutara temple, granary, saints' accommodation, six faced deity i.e. the

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complete outer part inside the courtyard was not included in this attachment. All this i.e. the entire outer part inside the courtyard viz. Ramchabutara, Chhathi worship place, granary, store, six faced deity had been in possession of Nirmohi Akhara since time immemorial." (E.T.C.)

"32. निर्मोही अखाड़े की रीति रिवाज के अनुसार अखाड़े के पंच भी जन्मभूमि मंदिर के इर्द गिर्द अपने छोटे–छोटे मंदिर बनाकर तथा ऋषियों के नाम पर समाधि कायम करके रहते थे। जिसमें से सुमित्रा भवन, सीताकूप मंदिर, रामलला मंदिर, सालिक राम मंदिर आदि कायम चले आ रहे थे।"

"32. According to customs of Nirmohi Akhara, the Panch of Akhara also used to live near the Janmbhumi temple by building small temples and establishing 'Samadhis' in the names of 'Rishis' (ascetics), out of which Sumitra Bhawan, Sitakoop temple, Ramlala temple, Salik Ram temple continued to exist." (E.T.C.)

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"35. श्रीराम जन्मभूमि के पूर्वी दरवाजे के दर्शनार्थियों को फल–फूल, बताशे आदि चढ़ाने का ठेका सालाना होता था। जो काम चिरकाल से निर्मोही अखाड़े के पहले के महन्थान करते चले आ रहे थे और ठेका लेने वालो से इकरारनामा लिखा लेते थे और सीताकूप से यात्रियों/दर्शनार्थियों को पवित्र जल, पिलाने के लिए ब्राह्मणों को ठेका दिया जाता था। जिसका महसूल महन्त अखाड़ा लिया करते थे। जितने बचे हुए उपलब्ध इकरारनामे थे जिनको मैंने दाखिल किया है और बहुत से कागजात लूट लिये गये थे जिनकी रिपोर्ट हुई थी।"

"35. The contract of offering flower-fruits, sweets etc. of the devotees of the eastern gate of Sri Ramjanmbhumi, was given on annual basis and since time immemorial this work had been done by the earlier Mahants of Nirmohi Akhara and the contractors were required to execute an agreement. The contract to provide holy water to the visitors/devotees from the Sita Koop, was given to the

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Brahmans and its consideration was received by the Mahant. The available agreements have been filed by me and many have been looted away, whose report had been lodged." (E.T.C.)

359. DW 3/1 denied user of premises in dispute inside or outside the courtyard by Mislims as mosque, tried to prove photographs as that of disputed premises, admits of being prosecuted in 1950 on the charge of destruction of certain graveyards but acquitted in appeal, was doing pairavi on behalf of Nirmohi Akhara in the proceedings initiated under Section 145 Cr.P.C. In paras 77, 78 and 81 he specifically said further about the possession and ownership of Nirmohi Akhara at the disputed premises as under:

"77. भगवान रामलला विराजमान मुख्य मंदिर श्रीराम जन्मभूमि का सेवयति अधिकार निर्मोही अखाड़ा पंचायती मठ का सदैव से रहा है और सदैव बतौर सर्वराकार निर्मोही अखाड़ा द्वारा महन्त अखाड़ा, मसविरा पंचान अखाड़ा, भगवान की सेवा पूजा, राजभोग, उत्सव समैया रामानन्दीय वैरागी सम्प्रदाय के परम्परा के रीति–रिवाज जो प्रचलित है, कुर्की की तारीख 29.12.1949 तक करती आयी है। और बाहरी भाग यानी कुर्कशुदा भीतरी भाग के पूर्व–उत्तर व दक्षिणी भाग अन्दर बाहरी चहारदीवारी में रामचबूतरा मंदिर में विराजमान भगवान रामलला व दीगर देवतान का पूजा–पाठ भी निर्मोही अखाड़ा बमौजिब रामानन्दीय वैरागी सम्प्रदाय महन्त अखाड़ा द्वारा व मसविरा पंचान अखाड़ा व पुजारी दूसरी कुर्की फरवरी 1982 तक करते चले आये हैं और बाहरी परिसर का इन्तजाम भण्डारगृह, संत निवास सभी का देखभात निर्मोही अखाड़ा ही करता रहा है।"

"77. The Sewait right of Sri Ramjanmbhumi temple with Lord Ramlala present, has always been vested in Nirmohi Akhara Panchayati Math and the Mahant Akhara, Masvira Panchan Akhara, worship of God, Rajbhog, Samaiya festival were all performed by Nirmohi Akhara as 'Sarvarakar' as per the Ramanand recluse sect till the date

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of attachment i.e. 29.12.1949. The worship of Lord Ramlala present over the Ramchabutara inside the outer boundary in east-north and south of the inner part of the attached portion or the outer part, and other deities was carried out by the Nirmohi Akhara through Ramanand Recluse sect Mahant Akhara and on advice of Panch of Akhara and priests, till the second attachment in 1982 and the management of the outer premises, store room, saints' accommodation was all carried out by Nirmohi Akhara." (E.T.C.)

"78. छट्ठी पूजन स्थल व शिव दरबार का इन्तजाम देखभाल निर्मोही अखाड़ा करता रहा है। जो कि फरवरी 1982 तक किया है। हमेशा से निर्मोही अखाड़ा अपने पंच, पुजारी व साधुओं द्वारा बाहरी व भीतरी भाग का इन्तजाम देखते हुए काबिज रहे हैं। मंदिर बाहरी व भीतरी दोनों पर चढ़ावा, द्रव्य, मिष्ठान, फल–फूल आदि निर्मोही अखाड़ा के साधुओं द्वारा ग्रहण होता था तथा प्रसाद व चरणामृत आदि यही लोग भक्तों को देते थे। मंदिर के बाहर पूर्वी गेट पर बताशा–फूल आदि का ठेका निर्मोही अखाड़ा द्वारा बहुत समय से दिया जाता रहा है। मुख्य मंदिर की कुर्की के बाद भी मुख्य गेट के पास वाली दुकान सीता राम यादव को दी गई थी जो 1962 तक वहां रहे।"

"78. The management of 'Chhathi' worship place and Shiv Darbar was carried out by the Nirmohi Akhara, till February, 1982. The Nirmohi Akhara has always managed and remained in possession over the outer and inner part through its panch, priest and saints. The offerings, money, sweets, fruits-flowers were accepted by the saints of Nirmohi Akhara both in the inner and outer temple, and they used to distribute the blessings and foot nectar to the devotees. The contract of sweet-flower etc. at the eastern gate outside the temple, was given by the Nirmohi Akhara since much time. Even after the attachment of the main

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temple, the shop near the main gate was given to Sita Ram Yadav, who remained there till the year 1962." (E.T.C.)

"81. भीतरी भाग में भगवान रामलला 1934 के पहले से विराजमान हैं और 1934 ई0 से लगातार निर्मोही अखाड़ा द्वारा कब्जा व दखल है जो मुसलमानों की जानकारी में है। वहां ठाकुर जी विराजमान हैं जिसका पूजा–पाठ, राजभोग सभी निर्मोही अखाड़ा की तरफ से होता चला आ रहा है। इस तौर पर 29 दिसम्बर, 1949 को भीतरी भाग की कुर्की के दिन भी अखाड़े का कब्जा रहा है। वह भी मिल्कियत निर्मोही अखाड़ा में धार्मिक न्यास होने के कारण निहित हो गई है।"

"81. Lord Ramlala has been present in the inner part from period prior to the year 1934 and from the year 1934 AD the Nirmohi Akhara has been in possession, within the knowledge of the Muslims. Thakur ji is present there and the worship, Rajbhog have all been carried out on behalf of Nirmohi Akhara. Accordingly, on the day of attachment of the inner part i.e. 29th December, 1949, the Akhara was in possession. That ownership has also vested in the Nirmohi Akhara on account of being a religious trust." (E.T.C.)

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360. **DW 3/2, Raja Ram Pandey**, 87 years old (vide affidavit dated 22.09.2003). He was cross examined in the following manner:

(a) 22.09.2003- by Ramesh Chandra Tripathi, defendant no. 17 and Umesh Chandra Pandey, defendant no. 22 (Suit-4) through Sri Vireshwar Dwivedi, Advocate (p. 17-19)

(b) 22/23.09.2003- by plaintiffs (Suit-5) through Sri A.K. Pandey, Advocate (p. 20-23)

(c) 23.09.2003- by Ramjanam Bhumi Punruddhar Samiti, defendant no. 20, through Km. Ranjana Agnihotri, Advocate (p. 23-24)

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(d) 23.09.2003- by defendant no. 11 through Sri Abdul Mannan, Advocate (p. 24-26)

(e)23/24/25/26/29/30.09.2003,

01/13/14/15/20/21/22.10.2003 - by Sunni Central Board of Waqf, defendant no. 9, through Sri Zafaryab Jilani, Advocate (p. 27-141)

(f) 22/23/24/28/29.10.2003, 13.11.2003- by plaintiff no. 7 (Suit-4) and defendant no. 5 (Suit-5) Mohd Hashim through Sri Mustaq Ahmad Siddiqui, Advocate (p. 141-211)g) 13.11.2003- defendants no. 6/1 through Sri Irfan Ahmad, Advocate and and defendant no. 6/2 through Sri Fazale Alam, Advocate and defendant no. 26 (Suit-5) through Sri Izhar Husain Siddiqui, Advocate adopted the cross examination already done by Sri Abdul Manna, Sri Zafaryab Jilani and Sri Mustaq Ahmad Siddiqui, Advocates (p. 211)

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361. DW 3/2 is resident of Mandir Ramkot, Kaushalya Ghat, Ayodhya, District Faizabad, came to Ayodhya in 1930 and since then daily visiting the temples of Sri Ramjanambhumi, Hanuman Garhi and Kanak Bhawan. The Janambhumi Temple is about 400 yards from his residence. He gave the details of 1934 riot in paras 4 and 5 of the affidavit as under:

"4. सन् 1934 के दंगा मेरी जानकारी में हुआ था जो हिन्दू–मुस्लिम दंगा के नाम से मशहूर है। मार्च में हुआ था। इस दंगे में मुसलमान काफी मारे गये थे और काफी कब्रिस्तान क्षतिग्रस्त किये गये थे। मेरे जानकारी में अयोध्या में रामजन्मभूमि मंदिर के इर्द–गिर्द मोहल्ला सुटहटी में पांच घर आलमगंज कटरा में चार घर टेढ़ी बाजार में तीन–चार घर, पांजी टोला कजियाना में चार पांच घर में मुसलमानों की आबादी थी। इसके अलावा मोहल्ला बेगमपुरा, मुगलपुरा व सैयदवाड़ा मिलाकर तीन चार घर हैं जिसमें कुछ शिया भी हैं।"

"4. The riot of the year 1934 had broken out in my

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knowledge, which is famous as Hindu-Muslim riot. It had broken out in March. Many Muslims were killed and a large number of graveyards were damaged in this riot. In my knowledge, in the vicinity of Ramjanmbhumi temple in Ayodhya there were 5 houses of Muslims in Mohalla-Suthati, 4 in Alamganj Katra, 3-4 in Tedhi Bazar and 4-5 in Panji Tola Kaziyana. Besides these, there are in all 3-4 houses in Mohalla- Begumpura, Mughalpura and Saidwada, out of which few are of Shias." (E.T.C.)

"5. 1934 के दंगे के समय में मैं 19–20 वर्ष का था। उस दंगे में काफी संख्या में मुसलमान मारे गये थे, कब्रें तोड़ी गई थीं, लेकिन श्रीराम जन्मभूमि मंदिर का कोई भाग या शिखर की तोड़ फोड़ नही हुई थी। बाहरी दीवार मामूली क्षतिग्रस्त हुई थी। जहां तक मुझे याद है दो मुसलमान दीवान थे, नाम याद नहीं हैं, उस समय कोई अंग्रेज डी0एम0 थे। इस दंगे के बाद मुसलमानों में दहशत फैल गई थी और श्रीराम जन्मभूमि मंदिर के तरफ जाते ही नहीं थे।"

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"5. I was aged 19-20 years at time of the riot of 1934. A large number of Muslims were killed in that riot, graves were destroyed but no part of the Sri Ramjanmbhumi temple or its dome was damaged. The outer wall was damaged slightly. To the best of my memory, there were two Muslim Diwans, whose names I do not remember. There was some British D.M. at that time. The Muslims were terror stricken after this riot and they stopped going towards the Sri Ramjanmbhumi temple." (E.T.C.)

362. In paragraphs no. 6, 7, 8, 16, 19, 22 and 27 of the affidavit he has made statement about his continuous worship in the inner and outer courtyard both, idols placed under the central dome (Garbhgrih), other facts in support of the above and about the priest etc. at the above place, as under:

"6. सन 1930 से जब से मैं अयोध्या आया हमेशा से दर्शन करता रहा

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हूँ। गर्भगृह भाग का दर्शन भी किया है जहां रामलला जी लकड़ी के सिंहासन पर विराजमान रहे हैं। सन 1934 में सेहन के बाहर लकड़ी के चौखट से जंगले बंधे थे, जहां बाद में लोहे के सीखचे लगा दिये गये। बाहरी भाग में जो दीवाल हाते की दीवाल से घिरा था, में ही आने–जाने के रास्ते बने हुए थे, पूरब वाला गेट खुला रहता था। पूरब वाले गेट में उत्तर–दक्षिण दो खम्भे कसौटी के लगे थे, जिसे मैं सन 1930 से देख रहा हूँ, उस खम्भे में मूर्ति उकेरी थी जिसे हनुमानजी की मूर्ति बताते हैं और इसलिए उस द्वार का नाम हनुमतद्वार प्रचलित रहा है और फूल पत्ती चित्रकारी भी थी। सवा फिट चौड़ा और तीन फिट ऊँचा शिलापट लगा हुआ है जिसमें अंक एक लिखा है, और देवनागरी लिपि में लिखा है'' श्री जन्मभूमि नित्य यात्रा'' व अंग्रेजी में भी जन्मभूमि लिखा यानी पत्थर में खुदा है।''

''6. I always had 'darshan', since the year 1930 when I came to Ayodhya. I had the 'darshan' of 'Garbh-grih' portion also, where Ramlala was present over a wooden throne. In the year 1934, the windows outside the courtyard were fixed in wood-panes, where iron grills were fixed subsequently. The ingress-egress passage existed in the wall surrounded by the courtyard wall in the outer part. The eastern gate remained open. To the north south of the eastern gate, were two touchstone pillars, which I had been witnessing from the year 1930. An idol had been engraved over the said pillar, which is termed as the idol of Hanuman ji and due to this the said gate was famous as Hanumatdwar. The picture of flower-leaves were also present. There is a 1 ¼ feet wide and 3 feet long stone slab, over which the figure 1 and 'Sri Janmbhumi Nitya Yatra' is written or engraved in Devnagari script as well as Janmbhumi in English.''(E.T.C.)

''7. रामजन्मभूमि मंदिर की बाहरी दीवाल पूरब उत्तर व दक्षिण जितनी भी बनी थी सबकी ऊँचाई लगभग 8–9 फुट ऊँची व करीब दो फिट चौड़ी

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थी। बाहरी हाते के अन्दर भाग में दक्षिण तरफ रामचबूतरा मंदिर है जिसकी लम्बाई चौड़ाई 21′ या 22′ X 17′ या 18′ फिट के लगभग हैं। यह चबूतरा करीब 3 फिट ऊॅचा है। चबूतरे के ऊॅपर सिंहासन है जिसमें रामलला विराजमान हैं, यह सिंहासन लकड़ी का है, गंगा जमुनी शैली का है यानी सोने चांदी के पत्तल लगे रहे थे, इस चबूतरे के तीन फिट ऊॅचाई वाले भाग में पूरब पश्चिम गुफा मंदिर है, इस गुफा मंदिर में कौशल्या जी काग भुसण्डि जी पूरब वाले में थे तथा पश्चिम गुफा में भरत जी विराजमान थे। इस चबूतरे से पूरब व दक्षिण कोने में पीपल व नीम के एकजाई पेड़ के अर्द्धगोल चबूतरे पर षष्टमुखी शंकर भगवान, नन्देश्वरजी, गणेशजी, पार्वतीजी आदि देवता विराजमान थे। बाहरी भाग में हाते के अन्दर सीखचे वाले दीवाल के उत्तर, उत्तरी फाटक के अन्दर भी छठी पूजन स्थल, एक बित्ता ऊॅचे चबूतरे पर बना था। छठी पूजन स्थल जिसमें चार जुगुल चरण चिन्ह, चौका बेलना, चूल्हा बना था, ये चारों चरण चिन्ह भगवान राम के चारों भाइयों के जुगुल चरण चिन्ह थे।''

''7. The eastern, northern and southern outer walls of Ramjanmbhumi temple were all about 8-9 feet high and about 2 feet thick. The Ramchabutara temple is southwards in the inner part of the outer courtyard, whose dimensions are about 21′ or 22′ x 17′ or 18′ feet. This Chabutara is about 3 feet high. Above the Chabutara is a throne, over which Ramlala is present. This wooden throne is of Ganga Jamuni style i.e. it has gold-silver plates. The cave temple is in east west of the 3 feet high portion of this Chabutara. Kaushalya ji and Kaagbhushundi ji are in the east cave temple and Bharat ji is present in the western cave. Six faced Lord Shankar, Nandeshwar ji, Ganesh ji, Parvati ji and other deities were present over the semi circular platform of Pipal and Neem tree in east and south corner of this Chabutara. The Chhathi worship place existed over a one palm high platform inside the northern gate, to the north of the grill wall inside the courtyard of the outer

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part. Four pairs of footmarks, Chauka-Belna, stove were present at the Chhathi worship place. These four footmarks, were the pair of footmarks of all four brothers of Lord Rama." (E.T.C.)

"8. छठी पूजन स्थल धार्मिक दृष्टिकोण से पूजनीय स्थल था जिसमें भी आरती होती थी, नियमित होती थी जिसमें हिन्दू धर्म के लोग पूजन व नमन करते थे । गर्भगृह में विराजमान रामलला व रामचबूतरा मंदिर पर विराजमान रामलला व अन्य देवस्थान पीपल एवं नीम के नीचे विराजमान शिव देवतान छठी पूजन स्थल व चरण चिन्ह सभी धार्मिक स्थलों की नियमित पूजन व आरती निर्मोही अखाड़े के पुजारी व सहायक पुजारी करते थे। भक्तों व दर्शनार्थियों द्वारा उपरोक्त सभी स्थलों का दर्शन, पूजन, प्रसाद, फूल, द्रव्य चढ़ाते, मैंने बराबर जिस साल से अयोध्या आया तभी से बराबर 6.12.92 सन 1992 दिसम्बर तक देखता रहा हूँ।"

"8. The Chhathi worship place was a revered place from religious point of view, where 'Arti' was performed regularly and the same was attended by Hindus. The regular worship and 'Arti' of all religious places including Ramlala present in 'Garbh-grih', Ramlala and other deities present in Ramchabutara temple, Shiva present under the Pipal and Neem tree, the Chhathi worship place and footmarks, were carried out by the priest and assistant priest of Nirmohi Akhara. From the year when I came to Ayodhya to 6th December,1992, I have regularly seen the devotees perform 'darshan', worship and offer sweets, flower, money at all the said places." (E.T.C.)

"16. वर्ष 1930 में जब मैं पहली बार आया तो निर्मोही अखाड़ा के महन्त नरोत्तम दास थे, उसके बाद महन्त राम चरन दास हुए, मा0 रामचरन दास ऊँचे डील डौल के साफा बांधते थे, तलवार लगा घोड़े पर चलते थे और उनसे जन्मभूमि में मिलता भी था। पुजारी उस समय सीता राम जी थे। वर्ष 1934 के दंगे में यही लोग पुजारी व महन्त थे। गर्भगृह के कुर्की के समय महन्त रघुनाथदास जी महन्त निर्मोही अखाड़ा थे व पुजारी महन्त

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बलदेव दास जी थे। जो नाका हनुमानगढ़ी फैजाबाद में भी महन्त थे। बलदेव दास जी को मैंने देखा था। निर्मोही अखाड़ा स्वयं में न्यास है। हनुमागढ़ी नाका उक्त अखाड़े से संबंधित हैं।''

"16. When I first came in the year 1930, Narottam Das was the Mahant of Nirmohi Akhara and he was followed by Mahant Ramcharan Das. Mahant Ramcharan Das was sturdily built and used to move with a sword on a horse with turban over his head. I had met him at the Janmbhumi. Sita Ram was the erstwhile priest. They were the priest and Mahant during the riot of the year 1934. At time of attachment of the 'Garbh-grih', Mahant Raghunath Das was the Mahant of Nirmohi Akhara and Mahant Baldev Das was the priest, who was the Mahant in Naka Hanumangarhi Faizabad as well. I have seen Baldev Das. Nirmohi Akhara is a trust in itself. The Hanumangarhi Naka is associated with the said Akhara." (E.T.C.)

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''19. पूरबी गेट में दर्शनार्थी को पहुॅचने के लिए हनुमागढ़ी दुराही कुऑ से साक्षीगोपाल मंदिर के सामने से गेट में आने के लिए उत्तर पूरब कोने से रास्ता आता था। जो 1930 से 1934 में भी कच्चा रास्ता था। गर्भगृह के कुर्की के 4–5 साल पहले खड़ंजा लगा।''

"19. In order to reach the eastern gate, the devotees had to take the path from the north-east corner to reach the gate in front of Sakshi Gopal temple from Hanumangarhi Dorahi well, which was unmetalled between the years 1930 to 1934. Bricks had been laid about 4-5 years prior to the attachment of the 'Garbh-grih'." (E.T.C.)

''22. जब मैं 1930 से 1949 तक गर्भगृह भीतरी भाग में दर्शन करने अन्दर जाता था तो गर्भगृह में कसौटी के पत्थर लगे थे जिसमें देव कन्याओं के कुछ और यक्ष जैसी मूर्तियां उकेरी थीं, कलश फूल, पत्ती इत्यादि बनी थीं। केन्द्रीय सरकार के नियन्त्रण होने पर भी मैं दर्शन करने जाता हूॅ। कसौटी के पत्थर वहीं पड़ा है जो दीवाल में लगे थे। और बाकी

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कसौटी के खम्भे पता लगा है कि संग्रहीत किये गये हैं।''

''22. When I went to have the 'darshan' of the inner part of the 'Garbh-grih' from the year 1930 to 1949, I found that touchstones had been used in the 'Garbh-grih', over which the figures of nymphs, Yakshas, pitcher, flower, leaves etc. had been engraved. I go to have 'darshan' even after the Central Government took over its control. The touchstones affixed in the walls, are lying there and it is found that the remaining Kasauti pillars, have been preserved." (E.T.C.)

''27. मैंने 1930 से लेकर विवादित परिसर को हिन्दुओं की पवित्र मंदिर के रुप में देखा है। जहां भगवान पर फूल माला, प्रसाद बराबर चढ़ता रहा है जहां यात्रियों को दर्शन होता रहा है।''

''27. From the year 1930, I have considered the disputed premises as a sacred temple of Hindus and have regularly offered flower, garland, sweet there. The devotees had 'darshan' over there." (E.T.C.)

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363. In favour of the plaintiff (Suit-3), i.e., Nirmohi Akhara, he has stated that their Sadhus/Ascetics used to work as priest etc. and observed worship inside courtyard temple as well as outside, i.e., Ram Chabootara etc. and in paragraphs no. 9, 13, 14, 15, 17, 29, 30 and 31 of the affidavit DW 3/2 said that the disputed premises was in possession of Nirmohi Akhara or its Sadhus who used to perform various religious functions and did not allow any Muslim to enter or visit the disputed premises.

364. DW 3/3, Satya Narain Tripathi is aged about 72 years old (vide affidavit dated 30.10.2003). He was cross examined in the following manner:

(a) 30.10.2003- by Ramesh Chandra Tripathi, defendant no. 17 and Umesh Chandra Pandey, defendant no. 22 (Suit-4) through Sri Vireshwar Dwivedi, Advocate (p. 6-12)

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(b) 30.10.2003- by plaintiffs (Suit-5) through Sri A.K. Pandey, Advocate (p. 12-15)

(c) 30/31.10.2003- by Mohd. Faruk Ahmad, defendant no. 11 through Sri Abdul Mannan, Advocate (p. 15-23)

(d) 31.10.2003, 03/04/05/06/07/10.11.2003- by Sunni Central Board of Waqf, defendant no. 9 through Sri Zafaryab Jilani, Advocate (p. 23-74)

(e) 10/11/12.11.2003- by plaintiff no. 7 (Suit-4) and defendant no. 5 (Suit-5) Mohd Hashim through Sri Mustaq Ahmad Siddiqui, Advocate (p. 74-97)

(f) 12.11.2003- defendants no. 6/1 through Sri Fazale Alam, Advocate and 6/2 through Sri Irfan Ahmad, Advocate and defendant no. 26 (Suit-5) through Sri T.A. Khan, Advocate adopted the cross examination already done by Sri Abdul Manna, Sri Zafaryab Jilani and Sri Mustaq Ahmad Siddiqui, Advocates (p. 97)

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365. DW 3/3's date of birth is 08.09.1931 and is resident of Mauja Mahawan, Tahsil Bikapur, District Faizabad. His village is about 35 km. from Ayodhya. He claims to have visited Ayodhya and gone for Darshan to Sri Ramjanambhumi Temple, Hanuman Garhi, Kanak Bhawan and Nageshwar Nath since childhood. Since 10 years of age, alongwith his parents, he is regularly visiting Ayodhya during the festivals of Ram Navami, Kartik Purnmasi, Chaudah Kosi Parikrama, Pancha Kosi Parikrama, Shrawan Jhoola and Ram Vivah and after attaining majority he himself has regularly visited. About worship in the disputed site, i.e., inside and outside the courtyard, existence of idols of Lord Ram inside the courtyard and other attending facts, he, in paras 4, 7, 8, 9, 10, 11, 12 and 13 of the affidavit said as under:

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''4. मैं 10 वर्ष की उम्र से समझने लगा हूँ और तभी से मैं अपने माता–पिता के साथ अयोध्या के पर्व रामनवमी, कार्तिक पूर्णमासी, चौदहकोसी परिक्रमा व पंचकोसी परिक्रमा, श्रावण झूला व राम के विवाह में अपने युवक होने तक बराबर अयोध्या आता रहा हूँ। मंदिर श्रीराम जन्मभूमि जिसका विवाद चल रहा है, दर्शन करता था व आरती तथा चरणामृत प्राप्त करता था। मैं अपने माता–पिता के साथ जब अयोध्या जाता था तो भगवान को प्रसाद व पुष्प आदि चढ़ाता था। मैं युवक होने पर अकेले अपने सहपाठी मित्रों के साथ बराबर श्रीराम जन्मभूमि दर्शन हेतु जाता रहा हूँ जो क्रम अभी भी जारी है।''

''4. I attained understanding from the age of 10 years and since then till I developed into a young man, I regularly went to Ayodhya along with my parents on the occasions of Ramnavami, Kartika Purnamasi, Chaudah kosi circumambulation, Panch kosi circumambulation, Shrawan Jhula and Ram Vivah. I used to have 'darshan' at Sri Ramjanmbhumi temple, which is under dispute, and had 'Arti' and foot nectar. Whenever I went to Ayodhya along with my parents, I used to offer sweets, flower etc. to Him. On developing into a young man, I have been regularly going alone along with my fellow students to have 'darshan' of Sri Ramjanmbhumi and this still continues.'' (E.T.C.)

''7. विवादित मंदिर में जाने का मुख्य द्वार पूरब ओर है। जहां जाने पर मुख्य द्वार में कसौटी के पत्थर लगे हुए थे। उत्तर तरफ जो कसौटी पत्थर उसके पास और पहले पूरब ओर एक पत्थर 1½ या पौने दो फुट चौड़ा लगभग तीन फुट ऊँचा मैं बचपन से देख रहा हूँ। जिसमें अंक एक ''श्रीराम जन्मभूमि नित्य यात्रा'' देवनागरी लिपि और उसके नीचे जन्मभूमि अंग्रेजी में लिखा है और उस कसौटी पत्थर में कलश, मोर, देवी का चित्र, मूर्ति व महावीरी लगा हनुमानजी की मूर्ति देखा था। शुरु में जब पिताजी के साथ जाता था तो कुछ लोग बताने लगे कि इसे हनुमतद्वार कहते हैं।''

''7. The main gate for entering the disputed temple, is in

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the east. Touchstones have been used in the main gate. Since my childhood, I have been seeing a 1 ½ or 1 ¾ feet wide and approximately 3 feet high stone slab, near the touchstone in north and eastwards a bit earlier. The figure 1, words 'Sri Ramjanmbhumi Nitya Yatra' in Devnagari script and word Janmbhumi in English were engraved over it. I had seen the figure, idol of pitcher, peacock, Goddess and Hanuman ji over the said touchstone. When I started going there along with my father, few people told that it was called Hanumatdwar." (E.T.C.)

"8. पूर्वी द्वार से अन्दर जाने पर सहन लगभग 28–30 फिट थी जिसके बाद सीखचे वाली दीवाल है और सीखचे वाली दीवाल के पश्चिम थोड़ा सहन छोड़कर गर्भगृह तीन शिखर वाला है। जहां गर्भगृह में ही रामलला विराजमान हैं। जिनका दर्शन व पूजन व प्रसाद व चरणामृत 1941 से लेता, उनके समीप से दर्शन करके दिसम्बर 1949 तक बराबर लेता रहा। 1949 में कुर्की हो जाने के बाद सन 1950 में सीखचे वाली दीवाल से भगवान का दर्शन व पूजन करता रहा हूँ तथा ढांचा गिरने के बाद जनवरी 93 से नियमित केन्द्रीय सरकार के नियन्त्रण वाले रास्ते से दर्शन करता चला आ रहा हूँ और वहीं भगवान रामलला अभी भी कायम हैं। जिनका दर्शन 1941 से अभी हाल तक करता चला आ रहा हूँ।"

"8. After entry through the eastern gate, was the courtyard of size 28 x 30 feet, after which was the grill wall and a bit westward of the grill wall was the three domed 'Garbh-grih' beyond the courtyard. Ramlala was present in the 'Garbh-grih' and I have had His 'darshan' , worship, blessings and foot nectar from the year 1941. I had His 'darshan' from close distance till December, 1949. After the attachment of 1949, I had the 'darshan' and worship of God from the grill wall, from the year 1950 onwards. I have been regularly having the 'darshan' from January, 1993, after the demolition of the structure and the place

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being under control of Central Government. Lord Ramlala is still present at the same place and I have had His 'darshan' from the year 1941 till recently." (E.T.C.)

"9. भीतरी भाग जो कुर्कशुदा कहलाता है कुर्की के बारे में मुझे 1950 खिचड़ी के दो–तीन दिन पहले तब देखा और दर्शन सीखचे वाले मध्य दरवाजे से करने दिया पुलिस वालों ने। लेकिन सहन, रामचबूतरा, मंदिर, छठी पूजन स्थल, शिव दरबार जो बाहरी सहन के अन्दर था। उनका दर्शन, पूजा अर्चना निकट जाकर जैसा 1941 में किया था, उसी प्रकार सन 1992 ढांचा गिरने के पूर्व तक किया है लेकिन 1982 में मुझे यह पता चला था कि बाहरी भाग भी निर्मोही अखाड़ा के आपसी विवाद में कुर्क हो गया था और इसके रिसीवर भी वही भीतर वाले भाग वाले रिसीवर थे। यह बात वहां के नियुक्त पुजारी (रिसीवर द्वारा) ने बतलाई थी।"

"9. The inner part, which is called the attached part, was seen by me 2-3 days prior to 'Makar Sankranti' of the year 1950 and the police men had permitted me to have 'darshan' from the central grill door. However, the courtyard, Ramchabutara temple, Chhathi worship place, Shiv Darbar, which were inside the outer courtyard were worshiped by me till the year 1992, prior to demolition of the structure, in the same manner as done in the year 1941. In the year 1982 I came to know that the outer part had also been attached in mutual dispute of Nirmohi Akhara and the Receiver of the inner part was its Receiver as well. This was told by the priest nominated there (by Receiver)." (E.T.C.)

"10. 1941 में अपने पिताजी के साथ दर्शन करना चालू किया। भारतवर्ष की आजादी के पहले मुझे यह बात भलीभॉति मालूम थी कि उक्त मंदिर निर्मोही अखाड़ा के आधिपत्य में है और निर्मोही अखाड़ा के ही साधु पुजारी गर्भगृह में भगवान रामलला की पूजापाठ करते हैं और दर्शनार्थियों, भक्तों को आरती व चरणामृत प्रसाद लेकर प्रसाद का चढ़ावा देते हैं । ऐसा करते मैंने सभी दर्शनार्थियों को देखा। ऐसा मैंने दर्शन करते वक्त देखा था।

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युवक होने पर मैं स्वयं ही प्रसाद, फूल इत्यादि चढ़ाता था और निर्मोही अखाड़ा के साधुओं से आरती व प्रसाद ग्रहण करता था।''

"10. I started to have 'darshan' along with my father in the year 1941. I knew this fact very well even before independence of India that the said temple was in the possession of Nirmohi Akhara and the saints-priests of Nirmohi Akhara used to perform the prayer of Lord Ramlala in the 'Garbh-grih' and accept and distribute the blessings amongst the devotees. I saw all the devotees do this. I had seen this at time of having 'darshan' . On growing up as a young man, I myself used to offer sweets, flowers etc. and accepted 'Arti' and blessings from the saints of Nirmohi Akhara." (E.T.C.)

''11. इसी प्रकार रामचबूतरा मंदिर पर मेरा व दर्शनार्थियों का दर्शन 1941 से लगातार दिनांक 6 दिसम्बर 1992 ढांचा गिरने के पहले व मेरा नवम्बर 1992 तक हुआ और छठी पूजा स्थल शिव दरबार का पूजन दर्शन ऐसे ही हुआ करता था। उन सभी पूजन स्थलों पर पुजारी, साधु निर्मोही अखाड़ा के रहते थे।''

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"11. Similarly, I and devotees regularly had 'darshan' at the Ramchabutara temple from the year 1941 to 6th December, 1992 prior to demolition of the structure. I had it till November, 1992. The prayer- worship at Chhathi worship place and Shiv Darbar was also carried out similarly. The priests, saints of Nirmohi Akhara were present at all those worship places." (E.T.C.)

''12. मैं हाजिर अदालत महन्त भास्कर दास को जानता हूँ। इन्हें मैंने 1946 से ही श्रीराम जन्मभूमि गर्भगृह में बतौर पुजारी तथा रामचबूतरा मंदिर पर छठी पूजा स्थल शिव दरबार में बतौर पुजारी देखता चला आ रहा हूँ क्योंकि 1946 से लेकर 1949 कुर्की के पहले व कुर्की के बाद तक 1941 से मैं दर्शन करने श्रीराम जन्मभूमि जाने लगा तो मेरे माता–पिताजी ने बताया कि यहां के पुजारी निर्मोही अखाड़ा के लोग थे और इनके गुरु बलदेवदास

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जी को भी मैं बतौर पुजारी देखा है। बलदेवदास जी से मैं भलीभॉति परिचित इसलिए हो गया था कि नाका हनुमानगढ़ी के महन्त थे। बलदेवदास जी को मैंने देखा है। हनुमानगढ़ी नाका मुजफ्फरा फैजाबाद के महन्त भास्करदास जी हैं जो इस समय निर्मोही अखाड़ा के सरपंच हैं। मैं भास्करदास को विवादित मंदिर के गर्भगृह में बतौर पुजारी देखा है और साथ ही साथ बाहरी भाग के रामचबूतरा मंदिर आदि पर पुजारी के रुप में देखा था लेकिन भीतरी भाग के कुर्क होने के बाद बाहर रामचबूतरे पर महन्त भास्करदास को 1965–66 तक देखा। उसके बाद बाहर वाले भाग में अखाड़े के दूसरे साधू सन्त रहते थे।''

"12. I know Mahant Bhaskar Das present in Court. I have seen him since the year 1946 as priest at Sri Ramjanmbhumi 'Garbh-grih', Ramchabutara temple, Chhathi worship place and Shiv Darbar i.e. from the year 1946 to 1949, before and after the attachment. I started going to Sri Ramjanmbhumi from the year 1941 to have 'darshan' and my parents told me that the priests here were of Nirmohi Akhara and I also saw their master Baldev Das as priest. I became very well acquainted with Baldev Das, as he was the Mahant of Naka Hanumangarhi. I have seen Baldev Das. Bhaskar Das is the Mahant of Hanumangarhi Naka Muzaffara Faizabad, who is the Sarpanch of Nirmohi Akhara at present. I have seen Bhaskar Das as priest in the 'Garbh-grih' of the disputed temple as also at the Ramchabutara temple in the outer part. However, after the attachment, I saw Mahant Bhaskar Das upto the year 1965-66 at the Ramchabutara in the outer part. Thereafter, other saints of the Akhara lived in the outer part." (E.T.C.)

''13. मैंने 1941 से लेकर 1982 फरवरी तक निर्मोही अखाड़ा के साधुओं को हनुमतद्वार के प्रवेश होने पर विवादित परिसर बाहरी सहन में उत्तर स्थित भण्डागृह व संत निवास में रहते व भगवान का प्रसाद बनाते देखा। यह भण्डारगृह और संत निवास हनुमतद्वार से उत्तर कुछ जगह

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छोड़कर उत्तर दीवाल तक लम्बा था।"

"13. In between the years 1941 to February, 1982, I had seen the saints of the Nirmohi Akhara enter through the Hanumatdwar and reside in the store room situated in north of the outer courtyard of the disputed premises and the saints' accommodation and preparation of 'Prasad' of the Lord. This store room and saints' accommodation extended to the northern wall with some gap in north of the Hanumatdwar." (E.T.C.)

366. DW 3/3 has also made statement regarding the possession and ownership of Nirmohi Akhara and its Mahant/Sarpanch in paras 10, 12, 15 and 16. Paras 15 and 16 are as under:

"15. विवादित पूरे परिसर यानी भीतरी व अन्दर के भाग पर क्रमश दोनों कुर्की के पहले निर्मोही अखाड़ा जो एक धार्मिक न्यास है। जिसका मौजूदा सरपंच महन्त भास्करदास जी हैं और मौजूदा महन्त जगन्नाथदास जी हैं, के कब्जे व आधिपत्य में रहा। भगवान रामलला के व्यवस्थापक निर्मोही अखाड़ा है।"

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"15. Prior to the attachment, the entire premises i.e., inner and outer part of the disputed premises were both under the possession and ownership of Nirmohi Akhara, which is a religious trust and whose present Sarpanch is Mahant Bhaskar Das and the present Mahant is Jagannath Das. The Nirmohi Akhara is the manager of Lord Ramlala." (E.T.C.)

"16. विवादित परिसर मस्जिद नहीं है। न मेरे होश से किसी मुसलमान ने नमाज पढ़ी है ।

"16. The disputed premises is not a mosque, nor in my senses have I seen any Muslim offer Namaz." (E.T.C.)

367. In para 3 of the affidavit, DW 3/3 has deposed that he joined service as Teacher in Saraswati Shishu Mandir, Pratapgarh in 1962, remained thereat for 2 years, transferred to

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Farrukhabad and stayed there for four years and then transferred to Faizabad in 1967. He thereafter worked at some other places also and retired in 1992 from the post of Headmaster.

368. DW 3/4, Mahant Shiv Saran Das is aged about 83 years (vide affidavit dated 14.11.2003). He was cross examined in the following manner:

(a) 14.11.2003- by Ramesh Chandra Tripathi, defendant no. 17 and Umesh Chandra Pandey, defendant no. 22 (Suit-4) through Sri Vireshwar Dwivedi, Advocate (p. 9-14)

(b) 17.12.2003- by plaintiffs (Suit-5) through Sri A.K. Pandey, Advocate (p. 16-22)

(c) 17/18.12.2003- by defendant no. 20 (Suit-4) through Km. Ranjana Agnihotri, Advocate (p. 22-27)

(d) 18.12.2003, 22.01.2004- by defendant no. 11, Mohd. Faruk Ahmad through Sri Abdul Mannan, Advocate (p. 27-42)

(e) 22/23/27/28/29.01.2004, 05/06/09.02.2004- by Sunni Central Board of Waqf, defendant no. 9, through Sri Zafaryab Jilani, Advocate (p. 42-109)

(f) 18.03.2004- by plaintiff no. 7 (Suit-4) and defendant no. 5 (Suit-5) Mohd Hashim through Sri Mustaq Ahmad Siddiqui, Advocate (p. 110-115)

(g) 18.03.2004- defendants no. 6/1 and 6/2 through Sri Irfan Ahmad, Advocate and defendant no. 26 (Suit-5) through Sri C.M. Shukla, Advocate adopted the cross examination already done by Sri Abdul Manna, Sri Zafaryab Jilani and Sri Mustaq Ahmad Siddiqui, Advocates (p. 115)

369. His statement in paras 8, 9, 10 and 11 are in respect to his

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claim of worshiping Lord Ram's birthplace Temple inside the courtyard (Garbhgrih) and read as under:

"8. श्रीराम जन्मभूमि में 1933 ई0 से दर्शन करने जाता रहा हूँ, श्रीराम जन्मभूमि मंदिर का निर्माण का परिसर दो भागों में मैंने शुरु से देखा है, पहला भाग भीतरी गर्भगृह जिसके ऊपर तीन शिखर हैं और आगे यानी पूरब तरफ सीखचे वाली दीवाल है जिसमें मुख्य गर्भगृह के सामने पूरब तरफ एक लोहे का दरवाजा था और इस दरवाजे के उत्तर उसी सीखचे वाली दीवाल में लगभग 18 या 20 फिट के बाद एक और लोहे का छड़दार दरवाजा था, यानी सीखचे वाली दीवाल में दो छड़दार दरवाजा था।"

"8. I have been going to Sri Ramjanmbhumi from the year 1933 AD to have 'darshan'. Since beginning, I have seen the built up area of Sri Ramjanmbhumi temple to be in two parts. The first part was the inner 'Garbh-grih', over which there were three domes and after that i.e. eastwards, was the iron rod wall which had a iron door in the east facing the main 'Garbh-grih' and to the north of this door, was another iron rod door in the same iron rod wall at a distance of about 18 or 20 feet, or in other words there were two iron rod doors in the iron rod wall." (E.T.C.)

"9. मैं भीतरी वाले गर्भगृह में भगवान रामलला के दर्शन करता रहा हूँ, रामलला की अष्टधातु की मूर्ति है एक बित्ता ऊँची है, एक अष्टधातु की एक मूठा की और मूर्ति है जिसे लखन लाल कहते हैं, हनुमानजी की सवा फिट या डेढ़ फिट ऊँची हनुमानजी की पाषाण मूर्ति है तथा सालिगराम भगवान 4, 6 रहे हैं जो बराबर मेरे दर्शन में वही मूर्तियां चली आ रही हैं।"

"9. I have had the 'darshan' of Lord Ramlala in the inner 'Garbh-grih'. The idol of Ramlala is made up of 'Ashthadhatu' and is about one palm high. There is another 'ashthadhatu' idol of one 'Mutha', which is called Lakhan Lal. There is stone idol of Hanuman ji about 1 ¼ to 1 ½ feet tall. There are about 4, 6 Saligram and all these

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idols have remained present regularly during my 'darshan'." (E.T.C.)

"10. वहां चांदी का सिंहासन लगभग सवा फिट चौड़ा डेढ़ फिट ऊॅचा है जिसमें भगवान रामलला व लखन लाल, सालिग राम भगवान विराजमान रहे हैं, सिंहासन के बाहर हनुमानजी विराजमान रहे हैं।"

"10. A silver throne about 1 ¼ feet wide and 1 ½ feet tall, is present there with Lord Ramlala, Lakhanlal and Salig Ram over it. Hanuman ji was present outside the throne." (E.T.C.)

"11. उसी मुख्य गर्भगृह में एक झूलानुमा काठ का सिंहासन रखा है जिसपर भी रामलला भगवान आते–जाते रहे हैं, बालरुप होने के कारण यह व्यवस्था भी रही है।"

"11. In the same main 'Garbh-grih', is a wooden swing shaped throne and Lord Ramlala keeps coming over it. This arrangement has been made on account of (His) child form." (E.T.C.)

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370. In paras 12, 14, 15, 18, 20, 22 and 23, DW 3/4 has stated about the ownership and possession of Nirmohi Akhara and its representative over the disputed premises and that they were the Sadhus of Nirmohi Akhara, performing Pooja etc. In paras 16 and 17 he has made a statement about the constitution and function of Nirmohi Akhara which we propose to deal separately while dealing with the issue relating to constitution, status etc. of Nirmohi Akhara.

371. DW 3/5, Raghunath Prasad Pandey, son of late Sri Bindeshwari Prasad Pandey, resident of Village Sariyawan Pure Khaipur, Pargana Mangalsi, Tehsil Sohawal, District Faizabad, is aged about 73 years (as per his affidavit dated 18.11.2003). He was cross examined in the following manner :

(a) 18.11.2003- by Ramesh Chandra Tripathi, defendant no. 17 and Umesh Chandra Pandey, defendant no. 22

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(Suit-4) through Sri Vireshwar Dwivedi, Advocate (p. 7-11)

(b) 18/19.11.2003- by plaintiffs (Suit-5) through Sri A.K. Pandey, Advocate (p. 11-21)

(c) 19.11.2003- by defendant no. 20 (Suit-4) through Km. Ranjana Agnihotri, Advocate (p. 21-24)

(d) 19.11.2003- by defendant no. 11, Mohd. Faruk Ahmad through Sri Abdul Mannan, Advocate (p. 24-28)

(e)19/20/24/25/27/28.11.2003, 01/02/04/05/08/09/10/11.12.2003-by Sunni Central Baord of Waqf, defendant no. 9, through Sri Zafaryab Jilani, Advocate (p. 29-174)

(f) 11/12/15/16.12.2003- by plaintiff no. 7 (Suit-4) and defendant no. 5 (Suit-5) Mohd Hashim through Sri Mustaq Ahmad Siddiqui, Advocate (p. 174-213)

(g) 16.12.2003 - defendants no. 6/1 through Sri Fazale Alam, Advocate and 6/2 through Sri Irfan Ahmad, Advocate and defendant no. 26 (Suit-5) through Sri T.A. Khan, Advocate adopted the cross examination already done by Sri Abdul Manna, Sri Zafaryab Jilani and Sri Mustaq Ahmad Siddiqui, Advocates (p. 213)

372. Sri Ramjanambhumi Temple according to his statement is about 16-17 km from his village. He is educated up to Class-VIII, was appointed in Railway Department in Jhansi in 1948 and retired on 31.01.1988. His date of birth is 08.10.1930. He claims to understand the things at the age of 7 years. His parents (mother) was very religious. His father died when he was 6 years of age. He used to visit Ayodhya accompanied with his mother. He has supported the issue that Lord Ram was being worshiped inside the courtyard and the said temple was

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maintained and looked after by the Bairagis of Nirmohi Akhara, Hindu people used to worship inside the courtyard and he never saw any muslim to offer Namaz at the premises in dispute. His statement in paras 6, 7, 8, 9, 10, 12, 13, 14, 15, 16, 17, 18 and 19 of the affidavit is as under:

''6. मैं वैष्णो सनातन धर्मी परिवार का हूँ। मेरी मॉ की आस्था भगवान राम में थी और मेरी भी आस्था भगवान राम में है। विवादित परिसर श्री रामजन्मभूमि मन्दिर है। जहॉ भगवान राम का जन्म हुआ। ऐसी मेरी आस्था है। यह आस्था मेरी मॉ की भी थी जो उन्होंने मुझे दिया।''

''6. I belong to a Vaishnav Sanatan Dharmi (orthodox religious) family. My mother had faith in Lord Rama, so do I. The disputed premises is Sri Ramjanmbhumi temple, where Lord Rama had been born. This is my belief. This was the belief of my mother as well, which she passed on to me.'' (E.T.C.)

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''7. विवादित श्री रामजन्मभूमि में विराजमान भगवान राम लला का दर्शन आरती, चरणामृत प्राप्त करने व प्रसाद प्राप्त करने का कार्य मैं अपने बचपन से अपनी मॉ के साथ जब जब वहॉ दूसरे दर्शन करने वालों को देखता आया हूँ। मॉ मेरी मेरे बचपन से ही मन्दिर रामजन्मभूमि में चरणामृत मेरे छोटे हाथों में दिलाती थी। श्रीरामजन्मभूमि का दर्शन अपनी धार्मिक आस्था के कारण बराबर करता चला आ रहा हूँ।''

''7. From my childhood, I have been seen people have darshan and arti of Lord Ramlala present in the disputed Sri Ramjanmbhumi, and receive charnamrit (foot nectar) and prasad. From my childhood, my mother used to make me receive charnamrit at the Ramjanmbhumi in my little hands. I have been regularly having the darshan of Sri Ramjanmbhumi out of my religious faith.'' (E.T.C.)

''8. यह कि बड़ा होने पर मैं अकेले ही अयोध्या श्री रामजन्मभूमि मन्दिर में दर्शन करने जाता रहा हूँ। हनुमान गढ़ी मन्दिर व कनक भवन मन्दिर भी प्रसिद्ध होने के कारण दर्शन हनुमान जी व कनक भवन में माता सीता जी

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का बराबर करता रहा हूँ। श्री रामजन्मभूमि मन्दिर भगवान राम की जन्मस्थली होने के कारण बहुत महत्व रखती हैं मेरी मॉ की व मेरी भी आस्था रामजन्मस्थली से बराबर जुड़ी रही। इस कारण श्री रामजन्मभूमि मन्दिर व उसमें विराजमान भगवान राम लला व दीगर धार्मिक चिन्हों का जैसे चरण चिन्ह, छठी पूजन स्थल, राम चबूतरा मन्दिर व शिव दरबार आदि का दर्शन जो विवादित परिसर में है। बराबर करता रहा हूँ।''

''8. That on growing up, I have been going alone to have darshan of Sri Ramjanmbhumi temple at Ayodhya. On account of being famous, I have also had the darshan of Hanumangarhi temple and Kanak Bhawan temple. The Ramjanmbhumi temple has immense importance on account of being the birthplace of Lord Rama. My mother and myself have always had faith in Ramjanmsthali. Due to this I regularly had the darshan of Sri Ramjanmbhumi temple, Lord Ramlala present therein and of other religious symbols such as foot marks, Chhathi worship place, Ramchabutara temple, Shiv Darbar etc., which are all within the disputed campus.'' (E.T.C.)

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''9. यह कि विवादित परिसर दो भाग में है। पहला बाहरी भाग दूसरा भीतरी भाग विवादित उक्त परिसर में भगवान राम लला व छठी पूजा स्थल चरण चिन्ह व राम चबूतरा शिव दरबार का बराबर दर्शन करता चला आ रहा हूँ। वड़ा होने पर अकेले उक्त विवादित मन्दिर श्री रामजन्मभूमि पर दर्शन करता चला आ रहा हूँ। अयोध्या में तीन मेले कार्तिक, सावन, रामनवमी मुख्य तौर पर होता है। अगहन में राम विवाह का मेला होता है। रामनवमी का एक विशेष त्यौहार रहता है। विवादित परिसर भगवान राम की जन्मस्थली व मन्दिर होने के कारण भारत वर्ष के कोने–कोने से तमाम हिन्दू धर्मावलम्बी जनता भगवान राम लला का दर्शन करने प्रसाद फूल माला चढ़ाने पूजा करने व चरणामृत प्राप्त करते मैंने अपने बचपन यानि शुरू से सन् 1937 से लेकर 1948 तक उक्त मन्दिर व धार्मिक स्थल व भगवान का दर्शन बाहरी और भीतरी भाग में देखता रहा हूँ। मुझे यह भी अपने मॉ से मालूम हुआ कि निर्मोही अखाड़ा के अन्तर्गत ही श्री राम

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जनमभूमि मन्दिर है। निर्मोही अखाडा के बारे में मेरी जानकारी मन्दिर हनुमान गढ़ी नाका में दर्शन करने वहॉ जाने से व बाबा बल्देव दास से काफी बढ़ गयी। निर्मोही अखाड़ा एक मठ है। पंचायती मठ है। धार्मिक न्यास है। सारी व्यवस्था पंचायती है। पंचो का निर्णय सर्वोपरि है। महन्थ अखाड़ा का पंचों के प्रस्ताव व बहुमत राय से कार्य करता हैं महन्थ को अखाड़े की जायदाद बेचने का हक नहीं है। जब तक पंचों का प्रस्ताव न हो महन्थ चुना जाता है। अखाड़े में सैनिक शिक्षा की पद्धति लागू है। ऐसा मैंने जाना है। हनुमान गढ़ी अयोध्या में बाबा को जानता हूँ। उन्होंने भी बताया कि हनुमान गढ़ी निर्वाणी अखाड़ा का मन्दिर है। अखाड़ा के रीति–रिवाज रामानन्दा स्वामी इस सम्प्रदाय के प्रवर्तक रहे हैं। इस सम्प्रदाय के साधु रामानन्दी वैरागी के इष्ट राम हैं। निर्मोही अखाड़ा का एक मन्दिर श्री विजय राधो मन्दिर रामघाट अयोध्या पर है।''

"9. That the disputed premises is in two parts. The first being the outer part and the second being the internal part. I have been regularly having the darshan of Lord Ramlala, Chhathi worship place, foot marks, Ramchabutara and Shiv Darbar at the aforesaid disputed premises. After growing up, I have been going alone to have darshan of the disputed Sri Ramjanmbhumi temple. The three main fairs at Ayodhya are Kartika, Sawan, Ramnavami. The fair of Ram Vivah is held during the month of Aghan (a month of Hindu calendar). There is a special festival on Ramnavami. From my childhood i.e. from the beginning in the year 1937 to the year 1948, I have seen numerous Hindu public from different corners of the country have darshan of Lord Ramlala and make offerings, offer flowers-garlands, offer prayer and receive charnamrit at the disputed premises, since the same is the birthplace and temple of Lord Rama. I also got to know from my mother that Sri Ramjanmbhumi temple was also under the Nirmohi Akhara. My knowledge about Nirmohi Akhara improved

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greatly by my darshan of temple at Hanumangarhi Naka and meeting Baba Baldev Das. The Nirmohi Akhara is a Math, a Panchayat Math. It is a religious trust. The entire working is as per Panchayat system. The decision of Panch is above all. The Mahant of the Akhara works on advise of Panchas and the majority view. The Mahant has no right to sell the property of the Akhara. The Mahant is elected unless there is a recommendation of the Panchas. I have so come to know that the system of military education is applicable in the Akhara. I know the Baba at Hanumangarhi, Ayodhya. He also told that Hanumangarhi is a temple of Nirvani Akhara. The customs and practices of this Akhara have been laid down by Swami Ramanand, the promoter of this sect. Rama is the Isht of Ramanand Vairagi, a saint of this sect. Another temple of Nirmohi Akhara, Sri Vijay Raghav temple, is at Ramghat Ayodhya." (E.T.C.)

''10. मैं 1948 तक लगभग हर माह कई बार उक्त मन्दिर में दर्शन करता रहा लेकिन उसके बाद रेलवे में झांसी तैनात होने पर तीन चार माह में जब भी घर आता रहा भगवान रामलला का पूरे मन्दिर के धर्मस्थल का दर्शन करता चला आ रहा हूँ। और नौकरी से रिटायर्ड होने पर पुनः अपने घर से हर माह दर्शन करने जाता रहा हूँ।''

"10. I had darshan in the said temple on number of times almost every month till the year 1948. However, after my posting at Jhansi under the Railways, I have been having the darshan of the entire temple site of Lord Ramlala, every 3-4 months whenever I come home. Now after retirement from service, I have again started going from my home to have darshan every month." (E.T.C.)

''12. मैं जब अपनी मॉ के साथ विवादित परिसर में दर्शन हेतु गया मेरी मॉ ने ही मुझे बताया कि यह रामजन्मभूमि मन्दिर है। अन्दर भीतरी भाग में

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भगवान राम लला विराजमान थे व बाहरी भाग में राम चबूतरा मन्दिर व छठी पूजन स्थल चरण चिन्ह चारों भाइयों का रहा है। चूल्हा बेलना–चकला भी था। शिव दरबार भी बाहरी भाग में था। जहॉ शंकर जी पार्वती जी गणेश जी नन्दी व शंकर जी का अरघा था। परिसर के पूर्वी गेट से दर्शनार्थी व भक्तगण आते–जाते थे। उत्तर भी गेट था जो ज्यादातर मेला भीड़ बढ़ने पर खुलता था। पूर्वी गेट से घुसते ही उत्तर तरफ भण्डार गृह सन्त निवास व कोठार था। जिसमें साधुओं वैरागियों को रहते व भगवान का प्रसाद बनाते शुरू से देखा था। धीरे–धीरे कई बार में दर्शन कराते समय मेरी मॉ ने बताया था यहॉ पुजारी व साधू लोग रहते हैं। वह निर्मोही अखाड़ा के साधू वैरागी है। और तभी से बराबर भीतरी भाग में 1949 दिसम्बर तक निर्मोही अखाड़ा के साधूओं वैरागियों को पुजारी की तरह कार्य करते व प्रसाद लेकर भोग लगाकर दर्शनार्थियों को प्रसाद भोग लगा देते। भगवान का चरणामृत देते। फूल माला आदि दर्शनार्थियों से लेकर भगवान पर चढ़ा दर्शनार्थियों को फूल माला देते देखा और तभी से देख रहा हूॅ। निर्मोही अखाड़ा के साधूओं वैरागियों को राम चबूतरा मन्दिर पर विराजमान राम लला पर भी वैसे पुजारी का कार्य करते देखा जैसे भीतरी भाग में बयान किया है। इसी तरह देखभाल पूजा आरती शिव दरबार व छठी पूजा स्थल चरण चिन्ह चकला बेलना चूल्हा पर भी निर्मोही अखाड़ा के लोगों को पूजा आरती व इंतजाम करते देखा है। निर्मोही अखाड़ा के बारे में मेरी मॉ को विशेष जानकारी थी क्योंकि वही मंगल, शनिवार जब अयोध्या नहीं जा पाती थी तो हनुमान गढ़ी नाका मुजफ्फरा पर हनुमान जी का दर्शन करने जाती रही हैं जो मेरे गॉव से 5 या 6 किमी दूरी पर है। नाका मुजफ्फरा पर हनुमान जी मन्दिर प्राचीन से स्थित है। जहॉ नाका मुजफ्फरा के वैरागी ही महंथ थे वहॉ महंथ बल्देव दास बहुत प्रसिद्ध मं0 हुए हैं। जिनके शिष्य मं0 भाष्कर दास इस समय मं0 है। इस कारण से ही निर्मोही अखाडा का ही अधिपत्य व्यवस्था विवादित परिसर श्री रामजन्मभूमि पर शुरू से मैंने देखा है।''

''12. Whenever I went to the disputed premises, alongwith my mother, to have darshan, it was my mother who told me that it was Ramjanmbhumi temple. Lord Ramlala was present in the inner part and the Ramchabutara temple, Chhathi worship place and foot marks of the four brothers

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were present in the outer part. The stove, belna-chakla were also present. The Shiv Darbar was also in the outer part, where Shankar Ji, Parvati Ji, Ganesh Ji, Nandi and argha of Shiva existed. The devotees used to enter through the eastern gate of the premises. There was gate in north also, which was mostly opened during fair on crowd increase. Immediately on entering through the eastern gate, was the store room, saints' accommodation and granary in the north, and from the beginning I had seen the saints-recluses live there besides the preparation of prasad taking place over there. Gradually during the course of darshan, my mother told me that priests and saints used to live there. They were the saints-recluses of Nirmohi Akhara and since then to December, 1949, the saints-recluses of Nirmohi Akhara functioned as priests and used to accept prasad from the devotees and delivered it to them after offering them to God. They used to distribute the charnamrit. I have seen them accept the flowers-garlands etc. from the devotees and return them to the devotees after offering them to God. I saw the saints-recluses of Nirmohi Akhara perform similar saint like work at the Ramchabutara temple as well, as described by me regarding the inner part. I have seen the Nirmohi Akhara people perform similar maintenance, prayer, arti at Shiv Darbar, Chhathi worship place, foot marks, chakla-belna, stove. My mother had special knowledge about Nirmohi Akhara because whenever she was unable to go to Ayodhya on Tuesday and Saturday, she used to go to have darshan of Hanuman Ji at Hanumangarhi Naka Muzaffara, which is at a distance of 5-6 kilometers from

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my village. Hanuman Ji is present in the ancient temple at Naka Muzaffara. The recluses of Naka Muzaffara were the Mahant over there. Mahant Baldev Das has been a very famous Mahant of the same, whose disciple Mahant Bhaskar Das is the present Mahant. Due to this, I had found the possession of Nirmohi Akhara extend over the disputed premises, Sri Ramjanmbhumi." (E.T.C.)

''13. यह कि भीतर वाला भाग जो तीन शिखर व सिकचें के अन्दर था। दिसम्बर 1949 में कुर्क हुआ यह मैंने जनवरी में घर आने पर जाना उस समय दर्शन मुझे भगवान रामलला के बाहरी भाग में पूर्ववत दर्शन भगवान के व पूज्य तीर्थ स्थली छठी पूजा स्थल शिव दरबार व राम चबूतरा मन्दिर पर पास जाकर निर्मोही अखाड़ा के पुजारियों से प्रसाद व चरणामृत लेकर होता रहा है। 1982 में बाहरी भाग निर्मोही अखाड़ा के आपसी विवाद से कुर्क हो गया जिसके भी रिसीवर भीतर वाले भाग के रिसीवर हुए। रिसीवर द्वारा पुजारी व व्यक्ति अब सभी पूज्य धर्मस्थलों पर जैसे छठी पूजा धर्मस्थल व राम मन्दिर चबूतरा शिव दरबार व भीतर भाग भगवान रामलला आदि पर बैठते हैं। इसलिए बाहर के कुर्की के बारे में रामनवमी 1982 में मुझे मालूम हुआ रामनवमी को देर तक परिसर में रूककर मैं पूजन व कुछ मानस पाठ करता हूॅ। उसी दिन बारह बजे भगवान राम का जन्म हुआ है। प्रसाद लेकर ही आता था रिसीवर के इन्तजाम में दोनों भाग बाहरी भाग व भीतरी भाग सम्पूर्ण ढॉचा गिराने तक यानि 6.12.1992 तक रहा है। ढांचा गिरने के बाद केन्द्रीय सरकार रिसीवर हो गयी लेकिन भगवान रामलला वही भगवान राम लला हैं जिनका मैं शुरू से दर्शन करता चला रहा हूॅ। अब भी विराजमान है। जिनका भी दर्शन मैं बराबर केन्द्रीय सरकार द्वारा नियंत्रित रास्ते से बराबर करता चला आ रहा हूॅ। अभी नहान, पूर्णिमा कार्तिक के दूसरे दिन में भी दर्शन करने गया था।''

"13. That the inner part was under the three dome and within the grill. I came to know that it was attached in December 1949, when I came home in January. At that time, I continued to have darshan of Lord Ramlala in the outer part along with the revered Chhathi worship place,

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Shiv Darbar and Ramchabutara temple and received prasad and charnamrit from the priests of Nirmohi Akhara. In the year 1982 the outer part was also attached due to internal dispute of Nirmohi Akhara and the Receiver of inner part, was appointed Receiver thereof. The priest and people appointed by the Receiver now look after all revered worship places such as Chhathi worship place, Ramchabutara temple, Shiv Darbar and Lord Ramlala in the inner part. I came to know about the attachment of the outer part on the occasion of Ramnavami, 1982. I stay back in the premises on the occasion of Ramnavami and offer my prayers and recite the Manas. Lord Rama was born at 12 'O' clock on this day. I used to bring along the prasad. Both, the inner and outer part, remained in control of the Receiver till demolition of the structure on 06.12.1992. After the demolition of the structure, the Central Government became the Receiver but Lord Ramlala is the same Lord Ramlala, whose darshan I have had since beginning, and He is still present there. I regularly have darshan even today through the route controlled by the Central Government. Recently I went to have darshan on the occasion of Nahan (occasion for a holy dip in sacred river), the second day of Kartik Purnima." (E.T.C.)

''14. मैं शुरू से जब से विवादित परिसर मन्दिर श्री रामजन्मभूमि दर्शन करने जा रहा हूँ। हमेशा मुझे तब निर्मोही अखाड़ा के पुजारियों व साधुओं व वैरागियों को मन्दिर उपरोक्त की व्यवस्था करते व पूरा इंतजाम करते बाहरी व भीतरी भाग में देख रहा हूँ। मुझे यह भी अपनी माँ से मालूम हुआ कि निर्मोही अखाड़ा के अन्तर्गत ही श्री रामजन्मभूमि मन्दिर है। निर्मोही अखाड़ा के बारे में मेरी जानकारी मन्दिर हनुमान गढ़ी नाका दर्शन करने जाने से व बाबा बल्देव दास से काफी बढ़ गयी।''

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"14. Since I started going to the disputed premises to have darshan of Sri Ramjanmbhumi, I have always found the priests, saints and recluses of Nirmohi Akhara carry out the entire arrangement and management of the inner and outer part. I came to know from my mother that the Sri Ramjanmbhumi temple was also under the Nirmohi Akhara. My knowledge about Nirmohi Akhara improved substantially from my visit for darshan of the temple at Hanumangarhi Naka and through Baba Baldev Das." (E.T.C.)

''15. जन्मभूमि मन्दिर के पूर्व व दक्षिण भी कुछ छोटे–छोटे मन्दिर निर्मोही अखाड़ा के पंच बनाकर रहते थे। शेषावतार सुमित्रा भवन भी मन्दिर था यह बाहर वाले मन्दिर 1991 में शायद यू0पी0 सरकार ने गिरा दिये अधिग्रहण कर।''

"15. The Panch of Nirmohi Akhara used to build and live in small temples in east and south of the Janmbhumi temple. Sheshawtar Sumitra Bhawan was also a temple. These outlying temples were possibly demolished by the U.P. Government after acquisition in the year 1991." (E.T.C.)

''16. विवादित परिसर भीतरी या बाहरी भाग कभी मस्जिद के तौर पर मेरे देखने के समय से आज तक इस्तेमाल होते मैंने नहीं देखा है।''

"16. From the date of my visits till date, I have never seen either the inner or outer part of the disputed premises being used as a mosque." (E.T.C.)

''17. यह कि विवादित परिसर में मैंने किसी मुसलमान को नमाज पढ़ते अपने होश सम्भालने के समय से आज तक नहीं देखा है।''

"17. That from the date of attaining maturity, I have not seen any Muslim offer Namaz in the disputed premises till date." (E.T.C.)

''18. मं0 भाष्कर दास को 1946 से मैंने विवादित परिसर में भीतरी व

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बाहर दोनों स्थान पर भगवान राम लला की पूजा अर्चना करते देखा है। पुजारी की हैसियत से कार्य करते देखा है। इनके गुरू मं0 बल्देव दास को भी 1946 के पहले से देखा हैं बल्देव दास जी का स्वर्गवास शायद 1962 में हुआ है।''

"18. From the year 1946, I have seen Mahant Bhaskar Das perform prayer-worship of Lord Ramlala in both inner and outer parts of the disputed premises. I saw him function as priest. I had also seen his master Mahant Baldev Das prior to 1946. Baldev Das probably passed away in the year 1962." (E.T.C.)

''19. कुर्की वाले भीतरी भाग के मुकदमें की जानकारी मुझे मं0 बल्देव दास जी से 1950 में ही शुरू माह जनवरी या फरवरी में हुई थी। दीवानी मुकदमा व निर्मोही अखाड़ा द्वारा दायर मुकदमा की पूरी जानकारी 1960 में मं0 बल्देव दास व बादहू मं0 भाष्कर दास से हुई जो मुझे कभी मन्दिर हनुमान गढ़ी नाका व कभी रामजन्मभूमि मंदिर अयोध्या राम चबूतरा मन्दिर पर मिलते थे।''

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"19. I came to know about the case regarding the attached inner part in the beginning of January or February, 1950 from Mahant Baldev Das. The complete information about the civil suit and the case filed by Nirmohi Akhara, was gathered by me in the year 1960 from Mahant Baldev Das and subsequently from Mahant Bhaskar Das, whom I sometimes met at temple Hanumangarhi Naka or at Ramjanmbhumi temple Ayodhya or at Ramchabutara temple." (E.T.C.)

373. DW 3/6, Sitaram Yadav born in 1943 has filed his affidavit dated 06.01.2004 under Order XVIII Rule 4 CPC, followed by his corss examination as under :

(a) 06.01.2004- by Ramesh Chandra Tripathi, defendant no. 17 and Umesh Chandra Pandey, defendant no. 22 (Suit-4) through Sri Vireshwar Dwivedi, Advocate (p. 4-

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(b) 07.01.2004- by plaintiffs (Suit-5) through Sri A.K. Pandey, Advocate (p. 16-14)

(c) 07.01.2004- by defendant no. 20 (Suit-4) through Km. Ranjana Agnihotri, Advocate (p. 14-15)

(d) 07/08.01.2004-by defendant no. 11, Mohd. Faruk Ahmad, through Sri Abdul Mannan, Advocate (p. 16-28)

(e) 08/09/12/13/14/15.01.2004- by Sunni Central Baord of Waqf, defendant no. 9, through Sri Zafaryab Jilani, Advocate (p. 28-87)

(f) 15/16/19.01.2004- by plaintiff no. 7 (Suit-4) and defendant no. 5 (Suit-5) Mohd Hashim through Sri Mustaq Ahmad Siddiqui, Advocate (p. 87-110)

(g) 19.01.2004 - defendants no. 6/1 through Sri Fazale Alam, Advocate and 6/2 through Sri Irfan Ahmad, Advocate and defendant no. 26 (Suit-5) through Sri T.A. Khan, Advocate adopted the cross examination already done by Sri Abdul Manna, Sri Zafaryab Jilani and Sri Mustaq Ahmad Siddiqui, Advocates (p. 110)

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374. He states about the existence of the shop of his father selling Batasha and other sweet meats for offering to the God on the northern side wall of eastern gate of Sri Ramjanambhumi Temple which continued till December, 1992. He claims to have gathered information about the temple, Ramjanambhumi as well as Nirmohi Akhara etc. from his father. Paras 4, 5, 7, 8, 9, 10, 11, 12, 13, 14 and 16 of the affidavit contain his statement about the existence of idol in inner courtyard, possession and ownership of Nirmohi Akhara and performance of Pooja by the priests of Nirmohi Akhara as under:

''4. मेरे पिता ने मंदिर रामजन्मभूमि परिसर व उससे संबंधित धर्मस्थल व निर्मोही अखाड़ा के बारे में पूरी जानकारी दिया और जब से मैंने होश

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संभाला तब से बराबर स्वयं सभी तथ्य रामजन्मभूमि मंदिर के बारे में अयोध्या के धार्मिक महत्व के बारे में यहां–अयोध्या के प्रसिद्ध मंदिरों के बारे में स्वयं जानकारी देखकर व दीगर साधुओं व महन्तों से हुई।''

"4. My father gave complete information about Ramjanmbhumi temple premises, the religious places related to it and the Nirmohi Akhara and after I attained maturity I gathered information about Ramjanmbhumi temple, the religious importance of Ayodhya and the famous temple of Ayodhya, myself and from different saints and Mahants." (E.T.C.)

''5. मेरे पिताजी ने बताया था कि दिसम्बर 1949 में भीतरी भाग जो तीन शिखर के नीचे सीखचे वाली दीवाल तक है, कुर्क हो गई थी मुझे यह भी बताया था कि कुर्की के पहले से भीतरी भाग गर्भगृह जिसे कहते हैं, में भगवान रामलला विराजमान चले आ रहे हैं । भगवान रामलला की– अष्टधातु की मूर्ति है। मुझे मेरे पिताजी ने बताया था कि यह मूर्ति निर्मोही अखाड़ा के किसी सरबरहकार महन्त या पंच ने मानव याददाश्त के पहले प्रतिष्ठा कराई थी।''

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"5. My father had told me that in December, 1949 the inner part, which was under the three domes and extended upto the grill wall, had been attached. I was also told that Lord Ramlala had been present in the inner part called 'Garbh-grih', even prior to the attachment. The idol of Lord Ramlala is made up of 'Ashtadhatu'. My father had told me that this idol had been placed by some Sarbarhakaar Mahant or Panch of Nirmohi Akhara, much beyond human memory." (E.T.C.)

''7. रामलला भगवान के अलावा मेरे पिता ने बताया था और मैं भी अपने होश से देख रहा हूँ कि लखन लाल की भी अष्टधातु की मूर्ति है जो चांदी के सिंहासन जो सवा फुट लम्बा चौड़ा व लगभग डेढ़ फुट ऊँचा पर विराजमान रामलला भगवान के साथ हैं। बगल में हनुमानजी की मूर्ति पाषाण की दीवाल के सहारे है जिसे भी मेरे पिता ने बताया पहले से कायम

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चला आ रही है और मैं भी अपने होश से देखता चला आ रहा हूॅ। सालिग राम भगवान भी 4–5 अदद सिंहासन चांदी पर रखे रहते हैं।''

''7. It was told by my father and has also been witnessed by me since I gained understanding that besides Lord Ramlala, there was a 'Ashtadhatu' idol of Lakhanlal as well and that it existed over a 1 ¼ feet wide and 1 ½ feet tall silver throne along with Lord Ramlala. In the side is the stone idol of Hanuman ji in support of wall and my father had told me that it existed since earlier times, and this was witnessed by me since I gained understanding. There were 4-5 Saligram over the silver throne." (E.T.C.)

''8. भीतरी भाग की पूजा–पाठ उत्सव समैया कुर्की के पहले निर्मोही अखाड़ा करता था जिसे मेरे पिता ने बताया अपने होश से भीतरी भाग रिसीवर के प्रबन्ध में देख रहा हूॅ लेकिन अपने होश से बाहरी भाग जिसमें रामचबूतरा मंदिर, शिव दरबार, छठी पूजा स्थल, चरण चिन्ह, भण्डारगृह आदि भाग पर निर्मोही अखाड़ा का प्रबन्ध इन्तजाम देखता आया हूॅ जब तक कि सन 1982 फरवरी में बाहरी भाग भी कुर्क हो गया।''

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''8. The worship, ceremony of the inner part was carried out by the Nirmohi Akhara prior to the attachment, which was told to me by my father. Since I gained understanding, I have seen the inner part under the control of Receiver but I have found the Nirmohi Akhara involved in in management of the outer part, which included Ramchabutara temple, Shiv Darbar, Chhathi worship place, footmarks, store room etc., till the outer part was attached in February, 1982." (E.T.C.)

''9. उक्त कुर्की के बाद दोनों भाग यानी बाहरी व भीतरी भाग के रिसीवर श्री के0के0 राम वर्मा हुए और रिसीवर तो बदलते रहे लेकिन पूरा ढांचा 6 दिसम्बर 1992 को भीड़ ने गिरा दिया इसके बाद मेरी दुकान यहां नहीं रही अब मैं बाहर अमांवा मंदिर के सामने दुकान करता हूॅ।''

''9. After the said attachment, Sri K.K. Ram Verma was

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appointed Receiver of both the parts viz. the inner and outer part. The Receivers kept changing. The entire structure was demolished by the masses on 6th December, 1992 and after it my shop ceased to exist at that place. Now my shop is situated in front of Amawan temple." (E.T.C.)

"10. रिसीवर को मेरे पिताजी के जमाने से मेरे ही दुकान से बालभोग व दूध भगवान रामलला के लिए जाता था।"

"10. The 'Balbhog' and milk for Lord Ramlala used to go to the Receiver from my shop, from the days of my father." (E.T.C.)

"11. मैं ढांचा गिरने के बाद दूध अब भी देने जाता हूॅ।"

"11. I still go to deliver milk despite demolition of the structure." (E.T.C.)

"12. गर्भगृह के भगवान रामलला का दर्शन बराबर करता रहा हूॅ जो ढांचा गिरने के पहले थे, वही रामलला अब भी हैं।"

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"12. I have regularly had the 'darshan' of Lord Ramlala in the 'Garbh-grih'. The Lord Ramlala present before demolition of the structure, is the same Ramlala present today." (E.T.C.)

"13. बाहर वाले भाग का मंदिर रामचबूतरा में भी भगवान रामलला व लखनलाल जी व भरतजी माता कौशिल्या जी हनुमानजी मूर्तियां गुफा मंदिर में मिलाकर रही हैं मंदिर काठ का गंगा जमुनी–चबूतरा राममंदिर पर रहा है। शिव दरबार बाहरी परिसर दीवाल के अन्दर पूरबी दक्षिण कोने में पीपल पेड़ के नीचे शिव दरबार संगमरमर पत्थर का रहा था जिसमें शंकरजी का अर्घा पार्वतीजी, गणेशजी, षष्टमुखी शंकरजी व नन्दीजी रहे थे जो तीनों धार्मिक पवित्र स्थल बने जहां मैंने अपने होश से बराबर कुर्की 1982 तक कब्जा व दखल निर्मोही अखाड़ा अयोध्या का देखा है। मैंने इन सभी धार्मिक स्थलों पर पुजारी निर्मोही अखाड़ा का देखा है मेरे होश के समय जेठ 1950 के करीब मैंने मा0 भास्कर दास को बतौर पुजारी देखता चला आ रहा हूॅ जो वहां 1962 तक रहे बाद में निर्मोही अखाड़े के पुजारी सिया राघव सरन

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रहे जो 1982 कुर्की तक रहे।''

''13. The idols of Lord Ramlala, Lakhanlal, Bharat ji, mother Kaushalya ji and Hanuman ji were present in the Ramchabutara temple in the outer part as well as the cave temple. The temple 'Kath Ganga-Jamuni' was at Ramchabutara temple. The marble stone Shiv Darbar existed below the Pipal tree in south-east corner within the wall of the outer premises, where Shankar ji's better half Parvati ji, Ganesh ji, Six faced Shankar ji and Nandi ji were present, which all became sacred religious places and from the day of my gaining understanding to the attachment of 1982, I have witnessed the possession of Nirmohi Akhara, Ayodhya extend over all of them. I have seen the priest of Nirmohi Akhara at all these religious places. From the days of my gaining of understanding in summer of 1950, I have seen M. Bhaskar Das as priest, who continued as such till 1962. Thereafter, Nirmohi Akhara's Sia Raghav Saran became the priest and continued till the attachment of 1982." (E.T.C.)

''14. हर मेले में तो मेरे होश से अयोध्या में श्रीराम जन्मभूमि परिसर में भारतवर्ष के कोने–कोने से भक्तगण दर्शन करने आते रहे जो पूरबी गेट से जाते थे, व मेला में उत्तरी गेट भी इस्तेमाल होता रहा है।''

''14. As far as I recollect, devotees from all parts of India came to Sri Ramjanmbhumi premises in each fair to have 'darshan'. They entered from the eastern gate. The northern gate was also used during fairs." (E.T.C.)

''16. मेरे 1950 जेठ माह में होश संभालने पर जबकि उसी माह में कोई वकील द्वारा नापजोख मौके पर हो रही थी, तभी मेरे पिताजी ने मुकदमे की बातें बतलाईं अब मैं जानता हूँ कि दीवानी मुदकमा चल रहा है और निर्मोही अखाड़ा एक मुख्य पक्षकार है जो सुन्नी सेंट्रल वक्फ बोर्ड से मुकदमा लड़ रहा है। निर्मोही अखाड़ा के साधु भण्डारगृह में बराबर कुर्की 1982 तक

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रहते रहे हैं और श्रीराम जन्मभूमि मंदिर के पूर्वी दक्खिनी कोने पर सुमित्रा भवन मंदिर निर्मोही अखाड़ा के पंच म0 रामदास का था जो मेरे होश के पहले का था तथा सीताकूप के पास रामलला मंदिर छोटे–छोटे निर्मोही अखाड़ा के साधुओं के पहले से कायम चले आ रहे थे जिन्हें 1991 अक्टूबर में उ0प्र0 सरकार ने अधिग्रहण कर गिरवा दिया था।"

"16. I gained understanding in 'Jyeshtha' month of 1950 and in the same month some measurement of the site was carried out by some advocate. It was at that point of time that my father had told me about the case. I now know that a civil case is pending and the Nirmohi Akhara is a main party and is contesting against Sunni Central Waqf Board. The saints of Nirmohi Akhara have continuously remained in the store room till the attachment of 1982. The Sumitra Bhawan temple in east-south corner of Sri Ramjanmbhumi temple, was of Nirmohi Akhara's Panch M. Ramdas and it was of period prior to my attainment of understanding. Small Ramlala temples near the Sitakoop, were already in existence and in October, 1991 they were demolished after acquisition by the U.P. Government." (E.T.C.)

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375. Paras 15 and 17 contains his (DW 3/6) statement about the constitution of Nirmohi Akhara, its function and Mahant etc. which shall be dealt with later on. In para 18 he says that he never saw any Muslim offering Namaz in the disputed premises and the said premise has never been used as mosque either inside or outside.

376. DW 3/7, Mahant Ramji Das, resident of Mohalla Shringar Hat, Ayodhya, District Faizabad, is aged about 82 years (as per his affidavit dated 30.01.2004). He was cross examined in the following manner :

(a) 30.01.2004- by Ramesh Chandra Tripathi, defendant no. 17 and Umesh Chandra Pandey, defendant no. 22

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(Suit-4) through Sri Vireshwar Dwivedi, Advocate (p. 11-16)

(b) 03.02.2004- by Mahant Suresh Das, defendant no. 2/1 (Suit-4) and Suit-5 through Sri Madan Mohan Pandey, Advocate (p. 18-22)

(c) 03.02.2004-by plaintiffs (Suit-5) through Sri A.K. Pandey, Advocate (p. 22-24)

(d) 03.02.2004- by defendant no. 20 (Suit-4) through Km. Ranjana Agnihotri, Advocate (p. 25-26)

(e) 03/04.02.2004- by Mohd. Faruk Ahmad, defendant no. 11 through Sri Abdul Mannan, Advocate (p. 27-37)

(f) 04/10/23/24/25/26/27/.02.2004, 01/03/04/05/10/11/12/16.03.2004- by Sunni Central Board of Waqf, defendant no. 9 through Sri Zafaryab Jilani, Advocate (p. 37-174)

(g) 16/17.03.2004- by plaintiff no. 7 (Suit-4) and defendant no. 5 (Suit-5) Mohd Hashim through Sri Mustaq Ahmad Siddiqui, Advocate (p. 174-188)

(h) 17.03.2004- defendants no. 6/1 and 6/2 (Suit-3) through Sri Irfan Ahmad, Advocate defendant no. 26 (Suit-5) through Sri C.M. Shukla, Advocate adopted the cross examination already done by Sri Abdul Manna, Sri Zafaryab Jilani and Sri Mustaq Ahmad Siddiqui, Advocates (p. 188)

377. His date of birth is 13.04.1923. He attained age of understanding at 12. His parents were very religious. DW 3/7 used to visit Ayodhya accompanied with his parents. He has supported the issue that Lord Ram was being worshiped inside the courtyard and the said temple was maintained and looked after by the Bairagis of Nirmohi Akhara. Hindu people used to worship inside the courtyard and he never saw any muslim to

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offer Namaz at the premises in dispute. His statement contained in paras 5, 6, 7, 8, 10, 15, 16, 17, 18, 19, 23, 24, 25, 26, 28, 28-A, 29, 30, 31, 32, 33 and 34 of the affidavit is as under:

''5. मेरे पिता व माता मेरे होश में जब–जब अयोध्या आये, अपने गुरू–घराना, मन्दिर बड़ा स्थान रामकोट अयोध्या ठहरते थे और वहीं से सरयू स्नान, प्रसिद्ध मन्दिर राम जन्म भूमि, हनुमान गढ़ी व कनक भवन आदि का दर्शन करते थे, मैं भी उनके साथ उपरोक्त मन्दिरों में भगवान का दर्शन करने जाता था।''

''5. On my coming of age whenever my parents came to Ayodhya they stayed at their Guru Gharana temple at Bada Sthan, Ramkot in Ayodhya and from there they proceeded to have a bath in Saryu and to have darshan of the famous Ram Janam Bhumi temple, Hanumangarhi, Kanak Bhawan, etc.. I also went along with them to have darshan of 'Bhagwan' at the aforesaid temples.'' (E.T.C.)

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''6. मैं मन्दिर राम जन्म भूमि अपने 11 या 12 साल की उम्र से बराबर जाता रहा हूँ।''

''6. I have consistently been going to the Ram Janam Bhumi temple since I was of 11 or 12 years of age.'' (E.T.C.)

''7. मैं जब पहली बार अपने माता–पिता के साथ मन्दिर श्रीराम जन्मभूमि भगवान का दर्शन करने गया तो मेरे पिता जी ने बताया कि यह प्रसिद्ध मन्दिर जन्म भूमि है जहां भगवान रामलला विराजमान हैं उक्त जन्म भूमि परिसर दो भागों में था यानि सींकचे के पश्चिम तीन शिखर के नीचे भीतरी भाग, जहां बीच के शिखर के नीचे भगवान रामलला व लखनलाल की मूर्ति बाल रूप में विराजमान थी व हनुमान जी भी बगल में विराजमान थे तथा 4–5 सालिगराम भगवान भी थे, भगवान रामलला व लखनलाल व सालिगराम चांदी के सिंहासन में थे उस सिंहासन के बाहर हनुमान जी विराजमान थे।''

''7. When I, for the first time, went along with my parents to have darshan of the presiding deity at Sri Ram Janam

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Bhumi temple, my father told me that this famous temple is 'Janam Bhumi' (birthplace) where Lord Ram Lala is seated. The said Janam Bhumi premises was divided into two parts, that is to say, towards the west of the bar and beneath the three towers lay the inside part, where beneath the central tower lay the idols of Ram Lala and Lakhan Lal in their baby forms and Hanumanji was also seated next to them and there were also 4-5 idols of Lord Saaligram. Lord Ram Lala, Lakhan Lal and Saaligram were seated on a silver throne and Hanumanji was seated outside that throne." (E.T.C.)

''8. उक्त भगवान रामलला का दर्शन अन्दर जाकर मैंने अपने माता–पिता के साथ किया और मेरे पिता जी ने बताया यह राम लला भगवान हैं यह लखनलाल हैं और यह हनुमान जी हैं। भगवान रामलला व लखनलाल अष्टधातु के हैं, और हनुमान जी पाषाण के हैं।''

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"8. On going inside I had darshan of the said Lord Ram Lala accompanied with my parents and my father told me that it is Ram Lala; it is Lakhan Lal and it is Hanumanji. Idols of Lord Ram Lala and Lakhan Lal are made of 'ashtadhatu' and that of Hanumanji is made of stone." (E.T.C.)

''10. पहली बार जब मैं पिताजी माता के साथ गया था तो बाहरी भाग जन्मभूमि मन्दिर में राम चबूतरा मन्दिर व राम चबूतरा मन्दिर के पूर्व व दक्षिण कोने पर बाहरी दीवाल के अन्दर पीपल पेड़ के निचे शिव परिवार रहा है तथा भन्डार ग्रह व छट्ठी पूजा स्थल जिसमें चार–चरण–चिन्ह चारों भाईयों व चूल्हा, बेलन, चकला संगमरमर का था जो कौशिल्या रसोई के नाम से जाना जाता है।''

"10. When I for the first time went there accompanied with my parents, we saw Ram Chabutra temple in the exterior part of the Ram Janam Bhumi temple and on the east-southern corner of the Ram Chabutra temple there lay

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the Shiva family beneath the fig-tree inside the exterior wall and there were store house and the Chhathi worship place with four foot-marks of the four brothers and with hearth, rolling-pin and 'chakla' made of marble which are known as Kaushalya Rasoi." (E.T.C.)

''15. मै जब से श्री राम जन्म भूमि मन्दिर दर्शन करने जाता रहा हूँ सदैव मैंने वहां तमाम दर्शनार्थियों को दर्शन करते, परसाद द्रव्य फूल आदि चढ़ाते व आरती चरणामृत लेते देखा है।''

"15. Since the time I have been going to have darshan of Sri Ram Janam Bhumi temple I have always seen several devotees having darshan, offering 'prasad', 'dravya' (materials), flowers, etc., performing 'aarti' and taking 'charnamrit'." (E.T.C.)

''16. यह कि 1940 ई0 में राम नवमी के पहले मणिराम दास की छावनी में स्वामी रामसुन्दर दास का शिष्य बना और तबसे अयोध्या में ही रहता हुआ बैरागी सम्प्रदाय के साधू के सभी रीति रिवाज का पालन कर अयोध्या –वास करता चला आ रहा हूं। जिसमें सरयू स्नान, श्रीराम जन्मभूमि, हनुमान जी व कनक भवन व बाल्मीकि आश्रम, छोटी छावनी, भक्तमाल आदि मन्दिरों में विराजमान भगवान का दर्शन आदि शामिल है।''

"16. That I became a disciple of Saint Ram Sundar Das at the camp of Mani Ram Das before Ram Navami in 1948 and since then I have been staying at Ayodhya, adhering to all rites and customs ordained for saints of the Bairagi sect which include taking a dip in Saryu and having darshan etc. of presiding deities at temples called Sri Ram Janam Bhumi, Hanumanji, Kanak Bhawan, Valmiki Ashram, Chhoti Chhavani, Bhaktmal, etc.." (E.T.C.)

''17. यह कि 1948 ई0 यानि शिष्य बनने के बाद मैं अपने गुरू महाराज स्वामी राम सुन्दर दास के साथ मणिराम दास छावनी में रहता रहा बाद में सन् 1962 में मेरे गुरू महाराज ने मोहल्ला–श्रृंगार हाट में भवन कोर्ट नीलाम में लेकर ठाकुर राम–जानकी की स्थापना कर तुलसी मानस मन्दिर

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नाम रखा और स्वयं महन्थ व सरबराहकार रहे। उक्त मन्दिर श्रृंगार हाट में स्थित है जो मुख्य अयोध्या के बाजार में थी, मैं वहां से बराबर श्रीराम जन्म भूमि दर्शन करने जाता रहा हूं। वर्ष 1969 से मैं उक्त तुलसी मानस मन्दिर का महन्थ व सरबराहकार हूं।''

"17. That after 1948, that is, after becoming disciple I kept staying at the Mani Ram Das Chhavani alongwith my spiritual teacher Maharaj Swami Ram Sundar Das. Later on, in 1962, my spiritual teacher, after receiving building/court through auction, established Thakur Ram Janaki at Mohalla Sringarhaat and named it Tulsi Manas Mandir and he himself remained its Mahanta and Sarvarahakar. The said temple is located at Sringarhaat, which was in the market of Ayodhya. From there I have consistently been going to have darshan of Sri Ram Janam Bhumi. I have been Mahanta and Sarvarahakar of the said Tulsi Manas temple." (E.T.C.)

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''18. यह कि जब से मैं, होश सम्भालने से पिता जी के साथ श्रीराम जन्म भूमि दर्शन करने जाता रहा हूं तब तब हमेशा मैंने भीतर भाग व बाहरी भाग राम चबूतरा, मन्दिर छट्ठी पूजा स्थल देखा है जहॉ पुजारी आरती करते थे व दर्शनार्थीयों से परसाद व फूल आदि लेते और उन्हें परसाद व चरणामृत देते थे। मेरे पूछने पर पिता जी ने बताया कि यह पुजारी व साधू निर्मोही अखाड़ा के हैं। शिष्य बनने के बाद से मुझे अच्छी तरह मालूम है कि मंदिर श्रीराम जन्मभूमि की बाहरी भाग एवं गर्भ गृह भीतरी भाग की व्यवस्था व देखभाल व भगवान राम लला की सेवा पूजा आदि निर्मोही अखाड़ा के पुजारी व साधू करते रहे हैं।''

"18. Since the time I have come of age I have been going along with my father to have darshan of Sri Ram Janam Bhumi. Whenever I had been visiting its inside and outside portions, the Ram Chabutra temple and the Chhathi worship-place where priests performed 'aarti' and took 'prasad', flowers, etc. from devotees and gave them 'prasad'

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and 'charnamrit'. On being queried by me my father told me that those priests and saints belonged to the Nirmohi Akhara. Since the time I became disciple I am well acquainted that priests and saints of Nirmohi Akhara have been managing and looking after the exterior part of Sri Ram Janam Bhumi temple and its interior part, that is, sanctum sanctorum and have also been engaging themselves in the service, worship etc. of Lord Ram Lala." (E.T.C.)

''19. यह कि वर्ष 1948 में निर्मोही अखाड़ा के गोलकी राम लखन दास जी थे जिनसे मेरा परिचय 1948 में साधू बनने के बाद वहीं जन्म भूमि पर हुआ। उक्त राम लखन दास गोलकी जब कभी मेरे दर्शन करने जाने के दरमियान मिले, तो मुझे मौलिश्री पेड के नीचे भन्डार गृह, सन्त निवास के सामने बैठा कर चाय अवश्य पिलाते थे वहां जन्म भूमि व अखाड़े के बारे में बताते थे। उस समय महन्थ रघुनाथ दास थे व गोलकी जी से ही मैंने पुजारी बलदेव दास को जाना पहचाना। उस समय अखाड़े के और भी साधू थे जिनमें से महन्थ भाष्कर दास जो आज कल निर्मोही अखाड़ा के सरपन्च व नाका हनुमानगढ़ी के महन्थ हैं, को उस समय भी मन्दिर राम चबूतरा व भीतरी में मात्र देखा था 1948 से ही मैं इन्हें जान गया था कि यह पुजारी बलदेव दास के शिष्य हैं कुर्की होने के पहले यानि माह दिसम्बर 1949 के पहले तक भीतरी भाग गर्भगृह में पूजा पाठ निर्मोही अखाड़ा के पुजारी करते थे कुर्की के बाद रिसीवर का पुजारी हो गया। कुर्की बाद बाहरी भाग यानि राम–चबूतरा मन्दिर व छट्ठी पूजा स्थल आदि पर पुजारी के रूप में महन्थ भाष्कर दास को 20सों साल देखा उनके बाद सिया राघव शरण पुजारी हुए और उन्हीं के पुजारी काल में 1982 फरवरी में धर्मदास के विवाद में बाहरी भाग कुर्क हो गया व भीतर वाले भाग के रिसीवर ही बाहर वाले भाग के भी हो गए।''

"19. That in 1948, there was one named Golki Ram Lakhan of the Nirmohi Akhara with whom I got acquainted at that very Janam Bhumi after becoming a saint in 1948. Whenever the said Ram Lakhan Golki met me while having

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darshan, he certainly seated me beneath the 'Maulishri Tree' in front of the store house and Saint Niwas and got tea served to me and told me about the Janam Bhumi and the Akhara. At that time Raghunath Das was Mahanta and I got acquainted with priest Baldev Das only through Golkiji. At that time the Akhara had some more seers including Mahanta Bhaskar Das who is presently 'sarpanch' of the Nirmohi Akhara and Mahanta of Naka Hanumangarhi. I had seen him at the Ram Chabutra temple and in the interior part even at that time. Since 1948, I had came to identify him as the disciple of priest Baldev Das. The priests of the Nirmohi Akhara performed 'pooja-path' in the inner part, that is, sanctum sanctorum before the attachment, that is, the month of December in 1949. After the attachment there came to be a priest on behalf of the Receiver. After the attachment Mahanta Bhaskar Das had been seen performing as a priest in the exterior part, that is, at the Ram Chabutra temple and the Chhathi worship place etc. for 20 years. After that Siya Raghav Saran came on to be the priest and while his being the priest, the exterior part came to be attached in February 1982, due to a dispute involving Dharm Das and the receiver of the interior part came to be that of the exterior part also." (E.T.C.)

''23. यह कि जब से मैं देख रहा हूँ विवादित परिसर यानि बाहरी व भीतरी भाग में कभी किसी मुसलमान को नमाज पढ़ते नहीं देखा।''

"23. That since the time I have been observing things I never saw any Muslim offer namaz in the disputed premises, that is, in its exterior and interior parts." (E.T.C.)

''24. यह कि परिसर के बाहर ऋषियों की समाधियां थी।''

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"24. That there were tombs of seers outside the premises." (E.T.C.)

''25. यह कि विवादित परिसर के सामने पूर्व तरफ निर्मोही अखाड़े के साधू छोटे–छोटे मन्दिर बना रहते थे सीता कूप मन्दिर, रामलला मन्दिर आदि टिन शेड में थे। पूर्व व दक्षिण कोने पर मुख्य गेट से 200 या 250 फिट के फसले पर सीता कूप पवित्र कुंआ है जिसकी धार्मिक आस्था की मान्यता रही है।''

"25. That towards the east of and opposite to the disputed premises, seers of the Nirmohi Akhara had small temples constructed. The Sitakoop temple, the Ram Lala temple etc. were under a tin shed. On the east-southern corner and at the distance of 200 or 250 feet from the main gate there was a holy well called Sitakoop, which has been a seat of religious reverence." (E.T.C.)

''26. यह कि वर्ष 1949 फ़रवरी के पहले से ही जन्म भूमि मन्दिर के बाहर मैदान व कथा मन्डप में बराबर रामायण पाठ, धार्मिक प्रवचन होता था और बराबर भीड़ धार्मिक प्रवचन सुनने आती थी।''

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"26. That even before February 1949, there used to be Ramayana path (recitation of the Ramayana) and religious sermons in the field outside the Janam Bhumi temple and at the Katha Mandap, and people used to flow in to listen to religious sermons." (E.T.C.)

''28. यह कि वर्ष 1935 यानि जब से मैंने होश सम्भाला और विवादित परिसर में दर्शन करने जाने लगा तब से बराबर इन्तजाम व कब्जा निर्मोही अखाड़ों वालों का देखा, निर्मोही अखाड़ा एक पंचायती मठ है और धार्मिक संस्था व न्यास है मुझे–शिष्य बनने के बाद धीरे–धीरे उक्त अखाड़े व निर्वाणी–अखाड़ा जिसके अन्तर्गत हनुमानगढ़ी है, के रीति रिवाज के बारे में जानकारी हुयी।''

"28. That since 1935, that is, since the time I began to understand things and started going to the disputed premises to have darshan, I have consistently seen it in the

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management and possession of the Nirmohi Akhara men. The Nirmohi Akhara is a monastery modelled on a panchayat system and it is also a religious institution and trust. On becoming disciple I gradually came to be acquainted with rites and customs of the said Akhara and the Nirvani Akhara, which includes Hanumangarhi." (E.T.C.)

''28 ए. यह कि मैं शास्त्री परीक्षा पास हूँ और संस्कृत का ज्ञान है। बाल्मीकि रामायण, अध्यात्म रामायण, भागवत विष्णु पुराण आदि पढ़ा है। वैदिक साहित्य के आधार पर मैं राम को परब्रम्ह परमेश्वर आदि श्रेष्ठ मानता हूँ।''

"28 A. That I am a Shastri pass and have knowledge of Sanskrit. I have read Valmiki Ramayana, Adhyatma Ramayana, Bhagwat Vishnu Purana, etc.. On the basis of the Vedic literature I regard Rama as the Supreme Soul/Supreme Being etc" (E.T.C.).

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''29. यह कि भगवान राम महा विष्णु के अवतार हैं और भगवान राम इसी विवादित परिसर में गर्भ गृह में प्रकट हुए हैं इसलिए यह राम जन्मभूमि कहलाता है।''

"29. That Lord Rama was an embodiment of Maha-Vishnu and Lord Rama appeared in the sanctum sanctorum in this very disputed premises. Hence, it is called Ram Janam Bhumi." (E.T.C.)

''30. यह कि बैरागी सम्प्रदाय से मेरा तात्पर्य और सन्दर्भ मेरे बयान में श्री रामानन्दीय श्री वैष्णव बैरागी से है जिसका मैं भी साधू हूं।''

"30. That by the Bairagi sect I mean and refer to Sri Ramanandiya Sri Vaishnav Bairagi sect, which finds mention in my statement and of which I am also a saint." (E.T.C.)

''31. यह कि बाल्मीकि रामायण में बाल कान्ड सर्ग–5 अयोध्या निर्माण मनु द्वारा व सर्ग 15 श्लोक 27 से 34 तक में भगवान विष्णु द्वारा जन्म भूमि का तथा अवतार लेकर 11000 वर्षो तक रहने का आश्वासन देना पाया

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जाता है।''

"31. That in the fifth 'sarga' of Valmiki Ramayana's Baalkand we come across description of settling Ayodhya by Manu and in stanzas 27 to 34 of its 15th 'sarga' we find Lord Vishnu speaking of Janam Bhumi and giving an assurance to incarnate himself and to live for 11000 year." (E.T.C.)

''32. यह कि अध्यात्मक रामायण के अनुसार पूर्ण ब्रम्ह परमेश्वर राम है श्री ब्रम्हा विष्णु भगवान, शंकर भगवान श्रीराम के अंश हैं यही हमारे सम्प्रदाय के प्रर्वतक स्वामी रामानन्द का प्रतिपादित सिद्धान्त है।''

"32. That as per Adhyatma Ramayana, Rama is the Supreme Being and Sri Brahma, Lord Vishnu and Lord Shankara are partial incarnation of Sri Rama. This is the principal laid down by Swami Ramananda, proponent of our sect." (E.T.C.)

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''33. यह कि इन पुस्तकों का फोटो स्टेट कुछ विवरण सूची 1 से 8 तक का दाखिल कर रहा हूं जो मेरे ज्ञान का प्रमाण है जिसे मैं सही मानता हूँ।''

"33. That I am filing photostat copies of some details from these books vide lists 1 to 8 which are a proof of my knowledge and which I take to be true." (E.T.C.)

''34. यह कि ऐसे में ब्रम्ह भगवान श्रीराम की जन्म भूमि होने के कारण विवादित पूरा परिसर पूज्य है।''

"34. That such being the position and due to its being the birthplace of the Supreme Being Lord Rama, the whole of the disputed premises is revered." (E.T.C.)

378. DW 3/8, Pt. Shyam Sundar Mishra, aged about 90 years (vide his affidavit dated 30.01.2004). He was cross examined in the following manner:

(a) 12.02.2004- by Mahant Suresh Das, defendant no. 2/1 (Suit-4) and Suit-5 through Sri Madan Mohan Pandey,

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Advocate (p. 9-11)

(b) 12.02.2004- by Ramesh Chandra Tripathi, defendant no. 17 and Umesh Chandra Pandey, defendant no. 22 (Suit-4) through Sri Vireshwar Dwivedi, Advocate (p. 12-20)

(c) 12/13.02.2004- by plaintiffs (Suit-5) through Sri A.K. Pandey, Advocate (p. 20-30)

(d) 13/16/17.02.2004, 05/06.04.2004- by Sunni Central Board of Waqf, defendant no. 9 through Sri Zafaryab Jilani, Advocate (p. 30-85)

(e) 06/07.04.2004- by plaintiff no. 7 (Suit-4) and defendant no. 5 (Suit-5) Mohd Hashim through Sri Mustaq Ahmad Siddiqui, Advocate (p. 85-112)

(f) 08.04.2004- by defendant no. 11, Mohd. Faruk, through Sri Abdul Mannan, Advocate (p. 114-125)

(g) 08.04.2004- defendant no. 6/1 and 6/2 (Suit-3) through Sri Nadeem Siddiqui, Advocate, Brief Holder, Sri Irfan Ahmad, Advocate and defendant no. 9 (Suit-4), Mahmood Ahmad, through Sri Shakilurrhman Siddiqui, Advocate adopted the cross examination already done by Sri Abdul Mannan, Sri Zafaryab Jilani and Sri Mustaq Ahmad Siddiqui, Advocates (p. 125)

379. He is residing at Ayodhya since seven generations. His residence is less than 400 yards from the Ramjanambhumi Temple. He has studied up to middle school and by profession is Purohit. Since the age of 14 he has been visiting Ramjanambhumi Temple and thereat attending Nirmohi Akhara, practicing wrestling etc. The Akhara run by Mahant Ram Charan Das who was proficient in wrestling, horse riding, and military exercises. About the existence of idol inside the

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courtyard, management and ownership of Nirmohi Akhara prior to December, 1949, and 1934 riot, he has made statement in paras 5, 6, 7, 8, 9, 10, 11, 12, 14, 17, 18 and 19 of the affidavit as under:

''5. अयोध्या के पंचकोसी परिक्रमा मार्ग के पास मौजा शाहजहांपुर का दंगा जो बकरीद दंगे के नाम से मशहूर है वर्ष 1934 में घटित हुआ उस समय मेरी उम्र लगभग 18–19 वर्ष थी। मैं पूरा नवयुवक था। उसके दो–तीन साल पहले से ही मैं पुरोहिती पंडिताई का काम करने लगा था, इस सिलसिले में अयोध्या के प्रसिद्ध मंदिरों में आना–जाना मेरा बराबर रहता था और इस समय मैं मंदिर कनक भवन का पुरोहित खानदानी हूँ।''

''5. The riot of the year 1934, which is known as the Bakrid riot, broke out in village Shahjahanpur near the Panchkosi (distance of five kose, one kose being equal to two miles) circumambulation path in Ayodhya. At that time, I was aged about 18-19 years. I was a young man. I had entered into priest-ship about 2-3 years earlier to that. I used to visit the famous temples of Ayodhya in this connection and at present I am the family priest of the Kanak Bhawan temple.'' (E.T.C.)

''6. धार्मिक ब्राह्मण परिवार होने के कारण मैं रामजन्मभूमि मंदिर का दर्शन रोज करने जाता था। श्री राम जन्मभूमि मंदिर के सामने सीताकूप के पास अखाड़े में कुश्ती सीखने व लड़ने मैं सन् 1936 तक गया हूँ । इस अखाडा में मैं सुबह पांच बजे नियमित रूप से जाता रहा हूँ । यह अखाडा जन्म भूमि के गेट से सीता कूप कुंए के पास लगभग एक घंटा तक रहता था। उसके बाद दर्शन करते थे और घर चला जाता था। जहां अखाडा है वहां से मन्दिर जन्मभूमि का पूर्वी गेट दिखाई पड़ता है और अगर मन्दिर जन्मभूमि से कोई तेज आवाज से बोलेगा तो अखाड़े में खड़े व्यक्ति को सुनाई पड़ेगा। जब मैं सुबह सन् 1936 तक कुश्ती लड़ने जाता था तो इसी दरम्यान सूरज की किरण फूटती थी कोई अजान विवादित परिसर से कभी नहीं सुनी न उधर किसी मुसलमान को जाते हुए देखा और न किसी को नमाज पढ़ते देखा।''

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"6. On account of belonging to a religious Brahman family, I daily went to the Ramjanmbhumi temple to have 'Darshan' (offering prayer by sight). I had been to the arena near Sita Koop opposite Sri Ramjanmbhumi temple, till the year 1936 to practice wrestling. I regularly went to this arena at 5 AM. This arena existed for about an hour between the Janmbhumi gate and the Sita Koop well. After this, I used to have 'Darshan' and then returned home. The eastern gate of the Janmbhumi temple is visible from the arena and if somebody speaks in high pitch at the Janmbhumi temple, the same would be heard by a person standing in the arena. When I went to practice wrestling in the morning till the year 1936, the sun used to dawn in the said period but I never heard any Ajaan from the disputed premises nor saw any Muslim either go in that direction or offer Namaz." (E.T.C.)

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"7. सन् 1936 में अखाड़ा जाना जब छोड़ा तो मैं जन्मभूमि सायंकाल में जाता था क्योंकि सुबह के समय सरयू स्नान व पुरोहित का कार्य करना पड़ता था। सन् 1934 के गौ–कसी दंगा मौजा शाहजहॉपुर जालपा नाला से शुरू हुआ था और जिसके चपेट में कजियाना, टेढ़ी बाजार, दुराही कुआं, सुतहटी, कोठी घाट व कटरा आदि मुहल्ले थे। जहां मुसलमान काफी मारे गये और कुछ कबरें तोड़ी गयी थीं । उस समय भी अयोध्या में बहुत कम ही मुसलमान के घर थे और इस वाकये से मुसलमान काफी दहशत में थे और मंदिर से रामजन्मभूमि की सड़क तरफ तो जाना ही छोड दिये थे। ***सन् 1934 में ब्रिटिश सरकार ने टैक्स सिर्फ हिन्दुओं पर ही लगाया था जो दंगा कच्चे पक्के घर के लिहाज से लगाया गया था।"***

"7. In the year 1936, when I stopped going to the arena, I started going to the Janmbhumi in the evening because in morning I had to take holy dip in the Saryu and discharge duties of priest. The cow slaughter riot of the year 1934,

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broke out in village Shahjahanpur Jalpa Nala and it extended over Quaziyana, Tedhi Bazar, Durahi Kuan, Suthati, Kothi Ghat, Katra and other localities, where number of Muslims were killed and some graves were destroyed. At that time also, there were very few houses of Muslims in Ayodhya and they were under much terror due to this incident and almost stopped going towards the road of Sri Ramjanmbhumi temple. ***In the year 1934, the British Government imposed tax only over Hindus as per the brick made or earth made houses.*** *" (E.T.C.)*

*"8. सन् **1934 के दंगे में** मुसलमानों के घर तोड़े गये, कब्रें तोड़ी गयी **लेकिन विवादित परिसर का कोई भी भाग नहीं तोड़ा गया था** केवल थोड़ी बहुत दीवाले क्षतिग्रस्त हो गयी थीं।"*

"8. The houses of Muslims and graves were destroyed ***in the riot of year 1934, but no part of the disputed structure was destroyed*** *and only the walls were damaged a bit." (E.T.C.)*

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"9. मैं जब दर्शन करने सन् 1936 के बाद जाने लगा तो मेरे कुछ जजमान राम रक्षा स्त्रोत पाठ करने के लिए अनुष्ठान देते थे जो पाठ मैं रामजन्मभूमि परिसर में जाकर अक्सर किया करता था जिसमें लगभग दो घंटे लग जाया करते थे यह पाठ मैं अपने समयानुकूल सुबह सायंकाल को करता था।"

"9. After the year 1936 when I started going to have 'Darshan', few of my 'Jajman' (client) gave me the assignment of reciting 'Ram Raksha Stotra' and the said recitation was mostly carried out by me at the Ramjanmbhumi premises and used to consume about two hours. I used to do the said recitation as per my convenience in morning or evening." (E.T.C.)

"10. जबसे मैं रामजन्मभूमि परिसर में दर्शन व पाठ करने जा रहा हूँ तभी से मैनें किसी भी मुसलमान को विवादितर परिसर यानी बाहरी व भीतरी

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भाग में नमाज पढ़ते या अजान देते न देखा न सुना।''

'10. Since I have been going to the Ramjanmbhumi premises in connection with 'Darshan' and recitation, I have neither seen nor heard about any Muslim either offering Namaz or Ajaan in the inner and outer part of the disputed premises." (E.T.C.)

''11. भीतरी भाग के माने मैं समझता हूँ जो तीनों शिखर के नीचे गर्भगृह और उसके सामने खुला सेहन जो सीकचें की दीवार से घिरा है और सन् 1949 में कुर्क हुआ, 1949 में जो कुर्क हुआ है उसकी चौहद्दी व नाप मैं बता सकता हूँ।

गर्भगृह का भाग लगभग 35–36 फीट चौड़ा 95–96 फीट लम्बा होगा और सीखचे वाली सेंहन 25–26 फिट चौड़ी और 95–96 फीट लम्बी है। कुर्कशुदा भाग का कुल भाग पूर्व–पश्चिम लगभग 60–62 फीट उत्तर से दक्षिण लगभग 95–96 फीट है।''

'11. By inner part, I mean the 'Garbh-grih under the three domes and the open courtyard in front of it, covered by grill wall and which had been attached in the year 1949. I can give the boundary and dimensions of the area attached in the year 1949.

The 'Garbh-grih' was about 35-36 feet long and the grill bound courtyard was about 25-26 feet wide and 95-96 feet long. The east-west side of the attached portion was about 60-62 feet in north to 95-96 feet in south." (E.T.C.)

''12. दिसम्बर, 1949 की कुर्की के बाद रिसीवर बाबू प्रियादत्त राम (चेयरमैन) हुए। कुर्की होते ही सींकचे वाली लोहे के दो दरवाजा में पुलिस द्वारा ताला बन्द हुआ था लेकिन बाद में दर्शन सीकचे से बाहर से होता था और मैं दर्शन करता था और दर्शनार्थी ऐसे ही दर्शन करते थे उस दौरान मुझे कुर्कशुदा सम्पत्ति की चौहद्दी मालूम हो गयी जो मौके पर बराबर जाने के कारण पुलिस व रिसीवर के पुजारी से जाना व देखी थी।

<u>कुर्कशुदा जमीन की चौहद्दी</u>

पूरबः बाहरी हाता, जिसमें रामजन्मभूमि चबूतरा व भन्डार गृह, संत निवास

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पश्चिमः परिक्रमा बादहू ढाई फीट की मुरेड़ी

उत्तरः छठी पूजन, चरन–चिन्ह, जेरे इंतजाम निर्मोही अखाडा,

दक्षिणः दक्षिण–पश्चिम 8–10 फीट हाता बकब्जा निर्मोही अखाड़ा जिसके उत्तर पूरब रामचबूतरा मंदिर व शिव परिवार है तथा पश्चिम तरफ जानिब जमीन बाहरी भाग बाहर के तीन तरफ से दीवाल से घिरा है जो दीवाल 8–9 फीट ऊॅची है और लगभग डेढ़ फीट चौडी है इसी दीवाल में पूर्वी गेट है। इस दीवाल के अतिरिक्त उत्तरी दीवाल में गेट है पूर्वी गेट और उत्तरी गेट के अलावा बाहरी भाग या भीतरी भाग में आने जाने का और कोई रास्ता नहीं है। बाहरी भाग में राम मंदिर चबूतरा जिस पर सिंहासन लकड़ी का सिंहासन है और रामलला जी विराजमान हैं। चबूतरा साढ़े तीन फिट ऊंचा है लगभग 20–22 फिट लम्बा है और 16–17 फीट चौड़ा है। चबूतरे में दो गुफा मंदिर है। एक में कौशल्या जी काग–भुसुन्डी जी है और दूसरे में भरत जी हैं।

"12. After the attachment of December, 1949, Mr. Priyadutt Ram (Chairman) was appointed Receiver. After the attachment, the two iron rod gates were locked by the police but the 'Darshan' continued from outside the grill and I as well as the devotees used to have 'Darshan' in this manner. In that period of my regular visits to that place, I came to know the boundary of the attached property, which I had gathered from the police and priest of the Receiver.

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<u>Boundary of the attached land</u>

East: outer courtyard, including Ramjanmbhumi chabutara, store room, saints' accommodation etc., possession of Nirmohi Akhara.

West: 2 ½ feet 'Muredi' beyond the circumambulation path

North: Chhathi worship, foot marks, under management of Nirmohi Akhara,

South: 8-10 feet courtyard in south-west in possession of Nirmohi Akhara to the north-east of which was the

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Ramchabutara temple and Lord Shiva family and land towards west. The outer part is bounded by walls on three sides. The wall is about 8-9 feet high and about 1 ½ feet wide. The eastern gate is in this very wall. Apart from this wall, there is a gate in the northern wall. There is no other passage other than the eastern and northern gate to visit either the outer or inner part. The Ramchabutara is there in the outer part, where there is a wooden throne with Ramlala present. The Chabutara is 3 ½ feet high and about 20-22 feet long and 16-17 feet wide. There are two cave temples at the Chabutara. Kaushalya ji and Kaag-Bhusundi exist in one and Bharat ji in the other." (E.T.C.)

''14. उक्त भीतरी भाग व बाहरी भाग में पुजारी, मैंने अपने होश से निर्मोही अखाडा के केशव दास बलदेव दास व भाष्कर दास आदि जो निर्मोही अखाड़ा के तरफ से पूजारी थे, देखा है। कुर्की के पहले बलदेव दास जी व उनके चेला भाष्कर दास थे और भी अखाड़े के साधु भण्डार गृह संत निवास में रहते व कुछ अखाड़े के साधु, विवादित परिसर के पूर्वी गेट पर सीताकूप तक छोटे मंदिर बना रहते थे।''

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''14. Since attainment of maturity, I have seen Nirmohi Akhara's Keshav Das, Baldev Das, Bhaskar Das etc. act as priest on behalf of Nirmohi Akhara in the said inner and outer part. Prior to the attachment, it was Baldev Das and his disciple Bhaskar Das. Other saints of the Akhara used to live in the store room and saints' accommodation and few saints used to build small temples from the eastern gate of the disputed premises to Sita Koop and lived therein." (E.T.C.)

''17. भगवान राम लला व लखन लाल की मूर्ति मय सालिकराम भगवान चांदी के सिंहासन में रही है।''

''17. The idols of Lord Ramlala and Lakhanlal along with that of Lord Salikram, existed over the silver throne."

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(E.T.C.)

'18. यह कि उक्त ***भगवान रामलला का दर्शन*** *कुर्की* ***1949 दिसम्बर के पहले अंदर जा कर करता रहा और बाद कुर्की सींकचे वाले दरवाजा के बाहर से करता रहा हूँ*** *तथा दिसम्बर 1992 बाद भी तम्बू में विराजमान भगवान रामलला का दर्शन करता रहा जो सरकारी नियंत्रण व देखरेख में होता है।''*

''18. That ***prior to*** *the attachment of* ***December, 1949 I used to have 'Darshan' of Lord Ramlala from inside and thereafter from outside the grill gate*** *and even after December, 1992 I continued to have 'Darshan' of Lord Ramlala present in the tent, under Government control and supervision." (E.T.C.)*

''19. निर्मोही अखाडा के गोलकी राम लखन दास कुर्की के पहले से देखा और बाद में भी रामजन्मभूमि बाहरी भाग की व्यवस्था करने रामघाट मन्दिर निर्मोही अखाडा से रोज जाते थे।''

''19. I had seen Nirmohi Akhara's Golki Ramlakhan Das prior to the attachment and even subsequently when he daily went to manage the outer part of the Ramjanmbhumi from Ramghat temple Nirmohi Akhara." (E.T.C.)

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380. Averments in paras 20 and 21 are about the constitution of Nirmohi Akhara which shall be dealt with later on. In para 22 he said that the inside part of the disputed premises was never used as a mosque.

381. DW 3/9, Ram Asrey Yadav, aged about 72 years (as per his affidavit dated 22.03.2004), is resident of Mohalla Vashistha Kund Ayodhya, District Faizabad for several generations. His residence is about 300 yards from the disputed site. He was cross examined in the following manner :

(a) 22.03.2004- by Ramesh Chandra Tripathi, defendant no. 17 and Umesh Chandra Pandey, defendant no. 22 (Suit-4) through Sri Vireshwar Dwivedi, Advocate (p. 5-

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8)

(b) 22.11.2004- by Mahant Suresh Das, defendant no. 2/1 (Suit-4) through Sri Madan Mohan Pandey, Advocate (p. 9-13)

(c) 22.11.2004- by plaintiffs (Suit-5) through Sri A.K. Pandey, Advocate (p. 13-16)

(d) 22.11.2004- defendant no. 20 (Suit-4) through Km. Ranjana Ahnihotri, Advocate adopted the cross examination already done by Sri Vireshwar Dwivedi and Sri Madan Mohan Pandey, Advocates (p. 16)

(e) 22.11.2004- by defendant no. 11 Mohd. Faruk through Sri Abdul Mannan, Advocate (p. 16-24)

(f) 23/24.11.2004- by Sunni Central Board of Waqf, defendant no. 9 through Sri Zafaryab Jilani, Advocate (p. 24-48)

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(g) 24.11.2004- by plaintiff no. 7 (Suit-4) and defendant no. 5 (Suit-5) Mohd Hashim through Sri Mustaq Ahmad Siddiqui, Advocate (p. 48-60)

(h) 25.11.2004- defendant no. 6/1 and 6/2 (Suit-3) and defendant no. 26 (Suit-05) through Sri Nadeem Siddiqui, Advocate, Brief Holder, Sri Irfan Ahmad, Advocate and Sri Fazale Alam, Advocates adopted the cross examination already done by Sri Abdul Mannan, Sri Zafaryab Jilani and Sri Mustaq Ahmad Siddiqui, Advocates (p. 60-61)

382. He is a witness of facts, sought to prove the worship of Lord Ram at the disputed site (inside the courtyard) prior to 1949. In paras 2, 3, 4, 5, 6, 7, 8, 9, 10, 13, 14 and 16 of the affidavit, he said as under:

''2. 10–11 साल की उम्र में मैंने होश सम्भाला। मेरे पिता जी थे। पिता जी के साथ मैं जन्मभूमि दर्शन करने जाता था। थोड़ा और बड़ा होने

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12–13 साल की उम्र हो जाने पर मैं नित्य अपने और मित्रों के साथ व अकेले भी मैं जन्मभूमि दर्शन करने जाता रहा हूँ। मदन मोहन गोकुल भवन वाले, धनपत यादव, श्याम लाल मौर्या आदि के साथ भी जाता रहा हूं। इसमें मदन मोहन जीवित हैं श्याम लाल भी जीवित हैं और सब मर चुके हैं मदन मोहन जीवित हैं जो सीतापुर विसवां के मूल निवासी हैं तथा गोकुल भवन के महन्थ राम मंगल दास के भान्जे हैं। गोकुल भवन में बराबर आते जाते व रहते रहे हैं।''

''2. I attained understanding at the age of 10-11 years. My father was alive. I used to go to Janmbhumi along with my father to have darshan. After growing a bit older i.e. at the age of 12-13 years, I used to daily go to Janmbhumi along with my other friends or alone, to have darshan. I also went along with Madan Mohan of Gokul Bhawan, Dhanpat Yadav, Shyam Lal Maurya and others. Out of them Madan Mohan is alive, so is Shyam Lal and the others have all expired. Madan Mohan, who is native of Sitapur Viswan, is alive. He is the nephew of Mahant Ram Mangal Das of Gokul Bhawan. He regularly visits Gokul Bhawan.'' (E.T.C.)

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''3. मैं अपने घर से कभी कुबेर टीले की तरफ से पगडन्डी रास्ते से तथा कभी सड़क से राम जन्म भूमि मंदिर दर्शन करने जाता था। अब गैंग से जाता हूं। साक्षी गोपाल तिराहे पर दुराही कुआं हनुमान गढ़ी सड़क से साक्षी गोपाल मंदिर के सामने दक्षिण पश्चिम कोने को एक रास्ता जन्मभूमि मंदिर के पूर्वी गेट तक जाता था। और दूसरा एक रास्ता हनुमानगढ़ी– दुराही कुआं सड़क से दक्षिण सीढ़ी द्वारा था, जो हनुमान गढ़ी की सड़क साक्षी गोपाल तिराहे से दुराही कुआं चौराहे को सड़क ढालू होकर नीचे चली गई है और उसी ढाल पर सीढ़ी खुलती थी।''

''3. I used to go to have darshan of Ramjanmbhumi temple from my house via Kuber mound, sometimes by lane and sometimes by road. Now I go in gang. A road towards the south-west corner opposite Sakshi Gopal temple on the

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road from Durahi well Hanumangarhi at Sakshi Gopal tri-crossing, led to the eastern gate of Janmbhumi temple, and the other way was from south of Hanumangarhi-Durahi well road to the steps, which was on a slope from Sakshi Gopal tri-crossing to Durahi well crossing and the steps were at that very slope." (E.T.C.)

"4. विवादित परिसर के तीन तरफ ऊंची दीवाल करीब 9–10 फिट ऊंची और पश्चिम तरफ थोड़ा परिक्रमा छोड़ कर एक पुरानी मुड़ेरी ढाई–तीन फिट ऊंची दीवाल बनी थी। और उस दीवाल के पश्चिम पूरा ढलान था।"

"4. The disputed premises was bounded on three side by about 9-10 feet high walls and in the west besides a bit of circumambulation path, there was a 2 ½ – 3 feet high wall in form of an old parapet, and to the west of said wall was the slope." (E.T.C.)

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"5. विवादित परिसर का मुख्य द्वार पूरब तरफ था, मुख्य द्वार पर कोई दरवाजा नहीं था, कसौटी के खम्भे अगल बगल थे। द्वार पर थे, द्वार के जिस कसौटी खम्भे पर चित्र थे उस चित्र को हनुमान जी की मूर्ति कहते थे, जिसमें महावीरी लगायी जाती थी। कुम्भ कलश फूल पत्ती की चित्रकारी थी और उसे कसौटी खम्भों के उत्तरी खम्भों के सामने एक सिला पट लगा है। जिसमें अंक एक लिखा है, और श्री जन्म भूमि नित्य यात्रा लिखा है। अब भी वहीं हैं गैन्ग वे से दर्शन करने पर दिखाई देता है। देवनागरी में तथा अंग्रेजी में जन्मभूमि लिखा है। जो मेरे बचपन से बराबर कायम चले आ रहे हैं पूरा परिसर विवादित परिसर का बाहरी भाग जो हाते से घिरा है, में पूरब के गेट से घुसने पर बांये राम चबूतरा मंदिर था और उस चबूतरे के पूरब दक्षिण कोने पर हाते के अन्दर ही पीपल के पेड़ के नीचे चबूतरे पर षष्ठ मुंखी शंकर जी, गणेश जी, पार्वती जी, नन्देश्वर जी की पाषाण विग्रह थी, शंकर जी का अर्धा था और उत्तर वाले गेट में दरवाजा था, जो दरवाजा मेला, मेला में दर्शनार्थियों की भीड़ बढ़ने पर खोल दिया जाता था। ज्यादातर लोग पूर्वी वाले गेट से आते जाते थें बाहरी भाग में उत्तर तरफ छठी पूजा स्थल जिसमें भगवान राम के चारों भाई चरण चिन्ह चौका बेलना चूल्हा था, जो पूज्य स्थल माना जाता रहा है जिसकी पूजा होती थी। सभी

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उपरोक्त धार्मिक स्थलों की भक्तगण पूजा–दर्शन करते थे मैं भी करता था।''

''5. The main gate of the disputed premises was in east. There was no door in the main gate. There were touchstone pillars on side of the gate. The picture over the touchstone pillar, was called the idol of Hanuman ji. There was painting of pot, pitcher, flower, leaf. Opposite the northern touchstone pillar, was a stone slab with figure 1 and 'Sri RamJanmbhumi Nitya Yatra' engraved over it. It is still there, and is visible at time of having darshan from gang way. Janmbhumi has been inscribed in Devnagari and English, and the same has continued since my childhood. On entering the outer part of the disputed premises bounded by courtyard, through the eastern gate, falls the Ram Chabutara temple and to the south-east corner of said Chabutara, were the stone deities of six faced Shankar ji, Ganesh Ji, Parvati Ji, Nandeshwar Ji and Argha of Shankar Ji below the Pipal tree inside the courtyard. There was a door in the northern gate, which was opened during fair, on increase in the number of devotees on the occasion of fairs. Most of the people used to enter through the eastern gate. There was Chathi worship place in the outer part, which had all four brothers of Lord Rama, foot marks, chauka-belana, stove and the same was considered to be a revered place. The devotees used to offer prayer-worship at all the aforesaid religious places and I also used to do the same.'' (E.T.C.)

''6. बाहरी भाग में स्थित धार्मिक स्थलों को बाहर व दूर दराज से आते दर्शनार्थी द्रव्य, मिष्ठान, पुष्प, फल इत्यादि चढ़ाते थे। इन सब धार्मिक स्थलों की पूजा आरती करने के लिए निर्मोही अखाड़ा की तरफ से पंच पुजारी व साधू रहते थे। जिनके रहने का स्थान पूरब गेट के दाहिने उत्तर

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तरफ सन्त निवास बना था उसी के साथ भगवान का प्रसाद बनाने के लिये भण्डार गृह था। और वहीं प्रसाद निर्मोही अखाड़ा के साधू जो वहां रहते थे, प्रसाद पाते रहे। निर्मोही अखाड़ा के मुख्य पुजारी महन्त बलदेव दास जी थे उनके शिष्य भास्कर दास हैं जिन्हें 1946 से देखा था। कई पुजारी सहयोग देने के लिये आते जाते थे जिनका नाम कुछ याद हैं जैसे राम सुभग दास शास्त्री रहे जो कटरा में राम महल मंदिर के महन्त हैं। इन्हें भी कुर्की के पहले वहां देखा था। उस समय निर्मोही अखाडा के महन्त रघुनाथ दास जी व गोलकी राम लखन दास जी थे। ये बाहरी भाग निर्मोही अखाड़े के कब्जे में सतत रूप से बहुत दिनों से चला आ रहा है। भीतरी भाग गर्भगृह मंदिर यानि जो तीन शिखर बना है उसके नीचे व बीच वाले शिखर के नीचे भगवान रामलला विराजमान हैं। अष्ट धातु के और उनके साथ लक्ष्मण जी हनुमान जी और सालिकराम भगवान हैं। भीतरी भाग 1949 दिसम्बर आखिर में कुर्क हुआ था, जानता हूं।''

''6. The devotees coming from outside and distant places, used to offer money, sweets, flowers, fruits etc. at the religious places situated in the outer part. The Nirmohi Akhara had its Panch, priest and saints to perform worship, Arti at all these religious places, and they used to live in the saints' accommodation in right north of the eastern gate. Along with it, was the store room for preparation of Prasad and the same Prasad was received by the saints of Nirmohi Akhara, who lived there. Mahant Baldev Das was the main priest of Nirmohi Akhara and Bhaskar Das was his disciple, whom I had seen from the year 1946. Many priests used to come to offer assistance and I remember the names of few viz. Ram Subhag Das Shastri, who was the Mahant of Ram Mahal temple at Katra. I had seen him also over there, prior to the attachment. At that time, Raghunath Das and Ramlakhan Das of Nirmohi Akhara were the Mahant and Golki respectively. This outer part has continuously been in

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possession of Nirmohi Akhara for long. Lord Ramlala of Ashtadhatu (of eight metals)is present under the central dome of the three dome structure i.e. the Garbh-grih temple in the inner part. Along with Him, are Laxman Ji, Hanuman Ji and Salik Ram. I know that the inner part was attached in last of December, 1949." (E.T.C.)

"7. ***भीतरी भाग गर्भगृह का भी पिता जी के साथ दर्शन किया है और फिर स्वयं भी दर्शन करने जाता था।*** *वहां पर भी भगवान की पूजा आरती व भोग–राग की निर्मोही अखाड़े के पुजारी ही व्यवस्था करते थे। मैं आरती के समय भी दर्शन करने पहुंचा हूं।"*

"7. ***I also had the darshan of the inner part Garbh-grih, along with my father and thereafter, I also went to have darshan alone.*** *There also, the worship, arti, bhog-raag of Lord were managed by the priests of Nirmohi Akhara. I have been there even at time of arti to have darshan." (E.T.C.)*

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"8. अयोध्या से बाहर से आने वाले दर्शनार्थी श्रीरामजन्मभूमि में जो दर्शन करने यात्री आते थे, उसमें से कार्तिक, अगहन, चैत्र में पुजारी के माध्यम से नवाह पाठ होता भण्डारा कराते थे। और पूरा परिसर निर्मोही अखाड़े के कब्जे में जब से होश संभाला देखता चला आ रहा हूं। ***भीतरी भाग कुर्की 1949 दिसम्बर के पहले तक निर्मोही अखाड़ा में व्यवस्था व कब्जे में थी।"***

"8. The devotees coming from outside Ayodhya to have darshan of Sri Ramjanmbhumi, used to have holy orations, bhandara (free food to masses out of religious faith) in the months of Kartika, Aghan, Chaitra. Since I attained understanding, I have found the Nirmohi Akhara to be in possession over the entire premises. ***Prior to December, 1949 the inner part was also under the management and possession of Nirmohi Akhara."*** *(E.T.C.)*

"9. फूल बताशा आदि बेचने वाले दूकानदार दौरी (टोकरी) में रखकर

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बेचते थे। बाद में दूकान भी कायम हो गई यही नहीं मंदिर के पूरब व दक्षिण कोने पर कुआं है जिसकी मान्यता अयोध्या हिन्दू समाज में बहुत है कि सब तीर्थों का जल भगवान राम के राज्याभिषेक के लिये आया। बनवास हो जाने पर वही जल सीताकूप में संग्रहित कर दिये गये उस सीता कूप के पवित्र जल पिलाने के लिये एक ब्राम्हण रहता था। जो निर्मोही अखाड़े के तरफ से रहता था।''

"9. The shopkeepers selling flower, sweet etc., used to sell them in a basket. Later on a shop was set up. There is a well in south-east corner in the temple, and it is the belief of Hindu community of Ayodhya that the water of all pilgrimages was brought here on the occasion of enthronement of Lord Rama. After the exile, the same water was collected in the Sitakoop. A Brahman was deputed on behalf of Nirmohi Akhara to administer holy water of Sitakoop." (E.T.C.)

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''10. ***22/23 दिसम्बर के पहले भी मैं गर्भगृह दर्शन के लिये गया था।*** *पौष का महीना था उसके दो महीना पहले ही कार्तिक व अगहन में दर्शनार्थियों की भीड़ थी।* ***22/23 दिसम्बर को गर्भगृह भाग में मूर्ति रखना एकदम गलत बात है।*** *कुछ मुकामी मुसलमानों ने झूठा हल्ला व दबाव शासन पर बनाकर झूठी फर्जी कार्यवाही करा दिया।* ***मेरे पिता जी व मेरे चाचा ने 1934 के हिन्दू–मुस्लिम दंगे जो गोकशी काण्ड के कारण हुआ था, के बारे में बताया था।*** *इस दंगा से मुसलमान मारे गये थें और कुछ कब्रें तोड़ी गई थी लेकिन विवादित परिसर मंदिर होने के कारण क्षतिग्रस्त नहीं हुआ। हर हिन्दू पर जुर्माना हिन्दू दंगा टैक्स लगा था। मुसलमान दंगे के कारण दहशत में आ गये थे।* ***मेरे पिता जी व मेरे चाचा ने बताया था*** *कि उस दंगे के दहशत के कारण राम जन्मभूमि के बगल की सड़क से भी नहीं जाते थे। विवादित भवन या परिसर में नमाज पढ़ने का कोई प्रश्न ही नहीं है और* ***मेरे चाचा ने यह भी बताया था कि विवादित परिसर के आस–पास किसी मुसलमान ने कोई मुर्दा भी दफन नहीं किया।***''

"10. ***I had gone to the Garbh-grih to have darshan even***

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before 22/23 December. *It was the month of Paush. There was a huge gathering of devotees two months earlier in the months of Kartika and Aghan.* ***It is totally incorrect that the idol was placed in the Garbh-grih on 22/23 December***. *Few local Muslims made a false issue out of it and got a farzi proceeding initiated by exerting pressure over the government.* ***My father and uncle had told me about the Hindu-Muslim riot of the year 1934, which had broken out on account of cow slaughter***. *Muslims were killed and graves demolished in this riot, but the disputed temple premises were not damaged. Hindu riot tax was imposed over all the Hindus. The Muslims were in terror due to this riot.* ***My father and uncle had told me*** *that on account of terror of said riot, they did not even pass through the road adjacent to Ramjanmbhumi. There is no question at all of Namaz being offered in the disputed structure or premises.* ***My uncle had also told me that no Muslim buried any dead body near the disputed premises***.*" (E.T.C.)*

"13. भीतर वाले भाग में भी कसौटी के खम्भे थे और उसमें देव कन्या त्रिभंगा रूप की मूर्ति बनी है। कुछ यक्ष की मूर्ति भी बनी थी कलश भी बना था मोर की आकृति थी। जो कसौटी पत्थरों में मैंने देखा था।"

"13.. There were touchstone pillars in the inner part with Tribhanga (having three bends or angles)idol of nymphs over it. There were few idols of Yaksha (Hindu demigods) and pitcher and peacock. I had seen them over the touchstone." (E.T.C.)

"14. उत्तरी गेट में ऊपर बाघ और मोर की आकृति बनी थी, गेट के पूर्वी दीवाल के बाहर बाराह भगवान की मूर्ति बनी थी तथा परिक्रमा करते समय दर्शनार्थी वहां पर भी माथा टेकते थे।"

"14. The figures of tiger and peacock were there at the

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northern gate. The idol of God Varah was there at the eastern wall of the gate and at time of performing the circumambulation, the devotees used to pay their reverence over there." (E.T.C.)

"16. मैं हनुमान गढ़ी मंदिर जो अयोध्या में मोहल्ला रामकोट में ही स्थित है में विराजमान हनुमान जी महराज का भी दर्शन करने जाता रहा हूं। मुझे अयोध्या में रहते–रहते जानकारी है कि हनुमानगढ़ी मंदिर की व्यवस्था निर्वाणी अखाड़ा के पंच साधू वैरागी पंचायती ढंग से करते हैं बैरागी सम्प्रदाय के ही सात अखाड़े अयोध्या में रहे हैं, जिसमें निर्वाणी अखाड़ा के अन्तर्गत हनुमानगढ़ी व वहीं पर ठा0 राम जानकी व नृसिंह मंदिर व कई मंदिर वाकै हैं तथा कपिल मुनि गंगा सागर चौबीस परगना बेस्ट बंगाल का मंदिर है ***निर्मोही अखाड़ा के अन्तर्गत प्रसिद्धि राम जन्म भूमि मंदिर है जिसकी मान्यता हिन्दू समाज भगवान राम की जन्म स्थली होने के कारण असीम व बहुत ज्यादा है*** *राम मंदिर तो अयोध्या व अन्यत्र बहुत है परन्तु* ***श्री राम जन्म भूमि तो एक यही विवादित स्थल है*** *इसलिये हिन्दू जनमानस में इसका महत्व बहुत ज्यादा है। मैं भी बहुत आस्था रखता हूं। निर्मोही अखाड़ा अयोध्या की बैठक राम घाट विजय राघव मंदिर है। जन्म भूमि के पास ही उक्त अखाड़े के पंचों के मंदिर सुमित्रा भवन रामलला मंदिर सीता कूप मंदिर आदि रहे हैं जो 1991 में उत्तर प्रदेश सरकार के अधिग्रहण में गिराये गये। अखाड़े का सम्बन्धित मंदिर नाका हनुमानगढ़ी रत्नसिंहासन लवकुश मंदिर, राम गुलेला आदि भी रहे हैं।"*

"16. I have also been going to the Hanumangarhi temple situated at Mohalla-Ramkot in Ayodhya, to have darshan of Hanuman Ji present over there. On account of my abode in Ayodhya, I have come to know that the management of Hanumangarhi temple was carried out by the Panch, saints, recluses of Nirvani Akhara as per the Panchayat custom. There have been seven Akharas of recluse sect in Ayodhya, out of which the Nirvani Akhara was in control of Hanumangarhi and Tha. Ramjanki, Narsingh and many

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other temples situated over there. The Kapil Muni Gangasagar is temple of Chaubis Pargana West Bengal. ***The famous Ramjanmbhumi temple is under the Nirmohi Akhara, which has immense importance for the Hindu society*** *on the ground of same being the birthplace of Lord Rama. There are many Rama temples in Ayodhya and elsewhere but* ***there is only one Ramjanmbhumi****, the disputed site, and as such it has immense importance for the Hindus. I also have much faith in it. The place of sitting of Nirmohi Akhara, Ayodhya is Ramghat Vijay Raghav temple. The Sumitra Bhawan, Ramlala temple and Sitakoop temple of the Panchas of the aforesaid Akharas, have been situated around the Janmbhumi, which were demolished in the acquisition by Uttar Pradesh Government in the year 1991. The Naka Hanumangarhi, Ratnasinghasan, Luvkush, Ramgulela temples have all been associated with the Akharas." (E.T.C.)*

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383. Regarding the possession of Nirmohi Akhara (plaintiff Suit-3) in paras 18 and 19, (DW 3/9) said:

''18. निर्मोही अखाड़ा ही भगवान राम लला विराजमान गर्भगृह मंदिर राम जन्मभूमि व बाहरी राम चबूतरा मंदिर पर विराजमान रामलला व छट्ठी पूजा स्थल शिव दरबार आदि धर्मस्थलों की व्यवस्था व कब्जा निर्मोही अखाड़ा का है जिसकी व्यवस्था निर्मोही अखाड़ा के पंच व महन्त करते है। ऐसा मैंने होश से बराबर कुर्की तक देखा है।''

''18. It is the Nirmohi Akhara, which has been in management and possession of religious places viz. Lord Ramlala present Garbh-grih temple, Ramjanmbhumi, outer Ramchabutara temple with Lord Ramlala present, Chhathi worship place, Shiv Darbar etc. and its management is carried out by Panch and Mahant of Nirmohi Akhara. I have seen so continuously from my attaining maturity to

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the attachment." (E.T.C.)

"19. 1949 में अखाड़े के महन्थ रघुनाथ दास थे देखा था, उसके बाद आज कल मं0 जगन्नाथ दास महन्थ है तथा मं0 भाष्कर दास सरपंच है जो हनुमानगढ़ी नाका के महन्थ हैं।"

"19. Raghunath Das was the Mahant of the Akhara in the year 1949, (I) had seen it. Thereafter, it is M. Jagannath Das, who is the Mahant these days. M. Bhaskar Das is the sarpanch and also the Mahant of Hanumangarhi Naka." (E.T.C.)

384. DW 3/9 also deposed about the continuous possession of Nirmohi Akhara, of the entire premises in dispute, non observance of any Namaz therein and in paras 12, 20 and 21, said as under:

"12. कुर्की भीतर वाले भाग की हुयी। कुर्की के बाद भी मैंने दर्शन किये। बाहर के भाग पहले से ही स्वतः कायम रहा व निर्मोही अखाड़े के अंतजाम में रहा ओर 1982 की कुर्की तक कायम रहा। 1982 से वही रिसीवर जो भीतर वाले भाग के थे बाहर वाले भाग के हो गये। पूरा परिसर हिन्दुओं का पवित्र राम जन्म भूमि मंदिर है जब से मैंने होश सम्भाला किसी भी मुसलमान को नमाज पढ़ते नहीं देखा।"

"12. The attachment took place in respect of the inner part. I had the darshan even after the attachment. The outer part continued as earlier and remained under management of Nirmohi Akhara which continued till the attachment of 1982. From the year 1982, the same Receiver of the inner part became the Receiver of the outer part as well. The entire premises is sacred Ramjanmbhumi temple of Hindus. Since I attained understanding, I never saw any Muslim offer Namaz over there." (E.T.C.)

"20. अपने होश से जब से मैं विवादित परिसर राम जन्मभूमि मंदिर दर्शन करने लगा, मंदिर ही देखता हूं। कभी नमाज पढ़ते किसी मुसलमान को नहीं देखा।"

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"20. From the age of my understanding, I have found the temple existing at the disputed premises whenever I went to have darshan of Ramjanmbhumi temple. I never saw any Muslim offer Namaz." (E.T.C.)

"21. ढांचा यानी विवादित परिसर 6 दिसम्बर 1992 को गिराये जाने के पूर्व से मेरे होश से पूर्वी गेट मंदिर श्रीराम जन्मभूमि हनुमत द्वार के बाहर गेट के राम जन्म भूमि शिलापट के बगल बाहर दीवाल परिसर से सटे पूर्व धनपत यादव की दूकान बताशा, इलायची दाना, मिष्ठान आदि की रही है जो निर्मोही अखाड़ा अयोध्या के किरायेदार थे धनपत यादव की मृत्यु अरसा 8/10 साल हुई उनके पुत्र सीताराम यादव है जीवित हैं जो कि दुकान पर बचपन से रहते थें उसके पहले उसी स्थान पर माता प्रसाद जिन्हें मतई भी कहते थे निर्मोही अखाड़ा की तरफ से दूकान मिष्ठान प्रसाद की करते थे।"

"21. Prior to demolition of the structure i.e. the disputed structure on 6th December, 1992, there existed the sweet (Batasha, ilaichi dana, misthan) shop of Dhanpat Yadav adjacent to the wall near the stone slab at the gate outside the eastern gate of Sri Ramjanmbhumi viz. the Hanumatdwar, who was tenant of Nirmohi Akhara, Ayodhya. Dhanpat Yadav expired about 8/10 years ago. His son Sitaram Yadav is alive, who used to sit at the shop from his childhood. Earlier Mata Prasad, who was also known as Matai, used to run a sweet shop at that very place on behalf of Nirmohi Akhara." (E.T.C.)

385. D.W. 3/11, Bhanu Pratap Singh son of Sri Ram Raj Singh, resident of village Haliyapur, District Sultanpur is aged about 70 years (as per his affidavit dated 28.4.2004). He was cross examined in the following manner :

(a) 28.04.2004- by Ramesh Chandra Tripathi, defendant no. 17 and Umesh Chandra Pandey, defendant no. 22 (Suit-4) through Sri Vireshwar Dwivedi, Advocate (p. 4-

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(b) 28.04.2004- by Mahant Suresh Das, defendant no. 2/1 (Suit-4) and Suit-5 through Sri Madan Mohan Pandey, Advocate (p. 7-13)

(c) 28.04.2004- by plaintiffs (Suit-5) through Sri A.K. Pandey, Advocate (p. 13-16)

(d) 29.04.2004- by defendant no. 20 (Suit-4) through Km. Ranjana Agnihotri, Advocate (p. 17-19)

(e) 29.04.2004- by defendant no. 11, Mohd. Faruk through Sri Abdul Mannan, Advocate (p. 19-28)

(f) 29/30.04.2004, 06/07/10/12.05.2004- by Sunni Central Board of Waqf, defendant no. 9, through Sri Zafaryab Jilani, Advocate (p. 28-89)

(g) 12/13.05.2004- by plaintiff no. 7 (Suit-4) and defendant no. 5 (Suit-5) Mohd Hashim through Sri Mustaq Ahmad Siddiqui, Advocate (p. 90-108)

(h) 13.05.2004- defendants no. 6/1 and 6/2 through Sri Fazale Alam, Advocate adopted cross examination already done by Sri Abdul Mannan, Sri Zafaryab Jilani and Sri Mustaq Ahmad Siddiqui, Advocates (p. 108)

386. He is disciple of Nirmohi Akhara, imparted Guru Mantra by Mahant Dinendra Das Mathia Mahant. His grandfather was a religious person, used to visit Ayodhya every year during Ramnavami and Sawan festival, who died in 1965. He visited Ayodhya along with his grandfather since the age of 10 and had Darshan at different temples namely, Ramjanambhumi, Hanuman Garhi, Kanak Bhawan, Chhota Chhavani, Bara Chhavani, Nageshwar Nath Mandir etc. About Darshan at the inner courtyard, placement of idols therein, possession and ownership of the disputed property by Nirmohi Akhara, he said

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in paragraphs 7, 8, 9, 10, 12, 13 and 14 of the affidavit as under :

''7. शुरू से ही उक्त रामजन्मभूमि मन्दिर के बारे में मुझे जानकारी अपने पितामह से मिली कि भगवान राम जो हमारे परिवार के इष्ट देव हैं का जन्म व अवतार लेना इसी भूमि में हुआ है बाद में मैंने स्वयं साधू सन्त व अपने गुरू महाराज से बात उपरोक्त जानी है और अयोध्या में रामकथा जहॉ कहीं भी मैंने सुनी है उन कथावाचकों से भी मैंने यह बात जानी है।''

"7. From the very beginning I gathered knowledge about said Ramjanmbhumi temple from my grandfather that Lord Rama was the 'ishtdev' of our family and He had incarnated at this very place. Subsequently, I heard the same things from my Guru and also from the narrators of Ramkatha in Ayodhya." (E.T.C.)

''8. मुख्य मन्दिर रामजन्मभूमि के पूरब मुख्य द्वार है जिसके अन्दर घुसने पर दक्षिण तरफ रामचबूतरा मन्दिर है तथा उत्तर तरफ सन्त निवास व निर्मोही अखाडा के साधुओं के रहने के लिए तथा भण्डार गृह है जिसे मैं शुरू से देख रहा हूॅ बाहरी सहन यानि जो चाहर दीवारी से घिरा था उत्तरी दरवाजा है। उत्तरी दरवाजे से पूरब जाकर उत्तर तरफ सीढ़ी बनी थी उत्तर वाली यही सड़क हनुमानगढ़ी चौराहे तक चली जाती रही है। उत्तरी तरफ छट्ठी पूजन स्थल, चार चरण चिन्ह–चकला बेलना चूल्हा शुरू से देखता चला आ रहा हूॅ।''

"8. The main gate is to the east of main Ramjanmbhumi temple, and after entering through it, lies the Ramchabutara temple in the south and the saints' accommodation and store room in the north for the residence of saints of Nirmohi Akhara, which have been witnessed by me since beginning. The northern gate is in the outer courtyard i.e. which was bounded by boundary. There was staircase in north after going eastwards on entry through the northern gate. This northern road leads to Hanumangarhi crossing. I have been seeing the Chhathi

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worship place, four footmarks, chakla-belna-stove, from beginning." (E.T.C.)

"9. ***रामचबूतरा मन्दिर में*** *काठ का सिंहासन रहा है जिसमें चांदी व सोने के फेरे लगे थे जिस पर* ***भगवान रामलला का बाल स्वरूप मूर्ति विराजमान थी तीनों भाइयों की मूर्तियां थी, हनुमान जी व सालिगराम भगवान भी वहॉ थे।"***

"9. There was a wooden throne ***in the Ramchabutara temple****, which had rings of silver and gold, over which the* ***child form idol of Lord Ramlala was present and the idols of the three brothers, Hanuman ji and Salikram were also present over there."*** *(E.T.C.)*

"10. रामचबूतरा मन्दिर साढ़े तीन फुट ऊॅचा था इसलिए पूरब व पश्चिम तरफ चौकोर गुफा बनी थी जिसमें कौशल्या जी की गोद में भगवान राम तथा एक तरफ भरत जी की डेढ़ से दो फुट उॅची मूर्ति थी मुझे यह मालूम है कि यह रामकोट मोहल्ला कहलाता है जहॉ श्री रामजन्मभूमि स्थित है, मैं बी.ए. पास हूॅ मुझे यह सन्तों व गुरूघराना के गुरू व पिता जी से यह मालूम है कि अयोध्या में रामानन्दीय सम्प्रदाय के ज्यादातर मन्दिर हैं निर्मोही अखाड़ा भी रामानन्दीय सम्प्रदाय का मन्दिर है।"

"10. The Ramchabutara temple was 3½ feet tall. There was square cave in its east and west, in one of which was the idol of Kaushalya ji with Lord Rama in her lap and 1½ – 2 feet tall idol of Bharat ji in the other. I know that it is called Ramkot Mohalla, where Sri Ramjanmbhumi is located. I am a graduate. I know from saints, Guru and my father that most of the temples in Ayodhya are of Ramanand sect. Nirmohi Akhara is also temple of Ramanand sect." (E.T.C.)

"12. जब से मैंने होश सम्हाला तब से उक्त मन्दिर रामजन्मभूमि में बराबर पूजा पाठ उत्सव समैया आरती व प्रसाद वितरण जब–जब मैं दर्शन करने गया तब–तब देखा हूॅ वहॉ के साधु व पुजारी निर्मोही अखाड़ा के अन्तर्गत है और उन्हीं का कब्जा बराबर देखता रहा हूॅ।"

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"12: Since I gained sense and went to the said Ramjanmbhumi temple to have 'darshan', I found that the worship, ceremony, arti and distribution of prasad was all under the saints and priests of Nirmohi Akhara and I have always found them to be in possession." (E.T.C.)

"13. भीतर वाले भाग को भी मैं जानता हूँ जो तीन शिखर लेकर सीखचों के अन्दर है और जिसे मैंने देखा है यह मुझे सन् 1950 ई0 में मालूम हुआ कि गुम्बद वाला भाग कुर्क हो गया और ताला बन्द हो गया है, सींखचों के फाटक से भगवान राम लला का दर्शन होता है।"

"13. I know the inner part as well, which is within the grill from the three domes and it has been seen by me. I know this from the year 1950 that dome portion had been attached and had been locked and that the 'darshan' of Lord Ramlala was had from the grill gate." (E.T.C.)

"14. ***अन्दर वाला भाग 1949 के पहले मैं अन्दर तक दर्शन करने भगवान रामलला का करने जाता था*** *तब भगवान राम लला कभी काठ के झूले पर या कभी ऊंची सीढ़ी वाली जगह पर विराजमान मिले। अन्दर पूजा पाठ निर्मोही अखाडा के साधू व पुजारी करते थे। जिनमें से म0 भाष्कर दास को पहचानता हूँ जो नाका हनुमानगढ़ी के महन्त हैं। कुर्की के तीन चार साल पहले से उन्हें वहॉ देखा है । कुर्की 1949 दिसम्बर में हुयी।"*

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"14: ***Prior to the year 1949, I used to go inside the inner part to have 'darshan' of Lord Ramlala****, when sometimes Lord Ramlala was found over the wooden swing and sometimes at the place over the elevated step. The worship in the inner part was carried out by saints and priests of Nirmohi Akhara, out of whom I recognize M. Bhaskar Das, who is the Mahant of Naka Hanumangarhi. I have seen him there from about 3-4 years prior to the attachment. The attachment took place in December, 1949." (E.T.C.)*

387. In para 16 DW 3/11 has said that since the date he attained

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the age of understanding, has never seen any Muslim offering Namaz in the premises of Ramjanambhumi :

> *''16. 1992 दिसम्बर में पूरा ढॉचा गिरा दिया गया लेकिन तम्बू में भगवान रामलला विराजमान हैं जिनकी पूजा सरकारी नियंत्रण में होती है। जब से होश सम्भाला तब से रामजन्मभूमि परिसर में कभी किसी मुसलमान को नमाज पढ़ते नहीं देखा।''*
>
> *"16: The entire structure was demolished in December, 1992 but Lord Ramlala is present in tent and His worship is carried out under government control. Since I gained sense, I have never seen any Muslim offer Namaz at the Ramjanmbhumi premises." (E.T.C.)*

388. In paras 10 and 11, he has said about the status of Nirmohi Akhara, which we shall deal separately while discussing Issue No. 17 (Suit-3).

389. DW 3/12, Ram Akshaibar Pandey is aged about 70 years (as per affidavit dated 24.05.2004). He was cross examined in the following manner:

(a) 24.05.2004- by Ramesh Chandra Tripathi, defendant no. 17 and Umesh Chandra Pandey, defendant no. 22 (Suit-4) through Sri Vireshwar Dwivedi, Advocate (p. 4-9)

(b) 24.05.2004- Mahant Suresh Das, defendant no. 2/1 (Suit-4) through Sri Madan Mohan Pandey, Advocate adopted the cross examination already done by Sri Vireshwar Dwivedi, Advocate (p. 9)

(c) 24.05.2004- by plaintiff (Suit-5) through Sri A.K. Pandey, Advocate (p. 10-15)

(d) 24.05.2004- plaintiff (Suit-1) through Sri P.L. Mishra, Advocate adopted the cross examination already done by plaintiffs (Suit-5) through Sri A.K. Pandey, Advocate (p. 15)

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(e) 24.05.2004- by defendant no. 20, Akhil Bhartiya Sri Ram Janma Bhumi Punarudhar Samiti through Km. Ranjana Agnihotri, Advocate (p. 14- 16)

(f) 24/25/26.05.2004- by defendant no. 11, Mohd. Faruk, through Sri Abdul Mannan, Advocate (p. 17-34)

(g) 26/27.05.2004, 01.07.2004- by Sunni Central Board of Waqf, defendant no. 11 through Sri Zafaryab Jilani, Advocate (p. 34-73)

(h) 01/02.07.2004- by plaintiff no. 7 (Suit-4) and defendant no. 5 (Suit-5) Mohd Hashim through Sri Mustaq Ahmad Siddiqui, Advocate (p. 73-89)

(i) 02.07.2004- defendants no. 6/1 and 6/2 (Suit-5) through Sri Fazale Alam, Advocate adopted cross examination already done by Sri Abdul Mannan, Sri Zafaryab Jilani and Sri Mustaq Ahmad Siddiqui, Advocates (p. 89)

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390. He attained age of understanding at 12 and since then has been visiting Ayodhya alongwith his grandfather, Shiv Ram Pandey. He is resident of Mohalla Ramapur Bhagahi, Pargana Nawabganj, Tahsil Tarabganj, District Gonda. His grandfather had studied up to Madhyama, knew Sanskrit, possess knowledge of religious books and used to visit various temples at Ayodhya. His village is about three and half Kos from Ayodhya. He said that the country attained independence from Britishers on 15.08.1947. He was visiting Ayodhya and worshiping the temples thereat after taking bath at river Saryu since one year earlier thereto. About details of his visit at Ayodhya, Ramjanamboomi Temple (disputed premises), outside and inside courtyard, existence of temple inside courtyard, its management and ownership with Nirmohi Akhara, he said in

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paras 6, 7, 8, 9, 12, 13, 14, 15, 16 and 17 of the affidavit as under:

''6. मैं अयोध्या जब आया अपने बाबा के साथ तो बराबर मंदिर हनुमान गढ़ी व प्रसिद्ध मंदिर श्री रामजन्म भूमि का दर्शन किया। जब बड़ा हो गया तो स्वयं अयोध्या दर्शन करने आता था और सरयू स्नान भी करता था तथा पंचकोसी व चौदह कोसी परिक्रमा भी किया है।''

''6. I regularly had 'Darshan' (offering of prayer by sight) of Hanumangarhi temple and famous Sri Ramjanmbhumi temple, when I came to Ayodhya along with my grandfather. When I grew up, I came to Ayodhya to have 'Darshan' and also took holy dip in the Saryu and also performed 'Panchkosi' (distance of five kose, one kose being equal to two miles) and 'Chaudahkosi' (distance of fourteen kose) circumambulation." (E.T.C.)

''7. अयोध्या में तीन मेले होते है जिसमें बाहर देश के कोने कोने से श्रद्धालु भक्त की श्रीराम जन्मभूमि मंदिर का दर्शन करने आते हैं और मंदिर श्री राम जन्म भूमि विराजमान भगवान रामलला का दर्शन करते हैं ।''

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''7. Three fairs are held at Ayodhya,in which devotees from different corners of country and abroad come to have 'Darshan' of Sri Ramjanmbhumi temple and have the 'Darshan' of Lord Ramlala present in Sri Ramjanmbhumi temple." (E.T.C.)

''8. भीतर लोहे के सीखचे वाला भाग व तीनों शिखर के नीचे जहॉ भगवान राम लला विराजमान पहले से थे को लेकर, आजादी मिलने के दो साल बाद कुर्क हो गया, तब मैं पन्द्रह साल का था।''

''8. The inner iron grill portion and the (area) under the three domes, where Lord Ramlala had existed from earlier times, were both attached within two years after independence. I was aged 15 years at that time." (E.T.C.)

''9. भीतर वाले भाग में कुर्की के पहले से मैं भगवान रामलला का दर्शन करता रहा हूँ। भीतर वाले भाग का

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इंतजाम मेरे गांव के निर्मोही अखाड़े वाले करते थे। *निर्मोही अखाडा के पूर्व म0 रघुनाथ दास को मैं देखा था। . . . . रामजन्म भूमि मंदिर भी निर्मोही अखाड़े का मंदिर है।''*

''9. ***I used to have 'Darshan' of Lord Ramlala in the inner part, prior to its attachment. The management of the inner part was carried out by the Nirmohi Akhara people of my village.*** *I had seen the earlier M. Raghunath Das of Nirmohi Akhara. . . . .The Ramjanmbhumi temple is also a temple of Nirmohi Akhara." (E.T.C.)*

''12. मैं जब पहली बार अपने बाबा के साथ दर्शन करने 12 साल की अपनी उम्र में गया था तो मुझे मेरे बाबा ने अखाड़े के बलदेव दास व रामलखन दास गोलकी को दिखा कर बताया था वहीं वहां पर पुजारी गोलकी थे तथा निर्मोही अखाडा के और साधु भाष्कर दास, रामदेव दास, पहाड़ी बाबा व 6–7 साधु वहां रहते थे।''

''12. When I first went to have 'Darshan' along with my grandfather at the age of 12 years, my grandfather had introduced me to Akhara's Baldev Das and Ram Lakhan Das, Golki and told that they were the priest- Golki and that other saints of Nirmohi Akhara viz. Bhaskar Das, Ramdev Das, Pahari Baba and 6-7 saints used to live there." (E.T.C.)

''13. मैंने कुर्की के पहले जब–जब श्री राम जन्मभूमि के भीतरी भाग में भगवान राम लला का दर्शन करने गया तब–तब वहां सारा इंतजाम व कब्जा निर्मोही अखाडा के उपरोक्त साधुओं को देखा। निर्मोही अखाड़ा के साधु व पुजारी सभी भक्तों व दर्शनार्थियों को चरणामृत देते, चढ़ावा लेते व प्रसाद देते थे निर्मोही अखाडा के पुजारी बाबा बलदेव दास या भाष्कर दास अथवा दूसरे साधुओं को देखा है। ***कुर्की के पहले ही अन्दर जाकर मैंने दर्शन भगवान रामलला का किया है*** *और कुर्की बाद सीखचे वाले दरवाजा से बाहर से भगवान राम लला का दर्शन होता रहा है। वहीं तथा बाहर से आने वाले भक्त भी प्रसाद, पैसा व फूल रामचबूतरा मंन्दिर पर चढ़ाते थे जिसे निर्मोही अखाड़ा के पुजारी लेते थे।''*

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''13. Whenever, prior to the attachment, I went inside the Sri Ramjanmbhumi to have 'Darshan' of Lord Ramlala, I found the above saints of Nirmohi Akhara to have been in complete management and possession over there. The saints- priests of Nirmohi Akhara used to give 'Charnamrit' (ambrosia of the feet of a deity), accept the offerings and distribute the 'Prasad' to all the devotees. I had seen Nirmohi Akhara's priest Baba Baldev Das or Bhaskar Das or other saints. ***I had the 'Darshan' of Lord Ramlala from inside prior to the attachment*** *and from outside the grill gate after the attachment. The devotees used to offer sweets, money and flowers at the Ramchabutara temple from there and outside, which were accepted by the priest of the Nirmohi Akhara.'' (E.T.C.)*

''14. आज से 20 या 22 साल पहले बाहरी भाग भी रिसीवर के पास हो गया लेकिन दर्शन हम लोगों को बराबर होता रहा।''

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''14. The outer part also went under the control of the Receiver, about 20 or 22 years back, but we continued to have the 'Darshan' regularly.'' (E.T.C.)

''15. 10,12, साल पहले कुछ बाहरी व भीतरी भाग भीड़ ने गिरा दिया तब भी भगवान रामलला लखनलाल व हनुमान जी तम्बू में वैसे ही विराजमान हैं और दर्शन लोहों के पाईप से घेरे रास्ते से होता है।''

''15. Some inner and outer part was demolished by the crowd about 10-12 years back, still Lord Ramlala, Lakhanlal and Hanuman ji exist in the tent in similar fashion and the 'Darshan' takes place through the path bounded by iron pipes.'' (E.T.C.)

''16. मैंने भीतरी व बाहरी भाग जब से देश की आजादी के एक साल पहले से जा रहा हूँ सदैव मन्दिर के तौर पर पाया भगवान विराजमान पाया है और दर्शन व पूजा होते देखा है।''

''16. Since I started visiting one year prior to

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independence, I always found the inner and outer part to be a temple, found the God present and found the 'Darshan' and worshipping going on." (E.T.C.)

"17. बाहर हाते वाले भाग में रामचबूतरा मंदिर शिवदरबार, छट्ठी पूजा स्थल व भण्डार व संत निवास आदि है। रामचबूतरा मंदिर पर मैं जब से होश सम्भाले हूँ, कब्जा निर्मोही अखाडा वालों का देखा है। यह भाग यानी बाहरी हाता वाला भाग आपस की लड़ाई में कुर्क हुआ। बाहरी हाते में संत निवास भण्डार गृह में निर्मोही अखाडा के साधु रहते थे। छट्ठी पूजा स्थल व शिवदरबार का इंतजाम निर्मोही अखाडा के लोग करते रहे हैं।"

"17. The Ramchabutara temple, Shiv Darbar, Chhathi worship place, store room and accommodation of saints exist in the outer courtyard part. Since I attained maturity, I found the Nirmohi Akhara people to be in possession over the Ramchabutara temple. This part i.e. the outer courtyard part had been attached in mutual conflict. The saints of Nirmohi Akhara used to live in the saints' accommodation, store room in the outer courtyard. The Nirmohi Akhara people used to manage the Chhathi worship place and Shiv Darbar." (E.T.C.)

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391. In para 18 he says that never in his conscious he has seen any Muslim offering Namaz in Ramjanambhumi either inside or outside courtyard.

392. D.W. 3/13, Mahant Ram Subhag Das Shastri, son of Sri Ram Raj Singh, is resident of Mohalla Mandir Ram Mahal. Mohalla Katra, Pargana Haveli Avadh, Ayodhya, District Faizabad aged about 86 years (as per his affidavit dated 5.7.2004). He was cross examined as under:

(a) 05.07.2004- by Ramesh Chandra Tripathi, defendant no. 17 and Umesh Chandra Pandey, defendant no. 22 (Suit-4) through Sri Vireshwar Dwivedi, Advocate (p. 12-13)

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(b) 05.07.2004- by Mahant Suresh Das, defendant no. 2/1 (Suit-4) through Sri Madan Mohan Pandey, Advocate (p. 13-14)

(c) 05.07.2004- by plaintiffs (Suit-5) through Sri Ved Prakash, Advocate (p. 14)

(d) 05/06.07.2004- by Mohd. Faruk Ahmad, defendant no. 11, through Sri Abdul Mannan, Advocate (p. 15-25)

(e) 06/07/08/09/19/20/21.07.2004- by Sunni Central Waqf Board, defendant no. 9, through Sri Zafaryab Jilani, Advocate (p. 25-108)

(f) 21/22.07.2004-by plaintiff no. 7 (Suit-4) and defendant no. 5 (Suit-5) Mohd. Hashim through Sri Mustaq Ahmad Siddiqui, Advocate (p. 108-)

(g) 22.07.2004- defendant no. 6/1 through Sri Irfan Ahmad, Advocate and defendant no. 6/2 through Sri Fazale Alam, Advocate adopted the cross examination already done by Sri Abdul Mannan, Sri Zafaryab Jilani and Sri Mustaq Ahmad Siddiqui, Advocates (p. 120)

393. He belong to State of Bihar and came to Ayodhya in December 1933. He became disciple of Ramanandiya Vairagi Sadhu sect in the State of Bihar itself and joined as disciple of Sri Janki Das Ji Maharaj, who had no permanent place to stay but remained continuously on pilgrimage and was related to Nirmohi Akhara. Guru of Sri Janki Das was Sri Bihari Saran Ji Maharaj who got constructed Ram Mahal Mandir in Mohalla Katra in 1927 whereat presently the witness is Mahant. He studied Sanskrit at Ayodhya since 1936 and obtained degree of Shastri. About his continuous visit to Ramjanambhumi temple at the dispute place, Pooja and Darshan inside the courtyard, ownership and possession of Nirmohi Akhara in paras 5, 6, 7, 8,

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9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20 and 21 of the affidavit he has said:

"5. मेरा नियम था मैं संध्याकाल एक घंटा राम नाम का अनुशरण राम जन्म भूमि पर करता था। रंग महल मंदिर से राम जन्म भूमि लगभग 400–500 फिट दूरी पर पर था मुश्किल से 2–3 मिनट का पैदल रास्ता था। श्री राम जन्म भूमि जाने के लिए साक्षी गोपाल मंदिर तिराहा से ऊपर चढ़ कर जाने का रास्ता था जो पूर्व–उत्तर से दक्षिण–पश्चिम कोने पर गया था।"

"5. To me it was a rule that I took the name of Rama at Ram Janam Bhumi for an hour in the evening. Ram Janam Bhumi was nearly 400-500 feet from Rang Mahal temple. It was hardly 2-3 minutes' walk. To reach Sri Ram Janam Bhumi, there was a flyover starting from Sakshi Gopal Mandir trisection and running from east-north to the south-western corner." (E.T.C.)

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"6. श्री राम जन्मभूमि मंदिर में जाने के लिए 1934 में मुझे दो दरवाजे मिले पहला दरवाजा पूर्व तरफ और दूसरा दरवाजा उत्तर तरफ था। ***पूरब वाले गेट में दरवाजा नही था*** *उत्तर वाले दरवाजे में एक टीन का गेट था। पूरब गेट पर दरवाजा नहीं था कसौटी के दो खम्भे लगे थे। खम्भों में चित्र भी दिखाई पड़ते थे। जिसे नित यात्री, हनुमानजी की मूर्ति बताते थे मैं भी वहीं समझता था। हनुमंत द्वार पर एक शिलापट भी था।"*

"6. In 1934, to reach Sri Ram Janam Bhumi temple I came across two gates, one of which was towards the east and the other one was towards the north. ***The eastern gate had no door****. The northern gate had a door made of tin. It had two pillars made of touch stone. Engraved on the pillars were also seen pictures which were stated by daily visitors to be images of Hanumanji. I also had the same impression. There was also a stone plate at Hanumat Dwar." (E.T.C.)*

"7. उस शिलापट पर अंक 1 पड़ा था और देवनागरी लिपि में श्री

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''जन्मभूमि नित्य यात्रा'' लिखा था। अंग्रेजी में जन्म भूमि लिखा था। मुख्य मंदिर और गर्भ भाग से पूरब गेट के बीच में एक सींकचे वाली दीवाल थी। बाहरी हाता की दीवाल तीन तरफ है जो 9–10 फिट ऊंची थी और दो–ढाई फिट चौड़ी थी और पश्चिम तरफ मुख्य मंदिर का परिक्रमा 4–5 फिट का चौड़ा था। और परिक्रमा के पश्चिम मुरेडी बनी थी जो ढाई–तीन फिट उंची थी। उसके बाद पश्चिम तरफ 20–25 फिट का ढाल है। उत्तर वाला दरवाजा ज्यादातर मेले में खुलता था जिसे सिंह द्वार कहते हैं। उत्तर वाले दरवाजे से निकल कर पूरब जाने पर वहां से सीढ़ी नीचे जाने के लिए बनी थी और जिस सड़क पर सीढ़ी खत्म होती है वह सड़क हनुमानगढ़ी दुराही कुंआ पर है जो उस जगह ढाल पर है। उस सड़क से ऊपर का कोई गेट नहीं दिखाई देता।''

''7. The stone plate had 'number-1' and 'Janam Bhumi Nitya Yatra' in Devnagari script written on it. On it was written Janam Bhumi in English. Between the main temple and the gate located east of the 'garbh' (sanctum sanctorum) part lay a wall with iron rods. The outer compound had walls on three sides which were 9-10 feet high and 2-2½ feet wide. Towards the west, the circumambulation of the main temple was 4-5 feet wide, and in the west of the circumambulation was a railing which was 2½ -3 feet high. Ahead of that, in the west lay a 20-25 feet slope. The eastern gate was opened mostly at the time of the fare and it is called Singh Dwar. On going eastwards out of the eastern gate there was a staircase leading downwards and ending on a road which was at Hanumangarhi Durahi Kuan and which had a slope at that point of place. No gate was seen upwards from that road.'' (E.T.C.)

'8. पूर्व दरवाजा यानि हनुमंत द्वार से परिसर में घुसने पर दक्षिण तरफ राम चबूतरा मंदिर है जो बाहरी हाते के अन्दर था। राम चबूतरा मंदिर 3 फिट ऊंचा लगभग 17–18 फिट चौड़ा और लगभग 21–22 फिट लम्बा था।

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"8. On entering the premises through the eastern gate, that is, Hanumat Dwar there is Ram Chabutra temple in the south and it is within the outer compound. The Ram Chabutra temple was 3-feet high, nearly 17-18 feet wide and nearly 21-22 feet long." (E.T.C.)

"9. रामचबूतरा मंदिर पर गंगा जुमनी का जड़ा हुआ लकड़ी का सिंहासन था जिसमें भगवान राम लला जी विराजमान थे। उत्सव रामलला, लक्ष्मण जी भी थे और दूसरे भरत जी, शत्रुहन जी, नीचे गुफा में थे। गुफा मंदिर चबूतरे के ऊंचाई वाले भाग में बने थे। गुफा मंदिर पूरब वाले भाग में कौशिल्या थी और पश्चिम भाग में भरत जी और शत्रुहन थे। और उसी गुफा मंदिर दीवाल में दोनों तरफ दीवाल में हनुमान जी की छोटी छोटी एक बित्ता की मूर्ति विराजमान थी।"

"9. At Ram Chabutra temple was a wooden throne studded with Ganga Jamuni (an alloy)and with Lord Rama seated on it. Besides Ramlala, Laxmanji was also there, and Bharatji and Shatrughnaji were placed in the cave located downwards. Cave temples were built in the elevated portion of the Chabutra. To the east of the cave temple was Kaushalya and to its east were seated Bharatji and Shatrughna. On both sides of the cave temple wall lay small idols of Hanumanji which measured one bitta (span of the hand) each." (E.T.C.)

"10. इस राम चबूतरा मंदिर के दक्षिण–पूरब कोने तरफ पीपल पेड़ के नीचे गोलाई के छोटे चबूतरे पर हाते के दीवाल के अन्दर षष्ठमुखी शंकर जी, गणेश जी, पार्वती जी, नन्देश्वर भगवान आदि की संगमरमर की मूर्तियां थीं।"

"10. On a small, circular chabutra beneath the fig-tree standing on the south eastern corner of this Ram Chabutra temple and within the compound wall lay marble idols of six-mouthed Shankar, Ganesha, Parvati, Lord Nandeshwar and so on." (E.T.C.)

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''11. मैंने बाहरी हाते में उत्तर तरफ छठी पूजन स्थल देखा उसका भी जिसमें भगवान राम के चारों भाई के चरण–चिन्ह और चकला बेलन चूल्हा बना हुआ था। जब से मैं राम जन्मभूमि पूजा करने जाने लगा तब से बराबर देख रहा हूं। राम जन्म भूमि में राम चबूतरा मंदिर भगवान का पूजा–पाठ, आरती निर्मोही अखाड़ा के पुजारी करते थे। जिसमें पांचो समय की नियमित आरती होती थी। निर्मोही अखाड़ा के साधुओं, पुजारियों को रहने के लिए तथा भगवान के परसाद बनने के लिए भन्डार व संत–निवास पूरब के गेट से सटे अन्दर के हाथे पूर्वी दीवाल से सटकर उत्तर तरफ बना था जहां पर निर्मोही अखाड़ा के साधू, पुजारी, पंच रहते थे। राम मंदिर चबूतरा के पूजा आरती की तरह ही निर्मोही अखाड़ा के तरफ से पीपल के पेड़ के नीचे विराजमान षष्ठमुखी शंकर जी, गणेश जी, पार्वती जी, नन्देश्वर भगवान की पूजा आरती होती थी। इसे भी निर्मोही अखाड़े के पुजारी नियमित सनातन विधि से करते थे। इसी प्रकार छठी पूजन स्थल की पूजा–आरती नियमित निर्मोही अखाड़ा के पुजारियों द्वारा होता था। ये तीनों स्थल का दर्शन करने दर्शनार्थी आते थे और भगवान का दर्शन करते थे। दर्शनार्थी जो आते थे अपनी श्रद्धानुसार धर्म स्थलों पर द्रव्य, फल–फूल, मिष्ठान्न व दूसरे सामान चढ़ाते थे। ये चढ़ावा निर्मोही अखाड़ा के पंचो, महन्थ के अधीन रहता था जिसे भगवान के सेवार्थ राम मंदिर चबूतरा के पुजारियों के माध्यम से लेते थे।''

''11. In the outer compound, I had a sight of 'Chhathi Poojan Sthal' and also of the place which had foot- prints of all the four brothers of Lord Rama and marks of chakla, belan (rolling pin), chulha (hearth). I have consistently been having sight of all this since I began to go to offer worship at Ram Janam Bhumi. Priests of Nirmohi Akhara used to perform 'pooja-paath' and 'aarti' of the presiding deity of the Ram Chabutra temple at Ram Janam Bhumi. There used to be regular and five-time 'aarti' there. To provide lodging to saints and priests of the Nirmohi Akhara and for preparation of 'prasad' of Bhagwaan (God), there was Bhandaar and Sant Niwas (store house cum dwelling

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place for saints) which was built adjacent to and north of the eastern wall and was also adjacent to and inside the eastern gate. Saints, priests and panchas of Nirmohi Akhara used to live there. Like pooja and aarti performed at Ram Mandir Chabutra, there used to be pooja and aarti of deities seated below the fig-tree – six-mouthed Shankar, Ganesha, Parvati and Lord Nandeshwar – on behalf of Nirmohi Akhara. Priests of the Nirmohi Akhara used to perform these services also in accordance with orthodox methods. Similarly, there used to be 'pooja-aarti' on a regular basis at 'Chhathi Poojan Sthal' by the priests of Nirmohi Akhara. Devotees used to come to have darshan of these three sites and of Bhagwaan (God). Devotees coming here, used to offer things, fruits, flowers, sweets and other articles as per reverence at the religious places. These offerings used to be in the custody of Panchas and Mahantas of Nirmohi Akhara and they used to be taken into the service of Bhagwaan through the priests of the Ram Mandir Chabutra." (E.T.C.)

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"12. 1934 शुरू से जब से मैं अयोध्या आकर राम जन्म भूमि मंदिर जाने लगा हूं तब से बराबर ढांचा गिरने के दो दिन पहले तक गया था अब राम नवमी कार्तिक के समय–समय पर कभी–कभी जाता हूं तब तक बराबर ये राम चबूतरा मंदिर षष्ठमुखी भगवान छठी पूजा स्थल, भन्डार गृह आदि मौजूद थे। 1934 में निर्मोही अखाड़ा के महन्थ नरोत्तमदास जी थे मैंने देखा है। तलवार व साफा लगाकर चलते थे।"

"12. Starting since the outset of 1934 I had consistently been coming to Ayodhya and visiting the Ram Janam Bhumi temple till two days prior to the demolition of the structure. Now I sometimes go there on the occasion of Ram Navami falling in Kartika month. Till then Ram Chabutra temple, six-mouthed Bhagwaan, Chhathi Pooja

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Sthal, Bhandaar Grih, etc. existed there. Narottam Das was Mahanta of Nirmohi Akhara in 1934. I have seen him. He used to wield a sword and wear a 'saafa'." (E.T.C.)

"13. जब से मैंने जन्मभूमि जाना शुरू किया कब्जा निर्मोही अखाड़े का ही दिखा। यह कब्जा कुर्की तक देखा जो 1949 में हुयी। यह बाहरी भाग की कुर्की 1982 में यानि बाहरी भाग के अन्दर वाले भाग का है जिसके भी रिसीवर के.के.राम वर्मा जी हुए थे।

1949 दिसम्बर 29 में जो कुर्की अन्दर वाले भाग की हुई उसके रिसीवर बाबू प्रियादत्त राम चेयरमैन नगरपालिका फैजाबाद थे। रामजन्मभूमि मंदिर के इर्द–गिर्द अखाड़े के रीति रिवाज के अनुसार कई पंच व उनके शिष्य छोटे–छोटे मंदिर बनाकर रहते थे। जिसका विवरण निम्नवत् हैः–

(1) सीता कूप मंदिर–गोविन्ददास अखाड़े से संबंधित साधू जन्म भूमि के पुजारी भी थे।

(2) सुमित्रा भवन मंदिर–पंच महन्थ रामदास पंच निर्मोही अखाड़ा था। सुमित्रा भवन मंदिर दक्षिण तरफ विवादित मंदिर से 150 फिट पर था।"

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"13. Since I started visiting Janam Bhumi, it has been only in the possession of Nirmohi Akhara. I had seen this possession till the attachment which took place in 1949. This attachment of the outer part took place in 1982. That is to say, it pertains to the interior of the outer part, and K.K. Ram Verma was appointed receiver in respect of it too.

In case of the attachment which took place on 29th December, 1949, Babu Priya Dutta Ram, Chairman, Nagarpalika Faizabad, was appointed receiver. As per customs of the Akhara, many panchas and their disciples used to build small temples to live in, in the vicinity of the Ram Janam Bhumi temple. Details thereof are us under:"

1. Sita Koop mandir – Ascetics associated with Govind Das Akhara who were also priests of the

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Janam Bhumi.

2. Sumitra Bhawan mandir–Panch Mahanta Ram Das Panch was Nirmohi Akhara. The Sumitra Bhawan was to the south of and at the distance of 150 feet from the disputed temple." (E.T.C.)

"14. पुराने पंचों के जमाने से ही ऋषियों की समाधियां स्थित चली आ रही थी और लोमस चौरा था जो बहुत प्रसिद्ध था। सुमित्रा भवन के दक्षिण–पश्चिम तरफ कुबेर टीला है जो बहुत प्राचीन है। तथा जन्म भूमि मंदिर सतह से काफी ऊंचा है। पूरब तरफ अंगद, नल–नील के भी टीले हैं जो जन्म भूमि सतह से नीचे हैं।"

"14. Right since the time of old Panchas tombs of ascetics had been existing. There was Lomash Chaura which was very famous. To the south – west of Sumitra Bhawan lies Kuber Tila, which is very old and is at a considerable elevation from the level of Janam Bhumi temple. To the east lay mounds of Angad and Nal-Neel too which were below the level of Janam Bhumi." (E.T.C.)

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"15. गर्भ गृह भाग में भगवान रामलला जी लकड़ी के ऊंचे सिंहासन पर विराजमान थे गर्भ गृह में भगवान राम लला मानव स्मृति के पहले से ही विराजमान चले आ रहे थे। और उनके साथ ही लक्ष्मण जी, हनुमान जी और सालिकराम भगवान भी विराजमान रहे हैं, ये मूर्तियां यानि भगवान रामलला की अष्टधातु विग्रह है और उसी प्रकार लक्ष्मण जी की भी मूर्ति है, हनुमान जी की मूर्ति पाषाण की है और सालिकराम भगवान है, सिंहासन बीच भाग में स्थित था। जब से मैं अयोध्या आया तब से मैं नियमित राम जन्म भूमि दर्शन करने जाता था और गर्भ गृह में विराजमान रामलला का बराबर दर्शन करता रहा। ये दर्शन बराबर नियमित रूप से 6 दिसम्बर के दो दिन पहले तक किया था।"

"15. In the 'garbh-grih' (sanctum sanctorum) part, Lord Ram Lala was seated on an elevated wooden throne. In the sanctum sanctorum, Lord Ram Lala had been seated since time immemorial. Along with him have been present

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Laxman, Hanuman and Lord Saalikram. These are idols, that is, individual shapes of Lord Ram Lala made of 'ashtadhatu' (alloy of eight metals), and there is a similar type of idol of Laxman. There is a stone idol of Hanuman and then is placed Lord Saalikram and the throne is placed at the centre. Since I began to come to Ayodhya I regularly used to go to have darshan of Ram Janam Bhumi and continued to have darshan of Ram Lala, seated in the 'garbh-grih'. I had regularly had darshan of these idols till two days before 6th December." (E.T.C.)

"16. जब–जब मैं राम जन्म भूमि नित–यात्रा में जाता था तो राम–नाम अनुष्ठान, पूजन में एक घन्टा से ज्यादा समय लगता था। कभी राम चबूतरे के सामने बैठकर कभी गर्भ गृह में भगवान के सामने बैठकर कभी पूरब वाले गेट के सामने मौलसरी के वृक्ष के नीचे राम नाम के अनुष्ठान का पूजन करता था कभी शिव–दरबार के सामने पीपल पेड़ के नीचे। सन् 1934 से लेकर 23 दिसम्बर, 1949 तक जिस समय फर्जी घटना बतायी जाती है, तक निर्मोही अखाड़े की तरफ कई पुजारी पूजा–पाठ करते थे मुख्य पुजारी कई वर्षो से महंथ बलदेव दास जी थे। 1934 में जब मैं आया तो बलदेव दास जी के गुरू भाई सीताराम दास जी पुजारी थे और जिनके अन्तर्गत कई सहायक पुजारी थे। जो संबंधित राम जन्मभूमि चबूतरा, छठी स्थल, गर्भ गृह मंदिर आदि सामिल हैं, इस दरमियान कई पुजारी आते–जाते रहे हैं, जैसे रामसकल दास जी, मैं (रामसुभग दास शास्त्री) सुदर्शन दास, राम विलास दास, वृंदा वन दास आदि।"

"16. Whenever I joined 'Ram Janam Bhumi Nit Yatra', I had to spend more than an hour in 'Ram Naam Anushthaan' and 'Poojan'. I used to perform 'Ram Naam Anushthaan' sometimes by sitting in front of Ram Chabutra, sometimes by sitting in front of Bhagwaan in 'garbh-grih' and sometimes by sitting beneath the Maulsiri-tree (large evergreen tree) in front of the eastern gate and sometimes by sitting beneath the fig-tree in front of Shiv-

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darbaar. Between 1934 and 23rd December, 1949 during which the fake incident is stated to have taken place, many priests used to perform pooja-paath on behalf of Nirmohi Akhara and Mahant Baldev Das Ji had been main priest for many years. In 1934, when I came, Sitaram Das, guru bhai (disciple of the same guru) of Baldev Das Ji, was the priest. And there were many assistant priests under him who were associated with Ram Janam Bhumi Chabutra, Chhathi Sthal, Garbh-grih Mandir, etc. In course of this period, many priests like Ram Shakal Das, Sudarshan Das, Ram Vilas Das, Vrindavan Das, me (Ram Shubhag Das Shastri) and so on, have been coming and going." (E.T.C.)

"17. मैं अखाड़े की तरफ से पुजारी के सहयोग में रहता था क्योंकि मैं रंग महल जन्म भूमि से करीब स्थान में रहता था। और प्रतिदिन रामानुष्ठान घंटा–दो–घंटा तीन घंटा जन्म भूमि परिसर में मौजूद रहकर भगवान का ध्यान करता था। इसलिए निर्मोही अखाड़े के साधुओं ने सन् 1949 के कई वर्ष पहले से उक्त धार्मिक स्थलों की पूजा के लिए अपने साथ लिए रहते थे। बैरागी सम्प्रदाय की नीति–रिवाज से पूजा करना मैं जानता हूं।"

"17. On behalf of the Akhara I used to render cooperation to the priest because I used to live at a place near Rang Mahal and Janam Bhumi and used to meditate on Bhagwaan by being present in course of 'Ramanushthaan' in the Janam Bhumi premises for one or two or three hours everyday. Hence, ascetics of Nirmohi Akhara used to keep me along with them for pooja at the said religious places from many years prior to 1949. I know the mode of worship as per rites and customs of Bairagi sect." (E.T.C.)

"18. मैं बतौर सहायक पुजारी निर्मोही अखाड़े की तरफ से नियुक्त हुआ था तथा 1949 में भी कुर्की के समय में मैं सहायक पुजारी के रूप में कार्यरत रहा।"

"18. I was appointed as assistant priest on behalf of

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Nirmohi Akhara and even in 1949, at the time of attachment, I was working as assistant priest." (E.T.C.)

"19. गर्भ गृह में भी दर्शनार्थी 23 दिसम्बर, 1949 की घटना के पहले तक सतत् रूप से भगवान का दर्शन करते थे, द्रव्य, मिष्ठान्न, वस्तुओं को चढ़ाते थे जिसे निर्मोही अखाड़े के पंच, महन्थ व पुजारी भगवान के सेवार्थ प्राप्त करते थे। ***गर्भ गृह मंदिर की व्यवस्था व कब्जा मैं निर्मोही अखाड़ा का स्वयं 1934 से बराबर देखता चला आ रहा हूं*** *और 1934 के काफी पहले चिरकाल से निर्मोही अखाड़े का कब्जा व व्यवस्था सदियों पूर्व से चला आ रहा है। ऐसा मुझे वृद्ध संतों व इतिहास से मालूम हुआ है।*

23 दिसम्बर, 1949 को जो अखाड़ा के छ' साधुओं जैसे मैं सुदर्शन दास, राम सकल दास, वृन्दावनदास, राम विलास दास जो निर्मोही अखाड़े के थे इनके अलावा हनुमानगढ़ी के साधु अभिराम दास जी थे। वह रिपोर्ट पुलिस कांस्टेबिल माता प्रसाद फर्जी मुसलमान, दीवान व सिपाही के दबाव में फर्जी लिखाई थी। जो चार्ज शीट मेरे ऊपर दर्ज थी उसकी पक्की अदालती नकल, मेरा मुचलका व जमानतनामा, तीनों मैंने नकल के रूप में मं0 भाष्कर दास सरपंच निर्मोही अखाड़ा से प्राप्त किया जिसकी फोटो स्टेट सूची–1 ता 3 मैं शपथपत्र बयान से दाखिल कर रहा हूं। यह सब फर्जी मुसलमान साजिश से हुयी, 1934 के दंगे के बाद मुसलमान विवादित परिसर के तरफ जा ही नहीं पाते थे। ऐसा इसलिए था कि 1934 के दंगे में काफी मुसलमान मारे गये थे और अयोध्या में मुसलमानों के चंद घर ही थे इसलिए नहीं जाते थे।

विवादित परिसर के इर्द–गिर्द सुन्नी जमात के लोगों के कुल 15–16 घर होंगे। विवादित परिसर के उत्तर सुटहटी मोहल्ला जिसमें 4–5 घर मुसलमान थे और उसके पश्चिम आलमगंज कटरा व टेढ़ी बाजार में क्रमशः 2–3 घर प्रति मोहल्ला और पांजी टोला में 3–4 घर थे। उस समय मुसलमानों की संख्या बहुत कम थी वे डरते थे और सन् 1934 के गौकशी के दंगे में हिन्दुओं ने मुसलमानों को मारा और कुछ कब्रिस्तान तोड़ा जिससे सिर्फ हिन्दुओं पर ही दंगा टैक्स लगा था इसलिए मुसलमान उधर गये ही नहीं। इसलिए नमाज पढ़ने का कोई प्रश्न ही नहीं है। मेरे देखने में 1934 से विवादित गर्भ–गृह या पूरे परिसर में कभी मुसलमानों द्वारा नमाज नहीं पढ़ा गया।"

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"19. Prior to the incident of 23rd December, 1949, devotees constantly had darshan of Bhagwaan (God) in 'garbh-grih' (sanctum sanctorum) and offered objects, sweets and articles which Panchas, Mahantas and priests used to get for the service of Bhagwaan. ***Since 1934 I have consistently been looking after the arrangement and possession of Garbh-grih Mandir on behalf of Nirmohi Akhara*** *and since much earlier than 1934, that is, for centuries, its possession and arrangement has been with Nirmohi Akhara. I have come to know this from old saints and from history.*

The 23rd December, 1949 incident involved six ascetics of Akhara such as Sudarshan Das, Ram Shakal Das, Vrindavan Das, Ram Vials Das and me – belonging to Nirmohi Akhara– and Abhiram Das, an ascetic of Hanumangarhi. That report was lodged by police constable Mata Prasad in a fake manner and under pressure from a fake Muslim, diwan and sepoy. I got copies of trio of true court copy of the charge-sheet filed against me, my bond and bail bond from Mahanta Bhaskar Das, Sarpanch of Nirmohi Akhara. I am filing photostat lists 1 to 3 along with my sworn statement. All this happened in collusion with a fake Muslim. After 1934 riot, Muslims could not venture to go towards the disputed premises. It was so because a sizeable number of Muslims were killed and on account of there being only a few houses of Muslims they did not go there.

There must be a total 15-16 houses of the Sunni community in and around the disputed premises. To the north of the disputed premises lay Suthati locality, which

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had 4-5 Muslim houses and to its west lay Alamganj Katra and Tedi Bazar localities with 2-3 houses each and Panji locality with 3-4 houses. At that time the number of the Muslims was extremely low and they used to be scared. In the Gokashi riot of the year 1934 the Hindus had killed the Muslims and had broken some graveyards as a result of which riot tax was inflicted only on Hindus. That being the reason Muslims did not even go towards that side. Hence, there is no question of offering namaz. I never saw Muslims offer namaz at the disputed sanctum sanctorum or in the entire premises since 1934." (E.T.C.)

"20. अयोध्या में प्रसिद्ध मेला श्रीराम नवमी, सावन झूला, कार्तिक परिक्रमा तीन मेला प्रधान हैं इस अवसर पर भारत के कोने–कोने से दर्शनार्थी आते हैं जो श्रीराम जन्मभूमि जाते हैं।"

"20. Ayodhya mainly witnesses three famous fairs viz. Sri Ram Navami, Sawan Jhoola and Kartik Parikrama. On these occasions, devotees come from the nooks and corners of India and visit Sri Ram Janam Bhumi." (E.T.C.)

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"21. हर मेले में ऐसे दर्शनार्थी भी आते हैं जो नवाह पाठ करते हैं व करवाते हैं और सूक्ष्म भन्डारा भी कराते हैं ये सब कार्य ऐसे दर्शनार्थी प्रत्येक मेला में प्रत्येक वर्ष निर्मोही अखाडा के महन्थ व पंचों व पुजारी के माध्यम से कराते थे जो गर्भ गृह में दिसम्बर, 49 तक कायम रहा और बाहरी वाले भाग में 1982 कुर्की तक कायम रहा।"

"21. Every fair also sees devotees who come and perform 'Navah-Paath' (nine-day recitation) or get it performed. They also get 'Sookshma Bhandara' organised. Every year, all these activities used to be performed on behalf of such devotees by Mahantas, Panchas and priests of Nirmohi Akhara at every fair and they continued at the sanctum sanctorum till December, 1949 and in the outer part till the 1982 attachment." (E.T.C.)

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394. In para 24, DW 3/13 has said that the disputed premises, inside and outside the courtyard, has never been used either for offering Namaz or as Mosque :

''24. विवादित गर्भ–गृह तथा बाहरी हाता में कभी नमाज नहीं पढ़ी गई और न ही मस्जिद के तौर पर इस्तेमाल हुयी है।

''24. Namaz was never offered in the disputed sanctum sanctorum and in the outer compound, nor has the said place ever been used as a mosque (E.T.C.)

395. DW 3/14, Jagadguru Ramanandacharya Swami Haryachara is aged about 69 years (vide affidavit dated 23.07.2004). His cross examination proceeded as under:

(a) 23/26.07.2004- defendant no. 20, Akhil Bhartiya Sri Ram Janma Bhumi Punarudhar Samiti through Km. Ranjana Agnihotri, Advocate (p. 14- 25)

(b) 26.07.2004- by Ramesh Chandra Tripathi, defendant no. 17, and Umesh Chandra Pandey, defendant no. 22, (Suit-4) through Sri Vireshwar Dwivedi, Advocate (p. 25-30)

(c) 26.07.2004- by plaintiffs (Suit-5) through Sri A.K. Pandey, Advocate (p. 30-31)

(d) 26.07.2004- Mahant Suresh Das, defendant no. 2/1 (Suit-4) through Sri Madan Mohan Pandey, Advocate adopted the cross examination already done by Sri Vireshwar Dwivedi and Sri Ajay Kumar Pandey, Advocates (p. 31)

(e) 26/27.07.2004- by defendant no. 11 through Sri Abdul Mannan, Advocate (p. 32-44)

(f) 27/28/29/30.07.2004, 02/03/04/05/06.08.2004- by Sunni Central Waqf Board, defendant no. 9 through Sri Zafaryab Jilani, Advocate (p. 44-158)

(g) 0616.08.2004- by plaintiff no. 7 (Suit-4) and defendant

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no. 5 (Suit-5) Mohd. Hashim through Sri Mustaq Ahmad Siddiqui, Advoate (p. 158-184)

396. He claims to be an authority about Ramanandi Sect, command on the matters relating to Veda, Purana, Smritia, Dharam Shastras, Kavya, etc., vast knowledge of language Sanskrit, and said:

''1. मैं रामानन्द सम्प्रदाय के मुख्य पीठ के सम्प्रदायाचार्य के पद पर प्रतिष्ठित हूँ।''

''1. I hold the post of Sect Head of Principal seat of Ramanand sect.'' (E.T.C.)

''2. रामानन्द सम्प्रदाय का मैं 25वां रामानन्द सम्प्रदायाचार्य हूँ।''

'2. I am the 25th Ramanand Sect Head of Ramanand sect.'' (E.T.C.)

''3. मैं व्याकरणार्च, साहित्याचार्य, वेदान्ताचार्य और एम0ए0 हूँ।''

''3. I am a Grammarian, Author, Vedantist and M.A.'' (E.T.C.)

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''4. मैंने वेद–पुराण, स्मृति, धर्मशास्त्र, काव्य, इतिहास तथा सनातन धर्म के अन्तर्गत जितनी भी मान्यताएं हैं उन सबको प्रायः सांगोपांग मैंने अध्ययन किया।''

''4. I have mostly studied all the beliefs under the Sanatan Dharma besides Veda-Purana, Smriti, Dharma Shastra, Poem and History.'' (E.T.C.)

''5. मेरा संस्कृत भाषा का मूल अध्ययन है।''

''5. I have originally studied in Sanskrit language.'' (E.T.C.)

''6. मैंने बाल्मीकि रामायण का भी अध्ययन किया है।''

''6. I have also studied Valmiki Ramayana.'' (E.T.C.)

''7. मैं योगीराज संस्कृत विद्यालय में प्राचार्य पद पर रहा हूँ। अनादि दिगम्बर जैन गुरूकुल में 6 वर्ष व्याकरण प्राध्यापक रहा हूँ। श्री निवास बोधायन रामानुज संस्कृत महाविद्यालय उत्तर तोताद्रि मठ में 18 वर्षों तक हेड आफ डिपार्टमेंट व्याकरण शास्त्र में था।''

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"7. I have worked on the post of Principal in Yogiraj Sanskrit School. I was Grammar Lecturer for six years in Anadi Digambar Jain Gurukul. I was Head of Department in Grammar for 18 years in Sri Niwas Bodhayan Ramanuj Sanskrit Degree College Uttar Totadri Math." (E.T.C.)

397. DW 3/14 came to Ayodhya in 1945 at the age of 10 years, and joined Ramanandi Sect as pupil of Swami Ram Balak Das Ji at Hanuman Garhi, studied at Ayodhya and Kashi, is author of several books on religion and religious literature as detailed below:

"9. मैंने निम्नलिखित ग्रन्थों की रचना की है :–

1. श्री सम्प्रदाय मन्थन (सात खन्डो में) अयोध्या से मुद्रित तथा विजक क्रम सम्वत् 2048,

2. श्री सम्प्रदाय समय टीका ग्रन्थ

3. वेदों में अवतार रहस्य,

4. श्री रामचरित मानस का वैदिकत्व,

5. ब्रम्ह सूत्र संस्कृत टीका,

6. उपनिशद ईशा वास्थोय निषद, हरिभाष्य

7. गीता भक्ति दर्शन,

8. नारी तू नारायणी,

9. श्री राम स्तवराज,

10. पंचमुख मंगल हनुमान,

11. श्री सम्प्रदायाचार्य दर्शन।"

"9. I have written the following books:

1. Shri Sampraday Manthan (in seven volumes) published from Ayodhya and Vijak Kram Samvat 2048

2. Shri Sampraday Samay Tika Granth

3. Vedon Mein Avtaar Rahasya

4. Shri Ramcharit Manas Ka Vaidikatva

5. Brahmsutra Sanskrit Tika

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6. Upnishad Isha Vasthoya Nishad, Haribhashya

7. Geeta Bhakti Darshan

8. Nari Tu Narayani

9. Shri Ram Stavraj

10. Panchmukh Mangal Hanuman

11. Shri Sampradayacharya Darshan" (E.T.C.)

398. He is founder/editor of monthly magazine "Awadh Saurabh", addressed religious discourses at various places. About his knowledge of religious literature, in paras 12 and 13, he says:

"12. मैंने, वैदिक साहित्य का अध्ययन किया है तथा वेद, वेदांग, पुराणों उपनिषद, स्मृति और भाष्य आदि का अध्ययन किया है तथा अन्य धार्मिक ग्रन्थों का अध्ययन किया है। मैंने बाल्मीकि रामायण का भी अध्ययन किया है तथा तुलसीदास कृत रामचरित्र मानस का भी अध्ययन किया है, गोस्वामी तुलसीदास के एकादश ग्रन्थ हैं जिन्हें मैंने पढ़ा है।"

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"12. I have studied Vedic literature as well as Vedas, Vedang, Puranas, Upnishad, Smriti and Bhashya etc. besides other religious treatises. I have also studied Valmiki Ramayana and Tulsi Das composed Ramcharitra Manas. There are 11 treatises of Goswami Tulsidas, which have been read by me." (E.T.C.)

"13. प्राचीन इतिहास के जानने के लिए वैदिक साहित्य का बहुत बड़ा महत्व है।"

"13. The Vedic literature has a very important role in knowing ancient history." (E.T.C.)

399. DW 3/14 has studied Valmiky Ramayan (Sanskrit and Hindi translation both). In paras 24 and 25, what has been said by Valmiky in Ramayan, is stated as under:

"24. बाल्मीकि रामायण में मेरे इष्ट व आराध्य राम के चरित्र का सजीव वर्णन महर्षि बाल्मीकि ने किया है।"

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"24. Maharshi Valmiki has given a lively description of my revered Lord Rama's character in Valmiki Ramayana." (E.T.C.)

"25. बाल्मीकि रामायण में अयोध्या व सरयू का वर्णन है और आज भी वह सब नदियों व राम वन गमन मार्ग की भौगोलिक स्थिति यथास्थिति यथावत कायम है। सरयू नदी है, नन्दी ग्राम है, यह नदी गंगा नदी भरद्वाज आश्रम, पंचवटी, रामेश्वरम लंका आदि।"

"25. The Valmiki Ramayana contains description of Ayodhya and Saryu and even today the geographical position of all the rivers and Rama's exile path, continues to be the same. River Saryu, Nandigram, river Ganges, Bhardwaj Ashram, Panchvati, Rameshwaram, Lanka etc. all exist." (E.T.C.)

400. In paras 26, 27, 28, 30, 56, 57 and 58 of the affidavit, DW 3/14 has referred to the contents of "Atharva Ved", "Shiv Sanhita" and "Rudrayamal" giving descriptions of Ayodhya but we find it unnecessary to refer it here in view of the statement of Muslim parties through their counsels under Order X Rule 2 CPC that they do not dispute about the birth of Lord Ram at Ayodhya as also that the present Ayodhya is the same where Lord Ram is believed to have born. The dispute has now narrowed down to the site in dispute.

401. With respect to identification of the disputed premises as birthplace of Lord Ram and his faith about the same, in paras 31 and 51 he said :

"31. मौजूदा समय भी श्री राम जन्मभूमि मंन्दिर यानि जिसका मुकदमा चल रहा है के पूर्व लोमश ऋषि आश्रम है जहां आज रामगुलेला मन्दिर है, वहीं पत्थर श्री लोमश जी लगा है। राम जन्म भूमि मंदिर से पश्चिम दक्षिण विध्नेश्वर भगवान हैं जो वशिष्ठ भवन मन्दिर के पश्चिम है इसका प्रमाण सूची ''क'' संलग्नक–शपथ है।"

"31. In present times also, there is the Ashram of Lomash

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Rishi ahead of Sri Ramjanmbhumi temple, about which case is pending. At the place where Ramgulela temple exists today, is the stone of Lomash ji. To the west-south of the Ramjanmbhumi temple, is Lord Vighneshwar, to the west of Vashishtha Bhawan temple. Its proof is list 'A' as enclosure-oath (to affidavit)." (E.T.C.)

"51. मेरी भांति भारतवर्ष के तमाम दर्शनार्थी रामजन्मभूमि के भीतरी व बाहरी भाग के विराजमान भगवान रामलला के व अन्य धार्मिक स्थल शिव दरबार व छट्ठी पूजा स्थल का दर्शन करते थे।"

"51. Just like me, various devotees of India had 'Darshan' of Lord Ramlala present in the inner and outer part of Ramjanmbhumi, other religious places,and Shiv Darbar and Chhathi worship place. " (E.T.C.)

402. In paras 35, 38, 39, 40, 41, 43, 44, 45, 46, 47 and 50 of the affidavit, DW 3/14 has stated about the ownership and possession of the premises in dispute, existence of idols inside the courtyard and worship therein prior to December, 1949 and said as under:

"35. निर्वाणी अखाडा के अन्तर्गत प्रसिद्ध हनुमानगढ़ी कपिलमुनि मंदिर व दीगर हनुमानगढ़ी में ही 12 मंदिर हैं। उसी तरह निर्मोही अखाड़े के अन्तर्गत श्रीरामजन्म भूमि मंदिर रहा है। निर्मोही अखाडा की प्राचीन बैठक रामघाट अयोध्या है। निर्मोही अखाडा का मंदिर रामापुर, खुर्दाबाद, सुमित्रा भवन, सीताकूप, नाका हनुमानगढ़ी आदि है।"

"35. Under the Nirvani Akhara are the famous Hanumangarhi, Kapilmuni temple and twelve temples in other Hanumangarhi. Similarly, the Sri Ramjanmbhumi temple has been under Nirmohi Akhara. The ancient seat of Nirmohi Akhara, is Ramghat Ayodhya. Ramapur, Khurdabad, Sumitra Bhawan, Sita Koop, Naka Hanumangarhi etc. are temples of Nirmohi Akhara." (E.T.C.)

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"38. मैं अयोध्या आने के बाद ही से विद्यार्थियों व हनुमानगढ़ी के संतों के साथ रामजन्मभूमि मंदिर नित्य दर्शन करने हेतु जाता रहा।"

"38. After coming to Ayodhya, I along with students and saints of Hanumangarhi went to have 'Darshan' of Ramjanmbhumi temple everyday." (E.T.C.)

"39. ***तीनों शिखर के बीच वाले शिखर के नीचे विराजमान भगवान रामलला का दर्शन कुर्की होने तक जब से अयोध्या आया, बराबर करता रहा हूँ।"***

"39. ***From my arrival till the attachment, I regularly had 'Darshan' of Lord Ramlala present under the mid dome of the three domes.*** *" (E.T.C.)*

"40. मेरे ज्ञान से कुर्की दिसम्बर 1949 के आखिर में हुई तब से बाहर सींखचे वाले दरवाजे से भगवान रामलला का दर्शन होता था।"

"40. According to me, the attachment took place in last of December, 1949 and since then the 'Darshan' of Lord Ramlala was had from outside the grill gate." (E.T.C.)

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"41. कुर्की के पहले शिखर के नीचे वाले भाग में विराजमान भगवान रामलाला का सेवा, पूजा पाठ उत्सव, समैया निर्मोही अखाडा अयोध्या करता था। निर्मोही अखाडा के पुजारी रहते थे पहले पहल जब मैंने दर्शन किया तो बलदेव दास जी पुजारी थे। कुछ समय बाद भाष्कर दास जो उनके चेला था, को देखा। भाष्कर दास अब नाका हनुमानगढ़ी में महन्थ हैं। और भी सहायक पुजारी थे नाम याद नहीं है।"

"41. Prior to the attachment, the service, worship, prayer, ceremony of Lord Ramlala present in the area under the dome was carried out by Nirmohi Akhara, Ayodhya. The priests of Nirmohi Akhara were present. Baldev Das was the priest, when I had my initial 'darshan'. After sometime, I saw his disciple Bhaskar Das. Bhaskar Das is now the Mahant in Naka Hanumangarhi. There were other supporting priests as well, but I do not remember their

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names." (E.T.C.)

"43. बाहर वाले भाग में पूर्वी दरवाजा से घुसने पर बाहरी भाग में ही रामचबूतरा मंदिर था जिस पर भी भगवान रामलला व तीनों भाईयों की बाल रूप मूर्तियां थीं। जिसका पूजा–पाठ उत्सव, समैया भी निर्मोही अखाडा वाले करते थे। वहां भी मैंने दर्शन किया।"

"43. The Ramchabutara temple fell in the outer part on entering the outer part through the eastern gate, where the idols of Lord Ramlala and three brothers were present in child form, whose worship, prayer etc. were done by the Nirmohi Akhara. I had 'Darshan' over there as well." (E.T.C.)

"44. पूर्वी दरवाजा से घुसते ही ऊपर दीवाल से सटा भन्डार संत निवास था जहां निर्मोही अखाडा के पुजारी पंच व साधु रहते थे।"

"44. Immediately after entry through the eastern gate, was the store room and saints' accommodation, where the priest, Panch and saints of Nirmohi Akhara lived." (E.T.C.)

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"45. चबूतरा लगभग 3 फीट ऊॅचा व 20 फीट लम्बा व 17 फीट लगभग चौड़ा होगा। चबूतरा पर काठ का सिंहासन था। व ऊपर छप्पर था। चबूतरा में गुफा की दर दोनों तरफ बनी थी, जिसमें कौशल्या के गोद में भगवान राम बाल स्वरूप थे व एक गुफा में भरत जी की पाषाण मूर्ति 2 फीट ऊॅची थी।"

"45. The platform was about 3 feet high, 20 feet long and 17 feet wide. There was a wooden throne over the platform, with a thatched shed. There were caves on both sides of the platform, in one of which was Lord Rama in child form in the lap of Kaushalya ji and in the other there was 2 feet high stone idol of Bharat ji." (E.T.C.)

"46. बाहरी वाले सेहन के ऊपर भी दरवाजा था जो मेले–मेले में खुलता था उत्तरी दरवाजे के दक्षिण बाहरी सेहन में छट्ठी पूजा स्थल था जिस पर भगवान राम लला चारों भाईयों के चरण चिन्ह थे व बेलना–चकला व

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चूल्हा था। जो पूज्य स्थल माना जाता था।"

"46. There was a gate in the outer courtyard, which was opened on the occasion of fair. In the outer courtyard to south of the northern gate, was the Chhathi worship place with foot marks of all four brothers including Lord Ramlala. The stove and 'Belana-Chakla' (utensils used in Indian kitchen), was considered to be a worship place." (E.T.C.)

"47. बाहरी भाग पर कुर्की के बाद भी निर्मोही अखाडा का कब्जा बना रहा लेकिन 22 साल पहले बाहरी भाग भी निर्मोही अखाडे के झगड़े में कुर्क हो गया जिसके भी रिसीवर हो गये रिसीवर भीतरी व बाहरी भाग के एक ही व्यक्ति थे नाम नहीं याद है।"

"47. The possession of Nirmohi Akhara continued over the outer part even after the attachment, but 22 years back even the outer part was attached in dispute of Nirmohi Akhara and a Receiver was appointed. There was same Receiver for both the inner and outer parts, but I do not remember the name." (E.T.C.)

"50. बाहरी भाग यानि रामचबूतरा मंदिर के पूर्व दक्षिण कोने पर पीपल पेड़ के नीचे शिव दरबार था जिसका इंतजाम भी निर्मोही अखाडा वाले देखते थे। "

"50. There was Shiv Darbar in the outer part i.e. under the Pipal tree in south-east corner of Ramchabutara temple, which was also managed by Nirmohi Akhara." (E.T.C.)

403. In para 52 he claims to have never seen any Muslim offering Namaz in the disputed premises, either inside or outside.

404. DW 3/15, Narendra Bahadur Singh is aged about 72 years (vide his affidavit dated 17.08.2004) and is resident of

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Mauja Rajapur Saraiya, Pargana Amsin, Tahsil Sadar, District Faizabad. He was cross examined in the following manner :

(a) 17.08.2004- by Ramesh Chandra Tripathi, defendant no. 17, and Umesh Chandra Pandey, defendant no. 22, (Suit-4) through Sri Vireshwar Dwivedi, Advocate (p. 7-13)

(b) 17.08.2004- by plaintiffs (Suit-5) through Sri A.K. Pandey, Advocate (p. 13-16)

(c) 17.08.2004- Mahant Suresh Das, defendnt no. 2/1 (Suit-4) through Sri Madan Mohan, Advocate adopted the cross examination already done by the above Advocates (p. 16)

(d) 17.08.2004- defendant no. 20, Akhil Bhartiya Sri Ram Janma Bhumi Punarudhar Samiti through Km. Ranjana Agnihotri, Advocate adopted the cross examination already done by Sri Vireshwar Dwivedi, and Sri Ajay Kumar Pandey, Advocate (p. 16)

(e) 17/18.08.2004- by defendant no. 11, Mohd. Faruk Ahmad, through Sri Abdul Mannan, Advocate (p. 17-32)

(f) 18/19/20.08.2004- by Sunni Central Waqf Board, defendant no. 9, through Sri Zafaryab Jilani, Advocate (p.32-55)

(g) 20/23.08.2004- by defendant no. 7 (Suit-4) and defendant no. 5, Mohd. Hashim (Suit-5) through Sri Mustaq Ahmad Advocate (p. 55-66)

(h) 23.08.2004 – defendant no. 26 (Suit-5) through Sri Irfan Ahmad, Advocate and defendants no. 6/1 and 6/2 (Suit-3) through Sri Fazale Alam, Advocate adopted the cross examination already done by Sri Abdul Manna, Sri Zafaryab Jilani and Sri Mustaq Ahmad Siddiqui,

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Advocates (p. 66)

405. His statement about continuous worship at Ayodhya prior to 1949, at the disputed premises (inside and outside courtyard), possession and ownership of the disputed premises, Pooja, and 1934 riot is in paras 2, 3, 4, 5, 6, 7, 8, 9, 15 and 18 of the affidavit and read as under:

"2. चैत्र राम नवमी, श्रावण झूला, कार्तिक पूर्णिमा व परिक्रमा के समय मेरे माता–पिता बैलगाड़ी से दर्शन करने अयोध्या आते थे मैं भी साथ आता था। बैलगाड़ी बरगदहिया जहां बरगद के काफी पेड़ व जगह था जो राजा अयोध्या की थी, में रूकती थी जहां से सरयू स्नान हनुमान गढ़ी, रामजन्मभूमि व कनक भवन मंदिर दर्शन करने जाते थे।"

"2- On the occasion of 'Chaitra Ramnavami', 'Shravana Jhula', 'Kartik Purnima' and circumambulation, my parents used to come to Ayodhya by bullock cart to have 'darshan'. I also used to come along. The bullock cart was parked at the Bargadahiya, where there were many banyan trees with space, of king Ayodhya and from there we used to go for Saryu dip, Hanumangarhi, Ramjanmbhumi and Kanak Bhawan temple to have 'darshan'." (E.T.C.)

*"3. मैं लगभग **11 साल की उम्र से होश सम्हाले हूँ** पहली बार चैत्र राम नवमी अपने माता–पिता के साथ बैलगाड़ी से अयोध्या मन्दिरों के दर्शन हेतु आया और वहीं बरगदहिया में बैलगाड़ी खड़ी हुई जहां से सरयू स्नान कर हनुमान गढ़ी **श्रीरामजन्म भूमि** व कनक भवन **का दर्शन किया है।**"*

*"3. **I have gained maturity at the age of about 11 years**. I first came to Ayodhya along with my parents by bullock cart on the occasion of 'Chaitra Ramnavami' to have 'darshan' of the temples of Ayodhya and the bullock cart was parked at the Baragadahiya, from where we had holy dip in the Saryu and then **the 'darshan'** of Hanumangarhi, **Sri Ramjanmbhumi** and Kanak Bhawan."*

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(E.T.C.)

"4. ***जन्म भूमि मन्दिर के मुख्य शिखर यानि बीच वाले शिखर के नीचे भगवान राम लला विराजमान थे जिनका मैंने दर्शन किया*** *पिता जी ने बताया यही भगवान राम लला हैं और भगवान राम की जन्मभूमि मंदिर है।"*

"4. ***Lord Ramlala was present under the main dome of the Janmbhumi temple viz. the mid dome and I had the 'darshan'****. My father told that this was Lord Ramlala and the temple of Lord Rama's birth place." (E.T.C.)*

"5. ***गर्भ–गृह भीतरी भाग में झूलेनुमा बड़ा काठ का सिंहासन था कभी सावन झूले में भगवान रामलला को झूले पर देखा व दर्शन किया, कभी उत्तर–पश्चिम कोने सीढ़ी नुमा स्थान पर छोटे से सिंहासन में देखा*** *व दर्शन किया। रामलला के अलावा लखन लाल थे छोटे सिंहासन के बाहर सटे हनुमान जी की पाषाण मूर्ति थी व सालिक राम आदि 4–5 रखे थे।"*

"5. ***There was a swing shaped big wooden throne in the inner part of the 'Garbh-grih'. Sometimes I saw and had the 'darshan' of Lord Ramlala over swing on occasion of 'Sawan Jhula'. Sometimes I saw and had (His) 'darshan' in a small throne at a staircase type place in the north-west corner.*** *There was Lakhanlal along with Lord Ramlala. Outside and adjacent to the small throne, was the stone idol of Hanuman ji with 4-5 Salikram etc." (E.T.C.)*

"6. मंदिर राम जन्मभूमि का दर्शन अकेले भी मैं 15 साल की उम्र से जाने लगा था जो क्रम मेरा ढांचा गिर जाने के पहले तक बराबर कायम रहा।"

"6. I started going alone at the age of 15 years, to have 'darshan' of Ramjanmbhumi temple and this continued regularly till the demolition of the structure." (E.T.C.)

"7. ढांचा 6 दिसम्बर 1992 को गिरा उसके बाद मेरा आना–जाना कम

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हो गया। साल में एक बार या दो बार, ज्यादातर चैत्र राम नवमी होता था। ***ढांचा गिरने के बाद भी भगवान राम लला वहीं भगवान रामलला हैं*** *जिनका दर्शन मैं बचपन से करता चला आ रहा हूँ अब तम्बू में विराजमान है। गैंग वेय यानि लोहे के पाइप से बन्द रास्ता बनाकर दर्शन प्रशासन द्वारा भक्तों को कराया जाता है।"*

"7. The structure collapsed on 6th December, 1992 and thereafter my visits were reduced. I used to go just once or twice a year, mostly on the occasion of 'Chaitra Ramnavami'. ***Even after the collapse of the structure, Lord Ramlala is the same Lord Ramlala****, whose 'darshan' I have had since my childhood. He is now present in the tent. The devotees were made to have 'darshan' by the administration through gang way a passage bounded by iron pipes." (E.T.C.)*

"8. बचपन से जब मैं रामजन्म भूमि मन्दिर दर्शन करने जाता था तो शुरू से पूर्व वाला गेट जो रामजन्मभूमि मन्दिर का हनुमंत द्वार कहलाता था, से अन्दर जाकर सभी धार्मिक स्थल जैसे रामचबूतरा मन्दिर, गुफा मन्दिर, छट्ठी पूजा स्थल, चरण चिन्ह, अन्दर गर्भगृह में विराजमान श्री भगवान राम लला तथा शिवदरबार पीपल पेड़ के नीचे का दर्शन करता था और ऐसे ही भारतवर्ष के कोने कोने से आए भक्तगण दर्शन करते थे आरती लेते, प्रसाद चढ़ाते, द्रव्य चढ़ाते, फूल चढ़ाते व मत्था टेकते व चरणामृत पुजारी से लेते थे।"

"8. Since my childhood days, when I used to go to have 'darshan' of Ramjanmbhumi temple, I used to enter through the eastern gate of Ramjanmbhumi temple called Hanumantdwar and had 'darshan' of all religious places viz. Ramchabutara temple, Cave temple, Chhathi worship place, footmarks, Lord Ramlala present inside the 'Garbh-grih' and the Shiv Darbar under the Pipal tree. Same was done by the devotees coming from different corners of India. They used to perform 'Arti' (a ceremony performed

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in worshiping a God), make offerings, offer money, flower, bow down on their forehead and accept foot-nectar." (E.T.C.)

"9. पूर्वी गेट यानि हनुमंत द्वार से घुसते ही उपर बाहरी दीवाल से लगा भन्डार गृह संत निवास बना था जहॉ निर्मोही अखाड़ा के साधु व पुजारी रहते थे और निर्मोही अखाड़ा के अंतजाम एवं कब्जे में बचपन से ही उक्त श्रीराम जन्मभूमि मन्दिर व उसमें स्थित धार्मिक स्थलों की व्यवस्था करते देखा है।"

"9. Just after entry through the eastern gate or Hanumantdwar, there was the store room and saints' accommodation adjacent to the upper outer wall, where the saints and priests of Nirmohi Akhara lived. Since my childhood, I have seen the said Sri Ramjanmbhumi temple and the religious places situated therein, to be in the management and possession of Nirmohi Akhara." (E.T.C.)

"15. जन्मभूमि मन्दिर को मैं व मेरी तरह मेरे माता–पिता व तमाम हिन्दू सनातन धर्मी जनता मन्दिर ही मानती रही और दर्शन करती रही है।"

"15. The Janmbhumi temple has been treated and worshiped as a temple by me, my parents and the Hindu Sanatan Dharma public." (E.T.C.)

*"18. **विवादित भीतरी भाग यानि गर्भगृह तथा बाहरी भाग यानि रामचबूतरा मन्दिर, छट्ठी** पूजा स्थल, शिव दरबार व भण्डार गृह आदि का **इंतजाम निर्मोही अखाडा के साधुओं का देखता चला आ रहा था।**"*

*"18. **I continued to see** the management of the **disputed inner part i.e. 'Garbh-grih' and of the outer part i.e. Ramchabutara temple, Chhathi** worship place, Shiv Darbar and store room etc., being carried out by the saints of Nirmohi Akhara." (E.T.C.)*

406. Paras 10, 11 and 12 of the affidavit of DW 3/15 relates to the constitution and status etc. of Nirmohi Akhara and shall be

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dealt with later on.

407. In paras 16 and 17 he has deposed of having seen no Muslim offering Namaz or using the disputed premises as mosque.

408. DW 3/16, Shiv Bheekh Singh, aged about 79 years (vide his affidavit dated 24.08.2004), is resident of Village Haliyapur, District Sultanpur. He was cross examined as under:

(a) 24.08.2004-by Sri Ramesh Chandra Tripathi, defendant no. 17 and Sri Umesh Chandra Pandey, defendant no. 22 (Suit-4) through Sri Vireshwar Dwivedi, Advocate (p. 7-9)

(b) 24.08.2004- by plaintiffs (Suit-5) through Sri Ajay Kumar Pandey, Advocate (p. 9-10)

(c) 24.08.2004- Mahant Suresh Dass, defendant no. 2/1 (Suit-4) through Sri Madan Mohan Pandey, Advocate adopted the cross examination already done by Ajay Kumar Pandey, Advocate (p. 10)

(d) 24.08.2004- defendant no. 20, Akhil Bhartiya Sri Ram Janma Bhumi Punarudhar Samiti through Km. Ranjana Agnihotri, Advocate adopted the cross examination already done by Sri Vireshwar Dwivedi, and Sri Ajay Kumar Pandey, Advocate (p. 11)defendant no. 20, Akhil Bhartiya Sri Ram Janma Bhumi Punarudhar Samiti through Km. Ranjana Agnihotri, Advocate adopted the cross examination already done by Sri Vireshwar Dwivedi, and Sri Ajay Kumar Pandey, Advocate (p. 11)

(e) 24/25-08-2004- by defendant no. 11, Mohd. Farooq Ahmad through Sri Abdul Mannan, Advocate (p. 11-24)

(f) 25/26/27-08-2004- by Sunni Central Waqf Board through Sri Zafaryab Jilani, Advocate (p. 24-54)

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(g) 27/31-08-2004- by plaintiff no. 7 (Suit-4) and Mohd. Hashim, defendant no. 5 (Suit-5) through Sri Mustaq Ahmad Siddiqui, Advocate (p. 54-68)

(h) 31-08-2004- by defendant no. 6/1 through Sri Irfan Ahmad, Advocate and defendant no. 6/2 and defendant no. 26 (Suit-5) through Sri Fazle Alam, Advocate adopted the cross examination already done by Sri Abdul Mannan, Sri Zafaryab Jilani and Sri Mustaq Ahmad Siddiqui, Advocates (p. 68-69)

409. His statement about continuous worship at Ayodhya prior to 1949 at the disputed premises (inside and outside courtyard), possession and ownership of the disputed premises of Nirmohi Akhara, performance of Pooja etc. by their Sadhus and 1934 riot is contained in paras 3, 4, 5, 6, 11, 12, 13, 15, 18, 19, 20, 21, 22, 23, 26 and 28 of the affidavit as under:

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"3. मैं सन् 1938 से विवादित मंदिर श्रीराम जन्मभूमि अयोध्या में विराजमान भगवान रामलला का दर्शन करता रहा हूँ।"

"3. Since the year 1938, I have had the 'darshan' (offering of prayer by sight)of Lord Ramlala present in the disputed Sri Ramjanmbhumi temple in Ayodhya." (E.T.C.)

"4. मैं लगभग 12 साल की उम्र से अपने माता–पिता व गांव वालों के साथ इक्का बैलगाड़ी से मेले–मेले अयोध्या जाता था, जहां इशरी दास के हाता में बैलगाड़ी खड़ी होती थी, वहीं से सरयू स्नान हनुमान गढ़ी कनक भवन व श्रीरामजन्मभूमि का दर्शन मैं माता–पिता के साथ इन मंदिरों में करता था और तभी से भगवान राम को बीच वाले गुम्बद के नीचे गर्भगृह में विराजमान देखा है।"

"4. Since the age of about 12 years, I, along with my parents and villagers, used to go to Ayodhya on occasion of fair by tonga- bullock cart. The bullock cart was parked in the premises of Ishari Das. From there I, along with my

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parents, used to take holy dip in Saryu and have 'darshan' of Hanumangarhi, Kanak Bhawan and Sri Ramjanmbhumi and since then I have seen Lord Rama to be present in the 'Garbh-grih' under the dome." (E.T.C.)

"5. बड़ा होने पर अकेले मित्रों के साथ कई साल मेले–मेले साइकिल पर अयोध्या श्रीराम जन्मभूमि मंदिर में विराजमान भगवान रामलला का दर्शन करने गया।"

"5. After growing up, I alone went to Ayodhya for many years by cycle along with friends on occasion of fair, to have 'darshan' of Lord Ramlala present in Sri Ramjanmbhumi temple at Ayodhya." (E.T.C.)

"6. शुरू–शुरू में मेरे माता पिता ने अयोध्या के प्रसिद्ध मंदिर श्री रामजन्मभूमि के बारे में बताया और भगवान राम की जन्मस्थली होने के कारण मंदिर श्रीरामजन्मभूमि का महत्व बताया।"

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"6. In the beginning my parents told me about Ayodhya's famous Sri Ramjanmbhumi temple and told the importance of Sri Ramjanmbhumi temple on account of being the birth place of Lord Rama." (E.T.C.)

"11. श्रीराम जन्मभूमि मंदिर का भीतर का भाग सींखचों वाले सहन को लेकर तीन शिखर के नीचे था जिसके ***बीच वाले शिखर के नीचे गर्भ गृह था जहां भगवान रामलला को जबसे मैं यानि 1938 से दर्शन करने जाने लगा गर्भगृह में विराजमान देखा।"***

"11. The inner part of Sri Ramjanmbhumi temple was from the grill bound courtyard to the area below the three dome, and ***under the mid dome was the 'Garbh-grih', where I had seen Lord Ramlala to be present since I started going to have 'darshan' i.e. year 1938.****" (E.T.C.)*

"12. वहां भगवान राम लला के अतिरिक्त लखन लाल व हनुमान जी भी थे कुछ सालिक राम थे संख्या याद नहीं।"

"12. Besides Lord Ramlala, Lakhanlal and Hanuman ji

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were also present over there. There were a few Salik Rams, whose number I do not remember." (E.T.C.)

"13. गर्भगृह में काठ का झूलेनुमा सिंहासन भी था व सीढ़ीनुमा जगह पर चॉदी का छोटे सिंहासन पर भगवान रामलला, लखन लाल थे व झूलें वाले सिंहासन पर सावन–झूले में उन्हें देखता था यानि भगवान रामलला को।"

"13. There was a swing shaped wooden throne in the 'Garbh-grih' and in the small silver throne at the staircase-like place, Lord Ramlala and Lakhanlal were present. I used to see Him i.e. Lord Ramlala over the swing shaped throne in the month of Sawan (a month of Hindi calendar)." (E.T.C.)

"15. मैं साल में दो बार तो अवश्य जाता था।"

"15. I did definitely go at least twice a year." (E.T.C.)

"18. अन्दर गर्भगृह के बाहर बाहरी भाग है जहां पर रामचबूतरा मंदिर छट्ठी पूजा स्थल भण्डार गृह व संत निवास व शिव दरबार था उसे भी शुरू से यानी 1938 से देख रहा हूॅ वहॉ भी दर्शन करता रहा हूॅ। रामचबूतरा मंदिर पर भी भगवान रामलला विराजमान है। भरत, शत्रुघ्न, लक्ष्मण बाल रूप में हैं। हनुमान जी हैं तथा चबूतरा में दो गुफा मंदिर सा बना है। जिसमें एक में कौशिल्या जी भगवान रामलला को गोंद में लिए हैं और एक में भरत जी की पाषाण मूर्ति है।"

"18. Inside is the outer part outside the 'Garbh-grih', where there were Ramchabutara temple, Chhathi worship place, store room, saints' accommodation and Shiv Darbar. I had been seeing them since beginning i.e. year 1938 and I had the 'darshan' there as well. Lord Ramlala is present in Ramchabutara temple as well. Bharat, Shatrughan and Laxman are in child form. Hanuman ji is present and there are two cave type temples in the Chabutara, in one of which is Kaushalya ji with Lord Ramlala in her laps and there is stone idol of Bharat ji in the other one." (E.T.C.)

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"19. मैंने 1938 में माता–पिता से यह बात जाना जो साधु व पुजारी वहां हैं वह सभी निर्मोही अखाडा के साधु हैं और ***भीतर व बाहर का सारा इंतजाम कब्जा निर्मोही अखाडा का बराबर कुर्की तक देखता रहा हूँ।"***

"19. In the year 1938 I came to know from my parents that the saints and priests over there, were the saints of Nirmohi Akhara and ***till the attachment I had found the entire management of both inside and outside, being carried out by Nirmohi Akhara."*** *(E.T.C.)*

"20. कुर्की माने समझता हूँ। 1949 में दिसम्बर में मुझे हनुमान गढ़ी के साधुओं व संतों से व निर्मोही अखाडा के साधुओं से जो बाहरी भाग भण्डार गृह व संत निवास में रहते थे से कुर्की बाद जब रामनवमी 1950 में गया तो पता चला भीतर का भाग कुर्क कर रिसीवर के देखरेख में पूजा पाठ भीतरी भाग का किया जाता है लेकिन 1950 में बाहरी भाग पर कब्जा निर्मोही अखाडे के उन्हीं साधुओं का देखता था जिन्हें भीतरी भाग में बतौर पुजारी देखा था। उस समय के साधुओं व पुजारियों में से एक साधु को काफी दिनों तक देखा जो महन्थ भाष्कर दास हैं जिन्हें नाका मंदिर हनुमान गढ़ी पर देखता हूँ। साईकिल से गांव से आने पर हनुमान गढ़ी नाका भी कभी –कभी दर्शन करने रूक जाता था। यदि मेले में आते वक्त मंगल दिन पड़ जाता था।"

"20. I understand the meaning of attachment. After the attachment in December, 1949 when I went there on the occasion of Ramnavami in the year 1950, I came to know from the saints and hermits of Hanumangarhi and the saints of Nirmohi Akhara, who lived in the outer store room and saints' accommodation, that after the attachment of the inner part, the worshipping was carried out under the supervision of Receiver. However, in 1950 I found the possession over the outer part, with those very saints whom I had seen as priest in the inner part. Out of the erstwhile saints and priests, I saw one saint for many days, who was

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Mahanth Bhaskar Das whom I see at Nak Hanumangarhi temple. While coming to my village by cycle, I some times stopped at Hanumangarhi Naka to have 'darshan', if it was Tuesday." (E.T.C.)

"21. मैंने सन् 1938 से कुर्की तक 1949 आखिरी दिसम्बर तक लगभग 12 साल में हर साल कम से कम दो बार अवश्य गया हूँ। इस तौर 24, 25 बार दर्शन 1938 से लेकर 1949 तक कर चुका था।"

"21. From the year 1938 till the last of December, 1949, I must have been there at least twice a year for about 12 years. As such I had about 24-25 'darshan' from the year 1938 to 1949." (E.T.C.)

"22. 1941 से अकेले जाने लगा जब 15 साल का हो गया था। "

"22. I started going alone from the year 1941, when I became 15 years old." (E.T.C.)

"23. 1950 के बाद भी गया हूँ ***बाहरी भाग में निर्मोही अखाडा का कब्जा देखा*** *महन्थ भाष्कर दास को सन् 1950 से 20वीं साल तक देखा उसके बाद कोई दूसरे साधु थे।"*

"23. I have been there even after the year 1950. ***I had found the possession of Nirmohi Akhara over the outer part****. I saw Mahant Bhaskar Das for 20 years from the year 1950. Thereafter, there was some other saint." (E.T.C.)*

"26. मैंने विवादित भवन भीतर व बाहरी भाग को सदैव रामजन्मभूमि मंदिर के तौर पर दर्शन किया है।"

"26. I always had the 'darshan' of inner and outer part of the disputed structure as Ramjanmbhumi temple." (E.T.C.)

"28. विवादित मंदिर में कुर्की के पूर्व बराबर कब्जा निर्मोही अखाडा के साधुओं का देखता रहा हूँ।"

"28. Prior to the attachment of the disputed temple, I always found the possession of the saints of Nirmohi Akhara over it."(E.T.C.)

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410. In para 27 he (DW 3/16) has said that no Muslim was seen by him offering Namaz or using premises in dispute as mosque.

411. DW 3/17, Mata Badal Tiwari, aged about 84 years (vide his affidavit dated 31.08.2004), is resident of Mohalla Taudhikpur Majre Kharauli, Pargana Isauli, Tahsil Musafirkhana, District Sultanpur. His cross examination proceeded as under :

(a) 31.08.2004- by defendant no. 20 (Suit-4), Akhil Bhartiya Sri Ramjanmbhumi Punaruddhar Samiti through Km. Ranjana Agnihotri, Advocate (p. 4-8)

(b) 31.08.04/01.09.2004- by plaintiffs (Suit-5) through Sri A.K. Pandey, Advocate (p. 16)

(c) 01.09.2004- by Mahant Suresh Das, defendant no. 2/1 through Sri Madan Mohan Pandeny, Advocate (p. 16-19)

(d) 01/02.09.2004- by defendant no. 11, Mohd. Faruk Ahmad, through Sri Abdul Mannan, Advocate (p. 20-37)

(e) 02/03/14.09.2004- by Sunni Central Waqf Board, defendant no. 9, through Sri Zafaryab Jilani, Advocate (p. 37-53)

(f) 14.09.2004- by plaintiff no. 7 (Suit-4) and defendant no. 5 (Suit-5), Mohd. Hashim, through Sri Mustaq Ahmad Siddiqui, Advocate (p. 54-62)

(g) 14.09.2004- defendant no. 6/1 through Sri Irfan Ahmad, Advocate and defendant no. 6/2 through Sri Fazale Alam, Advocate, adopted the cross examination already done by Sri Abdul Mannan, Sri Zafaryab Jilani and Sri Mustaq Ahmad Advocate Siddiqui, Advocates (p. 62)

412. His statement about continuous worship at Ayodhya prior

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to 1949 at the disputed premises (inside and outside the courtyard), possession and ownership of the disputed premises of Nirmohi Akhara, performance of Pooja etc. by their Sadhus and 1934 riot, is in paras 6, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20 and 21 of the affidavit and read as under:

*"6. जब से मैंने होश संभाला तभी से पिता जी व गांव वालों के साथ अयोध्या मेले–मेले में श्रीरामजन्मभूमि का दर्शन करने जाता रहे तथा बराबर जाते रहे हैं। **और यह बातें मैंने पिता जी से जाना है।**"*

*"6. Since I attained maturity, I, along with my father and villagers, regularly went to Ayodhya on occasion of fair to have the 'darshan' (offering of prayer by sight) of Sri Ramjanmbhumi, and **I came to know these facts from my father**." (E.T.C.)*

*"9. मैंने 1934 के हिन्दू मुस्लिम दंगा के बारे में **महन्थ बलदेव दास से जाना था** और दूसरे गांव–जवार से भी जाना था इसलिए **1935 में मैं** अयोध्या श्रीरामजन्मभूमि मंदिर भगवान रामलला का दर्शन करने **पहली बार अपने गांव के लोगों के साथ गया था। उस समय मेरी उम्र 15 वर्ष थी।**"*

*"9. I came to know about the Hindu-Muslim riot of 1934 **from Mahant Baldev Das** and other village- Jawar. Due to this I had gone to Ayodhya **in 1935 along with people of my village, to have 'darshan' of Lord Ramlala Sri Ramjanmbhumi temple. At that time I was aged 15 years.**" (E.T.C.)*

"10. 1935 सन् से लेकर पलटन में नौकरी करने के दरमियान करीब 10–12 मर्तबा अयोध्या से श्री रामजन्मभूमि दर्शन करने गया था।"

"10. In between the year 1935 and my service period in the platoon, I had gone to Ayodhya on about 10-12 occasions to have 'darshan' of Sri Ramjanmbhumi." (E.T.C.)

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"11. 1942 से कुर्की होने तक आज तक लगातार श्री रामजन्मभूमि मन्दिर में श्री रामलला का दर्शन बराबर किया हूँ इस दरमियान भी मैं 20–22 मर्तबा दर्शन करने अयोध्या गया।"

"11. From 1942 till the attachment and even till today, I have regularly had the 'darshan' of Sri Ramjanmbhumi temple. I had been to Ayodhya on 20-22 occasions in this period to have 'darshan'." (E.T.C.)

"12. मैं ज्यादातर हर मेले में अयोध्या दर्शन करने जाता था और अयोध्या में तीन मेले होते है।"

"12. I mostly went to Ayodhya during fair to have 'darshan' and three fairs are held at Ayodhya." (E.T.C.)

"13. मैं किसी साल एक आध मेला नहीं गया हूँगा लेकिन चैत्र राम नवमी मेले पर अवश्य मैं अयोध्या दर्शन करने गया हूँ।"

"13. I may have failed to visit on a couple of fairs, but I have definitely been to Ayodhya on the occasion of 'Chaitra Ramnavami' fair to have 'darshan'." (E.T.C.)

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"14. जब अन्दर वाला भाग कुर्क हो गया तो उसके बाद गॉव में जब बलदेव दास जी आये तब पता चला।"

"14. I came to know about attachment of the inner part, when Baldev Das came to village thereafter." (E.T.C.)

"15. ***कुर्की के बाद अन्दर जाकर भगवान रामलला का दर्शन नहीं हो पाता था लोहे के सीखचे वाले दरवाजे से दर्शन हो पाता था।"***

"15. ***After the attachment, the 'darshan' of Lord Ramlala was not possible from inside but from the iron grill gate.*** *" (E.T.C.)*

"16. कुर्की के बाद बाहरी भाग में पहले की तरह राम चबूतरा मन्दिर पर विराजमान भगवान रामलला तथा तीनों यानि शिवदरवार व छट्ठी पूजा स्थल पर बराबर दर्शन करता रहा हूँ।"

"16. Even after the attachment, I have regularly had the

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'darshan' of all the three viz. Lord Ramlala present in Ramchabutara temple, Shiv Darbar and Chhathi worship place in the outer part, as done earlier." (E.T.C.)

"17. श्री रामजन्मभूमि के भीतरी व बाहरी भाग दोनों पर मैंने निर्मोही अखाडा के साधुओं का कब्जा व इंतजाम 1935 सन् से बराबर देखा हूँ।"

"17. I have continuously seen the possession and management of the saints of the Nirmohi Akhara over the inner and outer part of Sri Ramjanmbhumi." (E.T.C.)

"18. आज से 22 वर्ष पहले जाना कि बाहर वाला भाग भी निर्मोही अखाडे के साधुओं के आपसी लड़ाई में कुर्क हो गया तब से सरकारी रिसीवर बाहर वाले भाग भी हो गया।"

"18. About 22 years ago, I came to know that even the outer part had been attached in mutual conflict of the saints of Nirmohi Akhara, and since then an official Receiver was appointed for the outer part as well." (E.T.C.)

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"19. राम जन्मभूमि के राम चबूतरा मन्दिर के उत्तर यानि पूर्वी गेट हनुमन्त द्वार से सटे निर्मोही अखाडा के साधुओं के रहने का सन्त निवास, भण्डार गृह मैं स्वयं 1935 सन् से देख रहा हूँ।"

"19. The store room and saints' accommodation for accommodation of saints, which is adjacent to eastern gate Hanumatdwar or the north of Ramchabutara temple of Ramjanmbhumi, have been witnessed by me since the year 1935." (E.T.C.)

"20. मैं आजादी मिलने के कुछ साल पहले से भाष्कर दास जो बलदेव दास के चेले हैं, को जानता पहचानता हूँ जन्मभूमि मंदिर में भी अन्दरूनी भाग में भी देखा, राम चबूतरे पर भी देखा, सन्त निवास में भी देखा और आजकल वे महन्थ हनुमानगढ़ी नाका के भी हैं। जहाँ भी मैंने इन्हे देखा।"

"20. I knew Bhaskar Das, disciple of Baldev Das, for a few years prior to the independence. I saw him in the inner

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part of the Janmbhumi temple, at the Ramchabutara and in saints' accommodation as well. These days he is the Mahant of Hanumangarhi Naka and I have seen him there as well." (E.T.C.)

"21. सन् 1935 से श्री राम जन्मभूमि मंदिर के भीतरी व बाहरी भाग पर कब्जा निर्मोही अखाडे के साधुओं को देखा और इन्हीं साधुओं के इन्तजाम में रामलला का दर्शन श्रद्धालु लोग करते थे और मैंने भी किया।"

"21. I found the saints of Nirmohi Akhara to be in possession over the inner and outer part of Sri Ramjanmbhumi temple since the year 1935. The devotees as well as I, had the 'darshan' of Ramlala under the management of these saints." (E.T.C.)

413. DW 3/17 joined army in 1939 and after completing one years training at Roorki went to South Afrika wherefrom he retired in November, 1941 due to medical unfitness.

414. D.W. 3/18, Acharya Mahant Banshidhar Das alias Uriya Baba, aged about 99 years (as per his affidavit dated 15.9.2004), is resident of Singh Darwaja, Chhavani Math, Jagannathpuri, Mandir Uriya Baba ka Sthan (Surya Mandir), Mohalla Ramkot, Ayodhya. He was cross examined as under:

(a) 15.09.2004- by defendant no. 17, Ramesh Chandra Tripathi and defendant no. 22 Umesh Chandra Pandey (Suit-4) through Sri Vireshwar Dwivedi, Advocate (p. 4-14)

(b) 15/16.09.2004- by plaintiffs (Suit-5) through Sri A.K. Pandey, Advocate (p. 14-20)

(c) 16.09.2004- defendant no. 2/1 (Suit-4) through Sri Madan Mohan Pandey, Advocate and defendant no. 20 through Km. Ranjana Agnihotri, Advocate adopted the cross examination already done by Sri Vireshwar Dwivedi and Sri A.K. Pandey, Advocates (p. 20)

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(d) 16.09.2004- by defendant no. 11, Mohd. Faruk Ahmad, Advocate through Sri Abudl Mannan, Advocate (p. 21-33)

(e) 16/17/18/20/21/22.09.2004- by Sunni Central Waqf Board, defendant no. 9, through Sri Zafaryab Jilani, Advocae (p. 34-96)

(f) 22/23/24.09.04/11/12.10.2004- by defendant no. 7 (Suit-4) and Mohd. Hashim, defendant no. 5 (Suit-5) through Sri Mustaq Ahmad Siddiqui, Advocate (p. 96-164)

(g) 12.10.2004- defendant no. 6/1 through Sri Irfan Ahmad, Advocate and defendant no. 6/2 through Fazale Alam, Advocate adopted thecross examination already done by Sri Abdul Mannan, Sri Zafaryab Jilani and Sri Mustaq Ahmad Siddiqui, Advocates (p. 164)

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415. He was born in 1905 and came to Ayodhya in 1930. Besides Sanskrit, he knows Hindi and Oriya also. He has got special knowledge in Balmiki Ramayan, Manas, Srimadbhagwatgita. About his continuous Darshan of Lord Ram at Ramjanambhumi (disputed premises) since 1930 (inside the courtyard), its ownership and possession of Nirmohi Akhara, non user of premises by any Mohammandan and no Namaz since 1930 are the basic facts which he has said in para 5, 6, 7, 8, 9, 11, 16, 17, 18 and 19 of the affidavit which are as under :

"5. 1930 से बराबर मैं अयोध्या वास के समय श्री राम जन्मभूमि मन्दिर और हनुमान गढ़ी व कनक भवन मन्दिर दर्शन करने जाता रहा हूँ।"

"5. Since the year 1930, I have been regularly going to have 'darshan' of Sri Ramjanmbhumi temple, Hanumangarhi and Kanak Bhawan temple during my stay at Ayodhya." (E.T.C.)

"6. 1930 में भी जब मैं श्री राम जन्म भूमि जिसका मुकदमा चल रहा है का

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दर्शन करने गया तो ***भीतर वाले भाग में भगवान राम लला जी विराजमान थे*** *जिनका मैंने दर्शन किया व प्रसाद व आरती व चरणामृत लिया। उक्त प्रसाद व आरती व चरणामृत मुझे निर्मोही अखाड़ा के पुजारियों व साधुओं द्वारा मिलते रहे जो मन्दिर राम जन्म भूमि के बाहरी भाग यानी मन्दिर राम चबूतरा के उत्तर मुख्य पूर्वी दरवाजा जो हनुमन्त द्वार कहलाता है के उत्तर सन्त निवास, भण्डार गृह में रहते थे।"*

"6. In the year 1930 also, when I went to have 'darshan' of Sri Ramjanmbhumi, about which case is pending, Lord Ramlala was present in the inner part and I had His 'darshan', prasad and arti and received charnamrit (foot nectar). The said prasad, arti and charnamrit were given to me by the priests and saints of Nirmohi Akhara, who used to live in the outer part of Ramjanmbhumi temple i.e. the saints' accommodation, store room in north of Hanumantdwar, the main gate to north east of Ramchabutara temple." (E.T.C.)

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"7. ***मैंने अन्दर वाले भाग में विराजमान भगवान रामलला का दर्शन 1949 दिसम्बर तक किया।*** *दिसम्बर के आखिरी सप्ताह में भीतर वाले भाग की कुर्की हुई थी। यह बात मैंने स्वयं देखा जब मकर संक्रान्ति से 10, 12 रोज पहले दर्शन हेतु गया था।"*

"7. ***I had 'darshan' of Lord Ramlala present in the inner part, till December, 1949.*** *The inner part had been attached in the last week of December. This was witnessed by me when I had gone to have 'darshan' about 10-12 days before Makar Sankranti." (E.T.C.)*

"8. भीतर वाले भाग की कुर्की गलत हुई। भगवान राम लला भीतर वाले भाग में पहले से विराजमान चले आ रहे हैं जिनका मैं दर्शन पूजा अर्चना 1930 से कर रहा हूँ।"

"8. The inner part was wrongly attached. Lord Ramlala has since back been present in the inner part whose 'darshan' and worship I have been doing since 1930."

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(E.T.C.)

'9. बाहरी भाग में राम चबूतरा छट्ठी पूजा स्थल व शिव दरबार व भण्डार व रसोईघर मय सन्त निवास है जिसमें निर्मोही अखाड़ा के साधू पुजारी पंच रहते हैं तथा ***इस बाहरी भाग में भी मैंने भगवान राम लला का दर्शन पूजन 1930 से किया है*** *और आरती प्रसाद व चरणामृत निर्मोही अखाड़ा के पुजारी व साधुओं से ग्रहण किया है। छट्ठी पूजा स्थल जहॉ चारो भाइयों राम, लक्ष्मण, भरत, शत्रुघ्न के चरण चिन्ह व चूल्हा चकला बेलना है का भी दर्शन व मत्था टेक कर पूजन भक्त लोग करते थे मैं भी करता था।''*

"9. The outer part includes Ramchabutara, Chhathi worship place, Shiv Darbar, store and kitchen along with saints' accommodation, where the saints, priests, panch of Nirmohi Akhara used to live. ***I have had 'darshan' and worship of Lord Ramlala in this outer part as well since 1930*** *and have received arti, prasad, charnamrit from priests and saints of Nirmohi Akhara. The devotees used to have 'darshan' and offer prayer at the Chhathi worship place, which has foot marks of all four brothers Rama, Laxman, Bharat, Shatrughan and stove – chakla- belna, and I also used to do the same." (E.T.C.)*

''11. मैंने यह सब बाहरी भाग में निर्मोही अखाड़ा का कब्जा, प्रबन्ध 1930 से बराबर फरवरी 1982 तक देखा है जब फरवरी 1982 में सिया राघव शरण के आपसी झगड़े में बाहरी भाग भी कुर्क हो गया था।''

"11. The possession, management of Nirmohi Akhara over this entire outer part, had been found by me from the year 1930 to February, 1982. The outer part was also attached in February, 1982 in mutual conflict of Siya Raghav Sharan." (E.T.C.)

''16. ***विवादित भीतरी भाग व बाहरी भाग में मैंने 1930 से किसी मुसलमान को नमाज पढ़ते नहीं देखा है।''***

"16. ***Since the year 1930, I have not seen any Muslim***

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offer Namaz in the disputed inner part and outer part." *(E.T.C.)*

"17. 1934 ई0 दंगे के बाद तो मुसलमान विवादित मन्दिर के उत्तर वाली सड़क से आते–जाते ही नहीं थे पहले सुटहटी मुहल्ला व श्रृंगारहाट आते – जाते थे।"

"17. After the riot of 1934 AD, the Muslims did not pass through the road in north of the disputed temple. Earlier they used to visit Mohalla- Suthati and Shringarhat." (E.T.C.)

"18. वैदिक साहित्य व वाल्मीकि रामायण व मानस व अन्य रचनाओं व साहित्यिक सामग्री पर यही विवादित स्थल श्री राम जन्म भूमि मन्दिर है और यही पवित्र तीर्थ नगरी अयोध्या सरयू तट के दक्षिण बसी है।"

"18. In the Vedic literature, Valmiki Ramayana, Manas and other compositions and literary material, this disputed site is described as Sri Ramjanmbhumi temple and this very sacred pilgrimage is situated in south of the banks of Saryu in Ayodhya." (E.T.C.)

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'19. भौगोलिक दृष्टि से सभी स्थल इतिहास के प्रमाणित होने के कारण ***मैं भगवान राम का जन्म इसी विवादित स्थल पर आस्थानुसार मानता हूँ।"***

"19. In view of all the historical places being proved from geographical point of view, ***I, as per belief, consider that the incarnation of Lord Rama had taken place at this disputed site****." (E.T.C.)*

416. About the constitution and status of Nirmohi Akhara, he has averred some facts in paras 14 and 15, which shall be referred to while considering Issue No. 17 (Suit-3).

417. D.W. 3/19, Ram Milan Singh, aged about 75 years (as per his affidavit dated 12.10.2004), son of Sri Vikaramajeet Singh, is resident of Mauza Haliyapur, Pergana Isauli, Tahasil Musaphirkhana, District Sultanpur. He was cross examined in

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the following manner :

(a) 13.10.2004- by defendant no. 17, Ramesh Chandra Tripathi and defendant no. 22 Umesh Chandra Pandey (Suit-4) through Sri Vireshwar Dwivedi, Advocate (p. 5-9)

(b) 13.10.2004- defendant no. 2/1 (Suit-4) through Sri Madan Mohan Pandey, Advocate and Sri A.K. Pandey, Advocate (Suit-5) adopted the cross examination already done by Sri Vireshwar Dwivedi Advocate (p. 9)

(c) 13/14.10.2004- by defendant no. 11, Faruq Ahmad through Sri Abdul Mannan, Advocate (p. 10-26)

(d) 14/15/25.10.2004- by Sunni Central Waqf Board, defendant no. 9 (Suit-3) through Sri Zafaryab Jilani, Advocate (p. 26-56)

(e) 25/26.10.2004- by plaintiff no. 7 (Suit-4) and defendant no. 5 (Suit-5) Mohd. Hashim through Sri Mustaq Ahmad Siddiqui, Advocate (p. 56-73)

(f) 26.10.2004- defendant no. 6/1 through Sri Irfan Ahmad Advocate and defendant no. 6/2 through Fazale Alam, Advocate adopted the cross examination already done by Sri Abdul Mannan, Sri Zafaryab Jilani and Sri Mustaq Ahmad Siddiqui, Advocates (p. 73)

418. His date of birth is 15.1.1930 and he claim to have attained the age of understanding in 1940, i.e. at the age of 10. He visited, for the first time, Sri Ramjanambhumi at Ayodhya with his parents and other villagers in 1940 and was told by his parents that this was the place where Lord Ram was born and the temple is that of Ramjanambhumi. Regarding his continuous visit to Ayodhya, worship of Lord Ram at the disputed premises inside the Courtyard, the possession and ownership of disputed

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premises by Nirmohi Akhara, he has stated in paragraphs 3 to 15, 17, 18, 20, 21 and 24 of the affidavit as under :

*"3. मैं तब से बराबर अयोध्या राम नवमी के अवसर पर अवश्य भगवान रामलला का दर्शन करने आता रहा हूं। **सन् 1940 से सन् 1951 तक हर रामनवमी में आने का मेरा क्रम हरसाल कायम रहा** लेकिन सन् 1951 के बाद रामनवमी में अयोध्या भगवान रामलला के दर्शन करने में नागा हो जाता था यानि किसी साल नहीं आ पाता था।"*

*"3. Since then I have definitely been to Ayodhya on the occasion of Ramnavami to have 'darshan' of Lord Ramlala. **This practice of mine continued every year on every Ramnavami from the year 1940 to 1951**, but after the year 1951 there was some gap in having 'darshan' of Lord Ramlala at Ayodhya on the occasion of Ramnavami i.e. I was unable to visit in a particular year." (E.T.C.)*

"4. मैं होश सम्भालने पर सन् 1940 में पहली बार जब अयोध्या आया तो पहले सरयू स्नान करते थे इसके बाद रामजन्मभूमि मन्दिर, कनक भवन व हनुमानगढ़ी का दर्शन करता था और नागेश्वरनाथ पर जल भी चढ़ाता था।"

"4. After attaining maturity, I first visited Ayodhya in the year 1940 and started with a holy dip in Saryu followed by 'darshan' of Ramjanmbhumi temple, Kanak Bhawan temple and Hanumangarhi and also used to offer water at Nageshwar Nath." (E.T.C.)

"5. मेरे पिता –माता परिक्रमा में भी अयोध्या आते थे और श्री रामजन्मभूमि मन्दिर में विराजमान भगवान रामलला का दर्शन करते थे मैं भी उनके साथ आता था।"

"5. My parents also used to come to Ayodhya on the occasion of Parikrama (circumambulation) and used to have 'darshan' of Lord Ramlala present in Sri Ramjanmbhumi temple and I also used to accompany them." (E.T.C.)

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''6. मैं जब पहली बार सन् 1940 में होश सम्भालने पर भगवान रामलला का दर्शन विवादित स्थल में स्थित मंदिर रामजन्म भूमि मन्दिर में जब माता–पिता के साथ किया था तो उसी साल सावन झूला में अयोध्या आया था और सावन झूला में भी अयोध्या में झूला लगता है उस समय मैंने सरयू स्नान कर श्रीराम जन्मभूमि मन्दिर में विराजमान भगवान रामलला का भी दर्शन किया और परिक्रमा व कार्तिक पूर्णिमा में भी इसी प्रकार यानि उसी साल सन् 1940 में कार्तिक मास में पड़ने वाले पंचकोसी परिक्रमा व 14 कोसी परिक्रमा व पूर्णिमा के नहान में भी अयोध्या आया था और भगवान रामलला विराजमान मन्दिर श्री रामजन्मभूमि अयोध्या का दर्शन किया।''

"6. When I first had the 'darshan' of Lord Ramlala, along with my parents in the year 1940 after attaining maturity, at the Sri Ramjanmbhumi temple situated at the disputed premises. In the same year I had also been to Ayodhya on the occasion of Sawan Jhula and on that occasion I had the 'darshan' of Lord Ramlala present in Sri Ramjanmbhumi temple after having a holy dip in Saryu. Similarly, on the occasion of Parikrama and Kartik Purnima in said year 1940, I had come to Ayodhya on the occasion of Panch kosi Parikrama, Chaudah kosi Parikrama and Purnima Snan and also had the 'darshan' of Lord Ramlala present in Sri Ramjanmbhumi temple Ayodhya." (E.T.C.)

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''7. श्रीरामजन्म भूमि मन्दिर परिसर दो भागों में 1949 दिसम्बर से हो गया। भीतर वाला भाग कुर्क हो गया था तथा बाहर वाला भाग में दर्शनार्थी आते –जाते थे।''

"7. The Sri Ramjanmbhumi premises was divided in two parts in December, 1949. The inner part was attached and the devotees kept visiting the outer part." (E.T.C.)

''8. भीतर वाला भाग जो कुर्क हुआ उसके बारे में सन् 1950 में जब चैत्र रामनवमी में भगवान रामलला का दर्शन करने आया तो पता चला एवं मैंने देखा कि सींकचे वाली दीवाल पर लोहे के छड़दार दरवाजा बन्द या ताला लगा था तथा बाहर पुलिस का पहरा था उसी जगह से भगवान

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रामलला का दर्शन मैंने व और भी दर्शनार्थियों ने किया। पुलिस से पूछने पर मालूम हुआ कि भीतर का भाग कुर्क हो गया।''

"8. In the year 1950 when I came to have 'darshan' of Lord Ramlala on the occasion of Chaitra Ramnavami, I came to know about the inner part, which had been attached, and also saw that it was bounded by a grill wall with gate, which was closed or locked and police had been posted out side it. I as well other devotees had the 'darshan' of Lord Ramlala from there. On inquiry from police, it transpired that the inner part had been attached." (E.T.C.)

'9. सन् 1940 में जब पहली बार मैं अपने होश में उक्त मन्दिर राम जन्म भूमि में दर्शन हेतु माता–पिता के साथ आया था तो भीतर जो बड़े पुजारी राम जन्म भूमि कहे जाते थे और मौजूद थे, ***उनको दिखाकर मेरे पिता ने बताया था कि यही बड़े पुजारी मं0 बलदेव दास जी है जो अपने गांव व जवार में आते जाते है मैंने पहचाना और तब से मैं महन्त बलदेव दास का भीतर वाले भाग में बतौर बड़े पुजारी मन्दिर राम जन्म भूमि देखा और तब से बराबर मं0 बलदेव दास को वहां बतौर बड़े पुजारी कार्तिक पूर्णिमा 1949 तक देखा है,*** *जिनके साथ निर्मोही अखाड़ा के और साधू भी रहते थे।''*

"9. In my senses, when I first went to the said Ramjanmbhumi temple along with my parents in the year 1940 to have 'darshan', a person called the head priest of Ramjanmbhumi was present there. ***Showing him to me my father told me that he was the head priest M. Baldev Das, who used to visit our village and locality. I recognized him and since then I have seen Mahant Baldev Das as head priest of Ramjanmbhumi temple in the inner part till Kartik Purnima in the year 1949.*** *Other saints of Nirmohi Akhara also remained with him." (E.T.C.)*

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''10. निर्मोही अखाड़ा के साधुओं के बारे में ***मेरे पिता जी ने पहली बार ही बताया था*** *कि उन साधुओं को पूर्व गेट से घुसने पर उनको संत निवास व भण्डार गृह में रहते देखता था।''*

''10. ***On the first occasion itself my father had told me*** *about the saints of Nirmohi Akhara that on entering through the eastern gate he had seen those saints reside in saints' accommodation and store room.'' (E.T.C.)*

'11. ***सन् 1940 में*** *जब पहली बार राम जन्म भूमि मन्दिर माता–पिता के साथ गया था तो* ***पिता जी ने बाहरी भाग यानि राम चबूतरा मन्दिर शिव दरबार व छट्ठी पूजन स्थल पर भी दर्शन कराया था।''***

''11. ***In the year 1940*** *when I first went to Ramjanmbhumi along with my parents,* ***my father had also taken me to have 'darshan' of the outer part i.e. Ramchabutara temple, Shiv Darbar and Chhathi worship place.''*** *(E.T.C.)*

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''12. राम चबूतरा मन्दिर पर भी भगवान रामलला विराजमान थे वहां भी निर्मोही अखाड़ा के साधू पुजारी थे।''

''12. Lord Ramlala was present at the Ramchabutara temple as well. The saints of Nirmohi Akhara were there as priests.'' (E.T.C.)

''13. शिव दरबार, राम चबूतरा मन्दिर के दक्षिण पूर्व कोने पर दीवाल के पेड़ के नीचे था। शंकर भगवान अर्घा, गणेश जी, पार्वती जी, कार्तिकेय जी, नन्दी जी सफेद संगमरमर पत्थर के विराजमान थे। वहां भी मैंने मत्था टेका था और लोगों को भी मत्था टेकते देखा।''

''13. The Shiv Darbar was under the tree in south-east corner of Ramchabutara temple . The white marble stone idol of Lord Shankar, Ganesh ji, Parvati ji, Kartikeya ji and Nandi ji were present over there. I paid my reverence there and also saw others do the same.'' (E.T.C.)

''14. छट्ठी पूजा स्थल उत्तरी गेट के पास था वहां चकला–बेलन –

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चूल्हा व भगवान राम यानि चारो भाइयों के चरण–चिन्ह बने थे वहां भी लोग मत्था टेकते थे मैंने भी अपने मां बाप के साथ मत्था टेका।''

"14. The Chhathi worship place was near the northern gate where Chakla- Belan- Chulha (hearth) and footmarks of all four brothers of Lord Rama, were present and people used to pay their reverence. I along with my parents, also paid my reverence there." (E.T.C.)

''15. मैं सन् 1940 से बराबर तीनों मेला जो अयोध्या में होता था। सन् 1951 चैत्र राम नवमी तक आया उसके बाद साल में किसी एक मेले में अवश्य दर्शन हेतु वहां जा पाता था।''

"15. From the year 1940, I regularly came to Ayodhya on all the three fairs till Chaitra Ramnavami of the year 1951. Thereafter, I went there at least once every year on occasion of any one fair." (E.T.C.)

''17. **सन् 1940 से 1982 तक निर्मोही अखाड़ा के साधुओं का कब्जा तथा वहा रहना व पुजारी का कार्य मन्दिर राम चबूतरा पर करना, मैंने बराबर देखा।** सन् 1982 के मकर संक्रान्ति के दिन भी मैं अयोध्या सरयू स्नान को गया था। इसलिए राम जन्म भूमि मन्दिर श्री दर्शन करने चला गया था इसलिए जानता हूं कि 1982 तक बाहरी भाग पर निर्मोही अखाड़ा वालों का कब्जा देखा।''

"17. ***Since the year 1940 to 1982, I have regularly seen the saints of Nirmohi Akhara perform the functions of priest at Ramchabutara temple and reside and be in possession over there****. I had been to Ayodhya on the occasion of Makar Sankranti in the year 1982 to have a holy dip in Saryu. Due to this, I had gone to Ramjanmbhumi temple to have the 'darshan' and as such I know that till 1982 I had seen the possession of Nirmohi Akhara extend over the outer part." (E.T.C.)*

''18. भीतर वाला भाग पर ही निर्मोही अखाड़ा का कब्जा व पुजारी द्वारा चरणामृत व परसाद देते मैंने 1940 से पूर्णिमा कार्तिक 1949 तक देखा हूं

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इसके बाद अगहन में कुर्की हो गयी थी, जैसा मैंने पहले बयान दिया था।''

"18. From the year 1940 to Kartik Purnima in the year 1949, I had seen the Nirmohi Akhara to be in possession over the inner part and the priests distributing Charnamrit (foot nectar) and Prasad. Thereafter, the attachment took place in Aghan, as already stated by me." (E.T.C.)

''20. निर्मोही अखाड़ा का एक मन्दिर रामघाट अयोध्या में है, वहां भी सावन मेले में मेरे पिता जी मुझे 1941 यानि दूसरे साल ले गये थे और बताया था कि यहीं निर्मोही अखाड़ा वाले हैं जिनके कब्जे व इन्तजाम व मालिकाना में श्री राम जन्मभूमि मन्दिर भी है। इसके बाद भी मैं सावन मेले में निर्मोही अखाड़ा मन्दिर और मन्दिरों की तरफ सावन झूला झांकी देखने सावन मेले में गया था। वहां इधर पता चला था कि मं0 जगन्नाथ दास निर्मोही अखाड़ा के महंथ हैं।''

"20. The Nirmohi Akhara has a temple at Ramghat Ayodhya. My father had taken me there in the next year i.e. in the year 1941 and had told that it was the same Nirmohi Akhara, which was in possession, management and ownership of the Sri Ramjanmbhumi temple. It was only after this that I visited the temples of Nirmohi Akhara on the Sawan fair to have glimpse of Sawan Jhula tableau. There I came to know that M. Jagannath Das was the Mahant of Nirmohi Akhara." (E.T.C.)

''21. नाका मुजफरा हनुमानगढ़ी फैजाबाद में हनुमान जी के मन्दिर के महंथ बलदेव दास थे वहां भी मैं मं0 बलदेव दास के जमाने में गया हूं। उसके शिष्य मं0 भाष्करदास को आजादी मिलने के एक साल पहले राम जन्म भूमि मन्दिर में बलदेव दास के साथ देखा था। नाका में भी हनुमान मन्दिर मैं देखे हूं।''

"21. The Mahant of Hanuman temple at Naka Muzaffara Hanumangarhi Faizabad, was Baldev Das. I have been there as well in the period of M. Baldev Das. One year before the independence, I had seen his disciple M.

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Bhaskar Das along with Baldev Das at the Ramjanmbhumi temple. I have seen Hanuman temples at Naka as well." (E.T.C.)

"24. निर्मोही अखाड़ा का कब्जा इन्तजाम भीतर वाले भाग पर 1949 कुर्की तक व बाहर वाले भाग पर 1982 तक देखा है।"

"24. I had seen the possession, management of Nirmohi Akhara over the inner part till the attachment of 1949 and till 1982 over the outer part." (E.T.C.)

419. In para 26, DW 3/19 has said of having not seen any Muslim offering Namaz in disputed premises nor has heard about so:

"26. मैंने अपनी जानकारी में किसी मुसलमान को विवादित मन्दिर में नमाज पढ़ते नहीं देखा और न ही किसी से सुना।"

"26. In my knowledge I have neither seen any Muslim offer Namaz at the disputed temple nor have I heard the same from anybody." (E.T.C.)

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420. **D.W. 3/20, Mahant Raja Ram Chandracharya**, aged about 76 years (as stated in his affidavit dated 27.10.2004), is resident of RanChor Rai Mandir Dakor, District Khera, Gujrat. He was cross examined as under:

(a) 27/28.10.2004- by plaintiffs (Suit-5) through Sri A.K. Pandey, Advocate (p. 17-31)

(b) 28.10.2004- by defendant no. 17, Ramesh Chandra Tripathi and defendant no. 22 Umesh Chandra Pandey (Suit-4) through Sri Vireshwar Dwivedi, Advocate (p. 31-40)

(c) 28.10.2004- by defendant no. 2/1 (Suit-4) through Sri Madan Mohan Pandey, Advocate (p. 40-44)

(d) 29.10.2004- defendant no. 20 through Km. Ranjana Agnihotri, Advocate adopted the cross examination already done by Sri Vireshwar Dwivedi, Sri A.K. Pandey

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and Sri Madan Mohan Pandey, Advocates (p. 45)

(e) 29.10.2004, 01.11.2004- by Mohd. Faruk Ahmad, defendant no. 11, through Sri Abdul Mannan, Advocate (p. 45-62)

(f) 01/02/03/04/05/08/09/10/17/18/19/20.11.2004- by Sunni Central Waqf Board, defendant no. 9 through Sri Zafaryab Jilani, Advocate (p. 62-198)

(g) 20/30.11.2004- by plaintiff no. 7 (Suit-4) and defendant no. 5 (Suit-5) Mohd. Hashim through Sri Mustaq Ahmad Siddiqui, Advocate (p. 198-218)

421. DW 3/20 came to Ayodhya at the age of 14 years and became pupil of Mahant Raghunath Das, Mahant of Nirmohi Akhara. The averments about Pooja, Darshan at Ramjanambhumi temple at the disputed premises (inside and outside courtyard), its ownership and possession with Nirmohi Akhara are contained in para 2, 3, 4, 5, 9, 10, 11, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, and 51 of the affidavit as under :

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'2. म0 रघुनाथ दास जी महराज रामघाट स्थित निर्मोही अखाड़ा मन्दिर में रहते थे लेकिन मैं जन्म भूमि मन्दिर में भगवान राम लला जिन्हें मैं अपना ईष्ट देव मानता हूँ की सेवा पूजा व भगवान का वर्तन, (पार्षद) साफ करना, फूल, तुलसी लाना माला आदि बनाने की सेवा करता था और मन्दिर के अन्दर बाहर झाड़ू–बहारू लगाता था।''

"2. M. Raghunath Das Maharaj lived in Nirmohi Akhara's temple at Ramghat. However, I consider Lord Ramlala of Janmbhumi temple as my favoured deity and I used to serve, worship, clean the utensils of God, bring flowers, Tulsi, make garland etc. and also used to broom the outer-inner side of the temple." (E.T.C.)

''3. उस समय निर्मोही अखाड़ा के बड़े पूजारी गोविन्द दास जी थे, और उनके सहायक पूजारी सुदर्शन दास, बलदेव दास आदि थे, तथा भण्डार व प्रसाद बनाने का कार्य राम किशुन दास लखनौवा बाबा किया करते थे, एक

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पहाड़ी बाबा राम प्रिया दास और थे जो कोप भवन मन्दिर के शिष्य थे रसोई में मदद करते थे।''

"3. At that time, Govind Das was the main priest of the Nirmohi Akhara and Sudarshan Das, Baldev Das etc. were his assistants. The preparation of food and 'prasad' was carried out by Ram Kishun Das Lucknowa Baba. The Pahari Baba Ram Priya Das was disciple of Kop Bhawan temple and he assisted in the kitchen." (E.T.C.)

'4. उस समय निर्मोही अखाडा के पंच गिरवर दास व रामप्यारे दास वहीं रहते थे तथा गोलकी राम लखन दास जी रामघाट अखाड़े के मन्दिर में रहते थे जो दिन में व शाम दोनों समय मंदिर राम जन्मभूमि रामकोट मोहल्ला, रामघाट, अयोध्या निर्मोही अखाड़ा के मन्दिर से आकर खर्चा व आमदनी का लेखा–जोखा करते थे व हिसाब लिखते थे। वहीं भण्डार गृह के पास संत निवास की कोठरी काठ की संदूक में लेखा–जोखा व हिसाब का कागजात व दीगर कागजात मन्दिर रामजन्मभूमि व निर्मोही अखाड़े का रखते थे।''

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"4. The Panch of Nirmohi Akhara, Girvar Das and Ram Pyare Das lived there in that period and the Golki, Ramlakhan Das lived at Ramghat temple of the Akhara. He used to come daily in morning and evening from the temple of Nirmohi Akhara to Ramjanmbhumi temple, Mohalla Ramkot Ramghat Ayodhya and maintain the account of expenses and income. He used to keep the documents related to accounts and other documents related to Ramjanmbhumi temple and Nirmohi Akhara, in a wooden box in the saints' accommodation near the store room." (E.T.C.)

''5. मा0 रघुनाथ दास जी मेरे गुरू महराज थे भगवान रामलला का दर्शन व मंदिर की विशेष देख–रेख हेतु दिन में एक बार अवश्य आते थे।''

"5. M. Raghunath Das, who was my Guru, used to come at least once daily to have 'darshan' of Lord Ramlala and

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maintenance of the temple." (E.T.C.)

"9. ***श्री राम जन्मभूमि मन्दिर में 1943 से 1949 कुर्की तक भीतरी भाग में विराजमान भगवान रामलला की पूजा–पाठ आरती उत्सव समया बराबर रामानन्दीय वैरागी सम्प्रदाय के रीति–रिवाज व परम्परा से होती रही है।*** *तथा धर्मावलम्बी सनातन वैदिक धर्मानुयायी विशिष्ट रूप से वहां यानी गर्भ गृह में अंदर तक बिला किसी रोक–टोक के दर्शन करते थे। प्रसाद चढ़ाते थे द्रव्य–पुष्प, मिष्ठान आदि चढ़ाते थे। यह सब चढ़ावा भगवान रामलला को होता था। जिसे निर्मोही अखाड़े के पुजारी लेते थे और दर्शनार्थियों को प्रसाद व चरणामृत देते थे और आरती भी देते थे। पूरा कब्जा निर्मोही अखाडा का था तथा निर्मोही अखाडा के इंतजाम में भगवान की पूजा पाठ व उत्सव समैया होते थे।"*

"9. ***From the year 1943 till the attachment of year 1949, the worship, Arti, and rituals of Lord Ramlala present in the inner part of Sri Ramjanmbhumi temple, were regularly performed as per the custom and practice of Ramanand Recluse sect*** *and the religious Sanatan, Vedic religious followers particularly went inside the 'Garbh-grih' without any obstruction and had 'darshan', offered 'prasad', money, flower, sweets etc.. All these offerings were made to Lord Ramlala and were received by the priests of Nirmohi Akhara, who used to distribute the 'prasad', 'charanamrit' and 'arti' amongst the devotees. The complete possession was with Nirmohi Akhara and the worship and ceremonies were carried out under the management of the Nirmohi Akhara." (E.T.C.)*

"10. अन्दर वाले भाग जिसे गर्भ गृह बताया है के ऊपर तीन शिखर है पूर्व सहन है उसके पूर्व सीखचे वाली दीवाल है सीखचे वाली दीवार के पश्चिम सहन व तीनों शिखर सहित वाला भाग भीतरी भाग कहा जाता है जो दिसम्बर 1949 ई0 में झूठे आधार पर पुलिस द्वारा कुर्क किया गया। कुर्की की फर्द बनी थी, जिसकी पक्की नकल फोटो स्टेट सूची (1) कागज

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पेपर नं0 108 सी. 1/4 है, जो दावा नं. 5/89 में निर्मोही अखाडा में दाखिल है जिसकी कापी मैंने पढ़ा है और पहले से 145 के मुकदमे में देखा था। जिसे पढ़ करके बयान कर रहा हूँ जिसमें भगवान रामलला तथा सभी सामानों का जिक्र है जिसकी चौहद्दी कुर्क शुदा भाग की उस समय मौका के लिहाज से प्रशासन व पुलिस द्वारा निम्नलिखित तौर पर लिखी गयी थी।

पूरब– चबूतरा मंदिर राम जी बकब्जा निर्मोही अखाडा सहन
पश्चिम– परिक्रमा
उत्तर– हाता छट्ठी पूजन और निर्मोही
दक्षिण– आराजी परती व परिक्रमा''

''10. There are three domes above the inner part called 'Garbh-grih'. There is courtyard in the east. To its east is the grill wall. The courtyard in west of the grill wall along with the area comprising the three domes, is called the inner part which was attached by the police in December, 1949 on fake ground. A memo of attachment had been prepared, the photostat of whose certified copy has been filed as List-1, paper no. 108C1/4 by Nirmohi Akhara in Case no. 5/89. I have read its copy and had seen it earlier in the case under section 145 and I am making this statement after reading the same. It mentions about Lord Ramlala and all the articles. The boundary of the attached portion, as per the then existing circumstances, has been given by the administration and police as under:

East- Chabutara temple of Lord Rama in possession of Nirmohi Akhara courtyard
West- circumambulation path
North- Campus Chhathi pujan and Nirmohi
South- Vacant plot and circumambulation path'' (E.T.C.)

''11. 1949 कुर्की के समय सभी भगवान रामलला व लखनलाल हनुमान जी व सालिक राम आदि तथा उन भगवान के सिंहासन व पार्षद व पहनावा

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का विवरण सभी दर्ज है।''

''11. At time of attachment of the year 1949, all the details pertaining to Lord Ramlala, Lakhanlal, Hanuman ji, Saligram etc., their thrones, 'parshad' and attire, were entered.'' (E.T.C.)

''29. म0 भाष्कर दास मेरे आने के बाद म0 बलदेव दास के चेला बने और राम जन्म भूमि पर ही सहायक पूजारी के तौर पर रहते थे, फैजाबाद नाका हनुमानगढ़ी मन्दिर भी जाते थे।''

''29. M. Bhaskar Das became the disciple of M. Baldev Das after my arrival and lived at the Ramjanmbhumi as assistant priest. He also used to go to Naka Hanumangarhi temple Faizabad.'' (E.T.C.)

''30. निर्मोही अखाडा के अन्तर्गत कई मन्दिर रहे हैं जिसमें प्रमुख श्री राम जन्म भूमि मन्दिर रहा है और मन्दिर विजय राधव मन्दिर, सुमित्रा भवन मन्दिर, इच्छा भवन मंदिर, सीता कूप मन्दिर, आदि।''

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''30. There were many temples under the Nirmohi Akhara, out of which Sri Ramjanmbhumi temple was the main along with Vijay Raghav temple, Sumitra Bhawan temple, Iksha Bhawan temple, Sitakoop temple etc.'' (E.T.C.)

''31. श्री राम जन्मभूमि मन्दिर परिसर में आने जाने के लिए दो दरवाजे हैं एक पूरब वाला हनुमन्त द्वार कहलाता है जिसमें कोई दरवाजा नहीं लगा है खुला रहता है तथा उक्त द्वार में दोनों तरफ कसौटी पत्थर के खम्भे लगे हैं। जिसमें आकृति उकेरी है और उसमें महावीरी लगी मैंने शुरू से देखा है आस्था के अनुसार उसे पहले से भक्त व संत लोग हनुमान जी की मूर्ति मानते थे इसलिए उस द्वार का नाम हनुमन्त द्वार पड़ गया। दूसरा दरवाजा उत्तर तरफ था जो सिंह द्वार कहलाता था जिसमें टीन के दरवाजे से बंद होता था। मेला–मेला खुलता था जिसे निर्मोही अखाड़ा के लोग मेले में खोलते व बन्द करते थे। उक्त गेट के ऊपर दो सिंह के दो मुखी से आकृति बनी थी जिस कारण उक्त द्वार को सिंह द्वार कहा जाता था।''

''31. There were two gates to enter the Sri Ramjanmbhumi premises. The eastern gate was called Hanumatdwar,

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which had no gate and it was always open. Pillars of touchstone were installed on both sides of said gate, with figures engraved thereon and since beginning I have seen Mahaviri over it. By belief, the saints and devotees always treated it as idol of Hanuman ji, due to which the said gate came to be known as Hanumatdwar. The other gate was in the north and was called Singhdwar. It remained closed by tin gate and was opened on occasions of fair by Nirmohi Akhara people. The figure of two two-faced lions existed at the said gate, due to which it was called Singhdwar." (E.T.C.)

'32. बाहरी भाग अर्थात 1949 की कुर्की के बाहर पूरब उत्तर दक्षिण भाग में राम चबूतरा मन्दिर, शिव दरबार व छट्ठी पूजा स्थल, भण्डार गृह, कोठार तथा सन्त निवास स्थित था जिसे मैं शुरू से देख रहा हूँ मैं निर्मोही अखाडा के और पुजारियों के साथ सन्त निवास में रहता था, भगवान के लिए भण्डार में प्रसाद बनता था तथा कोठार में अन्न आदि रखा जाता था।"

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"32. The Ramchabutara temple, Shiv Darbar and Chhathi worship place, store room, granary and saints' accommodation were situated in east north south of the outer part i.e. beyond the attachment of 1949. I have seen them since beginning. I used to live in the saints' accommodation along with other priests of Nirmohi Akhara. The 'prasad' was prepared in the 'bhandar' (kitchen) and grains etc. were kept in the granary." (E.T.C.)

"33. राम चबूतरा मन्दिर 17 फुट x 21 फुट का करीब 3 फुट ऊँचा था उसके ऊपर काठ का सिंहासन रखा हुआ था जिसमें बीच में रामलला, लक्ष्मण, भरत जी, शत्रुघ्न विराजमान थे तथा हनुमान जी भी थे। भगवान रामलला विराजमान मन्दिर राम चबूतरा भी निर्मोही अखाड़ा के कब्जे इन्तजाम में, मैं जब से वहॉ गया हूँ तब से देख रहा था और ***मेरे गुरू जी ने बताया कि 1885 ई0 में ही इस चबूतरे का मुकदमा***

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चला था जो निर्मोही अखाड़ा के कब्जे में तब से बराबर कायम चला आ रहा है *और वहॉ पर भगवान रामलला का पूजा–पाठ बराबर होता चला आ रहा है। मैने स्वयं 1943 ई0 से वहॉ पर भगवान की सेवा पूजा–पाठ आदि किया है और अखाड़े के पुजारियों को भगवान की आरती नियमित रूप से करते पूजा–पाठ करते तथा उत्सव समैया करते बराबर देखा है जहॉ श्रद्धालु भक्तों के दर्शन लेने पर वहॉ भी मिष्ठान फूल आदि चढ़ाते थे तथा पुजारियो से प्रसाद आदि लेते थे।''*

''33. The Ramchabutara temple was 17 feet x 21 feet and about 3 feet high. A wooden throne was placed therein with Lord Ramlala, Laxman, Bharat ji, Shatrughan and Hanuman ji were present over it. The Ramchabutara temple with Lord Ramlala present, was also under the management-control of the Nirmohi Akhara. I have seen this from the time I started going there. ***My Guru told me that in the year 1885 AD, a case had been filed in respect of this Chabutara, which has since then continuously been in possession of Nirmohi Akhara*** *and the worship of Lord Ramlala has regularly been going on, there. I have myself served-worshiped etc. the Almighty, there since the year 1943 and have also seen the priests of Akhara regularly carry out arti, worship, ceremonies. After having 'darshan', the devotees used to offer sweets, flowers etc. and accept 'prasad' etc. from the priests.'' (E.T.C.)*

''34. राम चबूतरा मन्दिर यानि राम चबूतरा में पूरब पश्चिम लगभग सवा दो x पौने तीन फुट के दो दर बने थे जिसमें छड़ के दरवाजे लगे थे जो श्रद्धालु भक्तों में गुफा मन्दिर कहकर प्रचलित था इस गुफा मन्दिर में एक गुफा में कौशल्या जी भगवान रामलला को गोद में लिए तथा हनुमान जी की प्रतिमा रही है जिसका भी दर्शन श्रद्धालु भक्त गण करते थे और दूसरी गुफा में पाषाण की भरत जी की 2 फुट ऊॅची मूर्ति थी और छोटी मूर्ति शत्रुघ्न जी की अष्टधातु की रखी थी जो कभी–कभी चबूतरें पर रख दी जाती और कभी–कभी गुफा मन्दिर में भरत जी के पास रख दी जाती थी।

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श्रृद्धालु भक्त वहॉ भी दर्शन करते थे, ऐसा मैं शुरू से देख रहा हूँ।''

"34. In east west of the Ramchabutara temple or Ramchabutara, there were two spaces of approximately 2 ¼ feet x 2 ¾ feet, which had doors of iron rod. They were famous amongst the devotees as cave temples. Out of these cave temples, the idols of Kaushalya ji with Lord Ramlala in her lap and of Hanuman ji were present in one cave and the devotees used to have their 'darshan'. The 2 feet tall stone idol of Bharat ji and small ashtadhatu idol of Shatrughan ji were present in the other cave, which was sometimes placed over the Chabutara and sometimes near Bharat ji in the cave temple. The devotees used to have 'darshan' here as well, as seen by me since beginning." (E.T.C.)

''35. उत्तर तरफ सिंह द्वार के पास छट्ठी पूजन स्थान पर जहॉ भगवान रामलला सहित चारों भाइयों के छोटे–छोटे चरण चिन्ह संगमरमर पत्थर के मौजूद थे और उसी के पास चूल्हा बेलना तथा चकला कायम था जहॉ भी श्रद्धालु भक्त लोग मत्था टेकते थे तथा दर्शन करते थे और वहॉ पर भी निर्मोही के पुजारी बराबर आरती पूजा करते थे ऐसा मैं शुरू से देखता रहा हूँ।''

"35. The Chhathi worship place was in the north near the Singhdwar, where Lord Ramlala and small footmarks of all four brothers were present over marble stone and in its vicinity were the 'chulha', 'belna' and 'chakla' and the devotees used to offer their prayer and have 'darshan'. The priests of Nirmohi regularly carried out worship 'arti' there as well and I had seen this since beginning." (E.T.C.)

'36. ***बाहरी भाग के इन सभी धार्मिक स्थलों का इन्तजाम व कब्जा मेरे गुरू जी ने बताया था कि 1885 ई0 से अभिलेखों के अनुसार चला आ रहा है*** *जबकि मेरे गुरू जी ने बताया था कि श्री राम जन्मभूमि में स्थित उक्त सभी धार्मिक स्थानों का तथा विराजमान*

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भगवान रामलला की पूजा–पाठ आरती आदि मानव स्मृति के पहले से निर्मोही अखाड़ा के पूर्व सन्त पुजारी द्वारा सदैव किया गया था इस सन्दर्भ में अखाड़े में परम्परा से जानी हुयी बाते यह है कि मानव याददाश्त से जानी हुयी बाते जो मैंने अपने गुरू परम्परा से जानी है ***श्यामानन्द दास के जमाने से मन्दिर श्री रामजन्मभूमि में पूजा–पाठ इन्तजाम सभी निर्मोही अखाडा के कब्जे व इन्तजाम में अनादि काल से चला आ रहा है जिसकी जानकारी मुझे गुरू परम्परा से हुयी है।''***

"36. ***My Guru had told me that according to records, the management and possession over all these religious places in the outer part had been continuing since 1885 AD****, whereas my Guru has told me that the worship, 'arti' etc. of all the said religious places situated at the Sri Ramjanmbhumi and of Lord Ramlala present, had always been carried out by the saints, priests of Nirmohi Akhara from time immemorial. In this behalf the facts known from customs of the Akhara are those which I have come to know by virtue of Human memory through Guru-parampara.* ***From the period of Shyamanand Das, arrangement for worship at Sri Ramjanmbhumi temple has been in the possession and management of Nirmohi Akhara since eternity. I have come to know about that through Guru-parampara****." (E.T.C.)*

''37. उक्त गर्भगृह में भगवान रामलला बहुत पहले से विराजमान चले आ रहे हैं और बराबर निर्मोही अखाड़ा के कब्जे व इन्तजाम में रहे हैं ***भीतरी भाग पर भी निर्मोही अखाड़े का कब्जा निर्विवाद रूप से खुल्लम–खुल्ला आम लोगों की जानकारी में था।''***

"37. Lord Ramlala has been present in the said 'Garbh-grih' from long time back and the possession and management of Nirmohi Akhara has always been there. ***The undisputed possession of Nirmohi Akhara over the***

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inner part was in the knowledge of general public." *(E.T.C.)*

"38. 1943 ई0 में मैं जब श्री राम जन्मभूमि पहुॅचा तो भगवान रामलला गर्भगृह यानी बीच वाले शिखर के नीचे उत्तर पश्चिम कोने पर सीढ़ीनुमा दर पर विराजमान थे। चांदी के सिंहासन पर भगवान रामलला व लखनलाल बाल स्वरूप में विराजमान रहे और हनुमान जी पाषाण मूर्ति सिंहासन के बाहर विराजमान थी तथा चार पॉच सालिकराम भगवान भी वहॉ विराजमान थे मुख्य शिखर से नीचे बीच वाले भाग में झूले का काठ का सिंहासन जिसमें कि भगवान रामलला विराजमान होते थे, सावन झूले में पुजारी द्वारा लाये जाते थे और भी उत्सव के समय लाये जाते थे जैसे शरद पूर्णिमा, कार्तिक पूर्णिमा आदि।"

"38. In the year 1943, when I reached the Sri Ramjanmbhumi, Lord Ramlala was present over a step type place in north west corner in the 'Garbh-grih' i.e. under the central dome. Lord Ramlala and Lakhanlal were present over a silver throne in child form and the stone idol of Hanuman ji was present besides the throne. 4-5 Salikram were also present. There was a swing shaped wooden throne under the main dome, which was occupied by Lord Ramlala. The priests used to bring Him on occasion of Sawan Jhula and other ceremonies such as Sharad Purnima, Kartika Purnima etc." (E.T.C.)

"51. इस मन्दिर में विराजमान भगवान रामलला की प्राण प्रतिष्ठा मात्र मानव स्मृति के पहले निर्मोही अखाड़े के किसी महन्त ने करायी थी। और ऐसे ही राम चबूतरे पर भगवान राम लला की मात्र मानव स्मृति के पहले निर्मोही अखाड़े के किसी महन्त प्राण प्रतिष्ठा करायी थी। ***ये सभी प्राण प्रतिष्ठा वैदिक रीति से हुई थी।*** *और इसी प्रकार बाहरी भाग में होते के अन्दर दक्षिण पूर्व कोने पर षष्ठ मुखी शंकर जी, गणेश जी, नन्दी जी, आदि देवता की प्राण प्रतिष्ठा निर्मोही अखाड़े के मानव स्मृति के पहले करायी थी। वह भी वैदिक रीति से हुई थी। और इसी प्रकार छठी स्थल पर चारों भाइयों की चरण चिन्ह की प्रतिष्ठा मानव स्मृति के पहले*

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निर्मोही अखाड़े के किसी महन्त ने करायी थी। ये सभी बातें अखाड़े के वृद्ध साधुओं से अपने गुरू महराज से जाना है पूछने पर हमारे गुरू ने बताया कि ये बताया कि ये बात उन्होंने परम्परागत अपने गुरू महराज व अपने से वृद्ध नागा अतितों से जाना। ये बातें जो मैंने बतायी कि सिर्फ प्राण प्रतिष्ठा ही देवताओं की हुई सम्पत्ति का कोई समर्पण नहीं हुआ। क्योंकि सम्पत्ति तो पहले तो पहले ही सार्वजानिक धार्मिक न्यास निर्मोही अखाड़े में निहित थी। इन सभी देवताओं के दर्शन के लिए हिन्दूओं को दर्शन करने की पूरी छूट थी किन्तु किसी मुसलमान को अन्दर आने की अनुमति कतई नहीं थी। और न ही कोई मुसलमान अन्दर आने पाता था। ये बातें भी हमने अपने परम्परागत गुरू महराज से जानी 1946 से 1949 तक मुख्य मन्दिर के भीतर वाले भाग में, तथा 1946 से 1982 कुर्की तक राम चबूतरा मन्दिर में षष्ठ मुखी शंकर भगवान स्थल, छठी पूजन स्थल पर बतौर पुजारी निर्मोही अखाड़ा रामानन्दीय बैरागी सम्प्रदाय के परम्परा व रीति रिवाज व वैदिक रूप से पूजा किया व पांचो समय की आरती किया। अखाड़े के महन्त जो चुने जाते हैं। वे अपने चुनाव के बाद अखाड़े के पद ग्रहण करने के बाद रिवाजन पंचो के हक में इकरार नामा करते हैं। और रजिस्ट्री करा देते हैं। अखाडे के किसी भी महन्त को अखाड़े के किसी भी सम्पत्ति के बारे में कोई भी विक्रय पत्र या अन्तरण का कोई भी कागज लिखने का अधिकार नहीं होता हैं जितने भी अखाड़ों का नाम बयान में ऊपर बताया है उनके रीति–रिवाज व परम्परा एक ही हैं निर्वाणी अखाड़ा जिसके अन्तर्गत प्रसिद्ध हनुमान गढ़ी मन्दिर है। उन्होंने अपने कुछ रीति रिवाज दफ्तर सब रजिस्ट्री फैजाबाद में पंजीकरण करा कर पुस्तक के रूप में छपवा कर प्रसारित किया। जिसकी एक पुस्तक की छाया प्रति मुकदमें में दाखिल किया।"

"51. The 'pran-pratishtha' of Lord Ramlala present in this temple was carried out by some Mahant of Nirmohi Akhara, in period beyond human memory. Similarly, the 'pran-pratishtha' of Lord Ramlala at Ramchabutara was carried out by some Mahant of Nirmohi Akhara, in period beyond human memory. ***All these 'pran-pratishtha' had taken place as per Vedic rites****. Similarly, the 'pran-pratishtha' of six faced Shankar ji, Ganesh ji, Nandi ji and*

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other deities in south east corner inside the courtyard of the outer part, was carried out by Nirmohi Akhara in period beyond human memory. It had also been carried out as per Vedic rites. Similarly, the 'pran-pratishtha' of footmarks of all the four brothers at the Chhathi place had been carried out by some Mahant of Nirmohi Akhara, in period beyond human memory. I have come to know these facts from elderly saints of Akhara and my Guru. On inquiry my Guru had told that he had come to know these facts customarily from his Guru and elderly Naga. The fact stated by me that only 'pran-pratishtha' of the deities had been carried out and that the property had not been surrendered because the property was already vested in public religious trust Nirmohi Akhara. The Hindus has full liberty to have 'darshan' of all these deities but no Muslim was allowed to enter and neither was any Muslim able to go inside. I came to know these facts as well from my customary Guru. The five times 'arti' and worship in the inner part of the main temple from the year 1946 to 1949, and six faced Lord Shankar at Ramchabutara temple and Chhathi worship place from the year 1946 to the attachment in 1982, was carried out by me as priest of Nirmohi Akhara as per the customs and practice of Ramanand Recluse sect and as per Vedic rites. The Mahant of the Akhara is elected. After assuming office in Akhara after the election, he customarily executes agreement in favour of Panchas and gets it registered. No Mahant of the Akhara is vested with the right to execute any sale deed or transfer deed regarding any property of the Akhara. All the Akharas named above have similar customs and practices.

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The Nirvani Akhara, which has the famous Hanumangarhi temple, has got few of its customs registered in the office of Sub-Registrar, Faizabad and published it in form of a book, whose copy has been filed in this case." (E.T.C.)

422. In para 50, DW 3/20 has said about the faith of Hindus regarding birth place of Lord Ram as under :

"50. विवादित मन्दिर प्राचीन नाम राम जन्म स्थान रहा शुरू में इसी नाम से प्रचलित रही है लेकिन सामान्यतः पूरे संसार में राम जन्म भूमि के नाम से प्रसिद्ध है। राम जन्म भूमि का वैदिक सनातन महत्व हिन्दू धर्म के अनुसार इसलिए बहुत ज्यादा है कि विष्णु अवतार भगवान रामचन्द्र का जन्म व अवतार इसी स्थल पर हुआ। इस आस्था का प्रमाण मुझे बाल्मीकि कृत रामायण स्कुंद पुराण, रूद्रयामल, तुलसीकृत मानस, और विभिन्न ऐतिहासिक व साहित्यक ग्रंथों के पढ़ने व सुनने से हुआ।"

"50. The ancient name of the disputed temple was Ram Janmsthan and initially it remained famous by this name. However, it is usually famous in the whole world as Ramjanmbhumi. The Ramjanmbhumi has immense Vedic and Sanatan importance in Hindu religion because Vishnu incarnate Lord Ramchandra had been born/descended at this very place. The evidence for this belief was found by me in Valmiki's Ramayan, Skand Purana, Rudrayamal, Tulsi's Ram Charit Manas and by reading and hearing different historical and literary works." (E.T.C.)

423. In para 44, 45, 65 and 73, DW 3/20 has said that Muslims have never offered Namaz at the disputed premises and at least since 1934, they have dared not to go to Garbhgrih, never permitted by Sadhus of Nirmohi Akhara to go towards disputed premises. Rest of the statement contained in the affidavit relating to the contents of certain published material. Testimony of the contents of published material by oral evidence is not admissible in evidence since the contents of the

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published books can be looked into from those books itself and for that purpose no oral evidence is admissible.

424. In para 8, he has said that he came to Ayodhya in 1943 and studied at Varanasi from 1954 to 1959:

''8. मैंने भाषा ज्ञान यानी हिन्दी संस्कृत घर पर ही पढ़ा था, अंग्रेजों भारत छोड़ो सत्याग्रह के बाद 1943 में अयोध्या आया था मेरी उच्च शिक्षा बनारस रामानन्द संस्कृत विद्यालय में हुई, अयोध्या में वेद पढ़ने के लिए गायत्री भवन संस्कृत विद्यालय जाया करता था मैं बनारस में 1954 ई0 से 1959 ई0 तक अध्ययनरत था।''

''8. I learnt language, that is, Hindi and Sanskrit at home itself. After the Quit India Movement, I came to Ayodhya in the year 1943. I received my higher education at Banaras Ramanand Sanskrit Vidyalaya. In Ayodhya, I used to go to Gaytri Bhawan Sanskrit Vidyalaya for reading the Vedas. I studied at Varanasi between the years 1954 to 1959 AD.'' (E.T.C.)

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425. **D.W. 13/1-1, Mahant Dharamdas**, aged about 59 years (vide affidavit dated 10.3.2005, is resident of Hanuman Garhi, Ayodhya, District Faizabad. He was cross examined as under:

(a) 10/11/14/15/16/17/18.03.2005- by Nirmohi Akhara, plaintiff (Suit-3) through Sri R.L. Verma, Advocate and Tarunjeet Verma, Advocate (p. 9-106)

(b) 18/21/22.03.2005- by plaintiff no. 9 and 10/1 Mahmood Ahmad and Mohd. Faruk Ahmad through Sri Abdul Mannan, Advocate (p. 107-130)

(c) 22/23/24/29/30/31.03.2005- by plaintiffs no. 1, 6/1, 8/1 Sunni Central Board of Waqf, Jiyauddin and Maulana Mahafujurrhman through Sri Zafaryab Jilani, Advocate (p. 130-203)

(d) 31.03.2005, 01.04.2005- by plaintiff no. 7 (Suit-4) through Sri Mustaq Ahmad Siddiqui, Advocate (p. 203-

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(e) 01.04.2005-defendant no. 6/1 (Suit-3) through Sri Irfan Ahmad, Advocate and defendant no. 6/2 (Suit-3) through Sri Fazale Alam, Advocate and defendant no. 26 (Suit-5) through Sri C.M. Shukla, Advocate adopted the cross examination already done by Sri Abdul Manna, Sri Zafaryab Jilani and Sri Mustaq Ahmad Siddiqui, Advocates (p. 225)

426. He is said to be Sri Mahant of Akhil Bharatiya Sri Panch Nirwani Ani Akhara and Mahant of Hanuman Garhi, Ayodhya. Born at village and post Dumari, District Baksar, Bihar, he came to Ayodhya in 1962 and became pupil of Baba Abhiram Das. About the characteristics of building in dispute so as to be a temple of Lord Ram, he has made statement in paras 4, 5, 6, 7, 8, 9, 10, 11, 12 and 19 of the affidavit as under :

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''4. यह कि राम जन्म भूमि परिसर में पूरब तरफ मुख्य द्वार था जिसे हनुमत द्वार कहते थे। हनुमत द्वार में दोनों तरफ काले कसौटी के एक–एक खम्भे लगे हुए थे जिन पर जय–विजय की मूर्तियां थीं और फूल–पत्ती, कलश आदे खुदे थे। हनुमत द्वार के सटे पूरब एक पत्थर जमीन में गड़ा हुआ था जिस पर संख्या '1' व जन्म भूमि नित्य यात्रा' लिखा था।''

''4. That towards the east of the Ram Janam Bhumi premises was the main door which was called Hanumat Dwar. Both sides of the Hanumat Dwar had one pillar each made of black touch stone depicting the idols of Jay-Vijay and with flowers, leaves, etc. engraved there on. Adjacent to and east of the Hanumat Dwar and buried in the ground was a stone with 'No.1' and 'Janam Bhumi Nitya Yaatra' written on it.'' (E.T.C.)

'5. यह कि हनुमत द्वार से प्रवेश करने पर दक्षिण की ओर राम चबूतरा था जहां भगवान राम लला की पूजा–अर्जना निरंतर होती थी, वहीं दक्षिण पूरब कोने पर एक नीम और एक पीपल का पेड़ था जिसके नीचे चबूतरे पर

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शिव लिंग, कार्तिकेय जी, गणेश जी, पार्वती जी व नन्दी जी की मूर्ति विराजमान थी।''

''5. That on entering through the Hanumat Dwar there was Ram Chabutra in the south where there used to be regular pooja-archana (worship and prayer) of Lord Ram Lala. In the south-east corner at that very place were a neem tree and a peepal tree(fig-tree) beneath which idols of Shiva's phallus, Kartikeya, Ganesha, Parvati and Nandi were installed on a rectangular terrace.'' (E.T.C.)

''6. यह कि हनुमत द्वार से प्रवेश करने पर उत्तर की ओर भण्डार व संत निवास था जिनमें साधु–संत रहते थे व बर्तन अनाज आदि रखा जाता था और प्रसाद बनता था। तीन गुम्बद वाले भवन के सामने सींकचे वाली दीवार थी जिसमें दो द्वार लगे थे, एक द्वार हनुमत द्वार के सामने पड़ता था और दूसरा इसके थोड़ा हट कर था।''

''6. That on entering through the Hanumat Dwar, towards the north were a store room and a dwelling place for saints in which sages and saints lived; utensils, grains, etc. were stored and prasad was prepared. In front of the three-dome building lay a wall with bars which had two doors, one of which was facing the Hanumat Dwar and the other one was a bit away from it.'' (E.T.C.)

''7. यह कि राम जन्म भूमि परिसर के उत्तर एक द्वार था जिसे सिंह द्वार कहा जाता था। सिंह द्वार के ऊपर बीच में गरूण जी की मूर्ति थी उनके दांए तरफ एक शेर व बाएं तरफ एक शेर बना था। सिंह द्वार से अंदर आने पर सीता रसोई/कौशल्या रसोई थी जहां चूल्हा, चौका, बेलन व चरण चिन्ह संगमरमर के बने लगे हुए थे।''

''7. That towards the north of the Ram Janam Bhumi premises was a door which was called Singh Dwar. Above the Singh Dwar was an idol of Ganesha in the midst and one lion each was carved out on both the right and left of it. On coming inside through the Singh Dwar, there lay Sita

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Rasoi/Kaushalya Rasoi where hearth, chauka, rolling-pin and foot-prints were made of marble." (E.T.C.)

"8. यह कि सीखचें वाली दीवार के पश्चिम ओर तीन गुम्बद वाला भवन था। जिसके बीच वाले गुम्बद के नीचे भगवान श्री रामलला का जन्म/प्राकट्य हुआ था। जिसके दर्शन मात्र से मोक्ष की प्राप्ति हो जाती है। भगवान श्री रामलला की जन्म भूमि स्वयं में ही देवत्व प्राप्त एवं पूज्य है समस्त सनातन धर्मी हिन्दू समुदाय द्वारा उनकी पूजा की जाती है।"

"8. That towards the west of the wall with bars was a three-dome building beneath the middle dome of which Lord Sri Ram Lala incarnated himself, by mere 'darshan' of whom one can attain liberation. The birthplace of Lord Sri Ram Lala itself is blessed with divinity and is revered. The entire orthodox Hindu community worships him." (E.T.C.)

"9. यह कि राम जन्म भूमि परिसर के उत्तर सनत, सनंदन सनातन, सनतकुमार, गर्ग, गौतम, शाण्डिल्य महार्षियों की समाधि और एक नारद चबूतरा था। राम जन्म भूमि परिसर के दक्षिण मार्कण्डेय व अंगिरा ऋषि की समाधि और उसके दक्षिण लोमश चौरा था। राम जन्म भूमि परिसर के दक्षिण–पूरब सीताकूप है जिसका जल बहुत ही पवित्र माना जाता है जिसे सभी हिन्दू सनातन धर्मी अपने धार्मिक कार्यो में प्रयोग करते हैं। हनुमत द्वार के पूरब शंकर चबूतरा व उसके पूरब बाबा अभिराम दास कथा मण्डप था।"

"9. That towards the north of the Ram Janam Bhumi premises lay tombs of sages like Sanat, Sanandan Sanatan, Sanat Kumar, Garg, Gautam and Shandilya and a Narad chabutra. Towards the south of Ram Janam Bhumi the tombs of seers viz. Markandeya and Angira and towards south of this was Lomash Chaura. Located on the south-east of the Ram Janam Bhumi premises was Sita Koop, water of which is regarded as very holy and which orthodox Hindus use in their religious activities. Located east of the Hanumat Dwar was Shankar chabutra and

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towards the east of this lay Baba Abhiram Das Katha Mandap." (E.T.C.)

"10. यह कि राम जन्म भूमि परिसर के चारो तरफ परिक्रमा मार्ग था जिससे तीर्थ यात्री, दर्शनार्थी श्री राम जन्म भूमि परिसर की परिक्रमा करते थे। हनुमत द्वार से परिक्रमा हेतु दक्षिण की ओर चलने पर पूर्वी दीवार में ही बाहर की ओर वाराह भगवान विराजमान थे।"

"10. That around the Ram Janam Bhumi premises was parikrama marg (route of circumambulation), through which pilgrims and devotees used to do circumambulation of Sri Ram Janam Bhumi premises. Moving towards the south from the Hanumat Dwar for circumambulation, towards the exterior of the eastern wall itself lay Lord Varah as presiding deity." (E.T.C.)

"11. यह कि तीन गुम्बद वाले भवन में बारह काले कसौटी पत्थर के खम्भे लगे हुए थे जिन पर हिन्दू देवी–देवताओं की मूर्तियां, कलश, पल्लव, फूल, पत्ती आदि उकेरी हुई थीं। बीच वाले गुम्बद अर्थात् गर्भगृह के सामने वाले द्वार के ऊपर चन्दन की लकड़ी का बना हुआ बीम लगा था।"

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"11. That the three- dome building had 12 pillars of black kasauti stone with idols of male and female Hindu deities, pitchers, foliages, flowers, leaves etc. engraved on them. On the middle dome, that is, above the gate located opposite to the sanctum sanctorum was placed a beam made of sandal-wood." (E.T.C.)

"12. यह कि श्री राम जन्मभूमि परिसर में जाने के लिए मात्र दो द्वार थे उत्तर में सिह द्वार व पूरब में हनुमत द्वार था और इन द्वारों से होकर ही तीन गुम्बद वाले भवन के अंदर जाया जा सकता था इसके अतिरिक्त अन्य कोई प्रवेश द्वार नहीं था, इसलिये साधु वैरागी व हिन्दू तीर्थयात्री, दर्शनार्थी आदि के अलावा अन्य किसी पंथ या मज़हब के अनुयायी प्रवेश नहीं कर पाते थे।"

"12. That there were just two gates to enter Sri Ram Janam Bhumi premises. Towards the north was Singh

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Dwar and towards the east was Hanumat Dwar. Only by passing through these doors one could enter the three-domed building. Except for this one, there was no other entrance. Hence, except saints, hermits, Hindu pilgrims, devoteees etc., followers of no other sect or faith could have entrance there." (E.T.C.)

''19. यह कि विवादित ढांचा गिरने के पूर्व मुख्य द्वार प्रवेश हेतु पूरब की ओर से था जिसे हनुमत द्वार के रूप में जाना जाता था मुख्य द्वार के दोनों तरफ काले कसौटी के खम्भे थे इसी प्रकार के 12 काले कसौटी के खम्भे अन्दर मुख्य भवन में भी लगे थे जिन पर घट, पल्लव, अमृत कलश, स्वास्तिक, फूल पत्ती, मोर, देवी देवताओं के चित्र उकेरे थे।''

''19. That prior to the demolition of the disputed structure, the main gate for entrance opened in the east and was called Hanumat Dwar. There were pillars of black kasauti stone on both sides of the main gate. The main building also had 12 pillars made of this very type of black kasauti stone and having images of pitchers, foliages, Amrit Kalash, Swastik, flowers, leaves, pecocks and male and female deities engraved on them." (E.T.C.)

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427. About the faith of Hindus that the place in dispute is the birth place of Lord Ram and that Babar got the building constructed after demolition of a Temple, at the instance of one Fakir, and the constructed building was never a mosque, hence, neither used as mosque nor Namaz was offered thereat, he has stated in paragraphs 13, 14, 15, 18, 20, 22, 23 and 25 of the affidavit as under :

''13. यह कि बाबर कभी भी इस देश का बादशाह नहीं था और न ही कभी उसे इस देश में बादशाह की मान्यता दी गई और न ही कभी बाबर ने बादशाह के रूप में इस देश में राज किया। बाबर मात्र एक लुटेरा था, जो लूटपाट के बाद वापस अपने देश अफगानिस्तान चला गया। विवादित स्थल पर स्थित राम जन्म भूमि मंदिर, जिसका राजा विक्रमादित्य के समय

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में जीर्णोद्वार हुआ था, को मीरबाकी , जो एक शिया मुसलमान था और बाबर का सेनापति था, ने एक फकीर के कहने पर ध्वस्त करके मस्जिद का रूप देने का प्रयास किया और इस भवन के निर्माण के लिये मंदिर के ही मलबे आदि का प्रयोग किया।"

"13. That Babur was never emperor of this country, nor was he ever recognised emperor of this country nor had he ruled over this country. Babur was just a plunderer and had gone back to his country, Afghanistan, after the plunder. Mir Baqi, a Shia Muslim and army commander of Babur, demolished the Ram Janam Bhumi temple, renovated during the reign of King Vikramaditya, and tried to give it the shape of a mosque at the behest of a Fakir and used the debris, etc. of the temple itself for the construction of this building." (E.T.C.)

"14. ***यह की मीरबाकी ने श्री रामजन्मभूमि मंदिर तोड़ कर जो तीन गुम्बद वाले भवन का निर्माण कराया वह कृत्य मूर्ति–पूजकों को अपमानित करने के उद्देश्य से किया था*** *न कि मस्जिद के रूप में इस्तेमाल करने हेतु और वह स्थान कभी भी मस्जिद के रूप में इस्तेमाल नहीं हुआ और न ही वहां पर कभी नमाज पढ़ी गई।"*

"14. ***That Mir Baqi built the three-dome building after demolishing Sri Ram Janam Bhumi temple. The said act was committed with the intention of insulting idol-worshippers****, not for using it as a mosque. This place was never used as a mosque nor was namaj ever offered there." (E.T.C.)*

"15. यह कि श्री राम जन्म भूमि पर स्थित तीन गुम्बद वाले भवन में कोई मीनार नहीं थी और न ही वहॉ पर वजू करने के लिये पानी एकत्रित करने का कोई स्थान था।"

"15. That Sri Ram Janam Bhumi-situated three-dome building had no minaret nor was there any place for collecting water for being used for 'vaju' (cleaning of

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hands).” (E.T.C.)

“18. यह कि हिन्दू समाज के लोग अनादि काल से इस स्थान को श्री राम चन्द्र जी की जन्मभूमि के रूप में परम्परागत आस्था और विश्वास से पूजते रहे हैं।“

“18. That people of the Hindu society have been worshipping the birthplace of Sri Ram Chandra with traditional faith and belief since eternity.” (E.T.C.)

‘20. यह कि मुख्य परिसर में मध्य गुम्बद के नीचे की भूमि पर भगवान श्री राम का जन्म हुआ था यह आस्था एवम् विश्वास हिन्दू जनमानस का है और इसी आस्था एवम् विश्वास के आधार पर देश विदेश के असंख्य हिन्दू राम भक्त विवादित स्थल को भगवान श्री राम की जन्म स्थली मान कर पूजा–दर्शन करते चले आ रहे हैं।“

“20. That Lord Sri Rama was born on the land lying beneath the middle dome located in the main premises. It is the faith and belief of Hindu public and on the basis of this belief innumerable Hindus and Rama-worshippers of the country and abroad have been doing pooja-darshan taking the disputed site to be the birthplace of Lord Sri Rama.” (E.T.C.)

*“22. **यह कि राम जन्म भूमि परिसर के चारो ओर हिन्दुओं के ही कई प्रतिष्ठित मंदिर व धर्म स्थान हैं जिनमें से प्रमुख सीता रसोई, कनक भवन, विश्वामित्र आश्रम, मत–गजेन्द्र, कोटेश्वर महादेव, रामखजाना मंदिर, सुग्रीव किला, रंग महल वशिष्ठ कुण्ड, कुबेर टीला, ब्रम्ह–कुण्ड गुरूद्वारा, आदि हैं।“***

*“22. **That around the Rama Janam Bhumi premises are many reputed temples and religious sites of Hindus only which chiefly include Sita Rasoi, Kanak Bhawan, Vishwamitra Ashram, Mat-gajendra, Koteshwar Mahadev, Ram Khajana temple, Sugreev Qila, Rang Mahal, Vashishtha Kunda, Kuber Tila, Brahma-Kunda, Gurudwara, etc**.” (E.T.C.)*

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''23. यह कि मेरी जानकारी में अयोध्या में हिन्दू समुदाय व मुस्लिम समुदाय के बीच आपस में मधुर संबंध रहे और वहां के अधिकतर स्थानीय मुसलमान (कुछ सामप्रदायिक, कट्टर पंथी व स्थार्थी तत्वों को छोड़कर) इस स्थान को सदैव हिन्दुओं के आराध्य देव भगवान श्री राम का जन्म स्थान ही मानते हैं और स्थानीय मुसलमान इस स्थान को कभी मस्जिद के रूप में स्वीकार नहीं करते हैं।''

''23. That as per my knowledge, mutual relations between Hindu and Muslim communities have been cordial in Ayodhya and most of its local Muslims (excluding some communal, fundamentalist and selfish elements) always consider this place only to be the birthplace of Lord Sri Rama, favoured deity of Hindus, and they never take it to be a mosque.'' (E.T.C.)

''25. यह कि इस्लाम मज़हब के अनुयायी, उनके उलेमा आदि से वार्तालाप से शपथकर्ता को यह जानकारी हुई कि इस विवादित स्थल को मुस्लिम समुदाय इबादत गाह के रूप में स्वीकार नहीं करते। उनका यह भी मानना है कि मस्जिद में मीनार व वजू के लिये समुचित व्यवस्था होना आवश्यक है। विवादित स्थल पर स्थित ढांचा में न तो मीनारें थी और न ही वजू के लिये कोई व्यवस्था थी। विवादित स्थल में राम की जन्मभूमि है जो धर्मशास्त्रों, जनश्रुतियों, प्रथाओं आदि के आधार पर प्रमाणित है, तथा अनादि काल से उस स्थल को भगवान श्री राम की जन्म भूमि के रूप में पूजित किया जाता चला आ रहा है।''

''25. That from talks with followers of Islam and with their Ulemas (clerics) the deponent has come to know that the Muslim community do not consider this disputed site to be a place of worship. They also hold that a mosque should necessarily have minarets and a proper arrangement for 'vaju'. The structure located at the disputed site had neither minarets nor any arrangement for 'vaju'. The birthplace of Rama is at the disputed site, which fact is established on the basis of scriptures, hear-says, customs, etc. The said

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place has continued to be worshipped as the birthplace of Lord Sri Rama since eternity." (E.T.C.)

428. In para 21, DW 13/1-1 has said about 1934 riots and in para 24 about possession of Hindus on the premises in dispute and the statement made by several Muslims in affidavit filed in proceedings under Section 145 Cr.P.C. :

''21. यह कि राम जन्म भूमि के परिसर में कभी कोई मुसलमान नहीं जाता था और न ही कभी किसी मुसलमान द्वारा वहां कभी नमाज पढ़ी गई। वर्ष 1934 में गौ हत्या के कारण अयोध्या में साम्प्रदायिक तनाव हो गया था और हिन्दू मुसलमान के बीच दंगा हुआ था उस दंगा में हिन्दुओं द्वारा मुस्लिम समुदाय के लोगों को जम कर मारा गया जिससे भयभीत होकर वर्ष 1934 के बाद श्री राम जन्म भूमि परिसर की तरफ मुस्लिम समुदाय के लोग नहीं जाते थे। 1934 से विवादित स्थल पर मुस्लिम समुदाय का कोई भी व्यक्ति अंदर नहीं गया।''

"21. That no Muslim ever visited the Ram Janam Bhumi premises nor was namaj ever offered by any Muslim. In the year 1934, Ayodhya witnessed communal tension and Hindu-Muslim riot due to cow-slaughter. In the riot, people of the Muslim community had been given a sound beating by Hindus following which people of the Muslim community, out of fear, did not go towards Sri Rama Janam Bhumi premises after 1934. Nobody from the Muslim community has gone inside the disputed site since 1934." (E.T.C.)

''24. यह कि वर्ष 1949 में धारा 145 जाप्ता फौजदारी की कार्यवाही के दौरान भी मुस्लिम समुदाय के अनेक लोगों ने इस विवादित स्थल को भगवान श्री राम की जन्म भूमि के रूप में स्वीकार किया एवम् इस स्थान पर निरंतर हिन्दंओं के कब्जे की पुष्टि करते हुए यह स्वीकार किया कि इस विवादित स्थल पर मुस्लिम समुदाय के लोगों के द्वारा कभी नमाज नहीं पढ़ी गई, और इस प्रकार के स्थल पर इस्लाम मज़हब के अनुसार नमाज नहीं पढ़ी जा सकती है।''

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"24. That in the year 1949, even in course of criminal proceeding of attachment under section 145, many people of the Muslim community accepted this disputed site as the birthplace of Lord Sri Rama and confirming the regular possession of Hindus over this place they admitted that namaj had never been offered by people of the Muslim community at the disputed site and that Islam does not permit namaj to be offered at this type of place." (E.T.C.)

429. In para 16 of the affidavit, DW 13/1-1 says that his Guru Late Baba Abhiram Das was observing various religious functions at the premises in dispute and electric connection was also in his name, as under :

'16. यह कि श्री राम जन्मभूमि स्थल पर समय–2 पर पुण्य तिथियों पर धार्मिक आयोजन होते रहे हैं। मेरे गुरू स्व0 बाबा अभिराम दास जी की देख–रेख में कार्यक्रमों का आयोजन होता था। श्री रामजन्मभूमि स्थान के नाम से बिजली का कनेक्शन था और बिजली के बिलों का भुगतान भी मेरे गुरू स्व0 बाबा अभिराम दास जी द्वारा किया जाता था। ''

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"16. That religious functions have been taking place from time to time at Sri Ram Janam Bhumi site on auspicious occasions. Programmes used to be organised under the supervision of my spiritual teacher, Late Baba Abhiram Das Ji. There was a power connection in the name of Sri Ram Janam Bhumi Sthan and even electricity bills used to be paid by my spiritual teacher, Late Baba Abhiram Das Ji." (E.T.C.)

430. D.W. 17/1 Ramesh Chandra Tripathi, the witness is defendant no. 17 (Suit-4), resident of village Bhagwan Patti, Pargana Mijhaura, Tahasil Akbarpur, District Ambedkar-Nagar, is 66 years of age (vide affidavit dated 9.5.2005). He was cross examined as under:

(a) 09/10/11/12.05.2005- by Nirmohi Akhara plaintiff

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(Suit-3) through Sri R.L. Verma, Advocate and Sri Tarunjeet Verma, Advocate (p. 10-56)

(b) 12/13.05.2005- by plaintiff no. 9 and 10/1 Mahmood Ahmad and Mohd. Faruk Ahmad through Sri Abdul Mannan, Advocate (p. 56-66)

(c) 13/16.05.2005- by plaintiffs no. 1, 6/1 and 6/2 Sunni Central Board of Waqf, Jiyauddin and Maulana Mahafujurrhman through Sri Zafaryab Jilani, Advocate (p. 66-92)

(d) 17.05.2005- by plaintiff no. 7 (Suit-4) and defendant no. 5 (Suit-5), Mohd. Hashim, through Sri Mustaq Ahmad Siddiqui, Advocate (p. 94-107)

(e) 17.05.2005-defendants no. 6/1 (Suit-3) through Sri Irfan Ahmad, Advocate and defendant no. 6/2 (Suit-3) through Sri Fazale Alam, Advocate and defendant no. 26 (Suit-5) through Sri C.M. Shukla, Advocate adopted the cross examination already done by Sri Abdul Manna, Sri Zafaryab Jilani and Sri Mustaq Ahmad Siddiqui, Advocates (p. 107)

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431. In para 4, 5, 6, and 7 of the affidavit, DW 17/1 has stated about faith of Hindus of the disputed place as birth place of Lord Ram and that the Hindus were performing Pooja thereat since long in the said premises. Paras 4 to 7 are reproduced as under :

''4. यह कि हिन्दू धर्म की स्थापित शाश्वत मान्यताओं, आस्थाओं एवं परम्पराओं के अनुसार भगवान विष्णु ने मानव रूप में तत्कालीन महाराज दशरथ के पुत्र के रूप में उनकी पत्नी कौशिल्या की कोख से अयोध्या में जन्म लिया।''

''4. That according to settled beliefs, customs and traditions of Hindu religion, Lord Vishnu embodied Himself in human form as son of the then king Dashrath

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from the womb of the latter's wife Kaushalya." (E.T.C.)

"5. यह कि अयोध्या नगर, जनपद फैजाबाद में स्थित है, तथा जिस स्थल पर आस्था, मान्यताओं एवं परम्पराओं के अनुसार भगवान श्रीराम ने जन्म लिया वह हिन्दू धर्मावलम्बियों द्वारा भगवान राम की जन्म भूमि के रूप में पूजित चली आ रही है। वह क्षेत्र जहॉ भगवान श्रीराम ने जन्म लिया वह आज भी नगर पालिका में मोहल्ला रामकोट के नाम से तथा राजस्व अभिलेखों में ग्राम–कोटरामचन्द्र के नाम से चला आ रहा है।"

"5. That the city of Ayodhya is situated within District Faizabad and according to the faith, belief and customs, the place where Lord Rama had incarnated, has been revered by followers of Hindu religion as the birthplace of Lord Rama. The place where Lord Rama had incarnated, still exists within the municipal area as Mohalla- Ramkot and as Village- Kotramchandra in the revenue records." (E.T.C.)

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"6. यह कि यूँ तो अयोध्या में कई धार्मिक पर्वो पर यथा, सावन झूला, अक्षय नवमी (चौदह कोसी परिक्रमा) प्रबोधिनी एकादशी (पंचकोसी परिक्रमा), कार्तिक माह की पूर्णमासी आदि अनेक तिथियों पर हिन्दू धर्मावलम्बियों का मेला, अयोध्या में स्नान–ध्यान दर्शन पूजन अर्चन हेतु लगता है किन्तु भगवान राम के जन्म तिथि अर्थात चैत्र मास के शुक्ल पक्ष की नवमी को भक्तों व तीर्थ यात्रियों का जो मेला अयोध्या में लगता है वह अयोध्या का सबसे बड़ा मेला होता है।

इस मेला में भारत वर्ष के कोने–कोने से अनेक भक्त तीर्थ यात्री तो लाखों की संख्या में एकत्र होते ही हैं विदेशी से भी लोग आते हैं व भगवान राम की जन्मस्थली का व उस स्थल पर भगवान श्रीरामलला की मूर्ति के दर्शन करके अपने को धन्य समझते हैं। यह दिन चैत्र राम नवमी के नाम से ही जाना जाता है।"

"6. That fairs of followers of Hindu religion are held at Ayodhya on many religious occasions such as Sawan Jhula, Akshay Navami (chaudah kosi circumambulation), Prabodhni Ekadashi (Panch kosi circumambulation), full

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moon in the month of Kartik etc., for having holy dip, worship etc. at Ayodhya but the fair of devotees and pilgrims held at Ayodhya on the occasion of the birth date of Lord Rama i.e. 9th day of Shukla fortnight of the month of Chaitra, is the biggest fair of them all.

Lakhs of pilgrims, devotees from different corners of India gathered here on the occasion of this fair, besides people from abroad. They used to have 'darshan' of the birthplace of Lord Rama and His idol over there, and used to consider themselves to be fortunate. This day is known as Chaitra Ramnavami." (E.T.C.)

'7. यह कि मैं शपथग्राही सात वर्ष की आयु से ही अयोध्या में रामजन्म भूमि मन्दिर में विराजमान भगवान रामलला की मूर्ति के दर्शन लगभग प्रत्येक वर्ष आज तक करता चला आ रहा हूँ। मुझ शपथग्राही के पिता मुझ शपथग्राही को बताया करते थे कि उनके पिता व पितामही के जमाने से ही चैत्र राम नवमी के अवसर पर सरयू स्नान एवम जन्म भूमि स्थित मन्दिर में विराजमान भगवान रामलला का दर्शन करने की परम्परा चली आ रही है, तथा यह कि भगवान राम का अवतरण त्रेता युग में हुआ था और तब से इस स्थल को तीर्थ के रूप में माना जाता है।''

"7. That I, the deponent, have had the 'darshan' of Lord Ramlala present in Ramjanmbhumi temple at Ayodhya, almost every year from the age of 7 years till date. My father had told me that the tradition of holy dip in Saryu and the 'darshan' of Lord Ramlala present in the temple situated at Ramjanmbhumi on the occasion of Chaitra Ramnavami, had continued from the period of his father and forefathers, and further that Lord Rama had incarnated in the Treta Yug and since then this place is considered to be a pilgrimage." (E.T.C.)

432. The details of the disputed premises in order to show it to be a Hindu temple of Lord Ram DW 17/1 has said in Para 12,

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13, 14 and 15 of the affidavit:

''12. यह कि ***विवादित स्थल पर स्थित मन्दिर में तीन गुम्बद थे जिसमें से मध्य वाले गुम्बद के नीचे भगवान रामलला की मूर्ति विराजमान थी। तीन गुम्बदों वाले भवन से उत्तर मिला हुआ सीतारसोई व छट्ठी पूजन स्थल या जिसमें चूल्हा, चौका, बेलन व चरण चिन्ह आदि बने हुए थे।*** *जन्मभूमि स्थल, मन्दिर राम जन्मभूमि व मन्दिर में उपरोक्त रूप से विराजमान भगवान श्रीराम की मूर्ति के दर्शन व पूजन के साथ ही दर्शनार्थियों एवं तीर्थ यात्रियों द्वारा उक्त सीतारसोई व छट्ठी पूजन सलि व उसमे बने हुए चूल्हा, चौका, बेलन व चरण चिन्ह आदि का भी दर्शन व पूजन निरन्तर किया जाता चला आया। विवादित स्थल के परिसर में प्रवेश हेतु मुख्य द्वार पूर्व की ओर था जिसे 'हनुमत द्वार' के रूप में जाना जाता था तथा दूसरा प्रवेश द्वार उत्तर की ओर था जो 'सिंह द्वार' के रूप में जाना जाता था जिससे होकर साधू, संत, बैरागियों एवं दर्शनार्थियों का आना जाना होता था। उक्त विवादित स्थल पर बने हुए उपरोक्त तीन गुम्बदों का निर्माण 6 दिसम्बर 1992 ई0 को गिर गया, किन्तु आज तक बराबर उस स्थल पर भगवान श्रीराम की मूर्ति विराजमान चली आती है जिसका हिन्दू भक्तों एवं तीर्थ यात्रियों तथा दर्शनार्थियों द्वारा दर्शन एवं पूजन अर्चन निरन्तर चला आ रहा है, ओर पुजारी भगवान श्रीराम का भोग पूजन अर्चन आदि शास्त्रों के विधान के अनुसार निरन्तर करते चले आ रहे हैं।''*

''12. That ***there were three domes in the temple at the disputed site, and the idol of Lord Ramlala existed below the central dome. Adjacent to north of the three dome building, was the Sita Rasoi, Chhathi worship place or stove, Chauka, Belan and footmarks etc.*** *Along with the 'darshan' and worship of the idol of Lord Sri Ram present at the Janmbhumi site, Ramjanmbhumi temple and temple as above, the devotees and pilgrims used to regularly have 'darshan' and worship of said Sita Rasoi and Chhathi worship place and the stove, Chauka, Belan and footmarks etc. built thereat. The main gate for entry to the disputed*

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site was eastwards, which was called Hanumatdwar and the other gate was northwards, which was called Singhdwar and the saints, hermits, recluses and devotees used to pass through it. All the said three domes at the disputed site, collapsed on 6th December, 1992, but the idol of Lord Sri Ram still continues to exist continuously at that very place and the Hindu devotees and pilgrims have all along been performing 'darshan' and worship and the priests have been carrying out the Ragbhog, worship etc. of Lord Sri Ram as per the Shastras." (E.T.C.)

"13. यह कि तीन गुम्बद वाले भवन के पूरब एक सीखचों वाली दीवाल थी जिसके पूर्व दक्षिण तरफ राम चबूतरा था जहॉ राम दरबार की मूर्तियॉ थी एवं बगल में भी अखण्ड कीर्तन चलता रहता था, तथा परिसर के बाहरी दीवाल के अन्दर की ओर दक्षिण–पूर्वी कोने में एक पुराने पीपल व एक नीम के पेड थे जिसके नीचे बने चबूतरे पर महादेव शंकर जी व कार्तिकेय जी तथा नन्दी आदि की मूर्तियॉ थीं जिनका दर्शनार्थियों द्वारा दर्शन व पूजन किया जाता रहा है।"

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"13. That to the east of the three dome building, was a iron rod wall, to the east-south of which was the Ramchabutara, over which the idols of Ram Darbar were present and the Akhand Kirtan also used to continue along side. In the south-east corner inside the outer wall of the premises, was an old Pipal and Neem tree under which was the family of Mahadev Shankar ji over a platform, i.e. Shankar ji, Parvati ji, Ganesh ji, Kartikeya ji and Nandi ji and the devotees regularly had the 'darshan' and worship of said deities. (E.T.C.)

"14. यह कि विवादित स्थल पर स्थित बाहरी चहारदीवारी के बाहर चारों ओर दर्शनार्थियों के परिक्रमा करने हेतु जगह थी जहॉ से दर्शन पूजन के उपरान्त दर्शनार्थी व तीर्थ यात्री आदि पूर्ण परिसर की परिक्रमा करते थे। सीखचों की दीवाल के सामने पूरब की ओर स्थित टीनशेड में नियमित रूप

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से तमाम साधू–सन्त–वैरागी रहते थे व कीर्तन भजन किया करते थे।''

"14. That outside the outer wall at the disputed site, was a place marked for circumambulation of the devotees. After having 'darshan' and and worship, the devotees and pilgrims used to perform circumambulation of the entire premises. Various saints- hermits- recluses lived in the tin shed opposite the iron rod wall in the east and performed Kirtan Bhajan." (E.T.C.)

''15. यह कि विवादित परिसर के उत्तर कुछ समाधियॉ थी जिनकी ऋषियों, मुनियों की समाधियों के रूप में दर्शनार्थियों द्वारा पूजा की जाती थी।''

"15. That there were a few 'samadhi' to the north of the disputed premises, which were worshiped by the devotees as 'samadhi' of Rishi, Muni." (E.T.C.)

433. In Paras 9, 10, and 17 he (DW 17/1) has said that neither there was any Babari Masjid at the disputed premises nor existence of any such mosque nor it was ever used as mosque by any Muslim and in fact as per his knowledge since 1934 no Muslim has ever visited the premises in dispute. The contents of the above paragraphs are as under :

''9. यह कि विवादित स्थल पर बाबरी मस्जिद अथवा अन्य किसी मस्जिद का कोई अस्तित्व कभी नहीं था। विवादित स्थल पर स्थित भवन भगवान श्री राम जन्मभूमि का मन्दिर था जिसमें पूर्व से ही भगवान श्री राम की मूर्ति विराजमान थी।''

"9. That neither Babri mosque nor any other mosque ever existed at the disputed site. The temple of Lord Sri Ramjanmbhumi existed at the disputed site, wherein the idol of Lord Sri Ram already existed." (E.T.C.)

'10. यह कि मेरी जानकारी के अनुसार वर्ष 1934 ई0 से विवादित स्थल पर व उसके आसपास कभी कोई इस्लाम धर्मानुयायी व्यक्ति नहीं गया और न ही कभी विवादित स्थल पर किसी ने नमाज अदा की तथा न कभी

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मुस्लिम समुदाय का अथवा मुस्लिम व्यक्ति का विवादित स्थल पर अथवा उससे सन्नद्व क्षेत्र पर कोई कब्जा ही कभी रहा। वास्तव में हिन्दू समुदाय के पुजारियों व साधुओं आदि का कब्जा इस पर अबाध रूप से निरन्तर चला आया एवं भगवान श्रीराम व उनकी जन्म–भूमि की पूजा अर्चना व दर्शन आदि होता चला आया है।''

''10. That as per my information, no follower of Islam went to or near the disputed site from the year 1934 AD, nor did anyone offer Namaz at the disputed site nor was the Muslim community or any Muslim ever in possession of the disputed site or its adjoining areas. In practice, the possession of priests and saints of Hindu community continued over it unhindered and the worship, Archana, 'darshan' etc. of Lord Sri Ram and His birthplace has continued.'' (E.T.C.)

'17. यह कि विवादित भूमि पर बाबर द्वारा निर्मित 'मस्जिद' अथवा अन्य प्रकार से निर्मित कोई 'मस्जिद' कभी नहीं रही और न ही कभी मुसलमानों द्वारा वहॉ नमाज अदा की गयी।''

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''17. That neither the 'mosque' built by Babar nor any 'mosque' built otherwise, ever existed at the disputed site nor did the Muslims ever offer Namaz there.'' (E.T.C.)

434. D.W. 20/1, Shashikant Rungata, aged about 51 years (vide affidavit dated 26.5.2005). He was cross examined as under:

(a) 25.05.2005-by Nirmohi Akhara plaintiff (Suit-3) through Sri R.L. Verma, Advocate and Sri Tarunjeet Verma, Advocate (p. 6-13)

(b) 25/26.05.2005- by plaintiff no. 9 and 10/1 Mahmood Ahmad and Mohd. Faruk Ahmad through Sri Abdul Mannan, Advocate (p. 13-19)

(c) 26/27.05.2005-by plaintiffs no. 1, 6/1 and 6/2 Sunni Central Board of Waqf, Jiyauddin and Maulana

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Mahafujurrhman through Sri Zafaryab Jilani, Advocate (p. 19-36)

(d) 30.05.2005- by plaintiff no. 7 (Suit-4) through Sri Mustaq Ahmad Siddiqui, Advocate (p. 37-53)

(e) 30.05.2005-defendants no. 6/1 (Suit-3) through Sri Irfan Ahmad, Advocate and defendant no. 6/2 (Suit-3) through Sri Fazale Alam, Advocate and defendant no. 26 (Suit-5) through Sri C.M. Shukla, Advocate adopted the cross examination already done by Sri Abdul Manna, Sri Zafaryab Jilani and Sri Mustaq Ahmad Siddiqui, Advocates (p. 53)

435. As per his affidavit, he is resident of 13, Chapel Road Hastings, Calcutta. He did B. Com. from Calcutta University in 1975 and, thereafter, got engaged in his family business. He used to visit Ayodhya along with his parents, friends and family members time to time since he has full faith in Lord Ram and his birth place at Ayodhya. About his faith in birth place of Lord Ram, his visit, construction of Mosque by demolishing a temple and about the characteristics showing that the premises in dispute was a temple, he has made averments in paras 3, 4, 5, 7, 8, 9, 10, 11, 12, 13, 14, 15, 17, 18, 20, 21 and 22 of the affidavit as under :

'3. यह कि मैं विवादित स्थल को भली भांति जानता हूँ और बचपन से ही मैं अपने स्वर्गीय पिता व इष्ट मित्रों के साथ व अपने परिवार के साथ समय समय पर जाता रहा हूँ। भगवान राम व उनकी जन्मस्थली में मेरी पूर्ण आस्था है इसी कारण मेरा व मेरे परिवार का आना जाना लगा रहता है।''

"3. That I am well acquainted with the disputed site and have been going there with my late father and dear friends since childhood. I have full faith in Lord Rama and his birthplace. For this very reason, I and my family regularly

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visit the site." (E.T.C.)

"4. यह कि मैं पहली बार अयोध्या सन् 1962 में गया था मेरे परिवार की परम्परा रही है कि तीर्थ यात्रा का प्रारम्भ अयोध्या से करते हैं। अयोध्या विश्वका महानतम तीर्थस्थल एवं सप्तपुरियों में से सर्वश्रेष्ठ मोक्ष दायिनी पुरी है। अयोध्या को भगवान श्री राम की जन्मस्थली होने का गौरव प्राप्त है। ऐसा पौराणिक ग्रन्थों एवं बाल्मीकी रामायण में वर्णित है। एवं तुलसीदास कृत "रामचरित्रमानस" में लिखा है मुझे यह ज्ञात है कि यूँ तो समस्त अयोध्या क्षेत्र ही मर्यादा पुरूषोत्तम भगवान राघवेन्द्र श्री राम की जन्मस्थली के रूप में देवतुल्य पूज्य है। परन्तु शास्त्रीय प्रमाणें व ग्रन्थों एवं करोड़ो वर्षो की आस्था के अनुसार अयोध्या के रामकोट मोहल्ले में जन्मभूमि व जन्म स्थान है।"

"4. That I went to Ayodhya for the first time in 1962. It is the tradition of my family that we start pilgrimage from Ayodhya. Ayodhya is the greatest pilgrimage site of the world and is the best liberation-giving puri (city) of the seven puris. Ayodhya has the distinction of being the birthplace of Lord Sri Rama. It is so mentioned in Puranic treatises, the Valmiki Ramayana and Tulsidas written Ram Charit Manas. I know that as a matter of fact the whole area of Ayodhya itself is revered like a deity as the birthplace of tradition-upholding Supreme Being Lord Raghvendra Sri Rama. But according to scriptural proofs and treatises and as per the faith of crores of years, the birthland and birthplace are situated in Ram Kot locality of Ayodhya." (E.T.C.)

"5. यह कि मैंने यह भी पढ़ा व सुना है कि सन् 1528 में बाबर नाम के विदेशी आक्रान्ता और लुटेरे के कहने पर उसके सहयोगी मीरबाकी ने वहॉ पर बने भव्य मन्दिर को तुड़वाकर उसको मस्जिद का रूप देने का प्रयत्न किया था।"

"5. I have also read and heard that in the year 1528, at the behest of a foreign invader and plunderer named

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Babur, his colleague, Mir Baqi, demolished the magnificent temple located there and tried to give it the shape of a mosque." (E.T.C.)

"6. यह कि मैं जब पहली बार अयोध्या गया था तो श्री राम जन्मभूमि, कनकभवन, हनुमानगढ़ी, नागेश्वर और हनुमान बाग आदि तीर्थस्थलों का दर्शन किया था एवं दर्शन के पूर्व मैंने सरयू में स्नान भी किया था।"

"6. That when I, for the first time, went to Ayodhya, I had 'Darshan' of the pilgrimage-sites such as Ram Janmbhumi, Kanak Bhawan, Hanumangarhi, Nageshwar, Hanuman Bagh, etc. and also took a dip in Saryu prior to the 'Darshan'." (E.T.C.)

"7. यह कि जब मैं जन्मभूमि के दर्शन करने गया तो मैनें वहां पर फूल प्रसाद आदि भी चढ़ाकर भगवान श्रीराम की जन्मस्थली को प्रणाम किया और हृदय में आस्था और विश्वास था कि इस स्थान के दर्शन मात्र से ही मोक्ष की प्राप्ति होती है।"

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"7. That when I went to have darshan of Janam Bhumi, I paid obeisance to the birthplace of Lord Sri Rama by also offering flowers, Prasad, etc. there, and I had faith and belief in the heart that liberation is attained only by having darshan of this place." (E.T.C.)

"8. यह कि वर्ष 1962 के बाद मैं कई बार अयोध्या दर्शन करने हेतु गया मैंने वहॉ पर न किसी मुसलमान को आते जाते देखा और न ही नमाज अदा करते देखा न सुना।"

"8. That after the year 1962 I went to have darshan of Ayodhya many times. I did not see any Muslim come and go from there, nor did I see and hear of him offering namaj there." (E.T.C.)

"9. यह कि अयोध्या में चैत्र माह के शुक्ल पक्ष की नौमी तिथि को रामनवमी का बड़ा महत्व है और भगवान श्री राम का जन्मोत्सव बड़ी धूमधाम से मनाया जाता है एक बार मुझे भी भगवान श्री राम के जन्मोत्सव की भव्य झॉकी देखने का शुभअवसर प्राप्त हुआ उस अवसर पर यहॉ बड़ी

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मात्रा में देश के कोने कोने से लाखों श्रद्धालु एवं दर्शनार्थी श्रीराम लला के दर्शन करने की कामना लेकर आये थे।''

"9. That Ram Navami falling on the ninth day of Shukla paksha of Chaitra month holds great importance in Ayodhya and birth celebrations of Lord Sri Rama are observed with great gusto. Once I had a golden opportunity to see grand tableaux of birth celebrations of Lord Sri Rama. On that occasion lakhs of devotees and darshan seekers had come here in large numbers from the nooks and corners of the country with the desire of having darshan of Sri Ram Lala." (E.T.C.)

''10. यह कि श्रीराम व अयोध्या में स्थित उनकी जन्मस्थली पर मैं पूजा व आरती के समय वहॉ पहुॅचा हूॅ।''

"10. That I have been to Ayodhya situated birthplace of Sri Rama at the time of pooja and aarti." (E.T.C.)

''11. यह कि मन्दिर के भीतर वाले भाग में कसौटी के खम्भे देखे हैं उनमें देवी देवताओं व यक्षों की मूर्तियॉ बनी थी। मैंने यह भी देखा है कि मन्दिर परिसर में बाघ, मोर, बैल एवं वाराह भगवान की मूर्तियॉ भी बनी थी।''

"11. That in the inner part of the temple I have seen pillars made of Kasauti stone depicting idols of male and female deities and Yakshas (demigods attending Kuvera and guarding his garden and treasures). I have also seen idols of tigers, peacocks, bulls and Lord Varah carved out in the temple premises." (E.T.C.)

''12. यह कि मैंने अयोध्या के तीन मेलों जिसमें चैत्र रामनवमी, कार्तिक पूर्णिमा और सावन झूला को भी अयोध्या जाकर भगवान श्री रामलला का दर्शन पाने का सौभाग्य प्राप्त किया है।''

"12. That I have been fortunate enough to have darshan of Lord Sri Rama by going to Ayodhya even on the occasions of the three fairs of Ayodhya namely Chaitra Ram Navami,

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Kartika Poornima and Sawan Jhoola fairs." (E.T.C.)

'13. यह कि हिन्दू धर्म की मान्यताओं आस्थाओं एवं परम्पराओं के अनुसार भगवान श्री रामलला अयोध्या के चक्रवर्ती महाराज दशरथ और महारानी कौशल्या को माध्यम बनाकर अयोध्या में उसी स्थान पर प्रकट हुए थे। और भगवान श्रीराम लला के प्रकट होने के विषय में बाल्मीकी रामायण जो भगवान श्री राम के समकालीन हैं एवं गोस्वामी तुलसीदास कृत ''रामचरित्र मानस'' में विस्तृत वर्णन है।''

"13. That as per beliefs, faiths and traditions of Hinduism, Lord Sri Ram Lala appeared at that very place in Ayodhya using Chakrawarti Maharaj of Ayodhya, Dashrath, and Maharani Kaushalya as media. A vivid description of Lord Sri Ram Lala's appearance finds mention in the Ramayana of Valimiki, a contemporary of Lord Sri Rama, and in Ram Charit Manas written by Goswami Tulsi Das." (E.T.C.)

''14. यह कि हिन्दू धार्मिक मान्यता के अनुसार भगवान श्री रामचन्द्र जी का अवतरण त्रेतायुग में अधर्म का नाश करने धर्म की स्थापना हेतु एवं सन्तों की रक्षा हेतु हुआ था। और उनकी पूजा अनादिकाल से भारत में ही नहीं अपितु समूचे विश्वमें की जाती है।''

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"14. That as per the religious tradition of Hinduism, Lord Rama incarnated himself to destroy Adharma (sins) and to uphold Dharma (right behavior) and to guard saints in Treta era, and he has been worshipped since eternity not only in India but also in the whole world." (E.T.C.)

''15. यह कि पूरे विश्वमें भारत वर्ष की पहचान भगवान श्रीराम और उनकी जन्मस्थली अयोध्या के कारण है। धार्मिक पुस्तकों तथा अन्य भाषाओं की पुस्तकों में स्वयं भूदेव श्रीराम जन्मभूमि, भगवान श्रीराम एवं अयोध्या नगरी का वर्णन भली भांति मिलता है।''

"15. That India is recognized all over the world because of Lord Sri Rama and Ayodhya being his birthplace. Sri Ram Janam Bhumi, Lord Sri Rama and Ayodhya Nagari find vivid description in religious treatises and in the books

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of other languages." (E.T.C.)

"17. यह कि श्रीराम जन्मभूमि को तोड़कर विवादित भवन बनाया गया फिर भी वह कभी मस्जिद का रूप नहीं ले सका क्योंकि इस विवादित भवन में कोई मीनार व 'वजू' करने के लिए पानी की व्यवस्था नहीं थी। विवादित भवन में बारह कसौटी के खम्भे थे जिनमें देवी देवताओं की आकृतियॉ उकेरी थी इसके अतिरिक्त हिन्दू धर्म के प्रतीक मोर कलश व पक्षी के चिन्ह भी अंकित किये हुये थे।"

"17. That by demolishing Sri Ram Janam Bhumi temple the disputed building was constructed but it could never take the shape of the mosque because this disputed building had no minaret and no arrangement of water for 'vaju' (cleaning of hands). The disputed building had 12 pillars of Kasauti stone with images of male and female deities engraved on them. Apart from them, images of peacocks, waterpots and birds were also carved out as symbols of Hinduism." (E.T.C.)

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"18. यह कि श्रीराम जन्मभूमि मन्दिर को ध्वस्त कर विवादित भवन का निर्माण होने के बाद श्रीराम जन्मभूमि की पवित्रता के प्रति लोगों की आस्था एवं विश्वास सदा बना रहा एवं बना रहेगा।"

"18. That even after the construction of the disputed building after demolishing Sri Ram Janam Bhumi temple, the belief and faith of people in the sanctity of Sri Ram Janam Bhumi persisted and will persist forever." (E.T.C.)

"20. यह कि मैं अयोध्या कई बार गया हूँ परन्तु कुछ विशेष पर्वो जैसे चैत्र मास में रामनवमी, अगहन मास में श्री राम विवाहोत्सव व सावन में झूला, आदि के अवसरों पर भी गया हूँ और पवित्र सरयू नदी में स्नान भी किया है। उक्त अवसरों के अतिरिक्त कार्तिक माह में चौदह कोसीय एवं पंचकोसीय परिक्रमा में भी किया है।"

"20. That I have been to Ayodhya many times. But I have also gone there on some special festivals such as Ram Navami in the month of Chaitra, Sri Ram Vivahotsav in the

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month of Agahan and Jhoola in the month of Sawan and have also taken a dip in the holy waters of the river Saryu. Apart from the said occasions, I have also taken part in 'chaudah-kosi' and 'panch-kosi' circumambulations." (E.T.C.)

"21. यह कि मैंने उक्त विशेष अवसरों पर विदेश से आये हुये हजारों की संख्या में श्रद्धालुओं तथा रामभक्तों को देखा है। इन अवसरों पर पूरी अयोध्या नगरी राममय हो जाती है। और समस्त वातावरण में सीताराम के भजन कीर्तन तथा घण्टे घड़ियाल व शंख आदि की ध्वनियॉ सुनायी देती हैं।"

"21. That I have seen devotees and worshippers of Rama coming from abroad in thousands on the said special occasions. The whole of Ayodhya Nagari is pervaded by the sense of association with Rama, and Bhajan and Keertan of Sita-Ram and sounds of bells, gongs, conchs, etc. are heard in the entire atmosphere." (E.T.C.)

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"22. यह कि श्रीरामजन्मभूमि कोटि कोटि हिन्दूजनों की आस्था एवं श्रद्धा का तीर्थ स्थान है जिसके दर्शन मात्र से ही पापों का नाश तथा अनेकों पुण्यों तथा मोक्ष की प्राप्ति होती है। भगवान श्रीराम की जन्मस्थली होने के कारण यह मोक्षदायिनी नगरी है।"

"22. That Sri Ram Janam Bhumi is a seat of faith for crores of Hindus and a site of pilgrimage attracting their reverence, mere darshan of which destroys sins and leads to attainment of many punyas and moksha (liberation). Due to being the birthplace of Lord Sri Rama, it is a liberation-giving town." (E.T.C.)

436. In para 19 DW 20/1 has said that no Muslim was ever seen by him offering Namaz neither visiting disputed place was seen. The contents of the paragraph 19 are as under :

"19. यह कि न ही मुसलमानों द्वारा वहॉ कभी भी कोई नमाज पढ़ी गयी और न ही मुसलमानों को वहॉ जाते देखा गया।"

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"19. That no namaj was ever offered there by Muslims nor was any Muslim seen going there." (E.T.C.)

437. D.W. 20/2, Swami Avimukteshwaranand Saraswati, aged about 36 years (vide affidavit dated 27.6.2005), is resident of Srividyamath Kedarghat, Varanasi, U.P. He was cross examined as under:

(a) 27/28/29/30.06.2005, 04.07.2005- by Nirmohi Akhara plaintiff (Suit-3) through Sri R.L. Verma, Advocate and Sri Tarunjeet Verma, Advocate (p. 9-69)

(b) 04.07.2005- by plaintiff no. 9 and 10/1 Mahmood Ahmad and Mohd. Faruk Ahmad through Sri Abdul Mannan, Advocate (p. 70-75)

(c) 04/06/07/08/11/12.07.2005- by plaintiffs no. 1, 6/1 and 6/2 Sunni Central Board of Waqf, Jiyauddin and Maulana Mahafujurrhman through Sri Zafaryab Jilani, Advocate (p. 75-146)

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(d) 12/13/14/15.07.2005- by plaintiff no. 7 (Suit-4) through Sri Mustaq Ahmad Siddiqui, Advocate (p. 146-181)

(e) 15.07.2005 - defendants no. 6/1 (Suit-3) through Sri Irfan Ahmad, Advocate and defendant no. 6/2 (Suit-3) through Sri Fazale Alam, Advocate and defendant no. 26 (Suit-5) through Sri C.M. Shukla, Advocate adopted the cross examination already done by Sri Abdul Manna, Sri Zafaryab Jilani and Sri Mustaq Ahmad Siddiqui, Advocates (p. 181)

438. He is pupil of Jagadguru Shankaracharya Swami Swaroopanand Saraswati Ji Maharaj, Jyotishpithadhishwar and Dwarika Shardapithadhishwar. His name through parents is Uma Shanker Pandey, obtained education upto Acharya from

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Kashi and did Shiksha Shastri (B.Ed.), registered for Research but could not complete the same due to Sanyas Diksha given by his Guru. He has mainly studied Ved, Vedang, Upnishad, Vyakaran, Darshan and Dharmshastra. Besides Hindi and Sanskrit in which he has special knowledge, he knows Gujrati, Bangla and English. He claims that as per tradition, his ancestors performed yagya to Lord Ram on his return to Ayodhya after defeating Ravan. He claims that according to his studies and information, the disputed place is the birth place of Lord Ram and in this regard, facts have been stated in paragraphs 13, 14, 15, 16, 17, 18, 19, 20, 25, 26, 27 and 30 of the affidavit as under :

''13. यह कि मेरे अध्ययन व जानकारी के अनुसार अयोध्या का प्रकरणगत स्थल ही भगवान् श्रीराम की जन्मभूमि है। यह सर्वविदित तथ्य है कि प्रभु श्रीराम का जन्म अयोध्या में हुआ था और वे इक्ष्वाकुवंशी चक्रवर्ती राजा दशरथ के ज्येष्ठ पुत्र थे। प्रकरणगत स्थल उनकी जन्मभूमि के रूप में सनातनधर्मावलम्बियों द्वारा तब से ही अनवरत पूजित होता चला आ रहा है। इसके पीछे हमारी आस्था, परम्परा, विश्वास और प्रसिद्धि का प्रबल आधार है।''

''13. That as per my study and knowledge, Ayodhya-situated site in question is itself the birthplace of Lord Sri Rama. It is a well known fact that Lord Sri Rama was born in Ayodhya and he was the eldest son of Supreme Ruler Dashrath of Ikshwaku dynasty. Since then the site in question has consistently been worshipped as his birthplace by adherents of orthodox Hinduism. Our faith, tradition and belief and its fame have been strong bases of it.'' (E.T.C.)

''14. शास्त्रों के अनुसार मूर्तियों और स्थानों की पूजा विहित है और ऐसा करने से सकलमनोरथों की सिद्धि और मोक्ष तक की प्राप्ति होती है।''

''14. Scriptures ordain for the worship of idols and places

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and such worship leads to the fulfillment of all desires and to the attainment of liberation." (E.T.C.)

"15. शास्त्रों में जन्म से जुड़ी सभी वस्तुओं का विशेष महत्व बताया गया है। वहॉ जैसे जन्मतिथि, नक्षत्र, दिन, का महत्व प्रतिपादित है वैसे ही जन्मस्थान का भी महत्व विशेष रूप से वर्णित है। भगवान श्रीराम ने स्वयं लंका विजय के पश्चात अपने छोटे भाई लक्ष्मण से यह कहकर जन्मभूमि के महत्व को बढ़ा दिया है कि लंका भले ही सोने की है। पर हे लक्ष्मण ! मुझे यह नहीं रूच रही। (मुझे तो अयोध्या की याद आ रही है। क्योंकि) जननी और जन्मभूमि तो स्वर्ग से भी बढ़कर हैं। श्लोक इस प्रकार है–

अपि स्वर्णमयी लंका न मे लक्ष्मण रोचते।
जननी जन्मभूमिश्च स्वर्गादपि गरीयसी।"

"15. All objects associated birth are stated in scriptures to be of special significance. The importance of date of birth, nakshatra and day is shown there. Similarly, the importance of birthplace is also particularly mentioned. Lord Sri Rama has himself enhanced the importance of the birthplace by saying to his younger brother Lakshman after his conquest over Lanka that 'Lanka may be made of gold, but O Lakshman! It does not look beautiful to me. (Memory of Ayodhya is occurring to me because mother and motherland are greater even than the paradise). The verse runs as under-

"Api swarnmayi Lanka na me Lakshman rochte.
Janani janmbhumisch swargadapi gariyasi." (E.T.C.)

"16. यह कि श्रीमद् वाल्मीकि रामायण के बालकाण्ड के पन्द्रहवें सर्ग के तीसवें श्लोक में स्वयं भगवान् नारायण ने अपने अवतारग्रहण के पूर्व सर्वप्रथम अपनी जन्मभूमि के बारे में सोचकर जन्मभूमि के महत्व को प्रतिपादित किया है। श्लोक इस प्रकार है–

एवं दत्वा वरं देवो देवानां विष्णुरात्मवान्।
मानुष्ये चिन्तयामास जन्मभूमिमथात्मनः।।"

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"16. That in the third verse of the 15th sarga of Srimad Valmiki Ramayan's Baalkand, Lord Narayan, first of all thinking of his birthplace before his incarnation, has himself stressed the importance of birthplace. The verse is as under-

"Evam dattva varam devo devanam Vishnuratmawan.

Manushye chintyamas janmbhumimthatmanah." (E.T.C.)

"17. यह कि जन्मस्थान में किसी प्रकार की प्रतिष्ठा या निर्माण आवश्यक नहीं हैं क्योंकि जन्मस्थान शक्तिमान् के जन्म से स्वतः शक्तिसम्पन्न हो जाता है। साथ ही निरन्तर पूजा–अर्चना से वह शक्ति जागृत बनी रहती है और लोगों को उनका अभीप्सित प्रदान करने में समर्थ होता है।"

"17. That there need not be any sort of pratishtha (deification) or construction at any birthplace because it gets empowered immediately with the birth of the Powerful. Besides, the power continues to be with constant pooja-archana and it is capable of bestowing people with desired results." (E.T.C.)

"18. यह कि स्थल–पुराण के रूप में प्रसिद्ध स्कन्दपुराण के वैष्णवखण्ड के अयोध्या माहात्म्य के दसवें अध्याय में अयोध्या यात्रा की विधि वर्णित है जिसमें स्पष्ट रूप से श्रीराम के जन्मस्थान का उल्लेख तथा अतिशायी महत्व वर्णित है। आज भी इस पुराण के उक्त सन्दर्भ में वर्णित स्थल अयोध्या में उपलबध हैं। यही कारण है कि प्रत्येक सनातनधर्मी अयोध्या जाकर इस स्थलों, विशेषकर श्रीरामजन्मभूमि का दर्शन करता है, परिक्रमा करता है और उस स्थान विशेष की रज को अपने सिर पर धारण कर अपने कृतकृत्य समझता है।"

"18. That the mode of Ayodhya journey finds mention in the 10th chapter of Ayodhya Mahatmya of Vaishnav Khand of Skandha Purana, famed as Sthal-purana. It clearly mentions the birthplace of Sri Rama and its considerable importance. The site mentioned in the said context of this

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Purana exists in Ayodhya even today. For this very reason, every adherent of orthodox Hinduism go to Ayodhya to do darshan and parikrama (circumambulation) of these places, particularly of Sri Ram Janam Bhumi and considers himself to be fortunate to have the dust of that particular place and to apply it to his head." (E.T.C.)

"19. यह कि प्राचीन भारत का लगभग समग्र साहित्य भगवान् श्रीराम की गाथाओं से भरा पड़ा है। वेदों, पुराणों, उपनिषदों तथा बाल्मीकि रामायण आदि ग्रन्थों में उनके जन्म और कर्म वर्णित हैं। यह परम्परा हिन्दी – अवधी के श्रीरामचरितमानस आदि आधुनिकतम साहित्य में भी कायम है।"

"19. That almost the entire literature of ancient India is replete with stories of Lord Sri Rama. His birth and actions find mention in the Vedas, the Puranas, the Upnishads, the Valmiki Ramayan, etc. This tradition goes on even in the most modern literature such as Ram Charit Manas written in Awadhi dialect of Hindi." (E.T.C.)

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"20. श्रीराम का राजा दशरथ के घर माता कौशल्या से जन्म हुआ था और उन्होंने अपने लोकोत्तर चरित्रों से महामानव या भगवान् की पदवी प्राप्त कर ली। इसका यही प्रमाण है कि आज भी रघुवंशी क्षत्रिय विद्यमान हैं जो स्वयं को श्रीराम का या उनके पुत्र कुश – जो कि राम के बाद अयोध्या के राजा बने थे– के वंशज हैं।"

"20. Sri Rama was born to mother Kaushalya at the house of King Dashrath and by virtue of his ethereal demeanours assumed the title of Superhuman or Bhagwan. Its proof is that even today Kshatriyas, descended from Raghuvansh, exist and they are descendents either of Sri Rama or of his son, Kusha, who became the King of Ayodhya after Rama." (E.T.C.)

"25. यह कि करोड़ों सनातनधर्मियों द्वारा राष्ट्देवता के रूप में पूजित भगवान् श्रीराम की जन्मभूमि उनके लिए सर्वोच्च महत्व की स्थली है ठीक उसी प्रकार जैसे मुसलमान भाइयों के लिए मक्का।"

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"25. That the birthplace of Lord Sri Rama, worshipped as the Deity of the Nation by crores of followers of orthodox Hinduism, is the place of highest importance for them as Mecca is for Muslims." (E.T.C.)

'26. यह कि यह प्रश्न मन्दिर और मस्जिद का नहीं अपितु श्रीरामजन्मभूमि का है। मन्दिर और मस्जिद मनुष्य द्वारा निर्मित होने के कारण हटाए जा सकते हैं परन्तु जन्मभूमि को बदला जाना संभव नहीं होने के कारण उसे हटाया नहीं जा सकता। एतावता उसका कोई विकल्प नहीं हो सकता।"

"26. That the question is not of temple and mosque but of Sri Ram Janam Bhumi. Temple and mosque being human constructions may be removed but Janam Bhumi not being subject to change cannot be shifted. Hence, there can be no option for it." (E.T.C.)

"27. समाज जिससे प्रभावित होता है उसके नाम पर अपने बच्चों, घर, गली मोहल्ले, गॉव तथा शहर आदि का नामकरण करता है। आज भी हमारे देश में सर्वाधिक नाम ऐसे हैं जिनमें राम शब्द विद्यमान है। यही नहीं, न केवल भारत अपितु विश्व के लगभग सभी देशों में श्रीराम के नाम पर अनेक शहरों के नाम मौजूद हैं। जो राम की सार्वभौमिकता की पुष्टि करते हैं।"

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"27. Society names children, houses, streets, localities, villages, towns, etc. after those by whom it is influenced. Even today most of the names in our country have the word Rama in them. Not only this, several towns are named after Sri Rama not only in India but also in almost all the countries of the world; that goes to establish the universality of Rama." (E.T.C.)

"30. वायु पुराण के अनुसार राम के पुत्र कुश ने श्रीराम की जन्मभूमि पर चौरासी खम्भों का सुन्दर मन्दिर तैयार करवाया।"

"30. As per the Vayu Purana, Kusha, son of Rama, built a beautiful temple supported by 84 pillars at the birthplace of Sri Rama." (E.T.C.)

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439. About belief of Hindus of the disputed place as birth place of Lord Ram, DW 20/2 has said in paras 34, 35 and 36 of the affidavit as under :

''34. यह कि भगवान श्रीराम की जन्मभूमि सदा ही परम पवित्र और अलौकित शक्ति से सम्पन्न है। वह कभी भी, किसी भी हालात में दूषित या अपवित्र नहीं हो सकती और हमारे लिए सर्वदा पूजनीय, वन्दनीय और मोक्ष आदि महान फलों को प्रदान करने में सक्षम है।''

''34. That the birthplace of Lord Sri Rama has always been most sacred and endowed with supernatural powers. It can never be defiled and desecrated at any cost and to us it is always revered, worth-worshipping and capable of yielding great results like liberation, etc.'' (E.T.C.)

''35. यह कि मैंने अनेक बार अयोध्या की यात्रा की है और अन्य मन्दिरों के अतिरिक्त श्रीरामजन्मभूमि का दर्शन किया है। मैंने श्रीराम नवमी पर भी यात्रा की है और लाखों श्रद्धालुओं के साथ श्रीरामजन्मभूमि का दर्शन किया है।''

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''35. That I have travelled to Ayodhya many times and have had darshan of Sri Ram Janam Bhumi besides other temples. I have also been there on Ram Navami and have had darshan of Sri Ram Janam Bhumi along with lakhs of devotees.'' (E.T.C.)

''36. यह कि मैंने स्कन्दपुराणोक्त क्रम का पालन करते हुए भी एक बार अयोध्या की यात्रा की है और श्रीरामजन्मभूमि का दर्शन किया है। इस क्रम को पूरा करने में मुझे ब्रिटिश जमाने के एक बड़े सरकारी अधिकारी श्री एडवर्ड द्वारा लगाए गए विशाल प्रस्तरपट्टों से बड़ा सहयोग मिला जो कि स्कन्दपुराण के क्रम से ही लगाया गया है और उस भौगोलिक स्थिति को सिद्ध करता है।''

''36. That following the sequence as ordained in the Skandha-purana I have once travelled to Ayodhya and have had darshan of Sri Ram Janam Bhumi. In following this sequence I got immense help from large stone-plates

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installed by Sri Edward, a high ranking government official of the British period which were installed strictly in the sequence as ordained in the Skandha-purana and which go on to establish its geographical location." (E.T.C.)

440. About existence of temple of Lord Ram, its demolition by Babar, that no mosque was constructed at Ayodhya, DW 20/2 has said in paragraphs 24, 31, 32, 33, 37 and 39 of the affidavit as under :

"24. यह कि यू.पी. डिस्ट्रिक्ट गजेटियर फैजाबाद 1960 जो श्रीमती यशा बसन्ती जोशी द्वारा संपादित एवं उत्तर प्रदेश सरकार द्वारा प्रकाशित है, में प्रकरणगत भवन में लगे शिलालेख का वर्णन है। किन्तु उसमें किसी मस्जिद के निर्माण की कोई बात नहीं लिखी है बल्कि देवदूतों के उतरने के स्थान पर भवन निर्माण का उल्लेख किया गया है। इससे भी यही साबित होता है कि प्रकारणगत स्थल भगवान् श्रीरामलला का अवतरण स्थल है। इसी गजेटियर में पूर्वी मुख्य द्वार से दक्षिण की दीवार में स्थित वाराह भगवान का भी उल्लेख मिलता है।"

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"24. That the U.P. District Gazetteer, Faizabad, 1960- edited by Srimati Yasha Basanti Joshi and published by the Government of Uttar Pradesh – speaks of stone inscriptions carved out in the building in question but it does not speak of construction of any mosque. But it speaks of construction of a building at the place of descent of devdoots (divine messengers). It also goes to establish that the site in question is the place of descension of Lord Sri Ram Lala. This very gazetteer also speaks of Lord Varah engraved in the wall south of the eastern main gate." (E.T.C.)

"31. अयोध्या माहात्म्य नामक ग्रन्थ में पूरी अयोध्या के बारे मे वर्णन किया गया है। इस ग्रन्थ में श्रीराम जन्मभूमि का वर्णन तो है परन्तु किसी मस्जिद का वर्णन नहीं किया गया है।"

"31. The whole of Ayodhya finds mention in the treatise

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titled Ayodhya Mahatmya. This treatise certainly speaks of Sri Ram Janam Bhumi but it does not speak of any mosque." (E.T.C.)

'32. बाबरनामा और आइने अकबरी नामक पुस्तकों का अध्ययन मैंने किया है। मुझे इनमें कहीं भी यह पढ़ने को नहीं मिला कि बाबर ने रामकोट अयोध्या में कोई मस्जिद बनवाईं।"

"32. I have studied the books titled Baburnama and Ain-e-Akbari. I did not read anywhere in it that Babur built any mosque at Ram Kot, Ayodhya." (E.T.C.)

"33. यह कि मेरी जानकारी में प्रकरणगत स्थल पर कभी भी किसी मुसलमान भाई ने नमाज नहीं पढ़ी है। और यदि पढ़ी भी हो तो उतने मात्र से वह भूमि न तो मस्जिद हो जाती है और न ही सनातनधर्मियों के लिए नापाक अथवा पवित्र। हमने देखा कि हमारे आस्था सम्पन्न मुस्लिम भाई रेलवे स्टेशन, बस स्टेशन, रेल आदि सार्वजनिक स्थानों पर पूरी श्रत्रद्धा से नमाज अदा करते हैं परन्तु क्या इतने मात्र से उपर्युक्त स्थान मस्जिद हो जाते हैं?"

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"33. That as per my knowledge no Muslim has ever offered namaj at the place in question. Even if namaj is offered, this alone does not make that land a mosque nor does it become unholy for orthodox Hindus. We have seen that our devout Muslims offer namaj with full reverence at public places such as Railway stations, bus-stands, railway trains, etc. but do the said places become mosques only on this account?" (E.T.C.)

'37. यह कि प्रकरणगत भवन कहीं से भी मस्जिद होने का आभास नहीं देता था और उसमें अनेक ऐसे चिन्ह और साक्ष्य थे जो उसका मन्दिर होना प्रमाणित करते थे।"

"37. That the building in question from nowhere gave any inkling of being a mosque and it had several signs and evidences establishing it as a temple." (E.T.C.)

"39. यह कि जनसाधारण की यह धारणा बनी हुई है कि बाबर ने अपने

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सिपहसालार मीरबॉकी के माध्यम से अयोध्या के रामकोट में स्थित भगवान श्रीराम की जन्मभूमि पर स्थित विशाल मन्दिर को तोड़कर मस्जिद का आकार देने का प्रयास किया। परन्तु सनातनधर्मियों के निरन्तर विरोध के फलस्वरूप उसे मस्जिद का रूप कभी भी नहीं दिया जा सका अपितु वहॉ निरन्तर भगवान श्रीरामलला की पूजा अर्चना होती रही। परन्तु मेरे अध्ययन में यह प्रचलित और प्रचारित धारणा अंग्रेजों के समय की ही प्रतीत होती है क्योंकि उससे पूर्व किसी भी स्थल पर ऐसा कोई प्रमाण उपलब्ध नहीं होता।''

"39. That there continues to be a public perception that Babur through his army commander Mir Baqi demolished a large temple located at Lord Sri Rama's birthplace at Ram Kot in Ayodhya and tried to give it the shape of mosque. But due to constant protest by orthodox Hindus it could never be given the shape of mosque and it continued to see pooja and archana (worship and prayer) of Lord Sri Ram Lala. But as per my study, this prevalent and circulated perception appears to be only of the British time but prior to it no such proof is available at any site." (E.T.C.)

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441. Lastly, DW 20/2 has said that the dispute between two communities is the result of Britishers' policy of divide and rule and prior thereto there was no such dispute. In para 40 of the affidavit he has said as under :

'40. यह कि प्रकरणगत स्थल को लेकर जो विवाद की स्थिति निर्मित हुई है मेरे विचार से वह अंग्रेजों की फूट डालों और राज करों की नीति का परिणाम है। ऐसे में सनातनधर्मियों एवं इस्लाम के अनुयायियों को इस वास्तविकता के आलोक में पारस्परिक द्वन्द और द्वेष भूलकर एक होकर भारतीय राष्ट् की शक्ति का संवर्धन करना चाहिए।''

"40. That the dispute which has cropped up over the site in question is, in my opinion, an outcome of the English policy of divide and rule. In such circumstances, in the

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light of this reality, orthodox Hindus and the followers of Islam should forget their internecine enmity and ill-will, be united and augment the strength of Indian Nation." (E.T.C.)

442. D.W. 20/3 Brahamchari Ramrakshanand, aged about 87 years (vide affidavit dated 18.7.2005), is resident of Jyotirmath, Trotakacharya Gupha, Post Joshimath, District Chamoli (Uttaranchal). He was cross examined in the following manner :

(a) 18/19.07.2005 - by Nirmohi Akhara plaintiff (Suit-3) through Sri R.L. Verma, Advocate and Sri Tarunjeet Verma, Advocate (p. 6-28)

(b) 19/20.07.2005- by Mohd. Faruk Ahmad, defendant no. 11 through Sri Abdul Mannan, Advocate (p. 29-32)

(c) 20/22.07.2005- by plaintiffs no. 1, 6/1 and 6/2 Sunni Central Board of Waqf, Jiyauddin and Maulana Mahafujurrhman through Sri Zafaryab Jilani, Advocate (p. 32-44)

(d) 25.07.2005- by plaintiff no. 7 (Suit-4) through Sri Mustaq Ahmad Siddiqui, Advocate (p. 45-52)

(e) 25.07.2005 - defendants no. 6/1 (Suit-3) through Sri Irfan Ahmad, Advocate and defendant no. 6/2 (Suit-3) through Sri Fazale Alam, Advocate and defendant no. 26 (Suit-5) through Sri C.M. Shukla, Advocate adopted the cross examination already done by Sri Abdul Manna, Sri Zafaryab Jilani and Sri Mustaq Ahmad Siddiqui, Advocates (p. 52)

443. He belong to village Dighori, District Sivani, Madhya Pradesh. His family name was Ramraksha Upadhyay and he got education with the said name. About his studies and knowledge

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that the place in dispute is birth place of Lord Ram and that this is the faith of Hindus, he has said in paragraphs 9, 10, 11, 12, 13 and 14 of the affidavit as under :

'9. यह कि मेरे अध्ययन व जानकारी के अनुसार अयोध्या स्थित विवादित स्थल ही भगवान श्री राम की जन्मभूमि है। यह सर्वविदित है कि भगवान श्रीराम का जन्म अयोध्या में हुआ था जो चक्रवर्ती महाराज दशरथ के ज्येष्ठ पुत्र थे।''

"9. That as per my study and knowledge, Ayodhya-situated disputed site itself is the birthplace of Lord Sri Rama. It is known to all that Lord Sri Rama was born in Ayodhya and was the eldest son of the Supreme King, Dashrath." (E.T.C.)

''10. यह कि अयोध्या स्थित विवादित स्थल हिन्दू धर्मानुयायियों द्वारा भगवान श्रीराम लला की जन्मभूमि के रूप में अनन्त काल से आस्था, परम्परा एवं विश्वास के अनुसार मान्यता प्राप्त व पूजनीय है और उस स्थल विशेष की पूजा निरन्तर होती चली आ रही है। शास्त्रों के अनुसार जन्मभूमि के दर्शन मात्र से ही मोक्ष की प्राप्ति होती है और सप्त मोक्षदायिनी पुरियों में अयोध्या का प्रथम स्थान है।''

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"10. That as per faith, tradition and belief, Ayodhya situated disputed site has been since eternity recognised and worshipped by adherents of Hinduism as the birthplace of Lord Sri Ram Lala and pooja has continued to be offered at that particular place. As per scriptures, one can attain liberation through mere darshan of the birthplace, and Ayodhya occupies the first place amongst seven liberation-giving puris." (E.T.C.)

''11. यह कि ***धर्मशास्त्रों के अनुसार जन्मस्थान की विशेष महत्ता है जो स्वयं भू देव के रूप में स्वप्राणप्रतिष्ठित एवं पूज्य स्थल है।*** *इस प्रकार की देवत्व प्राप्त स्थलों पर महन्त अथवा सरवराहकार की कोई आवश्यकता नहीं होती।''*

"11. That ***as per scriptures, the birthplace commands***

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***special importance and it is in itself a deified and revered place as Bhoo-dev (Lord of Land)**. There is no need of there being a Mahanta or Sarvarakaar at the places blessed with this type of divinity." (E.T.C.)*

*"12. यह कि मैंने गोस्वामी तुलसीदासकृत श्रीरामचरित मानस में भगवान श्रीराम के जन्म व जन्मस्थान का वर्णन पढ़ा है यूँ तो समस्त अयोध्या क्षेत्र ही भगवान श्रीराम की जन्मभूमि है परन्तु शास्त्रीय प्रमाणों व **लाखों वर्षों की आस्था के अनुसार अयोध्या स्थित भगवान श्रीराम का जन्मस्थल देवतुल्य पूज्य है।**"*

*"12. That I have read the description of Sri Rama's birth and birthplace in Sri Ram Charit Manas written by Goswami Tulsidas. As a matter of fact, the whole of Ayodhya itself is the birthland of Sri Rama but according to scriptural proofs and **as per the faith of Lakhs of years, Ayodhya-situated birthplace of Lord Sri Rama is revered like a deity**." (E.T.C.)*

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*"13. **यह कि गोस्वामी तुलसीदास के श्रीरामचरित मानस के बालकाण्ड के 191 दोहे के नीचे वाले छन्द में भगवान श्रीराम के प्राकाट्य का पूर्ण विवरण है।**"*

*"13. **That the incarnation of Lord Sri Rama finds full description in the verse just below 191st couplet of Baal-Kaand of Goswami Tulsidas-written Sri Ram Charit Manas.**" (E.T.C.)*

*"14. यह कि **मैंने अपने गुरू महाराज से सुना है कि स्कन्द पुराण में वर्णित अयोध्या माहात्मय से स्पष्ट रूप से प्रमाणित होता है कि** वर्तमान अयोध्या पुरी में श्रीराम जन्मभूमि के नाम से प्रसिद्ध स्थल ही श्रीरामजन्मभूमि स्थल है।"*

*"14. That **I have heard from my spiritual teacher that Ayodhya Mahatmya of the Skandha Purana clearly proves** that only the place called Sri Ram Janam Bhumi in the present Ayodhya-puri is Sri Ram Janam Bhumi site."*

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(E.T.C.)

444. About his (DW 20/3) performing Darshan, Pooja at the place in dispute since the age of 20 years under the central dome, inside the courtyard, the averments made in para 15 and 16 of the affidavit are as under:

"15. यह कि अयोध्या स्थित श्रीरामजन्मभूमि के दर्शन और पूजन मैंने कई बार किया है।"

"15. That I have done darshan and poojan of Sri Ram Janam Bhumi situated in Ayodhya." (E.T.C.)

"16. यह कि मैं अयोध्या पहली बार लगभग बीस वर्ष की अवस्था में गया था। मैंने अयोध्या में सरयू स्नान किया, नागेश्वर नाथ दर्शन करने के पश्चात मैंने श्रीराम लला मन्दिर के दर्शन किये। तदपुरान्त हनुमानगढ़ी, कनकभवन, सुमित्रा भवन आदि मन्दिरों के भी दर्शन किए।"

"16. That I went to Ayodhya for the first time at the age of nearly 20 years. I had taken a dip in Ayodhya and after having darshan of Nageshwarnath I had darshan of Sri Ram Lala temple. After that I had darshan also of temples such as Hanumangarhi, Kanak Bhawan, Sumitra Bhawan, etc." (E.T.C.)

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445. O.P.W. 1, Mahant Ramchandra Das Digambar, aged about 90 years (on 23.12.1999 when he commenced his testimony), was born at Village Sinhipur, District Chhapara, Bihar and came to Ayodhya at the age of 14-15 years. His cross examination took about a month and proceeded as under :

(a) 23/24-12-1999, 12/14/16-01-2000- by Nirmohi Akhara through Sri R.L. Verma, Advocate (p. 14-80)

(b) 16/17/18/19-01-2000- by Sunni Central Waqf Board, defendant no. 4, through Sri Zafaryab Jilani, Advocate (p. 81-131)

(c) 19/20-01-2000- by defendant no. 5 Hashim Ansari through Sri Mustaq Ahmad Siddiqui, Advocate (p. 131-

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(d) 20-01-2000 - defendant no. 6 through Sri Mohd. Nadeem Siddiqui, Advocate and defendant no. 26 through Sri Sayad Irfat, Advocate adopted the cross examination already done by defendants no. 4 and 5.

446. He is a Sadhu of Ramanandi sect and Sri Mahant of Akhil Bhartiya Sri Panch Ramanandi Digambar Ani Akhara. He has given the details of the Ramanandi sect and its Akhara which we propose to deal while considering issue No. 17 (Suit-3). He got associated with Digamber Akhara, Ayodhya about 45 years ago. He has lot of faith and belief in Lord Ram and in this respect he said as under :

''भगवान राम के जन्म के सम्बन्ध में हमारे यहॉ वाल्मीकि रामायण प्रथम स्थान रखता है। वाल्मीकि रामायण के एक–एक वाक्य को हम इतिहास व वेद के रूप में स्वीकार करते हैं। मेरे समक्ष श्रीमद्वाल्मीकि रामायण की पुस्तक है। मेरे समक्ष वाल्मीकि रामायण की जो प्रति है, वह गीताप्रेस गोरखपुर से प्रकाशित तथा प्रमाणित प्रति है। वाल्मीकि में लिखी बातें भगवान राम के प्रादुर्भाव के सम्बन्ध में लिखी बातें हैं जो रामायण के जिस पात्र के सम्बन्ध में कहा गया है, वह उस पात्र के सम्बन्ध में मान्य है। यह सभी बातें, सभी पात्रों के सम्बन्ध में मान्य नहीं है। पात्र से मेरा तात्पर्य महाराज दशरथ, रानी कौशल्या, महारानी कैकेयी, श्री हनुमान, सुग्रीव, केवट, शबरी, जटायु, अयोध्या, मिथिला, महाराजा जनक, महारानी सीता, महारानी उर्मिला, महारानी माण्डवी, महारानी श्रुतिकीर्ति, वशिष्ठ, विश्वामित्र आदि से है। इन पात्रों में सर्वप्रथम श्री रामचन्द्र जी हैं। इन सभी पात्रों में प्रमुख नायक श्री राम चन्द्र जी हैं।''

''The Valmiki Ramayana occupies the first place in the matter of birth of Lord Rama. Each phrase of Valmiki Ramayana is accepted by us as history and Veda. The book of Srimadvalmiki Ramayana is before me. The copy of Valmiki Ramayana before me, is a publication of Geeta Press, Gorakhapur and is genuine copy. The facts

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mentioned in Valmiki (Ramayana) are about the descendence of Lord Rama and the facts mentioned about any particular character, are acceptable as regards that character. All these facts are not acceptable about all the characters. By characters, I mean king Dashrath, queen Kaushalya, queen Kaikeyee, Sri Hanuman, Sugriv, Kevat, Shabri, Jatayu, Ayodhya, Mithila, king Janak, queen Sita, queen Urmila, queen Mandavi, queen Shruti Kirti, Vashishtha, Vishwamitra etc.. The first amongst these characters is Sri Ramchandra. Out of all of these characters, Sri Ramchandra is the main hero." (E.T.C.)

"मेरी आस्था के अनुसार इस सम्बन्ध में चार बातें प्रधान हैं– नाम, रूप, लीला एवं धाम। हमारे सम्प्रदाय में इन चारों को सच्चिदानन्द भगवान का विग्रह मानते हुए चारों को वस्तुतः एक माना गया है। नाम से भगवान राम का ग्रहण है। राम शब्द का शब्दार्थ शब्द शास्त्र में रमुक्रीडायाम् धातु से उत्पत्ति होती है और रमन्ते, क्रीडन्ते, योगनयों, अस्मिनतिरामा लिखा हुआ है। किसी व्यक्ति के सम्बन्ध में जानकारी प्राप्त करने के लिए उसके नाम तथा रहने के स्थान के बारे में जानकारी होना आवश्यक है। ***वाल्मीकि रामायण में यह उल्लिखित है कि भगवान राम का जन्म अयोध्या में हुआ।*** *अयोध्या का वर्णन हमारे वेदों में है, उपनिषदों में तथा संहिताओं में एवं अष्टादश उप पुराणें में, स्मृतियों में है और भारत के संस्कृत जगत में जो मान्य साहित्य उपलब्ध है, उन सब में भगवान का जन्म स्थान अयोध्या माना गया है। यह वही अयोध्या है जो वर्तमान स्थल है। इस स्थल पर भगवान राम का जन्म हुआ, इसके सम्बन्ध में चौहद्दी का उल्लेख करते हुए उपरोक्त सभी हिन्दू धर्म ग्रन्थों में स्पष्ट रूप से उल्लेख है। कागज सं0– 107ग/ 5 मेरे समक्ष है, स्कन्ध पुराण के अन्तर्गत अयोध्या महात्म्य प्रकरण में इस सम्बन्ध में स्पष्ट उल्लेख है।* ***भगवान राम का जन्म स्थल एवं गर्भगृह विवादित स्थल ही है, जहाँ पर रामलला जी इस समय विराजमान हैं।"***

"According to my faith, the following four are the main facts in this behalf, viz.- name, 'roop'(form), 'leela'

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(action) and 'dhaam' (abode). In our community, all four of them have virtually been treated to be one by taking them to be disintegration of God Sachchidanand. The name implies Lord Rama. The meaning of term Rama originates from the generic term 'ramukridayam' and it has been written as 'ramante, kridante, yoganyon, asmintirama'. In order to gather information about any person, it is essential to have knowledge of his name and place of abode. ***It has been mentioned in Valmiki Ramayana that Lord Rama was born at Ayodhya****. The description about Ayodhya is to be found in our Vedas, Upnishads, Sanghitas, 18 Up-Puranas, Smritis and all acceptable literature in the cultural domain of India and in all of them Ayodhya has been considered to be the birthplace of Lord. It is the same Ayodhya, which exists today. Lord Rama had incarnated at this very place. All the said religious treatises of Hindus clearly give the boundary in this behalf. The paper no. 107C/5 is before me. Clear description in this behalf is contained in the chapter of Skand Purana dealing with the importance of Ayodhya.* ***The birthplace of Lord Rama and the 'Garbh-grih', is the disputed site, where Ramlala is now present.****" (E.T.C.)*

"भगवान राम के जन्म का स्थान जो मैं बता रहा हूँ, वह राम उपासना सम्बन्धी ग्रन्थों में तथा अन्य हिन्दू शास्त्र ग्रन्थों में वर्णित है।"

"The birthplace of Lord Rama as being described by me, is the same as mentioned in treatises related to reverence of Rama and in other Hindu Shastra treatises." (E.T.C.)

"अयोध्या का इतिहास अत्यन्त प्राचीन एवं समीचीन है, जो शासन के आधार पर, काल के आधार पर कई भागों में विभक्त है। सत्ययुग कालीन अयोध्या, त्रेताकालीन अयोध्या, द्वापरकालीन अयोध्या, कलियुग

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कालीन अयोध्या। हिन्दू राजाओं के समय की अयोध्या, मुस्लिम समय के सम्राटों, बादशाहों के समय की अयोध्या, ईस्ट इण्डिया से लेकर अंग्रेजों के अन्तिम शासन काल की अयोध्या, कांग्रेसकालीन अयोध्या के आधार पर अयोध्या के इतिहास को बताया जा सकता है, जिनमें सर्वप्रथम बौद्धकालीन तथा विक्रमादित्य के काल की अयोध्या रही है। अयोध्या के अनेक पर्यायवाची शब्द हैं– अयोध्या, सत्या, परा, अपराजिता, साकेत आदि हैं।''

''The history of Ayodhya is very ancient and consistent, which is divided in many parts as per rule and period. The history of Ayodhya can be given on basis of Ayodhya of Satyug period, Ayodhya of Treta period, Ayodhya of Dwaper period, Ayodhya of Kalyug period, Ayodhya in times of Hindu kings, Ayodhya in times of Muslim kings and emperors, Ayodhya from the times of East India to last days of English rule, Ayodhya of Congress period. Out of these, the initial Ayodhya is of Buddha period and Vikramaditya period. The word Ayodhya has many synonyms such as- Ayodhya, Satya, Para, Aparajita, Saket etc.'' (E.T.C.)

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''जब मैं अयोध्या आया, तब से मैं निरन्तर राम जन्म भूमि, हनुमानगढ़ी नागेश्वरनाथ, सरयू, छोटी देवकाली, बड़ी देवकाली, लक्ष्मण घाट, सप्त सागर, जो छोटी देवकाली के समीप स्थित है एवं कनक भवन मन्दिर इन सभी सात स्थानों पर जब से मैं अयोध्या आया, तब से बराबर लोगों को अपरिवर्तनीय रूप से दर्शन करते हुए देखा है। . . . . . . ***. . . राम जन्म भूमि स्थल पर भगवान राम की प्रतिमा थी। सीता रसोई भी थी और वहाँ प्राचीन परम्परा से राम जन्म भूमि के नाम पर जो विशेष भवन था, उसके प्रत्येक खम्भों में अनेक देवी–देवताओं के (मूर्ति) चित्र थे।*** *मूर्ति के अतिरिक्त* ***उस भूमि की भी पूजा करते थे, जहाँ पर यह बताया जाता है कि यह राम जन्मस्थल है और भगवान राम का प्राकट्य हुआ है।*** *उसी स्थल पर एक राम लला जी के चबूतरा के नाम से एक फूस की झोपड़ी थी जिसमें निर्मोही अखाड़े के पुजारी पूजा करते थे तथा*

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भगवान को भोग–राग आदि अर्पित करते थे।''

*"Since I came to Ayodhya, I have regularly seen people having 'darshan' of all the seven places viz. Ramjanmbhumi, Hanumangarhi Nageshwar Nath, Saryu, Chhoti Dev kali, Badi Dev Kali, Laxman Ghat, Saptsagar situated near Chhoti Dev Kali and Kanak Bhawan temple.. . . . . **There was the idol of Lord Rama at Ramjanmbhumi site. Sita Rasoi also existed and in each pillar of the special building, which existed there as per ancient custom by name of Ramjanmbhumi, there were number of pictures (idol) of Gods-Goddesses over them**. Apart from the idol, **that land was also revered and it was said that it was the birthplace of Rama and Lord Rama had descended over there**. There was a hut made up of straw at that place, which was called the Chabutara of Ramlala, and the same was worshiped by the priests of Nirmohi Akhara, who used to make offering of Bhog-Raag etc. to Him." (E.T.C.)*

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447. About 1934 riots he (OPW 1) claims to be a witness and according to him since then neither the Muslims ever visited disputed premises nor offered any Namaz thereat and said :

''मेरे अयोध्या के निवास काल में वर्ष 1934 में अंग्रेजों के समय में यानी अंग्रेजों के शासनकाल में हिन्दू तथा मुसलमानों के मध्य आपसी मारपीट हुई। जिस स्थान पर मस्जिद को होना इस समय बताया जाता है, उस तथाकथित भवन के शिखर को तोड़ दिया गया। अंग्रेज सरकार ने अस्सी हजार रूपया जुर्माना लगाया, जिसे अयोध्या के सन्त–महन्तों ने एकत्र करके अंग्रेजी शासन को दिया, उसके बाद इस गिरे हुए शिखर की मरम्मत करवाई गई।''

"During the period of my stay at Ayodhya, a riot had broken out between Muslims and Hindus in the year 1934 during the British rule. The dome of the building existing at

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the place, where existence of mosque is being claimed today, had been damaged. The British Government had imposed a fine of Rupees eighty thousand, which was collected and deposited with the British Government by the saints-mahants of Ayodhya and subsequently the said damaged dome was repaired." (E.T.C.)

"मरम्मत का कार्य मुसलमान सम्प्रदाय ने नहीं करवाया। 1934 से लेकर 1947 तक पूजा–पाठ में किसी प्रकार का कोई व्यवधान उत्पन्न नहीं किया गया। मेरे समय में जब से मैं अयोध्या आया, मैंने विवादित परिसर में कभी नमाज अदा होते नहीं देखा। इस सम्बन्ध में कई बार प्रयास हुआ, इस सम्बन्ध में गिरफ्तारियॉ की गई। नमाज पढ़ने के सम्बन्ध में प्रयास किये जाने पर बराबर संघर्ष की स्थिति उत्पन्न हो जाती थी। मैंने नमाज पढ़ते हुए कभी नहीं देखा। जन्मभूमि के ऑगन के बीच में लोहे के सीखचों का एक दरवाजा था, इसे इस उद्देश्य से लगाया गया था, जिससे कोई जानवर आदि प्रवेश न कर सके।"

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"The repair work was not carried out by the Muslim community. There was no obstruction in prayer-worship from the year 1934 to 1947. Since my arrival at Ayodhya, I never saw Namaz being offered at the disputed premises. Attempts were made in this behalf on number of occasions and many arrests were effected. The attempts to offer Namaz, used to regularly give rise to clash like situation. I never saw Namaz being offered. In center of the courtyard of the Janmbhumi, was a gate of iron rods and it had been put there to prevent any animal etc. from entering." (E.T.C.)

448. About the incident of 23rd December 1949, he has said as under :

"23 दिसम्बर, 1949 को भगवान श्री राम की मूर्ति का प्राकट्य ब्रम्हमुहुर्त में हुआ। उस स्थल पर जहॉ पर पहले से मूर्ति पूजा अर्चना स्थापित थी, वहॉ पर चमत्कारपूर्ण घटना

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–प्रकाश के अवलोकन के पश्चात निर्मोही अखाड़े के राम चबूतरे पर जो मूर्ति स्थापित हुई, से हटाकर गर्भगृह में स्थापित कर दिया गया। *राम जन्मभूमि आन्दोलनों में मैं बराबर सम्मिलित हुआ हूँ। देश के स्वतंत्र होने के पश्चात राम जन्मभूमि स्थल पर मन्दिर बनाने का आन्दोलन चला, जिसके सम्बन्ध में तत्कालीन प्रधानमन्त्री से प्रतिनिधि मण्डल इस सम्बन्ध में कई बार मिला।''*

*''**The idol of Lord Sri Ram appeared in 'Brahm Muhurt' of 23rd December, 1949. After looking at the miraculous light incident, the idol installed over Ramchabutara of Nirmohi Akhara, was removed from the place, where the revered idol was already present, and installed in the 'Garbh-grih'**. I have always participated in the Ramjanmbhumi movement. After independence, the movement for building a temple at Ramjanmbhumi premises ga1ined momentum, and in this behalf a delegation met the erstwhile Prime Minister on number of occasions." (E.T.C.)*

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''इस स्थल पर जब पूजा–पाठ आदि का कार्यक्रम बराबर चलता रहा। उपर्युक्त घटना के बाद गर्भगृह में मूर्ति स्थापित होने के पश्चात पूजा–अर्चना का कार्यक्रम नियमित रूप से बराबर चलता रहा। इसके पहले भी इस स्थल पर पूजा–अर्चना आदि नियमित रूप से होता आया है। 23 दिसम्बर 1949 को विवादित स्थल पर मेरे पूजा–पाठ करने में किसी प्रकार का कोई व्यवधान उत्पन्न नहीं हुआ। उसके बाद कई मुकदमें इस सम्बन्ध में चले, जिनमें निषेधाज्ञा का आदेश पारित हुआ।''

''The prayer-worship etc. was always performed at this place. After the said incident i.e. installation of idol in the 'Garbh-grih', the prayer-worship continued regularly. Earlier also, prayer-worship etc. had been regularly performed at this place. There was no obstruction in my prayer-worship at the disputed site on 23rd December, 1949. Subsequently, many cases were filed in this behalf,

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wherein injunction order was passed." (E.T.C.)

449. He says that the suit filed by Sri Gopal Singh Visharad was defective due to non compliance of Section 80 C.P.C. and, therefore, he filed a separate suit i.e. Suit-2 (his suit has already been dismissed as withdrawn).

450. O.P.W. 2, Deoki Nandan Agarwal. He was plaintiff no. 3 (Suit-5), 80 years of age (when got his statement recorded on 16-20th June 2001), resident of 59/56, Dilkusha, Naya Katra, Allahabad. His cross examination commenced and followed as under :

(a) 06/08/09-08-2001-by Nirmohi Akhara through Sri R.L. Verma, Advocate (p. 71-126)

(b) 09/10-08-2001- by Mahmood Ahmad, defendant no. 6 through Sri Abdul Mannan, Advocate (p. 126-133)

(c) 10-08-2001, 12-09-2001, 19/20/21/22-11-2001, 6/7/8.2.2002 by Sunni Central Waqf Board, defendant no. 4, through Sri Zafaryab Jilani, Advocate (p. 133-202)

(Cross examination could not conclude due to his death)

451. After obtaining law degree, he was enrolled as an Advocate in 1958 and started practicing law in 1960 in this Court at Allahabad. He was elevated to the Bench on 17th November 1977 and retired on 3rd October 1983. He has given his statement-in-chief in 70 pages virtually reiterating the entire contents of plaint (Suit-5) and documents referred therein. He was cross examined by Sri R.L. Verma, counsel of Nirmohi Akhara, Sri Abdul Mannan, counsel for defendant no. 6 (Suit-5) and partly by Sri Jilani, counsel for defendant no. 4 (Suit-5). Sri Jilani last examined him on 8.2.2009 but thereafter the said witness was not available for further examination due to ill health and ultimately he died. We, therefore, need not give

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further details of his statement in chief at this stage but may refer the same, if is admissible in evidence as and when we find necessary.

452. OPW 4, Sri Harihar Prasad Tewari, aged about 85 years (as per his affidavit dated 01.08.2002), son of Late Sri Bal Mukund Tiwari, is resident of Village and Post Karimuddinpur, District Ghazipur. His cross examination commenced and followed as under :

(a) 01-08-2002- by Nirmohi Akhara, defendant no. 3, through Sri R.L. Verma, Advocate (p. 1-8)

(b) 01/02/05-08-2002- by Sunni Central Waqf Board, defendant no. 4, through Sri Zafaryab Jilani, Advocate (p. 8-29)

(c) 05-08-2002- by defendant no. 6 through Sri Abdul Mannan, Advocate (p. 29-33)

(d) 05/06-08-2002- by defendant no. 5 through Sri Mustaq Ahmad Siddiqui, Advocate (p. 34-45)

(e) 06-08-2002-- defendant no. 26 through Sri Sri Syed Irfan Ahmad, Advocate adopted the cross examination already done by defendants no. 4, 5 and 6

453. OPW-4 says about worshipping the idols of Lord Ram at the disputed site prior to attachment in 1949. His date of birth is 1917. He obtained education of Ayurvedacharya from Ayurved Vidyalaya, Jagdishpur Mandir, Ayodhya said to be affiliated to Dhanwantri Ayurved Vidyapeeth, Calcutta. He stayed from 1934 to 1938-39 at Ayodhya for undergoing education and during this period he claims to have visited the disputed site time and again. During the period of stay at Ayodhya he was residing at Ram Niwas Mandir, Ramkot Ayodhya which is about 250-300 Yards from Ramjanambhumi.

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Regarding birth of Lord Ram at the disputed site and faith of the people about the said birthplace etc., in paras 3, 4, 5 and 6, he has deposed as under:

> *''3. अयोध्या हिन्दुओं की एक प्राचीन पवित्रतम तीर्थ स्थली है जहां परब्रह्म परमेश्वर भगवान विष्णु ने राजा दशरथ के पुत्र श्रीराम के रूप में अवतार लिया था। हिन्दू मतावलम्बियों में अनादि काल से यह आस्था एवं विश्वास रहा है कि भगवान विष्णु ने श्रीराम के रूप में अयोध्या में अवतार लिया था। यह स्थल पूज्य है इसी आस्था एवं विश्वास के आधार पर लोग श्रीराम जन्मभूमि का दर्शन और परिक्रमा करने आते थे। मेरे परिवार के लोग, मेरे बाबा, अयोध्या में जब मैं 1934 से 1938 तक शिक्षा ग्रहण के दौरान रहा तो वहां के बड़े बुजुर्ग साधू संत भी बताते थे कि भगवान विष्णु ने भगवान श्रीराम के रूप में यहीं जन्म लिया था, और यही श्रीराम जन्मभूमि है, इसी आस्था और विश्वास के आधार पर मैं श्रीराम जन्मभूमि पर दर्शन करने जाता रहा और पढ़ाई समाप्त करने के बाद भी जब कभी अयोध्या आता था तब भी दर्शन करने जाता था, इधर लगभग 8–9 साल से सुग्रीव किला राम कोट अयोध्या में अधिकांश समय रहता हूँ। और राम जन्मभूमि का दर्शन करने जाता रहता हूँ।''*

> *''3. Ayodhya is an ancient sacred pilgrimage of Hindus, where the Almighty Lord Vishnu had incarnated as Lord Sri Rama, the son of King Dashrath. The followers of Hinduism have inculcated this faith and belief from ancient times that Lord Vishnu had incarnated Himself at Ayodhya as Sri Rama. This place is revered and it is out of this faith and belief that people used to come over to have darshan and perform circumambulation of Sri Ram Janmbhumi. During my stay at Ayodhya between 1934 to 1938 in connection with my education, my family members, my grand father, and other elderly saints used to tell me that Lord Vishnu had incarnated at this very place in form of Lord Sri Rama and this is Sri Ram Janmbhumi. I used to go to have darshan of Sri Ram Janmbhumi out of this faith*

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and belief and even after completing my studies I used to have darshan whenever I came over to Ayodhya. For the last 8-9 years, I mostly stay at Sugriv Qila, Ramkot, Ayodhya and keep going to Ram Janmbhumi for darshan." (E.T.C.)

"4. श्रीराम जन्मभूमि परिसर में जाने का रास्ता पूरब से था, इस पूरब के द्वार को हनुमत द्वार कहा जाता था। इस द्वार से श्रीराम जन्मभूमि परिसर में जाने पर बाये तरफ राम चबूतरा पर श्रीराम दरबार की मूर्तियां विराजमान थी उसके दक्षिण एक नीम एवं पीपल का पेड़ था वहां भी मूर्तियां विराजमान थी। हनुमत द्वार के दाहिने तरफ छप्पर का बना एक बहुत बड़ा झोपड़ा था जिसे भंडार कहा जाता था इसमें सैकड़ों साधू संत रहते थे और उनके बनाने–खाने का पूरा इंतजाम उसी में था जिसमें वे बनाते–खाते थे। साधू लोग चौबीसों घंटे ढ़ोल–झाल–मजीरा बजाते हुए कीर्तन करते रहते थे अन्य दर्शनार्थी, तीर्थयात्री भी कीर्तन में सम्मिलित होते रहते थे। इस परिसर के उत्तरी प्रवेश द्वार को सिंह द्वार कहा जाता था। सड़क से सिंह द्वार तक आने के लिए सीढ़ियां थी जो काफी जीर्ण–शीर्ण हो गयी थी टूट गयी थी इससे कोई आता–जाता नहीं था। सिंह द्वार के अन्दर सीता रसोई थी जिसमें चौका–बेलन–चूल्हा–चरण चिन्ह आदि थे जिनका दर्शन सभी हिन्दू धर्मानुयायी तीर्थयात्री करते थे। उसके दक्षिण भगवान श्रीराम की जन्मभूमि थी और वहीं गर्भ गृह कहा जाता था जिनका दर्शन मैं भी करता था।"

"4. The entrance to the Sri Ram Janmbhumi premises was in the east, and this gate in the east was called Hanumatdwar. On entering the Sri Ram Janmbhumi premises through this gate, was the Ramchabutra in left with deities of Sri Ram Darbaar present over it. To its south were Neem and Pipal tree. Deities were present over there as well. To the right of the Hanumatdwar was a very big hut with thatched roof, which was called store. Hundreds of saints used to live there. The entire arrangement of their fooding was available there and they

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used to live there and prepare their meals. The saints used to remain engaged round the clock in reciting Bhajans by playing Dhol-Jhaal-Manjira. Other devotees, pilgrims also used to participate in the Kirtan. The northern entrance gate to this premises was called the Singh Dwar. There were steps leading from the road to the Singh Dwar, which were much dilapidated and none used to use them. There was Sita Rasoi inside the Singh Dwar, which included Chauka-Belan-Choolha(hearth)-Charan Chinha(foot marks) etc. and all the Hindu pilgrims used to have their darshan. To its south was the birth place of Lord Sri Rama and the same was called Garbh-grih and I also used to have its darshan." (E.T.C.)

"5. चैत्र रामनवमी, सावन झूला, परिक्रमा मेला एवं राम विवाह के अवसर पर देश के कोने–कोने से हिन्दू धर्मानुयायी तीर्थयात्री अयोध्या आते और सरयू नदी में स्नान करने के पश्चात् मंदिरों में दर्शन करते रहे हैं, सभी तीर्थ यात्री राम जन्मभूमि का दर्शन करने अवश्य ही जाते थे। और अपनी श्रद्धा के अनुसार फल–फूल–पैसा आदि चढ़ाते थे। श्रीराम जन्मभूमि परिसर के बाहर–बाहर चारों तरफ परिक्रमा बनी हुई थी। तीर्थयात्री, दर्शनार्थी इस पूरे परिसर की परिक्रमा करते थे। नियमित रूप से सैकड़ों श्रद्धालु प्रतिदिन परिक्रमा करते रहते थे।"

"5. On the occasions of Chaitra Ram Navami, Sawan Jhoola, Parikrama mela (circumambulation fair) and Rama Vivah, Hindu pilgrims from all corners of the country used to visit Ayodhya and have darshan in the temples after taking a holy dip in the river Saryu. All the pilgrims definitely visited the Ram Janmbhumi to have darshan and used to offer money-flower-fruits as per their faith. A circumambulation path was laid down around the Sri Ram Janmbhumi premises. Hundreds of devotees used to regularly perform circumambulation everyday."

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''6. श्री राम जन्मभूमि परिसर के पूरब–दक्षिण कोने पर लगभग 200–250 कदम की दूरी पर सीताकूप था। इस कूप के जल का प्रयोग तीर्थयात्री, दर्शनार्थी और श्रीराम जन्मभूमि परिसर में रहने वाले साधू संत करते थे। श्रीराम जन्मभूमि परिसर में हिन्दू धर्मानुयायी तीर्थयात्रियों, साधु संतो की हमेशा भीड़ लगी रहती थी। कोई मुसलमान उसके आस–पास भी कभी नहीं आता–जाता था। और न ही कोई मुसलमान उस परिसर के अन्दर जाता था। मैंने कभी किसी मुसलमान को उसके अन्दर जाते व नमाज पढ़ते नहीं देखा। परिसर के नजदीक कभी अनजाने में भी कोई मुसलमान दिखाई दे जाता था तो साधू संत उसे मारने के लिए दौड़ा लेते थे इसलिए भय के कारण कोई मुसलमान उधर आता ही नहीं था। श्री राम जन्मभूमि परिसर में स्थित गर्भ गृह भवन में काले कसौटी के खम्भे लगे हुए थे जिन पर फूल–पत्तियां, देवी–देवताओं की मूर्तियां बनी हुई थी। गुंबदों वाला भवन ही पवित्र गर्भ गृह था जहां भगवान श्रीराम का जन्म होना माना जाता रहा है। हिन्दू तीर्थयात्री एवं दर्शनार्थी उन पर भी फल–फूल–पैसा आदि श्रद्धावश चढ़ाते थे। श्रीराम जन्मभूमि परिसर के आस–पास हिन्दुओं के तमाम मंदिर शुरू से रहे है।''

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''6. In the east-south corner of Sri Ram Janmbhumi premises, was the Sita koop (well) at a distance of about 200-250 paces. The water of this well was used by the pilgrims, devotees and the saints residing at Sri Ram Janmbhumi premises. The Sri Ram Janmbhumi premises was always flooded with Hindu pilgrims and saints. No Muslim ever came near the same nor ever went inside the premises. I never saw any Muslim go inside it or offer namaz over there. Even if any Muslim was mistakenly found near the premises, the saints used to chase him away and as such no Muslim came to that side out of fear. There were touch stone pillars in the Garbh-grih structure at the Sri Ram Janmbhumi premises, which had figures of flowers-leaves, Gods-Goddesses engraved over them. The dome structure was the sacred Garbh-grih, where Lord Sri

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Rama is believed to have descended. Hindu pilgrims, devotees and pilgrims used to offer fruits-flowers-money at Him out of faith. Various Hindu temples have always existed around the Sri Ram Janm Bhumi premises" (E.T.C.)

454. O.P.W. 5, Ramnath Mishra alias Banarasi Panda: is aged about 91 years (as per his affidavit dated 6/7.8.2002), resident of Naya Ghat, Ayodhya, District Faizabad. His cross examination proceeded as under :

(a) 07-08-2002- by Nirmohi Akhara, defendant no. 2, through Sri R.L. Verma, Advocate (p. 2-15)

(b)08-08-2002, 12/13/16/17-09-2002- by Sunni Central Waqf Board, defendant no. 4, through Sri Zafaryab Jilani, Advocate (p. 16-73)

(c) 17-09-2002- by defendant no. 6 through Sri Abdul Mannan, Advocate (p. 73-75)

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(d) 17-09-2002- by defendant no. 5 through Sri Mustaq Ahmad Siddiqui, Advocate (p. 75-86)

(e) 27-09-2002- defendant no. 26 through Sri Mohd. Azhar, Advocate and defendants no. 6/1 and 6/2 (Suit-3) through Sri Fazale Alam, Advocate, adopted the cross examination already done by defendants no. 4, 5 and 6

455. By profession he is a Teerthpurohit and residing at Ayodhya since 1932, assisting the people in visiting and performing Darshan and Pooja in various temples at Ayodhya. He has made averments about Darshan and Pooja inside the courtyard, i.e., Garbhgrih (under the central dome) till December 1949 and that the disputed premises was neither used as mosque nor any Namaz was offered thereat. He has said in paras 3, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, and 15 as under :

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''3. अयोध्या में प्रमुख रूप से चैत्र रामनवमी भगवान श्रीराम के जनमोत्सव के रूप में मनाया जाता है। सावन में सावन झूला उत्सव मनाया जाता है। कार्तिक मास के अक्षय राम नवमी, देवोत्थानी एकादशी, कार्तिक पूर्णिमा व सरयू स्नान का मेला, कार्तिक माह में पंचकोसी तथा चौदहकोसी परिक्रमा और वृहद मेला, अगहन सुदी पंचमी को राम विवाह का उत्सव मनाया जाता है। इन अवसरों पर विशेषरूप से देश के कोने–कोने से लाखों श्रद्धालु रामभक्त अयोध्या आते हैं जिनकी संख्या एक–एक दिन में 10–10, 15–15 लाख तक हो जाती हैं ये श्रद्धालु रामभक्त सरयू स्नान करते हैं, सरयू के घाटों पर दान–गोदान करते हैं। सरयू स्नान के पश्चात् पारंपरिक रूप से श्री राम जन्मभूमि, कनक भवन और हनुमानगढ़ी का दर्शन अवश्य ही करते हैं। इसके पश्चात् अयोध्या स्थित अन्य मंदिरों का दर्शन करते हैं। अयोध्या में प्रतिदिन एक उत्सव का दिन होता है जहॉ गली–गली और कण–कण में राम का जयघोष गूंजता रहता है। मंदिर में घंटाघडियाल बजता तथा कीर्तन भजन लगातार होता रहता है, सम्पूर्ण अयोध्या राममयी रहती है। अयोध्या में प्रत्येक दिन भारत के कोने कोने से हजारों की संख्या में श्रद्धालु रामभक्त आते रहते हैं और सरयू नदी में स्नान करते हैं। इसके बाद श्रीराम जन्मभूमि का दर्शन करने और राम अभिषेक भी करने जाते है। राम अभिषेक के पश्चात् कनक भवन जाकर भगवान राम का साक्षात् दर्शन प्राप्त करते हैं उसके पश्चात् हनुमान गढ़ी जाकर राम भक्त हनुमान का दर्शन करते हैं। फूल माला–प्रसाद आदि चढ़ाते हैं और अयोध्या स्थित तमाम मंदिरों में जाकर दर्शन करते हैं। हर गली हर मोहल्ले में राम–कीर्तन और रामधुन होती रहती है। श्रीराम जन्मभूमि में राम अभिषेक प्रातः शुरू होता है और दोपहर तक चलता है।''

''3. Ram Navami of Chaitra month is chiefly observed as birth celebration of Lord Rama in Ayodhya. Sawan Jhoola is celebrated in the month of Sawan. Akshay Ram Navami, Devotthani Ekadashi, Kartik Poornima and Saryu Snan fare are observed in the month of Kartik. Panchkosi and Chaudahkosi circumambulations and Vrihad mela (major fare) take place in the month of Kartik. Ram Vivah celebrations are observed on the occasion of Aghan Sudi Panchami. On these occasions, lakhs of devotees and

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Rama- worshippers come to Ayodhya particularly from the nooks and corners of the country and the number of such persons goes up to 10 or 15 lakhs on a single day. These devotees and Rama worshippers take a dip in Saryu and perform 'daan-godaan' (offering and that of cow). After taking a dip in Saryu, as a matter of tradition, they certainly have darshan of Sri Ram Janam Bhumi, Kanak Bhawan and Hanumangarhi. After that they have darshan at other temples situated at Ayodhya. Everyday is a day of celebration in Ayodhya, where acclamation of Rama resounded every street and every atom. Bells and gongs keep ringing and kirtan and bhajan (singing of hymns and devotional songs) goes on continuously in Ayodhya. The whole of Ayodhya is pervaded with the sense of association with Rama. Devotees and Rama- worshippers continue to come in thousands to Ayodhya from the nooks and corners of India and take a dip in river Saryu everyday. After that they go to have darshan of Sri Ram Janam Bhumi and to offer water to Rama. After offering water to Rama they have a direct darshan of Lord Rama by going to the Kanak Bhawan after that they go to Hanumangarhi and have darshan of Rama-worshipping Hanuman. They offer flowers, garlands, prasad, etc. and go to several Ayodhya-situated temples to have darshan thereat. Ram Kirtan and Ram Dhun continue to resound every street and every locality. Ram Abhishek (religious bathing of Rama) starts in the morning and continues till noon at Sri Ram Janam Bhumi." (E.T.C.)

"5. मैंने अपने जीवनकाल में देश के कोने–कोने के लगभग हजारों रामभक्त तीर्थयात्रियों को अयोध्या में दर्शन करवाया है जिसमें प्रमुखरूप से नेपाल के राजा महेन्द्र की माता जी लगभग 40 वर्ष पहले आयी थीं।

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महाराज टिहरी लगभग 50 वर्ष पहले आये थे। ओयल जिला खीरी के महाराजा भॅवर सिंह लगभग 30 वर्ष पहले आये थे। महाराजा मेवाड परिवार के लोग 1940–42 में अयोध्या आये थे। इन सभी लोगों के साथ जाकर मैंने श्रीराम जन्मभूमि, कनक भवन, हनुमानगढ़ी का अयोध्या में दर्शन करवाया था। मैं श्रीराम जन्मभूमि पर श्रद्धालु रामभक्तों के इच्छानुसार रामअभिषेक करवाता था और उनसे दक्षिणा प्राप्त करता था।''

''5. In my life, I have facilitated nearly thousands of Rama-worshippers and pilgrims coming from the nooks and corners of the country to have darshan in Ayodhya. They mainly included mother of King Mahendra of Nepal who had come nearly 40 years ago. The king of Tehri had come nearly 50 years ago. King Bhanwar Singh of Oyal, district Kheeri had come nearly 30 years ago. Family members of King of Mewar came to Ayodhya in 1940-42. I had accompanied all these persons and had facilitated them to have darshan of Sri Ram Janam Bhumi, Kanak Bhawan and Hanumangarhi. I used to perform Ram abhishek (consecration of Ram) at Ram Janam Bhumi as per the desire of devotees and Rama-worshippers and used to get dakshina (fee for religious service) from them.'' (E.T.C.)

'6. श्रीराम जन्मभूमि परिसर में जाने पर मुख्यद्वार पूरब से था जिसको हनुमत द्वार कहा जाता था। मुख्यद्वार पर दोनों किनारे काले कसौटी के खम्भे लगे हुए थे जिन पर फूल पत्ती और देवताओं के चित्र बने हुए थे। मुख्यद्वार से अन्दर जाने पर दक्षिण तरफ एक चबूतरा था जिसको रामचबूतरा कहा जाता था। उक्त रामचबूतरे पर पूरे रामदरबार की मूर्तियां विराजमान थी उसके नीचे गुफा मंदिर था। रामचबूतरा से दक्षिण पूरब कोने पर पीपल के पेड़ के नीचे भी मूर्तियां विराजमान थी उनमें गणेश जी शंकर जी आदि देवताओं की मूर्तियां थी। मुख्य द्वार से अन्दर उत्तर तरफ एक बहुत बड़ा छप्पर था जिसे भण्डार कहा जाता था। उसमें गल्ला, अनाज बर्तन, हण्डा, कड़ाही आदि भोजन बनाने के साधन व सामान रखे थे।

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रामचबूतरा व भण्डार के पश्चिम सिकचे की दीवारके अन्दर तीन गुम्बदों से आच्छादित गर्भगृह मंदिर था। बड़े बुजुर्ग परम्परानुसर बताते थे कि इसी मध्य गुम्बद के नीचे की भूमि पर भगवान श्रीराम का जन्म राजा दशरथ के पुत्र के रूप में हुआ था। इसी आस्था एवं विश्वास के आधार पर सम्पूर्ण हिन्दू रामभक्त जनता और मैं भी श्रीराम जन्मभूमि का दर्शन करता था तथा उसे अतिपवित्र एवं पूज्य स्थल माना जाता था।''

''6. On entering Sri Ram Janam Bhumi premises there lay the main entrance gate in the east which was called Hanumat Dwar. On the both sides of the main gate were black touch stone pillars with flowers, leaves and images of devotees engraved on them. On entering the main gate there was a chabutra (rectangular terrace) in the south which was called Ram Chabutra. On that Ram Chabutra lay idols of the entire Ram Darbaar and beneath it was a cave temple. On the south-eastern corner from Ram Chabutra were placed idols beneath the fig-tree. They included idols of deities such as Ganesha, Shankar, etc. Inside the main gate, northwards lay a very big shed which was called 'bhandar' (granary). Means and items of preparing food such as grains, utensils, hunda (metallic container for storing water), pan, etc. were kept there. To the west of Ram Chabutra and the granary and inside the western wall with bars lay 'garbh grih temple' surmounted with three domes. As per tradition, elderly persons used to tell that Lord Sri Rama was born as son of King Dashrath on the ground beneath this very central dome. On the basis of this very faith and belief, all Rama-worshipping Hindu public and I also used to have darshan of Sri Ram Janam Bhumi, which used to regarded as a very holy and revered place.'' (E.T.C.)

''7. श्रीराम जनमभूमि परिसर के उत्तरी प्रवेश द्वार को सिंहद्वार कहा

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जाता था। सिंहद्वार के ऊपर बीच में गरूण तथा उसके दोनों तरफ दो सिंह बने हुए थे। सिंहद्वार के अन्दर आने पर सीतारसोई थी। वहां चौका, बेलन, चूल्हा, चरणचिन्ह आदि थे। उसके दक्षिण श्रीराम जन्मभूमि गर्भगृह था, जो गुम्मदों आदि से आच्छादित हिन्दू मतावलम्बियों के लिए अत्यन्न ही पवित्र एवं पूज्य स्थल था। सभी हिन्दू मतावलम्बियों की प्राचीन परम्परा से दृढ़आस्था एवं विश्वास है कि इसी स्थल पर भगवान विष्णु ने महाराजा दशरथ के पुत्र राम के रूप में जन्म लिया था इसलिए यह स्थल ही अति पवित्र एवं पूज्य है, इसी आस्था एवं विश्वास के आधार पर तीर्थयात्री व दर्शनार्थी लाखों–लाख की संख्या में अयोध्या आकर श्रीराम जन्मभूमि का दर्शन–परिक्रमा करते रहे हैं और अब भी करते हैं। मुख्य प्रवेशद्वार के बाहर अंग्रेजों के जमाने का एक पत्थर लगा हुआ है और जिस पर जन्मभूमि नित्य यात्रा और हिन्दी की संख्या 1 (एक) लिखा हुआ है।''

"7. The northern entrance gate of Sri Ram Janam Bhumi premises was called Singh Dwar. Above Singh Dwar were engraved Garuna in the middle and two lions on both sides. On coming inside through Singh Dwar there lay Sita Rasoi, where there were chauka, belan (rolling pin), choolha (hearth), foot-prints, etc. To its south was Sri Ram Janam Bhumi Garbh-Grih (sanctum sanctorum of Sri Ram Janam Bhumi), which was surmounted with domes and was a very sacred and revered place for adherents of Hinduism. All followers of Hinduism, as per ancient tradition, have a firm faith and belief that Lord Vishnu took birth on this very place as son of King Dashrath, hence this place itself is very sacred and revered. On the basis of this very faith and belief, pilgrims and devotees have been coming in lakhs to Ayodhya to do darshan-parikrama (sight and circumambulation) of Sri Ram Janam Bhumi and so do they do even now. Outside the main entrance gate is fixed a stone of the English period which has words 'Janam Bhumi Nitya Yatra' and 'number – 1 (ek) of Hindi' written on it."

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(E.T.C.)

'8. श्रीराम जन्मभूमि परिसर के दक्षिण पूरब कोने पर लगभग 200–250 कदम की दूरी पर सीताकूप स्थित है। हिन्दू उसे बहुत ही पवित्र कूप मानते हैं। उसका दर्शन करते हैं तथा उसका पवित्र जल पीते और अपने घर भी ले जाते हैं। वहॉ अंग्रेजों के जमाने का एक पत्थर लगा है जिस पर सीताकूप लिखा है।''

"8. Sita Koop is situated on the south-eastern corner of Sri Ram Janam Bhumi premises and is at nearly 200-250 paces therefrom. Hindus regard the Koop as very sacred. They have darshan of it and drink its holy water and also take it to their homes. A stone of the English period is fixed there which has 'Sita Koop' written on it." (E.T.C.)

''9. मैंने अपने जीवनकाल में कभी भी किसी मुसलमान को श्रीराम जन्मभूमि परिसर – गर्भगृह में जाते नहीं देखा और न ही किसी मुसलमान द्वारा वहां नमाज पढ़ने का प्रश्न ही पैदा होता है। भूले भटके भी कोई मुसलमान अगर श्रीराम जन्मभूमि के आस पास दिखाई दे जाता था तो साधू–वैरागी लाठी डन्डा आदि लेकर मारने के लिए दौड़ा लेते थे भय के कारण किसी मुसलमान की हिम्मत ही नहीं पड़ती थी कि इस तरफ नजर उठाकर देख सके।''

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"9. In my life, I never saw any Muslim enter the sanctum sanctorum, nor is there any question of any Muslim offering namaj there. If any Muslim was seen in and around Sri Ram Janam Bhumi premises because of having come to it out of forgetfulness or due to having missed the way, saints and recluses used to give them a chase with lathi-danda (club,stick), etc. Out of fear, none of the Muslims was courageous enough to have a glance towards this site." (E.T.C.)

''10. श्रीराम जन्मभूमि परिसर के अन्दर गुम्मद वाले गर्भगृह में काले कसौटी के खम्भे लगे हुए थे उन पर कलश, फूल, पत्ती और देव आकृतियां बनी हुई थीं। गर्भगृह के अन्दर सन् 1928 से 1949 तक मैंने भगवान राम

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का चित्र लगे देखा था। दीवाल के कोनिया में ताखे पर भगवान की मूर्ति विराजमान थी। सन् 1949 तक यह मूर्ति वहां पर विराजमान मैंने देखा था।''

"10. The domed garbh-grih (sanctum sanctorum) located inside Sri Ram Janam Bhumi premises, had black touch stone pillars with pitchers, flowers, leaves and images of deities engraved on them. Between 1928 and 1949 I had seen the idol of Lord Rama fixed inside the sanctum sanctorum. The idol of Bhagwaan was placed on a niche in the corner of the wall. I had seen this idol present there till 1949." (E.T.C.)

''11. ***सिकचे वाली दीवार में दो दरवाजे थे उनमें ताला लगा रहता था*** *उसे निर्मोही अखाड़ा के पुजारी लोग खोलते व बन्द करते थे। वही पुजारी रामचबूतरा, सीतारसोई आदि की पूजा आरती इत्यादि करते थे।* ***जंगले से ही हम तीर्थयात्रियों–दर्शनार्थियों को गर्भगृह का दर्शन कराते थे वहीं एक दान–पात्र भी रखा हुआ था।*** *मुख्य गेट पर ही बतासा और फूल माला की दूकानें थीं जिनमें से एक सहदेव माली की दूकान थी।''*

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"11. ***The wall having bars had two doors which used to be locked.*** *Priests of the Nirmohi Akhara used to open and lock it. Priests used to perform pooja, aarti, etc. of Ram Chabutra, Sita Rasoi etc. at that very place.* ***Only through the window, we facilitated pilgrims and devotees to have darshan of garbh-grih. A donation-box was also kept at that very place.*** *Right at the main gate were shops of 'batasha'(roundish sugar-cake) and of flowers and garlands. Of the said shops, one was owned by a gardener called Sahdev." (E.T.C.)*

''12. ***मुख्यगेट के सामने जहॉ भी खोदा जाता था, लगभग एक फिट के नीचे जला हुआ धान निकलता था वहीं धान अपने यजमानों को प्रसाद स्वरूप देते थे।''***

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*"12. **Wherever ground facing the main gate was dug up to the depth of nearly one feet, burnt-paddy used to be taken out. We used to give our 'Yajmans' (clients) that very paddy as 'Prasad'**." (E.T.C.)*

"13. अक्टुबर, नवम्बर सन् 1949 में श्रीराम जनमभूमि और उसके अगल–बगल सामूहिक रूप से श्रीरामचरित मानस का अखण्ड पाठ महीनों हुआ था जिसमें हजारों हजार की संख्या में लोग शामिल होते थे मैं भी वहां श्रीराम चरित मानस पाठ करता था।"

"13. In October and November of 1949, in and around Sri Ram Janam Bhumi, there was a collective 'akhand paath' of Sri Ram Charit Manas which had gone for months together and in which thousands of people had participated. I also had done Sri Ram Charit Manas paath (recitation of Sri Ram Charit Manas) there." (E.T.C.)

*"14. **22/23 दिसम्बर 1949 को ब्राम्हमुहूर्त में भगवान श्रीराम लला गर्भगृह में प्रगट हो गये** इसकी जानकारी होने पर मैं भी वहां दर्शन करने 23 दिसम्बर को प्रातः काल गया वहां सिंहासन पर लगभग एक फिट ऊंची भगवान श्रीराम लला की मूर्ति–विराजमान थी। यह मूर्ति अष्टधातु की लगती थी।"*

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*"14. **In Brhama-muhurta (early morning) of 22nd/ 23rd December, 1949, Lord Sri Ram Lala appeared in 'garbh-grih'**. On coming to know it I also went to have darshan there on the morning of 23rd December. Nearly one feet-high idol of Lord Sri Ram Lala was seated on a thrown there. This idol appeared to be of 'asthdhaatu' (alloy of eight metals)." (E.T.C.)*

'15. सन् 1930 से 1950 तक मैं लगातार हर साल चैत्र रामनवमी को श्रीराम जन्मभूमि की 108 परिक्रमा करता था तथा 1932 से 1950 तक हर महीने की एकादशी को श्रीराम जन्मभूमि की ग्यारह परिक्रमा करता था।"

"15. I used to do 108 circumambulations at Sri Ram Janam Bhumi on the occasion of Chaitra Ram Navami

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every year from 1930 to 1950 in continuity and used to do 11 circumambulations at Sri Ram Janam Bhumi on Ekadashi every month from 1932 to 1950." (E.T.C.)

456. O.P.W. 6, Hausila Prasad Tripathi. He was born at village Pahunti, District Faizabad (now in District Ambedkarnagar). His examination-in-chief commenced and followed as under :

13-08-2002- **Examination-in-chief** by affidavit (p. 1-9)

Cross examination:(a) 13-08-2002-by Nirmohi Akhara, defendant no. 2, through Sri R.L. Verma, Advocate (p. 2-18)

(b) 14-08-2002- by defendant no. 6 through Sri Abdul Mannan, Advocate (p. 19-25)

(c) 14/16/21/23-08-2002, 02/03-09-2002- by Sunni Central Waqf Board, defendant no. 4, through Sri Zafaryab Jilani, Advocate (p. 25-103)

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(d) 03/04/05/18/19-09-2002- by defendant no. 6 through Sri Mustaq Ahmad Siddiqui, Advocate (p. 103-160)

(e) 19-09-2002- defendant no. 26 through Sri Mohd. Azhar, Advocate and defendants no. 6/1 and 6/2 (Suit-3) through Sri Fazale Alam, Advocate, adopted the cross examination already done by defendants no. 4, 5 and 6 (p. 161)

457. He is aged about 80 years in 2002. His village is about 30-35 k.ms. from Ayodhya. About Darshan and Pooja at the disputed premises and that the disputed premises was neither used as mosque nor any Namaz was offered thereat, he has said in paras 4, 5, 7, 8, 9, 10, 11, 12, 13 and 14 of the affidavit as under :

"4. मेरे गांव पहुंती से अयोध्या लगभग 30–35 किलोमीटर दूर है। आचार्य नगर से राम जन्मभूमि लगभग 9–10 किलोमीटर दूर है। सन् 1935

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के माह दिसम्बर में पहली बार अपने चाचा श्री माता प्रसाद त्रिपाठी के साथ अयोध्या आया था उस समय मेरी उम्र लगभग 12–13 वर्ष थी। उस समय मैं 5–6 दिन तक अयोध्या में रूका था। मेरे चाचा उस समय विजय राघव मंदिर अयोध्या, जो श्रीराम जन्मभूमि से लगभग आधा किलोमीटर दूर है में रहते थे। वह मुझसे 10–11 वर्ष बड़े थे। मेरे चाचा अयोध्या के बड़ा स्थान संस्कृत महाविद्यालय में पढ़ते थे वह सन् 1932 से 1945 तक अयोध्या में रहकर प्रथमा से लेकर आचार्य तक की शिक्षा ग्रहण किए। मेरे चाचा मुझे अयोध्या घुमाने के लिए ले गए थे। पहले सरयू स्नान कराये उसके बाद हम लोग नागेश्वर नाथ मंदिर दर्शन करने गए। उसके बाद हनुमान गढ़ी, कनक भवन, राम कचहरी और श्री राम जन्मभूमि का दर्शन करने गए। उसके बाद मैं जितने दिन अयोध्या में रहा प्रतिदिन सुबह शाम श्रीराम जन्मभूमि, कनक भवन दर्शन करने जाता था।''

"4. Ayodhya is nearly 30-35 kilometres from my village, Pahunti. Ram Janam Bhumi is nearly 9-10 kilometres from Acharya Nagar. In December of 1935, I came to Ayodhya along with my uncle, Sri Mata Prasad Tripathi for the first time. I was at that time nearly 12-13 years of age. I had then stayed at Ayohdya for 5-6 days. At that time my uncle used to live in the Vijay Raghava temple, Ayodhya, which is nearly half a kilometre away from Sri Ram Janam Bhumi. He was 10-11 years senior to me. My uncle was a student of Sanskrit Mahavidyalaya located at Bada Sthan at Ayodhya. He got schooling from Prathama to Acharya by residing in Ayodhya from 1932 to 1945. My uncle took me for a walk to Ayodhya. First of all, he took me for a dip in Saryu. Later on we went to have darshan of the Nageshwar Nath temple. After that we went to have darshan of Hanumangarhi, Kanak Bhawan, Ram Kutchery and Sri Ram Janam Bhumi. After that I used to go to have darshan of Sri Ram Janam Bhumi and Kanak Bhawan in the morning and evening daily for as many days as I stayed in

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Ayodhya." (E.T.C.)

'5. उसके बाद सन् 1936 के चैत्र मास में मैं अपने पिता जी तथा दादी के साथ चैत्र राम नवमी के अवसर पर अयोध्या गया। हनुमान गढ़ी, कनक भवन और श्रीराम जन्मभूमि का दर्शन हम लोगों ने किया। राम नवमी के समय देश के कोने–कोने से लाखों की संख्या में लोग अयोध्या आये हुए थे। अयोध्या आने वाले अधिकांश तीर्थ यात्री एवं दर्शनार्थी श्रीराम जन्मभूमि पर दर्शन पूजा करने आते है। श्रीराम जन्मभूमि का दर्शन करने के बाद हजारों लोगों को पूरे श्रीराम जन्मभूमि परिसर का बाहर से परिक्रमा करते हुए मैंने कई बार देखा। मेरी दादी पिता जी और मैं भी दर्शन करने के बाद श्रीराम जन्मभूमि के पूरे परिसर का परिक्रमा किया। दादी वृद्धावस्था के कारण केवल एक बार परिक्रमा कर पायीं किन्तु मेरे पिता जी तथा मैंने श्रीराम जन्मभूमि की पांच परिक्रमा पूरा किया।''

"5. After that, in Chaitra month of 1936, I along with my father and grandmother went to Ayodhya on the occasion of Ram Navami falling in month of Chaitra. We had darshan of Hanumangarhi, Kanak Bhawan and Sri Ram Janam Bhumi. On the occasion of Ram Navami, lakhs of people had come to Ayodhya from the nooks and corners of the country. Most of Ayodhya-bound pilgrims and darshan seekers come to have darshan and pooja at Sri Ram Janam Bhumi. I have on several times seen thousands of people doing circumambulation of the entire Sri Ram Janam Bhumi from outside after having its darshan. After having darshan my grand mother and I also did parikrama around the entire premises of Sri Ram Janam Bhumi. Because of her old age, grandmother could do parikrama just once but my father and I did parikrama of Sri Ram Janam Bhumi five times." (E.T.C.)

''7. ऐसी आस्था, मान्यता एवं विश्वास है कि भगवान श्रीराम का जन्म अयोध्या में हुआ था और वह स्थान श्रीराम जन्मभूमि के नाम से विख्यात है। जहां देश के कोने कोने से लाखों की संख्या में दर्शनार्थी आते हैं और

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श्रीराम जन्मभूमि का दर्शन करके उसकी परिक्रमा करते हैं। इसी आस्था एवं विश्वास के आधार पर हम लोग भी प्रतिवर्ष तीन–चार बार श्रीराम जन्मभूमि का दर्शन व परिक्रमा अवश्य ही करते है।''

''7. It is faith, recognition and belief that Lord Sri Rama was born in Ayodhya and that place is famous by the name of Sri Ram Janam Bhumi, where lakhs of darshan- seekers come from the nooks and corners of the country and do the parikrama of Sri Ram Janam Bhumi after having its darshan. On the basis of this very faith and belief, we also certainly go for darshan and parikrama (sight and circumambulation) of Sri Ram Janam Bhumi 3-4 times every year.'' (E.T.C.)

''8. मेरा भी दृढ़ विश्वास एवं आस्था है कि भगवान श्रीराम का जन्म अयोध्या में उसी स्थान पर हुआ है, जहां हजारों हिन्दू तीर्थ यात्री दर्शनार्थी आकर दर्शन पूजा व परिक्रमा करते हैं। इसी आस्था एवं विश्वास के आधार पर मैं भी 1935 से प्रतिवर्ष साल में 3–4 बार अयोध्या गया और वहां सरयू स्नान के बाद कनक भवन, हनुमान गढ़ी व श्रीराम जन्मभूमि का दर्शन व श्रीराम जन्मभूमि की परिक्रमा किया।''

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''8. I also have a firm belief and faith that Lord Sri Rama was born at that very place in Ayodhya where thousands of Hindu pilgrims and darshan seekers come to do darshan, pooja and parikrama. Under this very faith and belief I also went to Ayodhya 3-4 times a year since 1935 and after having a dip in Saryu had darshan of Kanak Bhawan, Hanumangarhi and Sri Ram Janam Bhumi and performed circumambulation of Sri Ram Janam Bhumi.'' (E.T.C.)

''9. सन् 1935 से 1945 तक जब तक मेरे चाचा अयोध्या में रहकर विद्या अध्ययन करते रहे। तब तक मैं जब भी साल में तीन–चार बार अयोध्या आता था। तो 2–4 दिन लगातार रूका और हनुमान गढ़ी, कनक भवन व श्रीराम जन्मभूमि का दर्शन प्रतिदिन किया 1945 के बाद भी मैं साल में 4–5 बार अयोध्या जाकर हनुमान गढ़ी, कनक भवन, श्रीराम जन्मभूमि का दर्शन

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करके उसी दिन वापस लौट आता था।''

"9. During 1935 to 1945, as long as my uncle kept residing and studying in Ayodhya, I used to go to Ayodhya 3-4 times a year. I daily had darshan of Hanumangarhi, Kanak Bhawan and Sri Ram Janam Bhumi by staying constantly for 2-4 days. Even after 1945 I used to go to Ayodhya 4-5 times a year and after having darshan of Hanumangarhi, Kanak Bhawan and Sri Ram Janam Bhumi used to return on the same day." (E.T.C.)

''10. श्रीराम जन्मभूमि परिसर में जाने के लिए मुख्य प्रवेश द्वार पूरब में था, जिसको हनुमत द्वार कहा जाता था। हनुमत द्वार से अन्दर जाने पर दक्षिण तरफ राम चबूतरा था जिस पर राम दरबार की मूर्तियां विराजमान थी, उसके दक्षिण–पूरब कोने पर एक पीपल व नीम का पेड़ था, जिसके नीचे जड़ के पास शिव दरबार की मूर्तियां विराजमान थीं। हनुमत द्वार के उत्तर बहुत बड़ा फूस का झोपड़ा था जिसे भंडार कहा जाता था, उसमें साधुओं का गल्ला–अनाज व बर्तन आदि रखने एवं भोजन बनाने–खाने की व्यवस्था थी। श्रीराम जन्मभूमि परिसर में साधु–वैरागी रहते थे। राम चबूतरा और भंडार के ठीक सामने पश्चिम की ओर की दीवार थी जिसमें सीकचों की कई खिड़कियां व दो दरवाजे लगे थे दरवाजे में ताला बन्द रहता था। सीकचों वाली दीवार के पश्चिम तीन शिखरों वाला भवन था। जिसमें बीच वाले शिखर के भाग की भूमि हिन्दू परम्परा, आस्था, विश्वास एवं मान्यता के अनुसार भगवान श्रीराम की जन्मभूमि है जिसे गर्भ गृह कहा जाता है। इसी परम्परा, आस्था एवं विश्वास के आधार पर मैं भी श्रीराम जन्मभूमि का दर्शन एवं परिक्रमा करने जाता था।''

"10. To enter Sri Ram Janam Bhumi premises there was a main entrance gate in the east which was called Hanumat Dwar. On entering the Hanumat Dwar there was Ram Chabutra in the south with idols of Ram Darbaar. On its south-eastern corner lay a fig-tree and a neem tree beneath which were seated idols of Sri Darbaar near the root. Towards the north of Hanumat Dwar was a very big

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thatched hut which was called store room and had arrangement for keeping grains, utensils, etc. and for cooking and eating food. Saints and hermits used to live in Sri Ram Janam Bhumi premises. Just in front of Ram Chabutra and the store room lay the western wall which had several windows with bars and had two gates, which used to be locked. To the west of the wall having bars was a three dome building, in which the land forming part of the central dome is, as per Hindu tradition, faith, belief and recognition, is the birth place of Lord Sri Rama which is called 'garbh-grih' (sanctum sanctorum). On the basis of this very tradition, faith and belief, I also went to have darshan and parikrama of Sri Ram Janam Bhumi." (E.T.C.)

"11. श्रीराम जन्मभूमि परिसर के उत्तर वाले प्रवेश द्वार को सिंह द्वार कहा जाता था। प्रवेश द्वार तक पहुंचने के लिए सीढ़िया थी, जो टूटी हुई थी। उससे अन्दर आने पर सीता रसोई थी। वहां चौकी, बेलन, चूल्हा, चरण–चिन्ह आदि थे। उसके दक्षिण भगवान श्रीराम की जन्मभूमि थी जिसे गर्भ गृह कहा जाता था। जन्मभूमि पर स्थित मंदिर प्राचीन भव्य मंदिर का ही अवशेष है।"

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"11. The entrance gate located to the north of Sri Ram Janam Bhumi premises, was called Singh Dwar. Leading to the entrance gate there were steps, which were broken. On entering by them, there was Sita Rasoi, where there were chauki, belan (rolling pin), chulha (hearth), foot-prints etc. To its south lay the birthplace of Lord Sri Rama which was called 'garbh-grih' (sanctum sanctorum). The temple located at the birthplace is a remnant only of an ancient magnificent temple." (E.T.C.)

"12. श्रीराम जन्मभूमि का दर्शन करने आने वाले सभी तीर्थ यात्री–दर्शनार्थी श्रीराम जन्मभूमि परिसर में पूरब के प्रवेश द्वार से प्रवेश

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करके राम चबूतरा पर विराजमान मूर्तियों, उसके दक्षिण–पूरब कोने पर नीम व पीपल के पेड़ के नीचे रखी मूर्तियों एवं सीता रसोंई, चरण चिन्ह आदि का दर्शन पूजा एवं सीकचों वाली दीवार के अन्दर स्थित भगवान श्रीराम के अति पवित्र जन्मभूमि का दर्शन व प्रणाम करते थे। जिसको गर्भ गृह माना जाता है। तीर्थ यात्री दर्शनार्थी तथा हम अपनी श्रद्धा अनुसार फल–फूल द्रव्य आदि चढ़ाते थे। सीकचों वाली दीवार के रास्ते अन्दर गर्भ गृह की ओर भी फल–फूल द्रव्य आदि अपनी श्रद्धा अनुसार तीर्थ यात्री दर्शनार्थी और हम चढ़ाते थे।''

"12. All pilgrims and darshan-seekers coming to have sight of Sri Ram Janam Bhumi, after entering Sri Ram Janam Bhumi premises through the eastern gate, used to do darshan and pooja of the idols seated on Ram Chabutra and those placed beneath the neem tree and fig-tree and also of Sita Rasoi, foot-prints, etc. and used to have sight of and pay obeisance to the very holy birthplace of Lord Sri Rama which was located inside the wall with bars, and was regarded as 'garbh-grih'. The pilgrims and darshan seekers used to offer fruits, flowers, objects, etc. depending on the level of their reverence. On coming inside through the route of the wall with bars, the pilgrims, devotees and we, as per our reverence, used to offer fruits, flowers, objects, etc. even towards the 'garbh-grih'." (E.T.C.)

''13. श्रीराम जन्मभूमि परिसर के चारों ओर परिक्रमा मार्ग बना था जिससे लोग परिक्रमा करते थे। श्रीराम जन्मभूमि परिसर के दक्षिण पूरब कोने पर लगभग 200–250 कदम की दूरी पर सीता कूप था। इसके जल का प्रयोग तीर्थयात्री दर्शनार्थी तथा श्रीराम जन्मभूमि परिसर में रहने वाले साधू–वैरागी करते थे। इस परिसर में हिन्दू तीर्थयात्रियों, दर्शनार्थियों, साधू–वैरागियों की हमेशा भीड़ लगी रहती थी। मैंने कभी किसी मुसलमान को श्रीराम जन्मभूमि परिसर की ओर आते हुए नहीं देखा न ही कभी किसी मुसलमान को उस परिसर के अन्दर कभी घुसते ही पाया था। श्रीराम जन्मभूमि हिन्दूओं का अति पवित्र स्थल होने के कारण एवं साधुओं तथा वैरागियों के डर के

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कारण कोई भी मुसलमान इस परिसर के आस–पास आने की हिम्मत नहीं जुटा पाता था, क्योंकि साधू व वैरागी उनका कत्ल कर देते थे।''

''13. Around Sri Ram Janam Bhumi premises was built parikrama marg (path of circumambulation) through which people did circumambulation. On the south-eastern corner of Sri Ram Janam Bhumi premises and at the distance of nearly 200-250 paces from it lay Sita Koop. Its water was used by pilgrims and darshan seekers and by saints and hermits living in Sri Ram Janam Bhumi premises. There always used to be crowd of Hindu pilgrims, darshan-seekers, saints and recluses in the premises. I never saw any Muslim come towards Sri Ram Janam Bhumi premises nor did I ever find any Muslim enter the premises. On account of Sri Ram Janam Bhumi being a very holy place for Hindus and for fear of saints and recluses, no Muslim could gather courage to come in and around this premises because saints and recluses used to kill them.'' (E.T.C.)

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''14. श्रीराम जन्मभूमि परिसर स्थित गर्भ गृह में काले कसौटी पत्थर के खम्भे लगे हुए थे। जिनपर फूल–पत्तियां, देवी–देवताओं की मूर्तियां आदि बनी हुई थी। शिखरों वाला भवन ही पवित्र गर्भ गृह है जहां भगवान श्रीराम का जन्म होना आदि काल से माना जाता रहा है। श्रीराम जन्मभूमि परिसर के आस पास तमाम मंदिर है। कसौटी (काले पत्थर) के खम्भे गर्भ गृह के दरवाजों पर लगे थे, जिसमें बनी मूर्तियों के भी हिन्दू तीर्थयात्री पूजा व दर्शन करते थे। श्रीराम जन्मभूमि मंदिर के चारों ओर केवल हिन्दू आबादी है तथा बड़ी संख्या में मंदिर है। जिसमें बराबर दर्शन–पूजा होता रहता है, एवं घंटा घडियाल बजते रहते हैं। जन्मभूमि पर कभी कभी न कोई मस्जिद रही है और न ही उस भवन में किसी मुसलमान ने नमाज ही पढ़ी है लगातार हिन्दू राम भक्तों का ही कब्जा राम जन्मभूमि पर रहा है।''

''14. The sanctum sanctorum located in Sri Ram Janam Bhumi premises had pillars made of black coloured touch stone and having flowers, leaves, images of male and

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female deities, etc. engraved on it. The domed building itself is the holy sanctum sanctorum where Lord Sri Rama has since eternity been considered to have taken birth. There are several temples in and around Sri Ram Janam Bhumi premises. The pillars made of touch stone (black stone) were fixed to the gates of the sanctum sanctorum, and Hindu pilgrims used to do pooja and darshan also of images engraved therein. Around Sri Ram Janam Bhumi temple, there is only Hindu inhabitation and there are a large number of temples where darshan & poojan takes place and bells & gongs keep ringing constantly. There has never been a mosque at the Janam Bhumi nor has any Muslim offered namaj in that building. Ram Janam Bhumi has regularly been in the possession only of Rama-worshippers of Hindu faith." (E.T.C.)

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458. O.P.W. 7, Ram Surat Tiwari, aged about 73 years (as per his affidavit dated 19.9.2002) is resident of village Pure Pahalwan, Tahasil Sadar, District Faizabad. His village is about 8 Kms. from Ayodhya. His cross examination proceeded as under :

(a) 19-09-2002 -by Nirmohi Akhara, defendant no. 2, through Sri R.L. Verma, Advocate (p. 9-12)

(b) 20-09-2002 - by defendant no. 6 through Sri Abdul Mannan, Advocate (p.13-22)

(c) 20/23/24/25/26/27/30-09-2002 - by Sunni Central Waqf Board, defendant no. 4, through Sri Zafaryab Jilani, Advocate (p. 22-115)

(d) 30-09-2002, 01-10-2002- by defendant no. 5 through Sri Mustaq Ahmad Siddiqui, Advocate (p. 115-131)

(e) 01-10-2002- defendant no. 26 through Sri T.A. Khan,

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Advocate and defendants no. 6/1 and 6/2 (Suit-3) through Sri Fazale Alam, Advocate, adopted the cross examination already done by defendants no. 4, 5 and 6 (p. 131)

459. OPW-7 had studied upto High School (passed in 1950), was appointed as Lekhpal in 1953 and retired in 1988. About Darshan and Pooja at the disputed premises and non user by any Muslim as mosque, non offering of Namaz by anybody thereat, he has said in paras 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15 and 16 of the affidavit as under :

''3. मेरे बड़े भाई श्री राम केवल तिवारी राजा साहब अयोध्या के यहां नौकरी करते थे। मैं उनके साथ सन् 1942 में गर्मी की छुट्टी में पहली बार अयोध्या गया था और लगभग 15 दिन अयोध्या में अपने भाई साहब के पास ही रहा। मैं अपने बड़े भाई के साथ प्रायः प्रतिदिन सरयू स्नान व मंदिरों में दर्शन करने जाता था। भाई साहब मुख्यतः हनुमानगढ़ी, कनक भवन, रतन सिंहासन, श्रीराम जन्मभूमि आदि मंदिरों का दर्शन कराने मुझे ले गये और उन्होंने ही उन मंदिरों का नाम और महत्व बतलाया। मेरे बड़े भाई और मैंने श्रीराम जन्मभूमि दर्शन करने के बाद श्री राम जन्मभूमि की परिक्रमा किया अन्य बहुत से लोग भी परिक्रमा कर रहे थे।''

''3. My elder brother Sri Ram Keval Tiwari was in service of Raja Saheb Ayodhya. I first visited Ayodhya along with him, in the summer vacation of the year 1942 and stayed with my elder brother at Ayodhya for about 15 days. I almost every day went with my elder brother to have a holy dip in Saryu and 'darshan' of temples in the morning. My brother mainly took me to Hanumangarhi, Kanak Bhawan, Ratan Singhasan, Sri Ramjanmbhumi etc. temples to have 'darshan' and told me the names and importance of those temples. My elder brother and me, circumambulated the Sri Ramjanmbhumi premises after having its 'darshan'. Many other persons were also performing circumambulation.'' (E.T.C.)

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''4. उसके बाद अयोध्या में वर्ष में चार–पांच बार जाता रहा। और सरयू स्नान एवं प्रमुख मंदिरों जैसे कनक भवन, हनुमान गढ़ी, श्रीराम जन्मभूमि आदि का दर्शन करता था। अयोध्या में प्रायः चैत्र रामनवमी, सावन झूला, कार्तिक पूर्णिमा, परिक्रमा मेला, राम विवाह आदि अवसरों पर तथा अपनी छुट्टियों में जाता था और अपनी सुविधानुसार सरयू– स्नान, मंदिरों में दर्शन–पूजा आदि करता था जो आज भी जारी है।''

''4. Thereafter, I visited Ayodhya about 4-5 times in an year and had holy dip in Saryu followed by 'darshan' of main temples viz. Kanak Bhawan, Hanumangarhi, Sri Ramjanmbhumi etc.. I usually visited Ayodhya on the occasion of Chaitra Ramnavami, Sawan Jhula, Kartik Purnima, Parikrama Mela, Ram Vivah etc. and during my holidays and had holy dip in Saryu followed by 'darshan' worship etc. as per my convenience and the same continues even today.'' (E.T.C.)

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''5. अयोध्या में मेला के अवसरों पर देशों के कोने–कोने से लाखों की संख्या में तीर्थयात्री–दर्शनार्थी आते हैं। सरयू स्नान करने के बाद मंदिरों में दर्शन करने जाते रहे जिनमें प्रमुख रूप से कनक भवन, हनुमानगढ़ी और श्रीराम जन्मभूमि का दर्शन अवश्य ही करते रहे और आज भी सरयू स्नान व दर्शन पूजा तीर्थयात्री–दर्शनार्थी करते हैं।''

''5. Lakhs of pilgrims-devotees visited Ayodhya from different corners of the country on the occasion of fairs. After having a holy dip in Saryu, they necessarily went to temples to have 'darshan', which mainly included Kanak Bhawan, Hanumangarhi and Sri Ramjanmbhumi and even today the pilgrims-devotees have a holy dip in Saryu followed by 'darshan' worship.'' (E.T.C.)

''6. श्रीराम जन्मभूमि परिसर में जाने के लिए मुख्य प्रवेश द्वार पूरब से था जिसको हनुमत द्वार कहा जाता था उसके बाहर एक बहुत पुराना पत्थर लगा था जिस पर ''जन्मभूमि नित्ययात्रा'' लिखा था। हनुमत द्वार में दोनों तरफ काले कसौटी पत्थर के खम्भे लगे थे जिन पर फूल–पत्ती और मानव

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आकृति उत्कीर्ण थीं। मानव आकृति देखने से द्वारपाल जैसी लगती थी उनका मुख खुरचा हुआ था। मेरे भाई साहब ने बताया था कि ये जय–विजय की मूर्तियॉ हैं। हनुमत द्वार से श्री राम जन्मभूमि परिसर में जाने पर बायें यानी दक्षिण तरफ राम चबूतरा था जिस पर राम दरबार की मूर्तियां विराजमान थी। राम चबूतरा के पूरब दक्षिण कोने पर पीपल तथा नीम के पेड़ के नीचे शिव दरबार यानी शिवलिंग, नन्दी गणेश पार्वती, पंचमुखी शिव की मूर्तियॉ विराजमान थीं। राम चबूतरा के नीचे गुफा मंदिर था। राम चबूतरा के पास ढोल–मंजीरा, घण्टा–घड़ियाल बजाते हुए चौबीसों घण्टे अनवरत कीर्तन चलता रहता था। जिसमें वहां के साधू–वैरागी और तीर्थयात्री दर्शनार्थी सम्मिलित रहते थे।''

"6. The main entrance gate leading to Sri Ramjanmbhumi premises, was in the east which was called Hanumatdwar. Outside it, was a very old stone with 'Janmbhumi Nitya Yatra' engraved over it. There were black touchstone pillars on both sides of the Hanumatdwar, which had flower, leaves and human figures engraved over them. The human figure appeared to be a 'dwarpal' (gate keeper) and its face had been scratched. My brother told me that they were the idols of Jai-Vijai. On entering the Sri Ramjanmbhumi premises through Hanumatdwar, the Ramchabutara was in left side i.e. towards south, where the idols of Ram Darbar were present. The Shiv Darbar i.e. idols of Shivlinga, Nandi, Ganesh, Parvati, five faced Shiva, were present under the Pipal and Neem tree in south-east corner of Ramchabutara. Below the Ramchabutara, was the cave temple. Kirtan was carried out uninterruptedly round the clock near the Ramchabutara by playing dhol-manjira, ghanta-ghadiyal and the saints-recluses and pilgrims-devotees used to participate." (E.T.C.)

"7. हनुमत द्वार से अन्दर जाने पर दाहिने यानी उत्तर तरफ एक बहुत

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लम्बी झोपड़ी थी जिसको भण्डार कहा जाता था। भण्डार में भोजन बनाने व खाने के सामान व साधन अर्थात् बर्तन इत्यादि रहते थे श्रीराम जन्मभूमि परिसर में सदैव साधू–वैरागियों का जमावाड़ा रहा करता था। राम चबूतरा के पश्चिम सींकचों वाली दीवार थी जिसमें दो दरवाजे लगे थे। सींकचे वाली दीवार के अन्दर तीन शिखरों वाला भवन था। ***मेरे बड़े भाई ने बताया था कि यही श्रीराम जन्मभूमि है और आदिकाल से हिन्दुओं में यह आस्था, विश्वास एवं लोकमान्यता प्रचलित है कि इस भवन के बीच वाले शिखर के नीचे ही भगवान विष्णु ने राजा दशरथ के पुत्र श्रीराम के रूप में अवतार लिया था इसीलिए इसे भगवान राम का गर्भगृह कहा जाता है।*** *राम चबूतरा, का दर्शन करने के बाद* ***सींकचों वाली दीवार के दरवाजे से*** *तीन शिखर वाले भवन में स्थित श्रीराम जन्मभूमि गर्भगृह का दर्शन तीर्थयात्री–दर्शनार्थी किया करते थे तथा फूल माला, द्रव्य–प्रसाद आदि वहीं से गर्भगृह की ओर डाल दिया करते थे।"*

"7. After entering through the Hanumatdwar, was a very big hut in the right side i.e. towards north, which was called store. The preparation of food and storage of eatables and utensils etc., was carried out in the store. The gathering of saints-recluses always existed at the Sri Ramjanmbhumi premises. To the west of the Ramchabutara, was the iron rod wall with two gates. Within the iron rod wall, was the three dome structure. ***My elder brother had told that it was Sri Ramjanmbhumi and that from ancient times it was the faith, belief of Hindus and prevalent public opinion that Lord Vishnu had incarnated below the central dome of this structure as Sri Rama, son of king Dashrath and due to this it was called the 'Garbh-grih' of Lord Rama.*** *After having 'darshan' of Ramchabutara, the pilgrims-devotees used to have 'darshan' of Sri Ramjanmbhumi, 'Garbh-grih' situated in the three dome structure* ***through the gate in the iron***

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rod wall *and they used to offer flower-garland, money-prasad etc. from there itself towards the 'Garbh-grih'." (E.T.C.)*

"8. बड़े–बुजुर्ग लोगों ने भी बताया था कि आस्था, विश्वास एवं प्रचलित लोकमान्यता के अनुसार सभी वैष्णव रामभक्त हिन्दू जनता बीच वाले शिखर के नीचे की भूमि को भगवान श्रीराम की जन्मभूमि होने के कारण अत्यंत पवित्र, पूज्य और दर्शनीय मानती है। इसी कारण मेरे भाई साहब उस स्थल को भगवान राम की जन्मभूमि मानते थे और मेरा भी दृढ आस्था एवं विश्वास है कि बीच वाले शिखर के नीचे की भूमि भगवान श्रीराम की जन्मभूमि है इसी आस्था एवं विश्वास के अनुसार सभी हिन्दू तीर्थयात्री–दर्शनार्थी श्रीराम जन्मूभूमि का दर्शन–पूजन एवं परिक्रमा करते रहे हैं। मैं भी उस पवित्र स्थल का दर्शन–पूजन करता था और पूरे परिसर की परिक्रमा करता था।"

"8. The elderly people had also told that out of faith, belief and prevalent public opinion, all the Vaishnavite Rama follower Hindu public considered the land under the central dome to be very pious, sacred and worshipful on account of being the birthplace of Lord Sri Ram. Due to this my elder brother considered the said place as birthplace of Lord Rama and it is my firm belief and conviction that the land below the central dome is the birthplace of Lord Sri Rama. It is out of this faith and belief that the Hindu pilgrims-devotees have been having the 'darshan' and performed circumambulation of Sri Ramjanmbhumi. I also used to offer prayer-worship at said sacred place and performed circumambulation of the entire premises." (E.T.C.)

"9. श्रीराम जन्मभूमि के परिसर के बाहरी दीवाल में उत्तर तरफ एक द्वार था जिसको सिंहद्वार कहा जाता था। सिंहद्वार के ऊपर दो शेर तथा उनके बीच में एक गरूण की मूर्ति बनी हुई थी। सिंहद्वार से श्रीरामजन्मभूमि परिसर में जाने पर सीता रसोई थी जिसको कौशिल्या रसोई भी कहा जाता

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था। वहां पर चूल्हा, चौका–बेलन, चरणचिन्ह आदि बने हुए थे। इनका दर्शन–पूजन दर्शनार्थी–तीर्थयात्री करते थे।''

"9. There was a gate in north of the outer wall of the Sri Ramjanmbhumi premises, which was called Singhdwar. The statues of two lions with one Garun in between, existed over the Singhdwar. On entering the Sri Ramjanmbhumi premises through the Singhdwar, fell the Sita Rasoi which was also called the Kaushalya Rasoi. It had stove (hearth), chauka-belan, footmarks etc.. The pilgrims-devotees used to have 'darshan'-worship of this place as well." (E.T.C.)

''10. मुख्य प्रवेश द्वार जिसको हनुमत द्वार कहते हैं से दक्षिण तरफ दीवाल में ही बाराह भगवान की एक मूर्ति बनी हुई थी। श्रीराम जन्मभूमि के चारो तरफ परिक्रमा मार्ग बना हुआ था जो लगभग 5–6 फिट चौडा रहा होगा इसी परिक्रमा मार्ग से हमने परिक्रमा किया है और अन्य तीर्थयात्री–दर्शनार्थी भी इसी मार्ग से परिक्रमा श्रीराम जन्मभूमि की किया करते थे।''

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"10. In south of the main entrance gate called Hanumatdwar, was the deity of God Varah in the wall. There was circumambulation path on all four sides of Sri Ramjanmbhumi, and it was about 5-6 feet wide. We performed the circumambulation through this very circumambulation path and the other devotees-pilgrims also used to circumambulate the Sri Ramjanmbhumi through this very path." (E.T.C.)

''11. श्रीराम जन्मभूमि परिसर के दक्षिण पूरब कोने पर लगभग डेढ–पौने दो सौ फिट की दूरी पर सीताकूप है, जहां एक पुराना पत्थर लगा हुआ है और उस पर सीताकूप लिखा हुआ है। सीताकूप का जल अत्यंत पवित्र मानकर तीर्थयात्री–दर्शनार्थी पीते थे और वह जल अपने साथ अपने घर भी ले जाते थे। मैंने भी सीताकूप के जल से आचमन किया है।''

"11. In south-east corner of the Sri Ramjanmbhumi premises, was the Sitakoop at a distance of about 150-175 feet, where a very old stone with Sitakoop engraved over it,

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has been fixed. The pilgrims–devotees used to drink the water of Sitakoop by considering it to be very sacred and also used to take it home. I also have performed 'achman' (sipping of water from palm of right hand as a ritual) with the water of Sitakoop." (E.T.C.)

'12. श्रीराम जन्मभूमि परिसर के पूरब शंकर चबूतरा और शंकर चबूतरे के पूरब साक्षी गोपाल मंदिर था । साक्षी गोपाल मंदिर अब भी है। सीताकूप के उत्तर पीपल–पाकड़ का पेड और छोटे–छोटे मंदिर व कुटिया थी।"

"12. To the east of Sri Ramjanmbhumi premises, is the Shankar Chabutara, to whose east is the Sakshi Gopal temple. Sakshi Gopal temple exists even today. To the north of the Sitakoop, were the Pipal-Pakad tree and small temples and hut." (E.T.C.)

"13. श्रीराम जन्मभूमि के दक्षिण ऋषि मुनि की समाधि बनी हुई थी उसके दक्षिण सुमित्रा भवन था। श्रीराम जन्मभूमि के उत्तर ऋषि मुनियों की समाधि और नारद चबूतरा था। सिंहद्वार से उत्तर सड़क पर जाने के लिए सीढ़ियॉ बनी थी जो टूटी–फूटी अवस्था में थीं।"

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"13. To the south of the Sri Ramjanmbhumi, were the Samadhi of Rishi-Muni and south to it was Sumitra Bhawan. Towards north of Shri Ram Janam Bhumi there were tombs of saint and Narad Chabutara. In north of the Singhdwar, were the steps leading to the road, which were in a poor condition." (E.T.C.)

"14. सींकचे वाली दीवाल के अन्दर तीन शिखर वाले भवन में बीच वाले शिखर के प्रवेश द्वार में और उसके अन्दर बारह कसौटी के खम्भे लगे हुए थे उन खम्भों में घट–पल्लव, फूल–पत्तियां, हिन्दू देवी–देवताओं की मूर्तियां उत्कीर्ण थीं उनमें से किसी मूर्ति का चेहरा, किसी का हाथ, किसी का पैर खुरचे हुए थे।"

"14. Twelve touchstone pillars existed at and inside the entrance gate to the central dome of the three dome structure within the iron rod wall. The said pillars had

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pitcher-leaf, flower-leaves, idols of Hindu Gods-Goddesses engraved over them. The face, hand, leg were scratched in different idols." (E.T.C.)

"15. जब से मैं श्रीराम जन्मभूमि का दर्शन करने जा रहा हूँ तब से कभी किसी मुसलमान को श्रीराम जन्मभूमि परिसर के तरफ आते हुए नहीं देखा। श्रीराम जन्मभूमि परिसर व उसके आस–पास भी कभी किसी मुसलमान को नमाज पढ़ते नहीं देखा। यदि कोई मुसलमान श्रीरामजन्मभूमि परिसर के तरफ आते हुए दिखाई भी दे जाता था तो साधू–बैरागी उसे मारने के लिए दौड़ा लेते थे।"

"15. Since I have started going to have 'darshan' of Sri Ramjanmbhumi, I have not seen any Muslim go towards the Sri Ramjanmbhumi premises. Neither have I ever seen any Muslim offer Namaz at or near the Sri Ramjanmbhumi premises. If some Muslim was found coming towards the Sri Ramjanmbhumi premises, the saints-recluses used to chase him away." (E.T.C.)

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"16. स्वतंत्रता के बाद भारत में श्रीराम जन्मभूमि पर भव्य मंदिर बनाने के लिए वैष्णव रामभक्त हिन्दू जनता और साधू–वैरागियों ने प्रयास प्रारम्भ किया इसी क्रम में सन् 1949 से अक्टूबर, नवम्बर, दिसम्बर माह में श्रीराम जन्मभूमि परिसर के चारो तरफ की झाड़ियो की कटाई और साफ–सफाई किया गया तथा अखण्ड रामचरित मानस का पाठ एवं सीताराम जप उपरोक्त महीनों में चलता रहा जिनमें हजारो–हजार लोग प्रतिदिन सम्मिलित होते थे और यह संख्या दिन–प्रतिदिन बढ़ती जाती थी। 22/23 दिसम्बर सन् 1949 को ब्रम्हमहूर्त में भगवान श्रीराम लला तीन शिखर वाले भवन में बीच वाले गुम्ब्द के नीचे प्रकट हुए, तमाम जनता उनके दर्शन के लिए आने लगी।"

"16. After independence, the Vaishnavite Rama follower Hindu public and saints- recluses started the efforts to build a grand temple at Sri Ramjanmbhumi. In this behalf the weeding of hedges around the Sri Ramjanmbhumi premises started in the month of October, November,

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December 1949 and the Akhand (non-stop) Ramcharit Manas Path (oration) and Sita Ram Jap was also performed in the said months, which were attended by thousands of people everyday and this number kept on increasing day by day. Lord Ramlala incarnated under the central dome of the three dome structure in Brahm Muhurt of 22/23 December, 1949 and the public started to throng to have His 'darshan'." (E.T.C.)

460. **O.P.W. 12, Kaushal Kishore Mishra**, is aged about 75 years (as per his affidavit dated 16.12.2002). His cross examination followed as under :

(a) 16.12.2002- by Nirmohi Akhara, defendant no. 3, through Sri R.L. Verma, Advocate (p. 8-22)

(b) 16/17/19/20.12.2002-by defendant no. 6 through Sri Abdul Mannan Advocate (p. 23-49)

(c)20.12.2002, 02/03/06/07.01.2003- Sunni Central Waqf Board, defendant no. 4 through Sri Zafaryab Jilani, Advocate (p. 49-111)

(d) 07/08.01.2003- by Hohd. Hashim, defendant no. 5 through Sri Mustaq Ahmad Siddiqui,Advocate (p. 111-126)

(e) 08.01.2003- defendant no. 26 through Sri T.A. Khan,Advocate and defendants no. 6/1 and 6/2 (Suit-3) through Sri Fazale Alam, Advocate, adopted the cross examination already done by defendants no. 4, 5 and 6

461. He claims that his ancestors settled at Ayodhya about 700 years ago, belong to the family of Guru Vashishtha, who was Guru of King Dashrath and Lord Ram at Ayodhya. He has derived knowledge about the worship of Lord Ram at Ayodhya from his grandfather and father, and in paras 2, 3, and 4 of the

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affidavit he says:

'2. मुझे मेरे बाबा जी से यह जानकारी मिली थी कि महाराजा दशरथ और भगवान राम के परिवार के आचार्य (गुरू) वशिष्ठ जी थे और आचार्य का कार्य करते थे। मेरे पूर्वजों के समय से ही पारिवारिक कार्य आचार्य का यानी मंदिरों में देवताओं के विग्रह की प्राण प्रतिष्ठा, पूजा–पाठ, यज्ञ–अनुष्ठान कराना, पर्व एवं उत्सव के अवसर पर विराजमान भगवान राम, भगवान राम के परिवार और हनुमान जी आदि विग्रह का मंगलानुशासन करके दक्षिणा प्राप्त करना रहा है। मैं भी मंदिरों में मूर्ति की प्राण–प्रतिष्ठा, पूजा पाठ, यज्ञ–अनुष्ठान आचार्य के रूप में करवाता रहा हूँ तथा मंगलानुशासन करके दक्षिणा प्राप्त करता रहा हूं।''

"2: I came to know from my grandfather that Vashistha ji was the Acharya (teacher) of the family of king Dashrath and Lord Rama and that he used to discharge the duties of Acharya. From the period of my ancestors it has been the family business of Acharya to perform 'pran-pratishtha' (deification) of Vigrah (idol) of deities, worship, Yagya-Anushthan (performance of sacrificial rituals), Manglanushasan (performance of sacred rituals) of Lord Rama, His family and Hanuman ji etc. on the occasion of festival and ceremony and to receive 'dakshina' thereafter. I also have been involved in performance of 'pran-pratishtha' of deities in temples, worship, Yagya Anushthan as Acharya and receipt of 'dakshina' after Manglanushasan." (E.T.C.)

''3. श्रीराम जन्म उत्सव (चैत्र शुक्ल राम नवमी) गुरू पूर्णिमा, (अषाढ़ शुक्ल) सावन झूला, रक्षा बन्धन, विजयादशमी (दशहरा) राम विवाह, हनुमान जयन्ती आदि अवसरों पर मंदिरों में पूजा–पाठ, यज्ञ–अनुष्ठान, मंगलानुशासन कराकर मंदिर में स्थापित विग्रह से दक्षिणा प्राप्त करने का विशेष महत्व है।''

"3. The receipt of 'dakshina' from vigrah setup in temple after worship, Yagya-Anushthan and Mangalanushasan

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have special importance on the occasions of Sri Ramjanm Utsav (Chaitra Shukla Ramnavmi), Guru Purnima (Ashadh Shukla) Sawan Jhula, Raksha Bandhan, Vijayadashmi (Dussehra), Ram Vivah, Hanuman Jayanti etc..'' (E.T.C.)

''4. मेरे बाबा जी तथा पिता जी अयोध्या में स्थित रंग महल, कनक भवन, श्रीराम जन्मभूमि लव कुश मंदिर, हनुमान गढ़ी आदि मंदिरों में पूजा–पाठ, अनुष्ठान यज्ञ कराते रहे और दक्षिणा प्राप्त करते रहे हैं। मै अपने बाबा जी और पिता जी के साथ मंदिरों में पूजा–पाठ, यज्ञ–अनुष्ठान के अवसर पर लगभग 5–6 वर्ष की आयु से ही जाने लगा था। मेरा यज्ञोपवीत 7 वर्ष की अवस्था में हुआ था। इसके पश्चात् मैं भी मंदिरों में पूजा–पाठ आदि कराने का शास्त्र सम्मत विधि से अधिकारी हो गया और इसके विधि–विधान के विषय का अध्ययन–ज्ञानार्जन करने लगा।''

''4. My grandfather and father used to carry out worship, Anushthan-Yagya and received 'dakshina' at Rang Mahal, Kanak Bhawan, Sri Ramjanmbhumi, Luv Kush temple, Hanumangarhi etc. situated in Ayodhya. I started going to temples on the occasion of worship, Yagya-Anushthan along with my grandfather and father, from the age of about 5-6 years. My Yagyopavit ceremony was performed at the age of 7 years and thereafter I became eligible to perform worship etc. at the temples as per the Shastras and with this end, I started studying and gaining knowledge.'' (E.T.C.)

462. About Darshan and Pooja at the disputed premises and that the disputed premises was neither used as mosque nor any Namaz was offered thereat, OPW-12 has said in para 5, 6, 7, 8, 9, 10, and 11 of the affidavit as under :

''5. लगभग 14–15 वर्ष की आयु में मैंने श्रीराम जन्मभूमि पर पूजा–पाठ आदि कराकर एवं मंगलानुशासन करके दक्षिणा प्राप्त किया और तब से बराबर श्रीराम जन्मभूमि पर पूजा–पाठ, मंगलानुशासन आदि हेतु जाता रहा।''

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"5. I carried out worship etc. at Sri Ramjanmbhumi at the age of approximately 14-15 years and received 'dakshina' after Mangalanushasan and since then I regularly went to Sri Ramjanmbhumi in connection with worship and Manglanushasan etc." (E.T.C.)

"6. मैंने देखा कि अयोध्या आने वाले तीर्थयात्री, दर्शनार्थी श्रीराम जन्मभूमि दर्शन करने अवश्य आते थे। मुख्य पर्वो पर इनकी संख्या लाखों में होती थी और वे राम चबूतरा, सीता रसोई, शिव चबूतरा और तीन शिखर वाले भवन के मध्य शिखर के नीचे स्थित गर्भ गृह अर्थात् श्रीराम जन्मभूमि जहां भगवान श्रीराम का जन्म हुआ था, का दर्शन पूजन करते रहे और सबकी परिक्रमा श्रीराम जन्म भूमि परिसर के चारों तरफ दीवार से सटे बाहर–बाहर बने परिक्रमा मार्ग से करते रहे।"

"6. When I started going to Sri Ramjanmbhumi along with my grandfather and father, I saw that the pilgrims visiting Ayodhya certainly came to Sri Ramjanmbhumi to have 'darshan'. Their number went upto lakhs on occasion of main festivals and they used to have 'darshan' and offer prayer at Ramchabutara, Sita Rasoi, Shiv Chabutara, the 'Garbh-grih' situated below the central dome of the three dome building i.e. that place of Sri Ramjanmbhumi where Lord Sri Rama was born, and they performed their circumambulation of the Sri Ramjanmbhumi premises along the circumambulation path adjacent to outer walls of Sri Ramjanambhumi." (E.T.C.)

"7. श्रीराम जन्मभूमि परिसर से लगभग 200–250 फीट दूर दक्षिण कोने पर स्थित सीताकूप के जल का प्रयोग तीर्थयात्री, दर्शनार्थी तथा श्रीराम जन्मभूमि परिसर में तथा उसके आस–पास रहने वाले साधू–वैरागी करते थे। मूल नक्षत्र में जन्म लेने वाले बच्चों की मूल शान्ति में सीताकूप के जल का विशेष महत्व रहा है। सीता कूप के पवित्र जल को दर्शनार्थी, तीर्थयात्री प्रसाद स्वरूप ग्रहण करते और अपने घर भी ले जाते रहे हैं।"

"7. The water of Sitakoop situated in south at a distance of

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about 200-250 feet from Sri Ramjanmbhumi premises, was used by the pilgrims, devotees and the saints-recluses residing in or around the Sri Ramjanmbhumi premises. The water of Sitakoop had special relevance in 'mool shanti' of children born in 'mool nakshatra'. The sacred water of Sitakoop was accepted by the devotees, pilgrims as 'prasad' and they also used to take it home." (E.T.C.)

"8. अयोध्या का कोई भी मुसलमान श्रीराम जन्मभूमि परिसर की ओर कभी आता ही नहीं था और न ही कोई अन्य मुसलमान हिन्दुओं के भय के कारण उधर आने की हिम्मत ही करता था यदि कभी कोई मुसलमान भूले–भटके भी श्रीराम जन्मभूमि परिसर की तरफ आते हुए दिखाई दे जाता था तो श्रीराम जन्म भूमि परिसर तथा आस–पास रहने वाले वैरागी उन्हें मारने के लिए दौड़ा लेते थे और भगा देते थे।"

"8. No Muslim of Ayodhya ever came towards Sri Ramjanmbhumi premises nor was any Muslim able to gather the courage due to terror of Hindus, to move in that direction. If any Muslim mistakenly was found coming towards the Sri Ramjanmbhumi premises, the recluses residing in or near the Sri Ramjanmbhumi premises used to chase and drive him away." (E.T.C.)

"9. मैं अपने सहपाठियों व मित्रों के साथ श्रीराम जन्मभूमि के पश्चिम स्थित मैदान में प्रायः खेलता था। एक–दो बार श्री राम जन्मभूमि परिसर की तरफ मुसलमान को आते दिखाई पड़ने पर वहां के साधू–वैरागी की ललकार पर हमने भी साधू–वैरागियों के साथ उस मुसलमान को मारने के लिए दौड़ा कर भगा दिया था।"

"9. I usually played along with my classmates and friends, in the ground to the west of Sri Ramjanmbhumi. On couple of occasions, after hearing the challenge of saints- recluses to the Muslims found coming towards the Sri Ramjanmbhumi premises, we also joined the saints-recluses in driving away those Muslims." (E.T.C.)

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''10. श्रीराम जन्मभूमि परिसर में अखण्ड कीर्तन सदैव चलता रहता था। दिसम्बर 1949 के दो–तीन महिने पूर्व वहां राम चरित मानस का पाठ प्रारम्भ हुआ और पाठ करने वालों की भीड़ बढ़ने लगी तो श्रीराम जन्म भूमि परिसर के आस–पास की झाड़–झंखाड की सफाई करके हजारो–हजार लोग श्रीराम चरित मानस का पाठ करने लगे। साधू–संतों के प्रवचन भी होते रहते थे। ***22/23 दिसम्बर, 1949 के ब्रह्म मुहूर्त में भगवान श्रीराम लला शास्त्र सम्मत विधि से तीन शिखर वाले भवन के मध्य शिखर, जो कि भगवान श्रीरामलला का जन्म भूमि अर्थात गर्भ गृह था, वहा पूर्ण उत्सव के साथ प्रकट हो गए*** *अर्थात् स्थापित हो गए।''*

''10. The Akhand Kirtan continued all along in the Sri Ramjanmbhumi premises. 2-3 months before December, 1949, the Ramcharit Manas Path (oration) was organized there and when the crowd started growing, thousands of people cleaned the vicinity of Sri Ramjanmbhumi premises and started the Ramcharit Manas Path. The Pravachan of saints were also held. ***Lord Sri Ramlala incarnated or was installed in Brahm Muhurt of 22/23 December, 1949 as per Shastra approved practice with full celebration, at the central dome of three dome building, which is the birthplace of Lord Sri Ramlala i.e. the 'Garbh-grih'****.'' (E.T.C.)*

''11. श्रीराम जन्मभूमि अयोध्या में जब से मैंने अपने बाबा जी और पिता जी के साथ जाना प्रारम्भ किया तब से वहां हिन्दुओं को ही पूरे परिसर में काबिज, दखील व पूजा–पाठ करते साधू–वैरागियों को परिसर में रहते हुए देखा। कभी किसी भी मुसलमान को उस तरफ न तो आते ही देखा और न ही कभी किसी मुसलमान को वहां नमाज पढ़ते ही देखा। और न ही वहॉ नमाज पढ़ने का प्रश्न ही पैदा होता है।''

''11. Since I started to going to Sri Ramjanmbhumi Ayodhya along with my grandfather and father, I have seen the Hindus worship and to be in possession over the entire

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premises and the saints-recluses to be residing in the premises. I never saw any Muslim go towards that direction or offer Namaz. Neither is there any question of Namaz being offered there." (E.T.C.)

463. About the faith of Hindus on the disputed site as birth place of Lord Ram, OPW-12 in para 12 and 13 of the affidavit says :

"12. ***मुझे मेरे बाबा जी एवं पिता जी से जानकारी मिली थी*** *कि अनादिकाल से हिन्दुओं में यह परम्परागत मान्यता, आस्था एवं विश्वास रहा है कि श्रीराम जन्मभूमि परिसर अयोध्या स्थित तीन शिखर वाले भवन के मध्य शिखर के नीचे भगवान श्रीरामलला का जन्म महाराजा दशरथ के पुत्र के रूप में त्रेता युग में हुआ था, जिसे गर्भ गृह कहा जाता है और इसी परम्परागत मान्यता, आस्था एवं विश्वास के कारण देश–विदेश के असंख्य तीर्थयात्री, दर्शनार्थी अयोध्या आते रहे हैं और श्रीराम जन्मभूमि का दर्शन पूजन एवं परिक्रमा करते रहे हैं।"*

"12. ***I came to know from my grandfather and father*** *that from ancient times, it has been the customary faith and belief of Hindus that Lord Sri Ramlala had incarnated under the central dome of the three dome builidng situated in Ayodhya, as son of king Dashrath in the Treta Yug, which is called the 'Garbh-grih' and it is out of this customary faith and belief that innumerable pilgrims, devotees from country and abroad have been visiting Ayodhya and having 'darshan', offer prayer and circumambulate the Sri Ramjanmbhumi." (E.T.C.)*

"13. मैं भी उपर्युक्त परम्परागत मान्यता, आस्था एवं विश्वास के आधार पर श्रीराम जन्मभूमि का दर्शन–पूजन एवं परिक्रमा करता रहा हूँ और पारिवारिक आचार्य परम्परा के अनुसार अयोध्या स्थित अन्य मंदिरों के अतिरिक्त श्रीराम जन्मभूमि पर भी पूजा–पाठ, यज्ञ–अनुष्ठान एवं मंगलानुशासन कराकर दक्षिणा प्राप्त करता रहा हूं।"

"13. I have also been having the 'darshan', worship and

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circumambulation of Sri Ramjanmbhumi out of the said customary faith and belief and I have been performing worship, Yagya-Anushthan and Mangalanushasan in other temples of Ayodhya besides Sri Ramjanmbhumi as per the family Acharya tradition, and have received 'dakshina' thereafter." (E.T.C.)

464. O.P.W. 13, Naradsharan is aged about 76 years (as per his affidavit 27.1.2003). His cross examination followed as under :

(a) 27-01-2003- by Nirmohi Akhara, defendant no. 3, through Sri R.L. Verma, Advocate (p. 6-12)

(b) 27/28-01-2003- by Mahmood Ahmad, defendant no. 6, through Sri Abdul Mannan, Advocate (p. 12-16)

(c) 28/29/30/31-01-2003, 03-02-2003-by Sunni Central Waqf Board, defendant no. 4 through Sri Zafaryab Jilani, Advocate (p. 16-66)

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(d) 03/04/05-02-2003- by defendant no. 5 through Sri Mustaq Ahmad Siddiqui, Advocate (p. 66-95)

(e) 05-02-2003- defendant no. 26 through Sri Sayad Irfan Ahmad, Advocate and defendants no. 6/1 and 6/2 (Suit-3) through Sri Mohd. Azhar, Advocate adopted the cross examination already done by defendants no. 4, 5 and 6 (p.95)

465. He came to Ayodhya in 1946 and is living thereat as a Sadhu. He became Mahant of Saryu Kunj, Rinmochan Ghat, Ayodhya after death of his Guru Sri Ram Manohar Saran. About Darshan and Pooja at the disputed premises and that the disputed premises was neither used as mosque nor any Namaz was offered thereat, he has said in paras 2, 3, 4, 5, 6, 7, 8 and 9 of the affidavit as under :

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''2. मेरे गुरू महाराज जी श्रीराम जन्मभूमि के निकट स्थित सीताकूप का एक घड़ा जल प्रतिदिन भगवान के भोग लगाने के लिए एवं स्वयं के पीने के लिए मंगवाते थे जिसे मेरे अन्य गुरू भाई लाते थे। कभी–कभी मैं भी जल लाता था क्योंकि सीताकूप का जल बहुत ही पुनीत एवं गुणकारी माना जाता था इसलिए अन्य कई आश्रमों में भी सीताकूप का जल प्रतिदिन ले जाया जाता था।''

''2. My Guru ji used to ask for one pitcher full of water from Sitakoop situated near Sri Ramjanmbhumi, for offering the same to Him and also for his own drinking, which was brought by my other Gurubhai (disciples of same teacher or Guru). Sometimes I also used to bring the water because it was considered to be very pure and full of qualities. Due to this, the water of Sitakoop was taken to other Ashrams everyday.'' (E.T.C.)

''3. जब मैं सन् 1946 में अयोध्या आया तो श्रीराम जन्मभूमि, कनक भवन, हनुमानगढ़ी, नागेश्वरनाथ, बड़ी छावनी, मणिरामदास छावनी और हनुमान बाग आदि का दर्शन करने जाया करता था।''

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''3. When I came to Ayodhya in the year 1946, I used to go to have 'darshan' of Sri Ramjanmbhumi, Kanak Bhawan, Hanumangarhi, Nageshwar Nath, Main Cantt., Maniramdas Cantt. and Hanuman Bagh etc.'' (E.T.C.)

''4. मैं श्रीराम जन्मभूमि का दर्शन करने कभी–कभी जाता था। श्रीराम जन्मभूमि में जाने का रास्ता पूरब से था जिससे ज्यादातर लोग आते जाते थे जिसे हनुमतद्वार कहा जाता था। इस द्वार में दोनो तरफ कसौटी के खम्भे लगे हुए थे जिन पर फूल–पत्ती, कलश और मूर्ति बनी हुई थी जिन्हे जय–विजय की मूर्ति कहा जाता था। पूर्वी द्वार यानी हनुमत द्वार के बाहर एक पत्थर लगा था जिसपर संख्या एक तथा ''श्री जन्मभूमि नित्य यात्रा'' लिखा हुआ था।''

''4. Sometimes I used to go to have 'darshan' of Sri Ramjanmbhumi. The passage leading to Sri Ramjanmbhumi was in the east and it was used by most of

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the people and it was called the Hanumatdwar. It had touchstone pillars on both sides with flower-leaves, pitcher and idols, which were called the idols of Jai-Vijai. There was a stone outside the eastern gate i.e. Hanumatdwar, which had figure '1' and 'Shri Janmbhumi Nitya Yatra', engraved over it." (E.T.C.)

'5. उत्तरी तरफ भी एक द्वार था जिसको सिंहद्वार कहा जाता था। उसके ऊपर बीच में गरूण तथा दोनों तरफ सिंह की मूर्ति बनी थी। सिंहद्वार से अन्दर जाने पर सीता रसोई थी जिसमें चौका, बेलन, चूल्हा एवं चरण चिन्ह थे। जिसका दर्शन–पूजा होती थी।''

"5. There was a gate in north as well, which was called Singhdwar. Two statues of lions with one Garun in between, existed over it. On entering through the Singhdwar, fell the Sita Rasoi which had chauka, belan, stove (hearth) and footmarks, and they were worshiped." (E.T.C.)

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"6. मुख्यद्वार यानी हनुमतद्वार से अन्दर जाने पर बाएं यानी दक्षिण तरफ रामचबूतरा था जिस पर मूर्तियां विराजमान थीं। रामचबूतरा लगभग मेरी कमर के बराबर ऊॅचा था। राम चबूतरे के नीचे दोंनो तरफ गुफा थी जिसमें भी मूर्तियॉ विराजमान थी। रामचबूतरे पर अष्टधातु की रामलला की भी मूर्ति थी वहीं मूर्ति 23 दिसम्बर सन् 1949 का ब्रम्ह मुहूर्त में गर्भगृह यानी तीन गुम्बद वाले भवन के बीच वाले शिखर के नीचे स्थापित की गयी थी।''

"6. On going inside through the main gate i.e. Hanumatdwar, there was the Ramchabutara in left side i.e. towards south, which had idols over it. The Ramchabutara was about my waist high. Below the Ramchabutara, were two caves on both sides which had idols present therein. There was a Ashthadhatu (alloy of eight metals) idol of Ramlala at the Ramchabutara. The same idol was installed in the 'Garbh-grih' i.e. below the central dome of the three dome structure, in Brahm Muhurt of 23rd December,

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1949." (E.T.C.)

"7. पूरब के दरवाजे से अन्दर जाने पर सामने पश्चिम तरफ तीन शिखर वाला एक भवन बना था। इसके बीच वाले शिखर के नीचे गर्भगृह था उस स्थान की पूजा होती थी इस स्थान के बारे में ***मेरे गुरू जी ने मुझे बताया*** *था कि सदैव हमेशा से यह स्थान भगवान श्रीराम के जन्मस्थान के रूप में पूज्य रहा है और इस स्थान की पूजा अनादि काल से चली आ रही है। मैंने भी इस स्थान की पूजा की और स्वयं भी देखा कि सैकड़ों– हजारों की संख्या में आने वाले तीर्थयात्री इस स्थान को प्रणाम और पूजा करते, दर्शन–पूजा के पश्चात् सीता रसोई, रामचबूतरा आदि का भी दर्शन–पूजा करने के पश्चात् हनुमत द्वार से बाहर निकलकर सम्पूर्ण परिसर की परिक्रमा करते।"*

"7. On entering through the eastern gate, there was a three dome structure towards west. Below its central dome was the 'Garbh-grih' and the said place was worshiped. ***My Guru had told me*** *about this place that it had always been revered as the birthplace of Lord Sri Ram and the reverence of this place has been continuing since ancient times. I also worshipped this place and myself saw hundreds-thousands of pilgrims offer their prayer and reverence at this place, followed by 'darshan' of Sita Rasoi, Ramchabutara etc. and then exit through the Hanumatdwar to perform circumambulation of entire premises." (E.T.C.)*

"8. जब से मैं अयोध्या आया तब से आज तक न तो किसी भी मुसलमान को श्रीराम जन्मभूमि की ओर जाते देखा और न तो वहां पर किसी भी मुसलमान को नमाज पढ़ते देखा और न सुना।"

"8. After my arrival at Ayodhya, till date I have neither seen any Muslim coming towards the Sri Ramjanmbhumi nor have seen or heard any Muslim offer Namaz over there." (E.T.C.)

"9. आजादी मिलने के बाद अयोध्या में साधू–बैरागी और आम हिन्दू द्वारा श्रीराम जन्मभूमि के चारों ओर झाड़–झंखाड़ की सफाई प्रारम्भ हुई और वहां

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पर अखण्ड कीर्तन, पाठ, जप भी प्रारम्भ हुआ जिसमें हजारों की संख्या में लोग सम्मिलित होते थे।"

"9. After independence, the saints-recluses and general public of Ayodhya started cleansing the Sri Ramjanmbhumi premises and thereafter, Akhand Kirtan, Path, Jap were organized over there, in which thousands of people used to participate." (E.T.C.)

466. In para 10 of the affidavit, OPW-13 has said that in 1992 while the land was being leveled, public found certain artefacts belong to an old temple etc.:

"10. मई, जून सन् 1992 में अयोध्या में श्रीराम जन्मभूमि के निकट भूमि समतलीकरण की कार्यवाही चल रही थी। सन् 1992 के बीच में श्रीराम जन्मभूमि परिसर के पूरब जब समतलीकरण हो रहा था, मैं भी गया तो हनुमत द्वार के 15–20 कदम पूरब–दक्षिण कोने पर एक ट्रैक्टर फॅस गया और कोशिश के बाद भी आगे नहीं बढ़ सका उससे अजीब सी आवाज होने लगी तब मैं और बहुत से लोग वहां इकठ्ठे हो गये ड्राईवर ने ट्रैक्टर को पीछे हटाया और मजदूर वहां फावड़े से खोदने लगे तो वहां से टूटे बड़े–बड़े पत्थर के टुकड़े निकलने लगे। मजदूरों ने मिलकर उन्हें बाहर निकाला जो पुराने मन्दिर के अवशेष मालूम होते थे।"

"10. The land levelling process was being carried out near Sri Ramjanmbhumi in Ayodhya in May, June, 1992. In the mid of year 1992, when the levelling work was being carried out in east of Sri Ramjanmbhumi, then I had also gone there when a tractor got stuck up in the south-east corner about 15-20 paces away from Hanumatdwar and despite attempts, it could not move ahead, and strange sounds started emanating from there. Then me and many other people gathered over there and the driver pulled back the tractor and the labours dug up the place with spade and pieces of big broken stones were found. The labours took them out, and they appeared to be remains of

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some ancient temple." (E.T.C.)

C. Temple (Existence and Demolition):

467. As stated above, in all there are 12 witnesses from both the sides.

468. PW 12 Ram Shankar Upadhyay; aged about 38 years in January 1998, (vide his affidavit dated 20.01.1998) is resident of village Mahuwapar, Pargana Basti Purab, Tehsil Basti Sadar, district Basti. His cross examination took place as under :

(a) 20/21.01.1998-by Nirmohi Akhara through Sri R.L. Verma, Advocate(p. 2-22)

(b) 22.01.1997- by Dharamdas, defendant no. 13, through Sri Ved Prakash, Advocate (p. 23-33)

(c) 03.03.1998-by Sri Umesh Chandra Pandey, defendant no. 22 through Sri Vireshwar Dwivedi, Advocate (p. 34-42), adopted by Hindu Mahasabha and Sri Ramesh Chandra Tripathi through Sri Hari Shankar Jain, Advocate (p. 53)

(d) 03.03.1998-by Sri Paramhans Ramchandra Das, defendant no. 2, through Sri Madan Mohan Pandey, Advocate, (p. 42-47)

(e) 04.03.1998- by Sri Rajendra Singh, son of Sri Gopal Singh Visharad through Sri P.L. Mishra, Advocate (p. 48-53)

(f) 20.04.1998-by Sri Deoki Nandan Agarwal, plaintiff (Suit-5) (p. 54-64)

469. As per his information based on certain books, PW-12 has deposed about the disputed site, i.e. place where Lord Ram took birth and that there was a Ram Temple which was demolished to construct a mosque, i.e., Babri mosque and has said as under:

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*"**मैंने हिन्दू धर्म की कुछ किताबें पढ़ी हैं** जैसे कि तुलसी दास जी की रामचरित मानस, बाल्मीकी जी का रामायण, राधेश्याम शुक्ल जी की लिखी रामायण, मनुस्मृति, शिवपुराण, मत्सयपुरान, हिन्दू धर्म की तमाम और किताबें व कर्मकाण्ड भी मैनें पढ़े है। यानी कर्मकाण्ड सम्बंधी किताबें पढ़ी है। श्रीरामचन्द्र जी का जन्म आज से लगभग 9 लाख वर्ष पहले हुआ था। उनका जन्म त्रेता युग में हुआ था। बाल्मीकी जी की रामायण के अनुसार उन्होंने लगभग ग्यारह हजार वर्ष तक राज्य किया था। रामचरित मानस का निर्माण तुलसीदास जी ने अयोध्या में दतुवन कुण्ड पर किया था उसे दातुन कुण्ड भी कहते हैं। रामचरित मानस में या तुलसीदास के अन्य किसी साहित्य में ऐसा कोई जिक्र नहीं आता कि अयोध्या में श्रीराम के मंदिर को तोड़कर कोई मस्जिद बनायी गयी हो। **हिन्दू धर्म की किसी भी किताब में ऐसा कोई जिक्र नहीं मिलता कि रामचन्द्र जी की जन्मस्थली पर बाबरी मस्जिद बनायी गयी हो या रामचन्द्र जी की जन्मस्थली वहॉ वाका हो जहॉ बाबरी मस्जिद बनी हुई थी।***

मैं उस जगह पर गया हुआ हूँ जहॉ बाबरी मस्जिद बनी हुई थी। मैं मस्जिद के अन्दर भी गया हुआ हूँ। मैं 2 फरवरी 1986 को गया था। और मैंने देखा था कि मस्जिदों में जो एक मैम्बर सा होता है उस पर मूर्ति रखी हुई थी। वे तीन मूर्तियां थी। मर्यादा पुरूषोत्तम श्रीराम सीता जी और लक्ष्मण की मूर्तियां थीं। आखिरी बार मैं उस इमारत में 1991 में गया था। आखिरी मर्तबा जब मैं वहॉ गया तो मैंने देखा कि कुछ तब्दीलियॉ थी, कुछ छत्र लगे हुए थे और मूर्ति सिंहासन पर थी। जगह तो करीब वही थी थोड़ा बहुत इधर उधर का फर्क था। उस इमारत की बनावट मस्जिद जैसी थी अन्दर फर्श पर सफे बने हुए थे। मैं पांच छः दफे उस इमारत में गया हुआ हूँ।''

*"**I have read some books of Hindu religion** such as Tulsidas's Ram Charit Manas, Valmiki's Ramayana, Radheyshyam Shukla's Ramayana, Manusmriti, Shiv Purana and Matsya Purana. I have also read several other books on Hindu religion and ceremonial rites. That is to say, I have read books related to ceremonial rites. Sri Ram Chandra was born nearly 9 lakh years ago. He was born*

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in in the Treta age. As per Valimiki's Ramyana, he ruled for about 11 thousand years. Tulsidas composed the Ram Charit Manas at Ayodhya-situated Datuan Kund, which is also called Datoon Kund. There is no such mention in the Ram Charit Manas or any other literature of Tulsidas that any mosque was built at Ayodhya after demolishing Sri Rama temple. ***No such mention is found in any book of Hindu religion that Babri mosque was built at the birthplace of Ram Chandra or that the birthplace of Ram Chandra existed at the place where Babri mosque was built.***

I have been to the place where the Babri mosque had been built. I have also gone inside the mosque. I went there on February 2, 1986 and saw that idols were placed on what looks like a 'member' in mosques. Those were three idols. They were idols representing tradition-upholding Supreme Being Sri Rama, Sita and Lakshman. I, for the last time, visited the building in 1991. When I, for the last time, went there, I saw that there were some changes; some parasols were placed and idols were on the throne. The place were nearly the same; there was a bit locational difference. The structure of the building was the same as that of the mosque. 'Safas' were built on the floor inside. I have been to the building for five or six times." (E.T.C.)

470. PW 13, Suresh Chandra Mishra, aged about 50 years (when he commenced his testimony on 13.07.1998), son of Sri Jagdish Prasad Mishra, is resident of 264 S.F.S., D.D.A. Flats, Mukharjee Nagar, Delhi. His cross examination continued for about four months as under :

(a) 13/14.07.1998-by Nirmohi Akhara through Sri R.L.

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Verma, Advocate(p. 2-24)

(b) 15.07.1998-by Dharamdas, defendant no. 13, through Sri Ved Prakash, Advocate (p. 25-30)

(c)15/16/17.07.1998,03/04/05/06/07.08.1998, 07/08.09.1998 - by Sri Umesh Chandra Pandey, defendant no. 22 through Sri Vireshwar Dwivedi, Advocate (p. 31-152)

(d) 08/09/10/12.09.1998- by Hindu Mahasabha, defendant no. 10 and Sri Ramesh Chandra Tripathi, defendant no. 17 through Sri Hari Shankar Jain, Advocate (p. 152-201)

(e) 13.10.1998-by Sri Paramhans Ramchandra Das, defendant no. 2, through Sri Madan Mohan Pandey, Advocate, (p. 202-222)

(f) 14/15.10.1998, 16/17/18/19.11.1998- by Sri Deoki Nandan Agarwal, plaintiff himself and Next friend to other plaintiffs (Suit-5) (p. 223-270)

(g)19/20.11.1998-by Sri Rajendra Singh, son of Sri Gopal Singh Visharad through Sri P.L. Mishra, Advocate (p. 270-288)

471. By profession, a Reader in Satyawati Co-Educational College, Delhi University he was teaching history. He initially belong to Allahabad and got his early education at Allahabad as well as graduation and post graduation from Allahabad University. He did B.A. in History, Philosophy and Sanskrit and M.A. in Ancient History (Culture and Archaeology). He passed M.A. in 1970 from Allahabad University when Sri G.R. Sharma was the Head of the Department of History. He did his Ph.D. from Delhi University in 1985, appointed as Lecturer in History at Satyawali Co-Education College in August, 1973 and promoted to the post of Reader thereat. He claims specialization

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in "Ancient History", presented a paper in Indian History Congress, also presented a paper at the level of International Archaeologists and participated in International Conference Croatia in May, 1998 on the subject pertaining to the disputed place. In the said conference no resolution was passed. Thereafter, another conference took place in Delhi after about 4 years wherein one resolution was passed, i.e., there shall be no discussion on the above subject. Regarding the disputed place, his statement is:

''मैंने बाबरी मस्जिद के बारे में यह झगड़ा शुरू होने के बाद गहन अध्ययन किया है। ***मेरे अध्ययन से पता लगा कि इस मस्जिद का निर्माण मीरबाकी ने करवाया था और इसे बनाने में किसी प्रकार की तोड़ फोड़ नहीं की गयी थी। मेरे अध्ययन में इस स्थान पर पहले किसी मंदिर के होने का प्रमाण नहीं मिलता।***

मैंने स्कन्द पुराण का भी अध्ययन किया है। ***स्कन्द पुराण के अनुसार भगवान राम का जन्म स्थान बाबरी मस्जिद वाली जगह पर नहीं बनता।***

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''बाबर के इतिहास के बारे में एक अहम किताब तो बाबरनामा ही है। सामयिक रूप में तो यही एक किताब है बाकी इतिहासकारों ने और भी किताबें लिखी हैं।

मैं अयोध्या गया हुआ हूँ। मैं 1992 से पहले भी गया हूँ। कार्बन डेटिंग के आधार पर अब यह राय बनी है कि अयोध्या में बसासत (आबादी) यानि की लोगों का रहना और आबाद होना चार सेंचुरी बीसी तक जाता है। हैबिटेशन 4 सेंचुरी बी.सी. से शुरू हुई है। यानी मानव निवास चार सेंचुरी बी.सी. से चालू हुआ है। ***प्रो0 आर0 एस0 शर्मा, प्रो0 डी0एन0 झा, प्रो0 सूरजभान ने सर्वेक्षण के आधार पर और अध्ययन के आधार पर भारत सरकार को एक रिपोर्ट दी थी उसमें चौथे साथी का नाम प्रो0 अतहर अली था। मैंने उस रिपोर्ट को पढ़ा है।*** *अतहर अली साहब का अभी इंतकाल हुआ है।*

पुरातत्व (आर्कोलाजी) एक विज्ञान है। इसको आगे बढ़ाने में नियम होते हैं। विवादित स्थान पर डा0 प्रो0 बी0बी0लाल द्वारा की गयी खोज जो खुदाई से की गयी, आखिरी खोज थी जो नियमानुसार की गयी थी। यह

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1976 में की गयी थी और इस बाबत रिपोर्ट इंडियन आर्कोलाजी में 1977 में दी गयी थी।''

"I have done deep study about Babri mosque, after the beginning of this dispute. From my studies it transpired that this mosque had been built by Mir Baqi and that no destruction of any kind had taken place in its construction. In my studies, no evidence was found about existence of any temple at this place.

I have also studied Skand Purana. ***According to the Skand Purana, the birthplace of Lord Rama is not made out at the site of Babri mosque.***

An authentic book about the history of Babar, is Babarnama. From strategic point of view, it is the only book. Other historians have written other books as well.

I have been to Ayodhya. I have been even before the year 1992. Opinion has now been formed that the populace of Ayodhya dates back to 4th century BC. The habitation started from 4th century BC. i.e. the human habitat started from 4th century BC. ***Prof. R.S. Sharma, Prof. D.N. Jha and Prof. Surajbhan had submitted a report to the Government of India on basis of survey and studies, in which a fourth member was also named as Prof. Athar Ali. I have read that report.*** *Mr. Athar Ali has recently expired.*

Archaeology is a science. It has rules of moving ahead. The discovery made through excavation by Dr. Prof. B.B. Lal at the disputed site, was the last discovery made as per rules. It was carried out in the year 1976 and a report in this behalf was published in the Indian Archaeology in the year 1977." (E.T.C.)

472. PW 15, Susheel Srivastava, aged about 48 years (on 15

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April 1999, when his deposition commenced), son of Sri Ganga Dayal, is resident of Ground Floor, Sewanti Bagh Pratap Ganj, Baroda. His cross examination followed as under :

(a) 15-04-1999-by Nirmohi Akhara through Sri R.L. Verma, Advocate(p. 2-18)

(b) 16/17-04-1999, 20/21/22/23.07.1999, 17.08.1999- by Dharamdas, defendant no. 13, through Sri Ved Prakash, Advocate (p. 19-108)

(c) 17/18-08-1999-Sri Paramhans Ramchandra Das, defendant no. 2, through Sri Madan Mohan Pandey, Advocate, (p. 108-130)

(d) 19/20-08-1999, 21/22/23/24-09-1999, 15/16-12-1999- By Hindu Mahasabha, defendant no. 10 and Sri Ramesh Chandra Tripathi, defendant no. 17 through Sri Hari Shankar Jain, Advocate (p. 131-286)

(e)16-12-1999- by Sri Rajendra Singh, son of Sri Gopal Singh Visharad through Sri P.L. Mishra, Advocate (p. 286-294)

(f) 16/17/20-12-1999- by Sri Deoki Nandan Agarwal, plaintiff himself and next friend to other plaintiffs (Suit-5) through Sri D.N. Agarwal (p. 294-313)

473. He was working as Professor in the Department of History, Maharaja Shambhaji Rao University, Baroda (Gujarat), and officiating as Head of the Department at that time. He did B.A. and M.A. from Allahabad University in two subjects i.e. History and Political Science and thereafter completed Ph.D. in 1989 from Allahabad University. His subject of research being "Tallukedar Aur Kastkar Ka Samband Awadh Me". The period of research subject was 1920 to 1939. He was registered for research (Ph.D.) in 1978 and his supervisor was Prof. Ravindra

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Kumar of Allahabad University who subsequently left in 1991 to join as Director, Nehru Memorial Museum and Library, Delhi. After obtaining post graduate qualification and before his registration for Ph.D., he was appointed in Allahabad University in December, 1974 as Lecturer. While working as Reader in the Department of History at Allahabad University, got appointment at Baroda University where he joined on 30.06.1997. He visited America in March, 1996 for fellowship and delivered about six lectures at Emri University, Atlanta and University of Pennsylvania. He also visited for fellowship, Oxford University, England where he stayed for about 4-5 months and participated in two conferences. He is author of a book on the disputed place titled as "**The Disputed Mosque-A Historical Enquiry**" which was published in 1991. Besides, he has assisted in writing of another book namely, "Anatomy of Confrontation-Ram Janm Bhumi-Babri Masjid Conflict" edited by S. Gopal. He is author of Article "How the British Saw the Issue". Besides, he has written several other Articles regarding disputed place which have been published. He commenced his research in 1987 and visited disputed place at Ayodhya in connection with his research work for 5 or 6 times. First of all he visited the disputed place in May-June, 1987 and lastly in January, 1993. He has also written another book namely, "Conflict in Agrarian Society" which was published in 1995. In respect to the disputed place and about his observation and finding, he says :

> *"मैं जब विवादित स्थल पर गया और उसको देखा तो* ***मेरी समझ में वह मस्जिद थी। वहाँ पर मैंने शिलालेख भी देखे थे। वह शिलालेख फारसी भाषा में मुझे प्रतीत हुए थे और उनकी स्क्रिप्ट अरबो पारसियन लगी थी।*** *मैंने जो शोध कार्य किया इस विवादित स्थल के बारे में उसमें मुझे ऐसा कोई साक्ष्य नहीं मिला जिससे लगता हो कि यह मस्जिद, मंदिर तोड़कर बनाई गयी हो।* ***मुझे ऐसा भी***

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कोई साक्ष्य नहीं मिला जिससे लगता हो कि विवादित स्थल पर भगवान राम का जन्म स्थान कहा जा सकता हो। *अयोध्या नगर में आबादी का होना मुझे चौथी या पॉचवी शताब्दी ईसा पूर्व समझ में आती है।"*

"When I went to the disputed site and saw it, ***it appeared a mosque to me. I had seen inscriptions over there. To me, those inscriptions appeared to be in Persian language and their script appeared to be Arbo-Persian****. From the research carried out by me, I found no such evidence regarding this disputed site to suggest that this mosque had been built after demolishing temple.* ***I found no such evidence so as to suggest that the disputed site could be considered as birthplace of Lord Rama****. According to me, the populace in the city of Ayodhya may have existed in 4 or 5 BC." (E.T.C.)*

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474. PW-16, Prof. Suraj Bhan has appeared as an expert witness (Archaeology). He retired in June, 1991 from the post of Professor, Department of Ancient Indian Archaeology, Kurukshetra University, Rohtak. He was examined thrice. Initial deposition from 22.2.2000 to 10.8.2000, the second one is from 26.8.2002 to 12.9.2009 and the last one is from 20.3.2006 to 28.7.2006.

<u>Part-I:</u>(a) 22/23-02-2000, 07/08-03-2000- by Nirmohi Akhara through Sri R.L. Verma, Advocate (p3-63)

(b) 17/18-07-2000-by Dharamdas, defendant no. 13, through Sri Ved Prakash, Advocate (p. 64-80)

(c) 18/19/20/21-07-2000, 07-08-2000- -by Sri Umesh Chandra Pandey, defendant no. 22 through Sri Vireshwar Dwivedi, Advocate (p. 80-139)

(d) 07/08-08-2000-Sri Paramhans Ramchandra Das, defendant no. 2, through Sri Madan Mohan Pandey,

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Advocate, (p. 139-168)

(e) 08/09-08-2000- by Hindu Mahasabha, defendant no. 10 and Sri Ramesh Chandra Tripathi, defendant no. 17, through Sri Hari Shankar Jain, Advocate (p. 168-177)

(f) 09-08-2000-by Sri Rajendra Singh, son of Sri Gopal Singh Visharad through Sri P.L. Mishra, Advocate (p. 177-182)

(g) 09/10-08-2000-by Sri Deoki Nandan Agarwal, plaintiff himself and next friend to other plaintiffs (Suit-5) (p. 182-201)

Part-II : 26-08-2002-**Affidavit** (p. 1-7)

Cross examination:(a) 26-08-2002- by Nirmohi Akhara through Sri R.L. Verma, Advocate (p. 3-14)

(b) 27/28/29-08-2002, 09-09-2002- by Sri Umesh Chandra Pandey, defendant no. 22 through Sri Vireshwar Dwivedi, Advocate (p. 15-79)

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(c) 09/10-09-2002- by Mahant Paramhans Ramchandra Das, defendant no. 2 through Sri Madan Mohan Pandey, Advocate (p. 79-96)

(d) 11/12-09-2002- by plaintiffs (Suit-5) through Sri A.K. Pandey, Advocate (p. 97-119)

(e)12-09-2002- by Sri Madan Mohan Gupta, defendant no. 20, through Km. Ranjana Agnihotri, Advocate (p. 119-124)

(f) 12-09-2002- Hindu Mahasabha, defendant no. 10 and Sri Ramesh Chandra Tripathi, defendant no. 17, through Sri Hari Shankar Jain, Advocate and Sri Rajendra Singh, son of Sri Gopal Singh Visharad through Sri P.L. Mishra, Advocate adopted the cross examination already done by other defendants and plaintiffs (Suit-5) (p. 124)

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Part-III : 20-03-2006-**Examination-in-chief** by affidavit (p.125-134)

Cross examination: (a) 20/21/22/23/24-03-06, 03/04/05/06/24/25-04-2006 - by Nirmohi Akhara through Sri R.L. Verma, Advocate and Tarunjeet Verma, Advocate (p. 135-311)

(b) 26-04-2006- by defendant no. 20 (Suit-4) through Km. Ranjana Agnihotri, Advocate (p. 312- 329)

Part-IV : (a) 27/28-04-2006, 22/23/24/25/26-05-2006-by defendant no. 20 (Suit-4) through Km. Ranjana Agnihotri, Advocate (p. 330- 428)

(b) 10/11/12-07-2006-by defendant no. 2/1 (Suit-4) through Sri Madan Mohan Pandey, Advocate (p. 429-484)

(c) 13/14/25-07-2006- by plaintiffs (Suit-5) through Sri Ajay Pandey, Advocate (p. 485-515

(d) 25/26-07-2006- by Sri Ramesh Chandra Tripathi, defendant no. 17 (Suit-4) through Sri Vireshwar Dwivedi, Advocate (p. 515-531)

(e) 26/27/28-07-2006- by defendant no. 13/1 (Suit-4) through Sri Rakesh Pandey, Advocate (p. 531-556)

(f) 28-07-2006- Plaintiff (Suit-1) through Sri P.L. Mishra, Advocate, adopted cross examination already done by other defendants (p. 556)

475. In his examination-in-chief dated 22.02.2000, he said that initially he worked as Lecturer in Punjab University, Chandigarh and before retirement he worked as Professor for about 12 years. Having studied the matter pertaining to Babri Mosque, he has written an article (Paper No. 190C2/1-20, i.e., Ex. 62 Suit-4); and (Paper No. 288C-1 to 17, i.e., Ex 45, Suit-5). In this regard he deposed as under:

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''विवादित स्थल यानी कि बाबरी मस्जिद को मैंने देखा था मौके पर जाकर देखा है। मैंने मौके पर विवादित स्थल पर नापजोख भी किया था ड्राफ्ट मैंन की मदद से एवं फोटो ग्राफर की मदद से। अपने शोध के कार्य में मुझे कोई भी ऐसा प्रमाण नहीं मिला जिससे यह कहा जा सके कि बाबरी मस्जिद किसी मंदिर को गिराकर बनाई गयी हो। श्री प्रोफेसर बी0बी0लाल एवं ए0के0नारायण के शोध के अनुसार अयोध्या में 7 वीं सदी बी0सी0 के पहले आबादी के होने का कोई प्रमाण नहीं मिलता। गवाह को पेपर नं0110 सी1/8 सूट नं0 5 में दाखिल किये गये कागज को दिखाया गया जिसको देखकर गवाह ने कहा कि यह लेख हमारा लिखा हुआ है और इसमें जो एक लेटर लगा है उस पर हमारा दस्तखत है इसी लेटर के साथ मैंने अपने लेख जो पेपर नं0 110सी/1/9 से 110सी1/13 तक है यह मेरा लेख है। (श्री देवकी नंदन अग्रवाल ने इस प्रश्न पर आपत्ति की और कहा कि उपरोक्त दस्तावेज मूल प्रति नहीं है यानी मूल दस्तावेज नहीं है अतः साक्ष्य में ग्राह्य नहीं है और न इसे साबित किया जा सकता है। यह आपत्ति मुकदमें के सुनवाई के समय विचार की जायेगी) इस फोटो स्टेट लेख की कापी पर जो संशोधन किये गये हैं और कटिंग है वह मेरे ही द्वारा की गयी थी। मैं यह निश्चितरूप से नहीं कह सकता कि इसकी मूल प्रति मेरे पास है या नहीं। इस लेख में जो भी मैंने लिखा है उसे मैं सही समझता हूँ। परन्तु अयोध्या के स्टडी के बाद इस लेख में मैंने कुछ जोड़ा है। अयोध्या के विजिट के दौरान हमारे साथ प्रो0 आर0एस0 शर्मा, ड्राफ्टमैन एवं फोटो ग्राफर साथ थे। अपने इस शोध कार्य को पूर्ण करने के बाद मैंने एक रिपोर्ट आई0सी0अच0आर0 को भेजी थी। इस मरहले पर गवाह का ध्यान गृह सचिव भारत सरकार के द्वारा प्रेषित अप्लीकेशन नं0 7 ओ/2000 ओ0एस0 नं04/89 के साथ संलग्न रिपोर्ट रामजन्मभूमि–बाबरी मस्जिद ए हिस्टोरियन रिपोर्ट की ओर दिलाया गया। जो कागज नं0 सी 2/190/1 से 20 है। यह रिपोर्ट मेरे तथा इसमें लिखित तीन अन्य नाम डा0 आर0एस0शर्मा, प्रो0 एम0 अतहर अली, श्री डी0एन0झा द्वारा तैयार संयुक्त रिपोर्ट थी। इस रिपोर्ट कवरिंग लेटर दिनांक 13 मई 91 के साथ लगा हुआ है जिस पर आर0 एस0 शर्मा एवं अतहर अली ने स्वयं दस्तखत किया है और मेरी तरफ से प्रो0 आर0 एस0 शर्मा ने दस्तखत किया है एवं प्रो0 डी0एन0 झा की तरफ से अतहर अली साहब ने दस्तखत किया है। इस पत्र में जो डेजिगनेशन दिखाया गया है वह सही है। इस रिपोर्ट के

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प्रथम पृष्ठ के पीछे मेरा डेजिगनेशन जो दिखाया गया है उसमें सोशल साइंस की जगह इन्डेक्सि/स्टैडी होना चाहिए था। इस रिपोर्ट को हम सभी चारों ने मिलकर फाइनल रूप दिया। ***इस रिपोर्ट के कन्टेंट से आज भी मैं पूरी तरह सहमत हूँ। इस शोधकार्य में मैंने पुरातत्व विषय संबंधी भाग लिखा था।*** *अर्थात पुरातत्व संबंधी योगदान इस रिपोर्ट में मेरा है। यह रिपोर्ट जो मुझे दिखायी गयी है यह वही रिपोर्ट है जो मैंने भेजी थी इस रिपोर्ट में जो लिखा है वह सही है। मैं आर0एस0शर्मा व एम0 अतहर अली के दस्तखत पहचानता हूँ और इस रिपोर्ट पर उन्हीं के दस्तखत हैं। इस कागज पर प्रदर्श संख्या क 62 डाला गया।''*

"I saw the disputed site, that is, the Babri mosque. I have seen it by going to the site. I even did on-the-spot measurements at the disputed site with the help of drafts-man and photographer . In course of my research, I came across no proof enabling me to say that the Babri mosque was built by demolishing any temple. As per the research of Prof. B.B. Lal and Sri A. K. Narayan, nothing has been found evidencing habitation in Ayodhya prior to the 7th century B.C.. (Paper no. 110C1/8 filed in Suit No. 5 was shown to the witness where upon he stated that this article is in his hand- writing and a letter annexed to it bears his signature). Accompanying this very letter, my article (paper nos. 110C/1/9 to 110C1/13) is my own article. (Sri Devaki Nandan Agarwal raised objection over this issue and contended that the aforesaid document is not an original copy, that is, an original document; hence it is not admissible in evidence and cannot be proved. This objection will be considered at the hearing of the case.) The corrections and cuttings that have been made on this photostat copy of article, were made by myself. I cannot certainly say whether I have its original copy or not. What

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I have written in this article, is correct to my understanding. But after making study on Ayodhya I have made certain additions to this article. During my Ayodhya visit, I was accompanied by Prof R.S. Sharma as well as a drafts-man and a photographer. After completion of this research work I sent a report to I.C.H.R.. (In this behalf, when the attention of the witness was drawn to a report captioned 'Ram Janam Bhumi-Babri Masjid: A Historian Report', annexed to Application no. 7O/2000 sent by Home Secretary, Government of India in O.S. No. 4/89, he stated) Running from paper no. C2/190/1 to 20, this report was a joint report prepared by me and three other persons viz. Dr. R.S. Sharma Prof. M. Athar Ali and Prof. D. N. Jha. This report is with a covering letter dated 13th May, 1991 on which R.S. Sharma and Athar Ali themselves have put their signatures and Prof. R.S. Sharma has signed on my behalf and Prof. Athar Ali has signed on behalf of Prof. D.N. Jha. The designation shown in this letter, is correct. On the back of the first page of the report is shown my designation, in which the word 'index study' ought to have been used in place of science. The four of us collectively gave a final shape to this report. I absolutely agree to the contents of this report even today. I had written archaeology-related portion in this research work. That is to say, my contribution in this report is in relation to archaeology. The report which has been shown to me, is the same that was sent by me. The contents of this report are correct. I recognise the signatures of R.S. Sharma and M. Athar Ali, and this report bears signatures of these very persons. This paper is marked as Exhibit Ka 62."

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(E.T.C.)

476. PW 16 was recalled by plaintiffs (Suit-4) to give his views in the light of a book written by Dr. T.P. Verma and Dr. S.P. Gupta, i.e., "Ayodhya Ka Itihas Evam Puratatva-Rigved Kal Se Aaj Tak" (Ex.3, Suit-5). He filed affidavit dated 26.08.2002 as statement-in-chief. The purpose of the said affidavit is mentioned in para 2 as under:

> "*2. That the deponent has been informed by the plaintiffs' counsel that he has been recalled to give his statement mainly regarding the claims made in the Book entitled as "Ayodhya Ka Itihas Evam Puratatva-Rigved Kal Se Aaj Tak" writeen by Dr. T.P.Verma and Dr. S.P. Gupta filed in this Hon'ble Court after the deponent's statement on oath recorded in this case. The deponent is an archaeologist and has adequate experience of filed archaeology."*

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477. In respect to the above book and its contents, PW-16 gave his statement in paras 3 to 17 of the affidavit as under:

> *"3. That the deponent has gone through the relevant portions of the aforesaid Book on Ayodhya, hereinafter referred to as 'the Book' or as 'Ayodhya Ka Itihas', and has to state that the conclusions drawn by the authors of the aforesaid book on the basis of the so called discoveries allegedly made in June-July 1992 and December 1992-January 1993, at Ayodhya, on or around or near the disputed site of Babri Masjid, can neither be said to be based upon any authentic archaeological evidence and nor the same can be relied upon for the purposes of any scientific study. The said discoveries alleged to have been made in 1992-1993, can not at all be said to be Finds or material discovered through scientific excavation or after*

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scientific recording."

"4. That the so called discovery of an inscription, alleged to have been made in December, 1992, from the debris of the Babri Masjid, can not be said to be an archaeological evidence of the alleged existence of any temple of 11th or 12th century, the demolition of which is being attributed to Babar or his Governor Mir Baqi. In this respect it is relevant to point out that neither any INSITU photograph of the said inscription has been published in Ayodhya Ka Itihas or anywhere else, to the best of the deponent's knowledge and nor any Diary/Notes etc. appear to have been maintained/prepared by anyone regarding the alleged discovery of the same."

"5. That similarly the so called Artefacts alleged to have been discovered in June- July, 1992, as a result of P.W.D. digging of the site, during the surface levelling operations of the Govt. of U.P., cannot be said to be finds or artefacts discovered as a result of any scientific excavation or with scientific recording, and as such the same can also not be accepted as an archaeological evidence of the alleged existence of any ancient temple on the site of Babri Masjid, the demolition of which could be attributed to Babar or his Governor Mir Baqi. The so called INSITU photographs of these alleged Finds can neither be said to be INSITU photographs, and nor the description of the same in Ayodhya Ka Itihas, or in any other Book or Booklet called as New Archaeological Discoveries, can be treated as Notes Book/Dairy recording the said alleged discoveries/finds."

"6. That there is no archaeological evidence regarding

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the site of Babri Masjid being the alleged Ram Janam Bhoomi or a sacred place associated with it as claimed by the authors of Ayodhya Ka Itihas. No such opinion was given by Sri B.B. Lal also either in his reports published in "Indian Archaeological-A Review" or in 'An Encyclopaedia of India Archaeology' Edited by A. Ghosh and and the assertions made in this respect in Ayodhya Ka Itihas are incorrect."

"7. That the Manchitra (Maps) no. 5 and 6, printed in Ayodhya Ka Itihas showing the alleged sections of the so called excavation of June 1992, have no archaeological relevance. There was absolutely no scientific excavation by any archaeologist during which the said pit/so called artefacts are alleged to have been found."

8. That the assertion made in Ayodhya Ka Itihas about the scrapping alleged to have been done by Dr. K.M. Srivastava and Dr. S.P. Gupta on 22-23 July, 1992, near the disputed site, appears to be unbelievable as Scrapping is required when the stratification fixed by earlier excavator needs to be verified after some passage of time. Then the fill-in of the old trench may be taken out and the section scraped. By such scraping the succession of strata can be determined. Scraping may also be done while exploring the early levels of a mound where later occupation or deposits have covered them and there are deep cutting made by rain gullies or rivers in parts of site. There is, however, no way of determining through "scraping", the particular stratum, in which material such as broken sculptures or brickbats was located prior to excavation in a trench or pit if the position of each of the

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item of material was not recorded with due dimensional measurements by a qualified archaeologist. When a section is freshly cut, the need for scraping does not arise, since the strata ought to be distinguished from the excavated section."

"9. That, the assertions made in the aforesaid Book regarding the so called conclusion of Prof. B.B. Lal about the pillar bases, allegedly being of the black stone pillars, which might have remained on their original site, are not correct. (As a matter of fact no such conclusion or opinion of Prof. B.B. Lal is given either in his excavation reports published in "Indian Archaeology-A Review" or even in his entry regarding Ayodhya given in 'An Encyclopaedia of Indian Archaeology' Edited by A. Ghosh)."

"10. That no material can be regarded as of archaeological significance, if its actual position in-situ before removal is not established. This should be established by photograph, or, at least by recording of its actual position by a qualified archaeologist. Such photographs / recording being not available for the sculptures allegedly recorded from outside the Babri Masjid and the inscription and other material allegedly obtained from the Babri Masjid during its unlawful demolition, nothing can be said about where they have actually come from."

"11. That no archaeological excavation in India can take place without license from the Archaeological Survey of India. Once the sculptures or the inscription were observed in-situ, the Archaeological Survey of India should have been informed immediately. When such an obvious step

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was not taken by those concerned, doubt immediately arises as to the truth of their reports about where the material has come from."

"12. That when a stone is taken from brickwork or wall of an old medieval building, it must contain traces of mortar and attached brickwork and rubble. Since the slab containing the alleged stone inscription has reportedly no trace of any such matter, it cannot be supposed that it really came from the wall of the Babri Masjid, to which it was allegedly attached during construction."

"13. That if there is difference in the colour of stone sculptures, it can be inferred that the material has been only partly immersed in the soil. Such colour variation being observable on the sculptures allegedly retrieved from underground in the vicinity of the Babri Masjid, it can be assumed that these could not have come from the underground spot as being claimed."

"14. That the sculptured stone pillars fixed in Babri Masjid have parallels only in eastern India (Bengal and Bihar). These may be seeen in the illustrations in R.D. Benerji's, "Eastern Indian School of Medieval Sculpture" published by Archaeological Survey of India, Delhi, (1933) (Plates LXXXIX (a) and (e) and XC (d)). On the pillars shown in Plates LXXXIX (a) and XC (d), Benerji says (pp. 155.7): "The best product of the Eastern School is a tall slender column recovered from Rajmahal. This pillar was originally brought from the ruins of Gaur (West Bengal) during the Musalman period. When ruins at Rajmahal (eastern Bihar) were destroyed by the East Indian Railway Company, the pillar was used as a lamp post. It was

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recovered from that position by the late Dr. John Anderson and now forms one of the principal attractions of the archaeological collections of the Indian Museum (Calcutta) .... This pillar appears to belong to the middle of the tenth century A.D. and the building of which it once formed part was a Saiva temple."

On the pillar illustrated on Plate LXXXIX (e), Benerji says (p. 157):

"Later in date (than middle of 10th century) and less elegant is another pillar from a Saiva temple discovered among the ruins now called Banaraja's Garh (Bangarh) in the Dinajpur District of Northern Bengal. This pillar was brought to Dinajpur town nearly a century ago and erected in the Maharaja's palace. It is inscribed and dated. According to the inscription the pillar belonged to a Saiva temple erected by a king of Gauda of Kamboja lineage in the Saka year 888=966 A.D."

"15. That it may also be stated that similar pillars shown in the Book of R.D. Benerji, referred in the Historians' Report to the Nation, are not on Plate LXRXIX (b) and (c) but the same should be read as Plate LXXXIX (a) and (e) and (c).

There are no Gahadavala parallels to the Babri Masjid pillars. Thus they must have been brought from Eastern India to Ayodhya at some time between the 10th and 16th centuries, and then used in the Babri Masjid. They do not at all attest to there being a temple at the site of Babri Masjid itself. "

"16. That the size of individual Hindu temples of the 11th and 12th centuries in the region of North India, was usually

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so small that it could not have covered the area of the Babri Masjid, let alone the additional area which is mentioned by authors of the book-Ayodhya Ka Itihas."

The largest temple at Khajuraho, the great site of Shaivite, Vaishnavite and Jain temples of the 10th -11th centuries, and among all temple-complexes nearest to Ayodhya, was the temple of Kandariya Mahadev, the dimensions of which were only 109 feet in length by 60 feet in width. This is less than the area of the Babri Masjid which was about 150 feet by 90 feet. Other temples at Khajuraho are still smaller. The Vishnu temple of Chaturbhoj measures only 85 feet by 44 feet, and of Devi Jagadambi only 77 feet by 50 feet. The temples at Khajuraho are fairly well dated by inscriptions, many of which were published in Epigraphia Indica. For shorter but authoritative accounts of Khajuraho templers, we can refer to James Fergusson's History of Eastern and Indian Architecture, Vol. II, pp. 140-143, and Percy Brown's, Indian Architecture (Hindu and Buddhist Periods), pp. 110-13."

"17. That the deponent has gone through the valuable Chapter /Article written by Prof. Ram Sharan Sharma regarding the matter in issue which was published in the book entitled as "Destruction and Conservation of Cultural Property" Edited by Robert Layton, Peter G. Stone and Julian Thomas, first published in 2001 by Routledge, 11 New Fetter Lane, London. This article/paper throws ample light on the crucial issues dealt with in the aforesaid book "Ayodhya Ka Itihas."

478. The above witness was again recalled at the instance of

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the plaintiffs (Suit-4) under Order XVIII Rule 4 C.P.C. after the ASI submitted its report to depose in support of the objections filed by the plaintiffs (Suit-4) against ASI report. The statement-in-chief by way of an affidavit dated 20.03.2006 refers to his views on the ASI report. He claimed to have visited the site during the course of excavation and said as under:

> *"2. That the Excavation report of Ayodhya dated 22nd August, 2003 has technically served the limited purpose of digging evidence for certain anomalies shown by the GPR Survey, but it has misrepresented the true nature of the structure, floors and so-called 'pillar bases' immediately underlying the Babri-Masjid ruins."*
>
> *"3. That the report claims that a so-called "massive pillared structure" of period VII underlying the mosque is that of a the so called "massive structure", (Pd. VII) below the mosque and continuity of all phases from 10th century onwards until the construction of the Babri Masjid as well as on the stones and decorated bricks, mutilated sculptures, carved architectural members, the alleged 50 pillar bases associated with it and the ruins of a so-called "circular shrine" (of Period V). A still earlier structure ascribed to period VI has been wrongly identified as a Gahadavala Temple (11th -12th century). (A critical examination of the evidence reported, however, leads to an altogether different conclusion. The structure believed to be a "massive" temple (of Period VII) standing at the site before the Babri-Masjid was constructed, is in fact an Idgah/Qanati mosque of the Sultanate period. Even the still earlier structure (Pd. VI) is also a mosque-like structure of the Sultanate period itself.)"*

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"4. That the ASI's report reaches its wrong conclusion by pursuing a defective methodology and biased assumptions, as will be shown hereafter."

"5. That the excavation at Babri Masjid site extended over 90 trenches each measuring 5x5 m. Natural soil was reached in J3 and G7 only. Since the Layers, floors and structures and associated remains are numbered and recorded trench-wise, it is necessary to classify the evidence from each of the trenches into cultural periods, sub-period and structural phases. Even though the stratigraphy of each trench is claimed to be finally correlated with the general sequence of cultures at the site, it was necessary to give a list of layers and periods trench-wise for facilitating the testing to the conclusions of the excavators. Such a concordance is, however not provided in the report. (This has enabled the excavators to get away with distorted conclusions like wrongly assigning structure 3 (North-South burnt brick wall no. 17 and Surkhi floor) to Period. VI (11th -12th century AD) and structure 2 (North-South burnt brick wall no. 16 and lime and Surkhi floor) to Period VII (12th -16th century A.D.) respectively.)"

"6. That while dealing with the pottery of medieval-Sultanate (Period VII), Mughal (Period VIII) and late and Post Mughal 0periods (Pd. IX) the report clearly states that " the distinctive pottery of the periods is glazed ware" (P. 108) and that " there is not much difference in pottery wares and shapes" over time. The ware occurs in stratified deposits even below the level of Floor no. 4 associated with Period VI (structure -3, wall 17 and Surkhi floor). Yet the excavators date the structure 3 to pre-Sultanate or the

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Gahadavala period (11th -12th century), which is totally contrary to its own statements with regard to the period of glazed ware (Periods VII, VIII and IX). The report elsewhere (P. 270) tells us that the glazed ware pieces "make their appearance in the last period of period VII". This is not mentioned in Chapter V on Pottery. (Such a gross manipulation could be possible because the report avoided mentioning the association of the glazed pottery in case of even the 21 pieces in the select list, what to speak of the hundreds of such glazed ware items recovered (pp. 109-111). This could not be due to any ignorance on the part of the ASI excavators of the diagnostic value of the Muslim glazed ware of the medieval period (Sultanate and Mughal). The fact is deliberately ignored that Muslim glazed ware is nowhere found associated with Hindu Temples in either the Sultanate or the pre-Sultanate period in North India yet the report identifies Structure 2 (wall 16 and lime Surkhi floor) with a so called massive temple believed to be in existence from 12th to early 16th AD.)"

"7. That the glazed tiles to the type recovered from Ayodhya are also characteristic of Muslim habitations of medieval India. Yet the diagnostic evidence found from the layers associated with structure 3 (wall 17 and Surkhi floor) has been placed in Period VI (11th -12th century) and not in Sultanate period. This is a plain example of evidence manipulation."

"8. That while digging the Babri Masjid site the ASI found four successive floors associated with three so called "massive structures dating from Period VI to VIII. These structures had massive western walls, so called pillar bases

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of brickbats and of one or more stones and thick and extensive floors of Surkhi (Pd. VI) and lime and Surkhi (VII and VIII). The architectural style and technology of these structures are clearly different from the early medieval alleged "Circular Shrine" (Period V) and associated structures of that period. The architectural fragments reported to be associated with temples (9th -12th century) of North India recorded by the Excavators from the filling in the trenches, ruins of medieval structures and the peripheral slopes of the site are either unstratified or from the secondary context. No evidence of foundation walls, contemporary levels or debris levels of any temple was recovered in the primary context at the site."

"9. What has been found below the massive Babri Masjid remains are the ruins of a massive burnt brick structure (wall 16, associated with lime and Surkhi floor and some brickbat stumps with capping stones in some cases and the so-called "pillar bases"). The burnt brick wall (16) provided with stones in the foundation, some of which are carved, has the same North-South orientation as that of he Babri Masjid wall overlying it. The western wall in the chamber has a one meter wide Mihrab in the middle and below the Mihrab of the Western wall of the southern hall of Babri Masjid besides a small arched Taq made of cut bricks so typical of Islamic structures of post 1206 AD era. The evidence of its Islamic character of the Sultanate period is further corroborated by the occurrence of lime and Surkhi floor and the Muslim glazed ware in these levels. The lay-out of he structure, its architectural style and the lime and Surkhi floor and Muslim glazed ware

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associated with it are unmistakably the evidence of a Sultanate period Eidgah mosque that preceded the Babri Masjid at the site and not of any Brahmanical temple"

"10. That a still earlier structure (Period VI) comprising wall (17) and the thick floor of Surkhi reported to be associated with it (below the structure of period VII) is also made of burnt brick western wall, and runs north-south almost to the same length and largely underlying wall 16 of Period VII. Its floor also extends over a fairly large area as those of the later two structures do. A few sherds of Muslims glazed ware or tiles have also been recorded from these levels which helps ascribing the structure to the early part of the Sultanate period. Its broad similarities with upper Sultanate structure of period VII in wall construction, is extent and orientation, the lay out of the Surkhi floors as well as association with Muslim glazed pottery and tiles, suggest an early Sultanate period for the structure which possibly functioned also as a Medieval Eidgah/ mosque."

"11. That the so called pillar bases, associated with all the three structures of the medieval period at the site, have not been well exposed to reconstruct comparative plans and cross sections of the three alleged structures which these supported. The so called pillar bases have no symbolic features on them. Nor are these found associated with even a single stone pillar or fragment of pillar to suggest their \affiliation with temples. The carved capstone on a pillar base in trench 'F7' dated to the 12th century on stylistic grounds, occurs in secondary context for reuse in the structure of Sultanate period. (The brickbat pillar bases

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laid in mud mortar cannot be load-bearing and may have supported wooden posts and thatched roof at the best.) The discovery of pedestal bases for supporting wooden pillars in three rows parallel to the Qibla wall in the Grand Mosque excavated at Banbhore in Sindh and its last phase dated to the 13th century represent a similar early style of mosque architecture. A general plan of the said mosque and a panoramic view of the same is evident from the photographs published in the Journal entitled as "Pakistan Archaeology" published by the Department of Archaeology and Museums. Government of Pakistan. A true copy of the relevant extract of which is filed herewith as ANNEXURE NO. 1. Stone pillars are also preserved in some Sultanate mosques of Delhi and Hissar (Haryana). (As such the use of pillar bases in Sultanate period cannot be exclusively ascribed to temple architecture. The report has conveniently ignored other solid evidence and exaggerated the importance of pillar bases and the derived architectural fragments for the purpose of misrepresenting the Islamic structures as temples.)"

"12. That the report does mention the existence of a tank-like structure below the "Ram Chabutra", but the excavators have wrongly ascribed the reservoir to the earlier phases of the "Ram Chabutra" and wrongly identified four projections in the middle of the four walls of he tank in original form (pp. 49-51). They have produced no evidence to substantiate their contention. (My close observation of the structure at the site revealed that the reservoir had only two east-west projections and the "Ram Chabutra" was constructed in two phases only after filling

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the reservoir.) The report shows no evidence of any correlation of the reservoir with phases of Babri Masjid construction."

"13. That a critical analysis of he report shows that it lays unjustified emphasis on the continuity of cultural and structural activities at the site from Gupta period onwards down to the Mughal era and lacks appreciation of change in type, function and style of the architecture distinguished by 'Mihrabs' and arched 'Taq', in he technique of constructing floors of lime and surkhi, and in the use of Muslim glazed ware so characteristic of Islamic tradition as distinct from the Brahmanical temple architecture of North India. The Report reveals a selective and one-sided use of he evidence such as of the pillar bases that have no diagnostic features and no exclusive relationship with temple and of architectural and sculptural fragments lying unstratified or in secondary context. What is most objectionable is the suppression of evidence that militated against the preconceived theory of temple below the Babri mosque, such as Muslim glazed pottery, glazed tiles, bones, Islamic features of 'Miharab' and 'Taq' and reservoir in the Babri mosque below the "Ram Chabutra" etc. The report also underplays the absence of the remains of any stone pillars standing over the so called "pillar bases" and similarities in the layout of structures of periods VI and VII (wall 16 and 17) and Babri Masjid, and their dissimilarities with pre-Sultanate structures such as the "circular shrine" of period VI. There is also an attempt to assign the Islamic structure, with its lime and Surkhi floor, to a supposed Gahadavala temple, without an iota of

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evidence. Last but not the least, the report shows discrepancies and distortions in the periodisation and chronology. The attempt to push back the date of NBPW period to century 1000 BC on no valid grounds and the dating of periods VI and VII, both associated with glazed ware and tiles and Surkhi floor, to pre-Sultanate period is baseless and motivated."

"14. That the report, on the whole, lacks scientific rigour, objectivity and professional integrity. Such trends and tendencies in Indian archeology pose a serious challenge not only to the world of historians but also to those citizens who are interested in truth and nothing but the truth."

479. PW 18, Suvira Jaiswal, aged about 66 years (on 19 February, 2001 when her statement commenced), wife of Lt. Sri Viswanath Prasad Jaiswal, is resident of 101, S.M.R. Majestic, Jupiter Colony, Sikh Road, Sikandrabad. Her cross examination followed as under :

(a) 19/20-02-2001- by Nirmohi Akhara through Sri R.L. Verma, Advocate(p. 2-33)

(b) 22-02-2001- by Dharamdas, defendant no. 13, through Sri Ved Prakash, Advocate (p. 34-42)

(c) 22/23-02-2001, 19/20/21-03-2001- by Sri Umesh Chandra Pandey, defendant no. 22 through Sri Vireshwar Dwivedi, Advocate (p. 42-103)

(d) 21/22.03.2001- by Sri Paramhans Ramchandra Das, defendant no. 2. through Sri Madan Mohan Advocate (p. 103-122)

(e) 22-03-2001, 01/03/04.05.2001- by Hindu Mahasabha, defendant no. 10 and Sri Ramesh Chandra Tripathi, defendant no. 17, through Sri Hari Shankar Jain, Advocate

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(p. 122-157)

(f) 04-05-2001- Sri Rajendra Singh, son of Sri Gopal Singh Visharad, plaintiff (Suit-1) through Sri P.L. Mishra, Advocated, adopted the cross examination already done by other defendants (p. 157)

(g) 04.05.2001- by plaintiffs (Suit-5) through Sri Vireshwar Dwivedi, Advocate (p. 157-163)

480. She did graduation and post graduation (1953) from Allahabad University. Her subject of special studies in M.A. was "History of Ancient India". She did Ph.D. in three or three and half years from Patna University under Dr. Ram Saran Sharma and her subject of research was "Vaishnav Dharma Ka Udbhav Aur Vikas" (Origin and Development of Vaishnavism). She joined Patna University as Lecturer in 1962 and thereafter came to Jawahar Lal Nehru University, New Delhi in 1971 whereat she became Professor in 1984 and retired in June, 1999. On the subject of present dispute, Conference of Indian Historians was regularly held and she participated therein. She also regularly participated in Seminars of Indian History Congress. In January, 2001 one Seminar of Indian History Congress was held at Calcutta, where she participated. About the disputed place, she said:

''मैंने अपने अध्ययन में श्रीरामचन्द्र के बारे में भी अध्ययन किया है। मैंने श्री रामचन्द्र जी के ऊपर कुछ लेख भी लिखे हैं मेरे द्वारा लिखा गया लेख श्री राम पर मेरी द्वारा हिन्दी के अनुवाद की पुस्तक में प्रकाशित हो चुका है। इतिहास की पुस्तकों में अर्थात प्रमाणित पुस्तकों में रामचन्द्र जी के जन्म के बारे में किसी स्थान विशेष का उल्लेख नहीं मिलता है। अर्थात उनके जन्म स्थल का उल्लेख नहीं मिलता है। ***मेरी दृष्टि में ऐसा कोई उल्लेख इतिहास की पुस्तकों में नहीं मिलता है जो कि यह दर्शाता हो कि बाबरी मस्जिद जहां स्थित थी वहां पर श्री राम का जन्म हुआ हो।*** *श्री बी0बी0लाल ने जो उत्खनन कार्य*

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किया है उसके आधार पर यह कहा जा सकता है कि अयोध्या 700 ईसा पूर्व कोई भी बस्ती अर्थात आबादी होने का प्रमाण नहीं मिलता है।

इस तरह का कोई भी प्रमाण मेरी जानकारी में नहीं मिलता है, जिससे यह विदित हो कि बाबरी मस्जिद का निर्माण राम मंदिर को तोड़कर किया गया हो। *मेरे लेख सोशल साइंटिस्ट, एक्आओरेटिलिया, इडियन हिस्ट्री कांग्रेस प्रोसिंडिंग, इण्डियन काउन्सल हिस्टोरिकल रिव्यू आदि में छपे हैं। मेरी एक किताब का नाम ''ओरिजन एण्ड डेंवलपमेण्ट आफ वैष्णजम'' है। दूसरी पुस्तक का नाम ''कास्ट'' है। मेरी पहली पुस्तक 1967 में पहली बार छपी थी।''*

''During my studies, I have studied about Sri Ramchandra also. I have written some articles as well about Sri Ramchandra. My article Sri Ram has been published in my Hindi translation book. In History books i.e. authentic books, no reference is found about any specific place as the birthplace of Ramchandra ji, or in other words no reference is found about His birthplace. ***In my view no reference is found in history books to show that Sri Ram was born at the place where the Babri mosque stood****. From the excavation carried out by Sri B.B. Lal, it can be said that no evidence is found about existence of any town or populace in Ayodhya prior to 700 BC.*

In my knowledge there is no such evidence, so as to show that the Babri mosque had been built after destructing Ram temple*. My articles have been published in Social Scientist, Acaoretiliya, Indian History Congress Proceeding, Indian Council Review etc. Origin and Development of Vaishnavaism is one of my books. The other book is 'Caste'. My first book was initially published in the year 1967." (E.T.C.)*

481. PW 20, Prof. Shirin Musavi, aged about 51 years (on 24.07.2001, when her deposition commenced), wife of Lt. Sri

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Jafar Hussain, is resident of Aligarh. She is a Reader in the Department of History, Aligarh Muslim University, Aligarh. Her cross examination took about four months:

(a) 25/26-07-2001- by Nirmohi Akhara through Sri R.L. Verma, Advocate(p. 12-42)

(b) 27-07-01/20/21/22/23-08-01-by Sri Umesh Chandra Pandey, defendant no. 22 through Sri Vireshwar Dwivedi, Advocate (p. 43-102)

(c) 23/25-08-2001-by Dharamdas, defendant no. 13, through Sri Ved Prakash, Advocate (p. 102-118)

(d)10-09-2001- by Sri Paramhans Ramchandra Das, defendant no. 2. through Sri Madan Mohan Advocate (p. 119-131)

(e)10/11-09-2001- by Hindu Mahasabha, defendnat no. 10 and Sri Ramesh Chandra Tripathi, defendant no. 17, through Sri Hari Shankar Jain, Advocate (p. 131-140)

(f)11-09-01/19-11-2001 -by Sri Rajendra Singh, son of Sri Gopal Singh Visharad, plaintiff (Suit-1) through Sri P.L. Mishra, Advocated (p. 140-145)

(g) 19-11-2001- by plaintiffs (Suit-5) through Sri Deoki Nandan Agarwal, Advocate (p. 145-147)

(e) 19-11-2001- re-examination with the permission of the Court (p. 147-148)

482. A Professor in the Department of History in Aligarh Muslim University (hereinafter referred to as 'A.M.U.') since 1988, she belong to Lucknow and obtained her degree in B.Sc. and M.Sc. from Lucknow University, taught Mathematics at Karamat Girls Degree College, Lucknow sometimes in 1970 and from April 1970 joined at A.M.U. as Teacher and thereafter passed M.A. (History) as a private student from A.M.U. and

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therefrom also did Ph.D. in 1980. Her subject in Ph.D. was "Economy of Mughal Empire-A Statical Study". She became Professor in 1988. Earlier thereto, she also taught at Chicago University in 1984 and held the office of Chairman i.e. Head of the Department in A.M.U. from 1997 to 1999. Her experience and other achievements in the field of her studies are :

(i) Fulbright fellowship from Chicago university and M.I.T. from U.S.A.

(ii) Visiting Professor Fellow in Shimal Institute of Advance Study as well as M.A. University, Baroda.

(iii) Residency of Rocker Filler Foundation.

(iv) "Extraordinary Carrier Award" given by University Grants Commission in 1988.

(v) Secretary for three years of Indian History Congress, tenure ended on 31.03.2001.

(vi) Member of Executive Board of International Commission for Historical Demography

(vii) Attended International Conferences for 8-9 times and visited America, Japan, England, Belgium, France, Netherland, Switzerland and Spain.

(viii) Delivered Lecture abroad i.e., at Oxford University, Cambridge University, London University, Chicago and Virginia.

(ix) Member for two terms of History panel of University Grants Commission.

(x) Nominee of Ministry of Education for Foreign Scholarship Committee of University Grants Commission.

(xi) Elected Member in the Executive of Indian History Congress for several times.

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(xii) Elected as Vice-President and President of U.P. History Congress.

483. Besides, she is author of two books namely "Economy of Mughal Empire-A Statical Study" published by Oxford University and "Episode in the Life of Akbar" published by National Book Trust of India. Both books are written in English but the first book was translated in Bengali and Hindi and the later one was translated in Hindi, Urdu, Marathi and Malyalam. A shorter book namely, "Men and Nature of Mugahl Era" has also been published. She edited a book in respect of 1857 events and is currently busy in writing a "Dictionary of Mughal India". She is author of various articles i.e., about 40-50 published in various journals in India and abroad namely Journal of Royal Asiatic Society, London, Journal of Social and Economic History of Orient Netherland, Anals France etc. In India her articles have been published in Indian Economic and Social History Review, Indian History Review and Men and Environment. She claims to have studied complete Mughal period which included the period of Babar. Regarding Babar, his visit at Ayodhya and the alleged construction of mosque etc. she deposed as under:

"जहॉ तक बाबर का भारत में आने का पश्न है एवं उसके अपने मैमाइरस, डायरी से ***प्रतीत होता है कि बाबर कट्टरवादी नहीं था। मुझे अपने अध्ययन में मध्यकालीन युग में ऐसा कोई भी साक्ष्य या प्रमाण नहीं मिला जिससे यह मालूम हो कि बाबरी मस्जिद किसी मंदिर को तोड़कर बनाई गयी हो।*** *बाबर के आने के पहले लगभग* ***1206 से अयोध्या में मुसलमानों की आबादी हो गयी थी। इसके कंटैम्पेरेरी सोर्सस में मस्जिद ईदगाह, कब्रिस्तान, मदरसे आदि पाये जाते थे।*** *खुद कहा कि* ***1192 से पहले अयोध्या में मुसलमानों के होने के कोई सबूत नहीं मिलते हैं।*** *1206 के बाद जिन समकालीन सूत्रों में मुसलमानों की आबादी*

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का जिक्र अयोध्या में मिलता है उसमें खौरूलमाजिलिस, फवायदुल फवाद, तबकातेनासेरी आदि हैं। खैरूलमाजालिस 13वीं सदी में लिखी गयी थी इस पुस्तक को निजामुद्दीन औलिया के वचन हैं जो कि मीरहसन सिजजी ने संकलित किये हैं। फवायदुल फवाद शेख नसीरूद्दीन चिराग के वचन हैं जो कि एक जगह संकलित कर दिये गये हैं। तवकातेनासिरी मिनहाज़ सिराज द्वारा रचित है। फवायुदल फवाद 1353 की रचित है।

तबकातेनासिरी में लिखा है कि 1206 में अयोध्या में देहली सल्तनत के नुमाइंदे को बंगाल में युद्ध के लिए जाने का आदेश दिया गया था।

बाबरी मस्जिद के ऊपर एक इन्सकिप्सन लगा हुआ था जो तीन भागों में विभाजित था जिसके कुछ भाग बेबरिज ने बाबरनामें में छापे थे परन्तु पूरा इन्सकप्शन 1965 के एपीग्राफियाइंडिका में जो ए0एस0आई0 का प्रकाशन है छपा है पूरा छपा है। यह फारसी भाषा में है और नसफ स्किप्ट में है। इसमें यह लिखा है कि इस मस्जिद को 1528–29 में मीरबाकी बनवाया है और यह भी लिखा है कि यह बाबर के हुक्म एवं मंशा पर बन रहा है। *इसकी तहरीर से ही इसको न्यूमेरिकली निकालने पर इसकी तारीख का पता चलता है। इसमें ऐसा कुछ भी नहीं लिखा है कि यह मस्जिद किसी मंदिर को तोड़कर बनाई गयी हो। बाबरी मस्जिद बनने के बाद करीब दौ सौ साल से ज्यादा 1760 तक ऐसा कोई साक्ष्य नहीं मिलता है कि यहॉ मंदिर तोड़कर मस्जिद बनाई गयी है या यहॉ पर कोई मंदिर कभी रहा हो। इस जगह को कभी भी रामजन्म भूमि नहीं कहा गया। रामजन्म अर्थात रामजन्म स्थान के नाम से कभी नहीं जाना गया। जर्मन यात्री टाईफन थ्रिलर भारत 1760–70 के बीच में आये थे और उनका एकाउन्ट 1788 में छपा था उसमें उन्होंने पहली बार यह लिखा है कि ऐसा कहा जाता है कि एक मस्जिद अयोध्या में मंदिर तोड़कर औरंगजेब ने मस्जिद ने बनाया है।* ***यह भी उन्होंने लिखा है कि यदि मस्जिद मंदिर तोड़कर बनाई गयी है तो वह बाबर के समय तोड़ा गया होगा क्योकि उस पर बाबर के समय के इन्सकप्शन हैं।*** *टाईफन थ्रिलर के इस वृतांत से यह स्पष्ट है कि लिजेन्ड बनना शुरू हो गया था कि बाबरी मस्जिद राम मंदिर तोड़कर बनाई गयी।''*

''So far as the issue of arrival of Babar in India is

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concerned and from his own memoirs, diary ***it appears that Babar was not an orthodox. During my studies I have not come across any such evidence or proof of medieval period to suggest that Babri mosque had been built by destroying any temple****. The* ***Muslim populace had come into existence in Ayodhya around 1206****, prior to arrival of Babar.* ***Mosque, 'Idgah' (a site where Id and other Muslim celebrations are held), graveyard, 'Madarsa' (school imparting Islamic education) etc. were found in its contemporary sources****. Stated on his own that* ***evidence about presence of Muslims in Ayodhya prior to1192, is not found****. The post 1206 contemporary sources containing references of Muslim populace include Khaurulmajalis, Favayedul Favad, Tabkatenseri etc. The Khaurulmajalis was composed in the 13th century and contains the sayings of Nizamuddin Auliya, compiled by Mir Hassan Sijaji. The Favayedul Favad is a collection of sayings of Sheikh Nasiruddin Chirag, which have been compiled at one single place. The Tabkatenseri has been composed by Minhaj Siraj. The Favayedul Favad is a creation of 1353.*

It has been mentioned in Tabkatenseri that in 1206 the representative of Delhi Sultanat in Ayodhya had been ordered to go to Bengal for war.

There was an inscription over the Babri mosque, which was divided in three parts, and few of its extract had been published by Bebridge in 'Babarnama', but the complete inscription has been published in Epigraphiaindica of 1965, which is a publication of ASI. It is in Persian language and Nasaf script. It has been

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mentioned in it that this mosque had been built by Mir Baqi in 1528-29 and also that it was being built on the direction and desire of Babar*. Its date is discovered numerically from its contents. It has nowhere been mentioned in it that this mosque had been built by destroying any temple. Even more than about 200 years after the building of Babri mosque i.e. till 1760, no evidence is found to suggest that mosque was built here after destroying temple or that any temple ever existed at that place. This place was never called Ramjanmbhumi. It was never known as Ramjanm or Ramjanmsthan. The German traveler Typhon Thaylor visited India between 1760-70 and his accounts were published in 1788. It was first mentioned by him therein that it was claimed that a mosque in Ayodhya had been built by Aurangzeb by destroying a temple.* ***He has also mentioned that if the mosque had been built by destroying a temple, then it must have been destroyed in the period of Babar because it had inscriptions of Babar's period****. From the said description of Typhon Thaylor it is clear that the legend that Babri mosque had been built by destroying Ram temple, was in the making." (E.T.C.)*

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484. P.W. 24, Prof. Dhaneshwar Mandal, aged about 69 years (in February, 2002), son of Late Sri K. N. Mandal, is resident of Bajrangbali Road, Naya Gaon, Post Jamalpur, District Munger (Bihar). He was examined twice. Firstly in 2002 (deposition commenced on 25.02.2002) and secondly in 2005 (i.e after excavation).

Part-I :25-02-2002-**Examination-in- Chief** (p. 1-8)

Cross examination:(a)25/26-02-2002- by Nirmohi Akhara

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through Sri R.L. Verma, Advocate (p. 9-28)

(b) 27/20-02-2002, 01-03-2002-by Umesh Chandra Pandey, defendant no. 22 through Sri Vireshwar Dwivedi, Advocate (p. 29- 62)

(c) 01/04-03-2002-by Dharamdas, defendant no. 13, through Sri Ved Prakash, Advocate (p. 63-77)

(d) 04/05-03-2002-by Sri Paramhans Ramchandra Das, defendant no. 2. through Sri Madan Mohan Advocate (p. 77-89)

(e) 05-03-2002-Hindu Mahasabha, defendnat no. 10 and Sri Raesh Chandra Tripathi, defendant no. 17, through Sri Hari Shankar Jain, Advocate (p. 89-94)

(f) 05-03-2002-Sri Rajendra Singh, son of Sri Gopal Singh Visharad, plaintiff (Suit-1) through Sri P.L. Mishra, Advocated, adopted the cross examination already done by other defendants (p. 94)

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(g) 05-03-2002- by plaintiffs (Suit-5) through Sri Vireshwar Dwivedi (P. 94-95)

Part-II :05-12-2005-**Examination-in- Chief** by affidavit (p. 96-130, Appendix-p. 131-140)

Cross examination:(a) 05/06/07/08-12-2005- by Nirmohi Akhara through Sri R.L. Verma, Advocate and Tarunjeet Verma, Advocate (p. 142-178)

(b) 08/09/12/13-12-2005- by Sri Madan Mohan Gupta, plaintiff (Suit-4) through Sri Ranjana Agnihotri, Advocate (p. 279-219)

(c) 13/14/15/16/19-12-2005- by Sri Dharmdas defendant no. 13/1 (Suit-4) through Sri Rakesh Pandey, Advocate (p. 219-263)

(d) 19/20/21/-12-2005- by Mahant Suresh Das, defendant

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no. 2/1 (Suit-4) through Sri Madan Mohan Pandey, Advocate (p. 263-295)

(e) 22/23-12-2005, 04-01-2006-by plaintiffs (Suit-5) through Sri A.K. Pandey, Advocate and Sri Ved Prakas, Advocate (p. 296-332)

(f) 04-01-2006- Plaintiff (Suit-1) through Sri P.L. Verma, Advocate and Sri Ramesh Chandra Tripathi, defendant no. 17 (Suit-5) through Sri Vireshwar Dwivedi adopted cross examination by Sri Madan Mohan Pandey, Advocate, and Sri Ved Prakash Advocate.

485. He was a Professor in the Department of Ancient History, Culture and Archaeology, Allahabad University, Allahabad and retired in 1993. He got his early education in Patna, graduation and post graduation from Allahabad University. In M.A. his subjects were Ancient History, Culture and Archaeology. Though he is not Ph.D., but many others have been awarded Ph.D. under his guidance. He was appointed as Exploration Assistant in the department of Ancient History, Culture and Archaeology in Allahabad University in 1960 and then became Lecturer, Reader and Professor in the same University. He was member of Ancient History Congress and President of its Archaeological Section in conference held at Bhopal in December 2001. His address in the capacity of President delivered in the concerned session was also published. He appeared as expert witness (Archaeology) and about the subject of archaeology, deposed as under :

"आर्कियोलाजी को हिन्दी में पुरातत्व कहते है। इलाहाबाद विश्वविद्यालय में प्राचीन इतिहास विभाग की ओर से हमने लगभग 33 वर्षों तक अध्यापन तथा क्षेत्रीय पुरातत्व में कार्य किया। और क्षेत्रीय पुरातत्व के क्षेत्र में प्राचीन मानव विकास की जितनी अवस्थायें हो सकती है उन सभी अवस्थाओं से सम्बद्ध पुरास्थलों का विधिवत उत्खनन किया है, और विधिवत उत्खनन से

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मेरा तात्पर्य वैज्ञानिक विधि पर आधारित उत्खनन से है। इस प्रकार के कालों में अपरपैलियोलिथिक, मेसोलिथिक, नियोलिथिक, चालकोलिथिक तथा हिस्टारिकल पीरियड है। अपने सर्विस के दौरान मैंने लगभग 5 महत्वपूर्ण पुरास्थलों का एक्सक्वेशन अर्थात उत्खनन किया है इसी प्रकार लगभग 200 सर्वेक्षण (एक्सप्लोरेशन–) का कार्य किया है।

पुरातत्व के अर्न्तगत हम मानव एवं मानव समाज के विकास का अध्ययन करते हैं इस अध्ययन के अर्न्तगत मुख्यतः भौतिक संसार से सम्बद्ध अंगो का ही अध्ययन किया जाता है। इस विषय के अर्न्तगत आध्यात्मिक संसार से सम्बद्ध किसी अंगो का अध्ययन करना कठिन ही नहीं असम्भव है। इस विषय का क्षेत्र अत्यंत व्यापक है, इसके अर्न्तगत भूतत्व शास्त्र (Geology) की दृष्टि से सम्पूर्ण चतुर्थक (क्वाटरनरी) जिसके अर्न्तगत प्लाइस्टोसीन तथा होलोसीन काल का अध्ययन किया जाता है। पुरातत्व शास्त्र की दृष्टि से (अर्थात आर्कियोलाजिकली) पाषाण युग से लेकर लौह युग तक का अध्ययन किया जाता है। पुरातत्व अनुसंधान की मुख्य विधियों में सर्वेक्षण तथा उत्खनन को रखते है। उत्खनन कार्य के लिए विशेष प्रशिक्षण की आवश्यकता अनिवार्य है, क्योंकि उत्खनन कार्य एक मेडिकल आपरेशन की भाति है और मेडिकल आपरेशन की ही तरह पूरी तैयारी करनी पड़ती है विशेष ट्रेनिंग अनिवार्य है। किसी भवन अवशेष के तिथि निर्धारण की दो विधियां है एक रिलेटिव, यानि सापेक्ष, और दूसरी एबसल्यूट। पुरातत्व सामग्री अर्थात आर्कियोलाजिकल मैटीरियल तथा आर्कियोलाजिकल साक्ष्य यह दोंनो भिन्न हैं। मानव निर्मित कोई भी वस्तु पुरातात्विक सामग्री हो सकती है, लेकिन पुरातात्विक साक्ष्य के लिए यह नितान्त आवश्यक है कि वह अपने संदर्भ से सम्बद्ध हो। जो वस्तु संदर्भ से सम्बद्ध है उसकी ही गणना पुरातात्विक साक्ष्य के अर्न्तगत किया जा सकता है। पुरातात्विक सामग्री यदि साक्ष्य के रूप में प्रस्तुत किया गया हो तो यह आवश्यक है कि उसकी प्राप्ति वैज्ञानिक विधि द्वारा हुआ हो। उनका संदर्भ से जुड़ा होना आवश्यक है।

पुरातत्व उत्खनन के लिए एवं सर्वेक्षण के लिए लाईसेंस का लेना आवश्यक हैं। यह लाईसेंस आर्कियोलाजिकल सर्वे आफ इंडिया द्वारा निर्गत किया जाता है। लाईसेंस लेना इसलिए आवश्यक है ताकि केवल ट्रेण्ड व्यक्ति ही उत्खनन व सर्वेक्षण का कार्य कर सकें।

उत्खनन में रिकार्डिग की अहम भूमिका है। रिकार्डिंग के अर्न्तगत

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मुख्य रूप में फोटोग्राफ, ड्राईग, तथा नापजोख आदि आते है। उत्खनित वस्तुओं को रिकार्ड करना आवश्यक होता हैं। इसमें फोटोग्राफ की सबसे बड़ी भूमिका है। ''इन सिटू'' फोटोग्राफ को हिन्दी में यथावत छायांकन कह सकते है और फोटोग्राफिक रिकार्डिग में सबसे अहम भूमिका ''इन सिटू'' फोटोग्राफ का है।''

''Archaeology is called 'Puratatva' in Hindi. I did teaching work and regional archaeology for about 33 years on behalf of Ancient History Department of Allahabad University. In the field of regional archaeology, I duly carried out excavation of archaeological sites related to all the stages of human evolution. By due excavation, I mean the excavation based on scientific method. These stages include upper paleolithic, mesolithic, neolithic, chalcolithic and historical periods. In my service period, I have carried out excavation of five important archaeological sites. Similarly, I have carried out about 200 explorations.

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In archaeology, we study about human beings and the evolution of human society. This study mainly includes the aspects related to the physical world. The study of any aspect of the spiritual world is not only difficult but impossible under this subject. This subject has wide domain and the Geology under it includes the study of Pleistocene and Holocene periods in complete quaternary. From archaeological point of view, the study extends from the stone age to iron age. Exploration and excavation are the main methods of archaeological research. Special training is essential for excavation work because it is like a medical operation, and complete preparations have to be made alike a medical operation. There are two methods of determining the age of remains of any building, one is relative and the other is absolute. The archaeological

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material and archaeological evidence are two different things. Any man made object can be archaeological materials but in order to be archaeological evidence, it is extremely necessary that it is related to its reference. The object which is related to its reference, can only be consider as archaeological evidence. If the archaeological material is produced as evidence, it is essential that it has been obtained by scientific method. Its relation with the reference is essential.

It is necessary to obtain license for archaeological excavation and exploration. This license is issued by Archaeological Survey of India. The license is essential so that only trained people may carry out the excavation and exploration work.

The recording occupies an important place in excavation. Recording mainly includes photograph, drawing, measurement etc.. It is essential to record the excavated materials. The photograph plays the most important role in this. 'In situ' photograph can be said to be 'yathawat chhayankan' (as it is photograph) in Hindi and the in situ photograph has the most important role in photographic recording." (E.T.C.)

"मैंने अपने ऊपर के बयान में आर्कियोलाजी विज्ञान के विधियों से संबंधित जो बयान दिया है वह मूलतः जिस पुस्तक पर आधारित है उसका नाम "आर्कियोलाजी फ्राम द अर्थ" है जिसके लेखक सर मार्टिमर व्हीलर है।"

"In my statement hereinabove, the statement related to methods of archaeology science, is mainly based on Sir Martimar Wheeler's book 'Archaeology From The Earth'." (E.T.C.)

486. PW-24 is author of a book regarding the disputed building

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namely "Ayodha- Archaeology after Demolition" published in 1993 and re-printed in 1994. (Exhibit-63, Suit-4). About his book and idea for writing the book, he said:

''रामजन्मभूमि बाबरी मस्जिद विवाद के सम्बन्ध में पुरातत्व की बड़ी भूमिका है। क्योंकि जब जमीन के नीचे की बातों से कोई विवाद जुड़ा हो तो उस स्थिति में पुरातत्व के बिना विवाद को सुलझाना कठिन है।''

''Archaeology has a very important role in Ramjanmbhumi- Babri mosque dispute, because in cases where the dispute is related to underground facts, then in said situation it is not possible to resolve the dispute without archaeology.'' (E.T.C.)

''इस पुस्तक का अध्ययन क्षेत्र बाबरी मस्जिद तथा इसके निकटवर्ती का भूभाग है अर्थात भूक्षेत्र है। इस पुस्तक का सोर्स मैटीरियल यानि श्रोत सामग्री हिस्टोरियन फोरम द्वारा प्रकाशित एक विशेष बुकलेट जिसका नाम रामजन्मभूमि अयोध्या न्यू आर्कियोलाजिकल डिस्कवरी है। इस बुकलेट में माननीय बी0बी0लाल महोदय द्वारा बाबरी मस्जिद के दक्षिण में उत्खनन का एक विशेष फोटोग्राफ प्रकाशित है। वह फोटोग्राफ श्रोत सामग्री का अहम अंग है, श्रोत के सम्बन्ध में। (इस बिन्दु पर गवाह का ध्यान विद्वान वकील साहब ने अन्य मूलवाद सं0 5/89 में दाखिल पेपर सं0 118–सी–1/35 की ओर दिलाया) इस पुस्तक के टाईटिल पेज के पीछे तस्वीर की ओर दिलाया गया जिसे गवाह ने देखकर कहा कि यह वही फोटो है जिसका उल्लेख मैंने ऊपर किया है।

इसी चित्र को मैंने अपनी पुस्तक प्रदर्श 63 में प्लेट I– प्लेट I I प्लेट I I I तथा प्लेट IV के नाम से अपनी पुस्तक के पेज –34 के बाद दर्शित किया है। प्लेट– IV पर मैंने जो दर्शाया है, उन्हें स्तम्भ आधार (पिलर बेसेज) कहा गया है। ये पिलर बेसेज ईट से बने। इस चित्र के अध्ययन के फलस्वरूप हम इस निष्कर्ष पर पहुंचे कि बाबरी मस्जिद के नीचे मंदिर नहीं था। चूँकि यह स्तम्भ आधार सम्पूर्ण ईट से नहीं बना है चूँकि इसमें ईट के टुकड़ों का ही इस्तेमाल हुआ है, अतः इसका पत्थर के पिलर्स के बोझ को सहना कठिन है। इसके अतिरिक्त हमने यह पाया कि ***वे स्तम्भ आधार हैं ही नहीं, वे दीवाल के अंग हैं****। (इस बिन्दु*

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पर वादी के विद्वान अधिवक्ता ने गवाह का ध्यान अन्य मूल वाद संख्या–5/89 में दाखिल पेपर सं0–118 सी–1/35 पेज संख्या 1की ओर दिलाया, जिसे देखकर गवाह ने कहा कि इस पेपर के पेज–1 से अन्त तक का मैंने अध्ययन किया है और अपनी पुस्तक में उल्लिखित पुरातात्विक सामग्री को क्रमशः मैंने डिस्कवरी नं0–2 और डिस्कवरी नं0–3 कहा है। इसी प्रकार ऊपर कहे गये फोटोग्राफ को जिसमें आधार स्तंभ है अपनी पुस्तक में डिस्कवरी नं0–1 में कहा है । डिस्कवरी नं0–2 और 3 को मैं सिर्फ पुरातात्विक सामग्री मानूंगा, न कि पुरातात्विक साक्ष्य। इसे हम विधिवत उत्खनन से प्राप्त सामग्री नहीं मानेंगे। डिस्कवरी नं0–3 के अन्तर्गत ईट की दीवार और दो खाइयॉ है। पेपर नं0–118सी–1/35 जो कुछ विद्वानों द्वारा रचित है, के डिस्कवरी नं0–3 के साथ दो लूज शीट संलग्न थे, वे डिस्कवरी नं0–2 व 3 से सम्बद्ध प्रस्तुत पुरातात्विक सेक्शन, सम्बन्धित ड्राइग है, जो इस पुस्तक के साथ संलग्न नहीं है। अन्य मूल वाद सं0 5/89 में दाखिल पेपर संख्या–118सी–1/95 को देखकर गवाह ने कहा कि यह डिस्कवरी नं0–3 से सम्बद्ध है। अर्थात डिस्कवरी नं0–3 से जो मैटीरियल मिला उसके सेक्शन का ड्राइंग है । इसी वाद में दाखिल पेपर संख्या 118 सी–1/94 को देखकर गवाह ने कहा कि यह डिस्कवरी नम्बर 2 से सम्बन्धित है, डिसकवरी नम्बर 2 के सेक्शन का ड्राइंग जो इसमें उपलब्ध नहीं है। डिस्कवरी नं0–3 से संबंध सेक्शन का ड्राइंग 118सी–1/95 को मैंने अपनी पुस्तक के पेज 24 पर प्रस्तुत किया है। डिस्कवरी नं0–2 से सम्बन्धित जिस सेक्शन का हवाला उपरोक्त बयान में दिया है, वह इन कागजातों में नहीं उपलब्ध है, उसको मैंने अपनी पुस्तक के पेज–21 पर दर्शाया है। वादी के विद्वान अधिवक्ता ने गवाह का ध्यान अन्य मूल वादसं0–589 में दाखिल पुस्तक–पेपर नं0–289सी–1 के परिशिष्ट–ख के पेज संख्या 289 सी 1/211 की ओर दिलाया, जिसे देखकर गवाह ने कहा कि इसमें दिखाये हुए शिलालेख (इन्सक्रिप्शन) की फोटो है। इस शिलालेख के सम्बन्ध में मैंने सुना है और पढ़ा भी है। 6 दिसम्बर 1992 को जब बाबरी मस्जिद ढहाया गया और जिन सामग्रियों को वहॉ से प्राप्त समझा गया, और जिसका उल्लेख भारत के अखबारों में छपा उन सामग्रियों को फ्रेश डिस्कवरी कहा गया है और इस फ्रेश डिस्कवरी का अध्ययन हमने किया है जिसका डिटेल हमारी पुस्तक प्रदर्श–63 के पेज–49 से 55 पर दिया गया है।''

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"The scope of study of this book is the Babri mosque and the landed area in its vicinity. The source material of this book is a special booklet titled 'Ramjanmbhumi Ayodhya New Archaeological Discovery' published by Historian Forum. This book contains a special photograph of the excavation carried out in south of the Babri mosque by Sri B.B. Lal. This photograph is main part of the source material regarding the source. (at this point the attention of the witness was drawn by the advocate to paper no. 118C-1/35 filed in O.O.S. 5/89). The (attention of the witness) was drawn to the picture published on back of the title page, and after looking at it the witness said that it was the same photograph, about which I have stated above.

I have given this photograph in my book after page no. 34 as Plate-I, Plate-II, Plate-III and Plate-IV in Exhibit 63. The depiction at Plate-IV, is called pillar bases. These pillar bases were made up of bricks. Consequent to study of this photograph, we arrived at the conclusion that temple was not under the Babri mosque, because this base was not completely made up of bricks and since brick pieces were used therein, hence it was difficult for them to bear the load of stone pillars. Apart from this, we also found that ***they were not pillar bases at all and instead were part of wall****. At this point, the attention of the witness was drawn towards page no. 1 of paper no. 118C-1/35 filed in O.O.S. no. 5/89 and after looking at it the witness stated that I have gone through page no. 1 to end of this paper and the archaeological materials mentioned in my book, have been mentioned as Discovery no. 2 and Discovery no. 3 respectively. Similarly, the photograph mentioned above,*

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which depict the pillar base, has been mentioned as Discovery no. 1 in my book. I would consider the Discovery no. 2 and Discovery no. 3, only as archaeological material and not archaeological evidence. We would not consider them to be materials obtained by due excavation. The Discovery no. 3 includes brick wall and two trenches. Two loose sheets were enclosed with Discovery no. 3 of paper no. 118C-1/35, which is composed by few scholars. They are drawing related to concerned archaeological section of Discovery no. 2 and 3, which are not part of this book. On looking at paper no. 118C-1/95 filed in O.O.S. no. 5/89, the witness stated that it is related to Discovery no. 2 but the drawing of the section of Discovery no. 2 is not available in it. The section drawing 118C-1/95 related to Discovery no. 3, has been given by me at page no. 24 of my book. The section related to Discovery no. 2 referred by me hereinabove, is not available in these documents. I have given it at page 21 of my book. The learned counsel for the plaintiff drew the attention of the witness to page no. 289C1/211 of Appendix B of paper no. 289C-1 filed in O.O.S no. 5/89, and after looking at it the witness stated that it was the photograph of inscriptions. I have heard and read about this inscription. When the Babri mosque was demolished on 6th December, 1992 and the articles which were considered to have recovered from there, and which were published in newspapers of India, the said articles were termed as fresh discovery and this fresh discovery has been studied by us, whose details are contained at page 49 to 55 of my book, exhibit 63." (E.T.C.)

487. Concerning the inscription, alleged to be found at the

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time of demolition of the disputed building on 06.12.1992, he presented a paper in the conference of Association of Study of History and Archaeology (in short "ASHA") sometimes in 1998-99 held at Calcutta and in this regard, he said:

"जिस शिलालेख का मैंने ऊपर बयान किया है उसे मैं मात्र पुरातात्विक सामग्री मानता हूँ। मैंने अपने ऊपर के बयान में कहा है कि पुरातात्विक साक्ष्य के लिए प्राप्त सामग्री का संदर्भ से सम्बद्ध होना नितान्त आवश्यक है। चूँकि यह अभिलेख जिसका जिक्र हो रहा है वह अपने संदर्भ से सम्बद्ध नहीं है, इसलिए वह मात्र सामग्री है न कि साक्ष्य।

अगर कोई शिलालेख किसी दीवार में चुना गया हो तो उस स्थिति में उस शिलालेख पर गारा, प्लास्टर विद्यमान होना आवश्यक है, और अगर उस शिलालेख के सम्बन्ध में विवाद है तो उस पर लगे हुए, गारे के प्लास्टर का एनालिसिस आवश्यक है। साथ ही साथ जिस दीवार में उस शिलालेख के लगे होने की बात कही गयी है उस दीवार के भी, गारे प्लास्टर का केमिकल एनालिसिस करके दोनों के पारस्परिक संबंध की पहचान करना अति आवश्यक है।

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डिस्कवरी नं0–2 से सम्बन्धित सेक्शन की ड्राइंग जो पेपर नं0–118सी–1/35 में नही था, वह पेपर नं0–289 सी0–1/206 पर दर्शाया गया है।"

"The inscription mentioned by me hereinabove, is considered mere archaeological material by me. I have stated above that the relation of recovered material with the reference, is extremely essential for archaeological evidence. Since the document being discussed, is not related with its reference, it is mere material and not evidence.

If any inscription has been walled up, then in such situation the presence of mortar, plaster over that inscription is essential and in case there is some dispute regarding that inscription then the analysis of mortar, plaster over it is essential. It is extremely essential to carry

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out the chemical analysis of mortar, plaster of the wall in which the inscription is said to have been walled up, and then to work out the mutual relationship of the two.

The drawing related to Discovery no. 2, which does not appear in paper no. 118C-1/35, has been shown in paper no. 289C-1/206." (E.T.C.)

488. P.W. 27, Prof. Dr. Shereen F. Ratnagar, aged about 57 years (on 8th April 2002), is resident of Empress Court, Churchgate, Reclamation, Mumbai. Her cross examination followed as under :

(a) 08/09/-04-2002-by Nirmohi Akhara through Sri R.L. Verma, Advocate (p. 15-34)

(b)10-04-2002-by Sri Mahant Dharam Das, defendant no. 13 through Sri S.D. Singh, Advocate (p. 35-38)

(c) 10/11-04-2002-by Umesh Chandra Pandey, defendant no. 22 through Sri Vireshwar Dwivedi, Advocate (p. 38-66)

(d) 11/12.04.2002- by Paramhans Ramchandra Das, defendant no. 2, through Sri M.M. Pandey, Advocate, (p. 67-80)

(e) 12.04.2002- by Hindu Mahasabha, defendnat no. 10 and Sri Ramesh Chandra Tripathi, defendant no. 17, through Sri Hari Shankar Jain, Advocate (p. 80-89)

(f) 15-05-2002 - by plaintiffs of Suit-5 through Sri Ved Prakash, Advocate (p. 90-102)

(g) 15-05-2002- Counsel for Madan Mohan Gupta, defendant no. 20, Shri S.P. Pandey, Advocate, adopted the cross examination already done on behalf of other defendants (p. 102)

489. A Professor (Archaeology), in Jawaharlal Nehru

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University, Delhi she retired voluntarily in the year 2000. She deposed her qualifications as under:

(a) Two post graduate degree in Archaeology and Ph.D. in Archaeology;

(b) A post graduate diploma in Archaeology from Landon University.

490. PW-27 was appointed as Lecturer in Jawaharlal Nehru University, Delhi in 1976, Reader in 1985 and Professor in 1994. She taught five courses- two in Archaeology and three in Ancient History connected with Archaeology. In Archaeology, she specially taught proto-history and "the Utilisation of Archaeological Evidence". She has experience of guiding a dozens of research students for M.Phil. and Ph.D. She was also fellow of British School of Archaeology in Iraq. After retirement, she had delivered lectures in academic staff Colleges and Universities such as Mahatma Gandhi University at Kottayam, Allahabad University, Chandigarh University, Mumbai and Delhi Universities, became member of Al Hajar Project in Oman, doing explorations and excavations, is working with Dr. Geoffrey Orchard of Birmingham.

491. PW-27 is author of five books, namely,

(1) The Encounters, the Westerly Trade of the Harappa Civilization (published in 1981)

(2) Enquiries into the Political Organization of Harappan Society (published in 1981)

(3) The End of the Great Harappan Tradition (published in 2000)

(4) Understanding Harappa (published in 2001)

(5) Bhartiya Itihas Ke Srot, Pracheen Kaal (published in 2001-02)

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492. PW-27 is author of a number of papers, more than twenty, published in different journals like "Man and Environment (Poona)"; "Studies in History (Delhi)"; "Current Anthropology (Chicago)", wrote papers on archaeological methods and also data retrieval in ancient history.

493. PW-27 was a visiting Professor in Paris in 1984, awarded by the College de France in January 2002, delivered two lectures at the College de France, at the University of Harare in Zimbabwe and at the Institute Kern at Leiden in Holland, also delivered the Heras Memorial lectures in Mumbai and her third book contains her Heras Memorial lectures in book form. She got archaeological training from Professor H.D. Sankalia (Pune) and from Professor S. Lloyd (London).

494. She claims to appear as an Archaeologist, got interest in the issue in the year 1990 approximately because an important part of the controversy was the claim made by the archaeologists about the discovery of an old temple in the disputed area. She had never visited Ayodhya, wrote an Article "Archaeological Discovery?" (Paper No. 291C1/14 for Frontline Magazine dated 6.11.1992). Another Article with the title "Startling Indeed" (paper No. 291C1/12) written by her colleague Prof. R. Champaka Lakshmi, the then Chairperson of Centre for Historical Studies, Jawaharlal Nehru for the said magazine. R. Champakalakshmi is specialized in Art, History and the Hindu Temple as a Social and Religious Institution, with emphasis on South India.

495. P.W. 27 claims to have read some books relating to the issue, one of such book is "Ramjanambhoomi, Ayodhya New Archaeological Discoveries" (Paper No. 118C-1/35) (Ex. 33, Suit-3). She has read the report of Prof. B.B. Lal pertaining to

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the disputed site.

496. About her experience of field archaeology, she said:

"As an Archaeologist, I have field experience with Prof. H.D. Sankalia at Tripuri Excavations; in Britain I worked with Henry Hurst at Box; In Turkey with David French at Ashvan; in Iraq at Tell al Rimah with David Oates; In Bahrain, at Al Markh with Mechael Road; in Iraq at Abu Salabih with Prof. N. Posgate and also in Oman recently. During these excavations, I learnt the general principles of stratification and all technical drawings which become interpretation of the strata and their relative dates to one another. Basically, there is no difference between the excavations in India and outside India but the British system is much more rigorous and every Archaeologist has to do all the work himself or herself. The training of excavations outside India taught me principles of data recovery which can be applied anywhere in the world, so that I am able to read and examine critically the excavation reports of any other Archaeologist."

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497. PW-27 said to have got published papers reflecting directly on the field of archaeology which are:

"1. A review Article on the Inamgaon excavations report; and

2. "Does Archaeology holds the Answerers?" (read in America in 1996 and published perhaps in 1998 or 1999" and

3. "The End of the Great Harappan Tradition (Published in 2000)

4. "Back to the Bones" published around 1998 or 1999 etc.

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I have also written a paper on weights and the formation process of the archaeological record (I read it in January 2002 in Paris (It is yet to be published).

498. About the archaeological excavation in Ayodhya, PW-27 said:

"*To my knowledge, two teams or institutions have conducted excavations at Ayodhya. These are – one, Banaras Hindu University, Varanasi, and the other is the Indian Institute of Advanced Study, Shimla. I read the excavations reports of these two institutions published in the journal 'Indian Archaeology-A Review.*

I read a journal titled as "Indian Archaeology 1969-70-A Review" edited by Prof. B.B. Lal published by the Archaeological Survey of India (A.S.I.). Copies of pages Nos. 40 and 41 of the above journal and the title page of that journal which are on record have been shown to the witness. This is Paper No. 291C-1/4 to 291 C-1/6. These papers are the true copies of the original which is before me marked Ex. E-1/1. This excavation report relates to Banaras Hindu University excavations made in three different spots at Ayodhya. Paper No. 107 C1/62 and 63 are true copies of the journal, "Indian Archaeology 1976-77 A Review" by ASI (marked Ex. E-2/1) Papers No. 291 C-1/1, 291 C-1/2 and 291C-1/3 are also the true copies of title page and plate No. 49 and 50 of the aforesaid journal (marked Ex. E-2/1).

Paper No. 291 C-1/16 and 17 are the true copies of page Nos. 76 and 77 and Plate No. XXII of "Indian Archaeology 1979-80-A Review" (marked Ex. E-3/1)

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With reference to Paper No. 291 C-1/5, I may submit that the significance of this report is that several cultural periods were found by the excavators and they made reference to some categories of small finds, but there is no mention of any architectural or sculptural material of any temple.

I have studied the two reports of Prof. B.B. Lal published in the journal, "Indian Archaeology-A Review 1976-77" (hereinafter to be referred as IAR) and in IAR 1979-80. Both these reports of Prof. B.B. Lal pertain to different sites at Ayodhya, IAR 1976-77, reports excavations at two different sectors including the disputed area. In IAR 1979-80, it is said that excavation was done in 14 different spots all over Ayodhya, but no specific area is mentioned. Mr. B.B. Lal's excavations uncovered remains of the later iron age and the early historic period, both of which are 1000 BC to 3rd Century AD. Thereafter, there is a gap in the occupation of Ayodhya and the city was reoccupied in the 11th Century AD. In the disputed area, Mr. B.B. Lal reports finding a large wall which could have been a fortification wall, the remains of brick houses and some ring wells. Amongst the small antiquities, he reports finding coins, seals and a large number of clay figurines including what may be the earliest Jaina sculpture and some potteries of interest. To my mind, significance of this report, IAR 1976-77, is that Mr. B.B. Lal mentions that the pits and brick debris came from levels below the 11th Century A.D. i.e. below the medieval reoccupation of Ayodhya- and that he states on page 53 as follows :

"The entire late period was devoid of any special

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interest."

In the IAR 1979-80 report, Prof. Lal reports remains of only up to the Gupta period and nothing thereafter. In Prof. B.B. Lal's report, there is no mention of any temple, leave alone one of the medieval period. Except these two reports, to my knowledge, there is no other report of Prof. B.B. Lal on Ayodhya excavations published in IAR.

To my knowledge, there is no other excavation conducted by anyone after Prof. B.B. Lal at Ayodhya in 1979-1980.

Paper No. 118 C1/36 was shown to the witness. I have not seen this photograph in IAR. I saw this trench photograph for the first time in the book No. 118 C1/35. IAR is the only authoritative journal being published by the Archaeological Survey of India in respect of excavations and explorations. The relevance of this journal is that it is obligatory for anyone receiving a permit from ASI to excavate or explore, to report his finds in IAR for that year, IAR is like a dairy in which all archaeological excavations, explorations, conservation, repairs, treasures and inscriptions found have to be reported, howsoever brief they may be. There is no reference to any so-called pillar base in the two reports of Prof. B.B. Lal as referred to above, nor is there any photograph. I have read about the trench with the so called pillar base in the trench photograph, paper No. 118 C1/36 and in some newspapers perhaps."

499. PW-27 claims to have read the book (Ex. 63, Suit-4) written by Prof. D. Mandal and said as under :

"I have read Prof. Mandal's book, Ext. 63 of O.S.

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No. 4 of 1989, and I have written an Introduction to it and have added some information in my footnotes to that book at page 67 and pages 68 to 69, in which the letters "SR" are mentioned in brackets. My introduction to the book is of course connected with the subject-matter, but it is an introduction in general terms, to make the rest of the book easier for the lay reader.

Mandal's approach is, in essence, as to what constitutes scientific evidence in archaeology and how we can draw valid inference from date. So the approach is that of field archaeology and stratigraphy. The major conclusion is that there is no substance to the claims which have been made about the remains of a temple at the disputed site as mentioned in Paper No. 118 C-1/35 henceforth to be referred as NAD, the caption of the photograph paper No. 118C1/36 refers to pillar bases.

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Mandal has three major criticism of this theory: First, he points out that the brick features consist of broken pieces of brick, they do not have straight edges and were not constructed in pits; therefore, he doubts that they could have taken the weight of so-called stone columns of a temple.

The second criticism is on Plate III of Mandal's book, which indicates that on the photo of the trench when he draws a straight line along the faces of two adjacent features, he finds that the so called pillar bases are not even in a row and the second so called row is not parallel to the first so-called row. If at all these were pillars of a temple in a row, they would have had to be very regularly placed in order to carry load.

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The line appearing in the middle of the photograph on Plate III of Mandal's book is a common device that archaeologists often use to check on their finds. This device is frequently used by other archaeologists and in the excavations of Kalibangan, excavated by Prof. B.B. Lal, he has also drawn lines connecting separate stretches of walls to show that they are part of the same fortification. This device has also been used by Prof. B.B. Lal in excavations at Kalibangan as is evident in his reports published at pages 28 to 31 of IAR 1968-69, paper No. 291/C1/7 to 291/C1/11. (Above referred photocopies have been filed by defendant No. 5 of O.S. No. 5 of 1989 and the original book has also been shown to the witness. The witness having compared them, has certified them to be true copies. Marked as Exts. E. 4.

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The third conclusion of Mr. Mandal was that the so-called pillar bases do not belong to the same stratum, which he makes very clear in the Plate II of his book. One so-called pillar base is sealed by one stratum, but another pillar base is sealed by another stratum. So these five pillar bases, as Mr. Mandal argues, belong to five different strata. It means that the five features or pillar bases were not functional at one and the same time, and therefore, they could not have belonged to the same building.

I accept Mr. Mandal's arguments and conclusions *as referred to above which refute the existence of pillar bases of any temple at the site in dispute. For the arguments in NAD, the so called pillar base in the trench would be a central argument.*

I agree with the arguments arrived at by Mr.

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Mandal *mentioned at page 19 of his Book Ext. 63. In the first four lines, he refers to "At the out set .....stratographic excavations." I fully agree with his finding."*

500. Commenting on Ex. 63 (Suit-4), PW-27 said:

*"**I do not accept the validity of stones, sculptures and other pieces as evidence for a temple as has been argued in the NAD Report** because of the circumstances of the so-called recovery. The circumstances of the recovery are that there was ground levelling by the P.W.D. of, I think, a large area in and around the disputed site. Ground levelling can never be a substitute for scientific excavations. The difference between the result of scientific excavation and discoveries made after land levelling is that in the former, we recover context. Context is a crucially important component of date; and when there is land levelling, context is destroyed before it can be seen. By Context, I am referring to the spatial as well as the vertical position of a find and also the cultural position of the find.*

If we look at the figure 2 page 21 of Ex. 63 of book Ex. 63, which figure is reproduced from a supplement to the NAD, I mean that there are problem with this pit as context. There is no level that completely seals the pit. Therefore, the pit cannot be stratigraphically dated. And as regard the finds that NAD reported from ground levelling operations, there is also a photograph (paper No. 118C 1/37). This is not a photograph of the process of digging these sculptures. In figure-2, there is no context available. We can contrast this find with finds found in a scientific excavation. If in a regular excavation, we had hit upon

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something, we would take photographs of it for several days during the actual recovery of the find, whether it was a treasure or a grave, etc. Simultaneously, we would be drawing and measuring the horizontal occurrence of every one of these important finds. We would make a plan of all the finds and we would identify the stratum to which the finds belong and this would be giving the context of the find."

501. Stating on objects found accidentally as well as inscriptions at the site, PW-27 said :

"It is true that some objects are found accidentally. They are not archaeological evidence because the context competent is missing. The so-called discovery of inscriptions and sculptures when the mosque was being vandalised, is not an archaeological find; but it is the reversal of the entire ethics and process of archaeology: for archaeologists, their function in society is to care for old structures. Whatever can be said to have been found at the site in dispute after demolition of the disputed structure cannot be said to be archaeological evidence because the context is totally demolished.

***If some inscription is found at a site, it is not necessary that it gives the date or the content of that site. It will depend on the context**. There is a famous example in Archaeology. There is a broken pillar edict of Ashok Maurya found at the Sirkap site of Takshila. But the date of Sirkap is not Mauryan. Sirkap is an Indo-Greek and Saka-Parthian town, dating 180 B.C. to A.D. 60 roughly (whereas the Mauryan period is 321 to 187 B.C.). So the Ashokan pillar must have been set up in the Bhir mound of*

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Taxila, but when it ceased to have any meaning, it was reused in a new township that was built near the Bhir mound, namely Sirkap. Therefore, ***an inscription may be established in one place but it may be removed to play a different function in another place. So, connection of a find or a object to a site depends upon the context****."*

502. PW-27 further said that she has not thoroughly read the book written by Dr. Thakur Prasad Verma and Dr. Swaraj Prakash Gupta though she has read a few paragraphs cursorily. She further said about the inscriptions alleged to be found in the debris at the time of demolition in 1992 as under :

"This book refers to an alleged recovery of alleged long inscription from the debris of the demolished structure. As an Archaeologist, in my opinion, this inscription has no value as evidence. It only comes from the broken remains of a vandalised old structure. There is no context."

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503. She admits of knowing Prof. Suraj Bhan, who according to her, is a Field Archaeologist, knows Sanskrit and has excavated proto historic and perhaps pre-historic sites although not sure about it.

504. **P.W. 28, Sitaram Rai**, aged about 72 years (on 22/23 April 2002), son of Late Harinandan Rai, is resident of 295, Nehru Nagar, Patna. His cross examination followed as under :

(a) 25/26-04-2002-by Nirmohi Akhara through Sri R.L. Verma, Advocate (p. 30-51)

(b)29/30-04-2002, 01/02-05-2002-by Umesh Chandra Pandey, defendant no. 22 through Sri Vireshwar Dwivedi, Advocate (p. 52-105)

(c) 02/03-05-2002-by Sri Mahant Dharam Das, defendant

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no. 13 through Sri S.D. Singh, Advocate (p. 105-113)

(d) 03/13-05-2002-by plaintiffs (Suit-5) through Sri A.K. Pandey, Advocate and Sri Ved Prakash, Advocate (p. 114-130)

(e) 13-05-2002- Hindu Mahasabha, defendnat no. 10 and Sri Ramesh Chandra Tripathi, defendant no. 17, through Sri Hari Shankar Jain, Advocate and defendant no. 20 through Sri S.P. Pandey, Advocate, adopted the cross examination already done by other defendants (p. 130)

(f) 13/14-05-2002- by Sri Rajendra Singh, son of Sri Gopal Singh Visharad plaintiff (Suit-1) through Sri P.L. Mishra, Advocate (p. 131-146)

505. PW-28 is a retired Director from the Department of Archaeology, Government of Bihar, Patna. Did B.A. in 1951 and M.A. (Ancient Indian History and Culture) from Patna University in 1973, his Special papers in M.A. were Epigraphy and Numismatic. His subject in Ph.D. was "Decypherment and Historical Study of a Pam leaf Manuscript from Tibbat, an Unknown Mahayan Texts" (9th and 10th century A.D.). He did Ph.D. from Patna University. Initially he joined ASI in 1956 at Nagarjun Excavation, Andhra Pradesh and after two years was appointed as Research Member in K.P. Jaiswal Institute under Bihar Government. He was to look after the work related to archaeology. In 1962, Directorate of Archaeology and Museum was established by the State Government of Bihar and he was transferred therein as "Exploration and Excavation Officer". He retired in March 1988 and till then was continuously engaged in the work of excavation. Approximately he was engaged in excavation work at about 12 places. Regarding his further experience about excavation, he said:

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''जिनमें से 3 उत्खनन कार्यो से सबंधित प्रतिवेदन प्रकाशित हुए थे ये वैशाली उत्खनन प्रतिवेदन, लोटा पहाड़ उत्खनन प्रतिवेदन, कैरियन उत्खनन प्रतिवेदन हैं। इसके अतिरिक्त कुम्रहार, कर्ण चौरा, ताराडीह, कटरा गढ़, बलराज वगैरह। इन उत्खनन के अलावा जब इनसाकिलोपीडिया आफ इंडियन आर्कियोलाजी तैयार हो रहा था तो उनमें भी मेरे चार अभिलेख प्रकाशित हुए। यह इनसाइकिलोपीडिया श्री ए0 घोष पूर्व डायरेक्टर आफ ए0एस0आई0 ने एडिट किया था। मैंने फील्ड आर्कियोलोजी में डा0 आर0 सुब्रहमण्यम, भूतपूर्व अधीक्षण पुरातत्व विधि, भारतीय पुराततव सर्वेक्षण, डा0 नील रत्न बनर्जी, निदेशक (सेवा निवृत्त) राष्ट्रीय संग्रहालय नयी दिल्ली डा0 सौन्दर राजन, अपर निदेशक, भारतीय पुरातत्व सर्वेक्षण, स्व0 हरि विष्णु सरकार, संयुक्त महानिदेशक, भारतीय पुरातत्व सर्वेक्षण आदि के साथ कार्य किया है।

सेवा निवृत्त के बाद भी मैं फील्ड आर्कियोलाजी से संबंधित रहा हूँ। अभी भी मैं के0पी0 जयसवाल रिसर्च इन्स्टीट्यूट के तत्वाधान में पाण्डवगढ़ समस्तीपुर में चल रहे उत्खनन कार्य से संबंधित हूँ। इसके अलावा नवनालंदा महाविहार में मैं भारतीय संस्कृति के अध्यापन हेतु प्रोफेसर असेरिटस के पद पर दो वर्षो तक योगदान करता रहा।''

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''Out of which reports were published on three excavations. These are reports on excavations carried out at Vaishali, Lotapahad and Kairiyan. Apart from these places, excavations were carried out at Kumrahaar, Karnchaura, Taradih, Katragarh, Balraajgarh, etc. Besides these excavation reports, when Encyclopedia of Indian Archaeology was being prepared, my four articles were published therein too. This Encyclopedia was edited by Sri A. Ghosh, Ex-Director of A.S.I. I have worked in field archaeology with Dr. R.Subramanyam, Ex-Superintendent, Law of Archaeology at Indian Archaeological Survey, Dr. Neel Ratna Banerjee, Director (retired), National Museum at New Delhi, Dr. Saunder Rajan, Additional Director, Indian Archaeological Survey,

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Lare Hari Vishnu Sarkar, Joint Director General, Indian Archaeological Survey, and so on.

Even after retirement I have been associated with field archaeology. Even today I am associated with the ongoing excavation at Pandavgarh, Samastipur under the aegis of K.P.Jaiswal Research Institute. Apart form this, I served as professor emeritus for two years to teach Indian Culture at Nav Nalanda Maha-Vihar." (E.T.C.)

506. Three books written by PW-28 have been published which includes his Ph.D. Thesis under the title "Suvarnvarnavdan" and another books is "Guarded to Vaishali Museum". Mainly his writings are in respect to Ancient India and Archaeology. About his knowledge of various languages, he said:

"मैं अंग्रेजी, हिन्दी व संस्कृत तीनों भाषाओं को पढ़ सकता हूँ इसके अलावा बिहार की मैथली भाषा का ज्ञान है मुझे ब्राह्मी, खरोष्ठी, ग्रीक, देवनागरी लिपि की जानकारी है। मेरा संबंध एपीग्राफी (अभिलेख) एवं पेलियोग्राफी (लिपिशास्त्र) से विद्यार्थी जीवन से लेकर आज तक रहा है।"

"I can read three languages – English, Hindi and Sanskrit. Apart from these, I have knowledge of the Maithali language of Bihar. I have knowledge of Brhami, Kharosthi, Greek and Devnagari scripts. I have been associated with epigraphy and palaeography from my student days till today." (E.T.C.)

507. About the disputed place also PW-28 has written some articles and in this regard he said:

*"**मैंने एक लेख "अयोध्या इन लिटरेचर एण्ड अर्कियोलोजी" नामक लिखा है** जो इण्डियन आर्कियोलाजी सिन्स इन्डिपेन्डेट में प्रकाशित हुआ है। यह किताब आशा (ऐसोशिएशन फार दि हिस्ट्री एण्ड आर्कियोलोजी) ने प्रकाशित किया था। मेरा यह लेख पेपर नं0 199सी/2 है। (पेपर नं0 199सी–2/1 मेरे द्वारा छपा हुआ आर्टीकिल है यह लेख मेरे द्वारा लिखा गया था और इस लेख को मैंने आशा के*

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अधिवेशन कुरूक्षेत्र में पढ़ा था, जो अधिवेशन 1995 में हुआ था। मेरे इस लेख में जो बातें लिखी हैं मेरे ख्याल से आज तक के समय तक सही है और इनमें कोई तब्दीली नहीं हुई है। मेरे दृष्टि में मेरे लेख के सारांश का एक बिन्दु यह है कि ***किसी भी साक्ष्य के आधार पर रामजन्मभूमि विवादित स्थल नहीं है।*** *मैंने अपना एक लेख "मथुरा इन लिट्रेचर एण्ड आर्कियोलोजी लिखा है जिसे मैंने आशा के दूसरे अधिवेशन में अलीगढ़ में पढ़ा और वह बाद में आशा के द्वारा ही प्रकाशित हुआ, जिसे रीजन एण्ड आर्कियोलोजी नामक पुस्तक में छपवाया गया जो पेपर नं0 199सी2/2 है। मेरा यह लेख मेरे विचार से आज तक सही है।* ***मैंने उपरोक्त दो लेखों में जिन स्त्रोतों का हवाला दिया है उनमें बाल्मीकि रामायण, तुलसी दास कृत रामचरितमानस, अर्थवेद, पुराणों आदि का भी मैंने अध्ययन किया है।"***

*"**I have written an article titled 'Ayodhya in Literature and Archaeology'**, which was published in 'Indian Archaeology since Independence'. This book was published by ASHA (Association for the History and Archaeology). This article of mine is paper no. 199C/2. Paper no. 199C-2/1 is a published article of mine. This article was written by me and was read by me in the Kurukshetra session of ASHA, which took place in 1995. Whatsoever is written in this article, is, in my opinion, correct even today and there is no change in it. From my point of view , one point of the crux of my article is that **Ram Janam Bhumi is not a disputed site on the basis of any evidence**. I have written one article of mine titled 'Mathura in Literature and Archaeology', which I read in the second session of ASHA held in Aligarh and which was subsequently published by ASHA itself. It was published in the book titled 'Region and Archaeology', which is marked as paper no. 199C 2/2. This article of mine is, in my opinion, correct till today. **Of the sources which I have***

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cited in the aforesaid two articles I have also studied the Valmiki Ramayan, Tulsidas-written Ram Charit Manas, Atharva-Veda, Puranas, etc. *" (E.T.C.)*

508. Regarding existence of a Temple beneath the disputed structure, PW 28 said :

*"**मैं पुरातत्व छात्र होने के नाते यह कह सकता हूँ कि विवादित स्थल पर रामजन्मभूमि मंदिर या कोई अन्य मंदिर कभी मौजूद नहीं था।** इसलिए इस बात का प्रश्न ही नहीं उठता कि किसी मंदिर को तोड़कर मस्जिद बनायी गयी हो। विवादित स्थल के पास में हुए उत्खनन कार्यों का उल्लेख मैंने 1976–77 के ''इण्डियन आर्कियोलोजी ए रिव्यू'' में पढ़ा है। **आर्कियोलोजकल साक्ष्यों के आधार पर यह स्थापित हुआ है कि 13वीं शताब्दी में तुर्किस लोग विवादित स्थल के साथ साथ पूरे इलाके में हिन्दुओं के साथ बसे हुए थे**। मैने अपने लेख पेपर नं0 199सी 2/1 में जिन काले 14 खम्भों का जिक्र किया है वह लोड बियरिंग नहीं थे, बल्कि डेकोरेटिव थे और उन्हें बाहर से लाकर लगाया गया था और वे खम्भे नींव में भी गड़े हुए नहीं थे, बल्कि सतह जमीन के उपर खड़े किये गये। अपने उपरोक्त लेख में ही मैंने उस शिलालेख का वर्णन किया है जिसे बाबरी मस्जिद ढहाने के बाद उसके, मलबे से निकला हुआ कहा जाता है, **मेरे मुताबिक वह शिलालेख 12वीं सदी का नहीं हो सकता**, जैसा कि मैंने अपने लेख में लिखा है। यह संदर्भ मैंने श्रीमती सुधा मलैया द्वारा लिखित लेख के आधार पर दिया था जिसका नाम– ''बोलते पाषाण'' था और वह ओजस्वनी नामक पत्रिका में सन् 1993 में छपा था। जिन अक्षरों के संबंध में मैंने अपने लेख में जिक्र किया है, वे 12वीं शताब्दी में उस रूप में नहीं थे। वे बाद में उस रूप में प्रचलित हुए उसका आधार यह है कि ब्राहमी लिपि जो सबसे पुरानी लिपि है उससे ही देवनागरी लिपि का प्रादुर्भाव हुआ है।*

*12वीं शताब्दी में उस स्थल को जहॉ पर आज वर्तमान मे अयोध्या है, अवधपुरी या अन्य किसी नाम से जाना जाता था और 16वीं शताब्दी तक उसे स्पष्ट रूप से अवधपुरी के नाम से ही जाना जाता था। तुलसीदास कृत रामायण रामचरित मानस सम्बत 1631 विक्रम 1574 ए0डी0 में लिखी गयी थी। रामचरित मानस में अयोध्या का वर्णन अवधपुरी के नाम से ही आया है। **मेरे विचार से हिन्दू धार्मिक स्थलों का संदर्भ मंदिर***

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के नाम से 20वीं शताब्दी से ही शुरू हुआ है। उससे पहले मंदिर देवायतन या देवालय के नाम से जाने जाते थे। *भगवान विष्णु के कुछ कुछ नाम इस प्रकार है– हरि, विष्णु देवेश, परमात्मा आदि हैं वैसे विष्णु के हजार नाम हैं। यदि विष्णु के लिए हरि नामक पर्यायवाची शब्द का प्रयोग किया जाये तो उसके साथ विष्णु का प्रयोग नहीं होगा। यानी यदि दोनों नाम विष्णु और हरि एक साथ प्रयोग किये जाये तो वह किसी व्यक्ति के हो सकते हैं, परन्तु विष्णु के नहीं।* ***मैं पुरातात्विक साक्ष्य के आधार पर यह कह सकता हूँ कि 12शताब्दी में अयोध्या में भगवान राम की पूजा नहीं होती थी। और न ही 12–13वी शताब्दी में भगवान राम का कोई मंदिर अयोध्या में मौजूद था।*** *तुलसीदास जी ने रामचरितमानस की रचना की तो वे अयोध्या में नहीं बल्कि काशी में पंचगंगा घाट नामक स्थान में रहते थे। परन्तु यह सही है कि तुलसी दास जी ने जिस दिन रामचरित मानस को लिखना शुरू किया उस दिन अवधपुरी अयोध्या में चले गये थे। तुलसीदास कृत रामचरित मानस में अयोध्या में किसी विशेष स्थल को रामजन्मभूमि के नाम से नहीं कहा गया हैं रामचरित मानस में किसी मंदिर को तोड़कर मस्जिद बनाने के जिक्र नहीं है। गोस्वामी तुलसीदास जी के गुरू श्री नरहरिदास काशी में रहते थे।''*

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*"**As a student of Archaeology I can say that there was never Ram Janam Bhumi temple or any other temple at the disputed site**. Hence, there is no question of any temple having been demolished to build a mosque. In 'Indian Archaeology- A Review' of 1976-77, I have gone through the account of excavations carried out in the vicinity of the disputed site. **On the basis of Archaeological evidences it is established that in the 13th century Turkish people had settled along with Hindus in the entire area including the disputed place**. The black pillars, 14 in number, which I have mentioned in my article paper no. 199C 2/1, were not load-bearing, but they were just decorative ones. They had been brought from outside*

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and were placed. These pillars were not buried even in the base but they were erected just above the ground floor. In the afore-said article itself, I have spoken of a pillar inscription which is said to have been taken out from the debris after the demolition of the Babri mosque. ***In my opinion, this inscription cannot be dated to the 12th century*** *as I have written in my article. I had given this reference on the basis of an article written by Smt Sudha Malaiya and which was titled 'Bolate Pashan' and was published in a magazine titled 'Ojaswini' in 1993. The letters which I have mentioned in my article, did not exist in the same way in the 12th century. They subsequently came to be in vogue in that form. Its basis is that Devnagari script has emerged only from the oldest script known as Brahmi script.*

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The place where Ayodhya presently stands, was known as Awadhpuri or by any other name in the 12th century and it was clearly known only as Awadhpuri up to the 16th century. Tulsidas-written Ramayan known as Ram Charit Manas was written in 1631 Vikrami, that is, 1574 AD. Ayodhya finds mention in the Ram Charit Manas only by the name of Awadhpuri. ***In my opinion, references of Hindu religious places in the name of temples are found only from the 20th century. Prior to that, temples were known as Devayatan or Devalaya****. Some of the names of Lord Vishnu are – Hari, Vishnu, Devesh, Parmatma, etc. As a matter of fact there are thousands of names of Vishnu. If for the word 'Vishnu' its synonym 'Hari' is used, the word 'Vishnu' will not be used with it (the word Hari). That is to say, if these two names, Vishnu and Hari, are used*

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together then they may be a name of a person but not of Vishnu. ***On the basis of archaeological evidence I can say that Lord Rama was not worshipped in Ayodhya in the 12th century nor was there any temple in the name of Lord Rama in Ayodhya in the 12th - 13th century****. At the time of composition of Ram Charit Manas Tulsidas lived at a place called Panch-Ganga Ghat in Kashi, but not in Ayodhya. But it is true that Tulsidas shifted to Awadhpuri Ayodhya on the day he started composing the Ram Charit Manas. No particular place in Ayodhya is not mentioned as Ram Janam Bhumi in the Ram Charit Manas written by Tulsidas. The Ram Charit Manas does not speak of any temple having been demolished to build a mosque. Sri Narhari Das, spiritual teacher of Goswami Tulsidas, lived in Kashi." (E.T.C.)*

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509. PW 28 made a statement that the present Ayodhya is not the one which was described in Valmiki Ramayan (on page 6 and 7 of his examination-in-chief), but this part of his entire examination is now wholly irrelevant in view of the statement of the learned counsels appearing for various Muslims parties recorded on 22.4.2009 under Order 10 Rule 2 wherein they have said as under :

"For the purposes of this case, there is no dispute about the faith of Hindu devotees of Lord Rama regarding birth of Lord Rama at Ayodhya as described in Balmiki Ramayan or as existing today."

510. In respect to the findings in archaeology, PW-28 said :

"आर्कियोलाजी के अनुसार आकस्मात पायी गयी वस्तु का भी महत्व है यद्यपि उसकी तिथि, उसके पाने की जगह, और पाते समय उसका इनसीटू फोटोग्राफी (यथास्थिति छाया चित्र) उपलब्ध हो। उपरोक्त चीजों के अभाव में आकस्मात पायी गयी चीजों का आर्कियोलाजी में कोई महत्व नहीं

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है। यदि कोई शिलालेख किसी बिल्डिंग में बहुत अरसे तक चुना हुआ रहा हो तो उसमें मोटर्र और प्लास्टर आदि के निशानात और कुछ अंश चिपके हुए अवश्य रहेगें।''

"As per archaeology, objects discovered all of a sudden also have importance if information on their date, place of discovery, in-situ position and photography (as the case may be) is available. In the absence of the aforesaid information, the objects discovered all of a sudden have no importance. If any inscription has been carved out in any building for a very long time, there must be traces and particles of mortar, plaster, etc. stuck to it." (E.T.C.)

511. Prof. R.S. Sharma, who was Professor in the Department of History at Patna and Delhi Universities was his teacher (Guru) and PW-28 knows that Prof. Sharma had written two articles in respect to Ayodhya. Besides, he knows Prof. Suraj Bhan, Prof. Suvira Jaiswal, Prof. D. Mandal, Prof. Suresh Mishra, and Dr. S.K. Gupta, who has worked with him at Nagarjun Konda excavation. He said that Dr. S.P. Gupta has written an article "An Open Letter to the Prime Minister". However, he said that Dr. S.P. Gupta neither has any relation with epigraphy or paleography nor knows Sanskrit language.

512. OPW 3 Dr. S.P. Gupta, aged about 70 years (on 28th June, 2001, the date on which his deposition started), resident of B-17, Kutub Institutional Area, New Delhi, he deposed as an expert witness (Archaeology and Museology). His cross examination followed as under :

(a) 28-06-2001- by Nirmohi Akhara, defendant no. 2, through Sri R.L. Verma, Advocate (p. 21-29)

(b) 28/29-06-2001, 20/21/22/23/24-05-2002, 10/11/12/13/14-06-2002, 08/09/10/11/12/15/16-07-2002,- by Sunni Central Waqf Board, defendant no. 4, through

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Sri Zafaryab Jilani, Advocate (p. 30-261)

(c) 16/17-07-2002- by defendant no. 6 through Sri Abdul Mannan, Advocate, further cross examination on behalf of defendant no. 6 postponed (p. 262-266)

(d) 17/18/19-07-2002, 19/20-08-2002 by defendant no. 5 through Sri Mustaq Ahmad Siddiqui, Advocate (p. 266-341)

(e) 20-08-2002- by defendant no. 6 through Sri Abdul Mannan Advocate through Sri Abudl Mannan, Advocate in continuation of 17-07-2002 (p. 341-343)

(f) 20-08-2002- defendant no. 26 through Sri Sayad Irfan Ahmad, Advocate adopted the cross examination already done by defendants no. 4, 5 and 6

513. OPW-3 is co-author of a book namely, "Ayodhya Ka Itihas Evam Puratatva (Rigved Kal Se Ab Tak)" (Ex. 3, Suit-5) alongwith Dr. T.P. Verma, OPW 9. His educational qualification is M.A., L.L.B., Diploma in Archaeology, Ph.D., Diploma in Environmental Archaeology and D.Litt. He has imparted education in "Museology" and "Art History" and retired as Director, Allahabad Museum in 1990. The languages in which he is conversant are Hindi, English, French and Russian. He has written several books and edited Magazines on Archaeology for several years. He is a founder member of "Men and Environment" magazine, President, Indian Archaeological Society in June, 2001 and prior to that he was Organising Secretary of Indian History and Cultural Society. He has been examiner of M.A., Ph.D. and D. Litt. in several Universities like, Banaras Hindu University, Ranchi University etc. He was awarded three medals/prizes in the subject of Archaeology out of which two are gold medals and one is International prize, i.e.,

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Sir Mortimer Wheeler Prize for excellence in the field of Archaeology. He obtained gold medal for securing highest marks in the subject of Archaeology and got Maulana Azad Gold Medal and Centenary Gold Medal for Standardization in Archaeology. He undertook exploration work in Himalayan Valley in India as well as in Bengal, Bihar, Tamil Nadu, Andhra Pradesh, Rajasthan and Uttar Pradesh. He started excavation work as a student of M.A. in 1952. He claims to have undergone excavation work at Kaushambi, Nagarjuna, Konda (Andhra Pradesh), Tamil Nadu, Konnatur, Gilund (Rajasthan), Kalibangan (Rajasthan), Sardargarh (Rajasthan) and Ayodhya. Besides, abroad also, in France he has done excavation work. He is connected to the Museum and Archaeological work with countries like, France, Germany, England, America, Russia, Mongolia, China, Japan, Israel, Egypt, South America etc. Abroad, he performed three types of work, (1) Archaeological survey, (2) Lecture series and (3) Archaeology and Museology related work. He was Director of Centre for Research in Archaeology, History and Palaeo Environment regulated by Indian Archaeological Society.

514. Explaining about the Archaeology he submits that there are two steps in Archaeology (1) excavation and (2) exploration. Besides, Epigraphy and Art History also have importance in Archaeology. He claims to have visited the disputed place as an Expert Archaeologist. With respect to the Archaeological work at the disputed site, the Archaeological finds obtained in 1992 at the disputed site and about description of material etc., OPW-3 said:

> *"मैं इस वाद से संबंधित स्थल एवं विवादित स्थल एवं उसकी इमारत को जानता हूँ। यह इमारत गिर चुकी है। मैं विवादित स्थल में इमारत गिरने के पहले एवं इमारत गिरने के बाद दोनों बार गया हूँ* ***मैं***

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वहाँ एक पुरातत्ववेत्ता होने के नाते गया था। *विवादित स्थल पर गिरने से पहले मैंने उस इमारत को देखा था। पुरातत्ववेत्ता के नाते मैंने वहाँ उत्खनन कार्य किया था। यह कार्य मैंने 1992 में किया था। इसके पहले 1975 में प्रो0 बी0बी0लाल की खुदाई में कुछ दिनों के लिए सम्मिलित हुआ था। प्रो0 बी0बी0लाल उस समय इंडियन इंस्टीट्यूट आफ एडवांस स्टडी शिमला के डायरेक्टर होते थे। बी0बी0 लाल की खुदाई के प्रोजेक्ट का नाम आर्कियोलाजी आफ रामायण रिलेटेड साईट था। रामायण रिलेटेड साईट श्री राम के जन्मस्थान से लेकर उनके वनगमन तक के स्थानों का सर्वेक्षण एवं उत्खनन से संबंधित था इस स्थान पर प्रो0 लाल से पहले 1970 के लगभग प्रो0 ए0 के0 नारायण बनारस हिन्दू विश्वविद्यालय ने उत्खनन कराया था। इन दोनों की अलग–अलग शार्ट (संक्षिप्त) रिपोर्ट इन्डियन आर्कियोलोजी के रिव्यू नामक भारत सरकार की पत्रिका में समय समय पर प्रकाशित हुई थी। मैंने इन रिपोर्टों को पढ़ा।''*

''I know the site related to the suit and the disputed site as also its building. This building has collapsed. I have gone to the disputed site twice- both prior and subsequent to the demolition of the building. ***I had gone there as an archaeologist****. I had seen the disputed site prior to the demolition of the disputed site. I had undertaken excavation work there as an archaeologist. I had done this work in 1992. Earlier in 1975, I had taken part in the excavation by B.B. Lal for a few days. at that time Prof. B.B. Lal was director of Indian Institute of Advance Study at Shimla. The excavation project of B.B. Lal was titled 'Archaeology of Ramayana- related site. The Ramayana-related site project was related to the survey and excavation of places from the birth place of Sri Rama to the path of His journey to forest. Before Prof. B.B. Lal, around 1970, Prof A.K. Narayana of Benares Hindu University had undertaken excavation work at this place. Separate short reports of these two ones were published from time to*

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time in a Government of India journal titled 'Review of Indian Archaeology'. I went through these reports"

"इस विवादित स्थल पर मैं 1991 में बतौर पुरातत्व के विशेषज्ञ की हैसियत से श्री वी0 पी0 सिंह उस समय के प्रधानमंत्री के द्वारा स्थापित एक कमेटी के सदस्य के रूप में गया था। मैंने वहॉ जाकर अध्ययन भी किया और फोटो भी लिया और कमेटी के सभी सदस्यों को उस इमारत की वस्तुओं को दिखाया भी। मैंने उस स्थल के, उस इमारत के भीतर और इमारत के बाहर के चित्र भी लिये थे। 1992 में जुलाई एवं अक्टुबर मास में गया था। उस समय भी मैंने फोटोग्राफ लिये थे। पहली बार जुलाई मास के प्रारम्भ में 2 और 3 तारीख को मैंने चालीस से अधिक पुरातात्विक वस्तुओं के अध्ययन के लिए गया था जिसके विषय में 18 जून, 1992 में अखबारों में छपे बयानों की समीक्षा के लिए गया था उसके पश्चात जुलाई के मध्य में स्वयं उत्खनन के लिए भी गया था। दुबारा जो मैंने उत्खनन किया मैंने उसमें पाया कि 18 जून को जितने भी शिलाखण्ड मिले थे वे एक बहुत बड़े प्राचीन गढढे में पड़े थे ***मैंने यह भी पाया कि इस स्थल पर कई संस्कृतियों के अवशेष थे और आखिरी अवशेष उन वस्तुओं के थे जो मध्ययुगीन संस्कृतियों से संबंधित थे।*** *इमारत के गिरने के बाद मैं 12 दिसम्बर 1992 में वहॉ गया था उसके पश्चात 1997–1998 तथा 1999 में भी गया था। मैंने तथा मेरे तीन सहयोगियों ने प्रो0 बी0आर0 ग्रोवर, श्री देवेन्द्र स्वरूप अग्रवाल, एक का नाम मुझे इस समय याद नहीं आ रहा है फिर कहा कि चार लोगों ने मिलकर सुप्रीमकोर्ट को एक अर्जी दी थी उसमें हमने प्रार्थना की थी कि इन वस्तुओं की जो वस्तुये 6 दिसम्बर 1992 के दिन एवं उसके बाद भी जनवरी के 1993 की निकली हुई वस्तुओं का पूर्ण संरक्षण कराया जाये एवं जितने शिलालेख मिले हैं उन सब का स्टैम्पेज कराया जाये और उसे विद्वानों को पढ़ने के लिए उपलब्ध कराया जाय।"*

"In 1991, I visited this disputed site as an archaeological expert (and) as a member of a committee constituted by the then Prime Minister, Sri V.P. Singh. By going there I carried out study, took photographs and showed objects of the building to all the members of the committee. I took photographs of that site as also of the

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interior and exterior parts of that building. I visited there in July and October of 1992. I took photographs at that time also. For the first time, in the beginning of July – on its second and third days, I went there to make study on more than 40 archaeological objects. I went there to review the statements on them published in news papers on 18th June 1992. After that, in the middle of July, I myself went there for excavation, too. I undertook excavation work for the second time and found that those stone blocks which were found on 18th June were lying in a very big old pit. ***I also found that there were remains of several cultures at this place and the last remains were of those objects which were related to medieval cultures****. After the demolition of the building I went there on December 12, 1992. After that I went there in 1997-1998 and 1999 as well. I and three of my colleagues- Prof. B.R. Grover, Sri Devendra Swaroop Agarwal and yet another person whose name I do not remember at present (then stated four persons) collectively moved an application to the Supreme Court praying for complete protection of these objects, including those discovered on 6th December, 1992 and even thereafter – January, 1993 and also for estampage to be done of all those inscriptions which have been discovered and for them to be made available to scholars for being deciphered."*

"हमारे प्रार्थना पत्र पर माननीय उच्चतम न्यायालय ने यह निर्णय दिया था कि भारत सरकार उन सभी वस्तुओं की पूर्ण सुरक्षा प्रदान करे एवं शिलालेखों के इस्टैम्पेज एवं छापे भारत सरकार के द्वारा कराकर सुरक्षित रखा जाये। माननीय उच्चतम न्यायालय के सभी आदेशों का पूर्ण रूप से पालन किया गया यद्यपि पूर्ण सुरक्षा में उस समय कुछ खामियॉ रह गयी थी जो कालान्तर में ठीक कर ली गयी। यह इस्टैम्पेज मेरी जानकारी में

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*भारतीय पुरातत्व सर्वेक्षण के विशेषज्ञ श्री कट्टी ने जो कर्नाटक के रहने वाले हैं उन्होंने तैयार कराया था। आर्कियोलाजिकल सर्वे आफ इंडिया का संक्षिप्त नाम ए0एस0आई0 है ए0एस0आई0 भारत सरकार की एक संस्था है यह इस्टैम्पेज श्री एम0एन0कट्टी ए0एस0आई में उन दिनों डायरेक्टर ऐपीग्राफी हुआ करते थे। सुरक्षित रखे जाने के बाद मैंने आर्टिकल्स को देखा था। **इन आर्टिकल्स की वीडियोग्राफी भी हुई थी** वीडियों ग्राफी के समय मैं मौजूद था मेरे अलावा और लोग भी थे उन लोगों में प्रो0 बी0आर0 ग्रोवर, डा0 सुधा मलैया डा0 डी0पी0दुबे आदि थे। इमारत गिरने के पहले इमारत गिरने बाद दोनों समय जब मैंने फोटोग्राफ लिये तो अन्य विशेषज्ञ भी थे।''*

*''On our application the Hon'ble Supreme Court ordered the Government of India to provide full protection to all those articles and for estampage of the inscriptions to be kept preserved by the Government of India. All the orders of Hon'ble Supreme Court were fully complied with. At that time there were some latches in providing full protection which were later rectified. This estampage was, in my knowledge, prepared by an expert of Indian Archaeological Survey named Sri Kutti, hailing from Karnataka. Abbreviation for Archaeological Survey of India is A.S.I.. A.S.I. is an institution of Government of India. Sri M.N. Kutti, who undertook this estampage, was then director (epigraphy) with A.S.I. I saw the articles after their being preserved. **These articles were even videographed**. At the time of videography I was present. Besides me, there were certain other persons. Among them were Prof. B. R. Grover, Dr. Sudha Malaiya, Dr. D.P. Dubey and so on. When I took photographs both prior to and subsequent to the demolition of the building, other experts were also present.''*

''इस मरहले पर उत्तर प्रदेश पुरातत्व संगठन द्वारा निर्मित विवादित

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ढांचे की ब्लेक एंड ह्वाईट एलबम में रखे चित्रों को गवाह को दिखाया गया गवाह ने एलबम के फोटोग्राफ संख्या 1 से लेकर 107 को देखकर कहा कि यह सभी फोटोग्राफ इमारत के अन्दर, बाहर तथा उसके आस पास के हैं। (उत्तर प्रदेश पुरातत्व संगठन लखनऊ द्वारा निर्मित विवादित ढांचे के रंगीन चित्रों के एलबम को गवाह को दिखाया गया जिसको देखकर गवाह ने कहा कि इस एलबम की फोटो संख्या 1 लगायत 201 मैंने इन फोटों को गौर से देख लिया है यह फोटोग्राफ्स उस इमारत के हैं उसके भीतर बाहर के हैं एवं आस पास के हैं।)''

''In this behalf, pictures in the black and white album on the disputed structure prepared by Uttar Pradesh Puratatva Sangathan were shown to the witness. Seeing photograph nos. 1 to 107 of the album, the witness stated that all these photographs represent the interior, exterior and adjacent parts of the building. When the coloured album on the disputed structure prepared by Uttar Pradesh Puratatva Sangathan, Lucknow was shown to the witness he stated : 'I have closely seen photograph nos. 1 to 201of this album. These photographs are of the building and represent its interior, exterior and adjoining parts'.''

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''गवाह का ध्यान अन्य मूलवाद संख्या 5/89 में दाखिल कागज संख्या 118 सी1/35 की ओर दिलाया गया जिसे देखकर गवाह ने कहा कि–यह एक स्पेशल पब्लीकेशन है यह मैगजीन एक हिस्टोरियन फोरम दिल्ली की एक इतिहासविद्ों की संस्था के द्वारा प्रकाशित हुई थी। यह प्रकाशन कई पृष्ठों का है। यह 118 सी1/35 जो दस पन्नों यानि 20 पृष्ठ का है। जिस संस्था ने इस पुस्तिकों को प्रकाशित किया है मैं भी उसका एक सदस्य था अन्य सदस्यों में डा0 वाई0डी0 शर्मा , डा0 के0एम0 श्रीवास्तव, प्रो0 ए0पी0नौटियाल, प्रो0 वी0आर0 ग्रोवर, डा0 सरदेन्दु मुखर्जी, श्री देवेन्द्र स्वरूप अग्रवाल एवं डा0 सुधा मलैया थे। यह सबके सब पुरातत्व वेत्ता अथवा इतिहासकार थे।''

''The attention of the witness was drawn to paper no. 118C1/35 filed in Other Original Suit no. 5/89 seeing

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which he stated – it is a special publication. This magazine was published by Historians Forum, a Delhi-based institution of historians. It runs into many pages. This paper, 118C1, has 10 sheets, i.e., 20 pages. I am also one of the members of the institution which has published this magazine. Other members included Dr. Y.D. Sharma, Dr. K.M. Srivastava, Prof. A.P. Nautiyal, Prof. B. R. Grover, Dr. Sardendu Mukherjee, Sri Devendra Swaroop Agarwal and Dr. Sudha Malaiya. All of them were archaeologists or historians."

"गवाह का ध्यान अन्य मूल वाद सं0 5/89 में दाखिल प्रकीर्ण प्रार्थना पत्र सं0 25 ओ/1999 के साथ दाखिल सूची संख्या 286 सी/1 ता 4 की ओर दिलाया गया जिसे देखकर गवाह ने कहा मैंने इसके साथ दाखिल फोटो एलबम कागज संख्या 286 सी 1/4 ए के सभी फोटोग्राफ्स भलीभांति देख लिये हैं जो संख्या में कुल 64 हैं। इस एलबम में जितने भी चित्र हैं जिनमें आदमी नहीं है वे सब के सब विवादित स्थल से ही संबंधित हैं। फोटो संख्या 1 विवादित स्थल की है किन्तु फोटो सं0 2 विवादित स्थल की नहीं है यह सब फोटोग्राफ्स विवादित इमारत के गिरने के बाद लिये गये हैं। जिस समय यह फोटोग्राफ्स खिंचे गये थे उस समय मैं वहॉ उपस्थित थ। उस समय विभिन्न पक्षों के अधिवक्तागण मौजूद थे। फोटो सं0 2 में उस समय के तत्कालीन कमिशनर श्री एस0पी0 सिंह मौजूद थे। वह इस फोटो में मौजूद हैं।"

"The attention of the witness was drawn to list nos. 286C/1 to 4 filed with Application no. 25O/1999 filed in Other Original Suit no. 5/89 seeing which he stated - I have properly seen all the photographs of album filed along with it and marked as paper no. 286C1/4 which are in all 64 in number. All the pictures that this album has, except for the ones representing men, are related only to the disputed site. Photograph no. 1 represents the disputed site but photograph no. 2 does not represent the disputed site. All

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these photograph after the fall of the disputed building. I was present there at the time when these photograph were taken. Counsels for different parties were present at that time photograph no. 2 shows the presence of the then commissioner Sri S. P. Singh. This photograph shows his presence."

"गवाह का ध्यान अन्य मूलवाद सं0 5/89 में दाखिल कागज संख्या 254 सी/3 जो 82 पृष्ठों का है की ओर दिलाया गया जिसको देखकर गवाह ने कहा कि यह इतिहास दर्पण पत्रिका है जो वैलूम 3 नम्बर 2 है यह दिसम्बर 1996 का है। पृष्ठ 62 से पृष्ठ 72 तक तथा पत्रिका में टेबिल 4 तथा उसके पुस्त पर एपियोग्राफी टेबिल 1 जो छपी है उसका मतलब उस शिलालेख की विषय वस्तु है, राजा आयुषचन्द्र जो अयोध्या का राजा था उसने जन्मभूमि पर एक विशाल पत्थरों से निर्मित मन्दिर बनवाया था जिसके शिखर पर स्वर्ण कलश लगवाया था इस मंदिर को उसने विष्णु हरि देवता को समर्पित किया था।"

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"The attention of the witness was drawn to the 82-page paper no. 234C/3 filed in other Original Suit no. 5/89 seeing which he stated – It is a journal titled 'Itihaas Darpan', which is volume 3 and number 2. It is December, 1996 issue. Pages 62 to 72 and table 4 in the journal and epigraphy table 1published on its back, stand for the contents of that inscription which shows King Ayush Chandra, king of Ayodhya, who had constructed a large stone temple at Janam Bhumi with a gold pitcher carved out on its dome. He had dedicated this temple to a deity called Vishnu Hari."

"गवाह ने बयान जारी करते हुए कहा कि इसका टाईटिल है अयोध्या का विष्णु हरि मंदिर शिलालेख। इसके कन्टेन्टस पृष्ठ सं0 66 तक जाते हैं। पृष्ठ सं0 67 पर इसी विषय पर एक शार्ट नोट आनदि विष्णु हरि टैम्पल इन्सक्रपशन आफ आयुष चन्द्र है। पहले के लेखक डा0 जी0सी0 त्रिपाठी और डा0 डी0पी0 दूबें हैं। पृष्ठ सं0 69 का विषय है पैलियोग्राफिक

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इवीडेन्स आफ दि अयोध्या इन्शक्रप्शन। इस लेख के लेखक डा0टी0पी0 वर्मा हैं। यह अब रिटायर रीडर बनारस हिन्दू विश्वविद्यालय हैं। यह उस विभाग के प्रध्यापक थे जिसे ऐन्शियन्ट इण्डियन हिस्ट्री कल्चर एन्ड आर्कियोलोजी विथ इस्पेशलाईजेशन इन पेलियोग्राफी कहते हैं। इनका स्पेलाईजेशन पेलियोग्राफी में है। मैं डा0 जी0सी0 त्रिपाठी एवं डा0 दूबे को जानता हूँ। डा0 जी0सी0त्रिपाठी डायरेक्टर हैं। सर गंगा नाथ झा रिसर्च इन्स्टीट्यूट इलाहाबाद के। डा0 त्रिपाठी का स्पेशलाईजेशन ऐपीग्राफी में है। डा0 डी0 पी0 दूबे का स्पेशलाईजेशन ऐपीग्राफी है यह इलाहाबाद विश्वविद्यालय में ऐन्सियेन्ट हिस्ट्री कल्चर एन्ड आर्कियोलोजी विभाग में रीडर है। मैंने इन दोनों विद्वानों को लिखते पढ़ते देखा है। ''

''Giving statement the witness stated – Its title is 'Vishnu Hari Mandir inscription of Ayodhya'. It contents go up to page no. 66. On this very subject there is short note on page no. 67 which reads as 'Anadi Vishnu Hari Temple Inscription of Ayush Chandra.' The former is jointly written by G.C. Tripathi and Dr. D.P. Dubey whereas the writer of the second one is T.P. Verma. Then stated – Its writers are G.C.Tripathi and T.P. Dubey. The subject of page no. 69 is 'Palaeographic Evidence of the Ayodhya Inscription'. The author of this article is Dr. T.P.Verma. He is now a retired Reader of Benares Hindu University. He was a professor in a department called Ancient Indian History, Culture and Archaeology with specialisation in Palaeography. His specialisation was in palaeography. I know Dr. G.C. Tripathi and Dr. Dubey. Dr. G.C. Tripathi was director with Sir Ganga Nath Jha Research Institute, Allahabad. Dr. Tripathi has specialisation in Epigraphy. Dr. D.P. Dubey has specialisation in Epigraphy. He is a reader in the department of Ancient Indian History, Culture and Archaeology at University of Allahabad. I have seen both of these scholars imparting lessons and giving dictations.''

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''इस मरहले पर पेपर संख्या 254 सी 1/8 पर गवाह का ध्यान दिलाया गया जिसे देखकर गवाह ने कहा कि इस पर डा0 डी0पी0 दूबे और डा0 जी0सी0 त्रिपाठी के हस्ताक्षर हैं। (गवाह का आगे बयान जारी रखते हुए वादी के विद्वान अधिवक्ता श्री वीरेश्वर द्विवेदी ने गवाह का ध्यान मूल वाद सं0 5/89 में दाखिल पेपर संख्या 107 सी 1/166 की ओर दिलाया जिसको देखकर कहा कि यह 107 सी 1/166 से 107 सी 1/186 तक है इसका विषय वस्तु रामजन्मभूमि कन्ट्रोवर्सी पैसन्स ए पार्ट व्हाट हिस्ट्री एन्ड आर्कियोलोजी हैव टू से आन दिस इश्यू। यह आर्टिकल मेरा लिखा हुआ है। यह 1990 में लिखा गया ध्यान में आता है।) (गवाह ने बयान जारी रखते हुए कहा कि यह लेख मैंने सबसे पहले 22 दिसम्बर 1989 में प्रसीडेंशियल एड्रेस के रूप में इण्डियन आर्कियोलाजिकल सोसायटी के 23 वे वार्षिक कान्फेंस में दिया था जो केवल मात्र फोटो स्टेट के द्वारा प्रकाशित किया गया था। वादी के विद्वान अधिवक्ता श्री वीरेश्वर द्विवेदी ने गवाह का ध्यान अन्य मूल वाद सं0 5/89 में दाखिल पेपर सं0 118 सी 1/65 से 118 सी 1/114 तक दिलाया जिसे देखकर गवाह ने कहा यह लेख मेरा ही लिखा हुआ है यह इतिहास दर्पण के वैलूयम 2 नम्बर 1 एन्ड 2 1995) गवाह ने बयान जारी रखते हुए कहा कि यह वही मैगजीन है जिसका मैंने पहले जिक्र (वर्णन) कर चुका हूँ। यह लेख 1993 में लिखा गया प्रतीत होता है। वादी के विद्वान अधिवक्ता श्री वीरेश्वर द्विवेदी ने गवाह का ध्यान अन्य मूल वाद सं0 5/89 में दाखिल कागज सं0 118 सी 1/115 से कागज सं0 118 सी 1/128 तक दिलाया जिसे देखकर गवाह ने कहा कि यह 1992 में लिखा गया था। यह लिखा तो मेरे ही द्वारा गया था। 10 अक्टुबर से 13 अक्टुबर 1992 में अयोध्या नगरी में एक नेशनल सेमीनार इन्डियन हिस्ट्री एन्ड कल्चर सोसायटी के द्वारा आयोजित किया गया था उस आयोजन में मैंने शिरकत की थी। उस समय उस सम्मेलन में पुरातत्व वेत्ता एवं इतिहास कार सम्मिलित हुए थे। अन्य मूल वाद सं0 5/89 के कागज सं0 118 सी 1/129 से लेकर 118 सी 1/144 तक गवाह का ध्यान दिलाया गया जिसे देखकर गवाह ने कहा कि यह कागज उपरोक्त सेमिनार से ही संबंधित है। आगे गवाह ने बयान जारी रखते हुए कहा कि लगभग 40 विद्वान इसमें सम्मिलित हुए थे जिनमें से डा0 वाई0डी0शर्मा, प्रो0 वी0पी0 सिन्हा, श्री आर0सी0 अग्रवाल, प्रो0 के0वी0 रमन आदि थे। तीन दिन के इस सेमीनार में विवादित स्थल का

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दौरा और मुआयना हुआ था उस पर चर्चा हुई थी और अन्त में रिज्यूलेशन पास हुए थे। यह कागज जो रेल्येलूशन पास हुए थे उनके टैक्सट्स है और जितने विद्वान वहॉ आये थे उन सबके हस्ताक्षर हैं। इनके साथ जितने भी फोटोग्राफ्स संलग्न हैं वे सभी विवादित स्थल से प्राप्त वस्तुओं के ही हैं।''

''In this behalf, the attention of the witness was drawn to paper no. 254C1/8 seeing which the witness stated – It bears signatures of Dr. D.P. Dubey and Dr. G.C. Tripathi. Further continuing the statement of the witness, learned counsel for the plaintiff Sri Vireshwar Dwivedi drew the attention of the witness to paper no. 107C1/166 filed in Original Suit no. 5/89 seeing which he stated – It ranges from 107C1/166 to 107C1/186. Its content is 'Ram Janam Bhumi Controversy: Passions apart What History and Archaeology Have to Say on This Issue.' This article is authored by me. It was, to my memory, written in 1990. Continuing his statement the witness stated – I delivered this article for the first time on 22nd December, 1989 as presidential address at 23rd annual conference of Indian Archaeological Society and it was published only through its photo stat. Sri Vireshwar Dwivedi, learned counsel for the plaintiff drew the attention of the witness to paper nos. 118C1/65 to 118C1/114 filed in Other Original Suit no. 5/89 seeing which the witness stated – this article is written only by me. It is contained in 'Itihaas Darpan', volume 2, nos. 1 and 2, 1995. Continuing his statement the witness submitted that this is that very magazine which I have already referred to. This article appears to be written in 1993. Sri Vireshwar Dwivedi, learned counsel for the plaintiff drew the attention of the witness to paper no. 118C1/115 to paper no. 118C1/128 filed in Other Original Suit no. 5/89 seeing which the witness submitted that this

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paper is related to the aforesaid seminar itself. Continuing his statement the witness stated that it was attended by nearly 40 scholars, including Dr. Y.D.Sharma, Prof. V.P. Sinha, Sri R.C. Agarwal, Prof. K.V. Raman and so on. During this three-day seminar the disputed site was visited and inspected and discussion was held thereon and resolutions were ultimately passed. This paper contains the text of the resolution passed and bears signatures of all those scholars who had assembled there. All those photographs which are annexed thereto, are only of all the articles discovered from the disputed site."

"मैंने इन वस्तुओं को जिस स्थान पर रखे गये थे वहीं पर जाकर देखा था। उस इमारत में मैंने 14 काले पत्थर के स्तम्भ देखे थे जो मेरी राय में निश्चित रूप से किसी हिन्दू मंदिर के ही अवशेष थे। यह स्तम्भ जिन्हें वहीं की लोकल भाषा में कसौटी पत्थर कहते थे वे वास्तव में शिष्टास नामक पत्थर के द्वारा बनाया गया था। इसका हिन्दी शब्द मुझे नहीं मालूम लेकिन यह जियोलोजिकल टर्म है।"

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"I had made on-the-spot observation of these things at the places where they were kept. I had seen 14 black stone pillars in the building which were, in my opinion, definitely remains only of some Hindu temple. These pillars which were said to be made of kasauti stone in local parlance, were actually made of a stone type known as 'Schist'. I do not know its Hindi word but it is a geological term."

"शिष्टोज़ पत्थर सेडीमेन्ट्री राक की कटेगरी में आता है जिसका रंग काला और गहरा नीला होता है। यह सभी स्तम्भ काले रंग के थे। इन स्तम्भों पर हिन्दू देवी देवताओं के चित्र हिन्दू प्रतीको के चित्र, हिन्दुओं में पुण्य माने जाने वाले फूल पत्तियों और पक्षियों के चित्र एवं पूर्ण घट जैसे वस्तुओं के चित्र उकरे गये थे। इन खम्भों के बनावट की शैली को गहड़वाल शैली कहते हैं। यह ग्यारहवीं और बारहवीं शताब्दी में उत्तर

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भारत में प्रचलित शैली थी। इस काल में कन्नौज में महाराजा गोविन्द्रचन्द्र राज्य करते थे ये गहड़वाल वंश के थे। यह खम्भे उस स्थान पर लगे थे जिनके ऊपर इमारत का कुछ हिस्सा अपने भार को रखे हुए था। इन खम्भों को सबसे पहले मैंने 1975 में देखा था। स्तम्भों के अलावा मुझे जुलाई 1992 में लगभग 40 ऐसे शिलाखण्ड भी देखने को मिले जो 18 जून 1992 में उत्खनित हुए थे और जिनकी बनावट और नक्काशी के आधार पर मैं निश्चित रूप से कहता हूँ कि वे किसी हिन्दू मंदिर के ही अवशेष थे। यह उत्खनन उस समय उत्तर प्रदेश सरकार के द्वारा भू समतलीकरण के दौरान मिला था मैं वहां अपने और विशेषज्ञों के साथ 2 और 3 जुलाई को पहुँचा था उनके अध्ययन के लिए क्योंकि इस खोज की खबर कई अखबारों में छप चुका था और हमारे लिए स्वाभाविक जिज्ञासा थी कि हम उनका अध्ययन करते। यह सच है कि 26 जनवरी 2001 को जो गुजरात में भूचाल आया था और जिसके विषय में अखबारों में छपा था कि वहॉ अनेक इतिहासिक इमारतें क्षतिग्रस्त हो गयीं हैं उनके निरीक्षण के लिए भी मैं एक पूरी टीम के साथ गुजरात गया था। जो वस्तुओं इमारत के गिरने के बाद पाई गयी थी उनके अध्ययन के लिए भी हम वहॉ गये थे मैं ढांचे के गिरने के पहले और ढांचे के गिरने के बाद दोनों समय जिन वस्तुओं को मैंने देखा उससे यह पाया कि ये दोनों ही प्रकार की सामग्री एक ही विल्डिंग काम्पलेक्स के हैं जिनका संबंध हिन्दू टैम्पल आर्कीटेक्चर से सीधा सीधा है। मेरे इस निष्कर्ष का आधार यह है कि यह दोनों प्रकार की वस्तुओं निम्न प्रकार के मंदिर स्थापत्य से जुड़ें हैं:– 1. आमलक जो हमेशा ही उत्तर भारत के नागर शैली के मंदिरों के उपर शिखर पर लगे होते हैं। 2. छाद्य यह भी मंदिर स्थापत्य का एक हिस्सा होता है जो स्तभ्मों के उपर जहॉ से छत शुरू होती है वहॉ लगा होता है। तीसरा वितान यह छत के नीचे जिसे हम सीलिंग कहते हैं वहॉ पर लगा होता है विशेषरूप से गर्भगृह के सामने अन्तराल में या उसके भी सामने पोर्च मंडप में लगा होता है। चौथा दरवाजे के चौखट के रूप में लगे हुए द्वार स्तम्भ भी होते हैं जिनके उपर देवी देवताओं के चित्र द्वारपाल के चित्र एवं लता वल्लरी भी उकरे गये होते हैं। पूर्ण कुम्भ स्तम्भों के नीचे यह दर्शाये जाते हैं जिससे यह पता चलता है कि द्वार स्तम्भ और सभी स्तम्भ जल से निकलते हैं यक्षगण पूर्ण–घटों को यक्षगणों के कन्धों पर उठाये हुए दिखाया जाता है जिन्हें भारवाहक दैवी शक्तियां कहा जाता है। गंधर्व एवं गंधर्वी मन्दिर के

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अलंकरण में आकाश से धरती में उतरते हुए गंधर्व और गंधर्वी के चित्र होते हैं जो अपने हाथों में फूल की माला लिए हुए होते हैं जो इस बात का प्रतीक है कि आकाश के देवगण भी इस मंदिर की पूजा में रत हैं। लता–उत्तर भारत के नागर शैली के मंदिरों के शिखर पर नीचे से लेकर उपर तक नक्काशीदार फूल पत्ती और डिजाइनें होती हैं जो आमलक के नीचे समाप्त होता है। . . . . . ."

"Schist comes under the category of sedimentary rock whose colour is black and dark blue. All these pillars were black coloured. Images of male and female Hindu deities, Hindu emblems and those of objects like flowers, leaves, birds and full pitchers were engraved on these pillars. The style of construction of these pillars is called Gahadwal Style. It was a style prevalent in northern India in the 11th and 12th centuries. During this period, Kannauj was ruled over by Maharaja Govind Chandra. He belonged to Gahadwal dynasty. These pillars were laid at the place which carried the weight of some portion of the building. I had seen these pillars for the first time in 1975. Apart from the pillars I came across nearly 40 such stone blocks in July, 1992 which were excavated on 18th June, 1992, and on the basis of their construction and carving I can definitely say that they were remains only of some Hindu temple. This excavation came to light during the levelling operation done by Uttar Pradesh Government at that time. I had reached there along with some more experts on second and third July to make study thereon, because news regarding this discovery had been published in many newspapers and it was natural for me to be curious about such study. It is true that an earthquake hit Gujarat on January 26, 2001 about which it was published in news papers that many historical buildings had been

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damaged there. I had gone to Gujarat along with a complete team, also for making their inspection. We had gone there also to make study on those articles which had been found after the fall of the buildings. On observation of objects as they existed prior to and subsequent to the collapse of the structure, I found that both types of materials belonged to one and the same building complex, which has a straight relation to Hindu temple architecture. The premise of this finding of mine is that these two types of things are associated with the following type of temple architecture: 1- 'Aamlak' (myrobalam), which are always affixed to the vertices/domes of Nagar Style temples of northern India. 2- 'Chhadya' – It is also a part of temple architecture and it is fixed above the pillars and at the point from where the roofing begins. 3- 'Vitan' – It is fixed below the ceiling, particularly in the intervening space in front of Garbh-grih (sanctum sanctorum) or in the porch facing it and it has images of male and female deities, porters, climbers and branches engraved on it. 'Poorna Kumbhas' are shown beneath the pillars, which goes on to suggest that the entrance pillar and all pillars are emerging from water. Yakshas – They are shown carrying full pitchers on their shoulders. They are called weight-carrying divine powers. Gandhrva and Gandharvi – Temples, for decoration purposes, have images of Gandhrvas and Gandharvis descending from space to the earth, with garlands in their hands. It signifies that even deities of space are engrossed in the worship of this temple. Lata(climbers) – From bottom to the top Nagar Style temples of the northern India have engraved flowers leaves

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and designs which end below the Aamlak."

"इसके अतिरिक्त स्तम्भों के शीर्ष अथवा कैपिटल भी मिले हैं जिनकी बनावट कमल की पंखुडियों के हैं जिन्हें हम पद्मवल्लरी कहते हैं यह भी नागर शैली के हिन्दू मंदिरों में ही पाया जाता है। इसके अतिरिक्त अधिष्ठान के 'कपोत' के शिलाखंड भी मिले हैं जो इस बात को दर्शाते हैं कि वे शिला खंड भी हिन्दू मंदिरों के स्थापत्य के हिस्से होते थे। इसके बाद में द्वार– शाखाओं की ओर भी ध्यान दिलाना चाहूँगा जिनके उपर लता–वल्लरी के अलावा भगवान विष्णु की कई मूर्तियॉ थीं। जिन्हें क्षत–विक्षत अवस्था में पाया गया है। अर्थात् जिन्हें जानबूझकर तोड़ा गया था। इसके अलावा मंदिर के 'पीठ' के भी अनेक शिलाखंड मिले हैं जो इस बात को प्रमाणित करते हैं कि जिस मंदिर के अवशेष थे एक ऊँचे अधिष्ठान पर बना था। सभी अवशेषों के भीतर सूर्य और कमल के अलंकृत वे शिलाखंड भी मिले हैं जो मंदिरों के गजथर एवं अश्वथर के ऊपर की मोल्डिंग के हिस्से थे जिनका सीधा संबंध सूर्य से अर्थात् वैष्णव देवता से जुड़ा था। इसके अलावा मंदिर के लींटर पर पूरे खिले हुए कमल एवं अर्ध खिले हुए कमल भी उकेरे गये थे जिनका सीधा संबंध हिन्दू मंदिरों एवं प्रतीको से था। प्रतीकों में विशेषरूप से द्वारा–शाखा के द्वारपालों का जिक्र भी करना चाहूँगा जिनके सिर पर करण्ड मुकुट, जिनके गले में वनमाला, जिनके एक हाथ में शूल एवं दूसरा हाथ वरद मुद्रा में दर्शाया गया है। इस प्रकार के द्वारपाल का चित्र केवल मात्र वैष्णव मंदिरों में ही उपलब्ध होता है अर्थात् जिस मंदिर के द्वारपाल में इस प्रकार की खूबियॉ हो उन्हें देखकर यह निश्चिततौर पर कहा जा सकता है कि वह मंदिर वैष्ण मंदिर ही था। इसे 'साइंस आफ आइकोनोग्राफी' कहते हैं। हिन्दी में इसे 'प्रतिमा लक्षण' की संज्ञा दी जाती हैं। इन्हीं शिलाखण्डों में मैंने वे शिलाखंड भी देखे हैं जो 'बीम' के रूप में इस्तेमाल किये गये हैं उनकी नक्काशी भी उसी प्रकार की थी जिस प्रकार की नक्काशी हमें बारहवी शताब्दी के उत्तर भारत के मंदिर में उपलब्ध होता है। अन्त में वैसे तो और भी अनेक शिलाखंड मैंने वहॉ पाये है जो बारहवीं शताब्दी के वैष्णव मंदिर के हैं किन्तु फिर भी मैं उन तीन शिला लेखों का भी विशेष जिक्र करना चाहूँगा। जिनको पुरालिपि शास्त्र के विद्वानों ने पढ़कर यह बताया है कि यह मंदिर जहॉ के शिलालेख हैं और मंदिर हरिविष्णु के उस देवता को समर्पित है जिसने बलिराजा का मान मर्दन किया था और दशानन को भी ऐसा ही

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करके समाप्त कर दिया था।''

''Besides this, capitols of pillars have been discovered which are shaped like lotus petals, which we call 'padmavallari'. Even this characteristic is seen in the Nagar Style Hindu temples. Besides stone blocks of 'Adhisthan's Kapot' have also been discovered which go on to show that even those stone blocks used to be parts of architecture of Hindu temples. After this I would also like to draw attention to 'Dwar Shakhas' above which, besides climbers and branches there were many images of Lord Vishnu which have been found in dilapidated state, that is to say, which have been broken deliberately. Besides, many stone blocks also of the back of the temple have been discovered, which fact go on to establish that the temple, of which they were the remains, was built on an elevated base. Among the remains Sun and lotus decorated stone blocks have also been found which were parts of the moulding above 'Gajthar' and 'Ashwathar' of temples and which were directly associated with the sun or the Vaishnava or the Vaishnavite deity. Besides these, fully as well as semi blossomed lotus were also engraved over the lintier of the temple, which are directly related to the Hindu temples and symbols. I would like to particularly refer to the Dwarpals (gatekeeper) at the Dwarshakha (gate) which had Karand throne over head and Vanmala (garland) around the neck, and a spear in one hand and the other hand being in form of blessing. Such figures of Dwarpals are to be found only in Vaishnav temples i.e. the temples which have such characteristics in their Dwarpals, can certainly be called Vaishnav temples. It is called the

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science of Iconography, and 'Pratima Lakshan' in Hindi. Amongst these stone blocks, I have seen those stone blocks as well which have been used as beam. Their engraving is also like the engravings available in temples of north India of the twelfth century. Although I have found many other stone blocks over there, which are of Vaishnav temple of twelfth century, still I would like to specially refer to three inscriptions, which have been deciphered by the scholars of lithography to the effect that the temple, to which these inscriptions belong, is devoted to that form of Hari Vishnu, who diminished the pride of king Bali as also of Dashanan."

''वादी के विद्वान अधिवक्ता श्री वीरेश्वर द्विवेदी ने गवाह का ध्यान अन्य मूलवाद सं0 5/89 में दाखिल उत्तर प्रदेश पुरातत्व संगठन द्वारा निर्मित श्वेत एवं श्याम एलबम की फोटो (चित्रों) की ओर दिलाया चित्र सं0 55 को देखकर गवाह ने कहा कि मेरा यह बयान है कि इसमें स्तम्भ के सबसे नीचे भाग में एक पूर्ण–घट है जो दो भारवाहक यक्षों के कन्धे पर उठाया गया है पूर्ण–कुम्भ में से लता–वल्लरी निकलते हुए दर्शाया गया है पूर्ण घट के मध्य में से एक कमल का फूल निकलता हुआ दर्शाया गया है जिसके फूल के ऊपर एक देव कन्या का चित्र है जिसे कुरेद कर नष्ट किया गया है इसके उपर स्तम्भ का मध्य भाग है जिसमें आठ कैसेट हैं। इसके ऊपर एक मालादल है अर्थात् मालाओं की एक लड़ी है। इसके ऊपर अन्त में शीर्ष या कैपिटल है जिसके ऊपर की नक्काशी में कमल दर्शाया गया है। चित्र सं0 56, 57, 58 को देखकर गवाह ने कहा कि यह तीनों ही चित्र एक ही स्तम्भ के नहीं हैं किन्तु चित्र सं0 56 और 57 एक ही स्तम्भ के हैं। चित्र सं0 55, 56 और 57 के डिटेल्स मैंने ऊपर लिखा दिये हैं जो सभी के सभी हिन्दू मंदिरों के स्तम्भों से संबंधित हैं। चित्र सं0 58 का चित्र एक दूसरे काले पत्थर के स्तम्भ का है जिसके ऊपर नक्काशी भी लगभग इसी प्रकार की है जिससे यह ज्ञात होता है कि ये दोनों पत्थर के स्तम्भ मंदिर के एक ही भाग में प्रयुक्त हुए होगें। चित्र सं0 59, 60, ही स्तम्भ के ऊपर और नीचे के डिटेल्स फोटोग्राफ्स हैं और इनमें भी वही

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विशेषतायें हैं जिनका जिक्र मैंने ऊपर किया है। चित्र सं0 61 व 62 एक दूसरे काले पत्थर के स्तम्भ के चित्र हैं। यद्यपि कि इनकी मुख्य विशेषताये वहीं हैं किन्तु इसमें आमलक जैसी दो पट्टिकाएं भी हैं जो निश्चित तौर पर बारहवी शताब्दी के मंदिरों में ही प्रतीक के रूप में दिखाये जाते हैं। चित्र सं0 64, 65 और 66 भी काले पत्थर के स्तम्भ के चित्र हैं जिनकी बनावट और जिनके ऊपर का अलंकरण भी उन्हीं प्रतीकों से भरा है जो बारहवीं शताब्दी के हिन्दू मंदिरों की विशेषता होती है। 63 नम्बर का चित्र खम्भे के नीचे का चित्र है जिसके ऊपर का अलंकरण टूटे हुए यक्षों के चित्र पूर्ण–घट से निकलते हुए कमल का चित्र एवं फूल–पत्तियों के चित्र से सज्जित हैं। इसका जिक्र मैं ऊपर कर चुका हूँ। चित्र सं0 71, 72,73 के चित्र भी एक दूसरे काले शिष्टास पत्थर के खम्भे का है जिसकी नक्काशी थोड़ी भिन्न है इसके ऊपर नीचे की ओर यक्ष और पूर्ण–घट हैं किन्तु पूर्ण घट से निकलते हुए कमल के साथ साथ दूसरी ओर एक दूसरा पुष्प है इस स्तम्भ पर मालायें भिन्न प्रकार की हैं तथा इनके शीर्ष अथवा कैपिटल पर उकेरे गये पत्र–पुष्पदल ऊपर से नीचे की ओर गिरते हुए दिखाये गये हैं अतः यह स्तम्भ भी बारहवीं शताब्दी के मंदिर के ही हैं। चित्र सं0 74 के खम्भे का डिटेल 76 नम्बर पर है जिसमें एक कोण पर पूर्ण–घट में से निकलता हुआ एक पुष्प है चित्र सं0 87, 88, 89, 90, 91, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106 को दिखाकर वादी के वकील के प्रश्न के उत्तर में गवाह ने बताया कि चित्र सं0 87, 88 दोनों ही चित्र संख्या 86 के डिटेल्स फोटोग्राफ्स हैं। ये स्तम्भ भी काले शिस्टोज पत्थर के टुकड़े से बनाया गया था इस पर भी जो चित्र मैं देख रहा हूँ वे सब बारहवीं शताब्दी के हिन्दू मंदिर के ही प्रतीक चिन्ह हैं। चित्र 87 के चित्र में सबसे ऊपर पुष्प पंखुडियों के मध्य से निकलते हुए माला पंक्तियों में दर्शाये गये हैं उसके नीचे मध्य भाग में दो पैनल हैं ऊपरी पैनल अर्द्ध चन्द्राकार रूप में हैं जिनके उपर पुष्पों की पुंखडियॉ हैं। उनको इस प्रकार से दिखाया गया है मानों एक कमल अपने पेरीकार्प के ऊपर पंखुडियों के दल से सज्जित है। इसके नीचे के पैनल में चार कमलों और उनकी धुमावदार पंखुडियों के रिपीट होते हुए पैनल हैं ये दोनों ही प्रतीक भारतीय मंदिर स्थापत्य के भीतर मिलते हैं जो सम्पूर्ण भारतीय साहित्य में हिन्दू प्रतीकों के नाम से जाने जाते हैं। चित्र सं0 89, 90 तथा 91 भी एक अन्य स्तम्भ के विभिन्न भागों को दर्शाते हैं इनके शीर्ष पर उल्टे पत्तीदार प्रतीक

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हैं जबकि मध्य में वनमाला और मणि का प्रतीक है चित्र सं0 91 में पूर्ण घट से निकलते हुए पुष्प वल्लरी एवं पत्तों के चिन्ह हैं जिनसे यह स्पष्ट होता है कि पूर्ण घट में जल था और उस जल से सभी हिन्दू प्रतीक निकल रहे थे। यह भी हिन्दू मंदिर स्थापत्य को पूर्ण रूप से दर्शाता है। फोटो सं0 97, 98, 99, 101 भी एक शिष्टोज पत्थर के स्तम्भ के विभिन्न चित्र हैं जिनके ऊपर की नक्काशी भी उसी प्रकार के हैं जिनका जिक्र मैंने पहले कहे गये पत्थर के बारे में किया है। चित्र सं0 101, 102, 103 तक काले पत्थर स्तम्भ के विभिन्न चित्र है जिनके ऊपर देव प्रतिमाओं को कहीं कही नष्ट कर दिया गया है अन्यथा इनकी विशेषताये भी वही है जिनका वर्णन मैं ऊपर कर चुका हूँ। चित्र सं0 104, 105 और 106 भी एक ऐसे ही काले पत्थर के खम्भे से संबंधित है जिनके ऊपर कमल माला, आमलक, पूर्ण घट, यक्ष आदि के चित्र विद्यमान हैं किन्तु चित्र सं0 106 में पूर्णघट से निकलता हुआ कमल दो दलो का है। ऊपर के दल से निकलते हुए एक मोर वल्लरी का चित्र भी है जिसे हल्की सी क्षति पहुँचाई गयी है और इसके फेसेट्स है अर्थात् एक मोर है मोर के पीछे पंख हैं जो ऊपर की ओर जा रहे हैं और वल्लरी रूप में गिर रहे हैं। हंस भारतीय प्रतीकों में एक है। वैष्णव धर्म से संबंधित होता है क्योंकि हंस सरस्वती से भी संबंधित है। अभी भी रहता है। ये फेसेट्स जो मैंने बताये है कमल के ऊपर हैं। चित्र सं0 24 में सामने की ओर एक पत्थर है जिसके ऊपर 1 लिखा है, उसके नीचे हिन्दी में जन्मभूमि लिखा है और उसके नीचे अंग्रेजी में भी जन्मभूमि लिखा है। चित्र सं0 1, 2 व 3 में ऐसा कुछ भी नहीं दिखता जिससे मैं कह सकूं कि इमारत का यह हिस्सा किसी वैष्णव मंदिर का बारहवी शताब्दी में बना हुआ अंश है। चित्र सं0 70 उस सीलिंग का चित्र है जो इमारत के एक गुम्बद के नीचे बना था यह ईटों की स्थापत्य है जिसके ऊपर चूने का मोटा पलास्टर चढ़ाया गया था। बीच में कमल की पंखुडियों का एक चित्र है जो संभवतः रंगों से बनाया गया था और जिसके बीच से एक लोहे की चेन लटक रही है। वादी के विद्वान अधिवक्ता श्री वीरेश्वर द्विवेदी ने उत्तर प्रदेश पुरातत्व संगठन द्वारा निर्मित रंगीन एलबम के चित्रों की ओर गवाह का ध्यान दिलाया जिसे देखकर गवाह ने कहा कि चित्र सं0 44 में एक लाल पत्थर का पट्ट है जिसके ऊपर संख्या 1 और हिन्दी में जन्मभूमि लिखा है तथा उसके नीचे अंग्रेजी में भी जन्मभूमि लिखा है चित्र सं0 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54 को देखकर गवाह ने कहा कि इमारत के भीतर

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जब आप जाते हैं तो उसके दरवाजे पर दोनों ओर दो काले पत्थर के स्तम्भ लगे हैं यह चित्र उन्हीं के हैं। चित्र सं0 55, ये भी उस इमारत के बाउन्ड्री वाल के चित्र हैं। चित्र 62, 63, 64, 65 ये चित्र भी उसी इमारत के बाउन्ड्रीवाल के चित्र हैं। चित्र 59, 60, 66, 68, 69, 70, 71, 72, 73, 76, 77, 78, 81, 82, 84, उस ढॉचे के भीतर ही ये सब बने थे। तथा भीतर की ओर से खींचे हुए चित्र हैं। चित्र सं0 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 137, 138, 139, 140, 141, 142, 143, 144, 145, 147, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, और 200 इन सभी चित्रों को मैंने भलीभांति देख लिया और यह रंगीन चित्र भी उन्हीं काले शिष्टोज पत्थर के बने हैं जिन्हें स्थानीय भाषा में 'कसौटी' का पत्थर कहा जाता है। ये चित्र काले चित्रों जैसे ही है केवल रंग का ही फर्क हैं किन्तु मैं चित्र नं0 186 और 187 की ओर ध्यान आकृष्ट कराना चाहूॅगा कि जिसमें कमल के ऊपर पदमआसन लगाये किसी देवता के चित्र के नीचे का हिस्सा ऊपर का पूरा भाग नष्ट कर दिया गया। मेरे ज्ञान के अनुसार यह चित्र भगवान विष्णु के योग के रूप में दर्शायी गयी एक मूर्ति का प्रमाण देता है। यह भी मेरे ऊपर लिखाये गये साक्ष्यों को और भी पोषित करता है कि जिस मंदिर के ये स्तंभ रहे होंगे उसका सीधा संबंध एक वैष्णव मंदिर से था जिसकी तिथि बारहवीं शताब्दी में पड़ती है क्योंकि आर्ट स्टाईल की दृष्टि से योग मुद्रा की विष्णु की मूर्ति और इस प्रकार से उकेरी गयी बारहवीं शताब्दी की एक विशेषता थी। इसी एलबम के चित्र सं0 134, 135, 174 को देखकर गवाह ने कहा कि यह चित्र भी गुम्बद के नीचे की सीलिंग का चित्र है जिसमें बीच में कमल की पंखुडी रंगों से चित्रित है तथा जिसके मध्य से लोहे की चेन निकलती हुई दृष्टिगोचर हो रही है। इसका भी जिक्र मैंने ऊपर किया है। इन चित्रों में सबसे विशेष बात मेरी दृष्टि में आठ पंखुडियों वाला कमल का चित्र है। उस इमारत में तीन गुम्बद थे एक गुम्बद के नीचे की सीलिंग जो ईंटों से बनी थी और जिसके ऊपर प्लास्टर किया गया था यह चित्र उसका है।''

"The learned counsel for the plaintiff, Sri Vireshwar Dwivedi drew the attention of the witness towards the black

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and white photographs prepared by the U.P. Archaeological Organization and filed in O.O.S No. 5/89. After looking at photograph no. 55, the witness stated that a complete pitcher is shown in the lowest part of the pillar and the same was lifted on shoulders by two load carrying Yakshas (demigods). Lata- Vallari (Branches) have been shown to be emerging out of the complete pitcher. A lotus flower is seen emerging from the center of the complete pitcher and a nymph is shown above the flower. Above it is the mid part of the pillar, which has eight facets. Above it is a Maladal i.e. string of garlands. Above it is the vertex or capital, over which a lotus has been shown in engraving. After looking at photograph nos. 56, 57 and 58 the witness stated that all these three photographs are not of the same pillar and instead photograph nos. 56 and 57 are of the same pillar. The details of photograph nos. 55, 56 and 57 have been given by me as above and all of them are related to pillars of Hindu temples. The photograph no. 58 is of another black stone pillar and its engraving is almost similar, from which it appears that both these stone pillars must have been used in same part of the temple. The photograph nos. 59, 60, 77 are detailed photographs of upper and lower part of the pillars and they have the same characteristics, as given above by me. The photograph nos. 61 and 62 are of another black stone pillar. Although their main characteristics are similar, but they contain two Amlak (myrobalan) like strips, which are definitely shown as symbols of twelfth century temples. The photograph nos. 64, 65 and 66 are also of black stone pillars, whose make and superficial decoration is full of those very symbols,

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which are characteristics of twelfth century Hindu temples. The photograph no. 63 is of the lower part of the pillar, whose superficial decoration includes damaged pictures of Yakshas (demigods), complete pitcher, lotus emerging out of complete pitcher and flowers-leaves, which have already been described above by me. The photograph nos. 71, 72, 73 are of another black Shistas stone pillar, whose engravings are a bit different. They have Yakshas (demigods) and complete pitcher at top and bottom, but along with the lotus emerging out of the complete pitcher is another flower on the other side. This pillar has various types of garlands and its vertex or capital have leaves-bunch of flowers moving downwards. Hence, these pillars are also of twelfth century temple. The details of the pillar in photograph no. 74 is at no. 76, which has a flower emerging out of the complete pitcher at an angle. On being shown photograph nos. 87, 88, 89, 90, 91, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105 and 106 by the learned counsel for the plaintiff, the witness stated that photograph nos. 87 and 88 are both detailed photographs of photograph no. 86. These pillars are also of black Shistas stone. The figures appearing over it, are also of symbols of twelfth century Hindu temple. In photograph no. 87 strings of garland have been shown to be emerging from the center of the flower petals at top. Below it in the mid part, are two panels. The upper panel is semi circular with flower petals on top in such a manner as if a lotus is blooming on its pericorp with its petals. In the lower panel, there are four lotus and their rounding petals are repeated in the panel. Both these symbols are found in Indian temple

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architecture, which are known as Hindu symbols in the entire Indian literature. The photograph nos. 89, 90 and 91 also depict various part of another pillar. Their top contain reversed leaf symbols whereas the mid part contain symbols of Vanmala (series of garland) and Mani. The photograph no. 91 depicts symbols of Pushpvallari (flower) and leaves, which shows that the complete pitcher contained water and all the Hindu symbols emerged out of that water. This also completely reflects on Hindu temple architecture. The photograph nos. 97, 98, 99 and 101 also depict Shistas stone pillars and the engravings over them are similar to the ones described as above by me. The photograph nos. 101, 102 and 103 are various pictures of black stone pillars with the figures of deities existing over them having been damaged at places, otherwise their characteristics are similar to the ones described above by me. The photograph nos. 104, 105 and 106 are also of similar black stone pillars, which have the figures of lotus, garlands, Amlak (myrobalan), complete pitcher, Yaksha (demigod) etc. existing over them. However, the lotus emerging out of the complete pitcher in photograph no. 106 is of two petals. A peacock vallari can be seen emerging out of the upper petal, which has been slightly damaged and it has facets i.e. there is a peacock, which has feathers pointing forward on its rear and are falling in form of vallari. Swan is one of the Indian symbols related to Vaishnav religion because it is related to Saraswati. It is same even today. The facets named above by me, are the lotus. In photograph no. 24 there is a stone with numeral '१' written over it followed by Janmbhumi in Hindi.

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Janmbhumi is also written below it in English. The photograph nos. 1, 2 and 3 do not depict any such thing on whose basis can I say that a particular portion of the building was part of any twelfth century Vaishnav temple. The photograph no. 70 is the picture of the ceiling of one of the dome of the structure. It is a construction of bricks with thick lime plaster. There is a picture of lotus petals in the center, which was probably made in colors and had a iron chain hanging out from center. The learned counsel for the plaintiff, Sri Vireshwar Dwivedi drew the attention of the witness towards the colored photographs contained in the album prepared by U.P. Archaeological Organization. On looking at it, the witness stated that the photograph no. 44 is a slab of red stone with numeral '1' and Janmbhumi written over it in Hindi. Janmbhumi is also written below it in English. After looking at the photograph nos. 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54 the witness stated that these photographs are of those two black stone pillars, which are found on both side of the gate after entering the structure. The photograph no. 55 is the picture of boundary wall of that structure. The photograph nos. 62, 63, 64, 65 are also pictures of boundary wall of that very structure. The photograph nos. 59, 60, 66, 68, 69, 70, 71, 72, 75, 73, 76, 77, 78, 79, 81, 82, 84 are of inside the structure and have been photographed from inside. I have carefully seen the photograph nos. 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 176, 177, 178, 179, 180, 181, 182, 183, 184,

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185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199 and 200 and these colored photographs are also of those black Shistas stones, which in local language are called touch stone. These photographs are like the black photographs and the sole difference is of color. However, I would like to draw attention towards photograph nos. 186 and 187 which contain the lower part of some God in the stage of 'Padamasan' (a posture of Yoga) over lotus and the entire upper part has been damaged. According to my knowledge, this photograph gives evidence of an idol of lord Vishnu in the form of Yoga. This further supports the evidences led by me herein above on the point that the temples, of which they were pillars, were certainly related to a Vaishnav temple dated around twelfth century inasmuch as from the point of art style, the Yoga form idol of Vishnu and such carvings, were characteristic of the twelfth century. After looking at photograph nos. 134, 135 and 174 the witness stated that these photographs were also of the ceiling beneath the dome, which had colored lotus petals in the center and a iron chain appearing to be hanging out from the center. This has also been referred above by me. From my point of view, the most important feature of these photographs is eight petaled lotus. That structure had three domes. This photograph is of the ceiling beneath one of the domes and was made up of bricks with plaster over it."

"वादी के विद्वान अधिवक्ता श्री वीरेश्वर द्विवेदी ने अन्य मूलवाद सं0 5/89 में दाखिल एलबम के कागज सं0 286 सी 1/4 ए की ओर दिलाया। गवाह ने बयान जारी रखते हुए कहा कि इस एलबम में दिये गये सारे फोटोग्राफ्स जब खीचे गये थे तब मैं उस समय मौजूद था । फोटो नं0 2 जब खींचा गया तब तमाम मौजूद व्यक्तियों में से मैं भी मौजूद था

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का फोटो है। इस चित्र में श्री जिलानी साहब और अन्य अधिवक्ताओं के चित्र हैं और इसी चित्र में मेरा भी एक चित्र हैं। जिनमें से श्री रंजीत लाल वर्मा, अधिवक्ता, श्री अजय कुमार पाण्डेय, अधिवक्ता, श्री मदन मोहन पाण्डेय, अधिवक्ता एवं श्री मुश्ताक अहमद सिद्दीकी अधिवक्ता का चित्र हैं ये सारे चित्र रामकथा कुन्ज तथा श्रीरामजन्मभूमि से संबंधित हैं । चित्र सं0 2 में श्री डी0पी0दूबे और श्रीमती सुधा मलैया पुरालेखन तथा आर्ट हिस्ट्री के विद्वान हैं। इसी चित्र में श्री देवेन्द्र स्वरूप अग्रवाल का भी चित्र है जो देश के जाने माने इतिहासकार हैं। इस चित्र में पीछे छिपे हुए कोट और टाई पहने हुए एक ऐसे महान मध्य युग के इतिहास के विद्वान का चित्र लगता है जो अब इस संसार में नहीं है किन्तु वे प्रोफेसर वी0आर0 ग्रोवर थे। चित्र सं0 1 में प्रोफेसर वी0आर0 ग्रोवर, डा0 सुधा मलैया का चित्र हैं चित्र सं0 5, 6, 7, 8, 9, 10 उस शिलालेख के विभिन्न अंशों के चित्र हैं जो शिलालेख 6 दिसम्बर 1992 के दिन मिला था। यह चित्र एक शिलालेख के चित्र हैं यह शिलालेख 6 दिसम्बर 1992 के दिन इमारत से निकली थी और रामकथा कुन्ज में रखी गयी थी। इस शिलालेख को मेरी उपस्थिति में पुरालेख विद्वानों ने पढ़ा था और सुनाया था इनमें से दो विद्वानों के नाम इस प्रकार से हैं। डा0 डी0पी0 दूबे एवं डा0 सुधा मलैया । चित्र सं0 4 में दो शिलालेख हैं इन शिलालेखों को भी उन्हीं दोनों ही विद्वानों ने पढ़ा और सुनाया था। प्रो0 वी0आर0 ग्रोवर इन्डियन कौंसिल आफ हिस्टारिकल रिसर्च के चेयरमैन थे। फोटो नं0 19 से 26 तक स्तम्भों के चित्र हैं। यह सभी स्तम्भ राम कथा कुन्ज में रखे गये थे। फोटो सं0 – 29, 30 द्वारा शाखा के इन चित्रों को ढॉचा गिरने के पहले मैंने नहीं देखा था। चित्र सं0 11, 12, 13, 14, 15, 16, 17, 18, यह सभी चित्र हिन्दू देवी देवताओं के चित्र हैं। इनकी फोटोग्राफी रामकथा कुन्ज में मेरे सामने हुई थी। यह सब पत्थर की मूर्तियों के चित्र हैं मैंने उन्हें देखा था। यह चित्र वैष्णव मन्दिर जो 12 वी शताब्दी की शैली में उत्तर भारत में बना था, उसके स्थापत्य के विभिन्न अंगों के चित्र हैं। फोटो नं0–26 में मेरा चित्र है, डा0 सुधा मलैया का चित्र है एवं प्रो0 वी0आर0 ग्रोवर का चित्र है। एक और व्यक्ति का चित्र है जिसका मुझे ध्यान नहीं आ रहा है। फोटो सं0 63 उस समय का चित्र है, जब इन वस्तुओं की वीडियोग्राफी हो रही थी। इसमें उस समय के कमिश्नर श्री एस0पी0 सिंह तथा उनके पास बैठे हुए उस समय के एस0पी0 का चित्र है तथा मेरा भी चित्र है।''

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′The learned counsel for the plaintiff drew attention towards the album, paper no. 286C-1/4 filed in O.O.S no. 5/89. The witness continued his statement and stated that I was present when all the photographs of this album had been taken. At time of the photograph no. 2, I was also present amongst various persons present. This photograph includes Sri Jilani and other advocates and I also appear in it. It includes Sri Ranjit Lal Varma, Advocate, Sri Ajay Kumar Pandey, Advocate, Sri Madan Mohan Pandey, Advocate and Sri Mushtaq Ahmad Siddiqui, Advocate. All these photographs are related to Ramkatha Kunj and Sri Ramjanmbhumi. Sri D.P. Dubey and Smt. Sudha Malaiya appearing in photograph no. 2 are scholars in epigraphy and art history. This photograph also includes Sri Devendra Swaroop Agarwal, who is a renowned historian of the country. In background of this photograph, there appears to be the picture of a famous historian of medieval history in a coat and tie, who is no longer alive viz. Prof. V.R. Grover. The photograph no. 1 contains the picture of Prof. V.R. Grover and Sudha Malaiya. The photograph nos. 5,6,7,8,9,10 are pictures of different parts of that inscription, which was found on 6th December, 1992. This photograph is of an inscription. It was recovered from the structure on 6th December, 1992 and had been kept at Ramkatha Kunj. This inscription had been read out by epigraphists in my presence. Two of the scholars were Dr. D.P. Dubey and Dr. Sudha Malaiya. The photograph no. 4 contains two inscriptions. These inscriptions had also been read out to me by the said two scholars. Prof. V.R. Grover was the Chairman of Council of Historical Research. The

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photograph nos. 19 to 26 are of pillars. All these pillars were kept at Ramkatha Kunj. The photograph nos. 29, 30 are of Dwarshakha. I had not seen these photographs prior to demolition of the structure. I had not earlier seen these photographs of Dwarshakha. The photograph nos. 11,12,13,14,15,16,17,18 are pictures of Hindu Gods-Goddesses. These photographs were taken in my presence at the Ramkatha Kunj. These are pictures of stone idols and I have seen them. These photographs are pictures of different aspects of architecture of twelfth century Vaishnav temple of north India. I figure in photograph no. 26 along with Dr. Sudha Malaiya and Prof. V.R. Grover. Another person appears in the photograph, but I am unable to identify him. The photograph no. 63 is of that time when all these articles were being videographed. It contains the picture of the erstwhile Commissioner, Sri S.P. Singh, the erstwhile S.P. sitting next to him and as also of me."

"प्रो0 बी0बी0लाल ने 1975 और 1980 में यहॉ खोदाई की थी। यहां पिलर बेसेस उनकी खोदाई में मिले थे। और उन्होंने इसके विषय में कई लेख लिखे थे। मैं उनकी इस रिपोर्ट से पूर्ण रूप से सहमत हूॅ। प्रो0 ए0के0 नारायण द्वारा जो खोदाई हुई थी 1970 के लगभग, उनकी वस्तुओं को मैंने बी0एच0यू0 में देखा था। मैं उनकी रिपोर्ट से भी पूर्ण रूप से सहमत हूॅ। मैंने इस मन्दिर के अवशेषों का अध्ययन जिन ब्रितानी तरीका से किया है, वे निम्न हैं:–

1. आर्किटेक्चरल स्टाइल आफ ए नार्थ इण्डियन टैम्पल आफ ट्वेल्थ सेन्चुरी ए0डी0

2. आर्ट हिस्टोरिकल अर्थात जितने भी चित्र वहॉ उकेरे हुए मिले, उन सबका कलात्मक स्टाइल का परीक्षण।

3. शिलालेखों में प्रयुक्त अक्षरों की बनावट, जिनके आधार पर तिथि का निर्धारण होता है।

4. एपीग्राफी । मैंने स्वयं स्थापत्य एवं आर्टहिस्टोरिकल सम्बन्धी स्टडी

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की। शेष की अन्य विद्वानों ने की थी।''

''Prof. B.B. Lal had carried out excavation here in the years 1975 and 1980. Pillar bases were found in said excavation and he has written many articles in that regard. I am in total agreement with his said report. The articles recovered in the excavation carried out by Prof. A.K. Narayan around the year 1970, had been seen by me at BHU. I am in total agreement with his report as well. The (British) methods by which I have studied the remains of this temple, are as follows:

1. Architectural Style of a North Indian Temple of Twelfth Century AD.

2. Art Historical i.e. examination of art style of all the pictures found engraved over there.

3. The make of letters used in inscriptions, on whose basis date in determined.

4. Epigraphy. I myself carried out the studies regarding architecture and art historical. The rest work was done by other scholars.''

''शिलालेख 'बफ सेपेड स्टोन' के शिलाखण्ड पर अंकित है। मैंने आर्कियोलोजी पर कई पुस्तकं लिखी हैं किन्तु रामजन्म भूमि की आर्किलोजी पर यद्यपि कि अनेक लेख लिखे हैं, किन्तु पुस्तक केवल एक लिखी है और वह भी अपने एक सहयोगी ***डा0 टी0पी0 वर्मा के साथ मिलकर लिखी है जिन्होंने ऐतिहासिक पक्ष का हिस्सा लिखा है, जबकि मैंने पुरातात्विक पक्ष का हिस्सा लिखा है।*** *यह पुस्तक मैं अपने साथ लाया हूँ। इस पुस्तक का नाम हैः– अयोध्या का इतिहास एवं पुरातत्व (ऋग्वेद काल से अब तक) मैं इस पुस्तक को दाखिल करना चाहता हूँ।''*

''The inscription 'Buff sand stone' is to be found over stone block. I have written many books on archaeology. However, despite having written many articles on

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archaeology of Ram Janmbhumi, ***I have written only one book and that, too, jointly with Dr. T.P. Verma, who has written the historical part and the archaeological part has been written by me****. I have brought along the said book. This book is titled 'Ayodhya ka Itihaas Evam Puratatva (Rigveda Kaal Se Ab Tak)'. I want to file this book."*

''अयोध्या में जो सेमीनार अयोध्या विषय पर हुआ था, उसमें दो रिज्यूलूशन पास हुआ था, उससे मैं सहमत हूँ। यह सेमिनार अयोध्या में ही हुआ था।''

"I am in agreement with the resolutions arrived at in the seminar held at Ayodhya regarding Ayodhya. That seminar had been held at Ayodhya."

515. OPW 9, Dr. Thakur Prasad Verma, aged about 69 years (as per his affidavit dated 31.10.2002). His cross examination followed as under :

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Part-I(a) 31.10.2002- by defendant no. 2 through Sri Abdul Mannan, Advocate (p. 10-19)

(b) 01.11.2002- by defendant no. 3 through Sri R.L. Verma, Advocate (p. 20-34)

(c)15/16/18/19/21.11.2002, 09.01.2003, 18/20/24/25/26/27.02.2003- by plaintiff no. 4 through Sri Zafaryab Jilani, Advocate (p. 36-179)

(d) 28.02.2003, 03/04/05.03.2003-by defendant no. 5 through Sri Mustaq Ahmad Siddiqui, Advocate (p. 180-215)

Part-II :(e) 10/11/13/20.03.2003-by defendant no. 5 through Sri Mustaq Ahmad Siddiqui, Advocate (p. 216-255)

(f)20/21/26/27/28.03.2003, 21/22/23/24/25/29/30.04.2003, 01/02/05/ 06.05.2003 - by Sunni Central Waqf Board, defendant no. 4, through Sri Zafaryab Jilani, Advocate (p.

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255-428)

(g) 06.05.2003- defendant no. 26 through Sri Irfan Ahmad, Advocate adopted the cross examination already done by defendants no. 4, 5, and 6 (p. 428)

(h) 06.05.2003- defendants no. 6/1 and 6/2 (Suit-3) through Sri Fazale Alam, Advocate adopted the cross examination already done by defendants no. 4, 5, and 6 (p. 428)

516. He is plaintiff no. 3 (Suit-5) and looking after the said suit on behalf of plaintiffs no. 1 and 2. He did his Post-Graduation in Ancient Indian History, Culture and Archaeology in 1958 and got Ph.D. in Palaeography from Banaras Hindu University, Varanasi (in short "BHU"). His subject of research was "Palaeography of Brahmi Script in North India from 2nd Century B.C. to 3rd Century A.D." He worked as a Lecturer and Reader between 1967 to 1993 in the Department of Ancient Indian History, Culture and Archaeology in BHU and retired in 1993. During this period he also worked as Principal D.A.V. College, Varanasi for about five months and in 1989 as Professor and Head of the Department, Gurukul Kangari University, Haridwar in the Department of Ancient Indian History, Culture and Archaeology for about a month. He has guided about 27 research students for Ph.D. out of which six research work relates to Palaeography. He is well conversed with several topics and member of "Numismatic Society of India", "Indian Epigraphical Society", "Indian History and Culture Society" etc; has authored the books like, "Palaeography of Brahmi Script Dwitiya Shatabdi Isvi Purva Se Lekar Tritiya Shatabti Isvi Purva Tak"; "Bhartiya Lipi Shastra of Abhilekhaki"; Puraabhilekh Sangrah"; Ayodhya Ka Itihas Evam Puratatva

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(Rigved Kal Se Ab Tak) etc. Besides he has also edited six parts of "Sri Ram Viswa Kosh" a magazine published by Bharitya Itihas Sankalan Samiti, U.P., has written several articles on Numismatic, Epigraphy, Palaeography, History, Arts etc. published in various journals in the country, is a born Vasnavite, worshipped Lord Ram and his incarnations. He said about his religious belief, in paras 10 and 11 of the affidavit, as under:

'10. मेरा जन्म वैष्णव परिवार में हुआ है। जन्म से ही भगवान विष्णु और उनके अवतारों के प्रति मेरी आस्था एवं भक्ति की भावना है। साथ ही अन्य देवी–देवताओं जैसे भगवान शिव, दुर्गा आदि के प्रति भी श्रद्धा एवं भक्ति है। हिन्दुओं की श्रद्धा केवल मूर्ति पूजा में ही नहीं अपितु उनके लिए स्थल भी पूज्य हैं जैसे केदारनाथ मंदिर, विष्णुपद मंदिर, गया आदि में स्थल ही पूज्य हैं। इसी प्रकार श्रीराम जन्मभूमि अति पवित्र एवं पूज्य स्थल है।''

''10. I have been born in a Vaishnavite family. Since birth, I had faith and belief in Lord Vishnu and His incarnations. I also had faith and belief in other Gods-Goddesses such as Lord Shiva, Durga etc. The faith of Hindus is not restricted only to idol worship and the place is also worshippable for them e.g. place is worshippable at Kedarnath temple, Vishnupad temple, Gaya etc. Similarly, Sri Ramjanmbhumi is a very sacred and worshippable place.''

''11. भगवान श्रीराम एक ऐतिहासिक पुरूष हुए हैं उनके पिता का नाम दशरथ एवं माता का नाम कौशल्या था। लक्ष्मण, भरत, शत्रुघ्न उनके भाई थे। भगवान श्रीराम ने अपने कृत्यों एवं आचरण से समाज में एक आदर्श स्थापित किया था जिसके कारण उनको मर्यादा पुरूषोत्तम भी कहा जाता है। श्रीराम भगवान विष्णु के अवतार माने जाते हैं।''

''11. Lord Sri Rama was a historical identity. His father's name was Dashrath and mother's Kaushalya. Laxman, Bharat, Shatrughan were His brothers. By His actions and conduct, Lord Sri Rama set an example in the society, due to which He is also called Maryada Purshottam. Sri Rama

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is considered as an incarnation of Lord Vishnu."

517. About Ayodhya, the present one where Lord Ram was born, existence of temple at the disputed place, birth of Lord Ram at the disputed place and construction of the disputed structure after demolition of a temple of Lord Ram he said in paras 12, 13, 14, 15, 16, 17 and 18 of the affidavit as under:

''12. भगवान श्रीराम का अवतार इसी भारत भूमि पर हुआ था। समस्त भारतीय वांगमय एक स्वर से इस बात की घोषणा करते हैं कि महाराजा दशरथ के पुत्र श्रीराम का जन्म अयोध्या में हुआ था। अयोध्या कोई काल्पनिक स्थल नहीं है वरन् एक वास्तविक नगर है जिसकी भौगोलिक स्थिति के बारे में भारतीय साहित्य में किसी भी प्रकार की मतविभिन्नता नहीं है। यह एक अत्यन्त प्राचीन नगरी है, जिसका उल्लेख वेदों में भी आया है। अथर्ववेद और तैत्तिरीय आरण्यक में इस मानव शरीर को देवताओं की नगरी कहा गया है तथा उसकी तुलना अयोध्या से की गई हैं यदि अयोध्या का अस्तित्व न होता तो इस प्रकार की उपमा नहीं दी जा सकती थी। यह वही अयोध्या है जो सरयू नदी के तट पर बसी है। समस्त भारतीय साहित्य में और सम्पूर्ण भारतीय उपमहाद्वीप में न तो दूसरी अयोध्या है और न ही दूसरी सरयू नदी।''

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"Lord Sri Rama incarnated himself on this very Bharat Bhumi. The whole of India is one in declaring that Sri Rama, son of King Dashrath was born in Ayodhya. Ayodhya is not an imaginary place; rather, it is a real town about whose geographical location no difference of opinion is found in Indian literature. It is a very ancient town which also finds mention in Vedas. Atharvaveda and Taitriya Aranyak has spoken of this human body as the abode of Gods and has compared it to Ayodhya. If Ayodhya had not existed, such sort of comparison could not have been made. This is the Ayodhya that is located on the bank of River Saryu. There is neither any other Ayodhya nor any other Saryu river in the entire Indian literature and in the

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whole of Indian subcontinent."

"13. अयोध्या में जिस स्थल पर भगवान श्रीराम ने जन्म लिया था वह हिन्दुओं के लिए विशेष महत्व रखता हैं अनेक शताब्दियों और असंख्य पीढ़ियों से हिन्दू जनता उस स्थल की पूजा करती आयी है तथा इस अविच्छिन्न परम्परा के कारण उस स्थल को भूलने अथवा उसमें किसी भी प्रकार के भ्रम की कोई गुंजाईश नहीं है। "यही वह स्थल है जिसका विवाद इस वाद में चल रहा है।"अनेक देशी, परसियन और युरोपीय लेखक यह बताते हैं कि अयोध्या में मुसलमान शासकों के शासनकाल में कम से कम तीन महत्वपूर्ण वैष्णव मंदिरों को ध्वस्त करके उन पर मस्जिदें बना दी गई थी। वह हैं अयोध्या स्थिति श्रीरामजन्मभूमि मंदिर, स्वर्गद्वार मंदिर और त्रेता के ठाकुर का मंदिर। इनमें श्रीरामजन्मभूमि मंदिर के लिए ही अनवरत संघर्ष हुए और हिन्दुओं का वहां पर पूजा करने का आग्रह रहा है और अभी भी वहां पूजा करते चले आ रहे हैं। इसका कारण यह रहा है कि देवी देवताओं के मंदिर कहीं भी और कभी भी बनाये जा सकते हैं, तथा उनमें मूर्ति की प्राणप्रतिष्ठा कराकर पूजा की जा सकती है किन्तु किसी के जन्मस्थल को कदापि बदला नहीं जा सकता। इसी कारण हिन्दुओं का उस परम पवित्र श्रीरामजन्मभूमि (स्थल) के प्रति विशेष आग्रह रहा है। श्रीरामजन्मभूमि मंदिर तोड़कर जबरदस्ती मस्जिद बना दिए जाने के बावजूद वहां पर उसी परम्परागत ढंग से प्रति वर्ष भगवान श्रीराम के जन्मदिन, चैत्रशुक्ल रामनवमी के अवसर पर श्रद्धालु रामभक्तों की भीड़ उमड़ पड़ती रही है और उसकी परिक्रमा–पूजा करके अपने श्रद्धा सुमन अर्पित करके हृदय में एक टीस लिए वापस जाती रही जिसका उल्लेख यूरोपीय यात्री टाइफेनथेलर ने किया है, "जिसका एस्ट्रेक्ट कागज संख्या 107सी–1/98–108 इस वाद में दाखिल है। 107सी–1/109 एंड 107सी–1/110 जो मार्टिन द्वारा लिखित उल्लेख भी इस वाद में दाखिल है।"

"The place where Lord Sri Rama was born in Ayodhya, holds a special importance for Hindus. For many centuries and for innumerable generations Hindu public has been worshipping this place. Due to this constant tradition it has continued to worship that place and for this very reason there is no room for them to forget the said place or to have any sort of confusion about it. This is the

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place which in dispute in this suit. Many native, Persian and European authors tell that in Ayodhya at least three important Vaishnavite temples were demolished and mosque were built in their places during the tenure of Muslim rulers. They are Ayodhya-situated Sri Ram Janam Bhumi temple, Swarg Dwar temple and Thakur temple of Treta Era. Out of these, there has been a consistent struggle only for Sri Ram Janam Bhumi temple and Hindus have been insisting on performing pooja there and they are continuing to perform pooja there even today. Its reason has been that temples of gods and goddesses can be built at any place and at any time and pooja can be performed after deifying the idols placed therein. But someone's birthplace can never be changed. For this very reason Hindus have been laying particular insistence on the holiest place called Sri Ram Janam Bhumi. Despite the mosque having been forcibly constructed after demolishing Sri Ram Janam Bhumi temple, on the occasion of Sri Rama's birth anniversary falling on Chaitra Shukla Navami, devout Rama worshippers converge there every year in that very traditional manner and perform parikrama and pooja and offer flowers as a mark of reverence and go back from there with a pain in their heart which has been described by a European traveller Typhen Thaylor. Its extract is filed in this suit as paper nos. 107C-1/98-108. The written account of Martin is also filed in this suit as paper nos. 107C-1/109 and 107C-1/110."

''14. जहां तक इतिहास का प्रश्न है अयोध्या अपने अस्तित्वकाल में उजड़ी और बसाई गईं वाल्मीकि रामायण 7/111/10 में उल्लेख है कि भगवान श्रीराम ने अपने जीवन काल में अयोध्या को विजन कर दिया था और अपनी सारी प्रजा के साथ स्वर्ग चले गए। अपने पुत्रों को अयोध्या के

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बाहर रहकर राज्य करने का प्रबन्ध कर दिया था। बड़े पुत्र लव को श्रावस्ती (सहेट–महेट) में राजधानी बनाकर राज्य करने को कहा था तथा यह स्थल भगवान बुद्ध के काल तक कोशल राज्य का राजधानी बनी रही। बाद में मौर्यकाल में भी यह कोशल प्रान्त (मगध साम्राजय का एक प्रान्त) की राजधानी बनी रही। दूसरे पुत्र कुश को कुशावती नगर बसा कर राज्य करने का प्रबंध किया जो विंध्य क्षेत्र में है और बाद में तथा अब तक महाकोशल के नाम से प्रसिद्ध है। रामायण में यह भी बताया गया है कि भगवान श्रीराम के बाद ऋषभ के समय में अयोध्या पुनः बसाई जायेगी। यह जैनियों के प्रथम तीर्थंकर थे जिन्हें आदिनाथ भी कहा जाता है। हिन्दुओं में ऐसी किवदंती है कि अयोध्या को तीसरी बार बसाने का श्रेय उज्जैन के महाराजा विक्रमादित्य को है, जिन्होंने जैसा कि इस वाद में दाखिल कागज संख्या 107सी–1/10, 107सी–1/28, 107सी–1/35, 107सी–1/55 से स्पष्ट होता है, अयोध्या में 360 मंदिर बनवाये। कुछ उन्हें उज्जैन के गर्दभिल्ल वंश के महाराजा विक्रमादित्य मानते हैं। जिन्होंने 57 ईसा पूर्व में शकों का विनाश करके विक्रम संवत् की स्थापना की थी तथा कुछ उन्हें गुप्तवंश के चन्द्रगुप्त विक्रमादित्य मानते हैं। जो भी हो इन 360 मंदिरों में श्रीरामजन्मभूमि का मंदिर अवश्य ही शामिल था।''

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''14. Insofar as history is concerned, Ayodhya was ruined and established in its existence period. It is mentioned in Valmiki Ramayana 7/111/10 that during His lifetime Lord Sri Rama had depopulated Ayodhya and had proceeded to heaven along with His entire subjects. He had arranged for His sons to rule from outside Ayodhya. The elder son Luv was asked to rule with Shrawasti (Sahet-Mahet) as capital and till the period of Buddha, this place continued to be the capital of Kaushal estate. Subsequently, in the Maurya period as well this Kaushal estate (province of Magadh empire) was the capital. The city of Kushawati, which is in the Vindhya region, was established for the rule of the other son Kush and thereafter till date it is famous as Mahakaushal. It has also been mentioned in the Ramayana

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that after Lord Sri Rama, Ayodhya would again be inhabited during the times of Rishabh. He was the first Tirthkar of Jains and is also known as Adinath. It is so believed amongst the Hindus that the credit for inhabitance of Ayodhya for third time, goes to Vikramaditya, king of Ujjain. It appears from paper no. 107C-1/10, 107C-1/28, 107C-1/35, 107C-1/55 filed in this suit that he had built 360 temples in Ayodhya. Few consider him to be king Vikramaditya of Gardbhill dynasty of Ujjain, who had destroyed the Shakas in 57 BC and had started the Vikram era and few consider him to be Chandragupta Vikramaditya of Gupta dynasty. Be that as it may, the Sri Ramjanmbhumi temple was certainly included in those 360 temples."

"15. श्रीरामजन्मभूमि के स्थल पर बने मंदिर की वर्तमान श्रृंखला का प्रारम्भ इसी काल से माना जाता है। मंदिर जीर्ण होते रहे उनका पुनसंस्करण होता रहा और यह कार्य ईसा की ग्यारहवी शताब्दी के प्रारम्भ तक चलता रहा। ***सालार मसूद 1032–33 ई0 में यहां आया और जन्मस्थल मंदिर को क्षतिग्रस्त किया।*** *वह बहराइच के युद्ध में राजा सुहेलदेव के द्वारा 14 जून, 1033 में मारा गया।"*

"15. The present series of the temple built at Sri Ramjanmbhumi site, is considered to have started in this very period. The temples kept frailing with age and they were renovated, which work continued till the start of 11th century AD. Salar Masud came here in 1032-33 AD and damaged the Janmsthal temple. On 14th June, 1033 he was killed by king Suhel dev in the battle of Bahraich."

"16. अयोध्या में विवादित ढांचा के विध्वंस के समय 6 दिसम्बर, 1992 को उसके मलवे में प्राप्त 20 पंक्तियों वाले शिलालेख (इस बाद में दाखिल इस्टैम्पेज का कागज 203 सी–1/3) से यह ज्ञात होता है कि गहड़वाल राजा गोविन्द चन्द्र (1114 से 1154 ई0) के शासनकाल में साकेत मण्डल के

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शासक ने यहां पर एक अति सुन्दर विशाल मंदिर का निर्माण कराया था। इसके निर्माण की आवश्यकता इसलिए पड़ी कि वह लगभग 70–80 वर्षो पूर्व क्षतिग्रस्त कर दिया गया था। लेकिन इस अवधि में भी वहां पूजा होती रही। इस्टैम्पेज को मैंने स्वयं देखा व उसकी उद्वाचन भी किया है।''

''16. *From the 20 line inscription (estampage filed in this suit as paper no. 203C-1/3) found in the debris of the disputed structure demolished on 6th December, 1992 at Ayodhya, it transpires that during the reign of Gaharwal king Govindchandra (from 1114 to 1154 AD) the ruler of Saket division built a very grand temple at this place. The need for construction of the same arose in view of the fact that it had been demolished about 70-80 years ago, but in this period also worship was taking place here. I have myself seen the estampages and have deciphered them.''*

''17. राजा अनय चन्द्र द्वारा बनवाया गया 11वीं–12वीं शताब्दी (गहड़वाल काल) का यह मंदिर पुनः बाबर के सेनापति मीरबाकी द्वारा 1528 में तोड़ा गया। मीरबाकी को बाबर अवध में छोड़कर ग्वालियर की ओर निकल गया था। लगभग 13 महीने बाद वह उस क्षेत्र में जब वापस आता है तब मीरबाकी अवध की सेना लेकर उससे मिलता है, इसका उल्लेख बाबरनामा में दृष्टव्य है।''

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"17- *This temple of 11th - 12th century (of Gaharwal period) built by king Anaychandra, was again demolished by Babar's commander Mir Baqi in the year 1528. Babar proceeded towards Gwalior after leaving Mir Baqi at Awadh. The meeting of the two after about 13 months on his return to the area, is mentioned in Babarnama.''*

''18. मैंने एक पुस्तक 'अयोध्या का इतिहास एवं पुरातत्व'' (ऋग्वेद काल से अब तक) इस वाद में दाखिल कागज संख्या 289सी–1 डा0 एस0पी0गुप्ता के साथ मिलकर लिखी है जिसके केवल अन्तिम अध्याय 11 के लेखक डा. एस.सी.गुप्ता हैं। इस पुस्तक में अपने द्वारा लिखित बातों की पूर्ण पुष्टि करता हूँ। इस पुस्तक को लिखने में जिन ग्रंन्थों का अध्ययन मैंने

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किया है उनका संदर्भ भी पुस्तक में वर्णित है। पुस्तक में विवरण ऐतिहासिक तथ्यों पर है किसी दुर्भावनावश या दबाव से नहीं।''

''18. I have written a book titled 'Ayodhya Ka Itihaas evam Puratatva' (from Rigveda to date) along with Dr. S.P. Gupta, which has been filed in this suit as paper no. 289C-1, and only the last chapter-11 has been authored by Dr. S.C. Gupta. I verify the facts written by me in this book. The treatises studied by me in writing this book, have been referred in the book. The descriptions in the book are on basis of historical facts and not due to mala fide or any compulsion.''

518. Besides, he sought to prove certain documents vide his statement in paras 19, 20 and 21 of the affidavit which are as under:

''19. इस के अतिरिक्त इस वाद में वादीगण की ओर से सूची संख्या 107 सी–1/1 से लेकर 107 सी–1/9, 116 सी–1/1 , 118 सी–1/1 ए–बी, 119 सी–1/सी , 120 सी–1/1 , 120 सी–1/4 से 120 सी–1/5, 121 सी–1/1, 189 सी–2/1, 154 सी–1/1–2, 155 सी–1/1, 158 सी–1/1 , 159 सी–1/2, 160 सी–1/1 , 160 सी–1/2, 160 सी–1/1 , 188 सी–1, 186 सी–1/4ए, 186ए, 306 सी–1/1, 307 सी–1 के साथ अभिलेख मूल पुस्तक, कैसेट,एलबम आदि दाखिल किये गये हैं जिनकी पूर्ण पुष्टि मैं करता हूँ।''

''19. Apart from these, the plaintiffs have filed records, original book, cassette, album etc. along with list number 107C-1/1 to 107C-1/9, 116C-1/1, 118C-1/1A-B, 119C-1/C, 120C-1/1, 120C-1/4 to 120C-1/5, 121C-1/1, 189C-2/1, 154C-1/1-2, 155C-1/1, 158C-1/1, 159C-1/2, 160C-1/1, 160C-1/2, 160C-1/1, 188C-1, 186C-1/4A, 186A, 306C-1/1, 307C-1, in this suit and I verify the same.''

''20. मैंने एक लेख 'पैलियोग्राफिक एवीडेन्स आफ दि अयोध्या इंस्क्रेप्शन' लिखा है जो इतिहास दर्पण नामक पत्रिका में प्रकाशित हुई है। और जो

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इस वाद में दाखिल कागज संख्या 254सी–1/3 है।''

''20. I have written an article called 'Palaeographic Evidence of the Ayodhya Inscription', which was published in a magazine called Itihaas Darpan and which has been filed in this suit as paper no. 254 C-1/3.''

''21. मैं अयोध्या प्रथम बार अक्टुबर, 1992 में इंडियन हिस्ट्री एण्ड कल्चरल सोसाइटी, नई दिल्ली द्वारा आयोजित सेमिनार में शामिल हुआ था जिसमें दो प्रस्ताव पारित किए गए थे। इस सेमिनार में शामिल विद्वानों ने सेमिनार में सहभागिता सूची पर अपने हस्ताक्षर बनाये थे। इस सूची में पन्द्रहवे नम्बर पर मेरा नाम अंकित है और उस पर मेरे हस्ताक्षर भी हैं। ''प्रस्ताव, सहभागिता सूची इस वाद में बतौर कागज संख्या 118सी–1/129 से 118सी–1/135 तक दाखिल है'' जिसकी पुष्टि मैं पूर्णतया करता हूँ। उसी समय मैंने विवादित स्थल का प्रथम दर्शन किया जहां भवन खड़ा था। अन्य तथ्यों के अतिरिक्त मैंने स्थल पर कसौटी के 14 खम्भे लगे हुए देखे थे जिन पर अनेक हिन्दू देवी–देवताओं के चित्र उत्कीर्ण हुए थे।''

''21. In Ayodhya, I participated for the first time in the seminar organised by Indian History and Cultural Society, New Delhi in October, 1992 wherein two resolutions were passed. The scholars participating in this seminar, had put their signatures on the participation list of seminar. My name finds place at serial no. 15 of this list along with my signature. I certify that 'The resolution and participation list have been filed in this suit as paper no. 118C-1/129 to 118C-1/135'. I had then seen the disputed site for the first time, where a structure was standing. Besides other issues, I had seen 14 touchstone pillars on the spot, which had the pictures of many Hindu Gods-Goddesses carved over them.''

519. OPW 11, Satish Chandra Mittal, aged about 65 years (as per his affidavit dated 25.11.2002), is resident of Saharanpur (U.P.). His cross examination followed as under :

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Part-I:(a) 25-11-2002-by Nirmohi Akhara, Defendant no.3, through Sri R.L. Verma, Advocate (p. 8-16)

(b) 26-11-2002-by defendant no. 6 through Sri Abdul Mannan, Advocate (17-20)

(c/1) 26/27/28/30-11-2002, 02/03/04/05/09/10/11/12/13-12-2002- by defendant no. 4 through Sri Zafaryab Jilani, Advocate (p. 20-172)

Part-II:(c/2) 07/08/09/15/16-04-2003- by defendant no. 4 through Sri Zafaryab Jilani, Advocate (p. 173-215)

(d) 16/17/18-04-2003, 12/13/14/19-05-2003, 24/25/26/27-06-2003- by defendant no. 5 through Sri Mustaq Ahmad Siddiqui, Advocate (p. 216-346)

(e) 27-06-2003, 01-07-2003-by defendant no. 6/2 (Suit-3) through Sri Aftab Ahmad Siddiqui, Advocate (p. 346-351)

(f) 01-07-2003 -defendant no. 26 through Sri Syed Irfan Ahmad, Advocate and defendants no. 6/1 (Suit-3) through Sri Fazale Alam, Advocate, adopted the cross examination already done by defendants no. 4, 5 and 6 (p. 351)

520. OPW-11 is a Professor (retired) from Kurukshetra University, has sought to support the version of the plaintiffs (Suit-5) that the disputed structure was constructed after demolition of the then temple of Lord Ram and the place in dispute is one where Lord Ram was born. He did Post-Graduation in History in 1959 from Agra University and in Political Science in 1962 from Punjab University, Chandigarh. He was conferred Doctorate in History in 1972 by Kurukshetra University. His subject of studies and teaching has been Modern History. He was a teacher in History in R.K.S.D. College, Kaithal from 1959 to August, 1974 and thereafter was appointed as Lecturer in History Department of Kurukshetra University in

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1974 wherefrom ultimately reached to the status of Professor and retired in December, 1997. Under his guidance seven students were conferred Ph.D. and 30 research students got M.Phil. He has authored 12 books relating to history, some of which are as under:

> *''(क) फ्रीडम मूवमेन्ट इन पंजाब 1905–1926 नई दिल्ली 1977 (ख) हरियाणा–ए हिस्टोरिकल परस्पेक्टिव 1761–1966 नई दिल्ली 1986 (ग) ए सेलेक्टेड एन्नोवेटेड बिबल्लियोग्राफी आफ फ्रीडम मूवमेनट इन इण्डिया पंजाब एण्ड हरियाणा 1858–1947 नई दिल्ली 1992 (घ) इण्डिया डिस्टार्टेड ए स्टडी आफ ब्रिटिश हिस्टोरियंस आन इण्डिया 3 वाल्यूम नई दिल्ली 1995–1998 (ड.) सोर्सेज आन नेशनल मूवमेन्ट 1919–1920 प्रो0 बी0एन0 दत्ता के साथ मिलकर''*
>
> *''(A) Freedom Movement in Punjab 1905-1926. New Delhi 1977 (B) Haryana- A Historical Perspective, 1761-1966 New Delhi, 1986 (C) A Selected Innovated Bibliography of Freedom Movement in India, Punjab and Haryana, 1858 – 1947, New Delhi, 1992 (D) India Distorted – A Study of British Historians on India, III Volume, New Delhi, 1995-1998 (E) Sources of National Movement 1919-1920 (co-authored by Prof. B.N. Dutta).''*

521. Besides, he also is the author of several chapters and research articles in certain books. In the Haryana State Gazetteer and Rohtak District Gazetteer, the History Section has been written by him and about 30 dozen research papers published in several journals, has participated in several seminars and conferences relating to history and at times also chaired the function. He is life member of several history societies and research committees, was appointed member by the University in Indian Historical Record Commission. He sought to prove paper No. 118C-1/132 and in this regard in para 7 of the affidavit said as under:

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'7. मैंने इण्डियन हिस्ट्री एण्ड कलचरल सोसाइटी नई दिल्ली द्वारा अयोध्या में 10 अक्टुबर सन् 1992 से 13 अक्टुबर 1992 तक अयोध्या शोध संस्थान अयोध्या में आयोजित वर्कशाप सेमिनार में भाग लिया था जिनमें लगभग 40–45 इतिहासविदों तथा पुरातत्वविदों ने सहभागिता किया था। उस सेमिनार में श्री राम जन्म भूमि अयोध्या से सम्बन्धित दो प्रस्ताव पारित किये गये थे। इस वाद में दाखिल कागज संख्या 118 सी–1/129 से 1/135 तक वर्कशाप सेमिनार में पारित प्रस्ताव तथा उसमें सहभागी विद्वानों की सूची है जिसमें कागज संख्या 118 सी–1/132 में क्रम संख्या 12 पर मेरा नाम लिखा है तथा मेरा हस्ताक्षर है जिसकी मैं पहचान करता हूं।''

"7. I participated in a workshop/seminar organised at Ayodhya Research Institute, Ayodhya by Indian History and Cultural Society, New Delhi from 10th October, 1992 to 13th October, 1992. Nearly 40-45 historians and archaeologists attended the said workshop. Two resolutions in relation to Sri Ram Janam Bhumi, Ayodhya were passed in the Seminar. Paper Nos. 118 C-1/129 to 1/135 filed in this suit, contains the resolutions passed in the said workshop/seminar and also the list of the scholars who had participated in it. Paper No. 118C-1/132, bears my name and signature at serial no.12 which I identify." (E.T.C.)

522. Regarding the construction of Babri Mosque after demolition of the temple, in paras 8, 9, 10, 12, 13, 14, 18, 19 and 20 of the affidavit, OPW-11 said as under:

''8. मैंने श्री राम जन्मभूमि/तथाकथित बाबरी मस्जिद के सम्बन्ध में विदेशी लेखकों, यात्रियों के विश्वकोष, गजेटियर्स, विदेशी यात्रियों के यात्रा विवरण एवं अन्य उपलब्ध सन्दर्भ ग्रन्थों का अध्ययन किया है। इस संबंध में मैनें सर्जन जनरल एडवर्ड बेल्फोर्ड का इन्साइक्लोपीडिया आफ इण्डिया एण्ड आफ इस्टर्न एण्ड सदर्न एशिया 1858, इन्साइक्लोपीडिया ब्रिटेनिका का 15वां संस्करण भाग–1, 1978 बेन्जामिन वाकर का हिन्दू वर्ल्ड

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इन्साइक्लोपीडिया आफ हिन्दूइज्म लन्दन प्रथम संस्करण 1968 का दूसरा संस्करण सन् 1995, गजेटियर आफ दी टेरिटरीज अण्डर दि गवर्नमेन्ट आफ ईस्ट इण्डिया कम्पनी–एडवर्ड थार्नटन 1854 हिस्टोरिकल स्केच आफ तहसील फैजाबाद विथ दी ओल्ड केपिटल्स अयोध्या एण्ड फैजाबाद पी0 कार्नेगी सन् 1870, गजेटियर आफ दी प्राविन्स आफ अवध सन् 1877, पी0 कार्नेगी, इम्पीरियल गजेटियर आफ इण्डिया प्रोविंशियल सीरीज यूनाइटेड प्राविन्सेज आफ आगरा एण्ड अवध वाल्यूम 2 सन् 1881, बाराबंकी डिस्ट्रिक्ट गजेटियर एच0आर0 नेविल सन् 1902 फैजाबाद डिस्ट्रिक्ट गजेटियर एच0आर0 नेविल सन् 1905 फैजाबाद डिस्ट्रिक्ट गजेटियर आफ यूनाइटेड प्राविन्सेज आफ आगरा एण्ड अवध–एच0आर0 नेविल सन् 1928 उत्तर प्रदेश डिस्ट्रिक्ट गजेटियर फैजाबाद श्रीमती ईशा बसन्ती जोशी इलाहाबाद सन् 1960, अर्ली ट्रेवल्स इन इण्डिया 1583–1619 एडिटेड बाई विलियम फार्स्टर लन्दन सन् 1921 हिस्ट्री एण्ड ज्योग्राफी आफ इण्डिया ओरिजनली पब्लिशड इन लैटिन–टान्सलेटेड इन फेंच हिस्टोरिक एण्ड ज्योग्राफी एण्ड स्अेटिस्टिक्स आफ इस्टर्न इण्डिया वाल्यूम 2 मान्ट गोगरी मार्टिन सन् 1838 हेन्स बेकर की अयोध्या 1986, रिपोर्ट आन दि सेटिलमेन्ट आफ दि लैण्ड रेवेन्यू आफ दि फैजाबाद डिस्ट्रिक्ट ए0अफ0 गिलेट सन् 1880 का अध्ययन किया है जिनमें श्री राम जन्मभूमि मन्दिर तोड़कर उसके स्थान पर ही तथाकथित मस्जिद बनाये जाने का उल्लेख है। खाली भूमि पर तथाकथित बाबरी मस्जिद बनाने का कोई उल्लेख नहीं है। ''

"8. I have studied encyclopaedia and gazetteers of foreign authors & travellers, travel account of foreign travellers and other available reference books in relation to Sri Ram Janam Bhumi/the so called Babri Mosque. In this regard, I have studied Surgeon General Belford's Encyclopaedia of India and of Eastern and Southern Asia, 1858; Encyclopaedia Britannica's 15th edition, part I; Benjamin Walker's Hindu World – Encyclopaedia of Hinduism, the second edition (1995) of the first edition (from London); Edward Thornton's Gazetteer of the Territories under the Government of East India and

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Company (1854); P. Carnegi's Historical Sketch of Tahsil Faizabad with the old capitals Ayodhya and Faizabad (1870); P. Carnegi's Gazetteer of the Province of Awadh (1877); Imperial Gazetteer of India, Provincial Series, United Provinces of Agra and Awadh, Volume2, 1881; H.R. Navel's Barabanki District Gazetteer (1902); H.R. Navel's Faizabad District Gazetteer (1905); H.R. Navel's Faizabad District Gazetteer of United Provinces of Agra and Awadh (1928); Smt. Isha Basanti Joshi's Uttar Pradesh District Gazetteer, Faizabad (1960); Early Travels in India (1583-1619) edited by William Forester, London, 1921; History and Geography of India originally published in Latin, translated in French; History and Geography and Statistics of Eastern India, volume 2 by Gogri Martin (1838); Hens Becker's Ayodhya (1986); and A.F. Gillet's Report on the Settlement of the Land Revenue of the Faizabad District (1880). All of these make mention of Sri Ram Janam Bhumi temple having been demolished and the so called mosque having been constructed in its place. There is no mention of the so called Babri mosque having been constructed on the vacant land." (E.T.C.)

''9. इन्साइक्लोपीडिया एक विश्व मान्य ग्रन्थ है जिसमें विश्वके विभिन्न विषयों के विद्वानों के विचार संकलित रहते हैं। इस वाद में दाखिल कागज संख्या 107 सी–1/120 व 121 इन्साइक्लोपीडिया ब्रिटेनिका की प्रति है जिसमें श्री राम जन्म स्थान स्थल पर बाबर द्वारा मस्जिद का निर्माण कराये जाने का उल्लेख है। इस वाद में दाखिल कागज संख्या 107 सी–1/111 सर्जन जनरल बेल्फोर द्वारा तैयार इन्साइक्लोपीडिया आफ इण्डिया एण्ड इस्टर्न एण्ड सदर्न एशिया की प्रति है।''

"9. Encyclopaedia is a globally acknowledged book which compiles opinions of scholars of the world on various subjects. Paper No. 107C-1/120 and 121 filed in

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this suit, is a copy of Encyclopaedia Britannica which makes mention of the mosque having been built by Babur on the site of Sri Ram Janam Bhumi. Paper No. 107C-1/111 filed in this suit, is a copy of Encyclopaedia of India and Eastern and Southern Asia prepared by Surgeon General Belford." (E.T.C.)

''10. मैंने बैजामिन वाकर द्वारा लिखित हिन्दू वर्ल्ड एण्ड इन्साइक्लोपीडिक सर्वे आफ हिन्दूइज्म वाल्यूम 1 भी पढ़ा है जिसमें अयोध्या में स्थित श्री राम जन्मभूमि मन्दिर को विनष्ट करके उस स्थान पर मस्जिद निर्मित करने का उल्लेख है। बैजामिन वाकर द्वारा लिखित इस पुस्तक के पृष्ठ संख्या 103 व 104 आवरण पृष्ठ सहित की छायाप्रति बतौर संलग्नक–1 प्रस्तुत की जाती है।''

"10. I have also read Benjamin Walker's Hindu World and Encyclopaedic Survey of Hinduism, volume1 which makes mention of Sri Ram Janam Bhumi temple having been demolished and the mosque having been built on its locus. Photocopies of pages 103 and 104 and also of cover page of this book, authored by Benjamin Walker, are annexed as annexure no.1." (E.T.C.)

''12. इस वाद में दाखिल कागज सं.0 107 सी–1/42 लगायत 45 फैजाबाद डिस्ट्रिक्ट गजेटियर सन् 1905 कागज सं0 107सी–1/49 से 53 फैजाबाद डिस्ट्रिक्ट गजेटियर सन् 1928 कागज सं0 107 सी–1/54 लगायत 61 फैजाबाद डिस्ट्रिक्ट गजेटियर सन् 1960 और इम्पीरियल गजेटियर प्राबिशिंयल सिरीज भाग 2 सन् 1880 कागज सं0 107 सी–1/127 से 130 है, जिसमें अयोध्या स्थित श्री राम जन्मभूमि पर स्थित मंदिर का वर्णन आया है और उस मंदिर को विनष्ट करके मस्जिद बनाये जाने का उल्लेख है।''

"12. Papers filed in this suit include Faizabad District Gazetteer (1905) being paper no. 107C-1/42 to 45, Faizabad District Gazetteer (1928) being paper no. 107 C-1/49 to 53, Faizabad District Gazetteer (1960) being paper

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no. 107C-1/54 to 61 and Imperial Gazetteer, Provincial Series being paper no. 107C-1/127 to 130, all of which make mention of a temple located at Sri Ram Janam Bhumi situated in Ayodhya and also of the said temple having been demolished and a mosque having been built at its place." (E.T.C.)

"13. मिस्टर पी0 कारनेगी जो सन् 1870 में फैजाबाद के आफिशियेटिंग डिप्टी कमिश्नर थे, उन्होंने अपनी पुस्तक हिस्टोरिकल स्केचेज आफ डिस्ट्रिक्ट फैजाबाद विथ दी ओल्ड कैपिटल्स आफ आयोध्या एण्ड फैजाबाद कागज सं0 107 सी 1/17 से 24 में अयोध्या स्थित तीन प्रसिद्ध प्रमुख मन्दिरों का जो जन्म स्थान मन्दिर, स्वर्गद्वार मन्दिर त्रेता का ठाकुर मन्दिर का वर्णन किया है जिसमें जन्म स्थान मन्दिर को विनष्ट करके उसी स्थान पर सन् 1528 में बाबर द्वारा मस्जिद बनाये जाने का वर्णन है। इसी प्रकार इस वाद में दाखिल कागज सं0 107 सी–1/25 व 26 गजेटियर आफ प्राबिन्स आफ अवध वालयूम 1 सन् 1877 में भी पी0 कारनेगी द्वारा अपनी पुस्तक में लिखी उपरोक्त बात का उल्लेख है।

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"13. Mr. P. Carnegi, who was officiating Deputy Commissioner of Faizabad in 1870 has in his book 'Historical Sketches district Faizabad with the old capitals of Ayodhya and Faizabad (paper no. 107C-1/17 to 24) described three Ayodhya situated famous temples known as Janam Sthan Mandir, Swarg Dwar Mandir and Thakur Mandir of Treta Era. The said book has the mention of the Janam Sthan Temple having been destroyed and the mosque having been built at its place by Babur in 1528. Similarly, Gazetteer of Province of Awadh, volume 1, 1877 filed in this suit as paper nos. 107C-1/25 and 26, also has the aforesaid mention as contained in the book of P. Carnigi." (E.T.C.)

"14. इस वाद मे दाखिल कागल सं0 107 सी 1/40 व 41 बाराबंकी डिस्ट्रिक्ट गजेटियर की प्रति है जो सन् 1902 में एच0आर0 नेविल के

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निर्देशन में प्रकाशित हुई जिसमें अयोध्या स्थित श्री राम जन्म स्थान मन्दिर को बाबर द्वारा ध्वस्त करके उसी स्थान पर मस्जिद बनाये जाने का उल्लेख है। इसी तरह बाद में दाखिल कागज सं0 107 सी–1/10 व 11 गजेटियर आफ दी टेरीटारीज अन्डर दी गवर्नमेन्ट आफ ईस्ट इण्डिया कम्पनी सन् 1854 की प्रति है जिसे एडवर्ड थर्नटन के निर्देशन में प्रकाशित किया गया जिसमें महाराजा विक्रमादित्य द्वारा अयोध्या में भगवान श्री राम से सम्बन्धित 360 मन्दिरों के बनवाये जाने का उल्लेख है तथा बाबर द्वारा मस्जिद बनवाये जाने का वर्णन है।''

"14. Paper Nos. 107C-1/40 and 41 filed in this suit, are the copy of Barabanki District Gazetteer, which was published under the guidance of H. R. Navel in 1902 and which makes mention of Sri Ram Janam Bhumi temple having been demolished and a mosque having been built at that very place by Babur. Likewise, Gazetteer of the territories under the Government of East India Company (1854) forms paper nos. 107C-1/10 and 11 filed in the suit and it was published under the guidance of Edward Thornton. It has the description of 360 temples associated with Lord Sri Rama having been built in Ayodhya by King Vikramaditya and also that of a mosque having been constructed there by Babur." (E.T.C.)

''18. इन यात्रा वर्णन के अलावा रिपोर्ट आफ सेटिलमेन्ट आफ दि लैण्ड रेवेन्यू आफ फैजाबाद डिस्ट्रिक्ट सन् 1880 ए0एफ0 गिलेट द्वारा प्रकाशित की गई जिसके सुसंगत पृष्ठ कागज सं0 107 सी–1/28 से 30 इस वाद में दाखिल है जिसमें जन्म स्थान मन्दिर, स्वर्गद्वार मन्दिर, त्रेता का ठाकुर मन्दिर का वर्णन है जिसके अनुसार बाबर सन् 1528 में बाबर अयोध्या के आस पास कहीं एक सप्ताह तक ठहरा था और जन्म स्थान मन्दिर को ध्वस्त करके मस्जिद का निर्माण कराया था।''

"18. Besides this account of travel, Report of Settlement of Land Revenue of Faizabad district (1880) was published by A. F. Gillet and its relevant pages are filed as paper nos.

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107C-1/28 to 30 in this suit and they have the description of Ram Janam Sthan temple, Swarg Dwar temple and Thakur temple of Treta Era as per which description, Babur stayed for week somewhere in the vicinity of Ayodhya and got the Janam Sthan temple demolished and a mosque constructed." (E.T.C.)

"19. प्रसिद्ध डच विद्वान हेंस बेकर ने अपनी पुस्तक अयोध्या जो सन् 1986 में 2 वाल्यूम में प्रकाशित हुई में यह स्पष्ट लिखा है कि धरती के जिस पावन स्थल पर राम का अवतार हुआ था उस स्थान पर स्थित जन्मभूमि मन्दिर को बाबर ने सन् 1528 में नष्ट किया और इसके ढाचे से मीरबाकी ने मस्जिद का निर्माण किया जिसमें 14 काले पत्थर के स्तम्भ लगे हुए थे।"

"19. Famous Dutch Scholar Hens Becker in his book 'Ayodhya' published in two volumes in 1986 has clearly written that in 1528 Babur destroyed the Janam Bhumi temple located at the holy place where Rama had incarnated himself and out of its structure Mir Baqi built a mosque having 14 pillars of black stone." (E.T.C.)

"20. उपलब्ध सामग्री के आधार पर ***मेरा निश्चित मत है कि रामजन्मभूमि मन्दिर स्थान को बाबर ने विनष्ट करके उसकी सामग्री से मस्जिद का निर्माण कराया।"***

"20. On the basis of the materials available ***I am of a definite view that Babur destroyed Ram Janam Bhumi Mandir/Sthan and got the mosque constructed from its materials.*** *" (E.T.C.)*

523. Regarding the place in dispute being the birthplace of Lord Ram he said in paras 15, 16 and 17 of the affidavit :

"15. समय समय पर पूरोपीय विदेशी यात्रियों ने भारत एवं आयोध्या की यात्रा की और अपने यात्रा–वृतान्त में आयोध्या और आयोध्या में स्थित श्री रामजन्मभूमि का वर्णन किया है। ब्रिटिश सौदागर विलियम फ्रीन्च कैप्टन हाकिन्स के साथ सन् 1608 से 1611 तक भारत यात्रा किया था। इस

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दौरान वह आयोध्या भी गया था उसने आयोध्या के रामकोट के आस–पास पुराने खण्डहरों की विद्यमानता की पुष्टि की है जिसके सम्बन्ध में हिन्दुओं की मान्यता रही कि हजारों साल पहले भगवान राम ने यहां अवतार लिया था इसकी पुष्टि विलियम फार्स्टर द्वारा सम्पादित पुस्तक अर्ली टेवेल्स इन इण्डिया सन् 1583 से 1619 इस वाद में दाखिल कागज सं0 107 सी 1/65 में भी की गई है। यह पुस्तक सन् 1921 में लन्दन से प्रकाशित हुई थी।''

"15. Foreign travellers hailing from Europe travelled India and Ayodhya from time to time and they have in their travel-accounts have made mention of Ayodhya and Sri Ram Janam Bhumi located there. A British merchant William Finch, along with Captain Hawkins, travelled India between 1608 and 1611. In course of it he had also visited Ayodhya. He has confirmed there being traces of old remains in and around Ram Kot of Ayodhya, where Hindus hold that Lord Rama had incarnated himself. This fact also gets corroborated by William Forester – edited book titled 'Early Travels in India (1583-1619)', filed in this suit as paper no. 107C-1/65. This book was published from London in 1921." (E.T.C.)

''16. जोसेफ टाइफन थेलर आस्ट्रेलियन पादरी ने सन् 1766 से 1771 की अवधि तक अवध क्षेत्र का दौरा किया था उसने लैटिन भाषा में पुस्तक लिखी जिसका फ्रेंच अनुवाद सन् 1785 में हिस्टोरिक एट जियोग्राफिक डी0एल0 इण्डे, जीन बरनाल द्वारा किया गया जिसकी प्रति इस वाद में दाखिल कागज सं0 107 सी–1/96 से 108 है इसमें यह उल्लेख है कि बाबर ने आयोध्या स्थित रामजन्मभूमि मन्दिर को ध्वस्त कर उसके खम्भों का प्रयोग करके एक मस्जिद का निर्माण कराया जहॉ 18वीं शताब्दी तक हिन्दू पूजा करते रहे हैं। यह पूजा हिन्दू दोनों स्थान यानी खुले प्रांगण तथा मस्जिद में अन्दर करते रहे इसमें बाई तरफ चबूतरे पर पूजा का वर्णन भी मिलता है जो उस समय प्रचलित थी। यह सोचना गलत होगा कि हिन्दुओं ने पूजा की कोई नयी परम्परा मस्जिद के निकट शुरू की थी।

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"16. Joseph Typhen Thaylor, an Australian clergyman travelled the Awadh region from 1766 to 1771. He wrote a book in Latin language which was translated into French by D.L.Inday and Jean Barnal in 1785 which was titled 'Historic at Geographic', copy of which is filed in this suit as papers nos. 107C-1/96 to 108. It mentions that Babur demolished Ayodhya situated Ram Janam Bhumi temple and by using its pillars constructed a mosque where Hindus continued to worship till the 18th century. Hindus continued to offer pooja at both in the open courtyard and inside the mosque. It also contains description of pooja being performed at the chabutra located towards the left which was then vogue. It would be wrong to think that Hindus started any new tradition of performing pooja near the mosque." (E.T.C.)

"17. प्रसिद्ध ब्रिटिश सर्वेयर मान्ट गोगरी मार्टिन ने सन् 1838 में अपनी पुस्तक हिस्ट्री एन्टीक्वीटीज एण्ड स्टेटिस्टिक्स आफ ईस्ट इण्डिया वालयूम 2 की प्रति इस वाद में दाखिल कागज संख्या 107 सी–1/109–110 में यह उल्लेख किया है कि महाराजा विक्रमादित्य द्वारा निर्मित मन्दिर के खम्भों को मस्जिद बनाने में लगाये गये यद्यपि खम्भों पर बनी मूर्तियों को बाबर द्वारा धर्मान्ध (बिगाट) की सन्तुष्टि के लिये खण्डित किया गया है।"

"17. Famous British surveyor Mont Gogari Martin in his 1838-published book History, Antiquities and Statistics of East India, volume II, copy of which is filed in this suit at paper nos. 107C-1/109-110, has mentioned that the pillars of the temple built by King Vikramaditya were used in the construction of the mosque but the idols carved on the pillars were broken by Babur for the satisfaction of bigots." (E.T.C.)

524. OPW-11 also gave his opinion about the gazetteer as a source of history and in para 11 of the affidavit said as under:

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''11. गजेटियर आधुनिक भारत के इतिहास के एक महत्वपूर्ण श्रोत है जिनसे प्राचीन व मध्यकाल के इतिहास की स्पष्ट झलक मिलती है। किसी साम्राज्य प्रान्त या जिले के गजेटियर उस स्थान का शब्द अथवा इन्डेक्स होते हैं जिनसे ऐतिहासिक, सामाजिक, पुरातात्विक व्यापारिक और आकंड़े आदि सम्बन्धी जानकारी मिलती है। भारत वर्ष में इन गजेटियर्स की रचना 19वीं शताब्दी के मध्यकाल में शुरू हुई। इसकी विस्तृत योजना सन् 1866 में गवर्नर जनरल लार्ड मेयो के कार्यकाल में बनी जो बाद में सन् 1881 में इम्पीरियल गजेटियर आफ इण्डिया के रूप में प्रकाशित हुई। प्रारम्भ में ब्रिटिश सरकार तथा स्वतंत्रता प्राप्ति के बाद भारत सरकार तथा राज्य सरकारों ने करोड़ो रूपये व्यय करके समय–समय पर गजेटियर विभिन्न विषयों के विद्वानों की देखरेख में परिवर्तित, संशोधित तथा प्रकाशित किये हैं। जैसे सन् 1960 के फैजाबाद गजेटियर की एडवाइजरी बोर्ड में डा0 एस0 नुरूल हसन, अध्यक्ष एवं निदेशक इतिहास विभाग मुस्लिम यूनिवर्सिटी अलीगढ़, डा0 एस0 मुजफ्फर अली, प्रोफेसर एवं अध्यक्ष भूगोल विभाग सागर विश्वविद्यालय सागर तथा डा0 गोविन्द चन्द्र पाण्डेय, प्रो0 प्राचीन भारतीय इतिहास गोरखपुर विश्वविद्यालय गोरखपुर आदि विद्वान सम्मिलित रहे जिन्होंने अपनी देखरेख, निर्देशन एवं अपने विषय से सम्बन्धित अध्यायों को देखने के बाद गजेटियर में प्रकाशन की अनुशंसा की थी।''

''11. Gazetteer is a vital source of History of Modern India giving a clear glimpse of ancient and medieval history. The gazetteer of any empire, province or district are an index of the said place providing historical, social, archaeological, statistical and trade- related knowledge. In India these gazetteers began to be written in the middle of 19th century. Its comprehensive plan was prepared in 1866 during the tenure of Governor General Lord Mayo. It was later published as Imperial Gazetteer of India in 1881. In the beginning, the British Government and after the dawn of Independence Indian Government and State Governments by spending crores of rupees have got the gazetteers amended, revised and published under the

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supervision of scholars of various subjects from time to time. For example, the Advisory Board of the 1960 Faizabad Gazetteer comprised scholars like Dr. S. Narul Hasan, Chairman and Director, Department of History at Aligarh Muslim University; Dr. S. Mujaffar Ali, professor and head, Department of Geography at Sagar University, Sagar and Dr. Govind Chandra Pandey, a professor of Ancient History at Gorakhpur University, Gorakhpur and so on who under their supervision and direction and after going through the chapters related to their subjects recommended for the publication of the gazetteer." (E.T.C.)

525. **OPW 16 Jagadguru Ramanandacharya Swami Rambhadracharya,** aged about 54 years (vide his affidavit dated 15.7.2003) and his cross examination is as under :

(a) 15-07-2003-by Nirmohi Akhara, defendant no. 3, through Sri R.L. Verma, Advocate (p. 10-25)

(b) 16-07-2003- by defendant no. 6 through Sri Abdul Mannan, Advocate (p. 26-29)

(c) 16/17/18-07-2003- by Sunni Central Waqf Board, defendant no. 4 through Sri Zafaryab Jilani, Advocate (p. 29-64)

(d) 18/21-07-2003- by defendant no. 5 through Sri Mustaq Ahmad Siddiqui, Advocate (p. 64-75)

(e) 21-07-2003- defendant no. 26 through Sri Sayad Irfan Ahmad, Advocate and defendants no. 6/1 and 6/2 (Suit-3) through Sri Fazale Alam, Advocate adopted the cross examination already done by defendants no. 4, 5 and 6 (p.75)

526. He is blind since the age of 2 months due to lack of

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medical assistance. His real name given by the family is Girdhar Mishra and his father's name is Pt. Rajdeo Mishra. He has studied from Prathama to Acharya, Vidya Varidhi and Vachaspati from Sampurnanand Sanskrit Unviersity, Varanasi and did Shastri in 1973 securing highest marks, was awarded gold medal by the University. Similarly, in Acharya Examination passed in 1976 he secured highest marks and got five gold medals. He did his research in "Adhyatmaramayane Apaniniya Prayoganam Vimarshah" and was conferred Ph.D. in 1982. In 1995 he was conferred D.Lit. on the subject "Paniniyashtadhyayh Pratisutram Shabdabodh Samiksha". He has studied Veda, Vedanga, Upnishahd, Vyakaran and Dharmshastra thoroughly and is author of 76 books. Residing at Chitrakoot since 1983, changing his name as Rambhadracharya, he established in 1987 Sri Tulsi Peeth at Chitrakoot. He was honoured as Jagadguru Ramanandacharya in 1988 at Varanasi and was seated as Sri Tulsi Peethadheeshwar Jagadguru Ramanandacharya Swami Rambhadracharya in Kumbh Allahabad in 1989. He established Jagadguru Rambhadracharya Viklang Vishwavidyalaya Chitrakoot of which he is Vice Chancellor. Presently 14 students are undergoing research under his guidance. He belongs to Ramanandi Sampradaya and worships Lord Sri Ram. He has studied about Lord Sri Ram in religious books. He has knowledge of all Indian languages including English except Urdu; and in Sanskrit he possesses special knowledge. He has widely travelled abroad. Regarding the place of birth of Lord Ram at the disputed site, he stated in para 18 to 27 of his affidavit as under:

> *"18. मेरे अध्ययन व जानकारी के अनुसार अयोध्या स्थित विवादित स्थल ही भगवान श्रीराम की जन्मभूमि है। यह सर्वविदित है कि भगवान श्रीराम का जन्म अयोध्या में ही हुआ था तथा विवादित स्थल हिन्दू*

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धर्मानुयायियों द्वारा भगवान श्रीराम के जन्मभूमि के रूप में अनंतकाल से आस्था, परम्परा एवं विश्वास के अनुसार मान्यता प्राप्त है तथा उस स्थल की पूजा अनवरत होती चली आ रही है।''

''18. As per my study and knowledge, Ayodhya-situated disputed site itself is the birthplace of Lord Sri Rama. It is known to all that Lord Sri Rama was born in Ayodhya itself and the disputed site is, as per faith, tradition and belief, recognised by the followers of Hinduism as the birthplace of Sri Rama since the time immemorial, and the worship of that place has consistently been performed." (E.T.C.)

''19. हिन्दू धर्मशास्त्र के अनुसार मूर्ति तथा देवस्थल पूज्य है जिनकी पूजा–अर्चना से मनुष्य को मोक्ष की प्राप्ति होती है।

''19. As per Hindu scriptures, idols and the places of gods are revered worshipping which a man attains liberation." (E.T.C.)

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''20. हिन्दू धर्मशास्त्रों में स्थान विशेष की विशेष महत्ता है जो स्वयंभूदेव के रूप में स्वयं प्राण प्रतिष्ठित एवं पूज्य हैं। इस प्रकार के स्थान अतंतकाल से जनमानस में आस्था, परम्परा एवं पूजा के कारण सर्वोत्कृष्ट पूज्य स्थल हैं। इस प्रकार के देवत्य प्राप्त स्थलों पर शिवैत या सर्वराहकार या महंत की कोई आवश्यकता नहीं होती है। मानव निर्मित देवस्थलों में शिवैत या सर्वराहकार या महंत की नियुक्ति की आवश्यकता होती है।''

''20. Particular places have special importance in Hindu scriptures and they are self deified and revered as Swayambhudev (God of land in themselves). By virtue of faith, tradition and worship, this type of places are the most exalted places of worship in the minds of people from eternity. This type of places blessed with divinity do not require 'Shivait' or 'Sarvarahakar' or 'Mahanta'. Appointment of 'Shivait' or 'Sarvarahakar' or 'Mahanta' needs to be made at man-made places of gods." (E.T.C.)

''21. बाल्मीकि रामायण, अथर्ववेद, यजुर्वेद, रामतापनीययोपनिषद,

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स्कन्दपुराण, तुलसीदास के साहित्य में अयोध्या में आराध्य देव राघवेन्द्र सरकार भगवान श्रीराम व विवादित स्थल भगवान श्रीराम की जन्मभूमि होने का विवरण मिलता है। तुलसीकृत ''श्री तुलसी दोहाशतक'' में गोस्वामी तुलसीदास जी ने स्पष्ट रूप से मुस्लिमों तथा बाबर के कृत्यों एवं अयोध्या में श्रीराम जन्म मन्दिर मीरबाकी द्वारा तोड़कर मस्जिद बनवाने का वर्णन किया है जैसे–

मंत्र उपनिषद ब्राह्मनहुँ बहु पुरान इतिहास।
जवन जराये रोष भरि करि तुलसी परिहास।।
सिखा सूत्र से हीन करि, बल ते हिन्दू लोग।
भमरि भगाये देश ते, तुलसी कठिन कुजोग
बाबर बर्बर आइके, कर लीन्हे करवाल।
हने पचारि–पचारि जन, तुलसी काल कराल।।
सम्बत सर वसु बान नभ, ग्रीष्म ऋतु अनुमानि।
तुलसी अवधहिं जड़ जवन, अनरथ किय अनखानि।।
राम जनम महिं मंदिरहिं, तोरि मसीत बनाय।
जबहि बहु हिन्दुन हते, तुलसी कीन्ही हाय।।
दल्यो मीरबाकी अवध, मन्दिर रामसमाज।
तुलसी रोवत हृदय हति, त्राहि त्राहि रघुराज।।
राम जनम मंदिर जहाँ, लसत अवध के बीच।
तुलसी रची मसीत तहँ, मीरबाकी खल नीच।।
रामायन घरि घन्ट जहँ, श्रुति पुरान उपखान।
तुलसी जवन अजान तहँ, कियो कुरान अजान।।

''Description of Ayodhya being the birthplace of Raghavendra Lord Sri Rama and the disputed site being Sri Rama's birthplace, is found in Valmiki Ramayana, Atharvaveda, Yajurveda, Ramtapniyayopanishad, Skandapurana and Tulsidas's literature. Goswami Tulsidas, in his 'Sri Tulsishatak' has clearly described the deeds of Muslims and Babur and the mosque having been built by Mir Baqi after demolishing Sri Ram Janam Mandir at Ayodhya, which runs as follows:

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Goswami Tulsidas Ji says that 'Yavans' (barbarians /Mohammedans) ridicule hymns, several Upnishads and treatises like Brahmans, Puranas, Itihas (histories) etc. and also the Hindu society (orthodox religion) having faith in them. They exploit the Hindu society in different ways.

Goswami Tulsi Das says that forcible attempts are being made by Muslims to expel the followers of Hinduism from their own native place (country), forcibly divesting them of their Shikha (lock of hair on the crown of head) and 'Yagyopaveet' (sacrificial thread) and causing them to deviate from their religion. Tulsi Das terms this time as a hard and harrowing one.

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Describing the barbaric attack of Babur, Goswami Ji says that he indulged in gruesome genocide of the natives of that place (followers of Hinduism), using sword (army).

Gowami Tulsi Das Ji says that countless atrocities were committed by foolish 'Yavans' (Mohammedans) in Awadh (Ayodhya) in and around the summer of Samvat 1585, that is, 1528 AD (Samvat 1585- 57=1528 AD).

Describing the attack made by 'Yavans', that is, Mohammedans on Sri Ramjanambhumi temple, Tulsi Das Ji says that after a number of Hindus had been mercilessly killed, Sri Ram Janam Bhumi temple was broken to make it a mosque. Looking at the ruthless killing of Hindus, Tulsi Ji says that his heart felt aggrieved, that is, it began to weep, and on account of incident it continues to writhe in pain.

Seeing the mosque constructed by Mir Baqi in Awadh, that is, Ayodhya in the wake of demolition of Sri

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Ram Janam Bhumi temple preceded by the grisly killing of followers of Hinduism having faith in Rama and also seeing the bad plight of the temple of his favoured deity Rama, the heart of Tulsi began to always cry tearfully for Raghuraj (the most revered among the scions of the Raghu Dynasty). Being aggrieved thereby, submitting himself to the will of Sri Rama, he shouted: O Ram ! Save....Save...

Tulsi Das Ji says that the mosque was constructed by the wicked Mir Baqi after demolishing Sri Ram Janam Bhumi temple, situated in the middle of Awadh, that is, Ayodhya.

Tulsi Das Ji says that the Quran as well as Ajaan call is heard from the holy place of Sri Ram Janam Bhumi, where discourses from Shrutis, Vedas, Puranas, Upnishads etc. used to be always heard and which used to be constantly reverberated with sweet sound of bells."(E.T.C.)

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"22. गोस्वामी तुलसी दास ने अपनी रचना कवितावली में निम्नलिखित पंक्तियों के द्वारा समाज से विरक्तता और भगवान राम के प्रति अपनी आसक्ति एवं आस्था प्रकट करते हुए विवादित स्थल के बारे में उल्लेख किया है:–

धूत कहौं अवधूत कहौं, रजपूत कहौं, जोलहा कहौं कोऊ।
काहू की बेटी से बेटा न ब्याहब, काहू की जाति बिगारन सोऊ।।
तुलसी सर नाम गुलामु है राम को, जाको रूचे सो कहै कछु जोऊ।
मांगि के खैबों, मसीत में सोइबो, लैवे को एकु न दैवे के दोऊ।।"

"22. In his work 'Kavitavali', Goswami Tulsidas while expressing detachment from the society and his attachment and faith towards Lord Rama has mentioned about the disputed site in the following lines:-

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"Dhoot Kahaun, Avadhoot Kahaun, Rajpoot Kahaun, Jolha Kahaun Kou.

Kahu Ki Beti Se Beta Na Byahab, Kahu Ki Jati Bigaran Sou.

Tulsi Sar Naam Gulamu Hai Ram Ko, Jako Ruche So kahe Kachhu Jou.

Mangi Ke Khaibon, Maseet Me Soibo, Laive Ko Eku Na Deve Ke Dou." (E.T.C.)

''23. वेद सम्मत वाल्मीकि रामायण की रचना भगवान श्रीराम के समय की ही मानी जाती है। बाल्मीकि रामायण के बालकाण्ड के सर्ग 18 में भगवान श्रीराम के जन्म के समय, ऋतु, ग्रह, नक्षत्र आदि का वर्णन करते हुए महर्षि बाल्मीकि ने विवादित स्थल को ''सर्वलोक नमस्कृत'' शब्द के माध्यम से भगवान श्रीराम के जन्म स्थली को निम्नलिखित श्लाको द्वारा स्पष्टतः वर्णित किया हैः–

ततो यज्ञे समाप्ते तु ऋतुनां षट् समत्ययुः।

ततश्च द्वादशे मासे चैत्रे नावमिके तिथौ।।

नक्षत्रेऽदिति दैवत्ये स्वोच्चसंस्थेषु पन्जसु।।

ग्रहेषु कर्कटे लग्ने वाक्यताविन्दुना सह।।

प्रोद्यमाने जगन्नाथं सर्वलोक नमस्कृतम्।

कौशल्याजनयद् रामं दिव्य लक्षण संयुतम्।।''

''23. The Veda equivalent Valmiki Ramayana is considered to have been composed in the period of Lord Sri Rama. While describing the time, climate, planets etc. of the birth of Lord Sri Rama in Sarga-18 of Balkand in the Valmiki Ramayana, Maharishi Valmiki has clearly described the birthplace of Lord Sri Rama through the words 'Sarvalok Namaskrit' in the following Shloka-

"Tato Yagye Samapte Tu Ritunam Shat Samatyuyah.

Tatasch Dwadashe Mase Chaitre Navamike Tithau.

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Nakshatre-aditi Daivatye Swochchsanstheshu Panjasu.

Graheshu Karkate Lagne Vakyatavinduna Sah.

Prodyamane Jagannatham Sarvalok Namaskritam.

Kaushalyajanayad Ramam Divya Lakshan Samyutam." (E.T.C.)

''24. धर्मग्रन्थ विशेषतः रामतापनीयोपनिषद, वेद,–वेदांग में भगवान के चार रूपों अर्थात (1) नाम (2) रूप (3) लीला (4) धाम का वर्णन है जिनके पूजा करने का विधान है।

''धाम से आशय जन्मभूमि से है जैसा कि निम्नलिखित श्लोक से स्पष्ट है:–

धर्म स्थाने प्रकाशे च जन्मभूमौ तथैव च।।

किरणे चैव विज्ञेयम् तथा चन्दनरश्मिनो।।

इस प्रकार स्पष्ट है कि श्री राम जन्मभूमि आराध्यदेव के समान पूज्य है तथा अनंतकाल से उसी रूप में हिन्दू धर्मावलम्बियों द्वारा उनके आस्था केन्द्र के रूप में निरन्तर पूजित चला आ रहा है।''

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''24. The religious books specially Ramtapniopanishad, Veda-Vedangas contain description of all four forms of God Almighty viz. (1) Name, (2) Form, (3) Leela (actions) and (4) Dham (abode), besides the method of offering prayer. The word Dham implies Janmbhumi (birthplace), as is clear from the following Shloka-

"Dharm Sthane Prakashe Cha Janmbhumau Tathaiva Cha.

Kirane Chaiv Vigyeyam Tatha Chandanrashmino." (E.T.C.)

Accordingly it is clear that the Sri Ramjanmbhumi is worshipable alike favoured deity and since time immemorial, the Hindu devotees have been continuously revering the said place as the centre of their faith.'' (E.T.C.)

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''25. श्रीकृष्णदासात्मज क्षेमराज श्रेष्ठि द्वारा स्थापित वेंकटेश्वर (स्टीम्) मुद्रणालय में सम्बत् 1966 में मुद्रित एवं प्रकाशित स्कन्द पुराण के वैष्णव खण्ड के अयोध्या महात्म्य की जानकारी मुझे है। जिसमें भगवान श्रीराम की जन्मभूमि का स्पष्ट वर्णन किया गया है। इस ग्रन्थ के मुख पृष्ठ एवं अध्याय 10 के पृष्ठ संख्या 292 पर श्लोक संख्या 1 से 25 तक की छाया प्रति संलग्नक–1 के रूप में इस शपथपत्र के साथ संलग्न है जो मूल पुस्तक की यथार्थ छायाप्रति है।''

''25. I know about the Ayodhya Mahatamya of Vaishnava part of Skand Purana printed and published in the year 1966 by Venkateshwar (esteem) Printing Press established by Kshemraj Shreshti son of Shrikrishnadas, which contains clear description of the Janmbhumi (birthplace) of Lord Sri Rama. The photocopy of page no. 292 of chapter 10 of this book containing Shloka 1-25 as well as that of the cover page, has been enclosed with this affidavit as Enclosure-1, which is exact photocopy of the original book.'' (E.T.C.)

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''26. मैं रामतापनीयोपनिषद, बाल्मीकि रामायण आदि पुस्तकें भी अपने साथ लाया हूँ।''

''26. I have brought along Ramtapniopanishad, Valmiki Ramayana and other books.'' (E.T.C.)

''27. यजुर्वेद के तैतरीय शाखा के भगवती श्रुति के अनुसार अयोध्या देवताओं की पुरी है जहॉ पर भगवान श्रीराम का जन्म हुआ था।''

''27. As per Bhagwati Shruti of Taiteriya branch of Yajurveda, the entire Ayodhya is of Gods, where Lord Sri Rama was born.'' (E.T.C.)

527. **DW 13/1-3, Dr. Bishan Bahadur,** aged about 59 years (vide his affidavit dated 07.04.2005), is resident of Rajeshwar Colony, Surendra Nagar, Aligarh. His cross examination is as under:

(a) 07/08/11.04.2005- by Nirmohi Akhara, plaintiff (Suit-

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3) through Sri Tarunjeet Verma, Advocate (p. 7-36)

(b) 11/12.04.2005- by plaintiff no. 9 and 10/1 Mahmood Ahmad and Mohd. Faruk Ahmad through Sri Abdul Mannan, Advocate (p. 37-50)

(c) 12/13/15/19/20/21/25/26/27.04.2005- by plaintiffs no. 1, 6/1, 8/1 Sunni Central Board of Waqf, Jiyauddin and Maulana Mahafujurrhman through Sri Zafaryab Jilani, Advocate (p.50-149)

(d) 27/28.04.2005, 02/03/04/05.05.2005- by plaintiff no. 7 (Suit-4) through Sri Mustaq Ahmad Siddiqui, Advocate (p. 150-191)

(e) 05.05.2005-defendant no. 6/1 (Suit-3) through Sri Irfan Ahmad, Advocate and defendant no. 6/2 (Suit-3) through Sri Fazale Alam, Advocate and defendant no. 26 (Suit-5) through Sri C.M. Shukla, Advocate adopted the cross examination already done by Sri Abdul Manna, Sri Zafaryab Jilani and Sri Mustaq Ahmad Siddiqui, Advocates (p. 191)

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528. He was working as Reader in Sri Varshneya Degree College, Aligarh in the Department of History and was Incharge Head of the Department at that time. He is M.A. in History and English Literature and Ph.D. His subject of research was “Hindu Resistance During Saltanat Period” and he got Ph.D. in 1975 after doing his Post-Graduation in History in 1969. He is engaged for 35 years in the teaching of history to graduate and post-graduate students, guided about 22 students for Ph.D. conferred by Agra and Ruhelkhand University, guided 64-65 short researches and got published 19 research papers. Besides, he has authored a book “Viswa Ka Itihas” and “Maharan Pratap – Ek Sambal Ek Chunauti”. He claims to be a specialist in

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"medieval history" and appeared as a witness expert (Historian) as per para 6 of the affidavit:

> *"6. यह कि मैंने भारत वर्ष के इतिहास के मध्यकालीन समय के इतिहास का विशेषरूप से अध्ययन किया है। इतिहास की दृष्टि से प्रथाएं एवम् परम्पराएं स्वमेव इतिहास के साक्ष्य के रूप में मान्य है।"*
>
> *"6. That I have specially studied the medieval period of Indian History. From the point of history, customs and traditions are in themselves acceptable as evidence of history." (E.T.C.)*

529. Regarding the medieval history and its co-relation with the disputed site, construction of temple of Lord Ram and its destruction for construction of disputed structure he said in para 7 to 14 of the affidavit as under:

> *"7. यह कि गहड़वाल वंश का प्रारम्भिक शासक यशोविग्रह था। यशोविग्रह का पुत्र महीचंद था महीचंद का पुत्र चंद्रदेव उसका उत्तराधिकारी बना जिसके शासन के अन्तर्गत कन्नौज, काशी (बनारस), कौशिक (इलाहाबाद क्षेत्र), कौशल (अवध जिसमें अयोध्या सम्मिलित थी), इंद्रस्थान (वर्तमान बुलंद शहर जिले में) सम्मिलित था। चंद्रदेव सन् 1085 से सन् 1100 तक शासक रहा जिसने अपनी राजधानी कन्नौज को तथा दूसरी राजधानी काशी को बनाया था।"*
>
> *"7. That the first ruler of Gaharawal dynasty was Yashovigrah. Mahichand was the son of Yashovigrah. Mahichand Kaak son of Chandradev became his successor, during whose reign Kannauj, Kashi (Varanasi), Kaushik (Allahabad area), Kaushal (Awadh including Ayodhya), Indrasthan (present Bulandshahar district) were under him. Chandradev ruled from the year 1085 to 1100 and he had Kannauj as his capital and Varanasi as the second capital." (E.T.C.)*
>
> *"8. यह कि चंद्रदेव के बाद मदनचंद (मदनपाल/मदनदेव) सन् 1100 से सन् 1110 तक उपर्युक्त क्षेत्र का शासक रहा। गोविन्दचन्द जो*

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गोविन्दचन्ददेव के नाम से भी जाने जाते हैं, सन् 1110 से सन् 1156 तक उसके बाद विजय चन्द सन् 1156 से सन् 1170 तक तदोपरान्त जयचन्द सन् 1170 से सन् 1194 तक उसके बाद हरिश्चन्द सन् 1194 से सन् 1226 तक शासक रहे जिनके शासन के अन्तर्गत अयोध्या रही।"

"8. That after Chandradev, Madanchand (Madanpal/ Madandev) became the ruler of said area from the year 1100 to 1110. Govind chand, who is also known as Govind Chand Dev was the ruler from the year 1110 to 1156, Vijay Chand from 1156 to 1170, Jai Chand from 1170 to 1194 and Harishchandra from 1194 to 1226 and Ayodhya remained under their rule."

''9. यह कि सन् 1032–33 में सैयद सालार मसूद की सेना द्वारा अयोध्या जहॉ भगवान श्रीराम लला का मंदिर स्थित है, पर आक्रमण करके मंदिरों को क्षतिग्रस्त किया गया सैयद सालार मसूद सतरख से बहराइच आया और राजा सुहेलदेव (साहिलदेव/सोहलधेव) के द्वारा युद्ध में हाटिला अशोकपुर में मारा गया।''

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"9. That in the year 1032-33, the force of Syed Salar Masud attacked Ayodhya, where the temple of Lord Sri Ramlala is situated, and damaged the temples. Syed Salar Masud came from Satrakh to Bahraich and was killed in battle at Hatila Ashokpur by king Suhel dev (Sahildev/ Sohal dhev)." (E.T.C.)

''10. यह कि भारतवर्ष में कुतबुद्दीन ऐबक ने दिल्ली में सन् 1206 में शासन प्रारम्भ किया जिसे सामान्यतः मध्यकालीन भारतीय इतिहास का प्रारम्भ माना जाता है। इस काल की समाप्ति प्लासी के युद्ध सन् 1757 में होती है।''

''10. That Qutub-ud-din Aibak founded his empire in Delhi in the year 1206, which is usually considered as the beginning of medieval Indian history. This period ends in the year 1757 with the battle of Plassey." (E.T.C.)

''11. यह कि सन् 1393 से सन् 1479 तक अयोध्या जौनपुर के शर्की वंश

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के शासकों के अधीन रही। जौनपुर शर्की शासन की राजधानी थी। राज्य के शेष स्थानों पर जीवन सामान्य गति से चलता रहा। शिक्षा, भवन निर्माण का कार्य चलता रहा एवम् सूफी संतों का पर्याप्त प्रभाव रहा। ''

''11. That from the year 1393 to 1479, Ayodhya remained in the rule of rulers of Shirky dynasty of Jaunpur. Jaunpur was the capital of Shirky rule. The life in other parts of the country passed off in due course. The education and building construction work continued and there was sufficient influence of the Sufi saints.'' (E.T.C.)

''12. यह कि बाबर अपने मूल राज्य समरकंद और फरगना में अनेकों बार पराजित हुआ और अंततः निष्कासित कर दिया गया। अपने कुछ साथियों के साथ काबुल पहुॅच कर बाबर ने विजय प्राप्त की और उसको स्थाई रूप से कब्जे में रखने के लिए पंजाब के क्षेत्र में 5 आक्रमण किये। विध्वंस व अत्याचार करता हुआ बाबर ने दिल्ली के सुल्तान इब्राहिम लोदी को सन् 1526 में पराजित किया। उसके बाद सन् 1527 में राणा संग्राम सिंह (राणसंगा) से जेहाद किया तत्पश्चात चंदेरी के युद्ध में भयंकर नरसंहार करते हुए नरमुण्डों का पिरामिड खड़ा कर दिया।''

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''12. That Babar was defeated number of times in his own country Samarkand and Fargana and was ultimately driven away. Babar gained victory on reaching Kabul along with few of his associates and in order to maintain his possession on permanent basis, he carried out five invasions over the area of Punjab. Continuing with his destruction and cruelty, Babar defeated Sultan of Delhi, Ibrahim Lodi in the year 1526. Thereafter, he engaged himself in Jehad with Rana Sangram Singh (Rana Sanga) in the year 1527. Subsequently, in the battle of Chanderi he carried out large scale homicide and created a pyramid of human skulls.'' (E.T.C.)

''13. यह कि मेरे अध्ययन एवम् जानकारी के अनुसार अयोध्या स्थित श्री राम जन्म भूमि पर स्थित मंदिर को बाबर के सेनापति मीरबाकी द्वारा ध्वस्त

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करके जो निर्माण कराया उस निर्माण में मंदिर के मलबे का इस्तेमाल किया गया।''

''13. That according to my studies and knowledge, the debris of temple situated at Sri Ramjanmbhumi in Ayodhya and demolished by Mir Baqi, the commander of Babar, was used in the construction raised over there." (E.T.C.)

''14. यह कि मेरे अध्ययन एवम् जानकारी के अनुसार अयोध्या में स्थित विवादित भूमि को हिन्दुओं द्वारा अनादिकाल से अपने आराध्य भगवान श्रीराम की जन्मभूमि के रूप में प्रथागत एवं परंम्परागत रूप से पूर्ण आस्था एवं विश्वास के साथा दर्शन–पूजा किया जाता रहा है।''

''14. That according to my studies and knowledge, the disputed site at Ayodhya has been revered by the Hindus since ancient times as the birthplace of their revered Lord Sri Rama out of their customary and traditional faith and belief." (E.T.C.)

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530. **DW 20/4, Madan Mohan Gupta,** aged about 52 years (vide his affidavit dated 16.05.2005), is resident of T.T. Nagar, Bhopal (M.P.). His cross examination followed as under :

(a) 26/27.07.2005 - by Nirmohi Akhara plaintiff (Suit-3) through Sri R.L. Verma, Advocate and Sri Tarunjeet Verma, Advocate (p. 9-32)

(b) 27/28.07.2005 - by plaintiff no. 9 and 10/1 Mahmood Ahmad through Sri Abdul Mannan, Advocate (p. 33-44)

(c) 28/29.07.2005, 01/10/11.08.2005, 21/22.11.2005- by plaintiffs no. 1, 6/1 and 6/2 Sunni Central Board of Waqf, Jiyauddin and Maulana Mahafujurrhman through Sri Zafaryab Jilani, Advocate (p. 44-115)

(d) 22/23.11.2005 - by plaintiff no. 7 (Suit-4) through Sri Mustaq Ahmad Siddiqui, Advocate (p. 115-137)

(e) 23.11.2005 - defendants no. 6/1 (Suit-3) through Sri Irfan Ahmad, Advocate and defendant no. 6/2 (Suit-3)

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through Sri Fazale Alam, Advocate and defendant no. 26 (Suit-5) through Sri C.M. Shukla, Advocate adopted the cross examination already done by Sri Abdul Manna, Sri Zafaryab Jilani and Sri Mustaq Ahmad Siddiqui, Advocates (p. 137)

531. He himself is defendant No. 20 in Suit-4 and was Coordinator, Akhil Bhartiya Sri Ram Janma Bhumi Punruddhar Samiti. He is a Vaishnavite, follower of Vaisnav Hindu Sanatan Religion and worshipped Lord Ram since generations. His parents have got a temple of Sri Ram Janki Evam Shiv Ji constructed at Rewa (M.P.) known as Omkareshwar Temple Rewa. He sought to support his claim of the place in dispute as a birthplace of Lord Ram, continuously worshipped as such, non-observance of any Namaj by any Muslim at any point of time and construction of the disputed structure after demolition of a temple, and, in paragraphs no. 4 to 30 of the affidavit said as under:

''4. यह कि विवादित भवन अनादिकाल से भगवान श्रीरामलला की जन्मभूमि के रूप में पूज्य रही है, जहां पर भगवान श्रीरामलला की मूर्ति विराजमान रही है। जो कभी भी मस्जिद नहीं रही है।''

''4. That the disputed structure has been revered since ancient times as the birthplace of the Lord Sri Ramlala with the idol of Lord Sri Ramlala existing over there and it was never a mosque.'' (E.T.C.)

''5. यह कि मैं विवादित स्थल को भली भॉति जानता हूँ एवं बचपन से ही अपने स्वर्गवासी माता–पिता व ईष्ट मित्रों के साथ तथा कालान्तर में स्वयं अपने परिवार के साथ समय–समय पर जाता रहा हूं। भगवान श्री राम में और इनकी जन्मस्थली में मेरी पूर्ण आस्था एवं विश्वास सदैव से रहा है इसके अतिरिक्त अयोध्या के परम पूज्य स्वर्गीय सन्त श्री राम मंगलदास जी महराज मेरी स्वर्गीय माता श्रीमती सोमवती गुप्ता के आध्यात्मिक गुरू रहे हैं इस कारण मेरा और मेरे परिवार का अयोध्या जाना लगातार बना ही रहता

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है।''

''5. That I know the disputed site very well and since my childhood I have visited the said place along with my late parents, friends and subsequently with my family. I have always had full faith and belief in Lord Sri Ram and His birthplace. Apart from this, late Sant Ram Mangal Das ji Maharaj was the spiritual teacher of my late mother Smt . Somwati Gupta and due to this I and my family used to regularly visit Ayodhya.'' (E.T.C.)

''6. यह कि हिन्दू धर्म की मान्यताओं, आस्थाओं एवं परम्पराओं के अनुसार भगवान श्री रामलला अयोध्या के चक्रवर्ती महाराज दशरथ और महारानी कौशल्या को माध्यम बनाकर अयोध्या में उसी स्थान पर प्रकट हुए थे और भगवान श्री राम लला के प्राकट्य के विषय में वाल्मीकी रामायण जो भगवान श्री राम के समकालीन है एवं गोस्वामी तुलसीदास कृत ''श्री रामचरित मानस'' में विस्तृत वर्णन है जिसका मैंने अध्ययन किया है श्रीराम चरित मानस का संगत पृष्ठ बतौर सबूत कागज संख्या 43ए1/29 दाखिल है।''

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''6. That according to the faith, customs and believes of Hindu religion, Lord Sri Ramlala had appeared/incarnated at that very place in Ayodhya through emperor Dashrath and queen Kaushalya. The Valmiki Ramayana contemporay to Lord Sri Rama, and Goswami Tulsidas's Sri Ramcharit Manas contain detailed description about the incarnation of Lord Sri Rama. I have studied the same and the relevant page of Sri Ramcharit Manas has been filed in evidence as Paper no. 43A-1/29.'' (E.T.C.)

''7. यह कि हिन्दू जनता अपनी आस्था और विश्वास से देव स्वरूप श्री राम जन्मभूमि की पूजा सदैव से करती रही है जहां पर प्राचीनकाल में श्री राम जन्मभूमि मन्दिर विद्यमान रहा है। और कालान्तर में महाराजा विक्रमादित्य ने श्रीराम जन्मभूमि मन्दिर का पुनरूद्धार कराया।''

''7. That the Hindu public has all along revered the

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Ramjanmbhumi out of their faith and belief, where the Sri Ramjanmbhumi temple has existed since ancient times and which had been renovated with passage of time by king Vikramaditya." (E.T.C.)

''8. यह कि हिन्दू धार्मिक मान्यता के अनुसार भगवान श्री राम चन्द्र जी का अवतरण ''त्रेतायुग'' में अधर्म का नाश करने और धर्म की स्थपना हेतु एवं सन्तों की रक्षा हेतु हुआ था और उनकी पूजा अनादिकाल से भारत में ही नहीं वरन पूरे विश्वमें की जाती है।''

''8. That according to Hindu religious belief, Lord Sri Ramchandra had incarnated in Treta Yuga to destroy the evil, propagate religion and protect the saints and He has been worshipped since ancient times not only in India but in the entire world." (E.T.C.)

''9. यह कि पूरे विश्वमें भारत वर्ष की पहचान भगवान श्रीराम और उनकी जन्मस्थली अयोध्या के कारण है। धार्मिक पुस्तकों तथा अन्य भाषाओं की पुस्तकों में स्वयं भूदेव श्रीराम जन्मभूमि भगवान श्रीराम एवं अयोध्या नगरी का वर्णन भली भॉति मिलता है।''

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''9. That India is recognised in the whole world on account of Lord Sri Rama and His birthplace Ayodhya. The religious books as well as the literature in other languages contained a detailed description about Sri Ramjanmbhumi, Lord Sri Rama and the city of Ayodhya." (E.T.C.)

''10. यह कि गोस्वामी तुलसीदास ने अपनी ''श्रीरामचरित मानस'' में भगवान श्रीराम, अयोध्या एवं श्रीराम जी की लीलाओं एवं चरित्र का वर्णन किया है, परन्तु श्रीराम जन्मभूमि स्थल पर किसी मस्जिद व नमाज पढ़ने का कोई वर्णन नहीं किया।''

''10. That in his Sri Ramcharit Manas, Goswami Tulsidas has described Lord Sri Rama, Ayodhya and the Leelas (acts) and character of Sri Rama. However, there is no description about existence of any mosque at Sri Ramjanmbhumi site or the offering of Namaz therein."

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(E.T.C.)

''11. यह कि भगवान श्रीराम का जन्म चैत्र मास की शुक्ल पक्ष की नवमी तिथि को हुआ था और उन्होंने राक्षस राज रावण का वध किया था और आज तक विजयदशमी पर्व के रूप में पूरे विश्वके हिन्दुओं द्वारा मनाया जाता है और लंका विजय के पश्चात् भगवान श्रीराम के अयोध्या लौटने पर पूरे विश्वमें दीपावली पर्व मनाने की परम्परा सदियों से चली आ रही है जिसका कारण है कि इस दिन भगवान श्रीराम लंका विजय के पश्चात् अयोध्या वापस लौटे थे।''

''11. That Lord Sri Rama was born on the ninth day in Shukla Paksha of Chaitra month and He had killed demon king Ravana, which day is celebrated as Vijayadashami by Hindus all over the world and the tradition of celebrating the day of return of Lord Sri Rama to Ayodhya after the victory over Lanka as Deepawali, has been continuing for centuries across the world.'' (E.T.C.)

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''12. यह कि बहुत प्राचीन पुस्तक अयोध्या महात्म्य जिसे तथाकथित शाोध करने वाले यह कहते हैं कि यह अकबर के काल में प्रकाश में आयी परन्तु इस पुस्तक में कहीं भी विदेशी आक्रान्ता बाबर द्वारा तथाकथित मस्जिद बनवाये जाने का उल्लेख नहीं है।''

''12. That a very old book 'Ayodhya Mahatmya', claimed by alleged researchers to have seen light of day during the reign of Akbar, does not contain any reference of construction of the alleged mosque by foreign invader Babar.'' (E.T.C.)

''13. यह कि यू0पी0 जिला गजेटियर फैजाबाद 1960 जो श्रीमती यशा बसन्ती जोशी द्वारा सम्पादित एवं उत्तर प्रदेश सरकार द्वारा प्रकाशित है, में विवादित भवन में लगे शिलालेख का वर्णन है किन्तु उसमें किसी मस्जिद के निर्माण की कोई बात नहीं लिखी हुई है। बल्कि देवदूतों के उतरने के स्थान पर भवन निर्माण का उल्लेख किया गया है। इससे भी यही साबित होता है कि विवादित स्थल भगवान श्रीराम लला का अवतरण स्थल है जिस पर स्थित श्रीराम जन्मभूमि मन्दिर को तोड़कर विवादित भवन का निर्माण

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विदेशी आक्रान्ता बाबर के सलाहकार मीरबाकी ने करवाया था इसी गजेटियर में पूर्वी मुख्य गेट से दक्षिण तरफ दीवाल में स्थित वाराह भगवान का उल्लेख मिलता है।''

''13. That the U.P. District Gazetteer, Faizabad 1960, which has been edited by Smt. Yasha Basanti Joshi and published by Uttar Pradesh Government, mentions about the inscriptions at the disputed structure but it nowhere mentons about construction of any mosque and instead there is mention about construction of building at the place of descendence of angels. This also proves that the disputed site is the place of descendence of Lord Sri Ramlala and that the disputed structure was built by Mir Baqi, the advisor of foreign invader Babar after demolishing the Sri Ramjanmbhumi temple situated at the said place. This very Gazetteer mentions about Lord Varah situated in the wall to south of the eastern main gate.'' (E.T.C.)

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''14. यह कि श्री राम जन्मभूमि मन्दिर को तोड़कर विवादित भवन बनाया गया फिर भी वह कभी मस्जिद का रूप नहीं ले सकी क्योंकि इस विवादित भवन में कोई मीनार व ''वजू' करने के लिए पानी की व्यवस्था नहीं थी। विवादित भवन में बारह कसौटी के खम्भे थे जिनमें हिन्दू देवी–देवताओं की आकृतियॉ उकेरी थीं इसके अतिरिक्त हिन्दू धर्म के प्रतीक मोर, कलश व यक्ष के चित्र भी उकेरे हुये थे। इसके अतिरिक्त वहॉ पर श्री राम यंत्र, तोरण गणपति, प्राकार मंदिर भी बना था।''

''14. That the disputed structure had been built after demolishing Sri Ramjanmbhumi temple, but it could never assume the form of a mosque because there was no minaret and arrangement of water for Vajoo. There were 12 touchstone pillars in the disputed structure with deities of Hindu Gods-Goddesses engraved over them. Besides these, the pictures of Hindu religious symbols peacock, pitcher and demi Gods had also been engraved. The Sri Rama

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Yantra, Toran, Ganpati and Prakar temple also existed over there." (E.T.C.)

''15. यह कि श्री राम जन्मभूमि मन्दिर को ध्वस्त कर विवादित भवन का निर्माण होने के बाद भी श्री राम जन्मभूमि की पवित्रता के प्रति लोगों की आस्था एवं विश्वास सदा बना रहा एवं बना रहेगा।''

''15. That despite construction of the disputed structure after demolition of Sri Ramjanmbhumi temple, the faith and belief of public continued and would continue towards the sacredness of Sri Ramjanmbhumi." (E.T.C.)

''16. यह कि जिस प्रकार यहूदियों के लिए ''येरूशलम'' और मुसलमानों के लिए ''मक्का मदीना'' धार्मिक आस्था का प्रतीक है उसी प्रकार भारत के ही नहीं वरन् विश्वके हिन्दुओं की धार्मिक आस्था एवं विश्वास का प्रतीक अयोध्या स्थित श्रीराम जन्मभूमि स्थान है।''

''16. That similar to Jerusalem to the Jews and Mecca-Medina to Muslims, is the Ayodhya situated Sri Ramjanmbhumi to the religious faith and belief of Hindus not only in India but in the whole world." (E.T.C.)

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''17. यह कि श्रीराम जन्मभूमि परम्परा आस्था एवं विश्वास से सदैव सम्पूर्ण विश्वके समस्त हिन्दुओं का पवित्र धार्मिक एवं देवतुल्य पूज्य स्थल रहा है मंदिर में मूर्ति का प्रतिष्ठित करना प्रत्येक परिस्थिति में आवश्यक नहीं हैं जिस प्रकार मथुरा स्थित कृष्ण जन्म स्थान पर भगवान श्रीकृष्ण की कोई भी मूर्ति नहीं है बावजूद इसके यह स्थान हिन्दुओं के लिए बहुत पवित्रतम एवं पूज्य स्थान है उसी प्रकार श्री राम जन्मभूमि स्वयं में ही देवतुल्य एवं पूज्य स्थान है।''

''17. That in view of tradition, faith and belief, the Sri Ramjanmbhumi has been a sacred religious revered place of all the Hindus across the world. The installation of idol is not essential in all situations. There is no idol of Lord Sri Krishna at the Mathura situated Krishna Janmsthan, still it is a very sacred and reverable place for Hindus. Similarly Ramjanmbhumi in itself is a sacred revered place."

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(E.T.C.)

''18. यह कि श्री राम जन्मभूमि जिसका चन्द लोगों ने अपने छोटे से स्वार्थ के लिए विवादित स्थल का नाम दे दिया है, पर सदैव से ही भगवान श्रीराम लला की पूजा होती चली आ रही है।''

''18. That the worship of Lord Sri Ramlala has always been performed at Sri Ramjanmbhumi, which has been named by few people as disputed site due to their vested interest.'' (E.T.C.)

''19. यह कि बाबर ने कभी भी कोई वक्फ नहीं किया था न ही वह अयोध्या स्थित श्रीराम जन्मभूमि का मालिक व काबिज हो पाया। जन्मभूमि सदैव से भगवान श्रीराम की जन्मस्थली रही है और उसके मालिक और काबिज सदैव से भगवान श्रीराम लला रहे हैं। हिन्दू जनमानस उस स्थान पर भगवान श्रीराम लला की अनादिकाल से पूजा अर्चना करती चली आ रही है।''

''19. That Babar never executed any waqf nor was able to because owner in possession of Ayodhya situated Sri Ramjanmbhumi. The Janmbhumi has alwayas been the birthplace of Lord Sri Rama and Lord Sri Ramlala has always been its owner in possession. The Hindu public has been worshipping Lord Sri Ramlala at that place since ancient times'' (E.T.C.)

''20. यह कि विदेशी आक्रान्ता बाबर को हिन्दुओं से उनके आराध्य देव की जन्मस्थली को छीनकर किसी और को देने का अधिकार नहीं था, बाबर का यह कृत्य सदैव से भर्त्सनात्मक व निन्दनीय रहा है।''

''20. That the foreign invader Babar had no right to grab from Hindus, the birthplace of their revered God and give it to somebody else. This conduct of Babar has always been condemnable.'' (E.T.C.)

''21. यह कि भगवान श्रीराम की जन्मस्थली अयोध्या में स्थल विशेष पर ही है जहॉ पर विवादित भवन था इसको कहीं पर भी स्थानान्तरित नहीं किया जा सकता। जिस प्रकार मक्का तथा यरूशलम को अन्यत्र कहीं

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स्थानान्तरित नहीं किया जा सकता उसी प्रकार श्रीराम जन्मस्थली को अन्यत्र कहीं स्थानान्तरित नहीं किया जा सकता, परन्तु मस्जिद व अन्य धार्मिक स्थल कहीं भी बनाये जा सकते है ं परन्तु जन्मस्थली का कभी कोई विकल्प नहीं हो सकता।''

''21. That the birthplace of Lord Sri Rama is at a particular place in Ayodhya, where the disputed structure existed. It can not be shifted elsewhere. As Mecca and Jerusalem can not be shifted elsewhere, so can not be Sri Ramjanmsthali. However, mosque and religious structures can be built at any place but there can be no alternative for the birthplace.'' (E.T.C.)

''22. यह कि पं0 जवाहरलाल नेहरू और सरदार पटेल ने गुजरात में सोमनाथ मन्दिर का निर्माण कुछ कट्टरपंथी मुस्लिमों के विरोध के बाद भी करवाया था, उसी प्रकार ईसाई कट्टरपंथियों के विरोध के बाद भी कन्याकुमारी में (विवेकानन्द रॉक, विवेकानन्द मन्दिर) का निर्माण कराया गया और केन्द्र सरकार ने इसे स्वीकार कर लिया वैसे ही भारत वर्ष में रहने वाले प्रत्येक व्यक्ति का प्रथम कर्तव्य है कि राष्ट्रमंगल के प्रतीक मर्यादा पुरूषोत्तम भगवान श्रीराम के मन्दिर का निर्माण उसके मूल स्थान पर करवाकर अपने राष्ट्रप्रेम को सिद्ध करें।''

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''22. That Pt. Jawaharlal Nehru and Sardar Patel had built the Somnath temple in Gujrat despite protest of few orthodox Muslims. Similarly, the construction at Kanyakumari (Vivekanand Rock, Vivekanand temple) was carried out despite protest of Christian orthodox and it was accepted by the Central Government. It is the prime duty of every person residing in India to get the temple of state welfare symbol Maryada Purshottam Lord Sri Rama, constructed at its original place and thereby prove his love for the country.'' (E.T.C.)

''23. यह कि बाबर एक क्रूर विदेशी आक्रान्ता था इसलिए उसे न तो श्रीराम जन्मभूमि स्थान पर मस्जिद बनवाने का अधिकार था और न ही उस

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तथा कथित स्थान को मुसलमानों को देने का ही अधिकार था।''

''23. That Babar was a cruel foreign invader and as such he neither had any authority to build a mosque at Sri Ramjanmbhumi site nor to give the said place to Muslims.'' (E.T.C.)

''24. यह कि मुझे यह मालूम है कि मुसलमानों द्वारा वहॉ कभी भी कोई नमाज नहीं पढ़ी गयी और न ही उस राम जन्मभूमि परिसर की ओर किसी मुसलमान को कभी जाते देखा गया। मैंने ऐसा पढ़ा है कि मेवाड़ से सुखपाल नामक ब्राह्मण श्री मीराबाई का एक पत्र जो गोस्वामी तुलसीदास को सम्बोधित था, लेकर आया था, जिसमें मीराबाई ने अपनी व्यथा और उसका समाधान गोस्वामी जी से पूछा और गोस्वामी तुलसीदास ने पत्र का उत्तर देकर उनकी व्यथा का समाधान किया उनको पढ़ने के बाद मीराबाई अयोध्या आई और श्रीराम जन्मभूमि स्थल पर भगवान श्रीराम के प्रेम में बाउरी होकर नाचने लगी और लोग कहनें लगें–'पग घुँघरू बॉधी मीरा नाची रे, लोग कहे मीरा हो गयी वाउरी सास कहे कुल नासी रे'' और इसी कारण वह स्थान बाउरी के नाम से भी प्रसिद्ध हो गया। मीरा के सम्बन्ध में श्रीभक्तमाल नामक पुस्तक के कुछ पृष्ठों की प्रति संलग्नक संख्या 1 के रूप में संलग्न है।''

''24. That to the best of my knowledge, Muslims never offered Namaz over there nor was any Muslim ever spotted going towards Ramjanmbhumi premises. I have so read that a brahman named Sukhpal had come from Mewar with a letter of Meera Bai addressed to Goswami Tulsidas, whereby Meera Bai had asked for the solution of her miseries from Goswami Ji and by replying the said letter, Goswami Tulsidas had resolved her miseries. After reading the same, came to Ayodhya and started dancing at Sri Ramjanmbhumi site in devotional love of Lord Sri Rama and people started saying that 'Pag ghunghru bandhi Meera nachi re, log kahe Meera ho gayi bavri, saas kahe kul nasi re' and due to this the said place became famous

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as Bavri. Few pages of the book Sri Bhaktmal related to Meera, have been enclosed as Enclosure No. 1." (E.T.C.)

"25. यह कि मैं अयोध्या कई बार गया हूँ, परन्तु कुछ विशेष पर्वो जैसे चैत्र शुक्ल रामनवमी, अगहन मास में श्रीराम विवाहोत्सव तथा सावन झूला आदि के अवसरों पर भी गया हूँ और सरयू में स्नान किया है और अयोध्या स्थित सभी मन्दिरों में दर्शन व पूजन किया है इसके अतिरिक्त कार्तिक माह में चौदह कोसी एवं पंचकोसी परिक्रमा भी अयोध्या में की जाती है।"

"25. That I have been to Ayodhya on number of occasions including special occasions such as Chaitra Shukla Ramnavami, Sri Ramvivahotsav in the month of Aghan and Shrawan Jhula etc. and have also taken dip in Saryu. I had darshan and worship at all the temples at Ayodhya. Besides these, Chaudah kosi and Panch kosi circumambulation are also performed at Ayodhya in the month of Kartika." (E.T.C.)

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"26. यह कि मैंने उक्त विशेष अवसरों पर देश विदेश से आये हुए हजारों की संख्या में श्रद्धालुओं तथा राम भक्तों को देखा हैं इन अवसवरों पर पूरी अयोध्या नगरी राममय हो जाती है और समस्त वातावरण में सीताराम के भजन कीर्तन तथा घण्टे घड़ियाल, शंख की ध्वनियॉ सुनायी देती है।"

"26. That on the above special occasions I have seen thousands of devotees of Rama from within and outside the country. The entire city of Ayodhya is gripped in the fervour of Rama on these occasions and the Bhajan-Kirtan of Sita-Ram as well as the sound of gangs-gongs and conch fill up the atmosphere." (E.T.C.)

"27. यह कि मैंने अपनी माता जी से सुना है कि श्रीराम जन्मभूमि परिसर में पहले अखण्ड कीर्तन तथा रामचरित मानस का पाठ होता था।"

"27. That I have learnt from my mother that earlier Akhand (non stop) Kirtan and oration of Ramcharit Manas used to take place at the Sri Ramjanmbhumi premises." (E.T.C.)

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''28. यह कि श्री राम जन्मभूमि कोटि–कोटि हिन्दूजनों की आस्था एवं श्रद्धा का स्थान है जिसके दर्शन मात्र से ही पापों का नाश हो जाता है तथा अनेकों पुण्यों तथा मोक्ष की प्राप्ति होती है। भगवान श्रीराम की जन्मस्थली होने के कारण यह मोक्षदायिनी नगरी है।''

''28. That Sri Ramjanmbhumi is the place of faith and belief of crores of Hindus, by mere darshan of which, the sins are forgiven and many blessings and salvation are obtained. On account of being the birthplace of Lord Sri Rama, it is a salvation according city." (E.T.C.)

''29. चूँकि मैं एक सम्पादक हूँ और इस नाते मैंने देश विदेश की कई यात्राएँ की है और यह पाया है कि भारत देश की पहचान मर्यादा पुरूषोत्तम भगवान श्रीराम व उनकी नगरी अयोध्या से है।''

''29. As I am an Editor, I have travelled within and outside the country and have found that India as a country is recognised through Maryada Purshottam Lord Sri Rama and His city Ayodhya." (E.T.C.)

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''30. यह कि मैंने भली भांति पढ़ा है कि पूर्व में विदेशी आक्रान्ताओं द्वारा हिन्दुओं के धार्मिक स्थल तोड़ने की क्रूर परम्परा रही है जिनमें सोमनाथ मन्दिर, काशी विश्वनाथ मन्दिर एवं मथुरा स्थित श्री कृष्ण जन्मभूमि पर विदेशी आक्रान्ताओं द्वारा क्रूर आक्रमण कर क्षति पहुँचायी गयी इन क्रूर विदेशी आक्रान्ताओं में कुछ के नाम बाबर, महमूद गजनवी, सिकन्दर लोदी, औरंगजेब, इब्राहिम लोदी आदि के नाम सर्वोपरि हैं।''

''30. That I have very well read that in past there was a cruel practise of demolition of Hindu religious places by the foreign invaders, which included the Somnath temple, Kashi Vishwanath temple and the Mathura situated Sri Krishna janmbhumi. Amongst these cruel foreign invaders, the names of Babar, Mahmud of Ghajini, Sikandar Lodi, Aurangzeb, Ibrahim Lodi etc. are on the top." (E.T.C.)

D. ASI Report:

532. Witnesses have been produced to pursue this Court to

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reject ASI Report and others say that it should be accepted. These are about twelve witnesses.

533. **PW 29, Dr. Jaya Menon**, aged about 43 years (on 28th September, 2005 at the time of swearing the affidavit), resident of S-5, Azim Estate, Sir Saiyyed Nagar, Aligarh, is working as Reader in the Centre of Advanced Study, Department of History, Aligarh Muslim University, Aligarh and was an observer nominated by the plaintiffs (Suit-4) of the excavation conducted by ASI. Her cross examination followed as under :

Part-I :(a) 29/30-09-2005- by Madan Mohan Gupta, defendnat no. 20 through Sri Ranjana Agnihotri, Advocate (p. 27-46)

(b) 03/04/05/06/07/24/25/26-10-2005-by plaintiff (Suit-5) through Sri R.L. Verma, Advocate and Tarunjeet Verma, Advocate (p. 47-139)

Part-II :(a) 27/28-10-2005-by Ramesh Chandra Tripathi defendant no. 17 (Suit-4) through Sri Vireshwar Dwivedi (p. 140-166)

(b) 09/10/12-01-2006- by Mahant Suresh Das, plaintiff (Suit-4) through Sri Madan Mohan Pandey, Advocate (p. 167-211)

(c) 13/16-01-2006- by Mahant Dharam Das, defendant no. 13/1 (Suit-4) through Sri Rakesh Pandey, Advocate (p. 212-233)

(d) 17/18/19-01-2006- by plaintiff (Suit-5) through Sri Ved Prakash, Advocate (p. 234-266)

(e)19-01-2006-plaintiff (Suit-1) through Sri D.P.Gupta, Advocate adopted the cross examination done by Shri Ved Prakash, Advocate, Shri Madan Mohan Pandey, Advocate and Sri Vireshwar Dwivedi, Advocate (p. 266-267)

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534. She claims to be an expert witness (Ancient History and Archaeology). She did M.A. from the Department of Archaeology, Deccan College, Pune and Ph.D. from the Centre for Historial Studies, Jawaharlal Nehru University, New Delhi, stated to have worked as Lecturer at M.S. University of Baroda (Varodara) in February, 1996, in the Department of Ancient History and Archaeology, and remained thereat till January, 2006 as Senior Lecturer whereafter joined at Aligarh. Prior to 1996 she claims to have excavated at several Archaeological sites, pertaining to different period, like Daulatabad (Medieval), Kuntasi (Harappan), Nagwada (Harappan) and Samnapur (Pre-historic-Middle Palaeolithic). After 1996 she claims to have excavated at Bagasra, a site excavated by the Department. She observed the excavation work at the disputed site for 32 days from April to July 2003 as under:

"April 26, 2003 to 2nd May 2003

May 20th 2003 to 31st May 2003

June 22nd to 27th June 2003

July 19th 2003 to 26th July 2003."

535. She has given a detailed statement assailing correctness of ASI report on different aspects and we propose to deal with the same in detail later while dealing with the objections of the parties against ASI report.

536. **PW 30, Dr. R.C. Thakran**, a Professor in Department of History, University of Delhi, has deposed as an expert witness (Archaeology) and has opposed the report and findings of ASI vide his affidavit dated 07.11.2005 followed by his cross examination as under :

Part-I:(a) 07/08/09/10/16/17/18-11-2005, 13/14-02-2006- by Nirmohi Akhara through Sri R.L. Verma, Advocate

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and Sri Tarunjeet Verma, Advocate (p. 21-133)

(b) 27/28-02-2006, 01/02-03-2006, 27/28-06-2006-by Umesh Chandra Pandey, defendant no. 22 through Sri Vireshwar Dwivedi, Advocate (p. 134- 199)

Part-II: Cross examination :

(a) 03/04/05/06/07/17/18/19/20/21-07-2006, 07-08-2006 -by defendant no. 13/1 (Suit-4) through Sri Rakesh Pandey, Advocate (p. 200-339)

(b) 07/08-08-2006- by Mahant Suresh Das defendant no. 2/1 (Suit-4) through Sri Madan Mohan Pandey, Advocate (p. 339-364)

(c) 10/11-08-2006-by defendant no. 20 (Suit-4) through Sushri Ranjana Agnihotri, Advocate (p. 365-386)

(d) 11-08-2006- by plaintiffs (Suit-5) through Sri A.K. Pandey, Advocate (p. 386-393)

(e) 11-08-2006- Plaintiffs (Suit-1) through Sri D.P. Gupta adopted the cross examination already done by other defendants (p. 393)

537. He was 53 years of age in 2005 while deposing the above statement. He is resident of Probyn Road, Delhi University, Delhi. He passed M.A. in Ancient History, Culture and Archaeology from Kurukshetra University, Kurukshetra in 1975, M.Phil (Archaeology) from the Centre of Historical Studies, Jawaharlal Nehru University, New Delhi in 1981, and, Ph.D (Archaeology) from Department of History, University of Delhi in 1993. He is teaching Ancient History and Archaeology since 1977 in Delhi University, attended excavation at the site of Mirzapur and Raja Karan Ka Qila, Kurukshetra for two academic sessions in 1974-75 during Master's degree course. Also claim to be involved in Archaeological Research since

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1976. He observed excavation at the disputed site of Archaeology during March to August, 2003 and in respect to the report of ASI, he says:

> *"3. That the report of the Archaeological Survey of India (ASI) submitted to this Hon'ble Court on 22nd August, 2003, is an* ***unprofeesional document, full of gross omissions, one-sided presentation of evidence, clear falsifications and motivated inferences.*** *It is full of internal contradictions and discrepancies as will be pointed out below. The ASI's only aim seems to be to so ignore and twist the evidence* ***as to make it suit its "conclusions" tailored to support*** *the fictions of interested parties about the previous existence of an alleged temple on the disputed site."*
>
> *"4. That the first and crucial gross omission in the ASI's Report is the total absence of any list in which the numbered layers in each trench are assigned to the specific period as distinguished and numbered by ASI itself. The only list available is for some trenches only in the Charts placed between pages 37-38. A list or Concordance or trench-layers in all trenches with Periods was essential to test whether the ASI has correctly assigned artefacts from certain trench layers to particular periods in its main Report. Where, as we shall see below, in connections with bones, Glazed wares and terracotta pieces the finds can be traced to trench-layers that are expressly identified with certain Periods by the ASI in its above-mentioned charts, it can be shown that the ASI's assignment of layers to particular periods is often demonstrably wrong and made only with the object of tracing structural remains or*

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artefacts there to an earlier time in order to bolster the wrong theory on a pre-mosque alleged Hindu temple."

"5. The one decisive piece of evidence, which entirely negates large and medium size animals (cattle, sheep and goats) are a sure sign of animals being eaten or thrown away dead at the site, and, therefore, rule out a temple existing at the site at that time. In this respect directions were given by the Hon'ble High Court to the ASI to record "the number and size of bones and glazed wares". The Report in its "Summary of Results" admits that "animal bones have been recovered from various levels of different periods" (Report, p.270). But this is the sole reference the Report makes to them. Any serious archaeological report would have tabulated the bones, by periods, levels and trenches, and identified the species of the animals (which in bulk seem to be sheep and goats). There should, indeed, have been a chapter devoted to animal remains. But despite the statement in its "Summary", t ***there is no word about the animal bones in the main text of the Report. This astonishing omission is patently due to the ASI's fear of the fatal implications held out by the animal bone evidence for its preconceived temple theory.*** *"*

Now if we turn to the ASI's record of the Finds in the Day-to-Day Register and Antiquities Register we find that in Trenches Nos. E-6 (Layer 4), E-7 (Layer 4), F-4/F-5 (Layer 4) animal bones have been found well below Period VII-layers, i.e. to Period VI (Early Medieval – Pre-Sultanate) or still earlier, and in Trenches Nos. F-8, G-2, J-2/J-3, they are found in Layers assigned by ASI to period VI itself. Thus bones have been found in what are allegedly

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central precincts or the alleged Rama temple allegedly built in 'Period VI'. The ASI says that a massive temple was built again in Period VII, but in Trenhes Nos.E6, F8, G-2 and J-E/J-4 bones have been found in layers assigned to this very Period also in the same central precincts. The above data may be found in the Tabes produced in Sunni Central Board of Waqfs (UP)'s 'Additional Objection' dated on 3-2-04.

The ASI perhaps knows that sacrificial animals' bones (if we are dealing here with a temple where animals were sacrificed, which incidentally, has not been claimed for any Rama temple) cannot be represented by bone fragments, but need to be found at particular spots, practically whole and entire, which is not here at all the case in even a single instance."

"6. ***That the glazed ware, often called "Muslim" glazed ware,*** *constitutes an equally definite piece of evidence, which militates against the presence or construction of a temple. Since such glazed ware was not at all used in temples. The ware is all-pervasive till much below the level of "Floor No.4", which floor is falsely ascribed in the Report to the "huge" structure of a temple allegedly built in the 11th-12th centuries. The Report tells us that the glazed ware sherds only "make their appearance" " in the last phase of the period VII" (p.220). Here we directly encounter the play with the names of periods. On page 270, Period VII is called "Medieval Sultanate", dated to 12th-16th century A.D. But on p.40 "Medieval-Sultanate" is the name used for period VI, dated to 10th and 11th centuries. The summary concedes (on*

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page 270) that the glazed ware appears only in "the last phase of Period VII". In the Chapter V, however, no mention is made of this "last phase" of Period VII; it is just stated that "the pottery of Medieval-Sultanate, Mughal and Late-and-Post Mughal period (Periods VII to IX)... indicated that there is not much difference in pottery wares and shapes" and that "the distinctive pottery of the periods is glazed ware" (p.108). The placing of the appearance of Glazed Ware in the "last phase" only of Period VII appears to be a last-minute invention in the Report (contrary to the findings in the main text) to keep its thesis of alleged "massive" temple, allegedly built in period VII, clear of the "Muslims" Glazed-Ware by a sleight of hand, because otherwise it would militate against a temple being built in that period. All this gross manipulation has been possible because not a single item of glazed pottery is attributed to its trenches and stratum in the select list of 21 items of glazed ware (out of hundreds of items actually obtained) on pages 109-111. Seeing the importance of glazed ware as a factor for elementary dating (pre- or post-Mslim habitation at the site), (and in view also of the Hon'ble High Court's orders about the need for recording of glazed ware, a tabulation of all recorded glazed-ware sherds according trench and stratum was essential.) That this has been entirely disregarded shows that, owing to the glazed-ware evidence being totally incompatible with any temple construction activity in periods VI and VII, the ASI has resorted to the most unprofessional act of ignoring and manipulating evidence."

"7. That going by the Poetry Section of the Report

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(p.108), not by its "Summary", the presence of Glazed Ware throughout Period VII (Medieval, 12th-16th centuries) rules out what is asserted on page 41, that a "column-based structure" - the alleged 50-pillar – was built in this period. How could Muslim have been using glazed ware inside a temple? Incidentally, the claim of a Delhi University archaeologist (Dr Nainjot Lahiri) defending the Report, that glazed ware was found at Muslim, and Tulamba (near Multan) before the 13th century, hardly germane to the issue, since these were towns under Arab rule with Muslim settlements since 714 AD onwards, and so the use of glazed ware there is to be expected. The whole point is that glazed ware is an indicator of 'Muslim habitation, and is not found in medieval Hindu temples."

"8. That the ***story of Glazed Tiles is very similar. These too are an index of Muslim habitation****. Yet 2 glazed Tiles are found in layers of Period VI means that the layers are wrongly assigned and must be dated to Period VII (Sultanate period). There could be no remains of any alleged "huge temple" in these layers, then."*

"9. That when the ASI submitted its Day -to-Day and Antiquities Register for inspection it turned out that the ASI had concealed the fact in its Report that the layer of certain trenches it had been attributing to pre-Sultanate Period V cannot simply belong to it, because glazed tiles have been found in it; and the layers assigned to Period VI could not have belonged to a temple, as alleged, because both glazed ware and glazed tiles have been found in it. In this respect attention may be invited to the Tabes submitted as

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Annexure I to the Additional Objection of the Sunni Waqf Board, dated 3-2-04."

"10. That the ASI's Report is so ***lacking in integrity*** *that it* ***tries to achieve its object by manipulation nomenclature****. In Chapter III, "Stratigraphy and Chronology" it has names for periods VI and VII that are coolly altered in the other Chapters in order simply to transfer inconvenient material of Period VI to Period VII and thus make Period VI levels purely "Hindu". On pages 38-41, the nomenclature for Periods V, VI and VII is given as follows:*

Period V: Post-Gupta-Rajputa, 7th to 10th Century

Period VI: Medieval -Sultanate, 11th -12th Century

Period VII: Medieval, 12th - 16th Century

Now let us turn to "Summary of Results" (pp.268-9). Here the nomenclature is altered as follows:-

Period V: Post-Gupta-Rajputa, 7th - 10th Century

Period VI: Early medieval , 11th -12th Century

Period VII: Medieval-Sultanate, 12th - 16th Century

"11. That this transference of "Medieval-Sultanate period" from Period VI to Period VII has the advantage of ignoring Islamic-period materials like Glazed ware or lime-mortar bonding by removing them arbitrarily from Period VI levels to those of Period VII so that their actual presence in those levels need not embarrass the ASI in this placing of the construction of an alleged "massive" or "huge" temple in Period VI. The device is nothing but manipulation and the so-called single "correction" of nomenclature of Period VI, after the Report had been prepared, does not remove the confusion."

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"12. That this brings us to the way in which the entire stratigraphy has been fixed, and ***certain layers obviously of Islamic provenance pressed into pre-Muslim periods (Period VI and earlier)*** *as shown in Annexure No.1, Table 2, attached to the objection of Mr. Hashim dated 8.10.2003. This kind of false stratigraphy has led to situations that are impossible in correctly stratified layers, namely, the presence of later materials in earlier strata. The presence of earlier materials in later or upper layers is possible, but not the reverese (Obviously the entire stratigraphy has been falsified to invent a temple in "Post-Guppta-Rajputa" times.)*

"13. That while digging up the Babri Masjid site, ***the excavators found four floors****, numbered, upper to lower, as Nos. 1, 2, 3 and 4, Floor No.4 being the lowest and so the oldest. Floor No. 3 is linked to the foundation walls of the Babri Masjid – what the ASI calls the "demolished" or "disputed structure" - built in 1528. Floor No. 4 is described by the Report as "a floor of lime mixed with fine clay and brick crush", i.e. a typically Muslim style surkhi and lime floor.* ***It is obviously the floor of an earlier Mosque/Eidgah and mihrab and taq were also found in the associated foundation wall (not, of course, identified as such in the ASI's report****). Such a floor, totally Muslim on "stylistic grounds" is turned by the ASI into an alleged temple floor, "over which a column-based structure was built". (as asserted by A.S.I.). No single example is offered by the ASI of any temple of pre-Mughal times having such a lime-surakhi floor, though one would think that this is an essential requirement when a purely Muslim structure is*

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sought by the ASI as Hindu one. Once this arbitrary appropriation has occurred (page 41), we are then asked by the ASI's report to imagine a "Massive Structure Below the Disputed Structure", the massive structure being an alleged temple. It is supposed to have stood upon alleged 50 pillars, and by fanciful drawings (Figure 23, 23A and 23B) in the ASI's Report, it has been "reconstructed". [Though one may still feel that it was hardly "massive" when one compares Figure 23 (showing Babri Masjid before demolition) and Figure 23B (showing the reconstructed temple with 50 imaginary pillars!)] Now, according to the ASI's Report, this massive structure with "bases" of 46 if its alleged 50 pillars now allegedly exposed, was built in Period VII, the period of the Delhi Sultans, Sharqi rulers and Lodi Sultans (1206-1526) : This attribution of the Grand temple, to the "Muslim" period is not by choice, but because of the presence of "Muslim" style materials and techniques all through. This, given their jaundiced view of medieval Indian history, must has been all the more reason for them to imagine a still earlier structure assignable to an earlier time. Of this structure, however, ***only four alleged "pillar bases" , with "foundation" attached to Floor 4, have been found****; and it is astonishing that this should be sufficient to ascribe them to 10th -11th century and to assume that they all belong to one structure. That structure is proclaimed as "huge", extending nearly 50 metres that separate the alleged "pillar-bases" at the extremes. Four "pillar bases"can hardly have held such a long roof; and if any one tried it on them it is not surprising that the result was,*

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as the ASI Report admits, "short-lived" (Report, p. 269). (All of this seems a regular part of a propagandist archaeology rather than a report from a body called the Archaeological Survey of India.)"

"14. That further the four alleged pillar bases dated to 11th -12th centuries are said " to belong to this level with a brick crush floor". This amounts to a totally unsubstantiated that surkhi was used in the region in Gahadavala times (11th - 12th centuries). No examples of such use in Gahadavala times are offered. One would have thought that Sravasti (District Bahraich), from which the ASI team has produced a linga-centred Shavaite "circular shrine" of the Gahadavala period for comparison with the so-called "circular shrine" at the Babri Masjid site, would be able to produce at least one example of either surkhi or lime mortar from the Gahadavala period structures at Sravasti. But such has not at all been the case. One can see now why it had been necessary to call this period (period V) "Medieval-Sultanate" (p.40) (by a later "correction" submitted to the Hon'ble Court, this has been changed to " Post-Gupta, Rajput"), though it is actually claimed to be pre-Sultanate, being dated 11th -12th century. By clubbing together the Gahadavala with the Sultanate, the surkhi is sought to be explained away; but if so, the alleged "huge" structure too must come to a time after 1206, for the Delhi Sultanate was only established in that year. And so, to go by ASI's reasoning, the earlier allegedly "huge" temple too must have been built when the Sultans ruled!"

"15. That the way the ASI has distorted evidence to suit its

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"temple theory" is shown by its treatment of the mihrab (arched recess) and taq (niche) found in the western wall, which it turns into features of its imagined temple. On p. 68 of the ASI's Report are described two niches in the inner side of Wall 16 at an interval of 4.60 metres in trenches E6 and E7. These were 0.20 metre deep and I metre wide. A similar niche was found in Trench ZE2 in the northern area and these have been attributed to the first phase of construction of the so-called 'massive structure' associated with wall 16. Such niches, along the inner face of a western wall, are again characteristic of Mosque / Eidgah construction. Moreover, the inner walls of the niche are also plastered (as in Plate 49) which indicated that the plaster was meant to be visible. A temple niche, if found, it would in any case have to be on the outer wall. In the first phase of construction, the supposed massive structure was confined to the thin wall found in Trenches ZE1-ZH1 in the north and E6-H5/H6 in the south (p. 41). How then does one explain the location of niches outside the floor area of the massive structure? This is typical of a mosque/ eidgah, which has a long, wide north-south wall, with niches at intervals on its inner face and there may be a small covered area in the centre. Which would have narrow demarcating walls. And the ASI is able to produce no example of similar recess and niche from any temple."

"16. That since the entire basis of the supposed "huge" and "massive" temple-structures preceding the demolished mosque lies in the ASI's reliance upon its alleged "pillar bases" I beg now to consider what these really are and what they imply. In this respect one must first remember

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that what are said by the ASI to be pillar bases are in many cases are only one or more calcrete stones resting on brick-bats, just heaped up, though ASI claims that mud-mortar was sometimes used. In many claimed "pillar bases" the calcrete stones are not found at all. As one can see from the descriptive table on pages 56-67 of the report not a single one of these supposed "pillar bases" has been found in association with any pillar or even a fragment of it; and it has not been claimed that there are any marks are indentations or hollows on any of the calcrete stone to show that any pillar had rested on them. The ASI Report nowhere attempts to answer the questions (1) why brick bats and not bricks were used at the base, and (2) how mud-bonded brick-bats could have possibly with stood the weight of roof-supporting pillars without themselves falling apart. It also offers not a single example of any medieval temple where pillars stood on such brick-bat bases."

"17. That despite the claim of these pillar bases being in alignment and their being so shown in fancy drawings (figures 23, 23A and 23B), the Reports claim that these bases are in alignment is not borne out by the actual measurements and distances; and there is indeed much doubt whether the plan provided by ASI is drawn accurately at all, there are enormous discrepancies between Fig. 3A (the main plan) and the Table in Chapter 4 on the one hand, and the Report's Appendix IV, on the other. Trench F7 has 4 alleged "pillar bases" in the former, for example; but only one in the latter!"

"18. That in fact the entire matter of the way the ASI has identified or created "pillar bases" is a matter of serious

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concern. Complaints were also made to the Observers appointed by the High Court that the ASI was ignoring calcrete-topped brick-bat heaps where these were not found in appropriate positions and selected only such brick-bat heaps as were not two for of from its imaginary grids, and there creating the alleged "bases" by clearing the rest of the floor of brick-bats."

"19. That the most astonishing thing that the ASI so casually brushes aside relates to the varying levels at which the so-called "pillar bases" stand. Even if we go by the ASI's own descriptive table (page 56-57), as many as seven of these alleged 50 "bases" are definitely above Floor 2, and one is in level with it. At least six rest on Floor 3, and one rests partly on Floor 3 and 4. since at least come that so many pillars were erected after the Mosque had been built in order to sustain an alleged earlier temple structure ! More, as many as nine alleged "pillar bases" are shown as cutting through Floor No. 3. So, are we to understand that when the Mosque floor was laid out, the "pillar bases"at all, but some kind of loosely-bonded brickbat deposits, which continued to be laid right from the time of Floor 4 to Floor1."

"20. That it may be added that even the table on pages 56-67 of the ASI's Report may not correctly represent the layers of the pillar bases, since its information of floors does not match that of the Report's Appendix IV which in several trenches does not attest to Floor NO. 4 at all, which the "pillar bases" in many cases are supposed to have sealed by, or to have cut through or stand on ! For example, "pillar base 22" on pp.60-61 is indicated as the

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resting on floor 4, but there is no Floor 4 shown as existing in Appendix IV of the Report in Trench F2 where this base supposedly stands. Similar other discrepancies are listed below:

Information in text of ASI's Report	***Information in Appendix 4 of Report***
PB No.3:ZG2-F1. 2(p.56)	*Only F1.1 mentioned (p.8)*
PB No.6:ZJ2-F1. 2(p.57)	*F1.1 mentioned (p.12)*
PB No.8:ZG1-F1. 2(p.58)	*Only F1.1 mentioned (p.8)*
PB No.18:H1-F1.4(p.60)	*No.F1.4 (p.11)*
PB No.22:F2-F1.4(p.60-61)	*No. F1.4(p.6)*
PB No.27:H5-F1. 4(p.62)	*3 successive floors No. F1.4(p.11)*
PB No.28:F6-F1.4(p.62)	*No. F1.4 (p.7)*
PB No.31:F6-F7-F1. 4(p.63)	*3 floors mention for F6 (p.7); Floors 1 and 1A for F7 (p.7)*
PB No.32:F6/F7-F1. 4(p.63)	*3 floors mention for F6 (p.7); Floors 1 and 1A for F7 (p.7)*
PB No.34,35:F7-F1. 4(p.64)	*Only F1.1 and 1A (p.7)*
PB No.36:G7-F1. 4(p.64)	*No.F1.4 (p.10)*
PB No.37:F8-F1. 3(p.65); no.F1.3 beyond 6 series (p.63)	*-*
PB No.39:G8-F1. 4(p.65)	*3 successive floors (p.10)*
PB No.45:G9-F1. 4(p.66)	*3 successive floors (p.10)*
PB No.44:F9-F1. 4(p.66)	*2 floors mentioned (p.8)*
PB No.46:H9-F1. 4(p.66)	*3 floors (p.12)*
PB No.47:F10/F10-F1 4(p.66)	*E10:F1.1 mentioned (p.5); F10: 2 floors mentioned (p.8)*
PB No.48:F10-F1. 4(p.67)	*2 floors mentioned (p.8)*
PB No.49:G10-F1. 4(p.67)	*2 floors mentioned (p.10)*
PBNo.49:G10/H10-F1.4 (p.67)	*2 floors each in G10 and H10 (pp.10,12)*
PB No.50:H10-F1. 4(p.67)	*Floors mentioned (p.12)*

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"21. That the ASI should have surely looked about for other explanations of the heaps of brickbats before jumping to its "pillar bases" theory. There is at least one clear and elegant explanation. When the surkhi-lime mortar bonded Floor No.4 was being laid out over the mound sometimes during the Sultanate period, its builders must have had to level the mound properly, the stones (the latter often joined with lime mortar) to fill them and enable the floor to filled up in order to lay out Floor 4 went our of repair, its holes had similar deposits of brickbats had to be made to fill the holes in order to lay out Floor 2 (or, indeed, just to have a level surface). This explains why the so called "pillar bases" appear to "cut through" both Floors 3 and 4, at some places, while at other they "cut through Floo3 or Floor 4 only. They are mere deposits to fill up holes in the floors. Since such repairs were in time needed at various spots all over the floors, these brickbat deposits are widely dispersed. Had not he ASI been so struck by the necessity of finding pillars and "pillar bases" to please its masters, which had to be in some alignment, it could have found scattered over the ground not just fifty but perhaps over a hundred or more such deposits of brickbats. A real embarrassment of riches of "pillar bases", that is! Only they are, of course, not pillar bases at all."

"22. That it may here be pointed out that when Mr.B.R.Mani the first leader of the ASI team at Ayodhya, excavated at Lal Kot, District of South New Delhi, he describes "pillar bases" of "Rajput style", about which he says:

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"These pillar bases rest on stone pedestals and are 2.90m. Apart from each other. They might have supported some wooden canopy.

(Indian Archaeology, 1992-93 – A Review, official publication of ASI, New Delhi, 1997, p.9)."

A true copy of the relevant extract of the said report of Mr. Mani is enclosed herewith as ***ANNEXURE No.1*** *to this affidavit.*

Mr. Mani illustrates these four pillar bases in Plates VI and VII of the same publication. Each comprises a number of squarish stone slabs resting on each other with a larger stone slab at the bottom. Yet these were not thought by him to be strong enough to support anything more that "a wooden canopy." And yet at Ayodhya, single calcrete slabs resting on nothing more than brickbats are held by the same Mr. Mani and his team to have supported stone pillars bearing massive stone structures!"

"23. That having thus shown that there is no basis for the ASI's illusionary 50-pillared structure, it is still pertinent to ask why the ASI regards a pillared hall to have necessarily been a temple. In this aspect the ASI should have noticed such pillared structures of the Beghumpuri Mosque, the Kali Masjid and the Khirki Masjid, all built at Delhi by Khan Jahan Firozshahi in the 180's AD the original photograph of which are printed in Tatsuro Yamamoto, Matsuo Ara and Tokifusa Tsokinowa, Delhi: Architectural Remains of the Delhi Sultanate Period, Tokyo, 1967, Vol.I, Plates 14b, 18c and 20c. It is astonishing that the ASI should have closed its eyes to such structures; but this is just another proof that its Report is a simple product of

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bias and partisanship."

"24. That much is made in the ASI Report of the "Circular Shrine"(Report, pages 70-71), again with fanciful figured interpretations of the existing debris (Figs. 24 and 24A in the Report). Comparisons with circular Shaivite and Vaishnavite Shrines (Fig. 18) are made. The ASI had no thought, of course, of comparing it circular walls and buildings of Muslim construction – a very suggestive omission. The surviving wall, even in ASI's own drawing makes only a quarter of circle, and such shapes are fairly popular in walls of Muslim construction. And then there are Muslim built domed circular buildings, such as the the 13th century tomb of Sultan Ghari at Delhi, where the inner tomb chamber is circular (See Ancient India, official publicaiton of ASI, 1947, volume, Pl.VIII). A true copy of the said Plate VIII is enclosed herewith as ***Annexure No. 2*** *to this affidavit."*

"25. That even if we forget the curiously one-eyed nature of ASI's investigations, let us first consider the size of the alleged "shrine". Though there is no reason to complete the circle in the elliptical way as the ASI does, the circular shrine, given the scale of the Plan (Figure 17 in the Report), would have an internal diameter of just 160 cms. or barely 5 ½ feet! Such a small structure can hardly be a shrine. But it is, in fact, much smaller. The Plan in Fig. 17 of the report shows not a circle (as one would have if the wall shown in plates 59 and 60 or continued) but an ellipse, which it has to be in order to enclose the masonry floor. No "elliptic (Hindu) shrine" is, however, produced by ASI for comparison: the few that are shown are all

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circular. As Plate 59 makes clear the drawing in Fig. 17 ignore a course of bricks which juts out to suggest a true circle, much shorter than the elliptic one: this would reduce the internal diameter to less than 130 cms. Or 4.3 feet ! Finally, as admitted by the ASI itself, nothing has been found in the structure in the way of image or sacred piece that can justify it being called a "shrine".

"26. That, indeed, if the ASI insists on it being a shrine, it is strange that it did not consider the relevance of a Buddhist Stupa here. Attention is drawn to Plate XLV-A showing "exposed votive stupas" Sravasti, in the ASI's own Indian Archaeology, 1988-89- A Review, a true copy of which is enclosed herewith as Annexure No.3 to this affidavit. It is indicative of the ASI's bias that while it provided an example of an alleged circular Shaivite shrine from Sravasti, along with a photograph (Report's Plate 61), it totally overlooks the stupas found there. As shown above the small size of the so called "circular shrine" at the Babri masjid site precludes it from being a temple, and the stupas (which is not entered!) is the only possible candidate for it, if the structure has to be a pre-Muslim sacred structure. But the stupa is not a temple, let alone a Hindu temple."

"27. That the short report on Inscriptions on pages 204-06, one of which is in Nagari, and two are in Arabic show how casual and preconceived in its notions the ASI was. There is no argument given for dating it to the 11th century: its time range could be 7th - 12th centuries; and if so it could be a Pala record of a Buddhist provenance – a piece of evidence negating the presence of a Hindu temple. There is

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also no argument offered by the Arabic inscriptions can be dated to the 13th century with as much reason as to the 16th century."

"28. That the ASI makes much use of teracotta figures. Yet its stratigraphy is found to be totally wrong. No later figurine or artefact can be found in an earlier layer, while the converse can, of course, be the case. Yet there are a number of cases where layers in different trenches assigned to early Periods by ASI in its table of terracotta objects (pages 219-243) contain items of later periods (as identified by ASI itself) in these early layers. These are evident from the chart given below showing, again how the propensity to date certain layers early so as to support the ancient temple thesis has landed the ASI into impossible discrepancies. These discrepancies show that (a) the dating of the individual layers is wrong, and (b) the terracotta evidence this does not support the presence of an alleged temple here built before the construction of the Babri Masjid:-

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DESCREPENCIES IN STRATIGRAPHY IN RELATION TO TERRACOTTA FIGURINES (Periods as defined by ASI's Report)

Artefact details	*Discrepancies*
S.No. 50, R. No. 1027. Part of human figurine. Mughal level. G5, layer 2, below Floor2	*Layer 2 below Floor 2 belongs to Medieval period. It is impossible for a medieval period layer to have material from Mughal period which is later*
S.No. 52, R.No. 393. Animal figurine. Late Medieval period. E8, layer 5	*Layer 5 in E8 is Post Gupta (7th - 10th centuries AD). It is impossible for late Medieval (Mughal)*

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	period material to be found in an earlier period.
S.No. 67, R.No. 549, Animal figurine. Early Medieval. F9, layer 5	*F9 layer 5 is post Gupta. It is impossible for Early Medieval period material to be found in post Gupta period which is earlier*
S.No. 69, R.No. 594, Animal figurine. Medieval. E8, layer 5	*E8 layer 5 is post Gupta. It is impossible for Medieval period material to be found in post Gupta period which is earlier*
S.No. 71, R.No.607, Animal figurine. Mughal. E8, layer 5	*E8 layer 5 is post Gupta. It is impossible for Mughal period material to be found in post Gupta period which is earlier*
S.No. 73, R.No.628, Animal figurine. Mughal. E8, layer 6	*E8 layer 6 is post Gupta. It is impossible for Mughal period material to be found in post Gupta period which is earlier*
S.No. 76, R.No. 689, Animal figurine. Early Medieval. F8, layer 5	*F8 layer 5 is post Gupta-Rajput. It is impossible for Early Medieval period material to be found in post Gupta period which is earlier*
S.No. 84, R.No.739, Animal figurine. Post-Gupta. E8, layer 8A	*E8 layer 8A is Gupta Level. It is impossible for post-Gupta period material to be found in post Gupta period which is earlier*
S.No. 85, R.No.762, Animal figurine. Post-Gupta. E8, layer 9	*E8 layer 9 is Gupta/Kushan Level. It is impossible for post-Gupta period material to be found in Gupta/Kushan period which is earlier*
S.No. 86, R.No.767, Animal	*F8 layer 7 is Gupta Level.*

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figurine. Post-Gupta. F8, layer 7	*It is impossible for post-Gupta period material to be found in Gupta period which is earlier*
S.No. 90, R.No. 793. Animal figurine. Medieval. H4/H5, layer 4	*H4/H5 layer 4 is Early Medieval. It is impossible for Medieval period material to be found in Early Medieval period which is earlier*
S.No. 114, R.No.1087, Animal figurine. Gupta. G7, layer 10	*G7 layer 10 is Kushan. It is impossible for Gupta period material to be found in Kushan period which is earlier*
S.No. 115, R.No.1088, Animal figurine. Gupta. G7, layer 10	*G7 layer 10 is Kushan. It is impossible for Gupta period material to be found in Kushan period which is earlier*
S.No. 119, R.No.1152, Animal figurine. Kushan. G7, layer 13	*G7 layer 13 is Sunga. It is impossible for Kushan period material to be found in Sunga period which is earlier*
S.No. 122, R.No.1177, Bird figurine. Early Medieval. G8, layer 5	*G8 layer 5 is post Gupta-Rajput. It is impossible for Early Medieval period material to be found in post Gupta period which is earlier*

"29. That it may be mentioned that in the purely Muslim phase at Lalkot, South New Delhi District, excavated by Mr. B.R. Mani, the first team leader of the ASI at Ayodhya and joint author of its Report on Ayodhya, Mr. Mani found "a large number of crude handmade terracotta human and animal figurines"(Indian Archaeology, 1991-92 – A Review, page 15). Thus it cannot be argued that the

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presence of such human and animal figurines suggests a non-Muslim or pre-Muslim association, let alone any affiliation with a temple."

"30. That no Vaishnavite images have been found. All finds are stray ones or, as with the black schist pillar, visible within it when the Masjid had stood but not yet broken up by the Karsevaks and buried in the Masjid debris in 1992. Whatever little in stone has come out (as one decorated stone or inscribed slab -used in a wall), like stones with "foliage pattern, amalaka, kapotapadi door jamb with semi-circular pilaster, lotus motif" (Report, p.271), are in total very few, and all easily explicable as belonging to ruins elsewhere and brought for re-use during the construction of the Babri Masjid or the earlier Mosque/Eidgah. Moreover, the lozenge design (Report, Plate 90) is probably Islamic (compare Plate 92, with Arabic inscription). The extremely short list that the ASI is able to compile of such doubtful temple-relics shows that they did not come from any alleged "massive" temple at the site, but brought randomly from different earlier ruins."

"31. That it is most interesting that while these few stray finds are sought to justify the thesis of the presence of an alleged temple at this site, but when Dr. B.R. Mani, the joint author of the ASI Report, found many more similar items in his excavations at Lalkot, South New Delhi district, his conclusions were quite different. He found, in his own words, "a stone Varaha figure, two stone amalakas, decorated pillar bases, and a number of other decorated architectural fragments reused in later

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structures or scattered on the mound or in the tank area of Anang Tal along with a huge part of another amalaka and pillar bases found in the eastern part of the tank" (Indian Archaeology, 1991-92 – A Review, official publication of ASI, New Delhi, 1996, p.12), Mr Mani nevertheless says that this sire was away from "the temple-mosque complex" and contained the palace of Anang Pal (ibid, p.9). Clearly, in taking the much smaller and slimmer list of doubtful artefact at the Babri Masjid site as indicative of a temple, Mr. Mani and his colleagues have now simply pursued a given brief. A true copy of the relevant extracts of this report of Dr. B.R. Mani is enclosed herewith as ***ANNEXURE No. 4*** *to this affidavit."*

"32. That the bias and partisanship of the ASI's Report takes one's breath away. In almost everything the lack of elementary archaeological controls is manifest. The one-page carbon-date report, without any description of material, strata and comments by the laboratory, is meaningless, and open to much misuse. There has been no thermoluminescence (TL) dating of the pottery; nor any carbon-dating of the animal or human bones, although these are necessary for dating the remains themselves and the strata in which they are found, in order to test the ASI's own manipulated chronology. Indeed, no care has been exercised in its references to chronology, and Period 1 "Northern Black Polished Ware" has been pushed back to 1000 BC in the "Summary of Results" (page 268). when even in Chapter II of "Stratigraphy and Chronology", the earlier limit of the period is rightly placed at 6th century B.C. (page 38). The urge is obviously to provide the

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maximum antiquity to habitation at Ayodhya, however absurd the claim."

"33. That quite obviously such claims as made by ASI in its Report and the demands of professional integrity cannot go together. What all well-wishers of Indian Archaeology have to consider is how, with a Report of the calibre we have examined, there can be any credibility left in the Archaeological Survey of India, an organization that has had such a distinguished past. But now the good repute of the Archaeological Survey of India has also suffered an irremediable blow. (It has been shown up as partisan and subservient to its master's wishes. Its so called "Conclusions" must be rejected in toto.)"

538. **PW 31, Dr. Ashok Datta**, aged about 58 years (vide his affidavit dated 20.01.2006), resident of K.P. Mukherjee Road, Post Barisa, Kolkatta (West Bengal), is working as Senior Lecturer, Department of Archaeology, University of Calcutta and deposed his statement as an expert witness (Archaeology). His cross examination is as under:

Part-I :(a) 20/23/24/25/27/30/31-01-2006, 01-02-2006 - by Nirmohi Akhara through Sri R.L. Verma, Advocate and Sri Tarunjeet Verma, Advocate (p. 12-112)

(b)01/20/21-02-2006-by Shri Madan Mohan Gupta, defendant no. 20 (Suit-4) through Km. Ranjana Agnihotri, Advocate (p. 113-148)

Part-II :(a) 22/23/24-02-2006, 01/02/03-05-2006-by Shri Madan Mohan Gupta, defendant no. 20 (Suit-4) through Km. Ranjana Agnihotri, Advocate (p. 149-214)

(b) 03/04/05-05-2006- by Ramesh Chandra Tripathi defendant no. 17 (Suit-4) through Sri Vireshwar Dwivedi,

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Advocate (p. 214-243)

(c) 08/09-05-2006-by Mahant Suresh Das defendant no. 2/1 (Suit-4) through Sri Madan Mohan Pandey, Advocate (p. 244-272)

(d) 10-05-2006-by defendant no. 13/1 (Suit-4) through Sri Rakesh Pandey, Advocate (p. 273-281)

(e) 12-05-2006- by plaintiff (Suit-5) through Sri Ajay Pandey, Advocate (p. 282-295)

(f) 12-05-2006-Plaintiff (Suit-1) through Sri P.L. Mishra, Advocate adopted the cross examination already done on behalf of other defendants (p. 295)

539. He did M.A. (Archaeology) in 1972 and Ph.D. in Pre-History (Anthropology) in 1981 from University of Calcutta. Worked thereafter in Archaeology in West Germany in 1982 and about the experience and excavation work, has given the following details:

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"3. That the deponent has been associated with the following excavations:

(i) Excavation at KOLN in Germany in 1982.

(ii) Excavation at Mathura in 1977 with ASI Team.

(iii) Excavation at KARNASUVARNA, West Bengal in 1971.

(iv) Excavation at MANGALKOT, BURDWAN, West Bengal from 1986 to 1991.

(v) Excavation at DIHAR, BANKURA, West Bengal from 1991 to 1996.

(vi) Excavation at PAKHANNA, BANKURA, West Bengal from 1997 to 2000 and also in 2002-2003.

(vii) Excavation at DANTANA, MIDNAPUR, West

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Bengal in 2003 to 2004."

540. PW 31 claims to have observed excavation at the disputed site for several days during March to August, 2003, has deposed statement objecting the correctness of the ASI report and said in paras 6 to 21 as under:

> *"6. That the final report of Archaeological Survey of India (ASI) dated 22-8-2003 submitted in this Hon'ble court is a one sided presentation with clear distortion of the material recovered during excavation and motivated inferences have been drawn from the evidence."*
>
> *"7. That the ASI has committed gross omissions in preparing the said report and one such omission is the total absence of any list in which the number of layers in each trench were assigned to the specific period as distinguished and numbered by the ASI itself. The chart placed between pages 37-38 of the report is given for some of the trenches only no other list or concordance of the layers of all the trenches has been given although the same was also essential to test whether the artefacts etc. have been assigned correct period."*
>
> *"8. That the ASI appears to have proceeded with preconceived notion to trace and identify the structural remains or artefacts in order to establish and give strength to the theory of an alleged Hindu temple said to be existing there before the Babri Mosque."*
>
> *"9. That glazed tiles are also indications of Muslims habitation. A Scatter Diagram of Islamic Ceramics and so called pillar bases is enclosed herewith as* ***Annexure No. 2."***
>
> *"10. That the ASI has, in a casual manner, brushed aside*

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the varying levels at which the so-called 'pillar-bases" are said to have been found. The ASI's own descriptive table (pages 56-67), shows that as many as seven of these alleged 50 "bases" are definitely above Floor 2, and one is in level with it. At least six of them rest on Floor 3, and one rests partly on Floor 3 and 4. Nine alleged "pillar bases" are also shown as cutting through Floor No. 3. Thus it is clear that these are simply not 'pillar bases" at all, but some kind of brickbat deposits, which continued to be laid right from the time of Floor 4 to Floor 1."

"11. That in the light of my own field experience and observation (during the course of excavation at Ayodhya), the report submitted by ASI appears to be malafide and full of misinterpretation of archaeological data and far from the ground reality. The report is full of contradictions from the very beginning to the end. Any person having basic knowledge in archaeology may reject the report straightway."

"12. That the report contains that "As stated earlier ..... 50 exposed pillar bases to its east attached with floor 2 ....." (page no. 54). It further states that "Subsequently during the early medieval period (eleventh-twelfth century A.D.) ..... only four of the fifty pillar bases exposed during the excavation belong to this level with a brick crush floor. On the remains ..... a massive structure with these structural phases and three successive floors attached with it ....." (page no. 269).

That above statement of ASI reveals few interesting points:-

a) It contradicts its own statement.

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b) *It appears from the above statement as well the chart that shows the locus of different alleged pillars that at least four so called pillar bases were attached with the brick crush or brick jelly floor found at a depth of 2.20 B.S. According to its chronological estimation this phases belongs to 11th - 12th century A.D.*

c) *It also appears from the Iso-Matric projections of excavated site (Fig Nos. 23, 23A and 23B) and the chart showing the locus of different pillars that these so called pillar bases are found in different elevations and attached to four different floor levels.*

d) *It, therefore, implies that there existed four Phases of constructions being characterized by pillared halls long before the construction of the disputed structure.*

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e) *According to the conclusion drawn by ASI as shown in fig no. 23, 23A and 23B, it appears that these so called pillar bases represent the remains of a huge pillared hall.*

f) *If it is so then we have to subscribe to the Theory that there existed three more earlier Pillared halls.*

g) *Again if we accept the theory that the last Pillared hall was destroyed and demolished before the construction of the present disputed structure, the question which immediately crops up in one's mind is that then who demolished the earlier pillared halls particularly the lowest one which should belong to 11th -12th century A.D. according to their own estimation."*

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"13. That this is a bogus and utopian idea that a massive pillared hall existed immediately below the disputed structure. In fact, these so called pillar bases, comprising two/three courses of broken bricks or brick-bats forming circular/square/rectangular or oblong with uneven calcrete stone block on its top, were used for resting the lime/surkhi floors."

"14. That to impress upon the general people as well the honorable judges of the high court, the ASI has taken the help of isometric projection of the excavated site with superimposition of these pillars. This has been done deliberately to give an impression of the uniform distribution and alignment of these so called pillared bases. But the ground reality is different. They occur, according to their own statement and the chart providing the locus, in at least four different levels ranging from . 50m to 2.20m covering four different floor levels. To avoid this difference in elevation they have taken the help of this iso-metric projection of pillars."

"15. That the Ground plans showing different floor levels are drawn by ASI without showing minimum courtesy to the ethics of archaeological recording."

"16. That the best example showing how the archaeological data has been manipulated to achieve a particular goal is represented in Fig. No. 22. The figure shows the section of J3 trench where the total deposit (approx. 10.50 m) has been divided into 14 layers. This is an incorrect statement showing the deposit of J3 as stratified which are largely filled with filling materials.

In this contest we can refer the guideline of Wheeler

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where he has suggested that layer marking can be made within a pit provided the materials are found sealed by subsequent layer. But it is always desirable not to use the pit materials unless they are supported by other evidences. Moreover the pit materials should always be kept separately and marked as pit no. 1, pit no. 2 and so on so forth. But what the ASI has done in the present case is a gross violation of archaeological norms. In the final report, they described the deposit of J3 as pit materials and represent the trench as stratified by putting layer marking, although admitted in the report that these layer markings are superficial. These is no place of superficiality in archaeology. All the materials of this trench have been registered under a specific layer marking. The basic question which arises in one's mind is that why they did it? They did it because any person having archaeological background knows that dump/pit always yield best quality antiquities. But if the objects are labeled with dump/pit slip, it does not carry any weight or significance in terms of chronology."

"17. That the mound is characterized by extensive structural activities in the form of floors and walls including foundation wall. As a result the whole stratigraphical sequence particularly in the upper level is disturbed by the filling materials (debris). But no attempt has been made by the ASI to co-relate different structures with stratigraphy which can be made by meaningful planning of excavation. The time and age of any structure can be determined only when it is related to layer. There lies the significance of stratigraphy."

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"18. That in the report the ASI has concluded "Now viewing in totality and taking into account the archaeological evidence of a massive structure just below the disputed . . . . . are indicative of remain which are distinctive features found associated with the temples of north India . . . ."

This final conclusion drawn by ASI on the basis of materials as stated in their report does not rest on ground reality. The materials unearthed from dumps and pits do not support the theory of north Indian temple structure below the disputed mosque. How far it is reliable to believe that those who used fine decorative black basalt pillar, decorative stone lotus petal motif and other decorative stone patterns in their alleged temple would use brickbats and broken uneven calcrete blocks in their sacred temple which attaches too much of sentiment to the people."

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"19. That in the summary of results (chapter X) the ASI concluded on glazed ware, glazed tile, celadon and porcelain herds in the following manner "In the last phase of period vii glazed ware sherds make their appearance and continue in the succeeding levels of next period where they are accompanied by glazed tiles which were probably used in the original construction of the disputed structure. Similarly is the case of Celadon and porcelain sherds recovered in a very less quantity they come from secondary context . . . . ." (page 270).

One can obviously ask the excavator in view of this above statement what does he mean by the word "secondary context" ? According to his own statement "the brick and stone structures that were raised in

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Kushana and the succeeding periods of Gupta and post-Gupta times have added heights to the mounds. To build further structure upon the earlier debris the later people added deposit of earth excavated from the periphery of the mound which belonged to much earlier cultural periods. This is true for the rest of the structural phases also . . . . . ”

It means that from sultanate period onwards the mound was filled up from time to time with architectural debris and earth excavated from periphery region of the mound. This means that all the deposit from this level upwards is debris and, therefore, not stratified. Naturally any antiquity collected from this level onwards is coming from secondary context. This is also applicable to the objects shown by the excavator in pushing back the theory of so-called north Indian temple. But the learned excavator has forgotten that any object coming from below any floor level may be considered as stratified in the sense that the objects are at least not later in age than the age of the overlying floor. In the present case many glazed ware sherds including glazed tiles have been reported from below different Surbhi-lime floors. (see table on glazed ware and tiles etc, as provided in the report by ASI). This would further indicate that the debris between three different lime-surbhi floors immediately below the disputed structure and which contain glazed ware, glazed tile, celadon and porcelain were excavated from the periphery of the mound to raise the area in different structural phases. This means that the periphery region of the present mound was inhabited by Islamic culture people

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immediately before the construction of the disputed structure who used these ceramics otherwise we can not explain the reason."

"20. That it appears, therefore, on the basis of material evidences that the site was continuously occupied by the Islamic culture people right from the time of Sultanate period and the structures associated with this level belong to Islamic culture and in reality there did not exist any temple as suggested by ASI in their report."

"21. That the good repute of the ASI has suffered an irreparable loss and the credibility of such a reputed organization has also suffered immensely on account of such a faulty report which does not stand the test of professional integrity."

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541. **PW 32, Dr. Supriya Verma,** aged about 46 years, (on 27.03.2006) resident of Unit II, Teachers Flatlets, University of Hyderabad Campus, Gachi Hbowli, Hyderabad (A.P.), was working at Hyderabad University since 2005 as per her affidavit dated 27.3.2006 filed under Order 18 Rule 4 C.P.C. followed by her cross examination as under :

(a) 27/28-03-2006- Sri Ramesh Chandra Tripathi, defendant no. 17, through Sri Vireshwar Dwivedi, Adovcate (p. 20-40)

(b) 28/29/30/31-03-2006, 17-04-2006-By Akhil Bhartiya Ram Janam Bhoomi Punruddhar Samiti, defendant no. 20 (Suit-4) through Ms. Ranjana Agnihotri, Advocate (p. 40-98)

(c) 17/18/-04-2006-by Nirmohi Akhara through Sri R.L. Verma, Advocate (p. 98-116)

(d) 19/20/21-04-2004-By Mahant Suresh Das, defendant

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no. 2/1 through Sri Madan Mohan Pandey, Advocate (p. 117-157)

(e) 15/17-05-2006- by Mahant Dharm Das, defendant no. 13/1 (Suit-4) through Sri Rakesh Pandey, Advocate (p. 158-172)

(f) 17/18/19-05-2006, 24-07-2006- by plaintiffs (Suit-5) through Shri Ajay Pandey, Advocate and Sri Ved Prakash, Advocate (p. 172-218)

(g) 24-07-2006-Plaintiff (Suit-5) through Sri D.P. Gupta, Advocated adopted the cross examination already done on behalf of other defendants)

542. She has sought to discredit ASI report on various grounds claiming expertise in Archaeology i.e. an expert witness (Archaeology). She did M.A. in 1982 from Punjab University, Chandigarh, M.Phil in 1985 and Ph.D. in 1997 from Jawahar Lal Nehru University, New Delhi. Worked as Lecturer in Archaeology in Punjab University (Chandigarh) in the Department of History from October 1999 to February 2005, as Post Doctorate Fellow (Archaeology) at the Centre for Historical Studies, Jawahar Lal Nehru University, New Delhi from October 1997 till July 1998 and as temporary Lecturer (Archaeology) at M.S. University, Baroda, in the Department of History from August 1998 to June 1999. Her subject of research in Ph.D. was "Changing Settlement Patterns in Kathiawar from the Chalcolithic to the Early Historic Period", and participated in excavation at several sites like, Nageshwar, Samnapur, Nagwada and Bagasara and in 2006 was involved in Archaeological Project at Indore Khera in Anupshahr, District Bulandshahr (U.P.). She has authored following books:

(1) Chapter on Archaeology in the book entitled as

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"Some Themes in World History"prepared for Class XI as a text book by the National Council of Education and Research Training, New Delhi in April 2006.

(2) Co-edited with Prof. Satish Saberwal the book entitled "Tradition in Motion: Religion and Society in History" published by Oxford University Press, New Delhi in 2005.

(3) All the chapters on Archaeology in "Bharat Ka Itihas Part I, prepared by the State Council of Education Research and Training, New Delhi prescribed by the Delhi State Government since 2004.

543. About research papers, PW 32 has given details as under:

(a) "Changing Settlement Patterns in Kathiawar", published in the book "Iron and Social Change in Early India" edited by Prof. B.P. Shahu from Oxford University Press, New Delhi (2006) (Originally published in the Journal known as "Studies in History, Vol. VI, No. 2, 1990)

(b) "Ethnography as Ethnoarchaeology: a review of studies in ethnoarchaeology of South Asia", published in the Book 'Past and Present': "Ethnoarchaeology in India", published by Center for Archaeological Studies and Training, Eastern India and Pragati, Kolkata and New Delhi, 2006.

(c) "Introduction of the book "Traditions in Motion: Religion and Society in History", edited by the deponent and Prof. Saberwal and published by Oxford University Press, New Delhi in 2005.

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(d) "Defining Tradition: An Archaeological Perspective", written jointly with Dr. J. Menon and published in S. Saberwal and S.Verma's book 'Traditions in Motion: Religion and Society in History', Oxford University, Press, New Delhi, 2005.

(e) "In the absence of mounds: shifting villages, pastoralism and depopulation", published in the book edited by R. Heredia and S. Ratnagar, ' Mobile and Marginalized peoples: Perspectives from the Past' Manohar publishers, New Delhi, 2003.

(f) "Is Archaeology an Immature Discipline?" Published in The Indian Historical Review, Vol. XXVIII (2001).

(g) "The Development of "Harappan Culture" as an Archaeological Label: a case study of Kathiawar" published in The Indian Historical review, Vol. XXVI (1999).

(h) 'Owning a Civilization', jointly written with Dr. J. Menon published in the Summerhill Review, Vol. IV, no. 2, (1998) by the Indian Institute of Advanced Studies, Shimla.

(I) "Villages Abandoned: the case for mobile pastoralism in Post Harappan Gujarat' published in Journal "Studies in History", Vol. VII, No.2, (1991) by SAGE (London and New Delhi).

544. PW 32 witnessed the excavation by ASI for about 47 days as under:

5th April 2003 -12th April 2003

11th May 2003 - 31st May 2003

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22nd June 2003 - 27th June 2003

8th July 2003 - 19th July 2003

545. From Para 6 to 30 of her affidavit PW 32 has discussed and pointed out irregularities/discrepancies/shortcomings in the excavation report of the ASI which we propose to refer and discuss while discussing ASI report later on.

546. **OPW 17, Dr. R. Nagaswamy**, aged about 76 years (on 17th August, 2006), resident of 22nd Cross Street Besent Nagar, Chennai (Madras), deposed his statement as an expert witness (Archaeologist) to support ASI report. His cross examination followed as under :

Part-I:(a) 17/18/19/21/22/23/24-08-2006- by Mohd. Hashim, defendant no. 5 (Suit-5) by Sri M.A. Siddiqui, Advocate (p. 30-116)

Part-II : Cross examination: (b) 25-08-2006, 04/05/06/07/08-09-2006- by Mohd. Hashim, defendant no. 5 (Suit-5) by Sri M.A. Siddiqui, Advocate (p. 117-184)

(c) 11/12/13/14/15/18/19/20/21/22-09-2006- by Sunni Central Waqf Board, defendant no. 4 (Suit-4) through Sri Z. Jilani, Advocate (p. 185-317)

547. He did Post Graduation in Sanskrit and Literature from Madras University in 1958 and Ph.D. from Pune University in 1974. He worked as Curator for Art and Archaeology, Government Museum, Madras in 1959-63; as Assistant Special Officer (Archaeology), Government of Tamilnadu in 1963-65; Director of Archaeology, Government of Tamilnadu from 1966-88 and retired from the post of Director on 31st August, 1988, appointed as Vice-Chancellor, Kanchipuram University Madras in February 1995 and served as such up to 1996, was working as Director, International Institute of Shaiv Siddhant Research,

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Dharmpuram, Madras. He claims specialization in the field of Temple Arts and Culture, Archaeology, Art History, Tamil Literature from Sangam age to Modern period, Sanskrit Literature, Indian Epigraphy and Archaeology, Ancient Indian Law and Society, South Asian Art and Religion, Agamic and Vastu Literature, South Indian Music and Dance, South Indian Numismatics, Religion and Philosophy, and Village studies. He has given details of his literary and other achievements from paras 9 to 22 of the affidavit which we skip for the moment and may deal with at the appropriate stage whenever necessary. He claims to have studied ASI report, deposed in support of the finds and findings of the said excavation, and from paras 24 to 42 said as under:

> *"24. That Archaeological Survey of India which is more than one hundred years old and has produced the most outstanding stalwarts in the field of Archaeology is known throughout the world for its excellence in all spheres of Archaeological work especially in the field of excavation its work has been extremely accurate and scientifically praiseworthy. Archaeology provides scientific factual data for reconstructing ancient history and culture, and is an important tool of human understanding and ASI has been doing this exercise admirably."*
>
> *"25. That no excavator can create or manufacture a structure consisting a number of courses inside a trench. In some places long walls may cut through several trenches but these are easily seen through the layers, the baulk and retain them."*
>
> *"26. That Chronologically early antiquities can be found in later periods which is perfectly normal but later*

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antiquities are not found in earlier layers."

"27. That the ASI in the opinion of the deponent has followed all the required archaeological principles and has undertaken precautions to safeguard the site and has completed the excavation works in compliance of court's order. The report submitted by the Archaeological Survey of India, reveals that their performance within a limited period of time is a work of highest scientific nature and is an important piece in the history of Archaeology."

"28. That before excavation of the disputed site a GPR survey was conducted under the orders of the court which is a non destructive scientific surveying method on the spot. The GPR survey is considered to be the most scientific method for conducting survey before actual digging. The anomalies pointed out in GPR survey may be confirmed by actual digging and that is what the ASI has done."

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"29. That the GPR survey conducted before actual digging under the orders of the court indicated about anomaly alignment across the main platform north and south of the sanctum sanctorum extending to Ramchabutra. The anomaly alignment corresponded to a wall foundation belonging to successive construction period associated with ancient and Contemporaneous structures like pillars, foundation walls, slabs etc."

"30. That the Archaeological Survey of India has arranged Archaeological documentation including drawing, and Photography, of the Structural remains, pottery, and antiquities, and collections of samples of plaster, floors bones, charcoal, palaeo-botanical remains for scientific studies and analysis."

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"31. That in the year 1929 excavation were conducted at Mahasthan a great Hindu pilgrim centre in modern Bangladesh which was originally a portion of north India, about 8 miles from Bogra town. This place contains both Vaishnava and Saiva temples. The excavations were conducted by Dr. Nazeemuddin Ahmad and was published by the Archaeological Survey of India Bangladesh. In the said excavations archaeologists found an inscribed stone with Brahmi inscriptions of the Asokan period and the excavation proved the site to be ancient Mahasthan. In the excavation a number of carved stone pillars and pieces were found on the mound which proved the site to be an important Hindu temple, in almost every aspect. There were pillar bases. There were carved stone used. The habitation of the site goes back to Kushan period. In some instances the Temples have been built in successive phases over the existing structures. There were massive walls pointing to porches. There seems to be a central opening. Some of the carved stones of the Hindu temples are found used in Islamic structure. There were also large Islamic pottery and antiquities strewn over an area but no Islamic structure was found there. The number of Hindu carvings laying in the region are indicative of an important Hindu temple beneath the mound etc. Though it is an Islamic country, and though the excavator is an Mussalman they do not deny the existence of a Hindu temple laying buried but on the other that it is a Hindu temple. They being excellent Archaeologists have no hesitation in stating the truth. Photocopy of relevant pages prepared and annexed with this affidavit as ***Annexure No. 3."***

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"32. That the archaeological excavation at Ayodhya has shown indisputably that there existed a structure immediately beneath the disputed structure. It shows that the structure also had pillar bases. Pillar bases have been found in Mahasthan excavation in the Hindu temple area and that the Bangladesh Archaeologists have shown those pillar bases were meant to support a porch of a Hindu temple."

"33. That from the perusal of the report it is clear that the layers are well stratified and the periodization has been done as per settled norms and the finds have also been recorded and interpreted properly."

"34. That the carbon dating is a scientific mode of periodization which is considered to be reliable dating method in archaeology."

"35. That Pillar bases are made up of some sources of brick bats and are either square or circular in formation' Calcreate stone blocks are kept on sand stone block-one decorated stone block was found here. The idea that they are not pillar bases but heaps of stone for holding floor level is not correct. The stones in the middle of the brick formation undoubtedly were intended for supporting pillars and this tradition seems to have been followed through the centuries in this areas where even indisputable pillar bases are found. Below this brick wall, was found another brick wall-decorated stone blocks were used on top of this wall. Beneath pillar bases, earlier pillar bases were found. Some more brick structures were found beneath these walls. Most of the pillar bases were found connected with 2nd floor."

"36. That existence of circular shrine with pranal towards

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north proves existence of Hindu temple."

"37. That the brick circular shrine is circular outside and square on the inner side, with a rectangular projection in the east with entrance, it has a water chute on the northern side which is obviously in level with the floor level of the inner sanctum clearly intended for the abhisheka to be drained, As this seems to be secondary shrine dedicated to Siva in his linga from the shrine is built to smaller dimension. Smaller dimension of subsidiary shrines with just minimum entrance space are seen in some of temples, eg. Manasor, Rajasthan- Kumbharia Shantinath Temple relevant pages are photostat copies prepared from those books, are annexed with this affidavit as ***Annexure no. 4, 5*** *(Temples of India by Krishna deva, published by Aryan Books, New Delhi) The smaller dimension does not preclude the structure being a shrine. The absence of any significant artefacts belonging to other sister faiths like Buddhism or Jainism, precludes this structure being identified with any of those faith."*

"38. That in the opinion of the deponent the excavation report, its finds, proves beyond doubt the existence of a Hindu temple under the surface of the disputed structure."

"39. That the presence of different bones in Hindu temple area is nothing unusual, nor does it minimize the sanctity of the temple premises, Bones in archaeological excavation are quite common."

"40. That all classical Hindu temples are laid according to a prescribed grid know as Vast pada vinayasa, Sacred diagram. Within the diagram and immediately outside the diagram several natural, benign or wild forces are present

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that are propitiated. Among such forces are bhuta, pretas, Pisachas, etc which are offered worship when the temple is first erected and subsequently annually during the great festivals. During their worship different kinds of food offerings are made which include for Bhuta, Pretas, Pisachas etc. blood and meat of flesh of animals etc. suited to the nature of the evil forces (Mayamata, vol I, reference for meal offering and also for use of Lime and "Vastu Sastra" by D.N. Shukla, P. 114) photocopy of relevant pages prepared and annexed with this affidavit as ***Annexure No.*** *6 and* ***7.*** *It is invariably part of Hindu worship. The offering is made generally during the mid of the night in all the directions. So the presence of Bones of animals or birds etc. does not preclude the place being a Hindu temple. There is a temple at Gudimallam now in Andhrapradesh near the famour Thiruppati Balaji Kshetra. The temple is well known to Indologists and carries in it sanctum a Siva linga which is in the form of human phallus and is dated to second century BC to the time of famous Bharhut sculptures of the Sunga Period. In order to asses the antiquity of this famour sculpture and its antiquity of the temple, the ASI conducted an excavation in side the sanctum of the temple. The excavated space between the linga and the sanctum wall was found to have been filled up in 12th - 13th century when the aforesaid temple was built. This filling contained bone pieces right in the garbhagraha area of a Hindu temple: the excavation shows that finds of bone does not mean the structure could not be a Hindu temple."*

"41. That the Marici Samhita an early Vaishnava text,

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(Pub Thiruppati Ed. 1926, p. 140) mentions parivara devas that include Nagas, Bhuta, Yaksha, Durga, Chota mukhi, Dhatri, Grahakshata, Rakshasa, Gandharva etc. At the beginning of festival all deities are offered Bali to propitiate them. Marichi p. 351. The following are the divinites to be propitiated with bali in addition to the well known ones. Deva Bhuta, Yaksha, Rakshara, Pisacha, Naga, Gandharvas and 18 ganas. (Bhrigu : Samhita Khiladhikara, also called Bhrgu Samhita Ed. Partha sarathi Bhattacharya, 1961 – Thiruppati, P. 434, Mahotsavavidhi.)

Kamikagama :Saiva – Pt. 1, 1975, 75 Ref. Vastidevabali

It gives what bali should be offered to whom.

Rudra – mamsam annam (cooked rice with meat)

Rudrajaya phenam (Moss)

Apa – fish

Apavatsa – Mamsa (meat)

Caraki – ghee, (Mamsam meat)

Grahas – Mamsannam (cooked rice with meat)

These are called Utkrshta bali (highly respected) bali."

"42. That the sarvasiddhanta viveka, a Sanskrit text states a branch of the saivas offered Madhu, Matsya, and Mamsa. (Art and Religion of the Bhairavas, R. Nagaswamy, Tamil Arts Academy, Chennai, 2006 P.S. - 6 and Page 49, photocopy of relevant pages prepared and annexed with this affidavit as ***Annexure No. 8.****"*

548. OPW 18, Arun Kumar Sharma, a retired Superintending Archaeologist from ASI, aged about 73 years (vide his affidavit dated 28.08.2006), is resident of Sector 3, C.B.D. Belapur, Navi Mumbai (Maharashtra). His cross

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examination followed as under:

Part-I : is his affidavit

Part-II : Cross examination: (a) 28/29/30/31-08-2006-by Mohd. Hashim, defendant no. 5 (Suit-5) through Sri M.A. Siddiqui, Advocate (p. 29-74)

(b) 31-08-2006, 01/25/26/27-09-2006, 01/02-11-2006- by Sunni Central Waqf Board, defendant no. 4 (Suit-5) through Sri Z. Jilani, Advocate (p. 74-152)

Part-III :(c) 03/06/07/08/09/10/13/14/15-11-2006- by Sunni Central Waqf Board, defendant no. 4 (Suit-5) through Sri Z. Jilani, Advocate (p. 152-272)

(d) 15-11-2006 defendant no. 26 through Sri Sayad Irfan Ahmad, Advocate and defendants no. 6/1 and 6/2 (Suit-3) through Sri Fazale Alam, Advocate adopted the cross examination already done by defendants no. 4 and 5 (p.273)

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549. The witness has appeared as an expert (Archaeology) to support the findings of ASI. He did M.Sc. (Physical Anthropology) in 1958 from University of Sagar (Madhya Pradesh) and Post Graduate Diploma in Archaeology in 1968 from Institute of Archaeology, Government of India. In the Diploma examination he was awarded -

(a) Maulana Azad Memorial Medal for topping in the batch;

(b) Maulana Azad Memorial Prize;

(c) Sir Mortimer Wheeler Prize for excavation;

(d) Dr. K.M. Puri Prize for publication.

550. OPW 18 served ASI from 1959 to 1992 and had the opportunity to explore and excavate archaeological sites ranging from pre-historic time to modern time throughout the country.

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The sites he excavated under the licence issued by Director General, ASI, as Team Director of the excavations and the reports of the said excavation were submitted to ASI within one year of the completion of the excavation, published in book form, are:

(i) Excavations at Gufkral (J&K) in the year 1981-82

(ii) Excavations at Karkabhat (Chhattisgarh)-1990

(iii) Excavations at Sekta (Manipur)-1991

(iv) Excavations at Anangpur (Haryana)- 1991-92

(v) Excavations at Bhaithbari (Meghalaya) – 1991-92

(vi) Excavations at Ladyura (presently in Uttranchal)-1992

(vii) Excavations at Darekasa (Maharashtra)-1992

551. OPW 18 is author of the books containing reports of excavation and explorations and has also edited certain work as under:

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A. **<u>Excavations</u>**

(i) Emergence of Early Culture in North east India (New Delhi, 1993)

(ii) Pre-historic Delhi and its Neighbourhood (New Delhi, 1993)

(iii) Manipur – Its Glorious Past (New Delhi, 1994)

(iv) Megaliths in India – in context of Sought-East Asia (New Delhi, 1994)

(v) Early Man in Eastern Himalayas including Nepal (New Delhi, 1996)

(vi) Pre-historic Burials of Kashmir (New Delhi, 1998)

(vii) The Departed Harappans of Kalibangan (New Delhi, 1999)

(viii) Archaeo-Anthropology of Chhattisgarh (New Delhi,

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2000)

(ix) Early Man in Jammu and Laddakh Kashmir (New Delhi, 2000)

(x) Heritage of Tansa Valley (New Delhi, 2004)

(xi) Excavating in a Cave, Cist and Church (New Delhi, 2005)

(xii) Excavating Painted Rock Shelters (New Delhi, 2006)

B. **Explorations**

(i) Pura-ratna – volumes – Shri Jagat Pati Joshi Facilitation volume, New Delhi, 2002.

(ii) Puraprakasa – 2 volumes – Dr. Zia-ud-din Ahmed Desai commemoration volume, New Delhi, 2003.

552. OPW 18 participated as a team member in certain excavations and wrote reports on specific topics assigned to him in the following excavations:

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(i) Kali Bangal (Rajasthan)

(ii) Burzahom (J&K)

(iii) Lothal (Gujarat)

(iv) Surkotada (Gujarat)

(v) Malvan (Gujarat)

553. After retirement OPW 18 claims to have worked as under:

(i) was appointed as Officer on Special Duty in 1993 in Indira Gandhi National Centre for the Arts, New Delhi and excavated the Rock Shelter site at Jhiri (M.P.) in 1993-94 in collaboration with the French Team. He was the leader of the Indian Team.

(ii) On request from Gurudev Siddha Peeth, Ganeshpuri, Maharashtra, explored the entire Tansa Valley to

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locate and document archaeological remains.

(iii) From 1997, he was appointed as Director (Projects) in Bodhisatwa Nagarjun Smarak Sanstha Va Anusandhan Kendra, Nagpur to conduct explorations and excavations and, as Director, conducted excavations at Sirpur (Chhattisgarh) from 2000 to 2004. He is conducting excavations and simultaneous conservation at Mansar (Maharashtra) since 1997-98 till this date under license from Archaeological Survey of India.

(iv) He has been appointed as Archaeological Adviser to the Government of Chhattisgarh since 2004 and is conducting excavations and simultaneous conservation at Sirpur (Chhattisgarh) since 2004 under license from Archaeological Survey of India.

554. OPW 18 also claims to have studied animal bones in excavation at Mirzapur and Karan Ka Teela (both in Haryana) and submitted report which has been published at the instance of Vice-Chancellor, Kurukshetra University; examined bones excavated from Sarai Nagar Rai, gave report which was published in book "Beginning of Agriculture"-Allahabad-1980 at the instance of Prof. G.R. Sharma (Late), Allahabad University. He is author of several research articles on various topics of archaeology published in international and national journals and is one of the expert of Indian Council of Historical Research, New Delhi to evaluate various projects for grant of fellowships to scholars; delivered lectures and imparted field training on exploration and excavation techniques to the students of Institute of Archaeology, Government of India. He visited excavation site on 6th - 7th August 2003, examined the

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excavated structures, layers and deposits, and also examined the report of ASI as well as the photographs and other connected record. He deposed that the ASI has conducted its work strictly in accordance with well known principles and in para 15 of the affidavit said:

> *"15. That the report submitted by Archaeological Survey of India is in conformity with the archaeological principles and norms and is a most scientific report of the excavation of the disputed site at Ayodhya and is based on well-established and internationally accepted norms of archaeological excavations. From the perusal of the report, it is clear that the* ***layers are well stratified and the periodisation has been done in a proper way*** *and the* ***finds have also been recorded and interpreted strictly in accordance with the settled archaeological norms****."*

555. The rest of the averments contained in his affidavit in examination-in-chief, we find appropriate to refer at the stage while dealing with ASI report later on alongwith statement in cross-examination.

556. **OPW 19, Sri Rakesh Datta Trivedi,** aged about 71 years (as per his affidavit dated 03.10.2006), resident of Sector 8, Rohini, Delhi, retired Director, ASI, New Delhi, has deposed as an expert witness (Archaeology) to support ASI report. His cross examination followed as under :

(a)03/04/06/09/10/11/12/13/16-10-2006- by Mohd. Hashim, defendant no. 5 (Suit-5) through Sri M.A. Siddiqui, Advocate (p. 9-106)

(b) 17/18/19-10-2006, 15/16/18/20/21/22/23/24/-11-2006, 04/05-12-2006-by Sunni Central Waqf Board, defendant no. 4 through Sri Zafaryab Jilani, Advocate (p. 106-241)

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(c) 05-12-2006- defendant no. 26 through Sri Syed Irfan Ahmad, Advocate and defendants no. 6/1 and 6/2 (Suit-3) through Sri Syed Irfan and Sri Fazle Alam, Advocate adopted the cross examination already done by defendants no. 4 and 5. (341-342)

557. He did M.A. (Ancient Indian History and Archaeology) in 1958 from Lucknow University, Lucknow, joined National Museum, New Delhi as Museum Lecturer and worked in the said museum between 1962 to 1974. During this period he got specialised training in Museology in France under the French Government Scholarship scheme in 1967-1969, also visited museums at United Kingdom, Czechoslovakia and West Germany for specialised studies. He joined ASI, New Delhi, in 1974 and retired as Director, ASI New Delhi in June 1993. During this period he visited archaeological sites, museums and monuments in Japan under the cultural exchange programme of Government of India; worked as Head of the Temple Survey Project of North India from 1977-1984 and was engaged in research, interpretation of Indian Art, Temple Architecture and its Sculptures connected with Ancient Temples; and is author of "Temples of the Pratihara Period in Central India" published by ASI in series of Architectural Survey of Temples and another book titled as "Iconography of Parvati" published by Agam Kala Prakashan, New Delhi which deals with Parvati as the consort Siva; wrote several articles and research papers of Indian art and culture and therefore his services were connected with the study and research of temple archaeology and iconography. He said to have studied both the volumes of the report submitted by the ASI and in this regard stated as under from paras 9 to 17 of the affidavit:

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"9. That the deponent during his service was connected with the study and research of temple architecture and Iconography."

"10. That the structural and architectural remains found in excavation at the disputed site proves the existence of remains of massive structure underneath. The existence of massive walls coupled with other structures and pillar bases further indicate the existence of an extensive pillared Mandapa-like structure which is found in temples of northern India."

"11. That the existence of 50 pillar bases exposed (some of them fully, other partially and a few of them traced in section) also indicate the existence of the Mandapa. The pillared structure which was below the surface of the disputed structure was standing on the much bigger area on lateral sides and front side facing east, further proves the existence of a big Mandapa."

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"12. That in the Southern side of the disputed structure, the remains of a circular shrine, which dates back earlier to the pillared structure facing east, has a Vari-marga (Pranala) on the northern side to serve as an outlet for water which is usually found in the temples. To the east of it are situated the remains of water tank (Pushkarini) encountered under the Rama Chabutara. It may be mentioned here that Pushkarini is associated with Hindu temples."

"13. That the Architectural and Sculptural remains like Makar pranala (Crocodile faced Chute) terminating in foliage pattern, architectural pieces carved with Patra-Lata or kalpa-valli motif, pillar bases encased by

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orthostats and bhadraka-type pillar base, lower part of an octagonal pillar carved with foliage pattern, architectural piece carved with alternating padma and ratna (lotus and diamond) motifs reused in the lower portion of brick wall definitely belong to some earlier temple structure."

"14. That the architectural pieces carved with diamond (ratna) pattern and ceiling slab carved with lotus relief, pieces of broken amalaka, ghatapallava pillars, fragmentary foliage and floral carvings, Shrivatsa mark carved on stone in low relief, carved bricks with Ardha ratna and rope design; all these are indicative of a temple repertoire."

"15. That the book written by Percy Brown titled as "Indian Architecture" (Buddhist and Hindu) published by D.B. Taraporewalla Sons and Company Private Limited, Bombay, deals with architectural and pillar remains of Hindu temples reused in mosques. ***Annexure No.1*** *of this affidavit is true photocopy of the original book plate number XCVI showing re-erected pillars of Qutub Mosque which establishes that temple remains were adapted in mosque."*

"16. That ***Annexure No. 2*** *of this affidavit is true photocopy of the original book plate number VI figure 1 and 2 of the same book relating to Islamic period also establishes reuse of temple remains and pillars in Islamic structure."*

"17. That ***Annexure No. 3*** *of this affidavit is true photocopy of the original book "Indian Archaeology 1998-99 a Review" plate number 91 and* ***Annexure No. 4*** *of this affidavit is true photocopy of the original book Hindu*

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Iconography (Based on Anthological Verses, Literature, Art and Epigraphs) by S.P. Tewari published by Agam Kala Prakashan, New Delhi, plate 10 and 12 which show the photo of Uma Mahesvara which indicate similarity to the badly damaged sculpture of Divine Couple."

558. DW 6/1-1, Hazi Mahboob Ahmad, aged about 67 years (vide his affidavit dated 29.08.2005). His cross examination followed as under :

Part-I:(a) 29/30/31.08.2005, 01.09.2005- by plaintiffs (Suit-3) through Sri R.L. Verma, Advocate and Sri Tarunjeet Verma, Advcoate (p. 10-48)

(b) 01/02.09.2005- by Ramesh Chandra Tripathi, defendant no. 17 through Sri Vireshwar Dwivedi, Advocate (p. 48-64)

(c) 02/05/06.09.2005- by defendant no. 20 (Suit-4) through Km. Ranjana Agnihotri, Advocate (p. 64-90)

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(d) 06.09.2005- by Mahant Suresh Das, defendnat no. 2/1 (Suit-4), through Sri Madan Mohan Pandey, Advocate (p. 90-101)

Part-II :(e) 07/08/09/12.09.2005- by defendant no. 13/1 through Sri Rakesh Pandey, Advocate (p. 102-154)

(f) 12.09.2005, 19/20/21.10.2005, 24/25.11.2005- by plaintiffs (Suit-5) through Sri Ved Prakash, Advocate (p. 155-207)

559. He has given his statement criticizing ASI report, and making allegations against certain authorities of the then Government of India also. He himself is defendant no. 6/1 in Suit-3 and had already submitted his objection dated 08.10.2003 and supplementary objection dated 03.11.2003, and, in support thereof filed affidavit dated 29.08.2005, criticizing ASI report as

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a whole. We propose to refer the same later while dealing with the objections against ASI report.

560. **DW6/1-2, Mohd. Abid**, aged about 49 years, (in 2005) working as Senior Technical Assistant in the Archaeology Section of the Department of History, A.M.U., Aligarh, resident of Shivli Road, A.M.U., Aligarh, filed affidavit dated 12.09.2005 claiming himself to be an expert (Archaeology) and has deposed against ASI report. His cross examination followed as under :

(a) 12/13.09.2005- by plaintiffs (Suit-3) through Sri R.L. Verma, Advocate (10-26)

(b) 14.09.2005- by Mahant Suresh Das, defendant no. 2/1 (Suit-4), through Sri Madan Mohan Pandey, Advocate (p. 27-42)

(c) 15.09.2005- by Ramesh Chandra Tripathi, defendant no. 17 (Suit-4) through Sri Vireshwar Dwivedi, Advocate (p. 43-53)

(d) 15/16.09.2005- by defendant no. 20 (Suit-4), Akhil Bhartiya Sri Ramjanam Bhumi Punruddhar Samiti, through Km. Ranjana Agnihotri (p. 53-66)

(e) 19/22/23/24/26/28.09.2005-by defendant no. 13/1 through Sri Rakesh Pandey, Advocate (p. 67-144)

(f) 28/29.09.2005- by plaintiffs (Suit-5) through Sri Ajay Pandey, Advocate (p. 144-159)

(g) 29.09.2005- Rajendra Singh, plaintiff (Suit-1) through Sri P.L. Mishra, Advocate adopted the cross examination already done by defendant no. 13/1 Dharm Das through Sri Rakesh Pandey, Advocate and plaintiffs (Suit-5) through Sri Ajay Kumar Pandey, Advocate (p. 159-160)

561. He did M.A. in Ancient Indian History from Agra

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University, Agra and Diploma in Civil Engineering from A.M.U. He joined as Technical Assistant (Draftsman) in 1979 in the Archaeological Section of History Department of A.M.U. whereat the said post was later on upgraded as Senior Technical Assistant. He claims to have worked in several excavations, detailed by him in para 3 of the affidavit, as under:

''यह कि शपथी ने अलीगढ़ मुस्लिम विश्वविद्यालय के इतिहास विभाग के अन्तर्गत पुरातत्व अनुभाग के अपने कार्यकाल में पुरातात्विक उत्खनन की कुछ महत्वपूर्ण परियोजनाओं की उत्खनन प्रक्रिया में सक्रिय भागीदारी की है। शपथी ने प्रो0 आर0सी0गौड़ के अधीन 'अतरंजी खेड़ा' (जिला एटा), ''फतेहपुर सीकरी नेशनल प्रोजेक्ट आफ एक्सकेवेशन', आगरा, लाल किला, सिद्धपुर तथा दोलतपुर (जिला बुलन्दशहर) में एवम प्रो0 एम0डी0एन0 साही के अधीन 'जखेड़ा' (जिला बुलन्दशहर) में एवम् डा0 माखन लाल के अधीन 'राधन' (जिला कानपुर) में भी उत्खनन कार्य में सक्रिय भागीदारी की है। इन पुरातात्विक उत्खननों में मैंने स्वयं खुदाई करने के साथ-साथ इन स्थलों पर उत्खनन की सभी अवस्थाओं (Stages) की सेक्शन ड्राइंग बनाने से लेकर उत्खनन में प्राप्त होने वाली महत्वपूर्ण पुरावस्तुओं को निकालना, उन्हें चिन्हित कर सूचीबद्ध करना, उनके प्राप्ति स्थान (Locus) को निश्चित करना, एवम पुरास्थल पर खुदाई से प्राप्त पुरातात्विक परतों (Layers)के विभिन्न कालों के स्तरीकरण (Stratification) करना एवम उनका काल निर्धारण आदि उत्खनन की विभिन्न प्रक्रियाओं से पूरी तरह जुड़े रहकर कार्य किया है । इस कारण वह पुरातात्विक उत्खनन के मानक, तकनीक तथा उसकी वैज्ञानिक व व्यवहारिक पद्धति व प्रक्रिया से अच्छी तरह से परिचित है।

उपरोक्त खुदाइयों से सम्बन्धित उल्लेख Indian Archaeology-A Review की 1979–80 (प्रष्ठ 71, 75) 1980–81 (पृष्ठ 66), 1981–82 (प्रष्ठ 65), 1982–83 (प्रष्ठ 89), 1983–84 (प्रष्ठ 81), 1984–85 (प्रष्ठ 80, 86), 1985–86 (प्रष्ठ 74, 78) तथा 1986–87 (प्रष्ठ 73) आदि की रिपोर्ट में मिलता है। इन खुदाइयों के अतिरिक्त शपथी ने Prof. R.C.Gaur तथा Sri Makkhan Lal आदि के साथ पुरातात्विक स्थलों के Exploration तथा सर्वे का कार्य भी किया है। मेरे इस प्रकार के

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कार्यों के उल्लेख Indian Archaeology 1978-79 -A Review के प्रष्ठ 21 तथा Indian Archaeology 1986-87--A Review के प्रष्ठ 80 पर मिलते हैं।''

''That I, the deponent, have made an active participation in the excavation proceedings of some important projects of archaeological excavation during my stint in the archaeological section under the history department of Aligarh Muslim University. I, the deponent, have made an active participation in the excavations at 'Atranji Kheda' (District Etah), 'Fatehpur Sikri National Project of Excavation', Agra, the Red Fort, Siddhpur and Dolatpur (District Bulandshahar) under Professor R. C. Gaur and at Jakheda (District Bulandshahar) under Prof. M.D.N.Shahi and at Radhan (District Kanpur) under Dr. Makhana Lal. Besides personally doing the digging, I have worked at these archaeological excavations by completely associating myself with various excavation proceedings ranging from making section drawing of all stages of excavation at these places to taking out important archaeological antiquities, marking and listing them, determining their locus of discovery, making period-wise stratification of archaeological layers discovered through excavation at the archaeological sites and carrying out their periodization, etc. For this reason, I am well acquainted with the norms and method of archaeological excavation and with its scientific and practical method and process. The aforesaid excavations find mention in Indian Archaeology – A Review on pages 71 and 75 of its 1979-80 issue, on page 66 of its 1980-81 issue, on page 65 of the 1981-82 issue, on page 89 of the 1982-83 issue, on page

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81of the 1983-84 issue, on pages 80 and 86 of the 1984-85 issue, on pages 74 and 78 of the 1985-86 issue and on page 73 of 1986-87 issue. Besides these excavations, I, the deponent, have also carried out exploration and survey of archaeological sites with Prof R. C. Gaur, Sri Makhan Lal and others. This type of works of mine find mention on page 21 of Indian Archaeology- A Review, 1978-79 issue and on page 80 of on its 1986-87 issue." (E.T.C.)

562. DW 6/1-2 remained present during the course of excavation conducted by ASI at the disputed site for 83 days, i.e., from 12.03.2003 to 22.03.2003, 26.03.2003 to 15.04.2003, 05.05.2003 to 06.06.2003 and 16.06. 2003 to 03.07.2003 under the instructions of Muslim parties as their nominee, and witnessed various proceedings of excavation at different level. Regarding his observations during the course of excavation etc. he has given his statement in paras 5 and 6 which we propose to refer in detail while dealing with ASI report later.

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563. DW20/5, Jayanti Prasad Srivastava, aged about 74 years, (vide his affidavit dated 15.01.2007), is resident of Bharat Apartment Shalimar Garden Ex-2, Sahibabad, District Ghaziabad. His cross examination followed as under :

Part-I:

(a/1)15/16/17/18/19/31.01.2007,01/02//05/06/07/08/09/12/13/ 14.02.2007 - by Mohd Hashim plaintiff no. 7 (Suit-4) through Sri Mustaq Ahmad Siddiqui, Advocate (p. 9-189)

Part-II :(a/2) 15/19.02.2007- by Mohd Hashim plaintiff no. 7 (Suit-4) through Sri Mustaq Ahmad Siddiqui, Advocate (p. 190-209)

(b)19/20/21/22/23.02.2007,

12/13/14/15/16/19/20/21/22/23.03.2007- by plaintiffs no.

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1, 6/1 and 6/2 Sunni Central Board of Waqf, Jiyauddin and Maulana Mahafujurrhman through Sri Zafaryab Jilani, Advocate (p. 209-376)

(c) 23.03.2007- Sri Syed Irfan Ahmad, Advocate for defendant no. 26 (Suit-5) adopted the cross examination of already made on behalf of plaintiffs (Suit-4) through Sri M.A. Siddiqui and Z. Jilani Advocates (p. 376)

(d) 23.03.2007- Sri Irfan Ahmad and Sri Fazle Alam, Advocates for defendants no. 6/1 and 6/2 (Suit-3) adopted the cross examination already done on behalf of plaintiffs (Suit-4) through Sri M.A. Siddiqui and Z Jilani, Advocates. (p. 376)

564. DW 20/5 is a retired Superintending Archaeologist, ASI, New Delhi. He deposed his statement to support findings of ASI report. He claims to be an Expert witness (Archaeology). He did M.A.(History) with specialization in Ancient Indian History and Culture from Lucknow University, Lucknow in 1955, passed Vidya Vachaspati Examination with a Combined Degree Course in Comparative Religion and Vedic Philosophy, Hindi and Ancient Indian Social Studies during the year 1960-61 from Arya Sahitya Mandal Ltd., Ajmer, Rajasthan; worked as a temporary Lecturer (History) in Sri Gandhi Vidyalaya, Sidhauli, District Sitapur; Technical Assistant in ASI, Excavation Branch, Nagpur (Maharashtra) from 15.05.1964 to December, 1971 for excavations in different parts of the country and in 1972 for excavation at Purana Qila, New Delhi; between 1964 to 1968 he was a Research Scholar at Vikram University, Ujjain (MP) under the guidance of Prof. M.N. Kaul, Former Head of History Department, Victoria College, Gwalior; worked on the History of Gwalior Region during the early medieval period from Circa

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800 A.D. to 1300 A.D; joined ASI as an Exploration Assistant in the Central Circle, Bhopal in 1957 and explored an ancient mound at Ashta in the District Sehore (MP); attended excavation site at Ujjain in 1957-58 conducted by ASI; attended excavation site in District Sagar (MP) in 1960-61 and 1961-62 which work was undertaken by the Department of Ancient Indian History and Archaeology, Sagar University. He explored sites in district Hoshangabad (MP) in 1960-61 in Tawa Narmada River Valley; a site in Daddakadatur near Mysore in District Kolar in Karnataka in 1966-67; another site in District Karnoor (Andhra Pradesh) in 1967-68. Earlier while he was working as temporary lecturer at Sidhauli, he explored an ancient mound known as Maniva Kot in District Sitapur (UP) which was subsequently excavated by the Department of Archaeology and Museum, Government of U.P., Lucknow to establish its antiquity going up to sixth century BC. He also explored mounds and brick temples of Garhwal period in Village Nasirabad, Tehsil Misrikh, District Sitapur (U.P.) and visited a site at Village Unchgaon, Tehsil Sadhuli, District Sitapur in the year 1956-57 which was excavated by the Directorate of Archaeology & Museum, U.P. Government, Lucknow exposing the basement of massive Shiv Temple of Pratihara period of early Medieval Indian History. He joined as Deputy Superintending, Archaeologist (Sea Customs) ASI, Government of India, New Custom House Bombay, as an Art and Antiquity Expert for assisting the Customs Authorities in identifying the objects and antiquities which are prohibited for export purposes; posted as Deputy Superintending (Archaeologist), Northern Circle, Agra to assist and to carry out the administration and conservation of National Protected Monuments from July 1976

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to May 1978; promoted as Superintending Archaeologist (Publication) in the office of Director General, ASI and was also posted as Superintending Archaeological (Special) for Delhi Group of Circles from July 1984 to May 1987 for demarcation of area around the National Protective Monuments. From 20th November, 1987 to 31st July 1991 he remain posted as Superintending Archaeologist, Excavation Branch to conduct excavation and exploration in the State of Punjab, Haryana, U.P. and M.P. and retired on 31.07.1991. In brief he claims to have excavated the following sites:

1. Adamgarh (Hoshangabad) MP 1960-61
   (A Palaeolithic and Microlithic site)
2. Basenagar Vidisha (M.P.) 1963-64
   (A Chalcolithic and early historic site)
3. Kalibangan (Sri Ganganagar) Rajasthan 1964-65
   (A Pre Harappan and Harappan site)
4. Kalibangan (Sri Ganganagar) Rajasthan 1965-66
   (A Pre Harappan and Harappan site)
5. Paiyampali (North Arcot) Tamil Nadu 1966-67
   (A Neolithic and Megalithic site)
6. Singanpalli (Karnool) Andhra Pradesh 1967-68
   (A Neolithic and Chalcolithic site)
7. Kalibangan (Sri Ganganagar) Rajasthan 1968-69
   (A Pre Harappan and Harappan site)
8. Pauni (Bhandara Maharashtra) 1969
   (An Early Buddhist Stupa site)
9. Pauni (Bhandara) Maharashtra 1969-70
   (An Early Buddhist Stupa site)
10. Malwa (Surat) Gujarath 1970
    (A Post Harappan and Chalcolithic Port Site)

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11. Surkotada Bhuj (Kutch) Gujrat 1970-71
    (A Harappan site)
12. Purana Qila (New Delhi) 1971-72
    (A Proto Historic site)
13. Mathura (U.P.) 1973-74
    (A Proto Historic Site)
14. Fatehpur Seekri (Agra, U.P.) 1976-77
    (A National Project of Mediaeval Archaeology)
15. Fatehpur Seekri (Agra, U.P.) 1981-82
    (A National Project of Mediaeval Archaeology)
16. Thaneshwar (Kurukshetra, Haryana) 1987-88
    (An early historic site)
17. Sanghol (Ludhiana, Punjab) 1987-88
    (A Late Harappan site)
18. Sanghol (Ludhiana, Punjab), 1988-89
    (A Late Harappan site)
19. Sanghol (Ludhiana, Punjab) 1989-90
    (A Late Harappan Site)
20. Directed explorations in districts Ludhiana, Ropar and Patiala during 1988-89.

565. DW 20/5's reports in regard to the independent exploration results published in the "Indian Archaeology-A Review" from 1957 to 1964, are:

1. Indian Archaeology-a-Review-1957-58; page:67 and Item: 20
2. I.A.R.-1958-59; Page-26, Item : 22
3. I.A.R.-1959-60; Page-69, Item : 15 and 16
4. I.A.R.-1960-61; Page-59, Item : 26
5. I.A.R.-1961-62; Page-98, Item : 21 and 22
6. I.A.R.-1962-63; Page-68, Item : 20 and 30
7. I.A.R.-1963-64; Page-87, Item : 13 and 14

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566. Regarding exploration in District Hoshangabad (M.P.) the publication is in I.A.R. 1960-61, Item 31, and regarding Kolar, District Mysore and Karnool, the reference is I.A.R. 1967-68, page 3 Item 6.

567. DW 20/5 claim to remain present at the site of excavation for a period of five months i.e. from March 2003 to August, 2003 and in this regard from para 22 to 28 states as under:

> *"22. That the excavation at disputed site was carried out by the Archaeological Survey of India from 12th March 2003 to 7th August 2003."*
>
> *"23. That the deponent spent five months i.e. March 2003 to August 2003 at the excavation site at Ayodhya and observed the entire excavation."*
>
> *"24. That the excavation at disputed site at Ayodhya was carried out with limited but defined objects."*
>
> *"25. That during excavation, the Archaeological Survey of India adopted the latest techniques of layout of trenches where limited space was available."*
>
> *"26. That the excavation work was planned in phased manner in particular areas as per significant signals pointed out by the Ground Penetrating Radar Survey."*
>
> *"27. That the Archaeological documentation including drawing and photography of the structural remains, pottery and antiquities were done in very organized manner as per the norms of Archaeology."*
>
> *"28. That in order to maintain transparency all the excavated materials including antiquities, object of interest, glazed pottery, tiles and bones which were recovered from the trenches, were sealed in the presence of*

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Advocates, Parties or their nominees and kept on the same day of their recovery in the Strong Room provided by the authorized person."

568. Regarding individual aspects of the matter referred to in the ASI report, his statement is in paras 29 to 33 and we propose to deal with it later alongwith ASI report but his assertion contained in para 34 of the affidavit may be reproduced as under:

"34. That there was a Temple Structure beneath the disputed Structure."

E. <u>Characteristics of Mosque</u>

569. **PW 10, Mohd. Idris,** claims to be an expert in Muslim religious matters. His deposition is as under :

28.02.1997-**Examination-in-chief** (p. 1-5)

<u>Cross examination:</u> (a) 28.02.1997, 03/04.03.1997- by Nirmohi Akhara through Sri R.L. Verma, Advocate (p. 5-41)

(b) 04/05.03.1997-by Dharamdas through Sri Ved Prakash, Advocate (p. 41-58)

(c) 05/06.03.1997, 09/29.04.1997-by Sri Umesh Chandra Pandey through Sri Vireshwar Dwivedi, Advocate (p. 58-95), adopted by Hindu Mahasabha and Sri Ramesh Chandra Tripathi through Sri Hari Shankar Jain, Advocate (p. 99) and Sri Rajendra Singh, son of Sri Gopal Singh Visharad through Sri P.L. Mishra, Advocate (p. 99)

(d) 29.04.1997-by Sri Paramhans Ramchandra Das through Sri Madan Mohan Pandey, Advocate (p. 95-99)

(e) 29/30.04.1997-by Sri Deoki Nandan Agarwal, plaintiff (Suit-5) (p. 100-115)

570. He is aged about 52 years (in February, 1997 when his

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statement-in-chief commenced on 28.02.1997) is resident of Qusba Mehrawal, District Basti. By profession he is a Teacher at Madarsa Darul Uloom Ahle Sunnat Faizul Islam which is at Mehrawal, District Basti. About his qualification and other expertise in the religious matters he said:

''मैं फाजिले दरसे निजामियां और फाजिले दरसे आलिया हूॅ। मैंने कई मदरसों से तालीम हासिल की है। मुझे फाजिलेदरसे निजामिया की सनद जामियां हमीदिया रिजविया मदनपुरा बनारस से मिली थी और फाजिले दरसे आलिया की सनद अरबी एण्ड पर्शियन बोर्ड, इलाहाबाद से मिली है। फाजिल से पहले आलिम होता है। आलिम की सनद भी मुझे इन दोनों जगह से मिली है। मेरी तालीम 1962 में मुकम्मल हो गयी थी। उसके बाद मैं पढ़ाने लगा। मैं मेहरावल में ही पढ़ाता हूॅ। मेरे मदरसे का नाम दारूलउलूम अहलेसुन्नत फेजुल इस्लाम है। मैं वहां पर 1963 से पढ़ा रहा हूॅ। मैं जो मौजे पढ़ाता हूॅ वह हैं फिकहा, हदीस, तफ्सीर, वगैरह हैं आजकल मैं सदर मददरिस/प्रिंसिपल/हूॅ। मैंने कुरान शरीफ और उसके तफ्सीर को पढ़ा हैं और पढ़ाया भी हैं हदीस को भी मैंने पढ़ा है और पढ़ाया भी है।

कुरान शरीफ की जो खास–खास तफ्सीरे मैंने पढ़ी हैं वह हैं– तफ्सीर जलालैन, मदारेकुत्तनजील, तफ्सीर वैजावी, तफ्सीराते अहमदिया, तफ्सीरेकबीर, तफ्सीरे कश्शाफ वगैरह।

हदीस के खास–खास मजुएं भी मैंने पढ़े हैं। जैसे कि बुखासी शरीफ, मुसलिम शरीफ, तिरमिजी शरीफ, अबूदाउद, इब्नेमाजा वगैरह।

फिक्ह की अहम किताबों में–हिदाया, शरैवकाया, मुनियतुलमुसल्ली, फतावाहिनदिया, फतहुलकदीर, दुर्रेमुख्तार, रद्दुलमुहतार, वगैरह। फतावाहिन्दिया और फतावाआलमगिरा एक ही किताब के अलग–अलग नाम हैं।''

''I am 'Fazil-e-darse Nizamian' and 'Fazil-e-darse Aalia'. I have got education from many schools. I obtained my 'Fazil-e-darse Nizamian' certificate from Jamian Hamidia Rizvia, Madanpura, Benares and 'Fazil-e-darse Aalia' certificate from Arabic and Persian Board, Allahabad. Aalim precedes Fazile. I have got the Aalim

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certificate, too, from these two places. I completed my schooling in 1962. After that I began to teach. I teach at Mehrawal itself. The name of my school is Darul-uloom Ahlesunnat Fezul Islam. I have been teaching there since 1963. Subjects which I teach include fiqah, Hadis(tradition/narrative about sayings of Prophet Muhammad), Tafsir(explanation of the Quran), etc. Now a days I am head/principal of the school. I have read the holy Quran and its explanation and also taught them. I have read Hadis and also taught it.

Particular explanations which I have read on the holy Quran , are; Tafsir Jalalain, Madar-e-quttanzeel, Tafsir Vaizavi, Tafsira-raate Ahmadiya, Tafsir-e-kabir, Tafsir-e-kashshaaf, etc.

On Hadis I have also read particular mazus, such as Bukhaasi Sharif, Muslim Sharif, Tirmizi Sharif, Abu Dawood, Ibn-e-maaza, etc.

Important books on fiqah include Hidaya, Sharaivakay, Muniyatulmusalli, Fatawahindiya, Fathulkadir, Durremukhtaar, Raddulmuhtaar,etc.. Fatawahindiya and Fatawa-aalamgira are different names of the same book." (E.T.C.)

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571. PW 10 deposed further about the characteristic of a mosque etc. and said:

"कुरान शरीफ में तर्जे तामीर मस्जिद की बाबत कोई हुक्म नहीं है। यानी कि मस्जिद बनाने वाला आजाद है वह उसे किसी भी तरह से बना सकता है। मस्जिद में किसी गुम्बद या मीनार का होना जरूरी नहीं हैं ***हदीश में एक हुक्म यह है कि मस्जिदों में मीनार न बनाई जाये।*** *मस्जिद में कुएं का होना या वजू का इन्तजाम होना भी जरूरी नहीं है। हदीश शरीफ में घर से वजू करके मस्जिद जाने की तरजीह दी गयी है। ऐसे शख्स को घर से चलने पर हर कदम पर दस दस नेकियां मिलती*

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हैं। सब खतायें माफ हो जाती हैं। तामीर करने वाला चाहे शिया हो चाहे दूसरी जमात से ताल्लुक रखता हो उससे वह मस्जिद सिर्फ एक ही जमात तक सीमित नहीं रह जायेगी बल्कि वह एक आम मस्जिद कहलायेगी। जिस मस्जिद में इमाम सुन्नी हो और नमाजियों की ज्यादा तादाद भी सुन्नियों की हो उसका मुतवल्ली शिया मुसलमान भी हो सकता है। **अगर मस्जिद किसी ऐसी जगह बन जाये जिसके चारो तरफ कब्रिस्तान हो तो भी वह नजायज नहीं कहलायेगी।** अगर मस्जिद में जाने के रास्ते में हिन्दुओं के मंदिर आते हों तो मस्जिद पहुॅचने की कोई मनाही या बुराई नहीं है। ऐसी मस्जिद में नमाज पढ़ी जा सकती है ऐसी जगह पर मस्जिद बनाना भी जायज हैं **अगर मस्जिद ऐसी जगह तामीर हो जाये जो गैर मुस्लिम मजहब वालों का अपना मुकद्दस मुकाम रहा हो तो मस्जिद के अपने रूतबा और पकीजगी में कोई फर्क नहीं आयेगा। अगर मस्जिद ऐसी जगह बन जाये जहॉ पहले मंदिर था और बाद में सिर्फ जमीन थी तो उस जमीन पर बनी हुई मस्जिद जायज रहेगी।** अगर मस्जिद की इमारत शिकस्ता हो जाये, गिर जाये या शहीद हो जाये तो भी मस्जिद की जमीन की अहमियत और रूतबे में फर्क नहीं आयेगा क्योंकि वह खुद एक मस्जिद है। उस जमीन पर नमाज पढ़ी जा सकती हैं उस जमीन का इस्तेमाल किसी और मकसद के लिए हो सकता। **अगर मस्जिद की दीवारों पर या खम्भों पर किसी जानदार चीज की तस्वीरें या मूर्तियॉ बनी हुई हों तो वहॉ चन्द सूरतों में की गयी नमाज मकरूह हो जायेगी। यानी उसके सबाब में कुछ कमी हो जायेगी लेकिन नमाज जायज रहेगी और चन्द सूरतों में कुछ कमी हो जायेगी लेकिन नमाज रहेगी और चन्द सूरतों में वह मकरूह भी नहीं होती उसका सबाब पूरा रहता है। अगर तस्वीर सामने हो, सजदेकी जगह पर हो तो नमाज मकरूह हो जायेगी। अगर तस्वीर सामने भी हो और नमाज पढ़ने वाले को उसका ऐहसास न हो या इलम न हो तो नमाज में कोई कमी नहीं आयेगी।** अगर तस्वीर इतनी छोटी हो कि उस पर गौर न किया जा सके तो नमाज में कोई फर्क नहीं पड़ेगा। अगर मस्जिद के किसी हिस्से में मूर्तियॉ रखी हुई हो तो भी नमाज जायज रहेगी लेकिन उस मूर्ति को निकालने की भरपूर कोशिश करना जरूरी हैं

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फिर भी मस्जिद वो बकरार रहेगी उस पर कोई फर्क नहीं पड़ेगा। उस मूर्ति के वहॉ रखे रहने पर भी वह तमाम जगह मस्जिद ही कहलायेगी किसी चीज के आने जाने पर मस्जिद की नवैय्यत पर फर्क नहीं पड़ेगा। ***अगर मस्जिद के किसी हिस्से में दूसरे किसी मजहब के लोगों ने अपने गैर मुस्लिम यकीदे के मुताबिक पूजा पाठ शुरू कर दी हो या वहॉ वो दर्शन के लिए आते हों तो भी मस्जिद की अपनी पकीजगी में फर्क नहीं आयेगा वो मस्जिद ही रहेगी।***

कब्रिस्तान इस्लामिक मजहब के मुताबिक एक जगह से दूसरी जगह मुन्तकिल नहीं हो सकती। एक कब्र जहॉ बन गयी उसको उस उस जगह से कहीं मुंतकिल नहीं किया जा सकता। मस्जिद को भी अपनी जगह से कहीं मुंतकिल नहीं किया जा सकता। कब्रिस्तान से अगर कब्रों के निशानात भी मिट जायें तो भी वह कब्रिस्तान बकरार रहेगा। अगर कब्रो के निशानात मिटा दिये जायें और कब्रों को खोद दिया जाये तो भी वह कब्रिस्तान रहेगा।

हिन्दुस्तान के मुगल सल्तनत की तारीख भी मैने पढ़ी है। ***तारीख में मुझे ऐसा कोई जिक नहीं मिला कि बाबर ने अयोध्या में कोई मंदिर तोड़कर मस्जिद बनायी हों बाबर के दौर में हिन्दुस्तान में किसी और जगह भी कोई मंदिर तोड़कर मस्जिद नहीं बनायी गयी।***

औरंगजेब के जमाने में भी ऐसा किसी वाक्ये का जिक मैंने तारीख में नहीं पढ़ा। *फतावेह आलमगिरी की बहुत से उलेमाओं ने एकठठा होकर तरबीब दी थी।''*

''The holy Quran gives no command as to construction of a mosque. That is to say, the builder of a mosque is free to build it any way he likes. It is not necessary for a mosque to have any dome or minaret. ***Hadis contains a command that mosques should not have minarets****. It is also not necessary for a mosque to have a well or an arrangement for vaju (cleaning of hands and feet). Hadis Sharif lays emphasis on going to mosque after doing 'vaju' at home. Such a person gets blessings at every ten paces after leaving home. All his sins get*

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pardoned. The builder may be a Shia or of any other community; that will not limit the mosque to only one community. Rather, it will be called a public mosque. A mosque having Sunni as Imam and with Sunnis forming the majority of namazists, may have even a Shia Muslim as Mutvalli. ***If a mosque is constructed at a place surrounded by graveyard even then it will not be called unholy****. If there are Hindu temples on the way to a mosque, there is no restriction or evil in reaching the mosque. Namaz can be offered at such a mosque. It is also legitimate to build a mosque.* ***If a mosque is built at a place which has been a holy place for non-Muslims, it will not affect the standing and sanctity of the mosque. If a mosque is built at a place which earlier had a temple and was subsequently just a piece of land, the mosque built on such a place will be legitimate****. If the building of the mosque gets damaged, demolished or martyred even then the land of the mosque will not lose its importance and standing because it is in itself a mosque. Namaz can be offered at this place. It can be used for any other purpose.* ***If the walls or pillars of a mosque have pictures or idols of animate things carved on them, the namaz offered there will be 'maqruh' in some situations. That is to say, it will be somewhat deficient in its rewards but it will be legitimate, and in certain situations it will have somewhat less force but it will be a namaz. In some situations, it is not 'maqruh' but it is fully rewarding. If the picture is right in front and at a holy place and namazist has no impression or idea about it even then the namaz will have no deficiency.If the picture is so***

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small that it cannot be seen, it will have no impact on namaz. *If 'murtis' (idols) are kept in any portion of the mosque even then namaz will be legitimate. But all out efforts are necessary to be made for taking them out. However, the mosque will continue to be such and it will not have any impact on its character. Even if idols remain to be placed there, such place in its major portion will be called mosque only. The character of the mosque will not be affected by to and fro movement of things.* ***If people of any other faith have started performing pooja-paath (worship and prayer) as per non-Muslim rites in any portion of the mosque, or they go to have darshan there, it will not affect the sanctity of the mosque and it will remain a mosque.***

As per Islamic faith, a grave yard cannot be shifted from one place to another. Once a graveyard is erected, it cannot be moved elsewhere. A mosque cannot be shifted from its locus to anywhere else. Even if traces of graves are obliterated from the graveyard, it will remain to be a graveyard. If signs of graves are wiped out and the graves are dug up even then it will remain to be a graveyard.

I have also read the history of Mughal Sultanate of Hindustan. ***In the history I have found no mention of Babur having demolished any temple to build a mosque. During the reign of Babur, mosque was not built by demolishing any temple at any other place also.***

In the history, I have not read about any such incident *even in reference to the reign of Aurangzeb. Many Ulemas of Fataweh Aalamgiri had assembled and given 'tarbeeb'." (E.T.C.)*

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572. **PW 11, Mohd. Burhanuddin,** is aged about 60 years (on 16th September, 1997) and resident of Sambhal, District Moradabad. His cross examination followed as under :

(a) 16/17.09.1997- by Nirmohi Akhara through Sri R.L. Verma, Advocate(p. 3-23)

(b) 18.09.1997-by Dharamdas through Sri Ved Prakash, Advocate (p. 24-30)

(c) 18/19/30.09.1997, 11.10.1997- by Sri Umesh Chandra Pandey through Sri Vireshwar Dwivedi, Advocate (p. 31-64)

(d) 11.10.1997- by Sri Paramhans Ramchandra Das through Sri Madan Mohan Pandey, Advocate (p. 64-69)

(e) 12.11.1997-by Hindu Mahasabha and Sri Ramesh Chandra Tripathi through Sri Hari Shankar Jain, Advocate (p. 70-73)

(f) 12.11.1997-Cross examination made so far adopted by Sri Rajendra Singh, son of Sri Gopal Singh Visharad through Sri P.L. Mishra, Advocate (p. 73)

(g) 12/13/21.11.1997-by Sri Deoki Nandan Agarwal, plaintiff himself and next friend to other plaintiffs (Suit-5) (p. 73-93)

573. He is a teacher at Darul Uloom Nadvatul Ulema, Lucknow, a Madarsa also known as Nadva. About his educational qualification and expertise in religious matter pertaining to Islam he said:

"मेरी प्रारम्भिक तालीम संभल के दो मदरसों में हुई। संभल जिला मुरादाबाद में है। उसके बाद मैंने अपनी तालीम दारूल उलूम देवबंद से हासिल की। वहॉ से मैने फाजिल की सनद हासिल की। यह सनद मुझे 1957–58 में मिली थी। उसके बाद देहली में मदरसा आलिया अरबिया–फतेहपुरी में पढ़ाया। आलिम की सनद से फाजिल की सनद बड़ी होती है। बाज मदरसों में आलिम का कोर्स होता है लेकिन उसकी सनद

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नहीं दी जाती। देहली के बाद मैं दारूल उलूम नदवतुल उलेमा, लखनऊ 1970 में आया। (इस मदरसा को नदवा के नाम से जाना जाता है।) मैं नदवा में दिसम्बर 1970 से पढ़ा रहा हूँ। मैं खास तौर से हदीस, तफसीर और फिके पढ़ाता हूँ।

कुरान शरीफ पर खास–खास तफसीरे जो मैंने पढ़ी हैं वह है– खाजिन कशशाफ, इबबे कसीर, मजहरी, बयानुलकुरान, बैजाबी, मअहारिफ अल कुरान।

हदीस की जो खास खास किताबें पढ़ी है वो हैं बुखारी शरीफ, मुस्लिम शरीफ, तिरमिजी अबूदाउद, नसाई, इब्नेमाजा, मिशकातशरीफ।

जो फिकेह की किताबें पढ़ी हैं उनके नाम हैं– हिदाया, शरहवकाया, कन्जूददकायक, कुदूरी, बदाये, ददुल मुहतार, दुरूल मुख्तार।''

''I had my early schooling in two schools of Sambhal. Sambhal is in Muradabad district. After that I got my schooling from Darool Uloom, Devband. I obtained the Fazil certificate from there. I obtained the certificate in 1957-58. After that I taught at a Delhi-situated school known as Aaliya Arabia-Fatehpuri. The Fazil certificate is superior to the Aalim certificate. Certain schools run the Aalim course but no certificate thereof is awarded. After teaching at Delhi I came to Darul Uloom Nadwatul Ulema, Lucknow in 1970. (This school is known by the name of Nadwa). I have been teaching at Nadwa since December, 1970. I teach Hadis (collection of traditional sayings of Prophet Muhammad), Tafsir (explanation of the Quran) and fiqah in particular.

Particular explanations I have read on the holy Quran, are: Khazin Kashshaaf, Ibabe Kasir, Majhari, Bayanulquran, Baijabi and Ma-aharif Al Quran.

Particular books which I have read on Hadis, are: Bukhari Shari, Muslim Sharif, Tirmizi Abudawood, Nasai, Ibn-e-maza and Mishakat Sharif.

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Names of the Fiqah books which I have read, are: Hidaya, Sharahwakaya, Kanjoodadkaayak, Kuduri, Badaye and Dadul Mahtar Durul Mukhtar. " (E.T.C.)

574. In the matter of characteristic of mosque and other Islamic matters PW 11 said:

"कुरान शरीफ या हदीस में मस्जिद के तर्जे तामीर के बारे कोई खास हिदायत नहीं है। शरियत के निजाम से मस्जिद के लिए किसी खास तरह की इमारत की जरूरत नहीं है। किसी खास शक्ल की जरूरत नहीं है। सिर्फ उसे किब्ला रूख होना चाहिए। किसी गुम्बद या मीनार का होना मस्जिद के लिए जरूरी नहीं है। मस्जिद में किसी कुएं का होना या वजू का इन्तजाम होना भी जरूरी नहीं है। मस्जिद के चारों तरफ भी कब्रिस्तान हो सकता हैं मस्जिद के जाने के रास्ते में अगर किसी दूसरे मजहब की कोई इबादतगाह (धार्मिक स्थल) हो, तो भी मस्जिद की नवइत या पाकीजगी पर फर्क नहीं आयेगा। अगर मस्जिद की इमारत शिकस्ता हो जाये तो उसे गिराकर दुबारा बनाया जा सकता है। अगर कोई दूसरे लोग मस्जिद की इमारत को गिरा दें, तो भी वह मस्जिद कायम रहेगीं अगर तामीरशुदा मस्जिद को गिरा दिया जाये, तो भी वह जमीन मस्जिद कायम रहेगी। जिस जगह पर एक दफा मस्जिद बना दी जाये, वह हमेशा मस्जिद रहेगी। जिस जगह पर एक दफा मस्जिद बना दी जाये, वह हमेशा मस्जिद रहेगी। अगर किसी मस्जिद की दीवारों पर या खम्बों पर कोई पशु–पक्षी या आदमी या औरतों या देवी–देवताओं की तसवीरे बनी हुई हों तो भी वहां पर नमाज पढ़ी जा सकती है, लेकिन अगर ऐसी अलामात किबले की तरफ वाली दीवार पर हों, तो नमाज हो जायेगी, मगर वह मकरूह हो जायेगी। उसमें त्रुटि आ जायेगी। मकरू से मतलब है कि उसे सबाब में कमी हो जायेगी। अगर मस्जिद के किसी हिस्सा में किसी देवी–देवता की मूर्ति रख दी जाये, तो भी मस्जिद कायम रहेगी। अगर मस्जिद के किसी हिस्से में किसी दूसरे मजहब वाले अपनी इबादत शुरू कर दें, तो भी वह मस्जिद रहेगी।

"The holy Quran or Hadis has no specific command about the style of mosque construction. As per the order of Shariyat, there is no requirement of a particular type of building for a mosque. There is no requirement of a

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particular shape. It is only required that it should be facing Kibla. It is not necessary for a mosque to have a dome or a minaret. It is also not necessary for a mosque to have a well or arrangement for 'vaju'. There may be a graveyard all around a mosque. Even if there is a worship place of any other faith on the way to a mosque, it will not affect the sanctity of the mosque. If the building of mosque gets dilapidated, it can be demolished and built afresh. Even if a mosque is demolished by other persons, the mosque will continue to be such. If a constructed mosque is demolished even then the land will continue to be a mosque. Any place where a mosque is once constructed, will always be a mosque. If any mosque has pictures of animals or birds or men or women or male and female deities engraved on its walls even then namaz can be offered there. But if such signs/symbols are on the wall facing Kibla, namaz will get offered but it will be 'maqruh'. There will be error in it. By the word 'maqruh' it is meant that it will develop short fall in its efficacy. Even if any idol of male or female deity is placed in any part of the mosque, it will continue to be a mosque. If followers of any other religion begin to perform worship in any part of mosque even then it will be a mosque." (E.T.C.)

''कब्र को जरूरतन मुन्तकिल किया जा सकता है, लेकिन जगह के मुन्तकिल होने का सवाल ही पैदा नहीं होता।

जगह तो जमीन होती है, वह कैसे मुन्तकिल हो सकती है। कब्र के मुन्तकिल होने से मेरा मतलब मयइत (मृतक शरीर) के मुन्तकिल होने से है। अगर किसी कब्रिस्तान में कोई जगह बाकी न रही हो और वह कब्रिस्तान इतना पुराना हो चुका हो कि वह उसमें मयइत जमीन में जब्त हो गई हो और उसका कोई वक्फ ऐसा न हो जिससे उस जमीन के दूसरे इस्तेमाल पर पाबन्दी हो तो वह जगह दूसरे इस्तेमाल में आ सकती है,

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वरना नहीं। यानी वाकिफ की मंशा के बगैर वह जगह दूसरे इस्तेमाल मे नहीं आ सकती।

*अपनी तालीम के दौरान मैंने हिन्दुस्तान की तारीख का मुतायला भी किया है, थोड़ा–बहुत। **मेरे इल्म में ऐसा नहीं है कि बाबर ने अयोध्या में किसी मन्दिर को तोड़कर मस्जिद बनवाई हो। मेरे इल्म के मुताबिक बाबरी मस्जिद की तामीर किसी मन्दिर को तोड़कर नहीं की गई।**"*

"A grave can be shifted if there be any such requirement, but there is no question of shifting the place.

The place is certainly a piece of land. How can it be shifted. 'By shifting of the grave' I mean the shifting of the body of a dead person. If any graveyard is left with no place and the graveyard has become so old that dead bodies have got mixed with soil and there is no waqf putting restriction on the use of the land in any other way, the land can be put to some other use. If such is not the case, it cannot be used otherwise. That is to say, without the consent of the waqf, the land cannot be put to any other use.

*In course of my study I have gone through the history of Hindustan to some extent. **I have no idea whether Babar had built a mosque in Ayodhya after breaking down any temple. To my knowledge, the Babri mosque was constructed not by demolishing any temple.**" (E.T.C.)*

575. **PW 19, Maulana Atiq Ahmad,** aged about 47 years (on 21st May, 2001 when his examination commenced), resident of Village Murla Kalan, District Sant Kabir Nagar, is working as Teacher at Nadvat-ul-Ulema, Daliganj, Lucknow. His cross examination followed as under :

(a) 21/22-05-2001- by Nirmohi Akhara through Sri R.L.

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Verma, Advocate(p. 3-38)

(b) 23-05-2001- by Dharamdas, defendant no. 13, through Sri Ved Prakash, Advocate (p. 39-47)

(c) 23.05.2001, 09/10.07.2001- by Sri Umesh Chandra Pandey, defendant no. 22 through Sri Vireshwar Dwivedi, Advocate (p. 47-74), adopted by Hindu Mahasabha, defendnat no. 10 and Sri Ramesh Chandra Tripathi, defendant no. 17, through Sri Hari Shankar Jain, Advocate, plaintiffs (Suit-1) through Sri P.L. Mishra, Advocate and plaintiffs (Suit-5) (p. 84)

(d) 10-07-2001- Sri Paramhans Ramchandra Das, defendant no. 2. through Sri Madan Mohan Advocate (p. 74-84)

576. He stated about his qualifications, experience in religious matters (Islam) as under:

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"मैं नदवत–उल–उलेमा में इस समय कार्यरत हूँ। मैं वहां पर उस्ताद हूँ। मैं 20 साल से वहां पर पढ़ा रहा हूँ। मेरी शुरू की तालीम मेरे गांव की है, उसके बाद मैं मदरसा नूरूल–उलूम, बहराईच में पढ़ा था। वहां पर मैं चार साल तक पढ़ा। मैंने बहराइच से मौलवी का इम्तेहान पास किया था। उसके बाद मैं दारूल–उलूम देवबन्द में चला गया। वहां से मैंने फाज़िल की डिग्री हासिल कीं फाजिल का कोर्स 6 वर्षों का होता है। फाजिल का कोर्स करने के बाद मैंने देवबन्द से ही मुफ्ती का कोर्स किया। फाजिल करने के बाद मैंने इलाहाबाद बोर्ड से आलिम की परीक्षा पास की थीं यह परीक्षा मैंने फाजिल की डिग्री हासिल करने के बाद दी थी। नदवतुल उलमा लखनऊ में मैं इस्लामिक लॉ यानि फिकह और उसूले फिक पढ़ाता हूँ। इसके अलावा हदीस एवं तफ्सीर पढ़ाता हूँ। इस्लामिक लॉ में मुफ्ती से संबंधित विषय भी आते हैं। इस्लामिक लॉ में विशेष ज्ञान रखने वाले को ही मुफ्ती कहते हैं। मैं इस्लामिक फिक एकेडमी, दिल्ली का सेक्रेटरी हूँ। इस्लामिक फिक एकेडमी का हर साल एक सेमीनार मुस्लिम मसायल एवं इस्लामिक लॉ पर होता है। यह सेमीनार हिन्दुस्तान के मुख्तलिफ मुकामों पर होता है। चूंकि मैं उसका सेक्रेटरी हूँ इसलिए उन

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सभी सेमीनारों में शामिल होता हूँ। मैं मुस्लिम पर्सनल लॉ बोर्ड का फाउंडर मेंबर भी हूँ। इस एकेडमी के सेमीनार हिन्दुस्तान के अन्दर ही होते हैं पर इसमें दूसरे मुमालिक से भी लोग शामिल होते हैं। 1999 में मैं शरीया स्कालरर्स आफ नार्थ अमेरिका की दावत पर अमेरिका उनकी कांफ्रेंस यानि दो कांफ्रेन्स अटेण्ड करने गया था। इसके अलावा काहिरा में औकाफ की कांफ्रेंस में शिरकत करने गया था। काहिरा मिस्र की राजधानी है। अमेरिका में पहली कांफ्रेंस फरवरी 99 में हुयी थी और दूसरी कांफ्रेंस जिसमें मैं शामिल हुआ था वह नवम्बर 99 में हुयी थी। इन दोनों कांफ्रेंस में मैने अपना पेपर पढ़ा। उपरोक्त पहली कांफ्रेंस में मेरा विषय उर्फ अर्थात् कस्टम्स से रिलेटेड था। दूसरे कांफ्रेंस में मसलेहत की शरीयत लॉ में क्या अहमियत है, उस सिलसिले में मैंने अपना पेपर पढ़ा। नदवतुल उलमा जहां मैं पढ़ा रहा हूँ वहां और भी बहुत से उस्ताद हैं। मौलाना बुरहानुद्दीन सम्भली नदवतुल उलेमा के एक सीनीयर उस्ताद हैं। वह इस्लामिक फिक एवं तफ्सीर और हदीस पढ़ाते हैं। हदीस से संबंधित मैंने जो अहम किताबें पढ़ी हैं उनका नाम इस प्रकार हैः— बुखारी शरीफ, मुस्लिम शरीफ, अबूदाउद शरीफ, तिदमजी शरीफ, इब्नेमाजा शरीफ, तहावी शरीफ, मुअत्ता इमाम मालिक। फिक पर मैंने जो अहम किताबें पढ़ी हैं उनमें हिदाया, शरए बकाया, बढ़ाए उस्सना, फतहुल फदी वगैरह हैं।''

"I am at present working with Nadwat-ul-Ulema. I am a teacher there. I have been teaching there for 20 years. I had my early education at my village. After that I got schooling at a school known as Nurool-Uloom situated in Bahraich. I got education there for four years. I passed the Maulvi examination from Bahraich. After that I migrated to Darool-Uloom, Deoband. From there I obtained my Fazil degree. Fazil is a 6-year course. After completion of a course in Fazil I did a course in Mufti from Deoband itself. After doing my Fazil I passed my Aalim examination from the Allahabad Board. I had appeared at this examination after obtaining my Fazil degree. I teach Islamic law, that is, Fiqah and Usule Fiq. Besides, I also

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teach Hadis and Tafsir. The Islamic also covers topics related to Mufti. Only those having special knowledge in the Islamic law are called Mufti. I am secretary of the Islamic Fiq Academy, Delhi. The Islamic Fiq Academy organises a seminar on Muslim-related issues and the Islamic law every year. This seminar is held at different places of Hindustan. As I am its secretary, I participate in all those seminars. I am also a founder member of the Muslim Personal Law Board. Seminars of this Academy are held only within Hindustan but they are attended by people of other countries also. In 1999, on the invitation of Shariyat scholars of North America I went there to attend conferences two times. Besides, I went to participate in the Auqaf conference held in Cairo. Cairo is the capital of Egypt. The first conference was held in February, 1999 in America and the second conference, which I attended, was held in November, 1999. I read out my papers in both of these conferences. In the aforesaid first conference, my topic was custom-related. In the second conference, I read out my paper on what importance maxims hold in the Shariyat Law. There are many other teachers at Nadwat-ul-Ulema, where I am teaching. Maulana Surhan-ud-Din Sambhali is a senior teacher at Nadwat-ul-Ulema. He teaches Islamic Fiq, Tafsir and Hadis. The names of important books which I have read in relation to Hadis, are: Bukhari Sharif, Muslim Sharif, Abudawood Sharif, Tidmazi Sharif, Ibn-e-Maza Sharif, Tahawi Sharif, Muatta Imam Maalik. The important books which I have read on Fiq, include Hidaya, Sharye Bakaya, Badhaye Ussana, Fathul Fadi etc..” (E.T.C.)

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577. Regarding characteristic of mosque etc. PW 19 said:

"इस्लाम में मस्जिद का तर्जे – ए– तामीर कहीं मुअइन नहीं है। मस्जिद उस जमीन को कहते हैं जिसे जमाअत के साथ नमाज पढ़ने के लिए वक्फ कर दिया जाए। अगर किसी जमीन पर सिर्फ इमारत है और उस पर गुम्बद या मीनार नहीं है तो भी वह मस्जिद कही जायेगी। ***मस्जिद में वजू खाना होना या नहाने की जगह का होना जरूरी नहीं है।*** *आसानी के लिए ऐसा इन्तजाम कर दिया जाता है।* ***मस्जिद के इर्द–गिर्द कब्रिस्तान हो सकता है।*** *मस्जिद के आस–पास यदि कब्रिस्तान हो तो भी मस्जिद का स्वरूप नहीं बदलता। अगर मस्जिद के चारों तरफ दूसरे मजहब की इबादतगाहें हों तब भी मस्जिद कायम रहेगी। अ****गर मस्जिद में उसके खंभों या दीवारों पर तस्वीर आदमी या औरतों, पक्षी या जानवरों की तस्वीर हों तो भी उससे मस्जिद का स्वरूप नहीं बदलेगा।*** *अर्थात् मस्जिद रहेगी पर चित्रों को ढक देना होगा ताकि नमाज के समय सामने न हों अर्थात सामने न पड़े।* ***अगर मस्जिद के अन्दर किसी दूसरे मजहब के देवी देवताओं की तस्वीर होती है तब भी मस्जिद का स्वरूप नहीं बदलेगा।*** *मस्जिद जब एक बार बन गयी वह हमेशा मस्जिद रहती है। अगर मस्जिद की इमारत गिरा दी जाए या गिर जाए तब भी वह जगह मस्जिद रहती है। अ****गर किसी मस्जिद में दूसरे मजहब वाले अपने देवी–देवताओं की पूजा करने लगें तब भी वह जगह मस्जिद रहेगी।****"*

"In Islam, the style of mosque construction nowhere finds specific mention. The name of mosque is given to a piece of land which is gifted for offering namaz in group. If there is just a building on any land and such building has no domes or minarets even then it will be called a mosque. ***It is not necessary for there to be a place for doing vaju or for having a bath in the mosque****. Such an arrangement is made to provide facility.* ***There may be a graveyard in the vicinity of the mosque****. If there is a graveyard in and around a mosque even then the character of the mosque*

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does not change. If there are worship places of other faiths around a mosque even then the mosque will continue to exist. ***If a mosque has pictures of men or women or birds or animals even then the character of the mosque will not change****. That is to say, the mosque will continue to be such and the pictures will have to be covered so that they may not be in front while offering namaz.* ***If there are pictures of male and female deities of any other faith inside a mosque even then the character of the mosque will not change.*** *A mosque once constructed will always be a mosque. A place continues to be a mosque even if the building of the mosque is demolished or it falls down.* ***If the followers of any other faith begin to worship their respective gods-goddesses in any mosque even then its place will remain to be a mosque****." (E.T.C.)*

578. **PW 22, Mohd. Khalid Nadvi:** Other details have already been dealt under the category "Witness of facts" in para 319.

579. His basic education is from Nadve wherefrom he obtained degree in Alim and Fazil in 1975 and 1977 respectively, taught at Zamia Islamiya, Bhatkal, Karnataka from 1978 to 1985, taught at Zamia Hidaya, Jaipur from 1985 to 1992, and taught for one year at Nadve. In his education, Tafshir of Quran-i-Karim, Hadis, Fiqah and Arabi Adab was included. The Tafshir of Quran-i-Karim included Ibne Kasir, Kashshaf, Madarikul, Tanjil, Khajin, Tafsire Kurtuvi, Mariful, Quran, Tadabbure Quran etc. The prominent books of Hadis include Bukhari Sharif, Muslim Sharif, Tirmiji Sharif, Muatta Imam Malik, Abudaud Sharif etc. which had all been read by him. In Fiqah he has read Hidaya, Sharhe Wakaya, Kuduri etc. With respect to characteristics of mosque etc. he said:

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"कुरान शरीफ और हदीस शरीफ में मस्जिद की तर्ज या शक्ल का कोई तजकीरा मौजूद नहीं है। शरीयत की और किताबों में भी मस्जिद की तर्ज या उसके आकार का कोई जिक्र नहीं मिलता है। सिर्फ किबलारूख होने की बात मिलती है। ***किसी मस्जिद में गुम्बद या मीनार का होना जरूरी नहीं है।*** *मस्जिद में कुए या पानी का इंतजाम वजू के लिए होना जरूरी नहीं है। हूजूर मोहम्मद साहब के जमाने में जिन तीन मस्जिदों की तामीर का जिक्र मिलता है। वह मस्जिदे कुबा, मस्जिदे नबवी और मस्जिदें जुआसा है। इनमें गुम्बद या मीनार होने का कोई जिक्र नहीं मिलता। हुजूर साहब के जमाने में अजान ऊँची जगह से अजान दी जाती थी जिससे आवाज दूर तक जा सके। अजान देने का मुकाम मस्जिद के अन्दर या बाहर दोनों जगह हो सकता है। मस्जिदें नबबी में जुमे की पहली अजान मस्जिद के बाहर जौरा नामक स्थान से दी जाती थी।*

यदि किसी जगह पर स्थित इमारत को गिरा दिया जाय या वह गिर जाय तो वह जगह मस्जिद ही रहेगी। ***यदि मस्जिद के किसी हिस्से में किसी देवी या देवता की प्रतिमा रख दी जाय तो भी मस्जिद की हैसियत नहीं बदलती बल्कि मस्जिद ही रहेगी। यदि मस्जिद में दूसरे धर्म के लोग अपनी इबादत शुरू कर दे तो भी मस्जिद की हैसियत नहीं बदलती बल्कि मसिजद ही रहेगी।*** *. . . . . मौलाना बुरहानुद्दीन साहब नदवे में उस्ताद हैं। वह शोवए तफसीर के हेड हैं। वह आजकल उलमा की फेहरिस्त में सफे अव्वल पर हैं।"*

"There is no mention about the form or shape of mosque in holy Quran and holy Hadis. In other books of Shariyat as well, no reference is found about the form or shape of mosque. Reference is found only about (they) facing Kibla. ***The presence of dome or minaret is not essential in any mosque****. It is not essential to have a well or arrangement of water in a mosque for 'Vazu'. The three mosques said to have been built in the period of Prophet Mohammad, are Quba mosque, Nabavi mosque and Juasa mosque. No reference is found about presence of dome or*

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minaret therein. During the period of Prophet, the Ajaan call was given from an elevated place so that it may reach far off places. The place for giving the Ajaan call could be both inside and outside the mosque. The first Ajaan call of Juma was given at Nabavi mosque from an outside place called Jaura.

If the building at any place is demolished or it collapses, the said place would remain a mosque. ***If the idol of any God or Goddess is placed in any part of a mosque, then also the status of the mosque does not change and it remains a mosque. If the followers of other religion start practicing their religious faith in a mosque, then also the status of the mosque does not change and it remains a mosque****. . . . . Maulana Burhanuddin is master at 'Nadva'. He is head of Shov-e-tafsir. Presently he is on top of the list of Ulemas." (E.T.C.)*

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580. **PW 25, Sibte Mohammad Naqvi:** His details has already been dealt with under the category "Witnesses of facts" in para 324 With respect to the characteristics of mosque, his statement is very brief and as under:

"इस्लाम में मस्जिद का स्वामित्व अल्लाह में निहित होता है। मस्जिद में किसी मसलक का अर्थात शिया और सुन्नी मुसलमान नमाज पढ़ सकता है।"

"In Islam the ownership of mosque is vested in Allah. Muslim of any sect i.e. Shia or Sunni can offer Namaz in mosque."(E.T.C.)

581. **PW 26, Kalbe Jawwad,** aged about 38 years (on 2/3rd April 2002 when his examination-in-chief commenced), is resident of Mohalla Johari, Lucknow. His cross examination followed as under :

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(a) 03/04-04-2002- by Nirmohi Akhara through Sri R.L. Verma, Advocate (p. 6-33)

(b) 04/05/15-04-2002 - by Dharamdas, defendant no. 13, through Sri Ved Prakash, Advocate (p. 33- 40)

(c) 15.04.2002- by Paramhans Ramchandra Das, defendant no. 2, through Sri M.M. Pandey, Advocate, (p. 40-52)

(d)15/16-04-2002- by Hindu Mahasabha, defendnat no. 10 and Sri Ramesh Chandra Tripathi, defendant no. 17, through Sri Hari Shankar Jain, Advocate (p. 52-62)

(e) 16/17-04-2002- by Umesh Chandra Pandey, defendant no. 22 through Sri Vireshwar Dwivedi, Advocate (p. 62-89)

(f)17-04-2002- Sri Rajendra Singh, son of Sri Gopal Singh Visharad plaintiff (Suit-1) through Sri P.L. Mishra, Advocate adopted the cross examination by other defendants (p. 89)

(g) 17-05-2002- by plaintiffs (Suit-5) through Sri Ved Prakash, Advocate (p. 90-98)

582. PW-26 claims to have acted as Imam of Friday Namaz at Asfi Masjid, Lucknow. About his family background, he said:

'मेरे वालिद साहब लखनऊ में शियों के इमामे जुमा रहे हैं। इसी तरह से मुस्लिम पर्सनल ला बोर्ड के नायब सदर भी रहे हैं और अलीगढ़ मुस्लिम यूनिवर्सिटी में शिया थियोलाजी विभाग के हेड रहे हैं और थियोलोजी फेकल्टी के डीन भी रहे हैं। मेरे दादा मौलाना कल्बे हुसैन साहब भी बड़े आलिमें दीन व मुजतहद रहे हैं। मेरे परदादा मौलाना कल्बे सादिक उर्फ आका हसन साहब आल इंडिया शिया कांफ्रेंस के फाउंडर व इसी तरह से शिया कालेज के फाउंडर और शिया अनाथालय के फाउंडर और बहुत से आर्गनाइलेशंस के फाउंडर रहे हैं। लखनऊ में सारे शियों की जुमे की नमाज आसफी मस्जिद में होती है। उस आसफी मस्जिद के जुमे की नमाज की इमामत जब मैं लखनऊ में रहता हूँ तब मैं ही करता हूँ।

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आसफी मस्जिद नवाब आसिफ उद्दौला साहब ने बनवायी थी और उन्हीं के नाम से आसिफी मस्जिद है। लखनऊ में शिया हजरात की एक और मस्जिद है जो जुमा मस्जिद कहलाती है। यह ठाकुरगंज में है। वह भी शाही ज़माने की बनी हुई है। आसिफी मस्जिद का इंतजाम हुसैनाबाद ट्रस्ट करती हैं। मेरे वालिद साहब भी इसी आसिफी मस्जिद में इमाम ए जुमा रहे हैं।

मेरे परदादा मौलाना आका हसन साहब भी मुजतहिद रहे हैं।''

''My father was the Jumma Imam of the Shias at Lucknow. He was also the deputy head of Muslim Personal Law Board as well as the Head of Shia Theology Department of Aligarh Muslim University and the Dean of Theology faculty. My grandfather Maulana Kalbe Hussain was a known religious scholar and Mujathad. My great grandfather Maulana Kalbe Sadiq @ Aka Hassun was the founder of All India Shia Conference, the Shia college, Shia Orphanage and many other organisations. All the Shias of Lucknow offer the Jumma Namaz at the Asifi mosque. The Amamat (acting as Imam) of Jumma Namaz at said Asifi mosque is done by me whenever I am present in Lucknow.

''The Asifi mosque was built by Nawab Asif-ud-daula and the Asifi mosque has been named after him. The Shias have another mosque in Lucknow, which is known as Jumma mosque. It is at Thakurganj and it was also built during the royal times. The Asifi mosque is maintained by Hussainabad trust. My father was also the Imam-e-Jumma of this Asifi mosque.

My great grandfather Maulana Aka Hasan was also a Mujathid.'' (E.T.C.)

583. About his own qualification experience in religious matters etc., PW 26 said:

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''मेरी इब्नेदाई तालीम यहीं लखनऊ में हुई। मैंने लखनऊ में शाही जमाने से कायम सुलतानुल मदारिस से आखरी डिग्री सदरूल अफाज़िल हासिल की हैं। सदरूल अफाजिल से पहले उसी मदरसे से सनदुल अफाजिल की डिग्री भी मैंने हासिल की। सदरूल अफाजिल मैंने तकरीबन 1982 के आसपास किया।यहां से तालीम हासिल करने के बाद मैं अलीगढ़ मुस्लिम यूनिवर्सिटी से बी0ए0 और एम0ए0 किया। एम0ए0 मैंने फारसी में किया उसके बाद मैंने पी0एच0डी0 में एडमिशन लिया और एम0फिल पास किया। उसी जमाने में यानि 86 के अंत में मेरे वालिद साहब का इंतकाल हो जाने के कारण मैं वापस आ गया और पी0एच0डी0 मुक्कमल नहीं कर पाया। आला दीनी तालीम के सिलिसिले में सन् 87 के आखिर में मैं ईरान चला गया था। वहां के मजहबी शहर कुम में हौजा–ए–इल्मिया में दाखिला लिया। मैं सन् 2001 तक वहां रहा। मैं तकरीबन एक साल से मुस्तकिल लखनऊ में रह रहा हूॅ। जिस दौरान मैं कुम में जेरे तालीम था उस दौरान मोहरर्म के दौरान 3 महीने और रमजान के दौरान 2 माह लखनऊ आ जाता था।''

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"*My initial education was at Lucknow. I obtained my last degree of Darul Afazil from the Sultanul Madaris established at Lucknow during the royal times. Prior to Sadrul Afazil, I had also obtained the degree of Sandul Afazil from that very Madarsa. I did my Sadrul Afazil around the year 1982. After my education here, I did my B.A. and M.A. from Aligarh Muslim University. I did my M.A. in Persian. Thereafter, I took admission in Ph.D. and also did M.Phil. In that very period i.e. around the end of 86, I had to return as my father expired and I could not complete my Ph.D. At the end of the year 87, I went to Iran in connection with highest religious education. There I took admission in Hauza-e-ilmia in the religious city Kum. I remained there till the year 2001, in which period I remained involved in education at Kum. For the last one year I have been permanently residing at Lucknow. In that*

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period, I used to come to Lucknow for three months during Moharram and two months during Ramzan." (E.T.C.)

584. With respect to certain other matters PW 26 said:

"हौजा–ए इल्मिया में करीब 400 मदरसे हैं इनमें कुल छात्रों की संख्या लगभग तीस हजार होगी। वहां के बड़े उलेमा इसे चलाते हैं। इस समय शिया मसलत का दुनिया में सबसे बड़ा दीनी मरकज कुम शहर है। कुम के 7–8 बड़े उलेमा ऐसे हैं जिनकी तकलीद हिन्दुस्तान के शिया मुसलमान करते हैं। ईरान के अलावा ईराक के शहर नजफ़ अशरफ के तीन बड़े आलिमों की तकलीद भी हिन्दुस्तान के शिया मुसलमान करते हैं ईरान और ईराक के अलावा दुनिया में और कोई मुल्क ऐसा नहीं है जिसके किसी आलिम की तकलीद हिन्दुस्तान के शिया मुसलमान करते हों। पिछले 20 साल में पाकिस्तान में ऐसा कोई आलिम नहीं रहा है जिसकी तकलीद हिन्दुस्तान के शिया मुसलमान करते हों। यदि पाकिस्तान का कोई आलिम कोई फतवा जारी करे तो हिन्दुस्तान के शिया मुसलमान उसे नहीं मानेगें क्योंकि इतना बड़ा कोई आलिम वहां नहीं है। शिया मसलक की फिक्ह को आमतौर से लोग फिक्ह जाफरिया के नाम से जानते हैं वरना दरअसल वह फिक्ह इस्लामी है। यह फिक्ह जाफरिया हमारे छठे इमाम हजरत इमाम जाफ़र सादिक (अ0स0) की तरफ मंसूब है।"

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"*There are about 400 Madarsa in Hauja-e-ilmia. There would be about thirty thousand students in all in them. The reputed Ulemas used to run them. Presently the largest religious preaching place of Shia faith in the world is the city of Kum. There are 7-8 such reputed Ulemas of Kum, who are followed by the Shia Muslims of India. The Shia Muslims of India also follow three big scholars of Nazaf Asharaf city of Iraq besides Iran. Besides Iran and Iraq, there is no other country in the world, the scholars of which are followed by the Shia Muslims of India. If any scholar of Pakistan issues any fatwa (religious direction), the Shia Muslims of India would not follow the same because there is no such reputed scholar over there. The*

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fiquh of Shia faith are usually known by people as Fiquh Zafaria, which actually is Islamic Fiquh. This fiquh Zafaria is owed to our sixth Imam Hazrat Imam Zafar Sadiq (A.S.)." (E.T.C.)

585. Regarding characteristic of mosque and the inter relationship of Shia and Sunni, PW 26 said:

"मस्जिद की शरई हैसियत के बारे में शिया और सुन्नी फिक्ह में मेरी नजर में कोई बुनियादी फर्क नहीं है। मस्जिद की शरई हैसियत और मिलकियत के सिलसिले में कुरान शरीफ में साफ एलान है। "इन्नल मसाजिदा लिल्लाह" जिसके मायने हैं कि मस्जिदें सिर्फ अल्लाह के लिए हैं। कुरान शरीफ में या हदीश शरीफ में मस्जिद के किसी खास किस्म की इमारत होने का कोई तजकिरा नहीं हैं मस्जिदों की शक्ल सूरत के ताल्लुक से इमामों के वहां भी कोई तजकिरा नहीं मिलता है सिवाये इसके कि मस्जिदों को जयादा ज़ीनत मत दो ज्यादा सजाओ नहीं। ***शरीअत के मुताबिक किसी मस्जिद में मीनार और गुम्बद का होना जरूरी नहीं है और मना भी नहीं है।*** *इस्लाम में मोहम्मद साहब के आने के बाद की पहली मस्जिद मदीने से थोडा पहले मस्जिद कुबा के नाम से मशहूर है। जब वह मदीने पहुंचे तो मस्जिदें नबवी की तामीर हुई। मैंने इतिहास में पढ़ा है कि इन दोनों मस्जिदों में गुम्बद और मीनार नहीं थी जब यह कायम हुई । खजूर के तने को जमीन में गाड़ कर खंबे बनाये गये थे और खजूर की शाखों से छत डाली गयी थी। इन दोनों मस्जिदों में वजू का अलग इंतजाम होने की कोई बात किसी इतिहास में नहीं मिलती है। मस्जिद के अंदर वजू के पानी का इंतेजाम होना जरूरी नहीं है। मैंने बहुत सी ऐसी मस्जिदें देखी है जहां मस्जिद के पास कुंआ मौजूद हो। हमारे यहां यह है कि हमेशा बा वजू रहना चाहिए। इस में कोई शर्त नहीं है कि आदमी घर से वजू करके आये या मस्जिद में वजू करे। यदि मस्जिद के इर्द गिर्द कब्रिस्तान वाके हो तो इससे मस्जिद की नवय्यत पर कोई असर नहीं पड़ता है। मस्जिद के एक बार तामीर हो जाने के बाद और उसमें नमाज पढ़ लेने के बाद कोई गैर मुसलमान उस पर कब्जा कर ले तो उससे मस्जिद की नवय्यत नहीं बदलती और वह मस्जिद ही बनी रहती है।* ***मस्जिद हर हाल में मस्जिद ही रहेगी चाहे उसमें दूसरे धर्म के मानने वाले उसमें अपनी इबादत शुरू कर दे या***

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उसमें मूर्तियां रख दें। *मस्जिद की इमारत यदि गिरा दी जाये और वहां केवल जमीन बची हो तो वह भी मस्जिद ही होगी बल्कि हमारे यहां तो यहां तक है कि उसके नीचे एवं ऊपर फिजा में जो एरिया है वह भी मस्जिद ही मानी जायेगी।* ***यदि किसी मस्जिद के किसी जुज में या भाग में किसी दूसरे मजहब के चित्र आदि हो तो भी मस्जिद की नवय्यत नहीं बदलती।*** *मस्जिद की शरई हैसियत के बारे में दीनी किताबों में ''एहकामे मस्जिद'' के नाम से एक अलग ही चैप्टर मिलता है। मेरी जानकारी में शिया मुसलमानों में से किसी मुसलमान ने आज तक न मेरे सामने यह बात कही और न मेरी जानकारी में ऐसी कोई बात आई कि बाबरी मस्जिद से शिया मुसलमानों ने अपना हक छोड़ दिया है या वे हक छोड़ना चाहते हैं। मैंने बाबरी मस्जिद का नाम सुना है वहां जाने का इत्तिफाक कभी नहीं हुआ। पाकिस्तान के किसी मौलान सैय्यद मोहम्मद नकी साहब नाम शिया आलिम के नाम से मैं वाकिफ नहीं हूॅ। मेरे ध्यान में नहीं है कि आज से 14–15 साल पहले इस नाम के कोई शिया आलिम गुजरे हों। चौधरी सिब्ते मो0 नकवी साहब के नाम से वाकिफ हूं। यह मेरे वालिद साहब के अच्छे दोस्तों में रहे हैं वह अच्छे स्कालर है और सुलतानुल मदारिस से तालीम याफता हैं प्रिंस अंजुम कदर को मैं जानता था। वह शिया आलिम की हैसियत नहीं रखते हो बल्कि सोशल रिफारमर थे उनका शुमार शिया रहनुमा में नहीं होता था। क्योंकि हमारे यहां उलेमा ही रहनुमा होते हैं। लखनऊ या उ0प्र0 या हिन्दुस्तान में हमारे यहां केवल बड़े उलेमाओं की बात शिया लोग मानते हैं।*

मुझे मालुम है कि मैं जिस मुकदमें में गवाही दे रहा हूं वह बाबरी मस्जिद से सम्बन्धित है। ***मेरी जानकारी में जो अखबारात और एककिताब से हासिल हुई, बाबरी मस्जिद बाबर के जमाने में बनी थी उसे बाबर के हुक्म से मीर बाकी ने बनवाया था। जहां तक मेरी मालूमात है इसमें 1949 तक नमाज होती रही।*** *''*

"According to me, there is no fundamental difference regarding the Sharai status of mosque in Shia and Sunni fiqah. The holy Quran contains explicit directions regarding the Sharai status and ownership of mosque. The phrase 'Innal Masajida Lillah' means mosques are only for

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Allah. The holy Quran Sharif or the Hadis Sharif do not contain any mention about the mosque being in any particular form. No reference is found with the Imams about the shape of mosques except for the fact that do not decorate the mosque excessively. ***According to the Shariyat, it is not essential to have minarets and domes in any mosque and neither is there any such restriction****. The first mosque in Islam after the advent of Prophet Muhammad, is famous as Masjid-Quba, which lies a bit ahead of the Masjid-Madine. When he reached Madine, the Nabvi mosque was built. I have studied in history that when both these mosques were built, they did not have minarets and domes. The stems of date-palm were fixed in the ground to serve as pillars and the branches of the date-palm were utilized as roof. Reference is not found in history about there being separate arrangement for Vajoo in both these mosque. It is not essential to have arrangement of Vajoo water inside the mosques. I have seen many such mosques where wells existed near the mosque. It is necessary amongst us that one should always perform Vajoo, and there is no such restriction that a person should perform Vajoo at home or at the mosque. If there is any graveyard around a mosque, it has no bearing on the status of the mosque. If after the construction of a mosque and offering of Namaz therein, any non-Muslim occupies it, then the status of the mosque does not change and it remains a mosque.* ***A mosque will remain a mosque in all circumstances irrespective of the fact that followers of other religion may start practising their religious practises therein or may place their deities****. If*

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the structure of a mosque is demolished and only land remains there, then also it would remain a mosque and in-fact it is believed amongst us that even the ground beneath it as well as the open air area above it is also considered as mosque. ***The status of the mosque does not change even if there is any picture of other religion inside the mosque or any part thereof****. A separate chapter titled ' Ahkam-e-masjid' is found in the religious books regarding the Sharai status of the mosque. In my knowledge, the Shia Muslims have not stated till date before me nor has any such information come to my knowledge that the Shia Muslims have either relinquished their claim over the Babri mosque or that they want to do so. I have heard about Babri mosque but I never got the opportunity to visit the same. I am not conversant with the name of any Shia scholar named Maulana Syed Mohammed Naqi. I do not recollect whether there was any Shia scholar of the same name about 14-15 years ago. I am conversant with the name of Chaudhary Sibte Mohammed Naqvi. He was a good friend of my father. He is an excellent scholar and has received education at Sultanul Madaris. I knew Prince Anjum Kadar. He did not have the status of a Shia scholar and instead was a social reformer. He is not considered as a protector of Shia because amongst us, the Ulemas are the protectors. Whether in Lucknow or in U.P. or in India, the Shias adhere only to reputed Ulemas.*

I know that the case in which I am giving evidence, is related to Babri mosque. ***According to my knowledge derived from newspapers and books, the Babri mosque was built during the reign of Babar by Mir Baqi under***

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***the orders of Babar. To the best of my information, Namaz was offered here till 1949**." (E.T.C.)*

F. <u>Sanskrit Inscriptions said to be found in 1992</u>:

586. **OPW 8, Ashok Chandra Chaterjee,** a Businessman and Journalist, has deposed to prove recovery of stone slab containing Sanskrit inscriptions on 06.12.1992 during the course of demolition of disputed structure. His examination-in-chief commenced on 03.10.2002 and followed as under :

(a) 03-10-2002 - by Nirmohi Akhara, defendant no. 2, through Sri R.L. Verma, Advocate (p. 9-19)

(b) 03/04/07-10-2002 - by defendant no. 6 through Sri Abdul Mannan, Advocate (p. 19-45)

(c) 07/08/09/10/11/22/23/24/25/26/28-10-2002- by Sunni Central Waqf Board, defendant no. 4, through Sri Zafaryab Jilani, Advocate (p. 45-179)

(d) 29/30-10-2002 - by defendant no. 5 through Sri Mustaq Ahmad Siddiqui, Advocate (p. 180- 212)

(e) 30-10-2002- defendant no. 26 through Sri T.A. Khan, Advocate and defendants no. 6/1 and 6/2 (Suit-3) through Sri Fazale Alam, Advocate, adopted the cross examination already done by defendants no. 4, 5 and 6 (p. 212)

587. As per his affidavit dated 03.10.2002 he is aged about 52 years and is resident of Civil Lines, Faizabad. Since birth, he is residing at Faizabad, Graduate in Science and possess a Law Degree; Partner of a Firm M/s Majestic Automobiles, Faizabad and owner of a Cine Talkies, namely, Majestic Talkies. He claims to be a Free Lance Journalist for the last 16-17 years and reporter of a weekly newspaper "Panchjanya" at Faizabad Division. He got recognised journalist identity card in 1990 from U.P. Information Directorate and his name is mentioned in

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the list of recognised journalist at Serial No. 28. Regarding the disputed structure and place, he deposed in paras 3 to 14 as under:

''3. मैं अयोध्या स्थित श्रीराम जन्मभूमि मंदिर जिसके सम्बन्ध में यह विवाद चल रहा है, को भलीभांति जानता हूॅ। मैं हिन्दू धर्मानुयायी हूॅ। मेरे परिवार में देवी देवताओं की पूजा–अर्चना होती रही हैं बचपन से ही मैं अपने माता–पिता, भाई–बहन के साथ फैजाबाद में बड़ी देवकाली, कालीबाड़ी आदि मंदिरों में दर्शन करता रहा हूॅ और अयोध्या में श्रीराम जन्मभूमि, कनक भवन, हनुमानगढ़ी, नागेश्वरनाथ आदि मंदिरों का दर्शन करता रहा हूॅ।''

''3. I properly know Ayodhya-located Sri Ram Janam Bhumi Temple over which this dispute is going on. I am an adherent of Hinduism. My family has been performing worship and prayer of male and female deities. Right since my childhood I have been going along with my parents and siblings to have darshan at temples such as Badi Devkali, Kalibadi, etc. in Faizabad and also at temples like Sri Ram Janam Bhumi, Kanak Bhawan, Hanumangarhi, Nageshwarnath, etc. at Ayodhya. '' (E.T.C.)

''4. फरवरी 1986 में जब श्रीराम जन्मभूमि मंदिर का ताला खोलने का आदेश हुआ तब मैं फैजाबाद कचेहरी में ही था। ताला खोलने के आदेश की जानकारी होने पर मैं अयोध्या में श्रीराम जन्मभूमि स्थल पर पहुंच गया जहां अन्य कई पत्रकार भी मौजूद थे। भगवान श्री रामलला के दर्शनार्थियों की भारी भीड़ एकत्रित थीं पुलिस–प्रशासन द्वारा श्रीराम जन्मभूमि का ताला खोलते ही दर्शनार्थी अति प्रसन्नता में उछल–कूद, नृत्यागायन करने लगे घण्टा, घडियाल, शंख बजने लगे रामधुन गाते हुए लोग भगवान श्रीरामलला का दर्शन करने लगे। अयोध्या की गली–गली मोहल्ले–मोहल्ले दर्शनार्थियों –रामभक्तों से भर गये। बड़े ही उल्लास के साथ लोग भजन–कीर्तन करते हुए भगवान रामलला का दर्शन–पूजन करने लगे।''

''4. In February, 1986, when an order was issued for opening the lock of Sri Ram Janam Bhumi temple, I was at

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the Faizabad Kutchery itself. On coming to know the order for opening the lock I reached Sri Ram Janam Bhumi site at Ayodhya. Many other journalists were present there. A large crowd of devotees of Lord Sri Ram Lala were assembled. Immediately after the lock of Sri Ram Janam Bhumi being opened by the police and the administration, the devotees out of ecstasy began to engage themselves in frolics, dancing and singing; bells, gongs and conchs began to ring and chanting Ram Dhun people began to have darshan of Lord Sri Ram Lala. Every street and locality of Ayodhya was flooded with devotees and Rama worshippers. Chanting hymns and devotional songs, people with great joy began to have darshan and perform poojan of Lord Sri Ram Lala." (E.T.C.)

"5. श्री राम जन्मभूमि मंदिर का ताला खुलने तथा उसके बाद भी श्रीराम जन्मभूमि से सम्बन्धित आन्दोलनों और घटनाओं का समाचार संकलन व रिर्पोटिंग साप्ताहिक समाचार पत्र को करता रहा हूँ। सन् 1989 के नवम्बर माह में श्री राम जन्मभूमि मंदिर का शिलान्यास संतों की इच्छा एवं सन्त–महंत – विद्वानों की उपस्थिति में श्री कामेश्वर चौपाल जी के द्वारा किया गया जो कि एक अनुसूचित जाति के व्यक्ति थे इसका समाचार भी मैंने प्रमुखता से समाचार पत्र को भेजा था।"

"5. At the time of unlocking Sri Ram Janam Bhumi temple and even after that I have continued to do news compilation and reporting on the agitations and incidents connected with Sri Ram Janam Bhumi for the weekly newspaper. In November of 1989, keeping in view the desire of saints and in presence of saints, mahantas and scholars, the foundation stone of Sri Ram Janam Bhumi temple was laid by Sri Kameshwar Chaupal, who belonged to a scheduled caste. News regarding this was prominently sent to the newspaper." (E.T.C.)

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''6. अक्टुबर सन् 1990 में श्री राम जन्मभूमि आन्दोलन के समय में अयोध्या में विवादित स्थल के आस–पास आन्दोलनकारियों के समीप रह कर समाचार संकलन करता रहा। 2 नवम्बर सन् 1990 को अयोध्या में गोलीकाण्ड के समय मैं अयोध्या में ही लाल कोठी वाली गली में आन्दोलनरत निहत्थे हिन्दुओं के पास ही मौजूद था। इस आन्दोलन में भाग लेने लाखों की संख्या में श्रद्धालु रामभक्त कारसेवक आये हुए थे।''

"6. At the time of Sri Ram Janam Bhumi agitation in October, 1990, I continued to do news compilation by keeping myself close to agitationists in and around the disputed site in Ayodhya. At the time of firing in Ayodhya on 2nd November, 1990, I was present right near the agitating unarmed Hindus in the Lal Kothi street in Ayodhya itself. Lakhs of devotees, Rama-worshippers and karsevaks had come there to participate in this agitation." (E.T.C.)

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''7. 6 दिसम्बर 1992 को जिस दिन विवादित ढांचा ध्वस्त हुआ उस दिन मैं विवादित स्थल पर ही समाचार संकलन हेतु विद्यमान था जहां कारसेवकों के अतिरिक्त देश–विदेश के बहुत से पत्रकार भी मौजूद थे। विवादित भवन के ध्वस्त किये जाते समय तीन गुम्बदों वाले भवन के पीछे अर्थात् पश्चिम की तरफ मैं खड़ा था। मेरे साथ कई अन्य पत्रकार और प्रेस फोटोग्राफर भी वहॉ खड़े थे।''

"7. On 6th December, 1992, when the disputed structure was demolished I was present for compilation of news at the disputed site itself where besides the karsevaks many journalists from inside and outside the country were also present. While the disputed building was being demolished, I was standing behind the three-domed building, that is, towards the west. Many other journalists and press photographers were also standing there along with me." (E.T.C.)

''8. जून सन् 1992 में श्रीराम जन्मभूमि परिसर के पूरब तरफ उत्तर

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प्रदेश सरकार द्वारा कराये जा रहे समतलीकरण के दौरान जब कुछ पत्थर के टुकड़े मिले जो मंदिर के पुरावशेष मालूम होते थे और कुछ खण्डित मूर्तिया, मृदा मूर्तियां, मिट्टी के बर्तन आदि मिले तो दूसरी जानकारी मिलते ही मैं समतलीकरण स्थल पर गया वहॉ अन्य कई पत्रकार और भी आये हुए थे हम सभी पत्रकारों ने उन पुरावशेषों, मृदा मूर्तियो, मिट्टी के बर्तनों आदि को देखा और इसकी रिपोर्ट अपने–अपने समाचार पत्रों में भेजा। समतलीकरण के दौरान प्राप्त उपरोक्त सभी वस्तुएं अर्थात् मंदिर के पुरावशेष, कुछ खण्डित मूर्तियां, मृदामूर्तियां और मिट्टी के बर्तन आदि रामकथा संग्रहालय–राजसदन अयोध्या में पुरातत्व विभाग उत्तर प्रदेश के संरक्षण में रखा गया।''

"8. In June,1992, in course of the levelling operation carried out by the Government of Uttar Pradesh in the eastern side of Sri Ram Janam Bhumi premises, some pieces of stones appearing to be the remains of the temple were discovered and some fractured idols, ceramic idols and earthen ware etc. were also found. On coming to know of it, I went to the site of the levelling operation. Many other journalists had also come there. All of us, the journalists, witnessed all those antiquities that included earthen idols, ware etc. and filed reports on it for their respective papers. All the afore-said objects discovered in course of the levelling operation - which included antiquities of the temple, some broken idols, ceramic idols, earthen ware etc. were preserved at the Ram Katha Museum – Raj Sadan, Ayodhya under the care of Archaeology Department, Uttar Pradesh." (E.T.C.)

''9. 6 दिसम्बर सन् 1992 को जब मैं विवादित भवन के पीछे खड़ा था तो मैंने देखा कि पश्चिम की दीवाल के कुछ भाग का प्लास्टर उखड़ा हुआ है और दीवाल में बेतरतीब ढंग से असमान आकृति एवं आकर के पत्थर एवं ईटें लगी हुई हैं जैसा कि पुरातत्व विभाग उत्तर प्रदेश द्वारा निर्मित श्वेतश्याम एलबम कागज संख्या 201–सी–1 के चित्र संख्या 4,5,6,13,14

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और 18 में दर्शित है और रंगीन एलबम कागज संख्या 200–सी–1 के चित्र संख्या 21,22,23,24,27,33 और 34 में दर्शित है।''

"9. On 6th December, 1992, when I was standing behind the disputed building, I saw that plaster had come off some portion of the western wall and bricks and stones of uneven size and shape were used in the wall in a disorderly manner, as is shown in pictures 4,5,6,13,14 and 18 of the black-white album (paper no. 201-C-1) prepared by archaeology department and in pictures 21,22 23,24,27,33 and 34 of the coloured album (paper no. 200-C-1)." (E.T.C.)

''10. थोड़ी देर बाद कारसेवकों द्वारा सरिया–बल्ली–लोहे के पाइपों से तीन गुम्बदों वाले भवन के दक्षिण और बीच वाले गुम्बद के बीच की पश्चिम दीवार पर प्रहार करने पर दीवाल में बेतरतीब ढंग से असमान आकृति एवं आकार के ईंटें, लखौरी ईंटे और पत्थर गिरने लगे। मेरे सामने ही कई अलंकृत शिलाखण्डों के साथ एक शिलाखण्ड लगभग साढ़े तीन फुट लम्बा लगभग दो फुट चौड़ा एवं लगभग 6 इंच मोटा रहा होगा, भी गिरा। ये सभी शिलाखण्ड किसी मंदिर के अवशेष लगते थे। उत्सुकतावश मैं तथा मेरे साथ वहां खड़े कुछ पत्रकार उस शिलाखण्ड को देखने लगे। तभी वहां उपस्थित एक साधू ने कहा कि यह किसी प्राचीन मंदिर का शिलालेख लगता है इसे संभालकर ले चलो और अन्य अलंकृत शिलाखण्डों को भी ले चलकर रामकथाकुंज में स्थित भवन के पास एकत्रित करो। कुछ कारसेवकों ने शिलालेख जैसा प्रतीत होने वाले शिलालेख को उठाकर रामकथा कुंज स्थित भवन के पास ले जाकर गिरा दिया जिससे वह खण्डित हो गया। पश्चिमी दीवाल से निकले अन्य शिलाखण्डों को भी कारसेवकों ने उस साधू के निर्देश पर रामकथा कुंज स्थित भवन के पास ले आकर रख दिया। विवादित भवन के दीवारों से निकलते जा रहे अन्य शिलाखण्ड जो मंदिर के अवशेष प्रतीत होते थे उन्हे उठा–उठाकर कारसेवक राम कथा कुंज भवन के पास रखे। उपरोक्त शिलालेख जैसा प्रतीत हो रहे शिलाखण्ड के आस पास इकट्ठा रखने लगे। उस समय मैं ओर अन्य बहुत से पत्रकार वहां पर मौजूद थे तथा उत्सुकतावश देख रहे थे जो टूटे हुए मंदिरों के अवशेष लग रहे थे। रामकथा कुंज के पास उपरोक्त शिलाखण्ड एवं मंदिर के अन्य

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पुरावशेषों के रखते समय उन्हें देखने के लिए भीड़ बढ़ने लगी तो पुलिस वालों ने उन सभी शिलाखण्डों को अपने संरक्षण में ले लिया और लोगों को समझा बुझाकर वहां से दूर हटाया।''

"10. After some time, when the western wall, lying between southern and central dome of the three-domed building, was struck by karsevaks with iron-rods, wooden poles and iron-pipes, the bricks, lakhauri bricks and stones of uneven size and shape used in the wall in an unsystematic manner began to fall. Right in my presence, a block of stone which may have been around 3½ feet in length, around two feet in width and around six inches in breadth, fell off besides many decorated stone blocks. All these stone-blocks appeared to be remains of some temple. I and some journalists standing there with me began to see that stone-block out of curiosity. At that very time a saint present there said: "It appears to be a stone -block of some ancient temple. Let us take it and the decorated stone-blocks carefully and assemble them near the building located at Ram Katha Kunj". Some karsevaks picked up a stone block looking like an inscription and dropped it near Ram Katha Kunj-situated building as a result of which it got broken. Under the direction of the saint, the karsevakas took away other stone blocks coming off the western wall and dropped it near Ram Katha Kunj-located building. Other stone blocks, which came off the walls of the disputed building and which appeared to be remains of the temple, were taken away by the karsevaks and were kept near the Ram Katha Kunj Bhawan. They began to put together the aforesaid stone-blocks looking like inscriptions. At that time I and many other journalists were present there and were out of curiosity witnessing what

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appeared to be the remains of temples. While the aforesaid stone-blocks and other antiquities of temple were being kept, the crowd began to get larger and the policemen took all those stone blocks in their custody and got people away by persuading them." (E.T.C.)

"11. 6 दिसम्बर 1992 को विवादित भवन के दीवालों से निकले प्राचीन मंदिर के अवशेषों से सम्बन्धित रिपोर्ट मैंने तथा अन्य पत्रकारों ने अपने–अपने समाचारपत्रों को भेजा। 7 जनवरी 1993 को पुलिस–प्रशासन द्वारा विवादित स्थल की वैरीकेटिंग कराये जाते समय मेरे सामने ही एक आमलक निकला उसे मैंने देखा और अन्य लोगों को भी बताया।"

"11. On 6th December, 1992, I and other journalists sent reports on the remains of the ancient temple coming off the walls of the western building, to their respective newspapers. On 7th January,1993, while barricading was being done by the police administration at the disputed site, an 'amalak' came out right in front of me which I saw and about which I told other persons too." (E.T.C.)

"12. 13 दिसम्बर 1992 को प्रातः काल डा. सुधा मलैया, जिनसे मेरा परिचय 6 दिसम्बर, 1992 को ही रामकथा कुंज के पास शिलाखण्ड रखते हुए हुआ था, ने मुझे टेलीफोन करके कहा कि वह विवादित भवन के दीवालों एवं मलवों से प्राप्त पुरावशेषों तथा शिलालेख जैसा प्रतीत होने वाले शिलाखण्ड को देखना और उनका अध्ययन करना चाहती हूँ, उन्हें वहां तक पहुंचाने में मैं उनकी मदद करूं। "

"12. On the morning of 13th December, 1992, Dr. Sudha Malaiya, with whom I had got acquainted while putting the stone block near Ram Katha Kunj on 6th December, 1992 itself, told me over telephone that she wanted to see and study the antiquities and inscription-like stone-blocks discovered from the walls and debris of the disputed building and requested me to help her reach there."

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(E.T.C.)

''13. मैंने अपनी मोटरसाईकिल से डा. सुधा मलैया को रामकथा कुंज स्थित भवन, जहां विवादित भवन से निकले पुरावशेष–शिलाखण्ड रखे थे, वहां ले गया। वहां पहुंचने के थोडी देर में ही डा.एस.पी.गुप्ता भी वहां आ गये जिनका परिचय डा. मलैया ने मुझसे कराया। उन लोगों ने वहां रखे शिलाखण्ड, पुरावशेष तथा शिलालेख को देखा और उनमें से कई के फोटो खीचें । शिलालेख का फोटो खींचने के लिए मैं उसको सीधा किये खड़ा रहा। डा. एस.पी.गुप्ता, डा. सुधा मलैया उस शिलालेख को देखने लगे, वहां उपस्थित दैनिक आज के फोटोग्राफर ने उसका फोटो ले लिया। जिसमें मैं शिलालेख को पकड़े हुए खड़ा हूँ और डा. सुधा मलैया तथा डा. एस.पी. गुप्ता उसको देख रहे हैं। यह फोटो दैनिक आज के लखनऊ संस्करण में 15 दिसम्बर 1992 को प्रकाशित हुआ था जो मेरे पास मौजूद है।''

''13. I took Dr. Sudha Malaiya on my motorcycle to Ram Katha Kunj- located building where the antiquities and stone blocks discovered from the disputed building were kept. Soon after our reaching there Dr. S.P. Gupta also reached there and Dr. Malaiya introduced him to me. They witnessed the stone-blocks, antiquities and inscriptions placed there and photographed many of them. To enable the inscription to be photographed, I kept standing, putting it straight. Dr. S.P.Gupta and Dr. Sudha Malaiya began to see the inscription and the photographer of the daily 'Aaj' took photograph of it, in which I am standing holding the inscription and Dr. Sudha Malaiya and Dr. S.P. Gupta are looking at it. This photograph was on 15th December, 1992 published in the Lucknow edition of the daily 'Aaj' and it is with me.'' (E.T.C.)

''14. 6 दिसम्बर 1992 को सायंकाल लगभग 6 बजे जैसे ही यह समाचार आया कि उत्तर प्रदेश के मुख्यमंत्री श्री कल्याण सिंह ने त्यागपत्र दे दिया है और उत्तर प्रदेश में राष्ट्पति शासन लागू हो गया है वैसे ही अयोध्या–फैजाबाद में कर्फ्यू लगा दिया गया। पुलिस–अधिकारियों से

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सम्पर्क करने पर उन्होंने बताया कि अयोध्या–फैजाबाद में बाहर से लोगों का आना बन्द कर दिया गया है और जो कारसेवक यहां मौजूद हैं उन्हें अविलम्ब बसो एवं ट्रेनों द्वारा बाहर भेजने की व्यवस्था की जा रही है।''

"14. On the evening of 6th December, 1992, at around 6 o'clock, as soon as there came the news that the Chief Minister of Uttar Pradesh, Sri Kalyan Singh had resigned and the President Rule had been promulgated in Uttar Pradesh, curfew was clamped in Ayodhya-Faizabad. On being contacted police officials told that the entry of outsiders in Ayodhya-Faizabad had been banned and arrangements were being made for immediately sending back the karsevaks, present there, by buses and trains." (E.T.C.)

588. **OPW 10, Dr. Koluvyl Vyassrayasastri Ramesh,** has appeared as expert (Epigraphist) to prove the report (Paper No. 306C-1/1 to 306C-1/11) consisting of transcription of the estampage of the stone slab, prepared from the estampage (paper No. 203C-1/1). His examination-in-chief commenced on 11.11.2002 and followed as under :

11-11-2002- **Examination-in-chief** (p. 1-5)

Cross examination :(a) 11-11-2002- by Nirmohi Akhara, Defendant no.3, through Sri R.L. Verma, Advocate (p. 6-9)

(b) 11-11-2002- by defendant no. 6 through Sri A. Mannan, Advocate (p. 1012)

(c) 11/12/13/14/-11-2002, 17-02-2003- by Sunni Central Waqf Board, defendant no. 4 through Sri Z. Jilani, Advocate (p. 12-57)

(d) 17/18-02-2003- by defendant 5, Mohd. Hashim, through Sri M.A. Siddiqui, Advocate (p. 57-67)

(e) 18-02-2003- defendant no. 26 through Sri Syed Irfan

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Ahmad, Advocate and defendants no. 6/1 and 6/2 (Suit-3) through Sri Fazale Alam, Advocate, adopted the cross examination already done by defendants no. 4, 5 and 6 (p. 67)

589. He is aged about 67 years of age (as per his affidavit dated 11.11.2002) and is resident of J Block, Kuvempnagar, Mysore. He is a retired Joint Director General, ASI, New Delhi. He did M.A. in Sanskrit Language and Literature from Madras University in 1956; Ph.D. in History in 1965 from Karnataka University; joined the office of Government Epigraphist for ASI at Ootacamund in 1956; later selected by Union Public Service Commission for the post of "Deputy Superintending Epigraphist" for Sanskrit inscriptions in 1966, promoted as Superintending Epigraphist in 1976, Chief Epigraphist in 1981, Director of Epigraphy in 1984 and Joint Director General, ASI, New Delhi in 1992 wherefrom retired on 30.06.1993. Since October, 1998 he is serving as Honorary Director, Oriental Research Institute, University of Mysore. Authored 14 books, 10 in English and 4 in Kannada, wrote more than 200 articles published in research journals of epigraphical and allied subjects. The important publications which he claim in para 5 of the affidavit are as under:

"5. During the course of my service as an Epigraphist and after my retirement, I have authored 14 books, 10 in English and 4 in Kannada. I have published more than 200 Articles in research Journals, all on Epigraphical and allied Subjects. Among my important publications may be mentioned:-

(a) Corpus of Western Ganga Inscriptions (Published by Indian Council of Historical Research New

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Delhi)

(b) Bagh Copper plate hoard of the Gupta period (Published by Archaeological Survey of India New Delhi)

(c) Recently Discovered Copper Plate Inscriptions in the collection of the Department of Archaeology government of Karnataka (Published by the Department of Archaeology Government of Karnataka)

(d) More Copper Plate inscriptions in the collection of the Department of Archaeology Government of Karnataka (Published by the Department if archaeology Government of Karnataka)

(e) Indian Epigraphy (Sandeep Prakashan New Delhi)

(f) Vatapi Chalukyas and their times (Agam Prakashan New Delhi)

(g) A History of South Kanara (Published by the Karnataka University)

(h) I have been an office bearer (President and Secretary and Executive Editor) of the Epigraphical Society of India since its inception in 1974. I have attended a large number of seminars in India and abroad on topics relating to Epigraphy and History, the latest being International Seminar on Epics" at the University of Malaya Kualalumpur in which I presented a paper on "Epigraphical References to Great Indian Poems". (in October 2002)"

590. Regarding the document he sought to prove, paras 6 to 15 of the affidavit of OPW 10 are as under:

"6. Sri Deoki Nandan Agrawala along with his counsel approached me and requested for decipherment of the 20

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line stone inscription on the basis of estampage made available to me which is the same as paper No. 203C-1/1 on record of this suit."

"7. I studied the said Estampage thoroughly and deciphered the same and translated it in English and prepared my report which I handed over to Sri Deoki Nandan Agrawala."

"8. My report consists of transcription of estampage in Nagari transliteration in Roman and translation in English."

"9. Although certain portions of the inscription are broken or damaged, the overall purport and the crux of its import are clear beyond doubt. The epigraph mentions Govindachandra who belonged to the Gahadarwala Dynasty and ruled over a fairly vast empire between 1114 and 1155 A.D. This shows that the inscription is of the 12th century A.D. The chaste Sanskrit and orthographical features as well as palaeography also confirm that the inscription belongs to 12th century A.D."

"10. I state that in my report a mention of verse at page 2 line 8, is typographical error; which should be read as verse '6'. On the same page of my report, 'verse 7' has been inadvertently omitted which is in appreciation of Mame's valorous deeds in battle fields."

"11. Verses 19 and 24 of the inscription mention Saketa Mandala of which Ayodhya was the headquarters."

"12. Verses 21 to 24 mention the construction of a lofty stone temple for God Vishnuhari by Meghasuta. He was succeeded by Aayushya Chandra, the younger son of Alhana who, while residing at Ayodhya, which had

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towering abodes, intellectuals and temples, endowed the entire Saketa Mandala with thousands of wells, reservoirs, alms-houses, tanks, etc."

"13. Verse 27 (damaged in part) alludes to the episodes of Vishnu's incarnation as Narasimha (who killed Hirnyakasipu), Krishna (who killed Banasura), Vamana (who destroyed Bali) and Rama (who killed ten-headed Ravana)."

"14. I state that according to the contents of the inscription, the temple of Vishnuhari constructed by Meghasuta must have been in existence in the temple town of Ayodhya from 12th century A.D."

"15. That the 'report' mentioned hereinbefore by me and filed in this case as paper No. 306C-1/1 to 306C-1/1 is the same report which I prepared and signed by me. I identify my signature thereon."

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The translation of inscription of stone slab shall be dealt later while dealing with the relevant issue.

591. **OPW 15, Dr. M. N. Katti,** aged about 64 years (as per his affidavit dated 31.03.2003), resident of Vijaya Nagar III Stage, Mysore (State of Karnataka), is a retired Director (Epigraphy, ASI). His cross examination followed as under :

(a) 31-03-2003-by Nirmohi Akhara, defendant no. 3, through Sri R.L. Verma, Advocate (p. 7-17)

(b) 01/02-04-2003-by defendant no. 6 through Sri Abdul Mannan, Advocate (p. 18-37)

(c) 02/03/04/28-04-2003- by Sunni Central Waqf Board, defendant no. 4 through Sri Zafaryab Jilani, Advocate (p. 37-77)

(d) 28-04-2003- by defendant no. 5, Mohd. Hashim

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through Sri M.A. Siddiqui, Advocate (p. 77)

(e) 28-04-2003- defendant no. 26 through Sri Sayad Irfan Ahmad, Advocate and defendants no. 6/1 and 6/2 (Suit-3) through Sri Fazale Alam, Advocate adopted the cross examination already done by defendants no. 4, 5 and 6 (p. 78)

592. He deposed to prove paper No. 203-C1/1 and 203C1/2 i.e., the Estampages of the inscriptions on the stone slab said to have been recovered in 1992 which was kept in Ram Katha Kunj in the custody of the Commissioner, Faizabad. Having passed M.A. (Sanskrit) from Osmania University, Hyderabad in 1961, did Post-Graduate Diploma in Archaeology from School of Archaeology, ASI, New Delhi in 1963 and joined as Epigraphical Assistant, office of Government Epigraphist of India ASI at Ooctacomund in 1964. The said office was later on shifted to Mysore in 1966. He was selected by Union Public Service Commission for the post of Deputy Superintending Epigraphist for Dravidian inscriptions in 1970 and again as Deputy Superintending Archaeologist in 1974. He was promoted as Superintending Epigraphist in December, 1978, as Chief Epigraphist in 1984 and Director Epigraphy in 1992 wherefrom he retired in March, 1997. After retirement also he was engaged as consultant for epigraphy in ASI in June, 1997 till December, 1997 at Mysore. During the course of his service as well as after retirement he edited twelve volumes dealing with epigraphy published by ASI and two volumes of the Journal of Epigraphical Society of India and one Dictionary of 'Personal Names of Mysore District'. He is author of a book “Lipshashtra Pravesha” written in Kannada, published in 1972, and edited another book in Kannada, i.e., “Namma Maisuru”

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published in 2001, has written more than 100 research articles. Regarding estampages on the stone slab, i.e., paper No. 203C-1/1 and 203C-1/2 he said in para 10 and 11 as under:

> *"10. I was instructed by the Director General of Archaeological Survey of India to prepare the Estampages of the inscriptions on the stone slab and pillar which I had prepared at Ayodhya, District-Faizabad in February, 1994 where they were kept in Ram Katha Kunj in the custody of Commissioner Faizabad under tight Police Security. I have seen these Estampages which are paper no. 203C-1/1 and 203C-1/2. When I had prepared them at Ayodhya, then I made necessary note on the back of them under the my initial and also I had put line numbers on either side of the text portion of the inked Estampages of 20 lines which are same Estampages and which bear my initial, one set of these Estampages is also with the Archaeological Survey of India, New Delhi."*
>
> *"11. In the month of August, 1996, I was instructed by the Director General, Archaeological Survey of India to carry the above Estampages to Lucknow, meet the Commissioner, Faizabad and file the same in the Hon'ble High Court Accordingly, I came to Lucknow where Commissioner, Faizabad met me and then the above Estampages marked as Paper No. 203C1/1 and 203C1/2 kept in sealed envelope, were submitted by us before the Joint Registrar, Hon'ble High Court, Lucknow Bench, Lucknow."*

G. <u>Artefacts in Debris</u>:

593. **OPW 14, Dr. Rakesh Tiwari,** was working as Director, Rajya Puratatva Sangthan, U.P. Lucknow. His examination-in-

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chief commenced on 07.02.2003 and followed as under :

07-02-2003- **Examination-in- chief** by affidavit (p. 1-4)

Cross examination:(a) 07-02-2003-by Nirmohi Akhara, defendant no. 3, through Sri R.L. Verma, Advocate (p. 5-10)

(b) 10/11-02-2003- by Mahmood Ahmad, defendant no. 6, through Sri Abdul Mannan, Advocate (p. 11-26)

(c) 11/13/14/19-02-2003, 05-03-2003-by Sunni Central Waqf Board, defendant no. 4 through Sri Zafaryab Jilani, Advocate (p. 26-81)

(d) 07/08-05-2003- by defendant no. 5 through Sri Mustaq Ahmad Siddiqui, Advocate (p. 81-94)

(e) 08-05-2003- defendant no. 26 through Sri Sayad Irfan Ahmad, Advocate and defendants no. 6/1 and 6/2 (Suit-3) through Sri Mohd. Azhar, Advocate adopted the cross examination already done by defendants no. 4, 5 and 6 (p. 94)

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594. OPW-14 claims to have prepared two lists of certain artefacts and finds, kept at Ram Katha Kunj, Ayodhya and from paras 2 to 6 of the affidavit dated 07.02.2003 has said:

"2. मैं अपनी टीम के साथ माननीय उच्च न्यायालय लखनऊ पीठ लखनऊ के आदेश के अनुपालन में सन् 1990 में अयोध्या स्थित विवादित स्थल पर जाकर वाद के पक्षकारों एवं उनके अधिवक्ताओं की उपस्थिति में विवादित भवन एवं परिसर का श्वेतश्याम व रंगीन फोटोग्राफी तथा वीडियोंग्राफी अपने निर्देशन एवं देखरेख में करवाया था।

"2. In compliance with the order of the Hon'ble High Court, Lucknow Bench, Lucknow, I along with my team went to the disputed site situated in Ayodhya and ensured the black and white and the coloured photography and videography of the disputed building and premises under my direction and care and in presence of parties to the suit

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and their counsels." (E.T.C.)

''3. श्वेत श्याम व रंगीन फोटो विवादित भवन एवं परिसर के जिस–जिस भाग के लिये गये थे उनका विवरण उल्लिखित करते हुए दो एलबम तैयार किया गया। यह दोनों एलबम तथा बीडियो कैसेट को माननीय उच्च न्यायालय लखनऊ पीठ लखनऊ को प्रेषित कर दिया था तथा निगेटिव अपने विभाग में सुरक्षित रखवा लिया था जो आज भी सुरक्षित रखे हुए हैं।''

"3. Detailing the portions of the disputed building and premises of which the black and white as well as colour photographs were taken, two albums were prepared. I sent these two albums and video cassettes to the Hon'ble High Court, Luchnow Bench, Lucknow and ensured the retention of the negatives with my department which are kept safe even today." (E.T.C.)

''4. दिसम्बर सन् 1992 में जब विवादित भवन ध्वस्त हो गया तो सचिव पर्यटन एवं सांस्कृतिक कार्य विभाग के आदेश पर मैं अपनी टीम के साथ विवादित स्थल पर गया जहॉ विवादित भवन का मलवा बिखरा हुआ था उनमें कहीं–कहीं प्राचीन पुरावशेष की श्रेणी में आने वाले प्रस्तरखण्ड भी धूल धूसरित बिखरे हुए थे। विवादित स्थल के निकट ही स्थित रामकथा कुंज में भी उपरोक्त विवादित भवन के पुरावशेष रखे हुए थे जहॉ पुलिस मौजूद थी।''

"4. In December, 1992, when the disputed building was demolished, I, under the orders of the Secretary, Department of Tourism and Cultural Affairs, went along with my team to the disputed site, where the debris of the disputed building was strewn in which stone-blocks categorized as antiquities were also lying covered with dust. The antiquities of the aforesaid disputed building were kept also at Ram Katha Kunj, located near the disputed site itself, where the police was present." (E.T.C.)

''5. जिलाधिकारी फैजाबाद की अपेक्षानुसार मेरे निर्देशन व देख–रेख

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तथा श्री गिरजाशंकर तिवारी निदेशक राम कथा संग्रहालय राज सदन, अयोध्या व श्री इन्द्र देव सिंह अपर नगर मजिस्ट्रेट फैजाबाद की उपस्थित में राम कथा कुंज में रखे हुए पुरावशेषों पर संख्या आर.के.के.–1 से लेकर आर.के.के.–265 तक अंकित की गयी तथा तदनुसार उन पुरावशेषों की सूची बनायी गयी जिस पर श्री गिरजाशंकर तिवारी व श्री इन्द्रदेव सिंह ने अपने–अपने हस्ताक्षर मेरे समक्ष ही कियें उस सूची की प्रतियां सम्बन्धित अधिकारियों को प्रेषित कर दिया गया था। उक्त पुरावशेषों की मूल सूची आठ पृष्ठों में व सचिव पर्यटक एवं सांस्कृतिक कार्य विभाग के पत्र अपने साथ लाया हूँ जिसकी छायाप्रति बतौर संलग्नक एक व दो के इस शपथपत्र के साथ संलग्न है। कालान्तर में पुनः निरीक्षण करने पर यह पाया गया कि एक वास्तुखण्ड पर गलती से दो नम्बर अंकित हो गये थे।''

"5. As required by the District Magistrate, Faizabad, the antiquities kept at Ram Katha Kunj were marked with the numbers ranging from R.K.K.-1 to R.K.K.-265, under my direction and supervision and in presence of Sri Girja Shankar Tiwari, Director, Ram Katha Sangrahayalaya, Raj Sadan, Ayodhya and Sri Indra Dev Singh, Additional City Magistrate, Faizabad. Accordingly the list of those antiquities was prepared on which Sri Girja Shankar Tiwari and Sri Indra Dev Singh put their respective signatures right in front of me. Copies of those lists were sent to the concerned officers. Along with the letter of the Secretary, Department of Tourism and Cultural Affairs, I have brought the 8-page original list of the said antiquities, photocopies of which are annexed to this affidavit as annexures 1 and 2. Subsequently, on re-inspection it was found that two numbers were by mistake marked on a stone-block ." (E.T.C.)

''6. उपर्युक्त पुरावशेषों की सूची मैंने स्वयं प्रमाणित करके माननीय उच्च न्यायालय लखनऊ पीठ लखनऊ को पहले भी प्रेषित किया है।''

"6. After personally certifying the aforesaid list of

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antiquities I have sent the same to the Hon'ble High Court, Lucknow Bench, Lucknow even earlier." (E.T.C.)

595. About the list of the documents etc. which he has annexed as Annexure-1 to his affidavit we shall deal with in detail later.

H. <u>Commissioner/Survey Report</u>:

596. **PW 17, Zafar Ali Siddiqui,** aged about 65 years (on the date of commencement of his statement-in-chief on 20.10.2000), is resident of Mohalla Dariyapur, District Sultanpur. His cross examination followed as under :

(a) 20.10.2000, 13/14.11.2000- by Nirmohi Akhara through Sri R.L. Verma, Advocate(p. 4-37)

(b)15-11-2000- by Dharamdas, defendant no. 13, through Sri Ved Prakash, Advocate (p. 38-44)

(c)15/16/17-11-2000, 08.01.2001- by Sri Umesh Chandra Pandey, defendant no. 22 through Sri Vireshwar Dwivedi, Advocate (p. 44-80)

(d) 08.01.2001- Sri Paramhans Ramchandra Das, defendant no. 2. through Sri Madan Mohan Advocate adopted by cross examination on behalf of defendant no. 3 and defendant no. 22 (p. 80)

(e) 08.01.2001-Sri Rajendra Singh, son of Sri Gopal Singh Visharad through Sri P.L. Mishra, Advocate (p. 80-87)

(f) 08.01.2001- Hindu Mahasabha, defendnat no. 10 and Sri Ramesh Chandra Tripathi, defendant no. 17, through Sri Hari Shankar Jain, Advocate adopted the cross examination already done by other defendants (p. 87)

(g) 08.01.2001- Plaintiffs no. 1 and 2 through Sri Vireshwar Dwivedi advocate the cross examination already done by other plaintiffs (p. 87)

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597. By profession he is an Advocate practising since 1961-62. He claims to have surveyed the disputed site on private request of one of the plaintiffs (Suit-4) and had prepared a report and map (Paper No. 191C-2). He sought to prove the above survey report and map and said as under:

''पहले मुझसे इस मुकदमें के वादी हाशिम साहब ने इस झगड़े की जमीन का सर्वे करने को कहा था इसके बाद वादी के वकील साहब श्री मन्नान साहब, श्री जिलानी साहब एवं श्री मुश्ताक अहमद साहब ने इस सर्वे काम को करने के लिए इंगेज किया था। उनके कहने के बाद मैंने इस झगड़े वाली जमीन का सर्वे 19, 20, 21 जुलाई, 1990 को किया था मुझे वादी ने नजूल का नक्शा दिया था। मुझे 23 प्लाट का सर्वे करने के लिए कहा गया था। वादी ने नजूल का खसरा 1931 का भी मुझे दिया था। उसमें विवादित जमीन के सभी 23 प्लाट दिखलाये गये थे। उस विवादित जमीन के एक प्लाट पर एक मस्जिद बनी थीं वह मस्जिद प्लाट सं0 583 पर बनी थी। मस्जिद के पूरब तरफ प्लाट सं0 586,581 व 584 स्थित थे। मस्जिद के उत्तर तरफ प्लाट सं0 582 स्थित था। मस्जिद के दक्षिण तरफ प्लाट सं0 590 व 588 स्थित थे। यह नम्बर मैं 1931 के नजूल के नक्शे व खसरे से बता रहा हूं।

नजूल के 1931 वाले नक्शे में दक्षिण की तरफ एक सिहद्दा बना था। उसी से मैंने कार्य शुरू किया । मैंने इस सिहद्दे को ढूँढने के लिये कुछ प्लाटों की नाप जोख की और तब यह मालूम किया किया कि यह सिहद्दा इसी जगह पर होगा उस जगह की खुदाई करने पर सिहद्दा मिला था । सिहद्दा के पश्चिम व उत्तर के प्लाटों से मैने नाप जोप की थी। सिहद्दे की स्थिति नक्शे के हिसाब से मैने मौके पर ठीक पायी थी सिहद्दों से सबसे करीब एक बाग मिला था जो 632 से 638 तक स्थित था। अर्थात वह बाग इतने नम्बरों को लेकर बनी थी। 1931 के नक्शे के हिसाब से मैने नाप जोख की थी और वह मौके पर बिल्कुल सही पायी थी। अर्थात मौके पर हूबहू मिलती थी। मैं जब सर्वे कार्य कर रहा था उस समय कोर्ट से सर्वे कमिश्नर एक गये थे और मुझे यह हिदायत दी गयी थी कि मैं इनको असेस भी करूं और अपनी भी एक रिपोर्ट बनाऊँ । मेरे इस सर्वे कार्य में अयोध्या के कई लड़के मेरी मदद कर रहे थे।

जिस समय मैंने सर्वे का कार्य किया उस समय वादी के वकील श्री

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मन्नान श्री जिलानी, श्री मुश्ताक अहमद साहब एवं वादी मौजूद थे। फैजाबाद के आफताब अहमद सिद्दीकी वकील साहब भी मौजूद थे। मैंने मौके पर जब नाप जोख की थी तो नोट्स तैयार किया था। सर्वे करने के करीब एक एक माह के अन्दर अर्थात अपने नोट्स बनाने के एक माह के अन्दर मैंने अपनी एक रिपोर्ट तैयार करके रख ली थी। यह नोट्स मैंने मौके पर बनाये थे। मैंने इस नाप जोख के समय मौके पर एक रफ स्केच भी बनाया था। उसी की मदद से मैंने नक्शा तैयार किया था। मैंने जो नक्शा बनाया था व रिपोर्ट जो बनायी थी वह इस समय भी मेरे पास है। मैं यह रिपोर्ट व नक्शा पेश कर सकता हूँ। (रिपोर्ट पेश करने के विषय पर विपक्षीगण के अधिवक्ताओं ने आपत्ति की और उन्होंने यह कहा कि यह आपत्तियां वो पहले ही लिखित रूप से दाखिल कर चुके हैं। उनका कहना है कि यह रिपोर्ट गवाह के द्वारा दाखिल नहीं हो सकती है एवं इस संबंध में सर्वे कमीशन की रिपोर्ट पहले ही खारिज हो चुकी है। चूंकि गवाही चल रही है इसलिए यह उचित होगा यह रिपोर्ट फिलहाल रख ली जाये परन्तु एडिमीसिविलिटी एवं ग्राहता के संबंध में अलग से आदेश गवाह का बयान खतम होने पर दिया जायेगा।) गवाह द्वारा रिपोर्ट व नक्शा लिया गया जिस पर पेपर नं0 191 सी 2 डाला गया। इस रिपोर्ट पर मेरे हर पेज पर दस्तखत हैं और नक्शे पर भी हैं। इस रिपोर्ट पर कोई तिथि अंकित नहीं है । यह रिपोर्ट मैंने 13, 14 अक्टुबर सन् 2000 को टाईप कराकर तैयार की और नक्शा भी उसी दिन पुराने नक्शे से ट्रेस करके बनाया है। यह रिपोर्ट भी मैंने पुरानी रिपोर्ट पर तैयार की अर्थात टाईप करायी। यह नक्शा मेरे हाथ द्वारा ट्रेस किया गया । जो चीज नक्शे में दिखायी है वह रिपोर्ट में लिखी है वह मौका और नक्शे के हिसाब से सही है।''

''Initially the plaintiff of this suit, Mr. Hashim, had asked me to survey the disputed land. Subsequently, the counsel of this case viz. Mr. Mannan, Mr. Jilani and Mr. Mustaq Ahmad, engaged me to carry out this survey. On their instruction, I conducted survey of the disputed land on 19th 20th and 21st July 1990. The plaintiff had furnished Nazul map of 1931. I had been asked to survey 23 plots. The plaintiff had also given me the nazul khasra of 1931.

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All the 23 plots of the disputed land were shown in it. A mosque was built over a plot of said disputed land. That mosque was built over plot no. 583. Plot Nos. 586, 581 and 584 were situated to the east of the mosque. The plot no. 582 was to the north of the mosque. The plot nos. 590 and 588 were situated in south of the mosque. I am giving these numbers on basis of the nazul map and khasra of 1931.

There existed a 'Sihadda' (tri-junction pillar or platform) in south of the Nazul map of 1931. In order to discover this 'Sihadda', I measured certain plots and then located the place/point of 'Sihadda'. After digging at that place, 'Sihadda' was found. I had measured the plots to west and north of the 'Sihadda'. I had found the location of the 'Sihadda' on the spot, to be in accordance with the map. Nearest to the 'Sihadda' was a grove over numbers 632 to 638 i.e. the grove existed over the said numbers. I had carried out the measurement as per the map of 1931 and it was found in order on the spot i.e. it was exactly the same on the spot. When I was carrying out the survey, the Survey Commissioner of the court also arrived over there and I was instructed to assist him, besides preparing my own report. Many local boys of Ayodhya also assisted me in this survey.

At the time of the survey, the plaintiff's counsel Sri Mannan, Sri Jilani, Sri Mushtaq Ahmad and the plaintiff were present over there. Sri Aftaab Ahmad Siddiqui, Advocate, of Faizabad was also present. When I had carried out the measurement, I prepared notes. Within one month of conducting the survey or within one month of preparation of my notes, I had kept a report after its

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preparation. I had carried out the measurement and prepared my notes on the spot. I prepared a report within one month. At time of measurement at the spot, I had also prepared a rough sketch, and I had prepared the map by its help. The map and report prepared by me, are with me at present. I can produce the said map and report (in the matter of production of the report, the counsel for the opposite parties raised objection and contended that they have already filed the written objections in this behalf. They contended that the witness cannot file the report and the report of Survey Commission in this behalf, has already been rejected. Since evidence is being led, it would be proper that the said report be taken for the time being but orders regarding the admissibility of the same would be passed after conclusion of evidence of the witness). The report and map were taken from the witness which were numbered as paper no. 191C-2. All the pages of this report and the map bear my signature. This report does not contain any date. I had got this report typed out on 13,14 October, 2000 and on the same day I had got the map traced out from the old map. This report was also prepared i.e. got typed out by me from the old report. This map has been traced by me in my own hands. The items appearing in the map and described in the report, are correct as per the location and map." (E.T.C.)

598. **DW 3/10 Sri Pateshwari Dutt Pandey;** is an Advocate aged about 74 years (vide his affidavit dated 23rd March 2004) and was cross examined as under :

(a) 23.03.2004- by Ramesh Chandra Tripathi, defendant no. 17 and Umesh Chandra Pandey, defendant no. 22

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(Suit-4) through Sri Vireshwar Dwivedi, Advocate (p. 5-8)

(b) 23.03.2004- by plaintiffs (Suit-5) through Sri Ved Prakash, Advocate (p. 8-9)

(c) 23.03.2004- Mahant Suresh Das, defendant no. 2/1 (Suit-4 and 5) through Sri M.M. Pandey, Advocate adopted the cross examination already done by Vireshwar Dwivedi and Sri Ved Prakash Advocates (p. 9)

(d) 24.03.2004- by defendant no. 20 (Suit-4) through Km. Ranjana Agnihotri, Advocate (p. 11)

(e) 24/25.03.2004- by defendant no. 11 through Sri Abdul Manna, Advocate (p. 12-22)

(f) 25/26/29/31.03.2004, 01/19/20.04.2004- by Sunni Central Waqf Board, defendant no. 9 through Sri Zafaryab Jilani, Advocate (p. 22-90)

(g) 21/27.04.2004- by plaintiff no. 7 (Suit-4) and defendant no. 5 (Suit-5) Mohd Hashim through Sri Mustaq Ahmad Siddiqui, Advocate (p. 91-110)

(h) 27.04.2004- defendant no. 6/1 through Sri Irfan Ahmad, Advocate and defendant no. 6/2 through Sri Fazale Alam, Advocate adopted the cross examination already done by Sri Abdul Mannan, Sri Zafaryab Jilani and Sri Mustaq Ahmad Siddiqui, Advocates (p. 111)

599. He claimed to have submitted Commission's report on 13.10.1973 pursuant to an order in O.S. No. 9 of 1973 Nirmohi Akhara Vs. Baba Ram Lakhan Izlasi, in the Court of Civil Judge, Faizabad and has filed a copy of the said report and proved the same. He prepared and submitted said report after inspecting the premises in question on 22th August, 26th August 1973 and 6th September 1973. The aforesaid suit itself had been

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decided finally in 1978. It is not necessary to make any further discussion on this aspect of the matter since the above report, if necessary, would be discussed later on. The statement of DW 3/10 in detail would also be referred and discussed later on if necessary.

Documentary Evidences

600. Documents of plaintiff (Suit-1) :

Sl. No	Description of Paper	Paper No./ Exhibit mark	Register/ Page No.
1	Copy of the affidavit by Abdul Ghani dated 16-2-1950, in the court of City Magistrate Faizabad U/s 145 Cr.PC. P.S. Ayodhya District Faizabad	69/C-Ex.1	5/5
2	Copy of the affidavit of Wali Mohammad dated 3.2.1950, in the Court of City Magistrate Faizabad U/s 145 Cr.P.C. Rex Vs. R.J.B.&B.M.	183-Ex.2	5/9-10
3	Copy of affidavit filed by Hasnu dated 29.12.1950 in the Court of City Magistrate Faizabad U/s 145 Cr.P.C.	184/C-Ex.3	5/11-12
4	Copy of affidavit of Mohd. Umar dated 11.2.1950, in the Court of City Magistrate Faizabad U/s 145 Cr.P.C.	185/C-Ex.4	5/13-14
5	Copy of affidavit of Ajeemullah dated 13.2.1950 in the Court of City Magistrate Faizabad U/s 145 Cr.P.C.	186/C-Ex.5	5/17-18
6	Copy of affidavit filed by Latif dated 13.2.1950 in the Court of City Magistrate Faizabad U/s 145 Cr.P.C.	187/C-Ex.6	5/19-20
7	Copy of affidavit of Mohd. Husain dated 14.2.1950, in the Court of City Magistrate Faizabad U/s 145 Cr.P.C.	188/C-Ex.7	5/21-22

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8	Copy of affidavit of Abdul Sattar dated 16.2.1950, in the Court of City Magistrate Faizabad U/s 145 Cr.P.C.	189/C-Ex.8	5/23-24
9	Copy of affidavit of Ramzan dated 16.2.1950, in the Court of City Magistrate Faizabad U/s 145 Cr.P.C.	190/C-Ex.9	5/25-26
10	Copy of affidavit of Hoshaldar dated 16.2.1950, in the Court of City Magistrate Faizabad U/s 145 Cr.P.C.	191/C-Ex.10	5/27
11	Copy of affidavit of Abdul Sakoor dated 16.2.1950, in the Court of City Magistrate Faizabad U/s 145 Cr.P.C.	192/C-Ex.11	5/29
12	Copy of affidavit of Abdul Razal dated 16.2.1950, in the Court of City Magistrate Faizabad U/s 145 Cr.P.C.	193/C-Ex.12	5/31
13	Copy of affidavit of Abdul Jaleel dated 14.2.50, in the Court of City Magistrate Faizabad U/s 145 Cr.P.C.	194/C-Ex.13	5/33
14	Copy of affidavit of Peeru Dated 11.2.50 filed before City Magistrate, Faizabad in proceedings u/s 145 Cr.P.C.	195/2 Ga-Ex.14	5/35
15	Copy of the report of Deputy Commissioner Faizabad in compliance of Commissioner's order dated 14.05.1877 in Misc. Appeal No. 56 decided on 13.12.77	319/1Ga-319/2Ga-Ex.15	5/41
16	Copy of the order of the Commissioner Faizabad dated 13.12.1877 in Mohd. Asgar Vs. Khem Das, Misc. Appeal No. 56	320/Ga-Ex.16	5/45
17	Copy of judgment dated 18.6.1883 passed by Sub Judge, Faizabad in case no. 1374/943, Syed Mohd. Asghar Vs Raghubar Das	321/Ga-321/2Ga-Ex.17	5/47
18	Copy of the application of Mohd. Asghar dated 2.11.1883 in the Court of Assist. Commissioner	322/Ga-Ex.18	5/55

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	Faizabad Mohd. Asgar Vs. Raghubar Das		
19	Copy of report dated 28.11.1858 of Sheetal Dubey Thanedar Awadh (case no. 384)	325Ga-Ex.19	5/61
20	Copy of application/complaint dated 30.11.1858 of Mohd. Khateeb (in case no. 884)	326Ga-Ex.20	5/65
21	Copy of report dated 1.12.1858 of Sheetal Dubey Thanedar Awadh (case no. 884)	327Ga-Ex.21	5/69
22	Copy of report dated 6.12.1858 of Thanedar Awadh (case no. 884)	328Ga-Ex.22	5/73
23	Copy of application dated 9.4.1860 of Mohammadi Shah	329Ga-Ex.23	5/77
24	Copy of the plaint dated 22.10.1882 of Suit No. 374/943 of 1882 Mohd. Asghar Vs. Raghubar Das in the Court of Munsif Faizabad	349/Ga-Ex.24	5/83
25	Copy of the judgment dated 22.8.1871	350Ga-Ex.25	5/87
26	Copy of plaint dated 22.2.1870 case Mohd. Asghar Vs. Sarkar Bahadur	351Ga-Ex.26	5/91
27	Copy of the order dated 22.1.1884 in case no. 19435 by Asstt. Commissioner, Faizabad	352/Ga-Ex.27	5/95
28	Copy of the application of Raghubar Das dated 27.6.1884 before Asstt. Commissioner, Faizabad	353/Ga-Ex.28	5/99
29	Copy of the order dated 12.10.1866 of Deputy Commissioner, Faizabad in case no. 223	354Ga-Ex.29	5/103
30	Copy of memo of appeal dated 13.12.1870 before Commissioner against order dated 03.04.1877 passed by Dy. Commissioner.	355/Ga-Ex.30	5/107
31	Copy of Application dated 5.11.1860 of Rajjab Ali in the Court of Deputy Commissioner Faizabad, Meer Rajjab Ali Vs. Akali Singh	356/Ga-Ex.31	5/117

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32	Copy of the Map Kistwar, village Ramkot Tehsil Haveli District Faizabad 1344, 1345 F, in 1937	357/Ga-Ex.32	5/123
33	Copy of order dated 26.8.1868 disposed of by Major J. Read Commissioner, Faizabad in appeal no. 275 Niamat Ali Shah Vs. Ganga Dhar Shastri	358/1Ga-2Ga Ex.33	5/127-129
34	Copy of the order dated 12.1.1884 passed by Asstt. Commissioner, Faizabad in Case No. 19435 in respect of Najool of Ram Janam Bhumi Pargana Haveli Awadh, Faizaadl Mohd. Asghar Vs. Raghubar Das	359/Ga-Ex.34	5/131

601. Documents filed by defendants (Suit-1):

Sl. No	Description of Paper	Paper No./ Exhibit Mark	Register/ Page No.
1	Document written by Dr. H. C. Rai Proved by Gaya Prasad Tewari in the Court of Civil Judge, Faizabad on 14.12.1961	423 Ga-Ex. A1 (Not relevant now)	Relate to substitution matter have not enclosed
2	Document written by Dr. H. C. Rai Proved by Gaya Prasad Tewari in the Court of Civil Judge, Faizabad on 14.12.1961	425 Ga-Ex. A2 (Not relevant now)	Relate to substitution matter have not enclosed
3	Grant certificate of Chief Commissioner in favour of Rajjab Ali and Mohd. Asghar	6/83-Ex. A3	6/33
4	Death report of Mohd. Shami Mohalla Raiganj Ayodhya dated 26.6.1958	437 Ga-Ex. A3A (now not relevant)	8/565
5	Report dated 16.9.1938 by Sri S.M. Owais, District Waqf Commissioner	73/1-5A-Ex. A4	6/35

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6	Report dated 8.2.1941 by Mr. A Majeed District Waqf Commissioner	74/1-2A-Ex. A5	6/45
7	Application dated 5.6.1934 of Zaki and others U/s 15 of Police Act	75/1-Ex. A6	6/49
8	Agreement dated 25.7.1936 between Mohd. Zaki and Abdul Gaffar	75A-Ex. A7	6/63
9	Income expenditure statement of 1299, 1306 and 1307 Fasli	76A-Ex. A8	6/75
10	Asal Photo Masjid Babri	42-Ex. A9	6/151
11	Naqual register Tahkikat Moafi dated 14.3.1860	53/1 and 53/2, Ex. A10	6/153
12	Copy of register moafiyat faizabad govt. order 234 dated 29-06-60	80/C-Ex. A11	6/163
13	Naqual register A6 jeem Mutallikan Faizabad.	81/C-Ex. A12	6/165
14	Copy of application dated 25.9.1866 by Mohd. Afzal, Mutwalli, Masjid Babri, Oudh	57/C-Ex. A13	6/173
15	Copy of letter dated 25.8.1863 of Chief Commissioner Oudh to Commissioner, Faizabad	83C-Ex. A14	7/181
16	Copy of order dated 5/6.9.1863 of Finance Commissioner, Oudh to Commissioner, Faizabad	84C-Ex. A15	7/183
17	Copy of Robekar Rozanamacha-408 issued by extra Asst. Commissioner referring order dated 31.08.1863 of Dy. Commissioner, Faizabad and copy of the order sheet dated 9, 16, 28 and 30.09.1863 of Asst. Commissioner, Faizabad	41/59 Ex. A16	7/185
18	Copy of Robekar alongwith order sheet dated 16.8.1865 of Karnegi, Deputy Commissioner, Faizabad	41/60 Ex. A17	7/193
19	Copy of the order dated 30.10.1865 of Assistant commissioner	41/61-Ex. A18	7/193
20	Order and decree dated 30.1.1870 and 03.02.1870 of Settlement Officer's Court, Faizabad in Case No. 5, Mohd. Afzal Ali and Mohd Asghaer Vs. Government.	88C-Ex. A19	7/207

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21	Copy of order dated 22.8.1871 of Settlement Officer, Faizabad	89C-Ex. A20	7/231
22	Khasra 1277 Fasli (1873 AD) showing Plot No. 163	90C-Ex. A21	7/233
23	Copy of plaint dated 19.1.1885, Raghubar Das Vs. Sec. of State (case no. 61/280(1885))	91/1,2C-Ex. A22	7/237
24	Written Statement of Mohd. Asghar, defendant no. 2 in case no.61/280(1885) dated 22.12.1885	92/C-Ex. A23	7/255
25	Copy of the report dated 6.12.1885 of Gopal Sahai, Ameen, Raghuar Das Vs. Saheb Bahadur Secy. of State in case no. 61/280 of 1885	93/1/C-Ex. A24	7/271
26	Map prepared by Gopal Sahai, Ameen, Court Commissioner on 6.12.1885	94/2C-Ex. A25	7/277
27	Judgment dated 24.12.1885 Raghubar Das Vs. Secy. of State from the Court of Sub Judge, Faizabad case no. 61/280	94/1C-Ex. A26	7/283
28	Copy of judgment dated 18/26.3.1886 of F.E.A. Chemier D.J. Faizabad in CA no. 27/1885	95/1C-Ex. A27	7/319
29	Decree dated 18/26.3.1886, Raghubar Das Vs. Secy. of State, CA No. 27/1885, Court of D.J. Faizabad (F.E.A. Chamier)	96/1C-Ex. A28	7/325
30	Copy of report E.L. Norton Esquire L.R. to govt. 18.12.1929 with reference to the application U/s 92 CPC	97/1C-Ex. A29	7/331
31	Naqual Intekhab Khewat Mauja Bahoranpur 1332 F.	98/C-Ex. A30	7/333
32	Copy of account for the period 7.4.1924 to 28.3.1925 given by Sayed Mohd Zaki	100C-Ex. A31	7/357
33	Naqual Hisab for the period 29.3.1925 to 14.4.1926	101/C-Ex. A32	7/379
34	Copy of account income and expenditure dated 27/29.05.1943 regarding Mohd. Bahoranpur Moafi Mauja Bahoranpur for 25.9.41 to 12.9.42	102/C-Ex. A33	7/401
35	Naqual Indraj Waqf No. 26, Faizbad Govt. Gazette dated	103/C-Ex. A34	7/409

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	26.2.1944		
36	Hisab Amdani aur kharch Sunni Central Board of Waqf 1.4.1947 to 31.3.1948	104/C-Ex. A35	7/413
37	Report of Auditor (Khajahnci) 27.7.1948	105/C-Ex. A36	7/415
38	Nakal Khasara Abadi Kistwar	106/C-Ex. A37	7/417
39	Nakl Khasara Abadi Kistwar	107/C-Ex. A38	7/419
40	Naqual Naksha Kistwar Bandobhast	108/C-Ex. A39	7/421
41	Intekhab Naksha Abadi Mauja Ramkot Pargana Haveli	109/C-Ex. A40	7/423
42	Khewat Mauza Bahoranpur	110/C-Ex. A41	7/425
43	Copy of judgment dated 30.03.1946 Shia Waqf Board Vs. Sunni Waqf Board Regular Suit No. 29/1945, judgment by Sri. S.A. Ahsan	176/1C-Ex. A42	8/431
44	Copy of order of Dy. Commissioner Faizabad dated 6.10.1934 on the list of compensation regarding Babri Mosque	266 Ga-Ex. A43	8/459
45	Copy of estimate of Tahavar Khan Thekedar, Babri Masjid Ayodhya 15.4.1935	267 Ga-Ex. A44	8/461
46	Copy of order passed by Dy Commissioner, Faizabad dated 26.2.1935 on application of Tahavar Khan	268 Ga-Ex. A45	8/467
47	Copy of the report of Mubaraq Ali, Bail order 27.1.1936 regarding construction of mosque	269 Ga-Ex. A46	8/469
48	Copy of the order dated 29.1.1936 passed by A. D. Dixon regarding the repairs of the Babri Mosque, Ayodhya	270 Ga-Ex. A47	8/471
49	Copy of the inspection note dated 21.11.1935 by Zorawar Sharma Asst. Engineer P.W.D.	271/1-2 Ga-Ex. A48	8/473
50	Copy of the order dated 12.5.1934 passed by Milner White regarding cow slaughter question at	272 Ga-Ex. A49	8/477

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	Shahjanpur and Ayodhya Riot no. XV-162, 1929-30 to 1934-35		
51	Copy of the application moved by Tahavar Khan, Thekedar dated 16.4.1935	276 Ga-Ex. A50	8/479
52	Copy of the application moved by Tahavar Khan Thekedar dated 25.2.1935 (cow slaughter question)	274 Ga-Ex. A51	8/483
53	Copy of the application moved by Tahavar Khan Thekedar dated 30.4.1936	275 Ga-Ex. A52	8/485
54	Copy of the application moved by Tahavar Khan Thekedar dated 2.1.1936	276 Ga-Ex. A53	8/493
55	Report of the auditor dated 27.7.1948 for the year 1947-48	299-Ex. A54	8/501
56	Naqual Hisab Amdani Aur Kharcha Babat 1.10.1947 to 31.3.1948, Sunni Central Waqf Board U.P. Jawwad Husain Mutwali	300 Ga-Ex. A55	8/503
57	Report of the auditor for 1948-1949, Babat Waqf file no. 26	301 Ga-Ex. A56	8/505
58	Naqual Hisab Aamdani Aur Kharch 1.4.1948 to 31.3.1949	302 Ga-Ex. A57	8/507
59	Naqual report of the auditor from 1949-50 M. Husain, Auditor 23.12.1950	303 Ga-Ex. A58	8/509
60	Copy of the report of income and expenditure 1.4.1949 to 31.3.1950 by Jawad Husain Mutwali	304 Ga-Ex. A59	8/511
61	Copy of the register Waqf U/s 38 U.P. Muslim Waqf act No. 13/1936	305 Ga-Ex. A60	8/513
62	Copy of the application by Abdul Gaffar Pesh Imam Babri masjid dated 20.8.1938	306 Ga-Ex. A61	8/515
63	Naqual Murasala no. 5007/26/7 dated 25.11.1948	307 Ga-Ex. A62	8/519
64	Naqual report Mohd. Ibrahim Waqf Inspector dated 10.12.1949 for protection of mosque	308 Ga-Ex. A63	8/523
65	Naqual report Mohd. Ibrahim Saheb Waqf Inspector dated 23.12.1949 for protection of mosque	309 Ga-Ex. A64	8/529
66	Notice of Shiya Central Board to	310 Ga-	8/537

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	Sunni Central Board 11.4.1945	Ex. A65	
67	Original letter dated 20.11.1943 in reply of the letter no. 5272 dated 27.10.1943	311 Ga-Ex. A66	8/539
68	Copy of the application dated 19/20.7.1938 of Mohd. Zabi S/o Mohd. Razi addressed to Waqf Commissioner Faizabad	312 Ga-Ex. A67	8/547
69	Copy of the order of Dy. Commissioner Faizabad dated 19.1.1928 file no.14/77, 1922	313 Ga-Ex. A68	8/559
70	Copy of robekar dated 15.12.1858, Case no. 884 Awadh Darbar Janam Sthan-petitions moved to Thanedar Nihang Singh	361 Ga-Ex. A69	8/569
71	Copy of order dated 5.12.1858 regarding eviction of Faqir Tek Singh	362 Ga-Ex. A70	8/573
72	Shajara Sub Malikan Mauja Bahoranpur Pargana Haveli Awadh	177-Ex. A71	8/577
73	Naqual Hisab Madkhala Mohd. Zaki 9.7.1925	99/C-Ex. A72	7/337

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602. Documents of plaintiff (Suit-3) :

Sl. No	Description of Paper	Paper No. /Exhibit mark	Register / Page No.
1	Certified copy of agreement executed by Panchas of Nirmohi Akhara dated 19.3.1949	39C1/4-20 Ex.1	9/15
2	Certified copy of the order dated 9.2.1961 passed by City Magistrate, Faizabad	39C1/21-Ex.2	9/49
3	Original Certificate of erection/re-erection of the building file no. 289/59 in the name of Mahant Raghunath Das Chela Dharam Das, Ramkot Ayodhya along with the map	39C1/22 Ex.3	9/91
4	Original map/plan for the erection of the building file no. 397 dated 6.9.1963 in the name of Mahant Raghubar Das Chela Dharam Das resident of Ramkot, Ayodhya along with the certificate for the construction	39C1/24-25-Ex.4	9/53

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	of the building.		
5	Copy of the application moved by Vedanti Raja Ram Chandra Charya dated 6.2.1961 before City Magistrate Faizabad	39C1/26-Ex.5	9/59
6	Certified copy of the written statement of Baba Baldev Das dated 29.12.50 in the Court of City Magistrate, Faizabad in case no. 1/2/18, U/s 145 Cr.P.C.	39C1/27-28-Ex.6	9/61
7	Copy of the order dated 30.7.53 by Sri Prem Shanker City Magistrate Faizabad in case no. 1/2/18 U/s 145 Cr.P.C. P.S. Ayodhya Rex Vs.R.J.B.-B.M.	39C1/29-30-Ex.7	9/65
8	Original Qabuilyat (consent) by Jhingoo S/o Gaya in favour of Mahant Nirmohi Akhara regarding Sita Koop on 4 Annas Stamp executed on 11.6.1900 along with its translation	39C1/31-32-Ex.8	9/69
9	Original agreement (Theka) dated 29.10.1945 of the Shop of Janam Bhumi Remkot Ayodya in favour of Gopal S/o Babu Kurmi by Narottam Das dated 13.10.1942 on 1 rupee stamp along with its translation	39C1/33-34-Ex.9	9/73
10	Original agreement (Theka) 29.10.1945 of shop of Janam Bhumi executed in favour of Mata Prasad by Mahant Raghunath Das, Nirmohi Akhara on a stamp of rupees 1 and 4 Annas along with translation	39C1/35-36-Ex.10	9/77
11	Certified copy of the order dated 30.10.1922 regarding amendment of plaint	39C1/40-41-Ex.11	9/89
12	Certified copy of judgment of C.A. No. 10/1923 decided on 22.10.1923 in the Court of Sub Judge Faizabad in the case Mahant Narottam Das Vs. Ram Swaroop Das	40C1/2-5-Ex.12	9/93
13	Postal receipt of registered letter sent to Priya Dutt Ram dated 6.10.59	41C1/9-Ex.13	9/117
14	Receipt registered letter sent to S.P. Office Faizabad dated 6.10.59	41C1/10-Ex.14	9/119
15	Extract from the book “A History of Dasnami Naga Sanyacies” written by Sri Yadunah Sarkar admitted on 24.3.2009	51C1/1-17, Ex. 15	Separate

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16	Registered letter by Dy. Commissioner Faizabad to Mahant Raghunath Das Chela Mahant Dharam Das dated 30.11.59	41C1/5-Ex.16	9/109
17	Envelop registered A/D dispatched by Commissioner Faizabad dated 1.12.59	41C1/6-Ex.17	9/111
18	Acknowledgment S.P. Faizabad dated 7.10.59	41C1/7-Ex.18	9/113
19	Acknowledgment Priya Dutt Ram receiver Janam Bhumi dated 10.10.59	41C1/8-Ex.19	9/115
20	Book Sri Mad Bhagwat Gita published by Geeta Press Gorakhpur, C.M. Appl. No. 83(O) of 2003	43C1/1-Ex. 20	Book
21	Book "Rajasthan Ki Bhakti Parampara evam Sanskriti" writer Dinesh Chandra Shukla evam Omkar Narain Singh Jodhpur, C.M. Appl. No. 83(O) of 2003	43C1/8-Ex. 21	Book

603. Documents of plaintiffs (Suit-4) :

Sl. No.	Description of Paper	Paper No./Exhibit mark	Register/ Page No.
1	Grant certificate of Chief Commissioner Faizabad dated 22.12.60	7C1/1,2-Ex. 1	10/27
2	Copy of the register Moafi for rent free holdings dated 29.6.1860	8Ga 2 Ex. 2	10/29
3	Naqual Indrajaat register No. Jeem, Mashmula register No. 6/Ga dated 27.9.1902 with inspection note dated 27.9.1902	9Ga 1-Ex. 3	10/33
4	Copy of the map relating to village Ramkot Bandobast Sabiqua Awwal of 1st settlement 1861	10Ga 1-Ex. 4	10/35
5	Copy of Intekhab Khevat Aala Patwari Mutalliqua Mauza Bahoranpur, pargana Haveli tahsil Faizabad, District Faizabad relating to 1357F, Mashmoola 1355 to 1358	11Ga 1-Ex. 5	10/37
6	Copy of the robekar of Dy. Commissioner Faizabad dated 13.9.1868	12Ga 1-Ex. 6	10/39
7	Copy of the robekar Dy. Commissioner Faizabad dated 13.9.1865	13Ga 1-Ex. 7	10/41

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8	Copy of the judgment sabika register aam no. 15047, 23.8.1871	14Ga 1-Ex. 8	10/43
9	Copy of the order dated 22.8.1871 of Settlement Officer, Faizabad (Numberdaari Masumule Missil Haqiyat Bandobast Sabik Oudh)	15Ga 1-Ex. 9	10/45
10	Copy of Khsara abadi mauza Ramkot az jild Bandobast Sabik naqual no. 167 and 163 register no. 3056	16Ga 1-Ex. 10	10/47
11	Naqual Indrajaat Khasara Kishtwar Mashmoola Sabik Mauza, Ramkot Pargana Haveli, District Faizabad relating to Plot No. 163 & 167	17Ga 1-Ex. 11	10/55
12	Naqual Shajara Malikan Mauza Bahoranpur, Pargana Haveli Awadh District Faizabad	18Ga 1-Ex. 12	10/59
13	Copy of the plaint dated 19.1.1885 in case no. 61/280, year 1885 (Mahant Raghubar Das Vs. Secy. of State) in the Court of Sub Judge Faizabad Mai Naqsha Nazari	19Ga 1/1-2-Ex.13	10/63
14	Copy of written statement filed by Syed Mohd. Asghar Mutawalli Masjid Babari (Raghubar Das Vs. Secy. of State) Case no. 61/280, year 1885 decided on 24.12.1885 along with Hindi Translation	20/1Ga 1 and 20/2Ga 1-Ex.14	10/67
15	Copy of the report commissioner 6.12.1885 along with map case no. 61/280 year 1885 (M. Raghubar Das Vs. Secy. of State)	21/1Ga 1 and 21/2Ga 1-Ex.15	10/75
16	Copy of Judgement Munsif/Sub Judge Faizabad Pt. Hari Kishan dated 24.12.1885 (Dawa Banvane Mandir Chobootra) Case no. 61/280 year 1885 (M. Raghubar Das. Vs. Secy. of State)	22/1Ga 1 to 22/4Ga 1-Ex.16	10/85
17	Copy of judgment dated 18/26, 3-1886, passed by F.E.A. Chemier, District Judge, Faizabad in civil appeal no. 27/1886, Raghubar Das Vs. Secy. of State and Mohd. Asghar	23/1Ga 1 to 23/3Ga 1-Ex.17	10/91
18	Copy of decree in C.A. No. 27/1886 Court of District Judge Faizabad in Raghubar Das Vs. Secy. of State	24Ga 1/1 to 24Ga 2/1-Ex.18	10/95
19	Copy of the application Mumtaz	25/1Ga 1	10/99

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	Husain dated 18.12.29 in the Court of Civil Judge Faizabad recorded by E.L. Norton Esquire I.C.S.M.L.C., L.R. to Govt. United Provinces (Suit no. 2/50 Gopal Singh Visharad Vs. Zahoor Ahmad	to 25/2Ga 1-Ex.19 (page 97-99)	
20	Copy of judgment dated 30.3.1946 in R.S. No. 29/1945 passed by Sri Akhtar Ahsan Esquire Civil Judge Faizabad (Shia Central Board Vs. Sunni Central Board)	26/1-8Ga 1-Ex.20 (page 101-115)	10/115
21	Copy of report S.M. Visht District Waqf Commissioner dated 16.9.1938 suit no. 2/50 Gopal Singh Visharad Vs. Zahoor Ahmad	27/1Ga 1 to 27/4Ga 1-Ex.21	10/119
22	Copy of report Pister Sri A. Majeed District Waqf Commissioner dated 8.2.41 in suit no. 2 of 1950, Gopal Singh Visharad	28/1Ga 1 to 28/5Ga 1-Ex.22	10/125
23	Copy of application of Mohd. Zaki and others in the Court of Civil Judge Faizabad in case no. 2 of 1950 Gopal Singh Vs Zahoor Ahmad and others	29/1Ga 1 to 29/2Ga 1-Ex.23	10/135
24	Agreement dated 25.7.1936 between Mohd. Zaki and Abdul Gaffar.	30/1Ga 1 to 30/2Ga 1-Ex.24	10/139
25	Copy of order dated 30.7.53 passed by Sri Prem Shanker City Magistrate 1st class in case no. 1/2/18, U/S 145 Cr.P.C. State Vs. Janam Bhumi	31/1Ga 1 to 31/2Ga 1-Ex.25	10/143
26	Postal receipt dated 19.9.61, High Court Branch, Lucknow	32/Ga 1-Ex.26	10/145
27	Postal receipt dated 21.9.61, High Court Branch Lucknow.	34/Ga-Ex.27	10/149
28	Postal receipt Dy. Commissioner Faizabad dated 19.9.1961	36/Ga 1-Ex.28	10/153
29	Postal receipt dated 19.9.61, High Court	38Ka 1-Ex.29	10/157
30	Postal receipt dated 19.9.61, High Court	40Ka 1-Ex.30	10/161
31	Postal receipt dated 19.6.61 to Babu Priya Dutt Ram	42Ka 1-Ex.31	10/165
32	Copy of the report of Auditor of Sunni Central Board of Waqf for the year 1947-48, waqf file no. 26 District Faizabad regarding Babri	202/Ga 1-Ex.32	11/177

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	Masjid Faizabad along with Hindi transliteration		
33	Copy of the account of income and expenditure for 1947-48, filed by Jawad Husain Mutawalli Babri Masjid with Hindi transliteration	203/Ga 1-Ex.33	11/181
34	Copy of the report of auditor for 1948-49, included in the Waqf file no. 26	204/Ga 1-Ex.34	11/185
35	Copy of the account of income and expenditure for the year 1948-49, file by Mutawalli S.C.W.B. along with transliteration	205/Ga 1-Ex.35	11/187
36	Copy of the report of auditor for the year 1949-50, file no. 26 along with Hindi Transliteration	206/Ga 1-Ex.36	11/191
37	Copy of the account of income and expenditure for 1949-50 filed by Mutawalli Babri Masjid with Hindi Transliteration	207/Ga 1-Ex.37	11/193
38	Copy of form of registration of Waqf U/s 38 of the Waqf act (13/1936) including in Waqf file no. 26	208/Ga1 -Ex.38	11/197
39	Copy of extract of Waqfs in respect of Waqf no. 26 of the Masjid Babri District Faizabad Published in U.P. Gazette dated 26.2.1944 along with transliteration	209/Ga 1-Ex.39	11/207
40	Copy of application of Abdul Ghaffar Pesh Imam Babri Masjid to the Waqf Commissioner Faizabad dated 20.8.1938 along with Hindi Transliteration	210/Ga 1-Ex.40	11/211
41	Copy of the notice issued by the Secy. Sunni Central Waqf Board to Munshi Jawad Husain Mutwalli Babri Masjid dated 25.11.48 letter no. 5007/26VII, along with transliteration	211/Ga 1-Ex.41	11/215
42	Copy of plaint in case no. 2/50 Gopal Singh Visharad vs. Zahoor Ahmad and others in the Court of Civil Judge Faizabad	212/Ga 1/1/3 Ex. 42	11/219
43	Copy of W.S. in the above suit by defendant no. 9, S.P. Faizabad dated 1.5.1950	213/Ga 1-4-Ex. 43	11/225
44	Copy of the W.S. by defendant no. 6	214Ga	11/233

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	in the above suit by deputy Commissioner Faizabad	1/1-4-Ex. 44	
45	Copy of the W.S. of defendant no. 8, City Magistrate Faizabad Sri Markandey Singh	215/Ga/1/1-3 Ex. 45	11/241
46	Copy of plaint in R.S. No. 25/50, Paramhans Ramchandra Das Vs. Zahor Ahmad in the Court of Civil Judge Faizabad	216Ga 1/1-4 Ex. 46	11/247
47	Copy of W.S. filed by Dy. Commissioner Faizabad defendant no. 6 in case no. 25/50, Paramhans Ramchandra Das Vs. Zahoor Ahmad in the Court of Civil Judge Faizabad dated 1.1.51	217/Ga 1/1-4 Ex. 47	11/255
48	Copy of W.S. filed by defendant no. 7 Deputy Commissioner Faizabad in case no. 25/50, Paramhans Ramchandra Das Vs. Zahoor Ahmad	218C 1/1-4-Ex. 48	11/263
49	Copy of the Tarmimi Khasra Mohalla Ramkot Ayodhya District Faizabad 1931 from the record of Nazool along with Hindi transliteration	Ex. 49	11/283
50	Copy of map Kishtwar Mohalla Ramkot City Ayodhya District Faizabad 1338 F.	220Ga 1- Ex. 50	11/331
51	Copy of the report F.I.R. No. 167 Dated 23.12.1949, P.S. Chowk Katra Ayodhya section 145 Cr.P.C. case no. 2/50, Janam Bhumi (Date of judgment 30.7.53, Court of City Magistrate Faizabad)	236/Ga-Ex. 51	12/337
52	Certified copy of the Khasara Abadi of Mauza Ramkot of Ayodhya of 1931 issued by the Nazool Officer Faizabad in February 1990	65A2/2-3-Ex. 52/ Ex. 49	12/350
53	Certified copy of inspection note of Civil Judge Faizabad dated 26.3.1946, page no. 165(A) in suit no. 29/1945, Shia Waqf Board Vs. Sunni Waqf Board	295Ga 1/1-2 Ex.53	12/355
54	Certified copy of the application of Mohd. Asghar and others dated 12.3.1961 District Commissioner of Faizabad file no. 25 Mohalla Kot Ram Chander Ayodhya Meer Rajjab	296Ga 1/1-Ex. 54	12/359

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	Ali Vs. Imkani Singh, Date of Judgment 18.3.1861		
55	Certified copy of report of Khem Sing Subedar dated 16.3.1861, regarding demolition of Kutiya of defendant Imkani Singh	297Ga 1/1-4 Ex.55	12/363
56	Registered A.D. to Babu Priya Dutt Ram	44Ka 1-Ex. 56	10/169
57	Acknowledgment State of U.P. through Secy to State govt. U.P. dated 21.9.1961	33/Ga 1-Ex. 57	10/147
58	Acknowledgment State of U.P. through Collector Faizabad dated 20.9.	35/Ga-Ex. 58	10/151
59	Acknowledgment Dy. Commissioner 20.9.61	37/Ga 1-Ex. 59	10/155
60	Acknowledgment City Magistrate Faizabad 20.9.61	39Ka 1-Ex. 60	10/159
61	Acknowledgment S.P.Faizabad dated 20.9.61	41Ka 1-Ex. 61	10/163
62	A Historian Report to The Nation by R.S. Sharma, M. Athar Ali, D.N. Jha and Suraj Bhan	190C2/1-35 Ex.62	12/367
63	Dr. D. Mandal's Book "Ayodhya-Archaeology after Demolition"	Ex. 63= Ex. D26 (Suit-5)	30/9
64	Photo copy of the Title page and photographs the book " Ek Drastikon Ram Janam Bhoomi, Babri Masjid Vivad" by R. S. Srivastava	260 C1/1-12 Ex.64	16/80
65	Photo copy of the Title page and photographs the book " Ek Drastikon Ram Janam Bhoomi, Babri Masjid Vivad" by R. S. Srivastava	262 C1/1-4-Ex. 65	16/93
66	Letter dated 26-12-1949 by K.K.K. Nayar (ICS)	202C2/ 202 to 204 Ex. 66	Separate (C.M. Application No. 20(O)02
67	Letter dated 27-12-1949 by K.K.K. Nayar	C2/203-203/5 Ex. 67	do
68	Photocopy of title page and pages of the book entitled as "Bhai Baley Wali Sri Guru Nanak Dev Ji Ki Janam Sakhi"	208 C1/ 1-4-Ex.68	15/3
69	Photocopy of the title page and pages	210	15/8

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	of the book titled as " Sikh and Sikhism" by W.H.Mc Leod	C1/1-10 Ex.69	
70	Photocopy of the title page and pages of the book title as "The Sikh Religion" by Max Arthur Macauliffe Vol. I	230C1/ 1-10 Ex.70	15/167
71	Photocopy of the title page and pages of the book title as " Sri Guru Granth Sahib" (Chauthi Sanchi) by Dr. Manmohan Sehgal	232 C1/ 1-5- Ex.71	15/178
72	Photocopy of the book " The Sikh Religion" by Max Aurthur Macauliffe. Vol. I	234 C1/ 1-7- Ex.72	15/184
73	Photocopy of the title page and pages of the book entitled as "The Evolution of the Sikh Community" by W.H. Mcleod	236 C1/1-5- Ex.73	15/192
74	Photocopy of the title page of the book " The Sikh World" by Ramesh Chandra Dogra	238 C1/1-5- Ex.74	15/198
75	Photocopy of the title page of the book entitled as " A History of the Sikhs" by Khushwant Singh, Vol.I	240C1/1 -16- Ex.75	15/204
76	Photocopy of the title page of the book entitled as "Sri Guru Granth Sahib" (Pahli Sanchi) by Dr. Manmohan Sehgal.	248 C1/1-7- Ex.76	15 and 16/21
77	Photocopy of the title page of the book entitled as "Janam Sakhi Das Guru, i.e. Suraj Prakash" by Gyani Gyan Singh Ji.	250 C1/1-2- Ex.77	16/28
78	Photocopy of the title page of the book entitled as "Adi Sri Guru Granth Sahib" (Tisri Sanchi) by Dr. Manmohan Sahgal.	252 C1/1-10 Ex.78	16/31
79	Photocopy of the title page of the book entitle as "Adi Sri Guru Granth Sahib" (Dusari Sanchi)	254 C1/1 –17 Ex. 79	16/42
80	Photocopy of the title page of the book title as " Sri Mad Dev Murari Ji ki Jeevani Tatha Sri Guru Parampara Prakash".	256 C1/1-5- Ex. 80	16/60
81	Photocopy of the title page of the book entitle as "Babar Nama" Anuwadak Yugjeet Naval Puri	216 C1/1-21 Ex. 81	15/31
82	Photocopy of the title page of the book entitled as "Memoires of Babar	218 C1/ 1- 20	15/52

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	Emperor of India" by Lt. Col. F.G. Talbot	Ex. 82	
83	Photocopy of the title page of the book entitle as "Babar Nama" Anuwadak Yugjeet Naval Puri (408-426)	220 C1/ 1-11 Ex. 83	15/73
84	Photocopy of the title page of the book entitle as "Babar Nama" Anuwadak Yugjeet Naval Puri (P. 458-459, 486, 487, 512-515)	222 C1/ 1- 5 Ex. 84	15/85
85	Photocopy of the title page of the book entitled as "Mugha Kaleen Bharat 'Babar'" Anuwadak Syed Athar Abbas Rizvi	224 C1/1 –62 Ex. 85	15/91
86	Photocopy of the title page of the book entitled as "Sri Guru Granth Saheb" by Dr. Manmohan Sehgal	212 C1/ 1-4 Ex. 86	15/19
87	Photocopy of the title page of the book entitled as "The History of India" as told by its own historian Vol. VI by Sir H.N. Elliot, K.C.B.	242 C1/ 1-5 Ex. 87	16/20
88	Photocopy of the title page of the book entitled as "The History of India" as told by its own historian Vol. IV	244 C1/ 1-7 Ex. 88	16/7
89	Photocopy of the title page of the book entitled as "The History of India" as told by its own historian Vol. III	246 C1/1-7 Ex. 89	16/14-20
90	Copy of title page and contents of pages 51-53 and 62-65 of Disputed Mosque by Sushil Srivastava proved by DW 13/1-3	280-C-1/1-6 Ex. 90	16/157
91	Copy of extract of title page and P. 659-660 of Mughal Kaleen Bharat by Syed Athar Abbas Rizvi (P. 135-136) proved by Dr. Bisan Bahadur DW 13/1-3	282C-1/1-3 Ex. 91	16/164
92	Mughal Empire in India by Prof. S.R. Sharma, (page 12-34) proved at p. 177 and 178 by statement of DW 13/1-3 Bisan Bahadur	284C-1/1-14 Ex. 92	16/168
93	Copy of the title page and pages 69 to 73 of the book entitled as "Indian Archaeology – A Review 1988-89"	304C1/1 -7-Ex. 93	Separate
94	Copy of the title page and pages 81 to 82 of the book entitled as "Indian	304C1/8 -11	Separate

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	Archaeology – A Review 1988-89"	Ex. 94	
95	Copy of the title page and pages 48 to 49 of the book entitled as "Indian Archaeology – A Review 1976-77"	304C1/12-15 Ex. 95	Separate
96	Copy of the title page and pages 13 of the book entitled as "Indian Archaeology – A Review 1960-61"	304C1/16-18- Ex. 96	Separate
97	Copy of the title page and pages 16 to 17 of the book entitled as "Indian Archaeology – A Review 1963-64"	304C1/19-22 Ex. 97	Separate
98	Copy of the title page and pages 20 to 22 of the book entitled as "Indian Archaeology – A Review 1966- 67"	304C1/23-28 Ex. 98	Separate
99	Copy of the title page and pages 88 to 94 of the book entitled as "Indian Archaeology – A Review 1989-90"	304C1/29-37- Ex. 99	Separate
100	Copy of the title pages, Foreward, Preface, Acknowledgement and contents of the book entitled as "Excavation at Kalibangan"	304C1/38-43 Ex. 100	Separate
101	Photo copy of the book titled as "The New Encyclopaedia Britanika Vol-27	228C1/1-7 Ex. 101	15/159
102	Photostat copy of the title page, preface, contents and pages 259 to 281 of the book entitled as " The History Of India as told by its Historian Vol. II" by Sir H.M, Elliot and John Dowson as per list 285C1	286C1/1-14 Ex. 102	16/183
103	Epigraphica India (Arabic and Perssian Supplement 1965 Edited by Dr. Z.A. Desai, filed on 19.11.2001 by P.W. 20 Shireen Moosvi	196BC2/15-22 Ex. 103	Separate C.M. 31(O)/2001
104	Early Travels in India 1583-1619, Edited by William Foster C.I.E.	196BC2/23-26 Ex-104	do
105	Catalogue of Historical Documents in Kapad Dwara Jaipur Part II Map and Plans By Gopal Narain Bahura and C.M. Singh Jaipur 1990	196BC2/27, 28 Ex. 105	do
106	List of Sunni Waqf's situated in Agra and Awadh on which UP Muslim Waqf Act 13 of 1936 applies published in Govt. Gazetteer	244GA-1 Ex. 106	12/407

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	alongwith original Gazettee 1944		
107	Indian Archaeology since Independence edited by Sri K.M. Shrimali. Delhi 1996-Association for the Study of History and Archaeology	199C-2/1 Ex. 107	18(0)2002 Separate
108	Mathura in Literature and Archaeology- Sita Ram Roy filed though (C.M. Appl. No. 18 (O) of 2002 in Re 4/89 dated 22.04.2002)	199C-2/2 Ex. 108	do
109	Relevant extract of the book entitled as "Fawaidul Fawad" published from Lahore in 1966, filed through C.M. Appl. No. 31(O) of 2001 In Re. OOS No. 4/1989, by Shireen Moosvi. P.W. 20 on 19.11.2001.	196BC-2 to 196BC-2/4 Ex. 109	Book/31(0)01 Separate
110	Relevant extract book "Khairul Majalis" edited by Prof. Khaliq Ahmad Nizami published by Dept. of History A.M.U.	196BC-2/5-12 Ex. 110	do
111	Relevant Extract of the Book "Khulasatu-Tawarikh" written by Munshi Sujan Rai Bhandari published from Delhi in 1918.	196 BC-2/13-14 Ex. 111	do
112	Page 134/1-4, Photostat copy of "Palistan Archaeology-Edited by M. Haraounmur Rashid, Annex. No. 1 to the affidavit of Suraj Bhan PW 16 on 20.03.2006 (Part-III of the statement) with affidavit of Suraj Bhan	Ex. 112	With affidavit of Suraj Bhan
113	Page 20/1-20/5, Extract from "Indian Archaeology-A Review" edited by Ajai Shanker, Director General, ASI 1997 pages 6-9, Annex. 1 to the affidavit of R.C. Thakran at the time of statement	Ex. 113	do
114	Page 20/8, 20/9, "Ancient India" Bulletin of ASI Numbers 3, 1947, Annex. II to the affidavit of R.C. Thakran at the time of statement	EX. 114	do
115	Page 20/10-20/12, I.A.R. 1988-89 edited by M.C. Joshi, published by ASI 1993, Annex. III to the affidavit of R.C. Thakran at the time of statement	Ex. 115	do
116	Page 20/14-20, Indian Archaeology 1991-92 edited by B.P. Singh,	Ex. 116	do

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	Secretary Dept. of Culture and D.G. A.S.I. 1996 Edition, Annex. IV to the affidavit of R.C. Thakarn		
117	Page 19/1-8, Extract from "Archaeology-The Basics" by Clive Gamble. Annex. I to the affidavit of PW 32, Supria Verma	Ex. 117	With affidavit of Supriya Verma
118	Annex. 2 to 11, filed alongwith additional objection against ASI report by the plaintiff of OOS 4 of 1989 at page 29, 30 of her affidavit. Has proved all these photographs which are of the different mosques, platforms and walls etc.	Ex. 118-127	With object--ion of Z. Jilani
119	Extract from "Sri Ram Janam Bhumi Ka Rakta Ranjit Itihas" by Pandit Ram Goptal Pandey "Sharad" published in 1987, Title page and pages 14,15,31, 33, 34 and 95, filed on 10.9.2003 by Sri Z. Jilani, Adv., during cross examination of DW 3/1	44C-1/1-8 through list 44C-1 Ex. 128	19/33

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604. Documents filed by defendants in (Suit-4):

Sl. No.	Description of Paper	Paper No./ Exhibit mark	Register/ Page No.
1	Copy of the preliminary order passed by Sri Markandey Singh Magistrate ! st Class (Addl. City Magistrate, Faizabad cum Ayodhya) dae of order 29.12.1949	231/C1, Ex. A1	14/5
2	Copy of the order passed on 30.7.1953 by City Magistrate Prem Shanker in case no. 1/2/18 U/s 145 Cr.P.C.	232/1/C1-2, Ex. A2	14/7
3	Copy of supurdnama dated 5.1.50 in the Court of City Magistrate Faizabad in case no. 1/2/18 U/s 145 Cr.P.C.	233/C1, Ex. A3 (page 33 Vol. I) =Ex-1 of Suit-4	14/11
4	Certified copy of the order dated 04-06-1942 on compromise in R.S. No. 95/1941, in the court of Add. Civil	43B 1/2, Ex. A4	14/15

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	Judge Faizabad Nirmohi Akhara Vs Raghunath Das and 7 others		
5	Certified copy of the decree with terms of compromise in R.S. No. 95/1941 in the Court of Civil Judge Faizabad Mahant Ramcharan Das Vs. Raghunath Das and others	43B1/3-9, Ex. A5 (page 45-48)	14/17
6.	Copy of the commission report dated 18-04-1942, filed by Pleader commissioner in R. S. No. 95/41	43B1/10-16, Ex. A6	14/31
7	Certified copy of judgment dated 4.11.1966, U/s 145 Cr.P.C. By Munsif Faizabad Mahant Prem Das Vs. Ram Lakhan Das Golkee	43B1/17-20, Ex. A7	14/45
8	Certified copy of reference order of City Magistrate in aforesaid case dated 9.9.1966 case no. 10/1966	43B1/21-25, Ex. A8	14/55
9	Geetawali by Goswami Tulsi Das Filed in O.O.S. 4/89 by Deponent No. 3 Through his witness R.P. Pandey. Marked Exhibit as per order of Court dt. 8-7-08	46C-1/1, Ex. A9	19/53
10	Appendix 'A' to the book "A Historical Sketch of Teh. Faizabad" by P. Karnegi, Officiating Commissioner and Settlement Officer	258C-1/1-14, Ex. A10	16/66
11	Certified copy of Khasra 1308F Nazool regarding registered Nazul plot no. 588 Vill. Kot Ramchandra Ayodhya	43B1/27, Ex. A11	14/69
12	Certified copy of the statement of Abhiram Das Chela Saryu Das in the Court of D,J Fazizabad in case no. 12/61, Dated 18-03-1978	266C-1/1-3, Ex. A12	16/121
13	Certified copy of the charge sheet under session trial no. 49/83 in the court of 3rd Additional Session Judge as per list 269C1, marked as paper no. 270C1/1-7	270C-1/1-7 Ex. A13	16/137
14	Certified copy of the objection by Dharm Das dated 16-07-1982 in the court of A.D.M/ Nazul Officer	272C1/1-3, Ex. A14	16/144
15	Certified copy of the affidavit of Dharam Das dated 16-07-1982 in the court of ADM/Nazul Officer, in case no. 101/133/26/866	276C1/1-3, Ex. A15	16/151

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16	Affidavit of DW 3/20, Sri Ram Chandracharya (Statement)	Ann. 19, page 16/51, Ex. A16	Separate
17	Copy of the application moved by Abhiram Das in the Court of A.D.M. Faizabad in case no. 58/73, Misc. Appl. P.S. Kotwali district Faizabad dated 11.6.1956	431/C1, Ex. M1	17/7
18	Copy of the order dated 26.6.50 by H.S. Tewari A.D.M. Faizabad case no. 58/73 of 1956, on Misc. Appl of Abhiram Das P.S. Kotwali District Faizabad	432/C1, Ex. M2	17/9
19	Copy of application by Abhiram Das dated 21.12.62 before City Magistrate Faizabad	433/C1, Ex. M3	17/11
20	Report made by Sri Priya Dutt Ram receiver on Misc. application of Baba Abhiram Das dated 21.12.62	434/C1, Ex. M4	17/13
21	Copy of order dated 21.12.1962passed by city magistrate S.N. Sharma on Misc. Application of Abhiram Das dated 21.12.62	435/C1, Ex. M5	17/15
22	Copy of order dated 21.12.1962 passed by Sri S.N. Sharma City Magistrate Faizabad on Misc. Application of Abhiram Das	436/C1, Ex. M6	17/17
23	Copy of the record of the right (3 yearly) from 1374 to 1376 F, village Dihwa, Pargana Pratamganj, Tahsil Nawabganj	442/Ga1, Ex. M7	17/29
24	Copy of Bandobast Map 1944-45 F Babat Mauza Ramkot Pargana Haveli Awadh Faizabad	54A2/11 , Ex. B1	33/13
25	Copy of Naqual Khasra Kishtwar Bandobast of the year 1344-45 F Mauza Ramkot, Pargana Haveli Awadh, Faizabad with Hindi copy	54A2/12 -20, Ex. B2	33/15
26	Photograph back view of the building	54A2/30 , Ex. B3	33/51
27	Book titled as “Sikh Itihas Mein Sri Ram Janam Bhumi” by Rajendra Singh D.W. 2/1-1	206C1, Ex. B4	15/1
28	Annexure filed alongwith the affidavit of Rajendra Singh D. W. 2/1-1 Book titled as “ Bhai Bale Wali	12/14-16, Ex. B5	Separate

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	Janam Sakhi"		
29	Annex. 1, Extract from "Janam Sakhi Bhai Bala Ka" by Dr. Gurubachan Kaur: (Hindi Transliteration) D.W.2/1-1 (statement)	12/1-3, Ex. B6	Separate
30	Annex. 2, Extract from "Janam Sakhi Sri Guru Nanak Dev Ji" by Sri Mihir Wan Ji Sodi (Hindi Transliteration) D.W.2/1-1 (statement)	12/4-5, Ex. B7	Separate
31	Annex. 3, Extract from "Aadi Sakhiya" Third Edition published by Lahor Book ShopD.W.2/1-1 (statement)	12/6-8, Ex. B8	Separate
32	Annex. 4, Extract from "Puratan Janam Sakhi- Sri Guru Nanak Dev Ji Ki" (Sachitra) D.W.2/1-1 (statement)	12/9-10, Ex. B9	Separate
33	Annex. 5, Extract from "Pothi Janam Sakhi" D.W.2/1-1 (statement)	12/11-13, Ex. B10	Separate
34	Annex. 6, Extract from "Guru Nanak Bans Prakash (Punjabi) by Sukhbasi Ram Bedi, edited by Gurumukh Singh, Languages Dept. Punjab, Patiala, 1986 D.W.2/1-1 (statement)	12/18-20, Ex. B11	Separate
35	Annex. 8, Extract from "Janam Sakhi Sri Guru Nanak Dev Ji" by Mihirwan Ji Sodhi D.W.2/1-1 (statement)	12/21-24, Ex. B12	Separate
36	Annex. 9, Extract from "Janam Sakhi Sri Guru Nanak Dev Ji" by Mihirwan Ji Sodhi D.W.2/1-1 (statement)	12/25-35, Ex. B13	Separate
37	Annex. 10, Extract from "Sri Guru Teerth Sangrah" by Sriman Tara Hari Narottam D.W.2/1-1 (statement)	12/36-39, Ex. B14	Separate
38	Annex. 11, Extract from "Twarikh Guru Khalsa" by Bhai Gyan Singh Ji Gyani D.W.2/1-1 (statement)	12/40-42, Ex. B15	Separate
39	Presidential Address by S.P. Gupta on 22.12.1989 in Guntoor (A.P.) on the subject "Sri Ram Janam Bhumi Controversy- Passion apart what history and archaeology have to say on this Issue", Proved by the witness at page 9 of his evidence as OPW 3	54A2/50-70, Ex. B16	33/51
40	Photocopy of the photograph of Babri Masjid without Meenars	78A-2/52, Ex. J1	13/99
41	Srimad Valmiki Ramayan	261	Separate

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		C1/182 Ex. J2/1 and J2/2	book
42	Maharishi Valmiki Praneet Valmiki Ramayan Sloka-6	78A2/7, Ex. J3	13/13
43	Photograph of Faizabad District Gazeetter 1905, pages 173, 174	78A2/53 -55, Ex. J4	13/101
44	Photograph of the extract from "Babar Nama" Vol.-II, written by A.S. Beveridge, appendix LXVII and LXXVIII and also page LXXVII-IXXI	78A-2/21-24,Ex. J5	13/39
45	History of Awadh (Amir Ali Shaheed or Marka_E_Hanuman Ghari by Sheikh Mohd. Azmat Ali Kakorbi, page 3, 9, 72	78A-2/25-27, Ex. J6	13/47
46	Photocopy of encyclopedia Britanica Vol. I 693, 694	87B-1/3, Ex. J7	13/115
47	Photograph of the extract from the book "Babar Nama" by A.S. Beveridge, pages 656, 657	87B-1/7-Ex. J8	13/127
48	Photograph of the extract from the book "Babar Nama" by A.S. Beveridge, page 602	87B-1/8-Ex. J-9	13/129
49	Fasanae-E-Ibrat Page 71 by Mirza Bazeb Ali Beg	78A-2/28-30, Ex. J10	13/53
50	Extract of the Book Titled as "The Disputed Mosque" Page no. 22	C2-161/1, Ex. J11	34/69
51	Last page of the cover of the book titled as " Disputed Mosque"	C2-162/, Ex. J12	34/71
52	Photo copy of the Bevridge's translation of the book " Babarnama" page no. 401 and 402	C2-163/1-2, Ex. J13	34/73
53	Photo copy of the pages of the book entitled as " Memoir of Zaheer-Ud-Din Mohammad Babar Emperor of Hindustan	C2-164/1-3, Ex. J14	34/77
54	Photo copy of the Extract of the book Titled as " Disputed Mosque" by Sushil Srivastava Page no. 72	C2-165/1, Ex. J15	34/83
55	Photo copy of the Foot note 22 of Page no. 95 in the Chapter " Did Babar Build the Masjid" of the book " Disputed Mosque" by Susheel	C2-166/1, Ex. J16	34/85

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	Srivastava		
56	Extract of the Book entitled as “Ain-I-Akbari” page no. 182	C2-167/, Ex. J17	34/87
57	Extract of the book entitled as “ Memories of Babar” page no. 333	C2-168 Ex. J18	34/89
58	Photo copy of the extract of the book entitled as “ Early Travels in India” written by William Foster	C2-170/, Ex. J19	34/117
59	Photo copy of the Extract of the book “History of the Buddhism In Kashmir” by Dr. Sarla Khosla	C2-171/1-5, Ex. J20	34/127
60	Photo copy of the book titled as“Kalhan’s Rajtarangani” by M. A. Stein Vol-2	C2-172/1-4, Ex. J21	34/119
61	Photo copy of the book titled as “ The History, Antiquities, Topography and Statistics of Eastern India” Vol – II by Montgomry Martin	C2-178/1-8, Ex. J22	35/211
62	Photo copy of the Extract of the book titled as “ History of India under Babar” by William Erskin	C2-180/1-8, Ex. J23	35/253
63	Photo copy of the Extract of the Monumental Antiquities and Inscription in the North Western Provinces and Oudh by A. Fuhrer	C2-181 Ex. J24	35/273
64	Photo copy of the Extract of the book “Early travels in India 1583-1619” Edited by William Faster	C2-182/1-4, Ex. J25	36/381
65	Photo copy of the Extract of the book titled as “Indian Antiquities" edited by Richard Carnac Vol. XXXVIII-1908	C2-185/1-4, Ex. J26	36/423
66	Photo copy of the Extract of the book “Hadeeke-A-Shohda”	C2-187/1-6, Ex. J27	36/445
67	Extract from book titled as “Babur” by Dr. Radhey Shyam	C2/169/1-13, Ex. J28	34/91
68	Extract from the report of “Tours in the Central Doab and Gorakhpur in 1974-75 and 1875-76” by A.C.L. Carlleyle under the Superinten--dence of Major General A Cunningham Vol. XII.	179C2/1-8, Ex. J29	35/237
69	Ayodhya in Ancient India by B.C. Law, report of B.C. Law (Journal of Jha Research Institute Vol. 1, page	C2 173/1-11,	34/137

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	423-443)	Ex. J30	
70	Holi Quran Majid, Page 3, 4 written by Maulana Sayed Farman Ali	78A2/31 , Ex. J31	13/57
71	"Purattava" Bulletin of the Indian Archaeology society	302C1, Ex.T-1	Separate book
72	Photocopy of the district Gazetteer Faizabad written by E.B. Joshi 1960	43A1/12 -21, Ex. T-2	18/25
73	Photocopy of the extracts of "Babarnama" translated by A.S. Beveridge Vol II	43A1/22 -24, Ex.T-3	18/45
74	Photocopy of the pages from the book "Ramacharita Manas" Tikakar Dr. Raj Bahadur Pandey	43A1/29 to 35,Ex-T-4	18/59
75	Photocopy of the district Gazetteer Faizabad 1905 of United Provinces of Agra and Awadh written by H. R. Nevill	43A1/2 to 11, Ex. T-5	18/5
76	Photocopy of the pages from the book "Ain-E-Akbari" by Col. H.S. Harett written by Abul Fazal Allani Vol. II	43A-1/25-28 Ex. T-6	18/51
77	Copy of the page 334 of the book entitled as "Dictionary of Islam" By Thomas Patric Huge. Court order dated 11-11-97(P.W. 11 Statement, at page 58)	120C1/3 -Ex.V-1 =Book Ex.005-5-34	Separate book
78	Photo Copy of the Extract of the chapter entitled as "Did Babar Build The Masjid"	C2-155/1-17, Ex. Q1	34/3
79	Photo Copy of the Extract of the book "Babar Nama" by Bevridge	C2-156/1-5, Ex. Q2	34/37
80	Extract of the Chapter " Did Babar Build the Masjid"	C2-159/1-5, Ex. Q3	34/57
81	Page 8 of " The disputed Mosque"	C2-160/1. Ex. Q4	34/67
82	Photo copy of the Extract of the book "Dictionary of the Islam" by Thomas Patrick	C2-196/1,2, Ex. Q5	36/553
83	Babarnama translated by A.S. Beveridge, Chapter "Hindustan" page 602, 603, 604 and 656	C2-157/1-4 Ex. Q6	34/47

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605. Documents of plaintiff (Suit-5) :

Sl. No.	Description of Paper	Paper No./ Exhibit mark	Register/ Page No.
1	Certified copy of the plaint in Suit No. 29/1945 Shia Central Board of Waqf Vs Sunni Central Board of Waqf (Civil Judge Faizabad)	107C1/248-250, Ex. 1	23/703
2	Report of K.V. Ramesh O.P.W. 10	306 C-1/1-11, Ex. 2	29/5
3	Book written by S.P. Gupta and T.P. Verma "Ayodhya Ka Itihas and Puratattava Rig Ved Se Abtak"	289C1/1, Ex. 3	Separate book
4	Annexure 1 of S.C. Mitttal's Affidavit of examination in Chief extract of Benjamin Walker' Book "Hindu World and Encyclopaedic Survey of Hinduism" Vol. I, Page 103 and 104 of the book.	310C1 and 310C1/1-3, Ex. 4	Separate
5	Photocopy of pages 739 to 740 of the gazetteer of the territories under the Govt. of East India Company by Edward Thornton 1854	107C1/10-11, Ex. 5	20/21
6	Photocopy of plate XLIX and pages 320-327 from the book "Archaeological Survey of India, 4 reports 1862,63,64 and 65, vol. I by Alexander Cunningham C.S.I.	107C1/12-16A, Ex. 6	20/25
7	Photocopy of pages 6 and 7 of the gazetteer of Oudh vol. I, 1877	107C1/25-26, Ex. 7	20/51
8	Photocopy of paras no. 618-19, 666-67-68-69, from the pages of the book "Report of settlement of land revenue Faizabad District" by A. F. Millett. C. S. Govt. Press Allahabad 1880	107C1/27-30, Ex. 8	20/55
9	Photocopy of pages 295 to 297 with frontispiece of the book "The Monumental antiquities and inscriptions in the north western provinces and Awadh described and arranged by A. Fuhror, Phd. Of the Archaeological Survey N.W.P and	107C1/33-36, Ex. 9	20/67

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	Oudh Allahabad and others at Calcutta, Madras, Bombay ,London, Isipaig		
10	Photocopy of the page and pages of 388 and 389 of the Imperial Gazetteer of India, Provincial series united provinces of Agra and Oudh Vol. II the Allahabad, Banaras, Gorakhpur Kumaon, Lucknow and Faizabad divisions and the native states with frontispiece XLIII district gazetteer of the united provinces Agra and Oudh by N. R. Nobell I.C.S., Govt. Press Allahabad 1905, edition	312C-1/22-23,Ex. 10	29/87
11	Photocopy of pages 172 to 174 and 175 to 177 with frontispiece of Faizabad gazetteer vol. XLIII 1905 Edition District Gazetteers of United Province of Agra Oudh	107C1/42-48, Ex. 11	20/85
12	Same as above 1928 Edition, photocopy of pages 178-181 with frontispiece	107C1/49-53, Ex. 12	20/99
13	Photocopy of pages 34-36-46-47 and 352 to 354 with frontispiece of the U.P. District Gazetteer Faizabad by Smt. Isha Basant Joshi. (1960 Edition)	107C1/54-61, Ex. 13	20/109
14	Photocopy of the page and pages 52 and 53 free “Indian archaeology a review 1976”.	107C 1/62-63, Ex. 14	20/125
15	Photocopy of pages 332 and 333 by Memoirs of Zehiruddin Mohd. Babar translated by John Leyden and William Erskin	107C1/69-70, Ex. 15	20/139
16	Photocopy of the book “Babur-Nama” translated by Annette Susannah Beveridge print edition published by Oriental books	107C1/71-74, Ex. 16	20/145
17	Photocopy of extract from the book “Babri-Masjid” "Tarikhei Pash--mannjar Aur Pesh Manjar Ki Roshni Mein" by Syed Shahabuddin Abdur Rehman, 1987 Edition	107C1/79-81, Ex. 17	20/187
18	Photocopy of the frontispiece and pages 3, 70 , 71 ,72 ,73 and 9, 10 11 of book Amir Ali Shaheed Aur	107C1/82-87, Ex. 18	Separate book 21/201

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	Marka-I-Hanuman Garhi by Shah Mohd. Azmat Ali Alvi Kakorvi, published by Dr. Zaki Kakorvi in 1987, publisher Markaz Adab Lucknow		
19	Photocopy of page 176 from the book " Early travels in India 1583-1619, London 1921", containing the report of William Finch (1608-1611), by William Foster	107C1/95, Ex. 19	21/271
20	Photocopy of page and pages 335 and 336 of vol. II of the book " History, antiquities, topography and statistics of eastern India – of report Montgomery Martin, British surveyor of the year 1838	107C1/109-110, Ex. 20	21/321
21	Encyclopaedia Britannica XV edition 1978, photocopy of page and pages of the book 693 and 694	107C1/120-121, Ex. 21	21/345
22	Photocopy of frontispiece and pages 59, 60, 150 to 155 and Parishist Gha in two pages of the book "Ayodhya Ka Itihas" by Hindi Sudhaker Rai Bahadur Sri Awadh Wasi Lala Sita Ram book Hindustani Academy 1932.	Ex. 22	Separate book
23	The book "Ayodhya" by Hans Baker.	120C-1/2, Ex. 23	31/35
24	Original book "Sri Ram Janam Bhumi Ka Pramanik Sachitra Itihas" by Dr. Radhey Shyam Shukla, published by BalKrishna Goswami, 590 Ramkot Ayodhya 1986	107C1/154, Ex. 24	22/415
25	Typed frontispiece with photocopy of pages 227-234 typed copy of the note indicates the collection and the sources consulted of the book " A clash of cultures Awadh, the British and the Mughals" by Michel H. Fisher published by Manohar Publication New Delhi 1987	107C1/155-164, Ex. 25	22/513
26	Copy of plaint dated 19-01-1885 of Mahant Raghubar Das (Hindi transliteration) in suit no. 61/280 of 1885	107C1/226-228, Ex. 26	22 &23/659
27	Copy of G. O. No. 1622/VII-447 date	107C1/2	23/665

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	06-12-1912, granting permission to Institute a suit U/s 92 of the code of civil procedure in respect of the alleged trash relating to the alleged Babri Mosque	29, Ex. 27	
28	Copy of G.O. 6373/F2991 dated 18-12-1929 granting permission to six Muslim individuals to institute a suit U/s 92 C.P.C with respect to the alleged proof relating to the alleged Babri Mosque about 12 Bighas of village Sholapur Pargana Haveli Awadh	107C1/2 30, Ex. 28 (page 331) Ex. 19 (page 97-99)	23/667
29	News paper report with photostat copy page no. 3(city) of Hindustan Times Lucknow dated 13-11-97	116C1/2, 2A, 2B, Ex. 29 only on 116C-1/2	27/5
30	Photocopy of Hidaya by Charles Hamilton frontispiece of page and pages 239-240	116C1/3-5, Ex. 30	27/7
31	Copy of affidavit filed by Sri Arvind Verma, Commissioner, Faizabad on 13.5.1993	118C1/1-13, Ex. 31	27/41
32	Copy of the affidavit dated 6.8.1993 of Radhey Saran Kaushik A.No. /92 in C.P. No. 97/2002 Aslam Bhoorey Vs Union of India.	118C-1/21-25, Ex. 32	27/81
33	Book "Ram Janam Bhumi Ayodhya-New Archaeological discoveries" by. K.S. Lal, president of the Historian forum Ayodhya.	118C-1/35/1-20, Ex. 33	27/107
34	Book written by Patrick Thomas Hughes "A Dictonary of Islam"	120C-1/3, Ex. 34	Separate book
35	Book written by Percy Brown "Indian Architecture"	121C-1/2-9, Ex. 35	31/161
36	"Itihas Darpan" December 1996 year 3 vol. II note: Extracts from the same book has been filed again as paper no. 254C-1/4-8, 254C-1/9, 10, 254C-1/11-16	254C-1/3 to 3/78, Ex. 36	32/7
37	Booklet written by Mohd. Hashim	255C-	32/117

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	Ansari “Babri Masjid Kee Vajyabi Ke Liye”	1/2/1 to 2/20, Ex. 37	
38	Letter dated 3-11-89 addressed to Prime Minister from Babri Masjid Action Committee	255c-1/3, 4, Ex. 38	32/165
39	Press release dated 3-11-1989	255C-1/5, Ex. 39	32/167
40	Declaration of Delhi on Babri Masjid adopted by all India Babri Masjid New Delhi	255C-1/6-11, Ex. 40	32/169
41	Book “Ram Janam Bhumi Babri Masjid Satya Kya Hai”	255C-1/12 to 12-16, Ex. 41	32/181
42	Book “Ram Charitra Manas” (Gutka)	258C-1, Ex. 42	32/209
43	Map of Aquired area under Act no. 33/1999	259C-1/2, 3, Ex. 43	32/201
44	Book “ Satyarth Prakash”	287C-1, Ex. 44	Separate book
45	“Historian's Report to the Nation” "Babri Mosque or Rama's Birthplace"	288C-1 to 1/17, Ex. 45	32/231
46	Photocopy of the article “Glazed Ware in India “ Written by K.K. Mohammad.	331V-1/1-6, Ex. 46	In separate file cover
47	Photocopy of the title page and pages of the book “Babari Masjid” with page 5, Admitted by Sri. M.A. Siddiqui on 1-5-08	116C-1/6-7, Ex. 47	27/13
48	Memoirs of Z.M. Babur translated by John Leyden and William Erskine Esq. page 378 to 381	107C-1/64-68, Ex. 48	20/129
49	Photocopy of pages 5, 6, 7 and 19, 20, 21 of the Photograph of the structure at Janam Sthal with the frontispiece of the book “Historical Sketch of Faizabad” with the old capitals Ajodhya and Fyzabad by P. Carnegy officiating commissioner and settlement officer 1870 Awadh Govt. Press.	107C-1/17-23, Ex. 49	20/35
50	Photocopy of frontispiece and page and pages 59, 60, 150 to 155 and	107C-1/122-	21/349

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	Parishist Gha in two pages of the book " Ayodhya ka Itihas" by Hindi Sudhaker Rai Bahadur Sri Awadh Wasi Lala Sita Ram book Hindustani academy 1932	129, Ex. 50	
51	Copy of article on Ayodhya and God Rama by Ajay Mitra Shastri Dept. Of Ancient History and Archeology, Nagpur University	118C-1/60-64, Ex. 51	28/217
52	Photocopy of pages 168 and 169 of the Barabanki district gazetteer 1902 edition H.R. Nevill I.C.S.	107C-1/40-41, Ex. 52	20/81
53	Photocopy of page 9 of the book "Religious policy of the Mughal emperors" by S.R. Sharma published by Asia Publishing house 1962	107C-1/119, Ex. 53	21/343
54	One video cassette Ayodhya December 1992, prepared by Jain Studio of Delhi	118C-1/33, Ex.54	Separate
55	One Video cassette archaeological evidence of Ram Janam Bhumi	118C-1/34, Ex. 55	Separate
56	Photocopy of frontispiece of part I and pages 44,45, 128 to 140 there of the frontispiece and pages 143 (Chapter 21) the Janam Sthan 144 to 149 thereof of the book "Ayodhya" by Hans Bakker	107C-1/132-153,Ex. 56	21/369
57	Photograph of introduction Ayodhya by Hans Baker Vol. I page XV to XVIII	120C-1/6-9, EX. 57	31/41
58	Photocopy of "Religious development in Saket" book bearing page no. 43	120C-1/10, Ex. 58	31/49
59	"The eleventh and twelfth century" page no. 49-59, first chapter 3	120C-1/11-21, Ex. 59	31/51
60	The origin of devotion to Rama within Vaishnavism	120C-1/22-28, Ex. 60	31/73
61	The development of Ayodhya to Ayodhya Mahatmya	120C-1/29-31, Ex. 61	31/87
62	Part I Chapter VIII, page No. 141, 143, 150 and 151	120C-1/32-35, Ex. 62	31/93
63	Part II, Chapter 23, "Ramanavami	120C-1/36-	31/101

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	Mahatmya" (Featuring Janam Sthan and Yamasthala"	63,Ex.63	
64	Part II, chapter 25, "Kaikaiee Bhawan and Sumitra Bhawan" page no. 176 to 177	120C-1/64-65, Ex.64	31/155
65	Part II, Chapter 26, "Sita Koop" page no. 178	120C-1/66, Ex.65	31/159
66	Maps of Ayodhya-Faizabad illustration-II	120C-1/67, Ex. 66	Vol 31 map awaited
67	Maps of Ayodhya-Faizabad illustration-III	120C-1/68, Ex. 67	do
68	Photocopy of the extracts Indian Architecture (Islamic Period) by Percy Brown	121C-1/2-9, Ex. 68	3/1631
69	Photocopy of "Aine-Akbari" by Abul Fazl Vol II Subaye Awadh, Nawal Kishore Press Lucknow 1881, copy made by B.R. Grover in his own handwriting of page 78	107C-1/76, Ex. 69	20/163
70	Photocopy of page 427 on the book "Hadeeqa-E-Shohada" by Mirza Jaan, published in 1956, Lucknow with frontispiece containing Nasbihat-I-Bist-O-Panjum Az Chahal Nisaih Bahadur Shahi daughter of Bahadur Shah Alam Gir	107C-1/77, 77A, 78, Ex. 70	20/167
71	Extract from the book "The Disputed Mosque" A Historical Enquiry by Susheel Srivastava, Chapter V, "Did Babar build the Masjid"	C2-188/1-20, Ex. 71	36/457
72	Affidavit of PW 17 Ann. 5, page 28/44 to 28/51	Ex. 72	Separate
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74	Affidavit of PW 18 Ann. 1, page 27/1-3	Ex.74	Separate
75	Affidavit of PW 18 Ann. 3, page 27/9-29	Ex. 75	Separate
76	Affidavit of PW 18 Ann. 7, page 27/60-64	Ex. 76	Separate
77	Affidavit of PW 18 Ann. 8, page 27/65-67	Ex. 77	Separate
78	Affidavit of PW 18 Ann. 10, page 27/93-99	Ex. 78	Separate

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79	Affidavit of PW 18 Ann. 11, page 27/ 100-121	Ex. 79	Separate
80	Affidavit of PW 18 Ann. 12, page 27/ 122-126	Ex. 80	Separate
81	Affidavit of PW 18 Ann. 13, page 27/ 127-138	Ex. 81	Separate
82	Affidavit of PW 18 Ann. 14, page 27/ 139-145	Ex. 82	Separate
83	Affidavit of PW 18 Ann. 16, page 27/ 150-153	Ex. 83	Separate
84	Affidavit of PW 18 Ann. 18, page 27/ 158-160	Ex. 84	Separate
85	Affidavit of PW 18 Ann. 27, page 27/ 204-207	Ex. 85	Separate
86	Affidavit of PW 19 Ann. 1, page 7/1-3	Ex. 86	Separate
87	Affidavit of PW 19 Ann. 2, page 7/4-6	Ex. 87	Separate
88	Affidavit of PW 19	Ann. 3, page 7/7-9- Ex. 88	Separate
89	Ann. 25, Page 27/193 to 197 of the affidavit filed by OPW 18 Sri A.K. Sharma (Extract from "The Excavations at Kaushambi" by G.R. Sharma)	Ex. 89	Separate
90	Ann. 26, Page 27/198 to 207 of the affidavit filed by OPW 18 Sri A.K. Sharma (Extract from "Perspective in Social and Economic History of Early India" by R.S. Sharma)	Ex. 90	Separate
91	Ann. 28, Page 27/208 to 210 of the affidavit filed by OPW 18 Sri A.K. Sharma (Extract from "Ancient India" by R.S. Sharma)	Ex. 91	Separate
92	Archaeological Survey report: N.W. Provinces and Oudh (Ayodhya, Bhulia Tal, Sahet and Mahet)	107C!/3 1-32, Ex. 92	20/63
93	Annex. Pages 1/1 to 1/4 to the affidavit of O.P.W. 16 (Extract of Skand Mahapuran Part II, Ayodhya Mahamatya (2-8) with Hindi Translation (5 Pages)	Ex. 93	Separate
94	Annex. 4, Pages 7/10 to 7/13 to the affidavit of O.P.W. 19 Sri Rakesh Datta (Extract from the "Hindu	Ex. 94	Separate

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	Iconography" by Sri S.P. Tewari)		
95	Annex. 1, Pages 4/1 to 4/8 to the affidavit of O.P.W. 14 (Ram Katha Kunj Ayodhya Faizabad Mein Rakhey Awashesh ki Soochi)	Ex. 95	Separate
96	Ammex 2. Page 4/9 to the affidavit filed by O.P.W. 14 Rakesh Tewari on 7.2.2003 (Letter of Alok Sinha to Sri Arvind Verma Commissioner Faizabad Division Dt. 14.12.1992, Paryatan Evam Sanskriti Karya Vibhag Vidhan Bhawan Lko.)	Ex. 96	Separate
97	Annex. 20 to the affidavit of OPW 18 A.K. Sharma Page no. 27/165-169 (2004 Edition) filed on 28.08.2006, book no. 124 (Indian Archaeology A Review-1998-99	Ex. 97	Separate
98	Annex. 24 to the affidavit of OPW 18, filed on 28.08.2006 with affidavit of Examination-in-chief, page 27/182-192, book no. 140 (Extract of "Pura Prakash" (Dr. Z.A. Desai Commemoration Vol. II, Editor A.K. Sharma, M.I. Quddusi, M.Y. Quddusi, G.S. Khwaja)	Ex. 98	Separate
99	Annex. 5 of the affidavit of OPW 18, filed on 28.08.2006, 148 page No. 27/40-53 Book No. 148 ("Ancient India-Bulletin of A.S.I. Number IV", July 1947 to Jan-1948)	Ex. 99	Separate
100	Page No. 27/30-39, filed on 28.08.2006 with the affidavit of OPW 18 Sri A.K. Sharma, (Extract from "Ancient India-Bulletin of A.S.I. November 2, 1947)	Ex. 100	Separate
101	Annex. 17 to the affidavit filed by OPW 18 on 28.08.2006, page No. 27/154-160 (Urdu Hindi Dictionary by Mohammad Mustafa "Maddah")	Ex. 101	Separate
102	Annex. 4 to the affidavit of OPW 17, filed on 17.08.2006, page no. 28/40-43, book no. 124 ("Indian Archaeology 1998-99 A Review" published by A.S.I.)	Ex. 102	Separate
103	Newspaper report page 10 of Amar Ujala Kanpur dt. 12.10.1995, proved by OPW 2 at page 57 of his	119C-1/2 Ex.103	31/5

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104	Annex. No. 3 of OPW 17, R. Nagaswami, Page No. 28/24-39 (Extract from Mahastham)	Ex. 104	Separate
105	Annex. 6, Page No. 28/52-60 (Extract from Mayamatam, edited by Bruno Dagens Vol. I)	Ex. 105	Separate
106	Annex. 7, page 28/61-63, by OPW 17, R. Nagaswami (Extract from Vastu-Sastra Vol. II, Hindu Canons of Iconography and painting by D.N. Shukla)	Ex. 106	Separate
107	Annex. 2, page 27/4-8 by OPW 18 (Macmillan Dictionary of Archaeology editor Ruth D. White Homes)	Ex. 107	Separate
108	Annex. 6 by OPW 18, page 27/54-59 (Puratatva Paribhasha Kostha History Dept. Vaigyanik Tatha Takniki Sabdawali, Kendriya Hindi Nidesalaya Bharat Sarkar 1979)	Ex. 108	Separate
109	Annex. 9, statement page 27/68-92 OPW 18 (Extract from An Encyclopaedia of Indian Archaeology-Edited by A Ghosh Vol. I)	Ex. 109	Separate
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113	Annex. 15, statement Page 27/146-149 by OPW 18 (Macmillan Dictionary of Archaeology-Editor Ruth D. White House.	Ex. 113	Separate
114	Presidential Address by S.P. Gupta on 22.12.1989 in Guntoor (A.P.) on the subject “Sri Ram Janam Bhumi Controversy- Passion apart what history and archaeology have to say	107C1/165-186, Ex. 114	23/535

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116	Description of Ram Janam Bhumi in Ayodhya Mahatmya edited by Sri Krishna Das, Khem Raj Srashi	107C1/75 Ex. 116	20/161
117	Original Book "Hindu Vishwa" Oct. 92 Vol 28 No. 2 Kartik 2049 Vikrami, edited by H.C. Srivastava	118C1/36 Ex. 117	27/117
118	Matter written by Pt. Hari Saran Dwivedi, 305, Bahadur Ganj, Allahabad-3 dated 21.10.1989	107C-1/232 Ex. 118	23/671
119	Matter written by Pt. Indu Shekhar Pandey, Parashar-Jyotish Bhawan-2/22 Bhadaini, Varanasi	107C-1/231 Ex. 119	23/669
120	Letter of Syed Shabuddin, M.P. (Lok Sabha) to Mr. Anjum Qader	107C-1/239 Ex. 120	23/685
121	Letter of Prince Anjum Quder to Sri Shabuddin dated 2.9.88 King of Oudh's Mausoleum, Garden Reach Calcutta, 24	107C-1/240, 240/1 Ex. 121	23/687
122	Letter of Prince Anjum Quder to Sri V.P. Singh, Prime Minister of India dated 26.2.1990	107C-1/241-242, Ex. 122	23/689
123	Extract from "Encyclopedia of India and of Easter and Southern Asia" by Surgeon Jen. Bilfore	107C-1/111 Ex. 123	21/325
124	A note on essentials and characteristics of a Mosque prepared by Sri D.N. Agarwal, a retired Judge, Allahabad High Court	116C-1/11-17,Ex. 124	27/23
125	List of documents examined by NAI from Sri Kishore Kunal, O.S.D., Ministry of State Home by Director General (Archive) dated 16.5.1991 along with list of the documents	118C-1/37-59,Ex. 125	27/171
126	Details of photographs (ten photographs)	119C-1/C & 119C-1/C-1 to C-10, Ex. 126	31/13
127	Letter of Prince Anjum Qudar President All India Shia Conference	107C-1/243-	23/639

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	dt. 13.12.1988 from Pakistan Addressed to Sarkar Tajaul-Ulem M.S.M. Naqvi (Fatwa with Hindi and English translation)	247 Ex. 127	
128	Indian History and Cultural Society, New Delhi workshop seminar 10-13th Oct. 1992 Ayodhya. Two resolution, signature of T.P. Verma at Serial No. 214	118C-1/129-135 Ex. 128	28/355
129	Archaeological and art historical evidence of the existence of the Hindu Temple of a Hindu religious structure prior to the construction of the disputed structure	118C-1/65-92, 96-114 Ex- 129	28/227, 289
130	New Archaeological evidence of "An Eleventh Century Hindu Temple at Ayodhya" article by Dr. S.P. Gupta former Director Allahabad Museum	118C-1/115-128 and 136-145 Ex. 130	28/327, 369
131	Part-II Appendix II to IV from D. Mandal's book 'Ayodhya Archaeology after Demolition'	118C1/ 93-95 Ex. 131	28/283
132	Catalogue of Historical Documents in Kapad Dwar Jaipur Plan Front piece foreword by Bhawani Singh of Jaipur M.V.C and page 36 along with two maps	107C-1/193-195, 197 Ex. 132	21 & 23/593
133	Extract from the book of description, Historical and Geographical, of India by Typhen Thalor, pages 252-254	107C1/ 96-104 Ex.133	21/273

606. Documents of defendants (Suit-5) :

Sl. No.	Description of Paper	Paper No./ Exhibit mark	Register/ Page No.
1	Certified copy of inventory dated 5.1.50 in case no. 4/31 U/s 145 Cr.P.C. in the Court of City Magistrate Faizabad original file summoned in O.O.S. No. 4/89	108C1/5, Ex. C1	24/11
2	Certified copy of order dated 3.8.57 by 1st Addl. Sessions Judge Faizabad in criminal appeal no. 50/51 Bhaskar Das Vs. State	108C1/6-11, Ex. C2	24/13
3	Certified copy of the order of the City Magistrate Faizabad dated 5.9.66, case no. 533/66 State Vs.	108C1/12-13, Ex. C3	24/23

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	Prem Das		
4	Certified copy of order of C.A. No. 10/1923 dated 22.10.1923 Mahant Narottam Das Vs. Ram Swaroop	108C1/14-17, Ex. C4	24/29
5	Certified copy of plaint Ram Gopal Das Vs. Ashok Singhal R.S. 426/1989 in the Court of Civil Judge Faizabad	108C1/18-22, Ex. C5	24/37
6	Certified copy of the commission report dated 8.11.1989 in suit (426/89)	108C1/23-25, Ex. C6	24/47
7	Certified copy of the order passed by Sri K.K. Singh 4th A.S.J. Faizabad dated 13.5.83 Dharam Das Vs. Panch Ramanandi in Crl. Revision No. 60 of 1982	108C1/26-27, Ex. C7	24/53
8	Certified copy of commission report dated 13.10.1973 in R.S. No. 9/73, Nirmohi Akhara Vs. Ram Lakhan in the Court of Civil Judge, Faizabad with map	108C1/28-35, Ex. C8	24/57
9	Certified copy of W.S. by Abhay Ram Das in case U/s 145 Cr.P.C. in the Court of City Magistrate Faizabad	108C1/36-38, Ex. C9	24/73
10	Copy of constitution of Ram Janam Bhoomi Nyas and statement of income and expenditure filed in O.O.S No. 5/89 by Sri R.L. Verma	111C-1/1-11, Ex. C10	24/81
11	Notice by D.M. Faizabad dated 22.12.34	285C/1/2,3 Ex. C11	24/99
12	Photocopy of the book entitled as "The Aine Akbari" by Abul Fazal Allami Vol. 3	320C1/1-6, Ex. D1	42/83
13	Photocopy of the book entitled as "The Aine Akbari" by Abul Fazal Allami Vol. 2	321C1/1-21, Ex. D2	42/97
14	The History and Culture of the Indian People Part-II Vol-10 by R. C. Majumdar	313C1/ 1-14, Ex. D3	37/297
15	Photocopy of the relevant extracts of the book entitled as "A Drashtikon-Ram Janam Bhumi Babri Masjid Vivad" by Ram Sharan Srivastava	296 C1/1-6, Ex. D4	37/85
16	"History of India" By as told by its own historians, the Mohammadan	315 C1/ 1-10,	38/353

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	period Vol. II	Ex. D5	
17	The History of India as told by its own historians The Mohammadans period by Vincent A. Smith	319 C-1/ 1-9, Ex. D6	42/63
18	Photostate copy of the title page and pages 180-182 of the book titled as A-In-I Akbari (Vol.II) by Abul Fazal Allami	328C1/1-5, Ex. D7	41/265
19	Photostat copy of the title page and pages VII, VIII and IX (content) of book titled as Encyclopaedia of Indian Temple Architecture North India edited by M.A. Dhaki.	329C1/1-5, Ex. D8	39/9
20	Photostat copy of the title page and plates 32, 33, 34, 35, 38, 39 and 40 of the book titled as Encyclopaedia of Indian Temple Architecture North India edited by M.A. Dhaki.	329C1/6-10, Ex. D9	39/17
21	Photostat copy of the title page and preface page and pages 12 and 14-17 of the book titled as The Hindu Temple by Stella Kramrisch Vol.I	329 C1/11-18, Ex. D10	39/25
22	Photostat copy of the title page and pages 313, 348 and 411 of the book titled as The Hindu Temple by Stella Kramrisch Vol.II	329 C1/19-23, Ex. D11	39/39
23	Photostat copy of the title page and pages 143-148 of the report of excavation at Bhagwanpura 1975-76 and other exploration and excavation 1975-81 in Haryana, Jammu & Kashmir and Punjab	326-C1/60-67, Ex. D12	41/107
24	Photostat cop of the report “Lothal A Harappan port town 1955-62	326C-1/9-25, Ex. D13	41/53
25	Photostat copy of the memoirs of the ASI no. 98 Excavation at Kalibangan the early Harappans (1960-69)	327C-1/1-17, Ex. D14	41/181
26	Photostat copy of the memoires of the ASI No. 87 Excavation at Surkotada 1971-72 and exploration of Kutch	327C-1/44-57, Ex. D15	41/237
27	Photostat copy of the notice of the meeting of Central Advisory Board of Archaeology called on 02.08.2006, including the minutes	332C-1/1-51, Ex. D16	39/49

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	of the meeting held on 2.9.2005 and the minutes of the meeting of the standing Committee of the Central Advisory Board of Archaeology held on 20th and 21st October 2005.		
28	Extracts from book "Indian Architecture" (Buddhist and Hindu Periods) by Percy Brown	333-1/1-9, Ex. D17	39/153 , 40/153
29	Photostat copy of the title page foreword and pages 89-10, 177-181, 196, 215-217, 220, 22, 233, 235-237,239-243, 252, 257, 259, 268, 269, 275, 276, 278, 285-287, 305-307, 311, 314, 316-334 of the book title as Temples of Pratihara Period in Central India written by R.D. Trivedi	334C-1/1-52, Ex. D18	40/175
30	Photostat copy of the title page and of pages 5-13, 135-141, 288, 293 and 300 of the book title as Temples of Pratihara period in Central India by R.D. Trivedi.	335C-1/1-20, Ex. D19	40/281
31	Photocopy of the letter of Sri Kishore Kunal O.S.D. Of the ministry of State Home India dated 23-1-1991	292C-1, 292C-1/1, Ex. D20	37/61
32	Relevant extract of the book " Sri Ram Janam Bhumi Aitihasik Avam Puratativik Sakshya" by T.P. Verma and S.P.Gupta.	304C1/1-4, Ex. D21	38/195
33	Coloured Photograph purported and said to be of Maharishi Valmiki (Saint) as published in Valmiki Ramayan, Paper no. 261C1/1	261C-1/1/1, Ex. D22	38/205
34	Extract from the book " Meri Jeewan Yatra" by Rahul Sankrityayan.	314C1/1-12, Ex. D23	38/327
35	Photocopy of extract of the book "Sri Ram Janam Bhumi" by Dr. Radhey Shyam Shukla	110C-1/55, 55A,56, Ex. D24	25/129
36	Original report on Babari Masjid containing historians report to the Indian nation (Babari Mosque of Ram's berth place) by R.S. Sharma and others	110C-1/96, Ex. D25	25/211

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37	Copy of original book of Prof. D. Mandal entitled as "Ayodhya Archeology After Demolition" by Orient Longman (title page contents, preface and page 1 to 69)	198C-2/1-89, Ex. D26 = Ex.63 (Suit-4)	30/7
38	Copy of extract of Epigraphica Indica (Arabic and persian supplement 1965) edited by Z.A. Desai	198C-2/90-99, Ex. D27	30/99
39	Photocopy of the extract of Epigraphica Indica (Vol. IV (1896-97) published by ASI New Delhi	198C-2/100-106, Ex. D28	30/119
40	Photocopy of extract of above book Vol XIV (1917-1918)	198C-2/107-117, Ex. D29	30/133
41	Photocopy of the extract of Epigraphica Indica (Vol XX (1929-1930) published by A.S.I. New Delhi	198C-2/118-123, Ex. D30	30/155
42	Photo copy of the relevant extracts of the BJP's White paper on Ayodhya and The Ram Temple movement published in April 1993, Titled page and page 4 and 66	294C1/1-3, Ex. D31	37/73
43	Photo copy of the extract of the book titled as " Fair reports made during the years 1862-63-64-65" by Alexander Cunningham Vol-IV (titled pages 293-296, 319 and plate XLVII)	322C1/1-22, Ex. D32	42/141
44	Photo copy of the Extract of the book titled as "History of Mughal Architectural Vol-I" By R. Nath	197C2/1-8, Ex. D33	Separate book
45	Photo copy of the book "Temples of India" title page, contents and pages no. 20, 21, 23, 26, 27 and 100	302C1/1-9, Ex. D34	37/141
46	Photocopy of the extracts from the book entitled as "The secular Emperor Babar" by Mrs. Surinder Kaur, Tapan Sanayal published by Lok Geet Prakashan Sirhind	110C1/14-51, Ex. D35	25/49
47	R.D. Banarji's "Eastern Indian School of Medieval Sculpture" published by ASI Delhi (1933 Edition) Plates LXXXIX (a) and (e) and XC(d), proved in para 14 of	308C-1/10-15, Ex.D36	38/231

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	the affidavit of PW 16 (Part-II) dt. 26.08.02.		
48	Photostat copy of the Article written 'Ramjanambhumi-Babri Masjid Issue: Misuse of Archaeological Evidence' by Prof. Sooraj Bhan dated 26.12.1990 Prof. And Dean of Kurukshetra University proved at page 1 of his statement.	110C/8-13, Ex.D37	25/37
49	Extract from "Sri Ram Janam Bhumi Ka Rakt Ranjt Itihas" (31st Edition) by Sri Ram Raksha Tripathi "Nirbheek" Title page and pages 6, 7 and 8 filed by defendant no. 4 on 20.5.1992	110C-1/52-54, Ex.D38	25/123
50	Certified copy of judgment dated 2.9.82 passed by Munsif Sadar Faizabad in Re R.S. 57/78 Bhagwan Sri Ram Lala Vs. State	109C1/2, Ex. E1	25/5
51	Certified copy of plaint before Munsif Sadar Faizabad R.S. no. 57/78 Bhagwan Sri Ram Lala Vs. State dated 11.2.78	109C1/3-7, Ex. E2	25/7
52	Certified copy of decree in R.S. No. 57/78 Bhagwan Sri Ram Lala Vs. State passed by Learned Munsif Sadar Faizabad dated 5.10.82	109C1/8-10, Ex. E3	25/17
53	Indian Archaeology (1969-70 A-Review) Edited by B.B. Lal, Director General, A.S.I.	291 C1/ 4,5,6, Ex. E1/1	37/11
54	Indian Archaeology (1976-77 A-Review) by B.K. Thapar.	291C1/ 1,2, 3, Ex. E2/1	37/5
55	Indian Archaeology (1979-80 A-Review) by B. B. Lal	291C1/16, 17, Ex. E3/1	37/35
56	Indian Archaeology (1968-69 A-Review) by B. B. Lal	291C1/ 7-11, Ex. E4/1	37/17
57	Hindu World and Encyclopaedic Survey of Hinduism by Benjamin Walker. (Vol.II)	318C1/ 1-14, Ex. E4	42/33
58	India Distorted " A Study of British Historians India Vol. III By S. C. Mittal	323 C1/1-25, Ex. E5	42/187

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59	The Early History of India By Vincent A. Smith	324C1/ 1-28, Ex. E6	42/239
60	Extract from the journal "Prag Dhara" editor Sri Rakesh Tewari of ASI	316C1/1-9, Ex. E7	42/5
61	Extract of "Startling indeed-Some Discoveries of Convenience" by Champak Lakshmi Extract were taken from "From line magazine. Shereen Ratnagar (PW 27) has proved at page 4 of her statement.	291C-1/12-15, Ex. E8	37/27

607. In brief the documentary exhibits by the parties are as under:

1. Plaintiffs (Suit-1) – Exhibits No. 1 to 34 (Total 34)
2. Plaintiffs (Suit-3) – Exhibits No. 1 to 21 (Total 21)
3. Plaintiffs (Suit-4) – Exhibits No. 1 to 128 (Total 128)
4. Plaintiffs (Suit-5) – Exhibits No. 1 to 132 (Total 132)
5. Defendants (Suit-1) – Exhibits No. A1 to A72 (Total 73)
6. Defendants (Suit-4) – (i) Exhibits No. A1 to A16 (Total 16)
   (ii) Exhibits No. M1 to M7 (Total 7)
   (iii) Exhibits No. B1 to B16 (Total 16)
   (iv) Exhibits No. J1 to J31 (Total 32)
   (v) Exhibits No. T1-T6 (Total 6)
   (vi) Exhibit No. V1 (Total 1)
   (vii) Exhibits No. Q1 to Q6 (Total 6)
7. Defendants (Suit-5) – (i) Exhibits No. C1 to C11 (Total 11)
   (ii) Exhibits No. D1 to D38 (Total 38)
   (iii) Exhibits No. E1 to E8 (Total 12)
   Grand Total - 533

608. Before proceeding ahead on merits of the issues, it would be useful to recapitulate how the dispute arose. Hindus believe Lord Ram born at Ayodhya, is the tenth incarnation of Lord Vishnu and worship as such.

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609. Babar invaded India in 1526 A.D.. He came with an intention to conquer and rule. He defeated Ibrahim Lodi in the battle of Panipat in April 1526 A.D.. He proceeded further and reached near Ayodhya on 28.3.1528 i.e. on the bank of river Saryu. Some of the parties claim that his Commander Mir Baqi under the orders of Babar, demolished a temple of Lord Ram at the disputed site and constructed in 1528 A.D. a building thereat, which, some of the parties claim to be a 'Mosque'. Others dispute the factum of demolition and even the very existence of the alleged temple. The determination of period of construction of the building in 1528 A.D. is based upon the inscriptions said to be installed by Mir Baqi at the aforesaid building and noticed for the first time in 1813-14 A.D. by Dr. F.S. Buchanan. However, Nirmohi Akhara disputes both the above claims and says that the building was throughout a temple and remained in its possession till attachment in 1949. It is also alleged that some serious dispute between the two communities took place in 1855 A.D. and, thereafter, a boundary wall was constructed separating the disputed building from other spots namely Ram Chabutara, Sita Rasoi etc. The area inside of the boundary as already said is referred as "inner courtyard" and rest as "outer courtyard". It is said that in 1934 A.D. again a serious dispute arose causing some damage to the disputed building which was repaired and the cost was recovered by the British Government from local Hindu inhabitants by imposing fine. On 23.12.1949 A.D. a first information report was lodged at Ayodhya about trespass by some Hindu people in the inner courtyard of the disputed building and placement of idols of Lord Ram beneath the central dome. Therefrom the entire litigation has cropped up and is before us for consideration.

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610. We may mention at this stage that Sri Z. Jilani, Sri M.A. Siddiqui and Sri Rizwan, learned counsels for Muslim parties made statements under Order 10 Rule 2 during the course of the arguments that they are not disputing the faith and belief of the Hindus that Lord Ram was born at Ayodhya. This statement is in consonance with the findings of this Court recorded in its order dated 08.05.1996 referred to by us above in para 199. They, however, submit that the dispute is about the exact location of birth place and in particular about the disputed premises. Their case is that the disputed premises is not where exactly Lord Ram took birth and there is no evidence to this extent. This statement under Order 10 Rule 2 by the learned Counsels has definitely to some extent narrowed down the canvass of the case and has also saved the Court from entering in a field of faith and belief, the justiciability and the power of the Court in regard whereof itself is arguable.

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611. All the issues framed in the four cases, for convenience, can broadly be placed under the following Heads :

(A) Notice under Section 80 C.P.C.

(B) Religious denomination

(C) Res judicata, waiver and estoppel

(D) Waqf Act 13 of 1936 etc.

(E) Miscellaneous issues like representative nature of suit, Trust, Section 91 C.P.C., non joinder of parties, valuation/ insufficient Court fee/under valuation and special costs.

(F) Person and period- who and when constructed the disputed building

(G) Deities, their status, rights etc.

(H) Limitation

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(I) Possession/adverse possession

(J) Site as birthplace, existence of temple and demolition if any.

(K) Character of Mosque

(L) Identity of the property

(M) Bar of Specific Relief Act

(N) Others, if any

612. The marathon arguments in these cases stretched to 75 days covering a period of about 11 months in the first spell, and when due to elevation of one us (Hon'ble S. R. Alam, J.) as Chief Justice of Madhya Pradesh High Court, the Bench was reconstituted, the matter was reheard and it stretched for 90 days in second spell i.e. from 11.1.2010 to 26.7.2010.

613. Sri Z. Jilani, Sri M.A. Siddiqui and Sri Rizwan, Advocates have appeared and advanced their submissions on behalf of Muslim parties while Sri Ravi Shankar Prasad, Sri P.R. Ganesh Aiyer and Sri K.N. Bhatt, Senior Advocates, Sri R.L. Verma assisted by Sri Tarun Verma, Sri P.N. Misra, Miss Ranjana Agnihotri, Sri M.M. Pandey, Sri Ved Prakash, Sri Rakesh Pandey, Sri Hari Shankar Jain, Sri D.P. Gupta, Sri A.K. Pandey, Sri R.K. Srivastava, Advocates have appeared on behalf of the various Hindu parties and made their submissions. On behalf of State of U.P. Sri S.P. Srivastava, the learned Additional Chief Standing Counsel has put in appearance but has not advanced any oral submissions. The arguments travel in a very vast area with lots of varieties, shades and colours. Besides, the oral submissions, the parties have also filed their written submissions which are made part of record.

Discussion and findings on Merits Issuewise :

(A) **Notice under Section 80 CPC**

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614. **Issue No. 10 (Suit-3)**

(a) Is the suit bad for want of notice u/s 80 C.P.C.?

(b) Is the above plea available to contesting defendants?

615. The plaintiffs in para 12 of the plaint (Suit-3) have said that they sent notices under Section 80 C.P.C. to the defendants no. 1 to 5 (Suit-3). The notices were delivered on 6.10.1959 and 12.10.1959. The same have also been replied by the aforesaid defendants through defendant no. 3 intimating that they shall defend the suit, if any, filed by the plaintiffs. No written statement has been filed on behalf of the defendants 1 to 5 in the aforesaid suit. Thus, there is no objection on behalf of the defendants 1 to 5 regarding maintainability of suit for want of notice under Section 80 C.P.C. In the written statement filed on behalf of defendants no. 6 to 8, para 12 of the plaint has been simply denied and in para 24 it is said that the suit is bad for want of notice to defendants no. 1 to 5 under Section 80 C.P.C. In replication, the plaintiffs have not only reiterated their stand taken in the plaint but in para 24, further pleaded that the defendants 6 to 8 have no right to take plea of want of notice under Section 80 C.P.C.

616. We find that Ex. 13 (Suit-3) is a postal receipt dated 6.10.1959 of a registered letter sent to Priya Dutt Ram and Ex. 14 (Suit-3) is a similar receipt dated 6.10.1959 of a registered letter sent to Superintendent of Police, Faizabad. The reply received from the Deputy Commissioner, Faizabad and the acknowledgments of the registered letters are also on record as Exhibits 17, 18 and 19 (Suit-3). The Deputy Commissioner, Faizabad in his letter dated 30.11.1959 (Ex. 16 Suit-3) has said that the suit, if any filed, would be defended. The witnesses

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D.W. 3/1 and D.W. 3/20 in their statements have also supported the stand taken by the plaintiffs. D.W. 3/1, Mahant Bhaskar Das in para 38 and 39 of his examination-in-chief has proved the notices sent to the defendants District Magistrate, Faizabad etc. and also the reply which they received from defendants 1 to 5. Para 38 and 39 states as under :

> *''38– कागज संख्या 41 सी–1/2 दफा 80 के प्राप्ति की रसीद है, इसी प्रकार सी–1/3 जिलाधिकारी की प्राप्ति की रसीद है और सी–1/4 महन्त रघुनाथ दास निर्मोही अखाड़े के द्वारा जिलाधिकारी फैजाबाद के कार्यालय में नोटिस प्राप्त कराने की रसीद है। ये सभी नोटिसे दो महीने दावा दाखिल करने में भेजी गयी थी।''*
>
> *''38- The paper no. 41C-1/2 is the receipt of Section 80. Similarly, C-1/3 is the receipt of District Magistrate and C-1/4 is the receipt of notice served in the office of District Magistrate, Faizabad by Mahant Raghunath Das Nirmohi Akhara. All these notices had been sent in respect of the suit being filed in two months.'' (E.T.C)*
>
> *''39– कागज संख्या सी–1/5, 30 नवम्बर 1959 जबाव नोटिस है जो प्रतिवादी सी–1/5 के तरफ से भेजा गया है। सी–1/6 के जबाव नोटिस जिलाधिकारी, फैजाबाद हैं। सी–1/7 व सी–1/8 पावती रसीद है। सी–1/9 व सी–1/10 डाकघर की रसीदें हैं।''*
>
> *''39- Paper no. C-1/5, 30th November, 1959 is the reply to notice sent by defendant C-1/5. C-1/6 is the reply of notice by District Magistrate, Faizabad. C-1/7 and C-1/8 are acknowledgment receipts. C-1/9 and C-1/10 are receipts of Post Office.'' (E.T.C)*

617. Similarly, D.W. 3/20, Mahant Rajaram Chandracharya in para 28 of his examination-in-chief has made averments and proved the receipt of notice as under :

> *''पेपर नं0 41 सी 1 से 9 किता कागजात यानि 41 सी. 1/2 ता 41 सी. 1/10 दावा दाखिला करने के पहले सरकार व सरकारी मुलाजिमों पर दफा 80 की नोटिस दी गयी थी जो नोटिस, पोस्टल रसीद व तामीला प्राप्ति का है।''*

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"The nine papers from paper no. 41C-1 i.e. 41C-1/2 to 41C-1/10, are the postal receipts and receiving of the notices sent under section 80 to Government and Government Officials before filing the suit." (E.T.C)

618. Nothing has been brought otherwise in the cross examination to contradict the aforesaid averments. No evidence otherwise has been led by any of the defendants.

619. It is no doubt true that Section 80, as it stood before 1976 amendment, admitted no implication and exceptions whatsoever and reads as under :

"80. Notice.- *No suits shall be instituted against the Government (including the Government of the State of Jammu & Kashmir) or against a public officer in respect of any act purporting to be done by such officer in his official capacity, until the expiration of two months next after notice in writing has been delivered to, or left at the office of-*

(a) in the case of a suit against the Central Government, except where it relates to a railway, a Secretary to that Government;

(b) in the case of a suit against the Central Government where it relates to railway, the General Manager of that railway;

(bb) in the case of a suit against the Government of the State of Jammu and Kashmir the Chief Secretary to that Government or any other officer authorised by that Government in this behalf;

(c) in the case of a suit against any other State Government, a Secretary to that Government or the Collector of the district;

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and, in the case of a public officer, delivered to him or left at this office, stating the cause of action, the name, description and place of residence of the plaintiff and the relief which he claims; and the plaint shall contain a statement that such notice has been so delivered or left.

620. The provision was expressly mandatory and imposes statutory and unqualified obligation upon the Court. The service of notice under Section 80 is a condition precedent for the institution of suit against the Government or public officer where the complaint is in respect of his acts in official capacity. However, in the absence of non compliance of Section 80 C.P.C., the suit is not liable to be dismissed as not maintainable.

621. In the case in hand, since the plaintiffs have shown that they served notice under Section 80 C.P.C. upon the defendants no. 1 to 5 and neither any material controverting the above facts has been brought on record by the defendants nor any submission has been advanced to show that Section 80 was not complied by the plaintiffs (Suit-3). We thus have no hesitation to hold that the Suit is not barred for want of notice under Section 80 C.P.C. and **Issue 10 (a) is answered accordingly.**

622. Now we come to the second part of this issue i.e. 10 (b). The legislative intent of Section 80 is to give the Government sufficient notice of the suit which is proposed to be filed against it so that it may reconsider the decision and decide for itself whether the claim made could be accepted or not. The object of the section is advancement of justice and securing public good by avoidance of unnecessary litigation (**Bihari Chowdhary and another Vs. State of Bihar and others 1984 (2) SCC 627; State of Andhra Pradesh and others Vs. Pioneer Builders AIR 2007 SC 113)**.

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623. We, however, proceed to consider certain authorities cited on behalf of the defendant no. 10 to press upon their submission that in case of non compliance of Section 80 C.P.C., it is the duty of the Court to reject the plaint outright even if no objection is raised by anyone since it is a jurisdictional issue.

624. Prior to Section 80 C.P.C., 1908, similar provision existed in Section 424 of C.P.C., 1882. Considering the purpose and objective of such a provision, in **Secretary of State for India In Council Vs. Perumal Pillai and others (1900) ILR 24 (Mad.) 271** it was held :

> *"... object of the notice required by section 424, Civil Procedure Code, is to give the defendant an opportunity of settling the claim, if so advised, without litigation."*

625. With reference to Section 80 C.P.C. of 1908, the objective and purpose came to be considered in **Secretary of State for India In Council Vs. Gulam Rasul Gyasudin Kuwari (1916) ILR XL (Bom.) 392** wherein it was held as under :

> *"... the object of section 80 is to enable the Secretary of State, who necessarily acts usually through agents, time and opportunity to reconsider his legal position when that position is challenged by persons alleging that some official order has been illegally made to their prejudice."*

626. In **Raghunath Das Vs. Union of India and another AIR 1969 SC 674**, in para 8, the Court said :

> *"**8.** The object of the notice contemplated by that section is to give to the concerned Governments and public officers opportunity to reconsider the legal position and to make amends or settle the claim, if so advised without litigation. The legislative intention behind that section in our opinion is that public money and time should not be*

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wasted on unnecessary litigation and the Government and the public officers should be given a reasonable opportunity to examine the claim made against them lest they should be drawn into avoidable litigations. The purpose of law is advancement of justice. The provisions in Section 80, Civil Procedure Code are not intended to be used as boobytraps against ignorant and illiterate persons."

627. The object and purpose of enactment of Section 80 C.P.C. was also noticed in **State of Punjab Vs. M/s. Geeta Iron and Brass Works Ltd. AIR 1978 SC 1608** as under :

"A statutory notice of the proposed action under S. 80 C.P.C. is intended to alert the State to negotiate a just settlement or at least have the courtesy to tell the potential outsider why the claim is being resisted.

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628. The requirement of notice under Section 80 C.P.C. has also been held mandatory. In **Bhagchand Dagaduss Vs. Secretary of State for India in Council AIR 1927 PC 176**, it was held that the provision is express, explicit and mandatory. It admits no implications or exceptions. It imposes a statutory and unqualified obligation upon the Court. Therein a noticed was issued under Section 80 C.P.C. on 26.6.1922, but the suit was instituted before expiry of the period of two months from the said date. The Judicial Committee Observed :

"To argue as appellants did, that the plaintiffs had a right urgently calling for a remedy, while Section 80 is mere procedure, is fallacious, for Section 80 imposes a statutory and unqualified obligation upon the Court."

629. This decision was followed by Judicial Committee in **Vellayan Chettiar Vs. Government of Province of Madras**

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AIR 1947 PC 197.

630. In **Government of the Province of Bombay Vs. Pestonji Ardeshir Wadia and Ors. AIR 1949 PC 143** it has been held that provisions of Section 80 of the Code are imperative and should be strictly complied with.

631. A Constitution Bench of the Apex Court in **Sawai Singhai Nirmal Chand Vs. Union of India AIR 1966 SC 1068** also took the same view. Following the above authorities in **Bihari Chowdhary (supra)**, the Apex Court, in para 6, observed :

> ***"6.*** *It must now be regarded as settled law that a suit against the Government or a public officer, to which the requirement of a prior notice under Section 80 C.P.C. is attracted, can not be validly instituted until the expiration of the period of two months next after the notice in writing has been delivered to the authorities concerned in the manner prescribed for in the Section and if filed before the expiry of the said period, the suit has to be dismissed as not maintainable."*

632. In none of the above noted cases, the Courts had the occasion to consider whether a Suit for non compliance of Section 80 C.P.C. ought to be dismissed even if the authority for whose benefit the provision has been made is not inclined to press this objection or is interested to get the decision on merits from a competent Court of law. On the contrary, slight divergent view was also going on simultaneously as is evident from some of the authorities of the Apex Court.

633. In **Dhian Singh Sobha Singh Vs. Union of India AIR 1958 SC 274** (page 281), the Court observed that Section 80 C.P.C. must be strictly complied with but that does not mean

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that the terms of Section should be construed in a pedantic manner or in a manner completely divorced from common sense. It observed :

> *"The Privy Council no doubt laid down in Bhagchand Dagadusa v. Secretary of State AIR 1927 PC 176 that the terms of section should be strictly complied with. That does not however mean that the terms of the notice should be scrutinised in a pedantic manner or in a manner completely divorced from common-sense. As was stated by Pollock, C. B., in Jones v. Nicholls, (1844) 13 M&W 361=153 ER 149 "we must import a little common sense into notices of this kind." Beaumont, C. J., also observed in Chandu Lal Vadilal v. Government of Bombay, AIR 1943 Bom 138 "One must construe Section 80 with some regard to common-sense and to the object with which it appears to have been passed."*

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634. In para 17 of the judgment while referring to and relying on its earlier decision of **Sangram Singh Vs. Election Tribunal, Kotah, AIR 1955 SC 425**, the Apex Court said:

> *"Section 80 of the Code is but a part of the Procedure Code passed to provide the regulation and machinery, by means of which the Courts may do justice between the parties. It is therefore merely a part of the adjective law and deals with procedure alone and must be interpreted in a manner so as to subserve and advance the cause of justice rather than to defeat it."*

635. The protection provided under Section 80 is given to the person concerned. If in a particular case that person does not require protection, he can lawfully waive his right. This is what was held in **Dhirendra Nath Gorai and Sabal Chandra Shaw**

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and others Vs. Sudhir Chandra Ghosh and others AIR 1964 SC 1300 where considering a pari materia provision, i.e. Section 35 of Bengal Money Lenders Act, 1940 the Apex Court held that such requirement can be waived. Similarly, while considering Section 94 of the Representation of People Act, 1951, the above view was reiterated in **S. Raghbir Singh Gill Vs. S. Gurucharan Singh Tohra and others 1980 (Suppl.) SCC 53**. All the aforesaid decisions have been followed in **Commissioner of Customs, Mumbai Vs. M/s. Virgo Steels, Bombay and another AIR 2002 SC 1745** and it has been held that notice in such a case can be waived.

636. A Full Bench of the Bombay High Court in **Vasant Ambadas Pandit Vs. Bombay Municipal Corporation and others AIR 1981 Bombay 394** while considering a similar provision contained in Section 527 of Bombay Municipal Corporation Act, 1888 held *"The giving of the notice is a condition precedent to the exercise of jurisdiction. But, this being a mere procedural requirement, the same does not go to the root of jurisdiction in a true sense of the term. The same is capable of being waived by the defendants and on such waiver, the Court gets jurisdiction to entertain and try the suit."*

637. In **Amar Nath Dogra Vs. Union of India 1963 (1) SCR 657**; **State of Punjab Vs. Geeta Iron and Brass Works Ltd. 1978 (1) SCC 68** and **Ghanshyam Dass Vs. Dominion of India 1984 (3) SCC 46** the Apex Court also held that notice under Section 80 C.P.C. or similar provisions of other Acts are for the benefit of a particular authority. The same can be waived as they do not go to the root of jurisdiction in the true sense of the term. Referring to the aforesaid judgments as well as the Full Bench judgment of Hon'ble Bombay High Court in **Vasant Ambadas**

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Pandit (supra), the Apex Court in **Bishandayal and sons Vs. State of Orissa and others 2001 (1) SCC 555** (para 16) said that there can be no dispute to the proposition that a notice under Section 80 can be waived.

638. In fact we find in **Ghanshyam Dass and Ors. Vs. Dominion of India and Ors. (supra)** wherein a three judges Bench considered the correctness of the decision of this Court in **Bachchu Singh Vs. Secretary of State for India in Council, ILR (1903) 25 All 187**, **Mahadev Dattatraya Rajarshi Vs. Secretary of State for India AIR 1930 Bom 367** and earlier decision in **S.N. Dutt Vs. Union of India, AIR 1961 SC 1449**. Though the facts of that case are slightly different but what has been observed by the Apex Court is of some importance. The Apex Court while reiterating the Privy Council's observations in **Bhagchand Dagadusa (supra)** that requirement of Section 80 C.P.C. of giving notice is express, explicit an mandatory and admits of no implications or exceptions, however observed that one must construe Section 80 with some regard to common sense and to the object with which it appears to have been passed. It also observed that our laws of procedure are based on the principle that "as far as possible, no proceeding in a court of law should be allowed to be defeated on mere technicalities". The Apex Court overruled its decision in **S.N.Dutt (supra)** as also the Bombay High Court's decision in **Mahadev Dattatraya Rajarshi (supra)** and this Court's decision in **Bachchu Singh (supra)**. In the case before the Apex Court though notice was issued but on a closer scrutiny, the High Court found that it was not a valid notice under Section 80 C.P.C. and therefore non-suited the plaintiff. This judgment was reversed by the Apex Court making the abovesaid observations. The Court reiterated

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that the object of notice contemplated by Section 80 is to give to the Government and public officers an opportunity to consider the legal position and to make amends or settle the claim, if so advised, without litigation so that public money and time may not be wasted on unnecessary litigation.

639. Considering the objective of such enactment and the fact that party concerned can waive it, we are of the view that the plea of want of notice under Section 80 cannot be taken by a private individual since it is for the benefit of the Government and its officers.

640. A Division Bench of Hon'ble Bombay High Court in **Hirachand Himatlal Marwari Vs. Kashinath Thakurji Jadhav AIR (29) 1942 Bombay 339** said *"In the first place defendant 3 is not the proper party to raise it, and in the second place the receivers in our opinion must be deemed to have waived their right to notice. It is open to the party protected by S. 80 to waive his rights, and his waiver binds the rest of the parties. But only he can waive notice, and if that is so, it is difficult to see any logical basis for the position that a party who has himself no right to notice can challenge a suit on the ground of want of notice to the only party entitled to receive it. We think therefore that this ground of attack is not open to defendant 3; and for our view on this point direct support may be obtained from 32 Cal. 1130."*

641. The same view has been taken by Kerala High Court in **Kanakku Vs. Neelacanta, AIR 1969 (Kerala) 280** holding that the plea of want of notice cannot taken by private individuals.

642. A Single Judge of this Court in **Ishtiyaq Husain Abbas Husain Vs. Zafrul Islam Afzal Husain and others AIR 1969 Alld. 161** has also expressed the same view:

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"It appears to me that the plea of want of notice is open only to the Government and the officers mentioned in section 80 and it is not open to a private individual. In this particular case the State Government did not even put in appearance. The notice, therefore, must be deemed to have been waived by it."

643. We respectfully endorse the aforesaid view of the Hon'ble Single Judge.

644. The entire **issue 10 (a) and 10 (b) (Suit-3) is, accordingly, decided in favour of plaintiffs (Suit-3)**. We hold that a private defendant cannot raise objection regarding maintainability of suit for want of notice under Section 80 C.P.C.

645. **<u>Issues No. 13 and 14 Suit-1)</u>**

13. Is the suit no. 2 of 50 Shri Gopal Singh Visharad Vs. Zahoor Ahmad bad for want of notice under Section 80 CPC.

14. Is the suit no. 25 of 50 Param Hans Ram Chandra Vs. Zahoor Ahmad bad for want of valid notice under section 80 CPC?

646. The objection with respect to want of notice under Section 80 CPC has been taken by defendants no. 1 to 5 (Suit-1) in their written statements in para 21 which reads as under:

"21. यह कि मुद्दई ने मुद्दालेहुम 6 लगायात 9 के खिलाफ कोई नोटिस हस्ब दफा 80 जाब्ता दीवानी जारी नहीं किया है इस बिनाह पर भी दावा हाजा नाकिस वनकाबिल फजराई अदालत है। "

"21. That the plaintiffs have not served any notice under section 80 C.P.C. on the defendant nos. 6 to 9 and the suit is bad and not maintainable on this ground also." (E.T.C)

647. Similarly in the written statement of defendants no. 6, 8

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and 9, such objection, i.e., want of notice under Section 80 CPC has been raised in the same words in para 9 of each respectively which reads as under:

> *"9. No notice as required by section 80 C.P.C. has been served, and the suit deserves to be dismissed on that ground alone."*

648. In the written statement of defendant no. 10 also objection with respect to want of of notice under Section 80 CPC has been taken in para 21 which reads as under:

> *"21. That the suit is bad and not maintainable even on account of the reason that no notice required under Section 80 C.P.C. had been given to the defendant nos. 6 to 9 and in this view of the matter the plaint is liable to be rejected under Order VII rule 11 C.P.C."*

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649. So far as the defendants no. 1 to 5 are concerned they have expired and there is no substitution in their place except defendant no.1 who is now represented by his son Farooq Ahmad as defendant no. 1/1.

650. So far as the defendant no. 10 is concerned, Sri Jilani, learned counsel has argued that since no notice under Section 80 C.P.C. has been given to the defendants no. 6 to 9, therefore, the suit is barred by Section 80 C.P.C. and is liable to be dismissed on this ground alone.

651. Sri Siddiqui, adopting the above submissions, laid emphasis upon argument that violation of Section 80 CPC is fatal. The requirement of the said provision is mandatory. Hence, Suit-1 deserves to be dismissed on this ground alone.

652. Sri A.K. Pandey, learned counsel for the plaintiff on the contrary submitted that the stand taken by the State Government is that it is not interested in the property in dispute and as such

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they do not propose to contest the suit and be exempted from costs as is evident from an application filed on behalf of City Magistrate and the Superintendent of Police, Faizabad on 23.04.1962/28.05.1962 before the Civil Judge, Faizabad in Suit-4. In his written argument Sri A.K. Pandey refers to certain pleadings as under:

> *"A counter affidavit to the objection/affidavit against the application dated 12.12.1994 in O.O.S. No. 1 of 1989 (R.S. No. 2 of 1950) filed by the state of Uttar Pradesh on 17/18.01.1995 through Sri Jai Dayal Puri special Secretary to Government, Home Department U.P. Sachivalaya Lucknow.*
>
> *It is mentioned in **para 5** of the above counter affidavit of the state that "State Government is of the firm view that the **dispute in between the two parties** and the role of the State Government is only to ensure the maintenance of the law and order situation in the area.*
>
> *It is also mentioned in **para 6** of the above counter affidavit of the state that "the fact is that after scrutinysing the whole matter the State Government came to the conclusion that the dispute in **between the two parties** and **whatever the orders would be the same would be given full respect** and the role of the State Government is to maintain law and order situation at the disputed site in question".*
>
> *An objection against C.M. application no 133 (O) of 2003 (State Government's application) filed by the plaintiffs of O.O.S. no. 4 of 1989 on 1 December 2003 through their counsel Sri A. Mannan Advocate and Sri. Z. Jilani Advocate. In this objection they admit that **State is***

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***non contesting party**. The relevant paras of objection are as under:-*

*Para1. That the application under objection has been moved by **An non contesting party.***

*Para2. That the State Government has already given in writing that **it is not a contesting party** and had declared itself to be neutral.*

*Para4. ..... but the State Government or the District Magistrate, Faizabad have neither filed any objection against the A.S.I. report and nor it is expected that they will be taking any stand regarding the same as they have already claimed themselves to be **neutral** on the matter in issue.*

***Order passed** on C.M. Application No. 133(0) of 2003 by this Hon'ble Special full Bench on 4.12.03 the relevant portion is given as under.*

*"Normally, this court does not provide the copy of the documents to the **non contesting parties**. However, in the facts of the case and also in view of the fact that the state is party to the proceeding and is represented by the learned additional chief standing counsel, we feel that no prejudice" would be caused to any of the parties, if one set of CDs is provided to the State Government."*

***(RS No. 236 of 1989)** O.O.S. No. 5 of 1989 Bhagwan Shri Ramalala Virajman and others versus Rajendra Singh and others was filed on 01.07.1989. In this suit, written statement is not filed by defendant no 7 to 10 i.e. The State of U.P., The Collector, the City Magistrate, The Senior Superintendent of Police Faizabad, they have not raised objection regarding notice under section 80*

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Code of Civil Procedure.

The true cause of action to the plaintiff in O.O.S. no. 1 of 1989 is against the Muslims Defendants 1 to 5, and the state or their agencies defendants 6 to 9 are only proforma Defendants. The reason is that the Plaintiff's right of worship of Shri Rama Janma Bhoomi and the Idols of Bhagwan Shri Rama situated in Shri Rama Janama Bhoomi was obstructed by the State's sovereign power to maintain law and order through their agencies. The City Magistrate passed order u/s 145-146 Cr.P.C. to attach the disputed property and placed it in Custodia legis through a Receiver in exercise of those statutory and sovereign powers in the meantime this Civil suit was filed in a situation of emergency when the rights of devotees were in great geopardy, Hence injunction order was passed by the Civil Court the ultimate order dated 30.07.1953 is ***Annexure No. 4****. The City Magistrate undertake that the order passed by the Civil Court in this very suit (while no other suit had been file till then) shall be implemented and rights of parties shall be restored accordingly. This situation has continued to prevail, subject to certain notifications caused by T****he Acquisition of certain Area at Ayodhya act, 1993, No. 33 of 1993.***

Today, The Authorized Person/ Commissioner Faizabad Division under the act stands in the same position as 'Receiver' under the Original Civil Court/ Magistrates orders. The property therefore confines to be Custodia Legis, and the only relief permissible is declaration and consequential injunction sought for in the suit. The Government has therefore represented to this

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*Hon'ble Court that it is **not interested** in the subject matter of dispute in this suits as indicated above. It was, therefore, not necessary to issue a notice u/s 80 C.P.C. stand, waived and in any case it is no longer necessary as the suit stands at present.*

It is clear from the action of the State, mentioned above that:-

(i) State is not interested in the property in suit

(ii) State is non contesting party

(iii) State waived its right to objection u/s 80 C.P.C.

(iv) State action is and is liable for only maintain law and orders between the two communities and site in dispute."

653. He also placed reliance in support of his submissions to the Apex Court's decision in **Dhian Singh Sobha Singh Vs. Union of India, AIR 1958 SC 274 (para 30);** this Court's decision in **Smt. Raj Kumari Vs. Board of Revenue U.P., AIR 1985 RD 33;** and Patna High Court's decision in **Province of Bihar Vs. Kamakshya Narain Singh, AIR 1950 Patna 366.**

654. Before considering the above submission, we may notice one more fact. The defendants no.6 and 9 are represented by Sri S.P. Srivastava, learned Additional Chief Standing Counsel, but on being asked, he made a statement that the State Government is neither supporting nor opposing any of the Suit but is interested in peaceful adjudication of the matter which would be in the larger interest of the public i.e. the members of both the communities in particular and the entire State and Country in general. He did not advance any argument on any of the aspects and despite the fact that in the written statement filed on behalf of respondent no. 6, 8 and 9, an objection of non

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compliance of Section 80 C.P.C. has been taken but he did not press the said objection before us and advanced no argument. He, however, said that he abide by the stand taken in written statement and deny any collusion with the defendants no. 1 to 5. The defendant no. 7 (Suit-1) has not filed any written statement. Therefore, the objection of non compliance of Section 80 C.P.C. has been raised and pressed before us only by the private party, i.e., the Sunni Central Board of Waqfs, defendant no. 10, for whose benefit Section 80 C.P.C. admittedly has not been enacted. As we have already discussed, it is open to the State authorities-defendants, for whose benefit the provision is made to waive the benefit of such a provision. When no argument is advanced on behalf of the State and its authorities, though they are represented through a counsel before the Court, we would be justified in inferring waiver on the part of the said authorities.

655. In view of what we have discussed above in regard to issue no. 10 (b), Suit-3, this issue also stands covered therewith. However, we need to discuss some authority cited by Sri Siddiqui.

656. **Jagadish Chandra Deo Vs. Debendra Prosad Bagehi Bahadur and Ors. AIR 1931 Cal 503** is an authority relied by Sri Siddiqui. There the Court observed that it is the duty of the Court to look into the plaint and find out whether there is averment as to the service of notice and when it found that there is no such averment, the plaint itself should be rejected and the suit should not proceed. Observing the aforesaid, Calcutta High Court relied on the decision of this Court in **Bachchu Singh (supra)**. Since the decision in **Bachchu Singh (supra)** has already been overruled by the Hon'ble Apex Court in **Ghanshyam Dass (supra), the** Calcutta High Court's decision in

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Jagdish Chandra Deo (supra), in our view, also cannot be relied on.

657. In **Province of Bihar Vs. Kamakshya Narain Singh AIR 1950 Patna 366** following the Privy Council decision in **Vellayan Chettiar (supra)** it was observed that right to notice under Section 80 C.P.C. can be waived by the State. However, therein notice was already given but the question whether the notice was in accordance with the requirement of Section 80 C.P.C. was raised by the learned Advocate General on behalf of the State whereupon the High Court took the view that suit being of the nature of a bill *quia timet,* the right to notice under Section 80 can be waived by the State. Strictly speaking, this decision does not appear to be in line with what has been said by Apex Court in subsequent decisions in **Dhian Singh Sobha Singh (supra)**, **Sawai Singhai Nirmal Chand (supra)** and **Ghanshyam Dass (supra)**.

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658. In **Smt. Raj Kumari Vs. Board of Revenue (Supra)** though an issue was framed regarding want of notice under Section 80 CPC but neither the State Government pressed the same before the Court nor lead any evidence in support thereof hence this Court held that the plaintiff cannot be non suited for want of notice under Section 80 CPC since the parties for whose benefit the provision has been made has not pressed the same and a third party cannot take advantage by taking plea of want of notice to the State Government or its authorities.

659. Considering in the light of of the above dictum and exposition of law in simplicitor, the first reason which favours the plaintiff in our view to maintain the Suit is the factum of non pressing of this objection by defendants no. 6 to 9. Secondly, the Suit is pending for the last 61 years and more. It is no doubt true

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that the defendants no. 1 to 5 have raised this objection in their written statement filed in February, 1950 itself but it appears that they never pressed this objection and requested the Court to take up the objection with respect to non compliance of Section 80 C.P.C. as a preliminary issue and to decide the same and that is how the matter is still pending.

660. Thirdly, the various other issues raised in Suit-1 would not die as a result of our taking the extreme view of dismissal thereof being the consequence of non compliance of Section 80 C.P.C. since later on the said suit was connected with three others and similar issues are up for consideration before us in other three cases also. The issues raised in Suit-1 since are similar as raised in other three cases, the same have to be decided on merits irrespective of the consequence Suit-1 may suffer of a strict technical view in the matter.

661. Lastly, we also intend to consider the question of the consequences of non compliance of Section 80 C.P.C. in the light of what has been observed by the Apex Court subsequently in a catena of decisions considering various reports of Law Commissions as also the object and purpose of enactment of the said provision. The observations of the Apex Court [See: **Ghanshyam Dass (supra)]** are clear that it is a procedural law. It is meant for augment of the course of justice and not to impeach it on mere technical grounds. The experience of more than a century shows that the purpose and objective for which a two months' notice is required to be given to the State has lost its efficacy for the reason that the Government or its authorities never bother to consider the grievance raised by a litigant on receiving a notice given under Section 80 C.P.C. and never consider to resolve the dispute, if any, by giving a proper reply

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or by considering the grievance of the persons concerned. Almost in all the cases, the incumbent had to resort to the remedy of suit. The requirement of notice under Section 80 C.P.C. has become a mere formality for the State.

662. Moreover, in the case in hand, there was no scope for defendants no. 6 to 9 even to consider and act to resolve the grievance of the plaintiff (Suit-1) had a notice under Section 80 C.P.C. been given to them in the context of peculiar facts and circumstances of this case. The background facts are that alleging that an idol has been placed inside the disputed building treated to be an old Mosque by Muslims, a first information report was lodged on 23rd December, 1949. The Police also reported the matter to City Magistrate apprehending a serious law and order situation on account of the above incident. Finding substance in the report of the Police and apprehending immediate breach of peace and public tranquility as also disturbance of law and order, the Magistrate passed an order on 29th December, 1949 attaching the disputed property (disputed building and inner courtyard) and appointed Commissioner to manage the affairs of the said premises. The administrative authorities at Ayodhya and District Faizabad were to act in the aid of the execution of the said statutory order for maintaining law and order. The action and omission on the part of the District authorities, therefore, was not on their own but it was pursuant to a statutory order passed by the City Magistrate in exercise of his statutory powers. It is this order which in fact caused some obstruction, if any, in the plaintiff's alleged right of worship at the disputed premises. From perusal of the pleadings and reliefs sought in the plaint it is evident that the plaintiff sought to enforce his right to worship the idols which he

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believed to be the Deity placed at the birthplace of Lord Rama and the right he was exercising in the past also in a regular manner, which was obstructed due to attachment of the property (inner courtyard and the disputed building) under the order of the City Magistrate who also appointed a Receiver in purported exercise of power under Section 145 Cr.P.C. If we consider the purpose of notice contemplated by Section 80 C.P.C., it is evident that the Receiver took charge of the property in dispute (i.e. inner courtyard including building) pursuant to statutory order passed by the City Magistrate on 29th December, 1949. The various authorities of the State Government evidently acted to get the statutory order of the Magistrate executed and also to maintain law and order. A notice to the State Government in such circumstances would not have served the purpose, inasmuch as, there was no act or omission on the part of the State Government on its own either in restraining the plaintiff from offering worship on the disputed site or otherwise but whatever its authorities were doing that was to comply with the statutory order passed by the City Magistrate on 29th December, 1949. The notice, if any, sent by the plaintiff (Suit-1) would not have served the purpose for which a notice is required to be sent under Section 80 C.P.C. to the Government or its officers.

663. Besides, the alleged obstruction of the plaintiff's right of worship, if any, was *de die indium* and there was an urgency in the matter. In a case of attachment made by the Magistrate in exercise of power under Section 145 Cr.P.C., it is not the possession taken by the Court or by statutory authority or the State on its own but in law it is deemed to be a possession on behalf of the real owner. It has not been argued by any of the

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learned counsels that since the real cause of action arose on account of the order of attachment passed by the City Magistrate, the plaintiff could have served a notice under Section 80 C.P.C. to the Magistrate. The statutory power and its consequences could not have been undone by the State Government. Then no useful purpose would have served if a notice would have been issued by the plaintiff to the State Government or its officers in view of the peculiar facts and circumstances of this case.

664. Considering the observations of the Apex Court in **Ghanshyam Dass (supra)** and the discussion as above, we are inclined to take a view that plaintiff in Suit 1 ought not to be non-suited for want of notice under Section 80 C.P.C. to the defendants No.6 to 9.

665. In view of the above, and also considering the fact that learned Standing Counsel appearing on behalf of defendants No. 6 to 9 has not advanced any argument pressing the objection with respect to want of notice under Section 80 C.P.C. and further that the objection with respect to want of notice cannot be taken by private individuals, as we have already held while deciding issue No.10(b) (Suit-3), we hold that Suit-1 need not be rejected as barred by Section 80 C.P.C. This question is answered accordingly in negative i.e. in favour of plaintiff (Suit-1).

666. So far as Issue No.14 of Suit-1 is concerned, it has become redundant since Suit No. 25 of 1950 (i.e., Suit-1) has already been dismissed as withdrawn by the plaintiffs of that suit and, therefore, there is no occasion to answer the same.

667. Issues no. 26 and 27 of Suit-5:

26. Whether the suit is bad for want of notice under

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section 80 C.P.C. as alleged by the defendants 4 and 5?

27. Whether the plea of suit being bad for want of notice under Section 80 CPC can be raised by defendants 4 and 5?

668. Both the issues No.26 and 27 of Suit 5 are answered in negative in view of our findings on Issue No. 10(b) (Suit-3) and therefore, we hold that Suit 5 is not bad for want of notice under Section 80 C.P.C. since no such objection has either been raised or pressed before us by the State Government or its authorities. The defendants no.4 and 5 being private parties cannot raise such an objection. In fact, during the course of argument, learned Counsels for the defendants have not advanced any submission on these two issues in respect to Suit-5. Thence also the plaintiffs (Suit-5) cannot be non suited on this ground. Both the issues are decided in favour of plaintiffs (Suit-5).

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(B) Religious Denomination

669. **Issue no. 17 (Suit-3)**

"Whether Nirmohi Akhara, plaintiff, is Panchayati Math of Rama Nand sect of Bairagis and as such is a religious denomination following its religious faith and pursuit according to its own custom?"

670. This issue was framed vide Court's order dated 23.2.1996 on the application of plaintiffs (Suit-3). The plaintiffs have pleaded that Nirmohi Akhara is a Panchayati Math of Ramanandi sects of Vairagies and as such is a religious denomination following its own religious customs prevalent in Vairagies sects of Sadhus. Since the days of Yore there exist an ancient Math or Akhara of "Ramanandi Vairagies" called 'Nirmohi' with its seat at Ramghat known as 'Nirmohi Akhara'. The plaintiff no. 1 (Suit-3), Nirmohi Akhara, is a religious

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establishment of a public character and plaintiff no. 2 is the present Head as its Mahant and Sarbarahkar. The customs of Nirmohi Akhara were reduced in writing on 19.03.1949 by a registered deed. The plaintiff Nirmohi Akhara owns several Temples and manages all of them through Panch and Mahants of Akhara. The Temples and property vest in Akhara which is a "Panchayati Math". It acts on a democratic pattern. The management and right to manage "Akhara" vests absolutely with Panch.

671. The defendants 6 to 8 in their written statement have not said anything in reply to the above averments. The defendant no. 10, Umesh Chandra Pandey, in his written statement has asserted that Janamsthan, the disputed premises, is a holy place of worship and belong to deity of Bhagwan Sri Ram Lala Virajman. It never belonged nor could belong to plaintiff no. 1 (Suit-3) which owe its existence for the last 200 years only, though the holy Janamsthan or Janam Bhumi is a very old Temple. The main presiding deity of the Temple is Bhagwan Sri Ram. The Hindu Temple is deemed to be possessed and owned by a deity. The Principal deity of Sri Ramjamanbhumi is Bhagwan Sri Ram.

672. In replication, the plaintiffs have said that Nirmohi Akhara originated more than 500 years ago. There was a great religious preceptor 'Shankaracharya' at the end of 7th century A.C., who established for the first time “Hindu Math” in four corners of India, i.e., Goverdhan Math at Puri, Jyotir Math at Badrinath, Sharda Math at Dwarka and Sringeri Math at Tungabhadra. The said practice was followed, first in time, by Sri Ramanujacharya, and then by Sri Ramanand. "Ramats", a sect of Vaishnavs, was founded by Sri Ramanand, which

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contained a large element of aesthetic population founded in Banaras and Ayodhya. Ramanand established several Maths consist of only celibates. They obey no caste rules and even Shudras are in their brotherhood. The "Ramats" worship one God in the form of "Ram" and they call themselves "Das" (servants of Lord). About 500 years ago, Sri Swami Brijanand Ji and Sri Balanand Ji, who belong to Ramanandi sect of Vairagies established three 'Anni' known as (1) Nirmohi, (2) Digamber and (3) Nirwani for protection and improvement of "Chatuha Ramanandi Sampraday" comprising of seven Akharas only, namely, (1) Sri Panch Ramanandi Nirmohi Akhara, (2) Sri Panch Ramanandi Nirwani Akhara, (3) Sri Panch Ramanandi Digambari Akhara, (4) Sri Panch Ramanandi Santoshi Akhara, (5) Sri Panch Ramanandi Khaki Akhara, (6) Sri Panch Ramanandi Niralambi and (7) Sri Panch Ramanandi Maha Nirwani. The Akharas as "Panchayati Maths" act on democratic pattern and real power vests in Panch. The appointment of Mahant is by election. The person, who is elected by the Panchayat becomes the formal head of Akhara. The Nirmohi Akhara, a Panchayati Math, owes several temples and one of such is “Ram Janam Asthan”. Nirmohi Akhara is a religious denomination and had been maintaining and managing the disputed temple since long.

673. In support of their claim, besides certain documentary evidences, some witnesses have also been examined by plaintiffs (Suit-3). At this stage, in our view, the following questions, i.e., incidental but integrally connected need be considered first to answer the main issue.

1. What is a "Math"? Its meaning, constitution etc.?
2. What is a "Panchayati Math”?

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3. What is the meaning of a "religious denomination"?

674. A "Math" is an important type of Hindu religious endowment. It spell differently at places, namely, Math, Mutt or Muttum. In ordinary language, it signifies an abode or residence of ascetics. In legal parlance, it connotes a monastic institution presided over by a Superior and established for the use and benefit of ascetics belong to a particular order, who generally are disciples or co-disciples of the superior.

675. The detailed history and other characteristics of religious institution, i.e., "Math" has been discussed in the learned work of Dr. B.K. Mukherjea, "The Hindu Law of Religious and Charitable Trusts" (Tagore Law Lectures) (hereinafter referred to as "Mukherjea's Hindu Law"), which was first published in 1952 and we are referring the relevant extract from its 4th edition, edited by P.B. Gajendragadkar and P.M. Bakshi. It is stated in para 7.5 at page 332 that Hindu Maths were established for the first time by Adi Shankaracharya. He himself founded four Maths at the four corners of India and made them centres of his Vedantik teaching. Bhogavardha Math at Puri (in east), Jyotir Math at Badrinath (in north), Sharda Math at Dwarka (in west) and Sringeri Math at Tungabhadra (in south) are the four Maths. Each of these Maths was placed in the charge of one of his four principal disciples, who were, Padmapad, Hastamalak, Sureswar and Trotaka. These four disciples had their own disciples also. In the course of time ten orders or classes of monks were formed, into which the monks of the Shankar School stood divided. These ten orders popularly known as Dasnamis bear the appellants Tirtha, Asrama, Vana, Aranya, Giri, Parvat, Sagar, Saraswati, Bharati and Puri. The disciples of Trotaka at Jyotir Mutt at Badrinath were Giri, Parvat and Sagar,

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while the Sringeri Math claimed as its adherents Saraswati, Bharati and Puri. In addition to the Sannyasis who belong to the fourth stage of life, there were "Naishthik Brahmacharis" or perpetual students attached to all the Maths. This practice started by Adi Shankaracharya was followed by almost all the religious teachers since then.

676. First in order of time was Sri Ramanujacharya,who propounded the theory “qualified monism” in opposition to the “pure monism” of Adi Shankaracharya. Shankar's theory was based upon rigorous logic, recognised the Supreme Brahman as the only one and absolute reality. It regarded everything else as phenomenal or illusory. Ramanuj and other Vaishnava teachers who followed him were all philosophical theists. They tried to reconcile their metaphysical doctrines with the yearnings of the human heart which always requires a personal God as the supreme cause of all that exists and an eternal soul which yearns for “an approach to an union with that Being”. The followers of Ramanuj are known as "Sri Vaishnavas". The object of their adoration is “Supreme” being in the form of "Vishnu" who is always associated with "Shri" or "Lakshmi". On the model of Dashnami Maths of Shankaracharya, Ramanuj founded a large number of Maths for the purpose of strengthening the doctrine propounded by him.

677. Then came Sri Ramanand (born in 1299 A.D.), disciple of Ramanuj. He founded a sect of Vaishnavas known as "Ramats". Ramanand himself is said to have built a Math, for the “ascetics” of his sect, in Benares. The "Ramats" worship one God in the form of Ram.

678. The meaning of the word “ascetic” in Oxford English-English-Hindi Dictionary (2008) on page 64 is as under:

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*"**ascetic** not allowing yourself physical pleasures, especially for religious reasons"*

679. In New Lexicon Webster's Dictionary of the English Language, Deluxe Encyclopedic Edition, at page 53, the word "ascetic" has been described as under:

*"**as.cet.ic 1.** adj. practicing self-discipline with a view to spiritual improvement, esp. by learning to do without things good in themselves (e.g. warmth, comfort) frugal, austere (of personal appearance) giving the impression of self-denial, gaunt, spare **2.** n. a person who practices asceticism, a person who lives an austere life."*

680. Thus ordinarily, an ascetic is one who renounces the world and devotes himself to religion, owns no property, no fixed place of residence and accept such food and lodgings as are provided by pious householders. But if a pious ascetic gathers around him a number of disciples whom he initiates into the mysteries or tenets of his order and such of his disciples intend to become ascetics, renounce all connection with their family including family wealth and completely affiliate themselves with the said spiritual teacher, a spiritual fraternity would eventually grow up. If pious, generous persons endow such a fraternity with property, it naturally vests in the preceptor for the time being and a home is created for the brotherhood, i.e., a Math and that would lead to the constitution and building of a Math. Once the "Math" is established, succession to headship takes place within spiritual family according to the usages that grow up in a particular institution.

681. The term "Math" has been described in the Law Lexicon-The Encyclopaedic Law Dictionary by P. Ramanatha Aiyer (1997) at page 1205 as under:

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*"**Math.** Although there are some differences between debuttar property and property dedicated to a math, where the math is an idol installed in it, property appertaining to a math, whether dedicated to the idol or not, is not the personal property of the head of the math; and when the holder or Mahant is not only a sanyasi but also a celibate, the property is utterly incapable of passing to natural heirs. The fact that the holder executes a hibanama in which he describes the math as his math carries little weight; the math with the idol cannot be his personal property. The presumption in the case of a mahant who is a sanyasi and a celibate, having no family of his own, and who is free from all worldly attachments, is that the property held or acquired by him is so held or acquired on behalf of the math to which his life is entirely devoted. A presumption of the same kind would arise in respect of the property subsequently acquired by such celibate Mahant. Susil Chandra Sen and another v. Gobind Chandra Das and another, 6 RP 705=150 IC 61=AIR 1934 Pat 431.*

The term 'Math' is used in the sense either of an institution or of a building. Maths are in the nature of monastic institutions and the term may also be used for the building in which such an institution is housed. Where originally there was a banking or money-lending business which passed from each of its proprietors to his chosen successor, chosen for his business capacity and not for his learning or piety, and there was no religious object behind the business but they called themselves sanyasis and their residence Math it was held that the property acquired by the proprietors could not be claimed to be 'Math' properties as

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there was no 'Math" in the legal sense of the word. Mayanand Gir v. Parshottamanand Gir, 1943 ALJ 400=1943 OWN (HC) 250.

An institution comes within the definition of 'math' if it satisfies three conditions; i) that the institution be for the promotion of the Hindu Religion; ii) that it be presided over by a person whose duty is to engage himself in-spiritual service or who exercises or claims to exercise spiritual headship over a body of disciples; and iii) that the office of such person devolves in accordance with the directions of the founder of the institution or is regulated?, by usage, Srinivas Das v. Surjanarayan, AIR 1967 SC 256, 259. [Orissa Hindu Religious Endowments Act (4 of 1939), Sec. 6(7)]"

682. In **Sammantha Pandara Vs. Sellappa Chetti ILR 2 (1878-81) Madras 175** Madras High Court discusses the origin of 'Math' as under:

"The origin of mattams is ordinarily as follows : A preceptor of religious doctrine gathers around him a number of disciples whom he initiates into the particular mysteries of the order, and instructs in its religious tenets. Such of these disciples as intend to become religious teachers, renounce their connection with their family and all claims to the family wealth, and, as it were, affiliate themselves to the spiritual teacher whose, school they have entered. Pious persons endow the schools with property which is vested in the preceptor for the time being, and a home for the school is erected and a mattam constituted. The property of the mattam does not descend to the disciples or elders in common; the preceptor, the head of

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the institution, selects among the affiliated disciples him whom he deems the most competent, and in his own life-time installs the disciple so selected as his successor, not uncommonly with some ceremonies. After the death of the preceptor the disciple so chosen is installed in the gaddi, and takes by succession the property which has been held by his predecessor. The property is in fact attached to the office and passes by inheritance to no one who does not fill the office. It is in a certain sense trust property; it is devoted to the maintenance of the establishment, but the superior has large dominion over it, and is not accountable for its management nor for the expenditure of the income, provided he does not apply it to any purpose other than what may fairly be regarded as in furtherance of the objects of the institution. Acting for the whole institution he may contract debts for purposes connected with his mattam, and debts so contracted might be recovered from the mattam property and would devolve as a liability on his successor to the extent of the assets received by him.

We do not of course mean to lay it down that there are not mattams which may have been established for purposes other than those we have described, nor that the property may not in some cases be held on different conditions and subject to different incidents. We have, described the nature of the generality of such institutions and the incidents of the property which is devoted to their maintenance."

683. Again considering as to what is meant by a 'Math', a Division Bench of Madras High Court in **Giyana Sambandha Pandara Sannadhi Vs. Kandasami Tambiran 1887 ILR Vol.**

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10 Madras 375 held as under:

"The origin of these associations, their constitution and development, form part of the history of the establishment and spread of the Brahminical system of religious doctrine among the Sudra communities in Southern India. Originally, the ascetic, who renounced the world and devoted himself to religion, confined his attention to the study of theology, to imparting religious instruction to his disciples, and to complying with the ordinances prescribed for the guidance of his order. He then owned no property, except his cloths, sandals, religious books and the idol he kept for his personal worship and a few other articles of trifling value which were absolutely necessary (Mitakshara, Chap. II, s. 8, para. 8). He had no fixed residence and moved from village to village, accepting such lodgings and food as were provided for him by pious laymen, who were in their turn enjoined by the Shastras to honour and support him. This is the mode in which Brahman Sanniyasis live even at the present time. In several villages pious laymen erected buildings for the residence of hermits when they visited their villages, and these were called Mutts. In its original and narrow sense, then, the term "Mutt" signified the residence of an ascetic or Sanniyasi or Paradesi.

But when the Buddhists assailed the Brahminical religion and when Sankarachariyar, the founder of the Advaita or non-dualistic school of philosophy, ultimately prevailed against them, he established some Mutts in order to maintain and strengthen the doctrine and the system of religions philosophy he taught, Sanniyasis being placed at

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the head of those institutions. After Sankarachariyar, the founders of the Vaishnava, Madhva and other schools of religious philosophy in this Presidency established Mutts for a similar purpose. In former times these institutions exercised considerable influence over the laymen in their neighbourhood; they became centres of classical and religious learning and materially aided in promoting religious knowledge and in encouraging religious and other charities. The ascetics who presided over them were held, owing to their position as religious preceptors, and often also in consequence of their own learning and piety, in great reverence by Hindu princes and noblemen, who from time to time made large presents to them and endowed the Mutts under their control with grants of land. Thus, a class of endowed Mutts came into existence in the nature of monastic institutions, presided over by ascetics or Sanniyasis who had renounced the world. Thus, the ascetic who originally owned little or no property, came to own the Matam under his charge and its endowment, in trust for the maintenance of the Mutt, for his own support, for that of his disciples, and for the performance of religious and other charities in connection with it, according to usage."

684. In **Vidyapurna Tirtha Swami Vs. Vidyanidhi Tirtha Swami 1904 ILR Vol. XXVII Madras 435,** the Madras High Court following its earlier decision in **Sammantha Pandara Vs. Sellappa Chetti (supra)** observed with respect to original growth of 'Math' in this country as under:

"The origin and growth of mutts in this country is thus described in the two judgments of this Court already referred to : "A preceptor of religious doctrine gathers

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around him a number of disciples whom he initiates into the particular mysteries of the order and instructs in its religious tenets. Such of these disciples as intend to become religious teachers renounce their connection with the family and all claims to the family wealth and, as it were, affiliate themselves to the spiritual teacher whose school they have entered. Pious persons endow the schools with property which is vested in the preceptor for the time being and a home for the school is erected and mattam constituted" (Giyana Sambandha Pandara Sannadhi v. Kandasami Tambiran I.L.R., 10 Mad., 375). "The ascetics who presided over them were held, owing to their position as religious preceptors and often also in consequence of their own learning and piety, in great reverence by Hindu princes and noblemen who, from time to time, made large presents to them and endowed the mutts under their control with grants of land. Thus a class of endowed mutts came into existence, in the nature of monastic institutions, presided over by ascetics or sanniyasis who had renounced the world." The object of these mutts is generally the promotion of religious knowledge, the imparting of spiritual instruction to be disciples and followers of the mutt and "the maintenance and strengthening of the doctrines and tenets of particular schools of philosophy."

685. What has been said in **Giyana Sambandha Pandara Sannadhi (supra)** has been followed in **Kailasam Pillai Vs. Nataraja Thambiran and Ors. 1910 I.L.R. 33 Madras 265** at page 267.

686. The Privy Council in **Ram Parkash Das Vs. Anand Das and Ors. AIR 1916 Privy Council 256** had also occasion to

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consider about 'Math' and observed:

"An asthal, commonly known in Northern India as a muth, is an institution of a monastic nature. It is established for the service of a particular cult, the instruction in its tenets and the observance of its rites. The followers of the cult and disciples in the institution are known as chelas; the chelas are of two classes celibate and non-celibate. In the asthal now being dealt with, the religious brethren were the bairagi or celibate chelas; the lay brethren were girhast or householder chelas. The mahant must, by the custom of the muth, be a bairagi or religious chela."

687. Again in **Sri Vidya Varuthi Thirth Swamigal Vs. Baluswami Ayyar and Ors. AIR 1922 P.C. 123** the Privy Council expressed its views on page 126 about "Maths" in the following words:

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"In many cases in Southern India, especially where the diffusion of Aryan Brahmanism was essential for bringing the Dravidian peoples under the religious rule of the Hindu system, colleges and monasteries under the names of Mutt were founded under spiritual teachers of recognised sanctity. These men had and have ample discretion in the application of the funds of the institution, but always subject to certain obligations and duties, equally governed by custom and usage."

688. All the aforesaid decisions were considered by the Apex Court in **Shri Krishna Singh Vs. Mathura Ahir and others 1981 (3) SCC 689=AIR 1980 SC 707**. In para 19, the Apex Court concluded as under:

"19. *.....Math means a place for the residence of ascetics and their pupils, and the like. Since the time of*

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Sankaracharya, who established Hindu maths, these maths developed into institution devoted to the teaching of different systems of Hindu religious philosophy, presided over by ascetics, who were held in great reverence as religious preceptors, and princes and noblemen endowed these institutions with large grants of property."

689. In **Krishna Singh (supra)** the Court also observed that a Math is an institutional sanctum presided over by a superior who combines in himself the dual office of being the religious or spiritual head of the particular cult or religious fraternity, and of the manager of the secular properties of the institution of the Math. It also held that the principles noticed in the above cases would make it sufficiently clear that *"a math is an institutional sanctum presided over by a superior who combines in himself the dual office of being the religious or spiritual head of the particular cult or religious fraternity, and of the manager of the secular properties of the institution of the math."*

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690. Concept of Mutt, private and public, has been considered in **Bihar State Board of Religious Trust Vs. Mahant Sri Biseshwar Das AIR 1971 SC 2057** and in para 17 the Court observed :

"A religious mutt in northern India is usually known as asthal, a monastic institution founded for the maintenance and spread of a particular sampradaya or cult. The distinction between dedication to a temple and a mutt is that in the former case it is to a particular deity, while in the latter, it is to a superior or a mahant. ... A mutt can be dedicated for the use of ascetics generally or for the ascetics of a particular sect or cult, in which case it would be a public institution. Mutts have generally sadavrats, i.e.

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arrangements for giving food and shelter to wayfarers and ascetics attached to them. They may have temples to which the public is allowed access."

691. A "Math" is not a Temple inasmuch it is a place for rendering charitable and religious services in general. Merely there are idols in the Math, it cannot be treated as a Temple. Similarly, an institution which is in its origin a Math, cannot be treated as a temple because idols are also worshipped in the Math. The Math can not be treated as a place of public religious worship mere by reason of the worship of idols. The primary purpose of a Math is to encourage and foster spiritual learning by maintenance of a competent line of teachers who impart religious instructions to the disciples and followers of the Math and try to strengthen the doctrines of the particular school or order of which they profess to be adherents. The deity or an idol may be an essential element in a Math if the worship of a personal God in a certain form is an essential feature of the religious doctrine of a certain order. The worship of God in that form would be a part of their religious teaching which it would be the duty of any Math of that order to foster and encourage, otherwise it may not be necessary. This has been pointed out in Mukherjea's Hindu Law (supra), 4th Edn. at page 331-332 as under :

"...there are religious orders like those of the Shankara School which believe in monastic doctrines of the Vedanta and to not regard the worship of a personal God as a necessary or essential part of the religious teachings. Even in Shankar Mutts, there may exist a shrine for a particular idol but it cannot be said that the presiding element in a Mutt must be a deity or that there cannot be a Mutt without

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an idol. A shrine or a temple may ordinarily be seen as an adjunct to a Mutt, but it is not a necessary one and even when it exists, it is not the chief or the indispensable part of the institution. It is only ancillary to the main purpose for whicht he Mutt is endowed and the presiding element in a Mutt is always the Mohunt or the spiritual preceptor."

692. A place of worship is not a necessary part of a Math, though it is often found in such institution and although primarily intended for the use of inmates, the public may also be admitted to such places of religious worship. (See **Thamba Vs. Arundel I.L.R. 6 Mad. 287**).

693. The presiding element in a Math is an ascetic or a religious teacher, who together with his disciples and co-disciples form spiritual family. It owe its existence to benefactions or grants of property made by pious benefactors. The object of the benefaction is the creation of an institution for the benefit of a fraternity of religious men at the head of which stands the superior or Mahant (also termed as "Mohunt"), who represents the entire institution. (vide **Satya Charan Sarkar Vs. Mohanta Rudrananda Giri AIR 1953 Cal. 716**).

694. In **Shri Krishna Singh Vs. Mathura Ahir (supra)**, the Apex Court also quoted the relevant extracts from Mukherjea's Hindu Law (supra) as to what a “Math” would signify. It further held that the property belong to a Math is in fact attached to the office of Mahant, and passed by inheritance to no one who does not fill the office. The head of a Math, as such, is not a trustee in the sense in which that term is generally understood, but in legal contemplation he has an estate for life in its permanent endowments and an absolute property in the income derived from the offerings of his followers, subject only to the "burden

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of maintaining the institution". He is bound to spend a large part of income derived from the offerings of his followers on charitable or religious objects.

695. The words "the burden of maintaining the institution" must be understood to include the maintenance of Math, the support of its head and his disciples and the performance of religious and other charities in connection with it, in accordance with usage.

696. According to Hindu jurisprudence, religious institutions such as a "Math" is treated a “juristic entity” with a legal personality capable of holding and acquiring property. The ownership of property vest in the institution. From the very nature of Math, it can act and assert its rights only through a human agency known as "Mahant", Shebait or Dharmakarta or sometimes known as trustee. The Apex Court in **Shri Krishna Singh (supra)** quoted the following observation of the Bombay High Court *(Jenkins, C.J. in* **Babajirao Vs. Laxmandas 1904 ILR 28 Bom. 215 at 223***)* with approval which defines the true notion of a “Math” in the following terms :

> *"A math, like an idol, is in Hindu law a judicial person capable of acquiring, holding and vindicating legal rights, though of necessity it can only act in relation to those rights through the medium of some human agency."*

697. In **H.H. Shri Swamiji of Shri Amar Mutt and others Vs. Commissioner, Hindu Religious and Charitable Endowments Department and others 1979 (4) SCC 642**, Hon'ble P.N. Shinghal, J., in a separate judgment, though concurring with the conclusion of majority view of the Constitution Bench, in para 47 observed *"A Mutt is a monastic institution for the use and benefit of ascetics belonging to a*

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particular order presided over by a superior who is its religious teacher. The Mutt property, though originally given by a donor, belongs to that spiritual family represented by the superior or Mahant. It does not, however, vest in him, as he is some sort of a "shebait", and vests in the Mutt as a juristic person."

698. The term "Mahant" has been descried in the Law Lexicon-The Encyclopaedic Law Dictionary by P. Ramanatha Aiyer (1997) on page 1161 as under:

> *"**Mahant.** (H.) The head of a religious establishment of the medicant orders of the Hindus. (Wil. Gloss. 317.)*
>
> *A Mahant or the head of a Math is not a "trustee" in the sense in which that term is understood in English law. The only law as to a Mahant and his office, functions and duties, is to be found in custom and practice, which is to be proved by testimony. But though a Mahant is not a trustee, in the English sense, he is, in view of the obligations and duties resting on him, answerable, as a trustee in the general sense, for the proper administration of the institution of which he is the head. The existence of a very wide discretion in the Mahant as to the application of the income of the Math or asthal is by no means inconsistent with a fiduciary obligation so to manage the property of the Math that the objects for which the Math exists shall be effectively serve. (Kesho Das v. Amar Dasji and others, 14 Pat 379=156 IC 1093=8 RP 62=16 Pat LT 35=AIR 1935 Pat 111)"*

699. The position of a "Mahant" of a "Math" is like that of a "Head of the institution". He is neither a corporation nor a life tenant in respect to the Math property. He is also not a trustee in the sense in which the term is understood in English law. Call

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by whatever name, he is the manager or custodian of the institution. The property which he holds does not vest in him; it vests in the institution and is held by him as a Manager of the same. [See **Vidyavaryathi Vs. Baluswami (Supra**)].

700. In **Krishna Singh (supra)** regarding the succession of Mahantship of a Math or religious institution the Apex Court said:

> *"30. The law is well settled that succession to mahantship of a math or religious institution is regulated by custom or usage of the particular institution, except where a rule of succession is laid down by the founder himself who created the endowment. See: Genda Puri v. Chatar Puri (1886) 13 Ind App 100 (PC); Sital Das v. Sant Ram AIR 1954 SC 606 and Mahalinga Thambiran v. La Sri Kasivasi (1974) 2 SCR 74."*

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701. According to usage, wide discretion in the application of funds of the institution is possessed by the "Mahant" but it is always subject to certain obligations and duties equally prescribed by customs and usages.

702. Then comes the next question as to what is a "Panchayati Math". The answer to this question is also found in the learned work of Mukherjea's Hindu Law (supra). It appears that in general, there are three kinds of Maths according to different ways in which the heads or superiors are appointed, i.e., Mourasi, Panchayati and Hakimi. In the first category, the office of the Mahant is hereditary and devolves upon the Chief disciple of the existing Mahant, who usually nominates him as his successor. In the second category, i.e. Panchayati, the office is elective and the presiding Mahant is elected by an assembly of Mahants. In the last category, the appointment of Mahants is

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vested in the ruling power or in the party who has endowed the temple. We are not going into further details of other kinds of Maths and confine our discussion to “Panchayati Math”.

703. As we have already observed the mode of appointment of Mahant is by election in a Panchayati Math. As to who would constitute the electoral body depends upon the customs of the particular institution. Normally the Mahants of the same sect in a particular locality or Mahants having a common origin assemble and elect the successor of the Mahant of the institution.

704. Before coming to third aspect, namely, “religious denomination”, we may refer to one more aspect of a Math, i.e., public and private Maths. B.K. Mukherjea in Hindu law (supra) has discussed about such Maths and observed that there can be a private Math depending upon the construction of the grant, customs and usage of the institution etc. However, it has further observed that where the body is created for the benefit of the public generally, the Math is dedicated for the use of ascetics generally, such Math would be regarded as public institution. Maths have generally Sadavrats or arrangement for feeding and giving shelter to wayfarers and ascetics attached to them. They may also have Temples to which the public is allowed access. Such circumstances might indicate the public character of the endowment but nevertheless it is probable to have a private Math where the endowment is not intended to confer benefit upon the public generally or even upon the members of a particular religious sect or order.

705. Now we come to the third aspect of the matter as to what is a "religious denomination". These words have attained significance in view of the expression “religious denomination”

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contained in Article 26 and 27 of the Constitution of India. To understand the meaning of the expression “religious denomination”, we have to understand the meaning of the expressions "religion" and “denomination”.

706. Obviously, the words "religion" and “denomination” both are not defined in the Constitution, though they occur in Articles 15 (1), 15 (2), 16 (2), 16 (5), 23 (2), 25 to 28, 29 (2) and 30. In order to understand its scope it would be useful to refer the aforesaid provisions as under :

> ***15.*** *(1) The State shall not discriminate against any citizen on grounds only of* ***religion****, race, caste, sex, place of birth or any of them.*
>
> *(2) No citizen shall, on grounds only of* ***religion****, race, caste, sex, place of birth or any of them, be subject to any disability,liability, restriction or condition with regard to-*
>
> *(a) access to shops, public restaurants, hotels and place of public entertainment; or*
>
> *(b) the use of wells, tanks, bathing ghats, roads and place of public resort maintained wholly or partly out of State funds or dedicated to the use of the general public.*
>
> ***16.*** *(2) No citizen shall, on grounds only of* ***religion****, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect of, any employment or office under the State.*
>
> *(5) Nothing in this article shall affect the operation of any law which provides that the incumbent of an office in connection with the affairs of any* ***religious*** *or* ***denominational*** *institution or any member of the governing body thereof shall be a person professing a particular religion or belonging to a particular*

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denomination.

23. *(2) Nothing in this article shall prevent the State from imposing compulsory service for public purposes, and in imposing such service the State shall not make any discrimination on grounds only of* ***religion****, race, caste or class or any of them.*

25. *(1) Subject to public order, morality and health and to the other provisions of this Part, all persons are equally entitled to freedom of conscience and the right freely to profess, practice and propagate* ***religion****.*

(2) Nothing in this article shall affect the operation of any existing law or prevent the State from making any law-

(a) regulating or restricting any economic, financial, political or other secular activity which may be associated with ***religious*** *practice;*

(b) providing for social welfare and reform or the throwing open of Hindu ***religious*** *institutions of a public character to all classes and sections of Hindus.*

26. *Subject to public order, morality and health, every* ***religious denomination*** *or any section thereof shall have the right-*

(a) to establish and maintain institutions for ***religious*** *and charitable purposes;*

(b) to manage its own affairs in matter of ***religion****;*

(c) to own and acquire movable and immovable property; and

(d) to administer such property in accordance with law.

27. *No person shall be compelled to pay any taxes, the proceeds of which are specifically appropriated in payment of expenses for the promotion or maintenance of any*

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*particular **religion** or **religious denomination**.*

***28.** (1) No **religious** instruction shall be provided in any educational institution wholly maintained out of State funds.*

*(2) Nothing in clause (1) shall apply to an educational institution which is administered by the State but has been established under any endowment or trust which requires that **religious** instruction shall be imparted in such institution.*

*(3) No person attending any educational institution recognised by the State or receiving aid out of State funds shall be required to take part in any **religious** instruction that may be imparted in such institution or to attend any **religious** worship that may be conducted in such institution or in any premises attached thereto unless such person or, if such person is a minor, his guardian has given his consent thereto.*

***29.** (2) No citizen shall be denied admission into any educational institution maintained by the State or receiving aid out of State funds on grounds only of **religion**, race, caste, language or any of them.*

***30.** (1) All minorities, whether based on **religion** or language, shall have the right to establish and administer educational institutions of their choice.*

*(2) The State shall not, in granting aid to educational institutions, discriminate against any educational institution on the ground that it is under the management of a minority, whether based on **religion** or language. (emphasis added)*

707. Religion is certainly a matter of faith with individuals or

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communities. Religion has its basis in a system of beliefs or doctrine which are regarded by those, who profess that religion are conductive to their spiritual well being, but it would not be correct to say that religion is nothing else but a doctrine or belief. A religion may not only lay down a code of ethical rules for its followers to accept, it might prescribe rituals and observances, ceremonies and modes of worship which are regarded as integral part of religion and these forms and observances might extend even to matters of food and dress.

708. The expression "religion" has been defined in the "Words and Phrases", Permanent Edition, Vol. 36-A, page 461-463 and onwards, and reads as under :

> *"The terms 'religion' and 'religious' in ordinary usage are not rigid concepts.*
>
> *'Religion' has reference to one's views of his relations to his Creator and to the obligations they impose of reverence for his being and character and of obedience to his will.*
>
> *"The word 'religion' in its primary sense (from 'religare' to rebind-bind back), imports as applied to moral questions, only a recognition of a conscious duly to obey restraining principles of conduct. In such sense we suppose there is no one who will admit that he is without religion.*
>
> *"'religion' is bond uniting man to God and virtue whose purpose is to render God worship due him as source of all being and principle of all government of things.*
>
> *"'Religion' has reference to man's relation to divinity to the moral obligation of reverence and worship. Obedience, and submission. It is the recognition of God as an object of worship, love and obedience; right feeling*

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ship, love and obedience; right feeling towards God, as highly apprehended.

"'Religion' means the service and adoration of God or a God as expressed in forms of worship; and apprehension, awareness, or conviction of the existence of a Supreme Being; any system of faith, doctrine and worship, as the Christian religion, the religions of the Orient; a particular system of faith or worship.

"'The term 'religion' as used in tax exemption law, simply includes (1) a belief, not necessarily referring to supernatural powers; (2) a cult, involving a gregarious association openly expressing the belief; (3) a system of moral practice directly resulting from an adherence to the belief; and (4) an organisation within the cult designed to observe the tenets or belief, the content of such belief being of no moment.

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"while 'religion' in its broadest sense includes all forms of belief in the existence of superior beings capable of exercising power over the human race, as commonly accepted it means the formal recognition of God, as members of societies and association, and the term 'a religious purpose', as used in the constitutional provision exempting from taxation property used for religious purposes, means the use of property by a religious society or body of persons as a place for public worship.

"'Religion' is a squaring human life with superhuman life. Belief in a superhuman power and such an adjustment of human activities to the requirements of that power as may enable the individual believer to exist more happily is common to all 'religions'. The term 'religion' has reference

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to one's views on his relations to his Creator, and to the obligations they impose on reverence for His being and character and obedience to his will.

"The term 'religion' has reference to one's view of his relations to his Creator, and to the obligations they impose of reverence for his being and character, and of obedience to his will. With obligations he may think they impose, and the manner in which an expression shall be made by him of his belief on those subjects, no interference can be permitted, provided always the law of society designed to secure its peace and prosperity, and the morals of its people, are not interfered with."

709. In Corpus Juris Secundum Vol. LXXVI (1952), pages 727-729, the word "religion" has been described as under:

"RELIGION. *The word "religion" is derived from "religare," meaning to rebind, to bind back; and in its most general sense it means devotion or fidelity, as to a principle or practice; scrupulous conformity; conscientiousness; deep attachment like that felt for an object of worship.*

There is not complete agreement on a definition of the word "religion" as it is used in the theological sense, and the content of the term is found in the history of the human race and is incapable of compression into a few words. It is not defined in the Bible or in various state constitutions, and although the word is used in the First Amendment to the Constitution of the United States, see Constitutional Law § 206 a, it is not defined in the Constitution, and it is therefore necessary to go elsewhere to ascertain the meaning of the term, and it has been said

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that there is nowhere to go more appropriately than to the history of the times in the midst of which the Bill of Rights of the federal Constitution was adopted.

What has been referred to as a "minimum definition" of the word "religion" as stated by a legal philosopher is that the term "religion" has reference to one's views of his relations to his Creator, and to the obligations they impose of reverence for His being and character, and of obedience to His will.

As stated by a religious philosopher, religion is squaring human life with superhuman life, and what is common to all religions is belief in a superhuman power and an adjustment of human activities to the requirements of that power, such adjustment as may enable the individual believer to exist more happily.

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As generally accepted, "religion" may be defined as a bond uniting man to God and a virtue whose purpose is to render God the worship due to him as the source of all being and the principle of all government of things; the recognition of God as an object of worship, love, and obedience; the service and adoration of God or a god as expressed in forms of worship, in obedience to divine commands, especially as found in accepted sacred writings or as declared by recognized teachers and in the pursuit of a way of life regarded as incumbent on true believers; an apprehension, awareness, or conviction of the existence of a Supreme Being, or, more widely, of supernatural powers or influences controlling one's own, humanity's, or nature's destiny; also, such as apprehension, etc., accompanied by or arousing reverence, love, gratitude, the will to obey and

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serve and the like; religious experience or insight; often, specifically, the awakening of religious belief, convictions, etc., as in conversion; a belief in an invisible superhuman power, or powers, conceived of after the analogy of the human spirit, on which, or whom, man regards himself as dependent, and to which, or whom, he thinks himself in some degree responsible, together with the feelings and practices which naturally flow from such a belief; some system of faith and practice resting on the idea of the existence of one God, the creator and ruler, to whom His creatures owe obedience and love. More specifically, the word "religion" is understood to mean conformity in faith and life to the precepts inculcated in the Bible, respecting conduct of life and duty toward God and man; the Christian faith and practice.

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The essence of religion is belief in a relation to God involving duties superior to those arising from any human relation, and it includes a way of life as well as beliefs on the nature of the world. ***In its broadest sense "religion" comprehends all systems of belief in the existence of being superior to, and capable to exercising an influence for good or evil on, the human race, and all forms of worship of service intended to influence or give honor to such superior powers; any system of faith and worship; morality with a sanction drawn from a future state of rewards and punishment.****" (emphasis by Court)*

710. Black's Law Dictionary, Seventh Edition, page 1293 describe it as under:

*"**religion.** A system of faith and worship usu. involving belief in a supreme being and usu. containing a moral or*

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ethical code; esp., such a system recognized and practiced by a particular church, sect, or denomination. In construing the protections under the Establishment Clause and the Free Exercise Clause, courts have interpreted the term religion quite broadly to include a wide variety of theistic and nontheistic beliefs."

711. Law Lexicon-The Encyclopaedic Law Dictionary by P. Ramanatha Aiyer (1997) describe "religion" at page 1646-1647 as under:

*"**Religion.** (Religio). Virtue, as founded on reverence of God, and Expectation of future rewards and punishments; a system of Divine Faith and Worship as opposed to others. (Johns) That habit of reverence towards the Divine Nature, whereby we are enabled and inclined to serve and worship him, after such a manner as we conceive most acceptable to him, is called Religion. (Tomlins Law Dic.)*

"What is Religion? Is it not what a man honestly believes in an approves of and thinks it is duty to inculcate on others, whether with regard to this world or the next? A belief in any system of retribution by an overruling power. It must, I think include the principle of gratitude to an active power who can confer blessings" (per Willes, J., Baxter v. Langley, 38 LJMC 5).

In all countries the word "religion" is ordinarily understood to mean some system of faith and practice resting on the idea of the existence of one God, the creator and ruler, to whom his creatures owe obedience and love.

Religion is morality, with a sanction drawn from a future state of rewards and punishments.

The word "religion" in its primary sense imports, as

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applied to moral questions, only a recognition of a conscious duty to obey restraining principles of conduct. In such sense we suppose there is no one who will admit that he is without religion.

By the generic word "religion" is not meant the Christian religion or Bible religion, but it means the religion of man, and not the religion of any class of men.

"I for one would never be a party, unless the law were clear, to saying to any man who put forward his views on those most sacred things, that he should be branded as apparently criminal because he differed from the majority of mankind in his religious views or convictions on the subject of religion. If that were so, we should get into ages and times which, thank God, we do not live in, when people were put to death for opinions and beliefs which now almost all of us believe to be true."--[Lord Coleridge, C.J., Reg. v. Bradlaugh and others, (1883) 15 Cox. C.C. 230]

"All persecution and oppression of weak consciences on the score of religious persuasions, are highly unjustifiable upon every principle of natural reason, civil liberty, or sound religion." Sir Wm. Blackstone, (1765) Com. Bk. IV, ch. 4, p. 40.

The teachings of Sri Arubindo is only philosophy and not religion. S.P. Mittal v. Union of India, AIR 1983 SC 1, 4, 33. Auroville (Emergency Provisions) Act (59 of 1980)

The expression "religion" mentioned in cl. (b) of Art. 26, includes not only the philosophical side of religion, but also religious practices as laid down in the tenants of any religious sect. Ram Chandra Deb v. State of Orissa, AIR 1959 Ori 5, 10.

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The word 'religion' means the distinct religion and all recognized practices thereof. Arya Samaj Educational, Trust, Delhi v. the Director of Education Delhi Administration Delhi, AIR 1976 Del 207, 211.

The term "religion" whatever its best definition, clearly refers to certain characteristic types of data (beliefs, practices, feelings, moods, attitudes etc.). It primarily involves some immediate consciousness of transcendent realities of supreme personal worth vitally influencing life and thought, expressing themselves in forms which are conditioned by the entire stage of development reached by the individual and his environments and tending to become more explicit and static in mythologies, theologies, philosophies and scientific doctrines. Ramanasramam v. Commissioner for Hindu Religions and Charitable Endowments, AIR 1961 Mad 265, 269.

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Religion is concerned with man's relations with God. If reason leads people not to accept Christianity or any known religion, but they do believe in the excellence of qualities such as truth, beauty and love, or believe in the Platonic concept of the ideal, their beliefs may be to them the equivalent of a religion, but viewed objectively they are not religion, Barralet v. Attorney General, (1980) 3 All ER 918, 924."

712. In the New Lexicon Webster's Dictionary of the English Language Deluxe Encyclopedic Edition, page 841, define "religion" :

*"**re-li-gion** n. man's expression of his acknowledgment of the divine, a system of beliefs and practices relating to the sacred and uniting its adherents in a community, e.g.*

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Judaism, Christianity, adherence to such a system, a man without religion, something which has a powerful hold on a person's way of thinking, interests etc."

713. The Apex Court in **Commissioner, Hindu Religious Endowments, Madras Vs. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt AIR 1954 SC 282** also considered the same and in para 17, it said :

"*17.....Religion is certainly a matter of faith with individuals or communities and it is not necessarily theistic. There are well known religions in India like Buddhism and Jainism which do not believe in God or in any Intelligent First Cause. A religion undoubtedly has its basis in a system of belief or doctrines which are regarded by those who profess that religion as conductive to their spiritual well being, but it would not be correct to say that religion as nothing else but a doctrine or belief. A religion may not only lay down a code of ethical rules for its followers to accept, it might prescribe rituals and observances, ceremonies and modes of worship which are regarded as integral parts of religion, and these forms and observances might extend even to matters of food and dress."*

714. In **Ratilal Panachand Gandhi Vs. The State of Bombay and others, AIR 1954 SC 388** the Court observed:

"A 'religion' is not merely an opinion, doctrine or belief. It has its outward expression in acts as well. Religious practices or performances of acts in pursuance of religious belief are as much a part of religion as faith or belief in particular doctrines. Thus if the tenets of the Jain or the Parsi religion lay down that certain rites and ceremonies

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are to be performed at certain times and in a particular manner, it cannot be said that these are secular activities partaking of commercial or economic character simply because they involve expenditure of money or employment of priests or the use of marketable commodities. No outside authority has any right to say that these are not essential parts of religion and it is not open to the secular authority of the State to restrict or prohibit them in any manner they like under the guise of administering the trust estate."

715. Another Constitution Bench in **S.P. Mittal Vs. Union of India AIR 1983 SC 1** considered the "religion" and in para 12 of the judgment, it said :

"12.....The Constitution considers Religion as a matter of thought, expression, belief, faith and worship, a matter involving the conscience and a matter which may be professed, practised and propagated by anyone and which may even have some secular activity associated with it....."

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716. In **S.P. Mittal (supra)** the Court also held:

"'Religion' is morality, with a sanction drawn from a future state of rewards and punishments. The term 'religion' and 'religious' in ordinary usage are not rigid concepts. 'Religion' has reference to one's views of his relations to his Creator and to the obligations they impose of reverence for his being and character, and of obedience to his will. The word 'religion' in its primary sense (from 'religare', to rebind, bind back), imports, as applied to moral questions, only recognition of a conscious duty to obey restraining principles of conduct. In such sense we suppose there is no one who will admit that he is without

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religion. Religion is bond-uniting man to God, and virtue whose purpose is to render God worship due him as source of all being and principle of all government of things. 'Religion' has reference to man's relation to divinity; to the moral obligation of reverence and worship, obedience, and submission. It is the recognition of God as an object of worship, love and obedience; right feeling toward God, as highly apprehended. 'Religion' means the service and adoration of God or a god as expressed in forms of worship; an apprehension, awareness, or conviction of the existence of a Supreme Being; any system of faith, doctrine and worship, as the Christian religion, the religions of the Orient; a particular system of faith or worship. While 'religion' in its broadest sense includes all forms of belief in the existence of superior beings capable of exercising power over the human race, as commonly accepted it means the formal recognition of God, as members of societies and associations, and the term, 'a religious purpose', as used in the constitutional provision exempting from taxation property used for religious purposes, means the use of property by a religious society or body of persons as a place for pubic worship. 'Religion' is squaring human life with superhuman life. Belief on a superhuman power and such an adjustment of human activities to the requirements of that power as may enable the individual believer to exist more happily is common to all 'religions'. The term 'religion' has reference to one's views of his relations to his Creator, and to the obligations they impose of reverence for his being and character, and of obedience to his will. With man's relations to his Maker and the

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obligations he may think they impose, and the manner in which he of his belief on those subjects shall make an expression, no interference can be permitted, provided always the laws of society, designed to secure its peace and prosperity, and the morals of its people, are not interfered with."

717. In **Most Rev. P.M.A. Metropolitan and others Vs. Moran Mar Marthoma and another, 1995 (Supple) (4) SCC 286** the word religion was described as under:

"Religion" is the belief, which binds spiritual nature of men to supernatural being. It includes worship, belief, faith, devotion etc. and extends to rituals. Religious right is the right of a person believing in a particular faith to practice it, preach it and profess it."

718. In **A.S. Narayana Deekshitulu Vs. State of A.P. and others, 1996(9) SCC 548** the Court described "religion" with reference to Articles 25 and 26 of the Constitution as under:

"'Religion' as used in these articles must be construed in its strict and etymological sense. 'Religion' is that which binds a man with his Cosmos, his Creator or Super force. It is difficult and rather impossible to define or delimit the expressions 'religion' or "matters of religion' used in Article 25 and 26. Essentially, religion is a matter of personal faith and belief of personal relations of an individual with what he regards as Cosmos, his maker or his creator, which, he believes, regulates the existence of insentient beings and the forces of the universe. 'Religion' is not necessarily theistic and in fact there are well-known religions in India itself like Buddhism and Jainism, which do not believe in the existence of God. In India, Muslims

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believe in Allah and have faith in Islam; Christians in Christ and Christianity; Parsis is Zoroastrianism; Sikhs in Guru Granth Sahib and teachings of Guru Nanak Devji, its founder, which is a facet of Hinduism like Brahmo Samaj, Arya Samaj etc. A religion undoubtedly has its basis in a system of beliefs and doctrine, which are regarded by those who profess religion to be conducive to their spiritual well being. A religion is not merely an opinion, doctrine or belief. It has outward expression in acts as well.----------"

719. In **T.K. Gopal alias Gopi Vs. State of Karnataka, 2000 (6) SCC 168** the Court said:

"'Religion' is a matter of faith stemming from the depth of the heart and mind. 'Religion' is a belief, which binds the spiritual nature of man to a supernatural being; it is an object of conscientious devotion, faith and pietism. Devotion in its fullest sense is a consecration and denotes an act of worship. Faith in the strict sense constitutes firm reliance on the truth of religious doctrines in every system of religion. Religion, faith or devotion is not easily interchangeable."

720. In **Ms. Aruna Roy and others Vs. Union of India and others, JT 2002 (7) SC 103** it was said:

"The word 'religion' has different shades and colours. Important shade is dharma (duty), that is to say, duty towards the society and the soul. It should not be misunderstood nor contention could be raised that as it is used in the national policy of education, secularism would be at peril."

721. In **P.M.A. Metropolitan (supra)** the Court in respect to faith and belief also observed: *"Religion is founded on faith and*

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belief. Faith emanates from conscience and belief is result of teaching and learning." (para 3)

722. The word "denomination" has been described in Black's Law Dictionary Seventh Edition on page 446 as under:

> *"**denomination. 1.** An act of naming. **2.** A collective designation, esp. of a religious sect."*

723. In "Words and Phrases", Permanent Edition, Vol. 12 (1962), page 105, defines it as under :

> *"A "denomination" is a religious sect having a particular name. Hale v. Everett, 53 N.H. 9, 92, 16 Am.Rep. 82.*
>
> *A "denomination" is defined by Webster as "A class or collection of individuals called by the same name; a sect." Wilson v. Perry, 1 S.E. 302, 304, 314, 29 W.Va. 169.*
>
> *In an indictment charging the larceny of national bank bills, the number and denomination of which are to the grand jury unknown, "denomination" refers to the value or number of dollars the several bills represented, as the denomination of $500, etc. Duvall v. State, 63 Ala. 12, 17.*
>
> *"Religious sect, order, or denomination," as used in V.A.M.S. Const. 1865, art, 1, § 13, providing that a "religious sect, order, or denomination" was capable of receiving a devise, etc., is not to be limited in meaning to such religious bodies as are composed of many local congregations linked together by rules of the sect, order, or congregation, so that what property one holds belongs in some sense to the whole, but includes a local congregation uncontrolled by any general ecclesiastical organization. Boyce v. Christian, 69 Mo. 492, 494."*

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724. The Law Lexicon-The Encyclopaedic Law Dictionary by P. Ramanatha Aiyer (1997) describe "denomination" on page 521:

> ***"Denomination.*** *A class or collection of individuals called by the sane name; a sect; a class of units in money (coins of small denomination); a distinctively named church or sect (as, elergy of all denominations).*
>
> *A class or society of individuals called by the same name especially a religious group or a community of believers called by the same name."*

725. New Lexicon Webster's Dictionary of the English Language, Deluxe Encyclopedic Edition, at page 256 defined the word "denomination" as under:

> *"**de-nom-i-na-tion** n. the act of denominating, a name, esp. one given to a class or category, one of a series of units in numbers, weights or money, a religious sect, Protestant denominations."*

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726. The term "denomination" came to be considered by the Apex Court in **Bramchari Sidheswar Shai and others Vs. State of West Bengal AIR 1995 SC 2089** and in para 14 of the judgement referring to Oxford Dictionary, the Apex Court quoted from **Sri Shirur Mutt (supra)** as under :

> *"...The word denomination has been defined in the Oxford Dictionary to mean a collection of individuals classed together under the same name: a religious sect of body having a common faith and organisation and designated by a distinctive name....."*

727. In **Sri Adi Visheshwara of Kashi Vishwanath Temple, Varanasi and others Vs. State of U.P. and others, 1997(4) SCC 606** the court said:

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"On the practices of the Math, the meaning of the connotation "denomination" in that behalf, it was held that each such sect or special sects which are founded by their organizer generally by name be called a religious denomination as it is designated by distinctive name in many cases. It is the name of the founder and has common faith and common spiritual organization. Article 26 of the Constitution contemplates not merely a religious denomination but also a section thereof. The words "religious denomination" under Article 26 of the Constitution must take their colour from the word religion and if this be so the expression religious denomination must be (1) a collection of religious faith, a system of belief, which is conducive to the spiritual well-being, i.e, a common faith; (2) Common organization; (3) a designation by a distinctive name."

728. In Corpus Juris Secundum Vol. LXXVI (1952) on page 738 the word "religious sect or denomination" has been described as under:

> *"The term "religious sect or denomination" refers to people believing in the same religious doctrines who are more or less closely associated or organized to advance such doctrines and increase the number of believers therein; a body or number of persons united in tenets but constituting a distinct organization or party by holding sentiments or doctrines different from those of other sects or people.*
>
> *The term "religious sect or denomination" refers to people believing in the same religious doctrines who are more or less closely associated or organized to advance such doctrines and increase the number of believers therein; a church, or body of persons in some way united*

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for purposes of worship, who profess a common religious faith, and are distinguished from those composing other such bodies by a name of their own; a body or number of persons united in tenets but constituting a distinct organization or party by holding sentiments or doctrines different from those of other sects or people.

Denomination. A class or collection of individuals called by the same name; a sect. It has been said to be equivalent to, or synonymous with, "persuasion."

Persuasion. In religious affairs, a creed or belief; hence a sect or party adhering to a creed or system of opinions."

729. The word "religious denomination or religious sect" has been described in Words and Phrases Permanent Edition Vol. 36A (1962) on page 479:

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"A religious sect is a body or number of persons united in tenets, but constituting a distinct organization or party, by holding sentiments or doctrines different from those of other sects or people. State v. Hallock, 16 Nev. 373, 385.

"People believing in the same religious doctrines, who are more or less closely associated or organized to advance such doctrines and increase the number of believers therein," constitute a religious sect. State v. District Board of School Dist. No. 8, 44 N.W. 967, 973, 76 Wis. 177, 7 L.R.A. 330, 20 Am.St.Rep. 41.

"Religious sect, order, or denomination," as used in V.A.M.S. Const. 1865, art, 1, § 13, providing that a "religious sect, order, or denomination" was capable of receiving a devise, etc., is not to be limited in meaning to

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such religious bodies as are composed of many local congregations linked together by rules of the sect, order, or congregation, so that what property one holds belongs in some sense to the whole, but includes a local congregation uncontrolled by any general ecclesiastical organization. Boyce v. Christian, 69 Mo. 492, 494."

Within Const. Art. 1, § 1, par. 14, providing that no money shall be taken from the public treasury in aid of any church, sect, denomination, or sectarian institution, a "religious sect" is a body or number of persons united in tenets and constituting a distinct organization or party holding sentiments or doctrines different from those of other sects or people, and having a common system of faith. Every such sect is "sectarian," and a "church" is an organization for religious purposes or for the public worship of God. Benett v. City of La Grange, 112 S.E. 482, 485, 153 Ga. 428, 22 A.L.R. 1312."

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730. The term "religious sect" is described in the Law Lexicon-The Encyclopaedic Law Dictionary by P. Ramanatha Aiyer (1997) at page 1648 as under:

*"**Religious sect.** "People believing in the same religious doctrines, who are more or less closely associated or organized to advance such doctrines and increase the number of believers therein," constitute a religious sect. A religious sect is a body or number of persons united in tenets, but constituting a distinct organization or party, by holding sentiments or doctrines different from those of other sects or people."*

731. In the New Lexicon Webster's Dictionary of the English Language Deluxe Encyclopedic Edition at page 841 the word

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"religious" has been described as under:

> *"re-li-gious 1. adj. of, pertaining to, or concerned with religion, faithful in religion, associated with the practice of religion, a religious rite (of behavior) governed by principles adhered to as strictly as if they were those of a religion, a religious regard for accuracy, of or pertaining to a monastic order 2. pl. re-li-gious n. someone who has made monastic vows."*

732. The term "religious denomination" came up for consideration before the Apex Court in **Sri Shirur Mutt (Supra)** and after referring to the Oxford Dictionary, the Court observed that the meaning of "religious denomination" is a collection of individuals classed together under the same name; a religious sect or body having a common faith and organization and designated by a distinctive name. The Court held that different sects or sub-sects can certainly be called a religious denomination as it is designated by a distinctive name, has a common faith and common spiritual organization.

733. In **S.P. Mittal (supra)** the Court also considered the term 'religious denomination' and said:

> *"The word 'religious denomination' in Article 26 of the Constitution must take their colour from the word 'religion' and if this be so, the expression 'religious denomination' must also satisfy three conditions". It must be a collection of individuals who have a system of beliefs or doctrines, which they regard as conducive to their spiritual well being, that is, a common faith; Common organization; and Designation by a distinctive name."*

734. In **S. R. Bommai and others Vs. Union of India and others AIR 1994 SC 1918** and **M/s Radhasoami Satsang,**

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Saomi Bagh, Agra Vs. Commissioner of Income Tax 1992 (1) SCC 659 the aforesaid tests for determination of "religious denomination" were reiterated.

735. In **Nallor Marthandam Vellalar and others Vs. Commissioner, Hindu Religious and Charitable Endowments and others 2003 (10) SCC 712**, it was held that the words "religious denomination" take their colour from the word "religion". The Court further said that the expression "religious denomination" must satisfy three requirements- (1) it must be collection of individuals, who have a system of beliefs or doctrine which they regard as conducive to their spiritual well-being, i.e. a common faith, (2) a common organization; and (3) designation of a distinctive name. It necessarily follows that the common faith of the community should be based on religion in that they should have common religious tenets and basic cord which connects them, should be religion and not merely consideration of caste of community or social status.

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736. Following the view taken with regard to "religious denomination" in **Sri Shirur Mutt (supra)**, a three-Judge Bench of the Apex Court in **Acharya Jagdishwaranand Avadhuta and others Vs. Commissioner of Police, Calcutta and another 1983 (4) SCC 522** held that "Ananda Marga", which is a collection of individuals who have a system of beliefs which they regard as conducive to their spiritual well being; a common organization; a definite name could be regard as a "religious denomination" within Hindu religion as it satisfies the test laid down by the Constitution Bench in **Sri Shirur Mutt (supra).**

737. In **Bramchari Sidheswar Shai (supra)**, the Court held that Ram Krishna Mission is also a "religious denomination", and while expressing so, the Court in para 51 of judgment said :

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"51. No good reason is shown to us for not accepting the view of the Division Bench of the point that Ramakrishna Mission or Ramakrishna Math is a religious denomination. It is not in dispute and cannot be disputed that Sri Ramakrishna could be regarded as religious teacher who expounded, practised and preached the principles of Vedanta on which Hindu religion is founded, to meet the challenges posed to humanity in the changing world and made his disciples to spread the principles so expounded by him not only in India but all over the world as the basic principles of Hinduism. It cannot also be disputed that the disciples of Ramakrishna formed Ramakrishna Math and Ramakrishna Mission for propagation and promotion of the principles, so expounded, practised and preached by Ramakrishna Parmahansa, by way of publications and building of temples, prayer halls and building of educational, cultural and charitable institutions as performance of sevas resulting in the coming up of organisations as Ramakrishna Maths and Ramakrishna Missions, all over the world. These Maths and Missions of Ramakrishna composed of the followers of principles of Hinduism as expounded, preached or practised by Ramakrishna as his disciples or otherwise form a cult or sect of Hindu religion. They believe in the birth of sage Ramakrishna in Dakshineswar as an Avatar of Rama and Krishna and follow the principles of Hinduism discovered, expounded, preached and practised by him as those conducive to their spiritual well-being as the principles of highest Vedanta which surpassed the principles of Vedanta conceived and

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propagated by Sankaracharya, Madhavacharya and Ramanunjacharya, who were earlier exponents of Hinduism. Hence, as rightly held by the Division Bench of the High Court, followers of Ramakrishna, who are a collection of individuals, who adhere to a system of beliefs as conducive to their spiritual wellbeing, who have organised themselves collectively and who have an organisation of definite name as Ramakrishna Math or Ramakrishna Mission could, in our view, be regarded as a religious denomination within Hindu religion, inasmuch as they satisfy the tests laid down by this Court in Sri Shirur Math's case (AIR 1954 SC 282) (supra) for regarding a denomination as a religious denomination."

738. It may be noticed at this stage the scope of judicial review about what constitute religious belief or what is essential religious practices or what rites and ceremonies are essential according to the tenets of a particular religion. It is not the subject to the belief of faith of a judge but once it is found that a belief, faith, rite or ceremony is genuinely and consciously treated to be part of the profession or practice of a religion by the segment of people of distinct group, believing in that particular religion, suffice it to constitute "religion" within the term of Article 25 of the Constitution whereunder the persons of the said segment have a fundamental right to practice their religion without any interruption from the State. This right is subject only to public order, morality and health and to the other provisions of Part III of the Constitution as well as the power of the State to make laws in respect to the matter provided in Article 25(2) of the Constitution. This right is conferred to the persons professing, practising and propagating the concerned

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religion.

739. In **Jamshed Ji Vs. Soonabai, (1909) 22 Bom 122** Hon'ble Davar, J. in respect to the belief of a community regarding religion observed:

> "*If this is the belief of the community and it is proved undoubtedly to be the belief of the Zoroastrian community,- a secular Judge is bound to accept that belief-it is not for him to sit in judgement on that belief, he has no right to interfere with the conscience of a donor who makes a gift in favour of what he believes to be the advancement of his religion and the welfare of his community or mankind."*

740. The above view has been quoted with approval in **Ratilal Panachand Gandhi (supra)** and in **Bijoe Emmanuel and others Vs. State of Kerala and others, 1986(3) SCC 615** wherein after quoting the above observation the Apex Court approved the same in the following words:

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> *"We do endorse the view suggested by Davar J.'s observation that the question is not whether a particular religious belief or practice appeals to our reason or sentiment but whether the belief is genuinely and conscientiously held as part of the profession or practice of religion. Our personal views and reactions are irrelevant. If the belief is genuinely and conscientiously held it attracts the protection of Article 25 but subject, of course, to the inhibitions contained therein."*

741. The contents and the scope of Article 25 and 26 of the Constitution have been considered by the Apex Court in a number of decisions and it would be suffice to refer a Constitution Bench decision in **Sardar Syedna Tahel Saifuddin Saheb Vs. State of Bombay, AIR 1962 SC 853** wherein,

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referring to its earlier decisions, the Apex Court in para 34 observed:

> *"The content of Arts. 25 and 26 of the Constitution came up for consideration before this Court in 1954 SCR 1005: (AIR 1954 S.C. 282), Ramanuj Das v. State of Orissa, 1954 SCR 1046: (AIR 1954 SC 400), 1958 SCR 895: (AIR 1958 S.C. 255); (Civil Appeal No. 272 of 1960 D/- 17-3-1961: (AIR 1961 SC 1402), and several other cases and the main principles underlying these provisions have by these decisions been placed beyond controversy. The first is that the protection of these articles is not limited to matters of doctrine or belief, they extend also to acts done in pursuance of religion and therefore contain a guarantee for rituals and observances, ceremonies and modes of worship which are integral parts of religion. The second is that what constitutes an essential part of a religion or religious practice has to be decided by the courts with reference to the doctrine of a particular religion and include practices which are regarded by the community as a part of its religion."*

742. Here referring as to what constitute "religious denomination", the Court also observed that the identity of a "religious denomination" consists in the identity of its doctrine, creeds and tenets and these are intended to ensure the unity of the faith which its adherents profess and the identity of the religious views and the bonds of the union which binds them together as one community. In the absence of conformity to essentials, the denomination would not be an entity cemented into solidity by harmonious uniformity of opinion, it would be a mere incongruous heap of, as it were, grains of sand, thrown

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together without being united, each of these intellectual and isolated grains differing from every other, and the whole forming a but nominally united while really unconnected mass; fraught with nothing but internal dissimilitude, and mutual and reciprocal contradiction and dissension. (This is a quote from the passage of Lord Halsbury in Free Church of Scotland Vs. Overtoun; 1904 AC 515 which in turn refer to the observations of "Smith B." in Dill Vs. Watson, (1836) 2 Jones Rep. (Ir Ex) 48).

743. The Apex Court further observed that a denomination within Article 26 and persons who are members of that denomination are under Article 25 entitled to ensure the continuity of the denomination and such continuity is possible only by maintaining the bond of religious discipline which would secure that continued adherence of its members to certain essentials like faith, doctrine, tenets and practices. The right guaranteed by Article 25(1) is not confined to freedom of conscience in the sense of the right to hold a belief and to propagate that belief, but includes the right to the practice of religion, the consequences of that practice must also bear the same complexion and be the subject of a like guarantee.

744. In **Sardar Sarup Singh and others Vs. State of Punjab and others, AIR 1959 SC 860** another Constitution Bench observed that freedom of religion in our Constitution is not confined to religious beliefs only but extends to essential religious practices as well subject to the restriction which the Constitution has laid down. Referring to **Shirur Mutt (supra)** it also held that a religious denomination or organization enjoys complete autonomy in the matter of deciding as to what rites and ceremonies are essential according to the tenets of the

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religion they hold. Similarly referring to **Venkataramana Devaru Vs. State of Mysore, AIR 1958 SC 255** the court said that matters of religion in Article 26(b) include practices essential according to the community as part of its religion.

745. In the light of the above discussion, let us examine as to what are the characteristics of Nirmohi Akhara, plaintiff, so as whether it can be called "the Panchayati Math of Ramanandi sect of Bairagies" and also a "religious denomination following its religious faith and pursues according to its own customs".

746. Sri R.L. Verma, Advocate, learned counsel for plaintiffs (Suit-3) placed before us Exhibit-1 (Suit-3), which is a copy of a registered document containing in writing the customs and practices to be observed by Nirmohi Akhara. The document is registered with the Sub-Registrar, Faizabad under Registration Act, 1908 on 26.3.1949. It states that about 500 years back, Sri Brijanand and Sri Balanand Ji constituted 3 Anni, namely, (1) Nirmohi, (2) Digamber and (3) Nirwani and thereunder constituted seven Akharas, namely, (1) Sri Panch Ramanandi Nirmohi Akhara, (2) Sri Panch Ramanandi Nirwani Akhara, (3) Sri Panch Ramanandi Digambari Akhara, (4) Sri Panch Ramanandi Santoshi Akhara, (5) Sri Panch Ramanandi Khaki Akhara, (6) Sri Panch Ramanandi Niralambi and (7) Sri Panch Ramanandi Maha Nirwani. These bodies were constituted for protection and development of "Chatuha Sampraday". All these seven Akharas were based on military training of Sadhus. The existing Mahant of Nirmohi Akhara was Sri Raghunath Das, but in hierarchy the Panchayat has twelve other Mahants or may be called "Sub-Mahants". Nirmohi Akhara has a lot of property including several temples, namely, Ramjanam Bhumi Temple at Mohalla Ram Kunj, Temple Akhara at Mohalla Rajghat etc. The

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appointment and removal of the Mahant shall be by panchayat. The property shall be in the name of Mahant, but would belong to Nirmohi Akhara. Any legal proceeding shall be taken through Mahant. However, Mahant would not work contrary to the decision of Panch. The Akahara shall follow and propound the religious tenets of "Chatuha Sampraday" with further provision of giving military training to its Sadhus for the protection of its Sampraday.

747. Sri Verma submitted that Ramanand Sect has its origin with Lord Ram who is treated to be the first superior of the sect. It has derived its continuance since then. Sri Ramanandacharya, however, was a person who formally established it sometimes in 13th Century. The military training commenced in the sect by Sri Anubhavanandacharya in the 16th Century and was given a final shape by Sri Balanandacharya. In support of his submissions he placed before us a book "Smritigranthah" 30th Edition published by Sri Ramanand Darshan Shodh Sansthan on 27.01.2000 (Paper No. 43-C1/6). Page 543/279 contains some details of Sri Anubhavanandacharya showing his period from Samvat 1503-1611 (1446 AD-1554 AD). Similarly page 695/431 gives the details of Sri Balanandacharya showing his period as Samvat 1710-1852 (1653 AD-1795 AD). From page 73/49 it is evident that Sri Ramanandacharya himself was born in Samvat 1356 (1299 AD) at Prayagraj i.e. Allahabad and died in Samvat 1532 (1475 AD) at Varanasi.

748. He further relied on **Yadunath Sarkar's "History of Bairagi Akharas**" to show existence of Vairagis and their activities in Kumbh Mela in the year 1796 AD and 1882 AD.

749. He also relied on certain other books which are as under.

750. "**A Historical Sketch of Tahsil Fyzabad, Zillah**

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Fyzabad" by P. Carnegy printed at the Oudh Government Press, Lucknow in 1870 (in short "P. Carnegy's Historical Sketch"). P. Carnegy was officiating Commissioner and Settlement Officer at Faizabad. Besides others, he has also dealt with the Akharas of Ayodhya in his book from Page 19 to 20, as under :

"The monastic orders.- There are seven Akharas or cloisters of the monastic orders, or Bairagis, disciples of Vishnu, in Ajudhia, each of which is presided over by a Mahant or Abbot; these are :-

1. Nirbani, or silent sect, who have their dwelling in Hanuman Garhi.

2. The Nirmohi, or void of affection sect, who have establishments at Ramghat, and Guptarghat.

3. Digambari, or naked sect of ascetics.

4. The khaki or ash-besmeared devotees

5. The Maha-nirbani, or literally dumb branch.

6. The Santokhi, or patient family.

7. The Nir-alambhi, or provisionless sect.

The expenses of these different establishments of which the first is by far the most important, are met from the Revenues of lands which have been assigned to them; from the offerings of pilgrims and visitors; and from the alms collected by the disciples in their wanderings all over India.

The Nirbani sect,- I believe the Mahant of the Nirbani Akhaara or Hanumangarhi, has 600 disciples, of whom as many as 3 or 400 are generally in attendance, and to whom rations are served out at noon daily. The present incumbent has divided his followers into four Thoks or parties, to whom the names of four disciples, as

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marginally noted, have been given.

There appear to be as I have already pointed out in my "Notes on Races, &c.," several grades of discipleship in connexion with these establishments.

I. There are the ordinary worshippers of all the different Hindu castes, who still retaining their position in the world and their home ties, become disciples in the simple hope that their prayers offered under the auspices of their spiritual guides, will be heard and their temporal wishes granted.

II. There are also those who forsaking the world and their homes, join the fraternity of devotees in view solely to their eternal well being, a privilege which is within the reach of all castes of Hindus. Of these latter those who were Brahmins and Chhatris before initiation are exempted from manual labour, while the menial offices of cooking, sweeping, water drawing &c. devolve upon those of the brethren who were originally of the lower castes.

A disciple of the 2nd is for a time admitted as a novice and entrusted with unimportant secular offices only. He is then required to make a round of the great places of pilgrimage such as Dwarka Jagarnath, Gya &cs. &c., and on his return thence he is finally admitted to all the privileges of the order; celibacy is enforced, and those who surreptitiously marry, or steal, are expelled from the brotherhood. Brahmins and Chhatris are admitted to membership without limit as to age, but candidates, of other castes must be under the age of sixteen years, so that they may readily inbibe the doctrines of the order. The orders of the Mahant and his advisers, the heads of Thoks,

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must be implicitly obeyed. The best of the disciples are chosen to remain at the temple to conduct the devotions in solitude.

Nirmohi sect.- It is said that one Gobind Das came from Jaipur some 200 years ago and having acquired a few Bighas of revenue-free land, he built a shrine and settled himself at Ram Ghat. Mahant Tulshi Das is the sixth in succession. There are now two branches of this order, one at Ram Ghat, and the other occupying the temples at Guptar Ghat. They have rent free holdings in Basti, Manakpur and Khurdabad.

The Digambari sect.- Siri Balram Das came to Ajudhia 200 years ago, whence it is now known, and having built a temple settled here. Mahant Hira Das is the seventh incumbent. The establishment of resident disciples is very small being limited to 15; they have several revenue free holdings in the district.

The Khaki sect.- When Remchandr became an exile from Ajudhia his brother Lachhman is said in his grief to have smeared his body with ashes and to have accompanied him. Hence he was called Khaki, and his admiring followers bear that name to this date. In the days of Shuja-ud-Dowla one Mahant Dya Ram is said to have come from Chitrkot, and having obtained 4 bighas of land, he thereon established the Akhara, and this order of Bairagis now includes 180 persons, of whom 50 are resident and 100 itinerant. This establishment has some small assignments of land in this, and in the Gondah district. Ram Das the present Mahant is seventh in succession from the local founder of the order.

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The Mahanirbani sect.- Mahant Parsotam Das came to Ajudhia from Kotah Bundi in the days of Shuja-ud-Dowla, and built a temple at Ajudhia. Dial Das the present incumbent is the sixth in succession. He has 25 disciples, the great majority of whom are itinerant mendicants. The words Mahanirbani imply the worshipping of God without asking for favours, either in this world or the next.

The Santoki sect.- Mahant Rati Ram arrived at Ajudhia from Jaipur in the days of Mansur Ali Khan, and building a temple founded this order. Two or three generations after him the temple was abandoned by his followers, and one Nidhi Singh, an influential distiller in the days of the Ex-king, took the site and built thereon another temple. After this Khushal Das of this order returned to Ajudhia and lived and died under an Asok tree, and there the temple which is now used by the fraternity, was built by Ramkishn Das the present head of the community.

The Niralambhi sect.- Siri Birmal Das is said to have come from Kotah in the time of Shuja-ud-Dowla, and to have built a temple in Ajudhia, but it was afterwards abandoned. Subsequently Narsing Das of this order erected a new building near Darshan Sing's temple. The present head of the fraternity is Ram Sevak, and they are dependent solely on the offerings of pilgrims."

751. "**Fyzabad: A Gazetteer being Vol. XLIII of the District Gazetteers of the United Provinces of Agra and Oudh**" by **H.R. Nevill** published by **Government Press, United Provinces** in **1905** (Book No. 4) also gives some details about the Ramanandis and Vairagi Akharas of Ayodhya as under:

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"Hinduism in this district is naturally influenced in a large degree by the presence of Ajodhya, the birthplace of Rama, so that it is only to be expected that the Vaishnavite form should predominate. The census returns show, however, that the professed followers of Vaishavism amount to only a small proportion of the Hindu population. No more than 7.7 per cent. were returned as Vaishnavites and 5.5 per cent. as Ramanandis. In both cases the proportions are high, but still the great mass of the Hindus appear to belong to no particular sect, as is generally the case throughout Oudh.

Among the numerous Faqirs whose home is at Ajodhya there are many Bairagis, who are included in the Vaishnavites. ***These Bairagis belong to regularly constituted religious bodies and are devided among seven different akharas or orders.*** *The disciples have to pass through a series of stages, which are identical in all cases. They are admitted while under the age of sixteen, although the rule is relaxed in the case of Brahmans and Rajputs, who also enjoy other privileges, especially in the matter of exemption from menial service. The first stage is known as Chhora and lasts for three years: the work of the novice consists of servile offices, such as cleaning the smaller utensils of the temple and of the common mess, carrying wood, and performing puja path. The second stage is also for three years and is known as bandagidar. The disciple now draws water from the well, cleans the larger vessels, cooks the food, as well as doing puja. At the expiration of this period there follows a third stage of equal duration, known as hurdanga. In this the work consists in*

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taking the daily food to the idols, distributing the daily rations given at midday to the brethren, doing puja and carrying the nishan or temple standard. In the tenth year the disciple enters on a fourth period of three years called naga. During this stage he leaves Ajodhya with his contemporaries and goes the round of all the tiraths or sacred places of India, subsisting all the time on mendicancy. At his return he reaches the fifth and final stage called atith, which continues till his life's end. He now ceases to work, except in the matter of puja path, and is provided with food and clothing.

The seven orders have a regular system of precedence which is observed in ceremonial processions and on similar occasions. *In front come the Digambaris, followed by the Nirbanis on the right and the Nirmohis on the left. In the third rank behind the Nirbanis march the Khakis on the right and the Niralambhis on the left; and after the Nirmohis come the Santokhis and Mahanirbanis in the same order. Between each body a space is left, both in front and on the flanks. The Digambaris or naked ascetics are said to have been founded by one Balram Das, who came to Ajodhya over two hundred years ago and built a temple here. The present head of the college is the eleventh mahant. The order is a small one, as the number of resident brethren is limited to fifteen; it is on the other hand possessed of considerable wealth, having several revenue-free holdings in Gorakhpur and two villages, Puraina in tahsil Fyzabad and Kalupur in Tanda, recently purchased in this district. The largest community is that of the Nirbanis, who live in the celebrated Hanuman Garhi*

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temple. They are very numerous, but there are not more than 250 resident disciples who obtain daily rations. The Nirbanis are divided into four thoks or pattis, which go by the names of Hardwari, Basantia, Ujainia and Sagaria, each with its own mahant; but over all is a single presiding mahant, chosen by common consent, who occupies the gaddi in the verandah in front of the temple. The Nirbanis are very wealthy: besides owning revenue-free lands in Fyzabad, Gonda, Basti, Pratabgarh and Shahjahanpur, they carry on an extensive business as moneylenders and dealers in elephants, and have purchased several villages with the proceeds. Their revenue from the offerings made by pilgrims is also very large. ***The Nirmohi sect claim spiritual descent from one Gobind Das of Jaipur. They formerly held the Janamasthan temple in Ramkot, the remains of which still belong to them; but on its destruction by the Musalmans they moved to Ramghat. Subsequently a quarrel arose among them on a question of succession and a split occurred, a branch leaving Ramghat and settling at Guptarghat. The mahant of the Ramghat branch is the ninth in succession from the founder. The Nirmohis of Guptarghat have some revenue-free lands in Basti, Mankapur and Khurdabad, but the others are wholly dependent on the temple offerings. The name signifies "void of affection."*** *The Khaki or ash-besmeared akhara was established in the days of Shuja-ud-daula by one Daya Ram from Chitrakot, who obtained four bighas of land in Ajodhya and built thereon a temple. The order numbers 180 persons, of whom 50 are resident and the rest itinerant. The present head is*

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eleventh in succession from the founder. The khakis own some land in Basti and hold the lease of one village in Gonda. The sect called Niralambhi, or provisionless, dates from the same period, having been founded by Birmal Das of Kotah, who came to Ajodhya and built a temple which was afterwards abandoned. One of his successors, Narsingh Das, erected a new temple near that of Darshan Singh. The fraternity is a small one and depends solely on the offerings of pilgrims. The Santokhis or patient faqirs are a small and poor sect without any endowment. The akhara was founded in the time of Safdar Jang by Rati Ram of Jaipur, who built a temple in Ajodhya. This was subsequently abandoned and the site taken for another temple by Niddhi Singh, an influential Kalwar in the days of Wajid Ali Shah. After this, one Khushal Das of the Santokhi sect returned to Ajodhya, and his successor, Ramkishan Das, built the present temple. In 1900 the mahant died and for some time the Akhara was deserted and no successor appointed. Lastly come the Mahanirbanis or dumb faqirs, the word implying worship without asking for favours either in this work or the next. The present mahant is the seventh in succession from the founder, one Parsotam Das, who came to Ajodhya from Kotah Bundi in the reign of Shuja-ud-daula, and built a temple. There are twenty-five brethren, the majority of whom are itinerant mendicants." (emphasis added)

752. "**Ayodhya Ka Itihas**" written by **Sri Avadhwasi Lala Sitaram** (first published in **1932 and reprinted in 2001**) (Book No. 46) is the next work. Page 35 thereof reads as under:

"इन सातों अखाड़ों के नियमित क्रम हैं जिसके अनुसार ये बड़े–बड़े

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मेलों और ऐसे ही अवसरों पर चलते हैं। पहले दिगंबरी रहते हैं, फिर उनके बाद निर्वाणी दाहिनी ओर, और निर्मोही बाई ओर, तीसरी पंक्ति में निर्वाणियों के पीछे खाकी दाहिनी ओर, और निरालंबी बाईं ओर। और निर्मोहियों के पीछे संतीषी और महानिर्वाणी। हर एक के आगे और पीछे कुछ स्थान खाली रहता है।''

"There is successive order for these seven Akharas, according to which they move in big fairs and similar occasions. First of all Digambaris find place then, Nirvani on right side and Nirmohi on left side, in third line behind Nirvanis towards right side Khaki and towards left side Niralambi find place. Behind Nirmohis, Santishi and Mahanirvani move. Some place remains vacant in front and backward side of each. " (E.T.C.)

753. Next is **"Rajasthan Ki Bhakti Parampara Evam Sanskriti"** by **Sri Dinesh Chandra Shukla and Onkar Narain Singh** published at Rajasthani Granthagar, Jodhpur (Book No. 73). Sri Dinesh Chandra Shukla was Associate Professor, History Department, Jodhpur University, Jodhpur and Sri Onkar Narain Singh was Senior Research Assistant, History in the same University. In the Schedule A on page 223 under the heading "Madhyakalin Rajasthan Me Vaishnav Bhakti Parampara", he has not only given the reference of origin of Vaishnav faith in Rajasthan but has also given pedigree of Ramanandacharya and his disciples related with Rajasthan as under:

''यद्यपि राजस्थान में रामानन्द की परम्परा के विकास के पूर्व ही जांभोजी और जसनाथ जी ने वैष्णव मत के प्रचार–प्रसार हेतु पृष्ठभूमि एवं समयुगीन नाथ–पंथियों के विकृत पतितशील तथा क्रिया–कलापों के विरोध में वातावरण का निर्माण कर दिया था। तथापि परवर्ती काल में उदार वैष्णव–प्रकृति को भक्ति धारा द्वारा संचित कर समस्त राजस्थान को लहलहित करने का श्रेय रामानन्द परम्परा के शिष्यों और अनुयायी गणों को

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ही है।

इन शिष्यों में अनन्तानन्द का सांभर आना तथा मारवाड़ नरेश मालदेव को शिष्यत्व प्रदान करना सुविख्यात है। राजस्थान के प्रसिद्ध वैष्णव भक्त कृष्णदास पयहारी (1502–27 ई0) जिन्होंने गलता (जयपुर) की नाथ–मतावलम्बी गद्दी को अधिकृत कर वैष्णव–जनों की सर्वप्रथम और सर्व–प्रधान गद्दी स्थापित की थी, इन्हीं अनन्तानन्द के शिष्य थे। इसी काल में आमेर–नरेश पृथ्वीराज और महारानी बालाबाई इनके शिष्य बने। पयहारीजी के शिष्य अग्रदास ने आमेर नरेश मानसिंह को भारत के अनेक मन्दिरों के पुनरूद्धार हेतु अभिप्रेरित किया था। फलतः वृन्दावन के अनेक मन्दिर एवं घाट, पटना का वैकुण्ठपुर (गुरू गोविन्दसिंह जन्म स्थली) तथा जगन्नाथ धाम की प्रतिष्ठा की गई। भक्तमाल के सुप्रसिद्ध रचयिता नाभादास इन्हीं अग्रदास के शिष्य थे। पयहारीजी के दूसरे शिष्य कील्हदास ने राम–भक्ति के साथ योगाभ्यास को भी प्रश्रय देते हुए रामानन्द की वैरागी–परम्परा में योग–साधना का समावेश कर 'तपसी शाखा' का प्रवर्तन किया।

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रामानन्द के सबसे छोटे शिष्य सुरसुरानन्द रामानन्द की राजस्थान यात्रा के समय से ही राजस्थान से सम्बन्धित रहे।

इनकी परम्परा में केवलानन्द और माधवानन्द हुए। केवलानन्द की परम्परा में ***अनुभवानन्द, ब्रह्मानन्द, बृजानन्द, बालानन्द*** *और* ***गोविन्दजी*** *हुए जिन्होंने ब्रज–भूमि से भगवान श्रीकृष्ण के विभिन्न श्री–विग्रह राजस्थान के नाथद्वारा, कांकरोली, कोटा और जयपुर लाकर प्रतिष्ठित करने की महत्वपूर्ण भूमिका अदा की। माधवानन्द की परम्परा में नरहरिदास हुए, जिन्हें गोस्वामी तुलसीदास का गुरू माना जाता है। इनका 'झीतडा' (मारवाड़) में 'फूवा मठ' के नाम से प्रसिद्ध स्थान है।*

रामानन्द की राजस्थान से सम्बद्ध शिष्य–प्रशिष्य परम्परा निम्नांकित तालिका द्वारा प्रदर्शित की जा सकती है।–

रामानन्द

अनन्तानन्द — *सुरसुरानंद*

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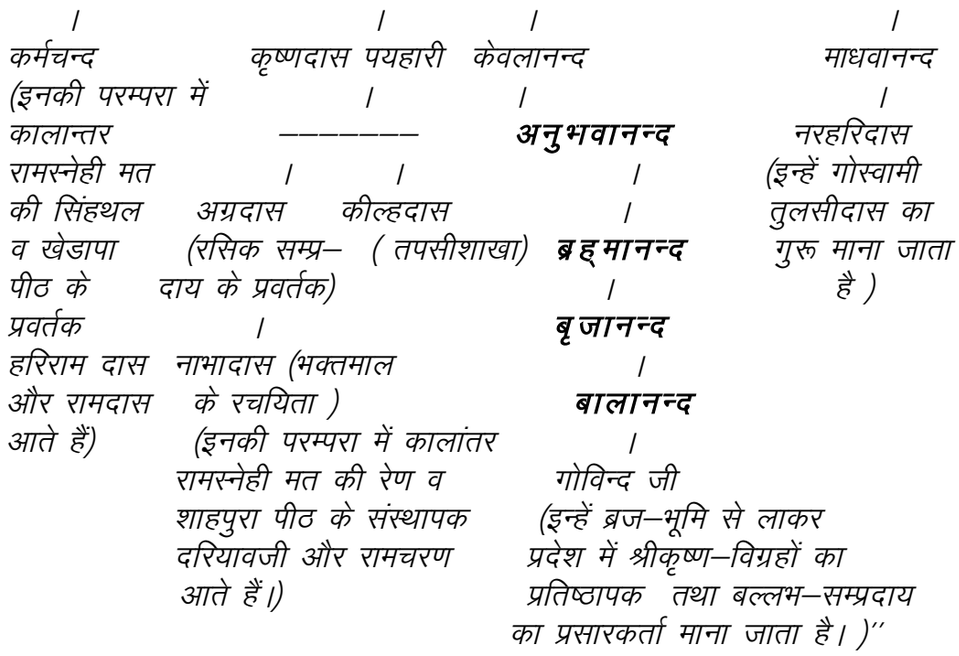

(emphasis added)

"Although before the growth of Ramanandian tradition in Rajasthan, Jambho Ji and Jasnath Ji had created a background for propagation of Vaishnavism and an atmosphere against the degenerated and retrogressive activities of contemporary 'Nath-panthi', still the credit for imbuing the entire Rajasthan in the later period by instilling liberal Vaishnavism with devotional cult goes to disciples and followers of Ramanandian tradition.

Out of these, the arrival of Anantanand in Sambhar as also the initiation of Marwar king Maldev, is very famous. The famous Vaishnava devotee of Rajasthan, Krishandas Paihari (1502-27 AD), who took over the seat of Nath cult followers at Galta (Jaipur) and set-up the first and foremost seat of Vaishnavites, was a disciple of this very Anantanand. In this very period, Amer king Prithviraj and queen Bala Bai became his disciples. Paihari's disciple Agradas had prompted Amer king Maan Sing to renovate many temples of India. Consequently, many temples and

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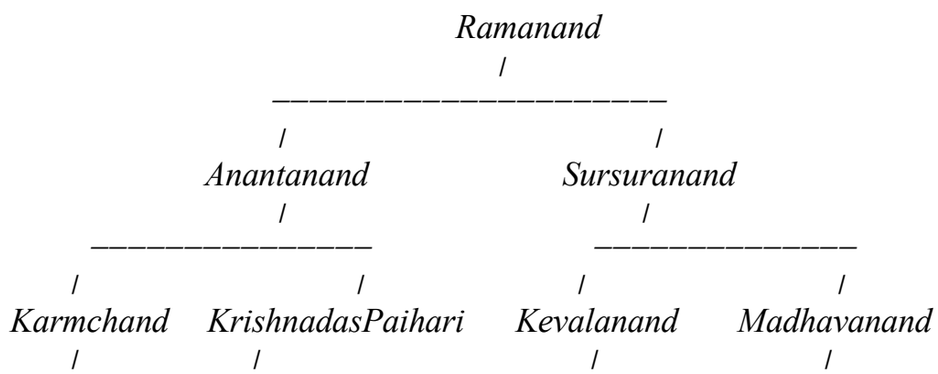
Ghats of Vrindavan, Vaikunthpur (birthplace of Guru Govind Singh) at Patna and Jagannath Dham were established. Nabhadas, famous composer of Bhaktmal, was disciple of this very Agradas. The other disciple of Paihari, Kilhdas propagated 'Tapsi Shakha' (school of asceticism) by promoting Yogic practices with devotion to Rama and by blending Yoga practices with Ramanandian Vairagi practices.

The youngest disciple of Ramanand, Sursuranand remained associated with Rajasthan right from the times of Ramanand's Rajasthan visit.

There were Kevalanand and Madhavanand in his cult. Anubhavanand, Brahmanand, Brijanand, Balanand and Govind Ji were there in the cult of Kevalananad, who played important part in bringing various Shri-Vigrah of Lord Shri Krishna from Brij Bhumi and installing them at Nathdwara, Kankroli, Kota and Jaipur in Rajasthan. In the cult of Madhavanand was Narharidas, who is considered to be the 'Guru' (master) of Goswami Tulsidas. His 'Jhitada' (Marwar) is a place famous as 'Fuwa Math'.

The 'Shishya-Prashishya Parampara' (cult of disciples-disciples of disciples) of Ramanand associated with Rajasthan, can be shown by the following table:



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(In later period of his cult, come Hariramdas and Ramdas, promoter of Singhsthal and Khedapa seats of Ramsanehi cult)

Agradas (Promoter of Rasik cult)

Nabhadas (composer of Bhaktmal)

In later period of his cult, come Rend of Ramsanehi Cult, Dariyavji founder of Shahpura Seat & Ram Charan)

Anubhavanand

Brahmanand

Brijanand

Balanand

Govind Ji

(He is considered to have established Sri Krishna-Vigrahas in the State after bringing them from Brijbhumi and promoter of Ballabh Cult)

Kilhdas (Tapsi Branch)

Narharidas (He is said to be Master of Goswami Tulsidas)

(emphasis added)

754. **"Sri Ram Janmabhumi-Pramarik Itihas"** by **Dr. Radhey Shyam Shukla (1986 Edition)** (Paper No. 107 C1/154/35) (Exhibit No.24) is relied to show that notice of Nirmohi Akhara was taken therein also.

755. Certain witnesses were also produced to depose about the constitution, status and nature of Nirmohi Akhara and about its practices and religious beliefs.

756. Mahant Bhashkar Das (75 years age), DW 3/1 claim himself Sarpanch of Sri Manch Ramanandiya Nirmohi Akhara, Ramghat, Ayodhya. In his deposition in paras 5, 6, 7, and 40 to 44 he said :

> *"5– जब मैं 1946 में अखाडा के रीतिरिवाज अनुसार बाबा बलदेव दास का शिष्य बना तो उस समय निर्मोही अखाड़ा रामघाट, अयोध्या के महन्त, महन्त रघुनाथ दास जी थे। उस समय अखाड़े के अन्तर्गत है। .....और निर्मोही अखाडे में महन्त व पंच जो वहां रहते थे के अलावा पचीसवें बैरागी साधु भी रहते थे। ..... मैं अपने गुरू जी के साथ जन्मभूमि जाता था और वहॉ रहता भी था। अखाड़े के रीतिरिवाज की जानकारी मुझे रामजन्मभूमि मंदिर पर रह कर पूरी तरह हुई। .....*
>
> *रामानन्दीय बैरागी सम्प्रदाय के संस्थापक स्वामी रामानन्दाचार्य भी थे।"*

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"5- When in 1946, I became disciple of Baba Baldeo Das, as per the customs of Akhara, at that time, Mahant Raghu Nath Das Ji was Mahant of Nirmohi Akhara, Ramghat, Ayodhya. At that time under Akharas.....and in Nirmohi Akharas, besides Mahant and Panches who reside there, 25th Baraigi Saints also lived. .....I used to go to Janam Bhumi along with my teacher and also lived there. On living at Ram Janam Bhumi, I gained knowledge about the customs of Akharas.....

The founder of Ramanandi Bairagi Sect was also Swami Ramanandacharya." (E.T.C.)

"6– ये रामानन्दीय बैरागी सम्प्रदाय के ***अखाड़ों की स्थापना बाला नन्द जी महाराज अरसा 500 वर्ष पूर्व किया था।*** *उत्तर भारत में निर्मोही अखाड़ा की कई बैठकें है। इन सभी बैठकों के अन्तर्गत कई मन्दिर हैं। अयोध्या में उक्त निर्मोही अखाड़ा की प्राचीन बैठक रामघाट अयोध्या में है।*

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अखाडा एक सार्वजनिक, धार्मिक न्यास स्वयं है।

अयोध्या में रामानन्दीय बैरागी के सात अखाडे हैं।

1– दिगम्बर अखाड़ा 2– निर्वाणी अखाड़ा 3– निर्मोही अखाड़ा 4–सन्तोषी अखाड़ा 5– खाकी अखाड़ा 6– महा निर्वाणी अखाड़ा 7–निरालम्बी अखाड़ा।

हर अखाड़ा में अनेक मंदिर हैं और अलग–अलग देवता विराजमान हैं। जैसे–निर्वाणी अखाड़े में हनुमान मंदिर, जिसमें हनुमन्त लाल विराजमान हैं। नरसिंह मंदिर, जिसमें नरसिंह भगवान विराजमान हैं। रामजानकी मंदिर जिसमें राम जानकी विराजमान हैं। ये सभी मंदिर अखाड़े में निहित हैं । और ऐसे ही निर्मोही अखाड़े में विजय राघव मंदिर जिसमें राम जानकी विराजमान है जिनके साथ दरबार है,–जैसे लक्ष्मण, भरत, शत्रुघ्न, गरूण जी हैं। और निर्मोही अखाडे के अन्तर्गत राम जन्मभूमि मंदिर है जिसमें रामलला विराजमान हैं जिनके साथ उनके तीन भाई की मूर्तियां हैं।"

"6- ***Establishment of these Akharas*** *of Ramanandi Bairagi Sect* ***was made by Bala Nand Ji Maharaj 500***

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years ago. *There are several assemblies of Nirmohi Akharas in North India. Under all these assemblies there are several temples. The ancient assembly of the aforesaid Nirmohi Akhara is in Ramghat, Ayodhya.*

Akhara itself is a public, religious trust. *In Ayodhya there are seven Akharas of Ramanandi Baraigis: 1. Digambar Akhara 2. Nirvani Akhara 3. Nirmohi Akhara, 4. Santoshi Akhara 5. Khaki Akhara 6. Maha Nirvani Akhara 7. Niralambi Akhara.*

There are many temples in every Akhara wherein different deities are ensconced, e.g., Hanuman Temple in Nirwani Akhara wherein Hanumant Lal is enthroned, Narsingh Temple in which Lord Narsingha is ensconced, Ram Janki Temple wherein Ram Janki is placed. All these temples are vested in Akharas. And under a similar Akhara in Vijay Raghav Mandir wherein Ram-Janki is enthroned with court,-e.g., Lakshman, Bharat, Satrughna, Garun Ji and Ram Janam Bhumi Temple is under Nirmohi Akhara in which Ram Lala is enthroned and with whom there are idols of his three brothers." (E.T.C.)

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"40– निर्मोही अखाड़े के सुसंगत महन्तों का सजरा निम्नलिखित हैः–

माखन दास जी
/
तुलसीदास जी
/
बलदेव दास जी
/
नरोत्तम दास
/
महन्त राम चरन दास
/
महन्त रघुनाथ दास, चेला धर्मदास
/
महन्त प्रेम दास
/

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महन्त रघुनाथ दास
।
महन्त रामेश्वर दास, चेला ईश्वर दास
।
महन्त रामकेवल दास, चेला गोपाल दास (जिनसे इस्तीफा लिया गया)
।
महन्त जगन्नाथ दास, चेला–वैष्णव दास''

''40. Pedigree of relevant Mahants of Nirmohi Akhara is as under:

Makhan Das Ji
I
Tulsidas Ji
I
Baldev Das Ji
I
Narottam Das
I
Mahant Ram Charan Das
I
Mahant Raghunath Das, Chela Dharamdas
I
Mahant Prem Das
I
Mahant Raghunath Das
I
Mahant Rameshwar Das, Chela Ishwar Das
I
Mahant Ram Kewal Das, Chela Gopal Das (from whom resignation was obtained)
I
Mahant Jagannath Das, Chela-Vaishnav Das''
(E.T.C.)

''41– रामानन्द के बारह शिष्यों का विवरण

सुरसुरानन्द
।
अनुभवानन्द
।
श्यामनन्द
।
गोविन्द दास

माखन दास जी के ऊपर दस पीढ़ियां और जो निम्नवत् हैः–

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1– महन्त गोविन्द दास जी

2– महन्त अयोध्या दास जी

3– महन्त गोपाल दास जी

4– महन्त जयराम दास जी

5– महन्त रतन दास जी

6– महन्त अनन्त दास जी

7– महन्त मंगल दास जी

8– महन्त जगन्नाथ दास जी

9– महन्त कोशल्या दास जी, जो महन्त माखन दास जी के गुरूभाई थे।"

"41. Description of twelve disciples of Ramanand:

Sursura Nand

I

Anubhavanand

I

Shyama Nanad

I

Govind Das

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Ten generations prior to Makhan Das Ji are as under:

1. *Mahant Govind Das Ji*
2. *Mahant Ayodhya Das Ji*
3. *Mahant Gopal Das Ji*
4. *Mahant Jairam Das Ji*
5. *Mahant Ratan Das Ji*
6. *Mahant Anant Das Ji*
7. *Mahant Mangal Das Ji*
8. *Mahant Jagannath Das Ji*
9. *Mahant Koshalya Das Ji, who was Teacher's brother of Makhan Das Ji" (E.T.C.)*

*"42– **रामानन्द जी का प्रादुर्भाव 14 वीं शताब्दी के शुरू में हुआ,** द्वादश शिष्यों में कबीरदास जी भी थे, रामानन्द जी के दो शिष्य अनन्तानन्द, सुरसुरा नन्द और सुरसुरा नन्द जी के दो शिष्य केवलानन्द,*

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माधवानन्द और केवलानन्द जी के बाद अनुभवा नन्द, ब्रह्मानन्द, बृजानन्द, बालानन्द रहे थे। माधवानन्द के शिष्य नरहरि दास और नरहरि दास के शिष्य तुलसीदास जी जो मानस के रचयिता रहे हैं।"

*"42. **Appearance/origin of Ramanand Ji was in the beginning of 14th century,** amongst his twelve disciples , was Kabir Das Ji too, Ramanand Ji's two disciples were Anantanand, Sursuranand and two disciples of Sursura Nand Ji were Kevalanand and Madhavanand and after Kevalanand Ji were Anubhava Nand, Brahmanand, Brijanand and Balanand. Narhari Das was disciple of Madhavanand and Narhari Das's disciple was Tulsi Das who has been composer of Manas." (E.T.C.)*

*"43– **अनुभवा नन्द व उनके उप शिष्य बालानन्द ने श्री चतुर सम्प्रदाय के प्रचार जागृत व उन्नति रक्षा के लिए तीन अन्नई एवं सात अखाड़े का निर्माण किया** जो सैनिक पद्धति पर आधारित रहे हैं, **जो लगभग छः सौ वर्ष पूर्व से चला आ रहा है।** रामानन्द सम्प्रदाय के श्रीमठ् बनारस हैं। इसके गद्दी पर इस समय जगत्गुरू हरियाचार्य जी हैं और इनमें पहले जगत्गुरू श्री शिवरामाचार्य जी थे।"*

*"43. **Anubhava Nand and his Deputy disciple Balanand Ji created three Annais and seven Akharas** which has been based on army system, **for publicity, awakening, promotion and sustenance of Sri Chatur Sect, and has been persisting for about last six hundred years.** Sri Math (main math) of Ramanand Sect is in Banaras. Presently Jagadguri Hariyacharya is enthroned on it and prior to him, was Jagatguru Sri Shivramacharya Ji." (E.T.C.)*

*"44– **मैं करीब आठ–नौ साल से सरपंच हूं** इसके पहले उप सरपंच था और उसके पहले पंच था। निर्मोही अखाड़ा के साबिक महन्तों का महन्त रघुनाथ दास जी के समय से मुख्तार रहा है। जैसे रघुनाथ दास*

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जी, रामकेवल दास थे।''

*"44. **For 8-9 years I am Sarpanch** and earlier I was Deputy Sarpanch and prior to that Panch. Former Mahants of Nirmohi Akhara have been Mukhtar from the time of Mahant Raghunath Das Ji. Such as, Raghunath Das Ji, Ram Keval Das Ji." (E.T.C.)*

757. In cross-examination at page 173 to 176, the witness DW 3/1 said :

''गवाह को उनकी मुख्य परीक्षा के शपथ–पत्र का पैरा–41 दिखाया गया और यह पूछा गया कि इसमें क्या माखन दास जी के ऊपर दस पीढ़ियों का नाम दिया है और नौ महंतों का उल्लेख किया है, क्या ये नौ महंत वही हैं, जिनके बारे मे आपने ऊपर कहा है कि माखन दास जी से पहले निर्मोही अखाड़े के 8–10 महंत हुए थे? उपरोक्त को देखकर गवाह ने कहा कि–ये वही महंत हैं, परन्तु मुझे उनके नाम याद नहीं थे। ***इस पैरा–41 के उल्लेख के अनुसार महंत गोविंद दास जी निर्मोही अखाड़ा के पहले महंत हुए थे। महंत गोविंद दास जी ने निर्मोही अखाड़ा की स्थापना नहीं की थी, बल्कि स्वामी बालानन्दाचार्य जी ने निर्मोही अखाडा की स्थापना की थी।*** *मुझे नहीं मालूम कि स्वामी बालानन्दाचार्य ने महंत गोविंद दास जी को निर्मोही अखाड़ा का महन्त बनाया था अथवा नहीं।* ***मैं नहीं बता पाऊंगा कि गोविन्द दास जी जयपुर में निर्मोही अखाड़ा के महंत हुए थे या अयोध्या में।***

प्रश्न– गोविंद दास जी किस काल में निर्मोही अखाड़ा के महंत हुए थे?

*उ0–**गोविंद दास जी 600 वर्षो के अन्तर्गत निर्मोही अखाड़ा के महंत हुए।***

यह बात मैंने पूर्वजों के बताने के आधार पर कही है और किताबों में भी पढ़ी है। शायद ''रामजन्मभूमि का रक्तरंजित इतिहास'' में मैंने यह बात पढ़ी है कि गोविंद दास जी 600 वर्षो के अन्तर्गत निर्मोही अखाड़े के महंत हुए हैं।

विद्वान जिरहकर्ता अधिवक्ता द्वारा गवाह को उनकी मुख्य परीक्षा के शपथ–पत्र का पैराग्राफ–42 दिखाया गया और यह पूछा गया कि–क्या

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रामानन्द जी और तुलसीदास जी का भी कोई संबंध निर्मोही अखाड़ा से रहा है।''

*''उपरोक्त पैरा–42 को देखकर गवाह ने उत्तर दिया कि–**स्वामी रामानन्दाचार्य जी ने इस सम्प्रदाय की स्थापना की थी, जो रामानन्दीय कहलाते हैं और उनके शिष्य–परशिष्यों में आगे चलकर तुलसी दास जी, नरहरियानन्द जी के शिष्य हुए। निर्मोही अखाड़ा की स्थापना उनके बाद हुई और बालानन्दाचार्य जी ने की।** अपने शपथ–पत्र के पैरा–42 में जो मैंने बालानन्द नाम लिखा है, उससे मेरा तात्पर्य बालानन्दाचार्य जी से ही है।*

*विद्वान जिरहकर्ता अधिवक्ता द्वारा गवाह को उनकी मुख्य परीक्षा के शपथ–पत्र के पैरा –42 एवं 47 दिखाये गये और यह पूछा गया कि– उपरोक्त पैराग्राफ में रामानन्द जी से बालानन्दाचार्य जी का जो सम्बन्ध बताया गया है, क्या उससे यह तात्पर्य है कि बालानन्द जी अनुभवानन्द जी के शिष्य थे या वे केवलानन्द जी के शिष्य थे? उपरोक्त दोनों पैराग्राफ्स को पढ़कर गवाह ने उत्तर दिया कि– **बालानन्द जी बृजानन्द जी के शिष्य थे।** इसी पैराग्राफ–43 को दिखाकर गवाह से पूछा गया कि इसमें जो अनुभवानन्द व उनके उप–शिष्य बालानन्द लिखा है, उससे आपका क्या तात्पर्य है उपरोक्त को देखकर गवाह ने उत्तर दिया कि–**इससे मेरा तात्पर्य यह है कि बालानन्द जी अनुभवानन्द जी के नाती–परनाती चेला थे।***

*अपने शपथ–पत्र के पैराग्राफ–42 को देखकर गवाह ने कहा कि–इसकी नीचे से तीसरी लाइन में अनुभवानन्द, ब्राह्मानन्द, बृजानन्द, बालानन्द लिखा है, उससे मेरा तात्पर्य यह है कि अनुभवानन्द के शिष्य ब्राह्मानन्द थे और अनुभवानन्द और नरहरिदास समकालीन थे। अनुभवानन्द जी का निधन ढाई सौ वर्ष की आयु में हुआ था। मैं यह नहीं बता पाऊंगा कि अनुभवानन्द जी का निधन कब हुआ था, यह भी नहीं बता पाऊॅगा कि औरंगजेब के जमाने में हुआ था या उसके बाद हुआ था। यह मुझे मालूम है कि तुलसीदास जी बादशाह अकबर के जमाने के थे। उन्हें, यानी तुलसीदास जी को मैंने नरहरिदास जी का शिष्य लिखा है। बालानन्द जी तुलसीदास जी के समय के पहले के थे। **बालानन्द जी तुलसीदास जी के समय से 200 साल पहले के थे।** मैं यह नहीं बता पाऊॅगा कि बादशाह अकबर का काल 16वीं शताब्दी का था या*

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उससे बाद का था।

प्रश्न– आपने अपने बयान में ऊपर यह कहा है कि – निर्मोही अखाड़ा व 6 अन्य अखाड़ों व 3 अनी की स्थापना बालानन्द जी ने की थी, परन्तु आपके शपथ पत्र के पैरा–43 में यह लिखा है कि – अनुभवानन्द व उनके उप–शिष्य बालानन्द ने . . . . . तीन अन्नई एवं सात अखाड़े का निर्माण किया। इस प्रकार आपके उपरोक्त बयान और शपथ–पत्र के इस उल्लेख में अन्तर क्यों है?

उत्तर– उपरोक्त को देखकर गवाह ने उत्तर दिया कि–अन्तर कुछ नहीं है और ***अनुभवानन्द जी की प्रेरणा से बालानन्द जी ने अखाड़ों की स्थापना की थी। जिस समय इन अखाड़ों की स्थापना हुई थी, उस समय अनुभवानन्द जी जीवित थे।***

प्रश्न– क्या अनुभवानन्द जी भी जयपुर में रहते थे, जहॉ पर आपने उपरोक्त अखाड़ों की स्थापना होना बताया है?

उत्तर– अनुभवानन्द जी उस समय जयपुर में थे अथवा नहीं, यह मैं नहीं बता सकता, क्योंकि ये लोग चलते–फिरते रहते थे।

गवाह ने अपने शपथ–पत्र के पैराग्राफ –43 को देखकर कहा कि–इसमें उल्लिखित है कि– 'रामानन्दीय सम्प्रदाय का श्रीमठ बनारस है'' अर्थात् बनारस में रामानन्द सम्प्रदाय का केन्द्र है। वहॉ स्वामी रामानन्द के रहने के समय से इसका केन्द्र बनारस रहा है, परन्तु उनके शिष्य व पर–शिष्य भारतवर्ष में चारो तरफ़ भ्रमण किया करते थे।'' (पेज 173–176) (emphasis added)

"The witness was shown para 41 of the affidavit of his examination-in-chief and was asked whether the names of 10 generations of Makhan Das are given and reference of nine Mahants have been made, whether these are those nine Mahants about whom you (witness) have stated above that prior to Makhan Das Ji 8-10 Mahants of Nirmohi Akhara became? Seeing the aforesaid the witness said that these are those Mahants but I did not recollect their names. ***According to this mention in para 41, Mahant Govind Das Ji has been the first Mahant of Nirmohi Akhara.***

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Mahant Govind Das Ji did not establish Nirmohi Akhara, rather Swami Balalnandacharya Ji had founded Nirmohi Akhara. *I do not know whether Swami Balanandacharya had appointed Mahant Govind Das Ji as Mahant of Nirmohi Akhara or not.* ***I cannot say whether Govind Das Ji has been made Mahant of Nirmohi Akhara in Jairpur or in Ayodhya****.*

Question-In which period Govind Das Ji became Mahant of Nirmohi Akhara?

*Answer-****Govind Das Ji became Mahant of Nirmohi Akhara within 600 years****.*

This statement I have given on the basis of saying by ancestors and also read in book. Probably, in "Ram Janam Bhumi Ka Raktranjit Itihas" I have read it that Govind Das Ji became Mahant of Nirmohi Akhara within 600 years.

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The witness was shown paragraph 42 of the affidavit of examination-in-chief by learned counsel cross-examining the witness and was asked whether Ramanand Ji and Tulsidas Ji have been related in any manner with Nirmohi Akhara."

"Seeing the aforesaid para 42 the witness replied that ***Swami Ramanandacharya Ji had established this sect, who are called Ramanandi and later on amongst their disciples-grand-disciples was Tulsidas Ji, disciple of Narhariya Nand Ji. Nirmohi Akhara was established thereafter and was founded by Balanandacharya Ji****. In para 42 of the affidavit where I have written the name Balanand, by which I meant Balanandcharya Ji only.*

The witness was shown paragraph 42 and 47 of the affidavit of examination-in-chief by learned counsel cross-

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examining the witness and it was asked whether by the relation between Ramanand Ji and Balanandacharya Ji, as stated in the above paragraph, it meant that Balanand Ji was disciple of Anubhavanand Ji or whether they were disciple of Kevelanand Ji. Reading the aforesaid two paragraphs, the witness replied that-Balanand Ji was disciple of Brijanand Ji. Showing paragraph 43 it was asked from the witness what does he mean by Anubhavanand and his Deputy disciple as written in it, the witness after going through the aforesaid replied-by it I mean that Balanand Ji was grand-grand disciple of Anubhavanand Ji.

Seeing paragraph 42 of his affidavit the witness said that the third line from the bottom makes mention of Anubhavanand, Brahmanand, Brijanand and Balanand by which I mean that Brahmanand was the disciple of Anubhavanand and Brijanand was the disciple of Brahmanand and Balanand was the disciple of Brijanand. Anubhavanand and Narhari Das were contemporary. Anubhavanand Ji died on attaining the age of 250 years. I cannot say as to when Anubhavanand Ji died, I can also not say as to whether he died in the period of Aurangzeb of thereafter. I know that Tulsidas Ji was in emperor Akbar's period. I have written him i.e. Tulsidas Ji as disciple of Narhari Das Ji. Balanand Ji has been 200 years earlier to Tulsidas Ji. I cannot say if the period of Akbar was during 16th Century or subsequent to that.

Question-In your statement you have said above that Nirmohi Akhara, six other Akharas and three Annais were founded by Balanand Ji but in para 43 of your affidavit it is

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written that Anubhavanand and his Deputy Disciple Balanand..... formed three Annais and seven Akharas. Thus why is there contradiction in your aforesaid statement and contents of the affidavit?

Answer-Seeing the aforesaid the witness replied that there is no difference at all and Balanand Ji had established the Akharas with the inspiration of Anubhavanand Ji. When these Akharas were founded, at that time Anubhavanand Ji was alive.

Question- Whether Anubhavanand Ji also resided in Jaipur, where, as you have said, the aforesaid Akharas were founded.

Answer: Whether Anubhavanand Ji was in Jaipur or not at that time, I cannot say because these people used to wander.

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Seeing para 43 of his statement the witness said that it is written in it that " the chief Math of Ramandiya Sect is in Banaras" or in Banaras there is centre of Ramanand Sect. Since the time of living by Swami Ramanand there, its centre had been Banaras, but his disciples and grand disciples used to roam all around India." (E.T.C.)

758. At page 221 to 222, D.W. 3/1 referred to the book "Smritigranthah" and said :

''विद्वान जिरहकर्ता अधिवक्ता द्वारा गवाह को उनके मुख्य परीक्षा के शपथ पत्र का पैराग्राफ –75 दिखाया गया और यह पूछा गया कि आपने अपनी गुरू परम्परा तथा ''सम्प्रदाय की प्रमाणिक पुस्तकों से'' किस बात की जानकारी होना इस पैराग्राफ में लिखा है? उपरोक्त को देखकर गवाह ने उत्तर दिया कि–इस पैराग्राफ में मैंने अपने पूर्वजों के सम्बन्ध में जो रामानन्दीय सम्प्रदाय के और रामानन्द जी के शिष्य थे, उनके सम्बन्ध में जानकारी होने की बात लिखी है। इस पैरा में उल्लिखित प्रमाणिक पुस्तकों से मेरा तात्पर्य स्मृति ग्रन्थ से है। स्मृति ग्रन्थ एक ग्रन्थ है। उसे गुजरात के

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रामानन्दाचार्य जी ने लिखा है। मैंने उसे थोड़ा पढ़ा है। वह किताब इस न्यायालय में दाखिल है। यह पुस्तक अभी हाल ही में दाखिल हुई है और उस पुस्तक में मैंने रामानन्दाचार्य और उनके शिष्यों के बारे में पढ़ा है।

.....

*विद्वान जिरहकर्ता अधिवक्ता द्वारा गवाह को उनके मुख्य परीक्षा के शपथ पत्र का पैरा–76 दिखाया गया और यह पूछा गया, कि इस पैराग्राफ में आपने यह लिखा है कि इस बयान के साथ ''संलग्नक सूची दाखिल कर रहा हूँ'' तो कृपया यह बाताएं कि क्या आपके मुख्य परीक्षा के शपथ–पत्र के साथ कोई संलग्नक सूची लगी है? उपरोक्त को देखकर गवाह ने उत्तर दिया कि–**मेरे मुख्य परीक्षा के शपथ–पत्र के साथ कोई संलग्नक सूची नहीं लगी है।** गवाह को उनके मुख्य परीक्षा के शपथ –पत्र का पैरा 76 का अंश ''जो रामानन्दीय सम्प्रदाय के ....परम्परा है'' दिखाया गया और पूछा गया कि इससे आपका क्या तात्पर्य है? उपरोक्त को देखकर गवाह ने उत्तर दिया कि– **इससे मेरा तात्पर्य यह है कि रामानन्दीय सम्प्रदाय के वंश परम्परा की सूची इस किताब में है। इस किताब का नाम ''स्मृति–ग्रन्थ'' इसी पैराग्राफ–76 में लिखा है।'' (पेज 221–222) (emphasis added)*

"The witness was shown paragraph 75 of the affidavit of examination-in-chief by learned counsel cross-examining the witness and it was asked as to derivation of knowledge of which fact from your Teacher's tradition as well as authentic books of the sects, you have written in this paragraph. Seeing the aforesaid paragraph, the witness answered that in this paragraphs I have written with respect to possessing knowledge about my ancestors who were disciples of Ramanandi Sect and Ramananad Ji. By authentic book , as mentioned in this para, I mean-- Smriti Book. Smriti Granth is a book which is written by Ramanandacharya Ji of Gujarat. I have read that a little. That book is filed in this Court. This book has been filed recently and I have read in that book about

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Ramanandacharya and his disciples....

The witness was shown paragraph 76 of the affidavit of examination-in-chief by learned counsel cross-examining the witness and it was asked that you have written in this paragraph that alongwith this statement you are filing enclosures' list, please tell whether any enclosure list has been annexed with affidavit of examination in chief ? Seeing that the witness replied that ***alongwith my affidavit in examination-in-chief , no any annexures' list is enclosed****. The witness was shown the portion of para 76 of the affidavit to the effect "Which is of Ramanandi Sect.....customs" and was enquired what did he mean by it. Seeing the above, the witness answered that by it he meant that pedigree of followers of Ramanandi Sect is there in this book.* ***The name of this book "Smriti Granth" is written in paragraph 76."*** *(E.T.C.)*

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759. **Shiv Saran Das D.W.3/4,** belong to Nirmohi Akhara and in para 14 and 16 of the affidavit (Examination-in-Chief) he said :

"14– ***निर्मोही अखाड़ा एक धार्मिक न्यास है*** *जिसके अन्तर्गत कई मंदिर हो सकते हैं, निर्मोही अखाड़ा अयोध्या रामघाट की बैठक में प्रसिद्ध श्री राम जन्म भूमि मन्दिर है, राम–घाट विजय राघव मन्दिर और सम्बन्धित कई मंदिर हैं जैसे सुमित्रा भवन, रत्न सिंहासन, लवकुश मन्दिर, राम गुलेला मन्दिर आदि हैं।*

16– ***निर्मोही अखाड़ा एक पंचायती मठ है तथा जिसकी पंचायती – व्यवस्था है।*** *पंचान का निर्णय सर्वोच्च है।* ***महन्थ कोई जायदाद, बिना निर्मोही अखाड़ा के पंचों की अनुमति के न तो बेंच सकता है, न रेहन या न दान कर सकता है।''*** *(emphasis added)*

"14. Nirmohi Akhara is a religious trust *under control of which there may be several temples, In the assembly of*

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Nirmohi Akhara, Ayodhya, Ramghat lie the famous Ram Janam Bhoomi Temple, Ram Ghat, Vijay Raghav Temple and related several temples, i.e., Sumitra Bhawan, Ratna Singhasan, Lava Kusha Temple, Ram Gulela Temple etc.

16. ***Nirmohi Akhara is a Panchayati Math whereof there is Panchayati arrangement.*** *Decision of Panches is ultimate.* ***A Mahant cannot sell, nor pledge nor donate any property without permission of Panches of Nirmohi Akhara."*** *(E.T.C.)*

760. However, in cross-examination on page 20 though he (DW 3/4) said that Vaishnav Dharma is followed in all the Akharas of Ramanandiya Sampradaya and training of arms is also given in the Akharas for protection of Hindu Dharma from others but he, however, has no knowledge as to when Nirmohi Akhara was established. About Ramanandi Sampradaya, in the cross-examination at pages 26-27, he said :

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''जगद्गुरू श्री रामानन्दाचार्य जी रामानन्दी सम्प्रदाय के पीठाधीश्वर तो हैं ही, इसके अलावा वे वैष्णव सम्प्रदाय के आचार्य भी हैं और इसी कारण उन्हें बहुत आदर व सम्मान प्राप्त है। रामानन्दाचार्य जी के जितने भी अनुयायी हैं, उन सब के लिए रामानन्दाचार्य जी द्वारा बताये हुए रीति–रिवाज का पालन करना अनिवार्य है। रामानन्दी सम्प्रदाय में जो चतुः सम्प्रदाय है, वह जिसे श्रेष्ठ समझता है, वह उसे जगद्गुरू रामानन्दाचार्य के पद से विभूषित करते हैं। इन जगद्गुरू रामानन्दाचार्य जी का सभी वैष्णव लोग आदर व सम्मान करते हैं।'' (पेज 26–27)

"*Jagadguru Sri Ramanandcharya Ji besides being the Supreme Chairperson of Ramanandi Sect, he is also Acharya of Vaishnav Sect and it is for this reason that he commands a lot of honour and respect. For all the followers of Ramanandacharya Ji, it is incumbent to follow the customs and traditions enunciated by Ramanandacharya Ji. In Ramanandi Sect which is*

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quadruple-sect, whom it (Sect) considers great, it adorns him with the title of Jagadguru Ramanandacharya. All Vashnavites pay honour and regard to this Jagadguru Ramanandacharya." (E.T.C.)

761. On page 42 of the cross-examination he said :

*"**अयोध्या में निर्मोही अखाड़ा है।** निर्मोही अखाड़ा के सदस्यों की कोई गिनती नहीं है और मैं अंदाज से भी नहीं बता पाऊँगा कि उस अखाड़े के कितने सदस्य हैं। **निर्मोही अखाड़ा 300–400 साल से नहीं, बल्कि उसके बहुत पहले से चल रहा है। निर्मोही अखाड़ा में भी शस्त्रों की ट्रेनिंग दी जाती है।** यह ट्रेनिंग हमारे गुरूजन देते हैं। निर्मोही अखाड़ा अयोध्या के अलावा और भी कई जगहों पर है। शस्त्रों की ट्रेनिंग हर जगह होती है। शस्त्रों से मेरा मतलब है हथियार।" (पेज 42)* (emphasis added)

"In Ayodhya there is Nirmohi Akhara. There is no counting of members of Nirmohi Akhara, nor I can tell by guesswork as to how many members are there in the Akhara. Nirmohi Akhara is existing not for only 300-400 years, but is continuing from much before. In Nirmohi Akhara too, training of arms is imparted. This training is given by our teachers. Nirmohi Akhara is existing at several places besides Ayodhya. Training of arms is imparted at every place. Arms means weapon." (E.T.C.)

762. **DW 3/9, Ram Asrey Yadav** in para 17 of his affidavit has said:

"17. यह कि निर्मोही अखाड़ा एक पंचायती मठ व धार्मिक न्यास यानी संस्था है करीब साढ़े पांच या छः सौ वर्ष के पूर्व से कायम है ऐसा मैंने हनुमानगढ़ी के साधुओं से जाना है और उनके छपे रीति रिवाज में पढ़ा है इकरारनामा पंजीकृत था जो इकरारनामा के रूप में छपी थी 1962 में छपी थी। मैंने देखा है पढ़ा है वही रीति रिवाज कौम बैरागयान निर्मोही अखाड़ा पर भी लागू हैं।"

"17. That the Nirmohi Akhara is a Panchayati Math and

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religious trust i.e. institution for the last about 5 ½ – 6 hundred years. I have so learnt from the saints of Hanumangarhi and also from their printed custom-practices. The agreement was registered and published in the year 1962. I have seen and read it. The same custom-practices are applicable over the recluses of Nirmohi Akhara." (E.T.C.)

However, from a bare perusal of the averments it is evident that the same is wholly hearsay and cannot be said to be a statement of fact, being disclosed by a witness who is personally aware of the same.

763. **Jagadguri Ramanandacharya Swami Haryacharya D.W.3/14,** claims himself to be the 25th superior of Ramanandi Sampradaya, holding the office of Rampradayacharya at the Principal Seat of the said Sampradaya. About the "Sampradaya" and "Akhara", in paras 32, 33, 34, 36 and 59 of his affidavit (Examination-in-Chief) he has said :

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"32– रामानन्दीय बैरागी सम्प्रदाय में विशिष्टाद्वैत दर्शन का प्रतिपादन स्वामी रामानन्दाचार्य ने लगभग 700 वर्षो के पूर्व किया था ***रामानन्दीय सम्प्रदाय के इष्ट देव भगवान राम हैं।"***

"32- In the sect of Ramanandi Baraigis, induction of "Vishistadwait Darshan" was done bv Swami Ramanandacharya about 700 years ago. ***The ideal deity of Ramanandi Sect is Lord Rama.****" (E.T.C.)*

"33– ***रामानन्दी वैष्णव सम्प्रदाय के अखाड़ों की स्थापना बालानंद जी महराज ने आज से 500 वर्षो पूर्व किया।*** *भारत वर्ष के कई क्षेत्रों में निर्मोही अखाड़ा की कई बैठक है इस अखाड़े के अन्तर्गत कई मन्दिर हैं।"*

"33. ***Establishment of Akharas of Ramanandi Vaishnav Sect was done by Balanand Ji Maharaj about 500 years ago from today.*** *In various parts of India, there*

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is a number of assemblies of Nirmohi Akhara and under these Akharas, there are several temples." (E.T.C.)

*"34– **निर्मोही अखाड़ा एक धार्मिक न्यास स्वयं है जिसकी व्यवस्था पंचों के अधीन होती है यह अखाड़ा पंचायती मठ है जिसमें पंचों द्वारा चुना महन्थ होता है जो पंचों के बहुमत राय से कार्य करता है** महन्थ अखाड़े की सम्पत्ति का बैनामा दान पत्र आदि नहीं लिख सकता है।"*

*"34. **Nirmohi Akhara is a religious trust itself, management whereof is under the supervision of Panches. This Akhara is a Panchayati Math, in which a Mahant is elected by Panches, who functions with majority opinion of the Panches.** A Mahant cannot write a sale deed or donation deed etc." (E.T.C.)*

"36– श्री चतुः सम्प्रदाय के वैष्णवों का सैनिक संघटन ही अनी अखाड़े हैं जिसमें रामानन्द विष्णु स्वामी निम्बार्क और मध्वाचार्य हैं। निर्वाणी अनी, निर्मोही अनी व दिगम्बर अनी के रीति रिवाज परम्परा एक ही तरह हैं मैं निर्वाणी अखाड़ा का साधू रहा हूँ। सभी रीति रिवाज परम्परा जानता हूं रीति रिवाज व परम्परा हनुमानगढ़ी वही है जो निर्मोही अखाड़ा व दिगम्बर अखाड़े की है।"

"36. It is Ani Akharas, which are the army organisation of Four-Sect Vaishnavites, in which there are Ramanand, Vishnu Swami Nimbark and Madhvacharya. customs and traditions of Nirvani Ani, Nirmohi Ani and Digambar Ani are alike. I have been a saint of Nirvani Akhara. I know all customs and traditions. Customs and Traditions Hanumangarhi is the same which are of Nirmohi and Digambar Akharas." (E.T.C.)

"59– आनन्द भाष्यकर जगद्गुरू श्री रामानन्दाचार्य जी की 700 वीं जयन्ती स्मारक स्मृति ग्रन्थ "श्री रामानन्द सम्प्रदाय का इतिहास" तथा उन्हीं का जयन्ती स्मारक ग्रन्थ मैंने पढ़ा है इन दोनों ग्रन्थों के सम्पादक मन्डल स्वामी हरिप्रसादाचार्य जी स्वामी सीतारामाचार्य व स्वामी राम

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स्वरूपाचार्य जी हैं मुद्रण अहमदाबाद गुजरात से हुआ। यह दोनों पुस्तकें मुझे निर्मोही अखाड़ा के वकील साहेब ने बताया कि मुकदमें में दाखिल है ***दोनों पुस्तकें हमारे सम्प्रदाय में मान्यता प्राप्त हैं।''*** *(emphasis added)*

"A souvenir written by commentator Anand in the memory of 700th anniversary of Jagadguru Sri Ramanandacharya "Sri Ramanand Sampradaya Ka Itihas" and his Jayanti Smrarak Granth, I have read. In editorial board of these two books are Swami Hari Prasadacharya Ji, Swami Sitaramacharya and Swami Ram Swarupacharya Ji. Printing was done in Ahmadabad, Gujarat. I have been told by the counsel for Nirmohi Akhara that these two books are filed in the suit. ***Both the books bear recognition of our Sect."*** *(E.T.C.)*

764. In cross-examination, DW 3/14, in respect to the issue No. 17, at pages 16,17, 21,22, 26, 27, 29, 41-44, 45, 46, 49, 93, 94 said:

"रामानन्द सम्प्रदाय का उद्देश्य तथा विधेय रामानन्दीय सिद्धान्त विशिष्टाद्वैत दर्शन का प्रचार, प्रसार, धर्मोपदेश, व्याख्यान और प्रत्याख्यान करना है। रामानन्दाचार्य जी के इष्टदेव भगवान राम ही थे। वही आचार्य के रूप में राममन्त्र को सर्वप्रथम सीता जी को दिए। रामानन्दीय सम्प्रदाय के जो अन्य अनुयायी हैं, उनके इष्टदेव भगवान सीताराम हैं। रामानन्दीय सम्प्रदाय में मूर्ति पूजा होती है। जन्मस्थली की भी पूजा होती है। पॉच प्रकार की मूर्तियां रामानन्दीय सम्प्रदाय में स्वीकार की जाती हैं। जिनमें धातु की, काष्ठ की, मिट्टी की, चिन्ह की, भूमि की और अक्षर की मूर्तियां होती हैं। विशिष्टाद्वैत दर्शन में मूर्ति के अतिरिक्त जन्मस्थान की भी पूजा होती है।" (पेज – 16–17)

"The objective of the Ramananda School was the publicity, propagation, preaching, exposition and counter-exposition of the Ramananda School of Vishishtadwait (particular monism). The favoured deity of

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Ramanandacharya was Lord Rama alone. As a spiritual teacher, he, for the first time, gave Ram mantra to Sita. Lord Sitarama is the favoured deity of the Ramananda school. The Ramanada school practises idol-worship.The birth place is also worshipped. The Ramananda School believes in five types of idols, which are of metal, of wood, of mud, of signs, of ground and of letters. Apart form idols, the Vishishtadwait school of philosophy also worships birth-places." (E.T.C.)

"अयोध्या में रामानन्दीय सम्प्रदाय के तीनों अखाड़े हैं। तीनों अखाड़े अनी अखाड़े हैं। अनी से तात्पर्य सेना से है। प्रत्येक अखाड़ों की व्यवस्था पंचायती है। स्वयं कहा कि अखाड़े के महन्त को समूह चयनित करता है। तीनों अखाड़ों में कोई मुख्य अखाड़ा नहीं है। तीनों अखाड़े बराबर हैं अर्थात् निर्मोही, निर्वाणी एवं दिगम्बर तीनों अखाड़े समान हैं। ऐसा नहीं है कि मुख्य अखाड़ा दिगम्बर अखाड़ा हो। तीनों अखाड़ों की कार्य पद्धति समान है। अखाड़ों में जो मन्दिर हैं, उनमें तीन बार अर्थात् प्रातःकाल, मध्यान्ह काल एवं सायं काल पूजा होना अनिवार्य है। रामानन्दीय सम्प्रदाय के मन्दिरों में कम से कम तीन बार पूजा होती है।" (पेज – 21–22)

"There are three Akharas of the Ramananda school in Ayodhya. The three Akharas are Ani Akharas. The word Ani means 'Sena' (army). The system of each Akhara is on the Panchayat pattern. (Himself stated) The Mahant (head) of the Akhara is selected by a group. None of the three Akharas is the main Akhara. The three Akharas have equal status, that is to say, the three Akharas, viz, Nirmohi, Nirvani and Digambar are at par with each other. It is not that the Digambar Akhara is the main Akhara. The trio of Akharas have the same way of working. In the temples managed by these Akharas, it is mandatory to offer worship three times, that is, in the morning, at noon and in the evening. Worship is offered at least three times in the

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temples of the Ramananda school." (E.T.C.)

"आदि रामनंदाचार्य की 700वीं जयंती इसी वर्ष मनायी जायेगी। आदि रामानंदाचार्य रामानंदीय सम्प्रदाय के प्रर्वतक नहीं है वे उसके उद्धरक या उस सम्प्रदाय को गति देने वाले कहे जा सकते हैं। ***रामानंदीय सम्प्रदाय अनादिकालीन हैं। यह सम्प्रदाय रामानंद जी के नाम पर पड़ा हुआ है। रामानंद जी 700 वर्ष पूर्व हुए थे।"*** *(पेज – 26)*

"700th anniversary of First (initial) Ramanandacharya would be celebrated this year. Aadi Ramanandacharya is not founder of Ramanandi Sect, he may be said as saviour or one who gave momentum to that sect. ***Ramanandi sect is in existence from time immemorial. This sect has been titled in the name of Ramanand Ji. Ramanandji lived 700 years ago."*** *(E.T.C.)*

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"अपनी मुख्य परीक्षा के शपथ–पत्र में ''अनीं'' शब्द का प्रयोग किया है, जिसका अर्थ तथा भावार्थ सेना होता है। विभिन्न अखाड़ों में सर्वोच्च कोई नहीं होता है। तीनों अखाड़ों के प्रमुख समान होते हैं। किसी विशिष्ट अखाड़े के ''अनी'' के प्रमुख होते हैं, जो कुम्भ के अवसर पर ''अनि'' के प्रमुख रूप में कार्य करते हैं। शेष समय भी वह ''अनि'' के प्रमुख रहते हैं परन्तु ''अनि'' का संचालन कुम्भ के अवसर पर ही होता है। निर्मोही, निर्वाणी के भी ''अनि'' के प्रमुख होते हैं। अखाड़ा भी धार्मिक सैन्य शक्ति का प्रतीक है। हिन्दू धर्म में सैन्य शक्ति की आवश्यकता का अनुभव इसलिए हुआ, क्योंकि आक्रांता लोग हमेशा आते रहे।" (पेज – 27)

" I have used the word "Ani" in the affidavit of my examination in chief, which means and connotes "army". In various Akharas nobody is supreme. Heads of all the three Akharas are equal in rank. It is the Chief of "Ani" of a specific Akhara who functions as the chief of Ani on the occasion of Kumbh. For the remaining period also, they remain the Chief of Ani but commanding of Ani is done on

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the occasion of Kumbh. There are Chief of Nirmohi and Nirvani too. Akhara is also a symbol of religious army power. Necessity of religious army power in Hindu religion was felt because invaders always used to come."(E.T.C.)

''विशिष्टाद्वैत को मैं परिभाषित कर सकता हूँ, उसके अनुसार माया जीव ब्रह्म को तीन तत्वों अर्थात् तत्वत्रय (ब्रह्म तत्व) के रूप में स्वीकार किया गया है। इसका सरल अर्थ इस प्रकार है कि जहॉ–जहॉ परमात्मा होगा, वहॉ–वहॉ पर जीव तथा जगत अवश्य होगा। विशिष्टाद्वैत का यही सिद्धांत वैष्णव सम्प्रदाय में स्वीकार किया जाता है। इस सिद्धान्त में आत्मा तथा परमात्मा को भिन्न नहीं माना गया है, इसमें दोनों के एकत्व का प्रतिपादन है। भोक्ता, भोग्य तथा उसके प्रेरक ये तीनों ही परमेश्वर हैं। यह विशिष्टाद्वैत का सिद्धान्त है, जो द्वैत तथा अद्वैत से थोडा भिन्न है। रामानंद सम्प्रदाय के लोग इस विशिष्टाद्वैत सिद्धान्त के अनुयायी हैं। उत्तर भारत के अतिरिक्त दक्षिण भारत में बहुत वृहद रूप से विशिष्टाद्वैत सिद्धान्त को माना जाता है। हिन्दू धर्म में अद्वैत सिद्वान्त को मानने वाले भी है, इसके अनुगमी शैव लोग हैं। द्वैत सिद्वान्त के लोग निम्बार्क तथा मध्व सम्प्रदाय के मानने वाले हैं। रामानंद सम्प्रदाय के पूर्व भी विशिष्टाद्वैत सिद्धान्त था, क्योंकि यह अनादि कालीन है। चारों वेदों में जो प्रथम वेद ऋग्वेद है, उसमें भी राजा दशरथ का वर्णन है। मेरी मुख्य परीक्षा के शपथ–पत्र की धारा 59 जो पृष्ठ 12 पर है, को मैंने पढ़ लिया है, इस धारा में उल्लिखित दोनों पुस्तकों ''श्री रामानंद सम्प्रदाय का इतिहास तथा श्री रामानंदाजयंती स्मारक ग्रन्थ पुस्तकों'' को मैंने तीन दिन पूर्व पढ़ा है। ये दोनों ग्रन्थ अलग–अलग लगभग तीन सौ–चार सौ पृष्ठों के हैं।'' (पेज 29)

''I can define Vishishtadvait. It accepts Maya Jeeva and Brahma as three substances (divine substances). Its plain meaning is that wherever there is God, Jeeva (individual soul) and Jagat (world) will certainly be there. This very principle of Vishishtadvait is accepted in the Vaishnavite sect. This principle does not differentiate 'Atma' (individual soul) from 'Paramatma'(Supreme Soul).

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It speaks of the unity of both. The Trio - the user, the used and their encourager are Supreme Being. It is a principle of Vishishtadvait, which is a bit different from dualism and monism. Followers of the Ramananda sect are adherents of Vishitadvait philosophy. The Vishishtadvait philosophy is followed on a very large scale in south India apart from north India. There are also followers of monism in Hindu religion. Its followers are Shaivaites. Adherents of principle of monism in Hinduism are the followers of Nimbark and Madhva sects. Even before the Ramananda sect existed the philosophy of Vishishtdvait, because it is not of the earliest period. The Rigveda, the first of the four Vedas, also speaks of King Dashrath. I have read page 12-para 59 of the affidavit filed in course of my examination-in-chief. I read both the books 'Sri Ramananda Sampradaya Ka Itihaas' and 'Sri Ramanandajayanti Smarak Granth', mentioned in this para, three days ago. Both of these books are separately of 300-400 pages each." (E.T.C.)

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"जिन अखाड़ों का मैंने अपने बयान में उल्लेख किया है, वे अखाड़े 15वीं शताब्दी में बने थे। *यह कहना गलत है कि ये अखाड़े 15वीं शताब्दी में जयपुर में बने थे। सही यह है कि ये अखाड़े अनादि काल में बने थे, क्योंकि इनका उल्लेख बाल्मीकि रामायण में है। जयपुर में अखाड़ों के निर्माण के संबंध में कोई घटना नहीं हुई थी। इन अखाड़ों में अस्त्र–शस्त्र चलाने की ट्रेनिंग दी जाती है, उसे पटावाना कहते हैं। पटाबाना में लट्टू, तलवार, लाठी, भाला, बल्लम, छड़ी का प्रयोग होता है। स्वयं कहा कि अनी का अर्थ सेना होता है इसलिए इनमें अस्त्र–शस्त्र का प्रयोग करना सिखाया जाता है। हिन्दुस्तान में अखाड़ों की कुल संख्या 13 नहीं है, बल्कि इनकी संख्या 18 है। सभी अखाड़े कुंभ के अवसर पर पधारते हैं। कुंभ के अवसर पर अखाड़े के लोग एक माह तक ठहरते हैं। कुंभ के अवसर पर उपरोक्त अस्त्र–शस्त्रों को चलाने का कोई प्रशिक्षण नहीं*

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दिया जाता है। जिस समय स्नान के लिए शाही जुलूस निकलता है, उस समय साधु लोग पटाबाना खेलते हुए स्नान करने के लिए जाने वाले साधुओं के आगे–आगे चलते हैं। वह जुलूस कितनी अवधि का होता है, उसके लिए सरकार द्वारा अलग–अलग समय निर्धारित है तथा उस समय का निर्धारण अखाड़ों से गंगा की दूरी के आधार पर तय किया जाता है। कुंभ के अवसर पर एक माह के अन्तर्गत मात्र तीन शाही स्नान होते हैं, इन्हीं शाही स्नानों के अवसर पर यह जलूस निकलते हैं। एक माह के कुंभ के दौरान सेवा–पूजा व अभ्यागतों को भोजन देने का कार्य चलता है। उस समय कितने लोगों को भोजन कराया जाता है, उसकी कोई निश्चित संख्या नहीं होती। जितने भी व्यक्ति उस अवसर पर आ जाते हैं, सबको भोजन करा दिया जाता है। जिन 18 अखाड़ों का मैंने ऊपर अपने बयान में उल्लेख किया है उनमें प्रमुख अखाड़े प्रयाग, हरिद्वार नासिक व उज्जैन में हैं। शाही स्नान के समय 18 अखाड़े एक साथ चलते हैं। केवल जगद्गुरू लोग अकेले चलते हैं। श्री ***वैष्णव सम्प्रदाय में चार जगद्गुरू हैं उपरोक्त 18 अखाड़े आज से पांच सौ वर्ष पूर्व बिरजानन्द जी के शिष्य बालानन्दाचार्य जी ने स्थापित किये थे। पहला अखाड़ा राजस्थान में जयपुर में बना था।***

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साक्षी को अन्य मूलवाद सं0 4/89 का कागज संख्या 236/52 दिखाया गया, साक्षी ने उक्त रिपोर्ट के दोनों पेजों को पढ़ने के उपरान्त यह कहा कि मुझे इस रिपोर्ट के बारे में जानकारी नहीं है। ***निर्मोही, निर्वाणी तथा दिगम्बर तीनों अखाड़ों का निर्माण स्वामी जी ने एक साथ जयपुर में किया था। तीनों अखाड़ों का निर्माण स्वामी जी द्वारा आज से 500 वर्ष पूर्व किया गया था।*** *मैं यह नहीं बता सकता कि 500 वर्ष पूर्व जयपुर में मुस्लिम शासन न होने के कारण उक्त अखाडों का निर्माण किया गया था। रामानन्दाचार्य जी जयपुर इलाके के रहने वाले नहीं थे, वे प्रयाग, जिसे आजकल इलाहाबाद कहा जाता है, के रहने वाले थे।* ***जयपुर स्वयं रामानन्दाचार्य जी नहीं गये थे, उनके शिष्य बालानन्द जी ने जयपुर में जाकर इन अखाड़ों की स्थापना किया था। पहले तीन अखाड़े बने थे, उनके प्रभेद 18 अखाड़ें हैं। जयपुर में सूत्र रूप में अखाड़ों के निर्माण संबंधी सिद्धान्त बनाये गये थे, परन्तु उसके आधार पर नियम तथा उपनियम बनाने का कार्य बाद में हुआ***

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था। *यह नियम तथा उपनियम जयपुर में सिद्धान्तों के निर्णय के बाद छः माह के अन्तर्गत ही बना दिये गये थे। यह नियम तथा उपनियम क्रमशः प्रयाग, हरिद्वार, उज्जैन तथा नासिक में बनाये गये थे। अखाड़ों की विधाओं में नागा, हुडदंगा, छोरा तथा अतीत है, अखाड़ों में शुरू से ही ये चारों प्रकार के लोग रहते चले आये हैं। इसी प्रकार शस्त्रों की शिक्षा भी शुरू से अखाड़ों में दी जाती रही है। जिन तीन अखाड़ों का उल्लेख मैंने ऊपर किया है,* ***ये अखाड़े स्थिर नहीं रहते हैं, ये चलते–फिरते रहते है। अतएव इसी प्रकार ये अखाड़े अयोध्या में पहुंचे।*** *पूरे भारत में अखाड़े के लोग जाते हैं तथा भेंट विदाई प्राप्त करते हैं। स्वयं कहा कि वर्तमान काल में रामानन्द सम्प्रदाय के 90 लाख साधु पूरे भारत में विचरण कर रहे हैं। इन साधुओं में जो लोग अस्त्र–शस्त्र ट्रेनिंग चाहते हैं वे उस ट्रेनिंग को लेते हैं इसके अतिरिक्त जिनकी रूचि पढ़ने–लिखने की होती है, वे पढ़ाई–लिखाई करते हैं।* ***स्वयं कहा कि अखाड़ा एक न्यास हे, जिसमें पंचायती व्यवस्था है।*** *इसलिए जिसकी जैसी रूचि हो, उसी अनुसार पढ़ने लिखने, योगासान सीखने तथा अस्त्र–शस्त्र सीखने की शिक्षा इन अखाड़ों में दी जाती है। राष्ट्रीय स्वयं सेवक संघ का उद्‌भव अखाड़ों से नहीं हुआ है। राष्ट्रीय स्वयं सेवक संघ की स्थापना नागपुर में हेडगेवार ने किया था। उपरोक्त तीन अखाड़ों के अतिरिक्त एक और अखाड़ा निरालम्बी भी अयोध्या में है। निरालम्बी अखाड़ा के महन्त है, इस अखाड़े में जो विद्यार्थी रहते हैं, वे लिखते–पढ़ते हैं। निरालम्बी अखाड़े की कई शाखायें अयोध्या में है। इसके अतिरिक्त अयोध्या के बाहर भी इसकी शाखायें हैं, परन्तु उनकी गिनती मैंने नहीं किया। उपरोक्त अखाड़ों के अतिरिक्त ख़ाकी अखाड़ा भी अयोध्या में है। खाकी अखाड़ा में तीस–चालीस लोग हैं। खाकी अखाड़े के लोगों की संख्या अयोध्या के बाहर हज़ारों की संख्या में है, ये लोग विभिन्न प्रान्तों जैसे गुजरात, राजस्थान व महाराष्ट्र में फैले हुए हैं। यह ट्रेनिंग अखाड़ों में स्थित आश्रम में ही होती है। कहीं बाहर ट्रेनिंग देने के स्थान निर्धारित नहीं है। जो अखाड़ा होता है, उसके पास शस्त्र होते ही हैं अतः उन्हीं अस्त्रों से ट्रेनिंग दी जाती है। रामघाट मोहल्ले में निरालम्बी अखाड़ा है, हनुमानगढ़ी चौराहे के पास ख़ाकी अखाड़ा है। निर्वाणी अखाड़ा हनुमानगढ़ी, दिगम्बर अखाड़ा हनुमानगढ़ी चौराहे से थोडा आगे तथा उसी से थोड़ा आगे निर्मोही अखाड़ा स्थित है। सभी अखाड़ों के नियम भी हैं तथा स्थान भी हैं। अयोध्या में इन अखाड़ों के जो स्थान हैं, उनमें ट्रेनिंग दी*

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जाती है। यह ट्रेनिंग शस्त्रों की तथा विद्या की, योगासन की दी जाती है। ***बालानन्दाचार्य, विरजानन्द जी के शिष्य थे।*** *अखाड़े का तात्पर्य अखण्डता से है।* ***यह अखाड़े प्राचीन काल से हैं, परन्तु बालानन्द जी ने इसे गतिमान किया था।"****(पेज–41–44) (emphasis added)*

"The Akharas which I have referred in my statement, were established in 15th Century. This is wrong to say that these Akharas were founded in 15th century in Jaipur. It is true that these Akharas were created in time immemorial, because its reference is in Balmiki Ramayan. No event regarding formation of Akharas in Jaipur took place. In these Akharas training of using arms and weapons is imparted, which is called Patabana. In Patabana, Lattu, sword, lathi, spear, Ballam and stick are used. Of his own said that Ani means army and therefore, training of using arms and weapons is given. Total number of Akharas in India is not only 13, but it is 18. All Akharas visit on the occasion of Kumbh. On the occasion of Kumbh Akhara people stay for one month. On the occasion of Kumbh no training for using the aforesaid arms and weapons is given. When the procession moves for royal bath, at that time, saints displaying Patabana moves ahead the saints. The period of that procession is determined by the Government with different timings and fixation of the time is made keeping in view the distance of Akharas from Ganges. On the occasion of Kumbh within one month only three royal baths are done. Procession moves only at the time of these three Royal Bath. During the period of one month in Kumbh service, worship etc. and providing food to guests go on. At that time how many persons are fed, the number is not fixed. As many as persons arrive there at that

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occasion they are all provided food. Out of 18 Akharas, which I have referred in my statement aforesaid, main are in Prayag, Haridwar, Nasik and Ujjain. At the time of Shahi Snan (Royal Bath) all the 18 Akharas move together. Only Jagadguru moves alone. There are four Jagadguru in Vaishnav Sect. ***The aforesaid 18 Akharas were created 500 years ago since today by Balanandacharya Ji disciple of Birjanand Ji. First Akhara was founded in Jaipur, Rajasthan.***

The witness was shown paper no. 236/52 of Original Suit No. 4/89, after going through two pages of the report, said that he had no knowledge about this report. Swami Ji had founded the three Akharas Nirmohi, Nirvani and Digambar simultaneously in Jaipur. I cannot say that on account of there being no Muslim Rule in Jaipur 500 years ago, these Akharas were created. Ramanand Ji was not resident of Jaipur area. He was a resident of Prayag which is today known as Allahabad. Ramananad acharya Ji himself did not go to Jaipur, his disciple Balanand Ji went Jaipur and founded these Akharas. ***Initially, three Akharas were created and their 18 sub-divisions are there. In Jaipur, in the shape of formulae, principles for creation of Akharas were enacted but on that basis, framing of Rules and Sub rules were done subsequently****. These rules and sub rules were enacted within six months of promulgation of principles in Jaipur. These rules and sub rules were framed in Prayag, Haridwar, Ujjain and Nasik respectively. In the branches or division of Akharas are Nagas, Hurdanga, Chhora and Ateet, and from very beginning these four categories existed. Likewise,*

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education of arms and weapons were imparted in the Akharas from inception. ***The three Akharas which I have mentioned above, they are not static and are nomadic.*** *Therefore, in this way, these Akharas reached Ayodhya. Members of Akharas roam through out whole of India and receives meeting-farewell gift. Of his own said, presently, 90 lacs saints of Ramanand Sect are wandering throughout India. The saints wishing to have training of weapons, they get the training and besides it, the saints who are interested in schooling, they do the same. Of his own said that* ***Akhara is a trust with Panchayati system.*** *Therefore, as per one's interest, according to that, schooling, learning Yogasan and training of arms and weapons are imparted in these Akharas. Origin of Rashtriya Swyam Sewak Samgh is not Akharas. Rashtriya Swayam Sewak Sangh was founded in Nagpur by Hedgewar. Apart from the aforesaid three Akharas, one more Akhara--Niralambi is also in Ayodhya. There is a Mahant of Niralambi Akhara. The students living in this Akhara study. There are many branches of Niralambi Akhara in Ayodhya. Besides it, there are its branches out of Ayodhya, but I have not counted them. Besides the aforesaid Akharas, a Khaki Akhara is also in Ayodhya. There are 30-40 people in Khaki Akhara. Number of persons in Khaki Akharas out of Ayodhya is in thousands, these people are scattered in different States i.e., Gujrat, Rajasthan and Maharashtra. This training is imparted in the Huts (Ashram) of these Akharas. No place outside is fixed for giving training. The Akhara has arms and weapons, therefore, training is given with those weapons. In Mohalla Ram Ghat there is a Niralambi*

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Akhara and near Hanuman Garhi crossing there is a Khaki Akhara. Nirwani Akhara Hanuman Garhi and Digambar Akhara Hanuman Garhi are a little ahead of crossing and thereafter a little ahead Nirmohi Akhara is situated. All Akharas have rules and places too. A training is imparted in the places of these Akharas. Balanandacharya was a disciple of Birjanandji. Akhare means indivisibility. ***These Akharas exists from ancient period but Balanandji gave momentum to it****." (E.T.C.)*

"रामानन्दी सम्प्रदाय के अन्तर्गत जो संप्रदायाचार्य होते हैं, उनके लिए भी अस्त्र शस्त्र धारण करना जरूरी नहीं है। मैंने भी दण्ड धारण कर रखा है, यह न अस्त्र है, न शस्त्र है। ***रामानन्द जी का जो सिद्धान्त तत्वत्रैय है, उसी का मनसा, वाचा, कर्मणा तीनों तत्वों की स्वीकृति, जिसमें एक बिल्व, पलाश तथा बांस होता है, के प्रतीक के रूप में इसे धारण किया जाता है। इसका तात्पर्य ब्रह्म जीव और माया से है।*** *यह दण्ड लकड़ी का होता है। ऊपर का अंश सुमेरू कहा जाता है, जो ब्रह्म का प्रतीक है। इस* ***दण्ड के ऊपरी भाग में तिलक का चिन्ह बना हुआ है, जो रामानन्दीय सम्प्रदाय का प्रमुख चिन्ह है।"*** *(पेज–45)*

"It is not necessary for Acharya of Ramanandi Sect too to bear arms and weapons. I also bear a Dand (Stick). It is neither an arm nor weapon. It contains a Bilva, Palas and Bamboo and is borne in token of acceptance of the principle of Tatvatraya of Ramanandji, namely, three elements in thought, word and deed. It means Bramha, Jeev and Maya. This stick is made of wood. Upper portion is called Sumeru which is the symbol of Bramha. On the ***upper portion of this stick, a sign of Tilak is made which is the main symbol of Ramanandi Sect."*** *(E.T.C.)*

*"****चतुः सम्प्रदाय का अर्थ है, रामानन्द, निम्बार्क, बल्लभ तथा मध्व।*** *इन्हीं चारों को मिलाकर चतुः सम्प्रदाय कहा जाता है। चारो*

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सम्प्रदायों के चार प्रतिनिधि महन्त होते हैं।" (पेज –46)

"Charuh-Sampradaya ***(Quadruple Sect) means, Ramanand, Nimbark, Ballabh and Madhwa.*** *These four together is called Chatuh-Sampradaya (qudruple sect). Mahants are representatives of these four Sects." (E.T.C.)*

"आदि शंकराचार्य का काल रामानंदाचार्य के काल से सौ, दो सौ साल पुराना है।" (पेज 49)

"Aadi Sankaracharya's period is 100-200 years earlier to that of Ramanandacharya." (E.T.C.)

"रामानन्दाचार्य रामानन्दीय सम्प्रदाय के आचार्य थे, परन्तु वे इस सम्प्रदाय के संस्थापक नहीं थे। रामानन्दीय सम्प्रदाय की संस्थापक सीता जी हैं। *वे इस सम्प्रदाय की आचार्या हैं, जिन्होंने राममन्त्र की व्याख्या एवं श्रीमत् का प्रचार सर्वप्रथम किया।* ***सीता जी एवं रामानन्दाचार्य के बीच में जो लोग इस सम्प्रदाय के आचार्य के रूप में जाने जाते हैं, उन लोगों में बोधायन, पाराशर, व्यास जी, हनुमान जी हैं। इन सभी लोगों ने इस सम्प्रदाय को गति प्रदान की। बोधायन किस काल के थे, यह मैं नहीं बता सकता। यह शायद महात्मा बुद्ध के बाद हुए हैं।*** *बोधायन के बारे में कोई साहित्य प्राप्त नहीं होता है।* ***वेदव्यास जी को मैंने चिरंजीवी होना बताया है। हनुमान जी देवता थे।*** *स्वयं कहा कि वह देव और मानव दोनों थे।* ***रामानन्दाचार्य के पूर्व इस संप्रदाय के सम्बन्ध में साहित्य की रचना करने वाले और किसी व्यक्ति को मैं नहीं जानता हूँ,*** *केवल सीता जी का भाष्य है, जो जानकी भाष्य के नाम से विख्यात है।* ***रामानन्दीय सम्प्रदाय के बारे में आजकल जो साहित्य उपलब्ध हैं, उनमें सबसे प्राचीन रामानन्दाचार्य जी का ही साहित्य है। अन्य साहित्य जो इस सम्प्रदाय के बारे में उपलब्ध है वह रामानन्दाचार्य जी के बाद के हैं।"*** (पेज–93) *(emphasis added)*

*"**Ramanandacharya was an Acharya of Ramanandi Sect, but he was not a founder of this Sect.***

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The founder of Ramanandi Sect is Sita Ji. *She is Acharya (Lady Teacher) of this Sect, who first of all, explained Ram Mantra and and made publicity of Srimat (pious saying of Lord).* ***The persons who are known as Acharya of this Sect in between Sita Ji and Ramanandacharya, are Bodhayan, Parasar, Vyas Ji and Hanuman Ji. All these gave momentum to this Sect. To which period Bodhayan pertained, I cannot say. Probably, he might have been after Mahatma Buddh.*** *No literature is available about Bodhayan.* ***I have said Ved Vyas Ji as immortal. Hanuman Ji was a God.*** *Of his own said, that he was a God and human being both.* ***I do not know any other person, earlier to Ramanandacharya, who might have created literature in respect to this Sect.*** *Only there is a commentary of Sita Ji which is famous by "Janaki Bhashya".* ***Whatever literature of Ramanandi Sect is available today, amongst them the ancient is only the literature of Ramanandacharya Ji. Other literature available with regard to this Sect, is of the period subsequent to that of Ramanandacharya Ji.*** *" (E.T.C.)*

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"रामानन्दाचार्य के बारह शिष्यों में से एक शिष्य अनुभवानन्दाचार्य है। ***अनुभवानन्दाचार्य का काल आज से लगभग 500 वर्ष के अन्तर्गत माना जाता है। इनका जन्म सम्वत् 1503 में वाराणसी में हुआ था।*** *अनुभवानन्दाचार्य ने अपने जीवन काल में सैनिक पद्धति का प्रतिपादन किया था और अपने अनुयायियों को उन्होंने भाला, तीर, बरछा आदि चलाने की शिक्षा दी होगी। अनुभवानन्दाचार्य जी के शिष्य विरजानन्दाचार्य थे। विरजानन्दाचार्य के शिष्य बालानन्दाचार्य थे।* ***बालानन्दाचार्य ने अखाड़ों की स्थापना आज से पॉच सौ वर्ष पूर्व किया।*** *रामानन्द जी और उनके शिष्यों का उद्देश्य वैदिक संस्कृति का प्रचार तथा भारतीय शस्त्रों का सैद्धान्तिक विवेचन करना था।"* (पेज–94) *(emphasis added)*

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"Amongst 12 disciples of Ramanandacharya, one is Anubhavanandacharya. ***The period of Anubhavanand-acharya is considered within 500 years from today. He was born in Samvat 1503 in Varanasi.*** *Anubhavanand-acharya during his life time had laid down a principle of Army System and might have given training of using Bhala, arrow, spears etc. to his followers. Anubhavanand-acharya's disciple was Virjanandacharya. Balanand-acharya was the disciple of Virjanandacharya.* ***Balanand-acharya founded the Akharas 500 years ago from today.*** *The aim of Ramanand Ji and his disciples was to expand the vedic culture as well as theoretical analysis of Indian scriptures."(E.T.C.)*

765. **D.W. 3/20 Mahan**t Rajaram Chandracharya (aged about 76 years as on 27th October, 2004**)** in his affidavit (Examination-in-chief) has said about Ramanandi Sampraday in paras 46, 47, 48 and 49 as under:

"46. ***निर्मोही अखाड़ा के अन्तर्गत कई मन्दिर हैं।*** *जिसमें से राम कोट स्थित प्रसिद्ध राम जन्म भूमि मन्दिर हैं।* ***निर्मोही अखाड़ा एक पंचायती मठ है जिसकी व्यवस्था पंचो द्वारा होती है।*** *पंच बैठक कर प्रस्ताव पास कर निर्णय करता है जो प्रस्ताव पास होता है। उसे अखाड़े के सभी साधुओं को मानना पड़ता है और महन्त को भी मानना पड़ता है* ***महन्त स्वतंत्र नहीं हैं महन्त पंचों के आधीन ही निर्मोही अखाड़ा के मन्दिर व सम्पत्ति की व्यवस्था करते है।"***

"46. ***There are several temples under Nirmohi Akhara.*** *Out of which, is famous Ram Janam Bhumi situated at Ram Kot.* ***Nirmohi Akhara is a Panchayati Math, which is managed by Panches.*** *Panches pass proposal in meeting and take a decision,the proposal which is passed, all the saints are bound to abide by the same and Mahant has also to follow the same.* ***Mahant is not free and he manages***

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the temple of Nirmohi Akhara and its property acting under the control of Panches. *" (E.T.C.)*

"47. ***श्री रामानन्दीय सम्प्रदाय के आदि आचार्य जानकी व श्री राम जी हैं।*** *स्वामी रामानन्द ने विशिष्टाद्वैत दर्शन का प्रतिपादन किया इसलिए उनके नाम पर रामानन्दी वैरागी सम्प्रदाय पड़ा ये रामानन्दीय* ***वैरागी सम्प्रदाय के अखाड़ों की स्थापना बालानन्द जी महराज ने अरसा 500 वर्ष पूर्व किया था*** *उत्तर भारत में निर्मोही अखाड़ा की कई बैठकें हैं। इन सभी बैठकों के अन्तर्गत कई मंदिर हैं। अयोध्या में उक्त निर्मोही अखाड़ा की प्राचीन बैठक रामघाट अयोध्या में है।* ***अखाड़ा एक सार्वजनिक, धार्मिक न्यास स्वयं है।*** *अयोध्या में रामानन्दीय वैरागी के सात अखाड़े हैं। (1) दिगम्बर अखाड़ा (2) निर्वाणी अखाड़ा (3) निर्मोही अखाड़ा (4) संतोषी अखाड़ा (5) खाकी अखाड़ा (6) महानिर्वाणी अखाड़ा (7) निरालम्बी अखाड़ा। हर अखाड़ों में अनेक मन्दिर हैं। और अलग–अलग देवता विराजमान हैं। जैसे निर्वाणी अखाड़े में हनुमान मंदिर, जिसमें हनुमन्त लाल विराजमान हैं। नरसिंह मन्दिर जिसमें नरसिंह भगवान विराजमान हैं। राम जानकी मन्दिर जिसमें राम जानकी विराजमान हैं। ये सभी मन्दिर अखाड़े निहित हैं। और ऐसे ही निर्मोही अखाड़े में विजय राघव मन्दिर जिसमें राम जानकी विराजमान हैं। जिनके साथ दरबार है। जैसे–लक्ष्मण, भरत, शत्रुघ्न, गरूण जी हैं और निर्मोही अखाड़े के अन्तर्गत राम जन्म भूमि मन्दिर है जिसमें रामलला विराजमान हैं जिनके साथ उनके तीन भाई की मूर्तियॉ हैं।* ***निर्मोही अखाड़े के महन्त व सर्वराकार पंचो के चुनाव द्वारा नियुक्ति किया जाता है। वरासत नहीं चलती यानि गुरू के मरणोपरान्त चेला महन्त नहीं होता है।*** *निर्मोही अखाड़े के मन्दिर व अखाड़े के अचल सम्पत्ति पर सरकारी कागजात पर महन्त अखाड़े का नाम दर्ज होता है।* ***अखाड़े के मन्दिर में जो ठाकुर जी विराजमान होते हैं। वे किसी जायदाद के मालिक नहीं है। बल्कि सभी जायदाद मलकियत अखाड़ा रहती है। जो स्वयं में धार्मिक न्यास है।*** *जिन सभी मन्दिर व जायदाद की व्यवस्था अखाड़ा बहैसियत सर्वराकार पंचायती तौर पर महन्त अखाड़ा करता है।"*

"47. ***Aadi Acharya (Initial Teacher) of Ramanandi Sect is Janaki and Sri Ram Ji.*** *Swami Ramanand enunciated*

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Vishishtadwait Philosophy, therefore, on his name, it was called Ramanandi Varaigi Sect and ***Akharas of this Vairagi Sect were founded by Balanand Ji Mahraj about 500 years ago.*** *There are a number of assemblies of Nirmohi Akharas in North India. There are many temples under all these assemblies. In Ayodhya the ancient assembly of the aforesaid Nirmohi Akhara is in Ramghat, Ayodhya.* ***Akhara is a public, religious trust.*** *There are seven Akharas of Ramanandi Varaigi in Ayodhya. (1) Digambar Akhara (2) Nirvani Akhara (3) Nirmohi Akhara (4) Santoshi Akhara (5) Khaki Akhara (6) Mahanirvani Akhara (7) Niralambi Akhara. In every Akhara there are several temples. And different deities are enthroned. Such as, Hanuman Temple in Nirvani Akhara, wherein Hanumant Lal is enthroned. Narsingh Temple in which Narsingh Bhagwan is enthroned. Ram Janki Temple wherein Ram Janki is enthroned. All these temples are vested in Akharas. And under a similar Akhara in Vijay Raghav Mandir wherein Ram-Janki is enthroned with court,-e.g., Lakshman, Bharat, Satrughna, Garun Ji and Ram Janam Bhumi Temple is under Nirmohi Akhara in which Ram Lala is enthroned and with whom there are idols of his three brothers.* ***Mahant and Sarvarakar of Nirmohi Akhara are elected by Kar Panches, heritage is not permissible, meaning that after death of Guru (teacher) his disciple does not become a Mahant.*** *In Government records, the name of Mahant is recorded with respect to the immovable property of Nirmohi Akhara and temples.* ***The Thakur Ji who is enthroned in the temple of an Akhara, is not owner of any property, rather all***

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the property is of Akhara which in itself is a religious trust. *Management of all these temples and property of Akhara is done by Mahant of Akhara as Sarvarakar under Panchayati system." (E.T.C.)*

"48. निर्मोही अखाड़े के सुसंगत महन्तों का शजरा निम्नलिखित है–

मं0 गोविन्द दास जी

मं0 अयोध्या दास जी

मं0 गोपाल दास जी

मं0 जय राम दास जी

मं0 रतन दास जी

मं0 अन्नत राम दास जी

मं0 मंगल दास जी

मं0 जगन्नाथ दास जी

मं0 कौसल्या दास जी

मं0 माखन दास जी

मं0 तुलसी दास जी

मं0 बलदेव दास जी

मं0 रघुबर दास जी

मं0 नरोत्तम दास चेला रघुबर दास

मं0 राम चरन दास जी

मं0 रघुनाथ दास चेला मं0 धर्म दास

मं0 प्रेमदास मं0 रघुनाथ दास

मं0 रामेश्वर दास चेला ईश्वर दास

मं0 राम केवल दास चेला गोपाल दास जी (इनसे इस्तीफा लिया गया)

मं0 जगन्नाथ दास चेला वैष्णव दास"

"48. Pedigree of relevant Mahants of Nirmohi Akhara is as under:

M. Govind Das Ji

M. Ayodhya Das Ji

M. Gopal Das Ji

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M. Jai Ram Das Ji

M. Ratan Das Ji

M. Anant Ram Das Ji

M. Mangal Das Ji

M. Jagannath Das Ji

M. Koshalya Das Ji,

M. Makhan Das Ji

M. Tulsidas Ji

M. Baldev Das Ji

M. Raghubar Das Ji

M. Narottam Das Ji Chela Raghubar Das Ji

M. Ram Charan Das Ji

M. Raghunath Das, Chela Mahant Dharamdas

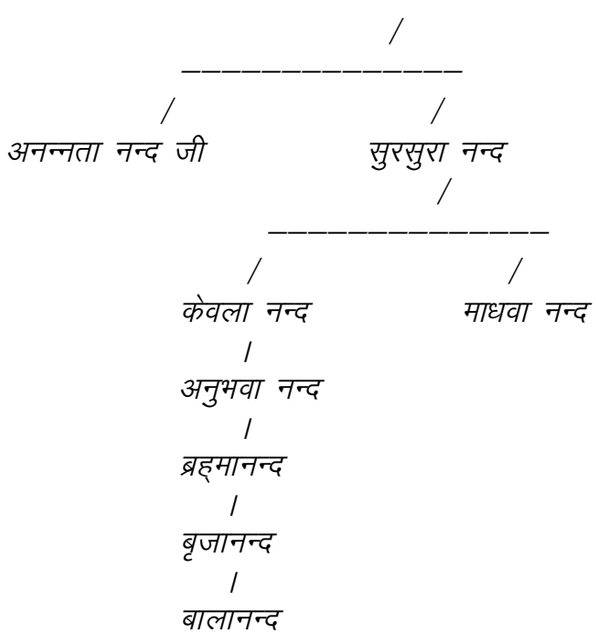
M. Prem Das M. Raghunath Das

M. Rameshwar Das, Chela Ishwar Das

M. Ram Keval Das Chela Gopal Das Ji (from whom resignation was obtained)

M. Jagannath Das Chela Vaisnav Das" (E.T.C.)

''49. रामानन्द जी का प्रादुर्भाव 13वीं शताब्दी के अंत में हुआ। द्ववादस शिष्यों में कबीर दास जी भी थे। रामानन्द जी के दो शिष्य–



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माधवानन्द के शिष्य नरहरि दास और नरहरि दास के शिष्य तुलसी दास जी जो मानस के रचयिता हैं ***अनुभवा नन्द व उनके उप शिष्य बालानन्द ने श्री चतुर सम्प्रदाय के प्रचार जागृत व उन्नति रक्षा के लिए तीन अन्य तथा सात अखाड़े का निर्माण किया जो सैनिक पद्धति पर आधारित है जो लगभग 600 वर्ष पूर्व से चला आ रहा है।*** *और रामानन्द सम्प्रदाय के श्री मठ बनारस है। इसके गद्दी पर इस समय जगद्गुरू शिवरामाचार्य जी थे जिन्होंने विश्व हिन्दू परिषद के क्रिया कलापों पर बहुत रोष प्रकट किया अखबारों पर उनका बयान छपा जिसे अखाड़े ने दाखिल किया।'' (emphasis added)*

"49. Appearance of Ramanad Ji was in the end of 13th century. Kabir Das Ji was one of his 12 disciples. Two disciples of Ramanand Ji:

Ananta Nand Ji *Sursura Nand*

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Kevla Nand *Madhva Nand*

I
Anubhava Nand
I
Bramha Nand
I
Brija Nand
I
Balanand

Madhavanand's disciple was Narhari Das and Narhari Das's disciple was Tulsidas Ji who is composure of Manas. ***Anubhava Nand and his Deputy disciple Balanand Ji created three Annais and seven Akharas*** *which has been based on army system,* ***for publicity, awakening, promotion and sustenance of Sri Chatur Sect, and has been persisting for about last six hundred years.*** *Sri Math (main math) of Ramanand Sect is in*

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Banaras. Presently Jagatguru Sri Shivramacharya Ji is enthroned on it who expressed great anguish on the activities of Viswa Hindu Parishad and his statement was published in newspapers which the Akhara filed." (E.T.C.)

766. In para 57 DW 3/20 has said that history and constitution of the aforesaid Sampraday Akhara is also mentioned in "Smritigranth" published by the Sampraday itself as well as in a Book titled as "Rajasthan Ki Bhakti Parampara Evam Sanskriti" written by Sri Dinesh Chandra Gupta and Onkar Narain Jodhpur. In cross examination, on pages 18, 19, 20, 46/47, 108/109 and 178 he said :

''अखाड़े से तात्पर्य यह है कि धार्मिक संरक्षण एवं सम्वर्धन के लिए जिस संस्था का निर्माण किया जाता है, उसे अखाड़ा कहा जाता हैं। स्वयं कहा कि ''अखण्ड'' शब्द का अपभ्रंश अखाड़ा है। यदि कहीं पर निर्मोही अखाड़े का उल्लेख करना हो तो शुद्ध रूप से उसे ''निर्मोही अखाड़ा'' लिखेगें। यह सही है कि निर्मोही अखाड़े का नाम शुद्ध रूप से ''श्रीपंच रामानन्दीय निर्मोही अखाड़ा'' लिखेंगे। यह अखाड़ा अखिल भारत वर्षीय स्तर पर स्थापित है। इस प्रकार इस अखाड़े का पूरा नाम ''अखिल भारत वर्षीय श्री पंच रामानन्दीय निर्मोही अखाड़ा'' है। इस प्रकार निर्मोही अखाड़े के अतिरिक्त भी जितने अखाड़े हैं, उनके परिचय में इसी प्रकार की शब्दावली प्रयुक्त होती है। ***इन अखाड़ों की स्थापना परम्परा से वर्षो पहले हो चुकी थी। बालानन्दाचार्य जी के समय में उनका संबर्धन व परिष्कृत कार्यक्षेत्र विशेष रूप से स्थापित हुआ।*** *अखाड़ों की स्थापना अमृत मंथन की प्रथा से शुरू होती है। आसुरी व देवी शक्ति के बीच का जो संघर्ष है वहीं पर अखण्ड शक्ति का प्रदर्शन अखाड़ों के उत्पन्न होने का मूलभूत प्रेरक तत्व है। देशकाल को ख्याल में रखते हुए उनका संकोच व विकास समय–समय पर होता रहता है। अमृत मंथन के समय से ही निर्मोही अखाड़ा तथा अन्य अखाड़ों की उत्पत्ति का मूलभूत श्रोत शुरू होता है और परिस्थितियों को ध्यान में रखते हुए बाद में इनके नामकरण भी होते रहे। निर्मोही अखाड़े के नौ विभाग हैं।* ***बालानन्दाचार्य के समय के पूर्व से ही निर्मोही अखाड़ा की उत्पत्ति हो गयी थी।*** *इस*

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अखाड़ें का नामकरण संस्कार भी बालानन्दाचार्य के समय में हो चुका था। इन अखाड़ों का नामकरण किस महात्मा व आचार्य के समय में हुआ, यह मैं नहीं बता सकता, परन्तु पूर्वाचार्यों के द्वारा इन अखाड़ों के नाम का उल्लेख होता आया है और ये नाम इसी तरह आज तक चल रहे हैं। ***रामानन्दीय सम्प्रदाय के प्रथम आचार्य रामचन्द्र जी हैं।*** *इस संबंध में एक श्लोक है ''सीतानाथ समारम्भाम रामानन्दाचार्य मध्यमाम् अस्मतदाचार्य पर्यांताम् वन्दे गुरू परम्पराम्'' रामानन्दाचार्य शिष्य परम्परा में 22वें स्थान पर हैं। उनके द्वारदश शिष्यों में सुरसुरा नन्द, उनके शिष्य अनुभवानन्द, उनके शिष्य ब्रह्मानन्द, ब्रह्मानन्द के शिष्य बालानन्द हुए। इस प्रकार रामानन्दाचार्य जी के बाद 23वें नम्बर पर उनके शिष्य सुरसुरानन्द,* ***24 वें नम्बर पर अनुभवानन्द,*** *25वें नम्बर पर ब्रह्मानन्द, 26 वें नम्बर पर गजानन्द,* ***27 वें नम्बर पर बालानन्द जी इस शिष्य परम्परा में हुए।*** *अखाड़ों की स्थापना किसी संघर्ष के बाद होती है।''(पेज 18–20)*

"Akhara means the institution which is created for religious conservation and growth, of his own said, degenerated or corrupt form of the word "Akhand" is "Akhara". If somewhere "Nirmohi Akhare" is to be written, it will correctly be written "Nirmohi Akhara". It is true that correct name of Nirmohi Akhara will be written "Sri Panch Ramanandiya Nirmohi Akhara". This Akhara is established on all India level. Thus, full name of this Akhara is "Akhil Bharat Varshiya Sri Panch Ramanandiya Nirmohi Akhara". Thus, besides Nirmohi Akhara, for introduction of all the Akharas this phrase is used. ***These Akharas had been established years ago by way of custom. In the period of Balanandacharya their growth and purified work field was specially established.*** *Foundation of Akharas begins from the custom of Amrit Manthan. The struggle between divine and evil powers and thereby the emergence of indestructible power is the basic inspiriting element of creation of the Akharas. Keeping in view the*

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place and time, process of their reduction and improvement continues. Basic source of origin of Nirmohi Akhara and other Akharas commences right from the time of Amrit Manthan, and subsequently, having regard to the circumstances, their nomenclature was being done. There are nine departments of Nirmohi Akhara. ***From the time before Balanandacharya, Nirmohi Akhara had come into existence****. Rite of nomenclature was also done during the period of Balanandacharya. I cannot say as to within the period of which saint or Teacher, nomenclature of these Akharas were done, but nomenclature was being referred by teachers of past and these names are continuing like this till date.* ***The first teacher (Acharyha) of Ramanandi Sect is Acharya Ram Chandra Ji.*** *In this connection there is a verse: "Sitanath Samarambham Ramanandacharya Madhyamam Asmatdacharya Paryatam Vande Guru Paramparam". Ramanandacharya is at 22nd place in disciple -tradition. Amongst his 12 disciples, are Sursuranand, his disciple Anubhavanand, his disciple Brahmanand and Brahmanand's disciple Balanand. Thus, after Ramanandacharya Ji , at serial no. 23- his disciple Sursuranand, at serial no.* ***24- Anubhavanand,*** *at 25th Brahmanand, at 26th Gajanand and at* ***27th place Balananand became Acharya under the disciple tradition.*** *Akharas are created after any struggle." (E.T.C.)*

''रामानन्दाचार्य का जन्म 13वीं शताब्दी में हुआ था। बालानन्दाचार्य ने जयपुर में अखाड़ों का विकास किया था। *बालानन्दाचार्य चूंकि जयपुर में ही रहते थे, इसलिए उन्होंने इस स्थान को अखाड़ों के विकास हेतु चुना।* ***बालानन्दाचार्य के पूर्व भी सभी अखाड़े वर्तमान थे। बालानन्दाचार्य के वर्षों पहले से इन***

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अखाड़ों का अस्तित्व था, परन्तु कितने समय पूर्व से इन अखाड़ों का अस्तित्व था, यह मैं नहीं बता सकता। *कुल 18 अखाड़ों का विकास बालानन्दाचार्य ने देश–काल को देखते हुए किया था। इन अखाड़ों की शाखाएं देश के हर कोने में थीं। ये शाखाएं भारत के हर कोने में थीं। हर कोने से तात्पर्य बंगाल में तथा अन्य प्रदेशों में इसकी शाखाएं थीं। उत्तर प्रदेश में भी इसकी शाखाएं थीं। उत्तर प्रदेश नाम आज़ादी के बाद आया है। इसके पूर्व भी अखाड़ों की शाखाएं इस स्थान पर थी। अवध प्रदेश में भी अखाड़े की शाखाएं थीं। अवध में पंचरामानन्दीय निर्मोही अखाड़ा, पंच रामानन्दीय निर्वाणी अखाड़ा, श्री पंचरामानन्दीय खाकी अखाड़ा की शाखाएं चित्रकूट, वृन्दावन तथा गिरिराज में थीं। अयोध्या में भी इनकी शाखाएं थीं और अब भी हैं। अयोध्या में निर्वाणी, निरालम्बी, निर्मोही, खाकी और दिगम्बर अखाड़ों की शाखाएं थीं। अयोध्या में अखाड़ों की जो शाखाएं थीं वे धर्मरक्षा में तथा उसके प्रचार व प्रसार में संलग्न रहती थीं।* ***अयोध्या में ये अखाड़े वर्षों पहले से थे, परन्तु कितने वर्षों पूर्व से वहाँ पर थे, यह मैं नहीं बता सकता।*** *अयोध्या में सभी 18 अखाड़ों की शाखाएं थीं। रामानन्दाचार्य ने धर्म की रक्षा की घोषणा की थी। स्वयं कहा कि उनके पूर्व के आचार्यों तथा बाद के आचार्यो ने भी ऐसा किया। रामानन्दाचार्य 14वीं शताब्दी के बाद तक रहे। यह काशी में रहते थे तथा अन्य प्रदेशों का भी भ्रमण करते थे। रामानन्दाचार्य संगठित अखाड़ों को देश–धर्म की रक्षा के लिए प्रेरणा देते थे।'' (पेज 46–47)*

"Ramanandacharya Ji was born in 13th century. Balanandacharya evolved Akharas in Jaipur. *Since Balanandacharya lived in Jaipur, therefore, he chose this place for growth of Akharas.* ***Even before Balanandacharya all Akharas were in existence. From years before Balanandacharya, these Akharas were in existence, but I cannot say as to since how many years they existed.*** *Development of 18 Akharas in all was done by Balanandacharya keeping in view the time and place. Branches of these Akharas were in each corner of the country. These branches were in each corner of India.*

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Each corner means, in Bengal and in other States their branches existed. Its branches were in U.P. Too. Name of Uttar Pradesh has come into existence after freedom. Earlier to it, branches of Akharas were at this place. In Avadh Province too, its branches were present. In Awadh, branches of Panch Ramjanandi Nirmohi Akhara, Panch Ramanandi Nirvani Akhara and Sri Panch Ramanandi Khaki Akhara were in Chitrakoot, Vrindavan and Giriraj. Its branches were in Ayodhya too and are still existing. In Ayodhya there were branches of Nirvani, Niralambi, Nirmohi, Khaki and Digambar Akharas. The branches of Akharas which were in Ayodhya, had been indulged in saving the religion and its publicity and expansion. ***These Akharas existed in Ayodhya years before but for how many years they existed there, I cannot tell.*** *In Ayodhya there were branches of all the 18 Akharas. Ramanandacharya had proclaimed for protection of religion. Of his own said that his predecessor Acharyas (teachers) and subsequent Acharyas also did so. Ramanandacharya remained till the post 14th century. He used to live in Kashi and wander other provinces too. Ramanandacharya used to inspire the Akharas for saving the nation and religion. (E.T.C.)*

''सूची सं0 10 में रामानन्द से शुरू होने वाली वंशावली में सभी नाम उनके हैं, जो निर्मोही अखाड़ा के पूर्व आचार्य यानी महन्त थे। इसका मतलब यह है कि रामानन्द से ही निर्मोही अखाड़े के महन्तों का प्रचलन शुरू हुआ, पहले से नहीं, अर्थात रामानन्द यानी रामानन्दाचार्य निर्मोही अखाड़े के पहले महन्त, मध्य आचार्य हुए। *मेरे शपथ–पत्र के प्रस्तर–49 में यह लिखा है कि रामानन्द जी का प्रादुर्भाव 13वीं शताब्दी के अन्त में हुआ, इससे मेरा आशय है कि उससे पहले कोई प्राचार्य नहीं था। स्वयं*

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कहा कि उस समय से पहले केवल परम्परा थी।

मेरे शपथ पत्र के प्रस्तर–49 में लिखे हुए सभी नाम निर्मोही अखाड़े के आचार्यों यानी महन्तों के हैं। प्रस्तर–49 में नरहरि दास व तुलसीदास, जो माधवानन्द की वंशावली में हैं मात्र निर्मोही अखाडा के साधु थे, महन्त नहीं थे। प्रस्तर–48 में 11 वें नम्बर के महन्त तुलसीदासजी, वह तुलसीदास जी नहीं थे, जिनका ज़िक्र प्रस्तर–49 में नरहरिदास के शिष्य के रूप में आया है। प्रस्तर–49 में मैंने यह कहा है कि अनुभवानन्द एवं उनके उप शिष्य बालानन्द ने चतुर्सम्प्रदाय के निर्माण हेतु, तीन अनि तथा सात अखाड़ों का निर्माण किया था। इन सात अखाड़ों में निर्मोही अखाड़ा एक है। ***सातों अखाड़ों तथा अनि का निर्माण यानी प्रादुर्भाव रामानन्दाचार्य के पूर्व में हुआ था।*** *आगे स्पष्ट किया कि विशेष परिस्थितियों में संरचना सैनिक पद्धति पर की गई। सूची–12 में दर्शित रामानन्द सम्प्रदाय की गुरू–परम्परा निर्मोही अखाड़े से ही संबंधित है और ये सभी लोग निर्मोही अखाड़ा के आचार्य/महन्त समझे जायेंगे। सूची–12 के प्रथम पृष्ठ में प्रस्तावना टाइटिल के अन्तर्गत जिस श्रीमठ का जिक्र है, वह वाराणसी में स्थित था और चरण पादुका भी वाराणसी में ही स्थित है।" (पेज 108–109)*

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"In list 10, all the names shown in the pedigree beginning from Ramanand, are of those who were prior Acharya or Mahant of Nirmohi Akhara. It means custom of Mahants of Nirmohi Akharas commenced from the time of Ramanand, not before, i.e., first Mahant was Ramanand or Ramanandacharya of Nirmohi Akhara, and became Madhya Acharya. In para 490 of my affidavit, this is written that appearance of Ramanand Ji was in the end of 13th century, by it, I mean that prior to that there was no any Pracharya. Of his own said that prior to that only custom was there.

All the names written in para 49 of my affidavit are of Acharya or Mahants of Nirmohi Akhara. In para 49 Narhari Das and Tulsi Das who were in the pedigree of

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Madhavanand, were only the saints of Nirmohi Akhara and not Mahant. The name of Tulsidas Ji mentioned at serial no. 11 in para 48, is not of that Tulsidas Ji whose reference has come in para 49, as the disciple of Naharidas. In para 49 I have said that Anubhavanand and his Deputy disciple Balanand had founded three Annis and seven Akharas in order to create quadruple sects (Chatuh-Sampradaya). Out of these seven Akharas, one is Nirmohi Akhara. ***Creation or birth of the seven Akharas and Ani took place before Ramanandacharya.*** *Further clarified that in special circumstances, creation was done on army system. Guru-Parampara (Teacher tradition) of Ramanand Sect indicated in list 12, does relate to Nirmohi Akhara and all these people shall be deemed Acharya/Mahant of Nirmohi Akhara. There is a reference of Sri Math, made under preamble title, at first page of list 12, which situated at Varanasi and Charan Paduka (wooden sleeper) is also situated in Varanasi." (E.T.C.)*

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*"**यहां पूजा अर्चन की परम्परा रामचन्द्र जी से शुरू होती है और रामानन्दाचार्य इस परम्परा के मध्य में है** और उनसे लेकर मेरे गुरू जी तक जो परम्परा, पद्धति व रिवाज है, उसके अनुसार हम वहां पर दर्शन, पूजन व अर्चन करते चले आये हैं।"(पेज–178) (emphasis added)*

*"**Here tradition of worship commenced from Ramchandra Ji and Ramanandacharya is in the middle of this tradition** and beginning from him upto my Guru (teacher) we have been performing Darshan, worship, Archna etc. according to prevalent customs, system and tradition." (E.T.C.)*

767. Besides, on page 101 of his cross examination, DW 3/20 has made some statement to show that some of the Vairagies of

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Nirmohi Akhara were at Ayodhya when the disputed building was sought to be constructed at the disputed site :

"आज जो मूर्तियॉ विवादित स्थल पर देखने को मिलती हैं, वे वही मूर्तियॉ हैं, जो बाबा श्यामानन्द जी के द्वारा उत्तराखण्ड लेकर चली जाने वाली मूर्तियों में से हैं। बाबा श्यामानन्द जी वह मूर्तियॉ बाबर के आक्रमण के समय उत्तराखंड लेकर चले गये थे। गोविन्ददास जी बाबा श्यामानन्द के अंगरक्षक व शिष्य थे। गोविन्ददास जी ने मूर्तियों को ले आकर पुनः उसी स्थान पर स्थापित कर दिया।

प्रश्न– बाबा श्यामानन्द द्वारा कथित रूप से उपरोक्त मूर्तियों उत्तराखंड ले जाने के कितने समय बाद उनके शिष्य गोविन्द दास जी द्वारा वह मूर्तिया दोबारा अयोध्या ले आई गयीं और पुनः स्थापित की गयीं?

उत्तर– ***जब युद्ध शान्त हो गया, तभी वे मूर्तियॉ लाकर पुनः स्थापित की गयीं।***

इस पुस्तक के अनुसार ये मूर्तियॉ उसी समय में पुर्नस्थापित की गयीं। मेरा ऐसा मानना है कि ***गोविन्ददास जी द्वारा मूर्तियॉ बाबर काल के अंतिम समय में उसी जगह पर पुनर्स्थापित की गयीं, जहॉ पर पहले रखीं थीं।*** *मूर्तियों की पुनर्स्थपना के समय विवादित ढांचे का पूरी तरीके से निर्माण नहीं हो पाया था। उसका पूरी तरह से पुनर्निर्माण कभी नहीं हो पाया।" (पेज–101) (emphasis added)*

"Today the idols which are seen at disputed site, they are the same, which had been carried away to Uttarakhand by Baba Shyamanand Ji. At the time of invasion of Babar, Baba Shyamanand Ji had gone alongwith those idols to Uttarakhand. Govind Das Ji was bodyguard and disciple of Baba Shyamanand. Govind Das Ji after taking back the said idols, again installed them at the same place.

Question.. After how long time since the alleged carrying away of the idols by Baba Shyamanand Ji to Uttarakhand, they were again taken back to Ayodhya by his disciple Govind Das Ji and were again installed.

Ans. ***When the battle ended, those idols were brought***

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and re-installed.

As per this book, these idols were reinstalled in that very period. I so think that the ***idols were re-installed in the last period of Babar itself at that very place by Govind Das Ji, where they were earlier placed.*** *At the time of re-installation of idols, disputed structure could not be constructed completely. It was never reconstructed completely." (E.T.C.)*

768. **D.W. 2/1-3 Mahant Ramvilas Das Vedanti (aged about 51 years as on 16th February 2005)** in his cross examination on pages 15/16, 18 and 22 has said :

"रामानन्दाचार्य वैष्णव सम्प्रदाय के प्रवर्तक आदि जगद्गुरू रामानन्दाचार्य जी हैं। रामानन्दाचार्य का प्रादुर्भाव प्रयाग की भूमि में हुआ था, परन्तु प्रादुर्भाव काल में नहीं बता सकता हूँ। आज से लगभग 700 वर्ष पूर्व आदि जगद्गुरू रामानन्दाचार्य जी का प्रादुर्भाव हुआ था। रामानन्द सम्प्रदाय की गुरू परम्परा आदि गुरू रामानन्दाचार्य के पूर्व भी थी। रामानन्दीय सम्प्रदाय के आद्याचार्य आदि गुरू रामानन्दाचार्य जी हैं। ***यह कहना सही हो सकता है कि सर्वेश्वर भगवान राम रामानन्दीय सम्प्रदाय के आद्याचार्य रहे हों।*** *आद्याचार्य के बाद गुरू परम्परा में सीता जी, हनुमान जी, वशिष्ठ जी, पाराशर जी आदि हैं।" (पेज 15–16)*

"Jagadguru Ramanandacharya Ji is the founder of Ramanandacharya Vaishnav Sect. Ramanandacharya took birth on the land of Prayag, but the time of birth I cannot say. About 700 years ago from today, Ramanandacharya Ji was born. Guru-tradition of Ramanand Sect existed even prior to Ramanandacharya. The initial Acharya of Ramanandi Sect is Adi Guru Ramanandacharya Ji. It may be true to say that ***Sarveshwar Bhagwan Ram might be the initial teacher of Ramanandi Sect.*** *After Adyacharya in Teacher-Tradition, are Sita Ji, Hanuman Ji, Vashisth Ji, Parasar Ji etc." (E.T.C.)*

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*''गीता में यह वर्णित है कि भगवान में दास्य भाव रखने वाला भक्त होता है। **रामानन्दीय सम्प्रदाय के जितने भी अनुयायी हैं, वह भगवान सीता राम को अपना ईष्ट मानते हैं तथा उनके प्रति दास्य भाव रखते हैं।** गीता में सखाभाव का भी उल्लेख है। दास्य भाव से उपासना करने वाले रामानन्दीय सम्प्रदाय के वैरागियों की बाहुल्यता अयोध्या व वाराणसी में है। रामानन्दीय सम्प्रदाय में रसिक सम्प्रदाय के लोग भी होते हैं यह लोग वाराणसी, अयोध्या, जनकपुर आदि स्थानों पर पाये जाते हैं। स्वयं कहा कि प्रायः सभी तीर्थो में सभी प्रकार के उपासक पाये जाते हैं। संत वह व्यक्ति होता है, जो निर्मल हृदय का हो। निस्वार्थ भाव से परोपकार करना यह मानव धर्म है तथा यह संत का लक्षण है।'' (पेज 18)*

***"In Gita it is mentioned that one who is possessed with the passion of servant towards the God, is called Bhakta. All the followers of Ramanandi Sect, they regard Bhagwan Sita Ram as their ideal God and possess the filling of servant towards them.** In Gita, there is reference of friendly-passion also. Number of Vairagies of Ramanandi Sect worshipping with the passion of servant is in abundance in Ayodhya and Varanasi. In Ramanandi Sect, there are people of Rasik Sect and these people are found in Varanasi, Ayhodhya, Janakpur etc. places. Of his own said, often in all Tirthas (religious places) all sorts of worshippers are found. A saint is a person who is of clear heart. To help others selflessly is human duty/religion and this is the sign of a saint." (E.T.C.)*

''रामानन्दाचार्य जी ने पंचगंगाघाट वाराणसी में श्रीमठ स्थापित किया था। उनके द्वादश प्रसिद्ध शिष्य हुए। इन शिष्यों में कबीर दास, अनन्तानन्द, सुसुरानन्द, सुखानन्द, नरहरियानन्द, योगानन्द, भावानन्द, सेनजी, धना जी, गालवानन्द, रैदास, पीपा दास थे। रामानन्दीय वैरागी सम्प्रदाय में आने के लिए जाति का प्रतिबन्ध नहीं था। हनुमानगढ़ी में रहने के कारण यह जानकारी हुई कि सुरसुरानन्द जी के शिष्यों गालवानन्द तथा अनुभवानन्द ने

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म्लेच्छों तथा यवनों से उन मन्दिरों की रक्षा के लिए उन अखाड़ों की स्थापना किया था। मुझे इस सम्बन्ध में विशेष जानकारी नहीं है कि उन अखाड़ों में शस्त्र तथा शास्त्र दोनों की शिक्षा दी जाती थी या नहीं।''(पेज 22) (emphasis added)

"Ramanandacharya Ji had founded Sri Math at Panchganga Ghat, Varanasi. His 12 disciples became renowned. Kabir Das, Anantanand, Sursuranand, Sukhanand, Narhariyanand, Yoganand, Bhavanand, Sen Ji Dhana Ji, Galvanand, Raidas and Peepa Das were amongst these disciples. There was no caste restriction for joining Ramanandi Vairagi. Due to residing in Hanuman Garhi, this knowledge was derived that Galvanand and Anubhavanand, disciples of Sursuranand had founded those Akharas for saving the temples from barbarians and Muslims.I have no knowledge whether in those Akharas, training of arms and scriptures both was being given or not." (E.T.C.)

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769. **Swami Avimukteshwaranand Saraswati D.W. 20/2** on page 18 of the Cross examination has said :

*''**मैंने रामानुजाचार्य का नाम सुना है। उन्होंने रामनुज सम्प्रदाय का गठन किया था। मैंने रामानन्दाचार्य का नाम सुना है उन्होंने रामानंदीय सम्प्रदाय की स्थापना की थी।** रामानंदाचार्य को आनन्द भाष्यकार भी कहा जाता है क्योंकि उन्होंने आनंद भाष्य की रचना की थी। उनके सम्प्रदाय के ईष्ट देवता भगवान श्रीराम हैं। उनके सम्प्रदाय के मानने वाले साधु रामानंदीय वैरागी साधु कहलाते हैं। **उनके ईष्ट देव भी भगवान श्री राम हैं।** रामानंद के बारह शिष्य बहुत प्रसिद्ध हुए हैं, इन बारह शिष्यों में एक शिष्य कबीर दास भी थे। रामानंदीय बैरागी सम्प्रदाय के अनुसार सर्वअवतारी, सर्वेश्वर भगवान राम हैं। रामानंदीय सम्प्रदाय के अनुयायी उत्तर भारत में अधिक मात्रा में हैं। जगद्गुरू रामानंदाचार्य ने हजारों मठों की स्थापना की है या नहीं, इसकी जानकारी मुझे नहीं है परन्तु काशी में पंचगंगा घाट पर श्री मठ की स्थापना*

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की थी। रामानंद के 12 शिष्यों में से प्रत्येक का नाम मुझे याद नहीं है परन्तु कबीरदास, रैदास तथा पीपाजी का नाम मुझे इस समय स्मरण है। दशनामी साधुओं में दो प्रकार का औपचारिक वर्गीकरण अर्थात् शास्त्रधारी तथा शस्त्रधारी वास्तव में नहीं है। इन सन्यासियों के कुछ अखाड़ों में अस्त्र–शस्त्र शिक्षा अवश्य दी जाती है। रामानंद जी की सातवीं शताब्दी अभी कुछ दिन पूर्व मनायी गयी थी। रामानंदीय के शिष्यों ने अखाड़ों की स्थापना की हो, जिनमें शस्त्र तथा शास्त्र दोनों की जानकारी दी जाती हो इसकी जानकारी मुझे नहीं है। मुझे अनी अखाड़ों के संबंध में जानकारी नहीं है परन्तु नाम सुने हैं, निर्वाणी निर्मोही तथा दिगम्बर अखाड़ों के नाम मैंने सुने हैं।'' (emphasis added)

''I have heard the name of Ramanujacharya. He had organized Ramanuj Sect. I have heard the name of Ramanandacharya, he had founded Ramanandi Sect. Ramanand is also called Anand Commentator because he had authored commentary on Anand. The ideal god of his sect is Lord Ram. The saints following his Sect, are called Ramanandi Bairagi Saints. The ideal God of theirs also is Lord Rama. Ramanand's 12 disciples have become most renowned, Kabir Das ji was also one of those 12 disciples. According to Ramanandi Vairagi Sect, all-incarnation is Sarveshwar Bhagwan Ram. Followers of Ramanandi Sect is in abundance in North India. Whether Jagadguru Ramanandacharya had established thousands of Maths or not, I have no knowledge of that, but in Kashi at Panch Ganga Ghat, he established Sri Math. I do not recollect the name of each of 12 disciples of Ramanand, but recollect the names of Kabir Das, Raidas and Peepa Ji at present. In Dashnami Sadhus, there is no formal classification of two kinds, i.e., scripture holder and arms holder. In some of the Akharas of these saints, training of arms and weapons is certainly given. Seventh century of Ramanand was

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celebrated some days ago. I have no knowledge whether the disciples of Ramanand had established such Akharas wherein training of arms and scriptures both was imparted. I have no knowledge about Ani Akhara, but have heard the names, I have heard the names of Nirvani, Nirmohi and Digambar Akharas." (E.T.C.)

770. **Jagadguru Ramanandacharya Swami Rambhadra-charya (aged about 54 years as on 15th July 2003) O.P.W. 16,** in his cross examination at pages 10/11, 13, 14, 16, 17, 18, 64 and 65 has deposed as under :

*"**मैं रामानन्दी सम्प्रदाय का जगद्गुरू रामानन्दाचार्य भी हूं। श्री आद्य रामानन्दाचार्य का प्रादुर्भाव 700 वर्ष पहले हुआ।** उन्होंने आनन्द भाष्य लिखा 10 उपनिषदों पर, श्रीमद् भगवत गीता पर एवं ब्रह्मसूत्र पर। उपर्युक्त तीनों ग्रन्थों को प्रस्थानत्रेय कहते हैं और इन तीनों पर लिखा गया भाष्य आनन्द भाष्य कहा जाता है और इसी कारण से इन तीनों भाष्यों के रचयिता को आनन्द भाष्यकार के नाम से जाना जाता है। दर्शन और सिद्धान्त में कोई अंतर नहीं है, **विशिष्टाद्वैत ही हमारा दर्शन है।** स्वामी श्री आद्यरामानन्दाचार्य जी के मुख्य 12 शिष्य थे। उनके तृतीय शिष्य का नाम सुरसुरानन्दाचार्य है और चौथे शिष्य नरहर्यानन्दाचार्य है। भावानन्दाचार्य इनके शिष्य थे और भावानन्दाचार्य के शिष्य अनुभवानन्दाचार्य हैं। अनुभवानन्दाचार्य के शिष्य विरजानन्दाचार्य है और विरजानन्दाचार्य के शिष्य **बालानन्दाचार्य हैं जिन्होंने अखाड़ों की स्थापना की।***

***श्री रामानन्दीय सम्प्रदाय का उद्देश्य है, वैदिक संस्कृति का प्रचार एवं भारतीय शास्त्रों का सैद्धान्तिक विवेचन।**" (पेज 10–11)*

*"**I am also Jagadguru Ramanandacharya of Ramanandi Sect. Sri Adya Ramanandacharya was born about 700 years ago.** He wrote Anand Bhashya (commentary), on 10 Upnishads, Srimad Bhagwat Gita and Brahm Sutra. The aforesaid three books are called*

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"Prasthantreya" and the commentary written on these three is called Anand Bhashya, and it is for this reason that the author of all these three commentaries, is called Anand Commentator. In philosophy and principle there is no difference. ***Vishishtadwait is our philosophy****. Swami Sri Adyaramanandacharya had 12 chief disciples. His third disciple's name is Sursuranandacharya and fourth is Narharyanandacharya. Bhavanandacharya was his disciple and Bhavanandacharya's disciple is Anubhavanandacharya. Virjanadacharya is the disciple of Anubhavanandacharya and* ***Balanandacharya is the disciple of Virjanandacharya who established the Akharas****.*

The aim of Ramanandi Sect is to expand the vedic culture as well as theoretical analysis of Indian scriptures." (E.T.C.)

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"यह ठीक है कि स्वामी रामानन्दाचार्य जी के इष्टदेव भगवान श्री राम हैं और उनके सभी सम्प्रदाय के अनुगामियों के भी इष्ट श्री राम ही हैं। भगवान श्री राम की मूर्ति की उपासना होती है और उनके जन्म स्थल की भी उपासना होती है। भगवान राम महा विष्णु हैं। मेरे रामानन्दाचार्य का मानना है कि भगवान राम सब के अवतारी हैं। इसलिए रामतापनीयोपनिषद में उनको महाविष्णु कहा गया। स्वामी रामानन्दाचार्य के अनुगामी श्री रामनन्दीय श्री वैष्णव कहलाते हैं। रामायण भगवान श्री राम की जीवन की समग्र कथा है।" (पेज 13)

"It is true that the ideal God of Swami Ramanandacharya is Lord Sri Ram and the ideal God of all the followers of his sect is also Sri Ram. The deity of Sri Ram is worshipped and his birth place is also worshipped. Lord Ram is Maha Vishnu. My Ramanandacharya considered that Lord Ram is incarnation of all. Therefore, in Ramtapniyopnishad he has been called Maha Vishnu.

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The followers of Swami Ramanandacharya are called Ramanandi Sri Vaishnav. Ramayan is a complete story of Lord Rama's life." (E.T.C.)

"ऐसा कहना गलत होगा कि स्वामी रामानन्दाचार्य जी ने कई मठों की स्थापना की बल्कि उनके द्वारा एक मठ वाराणसी में स्थापित किया गया है जिसका नाम श्रीमठ है। यह ठीक है कि उनके शिष्यों ने कई धार्मिक मठों की स्थापना की और करते चले आ रहे हैं। इन मठों की जहां–जहां स्थापना हुई वहां भगवान राम विराजमान हैं। हमारे विशिष्टाद्वैत दर्शन में साकार मूर्ति पूजा के साथ–साथ भगवान राम के प्राकट्य स्थल की भी पूजा होती है। जिसे हम लोग धाम कहते हैं। यह ठीक है कि स्वामी रामानन्दाचार्य के पहले आदि शंकराचार्य का प्रादुर्भाव हो चुका था। यह कहना ठीक है कि शंकराचार्य का दर्शन निराकार दर्शन था। यह कहना गलत है कि शंकराचार्य छद्म बौद्ध थे अर्थात् छिपे हुए बौद्ध के रूप में माने जाते थे। शंकराचार्य छद्म बौद्ध थे, ऐसा कुछ लोगों का मत है, पर सब का नहीं है। यह कहना पूर्ण गलत है कि रामानन्दाचार्य ने साकार ब्रह्म की कल्पना की। यह ठीक है कि स्वामी रामानन्दाचार्य के दर्शन में साकार ब्रह्म की उपासना की व्यवस्था है। वेद ने भगवान के अवतार होने के चार विग्रह माने हैं नाम, रूप, लीला व धाम। इन चारों की साकार सिद्धान्त के अनुसार श्री रामानन्दीय श्री वैष्णव पूजा करते हैं। कुछ रूप नित्य प्रतिष्ठित होते हैं उनके प्रतिष्ठा की आवश्यकता नहीं होती जैसे धाम। धाम का अर्थ जन्म स्थान है जैसे मथुरा धाम, अयोध्या धाम, जगन्नाथपुरी धाम आदि–आदि।" (पेज 14)

"It would be wrong to say that Swami Ramanandacharya established several Maths, instead only one Math in Varanasi has been established by him, name of which is Sri Math. It is true that his disciples established and has been establishing several religious Maths. In these Maths, wherever established Lord Ram is enthroned. In our Vishisthadwait philosophy alongwith visible idol worship, the incarnation place of Lord Rama is also worshipped, to which we say "Dham". It is true that before

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Ramanandacharya, Adi Sankaracharya was born. It is true to say that the philosophy of Sankaracharya was formless (Nirakar) philosophy. It is wrong to say that Sankaracharya was disguised Buddhists or was considered as disguised Buddhist. Sankaracharya was a disguised Buddhist, it is the view of only some people and not of all. It is wholly wrong to say that Ramanandacharya thought of Sakar Brahma (visible God). It is true that in the philosophy of Ramanandacharya there is arrangement of worship of Sakar Bramha. As per Vedas, for incarnation of God, there should be four characteristics, i.e., form, miraculous activities (Leela) and home (Dham). As per visible theory the followers of Ramanand performs Vaishnav Puja. Some forms are eternally installed and need not be installed, e.g., Dham. Dham means of birthplace, such as Mathura Dham, Ayodhya Dham, Jagannathpuri Dham etc." (E.T.C.)

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"यह कहना सही है कि प्रत्येक मठ में एक मंदिर होता है जिसमें भगवान राम की प्रतिमा स्थापित होती है। एक रामानन्दीय मठ में एक से ज्यादा मंदिर हो सकते हैं। यह मठाधीश की इच्छा पर निर्भर है।

अनुभवानन्दाचार्य जी का काल अब से 500 वर्ष के अन्तर्गत माना जा सकता है। मुझे इस कथन पर कोई आपत्ति नहीं है कि "अनुभवानन्दाचार्य का जन्म विक्रम सम्वत् 1503 स्थान वाराणसी कान्यकुब्ज परिवार में हुआ था", परन्तु मैं इसकी प्रामाणिकता के संबंध में अभी विश्वस्त नहीं हूं। *श्री अनन्तानन्दाचार्य और भावानन्दाचार्य व सुरसुरानन्दाचार्य और नरहर्यानन्दाचार्य, रामानन्दाचार्य, के शिष्य थे परन्तु उन्हें अनुभवानन्दाचार्य का गुरू भाई कहना सत्य नहीं होगा। यह कहना सही है कि अनुभवानन्दाचार्य जी ने अपने काल में सैनिक पद्धति का प्रतिपादन किया था जिसके अनुसार उन्होंने अपने अनुयायियों को बरछा, तीर, भाला आदि चलाने की शिक्षा का प्राविधान किया था। यह कहना सही है कि यह सैनिक*

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पद्धति अखाड़ों में लागू हुई यह कहना सही है कि ऐसे सैनिकों का धर्म, धर्म की रक्षा करना, स्वसम्प्रदाय की रक्षा, मंदिर मठों की रक्षा व सुरक्षित रखने के लिए युद्ध करना था।'' (पेज 16–17)

"It is true to say that every Math contains a temple wherein the idol of Lord Ram is installed. In one Ramanandi Math there may be temples more than one. It depends upon the wishes of Mahant.

The period of Anubhavanandacharya can be considered within 500 years hence. I have no objection to this statement that "the birth of Anubhavanandacharya took place in Vikram Samvat 1503 in a Kanyakubja family at Varanasi", but I am not sure about its authenticity. *Sri Anantacharya and Bhavanandacharya and Sursuranandacharya and Narhariyanandacharya were disciples of Ramanandacharya but it would be true to say that Anubhavanandacharya was his Guru-Bhai (brother by virtue of being disciple of same Guru or teacher.). It is true to say that during his period, Anubhavananadacharya Ji enunciated army system, according to which, he had made provision for training of wielding Barchha, arrows and spears to his followers. It is true to say that army system was made applicable in Akharas. This is true to say that duty of such soldiers was to fight for saving and protecting religion, their own sect, temples and Maths." (E.T.C.)*

''अनी''– का अर्थ सेना से है। उपरोक्त तीनों अखाड़े ''अनी'' है। यह कहना सही है कि जो परम्परायें रामानन्दीय सम्प्रदाय के एक अखाड़े के अनी पर लागू होंगी, शेष दोनों अखाड़े के अनी पर लागू रहेगीं। ***यह कहना सही है कि सभी अखाड़ों की व्यवस्था पंचायती है। यह भी सत्य है कि अखाड़ों के पंचायत को बहुमत के अनुसार कार्य करना होता है। यह कहना सही है कि सभी***

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अखाड़े के महन्त पंचों द्वारा चुने जाते हैं। *यह कहना सत्य है कि किसी भी अखाड़े के महन्त का मुख्य कार्य धर्मोपदेश है। यह सही है कि मठ अखाड़े के बाकी कार्य जिसमें प्रबन्ध, मंदिर की पूजा आदि का कार्य महन्त नहीं बल्कि पंचगण देखते हैं, पंचगण के उसी प्रबन्ध में पुजारी, गोलकी, पंच, सरपंच आदि होते हैं। यह कहना सही है कि अखाड़े के किसी साधू का नागापना किसी भी कुंभ में होता है। दिगम्बर अखाड़ा सभी अखाड़ों का राजा कहलाता है। अपनी–अपनी परम्परा के अनुसार प्रत्येक कुंभ में पहले स्नान के समय प्रथम पंक्ति में तीनों अखाड़ें निर्णय के अनुसार होते हैं।'' (पेज 17– 18)*

"Ani" means "Army". The aforesaid three Akharas are Anni. This is true to say that the traditions of Ramanandi Sect which are applicable to Ani of one Akhara, shall also be applicable to Annis of remaining two Akharas. ***This is true to say that management of all Akharas is under Panchayati system. This is also true that Panchayat has to act according to majority. It is true to say that Mahant of All Akharas are elected by Panches.*** *This is true to say that the chief duty of Mahants of all Akharas is preaching religion. This is true to say that remaining work of Math of Akhara, which includes management of temple, worship etc., is looked after by Panches and not by Mahant. Amongst the management of Panches, there are priest, Golki, Panch, Sarpanch etc. It is true to say that demonstration of the nature of a Naga saint of any Akhara takes place in any Kumbh. Digambar Akhara is head of all the Akharas. According to their own traditions, in every Kumbh, timing and sequence of bath as to who will first take bath, is decided by the three Akharas in first row." (E.T.C.)*

''मेरा नाम रामभद्राचार्य और मेरे पद का नाम जगद्गुरू रामानन्दाचार्य है। इस समय भारतवर्ष में केवल चार जगद्गुरू

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रामानन्दाचार्य हैं। जगद्गुरू रामानन्दाचार्य का चयन काशी विद्वत् परिषद् और रामानन्दीय अनी अखाड़े और चार सम्प्रदाय करते हैं। अक्टुबर सन् 1988 तक रामानन्दाचार्य का केवल एक पद था, उसके पश्चात चार पद हो गये। चार पदों का सृजन अनी अखाड़ों ने किया। जून सन् 1988 में ही काशी विद्वत परिषद ने मेरा अभिषेक कर दिया था और अक्टूबर सन् 1988 के बाद प्रयाग कुंभ में सर्वसम्मति से मेरा समर्थन कर दिया गया। काशी विद्वत् परिषद् की सहमति से अनी अखाड़े ने चार पदों का सृजन किया। मेरे अतिरिक्त तीन और जगद्गुरू रामानन्दाचार्य हैं, जिनके नाम हर्याचार्य, राजीवलोचनाचार्य और रामेश्वरानन्दाचार्य हैं। ***जगद्गुरू रामानन्दाचार्य का अस्तित्व 700 वर्ष पूर्व से होता आया था। रामोपासक वैष्णव सम्प्रदाय को आद्य रामानन्दाचार्य ने चलाया था।*** *वैष्णव सम्प्रदाय में श्रीराम के अतिरिक्त कृष्ण के उपासक एवं नारायण के उपासक भी हैं। इनके पांच सम्प्रदाय और हैं। भगवान श्रीराम महाविष्णु हैं और कृष्ण–नारायण, सब उनके रूप हैं। ईश्वर के सभी रूप राममय हैं।*

मेरे शपथ पत्र के प्रस्तर 6 में लिखा साहित्य जो मुझे पढ़कर सुनाया जाता था, उनमें तुलसी साहित्य के निम्नलिखित नाम हैं– श्रीरामचरितमानस, कवितावली, हनुमानबाहुक, हनुमानचालीसा, रामगीतावली, कृष्णगीतावली, जानकी मंगल, पार्वती मंगल, वैराग्य संदीपिनी, लघु बरवै रामायण, वृहद् बरवै रामायण, रामाज्ञा प्रश्न, दोहावली, तुलसी दोहा शतक, विनय पत्रिका।'' (पेज 64–65) (emphasis added)

''My name is Ram Bhadracharya and the name of office I hold is Jagadguru Ramanandacharya. Presently, in India there are only four Jagadguru Ramanandacharya. Selection of Jagadguru Ramanandacharya is made by Kashi Vidwat Parishad and Ramanandi Ani Akharas and four Sects. Up till October 1988 there was only one post of Ramanandacharya, but thereafter the number became four. Creation of four posts was done by Ani Akharas. In June 1988 Kashi Vidwat Parishad had coronated me and and that was approved by majority in Prayag Kumbh after 1988. With the consent of Kashi Vidwat Parishad, Ani

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Akharas created four posts. Besides me, there are three other Jagadguru Ramanandacharya, namely, Haryacharya, Rajeev Lochanacharya and Rameshwaranandacharya. Existence of Jagadguru Ramanandacharya had been since 700 years before. Ram-worshipper Vaishnav Sect had been initiated by Adya Ramanandacharya. In Vaishnav Sect, besides worshippers of Sri Ram there are worshippers of Krishna and Narayana also. They have five more Sects. Lord Sri Ram is Mahavishnu and Krishna, Narayan all are his forms. All forms of the GOD are vested in Ram.

Literature referred in para 6 of my affidavit, which was read over to me, amongst them, the names of books in Tulsi literature are—Sri Ram Charitmanas, Kavitawali, Hanuman Bahuk, Hanuman Chalisa, Ram Gitawali, Krishna Gitawali, Janki Mangal, Parvati Mangal, Vairagya Sandeepani, Laghu Barvai Ramayan, Vrihad Barwai Ramayan, Ramagya Prashna, Dohawali, Tulsi Doha Shatak, Vinay Patrika." (E.T.C.)

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771. Besides, DW 3/3, in para 15, said that Nirmohi Akhara is a religious trust . DW 3/5 , Raghunath Prasad Pandey in para 9 has said that Nirmohi Akhara is a 'Math', a Panchayat math and a religious trust and its working is as per Panchayat system. The decision of Panch is above all. The Mahant of the Akhara works on advise of Panchas and the majority view. The Mahant has no right to sell the property of the Akhara and is elected unless there is a recommendation of the Panchas. The system of military education is applicable in the Akhara. The customs and practices of Nirmohi Akhara have been laid down by Swami Ramanand, the promoter of the sect and the Lord Ramis the Isht

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of Ramanand Vairagi, a saint of the sect. In para 12, he said that about the Nirmohi Akhara, his mother had special knowledge. Again, in para 14 of the affidavit, he said that his information about Nirmohi Akhara was enriched due to his visit for Darshan of the temple at Hanumangarhi Naka and Baba Baldev Das.

772. DW 3/6, Sitaram Yadav in paras 15 and 17 stated about the constitution of Nirmohi Akhara, its function and Mahant as under :

''15 –निर्मोही अखाड़ा एक पंचायती मठ है और स्वयं में एक धार्मिक संस्था तथा धार्मिक न्यास है जिसके अन्तर्गत कई मन्दिर हैं जैसे रामघाट मोहल्ले में विजय राघव मन्दिर तथा रामकोट मोहल्ले में राम जन्म भूमि मन्दिर है। विवादित परिसर का मालिक व काबिज निर्मोही अखाड़ा रहा है। अखाड़े की व्यवस्था पंचों के निर्णय से होती है जो सर्वोपरि है, महन्त अखाड़े के पंचों के बहुमत राय व प्रस्ताव से कार्य करता है महन्त को अखाड़े की जायदाद को बेचने का हक नहीं है तथा न ही देने का हक है यह रिवाज मैंने अयोध्या में हनुमानगढ़ी के साधुओं से सुना है जो हनुमानगढ़ी निर्वाणी अखाड़ा के अन्तर्गत है। सभी अखाड़ों के रीति रिवाज एक ही तरह के हैं जो रामानन्दीय वैरागी हैं।''

"15. Nirmohi Akhara is a Panchayati Math and is itself a religious body as well as a religious trust, which handles many temples, such as the Vijay Raghav temple in Ramghat locality and the Ramjanmbhumi temple in Ramkot locality. The Nirmohi Akhara has been the owner and occupant of the disputed premises. Akharas are managed by the decision of Panchas, who are all in all. Mahant works on the basis of the majority view and proposal of Panchas of the Akhara. The Mahant has got no right to sell the property of the Akhara, nor does he have any right to gift it. I have heard about this practice from the sages of Hanumangarhi in Ayodhya who belong to the Hanumangarhi Nirvani Akhara. All Akharas follow

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practices of similar nature, as in case of Ramanandian recluses." (E.T.C.)

17– मेरे होश के समय निर्मोही अखाड़ा के महन्त रघुनाथ दास, गोलकी राम लखन दास व पुजारी बल्देव दास व उनके शिष्य मं0 भाष्कर दास तथा दीगर पंच राजाराम चन्द्राचार्य, रामदास, राम केवल दास आदि को देखा था। मं0 भाष्कर दास हाजिर अदालत, निर्मोही अखाड़ा के सरपंच है और नाका हनुमानगढ़ी फेजाबाद के महन्त है।''

"17. At time of attaining maturity, I had seen Raghunath Das of Nirmohi Akhara as Mahant, Ram Lakhan Das as Golaki, Baldev Das and his disciple M. Bhaskar Das as priest and Rajaram Chandracharya, Ramdas, Ram Keval Das etc. as other Panchas. M. Bhaskar Das, present in court, is the Sarpanch of Nirmohi Akhara and is the Mahant of Naka Hanumangarhi, Faizabad." (E.T.C.)

773. DW 3/7, Mahant Ramji Das in para 28 said that Nirmohi Akhara is a Math modelled on Panchayat system and is also a religious institution and trust. On becoming disciple, he gradually acquainted with rites and customs of the said Akhara and the Nirvani Akhara, which includes Hanumangarhi. He claims to be an asetic of Ramanandiya Sri Vishnav Vairagi sect.

774. Pandit Shyam Sundar Mishra DW 3/8 in paras 20 and 21 has said about the constitution of Nirmohi Akhara as under :

''20 –निर्मोही अखाड़ा एक पंचायती मठ व धार्मिक संस्था है जिसमें कई मन्दिर हैं और यह मन्दिर श्री राम जन्म भूमि भी निर्मोही अखाड़े का है।"

"20 Nirmohi Akhara is a Panchayati Math and a religious body, which has many temples, and even this Sri Ramjanmbhumi temple also belongs to Nirmohi Akhara" (E.T.C.)

"21 – निर्वाणी अखाड़ा भी ऐसे ही पंचायती मठ है जिसमें हनुमानगढ़ी है दिगम्बर अखाड़ा भी ऐसे ही पंचायती मठ है सभी अखाड़े के रीति रिवाज एक हैं यानी पंचायती व्यवस्था है।''

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"21. Nirvani Akhara is also a similar Panchayati Math, which includes Hanumangarhi. Digamber Akhara is a similar Panchayati Math. The customs and practices of all the Akharas are the same i.e. Panchayati system" (E.T.C.)

775. Ram Asrey Yadav DW 3/9, in para 17 of the affidavit has said that Nirmohi Akhara is a Panchayati Math and religious trust. This institution exists for the last 5½ -6 hundred years. This he has learnt from the saints of Hanumangarhi and the printed custom practices which was the registered agreement and published in the year 1962, which has been seen and read by him. The same custom-practices are applicable over the recluses of Nirmohi Akhara.

776. Bhanu Pratap Singh DW 3/11, in paras 10 and 11 of the affidavit has said :

"10. .....निर्मोही अखाड़ा भी रामानन्दीय सम्प्रदाय का मन्दिर हैं।'

"10. . . . Nirmohi Akhara is also a temple of Ramanand sect."(E.T.C.)

"11. रामानन्दीय सम्प्रदाय के प्रवर्तक रामानन्द जी थे।"

"11. Ramanand was the exponent of Ramanand sect."(E.T.C.)

777. Ram Akshaibar Pandey DW 3/12, in para 11 has said that Nirmohi Akhara manages its properties as per Panchayat system. Panch Akhara is the owner and Mahant is only for name sake. Mahant has no right to sell the property of Akhara.

778. Narendra Bahadur Singh DW 3/15, in paras 10, 11 and 12 of the affidavit has said about the constitution and status of Nirmohi Akhara as under:

"10 –निर्मोही अखाड़ा के बारे में बचपन में मेरे पिता ने बताया था कि अयोध्या का बैरागी रामानन्दी साधुओ का प्रसिद्ध मठ है मैंने थोड़ा बड़ा होते व यहां के साधुओं से बातचीत करके व दीगर संतों से निर्मोही अखाड़ा के बारे में जानकारी हुयी कि यह निर्मोही अखाड़ा की पंचायती व्यवस्था है और

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अखाड़े के अन्तर्गत कई मन्दिर हैं श्री राम जन्म भूमि मन्दिर भी निर्मोही अखाड़ा के अन्तर्गत प्रसिद्ध मन्दिर है। निर्मोही अखाड़ा की एक बैठक व मन्दिर विजय राघव रामघाट मुहल्ले में है।"

"10. In my childhood, my father had told me about Nirmohi Akhara that it is a famous Math of Bairagi Ramanandian sages of Ayodhya. On becoming slightly major, by talking to sages and other saints of this place I came to know as regards the Nirmohi Akhara that this Akhara has Panchayati system and it has many temples. Sri Ramjanmbhumi temple is also a famous temple under the Nirmohi Akhara. Belonging to the Nirmohi Akhara, a 'Baithak' (sitting place) and a temple named Vijay Raghav are located in the Ramghat locality." (E.T.C.)

"11 – अखाड़ों की स्थापना 600 वर्ष पूर्व हुयी ऐसा मुझे हनुमानगढ़ी के संतों ने बताया। कि जैसे हनुमान गढ़ी मन्दिर निर्वाणी अखाड़े अन्तर्गत है वैसे श्रीराम जन्म भूमि मन्दिर निर्मोही अखाड़े के अन्तर्गत रहा है।"

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"11. Akharas were founded 600 years back. Saints of Hanumangarhi told me that as the Hanumangarhi temple is under the Nirvani Akhara; so has Sri Ramjanmbhumi temple been under the Nirmohi Akhara." (E.T.C.)

"12 – अयोध्या में यही दो प्रमुख अखाड़े हैं। और भी अखाड़े हैं जैसे– दिगम्बर खाकी आदि लेकिन प्रमुख अखाड़ा निर्मोही व निर्वाणी रहा है।"

"12. Only these two are main Akharas in Ayodhya. There are some more Akharas, such as Digamber Khaki, etc. but Nirmohi and Nirvani have been main Akharas." (E.T.C.)

779. Acharya Mahant Banshidhar Das alias Uriya Baba DW 3/18, in paras 14 and 15 of his statement by way of an affidavit has said :

"14 –रामानन्दीय सम्प्रदाय में अखाड़ों की व्यवस्था के बारे में जानता हूँ निर्वाणी अखाड़ा के अन्तर्गत हनुमान गढ़ी है वैसे ही निर्मोही अखाड़ा के अन्तर्गत श्री राम जन्म भूमि मन्दिर सदैव से रहा है और निर्मोही अखाड़ा का

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आधिपत्य मैं 1930 से कुर्की तक देखा हूँ उसके बाद से मुकदमा ही चल रहा है जो मैंने दूसरों से जाना है।"

"14. As regards the management of Akharas in the Ramanandian sect I know that Hanumangarhi is under the Nirvani Akhara and so has Sri Ramjanmbhumi temple always been under the Nirmohi Akhara, and I have seen the possession of the Nirmohi Akhara between 1930 and the time of attachment. After that, litigation itself is going on, about which I have come to know from others." (E.T.C.)

"15 – निर्मोही अखाड़ा पंचायती रामनन्दीय वैरागियों का मठ है जैसे निर्वाणी अखाड़ा है सभी के रीति रिवाज एक हैं। अखाड़ा मठ होने के कारण स्वयं में धार्मिक न्यास है जिसके अन्तर्गत कई मन्दिर होते हैं।"

"15. Like the Nirvani Akhara, the Nirmohi Akhara is a Panchayati Math of Ramanandian recluses. The customs and practices of all of them is the same. Being a Math, the Akhara is itself a religious trust under which there are many temples." (E.T.C.)

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780. Now we proceed to apply the aforesaid pleadings, evidence and exposition of law to the issue in question.

781. From the pleadings we find that plaintiffs have categorically said that Nirmohi Akhara is a Panchayati Math of Ramanandi Sect of Vairagis and as such is a religious denomination following its own religious customs prevalent in Vairagi sects and Sadhus. These averments have not at all been denied in the written statement of the defendants no. 6 to 8 and 10. Further that it is a religious establishment of public character and plaintiff no. 2 is the present head as its Mahant and Sarvarahkar has also not been disputed. The averments that there exists an ancient Math or Akhara of Ramanandi Vairagi called Nirmohi with its seat at Ramghat known as Nirmohi Akhara has also not been disputed in the written statement.

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What has been disputed by respondent no. 10 is that the whole temple of Janambhumi/Janma Asthan is much older and has the preceding deity of Bhagwan Sri Ram, therefore, the averment with respect to owning of temple of Ram Janma Asthan is concerned is actually disputed. The averment that Nirmohi Akhara being a Panchayati Math acts on a democratic pattern and the management and right to manage vests absolutely with Panch are also not disputed.

782. DW 3/1 in his affidavit filed as statement-in-chief in para 2 has also said that Nirmohi Akhara is a Panchayati Math and is managed through Panch and Mahant. The supreme power vests in Panchayat and Mahant is also liable to act as per the directions of Panchayat. Further in para 7 he says that Mahant and Panches are elected by the Nirmohi Akhara and office is not way of succession though property is entered in the Government records in the name of Mahant but the ownership vests in Nirmohi Akhara. He has also deposed about the formal registration of a deed containing the customs and traditions of Nirmohi Akhara in 1949 and his averments as as under:

> *"2. निर्मोही अखाड़ा के अन्तर्गत कई मंदिर हैं। जिसमें से रामकोट स्थित प्रसिद्ध रामजन्म भूमि मंदिर है। निर्मोही अखाडा एक पंचायती मठ है जिसकी व्यवस्था मंचों द्वारा होती है। मंच बैठक में प्रस्ताव पास होता है। उसे अखाडे के सभी साधुओं को मानना पड़ता है और महन्त को भी मानना पड़ता है महन्त स्वतंत्र नहीं है महन्त मंचों के आधीन ही निर्मोही अखाड़ा के मन्दिर व सम्पत्ति की व्यवस्था करते हैं।"*
>
> *"2. There are many temples under the Nirmohi Akhara which include famous Ramjanmbhumi temple situated at Ramkot. The Nirmohi Akhara is a Panchayati Math, management of which is handled by Panchas. Resolutions are adopted in the meetings of Panchas. All the sages of the Akhara has to abide by them and Mahant, too, has to*

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abide by them. Mahant is not independent. Mahantas look after the management of the Nirmohi Akhara and its property only under the Panchas." (E.T.C.)

"7. निर्मोही अखाडे के महन्त व सर्वराकर कार पंचों के चुनाव द्वारा नियुक्ति किया जाता है। वरासत नहीं चलती यानि, गुरू के मरणोपरान्त चेला महन्त नहीं होता है। निर्मोही अखाडे के मंदिर व अखाडे के अचल सम्पत्ति पर सरकारी कागजात पर महन्त अखाडे का नाम दर्ज होता है। अखाडे के मंदिर में जो ठाकुर जी विराजमान होते हैं वे किसी जायजाद के मालिक नहीं है, बल्कि सभी जायजाद मलकियत अखाड़ा रहती है जो स्वयं में धार्मिक न्यास है जिन सभी मंदिर व जायजाद की व्यवस्था अखाडा बहैसियत सर्वराकर पंचायती तौर पर कमाराविरा पचीन अखाडा करते हैं।"

"7. Mahantas and Sarvrakars of the Nirmohi Akhara are appointed through election by Panchas. These offices do not pass on by succession, that is to say, 'Chela' (disciple) does not become a Mahant after the death of his 'Guru' (spiritual teacher). The name of Mahanta of the Nirmohi Akhara is recorded in Government papers relating to the Akhara temple and its immovable property. Thakur Ji (presiding deity) seated in the Akhara temple is not the owner of any property. Rather, title to all the property is vested in the Akhara, which is itself a religious trust. Kamaravira Pachin Akhara looks after the management of all the temples and their property through its Sarvarakar as per the panchayati system." (E.T.C.)

"13. अखाडे में महन्त जो चुने जाते हैं वे अपने चुनाव के बाद अखाडे के पद ग्रहण करने बाद रिवाजन पंचों के हक में इकरारनामा करते हैं और रजिस्ट्री करा देते हैं। अखाडे के किसी भी महन्त को अखाडे की किसी भी सम्पत्ति के बारे में कोई विक्रयपत्र या अन्तरण का कोई भी कागज रखने का अधिकार नहीं होता है। जितने भी अखाडों का नाम ऊपर बयान में बताया है। उनके रीति रिवाज व परम्परा एक ही है। निर्वाणी अखाडा जिसके अन्तर्गत प्रसिद्ध हनुमानगढ़ी मंदिर है उन्होंने अपने कुछ रीति

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रिवाज दफ्तर सब रजिस्ट्री फैजाबाद में पंजीकृत करा कर पुस्तक के रूप में छपवाकर प्रसारित किया। जिसकी एक पुस्तक की छाया प्रति मैंने दाखिल किया।''

"13. After being chosen and on assumption of office, Mahantas enter an agreement in favour of Panchas and gets registry executed. None of the Mahantas of the Akhara has the power to retain any sale-deed or any paper of transfer in respect of any property of the Akhara. The Akharas, names of which I have enumerated above, have the same customs and practices. The Nirvani Akhara, under which there is a famous temple called Hanumangarhi, got some of its customs and practices registered with the office of Sub Registrar, Faizabad, got them printed in the form of book and then circulated the same. I filed photocopy of one of the said books." (E.T.C.)

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''14. निर्मोही अखाडा ने भी अखाडे की रीति रिवाज लिपिबद्ध करके 10 मार्च 1949 को दफ्तर सब रजिस्ट्री फैजाबाद को पंजीकृत कराया जिसकी सत्य प्रतिलिपी मैंने दाखिल की है। मार्च 1949 के दस्तावेज में श्रीराम जन्मभूमि मंदिर का पूरा विवरण दिया गया है।''

"14. The Nirmohi Akhara also got its customs and practices scripted and got the same registered at the office of Sub Registrar, Faizabad on 10 Mach, 1949, true copy of which I have filed. The March, 1949 document contains full account of Sri Ramjanmbhumi temple" (E.T.C.)

783. Neither any material has been placed by the other side to contradict the above statement in particular the fact that Nirmohi Akhara is a Panchayati Math nor that it has managed through a Panchayat of elected members of Nirmohi Akhara.

784. Besides above, DW 3/2, Raja Ram Pandey in para 16 of his affidavit has said that Nirmohi Akhara is a trust in itself. Neither he is an ascetic and/or a Sadhu having any occasion to

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study about the history of Nirmohi Akhara or its constitution nor otherwise has any reason to get this knowledge from any reliable source nor is an expert in the subject. A witness of fact unless possess information on his own cannot make a statement based on an information he has received particularly when the person conveying information is alive but has not been produced. In our view, it is neither reliable nor otherwise admissible.

785. Similarly DW 3/3, Satya Narain Tripathi in para 15 has stated that Nirmohi Akhara is a religious trust and the present Sarpanch Mahant is Sri Bhaskar Das Ji while present Mahant is Sri Jagannath Das Ji.

786. DW 3/5, Raghunath Prasad Pandey in para 9 of his affidavit dated 18.11.2003 has said that Nirmohi Akhara is a Math, i.e., Panchayati Math and a religious trust. The entire arrangement is Panchayati and the decision of Panch is final. The Mahant of Akharas works on advise of Panch and majority view. The Mahant has no right to sell the property of Akhara and is elected unless there is a recommendation of Panch. He further says that he has come to know that system of military education is applicable in Akhara. The customs and practices of this Akhara has been laid down by Swami Ramanand, the promoter of the sect. Ram is the Isht of Ramanand Bairagi the saint of this sect. This statement also based on the information, therefore, is inadmissible.

787. DW 3/6, Sitaram Yadav in paras 15 and 16; DW 3/7, Mahant Ramji Das in para 28; DW 3/8, Pt. Shyam Sunder Mishra in paras 20 and 21; DW 3/9, Ram Asrey Yadav in para 17; DW 3/11, Bhanu Pratap Singh in para 23; DW 3/12, Ram Akshaibar Pandey in para 11; and, DW 3/15, Narendra Bahadur

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Singh in paras 10, 11 and 12 of the affidavit have made similar averments.

788. The above statements have been made on the basis of the information they have received and the information pertains to the history of Nirmohi Akhara having not been shown to be possessed by the aforesaid witnesses though apparently inadmissible but since it corroborates with the similar statements made by other witnesses, i.e., DWs 3/4, Mahant Shiv Saran Das; 3/14, Jagadguru Ramanandacharya Swami Haryacharya; and 3/20, Mahant Raja Ramchandracharya and they being integrally connected with Nirmohi Akhara may have occasion to possess the said information and moreover since it has not been contradicted by the defendants in any manner, we find that so far as the status of Nirmohi Akhara as a "Math" and that too a "Panchayati" Math cannot be doubted.

789. Evidently Nirmohi Akhara satisfy the test of 'Math' as is known in legal parlance that it connotes a monastic institution presided over by a superior and established for the use and benefit of ascetics belong to a particular order who generally are disciples and co-disciples of the superiors. The statement of the witnesses shows that initially a Math namely, Ramanandi Vairagi Sampradaya was established by Swami Ramanandacharya. His disciples continue to manage the said Math. With the passage of time separate bodies were created namely, Anni i.e. Bridgeds. The three Anni were, Nirmohi, Nirwani and Digamber. Therefrom, seven Akharas were established namely, Digamber, Nirwani, Nirmohi, Santoshi, Khaki, Mahanirwani and Niralambi. They maintain their own customs and tenets and worship "Lord Rama" as "God". The presiding element is not the deity but temple of Lord Rama, and

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is found in Math of respondent no. 1.

790. In the replication the plaintiffs have tried to improve upon their case in the plaint by pleading that the Nirmohi Akhara originated more than 500 years ago i.e. with respect to the time factor when the plaintiff no. 1 (Suit-3) came into existence and to prove the aforesaid averment further facts have been given in the replication including the details of various Maths, Akharas etc. and their Mahants etc.

791. The sect Nirmohi Akhara is claimed to have been established by Balanandacharya though their appears to be some confusion about the real point of time when this Akhara came in existence. The plaint refers to the days of Yore when there existed the ancient Math or Akhara of Ramanandi Vairagi called "Nirmohi". In the replication it has been clarified that the Nirmohi Akhara originated more than 500 years ago. It is said that about 500 years ago Swami Brijanandji and Balanandji who belong to Ramanandi sect of Vairagies established three Anni comprising of seven Akharas for protection and improvement of Chatuha Ramanandi Sampradaya. **H.R. Nevill's Fyzabad A Gazetteer (1905), (supra)**, mentioned in respect to Digambaris that the same was founded by one Balramdas who came to Ayodhya over 200 years ago but nothing has been said about "Nirmohi Akhara" except that it claims spiritual decent fron one Govind Das of Jaipur. “P. Carnegy's **Historical Sketch”** on page 20 mentions the period of Nirmohi Akhara about 200 years ago and in the schedule (A) it mentions about 250 years.

792. DW 3/1 in para 3 of the statement-in-chief said that Balanandji established Akharas of Ramanandi Vairagi Sampradaya about 500 years ago but in para 42 and 43 he said that the commencement of Ramanandi Sampradaya relates to

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14th Century and Sri Anubhavanand and his sub-disciple, Balanand established three Anni and seven Akharas for protection and awareness of Chatuh Sampradaya which are working on military pattern and continuing for about 600 years. In his cross-examination he has admitted that Nirmohi Akhara was not established by Sri Govind Das Ji but by Sri Balanandacharya and reiterated that Sri Govind Das Ji must have existed about 600 years back. He, however, admits that Balanand came much after Anubhavanand and varified the pedigree that after Anubhavanand came Bramhanand, Brijanand and then Balanand but further in his cross-examination at one stage he said that Balanand was before about 200 years to Sri Tulsidas Ji. At one stage of cross-examination he said that Sri Balanand Ji established Akharas encouraged by Sri Anubhavanand who was alive at the time of the said establishment. However, he verified the factum of life span of various Mahants of Akharas mentioned in the book "Smritigranth" published by plaintiff no. 1 itself.

793. Similarly, DW 3/4, Shiv Saran Das also said that Nirmohi Akhara is continuing not for 300 or 400 years but much earlier thereto. Interestingly DW 3/4 on the one hand in para 33 of his statement said that Balanand Ji established Akharas about 500 years ago but in cross-examination he said that these Akharas were not established in 15th Century at Jaipur but they are since time immemorial and their reference is find mention in Valmiki Ramayan. Then at other place he again reiterated that the three Anni were established by Swamiji at the same point of time at Jaipur about 500 years ago. He also gave life span of Anubhavanand about 500 years ago having born in Varanasi in Vikram Samvat 1503 (1446 AD). The period of 500 years of

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establishment of Nirmohi Akhara by Balanand has been reiterated by DW 3/20 in para 47 of his statement but at a subsequent stage i.e. in para 49 he gave the period of establishment of Akhara about 600 years ago. Other witnesses also have not made any improvement except of stating that Akhara was established about 500 years ago. From the above facts which are commonly said in respect to establishment of Akhara, the following common facts emerges.

794. Sri Ramanandacharya was the first in the chain of Ramandiya Sampradaya of Bairagis and he himself was born in 1299 AD, i.e., at the end of thirteenth century. Meaning thereby his Sampradaya must have come into existence alongwith his followers in 14th Century and not earlier thereto. According to "Smritigranth", the book published by plaintiff no. 1, Sri Anubhavanandcharya (twenty fourth in lineal generation) disciple of Sri Ramanandacharya was born in 1446 AD and died in 1554 AD. Sri Balanandacharya was born in 1653 AD i.e. almost 100 years after the death of Sri Anubhavanandcharya, therefore, the statement that Sri Anubhavanandacharya was alive when Sri Balanandacharya established the Akharas is apparently incorrect. The three Anni and seven Akharas were established by Sri Balanandacharya, therefore, it must be some times after 1653 AD when Balanandacharya himself was born. The establishment of Akhara took place in Jaipur and thereafter it came to Ayodhya. Therefore, it must have been later than 17th Century but cannot be in any case earlier thereto.

795. From the year of birth of founder of the Ramanandi Samprayaday upto the stage of Balanandacharya, a chart has been prepared by Sri Verma and supplied to the Court during the course of argument which is as under :

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"रामानन्दाचार्य जी 22 आचार्य पीठ

(सम्वत–1356 अर्भिभाव 1299 ए0डी0)

/

/ / / / / /

अनन्तानन्दाचार्य सुखानन्दाचार्य सुरसुरानन्दाचार्य भावानन्दाचार्य पीपाचार्य कबीर

1385 सम्वत– सम्वत1376 1417 सम्वत 1446 सम्वत

1328 सन 1319 सन 1360 ए0डी0 1389ए0डी0

(मृत्यु–126 वर्ष में)

/

/

/ /

अनुभवानन्दजी हनुमदाचार्य

(1503 सम्वत–1446 सन) 1456 सम्वत–1399 सन

(108 वर्ष–उम्र) जन्म–बनारस

/

विरजानन्दा

/

बालानन्द जी (1710सम्वत–1653 सन)

(मृत्यु–142 वर्ष)

(जन्म–मेरठ)"

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The above chart also supports the view which we have taken.

796. Sri Verma has tried to explain that the military organization of Ramanandi Sampraday was set up during the period of Sri Bhawanandacharya and after his death in 1482 A.D., it was given the form of Anni, i.e. Akhara by Sri Balanandacharya. We, however, do not find the said explanation supported by any pleading, and written or oral evidence. His own book, i.e., Sri Ramanandi Sampradaya Ka Itihas" referred in para 59 of the affidavit of D.W. 3/14 , a photocopy of which has been made available, gives details of Swami Balanand Ji and Sri Govindanand Ji, as under :

"श्री स्वामी बालानन्द

श्री स्वामी बालानन्दजी देश और धर्म–रक्षक श्री नन्द के एक महान प्रतापी शिष्य थे। श्री नन्दजी के काल में तो श्री बालानन्दजी ने सैनिक गुण और शासन करने की पूर्ण योग्यता ग्रहण की थी और इन्होंने श्री

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व्रजानन्दजी को वृद्धावस्था में पूर्ण विश्राम दे दिया था। जयपुर के महाराजा सवाई जयसिंहजी श्री बालानन्दजी के पूर्ण अनुयायी थे और भरतपुर के महाराजा सूरजमलजी ने बालानन्दजी के सहयोग से ही आगरे के किले पर एक अधिपत्य कर लिया था। श्री बालानन्दजी ने गुरु भ्राता मानदासजी के सहयोग से राम स्थान श्री अयोध्याजी का पुनरुद्धार किया था। ***बालानन्दजी ने विक्रम संवत 1791 में गॉवडी पुर गॉव (शेखावाटी) में प्रथम साधु संगठन किया,*** *उस समय गलता गद़दी के श्री हरि आचार्यजी तर्क पीठ के श्री वृन्दावनदासजी और दादू द्व ारे ने मंगलदासजी के सहयोग से निम्बार्क छावनी की स्थापना हुई ओर स्थान का नाम नीम का थाना। इसी समय श्री बालानन्दजी ने तीनों अनियों की स्थापना की। 52 द्वारे बनाये गये और अखाडों का संगठन किया। स्वामी बालानन्दजी ज्योंही स्वाधीनता प्राप्ति के लिए देश में प्रयत्न शुरु किया। उसी समय उनके साथी बाजीराव, सवाई जयसिंह और दुर्गादासजी का निधन हो गया। सवाई जयसिंहजी ने अपनी मृत्यु पूर्व जयपुर राज्य का शासन–भार श्री बालानन्दजी के हाथ में दिया था और उसके पश्चात श्री बालानन्दजी को विवश होकर अपना कार्य क्षेत्र जयपुर राज्य तक ही सीमित रखना पडा। श्री स्वामी बालानन्दजी अपने गुरु व्रजानन्दजी के साथ कार्तिक सुदी दौज संवत 1800 वि0 को जयपुर (राजस्थान में स्थायी रुप से आकर रहे। वृन्दावन के लोकनाथ गोस्वामी के सेव्य ठाकुर राधा विनोद के जयपुरस्थ मन्दिर में आपका निवास स्थान बना। यह स्थान आज भी जयपुर नगर के सबसे उच्च स्थानों में है। स्वर्गीय सवाई जयसिंहजी के दो पुत्र थे– (1), ईसरी सिंह, (2) माधोसिंहजी। ये दोनों ही बालानन्दजी के शिष्य और कृपा–पात्र थे। इसीलिए बालानन्दजी ने उस समय किसी का भी पक्ष लेना उचित नहीं समझा और वे अपने वृद्ध गुरु व्रजानन्दजी की सेवा में संलग्न रहे। श्री व्रजानन्दजी के तिरोधान के पश्चात* ***श्री स्वामी बालानन्दजी मार्गशीर्ष शुक्ल 13 संवत 1809 वि0 को श्री गिरिजानन्दजी की गद़दी में विराजे।*** *उसके पश्चात उन्होंने जयपुर राज्य की रक्षार्थ अनेकों युद्ध लडे। स्वामी बालानन्दजी ने दिल्ली के सुप्रसिद्ध वजीर कमरुद़दीनखॉ और नजकखॉ जैसे महान विद्वानों को जयपुर में परास्त किया। मुहम्मदशाह बादशाह के समय श्री बालानन्दजी के एक शिष्य तुलसीदास को महावन नामक एक परगना देने का एक प्राचीन पट़टे में उल्लेख है। मुगल काल के अन्तिम समय में जब बालाजी बाजीराव*

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*ने केन्द्र पर आधिपत्य कर लिया था तो उस समय वह जयपुर पर चढाई करके आया था। श्री बालानन्दजी से उसकी भेंट होने पर वह नतमस्तक होकर उनके चरणों पर गिर पडा। इसका उल्लेख सरजदुनाथ सरकार ने अपने फाल ऑफ मुगल्स में किया है। **संवत 1849 वि0** में इस महिमामय विभूति का निधन हो गया और मुगल साम्राज्य का भी उसी समय पतन हो गया।*

श्री गोविन्दानन्दजी

*श्री बालानन्दजी के शूरवीर शिष्य थे। श्री बालानन्दजी ने उनको सैनिक शिक्षा में निपुण बना दिया था। उनके अन्तिम समय में स्वतन्त्रता प्राप्ति के लिए बापूजी सिन्धिया के साथ नरसिंहगढ (उमटवाडे) में स्वतन्त्र सेना का संगठन कर रहे थे। श्री बालानन्दजी के परलोक गमन के बाद वह जयपुर आये **और 1791 में वे गद्दी पर बैठे।** श्री गोविन्दानन्दजी भी जयपुर के सेना–नायक बनकर रहे और जयपुर की ओर से कितने ही युद्ध लडे। सन 1803 या 1804 में जब अंग्रेजों ने राजस्थान के भरतपुर के किले पर आक्रमण किया तो उस समय श्री गोविन्दानन्दजी के शिष्य तत्कालीन भरतपुर नरेश ने उनके सहयोग से अंग्रेजी सेना को परास्त कर दिया था और उसके पश्चात ही अंग्रेजों की धाक भरतपुर से उठ गई थी और विलायत में उनका बडा उपहास हुआ था। श्री गोविन्दानन्दजी ने अपने चमत्कार से ऐसी परिस्थिति पैदा कर दी थी कि ब्रजवासियों को चक्रधारी श्रीकृष्णचन्द्र स्वयं भरतपुर के किले की रक्षा करते हुए दिखलाई देते थे। तीन पीढियों से लगातार देश की सुरक्षा का प्रयत्न करने वाले अन्तिम महान सन्त का वि0सं0 1862 में स्वर्गवास हो गया व देश में ऐसा कोई पराक्रमशाली वीर नहीं रहा जो अंग्रेजों का जम कर मुकाबला करता।"*

797. The details mentioned above show that Sri Balanandacharya established three Anni in 1734 AD at Shekhavati (Rajasthan), confined himself to Jaipur area and lived permanently at Jaipur. He died in 1795 AD. There appears to be some mistake in date for the reason that in respect to Sri Govindanand Ji, it is mentioned that after the death of Sri Balanand Ji, he became Mahant in 1791 and Sri Govindanand Ji died in 1892 A.D. As we have already noticed that the credit to

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establish Nirmohi Akhara at Ayodhya lie with Sri Govind Das Ji, therefore of necessity, this period would not go earlier to 1734 A.D.

798. In "Rajasthan Ki Bhakti Parampara Evam Sanskriti" (supra) the pedigree of the disciples of Ramanandacharya is given which shows that even after Balanandacharya the next Mahant Sri Govind Ji continued to stay at Rajasthan and, therefore, the establishment of Akhara at Ayodhya from Jaipur, in our view, cannot relate with beyond 1734 AD but it must be sometimes between 1734 AD to 1800 AD.

799. We accordingly, in view of the above discussion, **decide the issue no. 17 (Suit-3) in favour of the plaintiffs** by holding that Nirmohi Akhara, plaintiff no. 1 is a Panchayati Math of Ramanandi Sect of Vairagi and as such is a religious denomination following its religious faith and pursuit according to its own custom. We however further hold that its continuance in Ayodhya find sometimes after 1734 AD and not earlier thereto.

(C) Relating to Suit-1885 and its effect on present suits, i.e., res judicata and estoppel etc. :

800. Under this category fall Issues No. 5(a), 5(b), 5(c) and 5(d) (Suit-1); 7(a), 7(b), 7(c), 7(d) and 8 (Suit-4); and 23 and 29 (Suit-5).

801. Let us examine first as to what is the real objection raised by the parties on the question of res judicata and estoppel in their pleadings.

802. In the written statement dated 24.02.1989 of defendant no. 10 (Suit-1) para 12 under the heading “additional pleas”, averments with respect to Suit 1885 are made which reads as under:

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"12. That in 1885 Mahant Raghubar Das (Mahant of Janam Asthan of Ayodhya) had filed a suit against the Secretary of State for India in Council, and Mohd. Asghar, Mutawalli of the said mosque, in the Court of Sub-Judge, Faizabad, in which a site plan had also been annexed alongwith the Plaint and in the said site plan the mosque in question was specifically mentioned in the western side of the Chabutra in respect whereof the said suit was filed for permission to erect temple over the said Chabutra. In respect of the said Chabutra the said Mahant Raghubar Das had stated that the temple of Janam Bhoomi was desired to be constructed over there but the said Mahant could not succeed even in that suit which was ultimately dismissed on 24th December, 1885 by the Sub-Judge, Faizabad, and the Appeal filed against the said judgment and decree dated 24th December, 1885 was also dismissed by the District Judge, Faizabad, and the Second Appeal filed against the same had also been dismissed by the Judicial Commissioner of Avadh."

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803. Thereafter in para 13 the defendant no. 10 (Suit-1) has averred that the Suit 1885 was filed on behalf of Mahants of Hindus of Ayodhya and Faizabad. It reads as under:

"13. That the aforesaid suit was filed by Mahant Raghubar Das on behalf of other Mahants and Hindus of the Ayodhya and Faizabad etc."

804. In para 31 bar of res judicata and in para 32 estoppel has been pleaded as under:

"31. That the judgment and decree passed by Sub-Judge, Faizabad, in Original Suit No. 61/280 of 1885 (Mahant Raghubar Das Versus Secretary of State and another)

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dated 24.12.1885 and confirmed by the District Judge, Faizabad, in Civil Appeal No. 27 of 1885 as well as by the Judicial Commissioner of Avadh in Second Appeal operates as res judicata and so the instant suit is barred by the principles of res judicata."

"32. That the plaintiff is even estopped from claiming the mosque in question as the Janam Bhoomi of Sri Ram Chandraji as the palintiff's predecessor and specially Mahant Raghubar Das had confined his claim to the Chabutra of 17'x21' outside the said mosque as being Janam Asthan of Sri Ram Chandraji and also because there already exists Ram Janamasthan Mandir in the northern side of the property in question at a short distance from the pathway passing from the side of the Babri Masjid."

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805. Similarly, in Suit-3 defendants no. 6 to 8 in their written statement dated 28.03.1960 have given the reference of Suit-1885 in paras 17, 18, 19 and 20 which read as under:

''17. यह कि सन् 1885 ई0 मुसम्मी रघुवर दास महन्थ जनम स्थान अयोध्या ने खिलाफ सिक्रेटरी आफ स्टेट फार इंडिया इन कौंसिल व मुसम्मी मुहम्मद असगर मुतवली व खतीब मसजिद बाबरी मजकूर एक दावा इजलास जनाब सब जज साहब बहादुर फैजाबाद न में व इजहार मिलकियत खुद दायर किया।''

''18. यह कि मुकदमा मजकूर के सिलसिले में मुद्दई ने एक नक्शा नजरी में भी दाखिल किया। जिसमें मसजिद बहुनत साफ व सरीह तौर पर दिखलाया था इस पर कोई एतराज नहीं किया था। दादरसी सिर्फ एक जुजबे आराजी मांसूमा चबूतरा की मांगी थी अब मुद्दैयान मुकदमा हाजा का यह कहना कि कुल इमारत मुतदाबिया जनम भूमि का मंदिर है बिलकुल गलत और बेबुनियाद है। और मुकदमा हाजा के लिये बद्यान्ते व बेइमानी से गढ़ा गया है।''

''19. यह कि अदालत सब जज बहादुर फैजाबाद से बतारीख 24 दिसंबर

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सन् 85 ई दावा मुद्दई बाबत चबूतरा भी खारिज कर दिया और फैसला मजकूर अदालत अपील से भी बहाल रहा। और सब जज के फैसले में जो रिमार्क मुतालिक खारजुल मियाद मिलकियत मुद्दई निस्बत चबूतरा मुतदाबिया मुकदमें मजकूर मुद्दई के हक में था उसको मनसूख व मुस्तरद कर दिया और मुकदमा व अपील कुल्लीयतन खारिज कर दिया।''

''20. यह कि मुकदमा मजकूर निहायत सनसनीखेज था और इसमें तमाम महन्थान अयोध्या व मुआजिज अहले हिनूद अयोध्या व फैजाबाद मुद्दई मुकदमा की हिमायत व पैरबी में थे। तमाम अहले हिनूद को इल्म मुकदमा मजकूर का था और है।''

806. The plaintiff, Nirmohi Akhara (Suit-3) in its replication dated 13.05.1963 replied paras 18, 19 and 20 of the written statement as under:

"18. The contents of para 18 of the written statement are totally wrong and are denied. If any sketch map be found to have been filed by the said Raghubar Das in the said suit it would be totally false, fictitious and collusive and is not binding on the plaintiffs. The building in suit is nothing else but the temple of Janma Bhumi.

19. The contents of para 19 of the written statement are denied.

21. That contents of para 19 of the written statement are pure concoctions and are denied."

807. The defendant no. 10 (Suit-3) in its additional written statement dated 24.08.1995 has only replied the amended paragraphs of the plaint dated 16/18.12.1961 but there is nothing about res judicata or estoppel.

808. In Suit-4 the reference of Suit 1885 and its details have been given in paragraphs no. 6, 6A, 6B, 6C, 6D, 6E and 6F of the plaint. The paragraphs no. 6A to 6F were incorporated by way of amendment pursuant to the Court's order dated 22.12.1962. The same read as under:

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"6. That in 1885, one Mahant Raghubar Dass alleging himself to be the Mahant of Janam Asthan instituted a suit (Original Suit No. 61/280 of 1885) against the Secretary of State for India in Council and Mohammad Asghar, Mutawalli of the Babri Mosque, for permission to build a temple on the Chabutra 17' x 21' mentioned in para 5 above, in the court of the learned Civil Judge, Faizabad which was dismissed and the appeal from the said decree was also dismissed by the learned District Judge, Faizabad (Civil Appeal No. 27 of 1885). In the sketch map filed alongwith the plaint in Suit No. 61/280 of 1885 the entire building, with the exception of the Chabutra 17' x 21' was admitted to be mosque and was shown as such.

6A. That the cause of action for the suit in Suit No. 61/280 of 1885 in the Court of the Civil Judge, Faizabad, arose on the refusal of the Dy. Commissioner of Faizabad on the representation of some Muslims to grant permission to Mahant Raghubar Dass, Mahant of Janam Asthan for the construction of a temple on the ground that a temple could not be permitted to be built on land adjoining the mosque (meaning thereby the Babri Masjid).

6B. "In that suit Regular Suit No. 61/280 of 1885 of the Court of Civil Judge, Faizabad Mahant Raghubar Dass was suing on behalf of Himself, on behalf of Janam Asthan, and on behalf of the whole body of persons interested in Janam Asthan and Mohd. Asghar, Mutawalli of the Babri Masjid was made a defendant."

6C. Mohammad Asghar Defendant Mutawalli of Babri Masjid contested the suit inter-alia on the ground that the land on which the temple is sought to be built is not the

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property of the plaintiff or of the Asthan, that the said land lies within the Ahata of Babari Masjid and is the property of the Masjid.

6D. That in the suit mentioned above the matter directly and substantially in issue was:-

(i) the existence of the Babari Masjid.

(ii) the right of the Hindus to construct a temple on land adjoining the Masjid.

The existence of the mosque was admitted by the plaintiff in that suit and the Suit of the plaintiff was dismissed on the further ground of public policy.

6E. If the building was not a masjid but a temple as alleged in the present suit the matter might and ought to have been pleaded by Mahant Raghubar Dass in the former suit (suit No. 61/280 of 1885 mentioned above) and shall be deemed to have been a matter directly and substantially in issue in that Suit and the plea that the building is not a Masjid but a temple cannot be raised in the present suit. For the reasons mentioned above the decision in the former suit operates as res judicata in the present Suit.

6F. That on the admission contained in the plaint of Regular Suit No. 61/280 of 1885 mentioned in the preceding paragraphs it must be taken an established fact that the building now claimed by the Hindus as the temple of Janam Asthan was and is a mosque and not a temple."

809. The defendants no. 1 and 2 (Suit-4) in written statement dated 12.03.1962 have replied para 6 of the plaint in para 6 of the written statement as under:

"6. That the defendants No. 1 and 2 has no knowledge of

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the facts mentioned in para 6 of the plaint, hence the para 6 is denied."

810. Another written statement dated 25.01.1963 of defendants no. 1 and 2 also contained reply of paras 6A to 6F of the plaint in para 6 of the written statement which reads as under:

"6. That the defendant no. 1 has no knowledge of the facts mentioned in para 6 of the plaint, hence the para 6 is denied. The additional paras added by the amendment as A to P.F. are wrong and denied see further pleas."

811. The defendants no. 3 and 4 (Suit-4) i.e. Nirmohi Akhara and its Mahant Raghunath Das in their written statement dated 22.08.1962 have replied para 6 of the plaint in para 6 of the written statement as under:

"6. The contents of para 6 of the plaint are denied. The answering defendants are not aware of any suit having been filed by any person known as Mahant Raghubar Dass styling himself to be the Mahant of Janam Asthan. Janam Asthan is situate in the north of temple of Janam Bhumi across the road passing between Janam Bhumi and Janam Asthan. Any sketch map filed by the said Raghubar Dass along with the alleged plaint would be false and fictitious and is not binding on the answering defendant."

812. After the amendment of plaint and insertion of para 6A to 6F the defendants no. 3 and 4 (Suit-4) in their additional written statement dated 25.01.1963 have replied the said paragraphs as under:

"37. The contents of paragraphs 6A to 6D of the plaint are denied. Even if it were proved that any person known as Mahant Raghubar Dass made any admissions or statements or averments in the said suit the answering

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defendants are not bound by the same and their title and interest in the temple of Janam Bhoom can in no way be affected."

"38. The contents of paragraph 6E are denied. The building in dispute in the present suit is certainly a temple and not a mosque. The decision if any in the above noted suit of 1885 cannot and does not operate as Resjudicata in the present suit, nor is the said decision any piece of evidence in the present suit."

"39. The contents of para 6-F of the plaint are denied. The building in question in the present suit is a temple of Janam Bhoom and not a mosque as alleged by the plaintiff."

"40. That the contents of paragraphs 6A to 6E do not form part of pleading but contain argument and references to evidence."

"41. That the answering defendants do not derive any title from the said Mahant Raghubar Dass of suit no. 61/280 of 1885 and are not bound by any actions or conduct of the said Reghubar Dass in the said suit."

813. The defendant no. 3 (Suit-4) in its additional written statement dated 21.08.1995 has said not only something about Suit 1885 but also with respect to some other suits i.e. Regular Suits No. 256 of 1922 and 95 of 1941 in its para 3 which reads as under:

"3. That contents of amended plaint para 21 A is denied except the factum of demolition. The real fact regarding Sri Ram Chabutara temple, Chhatti Pujan, etc. as narrated above has been concealed and purposely not adverted in this paragraph against the following existing facts and established fact chronologically as follows:

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(1) *The sub Judge, Faizabad while holding that 'Charan' (feet) is embosed on the Chabutara which is being worshipped. On a Chabutara over that Chabutara of Idol of Thakurji is installed. The Chabutara is in possession of the defendant no. 3, Nirmohi. The District Judge, vide his judgment while holding that it is most unfortunate that a Masjid should have been built on a land specially held sacred by the Hindues, Judge's judgment.*

(2) *In Regular Suit No. 256 of 1922 between Mahanth Narottam Das and Mahant Ram Swaroop Das (representing Nirmohi Akhara) with regard to realising dues from the hawkers in the area belonging to the parties following statement was made by the counsel on behalf of Mahant Narottam Das, which reads as under:-*

> *"The land marked red in the map was all along parti land till the defendant made the constructions in dispute. The land belongs to the Nazul and the plaintiff as Mahant of the Janam asthan and his predecessor have all along been in possession and has basis of his title on possession. No lease from Nazul has been taken. They have been holding the land under the Iqrarnama from the Shahi times. There has been no settlement decree"*
>
> *Defendant's pleader says:-*
>
> *"I admit para 1 of the W.S. The land never belonged to Nazul department."*

(3) *In a suit No. 95 of 1941 between Mahanth Nirmohi*

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Akhara namely Ram Charan Das and Raghunath Das a commission report was prepared. In the said report at item No. 2 Description of Temple Ram Janam Bhumi belonging to Nirmohi Akhara was specifically mentioned. At item No. 3 of the said report name of Sita Koop belonging to Nirmohi Akhara (Annexure-A).”

814. Defendant no. 9 (Suit-4) in his written statement dated 28.07.1962 expressed its lack of knowledge about Suit 1885.

815. Defendant no. 11 (Suit-4) in his written statement dated 15.02.1990 also has similarly denied paragraphs 6A to 6F of the plaint in paragraphs no. 6A to 6F which read as under:

“6A. The contents of para 6A of the plaint are not correct and as such are denied.

6B. That the contents of para 6B of the plaint are matter of record in the knowledge of the plaintiff as such not admitted.

6C. The contents of para 6C of the plaint are not correct and as such are denied.

6D. The contents of para 6D of the plaint are incorrect and as such are not admitted.

6E. The contents of para 6E of the plaint are incorrect and as such not admitted.

6F. The contents of para 6F of the plaint are not correct and as such are denied.”

816. The written statement dated 20.07.1968 has been filed on behalf of Baba Abhiram Das and in para 6 he has replied para 6 of the plaint as under:

“6. That the answering defendant has no knowledge of the facts mentioned in para 6 of the plaint hence the

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contents of para 6 are denied. The additional paras added by the amendment as A to F are wrong and denied. See further pleas."

817. In the written statement dated 04.12.1989 defendant no. 13 (Suit-4), Dharam Das has replied paras 6 and 6A to 6F of the plaint in paras 6 to 6F as under:

"6. That in paragraph 6 of the plaint, the fact of the filing of the suit by Mahant Raghubar Das against the Secretary of State for India is not denied, but the rest of the contents of that paragraph are denied. That suit was for permission to erect a permanent temple in place of the then existing structure at the Rama Chabutra. Mohammad Asghar was added later as a Defendant on his own request. It is denied that the alleged 'mosque' at Janmasthan was a 'mosque' or that Mohammad Asghar was its Mutawalli. The result of that suit is wholly irrelevant in the present suit and does not bind the answering Defendant or the Hindus in general or the worshippers of Bhagwan Sri Rama Lala Virajman at Sri Ram Janma Bhumi in particular."

6-A. That the contents of paragraph 6-A of the plaint are denied.

6-B. That the contents of paragraph 6-B of the plaint are denied.

6-C. That the contents of paragraph 6-C of the plaint are denied.

6-D. That the contents of paragraph 6-D of the plaint are denied.

6-E. That the contents of paragraph 6-E of the plaint are denied.

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6-F. That the contents of paragraph 6-F of the plaint are denied. It is rather established by the judgments in that suit that Asthan Sri Rama Janma Bhumi, called the Janmasthan, was a sacred place of Hindu worship of Bhagwan Sri Rama, as the incarnation of Lord Vishnu, symbolised by the existence of the objects of worship like the Sita-Rasoi, the Charans, and the Idol of Bhagwan Sri Rama Lala Virajman on the Chabutra, within the precincts of the building at Janmasthan, which was alleged to be a Masjid; and that there was no access to it except through that place of Hindu worship by which it was land-locked. Such a building could not be a Masjid according to the tenets of Islam."

818. In the written statement dated 18/19.07.1969 of defendant no. 18 (Suit-4) the reply is contained in para 6 of the written statement as under:

"6. Denied. Any statement filed by the said Raghubar Dass along with the alleged plaint would be false and fictitious and is not binding on the answering defendant."

819. The defendant no. 20 (Suit-4), Madan Mohan Gupta has replied para 6 and 6A to 6F of the plaint in para 6 and 7 of his written statement dated 05.11.1989 as under:

"6. That the contents of paragraph 6 of the plaint are denied. The answering defendants are not aware of any such alleged suit. Any sketch map filed by said Raghubir Das along with the alleged plaint would be fictitious and would not be binding on the answering defendants.

7. That the contents of paragraph 6-A, 6-B, 6-C, 6-E, 6-F of the plaint are denied. The building in dispute is a temple and not a mosque. Any alleged decision cannot and

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does not operate as res-judicata in the present suit. Neither the answering defendant nor the Hindu Public in general derive any title from the said Mahant Raghubar Das or his representatives and are not bound by their any action or conduct, nor decision in the said suit No. 61/280 of 1985."

820. In Suit-5, the Sunni Central Waqf Board, defendant no. 4 in its written statement dated 26/29.08.1989 has given details of Suit-1885 in para 20 as under:

"20. That the contents of para 20 of the Plaint are also incorrect and hence denied as stated and in reply thereto it is submitted that there is no deity by the name of Asthan Ram Janam Bhoomi and as a matter of fact there is no said Asthan also within the premises of Babri Masjid.

It is also relevant to mention here that in 1885 Mahant Raghubar Das, Mahant of Janam Asthan of Ayodhya, had filed a suit against the Secretary of State for India in Council and Mohd. Asghar, Mutwalli of the said mosque in the Court of Sub-Judge, Faizabad, in which a site plan had also been annexed alongwith the plaint and in the said site plan the mosque in question was specifically mentioned in the western side of the Chabutra in respect whereof the said suit was filed for permission to erect temple over the said Chabutra. In respect of the said Chabutra the said Mahant Raghubar Das had stated that the temple of Janam Bhoomi was desired to be constructed over there, but the said Mahant could not succeed even in that suit which was ultimately dismissed on 24th December, 1885 by the Sub-Judge, Faizabad, and the appeal filed against the said judgment and decree dated 24th December, 1885 was also dismissed by the District Judge, Faizabad,

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and the Second Appeal filed against the same had also been dismissed by the Judicial Commissioner of Avadh. The aforesaid suit was filed by Mahant Raghubar Das on behalf of other Mahants and Hindus of Ayodhya and Faizabad etc. As such the plaintiffs cannot claim any portion of the Babri Masjid to have been defied or having become a juridical personality by the name of Asthan Ram Janam Boomi and specially so when neither there has been any installation of deity and nor any personification of the same in accordance with tenets of Hindu religion or Law. (It is further submitted that the plaintiffs are even estopped from claiming the mosque in question as the Janam Boomi of Sri Ram Chandraji) as the plaintiffs' predecessors and specially Mahant Raghubar Das had confined his claim to the Chabutra (platform) of 17' x 21' ft. outside the said mosque as being Janam Asthan of Ram Chandraji and also because there already exists another temple known as Janam Asthan temple situate at a distance of less than 100 yards only from Babri Masjid and on its northern side."

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821. The defendant no. 5 (Suit-5) Mohd. Hashim in his written statement dated 14/21.08.1989 has raised the plea of estoppel and acquiescence based on Suit-1885 and also Suit No. 57 of 1978 in para 59 of the written statement which reads as under:

"59. That Ram Janam Sthan Mandir exists in Ayodhya which is quite distinct and separate from the premises in question. Mahant Raghubar Das of Ram Janam Sthan Mandir filed regular suit No. 61/280 of 1885 for a portion of premises in dispute measuring 17 x 21 feet which was dismissed from the Court of Subordinate Judge, Faizabad

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and appeal against the said decree filed by Mahant Raghubar Das was also dismissed from the court of District Judge as well as the Judicial Commissioner, Avadh parallel to Hon'ble High Court. In the said suit the existence of Mosque in question has been very much unequivocally admitted and that admission is binding on the present plaintiffs as well as by estoppel and acquiescence and the said suit was decided with the clear findings that even if any wrong was done in 1528 A.D., that cannot be undone now. The answering defendant factually disputing the statement that any wrong was done by or at the behest of King Emperor Babar is advised to state that said findings operate as resjudicata and the instant suit is barred U/S 11 C.P.C. Besides above regular suit No. 57 of 1978 filed on behalf of and in the name alleged Deity itself for the very property has been dismissed from the Court of Munsif, Faizabad and till this date no step has been taken to set aside that order as such the present suit is liable to be dismissed."

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822. The written statement of defendant no. 5 has been adopted by the defendant no. 6 vide its reply dated 21.22.08.1989 (Paper No. 40-A1).

823. The pleadings aforesaid caused framing of the issues relating to res judicata, estoppel etc. All the aforesaid issues except issue no.29 (Suit-5) emanates from the Suit No.61/280 of 1885 filed by Mahant Raghubar Das *(hereinafter referred to as "Suit 1885")* which was dismissed by all the Courts upto the level of Judicial Commissioner. Before embarking upon all these issues on merits, it would thus be appropriate to have an idea of what were the pleadings and what has been decided in

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Suit 1885.

824. A copy of the plaint dated 19.1.1885 in Suit 1885 is Ex.A-22 (Suit-1). It was filed in the Court of Munsif, Faizabad. The plaintiff described himself as "Mahant Raghubar Das, Mahant Janam Asthan at Ayodhya". The sole defendant was described as "Secretary of Council of India". It was an injunction suit i.e. suit for permission for construction of temple. The plaintiff prayed for an injunction to the defendant so as not to restrain him from construction of a temple over a platform (Chabutara), Janam Asthan at Ayodhya, measuring north-17 ft., east-21 ft., south-17 ft. and west 21 ft. He said that market value of the property is not ascertainable, therefore, the court fees under Item 17(6) of 1870 Act of Court Fees has been paid and the position of the site is clear from the appended map.

825. The plaint had five paragraphs. In brief, it stated that Janam Asthan at Ayodhya in Faizabad city is a Holy place of great reverence and religious importance. The plaintiff is the Mahant of this place of worship. The Chabutara Janam Asthan east-west 21 ft. and north-south 17 ft. has Charan Paduka embedded and a small temple which is worshipped. The Chabutara is in possession of the plaintiff. Due to lack of any building thereon it caused serious difficulty in every season to plaintiff and the worshippers. Construction of a temple on the said Chabutara would not cause any prejudice to anyone but give relief to the plaintiff, worshippers and travellers. In March or April 1883 due to objection by Muslims, the Deputy Commissioner, Faizabad obstructed construction of temple whereupon the plaintiff submitted an application to the local Government but received no reply. Thereafter a notice dated 18.8.1884 under Section 424 C.P.C. sent to the Secretary, Local

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Government but thereon also, no reply was received which had given a cause of action to file the suit. In para 5 of the plaint it was mentioned that a responsible citizen is entitled to construct a building as he likes on a place which he own and is in his possession. The Government and Court is also under a duty to protect the public and help them in peaceful enjoyment of their rights, therefore, an appropriate relief be given by retraining the defendant from obstructing the aforesaid construction and not to create any obstruction, objection etc. and also pay cost of the suit.

826. All the paragraphs of the plaint were verified on personal knowledge and belief by Raghubar Das, Mahant Janam Asthan, Ayodhya, the plaintiff. A map was appended with the plaint showing a three-domed structure termed as "Masjid" within a railing boundary having one entrance gate on the eastern wall and one barbed window. This is in fact, the "inner courtyard" portion. Outside thereof, on the south-east side, a "Chabutara" is shown of the size of 17 X 21 ft. and on the north-west side of the outer courtyard a place known as "Sita Chulha" had been shown. On the outer boundary wall, on the northern side and eastern side one gate each is shown.

827. The suit of 1885 was initially filed impleading only Secretary, Council of India as defendant. Thereafter, one Mohd. Asghar filed an impleadment application which was allowed and he was impleaded as defendant no.2. He claimed himself the Mutwalli of Babri Mosque. He filed a written statement dated 22.12.1885 (Ex.A-23, Suit-1). This written statement also has five paragraphs. He averred in the written statement that the Emperor Babar created Royal Waqf by constructing Masjid and on the upper side of the mosque compound, and above the door,

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the word 'Allah' was got inscribed. He also declared some grant for its maintenance. This would mean that the premises would not remain in the ownership of anyone else, once a Waqf is created since the land vests in Almighty. No permission was ever granted by the Emperor or his successor or representative to anyone for use of the land in the compound of the mosque on which Chabutara existed. No such permission was given to the plaintiff. He cannot be the owner of the said land. No evidence, document or Emperor's permission has been shown in support of the claim of the ownership on the said Chabutara. In the absence of the claim based on ownership no one has any right in law or otherwise to construct a temple on such land. If somebody visits a mosque compound and pay respect, that would not result in conferring ownership upon him. There was no Chabutara from the date of construction of mosque till 1856. It was constructed in 1857 though for its removal, complaint was filed. No right of ownership would be available to the plaintiff on the aforesaid land merely for the reason that there is a Chabutara, and, whenever attempt was made to trespass the mosque area, complaint used to be made to the Government. One Faqir raised a hut which was removed on complaint. The justice required that in the absence of any material with respect to the ownership of the land in question for 368 years and even from 1857, the plaintiff has no right to construct the temple. The plaintiff is mistaking himself as the owner of Chabutara. He has no right to construct temple thereon. Without the right of ownership no such construction can be made.

828. The trial court also obtained a Commissioner's report dated 6.12.1885 prepared by Sri Gopal Sahai, Amin, showing a spot map of the entire premises. A copy of the Commissioner's

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report dated 6.12.1885 is Ex.A-24 (Suit-1) and the spot map submitted by the said Commissioner is Ex.A-25 (Suit-1).

829. The suit was tried and decided by Sri Hari Kishan, Sub-Judge, Faizabad vide judgment dated 24.12.1885. A copy of the judgment is Ex.A-26 (Suit-1). A perusal thereof shows that on behalf of the Secretary of the State of Indian Council, a written statement was also filed contending that there is no cause of action for filing the suit since the plaintiff has not been evicted from Chabutara and even otherwise, the suit is barred by limitation. The plaintiff has no right to seek any relief.

830. The Court framed six issues as under:

1. Whether stamp fee is sufficient ?
2. Whether the suit is within limitation ?
3. Whether there exists no cause of action ?
4. Whether the relief as sought is legal or contrary to law ?
5. What is the area of Chabutara, i.e., its measurement ?
6. Who own and possess the said Chabutara ?

831. The plaintiff in support of his case filed a copy of Oudh Gazetteer, page 7 issued by the Government containing transliteration of "Ayodhya Mahatmya" published by the Journal Asiatic Society.

832. On behalf of defendants, a number of documents were filed which need not be mentioned in detail hereat. The trial court held that stamp paid was sufficient, suit is not barred by time, there was a cause of action for filing the suit, the size of Chabutara shown in the map was correct and there is no dispute. However, the two important issues, namely, issues no. 4 and 6 were dealt with by it differently. So far as issue no.6 is concerned, the trial court held that the Chabutara is in possession of the plaintiff which is not disputed by the

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defendant no.2 Mohd. Asghar. To prevent any dispute between Hindu and Muslims, the area was divided by railing wall, separating the domed structure from the outer courtyard where Chabutara existed, which is well accepted to the parties. He said that the Government gazetteer verified the fact that there was a serious riot in 1855 between Hindus and Muslims as a result whereof the wall was erected, dividing the constructed building from Chabutara so that Muslims may offer prayer inside and Hindus outside. This means that the outer side alongwith the Chabutara is in possession of the plaintiff and Hindu people. Since the area to visit Masjid and temple is the same but the place where the Hindus offer worship, is in their possession, therefore, there cannot be any dispute about their ownership also.

833. On issue no.4 the trial court held that the relief sought is not contrary to law since the person who is owner and in possession of a place can make construction on his premises which is in his possession. But since in the vicinity there is a wall of a mosque whereon the word 'Allah' is inscribed and at such a place if the temple is constructed, it may cause serious dispute between Hindu and Muslims and any permission for construction of temple at such a place is likely to create a law and order problem, therefore, no such permission can be granted. The suit was accordingly dismissed.

834. A Civil Appeal No. 27 of 1885 was filed by Mahant Raghubar Das in the Court of District Judge, Faizabad and a cross objection was filed by Mohd. Asghar, defendant no. 2 against the finding of the trial court in respect to issue no. 6 in so far as it held the plaintiff, owner of the land in question, i.e., Chabutara. This appeal was decided by Sri F.E.A. Chamier,

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District Judge, Faizabad vide judgement dated 18/26.03.1886 (Ex. A-27, Suit-1). He dismissed plaintiff's appeal. So far as the cross objection of Mohd. Asghar are concerned, the finding of the trial court to the extent it had held plaintiff as owner of the land in dispute, was declared redundant and consequently directed to be expunged from the judgement of the trial court. Accordingly the following part of the judgement of Trial Court was expunged:

> *"Bahar Ke Darje Ki Araji Mai Chabutara Makbooza Mudai Wa Hindu Logon Ki Hai.- Go Us Mukam Par Jahan Ahle Hunud Paristish Karte Hai Kadim Kabza Unka Hai Jisase Milkiyat Unke Me Koi Kalam Nahin Ho Sakta Hai."*

835. From the judgement of the learned judge deciding the first appeal it appears that he visited the spot on 17.03.1886 and in the light of what he noticed on spot inspection, he recorded certain facts in the judgement, namely the Masjid built by Emperor Babar stands on the border of town Ayodhya west and south and is clear of habitations. He expressed his anguish that it is most unfortunate that a Masjid should have been built on a land especially held sacred by Hindus but as that event occurred 358 years ago he found it too late in the day to reverse the process and said that the parties should maintain status quo. In this light he observed that any interference would cause more harm and damage than benefit. He categorically observed that the only question to be decided in the case is **that the position of the parties will be maintained**. Giving his reason for dismissing the suit he said as under:

> *"The reason why this suit is dismissed is that there is no injuria nothing which could give a right of action to the plaintiff."*

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836. Mahant Raghubar Das took the matter in second appeal (No. 27 of 1886) to the Court of Judicial Commissioner of Oudh. The said appeal was dismissed by Sri W. Young, Judicial Commissioner of Oudh vide judgement dated 01.11.1886 observing:

> *"There is nothing whatsoever on the record to show that the plaintiff is in any (illegible) the proprietor of the land in question."*

837. The second appeal's judgement of the Judicial Commissioner also says that considering the situation that a mosque was existing in the nearby area for last 350 years which is said to have been constructed by Emperor Babar, who preferred to chose **this holy spot according to Hindu legends as the site of his mosque,** it is a wise step not to allow the parties to disturb the status quo and further that the plaintiff failed to show that he is proprietor of the land in question. The appeal deserved to be dismissed and no warrant for interference with the judgement of the court below.

838. Sri Z. Jilani, learned counsel for the plaintiffs (Suit-4) vehemently contended that the judgement of the trial court which has been confirmed up to the level of Judicial Commissioner shows very categorically that the entire area of the "inner courtyard" was mosque used by Muslims for offering Namaz and this finding having not been upset would operate as res judicata against the plaintiffs of rest of the suits. He submitted that the suit 1885 was filed by Raghubar Das designating himself as Mahant Janam Asthan at Ayodhya and, therefore, Suit-5 having been filed by impleading Janam Asthan as one of the plaintiff treating it to be a juridical personality is barred by principle of res judicata and Section 11 C.P.C. He

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further contended that Mahat Raghubar Das filed the above suit for the benefit of the interest of the entire Hindu community and in effect it was in a representative capacity, therefore, a new suit raising similar questions would be barred by resjudicata.

839. Sri M.A. Siddiqui, Advocate, submitted that from 1885 and onwards in every litigation the building in the "inner courtyard" was termed and known as "mosque". The parties, therefore, are estopped from contending that no mosque ever existed on the disputed site. Relying on Section 11 and in particular Explanation IV and VI C.P.C., the pleadings and judgements of Suit 1885, he argued that Suit-1 and 5 are barred by res judicata or in any case on the principle of estoppal. He contended that res judicata is not confined to what has been said in Section 11 C.P.C. but also has its scope outside thereof. Some aspects in Section 11 C.P.C. are recognised as common principle of res judicata. He placed reliance on **Talluri Venkata Seshayya and others Vs. Thadikonda Kotiswara Rao and others, AIR 1937 P.C. page 1** and contended that whatever the findings and decision has come in 1885 that is binding and in particular in respect to the following facts:

1. Unqualified statement that inner courtyard is Masjid.
2. Whatever Mahant Raghubar Das said was on behalf of entire Hindu community.
3. Existence of the building of the mosque in the vicinity was the cause for prohibition of construction of temple, therefore, the very fact that any temple was in existence is not correct.
4. The entire building was a mosque, is a finding which has attained finality in the litigation of 1885.

840. He also placed reliance on **K. Ethirajan Vs. Lakshmi**

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and others, AIR 2003 SC 4295 (paras 10, 17 and 18). He submit that res judicata is a growing subject and is a well recognised principle to avoid vexing a person twice on a matter already decided. Reliance is placed also on **State of Karnataka and another Vs. All India Manufacturers Organization and others, 2006(4) SCC 683** (paras 32, 34, 35, 36, 38, 39, 48, 49 and 50); **Lal Chand Vs. Radha Kishan, AIR 1977 SC 789** (para 19)-**1977(2) SCC 88**; and, **Sulochana Amma Vs. Narayanan Nair, AIR 1994 SC 152** (paras 5, 7 and 8).

841. He next contended that, pleaded or not, if parties knew the case, the Court considered and decided, it would operate as res judicata. Reliance is placed on **Midnapur Zamindary Co. Ltd. Vs. Kumar Naresh Narayan Roy and others, AIR 1924 P.C. 144** (para 149); **Krishna Chendra Gajapati Narayana Deo Vs. Challa Ramanna and others, AIR 1932 P.C. 50; Dhan Singh Vs. Jt. Director of Consolidation, U.P. Lucknow and others, AIR 1973 All. 283** and **State of Punjab and others Vs. M/s. Surinder Kumar and Co. and others, AIR 1997 SC 809** (para 5).

842. Then he contended that a point which might or ought to be taken if not taken, would operate as res judicata in all subsequent litigation/ subsequent proceedings. Even if a judgement is erroneous, yet, is binding and in support thereof Sri Siddiqui cited **P. K. Vijayan Vs. Kamalakshi Amma and others, AIR 1994 SC 2145** (paras 10, 11, 13 and 14)**; Gorie Gouri Naidu (Minor) and another Vs. Thandrothu Bodemma and others, AIR 1997 SC 808** (para 4)**; Premier Cable Co. Ltd. Vs. Government of India and others, AIR 2002 SC 2418** (para 2) and **Abdul Rahman Vs. Prasony Bai and another, AIR 2003 SC 718** (paras 24, 25, 26 and 31).

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843. Coming to the plea of estoppal and abandonment, he said that 2.77 acres of land, except of inner courtyard was acquired by the State of U.P. vide notification dated 7.10.1991 and 10.10.1991 and the map thereof has been filed as Annexure A to the counter affidavit of the State of U.P. in the writ petition no. 3540 of 1991 (MB) filed against the aforesaid acquisition. The plaintiffs (Suit-5) did not challenge the same. This amounts to acquiescence of their right in respect to the land which was acquired by the State in 1991. Even if subsequently the said notification was quashed by this Court, in the writ petition filed by some Muslims as well as the Nirmohi Akhara, that would not result in any benefit to the plaintiffs (Suit-5). The pre acquisition rights of plaintiffs (Suit-5) would not revive in any manner. In support, he placed reliance on **M.T.W. Tenzing Namgyal and others Vs. Motilal Lakhotia and others 2003 (5) SCC 1** (para 21).

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844. Sri Siddiqui further pleaded that the land in question including some other was acquired by the Government of India vide Act No. 33 of 1993 and Section 4 Sub-section 3 thereof provided that all the suits pending in the Lucknow Bench of the High Court in respect to the said land would stand abated. The plaintiffs (Suit-5) did not challenge the said enactment and instead on 4.2.1993 an application no. 4(o) of 1993 was filed by the plaintiff no. 3 on behalf of all the plaintiffs (Suit-5) requesting that in view of Section 4(3) of Act No. 33 of 1993, the suit, having abated, be dismissed as such. The conduct of the plaintiff, therefore, shows that they abandoned their rights to the land in dispute and, therefore, considering their conduct, it cannot be said that they have any right at all alive in respect to the land in question. Such conduct is relevant even in a suit for

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declaration or a title suit. In support of the aforesaid submission, he placed reliance on **Jai Narain Parasrampuria and others Vs. Pushpa Devi Saraf and others 2006 (7) SCC 756**.

845. Next contention is that after acquisition, nothing remains to be claimed by the plaintiffs (Suit-5). Since they did not challenge the said acquisition, they are estopped and the suit is liable to be dismissed for this reason alone. No relief can be granted to the plaintiffs (Suit-5) in view of the aforesaid facts and circumstances and their conduct. He also said that as soon as the plaintiffs (Suit-5) filed application on 4.2.1993, the suit stood abated at that stage itself, and, therefore, in law, Suit-5 cannot be said to be pending before this Court. Hence, there is no question of granting any relief to plaintiffs (Suit-5). In support, he placed reliance on **M/s Hulas Rai Baij Nath Vs. Firm K.B. Bass and co. AIR 1968 SC 111**, a division Bench judgment of this Court in **Smt. Raisa Sultana Begam and others Vs. Abdul Qadir and others AIR 1966 Alld. 318** and certain single Judge's judgments in **Ram Chandra Mission Vs. Umesh Chandra Saxena and others 1997 ACJ 896** (para 6); **Upendra Kumar and others Vs. District Judge, Azamgarh and others 1997 ACJ 823** (para 6, 7, 8 and 11); **State Bank of India Vs. Firm Jamuna Prasad Jaiswal and sons and another AIR 2003 (Alld.) 337**; **Lakshmana Pillai and another Vs. Appalwar Alwar Ayyangar and another AIR 1923 Madras 246.**

846. He further said that though the Act of 1993 was challenged by some of the Muslim parties including some plaintiffs (Suit-4) and Nirmohi Akhara, and in that matter, i.e. in the case of **M. Ismail (supra)** the Apex Court struck down Section 4 Sub-section 3 of 1993 Act whereby the suits were

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made to abate, but, that declaration ipso facto would not reverse the consequences of the said provision, which had already taken place in respect to Suit-5, which stood already abated on 7.1.1993, the date on which the aforesaid Act came into force. In any case, on 4.2.1993, when the plaintiffs (Suit-5) filed application stating that the suit has abated, it had resulted in abatement automatically. In order to show the effect of acquisition as pleaded above, he placed reliance on **M.T.W. Tenzing Namgyal (supra)** (para21). He further said that once the suit has abated or stood abandoned, the plaintiffs (Suit-5) cannot challenge as they are estopped from doing so. In support thereof reliance is placed on **Deewan Singh and others Vs. Rajendra Pd. Ardevi and others AIR 2007 SC 767** (para 43, 52), **Jai Narain (supra)**; **Anuj Garg and others Vs. Hotel Association of India and others 2008 (3) SCC 1** (para 53, 54) and **Barkat Ali and another Vs. Badrinarain 2008 (4) SCC 615** (para 11 and 15).

847. He also said that even if acquisition of land is quashed on the challenge made by some of the parties, the effect would not benefit the persons who did not challenge the same and for them, the acquisition would stand. On enquiry as to whether the aforesaid arguments are covered by any of the issues, he referred to **Issue No. 18 (Suit-5)**, para-42 of the W.S. of the defendant no. 3 (Suit-5), para 47 of W.S. of defendant no. 4 (Suit-5) and para 62 of W.S. of defendant no. 5 (Suit-5). Thereafter, he also referred to para 12 of the Addl. W.S. of defendant no. 5 (Suit-5) and contended that the argument advanced by him are covered by the pleading in the aforesaid paragraphs.

848. Advancing submissions in respect of issue no. 7(d), 8

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(Suit-4) and 23 (Suit-5), he said that issue 7 (d) is whether title of the Muslims to the property in dispute or any portion thereof was admitted by plaintiff of Suit No. 61/280 of 1885 filed by Mahant Raghubar Das and if so, its effect? Referring to the plaint of the aforesaid suit, he said that the disputed structure was mentioned therein as mosque and, therefore, it is a kind of admission of the plaintiff about the title of the Muslims over the property in dispute. Referring to Section 58 of the Evidence Act, he said that a fact admitted need not be proved.

849. Per contra, opposing the objection based on res judicata resulting from Suit 1885, Sri R.L.Verma, Advocate pointed out that though no such issue has been framed in respect to Suit-3 but is in rest of the three suits, still he would submit that none of the suit is barred either by res judicata or estoppel due to the decision in Suit 1885. In this regard, he first referred to para-6, 6-A, 6-B to 6-F, 7, 11-A and 23 of the plaint of Suit-4. Then he referred to para 5 and 6 of the written statement filed on behalf of defendants no. 3 and 4 (Suit-4), paragraphs 31, 32, 38 and 40 of the additional written statement dated 25.1.1963 and the additional written statement dated 28/29.11.1963. He also referred to the replication at page 59 of the paper book. He also placed before us para 6, 6-A, 6-B to 6F and 33 of the written statement of Abhiram Das.

850. Tracing the history of procedural law, he submitted that after the British annexation of the country, Code of Civil Procedure was enacted for the first time in 1859, i.e. Act No. 8 of 1859. However, it operated only in Presidency Towns and Small Causes Courts. Thereafter, some amendments were made in C.P.C., 1859; vide, Act No. 4 of 1860, 3 of 1861. Earlier CPC was replaced by Act No. 10 of 1877 and then Act No. 14 of

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1882.

851. Sri Verma contended that to attract the bar of Section 11 CPC, 1908, the following aspects have to be considered :

(a) pleadings of earlier suit;

(b) parties

(c) cause of action;

(d) relief; and

(e) judgment.

852. He would submit that if the judgment does not operate as res judicata, it cannot be utilized as a piece of evidence in respect to some observations and finding therein as the same are barred by Sections 41, 42 and 43 of the Evidence Act. Placing before us copy of the plaint of Suit 1885, Ex. A-22 (Suit-1) he argued that Mahant Raghubar Das filed the suit in his own capacity and not as a Mahant of Math Nirmohi Akhara. In the alternative he would submit that Sri Raghubar Das litigated disclosing his status as Mahant, Janamsthan Ayodhya. The said suit was in relation to a limited property right, i.e., Chabutara measuring 17 ft. x 21 ft. and the dispute pertains to the right of construction of a temple thereon. The cause of action for the suit was also limited against the State and that's why only Secretary, Council of India, was impleaded as defendant. Placing pleadings and judgment of Suit 1885 before us, he submits that act of Mahant Raghubar Das was neither in the representative capacity of all Hindus nor in the capacity of Mahant of Nirmohi Akhara which is a juristic personality and, therefore, there is no question of attracting the bar of res judicata. He also pointed out that neither the parties were same nor Nirmohi Akhara claimed any right in the said suit through Mahant Raghubar Das nor the dispute of inner courtyard was involved, hence, objection with

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respect to res judicata taken by Muslim parties is totally misconceived. In support, he placed reliance on Apex Court's decision in **State of Maharashtra Vs. M/s. National Construction Company, Bombay AIR 1996 SC 2367** (para 6, 9 and 17) and two single Judge judgments of this Court in **Munesh Kumar Agnihotri and others Vs. Lalli Prasad Gupta AIR 1989 (Alld.) 202** and **Ram Naresh Vs. State of U.P. 2003 (21) LCD 1120**. In respect to his submission of Sections 40, 41 and 42 of the Evidence Act, he placed reliance in **Abdul Quadir Vs. Tahira 1997 (15) LCD 379**. He further submit that mere mention of the word "Masjid" in the annexure to the plaint, i.e., the map, does not mean any admission of an undisputed fact between the parties of a subject matter attracting the principle of estoppel; and, placed reliance on **B.L. Sridhar Vs. K.M. Munireddy 2003 (21) LCD 88 (SC)=AIR 2003 SC 578**. So far as Suits- 1 and 5 are concerned, he submits that neither the parties were same nor Mahant Raghubar Das filed the Suit in representative capacity and, therefore, res judicata or estoppel has no application to the said suits.

853. Coming to the issues in question, we find that **Issue No. 5 (a) (Suit-1)** is in respect to whether the property in dispute before us was involved in original suit of 1885 or not and reads as under:

> *"Was the property in suit involved in Original Suit No. 61/280 of 1885 in the court of Sub Judge,Faizabad, Raghubar Das Mahant Vs. Secretary of State for India and others?"*

854. Apparently, it may not be said that the disputed property in Suit-1885 has no connection with the disputed property before us. However, we are also clearly of the view that entire

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disputed property before us was not up for consideration in Suit-1885 and, in fact, that was a suit for a very small part of the land out of the total land which is disputed before us and by itself to identify both being same, similar or identical would not be correct. From a perusal of the plaint in Suit-1885 (Ex. A-22, Suit-1) (Vol. 7, Page 245 of the Bound Registers of documents) it is evident that the plaintiff claimed permission to raise construction over a Chabutara at Janamsthan, Ayodhya measuring north 17 feet, east 21 feet, south 17 feet and west 21 feet. In para 2 and 3 of the plaint, the plaintiff, Mahant Raghubar Das, pleaded -

''दफा 2–यह कि चबुतरा जन्म–स्थान पूरब पच्छिम 21 फिट उत्तर दक्खिन 17 फिट है। उस पर चरणपादका गड़ी हुई है और छोटा सा मन्दिर रखा हुआ है जिसकी परस्तिश होती है।

दफा 3– यह चबुतरा मज़कूर बकब्जा मुद्दई है।.....''

855. The plaintiff (Suit-1885) prayed for grant of relief as under :

''डिक्री बनाने मन्दिर ऊपर चबुतरा जन्म स्थान वाकैया अयोध्या उत्तर 17 फिट पूरब 21 फिट दक्खिन 17 फिट पच्छिम 21 फिट के फरमाये जायें।''

856. In the map appended to the plaint (Suit-1885) though the disputed building and the area of inner and outer courtyard was also shown but from the pleadings in the plaint, it is evident that the dispute therein pertain to the Chabutara measuring 17X21 situated at south-east and in the outer courtyard.

857. Mohammad Asgar, who claimed himself to be Mutwalli, Masjid Babari, in his written statement (Suit-1885) also said that the dispute pertain only to the chabutara situated in the outer courtyard south-east. This is evident from the his pleadings in para 1, 3 and 4 of the written statement (Suit-1885) and the relevant extract thereof is as under :

''यह जमीन जिस पर चबूतरा है मूरिसान मुद्दई को न दी हो ... मुद्दई ने

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निस्बत इस टुकड़ा ज़मीन के मिलकियत उस पर हासिल नहीं की ... ता 1856 ई0 इस मुकाम पर चबूतरा नहीं था। 1857 ई0 में बना ... ज़ाहिर है कि बिना इस चबूतरे की 1857 ई0 से हुई है। ... यह ख्याल मुद्दई कि चबूतरा हमारा है, और जब कि चबूतरा हमारा है तो उस पर मन्दिर बनाने का भी अख़तियार हमको है महज़ बनफ्सानियत मज़हबी गलत फहमी मुद्दई की है क्योंकि उस चबूतरे पर बैठना या चढ़ावा चढ़ाने का भी अख़तियार मालिकाना बिला किसी तारूज़ के नही है।

858. From the above judgments, it is evident that they considered the dispute with respect to the construction sought to be made on the aforesaid Chabutara and it was not in respect to the entire disputed site or building as is before us. The right of ownership or possessory right in respect to any part of land in dispute as is before us was not involved in Suit-1885. The relief for permission to make construction of a temple on the Chabutara in the outer courtyard measuring 21X17 feet was sought. Moreover, in para 12 of the written statement dated 24.2.1989 of defendant no. 10 (Suit-1), he has also admitted that the suit was filed for permission to erect temple over the aforesaid chabutara, as is evident from the following :

"The said suit was filed for permission to erect temple over the said Chabutara. In respect of the said Chabutara, the said Mahant Raghubar Das had stated that the temple of Janamsthan was desired to be constructed over there."

859. In Suit-1, the plaintiff is seeking injunction against defendants in regard to his right to worship of the idols placed under the central dome in the inner courtyard. There is no claim either about ownership or possession.

860. Therefore, we are of the view that the property engaging attention of this Court in Suit-1 was not involved in original suit no. 61/280 of 1885, Mahant Raghubar Das Vs. Secretary for State of India and others and I**ssue No. 5 (a) (Suit-1) is**

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answered in negative.

861. **Issue No. 5 (b) (Suit-1)** is whether Suit-1885 was decided against the 'plaintiff'. It reads as under:

"Was it decided against the plaintiff?"

862. The issue, in fact, is a bit confusing vague and unclear. The word 'plaintiff' is not clearly defined. It does not indicate whether it needs to be answered with respect to the plaintiff (Suit-1) or plaintiff (Suit-1885). Evidently, Suit-1885 was filed by Mahant Raghubar Das while plaintiff (Suit-1) before us is Gopal Singh Visharad (substituted by his son Rajendra Singh Visharad). Nothing has been brought before us to show that Gopal Singh Visharad was connected or related with Raghubar Das and/or that Raghubar Das filed Suit-1885 representing Gopal Singh Visharad also. Sri Jilani and Sri Siddiqui, the learned counsel submitted that since Suit-1885 was filed for the benefit of Hindus in general, who used to visit the disputed site, as alleged, for worship and, therefore, Raghubar Das should be deemed to be representing Gopal Singh Visharad also as both are Hindu. The submission, in our view, is wholly misconceived and has to be rejected outrightly. The mere fact that two persons have a common religion or faith, it does not mean that the two are related in any manner or in a litigation one can be said to be representing another merely for the reason that the dispute in the suit filed by former has some relation with the common religious matter of the both. In fact, the learned counsel for the Muslim parties could not tell as to how and why Suit-1885 can be said to have been decided against Sri Gopal Singh Visharad, plaintiff (Suit-1) who is before us.

863. Treating as if Issue- 5 (b) (Suit-1) required answer by referring to plaintiff of Suit-1885, we find that it is true that the

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aforesaid suit was dismissed upto the level of Judicial Commissioner and no relief, as sought, was granted therein to the plaintiff Mahant Raghubar Das. In that context it can be said that the suit was decided against him. However, to hold that any issue relating to ownership or possession with respect to the disputed area in Suit-1885 i.e. Chabutara measuring 21'X17' situated at south east in the outer courtyard was decided against Mahant Raghubar Das would not be correct since there is no such finding recorded by the ultimate Court of appeal, i.e. the Judicial Commissioner except that plaintiff Raghubar Das could not place anything before the Court to substantiate his claim of ownership over the said Chabutara.

864. The record shows that the issue no. 6 was framed in the following matter :

"To whom does the land belong?"

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865. The Trial Court decided the aforesaid issue by holding that the said Chabutara is in possession of the plaintiff, as is being worshiped by Hindus and this is also admitted by the defendants, hence, the possession shows ownership and in this respect there cannot be any dispute. This part of the findings of the Trial Court was directed to be struck out of the judgment being redundant by the District Judge (the First Appellate Court) vide judgment dated 18/26.3.1886. The District Judge observed that "considering the situation of the disputed site, any innovation would cause more harm and derangement of order than benefit. All that can be done is to maintain status quo by the parties". While directing for striking of the above part of the observation with respect to the ownership of the Chabutara, the appellate Court observed as under :

"The words are redundant and are to be struck out of

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the judgment. The only question decided in this case is that the position of the parties will be maintained."

866. However, justifying the order of the Trial Court in dismissing the suit by declining to grant any relief, the District Judge held :

"The reason why this suit is dismissed is that there is no "injuria", nothing which would give a right of action to the plaintiff."

867. The Judicial Commissioner, Oudh (Hon'ble W. Young) in his judgment dated 2.9.1886 held as under :

"The matter is simply that the Hindus of Ajudhia want to erect a new temple of marble ... over the supposed holy spot in Ajudhia said to be the birthplace of Sri Ram Chandar. Now this spot is situate within the precincts of the grounds surrounding a mosque constructed some 350 years ago owing to the bigotry and tyranny of the Emperor Baber-who purposely chose this holy spot according to Hindu legend- as the site of his mosque.

The Hindus seem to have got very limited rights of access to certain spots within the precincts adjoining the mosque and they have for a series of years been persistently trying to increase there rights and to erect building over two spots in the enclosure.

(1) Sita ki Rasoi

(b) Ram Chandar ki Janam Bhumi.

The executive authorities have persistently repressed these encroachments and absolutely forbid any alteration of the 'status quo'.

I think this a very wise and proper procedure on their part and I am further of opinion that Civil Courts have

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properly dismissed the plaintiff's claim.

The pleas on appeal to this ... are wholly unsupported by facts in the case or by any document that appears to me ... some of the reasoning of the Lower Appellant Court as to the limitations of the Civil Court jurisdiction. However I approve of their final conclusion to which it has come – and I see no reason to interfere with its order modifying the wording of part of the judgment of the Court of First Instance. There is nothing whatever on the record to show that plaintiff is in any sense the proprietor of the land in question.

This appeal is dismissed with costs of of all Courts."

868. Therefore, the order of Judicial Commissioner clearly shows that it had specifically approved the final conclusion of the Court below and has also declined to interfere with the part of the order of the first Appellate Court modifying Trial Court's order since there was nothing to show that the plaintiff Mahant Raghubar Das was the proprietor of the land in question. The land in question comprised of only Chabutara measuring 17X21 feet situated at south-east. However, Issue 6, which was worded as to whom the land in dispute belong was not answered by the two appellate Courts giving any finding in favour of anyone. Therefore, while answering the **issue 5(b) (Suit-1),** we can say only this much that the suit was decided against the plaintiff Mahant Raghubar Das inasmuch he was not granted any relief by the respective Courts and not beyond that and it is answered accordingly.

869. Next is **Issue No. 5 (c) (Suit-**1):

"*Was the suit within the knowledge of Hindus in general and were all Hindus interest in the same?"*

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870. We find that in para 13 of the written statement dated 24.2.1989, defendant no. 10 (Suit-1) though has averred that Suit-1885 was filed by Mahant Raghubar Das on behalf of other Mahants and Hindus of Ayodhya and Faizabad etc. but no material or evidence has been placed on record whatsoever to support it. Neither the copy of the plaint Ex. A-22 (Suit-1), written statement filed by Mohammad Asgar, the alleged Mutwalli, Ex. A-23 (Suit-1), the Trial Court's judgment dated 24.12.1885, Ex. A-26 (Suit-1) as well as the judgment of the appellate court dated 18/26.3.1886, i.e. Ex. 27 (Suit-1), contain anything nor there is any mention whatsoever which may justify an inference that the aforesaid suit was filed by Mahant Raghubar Das representing all Mahants of Ayodhya and Hindus of Ayodhya and Faizabad etc. In the absence of any material or evidence, documentary or otherwise, to support the above factual statement, we have no hesitation to answer the above issue in negative, i.e. against the defendants. Moreover, it is also not the case of the defendants (Suit-1) that Suit-1885 was filed by Mahant Raghubar Das by obtaining permission of the Court to file the said suit in representative capacity and, therefore also it cannot be said that in the aforesaid suit, plaintiff Mahant Raghubar Das represented all the Mahants of Ayodhya as well as Hindus. The assertions about alleged knowledge of Hindus in general and their interest in the subject matter are very vague, uncertain and unreliable in law. If some dispute pertains to a place and that too a religious one, a large number of persons following the same faith and belief may have interest to know about the matter and they may also have the knowledge of the dispute but that is neither here nor there and would have no legal implication in the matter. Neither any provision impelling

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us to take a different view has been placed nor we are persuaded to find something in favour of the defendants and even otherwise nor any binding precedent is placed before us throwing light on the issue in question in support of the defendants and, therefore also we find no reason to answer the aforesaid issue in positive in any manner. In any case, since no evidence, whatsoever, showing that the Hindus in general had knowledge of the Suit-1885 or that all Hindus were interested in the same, has been placed on record, though both these aspects are factual and ought to be proved by cogent material evidence, **we decide the aforesaid issue, i.e., Issue No. 5 (c) (Suit-1) in negative, i.e. against the defendants**.

871. **Issue No. 7 (a) (Suit-4)** is also similar to Issue No. 5 (c) (Suit-1) and reads as under:

> "*Whether Mahant Raghubar Dass, plaintiff of Suit No. 61/280 of 1885 had sued on behalf of Janma Sthan and whole body of persons interested in Janma-Sthan?*"

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872. Sri Siddiqui besides his oral submissions has said in his written submissions with respect to issue no. 7(a) (Suit-4) as under:

> *"In the plaint of the said suit Raghubar Das has described himself as Mahant Janam Asthan and raised the grievance of the whole the body of persons having faith in the said Chabutara wooden temple visiting the same. No personal or individual interest has been at all averred and plaint averments make it vividly clear as such."*

873. We have already said that Mahant Raghubar Das filed the above suit asserting his capacity as Mahant Janam Asthan but there is not even a whisper in the entire plaint of Suit-1885 that he is filing the above suit for and on behalf of the Hindus in

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general and in representative capacity for their benefit, hence the submission made by Sri Siddiqui, is find difficult to accept. By doing something if some more benefit or convenience would have become available to the visitors or worshippers, it cannot be said that the suit itself was filed in representative capacity or for the whole body of the persons, i.e., those who have faith in Ram Chabutara in respect whereto Suit-1885 was filed.

874. Here also nothing has been placed on record to show that Mahant Raghubar Das filed Suit-1885 representing Janamsthan as a juristic personality or as whole body of persons interested in Janamsthan. For the reasons which we have already discussed above qua Issues No. 5 (c) (Suit-1) which are entirely applicable to this issue also, **we answer Issue No. 7 (a) (Suit-4) in negative and hold that there is nothing to show that Mahant Raghubar Das filed Suit-1885 on behalf of Janamsthan and whole body of persons interested in Janamsthan.**

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875. At this very stage, we also deal with **Issue No. 7 (d) (suit-4)** which says that in Suit-1885 whether title of Muslims to the property in dispute or any portion thereof was admitted by the plaintiff of the said suit and if so its effect. It reads as under:

> *"Whether in the aforesaid suit, title of the Muslims to the property in dispute or any portion thereof was admitted by plaintiff of the that suit? If so, its effect?"*

876. Pleading of Suit-1885 have already been discussed above in extentio. We do not find any such admission therein nor such indication is discernible from the three judgments of the three Courts, namely, the Court of Sub Judge, Faizabad; the District Judge, Faizabad and Judicial Commissioner, Lucknow (Oudh). The learned Counsels for the defendants (Suit-1), namely, Sri

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Jilani and Sri Siddiqui also could not place anything wherefrom it can be said that Mahant Raghubar Das at any point of time admitted the title of Muslims to the property in dispute or any portion thereof in Suit-1885. In the circumstances, we hold that the aforesaid issue to this extent has to be answered in negative that there is no admission by Mahant Raghubar Das, plaintiff of Suit-1885 about the title of Muslims to the property in dispute or any portion thereof. In absence of any such admission, the question of considering effect thereof does not arise. **Issue No. 7 (d) (Suit-4) is answered accordingly.**

877. Now we come to **Issues No. 5 (d) (Suit-1), 7 (c) (Suit-4), 8 (suit-4) and 23 (Suit-5),** which specifically relate to the legal effect of the pleadings pertaining to Suit-1885 as discussed above, i.e. res judicata and estoppel. They read as under:

> *"Does the decision in same bar the present suit by principles of res judicata and in any other way?"*
>
> *"Whether in view of the judgment in the said suit, the members of the Hindu community, including the contesting defendants, are estopped from denying the title of the Muslim community, including the plaintiffs of the present suit, to the property in dispute? If so, its effect?"*
>
> *"Does the judgment of case No. 6/281 of 1981, Mahant Raghubar Dass Vs. Secretary of State and others operate as res judicata against the defendants in suit?"*
>
> *"Whether the judgment in suit no. 61/280 of 1885 filed by Mahant Raghubar Das in the Court of Special Judge, Faizabad is binding upon the plaintiffs by application of the principles of estoppel and res judicata as alleged by the defendants 4 and 5?"*

878. Proceeding to consider the rival submissions on merits,

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we shall first like to mention in brief what res judicata is, its genesis and evolution.

879. The legislative history involving the principle of res judicata brings us to the first codified civil procedure i.e. Act 8 of 1859, which was applicable to only the Mofussil Courts (i.e. the Courts of Civil Judicature not established by Royal Charter). Prior thereto, the procedure of Mofussil Courts was regulated by Special Acts and Regulations, which after enactment of Act 8 of 1859 were repealed by Act 10 of 1861. Act 23 of 1861 further amended 1859 Act. Section 42 of Act 23 of 1861 gives short title as 'Code of Civil Procedure' to parent Act 8 of 1859. In 1862, the Supreme Court and the Courts of Sadar Diwani Adalat in Presidency Towns were abolished by the High Courts Act, 1861 and powers of those Courts were vested in the Chartered High Courts. The Letters Patent of 1862 establishing the High Courts extended the procedure of Act 8 of 1859 to these Courts. The Charter of 1865 which empowered the High Courts to make Rules and Orders regulating proceedings in civil cases, required them to be guided, as far as possible, by the provisions of Code of 1859 and subsequent amending Acts. Act 8 of 1859 was amended from time to time vide Act 4 of 1860, 43 of 1860, 23 of 1861, 9 of 1863, 20 of 1867, 7 of 1870, 14 of 1870, 9 of 1871, 32 of 1871 and 7 of 1872. The Act 8 of 1859, which we can term as the “first codified civil procedure”, was repealed and substituted by Act 10 of 1877, which may be termed as “second codified civil procedure”. There were only two amendments in this Act, vide Act 18 of 1878 and 12 of 1879. Within five years of the enactment of the second Code, this was also repealed and superseded by Act 14 of 1882, which can be treated as “third Code of Civil Procedure”. It was also amended

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by Acts 15 of 1882, 14 of 1885, 4 of 1886, 10 of 1886, 7 of 1887, 8 of 1887, 6 of 1888, 10 of 1888, 13 of 1889, 8 of 1890, 6 of 1892, 5 of 1894, 7 of 1895 and 13 of 1895. It was then superseded and substituted by the present Code, i.e., Act No. 5 of 1908, which came into force on 1st January, 1909.

880. The learned counsel for the plaintiff (Suit-3), while trying to take this Court through the history of legislation, intended to argue though faintly that the question as to whether the suits in question sought to be barred by res judicata would be governed by the provision pertaining to res judicata as it stood in 1885 when the Suit-1885 was filed and decided and not by the subsequent enactments since the language of the provision pertaining to res judicata has gone under crucial amendments from time to time.

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881. In our view, the argument at the threshold is thoroughly fallacious and deserves to be mentioned for rejection only. It is not in dispute that all the four Codes were enacted with the preamble mentioning as an Act to consolidate and to amend the laws relating to procedure of the Courts of Civil Judicature meaning thereby the legislature all through intended to construe exhaustive enactments dealing with the matters pertaining to procedure of Courts in civil matters. To consolidate means to collect the statutory law relating to a particular subject and to bring it down to take in order that it may form a useful code applicable to the circumstances existing at the time when the consolidation is enacted as observed by the Privy Council in **A.G. of Bengal Vs. Prem Lal Mullick (1895) ILR 22 Cal. 788 (PC)**. Same view was expressed by our full Bench also in **Shantha Nand Gir Chela Vs. Basudevanand AIR 1930 Alld. 225**. The purport of such codification means that if the language

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of the statute is plain, simple and unambiguous, there may not be any occasion for the Court to have recourse to the earlier law but if it is capable of more than one meaning, it is permissible to refer to the previous state of law so as to construe the provision correctly. A consolidating Act raises the presumption that it does not intend to alter the earlier law in its entirety unless the changes and alteration are such so as to show that the earlier law has been made redundant in its entirety.

882. However, for the purpose of the present case, it may not be necessary either to take an extreme view in the matter for the reason that principle of res judicata, as it stands today, we find has its origin and existence long back besides any boundation of system of jurisprudence whether Hindu law, Muslim law, English law etc. We do not find any substantial change in the principle and the very basis of the concept which if applicable would have to be followed by a Court of law unless it can be shown that the principle of res judicata, as is known, is not at all attracted in a given case. We find that the availability of the principle of res judicata existing in different systems of law has been very painstakingly traced by the Hon'ble Judges of Lahore High Court in a Full Bench decision in **Mussammat Lachhmi Vs. Mussammat Bhulli, 1927 ILR (VIII) 384** and it would be useful to have the benefit of such in depth study by reproducing the same as under :

> "*In the mitakshra (Book II, Chap. I, Section V, verse 5) one of the four kinds of effective answers to a suit is "a plea by former judgment" and in verse 10, Katyayana is quoted as laying down that "one against whom a judgment had formerly been given, if he bring forward the matter again, must be answered by a plea of Purva Nyaya or*

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former judgment" (Macnaughten and Colebrooke's translation page 22). The doctrine, however, seems to have been recognized much earlier in Hindu Jurisprudence, judging from the fact that both the Smriti Chandrika (Mysore Edition, pages 97-98) and the Virmitrodaya (Vidya Sagar Edition, page 77) base the defence of Prang Nyaya (=former decision) on the following text of the ancient law-giver Harita, who is believed by some Orientalists to have flourished in the 9th Century B.C. and whose Smriti is now extant only in fragments :-

"The plaintiff should be non-suited if the defendants avers; 'In this very affair, there was litigation between him and myself previously,' and it is found that the plaintiff had lost his case".

There are texts of Parsara (Bengal Asiatic Society Edition, page 56) and of the Mayukha (Kane's Editiona, page 15) to the same effect.

Among Muhammadan law-givers similar effect was given to the plea of "Niza-I-munfasla" or "Amar Mania Taqrir Mukhalif." Under Roman Law, as administered by the Proetors' Courts, a defendant could repel the plaintiff's claim by means of "exceptio rei judicata" or plea of former judgment. The subject received considerable attention at the hands of Roman jurists and as stated in Roby's Roman Private Law (Vol. II, page 338) the general principle recognized was that "one suit and one decision was enough for any single dispute" and that "a matter once brought to trial should not be tried except, of course, by way of appeal".

The spirit of the doctrine is succinctly expressed in

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the well known maxim "Nemo debet bis vexari pro eadem causa" (no one shall be twice vexed for the same cause). At times the rule worked harshly on individuals (E.g., when the former decision was obviously erroneous) but its working was justified on the great principle of public policy "Interest rei publicant sit finis litium" (it is for the public good that there be an end of litigation).

In some of these ancient systems, however, the operation of the rule was confined to cases in which the plaintiff put forward his claim to "the same subject matter with regard to which his request had already been determined by a competent Court and had passed into judgment". In other words, it was what is described as the plea of "estoppel by judgment" or "estoppel by record", which was recognized and given effect to. In several European continental countries even now the rule is still subject to these qualifications, e.g., in the Civil Code of France, it is said "The authority of the thing adjudged (chose judge) has place only in regard to that which has constituted the object of a judgment. It is necessary that the thing demanded be the same; that the demand be founded upon the same cause; that it be between the same parties and found by and against them in the same capacity."

In other countries, and notably in England, the doctrine has developed and expanded, and the bar is applied in a subsequent action not only to cases where claim is laid to the same property but also to the same matter (or issue) as was directly and substantially in dispute in the former litigation. In other words, it is the identity of the issue, which has already been "necessarily

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tried" between the parties and on which a finding has been given before, and not the identity of the subject matter which attracts the operation of the rule. Put briefly the plea is not limited to "estoppel by judgment" (or record), but is also extended to what is described as "estoppel by verdict". The earliest authoritative exposition of the law on the subject in England is by Chief Justice DeGrey in the Duchess of Kingston Case (1), which has formed the basis of all subsequent judicial pronouncements in England, America and other countries, the jural systems of which are based on or inspired by British Jurisprudence. In that case a number of propositions on the subject were laid down, the first of them being that "the judgment of a Court of concurrent jurisdiction, directly upon the point, is as a plea a bar, or as evidence conclusive, between the same parties upon the same matter, directly in question in another Court."

In British India the rule of res judicata seems to have been first introduced by section 16 of the Bengal Regulation III of 1793, which prohibited the Zilla and City Courts "from entertaining any cause, which form the production of a former decree of the record of the Court, shall appear to have been heard and determined by any judge or any superintendent of a Court having competent jurisdiction". The earliest legislative attempt at codification of the law on the subject was, however, made in 1859, when the first Civil Procedure Code was passed. Section 2 of the Code barred the cognizance by Courts of suits based on the same cause of action, which had been heard and determined before by Courts of competent

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jurisdiction. It will be seen that this was only a partial recognition of the English rule in so far as it embodied the principles relating to estoppel by judgment (or record) only and did not extend to estoppel by verdict. In 1877 when the Code was revised, the operation of the rule was extended in section 13 and the bar was no longer confined to the retrial of a dispute relating to the same cause of action but the prohibition equally applied against reagitating an issue, which had been heard and finally decided between the same parties in a former suit by a competent Court. The section has been amended and amplified twice again and has assumed its present form in section 11 of the Code of 1908, the principal amendments which have a bearing on the question before us, being (a) that the expression "former suit" was defined as meaning a suit which has been first decided and not one which was first instituted, and (b) that the competence of a Court is not regulated by the course of appeal of the former suit but by its capacity to try the subsequent suit as an original Court.

But although the Indian Legislature has from 1859 onwards made several attempts to codify the law on the subject and the present section 11 is a largely modified and improved form of the original section 2 of Act VIII of 1859, it must be borne in mind that the section as even now enacted, is not exhaustive of the law on the subject, and the general principles of res judicata apply to matters on which the section is silent and also govern proceedings to which the section does not in terms apply."

883. It is, thus, evident that Res judicata is a principle or doctrine or concept which is well recognized since ancient

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times. It is a principle of universal application treated to be a fundamental and basic idea in every developed jural society. The very objective of adjudication of a dispute by an adjudicatory forum, whatever name it is called, is to bring to an end dispute or *lis* between the parties. The seed of justice, thus, aims to have every matter fairly tried once and, thereafter, further litigation should be barred treating to be concluded for all times to come between the parties. So far as the dispute which has already been adjudicated, it is a rule common to all, well defined in a civilized system of jurisprudence that the solemn and deliberate sentence of law upon a disputed fact pronounced, after a proper trial, by its appointed organ should be regarded as final and conclusive determination of the question litigated and should set at rest, forever, the controversy. This rule which treats the final decision of a competent Tribunal as "irrefragable truth" was well known to Hindu and Mohammadan lawyers and jurists since long as the system is recognized in Hindu as well as Muslim laws also.

884. So far as Europe is concerned, it is mainly influenced with the legal system of Roman jurisprudence. This principle is one of the great gains of Roman jurisprudence carried to modern jural system of Europe. In the Anglo saxon jurisprudence, this principle is formerly based on an maxim of Roman jurisprudence *"interest reipublicae ut sit finis litium"* (it concerns the state that there should be an end to law suits) and partly on the maxim *"nemo debut bis vexari pro una at eadem cause* (no man should be vexed twice over for the same cause). The Act 8 of 1859 provided the principle of the res judicata in Section 2 which read as under :

"The civil court shall not take cognizance of any suit

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brought on or cause of action which shall have been heard and determined by a court of competent jurisdiction in a former suit between the same parties, or between parties under whom they claim."

885. The principle of res judicata vide Section 2 of C.P.C., 1859 came to be considered before the Privy Council in **Soorjomonee Dayee Vs. Suddanund Mahapatter (1873) 12 BLR 304, 315 (P.C.)**. The Judicial Committee said "We are of the opinion that Section 2 of the Code of 1859 would by no means prevent operation of the general law relating to res judicata founded on the principle *"nemo debet bis vexari pro eadem causa"*.

886. In **Krishna Behary Ray Vs. Bunwari Lal Ray, (1875) 1 Cal. 144 (146),** Privy Council while construing the expression "cause of action" held that it cannot be interpreted in its literal and restricted sense and if a material issue had been tried and determined between the same parties by a competent court, the same cannot be re-agitated again by the parties in a later suit who were also partied in the former suit.

887. When this view was expressed in some other judgment also the legislature introduced the words "matter directly and substantially in issue" in Section 13 in Act No. 10 of 1877 and 14 of 1882. In Act No. 10 of 1877, it was Section 13 of the Code.

888. In **Parthasaradi Ayyangar and others Vs. Chinnakrishna Ayyangar and others Vol. V ILR Madras Series (1882) 304** an interesting question with respect to res judicata and estoppel by verdict and/or estoppel by judgment was considered. An original suit no. 12 of 1850 was instituted by certain persons of Tenkalai sect in the Court of Sadar Amin

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against the members of Vadakalai sect. A Vadakalai temple was erected in the village of Mathura Mangalam in the honor of a devotee Embar in which the member of Tenkalai sect were interested in maintaining worship and in defending the privileges of the temple. The other sect, namely, Vadakalai, also erected a Vaishnava temple on a private site in the Sanadi (temple) street in honor of a devotee, Vedhanta Desikar, which was later on thrown open for regular public worship. In 1849 the above mentioned suit was filed praying that the Vadakalais be compelled to remove their idols and be prohibited from celebrating festivals and erecting any temple in the village for the worship of their idols. The Vadakalais, defended the suit contending that the general right of owners of land to erect on their own property, places of public worship and to set up therein such idols as they thought fit. Earlier to that suit, it appears that there was some other suit between the same sects wherein the pundit had delivered an opinion that the public worship of idols of devotees such as the spiritual teachers of the respective sects was not recognized by Hindu law, and that law did not permit persons to assemble together to celebrate to such idols. But where it was customary to do so, such idols might be used in private worship. Relying on the said opinion of the pundit, the Sadar Amin granted the order of injunction prayed for. In the appeal preferred before the Judge, he held that supposing the worship of which the Tenkalais complained was prejudicial to the interests of the institution they supported, the question being one of conscience, no cause of action accrued to the Tenkalais, and that it was competent to the Vadakalais to adopt the worship of what idols they pleased in pagodas erected on their own lands. It reversed the decree in so much it ordered

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the removal of the idols and prohibited the Vadakalais from erecting pagodas and celebrating public worship therein. But it found that conduct of procession in honor of Vadakalai idols was an innovation, did not form an essential part of the worship, and might be productive of public disturbance, and, accordingly, passed an order restraining it. Noticing that this part of the order was beyond the relief sought in the plaint, an appeal was preferred before the Sadar Court. The Sadar Court sought for opinion of the pundits of the Court with respect to Hindu law on the subject who opined that it would be contrary to custom to allow a pagoda to be erected by the Vadakalai Vaishnavas even on their own ground if such an erection was against the feelings generally of the people of the village. He referred to a passage in the preamble of the Mitakshara which declared that "no cases prejudicial to the feelings of the inhabitants of a town or village shall be entertained by a King". The Sadar Court accordingly decreed that the defendants (the Vadakalais) should be prohibited from erecting temple or instituting public worship on the spot of ground objected to by the plaintiffs and which lay within the range of their temple, that is to say, withing the usual range of the processions conducted in connection with the temple worship. In another appeal no. 141 of 1856, Sadar Court declared that the right to pass in procession through the public streets of a town in such a way as the Magistrate might not object to as dangerous to the public safety, was a right inherent in every subject of the state and the Vadakalais' action which continued was in disobedience as was restrained by the earlier decree and injunction prohibiting decree was again passed in 1862. Thereafter, Vadakalais removed their idols and erected a building for the purpose of worship on another site. No

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arrangement of celebration of the public worship was made till 1879 except of occasional processions. However, in 1879 again provision was made for continuous conduct of such worship throughout the year. This led to another suit which ultimately reached to the appellate Court. It was held that the decree in earlier suit cannot preclude the Vadakalais from building a temple or conduct public worship at any other spot and plea of estoppel based on the earlier decisions was held to be inapplicable. The Court held that the matter in issue which was raised and decided in the former suit was not a question of fact but a question of law based on the opinion of pundit which was found opposed to the law declared to be the law of India under British administration. The Court held that the law of India under British administration as declared is that the person of whatever sect are at liberty to erect building and conduct public worship on their own land provided they neither invade the rights of property enjoyed by their neighbours nor cause a public nuisance, and that they are also entitled to conduct religious processions through public streets so that they do not interfere with the ordinary use of such streets by the public and subject to such directions as the Magistrate may lawfully give to prevent obstructions of the thoroughfare or breaches of the public peace. The Court held that the principle of res judicata also would not come in way. The Courts are bound to ascertain and apply the law and not to make law. It observed that what was argued was estoppel by verdict and estoppel by judgment. Explaining the "estoppel by verdict", it was held that it indicates that such estoppels are confined to questions of facts and no authority was cited before the Court to warrant the application of rule to determination of an issue of law. Explaining the

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principle of res judicata, the Court observed, *"Although considerations of convenience have established the rule that the final decree of a competent Court is decisive of the rights it declares or refuses notwithstanding it may have proceeded on an erroneous view of the law, and although the same considerations have established the rule that the determination by a competent Court of questions of fact directly and substantially in issue are binding on the parties, these considerations do not suggest the expediency of compelling the Courts to refuse to give effect to what they have ascertained to be the law."* However, the Court also said that all earlier decisions were in respect to a different place and would not bar the subsequent suit which was in respect to another spot.

889. In **Ram Kirpal Vs. Rup Kuari (1883) ILR 6 (Alld.) 269 (P.C.)** it was held that Section 13 of 1877 Act would not apply to execution proceedings but upon general principles of law the decision of a matter once decided in those proceedings was a bar to the same matter being re-agitated at a subsequent stage thereof.

890. Act 5 of 1908 contains the provision of res judicata under Section 11 which substantially is same as it was in Act 14 of 1882, but includes certain explanations clarifying some aspects of the matter considered to be necessary in the light of some judgments of different High Courts. It has undergone some amendments in 1976, but has withstood the test of the time more than a decade. Section 11 of Act 5 of 1908, as it stands today, reads as under :

> ***"11. Res judicata.-*** *No Court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit*

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between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a Court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such Court.

Explanation I- The expression "former suit" shall denote a suit which has been decided prior to the suit in question whether or not it was instituted prior thereto.

Explanation II.- For the purposes of this section, the competence of a Court shall be determined irrespective of any provisions as to a right of appeal from the decision of such Court.

Explanation III.- The matter above referred to must in the former suit have been alleged by one party and either denied or admitted, expressly or impliedly, by the other.

Explanation IV.- Any matter which might and ought to have been made ground of defence or attack in such former suit shall be deemed to have been a matter directly and substantially in issue in such suit.

Explanation V.- Any relief claimed in the plaint, which is not expressly granted by the decree, shall, for the purposes of this section, be deemed to have been refused.

Explanation VI- Where persons litigate bona fide in respect of public right or of a private right claimed in common for themselves and others, all persons interested in such right shall, for the purposes of this section, be deemed to claim under the persons so litigating.

Explanation VII.- The provisions of this section shall apply to a proceeding for the execution of a decree and reference in this section to any suit, issue or former suit shall be

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construed as references, respectively, to proceedings for the execution of the decree, question arising in such proceeding and a former proceeding for the execution of that decree.

Explanation VIII.-An issue heard and finally decided by a Court of limited jurisdiction, competent to decide such issue, shall operate as res judicata in as subsequent suit, notwithstanding that such Court of limited jurisdiction was not competent to try such subsequent suit or the suit in which such issue has been subsequently raised."

891. Explanations VII and VIII have been added by Amendment Act of 1976 and admittedly have no application to the dispute in hand.

892. The plea of res judicata is an inhibition against the Court and a finding in favour of a party on the plea of res judicata would oust the jurisdiction of the Court to try the subsequent suit or the suit in which such issue has been raised, which has been heard and finally decided in the former suit (see : **Pandurang Dhondi Chougule Vs. Maruti Hari Jadhav AIR 1966 SC 153**. Since, it restrains the Court to try the subsequent suit or an issue raised subsequently, we have no manner of doubt that for the purpose of present case, it is the provision contained in Section 11 of Act 5 of 1908, which will govern the matter and not the earlier one. The application of principle of res judicata is based on public policy and in the interest of the State as well. However, we would like to clarify here itself that we may not be understood as observing that the principle of res judicata is confined to Section 11 of the Act 5 of 1908. As we have already held, the principle of res judicata was well recognized in the ancient legal systems also and it has

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consistently been held as not limited to the specific words of the Code for its application.

893. One of the oldest case which considered the doctrine of res judicata vide Section 11, CPC, 1908 is **Sheoparsan Singh and others Vs. Ramnandan Prasad 43 IA 91(PC)= 20 C.W.N. 738 (P.C.)** wherein their Lordships reminded the dictum in the words of Lord Coke in **Priddle Vs. Napper 6 Coke IA 1777** which said *"Interest reipublicae ut sit finis litium"*, otherwise great oppression might be done under colour and pretence of law. (See also **Commissioner of Central Excise Vs. Shree Baidyanath Ayurved Bhawan Ltd. JT 2009 (6) SC 29**).

894. The statement of law as propounded in **Sheoparsan Singh (supra)** has been approved by the Apex Court in **Iftikhar Ahmed Vs. Syed Meharban Ali 1974 (2) SCC 151**.

895. Then comes **Hook Vs. Administrator General of Bengal 1921 (ILR) 48 (Cal.) 499 (P.C.)** wherein it was said that Section 11 of the Code is not exhaustive of the circumstances in which an issue is res judicata. Even though the Section may not apply, the plea of res judicata still would remain operative apart from the limited provisions of the Code, and would bar a subsequent suit on the same issue unless is shown to be inapplicable by the defendants referring to pleading, parties and cause of action etc. It was reaffirmed by Lord Buckmaster in **T.B. Ramachandra Rao and another Vs. A.N.S. Ramchandra Rao and others, AIR 1922 PC 80** wherein the remarks were "*that the principle which prevents the same case being twice litigated is of general application, and is not limited by the specific words of the Code in this respect.*"

896. In **Kalipada De Vs. Dwijapada Das, AIR 1930 PC 22** the Privy Council held *"the question as to what is considered to*

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be res judicata is dealt with by Section 11 of CPC 1908. In that section many examples and circumstances in which the rule concerning res judicata applies are given; but it has often been explained by this Board that the terms of Section 11 are not to be regarded as exhaustive".

897. In **Gulam Abbas Vs. State of U.P., AIR 1981 SC 2199** it was held that Section 11 is not exhaustive of the general doctrine of res judicata. Though the rule of res judicata as enacted in Section 11 has some technical aspects the general doctrine is founded on consideration of high public policy to achieve two objectives namely that there must be a finality to litigation and that individuals should not be harassed twice over the same kind of litigation.

898. It is thus clear that principle of res judicata is based on sound policy and not an arbitrary one. Henry Campell Black in his Treatise "for law of judgments" 2nd Edition Vol. I, para 242 has observed that *"Where the court has jurisdiction of the parties and the subject matter in the particular case, its judgment unless reversed or annulled or impeachment by parties or privies, in any collateral action or proceeding whatever the Doctrine of this court, and of all the courts of this country, is formerly established, that if the court in which the proceedings took place had jurisdiction to render the judgment which it did no error in its proceedings which did not affect the jurisdiction will render the proceedings void, nor can such errors be considered when the judgment is brought collaterally into question one. This principle is not merely an arbitrary rule or law but it is a doctrine which is founded upon reason and the soundest principle of public policy."*

899. In **Jenkins Vs. Robertson, (1867) LRIHL 117** Lord

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Romily observed *"res judicata by its very words means a matter upon which the court has exercised its judicial mind and has come to the conclusion that one side is right and has pronounced a decision accordingly. In my opinion res judicata signifies that the court has after argument and considerations come to a decision on a contested matter."*

900. In Corpus Juris Vol. 34 it is said that it is a rule of universal law providing every regulated system of jurisprudence and is put upon two grounds embodied in various maxims of common law, the one of public policy and necessity which makes it to the interest of the state that there should be an end of litigation, and, the other, hardship on the individual that he should not be vexed twice for the same cause.

901. The Apex Court in **Smt. Raj Lakshmi Dasi and others Vs. Banamali Sen and others AIR 1953 SC 33** remarked *"When a plea of res judicata is founded on general principles of law, all that is necessary to establish is that the Court that heard and decided the former case was a Court of competent jurisdiction. It does not seem necessary in such cases to further prove that it has jurisdiction to hear the later suit. A plea of res judicata on general principle can be successfully taken in respect of judgments of Courts of exclusive jurisdiction, like revenue Courts, land acquisition Courts, administration Courts, etc. It is obvious that these Courts are not entitled to try a regular suit and they only exercise special jurisdiction conferred on them by the statute.*

902. In **Lal Chand Vs. Radha Krishan (supra)** the Apex Court reiterated *"the principle of res judicata is conceived in the larger public interest which requires that all the litigation must sooner than later come to an end. The principle is also founded*

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on equity, justice and good conscious which require that a party which has once succeeded on a issue should not be permitted to be harassed by a multiplicity of proceedings involving the same issue".

903. In **K. Ethirajan (sapra)** which has also been relied by Sri Siddiqui, learned counsel for plaintiff (Suit-4) the Apex Court refering to para 26 of its earlier judgement in **Hope Plantations Ltd. Vs. Taluk Land Board, Peermade, JT 1998 (7) SC 404** held that rule of res judicata prevents the parties to a judicial determination from litigating the same question over again. Where the proceedings have attained finality, parties are bound by the judgement and cannot litigate again on the same cause of action.

904. In **Sulochana Amma (supra)** the scope of Section 11 CPC was considered and it was said that Section 11 does not create any right or interest in the property but merely operates as a bar to try the same issue once over. It aims to prevent multiplicity of the proceedings and accords finality to an issue which directly and substantially has arisen in the former suit between the same parties or their privies, decided and became final so that parties are not vexed twice over; vexatious litigation would be put to an end and the valuable time of the Court is saved. The above judgement also clarify Explanation VIII that the decree of a Court of limited jurisdiction would also operates as res judicata in the subsequent suit though the subsequent suit was not triable by that Court.

905. Recently the Apex Court has reiterated the above view in **Brij Narain Singh Vs. Adya Prasad, JT 2008 (3) SC 1.**

906. The doctrine of res judicata has been extended to public interest litigation also in **State of Karnataka and another Vs.**

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All India Manufacturers Organization (supra) and the Court has said:

> *"As a matter of fact, in a public interest litigation, the petitioner is not agitating his individual rights but represents the public at large. Hence the litigation is bona fide, a judgement in previous public interest litigation would be a judgement in rem. It binds the public at large and bars any member of the public from coming forward before the court and raising any connected issue or an issue, which had been raised should have been raised on an earlier occasion by way of public interest litigation."*

907. In **Mathura Prasad Sarjoo Jaiswal and others Vs. Dossibai AIR 1971 SC 2355**, the Court clarified that the doctrine of res judicata is in the domain of procedure and cannot be exalted to the status of a legislative direction between the parties so as to determine the question relating to interpretation of the enactment affecting the jurisdiction of the Court finally between them even though no question of fact or mixed question of law and fact and relating to the right in issue between the parties once determined thereby. It also said that a decision of a competent Court on a matter in issue may be res judicata in another proceeding between the same parties; the "matter in issue" may be an issue of fact, an issue of law or one of mixed law and fact. However, the Apex Court said that the previous decision on a matter in issue alone is res judicata; the reasons for the decision are not res judicata, and said as under :

> *"The previous decision on a matter in issue alone is res judicata; the reasons for the decision are not res judicata."*

908. Another aspect as to when the rule of res judicata would

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not be attracted has been dealt with in detail in para 10 of the judgment in **Mathura Prasad Serjoo Jaiswal (supra)** which reads as under :

> *"A mixed question of law and fact determined in the earlier, proceeding between the same parties may not, for the same reason, be questioned in a subsequent proceeding between the same parties. But where the decision is on a question law, i.e. the interpretation of a statute, it will be res judicata in a subsequent proceeding between the same parties where the cause of action is the same, for the expression "the matter in issue" in S. 11, Code of Civil Procedure, means the right litigated between the parties, i.e. the facts on which the right is claimed or denied and the law applicable to the determination of that issue. Where, however, the question is one purely of law and it relates to the jurisdiction of the Court or a decision of the Court sanctioning something which is illegal, by resort to the rule of res judicata a party affected by the decision will not be precluded from challenging the validity of the order under the rule of res judicata, for a rule of procedure cannot supersede the law of the land."*

909. In other words, what we discern from the above authorities, is that the res judicata is a fundamental principle in a legal system to set at rest a dispute once settled so as not to trouble the parties again and again on the same matter. It operates on the principle that a question must be once fairly and finally tried by a competent Court and, thereafter, further litigation about it between the same parties must be deemed to have concluded and should not be allowed to be re-agitated. The maxim to be attracted is *"no one shall be vexed twice over the*

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same matter". [See **Shree Baidyanath Ayurved Bhawan Ltd. (supra)**].

910. It is not that every matter decided in a former suit can be pleaded as res judicata in a subsequent suit. To attract the plea of res judicata, the conditions precedent, which need to be proved are :

1. The matter directly and substantially in issue in the subsequent suit must be the same matter, which was directly and substantially in issue, either actually or constructively, in the former suit.

2. The former suit must have the same parties or the parties under whom they or any of them claims.

3. The parties must have litigated under the same title in the former suit.

4. The Court, which decided the former suit must have been a Court competent to try the subsequent suit or the suit in which such issue has been subsequently raised.

5. The matter directly and substantially in issue in the subsequent suit must have been heard and finally decided by the Court in the first suit.

911. In **Syed Mohd. Salie Labbai Vs. Mohd. Hanifa AIR 1976 SC 1569**, the Apex Court said that in attracting the plea of res judicata the following conditions must be proved :

1. that the litigating parties must be the same;

2. that the subject-matter of the suit also must be identical;

3. that the matter must be finally decided between the parties; and

4. that the suit must be decided by a court of competent jurisdiction.

912. In certain cases, the applicability of res judicata qua the

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aforementioned conditions precedent came to be considered with certain different angles, which may be useful to be referred hereat.

913. One such aspect came to be considered by the Privy Council in **Midnapur Zamindary Co. Ltd. (supra)** which is also a decision cited by Sri Siddiqui. The plaintiff excluded certain question by the statement of his pleader and, therefore, the trial court did not decide the issue. In the first appeal the defendant urged that the Trial Judge was wrong in not deciding this question even though his action was based on the plaintiff's advisor's statement and the defendant asked the first appellate court expressly to decide the question. The court did so. The question was whether it can be argued that the point decided was not raised and, therefore, the court did not consider it to be a necessary issue. On the contrary when the first appellate court decided the issue and the same became final, it would operate as res judicata to the subsequent suit involving the same issue.

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914. Another angle of the above aspect came to be considered by the Privy Council in **Prem Narain Vs. Ram Charan and others, AIR 1932 P.C. 51** where though the point was not properly raised in the plaint but both parties without protest chose to join issue upon that point and it was held that the decision on the point would operate as res judicata between the parties.

915. In **Jagdeo Misir Vs. Mahabir Tewari, AIR 1927 All. 803** a Division Bench of this Court held:

> *"We think that those two cases are authorities for the proposition that if a party raised an issue, however improperly, in a case which is accepted by the other side and if the Court itself accepts the issue to be one relevant*

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to the enquiry and necessary for the determination of the case, and that issue is argued out by both parties and a judicial decision come to, it is not open subsequently for either of the parties or their successors-in-interest or the person claiming through them, to say that the issue does not constitute res judicata."

916. This has been followed in **Lalji Sahib Vs. Munshi Lal, AIR 1943 All 340** and **Dhan Singh (supra)**.

917. In **Dhan Singh (supra)** this Court also held that res judicata may apply even though the parties against whom it is sought to enforce did not enter appearance and contest question in the previous suit. But in such a case it has to be shown that such a party had notice that the relevant question was in issue and would have to be decided for which the burden lie on the person who pleaded bar of res judicata. For these propositions this Court followed and relied on **Chandu Lal Vs. Khalilur Rahman, AIR 1950 P.C. 17.**

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918. The proposition advanced by Sri Siddiqui that even if a judgement in a previous case is erroneous it would be binding on the parties thereto and would operate as res judicata in subsequent case as held in **Gorie Gouri Naidu (supra)** is well settled.

919. In short, we can say that though in order to have the defence of res judicata accepted, it is necessary to show not only that the cause of action was same, but also that the plaintiff had an opportunity of getting the relief in the former proceedings, which he is now seeking. In **Jaswant Singh Vs. Custodian of Evacuee Property 1985 (3) SCC 648** it was pointed out that the test is whether the claim in the subsequent suit or proceeding is in fact founded upon the same cause of action, which was the

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foundation of the former suit or the proceeding. The cause of action for a proceeding has no relation, whatsoever, to the defence, which may be set up, nor does it depend upon the character of the relief prayed for by the plaintiff or the applicant. It refers entirely to the grounds set forth in the plaint or the application, as the case may be, as the cause of action or in other words, to the media upon which the plaintiff or the applicant ask the Court to arrive at a conclusion in his favour.

920. Coming to the decision cited by Sri Siddiqui in **Talluri Venkata Seshayya (supra)** we find that there was a case where five temples, subject matter of suit, were built in 19th Century by one Thadikonda Seshayya a native of Vellatur and the grandfather of Kotiswara Rao adoptive father who is said to have earn wealth in Hyderabad and return to his native place. The temples were built for the deities of Siddhi Ganapati Swami, Rajeswara Swami, Bhimeswara Swami, Adi Seshachala Swami and Kameswara Maharani. Sri Thadikonda Seshayya conducted the festivals and other affairs of the deities during his life time. He left a will dated 26.08.1826 shortly before his death directing his widow, Adilakshmamma to make a permanent endowment for the temples to the extent of Rs. 70,000/- out of his self acquired properties. The widow purchased two sets of properties in the villages of Kowtharam and Peddapulivarru for the temples, conducted the affairs of temples out of the land so purchased, and afterwards made a formal gift of the lands to the idols. Another set of properties in the village of Vellatur was endowed to the same temples by the Zamindar of Narasaraopet. Seshayya's two sons, Siddi Ganapati Doss and Nagabhushana Gajanana Doss conducted festivals and other affairs until the death of Ganapati in 1857. The latter's

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widow claimed the Dharmakartaship but the Collector decided in favour of Gajanana. In 1859 the Inam Commissioner granted an Inam title deed in respect of the Devadayam Inam situated in the village of Kowtharam. In 1867 Gajanana started borrowing money on the security of Devadayam lands, which culminated in a usufructuary mortgage for Rs. 8000/- dated 15.01.1887 under which the lands of Kowtharam were handed over to the mortgagee. To discharge this mortgage Gajanana and his adopted sons Seshayya granted permanent lease of Kowtharam lands dated 06.12.1888 and on the same date the mortgagee, Gopalkrishnamma executed the counterpart of the lease. Two persons interested in the temples and in the performance of the service and worship thereof who had obtained the leave of the Court under Section 18, Religious Endowments Act, 20 of 1863, on 18.01.1891 filed suit O.S. No. 4 of 1891 in the District Court, Kistna against Gajanana, his adopted son Seshayya and Gopalakrishna claiming that the five suit temples at Vellatur were public temples, therefore, the first two defendants be removed from the office of the Dharmakarta. The main defence taken by the defendants in the said suit was that the temples and lands were private property hence Act, 20 of 1863 did not apply. Gajanana died during the pendency of suit. Vide judgment dated 05.02.1892 the District Judge Kistna dismissed suit holding that the temples were private, lands were a private foundation and Act, 20 of 1863 did not apply. The judgment was confirmed by Madras High Court in appeal vide judgment dated 03.08.1893. One suit was filed by Venkata Seshayya and others on 21.08.1923 as representing the interested public under Order 1 Rule 8 CPC with the requisite permission of the Subordinate Judge of Masaulipatam seeking a declaration that five temples

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of the village of Vellatur, Guntur District are public temples and that certain Ina lands situated in Kowthavaram village form the endowment of these temples and, therefore, the plaintiff seeking setting aside of a permanent lease in respect of these lands executed on 06.12.1888 by the then Managers of the temples, the mortgage deed on the security of these lands dated 03.11.1900 and the Court sale effected in execution of the decree obtained on the basis of the said mortgage in O.S. No. 29 of 1911. They further seek restoration of possession of these lands to Kotiswara Rao, defendant no. 1 who is the person hereditary Dharmakartha of the temples. Before the Privy Council it was contended on behalf of the appellants conceding that the appellants must be deemed to be claiming under plaintiffs in 1891 suit within the meaning of Explanation VI, Section 11 CPC as they were both claiming as representing the public interest in the temples of Kowthavaram lands and the issue in the two suits was substantially same but it was submitted that 1891 suit was not a bona fide litigation, there was gross negligence in the conduct of the suit by the plaintiff in 1891 suit, and, therefore, the principle of res judicata would not bar the present suit. Rejecting the submission, it was held that the provision of Section 11 CPC is mandatory and the ordinary litigant who claims under one of the parties to the former suit can only avoid its provisions by taking advantage of Section 44, Evidence Act which defines with precision the grounds of such avoidance as fraud or collusion. The exposition of law stated therein need not be discussed further since it is consistent with what was held subsequently also as has been discussed by us above.

921. During the course of argument, the learned counsel for

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the plaintiff (Suit-4) has pleaded and pressed the plea of maintainability of suit on the ground of res judicata and estoppel using both the term it appears to us interchangeably. However, we do not subscribe to the view since it is now well settled that the two are essentially different. It is true that sometimes res judicata has been treated as part of the doctrine of the estoppel, but both have been held to be different in connotation, in application and with reference to the essential indicias thereof.

922. Both these principles are based on public policy and justice. Often they are treated as a branch of law having same traits but both differ in several aspects. Doctrine of res judicata some times is construed as a branch of doctrine of estoppel but as we said earlier both have different connotation. In **Hope Plantations Ltd. (supra)** in para 26 of the judgement the Apex Court said:

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> *"It is settled law that the principles of estoppel and res judicata are based on public policy and justice. Doctrine of res judicata is often treated as a branch of the law of estoppel through these two doctrines differ in some essential particulars....."*

923. The estoppel is part of the law of evidence and prevents a person from saying one thing at one time and opposite thing at another time while res judicata precludes a man from avowing the same thing in successive litigations. (**Cassomally Vs. Carrimbhoy (1911) 36 Bom. 214**; **Radharani Vs. Binodamoyee AIR 1942 Cal. 92**; **Rajah of Venkatgiri Vs. Provinces of Madras AIR (34) 1947 Madras 5**. We find it useful to refer the distinction elucidated by Hon'ble Mahmood J. in **Sitaram Vs. Amir Begum (1886) ILR 8 Alld. 324** *"Perhaps shortest way to describe difference between the plea of res*

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judicata and estoppel is to say that while the former prohibits the Court from entering into an inquiry at all as to a matter already adjudicated upon, the later prohibits a party after the inquiry has already been entered upon from proving any thing which would contradict his own previous declaration or acts to the prejudice of another party who, relying upon those declaration or acts to the prejudice of another party, has altered his position. In other words, res judicata prohibits an inquiry in limine, whilst an estoppel is only a piece of evidence".

924. Res judicata has been held to be a branch or specie of the rule of estoppel called "estoppel by record". In **Guda Vijayalakshmi Vs. Guda Ramchandra Sekhara Sastry, AIR 1981 SC 1143** in para 3 the Apex Court observed:

> *"Res judicata, after all, is a branch or specie of rule of estoppel called estoppel by record and though estoppel is often described as a rule of evidence, whole concept is more correctly viewed as a substantive rule of law."*

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925. A judgement operates as estoppel on all points considered and decided therein. It is the decision and not decree that creates bar of res judicata. Res judicata, therefore, is estoppel by judgement or record and not by decree. The judgement operates as estoppel in respect to all the findings which are essential to sustain the judgements. What has taken place, recorded and declared final, cannot be questioned subsequently by anyone which has already an opportunity to adjudicate and this is what we call as estoppel on record. The distinction between the doctrine of res judicata and estoppel would lie with the estoppel results from the acts and conduct of the parties while the res judicata prohibits the Court from entering into an inquiry as to a matter already adjudicated upon.

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While in the case of estoppel it prohibits a party after the inquiry has already been entered upon from proving anything which would contradict his own previous declaration or acts to the prejudice of another party who relying upon those declaration or acts has altered his position. Rule of res judicata prevents the parties to a judicial determination from litigating the same question over and again even though the determination may even be demonstratedly wrong. When the proceedings have attained finality, parties are bound by the judgement and are estopped from questioning it. They cannot litigate again on the same cause of action nor can they litigate any issue which was necessary for decision in the earlier litigation. These two aspects are "cause of action estoppel" and "issue estoppel". It is held that these two terms are of common law origin.

926. The learned counsel for the parties have also addressed this Court as to what does it mean by the words "suit"; "issue"; "directly and substantially in issue" in order to show whether the principle of res judicata would be attracted in the cases in hand or not.

927. To apply the doctrine of res judicata we need to understand the meaning of the word "suit" or "issue", when a matter can be said to be "directly and substantially in issue", can it be said that the parties are same or parties in the earlier suit were the parties under whom the present one are claiming their rights i.e. litigating under the same title.

928. Sri R.L. Verma, learned counsel for the plaintiff in Suit-3 refers to Order 4 Rule 1 and submitted that a suit is instituted by presenting a plaint. He also referred to Order 6 to show that "pleadings" means "plaint" and "written statement" and Order 7 to show what constitute a "plaint".

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929. It is not disputed by the parties that the term “suit” has not been defined in CPC. Section 26 says that every suit shall be instituted by presentation of a plaint or in such other manner as may be prescribed. The term "suit" was considered by the Privy Council in **Hansraj Gupta and others Vs. Dehradun Mussorie Electric Tramway Company Ltd., AIR 1933 PC 63** and it was held that word “suit” ordinarily, apart from some context, must be taken to mean a civil proceeding instituted by presentation of a plaint. To the same effect is the view expressed by the Madras High Court in **Venkata Chandrayya Vs. Venkata Rama Reddy, (1899) 22 Madras 256, Raja Gopa Chettiar Vs. Hindu Religion Endowment Board, Madras, AIR 1934 Madras 103** and by Punjab and Haryana High Court in **Union Territory of Chandigarh Vs. Sardara Singh and others, AIR 1981 (Punjab and Haryana) 354.**

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930. However, if a suit is filed by a pauper under Order XXXIII CPC the same would commence from the moment the application to sue in forma pauperis is presented. (see **Matuka Mistry Vs. Kamakhaya Prasad, AIR 1958 (Patna) 264 (FB), Narayana Dutt and another Vs. Smt. Molini Devi, AIR 1964 (Rajasthan) 269, Shripati Quer Vs. Malti Devi, AIR 1967 (Patna) 320**). This illustration is only for the purpose to show "any other manner as may be prescribed", contained in Section 26 CPC.

931. Similarly, the "issue" has also not been defined in CPC. Whartons “Law Lexicon” says that “issue” means "the point in question at the conclusion of the pleading between the contending parties in an action, when one side affirms and the other side denies". Order XIV of the Code of Civil Procedure deals with the settlement of “issues” and determination of suit

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on issues of law or on issues agreed upon. Rule 1 deals with the framing of issues as follows:

1. Issues arise when a material proposition of fact or law is affirmed by the one party and deemed by the other.
2. Material propositions are those propositions of law or fact which a plaintiff must allege in order to show a right to sue or a defendant must allege in order to constitute his defence.
3. Every material proposition affirmed by one party and denied by the other, shall form the subject of a distinct issue.
4. Issues are of two kinds.
   (a)Issues of fact
   (b)Issues of law

Meaning of "a matter directly and substantially in issue"

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932. Then comes as to what constitute "a matter directly and substantially in issue". One of the test recognized is, if the issue was necessary to be decided for adjudicating on the principle issue, and, was decided.

933. A collateral or incidental issue is one i.e. ancillary to a direct and substantive issue; the former is an auxiliary issue and the later the principal issue. The expression collateral or incidental in issue implies that there is another matter which is directly and substantially in issue. (Mulla's C.P.C. 16th Edition, Vol. I, page 179).

934. Difficulty, however, in distinguishing whether a matter was directly in issue or collaterally in issue confronted various Courts in different Countries and certain test were laid down therein. Halsbury's Laws of England (Vol. 16, para 1538, 4th Edn.) says *"difficulty arises in the application of the rule, in*

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determining in each case what was the point decided and what was the matter incidentally cognizable, and the opinion of Judges seems to have undergone some fluctuations."

935. In "The Doctrine of Res Judicata" (2nd Edn., 1969, p. 181), "Spencer Bower and Turner", quoted Dixon, J. of the Australian High Court in **Blair Vs. Churran (1939) 62 CLR 464** at page 553; *"The difficulty in the actual application of these conceptions is to distinguish the matters fundamental or cardinal to the prior decision on judgment, or necessarily involved in it as its legal justification or foundation, from matters which, even though actually raised and decided as being in the circumstances of the case the determining considerations, yet are not in point of law the essential foundation of a groundwork of the judgment."*

936. The aforesaid authorities opined in order to understand this essential distinction, one has always to inquire with unrelenting severity- is the determination upon which it is sought to find an estoppel so fundamental to the substantive decision that the latter cannot stand without the former. Nothing less than this will do. It is suggested by Dixon, J. that even where this inquiry is answered satisfactorily, there is still another test to pass: viz. whether the determination is the "immediate foundation" of the decision as opposed to merely "a proposition collateral or subsidiary only, i.e. not more than part of the reasoning supporting the conclusion." It is well settled, say the above authors, "that a mere step in reasoning is insufficient. What is required is no less than the determination of law, or fact or both, fundamental to the substantive decision."

937. Corpus Juris Secundum (Vol. 50, para 725) noticed the above aspects and conceded it is sometimes difficult to determine when particular issue determined is of sufficient

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dignity to be covered by the rule of estoppel. It is said that estoppel by judgment does not extend to any matter which was only incidentally cognizable or which came collaterally in question, although it may have arisen in the case and have been judicially passed on.

938. However, this rule did not prevent a judgment from constituting an estoppel with reference to incidental matters necessarily adjudicated in determining ultimate vital point.

939. American Jurispudence (Vol. 46, Judgments, para 422) says; *"Under this rule, if the record of the former trial shows that the judgment could not have been rendered without deciding the particular matter, it will be considered as having settled that matter as to all future actions between the parties."*

940. The words "substantially" means "of importance and value". When a matter is substantially in issue, when it is of importance and value for the decision of main proceeding. When parties go to a trial on a particular issue treating it as material and invites the Court to give a decision thereon, that will be an issue substantially and directly involved and would operate as res judicata. However, a mere expression of opinion on a question not in issue cannot operate as res judicata as held in **Ragho Prasad Gupta Vs. Krishna Poddar AIR 1969 SC 316**.

941. In **Sajjadanashin Sayed Md. B.E. Edr. (D) By LRS. Vs. Musa Dadabhai Ummer and others 2000 (3) SCC 350**, the term "directly and substantially in issue" qua the words "incidental and collateral" came up for consideration. The Edroos family in Gujarat claimed to be descendants of Hazarat Imam Ali, the son-in-law and cousin of Prophet Muhamed. One of the descendants of the said Hazrat came down to India in

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1542 A.D. and founded his Gadi at Ahmedabad, Broach and Surat. The members of the Edroos family were Sajjadanashins or Mutavallis of the wakf throughout. The three Rozas at the three places as well as the villages which were granted - not only for the maintenance of these Rozas but also for the benefit of the Waquif's family, - constituted the wakf. The holder was buried in the house and his Dargah is situated in this place. There is also a place for reciting prayers. In an earlier litigation in **Sayed Abdula Edrus Vs. Sayad Zain Sayad Hasan Edrus ILR (1889) 13 Bom. 555**, a Division Bench of the Bombay High Court, traced the history of the wakf and held that the custom of primogeniture did not apply to the office of Sajjadanishin or Mutavalli of this wakf. In a later dispute in **Saiyad Jaffar El Edroos Vs. Saiyad Mahomed El Edroos AIR 1937 Bom. 217** another Division Bench held after construing the royal grants relating to the villages Umrao and Orma that the grants were primarily for the Rozas and Dargas and they clearly constituted "wakf" but that the Sajjadanashin or Mutavalli had, however, a right to the surplus income left over after discharge of the legal obligations regarding the wakf. It was thus held that the Sajjadanishin could provide for the needs of the indigent members of the family and this was a pious obligation which was only a moral obligation and not a legal obligation and hence the indigent members of the Edroos family, as a right, could not claim maintenance out of the surplus income. Thereafter, Regular Suit No. 201 of 1928 was filed by three plaintiffs under Section 92 C.P.C. impleading father of Sayed Mohamed Baquir-El-Edroos in 1928 after obtaining permission on 22.2.1928 from the Collector under Section 92 C.P.C. for filing the suit. The suit was dismissed on 6.10.1931, the first appeal

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was dismissed but cross objections were allowed on 21.11.1938 and the second appeal to the High Court was withdrawn. In the aforesaid suit, there were eight points whereof points no. 1 to 7 related to the validity of appointment of the defendant and the nature of the office and the right to the surplus etc. It was held that the appointment of defendant as Sajjadanashin was valid and that the grant of the property was both for the Rozas and for the maintenance, presumably of the Sajjadanashin and his family members. It was also held that the Sajjadanashin had complete power of disposal over the surplus as he was not in the position of an ordinary trustee. It was held that the Sajjadanashin had complete power of disposal over the surplus, hence the plea of plaintiff's complaint about mis-utilization of the income by Sajjadanashin was rejected. Another issue was framed whether the waqf was a private or a public and it was held that it was a private waqf. The District Court held that from 1746 A.D. onwards, the Sajjadanashin were using the revenue of these villages for their own maintenance and that of the members of their family and other dependents. This finding was consistent with the judgment of the Bombay High Court in **Saiyad Jaffar El Edroos (supra)** wherein this was held permissible. The District Court in view of the fact that Sajjadanashin was from the family and not a stranger or outside held it a private waqf. Thereafter another matter came before the Gujrat High Court in relation to Ahmedabad Rozas wherein also a Single Judge of Bombay High Court in **Alimiya Vs. Sayed Mohd. AIR 1968 Guj. 257** rejected a similar plea. This judgment was confirmed by the Division Bench in **Sayed Mohd. Vs. Alimiya (1972) 13 Guj.LR 285**. In the case before the Apex Court in respect to Rozas at all the three places, the

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Assistant Commissioner in enquiry no. 142 of 1967 passed an order dated 26.7.1968 accepting the preliminary objection of res judicata but the Joint Charity Commissioner, Gujrat in its order dated 17.12.1973, in appeal, did not accept the said plea which was pressed before him only in respect to the Rozas at Broach and Surat. He set aside the order of Assistant Commissioner and remanded the matter for enquiry. The Assistant Judge in Misc. Civil Application No. 32 of 1974 affirmed the order of Joint Commissioner on 3.9.1976 and it was further affirmed by a Division Bench of Gujrat High Court in First Appeal No. 985 of 1976 on 27.7.1985. Aggrieved by the aforesaid order, the appellant, Sajjadanashin Sayed took the matter to the Apex Court and raised the plea of res judicata in respect to Rozas at Broach and Surat. It is in the light of the above facts, the Apex Court considered the matter. In order to see whether the principle of res judicata is attracted, the Apex Court framed an issue as to what is the meaning of "collaterally and incidentally in issue" as distinguished from "directly and substantially in issue". In para 11, the Apex Court found that the matter collaterally and incidentally in issue are not ordinarily res judicata and this principle has been well accepted but certain exceptions to this principle have also been accepted. The Court also traced out the law on the subject in England, America, Australia and India. Referring to Halsbury's Laws of England (Vol. 16, para 1538, 4th Edn.), the Court observed that the fundamental rule is that a judgment is not conclusive if any matter came collaterally in question or if any matter is incidentally cognizable. The said judgment attained finality since the second appeal filed in the High Court was withdrawn.

942. In the light of the above facts and in this context the

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Apex Court in **Sajjadanashin (supra)** in respect to India, affirmed the view of the learned Author Mulla in "C.P.C." as under:

> *"..a matter in respect of which relief is claimed in an earlier suit can be said to be generally a matter "directly and substantially" in issue but it does not mean that if the matter is one in respect of which no relief is sought it is not directly or substantially in issue. It may or may not be. It is possible that it was "directly and substantially" in issue and it may also be possible that it was only collaterally or incidentally in issue, depending upon the facts of the case. The question arises as to what is the test for deciding into which category a case falls? One test is that if the issue was "necessary" to be decided for adjudicating on the principle issue and was decided, it would have to be treated as "directly and substantially" in issue and if it is clear that the judgment was in fact based upon that decision, then it would be res judicata in a later case. One has to examine the plaint, the written statement, the issues and the judgment to find out if the matter was directly and substantially in issue (Ishwer Singh Vs. Sarwan Singh AIR 1965 SC 948 and Syed Mohd. Salie Labbai Vs. Mohd. Hanifa AIR 1976 SC 1569).*

943. It also referred to two judgments of the Privy Council in **Run Bahadur Singh Vs. Lucho Koer ILR (1885) 11 Cal 301** and **Asrar Ahmed Vs. Durgah Committee AIR 1947 PC 1** as well as its earlier decision in **Pragdasji Guru Bhagwandasji Vs. Ishwarlalbhai Narsibhai 1952 SCR 513** and found that inspite of a specific issue and adverse finding in the earlier suit, the finding was not treated as res judicata as it was purely

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incidental or auxiliary or collateral to the main issue in each of the three cases and was not necessary for the earlier case nor formed foundation. It also considered **Sulochana Amma (supra)** and a Madras High Court decision in **Vanagiri Sri Selliamman Ayyanar Uthirasomasundar-eswarar Temple Vs. Rajanga Asari Air 1965 Mad. 355** in respect whereto it was pointed out that there was a direct conflict. The Court however found that the said decisions are not contrary to each other but should be understood in the context of the tests referred to above. It held that in **Sulochana Amma (supra)** it is to be assumed that the tests above referred to were satisfied for holding that the finding as to position was substantially rested on title upon which a finding was felt necessary but in the case before the Madras High Court, it must be assumed that the tests were not satisfied. The Apex Court confirmed the observations of the learned author Mulla in "C.P.C. (Supra)" and said that it all depend on the facts of each case and whether the finding as to title was treated as necessary for grant of an injunction in an earlier suit and was also substantive basis for grant of injunction or not.

944. Further, the Court in **Sajjadanashin (supra)** quoted the following from the "Corpus Juris Secundum" (Vol. 50, para 735, p. 229) where a similar aspect in regard to findings on possession and incidental findings on title were dealt with and held, *"Where title to property is the basis of the right of possession, a decision on the question of possession is res judicata on the question of title to the extent that adjudication of title was essential to the judgment; but where the question of the right to possession was the only issue actually or necessary involved, the judgment is not conclusive on the question of*

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ownership or title." The Court observed that in the case before it there were certain changes in the statutory law with respect to definition of "public waqf" and in view thereof since now the "private waqf" was also included within the definition of "public waqf" in the Act, due to change in subject it held that the earlier decision would not operate as res judicata.

945. We propose not to deal with this aspect of the matter further at this stage but if necessary would discuss the same with more depth if the occasion needs so.

946. In **Sharadchandra Ganesh Muley Vs. State of Maharashtra and others AIR 1996 SC 61**, Explanation IV Section 11A containing doctrine of 'might and ought' and application of doctrine of constructive res judicata came to be considered. The Court held that where in respect to land acquisition proceedings an earlier writ petition was filed without raising a plea which was available at that time, in the second writ petition such plea could not have been taken as the doctrine of 'might and ought' engrafted in Explanation IV to Section 11 of the C.P.C. would come into play and the incumbent would be precluded from raising the controversy once over. The Court held that the doctrine of constructive res judicata shall put an embargo on his right to raise a plea as barred by limitation under Section 11A.

"Explanation IV"

947. However, the concept of "constructive res judicata" is necessary to be dealt with in view of Explanation-IV Section 11 C.P.C. A Matter, which might and ought to have been made a ground of attack or defence is a, matter which is constructively in issue. The principle underlying Explanation-IV is res judicata not confined to issues which the Courts are actually asked to

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decide but cover issues or facts which are so clearly part of the subject matter of the litigation and so clearly could have been raised that it would be an abuse of the process of the Court to allow a new proceeding to be started in respect of them. (**State of U.P. Vs. Nawab Hussain AIR 1977 SC 1680)**. The proposition of law expounded in the authorities cited by Sri Siddiqui, as referred to above, in para 20 is also unexceptional. However,it would apply only where a plea was available at the time of the suit but not availed of. But there is no question of constructive res judicata where there is no adjudication in the earlier proceedings (**Kewal Singh Vs. Smt. Lajwanti 1980 (1) SCC 290**). The effect of Explanation-IV is where a matter has been constructively in issue, it could not from the very nature of the case be heard and decided but will be deemed to have been heard and decided against the parties omitting to allege it except when an admission by the defendant obviates a decision (**Sri Gopal Vs. Pirthi Singh (1902) ILR 24 Alld. 429 (PC); Government of Province of Bombay Vs. Peston Ji Ardeshir Wadia AIR 1949 PC 143)**.

948. There is an exception to this plea, i.e., where the evidence in support of one ground is such as might be destructive for the other ground, the two grounds need not be set up in the same suit. In **Kanhiya Lal Vs. Ashraf Khan AIR 1924 Alld. 355**, it was observed that a person claiming property on the allegation that it is wakf property and that he is the Manager thereof is not bound to claim the same property in the same suit alternatively in his own rights in the event of its being held that the property was not wakf property. In **Madhavan Vs. Chathu AIR (38) 1951 Madras 285**, a suit to recover possession of properties on a claim that they belong personally to the plaintiff was held not

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barred by reason of a decision in a previous suit, in which they were claimed as belonging to a Tarwad of which he was a member. Similarly, where the right claimed in the subsequent suit is different from that in the former suit; it is claimed under a different form that in the former suit; it is claimed under a different title, the subsequent suit would not be barred by res judicata/constructive res judicata.

949. Next is the question about the "same parties" or "between parties under whom they or any of them claim". In order to find a person by res judicata it must be shown that he was in some way party to the earlier suit as the judgment binds only parties and privies. A person claiming under a party is known as privy. The ground of privity is property and not personal relations. If the plaintiff in subsequent suit claims independent right over the suit property the principle of res judicata would not apply. If the predecessor in interest was party to the suit/proceeding involving the same property then the decision binds his successor in interest. From the record it must be evident that the party sought to be bound was in some way a party to the suit. A person merely interested in the litigation cannot be said to be a party to the suit. Such a person is neither to make himself a party nor can be bound by the result of the litigation as held in **Jujjuvarapu Vs. Pappala, AIR 1969 A.P. 76.**

950. Where a person in the subsequent suit claims independent right over the suit property the principle of res judicata would not apply. **(Byathaiah (Kum) and others Vs. Pentaiah (Kum) and others, 2000 (9) SCC 191).**

951. Similarly the party must be litigating under the same title. The test is the **identity of title in two litigations** and not the identity of the actual property involved in two cases as held in

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Rajalaxmi Dasi Vs. Banamali Sen (supra); Ram Gobinda Daw Vs. Smt. H. Bhakta Bala Dassi, AIR 1971 SC 664.

952. Same title means same capacity; the test being whether the party litigating is in law the same or a different person. If the same person is a party in different character, the decision in the former suit does not operate as res judicata. Similarly, if the rights claimed are different, the subsequent suit will not be res judicata simply because the property is identical. Title refers not to cause of action but to the interest or capacity of the party suing or being sued.

953. In **Sri Ramjee and others Vs. Bishwanath Pd. Sah and others AIR 1978 Patna 129**, former suit was filed by plaintiff alone and in his own rights while the subsequent suit was filed in the name of the deity and it was held not barred as res judicata.

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"Explanation VI"

954. Lastly, but not the least, is the concern with respect to Explanation-VI, i.e., representative suit. It provides that where persons litigate bona fide in respect of a public right or a private right claimed in common for themselves and other persons interested in such right, shall, for the purpose of the Section, be deemed to have claimed under the persons so litigating. The counsels for the plaintiffs (Suit-4) have heavily relied upon this provision. Explanation-VI apparently is not confined to the cases covered by Order 1 Rule 8 C.P.C., but would include any litigation in which, apart from the rule altogether, parties are entitled to represent interested persons other then themselves. It is a kind of exception to the ordinary rule of res judicata which provide for the former litigation between the same parties or their privies. Even persons, who are not parties in the earlier

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proceeding, in certain contingencies, may be debarred from bringing a suit subsequently if the conditions contemplated under Explanation-VI Section 11 are satisfied. The conditions to attract Explanation-VI so as to constitute res judicata, which must exist, are :

1. There must be a right claimed by one or more persons in common for themselves and others not expressly named in the suit,
2. The parties not expressly named in the suit must be interested in such right.
3. The litigation must have been conducted bona fide on behalf of all the parties interested.
4. If the suit is one under Order 1 Rule 8, all the conditions of that Section must have been strictly complied with.

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955. The essentials of representative suit vis a vis the principle of res judicata with reference to Explanation VI Section 11was considered by Privy Council in **Kumaravelu Chettiar and others Vs. T.P. Ramaswami Ayyar and others, AIR 1933 PC 183.** Prior to the enactment of CPC of 1877 there was no express legislation on the subject of representative suit. In these circumstances, the Courts assumed the task and followed the practice virtually obtained in the Court of Chancery in England. Existence of this practice was demonstrated by referring to a judgment of Madras High Court in **Srikanti Vs. Indupuram (1866) 3 M.H.C.R. 226.** The Court emphasized that convenience, where community of interest existed, required that a few out of a large number of persons should, under proper conditions, be allowed to represent the whole body, so that in the result all might be bound by the

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decree, although only some of the persons concerned were parties named in the record. It observed that absence of any statutory provision on the subject, the Courts in India, it would seem, prior to 1877 assumed the task and duty to determine in the particular case whether, without any real injustice to the plaintiffs in the later suit, the decree in the first could properly be regarded as an estoppel against further prosecution by them of the same claim. The first legislation was made vide Section 30 in CPC 1877 which is now found in Order I Rule 8 CPC of 1908. The Privy Council held at page 186:

> *"It is an enabling rule of convenience prescribing the conditions upon which such persons when not made parties to a suit may still be bound by the proceedings therein. For the section to apply the absent persons must be numerous; they must have the same interest in the suit which, so far as it is representative, must be brought or prosecuted with the permission of the Court. On such permission being given it becomes the imperative duty of the Court to direct notice to be given to the absent parties in such of the ways prescribed as the Court in each case may require; while liberty is reserved to any represented person to apply to be made a party to the suit."*

956. The Privy Council also approved a Calcutta High Court decision in **Baiju Lal Vs. Bulak Lal, (1897) 24 Cal 385**, where Ameer Ali, J. explaining the position under Section 30 said:

> *"The effect of S. 30 is that unless such permission is obtained by the person suing or defending the suit, his action has no binding effect on the persons he chooses to represent. If the course prescribed by S. 30 is not followed in the first case, the judgment does not bind those whose*

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names are not on the record."

957. In **Waqf Khudawand Taala Banam Masjid Mauza Chaul Shahabudinpur vs. Seth Mohan Lal 1956 ALJ 225** a suit for declaration of the property in dispute as a public mosque was filed. It appears that earlier a suit was filed against some Muslims claiming to be the proprietor and notice under Order 1 Rule 8 C.P.C. was also issued to other residents of that locality. Defence taken by Muslims was that property in dispute was a public mosque. The suit was decreed and the defence was not found proved. Thereafter second suit was filed by Muslim parties of neighbouring village wherein the plea of res judicata was taken. Defending the said objection on behalf of plaintiffs it was contended that in earlier case notice under Order 1 Rule 8 was issued to the residents of Chaul Shahabuddinpur and not of the village to which the plaintiffs belonged which is a neighbouring village. However, the Court upholding the plea of *res judicata* observed that Explanation VI to Section 11 C.P.C. is attracted in the matter and once in respect of a public right the matter has been adjudicated, the decision is binding on all persons interested in that right and they will be deemed to claim under the persons who litigated in the earlier suit in respect of that public right.

958. The question of issue estoppel and constructive res judicata in regard to a judgment in a representative suit came to be considered by the Apex Court in **Shiromani Gurdwara Parbandhak Committee Vs. Mahant Harnam Singh and others, AIR 2003 SC 3349.** The facts, in brief, are necessary to understand the exposition of law laid down therein. Gurdial Singh and Ishwar Singh of Village Jhandawala obtain permission from the Advocate General under Section 92 CPC to

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institute a suit against one Harnam Singh for his removal from Mahantship. It was stated in the plaint that there was one Guru Granth Sahib at Village Jhandawala, Tehsil and District Bhatinda which was managed by Mahant Harnam Singh as a Mahatmim and he was in possession of the Dera, and agricultural land belonging to Guru Granth Sahib which was a public religious place and was established by the residents of village; it was a public trust created by the residents of the village for the service of the public to provide food from lunger, to allow the people to fulfill religious beliefs and for worship etc. The two plaintiffs in their capacity as representatives of owners of land situated in the village and the residents thereof claim that they were entitled to file a suit under Section 92 CPC. Harnam Singh, Mahant in his written statement took the defence that there was no such interest in the public as to entitle the aforesaid plaintiffs to institute the suit. The trial court and the High Court recorded a concurrent finding that all Mahants of the institution from Bhai Saida Ram to Mahant Harnam Singh have been Nirmalas. However, the trial court held that such Nirmala Sadhus are not Sikhs and that the institution was not a Sikh institution. High Court disagreed with this conclusion and held that Sadhus Nirmalas are a sect of the Sikhs and consequently the Sikhs had interest in the institution as it was a Sikh Gurdwara and upheld the plaintiffs claim to file a representative suit under Section 92 CPC. In appeal the Apex Court, however, held (i) Nirmala Sadhus are not Sikhs; (ii) the mere fact that at some stage there was a Guru Granth Sahib in the Dera in dispute cannot lead to any conclusion that the institution was meant for or belonged to the followers of the Sikh religion. The Dera was maintained for entirely a distinct sect known as Nirmals Sadhus

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who cannot be regarded as Sikhs; (iii) the institution was held to be not belonging to the followers of the Sikh religion; (iv) the plaintiffs in their mere capacity of followers of Sikh religion could not be held to have such interest as to entitle them to institute a suit under Section 92 CPC. This judgement dated 24.02.1967 of the Apex Court is reported as **Mahant Harnam Singh Vs. Gurdial Singh and another, AIR 1967 SC 1415.** In the meantime it appears that under Section 7(1) of Sikh Gurdwaras Act, 1925, 60 persons claiming to be worshippers made a petition for declaring the institution in question, i.e., Guru Granth Sahib situated in Village Jhandawala, District Bhatinda to be a Sikh Gurdwara. The Punjab Government by notification dated 23.01.1961 made such a declaration under Section 7(3) of the aforesaid Act. It may be pointed out that these 60 persons also included the two plaintiffs of earlier litigation, i.e., Gurdial Singh and Ishwar Singh. Mahant Harnam Singh with others filed counter petition under Section 8 of Sikh Gurdwaras Act, 1925 stating that the institution was not a Sikh Gurdwara but was a Dera Bhai Saida Ram. A similar petition under Section 8 was also moved by 58 persons of the Dera making a similar claim. Both these petitions were forwarded by the State Government to the Tribunal for disposal. The Tribunal formulated the following two questions: (1) what is the effect of the judgment of the Apex Court in **Mahant Harnam Singh (supra);** and (2) whether the institution in dispute was a Sikh Gurdwara. The Tribunal decided issue no. 1 as a preliminary issue vide order dated 08.03.1977 and held that the decision in **Mahant Harnam Singh (supra)** would not bar the jurisdiction of the Tribunal to decide claim petition under Section 7 of the Act. The order of the Tribunal attained finality since challenge

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before the High Court and Apex Court was unsuccessful. Thereafter, issue no. 2 was taken up and the Tribunal held that the institution was a Sikh Gurdwara, originally established by Sikhs and the object of worship was Guru Granth Sahib because the majority of villagers were Sikhs and Nirmalas are Sikhs. This order of the Tribunal in respect to issue no. 2 was challenged before the High Court. It held that the Tribunal has lost sight of the decision in **Mahant Harnam Singh (supra).** It is this order of the High Court which was taken in appeal before the Apex Court, which held that once in a suit instituted under Section 92 CPC a categorical finding was recorded that (i) Nirmala Sadhus are not Sikhs; (ii) the Dera was maintained for entirely a distinct sect known as Nirmals Sadhus who cannot be regarded as Sikhs; (iii) the mere fact that at some stage there was a Guru Granth Sahib in the Dera cannot lead to any conclusion that the institution was meant for or belonged to the followers of Sikh religion, these findings were rendered in suit filed under Section 92 CPC, therefore, cannot be reagitated and any challenge thereto is precluded on the principle of issue estoppel. The nature of suit under Section 92 CPC was explained by the Apex Court in para 19 of the judgement referring to its earlier decision in **R. Venugopala Naidu and others Vs. Venkatarayulu Naidu Charities and others, AIR 1990 SC 444** holding that a suit under Section 92 CPC is a suit of special nature for the protection of public rights in the public trust and charities. The suit is fundamentally on behalf of the entire body of persons who are interested in the trust. It is for vindication of public rights. The beneficiaries of the trust, which may consist of public at large, may choose two or more persons amongst themselves, for the purpose of filing a suit under

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Section 92 CPC and the suit-title in that event would show only their names as plaintiffs. In the circumstances, it cannot be said that the parties to the suit are only those persons whose names are mentioned in the suit-title. The named plaintiffs being the representatives of public at large, which is interested in the trust, of such interested persons, would be considered in the eyes of law to be parties to the suit. A suit under Section 92 CPC is thus a representative suit and as such binds not only the parties named in the suit-title but all those who share common interest and are interested in the trust. It is for that reason that Explanation 6 to Section 11 CPC constructively bars by res judicata the entire body of interested persons from reagitating the matter directly and substantially in issue in an earlier suit under Section 92 CPC.

959. It is well settled law that explanation to a section is not a substantive provision by itself. It is entitled to explain the meaning of the words contained in the Section or to clarify certain ambiguities or clear them up. It becomes a part and parcel of the enactment. Its meaning must depend upon its terms. Sometimes, it is for exclusion of some thing and sometimes exclude something from the ambit of the main provision or condition of some words existing therein. Therefore, an explanation should be read harmoniously so as to clear any ambiguity in the main section. A clash of interest in the parties would oust the applicability of Explanation-VI.

960. In **Commissioner of Endowments and others Vs. Vittal Rao and others (2005) 4 SCC 120**, it was held that even though an issue was not formerly framed but if it was material and essential for the decision of the case in the earlier proceeding and the issue has been decided, it shall operate as res judicata in

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the subsequent case.

961. In **Vithal Yeshwant Jathar Vs. Shikandarkhan Makhtumkhan Sardesai AIR 1963 SC 385**, it was held :

> *"It is well settled that if the final decision in any matter at issue between the parties is based by a court on its decisions on more than one point- each of which by itself would be sufficient for the ultimate decision- the decision on each of these points operates as res judicata between the parties."*

962. These are the few general principles, which we have considered and elaborated to find answer to the issues relating to res judicata and estoppal raised by learned counsels for the parties.

963. The submission of the counsel for plaintiffs in leading suit i.e. of Sri Jilani and also Sri Siddiqui are that the Suit 1885 was filed by "Mahant Raghubar Das" who was at that time "Mahant" of the "Math Nirmohi Akhara". It is the admitted case of Nirmohi Akhara, plaintiff (Suit-3), that they are in possession of the entire property in dispute including the Chabutara, (measuring 17x21 ft.). Sri Raghubar Das, therefore, when sought permission to construct a temple on the said Chabutara was seeking a relief for the benefit of the Math, Nirmohi Akhara which is claimed by them now to be the property of the Math. Therefore, Raghubar Das in his capacity as Mahant was representative of Nirmohi Akhara and having failed to establish his claim on Chabutara by failing to prove his ownership, the said decision binds Nirmohi Akhara also and they cannot claim any right beyond that. It is further said that in the plaint i.e. the Map appended in the plaint of Suit 1885 the disputed construction in the inner courtyard was shown and marked as

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Masjid. It was open to the plaintiff of Suit 1885 to show his ownership on the entire premises which was actually disputed by Sri Mohd. Asghar, defendant no. 2 in Suit 1885 but it chose not to press the said point and, therefore, Nirmohi Akhara is now debarred from raising the same point again over which their Mahant has already failed. It is further contended that the prayer for construction of temple was for the larger benefit of the public at large who used to visit and worship Janam Asthan at Chabutara but having failed to show and prove its proprietorship or any right to construct temple on the disputed site, the same issue cannot be raised again.

964. What we have already noticed, it has not been disputed by Nirmohi Akhara that in 1885 Raghubar Das was Mahant of Nirmohi Akhara. Let us examine the law relating to the rights of Mahant of suing and being sued. The Math i.e. Nirmohi Akhara, as we have said, is a juridical person. The ownership of a property would rest in the Math. However, this juridical entity acquires whole and indicates its legal rights through Mahant of superior as a human agent. The Mahant is the spiritual head of Math as well as administrator of its temporal affairs. He represents the Math in its dealings with the external world. Of necessity the Mahant has the power to do everything that is required in the interest or for the benefit of the endowment i.e. Math. It means that he is the proper person to institute or defend suit on behalf of Math. In **Babaji Rao Vs. Laxman Das (supra)** it was said that when the property is vested in the Math then litigation in respect of it has ordinarily to be conducted by and in the name of Manager not because the property vest in the manager but because it is the established practice that suit would be brought in that form. There must be an exception where it

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can be said that uses or customs or express directions of the founders provide vesting of right to possession of Math property elsewhere. In such cases where the suit is filed by a Mahant there are two distinct classes of suit, (1) where he seeks to influence his private and personal rights and (2) where he seeks to vindicate the rights of the endowment i.e. Math. These two classes have been further illustrated in **Gnanasambanda Pandara Vs. Velu Pandaram (1899) LR 27 IA 69** and **Dattagiri Vs. Dattatrya (1904) ILR 27 Bom 236**. The right of the Math cannot ordinarily be prejudiced by the result of a suit of a former class, i.e., to say the one in which the private and personal rights of the Manager (Mahant) alone are in question. Therefore, in such status it would be an important question to be seen whether litigation was a right of the Math or that of Mahant and when it can be said that a suit has been filed by Mahant for the benefit of Math. We can take the help of an earlier precedent of this Court in **Biram Prakash Vs. Narendra Das AIR 1961 All. 266** where the suit was instituted by a person claiming to be the Mahant of a Math and sought to recover possession of the property belong to that Math. The Court held that the suit was not to establish the personal rights of the plaintiff and it was binding on the Math.

965. From a perusal of the plaint of suit 1885, the first thing which is gravely attracted is the description of the plaintiff as following :

"Raghubar Das, Mahant Janamsthan, Ayodhya"

966. Besides, in the entire plaint, the plaintiff has not mentioned even a word about the endowment or Math, i.e., Nirmohi Akhara. From a bare perusal of the plaint, it cannot be discerned at all that the plaintiff thereof has anything to do with

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Nirmohi Akhara or that the said plaint has any connection with Nirmohi Akhara. What is evident and appears to be logical to us is that Mahant Raghubar Das sought to treat Janamsthan Ayodhya as an independent endowment and claiming himself to be the Mahant thereof filed the aforesaid suit. The aforesaid suit was not filed in the representative capacity inasmuch though Mahant Raghubar Das gave justification for construction of temple that would be useful for the visitors and worshipers in general but the construction of temple was for his benefit and not for the benefit of endowment of which he claims to be the Mahant, i.e., Janamsthan, Ayodhya. It has not been brought on record by any material that Mahant Raghubar Das was allowed to contest the aforesaid suit of 1885 representing the entire Hindu community. Admittedly, the plaintiff (Suit-1), thus, was neither party in the said suit of 1885 nor it can be said that he was represented by Mahant Raghubar Das nor that the plaintiff in Suit-1 is claiming any interest deriving title from the earlier plaintiff of Suit-1885. So far as the Nirmohi Akhara is concerned though Mahant Raghubar Das was a Mahant of the Math at the relevant time but there is nothing apparent from the plaint or other material to suggest that he filed the aforesaid suit on behalf of Math Nirmohi Akhara or for its benefit. Moreover the plea of res judicata has not been raised to bar Suit-3. So far as Suit-5 is concerned, Ram Janamsthan, which is one of the plaintiffs, is not an endowment in suit 1885. It is claiming itself to be the deity, a juridical personality in its own rights. So far as Suit-4 is concerned, the plea of res judicata, a plea of defence clearly inapplicable to bar that suit.

967. From the pleadings of Suit 1885, it is also difficult to hold that Ramjanamsthan was itself the plaintiff represented by

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Mahant Raghubar Das and the said suit was filed for the benefit of said deity. In fact, the words "Janamsthan" in the title of the Suit 1885 has been mentioned as referring to a pious place and like an address but not treating as a deity or a juridical person of its own. Whether Mahant Raghubar Das filed the aforesaid suit on behalf of or for the benefit of Nirmohi Akhara does not appear from the pleadings of the said Suit. It would be entering in to realm of conjectures, if we presume to hold that the prayer for construction of temple at Chabutara ultimately would have benefited Nirmohi Akhara and, therefore, it must be deemed that the said suit was filed by Mahant Raghubar Das for the benefit of Nirmohi Akhara. When he claims himself to be Mahant of Janamsthan in filing the said suit without any reference to Nirmohi Akhara whether he intended to claim his own ownership or his own rights only or whether it was on behalf of Nirmohi Akhara is not to be guessed. In the absence of any indication or express words in the pleadings, it must be held that whatever he claimed in Suit-1885 was confined to himself and not to Nirmohi Akhara. Apparently, it is therefore difficult to hold that the parties in the suits in question are same as that of Suit 1885 or that the plaintiff of Suit 1885 was the person under whom the plaintiffs in Suits- 1, 3 and 5 are claiming their rights and, therefore, one of the essential conditions to attract res judicata does not exist.

968. After having said so we proceed further to find out as to whether the issue in the subsequent suit is the same which was directly and substantially an issue either actually or constructively in the former suit.

969. What has been pleaded in para 6(D) and 6(E) of the plaint (Suit-4) is that the two questions namely the existence of

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Babri Masjid and the right of Hindus to construct a temple on land adjoining the Masjid were the matter directly and substantially in issue in Suit 1885 and therefore, in respect to the said issues, the judgment in Suit 1885 shall operate *res judicata*.

970. Sri Jilani and Sri Siddiqui, learned counsels for Muslim parties vehemently argued that it is not open to the Hindu parties to plead that there is no mosque at the disputed site or there existed a temple throughout. The pleadings and the facts in detail of suit 1885 have already been narrated and it does not appear therefrom that there was any issue with respect to the existence of mosque at the disputed site or that of the right of Hindus to construct a temple on land adjoining the Masjid. Existence of *Chabutara* in the outer courtyard of the disputed site was not disputed by Muslim parties either in Suit 1885 or in the present set of suits.

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971. Mahant Raghubar Das, as an individual, was interested in making some construction over Chabutara which was already having a small temple. In order to provide better facilities to Hindu worshipers he wanted to make further construction on the said *Chabutara* so as to make it a bigger temple. Whether the building inside the courtyard was a mosque; whether it was validly constructed or whether there was any valid wakf etc. were not the questions involved in the said matter at any stage. From the plaint of Suit 1885 it is evident that Mahant Raghuvar Das had no concern with the area inside the courtyard and his concentration was only to raise some construction on *Chabutara* measuring 21 ft. x 17 ft. situated in the outer courtyard in the site plan. He mentioned the building of the inner courtyard as mosque but there was no issue on this aspect at all. The question therefore that it was a question directly and substantially in issue

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that the building in dispute was a mosque would amount to stretching and reading too much in the suit of 1885 which actually do not exist. The submission, in our view, is thoroughly misconceived.

972. So far as the second aspect is concerned that the right to construct a temple on the land adjoining the mosque was denied, this submission has been made in much wider terms and it travels beyond what was actually the pleadings, issues and the decisions in Suit 1885. The ultimate Court declined to decree the suit of Mahant Raghubar Das in Suit 1885 on the ground of lack of cause of action, law and order situation considering the topography of the area at that time but no issue whatsoever was actually decided by the Court of second appeal in which the judgments of the Courts below ultimately merged.

973. In our view the plaintiffs (Suit 4) have misconstrued the purport of the words "matters directly and substantially in issue" as used in Explanation IV Section 11 of C.P.C.

974. Even otherwise, we fail to understand as to how this pleading in plaint could have been taken by the plaintiff in Suit-4 since, in our view, this could have been, if permissible, to be taken as a plea in defence when such issues are raised by some parties. In any case, we are clearly of the view that the judgments in Suit 1885 by no means can be said to operate as *res judicata* in respect to the matters as are pleaded in para 6(D) and (E) of the plaint in Suit-4.

975. As we have referred to the pleadings of Suit-1885, we find that the plaintiff claim was right to make construction over Chabutara being its owner as well as in possession. Ownership with respect to Chabutara was disputed by defendant no. 2 (Suit 1885). It is for this reason a specific question i.e. Issue No. 6

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was framed as to who own and possess the said Chabutara. The trial court held that since the plaintiff was in possession of the said Chabutara since long, therefore, he can be said to be owner and thus decided Issue No. 6 in his favour. However, it decline to grant any relief to the plaintiff for a different reason namely that ti would not be in the interest of the public at large and to maintain law and order and peace between two communities to make some construction at a place in the vicinity whereof a mosque existed. The first appellate court did not decide Issue No. 6 though it directed to struck off the observations and findings with respect to the ownership of the plaintiff qua Issue No. 6 (Suit-1885) but by itself did not record any finding as to whether the plaintiff was owner of the said Chabutara or not and this question left open by the first appellate court. It however dismissed the suit on the ground that it is not in public interest to allow such construction at a place where in the vicinity mosque existed. In the second appeal the Judicial Commissioner while confirming the lower courts judgments of dismissal of suit also observed that the plaintiff failed to prove his ownership over Chabutara. However, it did not decide the issue as to who own and possess the said Chabutara. The observation that the one party fail to place any evidence in support of an issue like the issue of ownership in the present case would not mean that the ownership of the other party had been accepted by the Court. It is thus clear that though in Suit-1885 the plaintiff sought relief on the ground of his ownership but could not succeed, besides other reasons, also for failure in placing any evidence to show his ownership but simultaneously it is clear that the courts did not decide at all as to who own the said Chabutara and no finding in this regard has been recorded by the Courts. Rather

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Judicial Commissioner's judgment also shows that he has given his additional reason for dismissing the suit that there being no injuria hence the very cause of action to the plaintiff did not exist. The issue of ownership of the inner courtyard premises or the entire outer courtyard premises was not at all involved in the aforesaid suit. Hence it cannot be said that the issues engaged in the present suits were directly and substantially involved in the earlier suit of 1885. The another test to attract the doctrine of res judicata, therefore, also fails as lacking in the present cases.

976. There is another angle to this aspect. It was clarified in **P.M.A. Metropolitan (supra)** that when a decision is taken in appeal the rule is that it is the appellate decision and not the decision of the trial court that operates as res judicata. Consequently, where a suit is decided both on merits and on technical grounds by the trial court but the appellate court maintains it on technical ground like beyond limitation or suit being not properly constituted then the decision rendered on merits by the trial court seizes to have finality. The Apex Court refer to and relied on the Privy Council's decision in **Abdullah Ashgar Ali Khan Vs. Ganesh Dass, AIR 1917 PC 201** where construing the expression "heard and finally decided" in Section 10 of the British Baluchistan Regulations 9 of 1886 the Privy Council held where suit was dismissed by two courts on merits but the decree was maintained in second appeal because the suit was not properly constituted then the finality on merits stood destroyed. The Apex court clarified this position in para 47 of the judgement as under:

> *"47. The rationale of these decisions is founded on the principle that if the suit was disposed of in appeal not on merits but for want of jurisdiction or for being barred by*

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time or for being defectively constituted then the finality of the findings recorded by the Trial Court on merits stands destroyed as the suit having been found to be bad for technical reasons it becomes operative from the date the decision was given by the trial court thus rendering any adjudication on merits impliedly unnecessary. On the same rationale, once the Royal Court of Appeal allowed the Review Petition and dismissed the appeal as the ex-communication of Dionysius was contrary to principles of natural justice and he had not become heretic then the finding on authenticity of the canon etc. rendered in the original order was rendered unnecessary. Therefore, the finding recorded on the authenticity of the canon and power of the Patriarch etc. recorded in the earlier order could not operate as res judicate in subsequent proceedings."

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977. The above aspect was also considered by the Apex Court from another angle in para 48 of the judgement in **P.M.A. Metropolitan (supra)** as under:

"48. Last but not the least reason to hold that the finding in the Vattipanam Suit recorded by the High Court in its original judgment on canon etc. could not operate as res judicata is where a decree is one of dismissal in favour of the defendants, but there is an adverse finding against him, a plea of res judicata cannot be founded upon that decision because the defendant having succeeded on the other plea had no occasion to go further in appeal against the adverse finding recorded against him [see Midnapur Zamindari Company Ltd. vs. Naresh Narayan Roy, AIR 1922 PC 241]. Mr. Parasaran, the learned senior counsel

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for the appellant, urged that this is not an absolute rule as there is mutuality in res judicata and even the succeeding party is bound by the question decided against him. Reliance was placed on Mt. Munni Bibi and Anr. vs. Tirloki Nath and Ors., AIR 1931 PC 114, V.P.R.V.Chockelingam Chetty vs. Seethai Ache and Ors., AIR 1927 PC 252, Sham Nath Madan vs. Mohammad Abdullah, AIR 1967 J&K 85 and Arjun Singh vs. Tara Das Ghosh, AIR 1974 Patna 1 (FB). The two Privy Council decisions do not appear to be of any assistance as the first one, Mt. Munni Bibi (supra), is the leading decision on the principle of res judicata amongst co-defendants. True the Patriarch and Catholico were co-defendants and there was lis too but in view of the finding on natural justice and apostacy the finding on other issues was rendered unnecessary. The rule of res judicata amongst co-defendants is also governed by those rules which apply to normal rule of res judicata. The decision in Chockalingam Chetty (supra) is an authority for the principle that where an appeal is filed without impleading a defendant through whom other defendants derived title then the decision in his favour operates as res judicata between plaintiff and other defendants as well. Similarly, in the decision of the Patna High Court in Arjun Singh (supra) the primary question was whether a party against whom a finding is recorded has got a right of appeal even though the ultimate decision was in his favour and it was held that there was no bar, but what was necessary was that the finding so recorded should operate as res judicata. On facts it was found that the Appellate Court while maintaining the order of dismissal of the suit

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on preliminary issue recorded findings on other issues which were against the plaintiff, yet the plaintiff was not entitled to file an appeal as the findings on merits which were adverse to him could not operate as res judicata. In Sham Nath's case (supra) the learned Single Judge rejected the plea of res judicata raised on behalf of the plaintiff, but while considering the alternative argument, observed that an adverse finding recorded against a defendant in a suit dismissed could not operate as res judicata unless the adverse finding formed a fundamental part of the decree itself. None of the decisions, therefore, are of any help to the appellant."

978. Similarly, as we have already said, the issue which was involved in 1885 Suit, having not been decided by the courts, all the ingredient which are condition precedent to attract to plea of res judicata, therefore are wanted in the cases in hand.

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979. It was further contended that the observations of the courts below that in the map appended to the plaint the building in the inner courtyard was shown as mosque, the statement of defendant no. 2 that the mosque was constructed by Babur and the similar observations made by the appellate courts having not been disputed or challenged by the plaintiff in the said case, the findings recorded in the decision are final and binding on the parties before us. We are afraid that neither the same can be said to be a finding recorded by the courts nor for the said purpose the judgment of Suit-1885 constitute evidence by virtue of Section 40 to 43 of the Evidence Act which read as under:

*"**Section 40. Previous judgments relevant to bar a second suit or trial.--**The existence of any judgment, order or decree which by law prevents any court from taking*

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cognisance of a suit or holding a trial, is a relevant fact when the question is whether such court ought to take cognisance of such suit or to hold such trial."

*"**Section 41. Relevancy of certain judgments in probate, etc, jurisdiction.--**A final judgment, order or decree of a competent court, in the exercise of probate, matrimonial, admiralty or insolvency jurisdiction, which confers upon or takes away from any person any legal character, or which declares any person to be entitled to any such character, or to be entitled to any specific thing, not as against any specified person but absolutely, is relevant when the existence of any such legal character, or the title or any such person to any such thing, is relevant.*

Such judgment, order or decree is conclusive proof;

that any legal character which it confers accrued at the time when such judgment, order or decree came into operation;

that any legal character, to which it declares any such person to be entitled, accrued to that person at the time when such judgment, order or decree declares it to have accrued to that person;

that any legal character which it takes away from any such person ceased at the time from which such judgment, order or decree declared that it had ceased or should cease;

and that anything to which it declares any person to be so entitled was the property of that person at the time from which such judgment, order or decree declares that it had been or should be his property."

*"**Section 42. Relevancy and effect of judgments, orders***

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or decrees, other than those mentioned in s. 41.-- *Judgments, orders or decrees other than those mentioned in s. 41, are relevant if they relate to matters of a public nature relevant to the inquiry; but such judgments, orders or decrees are not conclusive proof of that which they state."*

*"**Section 43. Judgments, etc, other than those mentioned in ss 40-42, when relevant**—Judgments, orders or decrees, other than those mentioned in ss 40, 41, and 42, are irrelevant unless the existence of such judgment, order or decree, is a fact in issue, or is relevant under some other provision of this Act."*

980. Evidently Sections 40, 41 and 42 are not attracted in this case and that being so the judgment is irrelevant and cannot be an evidence in respect to the facts in issue in these cases. We are not shown any other provision of the Evidence Act, 1872 whereunder the judgments of Suit-1885 can be said to be relevant except Section 13 which reads as under:

*"**Section 13. Facts relevant when right or custom is in question.--**Where the question is as to existence of any right or custom, the following facts are relevant:*

(a) any transaction by which the right or custom in question was created, claimed, modified, recognized, asserted, or denied, or which was inconsistent with its existence;

(b) particular instances in which the right or custom was claimed, recognized, or exercised, or in which its exercise was disputed, asserted or departed from."

981. Learned counsels for the Muslim parties contended that it was asserted in Suit-1885 that a mosque was constructed by

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Emperor Babur in the inner courtyard of the disputed site and also he created a waqf resulting in the vesting of land in the Almighty. The plaintiff was not granted any permission etc. by the Emperor or his successor and, therefore, he cannot be the owner of the land over which the Chabutara is existed. They also contended that the fact of construction of mosque by Babur was noticed by the first appellate court in its judgment and he found that after 358 years it is too late in the day to reverse the process and the parties, therefore, should maintain status quo. These facts relating to the rights and custom are relevant and for the said purpose the judgments of 1885 Suit can be seen as a valid piece of evidence. It is said that this aspect of the matter in the judgment relates to a matter of public nature. We however find it difficult to subscribe to the said submission. It is though true that the judgments wherein do not operate as res judicata can be admitted in evidence to show the existence of a judgment in favour of a party. It may also be admitted as proof of the facts of litigation, its results and effect upon the parties which makes a certain course of conduct probable or improbable on the part of the one of the parties. (See **Shiv Charan Vs. State of U.P., AIR 1965 (All.) 511**)

982. It is also true that a judgment in another suit which is not inter partes may be evidence under this Section for certain purposes, i.e., to prove the fact of the judgment; to show who the parties to the suit were; to show what was the subject matter of the suit; to show what was decided or declared by the judgment; to show what documents had been filed by the parties in the proceedings; to establish the transaction referred to in the judgment; to show the conduct of the parties, or particular instances of the other side or a right or assertion or title. (See

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Harihar Prasad Singh Vs. Deo Narain, AIR 1956 SC 305)

983. However, the reasons upon which a judgment is founded, cannot be regarded as, nor can any finding of fact there come to other than the transaction itself, relevant in another case. (See **Gobinda Narain Singh Vs. Sham Lal, AIR 1931 P.C. 98=LR 58 IA 125)**

984. Similarly, recitals in a judgment are no evidence whatever to prove the exact admissions made by a party or witness. (See **Indra Singh Vs. Income Tax Commissioner, AIR 1943 Pat. 169** and **Abdulla Vs. Kunbammad, AIR 1960 Ker. 123)**

985. This Court in **Hira Lal Vs. Hari Narain, AIR 1964 All 302** held that a right in dispute cannot be proved on the basis of the finding in respect of that right in a previous suit not inter partes. A judgment, recording a finding, recognizing certain right cannot be used as evidence to prove the right in another suit not between the same parties.

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986. Dealing with the issue of res judicata as to when, how and in what manner it would operate, the Apex Court in **P.M.A. Metropolitan (supra)** observed that the pleadings of the parties give rise to various issues whereupon the questions framed and answered, if any, by the court, and, in these circumstances the crucial issue arises whether the direction issued by the Court and not the judgement, i.e., any finding recorded would operate as res judicata. The Court referred to and followed its Constitution Bench decision in **Mysore State Electricity Board vs. Bangalore Woollen, Cotton and Silk Mills Ltd. and Ors., AIR 1963 SC 1128 (**para 12) where it was observed:

> *"It is well settled that in order to decide whether a decision in an earlier litigation operates as res judicata,*

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the court must look at the nature of the litigation, what were the issues raised therein and what was actually decided in it.....it is indeed true that what becomes res judicata is the "matter" which is actually decided and not the reason which leads the court to decide the 'matter'".

987. The judgement in **P.M.A. Metropolitan (supra)** which followed the above Constitution Bench decision also is a three judges decision and it virtually set at rest the question as to what would constitute res judicata and this is what is reiterated in para 55 of the judgement:

"These observations are well settled and reiterate established principle laid down by the Courts for the same, sound and general purpose for which the rule of res judicata has been accepted, acted, adhered and applied, dictated by wisdom of giving finality even at the cost of absolute justice."

"Such is the principle of finality. True that the questions must have been adjudicated stricto sensu as observed by this Court.. . . ."

988. If an issue has been decided by the Court or a dispute has actually been decided by the Court, it should not be allowed to be re-adjudicated as that would be contrary to the principle of finality but no more and no less. If the dispute has actually not been decided on the issues framed or that the matter has been decided by the appellate court on some technical reason, in that case as already observed since it is the final judgement of appellate courts that would hold the field, it cannot be said that since the trial court has decided the issue, it must operate as res judicata. We have no hesitation in applying the principle of finality in a case where the issues raised have actually been

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decided even if wrongly but where the judgement of the ultimate court shows that a particular issue has not been decided or left open or nothing is said about that, we find it difficult to hold that even in such a case the parties can be non suited in a subsequent matter on the ground of an earlier decision where the issue which has arisen in the subsequent suit has not been decided actually. The principle of finality has been noticed in detail in an English case, i.e., **Ampthill Peerage Case, (1976) 2 All ER 411** where at pages 423 and 424 it was held:

> *"Our forensic system, with its machinery of cross-examination of witnesses and forced disclosure of documents, is characterised by a ruthless investigation of truth. Nevertheless, the law recognises that the process cannot go on indefinitely. There is a fundamental principle of English law (going back to Coke's Commentary on Littleton) generally expressed by a Latin maxim which can be translated: 'It is in the interest of society that there should be some end to litigation'. This fundamental principle finds expression in many forms. Parliament has passed Acts (the latest only last year) limiting the same within which actions at law must be brought. Truth may be thus shut out, but society considers that truth may be bought at too high a price, that truth bought at such expense is the negation of justice. The great American Judge, Story, J. delivering the judgment of the Supreme Court of the United States in Ball v. Morrison (1828 (1) Peters 351) called the first of these Acts of limitation 'a statute of repose'; and in England Best CJ called it 'an act of peace' (A'Court v. Cross). The courts of equity, originally set up to make good deficiencies in the common*

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law, worked out for themselves a parallel doctrine. It went by the technical name of laches. Courts of equity would only give relief to those who pursued their remedies with promptitude. Then, people who have long enjoyed possession, even if they cannot demonstrate a legal title, can rarely be dispossessed. Scottish law goes even further than English: delay in vindicating a claim will not only bar the remedy but actually extinguish the right. But the fundamental principle that it is in society's interest that there should be some end to litigation is seen most characteristically in the recognition by our law--by every system of law--of the finality of a judgment. If the judgment has been obtained by fraud or collusion it is considered a nullity and the law provides machinery whereby its nullity can be so established. If the judgment has been obtained in consequence of some procedural irregularity, it may sometimes be set aside. But such exceptional cases conclude the matter. That, indeed, is one of society's purposes in substituting the law suit for the vendetta....And once the final appellate court has pronounced its judgment, the parties and those who claim through them are concluded, and if the judgment is as to the status of a person, it is called a judgment in rem and everyone must accept it. A line can thus be drawn closing the account between the contestants. Important though the issues may be, how extensive so ever the evidence, whatever the eagerness for further fray, society says; 'We have provided courts in which your rival contentions have been heard. We have provided a code of law by which they have been adjudged. Since judges and juries are fallible human

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beings, we have provided appellate courts which do their own fallible best, to correct error. But in the end you must accept what has been decided. Enough is enough.' And the law echoes : res judicata, the matter is adjudged'. The judgment creates an estopel-which merely means that what has been decided must be taken to be established as a fact, that the decided issue cannot be reopened by those who are bound by the judgment, that the clamouring voices must be stilled, that the bitter waters of civil contention (even though channeled into litigation must be allowed to subside".

989. In our view, except of the fact that Raghubar Das, Mahat Janam Asthan, Ram Kot, Ayodhya failed to prove his claim of ownership over Chabutara in the outer courtyard may a relevant fact for which the judgments of Suit 1885 may be seen but beyond that the observations and reasons etc. of the Court in the judgment are not such facts relevant which are covered by Section 13 or any other of the Evidence Act so as to make the said judgments admissible in evidence and in the absence thereof, as said in Section 43, the judgment as evidence is irrelevant.

990. There is also nothing on record to show that Suit 1885 was filed on behalf of the entire Hindu community as a whole or the persons interested in Janam Asthan namely, in representative capacity nor there is anything to show that the suit was in the knowledge of Hindus in general and all Hindus were interested in the same. No material or evidence has come on record in proof thereof.

991. Though Mahat Raghubar Das was a Mahant at the relevant time of Nirmohi Akhara but no plea of res judicata or

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estoppal has been raised in respect to Suit-3 which has been filed by Nirmohi Akhara. In the absence of any such plea Suit-3 cannot be said to be barred by any such principle. So far as Suit-1 and 5 are concerned, as we have already discussed, the necessary indicias to attract plea of res judicata wanting, the issues pertaining to res judicata and estoppal would not be attracted in those cases.

992. Coming to the various authorities cited by Sri Siddiqui on behalf of the plaintiff (Suit-4), we do not find that the view which we have recorded hereinabove comes in conflict or in contradiction to the exposition of law laid down thereon.

993. In **Talluri Venkata Seshayya (supra)** it was held that the provisions of Section 11 are mandatory. We agree. On facts, however, Section 11 in that case was found attracted but has no application to the present case inasmuch therein the earlier suit was brought by two persons which was dismissed on the ground that the temples were private temples and the property endowed to the temple. Being a private endowment, the alienation thereof was valid. The second suit filed as representative suit by some persons in public interest for declaring certain temples as public temples and for setting aside alienation of endowed property by the Manager. The plaintiff of the second suit conceded before the Court that they could be deemed to be persons claiming under the plaintiff in the prior suit and the issue in both the suits are same as is apparent from the following :

> *"Mr. Dunne, on behalf of the appellants, conceded that subject to the question of bona fides, the present appellants must be deemed to be claiming under the plaintiffs in the 1861 suit within the meaning of Expl. 6, S. 11 Civil P.C., as they were both claiming as representing the public interest*

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in the temples and the Kowtharam lands. He further conceded that the matter in issue in the two suits was substantially the same."

994. Section 11 was sought to be wriggle out by contending that the earlier suit was not a bona fide litigation, brought in collusion with the defendants and there was gross negligence, which facts, however, could not be proved. The said judgment, therefore, in our view, does not render any help to the parties in holding Suits-1 and 5 barred by res judicata on account of decision of Suit-1885.

995. In **K. Ethirajan (supra)**, the property in dispute owned by widow Gangammal's sister's son and was allowed to occupy a portion of the suit properties since before commencement of (Tamil Nadu) Estates (Abolition and Conversion into Ryotwari) Act, 1948 (hereinafter referred to as "T.N. Ryotwari Act, 1948. The widow Gangammal died in the year 1939. One M. Gurunathan (subsequently died and his legal representatives were impleaded as respondents before the Apex Court) claimed right to the property by inheritance showing his relationship with Gangammal's son and her husband's brother. Claiming title to the suit property by inheritance, Gurunathan filed Suit No. 530 of 1948 which was decided on 27.6.1949 against the step brother of Gangammal describing the latter as in unlawful possession of the suit property. Gurunathan obtained a decree of eviction against the step brother of Gangammal in the aforesaid suit. K. Ethirajan was not a party to the said suit, which was decreed on 27.6.1949 though he was in occupation of the portion of the suit property. The Director of Settlement in the proceedings initiated in accordance with Section 18 (4) of T.N. Ryotwari Act, 1948 recognized joint ownership and possession

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of K. Ethirajan and M. Gurunathan on the suit property and granted a joint patta in their favour on 28.8.1970. The said joint patta was upheld by higher authorities under T.N. Ryotwari Act, 1948. The claim of M. Gurunathan for recognition of his exclusive right to the suit properties being nearest heir of Gangammal was rejected by all the authorities concerned under the aforesaid Act. It is on the basis of this joint patta, K. Ethirajan filed a suit for the portion in his possession which was decreed by Trial Court as well as first appellate Court. The Courts below while granting decree of partition in favour of plaintiff K. Ethirajan, apart from relying on the joint patta, also relied on the judgement passed in previous litigation with regard to the the suit properties between K. Ethirajan and M. Gurunathan. It appears that M. Gurunathan had filed Original Suit No. 9003 of 1973 against K. Ethirajan seeking his eviction and delivery of possession of the portion of suit property of the dimensions 37'X20' with a superstructure thereon used for residence. The suit was defended by K. Ethirajan on the ground, inter alia, that he is in possession of the disputed land and the superstructure being the adopted son of Gangammal and had been granted a joint patta in the proceedings which concluded in his favour under the Act of 1948. The earlier Suit of 1973 was dismissed by the Trial Court vide judgment dated 6.10.1976 holding that K. Ethirajan was in possession of the suit property as a mere licensee of M. Gurunathan (deceased) but was in possession of the suit property as owner since 1940. The Trial Court also held that K. Ethirajan having remained in continuous possession of the suit property as owner had perfected his title by remaining in adverse possession for more than the statutory period of 12 years. The appeal no. 389 of 1977 preferred by M.

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Gurunathan against the judgement dated 6.10.1976 was dismissed on 24.4.1979 holding that K. Ethirajan was in possession since much prior to the grant of the alleged licence/permission to him and, therefore, the contention of M. Gurunathan that he was licensee of Gurunathan was incorrect. The Court also relied on the proceedings pertaining to grant of joint patta. However, the plea of adverse possession of K. Ethirajan was negatived on the ground that if he was basing his claim of ownership and possession on the basis of joint patta, the question of adverse possession inter se between co-owners would not arise. The matter did not carry further and attained finality. Based on this judgment, the Trial Court and first Appellate Court in latter suit granted a preliminary decree of partition of suit property in favour of K. Ethirajan, the plaintiff this time. In the second appeal, the High Court upset the findings of both the Courts below and dismissed the suit of K. Ethirajan observing that in the earlier litigation between the parties, the defence set up by K. Ethirajan was on the basis of adverse possession and he never set up a case of co-ownership and, therefore, it barred the second suit by K. Ethirajan on the basis of joint ownership of the suit property. The Apex Court held the High Court in error and reversed the judgment and restored the judgment of Trial Court and the first appellate Court. After going through the judgment of the earlier litigation as well as the present one, the Apex Court found that the earlier suit filed by M. Gurunathan was dismissed by the Trial Court on the ground that the case of grant of leave and patta set up by him was not approved and the defendant, i.e., K. Ethirajan being in possession since 1940 onwards had perfected his title by adverse possession. The appellant Court though negatived the plea of

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adverse possession, but relying on the joint patta came to the conclusion that the parties were co-owners and it was held that between co-owner, plea of adverse possession cannot be accepted. The decree of dismissal of suit was upheld by the appellate Court on the ground that plea of grant of licence by M. Gurunathan was not proved and the parties were co-owners under the joint patta in their favour. The judgment of the appellate Court dismissing the suit on the finding of co-ownership was not challenged any further and attained finality. In these circumstances, the Court held that the dispute of title to the suit properties between the parties was an issue directly and substantially involved in the earlier suit which was decided by the first appellate Court and thus the principle of res judicata would attract. It was observed that M. Gurunathan or his legal representatives are estopped from questioning the claim of co-ownership of K. Ethirajan and his legal representatives and for that purpose, the Apex Court also relied on the law laid down in **Hope Plantations Ltd. (supra)**.

996. Thus, it is evident from what has been observed by the Apex Court that the issue was directly and substantially involved in the earlier litigation between the same parties and was decided also, hence, would operate as res judicata in the subsequent suit. This obviously is not the case before us. Firstly, we have not been able to find out that the parties in the earlier suit are same as in the present one or that the parties or any of them in the cases in hand are litigating through the plaintiff (Suit-1885). Secondly, the issue of ownership of Mahant Rathubar Das though was directly raised but the first appellate Court while striking off the finding of Trial Court on the aforesaid issue did not consider further to decide the same either

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way and left it undecided. It, however, upheld the decree of dismissal on the ground of public order, propriety etc. This judgment of the first appellate Court as such was affirmed in second appeal Therefore, the necessary ingredients for attracting plea of res judicata lack in the present cases.

997. Reliance was also placed on para 17 and 18 of the judgment in **K. Ethirajan (supra)** which may also be discussed herein. It was contended on behalf of the respondents in K. Ethirajan that the earlier suit was for a limited property, i.e, a portion of the suit property measuring 37'X20' with superstructure thereon and, therefore, even if res judicata and estoppel would apply, it would be confined only in respect to that portion of land and not beyond that. The Apex Court, however, negatived the petitioners' submissions observing that in the earlier litigation, M. Gurunathan sought eviction of K. Ethirajan from portion of suit property by claiming exclusive title to the whole property involved in the subsequent suit. K. Ethirajan took the defence of adverse possession and co-ownership on the basis of joint patta. The Apex Court from the pleadings came to the conclusion that it is not correct to hold that earlier litigation was restricted only to a portion of the whole property involved in the present suit and held as under :

> *"Looking to the pleadings of the parties in that suit (copies of which are placed before us in additional paper-book), the ground urged by the respondent that in the earlier litigation, claim of exclusive ownership set up by deceased-M. Gurunathan was restricted only to a portion of the whole property involved in this suit, does not appear acceptable. On the basis of pleadings of the earlier suit, we find that the issue directly involved was claim of exclusive*

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ownership of deceased-M. Gurunathan to the whole property left behind by deceased-Gangammal although eviction was sought of the defendant from a particular portion of the land on which he had built a hut for residence. The suit was resisted by deceased-K. Ethirajan claiming adverse possession and alternatively as co-owner on the basis of joint patta (Ex. A-7).”

998. Further, the Apex Court in para 20 of the judgment held as under :

*“**20.** The argument that principle of res judicata cannot apply because in the previous suit only a part of the property was involved when in the subsequent suit the whole property is the subject-matter can not be accepted. The principle of res judicata under Section 11 of the Code of Civil Procedure is attracted where issues directly and substantially involved between the same parties in the previous and subsequent suit are the same-may be- in previous suit only a part of the property was involved when in the subsequent suit, the whole property is the subject-matter.”*

999. There cannot be any dispute on the principle, but as we have already observed that the issue of title having not been decided by the first appellate Court and on the contrary the findings of the Trial Court with respect to ownership of the plaintiff, Raghubar Das, in Suit-1885 having been directed to be expunged, there remained virtually no decision or finding on the issue pertaining to ownership of suit property in Suit 1885 and, therefore, in our considered view, the plea of res judicata or estoppel would have no application hereat.

1000. In **Krishna Chendra Gajapati Narayan Deo (supra)**,

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the only question of law considered and decided by Privy Council is, if an issue was not property raised in the plaint, but both the parties without protest chose to join the issue and obtained a decision thereon in an earlier litigation, that would also operate as res judicata in the latter litigation. The exposition of law aforesaid also has no application whatsoever in these cases for the reason we have already discussed. The result of the judgment of the first appellate Court in Suit 1885 is that the issue pertaining to ownership remained undecided and in the second appeal, the Judicial Commissioner's judgment shows that the plaintiff Mahant Raghubar Das therein was found to have shown no material to prove his ownership but who owned the property in dispute in Suit 1885 as such was not decided. Therefore, it cannot be said that the judgment of Suit 1885 may operate res judicata to the suits in question.

1001. The Privy Council in **Midnapur Zamindary Co. Ltd. (supra)** on page 149 of the judgment observed *"Can it be said under these circumstances that the point was not raised, that the Court did not consider it to be necessary issue did not impliedly decide that it was necessary and did not decide the issue on the merits? We think the answer is clearly in the negative. Then what of the decree? It is true that it does not expressly refer to the tenancy right, but it gave a decree for possession. What, then, did it intend to give? For the appellant it is said that all that was given was possession as co-proprietor and that the question whether such possession was free of the alleged tenancy right was left untouched. But if so, what was the necessity of discussing the question in the judgment? We ought not, we think, to assume that the Judges discussed a question which was irrelevant to the case, and then granted no relief in respect of it;*

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but rather that as they had discussed and negatived the alleged tenancy right in the judgment they intended to, and did give a decree which should give effect to these findings. If so, the learned Judges' decree in effect gave to the respondent before us a right to the lands in that suit free of that alleged tenancy right claimed. We are of opinion therefore that the issue as to the appellants' right is res judicata."

1002. The above exposition is also unexceptional, but, in our view again has no application in these suits since the facts are different.

1003. Sri Siddiqui has placed reliance on para 32, 34, 35, 36, 38, 39, 48 and 50 of the judgment in **State of Karnataka and another Vs. All India Manufacturers Organization and others (supra)**. Para 32, 34 and 36 refer to Section 11 and general principles of res judicata. The principle laid down by the Apex Court is :

> *"The main purpose of the doctrine is that once a matter has been determined in a former proceeding, it should not be opened to the parties to re-agitate the matter again and again."*

1004. We have also expressed our view which are strictly in conformity with what has been observed by the Apex Court.

1005. The basic question raised therein was the applicability of plea of res judicata in public interest litigation. The Apex Court held that it would apply. It followed its earlier judgment in **Forward Construction Company Vs. Prabhat Mandal (Regd.) 1986 (1) SCC 100** and Explanation IV of Section 11 C.PC. In para 38 the Court reminded the spirit behind Explanation IV Section 11 C.P.C. by referring to the observations of Wigram, V.C. In **Henderson Vs. Henderson**

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(1843-60) All ER Rep 378 and said:

> *"The plea of res judicata applies, except in special case (sic), not only to parties upon which the court was actually required by the parties to form an opinion and pronounce a judgment, but to every point which property belonged to the subject of litigation and which the parties, exercising reasonable diligence, might have brought forward at the time."*

1006. In para 39 also, similar observation of Somervell, L.J. In **Greenhalgh Vs. Mallard (1942) 2 All ER 225 (CA)** have been quoted which says *"I think that on the authorities to which I will refer it would be accurate to say that res judicata for this purpose is not confined to the issues which the court is actually asked to decide, but that it covers issues or facts which are so clearly part of the subject-matter of the litigation and so clearly could have been raised that it would be an abuse of the process of the court to allow a new proceeding to be started in respect to them."*

1007. Para 48, 49 and 50 refer the above principle and philosophy behind Explanation IV and say that it is to prevent abuse of the process of Court through re-agitation of settled issues. The observation in **Greenhalgh (supra)** was found to have been referred approvingly by the Apex Court in **State of U.P. Vs. Nawab Hussain (supra)** (para-4). The aforesaid observations being exposition of law with respect to Explanation IV Section 11 are also unexceptionable. The principles of law and the cases where Explanation IV would be attracted cannot be doubted but whether the same are attracted in the cases in hand is the moot question, which we find in negative. In our view, the above judgment also lends no support

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to the objection that the suits in question are barred by principle of res judicata in the light of the decision in Suit-1885.

1008. In **Lal Chand (supra)**, one Radha Kishan owned a house no. 142, Katra Mashru, Delhi. He let out a portion consisting of five rooms on the ground floor and two rooms on the second floor to one Lal Chand. Radha Kishan filed suit no. 42 of 1958 in the Court of Sub-Judge, Delhi seeking eviction of Lal Chand and against four others. He alleged that Lal Chand had sublet the premises. The eviction was sought on three grounds including that he required the premises for his own use and occupation. It was decreed on the ground of need for own use and occupation. Rest of the grounds were rejected. The decree was upheld in appeal but with respect to premises, the appellate Court thought that the requirement of landlord would be met if possession of two rooms at the second floor is given to him. However, since there was no provision for giving possession of a part of the disputed premises in Delhi Rent Control Act, 1952, the entire decree was confirmed and the same stood continued in the second appeal also. The suit property being situated in a slum area, the landlord filed an application under Section 19 (2) of the Slum Areas (Improvement and Clearance) Act, 1956 (in short "Slum Act, 1956") for permission of the competent authority to execute decree for possession. The competent authority after taking note of Section 19 (4) of Slum Act, 1956 permitted the landlord to execute the decree in respect to two rooms situated on the second floor only and refused permission to execute decree in regard to the premises situated on the ground floor. The order was upheld in appeal and consequently the tenants handed over possession of two rooms on second floor to the landlord.

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Thereafter, the landlord filed a fresh regular suit no. 435 of 1936 against Lal Chand and others for possession of the remaining rooms on the ground floor. In the above circumstances, the Apex Court held the subsequent suit barred by res judicata observing as under :

> "*19. Only one more aspect of the matter needs to be adverted to. The respondent after obtaining a decree for eviction against Lal Chand and his alleged sub-tenants applied for permission of the competent authority to execute that decree. Permission was granted to him to execute the decree in respect only of the two rooms on the second floor and in pursuance of that permission he obtained possession of those two rooms. We are unable to understand how after working out his remedy under the Delhi Rent Control Act as modified by the Slum Clearance Act, it is competent to the respondent to bring a fresh suit for evicting the appellants from the premises on the ground floor. The authorities under the Slum Clearance Act who are exclusively invested with the power to determine whether a decree for eviction should be permitted to be executed and, if so, to what extent, had finally decided that question, refusing to allow the respondent to execute the decree in respect of the ground floor premises. By the present suit, the respondent is once again asking for the relief which was included in the larger relief sought by him in the application filed under the Slum Clearance Act and which was expressly denied to him. In the circumstances, the present suit is also barred by the principle of resjudicata. The fact that Section 11 of the Code of Civil Procedure cannot apply on its terms, the earlier*

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proceeding before the competent authority not being a suit, is no answer to the extension of the principle underlying that section to the instant case. Section 11, it is long since settled, is not exhaustive and the principle which motivates that section can be extended to cases which do not fall strictly within the letter of the law. The issues involved in the two proceedings are identical, those issues arise as between the same parties and thirdly, the issue not sought to be raised was decided finally by a competent quasi-judicial tribunal. The principle of res judicata is conceived in the larger public interest which requires that all litigation must, sooner than later, come to an end. The principle is also founded on equity, justice and good conscience which required that a party which has once succeeded on an issue should not be permitted to be harassed by a multiplicity of proceedings involving determination of the same issue. Were it permissible to bring suits of the present nature, the beneficial jurisdiction conferred on the competent authority by the Slum Clearance Act would become illusory and meaningless for, whether the competent authority grants or refuses permission to execute a decree for eviction, it would always be open to the landlord to enforce the ejectment decree by filing a substantive suit for possession. Verily, the respondent is executing the eviction decree by instalments, now under the garb of a suit. Apart from the fact that the suit is barred on account of principles analogous to res judicata, it is plainly in violation of the injunction contained in Section 19 (1) (b) of the Slum Clearance Act, if regard is to be had to the substance and not for the form

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of the proceedings."

1009. From the facts noticed above, we have no manner of doubt that the application of res judicata in the above case was rightly applied but in the facts of the cases in hand, the aforesaid judgement has no application.

1010. In **Sulochana Amma (supra)**, Explanation- VIII of Section 11 came to be considered before the Apex Court and it was held that an order or an issue which had arisen directly and substantially between the parties or their privies and decided finally by a competent Court or Tribunal, though of limited or special jurisdiction which includes pecuniary jurisdiction, will operate as res judicata in a subsequent suit or proceeding, notwithstanding the fact that such Court of limited or Special jurisdiction was not a competent Court to try the subsequent suit. The only requirement is that the issue must directly and substantially has arises in a latter suit between the same parties or the privies. The question decided therein does not apply to the present suits.

1011. In **State of Punjab and others Vs. M/s. Surinder Kumar (supra)**, the question was about the meaning of the words "might and ought" used in Section 11 C.P.C. M/s Surinder Kumar and Co. had the leasehold right to vend the Indian made Foreign liquor at Ludhiana for financial year April 1, 1995 to March 31, 1996 at their shops located at 44 places, licensed to sell under L-2 and L-14. The Excise Department initiated certain proceedings against them and cancelled licence. Against the order of cancellation, writ petitions were filed impleading the then Minister for Excise and Taxation as one of the respondents alleging mala fide in cancellation of licence. The Division Bench allowed the writ petition vide judgement

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dated 15.9.1995 and remitted the matter to the appellate authority to decide the appeal within 15 days. The High Court observed that it was conceded that the Minister against whom the allegation of mala fide are alleged is no more a Minister, therefore, on the finding that there was an alternative remedy available to the petitioner, it relegated the petitioner to avail the said remedy of appeal. The appellate authority, though, upheld the allegations of illegality and irregularity in conducting business by the licensee but took a lenient view and instead of cancellation of licence, treated the period from the date of cancellation of licence till filing of writ petition and grant of stay order by the High Court as the period of substantive suspension as a measure of penalty. It is against this appellate order, the writ petition was again filed before the High Court, which was allowed and the matter was remitted to the appellate authority to decide the matter on the ground of mala fide alleged against the Minister. In the second batch of the petitions, the Minister was not made a party. That being so, the High Court was not in a position to go into the question of mala fide. The Apex Court held that it could not have directed the appellate authority to go into the question of mala fide. The Apex Court held that the words "might and ought" used in Section 11 would stand in the way operating as res judicata. In our considered view, the above judgement also lends no support.

1012. In **P. K. Vijayan (supra)** the words "might and ought" again came to be considered. One Kamalakshi Amma, landlord, filed R.C.P. No. 19 of 1974 under Section 11 of Kerala Buildings (Lease and Rent Control) Act, 1965 for eviction of the P.K. Vijayan-tenant. Under the proviso thereto, if the the tenant denies title of the landlord or claims right of permanent tenancy,

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the Rent Controller was required to decide whether denial or claim is bona fide and if a finding is recorded positively in favour of the tenant on the aforesaid issue, it will require the landlord to sue for eviction of the tenant in a Civil Court. The Rent Controller accepted the plea of P. K. Vijayan in regard to 'bona fide' and relegated the landlord to seek eviction by a civil Suit. Before the civil proceedings could be initiated, the tenant filed D.A. No. 11730 of 1986 before the Land Tribunal under Kerala Land Reforms Act claiming that the lease was of agriculture land and as a cultivating tenant, he is entitled to get assignment of title of the land under Section 72B of the Land Reforms Act which postulates that the cultivating tenant of any holding or part of the holding, the right, title and interest in respect of which has vested in the Government under Section 72 shall be entitled to assignment of such right, title and interest. The term "cultivating tenant" was defined to mean a tenant who is in actual possession of, and is entitled to cultivate the land comprised in his holding. The Land Tribunal vide order dated 26.11.1976 held that the lease was of commercial building and not agricultural land and dismissed the petition of the tenant. The tenant before the Civil Court, relied on Section 106 of the Land Reforms Act and claimed that the land was demised for a commercial or industrial purpose and he had constructed a building thereon for commercial purpose before 20.5.1967, therefore, by operation of Section 106 of the Land Reforms Act, he cannot be ejected. He also questioned the jurisdiction of the Civil Court to decide the question and contended that the matter has to be referred to the Land Reforms Tribunal under Section 125 (3) of the Land Reforms Act. The Trial Court decided the matter vide order dated 3.8.1887 in favour of tenant upholding

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his contention for reference under Section 125 (3) of the Land Reforms Act to the Tribunal. The revision of the landlord was allowed by the High Court holding that the Land Reform Tribunal cannot decide the dispute in view of its earlier order under Section 72B and also on the ground of res judicata. The appeal taken to the Apex Court where it upheld the plea of res judicata of landlord observing hat the plea of entitlement under Section 106 of Land Reforms Act was available to the tenant in the eviction proceedings and if he would have raised at that time before the Rent Controller, lacking jurisdiction, the Rent Controller would have referred the matter to the Land Tribunal for decision under Section 125(3) of the Land Reforms Act. Having said so, the Apex Court held that the rule of "might and ought" envisaged in Explanation IV to Section 11 C.P.C. squarely applies and in para 11 of the judgement said :

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*"**11.** However, the appellant merely chose to deny the title of the landlords and did not raise the plea of S. 106 of the Land Reforms Act. The rule of "might and ought" envisaged in Explanation IV to S.11, C.P.C. squarely applies to the facts of the case and, therefore, it is no longer open to the appellant to plead that, Civil Court has no jurisdiction to decide the matter and it shall be required to be referred to the Land Tribunal.*

That apart, in the proceedings under S. 72B the appellant pleaded that it is a land governed by the provisions of the Land Reforms Act and that, therefore, he is entitled to the assignment of the right, title and interest therein. The Tribunal found that the lease being a commercial lease, the appellant is not entitled to the assignment of the right, title and interest in the demised

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land which was not vested in the State under S. 72 since the lease was not of agricultural land demised to the appellant. In that view of the matter and the appellant having decided only to avail the remedy of S. 72B and omitted to plead the remedy of S. 106, it is no longer open to him to contend that he is entitled to the benefit of S. 106 of the Land Reforms Act."

1013. The Apex Court further held in para 13 of the Judgement that *"The tenant is expected to raise all the pleas available under the statute at the relevant time. It is a sheer abuse of the process of the Court to raise at each successive stages different pleas to protract the proceedings or to drive the party to multiplicity of proceedings. It would be fair and just that the parties to raise all available relevant pleas in the suits or the proceedings when the action is initiated and the omission thereof does constitute constructive res-judicata to prevent raising of the same at a later point of time. Thereby it must be deemed that they are waived."*

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1014. The law declared above by the Apex Court in **P.K. Vijayan (supra)** is binding upon us. However, we fail to understand as to how this would apply to the facts of the cases in hand in the light of the facts of the suits in question which we have already discussed in detail.

1015. In **Gorie Gouri Naidu (supra)**, the Apex Court held that inter party judgement is binding upon the parties even if it is erroneous. The Court said :

"In our view, such decision of the Division Bench is justified since the said earlier decision in declaring the deeds of gift as invalid, is binding between the parties. There is no occasion to consider the principle of estoppel

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since considered by the learned single Judge in the facts and circumstances of the case for holding the said transfers as valid, in view of the earlier adjudication on the validity of the said deeds in the previous suit between the parties. The law is well settled that even if erroneous, an inter party judgment binds the party if the Court of competent jurisdiction has decided the lis."

1016. In **Premier Cable Co. Ltd. (supra)**, an assessment order was challenged in appeal which was dismissed on the ground of delay. Revision was also dismissed. The writ petition against the revisional order was also dismissed and the said order attained finality not being taken to the higher Court. In these circumstances, the Apex Court held that the levy under the aforesaid assessment order, which has attained finality, cannot be challenged by means of a civil suit since it is barred by principle of res judicata.

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1017. In **Abdul Rahman (supra)**, the issue of principle of res judicata as such was not up for consideration but in the facts and circumstances of the case, the Court refused the plaintiff to peruse the remedy in a Court of law. The peculiar facts of the case are noticed in para 30 of the judgement, which reads as under :

*"**30.** .....The issue as regards the status of the 1st respondent has never been raised before the revenue authorities. As the appellant herein claimed himself to be a tenant of Mangal Singh, there was no reason as to why he could not be said to be aware of the relationship between the 1st respondent and the said Mangal Singh. He allowed the proceedings of the Board of Revenue to be determined against him. The decision of the Board of Revenue attained*

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finality. His writ petition was also dismissed. Be it also noted that the civil suit was filed three years after the adjudication of the rights of the parties in the mutation proceedings."

1018. After noticing the aforesaid facts, the Apex Court in para 31 said:

"31. *In the aforementioned situation, in our opinion, the appellant must be held to have taken recourse to abuse of process of Court underlying the principle that the litigation should be allowed to attain finality in public interest. Although the concept of issues estoppel or estoppel by records are distinct and separate from the concept of abuse of process in public interest, the Court may refuse the plaintiff from pursuing his remedy in a Court of law. See Johnson v. Gore Wood and Co., ((2002) 2 AC 1)."*

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1019. Thus, the above judgement also lends no support to attract plea of res judicata in the present case.

1020. In **M.T.W. Tenzing Namgyal (supra)** the facts were that Plots No. 1013, 1014 and 1040 (part) situated at Gangtok belonged to one Chogyal Sir Tashi Namgyal. It was his personal property forming part of his private estate. One pucca building was constructed on Plot no. 1014 situated at New Market Road, Gangtok and it was let out to tenants. On the adjacent land to the said building there existed a private passage of 12 feet width made of steps and further on the adjacent south thereto, there was another building known as Yuthok building situated on Plot No. 1012. Another passage existed behind the aforesaid two buildings said to be a private gully being Plot No. 1013. There were two wooden buildings used as kitchen, latrines and

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godown for the use of tenants occupying the aforesaid two buildings at New Market Road and Yuthok. It is said that there was a retaining wall on the west of Plot No. 1040 (part) which was the boundary between the land of the Plaintiffs' private estate and the land of defendant No. 2. The plaintiffs filed a suit alleging that the defendants had started construction of a big pucca building for running a hotel on the land situated on the south of his land being Plot no.1040 and it was alleged that the defendants illegally had encroached upon about 6,600 sq. ft. therein. The defendants denied, and disputing the allegations in their written statement, though admitted the existence of the pucca building and the flight of steps, contended that the latter belonged to Gangtok Municipality and meant to serve as the exclusive passage to the plot on which defendant no. 2 started constructing a multi-storeyed building. It was claimed that beyond the structures of the plaintiffs a precipitated hill edge exists on the eastern boundary of the defendants' land and the same was all through in the possession of the defendants. The defendants also claimed settlement of their land by virtue of three documents of the years 1961, 1975 and 1977. The suit was dismissed by the District Judge, Gangtok on 29.03.1985 but in appeal the High Court allowed the same and remanded the matter to the trial court directing to appoint another Commissioner to make local investigation with reference to the cloth survey map and actual measurement on the spot so as to ascertain the actual area of Plot No. 1040 etc. An opportunity was also given to the parties to re-examine their witnesses etc. The trial court appointed another Commissioner who, inter alia, found that Plot No. 1040 measures 0.69 acres out of which the land allotted to the defendants was 13, 879 sq. ft. and the total

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area of constructions made by defendants no. 1 and 2 being the Denzong Cinema, two shop houses and hotel comes to 13, 616.46 sq. ft., which was accepted by the defendants but according to the plaintiffs the same was 13, 503.60 sq. ft. The trial court decreed the suit on 26.02.1988 but the judgment was reversed by High Court in appeal on 30.06.1994. The Apex Court noticed that the plaintiffs' predecessor in interest was late Chogyal Sir Tashi Namgyal of Sikkim. There is, therefore, no question of plaintiffs' having any document of title. The only document of title which was produced by the plaintiffs in support of their claim was a 'Khasra' showing entry in the name of 'Sarkar' as also in the name of 'Shri Panch Maharaja Sir Tashi Namgyal of Sikkim'. Some plots were recorded as Private Estate. Plots No. 1013, 1014 and 1040 were recorded in the name of Shri Panch Maharaj Sir Tashi Namgyal but the area of the plots was not mentioned. In the plaint, besides Plot No. 1013 and 1014, the plaintiffs claimed ownership in respect of Plot no. 1040 (part) and not the entire plot. The manner in which ownership for part of Plot No. 1040 claimed was not disclosed**.** It appears that a suggestion was made long back to pay a lump sum amount in lieu of the bazar area including the income so that the private estate may vest in Sikkim Darbar. The said proposal was accepted on 22.06.1959 after being approved and sanctioned by the Chogyal and the payment aforesaid was made. It is in these circumstances the High Court recorded a finding that all land entered in 'Khasra' in the name of “Sir Tashi Namgyal” did not belong to his private estate. The Apex Court, however, considered the matter on the assumption that the said finding of the High Court was not correct in view of the fact that the plaintiffs' land in suit were the subject matter of acquisition,

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it was noticed that Sikkim Darbar granted settlement of a piece of land in favour of one of the defendants for construction of Cinema Hall on 10.04.1961. The original plaintiff held shares in Denzong Cinema Limited. The Cinema Hall started in the year 1969. The State of Sikkim merged with the Union of India in terms of an agreement on 26.04.1975. In view of Article 371 F of the Constitution the property and assets vested in the Government of State of Sikkim. The High Court recorded a finding that before and after merger of Sikkim with the Government of India, Plot No. 1040 was always treated as that belong to the Government and not private estate. The Apex Court found that the plaintiffs failed to prove their ownership/title on the plot in question. Having accepted compensation, the successor in interest is estopped and precluded from contending that the property did not vest in Sikkim Darbar and ultimately with the Government of India. In the circumferences, the Court dismissed the appeal and upheld the judgment of High Court. With respect to the evidentiary value of the 'Khasra' and 'Khatian' the Apex Court in paras 32 and 33 said:

> *"32. The khasra and khatian have not been prepared under a statute. The question as to whether the same would be historical material or instrument of title or otherwise, would depend upon either the statute governing the same or the practice prevailing in the State. In the event, however, the records of right were not prepared under a statute, a presumption of correctness may be raised only in terms of Section 35 of the Indian Evidence Act.*
>
> *33. However, ordinarily records of right cannot be treated to have any evidentiary value on the question of*

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title inasmuch as such records are prepared mainly based on possession."

1021. The case was decided on the facts of its own and we fail to find any support from the said judgment in respect to the plea of res judicata in the present cases. This judgment was relied by Sri Siddiqui in support of his plea of estoppel and abandonment based on the acquisition notification dated 07.10.1991. He submitted that the said notification was not challenged by the plaintiffs (Suit-5) and, therefore, it amounts to acquiescence on their part in respect to their rights, if any, to the land which was acquired by the State pursuant to the aforesaid notification and its quashing thereafter by the Court in various writ petitions would not change the situation.

1022. We do not find any substance in the submission. It is not in dispute that the notification dated 07.10.1991 and 10.10.1991 whereby the land in question alongwith the others was sought to be acquired by the State of U.P., were challenged in a number of writ petitions led by Writ Petition No. 3540 of 1991. The said notifications were quashed by this Court vide judgment dated 11.12.1992 holding the same to be illegal and unconstitutional. The effect of the judgment would be as if the aforesaid two notifications never existed. It cannot be pleaded that though the two documents quashed by the Court would be non-est for the persons who were party in those cases but would have some consequences for others. Once the very document as a result of its quashing become non-est, it would not result in any consequence whatsoever in law and even otherwise. Therefore, it cannot be said that Suit-5 cannot proceed further as if the plaintiffs have squeezed their rights in land in question.

1023. A similar argument has been made as a result of

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acquisition of certain land vide Act No. 33 of 1993. Sri Siddiqui submitted that not only the plaintiffs (Suit-5) did not challenge the said enactment but also submitted to its provisions by filing an Application No. 4(o) of 1993 on 04.02.1993 praying for abatement of the suit in view of Section 4(3) of the Act No. 33 of 1993. Admittedly, sub-section of Section 4(3) of the aforesaid Act has been declared ultra vires and unconstitutional. Any provision which is unconstitutional is non-est i.e. still born and would not result in any consequences. It means as if the said provision never existed or operated. Even if it was not challenged by the plaintiff (Suit-5) and they sought to surrender to the legal consequences of the said Act but if subsequently in any other proceeding the statutory provision is found to be unconstitutional i.e. still born, the consequences would be as if the said provision has no adverse effect. Though reliance has been placed by Sri Siddiqui on certain judgments of the Apex Court as well as of this Court but in our view the aforesaid judgments do not lay down any such law and the reliance is misplaced.

1024. **Jai Narain Parasrampuria (supra)** was a case where the suit for specific performance was filed. The Court held that the relief being discretionary can be refused on the conduct of the parties. Representing the company, other parties were led to believe that the company was owner of the property as a result whereof third parties alter their position. It was thus held by the Apex Court that the principle of estoppel would apply. However, the Court did not forgot to add a caution as under:

> *"We may, however, hasten to add that where there exists a statutory embargo, vesting of title in a person shall be subject thereto."*

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1025. Relying on various other authorities on the subject the Court also held:

> *"The doctrine of estoppel by acquiescence was not restricted to cases where the representor was aware both of what his strict rights were and that the representee was acting on the belief that those rights would not be enforced against him. Instead, the court was required to ascertain whether in the particular circumstances, it would be unconscionable for a party to be permitted to deny that which, knowingly or unknowingly, he had allowed or encouraged another to assume to his detriment. Accordingly, the principle would apply if at the time the expectation was encouraged (sic)."*

1026. It was also held by the Apex Court that the principle of res judicata may not have any application in the aforesaid facts.

1027. In **B.L. Sridhar Vs. K.M. Munireddy (supra)**, the Court considered the principle of estoppel and said that it is not a cause of action but a rule of evidence which precludes a person from denying the truth of some statement previously made by him but would be attracted when *"one person has by his declaration, act or omission caused or permitted another person to believe in it to be true and to act upon that belief, neither he nor his representative shall be allowed in any suit or proceeding between himself and such person or his representative to deny the truth of that thick.*" Sri Siddiqui could not show as to how the party represented by him has acted believing on the statement of the plaintiff (suit-5) so as to attract the principle of estoppel in the case in hand. The judgment, in our view, has no application to the facts involved in the present case.

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"Order XXIII Rule 1-Whether applicable and attracted to Application No. 4(o) of 1993 and its consequences, if any"

1028. **M/s Hulas Rai Baij Nath (supra)** was a case with respect to the application of Order XXIII Rule 1 CPC. It was held that Order XXIII Rule 1(1) gives an unqualified right to a plaintiff to withdraw a suit. It also held that there is no provision in CPC which required the Court to refuse permission to withdraw the suit and to compel the plaintiff to proceed with it. However, if a set off has been claimed under Order 8, CPC or a counter claim has been filed the position may be different. We do not find any occasion to have application of the said authority to the facts of this case. Obviously no application under Order XXIII Rule 1 has been filed by the plaintiff (Suit-5) for withdrawal of the suit. The alleged application only drew attention of the Court to Section 4(3) of Act No. 33 of 1993 and its consequences and requested the Court to act accordingly. As soon as the said statute i.e. Section 4(3) seizes to have any legal consequences having been declared unconstitutional, the position as it stood before enactment of the said provision would stand restored.

1029. We now come to the Division Bench decision of this Court in **Smt. Raisa Sultana Begam (supra).** This Court has held that there is no provision laying down procedure for withdrawing the suit, manner in which it can be withdrawn and the essential physical acts required to be done to constitute withdrawal, which can be in any form. The Court further held that withdrawing of suit needs no permission from the Court and since there is no provision allowing revocation of the withdrawal application, therefore, an application for withdrawal of suit becomes effective as soon as it is done i.e. by giving

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information to the Court. The Court's order thereon is no part of the act of withdrawal. On page 322, para 9 of the judgement, the Court observed:

> *"The right to withdraw has been expressly conferred by rule 1(1); there is no provision conferring the right to revoke the withdrawal and there is no justification for saying that the right to withdraw includes in itself a right to revoke the withdrawal. As we said earlier, certain consequences arise from the withdrawal which prevent his revoking the withdrawal, the withdrawal is complete or effective as soon as it takes place, and, in any case, as soon as information of it is conveyed to the Court, and no order of the Court is required to effectuate it or even to recognize it."*

1030. In **Smt. Raisa Sultana Begam (supra)**, Order 23, Rule 1, as was in the statute book prior to 1976, was under consideration, which read as under :

> ***"1.*** *(1) At any time after the institution of a suit the plaintiff may, as against all or any of the defendants, withdraw his suit or abandon part of his claim.*
>
> *(2) Where the Court is satisfied-*
>
> *(a) that a suit must fail by reason of some formal defect, or*
>
> *(b) that there are other sufficient grounds for allowing the plaintiff to institute a fresh suit for the subject-matter of a suit or part of a claim,*
>
> *it may, on such terms as it thinks fit, grant the plaintiff permission to withdraw from such suit or abandon such part of a claim with liberty to institute a fresh suit in respect of the subject-matter of suit or such part of a claim.*

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(3) Where the plaintiff withdraws from a suit, or abandons part of a claim, without the permission referred to sub-rule (2), he shall be liable for such costs as the Court may award and shall be precluded from instituting any fresh suit in respect of such subject-matter or such part of the claim.

(4)Nothing in this rule shall be deemed to authorize the Court to permit one of several plaintiffs to withdraw without the consent of the others."

1031. The Division Bench, while taking the view as noted above, disagreed with otherwise view taken by the Hon'ble Madras, Bombay and Calcutta High Court, and in an earlier Division Bench of this Court; in **Mukkammal Vs. Kalimuthu Pillay 15 Ind Cas 852 (Mad)**; **Lakshmana Pillai Vs. Appalwar Alwar Ayyangar (supra); Yeshwant Govardhan Vs. Totaram Avasu AIR 1958 Bom. 28; Raj Kumari Devi Vs. Nirtya Kali Debi (1910) 7 Ind Cas 892 (Cal)**; and **Ram Bharos Lall Vs. Gopee Beebee (1874) 6 NWP 66** respectively. We find, with great respect, difficult to subscribe the view taken in **Smt. Raisa Sultana Begam (supra).** In our view, if the Court was unable to agree with the earlier Division Bench judgement in **Ram Bharos Lall (supra)**, the matter ought to have been referred to the Larger Bench. It is true that the right of the plaintiff to withdraw suit is absolute as observed by the Apex Court in **M/s Hulas Rai Baij Nath (supra)** and once an application is made by the plaintiff and pressed before the Court, the Court cannot refuse such withdrawal unless there is a case of counter claim, set off etc. It would not mean that as soon as an application informing the Court is moved by the plaintiff that he intends to withdraw the suit or that an oral information is given, the effect

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would be that the suit would stand withdrawn.

1032. So long as a suit is not instituted by presenting a plaint to the Court, the plaint remains the property of the litigant and would not result in any legal consequence, if he does not present it to the Court, but when the plaint is presented before a competent Court of jurisdiction and a suit is ordered to be registered in accordance with rules, the plaint would become the property of the Court and it would result in certain legal consequences, i.e., pendency of a suit or a case before a Court of law. The said legal consequences cannot be nullified without any order of the Court by the litigant simply by orally or in writing informing the Court that he intends to withdraw the suit. It is true that under Order 23 Rule 1, as it stood before 1976 amendment, there was no provision requiring any specific order to be passed by the Court allowing the plaintiff to withdraw his suit but considering the entire procedure of institution of a suit, it cannot be doubted that a suit, duly instituted, and registered in a Court of law cannot stand withdrawn without any order of the Court. In this regard, it would be appropriate to have the procedure of filing of suit in C.P.C., as it was prior to its amendment in 1976.

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1033. Order IV Rule 1 (Allahabad amendment) provides for institution of suit and reads as under :

> ***"1.*** *(1) Every suit shall be instituted by presenting to the Court or such officer as it appoints in this behalf, a plaint, together with a true copy for service with the summons upon each defendant, unless the Court for goods cause shown allows time to filing such copies.*
>
> *(2) The court-fee chargeable for such service shall be paid in the case of suits when the plaint is filed and in the*

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case of all other proceeding when the processes applied for."

1034. The manner of registration of suit was provided in Rule 2 Order IV and reads as under :

> ***"2. [S. 58]*** *The Court shall cause the particulars of every suit to be entered in a book to be kept for the purpose and called the register of civil suits. Such entries shall be numbered in every year according to the order in which the plaints are admitted."*

1035. Once a suit is duly instituted, the Court would pass order issuing summons to the defendants to appear and answer the plaint. Such summons, vide Order V Rule 3, are required to be signed by the Judge or such officer as he appointed, and also the seal of the Court. A suit once duly instituted and registered in the Court would not struck off from the record of the Court on the mere communication by the plaintiff orally or in writing that he intends to withdraw unless an order is passed by the Court to the said effect, which would have the legal consequence of bringing the proceedings set in motion by instituting the suit, to a halt. Mere absence of any provision permitting withdrawal of the application filed by a plaintiff for withdrawing the suit does not mean that no such power is vested in the plaintiff. So long as an order is not passed by the Court, if the plaintiff informs the Court by moving an application that he intends to withdraw the application for withdrawal of suit, he can always request or inform the Court that he does not want to press the application and the same may be dismissed as not pressed or withdrawn. It is only where the plaintiff press his application before the Court requiring it to pass the order for withdrawal of the Suit, the Court would pass the said order in

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accordance with law since it cannot compel a plaintiff to pursue a suit though he want to withdraw the same. It would thus be wholly unjust to hold that once an application to withdraw the suit is filed by a plaintiff, he cannot withdraw the same and the suit would stand dismissed as withdrawn. This would have serious and drastic consequences in as much as he cannot file a fresh suit on the same cause of action.

1036. Moreover, the existence of a provision i.e. Rule 1(3), empowering the Court to consider as to whether the plaintiff should be saddled with the liability of payment of cost or not also contemplates that an application for withdrawal of suit by itself would not result in any consequences whatsoever unless the Court has applied its mind regarding the cost. If what has been held in **Smt. Raisa Sultana Begam (supra)** is taken to be correct, it would mean that there would be no occasion for the Court to apply its mind on the question of cost under Rule 1(3) since the suit would stand dismissed as withdrawn as soon as the plaintiff informs the Court about his decision for withdrawal of the suit either orally or in writing. This is nothing but making Rule 3 (1) redundant. The earlier judgement of this Court in **Raja Shumsher Bahadoor Vs. Mirja Mahomed Ali (1867) Agra H.C.R. 158** wherein this view was taken that the withdrawal must be regarded as terminating automatically the proceedings in the suit involving the suit's immediate dismissal was not found to be correct subsequently by the Division Bench in **Ram Bharos Lall**. We, therefore, find it appropriate in the entire facts and circumstances to take a different view and have no hesitation in holding though with great respect to the Bench, that the law laid down in **Smt. Raisa Sultana Begam (supra)** is not correct. In our view, the law laid down in **Ram Bharos Lall**

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(supra), **Mukkammal Vs. Kalimuthu Pillay (supra)**, **Raj Kumari Devi Vs. Nirtya Kali Debi (supra)** and **Yeshwant Govardhan Vs. Totaram (supra)** lay down the correct law. We also find that a Division Bench of Orissa High Court in **Prema Chanda Barik Vs. Prafulla Kumar Mohanty AIR 1988 Orissa 33** has also taken the same view and did not find itself agreeable with the Division Bench decision in **Smt. Raisa Sultana Begam (supra)**. In fact, a Division Bench of Calcutta High Court in **Rameswar Sarkar Vs. State of West Bengal and others AIR 1986 Cal. 19** has gone slightly further by observing that where there is no provision under the Code providing for withdrawal of application for withdrawal of suit, Section 151 C.P.C. would apply.

1037. It would be useful to remind ourselves the observations of the Apex Court in respect to the provisions of the Code in **Manohar Lal Chopra Vs. Rai Bahadur Rao Raja Seth Hiralal AIR 1962 SC 527** *"It is well settled that the provisions of the Code are not exhaustive, for the simple reason that the Legislature is incapable of contemplating all the possible circumstances which may arise in future litigation and consequently for providing the procedure for them."* Referring to Section 151, the Apex Court in the same judgement also held *"The section itself says that nothing in the Code shall be deemed to limit or otherwise affect the inherent power of the Court to make orders necessary for the ends of justice."*

1038. Order XXIII Rule 1 has now been substituted by C.P.C. (Amendment) Act 104 of 1976 vide Section 74 with effect from 1.1.1977 and the newly substituted provision reads as under :

> ***Order XXIII R. 1. Withdrawal of suit or abandonment of part of claim****.--(1) At any time after the institution of a suit,*

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***the plaintiff may**, as against all or any of the defendants, **abandon his suit** or abandon a part of his claim:*

Provided that where the plaintiff is a minor or such other person to whom the provisions contained in rules 1 to 14 of Order XXXII extend, neither the suit nor any part of the claim shall be abandoned without the leave of the Court.

(2) An application for leave under the proviso to sub-rule (1) shall be accompanied by an affidavit of the next friend and also, if the minor or such other person is represented by a pleader, by a certificate of the pleader to the effect that the abandonment proposed is, in his opinion, for the benefit of the minor or such other person.

*(3) **Where the Court is satisfied**,--*

(a) that a suit must fail by reason of some formal defect, or

(b) that there are sufficient grounds for allowing the plaintiff to institute a fresh suit for the subject-matter of a suit or part of a claim,

*it may, on such terms as it thinks fit, **grant the plaintiff permission to withdraw from such suit** or such part of the claim with liberty to institute a fresh suit in respect of the subject-matter of such suit or such part of the claim.*

(4) Where the plaintiff--

(a) abandons any suit or part of claim under sub-rule (1), or

(b) withdraws from a suit or part of a claim without the permission referred to in sub-rule (3),

he shall be liable for such costs as the Court may award and shall be precluded from instituting any fresh suit in

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respect of such subject-matter or such part of the claim.

(5) Nothing in this rule shall be deemed to authorize the Court to permit one of several plaintiffs to abandon a suit or part of a claim under sub-rule (1), or to withdraw, under sub-rule (3), any suit or part of a claim, without the consent of the other plaintiffs."

1039. Proviso inserted in Rule 1 (1) Order XXIII makes it very clear where the plaintiff is a minor or such other person to whom the provisions contained in rules 1 to 14 of order XXXII extend, neither the suit nor any part of the claim shall be abandoned without the leave of the Court. The proviso is mandatory and does not permit withdrawal of a suit filed on behalf of a minor etc. unless the leave of the Court is obtained. In the case in hand, plaintiffs no. 1 and 2 are deities who have been allowed to sue through their next friend.

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1040. Plaintiffs no. 1 and 2, being deity, are juristic persons and plaintiff no. 3 is the person taking care of plaintiffs no. 1 and 2. At this stage, we are proceeding by assuming that plaintiffs no. 1 and 2 are deities and, therefore, a juristic person individually though the question whether they are 'juristic person' has also been raised separately which we shall deal later on but for the purpose of objection raised hereat with reference to Order XXIII Rule 1 we proceed to treat plaintiffs 1 and 2 as deity.

1041. A deity has been held to be a 'minor' and cannot sue on its own but through a Shebait or Manager or any other person who can file suit on its behalf. In **Shiromani Gurudwara Prabandhak Committee, Amritsar v. Shri Som Nath Das and others, AIR 2000 SC 1421** the Apex Court held that the deity is a minor and its welfare can be looked into by the

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Shebait/Sarvakar/Manager or the next friend. In such a case the leave of the Court is necessary for withdrawal of suit as required by proviso to Rule 1(1) and, therefore, also the question of withdrawal of the suit as soon as the application is made cannot arise at all.

1042. In **State Bank of India Vs. Firm Jamuna Prasad Jaiswal (supra)** the Hon'ble Single Judge followed the Division Bench judgment in **Smt. Raisa Sultana Begam (supra)** in order to hold that withdrawal application cannot be allowed to be withdrawn except where it was a case of fraud. Since we have held the judgement in **Smt. Raisa Sultana Begam (supra)** as not laying down a correct law, the Single Judge judgement in **State Bank of India Vs. Firm Jamuna Prasad Jaiswal (supra)** also cannot be said to be a good law. Same is the fate of other Single Judges judgements in **Ram Chandra Mission (supra)** and **Upendra Kumar (supra)** which also rely on **Smt. Raisa Sultana Begam (supra).** Therefore, all the aforesaid judgements would not help Sri Siddiqui in any manner.

1043. We may also observe hereat that so far as the present case is concerned, no application under Order XXIII Rule 1 has been filed by the plaintiff (Suit-5) seeking withdrawal of the suit and instead the alleged application is with reference to Section 4 (3) of Act 33 of 1993. Therefore, Order XXIII Rule 1 even otherwise would not be attracted in the present case.

1044. Since we have taken a view that the suit did not stand abandoned or withdrawn as soon as the application was made, the question of estoppel as argued by Sri Siddiqui is not attracted and, therefore, the Apex Court's decision in **Deewan Singh (supra), Jai Narain (supra), Anuj Garg (supra)** and **Barkat Ali (supra)** would have no application and lend no

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support to the plaintiffs (Suit-4) and defendants (Suit-5).

1045. Now coming to the authority cited by Sri Verma, we find that in **State of Maharashtra Vs. M/s. National Construction Company (supra)**, the Apex Court laid down the law that bar under Section 11 CPC applies in a matter directly and substantially in issue in the former suit and has been heard and finally decided by a Court competent to try such suit. Meaning thereby that on the matter in issue, in question, there has been an application of judicial mind and a final adjudication has been made. If the former suit is dismissed without any adjudication on the matter in issue i.e. merely on a technical grounds like non-joinder, that cannot operate as res judicata. The Apex Court relied on its earlier decision in **Sheodhan Singh Vs. Daryo Kunwar, AIR 1966 SC 1332** where the suit dismissed for want of jurisdiction was held not to operate as res judicata. The Court also followed its decision in **Inacio Martins Vs. Narayan Hari Naik, 1993(3) SCC 123.** The legal proposition thus is well settled.

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1046. **Munesh Kumar Agnihotri (supra)** was a case where the parties in two suits were different hence the plea of res judicata was negatived by the Hon'ble Single Judge. Where cause of action is different, res judicata has no application in the subsequent suit as held in **Ram Naresh (supra)** and in our view there cannot be any dispute to the said proposition. The same was the position in **Abdul Quadir (supra)** where also the Court found that the cause of action involved in the subsequent suit was different and the parties were also found to be different.

1047. There are some more authorities cited at the bar.

1048. In **Union of India Vs. Pramod Gupta (2005) 12 SCC 1**, the application of res judicata in respect to determination of

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market value and title of respondents was under consideration. Certain exemplars in the form of judgment and awards in respect to the acquisition of land and award of compensation were relied on and it was argued that since Union of India was party to those proceedings in the matter of determination of market value, the principle and decision already taken earlier cannot be disputed by it and is estopped besides that the challenge is barred by res judicata. The Apex Court negatived it by giving three exceptions, (1) If the Union of India had not preferred any appeal against earlier judgments and award, it would not be estopped and precluded from raising the said question in a different proceeding since in a given case it is permissible in law to do the same keeping in view the larger public interest. (2) Referring to **Government of West Bengal Vs. Tarun K.Roy 2004 (1) SCC 347** it observed that non filing of an appeal in any event would not be a ground of refusing to consider the matter on its own merits. (3) Referring to **State of Bihar and others Vs. Ramdeo Yadav and others, 1996(2) SCC 493** and **State of West Bengal and others Vs. Debdas Kumar and others 1991 (1) Suppl. SCC 138**, it observed that when public interest is involved in interpretation of law, the Court is entitled to go into the question. It was held that principle of res judicata would apply only when the lis was inter-parties and had attained finality in respect to the issue involved. The said principle will, however, have no application inter alia in a case where the judgment and/or order had been passed by a Court having no jurisdiction therefor and/or in a case involving a pure question of law. It will also have no application in a case where the judgment is not a speaking one. The Apex Court also referred to **Ramnik Vallabhdas**

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Madhvani and others Vs. Taraben Pravinlal Madhvani (2004) 1 SCC 497 and reiterated that the principle of res judicata is a procedural provision and has no application where there is inherent lack of jurisdiction. Thus this judgement inroads an exception in the principle of res judicata where the matter carry for larger public interest.

1049. In **Anathula Sudhakar Vs. P. Buchi Reddy and others (2008) 4 SCC 594** no question of estoppel or res judicata as such was involved as is evident from para 12 of the judgment wherein the issues considered by the Apex Court are quoted:

> *(I) What is the scope of a suit for prohibitory injunction relating to immovable property?*
>
> *(ii) Whether on the facts, the plaintiff ought to have filed a suit for declaration of title and injunction?*
>
> *(iii) Whether the High Court, in a second appeal under Section 100 CPC, could examine the factual question of title which was not the subject-matter of any issue based on a finding thereon, reverse the decision of the first appellate court?*
>
> *(iv) What is the appropriate decision?*

1050. The Apex Court considered the first question as to when a mere suit for permanent injunction would lie and when it is necessary to file a suit for declaration and/or possession with injunction as a consequential relief and briefly summarized the principle as under :

(A) (a)Where a plaintiff is in lawful or peaceful possession of a property and such possession is interfered or threatened by the defendant, a suit for an injunction simplicitor will lie.

(b) A person has a right to protect his possession against

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any person who does not prove a better title by seeking a prohibitory injunction. But a person in wrongful possession is not entitled to an injunction against the rightful owner.

(c) Where the title of plaintiff is not disputed but he is not in possession, his remedy is to file a suit for possession and seek in addition, if necessary, an injunction. A person out of possession cannot seek the relief of injunction simplicitor, without claiming the relief of possession.

(d) Where the plaintiff is in possession but his title to the property is in dispute or under a cloud or where the defendants assert title thereto and there is also a threat of dispossession from the defendant, the plaintiff has to sue for declaration of title and the consequential relief of injunction.

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(e) Where the title of plaintiff is under a cloud or in dispute and he is not in possession or not able to establish possession, necessarily the plaintiff will have to file a suit for declaration, possession and injunction.

(f) A prayer for declaration will be necessary only if the denial of right and challenge to the plaintiff's title raises a cloud on the title of the plaintiff to the property.

(B) A cloud is said to have raised over a person's title when some apparent defect in his title to the property or when some prima facie right of a third party over it is made out or shown. An action for declaration is remedy to remove the cloud on the title to the property. On the other hand where the plaintiff has clear title supported by documents, if a trespasser without any claim to title or an interloper without any apparent title, merely deny plaintiff's title, it

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does not amount to raining a cloud over the title of the plaintiff and it will not be necessary for the plaintiff to sue for declaration and a suit for injunction may be sufficient.

(C) Where the plaintiff, believing that the defendant is only trespasser or a wrongful claimant without title, files a mere suit for injunction, and in such a suit, the defendant discloses in his defence the details of the right or title claimed by him, which raises a serious dispute or cloud over the plaintiff's title then there is a need for the plaintiff to amend the plaint and convert the suit into one for declaration. Alternatively, he may withdraw the suit for bare injunction with permission of the Court to file a comprehensive suit for declaration and injunction. **He may file the suit for declaration with consequential relief, even after the suit for inunction is dismissed, where the suit raised only the issue of possession and not any issue of title.** (emphasis supplied)

(D) If the property is a vacant site, which is not physically possessed, used or enjoyed, in such cases the principle is that possession follows title. If two persons claim to be in possession of a vacant site, one who is able to establish title thereto will be considered to be in possession as against the person who is not able to establish title.

(E) In a suit relating to a vacant site filed for a mere injunction and the issue is one of the possession, it will be necessary to examine and determine the title as a prelude for deciding the de jure possession. In such a situation, where the title is clear and simple, the court may venture a decision on the issue of title, so as to decide the question of de jure possession even though the suit is for a mere

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injunction. But where the issue of title involves complicated or complex questions of fact and law, or where court feels that parties had not proceeded on the basis that title was at issue, the Court should not decide the issue of title in a suit for injunction. The proper course is to relegate the plaintiff to the remedy of a full-fledged suit for declaration and consequential reliefs. Referring to the Madras High Courts' decision in **Vanagiri (supra)**, the Apex Court in **Pramod Gupta (supra)** observed that the second suit would be barred only when the facts relating to title are pleaded, when an issue is raised in regard to title and parties lead evidence on the issue of title and the Court instead of relegating the parties to an action for declaration of title decides upon the issue of title and that decision attains finality. However, the Apex Court made it clear in para 20 of the judgment that the question relating to res judicata was not before it but the question whether a finding regarding title could be recorded in a suit for injunction simpliciter, in the absence of pleadings and issue relating to title is up for consideration. The said judgment, in our view as such lends no credence to the plaintiff's (Suit-4).

1051. To the same effect is the judgment in **Williams Vs. Lourdusamy & another (2008) 5 SCC 647** wherein the Apex Court relied its decision in **Sajjadanashin Sayed (supra)**.

1052. In **State of Uttar Pradesh and another Vs. Jagdish Sharan Agrawal and others (2009) 1 SCC 689** where a suit was dismissed for non prosecution and there was no decision on merits and also where the Court found that order IX Rule 9 was not applicable, it was held that the principle of res judicata will

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not bar a subsequent suit being inapplicable.

1053. In **Mahila Bajrangi Vs. Badribai (2003) 2 SCC 464** in order to attract doctrine of res judicata, it was held that a decision on an issue that has been and substantially in issue in the former suit between the same parties which has been heard and finally decided would be considered as *res judicata* ***and not merely finding on every incident or collateral question to arrive at such a decision that would constitute res judicata.***

1054. In **Bishwanath Prasad Singh Vs. Rajendra Prasad and another (2006) 4 SCC 432** a deposit made under Section 83 of the Transfer of Property Act, 1882 was held to be procedural in nature and not to constitute a decision on an issue directly and substantially arises in an earlier suit so as to operate res judicata even if before allowing the deposit to be made under Section 83, the Court has passed a detailed order dealing the rival submissions.

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1055. In **Srikant Vs. District Magistrate, Bijapur and others (2007) 1 SCC 486** referring to its earlier judgments, the Court held that the doctrine of constructive res judicata is confined to civil action and civil proceedings and inapplicable to illegal detention and the action brought for a writ of habeas corpus. However, where an earlier application for habeas corpus has been rejected, a second application on the same ground may not be permissible but if there are some fresh grounds even such a bar would not apply. This judgment, therefore, has nothing to do with the issue of res judicata engaging attention in the present suits.

1056. In **Saroja Vs. Chinnusamy (2007) 8 SCC 329**, the Court summarized conditions to attract the doctrine of res judicata under Section 11 C.P.C. as under :

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(i) There must be two suits-one former suit and the other subsequent suit;

(ii) The Court which decided the former suit must be competent to try the subsequent suit;

(iii) The matter directly and substantially in issue must be in the same either actually or constructively in both the suits.

(iv) The matter directly and substantially in issue in the subsequent suit must have been heard and finally decided by the Court in the former suit;

(v) The parties to the suits or the parties under whom they or any of them claim must be the same in both the suits;

(vi) The parties in both the suits must have litigated under the same title.

1057. In **Saroja's case (supra)** the interesting thing is that a suit no. 233 of 1989 was filed on 19.4.1989 by one Saroja, her minor children Suganthamani and Ramesh against her husband Kuppusamy and his tenant for declaration of title and permanent injunction in respect of a property "A". During the pendency of the suit, Kuppusamy, husband of Saroja, sold the suit property by a registered sale deed dated 13.6.1990 for a consideration of rupees one lac to the appellant Saroja. She (appellant) filed another suit being O.S. No. 493 of 1990 for declaration of title and permanent injunction claiming absolute ownership and possession of the suit property purchased by her from Kuppusamy claiming that she had been in continuous possession of the suit property from the date of purchase and the *Patta, Chittha* and *adangal* also stood in her name. The suit was contested. When the later suit was pending, the earlier suit was decreed ex-parte in favour of respondent no. 3 and her minor

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children. The subsequent suit was also decreed but in appeal the decree was reversed and the judgment of the first Appellate Court was confirmed by the High Court in second appeal. The Apex Court also confirmed the above judgment holding that a decree which is passed ex parte is as good as a decree passed after contest.

1058. In **Bharat Sanchar Nigam Ltd. and another Vs. Union of India & others JT 2006 (3) SC 114**, the application of principle of res judicata in tax matters was considered and it was held that every assessment year gives a new cause of action since different assessment orders are to be passed and, therefore, the order in respect to one assessment proceedings shall not operate as res judicata for the subsequent assessment years. The Court further held as under :

> ***"20.*** *The decisions cited have uniformly held that res judicata does not apply in matters pertaining to tax for different assessment years because res judicata applies to debar courts from entertaining issues on the same cause of action whereas the cause of action for each assessment year is distinct. The courts will generally adopt an earlier pronouncement of the law or a conclusion of fact unless there is a new ground urged or a material change in the factual position. The reason why courts have held parties to the opinion expressed in a decision in one assessment year to the same opinion in a subsequent year is not because of any principle of res judicata but because of the theory of precedent of the precedential value of the earlier pronouncement. Where facts and law in a subsequent assessment year are the same, no authority whether quasi judicial or judicial can generally be permitted to take a*

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different view. This mandate is subject only to the usual gateway of distinguishing the earlier decision or where the earlier decision is per incuriam. However, these are fetters only on a coordinate bench which, failing the possibility of availing of either of these gateways, may yet differ with the view expressed and refer the matter to a bench of superior strength or in some cases to a bench of superior jurisdiction.

1059. The discussion made above as also in the light of the principles of law laid down in the various precedents, some of which are discussed above, the conclusion is inevitable that in no manner, it can be said that anything in Suit-1885 may be construed or taken as to operate as res judicata in the suits up for consideration before us. In fact, neither the principles of res judicata nor estoppel is attracted in any manner as the conditions precedent for attracting the said principles are completely lacking. It cannot be said that either the suits are barred by principle of res judicata or that Suit-1885 was filed on behalf of the whole body of persons interested in Janam Asthan and, therefore, all the Hindus are barred by the same. It also cannot be said that the defendants are estopped from denying the title of Muslim community including the plaintiff of Suit-4 to the property in dispute in view of the judgments of Suit-1885.

1060. In **Smt. Dhana Kuer Vs. Kashi Nath Chaubey, 1967 AWR 290** a Single Judge upheld the decision of the courts below holding that the suit was barred by Section 11 Explanation VI. An earlier suit was filed by Kashi Nath, Vindhayachal and Bindeshwari seeking a declaration that Lt. Jadunandan, husband of Smt. Asharfa has no interest of the property in suit except a right of maintenance. The trial court

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dismissed the suit but in appeal the suit was decreed and the judgment was confirmed in second appeal also. Thereafter Smt. Dhana Kuer, daughter of Jadunandan and Smt. Asharfa filed another suit seeking a declaration that Jadunandan died as separate member of the family. The Court held that the earlier suit was contested in respect of a private right claimed in common for oneself and others and, therefore, the judgment was binding upon the successors who can be validly said to be represented in the earlier case through the superior member. In our view, this judgment has no application in the case in hand as is evident from the facts noted above.

1061. **Mst. Sudehaiya Kumar and another Vs. Ram Dass Pandey and others, AIR 1957 All. 270** sought to be relied by referring para 6 to contend that Explanation VI Section 11 C.P.C. is not confined only to the representative suits governed by Order 1 Rule 2 but is applicable to other suits as well. This principle has been explained by the Apex Court in **Narayana Prabhu Venkateswara Prabhu Vs. Narayana Prabhu Krishna Prabhu, AIR 1977 SC 1268** giving an illustration where each party in a partition suit claiming that the property, the subject matter of the suit, is joint, asserts a right or title common to others to make identical claims. If that very issue is litigated in another suit and decided, the others making the same claim cannot be held to be claiming a right in common for themselves and others. Each of them in such a case must be deemed to represent all those, the nature of whose claims and interests are common and identical. The crux of the matter to attract Explanation VI is that interest of a person concerned has really been represented by the other; in other words his interest has been protected after in a bonafide capacity. If there be any clash

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of interest between the persons concerned and is assumed representative, or if the later deem to collusion, or, for any other reason mala fide involves to defend the claims, it cannot be considered to be a representative interest as held in **Surayya Begum (Mst) Vs. Mohd. Usman and others, 1991(3) SCC 114.** Sri Siddiqui is also relied upon **Bidhumukhi Dasi Vs. Jitendra Nath Roy and others, 1909 Indian Cases (Calcutta) 442; Singhai Lal Chand Jain Vs. Rashtriya Swayam Sewak Sangh, Panna and others, AIR 1996 SC 1211 (para 13);** and **Shiromani Gurdwara Parbandhak Committee Vs. Mahant Harnam Singh C. (Dead), M.N. Singh and others, AIR 2003 SC 3349 (paras 17 and 19)** but we find nothing therein to help him on this aspect of the matter.

1062. What we notice from the contentions of Sri Siddiqui is that his plea of res judicata is not limited to the suit or issue in suit having been raised, heard and decided but it is in respect to certain facts which are contained in the record of Suit-1885 with respect to the nomenclature of site or building or object and its location etc. He claims that mention of the above amounts to an admission by the plaintiff of Suit-1885 about the title, nature etc. of the said building or site or locality even if it was not in issue or nothing was decided on this aspect. Ignoring the issues raised in Suit-1885 and the decision of the Court, certain observations of the learned District Judge made during his personal visit of the site are also being claimed as a finding of fact binding on the parties not only to Suit-1885 but also to all those who go and intend to visit the aforesaid entire site either as worshipper or otherwise. The submissions is extremely far fetched and too remote to be accepted and applied in the case in hand.

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1063. We answer the I**ssues No. 5 (d) (Suit-1), 7(c) and 8 (Suit-4), and 23 (Suit-5) in negative.**

1064. The Issue No. 29 (Suit-5) is:

> *"Whether the plaintiffs are precluded from bringing the present suit on account of dismissal of suit no. 57 of 1978 (Bhagwan Sri Ram Lala Vs. State) of the Court of Munsif Sadar, Faizabad?"*

1065. It is not disputed that Suit No. 57 of 1978 was dismissed for non compliance of Court's order with respect to payment of Court fees. Neither any issue was raised nor argued nor decided by the said Court. Therefore, bar of res judicata is not at all attracted by the order dismissing Suit 57 of 1978 inasmuch as the said order dismissing the suit on technical ground does not come within the purview of judgment or a decision or issue as defined in Section 2 (9) CPC. **The issue no. 29 (Suit-5) is therefore answered in negative and in favour of plaintiffs**.

1066. Issue no. 7(b) (Suit-4) only pertains to the capacity of Mohammad Asghar in which he contested Suit-1885. It is not disputed by the parties that initially when the suit was filed by Mahant Raghubar Das there was only one defendant, i.e., the Secretary, Council of India. Mohammad Asghar later on filed an impleadment application claiming himself to be the Mutwalli of Babari Masjid and the said application was allowed whereupon he was impleaded as defendant no. 2. He pursued the case accordingly before the trial court and the appellate court. It is thus matter of record that in Suit-1885 Mohammad Asghar was allowed to pursue the matter as Mutawalli of Babari Masjid. No party has disputed this factum which is purely a matter of record. What has been in fact suggested by the counsel for

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Hindu parties is that mere factum that Mohammad Asghar's application was allowed in Suit-1885 permitting him to pursue the matter as defendant no. 2 in his alleged capacity of Mutawalli as Babari Masjid, whether it would bind the Hindu parties in the present cases. This, however, is not the issue. The only issue before us whether he was impleaded and pursued Suit-1885 as Mutawalli of Babari Masjid which is a fact derived from the record of Suit-1885 and, therefore, has to be decided in affirmance particularly in view of the fact that nothing has been said by the defendants (Suit-4) to disprove or contradict it. **Issue No. 7(b) (Suit-4) is decided accordingly in affirmance and in favour of plaintiffs (Suit-4)**.

(D) Relating to Waqfs Act No. 13 of 1936, 16 of 1960 and certain incidental issues:

1067. Under this category fall Issues No. 5(a), 5(b), 5(c), 5(d), 5(e), 5(f), 17, 18, 23, 24 (Suit-4); 9, 9(a), 9(b) and 9(c) (Suit-1); 7(a), 7(b) and 16 (Suit-3) and 28 (Suit-5).

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1068. Issues No. 17, 5(a), 5(c) and 5(d) (Suit-4) stood decided on 21.04.1966. The said issues read as under:

> "*Whether a valid notification under Section 5(1) of the U.P. Muslim Waqf Act No. XIII of 1936 relating to the property in suit was ever done? If so, its effect?"*
>
> "*Are the defendants estopped from challenging the character of property in suit as a waqf under the administration of plaintiff no.1 in view of the provision of 5(3) of U.P. Act 13 of 1936?"*
>
> *"Were the proceedings under the said Act conclusive?"*
>
> "*Are the said provision of Act XIII of 1936 ultra-vires as alleged in written statement?"*

1069. Learned Civil Judge considered issues no. 17, 5(a) and

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5(c) (Suit-4) in detail vide his order dated 21.04.1966 and in view of his findings recorded thereon, issue no. 5(d) (Suit-4) was not pressed by the defendants.

1070. The order dated 21.4.1966 is as under :

"All the above four suits were consolidated together on 6.1.1964 on the basis of the joint statement of the parties to all the above suits, which is available at paper No. 184A, of the leading case Original Suit No.12 of 1961. Issues covering the subject matter of all the above mentioned four suits were commonly framed in the leading case, Original Suit No. 12 of 1961 on 5.3.64, which are 16 in number. An additional issue No. 17 was framed on 17.4.65, which is available in the English Notes of the said date in the leading case.

Issue No. 5 (d) was initially taken-up for disposal as a preliminary issue for determination whether the question involved in issue No. 5 (d) should be referred to the Hon'ble the High Court, under Section 113 (Proviso) C.P.C.; or not. Before an answer to issue No. 5 (d) could be given by this court, the defendants of the leading case presented an application paper No. 239/C; whereby they prayed that the plaintiff be called upon to produce the notification contemplated in Section 5 of the U.P. Moslim Waqf Act. In response to the said application, the plaintiffs through their application 242/G filed two papers 243/C and 243/1A as the alleged Government Gazette Identification made under Section 5 of the U.P. Moslims Waqf Act. Paper No. 243/C is the attested copy of the supplement to the Government Gazette of the United Provinces, dated February 26, 1944-Part VIII; and paper

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No. 243/1A is the annexure to the said gazette notification printed in Urdu title: "Fehrist Sunni avaqaf wakai suo me Muthadda Agra wa Oudh, jinpar bamoojib report Commissioner Avaqaf, U.P. Moslims Waqf Act No.XIII of 1936 ki Dafat Aayad hoti hai".

Its title page further contains the following words :-

"Fehrist hasl Dafa 5 Act XIII/1936....."

In the said list of waqf property paper No.243/1A, the property in dispute in the above four suits as alleged by the plaintiffs of the leading case is mentioned at serial No. 26, of page 11. The entire list of Sunni Waqf property of Faizabad is mentioned at pages 10 and 11 of paper No. 243/1A. The proforma of the list as well as the entries against item No. 26 of the said list are reproduced below :-

No. Sumar	*Name waquif ya Waqf.*	*Name Mutwalli Maujooda*	*Nauip (sic. Nawyyet) Jaidad Mauqoofa*
26	*Badshah Babar*	*Syed Mohammad Zaki Mutwalli Masjid Babari Qasba Shahnawa, Dak-Khana Darshan Nagar*	*This column stands blank against entry No. 26 of the list paper No. 243/1A*

Subsequently, the defendants 1, 3 and 4 of the leading case filed their objections 247/C and 248/C against the plaintiffs' aforesaid papers 243/C, 243/1A and 244/C.

In reply to the said objections of the defendants, the plaintiffs filed their reply 250/C and 251/C against the

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defendants' aforesaid objections 248/C and 247/C respectively.

In connection with the subject matter of applications 239/C, 240/C, 251/C and the alleged Gazette Notification 243/C and the list of waqf property 243/1A, leaned counsel for the parties jointly stated that the following additional issue may be framed and issue No. 17 which should be decided first, because issue No. 5, with all its part recedes to a secondary position in face of the following additional issue No. 17. Their aforesaid joint request appears to be sound, and, therefore, the following additional issue No. 17 was framed :-

ADDITIONAL ISSIUE NO. 17 :

"Whether a valid notification under Section 5 (1) of U.P. Moslims Waqf act No. XIII of 1936, relating to the property in suits was ever done? Its effect?"

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Naturally issue No. 17, thus, become primarily the preliminary issue.

Learned counsel for the parties were heard at length in respect of issue No. 17. My findings under issue No. 17, are given here-under :-

FINDINGS ON ISSUE NO.17

The words "Waqf" and "Waqif" have been defined in Section 3(1) of Act XIII of 1936 Muslims Waqfs Act, U.P. as below :-

"Waqf" means the permanent dedication or grant of any property for any purposes recognized by the Mosalman law or usage as religious, pious or charitable and where no deed of waqf is traceable includes waqf by user; and a waqif means any person, who makes such dedication or

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grant".

It will be evident from the above definition that the word "waqf is inseparably connected with the word "any property", because the 'Waqf' can come into existence only in relation to any property. In this way, whenever the word 'Waqf" is conveyed to any person, it must necessarily convey simultaneously the idea or description or a tangible connotation about the existence of "any property" covered or included in the 'Waqf'. What I mean to say, is that if some one wants another to know that a particular property is waqf, it will be necessary for him to mention simultaneously the description of at least tangible connotation about the identity of the property of the waqf.

In the instant case, at hand, item No.26 (page 2 of the list paper No.243/1A) is totally blank in its last column, which was prescribed for mentioning the particulars of the property to be known as 'waqf" created by Badshah Babar. The absence of any mention of the tangible identity of the alleged waqf property of item No. 26, is a fatal-flaw in the alleged Government Notification paper No.243/C read with paper No. 243/1A; because no body living in the extensive district of Faizabad or for that matter living in any part of India, could or can reasonably make-out as to what is that specific property, which was proposed to be enlisted as Sunni Waqf" property in item No. 26, page 11, of paper No. 243/1A. Consequently, a person interested in the property in suits-living in a distant tract of Faizabad District or in any other State of India could never understand that the existing entries of item No. 26 of paper No. 243/1A, unequivocally relate to the present property in suits. That

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being so, proviso No. 1, to clause 2 of Section 5 of U.P. Moslims Waqf Act, 1936 and clause 3 of Section 5 of the said Enactment cannot come into play, in respect of the present property in suits; because the alleged Government Gazette Notification paper No. 243/C read with paper No. 243/1A, at item No. 26, page 11, of paper No. 243/1A, was meaningless; and because of the blankness of its last column, the same did not and could not convey to the public at-large or to for that matter to any one that the said item No. 26 of 243/1A, related to the present property in suits. The principle laid down in the ruling 'Harla. Vs. The State of Rajasthan, A.I.R. 1951, Supreme Court, p. 467 clearly goes to show that such a notification is no effective notification in the eyes of law or equity.

Learned counsel for the plaintiffs of the leading case cited before me the ruling AIR 1959, Supreme Court, P. 198, 'Sirajul Haq Khan and Others Vs. The Sunni Central Board of Waqf, U.P. and Others" to show that it was incumbent upon any Hindu also interested in the property of item No. 26 or 243/1A, to bring a regular suit for declaration within one year from 26.2.1944 when 243/1A was published in the U.P. Government Gazette, according to the provisions of clause 2, of Section 5 of Act XIII of 1936, and since none of the Hindus of India or Faizabad District or the defendants of the leading case or the plaintiffs of the connected three cases had brought any suit for declaration within one year of 25.2.1944, challenging the validity of item No. 26, page 11, of notification No. 243/1A; hence the defense of the defendants of the leading case and the suits of the plaintiffs of the connected three

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cases are barred by clause 3, of Section 5 of Act XIII/1936; whereby the aforesaid declaration of waqf by the waqf Commissioner, U.P. at item No. 26 of paper No. 243/1A, had become final and conclusive.

Bowing down to the principle laid down in the aforesaid ruling of Hon'ble the Supreme Court, I respectfully wish to point-out that the said ruling is distinguishable from the facts of the present cases at-hand; because in the aforesaid ruling, it was taken for granted that a valid notification of the proposed waqf property was duly made in the U.P. Government Gazette under Section 5(1) of Act XIII of 1936; whereas in the present cases, at-hand, the alleged notification as contemplated in Section 5, clause (1) of Act XIII of 1936, i.e. item No. 26 of the list paper No. 243/1A, does not amount to a valid notification; because the same does not convey the idea or the identity or necessary particulars about the property proposed by the waqf Commissioner to be listed as Sunni Waqf Property dedicated by Badshah Babar. I have already pointed out above that the definition of the word "Waqf" in Section 3(1) of Act XIII of 1936, necessarily relates to some specific property. This means that a clear mention of the property included in a waqf must necessarily be made when making a mention of a particular waqf. This has not been done in item No. 26 of paper No. 243/1A, inspite of the fact that column No. 4, of the above noted proforma was specifically prescribed for that end. In this connection, I may profitably refer to the aforesaid ruling itself, which has been cited on behalf of the plaintiffs of the leading case, in which their Lordships of Hon'ble The Supreme

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Court have themselves held as under :-

> *"That expression 'any person interested in a waqf", must mean 'any person interested in what is held to be a waqf'. It is only persons, who are interested in a transaction, which is held to be a waqf, who could sue for declaration that the decision of the Commissioner of Waqfs in that behalf is wrong and that the transaction in fact is not a waqf under the Act."*

The above under-lined words, as used by their Lordships of Hon'ble The Supreme Court, clearly point-out that persons interested in a property held as waqf by the Waqf Commissioner, will be duty bound to bring a suit for declaration within one year from the date of notification against the decision of the Waqf Commissioner if the notification had conveyed to them, the identity or the particulars of the proposed waqf property; and not otherwise. As pointed out above, item No. 26, of the notification list paper No.243/1A is utterly blank in its column No. 4 due to which no body could understand as to what property was intended to be included in the said item No. 26. That being so, the said notification is meaningless; and does not carry the sanctions provided in clause 3 of Section 5 of Act XIII of 1936 with it.

The entry of the name of Badshah Babar as Waqif, of a property in Faizabad District, as given in column No. 2, of item No. 26 of paper No. 243/1A, is not enough to convey the idea of the identify of the present property in suits, because Badshah Babar was the Emperor of the Moghal empire in India, who never resided in Faizabad

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District according to the pages of history of which a judicial notice can be taken by this Court, Secondly, there is no knowing as to how many waqfs were created by Badshah Babar in various parts of Faizabad District.

In column No. 3 of item No. 26 of paper No. 243/1A is given the name of the Mutwalli as Syed Mohammed Zaki Mutwalli Masjid Babari, Qasba Shah Nawa, Dak-Khana Darshan Nagar. A judicial notice of this fact can be taken by this Court, that qasba Shah Nawa lying within the jurisdiction of Post Office Darshan Nagar is at a distance of about 8 to 10 miles from Ayodhya. As the said entry of the particulars of the Mutwali stands in column 3 of item No. 26 of paper No. 243/1A, it shows on the face of it that Syed Mohammed Zaki might have been a Mutawalli of a mosque built by emperor Babar in Qasba Shah Nawa, Post Office Darshan Nagar. In this way, the entries of columns 2 and 3 also of item No. 26 of paper No. 243/1A are so vague and mis-leading that a number of the public at-large, residing in any part of our vast country India, who might be interested in the present property in suits, could never understands from the same that by the notification of item No. 26, of paper No. 243/1A, which was the present property in suits, which was proposed to be listed and declared as Sunni Waqf property by the Commissioner of Waqf U.P.

No explanation, whatsoever, has been offered on behalf of the plaintiffs of the leading case at the time of arguments on issue No. 17 or in the plaintiffs' reply, paper No. 250/C as to why column No. 4, of item No. 26 of paper No. 243/1A was left blank. In para 5 of the plaintiffs' reply

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paper No. 250/C, all that has been contended in that connection is that there is no vagueness in the entry relating to the mosque in suit at item No. 26, of paper No. 243/1A; because in its column No. 2, the name of Badshah Babar is clearly mentioned and in its column No. 3, the name of present Mutwalli Syed Mohammed Zaki Mutwalli Masjid Babari, is mentioned with his residential address as Qasba Shah Nawa, Post Office Darshan Nagar. It is noteworthy that in column No.3, of entry No. 26, of paper No. 243/1A, it is nowhere mentioned that Qasba Shah Nawa, Post Office Darshan Nagar was the residential address of Syed Mohammed Zaki. Consequently, it has been simply twisted at the end of para 1 of paragraph 5, of the plaintiffs' reply paper No. 250/2C, contains the 'Sakoonat' of residence of Syed Mohammed Zaki. As a matter of fact, a perusal of column No. 3 of item No. 26 of the notification list paper No. 243/1A, will clearly convey to the reader that Syed Mohammed Zaki was a Mutwalli of some mosque built by Babar in Qasba Shah Nawa Post Office Darshan Nagar. As such, the aforesaid explanation of the plaintiffs has no force.

At the end of para 5, in paper No. 250/3C, another explanation of the above was offered on behalf of the plaintiffs of the leading case as under :

"The plaintiffs' allegation being that the building in suit is mosque built by King Babar whose dynasty and accounts of his conquest are matters of history well known to all educated persons in India."

The aforesaid explanation in the first place, conveys the impression that the plaintiffs of the leading case are

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themselves conscious of the fact that it was a fatal lacuna in the aforesaid notification paper No. 243/C read with paper No. 243/1A whereby the description or particulars or identity of the waqf property mentioned in item No. 26, of paper No. 243/1A was omitted in column No. 4 or for that matter in any of the columns of item No. 26, of paper No. 243/1A. Secondly, the aforesaid explanation is confined to the alleged presumed knowledge of the educated persons only-totally ignoring that even uneducated persons whose number surpasses the number of education persons in this country, had also a right vested in them to assail the entries of item No. 26 of paper No. 243/1A.

Thirdly, it will be too remote to presume that the factum of the conquest of Emperor Babar over certain parts of India, which one can derive from the pages of popular books of history taught in schools and colleges must necessarily convey the details of those properties or buildings also, which were built by Emperor Babar in various parts of this vast country at different times.

Lastly, it is to be remembers that it is not the case of the plaintiffs of the leading case that property in suit was originally a temple, which was ever conquered by Emperor Babar, who got it remodeled in the shape of a mosque. The case of the aforesaid plaintiffs is contained in their plaint in leading case, as well as in the statement of the plaintiffs' learned counsel made under order X, rule 2 C.P.C. on 20.1.64, at paper No. 187A, is that the property in suits is the originally mosque, which was built for the first time at its place, by Emperor Babar in 1528 AD in the shape of a

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mosque which he had dedicated to the followers of Islam thereafter. That being so, the knowledge of the educated persons regarding the conquest of Emperor Babar derived from the pages of popular history books cannot profitably utilized by the plaintiffs of the leading case because according to the plaintiffs' own case, the property in suits was not conquered property but a property which was originally and for the first time built at its place by Emperor Babar for use of the Moslim public.

In view of the facts and reasons discussed above, I hold under issue No.17 that no valid notification under Section 5(1) of U.P. Moslim Waqf Act No. XIII of 1936 was ever made so far relating to the specific disputed property of the present suits at-hand. The alleged Government Gazette Notification paper No. 243/C read with the list paper No. 243/1A do not comply with the requirements of a valid notification in the eyes of law and equity as I have already discussed above. The aforesaid two papers, therefore, serve no useful purpose to the plaintiffs of the leading cases.

In view of my above findings I hold that the bar provided in Section 5(3) of U.P. Act No. XIII of 1936 does not hit the defence of the defendants of the leading case and their suits which are connected with the aforesaid leading case. Issue No. 17 is answered accordingly.

In view of my findings given above, the subject matter of issue No. 5 (a) also stands automatically decided against the plaintiffs of the leading case; and in favour of the defendants of the leading case and the plaintiffs of the connected cases. Issue No. 5(a) also, therefore, stands

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answered accordingly.

My findings under issue No. 17, given above, automatically answer issue No. 5(c) also, accordingly. Consequently, issue No. 5(c) is answered in the negative.

In this way, only two parts (b and D) of issue No. 5 stand for decision now. Issue No. 5 (b) will be taken up for disposal along with the remaining issues.

As regard issue No. 5 (d) counsel for the defendants of the leading case to report today whether issue No. 5 (d) is still prepared in face of my above findings under issues Nos. 17, 5 (a) and 5(c)?"

1071. After delivery of the aforesaid order, the learned counsels for defendants in Suit-4 made the following noting :

"In view of the finding of Court it is not necessary to press Issue no. 5 (d) at present. As such Issue No. 5 (d) is not pressed."

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1072. After referring to the above statement of the learned counsels for defendants (Suit-4), learned Civil Judge passed following order in respect to Issue No. 5(d) (Suit-4).

"Learned counsel for the defendants of the leading case has endorsed above that he does not press issue no. 5 (d) in view of the findings on issue nos : 17, 5(a) and 5(c), hence issue no. : 5(d) need not be answered by this Court.

Consequently put up on 25.5.66 for final heading of the above mentioned cases."

1073. **Issue No. 9 (Suit-1)** is similar to Issue No. 5(a) (Suit-4). It reads as under:

"*Is the suit barred by provision of Section 5(3) of the Muslim Waqfs Act (U.P. Act 13 of 1936)?"*

1074. With respect to Issue No. 5(a) (Suit-4) the learned Civil

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Judge in his order dated 21.04.1966 has recorded the following findings:

> *"In view of my findings given above, the subject matter of issue No. 5 (a) also stands automatically decided against the plaintiffs of the leading case; and in favour of the defendants of the leading case and the plaintiffs of the connected cases. Issue No. 5(a) also, therefore, stands answered accordingly."*

1075. Issue No. 9 (Suit-1) being similar, also stands decided accordingly in terms of the judgement dated 21.04.1966 of the learned Civil Judge, i.e., in favour of the plaintiff (Suit-1).

1076. **Issues No. 7(a) and 7(b) (Suit-3)** pertain to the notification under 1936 Act and read as under:

> *"Has there been a notification under Muslim Waqf Act Act No. 13 of 1936) declaring this property in suit as a Sunni Waqf?"*
>
> *"Is the said notification final and binding? Its effect?"*

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1077. Issue No. 17 (Suit-4) which has been decided by the detailed order dated 21.04.1966 of the learned Civil Judge is similar to both the above issues. Since it has already been held that no valid notification under Section 5(1) of 1936 Act in respect to the property in dispute has been issued, both the issues no. 7(a) and 7(b) (Suit-3) are answered in negative, i.e., in favour of the plaintiffs (Suit-3) and against the defendants therein.

1078. **Issues No. 5(b) (Suit-4) and 9(a) (Suit-1)** are similar which read as under:

> *"Has the said Act no application to the right of Hindus in general and defendants in particular, to the right of their worship?"*

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"Has the said Act no application to the right of Hindus in general and plaintiff of the present suit , in particular to his right of worship?"

1079. In the plaint (Suit-4) referring to 1936 Act, the plaintiffs have averred in paras 9 and 10 as under:

"9. That in 1936 the U.P. Muslim Wakfs Act XIII of 1936 was passed and under the provisions of the said Act, the Commissioner of Wakfs made a complete enquiry and held that Babari Masjid was built by Emperor Babar who was a Sunni Mohammedan and that the Babari Mosque was a public wakf. A copy of the Commissioner's report was forwarded by the State Government to the Sunni Central Board of Wakfs and the Sunni Central Board of Wakfs published the said report of the Commissioner of Wakfs in the Official Gazette dated 26.2.1944.

10. That, no suit, challenging the report of the Commissioner of Wakfs was filed by the Hindus or by any person interested in denying the correctness of the report of the Commissioner of Wakfs, on the ground that it was not a Muslim Wakf or that it was Hindu temple."

1080. In the Additional Written Statement of defendants No.1 and 2 (Suit-4) para (g), (h) and (i) read as under.

"(g) That the Commissioner of Wakf only has to make an enquiry about number of Shia and Sunni Waqfs in the district the nature of each waqf, the gross income of property transferred in the Waqf, the Govt. revenue, the expenses and whether it is one expected u/s 2. The Commissioner of Wakf has only to see whether any transaction is Waqf or not and that to which sect the Waqf belongs and further whether such Waqf is or is not

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exempted by sec.2 of the Act. All these things he has to do in accordance with the definition of Waqf in Section 3(1) of the Act XIII of 1936, an Act which is exclusively meant for certain clauses of Muslim Waqfs. The finality and conclusiveness in intended to give effect to the scheme of administration under the Muslim Waqfs Act and does not and cannot confer jurisdiction to decide question of title as against non-Muslims. The legislature u/s 5(3) does not say that the court shall take judicial notice of the reports of the Commissioner of Waqfs and shall regard them as conclusive evidence that the Waqf mentioned in such reports are Muslim Waqfs, as was done in Section 10 of the O.E. Act.

(h) That there has been no legal publication of alleged report and hence no question of any finality arises.

(i) That the purpose of publication is only to show to which sect. the waqf belongs. It does not call upon objections or suit by persons not interested in what is held to be a Waqf or not viz. by non muslims."

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1081. The written statement dated 25th January, 1963 of defendant no.2, para 32 (g), (h) and (i) read as under :

"(g) That the Commissioner of Wakf only has to make an enquiry about number of Shia and Sunni Waqfs in the District the nature of each waqf, the gross income of property comprosed in the Waqf, the Government Revenue, the expenses and whether it is one expected U/s 2. The Commissioner of Waqf has only to see whether any transaction is Waqf or not, and that, to which sect the Waqf belongs and further whether such Waqf is or is not exempted by sec.2 of the Act. All these things he has to do

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in accordance with definition of Waqf in Section 3(1) of the Act XIII of 1936, an Act which is exclusively meant for certain clauses of Muslim Waqfs. The finality and conclusiveness is intended to give effect to the scheme of administration under the Muslim Waqfs Act and does not and ***cannot confer jurisdiction to decide question of title as against non-Muslims****. The legislature U/s 5(3) does not say that the court shall take judicial notice of the reports of the Commissioner of Waqfs and shall regard them as conclusive evidence that the Waqf mentioned in such reports are Muslim Waqfs as was done in Section 10 of the O.E. Act.*

(h) That there has been no legal publication of alleged report and hence no question of any finality arises.

(i) That the purpose of publication is only to show to which sect. the Waqf belongs. It does not call upon objections or suit by persons not interested in what is held to be a Waqf or not viz. by non muslims."

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1082. Defendant No.13 and 14 Baba Abhiram Dass and Pundarik Misra also in para 32(g) have said :

"(g) That the Commissioner of Wakf only has to make an enquiry about number of Shia and Sunni Waqfs in the District, the nature of each waqf, the Government Revenue, the expenses and whether it is one excepted U/s 2. The Commissioner of Waqf has only to see whether any transaction is Waqf or not, and that, to which sect the Waqf belongs and further whether such Waqf is or is not exempted by Section 2 of the Act. All these things he has to do in accordance with definition of Waqf in Sec. 3(1) of the Act XIII of 1936, an Act which exclusively meant for

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certain clauses of Muslim Waqfs. The finality conclusiveness is intended to give effect to the scheme of administration under the Muslim Waqfs Act and does not and cannot confer jurisdiction to decide question of title as against non-Muslims. The legislature under Section 5(3) does not say that the court shall take judicial notice of the reports of the Commissioner of Waqfs and shall regard them as conclusive evidence that the Waqf mentioned in such reports are Muslim Waqfs as was done in Section 10 of the Taluqdari Act.

(h) There has been no legal publication of alleged report and hence no question of any finality arises.

(i) That the purpose of publication is only to show to which section the Waqf belongs. It does not call upon objections or suit by persons not interested in what is held to be waqf or not viz. by non Muslims."

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1083. Defendant No.13 again in his written statement in paras 33 and 36 has pleaded as under :

33. THAT in 1936 the U.P. Muslim Waqfs Act, was passed. It established two Central Boards of Waqfs in U.P., namely the Sunni Central Board of Waqfs and the Shia Central Board of Waqfs, to supervise and control the Muslim Waqfs of the two sects respectively. All the existing Waqfs were required to be surveyed and classified into Sunni and Shia Waqfs by a Commissioner of Waqfs, who was required to submit his report to the local Government, and the Government in its turn was required to send that report to the Central Board concerned, according to the sect to which the waqf belonged, whereafter the Central Board concerned was required to notify in the Gazette the

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Waqfs of its respective sect. There was no such notification in respect of the 'waqf' of the 'mosque' in dispute. Allegation to he contrary is wrong. The Plaintiff Waqf Board, has had no jurisdiction in respect of the premises even if it were a 'mosque'. Further, it took no action or positive steps for the custody or the care of the building or its establishment as a 'mosque'. No one acted as its Mutwalli, or Mauzin, or Imam, or Khatib, or Khadim. The descendant of Mir Baqi who was sought to be planted as the Mutwalli by the British was an opium addict. He denied that the grant of revenue free land was waqf for the purposes of the 'mosque', and instead claimed that it was his Nankar for services rendered to the British, and did not look after or manage the 'mosque' at all.

36. THAT the Sunni Central Board of Waqfs, U.P. has no jurisdiction or competence to meddle with the alleged 'waqf ; or the alleged 'mosque', or to sue in respect thereof for want of a proper and valid notification in its favour, in respect thereof, under Section 5 of the U.P. Muslim Waqfs Act, 1936, the notification published in the Official Gazette dated 26.2.1944, having already been held to be invalid by the Court's finding dated 21.4.1966 on issue No.17, in this Suit, which has become final and irreversible between the parties. Further, the suit when filed in 1961, was barred by the provisions of the U.P. Muslim Waqfs Act, 1960 ; only the Tribunal constituted under that Act had the jurisdiction to entertain a suit of this nature, if filed within the limitation prescribed by it, and the Civil Court had no jurisdiction to entertain it.

1084. Defendant No.17 in his (Additional) written

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statement dated 14th September, 1995 in para 11 has pleaded as under :

"11. That Sunni Central Board of Waqfs has no legal authority to file the suit and as such the suit is liable to be dismissed."

1085. With respect to Issue No. 9(a) (Suit-1) we find pleadings in paras 25 and 26 of the written statement of defendant no. 10 which read as under:

"25. That the ownership of the mosque in question vests in the God Almighty and the said mosque is a waqf property and the waqf character of the said mosque cannot be challenged by the plaintiff in this suit specially so when the plaintiff had never challenged the entry of the said waqf which was made in pursuance of the gazette notification issued by the State Government of Uttar Pradesh under provisions of the U.P. Muslim Waqf Act, 1936.

26. That the plaintiff's suit is barred even by the provisions of the U.P. Muslim Waqf Act, 1936."

1086. With respect to applicability of Wakfs Act, Sri M.M. Pandey, counsel for plaintiffs (Suit-5) has submitted:

(A) The Act needs a close examination. The Preamble aims at providing better governance and administration of certain classes of Wakfs and supervision of Mutawalli's management. S. 3(1) does not create any 'new' class of Wakf and recognises only those known to the Mahommedan Law; the Statement of Objects and Reasons also says so and adds that the Act "is not intended to deprive the Mutawallis of any authority lawfully vested in them, nor it aims at defining all the powers, duties and liabilities of the Mutawallis…" S. 4(1) provides for

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appointment of a District Commissioner of Wakf "for the purpose of making survey of all wakfs". Procedural powers of Civil Court are conferred on the Commissiioner for summoning witnesses, production of documents, local inspection/ investigation u/s 4(4) while making inquiries, but there are no guidelines how to 'initiate' an inquiry, what notices are required to be issued and to whom. S. 4(3) confers power on him to make 'such inquiries as he consider necessary'; there is no guideline for the manner in which he should proceed. This seems to be 'arbitrary' and violates the Constitutional requirement of fairness. The word 'necessary' will make Wakf Commissioner's discretion to be objective and open to judicial review.The Act does not provide for framing Rules of procedure for the Wakf Commisioner to observe before initiating an inquiry. If on particular facts or situation, Notice to a particular person is essential in the interests of justice and fairness, the Wakf Commissioner cannot plead that he had unrestricted discretion whether or not to issue Notice; in law, every fair procedure is permissible unless specifically probited. The Act does not prohibit the Wakf Commissioner to issue notices for giving opportunity to persons interested while conducting the inquiry. The proceeding before the Wakf Commissioner is quasi judicial as held in the case of Board of Muslim Wakfs, Rajasthan Vs. Radha Kishen (1979)2 SCC 468 (para 25). Further the SC has held in paras 37 to 39 that where a stranger who is a ***non-muslim*** *is in possession of a certain property, his right, title and interest therein cannot be put to jeopardy merely because the property is included in the list prepared by the Wakf*

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Commissioner under the U.P. Wakf Act. Although this decision concerns Section 6(1) of the Wakf Act of 1960, the SC has observed in para 35 that that Section "is based on Sub-section (2) of Section 5 of U.P. Muslim Wakf Act of 1936". This distinguishes the decision from that in 1959 SC 198, Sirajul Haq Khan Vs Sunni Central Board of Wakf where both Plaintiff and Defendants were Muslims. Thus Hindus, Nirmohi Akhara and any of the Defdts in OOS 4 of 1989, cannot be treated to be a 'person interested in a wakf' u/s 5(2) of the Wakf Act of 1936. It will also be appreciated that if Nirmohi Akhar and others were to be treated to be 'person interested in a wakf', it was incumbent upon the Wakf Commissioner to issue notices at that very time before deciding the issue. Even if it be treated to be administrative, an opportunity of hearing ought to have been given to Nirmohi Akhara and Hindu Community as held, after considering several decisions of Supreme Court, in the case of Muzaffar Hussain Vs. State of U.P, 1982 Allahabad Law Journal 909 (DB).

(B) Wakf Commissioner submits his report of inquiry to State Government u/s 4(5). The State Govt. has to 'forward a copy' of the report to Shia as well as Sunni Boards of Wakf u/s 5(1) and commands the Boards, as soon as possible, to 'notify in the Gazette the Wakfs relating to the particular sect to which, according to such report, the provisions of this Act apply'. This signfies that Shia and Sunni Boards are required to publish notices, in the Gazette, of only those Wakfs which relate respectively to Shia and Sunni Wakfs; further, only the particulars of the Wakf, without the report, are required to be published.

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Mere publication of the particulars of Wakf without the report cannot constitute notice of Wakf Commissioner's finding/report to Public, much less to any particular individual.

(C) Over and above the procedure contained in Ss 4 and 5 for the Wakf Commisioner in making survey and preparing lists of Wakfs and their publication by concerned Wakf Boards, S. 38 authorises the Wakf Board concerned also to register a Wakf at its Office. This registration may be made on an application by Mutwalli under sub-section (2), or by wakif, his descendants, beneficiary or any Muslim of the sect under sub-section (3) or by 'any person other than the person holding possession' of wakf property under sub-section (6). In an application under sub-section (6), the Wakf Board is required to give notice of the application to the person in possession and hear him. The Board will make an inquiry and pass final orders. The question is that since the Act specifically provides for issue of notice by Wakf Board to a person in possession of wakf property (whoever he may be – even a stranger), why no provision is made for Wakf Commissioner to issue similar notice to person in possession for the purpose of inquiry u/ss 4 and 5? An essential distinction is that while Wakf Commissioner is an officer of the State, the Wakf Board is not; hence while Wakf Commissioner may be presumed to act in a fair and just manner, the Wakf Board may not be presumed so to act, hence specific procedural methodology is prescribed for it in the matter of deciding a matter. As mentioned above, the proceedings before the Wakf Commissioner are quasi-judicial. 'Natural justice' would

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require such notice to be given to person in possession; failure to do so would render Wakf Commissioner's findings and list of Wakfs to be ineffective against strangers. In this case, Wakf Commissioner did not issue notice to Nirmohi Akhara who were admittedly in possession of Eastern half of the platform of DS itself as settled by the British Administration in 1885, in addition to Ram Chabutra, Sita Rasoi Chabutra and other portions of DA within the campus of DS. Admittedly, in 1934 during Hindu-Muslim riots, Hindus had demolished certain portions of DS, thereby exerting their rights over the property to the knowledge of everyone concerned with DS. The Govt. of U.P. even imposed punitive fine on Hindus for demolishing portions of DS which was repaired by the Govt. Thus the Hindu public in general (in addition to Nirmohi Akhara) was interested in DS, and a general public notice for Hindu worshippers too was called for. None was given, hence the entire proceeding of the Wakf Commissioner, declaring DS to be Sunni Wakf, was illegal.

(D) Then follows the provision which is <u>most important</u> for the purposes of these cases: S. 5(2) and 5(3). According to S. 5(2), the Mutawalli of a Wakf, <u>or any person interested in a Wakf</u> may bring a suit in a Civil Court for a declaration that any transaction held by the Commissioner of Wakfs to be Wakf is not Wakf, but no such suit by a person interested in the Wakf shall be instituted "after more than one year of the notification referred to in subclause (1)". Sub-section (3) provides that subject to the final result of such suit "the <u>report</u> of the Commissioner of Wakfs <u>shall be final and conclusive</u>". Subsection (4) commands that the

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Commissioner shall not be made a Defendant to the suit and no suit shall be instituted against him for anything done by him in good faith under colour of this Act. This bar cannot be made applicable to Plaintiffs of OOS 5 of 1989. Firstly, there is no valid Wakf of DS. Secondly, the Plaintiffs were neither Parties to the proceedings before, nor were given an opportunity by Wakf Commissioner to contest the claim of declaration of DS to be Wakf. Thirdly, neither Nirmohi Akhara, who were admittedly in possession of almost half portion of Platform (Chabutra) of DS lying towards East of a grilled partition wall erected by British administration in 1855 in addition to considerable portions of campus of DS, including Ram Chabutra, was given notice of the proceedings, nor Hindu devotees/community were given general notice although since 1934 riots they were admittedly asserting rights over it. If the requirements of Section 5 of the Wakf Act of 1936 applied to Nirmohi Akhara/Hindu devotees on the ground that they were 'persons interested in the wakf', then that was all the more reason for the Wakf Commissioner to have given notice to these persons. The action and decision of Wakf Commissioner, or by Sunni Central Board of Wakf on its basis, therefore, could not be binding on Plaintiffs, Nirmohi Akhara or Hindu devotes/community.

(E) When Wakf Act of 1960 came into force, the Sunni Board made 'Registration' of some of the disputed properties as Sunni Wakf u/s 29 of 1960-Act. Supreme Court held that any Survey report made and Registration of Wakf thereon was "futile and of no avail" because Registration of Wakf under 1936-Act had been kept alive

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by 1960-Act and the latter Act permitted Registration of only those Wakfs which were 'other than' those already Registered under 1936-Act. The claim of Shia community was upheld and Sunni Community were restrained permanently from interfering with exercise of rights by Shias. Now, there is absolutely nothing in common between Ghulam Abbas' case and the present cases.

1087. The creation of waqf was held valid and lawful by the Prophet Mohammad. It is said that this rule was laid down by Prophet himself and handed down in succession by Ibn Abu Nafe and Ibn Omar. Omar got piece of land in Khaiber whereupon he came to the Prophet and sought his counsel to make the most pious use of it. The Prophet said "if you like you may make a waqf of it, as it is, and bestow it in benification". Omar thereupon bestowed it in charity on his relatives, the poor and slaves and in the path of God, and travellers in a way that the land itself might not be sold, nor conveyed by gift, nor inherited. It is said that waqf continued in existence for several century until the land became waste. The prophet of Islam not only declared such works to be valid and lawful but also encourage their creation by dedicating his own property, the little that he had, in favour of posterity. It would be useful to refer as to what constitute a lawful waqf under Muslim Law. A Division Bench decision of Calcutta High Court in **Meer Mahomed Israil Khan Vs. Sashti Churn Ghose and others, 19 ILR (Calcutta) (1892) 412** where Justice Ameer Ali answering the question as to what constitute a lawful waqf under Mussulman law observed that there must be a substantial dedication for charitable or pious purpose. His Lordship further observed:

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"In the Mussulman system law and religion are almost synonymous expressions, and are so intermixed with each other that it is wholly impossible to dissociate the one from the other: in other words, what is religious is lawful; what is lawful is religious. The notions derived from other systems of law or religion form no index to the understanding or administration of the Mussalman law. The words "piety" and "charity" have a much wider signification in Mussalman law and religion than perhaps in any other. Every "good purpose," wujuh-ul-khair (to use the language of the Kiafaya), which God approves, or by which approach (kurbat) is attained to the Deity, is a fitting purpose for a valid and lawful wakf. A provision for one's children, for one's relations, and under the Hanafi Sunni law for one's self, is as good and pious an act as a dedication for the support of the general body of the poor. The principle is founded on the religion of Islam, and derived from the teachings of Prophet."

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1088. Thereafter Justice Ameer Ali proceeded to quote from "Hedaya" a commentary by "Fath-ul-kadir" said to be frequently quoted in "Fatawa-i- Alamgiri" in great detail and it would be useful to reproduce the same as under:

"I will give here a few passages from some of the best known authorities to show how utterly opposed the view taken in this case is to the Muhammadan law. The Fath-ul-kadir says--" Literally, it (the word wakf) signifies detention, ... in law . . . according to the Disciples, the tying up of property in such a manner that the substance (asl=corpus) does not belong to anybody else excepting God, whilst the produce is devoted to human beings, or is

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spent on whomsoever he [the wakif] likes; and the reason of it is that, though a desire to approach the Deity (kurbat) should form the ultimate motive of all wakfs, yet if, without such an (immediate) desire, a person were to dedicate a property in favour of the affluent (aghnia), the wakf would be valid in the same way as a wakf in favour of the indigent or for the purposes of a mosque: for, in giving to the affluent there is as much kurbat as in giving to the poor or to a mosque, and though the profit may not have been given to the poor on the extinction of the affluent [still] it is wakf and will be treated as wakf even before their extinction. This principle is founded on the reason that the motive in all wakfs is to make one's self beloved by doing good to the living in this world and to approach the Almighty in the next . . . . .

"In wakf Islam is not a condition; consequently if a Zimmi makes a wakf on his children and his posterity and gives it at the end to the indigent, it is lawful [equally with that made by a Moslem]. And it is lawful in such a case to give the usufruct conditioned for the indigent to the poor of both Moselms and Zimmis. The wakif may lawfully condition to give the usufruct solely to the poor of the Zimmis, and in that will be included Jews and Christians and Magians; or he may condition that a special body of them may get the produce . . . . whatever condition the wakif makes if it is not contrary to the Sharaa, will be lawful. And so long as the object is not sinful, the wakif may give to whomsoever he likes . . . According to Abu Yusuf the mention of perpetuity [or dedication to an object of a permanent nature] is not necessary to constitute a

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valid wakf, for the words wakf and sadakah conjunctively or separately imply perpetuity . . . In the Baramika it is stated that, according to Abu Yusuf, when a wakf is made in favour of specific individuals, on their extinction the profits of the wakf will be applied to the poor . . . Among the wakfs created by the Sahaba [Companions of the Prophet], . . the first is the wakf of Omar (may God be pleased with him) of his land called Samagh [at Khaibar] . . that created by Zobair bin Awwam of his house for the support of his daughter who had been divorced (by her husband); . . that of Arkam Mukhzumi, on his children of his house called Dar-ul-Islam at Safar (near Mecca), where the Prophet used to preach Islam, and where many of the disciples, among them Omar, accepted the Faith . . . Baihaki in his Khilafiat has stated upon the authority of Abu Bakr Obaidulla bin Zubair that [the Caliph] Abu Bakr (may God be pleased with him) had a house in Mecca which he bestowed in charity upon his children, and that it is still in existence . . . And Saad ibn Abi Wakkas bestowed in charity his houses in Medina and Egypt upon his children, and that wakf is still in existence, and [the Caliph] Osman (may God be pleased with him) made a wakf of Ruma, which exists until to-day, and Amr Ibn al-Aas [the Amru of European history], of his lands called Wahat in Tayef and of his houses in Mecca and Medina upon his children, and that [wakf] also is still continuing . . . According to Abu Yusuf the wakif may lawfully retain the governance of the trust, or reserve the profits for himself during his lifetime. This has been fully dealt with by Kuduri in two parts . . The jurists, Ahmed ibn-i-Abi Laila, Ibn

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Shabarma, Zahri, and others, agree with Abu Yusuf. Mohammed alone holds a contrary opinion . . . Abu Yusuf bases his rule upon the practice and sayings of the Prophet himself who used to eat out of the produce of the lands dedicated by him .... Another proof in support of Abu Yusuf's rule is that the meaning of wakf is to extinguish the right of property in one's self and consign it to the custody of God. Therefore, when a person reserves the whole or a portion of the profits for himself, it does not interfere with the dedication, for that also implies the approval of the Almighty and is lawful . . . For example, if a man were to dedicate a caravanserai and make a condition that he may rest in it, or a cistern and condition that he should take water from it, or a cemetery, and say that he may be buried there, all this would be lawful. [Further] our Prophet (may the blessings of God be with him) has declared that a man's providing for his subsistence is a sadakah [an act of piety or charity]. This Hadis has been substantially handed down by a large number [of people] and is authentic, and Ibn Maja states from Mikdam bin Maadi Karib that the Prophet declared that no gain of a man is so meritorious as that which he earns by the labour of his hands; and that which he provides for the maintenance and support of himself, the people of his household, his children, and his servants, is a sadakah. And Imam Nisai from Balia and he from Buhair has given the same tradition in these words:-'Whatever thou providest for thyself is a sadakah.' Ibn Haban in his Sahih states that Abu Said reports from the Prophet that any one who acquires property in a lawful manner, and provides therewith for his maintenance and

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for that of the other creatures of God, gives alms in the way of the Lord. . . . And Dar Kutni reports from Jabir that the Prophet (may God's blessing be with him) . . . declared that all good acts are sadakah and that a man providing subsistence for himself and his children and his belongings, and for the maintenance of his position, is giving charity in the way of God. . Tibrani has reported from Abi Imama that the Prophet of God declared that a man making a provision for his own maintenance, or of his wife, or of his kindred, or of his children, is giving sadakah. And in the Sahih of Muslim it is stated from Jabir that the Prophet told a man to make a beginning with himself and give the remainder to his kinsfolk."

1089. Justice Ameer Ali further on page 434 of the report observed that the words "charitable" and "religious" must be understood from a Mussulman and not from an English point of view. His view was concurred by Justice O'Kinealy and His Lordship also observed on page 437 of the report that "*it must be an endowment for religious or charitable purposes; and if we want to interpret a document of that kind, what we must naturally look to is what is really meant by the words "religious" or "charitable" among Muhammadans. As an example, we know that the words "charitable purpose" in Scotland have quite a different meaning from that in which they are used in England. And so in India, in judging of what is really meant by the words "religious" and "charitable" by a Muhammadan, we must take the view which their law takes, and not what is to be found in the English Dictionary."*

1090. The term "waqf" literally means detention. The legal meaning of waqf according to Abu Hanifa, is the detention of a

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specific thing in the ownership of the wakif or appropriator, and the devoting or appropriating of its profits or usufruct "in charity on the poor or other good objects." According to the two disciples, Abu Yusuf and Muhammad, waqf signifies the extinction of the appropriator's ownership in the thing dedicated and the detention of the thing in the implied ownership of God, in such a manner that its profits may revert to or be applied "for the benefit of mankind". A waqf extinguishes the right of the wakif or dedicator and transfers ownership to God. By dedication and declaration the property in the wakif is divested and vests in the Almighty.

1091. For the present purpose an idea of what constitute waqf in Islam is sufficient and we need not to go into further details. With respect to 'waqf' as recognised in Islamic Law, since hereat we are concerned with the relevant legislative aspect of the matter as it operated in India, we shall deal with Islamic Law in this respect in detail while dealing with the issue of validity of creation of waqf with respect to the property in dispute.

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Administration of Waqfs

1092. The concept of waqf in India got introduced with the establishment of Muslim rule. It appear that earlier 'Sultan' was the supreme authority over the administration of waqf properties and ultimate power vested in him. There was some decentralisation of the actual administration, control and supervision of waqf institutions. At the Centre, the Sadar-us-Sadar was entrusted with the overall control of waqfs administration in the empire. His main work was to supervise waqfs' administration and its properties. At the provincial level, it was Sadr-e-Subha and in District, Sadre-e-Sarkar used to look

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into the administration of waqfs. At the local level, the waqfs used to be looked after by Qazis who also looked after waqf cases. The administration of individual waqf was the responsibility of Mutawalli, which is still continuing. This kind of arrangement finds mention in detail in Fatwai Alamgiri said to be prepared under the command of Mughal Emperor Aurangzeb.

1093. During the reign of Indian sub-continent by East India Company, in the territory under their command so far as it had charitable and religious institutions of Hindus and Mohammedans, they were regulated by British Government exercising visitatorial powers. In exercise of this power, the British Government enacted several laws to prevent fraud and waste, and to secure honest administration of such institutions. The British Government did not interfere with the personal laws of Hindus and Muslim like inheritance, succession, marriage and religious institutions.

1094. In 1810, the general superintendence of religious and charitable endowments vested in Board of Revenue and the Board of Commissioners. Vide Bengal Regulations XIX of 1810 (The Bengal Charitable Endowment Public Building and Escheats Regulations, 1810), the Board of Revenue was put in possession of landed and other properties of charitable and religious endowments, of both Muslims and Hindus. The Regulations were obviously applicable to the area under the authority of East India Company. The said Regulations, however it appears, had no application to the area or to properties situated in Oudh for the reason that under the agreement of the East India Company with Nawab of Awadh (Lucknow), the said area of Oudh continued to be ruled by the

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"Nawabs" till its annexation in 1856.

1095. After the transfer of power from East India Company to British Government in 1857, a series of legislation came including those which were enacted with an object of proper administration of religious and charitable endowment. The Religious Endowments Act, 1863 (Act 20 of 1863) was passed and the properties relating to religious, charitable and public endowments were placed under the control of trustees, managers or superintendents. Local Committees were appointed which exercise the powers of the Board of Revenue or local agents.

1096. In respect to the Muslim in Oudh area, Oudh Laws Act XVIII of 1876 was enacted. Vide Section 3 thereof, the laws to be administered in the case of Mohammadans would be the same as in East Panjub. The East Punjab was governed by Punjab Laws Act IV of 1872 and Sections 5 and 6 thereof provide as under:

> *"5. In questions regarding succession, special property of females, betrothal, marriage, divorce, dower, adoption, guardianship, minority, bastardy, family relations, wills, legacies, gifts, partitions or any religious usage or institution, the rule of decision shall be--*
>
> *(1) any custom applicable to the parties concerned which is not contrary to justice, equity or good conscience and has not been, by this or any other enactment, altered or abolished, and has not been declared to be void by any competent authority;*
>
> *(2) the Mahomedan law, in cases where the parties are Mahomedans,.... except in so far as such*

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law has been altered or abolished by legislative enactment, or is opposed to the provisions of the Act, or has been modified by any such custom as is above referred to."

"6. In cases not otherwise specially provided for, the Judges shall decide according to justice, equity and good conscience."

1097. In respect to certain specified waqfs in Husainabad area in Lucknow (Oudh), Husainabad Endowment Act, 1878 (Act 15 of 1878) was enacted.

1098. In 1908, by enacting new Code of Civil Procedure, Sections 92 and 93 were incorporated for the proper administration of trusts. Under these sections two or more persons having any interest in a trust could file a suit with the prior permission of the Advocate General in relation to a matter regarding the appointment and removal of trustees, matters relating to the sale, exchange or mortgage of trust property, etc.

1099. Upto 1913 a waqf was valid if the effect of the deed of wqkf was to keep the property in substance to charitable uses. In **Abul Fata Mohammad Vs. Rasamaya, 22 IA 76** it was held by Privy Council that if the primary object of the waqf was the aggrandizement of the family and the gift to charity was illusory whether from its small amount or from its uncertainty and remoteness, the waqf, for the benefit of the family was invalid and no effect could be given to it. This decision caused lot of protest and dissatisfaction amongst the Muslim communities in India since the said decision in particular paralyzed the power of Muslims to make a settlement in favour of family, children and descendants or what is known as waqf-alal-aulad. Consequently, the matter was represented by the Indian Muslims before Lord

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Curzon, the then Viceroy and Governor General of India canvassing that for family settlement by way of waqf from the time of Prophet Mohammad down to the present time an unbroken chain of evidence existed to show that the law of waqf-alal-aulad existed in all countries having Muslim population like Arabia, Central Asia, Persia, Afghanistan and India. It was represented that the precepts of the Prophet support the family settlement amongst Muslim by way of waqf. It is said that the following precepts of the Prophet were cited:

"The apostle of God said:

"When a Mussalman bestows on his family and kindered, for the intention of rewards, it becomes alms, although he has not given to the poor, but to his family and children."

The apostle of God said:

"There is one Dinar which you have bestowed in the Road of God, and another in freeing a slave, and another in alms to the poor, and another given to your family and children; that is the greatest Dinar in point of reward which you gave to your family."

The apostle of God said:

"The most excellent Dinar which a man bestows is that which he bestows upon his own family. Omme Salma says, "I said to the Prophet, is there any good thing for me of rewards, for my bestowing on the Sons of Abu Salmas. His sons are no otherwise than mine." The Prophet said: "Then give to them, and for you are rewards of that you bestow upon them"

The apostle of God said:

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> *"Giving alms to the poor has the reward of one alms, but that given to kindered has two rewards; one the reward of alms, the other the reward of relationship. "The Prophet of God declared that a pious offering to ones family (to provide against their getting into want) is more pious than giving alms to beggars."*

1100. Accepting the claims of Muslims in India, Mussalman Waqf Validating Act, 1913 (Act No. 6 of 1913) *(hereinafter referred to as the "1913 Act")* was enacted to validate the waqf created for the benefit of the members of family i.e. waqf-alal-aulad. This Act came into force on 07.03.1913. The preamble of 1913 Act shows that it was enacted to declare the rights of Muslims to make settlements of property by way of waqf in favour of their family, children and decedents. The term "waqf" was defined in Section 2 (1) as under :

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> ***"2.*** .....
>
> *(1) "Waqf" means the permanent dedication by a person professing the Mussalman faith of any property for any purpose, recognized by the Mussalman law as religious, pious or charitable."*

1101. Section 5 of 1913 Act states that nothing therein shall affect any custom or usage whether local or prevalent among Musalman or any particular class or sect. The definition of 'Waqf' under 1913 Act recognises the concept of waqf as known in Shariyat Law.

1102. As already stated, a waqf therefore is an unconditional and permanent dedication of property with implied detention in the ownership of God in such a manner that the property of the owner may be extinguished and its profit may revert to or be

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applied for the benefit of mankind except for purposes prohibited by Islam.

1103. It may, however, be clarified at this stage that a waqf is distinct from Sadaqah, Hiba and trust. In Islamic Law- Personal by B.R.Verma first published in 1940 (6th Edition published in 1986) (reprinted in 1991 by M.H.Beg and S.K.Verma) identify the above distinction on page 630-631 of the book as under :

Sadaqah	***Wakf***
(1)The corpus itself may be consummed. *(2)It is only a donation.* *(3)The legal estate and not merely beneficial interest passes to charity to be held by trustees appointed by the donor. The trustee can dispose of the corpus itself.*	*(1)The income only can be sent.* *(2)It is an endowment.* *(3)The legal estate is transferred to God. It does not vest in the trustee or mutawalli who cannot deal with the corpus.*

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1104. The distinction between waqf and sadaqah is that in the case of former the income only can be spent while in the case of latter the corpus of the property may be consumed.

Hiba	***Wakf***
(1)It relates to absolute interest in the subject of the gift, the donee having a right not only to spend the usufruct but also the property itself.	*(1)It is only the usufruct which can be spent and the corpus cannot be disposed of except under very limited conditions.*
(2)The donee is a human being.	*(2)The ownership is transferred to God.*
(3)There are no limitations as to the object for which it can be made.	*(3)It is made for the benefit of mankind.*
(4)A hiba to an unborn person is invalid.	*(4)A wakf may be made in favour of a succession of unborn persons.*

Trust	***Wakf***
(1)No particular motive is	*(1)It is generally made with a*

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necessary.	*pious, charitable or religious motive.*
(2)The founder may himself be a beneficiary.	*(2)The wakf cannot reserve any benefit for himself (except to some extent under Hanafi law).*
(3)It may be for any lawful object.	*(3)The ultimate object must be some benefit of mankind.*
(4)the property vests in the trustee.	*(4)The property vests in God.*
(5)A trustee has got larger power than a mutawalli.	*(5)A mutawalli is only a manager or superintendent.*
(6)It is not necessary that a trust maybe perpetual, irrevocable or inalienable.	*(6)A wakf is perpetual, irrevocable and inalienable.*
(7)It results for the benefit of the founder when it is incapable of execution and the property has not been exhausted.	*(7)The cypres doctrine is applied and the property may be applied to some other object.*

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1105. Apparently, Islam is not a necessary condition for constitution of a waqf. It may be made by a Muslim or a non Muslim but the necessary condition for creation of a waqf is the object thereof. Ameer Ali in his book on Mohammedan Law (Fourth Edition) Volume I at page 200 has said *"Any person of whatever creed may create wakf, but the law requires that the object for which the dedication is made should be lawful according to the creed of the dedicator as well as the Islamic doctrines. Divine approbation being the essential in the constitution of a wakf if the object for which a dedication is made is sinful, either according to the laws of Islam or to the creed of the dedicator it would not be valid."* Thus a non Muslim may also create a waqf for any purpose which is religious under the Mohammedan Law. But the object of the waqf must be lawful according to the religious creed of the maker as well.

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1106. Section 3 of 1913 Act empowers any person professing muslim faith to create a waqf in all other respects in accordance with the provisions of Muslim Law for the following among other purposes, i.e., for the maintenance and support, wholly or partially of his family, children and descendants etc. It would be useful to reproduce Section 3 as under :

> ***"3.*** *It shall be lawful for any person professing the Mussalman faith to create a waqf which in all other respects is in accordance with the provisions of Mussalman law, for the following among other purposes :-*
>
> *(1) for the maintenance and support wholly or partially of his family, children or descendants, and*
>
> *(2) where the person creating a waqf is a Hanafi Mussalman, also for his own maintenance and support during his lifetime or for the payment of his debts out of the rents and profits of the property dedicated :*
>
> *Provided that the ultimate benefit is in such cases expressly or implicitly reserved for the poor or for any other purpose recognised by the Mussalman law as a religious, pious or charitable purpose of a permanent character."*

1107. 1913 Act, however, having not been given retrospective effect did not remove the hardship in its entirety created by the decision of Privy Council in **Abul Fata Mohammad (supra)** and in some later cases it was held that 1913 Act could not be construed as validating deeds executed before 07.03.1913.

1108. On 05.08.1923 the Mussalman Waqf Act, 1923 (Act No. XLII of 1923 (hereinafter referred to as "1923 Act") was enacted with the object of better management of waqf property

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and ensuring maintenance of proper accounts and its publication in respect of such properties. The aforesaid Act was applicable to the whole of British India at the relevant time and in 1948 the said words were substituted by the words "all the Provinces of India". The term "benefit", "mutwalli" and "waqf" were defined in Section 2 (a) (c) and (e) of 1923 Act, as under :

*"**2.** In this Act, unless there is anything repugnant in the subject or context,-*

(a)"benefit" does not include any benefit which a mutwalli is entitled to claim solely by reason of his being such mutwalli;

(b) .....

(c)"mutwalli" means any person appointed either verbally or under any deed or instrument by which a wakf has been created or by a Court of competent jurisdiction to be the mutwalli of a wakf, and includes a naib-mutwalli or other person appointed by a mutwalli to perform the duties of the mutwalli, and, save as otherwise provided in this Act, any person who is for the time being administering any wakf property;

(d).....

(e)"wakf" means the permanent dedication by a person professing the Mussalman faith of any property for any purpose recognised by the Mussalman law as religious, pious or charitable, but does not include any wakf, such as is described in section, 3 of the Mussalman Wakf Validating Act, 1913, under which any benefit is for the time being claimable for himself by the person by whom the

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wakf was created or by any of his family or descendants."

1109. Section 3 of 1923 Act placed an obligation on a Mutwalli to furnish certain particulars in respect to waqf property, income and expenses etc. within a period of six months from the date of commencement of the 1923 Act to the Court within the local limits of whose jurisdiction the property of the waqf, for which the said person is mutwalli, is situated. Non compliance of Section 3 was made penal vide Section 10 of the said Act.

1110. Section 10 of 1923 Act provides consequences on failure to comply with the provisions of Sections, 3, 4 and 5 and reads as under:

"10. ***Penalties.--****Any person who is required by or under Sec. 3 or Sec. 4 to furnish statement of particulars or any document relating to a wakf, or who is required by Sec. 5 to furnish a statement of accounts, shall, if he, without reasonable cause the burden of proving which shall lie upon him, fails to furnish such statement or document, as the case may be, in due time, or furnishes a statement which he knows or has reason to believe to be false, misleading or untrue in any material particular, or, in the case of a statement of accounts, furnishes a statement which has not been audited in the manner required by Sec. 6, be punishable with fine which may extend to five hundred rupees, or, in the case of a second or subsequent offence, with fine which may extend to two thousand rupees."*

1111. A question arose as to whether the Court while exercising power under Section 10 can proceed to look into the

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question as to whether any property which is denied to be a waqf property can be investigated and looked into so as to find out whether it is a waqf property within the meaning of Section 2(e) of the Act or not. This question came to be considered before a Hon'ble Single Judge of Patna High Court in **(Syed) Ali Mohammad Vs. Collector of Bhagalpur, AIR 1927 Patna 189.** The question was that of application of 1923 Act in respect to property where there was a dispute whether it was a waqf property or not. The petitioner before the High Court return a notice issued by the Collector including petitioner's property in the list of waqf properties stating that he was not incharge of any waqf property as defined in Section 2(e) of 1923 Act whereupon the Collector referred the matter to the District Judge who held the property as a waqf property and the question was whether the order of District Judge was within jurisdiction or not. It was held by the Hon'ble Patna High Court that there is no provision in the Act authorizing the Court, as defined in the Act, to determine as to whether any property which if denied to be a waqf property, is waqf property, within the meaning of the Act. The Act neither authorizes the Court to summon witnesses or to take evidence nor any procedure is prescribed for determining the question as to whether any property is a waqf property and no provision of appeal or revision is made if any such decision is made. It held that the Act applies to admitted waqfs and not to the properties which are denied to be the waqf properties.

1112. However, this view did not find favour with a Full Bench decision of Oudh Chief Court in **Mohammad Baqar and another Vs. S. Mohammad Casim and others, AIR 1932 Oudh 210** where it was held that mere denial of a property as constituting a waqf property by a person would not deprive

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jurisdiction to the Court to consider whether the property is a waqf property under 1923 Act or not, otherwise, it would defeat the very objective of the Act. In the majority decision, the Court said that it is a recalcitrant Mutawalli to whom the Act intends to reach and if the jurisdiction of the Court is ousted as soon as a Mutawalli who has failed to observe the provisions of the Act denies the alleged waqf that would defeat the very objective of the legislature. It was held that the application of 1923 Act does not depend upon the attitude which a Mutawalli may take with regard to origin of an alleged waqf. The Court said:

> *"From the definition of the word "wakf" in Cl. (e), S. 2 of the Act it is clear that a wakf of the nature described in S. 3, Mussalman Wakf Validating Act, 1913, is excluded from the operation of the Act of 1923. With a view to determine whether an alleged waqf is inside or outside the scope of the Act the Court must make some inquiry. The inquiry may be limited merely to an interpretation of the instrument creating the wakf if there is any or to the scrutinizing of the terms of an oral wakf." (page211)*

1113. The Court further held:

> *"It is true that the Act does not lay down any obligation on the Court as to the limits to which it should carry any inquiry which it may wish to make and no party is entitled to compel the Court to carry inquiry up to any particular stage. Indeed the Court may refuse to enter into any inquiry on the ground that the allegations of the parties disclose a controversy fit to be determined in a regular suit, and this, in my judgment, explains the absence of any special rule of procedure. The Court is invested with a discretion but it cannot, in my opinion, refuse to look into*

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the merits of the case and stay its hands on the sole ground that the alleged mutawalli does not admit the alleged wakf." (page 213)

1114. It is not the case of any of the parties that any such statement was furnished in respect to the property in dispute in the Court as defined under Section 2 (b) of the said Act and the provisions of the said Act were complied with at all. It is not the case of the parties, i.e., the plaintiff, Suit-4, or in general, Muslim parties, that the aforesaid Act was applicable to the property in dispute or that the compliance of the said Act was made by the concerned Mutawalli. In the absence of any pleadings in respect to 1923 Act, we have no hesitation in not considering the matter in the light of 1923 Act inasmuch as if that be so first of all it would be necessary to consider whether the property in question was a waqf made in 1528 and continued to be so thereafter and secondly whether any person as Mutawalli was in possession of the property in question in 1923 and thereafter. We have not been shown any material to show the existence of the above facts and even if so then why and in what circumstances the provisions under 1923 Act were not complied with is also not explained. We also find that it is case of none that Section 12 or 13 of 1923 Act at the relevant time were attracted to the property in dispute and/or that the said property was exempted by the competent government from the operation of 1923 Act.

1115. The next legislation is Mussalman Waqf Validating Act (XXIII) of 1930 which made 1913 Act applicable to waqfs created before the commencement of 1913 Act with the rider that the transactions already completed in respect to right, title, obligations, liability etc. shall not be affected in any manner.

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1116. Then came the 1936 Act (Act No. 13 of 1936) published in U.P. Gazette dated 20.03.1937. The above enactment was made for the better governance, administration and supervision of certain classes of Muslim waqf in the United Provinces of Agra and Oudh. Section 1 of 1936 Act provides for the commencement, and extent; and reads as under:

> *"(1) Short title, commencement and extent.--(1) This Act shall be called "the United Provinces Muslim Waqfs Act, 1936."*
>
> *(2) This section and sections 2 to 4 shall come into force at once. The rest of the Act shall not come into force until such date as the local Government may, by notification in the Gazette, appoint in this behalf.*
>
> *(3)It shall extend to the whole of the United Provinces of Agra and Oudh."*

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1117. We may mention at this stage that Section 1(2) enforces only Sections 2 to 4 at once and the rest of the Act was to come into force on such date as the local Government by notification in the gazette may appoint in this behalf. Sections 5 to 71 of the said Act came into force on 01.07.1941vide notification dated 20.06.1941 published in Government Gazette of the United Provinces Vol. LXIII, No. XXVI, Part-1, page 311 dated 20.06.1941 which reads as under:

> *"In exercise of the powers conferred by sub-section (2) of section 1 of the United Provinces Muslim Waqfs Act, 1936 (U.P. XIII of 1936), the Governor of the United Provinces is pleased to declare that sections 5 to 71 of the said Act shall come into force on the 1st day of July, 1941."*

1118. The reason for delay in notification giving effect to Sections 5 to 71 of 1936 Act came to be noticed in **Badrul**

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Islam Vs. The Sunni Central Board of Waqf, U.P. Lucknow, AIR 1954 Allahabad 459 in para 8 of the judgement as under:

> *"It is true that the provisions of Ss. 5 to 71 of the Act did not come in force till some time in 1941. This fact has no bearing because it appears that the late enforcement of these provisions was due to the fact that what was provided by these provisions could not have been given effect to till the Central Board had found on investigation through proper agency the waqfs which were subject to the Act. It was no use enforcing these provisions which could not have been given effect to. It was for this reason that these sections were later enforced."*

1119. It is said that the Commissioner of Waqf made survey under Section 4 and submitted his report. The Boards proceeded further by issuing notifications in respect to Sunni Waqfs on 26.02.1944 and in respect of Shia Waqfs on 15.01.1954 published in the gazette dated 23.01.1954, we are proceeding further presuming as if the rest of the provisions of the Act were made operative and will try to find out the answer to the above issues accordingly.

1120. Section 2 of 1936 Act provides for applicability of the Act to certain category of waqfs and inapplicability to some other category of waqfs and reads as under:

> ***"2.*** *Applicability of the Act.-(1) Save as herein otherwise specifically stated, this Act shall apply to all waqfs, whether created before or after this Act comes into force, any part of the property of which is situated in the United Provinces.*
>
> *(2) This Act shall not apply to-*
>
> *(i) a waqf created by a deed, if any, under the*

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terms of which not less than 75 per cent, of the total income after deduction of land revenue and cesses payable to Government of the property covered by the deed of waqf, if any, is for the time being payable for the benefit of the waqif or his descendants or any member of his family.

(ii) a waqf created solely for either of the following purposes :

(a) the maintenance and support of any person other than the waqif or his descendants or any member of his family,

(b) the celebration of religious ceremonies connected with the death anniversaries of the waqif or of any member of his family or any of his ancestors,

(c) the maintenance of private immabaras, tombs and grave yards, or

(d) the maintenance and support of the waqif or for payment of his debts, when the waqif is a Hanafi Musalman; and

(iii) the waqfs mentioned in the schedule : Provided that if the Mutawalli of a waqf to which this Act does not apply wrongfully sells or mortgages, or suffers to be sold in execution of a decree against himself, or otherwise destroys the whole or any part of the waqf property, the Central Board may apply all or any of the provisions of this Act to such waqf for such time as it may think necessary.

Explanation. A waqf which is originally exempt from the operation of this act may, for any reason

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subsequently, become subject to such operation, for example, by reason of a higher percentage of its income becoming available under the terms of the deed for public charities."

1121. The Schedule referred to in Section 2(2)(iii) of 1936 Act is as under :

1. Waqfs governed by Act XV of 1878.

2. Wazir Begam Trust, Lucknow.

3. Agha Abbu Sahib Trust, Lucknow.

4. Shah Najaf Trust, King's side, Lucknow, and Queen's side, Lucknow.

5. Kazmain Trust, Lucknow.

1122. Section 3 contains certain definitions as under:

"3. In this Act, unless there is anything repugnant in the subject or context--

(1) Interpretation clauses.--"Waqf" means the permanent dedication or grant of any property for any purpose recognized by the Musalman law or usage as religious, pious or charitable and, where no deed of waqf is traceable, includes waqf by user, and a waqif means any person who makes such dedication or grant."

(2) "Beneficiary" means the person or object for whose benefit a waqf is created and includes religious, pious or charitable objects, and any other object of public utility established for the benefit of the Muslim community or any particular sect of the Muslim community."

(3) "Mutawalli" means a manager of a waqf or endowment and includes an amin, a sajjadanashin, a khadim, naib mutawalli and a committee of management, and, save as otherwise provided in this Act, any person

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who is for the time being in charge of or administering, any endowment as such.

(4) "Family" includes--

(a) Parents and grand-parents.

(b) Wife or husband.

(c) Persons related through any ancestor, male or female.

(d) Persons who reside with, and are maintained by, the waqif, whether related to him or not.

(5) Property includes Government securities and bonds, shares in firms and companies, stocks, debentures and other securities and instruments.

(6) "Prescribed" means prescribed by rules made under this Act.

(7) "Court" means, unless otherwise stated either expressly or by implication, the court of the District Judge or any other court empowered by the local Government to exercise jurisdiction under this Act.

(8) "Net income" means the total income minus the land revenue and other cesses payable to Government and to local bodies:

Provided that in the case of land paying land revenue the recorded income shall be deemed to be the total income."

1123. Chapter I which has Sections 4 to 24 deals with Survey of Waqfs and Central Board of Waqfs. Section 4 deals with the Survey of Waqfs; Section 5 deals with the Commissioner's report and its publication in the Gazette; and, read as under:

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"4. (1) Survey of waqfs.--Within three-months of the commencement of this Act the local Government shall by notification in the Gazette appoint for each district a gazetted officer, either by name or by official designation for the purpose of making a survey of all waqfs in such district, whether subject of this Act or not. Such officer shall be called the Commissioner of waqfs."

(2) The Local Government may, from time to time when necessary cancel any appointment under sub-section (1) or make a new appointment.

(3) The "Commissioner of waqfs" shall, after making such inquiries as he may consider necessary, ascertain and determine--

(a) the number of all Shia and Sunni waqfs in the district;

(b) the nature of each waqf;

(c) the gross income of property comprised in the waqf;

(d) the amount of Government revenue, cesses and taxes payable in respect of waqf property;

(e) expenses incurred in the realization of the income and the pay of the mutawalli of each waqf if the waqf is not exempted under section 2; and

(f) whether the waqf is one of those exempted from the provisions of this Act under section 2:

Provided that where there is a dispute whether a particular waqf is Shia waqf or Sunni waqf and there are clear indications as to the sect of which it pertains in the recitals of the deed of waqf, such dispute shall be decided on the basis of such recitals.

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(4) In making such inquiries as aforesaid the Commissioner of waqfs shall exercise all the powers of a civil court for summoning and examining witnesses and documents, making local inspections, appointing commissioners for examination of witnesses, examining of accounts and making local investigations.

(5) The Commissioner of waqfs shall submit his report of inquiry to the local Government.

(6) The total cost of carrying out the provisions of this section shall be borne by the mutawallis of all waqfs to which the Mussalmans Waqfs Act, 1923, applies in proportion to the income of the property of such waqfs situated in the United Provinces.

(7) Notwithstanding anything in the deed or instrument creating any waqf, any mutawalli may pay from the income of the waqf property any sum due from him under sub-section (6).

(8) Any sum due from a mutawalli under sub-section (6) may, on a certificate issued by the local Government, be recovered by the Collector in the manner provided by law for recovery of an arrear of land revenue.

***5.** Commissioner's report.--*

(1) The local Government shall forward a copy of the Commissioner's report to each of the Central Boards constituted under this Act. Each Central Board shall as soon as possible notify in the Gazette the waqfs relating to the particular sect to which, according to such report, the provisions of this Act apply.

(2) The mutawalli of a waqf or any person interested in a waqf or a Central Board may bring a suit in a civil

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court of competent jurisdiction for a declaration that any transaction held by the Commissioner of waqfs to be a waqf is not a waqf, or any transaction held or assumed by him not to be a waqf is a waqf, or that a waqf held by him to pertain to a particular sect does not belong to that sect, or that any waqf reported by such Commissioner as being subject to the provisions of this Act is exempted under section 2, or that any waqf held by him to be so exempted is subject to this Act:

Provided that no such suit shall be instituted by a Central Board after more than two years of the receipt of the report of Commissioner of waqfs, and by a mutawalli or person interested in a waqf after more than one year of the notification referred to in sub-clause (1):

Provided also that no proceedings under this Act in respect of any waqf shall be stayed or suspended merely by reason of the pendency of any such suit or of any appeal arising out of any such suit.

(3) Subject to the final result of any suit instituted under sub-section (2) the report of the Commissioner of waqfs shall be final and conclusive.

(4) The Commissioner of waqfs shall not be made a defendant to any suit under sub-section (2) and no suit shall be instituted against him for anything done by him in good faith under colour of this Act."

1124. Sections 6, 7 and 8 of 1936 Act show that there shall be two Waqf Board namely, Shia Central Board and Sunni Central Board of Waqf. The constitution etc. thereof is provided from Section 6 to 17. Section 18 deals with the functions of the Central Board and reads as under:

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"18. *Function of the Central Board.- (1) The general superintendence of all waqfs to which this Act applies shall vest in the Central Board. The Central Board shall do all things reasonable and necessary to ensure that waqfs or endowments under its superintendence are properly maintained, controlled and administered and duly appropriated to the purposes for which they were founded or for which they exist.*

(2) Without prejudice to the generality of the provisions of sub-section (1) the powers and duties of the Central Board shall be-

(a) to complete and maintain and authentic record of rights containing information relating to the origin, income, object, and beneficiaries of every waqf in each district;

(b) to prepare and settle its own budget;

(c) to settle and pass budgets submitted by the mutawallis direct to the Board and any budget submitted to, but not approved by, a District Waqf Committee, provided that it is in accordance with the wishes of the waqif and the terms of the deed of waqf;

(d) to settle and pass the annual budgets of the District Waqf Committees;

(e) to institute and and defend suits and proceedings in a court of law relating to-

(i) administration of waqfs,

(ii) taking of accounts,

(iii) appointment and removal of mutawallis in accordance with the deed

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of waqf if it is traceable,

(iv) putting the mutawallis in possession or removing them from possession,

(v) settlement or modification of any scheme of management;

(f) to sanction the institution of suits under section 92 of the Code of Civil Procedure, 1908, relating to waqfs to which this Act applies;

(g) to take measure for the recovery of lost properties;

(h) to settle scheme of management and application of waqf funds in accordance with the doctrine of cypres in case of those waqfs, the objects of which are not evident from any written instrument or in cases in which the objects for which they were created have ceased to exist;

(i) to enter upon and inspect waqf properties;

(j) to investigate into the nature and extent of waqfs and waqf properties and call from time to time for accounts and other returns and information from the mutawallis and give directions for the proper administration of waqfs;

(k) to arrange for the auditing of accounts submitted by the mutawallis;

(l) to direct the deposit of surplus money in the hands of the mutawalli in any approved bank and to utilize it on the objects of waqf;

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(m) to supervise and control the District Waqf Committees;

(n) to administer the waqf fund;

(o) to keep regular accounts of receipts and disbursement and submit the same in the matter prescribed;

(p) to institute when necessary an inquiry relating to the administration of a waqf:

Provided that in the appointment of mutawallis or in making any other arrangement for the management of waqf property the Central Board shall be guided as far as possible by the directions of the waqif, if any."

1125. A careful reading of 1936 Act as also all the earlier enactments make it very clear that neither they create a waqf nor diminish or terminate a waqf nor affect a waqf in any other manner. On the contrary, the provisions have been made only to provide a statutory body for the better governance, administration and supervision of the waqfs to which the said Act apply. Further vide Section 2(1) of 1936 Act though it applies to all waqfs, whether created before the commencement of the Act or thereafter, if any part of the property of which waqf is situate in the United provinces but by virtue of Sub-section (2) of Section 2 certain classes of waqfs have been excluded. The exclusion under Sub-section (2) of Section 2 of 1936 Act is specific and has been categorized with precision. It would mean that only to the extent the waqfs are excluded by virtue of sub-section (2) of Section 2 all other waqfs, if a waqf validly created, would be governed by 1936 Act.

1126. The term 'Waqf' under 1936 Act has also been

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defined as a permanent dedication or grant of any property for any purposes recognized by the Musalman law or usage as religious, pious or charitable including waqf by user where no deed of waqf is traceable.

1127. However a cumulative reading of the entire 1936 Act shows that it does not govern the right of worship of Hindus or Muslims. as the case may be. The object of enactment is to provide better governance and administration in supervision of certain classes of Muslim Waqfs. The Waqfs to which the aforesaid Act applies are to be supervised and maintained by the Central Boards, namely, Shia Central or Sunni Central Board, as the case may be, constituted under Section 6 of the said Act.

1128. At this stage it may be pointed out that there was some ambiguity between Section 8(1)(i) and Section 12. Noticing the same, vide U.P. Muslim Waqfs (Amendment) Act 9 of 1953 which received the assent of the President on 26.02.1953, Section 12 was deleted and Section 8-A was inserted which was held valid by this Court in **All India Shia Conference Vs. Taqi Hadi and others, AIR 1954 All. 124.**

1129. In 1954, the Parliament enacted Waqf Act, 1954 (Act XXIX of 1954) (hereinafter referred to as '1954 Act'). The aforesaid Act though extended to whole of India except the State of Jammu and Kashmir but proviso to Section 1(3) thereof provides for the State of U.P., Bihar and West Bengal as under :

> *"Provided that in respect of any of the States of Bihar, Uttar Pradesh and West Bengal, no such notification shall be issued except on the recommendation of the State Government concerned."*

1130. Consequently, 1954 Act did not apply to the State of U.P. since the State of U.P. had its own Act of 1936.

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1131. Though not necessary for the category of the issues, with which we are concerned at this stage, but just to complete the legislative history, we find that the State legislature enacted U.P. Muslim Waqfs Act 1960 (U.P. Act No.XVI of 1960) (hereinafter referred to '1960 Act'). This U.P. Act, 1960 received assent of the President of India on 27th August, 1960 and was published in U.P. Gazette Extraordinary on 3rd September, 1960. Vide Section 1(3) of 1960 Act, it came into force at once. Section 2 of 1960 Act provides for the application of the Act and sub-section (1) thereof reads as under :

> *"2. Application of the Act.-(1) Save as herein otherwise specifically stated, this Act shall apply to all waqfs, whether created before or after the commencement of this Act, any part of the property comprised in which it situate in Uttar Pradesh, and to all the waqfs which at the time of the coming into force of this act were the superintendence of the Sunni Central Board or the Shia Central Board constituted under the U.P. Muslim Waqfs Act, 1936 (U.P. Act XIII of 1936).*

1132. Vide Section 85 (2) of 1960 Act, 1936 Act as well as Husainabad Endowment Act, 1878 were repealed. Some more enactments were repealed by insertion of Section 11 of U.P. Act No.28 of 1971 whereby the following was inserted in Section 85(2) of 1960 Act :

> *"The following enactments are also hereby repealed in their application to any waqf to which this Act applies :*
>
> *(1) the Bengal Charitable Endoments, Public Buildings and Escheats Regulation, 1810 (Act XIX of 1810) ;*
>
> *(2) the Religious Endoments Act, 1863 (Act XX of 1863) ;*

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(3)the Charitable Endowments Act, 1890 (Act XX of 1890) ;

(4) the Charitable and Religious Trusts Act, 190 (Act XIV of 1920):"

1133. There was saving provisions in Section 85 by way of proviso which read as under :

"Provided that this repeal shall not affect the operation of those Acts in regard to any suit or proceeding pending in any Court or to an appeal or an application in revision against any order that may be passed in such suit or proceeding and subject thereto, anything done or any action taken in exercise of powers conferred by or under those Acts shall unless otherwise expressly required by any provision of this Act, be deemed to have been done or taken in exercise of the powers conferred by or under this Act as if this Act were in force on the day on which such thing was done or action was taken."

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1134. Besides, Section 28 of 1960 Act provides saving of waqfs already registered and provides as under :

*"**Savings U.P. Act XIII of 1986**.- A waqf registered before the commencement of this Act under the U.P. Muslim Waqf Act 1936, shall be deemed to have been registered under the provisions of this Act."*

1135. 1960 Act now stands repealed by the Waqf Act, 1995 (Central Act) which has come into effect w.e.f. 1st January, 1996.

1136. Now reverting to 1936 Act, the general power of superintendence vested in the Central Board is to ensure that the waqfs or endowments under its superintendence are maintained, controlled, administered and duly appropriated to the purposes for which they were founded or for which they exist. The very

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functions of the Central Board, as such, do not relate directly to the right of worship of either the Hindus or Muslims in any manner. To some extent, however, it may be said that if a religious Waqfs is not properly maintained and administered, and, it causes hindrance or obstruction in observance of such religious activities for which the Waqf was created, the right of people in general who are entitled to use Waqf property for the purposes it is created, to that extent may be obstructed, but directly it cannot be said that 1936 Act in any manner deals with the right of worship of any of the member of the community for whose benefit the Waqf is created. It is moreso when the question of a member(s) of a community other than Muslim arises since neither his right of worship in any manner is sought to be affected by 1936 Act nor otherwise it does appear to do so.

1137. In respect to 1936 Act this question came to be considered by the Apex Court in **Siraj-ul-Haq Khan and others Vs. The Sunni Central Board of Waqf U.P. and others, AIR 1959 SC 198** in an appeal taken against the judgment of this Court in **Sunni Central Board of Waqf Vs. Siraj-ul-Haq Khan and others, AIR 1954 All. 88**. The matter pertains to Darga Hazarat Syed Salar Mahsood Ghazi situated in the Village Singha Parasi, District Bahraich. The appellants were members of the Waqf Committee, Darga Sharif, Bahraich and filed a suit seeking a declaration that the properties of suit were not covered by the provisions of 1936 Act. The Court considered the words "the Mutawalli of a waqf or **any person interested in a waqf**" under Section 5(2) of 1936 Act, and, construing the same, it held that it would mean "any person interested" in what is held to be a waqf and in order to find out so it is open to the Commissioner of the Waqf to find out whether a property is a

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waqf or not and if he includes such a property in the list of waqf, the person challenging such decision would be included by the words "any person interested in a waqf" under Section 5(2). It would be appropriate to reproduce the relevant observations in para 16 of the judgment:

> *"The word 'waqf' as used in this sub-section must be given the meaning attached to it by the definition in S. 3 (1) of the Act and since the appellants totally deny the existence of such a waqf they cannot be said to be interested in the 'waqf'. The argument thus presented appears prima facie to be attractive and plausible; but on a close examination of S. 5(2) it would appear clear that the words "any person interested in a waqf" cannot be construed in their strict literal meaning. If the said words are given their strict literal meaning, suits for a declaration that any transaction held by the Commissioner to be a waqf is not a waqf can never be filed by a mutawalli of a waqf or a person interested in a waqf. The scheme of this sub-section is clear. When the Central Board assumes jurisdiction over any waqf under the Act it proceeds to do so on the decision of three points by the Commissioner of Waqfs. It assumes that the property is a waqf, that it is either a Sunni or a Shia waqf, and that it is not a waqf which falls within the exceptions mentioned in S. 2. It is in respect of each one of these decisions that a suit is contemplated by S. 5, sub-s. (2). If the decision is that the property is not a waqf or that it is a waqf falling within the exceptions mentioned by S. 2, the Central Board may have occasion to bring a suit. Similarly if the decision is that the waqf is Shia and not Sunni, a Sunni Central Board may*

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have occasion to bring a suit and vice versa. Likewise the decision that the property is a waqf may be challenged by a person who disputes the correctness of the said decision. The decision that a property does not fall within the exceptions mentioned by S. 2 may also be challenged by a person who claims that the waqf attracts the provisions of S. 2. If that be the nature of the scheme of suits contemplated by S. 5(2) it would be difficult to imagine how the mutawalli of a waqf or any person interested in a waqf can ever sue for a declaration that the transaction held by the Commissioner of the waqfs to be a waqf is not a waqf. That is why we think that the literal construction of the expression "any person interested in a waqf" would render a part of the sub-section wholly meaningless and ineffective. The legislature has definitely contemplated that the decision of the Commissioner of the Waqfs that a particular transaction is a waqf can be challenged by persons who do not accept the correctness of the said decision, and it is, this class of persons who are obviously intended to be covered by the words "any person interested in a waqf ". It is well-settled that in construing the provisions of a statute courts should be slow to adopt a construction which tends to make any part of the statute meaningless or ineffective; an attempt must always be made so to reconcile the relevant provisions as to advance the remedy intended by the statute. In our opinion, on a reading of the provisions of the relevant sub-section as a whole there can be no doubt that the expression "any person interested in a waqf" must mean "any person interested in what is held to be a waqf ". It is only persons

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who are interested in a transaction which is held to be a waqf who would sue for a declaration that the decision of the Commissioner of the Waqfs in that behalf is wrong, and that the transaction in fact is not a waqf under the Act. We must accordingly hold that the relevant clause on which Mr. Dar has placed his argument in repelling the application of S. 5(2) to the present suit must not be strictly or literally construed, and that it should be taken to mean any person interested in a transaction which is held to be a waqf. On this construction the appellants are obviously interested in the suit properties which are notified to be waqf by the notification issued by respondent 1, and so the suit instituted by them would be governed by S. 5, sub-s. (2) and as such it would be barred by time unless it is saved under S. 15 of the Limitation Act."

1138. The above decision, however related to a matter where all the parties before the Court were Muslim and there was no question about the rights of non Muslim being affected by a decision of the Commissioner of Waqf or Central Board constituted under Section 6 of 1936 Act. In other words the decision noted above covered the persons following the same religious namely, Mohammadan Law but where such a dispute is raised by another party namely a person of different religion like, Hindu, Christian etc. whether 1936 Act at all will apply in that case or not, is not touched by the above judgment.

1139. In our view, since 1936 Act does not provide or control the right of worship of Hindu or Muslims, the rival dispute between the persons who are not Muslims, in the matter of an immovable property, whether it is waqf or not would not be governed by the provisions of 1936 Act but it would be open

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to non-muslim party to stake his claim without being affected in any manner by the provisions of 1936 Act.

1140. Our view find support from a Division Bench decision of Rajasthan High Court in **Radhakishan and another Vs. State of Rajasthan and others, AIR 1967 Rajasthan 1.** This case had arisen from the Waqfs Act, 1954 *(in short "1954 Act")* and interpretation of the words "any person interested therein" appearing in Section 6(1) came to be considered. The Court held that it would not empower the Board of Waqfs to decide the question whether a particular property is a waqf property or not if such a dispute is raised by a person who is stranger to waqf. The Division Bench therein referred to our Full Bench decision in **Mohammad Baqar (supra)** and observed that in reference to 1923 Act Patna, Lahore, Bombay and Madras High Court took a view that the District Judge has no jurisdiction to hold an inquiry into the nature of property where the alleged Mutawalli deny existence of waqf though the Allahabad Chief Court of Oudh took a different view.

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1141. We may notice hereat that in the Full Bench judgment of Chief Court of Oudh in **Mohammad Baqar (supra)** there was no question with respect to jurisdiction of the District Judge where the existence of alleged waqf is denied by a stranger and not the Mutawalli, therefore, we do not find that the decision in **Radhakishan (supra)** in any way can be construed as a dissenting view to the decision of Oudh Chief Court in **Mohammad Baqar (supra)**. This is evident from what has been held by the Rajasthan High Court in paras 24 and 25 reproduced as under:

> *"24. The present Act No. 29 of 1954 is, no doubt, an improvement on the Mussalman Wakf Act, 1923, but, in our*

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view, this also does not empower the Board of Wakfs to decide the question whether a particular property is a wakf property or not, if such a dispute is raised by a person who is a stranger to wakf. This view is further confirmed by the provisions of section 59 of the Act which lays down that in any suit or proceeding in respect of a wakf or any wakf property by or against a stranger to the wakf or any other person, the Board may appear and plead as a party to the suit or proceeding.

25. To sum up the position, the Wakf Commissioner, though he is invested with the powers of a civil court in respect of certain matters, is not a civil court empowered to decide a disputed question whether a particular property is a wakf property or not. He has only to make a survey of wakf property existing in the State at the date of commencement of the Act and to make a report of survey to the State Government. When the State Government forwards the report to the Board of Wakfs, it becomes the duty of the Board to examine it. Thereafter the Board should publish, in the official gazette, a list of wakfs existing in the State. The law does not require the Commissioner to make a survey of wakf properties which have already become extinct as such. If he mentions in his report that certain properties were once wakf properties and can still be recovered as such, then the proper course, in our opinion for the Board is to file a suit, get them declared as wakf properties and to recover their possession. If a dispute about existence of a wakf is raised by a person who is stranger to the wakf, then it is neither fair nor proper for the Board to include such properties in

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the list published in the official gazette. Section 6, in our opinion, refers only to those triangular disputes which exists between the Board of Wakf, the mutawalli and a person interested in the wakf. If there is a dispute between these three on a question whether a particular property is a wakf property or whether a wakf is a Shia wakf or a Sunni wakf, it is open to any one of them to institute a suit in a civil court of competent jurisdiction. If a suit is instituted, the decision of the Civil Court will be final. If no such suit is filed by any one of them within a year from the date of publication of the list of wakfs the Court would not entertain the suit thereafter and the list of the wakf shall be final and conclusive between them. The object of Section 6 is to narrow down the dispute between the Board of Wakf, the Mutawalli and the person interested in the wakf as defined in section 3. In our view, it does not concern a dispute if it is raised by a person who is an utter stranger to the wakf. The list cannot be final and conclusive as against a non muslim who is not covered by Section 6(1) of the Act. Again, if a dispute whether a particular property is a wakf property or not, is raised by a non-muslim and a stranger to the wakf, the Board of Wakfs has no jurisdiction to decide the matter in its own favour under Section 27 and enter it in the register. The Board's decision under section 27 would not be binding against such persons. For the same reason, the Board would not be able to recover possession of the property from such persons under Section 36B of the Act."

1142. The judgment of Rajasthan High Court was taken in appeal before the Apex Court in **The Board of Muslim Wakfs,**

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Rajasthan Vs. Radha Kishan and others, AIR 1979 SC 289. Two questions raised in appeal. Firstly, the meaning of the words "any person interested therein" in Section 6(1) and (4) of Waqf Act, 1954 and secondly, the power of Waqf Commissioner to make survey of waqf properties whether it includes an inquiry about certain property as a waqf property or not. The Apex Court referring to the various judgments considered by the Rajasthan High Court held that they would be of no assistance in interpreting the provisions of Waqf Act, 1954. However, it was held in para 23 of the judgment that the High Court was right in determining the scope of Section 6(1) of 1954 Act but fell in error in curtailing the ambit and scope of an inquiry by the Commissioner of Waqf under Section 4(3) and by the Board of Waqfs under Section 27 of the Act.

1143. For our purpose, the meaning assigned by the Apex Court in Section 6(1) to the words "any person interested therein" would be relevant to answer the issues noticed above and in this regard it would be appropriate to notice hereunder paras 31, 32, 33, 34, 35 and 36 of the judgment as under:

> *"31. That leaves us with the question as to the scope of sub-s. (1) of S. 6. All that we have to consider in this appeal is, whether if the Commissioner of Wakfs had jurisdiction to adjudicate and decide against the respondents Nos. l and 2 that the property in dispute was wakf property, the list of wakfs published by the Board of Wakfs under sub-s. (2) of S. 5 would be final and conclusive against them under S. 6(4) in case they had not filed a suit within a year from the publication of the lists. The question as to whether the respondents Nos.1 and 2 can be dispossessed, or their possession can be threatened*

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by the Board of Wakfs by proceeding under S. 36B without filing a suit in a civil court of competent jurisdiction does not arise for our consideration."

"32. In the present case, the respondents Nos. 1 and 2 who are non Muslims, contended that they are outside the scope of sub-s. (1) of S. 6, and consequently, they have no right to file the suit contemplated by that sub-section and, therefore, the list of wakfs published by the Board of Wakfs under sub-s. (2) of S.5 cannot be final and conclusive against them under sub-s. (4) of S. 6, It was urged that respondents Nos. 1 and 2 were wholly outside the purview of sub-s. (1) of S. 6 and they must, therefore, necessarily fall outside the scope of the enquiry envisaged by sub-s. (1) of S. 4, as the provisions contained in Sections 4, 5 and 6 form part of an integrated scheme. The question that arises for consideration, therefore, is as to who are the parties that could be taken to be concerned in a proceeding under sub-s. (1) of S. 6 of the Act, and whether the list published under sub-s. (2) of S. 5 declaring certain property to be wakf property, would bind a person who is neither a mutawalli nor a person interested in the wakf."

"33. The answer to these questions must turn on the true meaning and construction of the word 'therein' in the, expression 'any person interested therein' appearing in sub-s. (1) of S. 6. In order to understand the meaning of the word 'therein' in our view, it is necessary to refer to the preceding words 'the Board or the mutawalli of the wakf'. The word 'therein' must necessarily refer to the 'wakf' which immediately precedes it. It cannot refer to the 'wakf property'. Sub-section (1) of S. 6 enumerates the persons

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who can file suits and also the questions in respect of which such suits can be filed. In enumerating the persons who are empowered to file suits under this provision, only the Board, the mutawalli of the wakf, and 'any person interested therein', thereby necessarily meaning any person interested in the wakf, are listed. It should be borne in mind that the Act deals with wakfs, its institutions and its properties. It would, therefore., be logical and reasonable to infer that its provisions empower only those who are interested in the wakfs to institute suits."

"34. In dealing with the question, the High Court observes:

> *"In our opinion, the words "any person interested therein" appearing in sub-section (1) of S. 6 mean no more than a person interested in a wakf as defined in clause (h) of S. 3 of the Act.....*
>
> *It is urged by learned counsel for the petitioners that the legislature has not used in Section 6(1) the words "any person interested in a wakf" and, therefore, this meaning should not be given to the words "any person interested therein". This argument is not tenable because the words "any person interested therein" appear soon after "the mutawalli of the wakf" A and therefore the word 'therein' has been used to avoid re petition of the words "in the wakf" and not to extend the scope of the section to persons who fall outside the scope of the words "person interested in the wakf". The purpose of section 6 is to confine the dispute between the wakf Board, the mutawalli and a person*

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interested in the wakf."

That, in our opinion, is the right construction.

35. We are fortified in that view by the decision of this Court in Sirajul Haq Khan v. The Sunni Central Board of Wakf, U.P. 1959 SCR 1287:(AIR 1959 SC 198). While construing S. 5(2) of the United Provinces Muslins Wakf Act, 1936, this Court interpreted the expression "any person interested in a wakf" as meaning 'any person interested in what is held to be a wakf', that is, in the dedication of a property for a pious, religious or charitable purpose. It will be noticed that sub-s. (1) of S.6 of the Act is based in sub-s. (2) of S. 5 of the United Provinces Muslims Wakf Act, 1936, which runs thus:

"The mutawalli of a wakf or any person interested in a wakf or a Central Board may bring a suit in a civil court of competent jurisdiction for a declaration that any transaction held by the Commissioner of Wakfs to be a wakf is not a wakf, or any transaction held or assumed by him not to be a wakf, or that a wakf held by him to pertain to a particular sect does not be- long to that sect, or that any wakf reported by such Commissioner as being subject to the provisions of this Act is exempted under section 2, or that any wakf held by him to be so exempted is subject to this Act."

The proviso to that section prescribed the period of one year's limitation, as here, to a suit by a mutawalli or a person interested in the wakf.

36. The two provisions are practically similar in content except that the language of the main enacting part has been altered in sub-s. (1) of S. 6 of the present Act and put

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in a proper form. In redrafting the section, the sequence, of the different clauses has been changed, therefore, for the expression "any person interested in a wakf" the legislature had to use the expression "any person interested therein". The word 'therein' appearing in sub-s. (1) of S. 6 must, therefore, mean 'any person interested in a waker' as defined in S. 3(h). The object of sub-s. (1) of S. 6 is to narrow down the dispute between the Board of Wakfs, the mutawalli and the person interested in the wakf, as defined in S. 3 (h).”

1144. The Apex Court having said so as noticed above quoted the findings of the Rajasthan High Court with reference to Section 6 in para 37 of the judgment and in para 38 it says that it is in agreement with the reasoning of the High Court. The answer has further been crystallized by the Apex Court in paras 39 and 43 of the judgment as under:

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“39. It follows that where a stranger who is a non-Muslim and is in possession of a certain property his right, title and interest therein cannot be put in jeopardy merely because the property is included in the List. Such a person is not required to file a suit for a declaration of his title within a period of one year. The special rule of limitation laid down in proviso to sub s. (1) of S. 6 is not applicable to him. In other words, the list published by the Board of Wakfs under sub-s. (2) of S. 5 scan be challenged by him by filing a suit for declaration of title even after the expiry of the period of one year, if the necessity of filing such suit arises.”

“43. In view of the foregoing, the right of the respondents Nos. 1 and 2 in respect of the disputed property, if at all

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they have any, will remain unaffected by the impugned notification. They are at liberty to bring a suit for the establishment of their right and title, if any, to the property."

1145. As noticed above the Apex Court also referred to Section 5(2) of 1936 Act and observed that it is pare materia to Section 6(1) and (4) of Waqf Act, 1954.

1146. The above decision of the Apex Court in **Radhakishan (supra)** was followed in **Board of Mulim Wakfs Vs. Smt. Hadi Begum and others, AIR 1992 SC 1083** where in para 10 of the judgment the Court briefly reproduced what was held in **Radhakishan (supra)** regarding the right, title and interest of a non-muslim with reference to the Waqf Act, 1954 which also contain the provisions, pari materia with 1936 Act, and held:

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"The right, title and interest of a person who is non-muslim and is in possession of certain property is not put in jeopardy simply because that property is included in the list published under sub-sec. (2) of S. 5 and he is not required to file a suit in a Civil Court for declaration of his title within the period of one year and the list would not be final and conclusive against him. Sub-sec. (4) of S. 6 makes the list final and conclusive only between the Board, the mutawalli and the person interested in the wakf." (para 10)

1147. To the same effect is a decision of an Hon'ble Single Judge in **Marawthwada Wakf Board Vs. Rajaram Ramjivan Manthri and others, AIR 2002 Bom. 144.** With reference to Waqf Act 1954, in para 19 of the judgement, it observed:

"Therefore, from the above, it is extremely clear that the respondent No. 1, who is a non-Muslim, being a Hindu,

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could not file a suit u/S. 6 of the Wakf Act, 1954, but he cannot be barred from filing a suit especially in view of the fact that his right, title and interest have been jeopardised in view of the notification issued by the Government of Maharashtra aforesaid."

1148. Another Hon'ble Single Judge of this Court in **U.P. Sunni Central Waqf Board, Lucknow Vs. State of U.P. and others, 2006(6) ADJ 331** considering Act No.XVI of 1960 which contain similar provisions as that of 1936 Act, in para 9 of the judgment, observed:

"There is no dispute that the respondent No. 3 by virtue of sale deed became the owner of the property is dispute. The respondent No. 3 being non Muslim, the provisions of U.P. Muslim Waqf Act, 1960 was not applicable as held by this Court in the case of Chedda Singh and others Vs. Additional Civil Judge, Moradabad and others."

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1149. A similar view was taken in an earlier decision of this Court in **Chedha Singh and others Vs. Additional Civil Judge, Moradabad and others, 1996 Supp. AWC 189** which has been followed in **U.P. Sunni Central Waqf Board, Lucknow (supra).**

1150. Now, therefore, it is well settled that Section 5 of 1936 Act would have no application qua the rights of Hindus in general and plaintiff (Suit-1) in particular in respect to his right of worship. He would not be bound mere by inclusion of the property in a notification issued under Section 5(1) of 1936 Act. Moreover, in this particular case since the notification itself has been held invalid so far as the property in question is concerned, meaning thereby, in the eyes of law, there was no notification under Section 5(1) of 1936 Act and, therefore, also the

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restriction or benefit if any under the Act would not be applicable to either of the parties. No further provision has been shown to us from 1936 Act to affect the rights of Hindus in general and plaintiff (Suit-1) in particular affecting their/his right of worship etc..

1151. Therefore, both the issues are answered in favour of plaintiff (Suit-1) and defendants (Suit-4) in particular and in favour of Hindu parties in General. Issues No. 5(b) (Suit-4) and 9(a) (Suit-1) are answered accordingly.

1152. **Issue No. 5(e) (Suit-4)** reads as under:

> *"Whether in view of the findings recorded by the learned Civil Judge on 21.4.1966 on issue no.17 to the effect that "No valid notification under section 5(1) of the Muslim Waqf Act (No. XIII of 1936) was ever made in respect of the property in dispute", the plaintiff Sunni Central Board of Waqf has no right to maintain the present suit?"*

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1153. Issue 5(e) (Suit-4) raises a very basic question about the maintainability of Suit-4 pursuant to the finding recorded by the leaned Civil Judge where no valid notification has been issued under Section 5(1) of the Act in respect to the property in dispute. The question is whether in such circumstances, plaintiff, Sunni Central Board of Waqf (Suit 4) has any right to maintain the present suit or not. This leads us to examine about the Waqfs covered by 1936Act as also when the Sunni Central Board of Waqf can file a suit.

1154. Sri P.N. Mishra, learned counsel for the defendant No.20 in suit 4 submitted that once it is held that there is no valid notification issued under Section 5 of 1936 Act and in view of the further fact that no attempt was made by any person including the alleged Mutawalli to get the alleged waqf

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registered under Section 38 with the plaintiff No.1 in Suit-4 and the Sunni Central Waqf Board has failed to take any steps to get the alleged waqf registered by issuing necessary directions, as the case may be, under Section 39/40 of 1936 Act, it is evident that the disputed building in suit is never treated to be waqf by them and therefore, since it was not a waqf, the Act itself is not applicable. Hence suit-4 by plaintiff No.1 is not maintainable. He also submitted that even otherwise there was no waqf at all, hence 1936 Act is inapplicable. Sunni Central Waqf Board has no right to file the above suit.

1155. We find that though under the various provisions of 1936 Act, the legislature has attempted and made various provisions so that any waqf in the State of U.P., if existed, may be known to the Sunni Central Waqf Board so that it may be properly supervised and administered. However, the Act does not contain any provision that even though a waqf has been created in accordance with Islamic Law yet it would not be governed by the Act and shall be beyond the power of supervision, administration of Sunni Central Waqf Board or Shia Central Waqf Board, as the case may be for the mere reason that it was not notified under Section 5 of the 1936 Act, not registered due to fault of the Mutawalli, if any or due to inaction of the Board itself. It is, however, admitted by learned counsel for the defendant No.20 that the Act neither creates a waqf nor extinguish the same if the same is already in existence. In these circumstances, particularly in the absence of any provision in the Act, we have to consider whether there is any intrinsic indication in the Act to necessarily exclude such a waqf from the purview of 1936 Act merely for its non notification or registration etc. with the Board. If we find that there is no such

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intrinsic hint in the Act also then to accept the submission, wide enough, as advanced by Sri Mishra that even though there is a valid waqf, if it is not notified or registered with the Board or if no person has filed a suit for declaration that there is no waqf within the prescribed limitation, such waqf even if validly created would not be covered by 1936 Act, would mean that we have read certain words in the statute which do not actually exist. It travels in the realm of ***casus omissus*** which normally this Court shall not presume unless there is a necessary compulsion to do so. Considering the basic purpose for which the 1936 Act was enacted we find it difficult to read any such words in the statutes.

1156. The Waqf Act, 1954 though not applicable to the State of U.P. but therein the provisions are mostly pari materia with 1936 Act. To start with there also was no provision which restrain the Central Board or anyone to initiate proceedings for enforcing rights on behalf of a waqf not registered with the Board but later on Section 55-E was inserted therein by Act No. 69 of 1984 which bar enforcement of right on behalf of unregistered waqf by anyone which included the Waqf Board also. It reads as under:

> *"**55-E**. **Bar to the enforcement of right on behalf of unregistered waqfs.-**(1) Notwithstanding anything contained in any other law for the time being in force, no suit, appeal or other legal proceeding or the enforcement of any right on behalf of any waqf which has not been registered in accordance with the provisions of this Act, shall be instituted or commenced or heard, tried or decided by any Court after the commencement of the Waqf (Amendment) Act, 1984, or where any such suit, appeal or*

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other legal proceeding had been instituted or commenced before such commencement, no such suit, appeal or other legal proceeding shall be continued, heard, tried or decided by any Court after such commencement unless such waqf has been registered, after such commencement unless such waqf has been registered, after such commencement, in accordance with the provisions of this Act.

(2) The provisions of sub-section (1) shall apply, as far as may be, to the claim for set-off or any other claim made on behalf of any waqf which has not been registered in accordance with the provisions of this Act."

1157. We may notice that neither any similar provision was made in 1936 Act nor in Act No. XVI of 1960, therefore, it would not be appropriate to read something in U.P. Waqf Act, 1936 which actually did not find mention therein.

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1158. We may clarify at this stage that a provision pari materia with Section 55-E of 1954 Act has been included in Waqf Act, 1995 in Section 87 but we are not concerned thereto in this case.

1159. A collective reading of various provisions of 1936 Act shows that any 'waqf' defined under Section 3(1), whether existed at the time when 1936 Act came into force, or, came into existence subsequently, unless excluded under Section 2(2), would be covered by Section 2(1). In the present suits, there is an issue no. 6 (Suit-3) questioning the very existence of a 'Waqf' and, therefore, unless that issue is answered in favour of the plaintiffs (Suit-4), it can obviously be not said that the property in dispute constituted 'a Waqf' under Section 3(1) of 1936 Act and, therefore, will be covered by Section 2(1) of 1936Act since

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it is not excluded by Section 2(2). Apparently the purpose of survey and notification under Section 5(1) is to identify the Waqfs as also the concerned Central Board which would exercise the power of superintendence over the Waqf concerned i.e. whether it is Sunni or Shia. Absence of a notification under Section 5(1) in respect to a property which is a 'Waqf' otherwise would not result in exclusion of other provisions of 1936 Act. The function of Central Board and its power of superintendence is not circumscribed to the 'Waqfs' as notified under Section 5(1) of the Act.

1160. A perusal of Section 18 on the contrary shows that general power of superintendence of all Waqfs to which "the Act applies" is vested in the Central Board. Similarly, Section 38 of the Act also says that there is an obligation regarding registration of 'Waqf' whether it is subject to 1936 Act or not and whether created before or after the commencement of the Act, at the office of Central Board of the sect to which the Waqf belongs, namely, if the Waqf is a sunni Waqf, with Sunni Central Board of Waqf, otherwise, with the Shia Central Board of Waqf. The obligation for making application for registration is upon the Mutwalli. Non compliance of Section 38 is an offence punishable under Section 60. In case of failure of a Mutwalli to get the Waqf registered, the power is also conferred upon the Central Board itself to issue such a direction vide Section 40 of 1936 Act. Section 39 provides for maintaining a register of Waqfs by the Central Board containing particulars in respect to each Waqf. The said provision is not confined to only such Waqfs as are notified under Section 5(1) of 1936 Act. Section 47 confers power upon the Central Board to apply the Court seeking direction in cases of undisposed Waqf funds or

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where the directions in the deed of waqf are no longer sufficient to carry out the intention of the waqif or where is a case for the application of doctrine of cypres. Here also the entitlement of the Central Board to approach the Civil Court is not confined to the waqfs notified under Section 5(1). Section 48 and 49 also are applicable to "any waqf" to which 1936 Act applies and not confined to the waqfs notified under Section 5(1) of the Act. Similarly, Section 52 also provides for notice of suits to the Central Board where any suit relating to title to any waqf property or to the rights of a Mutwalli is instituted in any civil Court. It is also not confined to the waqfs notified under Section 5(1) of the Act. Same is the position under Section 53 and 54 of the Act. We are, therefore, of the view that **subject to Issue No. 6 (Suit-3), if answered in positive, i.e. in favour of plaintiffs (Suit-4) or against the plaintiffs (Suit-3)**,i.e. if it is held that mosque was dedicated by emperor Babar for worship by Muslims in general and results in creation of a public waqf property, in that condition, Issue No. 5 (e) has to be answered in favour of the plaintiffs (Suit-4) and it is to be held that the plaintiff, Sunni Central Board of Waqf, has a right to maintain the suit even though a valid notification under Section 5(1) of 1936 Act was never issued in respect to the property in question. Otherwise, this suit at the instance of Sunni Central Board of Waqf would not be maintainable.

1161. It is true that in **Tamil Nadu Wakf Board Vs. Hathija Ammal, AIR 2002 SC 402** which was a case arising out of the provisions of Waqf Act, 1954 and in particular Sections 4, 5, 6 and 27 thereof, the Court held that since the Board itself possess power to decide whether a particular property is waqf property or not and its decision is final unless it

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is revoked or modified by a civil court by virtue of Section 27 of 1954 Act and, therefore, the Board cannot file a suit for declaration that any property is a waqf property and for its possession. However, in our view, the above judgment does not apply to a case governed by 1936 Act which contain no provision pari materia to Section 27 of 1954 Act.

1162. At this stage we may also refer an earlier decision of this Court in **Afzal Hussain Vs. 1st Additional District Judge, AIR 1985 All. 79** where it was held that before taking an action under Section 57A, for recovery of possession of waqf property from unauthorised occupants, the first inquiry which the Board has to make is whether the immovable property in respect of which action is to be taken is entered as property of waqf in the register of waqfs maintained under S. 30 of 1960 Act being a jurisdictional issue. The above judgment also is not applicable for the reason that Section 57A provides for summery eviction of unauthorised occupants and is applicable only in such cases where the property is entered in the register of waqfs maintained under Section 30. Therefore, the dictum laid down therein cannot be extended to a case where a suit is to be filed by the Waqf Board for declaration of possession of a waqf even though it is neither notified under Section 5(1) nor registered with it under 1936 Act.

1163. Sri Siddiqui, however, tried to overcome the difficulty as a result of invalidation of the notification by the Civil Judge by contending that neither it afects the power of Sunni Board to maintain the suit nor shall bring into the question of limitation. Placing reliance on the Apex Court's decision in **U.P. Shia Central Board of Waqf Vs. U.P. Sunnir Central Board of Waqf, AIR 2001 SC 2086,** he contended that

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mere non-availability of the notification shall not deprive the Board from registering a property as a waqf property on its own inquiry. He further submits that the Hindu parties have also filed certain documents after obtaining certified copies thereof from the Sunni Board and that being so, it is not open to them to challenge that the waqf in question is not registered.

1164. The submissions of Sri Siddiqui, however, are not sustainable. It is though not disputed that U.P. Act 1936 contemplated enlistment of waqfs in the register of concerned Waqf Board in three ways, i.e., based on the list prepared by the Commissioner of Waqfs and consequential notification; on the application of the Mutwalli of the concerned waqf and registration by the concerned waqf after issuing notice by the Waqf Board itself but we have to look all these aspects in the light of the U.P. Act 1936 which continued to hold the field till 1960. Sections 1 to 4 came into force on 20.3.1937 but rest of the provisions, i.e., Sections 5 to 71 were enforced with effect from 1.7.1947. The only way in which the disputed waqf claimed to have been registered by the Waqf Board was the notification dated 26.2.1944 based on the report of the Commissioner. That notification was found invalid by the Civil Judge in its judgment dated 21.4.1966. It is nobody's case and even the counsel for the Waqf Board do not claim that till issue no. 17 was decided by the Civil Judge except of the notification dated 26.2.1944, there was any other procedure or method followed by the Sunni Board to enlist or register the concerned waqf in the register of the Waqf Board. Neither it is pleaded nor there is any material on record to substantiate the same. U.P. Act 1936 was substituted by U.P. Act 1960. This continued to hold the field till the Waqf Act 1995 was enacted by the

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Parliament. It is only in the pleadings which the Waqf Board filed after 1989, wherein for the first time it has pleaded that the waqf in question was registered by the Board under Section 30 of U.P. Act 1960. Till then there was no pleading, no material to show that the waqf in question was registered with the Board in any other manner except the notification dated 26.2.1944. That was declared invalid on 21.04.1966 by the Civil Judge. In the case of **Shia Waqf Board (Supra)** there was reference made under section 8 of U.P. Act 1960 since there was a dispute whether the concern waqf was a Sunni waqf or Shia waqf. The Apex Court held that where a dispute arose about the nature of the waqf whether it is a Shia waqf or a Sunni waqf, the only requirement under section 8 is the existence of dispute and not the existence of notification. Referring to section 6 (4) it further observed that if a notification has already been issued, then the restriction is that such dispute can be referred only within a period of one year and not after expiry thereof but so long the notification is not there, outer limit will not be attracted. We do not find this judgment to lend any help to the plaintiff (Suit-4) or Sunni Board in any manner.

1165. Similarly the pleading with respect to section 29 (8) also has no relevance in the case in hand since it is not the case of the Sunni Waqf Board that except the notification dated 26.02.1944 there was any other order of the waqf board which existed declaring the waqf in question as a waqf registered with the Board and the same having not been challenged under section 29(8) within time prescribed and thereafter could not have been raised in this regard. This pleas wholly baseless and is not attracted in these matters.

1166. Even otherwise, Suit-4 has been filed not only by

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the Sunni Central Waqf Board but there are nine more individual muslim parties being plaintiffs no. 2 to 10. It is obvious that they are muslims and, therefore, would be interested in the property in dispute to which they claim to be a waqf property. The right to file a suit by a muslim in respect to a property claimed to be a "waqf property" came to be considered before a Division Bench in **Anjuman Islamia Vs. Najim Ali and others, AIR 1982 MP 17** and in para 7 of the judgement it held:

> *"7. We shall first consider the question whether the suit was not tenable at the instance of the plaintiff. In brief S. 195 of the Principles of Mohammedan Law by Mulla (18th Edition), is the complete answer to this question, which contemplates that a suit for a declaration that property belongs to a wakf can be brought by Mohammedans interested in the wakf. Anjuman is a society of Mohammedans registered under the Societies Act (Act No. 21 of 1860), as per registration certificate No. 104 of 1960-61 (Exhibit P-5). Admittedly the members of plaintiff Anjuman and its president Shri Mohd. Abdul Qadir (PW 1) are residents of Chhatarpur and belong to Muslim community. They are, therefore, persons very much interested in the property in suit which they claim to be wakf property. The suit, therefore, instituted at their instance would be perfectly competent and tenable and the learned District Judge was wrong in holding otherwise."*

1167. In the absence of any other precedent persuading us to take a different view, we find ourselves in respectful agreement thereto. We therefore hold that Suit-4 cannot be said to be not maintainable provided the issue regarding the very

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nature of the disputed property whether it is a waqf or not is decided in favour of the plaintiffs (Suit-4) i.e. subject to the issue as to whether the disputed property is a waqf or not, i.e., issue no. 6 (Suit-3) if decided in favour of plaintiffs (Suit-4), i.e., defendants (Suit-3).

1168. I**ssue No. 18 (Suit-4)** is as under:

> *"What is the effect of the judgment of their Lordships of the Supreme Court in Gulam Abbas and others vs. State of U.P. and others AIR 1981 Supreme Court 2198 on the finding of the learned Civil Judge recorded on 21st April, 1966 on issue no. 17?"*

1169. Issue No. 18 (Suit-4) relates to the effect of the judgement of the Apex Court in **Gulam Abbas (supra)** on the Issue No. 17 (Suit-4) decided by the learned Civil Judge vide his judgement dated 21.4.1966. Sri Jilani argued that the notification dated 26.02.1944 under Section 5 (1) of 1936 Act was relied by the Apex Court in the above judgment meaning thereby the notification cannot be said to be void ab initio and it would be deemed as if the decision of the leaned Civil Judge is no more a good law in view of the fact that the law laid down by the Apex court is the law of the land vide Article 145 of the Constitution of India.

1170. Sri M.M. Pandey, counsel for plaintiffs (Suit-5), however, submitted that the decision in ***Ghulam Abbas's*** case may be considered. In respect of Doshipura Mosque and other properties, the Wakf Commissoner, after survey and inquiry, made a report dt 28/31.10.1938 u/s 4(5) of Wakf Act 1936 with Appendix VIII of Sunni Wakfs, excluding the Mosque, and Appendix X of Shia Wakfs including the Mosque; copies of the report were sent to both Shia and Sunni Boards of Wakf. On

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receipt of the report, Shia Board published Notification dt. 15.1.1954 of Appendix X in Gazette dt. 23.1.1954 u/s 5(1). Neither Sunni Board nor any person interested in the Wakf filed suit u/s 5(2), within the period prescribed, to challenge the omission of disputed properties from Appendix VIII. However, Sunni Board published Notification dt. 26.2.1944, u/s 5(1), including disputed properties, obviously not based on Appendix VIII (which had excluded the properties). Supreme Court held Sunni Board's Notification dt. 26.2.1944 to be invalid on the ground that it was not based on Appendix VIII while S.5(1) required the Notification to be 'in accordance with' Commissioner's report and that Wakf Commisioner's report with Appendix X became 'final and conclusive' in favour of Shia Wakf.

1171. We have perused the above judgment very carefully. The dispute before the Apex Court in **Gulam Abbas (supra)** was between the members of Shia and Sunni communities of muslims. In Mohalla Doshipura of Varanasi City, both sects of muslims, namely, Shias and Sunnis reside. Both revere the martyrdom of Hazrat Imam Hussain and Hazrat Imam Hasan, grandsons of Prophet Mohammad during Moharram but in different manner. The members of Shia sect in Mohalla Doshipura numbering about 4000 constitute a religious denomination having a common faith and observe Moharram for two months and eight days in a year in memory of Hazrat Imam Hussain who along with his 72 followers attained martyrdom at Karbala. The said religious belief is practised by the men-folk and the women-folk of the Shia community by holding Majlises (religious discourses), Recitations, Nowhas, Marsia, doing Matam (wailing) and taking out processions with

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Tabut Tazia, Alams, Zuljinha etc. For performing these religious rites, practices and observances, the Shia community has been customarily using from time immemorial nine plots in Mohalla Doshipura and the structures on some of them, particulars whereof are as under :

"*Plot No. 246; on which stands a Mosque which, it is common ground, belongs to both the sects as it was constructed out of general subscription from members of both the sects and every Mohammadan is entitled to go in and perform his devotions according to the ritual of his own sect or school.*

Plot No. 247/1130: on which stands the Baradari (Mardana Imambara- A structure of white stone having 12 pillars) constructed by Shias in 1893 used for holding Majlises, Recitations, Marsia and doing other performance.

Plot No. 245: on which there is a Zanana Imambara used by Shia ladies for mourning purposes and holding Majlises etc.

Plot No. 247: on which there is Imam Chowk used for placing the Tazia thereon (said to have been demolished by the Sunnis during the pendency of the instant proceeding).

Plot No. 248/23/72: a plot belonging to one Asadullah, a Shia Muslim, with his house standing thereon.

Plot No. 246/1134: on which stands a Sabil Chabutra (platform for distributing drinking water) belong to one Nazir Hussain, a Shia Muslim.

Plots Nos. 602/1133, 602 and 603 : being vacant plots appurtenant to the Baradari in plot No. 247/1130

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used for accommodating the congregation assembled for Majlises etc. when it over-lows the Baradari."

1172. The manner in which the religious rights, practices and functions used to be performed by the members of Shia community is mentioned in the judgment. The claim of Shia community to perform their religious rights on the said nine plots and structures thereon based on two foundations' (1) decisions of competent Civil Court adjudicating rights in their favour in earlier litigations and (2) registration of Shia Waqfs concerning the plots and structure for performance of theses practices and functions under Section 5 and 38 of 1936 Act, which had become final as no suit challenging the Commissioner's report and registration was filed within two years by any member of Sunni community or the Sunni Central Board of Waqf.

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1173. For the purpose of issue no. 18 (Suit-4), we need not to go into the details of the first aspect of the matter, i.e., the various suits and proceedings which became final between the two sects and instead straight way come to that part of the judgment which deals with the notification dated 26.02.1944 issued under 1936 Act. The Shia sect claim that the Commissioner of Waqf submitted his report dated 28/31.10.1938 to the State government under Section 4(5) showing the plots and structures referred to above as Shia Waqfs. This was followed by notification dated 15.1.1954 issued under Section 5(1) of 1936 Act by the Shia Central Board of Waqf and published in the U.P. Gazette dated 23.1.1954. No suit challenging to the said notification was filed either by Sunni Central Board of Waqf or any Sunni Muslim within the period prescribed under Section 5(2) of 1936 Act. The Sunni sect,

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however, relied on the notification dated 26.2.1944 issued by the Sunni Central Baord of Waqf under Section 5(1) of 1936 Act following the report of Commissioner of Waqf in respect to the waqfs which he identified a Sunni Waqf.

1174. After analysing the provisions of 1936 Act as well as Muslim Waqf Act 1960 (Act No.14 of 1960) (hereinafter referred to as "1960 Act"), the Apex Court discusses the facts pertaining to preparation of report by Commissioner and notifications issued under 1936 Act, in para 16 of judgment as under :

> *"It appears that the Government of Uttar Pradesh appointed Shri Munshi Azimuddin Khan, A deputy Collector, as a Chief or Provincial Commissioner of Wakfs under Section 4A of the 1936 Act for the purpose of making a survey of all the Wakfs in all the districts of the State. ... After making the necessary inquiries Shri Munshi Azimuddin Khan submitted to the State Government his Report dated 28th/31st October, 1938 and annexed several appendices to his Report; Appendix VIII referred to Waqfs pertaining to Sunnis and declared as subject to the 1936 Act and Appendix IX mentioned Waqfs pertaining to Sunni sect which were exempted from the Act; Appendices X and XI contained corresponding information about the Shia Waqfs which were respectively declared as subject to the Act or exempt from the Act. The original Report bearing the signature of Shri Munshi Azimuddin Khan, Chief Waqfs Commissioner was produced before us marked Exh. A) for our inspection by Mr. Rana, Counsel for the State of U.P. and the same was made available for inspection to the parties. There is a slip attached to the Report placed in*

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between Annexure VII and Annexure XIII containing an endorsement to the effect : "Appendices VIII and IX sent to the Sunni Board" and "Appendices X and XI sent to the Shia Board" with the signature of the Chief Commissioner of Waqfs below it.....Presumably the aforesaid action of sending the relevant appendices along with a copy of the Commissioner's report to the respective Sunni Central Waqf Board and the Shia Central Waqf Board was taken as required by Section 5(1) of the Act. ..... after receiving the aforesaid documents (Report together with the appendices X and XI), the Shia Central Waqf Board, as required by Sec. 5(1) of the Act, took steps to notify in the Official Gazette all the waqfs relating to their sect on the basis of the Appendices annexed to the Report; the relevant Notification under Section 5 (1) was issued on 15th January, 1954 and published in the Government Gazette on 23rd January, 1954. .....Admittedly, no suit was filed either by the Sunni Central Board or any other person interested in those Wakfs challenging the decision recorded in his Report by the Chief or Provincial Commissioner for Wakfs within the time prescribed under Section 5 (2) of the Act, and, therefore, the Chief Commissioner's Report together with the appendices X and XI thereto dated 28th/31st October 1938, on the basis of which the Notification dated 15th January, 1954 was issued and published in Official Gazette on 23rd January, 1954, must be held to have become final and conclusive as between the members of the two communities."

1175. Thereafter, in para 17 of the judgement, the Apex Court dealt with the notification dated 26th February, 1944 relied

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by the members of Sunni community and said:

> *"As against the aforesaid material respondents 5 and 6 and through them the Sunni community have relied upon a Notification dated 26th February, 1944 issued by the Sunni Central Wakfs Board under Section 5(1) of the U.P. Muslim Wakfs Act, 1936 following upon the receipt of the Report of the Chief or Provincial Commissioner of Wakfs in respect of mosque in Doshipura showing the same as Sunni Wakf, copy whereof has been annexed as Annexure S-2 to the affidavit dated 6th February, 1980 of Mohd. Basir Khan filed on behalf of the Sunni Central Waqfs Board as its "Pairokar'. This Notification on which reliance has been placed by the Sunnis appears to us of doubtful validity and probative value for the reasons which we shall presently indicate. Though issued and published earlier in point of time than the Notification of Shia Central Waqfs Board, it is admittedly not based on Appendices VIII and IX annexed to the Chief Commissioner's Report dated 28th/31st October, 1938 but on the basis of some Registers of Waqfs (meaning lists of Waqfs) said to have been received by the Sunni Board from the Commissioner of Wakfs. Curiously enough the Sunni Central Waqfs Board had stated through two affidavits dated 6th January, 1980 and 9th January, 1980 of their Pairokar Shri Mohd. Basir Khan that along with the copy of the Commissioner's report Registers of Waqfs were received but no appendices like Appendices VIII and IX were received from the Commissioner, that according to the Registers of Waqfs there were 245 charitable Sunni Waqfs in the District of Banaras which were covered by the 1936 Act and all such*

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Waqfs were accordingly notified by the Sunni Board in the government Gazette by issuing the Notification dated 26th February, 1944 under Section 5(1) of the Act. The original Report of the Commissioner does not refer to anything like Registers of Waqfs but, as stated earlier, it refers to Appendices Nos. VIII, IX, X and XI and the endorsement on the slip under the signature of the Chief Commissioner shows that the former two appendices were sent to the Sunni Board and the latter two to the Shia Board. In face of this endorsement and having regard to the fact that the Shia Board had received Appendices X and XI along with the Commissioner's Report which that Board offered to produce, it is difficult to accept the Statement of the Pairokar of the Sunni Board that no appendices were received by the Board along with a copy of the Commissioner's Report. It seems that relevant appendices, though received, are being withheld as their production would be adverse to the Sunnis. Apart from that aspect it is clear on their own admission that the Notification under Sec. 5 (1) of the 1936 Act was issued by the Sunni Central Waqfs Board not on the basis of Appendices VIII and IX which formed part of the Commissioner's Report but on the basis of some Registers of Waqfs said to have been received by it. The notification regarding the Sunni Waqfs issued on the basis of material which did not form part of the Chief Commissioner's Report would be in violation of Section 5(1) of the Act which required issuance of a Notification thereunder 'according to' the Commissioner's Report and as such the Notification dated February 26, 1944 relied upon by respondents 5 and 6 and members of

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the Sunni community would be of doubtful validity. ... .We are, therefore, clearly of the view that the Notification dated 26th February, 1944 issued under Section 5(1) of the 1936 Act by the Sunni Board is of no avail to the Sunnis for the purpose of defeating the customary rights of the Shias to perform their religious ceremonies and functions on the other plots and structures thereon."

1176. From the above judgment, thus, it is evident that the Apex Court, in fact, did not rely on the notification dated 26.2.1944 but instead held it to be of doubtful validity and probative value having not been issued in accordance with the procedure prescribed under Section 5 of 1936 Act. In our view, instead of upsetting the judgment of the learned Civil Judge, it, in fact, strengthened the said decision which has held that the notification dated 26th February 1944 was not a valid notification in respect to property in dispute. In view of the above discussion, we have no manner of doubt that the Apex Court's decision in **Gulam Abbas (supra)** does not affect the finding of the learned Civil Judge on Issue No. 17 (Suit-4) as contained in his judgement dated 21.4.1966, but on the contrary, support and strengthen his said finding. **Issue No. 18 (Suit-4) is answered accordingly**.

1177. **Issue No. 9(b) (Suit-1)** reads as under:

"Were the proceedings under the said Act referred to in written statement para 15 collusive? If so its effect?"

1178. Issue No. 9(b) (Suit-1) is based on the pleadings of the plaintiffs in para 15 of his replication which reads as under:

"15. ऐक्ट नं0 13 सन् 1936 बिल्कुल ultra vires है और उसके सम्बन्ध यदि कोई कार्यवाई की गई तो वह सब void है वादी किसी नोटिस के बन्धन में नहीं है और न किसी कार्यवाही जिसका वर्णन धारा 15

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में किया गया है इस अभियोग पर कोई प्रभाव है वादी का अनुमान है कि वह अभियोग मुसत्मा परस्पर षडयन्त्री भावना (साजिशी) से योजित किया था।''

"15. Act no.13 of 1936 is ultra vires and the proceeding, if any, in its pursuance is void. The plaintiff is not bound by any notice nor does any proceeding, mentioned in para-15, have any bearing on this case. According to the plaintiff, this case has been filed collusively." (E.T.C.)

1179. In this paragraph reply contain with respect to para 15 of the written statement filed on behalf of defendants 1 to 5 which reads as under:

''15. यह कि बमौजिब मुसलिम वक्फ ऐक्ट 13 सन 1936 चीफ कमिश्नर औकाफ मुकरर हुए और चीफ कमिश्नर मज़कूर ने बाद तहकीकात व मुआयना मौका मसजिद बाबरी यह तय किया कि मसजिद बाबरी का तामीर कुनिन्दा शहन्शाह बाबर सुन्नीउल मजहब था और वक्फ मुताल्लिक मसजिद मजकूर सुन्नी वक्फ है और इसी सिलसिले में कानूनी नोटीफिकेशन भी जारी कर दिया।''

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"15. That a Chief Commissioner of 'Aukaf' (plural of Waqf) was appointed under the Muslim Waqf Act 13 of 1936, and after investigation and inspection of the disputed site Babri mosque the Chief Commissioner decided that emperor Babar, the builder of Babri mosque, was of Sunni sect and the Waqf in respect of the disputed mosque is a Sunni Waqf, and (he) also issued a legal notification in this behalf." (E.T.C.)

1180. To the same effect the defendant No.10 has also pleaded in paras 14 and 16 which reads as under:

"14. That after the promulgation of U.P. Muslim Waqf Act, 1936, the Chief Commissioner of Waqfs had got a survey made in respect of the waqf properties and in that connection survey of the mosque in question was also

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conducted and the same was registered as a waqf and a gazette notification had also been issued in respect thereto under the provisions of the U.P. Muslim Waqf Act, 1936."

"16. That the said mosque stands registered as a mosque in the office of the U.P. Sunni Central Board of Waqf, hereinafter referred to as the Board, as Waqf No. 26 Faizabad even in the Register of Waqfs maintained under section 30 of the U.P. Muslim Waqf Act, 1960."

1181. In para 15 of the written statement of defendants no. 1 to 5 the statement of fact with respect to the inquiry made by the Chief Commissioner of Waqf and the notification dated 26.02.1944 has been made. This notification has already held to be invalid, so far as the disputed property is concerned. No material has been placed before this Court to show that the alleged proceedings under 1936 Act in any manner were the result of any conspiracy, mala fide etc. of the muslim parties. In fact the plaintiff (Suit-1) could not substantiate the plea of conspiracy taken in para 15 of his replication and during the course of arguments the learned counsel for the plaintiff (Suit-1), in fact, gave up the said plea and neither advanced any submission nor could substantiate the same. In the circumstances, **issue no. 9(b) (Suit-1) is answered against the plaintiff (Suit-1)** and it is held that the proceedings referred to in para 15 of the written statement (Suit-1) cannot be said to be collusive in the absence of placing anything before this court to substantiate the same. In these circumstances, the question of considering its effect does not arise.

1182. **Issue No. 9(c) (Suit-1)** is as under:

"Are the said provisions of the U.P. Act 13 of 1936 ultra vires for reasons given in the statement of plaintiff's

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counsel dated 9.3.62 recorded on paper no. 454-A?"

1183. Sri P.D. Goswami, counsel for the plaintiff (Suit-1) on 08/09.03.1962 made the following statement:

"Sri P.D. Goswami advocate for the plffs state that the report of the commissioner spoken of in para 15 of the W.S. has no effect on the rights of the plff nor do the provisions of Sec 5(3) of U.P. Act 13 of 1936 apply to the present suits as they are based on a right of worship of plff who is a Hindu. According to him the provisions of this Act are applicable to the property and the rights of the Muslims only.

He does not give up the plea taken by him in the replication in that connection.

According to him the said Act has been repealed by U.P. Act 16 of 1960. He further adds that in case the said Act be considered applicable to the present suits it is ultra vires the provisions of the Govt of India Act 1935 and is in conflict with the Ancient Monuments Preservation Act (Act No. VII of 1904)."

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1184. As we have already held that firstly, there was no valid notification under Section 5(1) of 1936 Act regarding the property in dispute, and secondly, that the said Act does not apply to non muslims, we do not find any occasion to go into this issue further since the statement of the learned counsel itself was conditional, i.e., if 1936 Act is held applicable to Suit-1 and 2 then it is ultra vires of the provisions of the Government of India Act, 1935 and is in conflict with the Ancient Monument Preservation Act (Act No. 7 of 1904).

1185. Even otherwise, we do not find as to how Act No. 7 of 1904 would come into picture in the case in hand. The

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aforesaid Act of 1904 was promulgated on 18.03.1904 with the preamble as under:

> *"Whereas it is expedient to provide for the preservation of ancient monuments, for the exercise of control over traffic in antiquities and over excavation in certain places, and for the protection and acquisition in certain cases of ancient monuments and of objects of archaeological, historical or artistic interest."*

1186. The statement of objects and reasons of 1904 Act reads as under:

> *"The object of this measure is to preserve to India its ancient monuments in antiquities and to prevent the excavation by unauthorised persons of sites of historic interest and value.*
>
> *2. In 1898 the question of antiquarian exploration and research attracted attention and the necessity of taking steps for the protection of monuments and relics of antiquity was impressed upon the Government of India. It was then apparent that legislation was required to enable the Government to discharge their responsibilities in the matter and a Bill was drafted on the lines of the existing Acts of Parliament modified so as to embody certain provisions which have found a place in recent legislation regarding the antiquities of Greece and Italy. This draft was circulated for the opinions of local Governments and their replies submitted showed that the proposals incorporated in it met with almost unanimous approval, the criticism received being directed, for the most part, against matters of detail. The draft has since been revised, the provisions of the Draft Bill prepared by the Government of*

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Bengal have been embodied so far as they were found suitable and the present Bill is the result.

3.The first portion of the Bill deals with protection of "Ancient monuments" an expression which has been defined in clause 2 (now section 2). The measure will apply only to such of these as are from time to time expressly brought within its contents though being declared to be "protected monuments". A greater number of more famous buildings in India are already in possession or under the control of the Government; but there are others worthy of preservation which are in the hands of private owners. Some of these have already been insured or are fast falling into decay. The preservation of these is the chief object of the clause of the Bill now referred to and the provisions of the Bill are in general accordance with the policy enunciated in section 23 of the Religious Endowments Act, 1863 (20 of 1863), which recognises and saves the right of the Government "to prevent injury to and preserve buildings remarkable in their antiquity and for their-historical or architectural value or required for the convenience of the public". The power to intervene is at present limited to cases to which section 3 of the Bengal Regulation 19 of 1810 or section 3 of the Madras Regulation VII of 1817 applies. In framing the present Bill the Government has aimed at having the necessity of good will and securing the co-operation of the owners concerned and it hopes that the action which it is proposed to take may tend rather to the encouragement than to the suppression of private effort. The Bill provides that the owner or the manager of the building which merits greater

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care than it has been receiving may be invited to enter into an agreement for its protection and that in the event of his refusing to come to terms the collector may proceed to acquire it compulsorily or take proper course to secure its application. It has been made clear that there is to be no resort to compulsory acquisition in the case the monument is used in connection with religious observances or in other case until the owner has had an opportunity of entering into an agreement of the kind indicated above; and it is expressly provided that the monument maintained by the Government under the proposed Act, shall not be used for any purpose inconsistent with its character or with purpose of its foundation, and that, so far as is compatible with the object in view the public shall have access to it free of charge. By the 4th proviso of clause 11 (now section 10) it is laid down that in assessing the value of the monument for the purpose of compulsory acquisition under the Land Acquisition Act, 1894 (1 of 1894) its archaeological, artistic or historical merits shall not be taken into account. The object of the Government as purchaser being to preserve at the public expense and for the public benefits an ancient monument with all its associations, it is considered that the value of those associations should not be paid for.

4. The second portion of the Bill deals with movable objects of historical or artistic interest and these may be divided into two classes; the first consists of ornaments, enamels, silver and copper vessels, Persian and Arabian Manuscripts, and curios general. These are for the most part portable and consequently difficult to trade; they are

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as a rule artistic; are of historic interest and it would be impracticable even were it desirable to prevent a dealer from selling and a traveller from buying them. The sculptural carvings, images, bas-reliefs, inscriptions and the like form a distinct class by themselves, in that their value depends upon their local connection. Such antiquities may, as in the case of those of Swat, be found outside India or in Native States and this the Legislature cannot reach directly; while as regards the British territory and under the existing law, it is impossible to go beyond the provisions of the Indian Treasure Trove Act, 1878 (6 of 1878). (In these circumstances, it is proposed, by clause 18 of the Bill to take power to prevent the removal from British India of any antiquities which it may be deemed desirable to retain in the country, and at the same time to present importation. By thus putting a stop on draft in such articles it is believed that it will be possible to protect against spoilation a number of interesting places situated without and beyond British territory. Clause 19 aims at providing for antiquities such as sculptures and inscriptions which belong to another place and ought therefore to be kept in situ or deposited in local museums. The removal of these, it is proposed to enable the local Government to prohibit by notification and the clause also provides that, if the object is movable, the owner may require the Government to purchase it outright and that, if it is immovable the Government shall compensate the owner for any loss caused to him by the prohibition. Clause 20 (now section 19) deals with the compulsory purchase of such antiquities if that is found to be necessary for their

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preservation and the owner is not willing on personal or religious grounds to part with them. In such cases it is proposed that the price to be paid should be assessed by the Collector, subject to a right of appeal to the local government but it is for consideration whether the Land Acquisition Act of 1894 should be followed and reference to the Courts allowed.

5. The third portion of the Bill deals with excavations and gives power to make rules to prohibit or regulate such operations."

1187. The term "ancient monument" and "antiquities" are defined in Section 2(1) and (2) of 1904 Act which read as under:

"*2(1) "Ancient monument" means any structure, erection or monument or any tumulus or place of interment, or any cave, rock-sculpture, inscription or monolith, which is of historical, archaeological or artistic interest, or any remains thereof, and includes--*

(a) the site of an ancient monument;

(b) such portion of land adjoining the site of an ancient monument as my be required for fencing or covering in or otherwise preserving such monument; and

(c) the means of access to and convenient inspection of an ancient monument;

(2) "antiquities" include any movable objects which the Central Government, by reason of their historical or archaeological associations, may think it necessary to protect against injury, removal or dispersion;"

1188. The term "owner" is also defined in Section 2(6) as under:

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"2(6) "owner" includes a joint owner, invested with power of management on behalf of himself and other joint owners, and any manager or trustee exercising powers of management over an ancient monument, and the successor in title of any such owner and the successor in office of any such manager or trustee:

Provided that nothing in this Act shall be deemed to extend the powers which may lawfully be exercised by such manager or trustee."

1189. Section 3 provides for "protected monuments". It is not the case of any of the parties that the disputed building was ever notified by the Government as a "protected monument" under Section 3 of 1903 Act.

1190. Sections 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14 and 15 are applicable to a "protected monument", i.e., an "ancient monument" which is declared to be "protected monument" by notification in the official gazette under Section 3 and, therefore, ex facie would have no application to the property in dispute.

1191. Section 10A which was inserted in 1932 is only in respect to control of the Central Government where it finds that mining, quarrying, excavation, blasting and other operations of a like nature needs to be restricted and regulated for the purpose of protecting or preserving any "ancient monument". This also has nothing to do with the disputed property as there is no such case of either party. We, therefore, find nothing in 1904 Act in any manner to affect the provisions of 1936 Act.

1192. So far as the Government of India Act, 1935 is concerned, learned counsel for the plaintiff (Suit-1) could not show anything therein to substantiate his plea of ultra vires of 1936 Act. It is no doubt true that 1936 Act was repealed by U.P.

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Act No. XVI of 1960 but that by itself would not make anything already done under 1936 Act redundant or illegal or non est. In fact the transactions already taken place are duly protected therein i.e. in 1960 Act. The counsel for the plaintiffs in fact could not substantiate the plea so as to persuade this Court to answer issue no. 9(c) (Suit-1) in his favour and it is accordingly decided in negative.

1193. Now comes **Issue No. 16 (Suit-3)** which reads as under:

> *"Is the suit bad for want of notice u/s 83 of U.P. Act 13 of 1936?"*

1194. We find that there is no pleading to this effect i.e. requirement of such notice, in the written statements of defendants in Suit-3. In fact in para 27 of written statement of defendant no. 10 (Suit-1) a plea of want of notice under Section 56 of 1936 Act has been taken which reads as under:

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> *"27. That the suit is not maintainable even on account of the reason that no notice was served upon the Board as required by section 56 of the U.P. Muslim Waqf Act, 1936 and the suit is liable to be dismissed even on this account."*

1195. Learned counsel for the defendant (Suit-3) neither could substantiate their case to support the above issue nor in fact could place anything before this Court to assist us to consider the above issue in an effective manner.

1196. In fact there is no Section 83 in 1936 Act. In the written statement filed in Suit-3 by the defendants No.6 to 8 there is no such pleading with reference to any provision of 1936 Act alleging that the same bars the suit. The defendant No.9, however, has stated before the Court that the plaint of Suit-4 be treated as his written statement and there also we do

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not find any such pleading referring to any provision of 1936 Act on the basis whereof it is said that the suit is barred for want of any notice. The only objection with reference to 1936 Act taken is in para 9 and 10 of the plaint (Suit-4) which states that the Commissioner of Waqfs made an enquiry with reference to the disputed building as a public waqf and based thereon the State Government issued a notification on 26th February, 1944 which having not been challenged by the Hindus or any person interested denying the report of the Commissioner of the Waqfs on the ground that it was a Muslim waqf or it was a Hindu temple hence now it cannot be challenged. It is only in Suit-1, the defendant No.10 in para 27 of its written statement has said that due to absence of notice, as required by Section 56 of 1936 Act, the suit is not maintainable and is liable to be dismissed. Even if we read issue 16 (Suit-3) that instead of Section 83 of 1936 Act, it ought to be Section 56 of 1936 Act, we do not find that it requires any notice before filing a suit and in fact reference to Section 56 is not correct, as is evident from a bare perusal thereof, which is reproduced as under:

> *"56. Appointment of mutawalli.- When there is vacancy in the office of mutawalli of a waqf and there is no one competent to be appointed under the terms of the deed of waqf, or where the right of any person to act as mutawalli is disputed, the Central Board may appoint any person to act as a mutawalli for such period and on such conditions as it may think fit."*

1197. However, there is another Section 53 in 1936 Act which contain some provision with reference to notice and reads as under :

> *"53. No suit shall be instituted against a Central Board in*

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respect of any act purporting to be done by such Central Board under colour of this Act or for any relief in respect of any waqf, until the expiration of two months next after notice in writing has been delivered to the Secretary, or left at the office of such Central Board, stating the cause of action, the name, description and place of residence of the plaintiff and the relief which he claims ; and the plaint shall contain a statement that such notice has been so delivered or left."

1198. From a bare perusal of Section 53 of 1936 Act, it is evident that its scope and purpose is wholly different. Even otherwise, the requirement of notice under Section 53 in 1936 Act is akin to Section 80 CPC. The Apex Court in para 25 of the judgment in Siraj-ul-Haq Khan (supra) has considered Section 53 and its effect and has observed that this Section is similar to Section 80 of the Civil Procedure Code and thereafter having said so further says that it was incumbent upon the appellants to have given the requisite notice under Section 53 before instituting the suit and failure to do so would bar the suit being not maintainable. The parties before us were required to show as to how Section 53 in the case in hand would be attracted to which none has assisted the Court. However, as observed by the Apex Court in Siraj-ul-Haq Khan (supra), the compliance is mandatory where Section 53 is applicable. Without considering the question as to whether the relief sought in Suit-3 would attract Section 53 or not; and, proceeding by assuming that Section 53 would apply, we are of the view that this provision has been made for the benefit of Central Board concerned in particular and Muslim communities in general. It is always open to a party for whose benefit the provisions has been made to

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waive such benefit. This aspect we have already considered in respect to the issues relating to Section 80 CPC above and following the reasons as are applicable to Section 80 CPC, we are of the view that the benefit under Section 53 can also be waived. If non-issuance of notice and defect under Section 53 is not pressed by the concerned Board before the Court, non-compliance of Section 53 would not vitiate the suit. The issue is answered accordingly.

1199. **Issue 5(f) (Suit-4)** relates to U.P. Act XVI of 1960 and reads as under:

> *"Whether in view of the aforesaid finding, the suit is barred on account of lack of jurisdiction and limitation as it was filed after the commencement of the U.P. Muslim Waqf Act, 1960?"*

1200. In the written statement dated 20th July, 1968, filed by defendants No.13 and 14 (Suit-4), it has been pleaded that after the enforcement of U.P. Act XVI of 1960, the suit in question having been filed in 1961, is not saved under Section 85(2) thereof. They further say that Section 9(2) of 1960 Act also would not save the finality of the decision of the Commissioner of Waqfs since 1936 Act itself having vanished after repeal and therefore, the suit on behalf of Sunni Central Waqf Board is wholly without jurisdiction.

1201. During the course of arguments, however, learned counsel for the defendants could not substantiate the above objection and could not show as to how Section 85(2) and Section 9(2) of 1960 Act would be attracted in the case in hand to make the suit without jurisdiction and beyond limitation. It is true that notification issued under Section 5(1) of 1936 Act has been held to be invalid so far as the property in dispute is

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concerned but in case the property in dispute is found to be waqf, no provision in U.P. Act XVI of 1960 has been shown which may deprive the Sunni Central Waqf Board or other plaintiffs of Suit-4 to maintain the suit in respect to a property which they claim to be a 'waqf property' and to claim its possession in case it is not otherwise impermissible in law. At least we are not able to find any provision under U.P. Act XVI of 1960 which may prohibit either plaintiff No.1 (Suit-4) or other plaintiffs from maintaining Suit-4 in question provided the property in dispute is a "waqf" within the meaning of Shariyat Law.

1202. In view of above, we do not find any substance and decide **issue 5 (f) (Suit-4)** against the defendants and in favour of the plaintiffs (Suit-4) holding that the suit in question is not barred having been filed after the commencement of U.P. Act No.XVI of 1960.

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1203. Now we come to **Issues 23 and 24 (Suit-4)** which can be considered together, and read as under:

> *"Whether the Waqf board is an instrumentality of State? If so, whether the said Board can file a suit against the State itself?"*
>
> *"If the Waqf Board is State under Article 12 of the Constitution? If so, the said Board being the State can file any suit in representative capacity sponsoring the case of particular community and against the interest of another community?"*

1204. The learned counsels for the defendants could not point out any pleadings raising such objection therein. However, they contended that since the Sunni Central Waqf Board has been constituted under 1936 Act and therefore, being a statutory

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body, its constitution, function etc. can be looked into from the various provisions of the statutory enactment and that itself would be sufficient to give necessary information. Though *prima facie* we find it difficult to accept the above proposition, but, however, we proceed to consider the above issues analyzing the relevant provisions of 1936 Act as well as 1960 Act to find out whether there is any substance in these issues.

1205. It is not in dispute that Sunni Central Waqf Board has been established under Section 6(1) of 1936 Act. Its constitution is provided in Section 7 thereof. The two provisions read as under:

> *"**6. Establishment of Central Boards**.-(1) there shall be established in the United Provinces two separate Boards to be called the "Shia Central Board" and the "Sunni Central Board" of waqfs. Each such Board shall be a body corporate and shall have perpetual succession and a common seal and shall by its said name sue or be sued."*
>
> *"**7. Constitution of Sunni Central Board**.- The Sunni Central Board shall consist of-*
>
> *(i) five members to be elected in the manner prescribed by Sunni members of the local legislature,*
>
> *(ii) four members to be elected in the manner prescribed by the District Waqf Committees.*
>
> *(iii) three members to be co-opted by the above nine members from persons whom they regard as ulamas, and two members from among mutawallis, and*
>
> *(iv) the President, if he is not one of the above fourteen members :*
>
> *Provided that the first Sunni Central Board shall be established by the local Government within three months of*

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the date on which this section comes into force and shall consist of-

(i) five members to be elected, in such manner as the local Government may direct, by the Sunni members of the local legislature;

(ii) two members to be elected, in such manner as the local Government may direct, by the Sunni members of Executive Committee of the Provincial Muslim Educational Conference ;

(iii) three members to be co-opted by the above seven members from persons whom they regard as ulamas ; and

(iv) three members to be co-opted by the above ten members."

1206. Section 10 of 1936 Act provides that the members of Central Board shall hold office for five years. Section 13 of 1936 Act provides for the place where the office of the Central Board shall be located and Sections 14 to 17 of 1936 Act are in respect to manner of function and requisite staff of such Board. Section 18 of 1936 Act provides for the functions of the Central Board which we have already referred to.

1207. Chapters 3, 4, 5, 6 and 7 of 1936 Act contain provisions with regard to registration of waqfs, audit of accounts, enquiry and supervision, legal proceedings and administration charges. Chapter 8 of 1936 Act provides for Mutawalli and Section 58 of 1936 Act confers powers upon the Board to remove Mutawalli from his office in certain circumstances. Section 68 of 1936 Act provides that the Government shall not be liable for any expenditure incurred in the administration of 1936 Act.

1208. From a perusal of 1936 Act, it is evident that the

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Central Sunni Waqf Board is a statutory body constituted in accordance with the provisions of the said Act. By no stretch of imagination it can be said to be either a Department of the State Government or an instrumentality of the State Government.

1209. A similar question came up for consideration in respect to the employees of certain statutory bodies like Jal Nigam, Banks, Local Bodies etc. where the employees claim themselves to be the Government employees as the bodies are controlled by the Government but negativing the said contention it was held by the Apex Court that the statutory bodies are neither a Department or part and parcel of the State Government nor the employees of the statutory bodies can be said to be the Government employees.

1210. Being a statutory body constituted under statute having powers, functions and duties, which the Waqf Board is liable to perform, it may be covered by the term 'Other Authority' under Article 12 of the Constitution of India but that by itself would neither make it an instrumentality of the State Government of U.P. nor would deprive it to file a suit where it is aggrieved against some action of the State Government or its authorities. The Waqf Board having been constituted with a particular objective i.e. for the better governance, administration and supervision of certain classes of Muslim Waqfs, from its very nature, its duty is confined for the welfare of certain special kind of properties of the persons of a particular community and in particular religion i.e. Muslims. It will wholly be misconceived to suggest that by representing or sponsoring the cause of members of a particular community against another community i.e. Muslims against Hindus, the Waqf Board is causing discrimination though it is a “State” under Article 12 of

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the Constitution. No authority could be placed before this Court binding upon us to take a view different than what we have discussed above.

1211. On the contrary, we find support from a decision of the Apex Court in **Syed Yousuf Yar Khan and others Vs. Syed Mohammed Yar Khan and others, AIR 1967 SC 1318** where a somewhat similar contention was raised that the "Waqf Board" is an agent of Central Government but rejecting the same the Apex Court in para 4 of the judgment held as under:

> *"(4) Counsel submitted that the present suit was a suit by or on behalf of the State Government and was therefore governed by art. 149 of the Indian Limitation Act 1908. He submitted that the Board of Muslim Endowments, Hyderabad, which according to him was the Board of Wakfs constituted under the Muslim Wakfs Act 1954, was an agent of the Central Government. By s. 9(2) of the Muslim Wakfs Act, 1954, the Board of Wakfs is a body corporate and by s. 15 of this Act, the Board is vested with the right of general superintendence of wakfs and is empowered to take measures for the recovery of the lost properties of any wakf and to initiate and defend suits and proceedings relating to wakfs. Counsel submitted that a corporation may be an agent of the State Government, and in support of this contention relied upon Halsbury's Laws of England, 3rd Ed., Vol. 9, p. 10-Tamlin v. Hannaford (1949) 2 All E. R. 327, and the observations of Shah, J. in State Trading Corporation of India Limited v. The Commercial Tax Officer, A.I.R. 1963 S.C. 811, 849, 850, paras. 115-117. He submitted that the State Government has delegated its functions of superintendence over wakfs*

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to the Board of Wakfs and the Board should therefore be regarded as an agent of the State Government. We are unable to accept this contention. By the Religious Endowments Act 1863, the Government divested itself of the management and superintendence of religious endowments which was vested in it under Regn. 19 of 1810 and Regulation 7 of 1817. The Board of Wakfs though subject to the control of the State Government, is a statutory corporation and is vested with statutory powers, functions and duties. The Board has power to hold property and is in control of the wakf fund (ss. 9 and 48). The State Government has no concern with the property vested in the Board save during the period of supersession of the Board under s. 64. Nor is the State Government liable for any expenditure incurred by the Board in connection with the administration under the Act (S. 54). The Board of Wakfs is not discharging a governmental function. The Act nowhere says that the Board would act as the agent of the State Government. It rather indicates that the Board is not the agent of the Government and the Government is not responsible for its acts. We must, therefore, hold that the Board of Wakfs is not an agent of the State Government and a suit instituted by it for the recovery of a wakf property is not a suit by or on behalf of the State Government."

1212. In **Syed Yousuf Yar Khan (supra)** the issue of identifying mutawalli with the State Government was also raised by contending that the mutawalli is an agent of the "Government" in order to take the benefit of Article 149 of the Limitation Act but that was also rejected by the Apex Court by

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observing:

> *"5. Counsel next submitted that the mutawalli is the agent of the State Government and that in any event the limitation for a suit by the mutawalli starts on the date of his appointment. In support of this contention counsel relied upon the decision in Jewun Doss Sahoo v. Shah Kubeer-ood-Deen, (1837-41) 2 Moo Ind. App. 390 at p. 422 (PC) where the Privy Council held that under the law then in force it was the duty of the Government to protect endowments and the mutawalli in that case was the procurator of the Government and his right to sue arose on his being appointed mutawalli. This ruling of the Privy Council was given under Regulation 19 of 1810. Since the passing of the Religious Endowments Act 1863, the mutawalli cannot be regarded as a procurator of the Government. He is not appointed by the Government, nor does he manage the endowment on its behalf and a suit by him for the recovery of the wakf property cannot now be regarded as a suit on its behalf, see Shaikh Laul Mahomed v. Lalla Brij Kishore, (1872) 17 Suth WR 430 and Behari Lal and Ors. v. Muhammad Muttaki, (1898) ILR 20 All. 482 at p. 488 (FB)."*

1213. In view of the above, we find it difficult to hold that the Waqf Board is an instrumentality of the State. However, even if it is an instrumentality of State, we do not find any disability for the Board to file a suit against the State if there is any wrong done by the State or its authorities. In our view, the issue which has been raised to suggest as if the Sunni Central Waqf Board if held as an instrumentality of the State, would be incompetent to maintain a suit against the State is thoroughly

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misconceived.

1214. The concept of instrumentality of the "State" came to be noticed in the light of considering the applicability of Part III of the Constitution of India dealing with fundamental rights vis a vis the meaning of the words "other authority" under Article 12 of the Constitution. To find out the bodies to whom Part III of the Constitution would apply, and if there is any infringement etc., the complaint may be raised before the High Court or the Supreme Court directly under writ jurisdiction also this concept was developed. To understand the concept, it would be prudent to have a perusal of Article 12 of the Constitution :

> *"**Article 12**. In this Part, unless the context otherwise requires, "the State" includes the Government and Parliament of India and the Government and the Legislature of each of the States and all local or other authorities within the territory of India or under the control of the Government of India."*

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1215. The Central and State Governments, the legislatures, Central and Provincial, and, Local authorities are obviously covered by the term "the State" under Article 12. The question arose as to what are the bodies which would answer the description of "other authorities" so as to qualify to be within the ambit of the word 'the State' to attract Part-III of the Constitution. In **Ramana Dayaram Shetty Vs. International Airport Authority of India and others, 1979 (3) SCC 489** the question arose as to whether "International Airport Authority of India" is "the State" within the meaning of Article 12 so as to attract the provisions under Part-III of the Constitution. Admittedly, "International Airport Authority of India" was neither the Government, Central or State, nor Legislature nor a

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Local authority. The question arose as to whether the words "other authorities" within the territory of India or under the control of the Government of India would include "International Airport Authority of India" so as to attract the provisions under Part-III of the Constitution. In this context the matter was examined. The Apex Court held that "International Airport Authority of India" is 'the State' within the meaning of Article 12 of the Constitution of India and, therefore, the provisions of Article 14 are attracted. If the act or omission on the part of International Authority of India is found to be arbitrary or discriminatory.

1216. There are catena of decision on this aspect but it may not be necessary for us to consider in detail all such authorities laying down various tests to determine when a body or authority can be said to be an "instrumentality" of the State so as to be within the ambit of the words "other authorities" for the purposes of Article 12 of the Constitution of India for the reason that in case a body qualify such tests and becomes an "instrumentality of the State" and, therefore, becomes "an authority" within the words "other authorities" under Article 12 of the Constitution, the result would be that provisions of Part-III of the Constitution would be applicable to it and any infringement thereof would be subject to judicial review directly before the superior courts in writ jurisdiction, i.e., under Article 226 of the Constitution of India as also under Article 32 of the Constitution. For our purposes suffice it to mention that an "instrumentality of the State" does not mean a "department of the State Government".

1217. The learned counsels for the defendants, despite of repeated query, could not tell us as to how an instrumentality of

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the State cannot invoke the jurisdiction of a Civil Court for enforcing its common law rights by filing a civil suit. It appears that misconception on the part of the defendants in Suit-4 is that an instrumentality of the State, if comes within the words 'the State' under Article 12 of the Constitution, the distinction of personality between the State Government as well as such instrumentality disappear and, therefore, one may not file suit against another. This is apparently fallacious and lacks substance. A body incorporated in accordance with the procedure prescribed by statute or a statutory body, i.e., constituted under a statute or by a statute, on its own is a juristic personality, i.e., legal person, who can possess property, enter into transactions by executing contract with the other persons (including natural, legal or juristic persons) and also to sue or be sued. An authority or statutory body which can be said to be an instrumentality of the State does not become necessarily a part and parcel of the Government.

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1218. The term 'Government' in its wider sense includes all the wings of Government, viz., executive, legislative or judicial but in narrower sense, it is normally the executive wing of the State.

1219. Bombay High Court in **Emperor Vs. Bhaskar Balwant Bhopatkar, (1906) ILR 30 Bom 421** observed:

> *"What is contemplated under this section is the collective body of the Government . . . . . It means that the person or persons collectively, in succession, who are authorized to administer the Government for the time being. One particular set of persons may be open to objection and to assail them, and to attack them and excite hatred against them, is not necessarily exciting hatred*

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against the Government, because they are only individuals and not representatives of that abstract conception which is called Government . . . . . The individual is transitory and may be separately criticized but that which is essentially and inseparably connected with the idea of Government established by law cannot be attacked without coming within this section."

1220. In **Annie Besant Vs. Government of Madras, AIR 1918 Mad 1210,** Madras High Court said**:**

"Government denotes an established authority entitled and able to administer the public affairs of the country. On the other hand, 'Government' is not identical with any particular individuals who may be administering the Government."

1221. Dixon J. in **Burns Vs. Ransley, (1944) 79 CLR 101** explaining the word "Government" as under:

"I take the word "Government" to signify the established system of political rules, the governing powers of the country consisting of the executive and the Legislature considered as an organized entity and independently of the persons of whom it consists from time to time. Any interpretation which would make the word cover the persons who happen to fill political or public offices for the time being, whether considered collectively or individually, would give the provision an application inconsistent with the parliamentary and democratic institutions and with the principles of the common law as understood in times, Governing the freedom of criticism and of expression."

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1222. A Full Bench of this court in **Ram Nandan Vs. State, AIR 1959 All 101** observed that the term "Government" has not been defined anywhere. Considering various provisions of the Constitution this Court observed that the "Government" means the executive machinery of the Union and of the States. It means the President acting with the advice of the Council of Ministers and the Governors acting with the advice of their Councils of Ministers. It is the system of Government or institution consisting of the President and the Governors acting with the advice of their Councils of Ministers and not the actual persons holding the offices of Presidents or Governors and the Ministers advising them. This Court quoted the approval and followed the observations of Bombay and Madras as noted above in **Bhaskar Balwant Bhopatkar (supra)** and **Annie Besant (supra)** respectively.

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1223. In **State of U.P. Vs. Nemchandra Jain, 1984 (2) SCC 405** the term "Government" was analyzed by the Apex Court observing that from the legal point of view, Government may be described as the exercise of certain powers and the performance of certain duties by public authorities or officers, together with certain private persons or corporations exercising public functions. The structure of the machinery of Government, and the regulation of the powers and duties which belong to different parts of this structure, are defined by the law, which also prescribes, to some extent, the mode in which these powers are to be exercised or those duties are to be performed. Government generally connotes three estates, namely, the Legislature, the Executive and the Judiciary. In a narrow sense it connotes executive only.

1224. The word "Government" has been defined in

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Section 3(23) of the General Clauses Act, 1897 as under:

> *"3(23). "**Government**".--This sub-section says that the terms "Government" or "the Government", shall include both the Central Government and any State Government."*

1225. The term "State Government" has also been defined in the General Clauses Act, 1897 in Section 3(60). The above definition of General Clauses Act in fact does not give any exact meaning except of referring the words, in general and in broader sense.

1226. The Constitution declares the "Government" being entitled to file a suit or to be sued by virtue of Article 300 of the Constitution which reads as under :

> ***"Article 300.** (1) The Government of India may sue or be sued by the name of the Union of India and the Government of a State may sue or be sued by the name of the State and may, subject to any provisions which may be made by Act of Parliament or of the Legislature of such State enacted by virtue of powers conferred by this Constitution, sue or be sued in relation to their respective affairs in the like cases as the Dominion of India and the corresponding Provinces or the corresponding Indian States might have sued or been sued if this Constitution had not been enacted.*
>
> *(2) If at the commencement of this Constitution--*
>
> *(a) any legal proceedings are pending to which the Dominion of India is a party, the Union of India shall be deemed to be substituted for the Dominion in those proceedings; and*
>
> *(b) any legal proceedings are pending to which a*

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Province or an Indian State is a party, the corresponding State shall be deemed to be substituted for the Province or the Indian State in those proceedings."

1227. Similarly, Section 79 C.P.C. provides for suits to be filed by or against the Government, as under :

*"**Section 79. Suits by or against the Government—** In a suit by or against the Government, the authority to be named as plaintiff or defendant, as the case may be, shall be—*

(a) in the case of a suit by or against the Central Government, the Union of India, and

(b) in the case of a suit by or against a State Government, the State."

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1228. Interpreting Article 300 of the Constitution of India the Apex Court in **State of Punjab Vs. Okara Grain Buyers Syndicate Ltd. and others, AIR 1964 SC 669** observed that this Article does not give rise to any cause of action but merely says that the State can sue or be sued as a juristic personality. The juristic personality of the State is conferred as a whole which consists of the executive government headed by the Governor and it is not divided into various branches or department of the Government so as to result constituting such number of juristic personality as are the departments in a State Government.

1229. Nothing has been brought to us and neither any authority has been cited nor anything else has been placed before us to persuade us to take a view that the Sunni Central Waqf Board can be held to be a department of the State Government so as to bar a suit against the State Government. Had it been a department of the "Government" obviously a civil

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suit under Section 9 CPC would not be maintainable for the reason that the State Government is a juristic personality as a whole which consists of all its limbs, i.e., various departments etc. Each and every department of the State Government cannot be said to be an "independent juristic personality" which can sue or be sued.

1230. The term "department of a State Government" also came to be considered before this Court in **Ram Chandra Vs. District Magistrate, AIR 1952 All. 520** and this Court held that a department is a unit or branch of the Government, either Union or State, under the political control of a Minister or Secretary of State or President of the Board. Individual officers serving under a department do not constitute a department. The department has an entity distinct and separate from the officers serving under it.

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1231. Drawing distinction between the "Government" and "Instrumentality of the State" within meaning of Article 12 of the Constitution in reference to Section 80 C.P.C. the question arose as to whether notice before filing a suit is a condition precedent to Electricity Board or not. The High Court of Kerala in **V.Padmanabhan Nair Vs. Kerala State Electricity Board AIR 1989 Kerala 86** held that the statutory bodies like Electricity Board, Food Corporation, Urban Development Corporation etc. may be an "Instrumentality of the State" within the meaning of "Article 12" of the Constitution, nevertheless would not answer the description of "Government" as understood in law and has understood in the context of Section 80 C.P.C.

1232. We have referred to the term "Government" in detail only to demonstrate that the personality of the Government for

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the purpose of being sued or to sue is not to be looked into as further divided in various departments but it is the entire executive government including all its departments which constitute the "Government", a legal personality, having status to sue or be sued in that capacity.

1233. Where there is a dispute between two "States" of the Union of India or between one or more States and the Union of India, Article 131 of the Constitution confers original jurisdiction upon the Apex Court in regard to resolution of such dispute. In this context, the Apex Court in **Chief Conservator of Forests, Government of Andhra Pradesh Vs. Collector and others, AIR 2003 SC 1805** observed that neither the Constitution of India nor CPC contemplates that two departments of a State or the Union of India will fight a litigation in a Court of law. It is neither appropriate nor permissible for two departments of the "State" to fight litigation in a Court of law. Various departments of the Government are its limbs and, therefore, they must act in coordination and not in confrontation. Although that was a case with respect to the justification of filing a writ petition yet the Apex Court deprecated the attempt of filing writ petition by one department against another and invoking extraordinary jurisdiction of the High Court. The Court observed that it smacks of indiscipline. It also held to be contrary to the basic concept of law that requires for suing or be sued there must be either a natural or juristic person.

1234. In para 13 of the judgment, the Court held:

> " *Every post in the hierarchy of the posts in the Government set-up, from the lowest to the highest, is not recognised as a juristic person nor can the State be treated*

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as represented when a suit/proceeding is in the name of such offices/posts or the officers holding such posts, therefore, in the absence of the State in the array of parties, the cause will be defeated for non-joinder of a necessary party to the lis..."

1235. It was made clear that the above principle does not apply to a case where an official of the Government acts as a statutory authority and sues or pursues further proceeding in its name because in that event, it will not be a suit or proceeding for or on behalf of a State /Union of India but by the statutory authority as such.

1236. With respect to the two departments fighting with each other, in para 14 of the judgment, the Court observed:

"It was not contemplated by the framers of the Constitution or the C. P. C. that two departments of a State or the Union of India will fight a litigation in a court of law. It is neither appropriate nor permissible for two departments of a State or the Union of India to fight litigation in a court of law. Indeed, such a course cannot but be detrimental to the public interest as it also entails avoidable wastage of public money and time. Various departments of the Government are its limbs and, therefore, they must act in co-ordination and not in confrontation. Filing of a writ petition by one department against the other by invoking the extraordinary jurisdiction of the High Court is not only against the propriety and polity as it smacks of undiscipline but is also contrary to the basic concept of law which requires that for suing or being sued, there must be either a natural or a juristic person."

1237. Best C.J. in **Neale Vs. Turton (1827) 4 Bing. 149** at

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page 151 observed that there is no principle by which a man can be at the the same time plaintiff and defendant. Sometimes it may happen that a person may be having different capacities in which he may act but as opined by Salmond in **Salmond On Jurisprudence (supra)** a man having two or more capacities would not derive a power to enter into a legal transaction with himself. Double capacity does not connote double personality. In certain circumstances, now by statute this concept has been diluted but so far as the two departments of the Government are concerned, the law of the land as already noticed above, is holding the field and we need not deal into this aspect any further.

1238. Thus, it is now settled that a department of the Government by itself has no legal personality and, therefore, it lacks capacity to sue or be sued ignoring the personality of the State. A department of the Government can always sue or be sued under the cover of the personality of the State and not of its own.

1239. This concept, however, would not apply to the cases where a statutory body or an incorporated body on its own enjoy the capacity of legal persona and, therefore, is well within its right to sue or be sued under its own name.

1240. Nobody could suggest in these cases that the Sunni Central Waqfs Board can be said to be a department of the Government. It cannot thus be identified with the Government. Once it is clear that the Waqfs Board has a different and independent juristic personality than the "Government", in the absence of any prohibition or bar either specifically or by or necessary implication in the statute, filing of a suit by one individual juristic personality against another cannot be

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objected. Exclusion of remedy by way of filing a civil suit cannot be assumed easily and unless there is an express or by necessary implication a bar provided by the statute, a suit under Section 9 cannot be held “not maintainable”. Though we have expressly held that Sunni Central Waqfs Board is not an instrumentality of the State, yet even if it is so, we are clearly of the view that there is no impediment in its way in filing a suit in its own name against the State or its authorities for redressal of its grievance, if there is anything wrong by such authority.

1241. So far as the second issue that if it is a “State" within Article 12 of the Constitution, it may not act in a manner which may amount to discrimination against one set of community, we have already said and at the pain of repetition hold that the statutory functions of the Waqfs Board is to supervise the management of the Waqfs registered in various manners as provided in the statute and in such discharge of duty, it can take all such steps as permissible in law irrespective of fact whether such step is against an individual of a different religion or the entire community of different faith.

1242. Looking the matter in a wider concept, the act of the Sunni Central Central Waqfs Board in filing Suit-4 even otherwise cannot be said to be an act discriminatory to a community inasmuch treating the disputed property as a Waqf created in accordance with the Islamic laws, the Board is trying to protect the same from being usurped by anybody else, be that it is an individual or a group of individuals or the entire community and in this respect if in a particular manner all such persons constitute members of a particular community, that will not make the act of the Sunni Central Waqfs Board discriminatory or/and against a particular community.

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1243. We **answer both the above issues accordingly**. We hold that neither the Waqf Board is "an Instrumentality of the State" nor it suffers any disability of filing a suit against State Government or its authorities nor there is anything wrong in the Waqf Board to file a suit representing the cause of Muslim community particularly for protection of a property which it claims to be a "waqf property". This is the principal function under the Act 1936, substituted by various subsequent Acts, as discussed above. Even if the Waqf Board is treated to be an "other authority" under Article 12 of the Constitution and covered by the term 'State' as defined under Article 12 of the Constitution, there is no impediment in the way of Sunni Central Waqfs Board in maintaining its suit.

1244. **Issue 28 (Suit-5)** reads as under:

> *"Whether the suit is bad for want of notice under Section 65 of the U.P. Muslim Waqfs Act, 1960 as alleged by defendants 4 and 5? If so, its effect."*

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1245. Defendant No.4-Sunni Central Waqf Board (Suit-5) in para 45 of the written statement dated 26/29 August, 1989 has pleaded about the non-maintainability of suit for want of notice and it reads as under:

> *"That as the subject matter of the instant suit is a waqf property and stands registered as a waqf in the Register of Waqf maintained by the Sunni Waqf Board under section 30 of the Waqf Act and a Gazette notification in respect thereto has also been issued by the State Government in 1944 and the same stands recorded as a mosque even in the revenue record and other government records and the same is even accepted as a mosque by the State Government and its officers in the written statements filed*

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in Regular Suit No. 2 of 1950 as well as in Regular Suit No. 25 of 1950, (the instant suit could not be instituted against the answering defendants until the expiration of two months next after notice, in writing, had been delivered or left at the office of the Board as per requirement of Section 65 of the U.P. Muslim Waqf Act, 1960 and no such notice having been given to the answering defendants by the plaintiffs, the suit is not maintainable and is liable to be dismissed).”

1246. To examine the correctness of the above objection, let us consider Section 65 of U.P. Act No.XVI of 1960 which reads as under :

*“**Notice of suits by parties against the Board**.- No suit shall be instituted against the Board in respect of any act purporting to be done by it in pursuance of this Act or of any rules made thereunder until the expiration of two months, next after notice in writing has been delivered to or left at the office of the Board, stating the cause of action the name, description and place of residence of the plaintiff and the relief which he claims; and the plaint shall contain a statement that such notice has been so delivered or left.”*

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1247. From a bare reading of Section 65 of 1960 Act it is evident that the same would apply where a suit is filed questioning the validity of any action of the Waqf Board. It clearly says that in respect of any act purporting to be done by the Board in pursuance of 1960 Act or of any rules made thereunder, if a suit is filed, the same would not be maintainable unless a two months' notice has been given in writing to the Board giving the details, as mentioned in the aforesaid provision. Suit-5 does not challenge any action of the Waqf

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Board taken under 1960 Act or the rules framed thereunder. *Ex facie,* the above provision is inapplicable considering the relief sought by the plaintiffs (Suit-5) which is confined to a declaration that the property in dispute therein belong to plaintiffs themselves and have sought a permanent injunction against the defendants prohibiting them from interfering with or raising any objection or placing any obstruction in construction of a new temple at the disputed site.

1248. Learned counsel for the defendants 4 and 5 (Suit-5) could not show as to how Section 65 would be attracted in respect of Suit-5. In fact they could not show that any action of the Waqf Board taken under 1960 Act or rules framed thereunder has been the cause of action for filing Suit-5. We therefore, have no hesitation in holding Section 65 of U.P. Act No.XVI of 1960 has no application in respect to the reliefs sought in Suit-5 and therefore, the suit cannot be held "not maintainable" for want of notice.

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1249. Since the provisions itself is not applicable, as we have said, the question of considering its effect does not arise. The issue is answered accordingly.

1250. Though no such issue specifically has been framed, but during the course of argument Sri P.N.Mishra, learned counsel appearing for defendant No.20 (Suit 4) pointed out that U.P. Act No.XVI of 1960 has been repealed by Central Act No. 43 of 1995 i.e. Waqf Act, 1995 (hereinafter referred to as '1995 Act')which has came into force on 01.01.1996. He drew our attention to Section 112 of 1995 Act which read as under :

> *"Repeal and savings.-(1) The Waqf Act, 1954 (29 of 1954) and the Waqf (Amendment) Act, 1984 (69 of 1984) are hereby repealed.*

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(2) Notwithstanding such repeal, anything done or any action taken under the said Acts shall be deemed to have been done or taken under the corresponding provisions of this Act.

(3) If, immediately before the commencement of this Act, in any State, there is in force in that State, any law which corresponds to this Act that corresponding law shall shall stand repealed;

Provided that such repeal shall not affect the previous operation of that corresponding law, and subject thereto, anything done or any action taken in the exercise of any power conferred by or under the corresponding law shall be deemed to have been done or taken in the exercise of the powers conferred by or under this Act as if this Act was in force on the day on which such things were action was taken."

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1251. He submits that since all State Laws have also been repealed by sub-section (3) of Section 112, U.P. Act No.XVI of 1960 is no more operative since 1st January, 1996. He also drew our attention to Section 87 of 1995 Act which reads as under :

*"**87. Bar to the enforcement of right on behalf of unregistered waqfs**.-(1) Notwithstanding anything contained in any other law for the time being in force, no suit, appeal or other legal proceeding for the enforcement of any right on behalf of any waqf which has not been registered in accordance with the provisions of this Act, shall be instituted or commenced or heard, tried or decided by any Court after the commencement of this Act, or where any such suit, appeal or other legal proceeding had been instituted or commenced before such commencement, no*

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such suit, appeal or other legal proceeding shall be continued, heard, tried or decided by any Court after such commencement unless such waqf has been registered, in accordance with the provisions of this Act.

(2) The provisions of sub-section (1) shall apply as far as may be, to the claim for set-off or any other claim made on behalf of any waqf which has not been registered in accordance with the provisions of this Act."

1252. It is contended by him that the notification dated 26th February, 1944 in respect to the property having been held invalid, no suit in respect to an unregistered waqf is maintainable and Section 87 encompass even the pending suits. He submits that even hearing or trial of the pending suit in respect to an unregistered waqf is not permissible.

1253. Sri Jilani, learned counsel for the plaintiffs (Suit-4) raised serious objection to the above argument pointing out that since no such issue has been framed, it would not be permissible for this Court to look into this aspect of the matter and the above argument has to be rejected outright as not entertainable.

1254. We gave our serious thought to the matter. Since Section 87 of 1995 Act prohibits even pending suits from being heard and tried in respect to an unregistered waqf and this being a mandate of law, this Court cannot ignore the same merely because there is no formal issue framed in this respect particularly considering the fact that enactment of 1995 Act is a subsequent event and the said Act has come into force during the pendency of this matter i.e. at the stage when this Court started recording evidence. However, we find that the question whether Suit-4 cannot proceed by virtue of the mandate contain in Section 87 of 1995 Act is not a pure question of law since

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condition precedent for attracting the said provision is that the waqf has not been registered with the Board at all.

1255. Despite our enquiry from the learned counsel for the defendant No.20, Sri Mishra could not show any such pleading in the written statement or additional written statement. In fact no such averment has been made in any of the written statement or additional written statement of any of the defendants that the property in dispute is not a registered waqf.

1256. On the contrary, Sri Jilani drew our attention to his written statement dated 26/29 August, 1989, para 45 (quoted above) (Suit-5) and para 16 of the written statement dated 24.2.1989 of defendant no. 10 (Suit-1) wherein it is averred that the property in question is a waqf property registered as a waqf in the register of waqf maintained by the Sunni Waqf Board under Section 30 of Act XVI of 1960. Sri Jilani pointed out that Section 30 of U.P. Act No.XVI of 1960 provides for register of waqfs, which is to be maintained by the Board containing details of each such waqfs.

1257. It is not the case of any of the defendants (Suit-4) that there is no registration or that registration was not done validly in accordance with the procedure prescribed under the Act or the averments contained in para 45 of the written statement of defendants No.4 (Suit-5) or para 16 of the written statement of defendant no. 10 (Suit-1) is factually incorrect. Since the question as to whether a particular waqf property is a registered one or unregistered one is a question of fact and there being an averment stating that the disputed property is a registered waqf, which has not been pleaded to be incorrect by the other side, we are of the view that Suit -4 filed by the Waqf Board and others cannot be held not maintainable by virtue of

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Section 87 of 1995 Act.

1258. It would also be important to notice that the Notification under Section 5 of Act of 1936 was held invalid by the learned Civil Judge in 1966, to be more precise on 21st April, 1966. The defendant No.4 had filed its written statement in Suit 5 on 26/29 August, 1989 stating that the property in question is registered as waqf in the register of waqfs maintained by the Board under Section 30 of Act 16 of 1960. There are three ways in which details of Muslim waqfs can be collected and thereafter they are to be entered in the register maintained by the Board; (i) pursuant to the notification issued by the Board after enquiry made by the Waqf Commissioner; (ii) On an application made by the Mutwalli of the concerned waqf; and (iii) Suo moto by issuing notice by the Board to the Mutawalli of the Waqf..

1259. The averments that the disputed building is registered as 'waqf' in the Board under Section 30 of Act 16 of 1960 having not been seriously challenged by the plaintiffs (Suit-5), no issue on this aspect has been framed. Lots of amendments were made in the pleadings after the decision of the Apex Court in **Dr. Mohammad Ismail (supra)** but no amendment or addition of any issue in this regard has been found necessary by any of the parties opposing the authority of the Sunni Board in pursuing Suit-4 as plaintiff or other suits as defendant. Mere declaration of the Notification issued under Section 5 of Act 1936 as invalid would not deprive the Sunni Board to take steps for registration of the building in dispute as waqf in the register maintained by it under Act 16 of 1960. In the absence of any factual foundation, it would not be justified for this Court to take recourse of Section 87 of 1995 Act and non suit Sunni Board or other muslim parties.

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1260. Sri Mishra, however, made some detailed legal arguments on this aspects hence we propose to consider such submissions to find out substance, if any, therein.

1261. It is said that Section 87 has a non obstante clause and therefore its mandate shall prevail not only over any contract but to any other law for the time being in force. Reliance is placed on **Union of India and Others Vs. SICOM Ltd. and Anr. 2009 AIR SCW 635** (at page 638) where para 3 reads as under:

> *"3. Mr. Shekhar Naphade, Learned senior counsel appearing on behalf of the respondent, on the other hand, submitted that principle that a crown debt prevails over other debt is confined only to the unsecured ones as secured debts will always prevail over a crown debt. Our attention in this behalf has been drawn to the non obstante clause contained in Section 56 of the 1951 Act. It was furthermore contendd that for the self-same reason Section 529A in the Companies Act was inserted in terms by way of special provisions creating charge over the property and some of the State Government also amended their Sales Tax Laws incorporating such a provision. The Central Government also with that view, amended the Employee's Provident Funds and (Miscellaneous) Provisions Act, 1952 and Employee's State Insurance Act, 1948.*
>
> *The learned counsel appears to be right."*

1262. Reliance is also placed on **State Bank of India Vs. Official Liquidator of Commercial Ahmedabad Mills Co. and Others 2009 CLC 73** where Gujrat High Court in para 13 of the judgement observed:

> *"Section 529-A of the Act opens with a non obstante*

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clause… Therefore, the said provision has an over writing effect not only qua the provisions of the act but also any other law for the time being in force...".

1263. The proposition with respect to a provision having non obstante clause being a well established legal principal admits no doubt. However this by itself may not result in any consequence to the suits in question.

1264. Sri Mishra further submitted that the prohibition contained against unregistered waqf is quite reasonable and in accord with the judgement of the Apex Court in **Bhandara District Central Cooperative Bank Ltd. and Others Vs. State of Maharashtra and Anr. 1993 Supp (3) SCC 259** wherein Section 145 of Maharashtra Cooperative Societies Act, 1996, which barred an unregistered society from using the word 'cooperative' in its name or title, was held reasonable and in the interest of general public. There is no challenge to the correctness of Section 87 of 1995 Act and therefore, in our view, the aforesaid submission and the authority cited would have no application in this case.

1265. Relying on a decision of Andhra Pradesh High Court in **Pamulapati Buchi Naidu College Committee Nidubroly and Ors. Vs. Government of Andhra Pradesh and Ors. AIR 1958 A.P. 773,** it was submitted that registration of waqf confers right upon the Sunni Central Board of Waqf to sue or be sued in respect of the affairs and properties of the registered waqf while in case of unregistered waqf of alleged Babari Masjid, the Sunni Central Board of Waqf has no right to maintain Suit-4. In the above decision it was held that if a society is not registered under the Act, it would have the character of an association which cannot sue or be sued except

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in the name of all the members of the association. Registration of the society confers on it certain advantages. Once the society is registered, it enjoins the status of a legal entity apart from the members constituting the same and is capable of suing or being sued. To the same effect is another authority relied by Sri Mishra i.e. **Radhasoami Satsang Sabha Dayalbag Vs. Hanskumar Kishanchand AIR 1959 MP 172** wherein the Court said that the registration under the Societies Registration Act confers on a society a legal personality and make it corporation or quasi corporation capable of entering into contracts.

1266. In our view, the submission as well as the reliance on the aforesaid judgments in the case in hand is thoroughly misconceived though the ratio of the said authorities is unexceptionable. It is not the case of defendant No.20 that the Sunni Central Waqf Board, a statutory body, was not constituted in accordance with the provisions contained in U.P. Act, 1936. The U.P. Muslims Waqf Act whether of 1936 or 1960 or the Central Waqf Acts of 1954 or 1995 neither create a waqf nor extinguish one, if it already exists. They recognize the waqfs created and existing in accordance with the law of Islam and make provisions for proper administration and maintenance thereof primarily so as to avoid any maladministration, misfeasance of waqf property. Registration of waqf in effect, considering in the light of the provisions of the aforesaid enactments, only means that the waqf is known to the concerned Waqf Board as to whether it is a Shia waqf or Sunni waqf and having entered their name in the register, the concerned Board should be in a capacity to supervise management and administration etc. of such waqfs. The purpose of enactment is

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public interest so that the waqf property may not be misappropriated or misused. With this objective the legislature intend to compel so as to have a complete picture of all existing valid waqfs created in accordance with Islamic law, has made such provision. By itself, it neither affects the existence of a waqf which though created in accordance with the Islamic law but for one or the other reason could not have been entered in the register of the concerned Waqf Board nor extinguish it. Besides, Section 87 it does not say that a pending suit in respect of a waqf which has not been registered shall stand abated or be dismissed but provides that it shall not be tried, or heard or decided by the Court, after the commencement of the Act, unless such waqf has been registered in accordance with the provisions of 1995 Act. Meaning thereby even during pendency of a matter, such a waqf can be registered by the Waqf Board and thereafter the suit, if pending but deferred, would continue and can be heard and decided.

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1267. It is also contended that under U.P. Act, 1936, a waqf can be registered by the Sunni Board pursuant to its name find mention in the gazette issued by the Central Board under Section 5(1) or if it is registered on an application of Mutawalli under Section 38(2) or where the Central Waqf Board has issued direction to concerned Mutawalli to apply for registration of a waqf or supply any information regarding waqf. It is said that the notification dated 26th February 1944 qua the alleged waqf in question having been declared invalid, registration based thereon also becomes null and void. Further that there is no registration as per the procedure prescribed in Section 38 or 40 of 1936 Act, it cannot be said that the Sunni Board can maintain a suit on behalf of such a waqf since Section 18(1) and (2)

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enable the concerned Board to maintain suit in respect of administration and recovery of lost properties only of those waqfs to which the provision of the Act applies. It is contended that the Act being inapplicable to waqf in question due to its non registration, the plaintiffs have no right to maintain Suit-4 and it is liable to be dismissed.

1268. In our view, there is no occasion to consider this aspect of the matter for reasons more than one. The notification under Section 5(1) of 1936 Act has been held invalid so far as the alleged waqf in question is concerned. This is not disputed by the learned counsels appearing for the plaintiffs (Suit-4). However, there is a presumption on the part of the defendant No.20 that the alleged registration claimed by the plaintiffs (Suit-4) in para 45 of written statement in Suit-5 is based on the notification dated 26th February, 1944 and none else though defendant 4 (Suit-5) (Central Sunni Waqf Board) has taken this stand in para 45 of their written statement by referring to Section 30 of Act 16 of 1960 and not that of U.P. Act, 1936. There is no averment in pleadings of any of the Hindu parties including defendant No.20 that this averment of defendant No.4 in Suit No.5 is incorrect or that there is no registration of the waqf in question at all. In the absence of any such facts pleaded by the concerned parties and in particular defendant no. 20, we find no reason to consider this aspect of the matter merely on the presumption of defendant No.2 particularly when the question is a mixed question of fact and law and in the absence of specific factual pleading, it would not be appropriate to presume certain facts and thereafter decide the applicability of Section 87 of 1995 Act in this case.

1269. In the written submissions Volume 2 at page 254

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para 11 it has been contended by Sri Mishra:

> *"As after invalidation of notification under Section 5(1) of the United Provinces Act, 1936* ***neither fresh survey of the waqf in question was caused under Section 6 of the Uttar Pradesh Muslim Wakfs Act, 1960 nor application for registration was made under Section 29(2) of the said Act of 1960 within a period of three months nor the Board did take any steps for registration of the said wakf under Section 31 of the said Act of 1960.*** *The alleged wakf remained unregistered wakf to which neither 1936 Act nor 1960 Act or 1995 Act are applicable as such the Plaintiff Wakf Board has no locus standi and instant Suit is hit by the provision of Section 87(1) of the Wakf Act, 1995. As such, the instant suit is not fit for being continued, heard, tried or decided and is liable to be dismissed on this score alone."*

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1270. In respect to the procedure to be followed under 1960 Act without there being any pleading, the learned counsel has presumed that neither any registration was made under Section 29(2) nor any steps were taken under Section 31 of Act 16 of 1960 nor any fresh survey of the waqf in question was made under Section 6 of the aforesaid Act, hence the waqf in question remain unregistered. In the absence of any pleading, we find it difficult to entertain the above submission involving pure factual aspects which ought to have been pleaded. Reference is also made to Section 66E of Waqf Act, 1954 but Sri Mishra, learned counsel could not dispute that Waqf Act, 1954, which was a Central Act, was not made applicable to the State of Uttar Pradesh and therefore, reliance on the said provision is wholly misplaced.

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1271. Sri Mishra referred to Section 6 of the Societies Registration Act, 1860 and Section 69(2) of Partnership Act, 1932 which are concerned to registered Society or Firm but in our view, the same would have no application to the case in hand for the reason we have already discussed above with reference to the decisions in **Pamulapati Buchi Naidu College Committee Nidubroly (supra)** and **Radhasoami Satsang Sabha Dayalbag (supra).**

1272. Referring to Section 2 of Shariyat Act, 1937 as amended by Madras Act 18 of 1949 as also the Apex Court's decision in **C.Mohammad Yunus Vs. Syed Unnissa and Ors. AIR 1961 SC 808,** it is contended that the Act was applied to all cities and provinces but in our view, neither the aforesaid provisions nor the decision of the Apex Court in **C. Mohammad Yunus (supra)** has any relevance with the point in question.

1273. Referring to certain documents, which are on record, and the translation provided thereof, Sri Mishra has submitted in his written arguments as under:

> A. In the application for registration of waqf made under section 38 of the United Provinces Muslim Waqfs Act, XIII of 1936 being exhibit 38 on pages 199 to 205 of the Volume No.11 of the documents filed in the instant suit by the Plaintiffs in its column no.3 it has been stated that there is no waqf but the waqifs are Emperor Babar and Nawab Sa'-a-Dat Ali Khan. Below column no.16 there is a note which says that the claim of the alleged Mutwalli's family is that the within mentioned property said to be granted for maintenance of the alleged Babari Mosque at somewhere else is not a waqf but a Service Grant in their favour. The aforesaid application tells the

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Emperor Babar and Nawab Sa'-a-Dat Ali Khan as joint waqifs which is quite impossible because the Emperor Babar died in 1530 AD while Nawab Sa'a-Dat Ali Khan ascended on throne in 1732 AD as such the persons who were not contemporary and there was a gap of 202 years between the former and later they cannot be joint waqifs of same of one waqf alleged to be Babri Masjid Waqf. This fact alone totally falsify the claim of the plaintiffs that the alleged waqf was created by the Emperor Babar. The grant in question was also a service grant not a waqf. The person who made application namely, Syed Kalbe Hussain had also his vested interest as it appears from the note of the application that his intention was to file a case against the persons who were enjoying their property claiming the same to be a service grant; from being motivated with such spirit and he made the aforesaid application for registration making fraudulent dishonest false and frivolous statements.

B. Be it mentioned herein that the plaintiffs have used fraud upon this Hon'ble Court by producing wrong transliteration of the note contained in said application for registration. Though in its original Urdu text it has been recorded that the persons recorded in revenue records do not consider it waqf but in Hindi transliteration thereof the plaintiffs by deleting the word 'nahi' of vital importance which finds place in between the words 'waqf' and 'tasleem' have made it meant that those persons says that it is waqf and nankar mafi. This fact came into light when the original text was read over in open Court by the Hon'ble Justice S.U.Khan, J. during my argument.

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C. In the list of Sunni Waqfs published in supplement to the Government Gazette of United Provinces dated 26th February, 1944 under Section 5 of U.P. Muslim Waqfs Act, XIII of 1936 to which, according to the report of the Commissioner of waqfs, the provisions of the said Act apply; on page 11 at serial no.26 (being the volume No.12 of the documents filed in the instant suit) it has been notified that Babri Mosque is located at Qasba Shahnawa not at Ramkot in Ayodhya. Hindi transliteration of relevant page of the said gazette notification containing the name of Badshah Babar on serial No.26 is on page no.341 to 345 of volume 12 of the documents filed in the instant suit. Hindi Transliteration of the proforma of the list as well as the entries against item no.26 of the said reads as follows:

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	नामे वाकिफ या वक्फ	नाम–ए–मतवली मौजूदा	नौ इयते जायदाद मकूफा
26	बादशाह बाबर	सैयद मोहम्मद जकी मतबली मस्जिद बाबरी कस्बा शाहनबा डाकखाना दर्शनगर	

From the above Gazette notification dated 26th February, 1944 it appears that Badshah Babar had erected a Mosque in Shahnawa town within the postal jurisdiction of Darshan Nagar of which Syed Mohammed Zaki was Mutawalli. The said gazette notification did not say that there was a mosque in Ramkot Pargana Havelli, Ayodhya in the district of Faizabad. As such said Babri Mosque Waqf cannot be construed to be waqf of any other Babri Mosque located anywhere else.

D. In the said gazette notification dated 26th February, 1944 (on page 479 of the volume 12 of the documents filed in the instant suit) another Babri Mosque along with

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the Mausoleum of the Emperor Babur has been mentioned in some other district perhaps in the district of Kanpur. It is well known recognized and admitted fact that the Mausoleum of the Emperor Babur is in Kabul, Afganistan not in India. This is glaring example of the facts of fraud, forgery and fabrication.

E. From the above mentioned relevant entries of the list of the gazette notification dated 26th February, 1944 it becomes clear that the waqf commissioners had not discharged their duties as it was cost upon them under the provisions of the United Provinces Muslim Waqfs Act, 1936 and in very casual manner either on hearsay they have listed several properties as of waqfs or the concern Waqf Commissioner were active participant in the fraud, forgery and fabrication.

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F. The Waqf Commissioner Faizabad's report dated 8th February, 1941 says that it appears that in 935 A.H. Emperor Babar built Babari or Janam Asthan Mosque at Ajudhya and appointed one Syed Abdul Baqi as the Mutwalli and khatib of the Mosque and for its maintenance an annual grant of Rs.60 was allowed by the said Emperor which continued till the fall of the Mughal kingdom. Later on said grant was increased by Nawab Sa-a-Dat Ali Khan to Rs.302/3/6 but no original papers about this grant by the king of Oudh are available. Relevant extract of said report reads as follows:

> "It appears that in 935 A.H. Emperor Babar built this mosque and appointed Syed Abdul Baqi as the mutwalli and khatib of the Mosque (vide clause 2 statement filed by Syed Mohammad Zaqi to whom a

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notice was issued under the Wakf Act.) An annual grant of Rs.60/- was allowed by the Emperor for maintenance of the mosque and the family of the first mutwalli Abdul Baqi. This grant was continued till of the fall of the Moghal Kingdom at Delhi and the ascendancy of the Nawabs of Oudh.

According to Cl. 3 of the written statement of Mohammad Zaki Nawab Sa'adat Ali Khan, King of Oudh increased the annual grant to Rs.302/3/6. No original papers about this grant by the king of Oudh are available."

From the aforesaid extract it is crystal clear that the Commissioner on the basis of mere statement of Syed Mohammed Zaki found that the Disputed Janam Asthan Structure was a mosque built by Emperor Babar which is in total discard to his duty cast upon him under said Act XIII of 1936.

G. Commissioner's said report dated 8th Feb. 1941 says that after the mutiny the British Govt. continued the above grant in cash upto 1864 and in the later year in lieu of cash some revenue free land in village Bhuraipur and Sholeypur was granted. The said report further records that Syed Mohammed Zaki produced a copy of the grant order of the British Govt. which was made on condition that Rajab Ali and Mohammad Asghar would render Police, Military or Political service etc. Thereafter the commissioner records that the above-mentioned object is elucidated in Urdu translation as follows:

"After the Mutiny, the British Government, also continued the above grant in cash upto 1864, and in

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the latter year in lieu of the cash grant, the British Government ordered the grant of some revenue free land in villages Bhuraipur and Sholeypur. A copy of this order of the British Government has been filed by the objector Syed Mohammad Zaki (vide Flag A). This order says that 'the Chief Commissioner under the authority of the Governor General in Council is pleased to maintain the Grant for so long as the object for which the grant has been made is kept up on the following conditions'. These conditions require Rajab Ali and Mohammad Asghar to whom the sannad was given, to perform duties of land holder in the matter of Police Military or political service etc. Thus the original object of the state grant of Emperor Babar and nawab Sa'adat Ali Khan is continued in this Sunnad by the British Government also i.e. maintenance of the mosque. The Nankar is to be enjoyed by the grantees for so long as the object of the grant i.e. the mosque is in existence."

H. In fact, this Urdu elucidation is creation of the said Waqf Commissioner as it is not in the alleged Sunned being page 33 of the volume 6 of the documents filed in the instant suit. Hindi transliteration and meaning of the said elucidative Urdu text as incorporated in the Waqf Commissioner's said report reads as follows:

''उस नानकार को जबतक कि मस्जिद जिसके वास्ते ये नानकार दी गयी थी बरकरार है। हसबे शरायत,दर्ज जैल कायम फरमाते हैं (जो शर्तें लिखी गयी हैं उसे कहते हैं)''

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A handwritten copy of the said sunnad with some error has been reproduced at page 27 of volume 10 of the documents filed in the instant suit. In the said alleged original version of the grant Urdu elucidation did not find place. From the said alleged original version of the alleged grant, it becomes crystal clear that the grant, if any, it was a service grant for rendering police, military and political services to the British Govt. against the enemies of the British Govt. Be it mentioned herein that in those days in the eyes of the Britishers the persons who were fighting against them for liberation of their motherland i.e. India they were considered to be mutineers and enemies of the Britishers. As such it can be inferred that the said service grant was given for helping the Britishers to defeat and rout the freedom fighters, not for a good cause of maintaining any Mosque. Full text of the alleged SUNNAD from page 33 of Vol. 6 (hand written copy on page 27 of Vol. 10 that is not accurate) is reproduced as follows:

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"Chief commissioner's

It having been established after due enquiry, that Rajub ally and Mohamad Usgar received a Cash Nankar of (Rs.302.3.6) Rupees three hundred to and three annas and six pie from Mouzah Shanwah Zila Faizabad from former Government. The Chief Commissioner, under the authority of the Governor General in Council is pleased to maintain the grant for long as the object for which the grant has been made is kept the following conditions. That they shall have surrendered all sunnads, title deeds, and other

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documents relative to the grant. That they and their successor shall strictly (illegible) all the duties of land-holder in matter of police, and an (torn) or political service that they may be required of them by the authorities and that they shall never fall under the just suspicion of favouring in any way designs of enemies of the British Government. If any one of these conditions is broken by Rajub ally and Mohamad Usgar or their successor the grant will be immediately resumed."

I. From the aforesaid alleged to be original text of the grant as produced by the plaintiffs it becomes crystal clear that Urdu interpolation has been done by the said Commissioner with sole motive to deprive the Hindus from their sacred shrine of Sri Ramjanamsthan which has been described as Babri Mosque in the plaint as well as Janam Asthan Mosque in the said Commissioner's report. From the words 'Janam Asthan Mosque' itself it becomes clear that the alleged Mosque was erected over the birth place of someone, and since time immemorial said place is being worshipped by the Hindus asserting that it is the birth place of the Lord of Universe Sri Ram it is needless to say that according to the said Commissioner, the alleged Mosque was erected over the janamasthan of Sri Ramlala.

J. The said Waqf Commissioner after recording the facts that Syed Mohammed Zaki had submitted before him that the said British grant was a service grant in favour of his predecessors for rendering police, military and political services to the Britishers subject to resumption on

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non-fulfillment of the aforesaid conditions thus it was not a waqf property granted for maintenance of the alleged mosque; the commissioner without any cogent evidence rejected his said contention simply stating that he did not agree to that view because the grant was not originally granted by the Britishers but it was continuation of original grant granted by the Muslim rulers as also for the reasons that after the Ajodhya riot of 1934 Syed Mohammad Zaki had presented an application to Deputy Commissioner in which he had described himself as Mutawalli or trustee of the mosque and of the trust attached thereto. In fact, prior to coming on this reference, in the preceding paragraphs of his said report the said commissioner himself has recorded that no paper of old grant even of the Nawabs of Oudh was available and placed before him. It is contrary to the law of evidence to draw inference on the basis of the statement of a person whose credibility was found suspicious, doubtful and non-reliable. As in his report the commissioner records that said Syed Mohammed Zaki was an opium addict and most unsuited for the proper performance of the duties expect of a Mutwalli of an ancient and historical mosque, which was not kept even in proper repairs for which reason he recommended to discharge the said Mutwalli. Relevant extract from said report is reproduced as follows:

> "Syed Mohammad Zaki, the objector, who is known as the Mutwalli of the Babari mosque, and also called himself as such raises an objection to the land in Sholeypur and Bhuranpur being regarded as a waqf, because he says the grant has been made for

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his substenance only (in Urdu). In do not agree with this view of his. The written statement filed by Mohammad Zaki himself is sufficient to show that the grant has been continued ever since 935 A.H. only because he and his ancestors were required to look after the mosque and keep it in proper condition out of the income allowed to them and also to provide for the maintenance of himself and his ancestors out of a part of the same grant.

Clearly then the grant of land to Mohammad Zaki must be regarded as a Waqf, the purpose of which is the maintenance of the religious building known as the Babari Mosque.

The learned counsel for Mohammad Zaki has also argued.

1) That the particular grant of land in Sholeypur and Bhureypur has been made by the British Government. A Non-Muslim body and hence the grant cannot be regarded as Muslim Waqf.

2) That the grant is a conditional one, being subject to resumption on non fulfillment by the grantee of any of the police Military or duties enjoined in the Sunnad, and that on account of these conditions the grant cannot be classed as a Muslim Waqf.

I do not agree with either view. firstly the British Government only continued a grant which had been made by the Muslim Government originally and in these circumstances, I cannot but regard the grant as a waqf.

3) As for the second point the conditions have been

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imposed upon the grantee, and not upon the way in which the grant to be utilized, which latter purpose is recognised as maintenance of the mosque. It is clear that if the conditions are broken the enjoyment of the grant by the Mutwalli himself for his sustence is to be withdrawn apparently implying that any other mutwalli will then be appointed to administer the grant for the original purpose of maintaining the mosque. I am strengthened in this view because I find the mention of the object of the grant i.e. maintenance of the mosque at the very outset of the Sunnad and the desirability thereof seems to be clear from the whole Sunnad.

I also find that after the Ajodhya riot of 1934, Syed Mohammad Zaki presented an application (Flag Ex. A) to Deputy Commissioner, in which he clearly described himself as Mutwalli or trustee of the mosque and of the trust attached thereto.

I also find that this same Mohammad Zaki submitted accounts in 1925 in Tahsildar's court in which he stated that the income from the grant managed by him was utilized for maintenance of the mosque, pay of Imam Muezzin and the provisions of Iftari etc., during Ramzan after deduction of Rs.20/- per month for sustence of the Mutwalli himself. The pay of the Mutwalli spends a much greater portions of the income on his own personal needs.

K. The Wakf Commissioner Faizabad in his said report dated 8th Feb. 1941 says that he examined Abdul Ghaffar, the then pes Niwaz who deposed that the imam was not

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being paid for last 11 years and thereafter the said commissioner says that the then Syed Mohammud Zaki was an opium addict and most unsuited to the proper performance of the duties expected from an Mutwalli of an ancient and historical mosque, thus he was liable to be discharged from his duties. Relevant extract from the said report which is on page nos. 45 to 48 of the volume No. 6 of the documents filed in the instant suit read as follows:

> "The present Mutwalli is of course a Shia. There is no information as to the sect to which Abdul Baqi himself belonged, but the founder Emperor Babar- was admittedly a Sunni, the Imam and Muezzin at the mosque are Sunni and only Sunnis say their prayer in it. Abdul Ghaffar the present Pesh Niwaj was examined by me. He swear that the ancestors of Mohammad Zaki were Sunnis who latter on was converted to Shia. He further said that he did not receive his pay during the last 11 years. In 1936 the Mutwalli executed a pronote promising to pay the arrear of pay by installment but upto this time nothing actually was done. I think therefore that this should be regarded as a Sunni Trust.
>
> I must say in the end that from the reports that I have heard about the present Mutwalli, he is an opium addict (vide his statement flag Ez) and most unsuited to the proper performance of the duties expected of a Mutwalli of an ancient and historical mosque, which is not kept even in proper repairs. It is desirable that, if possible, a committee of management should be appointed to supervise the

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proper maintenance and repairs of the mosque and discharge of his duties by the Mutwalli."

L. From the second report of the Commissioner of Waqf Faizabad being report dated 8th February, 1941 it becomes clear that the Imam was not being paid since 1930 and the alleged Mutwalli was an opium addict and most unsuitable person and in 1934 riots on 27th March, the alleged Mosque was demolished it can be safely inferred that Sri Ramjanamsthan temple structure was being used as a mosque because it cannot be imagined that a person will discharge duty of imam without getting salary for such a long period as according to Islamic law, only salary is the prescribed means of livelihood no imam can survive for want of salary as such in fact neither there was any mosque nor there was any mutwalli or imam.

M. From exhibit-62 being page nos.367 to 405 of volume 12 of the documents filed in the instant suit which is a report of the four historians it becomes crystal clear that how said report has been prepared having some design in mind or inadvertently and negligently which reflects from page 397 of the said volume where the dimension of the vedi described by Tieffenthaler has been wrongly reproduced as "a square platform 5 inches above ground, 5 inches long and 4 inches wide, constructed of mud and covered with lime. The Hindus call it Bedi, that to say, the birth place. The reason is that here there was a house in which Beschan (Bishan = Vishnu) took the form of Ram". Though correct dimension given by Tiffenthaler reads "a square chest, raised five inches from the ground, covered with lime, about five ells in length by not more

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than four in breadth. The Hindoos call it bedi, the cradle; and the reason is, that there formerly stood here the house in which Beshan (Vishnoo) was born in the form of Ram." This correct translation is given in the book 'Modern Traveller' volume 3, published by James Duncan in 1828. It is crystal clear that in the report of said historians the word 'ells' has been translated as 'inches' in fact, ells means yards which has been correctly translated in the translation made available by the Govt. of India to this Hon'ble Court. Tieffenthelar has not stated that the Bedi was of mud, it is creation of the mind of the aforesaid historians, as such said report of the historians is not reliable for the reasons of being prepared by incompetent persons or for being biased, motivated.

N. The page No. 155 of volume 6 of the documents filed in the instant suit purported to be copy of a folio of a register contains a pedigree wherein it has been written that the mafi was created for the muezzin and khattib of masjid Babari of Oudh date and year of the waqf is unknown to Syed Baqi therefore his son Syed (illegible) Ali, his son Syed Hussain Ali who was in possession for about 60 years now his son-in-law Rajab Ali and his daughter's son Muhammad Asgar are in existence and were in receipt of cash from village Shahnawa vide receipt (illegible) till fasali year 1263. In the year 1264 fasali enquiry about mafi was started but riot took place (illegible) crop (illegible) year 63 fasali was found (illegible) original (illegible) of and is document (illegible) in respect of mafi (illegible) settlement of village versus (illegible). A copy of the said contents has

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also been compiled in the said volume no.6 of the documents filed in the instant suit on its page nos. 157 to 161.

O. From the said enquiry report it appears that during the period of 332 years people of five generations including Syed Baqi held the office of muezzin and khattib of alleged Babri mosque during the period of 1528 to 1860 which means 66½ years was average of each generations which is quite impossible as according to Life Insurance Corporation's assessment average span of a change of generation is 26 years. And this pedigree is completely false, forged and fabricated one. During this period 16 generations of the Mughal rulers elapsed average whereof comes about 20 ¾ years. In the matter of Radha Krishan v. State of Bihar the Hon'ble Supreme Court has laid down the principle of law to evaluate and judge authenticity of a pedigree which has been reproduced in this argument at relevant place.

P. The alleged documents and/or transliteration thereof being page nos. 53 to 61 of the volume no.6 of the documents filed in the instant suit tells that the alleged Babri Mosque was demolished by the rioters and Bairagis on 27th March, 1934. The damaged domes were beyond repair. The allege list of damages says that apart from damaging the building, the Hindus either burnt or took away with them three pieces of mats, six pieces of matress, one piece of box, two pieces sandal, six pieces of curtains, five pieces of pitchers, hundred places badhana mitti, four pieces of small earthen pot, one piece chahar, water pot (illegible) three pieces Kasauti Patthar Tarikhi, 3

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x 1½ sq. ft. one piece, ladder two pieces, large iron jar two pieces. From the said list it is crystal clear that no engraved stone i.e. inscription was either carried away by the rioters or destroyed by the rioters. As such the story of the destruction of inscription is wholly concocted and the inscription which was prepared by the contractor was done at the instance of the Britishers to deprive the Hindus from their religious place and make the said place as bone of contention between Hindus and Muslims to facilitate their policy of divide and rule. As it has been written in the East India Gazetteer 1828 p. 352, 2nd column last para as well as the preface of the Neil B.E. Baillie's Digest of Moohummudan Law Vol.2 Edn. 1875 Introduction p. xi and xii.

Q. In Waqf Commissioner's report dated Feb. 8 1941, it has been recorded that the alleged Babri Mosque was built by one Abdul Baqi on being ordered to do so by the Emperor Babur. He records that there is no document to show that grant was sanctioned to the said Mosque either by the Mughal Emperors or Nawabs of Oudh, but as in 1864 a sunnud was issued stating that the grant was given to the grantee for rendering military, police and political services. It may be presumed that it was granted in continuance of the grants of Mughal Emperors to Nawabs of Oudh right from the Emperor Babur. The said Commissioner in his waqf report has committed forgery and fabrication by inserting certain words in Urdu transcript to show that the grant was given for maintenance of the alleged Babri Mosque. In fact, said sunnud is on record and entire sunnud is in English

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language and nothing is written in the said sunnud in Urdu transcript as such question of grant for maintenance of Babri Mosque cannot and does not arise at all. He says that some return submitted in the office of Tahsildar in 1995 shows that though major expenses was done by the grantee for his own maintenance, but a portion thereof was spent on maintaining alleged Babri Mosque. Be it mentioned herein that if grant would have been spent on maintaining alleged Babri Mosque its account would have been submitted to the District Civil court which was made mandatory under the provisions of The Mussalman Wakf Act, 1923 under Section 3 of the said Act. Report also says that the Imam was not paid for last 11 years i.e. since 1930 as also that the Mutwalli is a drug addict and the alleged Mosque is in not good condition as such Mutwalli should be removed.

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1274. Suffice it to say that Section 87 would be attracted where a waqf is not registered under the Act. If there was some irregularity or discrepancy in the procedure observed, whether that would make a waqf otherwise registered by the Central Sunni Waqf Board as unregistered, is neither an issue framed nor there is requisite pleadings by the concerned parties giving an opportunity to plaintiffs (Suit-4) to place on record the relevant evidence. So far as the appreciation of the documents, referred to above in sub paras A to Q, we are clearly of the view that the same would not negate an otherwise positive assertion by defendant 4 (Suit-5) which is not disputed at all by the other side by challenging the said pleading. Moreover no issue on this aspect has been framed. In our view, the suits in question cannot be held to be barred by Section 87 of the Act.

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1275. There is another aspect. There are specific issues concerning the very existence of the waqf and creation of a valid waqf in accordance with Shariyat Law. Where such a basic issue is involved about the very existence of a waqf, whether in such a case also Section 87 would have any application or not, we have our serious doubts but on this aspect in the absence of any pleadings or arguments on the part of the respective parties we find no occasion to express a final opinion. We are not inclined to widen the scope of the suits in question, the canvass whereof is already enlarged extraordinarily and we have enough complicated issues to consider and decide having wider ramifications. In the totality of the circumstances, as also the discussion as above, we are clearly of the view that the suits in question cannot be held untriable at this stage by virtue of Section 87 of 1995 Act. The submission of Sri P.N.Mishra, learned counsel for defendant 20 in Suit-4 with reference to Section 87 of 1995 Act is hereby rejected. We, however, make it clear that the submissions with respect to various documents in the above mentioned paragraphs F to Q are in fact not relevant to the above aspect of the matter. We intend to consider it later on while deliberating on the concerned issues involving those documents and their effect.

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(E) Miscellaneous issues like representative nature of suit, Trust, Section 91 C.P.C., non joinder of parties, valuation/ insufficient Court fee/under valuation and special costs.

1276. **Issue no. 6 (Suit-4)** reads as under:

> "*Whether the present suit is a representative suit, plaintiffs representing the interest of the Muslims and defendants representing the interest of the Hindus?"*

1277. Issue no. 6 (Suit-4) pertains to the nature of the suit

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in a representative capacity in respect to both the parties, i.e., plaintiffs and defendants. It is not disputed by learned counsel for the parties that the Civil Judge passed order dated 08.08.1962 under Order 1 Rule 8 CPC permitting plaintiffs to represent the interest of Muslims and the defendants to represent the interest of Hindus. The relevant part of the order says:

> *"I therefore allow appln 4-C and reject the objections 77-C & 97-C. The pltffs are permitted to sue representing the entire Muslim community and the pltffs are also permitted to sue the defdts no. 1 to 4 on behalf of and for the benefit of the entire Hindu community."*

None has made any submission otherwise. **The issue is answered accordingly in affirmance**.

1278. **Issue No.22 (Suit-4)** relates to special costs in case suit is dismissed. It reads as under:

> *"Whether the suit is liable to be dismissed with special costs?"*

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Learned counsel for the defendants have fairly stated that they do not press for any special costs and for they it would be sufficient if the suits are decided on merits expeditiously.

In the circumstances and in view of the above statement made on behalf of the learned counsel appearing for the defendants in Suit-4, **we answer Issue no.22 in negative i.e. no special costs need be awarded.**

1279. **Issues no. 11(a) and 11(b) (Suit-1)** reads as under:

> "*(a) Are the provisions of section 91 C.P.C. applicable to present suit? If so, is the suit bad for want of consent in writing by the Advocate General?*
>
> *(b) Are the rights set up by the plaintiff in this suit independent of the provisions of section 91 CPC? If not, its*

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effect."

1280. These issues are in respect to Section 91 CPC which reads as under:

> ***"91. Public nuisances and other wrongful acts affecting the public**.--(1) In the case of a public nuisance or other wrongful act affecting, or likely to affect, the public, a suit for a declaration and injunction or for such other relief as may be appropriate in the circumstances of the case, may be instituted,-*
>
> *(a) by the Advocate General, or*
>
> *(b) with the leave of the Court, by two or more persons, even though no special damage has been caused to such persons by reason of such public nuisance or other wrongful act.]*
>
> *(2) Nothing in this section shall be deemed to limit or otherwise affect any right of suit which may exist independently of its provisions."*

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1281. The onus to prove the above issue initially lie upon the defendants but no arguments have been advanced in respect to the above issue. Besides, we find from the record that Sri Chaudhary Kedarnath, Advocate, counsel of the plaintiff, Gopal Singh Visharad, who initially filed Suit-1, made a statement on 15.09.1951 under Order 10 Rule 2 stating that he is filing the above suit for enforcement of his individual right of worship and, therefore, has a right to maintain the above suit in his individual capacity. The relevant part of his statement is as under:

> *"Q. In what capacity does the plaintiff seek to exercise the relief which he seeks in the plaint.*
>
> *Ans. In my individual capacity.*

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Q. What is your individual capacity.

Ans. My individual capacity is distinct from public capacity and in this matter an idol worshipper."

1282. It also appears that an application was filed on behalf of defendants no. 1 to 5 under Order 1 Rule 8 CPC before the Civil Judge, Faizabad praying that the suit be treated to be in a representative capacity but the said application was rejected on 27.10.1951. The order has attained finality as nothing has been placed before us to show that the matter was taken up before the higher Court assailing the order dated 27.10.1951. Section 91 CPC does not take away the independent right of a person where such right partly relates to a public right of others also. It lays down merely the procedure to be adopted in a representative suit where a right of suit already exist. It did not confer or extinguish a new right on its own. In **Kadarbhai Mahomedbhai and another Vs. Haribhari Ranchhodbhai Desai and another, AIR 1974 Gujarat 120** a suit was filed by a person affected by public nuisance praying for removal of the public nuisance alleging special damage to him and it was held that such a suit is not barred either by Section 91 CPC or Order 1 Rule 8 CPC. To the same effect is the view taken by this Court in **Mst. Bhagwanti Vs. Mst. Jiuti and another, AIR 1975 Allahabad 341**. **In view of the above we answer issue no. 11(a) (Suit-1) in negative** and hold that neither Section 91 CPC is applicable to Suit-1 nor it is bad for want of consent in writing by Advocate General. **Issue No. 11(b) (Suit-1) is answered in affirmance**, i.e., the right of the plaintiff is independent as set up by him in the plaint as also in view of the statement under Order 10 Rule 2 CPC and has nothing to do with Section 91 CPC. The question of the subsequent part of the issue 11(b) need not be decided in view

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or our answer in favour of the plaintiff, i.e., in affirmance.

1283. **Issue no. 12 (Suit-1)** reads as under:

"Is the suit bad for want of steps and notice under Order 1, Rule 8 CPC? If so, its effect?"

1284. This issue is with reference to Order 1 Rule 8 CPC which reads as under:

"***8. One person may sue or defend on behalf of all in same interest.--****(1) Where there are numerous persons having the same interest in one suit,-*

(a) one or more of such persons may, with the permission of the Court, sue or be sued, or may defend such suit, on behalf of, or for the benefit of, all persons so interested;

(b) the Court may direct that one or more of such persons may sue or be sued, or may defend such suit, on behalf of, or for the benefit of, all persons so interested.

(2) The Court shall, in every case where a permission or direction is given under sub-rule (1), at the plaintiffs expense, give notice of the institution of the suit to all persons so interested either by personal service, or, where, by reason of the number of persons or any other cause, such service is not reasonably practicable, by public advertisement, as the Court in each case may direct.

(3) Any person on whose behalf, or for whose benefit, a suit is instituted or defended, under sub-rule (1), may apply to the Court to be made a party to such suit.

(4) No part of the claim in any such suit shall be abandoned under sub-rule (1), and no such suit shall be withdrawn under sub-rule (3), of rule 1 of Order XXIII, and no

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agreement, compromise or satisfaction shall be recorded in any such suit under rule 3 of that Order, unless the Court has given, at the plaintiffs expense, notice to all persons so interested in the manner specified in sub-rule (2).

(5) Where any person suing or defending in any such suit does not proceed with due diligence in the suit or defence, the Court may substitute in his place any other person having the same interest in the suit.

(6) A decree passed in a suit under this rule shall be binding on all persons on whose behalf, or for whose benefit, the suit is instituted, or defended, as the case may be.

Explanation.-For the purpose of determining whether the persons who sue or are sued, or defend, have the same interest in one suit, it is not necessary to establish that such persons have the same cause of action as the person on whose behalf, or for whose benefit, they sue or are sued, or defend the suit, as the case may be."

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1285. As we have already discussed above the application filed on behalf of defendants no. 1 to 5 under Order 1 Rule 8 CPC was rejected by Civil Judge, Faizabad by order dated 27.10.1951. The plaintiff had also made statement under Order 10 Rule 2 CPC that the right of worship, he is claiming by means of Suit-1, is his individual and personal right hence Order 1 Rule 8 CPC has no application. That being so, the question of taking steps and notice under Order 1 Rule 8 CPC does not arise. **Issue no. 12 (Suit-1) is accordingly answered in negative, i.e., in favour of the plaintiff (Suit-1)**.

1286. **Issue no. 15 (Suit-1)** pertains to non-joinder of defendants and says:

"*Is the suit bad for non-joinder of defendants?"*

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1287. It is not pointed out by any of the defendants as to who has not been impleaded as defendant though a necessary or proper party in the suit. No arguments have been advanced on this aspect and in the absence thereof **we answer issue no. 15 (Suit-1) in negative, i.e., in favour of the plaintiffs (Suit-1)**.

1288. **Issue no. 16 (Suit-1)** reads as under:

"*Are the defendants or any of them entitled to special costs under Section 35-A C.P.C."*

1289. It relates to special costs. Section 35A CPC says:

"35A. Compensatory costs in respect of false or vexatious claims or defenses.--*(1) If any suit or other proceedings including an execution proceedings but excluding an appeal or a revision any party objects to the claim of defence on the ground that the claim or defence or any part of it is, as against the objector, false or vexatious to the knowledge of the party by whom it has been put forward, and if thereafter, as against the objector, such claim or defence is disallowed, abandoned or withdrawn in whole or in part, the Court, if it so thinks fit] may, after recording its reasons for holding such claim or defence to be false or vexatious, make an order for the payment the object or by the party by whom such claim or defence has been put forward, of cost by way of compensation.*

(2) No Court shall make any such order for the payment of an amount exceeding three thousand rupees or exceeding the limits of it pecuniary jurisdiction, whichever amount is less:

Provided that where the pecuniary limits of the jurisdiction of any Court exercising the jurisdiction of a Court of Small Causes under the Provincial Small Cause

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Courts Act, 1887 (9 of 1887) or under a corresponding law in force in any part of India to which the said Act does not extend and not being a Court constituted under such Act or law, are less than two hundred and fifty rupees, the High Court may empower such Court to award as costs under this section any amount not exceeding two hundred and fifty rupees and not exceeding those limits by more than one hundred rupees:

Provided, further, that the High Court may limit the amount or class of Courts is empowered to award as costs under this Section.

(3) No person against whom an order has been made under this section shall, by reason thereof, be exempted from any criminal liability in respect of any claim or defence made by him.

(4) The amount of any compensation awarded under this section in respect of a false or vexatious claim or defence shall be taken into account in any subsequent suit for damages or compensation in respect of such claim or defence."

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1290. Learned counsels for the defendants have at the outset stated that they do not press any cost whatsoever and for them the biggest compensation would be the decision of the matter at the earliest and, therefore, none has pressed the above issue. **In the result issue 16 (Suit-1) is answered in negative, i.e., in favour of the plaintiff (Suit-1)**.

1291. **Issues no. 11, 12 and 15 (Suit-3)** read as under:

"Is the suit bad for non-joinder of necessary defendants?"

"Are defendants entitled to special costs u/s 35

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CPC?"

"Is the suit property valued and court fee paid sufficient?"

1292. None has pressed the above issues inasmuch as neither any submissions have been advanced as to who is the necessary party not impleaded in the suit rendering it bad for non-joinder nor the learned counsels for the defendants have pressed for special cost and on the contrary very fairly have said that the decision of the suit at the earliest is itself the biggest cost to them. No arguments have been advanced with respect to the valuation and the Court fees in the matter. **We, therefore, answer issues no. 11 and 12 (Suit-3) in negative, i.e., in favour of the plaintiffs (Suit-3). Issue no. 15 (Suit-3) is answered in affirmance, i.e., in favour of the plaintiff (Suit-3)**.

1293. **Issue no. 20 (Suit-5)** reads as under:

"Whether the alleged Trust creating the Nyas , defendant no.21, is void on the facts and grounds stated in paragraph 47 of the written statement of defendant no.3?"

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1294. Defendant no. 3 represented by Sri R.L. Verma, Advocate has not placed anything before this Court to show as to how the alleged trust defendant no. 21 is void. Besides, defendant no. 21 is not seeking any relief as such before us. The question as to whether the alleged trust is void or not would have no material bearing on the matter to the relief sought in Suit-5 which has been filed on behalf of two deities through next friend. We, therefore, find no reason to answer the aforesaid issue in the present case. **Issue no. 20 (Suit-5), therefore, remain unanswered** since it is unnecessary for the dispute in the present case to adjudicate on the said issue. The learned counsel for defendant no. 3 (Suit-5) also could not make

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any submission persuading us to take a different view.

(F) Issues relating to the Person and period- who and when constructed the disputed building:

1295. Mainly there are three issues under this category which requires adjudication on the question whether the building in dispute was constructed in 1528 AD and whether the construction was made by Babar or under his orders by any of his agent including Mir Baki.

1296. To be more precise, issues no. 6 (Suit-1), 5 (Suit-3) and 1(a) (Suit-4) fall in this category.

1297. **Issue No.6 (Suit-1)** reads as under:

> *"Is the property in suit a mosque constructed by Shahanshah Babar commonly known as Babri Mosque, in 1528 A.D.?"*

1298. Defendants no.1 to 5 (Suit-1) in para 9 of their written statement said:

> *''**दफा 9.** यह कि जिस जायदाद का मुद्दई ने दावा किया है वह शहन्शाह हिन्द बाबर शाह की तामीर करदा मस्जिद मौसूमा बाबरी मस्जिद है। जिसको शहंशाह मजकूर ने बाद फतेहआबी हिन्दुस्तान दौरान कयाम अयोध्या अपने वजीर व मुदारूल मोहाम मीर बाकी के एहतमाम से सन् 1528 ई0 में तामीर कराया और तामीर करके तमाम मुसलमान के लिए वक़्फ आम कर दिया। जिसमें तमाम मुसलमान का हक इबादत है।''*
>
> ***"Para 9.** That the property regarding which the plaintiff has filed the suit, is the mosque built by Babar, emperor of India, which is called Babri Masjid. It was built by the aforesaid emperor, after his conquest of India, in the year 1528 through his Governor and confederate (मुदारूल मोहाम) Mir Baqi during his stay at Ayodhya and after building the same, he created a universal Waqf in favour of Muslims in general, and all the Muslims have the right of worship over*

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there." (E.T.C.)

1299. In the replication filed by the plaintiff, he denied the existence of Babri Masjid in para 9 and said:

''बाबरी मस्जिद होने से इन्कार है।''

"Its existence as Babri Mosque is denied" (E.T.C.)

1300. The defendant no.10 (Suit-1) in para 2 and 10 of the written statement have said:

"2. .... and the same was constructed during the regime of Emperor Babar....."

"10. That the property in suit is an old mosque constructed around the year 1528 A.D. during the regime of Emperor Babar under the supervision of Mir Baqi and the same has always been used as a mosque and it was never used as a temple or as a place of worship for any other community except muslims."

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1301. **Issue No.5 (Suit-3)** reads as under:

"Is the property in suit a mosque made by Emperor Babar known as Babari Masjid?"

1302. In Suit-3, defendants no. 6 to 8 in written statement dated 28th March, 1960 in para 15 have said:

''धारा 15.. यह कि जिस जायदाद का मुद्दैयान ने दावा किया है वह शहनशाह हिन्द बाबर बादशाह के तामीर करदा मसजीद मौसमे बाबरी मसजिद है जिसको शहनशाह मजकूर ने अपने वजीर व मदारूल मोहाम मीरबाकी के एहतमाम से 1528 ई0 में तामीर कराया और मुसलमानान के लिये वक्फ आम कर दिया जिसमें तमाम मुसलमान का हक इबादत है।''

"Para 15. That the property regarding which the plaintiff has filed a claim, is a mosque built by Babur, Emperor of India, and is known as Babri Masjid. The mosque was built by the afore-named Emperor through his Secretary and Commander, Mir Baqi in 1528 and was given in public waqf to Muslims in which Muslims in general have a right

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of worship." (E.T.C.)

1303. The plaintiffs (Suit-3), in replication, have denied para 15 of the written statement and said:

"15. The allegations contained in para 15 of the written statement are totally incorrect and are denied. The property in suit is neither a mosque nor is it known as Babri Mosque, nor was it built by Emperor Babar nor is it known as Babri Mosque, nor was it built by Emperor Babar through Mir Abdul Baqi. Nor was it made wakf. The property in suit is the temple of Janma Bhumi."

1304. **Issue No.1(a) (Suit-4)** reads as under:

"When was it built and by whom-whether by Babar as alleged by the plaintiffs or by Meer Baqi as alleged by defendant no.13?"

1305. Plaintiffs (Suit-4) in para 1 and 2 of the plaint have said:

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"1. That in the town of Ajodhiya, Pergana Haveli Oudh there exits an ancient historic mosque, commonly known as Babri Masjid, built by Emperor Babar more than 433 years ago, after his conquest of India and his occupation of the territories including the town of Ajodhiya, for the use of the Muslims in general, as a place of worship and performance of religious ceremonies."

"2. That in the sketch map attached herewith, the main construction of the said mosque is shown by letters A B C D, and the land adjoining the mosque on the east, west, north and south, shown in the sketch map attached herewith, is the ancient graveyard of the Muslims, covered by the graves of the Muslims, who lost the lives in the battle between emperor Babar and the previous ruler of

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Ajodhiya, which are shown in the sketch map attached herewith. .....The mosque and the graveyard are in Mohalla Kot Rama Chander also known as Rama Kot Town, Ayodhya. The Khasra number of mosque and the graveyard in suit are shown in the Schedule attached which is part of the plaint."

1306. Defendants no.1 and 2 (Suit-4) while denying paras 1 and 2 of the plaint, in written statement dated 12th March, 1962 have in para 2 pleaded:

"2. That para 2 of the plaint is absolutely wrong and is denied. There was never any battle between Babar and the ruler of Ajodhya on any graveyard or mosque built as dictated by the said Babar."

1307. Defendant no.2 (Suit-4) in his written statement dated 25th January, 1963 while denying paras 1 and 2 (Suit-4), has further pleaded in para 2 of his written statement:

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"2. That para 2 of the plaint is absolutely wrong and is denied, there was never any battle between Babar and the ruler of Ajodhya on any grave yard or Mosque alleged to the built (as dictated) by the said Babar."

1308. Defendants no. 3 and 4 (Suit-4), in their written statement dated 22/24 August, 1962 have pleaded in paras 1 and 2 as under:

"1. The allegations contained in para one of the plaint are totally incorrect and are denied. There does not exist any mosque known as 'Babri Masjid' in Ajodhya – Nor was any mosque built by Emperor Baber in Ajodhya more than 460 years ago as alleged- Nor did Babar made any conquest or occupation of any territory in India at the time alleged in the plaint- The story of the mosque as narrated

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in plaint para 1 is a pure fiction."

"2. The allegations contained in Para 2 of the plaint are totally incorrect and are denied. The alleged sketch map is entirely false and imaginary and is the outcome of the plaintiffs fancy. On the Khasra no mentioned in the sketch map there stands neither any mosque nor any grave. The story of the alleged battle between Emperor Babar and any previous ruler of Ajodhya, whose name the plaintiffs are unable to mention in the plaint is pure canard. Neither did any Muslim lose his life in any battle on the land of the said Khasra Nos nor is there any grave or grave yard of any Muslim at the said place. . . . The real facts are that the said Khasra numbers pertain to the 'Temple of Janam Bhumi' and other land appurtenant thereto."

1309. In the additional written statement dated 28/29 November, 1963, the defendants no.3 and 4 (Suit-4) in para 38 said:

"Emperor Babar never built a mosque as alleged by the plaintiffs and...."

1310. Defendant No.13/1 (Suit-4) Dharam Das in his written statement dated 24th December, 1989 in para 1 said:

"1. That the contents of paragraph 1 of the plaint are denied. It is submitted that Babar was not a fanatic but a devout Muslim who did not believe in destroying Hindu temples, it was Mir Baqi, who was a Shia and commanded Babar's hords, who demolished the ancient Hindu temple of the time of Maharaja Vikramaditya of Sri Rama Janma Bhumi, and tried to raise a mosque-like structure in its place with its materials."

1311. Doubting the very factum whether the disputed

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building was constructed by Babar during his regime the defendant no.20 (Suit-4) in his written statement dated 5th November, 1989 in paras 32, 33, 34, 35 and 36 has said:

> *"32. ...There appears to be no description of any so called Baburi Masjid allged to have been constructed by Emperor Babur.*
>
> *"33. That the Faizabad Gazetteer, Volume 43 (XLIII) of the District Gazetteers of the United Provinces of Agra and Avadh compiled by Sri H.R. Nevill, I.C.S., published by Government Press in 1905 under the topic 'Directory' while dealing with Ayodhya (at page 12-F) affirmed that "The Janmsthan was in Ramkot and marked the birthplace of Ram". Later on, it is said, "The Mosque has two inscriptions, one on the outside and the other on the pulpit; both are in Persian and bear the date 935 Hizri, of the authensity of the inscriptions there can be no doubt, but no record of the visit to Ayodhya is to be found in the Musalman historians. It must have occurred about the time of his expedition to Bihar." It is to be noted that nothing has been found so far to establish the visit of Babur to Ayodhya. Only on the basis of these two inscriptions, the conclusion is being drawn all round that the mosque was built by Babur. It is very doubtful that it was so built. It appears to be a creation of Britishers sometimes in the Nineteenth century in order to create hatred between the two communities of India viz. Hindus and Muslims and thereby implement an effective policy of communal disharmony, and thereby create problems of law and order so that their annexation of Avadh may be justified on moral grounds. The script on the outer inscription of the mosque*

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is pretty bold and more artistic, a style which was developed sometimes in the middle half of the Nineteenth century while the inner inscription is very fine and thin, a style developed in the latter half of the Nineteenth century. It is therefore absolutely certain that on the basis of these two inscriptions it cannot be concluded that either the mosque was build in 1528 AD or in 935 Hizri, or it was built by Emperor Babur or his Governor Mir Baqui, as stated therein."

"34. That in the U.P. District Gazetteers Faizabad published by U.P. Government in 1960 and edited by Smt. Esha Basanti Joshi at page 47 quotes the inscription inside the mosque and relies on it for the date of construction of the mosque. The translation of the inscription in Persian given by her is as follows-

"By the command of Emperor Babur whose justice is an edifice reaching upto the very height of the heavens. The good hearted Mir Baqui built this alighting- place of angels; Buvad Khair Baqi: (May this goodness last for ever). The year of building it was made clear when I said Buvad Khair Baqi (=935)."

This also shows that for both the things i.e. for year of construction and for naming Emperor Babur as the builder of the mosque, authorities have relied upon only on two inscriptions found in the mosque."

"35. That in the Babur Nama translated by Annette Susannah Beveridge, Vol. II published by Sayeed International, New Delhi, in appendix 'U' the heading is 'The Inscriptions of Babur's mosque in Ayodhya (Awadh)'. While reproducing the inscription inside the mosque, and

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translating it at page IXXVIII after quoting the cuplets and giving its translation and working out the number 935 to identify the year, the author at the bottom appended the following notes, which is very important-

'Presumably the order for building the mosque was given during Babur's stay in Aud (Ayodhya) in 934 A.H. at which time he would be impressed by the dignity and sanctity of the ancient Hindu shrine- it (at least in part) displaced and like the obedient follower of Muhammad he was in intolerance of another Faith, would regard the substitution of a temple by a mosque as dutiful and worthy. The mosque was finished in 935 A.H. but no mention of its completion is in the Babur Nama. The diary for 935 A.H. has lost much matter, breaking off before where the account of Aud might be looked for. On the next page the author says, 'The inscription is incomplete and the above is the plain interpretation which can be given to the cuplets (aforesaid) that are to hand."

"36. That the Britishers in achieving their object got a book published in 1813 by Laiden and known as Memoirs of Badruddin Mohd. Babur, Emperor of Hindustan and for the first time in this book it was stated that Babur in March 1528 passed through Ayodhya and even though Laiden has not mentioned that Babur in Ayodhya demolished the Hindu temples and built the mosque in their place, yet the British rulers gave currency to this false news that Babur demolished the Ram Janma Bhumi Mandir and constructed the Baburi Masjid thereon. The translated Babur Nama, Memoirs of Babur, published in 1921 and translated by M.A.S. Beveridge has mentioned that Babur

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never interfered with the religion of others and even though he visited various Hindu temples he appreciated their archaeological beauties. It appears there are no evidences that Babur ever visited Ayodhya or demolished any Hindu temple in Ayodhya. To claim the disputed mosque as one built by Babur 400 years ago by the plaintiffs is therefore wholly wrong. In fact, in Faizabad Gazetteers 1960 at page 352, it is said 'It is said that at the time of Muslim conquest there were three important Hindu shrines (Ayodhya) and little else, the Janmasthan temple, the Swargadwar and the Treta-ke-Thakur. The Janmasthan was in Ramkot and marked the birth place of Ram....."

1312. In para 41, 46, 49 and 50, defendant no.20 though has given some other reasons to show that the building in dispute was not constructed in 1528 AD by Babar but they are more in the nature of characteristics of mosque etc. and therefore, we propose to refer while considering those issues.

1313. Sri Zafaryyab Jilani submitted that it has never been doubted by any authoritative Historian and others that the building in dispute was constructed in 1528 AD under the command of Babar by one of his commander Mir Baki. He admits that the said findings are based on the inscriptions fixed on the disputed building, which came to be noticed for the first time by Dr. Buchanan in the earlier part of 19th century and has consistently been acknowledged and affirmed thereafter by several authorities like Robort Montgomry Martin, P. Karnegi, Alexander Cunningham, W.C.Benett, A.S.Beveridge as well as the ASI. He contends that for the first time this novel argument has been advanced by defendant no. 20 raising doubt over

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whether the building in dispute was constructed by Babar or not though nothing has been placed on record to prove the same.

1314. Per contra, challenging the very basic submission of the plaintiffs (Suit-4) about construction of the disputed building by Babar in 1528 AD based on the inscriptions installed thereat, Sri Misra very ably argued that the basic premise itself is unsubstantiated, baseless and false. He said that it is an admitted position that Babar was a Sunni Muslim governed by Hanafi school of law as mentioned by A.S. Beveridge in her work titled as **"Babur-Nama"** *(hereinafter referred to as the "Babur-Nama by Beveridge")* translated in English from original Turki text, first published in 1921 (reprinted in 2006 by Low Price Publications, Delhi). On page 15, faith of Babur is described in the following manner:

> *"He was a true believer (Hanafi mazhablik) and pure in the Faith, not neglecting the Five Prayers and, his life through, making up his omissions. He read the Qur'an very frequently and was a disciple of his Highness Khwaja 'Ubaidu'l-lah (Ahrari) who honoured him by visits and even called him son."*

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1315. Sri Misra points out that in "Babur-Nama by Beveridge" the daily description of Babar by two days in Hijra 934 has not been given though for the entire earlier part a *de die-diem* description is given. However, in Hijra 935, narration of events for about 5 months and more is missing. Babar when invaded India entered from the northern front and defeated Sultan Ibrahim Lodi, Emperor of Delhi in the battle of Panipat in April, 1526 AD. He became king/Emperor of the entire area of which Sultan Ibrahim Lodi was exercising his authority as Emperor of Delhi. There was no change of reign in the matter of

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religion inasmuch as Ibrahim Lodi was also a Muslim and Babar defeated him, therefore, the Muslim rule continued. There was only a change of the Ruler. So far as Oudh is concerned, it was ruled directly by Delhi Emperor, i.e., Ibrahim Lodi and with his defeat the said area immediately fell within the authority of Babar. In **"Babur-Nama by Beveridge"** the arrangement of Oudh area, has been narrated at page 527 under the head "Action against the rebels of the East" as under:

> *"Sl. Ibrahim had appointed several amirs under Mustafa Farmuli and Firuz Khan Sarang-khani, to act against the rebel amirs of the East (Purab). Mustafa had fought them and thoroughly drubbed them, giving them more than one good beating. He dying before Ibrahim's defeat, his younger brother Shaikh Bayazid-Ibrahim being occupied with a momentous matter-had led and watched over his elder brother's men. He now came to serve me, together with Firuz Khan, Mahmud Khan Nuhani and Qazi Jia. I shewed them greater kindness and favour than was their claim; giving to Firuz Khan I krur, 46 laks and 5000 tankas from Junpur, to Shaikh Bayazid I krur, 48 laks and 50,000 tankas from Aud (Oude), to Mahmud Khan 90 laks and 35,000 tankas from Ghazipur, and to Qazi Jia 20 laks."*

1316. Sri Mishra says that Shaikh Bayazid, was an appointee of Babar but soon after appointment he (Bayazid) revolted and declared himself independent. About the appointment of Bayazid, on page 544, **"Babur-Nama by Beveridge"**, it says:

> *"Humayun, in accordance with my arrangements, left Shah Mir Husain and Sl. Junaid with a body of effective*

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braves in Juna-pur, posted Qazi Jia with them, and placed Shaikh Bayazid (Farmuli) in Aude (Oude).”

1317. When Bayazid revolted, to defeat him and some other rebel commanders, the Babar while proceeded towards Bihar moved via Ayodhya, Jaunpur etc. On 28th March, 1528 he reached near Ayodhya. However there is nothing in Babur-Nama to show that he ever entered the city. When Babar came near Ayodhya, the name of his commander was “Chin Timur”. There is no mention of any person as “Mir Baqi” in the entire **Babur-Nama by Beveridge**, who ever entered Ayodhya as a commander of Baber’s army or otherwise. Bayazid fled away from Ayodhya hearing arrival of Babar and his army. Baber’s commanders chased him from one place to another. Bayazid was ultimately killed by Humayun. There is no mention of a battle between Babar or his army and the then ruler of Ayodhya in 1528 AD. There was no occasion of burying muslims who were killed in the alleged battle in the graves, claimed to exist near the disputed site.

1318. **“Babur-Nama by Beveridge”** shows that Babar was not fond of destroying temples and instead he visited temples having idols at Gwalior and appreciated the Artistry thereof. It is only at one place where he found naked idols being extremely indecent which he ordered to destroy but not otherwise. Sri Mishra says that the very basis of the pleadings of Muslim parties that there was a battle between Babar and the then ruler of Ayodhya in 1528 AD is false and unsubstantiated.

1319. Referring to the inscriptions which are the basis of identifying the period of construction of disputed building by Babar i.e. 1528 AD, he said that the alleged inscriptions are

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nothing but a subsequent forgery. They were not installed in 1528 AD as claimed. He submits that the first reference of the inscription is found in **"Gazetteer of Territories under the Government of East India Company and of the Native States on the Continent of India"** by **Edward Thornton**, first published in 1858 AD (reproduced in 1993 by Low Price Publications, Delhi) and at page 739 it says that according to native tradition the temples were demolished by Aurangzabe, who build a mosque on the part of the site. The falsehood of the tradition is however, proved by an "inscription on the wall of the mosque", attributing the work to the conqueror Babar, from whom Aurangzabe was fifth in descent. He says that the said inscription has not been quoted in the said gazetteer. However, the Archaeological Survey of India in its book titled as **"The Sharqi Architecture of Jaunpur"** by A. Fuhrer, first published in 1889, reprinted in 1994 has reproduced the "inscriptions" said to be found on the disputed building at Ayodhya and whatever is mentioned therein has much difference to the text of the inscriptions quoted by Beveridge in her book i.e. "Babur-Nama". This difference fortify the fact that they were subsequently implanted. Some words are different which show that the said building was not constructed at the instance of Babar in 1528 AD.

1320. Fuhrer in Chapter X of the book **"The Sharqi Architecture of Jaunpur"** has given details of inscriptions found at the disputed building at Ayodhya. He points out that Beveridge claimed that texts of the inscriptions on Babar's Mosque in Ayodhya were received by her through her husband's inquiry made from the Deputy Commissioner of Faizabad. She has given details of the said inscriptions in Appendices 'U' at

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page lxxvii in 'Babur-Nama by Beveridge' (supra). The footnote, item two, says that a few changes in the turm of expressions have been made for clearness sake. Again with respect to the date of building she has tried to read it as 935 and in the footnote she says that presumably the order for building the mosque was given during Babur's stay in Aud (Ajodhya) in 934 A.H. though Babur-Nama itself shows that Babar reached near Ayodhya at the end of 934 A.H. and only two days of Hizra 934's description is missing.

1321. Sri Misra then referred to the third version of inscriptions published by ASI in **"Epigraphia Indica Arabic and Persian Supplement (in continuation of Epigraphia Indo-Moslemica) 1964-1965"** (reprinted in 1987). The chapter under the heading "Inscriptions of Emperor Babar" is said to have been written by Late Maulavi M. Ashraf Husain. The inscriptions dated A.H. 935 from Ayodhya are at page 58, 59, 60, 61 and 62. The opening part of the Chapter make certain comments about writer in the following words:

> *"A rough draft of this article by the author, who was my predecessor, was found among sundry papers in my office.* ***At the time of his retirement in 1953****,* ***he had left a note*** *saying that it might be published after revision by his successor. Consequently, the same is published here* ***after incorporation of fresh material and references and also, extensive revision and editing****. The readings have been also checked, corrected and supplemented with the help of my colleague, Mr. S.A. Rahim, Epigraphical Assistant,- Editor."*

1322. On page 58 the author refers to the reading of inscriptions by A. Fuhrer and says that he (Fuhrer) has

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incorrectly read it. In the last paragraph it says that the mosque contains a number of “inscriptions”. On the eastern facade is a *chhajja* below which appears a Quranic text and above an inscription in Persian verse. On the central mihrab are carved religious texts such as the Kalima (first Creed), etc. There was another inscription in Persian verse built up into right hand side wall of the pulpit. Of these, the last two mentioned epigraphs have disappeared. They were reportedly destroyed in the communal vandalism in 1934 AD but the writer of the chapter Sri Ashraf Husain managed to secure an inked rubbing of one of the them from “Sayyid Badru'l-Hasan of Faizabad”. He further says that the present inscription restored by the muslim community is not only in “inlaid Nasta'liq” characters, but is also slightly different from the original, owning perhaps to the incompetence of the restorers in deciphering it properly. The author further declare the translation and reading of inscription by “Fuhrer” and Beveridge both incomplete, inaccurate and different from the text. Sri Hussain has based his entire conclusions from the estampage claimed to have been received from Saiyyid Badru's Hasan of Faizabad whose credentials have not been given. In the bottom note it has said that the tablet was found in 1906-07 AD by Maulavi M. Shuhaib of the office of the Archaeological Surveyor, Northern Circle, Agra (Annual Progress Report of the Office of the Archaeological Surveyor, Northern Circle, Agra, for 1906-07, Appendix-D. The author had deciphered the three inscriptions on pages 59, 60, 61 and 62.

1323. Sri Mishra submits that the differences in inscriptions appear for the reason that the same were not installed in 1528 AD for the simple reason that no such

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construction at all took place at that time. He refers to the record of Tieffenthaler and submits that Tieffenthaler himself was a fine scholar with an unusual talent for languages. Besides his native tongue (Austrian) he understood Latin, Italian, Spanish, French, Hindustani, Arabic, Persian and Sanskrit. He argued with vehemence that had such inscriptions been available when Tieffenthaler visited Ayodhya after arriving in India in 1740 AD, he himself could have read it and would not have said in his work that an existing temple was demolished by Aurangzabe to construct three domed structure thereat (also mention that some says that the demolition and construction was made by Babar). Had the inscriptions been there, he would have clearly written that the said work was of Babar and not by Aurangzabe.

1324. Sri Mishra says that the actual demolition and construction, as the case may be, took place later on and was not done by Babar. He says that Mir Baqi is not a name but 'Baqi' means 'Bakshi', i.e., commander of an army of 100 men and 'Mir' is a title used to be given to civilian muslims at that time. Besides, there is no mention of any one named “Mir Baqi” who stayed at Ayodhya and undertook the above job. He submits that forgery of inscriptions by replacing and travelling from one place to another is not unknown. In this regard he referred to the inscriptions of “Rajputon Ki Masjid”. He also points out that “Fuhrer” mentions of only two inscriptions while in **“Epigraphia Indica 1964-65”** there is mention of three/four inscriptions. According to him the inscription might have been installed between 1776 to 1807 though the building in dispute might have been raised earlier but neither by Babar nor during his time nor by anyone at his instance.

1325. The other learned counsels appearing on behalf of

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Hindu parties adhered to their stand that a Hindu temple was demolished in 1528 AD under the command of Babar and thereafter building in dispute was constructed. However, the learned counsels submitted that their stand is not taken to be in refuting or challenging the stand taken by Sri P.N.Mishra, learned counsel appearing on behalf of defendant no.20 (Suit-4) and the same be examined by this Court on the basis of its own merits, in the light of the arguments advanced by him as also contradicted by the learned counsels appearing on behalf of Muslim parties and they (Hindu parties) be not treated to have joined this issue with the Muslim parties. They however submit that their basic premise continue that is demolition of temple at the birthplace of Lord Rama and construction of disputed building.

1326. The question as to whether the building in dispute was constructed in 1528 AD at the command of Babar or by Babar himself is a very important and pivotal issue, which may have its reflection on several other issues in all these connected suits. We proceed to examine this aspect of the matter very carefully.

1327. The root of the entire controversy is the disputed building which is said to have been constructed by Emperor Babar through his Commander/ Governor/Confederator, Mir Baqi. In the pleadings of muslim parties, though there is some difference in the language, but in an undisputed manner it has been pleaded that the building in dispute got constructed in 1528 AD by Emperor Babar after his conquest of India through his Commander/Governor/Confederator, Mir Baqi. This is what is the stand also taken by plaintiffs (Suit-5) and some other Hindu Parties.

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1328. Though already referred, but in a concised recapitulation, we may tell hereat that in para 1 of the plaint (Suit-4) it is averred that in Ayodhya there exist an ancient historic mosque commonly known as "Babri Masjid", built by Emperor Babar more than 433 years ago after his conquest of India and his occupation of the territories including the town of Ajodhya. It is also said in para 2 that on the land adjoining the said mosque, on all the four sides, there existed graveyard of Muslims who lost lives in battle between Emperor Babar and the previous ruler of Ajodhya. Suit having been filed in 1961, 433 years took it back to 1528 AD.

1329. In Suit-1, defendants No.1 to 5 in para 2 of their written statement dated 21st February, 1950, have said that the disputed building is a mosque constructed by Emperor Babar. In para 9, (additional pleas), it is averred that the disputed building is Babri mosque constructed by Emperor Babar of India, after conquest of India, during his stay at Ayodhya through his Minister/Commander Mir Baqi. The building in dispute was constructed in 1528 AD. Similar averments are made by defendant no.10 i.e. Sunni Central Waqf Board (Suit-1) in paras 2 and 10 of their written statement.

1330. In Suit-3, defendants No.6 to 8 in para 15 of their written statement, have said that the disputed building is a Babri Mosque constructed by Emperor of India through his Minister/Commander Mir Baqi in 1528 A.D.

1331. In Suit-5, defendant No.4 Sunni Central Waqf Board in para 13 of written statement dated 26/29 August, 1989, has said that the property in dispute is an old mosque known as Babri Mosque constructed during the regime of Emperor Babar. This has been reiterated in para 24. However, in para 24-B

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defendant No.4 states that the land in question undoubtedly belong to the State when the mosque in question was constructed on behalf of the State. He further says that Emperor Babar built the Babri Mosque on a vacant land lay in his State territory and did not belong to any one . It could very well be used by his officers for the purpose of mosque especially when the Emperor himself consented and gave approval for construction of the said mosque.

1332. The defendant No.5 (Suit-5) in para 40 of written statement dated 14/21st August, 1989, has averred that according to the inscription in the mosque, the same was constructed by Mir Baqi, one of the Commander of Babar in 1528. The existence of mosque in 1528 AD has been reiterated in para 67. The written statement of defendant No.5 has been adopted by defendant No.6 vide his application dated 21/22 August, 1989.

1333. Defendant No.24 (Suit-5)in para 12 has referred to the period of construction of the disputed building as 1528 AD. However, in para 15 there is slight change in the stand to the effect that Emperor Babar never came to Ayodhya and the Babri Mosque was built by Mir Baqi and not Babar. The period of construction as 1528 has been reiterated in para 22.

1334. Defendant No.25 (Suit-5) though in general supported the claim of other Muslim parties but in the written statement dated 16/18 September, 1989 it has not disclosed any particular date of construction of the building in dispute. The pleading therefore is that the building in dispute was constructed in 1528 AD by Babar or with his consent by Mir Baqi, a senior officer of Emperor Babar, but the basis on which the said date is mentioned is not given in the pleadings.

1335. Except the defendant No.5 (Suit-5) who in written

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statement has given the basis of such averment i.e. the inscription installed on the building in dispute, no further details of such inscription has been given either by him or anyone else. We however find that the only foundation is the inscription on the disputed building to claim the period of construction as would appear hereinafter.

1336. On behalf of the plaintiffs (Suit-4), 32 witnesses have been examined in all which include Expert Historians (as they claimed) namely Suresh Chandra Mishra, PW 13; Sushil Srivastava, PW 15; Prof. Suvira Jaiswal, PW 18; and Prof. Shirin Musvi, PW-20. Besides, a large number of witnesses examined on facts have deposed mainly about continuous offering of Namaz in the disputed building till December, 1949, possession of Muslims on the disputed building but some of them have also said about date of construction of the disputed building being 1528 AD based on their knowledge derived from various sources but basically derived from the inscriptions said to be existed in the disputed building, inside and outside, and some on the basis of History books without referring any name. Some others who claimed Expert Archaeologists have also said same thing on this aspect.

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1337. It would thus be appropriate to see what has been said by these witnesses about the date/period of construction of the disputed building as also the basis of such information/opinion.

1338. **P.W.13 Sri Suresh Chandra Mishra** in his cross examination has said:

> *''बाबर मेरा चुनिंदा विषय था।'' (पेज 54)*
>
> *"Babur was my favourite subject." (E.T.C.)*
>
> *''मेरे अध्ययन के अनुसार बाबर अवध से होकर गुजरे थे। यह घटना सन् 1528 के आसपास की है। . . . विवादित ढॉचे का निर्माण सन 1528*

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में हुआ था। इस बात का जिक्र भी आता है कि सन् 1528 में यह किस समय निर्माण हुआ था, लेकिन मुझे अब याद नहीं आ रहा। ***अभिलेख के परिशिष्ठ में इसका जिक्र आता है।*** *'' (पेज 69)*

"As per my study, Babur had passed through Oudh. This incident occurred in and around 1528 . . . The disputed structure was constructed in 1528. There is also a mention as to which time in 1528 this construction was raised but I do not remember that at present. ***It is mentioned in the appendix to the document.*** *" (E.T.C.)*

''जिस समय मैं मौके पर गया था, तो ***मैंने इस अभिलेख यानी इन्सक्रिप्सनज को भी महत्वपूर्ण समझा था। लेकिन यह अरबी में थे।*** *क्योंकि यह अतिरिक्त सूचना है और विश्वसनीय सूचना है इसलिए इसे मैं अब बता रहा हूँ। पहले महत्वपूर्ण बताये गये चिन्हों और चीजों में इनका जिक्र मैंने नहीं किया था।'' (पेज 71)*

"At the time when I visited the site, ***I considered only these records, viz., inscriptions to be important. But they were in Arabic language.*** *As that is an additional and credible information, I am telling it now. I did not make mention of these things in the symbols and objects earlier stated to be important." (E.T.C.)*

''यह अभिलेख अरबी में थे और मैं अरबी भाषा नहीं जानता। ***ऐसा नहीं है कि मैं आदतन झूठ बोलता हूँ।*** *14.07.98 को इस अदालत में मेरा बयान हुआ था। उसमें मैंने यह वाक्य लिखवाया था कि ''वहॉ पर जो शिलालेख था, वह फारसी में लिखा हुआ था लेकिन उसके बारे में मुझे पहले से पता था। मेरा आज वाला बयान ठीक है कि वह अभिलेख अरबी में लिखा हुआ था। वास्तव में वह शिलालेख नहीं, अभिलेख था। मेरा पहिला वाला बयान कि वह फारसी में लिखा हुआ था, गलत था। यह मेरे समझने में गल्ती के कारण से हो सकती है।* ***क्योंकि मैं न ही तो फारसी जानता हूँ और न अरबी।*** *मैं लैटिन भी नहीं जानता।''*

(पेज 72)

"These records were in Arabic and I do not know

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Arabic language. ***It is not that I am a habitual liar.*** *I on 14.07.98 gave my statement in this court. In the statement I had caused it to be recorded that 'the inscription which was there, was written in Persian language but I had been in the know of that from earlier'. My today's statement is correct that the record was written in the Arabic language. Actually it was a record, not an inscription. My earlier statement to the effect that it was written in Persian language, was incorrect. It may be due to mistake in understanding it,* ***because I know neither the Persian language nor the Arabic language.*** *I do not know Latin either." (E.T.C.)*

"मैंने अपने अन्वेषण के समय जब पहली–पहली बार वहॉ पर इन्सक्रिप्सन देखें तो मैंने किसी को बुलवाकर उन्हें नहीं पढ़वाया। मैंने उस इन्सक्रिप्सन की किसी कागज पर नकल नहीं उतारी। मैंने कोई फोटो भी नहीं लिया। मैं पुस्तक साथ लेकर गया था। मैं सिर्फ मिसेज बेवरीज की किताब लेकर गया था। . . . ये वही इन्क्रिप्सन हैं, जो मुझे कल दिखाई गई पुस्तक के रोमन पृष्ठ –77 से 79 पर दर्शायी गयी हैं। मैंने मौके पर उन इन्सक्रिप्सन्स का मिलान इस पुस्तक में दिये गये इन्सक्रिप्सन्स के साथ किया और फिर इस निष्कर्ष पर पहुॅच गया कि यह वही मस्जिद है। यह बातें 1989 या 1990 की हैं, लेकिन एक्जेक्ट तिथि मैं नहीं बता पाऊॅगा।"(पेज 79)

"In course of my investigation, when I for the first time saw inscriptions there, I did not call anybody to read them out to me. I copied the inscription on paper. I did not take any photograph either. I had gone there with a book. I had gone there only with the book written by Mrs. Beveridge. . . . . These are those inscriptions that are shown on Roman pages from 77 to 79 of the book shown to me yesterday. On the site I tallied those inscriptions with the inscriptions given in this book, and then I came to an

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inference that it was that very mosque. This incident pertains to 1989 or 1990 but I am not in a position to tell the exact dates." (E.T.C.)

"अन्वेषण के लिए मैं अपना सारा सामान इस परिसर के बाहर रखकर खाली हाथ अन्दर परिसर में गया था और बाहर आकर मैंने अपना सामान वापस ले लिया। मैं अपना सारा सामान जिसमें मेरी पुस्तक भी शामिल थी, अपने एक साथी के पास परिसर से बाहर उस स्थान पर छोड़ गया था, जहॉ पुलिस चेक कर रहीं थी।" (पेज 79–80)

"In order to carry out investigation, I had gone inside the premises empty-handed and after keeping all my belongings out of the premises, and after coming out I took all the belongings. I had left all my belongings, including my book also, with a friend at a place outside the premises where the police was checking." (E.T.C.)

"प्रश्नः क्या आपने परिसर से बाहर रखी हुई अपनी पुस्तक में दी गई अभिलेखों की शैली और लिपि का मुकाबला परिसर में वाका भवन पर लगे अभिलेखों के साथ बाहर आकर कर लिया था?

उत्तरः मैंने बाहर आकर मेल–मिलान किया था। और अन्दर जाने से पहले उसे समझकर गया था।

यह दोनों प्रक्रियायें उसमें शामिल थी कि अन्दर जाने के पहले उस पुस्तक में दिये गये अभिलेखों को उनकी शैली और लिपि के साथ अपने मानस पटल पर अंकित किया और अन्दर जाकर भवन पर लगे अभिलेखों के साथ उसका मिलान किया और इसी तरह से अन्दर लगे अभिलेखों को देखकर उनकी शैली और लिपि को अपने मानस पटल पर अंकित कर लिया और बाहर पुस्तक में दिये गये अभिलेखों से उनका मिलान कर लिया।" (पेज 80)

"Question:- After coming outside, did you tally the style and script of the records given in your book kept outside the premises with the inscriptions at Waqua Bhawan in the premises?

Answer:- After coming outside I tallied the records

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and before going inside I had understood them.

This exercise included two processes, which were that before going inside I had recorded the style and script of the records in my mind and on going inside I tallied them with the inscriptions in the building and that I registered the style and script of the inside inscriptions in my mind and on coming out I tallied them with records given in the book." (E.T.C.)

"प्र0 – यदि आपको एपीग्राफी का एक्सपर्ट कहा जाये तो सही होगा या गलत?

उ0– शालीनता से मैं एपीग्राफी का जानकार होना स्वीकार करता हूँ।

प्र0– आप से प्रश्न किया गया था और यह जानना चाहता हूँ कि आप अपने को एपीग्राफी का विशेषज्ञ मानते हैं या नहीं?

उ0– यह यदि आत्मश्लाघा या अपनी तारीफ न समझी जाये तो मैं विनम्रतापूर्वक कह सकता हूँ कि आप मुझे इस वर्ग में रख सकते हैं।"

(पेज 111)

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"Question:- If you are called an expert in epigraphy, will it be correct or incorrect to say such?

Answer:- With humility I accept my being conversant with epigraphy.

Question:- You were queried and I want to know whether you consider yourself to be a specialist in epigraphy or not ?

Answer:- If it is not taken to be self-praise, I can humbly say that I can be placed under this category."(E.T.C.)

"अयोध्या के बारे में मैंने जो अध्ययन किया है, वह गहन अध्ययन भी है और शोध भी है।" (पेज 170)

"The study which I have made with regard to Ayodhya, is no only a deep study but a research

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also."(E.T.C.)

"मुझे याद नहीं आ रहा कि बाबरनामें में उसके द्वारा या उसके राज्यकाल में अयोध्या में किसी मस्जिद के निर्माण का जिक्र आया है या नहीं। ***बाबरनामा में जिक्र मीरबाकी का है न कि ''बाकी'' का।''*** *(पेज 196–197)*

"I fail to remember whether or not the Baburnama makes mention of the construction of any mosque in Ayodhya by him or during his reign. ***The Baburnama makes mention of Mir Baqi, not of 'Baqi'.*** *" (E.T.C.)*

"मुझे इस समय स्मरण नहीं आ रहा कि बाबरनामा में ''बाकीताशकन्दी'' और ''बाकीशगावल'' का भी जिक्र आया है या नहीं। अगर ऐसा कोई जिक्र आया है तो वह उसके सेनापति मीरबाकी के लिए नहीं हो सकता।'' (पेज 197)

"At present I fail to remember whether 'Baqitashkandi' and 'Baqisadwal' find mention or not in Baburnama. If there is any such reference, it cannot be for his army-chief Mir Baqi." (E.T.C.)

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"यह कहना गलत है कि परशियन भाषा का अभिलेख 1934 में कहे गये दंगों के बाद लगाया गया हो।'' (पेज 198)

"It is wrong to say that an inscription in Persian language was engraved after the riots which allegedly erupted in 1934." (E.T.C.)

"बाबर ने ***बाकीताशकंदी को अवध का प्रशासक बना दिया था।*** *मुझे यह बात स्पष्ट नहीं है कि यह बाकीताशकंदी वही व्यक्ति था या नहीं जिसे मीरबाकी के नाम से जाना जाता है। सम्भावना तो यही है कि बाकीताशकंदी और मीरबाकी एक ही व्यक्ति के 2 नाम हों। मैं इस बात को निश्चित रूप से नहीं कह सकता सिर्फ सम्भावना ही है कि यह दोनों नाम एक ही व्यक्ति के थे।*

इन्सक्रिप्शन के बारे में एक जर्नल इपीग्राफिका इंडिका प्रकाशित हुई हैं उसको मैंने पढ़ा है। *वास्तव में यह एक जरनल है जो हर साल प्रकाशित होता है। इसके एक अंक में एक इंसक्रेपशन*

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आया है, एक लेख आया है जिसमें बाबरी मस्जिद के अंदर 14 लाईनों के अभिलेखों का जिक्र है। इसमें 3 शिलालेखों का जिक्र है। मैंने कल इसी अदालत में बयान दिया था कि वहां पर केवल एक शिलालेख था। ***वास्तव में मेरा वह बयान जबान के स्लिप करने के कारण हुआ। और इस इम्प्रेशन में हुआ कि वहां किसी नये जाली इन्सकपशन का जिक तो नहीं हो रहा।*** *''*

(पेज 213)

*"**Babur appointed Baquitashkandi administrator of Oadh.** I am not clear whether or not this Baquitashkandi was the same person that has come to be known as Mir Baqi. The possibility is that Baquitashkandi and Mir Baqi are two different names of one and the same person. I cannot say this definitely. It is just a possibility that these two names were of the same person.*

***I have read a journal 'Epigraphica Indica' in regard to inscription.** Actually, it is a journal published every year. One of its editions makes mention of an inscription and contains an article which makes mention of inscriptions with 14 lines inside the Babri mosque. It makes mention of three pillar inscription. Yesterday I gave a statement in this very court that there was just one pillar inscription there. **Actually, that statement of mine was due to slip of tongue and under the impression that there should not be any mention of any new fake inscription.**"(E.T.C.)*

''मैंने जब विवादित भवन का निरीक्षण किया तो ***मौके पर 2 शिलालेख देखे थे। एक शिलालेख तो बाहरी द्वार पर लगा था और दूसरा सम्भवतः पेलपिट मिम्बर पर लगा था।*** *उसके ऊपर लगा हुआ था। निरीक्षण से पहले मुझे यह जानकारी नहीं थी कि वहां पर 3 शिलालेख हैं। मुझे केवल 2 का ही पता था। मुझे 1990–91 के पास यह लगा था कि वहां पर 3 शिलालेख हैं। यह जानने के बाद कि वहां पर*

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3 शिलालेख है मुझे निरीक्षण करने का मौका नहीं मिला और वैसे भी पढ़ने के पश्चात मेरी तसल्ली हो गयी कि 3 शिलालेख हैं और उससे ही मेरी जिज्ञासा की संतुष्टि हो गयी। शिलालेखों का निरीक्षण करने से पहले ही मुझे यह जानकारी हो चुकी थी कि उन पर क्या कुछ लिखा हुआ है।''

(पेज 214)

''When I observed the disputed building, ***I saw two pillar inscriptions on the site. One pillar inscription was at the exterior door and the other one was perhaps at fall fiat member.*** *It was above it. Prior to my observation, I did not have the knowledge that three pillar inscriptions were there. I had knowledge only of two ones. In and around 1990-1991 I came to know that three inscriptions are there. After knowing that three pillar inscriptions are there I did not have the opportunity for observation. As a matter of fact, after reading I got satisfied that three inscriptions are there and that alone satisfied my curiosity. Even before observation of the pillar inscription, I had got the information what was written on them.'' (E.T.C.)*

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''जहां तक मैं समझता हूँ, मुझे इस अदालत में गवाही के लिए इस विषय पर बुलाया गया है कि जिस भूमि पर विवाद है आया कि वहॉ किसी मन्दिर को तोड़कर मस्जिद बनाई गई थी या नहीं मैंने यह बयान दिया है''(पेज 224)

''As far as I understand, I have been summoned in this court to depose whether or not a mosque was constructed by demolishing a temple on the disputed site. I have given this statement,'' (E.T.C.)

*''मैंने कुछ कदम उठाये थे विवादित भवन की ऐतिहासिकता को जानने के लिए। ....**उस स्थल पर एक अभिलेख था,** जो बाबरी मस्जिद में था, उसको देखा। .... **अभिलेख से मेरा मतलब बाबरी मस्जिद में लगे हुए इन्सकिप्सन से है।**'' (पेज 276)*

''I had made some attempts to know the history of the

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*disputed structure. .... **I had seen a record at that place**, which was within the Babri mosque. .... **By record, I mean the inscription at the Babri mosque.**" (E.T.C.)*

"मुझे परशियन नहीं आती।" (पेज 287)

"I do not know Persian." (E.T.C.)

1339. The witness has claimed himself to be an Expert Historian and on page 111 has also claimed that he may be placed in the category of Expert in "Epigraphy". His statement on page 54 shows that Babar was his favourite subject. He is M.A. in Ancient History (Culture and Archeology) and Ph.D. He claims that having undergone a deeper inquiry and study on the dispute he concluded that the mosque was constructed by Mir Baqi and for this purpose there was no destruction of any kind at the disputed site. He referred to Skand Puran, Baburnama, his visit to Ayodhya before 1992 and the report (Exhibit D25, Suit-5) (Paper No. 110C1/96) submitted to the Government of India by Prof. R.S. Sharma, Prof. D.N. Jha and Prof. Suraj Bhan alongwith Prof. Athar Ali being his study material. However, he admits that he did not find any reference of construction of the disputed building/Babari mosque in Baburnama and it also contains no reference of Mir Baqi. On the one hand he accepts of being expert in Epigraphy (page 111) but simultaneously he admits that neither he knows Arabic nor Persian nor Latin, therefore, he had no occasion to understand the language in which the alleged inscription was written. In his statement dated 14.07.1998 he claims that the inscriptions were written in Persian but later on page 72 he retracted and said that the inscriptions were written in Arabic and his earlier statement was wrong for the reason that neither he understand Persian nor Arabic. He attempted this Court to believe in his knowledge of

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History being an Expert Historian in Ancient History and that he has made a deep study on the subject which is like a research and therefrom he has come to know that the building in dispute was constructed in 1528 AD by Mir Baqi but his cross examination shows that for arriving at the said conclusion, without any further inquiry into the matter, what was written about the inscriptions in Epigraphica Indica (1964-65) as well as Baburnama by Beveridge and on that basis he believed and concluded as above. The slipshod and casual manner in which he made inquiry about inscriptions is further interesting. On page 79 he says that he carried inside the disputed building, the book "Baburnama by Beveridge" and therefrom compared the script of the inscriptions with the text quoted in the said book and since the matter relate to 1989/1990 he is not able to tell the correct date but thereafter on page 79/80 he admits that for security reasons his entire belongings were made to be left outside the premises and he went inside the disputed building empty handed. The book was also left outside where police checking was going. On page 80 when his statement about comparison of the text of the inscription with the book was further examined he says that he kept the text after reading the book in his mind and compared it with the inscription. This wonderful memory of the witness has to be seen in the light of the fact that the witness admits that he knows neither Persian nor Arabic. On page 79 he also admits that he also do not know Urdu language.

1340. The correctness of his statement can further be scrutinised in the light of what has been written by Maulvi F. Ashraf Hussain in his paper published in Epigraphica Indica (1965) where he admits that the original two inscriptions were

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damaged in 1934 and replaced by new one. Therefore, in 1989/90 what PW 13 saw, were the inscriptions replaced in 1934 and not that text which was available to Mrs. Beveridge, she has quoted in her book published in 1921. The difference between the text of the inscriptions quoted by Beveridge and that which was available to Maulvi Ashraf Hussain which he published in Epigraphica Indica, we would be demonstrating a bit later. Suffice it to mention at this stage that the inscriptions which were available in 1989/1990, having been replaced in 1934 contains lot of difference. The alleged deep study/research of PW 13 thus become seriously suspicious and make this witness wholly unreliable.

1341. Further, he claims to have read **"Baburnama by Beveridge"** but on page 197 could not tell whether the names Baqi Shaghawal and Baqi Tashkandi are mentioned therein or not. His lack of knowledge in this matter is writ large from the fact that Mrs. Beveridge has suggested that it is probably Baqi Tashkandi whose name was mentioned in the inscription as Mir Baqi but PW 13 on page 197 says that even if the names of Baqi Tashkandi and Baqi Shaghawal have been mentioned in Baburnama that cannot be connected with the army chief Mir Baqi. He also says that there is reference of Mir Baqi in Baburnama but during the course of arguments the learned counsel for the plaintiff (Suit-4) admits that the words "Mir Baqi" as such are not mentioned in the entire Baburnama translated by Mrs. Beveridge or others but what he submits that most of the Historians are of the view that "Baqi Tashkandi" was "Mir Baqi" since he was given the command and made incharge of Awadh by Babar.

1342. In fact PW 15 another expert historian witness on

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page 85 has clearly said that “Mir Baqi's” name does not find mention in Baburnama. He also says that there is nothing in Baburnama which may co-relate “Baqi Tashkandi” with “Mir Baqi”.

1343. From the entire statement of PW 13 this much is evident that in his opinion for the period of construction of the building, i.e., 1528 AD, and the person who got it constructed, i.e., Mir Baqi, the ultimate reliance is on the inscriptions (whether two or three, that would be discussed later on) and no other authentic material. The opinion of PW 13 in this regard, however, is based on the information which he received from the book “Baburnama” by Mrs. A.S. Beveridge and Epigraphica Indica (1965) from which he was satisfied and concluded his opinion. Beside that, he had no other reliable information to form the said opinion.

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1344. At this stage we may also mention that Dr. S.C. Misra (PW 13) did his Ph.D. under Prof. D.N. Jha (page 49) and claims to be closely acquainted with him. On page 44 he has also admitted that except **Baburnama by A.S. Beveridge** he has read no other translation at all. On page 31 he says that he has intellectually analysed and contemplated whether God is a reality or not and has come to the conclusion that there is no existence of God, since, he had no occasion to come face to face with God. On page 53, he says that he has also studied the “History of India” written by “Romila Thaper” and has also consulted her in the course of so called deep study on the dispute in question and believed whatever she has written is correct. On the one hand he claims to be a man of scientific temperament and in order to believe anything he looks into the matter and several things, analyse them and only then come to a

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concrete finding (page 49) but on page 56 he says that on the basis of general conception among majority of people and also because of acceptance on the part of scholars he accepted that Islam emerged through revelation. From reading of the books enumerated he came to a conclusion that scholars opined that Islam appeared through revelation. On page 57 he admits that neither he know what "revelation" means nor has read the process of such revelation and, therefore, he is wholly ignorance of the term "revelation" and its meaning. At several places he sought to correct his statement made earlier which throw light on his knowledge of the matter, his confidence as also his memory. One of such aspect is about the constitution of ASI which he stated to be in 1934 on 14.07.1998 but later, on page 73/74, he admits the incorrectness in the earlier statement and rectify the same by stating that it was constituted in 18th century. In his research he admits of having not read any gazetteer or Government gazette (page 74-75). On page 88 he further contradicted to some extent his statement about his scientific temperament and says that in respect to "Allahoupanishad" he has made statement only on secondary basis. He also admits the falsity of statement that in 1968 he went to the disputed site alongwith his parents but did not go inside although the parents went (page 33) and on page 93 in this regard he has said:

> *"यह कहना भी गलत है कि मैंने उसमें यह गलत बयानी की हो कि जब मेरे माता–पिता इस भवन के अन्दर चले गये तो मैं बाहर खड़ा रह गया था। वैसे यह ठीक है कि सन् 66 और सन् 68 में भी इस विवादित परिसर के बाहरी मुख्य द्वार पर ताला बन्द था और कोई भी व्यक्ति अन्दर नहीं जा सकता था।" (पेज 93)*
>
> *"It is wrong to say that in the said testimony I have wrongly stated that when my parents went inside this building, I was left standing outside the building. However,*

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it is true that even in 1966 and 1969 the main outdoor of this disputed premises was locked and none could go inside." (E.T.C.)

1345. On page 167 PW 13 said that there is nothing like Sanatan Dharm and on the same page he said that the word "Hindu" is a mixed term which comprises several type of people including those who had their origin somewhere outside and who have assimilated in it. Nobody was original Hindu. It is subsequent concept. It commenced from circa 4th or 3rd BC.

1346. Learned counsel for the defendants (Suit-4) pointed out to us that PW 13 was **not an expert of Medieval History** and this is evident from his admission on page 152/153 where he says that he is teaching students Ancient History and his Ph.D. was limited to the study of Kautilya's Arthshastra. The relevant part of his statement on page 152/153 is:

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"जिस कालेज में मैं अध्ययन करता हूं, वहॉ भारतीय प्राचीन इतिहास में केवल मैं ही एक ऐसा व्यक्ति हूं जो रीडर के पद पर कार्यरत है। हमारे कालेज में इस विभाग में प्रोफेसर पर पर कोई व्यक्ति नहीं है। हमारे कालेज में प्राचीन भारतीय इतिहास का कोई अलग विभाग नहीं है, यह इतिहास के विषय में ही सम्मिलित है और इस तरह से इतिहास का एक सामूहिक विभाग है, जिसके हेड आफ द डिपार्टमेण्ट श्री के0 भाग्या राव हैं।" (पेज 152)

"In the college where I am a teacher, I am the only person who is working as a reader of Ancient history. No person is posted on the psot of professor in this department in our college. There is no separate department of ancient Indian history in our college. It is comprised in the history subject itself and in this way there is a combined department of history, which is headed by Sri K.Bhagya Rao." (E.T.C.)

"मेरी शोध यानी डाक्ट्रेट कौटिल्य के अर्थशास्त्र तक सीमित है,

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जिसमें अभिलेखीय अध्ययन भी समाहित है। यह ठीक है कि यह अभिलेखीय अध्ययन भी कौटिल्य के अर्थशास्त्र तक सीमित है।

*मैं बी0ए0 के विद्यार्थियों को पढ़ाता हूँ और एम0ए0 फाइनल के विद्यार्थियों को भी पढ़ाता हूँ। **मैं केवल प्राचीन इतिहास पढ़ाता हूँ।** प्राचीन इतिहास में हम लोग भारतीय सन्दर्भ में, इस भूमि पर सर्वप्रथम अवतरित मनुष्य के साक्ष्य मिलने के समय से 750–800 ए.डी. तक का इतिहास पढ़ाते हैं।'' (पेज 153)*

''My research i.e. doctorate is limited to the study of Kautilya's 'Arthashastra and it also comprises documentary study. It is true that this documentary study is limited to the study of Kautilya's Arthashastra.

*I teach the students of B.A. and also those of M.A. final. **I teach ancient history only.** In ancient history, we teach history, in Indian context, from the time we get the earliest traces of human beings on this earth up to 750-800 AD.'' (E.T.C.)*

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1347. The defendants sought to highlight the fact that PW 13 was a paid witness and made certain questions about the manner in which he comes from Delhi. On page 185 he said:

''मैं दिल्ली से लखनऊ इस मुकदमें में गवाही देने के लिए कई बार आया हूं आती दफा कभी हवाई जहाज से नहीं आया लेकिन वापसी पर लखनउ से दिल्ली 2 दफा हवाई जहाज से गया हूं। आज भी मैं हवाई जहाज से वापस जाना चाहता हूं। यह ठीक है कि इस समय अदालत में मेरा हैण्ड बैग रखा हुआ है और उस पर इंडियन एयर और सहारा एयर लाईंस के कई (फिर कहा) एक–एक टेग कुल 2 टेग हैं।'' (पेज 185)

''I have been to Lucknow from Delhi several times in order to depose in this litigation. I never came by air but on my way back from Lucknow to Delhi I went by air two times. Even today I want to go back by aeroplane. It is true that at present my hand bag is kept with the court and it has many tags (then stated) one tag each of Indian Airlines

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and Sahara Airlines totalling two tags." (E.T.C.)

1348. However, later on he retracted and made a different statement on page 201 as under:

"मैं कभी भी गवाही देने के लिए हवाई जहाज से नहीं आया मैं जब कभी गवाही के लिए आता हूं तो या तो अपने पास से खर्च करता हूं या अदालत से मिली हुई धनराशि का प्रयोग करता हूं। मैं रेल यात्रा करता हूं और आने जाने की रिजर्वेशन करा कर चलता हूं। मैं सेकेण्ड ए0सी0, जिसके लिए मैं हकदार हूं द्वारा ही यात्रा करता हूं। यह ठीक है कि मैंने पिछली बार अदालत को बतलाया था कि मैं 2 बार हवाई जहाज से भी वापस दिल्ली गया हूं।" (पेज 201)

"I never came by air to give my testimony. Whenever I come for deposition I bear expenses either on my own or from the amount received from the court. I travel by rail and get my seat reserved while making to and fro journey. I travel in second class A.C. to which I am entitled. It is true that I told the court last time that I had gone back to Delhi by aeroplane two times." (E.T.C.)

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1349. His statement fails to inspire confidence and lack independent, fair and impartial opinion. He admits to have done Ph.D. under Prof. D.N. Jha who according to him was one of the signatory to the document "A Historians Report to the Nation" alongwith three others and on page 142 he admits that all these four persons he considered to be the top historians of the country and, therefore, place them above the published research of Hans Baker of Ayodhya. Prof. D.N.Jha in fact did not sign the letter. The other three took a partisan stand as we shall demonstrate later. He do not agree with Baker's conclusions though reason for such disagreement could not be given by him.

1350. **PW 15, Sushil Srivastava** is a Historian working on the post of Professor in Maharaja Saya Ji Rao University Baroda. During the course of examination, he rejoined

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Allahabad University. He deposed to have seen inscriptions and has further said that the same appears to have been written in Persian. The script is in Arbo-Persian. He is also author of a book on the subject titled as **"The Disputed Mosque – A Historical Enquiry"** which was published in 1991.

1351. With regard to the date of construction of the disputed building, inscriptions and his book, PW 15 in his cross examination has said:

> *''मैंने विवादित स्थल के सम्बन्ध में जो पुस्तक लिखी है, उसको लिखने के समय मुख्य गजेटियर और जो अन्य विदेशी यात्रीगण के लेख हैं, उनको आधार बनाया है।'' (पेज 9)*
>
> *"While writing the book, which I have written about disputed site, I made main gazetteers and articles of other foreign travellers, the basis of my book." (E.T.C.)*
>
> *''**वहां पर मैं भीतर व बाहर प्राचीन व राजकीय अभिलेख देखे थे दो बाहर थे।** एक अंदर था। **यह लेख दीवार पर लिखे थे**। यह लेख विवादित ढांचे पर बहुत ऊंचे पर लिखे थे। यह लेख पत्थर पर खुदा था। मैं यह नहीं कह सकता कि पत्थर पर बाहर की तरफ यह शब्द निकले हुए थे या भीतर खुदे हुए थे। मैंने विवादित स्थल के सम्बन्ध में पुराने मुकदमों में दाखिल रिकार्ड इस सम्बन्ध में नहीं देखे। मैंने कलेक्ट्रेट में इस सम्बन्ध में रखे रिकार्ड का अध्ययन किया था। मैंने पी0कार्नेगी डिप्टी कमिश्नर फैजाबाद द्वारा लिखित रिपोर्ट वहां पढ़ी थी। कलेक्ट्रेट कचहरी के रिकार्ड रूम में मैंने यह अभिलेख देखा था। पी0 कार्नेगी द्वारा अयोध्या स्केच मैने एक पार्ट में देखा था। इस रिपोर्ट में अयोध्या के मंदिर मस्जिद कुण्ड आदि का जिक्र आया है। विवादित स्थल का जिक्र मैंने उस रिपोर्ट में पढ़ा है। विवादित स्थल के बारे में उस रिपोर्ट में पी0 कार्नेगी ने लिखा है कि मस्जिद बाबर ने बनवायी थी **यह मस्जिद 1528–29 में बनवायी थी।** यह भी लिखा है कि यह मस्जिद जहां बनवायी गयी है वहां पर पहले राम जन्म का मंदिर रहा होगा। यह पी0 कर्नेगी का नोट 1867 में प्रकाशित हुआ था। इसके अलावा वहां मैने और कोई रिकार्ड नहीं देखा। मैंने जे0डब्लू0 होज डिप्टी कमिश्नर फैजाबाद का*

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कोई नोट 1905 वाला नहीं देखा।'' (पेज 13–14)

*''**There I had seen inside and outside ancient and official inscriptions, two were outside,** one was inside. **These inscriptions were written on the wall.** These inscriptions were written on much height of the disputed structure. I cannot say whether these words were engraved projecting outside or engraved inside the stone. In this connection, I have not seen the records filed in old cases regarding disputed site. I had studied the records kept in Collectorate in this connection. There I had read the report of P.Karnegi, Dy. Commissioner, Faizabad. I had seen this record in the Record Room of Collectorate. I have seen the sketch of Ayodhya in one of the Parts. In this report there is reference of temple, mosque, Kund etc. I have read in that report reference of the disputed site. In that report, regarding the disputed site, P. Karnegi has written that **the mosque was got constructed by Babar in 1528-29.** It is also written that at the place, where this mosque has been got constructed, there might have been Ram Janam temple earlier. This note of P. Karnegi was published in 1867. Except this I have not seen any other record there. I have not seen any note of 1905 by J.W. Hose, Deputy Commissioner, Faizabad.'' (E.T.C.)*

''बाबर अयोध्या नगरी कभी नहीं आया था।'' (पेज 14)

''Babar never came to Ayodhya city.'' (E.T.C.)

*''विवादित स्थल में जो शिला लेख मैंने जो बताये हैं वह किस सन् के थे या किस काल के थे मैं नहीं जानता । मुझे यह नहीं मालूम कि उन शिलालेखों पर कौन सा सन् या सम्बत् लिखा हुआ था। मैंने अपनी किताब में यह जिक्र किया है कि विवादित स्थल को शिलालेख पर कौन सा सन या सम्बत लिखा है। विवादित ढांचे के ऊपर जो लेख लिखा था उस पर जो सन या सम्वत लिखा था वह **बेवरेज साहब ने अपनी पुस्तक***

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में दर्शाया है मैंने उसी को अपनी किताब में लिख दिया है। उसमें 935–ए0एच0 अर्थात 1528–29 ए0डी0 लिखा हुआ था। *बाहर या भीतर वाले शिलालेख एक से नहीं थे। बाहर वाला शिलालेख काफी लम्बा था उसका पत्थर स्लेब काफी लम्बा था भीतर वाला पत्थर या पत्थर स्लेब छोटा था। यह बाहर वाला पत्थर का स्लेब जिस पर शिलालेख था वह 10–12 फिट लम्बा होगा फिर कहा कि 8–10 होगा। इस पत्थर के स्लेब की चौड़ाई करीब डेढ फिट रही होगी। अंदर वाला शिलालेख बाहर वाले पत्थर के स्लेब से आधे से भी छोटा था।'' (पेज 14–15)*

"I do not know as to which year or period the stone inscriptions of the disputed site, which I have referred, pertained. I do not know as to which year or Samvat is written on those inscriptions. I have referred in my book as to what year or Samvat is written on the stone inscriptions of the disputed site. ***The year or Samvat written in inscriptions over disputed structure was mentioned by Bevrez Saheb in his book. I have written that matter in my book. Therein 935 A.H., i.e., 1528-29 A.D. was written.*** *Stone inscriptions of outside and inside were not similar. The outer stone inscription was too much lengthy and its stone slab was very lengthy and inside stone or stone slab was small. This outer stone slab containing the inscription was 10-12 ft in length (Then said) might be 8-10 ft. The inside stone inscription was smaller than half of the outer stone slab." (E.T.C.)*

''बाबरनामा में विवादित ढांचे के सम्बन्ध में कोई जिक्र नहीं है। मस्जिद के सम्बन्ध में भी कोई जिक्र नहीं है। बाबरनामा में 2 मस्जिदों का यानी सम्भल वाली मस्जिद और शायद पानीपत वाली मस्जिद का जिक्र किया गया है।''(पेज 17)

"There is no reference of disputed structure in Babarnama. Nor any reference is there with regard to mosque. In Babarnama, there is reference of two mosques, i.e., of

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Sambhal Mosque and perhaps, Panipat Mosque." (E.T.C.)

*''**मैं परशियन भाषा न पढ़ सकता हूं और न लिख सकता हूं। मैं अरबी भी न पढ़ सकता हूं और न लिख सकता हूं।** संस्कृत का भी मुझे कोई अच्छा ज्ञान नहीं है।'' (पेज 32)*

*''**Neither I can read nor write Persian. I can also not read Arabic Language nor can write it.** I have no sound knowledge of Sanskrit also." (E.T.C.)*

''यह ठीक है कि जिस परशियन भाषा को मैं न पढ़ सकता हूँ और न लिख सकता हूं उसको पढ़ने लिखने पर अर्थात इन्टरप्रिट करने में मेरे ससुर ने बहुत मदद की।'' (पेज 33)

*''It is correct that my father-in-law helped me a lot in reading and*1366 *writing, i.e., in interpreting the Persian language, which neither I can read nor write, " (E.T.C.)*

''मेरे ससुर जी अरबी भाषा और फारसी भाषा के विद्वान हैं।'' (पेज 36)

''My father-in-law is a scholar of Arabic and Persian languages." (E.T.C.)

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''मैंने विवादित स्थल पर जो लेख या शिलालेख देखे थे वह फारसी भाषा में थे तथा फारसी लिपि में थे। यह सही है कि मुझे फारसी भाषा और लिपि के बारे में मुझे मेरे ससुर साहब से ज्ञान प्राप्त हुआ। फिर कहा कि यह कहना सही है कि यह ज्ञान मुझे विवादित स्थल पर पाये गये लेखों और शिलालेखों के सम्बन्ध में ससुर जी से प्राप्त हुआ था।'' (पेज 37)

''The script or inscriptions which I had seen at the disputed site, were in Persian language and script. It is correct that I acquired knowledge about Persian language and script from my father in law. Further said, it is correct to say that I acquired knowledge from my father in law, about script and inscriptions found at the disputed site."(E.T.C.)

''यह हो सकता है कि मैंने किताब में इतिहासकार होते हुए भी लोगों की स्कालरली फीलिंग को ध्यान में रखते हुए उन पर विश्वास किया और उनको विश्वास करके किताब में लिखा। मैंने अपनी किताब को लिखते

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समय इसका नाम हिस्टारिकल इन्क्वायरी रखा। यह हो सकता है कि मैंने इसे एक मोड इतिहासिक जांच का मानकर किताब लिखी हो।'' (पेज 38)

''It might be that despite being a historian, keeping in view the scholarly feeling of the people, I relied on them and noted down in my book. At the time of authoring my book , I titled it as Historical Inquiry. It may be that treating it as a turning point of historical investigation, I have written the book." (E.T.C.)

*''**यह सही है कि मेरे ससुर जी ने यह महसूस किया था कि बेवरेज के द्वारा विवादित स्थल के लेखों का जो अनुवाद किया गया है वह बिल्कुल पूरी तरह से सही नहीं है।**''(पेज 38)*

*''**It is true that my father in law felt that the translation of articles on disputed site made by Bevarage is not wholly correct."** (E.T.C.)*

''सन् 1988 में मेरा शोध कार्य पूरा नहीं था और चल रहा था।'' (पेज 39)

''In 1988 my research was not complete and was under process." (E.T.C.)

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*''**मेरे 1988 के प्रकाशन के बाद से ही मेरे उसी के कारण भाग्य जग गये** और मुझे डाक्टर की डिग्री मिल गयी और मुझे रीडर भी बना दिया गया। जिस समय मैं रीडर हुआ था और पी0एच0डी0 की डिग्री मिली थी **उस समय इलाहाबाद विश्वविदयालय के कुलपति श्री वहीदउदीन मलिक थे।** यह भी सही है कि उस समय उ0प्र0 के मुख्यमंत्री मुलायम सिंह यादव थे।'' (पेज 39)*

*''**It was only after 1988 publication that my luck brightened up,** I acquired degree of Doctorate and I was appointed Reader also. When I became Reader and was conferred Ph.D. Degree, **Sri Wahiuddin Malick was the Vice Chancellor of Allahabad University.** It is also correct that, at that time the Chief Minister of U.P. was Mulayam Singh Yadav." (E.T.C.)*

*''**मैं यह नहीं कह सकता कि तीन शिलालेखों में***

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से एक शिलालेख फारसी में था और दो अरबी में थे, क्योंकि मुझे इन दोनों भाषाओं का ज्ञान नहीं था।'' (पेज 51)

*"**I can not say whether out of three inscriptions one was in Persian and two were in Arabic, as I had no knowledge of these two language.**" (E.T.C.)*

''मैने अपनी पुस्तक में इन तीनों शिलालेखों का ॲग्रेजी अनुवाद करवाकर लिखा है। अंग्रेजी अनुवाद के लिए मैंने अपने ससुर जी से निवेदन किया था और उन्ही से करवाया था।'' (पेज 51)

"In my book I have written about the three inscriptions after getting the same translated in English. For English transcription I have requested my father-in-law and got it done from him." (E.T.C.)

''परन्तु वह अरबी तथा परसियन जानते हैं।'' (पेज 51)

"But he know Arabic and Persian." (E.T.C.)

''मैंने अपनी पुस्तक में यह लिखा है कि स्टाइल आफ कैलीग्राफी जो शिलालेखों पर है, उससे यह सन्देह पैदा होता है कि यह मस्जिद बाबर द्वारा बनवाई गई थी या नहीं। यह सही है कि इस उपरोक्त बात का आधार यह है कि मेरे ससुर शमशुल रहमान फारूकी साहब यह महसूस करते थे। यही बात मैंने अपनी किताब में लिखी है।'' (पेज 51)

"I have written in my book that the style of Calligraphy on inscriptions creates doubt whether this mosque was constructed by Babar or not. It is correct that the basis of the aforesaid fact is that my father-in-law realized so. I have written this fact in my book." (E.T.C.)

***''मैंने साइन्स आफ कैलीग्राफी नहीं पढ़ी है। एपीग्राफी का विषय भी मैंने नहीं पढ़ा है।''** (पेज 51)*

*"**I have not studied Science of Calligraphy. I have also not studied the subject of Epigraphy**." (E.T.C.)*

***''यह कहना सही हो सकता है कि विवादित मस्जिद 1501 ए.डी. में बनाई गई हो।''** (पेज 52)*

*"**It may be right to say that disputed mosque was***

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built in 1501 AD. *" (E.T.C.)*

*"**यह हो सकता है कि विवादित मस्जिद को बाबर से पहले किसी और ने बनवाया हो। बाबर ने 1526 से 1530 ए.डी. तक भारत के कुछ अंश पर ही विजय प्राप्त की थी।***"*

(पेज 52)

*"**It is possible that the disputed mosque might have been built by someone else prior to Babar. Between 1526 to 1530 AD, Babar conquered over only certain parts of India.*** *" (E.T.C.)*

"विवादित स्थल पर जिन तीन शिलालेखों का जिक्र मैंने किया है, उनमें से दो बहुत ऊपर थे, जो करीब 20–22 फिट ऊंचे थे। तीसरा शिलालेख नीचे था, उसको मैंने 4–5 फिट की दूरी से देखा था। परसियन भी स्क्रिप्ट होती है। अरेबिक व फारसी स्क्रिप्ट में लिखी जाती है। यह कहना गलत होगा कि फारसी कोई भी लिपि नहीं है। यह सही हो सकता है कि फारसी भाषा अरेबिक लिपि में लिखी जाती है। अरबी और परसियन लिपि में कुछ अल्फाबेट का अन्तर है, बाकी एक ही है इस सम्बन्ध में जो भी मैंने अपनी पुस्तक में लिखा है, मैं सेकण्ड्री सोर्स के आधार पर लिखा है। सेकेण्ड्री सोर्स दो प्रकार के होते हैं। पहले वाले में लिखित रूप में अखबार आदि आते हैं, और दूसरे में, लिखी हुई पुस्तकें आती हैं।"(पेज 52)

"Out of the three disputed inscriptions on disputed site which I have mentioned, two were at great height, approximately at the height of 20-22 ft. Third inscription was downward side which I viewed from a distance of 4-5 ft. Persian is also a script. Arabic and Persian is written in script. It will be wrong to say that Persian is not any script. It may be that Persian language is written in Arabic script. There is difference of few alphabets in Arabic and Persian script, remaining are the same. Whatever I have written in this regard in my book is based on secondary source. There are two sorts of secondary source. In the first category comes written newspapers etc. and in the second category

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comes written books." (E.T.C.)

*"उक्त विवादित ढांचा 16वीं शताब्दी के अलावा 15वी0 शताब्दी का बनाया हो सकता है। **विशेषज्ञ के रूप में मेरी राय में यह सम्भव है कि विवादित ढांचा बाबर का बनवाया हुआ न हो।** एक विशेषज्ञ के रूप में मैं यह कह सकता हूं कि यह विवादित ढांचा जौनपुर के सुल्तान का भी बनवाया हो सकता है।" (पेज 57)*

*"The aforesaid disputed structure might be a construction of fifteenth century besides sixteenth century. **As an expert, in my opinion, it is probable that the disputed structure was not constructed by Babar.** As an expert I can say that, it may be that the disputed structure was constructed by the Sultan of Juanpur." (E.T.C.)*

*"मैंने अपनी किताब सत्य के खोज के लिए लिखा। इस पुस्तक में एक अध्याय "डिड बाबर ब्लिट दि मस्जिद" है। इस पुस्तक को लिखने के पहले मैंने काफी छानबीन किया था। **छानबीन के पश्चात मैं इस नतीजे पर पहुॅचा कि विवादित ढांचा या तो तुगलक शासकों द्वारा बनाया गया था या शर्की शासकों द्वारा बनाया गया था।** मैं इस नतीजे पर नहीं पहुॅचा कि यह अवध के नवाबों द्वारा भी कुछ भाग बनाया गया। **अवध के नवाबों का एम्बलम (सरकारी निशान) दो मछलियॉ थीं।** वर्तमान समय में प्रदेश राज्य का एम्बलम भी दो मछलियॉ हैं।" (पेज 62)*

*"I have written my book for discovery of truth. This book contains a chapter entitled "Did Babar Build the Masjid". Before authoring this book, I had made a thorough probe. **After the investigation, I came to the conclusion that the disputed structure had been built either by Tughlaq rulers or Shirky rulers.** I did not reach the conclusion that some part of it was constructed by Nawabs of Avadh. **The emblem of Nawabs of Avadh was "two fish".** Presently also, the emblem of the State Government is two fish." (E.T.C.)*

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''मैंने अपनी पुस्तक के पृष्ठ 74 एवं 75 पर अरेबिक और परसियन के लेटर्स के स्क्रिप्ट्स के बारे में राय दिया है। मैंने अपना राय यह दिखाने के लिए दिया है कि बाबर अयोध्या नहीं गया था।'' (पेज 63)

''At pages 74 and75 of my book I have recorded my opinion with respect to scripts of Arabic and Persian letters. I have given this opinion in order to demonstrate that Babar never visited Ayodhya.'' (E.T.C.)

''मैंने अपनी पुस्तक के पृष्ठ संख्या–89 में बाबरी मस्जिद के कैलीग्राफी के स्टाइल पर अपनी राय व्यक्त किया है और उसके आधार पर यह निष्कर्ष निकाला कि इस बात पर ग्रीवियस सन्देह उत्पन्न होता है कि यह मस्जिद बाबर ने बनवाई। ***मुझे आर्ट या साइन्स आफ कैलीग्राफी का ज्ञान जरा भी नहीं है।''*** *(पेज 65)*

''At page 89 of my book I have recorded my opinion regarding the style of calligraphy of Babari Mosque, and on that basis came to this conclusion that on this point, a grievous doubt emerges if Babar had built this mosque. ***I have not the least knowledge of art or science of calligraphy.''*** *(E.T.C.)*

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''मैने अपनी पुस्तक के कालम–6 पृष्ठ –92, 93 एवं 94 में उन पुस्तकों का विवरण दिया है जिनके बारे में मुझे जानकारी है। मैंने उक्त सभी पुस्तकों को पूरी तरह से नहीं पढ़ा है। इनमें से मैंने लेनपूल, लेडेन, बेवरिज एवं रशबुक विलियम की पुस्तकें मैंने पढ़ी हैं। बाकी पुस्तकें केवल थोडी–थोड़ी पढ़ी हैं। उनमें कुछ पुस्तकें ऐसी हैं जो मैंने नहीं पढ़ी हैं।''

(पेज 68)

''In column 6 of pages 92,93 and 94 of my book, I have given description of those books about which I know. I have not read wholly all the aforesaid books. Out of these, I have read the books of Lenpool, Laden, Baverige and Rushbook William. I have studied a little the remaining books. There are certain books therein, which I have not studied.'' (E.T.C.)

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*"**यह सही है कि मैंने जिन किताबों को नहीं पढ़ा उनका भी जिक्र मैंने अपनी किताब में फुटनोट में किया है।**" (पेज 68)*

*"**It is true that, in the foot note of my book, I have mentioned those books too which I have not read.**"(E.T.C.)*

*"मैंने जिन तीन गांवों का जिक्र ऐपेडिक्स में किया है उसे मैंने रेवेन्यू के अभिलेखों में नहीं देखा है केवल गजेटियर के आधार पर लिखा है। मैंने यह ज्ञात नहीं किया कि विवादित स्थल किस मौजे में स्थित है। **मैंने गजेटियर में देखा कि विवादित स्थल नजूल में है।**"*

(पेज 71)

*"I had not seen in revenue records, the three villages, which I have mentioned in the appendix and have written only on the basis of Gazetteer. I did not find out as to in which village the disputed site lay. **I saw in Gazetteer that the disputed site is in Nuzul.**" (E.T.C.)*

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"यह कहना गलत है कि गजेटियर मौलिक शोध कार्य के श्रेणी में नहीं आता है। यह प्राइमरी सोर्स माना जाता हैं यह कहना सही है कि गजेटियर का मूल स्त्रोत जिले में रखे हुए रेवेन्यू रिकार्ड होते हैं।" (पेज 73)

"It is wrong to say that the gazetteer does not come within the category of original research work. It is considered a primary source. It is true to say that the basic source of gazetteer is revenue records maintained in the District." (E.T.C.)

*"**मैंने इस बात पर गौर नहीं किया कि शिलालेख शुरू से लगे हैं या बाद में लगा दिए गए हैं।**" (पेज 77)*

*"**I did not pay attention on this fact, as to whether the inscriptions were installed from the beginning or installed subsequently**." (E.T.C.)*

"मैंने बाबरी मस्जिद के हिस्टोरिसटी के बारे में कोई प्रमाणित पुस्तक नहीं पढ़ा केवल प्रशासनिक अंग्रेज अधिकारियों के हिस्टारिकल

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एकाउंट एवं गजेटियर ही पढ़ा है। मैंने किसी भारतीय या तुर्की या विदेशी मुसलमान लेखक की प्रमाणिक पुस्तक केवल बाबरी मस्जिद पर नहीं पढ़ी।'' (पेज 77–78)

"I have not read any authoritative book about the historicity of Babari Masjid, read historical accounts of British Administrative Officers and gazetteers only. I have not read any authentic book of any Indian or Turkish or Foreign Muslim on the Babari Mosque only." (E.T.C.)

''मुझे साइंस आफ एपीग्राफी की जानकारी नहीं है। पर्शियन और अरेबिक भी नहीं आती है।'' (पेज 78)

"I have no knowledge of Science of Epigraphy. I do not know even Persian and Arabic." (E.T.C.)

*''विवादित स्थल पर जो शिलालेख मैंने देखे उस पर गिनती अंकित नहीं थीं देखने पर मुझे यह ज्ञात नहीं हुआ कि शिलालेख किस वर्ष में लिखे गए। बाद में मुझे किसी ने बताया कि यह 935 ए0एच0के लिखे हुए हैं फिर कहा कि प्रो0 राधेश्याम ने मुझे यह बात बतायी कि यह शिलालेख 935 ए0एच0के लिखे हुए हैं और मैंने उन्हें सही मान लिया यह बात मैंने बेवरिज साहिबा की किताब से भी पढ़ी। **उपरोक्त दोनों लेखकों ने शिलालेख के एपीग्राफी को पढ़कर उपरोक्त नतीजा निकाला था। और मैंने उसी को सही मान लिया।**'' (पेज 78–79)*

*"There was no figure indicated on the inscriptions which I saw on the dispute site. On seeing, it could not be known as to in which year the inscriptions were written. Later on, someone told me that these are written in 935 AH, further said, Prof. Radhey Shyam had told me this fact that these inscription were written in 935 A.H. and I took the same to be true. I also read this fact in the book of Beverige. **The aforesaid two writers had drawn the said conclusion on deciphering the epigraphy of the inscriptions and I considered the same to be true.**"(E.T.C.)*

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"शिलालेख पर मीरबाकी का नाम लिखा था पर उन ***मीर बाकी का जिक्र बाबरनामें में नहीं आता है।*** *" (पेज 85)*

"On the inscription, the name of Mir Baqi was written but ***reference of the said Mir Baqi does not find place in Babarnama.*** *" (E.T.C.)*

"ऐसा बाबरनामें में कुछ भी नहीं मिलता कि शिलालेख में जिस बांकी का जिक्र आया है वह बांकी ताशकंदी रहा हो।" (पेज 85)

"In Babarnama nothing of the sort is found to indicate that Baqi mentioned in the inscriptions would have been Banki Tashkandi." (E.T.C.)

"मैं निश्चित रूप से इस निष्कर्ष पर नहीं पहुंच सका कि यह विवादित ढांचा किस पीरियड का है परन्तु ***यह मुगल काल के पहले का है।*** *" (पेज 106)*

"I could not reach with certainty to the conclusion as to which period the disputed structure pertains but ***it relates prior to the Mughal period****." (E.T.C.)*

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"एपीग्राफी का ज्ञान मुझे नहीं है। न्यूमिसमेटिक का ज्ञान मुझे नहीं है। आर्कोलाजी में मैंने कोई विशेष ज्ञान प्राप्त नहीं किया। सर्वे आफ लैण्ड का कोई ज्ञान मैंने प्राप्त नहीं किया। साईंस आफ आर्कीटेक्चर का मैंने कोई विशेष ज्ञान प्राप्त नहीं किया। तुर्की अरबी फारसी का भी कोई ज्ञान मैंने प्राप्त नहीं किया।" (पेज 106)

"I have no knowledge of Epigraphy. I have no knowledge of Numismatic. I did not acquire any specialization in archaeology. I did not acquire knowledge about survey of land. I did not acquire any specialized knowledge in Science of Architecture. I did not acquire any knowledge of Turkish, Arabic and Persian too." (E.T.C.)

"विवादित ढांचे का निर्माण आधुनिक काल में नहीं हुआ है बल्कि मध्य काल में हुआ है।" (पेज 109)

"This disputed structure has not been constructed in modern period, instead, it has been constructed in

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Medieval period." (E.T.C.)

"मेरी राय कनिघंम की रिपोर्ट तथा फ़्यूरर की रिपोर्ट जो 1891 की है पर ही आधारित है।" (पेज 113)

"My opinion is based only on Cunningham's Report and Fuhrer's report of 1891." (E.T.C.)

***"विवादित ढांचे के निर्माण के समय के बारे में कोई पुस्तक उपलब्ध नहीं है।"** (पेज 114)*

***"There is no book available with respect to construction of disputed structure."** (E.T.C.)*

"मेरी पुस्तक का नाम "डिस्पयूटेड मास्क ए हिस्टोरिक इन्कवायरी" है। मेरी पुस्तक मेरे शोध का नतीजा है। इस पुस्तक के अलावा मध्य कालीन इतिहास के बारे में मेरा कोई अन्य शोध नहीं है और न प्रकाशित हुआ है।" (पेज 131)

"The title of my book is 'Disputed Mosque, a Historic Enquiry'. My book is the outcome of my research. Except this book, there is no any other research of mine nor published, about Medieval history." (E.T.C.)

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"अपनी पुस्तक लिखने के लिए मैंने तीनों पुस्तकों यानी बाबर नामा आईने अकबरी और अकबरनामा के अलावा अन्य पुस्तकें भी पढ़ी। जिनके विवरण निम्नलिखित हैः– गजेटियर (1868), नेविल का गजेटियर (1901) से 1905 हण्टर द्वारा इम्पीरियल गजेटियर, इरविन की पुस्तक, पिलग्रिमेज से सम्बन्धित तथा कुछ अन्य पुस्तकें देखी हैं। इसके अलावा तीर्थ विवेचन काण्ड देखा है, तारीख फरा बक्श देखा है, कलिघम की रिपार्ट, फयूरर की रिपोर्ट समाचार पत्र भी देखें हैं।" (पेज 134)

"For the purpose of writing my book, Except these three books, i.e. Babarnama, Aine Akbari and Akbarnama, I read other books also, particulars whereof are: Gazetteer(1868), Gazetteer of Nevil (1901 to 1905), Imperial Gazetteer by Hunter, Irvin's book and some other books related to pilgrimage. Except this, I have also seen Tirth Vivechan Khand, Tarikh Fara Bux, I have seen the

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Report of Cunningham, Report of Furher as also the Newspapers." (E.T.C.)

"1526 पहले के अयोध्या का इतिहास मैंने उतना ही पढ़ा है जो गजेटियर में दिया गया है। गजेटियर 1905 में छपा था वो अयोध्या के बारे में पहला स्त्रोत था।" (पेज 137)

"I have read History of Ayodhya of the period prior to 1526 only to the extent which has been given in the gazetteer. What was published in Gazetteer 1905, was the first source about Ayodhya." (E.T.C.)

"जिन बातों को मैंने गलत पाया वो निम्नलिखित हैं:– 1. ***बाबर ने मस्जिद नहीं बनवाया क्योंकि बाबर अयोध्या कभी नहीं आया।***

बाबर के अयोध्या न आने के प्रमाण निम्नलिखित है। बाबरनामा में बाबर के अयोध्या के आने का जिक्र नहीं है। बाबरनामा में यह जिक्र नहीं है कि बाबर ने अयोध्यामें मस्जिद बनाने का हुक्म दिया।" (पेज 137–138)

"The facts which I found wrong are: 1. ***Babar did not get the mosque constructed since he never visited Ayodhya.***

The following is the evidence showing that Babar did not visit Ayodhya. In Babarnama there is no reference of Babar's visit to Ayodhya. There is no mention in Babarnama that Babar commanded for construction of a mosque in Ayodhya." (E.T.C.)

"अयोध्या के बारे में पुरातत्व से संबंधी सबसे पहली सामग्री कनिंघम की रिपोर्ट में ही है। उसके बाद दूसरी रिपार्ट फयुरर की रिपोर्ट है। जो 1891 की संभवतः है। ये आर्क्यालाजिकल सर्वे आफ इण्डिया के डाइरेक्टर और अंग्रेज अफसर थे।" (पेज 150)

"Regarding Ayodhya, the foremost material pertaining to archaeology is in Cunningham's report only. Thereafter, the second report is of Fuhrer, which is probably of 1891. They were British Officers and Director of Archaeological Survey of India." (E.T.C.)

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''मेरा निष्कर्ष है कि बाबर अयोध्या कभी नहीं आया था।'' (पेज 156)

"My conclusion is that Babar never came to Ayodhya" (E.T.C.)

''मेरे इस निष्कर्ष कि बाबर अयोध्या कभी नहीं आया का आधार यह है कि जिस रूट से बाबर 1528 में चल रहा था वह रूट अयोध्या होकर नहीं था। बाबर के रूट का आधार बाबरनामा है। यह आधार बाबरनामा के उस अनुवाद का है जो बेबरिज ने किया था। मैंने बेबरिज का पूरा अनुवाद जो उसने बाबरनामा का किया है मैंने पढ़ा है। ब्रेबरिज के अनुवाद को देखकर कहा कि बेबरिज ने ''ए यू डी'' अवध माना है। ब्रेबरिज के अनुवाद के पृष्ठ 401 एवं 402 का फोटो प्रति मेरे सामने हैं।'' (पेज 156)

"The basis of my inference that Babar never came to Ayodhya, is that the route by which Babar was proceeding in 1528 was not via Ayodhya. The basis of Babar's route if Babarnama. This basis is the translation of Babarnama by Beverige. I have read the entire transcription of Babarnama, which was made by Beverige. Seeing the transcription of Beverige, he (witness) said that Beverige has considered "AUD' as Awadh. Photocopy of pages 401 and 402 of Beverige's translation is before me." (E.T.C.)

''मैंने अपनी पुस्तक के पृष्ठ 71 पर यह लिखा है कि बाबर को एक मुख्य खलनायक के रूप में दर्शाया जाता है किन्तु यह आरोप उसके व्यक्तितत्व से मेल नहीं खाता है।'' (पेज 206)

"I have written at page 71 of my book that Babar is described as a main villain but this charge does not match with his personality." (E.T.C.)

''रशब्रुक विलियम तथा राधेश्याम दोनों ने बाबर के व्यक्तित्व के बारे में तारीफ की है। इसके अतिरिक्त आर0पी0त्रिपाठी और बनारसी प्रसाद सक्सेना ने भी बाबर की तारीफ किया है।'' (पेज 206)

"Rushbrook Willian and Radhey Shyam both have commended about Babar's personality. Besides, R.P. Tripathi and Banarsi Prasad Saxena also have praised

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Babar." (E.T.C.)

*"**राधेश्याम मेरे गुरू 1968 से 1996 तक रहे।** मैं उनकी विचारधारा से प्रभावित और सहमत हूँ। मेरी पुस्तक के लिखने में भी मेरे गुरू राधेश्याम साहब का सहयोग मिला और समय समय पर मैं पुस्तक लिखते समय उनसे डिसकस करता था।" (पेज 207)*

*"**Radhey Shyam had been my teacher from 1968 to 1996.** I agree and am influenced with his thought. While writing my book, I got cooperation from my teacher Radhey Shyam and while writing the book, I used to discuss with him from time to time." (E.T.C.)*

"मैंने अपनी पुस्तक के पेज सं0 88 पर जो लिखा है कि बाबर ने यदि मस्जिद बनाने के लिए हुक्म दिया होता तो ऐसा लिखा होता कि "बाहुक्म जहीरउद्दीन मो0 बाबर गाजी"। जो मैंने ऊपर कहा है यह मैंने कहीं पढ़ा नहीं है बल्कि मैंने यह अपने आप कहा है कि यदि बाबर ने कहा होता तो ऐसा होता।" (पेज 216)

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"I have written at page no. 88 of my book, had Babar commanded to construct the mosque, it would have been written "Under the Command of Zahiruddin Mohd. Babar Ghazi". The fact which I stated above, I have not read it anywhere, instead, I have said of my own that if Babar had commanded, it would have been so." (E.T.C.)

*"मैंने अपनी पुस्तक के पृष्ठ सं0 89 पर यह लिखा है कि **इसकी बहुत सम्भावना है कि शिलालेख बाद में लगाया गया हो जिसमें लिखा है कि यह मस्जिद बाबर ने बनायी हो।"***

(पेज 217)

*"I have written at page no. 89 of my book that **there is great probability that the inscription, wherein it is written that this mosque had been built by Babar, might have been installed subsequently.**" (E.T.C.)*

"मैंने इस बात पर शोध किया कि यह शिलालेख कितने पुराने हैं और कब के हैं। जो शिलालेख बाबरी मस्जिद के बाहरी दीवार पर लगा था

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वह शिलालेख पुराना लगता था पर अन्दर वाला शिलालेख की लिखावट 19वीं सदी की लगती थी। मेरी राय में वह 19वीं सदी का शिलालेख हो सकता था। बाबरी मस्जिद में कुल तीन शिलालेख थे जिनमें दो बाहर थे एक अन्दर।'' (पेज 218)

"I conducted research on the point as to how much old and of which period these inscriptions are. The inscription engraved on the outer wall of the mosque appeared to be old. But the calligraphy of the inner inscription appeared to be of 19th Century. In my opinion, it could be an inscription of 19th Century. The Babri mosque had three inscriptions in all of which two were outside and one was inside." (E.T.C.)

''यह बात कि भीतर वाला शिलालेख नया प्रतीत होता था मैंने इस आधार पर लिखा क्योंकि मुझे कैलिग्राफी की स्टाइल से ऐसा प्रतीत हुआ था। कैलीग्राफी स्टाइल पर मैंने कोई अध्ययन नहीं किया है। मैंने कुछ एक्सपर्टस से बात करने के पश्चात् इस कैलिग्राफिक स्टाइल की बात लिखी थी।'' (पेज 219)

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"I have written the fact that the inner inscription appeared to be new, because it so appeared from the style of caligraphy. I have not undertaken any study on Caligraphy. After having discussion with few experts, I wrote about this caligraphic style." (E.T.C.)

''यह सही है कि मुझे इतिहास का ज्ञान बहुत कम है।''

(पेज 222)

*"**It is true that I have a very little knowledge of history**." (E.T.C.)*

''यह सही है कि उपरोक्त तीनों पुस्तकों में विलियम फिन्च के वृतान्त एक ही हैं यानी उनके भारत यात्रा के वृतान्त तीनों पुस्तकों में एक ही हैं।'' (पेज 228)

"It is correct that in the aforesaid three books, description of William Finch is the same, i. e., their

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description regarding India's Travel is the same." (E.T.C.)

''विलियम फिन्च ने अपने यात्रा वृतान्त में यह लिखा है कि जब वह अयोध्या गया था, उसने अयोध्या का किला, गिरी–पड़ी हालत में पाया। यह सही है कि विलियम फिन्च के अनुसार उस किले को रामा पैलेस कहते थे, यह लिखा है।'' (पेज 229)

"William Finch has written in his travel account that when he visited Ayodhya, he found the Fort of Ayodhya in a dilapidated condition. It is correct that according to William Finch, that fort was called Rama's Palace, it is written." (E.T.C.)

''यह सही है कि जिस समय विलियम फिन्च ने अयोध्या यात्रा किया, उस समय बाबरी मस्जिद बन चुकी थी और राम जन्म स्थान मन्दिर भी मौजूद थी, किन्तु विलियम फिन्च ने इन दोनों चीजों का वर्णन अपने यात्रा वृतान्त में नहीं किया।'' (पेज 229)

"It is true that by the time William Finch travelled Ayodhya, Babari mosque had already been constructed and Ram Janmasthan Mandir (Temple of Rama's birthplace) was also existent, but William Frinch did not mention these two facts in his travel account." (E.T.C.)

''मेरे अनुसार बाबरी मस्जिद अयोध्या के केन्द्र स्थान पर बनी है। यह सही है कि बाबरी मस्जिद राम कोट के इलाके के लगभग बीचोबीच स्थित है। यह मेरी राय है।'' (पेज 236)

"According to me, Babri mosque has been built at the centre place of Ayodhya. It is correct that Babri mosque is situated almost in the middle of Ram Kot area. This is my opinion." (E.T.C.)

'मैंने टाइफन थेलर का वृतांत नहीं पढ़ा।'' (पेज 237)

"I did not read the description of Tiffenthaler."(E.T.C.)

''मैंने जोजेफ साहब पादरी साहब का वृतांत पूरा पढ़ा नहीं है।'' (पेज 258)

"I have not studied entire description of Father Joseph."(E.T.C.)

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"विलियम फिन्च साहब के वृतांत को मैं एक स्त्रोत मानता हूँ। मैं विलियम फिन्च साहब के वृतांत को बायस्ड मानता हूँ।"

(पेज 258)

*"**I regard the description of William Finch as a source. I consider the description of William Finch to be biased.**" (E.T.C.)*

*"**यह कहना गलत है कि ब्यूकानन साहब ने जो इन्सकिप्शन देखे थे वह 1855 के बाद विवादित स्थल पर नहीं थे और वहां पर दूसरे इन्सकिप्शन लगा दिये गये।** यह भी कहना गलत है कि 1855 में कोई नये इन्सकिप्शन लगे या उनको भी 1934–35 के दंगे में तोड़ दिया गया हो। पर 1934'35 के दंगे में विवादित स्थल को एवं पुराने लगे इन्सकिप्शन को क्षति जरूर पहुंची थी।" (पेज 282)*

*"**It is wrong to say that the inscriptions seen by Mr. Buchanan, were not present on the disputed site after 1855 and some other inscriptions had been installed there.** It is also wrong to say that any new inscription was installed in 1855 or the same was destroyed in the riot of 1934-35. However, in the riot of 1934-35, damage was certainly caused to the disputed site and previously installed inscription." (E.T.C.)*

"मैने अपनी पुस्तक के पेज 91 पर यह ठीक निष्कर्ष निकाला था कि बाबरी मस्जिद का निर्माण तुगलक या शर्कीज के समय हुआ हो। इसका अर्थ यह भी है कि शायद यह मस्जिद बाबर के समय या बाबर द्वारा नहीं बनाई गई थी। . . . . .मेरा यह भी निष्कर्ष इसमें है कि बाबर अयोध्या कभी नहीं आया। यह भी मेरा निष्कर्ष ठीक है, जो मैंने पेज 92 पर लिखा है कि चूँकि बाबर अयोध्या नहीं आया, इसलिए उसका राम जन्मभूमि मन्दिर गिराने का सवाल पैदा नहीं होता।" (पेज 295)

"I had drawn correct conclusion at page 91 of my book that Babari mosque might have been constructed

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during the time of Tughlaq or Sharkies. It also means that probably this mosque was not built during the period of Babar or by Babar... It is also my conclusion that Babar never came to Ayodhya. This inference of mine is also correct, as I have written at page 92, that since Babar did not visit Ayodhya, no question of demolishing Ram Janma Bhumi Mandir arises." (E.T.C.)

"यह मेरी राय सही है कि अगर मस्जिद शर्की शासकों ने बनवाया होगा तो वह अवश्य 1504 के पहले बनी होगी।" (पेज 300)

"My this opinion is correct that if the mosque had been built by Shirky rulers, it must have been built prior to 1504." (E.T.C.)

"मेरी राय व विश्वास में वाद संख्या –489 के प्रसतर 8 पृष्ठ 5 और 6 पैराग्राफ 2 में यह कथन कि नक्शा नजरी में दिखाए प्राचीन कब्रिस्तान उन मुसलमानों के हैं जो बाबर और अयोध्या के पूर्व शासक की लड़ाइ में मारे गए सही नहीं है।" (पेज 300)

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"In my opinion and belief, the statement contained in paragraph no. 8 at page 5 and paragraph no. 2 of suit no.4/89 to the effect that the old graveyard shown in the site plan related to those Muslims who were killed during the battle between Babar and previous ruler of Ayodhya, is not correct." (E.T.C.)

*"इतिहासकार के रूप में मैं यह कह सकता हूँ कि यह बातें गलत हैं। **मस्जिद एवं कब्रिस्तान के बारे में वाद–पत्र में किए गए अभिकथन मेरी ऐतिहासिक जांच और तथ्यों से मेल नहीं खाते हैं तथा मेरी राय से भिन्न हैं।**" (पेज 300)*

*"As a historian, I can say that these things are incorrect. **The averments regarding mosque and graveyard made in the plaint do not tally with my historical research and facts and differ from my opinion.**" (E.T.C.)*

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''नेविल साहब ने अपने गजेटियर में विवादित ढांचे को शायद बाबरी मस्जिद कहा है। उन्होंने अपने गजेटियर में इस ढांचे को बाबर की मस्जिद कहा है। मेरी राय में इसका अभिप्राय ''बाबरी मस्जिद'' से है।'' (पेज 309)

''Mr. Nevil in his gazetteer has probably termed the disputed structure as Babri Mosque. In his gazetteer, he has termed the structure as the Mosque of Babar. In my opinion, it means "Babri Mosque". (E.T.C.)

1352. Learned counsel for the defendants have stressed upon the motive of this witness and in furtherance thereof they drew our attention to certain facts antecedents to the publication of his book "The Disputed Mosque-A Historical Enquiry" in 1991:

''मेरी पत्नी का नाम मेहर अफशॉ फारूकी है। मेरा विवाह सिविल मैरिज यानी स्पेशल मैरिज एक्ट के अन्तर्गत हुआ है। उसके बाद मेरा निकाह भी हुआ था। मेरे ससुर का नाम शमशुल रहमान फारूकी है।''

(पेज 26)

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"The name of my wife is Mehar Afshan Farooqui. My marriage has been solemnized as civil marriage, i.e., under Special Marriage Act. Thereafter my Nikah too was performed. Name of my father in law is Shamshul Rehman Farooqui." (E.T.C.)

''मैंने निकाह के समय इस्लाम धर्म को स्वीकार किया है।'' (पेज 26)

"I have adopted Islam religion at the time of my Nikah." (E.T.C.)

''मैंने जब इस्लाम धर्म कबूल किया था उस समय मेरा नाम भी रखा गया था जो कि साजिद था। मैं न हिन्दू हूं और न मैं इस समय मुसलमान हूं। . . . .. . शादी मैंने इस्लामिक तौर पर की है।'' (पेज 27)

"When I adopted Islam religion, at that time, I was given a new name Sajid. Presently, I am neither a Hindu nor a Muslim..... I married according to Islamic rites." (E.T.C.)

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''मैंने अपने बच्चों का नाम फारसी जुबान में रखा है। ऐसी कोई बात नहीं है कि मुझे फारसी जुबान से कोई खास लगाव हो।'' (पेज 28)

'' I made nomenclature of my children in Persian language. It is not so that I have some special interest in Persian Language.'' (E.T.C.)

''मैंने बी0ए0 1970 में पास किया था, एम0ए0 पालिटिकल साईंस में 1972 में पास किया और उसके बाद मार्डन हिस्ट्री से एम0ए0 सन् 1974 में पास किया था।'' (पेज 28)

''I passed B.A. in 1970, M.A. in 1972 in Political Science and thereafter, passed M.A. in Modern History in 1974." (E.T.C.)

''यह सही है कि 11 वर्षो के सतत प्रयास के बाद मुझे पी0एच0डी0 की डिग्री 1989 में मिली थी। इसी बीच मेरी नियुक्ति तदर्थ रूप में 1974 में इलाहाबाद विश्वविदयालय में हो गयी थी। यह तदर्थ नियुक्ति प्रवकता के रूप में हुई थी। 1989 में मैं रीडर भी हो गया था।'' (पेज 28)

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''It is true that after 11 years of continuous efforts I secured Ph.D. Degree in 1989. Meanwhile, I was appointed on ad hoc basis in Allahabad University in 1974. This ad hoc appointment was made as a Lecturer. In 1989 I became Reader also." (E.T.C.)

''जनवरी, 87 से लेकर 1990 तक श्री बहीउद्दीन मलिक साहब इलाहाबाद विश्वविद्यालय के कुलपति थे। श्री बहीउद्दीन साहब भी मुझे जानते थे। . . . . . 6 फरवरी, 79 को मेरी शादी मेहर अफशां फारूकी साहिबा से हुई थी।'' (पेज 29)

''From January 1987 to 1990 Sri Bahiuddin Malik Saheb was the Vice Chancellor. Sri Bahiuddin Saheb also knew me.....On 6th February 79 my marriage took place with Mehar Afshan Farooqi." (E.T.C.)

''यह शादी मेरी और मेरी पत्नी के परिवार वालों की सहमति से नहीं हुई थी।'' (पेज 29)

''This marriage did not take place with the consent of

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my wife and family members." (E.T.C.)

''अपनी शादी के रजिस्ट्रेशन के बाद निकाह की जरूरत इसलिए पड़ी कि मेरे सुसराल वालों की स्वीकृति के लिए एवं सामाजिक मान्यता के लिए ऐसा करना उचित था।'' (पेज 30)

''Necessity of Nikah after registration of marriage, arose with a view to obtain approval of my in-laws and for social recognition it was essential to do so." (E.T.C.)

''उन्होंने यह च्वाइस अवश्य दी थी कि मैं निकाह कर लूँ। यही मेरे ससुराल वालों की च्वाइस ही मेरी च्वाइस थी। (फिर कहा) मेरी भी यही च्वाईस हो सकती थी।'' (पेज 30)

''They had given me a choice that I should perform Nikah. This choice of my in-laws was, in fact, my choice. (Further said). Choice of mine too could be only this."(E.T.C.)

''निकाह करने के लिए मुसलमान होना आवश्यक था। इसलिए मै मुसलमान हुआ था।" (पेज 30)

'' For materialization of Nikah it was necessary to be a Musalman. Therefore, I got converted as a Muslim."(E.T.C.)

''मुझे मेरी पत्नी ने इस कार्य में इनकरेज किया था।'' (पेज 33)

'' My wife encouraged me for this work." (E.T.C.)

''मेरे ससुर शमशुल रहमान फारूखी के इनीशीयल एस0आर0 फारूकी है।'' (पेज 33)

'' Initial of my father in law, Shamshul Rehman Farooqi, is S.R. Farooqi.'' (E.T.C.)

''मैंने अपनी पुस्तक के प्रीफेस में यह लिखा है कि मेहर अफशां फारूकी इसटोर्टड परसूयेडीग मी टू पापूलाइरिज दि हिस्टारिकल टुथ।''(पेज 33)

'' In the Preface of my book I have written that Mehar Afshan Farooqi started persuading me to popularize the historical truth." (E.T.C.)

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1353. They also pointed out that though he was registered for Ph.D. in 1978 having passed M.A. in Modern History in 1974 but could not complete Ph.D. for a decade. It is only in 1988 when Sri Vahiuddin Mullick was the Vice Chancellor of Allahabad University and Chief Minister of U.P. was Sri Mulayam Singh Yadav he was conferred Ph.D. in 1989. Sri M.M. Pandey, Sri H.S. Jain and Sri R.L. Verma all the learned counsels stated that PW 15 converted himself a 'muslim' for the purpose of marriage and also changed his name as 'Sajid' but has appeared in the witness box mentioning his name as Sushil Srivastava and this also shows lack of bonafide on his part and refers to his statement on page 49 and 50:

''यह सही है कि यथा आवश्यकतानुसार मैं अपने को साजिद भी कह लेता हूं और सुशील भी मान लेता हूं।'' (पेज 49)

"It is correct that as per requirement I use to say myself Sajid as well as Sushil." (E.T.C.)

''मैंने खुदा की कसम नहीं ली है ईश्वर की कसम ली है।''(पेज 49)

"I have not sworn in the name of 'Khuda', instead I have sworn in the name of 'Ishwar'." (E.T.C.)

''मेरा नाम साजिद नहीं है। मैंने धर्म परिवर्तन किया है और मुसलमान हुआ हूँ। पर मेरे लिए धर्म का कोई महत्व नहीं है। मैं अधर्म में विश्वास करता हूँ।'' (पेज 50)

"My name is not Sajid. I have got converted my religion and have become a Muslim but to me, the religion has no significance. I believe in Adharma (atheism)."(E.T.C.)

1354. They also pointed out that the wife of PW 15 is well qualified being M.A. in Medieval History and D.Phil. with specialisation in "Economic Policy of Delhi Sultanate" which she did in 1988 but her father was not a Historian and instead a Government servant, a member of Indian Postal Service and

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retired therefrom as is evident from page 50:

''मेरे ससुर इण्डियन पोस्टल सर्विस में कार्यरत थे। मेरे ससुर भी लिटरेरी क्रिटिक हैं, काम भी करते हैं।'' (पेज 50)

"My father-in-law was posted in Indian Postal Services. He also is a literary critic and work as such."(E.T.C.)

1355. About his conduct in the University the learned counsel drew our attention to the statement of PW 15 at page 55/56:

''यह कहना सही नहीं है कि मेरे आचरण के सम्बन्ध में कोई जांच हुई या उस जांच के बाद मैं वहां से हटा दिया गया।'' (पेज 55)

"It is not correct to say that any enquiry was conducted regarding my character or that I was removed from there after the enquiry." (E.T.C.)

''यह कहना गलत है कि शाह ने मेरे आचरण के बारे में एक सदस्यीय कमेटी के रूप में मेरी जांच किये थे। मुझे इस बात की जानकारी नहीं है कि उपरोक्त कमीशन ने मुझे गलत बयान देने का दोषी पाया था। मुझे इस बात की जानकारी नहीं है कि उपरोक्त कमीशन ने उक्त विश्वविद्यालय की महिला अध्यापक को तथा महिला छात्राओं के प्रति अश्लील आचरण या उनके प्रति अश्लील भाषा व्यक्त करने का दोषी पाया हो। मझे इस बात की जानकारी नहीं है कि उक्त कमीशन ने 13.4.99 को अपनी आख्या प्रस्तुत किया और यह सुझाव दिया कि मुझे वहां से निकाल दिया जाये। मुझे इस बात की जानकारी नहीं है कि विश्वविद्यालय के सिडीकेट ने 30.4.99 को अपने प्रस्ताव सं0 46 द्वारा मुझे हेड आफ दि डिपार्टमेंट और क्वार्डीनेटर और डी0आर0एस0 प्रोग्राम से हटा दिया। स्वतः कहा कि मझे 5.5.99 को सिडीकेट द्वारा इस आशय का पत्र प्राप्त हुआ कि मैं हेड आफ डिपार्टमेंट तथा क्वार्डीनेटर का चार्ज अन्य अध्यापक को सौंप दूँ। मैंने दि0 11.6.99 को अपने प्रो0 पद से त्यागपत्र सौंप दिया मैंने यह कारण दर्शाया कि मैं गुजराती भाषा के टेस्ट को पास करने में असमर्थ रहा हूँ और चूंकि उक्त परीक्षा को पास किये बगैर मैं कन्फर्म नहीं किया जा सकता था। तथा इलाहाबाद विश्वविद्यालय में मेरी अवकाश की अवधि समाप्त होने वाली थी। मुझे इस कारण 28 जून, 99 को कार्यमुक्त कर

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दिया गया था।'' (पेज 55)

"It is wrong to say that Shah as a one member Committee conducted the enquiry about my conduct. I am not aware of the fact that the aforesaid Commission found me guilty of tendering false statement. I have no knowledge of this fact whether the Commission found me guilty of indulging in scrofulous conduct or using salacious language with lady teacher and students of the said University. I have no knowledge of the fact that the aforesaid Commission submitted its report on 13.04.1999, recommending for my expulsion from there. I have no knowledge of the fact that the Syndicate of the University on 30.04.99, vide agenda No. 46, ousted me from the office of the Head of the Department, Coordinator and DRS programme. Of his own said that on 05.05.99 a letter of Syndicate was received to the effect that I should hand over the charges of the Head of Department and Coordinator to another teacher. On 11.06.99 I submitted my resignation from the post of Professor showing the reason that I have been unable to qualify to the test of Gujarati language in as much as, I could not be confirmed without clearing the aforesaid test. And period of my leave was about to exhaust. For this reason I was discharged from duty on 28.06.99." (E.T.C.)

''यह सही है कि मैं श्री वी0एम0शाह इन्क्वायरी कमेटी के समक्ष व्यक्तिगत रूप से उपस्थित हुआ था।'' (पेज 56)

"It is correct that I appeared in person before Sri V.M. Shah Enquiry Committee." (E.T.C.)

''यह कहना सही है कि विभाग के सभी अध्यापकों ने मेरे विरूद्ध यह शिकायत किया था कि वह लोग मेरे साथ काम नहीं कर सकते हैं। बल्कि केवल कुछ अध्यापकों ने ही इस प्रकार का प्रस्ताव किया था।

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(फिर कहा) कि वे लोग मेरे हेड के कार्य से संतुष्ट नहीं थे। यह कहना गलत है कि मुझे दुराचरण के कारण विश्वविद्यालय से निकाला गया और उस आदेश को प्राप्त न करे मैंने इस्तीफा दे दिया और वापस इलाहाबाद चला आया।'' (पेज 56)

"It is correct to say that all the teachers of the Department complained against me that they could not work with me. Rather, only few teachers made such proposal. (Further said) that they were not satisfied with my work as Head. It is wrong to say that due to misconduct, I was expelled from the University and without receiving that order, I resigned and returned to Allahabad." (E.T.C.)

1356. For our purposes, however, suffice it to mention that PW 15 has made out a new case and says that according to his study there is grievous doubt whether Babar built the mosque in dispute. He says that neither there is any material to show that Babar ever visited Ayodhya nor the name "Mir Baqi" finds mention in Baburnama. On page 217 he admits that as a result of his research he has written on page 89 of his book that inscriptions might have been fixed on the disputed building later on mentioning that the disputed building was built by Babar and on page 295 he refers to page 91 of his book where he has said that the disputed building might have been constructed at the time of Tughlaqs or Sharkis and may not have been built by Babar. On page 300 he further says that if constructed by Sharki Rulers, the disputed building might have been constructed prior to 1504. He also says that averments in para 2 and 8 of the plaint (Suit-4) that graves around the disputed building were of those muslims who died in battle between Babar and the erstwhile ruler of Ayodhya are incorrect statements (page 300). The witness, therefore, has not supported the case of plaintiff (Suit-

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4) and on the contrary has taken a totally different stand. In fact by reaching such inference, he has stated in his examination-in-chief that the disputed building was not constructed after demolishing a temple by Babar.

1357. Here one more aspect we need to mention. Though the witness has been produced as Expert Historian but on page 222 he admits that he had a very little knowledge of history. That being so according to own statement of the witness his statement cannot be taken as an opinion of an Expert Historian and, therefore, inadmissible under Section 45 of the Evidence Act. Even otherwise, the extract of his statement we have noticed above make it clear that neither the witness has made any threadbare inquiry into the matter nor has done his job honestly yet has written a book based on hearsay and has claimed it to be a book written by an Expert. He admits that he cannot read Persian, Arabic, Sanskrit and Urdu (Page 33). He admits that despite being historian he has accepted whatever said by others on the basis of their alleged scholarly feeling and wrote it in his book as a statement of fact (page 38). He has never studied either Calligraphy or Epigraphy (Page 51) but has made statement and recorded finding in this regard in his book. On page 65 he admits that he has raised doubt on the Calligraphy style of the text of the inscription at Babri mosque but simultaneously admits that he had not the least knowledge of art and science of Calligraphy. We in fact find it surprising with the kind of dishonesty, such person has shown. In his book he has given in the footnote reference of a number of books which he admits that he had never studied (page 68). On page 77 he says that he did not pay attention on the fact whether the inscriptions were installed from the beginning or installed

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subsequently but on page 217 admits that he has written on page 89 of his book that there is a possibility that the inscriptions might have been installed subsequently. On page 106 on the one hand he admits that he lacks knowledge of Epigraphy, Numismatic, Archeology, Survey of Land, Science of Architecture, Turkish, Arabic and Persian language yet simultaneously he says that though the period of construction of the disputed structure, he could not conclude but according to him it relates prior to Mughal period. We are sorry to find that a person like PW 15 has written a book on such an important and sensitive matter without having made an in-depth study on the subject and has deposed before us claiming himself to be an Expert Historian though simultaneously admit that he has a very little knowledge of history. On page 218 and 219 again contradicting his earlier statement he said that he has made research on the question as to how much old and of which period the inscriptions are and found that the inner inscription appears to be new from the style of calligraphy while the outer one is old. Despite admitting the fact that he has no knowledge of calligraphy he has made such comments on calligraphy of the text of inscription which is not expected from a responsible Expert Historian. Besides his statement ex facie appears to be incorrect in view of the admitted position as also mentioned in Epigraphica Indica (1965) published by ASI that there were three inscriptions out of which two got misplaced in 1934 and were restored by new one which had some mistakes and did not contain the correct original text.

1358. The lack of expertise of PW 15 in respect to Medieval History has also been commented by plaintiff's (Suit-4)'s another witness, i.e., PW 20, Shirin Musvi on page 129 of

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her statement where she said:

''मैं श्री सूरजभान जो एक आकियोंलाजिस्ट है डा0 सुवीरा जायसवाल जो ऐसीयन्ट इण्डियन हिस्टोरियन हैं और ***श्री सुशील श्रीवास्तव जो मार्डन इतिहासकार हैं*** *उनकी इस राय से यदि उन्होंने ऐसा कहा है कि मीरबाकी एक शिया था उनकी इस राय से सहमत नहीं हूँ चूंकि* ***वो लोग मेडिवल हिस्ट्री के एथारिटी नहीं है।***''

(पेज 129)

"I do not agree with the opinion of Sri Surajbhan, an Archaeologist, Dr. Suvira Jaiswal, Ancient Indian Historian and ***Sri Sushil Srivastava, Modern Historian*** *and if they have said so that Mir Baqi was a Shiya, I do not agree with their opinion* ***because they are not authority on Medieval History****." (E.T.C.)*

1359. PW 16, Prof. Suraj Bhan in his cross-examination has said:

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*''****मुझे विवादित स्थल पर शिलालेख जो मीरबाकी द्वारा लगवाया गया था उसके अलावा और कोई एपीग्राफिकल इवीडेंस नहीं मिली जिसके आधार पर यह कहा जा सके कि विवादित ढांचा का नाम बाबरी मस्जिद हो।*** *यह शिलालेख उतना ही पुराना था जितनी मस्जिद।'' (पेज 157)*

*"****Except for an inscription carved by Mir Baqi, I did not come across any other epigraphical evidence on the basis of which the disputed site may be called Babri Masjid.*** *This inscription is as old as this masjid." (E.T.C.)*

''विवादित ढांचे में 2 जगह पर इन्सक्रिप्शन लगे हुए थे। यह दोनों इन्सक्रिप्शन पत्थर में खुदे हुऐ थे परन्तु बाहर वाले इन्सीक्रप्शन का स्लेब दीवार में फिक्स था। यह दोनों उपरोक्त इन्सक्रिप्शन फारसी भाषा में लिखे थें मैं फारसी नहीं जानता यह सही है कि मैं फारसी नहीं पढ़ सकता इसलिए मौके पर मैं उन दोनों इन्सक्रिप्शन को नहीं पढ़ सकता था और अंदर वाली इन्सक्रिप्शन को देख भी नहीं पाया।'' (पेज–175)

"Inscriptions were engraved at two places in the

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disputed structure. Both of the inscriptions were engraved in the stone but the slab of the outside inscription was fixed in the wall. Both these inscriptions were written in Persian language. I do not know Persian. It is true that I can not read Persian. So I, could not read both the inscriptions at the site and could not even see the inside inscription."(E.T.C.)

"यह मस्जिद बाबर की अपनी बनवाई हुई नहीं थी, बल्कि यह मीरबाकी द्वारा बाबर की इजाज़त से बनवाई गई थी और इसी कारण बाबरी मस्जिद मीरबाकी के साधनों के अनुरूप ही बनी थी।" (पेज 334)

"This mosque not built by Babar on his own; rather, it was built by Mir Baqi with the permission of Babar, and for this very reason, the Babri mosque was built only as per the means of Mir Baqi." (E.T.C.)

"मस्जिद में लिखे शिलालेख में यह लिखा था और मस्जिद के तोड़े जाने से पहले मैंने उसे देखा भी था और उसके बारे में कई रिकार्डस हैं, जो भारत सरकार द्वारा हमें दिए गए थे, उनमें पढ़ा है तथा अयोध्या के ऊपर लिखी गई किताब में भी पढ़ा है।

*यह एपीग्राफ़, मस्जिद के मुख्य द्वार, पुनः कि, यानी मस्जिद के मुख्य गुम्बद में जाने वाले द्वार के ऊपर लगा था। इस शिलालेख में बाबरी मस्जिद के बनाए जाने के बारे में लिखा है, जो मैं अपने पहले के बयानों में बता चुका हूं। **यह शिलालेख फ़ारसी में है।** इस शिलालेख में यह नहीं लिखा है कि यह मस्जिद किसी और भवन को तोड़कर बनाई गई है।"*

(पेज 334–335)

"It was so written in the stone inscription at the mosque and the same had also been seen by me before demolition of the mosque. There are several records in this behalf, which have been provided to us by the Government of India. I have read it in them and also in the books written about Ayodhya.

This epigraph was engraved at the main gate of the

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mosque (again stated) that is to say, above the gate leading to the main dome of the mosque. This stone inscription refers about the construction of the Babri mosque, about which I have already stated. ***This inscription is in Persian.*** *This inscription does not mentioned that this mosque was built by demolishing any other building."(E.T.C.)*

*'***बाबरी मस्जिद के शिलालेख से यह स्पष्ट है कि यह बाबर के समय में सन् 1528 ईस्वी में बनायी गयी थी।***''* *(पेज 433)*

*"****From the inscriptions of Babri mosque, it is clear that it was built in the year 1528 AD during the times of Babar.****" (E.T.C.)*

''यह विद्वानों ने तय कर दिया है कि यह ढॉचा बाबर के समय में सन् 1528 ई0 में बनाया गया था, मैं भी इसको सही मानता हूँ।''(पेज 433)

"It has been determined by the scholars that this structure had been built in the year 1528 AD during the times of Babar. I also consider it to be correct." (E.T.C.)

''बाबरी मस्जिद का निर्माण प्राप्त तथ्यों के अनुसार सन् 1528–29 ईस्वी में हुआ था। जो मुगल काल में पड़ता है।'' (पेज 457)

"According to the facts determined, Babri mosque was built in the year 1528-29 AD, which falls in the Mughal period." (E.T.C.)

''मेरा इस ढॉचे को बाबरी मस्जिद कहने के पीछे और कोई विषेष उद्देष्य नहीं है, सिवाय इसके कि मैं पुरातत्ववेत्ता हूँ और बाबरी मस्जिद का ढॉचा पुरातात्विक हैरिटेज था, इसी नाम से जाना जाता था। मैंने इसे देखा था, इसको इसी नाम से मैंने अपने लेखों में लिखा है। यह अधिक डेफनिट और अधिक प्रिसाईज ढंग से उस ढॉचे को बताने का तरीका मुझे मालूम देता है।'' (पेज 457)

"I have no special motive in calling this structure Babri mosque, except for the fact that I am an archaeologist and the structure of Babri mosque was a

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archaeological heritage and was known by this name. I had seen it and have mentioned it so in my articles. It appears to me, to be a more definite and precise method of describing the said structure." (E.T.C.)

1360. The statement of PW 16 in respect to period of construction and the person by whom, is solely based on two inscriptions which he claims to have affixed on the disputed building in Persian language though neither the witness can read Persian nor could see the inner one. Here also on page 157 read with 334 and 335 though the witness claims that the inscriptions which were installed when he visited the premises were the same as were installed at the time of construction of the building and this shows that he has not read the text of the inscriptions as published in different books from time to time and had no occasion to compare the same but the statement has been made on pure conjecture and surmises.

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1361. The expertise of PW 16 on the matter relating to Medieval History has been doubted by another witness of plaintiff (Suit-4), i.e., PW 20, Shirin Musvi in her statement on page 129.

1362. Further the witness does not claim to be an Expert Historian but he is an Expert Archaeologist. Since he has written an Article on the disputed building i.e. Paper No. 110C1/8 (Exhibit D37, Suit-5), it appears that to support its contents, he came in witness box in his first appearance. For our purposes suffice it to mention that here also the sole foundation for claiming the period of construction of the building as "1528 AD" by Mir Baqi, the entire stress is on the said inscriptions and nothing else.

1363. Another Expert Historian **Suvira Jaiswal-P.W.18**, in

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her cross-examination with respect to the aforesaid aspect, has said :

''बाबर अवध के क्षेत्र में आया था ऐसा मैंने पढ़ा है लेकिन अयोध्या आया या नहीं मैं नहीं बता सकती हूँ।'' (पेज 24)

"Babur had come in the region of Awadh, I have read so, but in fact, came to Ayodhya or not, I cannot say."(E.T.C.)

''लेकिन ***बतौर इतिहासकार*** *मैं बता सकती हूँ कि 16वीं शताब्दी में बाबर ने अयोध्या में बाबरी मस्जिद बनवाई।'' (पेज 103)*

"but as a historian *I can tell that in 16th century Babar got constructed Babari Mosque in Ayodhya."(E.T.C.)*

*''**मैने बाबरी मस्जिद के बारे में कुछ नहीं पढ़ा विशेष रूप से नहीं पढ़ा इसलिए मैं नहीं बता सकती कि बाबरी मस्जिद कब अस्तित्व में आयी।** मैं यह भी नहीं बता सकती कि बाबरी मस्जिद के अस्तित्व में आने के पहले उस स्थान पर क्या था।"(पेज 105)*

*" **I have read nothing about Babari Mosque, I did not study thoroughly, therefore, I cannot say as to when Babari Mosque came into existence.** I cannot say as to what was there at the site before coming into existence of Babari Mosque." (E.T.C.)*

''मैंने बाबरनामा नहीं पढ़ा है।'' (पेज 121)

"I have not read Babarnama." (E.T.C.)

*'' यह ठीक है कि **मैं प्राचीन इतिहास की विशेषज्ञ हूं।** यह भी ठीक है कि मैं इस अदालत में **प्राचीन इतिहास के विशेषज्ञ के रूप में गवाही देने आई हूं।'' (पेज 122–123)***

*"This is correct that **I am expert in Ancient History.** It is also correct that I have come to this Court **to tender evidence as specialist in Ancient History.**" (E.T.C.)*

1364. PW 18 admits that she has come to depose her

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statement as Expert Historian being specialist in Ancient History (page 122-123). However, while on one hand she claims that the disputed building was constructed in 16th century by Babar at Ayodhya called Babari mosque and this statement she is making as a historian but simultaneously on page 105 she said that she has not read anything about Babari mosque and did not study thoroughly and, therefore, cannot say as to when Babari mosque came into existence. On page 121, she also admits of having not read "Baburnama" at all.

1365. Shrin Musvi-P.W.20 in her examination with respect to the aforesaid aspect has said:

(Examination-in-chief)

*"**There was an inscription at Babari Masjid divided in three parts** and its some part were printed in Beveridge's Babar-Nama. The entire inscription is published in 1965, Epigraphia Indica published by A.S.I. It is in Persian language and Nask-script. It mentions that Mir Baqi got the mosque constructed in 1528-29 AD on the orders and intention of Babar. The date of his construction is found from its script by numerical calculation. (page2-3)*

***Buchanan visited Ayodhya in 1810** and described about the same in his accounts. He has said that it is alleged that Aurangzeb demolished a temple in Ram Kot and constructed a mosque but he said that the **mosque has an inscription of the period of Babar, therefore, the aforesaid view is ill founded**." (page-4)*

(Cross-examination)

''यह ठीक है कि बाबर ने मीरबाकी को अवध का कमाण्डर नियुक्त किया था।'' (पेज 29)

"It is true that Babar had appointed Mir Baqi

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Commander of Awadh." (E.T.C.)

''बाबर का अयोध्या जाने का रेफ्रेन्सेज है, मगर ऐसा उसके मेमोआर में नहीं है। यह रेफ्रेन्सेज दूसरे समकालीन और समकालीन के पास के स्रोतों में पढ़ा है। सम्भवतः मैंने यह बात ख्वान्दमीर की लिखी हुई किताब में पढ़ा है। वह बाबर के समकालीन है। वह सेन्ट्ल एशिया के रहने वाले थे और बाबर के आफिसर थे। उनकी यह किताब फारसी लिपि में है। मैं फारसी जानती हूँ। दूसरा नियर कंटेपरेरी सोर्स इस समय मुझे याद नहीं है।'' (पेज 30–31)

"References of visit of Babar to Ayodhya are there but it is not so in his Memoir. I have read these references in other contemporary and nearby sources. Perhaps I have read this in the book written by Khwand Mir. He was contemporary to Babar. He was resident of Central Asia and an officer of Babar. His book is in Persian script. I know Persian. I do not remember presently any other near contemporary source." (E.T.C.)

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''बाबरनामा में मुझे जहॉ तक याद है, कहीं भी मस्जिद बनवाने का जिक्र नहीं है। अजखुद कहा कि तब उस जमाने में मस्जिद बनवाना कॉमन प्रैक्टिस थी।'' (पेज–31)

"In Babarnama so far as I remember, there is no reference anywhere of of getting any Mosque constructed. Then of her own, she said that those days, to get mosque constructed was a common practice." (E.T.C.)

''बाबर अयोध्या कब आया था, मैं नहीं बता सकती, क्योंकि बाबरनामा में उसके यहॉ आने का कोई जिक्र नहीं है।'' (पेज–33)

"I cannot say as to when Babar came to Ayodhya because in Babarnama there is no reference of his visit there." (E.T.C.)

''यह ठीक है कि सानी के मतलब दी अदर यानि दूसरा है। यह ठीक है कि विवादित ढांचे के ऊपर लगे हुए इन्सक्रेपशन पर मीर बाकी के लिये एक टाईटिल आसिफे सानी लिखा गया जिसे बनर्जी ने 'इसफहानी'

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पढ़ा था। शायद बनर्जी ने अपनी पुस्तक 'बाबरस रिलीजन' में ऐसा लिखा।'' (पेज 58)

"It is true that 'Sani' means "the other" or 'second'. It is true that in inscription on disputed structure, the title for Mir Baqi was written as 'Asife sani' which was read as Isfehani by Banerji. Perhaps Banerji has written this in his book Babar's religion." (E.T.C.)

''जैसा मैंने ऊपर बयान दिया है विवादित स्थल पर लगे शिलालेख को सन् 75 से 1980 के बीच में पढ़ा था एवं उस पर अध्ययन किया था। उन शिलालेखों का अध्ययन मेरे शोध के लिए आवश्यक था। मैंने अपनी थीसीस में विवादित स्थल पर पाये गये शिलालेख का कोई उल्लेख नहीं किया है इसमें कास्ट आफ कांस्ट्रक्शन के बारे में नहीं लिखा है।''

(पेज 120–121)

"As I have stated above, I had deciphered the epigraph on the disputed site between 1975 and 1980 and had studied on this point also. The study of those epigraphs was not necessary for my research." (E.T.C.)

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*''यह ठीक है कि **1975 के पहले विवादित स्थल पर लगे शिलालेखों की मुझे कोई जानकारी नहीं थी।**'' (पेज 121)*

*"It is true that **I had no knowledge of the epigraphs on the disputed sites before 1975.**" (E.T.C.)*

*''मैंने **ओरीजनल इन्सक्रिपशन की फोटो ऐपीग्राफिया इण्डिया 1964–65 में देखा है।**'' (पेज 121)*

*"**She had seen the photograph of the original inscription in Epigraphia Indica in 1964-65.**" (E.T.C.)*

''उस विवादित स्थल पर तीन शिलालेख लगे हुए थे इस समय पूरी तौर से याद नहीं है कि वह तीनों शिलालेख किन किन स्थानों पर लगे थे वो फारसी भाषा में थे।'' (पेज 122)

"Three inscriptions were installed on the disputed site. Presently I do not fully remember at which places those three inscriptions written in Persian language were

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installed." (E.T.C.)

''उसमें जो खास बात लिखी है वह यह है कि उसे बाबर के आदेश पर मीरबाकी ने बनवाया और ''खैर बाकी'' शब्द से इसके बनवाये जाने की तारीख निकलती है।'' (पेज 122)

"It is particularly mentioned therein that it was installed by Meer Baqi under the orders of Babar and the date of its installation is inferred by the word "Khair Baki." (E.T.C.)

''मेरे अनुसार सर्वप्रथम विवादित ढांचे का निर्माण 1528 में हुआ होगा।'' *(पेज 126–127)*

*"**In my opinion, first of all, the disputed structure may have been constructed in 1528.**" (E.T.C.)*

''यह कहना बिलकुल गलत होगा कि विवादित ढॉचे का निर्माण 1501 में किया गया हो।'' (पेज 127)

"It will be totally wrong to say that the disputed structure may have been constructed in 1501." (E.T.C.)

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''पेपर नं0 2/15–क–1 पर अंकित 18–12–61 की तिथि की ओर दिलाया जिसे पढ़कर गवाह ने कहा पैरा 1 में ऐसा लिखा गया है कि बाबरी मस्जिद बाबर द्वारा लगभग 460 वर्ष पहले बनवाई गयी थी यह 460 साल से ज्यादा नहीं हो सकता अगर यह बात 1961 में कही गयी है। चूंकि 1501 में बाबर हिन्दुस्तान आया ही नहीं था इसलिए उस समय बाबरी मस्जिद बनवाने का प्रश्न ही नहीं था इसके पैरा 1 में जो बाकी बाते लिखी है वह सही है लेकिन यह कहना कि यह बात 1961 से 460 साल पहले की है गलत है।'' (पेज 127–128)

"Attention was drawn to the date of 18-12-61 shown on Paper No. 2/15-Ka-1 seeing which the witness stated that it is written in para 1 that the Babri Masjid was built by Babur nearly 460 years ago. It can not be older than 460 years if such statement was made in 1961. As Babur did not even come to Hindustan in 1501, there was no question of Babri Masjid being built at that time. Other

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things written in its para 1 are correct but it is wrong to say that this statement was made 460 years prior to 1961."

(E.T.C.)

"मेरे अनुसार यह मस्जिद मीर बाकी ने बनवाई थी और उसने ऐसा कहा है कि बाबर के हुक्म से बनवाई गयी इसलिए मैं यह नहीं बता सकती कि बाबर का ऐसा आदेश था या नहीं क्योंकि किसी और सोर्स में उसका उल्लेख नहीं है।" (पेज 128)

"According to me, this mosque was got constructed by Mir Baqi and he has said that it was constructed under the commands of Babur, therefore, I can not tell whether Babur had given any such command or not because it is not referred to in any other source." (E.T.C.)

*"**बाकी ताशबन्दी मीरबाकी का ही नाम है** खुद बाबर ने बाबरनामा में इस नाम का उपयोग किया है। बाकी शगावल नाम मैने नहीं सुना फिर कहा कि ऐसा मुझे याद नहीं है। मैं यह नहीं बता सकती कि बाकी सगावल मीरबाकी का ही नाम था फिर कहा कि सगावल कोई नाम नहीं होता था कोई पोस्ट होती थी सगावल एक आफिस था उसकी क्या डयूटी और एक्जैक्ट नेचर क्या क्या थे मुझे नहीं मालूम।" (पेज 130)*

*"**Baqi Tashkandi is the name of Mir Baqi,** Babur himself has used this name in Baburnama. I have not heard the name of Baqi Sagawal, then said, I do not remember so, I can not tell as to whether Baqi Sagawal was the name of Mir Baqi, then said, Sagawal was not a name but was a post, Sagawal was an office. I do not know what was his duty and exact nature." (E.T.C.)*

"यह कहना गलत है कि जो इंस्क्रिप्षन विवादित ढांचे पर लगे हुए थे वो 1934 के दंगे के बाद लगा दिये गये थे,बल्कि यह सही है कि वह पहले से लगे हुए थे जिसका जिक्र बुकानन ने सन 1810 के अपने एकाउण्ट में किया है। कुल मिलाकर तीन इन्सक्रिप्षन विवादित ढांचे पर लगे हुए थे। तीनों इन्सक्रिप्षन अलग–अलग अल्फाज में थे परन्तु उनके कन्टेन्ट यानी उनका मतलब कमोबेष एक था। यानी तीनों इन्सक्रिप्षन एक

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ही समय के लगे हुए थे, जो सन 1580 के पहले के थे। एपीग्राफिक्स की स्टडी के अनुसार तीनों इन्सक्रिप्शन की लिपि 1580 के पहले की है । यह ***मैंने 'एपीग्राफिया इण्डिका वैल्यूम 1964–65 में पढा है कि तीनों इन्सक्रिप्शन 1528 में ही लगे थे।*** *ऐपीग्राफिया इण्डिका आर्कियोलाजिकल विभाग का एक जरनल है और काफी विष्वसनीय जरनल है।'' (पेज 136–137)*

"It is wrong to say that the inscriptions which stood at the disputed structure were installed after the 1934 riot. However, it is true that they were installed from before, as Buchanan has mentioned in his account of 1810 AD. In all, there are three inscriptions on the disputed structure. They had different wordings but their meaning was almost same. That is to say, the three inscriptions were installed at one and the same time. They all belong to pre-1580 period. As per the study of epigraphics, the script of all the three inscriptions preceded 1580. ***I have read in Epigraphia Indica Vol 1964-65 that the inscriptions was installed in 1528 itself.*** *Epigraphia Indica is a Journal from the Archaeological Deptt and it is fairly worth relying."(E.T.C.)*

''मैंने ***बनर्जी की पुस्तक बाबर एन्ड दि हिन्दूज में भी दो इन्सक्रिप्शन के बारे में पढा है*** *तीसरे के बाबत उन्होंने नहीं लिखा है क्योंकि वह क्षतिग्रस्त हो गया था। बनर्जी द्वारा लिखी गई पुस्तक मेरी अपनी लाइब्रेरी में मौजूद है और टैगोर लाइब्रेरी लखनऊ में भी होनी चाहिए।'' (पेज 137)*

*"**In Banerjee's book "Babur and the Hindus" also I have read about two inscriptions** but he has written nothing in regard to the third one because it was damaged."(E.T.C.)*

''बाबर ने अयोध्या के बारे में कोई खास बात नहीं कही।''(पेज 138)

"Babur did not say anything specific about

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Ayodhya." (E.T.C.)

"एक्जीबिट 53 को देखकर गवाह ने कहा इसमें लिखे अनुसार मीरबाकी बाबरी मस्जिद का फाउन्डर था। मेरे हिसाब से फाउन्डर का मतलब उससे है जिसने इसे बनाया।" (पेज 146)

"Seeing Exhibit 53, the witness said that Mir Baqi was, as per its contents, the founder of Babri Mosque. According to me, founder means the person who got it built." (E.T.C.)

1366. PW 20 in her examination-in-chief, besides other, has said that the inscription fixed at Babari mosque is divided in three, and some part thereof was published in "Baburnama" by Mrs. Beveridge and the entire inscription is in Epigraphica Indica (1965) and this shows that the building in dispute was constructed by Mir Baqi in 1528-29 AD. It is in Persian and script is Nask. The inscription also shows that the construction was made under the orders and as per the intention of Babar. The first of her statement that there was one inscription divided in three itself is not supported with what is pleaded and sought to be proved by plaintiffs (Suit 4). Further the text of the inscriptions as quoted in **Baburnama by Beveridge** and in **Epigraphica Indica (1965)** differs. On page 121 of her statement she claims to have seen the photo of original inscription in Epigraphica Indica (1964-65) while the author has said something else which we shall be discussing a bit later. On page 29 she claims that Mir Baqi was appointed commander of Awadh by Babar and on page 130 she says that Baqi Tashkandi was another name of Mir Baqi and this name has been used by Babar in Baburnama but we do not find mention of Mir Baqi or the fact that Baqi Tashkandi was also called as Mir Baqi in the Baburnama though some of the writers on their own have tried to identify "Baqi Tashkandi" with Mir Baqi but without giving

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any material to justify such inference. She further said that Buchanan in his account in 1810 has mentioned about three inscriptions (page 136-137) but we do not find any such publication or book written by Buchanan mentioning the same. On the contrary we find that Dr. Francis Buchanan though made certain survey for about seven years starting from 1807 but could not get himself published any material in this regard and later on his material was processed and a report was published in 1838 by "Robert Montgomery Martin".

1367. In any case despite so many reasons some of which we have already discussed, we find that the statement of the above mentioned Expert witnesses suffer serious flaws and make it extremely delicate situation for this Court to rely on their opinion. The only thing which consistently emerges is that the statement about the period of the construction and the person who got the disputed building constructed is solely founded upon the text of the inscriptions fixed on the disputed building. There is no other material either to corroborate or to support it.

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1368. Besides above expert historians, some other witnesses have also deposed about construction of mosque, the period and the persons who got it constructed.

1369. **PW-1-Mohd Hashim** in this regard has said:

''मैंने मीरबाकी का नाम खूब अच्छी तरह से सुना है। ....मीरबाकी बाबर का कमाण्डर था।'' (पेज 84)

"I have heard of the name of Mir Baqi very well. .... Mir Baqi was a commander of Babur."(E.T.C.)

''प्रश्न– आपने अपने अर्जी दावा के पैरा 1 में यह लिखवाया है कि यह मस्जिद जिसे बाबरी मस्जिद कहा जाता है शंहशाह बाबर ने बनवायी थी?

उत्तर– जो लिखा है वह सही लिखा है मेरा मतलब है कि यह मस्जिद बाबर के हुक्म से तामीर हुई थी।'' (पेज 92)

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"Question:- Have you got it written in para 1 of your claim that emperor Babur built this mosque, which is called Babri mosque.

Answer:- Whatsoever is written, is correctly written. I mean to say that this mosque was constructed at the behest of Babur."(E.T.C.)

"बाबरी मस्जिद बनते वक्त जंग नहीं हुई।" (पेज 92)

"There was no struggle while the construction of the mosque was under way." (E.T.C.)

"किसी तारीख के मुताबिक बाबर और अयोध्या के उस वक्त के राजा या हुकुमत के बीच में कोई जंग नहीं हुईं जिस वक्त मस्जिद बनी तब भी कोई जंग नहीं हुई।" (पेज 93)

"As per a narrative, no battle took place between Babur and the then King or Kingdom of Ayodhya. When the mosque was built even then no battle took place there."(E.T.C.)

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"विवादित भवन जिसे हम बाबरी मस्जिद कहते हैं सन् 1528 में तामीर हुआ था। मेरे अर्जी दावा के पैराग्राफ 1 में इस इमारत की जो उम्र लिखी गयी है वह सही है।" (पेज 100)

"The disputed building, which we call Babri mosque, was constructed in 1528. The age of this building as mentioned in paragraph 1 of my claim application, is correct."(E.T.C.)

"बाबर सुन्नी मुसलमान था। मीरबाकी शिया मुसलमान था। बाबर अब्बास कलंदर सुन्नी मुसलमान थे। मैं नहीं कह सकता कि मीरबांकी इनके मुरीद थे। शाहशांह बाबर कभी भी अयोध्या नहीं आये। बाबर की हकूमत दो साल की थी लेकिन मैं यह नहीं कह सकता कि कौन कौन सी खास सन् में यह हकूमत रही।" (पेज 109)

"Babur was a Sunni Muslim. Mir Baqi was a Shia Muslim. Babur Abbas Qalandar was a Shia Muslim. I cannot say Mir Baqi was his disciple. Emperor Babur

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never went to Ayodhya. The reign of Babur lasted for two years but I cannot tell in which particular years this rule was."(E.T.C.)

*''**इस मस्जिद पर एक पत्थर लगा हुआ था, जिस पर यह तमाम जानकारी दी गई थी कि यह मस्जिद बाबर ने बनवाई है, बजरिये मीरबॉकीं** अजखुद कहा उस पर लिखा हुआ था ''बफर मुदैशाह बाबर ने अदलसत''। उसके अलावा भी और कुछ लिखा था जो मुझे अब याद नहीं।*

प्रश्न– क्या उस पर आगे यह भी लिखा हुआ है ''बिना कर्ब ई मुहबत्ते कुदिशियॉ'

उत्तर– यह ठीक है, ऐसा भी लिखा हुआ था। आज खुद कहा कि फारसी में पूरी तारीख हिस्ट्री लिखी हुई थी।'' (पेज 120)

*"**This mosque had a stone detailing that this mosque was built by Babur through Mir Baqi.** (Himself stated) It had written on it 'Emperor Babur built it.' Apart from this, it had something more written on it which I cannot recall at present.*

Question:- Has it something further written which runs as 'bina karb ei muhabatte kudishian' ?

Answer:- It is true that it was so written. (Stated on his own) The entire history was written in Persian."(E.T.C.)

''बाबर की तमाम किताबों में इसका जिक्र आता है और आम लोगों में चर्चा है कि यह मस्जिद बाबर ने बनवाई थी।'' (पेज 120)

"It finds mention in many books of Babur and it is a public talk that Babur built this mosque." (E.T.C.)

''इस मस्जिद पर जो लिखा हुआ था कि यह फरिश्तों के उतरने की जगह है, वह मीरबांकी ने लिखवाया था।'' (पेज 136)

"It was Mir Baqi who had got it engraved on this mosque that it is a descending place of angels." (E.T.C.)

''मेरा कहना है कि 1528 से यह हमेशाा मस्जिद रहा है,''(पेज 164)

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"I have to say that it has always been a mosque since 1528," (E.T.C.)

"बाबर अयोध्या नहीं आये , अयोध्या के साथ लगती सरयू के उत्तर की तरफ पॉच – दस कोस पर बाबर ने कोई डेरा नहीं लगाया । यह कहना गलत है कि वह हफ्तें –दस रोज का कयाम करने के लिए वहॉ आया करते थे।" (पेज 179)

"Babur had not come to Ayodhya and he had not camped five-ten kosas north of the river Saryu flowing along Ayodhya. It is wrong to say that he used to come there to do work lasting a week or ten days." (E.T.C.)

"यह गलत है कि बाबरशाह ने मीरबॉकी को मस्जिद बनाने के लिए कोई हुक्म नहीं दिया था।" (पेज 180)

"It is wrong that emperor Babar had given no command to Mir Baqi for constructing a mosque." (E.T.C.)

1370. **P.W.2 Haji Mahboob Ahmad** has said:

"शहंशाह बाबर अयोध्या कभी नहीं आए। ....मीरबाकी बाबर का सेनापति था।" (पेज 27)

"Emperor Babur did not come to Ayodhya. .... Mir Baqi was Babur's army chief." (E.T.C.)

*"**बाबर की कोई लड़ाई अयोध्या में नहीं हुयी।** और इसलिए ऐसा कोई सवाल पैदा नहीं होता कि इस मस्जिद के आस–पास की कब्रें उन लोगों की हों जो बाबर से लड़ाई में मारे गए हों।" (पेज 76)*

*"**No battle with Babur had taken place in Ayodhya** and hence there is no question that the graves located in the vicinity of this mosque may be of those persons who may have have been killed in the battle with Babur."(E.T.C.)*

*"**मस्जिद में पत्थर जरूर लगे हुए थे,** एक पत्थर पर कुछ लिखा हुआ भी था, लेकिन मुझे मालूम नहीं कि क्या कुछ लिखा हुआ था।"(पेज 107)*

*"**Stones had certainly been used in the mosque**;*

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one stone had something written on it but I cannot tell what was written on it." (E.T.C.)

1371. **P.W.3 Farooq Ahmad** in his cross examination has said:

''बाबर हिन्दुस्तान का बादषाह था। बाबर के वजीर मीरबाकी ने यह मस्जिद बनवाई थी।'' (पेज 16)

"Babar was emperor of India. This mosque was built by Babar's Wazir Mir Baqi." (E.T.C)

''अयोध्या में सबसे पुरानी मस्जिद यही थी जिसको बाबरी मस्जिद कहा जाता है। बाबरी मस्जिद से पुरानी और कोई मस्जिद अयोध्या में नहीं है।'' (पेज 18)

"It was the oldest mosque in Ayodhya, which was called Babri Masjid. There is no other mosque older than Babri Masjid in Ayodhya." (E.T.C)

1372. **P.W.4 Mohd. Yaseen** also in his cross examination said:

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''मुतदाविया मस्जिद को शहंषाह बाबर ने बनवाया था इसलिए उसे बाबरी मस्जिद कहा जाता था। बाबर ने खुद आकर मस्जिद नहीं बनवायी उसका हुक्म था उसके वजीर ने बनवायी थी। ऐसी बात तवारीखों में लिखी होगी। मैंने ऐसी बात खुद इतिहास की किताबों में नहीं पढ़ी लेकिन ***लोगों से सुना है।''*** *(पेज 60)*

"The disputed mosque was built by emperor Babar, due to which it is called Babri mosque. Babar himself did not come over to build the mosque, and it was on his command that his Wazir had got it built. Similar references are found in history. I have not so read myself in history books, but ***I have heard so****." (E.T.C)*

*''****मुतदाविया इमारत में मेम्बर से सटा हुआ एक पत्थर लगा हुआ था, जिस पर फारसी में कुछ लिखा हुआ था।*** *यह ठीक है कि उस पर लिखा हुआ था ''बफरमूदे शाह बाबर''। मैंने इस बात का गौर नहीं किया कि उसी पत्थर पर 935 हिजरी बाबत तामीर इमारत*

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लिखी हो।'' (पेज 74)

*''**A stone was affixed adjacent to the member of the disputed structure, which had something inscribed in Persian.** It is true that 'Bafarmude Shah Babar' was inscribed over it. I did not pay attention to the fact that on that very stone, 935 Hizri was inscribed regarding the construction of the building." (E.T.C)*

1373. P.W.6 Mohammad Unus Siddiqi in his cross examination has said:

''मैं बाबरी मस्जिद एक्शन कमेटी का चेयरमैन हूँ फैजाबाद ब्रांच का।'' (पेज 8)

"I am chairman of the Faizabad branch of the Babri Masjid Action Committee." (E.T.C.)

''1957 और 1965 के बीच मुझे इस जायदाद के बाबत मालूम हुआ था कि यह कब और किसने बनवाई थी। मैं नहीं बता पाऊँगा कि बुनियादी तौर पर इस जायदाद का कितना रकबा था।'' (पेज 9)

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"Between 1957 and 1965 I came to know as to when this property was erected and by whom. I am not in the position to tell how much area this property basically had."(E.T.C.)

''अजखुद कहा कि मेरी यादश्त कमजोर है (फिर कहा कि सन् 1987 से शुरू हुई है।) यह ठीक है कि अब आलम यह है कि वाजवकात मैं अपने लड़कों के नाम भी भूल जाता हूँ।'' (पेज 33)

"(Stated on his own) my memory is weak. I began to develop weakness in my memory from 1986. (Again stated that it has started from 1987). It is true that condition has now become so serious that I forget even the name of my sons." (E.T.C.)

''मैंने बाबर नामा नहीं पढ़ा। जो हिस्ट्री की किताबें हमने अपने कोर्स में पढ़ी थी उनमें कहीं बाबरी मस्जिद का जिक्र नहीं आया। मैं क्योंकि वहीं का रहने वाला हूँ इसलिए मुझे बाबरी मस्जिद के बारे में जानकारी प्राप्त हो

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गयी।'' (पेज 55)

"I did not read 'Baburnama'. In the history books which I studied as a part of my course, I did not come across the mention of the mosque anywhere. As I hail from that very place, I came to have knowledge of the Babri mosque." (E.T.C.)

*''**मस्जिद के मेंबर पर एक पत्थर लगा हुआ था** जिस पर ऐसा तहरीर था कि बाबर के हुक्म पर इसकी तामीर मीरबाकी ने करायी थी। . . **यह पत्थर मेंबर पर लगी हुयी थी।** . . यह तहरीर फारसी में थी। मैं कुद हद तक फारसी पढ़ा हुआ हूँ। उस तहरीर को मैंने पढ़ा था। मिडिल क्लास के बाद मैंने अरबिया कालेज में दाखिला लिया था और वहां कुछ हद तक फारसी पढ़ी थी।'' (पेज 62)*

*"**On the member of the mosque was placed a stone** with an inscription that it was built by Mir Baqi at the diktat of Babur. . . . **This stone was fixed to the member.** . . This inscription was in Persian. I have read Persian to some extent. I read the inscription. After doing my middle, I sought admission in Arabia College and studied Persian to some extent there." (E.T.C.)*

1374. PW 10, Mohammad Idris has said**:**

*''जहॉ तक मैं जान पाया हूँ, किताबें पढ़कर और लोगों से सुनकर, वह यह है कि इस मस्जिद की तामीर मीरबाकी ने करवाई थी। क्योंकि इसका जिक्र अखबारों में आता रहा है, इसलिए मैं कह सकता हूँ कि **यह मस्जिद सन् 1528 में बनवाई गई थी।**'' (पेज 32)*

*"As far as I have come to know by reading the books and by hearing people that this mosque had been built by Mir Baqi. Since this fact has continued to be published in newspapers, I can say that **this mosque was built in 1528.**"(E.T.C)*

''बाबर के सिपहसलार के बारे में तो मैं नहीं जानता लेकिन मैंने मीरबाकी का नाम जरूर सुना है। यह उस जमाने के यानी 1525–26 के

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आसपास के एक बहुत बड़े आदमी थे। वो एक फौजी थे उनका तारूर्फ एक फौजी की हैसियत से है। वो मुसलमान थे इस्लाम के हामी थे। वो मुसलमान थे इसलिए जाहिर है कि वो भी बुतपरस्ती के खिलाफ थे।''(पेज 49)

"I do not know about the commanders of Babar, but have certainly heard the name of Mir Baqi. He was a very big personality of that time i.e. around 1525-26. He was a soldier and he is known as a soldier. He was Muslim and follower of Islam. Since he was Muslim, naturally he was against idolatry." (E.T.C)

''बाबर ने हिन्दुस्तान में किसी मस्जिद को नहीं तोड़ा। किसी मन्दिर को भी नहीं तोड़ा।'' (पेज 90)

"Babar did not demolish any mosque in India. Did not demolish any temple as well." (E.T.C)

''किसी भी तारीख की किताब में मैंने ऐसा नहीं पढ़ा कि बाबर कभी अयोंध्या आया हो। वह अवध प्रान्त के हाषिये से होकर बिहार जरूर गया था, . . जहॉ तक मीरबाकी का सवाल है, वह अयोध्या में जरूर आया और मुस्तकिल तौर पर यहॉ रहा। . . किताबों में मैंने पढा है कि ***जिस जमीन पर यह मस्जिद बनाई गई, वह इसकी तामीर से पहले एक खुले हुए मैदान की सूरत में पड़ी हुई थी।*** *'' (पेज 98–99)*

"I have not read so in any history book that Babar ever came to Ayodhya. He did go to Bihar along the border of Awadh province, ... So far as Mir Baqi is concerned, he did come to Ayodhya and remained here permanently. ... I have read in books that ***the land over which this mosque was built, was in form of an open space prior to its construction.*** *" (E.T.C)*

''935 हिजरी साल में अयोध्या पर किसी हिन्दू राजा की हकूमत नहीं थी। . . . . . यह ठीक है कि बाबर ने अयोध्या कब्जा करने के लिए कोई खास जंग नहीं की। शर्की सुल्तान जौनपुर वाले की हकूमत बाबर के आने पर खत्म हो गयी थी। उनकी यह हकूमत 932 और 937 हिजरी साल

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के बीच में खत्म हुई थी। उनकी छोटी–मोटी जंगे हुई थी मैं इस बाबत सही सन् नहीं बता सकता। इस बात का जिक्र डा0 बिलग्रामी की लिखी हुई किताब में है।'' (पेज 111)

''No Hindu king ruled over Ayodhya in 935 Hizri era. . . . . It is true that Babar did not contest any important battle to conquer Ayodhya. The reign of Sherky Sultan of Jaunpur came to an end on arrival of Babar. His reign ended between 932 and 937 Hizri era. He had small battles. I cannot correctly tell about them. This fact is mentioned in the book written by Dr. Bilgrami.'' (E.T.C)

1375. **P.W.12 Ram Shankar Upadhyay** has said:

''मेरा रिसर्च का आधार था कि 1528 में बाबरी मस्जिद बनी, इस पर किसी का कोई विवाद नही था'' *(पेज–30)*

''The premise of my research was that there was no dispute on the point of the Babri mosque being built in 1528 and also on its date,'' (E.T.C.)

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1376. **P.W.19 Maulana Atiq Ahmad** has said:

''बाबरनामा में विवादित स्थल यानी बाबरी मस्जिद बनवाने का कोई जिक्र नहीं है।'' (पेज 37)

''Baburnama' does not have mention of building the disputed structure, that is, Babri mosque.'' (E.T.C.)

''मुझे यह ठीक से याद नहीं है कि मैंने किस पुस्तक में पहली बार बाबरी मस्जिद का नाम पढ़ा हो। यह भी याद नहीं कि मैंने कब इसे पहली बार पढ़ा था।'' (पेज 46)

''I do not properly remember in which book I read the name of Babri mosque for the first time. I also do not remember when I read it for the first time.'' (E.T.C.)

''बाबरी मस्जिद के बारे में मैंने पढ़ा है। बाबर ने विवादित स्थल के अलावा और भी मस्जिदे हिन्दुस्तान में बनवाई है जिसका जिक्र तारीखों में आता है। ऐसा नहीं है कि बाबर की बनवाई गयी सभी मस्जिद बाबरी मस्जिद के नाम से ही जानी जाती है। मुझे मुतईयन तौर से किसी मस्जिद

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*को जिसे बाबर ने बनवाई, याद नहीं अर्थात इस मस्जिद यानि की बाबरी मस्जिद के अलावा। यह ठीक है कि बाबरी मस्जिद विवादित स्थल पर मीरबाकी ने बनवाया था। पर बाबर के हुक्म से। **बाबरी मस्जिद पर वह कत्बा लगा हुआ था उसमें यह बात लिखी हुई थी** कि यह मस्जिद मीरबाकी ने बाबर के हुक्म से बनवाई है। वह कत्बा मैंने खुद नहीं देखा पर उपरोक्त किताब बाबरी मस्जिद में उसका हवाला है कत्बे के आसार उसमें छिपे हुए है। यह ठीक है कि उसी किताब के आधार पर और दूसरे आर्टीकलस के बिना पर मैं ऐसा कह रहा हूँ कि **ऐसा कत्बा वहां लगा हुआ है।**" (पेज 76)*

*"I have read about Babri mosque. Babar had built many other mosques in India besides the one at the disputed site, whose references are found in history. It is not that all the mosques built by Babar are known as Babri mosque. I definitely do not remember any mosque built by Babar i.e. besides this mosque or the Babri mosque. It is true that Mir Baqi had built Babri mosque at the disputed site, but on the command of Babar. **An inscription was fixed at the Babri mosque in which it was mentioned** that this mosque had been built by Mir Baqi on command of Babar. I did not see this inscription myself, but the contents of the inscription have been published in the aforesaid book 'Babri Masjid'. It is true that on basis of said book and other articles, I am saying that **such inscription had been fixed over there.**" (E.T.C.)*

1377. PW 23, Mohd. Qasim Ansari has said:

"फारसी में शायद कुछ अन्दर लिखा था। पर मैं उसे पढ़ नहीं सका। अरबी में अल्लाह, मोहम्मद व कुरान की कुछ आयते ढ़ांचे के अंदर लिखी थी। यह मुझे याद नहीं है कि कितनी जगह कुरान की आयतें व अल्लाह, मोहम्मद लिखा था। जो अरबी में लिखा हुआ था वह सब खुदा हुआ लिखा था। यह आयतें पत्थरों पर भी लिखी थी और दीवारों पर भी लिखी थीं। एक एक जगह पर दो–दो, तीन–तीन लाईनें लिखी हुई

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थीं। यह लिखावटें 15–20 फिट की ऊँचाई पर लिखी हुई थीं। कहीं कहीं पर आठ दस फिट की नीचाई पर लिखी थी और इससे भी नीचे लिखी थीं। ...'' (पेज 72–73)

''There was something written in Persian outside. But I could not read that. The words 'Allah' and 'Muhammad', and some Ayats (verses) of the Quran were written in Arabic language, inside the structure. I do not remember at how many places verses of the Quran and the words 'Allah' and 'Muhammad' were written . Whatsoever was written in Arabic, was all engraved. These Ayats were engraved on stones as well as on walls. 2-3 lines were engraved on every place. These engravings were on the elevation of 15-20 feet. At certain places these engravings were at the depth of 8-10 feet or even at greater depth.'' (E.T.C.)

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1378. **PW 26 Kalbe Jawwad** in his cross examination has said as under:

''जहां तक मुझे ख्याल है बाबरी मस्जिद ***बाबर के गर्वनर मीरबाकी ने 1528 में बनवाई थी।*** *...बाबरी मस्जिद आजकल जिसे अयोध्या कहा जाता है वहां है। पहले यह मालूम हुआ था कि पहले* ***यह वीरान जगह थी बाद में आबाद हुई।*** *'' (पेज 41)*

''To the best of my memory, the Babri mosque was ***built in 1528 by Mir Baqi, Governor of Babar****. ... Babri mosque exists at the place which, these days, is called Ayodhya. It so transpired that earlier* ***this was a deserted place and was inhabited subsequently****.'' (E.T.C.)*

'' 1528 के पूर्व ***विवादित स्थल एक खाली जमीन थी और जिस पर यह मस्जिद तामीर की गयी।*** *' (पेज 42)*

''Prior to 1528, ***there was vacant land at the disputed site over which the mosque was built****.'' (E.T.C.)*

''विवादित स्थल के बारे में जो पुस्तक मैंने ''बाबरी मस्जिद'' नामक

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पढ़ी है और कोई पुस्तक में नहीं पढ़ा है, केवल अखबारात और लेखों में पढ़ा है। इस विषय पर लिखी नहीं गई हैं।'' (पेज 51)

"I have read only the book titled 'Babri Masjid' as regards the disputed site and have not read any other book. I have only read newspapers and articles. I have no special study on this topic, because not much books have been written on this topic." (E.T.C.)

''मैं सुनकर और पढ़कर बाबरी मस्जिद को बाबरी मस्जिद कहता हूँ। . . . मैंने अलग से इस बात पर कोई रिसर्च नहीं किया कि विवादित ढांचा बाबरी मस्जिद थी या नहीं।'' (पेज 58)

"I call the Babri mosque as Babri mosque on the basis of hearsay and my studies. ... I have not carried out any separate research as to whether the disputed structure was Babri mosque or not." (E.T.C.)

''मुझे सिर्फ इतना मालूम है कि बाबर कभी अयोध्या नहीं आया। लिहाजा उनके हमला करके खुद जीतने का सवाल नहीं उठता। यह स्टैब्लिष्ड है कि मस्जिद मीर बाकी ने बनवायी न कि बाबर ने।'' (पेज 87)

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"I know only this much that Babar never came to Ayodhya. Hence, the question of he being victorious does not arise. It is established that the mosque was built by Mir Baqi and not Babar." (E.T.C.)

''बाबरी मस्जिद के बाबरी मस्जिद होने का इल्म मुझे कुछ पढ़ने से हुआ और कुछ मातेबर गवाहों से हुआ। यह इल्म मुझे सबाहुद्दीन अब्दुल रहमान की किताब बाबरी मस्जिद और कुछ लेखों से हुआ। ... सबाहुद्दीन साहब एक आलिम थे। मुझे यह नहीं मालूम उनका स्पेषलाइजेषन काहे में था।'' (पेज 88)

"I gathered the knowledge of the Babri mosque being Babri mosque from certain studies and few 'Matebar' witnesses. I gathered this knowledge from Sabahuddin Abdul Rehman's book Babri Masjid and certain articles .... Sabahuddin was a scholar. I do not know his

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topic of specialization." (E.T.C.)

1379. **PW 29 Dr. Jaya Menon** though had appeared to depose her statement against A.S.I. report dated 22nd August 2003 but in her cross-examination she has also made statement about the period of construction of disputed building and also the person according to her who had constructed it. She said:

"I do not know the total number of mosques constructed in Ayodhya during 15th and 16th century but I know that Babri Masjid was constructed during 16th Century." (Page 146-147)

*"**I know that Babri Mosque was erected in the year 1528 by Mir Baqi**. . ... I do not exactly know as to who Mir Baqi was, but as I think, he was a commander possibly in Babar's army." (Page 154-155)*

"I don't know whether Babar had come to Ayodhya and Faizabad. I have heard about Meer Baqi who is supposed to have built Babri Masjid." (Page 219-220)

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1380. **PW 30 Dr. R.C. Thakran** in his cross examination said:

''सन् 1528 ई0 में अयोध्या फैजाबाद का रूलर कौन था, इसकी जानकारी मुझे नहीं है।'' (पेज 193)

"I do not know as to who was the ruler of Ayodhya, Faizabad in 1528." (E.T.C.)

''विवादित भवन बाबर द्वारा बनवाई गई मस्जिद है।'' (पेज 194)

"The disputed building is a mosque built by Babur."(E.T.C.)

*''इस बारे में कि अयोध्या में बाबर ने मस्जिद बनवाया था, मैंने समाचार–पत्रो तथा पत्रिकाओं में पढ़ा था। मैं **एक इतिहासज्ञ के रूप में** अख़बारों और पत्रिकाओं को ज्ञान का स्रोत मानता हूँ। स्वयं कहा कि इन स्रोतों से प्राप्त ऐतिहासिक जानकारी सत्यापित है या नहीं इसको इतिहासकार अध्ययन व विश्लेषण के द्वारा तय करते हैं। अख़बारों और*

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पत्रिकाओं से प्राप्त इस जानकारी का सत्यापन मैंने किसी पुस्तक से नहीं किया, ... इन लेखों व मोनोग्राफ़ों की आथेंटीसिटी को मैंने सत्यापित नहीं किया। स्वयं कहा कि पहले ही इतिहासकारों के द्वारा यह बात सत्यापित की जा चुकी थी। इस सम्बन्ध में किसी इतिहासकार की पुस्तक को मैंने नहीं पढ़ा है।'' (पेज 195)

"In news-papers and magazines, I read that Babur had built a mosque in Ayodhya. ***As a historian,*** *I consider news-papers and magazines to be a source of knowledge. (Himself stated) Historians through study and analysis determine whether historical information obtained from these sources is true or not. I did not through any book verify the veracity of this information, obtained from the news-papers and magazines. ... I did not certify the authenticity of these articles and monographs. (Himself stated) This fact had already been certified by the historians. I have not read a book of any historian in this regard." (E.T.C.)*

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''मेरे विचार से ***विवादित भवन सन् 1528 ईस्वी के लगभग बना होगा।''*** *(पेज 358)*

"In my opinion, ***the disputed structure may have been built around 1528 AD.****" (E.T.C.)*

1381. **PW 32 Dr. Supriya Verma** in his cross examination said:

"The ***inscriptions found at the disputed site*** *of excavation refer that Meer Baqi, the commander of Babar has built this mosque as I remember now." (Page 34)*

1382. **D.W.2/1-1 Sri Rajendra Singh** in his cross examination has said:

*''****सन् 1528 में विवादित स्थल पर*** *भगवान राम के मंदिर को गिराने के बाद* ***एक ढॉचे का निर्माण किया गया था,*** *जिसे कुछ लोग बाबरी मस्जिद कहते हैं।'' (पेज 26)*

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*"**In the year 1528, a structure had been built at the disputed site** after demolishing the temple of Lord Rama, which is called Babri mosque by few persons." (E.T.C.)*

"मैंने अपनी पुस्तक में "इपीग्राफिया इंडिका अरेबिक एण्ड परशियन स्पलीमेंट 1965" का हवाला दिया है, जिसे मैंने पढ़ा हैं जिस एपीग्राफिया इंडिका को मैंने पढ़ा है, उस पुस्तक में विवादित इमारत में लगे तीन पत्थर, जिन पर खुदाई थी, के चित्र छपे हैं और खुदाई में लिखे मज़मून का अनुवाद भी छपा है।" (पेज 36–37)

"I have referred 'Epigraphia Indica Arabic and Persian Supplement 1965' in my book and I have read the same. The Epigraphia Indica, which has been read by me, contains photographs of the three engraved stones fixed in the disputed structure as well as the translation of the Epigraph." (E.T.C.)

"बाबर जब अयोध्या गया था, तब उसके पूर्व राणासांगा को पराजित कर चुका था। यह सम्भव है कि जिस समय बाबर अयोध्या की तरफ गये, उस समय अयोध्या, अवध के अन्तर्गत आता था और वहां का गवर्नर इब्राहिम लोदी द्वारा नियुक्त रहा हो। बाबर जब अयोध्या की तरफ गये थे, तो वह अयोध्या नहीं गये थे, अयोध्या से कुछ कोस की दूरी पर घाघरा नदी के किनारे उन्होंने अपना पड़ाव डाला था। मुझे इस संबंध में कुछ–कुछ स्मरण आ रहा है कि उस स्थान पर पड़ाव डालने के बाद बाबर ने अपने कुछ साथियों को अयोध्या भेजा, इसके बाद इब्राहिम लोदी द्वारा नियुक्त गवर्नर शेख बायजीद अयोध्या छोड़कर भाग गया। बायजीद के अयोध्या छोड़कर भागने की यह घटना 1527–1528 ई0 में हुई, जो 930 हिजरी के तुल्य है। इसमें कोई सन्देह नहीं है कि इस घटना के बाद के कई महीनों की घटनाओं का विवरण बाबरनामें में उपलब्ध नहीं है। 28 मार्च, 1528 के बाद बाबरनामा में 2 अप्रैल, 1528 की घटना का विवरण मिलता है। उसके बाद का विवरण हो सकता है कि 18 सितम्बर, 1528 से मिलता हो। . . . . .25–26 सितम्बर, 1528 में बाबर ग्वालियर उरवा घाटी में उतरा थां उरवा घाटी के पूर्व वह बहुत से शहरों से होकर गुज़रे थे, हो सकता है कि इसके पूर्व वह आगरा से होकर गुजरे हों। स्वयं कहा कि बाबरनामा में इस संबंध में जानकारी मिल सकती है।" (पेज 79–81)

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"By the time Babar went to Ayodhya, he had defeated Rana Sanga. It is possible that when Babar went towards Ayodhya, it fell under Oudh and its Governor may have been appointed by Ibrahim Lodi. When Babar had gone towards Ayodhya, he had not gone to Ayodhya and instead had halted few kose (distance of two miles) away from Ayodhya along the banks of Ghaghra river. I am able to recollect a bit that after halting at that place, Babar had sent few of his associates to Ayodhya due to which Sheikh Baijeed, the Governor appointed by Ibrahim Lodi, fled away from Ayodhya. This fleeing incident of Baijeed occurred around 1527-1528 AD, which is equivalent to 930 Hizri era. There is no doubt that details of incidents occurring many months after this incident, are not available in the Babarnama. After 28th March, 1528, the next detail contained in Babarnama is of 2nd April, 1528. It is possible that the next details commence from 18th September, 1528. . . . . On 25-26th September, 1528 Babar had been to Urva valley in Gwalior and before reaching Urva valley, he had passed through many cities. It is possible that he may have passed through Agra. (The witness) stated on his own that information in this behalf can be had from Babarnama." (E.T.C.)

"स्वयं कहा कि पहली बार अयोध्या की तरफ आने के बाद वह ग्वालियर की तरफ चला गया था, वहां से लौटकर पुनः पर जब वह अयोध्या की तरफ गया, जो उक्त प्रस्तर की दूसरी तथा तीसरी लाइन में बताया गया है। जहां तक मुझे स्मरण है, यह बात सितम्बर 1528 के बाद की है। दूसरी बार जब बाबर अयोध्या की तरफ गया था, तब भी वह अयोध्या के अन्दर नहीं गया था। अयोध्या से दस कोस की दूरी पर उसका पड़ाव था। स्वयं कहा कि मैं सन्दर्भ देखकर ही पूरी बात बता पाऊॅगा।"(पेज 82)

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"(The witness) stated on his own that at time of his first visit to Ayodhya, he had proceeded towards Gwalior, from where he returned and went to Ayodhya, which is mentioned in second and third line of the said paragraph. To the best of my memory, this incident is subsequent to September, 1528. On the other occasion as well when Babar went towards Ayodhya, he did not enter Ayodhya and halted at a distance of 10 kose from Ayodhya. (The witness) stated on his own that I would be able to give the complete facts only after looking at the reference." (E.T.C.)

1383. **D.W.2/1-2 Sri Ram Saran Srivastava** in this regard, has said:

"रिकार्ड के हिसाब से ***विवादित भवन सन् 1528 में बना था,*** *इस प्रकार का लोग कथन करते हैं तथा रिकार्ड से भी यही साबित होता है।" (पेज 27)*

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"According to records, ***the disputed structure was built in the year 1528.*** *This is claimed by people and the records also prove it." (E.T.C.)*

"ऐसा बताया जाता है कि विवादित स्थल पर विवादित भवन सन् 1528 में मस्जिद के रूप में बनाया गया था।" (पेज 31)

*"****It is said that in the year 1528 AD, the disputed structure was built at the disputed site as a mosque.****"(E.T.C.)*

"लेकिन रिकार्ड के आधार पर पता चलता है कि सन् 1528 में बाबर ने मंदिर तोड़कर मस्जिद बनवाई थी। इतिहास की पुस्तकों से पता चलता है कि बाबर वहीं कहीं समीप में रूके हुए थे और उनके एजेण्ट मीर बाक़ी ने मंदिर तोड़कर मस्जिद बनाने का काम किया।" (पेज 35)

"But from the records it appears that in the year 1528 Babar had built the mosque after demolishing the

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temple. It is gathered from history books that Babar was staying at a nearby place and his agent Mir Baqi had gone ahead to demolish the temple and build a mosque."(E.T.C.)

"जहां तक मैंने पढ़ा है, बाबर के सन् 1528 में विवादित स्थल पर पहुंचने की बात नहीं मिलती है और कोई अन्य माध्यम भी ऐसा नहीं है कि जिससे पता चलता हो कि बाबर सन् 1528 में विवादित स्थल पर गया हो।" (पेज 36)

"From my studies, no reference is found about Babar going to the disputed site in the year 1528 and there is no such source from which it is found that Babar had been to the disputed site in the year 1528." (E.T.C.)

"रिकार्ड के अनुसार ***उक्त मस्जिद मीर बाक़ी ने सन् 1528 में बनवाई।*** *" (पेज 36)*

"According to records, ***the above mosque was built in year 1528 by Mir Baqi****." (E.T.C.)*

"विवादित स्थल पर लगे ***शिलालेख*** *व* ***रिकार्ड को देखने से*** *यह मालूम हुआ कि बाबर के हुक्म से उनके एजेण्ट मीर बाकी ने इस भवन का निर्माण देव पुरूषों (फरिश्तों) के आने के लिए करवाया था। मीरबाक़ी ने जिस मस्जिद को बनवाया था, उसमें मीनारें नहीं थी।"(पेज 37)*

*"****From perusal of records and inscriptions*** *at the disputed site, it transpired that under the order of Babar, his agent Mir Baqi had built this structure for descension of angels. There were no minarets in the mosque built by Mir Baqi." (E.T.C.)*

"विवादित भवन मस्जिद के रूप में सन् 1528 में बनाई गयी"

(पेज 39)

"The disputed structure was built as a mosque in 1528 A.D." (E.T.C.)

"वह विवादित भवन 1528 में निर्मित किया गया था । मैंने यह बात फैजाबाद के गज़ेटियर्स से पढ़कर अपनी पुस्तक में लिखी थी।" (पेज 52)

" The disputed structure was built in 1528. I have

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written this in my book after reading the gazetteers of Faizabad." (E.T.C.)

''मैंने अपनी पुस्तक काग़ज सं0 260 सी–1/1 में विवादित भवन की पश्चिमी दीवार पर लिखे शिलालेख का उल्लेख किया है, जो फारसी में था और जिसमें इस स्थान को फ़रिश्तों के उतरने का स्थान बताया गया है। इस को मैंने कई किताबों में पढ़ा था और उसी से अपनी किताबों में पढ़ा था और उसी से अपनी किताब में दिया था।'' (पेज 61)

" In my book, paper no. 260 C-1/1, I have mentioned about the inscription over the western wall of the disputed structure, which was in Persian and in which this place was termed as the place of descension of angels. I had read this in many books and wrote it in my books on basis thereof." (E.T.C.)

''विवादित भवन को मीर बाक़ी ने मस्जिद के रूप में बनवाया था तथा इसमें ***एक शिलालेख लगा हुआ था*** *कि यह फ़रिश्तों के उतरने का स्थान हैं साक्षी ने कहा कि मैंने ऊपर यह बयान नहीं दिया है कि मीरबाक़ी ने विवादित भवन को मस्जिद के रूप में बनवाया था, बल्कि मैंने यह बयान दिया है कि जैसा कि शिलालेख में उल्लिखित था यह फ़रिश्तों (ऐंजिल) के उतरने का स्थान था।'' (पेज 74–75)*

" The disputed structure was built as a mosque by Mir Baqi and ***there was an inscription*** *reading that it was the place of descension of angels. The witness stated that I have not stated above that Mir Baqi had built the disputed structure as a mosque and instead I had stated that as contained in the inscription, it was a place of descension of angels." (E.T.C.)*

''जैसा कि शिलालेख में उल्लेख था, यह भवन स्वर्ग से उतरने वाले फ़रिश्तों के लिए बनवाया गया था।

मुझे इस बारे में ज्ञान नहीं है कि फ़रिश्तों के उतरने की जगह को मस्जिद कहा जा सकता है या नहीं।'' (पेज 75)

"As contained in the inscription, this structure was

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built for descension of angels.

I have no knowledge of the fact whether the place of descension of angels can be called mosque or not."

(E.T.C.)

"मैंने इस संबंध में जितनी भी पुस्तकों का अध्ययन किया है, उन सब में लिखा है कि बाबर ने विवादित भवन को मस्जिद के रूप में बनवाया था, अर्थात् मीर बाकी ने जो भवन बनवाया था, वह बाबरी मस्जिद ही है।"(पेज 76)

"In all those books I have studied in this respect, it is written that Babur got the disputed building built as a mosque, that is to say, the building which Mir Baqui built, is the Babri mosque itself." (E.T.C.)

"मेरी यह जानकारी कि मन्दिर को तोड़कर सन् 1528 में विवादित भवन बनाया गया था, नियुक्ति के पूर्व से रही थी। छानबीन के बाद उपरोक्त दोनों बातों की पुष्टि हो गई।" (पेज 173)

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"My knowledge of the disputed building being built in 1528 by demolishing the temple, preceded my appointment. Both of the afore-said things came to be substantiated after enquiry." (E.T.C.)

1384. OPW 9 Dr. T.P. Verma in his cross examination has said:

"सन् 1528 में अयोध्या में बाबरी मस्जिद बनाये जाने का उल्लेख मिलता है। यह बात मैंने पढ़ी भी है कि सन् 1528 में अयोध्या में बाबरी मस्जिद बनाई गई।" (पेज 12)

"There is a reference of the Babri mosque being built at Ayodhya in 1528. I have also read that Babri mosque was constructed at Ayodhya in 1528 AD," (E.T.C.)

"प्र0– जब बाबरी मस्जिद बनी, तब क्या आप वहॉ मौजूद थे?

उ0 जी नहीं।" (पेज 12)

"Question:- Were you present there at the time when the Babri mosque was built ?

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Answer:- No, Sir." (E.T.C.)

"बाबरी मस्जिद ***बनाने के बाद बाबर के सिपहसालार मीरबाकी ताशकन्दी ने वहॉ पर तीन शिलाखण्ड़ों पर अभिलेख लिखवाये। जिन तीन शिलाखण्डों पर मीरबाकी ने वहॉ लिखवाया था, वे फारसी भाषा में लिखवाये थे।*** *जिन शिलाखण्ड़ों पर मीरबाकी ने परशियन में कुछ लिखाया था, उनमें से एक शिलाखंड आखिरी समय तक बाबरी मस्जिद पर लगा था, बाकी दो शिलाखंड उसके पहले ही कभी गायब हो चुके थे। इन शिलालेखों का विवरण एपीग्राफिया इंडिका परशियन खंड में अनुवाद सहित प्रकाशित हुआ है, जिसका उल्लेख मैंने अपनी पुस्तक "अयोध्या का इतिहास एवं पुरातत्व" में किया है। . . . . .एपीग्राफिया इंडिका एवं मेरी उपरोक्त पुस्तक दोनों में ही उपरोक्त तीनों शिलालेखों का वर्णन है। तीनों ही शिलालेख परशियन भाषा में लिखे गये थे। उन शिलालेखों से यह प्रगट होता है कि वह मस्जिद थी।" (पेज 12)*

*"**After the construction of the Babri mosque, Mir Baqi Tashkandi, commander of Babur, got three stone-blocks inscribed there. The inscriptions engraved on the three stone-blocks at the instance of Mir Baqi, were in Persian language.** Among the stone-blocks which Mir Baqi had got inscribed in Persian, one stone-block was fixed to the Babri mosque till the last time, but the remaining two stone-blocks had disappeared some time earlier. Accounts of these stone-blocks has been published with their translation in the Persian part of 'Epigraphia Indica', which fact I have made mention of in my book titled 'Ayodhya Ka Itihaas Evam Puratatva'. . The aforesaid three inscriptions find description both in 'Epigraphia Indica' and the aforesaid book of mine. All the three inscriptions were written in Persian language. From these inscriptions it is evident that it was a mosque." (E.T.C.)*

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''फरिश्तों के उतरने का स्थान''

मेरे इण्टरप्रिटेशन के अनुसार इसका अर्थ यह होना चाहिए कि यहॉ पर देवताओं का अवतार हुआ था।

देवताओं का अवतार भगवान राम के रूप में हुआ था। यह बात परशियन में लिखी गई थी।''(पेज 13)

''The place of descension of angels.''

As per my interpretation, it ought to mean that deities incarnated themselves at this place.

Deities incarnated in the form of Lord Rama. This thing was written in Persian.'' (E.T.C.)

''उपरोक्त तीनों शिलालेखों में से किसी भी शिलालेख को मैंने देखा नहीं था, उनके बारे में पढ़ा था। मैंने शिलालेख नहीं पढ़ा था शिलालेखों के बारे में पढ़ा था।'' (पेज 13)

''I saw none of the aforesaid three inscriptions, but I read about them. I did not decipher the inscriptions; I read about them.''(E.T.C.)

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लगभग सभी शिलालेखों में बाबर का नाम और उसके लिए दुआएं और उसके लिए आदेश का उललेख किया गया था। उपरोक्त शिलालेखों में से किसी में भी बाबर के आने का उल्लेख नहीं था। मैं परशियन भाषा बिलकुल नहीं समझता हूॅ। जिन पुस्तकों को मैंने कंसल्ट किया था उनमें यही लिखा था कि ये परशियन भाषा में लिखे गए थे। उन पुस्तकों में एपीग्राफिया इण्डिका परशियन खण्ड मिसेज बेवरिज द्वारा तैयार ''बाबरनामा'' का अनुवाद है। . . . एपीग्राफिया इण्डिका'' में यह लिखा हुआ है कि ये अभिलेख यानी शिलालेख बाबर के हुक्म से मीरबाकी ने लिखवाए थे।'' (पेज 14)

''Almost all the inscriptions have made mention of Babur's name, blessings for him as also orders for him. The arrival of Babur did not find mention in any of the aforesaid inscriptions. I do not at all understand the Persian language. Whichever books I consulted, said that these inscriptions were written in the Persian language.

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Out of those books, 'Epigraphia Indica', Persian part is a translation of 'Baburnama' scripted by Mrs. Beveridge. . . . It is written in 'Epigraphia Indica' that Mir Baqi got these inscriptions prepared at the behest of Babur."(E.T.C.)

''198सी–2/90 लगायत 198सी–2/99

प्र0– क्या यह उसी एपीग्राफिया इण्डिका की प्रति है, जिसके बारे में आपने ऊपर उल्लेख किया है?

उत्तर– जी हॉ। इसी कागज संख्या– 198सी–2/95 पर उपरोक्त शिलालेखों के फोटोग्राफ छपे हैं। कागज संख्या–198सी–2/96 पर पहले शिलालेख का टेक्सट एवं अनुवाद छपा है। दूसरे शिलालेख का टेक्स्ट एवं अनुवाद कागज संख्या –198सी–2/97 पर छपा है और तीसरे शिलालेख का टेक्स्ट एवं अनुवाद कागज संख्या – 198सी–2/97 एवं कागज संख्या–198–सी–1/98 पर छपा है। ये शिलालेख बाबर के जमाने में लिखे गए हैं। इन शिलालेखों पर हिजरी सन् की तिथि 935 वां वर्ष लिखा गया है जो ईस्वी सन् के अनुसार 15228–29 पड़ता है। इसीलिए मैं यह समझता हूँ कि ये शिलालेख सन् 1528 में लिखे गये हैं।'' (पेज 14–15)

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"198C- 2/ 90 to 198C-2/99

Question:- Is this a copy of that very 'Epigraphia Indica' you have referred to above ?

Answer:- Yes, Sir. Photographs of the aforesaid inscriptions are published on this very paper no. 198 C – 2/95. The text and translation of the first inscription is published on paper no. 198 C-2/96. Paper no. 198 C-2/97 carries the text and translation of the second inscription and paper nos. 198 C – 2/97 & 198 C – 1/98 carry the text and translation of the third inscription. These inscriptions date back to the reign of Babur. These inscriptions have 935th year of the Hizri calendar written on them which comes to be 1528 – 29 AD. That is why I have the impression that these inscriptions were written in 1528." (E.T.C.)

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''मैं इस बात से तो सहमत हूँ कि विवादित भवन 1528 ईस्वी में मस्जिद के रूप में बनाया गया था,''(पेज 255)

"I do agree that the disputed structure was built a mosque in 1528 AD," (E.T.C)

''बाबर स्वयं अयोध्या नहीं गया, बल्कि उसके अन्य सेनापतियों के साथ बाकी शग़ावल (मीर बाकी बेग) ने इस काम को अंजाम दिया, अर्थात बाबर मीर बाकी को अवध का चार्ज देकर ग्वालियर की ओर रवाना हो गया। बाबर के दोबारा अयोध्या की तरफ आने का कोई उल्लेख नहीं मिलता है। बाबरी मस्जिद तामीर कराने का वाक्या मीरबाकी को अवध का प्रभारी बनाकर बाबर के ग्वालियर चले जाने के बाद की घटना है, परन्तु यह घटना कितने बाद की है, यह मैं नहीं बता सकता हूँ। इस संबंध में ***एक मात्र और सबसे महत्वपूर्ण साक्ष्य वे तीन शिलालेख हैं, जो बाबरी ढांचे पर लगे हुए थे, ऐसा माना जाता है कि और इनमें से दो शिलालेखों में 935 हिज़री अर्थात् 1528 ई0 की तिथि पड़ी हुई है। किसी शिलालेख में उनके निर्माण का महीना और तिथि नहीं मिलती है, केवल सन् मिलता है।*** *मैंने अपनी पुस्तक के पेज 114 के पहले कालम में क्रमांक–6 के सामने* ***तीन मोहर्रम 935 हिजरी को 18 सितम्बर 1528 ई0 माना है। इसी क्रमांक –6 पर मैंने तीन मोहर्रम 936 हिजरी को 7 सितम्बर 1529 ई0 माना है।*** *इस गणना के अनुसार 935 हिजरी का वर्ष अगस्त 1529 तक अवश्य चला होगा। मेरे क्रमांक 6 के विवरण के अनुसार* ***बाबरनामें में 18 सितम्बर 1528 से सात सितम्बर 1529 तक का पूरा वर्णन मिलता है।*** *बाबरनामा में 18 सितम्बर 1528 ई0 से 7 सितम्बर 1529 तक के विवरण में किसी भी मंदिर को गिराये जाने का कोई उल्लेख नहीं मिलता है।'' (पेज 344–345)*

"Babar himself did not go to Ayodhya and instead Baqi Shagaval (Mir Baqi), along with other commanders, completed this task i.e. occupied Ayodhya and established the administration and thereafter Babar proceeded towards Gwalior after handing over charge of Awadh to Mir Baqi. No reference is found about Babar's re-visit to Ayodhya. The incident of construction of Babri mosque is subsequent

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to the incident of Babar proceeding towards Gwalior after making Mir Baqi in-charge of Awadh, but I cannot tell as to how much later. ***The sole and the most important evidence in this behalf are the three inscriptions, believed to be fixed in the Babri structure, and two of these inscriptions are dated 935 Hizri or 1528 AD. The month and date of construction is not found in any inscription, and only the year is found.*** *At serial no. 6 of first column at page 114 of my book, I have taken* ***three Moharram 935 Hizri to be 18th September, 1528. At this very serial no. 6 I have taken three Moharram 936 Hizri to be 7th September, 1529.*** *As per this calculation, the 935 Hizri year must have continued till August, 1529. According to the details of my serial no. 6, the* ***Babarnama contains complete descriptions from 18th September, 1528 to 7th September, 1529.*** *The Babarnama does not contain any reference of demolition of any temple between 18th September, 1528 to 7th September, 1529." (E.T.C)*

1385. OPW 11 Dr. Satish Chandra Mittal in his cross examination has said:

*"**बाबरी मस्जिद सन् 1528 में बनी थी।** उस समय बाबर जिन्दा थे। गजेटियर के अनुसार बाबर उस समय अयोध्या के निकट 6–7 कोस की दूरी पर कैम्प किये हुए था, जिस समय इस मस्जिद के निर्माण की उसने आज्ञा दी थी। यह आज्ञा उसने मीरबाकी को दी थी। और उसके बाद मीरबाकी ने बाबरी मस्जिद की तामीर करवाई थी।" (पेज 18-19)*

*"**Babri mosque was built in the year 1528.** At that time, Babar was alive. According to the gazetteer, Babar had camped near Ayodhya at distance of about 6-7 kose (one kose being equal to two miles) at the time when he had given the command for construction of this mosque. He had given this command to Mir Baqi, and thereafter Mir Baqi*

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had got Babri mosque constructed." (E.T.C)

''मैंने अपने हलफनामें के पैरा–17 में जो कागज संख्या–107सी–1/109 से 110 का संदर्भ दिया हे, यह उस किताब के पृष्ठ का संदर्भ नहीं है, संभवतः यह कागज संख्या गलती से लिखा गया है। मुझे यह नहीं मालूम है कि प्रसिद्ध ब्रिटिश सर्वेयर माण्ट गोमरी मार्टिन जिन्होंने सन् 1838 में अपनी पुस्तक ''हिस्ट्री एन्टीक्विटीज टोपोग्रापी स्टैटिस्टिक्स आफ ईस्ट इंडिया वाल्यूम–2'' लिखी है, वे अवध क्षेत्र में तैनात थे या कहीं और। ***माण्ट गोमरी मार्टिन जैसे कई सर्वेयर भारत में उन दिनों कई स्थानों पर बतौर सर्वेयर तैनात थे।*** *. .* ***मूलतः ब्रिटिश सर्वेयर माण्ट गोमरी मार्टिन इतिहासकार नहीं थे,*** *परन्तु उनके द्वारा लिखी पुस्तक को ऐतिहासिक दृष्टि से महत्वपूर्ण माना जाता है। माण्ट गोमरी मार्टिन ने अपनी पुस्तक में इस बात का हवाला दिया है कि बाबर ने 1528 में रामजन्मभूमि मन्दिर गिराकर उसी स्थान पर मस्जिद का निर्माण किया था। . . . . .मैंने अपने शपथ–पत्र के पैरा–17 में बाबर द्वारा मन्दिर गिराकर मस्जिद निर्माण कराने का बयान माण्ट गोमरी मार्टिन द्वारा लिखित किताब जिसके उद्धृत पृष्ठ–107सी–1/109 पर आधारित है और आज का बयान भी मैंने इसी किताब के हवाले से दिया है।'' (पेज 26–27)*

"The paper nos. 107C-1/109 to 110, mentioned by me in para-17 of my affidavit, are not the references of the pages of that book and possibly this paper number has been mentioned inadvertently. I do not know whether the famous British surveyor Montgomery Martin, who wrote the book 'History, Antiquities, Topography, Statistics of East India Vol.-II' in the year 1838, was posted in Awadh or elsewhere. ***In those days, many surveyors like Montgomery Martin were posted at many places in India as surveyor.*** *...* ***The British surveyor Montgomery Martin was basically not a historian****, but the book written by him is considered important from historical point of view. In this book of his, Montgomery Martin has referred that in*

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the yaer 1528 Babar had demolished Ramjanmbhumi temple and built a mosque at that very place. ... The contention in para-17 of my affidavit regarding demolition of temple by Babar and building of mosque in its place, is based on the book written by Montgomery Martin, whose excerpt is at page 107C-1/109, and my statement of the day is also based on that very book." (E.T.C)

1386. O.P.W.12 Kaushal Kishor Mishra in his cross examination has said:

''मेरी स्मृति अब बहुत अच्छी नहीं है। पांच –छः साल से मेरी स्मृति कमजोर हो गई है।'' (पेज 114)

"Now my memory is not very good. My memory has weakened for five-six years." (E.T.C.)

''इस मंन्दिर को मीर बाकी नाम के एक सेनापति ने तुड़वाया था और मस्जिद का निर्माण कराया था। मीरबाकी उस समय मुगल सम्राट बाबर के सेनापति थे। यह मस्जिद कितने सौ साल पहले मीरबाकी ने बनवायी इसकी जानकारी मेरे पिता व बाबा जी को थी लेकिन मुझे स्मरण नहीं है।'' (पेज 118–119)

"This temple was demolished and a mosque was erected in its place by a commander called Mir Baqi. Mir Baqi was at that time commander of Emperor Babur. How many years ago this mosque had been constructed, was known to my father and grandfather; but I do not have any recollection of it." (E.T.C.)

1387. Most of the above witnesses are not experts yet what discern undoubtedly that everybody's impression and opinion about the period of construction is based on inscriptions and nothing else. Therefore, scrutiny and study on inscription become vital.

1388. The written material which throws some light on this aspect consists of Gazetteers (published from time to time);

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settlement and survey reports; History books and certain other books pertaining to the disputed site/building though strictly speaking not written by well known historians but those persons claim to have collected information on the basis of their own inquiry or investigation etc. or had acquired knowledge in the capacity in which they were working or otherwise or due to the interest generated in the matter after dispute spread countrywide. We would place on record what has been said in such published material and also consider their credibility etc. simultaneously.

Gazetteers-Settlement/Survey Reports:

1389. 'Gazetteers', mostly published in 19th and 20th century during the pre-independence period, and, one after independence, published under the auspices of U.P. Government and another by the Government of India are the documents heavily relied in these cases. It is not in dispute that 'Gazetteers' are not the documents published under some statutory provision. In order to understand their evidenciary value and authority we have to first consider what 'Gazetteer' means.

1390. Learned counsels have placed before us a printout taken from internet from the site "Wikipedia, the free encyclopedia" under the heading "Gazetteer". It says that a 'gazetteer' is a geographical dictionary or directory, an important reference for information about places and place names, used in conjunction with a map or a full Atlas. It geographically contains information concerning the geographical makeup of a country, regions or continent as well as the social statistics and physical features such as mountains, waterways, or roads. Examples of information provided by gazetteers include the location of places, dimensions of physical features, population,

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literacy rate, etc. The “Oxford Dictionary” defines the “gazetteer” as a geographical index or dictionary. It refers to a document published by British Historian “Laurence Echard” in 1693 bears the title “Gazetteer's or Newman's Interpreter: Being a Geographical Index”. Echard wrote that the title “gazetteers” was suggested to him by a very eminent person whose name was not disclosed. The next part was published by Echard in 1704 as “the Gazetteer simply”. This is considered to be the introduction by the word gazetteer into the English language. It is said that since 18th century the word gazetteer has been used interchangeably to define either its traditional maning (i.e., a geographical dictionary or directory) or a daily news paper such as London Gazetteer. Tracing the history of gazetteer Wikipedia, the free encyclopedia says:

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> *“Gazetteers of ancient Greece existed since the Hellenistic era. The first known gazetteer of China appeared by the 1st century, and with the age of print media in China by the 9th century, the Chinese gentry became invested in producing gazetteers for their local areas as a source of information as well as local pride. Although existent only in fragments, the geographer Stephanus of Byzantium wrote a geographical dictionary in the 6th century which influenced later European compilers of gazetteers by the 16th century. Modern gazetteers can be found in reference sections of most libraries as well as on the Web.*
>
> *In his journal article "Alexander and the Ganges" (1923), the 20th century historian W.W. Tarn calls a list and description of satrapies of Alexander's Empire written between 324 and 323 BC as an ancient gazetteer. Tarn*

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notes that the document is dated no later than June 323 BC, since it features Babylon as not yet partitioned by Alexander's generals. It was revised by the Greek historian Diodorus Siculus in the 1st century BC. In the 1st century BC, Dionysius of Halicarnassus mentioned the chronicle-type format of the writing of the logographers in the age before the founder of the Greek historiographic tradition, Herodotus (i.e. before the 480s BC), saying "they did not write connected accounts but instead broke them up according to peoples and cities, treating each separately." Historian Truesdell S. Brown asserts that what Dionysius' describes in this quote about the logographers should be categorized not as a true "history" but rather as a gazetteer. While discussing the Greek conception of the river delta in ancient Greek literature, Francis Celoria notes that both Ptolemy and Pausanias of the 2nd century AD provided gazetteer information on geographical terms.

Perhaps predating Greek gazetteers were those made in ancient Egypt. Although she does not specifically label the document as a gazetteer, Penelope Wilson (PhD, Lecturer in the Department of Archaeology at Durham University) describes an ancient Egyptian papyrus found at the site of Tanis, Egypt (a city founded during the Twentieth dynasty of Egypt) which provides the following for each administrative area of Egypt at the time.

The Domesday Book initiated by William I of England in 1086 was a government survey on all the administrative counties of England; it was used to assess the properties of farmsteads and landholders in order to tax them sufficiently. In the survey, numerous English

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castles were listed; scholars debate on exactly how many were actually referenced in the book. However, the Domesday Book does detail the fact that out of 3,558 registered houses destroyed in 112 different boroughs listed, 410 of these destroyed houses were the direct result of castle construction and expansion. In 1316, the Nomina Villarum survey was initiated by Edward II of England; it was essentially a list of all the administrative subdivisions throughout England which could be utilized by the state in order to assess how much military troops could be conscripted and summoned from each region. The Speculum Britanniae (1596) of the Tudor era English cartographer and topographer John Norden (1548–1625) had an alphabetical list of places throughout England with headings showing their administrative hundreds and referenced to attached maps. Englishman John Speed's Theatre of the Empire of Great Britaine published in 1611 provided gazetteers for counties throughout England, which included illustrative maps, short local histories, a list of administrative hundreds, an index of parishes, and the coordinates of longitude and latitude for county towns. Starting in 1662, the Hearth Tax Returns with attached maps of local areas were compiled by individual parishes throughout England while a duplicate of their records were sent to the central government offices of the Exchequer. To supplement his 'new large Map of England' from 1677, the English cartographer John Adams compiled the extensive gazetteer "Index Villaris" in 1680 that had some 24,000 places listed with geographical coordinates coinciding with the map. The "Geographical Dictionary" of Edmund Bohun

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was published in London in 1688, comprising 806 pages with some 8,500 entries. In his work, Edmund Bohun attributed the first known Western geographical dictionary to geographer Stephanus of Byzantium (fl. 6th century) while also noting influence in his work from the Thesaurus Geographicus (1587) by the Belgian cartographer Abraham Ortelius (1527–1598), but stated that Ortelius' work dealt largely with ancient geography and not up-to-date information. Only fragments of Stephanus' geographical work Ethnica (Εθνικά) have survived and were first examined by the Italian printer Aldus Manutius in his work of 1502.

The Italian monk Phillippus Ferrarrius (d. 1626) published his geographical dictionary "Epitome Geographicus in Quattuor Libros Divisum" in the Swiss city of Zurich in 1605. He divided this work into overhead topics of cities, rivers, mountains, and lakes and swamps. All placenames, given in Latin, were arranged in alphabetical order for each overhead division by geographic type;. A year after his death, his "Lexicon Geographicum" was published, which contained more than 9,000 different entries for geographic places. This was an improvement over Ortelius' work, since it included modern placenames and places discovered since the time of Ortelius.

Pierre Duval (1618–1683), a nephew of the French cartographer Nicolas Sanson, wrote various geographical dictionaries. These include a dictionary on the abbeys of France, a dictionary on ancient sites of the Assyrians, Persians, Greeks, and Romans with their modern

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equivalent names, and a work published in Paris in 1651 that was both the first universal and vernacular geographical dictionary of Europe. With the gradual expansion of Laurence Echard's (d. 1730) gazetteer of 1693, it too became a universal geographical dictionary that was translated into Spanish in 1750, into French in 1809, and into Italian in 1810.

Following the American Revolutionary War, United States clergyman and historian Jeremy Belknap and Postmaster General Ebenezer Hazard intended to create the first post-revolutionary geographical works and gazetteers, but they were anticipated by the clergyman and geographer Jedidiah Morse with his Geography Made Easy in 1784. However, Morse was unable to finish the gazetteer in time for his 1784 geography and postponed it. Yet his delay to publish it lasted too long, as it was Joseph Scott in 1795 who published the first post-revolutionary American gazetteer, his Gazetteer of the United States. With the aid of Noah Webster and Rev. Samuel Austin, Morse finally published his gazetteer The American Universal Geography in 1797. However, Morse's gazetteer did not receive distinction by literary critics, as gazetteers were deemed as belonging to a lower literary class. The reviewer of Joseph Scott's 1795 gazetteer commented that it was "little more than medleys of politics, history and miscellaneous remarks on the manners, languages and arts of different nations, arranged in the order in which the territories stand on the map." Nevertheless, in 1802 Morse followed up his original work by co-publishing A New Gazetteer of the Eastern Continent with Rev. Elijah Parish,

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the latter of whom Ralph H. Brown asserts did the "lion's share of the work in compiling it."

1391. In 19th Century it is said that gazetteers were widely popular in Britain with publishers such as Fullarton, Mackenzie, Chambers and W & A.K. Johnston, many of whom were Scottish, meeting public demand for information on an expanding Empire.

1392. The above discussion gives us an idea and broad feature of documents published and termed as "Gazetteer". There is distinction between Gazette and Gazetteer. The British Government enacted "Official Gazette Act, 1863" (Act No. XXXI of 1863) and published various Gazettes thereunder. The Gazetteer, as said above though is not founded on a statute but being a document published under the authority or auspices of the Government, deserve much more reliability and confidence. It constitute an important source of historical and other informations in general and most authenticated data about the then existing affairs.

1393. The extent to which informations contained in Gazetters can be believed, relied and considered has been subject matter of Courts time and again wherein the information contained in the Gazetters has also been utilized in one or the other manner. Some of such cases may be referred as under. It appears that the consensus of the judicial opinion is that information contained in a Gazetteer can be considered but carrectness thereof may need corrorroboration. It all depend on the nature of dispute in every case.

1394. In **Fulbati Kumari Vs. Maheshwari Prasad Singh AIR 1923 Patna 453** a Division Bench of Patna High Court relied upon the Bengal District Gazetteer, Volume XVII in order

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to gather some information about what happened at Dumri when Captain Brown took over charge of the operations in the jungle *terry* tracts in 1774.

1395. In **Sukhdev Singh Vs. Maharaja Bahadur of Gidhaur AIR 1951 SC 288** Bengal District Gazetteer, Vol. XVII was referred and in para 10 the Apex Court held:

> *"The statement in the District Gazetteer is not necessarily conclusive, but the Gazetteer is an official document of some value, as it is compiled by experienced officials with great care after obtaining the facts from official records."*

1396. In **Gopal Krishnaji Ketkar Vs. Mahomed Jaffar Hussein AIR 1954 SC 5** a dispute regarding management of a Darga known as Haji Malang came to be considered before the Apex Court. The Darga had two tomb, one of a Hindu and another of Muslim saint. The Court referred to the Gazetteer of Bombay to find out the history which is said to have lost an antiquity and from the gazetteer it appears that a Muslim saint came to India as an Urban missionary in 13th century and after his death, he was buried in the said Darga. There was another tomb called Mayi's tomb where the body of a Hindu Raja's daughter treated by Bawa Malang as his daughter was buried. In the peculiar facts and circumstances of the case, the Apex Court observed that such matter cannot be governed either by Hindu or Muslim law but should be governed by its own special customs or by general law of public religious and charitable trust.

1397. In **Chhote Khan & others Vs. Mal Khan & others AIR 1954 SC 575**, the Court referred to Gazetteer Gurgaon District (1910) with respect to the properties owned by Meos of Ferozepore Tehsil and others villages in Gurgaon. It also

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referres to the settlement record of 1877 observing that it is an important document.

1398. In **Biswambhar Singh & others Vs. State of Orissa & another AIR 1954 SC 139**, the Court referred to Hunter's Imperial Gazetter, Volume 4, page 478 which mentions certain facts about the origin of Bhuyans as also the Settlement Report of 1907-1911.

1399. In **Commissioner of Income-tax Vs. Sri Ramakrishna Deo AIR 1959 SC 239**, the Court referred to the District Gazetteer, Vishakhapatnam, 1907 in para 3 of its judgment.

1400. In **State of Bihar & others Vs. Bhabapritananda Ojha AIR 1959 SC 1073**, the Court referred to Bihar District Gazetteer relating to Santal Parganas, 1938.

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1401. In **Swami Motor Transports (P) Ltd. & Anr. Vs. Sri Sankaraswamigal Mutt & Anr. AIR 1963 SC 864** the Court resorted to rely on "Madras District Gazetteers, Madurai" in respect to certain statistical data published therein in support of the claim of the State observing that this is the information furnished from authorized Government publication.

1402. In **Mahant Shri Srinivasa Ramanuj Das Vs. Surayan Dass & Anr. AIR 1967 SC 256** the Court said:

> *"These statements in the Gazetteer are not relied on as evidence of title but as providing historical material and the practice followed by the Math and its head. The Gazetteer can be consulted on matters of public history."*

1403. In **Laxman Siddappa Naik vs. Kattimani Chandappa Jampanna and others AIR 1968 SC 929** the Apex Court approved the consultation of Bombay Karnatak Gazetteer of 1893 and certain other similar documents to find out the

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distinguishing customs and manners of different tribes.

1404. Sri R.L.Verma, however, submits that in a suit where the question of title of temple or property is involved, it cannot be said to be a question of history and therefore, neither the Gazetteers nor the report of Archaeological Survey etc. can be an appropriate book of reference for deciding such a controversy and placed reliance on **Farzand Ali Vs. Zafar Ali 46 IC 119** where it is observed:

> *"We are inclined to think that the use of the historical works to establish title to the property cannot be justified on the strength of Section 57 of the Indian Evidence Act. The question of title between the trustee of a mosque, though an old and historical institution, and a private person, cannot, in our opinion, be deemed to be a 'matter of public history' within the meaning of the said section."*

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1405. The submission, in our view, is totally misconceived and travels much beyond the point for which the various copies of gazetteers have been filed before us by the parties and in fact some observations therefrom are also relied by Sri Verma. For the purpose of historical events and fact as they were centuries ago, the manner in which they have taken are detailed in the documents published under the authority of the then Government in the form of Gazetteers.

1406. **Mahant Shri Srinivasa Ramanuj Das (supra)** dictum has been followed in **Yadarao Dajiba Shrawane (Dead) Vs. Nanilal Harakchand Shah (Dead) & Ors. 2002 (6) SCC 404.**

1407. The first gazetteer in respect to Indian sub-continent came to be published in 1828 under the title **"East India**

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Gazetteer" by **Walter Hamilton** (second edition reprint 1993 by Low Price Publications, Delhi) containing particulars and descriptions of the Empires, Kingdoms, Principalities, Provinces, Cities, Towns, Districts, Fortresses, harbours, rivers, lakes and, C. of Hindostan and the adjacent Countries, India beyond the Ganges and the eastern Archipelago.

1408. Hamilton's "Gazetter" of 1828 on page 353 under the heading 'Oude' gives following information about Ayodhya :

> *"Pilgrims resort to this vicinity, where the remains of the ancient city of Oude, and capital of the great Rama, are still to be seen; but whatever may have been its former magnificence it now exhibits nothing* ***but a shapeless mass of ruins.*** *The modern town extends a considerable way along the banks of the Goggra, adjoining Fyzabad, and is tolerably well peopled; but inland it is a mass of rubbish and jungle,* ***among which are the reputed site of temples dedicated to Rama, Seeta, his wife, Lakshman, his general, and Hanimaun (a large monkey), his prime minister.*** *The religious mendicants who perform the pilgrimage to Oude are chiefly of the Ramata sect, who walk round the temples and idols, bathe in the holy pools, and perform the customary ceremonies."*

1409. Thereafter Robert Montgomery Martin, for the first time sought to contradict local belief or tradition about the person who made construction by referring to an inscription on the wall of the disputed building according to which it was the work of the conqueror Babar falsifying the local tradition of its construction by Aurangzabe in his work **"The History, Antiquities, Topography and Statistics of Eastern India" (1838 AD) (Ex. 20, Suit 5-Paper No.107C1/109-110)**. The copy

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of the book in all 6 volumes available to the Court is the first Indian reprint 1976 by Cosmo Publications, Delhi. The details of inscription referred to in the above passage have not been given. It says at page 334/335, Vol.II, as under:

> *".... if these temples ever existed, not the smallest trace of them remains to enable us to judge of the period when they were built; and the destruction is very generally attributed by the Hindus to the furious zeal of Aurungzebe, to whom also is imputed the overthrow of the temples in Benares and Mathura. What may have been the case in the two latter, I shall not now take upon myself to say, but with respect to Ayodhya the tradition seems very ill founded. The bigot by whom the temples were destroyed, is said to have erected mosques on the situations of the most remarkable temples; but the mosque at Ayodhya, which is by far the most entire, and which has every appearance of being the most modern, is ascertained by an inscription on its walls (of which a copy is given) to have been built by Babur, five generations before Aurungzebe."*

1410. Edward Thornton in **"A Gazetteer of the Territories under the Government of the East-India Company and of the native States on the Continent of India"**, first published in 1858 (reproduced in 1993) by Low Price Publications, Delhi (Book No. 10) on page 739 (Paper No.107C1-10 i.e. Ex.5 Suit 5) under the heading "Oudh" observed as under:

> "*According to native tradition, they were demolished by Aurungzebe, who built a mosque on part of the site. The falsehood of the tradition is, however, proved by* ***an inscription*** *on the wall of the mosque, attributing the work*

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to the conqueror Baber, from whom Aurungzabe was fifth in descent. The mosque is embellished with fourteen columns of only five or six feet in height, but of very elaborate and tasteful workmanship, said to have been taken from the ruins of the Hindoo fanes . . . . .” (emphasis added)

1411. We do not find from the above Gazetteer whether Thornton himself had viewed the alleged inscription, whether there was only one inscription or more than one and whether Thornton was capable of himself reading Persian/Arabic or the said information is based on secondary evidence, i.e., information he might have received from somebody else whose authenticity is also not known. To us it appear that the above observations are founded on what has been noticed by Robert Montgomery Martin in **“The History, Antiquities, Topography and Statistics of Eastern India”** by **Robort Montgomry Martin** (Vol-II) (first published in 1838 AD) (Supra) **(Ex. 20, Suit-5-Paper No. 107 C1/109-110)** where referring to the survey made by the Dr. Buchanan, Martin referred the inscription and contradicted local belief and tradition of demolition by Aurangzeb and said that it must have been the work of Babar.

1412. However, from the words “an inscription”, to us it appears that according to his information there existed only one inscription on the wall of the mosque which attributed the work to Emperor Babar.

1413. Then comes **P. Carnegy's** “**A Historical Sketch of Tahsil Fyzabad, Zillah Fyzabad**” *(hereinafter referred to as “P. Carnegy's Historical Sketch”).* He was an Officiating Commissioner and Settlement Officer at Faizabad and in 1967 prepared the said report which was **published in 1870**. Copies

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of frontispiece, pages 5, 6, 7, 19, 20 and 21 have been filed as paper No.107C1/17-23 i.e. Ex.49, Suit 5 (Register 20, page 35-47). Appendix-A containing the list of sacred places in and about Ajudhia has been filed as Ex. A-10 (Suit4) (Register 16, pages 67 to 78). With respect to construction of the disputed building, on page 20 and 21 of the book, (Paper No.107C1/22-23), P. Carnegy has said:

> *"The Janamasthan and other temples.- It is locally affirmed that at the Mahomedan conquest there were three important Hindu shrines, with but few devotees attached, at Ajudhia, which was then little other than wilderness. These were the "Janamasthan," the "Sargadwar mandir" also known as "Ram Darbar" and the "Tareta-ke-Thakur."*
>
> *On the first of these* ***the Emperor Babar built the mosque which still bears his name, A.D. 1528.*** *On the second Aurangzeb did the same A.D. 1658-1707; and on the third that sovereign, or his predecessor, built a mosque, according to the well known Mahomedan principle of enforcing their religion on all those whom they conquered.*
>
> *Babar's mosque.- According to Leyden's memoirs of Babar that Emperor encamped at the junction of the Serwa and Gogra rivers two or three kos east from Ajudhia, on the 28th March1528, and there he halted 7 or 8 days setting the surrounding country. A well known hunting ground is spoken of in that work, 7 or 8 kos above Oudh, on the banks of the Surju. It is remarkable that in all the copies of Babar's life now known, the pages that relate to his doings at Ajudhia are wanting. In two places in the Babari mosque the year in which it was built 935 H. corresponding with* ***1528 A.D. is carved in stone, along with inscriptions***

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dedicated to the glory of that Emperor.

1414. The reference of inscriptions in Carnegy's Historical Sketch is also at page 27, Section VI under the heading "Buildings" at Serial Item 5 which states as under:

> *"Babar's mosque with* ***stone inscriptions*** *in Ajudhia, date A.D. 1528, and stone columns of infinitely greater antiquity."*

1415. Here Carnegy has referred two inscriptions on the disputed building to infer that the same was constructed in 935 Hizra (corresponding with 1528 AD). He has also not said anything further. He also gave no details or the text of the alleged inscriptions.

1416. In **"Gazetteer of Oudh"** by **Mr. W.C. Benett**, C.S., Assistant Commissioner (**1877**) (Book No. 11), the factum of the construction of disputed building is given on page 6/7 which is a virtual reproduction of what is said in P. Carnegy's Historical Sketch (supra) as evident from the following:

> *"The Janamasthan and other temples.--****It is locally affirmed that at the Muhammadan conquest there were three important Hindu shrines****, with but few devotees attached,* ***at Ajodhya****, which was then little other than a wilderness.* ***These were*** *the* ***"Janamasthan,"*** *the "Swargaddwar mandir" also known as "Ram Darbar," "Treta-ke-Thakur."*
>
> ***On the first of these the Emperor Babar built the mosque, which still bears his name, A.D. 1528****. On the second, Aurangzeb did the same, A.D. 1658 to 1707; and on the third, that sovereign or his predecessors built a mosque, according to the well-known Muhammadan principle of enforcing their religion on all those whom they*

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conquered.

***Babar's mosque.**--According to Leyden's Memoirs of Babar, that Emperor encamped at the junction of the Serwa and Gogra rivers two or three kos east from Ajodhya, on the 28th March 1528, and there he halted seven or eight days, settling the surrounding country. A well-known hunting ground is spoken of in that work, seven or eight kos above Oudh, on the banks of the Sarju. It is remarkable that in **all the copies of Babar's life now known, the pages that relate to his doings at Ajodhya are wanting. In two places in the Babari Mosque, the year in which it was built, 935 H., corresponding with 1528 A.D., is carved in stone, along with inscriptions dedicated to the glory of that Emperor**.*

*If Ajodhya was then little other than a wilderness, **it must at least have possessed a fine temple in the Janamasthan; for many of its columns are still in existence and in good preservation, having been used by the Musalmans in the construction of the Babari Mosque**. These are of strong, close-grained, dark-colored or black stone, called by the natives kasauti (literally touch-stone slate,) and carved with different devices. To my thinking these more strongly resemble Buddhist pillars than those I have seen at Benares and elsewhere. They are from seven to eight feet long, square at the base, centre and capital, and round or octagonal intermediately." (emphasis added)*

1417. Next is the "**Gazetteer of the Province of Oudh**" Vol. I (three volumes in one) published by Low Price Publications, Delhi (first published in **1877-78**) (reprinted in LPP 1993)

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(Book No. 11). Copy of pages No.6 and 7 of the aforesaid Gazetteer have been filed as Papers No.107C1/25-26 i.e. Ex.7, Suit-5 (Register 20, Page 51-53). The 'introduction' of the above gazetteer has been written by **Mr. W.C. Benett**, C.S., Assistant Commissioner. Therefore, to us it appears that the above gazetteer was prepared by or under the supervision of Mr. Benett who might have been assisted with a number of other officers contributing write ups on different items. On page XXXIX, chapter I, "Introduction", it says:

> *"The great Afghan captains whom that prince defeated in Oudh have left no representatives, and the four pages describing the events which attended his entry to Ajodhya, where it is possible that the Hindu chiefs rallied round the centre of their religion, are missing from all the known copies of his memoirs.* ***The only record remaining is an ancient mosque, which preserves the invader's name on the holiest spot of all—the birthplace of Rama.****"*

1418. Thereafter on page 6/7, under the headings "The Janamasthan and other temples" and "Babar's mosque" it mentions about the inscriptions at two places in the disputed building to show the period of construction and the person by whom it was constructed. It is again a repetition of what was said in **P. Carnegy's Historical Sketch (supra)** and there is no substantial difference therein:

> *"The Janamasthan and other temples—It is locally affirmed that at the Muhammadan conquest there were three important Hindu shrines, with but few devotees attached, at Ajodhya, which was then little other than a wilderness. These were the "Janamasthan" the*

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"Swargaddwar mandir" also known as "Ram Darbar," "Treta-ke-Thakur".

On the first of these the Emperor Babar built the mosque, which still bears his name, A.D. 1528. On the second, Aurangzed did the same, A.D. 1658 to 1707; and on the third, that sovereign or his predecessors built a mosque, according to the well-known Muhammadan principle of enforcing their religion on all those whom they conquered."

Babar's mosque—According to Leyden's Memoirs of Babar, that Emperor encamped at the junction of the Serwa and Gogra rivers two or three kos east from Ajodhya on the 28th March 1528, and there he halted seven or eight days, settling the surrounding country. A well-known hunting ground is spoken of in that work, seven or eight kos above Oudh, on the banks of the Sarju. It is remarkable that in all the copies of Babar's life now known, the pages that relate to his doings at Ajodhya are wanting. ***In two places in the Babari Mosque, the year in which it was built, 935 H. corresponding with 1528 A.D. is carved in stone, along with inscriptions dedicated to the glory of that Emperor****."*

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1419. "Report on the settlement of the Land Revenue of the Fyzabad District", (Book No. 18) by **A.F. Millett**, C.S., Officiating Settlement Officer, published by North Western Provinces and Oudh Government press, Allahabad in **1880** (hereinafter referred to as "**Millet's report, 1880**"). The book on the very first page mentions that it contains partly, reports and notes of P. Carnegy, late Settlement Officer, and J. Woodborn, late Officiating Settlement Officer. Copies of the frontispiece as

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well as page No.218, 231, 235 and 236 have been filed as Paper No.107C1/27-30A i.e. Ex.8, Suit-5 (Register Vol.20 Pages 55-62).

1420. Here also reference of the disputed building, the period of its construction by Emperor Babar is in the same language as stated in **P. Carnegy's Historical Sketch (supra)** and there is no substantial difference in the two except of some addition as is evident from para 666 and 667, read as under:

> *"666. The Janmasthan and other temples.- It is locally affirmed that at the Mahomedan conquest there were three important Hindu shrines, with but few devotees attached, at Ajudhya, which was then little other than a wilderness. These were the "Janmasthan," the "Sargadwar mandir," also known as "Ram Darbar," and "Tareta-Ke-Thakur." **On the first of these the Emperor Baber built the mosque which still bears his name, A.D. 1528**; on the second Aurangzeb did the same, A.D. 1658-1707; and on the third that sovereign, or his predecessor, built a mosque according to the well-known Mahomedan principle of enforcing their religion on all those whom they conquered. **The Janmasthan marks the place where Ramchandar was born.** The Sargadwar is the gate through which he passed into Paradise, possibly the spot where his body was burned. The Tareta-Ke-Thakur was famous as the place where Rama performed a great sacrifice, and which he commemorated by setting up there images of himself and Sita.*
>
> *"667. Babar's mosque.- According to Leyden's Memoirs of Babar, that emperor encamped at the junction of the Serwu and Gogra rivers, two or three kos east from*

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Ajudhya, on the 28th March, 1528, and there he halted seven or eight days, settling the surrounding country. A well-known hunting-ground is spoken of in that work, seven or eight kos above Oudh, on the banks of the Sarju. It is remarkable that in all the copies of Babar's life now known the pages that relate to his doings at Ajudhya are wanting. ***In two places in the Babari mosque the year in which it was built, 935 H., corresponding with 1528 A.D., is carved in stone, along with inscriptions dedicated to the glory of that emperor****."*

1421. Next comes "**Barabanki: A gazetteer being Volume XLVIII of the District Gazetteer of the United Provinces of Agra and Oudh**" compiled and edited by **H.R. Nevill**, I.C.S., printed by F. Luker, Supdt., Government Press, United Provinces, Allahabad in **1904** *(hereinafter referred to as "Nevill's Barabanki Gazetteer 1904")*. Copy of pages No.168-169 have been filed as Paper No.107C1/40-41; Ex.52, Suit-5. He does not refer to any inscription etc. but while describing Hindu Muslim clash said to have occurred in 1853, he observed:

"The cause of the occurrence was one of the numerous disputes that have sprung up from time to time between the Hindu priests and the Musalmans of Ajodhya with regard to the ground on which formerly stood the Janamasthan temple, which was destroyed by Babar and replaced by a mosque."

1422. In **"Fyzabad-a Gazetteer being Vol. XLIII of the District Gazetteers of the United Provinces of Agra and Oudh"** by H.R. Nevill published in 1905 (Book No. 4) *(hereinafter referred to as "Fyzabad Gazetteer, 1905")*, page 173 refers to two inscriptions with the details of their place of

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installation:

> *"Ajodhya is pre-eminently a city of temples, and apart from these there are but few points of interest in the place. Not all of these places of worship are connected with the Hindu religion. There are six Jain shrines which have been already mentioned in Chapter III in connection with Jainism in this district; and there are also the Musalman mosques and tombs.* ***It is locally affirmed that at the time of the Musalman conquest there were three important Hindu shrines at Ajodhya and little else. These were the Janamasthan temple, the Swargaddwar, and the Treta-ka-Thakur, and each was successively made the object of attention of different Musalman rulers. The Janamsthan was in Ramkot and marked the birthplace of Rama. In 1528 A.D. Babar came to Ajodhya and halted here for a week. He destroyed the ancient temple and on its site built a mosque, still known as Babar' mosque. The materials of the old structure were largely employed, and many of the columns are in good preservation; they are of close grained black stone, called by the natives Kasauti, and carved with various devices.*** *Their length is from seven to eight feet, and the shape square at the base, centre and capital, the rest being round or octagonal. The mosque has two inscriptions, one on the outside and the other on the pulpit; both are in Persian and bear the date 935 Hijri. Of the authenticity of the inscriptions there can be no doubt, but no record of the visit to Ajodhya is to be found in the Musalman historians. It must have occurred about the time of his expedition to Bihar." (emphasis added)*

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The copy of the frontispiece and pages No.172, 173, 171, 175, 176 and 177 have been filed as paper No.107C1/42-48; Ex.11, Suit-5; Register Vol.20 page 85-97.

1423. Next is "**Imperial Gazetteer of India—Provincial Series—United Provinces of Agra and Oudh"-Vol. II (1908)** (Book No. 16) published by Superintendent of Government Printing Calcutta, where at page 388-389 (Ex.10 Suit-5; Paper No.107C1/37-39) it says:

> ***"At one corner of a vast mound known as Ramkot, or the fort of Rama, is the holy spot where the hero was born. Most of the enclosure is occupied by a mosque built by Babar from the remains of an old temple, and in the outer portion a small platform and shrine mark the birthplace.*** *Close by is a larger temple in which is shown the cooking-place of Sita, the faithful wife of Rama. A lofty temple stands on the bank of the Gogra at the place where Lakshmana bathed; and Hanuman, king of the monkeys, is worshipped in a large temple in the town, approached by an immense flight of steps, which bears the name Hanuman Garhi. Other noticeable temples built during the eighteenth and nineteenth centuries are the Kanakbhawan, a fine building erected by a Rani of Tikamgarh, the Nageshwarnath temple, Darshan Singh's temple, and a small marble temple built by the present Maharaja, Ajodhya also contains a number of Jain temples, five of which were built in the eighteenth century to mark the birthplaces of the five heirarchs who are said to have been born at Ajodhya.* ***Besides the mosque of Babar, two ruined mosques, built by Aurangzeb, stand on the sites of celebrated Hindu shrines--the Swargadwara, where***

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Rama's body was cremated, and the Treta-ka-Thakur, where he sacrificed." *(emphasis added)*

1424. The above gazetteer only refers the name of Emperor Babar that he constructed disputed building but neither the period nor the basis of such information is mentioned.

1425. **H.R. Nevill**, I.C.S., published another gazetteer in 1928 under the title "**Fyzabad: A Gazetteer being Vol. XLIII of the District Gazetteers of the United Provinces of Agra and Oudh".** Copy of the frontispiece and pages no.178, 179, 180 and 181 have been filed as Paper No.107C1/49-53 (Register 20, pages 99-107). In the preface written by Nevill in February, 1905 he said that in the earlier gazetteer of the province of Oudh, articles dealing with District Fyzabad and its various other divisions, towns and villages were taken almost wholly from the valuable and defuse Settlement Report of Mr. A.F. Millett, which embodied a large proportion of the remarkable notes and reports of Mr. Patrick Carnegy and the late Sri John Woodburn. These contain much that is now obsolete and still more of a purely traditional and speculative character. After collecting fresh materiel he found the necessity of publication of the said gazetteer. Chapter V deals with 'History'. For the present purpose we are confining to that part of the Gazetteer which deals with the period of construction of the disputed structure. On pages 151-152 the facts about the first Muslim invasion of Oudh is mentioned as under:

> *"The first Musalman invasion of Oudh was, according to the popular tradition, that of Saiyid Salar Masaud. The Mirat-i-Masaudi states that the youthful invader went from Multan to Ajodhya, where, after taking the city without a struggle, he remained hunting for some*

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time and then set out for Delhi in 1030 A.D. The route taken is remarkable and the story must be confused in some manner. There is no mention of his passing through Ajodhya on his march from Satrikh to Bahraich, where he met his death; but popular legend steps in to fill the gap."

1426. The above narration is sought to be supported by referring to the "**History of India-As told by its own Historians**" by **Sir H.M. Elliot and John Dowson,** Vol. II, page 531. We have with us all the eight volumes of the book of Elliot and Dowson which was first published in 1866-1877 and reprinted in 1990, 1996, 2001 and 2008. In the appendix Chapter III which starts from page 528 of Vol. II it appears that Salar Masud son of Sultan Mahmud Subuktagin came to India by crossing the river Indus. Having conquest Multan he led his army against '**Ajudhan**'. A few lines from page 530-531 of Elliot and Dowson's book are as under:

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*"The rainy season had now set in, so they remained at Multan the next four months. After the rains, Mas'ud led his army against **Ajudhan**. Although, in those days, that place and its vicinity was thickly peopled, it was subdued without a struggle. Mas'ud was delighted with the climate of **Ajudhan**, and as, moreover, it was a good sporting country, he remained there till the end of the following rains, when he set off for Delhi."*

1427. On page 530, footnote, the authors **(Elliot and Dowson)** have said:

"Ajudha or Ayodhya is the old form of the name Oudh. The scene of Mas'ud's later exploits is laid in the neighbourhood of Oudh."

1428. This narration claims to be an English translation of

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"Mir-at-i-Masaudi" written by Abdu-r Rahman Chishti. On page 513 the editor of the book "History of India" has mentioned about the author and the book "Mir-at-i-Masaudi" as well the following facts in order to enhance the degree of reliability on the aforesaid work in respect to life story of Salar Masaud:

> *"This is professedly a life of Mas'ud the Ghaznivide, and finds an appropriate place here after the story books. The author of this extraordinary work was by name' Abdu-r Rahman Chirsti. He explains the motives which impelled him to its composition, and the sources of his information after the following manner: "The history of the King of Martyrs, Salar Mas'ud, the facts of his birth, of his coming to Hindustan, and of his martyrdom, are told by different men in various ways, which have not found a place in any historical work of repute. The writer had long endeavoured to ascertain the real facts; and, after much research he obtained possession of an old book written by Mulla Muhammad Ghaznawi. This man was servant of Sultan Mahmud Subuktigin. He was also in the service of Salar Sahu, and of the Prince of Martyrs, whom he survived. The writer perused this old book from beginning to end with the greatest pleasure, and the doubts which he had entertained were dispelled. The book was very long, it entered into details about the wars of Sultan Mahmud, and Salar Sahu, mentioning incidentally here and there the King of Martyrs, and closing with an account of his martyrdom. Several of the beloved friends and attendants of the Martyr Sultan, in the abodes of the blessed, have urged the writer to the task which he has undertaken; but no one has made the same demand on behalf of Sultan Mahmud. It therefore*

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seemed expedient to him that he should select and commit to writing all that related to the Martyr King. He would not, however, have been able to succeed, even in this, without the directions he graciously received from the spirit of the departed. When he had set about his selection, and had engaged earnestly in the work, one night the spirit of the deceased martyr appeared to the writer in a vision, and most condescendingly expressed, with his blessed tongue, his approval of the work. Being thus graciously honoured, the author humbly replied that he had begun the work, and begged for assistance wherever his narration might be too high, or too low, too short, or too long. The spirit, with great affability, directed the author to write, and that he would attend to him and assist him. The present work is the result, to which the author has given the name Mir-at-i Mas'udi. May the reader of it also be (mas'ud) blessed. This is the author's prayer. The biography of the King of Martyrs having been derived from the aforesaid history, is here related in five chapters (dastans). Sundry incidents, and miraculous statements, which have been found in trustworthy books, have been selected, and, after being verified by oral communications with the author's spiritual visitors, have been inserted in the present work."

1429. The editor of "History of India" thereafter has termed the book as a historical romance and says that the book mainly seems to rest on the last word "*Tawarikh-i-Mahmudi"* of Mulla Muhammad Ghaznawi but at places it is difficult to rely on the narration. We do not find it expedient to go further except to point out that in all the subsequent Gazetteers, this history of invasion of Ayodhya by "Syed Salar Masud" has been followed

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referring to Elliot and Dowson's "History of India" Vol. II page 530/531 where the learned authors got confused by identifying "Ajudhan" as "Ayodhya" though the two are different places. "Ajudhan" was a place in "Punjab" while "Ayodhay" is much far therefrom. This mistake unfortunately has continued in a lot of History books also which have been published until recently.

1430. Dr. T.P. Verma, Historian and author of the book "**Ayodhya Ka Itihas Evam Puratatva**" (Exhibit 3-Suit 5) (Book No. 141) who has also written the same fact at page 110/111 in his above titled book, in his cross examination has admitted this error. **He admits that "Salar Masud" never came to "Ayodhya"** and he has wrongly mentioned the same in his book as is evident from the following:

''इस बात की सम्भावना कम है कि 11वीं शताब्दी में अयोध्या में मुसलमानों की आबादी रही होगी। सालार मसूद के सैनिक अधिकारी ख्वाजा मिट्ठे 1032 ईस्वी के करीब अयोध्या में आये रहे होगें। मेरे विचार से अयोध्या की सबसे पुरानी मस्जिद वही मस्जिद थी, जो बाबरी मस्जिद कही जाती थी। ...13वीं से 17 वीं शताब्दी के बीच में अयोध्या की गणना भारत वर्ष के बड़े शहरों में होती थी, जो आज की अयोध्या से बड़ी रही होगी। उस समय फैजाबाद नाम का कोई शहर नहीं था। ... मिराते – मसूदी में 10 – 12 राजाओं के नाम दिये हैं परन्तु यह नहीं दिया गया है कि अयोध्या में उस समय राजा कौन था।'' (पेज 347–348)

"There is least probability that Muslim populace may have existed in Ayodhya in the 11th century. Salar Masood's army officer Khwaja Miththe may have visited Ayodhya around 1032 AD. In my view, the oldest mosque in Ayodhya was the same mosque, which was called Babri mosque ... Ayodhya was considered to be a major city of India between 13th to 17th century, which was bigger than Ayodhya of today. At that time there was no city named Faizabad. ... The Mirate-Masoodi contains names of 10-12

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kings, but it has not been given as to who was the king at that time." (E.T.C)

"गवाह ने अपनी पुस्तक प्रदर्श ओ0ओ0एस0 5 –3 के पेज 158 के द्वितीय कालम को देखकर कहा कि यह वाक्य कि "इसके पूर्व उसने सतरख (साकेत अथवा अयोध्या) में डेरा डाला था", कथन गलत है,सही नहीं है, और ऐसा कोई वर्णन मीरात–ए–मसूदी में नहीं मिलता है। "मीरात–ए–मसूदी" में सतरख में डेरा डालने की बात कही गयी है, लेकिन यह सतरख, साकेत या अयोध्या है यह बात सही नहीं है। सतरख (सतरिख) फैजाबाद और बाराबंकी के बीच में स्थित एक स्थान का नाम है जो अवध क्षेत्र में पड़ता है। जिसकी दूरी वर्तमान अयोध्या से 50 मील से अधिक होगी। .... क्षेत्र से मेरा तात्पर्य न तो अयोध्या है और न सतरिख बल्कि इससे मेरा तात्पर्य सम्पूर्ण अवध क्षेत्र से है।" (पेज 349–350)

"After looking at second column of page 158 of his book, exhibit O.O.S 5-3, the witness stated that the sentence reading as 'prior to this he had camped at Satrakh (Saket or Ayodhya)' , is wrong and is not correct and no such reference is found in Mirat-e-masoodi. The Mirat-e-masoodi mentions about camping at Satrakh, but it is not correct that this Satrakh is Saket or Ayodhya. Satrakh (Satrikh) is a place situated between Faizabad and Barabanki, which falls in Awadh area and whose distance would be more than 50 miles from the present Ayodhya. ... By area, I neither mean Ayodhya nor Satrikh and instead I mean the complete Awadh zone." (E.T.C)

"मीराते ए मसूदी में सालार मसूद के अयोध्याा आने की बात नहीं कही गयी है यह मैं स्वीकार कर चुका हूं लेकिन इस बात की सम्भावना अभी भी बनी हुई है कि उसके सैनिकों की किसी टोली ने जन्म भूमि मंदिर को क्षति पहुंचाई हो क्योंकि आज ही मैं थोड़ी देर पहले बता चुका हूं कि हनुमान गढ़ी में सालार मसूद के सैनिक अधिकारी ख्वाजा मिट्ठे की कब्र होने की बात कही है।" (पेज 350)

"The Mirat-e-masoodi nowhere mentions about

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Salar Masood visiting Ayodhya. I have admitted this, but this probability still exists that certain group of his soldier may have caused damage to Janmbhumi temple because I have stated a short while ago that the existence of the grave of Khwaja Miththe, an army officer of Salar Masood, has been claimed at Hanumangarhi." (E.T.C)

*''**ख्वाजा मिट्ठे की कब्र अयोध्या में होने अथवा उनके सालार मसूद के सैनिक अधिकारी होने की बात मीराते–ए–मसूदी में नहीं आती है।** 1955 में बिहार से प्रकाशित हनुमान गढ़ी का इतिहास'' नामक पुस्तक जिसके लेखक अमर्त्य – सिंह हैं, ने इस बात का हवाला अपनी पुस्तक में दिया है और कहा है कि ख्वाजा मिट्ठे के कब्र की बात को एक इश्यू बनाया गया था इसी आधार पर मैंने अयोध्या में मसूद के सेनाओं के आक्रमण की बात और उसके मंदिरों के क्षतिग्रस्त करने के बारे में लिखा है। मैंने अपनी पुस्तक प्रदर्श ओ0ओ0एस0 5–3 में अमर्त्य सिंह की पुस्तक '6 हनुमान गढ़ी के इतिहास का हवाला नहीं दिया है और न ही मैंने अपनी पुस्तक में ख्वाजा मिट्ठे के कब्र के होने का हवाला दिया है।'' (पेज 351)*

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"The Mirat-e-masoodi neither mentions about existence of the grave of Khwaja Miththe at Ayodhya nor about he being an army officer of Salaar Masood. This fact has been referred in the book titled 'Hanumangarhi Ka Itihas', published in 1955 from Bihar and written by Amartya Singh, and it has been mentioned that the fact of Khwaja Miththe's grave had also been made an issue. On this basis, I have written about Ayodhya's invasion by the army of Masood and the destruction of its temples. In my book, exhibit O.O.S 5-3, I have neither referred to Amartya Singh's book 'Hanumangarhi Ka Itihas' nor have I referred about existence of grave of Khwaja Miththe."(E.T.C)

''स्वयं कहा कि मीरात–ए–मसूदी को इतिहास की पुस्तक का दर्जा

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नहीं प्राप्त है। इसे हिस्टोरिकल रोमांस या ऐतिहासिक उपन्यास कहा गया है जिसमें तथ्य एवं कल्पनाओं का खुलकर उल्लेख किया गया है, ऐसा इलियट एण्ड डाउसन ने कही है।'' (पेज 354)

"Stated on his own that the Mirat-e-masoodi is not recognized as a history book. It is said to be historical romance or historical novel, in which facts and imaginations have been used liberally, which is so claimed by Elliot and Dawson." (E.T.C)

*''इस पृष्ठ पर क्रम सं0 5 के नीचे दी गयी टिप्पणी से मैं अब इस समय पूरी तरह सहमत नहीं हूँ। ... गवाह ने अपनी पुस्तक के पृष्ठ 176 के क्रम सं0 21 के नीचे दी गयी टिप्पणी के प्रथम वाक्यांश ''सालार मसूद के आक्रमण के लगभग सात दशकों के बाद'' को देखकर कहा कि **मैं अब इससे भी सहमत नहीं हूँ।**'' (पेज 355–356)*

*"At present, I do not completely agree with the comment contained below serial no.5 of this page. . . . . After looking at part of the first sentence of the comment under serial no.21 of page 176 of his book reading as 'after about seven decades of invasion of Salar Masood', the witness stated that now **I do not agree with this as well.**" (E.T.C)*

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1431. Now coming back to **"Fyzabad Gazetteer 1928" (supra)** page 155, it mentions:

"In 1528 Babar built the mosque at Ajudhya on the traditional spot where Rama was born."

1432. Again in the later part a directory is appended and deals with Ayodhya at page 179/180, it says:

"It is locally affirmed that at the time of the Musalman conquest there were three important Hindu shrines at Ajodhya and little else. There were the Janamsthan temple, the Swargaddwar and the Treta-ka-Thakur, and each was successively made the object of

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attention of different Musalman rulers. The Janamasthan was in Ramkot and marked the birthplace of Rama. ***In 1528 A.D. Babar came to Ajodhya and halted here for a week****. He destroyed the ancient temple and on its site built a mosque, still known as Babar's mosque. The materials of the old structure were largely employed, and many of the columns are in good preservation; they are of close-grained black stone, called by the natives kasauti, and carved with various devices. Their length is from seven to eight feet, and the shape square at the base, centre and capital, the rest being round or octagonal.* ***The mosque has two inscriptions, one on the outside and the other on the pulpit; both are in Persian and bear the date 935 Hiji. Of the authenticity of the inscriptions there can be no doubt,*** *but* ***no record of the visit to Ahodhya is to be found in the Musalman historians.*** *It must have occurred about the time of his expedition to Bihar."*

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1433. Here also Nevill in the footnote has placed reliance on Elliot and Dowson's "History of India" Vol. 4 page 283 which is english translation of "Tuzak-I Babari" which is said to be Leyden and Erskine's translation as per the preface of the book. We have gone through the entire page 283 of the said book but do not find any fact mentioned about the construction of disputed site or building mentioned therein.

1434. After independence under the authority of Government of Uttar Pradesh (Revenue Department) District Gazetteers of Uttar Pradesh in the revised form were published. The **"Uttar Pradesh District Gazetteers-Faizabad"** by Smt. Esha Basanti Joshi (Book No. 17) was published in 1960 printed at the Indian Press (Private) Ltd., Allahabad. Copy of the

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frontispiece and pages No.34, 36, 46, 47, 352 and 354 have been filed as paper No.107C1/54-61 i.e. Ex.13, Suit-5 (Register 20, pages 109-123). With reference to the construction of disputed building by Babar and the period it says:

> ***"The Janmasthan was in Ramkot and marked the birthplace of Rama. It seems that in 1528 A.D. Babur visited Ayodhya and under his orders this ancient temple was destroyed and on the site was built what came to be known as Babur's mosque****. The material of the old temple was largely employed in building the mosque and a few of the original columns are still in good preservations; they are of cloe grained black stone (kasauti) bearing various Hindu bas-reliefs (see Plate I), the outer beam of the main structure being of sandal wood. The height of the columns is seven to eight feet, the shape of the base, the middle section and the capital is square, the rest being round or octagonal.* ***There are two inscriptions in Persian, one on the outside and the other on the pulpit bearing the date 935 Hijri****."*

1435. Broadly, we find and in fact it is even admitted by Sri Jilani that the sole basis for determining the period of construction of the disputed building and to co-relate it with Emperor Babar is/are the inscription(s) said to be installed in the disputed building referred to in certain Gazetteers etc. The text of these inscriptions have been given in different books which needs threadbare scrutiny to find out whether the disputed building was constructed in 1528 by or under the order of Emperor Babar is correct or not.

1436. The first document which has reproduced the text of said inscription(s) is the publication of Archaeological Survey

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of India titled as **"The Sharqi Architecture of Jaunpur; with notes on Zafarabad, Sahet-Mahet and Other Places in the North-Western Provinces and Oudh by A. Fuhrer; Original edition 1889 (**reprinted in 1994) by the Director General Archaeological Survey of India, New Delhi (hereinafter referred to as **"Fuhrer's Report")**. This is edited by Z.A.Desai. Chapter-X thereof refers to the inscriptions i.e., no. XL; XLI; XLII found at Ayodhya and is supported with the inscriptions found by Fuhrer at Ayodhya. It says that there were three inscriptions wherefrom he (Fuhrer) formed the opinion that the said building was constructed at Ayodhya in A.H. 930, or A.D. 1523, by Mir Khan, on the very spot where the old temple Janam Asthanam of Ramachandra was standing.

1437. The **inscription No. XL** was over the central *mihrab*, **written in Arabic characters** and gives twice the Kalimah as under:

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لا الاّ اللہ مُحمَّد رَسُول اللہ لا الاّ اللہ مُحمَّد رَسُول اللہ

"There is no god but Allah, Muhammad is His Prophet."

(English Translation by "the Author")

1438. Inscription No. XLI was found on the mimbar (right hand side of the disputed building) **written in Persian poetry**, the metre being Ramal, in six lines:

بمنشا ٔے بابر خد یو جہاں
بشانیکہ با کاخ گردوں عناں
بناکردہ ایں خا نٔہ پایدار
امیر سعادت نشان میر خاں
بماندہ ہمیشہ چنیں باینش
چناں شہر یار زمین و زماں

"1. बमंशाये बाबर खदयू जहां
बशाने कि बा काख़ गरदूँ इनां
2. बिना कर्दा–ए–ख़ान–ए–पायेदार

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अमीरे सआदत निशां मीर खां

3. बमानद हमेशा चुनां बानियश

चुनां शहरियारे ज़मीनो ज़मां''

(Hindi Transliteration)

''1. विश्व सम्राट बाबर के आदेशानुसार आकाश जैसे महल के भव्य के साथ।

2. सुदृढ़ घर का आधार रखा भाग्यवान नवाब मीर खां ने।

3. उसका ऐसा संस्थापक और पृथवी और युग का ऐसा सम्राट सदैव जिवित रहे।''

(Hindi Translation)

"1. By order of Babar, the kind of the world,

2. This firmament-like, lofty,

3. Strong building was erected.

4. By the auspicious noble Mir Khan.

5. May ever remain such a foundation,

6. And such a king of the world."

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(English Translation by "the Author")

1439. Inscription XLII was found above the entrance door of the disputed building **written in Persian poetry**, the metre being Ramal in ten lines. He further says that some characters of the second and whole third lines are completely defaced:

بسم اللہ الرحٰمن الرحیم

بنـــــــام انکـــــــہ--- کنـــــــد خـــــــالق بقلـــــــم جـــــــاودانی

چنـــاہ شہاہنشـــہ مشـــہور اقلیـــم زمیـــں را چـــوں مثـــال شـــادمانی

دراں حضـرت یکـی میـری معظـم کـہ خاقـان دولـت و فعفـور ثـانی

بنا ٔے عہد دیں تاریخ میموں کـہ نہصد سی بود ھجرت بـدانی

خـــدایا در جـ ہاں باشـــاہ بـــادا بچـــترو تخـــت بخـــت زنـــدگانی

فشـــاند در جـ ہاں بـــابر گـــل خیـــر کـــد در دور گیـــتی کـــامرانی

مشیرسـلطنت تـدبیر ملکـش کزیـں مسـجد حصـاری ھست بـانی

ھذالقط عہ التاریخ و صفت مسجد بخط نحیف عبد ضعیف فتح اللہ غوری

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محرر

''बिसमिल्लाहिर्रहमानिर्रहीम

1. बनामे आं कि.....

कुनद खालिक़ बकलमे जावेदानी

2. .....

.....

3. चुनां शाहंशहे मशहूरे अक़लीम

ज़मीं रा चूं मिसाले शादमानी

4. दरां हज़रत यके मीरे मुअज्ज़म

कि ख़ाक़ान दौलतो व फ़ग़फ़ूरे–सानी

5. बिनाये महदे दीं तारीख़ें मैमूं

नुह सद सी बुवद हिजरत बदानी''

6. खुदाया हर जहां बा शाह बादा

बचित्रो तख़्तो बख़्ते ज़िन्दगानी

7. फ़शनाद दर जहां बाबर गुले ख़ैर

कुनद दर दौरे गेती कामरानी

8. मुशीरे सलतनत तदबीरे मुलकश

कज़ीं मस्जिद हिसारे हस्त बानी

हाज़ल कितअतुत्तारीख़ व सिफ़ते मस्जिद ब–ख़ते नहीफ़ अब्दे ज़ईफ

फ़तहुल्लाह ग़ौरी मुहर्रर''

(Hindi Transliteration by Court)

''1. उस हस्ती के नाम से जो ..... उत्पत्तिकर्ता उसको कलम द्वारा अमर कर देता है।

2. .....

3. विश्व का ऐसा प्रसिद्व सम्राट जिसका अस्तित्व पृथवी के लिये प्रसन्नता का उदाहरण है।

4. उस शाही दरबार का एक विशाल नवाब है जा ख़ाक़ान (चीनी शासकों की उपाधि) जैसा सौभाग्यवश और द्वतीय फ़ग़कुर (चीनी शासकों की उपाधि) है।

5. धर्म के इस महद (गहवारे अर्थात मस्जिद) के आधार की ***शुभ तिथि 930 हिजरी प्रतीत*** *करो।*

6. ऐ! खुदा संसार के बादशाह के साथ उसका ताज, सिंहासन, भाग्य और

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जीवन सदैव बाकी रहे

7. बाबर सम्राट संसार में नेकियों के पुष्पों की वर्षा करता रहे और उसे सफ़लता मिलती रहे

8. शासन का सलाहकार और देश का प्रशासक जो इस मस्जिद के क़िले का आधार रखने वाला है।

तिथि का यह किता और मस्जिद का विवरण निर्बल गुलाम फतहुल्लाह गौरी के कम्ज़ोर लिपि द्वारा लिखा गया।"

(Hindi Translation by Court)

"1. In the name of God, the merciful, the element.

2. In the name of him who .....; may God perpetually keep him in the world.

3. .....

4. Such a sovereign who is famous in the world, and in person of delight for the world.

5. In his presence one of the grandees who is another king of Turkey and China.

6. Laid this religious foundation in the ***auspicious Hijra 930****.*

7. O God ! May always remain the crown, throne and life with the king.

8. May Babar always pour the flowers of happiness; may remain successful.

9. His counsellor and minister who is the founder of this fort masjid.

10. This poetry, giving the date and eulogy, was written by the lazy writer and poor servant Fath-allah-Ghorl, composer."

(English Translation by Author)

1440. After referring the aforesaid inscriptions and text, Fuhrer on page 68, Chapter X has made the following observations:

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"The old temple of Ramachandra at Janamasthanam must have been a very fine one, for may of its columns have been used by the Musalmans in the construction of Babar's masjid. These are of strong, close-grained, dark-coloured or black stone, called by the natives kasauti, "touch-stone slate," and carved with different devices. They are from seven to eight feet long, square at the base, centre and capital, and round or octagonal intermediately."

1441. The second extremely relied work is **"Babur-Nama" by A.S. Beveridge (first published in 1921) (reprinted in LPP 1989, 1997, 2000**), two volumes in a single bound book (Book No. 6). Besides the book itself, extract of some of the pages of the said book (of different editions) have also been filed by the parties which are exhibits as under:

(i) Paper No. 78 A-2/ 21-24 (Ex. J5, Suit-4) (Register Volume 13, page 39-45)

(ii) Paper No. 87 B-1/ 7 (Ex. J8, Suit-4)

(iii) Paper No. 87 B-1/ 8 (Ex. J9, Suit-4)

(iv) Paper No. C2-163/ 1-2 (Ex. J13, Suit-4) (Register Vol. 34 page no. 73-74)

(v) Paper No. 43A1/ 22-24 (Ex. T3, Suit-4) (Register Vol. 18 page 45-49)

(vi) Paper No. C2-156/ 1-5 (Ex. Q2, Suit-5) (Register Vol. 34 page 37-45)

(vii) Paper No. 107C1/ 71-74 (Ex.16, Suit-5) (Register 20 page 145-159)

1442. Appendix U at page LXXVII, LXXVIII and LXXIX refers to two such inscriptions, one inside the mosque and another outside the mosque. Photocopy of the aforesaid pages of Appendix U have been placed on record as Exhibit T3 (Suit-4)

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(Paper No. 43A-1/22-24), (Register 18 page 45-49). It appears from Appendix U that she got the text of the two inscriptions through the Deputy Commissioner of Fyzabad on an enquiry made by her husband about two inscriptions mentioned by several Gazetteers said to be existed on the Babar's mosque at Ayodhya. However, at the bottom, note 2, she says that while reproducing the text a few slight changes in the term of expression have been made for clearness sake. The text of the inscription inside the mosque as quoted in **Babar-Nama by A.S. Beveridge** is as under:

بفرمودۂ شاہ بابر کہ عدلش
بنایست تأ کاخ گردوں مُلاقی
بنا کرد ایں مُہیط قُدسیاں
امیر سعادت نشان میر باقی
بود خیر باقی چو سال بنایش
عیاں شد کہ گفتم بود خیر باقی

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''(1) बफरमूद–ए–शाहे बाबर कि अदलश, बिनाइस्त बा–काख़ गरदूँ मुलाक़ी।

(2) बिना कर्द–ए–महबते कुदसियां रा अमीरे सआदत निशां मीर बाक़ी

(3) बुवद ख़ैरे बाक़ी व साले बिनाइश अयां शुद चूं गुफतम बुवद ख़ैर बाक़ी''

(Hindi Transliteration by Court)

''1. सम्राट बाबर के आदेशानुसार जिसका न्याय एक ऐसी इमारत है जो आकाश के महल से जा मिली है।

2. भाग्यवान नवाब मीर बाक़ी ने फरिश्तों के उतरने के इस स्थान की आधार शिला रखी।

3. इसके आधार का वर्ष चूंकि एक खैर बाक़ी (शाश्वत भलाई) है। अतः मेरा यह कथन स्पष्ट हुआ ''बवुद खैर बाक़ी'' (यह भला कारनामा सदैव बाकी रहे)''

(Hindi Translation by Court)

''(1) By the command of the Emperor Babur whose justice

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is an edifice reaching up to the very height of the heavens.

(2) The good-hearted Mir Baqi built this alighting place of angles.

(3) It will remain an everlasting bounty, and (hence) the date of its erection became manifest from my words: It will remain an everlasting bounty." (E.T.C.)

1443. The text of the inscription outside the mosque quoted in Beveridge's "Babar-Nama" is as under:

بنام أنکہ داناهست اکبر کہ خالق جملہ عالم لامکانی

درود مصطفٰی بعد ازستایش کہ سرور انبیائ دو جہانی

فسانہ در جہاں بابر قلندر کہ شد در دورگیتی کامرانی

''1. बनामे आंकि दाना हस्त अकबर

कि ख़ालिक़ जुमला आलम लामकानी

2. दूरूदे मुस्तफा बाद अज़ सतायश

कि सरवर अंबिया–ए–दो ज़हानी

3. फसाना दर जहां बाबर क़लन्दर

कि शुद दर दौरे गीती कामरानी''

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(Hindi Transliteration)

''1. उसके नाम से जो सबसे महान बुद्विमान है जो सारे संसार का स्त्रष्टा एवं स्थान की कैद से मुक्त है

2. उसकी प्रशंसा के बाद मोहम्मद मुस्तफा सल्लल्लाहो अलैहि वसल्लम पर दरूद हो जो दोनों संसार के नबियों के सरदार हैं।

3. बाबर कलंदर का यह चरचा सारे संसार में व्यापक है कि वह एक सफल सम्राट हैं।''

(Hindi Translation)

"1. In the name of One who is Great (and) Wise (and) who is Creator of the whole world and is free from the bondage of space.

2. After His praise, peace and blessings be on Prophet Muhammad, who is the head of all the Prophets in both the worlds.

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3. In the world, it is widely talked about Qalandar Babur that he is a successful emperor." (E.T.C.)

1444. With respect to the second inscription that is outside the mosque, the Beveridge said that it is incomplete.

1445. The third set of text of inscription we are confronted with, is that published in **"Epigraphia Indica-Arabic & Persian Supplement (In continuation of Epigraphia Indo-Moslemica) 1964 and 1965"** reprinted 1987 published by the Director General Archaeological Survey of India, New Delhi. On page 49, the chapter begins with the heading "Inscriptions of Emperor Babur" said to be written by the **Late Maulvi M. Ashraf Husain** and edited by Z.A.Desai. Editor's note in the aforesaid Chapter is of some importance:

"A rough draft of this article by the author, who was my predecessor, was found among sundry papers in my office. At the time of his retirement in 1953, he had left a note saying that it might be published after revision by his successor. Consequently, the same is published here after incorporation of fresh material and references and also, extensive revision and editing. The readings have been also checked, corrected and supplemented with the help of my colleague, Mr. S.A.Rahim, Epigraphical Assistant,-Editor."

1446. On page 58 under sub-chapter VIII-X, "Inscriptions Dated A.H. 935, from Ajodhya", the author has referred to three inscriptions said to have existed at Babur's mosque. The author's comments about those inscriptions are:

"These three records are from Ajyodhya, in Fyzabad district of Uttar Pradesh. Ajodhya, called Ayodhya in ancient works, is a place of great antiquity. It was the earliest capital of the kingdom of Kosala in the later Vedic

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period, which may be traced down to 600 B.C. In the fifth and sixth centuries after Christ, the Gupta dynasty ruled over it and called it Saket, by which name it is also known in the Ramayana. From the seventh century onwards, a period of neglect ensued and according to Muslim historians, parties enjoyed hunting in its vicinity."

The chief fame of Ajodhya lies in its being the birth-place of Sri Rama, the deified son of Raja Dasaratha and hero of the Ramayana. At the Muslim conquest, three important temples are reported to have existed here, viz. Janmasthana or birth-place Temple, the Treta-ki-Thakur or the place where Sri Rama performed a great sacrifice in commemoration of which he set up images of himself and his wife Sita, and the Svargadvaram or Rama-Darbar, which is believed to be the place where he was cremated. The second and third are popularly believed to have been pulled down by Aurangzeb, and on the site of the first the present Baburi mosque is stated to have been built. The supposition is apparently anachronistic inasmuch as Aurangzeb was born about a century after A.H. 935, the date of Babur's record, and so the demolition could not have taken place so late.

The Baburi-Masjid, which commands a picturesque view from the riverside, was constructed according to A.Fuhrer in A.H. 930 (1523-24 A.D.) but his chronology, based upon incorrect readings of inscriptions supplied to him, is erroneous. Babur defeated Ibrahim Lodi only in A.H. 933 (1526 A.D.), and moreover, the year of construction, recorded in two of the three inscriptions studied below, is clearly A.H. 935 (1528-29 A.D.). Again, it

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was not built by Mir Khan as stated by him. The order for building the mosque seems to have been issued during Babur's ***stay at Ajodhya in A.H. 934 (1527-28 A.D.)****, but no mention of its completion is made in the Babur Nama. However, it may be remembered that his diary for the year A.H. 934 (1527-28 A.D.) breaks off abruptly, and throws the reader into the dark in regard to the account of Oudh.*

The mosque consists of three compartments, each crowned by a dome. The squinch-arches and stalactite pendentives turn each aisle of the prayer-chamber into a squarish room. The drums of the domes inside were originally relieved by arched recesses, and the central dome was embellished with ornamental incised plaster discs, but the ***present domes were only reconstructed in the thirties of this century and are devoid of any original features****.*

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The mosque contains a number of inscriptions. On the eastern facade is a chhajja, below which appears a Quranic text and above, an inscription in Persian verse. On the central mihrab are carved religious texts such as the Kalima (First Creed), etc. On the southern face of the pulpit was previously fixed a stone slab bearing a Persian inscription in verse. There was also another inscription in Persian verse built up into the right hand side wall of the pulpit. Of these, ***the last-mentioned two epigraphs have disappeared. They were reportedly destroyed in the communal vandalism in 1934 A.D****., but luckily,* ***I managed to secure an inked rubbing of one of them from Sayyid Badru'l Hasan of Fyzabad.*** *The present inscription, restored by the Muslim community, is not only*

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*in inlaid Nasta'liq characters, but is also **slightly different from the original**, owing perhaps to the incompetence of the restorers in deciphering it properly.*

The readings and translations of the historical epigraphs mentioned above, except in the case of one, were published by Fuhrer and Mrs. Beveridge, but their readings are so incomplete, inaccurate and different from the text that their inclusion in this article is not only desirable but also imperative.

The epigraph studied below was inscribed on a slab of stone measuring about 68 by 48 cm., which was built up into the southern side of the pulpit of the mosque, but is now lost, as stated above. It is edited here from the estampage obtained from Sayyid Badru'l Hasan of Fyzabad. Its three-line text consists of six verses in Persian, inscribed in ordinary Naskh characters within floral borders. It records the construction of the mosque by Mir Baqi under orders from emperor Babur and gives the year A.H. 935 (1528-29 A.D.) in a chronogram."

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1447. The inscriptions found at the southern side of the pulpit of the mosque is said to be found inscribed on a slab of stone measuring about 68 by 48 cm. He says that the original is lost. The quoted inscription is one edited from the estampage obtained from Sayyid Badru'l Hasan of Fyzabad. Further explanation at note 4 at the bottom at page 59 given by author is as under:

"It may be argued that since this epigraph is not quoted in Fuhrer's SAJ, the slab had already disappeared before he wrote. But that is not the case, since the tablet was found there in 1906-07 A.D. by Maulavi M. Shuhaib of the office

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of the Archaeological Surveyor, Northern Circle, Agra (Annual Progress Report of the Office of the Archaeological Surveyor, Northern Circle, Agra, for 1906-07."Appendix-D

1448. The first inscription's text which author has mentioned at **plate XVII (b)** is as under:

بفرمود ٔ ہ شاہ بابر کہ عدلش بنائ است بأ کاخ گردوں ملاقی
بنا کردہ ایں مُہبط قُدسیاں امیر سعادت نشاں میر باقی
بود خیر باقی و سال بنایش عیاں شد چو گفتم بود خیر باقی

''(1) बफरमूद–ए–शाह बाबर कि अदलश,
बिनाइेस्त बा–काख़ गरदूँ मुलाक़ी।
(2) बिना कर्दह ईं महबते कुदसियां रा
अमीरे सआदत निशां मीर बाक़ी
(3) बुवद खैरे बाक़ी व साले बिनाइश,
अयां शुद चूं गुफतम बुवद खैर बाक़ी''

(Hindi Transliteration)

''1. सम्राट बाबर के आदेशानुसार जिसका न्याय एक ऐसी इमारत है जो आकाश के महल से जा मिली है।

2. भाग्यवान नवाब मीर बाक़ी ने फरिश्तों के उतरने के स्थान की आधार शिला रखी।

3. वह खैर बाकी (सदैव रहने वाला एक भला कारनामा) है और उसके आधार का वर्ष यूं स्पष्ट हुआ जब मैंने कहा ''बवुद खैर बाक़ी''।''

(Hindi Transliteration)

"(1) By the order of king Babur whose justice is an edifice, meeting the palace of the sky (i.e. as high as the sky).

(2) This descending place of the angels was built by the fortunate noble Mir Baqi.

(3) It will remain an everlasting bounty, and (hence) the date of its erection became manifest from my words: It will remain an everlasting bounty."

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(English Translation by Author)

1449. The Fuhrer's inscription **no. XLI** which he mentions that the same was found inside the mosque on the mimbar (right hand side of the disputed building) has been termed as second inscription by Maulvi F. Ashraf Hussain. It consists of three couplets arranged in six lines. He (Hussain) clearly admits non existence of the said inscription by observing *"the epigraphical Tablet" which was built up into right hand side wall of the pulpit, does not exist now, and, therefore, the text of the inscription is quoted here from Furher's work, for the same reason, its illustration could not be given."* Sri Husain/Desai however, did not agree to the reading of the inscription by Fuhrer and observed that Furher's reading does not appear free from mistakes.

1450. About the third inscription, on page 60/61 of the book, the author has given narration as follows:

> *"The third record of Babur in the Ajodhya mosque, comprising a fragment of eight Persian verses of mediocre quality and a colophon, appears over the central entrances to the prayer-chamber above the chajja. The four-line text is executed in fairly good Naskh characters in relief amidst floral borders, on a slab measuring about 2 m. by 55 cm. The text is fairly well preserved, and Fuhrer must have been misinformed to affirm that 'a few characters of the second and the whole third lines are completely defaced'. The purport of the record is the same as that of the previous epigraphs, but here an additional edifice is also mentioned : In verse six, in line three, a fort-wall (hisar) is said to have been built along with the mosque in A.H. 935 (1528-29 A.D.), by Mir Baqu, who is here called the second*

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Asaf and councillor of the state."

1451. The **text of the third inscription** is as under :

بسم اللہ الرحمن الرحیم و بہ نثقتے

بنام آنکہ او داناست اکبر — کہ خالق جملہ عالم لا مکانے

دور مصطفے بعد ازثنایش — کہ سرور انبیا زبدہ جہانے

فسانہ در جہان بابر قلندر — کہ شد دردور گیتی کا مرانے

چناں کش ہفت کشوردر گرفتہ — زمین راچوں مثال آسمانے

درآں حضرت یکی میر معظم — کہ نامش میر باقی آصف ثانے

مشیر سلطنت تدبیر ملکش — کزین مسجد و حصار ہست بانے

خدایا در جہاں پایندہ بادا — کہ چتروتخت و بخت و زندگانے

بناء عہد زین تاریخ میمون — کہ نہصد سی پنج بود نشانے

تمت بذا لتوحید و نعت و مدح و صفت نوراللہ برھانہ خط عبدالضعیف نحیف فتح اللہ محمد غودے

बनाम ऑकि उ दानास्त अकबर,

कि खलिक जुमला आलम ला मकानी।

''1. दूरूदे मुस्तफ़ा बाद अज़ सनायश

कि सरवर अंबिया जुब्दा जहानी

2. फसाना दर जहां बाबर कलन्दर

कि शुद दर दौरे गीती कामरानी

3. चुनां कश हफ़्त किशवर दर गिरफ़्ता

ज़मीं रा चूं मिसाले आसमानी

4. दरां हज़रत यके मीरे मुअज्ज़म

कि नामश मीर बाक़ी आस्फ़ सानी

5. मुशीरे सलतनत तदबीर मुलकश

कज़ीं मस्जिदो हिसार हस्त बानी

6. खुदाया दर जहां पाइन्दा बादा

कि चित्रो तख़्तो बख़्तो ज़िन्दगानी

7. बिनाये अहदे ज़ीं तारीख़ मैमूं

कि नुह सद सी पंज बुवद निशानी

तम्मत हाज़त्तौहीदु व नात व मदह व सिफ़त नव्वरल्लाहु बुरहानहु खत्ते अब्दुज्ज़ईफ़ नहीफ़ फ़तहुल्लाह मोहम्मद ग़ौरी।''

(Hindi Transliteration)

''1. उस (खुदा) की प्रशंसा के बाद मोहम्मद मुस्तफा सल्लाल्लाहो अलैहि

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वसल्लम पर दरूद हो जो नबियों के सरदार और दुनिया के सर्वश्रेष्ठ है।

2. बाबर कलंदर का चरचा सारे संसार में है कि वह एक सफ़ल सम्राट है।

3. वह ऐसा सम्राट है कि जिसने सातों देशों पर विजय प्राप्त कर लिया, आकाश के समान पृथ्वी को भी अपने कब्जे में कर लिया।

4. उस शाही दरबार का एक विशाल नवाब है जिसका नाम मीर बाकी है द्वितीय आसिफ (आसिफ़ उपाधि रखता है)

5. शासन का सलाहकार और उसके देश का प्रशासक जो इस मस्जिद और किले का आधार रखने वाला है।

6. ऐ! खुदा संसार में उसका ताज, सिंहासन, भाग्य और जीवन सदैव बाक़ी रहे।

7. इस युग के इस इमारत की बुनियाद की शुभ तिथि की निशानी 935 है।''

(Hindi Translation)

"(1) In the name of Allah, the Beneficent, the Merciful. And in Him is my trust.

(2) In the name of One who is Wise, Great (and) Creator of all the universe (and) is spaceless.

After His praise, blessings be upon the Chosen one (i.e. the Prophet), who is the head of prophets and best in the world.

The Qalandar-like (i.e. truthful) Babur has become celebrated (lit. a story) in the world, since (in his time) the world has achieved prosperity.

(3) (He is) such (an emperor) as has embraced (i.e. conquered) all the seven climes of the world in the manner of the sky.

In his court, there was a magnificent noble, named Mir Baqi the second Asaf, councillor of his government and administrator of his kingdom, who is the founder of this mosque and fort-wall.

(4) O God, may he live for ever in this world, with fortune

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and life and crown and throne. The time of the building is this auspicious date, of which the indication is nine hundred (and) thirty five (A.H. 935=1528-29 A.D.).

Completed was this praise of God, of Prophet and of king. May Allah illumine his proof. Written by the weak writer and humble creature, Eathu'llah Muhammad Ghori."

(English Translation by Author)

1452. PW-15, Sushil Srivastava in his book "The Disputed Mosque-A Historical Enquiry" published in 1991 by Vistaar Publications, New Delhi has also given text of two inscriptions at page 86 of the book which are as under:

(A) Inscription above the pulpit inside the mosque

بفرمودۂ شاہ بابر کہ عدلش
بنایست تأکاخ گردوں مُلاقی
بنا کرد ایں مُہبط قُدسیاں
امیر سعادت نشان میر باقی
بود خیر باقی چو سال بنایش
عیاں شد کہ گفتم بود خیر

"ब फरमूदये शाह बाबर कि अदलश,
बिनायेस्त ता काखे गर्दूं मुलाकी।
बिना कर्द ईं मुहबते कुदसियां,
अमीरे सआदत निशान मीर बाकी।
बुवद खैरे बाकी! चू साले बिनायश,
अयां शुद कि गुफ्तम बुवद खैर बाकी।"

(Hindi Transliteration by Author)

"शाह बाबर के आदेशानुसार जिसका न्याय,
एक ऐसी एमारत है जो आकाश की ऊंचाई तक पहुंचती है।
निर्माण कराया इस फिरिश्तों के उतरने के स्थान को,
सौभाग्यशाली अमीर, मीर बाकी ने,
बवद खैरे बाकी (यह सदाचरण अनन्त तक रहे) जो उसके निर्माण का वर्ष

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है.

यह स्पष्ट हो गया जो मैं कहूं कि यह सदाचरण अनन्त तक रहे।''

(Hindi Transliteration by Author)

"(1) By the order of king Babar whose justice is an edifice meeting the pace of sky (i.e. as high as the sky).

(2) this descending place of the angels was built by the fortunate noble Mir Baqi.

(3) it will remain an everlasting bounty and (hence) the date of its erection became manifest from my words: it will remain an everlasting bounty." (English Translation by Author)

(B) Inscription at the entrance of the mosque i.e. the outer inscription

بنام اں کہ دانا ہست اکبر
کہ خالق جملہ عالم لامکانی
درود مصطفٰی بعد ازستایش
کہ سرور انبیائ دو جہانی
فسانہ در جہاں بابر قلندر
کہ شد در دورگیتی کامرانی

''बनामे आंकि दाना हस्त अकबर
कि खालिक जुमला आलम लामकानी
दूरूदे मुस्तफा बाद अज सतायश
कि सरवर अंबियाये दो जहानी
फसाना दर जहां बाबर कलन्दर
कि शुद दर दौरे गीती कामरानी''

(Hindi Transliteration)

''1. उसके नाम से जो सबसे महान बुद्विमान है जो सारे संसार का स्रष्टा एवं स्थान की कैद से मुक्त है

2. उसकी प्रशंसा के बाद मोहम्मद मुस्तफा सल्लल्लाहो अलैहि वसल्लम पर दरूद हो जो दोनों जहां में नबियों के सरदार हैं।

3. बाबर कलंदर का चर्चा संसार में है जो संसार में एक सफल सम्राट हुआ

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है।''

(Hindi Translation)

''1. In the name of One who is Great (and) Wise (and) who is Creator of the whole world and is free from the bondage of space.

2. After His praise, peace and blessings be on Prophet Muhammad, who is the head of all the Prophets in both the worlds.

3. The world has the house of Qalandar Babur, who has been a successful emperor in the world.'' (E.T.C.)

1453. The text of two inscriptions has also been given in Appendix "Gha" on page 659 and 660, **"Mugalkalin Bharat-Babar (1526-1530 AD)"** translated by Syed Athar Abbas Rizvi (first published in 1960 and in 2010 published for first time by Rajkamal Prakashan Pvt. Ltd., New Delhi). The photocopy of Appendix D *(Parishisht Gha)* page 659 and 660 of the above book along with its title page has been filed as Exhibit 91 (Suit-4) (Register 16, Pages 164-166) and the same reads as under:

(A) بفرمود ٔ ہ شاہ بابر کہ عدلش
بنایست تأ کاخ گردوں مُلاقی
بنا کرد ایں مُہیط قُدسیاں
امیر سعادت نشان میر باقی
بود خیر باقی چو سال بنایش
عیاں شد کہ گفتم بود خیر

'ब फरमूदये शाह बाबर कि अदलश,
बिनायेस्त ता काखे गर्दूं मुलाकी।
बिना कर्द ईं मुहबते कुदसियां,
अमीरे सआदत निशान मीर बाकी।
बुवद खैरे बाकी! चू साले बिनायश,
अयां शुद कि गुफ्तम बुवद खैर बाकी।''

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(Hindi Transliteration by Author)

''शाह बाबर के आदेशानुसार जिसका न्याय,
एक ऐसी एमारत है जो आकाश की ऊंचाई तक पहुंचती है।
निर्माण कराया इस फिरिश्तों के उतरने के स्थान को,
सौभाग्यशाली अमीर, मीर बाकी ने,
बवद खैरे बाकी (यह सदाचरण अनन्त तक रहे) जो उसके निर्माण का वर्ष है.
यह स्पष्ट हो गया जो मैं कहूं कि यह सदाचरण अनन्त तक रहे।''

(Hindi Translation by Author)

''(1) By the order of king Babar whose justice is an edifice meeting the pace of sky (i.e. as high as the sky).
(2) This descending place of the angels was built by the fortunate noble Mir Baqi.
(3)It will remain an everlasting bounty and (hence) the date of its erection became manifest from my words: it will remain an everlasting bounty.'' (E.T.C.)

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(B) بنام انکہ دانا ھست اکبر
کہ خالق جملہ علام لا مکانی
درود مصطفٰی بعد اذ ستایش
کہ سرور انبیای دو جہانی
فسانہ در جھاں بابر کلندر
کہ شد در دور گیتی کامرانی

'' बनाम आंकि दाना हस्त अकबर,
कि खालिके जुमला आलम ला मकानी।
दरूदे मुस्तफा बाद अज सताइश,
कि सरवरे अम्बियाये दो जहानी।
फसाना दर जहां बाबर कलन्दर,
कि शुद दर दौरे गेती कामरानी।''

(Hindi Transliteration by Author)

''उसके नाम से जो कि महान् ज्ञानी है,
जो समस्त संसार का सृष्टा और बिना घर का है।

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उसकी स्तुति के उपरान्त मुस्तफा पर दरूद,
जो दोनों लोकों के नबियों के सरदार हैं।
संसार में चर्चा है कि बाबर कलन्दर,
काल चक्र में उसे सफलता प्राप्त हुई।''

(Hindi Translation by Author)

'' In His name who is all wisdom,
Who is creator of the entire universe and who is abodeless.
After His praise peace be on Prophet Mohammad,
Who is the head of all the Prophets in both the worlds.
It is the talk of the world that Qalandar Babur,
Attained success with the movement of the time-wheel.''
(E.T.C.)

1454. In another book titled as **"Babar"** by Dr. Radhey Shyam, first published in 1978 by Janaki Prakashan Allahabad, the text of three inscriptions at the building in dispute in Appendix VI, Item VIII-X at pages 505 and 506 is given as under :

(A) بفرمود ٔ ہ شاہ بابر کہ عدلش
بنایست تأ کاخ گردوں مُلاقی
بنا کرد ایں مُہیط قُدسیاں
امیر سعادت نشان میر باقی
بود خیر باقی چو سال بنایش
عیاں شد کہ گفتم بود خیر باقی

'ब फरमूदये शाह बाबर कि अदलश,
बिनायेस्त बा काखे गर्दूं मुलाकी।
बिना कर्द ईं मुहबते कुदसियां,
अमीरे सआदत निशान मीर बाकी।
बुवद खैरे बाकी! चू साले बिनायश,
अयां शुद कि गुफ्तम बुवद खैर बाकी।''

(Hindi Transliteration)

''शाह बाबर के आदेशानुसार जिसका न्याय,

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एक ऐसी एमारत है जो आकाश की ऊंचाई तक पहुंचती है।
निर्माण कराया इस फिरिश्तों के उतरने के स्थान को,
सौभाग्यशाली अमीर, मीर बाकी ने,
बवद खैरे बाकी (यह सदाचरण अनन्त तक रहे) जो उसके निर्माण का वर्ष है.
यह स्पष्ट हो गया जो मैं कहूं कि यह सदाचरण अनन्त तक रहे।''

(Hindi Translation)

"(1) By the order of king Babar whose justice is an edifice meeting the pace of sky (i.e. as high as the sky).
(2) This descending place of the angels was built by the fortunate noble Mir Baqi.
(3) It will remain an everlasting bounty and (hence) the date of its erection became manifest from my words: it will remain an everlasting bounty."

(English Translation by Author)

(B) بمنشا ٔے بابر خدیو جہاں
بشانیکہ با کاخ گردوں عناں
بناکردہ ایں خا نۂ پایدار
امیر سعادت نشان میر خاں
بماندہ ہمیشہ چنیں باینش
چناں شہر یار زمین و زماں

''1. बमशाये बाबरे खदयू जहां
बसाने कि बा काख गरदूँ इनॉ
2. बिना कर्दा ईं खान–ए–पायेदार
अमीरे सआदत निशां मीर खां
3. बमांदह हमेशा चुनीं बानियश
चुनां शहरियारे जमीनो जमां''

(Hindi Transliteration)

''1. विश्व सम्राट बाबर के आदेशानुसार आकाश जैसे महल के समान।
2. इस सुदृढ़ घर का आधार रखा भाग्यवान नवाब मीर खां ने।
3. उसका ऐसा संस्थापक और पृथ्वी और युग का ऐसा सम्राट सदैव जिवित

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रहे।''

(Hindi Translation)

''(1) Under the commands of Babar, emperor of the world, a sky-like palace

(2) (that is to say) this strong house of God was founded by the fortunate noble Nawab Mir Khan

(3)*May ever remain such a founder of edifice, and such a king of the world and age.''* (E.T.C)

(C) بسم اللہ الرحمن الرحیم و بہ ثقتے

بنام آنکہ او داناست اکبر — کہ خالق جملہ عالم لا مکانے

دور مصطفے بعد ازثنایش — کہ سرور انبیا زبدہ جہانے

فسانہ در جہان بابر قلندر — کہ شد دردور گیتی کا مرانے

چناں کش ہفت کشوردر گرفتہ — زمین راچوں مثال آسمانے

درآں حضرت یکی میر معظم — کہ نامش میر باقی آصف ثانے

مشیر سلطنت تدبیر ملکش — کزین مسجد و حصار ہست بانے

خدایا در جہاں پایندہ بادا — کہ چتروتخت و بخت و زندگانے

بناء عہد زین تاریخ میمون — کہ نہصد سی پنج بود نشانے

تمت بذا لتوحید و نعت و مدح و صفت نور اللہ برھانہ خط عبدالضعیف نحیف فتح اللہ محمد غودے

''(1) बिसमिल्लाहिर्रहमानिर्रहीम व ब–सिक़ती

(2) बनामे आंकि ऊ दानास्त अकबर – कि ख़ालिक़ जुमला आलम लामकानी

दूरूदे मुस्तफा बाद अज़ सनायश – कि सरवर अंबिया जुब्दा जहानी

फसाना दर जहां बाबर क़लन्दर – कि शुद दर दौरे गीती कामरानी

(3) चुनां कश हफ्फत किशवर दर गिरफ़ता – ज़मीं रा चूं मिसाले आसमानी

दरां हज़रत यके मीरे मुअज्ज़म – कि नामश मीर बाक़ी आस्फ़ सानी

मुशीरे सलतनत तदबीर मुलकश – कज़ीं मस्जिदो हिसार हस्त बानी

(4) खुदाया दर जहां पाइन्दा बादा – कि चित्रो तख़्तो बख़्तो ज़िन्दगानी

बिनाये अहदे ज़ीं तारीख़ मैमूं – कि नुह सद सी पंज बुवद निशानी

तम्मत हाज़त्तौहीद व नात मदह व सिफ़त नव्वरल्लाहु बुरहानहु ख़त्ते

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अब्दुज्ज़ईफ़

नहीफ़ फ़नहुल्लाह मोहम्मद ग़ौरी।''

(Hindi Transliteration)

''अल्लाह के नाम से जो अत्यन्त करूणामय और दयावान है, और उसके भरोसे पर

1. उसके नाम से जो सबसे महान बुद्विमान है जो सारे संसार का सृष्टा एवं स्थान की कैद से मुक्त है

2. उसकी प्रशंसा के बाद मोहम्मद मुस्तफा सल्लल्लाहो अलैहि वसल्लम पर दरूद हो जो नबियों के सरदार और संसार के सर्वश्रेष्ठ व्यक्ति है।

3. बाबर कलंदर का चरचा सारे संसार में व्यापक है कि वह एक सफल सम्राट हुआ है।

4. वह ऐसा सम्राट है कि जिसने सातों देशों पर विजय प्राप्त कर लिया, पृथ्वी को भी आकाश के समान कब्जे में कर लिया।

5. उस शाही दरबार का एक विशाल नवाब है जिसका नाम मीर बाकी द्वितीय आसिफ है

6. शासन का सलाहकार और उसके देश का प्रशासक जो इस मस्जिद और किले का शिलानियास करने वाला है।

7. ऐ! खुदा संसार में उसका ताज, सिंहासन, भाग्य और जीवन सदैव बाक़ी रहे।

8. इस युग के इस इमारत की बुनियाद की शुभ तिथि की निशानी 935 है।''

(Hindi Translation)

"In the name of Allah, the Beneficent, the merciful, and in Him is my trust.

(1) In the name of One who is Wise, Great and Creator of all the universe and is spaceless.

(2) After he praise, blessing be upon the Choosen one (i.e. the Prophet) who is the head of the Prophets and best in the world.

(3) The Qalandar like Babar has attained fame in the whole world to the effect that he has been a successful

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emperor.

(4) He is such an emperor as has conquered all the seven climes of the world and also captured the earth as in case of sky.

(5) In that royal court there was a magnificent noble named Mir Baqi, the second Asaf.

(6) (He is) councillor of the Government and administrator of his kingdom, who is the founder of this mosque and fort-wall.

(7) O! God, may he live for ever in this world, with crown and throne and fortune and life.

(8) The time of this building of this age is this auspicious date, of which the indication is 935." (E.T.C.)

1455. From perusal of the text of the inscription said to be found inside the mosque i.e., the 6-lines inscription it is evident that the text quoted by Fuhrer, Beveridge and Maulvi F. Ashraf Hussain has apparent and demonstrable differences. The first line of the text by the three reads as under:

'बमंशाये बाबर खदयू जहां'' *(Fuhrer)*

''बफरमूद–ए–शाहे बाबर कि अदलश,'' *(Beveridge)*

''बफरमूद–ए–शाह बाबर कि अदलश,'' (Maulvi F. Ashraf Hussain)

1456. Similarly, we find difference in line 2 which is demonstrated as under:

*''**बशाने कि** बा काख़ गरदूँ **इनां** ''* *(Fuhrer)*

''बिनाइस्त बा–काख़ गरदूँ मुलाकी।'' *(Beveridge)*

''बिनाइेस्त बा–काख़ गरदूँ मुलाकी।'' *(Maulvi F. Ashraf Hussain)*

1457. The third line is also not the same.

*''बिना **कर्दा**–ए–**ख़ान–ए–पायेदार**''* *(Fuhrer)*

''बिना कर्द–ए–महबते कुदसियां रा'' *(Beveridge)*

''बिना कर्दह ईं महबते कुदसियां रा'' *(Maulvi F. Ashraf Hussain)*

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1458. The fourth line of Fuhrer is different than what is contained in Beveridge and Maulvi Ashraf Hussain as is evident from the following:

''अमीरे सआदत निशां मीर खां'' *(Fuhrer)*

''अमीरे सआदत निशां मीर बाक़ी'' *(Beveridge)*

''अमीरे सआदत निशां मीर बाक़ी'' *(Maulvi F. Ashraf Hussain)*

1459. Fifth line of all the three is different as demonstrated below:

''बमानद हमेशा चुनां बानियश'' *(Fuhrer)*

''बुवद खैरे बाक़ी कि तारीख़ मस्जिद,'' *(Beveridge)*

''बुवद खैरे बाक़ी व साले बिनाइश,'' *(Maulvi F. Ashraf Hussain)*

1460. Sixth line of Beveridge and Maulvi F. Ashraf Hussain is the same but different from Fuhrer as seen below:

''चुनां शहरियारे ज़मीनो ज़मां'' *(Fuhrer)*

''अयां शुद चूं गुफतम बुवद ख़ैर बाक़ी'' *(Beveridge)*

''अयां शुद चूं गुफतम बुवद ख़ैर बाक़ी'' *(Maulvi F.Ashraf Hussain)*

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1461. The next inscription which according to Fuhrer was a ten-line Persian poetry, Beveridge could get only three lines thereof and termed incomplete, Maulvi M.Ashraf Husain however found complete and running in about 10/11 lines. The distinction therein are:

Line-1 *''बिसमिल्लाहिर्रहमानिर्रहीम''* *(Fuhrer)*

No such line is found in Beveridge's text.

''बिसमिल्लाहिर्रहमानिर्रहीम व बिही सिकती''

(Maulvi F. Ashraf Hussain)

Line-2 *''बनामे आं कि.....''* *(Fuhrer)*

''बनामे आंकि दाना हस्त अकबर'' *(Beveridge)*

''बनामे आंकि ऊ दानास्त अकबर''

(Maulvi F.Ashraf Hussain)

Line-3 *''कुनद खालिक़ बकलमे जावेदानी''* *(Fuhrer)*

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''कि ख़ालिक़ जुमला आलम लामकानी'' *(Beveridge)*

''कि खालिक जुमला आलम लामकानी''

(Maulvi F.Ashraf Hussain)

Line- 4: completely defaced in the text of Furher but Beveridge and Maulvi F.Ashraf have given the following text:

*''**दूरूद** मुस्तफा बाद अज़ **सतायश''*** *(Beveridge)*

''दूरूदे मुस्तफा बाद अज़ सनायश'' *(Maulvi F.Ashraf Hussain*)

Line-5 : Completely defaced in Furher's text but in Beveridge's and Maulvi F.Ashraf's text it is quoted as under:

''कि सरवर अंबिया–ए–दो जहानी'' *(Beveridge)*

''कि सरवर अंबिया जुब्दा जहानी'' *(Maulvi F.Ashraf Hussain*)

Line-6 : Completely defaced in Furher's text but in Beveridge's and Maulvi F.Ashraf's text it is quoted as under:

''फसाना दर जहां बाबर क़लन्दर'' *(Beveridge)*

''साना दर जहां बाबर कलन्दर'' *(Maulvi F.Ashraf Hussain*)

Line-7 : Completely defaced in Furher's text but in Beveridge's and Maulvi F.Ashraf's text it is quoted as under:

''कि शुद दर दौरे गीती कामरानी'' *(Beveridge)*

''कि शुद दर दौरे गीती कामरानी'' *(Maulvi F.Ashraf Hussain*)

1462. After Line-7 Beveridge does not give any further text but has given remark that the inscription was incomplete but Furher and Maulvi F.Ashraf Husain have given the following text:

*Line-8 ''चुनां **शाहंशहे मशहूरे अक़लीम''*** *(Fuhrer)*

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''चुनां कश हफ़्त किशवर दर गिरफ़ता''

(Maulvi F.Ashraf Hussain)

Line-9 ''ज़मीं रा चूं ***निशाने शादमानी''*** *(Fuhrer)*

''ज़मीं रा चूं मिसाले आसमानी'' (Maulvi F.Ashraf Hussain)

Line-10 ''दरां हज़रत यके मीरे मुअज्ज़म'' (Fuhrer)

''दरां हज़रत यके मीरे मुअज्ज़म'' (Maulvi F.Ashraf Hussain)

*Line-11 ''****कि ख़ाकां–दौलतो फ़ग़फ़ूरे–सानी*** *'' (Fuhrer)*

*''****कि नामश मीर बाक़ी आस्फ़*** *सानी''*

(Maulvi F.Ashraf Hussain)

Line-12 ..... (Fuhrer)

'मुशीरे सलतनत तदबीर मुलकश'' (Maulvi F.Ashraf Hussain)

Line-13 ..... (Fuhrer)

''कज़ीं मस्जिदो हिसार हस्त बानी''

(Maulvi F.Ashraf Hussain)

Line-14 ..... (Fuhrer)

''खुदाया दर जहां पाइन्दा बादा'' (Maulvi F.Ashraf Hussain)

Line-15 ..... (Fuhrer)

''कि चित्रो तख़्तो बख़्तो ज़िन्दगानी''

(Maulvi F.Ashraf Hussain)

Line-16 '''बिनाये ***महदे दीं*** *तारीख़ें मैमूं'' (Fuhrer)*

''बिनाये ***अहदे ज़ीं*** *तारीख़ मैमूं''*

(Maulvi F.Ashraf Hussain)

Line-17 'नुह सद सी बुवद ***हिजरत बदानी''*** *(Fuhrer)*

*'****कि*** *नुह सद सी* ***पंज*** *बुवद* ***निशानी''***

(Maulvi F.Ashraf Hussain)

Line-18 ..... (Fuhrer)

'तम्मत हाज़त्तौहीदु व नात व मदह व सिफ़त नव्वरल्लाहु

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बुरहानहु खत्ते अब्दुज्ज़ईफ़ नहीफ़ फ़तहुल्लाह मोहम्मद ग़ौरी।'' *(Maulvi F.Ashraf Hussain)*

1463. We are extremely perturbed by the manner in which Ashraf Husain/Desai have tried to give an impeccable authority to the texts of the alleged inscriptions which they claim to have existed on the disputed building though repeatedly said that the original text has disappeared. The fallacy and complete misrepresentation on the part of author in trying to give colour of truth to this text is writ large from a bare reading of the write up. We are really at pains to find that such blatant fallacious kind of material has been allowed to be published in a book published under the authority of ASI, Government of India, without caring about its accuracy, correctness and genuineness of the subject. We have already given write up of Ashraf Husain. Firstly, he said that the mistake was committed in number of inscriptions. He claims that on the eastern façade is a Chhajja below which appears a Quranic text and above thereto an inscription in Persian verse. Then he says that on the central mehrab are carved religious text such as Kalma (First creed), etc. Then he says that on the southern face of the pulpit previously there affixed a stone slab bearing a Persian inscription in verse and another inscription in Persian verse was built up into right hand side wall of the pulpit. Both these inscriptions i.e., the one claimed to be on the southern face of the pulpit and the other on the right hand side wall of the pulpit are said to be non-available by observing *"of these the last mentioned two epigraphs have disappeared"*. The time of disappearance according to Maulvi Ashraf Husain was 1934 A.D. when a communal riot took place at Ayodhya. However, he claimed to have got an inked rubbing on one of the two

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inscriptions from Syed Badrul Hasan of Faizabad. The whereabouts of Syed Badrul Hasan , who he was, what was his status, in what way and manner he could get that ink rubbing of the said inscription and what is the authenticity to believe it to be correct when original text of the inscription are not known. There is nothing to co-relate the text he got as the correct text of the inscription found in the disputed building claimed to have lost in 1934.

1464. He also admits that the existing inscription which was restored by Muslim community was '*inlaid nastaliq'* character but simultaneously says that the restored inscription is slightly different from the original and this distinction he attributes perhaps to the incompetence of the restorer in deciphering it properly. When the original was already lost and there was nothing to verify the text of restored inscription with the original, neither the restored one can be relied upon nor it is understandable as to how he could have any occasion to compare the restored one with the alleged nonest/lost original one. It appears that the text which he got from Syed Badrul Hasan of Faizabad treated by him to be correct and taking it as the original text he has proceeded accordingly. It is also interesting to note that in the footnote realising this difficulty at item no.4, he has said that this tablet was found in 1906-07 A.D. by Maulvi M. Suhaib of the office of Regional Archaeological Surveyor, Northern Survey (Annual progress report of the office of Archaeological Surveyor, Northern Survey Agra for 1906-1907), Appendix 'D'). We however, find it difficult to understand this reference if the inscription was fixed on the wall of the disputed building, the question of finding tablet by Maulvi M.Ashraf Husain does not arise. If what he intends to

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suggest is that the inscription was noticed by Maulvi M. Suhaib in 1906-07 and he has made some reference in the annual progress report of 1906-1907, the text of the inscription if was published in the said report, the author ought to have taken material from such report and not from a stranger namely Syed Badrul Hasan of Faizabad whose credentials and authenticity is unknown and whether any such person actually existed or not, even this is doubtful, as has been argued by Sri Mishra and we find substance therein.

1465. The matter does not rest here. Ashraf Husain has critically commented upon the reading of one or two inscriptions as published by Fuhrer and Beveridge stating that *"....their readings are so incomplete, inaccurate and different from the text that their inclusion in this article is not only desirable but also imperative."*

1466. Once the alleged two inscriptions are lost and one of such inscriptions according to Sri Husain was found by Fuhrer who has published its text, without having either the inscription itself with him (Husain) or the authenticated stampage of the text of such inscription, how there could be any occasion for Husain to claim that the text given by Fuhrer is incorrect. Similarly, he also could not have any occasion to compare that text with that of Beveridge. Admittedly, the date of publication of such inscription by Fuhrer and A.S. Beveridge is before the date of disappearance i.e. 1934 as alleged by Ashraf Hussain. Therefore, so far as Fuhrer and Beveridge are concerned they could have an occasion to peruse the inscription that was installed before 1934 but so far as Maulvi M. Ahsraf Husain is concerned, this occasion in his own words, could not have arisen. The text, description and whatever had been set up by

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Ashraf Husain in respect of the above inscription is unbelievable and lacks trustworthiness. We are constrained to observe at this stage that in the matter of historical events and that too, when it bears a religious importance and the matter has also seen serious disputes between two communities, the persons who are connected with history etc. must behave responsibly and before making any write up, should check up, cross check and verify very carefully what they are writing since the consequences of their write up may be dangerous and irreparable.

1467. We move on to one more aspect. Even the text of the inscription which Ashraf Husain has given in plate 17(b), he says that the same is not what was printed in the existing inscription as restored by Muslim community after 1934 riots but the same is an added version from the stampage obtained from Syed Badrul Hasan of Faizabad. At this stage, we are unable to compare even the restored text of the inscription as the same is not available and Maulvi M. Ashraf Hussain instead of giving the existing text as it is of the restored inscription has changed it according to his whims and caprices.

1468. Coming to the authenticity of the text of the two inscriptions given by Beveridge, we find that she herself had neither read the said texts nor visited Ayodhya at any point of time. She claims to have received copy of the text through some correspondence made by her husband, Henry Beveridge, an I.C.S. Officer in British India Government.

1469. The text of two inscriptions are the copy which she claims to have received from Deputy Commissioner of Faizabad on an inquiry made by her husband. In this regard at page 656, foot note 3 at the bottom she has said:

"that he spent a few days near Aud (Ajodhya) to settle its

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affairs. The D.G. Of Fyzbaa (H.E. Nevill) p.173 says "In 1528 AD, Babur came to Ajodhya (Aud) and halted a week. The destroyed the ancient temple" (marking the birth-place of Rama) "and on its site built a mosque, still known as Babur's Mosque..... It has two inscriptions, one on the outside, one on the pulpit; both are in Persian; and bear the date 935 AH." This date may be that of the competition of the building.--(Corrigendum:-On f.339 n. 1, I have too narrowly restricted the use of the name Sarju. Babur used it to describe what the maps of Arrowsmith and Johnson shew, and not only what the Gazetteer of India Map of the United Provinces does,. It applies to the Sarda (f.339) as Babur uses it when writing of the fords.".

1470. Perhaps she went through the description of the disputed site in the light of the observations made by Sri Nevill who wrote 1904 -1905 Gazetteer (Supra). Whether the alleged text made available to her by the Dy. Commissioner, Faizabad was an ink stampage of the text of the alleged two inscriptions or it was obtained by him through somebody else by reading the contents or the manner in which the said text was collected, is not known. Rather there appears to be something otherwise. Footnote 2 on page lxxvii , Appendics 'U' of Baburnama (Memoirs of Babur) shows that some changes were made by Beveridge also:

> "*2. A few slight changes in the turn of expressions have been made for clearness sake."*

1471. To what extent the corrections have been made and what was necessity thereof is not ascertainable. Why a verbatim reproduction could not be made is also not understandable. At least there is nothing on record enabling us to examine this

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aspect of the matter. The second inscription, text whereof is quoted at page lxxviii, Appendices 'U' of **Baburnama by Beveridge,** we find that the same is incomplete and the reason assigned by Beveridge is that it is not now legible. The text of second inscription was not legible to Beveridge whose book was first published in 1914/1921. We fail to understand how its complete text could be available to Maulvi M. Ashraf Husain after more than forty years thereafter who got it published in **Epigraphia Indica -Arabic and Persian Supplement 1965 (supra)**.

1472. From the text of A. Fuhrer the period of construction of the disputed building is not 1528 AD and it also does not say that the same was built by Mir Baqi. The inscription no. XLI, line four mentions the name of Mir Khan and inscription no. XLII shows the period of construction as Hijra 930. The text given by Sri Sushil Srivastava, PW 15 in his book "The Disputed Mosque-A Historical Enquiry" is based on the text of two inscriptions given by A.S. Beveridge and Prof. Radhey Shyam as is evident from page 78-79 of his statement. Athar Hussain's text is the reproduction from Beveridge. Dr. Radhey Shyam has taken the text of three inscriptions from M. Ashraf Hussain's write-up published in Epigraphia Indica-Arabic and Persian Supplement in 1964-65.

1473. The apparent distinction, as appear from Fuhrer's reading of the inscription, is:

(a) There is no mention of word of "honour" before the name of Babar.

(b) Instead of "Mir Baqi" it mentions "Mir Khan".

(c) There is no use of the word "mosque" but it mentions "lofty building" and also shows no

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dedication to Almighty.

This is in respect to the first inscription.

1474. Then comes the second inscription, where the marked distinction is the date i.e. 930 A.H. (1523 AD). It is a well known fact that in 1523 AD Babar was not in Hindustan but in Kandhar/Kabul.

1475. Archaeological Survey of India also published a book "The Monumental Antiquities And Inscriptions In The North-Western Provinces And Oudh" described and arranged by A. Fuhrer published by the Superintendent, Government Press, N.-W. Provinces and Oudh, 1891. Copy of the frontispiece as well as pages No.295, 296 and 297 thereof have been filed as Paper No.107C1/33-36 i.e. Ex.9, Suit-5 (Register Vol.20, Pages 67-73). We have the entire book published in 1967 by Rameshwar Singh, Indological Book House, Varanasi (Book No.94). Pages No.295-297 are verbatim the same filed as paper Nos.107C1/34-36. About construction of building in dispute, on page 297 it says, "It is locally affirmed that at the Musalman conquest there were three important Hindu temples at Ayodhya; these were the Janamasthanam, the Svargadvaram, and the Treta-ke-Thakur. On the first of these Mir Khan built a masjid, in A.H. 930, during the reign of Babar, which still bears his name." The reference has been made to Archaeological Reports (New Series), Vol.1, page 67.

1476. Ex. 81 (Suit-4) (Paper No. 216C1/1-21) consists of certain pages from book **"Babarnama"** translated by Yugjeet Navalpuri, first published 1974, third publication 1996, 1998 and reprint 2002 by Sahitya Academy, New Delhi. The Editorial Note says that the book consist of Hindi translation by Navalpuri of F.G. Talbot's Edition of the "**Memoirs of Baber"**.

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However, the Chapter "Introduction" running from Page 9 to 18, pages 438 to 456 giving history from AH (1527 AD) and then for the year AH 936, page 510 has been filed. Sri Jilani from the above extract of the book has sought to submit that there is no mention either of entry of Babar to Ayodhya or any act of demolition of any temple or construction of a Mosque. For the date of construction of the disputed building in 1528 AD, he refers to Footnote 48 on page 447 which refers two inscriptions at the disputed building as under :

''48. (नेविल) 'जिला गजेटियर फ़ैजाबाद' में लिखा है: ''1529 ई0 में बाबर अयोध्या (अवध) आया और एक सप्ताह रहा। उसने प्राचीन मंदिर (राम–जन्मस्थान) तुड़वाकर उसके स्थान पर मसजिद बनवाई। . . .'' इस मसजिद पर दो अभिलेख हैं। (1) ***मसजिद के भीतर:***

''बफ़रमूदये शाहि बाबर कि अदलश बनाईस्त ता क़ाख़ि गरदूं मुलाकी
बना करदई मुहबिते कुदसियॉ। अमीरे सआदत–निशॉ मीर बाकी
बुवद ख़ैर बाक़ी चु साले बनाइश अयॉ शुद्ध कि गुफ़्तम बुवद ख़ैर बाक़ी!
(''गगन–तुंग है न्याय का सौध जिसका उसी शाह बाबर का आदेश पाकर
बनी देवदूतों की यह अवतरणिका ! मिर मीर बाक़ी को सौभाग्य का वर !
'बुवद ख़ैर बाक़ी !' – कहा स्पष्ट मैंने:'बुवद खैर बाक़ी' है निर्माण–वत्सर!''
(अयोध्या के 'शिक़दार') मीरबाकी (शक़ावुल, 'मीड़0बाशी' यानी 'हजारा', (ताशकंदी) ने बाबर के आदेश पर मसजिद बनायी थी। यहॉ पहला 'बुवद खैर बाक़ी' = (1) यह अच्छाई अमर रहे', (2) 'बाक़ी मीर–0') का कुशल–क्षेम चिरस्थायी हो' (कुरान–वचन 'मानव मर्त्य है, पर उसके शुभकर्म अमर हैं' के आधार पर शुभकामना)। दूसरा = निर्माण –तिथि –वर्णांक। 'बुवद : (वे + वाव +दाल = 2+6+4=) 12, +'खैर': (खे + ये + रे = 600 + 10 + 200 =) 810, + 'बाक़ी': (बे + अलिफ़ क़ाफ + ये= 2 + 1 + 100 +10 =) 113: =935 (हि0)।

(2) ***मसजिद के बाहर:***

''बनामे ऑ कि दाना हस्त अकबर कि ख़ालिकि जुमला आलम लामकानी
दुरूदे मुसतफ़ा बादज़ सितायश कि सरवार औवियाये दो–जहानी
फ़साना दर जहॉ बाबर क़लंदर कि शुद दर दौरि गीती कामरानी।''
(''उसी के नाम पर जिसने चराचर रचा, जो है महत्तम, किन्तु वे– घर:

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विरुद फिर मुसतफ़ा का) जिसके अनुचर उभय लोकों के पयग़मबर परात्पर; जगत् में कीर्तिमत् बाबर कलंदर सकल लौकिक–स्पृहा–परितुष्ट–अंतर !'') स्पष्ट है कि अभिलेख अपूर्ण है।

'मुसतफ़ा' (मानव–सहज दुर्गुणों से अछूता) मुहम्मद साहब का विशेषण–नाम है। बाबर 'कलंदर' (दे0) इसलिए है कि भारत–साम्राज्य–लाभ के बाद उसके लिए किसी लौकिक स्पृहा का अवकाश ही न रहा (राग–'नदी पार करके' विरागी हुआ वह)। अथवा (फ़रिश्ता के अनुसार) इसलिए कि भारत में 'उपार्जित' अपार धनकोषों में से उसने अपने लिए कुछ भी न रखा।''

1477. The language of the inscriptions is same as that is quoted in **Baburnama by Beveridge (supra)** who claimed to have text of the two inscriptions from the Deputy Commissioner of Faizabad and has referred to Nevill's Gazetteer of 1905 on page 556 of the book. Reading of the words "Mir Baqi" as "Shaghawal", "Tashkandi" appears to be the understanding of the author himself inasmuch it is not in dispute that both the names i.e. Baqi Shaghawal and Baqi Tashkandi have been mentioned separately in "Baburnama" and there is nothing to co-relate the two being name of the same person or that to corelate with 'Mir Baqi'. Sri Jilani also could not place anything to co-relate Mir Baqi with Baqi Shaghawal or Baqi Tashkandi to show that they were the names of one and the same person. We also find that on page 11 (Paper No. 216C1/5, the writer has mentioned : ''शकावुल ने[11], एक सौ बीस ईगाच[12] की दूरी चार दिन में ही तय कर ली थी।'' Statistics 11 has been explained on page 15 (Paper No. 216C1/7) as under :

''11. बेगों के नाम राजपत्र लिखने वालों का प्रधान, मुख्य सचिव, संचार–व्यवस्था का अधिकारी तथा सभी काजियों (न्यायाधीशों) और मुल्लाओं का प्रमुख। मीर–मुंशी और डाकपाल।

1478. In Regular Suit No. 29 of 1945 (Shia Central Waqf Board of Waqf Vs. Sunni Central Board of Waqf), it appears that the Court issued a direction to record the text of the

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inscriptions found at the disputed building. On 26.3.1946, Sri A. Akhtar Abbas went to read the inscriptions and noted on his inspection note as under :

"Inspection Notes

26.3.46

Present ... Mussama Khoja M. Yaqub, counsel of parties (besides others)

Inspected the mosque in suit & found the following inscriptions on a stone table near the pulpit-

بفرده موذه شاه بابر کہ عدلش
بنایست تأ کاخ گردوں مُلاقی
بنا کرد ایں مُہبط قُدسیاں
امیر سعادت نشان میر باقی
بود خیر باقی چو سال بنایش
عیاں شد کہ گفتم بود خیر باقی

''ब फरमूदये शाह बाबर कि अदलश,
बिनायेस्त ता काखे गर्दूं मुलाकी।
बिना कर्द ईं मुहबते कुदसियां,
अमीरे सआदत निशान मीर बाकी।
बुवद खैरे बाकी! चू साले बिनायश,
अयां शुद कि गुफ्तम बुवद खैर बाकी।''

(Hindi Transliteration by Author)

''शाह बाबर के आदेशानुसार जिसका न्याय,
एक ऐसी एमारत है जो आकाश की ऊंचाई तक पहुंचती है।
निर्माण कराया इस फिरिश्तों के उतरने के स्थान को,
सौभाग्यशाली अमीर, मीर बाकी ने,
बवद खैरे बाकी (यह सदाचरण अनन्त तक रहे) जो उसके निर्माण का वर्ष है.
यह स्पष्ट हो गया जो मैं कहूं कि यह सदाचरण अनन्त तक रहे।''

(Hindi Translation by Author)

"(1) By the order of king Babar whose justice is an edifice

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meeting the pace of sky (i.e. as high as the sky).

(2) this descending place of the angels was built by the fortunate noble Mir Baqi.

(3) it will remain an everlasting bounty and (hence) the date of its erection became manifest from my words: it will remain an everlasting bounty."

(English Translation by Author)

According to both parties this katba was replaced & new in place of the original tablet which was demolished during the communal riot in 1934.

There is another tablet at the central arch of the mosque facing the court-yard and it contains the following couplets:-

بسم اللہ الرحمن الرحیم و بہ ثقتے

بنام آنکہ او داناست اکبر — کہ خالق جملہ عالم لا مکانے

دور مصطفے بعد ازثنایش — کہ سرور انبیا زبدہ جہانے

فسانہ در جہان بابر قلندر — کہ شد دردور گیتی کا مرانے

چناں کش ہفت کشوردر گرفتہ — زمین راچوں مثال آسمانے

درآں حضرت یکی میر معظم — کہ نامش میر باقی آصف ثانے

مشیر سلطنت تدبیر ملکش — کزین مسجد و حصار ہست بانے

خدایا در جہاں پایندہ بادا — کہ چتروتخت و بخت و زندگانے

بناء عہد زین تاریخ میمون — کہ نہصد سی پنج بود نشانے

تمت ہذا لتوحید و نعت و مدح و صفت نوراللّٰہ برھانہ خط

عبدالضعیف نحیف فتح اللّٰہ محمد غودے

"(1) बिसमिल्लाहिर्रहमानिर्रहीम व ब–सिक़्ती

(2) बनामे आंकि ऊ दानास्त अकबर – कि ख़ालिक़ जुमला आलम लामकानी

दूरूदे मुस्तफा बाद अज़ सनायश – कि सरवर अंबिया जुब्दा जहानी

फसाना दर जहां बाबर क़लन्दर – कि शुद दर दौरे गीती कामरानी

(3) चुनां कश हफ़्फत किशवर दर गिरफ़्ता – ज़मीं रा चूं मिसाले

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आसमानी

दरां हज़रत यके मीरे मुअज्ज़म – कि नामश मीर बाक़ी आस्फ़ सानी
मुशीरे सलतनत तदबीर मुलकश – कज़ीं मस्जिदो हिसार हस्त बानी
(4) खुदाया दर जहां पाइन्दा बादा – कि चित्रो तख़्तो बख़्तो ज़िन्दगानी
बिनाये अहदे ज़ीं तारीख़ मैमूं – कि नुह सद सी पंज बुवद निशानी
तम्मत हाज़त्तौहीद व नात मदह व सिफ़त नव्वरल्लाहु बुरहानहु ख़त्ते अब्दुज्ज़ईफ़
नहीफ़ फ़नहुल्लाह मोहम्मद ग़ौरी।''

(Hindi Transliteration)

''अल्लाह के नाम से जो अत्यन्त करूणामय और दयावान है, और उसके भरोसे पर

1. उसके नाम से जो सबसे महान बुद्विमान है जो सारे संसार का सृष्टा एवं स्थान की कैद से मुक्त है

2. उसकी प्रशंसा के बाद मोहम्मद मुस्तफा सल्लल्लाहो अलैहि वसल्लम पर दरूद हो जो नबियों के सरदार और संसार के सर्वश्रेष्ठ व्यक्ति है।

3. बाबर कलंदर का चरचा सारे संसार में व्यापक है कि वह एक सफल सम्राट हुआ है।

4. वह ऐसा सम्राट है कि जिसने सातों देशों पर विजय प्राप्त कर लिया, पृथ्वी को भी आकाश के समान कब्जे में कर लिया।

5. उस शाही दरबार का एक विशाल नवाब है जिसका नाम मीर बाकी द्वितीय आसिफ है

6. शासन का सलाहकार और उसके देश का प्रशासक जो इस मस्जिद और किले का शिलानियास करने वाला है।

7. ऐ! खुदा संसार में उसका ताज, सिंहासन, भाग्य और जीवन सदैव बाक़ी रहे।

8. इस युग के इस इमारत की बुनियाद की शुभ तिथि की निशानी 935 है।'' (Hindi Translation)

"In the name of Allah, the Beneficent, the merciful, and in Him is my trust.

(1) In the name of One who is Wise, Great and Creator of all the universe and is spaceless.

(2) After he praise, blessing be upon the Choosen one (i.e.

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the Prophet) who is the head of the Prophets and best in the world.

(3) The Qalandar like Babar has attained fame in the whole world to the effect that he has been a successful emperor.

(4) He is such an emperor as has conquered all the seven climes of the world and also captured the earth as in case of sky.

(5) In that royal court there was a magnificent noble named Mir Baqi, the second Asaf.

(6) (He is) councillor of the Government and administrator of his kingdom, who is the founder of this mosque and fort-wall.

(7) O! God, may he live for ever in this world, with crown and throne and fortune and life.

(8) The time of this building of this age is this auspicious date, of which the indication is 935." (E.T.C.)

Note: The above inscription was read by Shukh Karamatullah (D.W. 5) who climbed up the arch by means of a ladder and ?he verses are written in Arabic characters."

1479. In the book **Ayodhya Ka Itihas** by Sri Avadhwasi Lala Sitaram, first published in 1932, reprinted in 2001, published by Arya Book Depot, New Delhi, the transcript of the in-script has been mentioned at page 115/116 which is a verbatim copy of the text quoted by A.S. Beveridge. The learned author has given, however, totally different reasons and history of the construction of the disputed building. There is nothing to show the basis on which he has written the said history. Sri Jilani has castigated the contents of this entire book of Lala

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Sitaram contending that neither he was a historian nor there is any authority mentioned in his book to generate confidence for what has been written therein, therefore, this book is not reliable. This author retired from the office of Deputy Collector as appearing from the Forward of his book written by Sri Devendra Swaroop.

1480. The above discussion tells us that basically there are three version in respect to the text or transcript of the inscriptions fixed on the disputed building. The text available to A.Fuhrer says that "a firmament-like lofty strong building was erected by an auspicious noble Mir Khan under the command of Babar in the year 930 AH i.e. 1523 AD and foundation of the said building was laid down by the King of China and Turkey in presence of Babar". The transcript made available to Beveridge reveal that "under the command of Emperor Babar, good hearted Mir Baki built that alighting place of angels in 935 AH i.e. 1528-29". The last one is that of ASI report of 1964-65 edited by Z.A.Desai, the transcript whereof says that “by the order of King Babar that descending place of Angles was built by the fortunate noble Mir Baki". In respect to another inspection, Desai text says that "a lofty building and lasting house (of God) was founded by Mir (and) Khan (Baqi)". The words placed within brackets are that of Mr. Husain or Dr. Desai's own insertion and do not find place in the text of the inscription as such.

1481. The fourth one, which can be said to be very recent and inspire more confidence than other is the one when pursuant to the order of the learned Civil Judge, Faizabad, Sri A. Akhtar Ahasan made inspection of the disputed structure on 26th March, 1946 and obtained text of two inscriptions fixed on the disputed

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building at that time. This text, as is reproduced in judgment dated 30.03.1946 (Ex. A42, Suit-1) in R.S. No.29/1945 says that in the first inscription the words are “by the order of Shah Babar, Amir Mir Baki built the resting place of angles in 923 A.H. i.e. 1516-17 AD". In respect to second inscription, he says that “Mir Baki of Isphahan in 935 AH i.e. 1528-29 AD”. We find that the reading of text of inscriptions by Civil Judge, Faizabad was earlier than Dr. Z.A.Desai's publication yet there is a good variance with the text of the estampage procured and transcribed by Desai.

1482. In the entire Babar-Nama i.e. all the translations made by various writers, we are not informed that the words “Mir Baki Isfahani" has been mentioned at any place. What has been said is Baki Tashkendi and various other Bakis but not Mir Baki Isfahani. We are informed by Sri P.N.Mishra, which is not disputed by other learned counsels, that Taskend is a city of Uzbekistan while Isfahan is a province of Iran.

1483. Sri Mishra, on the basis of the above facts submits that Baki Isfahani and Baki Taskandi cannot be regarded as one and the same person. Baki Isfahani a person not known to Babar having not been mentioned in Babarnama could not have any kind of authority at all in the period of Babar. It is therefore safe to presume that it is fictitious name which adds and fortify the argument that the inscription has been implanted later on with a transcription which is fictitious and false and had no factual authenticity.

1484. The above discussion raises a serious doubt over the genuinity and authenticity of the text or transcript of the inscriptions and the time when they were fixed on the disputed building. To base a finding in a judicial proceeding while

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adjudicating a dispute of this nature, it would be improper and against the all cannons of the principles applicable in such matter. However, there are some more facts and material which needs to be considered before recording a final opinion on the matter.

1485. The very first document/historical book in this regard is "Tuzuk-i-babri", i.e., "Baburnama" or "daily diary of Babar" which has been translated and published by several well known authors and some of them are considered to be the authentic work internationally also. Broadly the learned counsels for the parties and the Expert Historians have also not disputed authenticity of such work which we now propose to refer.

1486. Babur-nama (Tuzuk-i-babri) commences its description from 899 Hizra (1493-94 AD). In the total life span of 47 years and 10 months, the description of only 18 years of Babur's life is available and that too in various spans. The period, for which the details are not available, are as under:

1. History from the birth (14th February, 1483 AD) till Singhasanarohan Ramazan 899 Hijri (June 14, 1494 AD)
2. Description from 908 Hijri (1503 AD) till 909 Hijri (1504 AD)
3. Description from 914 Hijri (1508 AD) till 925 Hijri (1519 AD)
4. Description from 4 Safar 926 Hijri(15th January 1520 AD) till 30 Muharram 932 Hijri (16th November, 1525 AD)
5. Description from 13 Rajab 934 Hijri (3rd April 1528 AD) till 2 Muharram 934 Hijri (17th September, 1528 AD)
6. History of following days of 934 Hijri (1528-29 AD):
    (a) 1, 2 Muharram 934 Hijri (16, 17th September

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1528 AD)

(b) 21 Muharram 934 Hijri (6th October 1528 AD) to 26 Muharram 934 Hijri (11th October 1528 AD)

(c) 6 Safar 934 Hijri (20th October 1528 AD) to 8 Safar 934 Hijri (22nd October 1528 AD)

(d) 11 Safar 934 Hijri (25th October 1528 AD) to 20th Safar 934 Hijri (3rd November 1528 AD)

(e) 29 Safar 934 Hijri (12th November 1528 AD) to 8 Rabi-ul-Avval (20th November 1528 AD)

(f) 15 Rabi-ul-Avval (27th November 1528 AD) to 18 Rabi-ul-Avval (1st December 1528 AD)

(g) 24 Rabi-ul-Avval (7th December 1528 AD) to 28 Rabi-ul-Avval (11th December 1528 AD)

(h) 13 Rabi-ussani (25th December 1528 AD) till 15 Rabi-ussani (27th December 1528 AD)

(i) 6 Jamadi-ul-Avval (16th January 1529 AD) till 9 Jamadi-ul-Avval (19th January 1529 AD)

(j) 19 Shavval (25th June 1529 AD) till 30 Shavval (6th July 1529 AD)

(k) 5 Zikad (11th July 1528 AD) till 11 Zikad (17th July 1529 AD)

(l) 20 Zikad (27th July 1529 AD) till 4 Zilhijja (10th August 1529 AD)

(m) 11 Zilhijja (17th August 1529 AD) till 29 Zilhijja (4th September 1529 AD)

7. 4 Muharram 936 Hijri (8th September 1529 AD) till 6 Jamadi-ul-Avval 937 Hijri (26th December 1530 AD).

1487. In India, Babar came in 1526 AD and the description available of that period till his death is as under:

1. From 1 Safar 932 Hijri (17 November 1525 AD) till 12

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Rajab 934 Hijri (2nd April 1528 AD)

2. From 3 Muharram 934 Hijri (18th September 1528 AD) till 3 Moharram 936 Hijri (7th September 1529 AD). In this way the description of only three days of first month of 936 Hijri is available. The description of many days in between 935 Hijri is also not available.

1488. The missing record is of the period 2nd April, 1528 A.D. to 17th September, 1528 A.D. which is crucial for this matter. Out of this period, 2nd April, 1528 to 15th April, 1528 was part of 934 A.H. and 15th September, 1528 to 17th September, 1528 was part of 935 A.H. It means in the crucial year i.e. 935 A.H., the missing record is only of three days. Therefore, non mention of anything about disputed building in 935 A.H. in Babar-Nama does not sound to any reason.

1489. On crossing of the Babar's army led by his commander Sultan Chin Taimur, they found that Bayazid and Biban had already fled away and therefore, no fight at Ayodhya could have occurred. That being so, the question of killing of any Muslim and making of grave at the disputed site does not arise.

1490. The Manuscripts (in short "MS") of Baburnama, as available has been noticed by Mrs. A.S. Beveridge based on the magazine published by Royal Asiatic Society, Landon in 1900 AD:

1. MS written by Babur
2. MS sent to Khwaja Kalan
3. MS written by Humaun
4. MS possessed by Alphinston
5. MS kept at British Museum, Landon
6. MS in the India office of British Government
7. MS of Asiatic Society, Bengal

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8. MS at Mysore
9. MS of Biblothika Lindesiyana.
10. MS at Hyderabad
11. MS of St. Peteres Berg University.
12. MS kept at foreign office of St. Peters Berg
13. MS kept at Asiatic Society Museum of St. Peters Berg
14. MS of Bukhara
15. MS of Nazerbe Turkistan

1491. It is said that probably Babur got prepared two MS but presently none is available / traceable. Similarly MS sent to Khwaja Kalan, which is referred in his (Babur's) description dated 4th March, 1529 is also not available/traceable. Even otherwise since it is said to have been sent on 4th March, 1529, it could not have been completed after 4th March, 1959. MS of Mysore that is possessed by Tepu Sultan is also not available / traceable.

1492. Elphinston purchased the MS of Babur at Peshawar in 1809 AD, which probably was prepared between 1543 to 1593 AD and the said MS is kept in the Advocate's library, Edimbara.

1493. Dr. Leyden translated some of the part of Babur's autobiography from the MS of Elphinston and Erskin made corrections in his translation on the basis of the said MS.

1494. MS of Biblothika Lindesiyana was purchased in 1865 AD and is incomplete.

1495. MS of Hyderabad was made available to Mrs. Beveridge from the library of Sir Salar Jang. It is said to be prepared in 1700 AD. It is most complete available MS, as claimed by Mrs. A.S. Beveridge. She has written her translation of 'Baburnama' on the basis thereof.

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1496. MS of St. Petersberg is said to have been prepared from another MS copied in 1617 AD. Dr. George Jaikab Kehar prepared the said MS in 1737 but the MS where from it was prepared is not traceable. Elminski published Turkish Edition of Baburnama in 1857 AD on the basis of the said MS and French translation of Babur-nama made by Dr. Pevet Kotele was also based on the said MS.

1497. From the reading of translation of 'Babur-nama' we do not find any title thereof. However, now it is commonly known as "Babur-nama" or "Tuzuk-i-babri" by all.

1498. In the earlier part of Babur-nama i.e. upto 1508-09 AD, it is in the form of history where the details have been given of various events occurred in different years but from 1519 AD till end, it is a day to day description.

1499. Baburnama was originally written in Turkish. Initially, it was translated in Persian prose by Sheikh Zain Wafai Kwafi. One of the MS of the said translation is in Raza Library, Rampur, U.P. (India) and another is in British Museum, Landon. Another Persian translation was made by Mirza Payanda Hasan Gajnavi in 1586 AD under the orders of Behroz Khan Gajnavi, who in fact made a partial translation and it was completed by Mohd. Kuli Mugul Hisari. The most universal popular Persian translation was made by Mirza Abdurrahim Khane Khana Bin Bairam Khan (Abul Fazal) in 1589 AD.

1500. The first English translation of Babur-nama was attempted by "Dr. John Leyden" in 1810 AD. However, he could not complete the same and died in August, 1811 AD. At the same time "William Erskine" also commenced his English translation from Persian under the instructions of General Sir John Malcom and Elphinstone and completed his work in 1813

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AD. Thereafter he found that there was a lot of differences in the work of Dr. John Leyden. Since Leyden had commenced his translation from Turkish MS, Erskine made corrections in his translation and this work was published in 1826 AD under the title "Memoirs of Zehir-ed-Din Muhammad Babur" by "John Laden and William Erskine".

1501. Another translation was made in English by Mrs. Annette Susannah Beveridge, (hereinafter referred to as "Beveridge") under the title "Babur-nama (Memoirs of Babur)". Initially her translation was published in four parts as under :-

i. History prior to Babur's victory of Kabul (the period relating to Phargana) – published in 1912 AD.

ii. From Kabul Victory till India victory ; published in 1914 AD

iii. From India's victory till end ; published in 1917 AD

iv. Introduction, Glossary etc. ; published in 1921 AD

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1502. The complete four parts in two volumes were published collectively in 1922 under the title "The Babar Nama in English".

1503. French translation was made by Pevet-de-Kotele published in 1871 AD.

1504. The learned counsels for the parties have not disputed that the contents of the book of Beveridge's translation of Babur-Nama available to the Court has no difference with the photocopies of some of the pages filed as Exhibits, detailed above.

1505. The parties agree that amongst various books translating "Babur-nama, Mrs. Beveridge's translation is the most authentic and complete. The 'Affairs of Hindustan' commences from page 439 which says:

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"*The centre of interest in Babur's affairs now moves from Qandahar to a Hindustan torn by faction, of which faction one result was an appeal made at this time to Babur by Daulat Khan Ludi (Yusuf-khail) and 'Alau'd-din 'Alam Khan Ludi for help against Ibrahim.*"

1506. The details of meeting of Dilawar Khan and Babur giving an occasion to him to come to India has been written by Mrs. Beveridge on page 440 as under :

"b. Reception of Dilawar Khan in Kabul.

Wedding festivities were in progress when Dilawar Khan reached Kabul. He presented himself, at the Char-bagh may be inferred, and had word taken to Babur that an Afghan was at his Gate with a petition. When admitted, he demeaned himself as a suppliant and proceeded to set forth the distress of Hindustan. Babur asked why he, whose family had so long eaten the salt of the Ludis, had so suddenly deserted them for himself. Dilawar answered that his family through 40 years had uphelf the Ludi throne, but that Ibrahim maltreated Sikandar's amirs, had killed 25 of them without cause, some by hanging, some burned alive, and that there was no hope of safety in him. Therefore, he said, he had been sent by many amirs to Babur whom they were ready to obey and for whose coming they were on the anxious watch."

"c. Babur asks a sign.

At the dawn of the day following the feast, Babur prayed in the garden for a sign of victory in Hindustan, asking that it should be a gift to himself of mango or betel, fruits of that land. It so happened that Daulat Khan had sent him, as a present, half-ripened mangoes preserved in

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honey ; when these were set before him, he accepted them as the sign, and from that time forth, says the chronicler, made preparation for a move on Hindustan."

1507. Babur's expedition to India (Hindustan) this time was the fourth one and commenced in 930 AH i.e. 10th November, 1523 AD. The first battle ensued between Babur and Bihar Khan leaving a section of army of Ibrahim Ludi at Lahor since Daulat Khan had already fled therefrom. Babur defeated Bihar Khan and his troops followed Bihar Khan fugitive men into Lahor, plundered the town and burnt some of the *bazars.* Thereafter Babur moved to Dibalpur and samething happened thereat also i.e. it was stormed, plundered and put to the sword. We need not go into further details about other battles except the major battle against Ibrahim Lodi son of Sikundar Lodi (An Afghan) at Panipat which he (Babar) won on 20th April, 1526 A.D. This battle resulted in killing of about 40-50 thousand soldiers. Babur immediately appointed Humayun to reach Agra and take over the palace as also to mount guard over the Treasure. Some of the confidents of Babur were directed to keep watch on the Treasuries at Delhi.

1508. On 21st April, 1526, Babur visited bank of Jumna, on 24th April, 1526 A.D., he visited Sheikh Nizamud-din Auliya's Tomb on the bank of river Jumna at Delhi and also made an excursion into the Fort of Delhi where he spent night. On next day i.e. 25th April, 1526 A.D., he visited Khwaja Qutbud-din's Tomb, and the Tombs and residences of Suleman Ghiyasu'd-din Balban and Suleman Alauud-din Khilji and his Minar, the Hoze-shamsi, Hoze-i-khas and the Tombs and gardens of Suleman Buhlul Ludi and Sikandar Ludi. On page 476, Mrs. Beveridge mention:

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"*We bestowed the Military Collectorate (shiqdarlighi) of Dihli on Red Wali, made Dost Diwan in the Dihli district, sealed the treasuries, and made them over to their charge.*"

1509. On 28th April, 1526 A.D. Babur moved on for Agra and also made an excursion to Tughluqabad. He reached near Agra on 4th May, 1526 A.D. and stayed at the mansion of Sulaiman Farmuli in a suburb of Agra and moved on the next day to Jalal Khan's house. At Agra the garrison did not surrender to Humayun, and, therefore he sat down to watch the roads out of Agra till the arrival of Babur.

1510. The king of Gualiar (Gwaliar) had died in the battle of Panipat but his son and other family members were at Agra at that time. When Humayun reached Agra, they tried to flee away, but could not due to the close guard of outside ways by Humayun's army. They offered a mass of jewels and valuables including the diamond Koh-i-nur to Humayun which was offered by Humayun to Babur on his arrival but Babur gave it to Humayun back. It is said that the said diamond weigh about 320 ratis (8 misqals). On 10th May, 1526 AD, Babur entered the fort of Sultan Ibrahim Ludi at Agra.

1511. The biography though said to have been written *de die in diem,* but the record of some period being not available, the biography in respect to those dates is admittedly missing. Regarding his activities at Ayodhya, from a perusal of Page 602 of the book, it appears that he reached at some distance above the junction of rivers Ghaghara and Saryu on 28.3.1528, i.e., Saturday the 7th Rajab 934 A.H. The area reigned by Shaikh Bayazid Baqi Shaghawal, along with some others crossed the river and conquered the place. Babur stayed on the Bank of Saryu for sometimes. The autobiography contains the date 2nd

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April 1528 but thereafter there is a break of narrative between 2nd April to 18th September 1528 AD, i.e. Jumada II 12th, 934 A.H. and Moharram III 935 A.H.

1512. What happened at Ayodhya, whether Babur actually visited Ayodhya or not, nothing is mentioned about it in the said autobiography. The contents of his autobiography of dated 28.3.1528 and 2.4.1528 as contained on Page-602 are reproduced as under :

> *"(March 28th) On Saturday the 7th of Rajab we dismounted 2 or 3 kurohs from Aud above the junction of the Gagar (Gogra) and Sird(a). Till today Shaikh Bayazid will have been on the other side of the Sird(a) opposite Aud, sending letters to the Sultan and discussing with him, but the Sultan getting to know his deceitfulness, sent word to Qaracha at the Mid-day Prayer and made ready to cross the river. On Qaracha's joining him, they crossed at once to where were some 50 horsemen with 3 or 4 elephants. These men could make no stand; they fled, a few having been dismounted, the heads cut off were sent in.*
>
> *Following the Sultan there crossed over Bi-khub (var. Ni-khub) Sl. and Tardi Beg (the brother) of Quj Beg, and Baba Chuhra (the Brave), and Baqi Shahghawal, Those who had crossed first and gone on, pursued Shaikh Bayazid till the Evening Prayer, but he flung himself into the jungle and escaped. Chin-timur dismounted late on the bank of standing-water, rode on at mid-night after the rebel, went as much as 40 kurohs (80 m.), and came to where Shaikh Bayazid's family and relations (nisba?) had been; they however must have fled. He sent gallopers off in all directions from that place; Baqi Shaghawal and a few*

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braves drove the enemy like sheep before them, overtook the family and brought in some Afghan prisoners.

We stayed a few days on that ground (near Aud) in order to settle the affairs of Aud. *People praised the land laying along the Sird(a) 7 or 8 kurohs (14-16 m.) above Aud,* ***saying it was hunting-ground.*** *Mir Muhammad the raftsman was sent out and returned after looking at the crossing over the Gagar-water (Gogra) and the Sird(a)-water (Chauka?).*

(April 2nd) On Thursday the 12th of the month I rode out intending to hunt." (emphasis added)

1513. Page 617 of the above book, mentions activities of 22.10.1528 as under :

"(Oct. 22nd) By this time the treasure of Iskandar and Ibrahim in Dihli and Agra was at an end. Royal orders were given therefore, on Thursday the 8th of Safar, that each stipendiary (wajhdar) should drop into the Diwan, 30 in every 100 of his allowance, to be used for war-material and appliances, for equipment, for powder, and for the pay of gunners and matchlockmen."

1514. For the period, i.e., 2.4.1528 to 18.9.1528, the record of biography whereof is not available, during this period of five and half months, the Babur is said to have proceeded to Junpur (Jaunpur), Chausa, Baksara (Baksar) etc. and was ill for 40 days. Beveridge on Pages 603 and 604 of Babur-Nama has said:

"Mr. Erskine note (Mems. p.381n.) that he found the gap in all MSS. he saw and that historians of Hindustan throw no light upon the transactions of the period. Much can be gleaned however as to Babur's occupations during the 5½ months of the lacuna from his chronicle of 935 AH. which

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makes several references to occurrences of "last year" and also allows several inferences to be drawn. From this source it becomes know that the Afghan campaign the record of which is broken by the gap, was carried on and that in its course Babur was at Jun-pur (f. 365), Chausa (f. 365b) and Baksara (f. 366-366b); that he swam the Ganges (f. 366b) bestowed Sarun on a Farmuli Shaikh-zada (f. 374b and f. 377), negociated with Rana Sanga's son Bikramajit (f. 342b), ordered a Char-bagh laid out (f. 340), and was ill for 40 days (F. 346b). It may be inferred too that he visited Dulpur (f. 353b), recalled "Askari (f. 339), sent Khwaja Dost-i-khawand on family affairs to Kabul (f. 345b), and was much pre-occupied by the disturbed state of Kabul (see his letters to Humayun and Khawaja Kalan written in 935 AH.).

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It is not easy to follow the dates of events in 935 AH. because in many instances only the day of the week or a "next day" is entered. I am far from sure that one passage at least now found s.a. 935 AH. does not belong to 934 AH. It is not in the Hai. Codex (where its place would have been on f. 363b), and, so far as I can see, does not fit with the dates of 935AH. It will be considered with least trouble with its context and my notes (q.v. f.363b and ff. 366-366b)."

1515. From Page 679 of **'Babur-Nama' by Beveridge,** it further appears that Babur received message on 27.5.1529 about taking of 'Luknur' by Baqi and one Abdullah (kitabdar). The extract of the autobiography dated 27.5.1529 is reproduced as under :

"(May 27th) On Friday (19th) I rode out to visit Sikandarpur

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and Kharid. Today came matters written by 'Abdu'l-lah (kitabdar) and ***Baqi about the taking of Luknur."***

(emphasis added)

1516. On 28.5.1529, it is mentioned that the Babur sent one Kuki along with a troop to join Baqi.

1517. At Page 680 the author (Beveridge) has mentioned about a surprise survival of some record of 934 A.H. and has written that this part of the writing appears to be in respect to Aud (Ayodhya) where Babur spent some days in 934 A.H. It reads as under :

"After spending several days pleasantly in that place where there are gardens, running waters, ***well-designed buildings,*** *trees, particularly mango-trees, and various birds of coloured plumage, I ordered the march to be towards Ghazipur."* *(emphasis added)*

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1518. Pages 684 and 685, refer the dates 13th June 1529 A.D., 17th June 1529 A.D. and 20th June 1529 A.D., and say that Baqi joined Babur in pursuit of Biban and Bayazid near Dalmud (Dalmau) and Baqi was given leave along with his army of Aud (Ayodhya) on 20th June 1529 A.D.

1519. "**John Layden and William Erskine's**" book on "**Babar/ Babur-Nama**" also does not throw any light on this aspect.

1520. "**Lieut.-Colonel F.G. Talbot**" in his book **"Memoirs of Baber Emperor of India-First of the Great Moghuls"**, first published in 1909 (first Indian reprint 1974 published by Ess Ess Publications, Delhi) has said that with an intent to set up an Empire in India, he set out on march in 1525 A.D. along with about 12 thousands men. On 29th December, 1525 A.D., he reached at Sialkot. Here he has given his experience with Jats

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and Gujers in the following words :

> *"Every time that I have entered Hindustan, the Jats and Gujers have regularly poured down in prodigious numbers, from their hills and wilds, in order to carry off oxen and buffaloes. These were the wretches that really inflicted the chief hardships, and were guilty of the severest oppressions on the country." (Page 174)*

1521. Therefrom he proceeded to Panipat where he defeated Ibrahim Lodi, Sultan of Delhi in April 1526 A.D. On page 187 to 188, Talbot has narrated Baber's memoirs after defeating Ibrahim Lodi as under :

> *"On Thursday, the 28th of Rejeb, about the hour of afternoon prayers, I entered Agra, and took up my residence at Sultan Ibrahim's palace. From the time when I conquered the country of Kabul, which was in the year 1504, till the present time I had always been bent on subduing Hindustan. Sometimes, however, from the misconduct of my Amirs and their dislike of the plan, sometimes from the cabals and opposition of my brothers, I was prevented from prosecuting any expedition into that country, and its provinces escaped being overrun. At length these obstacles were removed. There was now no one left, great or small, noble or private man, who could dare to utter a word in opposition to the enterprise. In the year 1519, I collected an army, and having taken the fort of Bajour by storm, put all the garrison to the sword. I next advanced into behreh, where I prevented all marauding and plunder, imposed a contribution on the inhabitants, and having levied it to the amount of four hundred thousand shahrukhis in money and goods, divided the*

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proceeds among the troops who were in my service, and returned back to Kabul. From that time till the year 1526, I attached myself in a peculiar degree to the affairs of Hindustan, and in the space of these seven or eight years entered it five times at the head of an army. The fifth time, the Most High God, of his grace and mercy, cast down and defeated an enemy so mighty as Sultan Ibrahim, and ***made me the master and conqueror of the powerful empire of Hindustan****."*

1522. The Empire of Hindustan on Page 189 of **Talbot's Memoirs of Baber (supra)** is described in the following words :

"The empire of Hindustan is extensive, populous and rich. On the east, the south, and even the west, it is bounded by the Great Ocean. On the north, it has kabul, Ghazni, and Kandahar. ***The capital of all Hindustan is Delhi.****"*

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1523. He also narrated that on one hand Baber criticised the country he has recently invaded and conquered but simultaneously he has expressed very high opinion. Page 190 of the Book **'Memoirs of Baber' (supra)** says:

"Hindustan is a country that has few pleasures to recommend it. The people are not handsome. They have no idea of the charms of friendly society, of frankly mixing together, or of familiar intercourse. They have no genius, no comprehension of mind, no politeness of manner, no kindness or fellow-feeling, no ingenuity or mechanical invention in planning or executing their handicraft works, no skill or knowledge in design or architecture; they have no good horses, no good flesh, no grapes or musk-melons, no good fruits, no ice or cold water, no good food or bread

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in their bazars, no baths or colleges, no candles, no torches, not even a candlestick.

The chief excellency of Hindustan is, that it is a large country, and ***has abundance of gold and silver.*** *Another convenience of Hindustan is, that the* ***workmen of every profession and trade are innumerable, and without end.*** *For any work, or any employment, there is always a set ready, to whom the same employment and trade have descended from father to son for ages."*

1524. Though it is not necessary for the present purpose to discuss Babur-nama at great length since we are not concerned with the history of Babur or his invasion to India, laying of empire here-at, and its other political, social and other consequences but in the light of the respective arguments advanced by the parties it may be of some importance to have a bird eye view of some incidental relevant aspects borne out from the description given in Babur-nama. Sri Mishra said that Babar was a thorough religious person. In fact the submission of Sri Misra that Babar was a deeply indulged religious man, had no hatred towards idols, never visited Ayodhya and, therefore, had no occasion to order for construction of any building/disputed building, i.e., mosque at Ayodhya, are duly concurred and in fact in the line of what has been argued by Sri Jilani and other counsels appearing for various Muslim parties. This however is in direct contradiction to the arguments of Sri H.S.Jain, M.M. Pandey, A.K.Pandey etc.

1525. In **Beveridge's Babur-Nama** on page 15, the quality and habits of Babar are described:

"He was a true believer (Hanafi mazhablik) and pure in the Faith, not neglecting the Five Prayers and, his life

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through, making up his Omissions. He read the Quran very frequently and was a disciple of his Highness Khawaja 'Ubaidu'l-lah (Ahrari) who honoured him by visits and even called him son. His current readings were the two Quintets and the Masnawi of histories he read chiefly the Shah-nama. He had a poetic nature, but no taste for composing verses. He was so just that when he heard of a caravan returning from Khitai as overwhelmed by snow in the mountains of Eastern Andijan, and that of its thousand heads of houses (awiluq) two only had escaped, he sent his overseers to take charge of all goods and, though no heirs were near and though he was in want himself, summoned the heirs from Khurasan and Samarkand, and in the course of a year or two had made over to them all their property safe and sound.

He was very generous; in truth, his character rose altogether to the height of generosity. He was affable, eloquent and sweet-spoken, daring and bold. Twice out-distancing all his braves, he got to work with his own sword, once at the Gate of Akhsi, once at the Gate of Shahrukhiya. A middling archer, he was strong in the fist,- not a man but fell to his blow. Through his ambition, peace was exchanged often for war, friendliness for hostility.

In his early days he was a great drinker, later on used to have a party once or twice a week. He was good company, on occasions reciting verses admirably. Towards the last he rather preferred intoxicating confects and, under their sway, used to lose his head. His disposition was amorous, and he bore many a lover's mark. He played draughts a good deal, sometimes even threw the dice."

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1526. The treasure, Baber received at Agra was distributed to his son Humayun and other relatives, army men and also sent to his relatives in Samarkand and Khurasan:

> *"(May 12th) On Saturday the 29th of Rajab the examinations and distribution of the treasure were begun. To Humayun were given 70 laks from the Treasury, and, over and above this, a treasure house was bestowed on him just as it was, without ascertaining and writing down its contents. To some begs 10 laks were given, 8, 7, or 6 to others. Suitable money-gifts were bestowed from the Treasury on the whole army, to every tribe there was, Afghan, Hazara, 'Arab, Biluch etc. to each according to its position. Every trader and student, indeed every man who had come with the army, took ample portion and share of bounteous gift and largess. To those not with the army went a mass of treasure in gift and largess, as for instance, 17 laks to Kamran, 15 laks to Muhammad-i-zaman Mirza, while to 'Askari, Hindal and indeed to the whole various train of relations and younger children went masses of red and white (gold and silver), of plenishing, jewels and slaves. Many gifts went to the begs and soldiery on that side (Tramontana). Valuable gifts (saughat) were sent for the various relations in Samarkand, Khurasan, Kashghar and 'Iraq. To holy men belonging to Samarkand and Khurasan went offerings vowed to God (nuzur); so too to Makka and Madina. We gave one Shahrukhi for every soul in the country of Kabul and the valley-side of Varsak, man and woman, bond and free, of age or non-age."*

1527. The revenue of the country held by Babar in 1528 A.D. from Bhira to Bihar was 52 krurs (judged by Erskine in

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1854 A.D. at about Pound 4,212,000).

1528. At the time Babar invaded India, it was governed by five Musalman Rulers and two Pagans which he described as respected and independent Rulers. Besides them, there were many Rais and Rajas in the hills and jungles, held in little esteem. The seven Principle Rulers are described on page 481 to 484 of **Babur-Nama by Beveridge**:

> *"At the date of my conquest of Hindustan it was governed by* ***five Musalman rulers (padshah) and two Pagans (kafir).*** *These were the respected and independent rulers, but there were also, in the hills and jungles, many rais and rajas, held in little esteem (kichik karim).*
>
> *First, there were the Afghans who had possession of Dihli, the capital, and held the country from Bhira to Bihar. Junpur, before their time, had been in possession of Sl. Husain Sharqi (Eastern) whose dynasty Hindustanis call Purabi (Eastern). His ancestors will have been cup-bearers in the presence of Sl. Firuz Shah and those (Tughluq) sultans :they became supreme in Junpur after his death. At that time Dihli was in the hands of Sl. 'Alau'u'-din (Alam Khan) of the Sayyid Dynasty to whose ancestor Timur Beg had given it when, after having captured it, he went away. Sl. Buhlul Lodi and his son (Sikandar) got possession of the capital Junpur and the capital Dihli, and brought both under one government (88I AH.--1476 AD).*
>
> *Secondly, there was Sl. Muhammad Muzaffer in Gujrat; he departed from the world a few days before the defeat of Sl. Ibrahim. He was skilled in the Law, a ruler (padshah) seeking after knowledge, and a constant copyist of the Holy Book. His dynasty people call Tank. His*

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ancestors also will have been wine-servers to Sl. Firuz Shah and those (Tughluq) sultans; they became possessed of Gujrat after his death.

Thirdly, there were the Bahmanis of the Dakkan (Deccan, i.e., South), but at the present time no independent authority is left them; their great begs have laid hands on the whole country, and must be asked for whatever is needed.

Fourthly, there was Sl. Mahmud in the country of Malwa, which people call also Mandau. His dynasty they call Khilij (Truk). Rana Sanga had defeated Sl. Mahmud and taken possession of most of his country. This dynasty also has become feeble. Sl. Mahmud's ancestors also must have been cherished by Sl Firuz Shah; they became possessed of the Malwa country after his death.

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Fifthly, there was Nasrat Shah in the country of Bengal. His father (Husain Shah), a Sayyid styled 'Alau'u'd-din, had ruled in Bengal and Nasrat Shah attained to rule by inheritance. A surprising custom in Bengal is that hereditary succession is rare. The royal office is permanent and there are permanent offices of amirs, wazirs and mansab-dars (officials). It is the office that Bengalis regard with respect. Attached to each office is a body of obedient, subordinate retainers and servants. If the royal heart demand that a person should be dismissed and another be appointed to sit in his place, the whole body of subordinates attached to that office become the (new) officeholder's. There is indeed this peculiarity of the royal office itself that any person who kills the ruler (padshah) and seats himself on the throne, becomes ruler himself;

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amirs, wazirs, soldiers and peasants submit to him at once, obey him, and recognize him for the rightful ruler his predecessor in office had been. Bengalis say, "We are faithful to the throne; we loyally obey whoever occupies it". As for instance, before the reign of Nasrat Shah's father 'Alau'u'd-din, an Abyssinian (Habshi, named Muzaffar Shah) had killed his sovereign (Mahmud Shah Ilyas), mounted the throne and ruled for some time. 'Alau'u'd-din killed that Abyssinian, seated himself on the throne and became ruler. When he died, his son (Nasrat) became ruler by inheritance. Another Bengali custom is to regard it as a disgraceful fault in a new ruler if he expend and consume the treasure of his predecessors. On coming to rule he must gather treasure of his own. To amass treasure Bengalis regard as glorious distinction. Another custom in Bengal is that from ancient times parganas have been assigned to meet the charges of the treasury, stables, and all royals expenditure and to defray these charges no impost is laid on other lands.

These five, mentioned above, were the great Musalman rulers, honoured in Hindustan, many-legioned, and broad-landed. Of the Pagans the greater both in territory and army, is the Raja of Bijanagar.

The second is Rana Sanga who in these latter days had grown great by his own valour ans sword. His original country was Chitur; in the downfall from power of the Mandaus Sultans, he became possessed of many of their dependencies such as Rantanbur, Sarangpur, Bhilsan and Chandiri. ***Chandiri I stormed in 934 AH. (1528 A.D.) and, by God's pleasure, took it in a few hours; in it was***

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Rana Sanga's great and trusted man Midni Rao; we made general massacre of the Pagans in it and, as will be narrated, converted what for many years had been a mansion of hostility, into a mansion of Islam.

There are very many rais and rajas on all sides and quarters of Hindustan, some obedient to Islam, some, because of their remoteness or because their places are fastnesses, not subject to Musalman rule."

1529. From the above it does appear that Babar's visit to India for its conquest was a well intended plan and fulfillment of a dream which he had. At page 478 Mrs. Beveridge has written:

"From the date 910 at which the country of Kabul was conquered, down to now (932 AH.) (my) desire for Hindustan had been constant, but owing sometimes to the feeble counsels of begs, sometimes to the non accompaniment of elder and younger brethren, a move on Hindustan had not been practicable and its territories had remained unsubdued. At length no such obstacles were left; no beg, great or small (beg begat) of lower birth, could speak an opposing word. In 925 AH. (1519 AD.) we led an army out and, after taking Bajaur by storm in 2-3 gari (44-66 minutes), and ***making a general massacre of its people****, went on into Bhira. Bhira we neither over-ran nor plundered;* ***we imposed a ransom on its people****, taking from them in money and goods to the value of 4 laks of shahrukhis and having shared this out to the army and auxiliaries, returned to Kabul.* ***From then till now we laboriously held tight to Hindustan, five times leading an army into it****. The fifth-time, God the Most High, by his own mercy and favour, made such a foe as Sl. Ibrahim the*

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vanquished and loser, such a realm as Hindustan our conquest and possession." (emphasis added)

1530. It also appears therefrom that Babur treated himself to be the third invader who have conquered and ruled Hindustan. First according to him was Mahmud of Ghazni (also called Mahmud Ghaznavi), a "Turk" by race, who invaded India on several occasions and though died in 1030 AD but his descendants set long on the seat of Government in Hindustan. The second was Shihabuddin of Ghur (also known as "Muhammad Ghori") who died in 1206 AD and then the third was Babur.

1531. It thus appear that Babur did not came to Hindustan with an intention to spread Islam religion but he had intention to conquer and rule the country. It is true that Hindustan in the present form under a single hand could not have been there in 1526 AD and on the contrary it was independently ruled by several Rulers treating each part as a country but as a whole also it used to be called by Babar as “Hindustan”. This is also evident from page 479 of the aforesaid book where it is mentioned:

"All Hindustan was not under one supreme head (padshah), but each Raja ruled independently in his own country."

1532. It thus cannot be doubted that most of the persons, who ruled Indian sub-continent at that time were followers of Islam with whom Baber fought to set up his empire.

1533. About the construction of buildings in general and the workmen for construction work, on page 520 of **"Babur-Nama" by Beveridge**, she said:

“Another good thing in Hindustan is that it has

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unnumbered and endless workmen of every kind. There is a fixed caste (jam'i) for every sort of work and for every thing, which has done that work or that thing from father to son till now. Mulla Sharaf, writing in the Zafar-nama about the building of Timur Beg's Stone Mosque, lays stress on the fact that on it 200 stone-cutters worked, from Azarbaijan, Fars, Hindustan and other countries. But 680 men worked daily on my buildings in Agra and of Agra stone-cutters only; while 1491 stone-cutters worked daily on my buildings in ***Agra, Sikri, Biana, Dulpur, Gualiar and Kuil****. In the same way there are numberless artisans and workmen of every sort in Hindustan."*

1534. There is mention of buildings in Babur-Nama at different places including temple of Gwalior, mosque at Delhi, Agra, Gwalior and other several places but it is true that neither there is mention of demolition of any religious place by Babar in Awadh area nor there is anything to show that he either entered Ayodhya or had occasion to issue any direction for construction of a building and in particular a Mosque at Ayodhya.

1535. The Babar's camping at Ghaghar has also been described by **William Erskine** in his book **"History of India under Baber"** (May 1845), though published for the first time in 1854 after his death (Book No. 65) (Published in 1994 by M/s Atlantic Publishers and Distributors). Erskine came to India in 1803 AD as Secretary of Sri James Mackintosh at Bombay and later came to be appointed as Master in equity in the Recorder of Bombay Court but had to leave India in 1823 on suspicion of embezzlement. He was born in 1773 and died in 1852. After return from India he spent rest of his life in Scotland occupying the post of Provost of Saint Andrews in 1837-38 AD. It says:

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"Baber, having brought the war of Chanderi to a conclusion, lost no time in marching to meet the danger that threatened him in the East. Having repassed the Jamna, he proceeded without intermission towards Kanauj. ***On the road, he learned that his suspicions of Sheikh Bayezid's fidelity had not been unfounded.*** *That chief had joined Baban and Maaruf, the leaders of the revolt, with his whole army; so that Baber's troops had been compelled to retreat across the Ganges, to evacuate even Kanauj and to fall back on Raberi, movements that had enabled the enemy to take Shemsabad, a rich town in the Doab, by storm."*

1536. In **"History of India under Baber"** by **William Erskine (Supra)** on page 87, there is a footnote showing that Mir or Mirza was a title:

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"The princes of Taimur's family, even those who held the supreme power, had not yet assumed the title of shah or padshah, king of emperor; they were called Mir or Mirza, and often Sultan. In the text, however, the ruling prince is often called King, for distinction's sake; following the usage of historians in general, and even of Baber himself. The title of Sultan was not confined to the sovereign, many chiefs, and children of chiefs, especially among the Moghul tribes, being called by that name, which is an Arabic term, nearly equivalent to Lord. The titles, Mir, Mirza, and Shah, came also, in process of time, to be very commonly given to religious guides and holy men, or mendicants, and, from a sort of flattery, were often continued to the descendants as part of the family name. The title of Mirza, in later times, has been lavished by common usage on secretaries and

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clerks; and in general on all who pretend to learning. Mirza is merely mirzadeh, son of a Mir."

1537. The reference of Oudh in the said book of Earskine is on page 406, 443 and 450. Referring Lodhi dynasties expansions on page 406-407 Easrskine has written:

"Behlul's son, Sultan Sekander Lodi, a prince of talent, in a reign of thirty years, enlarged the kingdom still farther. In the Est, he subdued Behar, the last province that remained in the possession of the Sherki kings; and even advanced into Bengal, where Sultan Husein Shah had taken refuge. By a convention concluded with Sultan Ala-ed-din of Bengal, it was agreed, that Sekander should retain Behar, Tirhut, Sirkar Saran, and all that he had conquered; that he should not again invade Bengal; and that neither prince should support the enemies of the other. On the west, he gained possession of Dhulpur and Chanderi, and received the submission of the Raja of Gualiar and and other princes; so that, at his death, his kingdom had attained a very great extent, containing the Penjab, the Doab, the provinces of Oud, Laknau, Juanpur and Behar, besides a wide tract of country to the west of the Jamna, from the Satlej to Bandelkand. These extensive possessions, however, though under one king, had no very strong principle of cohesion. The monarchy was a congeries of nearly independent principalities, jagirs and provinces, each ruled by a hereditary chief, or by a zemindar or delegate from Delhi; and the inhabitants looked more to their immediate governors, who had absolute power in the province, and in whose hands, consequently, lay their happiness or misery, than to a

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distant and little known sovereign. It was the individual, not the law, that reigned. The Lodi princes, not merely to strengthen their own power, but from necessity, had in general committed the government of the province, and the chief offices of trust, to their own countrymen, the Afghans; so that men of the Lodi, Fermuli, and Lohana tribes, held all the principal jagirs; which, from the habitual modes of thinking of their race, they considered as their own of right, and purchased by their swords, rather than as due to any bounty or liberality on the part of the sovereign."

1538. Again on page 441-443 while referring political condition of the area under rule of Ebrahim Lodhi who was defeated by Babar in April 1526 AD, Earskine has said (including the description of political sovereignty on Ayodhya):

"But, though Baber had been victorious in the field, and was in possession of the two great capitals of the kingdom, it soon appeared that his situation, far from being one of safety or ease, was surrounded with difficulty and danger. He and his army were strangers to the people whom he had subdued; and a mutual dislike soon manifested itself between his soldiers and the inhabitants of Agra, his head-quarters. The peasantry, as well as the fighting men of the country, shunned and fled from his followers. The north of India, at the time of Baber's conquest, still retained much of its original Hindu organization; its system of village and district administration and government; its division into numerous little chieftainships, or petty local governments; and, in political revolutions, the people looked much more to their own immediate rulers, than to the prince who governed in

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the capital. Except at Delhi and Agra, the inhabitants everywhere fortified their towns, and prepared to resist. The invasion was regarded as a temporary inundation, that would speedily pass off. Every man in authority raised troops, and put himself in a condition to act. Those who held delegated authority or jagirs, being generally Afghans, were consequently hostile to the new state of things. They soon came to an understanding among themselves, and took measures for mutual co-operation. Raja Hasan Khan of Mewat, in the neighborhood of Agra, was the grand instigator of the opposition; which was supported by Nizam Khan, in Biana; Muhammed Zeitun, in Dhulpur; Tatar Khan Sarang-Khani, in Gualiar; Husein Khan Lohani, in Raberi; Kutb Khan, in Etawa; Alim Khna Jilal Khan Jighat, in Kalpi; Kasim Sambhali, in Sambhal; and Marghub, a slave, in Mahawan, within twenty kos of Agra. Indeed, all of these chiefs were immediately around Agra, or close upon its borders. They looked for aid from Rana Sanga, the powerful chief of Cheitur; who, on his part, laid claim to a great part of the right bank of the Jamna. These Western Afghans wished to place Sultan Mahmud Lodi, a Brother of the late Sultan Ibrahim, on the throne of Delhi; and so to preserve the Afghan and the Lodi dynasty.

In the Eastern provinces of Juanpur and Oud, the opposition presented even a more regular form. There, the confederacy of Afghan chiefs, who had been in open rebellion against Ibrahim for two years before his death, still continued. The revolt was originally headed by Nasir Khan Lohani, Maaruf Fermuli, and others. The insurgents,

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we have seen, had elected Baber Khan Lohani, the son of Deria Khan of Behar, for their king; and proclaimed him, under the name of Sultan Muhamed Shah. They now possessed, not only Behar, but nearly the whole territories of the old Sherki monarchy, especially the country on the left bank of the Ganges; and had even crossed to the right bank of the river, and taken possession of Kanauj, and advanced into the Doab. Sultan Ibrahim had sent an army, under Mustafa Fermuli and Firuz Khan Sarang-khani, to reduce the rebels to obedience. Mustafa had met the revolted chiefs, and defeated them in some well-contested actions. On his death, which occurred some time before the defeat of Sultan Ibrahim, he was succeeded in the command by Sheikh Bayezid, his younger brother. The army under his orders was formidable; and it was naturally to be expected, that, changed as circumstances now were, the two armies opposed to each other in the field, being both Afghans, would lay aside their mutual animosities, and, animated by national feelings, unite to expel Baber, the common enemy."

1539. The Afghan Chiefs who ruled in various territories of India without any subordination, when realized that Babar may settle in India ending their unlimited authority, their further action is described at page 443/444:

"It was clear that the Afghan chiefs, who till now had ruled with nearly unlimited authority both in Delhi and Behar, must be ruined if Baber settled in Hindustan, They, therefore, stirred up, with great success, the apprehensions of the natives, whether Musulman or Hindu, by the most false and groundless reports. The people of the country

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were told, that they had every thing to dread from their barbarous invaders; that they would be robbed of their property; that their wives and children would be dishonoured; their temples profaned or destroyed. Baber and his army had reached Agra in May, in that climate the hottest season of the year. The inhabitants, in terror, fled before them, and abandoned their dwellings, so that no grain or provender could be procured for man or beast. The villagers fled to the waste, and infested the highways, plundering and robbing on every side. The roads became impassable. Baber's force was so small that he was unable to send out detachments sufficient to protect the different districts. To add to these difficulties, the heats that year happened to be uncommonly intense, so that many of his men, who were from more temperate climates, unaccustomed to the burning sun of India, dropped down and died on the spot."

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1540. However, the manner in which Babar managed the things has been said on page 446 showing that Awadh was assigned to Bayazid Fermuli. To take possession of the assigned territory, Humayun moved alongwith army and on page 450 it has mentioned:

"Humayun, after putting to fight the Afghan army, crossed the Ganges and took possession of Juanpur. He next marched to Ghazipur, intending to attack Nasir Khan's army, which had retired into that neighborhood. But the Afghans, on his approach, retired behind the Gogra, as it would appear, into the territory of Bengal; and a detachment that he sent to pursue them returned, after plundering the country of Kherid and Behar. Having thus

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expelled them from the Juanpur territory, he left Shah Mir Husein, in the city of Juanpur, supported by Sultan Juneid Birlas with some of his best troops; and Sheikh Bayezid in Oud, with every means of maintaining the country; and then, in compliance with orders which he received from his father, recrossed into the Doab; and marching back by Kalpi, of which he gained possession by the submission of Alim Khan, rejoined the Emperor at Agra, bringing Alim Khan along with him."

1541. The movement of Babar in the last week of March 1528 AD near Awadh is described on page 487:

"The Emperor sending Sultan Chin Taimur, with a strong force to pursue them, himself advanced and occupied Laknau on the 21st, and passed the Gumti. Moving again in pursuit of the retreating enemy, he encamped, on the 28th, four or five miles above Oud, at the junction of the Gogra and Sirwu. Till then, Sheikh Bayazid had maintained his ground beyond the Sirwu, and had prevented Sultan Chin Taimur, Baber's general, from crossing. Being now reinforced, however, Chin Taimur effected a passage, and found the Afghans in full retreat. He followed them with great alacrity, slew numbers of them, and dispersed their army. Sheikh Bayezid threw himself into a jungle and escaped. Chin Taimur, after a pursuit of sixty miles, reached a spot which the families of the fugitives had left but a short time before. The light force was now divided into several parties, who followed the flying enemy in different directions. Their baggage and families were overtaken and seized; and several Afghans brought in as prisoners. The success was complete."

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1542. Here also there is no mention of anyone as Mir Baqi or about entry of Babar in Awadh. It was submitted that there was no occasion for Babar either to demolish a temple or to construct a mosque at Ayodhya in 1528 AD.

1543. On page 443, he has described the state of affairs at Ayodhya in 1526 that the Afghan Chief at Oud revolted against Ibrahim Lodi about two years back his death and the revolt was originally headed by Nasir Khan Lohani, Maaruf Fermuli and others. After the death of Mustafa Fermuli, Sheikh Bayezid succeeded him in his command who was his younger brother.

1544. On page 450, he mentions that Humayun after taking possession of Jaunpur left Shah Mir Husein thereat supported by Sultan Juneid Birlas along with some of his best troops and Sheikh Bayezid in Oud along with every means of maintaining the country and thereafter crossed Doab and marched towards Kalpi of which he gained possession after surrender of Alim Khan and immediately thereafter he rejoined the Emperor at Agra. In 1527, Babar proceeded on his march to fight against Rajputs where he defeated Rana Sanga. This victory has been described on page 473, **Erskine's History of India (supra)** as under :

> *"No victory could be more complete. The enemy were quite broken and dispersed. The whole fields around were strewed with the dead, as well as the roads to Biana and Alwar. Among the slain were Hasan Khan Mewati, who fell by a matchlock shot; Raul Udi Singh, of Dongerpur; Rai Chanderbhan Chohan; Manikchand Chohan, and many other chiefs of note. Baber directed a tower of heads to be erected; on a rising ground near the camp; and henceforth assumed the proud title of Ghazi, Victorious in a Holy War.*

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Rana Sanga himself escaped; it is said by the devotion of some of his followers, who threw themselves in the way of the pursuers, and sacrificed their lives for his safety; and the regret expressed by Baber for not having urged the pursuit in person has reference probably to the escape of his illustrious rival. It is remarkable that, since this defeat of Rana Sanga, no Rana of Cheitur has ever taken the field in person against any of the princes of the House of Taimur. When these princes were along with their armies, the Rana's troops have been entrusted to some eminent Rajput chief, the Rana himself withdrawing to some one of the hill-forts of his country."

1545. Baber returned to Agra on 25th April, 1527 and, thereafter, gained Chandwar, Raberi and Etawa which were surrendered by Kutb Khan who held it. The victory of Babar within a year after defeat of Ibrahim Lodi against Rajputs and others has been described on page 477 of **Erskine's History of India (supra)** as under :

"That battle has broken the power of the Afghans in India, as that of Kanwa had since broken that of the Hindu confederacy. He had evinced, to every class of men in the country, the decided superiority of his arms; and, with his mental resources, the awe inspired by his hardly northern troops, and his own bravery and conduct, the conquest of every part of India seems to lie open to his arms."

1546. Baber took some rest as mentioned on page 478 of **Erskine's History of India**:

"During the rains he visited Sikri, Dhulpur, and Bari, proceeding as far as the Chambal; he thence returned to Agra; and went to Kol or Koel in the Doad, and on to

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Sambhal, beyond the Ganges, returning by a different route."

1547. He, thereafter, planned to march against Afghans of the East, who still held out, in considerable force, beyond the Ganges and in Behar and some of the Hindu chiefs in the West whose confederacy he had felt to be so formidable, i.e. Medini Rai of Chanderi. After defeating Medini Rai at Chanderi, he proceeded to East, i.e., Kanauj. On page 484, **Erskine's History of India**, it is said that Baber got information that his suspicion of Sheikh Bayezid's fidelity is not unfounded. Bayezid had joined Baban and Maaruf, the leaders of the revolt with his whole army. As we have already noticed Sheikh Bayezid was posted at Oudh by Humayun to look after that area but on joining revolt, Baber had to move to Oudh. He reached near Ayodhya (Oudh) on 28th March 1528 A.D. and has narrated the events which took place thereafter as under :

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"The light force was now divided into several parties, who followed the flying enemy in different directions. Their baggage and families were overtaken and seized; and several Afghans brought in as prisoners. The success was complete."

1548. Here also we do not find anything so suggest that Baber either entered Ayodhya or gave direction to anyone to construct a Mosque or to demolish a temple so as to construct a mosque.

1549. Lastly, we have Hindi Translation, i.e. **"Mughal Kaleen Bharat Baber (1526-1530)"** by Sayed Athar Abbas Rizvi (Supra). In the chapter titled as "Review" Rizvi has observed that due to lack of confidence on Afghans, Baber already separated them from his army except a few one of

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confidence. Commenting on construction activities and available revenue on page 44, Chapter "Review", Rizvi has said:

''पानीपत के युद्ध के पूर्व जो कुछ भी धन सम्पत्ति प्राप्त होती थी उसका अधिकांश भाग वह लोगों में बांट दिया करता था। 5 मार्च को हुमायूँ के हमीद पर विजय प्राप्त करके लौटने के उपरान्त उसने उसे हिसार फ़ीरोज़ा तथा उसके अधीनस्थ स्थान एवं एक करोड़ नक़द धन पुरस्कार स्वरुप प्रदान कर दिया। आगरा के खज़ाने को भी उसने इसी प्रकार बड़ी उदारता से लोगों को बांट दिया और अपने आपको क़लन्दर कहलाने में गर्व का अनुभव किया करता था। हिन्दुस्तान में भी उसने प्रचलित शासन पद्धति का अनुसरण किया और विभिन्न प्रदेशों को पूर्ण रुप से अधिकार में करने तथा वहां शान्ति स्थापित रखने के लिए अक़्तादार एवं शिक़दार नियुक्त किये। कुछ प्रदेश खालसा में सम्मिलित कर लिये गये। किन्तु फिर भी ***उसके निर्माण कार्यों तथा दान पुण्य के कारण उसे धन के अभाव का सर्वदा ही सामना करना पड़ा।*** *22 अक्टूबर 1528 ई0 के वृतान्त में वह लिखता है कि ''इस बीच में सिकन्दर तथा इब्राहिम के देहली एवं आगरा के खज़ानों का अन्त हो गया। अतः बृहस्पतिवार 8 सफ़र को यह शाही आदेश हुआ कि प्रत्येक वजहदार युद्ध की सामग्री, अस्त्र–शस्त्र एवं बन्दूक़ तथा तोप चलाने वालों के वेतन हेतु अपनी वजह में से 100 में से 30 दीवान में दाखिल कर दें।''*

1550. On page 46 Rizvi says :

''बाबरनामा में तत्कालीन विभिन्न प्रान्तों की जमा (राजस्वं) की भी चर्चा की गई है। इस कारण कि आइने अकबरी के अतिरिक्त अकबर के पूर्व के इतिहासों में राजस्व के सम्बन्ध में इतना भी ज्ञान किसी ग्रन्थ से नहीं प्राप्त होता बाबरनामा का यह वृतान्त अत्यन्त महत्वपूर्ण है। बाबरनामा से यह भी पता चलता है कि ***उस समय तक हिन्दुस्तान के समस्त आमिल, कारीगर एवं श्रमिक हिन्दू होते थे।*** *मालगुजारी की वसूली में तुर्कों के राज्य में भी बड़ी कठिनाई होती थी। अलाउद्दीन के तत्सम्बन्धी कठोर नियम बड़े प्रसिद्ध हैं। बाबरनामा के वृतान्तानुसार हिन्दुस्तान के मैदान के बहुत से भागों में बड़े बड़े कांटेदार जंगल होते थे जहां परगनों के निवासी शरण ले लेते थे और विद्रोह कर देते थे तथा कर नहीं अदा करते थे। देहली के सुल्तानों के इतिहासों में मवास शब्द का इसी प्रसंग में बड़ा अधिक प्रयोग हुआ है जिसका अर्थ यही कांटेदार जंगल*

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है। इसके अतिरिक्त हलचल एवं अशांति के समय भी इसी प्रकार के सुरक्षित स्थानों का प्रयोग होता था। कोटला की बड़ी झील की चर्चा करते हुए वह लिखता है कि,''इसके एक ओर से दूसरे ओर (की कोई वस्तु) नहीं दिखाई पड़ती। इसके मध्य में एक टीला है। इसके चारों ओर बहुत से छोटी–छोटी नौकायें थीं। झील के समीप के ग्रामों के निवासी हलचल तथा अशांति के समय नौकाओं पर बैठकर उसी टीले पर चले जाते हैं। हमारे आगमन पर भी नौकाओं में बैठकर कुछ लोग झील के मध्य में चले गये।''

बाबरनामा से यह भी पता चलता है कि सुल्तान सिकन्दर ने अपने राज्यकाल में धौलपुर में एक बांध का निर्माण कराया था जहां ऊँचाई पर वर्षा का जल एकत्र होता था, जिससे एक बहुत बड़ी झील बन जाती थी। इस झील के पूर्व में एक उद्यान भी था।''

1551. Again on page 48, the Rizvi has mentioned about Baber's observation regarding workmen in India and says:

''वह लिखता है कि ''हिन्दुस्तान का एक बहुत बड़ा गुण यह है कि यहां हर प्रकार एवं हर कला के जानने वाले असंख्य कारीगर पाये जाते हैं। प्रत्येक कार्य तथा कला के लिए जातियां निश्चित हैं जो अपने पिता और पिता के पिता के समय से वही कार्य करती चली आ रही हैं। मुल्ला शरफ़ ने तीमूर बेग की पत्थर की मस्जिद के निर्माण के विषय में इस बात पर बड़ा अधिक जोर दिया है कि इसमें अज़रबाईजान, फ़ारस, हिन्दुस्तान तथा अन्य देशों के 200 पत्थर काटने वाले रोज़ाना काम करते थे किन्तु केवल आगरा में ही इसी आगरा के पत्थर काटने वालों में से 680 व्यक्ति मेरे आगरा के भवनों के निर्माण में कार्य करते थे। मेरे आगरा, सीकरी, व्याना, दौलपुर, ग्वालियर तथा कोल के भवनों के निर्माण में 1491 पत्थर काटने वाले रोज़ाना कार्य करते थे। इसी प्रकार हिन्दुस्तान में प्रत्येक प्रकार के अगणित शिल्पकार तथा कारीगर हैं।''

1552. The constrtuction activies in India have been detailed on page 49-50 by Rizvi in Mughalkalin Bharat as under :

''हिन्दुस्तान में निर्माण–कार्य

उसे हौज़, चबूतरे, नहर, बांध एवं भवनों के निर्माण से बड़ी रुचि थी। काबुल तथा ग़ज़नी में और हिन्दुस्तान आते हुए उसने विभिन्न स्थानों पर बहुत सी इमारतें, चबूतरे इत्यादि बनवाये। हिन्दुस्तान पहुंचकर उसने आगरा, सीकरी, धौलपुर, कोल, ग्वालियर तथा अन्य स्थानों पर अनेक निर्माण–कार्य

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करवाये।

उसकी राजधानी आगरा का वर्तमान रुप सुल्तान सिकन्दर लोदी के समय से ही प्रारम्भ हुआ था। इससे पूर्व राजधानी देहली में रहती थी। सुल्तान फ़ीरोज शाह तुग़लुक़ के राज्यकाल के अन्तिम वर्षों से ही उत्तरी भारत के विभिन्न प्रदेश स्वतंत्र होने लगे थे। अन्तिम सैयिद सुल्तान की बादशाही तो देहली से पालम तक ही सीमित रह गई थी। सुल्तान बहलोल का अधिक समय विद्रोहियों के दमन में व्यतीत हुआ। सुल्तान सिकन्दर लोदी के समय में यद्यपि बहुत से भाग विद्रोहियों से मुक्त हो गये थे किन्तु उसके राज्य में शान्ति स्थापित न हो सकी थी। अपने पूर्वी राज्यों को वश में रखने के लिए तथा इटावा, ग्वालियर, व्याना, कालपी एवं मेवात के अधिक निकट रहने और मालवा तथा राजपूतों के स्वतंत्र राज्यों पर दृष्टि रखने के उद्देश्य से सुल्तान सिकन्दर लोदी को आगरा को बसाने की आवश्यकता पड़ी किन्तु लोदियों के राज्यकाल में आगरा को अधिक उन्नति न प्राप्त हो सकी। वहां के भवन भी सम्भवतः देहली के भवनों की अपेक्षा सुन्दर न थे अतः बाबर की उनके प्रति घृणा स्वाभाविक ही थी। लोदी सुल्तानों ने उपयोगिता की दृष्टि से जो भी निर्माण–कार्य किये होंगे वे बाबर को अपनी ओर आकृष्ट न कर सके अतः उसने आगरा में विशेष रुप से ***उद्यान, भवनों, हम्माम, कुओं इत्यादि का निर्माण कराया।*** *उसने अपने निर्माण–कार्य के लिए सिकन्दर लोदी के आगरा के निकट ही यमुना के उस पार उचित भूमि की स्वयं खोज की। यद्यपि जो भूमि चुनी गई वह उसे पसन्द न थी किन्तु किसी अन्य अच्छी भूमि के अभाव के कारण उसे वही भूमि चुननी पड़ी। उसने वहां जो चारबाग़ अथवा शाही बाग़ लगवाया उसका नाम हश्त बहिश्त रक्खा। आगरा में उसने महल बनवाये। हम्मामों के निर्माण से तो उसे बड़ी खुशी हुई। वह लिखता है, ''मुझे हिन्दुस्तान की तीन बातों से बड़ी घृणा थी– गरमी, आंधी तथा धूल। इन तीनों से हम्मामों द्वारा ही रक्षा हो सकती है। यहां धूल तथा आंधी कहॉ प्रवेश? गरमी में यह इतना अधिक ठंडा हो जाता है कि लोग ठंडक के कारण कांपने लगते हैं। ''खलीफ़ा, शेख़ जैन, यूसुफ़ अली तथा अन्य अमीरों को भी जहां कहीं कोई अच्छी भूमि मिली वहीं उन्होंने हौज़ सहित बड़े सुडौल तथा उत्तम कुओं एवं भवनों इत्यादि का निर्माण करा लिया। लाहौर तथा दीबालपुर के समान रहॅट यहां भी मंगवाकर लगवाये गये। एक प्रकार के बड़े कुएं जिसे बाई कहते हैं, उस समय बड़े प्रचलित थे। इबने बतूता ने*

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*कोल के अतिरिक्त जुरफ़त्तन की भी एक बाई का उल्लेख किया है। बाबर ने भी अपने आगरा के चारबाग के निर्माण के पूर्व ही एक बाई का निर्माण प्रारम्भ करा दिया था। इसमें रहॅट भी लगवाया गया जिसके द्वारा जल क़िले चहारदीवारी से होता हुआ ऊपर के उद्यानों में जाता था। **धौलपुर** में उसने 22 अगस्त 1527 ई0 को पहाड़ी को कटवाकर एक छतदार अष्टाकार हौज़ के निर्माण का आदेश दिया। **उसने वहां एक मस्जिद भी बनवाई।** 5 अक्टूबर 1528 ई0 को वह उस छतदार हौज़ का निरीक्षण करने के लिए स्वयं पहुंचा। उसका प्रवेश द्वार भलीभॉति सीधा न हुआ था। उसने कुछ पत्थर काटने वालों को बुलवाकर आदेश दिया कि वे हौज़ के नीचे की सतह चिकनी करके उसमें जल भर दें और जल की सहायता से दीवार को एकसा कर दें। इस प्रकार बाबर ने स्वयं अपनी देख–रेख में दीवारेां को चिकना कराया। इसी प्रकार सीकरी में भी उसने अप्रैल 1527 ई0 के पूर्व ही बाग़ लगवाने का आदेश दे दिया था किन्तु जब 14 अक्टूबर 1528 ई0 को वह सीकरी पहुंचा तो वह बाग़ की दीवार तथा कुएं के निर्माण–कार्य से सन्तुष्ट न हुआ अतः जिन लोगों के सिपुर्द यह कार्य किया गया था, उनको उसने ताड़ना भी दी।''*

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बाग़ों में फल तथा पौधे लगाने से भी उसे बड़ी रुचि थी। काबुल में पहुंचने के उपरान्त उसने वहां आलू बालू की क़लमें लगवाईं। 1523–24ई0 में उसने जब पहाड़ खां को पराजित करके लाहौर तथा दीपालपुर को विजय किया तो बाग़े– वफ़ा में, जो उसने काबुल में सम्भवतः 1508–9ई0 में लगवाया था, केले ले जाकर लगवाये। इसके पूर्व उसने वहां गन्ने भी लगवाये थे और उसे अपने इस प्रयास में बड़ी सफलता मिल चुकी थी। उसने गन्ने बुखारा तथा बदख्शां में भी भिजवाये। हिन्दुस्तान में भी उसने काबुल की ओर के फलों को लगवाने का प्रयत्न किया। उसने बल्ख़ के खरबूजा बोने वालों को बुलवाकर आगरा में खरबूजे लगवाये। 24 जून 1529 ई0 को जब वह कुछ खरबूजे लेकर उपस्थित हुआ तो बाबर बड़ा प्रसन्न हुआ। इसी प्रकार प्रकार उसने आगरा के हश्त बहिश्त नामक उद्यान में उत्तम अंगूर की बेलों के लगाने का भी आदेश दिया था। 24 जून 1529 ई0 के वृतान्त में वह लिखता है कि '' शेख गूरन ने मुझे टोकरी भरकर अंगूर भेजे जो बुरे न थे। हिन्दुस्तान में इस प्रकार के खरबूजे तथा अंगूर उगाकर मुझे बड़ी प्रसन्नता हुई।''

1553. Rizvi has also not found Babar's entry in Ayodhya or

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construction of a mosque or direction to anyone including Mir Baqi for construction of any building at Ayodhya.

1554. Some of the authors have appreciated the character of Babar depicting him a holy, religious, kind hearted brave man having respect for all the religions etc. This is placed before us to deny even a possibility that Babar could have ordered to construct a mosque in a religious place of others.

1555. Dr. Radhey Shyam in his book **"Babar" (supra)** on page 441 has observed that Babar was what his fortune and misfortune, man and environment, his foes and friends, his joys and sorrows had made him. He was a soldier, a born warrior, a seasoned statesman and an accomplished diplomat, a loving husband and a man of many virtues seldom to be found in one single individual. Dr. Radhey Shyam thereafter referred to the comments of Abul Fazl about the qualities of Babar, describing him as "*bakht buland, himmat arjumand, Qudarat Kishwar kushai, mulkdai, Koshish dar mamulai balad, Sarfi niyat bar Rifayat abad, Khushdil wakhtan sipahi, zabt ashar az tabahi (Akbar Nama)"*. This appreciation by Abul Fazl is understandable since he had to show great regards to the grandfather of the Emperor in whose regime, he was employed.

1556. Dr. Radhey Shyam has further referred to the comments of Nizamuddin Ahmad (Tabqat-i-Akbari), translation II, page 40, Mirza Haidar Doghlat, the author of Tarikh-i-Rashidi. Dr. Radhey Shyam proceeded to characterise Babar as charitable, benevolent, liberal, kind, just, adjustable temperament, robust vigour and dynamic personality. On page 443 Dr. Radhey Shyam said that *"he was deeply imbued with humen feelings."* On page 444 Dr. Radhey Shyam said that *"he followed his religion like a comman man without allowing it to*

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prejudice his mind against the followers of other religions. Even after the conquest of Hindustan he continued to maintain such an attitude." On page 447 he observed that *"he never worked under the influence of religion. . . . . To him Shias and Sunnis were all alike."*

1557. We would not like to make any comment on the above observations as if we are sitting in appeal over the work of learned author but suffice it to mention that the learned author has ignored what is contained on page 554-555 of Beveridge's Baburnama (supra) where the breaking of the wine couplets in pieces has been compared with the dashing of the God of the idolaters. To the same effect is what has been translated by Rizvi (supra) also.

1558. Besides, we may refer at this stage the own observations of Dr. Radhey Shyam on page 451 of the book:

> *"As regards the destruction of the HIndu temples there is historical evidence both in Babar's support and against him. During the course of his campaigns or pleasure trips Babar occasionally came across large number of Hindu temples. These temples provoked great interest in him. Some of them he visited and appreciated their architectural beauty. While at Gwalior in 1528 Babar visited the fort, wherein he saw the places of Raja Man Singh and Vikramaditya. On the west of Rahim Dad's garden he saw a "Lofty idol house."* ***This was famous Teli Mandir which is said to have been constructed by Raja Man Singh's Gujari wife Mrignaini.*** *Then in the Urwa valley he saw the idol statues and he writes,* ***"three sides of the Urwa valley are solid rock, not the red rock of Bayana but one paler in colour. On these sides people***

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have cut out idol - statues, large and small. One large on the south side being perhaps 20 qari (yards) high. These idols are shewn quite naked without covering for the privaties, " writes that, "we rode ....to visit the idol-houses of Gualiar. Some are two, and some are three storeys high, *each storey rather low, in the ancient fashion. On their stone plainths are sculptured images. Some idol-houses in College fashion, have portico, large high cupola. In the lower celles are idols carved in the rock.* ***Except in the case of Jain idols in the Urwa valley, Babar never gave orders for the destruction of the temple of other places. As regards the Jain statutes of the Urwa Valley he himself has mentioned, in his Memoirs that the, "naked idols are its defect, I for my part ordered them to be destroyed." It is rather doubtful whether this order was ever carried out.*** *Mrs. Beveridge in a brief note writes that, "they were already in a mutilated conditions and they continue to be so until the Jains repaired them with coloured plaster." (emphasis added)*

1559. Thereafter, he has considered an inscription found at Jami Masjid at Sambhal (in the State of U.P.), which is said to have been constructed by demolishing Hari Mandir out of the debris of that temple:

"It is related that at his orders famous Hari Mandir at Sambhal was demolished and a Jami mosque was constructed out of the debris of that temple by his famous general Hindu Beg. An inscription on one of the walls of the mosque reads :

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۱	جامع اشئیم فضل و کمال		رافع الویہ ملک وملل
۲	باسط اجنحۂ امن و امان		باقی انبیۂ علم وعمل
	شاہ جم جاہ محمد بابر		حفظ اللہ عزو جل
۳	شمع دولت چوبرافروخت بہند		روشن از پر توآن شد سنبل
۴	از پے ساختن ایں مسجد		کہ مصون بادزنقصان وخلل
	کرد فرمان بکمیں بندۂ خویش		کہ بود عمدۂ ارکان و دل
۵	میر با عقل و خردہندو بیگ		آں باخلاق نکو گشتہ مثل
۶	چوں زفرمان شہنشاہ جہاں		یافت اتمام بہ توفیق ازل
	سال تاریخ و مہ دوزش گشتہ		یکم از شہر ربیع الاول

"Translation by author"

The Collector of the buildings of grace and beauty the raiser
of the standards of rule and faith,
the spreader of the wings of peace and tranquillity, the builder of the buildings of knowledge and deed,
Muhammad Babar, a Jam in dignity—May God Almighty have him in His protection,
Kindled in India the lamp of power, when a ray of it fell upon Sambhal,
To build this mosque may it be protected from destruction and decay,
He gave orders to his mean slave, who is one of the principal officers,
***Mir Hindu Beg**, the intelligent and wise who is an example to others in polite manners,*
And when in consequence of the order of the sovereign of the world by guidance of Providence to the mosque was completed."

1560. Its date is first day of the month of Rabi L 933 H. (December 1526 A.D.)

1561. Dr. Radhey Shyam, however, has then doubted

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correctness of the contents of the said inscription on pages 454-457:

> *"This inscription clearly mentions that at Babar's orders the mosque was built and completed on the first day of the month of Rabi-ul-Awwal 933 H./6th December 1526 by Hindu Beg. But it is quite surprising that Babar who was quite festidious in mentioning about everything that concerned him or even others, has not mentioned about the construction of a mosque by Hindu Beg at Sambhal. Nor did he mention that he gave orders to Hindu Beg to demolish any Hindu temple and construct a mosque over it. There is no reference to any order for the destruction of a Hindu temple and construction of a mosque by Hindu Beg at Sambhal in his Memoirs. Babar visited Sambhal in Sept.-Oct. 1527 and stayed there for three days but in his Memoirs he does not say a word about the fanatical activities of Hindu Beg there. His annoyance at the destruction of the Hindu temple by Hindu Beg at Sambhal is reflected in his silence and his indifference towards the whole affair. During the years 1526-27 his position in Hindustan was so precarious that it was not possible for him to take any drastic action against any general, Hindu Beg being one of them; even though they might have continued to commit gruesome acts in the name of their master. However, it is definite that though Babar's name was associated with the construction of the mosque, as was the prevailing practice, the Hindu temple was not demolished at his orders. Hindu Beg might have demolished the temple on his own account and even did not care to refer this matter to his master.*

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Nevertheless, the whole affair has aroused controversy. Mr. Carlleyele is of the opinion that the Jami mosque which is still standing amidst the beautiful surrounding was not constructed by Hindu Beg and it is of much earlier period. The district Gazetteer of United Provinces (Moradabad) mentions that "Babar's inscription in the mosque is a great historical forgery of all times." And the account of the temple and the mosque given in it is as follows: 'The erection of Hari Mandir is variously ascribed to Prithviraj, to a Raja named Jagat Singh and one Nar Singh, the grandson of Raja Vikram Sen one of the Dors of Baran. This temple no longer exists and its place is taken by a striking mosque, which forms the conspicuous feature in the landscape for miles around. This building is mainly of stone, which is certainly the material employed for the great central dome, for the outer walls and porch and for the flooring of the broad courtyard." In 1874 Mr. Carlleyele visited and inspected the mosque and was convinced that the dome was of Hindu workmanship, but the bricks were of Musalman workmanship. The whole of the mosque is coated with plaster so that it is impossible to ascertain the material. The wings are divided by a lateral row of pillars into two aisels and each had three arched openings on the courtyard. A flight of stone steps on either side gives access to the roof of the mosque, from which fine view of the town and the surrounding country can be obtained. ***Mr. Carlleyele came to the conclusion that the conversion of the temple into a mosque was of very recent date****. He based his decision on the fact that there has been recent litigation on the subject of the site between*

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the Musalmans and Hindus and appears to have been influenced by the arguments of the latter to the effect that the ***old inscriptions on the mosque walls were impudent forgeries****. This claim of the Hindus was of course rejected in the civil courts. Mr. Carlleyele could not see the documents going back to the days of Jahangir, now in possession of the guardians of the mosque. General Cunningham has repudiated the suggestion that the inscription were not genuine. The most important of these, states that the mosque was built by Hindu Beg at the orders of Babar in December 1526. It is certainly curious that the temple should have remained till that date, for Sambhal had long been the seat of the Muslim government, and it is even more surprising that a noted inconoclast like Sikandar Lodi should have allowed a building of such sanctity to stand in his temporary capital. . . . . But the mosque at Sambhal might well be older than Babar, to judge from its appearance. The architecture resembles that of Pathan buildings such as great mosque of Badaon and the huge sloping bastions on the west. The whole structure is very plain, severe, and massive, and if the Hindu materials have been employed the ornamentation has been very effectively concealed, since the only traces of Hindu covering visible are two rosettes on the stone slabs of the steps leading from the eastern gateway to the quadrangle. In the middle of the latter is a tank and fountain, filled from a large well outside the gateway. Whether Babar built it or simply repaired the mosque cannot be positively stated, but it is curious that the Ain-i-Akbari has referred to the celebrated temple of Vishnu at Sambhal. An inscription in the south*

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wing states that Rustam Khan Deccani repaired the mosque in 1657, while a similar tablet in the north wing was erected by one Sayyid Qutb in 1626. The two inscriptions above the outer and inner arches of the central chamber record the restorations affected by the Musalmans of the town and district about 1845." Thus Carlleyele's report asserts that Jami Masjid of Sambhal is of earlier date (ii) the inscription is fake (iii) that it was constructed much later.

But the arguments given against the construction of the mosque by Hindu Beg are not tenable. Had the mosque been of earlier date there should have been an inscription on it bearing the date of its construction. The grounds on which the inscription which assigns the construction of the mosque to Hindu Beg, has been declared fake, have not been indicated. Then the report itself records that in the mosque at places the use of the debris of a Hindu temple is visible. In addition to it may also be observed that ever since the occupation of Sambhal by the Mughals in December 1526 or a little earlier till the date when it was conferred on Humayun in jagir, the position of the Mughals there had always been very precarious. This is borne out by the fact that after its occupation Ali Yusuf was appointed to hold its charge. After his death Abdullah Kitabdar was sent and thereafter Hindu Beg and both of them returned to Agra after a few days and waited on Babar. Why did they return from there without being summoned to emperor's presence? Babar does not mention the reason which forced them to return from Sambhal. Nor does any other authority. It can however be presumed that the Hindu

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population which was so hostile to Hindu Beg did not permit him to stay there any longer and to continue to display the zeal of a fanatic. Nor did Babar like to send him again to Sambhal. Even if it is conceded that the mosque is of the earlier date, it can be presumed that its repair by Hindu Beg was not liked by the Hindu population."

1562. In the subsequent part Dr. Radhey Shyam proceeded to consider Ayodhya dispute also as a parrelel to the Sambhal's building.

1563. But if we consider what has been writeen in Babarnama by the Babar in straight words without twisting or mincing them we find that like any other brave, couragious, tactful but brutal warrior, Babar also possess all these qualities. It is true that he was truly religious but it means that he was a complete Islamic person and lacked tolerance atleast to the idol worshippers. He had no hitch in destroying idols worshipped by the inhabitants of India at that time and this we find very visibly from the words which are translated by Mrs. Beveridge from Babar's manuscript of "Tuzuk-i-babri" as is evident from page 554-555 as under:

"And I made public the resolution to abstain from wife, which had been hidden in the treasury of my breast. The victorious servants, in accordance with the illustratious order, dashed upon the earth of contempt and destruction the flagons and the cups, and the other utensils in gold and silver, which in their number and their brilliance were like the stars of the firmament. ***They dashed them in pieces, as, God willing! soon will be dashed the gods of the idolaters,****--and they distributed the fragments among the poor and needy."* (emphasis added)

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1564. In respect to the inhabitants of Hindustan, at page 518 of the aforesaid book it says as under:

> *"Most of the inhabitants of Hindustan are pagans; they call a pagan a Hindu. Most Hindus believe in the transmigration of souls. All artisans, wage-earners, and officials are Hindus. In our countries dwellers in the wilds (i.e. nomads) get tribal names."*

1565. Like other invaders whenever he defeated the local Rulers, his army did all such acts of loot, general massacre etc. While conquering Sambhal on page 528 the act of the army of Babur is mentioned as under:

> *"Malik Qasim cut off the heads of part of his force, took many horses, a few elephants and mass of booty."*

1566. After defeating Rana Sanga and his other supporters, at page 576 of the **Babarnama by Beveridge** it is mentioned that as a trophy of victory an order was given to set up a pillar of pagan heads on the infact-hill (koh-Bacha) between which and his camp the battle had been fought.

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1567. Similarly, on page 587 of the aforesaid book on 27th September, 1527 AD he mentions:

> *"Humayun had left Darwish (-i-ali) and Yusuf-i-ali in Sambal; they crossed one river, fought Qutb Sirwani and a party of rajas, beat them well and* ***killed a mass of men. They sent a few heads*** *and an elephant into Kul while we were there." (emphasis added)*

1568. Though in the army of Babur Hindustani soldiers were also included but it appears that he did not repose much confidence therein as is evident from page 547 of the aforesaid book:

> *"As little confidence was placed in Hindustani*

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people----------"

1569. As an invader Babar entered the Indian subcontinent, conquered it and did what he could or found necessary to claim victory which nobody can comment atleast today. It is said that all is fair in love and war and laws of war are not set by pen since they are decided in a war field by those who are fighting or by their commanders. Discussion may be held as to whether the manner in which a war took place, fought and the action of the soldiers therein was justified or not but the fact remains that before the matter has been taken in 20th Century by various countries to lay down certain principles to be observed during war and also recognise certain rights of prisoners of war, prior thereto no such principle in general were observed by the Rulers of different countries though at local level some kind of practice with respect to time etc. might have been followed. What had been done several hundreds years back by a king invading a country or between war of two kings is obviously beyond the pale of judicial review of this Court and of any Court functioning in independent India after the promulgation of our Constitution on 26.01.1950. We have not been shown of any authority by any learned counsels that we can examine the legality, correctness or genuinity of an action of a Ruler prior to the enforcement of British enactments in the subcontinent.

1570. However, the attempt by some of the authors to glorify or justify brutal massacre or action of some of the invaders or Rulers even if they might have conquered the subcontinent, by providing justification, explanation etc. is not understandable for the reason that the things which are evident and straight cannot be clothed with a velvet cover and would not provide a shell to give it a different colour. It shall only mislead the public at large

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and in particular the students of history. In our view, the historical events must be placed straight without any distortion, without any addition of words and without providing any explanation or justification in the words of the author as the same would be nothing but a sheer conjecture and surmise. If we claim that Babar felt happy having seen the mound of human heads and still we tell somebody that he was a kind hearted religious man, had no love for violence it would a blatant lie. This kind of attitude on the part of some of authors whose work has been placed before us for our consideration shows that these authors can go to the extent of glorification of any kind of misdeed which in the present day's civilised society can never appreciate or swallow. If innocent persons are killed either in terrorist activities or naxalite activities, in our view the action of these persons ex facie is inhuman, amounts to henious offence, deserved to be condemned without mincing words so as not to dilute the degree of violence and atrocity committed by them irrespective of the purpose, objective or whatever is behind such activity. Any other view is nothing but a serious contempt to the very mankind and would be a clear disrespect to those innocents who become victim of such incidents. Though the present days activities may not have any comparison with the wars and battles fought hundreds and thousands years back but to find out a positive character in such activities of the the Ruler/Kings under whom the army had done all these kind of brutalities would be a thought of abnormal minds. The lack of respect of Emperor Babar to idols meant for worship has already been demonstrated above and is fortified from what has been mentioned at page 611 of the Book “Baburnama” by Beveridge stating that he did not hesitate in destroying the idols on

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28.09.1528 at Uruwa (Gwalior) where he found three sites occupied by a solid rock wherein the people had cut out idols statue large and small and he ordered for destruction thereof.

1571. Ex. 82 (Suit-4) (Paper No. 218C1/1-20) contain certain pages from **"Memoirs of Baber- Emperor of India"** by Lieut. Colonel F.G. Talbot, first published 1974 by Ess Ess Publications, Delhi. This work is mainly based on the English translation of "Tuzuk-I-Babari" by John Leyden and William Erskine, first published in 1826 and it is said that the book being out of print for many years, therefore the Memoirs of Babar are practically now unknown. The author, however, has also taken help from Stanley Lane-Poole's Introduction to Babar. Pages no. I to XV from Chapter "Introduction", 1 to 3, 46 to 49 and 196 to 213 are before us. The attempt on the part of Sri Jilani is that from no part of the book it does appear that Babar ever encouraged destruction of Hindu temple or religious place of other religions. Sri H.S. Jain, on the contrary, submitted that his disliking to Hindus and other religions is writlarge from the fact that he addressed Hindus as *'Pagans'* and declared war against Rana Sanga as 'Holy war' which shows his character and extreme religious fervour towards 'Islam'. He referred to the following passage from page 207 of the book (Paper No. 218C1/16) :

> *"From the eleventh year of my age till now, I had never spent two festivals of the Ramza in the same place. Last year's festival I had spent in Agra. In order to keep up the usage, on Sunday night the thirtieth, I proceeded to Sikri to keep the feast there. A stone platform was erected on the north-east of the Garden-of-Victory, on which a set of large tents was pitched, and in them I passed the festival.*

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The night on which we left Agra, Mir Ali departed. He was extremely fond of playing cards, and had asked for some, which I sent him."

1572. The issues need to be decided by this Court does not get any help from the above documents. One thing, however, is clear that Babar came to India with a clear intention to stay and rule. In furtherance therefor, for keeping the morale of his force high and for other reasons, he took all necessary steps as he found expedient. It is evident from page 208 (Paper No. 218C1/17) and page 210 (Paper No. 218C1/18) :

"Hitherto the peoples of India had regarded Baber as a temporary raider who would depart as soon as he had gathered enough spoil; but when they found he had come to stay they began to consider what policy to pursue, and in weariness of incessant warfare began to see the merits of a master.

Three thousand Afghans from the Doab were the first to come over to him, and were rewarded with territories in Oudh, which was still in revolt.

One of the first acts of the Conqueror was to lay out a road from Agra to Kabul, and the distance having been actually measured, a tower twenty-four feet in height was erected at every fourteen miles, while at every sixteen miles a post-house for six horses was built, and an allowance fixed as a provision for post-house keeper, courier, grooms, and the keep of horses. Where the road lay through a rich man's territory he was made to pay all the costs of maintenance." (Page 208)

"The affairs of Hindustan had now been reduced to a certain degree of order. The revenue from land was

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returned at 4,212,000/-. This was from land alone and by no means represented the total income." (Page 210)

1573. The life of Babar after his conquest was very short inasmuch it is not in dispute that he died on 26th December 1530 AD at Agra. Thereafter in the light of his last wish, he was buried in the garden on the hillside at Kabul.

1574. Ex. 83 (Suit-4) (Paper No. 220C1/1-11) and Ex. 84 (Suit-4) (Paper No. 222C1/1-5) are also the photocopies of certain pages from "Babarnama" translated by Yugjeet Navalpuri Edn. 2002 and nothing has been referred therefrom by the learned Counsels for the parties. We also do not find any thing therefrom which may throw any light for deciding the issues in question.

1575. Next in this context is about the persons whose name is claimed to have been mentioned on the inscriptions at the disputed site, i.e., "Mir Baqi". In the transcript of Fuhrer it mentions "Mir Khan" while in other transcript it is mentioned as "Mir Baqi".

1576. Sri P.N. Misra, Advocate has vehemently argued that the entire Baburnama does not mention any person in the army or otherwise relating to Babar with the name of Mir Baqi. He says that Baqi was a military decoration in the army of Babar and Mir was a civil honour to the persons of respectability etc. He says that the part of the army sent to Ayodhya was headed with Timur Begh, Baqi Tashkindi etc. but it does not mention any person as Mir Baqi.

1577. Sri P.N. Misra, learned counsel appearing on behalf of defendant no. 20 (Suit-4) supported the above stand and also contended that there is nothing in the said diary maintained by Babar that he ever entered Ayodhya either in March 1528 or in

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April 1528. It is common ground that the Babar-Nama misses the text between 2nd April to 18th September 1528 AD. The reason we are not concerned. Sri Jilani raised the above argument in order to buttress his submission that Babar when did not enter Ayodhya himself there was no question of any demolition of a temple by him and construction of mosque. The pleadings of Hindu parties in connected suits to this effect are not correct, is what he tried to persuade us. Sri Misha, however, agree so far as the former part is concerned that there was no occasion for Babar himself to direct for demolition of any temple and construction of mosque since he did not enter Ayodhya but he tried to explain the things otherwise by submitting that this also shows that the disputed building was not constructed in 1528 AD and there is no historical document of contemporary period to substantiate the above claim of defendants no. 6 to 8 and 10 in Suit-1, the plaintiffs of Suit-4 and all muslim defendants in Suit-3 and 5. Sri Mishra also pointed out that Shaikh Bayazid was then governing Awadh/Ayodhya. The Army Commanders of Babar who crossed the river so as to enter Ayodhya were Tardi Beg of Quj Beg, Baba Chuhra, Baqi Shaghawal and Chin Timur. It is pointed out that there is no person named as Mir Baqi in the entire Babur-Nama. Sri Mishra placed before the Court Babur-Nama by Beveridge to show that it mentions Baqi Beg Chaghaniani; Qib Chaq Turk; Baqi Gagiani Afghan; Baqi Hiz; Kwaja Baqi son of Yahiya son of Ehrari who was murdered in 1500 AD; Baqi Beg Taskindi; Baqi Beg Shaghawal; Baqi Beg Mingbashi; Baqi Takhan. Sri Mishra submitted that there is no mention of any Mir Baqi in Babur-Nama. Our attention was also drew to page 684 of Beveridge's Babur-Nama to show that it is

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Baqi Tashkindi who came from Awadh (Ayodhya) on 13.06.1529 AD to meet Babar. Page 685 of Babur-Nama shows that Babar sent Baqi Shaghawal on 16.06.1529 while camping near Kalpi to collect information about his enemy, i.e., Biban and Bayazid. On 17.06.1529 AD it is mentioned that one of Baqi Beg's retainers came informing that Baqi had beaten scouts of Biban and Bayazid, killed one of their good men, Mubarak Khan Jalwani and some others, sent in several heads, and one man alive. He says that Baqi Shaghawal has been addressed as Baqi Beg and Baqi Tashkindi who came from Ayodhya has been addressed as Baqi but there is no mention of any of the person addressed as Mir Baqi. It is contended by Sri Mishra, Advocate that the later historians/translators, of their own, identified Baqi Tashkindi as Baqi Shaghawal as well as Mir Baqi though in the entire Babur-Nama, Babar has not addressed anybody or any one as Mir Baqi. He drew our attention to certain persons whose name started with the word Mir, namely, Mir Bujurg Tirmizi; Mir Khurd Bakawal; Mir Mughul son of Abdul Wahab Saghawal; Mir Sang-Tarash; Mir Zadas of Khwast and none of these persons, he submit, can be said to be possibly addressed as Mir Baqi.

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1578. In **Lieut. Colonel F.G. Talbot's under the title "Memoirs of Baber Emperor of India First of the Great Moghuls" (Supra)** on page 90, with respect to the events of the year 1504 AD there is a reference of Baqi Beg and on page 91 for the same period there is reference of Baqi Beg as well as Baqi Chaghiani. The relevant extract whereof are mentioned as under:

> *"At this same period,* ***Baki Beg*** *repeatedly, and with much earnestness, urged his sentiments, that to have two*

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sovereigns in one country, and two generals in one army, was an unfailing source of confusion and ruin, and inevitably productive of rebellion, mutiny, and finally of dissolution; as the poet says—

'Ten dervishes may repose on one cloak,
But two sovereigns cannot be contained in the same climate.
The man of God, when he eats half a loaf,
Divides the other half among the poor and needy.
If a king subdues a whole kingdom, nay a climate,
Still, as before, he covets yet another."

At this period, information arrived that Sheibani Khan had taken Andejan. On hearing this news, Khosrou Shah, unable to support himself in Kundez, took the route of Kabul with his whole force. No sooner had he left Kundez, than one of his old and confidential servants occupied that fortress, and declared for Sheibani Khan. Just as I reached the Red River, three or four thousand heads of houses of the Moghul clans, who had been dependent on Khosrou Shah, came and joined me, with their whole families. Here, in order to gratify ***Baki Beg,*** *I was obliged to discharge Kamber Ali, the Moghul, who has been so often mentioned. He was a thoughtless and rude talker; and* ***Baki Beg*** *could not put up with his manners.*

When Khosrou Shah learned that the Moghul tribes had joined me, he felt his own helplessness; and, seeking no remedy left, sent his son-in-law as his envoy, to make professions of submission and allegiance, and to assure me that, if I would enter into terms with him, he would come and submit himself. As ***Baki Cheghaniani,*** *a man of much*

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weight, though steadily attached to my service, yet was not without a natural bias in favour of his brother, he recommended a compromise to be made, on condition that Khosrou's life should be spared, and his property left entirely to his own disposal. A treaty was accordingly concluded on these terms."

1579. Another name, namely, Baqi Tarkhan is mentioned at page 11 of **Talbot's Memoirs of Baber (supra)** and that is also with reference to a much earlier period. The extract wherein the above name is mentioned on page 11 is as under:

*"**Baki Terkhan** was another. In the time of Sultan Ali Mirza, he rose to great consequence, his retainers amounting to five or six thousand. He was far from being in a proper state of subjection or obedience to Sultan Ali Mirza. He was very fond of hawking, and is said to have had seven hundred falcons at one time. His manners and habits were such as cannot well be described; he was educated and grew up in the midst of magnificence and state."*

1580. Besides, on page 4 it mentions the name of Mir Ghias Taghai; on page 26 it mentions about Mir Shaha and has appreciated about his gallantries; on page 114 there is a reference of Mir Beder and his dancing in the events relating to the year 1506 AD; on page 116 there is reference of Mir Jaan and his singing; on page 174/175 Mir Miran is mentioned and on page 207 Mir Ali is referred but there is no reference of any Mir Baqi. Talbot has not said anything about the Ayodhya visit except that of page 208 where he has referred to Awadh once only in the following manner:

"Thee thousand Afghans from the Doab were the

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first to come over to him, and were rewarded with territories in Oudh, which was still in revolt."

1581. On behalf of plaintiffs (Suit-4) copies of certain pages of "Mughal Kalin Bharat-Babar (1526-1530) by Syed Athar Abbas Rizvi (Supra) have been filed which are marked as Exhibit 85, Suit-4 (paper No. 223C1 and 224C1/1-62). These photocopies are from the 1960 edition of the book. Pages No. 19-20, 49-50, 232-233, 272-281, 310-313, 318-320, 328-341, 353, 375, 380-387 and 420-421 have been filed. We, however, are referring from 2010 reprint since this book in its entirety is available to the Court. On page 272, the book narrates the incidents of 28.03.1528 and 02.04.1528 which is almost similar to what is contained in Beveridge's Babur-Nama for the said date but since it is a translation by a Muslim writer having authority on the subject which is admitted to the plaintiffs of Suit-4 also, we reproduce the same as under:

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"अवध पहुंचना

अवध से दो एक पड़ाव पूर्व चीन तींमूर सुल्तान के पास से आकर किसी ने सूचना दी कि, " शत्रु सरदा के उस पार डटा हुआ है अतः कुमक भेजी जाये। " 1000 वीरों को ृपथक करके क़राचा के अधीन कुमक हेतु भेजा ।

(28 मार्च)– शनिवार 7 रजब को हमने अवध से 2–3 कुरोह पर गगर एवं सरदा के संगम के ऊपर पड़ाव किया । उस दिन तक शेख बायज़ीद सरदा के उस पार अवध के सामने रहा होगा । वह सुल्तान के पास पत्र भेजता एवं (संधि के विषय में) वार्ता करता रहा किन्तु सुल्तान ने उसकी धूर्तता से अवगत होने के कारण क़राचा को मध्यान्होत्तर की नमाज़ के समय सूचना भिजवायी और नदी पार करने की व्यवस्था करने लगा । जब क़राचा सुल्तान के पास पहुंच गया तो उन्होंने तत्काल नदी पार की । वहां लगभग 50 अश्वारोही तथा 3 या 4 हाथी थे। वे युद्ध न कर सके और भाग खड़े हुए । कुछ लोगों को घोड़े से गिराकर उनके सिर काट डाले गये और उन्हें (मेरे पास) भेज दिया गया ।

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सुल्तान के पीछे–पीछे बीखूब सुल्तान, कूज बेग के (भाई) तरदी बेग, बाबा चुहरा तथा ***बाक़ी शग़ावल*** *ने भी नदी पार की । जिन लोगों ने इनके पूर्व नदी पार की थी, उन लोगों ने शेख बायज़ीद का सायंकाल की नमाज़ तक पीछा किया किन्तु वह जंगल में घुसकर भाग गया । चीन तीमूर रात्रि में बँधे हुए जल के तट पर ठहरा और आधी रात में विद्रोहियों के पीछे रवाना हुआ । वह 40 कुरोह की यात्रा करके उस स्थान पर, जहां शेख बायज़ीद के परिवार वाले एवं सम्बन्धी ठहरे थे, पहुंच गया । वे भी भाग गये होंगे । उसने उस स्थान से द्रुतगामी अश्वारोहियों को प्रत्येक दिशा में उनका पीछा करने के लिए भेजा ।* ***बाक़ी शग़ावल*** *ने कुछ वीरों सहित शत्रुओं को भेड़ के समान भगा दिया और उनके परिवारों के पास पहुंच कर कुछ अफग़ानों को बन्दी बना लिया । हम कुछ दिन तक अवध तथा उस क्षेत्र के शासन प्रबन्ध को सुव्यवस्थित करने के लिए उस पड़ाव पर ठहरे रहे । अवध के 7–8 कोस दूर सरदा नदी के तट पर एक स्थान था जिसके विषय में कहा जाता था कि वह बड़ी अच्छी शिकार–गाह है । मीर मुहम्मद जालाबान को इस आशय से भेजा गया कि वह गगर नदी तथा सरदा नदी के घाट का निरीक्षण करके लौट आयें ।*

(2 अप्रैल)– वृहस्पतिवार 12 रंजब को हमने शिकार के उद्देश्य से प्रस्थान किया।''

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1582. The Rizvi's translation has referred to a large number of persons whose names have the title of 'Mir' on pages 716 and 717 as under:

''मीर अता उल्लाह; मीर अबुल बक़ा; मीर अब्दुल ग़फूर; मीर अलाउलमुल्क तिरमिज़ी; मीर अली; मीर अली बेग; मीर अली शेर; मीर अली शेर नवाई; मीर इब्राहीम; मीर इब्राहीम क़ानूनी; मीर ख़लीफ़ा; मीर खुर्द; मीर खुर्द बकावल; मीर ग़यास; मीर ग़यास तग़ाई; मीर ग़यासुद्दीन; मीर गेसू; मीर जान; मीर जान ईरदी; मीर तीमूरी खरबूज़ा; मीर दरवेश मुहम्मद सारबान; मीर फ़ाज़िल; मीर बद्र; मीर मीरान; मीर मुगूल; मीर मुरताज़; मीर मुहम्मद; मीर मुहम्मद अली जंगजंग; मीर मुहम्मद जालाबान; मीर मुहम्मद नाविक; मीर मुहम्मद बख़्शी; मीर मुहम्मद यूसुफ़; मीर शाह कूचीन; मीर शाह बेग; मीर शेरीम; मीर संगतराश; मीर सरे बरहना; मीर सुल्तान अली ख़्वाबबीन; मीर सैयिद अली हमदानी; मीर सैयिद रफ़ीउद्दीन मुहद्दिस

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सफ़वी; मीर हमह; मीर हमा; मीर हुसेन; मीर हुसेन मुअम्माई''

1583. On page 659 he has mentioned the words Amir Mir Baqi but that is with reference to his translation of stone inscriptions said to be there on the disputed building with which we have already discussed. In the entire translation of Babur-Nama and other description there is no mention of anyone as Mir Baqi. The aforesaid work also nowhere mention or shows that Babar at any point of time did enter Ayodhya or Awadh after reaching near thereto on 28.03.1528 though it is said that he stayed thereat for about a few days.

Traveller's Account

1584. There are two travellers account which have to be considered at this stage. One that of "William Finch" and another is that of "Father Joseph Tieffenthaler".

1585. **William Foster** published a book, namely, **"Early Travels in India"** (1985 First Edition distributed by Munshiram Manoharlal Publishers Pvt. Ltd.) which contains the narratives of seven Englishmen who traveled in northern and western India during the reigns of Akbar and Jahangir. These travelers are Ralph Fitch (1583-91); John Mildenhall (1599-1606); William Hawkins (1608-13); William Finch (1608-11); Nicholas Withington (1612-16); Thomas Coriyat (1612-17) and Edward Terry (1616-19). William Finch came to India in August 1608 and landed at Surat with Capt. Hawkins. With respect to Ayodhya, Finch has written on page 176 of the book as under :

> *"To Oude (Ajodhya) from thence are 50 c.; a citie of ancient note, and seate of a Potan king, now much ruined;* ***the castle built foure hundred yeeres agoe. Heere are also the ruines of Ranichand(s) castle and houses, which the Indians acknowled(g)e for the great God,***

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saying that he tooke flesh upon him to see the tamasha of the world. *In these ruines remayne certaine Bramenes, who record the names of all such Indians as wash themselves in the river running thereby; which custome, they say, hath continued foure Iackes of yeeres (which is three hundred ninetie foure thousand and five hundred yeeres before the worlds creation). Some two miles on the further side of the river is a cave of his with a narrow entrance, but so spacious and full of turnings within that a man may well loose himself there, if he take not better heed; where it is thought his ashes were buried. Hither resort many from all parts of India, which carry from hence in remembrance certaine graines of rice as blacke as gun-powder, which they say have beene reserved ever since.* ***Out of the ruines of this castle is yet much gold tryed.*** *Here is greate trade, and such abundance of Indian asse-horne that they make hereof bucklers and divers sorts of drinking cups. There are of these hornes, all the Indians affirme, some rare of great price, no jewell comparable, some esteeming them the right unicornes horne."*

Photocopy of page 176 of the book is Exhibit 19 Suit-5 (Register 21 Page 271)

1586. William Finch who visited Ayodhya between 1608-1611 AD neither found any building of importance of Muslim nor Muslim population nor any activity of Muslims noteworthy in Ayodhya. Had the building in dispute been constructed in 1528 i.e. just about 80 years back, it is quite difficult to understand that would not have been considered to be a place of importance and could have gone unnoticed by Finch. He has specifically referred to Castle of Lord Ram Chandra Ji which, in

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his understanding, was constructed about 400 years ago. Obviously, it could not be related to the building in dispute as such. Here also what he says that there existed ruins of Ram Chandra's castle and houses which the Indians acknowledge the Great God. He also says that in these ruins certain Brahmins used to record the names of visiting Indians which is a practice still in continuance in various holy places and those Brahmin people are normally called as Panda/Mahraj where one can find the record of hundreds of years back belonging to their predecessors who had earlier visited these holy places.

1587. Sri Jilani sought to argue that write up of William Finch lends no credence for it does not mention very clearly as to which place in Ayodhya he visited. However, Sri Jilani also could not suggest that in Ayodhya there is any place other than that which included the disputed site which may or could be considered to be the fort of King Dashrath or Lord Rama in ancient times. At least this much cannot be disputed that William Finch's travel account did not find mention of any big building known as "Babri Mosque" to have existed in Ayodhya having been constructed just about 80 years ago before his visit. His travel account suggests that the number of Muslim inhabitants in Ayodhya city in earlier 17th Century was negligible.

1588. Next comes another travel account of **"Father Joseph Tieffenthaler"** who visited India sometime in 1740 and remained here for about 20-25 years. He also visited Ayodhya during his above stay and had written travel account which was written in Latin in the book **"DESCRIPTION : HISTORIQUE ET GEOGRAPHIQUE : D E L' I N D E" under the title "TOME 1. NOUVELLE EDITION. Contenant la**

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Geographic de l'Ind-Uftan, avec. 39,. Planches". English translation of which is "HISTORICAL AND GEOGRAPHICAL DESCRIPTION OF INDIA" VOLUME 1 NEW EDITION containing the Geography of Hindustan, with 39 illustrations". The account of Tieffenthaler was translated in French and was published by **M. Jean Bernoulli** in 1786, photo copy of the first two pages of the French publication as well as pages no. 252 to 255 was provided to this Court which has been marked as Exhibit No. OOS 5-133 (Paper No. 107 C/96-104) (Register 21 page 273-289).

1589. The aforesaid documents were written in French (except of very few words which were in Lati). Since the English translation supplied by plaintiffs (Suit-5) was seriously disputed, we directed the Government of India to get an authenticated English Translation of the aforementioned pages which have been made available to us and after giving opportunity to the parties to file their objection has been admitted vide order dated 10.03.2010. The relevant part in the aforesaid report, i.e.,pages 253 is reproduced as under:

> *"L'empereur Aurengzebe a fait demolir la fortereffe appelee ramcot, & a eleve au meme lieu un temple mahometan, a triple coupole. D'autres difent qu'il a etc conftruit par Babor. On y voit I 4 colonnes de pierre noire, hautes de 5 empans, qui occupoient l'emplacement de la fortereffe. Douze de ces colonnes portent maintenant les arcades intericures de la Mosquee: deux (de ces I 2) font placees a la porte du cloitre. Les deux autres font partie du tombeau d'un certain Maure. On raconte que ces colonnes, ou plutot ces debris de colonnes artiftement travaillees ont etc apportees de l'ile de Lanca ou Selendip*

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[appelee Ceylan par les Europeens] par Hanumann, Roi des Singes."

Emperor Aurengzebe got the fortress called Ramcot demolished and got a Muslim temple, with triple domes, constructed at the same place. Others say that is was constructed by 'Babor'. Fourteen black stone pillars of 5 span high, which had existed at the site of the fortress, are seen there. *Twelve of these pillars now support the interior arcades of the mosque. Two (of these 12) are placed at the entrance of the cloister. The two others are part of the tomb of some 'Moor'. It is narrated that these pillars, or rather this debris of the pillars skillfully made, were brought from the island of Lanca or Selendip (called Ceylan by the Europeans) by Hanuman, King of Monkeys.*

(English transliteration)

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1590. Sri Mishra pointed out that there appears to be an english translation also of the travel record of Tieffenthaler. He refers to the english translation of Tieffenthaler in para 5 of his written argument and gave a brief biodata of father Tieffenthaler in para 6 which read:

"5. Father Josef Tieffenthaler, a Jesuit Missionary and noted geographer on Hindustan visited Ayodhya in 1770 did not find any Inscriptions even that superscription "Allah" mentioned by the Ld. District Judge in 1886. From Josef Tiffenthaler's description it appears that at that time also Hindus were worshipping inside the Ramjanmsthan Temple alleged to be converted into mosque either by Aurangzeb or by Babar. As he was not only a Missionary but an excellent Historian, Geographer

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and great linguistic having mastery over several languages including Arabic, Persian and Sanskrit, there was no possibility of overlooking the alleged Inscriptions by him as it would have enabled him to tell the people with certainty the name of the Tyrant Emperor who attempted to convert Sri Ramajanmasthan Temple into Mosque. English translation of a portion of his book “Descriptio Indiae” being description of Oude including the Sri Ramajanmasthan has been published on pages 312 to 317 in the “ Modern Traveller, a Popular Description, Geographical, Historical, and Topographical of the Various Countries of the Globe- India. Vol. III” ; London Edn.1828 published by James Duncan and has been digitalised by Google. Relevant extracts thereof read as follows:

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"Its appearance, in 1770, is thus described by Tieffen Thaler: “Avad with Ajudea by the learned Hindoos, is a city of the highest Antiquity.” ..... (Ibid.312)

“The most remarkable place is that which is called Sorgodoari, that is to say, the heavenly temple; because they say, that Ram carried away from thence to heaven all the inhabitants of the city. The deserted town was repeopled and restored to its former condition by Bikaramajit, the famous King of Oojein. There was a temple here on the high bank of the river; but Aurangzebe, ever attentive to the propagation of faith of Mohammed, and holding the heathen in abhorrence, caused it to be demolished, and replaced it with a mosque with minarets, in order to abolish the very memory of Hindoo superstition. Another mosque

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has been built by the Moors, to the East of this near the Sorgodoari in an edifice erected by Nabalroy, a former Hindoo governor. But a place more particularly famous is that which is called Sitha Rassoce, a table of Sitha (Seeta), wife of Ram; situated on an eminence to the south of the city. The emperor Aurangzebe demolished the fortress called Ramcote, and erected on the site of Mohammedan temple with a triple dome. According to others, it was erected by Baber. There are to be seen fourteen columns of black stone, five spans in height, occupied the site of the fortress. Twelve of these columns now support the interior arcades of the mosque: the two other form part of the tomb of a certain Moor. They tell us that these columnsms, are rather these remains of skillfully wrought columns, were brought from the Isle of Lanca or Selendip (Ceylon) by Hanuman, King of the Monkeys. On the left is seen a square chest, raised five inches from the ground covered with lime about 5 ells in length by not more than four in breadth. The Hindoos call it Bedi. The cradle; and the reason is, that there formerly stood here the house in which Beshan (Vishnoo) was born in the form of Ram, and were also, they say, is three brothers were born. Afterwards, Aurangzebe or, according to others, Baber caused the place to be destroyed, in order to deprive the heathen of the opportunity of practising there their superstitions. Nevertheless, they still pay superstitious reverence to both these places; namely, to that on which the Natal dwelling Ram stood, by going three

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> times around it, prostrate on the earth. The two places are surrounded with a low wall adorned with battlements. Not far from this is a place where they dig up grains of black rice changed into little stones, which are affirmed to have been hidden under ground ever since the time of Rama. On the 24th of the month of Tshet (Choitru), a large concourse of people celebrate here the birth-day of Ram, so famous throughout India."…… (Ibid. 313- 314)

6. Josef Tieffenthaler was born at Bozen in the Tyrol, on 27th August, 1710 and died at Lucknow on 5 July, 1785. He entered the Society of Jesus 9 October, 1729, and went in 1740 to the East Indian mission where he occupied various positions, chiefly in the empire of the Great Moghul. After the suppression of the Society he remained in India, and on his death was buried in the mission cemetery at Agra, where his tombstone still stands. He was a fine scholar with an unusual talent for languages; besides his native tongue he understood Latin, Italian, Spanish, French, Hindustani, Arabic, Persian, and Sanskrit. He was the first European who wrote an exact description of Hindustan. A brief list of his works is the best proof of his extraordinary power of work and his varied scholarship. In geography, he wrote a "Descriptio Indiae", that is a circumstantial description of the twenty two provinces of India, of its cities, fortresses, and the most important smaller towns, together with an exact statement of geographical positions, calculated by means of a simple quadrant. He wrote a large book on the courses of the Ganga. In history, he wrote many books. He wrote

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on the origin of the Hindus and their religion in Latin, expeditions of Nadir Shah to India in German, the Deeds of the Mughal Emperor Shah Alam in Persian, Incursions of the Afghans and the Conquest of Delhi in French. He wrote a book on contemporary history 1757-64. In linguistics he prepared a Sanskrit-Parsee Lexicon, treatises in Latin on the language of the Parsees, on the proper pronunciation of Latin, etc.. In the area of religion, he wrote 'Brahmanism' and works on Indian polytheism, Indian asceticism, the religion of Parsee Islam and relations of these religions to one another.In the field of the natural sciences he wrote on astronomical observations on the sunspots and zodiacal light, studies on the Hindu astronomy, astrology and cosmology. In addition, he wrote on the descriptions and observations of the flora and fauna of India. Thus he was an intellectual giant and a linguistic wizard and not mere a traveller or a merchant who made casual remarks. His published works along with biographical notes can be lucidly gleaned from Catholic Encyclopedia (1913) and 'Christianty in India' through Wikisource and Wikipedia's website respectively. His writings and contributions also find place in the books -HUONDER, Deutsche Jesuitenmissionäre des 17. und 18. Jahrh. (Freiberg, 1899), 179; NOTI. Jos.Tieffentaller, S. J., A Forgotten Geographer of India (Bombay, 1906); HOSTEN, Jesuit Missionaries in Northern India (Calcutta, 1907).

1591. Sri P.N. Mishra argued that Father Joseph Tieffenthaler himself was a linguist knowing Persian and Arabic very well. Had the inscriptions been two or three, as the case

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may be, whatever, fixed to the disputed building till the time he visited Ayodhya including the disputed site, he could have himself read the same and would have mentioned categorically that the building in dispute was constructed by Babur. There could not have been any occasion in such a case to mention that there was a demolition by Aurangzeb and construction of mosque by him and thereafter further that some says that it was done by Babur. Sri Mishra suggested that Aurangzeb died in 1707 A.D. and had ruled the most part of the country for about forty-eight years. Whether he himself visited Ayodhya or not is irrelevant for the reason that his Farman (command) for demolition of Hindu temples is referred to in several history books including some of the contemporary Muslim literature written by Muslim authors. He argued that the existing Hindu temple was demolished by Aurangzeb and it is during his regime, the disputed building was constructed but at that time no inscription was installed thereat. These inscriptions did not exist till Father Joseph Tieffenthaler visited Ayodhya including the disputed site between 1740 to 1760-65. He pointed out that the inscriptions on the disputed building came to be noticed for the first time by **Dr. Francis Buchanan** who was appointed by the Governor General in Council to undergo a survey of the Provinces ruled by the Presidency of Bengal in 1807 AD visited Ayodhya in 1810 AD.

1592. Here it would of some importance to have an idea of biography of Dr. Francis Buchanan. He was borne at Bardowie, Callander Perthshire on 15th February, 1762. His family originated in Spittal and claim the Chiefdom of the name of Buchanan. He studied medicines at the University of Edinburgh. He also studied Botany under John Hope in Edinburgh. After

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several voyages on merchant navy ship to area, he served in the Bengal Medical Service from 1794 to 1815 AD. From 1803 to 1804 AD he was Surgeon to the Governor General of India, Lord Wellesley in Calcutta. There he organised a Zoo, later known as Calcutta Alipore Zoo. He worked on Indian Fish Species entitled “An account of fishes found in the river Ganges and its branches (1822)” which describes over 100 species not formerly recognised scientifically. He also collected and described very new plants in the region and collected a series of Watercolours of Indian and Nepalese plants and animals, probably painted by Indian artists, which they say that they are now in the library of Linnean Society of London. After Tipu Sultan's defeat in 1799 AD he was asked to survey Southern India resulting in a journey from Madras through the countries of Mysore, Canara and Malabar (1807 AD). From 1807 to 1814 AD under the instructions of the Governor General and Council, Bengal he made a survey of the areas within the jurisdiction of the British East India Company, i.e., the provinces subject to the Presidency of Bengal. He became Superintendent of the Calcutta Botanical Garden in 1814 but due to his ill health return to Britain in 1815 AD. In the same year he inherited his mother's estate and in consequence took her surname of Hamilton, referring himself as “Francis Hamilton, formerly Buchanan” or simply “Francis Hamilton”. However, he is variously referred to by others as “Buchanan Hamilton”, “Francis Hamilton Buchanan” or “Francis Buchanan Hamilton”. He is considered to be Scottish Physician who made significant contribution as a **Geographer, Zoologist and Botanist** while living in India. He died on 15.06.1829.

1593. Apparently work of Dr. Buchanan could not be given

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final shape by him. However, it appears that three journals were published by the government of Bihar and Orissa sometime in 1923 AD and onwards. One was published relating to Patna and Gaya districts sometimes in 1923 AD under the editorship of Mr. Jackson, another was published soon thereafter dealing with the district of Sahabad under the care of Mr. Oldham and third one was published narrating the survey of District Bhagalpur conducted in the cold weather of 1810-11 AD edited by Mr. Oldham.

1594. As already said, in 1807 AD under the orders of Governor General and Council, East India Company Dr. Francis Buchanan was directed to conduct survey of all the provinces subject to the Presidency of Bengal. He was required to collect information upon the general topography of each districts; the condition of the inhabitants, their religious customs, the natural productions of the country, fisheries, forests, mines and quarries; the state of agriculture; the condition of landed property and tenures; the progress made in the arts and manufactures; the operations of commerce, and every particular that can be recorded, as forming an element, in the prosperity or depression of the people. The survey was pursued for seven years and in 1816 AD the results were transmitted to England.

1595. Due to bad health of Dr. Buchanan the matter could not proceed and it appears that the East India Company thereafter took the help of Mr. Robert Montgomery Martin. The Court of Directors permitted Mr. Martin to inspect the manuscripts with a view to selection for publication. It was sometimes in 1836 or 1838 Mr. Martin was required to study the material collected by Dr. Buchanan, prepare a report so as to place before the British public.

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1596. This leads us to look into the biography of **"Robert Montgomery Martin".** Born in Dublin of Protestant Irish Stock in 1801 AD he spent 10 years in medical practice in Shillong, East Africa and New South Wells and working as journalist in Calcutta. There he helped, found and edit "The Bengal Herald" before he return to Britten. He wrote on the colonies and colonial policy. On return he become embroiled in domestic, political and economic debate. In politics he initially supported Repeal of the Act of Union between England and Ireland but later switched to pro-unionism on religious and economic grounds. In economics he was an opponent of popular recardianism. He called for repeal of the 1819 AD currency legislation; vigorously advocated protectionism for British agricultural; concern himself with the principle of taxation. Due to limited personal finances and an interest in policy matters he sought Government patronage for official employment or financial support.

1597. Buchanan made survey in the then territory of District Behar, Shahabad, Bhagulpoor, Goruckpoor, Dinajpoor, Puraniya, Ronggopoor and Assam. Mr. Martin found that the time when the survey was made and when he was required to inspect the manuscripts has made certain matters irrelevant. He, therefore, in his wisdom confined his views to an examination of the geography and physical aspect of the country; to its traditional or recorded history, to the monuments or relics of antiquity; physical and moral conditions of the people amounting (according to the survey estimates) to 1.6 crore and to the resources of the soil which they till; the manufactures which carry on; and to the products and profits of agricultural and commercial industry. In his views the survey depicted a

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painful picture of human poverty, debasement and wretchedness. The report was submitted by Mr. Martin in February' 1838 which was first published in 1838. It has now been reprinted in 1976 in India by Cosmo Publications, Delhi. Martin's report has been published under the title **"Eastern India"** and is running in six volumes. It is a matter of importance that Martin has not claimed to have visited North West Provinces of India under East India Company. His entire opinion is based only on the perusal of record sent by Buchanan.

1598. In the Chapter **"District Gorukhpoor"**, certain facts about Ayodhya have been given. District Gorukhpoor (now spelt as "Gorakhpur") at that time situated to the left or north of the river Ghoghra. According to survey map published in Vol-2 and printed between page 290 and 291, book titled as "Eastern India" by Mortin, we find that on the western and southern side, the boundary wall is depicted by the rivers Gharghara/Ghaghara and Saryu; and on the northern and western side, the entire area termed as Domain of Nawab Vazir of Oudh. About river Ghaghra, description is on page 297 as under :

> ***"Ghaghra. -*** *The accounts of the great river, which passes the ancient city of Ayodhya, that I have received, differ not only very much from the maps of Danville and Rennell, but disagree very much among themselves. The confusion is increased to the most perplexing degree by very different names being not only given to different parts of the same river ; but even the very same portion by different people and tribes is called by different names. Finally the native maps, that I have received of the country; through which the remote branches of this river flow, are more imperfect than those of the country either to*

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the east or west, so that what I have to advance on the subject is liable to great doubt ; but as the information, if true is curious, I think, that until more accurate information is obtained, it should not be neglected.

At the city of Ayodhya this great river among the Hindus is usually called Sarayu (Soorjew, Rennell), and this name is in use in their sacred language; but by the Muhammedans it is called Ghaghra, from the Sangskrita word Gharghara. This name Mr. Gladwin (Ayeen Akbery) wrote sometimes Gehgher, sometimes Goghar; and Major Rennell writes it Gogra. The mountaineers from the east side of this river assure me, that neither name is known on the hills, and that the Sarayu celebrated in their legends is formed by the junction of the Bheri river, which I take to be the Soorjew of Major Rennell, with the Karanali Salasu, or Sanbhadrik, which is no doubt the Gogra of that eminent geographer, as the remarkable fountains emitting flame at Dulubasandra are situated near its bank. The inhabitants of the low country also in general agree with Major Rennell, in calling the eastern branch the Sarayu, and the western the Ghaghra, but the western branch which they mean, is quite different from that on which Dulubasandra is situated, and at any rate its principal branch on the mountains is the Kalinadi. Both these authorities therefore, that is, the mountaineers east from the river, and the people of the low country agree, that a great river coming from the west, and named the Ghaghra, unites with the Sarayu, coming from the east, and that this latter among the Hindus is considered as the principal river, and communicates its name to the united stream while the Muhammedans adopt

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the opposite opinion, and continue the name Ghaghra to the river at Ayodhya. ***A learned and intelligent Brahman, however, Hariballabh of Kuman, from the mountains on the west side of the river, and perfectly acquainted both with the country and the legends, says, that the names Sarayu and Ghaghra are applicable to the same river, through the whole length of its course.*** *That it rises by two petty sources in the Pergunahs of Karuvirpoor and Danapoor, on the hills north form Almorha ; but far removed from the snowy peaks of Emodus. These two torrents uniting at Bagheswar form the Sarayu, which continues to run east, receiving the Panar a small channel producing gold, and the Ramagangga of considerable size. Some way east from the junction of the latter, the Sarayu receives a river much larger than itself, which rises from the perennial snows of Emodus, and is called the Kalinadi. The united stream is the Sarayu, or Gharghara, and passes south-westerly towards the plains, nor does my informant know more of its course ; but, that it passes by Ayodhya to join the Ganges at Dadri,* ***he has learned from legend****.*

The account of the most intelligent boatmen that I could procure at Ayodhya, is as follows. *The boats which load timber, can proceed no higher up the Ghaghra than Mundiya ghat, which is in the Bareli district, about 18 coss, or 27 miles, road measure, from Pilibhit. The channel is there very wide, but the stream is not large, and is not above two cubits deep. The territory of Gorkha commences about seven or eight coss from Mundiya, at a large forest named Langsar, from which much timber comes. About twelve coss below Mundiya the Ghaghra receives from the*

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mountains a branch called Neaula, down which much timber comes from the territory subject to Gorkha. Twelve coss lower down, it receives the Kauriya, and immediately below its mouth a third named the Geruya enters. Timber is brought down both these rivers, and on the latter, in the dominions of Gorkha, are two great forest, Amba and Palamu. I suspect, that the Kauriyar and Geruya, and perhaps even the Neaula are only different mouths of the same river, which in the mountains is called Setigangga, or the white river. ***The Hindus have given the preference to the Sarayu,*** *which is said to be the smallest, nor is the larger branch any where fordable below the mouth of the Bhakosa.* ***The united channel begins to form the boundary between this district and the territories of the Nawab Vazir, just at the city of Ayodhya, where its channel and stream seem fully larger than that of the Ganges at Chunar. For about 18 miles below Ayodhya its width is from one to three miles, as it surrounds two very large islands, the property of the upper of which is disputed by the landholders of the two governments; but the lower is the undisputed property of the Muhammedan prince.*** *About ten miles above where the Ghaghra comes to be the boundary, it sends off a channel merely called the Sota, or branch, which runs parallel to the main river for above six miles, forming for more than four the boundary between the two governments, when it joins the Teri river.* ***I crossed this branch on the 11th of December,*** *where it was about a quarter of a mile wide, and perhaps a fourth of the channel might be covered with water knee deep, but nearly stagnant.*

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The Teri comes to the boundary of this district, about 14 miles from where it receives the above-mentioned branch of the Ghaghra, and, at the boundary receives from the north-west a marshy channel called the Nawara jhil, which forms the boundary for about four miles. The united channel called Teri is inconsiderable, and winds much, partly along the boundary, and partly on both sides of it, until about four miles from where it receives the branch of the Ghaghra called Sota. It there joins with a similar branch of that river called Bhagala, which for some way serves as the boundary. The united channel is called the Teri." (pages 297-300)

1599. Dealing with historical and topographical part of District Gorakhpur, on page 325 and onwards it says :

"This district forms a considerable part of the territory, which in ancient legend is called Maha Kosala. ..... This very extensive and fertile region has always been considered as the proper patrimony of the family of the sun, as it is called, which for a very long period governed large portions of India and at times produced its paramount lords." (page 325)

1600. The study which was conducted by Martin, the source of his information etc. in writing this chapter and in particular what he has observed on pages 325 to 337 can not be well understood unless we go through details of his entire discussion on the matter and, therefore, it would be necessary to reproduce the following from his book :

"*The history of the Hindus has been thrown into such confusion by* ***an attempt to reconcile the actual succession of their princes with a modern system of***

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astronomy, *as most ably explained by Mr. Bentley in the eighth volume of the Asiatic Researches, that the utmost difficulty attends all attempts to reconcile with any thing like reason* ***such ancient accounts as have been preserved in the monstrous and modern legends called the Purans.*** *The difficulties attending this subject may be fully appreciated by examining the different attempts of Sri William Jones in the second volume, of Major Wilford in the fifth volume, and of Mr. Bentley in the eighth volume of the Asiatic Researches, although in the latter the real source of the difficulties seems to have been fully discovered. Still, however, many great difficulties exist, which these authors have not fully explained, and of which the two first do not seem to have been fully aware.* ***Sir William Jones seems, without examination, to have adopted the account given of the Indian dynasties by Radhakanta, in his Puranartha-prakasa,*** *as the doctrine generally received by the Hindus on the subject, and alleges (Asiatic Researches, vol. 2, page 26),* ***that it begins with an absurdity so monstrous as to overthrow the whole system, he then endeavours to turn the whole of the early pedigree into an allegory, denying altogether the existence of many princes, because their names signify light, sky, sun, moon and so forth****; although he might have considered, that such names are sometimes used for men among ourselves, and among the present Hindus are very common. The grand objection to the system of Radhakanta is, however, his having adopted as a maxim, that there was always a supreme king of each of the families of the sun and moon, so that India, according to*

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him, was governed like Lacedaemon, by two chiefs of two families possessing equal power ; and that each dynasty contained exactly the same number of generations in the respective periods, into which the history is divided. This is a fable like many others, usually called opinions universally received among the Hindus, which Mr. Bantley (Asiatic Researches, vol. 8, page 244) so justly exposes. But the receiving it, as an universally acknowledged opinion, led Sir William Jones, from the imperfect lists composed by Radhakanta, to doubt whether any such personages as the Indian princes of the families of the sun and moon existed (Asiatic Researches, vol. 2, page 131). ***Had Sir Willam consulted the various genealogies contained in the different Purans, he would have found, that this opinion, by which he was staggered, rested entirely on the imagination of Radhakanta, or of some person from whom he borrowed it****, and could not be supported by the remains of history in the Purans.* ***So far as I can learn from Pandits, that I have employed to extract the Hindu genealogies from their books,*** *there was only one paramount king admitted at a time, and in general the succession to this power was totally irregular, not only between the tow great families, but among the branches of the same family, and, as I have mentioned in the account of Shahabad, was as irregular as the succession in Ireland during the government of the families descended of Heber and Heremon. It would even appear, that the succession to the supremacy was not strictly confined to the two families of the sun and moon, as Pandu and his successors were in fact descended of Vayasa ; and*

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also that many intervals occurred, in which no one king possessed paramount authority.

The table given by Major Wilfort is highly valuable ; although, when he says, that it is extracted from the Vishnu Puran, the Bhagawat, and other Puranas, without the least alteration whatever, we are only to understand, that Major Wilford made no alteration on the table, after it was extracted by his assistants from the Hindu records ; for the genealogies contained in the different books, to which he alludes, differ so much from each other, that no one table could be constructed from them without making numerous alterations. This interesting table is however exceedingly valuable in showing how nearly these genealogies, by taking the human age at a just valuation may be reconciled with the real eras pointed out by Mr. Bentley, on astronomical data. It must however be evident, that both systems are liable to some doubt. In the first place there is a very great difficulty in establishing any calculation upon the number of generations contained in the Hindu genealogies, owing to the very great carelessness, with which they have been constructed. Besides numerous transpositions it would seem, that in many parts, what in one Genealogy is detailed as a succession of several generations, is given in another genealogy as a list of brothers, so that by the former process the length of a dynasty is monstrously enlarged. Again in some genealogies a whole dynasty is represented by a single name, which occasions the most absurd anachronisms to be commonly received as canonical, by such as have studied only a part of these genealogies. These

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anachronisms are so distressing, that some learned persons have considered as quite vain the attempt of founding any thing like a regular chronology on the Hindu genealogies. I hope however, that this judgement is too harsh, and that a careful perusal of all the remains may lead to something as satisfactory as chronologies of equal antiquity usually admit. ***So far as I can at present judge, for I have not yet procured any thing like a full copy of the genealogies, the eras, even as curtailed by Major Wilford and Mr. Bentley, would require to be considerably reduced. I consider it necessary to reduce the former from the numerous interpolations of brothers and collaterals in place of sons.*** *The argument of Mr. Bentley goes only to show the manner, in which some former systems of chronology, detailed in the Graha Mangjari, have been deformed by the present system of Varaha Mihira ;* ***but these ancient systems were also mere astronomical fictions, and, although their application to history was not attended with such monstrous difficulties, as the present system, there is nothing in its nature to show, that it is in any degree connected with what actually happened.*** *One great difficulty occurs relative to the deluge, which Mr. Bentley and Major Wilford agree in placing immediately before the government of the family of the Sun in Kosala commenced, so that they consider the government of Swayambhuwa and his successors, kings of Vithora (Betoor Rennell) near Kanpoor, as in the antediluvian age,* ***while Swayambhuwa they call Adam, and Vaiwaswata father of the first king of Kosala, they call Noah. One of the legends, on which this opinion***

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rests has been given by Sir William Jones (Asiatic Researches, vol.2, page 117); but this, as explained by the Pandits, whom I have consulted, *is not reconcilable with the opinion above mentioned; and* ***these Brahmans insist, that no general deluge (Pralaya) has taken place since the time of Swayambhuwa.*** *The mistake consists in supposing, that Satyabrata (Satjavrata) and Vaiwaswata are the same person, and that whatever is related of one, may be attributed to the era of the other. But the Brahmans say, that these two personages, although the same soul in different transmigrations, lived at very remote periods, Satyavrata having been saved in an ark by God, when the deluge happened, while in his subsequent birth as Vaiwaswata, after an interval of many ages, he became a law-giver (Manu or Mamu), and founded the city of Ayodhya. It must be farther observed, that although the legend concerning the escape of Satyabrata or Satyarupa has a strong resemblance to the history of Noah, he is far from being considered by the Hindus as being like Noah the second father of the human race ; but he is said to have died without children, and was born again in the family of the Sun ; while Swayambhuwa was created to people the world after the deluge ; and from him were descended the first kings of India, who governed at Vithora, and who were perhaps natives,* ***although it is possible, that they may have been Assyrians. In place therefore of allowing the family of the Sun to have governed from the time of the deluge, and that the Treta yug or silver age extended to that event, we must, I imagine, allow the golden age or Satya yug, and the government of the descendants of***

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Swayambhuwa to be subsequent to that period, and of course must bring the time, when the kingdom of Kosala was founded, much latter than Major Wilford and Mr. Bentley do. *Could we depend on the accuracy of the numbers, as Sir William Jones observes, there is circumstance mentioned by Abul Fazil, that could throw much light on this subject. It would appear that,* ***the Brahmans, whom that person consulted, had not always applied to the history of their princes the astronomical fictions of Varaha Mihira, and they placed the birth of Budha, I presume the grandson of Atri, and son in law of Vaiwaswata first king of Ayodhya, in the year 1366 before the birth of Christ (Asiatic Researches vol. 2.p.125).*** *This entirely coincides with the opinion I have above stated, and places the commencement of the historical silver age, commencing with Budha, in the 1366th year before Christ, in place of the 2204th as given by Mr. Bentley from the astronomical systems of the Graha Mungjari. Such a reduction on the era of the silver age, and foundation of the kingdom of Kosala I am far from thinking absolutely necessary; but on the whole I am inclined to believe, that it approaches near the truth than the systems of Major Wilford or Mr. Bentley, although I must confess, as I have mentioned, that the coincidence of the two systems, founded on principles totally different, affords a strong presumption in favour of the result.*

In Hindu legend the appearance of certain persons named Brahmadikas created by God, and commonly called the progenitors of every living thing, forms a remarkable era, ***but the accounts concerning these***

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personages are totally dissonant, *as may be seen in the account of Major Wilford (Asiatic Researches, vol. 5, page 246). One authority makes the three sons of Swayambhuwa to have been the Brahmadikas, placing them thus at the commencement of the golden, and not at the beginning of the silver age; and* ***I have already stated my opinion, that these were the aboriginal inhabitants or earliest conquerors of India,*** *but other authority give another class totally different, and always containing Marichi, Atri, Anggirasa, Pulastya, Pulaha, Kritu, and Vasishtha, while others add Daksha, Bhrigu and Narada. The descendants of these personages governed India both in spirituals and temporals from the commencement of the silver age until about the time when the Greeks made their appearance, and numerous chiefs still claim to be of their family. They are all called Brahmans, either as being created by the God of that name, or perhaps more probably as being persons more intelligent than those who preceded them; far from being all of the sacred order, the greater part of their descendants were princes, statesmen and soldiers, and one in particular is stated to have been a merchant (Vaisya).*

We have seen that Swayambhuwa, the founder of the kingdom of Vithora, by the whole of what is called the golden age (Satya yug), preceded Vaiwaswata, the founder of the kingdom of Kosala, and the latter was the great grandson of Marichi, while Budha, who founded the adjacent kingdom of Kuru, and reigned at Pratisthan, opposite to Prayag, about the same time with Vaiwaswata, whose daughter he married, was the grandson of Atri. ***I look upon these Brahmadikas, therefore, as the leaders***

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of a colony, which at the end of the golden age, settled in India, and assumed the name of Brahmans , as being farther advanced in the arts than the descendants of Swaymbhuwa, its more early princes. I look upon it also as probable, that these personages came from western Asia, introducing with them the Sangskrita language, generally admitted to be radically the same with the Persian dialect, while the languages spoken among all the rude tribes that inhabit the fastnesses of India, and which are probably remains of its ancient tongue, have no sort of analogy to the languages of the west. *In the history of Kasmira, preserved by Abul Fazil, Kasyap, who was the son of Marichi, is said to have introduced the Brahmans (that is, a colony of civilized men) into that country, and the traditions of Behar state, that he there founded a city, of which I was shown some of the remains. These no doubt were of much later date than the time of Kasyap, although he may have been the founder of the city to which they once belonged.* ***One of the sons of Kasyap, named Viwaswa, is supposed to be now the deity presiding over the sun, owing probably to his having introduced from Persia the worship of that luminary, and, from flattery, his descendants were usually called the family of the sun (Suryabangsa).*** *His son Vaiwaswata, who, in a former transmigration, had been Satyabrata (perhaps Noah), founded the kingdom of Kosala, long one of the most powerful in India, and* ***built the city of Kosalapoori, or Ayodhya****.*

If I am right in supposing that Budha was born about 1366 years before Christ, he being the son-in-laws of

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Vaiwaswata, it is probable that this prince may have been born about the year 1399, and we may allow him to have been 33 years old when he founded Ayodhya, and the kingdom of Kosala. In the genealogies may be found several different lists of his successors, who are commonly supposed by Pandits to have succeeded each other from father to son, by right of primogeniture, nor did one prince fail to leave his kingdom to his eldest son for many generations (Asiatic Researches, vol. 2, p. 130). This, however, seems to be a mere supposition taken for granted, because in some of the genealogies the names follow each other without any remark, for the direct line failed in Ambarisha, and went to the descendants of his brother; and Bharata usurped the government for 14 years from his elder brother Rama. The genealogies differ so much in the names, number of persons, and order of succession, that without a very careful examination of all that is to be found concerning each person, little reliance can be placed on the particulars, although it is evident, that these genealogies have been taken from some common source; and I have no doubt, that a careful examination would enable the intelligent antiquary to remove many difficulties and contradictions, that now appear.

Far from the princes of Ayodhya having enjoyed an uninterrupted succession of supreme power for numerous ages, and from father to son, very few of them would appear to have been Chhatradharis, or lords paramount of India; and there is even reason to suspect, that the family at different periods was subject to great disasters, and repeatedly lost the dominion of even Kosala. ***The learned***

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of Ayodhya informed the Pandit of the Mission, that their city had been three times destroyed, *and that on these occasions all the people were carried to heaven with their Rajas Harischandra, Ambarisha, and Rama. The successors of these princes again collected people to occupy the city.* ***The Pandits, whom I have employed, have not been able to trace the passages in which the two first catastrophes are mentioned; but the third is known to every one****. Several traditions, however, that I have heard, confirm the opinion of Harischandra having been expelled from Ayodhya, as he is said to have removed the seat of government to Ellora, while his son Rohitaswa lived at Rautas, and his grandson founded Champa, at Bhagulpoor in Bengal. That Ambarisha also met with some misfortune is probable; as in the Sri Bhagwat, he is not succeeded by his son, and the line is carried on by Sindhudwipa, his brother, while in the Bangsalata, his immediate successor is Ritaparna, who, according to the Sri Bhagwat was the grandson of Sindhudwipa, and* ***until the time of Ritaparna it is probable that the family did not recover from its misfortune. The severe treatment of his wife Sita, is said to have induced that princes to excite her sons to rebel against their father Rama, and this, more probably than his piety, sent him and his adherents to heaven.*** *Ayodhya, however, was rebuilt by the son Kusha, who left a numerous offspring, that held the until the reign of Vrihadbala. From Vaiwaswata to Rama inclusive, the Sri Bhagwat reckons 55 princes, the Mahabharat reckons 69, and the Bangsalata 78; but the Ramayana of Valmika reckons only 36. This being it is*

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supposed by far the most ancient account, is probably the most correct, and we may suppose it to be free from the interpolations of collateral successions and dynasties introduced by later writers, and to be the actual succession of the kings of Ayodhya; ***unfortunately Valmiki gives no list of Rama's successors and the Purans, as usual, are filled with numerous discordance****. Vrihadbala, killed by Abhimanaya in the great war at the commencement of the iron age, was one of the most remarkable successors of Rama. According to the Sri Bhagwat, he was the 27th descent from Rama. In the Mahabharat he is the 33rd, and in the Bangsalata he is the 25th. As, owing to similar causes these numbers are probably as much increased as the predecessors of Rama, the number of princes, taking the scale of the Sri Bhagwat reduced by that of Valmiki as a guide, from Rama to Vrihadbala may have been 17, or from the commencement of the silver to the commencement of the iron age, 53 princes, which, they were also generations of 3 to a century, would give a duration of 1766 years. There is no impossibility in admitting such a duration;* ***but I think, as I have said, that in all probability it must be reduced.*** *Major Wilford (table in 5th Vol. of Asiatic Researches) has found in the Purans. 59 princes from the time of Rama to that of Chandragupta, contemporary nearly with Alexander. Reducing these by the scale of Rama's predecessors, we shall have 31 princes, which added to Rama and his predecessors, will give in all 67 princess, if these commenced their government 1366 years before Christ and ended it 300 years before this event, there will be on an average about*

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15 ½ years for each prince which can only be understood of reigns, and not of generations. ***On these grounds, Vaiwaswata being placed in the year before Christ, 1366, Rama will be placed in 775, and Vrihadbala, or the commencement of the historical iron age in the year 512. But, if the antiquary prefers with Major Wilford to consider these 67 as generations, we must double the length of each period; that is, we must say, that Ayodhya was founded 2732 years before Christ, that Rama flourished 1550 years before that event, and that Vrihadbala was killed in the 1024****.*

It must be observed, that in the Purans, little amplification seems to have been made in the family of the moon, as from Budha, one generation after Vaiwaswata to Krishna, contemporary with Vrihadbala, the Sri Bhagwat reckons 55 persons, a difference of only two persons from that which is given by the correction that is required in the list of the family of the sun, by comparing Valmiki with the Sri Bhagwat; and this coincidence, I consider as in a great measure proving, that the nature of the correction which I have adopted is not subject to material error, so far as relates to the number of successions; but it decides nothing as to the points of whether we are to consider these as reigns or as generations.

The people of Ayodhya imagine, that after the death of Vrihadbala, their city was deserted, and continued so until the time of Vikrama of Ujjain, who came in search of the holy city, erected a fort called Ramgar, *cut down the forests by which the ruins were covered, and* ***erected 360 temples*** *on the places sanctified*

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by the extraordinary actions of Rama, of his wife Sita, of his brother Lakshman, and of his General Mahavira. The only foundation probably for such a tradition is, that Vikrama may have erected some temples, and that in the Mahabharata the genealogy of the family it continued no lower than the time of Vrihadbala, as being foreign to the subject of the book; but in the Sri Bhagwat Vrihadbala is succeeded by 29 princes, and in the Bangsalata by 24. These, taken according to the scales of Ramas predecessors in Valmiki and the Sri Bhagwat, would give 18 princes, and this will give us 279, or 558 years, according as we call these successions reigns or generations, brining the existence of the family down to the time nearly of Alexander; but none of the latter princes rose to considerable power, and they were vassals of the Kings of Magadha. Their existence, however, throws a great doubt on the whole story concerning Vikrama.

This Vikrama is usually suppose to have been the personage from which the era called Sambat is derived, and, according to the reckoning used in Kosala, this era commences 57 years before the birth of Christ*, so that the city had been then deserted about 280 years.* ***How the places remarkable for the actions of the God could be traced after such a long interval, and amidst the forest, seems rather doubtful; and the doubt will be increased, if it supposed that they latter Vikarama, the son in law of the Emperor Bhoja, was the person who constructed the temples at Ayodhya. This I am inclined to think was probably the case, for although Rama was probably worshipped before the time of elder Vikrama, yet his***

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worship as that peculiarly distinguishing a sect of begots, seems to have been first established by Ramanuja about the time of the latter Vikrama, who may from thence be supposed peculiarly eager to discover the traces of the deity of his own sect. *Unfortunately if these temples ever existed, not the smallest trace of them remains to enable us to judge of the period when they were built; and* ***the destruction is very generally attributed by the Hindus to the furious zeal of Aurangzebe, to whom also is imputed the overthrow of the temples in Benares and Mathura. What may have been the case in the two latter, I shall not now take upon myself to say, but with respect to Ayodhya the tradition seems very ill founded. The begot by whom the temples were destroyed is said to have erected mosques on the situations of the most remarkable temples; but the mosque at Ayodhya, which by far the most entire, and which has every appearance of being the most modern, is ascertained by an inscription on its walls (of which a copy is given) to have been built by Babur****, five generations before Aurangzebe. This renders the whole story of Vikrama exceedingly doubtful, specially as what are said to be the ruins of his fort, do not in any essential degree differ from those said to have belong to the ancient city, that is consist entirely of irregular heaps of broken bricks, covered with soil, and remarkably productive of tobacco;* ***and, from its name, Ramgar, I am inclined to suppose that is was a part of the building actually erected by Rama****.*

Although I did not fail to visit the place, and

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whatever the Hindus reckon remarkable, ***I did not choose to take any measurements, so as to draw with any accuracy of plan of the space which the ruins occupy, as the doing so might have given offence to government of the Nawab Vazir, in whose territory, separated from this district only by the river Sarayu, they are situated****.*

I may in a general manner observe, that the heaps of bricks, although much seems to have been carried away by the river, extend a great way, that is, more than a mile in length, and more than half a mile in width; and that although vast ***quantities of materials have been removed to built the Muhammedan Ayodhya or Fyzabad, yet the ruins in many parts retain a very considerable elevation; nor is there any reason to doubt, that the structure to which they belong, has been very great; when we consider, that it has been ruined for above 2000 years.*** *None of the Hindu buildings at present existing are in the least remarkable either for size or architecture, and they are all not only evidently, but avowedly, quite modern,* ***that is, they have been all erected since the reign of Aurangzebe,*** *or most of them even within the memory of man.* ***Although they are built on what I have no doubt are the ruins of the palace that was occupied by the princes of the family of the sun, their being built on the spots, where the events which they are intended to celebrate, actually happened, would have been extremely doubtful, even had the elder Vikrama built temples on the various places which had been destroyed by Aurangzebe, so that the spots selected by Vikrama might be known by tradition;*** *but the whole of that story being*

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liable to strong suspicion, we may consider the present appropriation of names to different places as no better founded than the miracles, with several of them are said to commemorate.

It is said that in digging for bricks many images have been discover, *but the few which I was able to trace were too much broken to ascertain what they were meant to represent, except one at the convent (Akhara) of Guptar, where Lakshman supposed to have disappeared.* ***This represents a man and women carved on one stone. The latter carries somewhat on her head, and neither has any resemblance to what I have before seen.*** *The only thing except these two figures and the bricks, that could with probability be traced to the ancient city,* ***are some pillars in the mosques built by Babur. These are of black stone, and of an order which I have seen nowhere else, and which will be understood from the accompanying drawing. That they have been taken from a Hindu building, is evident, from the traces of images being observable on some of their bases; although the images have been cut off to satisfy the conscience of the begot. It is possible that these pillars have belonged to a temple built by Vikrama;*** *but I think the existence of such temples doubtful; and, if they did not exist,* ***it is probable that the pillars were taken from the ruins of the palace.*** *They are only 6 feet high. There is a Shiva Lingga called Nageshwar, which is called on by all the pilgrims to witness their faith, when they have performed the usual ceremonies; and this supposed to be the oldest image of the place. As Lakshman the brother of Rama is supposed to*

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have founded one of the orders of Yogis, there is a probability that the great God was a principal object of worship at the court of his brother, and this image may actually have then existed, as from its form, if kept from the weather, ***it may have lasted from the first origin of things;*** *but it leads to no conclusions, and may be of very modern date. Could we believe what is said of the chief objects of worship now at the place, they would be of singular curiosity.* ***They are images said to the present Rama, Lakshman, and Sita, made by the first personage,*** *and thrown by him into the Sarayu, when he was about to proceed on an expedition to the Indus.* ***In modern times they were divulged to a fortunate merchant by the ordinary course of dreaming. He drew them from the river, and built temple for them, which was destroyed by Aurangzebe, but the images were allowed to escape, and Ahilya, the widow of Holkar, lately built for them a small temple, which is only opened at peculiar times, and only to the faithful.*** *Sitting aside the dream, the escape of the images from Aurangzebe, as they are made of gold, renders the story very problematical. They are about a span high, and were so covered with flowers, and shown in so dark a place,* ***that my people who went to worship could form no opinion either as to their shape or materials****.*

I procured a good many old copper coins, and many were said to be of the Hindu Kings; but on examination, except two, all appear to contain Arabic inscriptions, but in very old characters, and I had similar ones at Agra. ***One said to have been found in the Sarayu retains a defaced***

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figure in the human form; and another the figure of a lion. These are probably Hindu coins, but they contain no legend, nor anything to indicate that they belonged to princes of the family of the sun.

The person who finally expelled the family of the sun from Ayodhya, is not stated by tradition, nor, so far as I can learn, in legend, but the learned of this district have heard of the dominion of the Cheros, although this impure tribe has here left no monuments of its power, the place being far removed from the seat of government." (pages 325-337)

1601. What is apparent from the above report of Martin is that he was the first person to tell us about inscriptions on the wall of the disputed building to say that it was built by Babar. We have also noticed that Buchanan must have visited the area between 1807 to 1814, i.e. after about 280 years (if the disputed building was constructed by Babar in 1528 AD). Martin however, has observed that the building appears to be most modern. He also found that locally the people said that after destructing a temple, the Mosque was constructed by Aurangzeb. It is difficult to believe that till 1807 there was no Hindu person capable of reading and writing Persian or Arabic, as the case may be, to find out what was written in the said inscriptions in the Mosque and to tell others that the disputed building was actually constructed by Babar. Buchanan also does not appear to have actually visited the disputed building in order to collect the details as is evident from the next para that he did not do so (collect measurement) for the reason that it might have offended the Government of Nawab Vazir. We may notice hereat that upto 1814 and even thereafter, the entire area of

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Avadh was within the sovereignty of Nawab Vazir of Lucknow though for some part of defence etc. Nawab Vazir has entered into a treaty with East India Company in 1801 but only the area which was in the territory of Banaras was within the authority of East India Company and rest of the part, particularly Avadh, was not within the reigning territory of East India Company. The text of the alleged inscriptions, the number of inscriptions etc. are not mentioned in the report. The language, however, shows that there was only one inscription which could be seen by Buchanan. The text of the inscription, as existed when Buchanan visited Ayodhya between 1807 to 1814, has not been placed before us in an authentic manner though plaintiffs (Suit-5) has sought to rely on a text of the inscription which he claims to have collected from British Museum but the same having not been proved in accordance with Evidence Act, we find it difficult to place any reliance thereon. Even if we place reliance thereon, nothing helps us to form an opinion that the building in dispute was actually constructed in 1528 by Mir Baqi under the command of Babar.

1602. The affidavit dated 17th December, 1999 was filed by Sri Deoki Nandan Agarwala plaintiff no.3 (Suit-5) where in para 3, 4 and 5 he said:

> *"3. That the English documents written in hand script prevalent in the past and Persian/Arabic and Nustalik annexures thereto were obtained by Vishwa Hindu Parishad, New Delhi through the Vishwa Hindu Parishad (U.K.) during the course of negotiations for resolving the tangle relating to the Sri Rama Janma Bhumi, by mutual dialogue through the mediation of the then Prime Minister of India in the year 1992, from the British Library where*

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the original manuscript of the document is lodged. The original leter from the General Secretary of the VHP U.K. Dated 23 Sept. 1992 to the VHP New Delhi is also being filed with this affidavit.

4. That the documents obtained from the British Library U.K. are not available anywhere else and appear to be unpublished. The originals cannot be moved from the Library and cannot therefore be produced. Their copies supplied by the Library are thus admissible in evidence.

5. That the documents in English are in old style hand written script of the early nineteenth century, with which I am well acquainted. I have deciphered them and made a typescript of the same, which is also being filed. I say that the type script of the handwritten documents in English is a correct copy of the same."

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1603. The letter dated 23rd September, 1992 referred to in para 3 of the aforesaid affidavit appears to have been sent by one Sri Kishor Ruparelia- Gen. Sec. 48 Wharfedale Gardens, Thornton Heath, Surrey UK addressed to Sri Jashwant Rai Gupta, Vishwa Hindu Parishad, Sankat Mochan Ashram, New Delhi. The relevant extract thereof is as under:

"I am sending herewith photocopies, obtained from the British Library, of the following documents kept under Ref MSS. EUR. E73 and filed as records by Dr Buchanan

1. Pages 1 & 2, written by Dr. Buchanan, heading: Translation Gorakhpur Inscript No. 1

2. Pages 3 & 4, a letter written by Dr Buchanan

3. Page 5, a Sanskrit inscription – this does not seem to relate to Ayodhya, but I am sending this because the page is part of continuation

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4. Page 6, heading: Inscription on a mosque at Ayodhya Gorakhpur No.1.

5. Page 7, this page seems to contain Persian and Arabic writing but no heading or description i.e. om English written on the page.

1604. This letter is paper No.189C2/3. Paper No.189C2/4-5 appears to be translation of some Persian or Arabic words by somebody at Gorakhpur. In respect to the period in Paper no.189C2/4-5, the following extract refers to AH935.

"N.B. The words بود خیر باقی *signifying "There is lasting charity" or "good works are lasting" also mean "the charity of Baqee" and form an anagram of the year of the erection viz : 935."*

1605. Thereafter paper no.189C2/8-9 contains the Persian or Arabic text to which we are not clear as to whether it is in respect to the inscriptions said to be fixed on the building in dispute or else.

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(Caligraphy page-1)

صاحب قران میرتیمور ابن میران شاہ ایں سلطان محمد شاہ ابن سلطان ابو سعید شاہ ابن عمرشیخ شاہ ابن بابر بادشاہ ابن ہمایون بادشاہ ابن اکبر بادشاہ ابن جہانگیربادشاہ ابن شاہ جہان بادشاہ ابن ابو المظفر محی الدین عالم کبر بادشاہ غازی

(Translation not available)

بسم اللہ الرحمن الرحیم

اشْهَدُ انْ لاَّ اِلٰهَ اِلاَّ اللّٰهُ وَ اَشْهَدُ اَنَّ مُحَمَّدً اعَبْدُه وَرَسُولُه

(ربنل اللہ ہو بخط عبد ضءیف محمد فاتح)

(Transliteration)

Bismillahir-Rahmanir-Rahim

Ašhadu an la ilaha ill lallah, wa ašhadu anna

Muhammadun Aabduhu wa rasuluhu.

(Rab-un-Allahu Bakkhittin Abdezaif Mohammad Fateh)

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(English Translation)

In the name of Allah, the most Gracious, and the Most Merciful.

I bear witness that there is no God except Allah, and I bear witness that Muhammad is Allah's devotee and His Messenger (Prophet)

(Rab-un-Allahu Bakkhittin Abdezaif Mohammad Fateh)

(Name of the Calligrapher)

ازقدیمان و وافغان ایں احوال چنان بدریافت رسید پیشترازینہ وبادشاہی بود کہ اورسیف خان عالی مسند میکقندوزیراوردختری بود کہ باموسی عاشقان نامزدکردہ بوند بعد ازچندی وزیراردارالنفا یدارلبقا رحلت کرد بادشاہ برای ضبط کروں کالابی خانہ وزیرطلاقی و پہرہ فرستکہ بموبوقت موسی عاشقان را خیال کذشت را دنیا بدست فرموند کہ پر چہ نقد و جنس و دخانہ است او را ہمہ کسان غار تکردہ ببرندبفرمودہ ہمیں مردمان کردند بعد ازغارت برون دریافت نمودند کہ حالا چیزی با قسبت یانہ ملازمان عرض کرند کہ ازقسم غلہ چیزی باقیست فرمودند کہ اورا ہم بغارت برندہیں فرمودند را لحال کدام خیر با قیست مردمان عرض نمودند یک پرچہ بلاس یعنی ٹاہٹہ ا یزان اسبان و بہ میخوردند با قیست فرمودند کہ اوبکار ما خواہد اندلیس اورا بیادر دہ اردرمیان دریں در کالا وا ختہ دردیشی اختیا کردند نیداراسہ لوہای بودند پوشیدہ اوازہ در دیشے و معجزہ را نشین درخدمت خضرت حاضرشدند حضرت حال بار را پریشان ملاحظہ -----خبری شیرنی خوارنیں فرمدند کہ بودبادشاہ خواہی شند بابر بر خواشتہ تسلیم کعبہ روانہ نشدند باد حضرت فرمودند کہ من و را بجا باعث ہندواں کہ نافوس پے نوارند جرایم وجبکہ بوبابر شاہ فتوی و را یجا نسندی بناخواہی کر و بعد ازخند فربابر بر تخت شاہی رسید بابر نام شاہ تندید و فرمودہ حضرت رفراموش کعند موسی عاشقان ازرا شخص را فرسا کہ بابر و ہانندبہ الوقت حکم بابر شاہ بر سوبہ دار رشید و درا الوقت میر نقاالله خان صوبہ بود ند او نشان ایں مسجد را بنا نمودند

(Translation not available)

(Calligraphy page-2)

بفرمودۂ شاہ بابر کہ عدلش

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بنایست تأ کاخ گردوں مُلاقی
بنا کرد ایں مُہبط قُدسیاں
امیر سعادت نشاں میر باقی
بود خیر باقی سال بنایش
عیاں شد کہ گفتم بود خیر باقی

(Translation not available)

لآ اِلٰہَ اِلاّ اللّٰہُ مُحَمَّدٌ رَسُوْلُ اللّٰہِ
بسم اللہ الرحمن الرحیم

قُلْ ھُوَ اللّٰہُ أحَدٌ ۔١۔ اللّٰہُ الصَّمَدُ ۔٢
لَمْ یَلِدْ وَلَمْ یُولَدْ ۔٣۔ وَلَمْ یَکُن لَّہُ کُفُوًا أحَدٌ ۔٤

Transliteration

La ilaha illa-llah, Muhammadu-rasulu-llah

Bismillahir-Rahmanir-Rahim

Qul huwa Allahu ahad *(1)*

Allahus-samad *(2)*

Lam yalid walam yulad *(3)*

Walam yakun lahu kufuwan ahad *(4)*

(Englidh Translation)

There is no God except the Allah, Muhammad is the devotee and Prophet of Allah.

In the name of God, Most Gracious, Most Merciful

Say: He is God, the One and Only; *(1)*

God, the Eternal, Absolute; *(2)*

He does not beget, nor is He begotten; *(3)*

And there is none comparable to Him. *(4)*

(Surah 112: Al-Ikhlas)

1606. The English translation (interpretation) of the aforesaid verses (though incomplete) has been given in paper no. 189C2/10-11, which has also been checked by the Court since one of us fortunately is conversant in Persian and Urdu. It reads as under:

"By order of King Babur whose Justice is a building reaching to the mansions of heaven, this alighting place of the angels was erected by Meer Baqee a nobleman

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impressed with the seal of happiness.

There is lasting charity in the year of its construction what declares is manifest "that good works are lasting"

N.B. The words بود خیر باقی *(Bavad Khair Baqee) signifying "There is lasting charity" or "good works are lasting" also mean "the charity of Baqee" and form an anagram of the year of the erection viz : 935.*

From the Tughra

There is no God but God, and Moohammad is the Prophet of God -

Say, O'Moohammad, that God is one, that God is holy, unbegetting and unbegotten, and that he hath no equal.

(Rab-un-Allahu Bakkhittin Abdezaif Mohammad Fateh)

(Name of the Calligrapher)

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2d

Nustalick

The victorious lord, Moohey ood Deen, Aulumgir, Badshah, the destroyer of Infidels; the son of Shah Juhan; the son of Juhangeer Shah; the son of Ukbar Shah; the son of Humayoon Shah; the son of Babur Shah; the son of OOmar Sheikh Shah; the son of Soolatan Uboo Saeed; the son of Sooltan Moohummad Shah; the son of Meeran Shah; the son of the Shahib i Qiran Meer Tymoor-

N.B. Sahib i qiran is applied to a Prince who has reigned above 30 years.

From the Tughra

In the name of God, most merciful. I testify that there is no God but God- He is one, and without equal- I also testify that Moohummad is his Servant and Prophet.

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This was engraced/ upon the propitious date of this noble erection, by this weak slave Moohummud Funa Ullah – N.B. The words in the parenthisis are not on the Insc., but understood.

Nustalick writing

We are informed by the ancients who were acquainted with the these facts that there was formerly a Prince named Tugli Khan Oimyeed throne. His Wuzeer had a daughter betrothed to Moosa Ashiquan. (Lit. The comforter of Lovers). After some time the Wuzeer departed from this dwelling of mortality to the abode of Eternity. --

The king having sent written orders for the purpose of sezing the property in the Wuzeer's house; at that moment Moosa Ashiqan was struck with the reflection that "This World is nothing". He gave orders that all the people should plunder and carry off whatever money and effects were in his house' – The people did as he directed. As soon as the plundering was over, he enquired whether anything remained. The attendants told him that there remained some grain. He directed them to carry off that also. After this he again made enquiry, if anything was yet left. The servants replied that there was only a piece of coarse canvas or Taut, upon which the horses were wont to eat their gram". "That" said he "will be of use to me". In short having taken and torn althrough the middle and threw it over his shoulders (or neck) he became a Durwish. --

Babur one of the Princes, hearing the report of his becoming a Durwish and the other circumstances, privately presented himself before his Highness. Beholding the wretched condition of Babur, he gave him some sweetmeats to eat and (addressing him) "Thou", said his Highness" shalt be King "Babur arose and having made his Salam,

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was departing. His Highness again said "I am annoyed by the Hindoos who are constantly ringing their Bells- When thou becomest King thou shalt build a Musjid at this place.

Sometime afterwards Babur mounting the royal throne was created King; but forgot His Highness's directions. Moosa Ashiqan sending a person from himself reminded him of it. Upon this the Soobadar received His Majoxty's commands--Meer Buqaoola Khan then Soobedar, and he erected this Massjid."

1607. Sri Ravi Shankar, Senior Advocate, Sri P.N.Mishra, Sri Hari Shankar Jain, Sri R.L.Verma, Advocates, learned counsels for Hindu parties sought to refer to the above documents to show that this is the extract of the report and documents of Dr. Buchanan himself and makes it very clear that the building in dispute was constructed much later what is being claimed as it contains the name of Emperor Alamgir (Aurangzab) also. As we have already said, the above documents were not proved by the concerned party and a properly obtained document from **British Library, Oriental and India Office Collections** has also not been produced. It is therefore difficult for us to place any reliance on the said documents.

1608. The worship of places by Hindus, however, has been noticed in the **History, Antiquities, Topography And Statistics of Eastern India (supra)** published in 1838. In Vol. I at page 195, Martin has observed:

"It must be observed, that the Hindus very often worship (Puja) without any temple or images. ... There are places, however, that are reckoned more holy than the house..."

1609. The long passage we have quoted from several pages of Martin's Eastern India, Vol. II above has some reason. We

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have no bias or prejudice against the agents of East India Company or the then British Government, but the manner in which they have dealt with the Indian ancient scriptures and have written down about its culture, religion, society etc. needs some deeper consideration. In fact, the history of India, which is substantially embodied in ancient religious scriptures, has been initially attempted to be penned down by the western writers after advent of East India Company. In 18th and 19th century a mass of work has been undertaken by them which has aroused anxiety and has drawn attention of the people abroad to know more about India. Before making further comments, one thing which is a matter of appreciation, we cannot forget is that whatever was written by western so called intelligentsia mainly in the two centuries as said above, at least has given a foundation or a point of commencement to others, whether in India or outside, to go for further research in the matter and endeavour to place the correct history of this sub-continent before the world at large.

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1610. The ancient scriptures in India was basically written in Sanskrit irrespective of the script. It was not a language of the common man. Therefore, virtually substantial section of the sub-continent comprising Hindustan at that time was in dark about the contents, meaning and the message derivable from those scriptures. It was confined to a particular class, i.e., Brahmans and there also a very few were learned having some deeper knowledge of those scriptures, otherwise general class was more satisfied with the superficial working knowledge sufficient for their day to day earning and survival.

1611. The East India Company after its initial few steps towards India, brought such a huge revenue to England that the

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people thereat were simply stunned and shocked to find out as to how this part of the Country could muster such a huge wealth. Another surprising aspect was that the Indian sub-continent was under the attack/invasion by outsiders for almost a thousand and more years in the past and had continuously been looted by them. Massive wealth continuously was driven off from the Country, yet when the merchant companies of Britishers in the form of East India Company visited India, in the first one and half decade i.e. upto 1613, it showed remarkable earning to their shareholders and public at large in England. This created great anxiety amongst the Britishers to know more about India. It also inspired other European Countries as we have seen that almost simultaneously the merchant ships travelled India through sea routes from the Countries like Portugal, France and England obvious. Trade from India to other Countries, i.e. Africa, Arab, China etc. had been going on since long and time immemorial as a result whereof merchants were able to garner extraordinary wealth by exporting several things like spices, sandalwood etc. from India. Besides fertile land of this Country also help in producing wealth. They also found that amongst the Hindus, age old traditions, religious faith carried down from generations to generations from time immemorial and had not got diluted despite several religious attacks, conversions, etc. All these things, which were really surprising, aroused lot of anxiety amongst the Europeans to know more about this Country.

1612. According to their concept, the oldest culture in the world was Roman and Greek and they knew nothing more than that. It was really difficult for them to believe that a much more advanced and that too more ancient culture could have existed in this part of the world for such a long time and has

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successfully faced all bad times to survive while the Roman and Greek culture has perished long back. With this idea lots of people from Europe came to India and tried to find out the source of its cultural and religious history from the written work whatever was available. Since, the work was mainly in Sanskrit, thus the written material was also available with the selected Brahmans. Several kinds of manuscripts they possessed which were collected by these western people in one or other way. They tried to find out in their own way the most authenticated and original manuscripts on the subject concerned. A language, a culture which was several thousands and more years old, it is surprising that these western intelligentsia class claim to have learnt and understood and that too achieved mastery. They dealt with the above collected material in their own way. Without making any serious comment on this aspect, suffice to mention that the spirit, the context of real intention of a culture which has developed in several thousand years is improbable, if not impossible, to be understood in such a short time. Even today those who are constantly studying and dealing with those matters, are still undergoing rigorous discussion, research and investigation to understand the correct and real intention behind the particular words, sentences, phrases and verses, as the case may be.

1613. The only thing which we really find commendable is that the zeal of the western intelligentsia to know more about the Indian ancient culture brought out the ancient literature from the confines of the Brahmans and as a result of its translation in English and other languages, the things became accessible to the entire lot so that they may also look into the matter, ponder over it so as to appreciate and understand. In fact this translation

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attracted the world people to go for more indepth research, discoveries and investigation and that is how the things started and today in 21st century we find several new and startling facts which belie a lot of settled concepts of the western writers of 18th or 19th century.

1614. The casual manner in which the long genealogy covering a very long period was found inconceivable by these writers and has been shortened at their whims and conjectures only because they could not have a complete chain is really startling. It means that if I am unable to tell the chain of my ancestors to five or seven or ten generations, that would mean that I have no such past chain of generation or it can be reduced to the extent of missing part. Non-availability does not mean non existent. No one can accept that merely because somebody could not give the detail of past generations, that would mean that he has no such ancestry. The casual and contemptuous manner in which Dr. Buchanan or Martin in the above work, i.e., **Eastern India (supra)** have dealt with the things we have quoted give a few example. If some needs a little more can be demonstrated from page 433 and onwards, some part of which we may notice hereunder :

> *"The highest science is here reckoned the theology of the Vedas, which is more studied, than would appear from the reports of the Pandit of the survey, who like other Bengalese holds this science, if such it can be called, in great contempt. The doctrines of Sangkara are chiefly followed; and the works most commonly studied are the Vedantasar, composed by a pupil of Awaitananda, a Brahman of the south, who dedicated his life to religion; the Pangchadasi, and the ten Upanishad Bhashyas of*

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Sangkara. The theologians here insist, that every word, sentence and verse in the Vedas, as they now exist, was formed by Brahma before the earth, and that Vyasa did not alter a syllable; but only arranged the original parts into four books, which previously had been comprehended in one. All mention therefore of events, that have happened since the creation, is supposed to be prophetical. Such, I believe, is the opinion, that very generally prevails among the Brahmans of the south, as well as those here; and, having been communicated to the learned in Europe, was supposed by them to imply, that the books now called the Vedas were the work of a great lawgiver named Brahma, who formed the laws of the Hindu nation, and introduced science. When it was discovered, that these works mentioned many personages, who lived very long after the commencement of the Hindu government, as the power of prophecy could not be received by any one but a Hindu, it was justly concluded, that they were not the works of the lawgiver Brahma, who in fact is a mere creature of imagination; and Mr. Pinkerton is fully justified in calling the Vedas modern forgeries, even had Mr. Colebrooke proved that they were written by Vyasa, and that Vyasa lived 12 centuries before the birth of Christ; for in comparison of the commencement of the Hindu history, before which the Vedas are alleged to have been written, even this distant period of Vyasa is but as yesterday. But that the Vedas, which now exist, were written by Vyasa the son of Parasara, or so early, seems to me completely incompatible with the mention made in them of the success, that had attended the ceremony used at the coronation of

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Janmejaya the son of Parikshita, by which he had conquered the world; for Janmejaya was grandson of Abhimanya, who was the great grandson of Vyasa the son of Parasara, and it is altogether impossible, that so remote an ancestor should live to celebrate the conquest of the world by his descendant. But besides this conquest is not likely to have been mentioned by any contemporary author; for in all probability the supreme government of India was not then vested in the spurious offspring of Vyasa, but in the house of Jarasandha. Mr. Colebrooke indeed states, that besides the descendant of Vyasa he has heard from the Brahmans of another Janmejaya son of Parikshita; but on a careful examination of the genealogies, extracted from the Purans by Manogyadatta, I can find no such person; nor can that learned Pandit recollect any such, although there are many Janmejayas, especially the son of Puru, kind of Pratishthan, and the names are so alike, that they may readily have misled the Pandits consulted by Mr. Colebrooke, speaking from recollection. If a Vyasa, therefore, was author of the present Vedas, it was not the son of Parasara, but some person, who probably lived shortly before Sangkara Acharya; and many in fact allege, that the instructor of this great doctor was named Vyasa. If so, the author, or compiler, or perhaps rather corrupter of the Vedas, lived about the ninth or tenth century of the Christian era, in the age emphatically called dark, and to judge from the account given of the Vedas by Mr. Colebrooke, the work is worthy of the age.

It is probable, however, that before this time, there existed a system of science (Veda), extending, according to

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a passage quoted by Mr. Colebrooke, not only to the four kinds of sacred knowledge, detailed in the present Vedas, but to grammar and history, the first of which in the passage alluded to is called the chief of the (Vedas) sciences, although the books now called Vedas do not treat on the subject. The historical part, there is reason to think, was valuable; but being irreconcilable with doctrines, which the author wished to establish, was totally new modelled in separate works called the Purans. Although all these go under the name of Vyasa, there is certain grounds to doubt of his having composed the whole, as it seems scarcely possible, that any one man in his senses would attempt to pass on the credulity of mankind a number of books, treating on the same subject in manners totally discordant and contradictory, as happens in these works. Many circumstances mentioned in these Purans, would show the time in which Vyasa actually lived, could any of these works be traced with certainty to him; and I suspect, that not only the historical part (Purana) of the ancient system of science, but that written by Vyasa has been new modelled in the various works now called Purans, all probably very modern, and composed by various persons."

1615. The long observations, we have just made are in the context of the fact that the Buchanan's survey relates to the earliest part of 19th century, i.e., 1807 to 1814. Aurangzeb died in 1707 after having ruled for about 50 years. Therefore, the memory of the people in respect to the incidents which took place during Aurangzeb were just 100 to 150 years old in comparison to that of Babar who was there about more than 275 years back. The people's memory is better reliable in respect to

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the recent incidents in comparison to ancient one. The belief of the local people about the destruction or construction at the disputed site, in the same way noticed by Tieffenthaler about 50 years back from the period of Buchanan and same thing noticed by Buchanan, in our view, ought to have been given more reliability than simply discarding the same on the basis of an inscription, the possibility whereof was always to be installed at any later point of time. In the absence of any material or anything to show that it was fixed almost 272 years back and the belief of the local people was perverse, we find it difficult to rely only on the observations of Buchanan based on inscriptions, the language whereof was not known to him and there is nothing to show that he could read or understood it.

1616. Sri P.N. Mishra, learned counsel further submitted that had the building in dispute constructed in 1528 and that too at the command of Emperor Babar, it would be inconceivable that Abul Fazal Allami in his work **"Ain-e-Akbari"** would have failed to notice the same though, if correct, it would have been the work of Akbar's grandfather. He refers to the **"Ain-e-Akbari"** written by Abul Fazal Allami, translated in English by **H. Blochmann** edited by Leiut. Colonel D.C. Phillott, first published 1927-1949 reprint 1989 published by Low Price Publications, Delhi. He pointed out that Abul Fazal Allami has referred to **"Ayodhya"** and its religious importance for Hindus and also certain religious places of Muslims. Therefore, it is improbable that he would have missed or ignored to mention about a grand mosque constructed by grandfather of Emperor Akbar though has mentioned about other places of Ayodhya. This shows that till the date when the aforesaid work was written by Abul Fazal, building in dispute had not came into

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existence and it is incorrect to suggest that it was constructed in 1528 AD. He explained that this is the reason why we do not find any such mention in the work of Goswami Tulsidas, a great follower of Lord Ram. From Volume 1 of **"Ain-e-Akbari"**, Sri P.N.Mishra placed certain extracts from page 162 and onwards to show that a large number of places of worship were constructed in 983 AH and onwards (see page 179, "Ain-e-Akbari") and that tax levelled on non-Muslims was abolished in 987 AH. About the abolition of tax on non-Muslims, page 198 of **"Ain-e-Akbari"** Vol.-1 quote as under :

> *"In this year the Tamgha (inland tolls) and the Jazya (tax on infidels), which brought in several krors of dam were abolished, and edicts to this effect were sent over the whole empire."*

1617. He also referred to pages 201, 202 and 203 to show that the policy of Akbar was not so fanatic and was judicious to Hindus also. Had there been such a construction at the religious place of Hindus, the Akbar would have allowed it to be removed. The various orders and actions as noticed by **Allami in "Ain-e-Akbari" Vol.-1** on pages 201 and onwards are as under:

> *"His majesty was now [990] convinced that the Millenium of the Islamitio dispensation was drawing near. No obstacle, therefore, remained to promulgating the design which he had planned in secret. The Shaykhs and Ulamas who, on account of their obstinacy and pride, had to be entirely discarded, were gone, and His Majesty was free to disprove the orders and principles of the Islam, and to ruin the faith of the nation by making new and absurd regulations. The first order which was passed was that the coinage should show the era of the Millenum, and that a*

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history of the one thousand years should be written, but commencing from the death of the Prophet. Other extraordinary innovation were devised as political expedients, and such orders were given that one's senses got quite perplexed. Thus the sijda, or prostration, was ordered to be performed as being proper for kings; but instead of sijda, the word zaminbos was used. Wine also was allowed, if used for strengthening the body, as recommended by doctors; no mischief or impropriety was to result from the use of it, and strict punishments were laid down for drunkenness, or gatherings and uproars. ....

"Beef was interdicted, and to touch beef was considered defiling. The reason of this was that, from his youth, His Majesty had been in company with Hindu liberation, and had thus learnt to look upon a cow- which in their opinion is one of the reasons why the world still exists- as something holy. Besides the Emperor was subject to the influence of the numerous Hindu princess of the Harem, who had gained so great ascendancy over him as to make his forswear beef, garlic, onion, and the wearing of a beard, which things His majesty still avoids. ***He had also introduced, though modified by his peculiar views, Hindu customs and heresies into the court assemblies, and introduces them still, in order to please and win the Hindus and their castes****; he abstained from everything which they think repugnant to their nature, and looked upon shaving the beard as the highest sign of friendship and affection for him. Hence this custom has become very general. Pandering pimps also expressed the opinion that the beard takes its nourishment from the testicles; for no eunnch had a beard; and one could not could exactly see of what merit or importance it was to cultivate a beard.*

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Moreover, former ascetics and looked upon carelessness in letting the beard grow as one way of mortifying one's flesh, because such carelessness exposed them to the reproach of the world; and so, at present, the silly lawyers of the Islam looked upon cutting down the beard as reproachful, it was clear that shaving was now a way of mortifying the flesh, and therefore praiseworthy, but not letting the beard grow. (But if any one considers this argument calmly, he will soon detect the fallacy.) Lying, cheating Muftis also quoted an unknown tradition, in which it was stated that 'some Qasis' of Persia had shaved their beards. But the words ka-ma gaf alu ba'z' 'l-quzdt (as some Qasis have done), which occur in this tradition, are based upon a corrupt reading, and should be ka-ma yaf 'a' u ba l-gusat (as some wicked men have done). . .

"The ringing of bells as in use with the Christians, and the showing of the figure of the cross, and . . . . . and other childish anything of theirs; were daily in practice. The words Kufr shay shud, or 'heresy' 'became common', express the Tdrikh (985). Ten or twelve years after the commencement of these doings, matters had gone so far that wretches like Mirza Jani, chief of Tattah, and other apostates, wrote their confessions on paper as follows :- 'I, such a one, son of such a one, have willingly and cheerfully renounced and rejected the Islam in all its phases, whether low or high, as I have witnessed it in my ancestors and have joined the Divine Faith of Shah Akbar, and declare myself willing to sacrifice to him my property and life, my honour and religion'. And these papers- there could be no more effective letters of damnation- were handed over to the Mujtahid (Abu'l Fazl) of the new creed, and were considered a source of confidence or promotion. The

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Heavens might have parted as under, and earth might have opened her abyss and the mountains have crumbled to dust!

"In opposition to the Islam, pigs and dogs were no longer looked upon as unclean. A large number of these animals was kept in the Harem, and in the vaults of the castle, and to inspect them daily was considered a religious exercise. ***The Hindus, who believe in incarnations, said that the boar belonged to the ten forms which God Almighty had once assumed.***

"God is indeed Almighty- but not what they say."

"The saying of some wise men that a dong had ten virtues, and that a man, if he possesses one of them, was saint, was also quoted as a proof. Certain courtiers and friends of His Majesty, who were known for their excellence in every department, and proverbial as court poets, used to put dogs on a tablecloth and feed them, whilst other heretical poets. Persians and Hindustanis, followed this example, even taking the tongues of dogs into their own mouths, and then boasting of it.

"Tell the Mir that thou hast, within thy skin, a dog and a carcass.

"A dog runs about in front of the house; don't make him a messmate.

"The ceremonial ablution after emission of semen was no longer considered binding, and people quoted as proof that the essence of man was the sperma genitale, which was the origin of good and bad man. It was absurd that voiding urine and excrements should not require ceremonial ablutions, whilst the emission of so tender a fluid should necessitate ablution; it would be far better, if people would first bathe, and then have connexion.

"Further, it was absurd to prepare a feast in honour

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of a dead person; for the corpse was mere matter, and could derive no pleasure from the feast. People should therefore make a grand feast on their birthdays. Such feasts were called Ash i haydt, food of life.

"The flesh of a wild boar and the tiger was also permitted, because the courage which these two animals possess would be transferred to any one who fed on such meat.

"It was also forbidden to marry one's cousins or near relations, because such marriages are destructive of mutual love. Boys were not to marry before the age of 16, nor girls before 14, because the offspring of early marriages was weakly. The wearing of ornaments and silk dresses at the time of prayer was made obligatory.

***"The prayers of the Islam, the fast, nay even the pilgrimage, were henceforth forbidden.** Some bastards, as the son of Mulla Mubarak, a worthy disciple of Shaykh Abu'l Fazl wrote treatises, in order to revile and ridicule our religious practices, of course with proofs. His Majesty liked such productions, and promoted the authors.*

***"The era of the Hijrah was now abolished, and a new era was introduced,** of which the first year was the year of the emperor's accession (963). The months had the same names as at the time of the old Persian kings, and as given in the Nisab" 's.sibniyan'. Fourteen festivals also were introduced, corresponding to the feasts of the Zoroastrians; but the feasts of the Musalmans, and their glory were trodden down, the Friday prayer alone being retained because some old, decrepit, silly people used to go to it. The new era was called Tdrikh I llahi, or 'Divine Era'. On copper coins and gold muhrs, the era of the Millennium was used, as indicating that the end of the religion of*

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Muhammad, which was to last one thousand years, was drawing near. Reading and learning Arabio was looked upon as a crime; and Muhammadan law, the exegesis of the Quran, and the Tradition, as also those who studied them, were considered bad and deserving of disapproval. Astronomy, philosophy, medicine, mathematics, poetry, history and novels, were cultivated and thought necessary. Even the letters which are peculiar to the Arabic language, as the ث-، ع،ح،ص، ض *and* ظ- *were avoided. Thus for* عبداللہ *people wrote* ابـداللہ *Abdullah; and for* احـدی *Ahadi,* اهـد *Ahadi etc. All this pleased His Majesty. Two verses from the Shahnama, which Firdawsi gives as part of a story, were frequently quoted at court-*

From eating the flesh of camels and lizards
The Arabs have made such progress,
That they now wish to get hold of the kingdom of Persia.
Fie upon Fate! Fie upon Fate!

"Similarly other verses were eagerly seized, if they conveyed a calumny, as the verses from the ....., in which the falling out of the teeth of our prophet is alluded to.

"In the same manner, every doctrine and command of the Islam, whether special or general as the prophetship, the harmony of the Islam with reason, the doctrines of Ru yat, Taklif, and Takwin, the details of the day of resurrection and judgment- all were doubted and ridiculed. And if anyone did object to this mode of arguing, his answer was not accepted. But it is well known how little chance a man has who cite proofs against one who will reject them, especially when his opponent has the power of life and death in his hands; for equality in condition in a sine qud

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won in arguing." (Page 201-206)

"Here Bada, on mentions the translations from Sanscrit into Persian, which have been alluded to above, p.110. It is not quite certain whether the translation were made from Sanscrit or from Hindi translations, or from both. Bada, on clearly states ***that for some translations, as at the Atharban, Hindus were used as interpreters.*** *For other works as the Mahabharat, there may have been Hindi translations or extracts, because Akbar himself (vide p.111, note 2) translated passages to Naqib Khan. Abu'l-Fazl also states that he was assisted by Pandits when writing the fourth book of the A-in. Compare Sir H. Elliott's Index to the Historians of India, p. 259." (Page 209)*

"In these days (991) new orders were given. ***The killing of animals on certain days was forbidden as on Sundays, because this day is sacred to the Sun****; during the first eighteen days of the month of Farwardin; the whole month of Ahan (the month in which His Majesty was born); and* ***on several other days to please the Hindus****. This order was extended over the whole realm, and capital punishment was inflicted on every one who acted against the command. Many a family was ruined. During the time of those fasts,* ***His Majesty abstained altogether from meat, as a religious penance, gradually extending the several fasts during a year over six months and even more****, with the view of eventually discontinuing the use of meat altogether." (Page 209-210)*

"In the same year (991) His Majesty built outside the town two places for feeding poor Hindus and Muhammadans, one of them being called Khayrpura and the other Dharmpura. Some of Abu'l-Fazl's people were put in charge of them. They spent His Majesty's money in

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feeding the poor. As an immense number of Jogis also flocked to this establishment, a third place was built, which got the name of Jogipura." (Page 210)

"His Majesty once ordered that the Sunnis should stand separately from the Shiahs, when the Hindustanis, without exception, went to the Sunni side, and the Persians to the Shiah side." (Page 212)

1618. **Vol. 2 "Ain-e-Akbari"** Page 181 and onwards deals with "Oudh" and Sri Mishra placed the following part thereof :

"It is situated in the second climate. Its length from the Sarkar of Gorakhpur to Kanauj is 185 kos. Its breadth from the northern mountains to Sidhpur on the frontier of the Subah of Allahabad is 115 kos. To the east is Bihar; to the north, the mountains; to the south, Manikpur, and to the west Kanauj. Its climate is good. Summer and winter are nearly temperate. Its principal streams are the Saru (Sarju), the Ghaghar (Gogra) the Sai and the Godi (Gumti). In the first mentioned, divers aquatic animals and foms of strange appearance show themselves. Agriculture is in a flourishing state, especially rice of the kinds called Sukhdas, Madhkar, and Jhanwan, which for whiteness, delicacy, fragrance and wholesomeness are scarcely to be matched. They sow their rice three months earlier than in other parts of Hindustan. When the drought begins, the Sai and Gogra rise high in flood and before the beginning of the rains, the land is inundated, and as the waters rise, the stalks of rice shoot up and proportionately lengthen: the crop, however, is destroyed if the floods are in full force before the rice is in ear. Flowers, fruits and game are abundant. Wild buffaloes are numerous. When the plains are inundated the animals take to the high ground where the people find sport in

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hunting them. Some of the animals remain all day in the water and only at night approach the dry ground and breathe in freedom. ***Awadh (Ajodhya) is one of the largest cities of India****. In is situated in longitude 118°, 0', and latitude 27°, 22'. It ancient times its populous site covered an extent of 148 kos in length and 86 in breadth, and* ***it is esteemed one of the holiest places of antiquity****.* ***Around the environs of the city, they sift the earth and gold is obtained. It was the residence of Rama Chandra who in the Treta age combined in his own person both the spiritual supremacy and the kingly office****.*

At the distance of one kos from the city, the Gogra, after its junction with the Sai, [Saraju] flows below the fort. Near the city stand two considerable tombs of six and seven yards in length respectively. The vulgar believe them to be the resting places of Seth and the prophet Job, and extraordinary tales are related of them. Some say that at Ratanpur is the tomb of Kabir, the assertor of the unity of God." (Page 181-182)

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1619. The above contents are published on pages 170-172 of "Ain-e-Akbari" by Abul Fazal Allami, translated by Colonel H.S. Jarrett, Vol. 2, published in 1891 at Calcutta and the photocopy thereof alongwith its frontispiece has been filed as Exhibit T6 (Suit-4) (Paper No. 43A-1/25-28) (Register 18, pages 51-57).

1620. He also referred to the two footnotes one of which is with respect to Ram and another with respect to Sant Kabir and read as under : .

"The 7th avatar, who in this capital of the solar dynasty founded on the chariot wheel of Brahma, consummated the glories of sixty generations of solar

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princes and ***as the incarnate Rama, i.e. the hero of the famous epic that bears his name****." (Page 182)*

"His doctrines were preached between A.D. 1380 and 1420 and attempted the union of Hindu and Muhammadan in the worship of one God whether invoked as Ali or Rama. On his deceased both these sects claimed the body and while they contested it, Kabir suddenly stood in their midst and commanding them to look under the shoud, vanished. A heap of beautiful flowers was there discovered, which, divided among the rival worshippers, were buried or burnt according to their respective rites. Pilgrims from upper India to this day beg a spoonful of rice water from the Kabir Monastery at Puri in Orissa." (Page 182)

1621. He also pointed out to page 184 which gives certain other statistics of Oudh showing that main castes residing therein were "**Brahmans**" and "**Kumbi**". Then on page 311 of Vol. 2 Sri Mishra says that Abul Fazal has also taken note of various incarnations of Lord Vishnu in the form of Varahavatara or Boar-Incarnation, Nara-Sinha or Man-Lion Incarnation, Vamana or Dwarj-Incarnation, Parasurama or Incarnation of Ram with axe, then Ramavatara or Ram Incarnation, Krishnavatara or Incarnation as Krishna, Buddhavatara or Buddha Incarnation, Kalkyavatara or Kalki Incarnation. On pages 316-317, Ramavatara has been described as under :

"They relate that Ravana one of Rakshasas two generation in descent from Brahma, had ten heads and twenty hands. He underwent austerities for a period of ten thousand years in the Kailasa mountain and devoted his heads, one after another in this penance in the hope of obtaining the sovereignty of the three worlds. The deity appeared to him and granted his prayer. The gods were

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afflicted by his rule and as in the former instances, solicited his dethronement which was vouchsafed, and Rama was appointed to accomplish this end. He was accordingly born during the Treta Yuga on ***the ninth of the light half of the month of Chaitra (March-April) in the city of Ayodhya****, of Kausalya wife of Raja Dasaratha. At the first dawn of intelligence, he acquired much learning and withdrawing from all worldly pursuits, set out journeying through wilds and gave a fresh beauty to his life by visiting holy shrines. He became lord of the earth and slew Ravana. He ruled for eleven thousand years and introduced just laws of administration." (Page 316-317)*

1622. Chapter IX Vol. 2 of **"Ain-e-Akbari"** deals with sacred places of pilgrimages and it includes a number of rivers as well as several places including Ayodhya as under :

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"CHAPTER IX

SACRED PLACES OF PILGRIMAGE

Although profound and enlightened moralists are convinced that true happiness consists in the acquisition of virtue and recognise no other temple of God but a pure heart, nevertheless the physicians of the spiritual order, from their knowledge of the pulsation of human feeling, have bestowed on certain places a reputation for sanctity and thus rousing the slumberers in forgetfulness and instilling in them the enthusiastic desire of seeking God, have made these shrines instruments for their reverencing of the just, and the toils of the pilgrimage a means of facilitating the attainment of their aim.

These holy places are of four degrees.

The first is termed deva or divine and dedicated to Brahma, Vishnu and Mahadeva. The greatest among these

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are twenty-eight rivers in the following orders:- [P.177] (1) Ganges, (2) Sarasvati, (3) Jamuna, (4) Narbada, (5) Vipasa, Known as Biah (Hyphasis), (6) Vitasta (Hydaspes or Bidaspes) known as the Bihat, (7) Kausiki, a river near Rhotas in the Panjab, but some place it in the neighborhood of Garhi in the eastern districts (8) Nandavati (9) Chandrabhaga, known as the Chenab, (10) ***Sarayu (Sarju) known as the Sarau****, (11) Satyavati, (12) Tapi known as Tapti upon the (north) bank of which is Burhanpur. (13) Paravati, (14) Pasavati (15) Gomati (Gumti) near Dvaraka. (16) Gandaki, upon the banks of which is Sultanpur of the Subah of Oudh, (17) Bahuda, (18) Devika (Deva or Gogra). (19) Godavari, called also Banganga. Pattan of the Dekhan is situated on its bank. (20) Tamraparni at the extremity of the Dekhan. Here pearls are found. (21) Charmanvati (22) Varana, near Benares (23) Iravti, known as the Ravi (Hydraotes), Lahor is on its bank. (24) Satadru (the hundred-Channelled), known as the Sutlej. Ludhiana is upon its bank. (25) Bhimarathi, [178] called also the Bhima, in the Dekhan. (26) Parnasona. (27) Vanjara, in the Dekhan, (28) Achamiyya, Some include the Indus, but it is not of the same sanctity.*

Each of these rivers as dedicated to one of these deities, has peculiar characteristics ascribed to it: Some of the places situated on their banks are esteemed holy, *as, for example, the village of Soron on the Ganges, to which multitudes flock on the twelfth of the month of Aghan (Nov-Dec).* ***Some regard certain cities as dedicated to the divinities.*** *Among these are Kasi, commonly called Benares. The Adjacent country for five kos around the city is held sacred. Although pilgrimages take place throughout*

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the year, on the Siva-ratri multitudes resort thither from distant parts and it is considered one of the most chosen places in which to die. Final liberation is said to be fourfold: (1) Salokya passing from the degrees of paradise to Kailasa. They say that when a man goes to heaven through good works, he must return to earth, but when after various transmigrations, he attains that region, he returns no more (2) Sarupya (assimilation to the deity); when a man partakes of the divine elementary form, he does nor revisit the earth. (3) Samipya (nearness to the deity) is when a man after breaking the elemental bonds, by the power of good works is admitted into the presence of God's elect, and does not return to earth. (4) Sayuiya (absorption into the deity); after passing through all intermediate stages, he obtains the bliss of true liberation. They have likewise divided the territory of Benares into four kinds. The characteristic of two parts is that when a being dies therein, he attains the fourth degree of Mukti; if he dies in one of the others, he reaches the third degree, and if in the remaining one, the second degree.

Ayodhya, commonly called Awadh. *The distance of forty kos to the east, and twenty to the north* ***is regarded as sacred ground. On the ninth of the light half of the month of Chaitra a great religious festival is held****.*

Avantika, Ujjain. All around it for thirty-two kos is accounted holy and a large concourse takes place on the Siva-ratri.

Kanchi (Conjervaram) in the Dekhan. For twenty kos around it is considered sacred. On the eighth of every Hindu month that falls on a Tuesday, there is a great concourse of pilgrims.

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Mathura is sacred for forty-eight kos around, and even before it became the birthplace of Krishna, was held in veneration. Religious festivals are held on the 23rd of the month of Bhadra (Aug-Sept) and the 15th of Karitika (Oct-Nov).

Duaraka. The country for forty kos in length and twenty in breadth is esteemed holy. On the Dlwalt festival, crowds resort hither.

Maya, known as Haridvra (Hardwar) on the Ganges. It is held sacred for eighteen kos in length. Large numbers of pilgrims assemble on the 10th of Chaitra.

These seven are called the seven (sacred) cities.

Prayaga now called Illahabas. The distance for twenty kos around is venerated. They say that the desires of a man that dies here are gratified in his next birth. They also hold that whoever commits suicide is guilty of a great crime except in this spot where it meets with exceeding reward. Throughout the year it is considered holy, but especially so during the month of Magha (Jan-Fab).

Nagarkot For eight kos round it is venerated. On the eighth of the months of Chaitra and Kartika, many pilgrims assemble.

Kashmir is also accounted of this class and is dedicated to Mahadeva. Many places in it are held in great veneration.

The second are the shrines of the Asuras, which are temples dedicated to the Daitya race. In many things they share the privileges of the devatas; but the latter are more pure, while the others are filled with the principle of tamas (darkness). Their temples are said to be in the lower regions (Patala).

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The third are called Arsha, or shrines of the great Rishis, men who by virtue of austerities and good works are in near proximity to the deity. [180] Their shrines are counted by thousands. Amongst them are Nimkhar (Nimishara), Pukhra (Pushkara), Khushab, and Badiri.

The fourth are called Manusha, or appertaining to men who by their power of good works are superior to mankind in general, though they do not obtain the rank of the third degree. Their shrines also are numerous. Among them is Kurkushetra, which for forty kos around is considered holy, and numerous pilgrims resort thither during eclipses of the sun and moon.

Ceremonies are laid down for each pilgrimage and their various meritorious results are declared.

O THOU! That seekest after divine knowledge, learn wisdom of these Hindu legends! Each particle among created atoms is a sublime temple of worship. May the Almighty deliver mankind from the wanderings of a vain imagination troubles over many things." (Page 332-336)

"...taken from the letter which is therewith connected and a name of more than four letters is considered blameworthy. In the fourth month they bring it into the sun before which time it is never carried out of the house. In the fifth month they bore the lobs of the right ear. In the sixth month, if the child be a boy, they place various kinds of food around him, and feed him with that for which he shows a preference. If it be a girl, this is not done till the sixth or seventh month. When it is a year old, or in the third year, they shave his head, but by some this is delayed till the fifth year, by others till the seventh, and by others again

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till the eighth year, when a festival is held. In the fifth year they send him to school and meet together in rejoicing.

They observe the birthday and annually celebrate it with a feast, and at the close of each year make a knot on a thread of silk. He is invested with the sacred string at the appointed time. At each of these occasions they perform certain works and go through some extraordinary ceremonies." (Page 349)

1623. On page 349, the important religious festivals of Hindus are also discussed which include Rama-Navami on page 350. Sri Mishra says, while acknowledging Ayodhya at length on various aspects of the matter, Abul Fazal having not noticed any building said to have been constructed by or under the command of Babar in 1528 AD proves that the same was not actually built in that manner and did not exist till then also.

1624. Sri Mishra, when asked that the building in dispute ex facie appears to be a Mosque, then how it came into existence if not constructed in 1528, submitted that it was actually attacked and damaged at the time of Aurangzeb and attempt was made to give it shape of a Mosque and inscriptions on the said building were fixed by someone much thereafter. He placed before us **"Indian Texts Series-Storia Do Mogor or Mogul India 1653-1708"** by Niccolao Manucci translated in English by Milliam Irvine Vol. III pages 244/245 where it deals with the Hindu holy places and reference to destruction of chief temple of Ayodhya by Aurangzeb and reads as under :

"In this realm of India, although King Aurangzeb destroyed numerous temples, there does not thereby fail to be many left at different places, both in his empire and in the territories subject to the tributary princes. All of them

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are thronged with worshippers; even those that are destroyed are still venerated by the Hindus and visited for the offering of alms. The Hindus assert that in the world there are seven principal places where it is possible to obtain what one has imagined and desired-that is to say, in cases where a person wishes to become emperor or king, wealthy, powerful, or to attain other positions of the same order. Now they ordinarily hold that on dying a person's soul is transferred according to the deeds he has done; if he has done good, his soul will pass into some one of consideration or of wealth, and should the deceased have done evil, his soul will be sent into some animal- an elephant, camel, buffalo, cow, tiger, wolf, a bird, a snake, a fish, et cetera. Now, some great sinner, deserving of hell, may be anxious for delivery therefrom, and want to become an emperor or great noble, or whatever he fancies; it can be done by sacrificing his life by drowning himself in a river or in the tanks found near temples at the foot of the gates.

The principal temples referred to above are these- that is to say:

1. *The first, Maya, to be found among the mountains of the north.*
2. *Matura (Mathura), which is near the city of Agrah.*
3. *Caxis (Kashi), which is on the Ganges, in the city of Benaras.*
4. *Canchis (Kanji), in the Karnatik*
5. *Evantica, in the mountains of Tartary.*
6. *Puris (Puri), on the borders of Cochin China.*
7. *Darahotis (? Gangotri), at the source of the*

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Ganges, as they suppose it to be [+5].

Bands of interested persons make these lengthy pilgrimages, enduring a thousand hardships on the way, only at the end to drown by their own choice, without considering where they are about to take up their abode.

***The chief temples destroyed by King Aurangzeb within his kingdom were the following**:*

1. Maisa (? Mayapur),

2. Matura (Mathura),

3. Caxis (Kashi)'

*4. **Hajudia (Ajudhya),***

and an infinite number of others; but, not to tire the reader, I do not append their names." (Page 244-245)

1625. Niccolo Manucci was a traveller, who came to India during the reign of Aurangzeb and had written his account of travel in the aforesaid book.

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1626. Sri Mishra pointed out that the reign of Emperor Aurangzeb was a total Islamic reign and all actions to cause damage to Hindu religion and religious places were taken by him. He not only revived Jizya which was a tax payable by non-Islamic people but also caused damage to Hindu religious places at a large scale. Sri Mishra refers to **"India in the 17th Century (Social, Economic and Politician) Memoirs of Francois Martin (1670-1694)"** Volume II, Part I (1681/1688) translated by Lotika Varadarajan first published 1984 by Manohar Publications, New Delhi, page 880 where it discusses about the rate of 'Jizya' increased by the Emperor in October 1683 AD and says :

"Towards the beginning of October, the principal bania merchants assembled to discuss the orders to

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increase the rate of jizya which had been sent by the Emperor to the Governor. I have already spoken about this tax which is similar to the carage paid by Christians in Turkey. During the remaining part of the month, several more meetings took place but these met with small success. If the entire amount due from this tax had been properly collected and paid into the imperial exchequer, the amount obtained by the Emperor under this head alone would have been far larger than the entire revenue accruing to him from the many kingdoms which made up his vast empire." (Page 880)

1627. About the destruction of religious places, Sri Mishra referred to Page 914 which says :

"When it had come to the knowledge of the Emperor that many rich Gujarati banias had built temples within their homes to perform their devotions, in his religious fervour, he ordered that the Governors of the province should carry out an inspection. ***All the temples in the cities and villages had been destroyed. Now these inner sanctums were also to be laid low and the least sign of the practice of Hindu religion was to be wiped out.*** *The members of this community, particularly at Hyderabad and Cambay where they were to be found in large numbers, were greatly alarmed at these instructions. It was said that the banias managed to circumvent the Mughal orders by giving presents to the Governors who thereupon took their inspection tours very lightly." (Page 914)*

1628. Volume II, Part II or **"India in the 17th Century (Social, Economic and Politician) Memoirs of Francois Martin (1670-1694)"** first published in 1985 page 1249 was

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relied by Sri Mishra which reads as under :

> *"Following the Emperor's orders with regard to the destruction of temples, the Moors brought one down in the Carnatic. This incited the Hindus to revolt in an attempt to prevent this action. The two communities clashed openly and both sides sustained loss of life. As a result, the Moors were forced to postpone their demolition activities to a later date."*

1629. He also referred to footnote 31 on page 1249 which says :

> *"31. According to French archival sources, B.N., N.A., 6213 (16), the Emperor had ordered all Hindu temples to be destroyed including that of Jagannath at Puri. This had brought about a Hindu rebellion as a result of which the edict was not enforced."*

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1630. He also referred to **"Mughal Documents (A.D. 1628-59)** Volume II by **S.A.I. Tirmizi** (first published 1995 by Manohar Publishers and Distributors, New Delhi). On page 142 at sl. no. 426 there is a reference of a *Farman* of Aurangzeb of 15th March 1659 AD, which reads as under :

> *"426. Manshur of Aurangzeb addressed to Abul Hasan states that it has been brought to the notice of the royal court that the Brahmins of Banaras are being removed from their ancient offices and that Hindus of Banaras and its neighbourhood are harassed. In accordance with the sharia the ancient temples, are not to be destroyed and new ones are not to be built and since our innate kindness of disposition and natural benevolence, the whole of our untiring energy and our upright intentions are engaged in promoting the public welfare and bettering the*

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condition of all classes, high and low, it is ordered that no person should interfere with or disturb the Brahmins and other Hindus so that they may, as before, remain in their ancient occupation and engage themselves with peace of mind in offering prayers for the continuance of our God-gifted empire so that it may last forever (JPHS, V(1)., pp. 247-48).

20 Jumada II/1069 A.H./15 March, 1659 A.D."

1631. He contended that initially the existing policy of Akbar, Jahangir and Shahjahan was followed by Aurangzeb, i.e. neither to destroy existing Hindu religious places nor to allow them to construct any new religious building but later on he took a different stand and pursuant thereto demolished a large number of Hindu temples.

1632. The total change of heart in reversing the earlier policy is said to have taken place almost after 10 years, i.e., with the start of 11th year of his reign in April 1669. It has been discussed in detail by **Stanley Lane Poole** in his book **"Aurangzib-and the decay of the Mughal Empire"**, first published in 1890, reproduced in 1995, published by Low Price Publications, Delhi on page 135-137. The relevant extract is as under:

"It seems to have been 1669 that the storm began to gather. In April of that year Aurangzib was informed that the Brahmans of Banares and other Hindu centers were in the habit of teaching their 'wicked sciences,' not only to their own people but to Muslims. This was more than the orthodox Emperor could tolerate; but the severity of his measures shows that he had been only waiting for a pretext to come down like a thunderbolt upon the unfortunate

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'heathen.' 'The Director of the Faith,' we are told, 'issued orders to all the governors of provinces to destroy with a willing hand the schools and temples of the infidels; and they were strictly enjoined to put an entire stop to the teaching and practising of idolatrous forms of worship.' It is not for a moment to be supposed that these orders were literally carried out. Even the English Government would not dare to risk such an experiment in India. All that was done was to make a few signal examples, and thus to warn the Brahmans from attempting to make proselytes among the True Believers. With this object the temple of Vishnu at Benares was destroyed and a splendid shrine at Mathura was razed to the ground, to make room for a magnificent mosque. The idols found in the temples were brought to Agra and buried under the steps of the mosque, so that good Muslims might have the satisfaction of treading them under foot." (para 135-136)

"It is very difficult to trace the cause and effect of Aurangzib's successive steps in his reactionary policy towards the Hindus. In the eleventh year of his reign he suddenly put a stop to the system of official chronicles, which had been minutely recorded by historiographers royal since the time of Akbar. Now, it was strictly forbidden to write any chronicles at all, and those that have come down to us were recorded in secret, or merely treasured in the memory, and have all the confusion and fragmentary character of haphazard reminiscences. There are probably several links missing in the chain of events which connected the first destruction of Hindu temples in 1669 with the imposition of the hated jizya or poll-tax on

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unbelievers, a few years later. The revolt of the Satnamis is one of the few links that have been preserved by the secret chroniclers, who were naturally disinclined to soil their pens with the doings of 'unclean infidels.' Another event is the rash interference of the Emperor in the matter of Jaswant Singh's children." (pares 137-138)

1633. Sri P.N.Mishra also tried to take help from the judgment of the District Judge Fyzabad in Suit 1885 since he himself had visited the disputed premises on 18th March, 1886. In para 7 and 8 of his written argument Sri Mishra formulated his argument based on the above as under:

7. The District Judge of Faizabad who visited Sri Ramjanmasthan/alleged Baburi Masjid on 18th March 1886 did not find any of the Inscriptions published by A. Fuhrer in 1989 and by A. S. Beveridge in 1921. Said Ld. Judge in his Judgment has recorded that the entrance to the enclosure was under a gateway which bore the superscription "Allah" immediately on the left as the platform or Chabootra of masonary occupied by the Hindus. His said finding is recorded in Judgment and Order dated 18th March 1889 passed in Civil Appeal No.27 of 1886 Mahanta Raghubardass, Mahant Janam Asthan City Oudh VS. Secretary of State of India, Court of Council and Mohd. Asghar by the said Judicial Officer Mr. F.E.A. Chamier, District Judge Faizabad which constitute pages 87 to 91 of the volume 10 of the Documents of O.O.S. No. 4 of 1989 being Volume I of the plaintiffs' documents. Relevant portion from page 89 of the said Volume being an extract of the said judgment reads as follows:

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"I visited the land in dispute yesterday, in the presence of all parties.

I found that the Masjid built by the Emperor Babar stands on the border of the town Ajudhia-that is to say to the west and south it is clean of inhabitations. It is most unfortunate that a Masjid should have been built on land specially held sacred by the Hindus, but as the event occurred 356 years ago it is too late now to remedy the grievance all that can be done is to maintain the parties in status quo. In such a case as the present one any (Sic) would cause more harm and damage (Sic) of order than benefit. The entrance to the enclosure is under a gateway which bears the superscription "Allah" immediately on the left as the platform or Chabootra of masonary occupied by the Hindus. On this is a small superstructure of wood in the form of a tent. This "Chabootra" is said to indicate the birthplace of Ram Chan deer. Infront of the gateway in the entry to masonary Platform of the Musjid. A wall pierced (illegible) and therewith railings divides the platform of the Musjid from the enclosure in which stands the "Chabootra"."

Be it mentioned herein that said judgment is Judgment per Incuriam as it has been passed in ignoratum of law. Prior to annexation of Oudh to British Rule the Law of Shar was law in force which law neither had rule of Limitation nor did recognise adverse possession. Apart from this Hindu law in respect of Debutter property also did not recognise adverse possession. This principle of Law had already been laid down by the Indian Courts of

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Record as well as Privy Council, London as such said judgment passed in ignoratum of those judicial pronouncement has no force of law. Moreover in the said Suit the Disputed Structure was not subject matter of that suit nor was declaration of title in respect thereof prayed for.

8. In the aforesaid judgment recording of the Ld. Judge the superscription "Allah" leaves no doubt that he had inspected the disputed premises and Structure very minutely and it is needless to say that if there would have been alleged Inscriptions that would not have gone unnoticed by him. Be it mentioned herein that according to Hindus' sacred book "Allopanisad" "Allah" is one of the several names of the almighty. Be it mentioned herein that the "Allopanishad" has been reproduced by the founder of Arya Samaj Maharshi Dayanand Saraswati in his book "Satyarthaprakash" 2nd revised edition published in Vikram Samvat 1939 i.e. 1882 A.D.. According to him it was written during the reign of Emperor Akbar. The text of "Allopanishad" as published on pages 556-67 of 'Satyarthaprakash' in "Dayanand-Granthmala published by Srimati Paropakarini Sabha, Ajmer 1983 Edn. reads as follows:

''अथाल्लोपनिषद्र व्याख्यास्यामः।

अस्माल्लां इल्ले मित्रावरुणा दिव्यानि भत्ते।

इल्लल्ले वरुणो राजा पुनर्ह्दुः।

हमा मित्रो इल्लां इल्लल्ले इल्लां वरुणो मित्रस्तेजस्कामः।।1।।

होतारमिन्द्रो होतारमिन्द्र महासुरिन्द्राः।

अल्लो ज्येष्ठं परमं पूर्ण ब्राह्मणं अल्लाम्।।2।।

अल्लोरसूलमहामदरकबरस्य अल्लो अल्लाम्।।3।।

आदल्लाबूकमेककम्। अल्लाबूक निखातकम्।।4।।

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अल्लो यज्ञेन हुतहुत्वा। अल्ला सूर्य्यचन्द्रसर्वनक्षत्राः।।5।।

अल्ला ऋषीणां सर्वदिव्यां इन्द्राय पूर्व माया परममन्तरिक्षाः।।6।।

अल्लः पृथिव्या अन्तरिक्षं विश्वरूपम्।।7।।

इल्लां कबर इल्लां कबर इल्लां इल्लल्लेति इल्लल्लाः।।8।।

ओम् अल्लाइल्लल्ला अनादिस्वरूपाय अथर्वणाश्यामा हुं ह्रीं जनानपशूनसिद्धान् जलचरान् अदृष्टं कुरु कुरु फट्।।9।।

असुरसंहारिणी हुं ह्रीं अल्लोरसूलमहमदरकबरस्य अल्लो अल्लाम् इल्लल्लेति इल्लल्लाः।।10।।

इत्यल्लोपनिषत् समाप्ता।।

1634. Be that as it may, the above discussion and the material considered by us make it very clear that the foundation of the entire history regarding construction of disputed building by Babar in 1528 AD is based upon the inscriptions said to be fixed thereon. The original text of the said inscriptions is not available at all. At least it has not been produced before us from any authentic source. The text of the said inscriptions published in different books and historical work, we have discussed, shows several crucial discrepancies therein. The historians, it appears being aware that Babar came to India in 1526 AD and visited Ayodhya in 1528 AD formed opinion in majority and read the text of the inscriptions that the date of construction of the building therein is 1528 AD i.e. 935 AH. However, in the earliest Journal of ASI, the text is not only different but the period mentioned is also different i.e. 930 AH.

1635. Interestingly there are some work written in Urdu in the 19th Century by some Muslim writers. Therein mostly they have mentioned the period of construction of the disputed building as 923 Hijri and further that it was constructed by the Babar at the instance of Syed Musa Ashikan. One of such document is titled as **"Ameer Ali Shaheed Aur Marka Hanuman Gari" by Shekh Mohammad Ajmat Ali Alvi**

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Kakoravi (written in 1886) revised by Dr. Zaki Kakoravi published in 1987 and on page 9/10 it says:

> *''कुतुब (पुस्तकें) साबिका (पूर्व) से मालूम है कि बाद तसल्लुत (कब्जा) सय्यद सालार मसऊद ग़ाज़ी के*
>
> *सलातीने इस्लामिया ने बिलाद (शहरों) हिन्दुस्तान जन्नत निशान में जहां कहीं नमूदी (अवसर)*
>
> *. .. . पाई वहां रुक्न (सदस्य) इस्लामी के तौर पर मस्जिद व खानकाह व मुसाफिर खाने बनवा दिए और मुअज़्ज़िन (बांगी) व मुदर्रिस रख कर दीने मोहम्मदी को शाया किया और सामान*
>
> *बिदअत (नया कार्य) . . . किया चुनांचे जिस तरह मथुरा बिन्दराबन वग़ैरह को खसोखासाक (घास फूस)*
>
> *बिदअत से साफ किया। इसी तरह फ़ैज़ाबाद अवध में जो बड़ा .. . का मकाम था, तख्तगाह पिदर लक्ष्मन व राम था बुतखाने जन्मस्थान में*
>
> ***923 हिजरी में सय्यद मूसा आशिकॉ के एहतमाम में मस्जिद सरबुलंद बाबरी तैयार हुई। पुरनूर रही।*** *वह हिंदुओं में सीता की रसोई. . . .मशहूर थी।*
>
> ***तारीख़ बिना ''खैर बाक़ी'' (923 हिजरी) है हुज्जत यादगार से मिलाती है।''***

1636. Thus the very basis of forming the view that the disputed building was constructed in 1528 AD by Babar or at his command by his agents is founded solely on inscriptions whose authenticity itself is not creditworthy.

1637. Unlike the historians who without any further probe, proceeded on the observations of Dr. Buchanan as published by Martin in 1838, we do not find it possible to record a finding that the building in dispute was constructed in 1528 AD by Babar or any of his agents.

1638. If we summarize our reasons, we find firstly that Babar in his chronological detail (to the extent it is available) in "Baburnama" has mentioned various buildings which he got constructed mainly at Agra where he stayed and made his

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headquarter and in the nearby areas or else. Obviously, if some construction or alteration in an existing building was made by any of his army officer or non-army officer who accompanied him from Farghana, there could not have any occasion for him to mention about the same in a work in which he recorded his daily affairs. His period of rule in the then Hindustan is very short, i.e., slightly more than four years. He being the founder of the dynasty, later known as Mughal dynasty, obviously was more interested in expansion of his reigning territory and not to indulge in avoidable confrontation which strategically may have added to his agony. A careful study of Baburnama show that wherever possible he made friends among non-muslims also so as to lessen rebels. Of course this was subject to the acceptance of those non-muslim Rulers about his supremacy. Besides the fact that no army commander of the name of "Mir Baqi", as such is mentioned in Baburnama, we find that Baqi Shaghawal who was made incharge of Oudh (Ayodhya) territory did not have any rest at Ayodhya. From 28.03.1528 and onwards, for a sufficiently long time, he remained on his toes chasing Bayazid and others. He was granted leave in June 1529 AD by Babar. It is the admitted case of the muslim parties that in a legendary work of Goswami Tulsidas on Lord Rama, i.e. 'Ramcharitmanas' which came into existence in a very short time after Babar, there is no mention of construction of a huge mosque at Ayodhya by Babar or anyone else. We are using the term "huge mosque" in the context of the place where the disputed building was constructed.

1639. Then in two traveller's account of Finch and Tieffenthaler also, this conspicuous miss cannot be overlooked. The first reference of Ayodhya and in particular the fort of Lord

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Rama at Ayodhya in the travellers account just after about 75 years and more, i.e., of "William Finch" who visited India between 1608 to 1611 AD. It is nobody's case that besides the area which is known today as Mauja Ramkot there was any other place where it was ever believed or seen by anybody the alleged house or fort of Lord Rama. On the contrary, what has been pointed out that in the first settlement of 1861 the site in dispute was part of plot no. 161 which had a total area of more than 9 Bighas. William Finch did not mention about any recently constructed Islamic building or mosque in this area and instead has referred to a house or fort which according to him was constructed about 400 years ago and belief of Hindus as birthplace of Ramchandar (Lord Rama). The period he mentions may be approximate, i.e., may or may not be very accurate but it carries the period of the then existing building to 11th or 12th century when Ayodhya was under the rule of Gaharwals. He also mentions about Pooja and worship being performed by Hindus (Brahmans) in the said area but there is no mention about the existence of muslims or their religious place of a recent construction in the said area. It is difficult to believe if such a huge construction was existing at that time, the same would have gone unnoticed by a person who has given so much details of the area he visited at Ayodhya.

1640. Then comes the next available version of Nicolo Minouchi who travelled India during the reign of Aurangzeb. On the one hand it cannot be disputed that he has mentioned about demolition of a temple at Ayodhya during the aforesaid period but further particulars have not been given. It gives an occasion to the learned counsels for the plaintiff (Suit-4) to contend that the travellers account of Minouchi does not throw

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any light that the alleged destruction of temple mentioned in his travellers account relates to the alleged Janambhumi temple and none else. This argument is unexceptionable since Minouchi's travellers account does not pin point any building or the area but then there is some further material.

1641. Father Joseph Tieffenthaler, an Austrian traveller visited India and remained here for more than two decades. In fact he stayed in India till his death. His credentials which have been made available to us through an internet printout of Wikipedia site shows that he was a linguist and well conversant with the languages like Persian and Sanskrit. It is this account which for the first time mentions about the alleged temple at the birthplace as well as its demolition by a muslim Ruler, in particular Mughal Ruler and construction of a mosque thereat. Tieffenthaler, however, says when he visited, the people in locality said that the demolition was caused by Emperor Aurangzeb though some people said that it was Babar. Had the inscriptions alleged to be fixed on the building in dispute at the time of its construction, would have existed thereat when Tieffenthaler visited the site, it is difficult to conceive that he could have written in his work whether it was Aurangzeb or Babar since he himself could have noticed the correct facts by reading the inscriptions for which he did not require any external help. Tieffenthaler's work which though written like a travellers guide between 1740-1760 and onwards but could not be seen by subsequent historians or those who prepared historical data perhaps for the reason that it remained unpublished in English. It might have been published in the Latin itself, the language in which Tieffenthaler wrote his diary but the publically known work is the "French translation" which

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is said to have been published in 1786. To us it appears that the building in dispute by the time Tieffenthaler came to Ayodhya had already been constructed but the inscriptions were not there. Besides, even at that time, inside the building in dispute, the Hindu religious structure in the form of a 'Vedi' existed which was being worshipped by Hindus. Here also it is remarkable that Tieffenthaler though has noticed worship by Hindus but is conspicuously silent about worship by muslims in the disputed building.

1642. We tried to enquire from learned counsel for the plaintiffs (Suit-4) as to how it could happen that a mosque was constructed but inside the premises a Hindu religious structure was allowed to remain as to be worshipped by Hindu public. In the absence of any source material on this aspect no reply obviously was forthcoming but to us it appears that though the building in dispute was constructed but immediately thereafter or after sometime it stood deserted by muslims. Hindus made their entry and raised a religious structure in order to continue with the sanctity of their belief that the place in dispute was the birthplace of Lord Rama and that is how their worship continued. It is inconceivable that at the time when the disputed building was constructed the people who did so would have allowed a Hindu religious structure inside the premises particularly when the building which they constructed was an Islamic religious place, i.e., mosque. We also find that Islamic religious scriptures clearly prohibit same place fit for worship by the persons of different faith and religion. We make it clear our use of the word mosque herein these issues be not treated as our finding since it being a separate issue shall be dealt with later.

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1643. Though it amounts to delving into some kind of conjectures but since here is a case which necessarily goes in history and particularly when for sufficiently long time the things are in dark, in the absence of anything contrary, we do not find it impermissible to think in this manner. It would come within the domain of preponderance of probability.

1644. The position appears to be that when the building in dispute was constructed, obviously the Islamic people, were in power who constructed the building in dispute. They did not allow or could not have allowed any Hindu religious structure to exist within the premises of the disputed building. If it was done after demolition of a Hindu religious structure, it is inconceivable while demolishing such structure, some part thereof would have been allowed to remain so as to be worshipped continuously by Hindu people after entering the premises of the mosque. Thus initially when it was constructed no such structure could have existed but as soon as the local Hindu people got opportunity, they created or made a symbolic structure to continue with the worship according to their belief with regard to the birthplace of Lord Rama and that is how structure in the form of Vedi was there and noticed by Tieffenthaler in his work which relates to the period of 1740-1760 AD.

1645. The building in dispute, therefore, not constructed in 1528 AD or during the reign of Babar, the preponderance of probability lie in favour of the period when Aurangzeb was the Emperor since it is again nobody's case that such an action could have been taken during the reign of Humaun, Akbar or Shahjahan. Without entering into the wild goose chase on this aspect suffice it to say that the building in dispute must have

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come into existence before 1707 AD when the reign of Aurangzeb ended on his death. Tieffenthaler's visit to Ayodhya is 35-55 years thereafter and this gave sufficient time in which the things as we have indicated above could have happened. The inscription on the disputed building either inside or outside was not there otherwise there was no occasion that the same could not have been noticed and seen by Tieffenthaler who himself was quite conversant with the language in which these inscriptions were written and found subsequently.

1646. Then comes the person who for the first time noticed the above inscription, i.e., Dr. F. C. Buchanan. He was a medicine man and, as his autobiography says, worked as personal physician of Lord Wellesley at the end of 18th century. He was entrusted with the work of survey of the territory within the hold of East India Company in North-West provinces at the commencement of 19th century. Obviously this was not his field of expertise and, therefore, it can well be conceived that he actually functioned as an overall Observer or Supervisor but in effect must have been assisted/attended by a team of the persons knowing the work of survey and also quite conversant with the local tradition, languages etc. The survey continued for about 7 years, i.e., 1807-1814. The survey report was said to have been submitted in more than one set. It appears that the record of the said survey sent to Calcutta office of East India Company as also to its main office in London. At the time he conducted survey, the area of Oudh as such was not within the reigning territory of East India Company but was part of the reigning territory of Nawab Vazir of Lucknow with whom East India company had a kind of agreement entered in 1801. The area towards Gorakhpur, Varanasi etc. was in the territory of East

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India Company and the demarcating land appears to be the bank of river Saryu near Ayodhya as is evident from the observations of Buchanan where he said that he did not undertook the exercise of measurement etc. at Ayodhya as it would have offended Nawab Wazir of Lucknow who was the reigning authority of that area. It is Buchanan who for the first time referred to an inscription wherefrom he could notice that the disputed building was erected in 1528 AD at the command of Babar though local people still at that time believed and said that the same was constructed at the time of Emperor Aurangzeb after demolishing a Hindu temple. When Buchanan visited Ayodhya, i.e. between 1807-1814, the period of Aurangzeb was about 100 years back while the period of Babar was about 275 years and more. It is difficult to conceive that the local people were not conversant as to who was responsible for construction or during whose reign the construction was made particularly when the matter was comparably recent. The people's memory is not so short and fades away with such a pace that they cannot recollect the events of just 50-60 years back. During the period of Buchanan it was a matter of just 100 years or more. Comparatively period of Aurangzeb was quite recent. Therefore, Buchanan's approach to ignore local belief that the building in dispute was constructed during the reign of Aurangzeb, in the absence of any concrete material, and not to make any further probe cannot be appreciated. However some margin has to be given to him since he was not an expert historian. It may happen that on plain reading of text, the period mentioned therein found 923 AH or 930 AH but he, knowing the period of Babar took upon himself to correct it.

1647. Moreover, Buchanan also cannot be said at fault since

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he had a reason to contradict this local belief based on an inscribed document which he found fixed on the building in dispute. To us it appears that this inscription must have been fixed in the building in dispute sometime between the visit of Tieffenthaler and survey of Dr. Buchanan. In order to give importance and antiquity to the building so as to avoid local hatred and conflict the inscript writer or the person responsible for it tried to co-relate it with the reign of Babar but due to lack of information or mistake, the period got written wrongly, i.e., 923 A.H. or 930 A.H. and he also mentioned a name i.e. Mir Baki or Mir Khan which did not find mention in Babar's "Tuzuk-i-Babri".

1648. Whether Buchanan actually noticed 923 A.H. or 935 A.H., we find difficult to record any concrete finding in the absence of any authenticated text of such inscription as was available to Buchanan. To us it appears when he noticed the name of Babar mentioned in the inscription even if the period in the inscription would have written as 923 A.H. he might have got it corrected in the light of the known period of visit of Babar at Ayodhya. This part of our observation as to what Buchanan might have done at that time is obviously in the realm of conjecture and we are conscious about it, but for us it is suffice to mention that in the absence of an authenticated text of the inscription as noticed by Buchanan, the only thing relevant for us is that the inscription was noticed for the first time by Buchanan and at that time he tried to contact the local people with respect to the period and person who constructed the disputed building. He was told about Aurangzeb but he discarded it on the basis of inscription and said that it is Babar and not Aurangzeb as locally believed. It is again nobody's case

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that the inscription of the period of Buchanan was replaced or changed at any later point of time atleast when it was so noticed and read by A. Fuhrer.

1649. In the meantime, we find that this text has been referred to in certain books written by muslim writers after 1855 AD. Without entering into the question whether those writers were well known Historians or merely story writers or whatever the case may be, for us suffice it to mention that in all these books they have mentioned the period of construction contained in the inscription as 923 A.H. Obviously it cannot be said that those writers who have written their books in Persian and Arabic were not capable of correctly reading the inscription and they committed a mistake in reading.

1650. In brief, we summarize the things and the position boils down as under:

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i. Dr. Fransis C. Buchanan said to be first person who read and collected the transcription but this text duly proved in accordance with law is not available to us. However, this found the basis of contradicting the local belief as it prevail till then i.e. around 1810 AD that the building in dispute was constructed during the reign of Aurangzebe after demolition of a temple was wrong and it was actually Babar, as borne out from the inscription.

ii. Next is A. Fuhrer. He was the first archaeologist who read and translated in 1889/1891 and got published three inscriptions alleged to be fixed on Babari Masjid which was alleged to be built under command of Emperor Babur at the site of Sri Ramjanmasthan.

A. Fuhrer's translations and introductory notes thereto read as follows:

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"Babar's- Masjid at Ayodhya was built in A.H. 930, or A. D. 1523, by Mir Khan, on the very spot where the old temple Janamasthanam of Ramchandra was standing . The following inscriptions are of interest. Inscription No.XL written in Arabic character over the mihrab of the masjid it gives twice the Kalimah:-

"There is no God but' Allah, Muhammad is His Prophet"

Inscription no.XLI is written in Persian poetry, the meter being Ramal, in six lines on the member, right-hand side of the masjid.

"1.By order of Babar, the king of the world,
2. This firmament-like, lofty,
3. Strong building was erected.
4. By the auspicious noble Mir Khan.
5. May ever remain such a foundation,
6. And such a king of the world."

Inscription No.XLII is written in Persian poetry ,the metre being Ramal, in ten lines, above the entrance door of the masjid. A few characters of the second and whole third lines are completely defaced.

"1. In the name of God, the merciful, the clement.
2. In the name of him who…; may God perpetually keep him in the world.
3. . . . . .
4. Such a sovereign who is famous in the world, and in person of delight for the world.
5. In his presence one of the grandees who is another king of Turkey and China.
6. Laid this religious foundation in the auspicious Hijra

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930.

7. O God ! May always remain the crown, throne and life with the king.

8. May Babar always pour the flowers of happiness; may remain successful.

9. His counselor and minister who is the founder of this fort masjid.

10. This poetry, giving the date and eulogy, was written by the lazy writer and poor servant Fath-allah-Ghori, composer."

The old temple of Ramachandra at Janamasthan must have been a very fine one, for many of its columns have been used by the Musalmans in the construction of Babar's masjid. These are of strong, close-grained, dark- coloured or black stone, called by the natives Kasauti, "touch-stone slate," and carved with different devices. They are from seven to eight feet long, square at the base,centre and capital, and round or octagonal intermediately.

(The Sharqi Architecture of Jaunpur by A.Fuhrer Ph.D. p 67-68)

ii. Third is Annette Susannah Beveridge was the second british scholar who in 1921 published texts of two Inscriptions purported to be of alleged baburi Mosque which were supplied by the Deputy- Commissioner of Fyzabad alongwith English Translation and Transliteration thereof done by a Muslim. In her said book A.S. Beveridge before giving Text and Translation of the alleged two Inscriptions writes as follows:

" Thanks to the kind response made by the Deputy-

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Commissioner of Fyzabad to my husband's enquiry about two inscriptions mentioned by several Gazetteers as still existing on 'Babur's Mosque" in Oudh, I am able to quote copies of both."

After giving text and transliteration of an Inscription he gives Translation with her exaggerating value thereof as follows:

"The translation and explanation of the above, manifestly made by a Musalman and as such having special value, are as follows:-"

"The inscription inside the Mosque is as follows:-"

After giving its Text and Transliteration she translates the alleged First Inscription as follows:

"1. By the command of the Emperor Babur whose justice is an edifice reaching up to very height of the heavens,

2. The good-hearted Mir Baqi built this alighting-place of angels;

3. Bavad khair baqi ! (May this goodness last for ever!) The year of building it was made clear likewise when I said Buvad khair baqi (=935)."

"The inscription outside the Mosque is as follows:-"

After giving its Text and Transliteration she translates the alleged Second Inscription as follows:

"The explanation of the above is as follows:-"

"In the first couplet the poet praises God, in the second Muhammad, in the third Babur - there is a peculiar literary beauty in the use of the word la-makani in the 1st couplet. The author hints that the mosque is meant to be the abode of God, although

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> he has no fixed abiding-place. - In the first hemistich of the 3rd couplet the poet gives Babur the appellation of qalandar, which means a perfect devotee, indifferent to all worldly pleasures. In the second hemistich he gives as the reason for his being so, that Babur became and was known all the world over as a qalandar, because having become Emperor of India and having thus reach the summit of worldly success, he had nothing to wish for on this earth.
>
> The inscription is incomplete and the above is the plain interpretation which can be given to the couplets that are to hand. Attempts may be made to reed further meaning into them but the language would not warrant it."

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1651. The text and translation of these above two authorities are evidently distinct and different. Beveridge's claim that the inscriptions were well existing on Baber's mosque in terms as to be understood about the existence of inscriptions and not for the text since admittedly she had not seen the inscriptions and its text but had collected the same as a secondary evidence.

1652. Then next comes the Civil Judge, Faizabad who has mentioned the text of the two inscriptions in his judgment dated 30.03.1946 in R.S. No.29 of 1945. He has also discussed the same as under:

> "Lastly there are the two Inscription in the mosque which have been reproduced in my inspection notes. These are also referred to in the Gazettes and according to the date in the inscription on the pulpit it was built in 923 Hijri, while according to other it was in 935 H. corresponding

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with 1528 A.D. These inscriptions were the sheet-anchor of the plff's case but I am of the opinion that they are inconclusive.

The 1st inscription contains three couplets in Persian and when translated runs as follows:

"By the order of Shah Babar, whose justice went up to the skies (i.e. was well known), Amir (Noble) Mir Baqi, of lofty grandeour, built this resting place of angels in 923 Hijri."

The 2nd inscription is more elaborate and contains usual high flown language on eulogy of Babar & describe Mir Baqi of Isphahan as his adviser and the builder of the mosque. This inscription no doubt s the plff's case, because it does not say that it was by the order of Babar shah & it only refers to the reign of Babar but the 1st couplet in the 1st inscription near the pulpit, clearly supports the theory that Babar had ordered the building of the as stated in the Gazettes and the settlement report."

1653. By this time, damage of inscription in 1934 and its restoration is admitted to the parties. Whether the restoration was accurate and if so on what basis is not known.

1654. Then next come Dr. Z.A. Desai's edited work in **"Epigraphia Indica Arabic & Persian Supplement 1964-65"** which gives another story with much difference. Paras 17, 18 and 19 of written argument:

17. Dr. Z.A. Desai informs that Fuhrer's reading does not appear to be free from mistakes. But he does not specify the mistakes committed by Fuhrer in his reading of the texts and translations thereof. From the scrutiny of Dr Desai's translation it appears that Dr. Desai in 4th line

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has added "and" between 'Mir' and 'Khan' and "Baqi" after 'Khan'. So he has converted 'Mir Khan' into 'Mir Khan Baqi'. And in the 3rd line he has added "of God" after 'this lasting house' to make it a mosque. He has neither given any rational explanation for his said conversion of 'Mir Khan' into 'Mir Baqi' nor He has exhibited as to how the Fuhrer's translation is different from the original text.

18. Dr. Z.A. Desai In his detailed discussion on all inscriptions of Babur's regime writes an introduction that a rough draft of an article of his predecessor Maulivi M. Asuraf Hussain who retired in 1953 was found amongst sundry papers in his office with a note that it might be published after revision by his successor. Consequently, he claims, that he has published these inscriptions with translation after extensive revision and editing, but nowhere has he mentioned that which portions of the reading of these inscriptions are his own revision and editing and on what ground these revisions have been made. About inscriptions at Ayodhya he writes that there are three inscriptions in the Babari Mosque out of which the two were completely destroyed by the Hindu rioters in 1934 A.D. However, he managed to secure an ink-stampage of one of them from Sayyid Badru'l - Hasan of Fyzabad. He writes that the present inscription restored by the Muslims Community "is also slightly different from the original owing perhaps to the incompetence of restorers in deciphering it properly." When Dr. Desai himself admits that the restored inscription is slightly different from the original, then his claim that the restored

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inscription fixed on Baburi mosque in or after 1934 is the dextrously rebuilt of the original one alleged to be fixed on since the days of Babur becomes meaningless and un-trustworthy. In fact, none of the Inscriptions was fixed on the Disputed Structure which has all along been sacred place of the Hindus known as Sri Ramajanmasthan Temple.

19. Dr. Desai informs that he has based his translation on the inscription of Fuhrer, although he says that Fuhrer must have been misinformed to affirm that; "few corrections of the second and the whole third line completely defaced". Even if it is supposed that some words in the 2nd line and the whole third line are defaced, there is not much impact in the meaning of the text of the inscription. But here we do find that Dr. Desai has extensively changed the meaning of the translated passage. It is quite different from what Fuhrer had translated. Fuhrer had written that it is in ten lines, above the entrance door of the Masjid. He has made its translation in ten separate lines. Dr. Desai has considerably changed the meaning of the text without pinpointing how Fuhrer's translation was wrong. Since beginning and the end of the text are the same and the inscription is said to be the same and there is no major variance in Fuhrer's English translation from the Persian text, Dr. Desai's translation appears to be arbitrary. He has changed the date of the inscription 930 H. (1523 A.D.) to 935A.H. Without assigning any reason. In Dr. Desai's translation the name of Mir Baqi the second Asfaq appears where as in the original Persian text Mir Baqi's name does

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not appear at all. Then Babar is called a Qalandar in this inscription which is not found in Fuhrer's translation. After 4th line Dr. Desai does not follow the line system and at the end he mentions Fathu'llah Muhammad Ghori as the humble writer of this inscription. His name figures in the Fuhrer's translation too. He goes on expanding how Babar was called Qalandar but he does not explain how the changes have taken place in the inscription which was not in the text read by Fuhrer.

1655. Sri P.N.Mishra has also requested this Court to take judicial notice of the fact that almost in all the inscriptions, which have been recovered by ASI said to be of the period of Babar mentions his name with much honour and deference. This he has demonstrated from various inscriptions referred to in **"Epigraphia Indica Arabic & Persian Supplement 1964-65" (Supra)**. He has summarized this part of argument in para 20 of written argument as under:

"In the above mentioned Inscriptions the Emperor's name Zahiru'd-Din Muhammad Babur Badshah Ghazi which has been recorded almost in all other available Inscription of his period, is missing from which it appears that the forgers of later days were not familiar with the correct name of the said Emperor.

In the Inscription, dated A.H. 933 i.e. 1526-27 A.D. found on the wall of a well from Fatehpur Sikri being Plate No. XV(a) in its 1st line his name has been recorded as follows:

"Zahiru'd-Din Muhammad Babur Badshah Ghazi"

(Epigraphia Indica Arabic & Persian Supplement 1964 and 1965 at page-51)

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In the Inscription of A.H. 934 i.e. 1527-28 A.D. found on a mosque from Panipat being Plate No. XVI(b) in its 1st line his name has been recorded as follows:

"Zahiru'd-Din Muhammad Babur Badshah Ghazi"

(Ibid.p. 55)

In the Inscription dated A.H. 934 i.e. 1527-28 A.D. found on a mosque from Rohatak being Plate No. XVI(a) in its 2nd line his name has been recorded as follows:

"Zahiru'd-Din Muhammad Babur Badshah Ghazi"

(Ibid.p. 56-7)

In the Inscription dated A.H. 934 i.e. 1528 A.D. found on a mosque from Rohtak being Plate No. XVII(a) in its 1st line his name has been recorded as follows:

"His Majesty Babur Badshah Ghazi"

(Ibid.p. 57)

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In the Inscription of A.H. 935 i.e. 1528-29 A.D. found on a mosque from Palam(Delhi) being Plate No. XVIII(a) in its 1st and 2nd lines his name has been recorded as follows:

"Zahiru'd-Din Muhammad Babur Badshah Ghazi"

(Ibid.p. 62)

In the Inscription of A.H. 935 i.e. 1528-29 A.D. found on a mosque from Pilakhna being Plate No. XVIII(c) in its 3rd line his name has been recorded as follows:

"Zahiru'd-Din Muhammad Babur Ghazi"

(Ibid.p. 64)

In the Inscription dated A.H. 936 i.e. 1529 A.D. found on a mosque from Maham being Plate No. XIX(a) in its 1st and 2nd lines his name has been recorded as follows:

"Zahiru'd-Din Muhammad Badshah Ghazi"

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(Ibid.p. 65)

1656. Regarding transportation of inscription from one place to another and affixing the same to raise the claim with respect to building on the basis of certain facts, which actually did not exist, he pointed out that this kind of practice has been noticed on various occasions. He sought to fortify it by referring to certain incidents mentioned in para 21 and 22 of his written argument:

> 21. It is not uncommon for ruffians to fix old Inscriptions on newly built and / or converted mosques. **'Epigraphia Indica Arabic & Persian Supplement 1964 and 1965'** at its pages 55 and 56 records that two Inscriptions dated 1934 fixed on two mosques at Rohtak did not belong to those mosques but have been fixed thereon. relevant extracts from said book read as follows:
>
> "Among the historical buildings, two mosques, viz., Masjid-i-Khurd in the Fort2 and Rajputon-ki-Masjid, a new mosque in the city area, bear inscriptions of the time of Babar. The one on the Masjid-i-Khurd consists of three lines inscribed on a tablet measuring 53 by 23cm. Which is fixed over the central archway outside3. The slab is badly damaged and considerable portion of the text has peeled off. It is, therefore, not possible to decipher it completely, but this much is certain that it refers to the construction of a mosque in the reign of ahiru'd-Din Muhammad Babur by one Qadi Hammad. If the Tughluq inscription occurring on the outer archway is in situ, this epigraph may not belong to this mosque." (Ibid.p.56)
>
> "The other epigraph of Babur in Rohtak is from the

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Rajputon-ki-Masjid. Fixed over its central arch, the tablet, measuring 1.1 m. By 21 cm., does not belong to the mosque, but it was rather intended as the tombstone of Masnad-i-'Ali Firuz Khan. It is inscribed with two lines of Persian which are slightly affected by the weathering of the stone. The text records A.H. 934 (1528 A.D.) as the date of the construction of the tomb of Masnad-i-Ali Firuz Khan, son of Masnad-i-Ali Ahmed Khan and grandson of Masnad- i-Ali Jamal Khan and refers itself to the reign of Babur. The style of writing is ordinary Naskh. I have read it as follows:-

TEXT

Plate XVII(a)

.....

TRANSALATION

(1) Completed was in the reign of His Majesty Babur Badshah Ghazi, may Allah perpetuate his kingdom and sovereignity, this noble edifice, (viz.) the tomb of His Excellency Masnad-i-Ali3 Firuz Khan, son of Masnad-i-Ali Ahmad Khan, son of Masnad-i-Ali Jamal Khan, the deceased, all of them, on the 10th of the month of Rabiu'l-Akhar, year (A.H.) four and thirty and nine hundred (10th Rabi'II A.H. 934 = 3rd January 1528 A.D.). (Ibid. P. 57)

22. In **'Epigraphia Indica Arabic & Persian Supplement 1964 and 1965'** at its pages 19 and 20 S.A. Rahim reports that at Fathabad near Chanderi in Guna district of Madhya Pradesh, stands the partially ruined palace known as Kushk-Mahal and Inscrption fixed thereon are not dated back to its construction but have

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been affixed thereon from time to time either by the visitors or by the Governors thereof. Relevant extracts from his said reprt read as follows:

"It would not be, however, wholly correct to say that the Kushk-Mahal does not bear any inscription. There are about a score of places on the walls enclosing the stair-cases, referred to above, which bear short inscriptions. The rubbings of some of these were found in the bundles of old estampages which werer transferred to our office, from the Office of the Government Epigraphist for India, Ootacamund, South India, who in his turn seems to have received them quite some time back from the Archaeological Department of the erstwhile Gwalior state. I prepared fresh rubbings of these records when I toured some places in Madhya Pradesh, including Chanderi, in November 1962. Of these, some are mere repetitions of the same text and as such have been excluded from this purview. The remaining four inscriptions are edited here for the first time.

These inscriptions raise an important question, as to whether they are contemporary with the building or not. They do not appear to be so, because they are not inscribed on tablets set up on the walls, nor are they found incised on prominent places on the monument. A building of such magnificence would have had, if at all it was so planned, an inscription of proportionate prominence. This does not rule out the possibility, however, of the existence of an epigraph on the monument, for it is possible that it had one and may

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have disappeared since. Moreover, the texts of the inscriptions under study are also vague on this point, for they do not make any explicit reference to the palace-building or its construction. In view of these facts, it appears more likely that these records are either visitors' etchings or some sort of mementos which the governors, the palace-guards or some other officials might have desired to leave on the stone.

Fortunately, one of these four records is dated, and since the same penmanship is employed in the other three records, they can also be safely taken as having been inscribed at about the same time or at short intervals. Their language is Persian and style of writing cursive Naskh. The wear and tear of time has affected the stone, resulting into partial obliteration of some of the letters, particularly in the first inscription.

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The contents of these four epigraphs classify them into two groups: one, of the first inscription, and the other of the remaining three. The first refers itself to the governorship(amal) of Khan-i-A'zam Sharaf Khan Sultani and the superintendence (shahnagi) of one person whose name is not very legible; it seems to be Raja, (son of) Shams, (son of) Fath. The name of the writer which is also not clear, appears to be Shiv Sing(?) Gulhar. This inscription is dated 1489-90. The three records of the other group refer, between themselves, to the governorship of Malik Mallu Sultani and superintendence of Sarkhail Shariqi Mulki and quote Gulhar Jit(?) Dev, as the scribe. They are undated and hence, it is difficult to state positively if they are earlier

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than the above dated inscription or not." (Ibid. P.19-20)

1657. We may place on record that on this aspect of the matter the learned counsels appearing on behalf of the Muslim parties in their rejoinder arguments could not give any substantial reply. They said that the matter involves historical facts. The inscriptions, their text, have been noticed in various history books. They have no other material to support the plea that the building in dispute was constructed by Babar in 1528 AD or at his command by his commander or his agent Mir Baki. They also submit that since this historical event has not been doubted for the last more than one and a half century, this Court may not be justified in recording a finding disturbing the historically admitted and believed fact as the Court is not expert in the matter of history and therefore, there should not be any venture on the part of the Court on this aspect.

1658. The later part of the argument that for the last more than one and a half century, the documents, which are available to us, do not show that the Historians doubted about the building in dispute was constructed during the reign of Babar. But simultaneously this is also proved that all have proceeded mechanically and without properly scrutinizing the texts of the inscriptions, as reported from time to time. The things have been taken as granted. It is also true that the incident of destruction of the temple and construction of a mosque at the disputed place was first noticed by Tieffenthaler in the second half of 18th Century. By that time Aurungzebe's rule was much nearer than Babar's reign. The local belief in respect to recent event normally is more reliable then much older one. This belief was so strong that it continued thereafter for the last 50 years and around 1810 AD, when Dr. Buchanan visited Ayodhya he also

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found the same. It is he, who for the fist time sought to controvert the local belief by bringing into picture Babar as the person responsible for the demolition of the temple and construction of mosque at that site. Subsequent writers were mostly petty employees of East India Company i.e. Robert Montgommery Martin or the British Government i.e. H.H.Wilson etc.

1659. During the reign of British Government, names of Aurangzebe and Babar, both were taken for Ayodhya, but tried to be a justified in respect to different buildings. The Indian Historians basically have followed what was written as per the observations of Buchanan. Nobody made any detailed investigation whatsoever. At least none tried to find out the actual events which took place and the correct historical facts.

1660. Normally, this Court would be justified in following the opinion of Expert Historians particularly when it covers a sufficiently long time, but when directly a historical issue is raised before it and this Court, as a matter of necessity, has no option but to find out the correct historical events to the extent of accuracy as much as possible, we cannot proceed blindly to follow what has been written by earlier Historians ignoring all other aspects, some of which we have already discussed. In fact, it is for this reason that the biographical details of some of the alleged history writers, we have mentioned in the early part of this judgment. Had there been two views possible we would not have hesitated in following the view which has prevailed for such a long time but where we find, considering all the relevant material, that the view, which has prevailed for such a long time apparently unbelievable and unsubstantiable, followed by the concerned authors and Historians without a minute scientific

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investigation, we cannot shut our eyes to such glaring errors and record a finding for which we ourselves are not satisfied at all.

1661. In fact the doubts created otherwise are so strong and duly fortified with relevant material that we have no hesitation in observing that they surpass the required test to become cogent evidence to prove a fact otherwise.

1662. Before concluding we may also deal with one aspect which has been raised though with caution from both the sites, i.e., the legal status and evidentiary value of the White Paper published by Government of India as well as various gazetteers.

1663. First we come to the White Paper issued in February, 1993 by the Government of India with the title "White Paper on Ayodhya".

1664. In Chapter I "Overview" paras 1.1 and 1.2 read as under:

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> *"1.1. Ayodhya situated in the north of India is a township in District Faizabad of Uttar Pradesh . It has long been a place of holy pilgrimage because of its mention in the epic Ramayana as the place of birth of Shri Ram. The structure commonly known as Ram Janma Bhoomi-Babri Masjid was erected as a mosque by one Mir Baqi in Ayodhya in 1528 AD. It is claimed by some sections that it was built at the site believed to be the birth-spot of Shri Ram where a temple had stood earlier. This resulted in a long-standing dispute."*
>
> *"1.2. The controversy entered a new phase with the placing of idols in the disputed structure in December, 1949. The premises were attached under section 145 of the Code of Criminal Procedure. Civil suits were filed shortly thereafter. Interim orders in these civil suits restrained the*

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parties from removing the idols or interfering with their worship. In effect, therefore, from December, 1949 till December 6, 1992 the structure had not been used as a mosque."

1665. In Chapter II "Background" para 2.13 and 2.15 read as under:

"2.13. As has been mentioned above, Hindu structures of worship already existed in the outer courtyard of the RJB-BM structure. On the night of 22nd/23rd December, 1949, however, Hindu idols were placed under the central dome of the main structure. Worship of these idols was started on a big scale from the next morning. As this was likely to disturb the public peace, the civil administration attached the premises under section 145 of the Code of Criminal Procedure. This was the starting point of a whole chain of events which ultimately led to the demolition of the structure. The main events of this chain have been summarised in Appendix-1."

"2.15. The Hindu idols thus continued inside the disputed structure since 1949. Worship of these idols by Hindus also continued without interruption since 1949 and the structure was not used by the Muslims for offering prayers since then. The controversy remained at a low ebb till 1986 when the District Court of Faizabad ordered opening of the lock placed on a grill leading to the sanctum-sanctorum of the shrine. An organisation called the Babri Masjid Action Committee (BMAC), seeking restoration of the disputed shrine to the Muslims came into being and launched a protest movement. The Hindu organisations, on the other hand, stepped up their activities to mobilise public opinion

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for the construction of a Ram temple at the disputed site."

1666. Similarly Chapter I para 1.14 refers to the excavations conducted by Prof. B.B. Lal at Ayodhya and Chapter II paras 2.6, 2.7, 2.8, 2.9 and 2.10 refers to certain more facts as under:

"1.14. The other controversy related to the excavations conducted by Prof. B.B. Lal at Ayodhya. His discovery of some pillar bases close to the disputed structure was cited by VHP to support its case. The authenticity of this finding was, however, disputed by AIBMAC which alleged that its historians had been denied the opportunity to examine the original record relating to this excavation. This was settled by making available material relating to Prof. Lal's excavations to the experts of both sides."

"2.6. There was a minor battle in this part of Ayodhya (Kot Ram Chandra) in 1855 in which a large number of casualties had taken place. A 3-man inquiry report of this incident is available on the records of the East India Company (and a copy is in the National Archives)."

"2.7. At some stage during the history of the RJB-BM structure a portion of its compound was occupied by Hindu structures of worship, viz Ram Chabutra and Kaushalya Rasoi. The presence of these structures is marked in court documents relating to a suit filed by Mahant Raghuvar Dass in 1885. These structures were in existence till December 6, 1992. There are indications that these structures were considerably older but the evidence on this point is not conclusive. Some Survey records of 1807-14 have come to notice in which the disputed site has been marked as 'Yanmasthan', i.e. Janmashtan."

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"2.8. It is also established that the dispute between Hindus and Muslims over this structure led to communal riots in 1934 in which the structure suffered some damage which was later repaired."

"2.9. The structure and its appurtenant land were notified as a Sunni Muslim Wakf in 1944. The validity of this notification has been called into question in court proceedings."

"2.10. The Ram Janma Bhoomi-Babri Masjid structure contained some architectural elements, particularly fourteen black stone pillars that were said to be part of a non-Islamic religious structure of 11th -12th century AD. The VHP argued that this constituted evidence that the disputed structure was built after destruction of a temple. The AIBMAC, however, argued that there was nothing to suggest that all these architectural elements belonged to a single structure standing at this very site. These could have belonged to different structures in other areas."

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1667. Sri P.R. Ganpathi Ayer and Sri K.N. Bhat, Senior Advocates sought to rely on the above report to show the structures already existing in the disputed area and some other historical events.

1668. Similarly, the factum of construction of the disputed building in 1528 AD mentioned in para 1.1 of the said paper is referred by the other side. The question is, what is the legal status of the document, how far the contents thereof can be relied on by the parties in a Court of Law in respect to certain facts which are to be adjudicated and whether a historical or otherwise facts mentioned in a White Paper published by Government of India are binding and conclusive so far as that

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fact(s) relating to occurrence or non-occurrence of an event etc. is/are concerned.

1669. No provision has been shown to us which cover a White Paper issued by the Government.

1670. The word "White Paper" has been defined in **"Words and Phrases"** Permanent Edition, Vol. 45, published by St. Paul, Minn. West Publishing Co., at page 127 as under:

> *"**White Paper:** Ballots upon paper tinged with blue, which has ruled lines not placed there as marks to distinguish the ballots, are upon "white paper," within the meaning of Act 1849, p. 74, § 15, providing that no ballot shall be received or counted unless the same is written or printed upon white paper without any marks thereon intended to distinguish one ballot from another. People v. Kilduff, 15 III. 492, 501, 60 Am. Dec. 769."*

1671. In "**DK Illustrated Oxford Dictionary**" published by Oxford University Press, at page 952:

> ***"White Paper-** Government report giving information or proposals on an issue."*

1672. In "**The New Lexicon Webster's Dictionary of the English Language**" (1987), published by Lexicon Publications, Inc. at page 1122:

> ***"White paper-**an informative government report issued on a matter which has received official investigation."*

1673. In "**The Layman's Dictionary of English Law" by Gavin McFarlane**" (1984), published by Waterlow Publishers Limited at page 314:

> ***"White Paper-**A governmental publication giving details of some topic which is to be laid before*

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Parliament."

1674. On the one hand it is a public document issued by the Government of India and, therefore, no doubt it is true, that, it can be looked into by a Court of Law. Even if the parties have not referred to it, judicial cognizance of such a document can be taken. A Full Bench of Punjab High Court in **Sukhdev Singh Vs. Union Territory, Chandigarh, AIR 1987 Punjab and Haryana 5** has said:

> *"15. What the White Paper describes can judicially be taken note of on which there can be no two opinions...."*

1675. However, there is no authority to show that the facts as given in White Paper are to be treated as correct in a Court of Law where those facts or related facts are disputed in a pending adjudication. No provision has been shown whereunder anything contained in a White Paper published by a Government may be taken to be a proved fact. We are not apprised of any authority whatsoever showing the legal status of a White Paper except that it is a public document under Section 74 of the Evidence Act. About the value of the facts or factual statements contained therein, to our mind, the things would depend on the nature of the facts stated in a White Paper and the context. Something concerning the governmental activities, if are mentioned in a White Paper which has been issued by that very Government, a presumption may lie that the facts relating to that body must have been correctly mentioned therein. This presumption also, however, is rebuttable and it is always open to anyone to contradict such a statement of fact and lead evidence to disprove it. Then there may be facts relating to history or historical events, the geographical position of the territories etc. as also the condition of the subject/people etc. The well known

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historical facts which are duly supported with other history books may be taken to be correct. Similarly in respect to the geographical position of the State the concerned government is more competent to tell about its accuracy than any individual. However, the facts historical or otherwise in respect to individual or group of individuals, and/or about the property matters of the subject, we have no manner of doubt that in such cases, at the best, the Court will presume that the government has mentioned those facts based on the record available to it but in case of dispute such statement would have no relevance and shall not be used for the advantage/disadvantage to any party. The dispute has to be considered by the appropriate judicial authority in the light of the evidence led before it. The facts mentioned in White Paper, depending upon the nature, at the best, may be used as a corroborating evidence but not otherwise.

1676. Then comes the gazetteers in respect whereto some of the authorities we have already discussed and noticed above. At this stage suffice it to mention that the facts contained in a gazetteer do not represent the conclusive status and correctness of those facts but again they have to be looked into and decide by a Court of Law based on the evidence available before it. The gazetteer may be considered as a relevant evidence but the historical, cultural and other facts, which may have some reflection on the rights, privileges etc. of individual or group of individuals, there the matter has to be considered by a Court of Law in the light of the evidence made available to it and if corroborated by other reliable evidence, the facts of history etc. contained in a gazetteer may be looked into. Gazetteers, published under the authority of the Government, we have no hesitation in treating the same to be a "public document" under

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Section 74 of the Evidence Act but then the contents thereof cannot be taken on their face value and cannot be relied to prove a particular aspect of the matter unless it is corroborated.

1677. Sri Ayer has relied on Section 87 of the Evidence Act to contend that the facts stated in a gazetteer may be presumed to be correct unless proved otherwise since the gazetteers are relevant for the purpose of Section 13 of the Evidence Act having noticed the faith of the people and the historical facts therein. To the extent that the gazetteer may be treated to be relevant and one of the piece of evidence, we may not have any objection but to suggest that the facts stated in a gazetteer may presume to be correct unless proved otherwise by applying Section 87 of the Evidence Act, we find it difficult to accept. Where the rights of the individuals or group of individuals pertaining to property dispute are under challenge, the facts mentioned in a gazetteer may be considered to be a relevant piece of evidence but not beyond that.

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1678. In the light of the above we do not find that either the Government of India's White Paper published in 1993 or various gazetteers, merely for mentioning one or the other facts, can be taken to be correct on its face value unless corroborated with cogent evidence.

1679. In the above facts and circumstance, it is difficult to record a finding that the building in dispute was constructed in 1528 AD by or at the command of Babar since no reliable material is available for coming to the said conclusion. On the contrary the preponderance of probability shows that the building in dispute was constructed at some later point of time and the inscriptions thereon were fixed further later but exact period of the two is difficult to ascertain.

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1680. The onus to prove lies upon the party who has pleaded these facts. We have no hesitation in saying that these parties have miserably failed to discharge this burden.

1681. In the absence of any concrete material to show the exact period and the reign of the concerned Mughal emperor or anyone else during which the above construction took place, we are refraining from recording any positive finding on this aspect except that the building in dispute, to our mind, may have been constructed much later than the reign of Emperor Babar and the inscriptions were fixed further thereafter and that is why there have occurred certain discrepancies about the name of the person concerned as also the period. The possibility of change, alteration or manipulation in the inscriptions cannot be ruled out.

1682. It is a matter of further probe by Historians and others to find out other details after making an honest and independent inquiry into the matter. The three issues, therefore, are answered as under:

(A) Issue no.6 (Suit-1) and Issue No.5 (Suit-3) are answered in negative. The defendants have failed to prove that the property in dispute was constructed by Shanshah/Emperor Babar in 1528 AD. Accordingly, the question as to whether Babar constructed the property in dispute as a 'mosque' does not arise and needs no answer.

(B) Issue No.1(a) (Suit-4) is answered in negative. The plaintiffs have failed to prove that the building in dispute was built by Babar. Similarly defendant no.13 has also failed to prove that the same was built by Mir Baqi. The further question as to when it was built and by whom cannot be replied with certainty since neither there is any

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pleading nor any evidence has been led nor any material has been placed before us to arrive at a concrete finding on this aspect. However, applying the principle of informed guess, we are of the view that the building in dispute may have been constructed, probably, between 1659 to 1707 AD i.e. during the regime of Aurangzeb.

(G) Issues relating to Deities, their status, rights etc.:

1683. In this category comes issues no. 12 and 21 (Suit-4); and, 1, 2, 3(a), 6 and 21 (Suit-5).

1684. Issues no. 12 (Suit-4) and 3(a) (Suit-5) involves common facts and consideration. Similarly issues no. 1 and 21 (Suit-5) and issues no. 2 and 6 (Suit-5) are common:

"Issue No. 1 (Suit-5):-

Whether the plaintiffs 1 and 2 are juridical persons?

Issue No. 21 (Suit-5):-

Whether the idols in question cannot be treated as Deities as alleged in paragraphs 1,11,12,21,22, 27 and 41 of the written statement of defendant no.4 and in paragraph 1 of the written statement of defendant no.5?

Issue No. 2 (Suit-5):-

Whether the suit in the name of Deities described in the plaint as plaintiffs 1 and 2 is not maintainable through plaintiff no.3 as next friend?

Issue No. 6 (Suit-5):-

Is the plaintiff no.3 not entitled to represent the plaintiffs 1 and 2 as their next friend and is the suit not competent on this account?

Issue No. 21 (Suit-4):-

Whether the suit is bad for non-joinder of alleged Deities?

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Issue No. 12 (Suit-4):-

Whether idols and objects of worship were placed ***inside the building*** *in the night intervening 22nd and 23rd December 1949* ***as alleged in paragraph 11 of the plaint*** *or they have been in existence there since before? In either case, effect?*

Issue No. 3 (Suit-5):-

(a) Whether the idol in question was installed ***under the central dome of the disputed building*** *(since demolished) in the early hours of December 23, 1949 as alleged by the* ***plaintiff in paragraph 27 of the plaint*** *as clarified in their statement under Order 10 Rule 2 C.P.C."*

1685. Pleadings in this respect are in para 11 of the plaint (Suit-4) and para 26 of the written statement dated 24th December, 1989 of defendant no. 13/1 (Suit-4); paras 1, 20 and 27 of the plaint (Suit-5) and paras 1, 11, 12, 21, 22, 27 and 41 of the written statement dated 26/29.08.1989 of defendant no. 4 (Suit-5) which read as under:

"11. That the Muslims have been in peaceful possession of the aforesaid mosque and used to recite prayer in it, till 23.12.1949 when a large crowd of Hindus, with the mischievous intention of destroying, damaging or defiling the said mosque and thereby insulting the Muslim religion and the religious feelings of the Muslims, entered the mosque and desecrated the mosque by placing idols inside the mosque. The conduct of Hindus amounted to an offence punishable under sections 147, 295 and 448 of the Indian Penal Code." **(Plaint, Suit-4)**

Para 26 of Written statement of defendant no. 13/1 (Suit-4):

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26. That it is manifestly established by public records and relevant books of authority that the premises in dispute is the place where, BHAGWAN SRI RAMA Manifested HIMSELF in human form as an incarnation of BHAGWAN VISHNU, according to the tradition and faith of the Hindus. Again according to the Hindu faith, GANGA originates from the nail of the tee of BHAGWAN VISHNU, and cleanses and purifies whatever is washed by or dipped into its waters. And BHAGWAN VISHNU having Manifested himself in the human form of Maryada Purushottam Sri Ramchandra Ji Maharaj at Sri Rama Janma Bhumi, those who touch the Earth or the footprints of BHAGWAN SRI RAMA symbolised by the CHARANS at that place, are cleansed of their sins and purified. The Earth at Sri Rama Janma Bhumi could not have acted differently ***towards the Muslims who went there****. They were also cleansed and purified of the evil in them by the touch of BHAGWAN SRI RAMA'S footprints, which like the waters of the GANGA purify all without any discrimination. The place, like the waters of the GANGA, remains unsullied, and has been an object of worship, with a juridical personality of its own as a Deity, distinct from the juridical personality of the presiding Deity of BHAGWAN SRI RAMA installed in the Temple thereat, and has existed since ever even before the construction of the first temple thereat and installation of the Idol therein. Indeed, it is the VIDINE SPIRIT which is worshipped. An Idol is not indispensable. There are Hindu Temples without any Idol.* ***The ASTHAN SRI RAMA JANMA BHUMI has existed immovable through the ages, and***

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has ever been a juridical person. *The actual and continuous performance of Puja at Sri Rama Janma Bhumi was not essential for the continued existence or Presence of the Deities at that place. They have continued to remain Present, and shall continue to remain Present, so long as the place lasts, which, being land, is indestructible, for any one to come and invoke them by prayer. The Deities are Immortal, being the Divine Spirit or the ATMAN, and may take different shapes and forms as Idols or other symbols of worship according to the faith and aspiration of their devotees.*

Paras 1, 20 and 27 of plaint (Suit-5):

"1. That the Plaintiffs Nos. 1 and 2, namely, Bhagwan Sri Rama Virajman at Sri Rama Janma Bhumi, Ayodhya, also called Sri Rama Lala Virajman, and the Asthan Sri Rama Janma Bhumi, Ayodhya, with the other Idols and places of worship situate thereat, ***are juridical persons with Bhagwan Sri Rama as the presiding Deity of the place***. *The Plaintiffs No. 3 is a Vaishnava Hindu, and seeks to represent the Deity and the Asthan as a next friend."*

"20. That ***the Place itself****, or the Asthan SRI RAMA JANMA BHUMI, as it has come to be known,* ***has been an object of worship as a Deity*** *by the devotees of Bhagwan Sri Rama, as IT personifies the spirit of the Divine worshipped in the form of SRI Rama LALA or Lord Rama the child. The Asthan was thus Deified and has had a juridical personality of its own even before the construction of a Temple building or the installation of the Idol of Bhagwan Sri Rama thereat."*

27. That after independence from the British Rule, the

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Vairagis and the Sadhus and the Hindu public, dug up and levelled whatever graves had been left in the area surrounding Sri Rama Janma Bhumi Asthan and purified the place by Aknand Patha and Japa by thousand and thousands of persons all over the area. Ultimately, ***on the night between the 22nd 23rd December, 1949, the Idol of Bhagwan Sri Rama was installed with due ceremony under the central dome of the building also****.*

Paras 1, 11, 12, 21, 22, 27 and 41 of Written statement of defendant no. 4 (Suit-5):

"1. That the contents of para 1 of the plaint are incorrect and hence denied as stated. Neither the plaintiffs no. 1 and 2 are the juridical persons and nor there is any Presiding Deity of Sri Ram Chandraji at the place in dispute and nor the plaintiff no. 3 has any locus standi or right to represent the co-called and alleged deity and Asthan as next friend. It is further submitted that the plaintiffs no. 1 and 2 are not at all legal personalities (and as such they have no right to file the instant suit). As a matter of fact there has never been any installation of deity within the premises of the disputed place of worship known as Babri Masjid and the ***idol in question was stealthily and surreptitiously kept inside the mosque*** *in the night of 22nd/23rd December, 1949 by some mischief-mongers against whom an F.I.R. had also been lodged at the Police Station Ayodhya on 23rd December, 1949.*

11. That the contents of para 11 of the plaint are denied as stated and in reply thereto it is submitted that the ***plaintiffs no. 1 and 2 cannot be treated as deities*** *and also there arises no question of their Sewa and Pooja. Rest*

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of the contents of the para under reply may be verified from the record.

12. That the contents of para 12 of the plaint are also denied as stated and in reply thereto it is submitted that there arises no question of Sewa and Pooja of the said alleged deities as no such deities exist in the building in question and the idols kept therein could not be treated as deities. It is further submitted that the restricted Pooja as carried on on 16th January, 1950 could not be treated as Sewa and Pooja of the alleged deity. It is also incorrect to say that there has ever been any likelihood of the suits being decided in such a manner that any closer Darshan of the idols could be possible.

21. That the contents of para 21 of the plaint are also denied as stated and in reply thereto it is submitted that the mythological concept of incarnation etc. is not at all relevant for the purposes of the instant case. (However, the averments of the para under reply are not correct and consistent with Hindu Law and the same being a matter of legal nature it will be dealt at the appropriate stage.) It is, however, relevant to mention here that ***neither there has been any installation of any deity within the premises in dispute and nor the ritual of Pranpratishtha in respect of any idol surreptitiously and stealthily kept inside the mosque in question was ever performed or observed****; as such there arises no question of divine spirit having been created or manifested in the idol forcibly kept in the mosque in question in the night of 22nd-23rd December, 1949 about which an F.I.R. was lodged at the Police Station Ayodhya in the morning of 23.12.1949 by a Hindu*

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Officer of the Police Station himself who had mentioned in the said F.I.R. that some mischievous element had kept the said idol in the preceding night in a stealthy and surreptitious manner by sheer use of force and on the basis of the said F.I.R. a Criminal case had also been registered against those persons who had kept the said idol and subsequently proceedings under section 145 Cr. Proc. Code had been drawn by the Magistrate and as a result of the communal tension arising and developing on account of the aforesaid incident of keeping the idol in the mosque, the said building had been attached on 29.12.1949 and Suprudgar/Receiver for the care and custody of the said building had also been appointed who had drawn up a Scheme of Management and the same was submitted on 5.1.1950.

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22. That the contents of para 22 of the plaint are also incorrect and hence denied as stated and in reply thereto it is submitted that the spirit of Sri Ramj Chandraji as the divine child cannot be said to reside at any place or in any idol kept inside the said mosque and as such no idol or place of the said mosque can be said to be deity. It is further submitted that there is no comparison of Kedranath or Vishnupad temple of Gaya with the Babri Masjid. It is also relevant to mention here that ***there is no Charan or Sita Rasoee within the premises of Babri Masjid*** *and the place known as Sita Rasoee is* ***situated outside the premises of the said mosque****. It is also incorrect to say that Pooja in any form was ever performed inside the mosque in question at any time prior to 23.12.1949.*

27.That the contents of para 27 of the plaint are also

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incorrect and hence denied as stated. The graves existing near the Babri Masjid were dug up and levelled mainly after 1949 and not just after Independence and in the night of 22nd-23rd December, 1949 ***some Bairagees had forcibly and illegally entered into the mosque and had kept the idol below the middle dome of the mosque*** *about which an F.I.R. was lodged at the Police Station Ayodhya in the morning of 23rd December, 1949 and some of the culprits were even named in the FIR. It is absolutely incorrect to say that the idol of Bhagwan Sri Ram Chandraji was installed with due ceremony in the Central dome of the building in the 'aforesaid' night. It is also incorrect to say that any purification of the alleged Asthan was done by Akhand Ramyan and Jap by thousands of persons all over the area.*

41. That the instant suit is not at all maintainable and the plaintiffs no. 1 and 2 are neither deities and nor they can be treated as juristic persons and the plaintiff no. 3 cannot claim himself to be the next friend of Bhagwan Sri Ram. As such none of the plaintiffs have any right to file the instant Suit."

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1686. The defendant no. 5 (Suit-5) also in para 1 of his written statement has said:

"1. That the contents of para 1 of plaint are denied. ***Neither the plaintiff no. 1 nor plaintiff no. 2 are the deities within the meaning of Hindu Law nor they are juristic person to file the suit.*** *Remaining contents of para are also denied. Kindly see additional pleas."*

1687. We may mention at this stage that para 11 of the plaint (Suit-4) has also been denied by the defendants no. 1 and 2 in

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para 11 of their written statement dated 12.03.1962 and thereafter in the additional pleas in paras 25, 28 and 29 they have pleaded that Hindu **Pooja is going on in the said temple since 1934, i.e., for about last 28 years and Muslims have never offered any prayer since 1934 therein**. It is also said that the plaintiffs (Suit-4) have falsely described the temple as Babari mosque. Same thing has been repeated in the written statement dated 25.01.1963 filed on behalf of defendant no. 2 in para 25.

1688. On behalf of Nirmohi Akhara defendants no. 3 and 4 also written statement has been filed wherein they have disputed the very assertion of construction of any building, i.e., Babari mosque by Emperor Babar 460 years ago as alleged in para 1 and it is also said that Babar did not make any conquest or occupation of any territory in India at that time. Similarly, any damage to the building in 1934 has been denied and consequently its rebuilding and reconstruction also denied. We may notice at this stage, in particular, para 13(C) of the written statement dated 22/24.08.1962 of defendants no. 3 and 4 which says:

> *"The said Temple Ram Chabutra has a history of Judicial scanning since 1885 A.D. and it existence and possession over temple Ram Chabutra was ever since in possession of Nirmohi Akhara and no other but Hindus allowed to enter and worship there and put offering in form of money, sweets, fruits, flowers etc....."*

1689. Similarly in para 38 of their additional written statement dated 28/29.01.1963 the defendants no. 3 and 4 have categorically denied that Emperor Babar ever built a mosque as alleged by the plaintiffs or that the Muslims were ever in

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possession of the building in question. Therefore, the case of the defendants no. 3 and 4 has all through been that the temple of Lord Rama at the disputed site exist from time immemorial and thereat neither any construction was made by Babar in 1528 AD nor any damage etc. caused in 1934 in the said temple and accordingly they also deny the allegation of placement of any idol in the disputed building on 22/23.12.1949. Para 11 of the plaint (Suit-4) has been denied alleging it to be false and concocted and in para 12 of the written statement it is said that no such incident ever took place. The report, if any, lodged by the constable is mischievous and in connivance of the plaintiffs.

1690. The arguments advanced by Sri Jilani, and as adopted by counsel appearing for other Muslim parties are, that, neither a place can be said to be a 'Deity' nor a Juristic person, nor every 'idol' will attain the status of a 'Deity' and thereby become a juristic person, unless it is installed by Shastric procedure i.e., by observing process of "Pran Pratishtha" (vivification). Neither idols in question placed at the disputed site are 'Deity' nor the place itself comes within the said notion recognised in law. The suit filed by plaintiffs no. 1 and 2 (Suit-5) is not maintainable. Non impleadment of Deity, i.e., idol and place makes Suit-4 untenable. Further submission is, the plaintiff 3 (Suit-5) is neither competent nor otherwise can represent plaintiffs 1 and 2 (Suit-5), he is not a proper person who can represent the plaintiffs 1 and 2, and even otherwise as a next friend. Therefore, Suit-5 is liable to be dismissed. Besides, plaintiffs 1 and 2 not being juridical person, Suit 5 is not maintainable in law.

1691. Sri Siddiqui also argued that *Pran Pratishtha* is necessary to make an idol 'deity' as held in **Jogendra Nath**

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Naskar Vs. Commissioner of Income Tax, Calcutta AIR 1969 SC 1089. He said that neither in 1949 nor thereafter, at any point of time, *Pran Pratishtha* of the idols, placed in the inner courtyard of the disputed structure, took place and, therefore, no right of worship of the idols placed therein is vested in or acquired by any Hindu. He said that plaintiff no. 2 is only a fictional deity and not a real deity. After construction of building more than 500 years ago, the deity cannot be said to have continued since then till date.

1692. With respect to Suit-3, contention of all the learned counsels appearing on behalf of various Hindu parties, [except Sri R.L. Verma who is counsel for plaintiff (Suit-3)] is that the Deities being juristic personalities having not been impleaded as defendants in Suit-3, though they are necessary parties, hence in their absence suit cannot proceed.

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1693. Responding to the objections of Sri Jilani, Sri Siddiqui and Sri Irfan Ahmad, Advocates, the other side, represented through Sri Ravi Shankar Prasad, Sri P.R. Ganesh Ayer and Sri K.N. Bhatt, Senior Advocates, Sri P.N. Mishra, Sri M.M. Pandey and other Advocates submit that in Hindu religious scriptures the concept of 'Deity' extremely vary. It includes a place or object, i.e. natural things like river, tree, stone, mountain, mound or even a part of earth connected with divine activities. Sri Ravi Shankar Prasad submitted that this aspect of the matter is also crucial and relevant to adjudicate issues no. 14 (Suit-4), 22 and 24 (Suit-5).

1694. Sri P.N.Mishra, Advocate, besides his oral submission, has also submitted written argument. In respect to the juridical personality of plaintiffs no.1 and 2 (Suit-5) and consecration etc., he has said:

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"A. According to Shastric (Scriptural) injunctions Sri Ramajanmasthan Sthandil, a Svayambhu Linga (Symbol) brought into existence and established by the Lord of Universe Sri Vishnu Himself. As such inspite of being decayed, or damaged, or destroyed it shall forever remain sacred place of Worship as it does not need purification or consecration or change. Pratistha is required only in respect of manmade Images/Idols/Symbols of Deities that can be done by chanting single Mantra XXXI.1 or II.13 of the Holy Divine Sri Yajurved (Vagasaneyee Samhita also known as "Sri Shukla Yajurved"). A deity needs to be worshipped by providing all things which are required for leading a healthy and excellent life.

B. Svayambhu i.e. Self-built or Self existent or Self-revealed Lingas (symbols) of Devatas (Gods) or the Lingas (Symbols) established by Gods, or by those versed in the highest religious truths, or by Asuras, or by sages, or by remote ancestors, or by those versed in the tantras need not be removed though decayed or even broken. Only decayed or broken Pratisthita Images/Idols require to be replaced with new one. In respect of renewal of the images, **"Treatise on Hindu Law" by Golapchandra Sarkar, (Sastri)** reproduces the Shastric injunction (Scriptural law) as follows:

> "Raghunanda's Deva-Pratistha-Tantram, last paragraph reads as follows:
>
> "8. Now (it is stated) the prescribed mode of Renewal of Decayed Images. Bhagwan says – 'I shall tell you briefly the holy ordinance for renewing Decayed Images * * *'
>
> "Whatever is the material and whatever size of the image

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of Hari (or the God, the protector) that is to be renewed; of the same material and of the same size, and image is to be caused to be made; of the same size of the same form (and of the same material), should be (the new image) placed there; either on the second or on the third day (the image of) Hari should be established; if, (it be) established after that, even in the prescribed mode, there would be blame or censure or sin; in this very mode the linga or phallic symbol and the like (image) should be thrown away; (and) another should be established, of the same size (&c.) as already described, - Haya-Sirsha".

"9. God said, -

'I shall speak of the renewal in the prescribed mode of lingas or phallic symbols decayed and the like &c * * *. (Allinga) established by Asuras, or by sages or by remote ancestors or by those versed in the tantras should not be removed even in the prescribed form, though decayed or even broken.'

(**Agnipuranam Chapter 103** Poona Edition of 1900 AD. p.143)

[There is a different reading of a part of this sloke noted in the foot-note of the Poona Edition of this Puran as one of the Anandashram series of sacred books: according to which instead of – " or by remote ancestors or by those versed in the tantras" –

the following should be substituted, namely:

"Or by Gods or by those versed in the highest religious truths."]

"10. Now Renewal of Decayed (images is considered); that is to be performed when a linga and the like are burnt

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or broken or removed (from its proper place). But this is not to be performed with respect but a linga or the like which is established by a Siddha or one who has become successful in the highest religious practice, or which is anadi i.e. of which the commencement is not known, or which has no commencement. But their Mahabhisheka or the ceremony of great anointment should be performed:- this is said by **"Tri- Vikrama" – Nirnaya – Sindhu – Kamalakar Bhatta, Bombay Edition of 1900 p.264.**

The author of the Dharma-Sindhu says as above in almost the same words – see Bombay Edition of 1988 p.234 of that work."

[**Treatise on Hindu Law by Golapchandra Sarkar, Sastri** (6th Edition, published by Easter Law House (1927) at p.745-748]

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C. **Alberuni** who compiled his book "**India in or about 1030 A.D.**" on page 121 has written that the Hindus honour their Idols on account of those who erected them, not on account of the material of which they are, best example whereof is Linga of sand erected by Rama. In his book on pages 117, 209, 306-07 and 380 he has also narrated about the Lord of Universe Sri Rama. Relevant extract from page 121 of "**Alberuni's India" Translated by Dr. Edward C. Sachau** (Reprint 2007 of the 1st Edn. 1910) published Low Price Publications, Delhi reads as follows:

"The Hindus honour their idols on account of those who erected them, not on account of the material of which they are made. We have already mentioned that the idol of Multan was of wood, e.g. the linga which Rama erected when he had finished the war with the demons was of

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sand. Which he had heaped up with his own hand. But then it became petrified all at once, since the astrologically correct moment for the erecting of the monument fell before the moment when the workmen had finished the cutting of the stone monument which Rama originally had ordered." (ibid page 121)

D. According to the Hindus' Divine Holy & Sacred Scriptures there are two types of images one Svayambhu (self-existent or self-revealed or self-built) and other Pratisthita (established or consecrated). **Where the Self-possessed Lord of Universe Sri Vishnu has placed himself on earth for the benefit of mankind, that is styled Svayambhu**. It does not require Pratistha. At Ramajanamasthan the Lord of Universe Sri Vishnu appeared and placed Himself on the said sacred place which itself became Svayambhu for the reason that invisible power of the Almighty remained there which confers merit and salvation to the devotees. Consecrated artificial manmade Lepya images i.e. moulded figures of metal or clay; and Lekhyas i.e. all kinds of pictorial images including chiselled figures of wood or stone not made by moulds are called Pratisthita. Sri Mishra then quoted para 4.5 of "**Hindu Law of Religious and Charitable Trusts' of B. K. Mukherjea 5th Edition**, Published by Eastern Law House at page 154.

E. According to the Holy Scripture "**Sri Narsingh Puranam**" (62.7-14 ½) Pratistha of the Lord of Universe Sri Vishnu should be done by chanting 1st Richa of the Purush Sukta of Shukla Yajurved [I.e **Vagasaneyee Samhita** Chapter XXXI] and be worshipped dedicating prescribed offerings by chanting 2nd to 15th Richas of the **Purush**

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Sukta. And if worshipper so wish after completion of worship he may by chanting 16th Richas of the **Purush Sukta** pray to Sri Vishnu for going to his His own abode. Above-mentioned verses of **Sri Narsingh Puranam** and Hindi translation thereof reads as follows:

''तस्य सर्वमयत्वाच्च स्थण्डिले प्रतिमासु च।
आनुष्टभस्य सूक्तस्य, विष्णुस्तस्य च देवता।। 7
पुरुषो यो जगद्बीजं श्रषिनारायणः स्मृतः।
दद्यात्पुरुषसूक्तेनं यः पुष्पाण्यप एव च।। 8
अर्चितं स्याज्जगत्सर्वं तेन वै सचराचरम्।
आद्ययाऽऽवाहयेद्देवमृचा तु पुरुषोत्तमम्।। 9
द्वितीययाऽऽसनं दद्यात्पाद्यं दद्यात्तृतीयया।
चतुर्थ्यार्घ्यः प्रदातव्यः पंजम्याऽऽचमनीयकम्।। 10
षष्ठया स्नानं प्रकुर्वीत सप्तम्या वस्त्रमेव च।
यज्ञोपवीतमष्टम्या नवम्या गन्धमेव च।। 11
दशम्या पुष्पदानं स्यादेकादश्या च धूपकम्।
द्वादश्या च तथा दीपं त्रयोदश्यार्चनं तथा।। 12
चतुर्दश्या स्तुतिं कृत्वा पञ्जदश्या प्रदक्षिणम्।
षोडश्योद्वासनं कुर्याच्छेषकर्माणि पूर्ववत्।। 13
स्नानं वस्त्रं च नैवेद्यं दद्यादाचमनीयकम्।
षण्मासात्सिद्धिमाप्रोति देवदेवं समर्चयन्।।14
संवत्सरेण तेनैव सायुज्यमधिगच्छति।

अब पूजनका मन्त्र बताते हैं। शुक्ल यजुर्वेदीय रुद्राष्टायायीमें जो पुरुषसूक्त है, उसका उच्चारण करते छन्द है, जगत्के कारणभूत परम पुरुष भगवान् विष्णु देवता हैं, नारायण ऋषि हैं और भगवत्पूजन में उसका विनियोग है। जो पुरुषसूक्त से भगवान को फूल और जल अर्पण करता है, उसके द्वारा सम्पूर्ण चराचर जगत् पूजित हो जाता है। पुरुषसूक्त की पहली ऋचासे भगवान् पुरुषोत्तमका आवाहन करना चाहिये। दूसरी ऋचासे आसन और तीसरी से पाद्य अर्पण करे। चौथी ऋचा से अर्घ्य और पॉचवी से आचमनीय निवेदित करें। छठी ऋचा से स्नान कराये और सातवीं से वस्त्र अर्पण करें। आठवीं से यज्ञोपवीत और नवमी ऋचासे गन्ध निवेदन करें। दसवीं से फूल चढ़ाये और ग्यारहवीं ऋचासे धूप दे। बारहवीं से दीप और तेरहवीं ऋचासे

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नैवेद्य, फल, दक्षिणा आदि अन्य पूजन–सामग्री निवेदित करे। चौदहवीं ऋचासे स्तुति करके पंद्रहवींसे प्रदक्षिण करें। अन्तमें सोलहवीं ऋचासे विसर्जन करे। पूजन के बाद शेष कर्म पहले बताये अनुसार ही पूर्ण करें भगवान् के लिये स्नान, वस्त्र, नैवेद्य और आचमनीय आदि निवेदन करे। इस प्रकार देवदेव परमात्माका पूजन करनेवाला पुरुष छः महीनेमें सिद्धि प्राप्त कर लेता है। इसी क्रम से यदि एक वर्षतक पूजन करे तो वह भक्त सायुज्य मोक्षका अधिकारी हो जाता है।।7–14 1/2।।

(Sri Narsingh Puranam 62.7-14 ½)

Be it mentioned herein that in the above **Sri Narsingh Puranam** 62.13 Sloke enumerates Pradakshina i. e. Parikrama (circumbulation) as 14th means of reverential treatment of the Deity and thereby makes it integral part of the religious customs and rituals of service and worship of a Deity.

F. 1st Holy Spell of **Purush Sukta** of the Holy Devine **Shukla Yajurved** [i.e **Vagasaneyee Samhita** Chapter XXXI] prescribed by the Holy **Sri Narsingh Puranam** for Pratistha of the Lord of Universe Sri Vishnu reads as follows:

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''सहस्रशीर्षा पुरुषः सहस्राक्षः सहस्रपात्।
स भूमि सर्वतः स्पृत्वाऽत्यतिष्ठाद्दशाङ्.गुलम्।।1।।

मन्त्रार्थ–सभी लोकों में व्याप्त महानारायण सर्वात्मक होने से अनन्त शिर वाले, अनन्त नेत्र वाले और अनन्त चरण (पैर) वाले हैं। ये पांच तत्वों से बने इस गोलकरूप समस्त व्यक्ति और समष्टि ब्रह्माण्ड को तिरछा, ऊपर, नीचे सब तरफ से व्याप्त कर नाभि से दस अंगुल परिमित देश, हृदय का अतिक्रमण कर अन्तर्यामी रूप से स्थित हुए थे।''

(ibid as translated by Swami Karpatriji and published by Sri Radhakrishna Dhanuka Prakasan Samsthanam, Edn. Vikram samvat 2048)

Simple English translation thereof reads:

'The Almighty God who hath infinite heads, infinite eyes;

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infinite feet pervading the Earth on every side and transgressing the universe installed Him in sanctum as knower of inner region of hearts'.

Be it mentioned herein in the **Mimamsa Darshan** as commented in Sanskrit by Sri Sabar Swami and in Hindi by Sri Yudhisthir Mimamsak and Mahabhasya, meaning of "Sahasra" has also been given "infinite" as also "one" apart from "thousand" and according to context one or other meaning is adopted.

G. "**Nitya Karma Puja Prakash**" has prescribed a Mantra of **Yajurved** [i.e **Vagasaneyee Samhita** Chapter II.13] for Pratistha of Lord Ganesh. Relevant portion of the said book reads as follows:

''अनन्तर सर्वप्रथम गणेशजी का पूजन करे। गणेश–पूजनसे पूर्व उस नूतन प्रतिमाकी निम्न–रीतिसे प्राण–प्रतिष्ठा कर लें–

प्रतिष्ठा– बायें हाथमें अक्षत लेकर निम्न मन्त्रों को पढ़ते हुए दाहिने हाथसे उन अक्षतोंको गणेशजी की प्रतिमापर छोड़ता जाय–

ऊँ मनो जूतिर्जुषतामाज्यस्य बृहस्पतिर्यज्ञमिमं तनोत्वरिष्टं यज्ञा समिमं दधातु। विश्वे देवास इह मादयन्तामो3 म्प्रतिष्ठ।

ऊँ अस्यै प्राणाः प्रतिष्ठन्तु अस्यै प्राणाः क्षरन्तु च।

अस्यै देवत्वमर्चायै मामहेति च कश्चन।।

इस प्रकार प्रतिष्ठा कर भगवान् गणेशका षोडशोपचार पूजनं (पृ0सं0 174–185 के अनुसार) करे। तदनन्तर नवग्रह (पृ0सं0 210), षोडशमातृका (पृ0सं0 205) तथा कलश–पूजन (पृ0सं0 186) के अनुसार करें।''

[**Nitya Karma Puja Prakash** published by **Gita Press Gorakhpur** 32nd Edn. 2060 Vikram Samvat at page 244]

H. The Holy "**Sri Satpath-Brahman**" interpreting said Mantra II.13 of the Holy Sri **Shukla Yajurved** [i.e. **Vagasaneyee Samhita**] says that Pratistha of all Gods should be done by said Mantra. Be it mentioned herein that the Holy **Sri Satpath-Brahman** being Brahman part of

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Divine **Sri Shukla Yajurved**, interpreting Mantras of said **Vagasaneyee Samhita** tells about application of those Mantras in Yajnas (Holy Sacrifices). Said Mantra II.13 of the Divine **Sri Shukla Yajurved (Vagasaneyee Samhita)** as well as **Sri Satpath-Brahman** (I.7.4.22) with original texts and translations thereof read as follows:

मनों जूतिर्जुषतामाज्यस्य वृहस्पतिर्यज्ञमिमं तनोत्वरिटं यज्ञं समिमं दधातु।
विश्वे दे्वास इह र्मादयन्तामो3म्प्रतिष्ठ।।13।।

(44) (जूतिः मनः आज्यस्य जुघतां) तेरा वेगवानमन घृतका सेवन करे, (वृहस्पतिः इमं यज्ञं तनोतु) ज्ञानका स्वामी इस यज्ञको फैलाये, (इमं यज्ञं अरिष्टं सं द्धातु) इस यज्ञको हिंसारहित करके सम्यक धारण करें। (विश्वे देवासः इह मादयन्र्ता) सब देव यहां आनन्दित हों, (ओं प्रतिष्ठ) ऐसा ही होवे, प्रतिष्ठित होंवे।।13।।

(ibid Hindi Translation of Padmbhushan Sripad Damodar Satvalekar,1989 Edn. Published by Swayadhyay Mandal pardi)

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English Translation of the abovenoted Hindi Translation reads as follows:

"May your mind Delight in the gushing (of the) butter. May Brihaspati spread (carry through) this sacrifice ! May he restore the sacrifice uninjured. May all the Gods rejoice here. Be established/seated here."

Sanskrit text of **Sri Satpath-Brahman** (I.7.4.22) as printed in '**Sri Shukla Yajurvediya Satpath Brahman**' Vol. I on its page 150, Edn.1988 Published by Govindram Hasanand, Delhi 110006 is reproduced as follows:

''मनो जूतिर्जुषतामाज्यस्येति। मनसा वाज्इद . . सर्वमाप्तं तन्मनसवैतत्सर्वमाप्रोति बृहस्पतिर्यज्ञमिमं तनोवरिष्टं यज्ञ समिमं दधाविति यद्विवृहं तत्संदधाति विशे देवास इन्ह मादयन्तामिति सर्व वे विश्वे देवाः सर्वेणेवैतत्संदधाति स यदि कामयेत ब्रूयात्प्रतिष्ठेति पद्यु कामयेतापि नाद्रियेत ।।22।। ब्राह्मणाम् ।।2. (7.4)।। अध्यायः ।।7।।''

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English translation of **Sri Satpath-Brahman** (I.7.4.22) as printed in Volume 12 of the series "**The Sacred Books Of The east**" under title 'The Satpath - Brahmana' Part I on its page 215, Edn. Reprint 2001 Published by Motilal Banarasidass, Delhi 110007 is reproduced as follows:

> 22. [He continues, Vag. S. II, 13]: 'May his mind delight in the gushing (of the) butter!' By the mind, assuredly, all this (universe) is obtained (or pervaded, aptam)): hence he thereby obtains this All by the mind.-'May Brhaspati spread (carry through) this sacrifice! May he restore the sacrifice uninjured!' - he thereby restores what was torn asunder.-'May all the gods rejoice here!'. 'all the gods,' doubtless, means the All : hence he thereby restores (the sacrifice) by means of the All. He may add, 'Step forward!' if he choose; or, if he choose, he may omit it. (Sri Satpath-Brahman I.7.4.22)

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I. 19th Holy Spell of **Naradiya Sukta** of the Holy Divine **Shukla Yajurved** [i.e. **Vagasaneyee Samhita** Chapter XXIII] is also widely applied by the Knower of the Scriptures to invoke and establish a deity. Said Mantra reads as follows:

> ''गणांनां त्वां गणपति हवामहे प्रियाणां स्वा प्रियपति हवामहे निधीनां त्वा निधिपति हवामहे वसो मम।
> आहमजानि गर्भधमा त्वमजासि गर्भधम।।''

English Translation of this Mantra based on Hindi Translation of Padmbhushan Sripad Damodar Satvalekar,1989 Edn. Published by Swayadhyay Mandal pardi reads as follows:

> "O, Lord of all beings we invoke Thee. O, Lord of beloved one we invoke Thee. O, Lord of Wealth we invoke Thee. O abode of all beings Thou are mine. O,

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Sustainer of Nature let me know Thee well because Thee the sustainer of Universe as embryo are Creator of All."

[**Shukla Yajurved** Chapter XXIII Mantra 19]

J. The vivified image is regained with necessaries and luxuries of life in due succession. Change of clothes, offering of water, sweets as well as cooked and uncooked food, making to sleep, sweeping of the temple, process of smearing, removal of the previous day's offerings of flowers, presentation of fresh flowers and other practices are integral part of Idol-worship. In public temple, in olden days these were being performed by Brahmins, learned in Vedas & Agamas. (Para 4.7 **Hindu Law of Religious and Charitable Trusts of B. K. Mukherjea** 5th Edition, Published by Eastern Law House at page 156.)

1695. Sri Ravi Shankar Prasad, Senior Advocate elaborated the concept of "Deity" as per the notions of ancient Hindu scriptures and, that, how can it be ascertained as to whether the place of worship of Hindus is "Deity" within the term and understanding in Hindu Law, how the properties held by "Deity" is alienable and also the development of Hindu Law. He placed, in extentio, certain excerpts from **B.K.Mukherjea's "The Hindu Law of Religious and Charitable Trusts"** (Tagore Law Lectures Fifth Edition revised by Sri A.C. Sen published by Eastern Law House in 1983 reprinted in 2003) pages 25, 26, 27, 38, 39, 40, 152 to 154, 156 to 163 besides several authorities of the Apex Court, this Court, Privy Council and various High Courts. The concept of deity, a very distinguishing feature of Hindu faith is one that, i.e., eternal, permanent and omnipresent wherein the deity is the image of the Supreme Being. The temple is the house of the deity and to constitute a temple it is

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enough if the people believe in its religious efficacy, i.e., there is some supreme super power existing there whom they need to worship and invoke its blessings.

1696. It is contended that religious purpose under the Hindu law must be determined according to Hindu notions. In support of his submission, he placed reliance on para 2.27 on page 75 of **"The Hindu Law of Religious and Charitable Trusts" by B.K. Mukherjea (supra)**, which says:

> *"These observations, if I may say so, apply with full force to trusts created by Hindus for religious purposes. Undoubtedly the court and not the donor is the judge, of whether an object is charitable or not, but the court cannot enter into the merits of particular religious doctrine, and therefore must remain neutral. The divine service of a particular religion is defined by the doctrines of the religion itself and no court can appreciate their spiritual efficacy, unless it knows these doctrines and hypothetically admits them to be true. In controversial matters the court cannot possibly decide whether the doctrines are beneficial to the community or not.* ***It has got to act upon the belief of the members of the community concerned, and unless these beliefs are per se immoral or opposed to public policy, it cannot exclude those who profess any lawful creed from the benefit of charitable gifts..."***

1697. It is said that the right of a deity of being worshipped by its followers ought not be compared with a secular law relating to management of deities for they are fundamentally distinct. The present case relates to the site/place of birth of Lord Rama, i.e., Ramjanambhumi which itself is a deity for the reason of the belief and faith of Hindu public since time

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immemorial that the Lord of Universe, the Supreme Being Vishnu manifested thereat as an incarnation in human form making that place sacred and pious and mere visit and Darshan thereof would be sufficient to shower blessing, happiness and salvation to the worshippers. By the very nature, the deity in question is not only inalienable but cannot be possessed or owned by any individual, legal or natural. This deity, i.e., the place itself is a legal person, i.e. a juridical person possessing all the facets of a legal person as recognized in law.

1698. Sri Prasad submitted that a self created Deity i.e. *Sayambhu,* need not be in a particular shape or form and even a place can be said to be a Deity. It is *extra commercium,* non-destructible, inalienable, and even if there is no structure, it is a temple if has the sanctity of pious place being worshipped by the believers with a faith that the religious merits shall be gained by them on offering prayer or worship thereat.

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1699. Sri Prasad relied on **Ram Jankijee Deities & Ors. Vs. State of Bihar & Ors. (1999) 5 SCC 50=AIR 1999 SC 2131** (para 13 to 28) and **Saraswathi Ammal & Anr. Vs. Rajagopal Ammal AIR 1953 SC 491** (para 6) to demonstrate as to what is the concept of deity in Hinduism. He submits that the religious issues pertaining to Hindu religion are to be considered and decided according to Hindu notions and referred to **Shiromani Gurdwara Prabandhak Committee, Amritsar Vs. Som Nath Dass & Ors. (Supra)** (para 30 to 42); **Poohari Fakir Sadavarthy Vs. Commissioner, H.R. & C.E. AIR 1963 SC 510** (at page 512); **Thayarammal Vs. Kanakammal & Ors. (2005) 1 SCC 457** (para 16); **Idol of Thakurji Shri Govind Deoji Maharaj, Jaipur Vs. Board of Revenue, Rajasthan, Ajmer & Ors. AIR 1965 SC 906** (para 6); **Mahant Ram Saroop Dasji**

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Vs. S.P.Sahi, Special Officer-in-charge of Hindu Religious Trusts and others AIR 1959 SC 951 (para 10); **Manohar Ganesh Tambekar & Ors. Vs. Lakhmiram Govindram & Ors. (1888) ILR 12 Bom 247**.

1700. Once an idol is always an idol and it never dies. For the above proposition, he referred to the Madras High Court's decision in **Board of Commissioners for Hindu Religious Endowments, Madras Vs. Pidugu Narasimham & Ors. AIR 1939 Madras 134** (at page 135) and **T.R.K. Ramaswami Servai & Anr. Vs. The Board of Commissioners for the Hindu Religious Endowments, Madras, through its President AIR (38) 1951 Madras 473** (para 47). The meaning; definition and concept of Temple in general as well in legislative enactments must be read and understood in the light of the *Shastrik Law*, otherwise it would be ultra vires of the Constitution. He refers to **Gedela Satchidananda Murthy Vs. Dy. Commr., Endowments Deptt., A.P. & Ors. (2007) 5 SCC 677** (at page 685); **T.V. Durairajulu Naidu Vs. Commissioner, Hindu Religious and Charitable Endowments (Administration) Department, Madras AIR 1989 Madras 60** (para 18); **Sri Adi Visheshwara of Kashi Vishwanath Temple, Varanasi & Ors. Vs. State of U.P. & Ors. (1997) 4 SCC 606** (para 30); **Gokul Nathji Maharaj & Anr. Vs. Nathji Bhogi Lal AIR 1953 All. 552; Pramath Nath Mullick Vs. Pradhyumna Kumar Mullick & Anr. AIR 1925 PC 139** (at page 143); **Bhupati Nath Smrititir the Bhattacharjee Vs. Ram Lal Mitra & Ors. 1909 (3) Indian Cases (Cal.) (FB) 642** (para 73).

1701. The manner in which a deity can hold property is illustrated by citing before us the decision of the Apex Court in **Jogendra Nath Naskar Vs. Commissioner of Income-Tax**

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(supra) (para 5 and 6); **Deoki Nandan Vs. Murlidhar & Ors. AIR 1957 SC 133** (para 6); **Kalanka Devi Sansthan Vs. The Maharashtra Revenue, Tribunal Nagpur and Ors. AIR 1970 SC 439** (para 5 at page 442) and **Narayan Bhagwantrao Gosavi Balajiwale Vs. Gopal Vinayak gosavi & Ors. AIR 1960 SC 100** (para 35 to 38).

1702. An idol is extra commercium and inalienable. He supported the above proposition by citing **Mukundji Mahraj Vs. Persotam Lalji Mahraj AIR 1957 Allahabad 77** (para 28 and 29); **Kasi Mangalath Illath Vishnu Nambudiri & Ors Vs. Pattath Ramunni Marar & Ors. AIR 1940 Madras 208**; **Smt. Panna Banerjee and Ors. Vs. Kali Kinkor Ganguli AIR 1974 Cal. 126** (para 65 and 66); **Kali Kinkor Ganguly Vs. Panna Banerjee & Ors. AIR 1974 SC 1932** (para 23 and 25); **Khetter Chunder Ghose Vs. Hari Das Bundopadhya (1890) 17 ILR Cal. 557** (at page 559).

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1703. Sri Prasad refers to **State of West Bengal Vs. Anwar Ali Sarkar & Anr. AIR (39) 1952 SC 75** (para 85) and read the observations how Hindu Law has developed. He relied on the **History of Dharmashastra** by P.V. Kane Vol. 2, Part-2, Chapter XXVI page 911 and Vol. 3 page 327 and 328 and also **Bumper Development Corp. Ltd. Vs. Commissioner of Police of the Metropolis and others 1991 (4) All ER 638**; **Addangi Nageswara Rao Vs. Sri Ankamma Devatha Temple Anantavaram 1973 Andhra Weekly Report 379**.

1704. To illustrate the concept of deity, i.e., continued supernatural power, omnipotent, never dying, never changed, he cited **Maynes' Hindu Law & Usages",** 16th Edn. and the **"The Classical Law of India"** by Robert Lingat.

1705. Sri R.L.Verma, learned counsel appearing on behalf of

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Nirmohi Akhara defendant No.3 raised objection about the maintainability of suits through next friend and contended that there is no averment in the entire plaint (Suit-5) as to why the plaintiff no.3 be allowed to file suit on behalf of plaintiffs no. 1 and 2 as their next friend. He submits that neither there is any averment that the already working Shebait is not looking after the Deity faithfully and religiously nor there is any averment that there is no Shebait at all of the Deities, plaintiffs no.1 and 2, nor there is any averment that plaintiff no.3 himself is a worshipper of the Deities (plaintiffs no.1 and 2) and therefore, is interested in the welfare and proper management of the property and daily care of Deities themselves. Sri Verma submits that Order XXXII, Rule 1 in terms has no application to Suit-5. The suit, as framed, is not maintainable through the next friend, hence, is liable to be rejected on this ground alone.

1706. Sri Verma further submits that O.P.W.-2 i.e. late D.N.Agarwal in his own statement under Order X, Rule 2 recorded on 20.4.1992 has admitted that the idols kept at Ram *Chabutara*, in the outer courtyard was shifted to the inner courtyard and kept under the central dome in the disputed building in the night of 22/23rd December, 1949. Further that it is also an admitted position that the idols while kept on Ram Chabutara in the outer courtyard were being looked after and managed by the priest of Nirmohi Akhara and the outer courtyard was in possession of Nirmohi Akhara. It means that the idols belong to Nirmohi Akhara, shifted from Ram Chabutara to the central dome of the disputed building and that being so, the idols cannot be held independent legal entity outside the religious endowment i.e. "Nirmohi Akhara".

1707. Sri M.M. Pandey, learned counsel for the plaintiffs

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(Suit-5), in respect to Issues No. 1 and 21 (Suit-5) has submitted as under:

A. Existence of a Supreme Being which controls everything and possesses the capacity of conferring good on human beings, is admitted alike by Islam (Allah), Christianity (God) and Hindu Dharma (Bramhan or Onkar). This Supreme Being is outside the realm of Courts, hence is not a Juristic entity. According to Islam, a Messenger (Prophet Mohammad) pronounced the commands of Allah in the form of Quran and other spiritual edicts; according to Christianity too, a Messenger came earlier (Christ – Son of God) to deliver the Gospel of God. According to Hindus, Bramha manifests Himself in human form by 'Reincarnation' (Avatar) with all the powers of the Supreme Being subject to self-imposed human limitations. William Finch recorded this popular perception about Ram in early 17th Century. Bramha too is seen in many Forms: Bramha (the Creator), Vishnu (the Preserver), Mahesh (the Destroyer), Shakti (the Universal Energy) etc. Ram and Krishna are Reincarnations of Vishnu; In **Shrimad Bhagwat Gita** Chapter X, verse 31, Shri Krishna declared: "Among warriors, I am Ram."

B. This self-manifestation of the Supreme Being is known as SWYAMBHU reincarnation, and the place of reincarnation is treated to be sacred just as Islam holds Mecca (birthplace of Prophet Mohammad) or Christianity holds Bethlehem/Jerusalem (birthplace of Christ) as sacred. While Islam and Christianity do not have a concept of Deity, Hindu Dharma has elevated the concept of Sacredness into an object of Divinity fit for Worship and recognises it as a Deity in a physical form too with a Faith that its worship has

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the capacity of conferring well. At the same time, "a Hindu does not worship the 'Idol or the material body made of clay or gold or other substance' as a mere glance of the mantras or prayers will show. They worship the eternal Spirit of the Deity, or certain attributes of the same, in a suggestive form, which is used for the convenience of contemplation as a mere symbol or emblem. It is the incantation of the mantras peculiar to a particular Deity that causes the manifestation or presence of the Deity or, according to some, the gratification of the Deity.

C. A mere birthplace without a physical outward shape may be a Deity. There is no question of consecration of Swyambhu Deity. (See **Addangi Nageswara Rao (supra)**

D. In addition to Swyambhu Deities, Idols/Images are made of any material and are CONSECRATED with the Spirit of Supreme Being through certain Vedic rites, known as Pran-Pratishtha whereby they become fit receptacles of Divinity; such Idols/Images too are recognised as Deities. In these Suits, the Plaintiffs of OOS 4 of 1989, Sunni Board & others, admitted in paras 11 and 23 of their plaint that on 23.12.1949, "a large crowd of Hindus……entered the mosque and desecrated the mosque by placing Idols inside the mosque". This implies an admission that the Idols were Deities as known to Hindu law, otherwise mere images (like printed pictures) could not desecrate the mosque; Sunni Board and others are barred/estopped, by this admission, from urging that the Idols were not consecrated.

E. 'Images/Idols' are symbols of Supreme Being; in worshipping the Image, the Hindu purports to worship the Supreme Deity and none else. It is for the benefit of the

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worshippers that there is a concept of Images of Supreme Being which is bodiless, has no attribute, is pure Spirit and has got no second (**B.K. Mukharjea, 1983 Edn. p.26**). The 'Self-revealed' Images are called SWYAMBHU where the Self-possessed Vishnu has placed himself on earth in stone or wood for the benefit of mankind. Thus 'Asthan Ram Janmabhumi', Plaintiff No. 2 in OOS 5 of 1989 is a Swyambhu Deity – the place where Lord Vishnu manifested Himself and was born as RAM, son of Kaushalya/King Dashrath.

F. The decisions of Indian Courts as well as Privy Council have held uniformly that Hindu Idol is a Juristic Person. Hindu Idol is according to long established authority founded upon the religious Customs of Hindus and recognition thereof by Courts of Law, a juristic entity. 'Deity has a juridical status with power of suing and being sued. Its interests are attended to by the person who has the Deity in his charge and who in law is his manager with all the powers which would in these circumstances, on analogy, be given to an infant heir. This doctrine is firmly established.

G. As a Juristic Person, the 'Hindu Deity' is a Class by Himself with no exact parallel. The Deity in short is conceived of as a living being and is treated in the same way as the master of the house would be treated by his humble servant. The daily routine of life is gone through with minute accuracy, the vivified Image is regaled with necessities and luxuries of life in due succession even to the changing of clothes, the offering of cooked and uncooked food and retirement to rest.

H. Endowment in favour of Deity is a perpetual estate; it

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is capable of receiving and holding property, but it does not possess a power of alienation, hence endowment in favour of Deity is necessarily a tied up or perpetual estate; absolute gifts of lands or money perpetually to an Idol or for other religious purposes have been held to be valid in Hindu Law from early times. A religious endowment does not create title in respect of the dedicated property in any body's favour, and property dedicated for religious charitable purpose for which the owner of the property or donor has indicated no administrator or manager, a property dedicated for general public use is itself raised to the category of a Juristic Person and such a property vests in the property itself as a Juristic Person. This special legal status squarely applies to Asthan Ram Janma Bhumi, Plaintiff No.2 in OOS 5 of 1989; the **spot where Ram was born, and all properties appurtenant thereto belong to and vest in the spot itself as juristic person. No body else, not even the Shabait can become owner of the Deity or property of Deity**.

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I. Since such vesting of the property is a perpetual estate and the Deity itself does not possess the power of its alienation, it follows that no law can divest the Deity of its property under any circumstance whatsoever. A Temple is the 'house' of the Deity. By destroying the house, neither the Deity nor Deity's property, on which the house stood, could cease to belong to Deity. Section 18 of Transfer of Property Act recognises that the rule against perpetuity under that Act, does not apply to transfer of property for the benefit of public; such exclusion is in-built in Hindu Law itself.

J. Vide, page 19-20 of **Mulla's "Principles of Hindu**

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Law, 1958 Edn, some of the important recognised Dharmashastras are known as **Smritis of Manu** (200 BC), **Yajnavalkya** (1st Century AD –p. 24)), **Narad** (200 AD –p. 26)), **Parashara, Brihaspati, Katyayana** (4th-5th Century AD – p.32) etc; they are of universal application, not in substitution for another but all treated as supplementary to each other (-p.20).

K. At page 33, Mulla records: "Katyayana maintains unimpaired the distinctive qualities of Smriti of Brahaspati to which he freely refers. His exposition is authoritative and remarkable for its freshness of style and vigorous approach. There can be little doubt that this Smriti must have been brought into line with the current law. It must have commanded a wide appeal as may readily be gathered from the profuse manner in which it has been quoted in all leading commentaries. The arduous task of collecting all the available texts of Katyayana from numerous commentaries and digests was accomplished by Mahamahopadhyaya Kane who collated and published in 1933 about one thousand verses of the **Smrtiti on Vyavahara** (Procedure) with an English translation".

L. Statement of law in **Katyayana Smriti** is of special significance in these suits. The force, sanctity and King's duty relating to Temples has been strongly emphasised in the Hindu Law from ancient times. Apararka [held to be an Authority under Hindu Law by PC in **Buddha Singh Vs. Laltu Singh, 42 I.A. 208 = ILR (1915) 37 All 604**) (Mulla p.51-52 acknowledged by Banares School] says that King should not deprive Temples of their properties (**History of Dharam Shastra – Government Oriental Series - by P.V.**

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Kane, Volume II Part II page 913). At page 911 Kane quotes Yagnavalkya that it is part of King's duty to prosecute and fine persons interfering with or destroying the property of Temples; he cites Manu (IX/280) requiring the King to pronounce death sentence on who breaks a Temple, and him who breaks an image to repair the whole damage and pay a fine of 500 pannas. The Deity and Temple not only served the object of Worship of Divine, but also served social purpose.

M. A significant recent decision of English Courts has recognised the concept of Hindu Idol's disability and representation by 'next friend', namely **Bumper Development Corporation Ltd Vs. Commissioner of Police of the Metropolis & Others (supra)** (including Union of India and other Indian Parties); a decision rendered by the Trial Court was upheld by Court of Appeal and House of Lords refused Leave to Appeal against CA decision, popularly known as Nataraj Case. In Tamil Nadu, near a 12th Century Temple which had laid in ruins since 13th Century, (called Pathur Temple), and remained un-worshipped since centuries (at pages 643 & 640), a bronze Hindu Idol, known as Siva Nataraj, was found by a labourer, Ramamoorthi, in 1976 during excavation of the ruins. The Nataraj Idol was sold through several hands and ultimately reached London market; criminal investigation for offence of theft of Idol was started and London Metropolitan Police seized it. Bumper Development Corporation laid claim to it as purchaser and sued for its possession and damages. Several other Claimants were impleaded to the suit: these included Union of India, State of Tamil Nadu, Thiru

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Sadagopan (Claimant No 3) as "the fit person" of the Temple and Temple itself (Claimant No. 4) through Claimant No3. (The concept of "fit person" is same as "Next Friend" at page 643). During pendency of the proceedings, a Sivalingam (which too was found buried in the ruins of the Temple) was reinstated as an object of worship at the site of the Temple. The Trial Judge, relying upon B.K.Mukherjea's Hindu Law of Religious and Charitable Trusts (page 646 of Report) held that Claimant No4 (Temple) suing through Claimant No. 3 as 'fit person, or custodian or next friend' (page 643 of Report) had proved his title superior to that of Bumper and 'the pious intention of 12th Century notable who gave the land and built the Pathur Temple remained in being and was personified by the Sivalingam of the Temple which itself had a title superior to that of Bumper'. The Court of Appeal upheld the finding of the Trial Court Judge that under Hindu Law, the Temple was a juristic entity and Claimant No. 3 (next friend Thiru Sadagopan) had the right to sue and be sued on behalf of the Temple. The right of the Temple through the Next Friend to possess the Nataraj Idol was upheld (page 648 of Report); House of Lords refused Leave to Appeal (page 649 of Report). This 20th Century decision of English Courts has striking similarity with the present Ram Janmabhumi case: 12th Century Temple remained in ruins & un-worshipped through centuries (in our case it was 11th-12th Century Vishnu-Hari Temple which was demolished in 1528 and Babri Mosque, DS was erected at its place, so that the Temple/Deity 'remained in ruins with existing foundations'). During the pendency of Bumper Development Corporation case, a Shivalingam, found buried

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in the ruins of the Temple was 'reinstated'. In our case, ASI found an ancient 'Circular Shrine' embedded in disputed area, DS was destroyed on 6.12.1992, and at its place a make-shift Temple was erected at Ram Janma Bhumi with Bhagwan Shri Ramlala installed in it; so both Deities Plffs 1 & 2 of OOS 5 of 1989 got into position. In Bumper case, the 'pious intention of 12th Century' dedication was held by the Trial Court 'to remain in being' as personified by the Sivalingam of the Temple, a juristic entity, which was represented by 'Next Friend. The same concept is laid down in the case of **Adangi Nageswara Rao Vs. Sri Ankamma Devatha Temple (supra)** (paras 6 & 8 – see para 36 of these Arguments). So also, in our case, Vishnu-Hari Temple of 11th-12th Century must be deemed 'to remain in being' on erection of make-shift Temple coupled with Circular Shrine and the Deity/Temple – Plaintiffs 1 & 2 must be held to be duly represented through Plaintiff No. 3 in OOS 5 of 1989 as Next Friend.

N. As mentioned earlier, a Hindu Deity is a Class by itself (See Para 40), there is no exact analogy or parallel. Its affairs are managed by a Shebait, but the Shebait is neither owner nor trustee of the Deity or its property as known to Indian Trusts Act (Section 1). 'Beneficiary' of the dedication (actual or assumed) is the Deity and every Worshipper/Devotee; the latter has interest enough to force the Shebait to perform his functions duly even through a Court action, if necessary. Supreme Court has held in the case of **Bishwanath Vs. Sri Thakur Radha Ballabhji (AIR 1967 SC 1044)** that worshippers of an Idol are its beneficiaries, though only in a spiritual sense, and persons who go in only for the purpose

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of devotion have, according to Hindu Law and religion, a greater and deeper interest in temples than mere servants who serve there for some pecuniary advantage; it goes on to say: "That is why decisions have permitted a worshipper in such circumstances to represent the Idol and to recover the property for the Idol". It is the duty of the State (King) to protect the Deity and its property – a shade of this duty is found in Section 92 CPC. [In para 40 of **Guruvayur Devasom Managing Committee Vs. C.K. Rajan, AIR 2004 SC 561**, the Supreme Court has held, "In any event, as a Hindu Temple is a juristic person, the very fact that S. 92 of the Code of Civil Procedure, seeks to protect the same, for the self-same purpose, Arts. 226 and 32 could also be taken recourse to."] Shebait cannot alienate the property of the Deity.

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O. A religious endowment does not create title in respect of the dedicated property in any body's favour, and property dedicated for religious charitable purpose for which the owner of the property or donor has indicated no administrator or manager, a property dedicated for general public use is itself raised to the category of a Juristic Person and such a property vests in the property itself as a Juristic Person. This special legal status squarely applies to Asthan Ram Janma Bhumi, Plaintiff No.2 in OOS 5 of 1989; the spot where Ram was born, and all properties appurtenant thereto belong to and vest in the spot itself as juristic person.

P. An idol is in the position of a minor and when the person representing it leaves it in a lurch, a person interested in the worship of the idol can certainly be clothed with an ad hoc power of representation to protect its interest. [See

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Bishwanath Vs. Shri Thakur Radha Ballabhji (supra)].

Q. Temples are sancrosanct and there cannot be alienation of a public temple under any circumstance being res extra commercium. In this regard he placed reliance on **Mukundji Mahraj Vs. Persotam Lalji Mahraj (supra)** (Para 28-29); **Manohar Ganesh Tambekar Vs. Lakhmiram Govindram (supra)** (Para 88); **Kali Kinkor Ganguli Vs. Panna Banerji (supra)** (Paras 24-25, Page 1936)**;** and, **Kasi Mangalath Nath Illath Vishnu Namboodiri (supra) (**Para 2).

R. **Smt. Panna Banerjee Vs. Kali Kinkar (supra)** (Para 65-66) cited to show that the deity cannot be sold. It is not a property and none can be its owner not even its founder.

S. **Khetter Chunder Ghosh Vs. Hari Das Bandopadhyay (supra)** (para 66, p. 559) is an authority for the proposition that the deity is not a property. None can own it. Idol is not a transferable property.

T. The fact is that the "disputed area" has always been considered to be the " Deity" . The deity in the present case is "Sri Ram Janmasthan", being the place where "Sri Ram Lalla" is Virajman that is resident. The said "disputed area" has always been considered sacred by the Hindus before and even after the construction of the disputed structure. The extensive archaeological evidence found by excavation by the Archaeological Survey of India clearly shows that before the construction of the structure known as the "Babri Masjid" in 1528 , there was an existent Hindu temple underneath it.

U. **"The Hindu Law of Religious and Charitable Trusts" by B.K. Mukherjea** also states at Page 160-162:

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> "Para 4.13. ..... The Smriti writers have laid down that if an image is broken or lost another may be substituted in its place; when so substituted it is not a new personality but the same deity, and properties vested in the lost or mutilated thakur become vested in the substituted thakur. Thus, a dedication to an idol is really a dedication to the deity who is ever-present and ever-existent, the idol being no more than the visible image through which the deity is supposed specially to manifest itself by reason of the ceremony of consecration."

V. Presence of an idol is not the only consideration to determine whether the place is a temple or not; what is important is whether a certain group of Hindus consider it sacred or whether a certain group can feel "divine presence" in the place.

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W. An Idol is not a precondition. If the public goes for worship and consider that there is a divine presence, then it is a temple. He relied on **Ram Janki Deity Vs. State of Bihar, 1999 (5) SCC 50** (Paras 13 to 19); **P.V. Durrairajulu Vs. Commissioner of Hindu Religious Trusts, AIR 1989 Madras 60 (**Para 18).

X. Referring to **Poohari Fakir Sadavarthy of Bondilipuram (supra) (**Para 8) Sri Pandey contended that the institution will be a temple if two conditions are satisfied – one – it is a place of public religious worship – and the other – it is used as of right by the Hindu community or any section thereof as a place of worship.

Y. Existence of idol not necessary if the public which go there consider that there is a divine presence in a particular place and by offering worship at that place they are likely to

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be the recipient of the bounty or blessings of God, then you have got the essential feature of a temple. The test is not the installation of an idol but the mode of its worship. Here Sri Pandey refers **T.R.K. Ramaswamy Servai and Anr. Vs. The Board of Commissioners (supra) (**Para 47); **Board of Commissioners of Hindu Endowment Vs. P. Narasimha (supra) (**Para 5 page 135); and **Gedela Satchidanand Murti (supra) (**Para 16, pages 684 and 685).

Z. The nature of Hindu religion is monism. It believes in one supreme-being who manifests himself in many forms. This is the reason why Hindus start adoring any deity either handed down by tradition or brought by a Guru, Swayambhu and seek to attain the ultimate supreme as held in **Sri Adi Vishweshara of Kashi Vishwanath Temple (supra)** (Para 30 page 631).

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AA. According to Hindu notion what is worshipped in a temple is not the stone image or image made of wood. It is the God behind the image which is the object of worship. The real owner of the property dedicated to a temple is deemed to be God himself represented through a particular idol or deity which is merely a symbol. Property worshipped for more than 300 years, there can be no direct evidence of consecration. After the length of time it is impossible to prove by affirmative evidence that there was consecration. However, the idol was duly recognized by all who believed. [See **Gokul Nath Ji Maharaj Vs. Nathji Bhogilal (supra)** (para 4 and 5)].

AB. Not only the area where Sri Ram Lalla is Virajman and is believed to be his place of birth as a deity but the entire complex is elevated to the status of a deity because the

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dedicated property gets imbued with a sacred character.

AC. **Mahant Ram Saroop Dasji Vs. S.P. Sahi (supra)** (Pages 958-959, Paras 10 & 12) was cited and it is submitted that it is difficult to visualize that a Hindu private Debuttar will fail for a deity is immortal. Even if the idol gets broken or lost or stolen another image may be consecrated and it cannot be said that the original object has ceased to exist. An idol which is a juridical person is not subject to death because the Hindu concept is that the idol lives for ever and placed reliance on **Idol of Thakur Sri Govind Dev Ji Maharaj (supra)** (Page 908, Para 6).

AD. Deity is a living being to be treated like a master. It is not a moving chattel. Hindu idol is not property. Custodian cannot destroy or cause injury. **Pramatha Nath Mullick Vs. Pradhyumna Kumar Mullick (supra) (**Para 9).

AE. Referring to Full Bench decision of Calcutta High Court in **Bhupati Nath Smrititirth Bhattacharjee (supra)** (Para 73) Sri Pandey contended that as per Shastric Hindu Law if the image is broken or lost another may be substituted in its place and when so substituted it is not a new personality but the same deity with properties previously vested in the lost or mutilated Thakur.

AF. The question as to what "portion" of the property is sacred is irrelevant since Hindus consider the entire area being the place of birth of Sri Ram as a deity in itself being the " Sri Ram Janmasthan / Sri Ram Janmabhoomi", being the Plaintiff No.2 .The presence of Sri Ram Lalla Virajman, being the Plaintiff No.1 on the said Sri Ram Janmasthan (being the Plaintiff No.2)does not detract from the fact that the entire disputed area is the place of birth of Sri Ram and

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therefore a deity in itself to the Hindus. The witnesses including foreign travelers have repeatedly confirmed that the entire premises has been worshipped, "parikrama" was undertaken by the devotees, even after the construction of the disputed structure. He submitted that there has been no denial of the above statement by any of the parties . He referred to paras 20 and 22 of the plaint and pointed out that the same have not been denied.

AG. Any worshipper is entitled to act on behalf of the Idol if the idol is undefended by a Shebait and cannot look after itself. This view finds support in **Bishwanath Vs. Shri Thakur Radha Ballabhji, (supra)** (para 10 and 11) and **Veruareddi Ramaraghava Reddy Vs. Konduru Seshu Reddy, 1966 Supp SCR 270.**

AH. In the present case since the deities of Sri Ram Janmabhumi and Sri Ram Lalla Virajman were not being able to look after themselves and no one was acting to protect their interests and their premises were being occupied or was being attempted to be occupied by those who were intending to extinguish the very right to be worshipped of the deities and repeated attempts were being made to interfere with the possession and the right of being worshipped by the devotees , hence concerned worshippers compromising of eminent and spiritual men of the Hindu community being represented by the Plaintiff No.3 were forced to approach the Court to protect the right of the deities (being the Plaintiffs No.1 and 2) to be worshipped .

AI. In support of the contention that the place of worship itself and the Deities seated at the disputed site are juridical persons Sri M.M. Pandey relied on **Guruvayur Devaswom**

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Managing Committee and anr. Vs. C.K. Rajan (Supra); Manohar Ganesh Tambekar Vs. Lakhmiram Govindram (supra); Avadh Kishore Dass Vs. Ram Gopal, 1979 SC 861; Angurbala Mullick Vs. D. Mullick, AIR 1951 SC 293; Kamaraju Venkata Krishna Rao Vs. Sub-Collector, Ongole, AIR 1969 SC 563; Thayarammal Vs. Kanakammal (supra); Krishna Singh Vs. Mathura Ahir, AIR 1972 Allahabad 273; Sarangadeva Periya Matam Vs. Ramaswami Goundar, AIR 1966 SC 1603; Vallabhacharya Swami Varu (Deity) of Swarna Vs. Deevi Hanumancharyulu, AIR 1979 SC 1147; Gollaleshwar Dev Vs. Gangawwa Kom Shantayya Math, AIR 1986 SC 231; Shiromani Gurudwara Prabandhak Committee Amritsar Vs. Shri Som Nath Dass (supra); Hindu Religious and Charitable Endowments, Mysore Vs. Ratnavarma Heggade, AIR 1977, SC 1848; Ram Jankijee Deities Vs. State of Bihar (supra) (p.50); Gokul Nathji Maharaj Vs. Nathji Bhogi Lal (supra); Bishwanath Vs. Shri Thakur Radhaballabhji, (supra); Kalanka Devi Sansthan (supra); Jogendra Nath Naskar Vs. Commissioner of Income-tax (supra); P.V. Sadavarty Vs. Commissioner of Income-tax, AIR 1963 SC 510; Gurudwara Prabandhak Committee Vs. Shiromani GPC, 2004 (4) SCC 146; Deoki Nandan Vs. Murlidhar (supra); Official Trustee of West Bengal Vs. Commissioner of Income-tax, AIR 1974 SC 1355; Idol of Thakurji Shri Govind Deoji Maharaj, Jaipur (supra); Vemareddi Ramaraghava Reddy Vs. Konduru Seshu Reddy, AIR 1967 SC 436; K. Manahunaitha Desikar Vs. Sundaralingam, AIR 1971 Madras 1 (FB).

1708. Sri K.N. Bhat, Senior Advocate answering the issues

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no. 1 and 2 (Suit-5), contended that Bhagwan Sri Ram of Ayodhya is undoubtedly a deity as such a juristic person with capacity to sue and being sued. Referring to B.K. Mukherjea's **Hindu Law of Religious and Charitable Trusts (supra)** in his written arguments he says:

> A. "A Hindu idol", the Judicial Committee observed in one of its recent pronouncements, "is according to long established authority founded upon the religious customs of the Hindus and the recognition there of by Courts of Law, a juristic entity. It has a juridical status with the power of suing and being sued." You should remember, however, that the juridical person in the idol **is not the material image**, and it is an exploded theory that the image itself develops into a legal person as soon as it is consecrated and vivified by the *Pran Pratistha* ceremony. It is not also correct that the Supreme Being of which the idol is a symbol or image is the recipient and owner of the dedicated property. (p.38.)
>
> B. From the spiritual standpoint the idol might be to the devotee the very embodiment of Supreme God but that is a matter beyond the reach of law altogether. (p.39.)
>
> C. The early Vedic hymns make no allusion to idol worship, and Max Muller held that idolatry did not exist among them. 'The religion of the Vedas,' he declared, 'knows no idols.' The Jabala Upanishad says, 'Images are meant only as aids to meditation for the ignorant'. (p.149)
>
> D. The image simply gives a name and form to the formless God and the orthodox Hindu idea is that conception of form is only for the benefit of the worshipper and nothing else. (p.153.)

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E. "The idol, deity or religious object," observed West and Buhler in their *Digest on Hindu Law,* "is looked upon as a kind of human entity." It is a sacred entity and ideal personality possessing proprietary rights. The Judicial Committee has pointed out on more occasions than one that it is only an ideal sense that property can be said to belong to an idol and the possession and management of it must, in the nature of things, be entrusted to some person as Shebait or manager. The legal principle has thus been summed up in one of the pronouncements of the Judicial Committee:

F. "A Hindu idol is, according to long-established authority, founded upon the religious customs of the Hindus, and the recognition thereof by courts of law, a 'juristic entity.' It has a juridical status, with the power of suing and being sued. Its interests are attended to by the person who has the deity in his charge and who in law is its manager, with all the powers which would, in such circumstances, on analogy, be given to the manager of the ***estate of an <u>infant heir</u>***. It is unnecessary to quote the authorities; for this doctrine, thus simply stated, is firmly established."(pp.158)

G. **Existence of idol is** not **necessary for temple.-** While usually an idol is instituted in a temple, it does not appear to be an essential condition of a temple as such. In an Andhra case, it was held that to constitute a temple, it is enough **if it is a place of public religious worship** and if the people believe in its religious efficacy, irrespective of the fact **whether there is an idol or a structure** or other paraphernalia. ***It is enough if the devotees or the***

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pilgrims feel that there is one superhuman power which they should worship and invoke its blessings. (pp.158-159.)

H. Moreover, - and this was pointed out by Chatterjee, J., who was a member of the Full Bench – **the conception of Hindu jurists was not that the image of clay or stone constituted the juristic person**. The Smriti writers have laid down that if an image is broken or lost another may be substituted in its place; when so substituted it is not a new personality but the same deity, and properties vested in the lost or mutilated *thakur* become vested in the substituted *thakur*. Thus, a dedication to an idol is really a dedication **to the deity who is ever-present and ever-existent, the idol being no more than the visible image** through which the deity is supposed specially to manifest itself by reason of the ceremony of consecreation. The decision in *Bhupati Smritititirtha v. Ramlal* has been followed by other High Courts in India, and it has been held by the Allahabad High Court in *Mohor Singh v. Het Singh* that a bequest to complete the building of a temple which was commenced by the testator and to install and maintain an idol therein was a valid bequest under the Hindu law.(pp.162-163)

I. A donor can certainly create a trust for the worship of an idol which is to be consecreated and established in future. The same principle applies if the deity is such as is worshipped periodically like Durga, and has no permanent image. The dedication of property for carrying on such periodical worship is perfectly valid, although every year a new clay image is prepared which is thrown into the

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river after the Puja is over. (p.163)

J. Where there is no deed, no question of construction arises, and the validity or otherwise of the endowment would have to be determined entirely on circumstantial evidence. In *Ram Ratan Lal v. Kashnath Tewari,* the Patna High Court has discussed the relevant considerations and the evidence needed for deciding the question how far the endowment is illusory. (p.167)

K. Reference may also be made to the judgments of the Supreme Court in **Idol of Thakurji Shri Govind Deoji Maharaj (supra); Bishwanath and Anr. Vs. Shri Thakur Radhaballabhji (supra); Jogendra Nath Naskar (supra); Kalanka Devi Sansthan Vs. Maharashtra Revenue Tribunal (supra); Official Trustee of West Bengal Vs. C.I.T., West Bengal (supra); Dr M. Ismail Faruqui (supra);** and **Ram Jankijee Deities (supra).**

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L. Plaintiffs in paragraphs 19, 20 and 21 have specifically pleaded and given the reasons why the place believed to be the birth place of Lord Sri Rama itself is a deity. That a 'place' can be an object of worship is now beyond doubt on account of the decisions of the Supreme Court in Faruqi's case and in Ram Janki's case – (1999) 5 SCC p.50 also Mukherjea pp 158-9 quoted supra.

M. The extracts quoted above from Mukherjea's treatise clearly brings out the distinction between a physical object, namely, an idol and a deity, though the two are used occasionally as inter-changeable expressions. What emerges is that it is a mistake to consider that there must be a physical object, namely, an idol before there can be a deity.

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N. There can be no doubt now that a deity is a juristic person and can sue through a next friend appointed by courts - see AIR 1967 SC 1044 . The present plaintiff 3 Sri.Trilokinath Pandey was appointed by the order of the Hon'ble Supreme Court.

O. Issues Nos. 21 and 22 are also closely connected and stand answered. It is made clear that the plaintiffs are not claiming that the idols alleged to have been placed under the dome in December, 1949 are the plaintiff deities– the idols are for the benefit of the devotees.

1709. The case of defendant no.3 (Suit-4), i.e., Nirmohi Akhara has been/is that the temple at Ram Chabutara belong to Nirmohi Akhara since long, was its property including the idols. It is not in dispute that Hindu idol, after its due consecration, becomes a legal personality but in the case in hand, Nirmohi Akhara, a religious endowment was managing the said temple and worshipping the idol hence in any case it stood in the capacity of Shebait of the said idol. The said status of Nirmohi Akhara was never terminated at any point of time and therefore, no suit on behalf of such an idol could have been filed by ignoring defendant no.3 and that too in the absence of any allegation of inaction or mal-action on the part of the Shebait i.e. Nirmohi Akhara. In support Sri Verma also placed reliance on **Commissioner, Hindu Religious Endowments, Madras Vs. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt (supra)** and **Kunwar Singh Vs. Sri Thakurji Mahraj, Birajman Mandir Gauntia Majra Dhamipur, Pargana and Tahsil Nawabganj, District Bareilly, 1992 (2) AWC 890.**

1710. The pleadings, argument etc. over these issues require us to consider the matter from two different angles:

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(i) Whether plaintiff no.1 is a Deity in terms of Hindu Law. Its effect,

(ii) Plaintiff no.2 is a place and therefore, first of all it has to be seen whether a place by itself can be a Deity and be conferred status of legal person in the light of principles of Hindu Law.

1711. If both these aspects about the Deities are decided in affirmance only then we will have to consider whether there was any Shebait of the said two plaintiffs and whether the plaintiff no.3 has rightly filed the suit in question as their next friend.

1712. First we first propose to consider, though in brief, as to how the idol worship came to exist, the concept form and the foundation etc., in the light of available ancient Hindu scriptures as also the judicial precedence.

1713. One of the oldest Aryan scripture i.e. the Rigveda refers to the worship of natural powers like sun, water, air etc. but according to Max Muller, "the religion of the Vedas knows of no idol". He (Muller) says that the worship of idols in India is a secondary formation, a later degradation of the more primitive worship of ideal gods. B.K.Mukherjea in **Hindu Law of Religious and Charitable Trusts (supra)** on page 13 has said:

> *"There is a difference of opinion amongst scholars as to whether the religion that is embodied in the Vedas was at all* ***polytheistic. A number of gods*** *indeed are named, but there are various passages in the Rigveda which expressly declare that the various gods are only different names of that "which is one". Max Muller calls the religion, "henotheism". The gods to whom the hymns of the Rigveda are addressed are idealised beings, who represent the beneficient and radiant powers of nature, e.g., sun, air,*

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earth, sky, dawn, etc. But the Vedic seers had, from the beginning, a glimpse of the infinity behind these finite forces, as is shown by the conception of 'Aditi' the mother of the gods which, as ***Max Muller says, was the earliest name invented to express the infinite****." (emphasis added)*

1714. Similarly, about the existence of 'temple' or 'monastic institution' in Vedic age, B.K. Mukherjea in **Hindu Law of Religious and Charitable Trusts (supra)**, on page 13 and 15 has said :

"*It is difficult to say to what extent the charitable and religious endowments as we see in modern times existed in the early Vedic period. The earliest Vedic literature which is known by the name of Samhitas throws very little light on this point.* ***It seems fairly certain that at this period there were no temples for worship of idols as we find in subsequent time, and an institution like the mutt or monastery of later days was also unknown.****"*

"There is also no mention of monastic institution in the Vedic literature. According to the Vedic Grihya Sutras, which regulated the life of man, there were the institutions of four Asramas prescribed for all persons belonging to the twice born castes. Man's life was divided according to this scheme into four Asramas or stages. The first stage was of Brahmachari or student who was to live in the house of hi preceptor and study the Vedas living a life of utmost austerity and discipline. In the second stage he married and became a householder or Grihastha and his duty was to perform the religious and secular works that were prescribed for this stage of life. In the third which was the Banaprastha stage, he was to live the life of a recluse, ***and***

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***in the last stage he became a Jati or ascetic**." (emphasis added)*

1715. Sri B.K. Mukherjea's above observation has come after his concurrence with the views of some historians at that time and particularly Europeans that Aryans migrated to India from elsewhere and Vedic literature is the scripture of Aryan culture. This is evident from what the learned author in para 1.11, page 10, has observed with respect to Rigveda; *"In the Rigveda, which is the earliest record of Aryun culture...."*

1716. In **'Development of Hindu Iconography'** by Jitendra Nath Banerjea (First Edition in 1941 and 5th Edition in 2002 published by Munshiram Manoharlal Publishers Pvt. Ltd.), the learned author opines:

> *"The nature of the prehistoric remains just discussed cannot be determined with certainty on account of the absence of any literary data throwing clear light on them ; but with the help of certain passages occurring in the Rgveda, the earliest extant literature of the Indo-Aryans, it is possible to offer a tentative explanation about some of them. **It may be observed, however, that in India, prior to the advent of the Aryans, image-worship might have been practised by her original settlers**. But it is still a matter of doubt and controversy when this was first introduced **among the Aryans who migrated into India**. From the beginning of the scientific method of Vedic studies in India this question engaged the attention of scholars." (Page 42) (emphasis added)*

1717. Thereafter, the learned author referred to the views of Max Muller, who said that the Vedic religion knew of no idols and it was a secondary formation. This has been reiterated by

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H.H. Wilson and Macdonell. Banerjea, then has also referred to a contrary view expressed by Bollensen.

1718. Sri S.V. Venkateswara, after considering rival opinions of several authorities on the subject, expressed his opinion that Vedic evidence was not at all sufficient for deciding whether gods were iconically represented in earlier Vedic period or not. His later observations have been quoted by J.N. Banerjea in **The Development of Hindu Iconography (supra)** as under :

> *"In a later contribution (Rupam, Nos.42-4, 1930), he was more definite, and he collected numerous additional passages from the Rgveda and other Vedas in support of his view ; he even used the term iconography in relation to the representation of the **Vedic deities**. He assigned the foremost place to the well-known verse in the **Rgveda, IV. 24, 10**, which was also noticed by Macdonell and others. The latter thought that it was a late passage probably containing an allusion to some concrete symbol of Indra. It is : Ka imam dasabhirmamendram krinati dhenubhih I Yada vrtrani jamghanadathainam me punardadat ('Who will buy this my Indra for ten cows? When he has slam his foes, he may give himback to me'). **Venkateswara** remarks about the passage thus : "The context shows that there were permanent images of Indra made and hired for what was in probability an Indra festival, and there were apparently images of Vrtra made for each occasion, whence the plural Vrtrani to be slain by Indra." With regard to R.V., V. 52, 15, noticed above, **Venkateswara** makes this significant observation, " this passage is also interesting in that it shows that **there was no idol worship,***

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but that images were used as concrete representations of gods whose real form and existence were conceived as different*." The existence of two forms of each god, one the concrete and finite and the other the abstract and infinite, is clear according to him in a Yajurveda passage (T.S., I. 7. 12; also A.V., VII. 31) which reads svaya tanva tanumairayata ('with your own, i.e., real, body enter this concrete body'). In his opinion,* ***the image is regarded in the Rgveda merely as a physical tenement of the real form of the god****, while in these texts we have two forms of the god mentioned- that* ***in the image being only an apparent and evanescent form,*** *and that* ***in the universe being the real and permanent form (sva tanuh)****. He finds reference to the relationship of these forms, finite and infinite, of the god even in the Rgveda (VII. 100, 6) which speaks of Visnu's assumption of another, the finite form in the battle with Vrtra, where he was a worthy companion of Indra (yadanyarupah samithe babhutha) ; Indra, who used Visnu as his vehicle (Visnvanusthitah), asked him to expand into the infinite space (sakhe Visno vitaram vikramasva) elbowing Vrtra out of existence till the latter begged to be received into the body of Indra himself. From this Venkateswara concluded that the belief was that the finite cabined in a particular form was not cribbed or confined by this fact but was capable of infinite expansion. He finds distinct references to the fashioning of images in such passages as R. V., VI. 28, 6 (asriram cit krnutha supratikam i.e., 'make that which was an ugly mass a beautiful image'); R.V., IV. 17, 4 (Indrasya karta svapastamo bhut, i.e., 'the maker of Indra was a most*

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stalwart being, a most skilful workman'); casting of metal images is also referred to in the Rgveda and other Vedas in such passages as R.V., VIII. 69, 12 (surmyam susiramiva, i.e., 'like a hollow tube'), R.V., X. 184, 1 (Visnuryonim kalpayatu tvasta rupani pimsatu 1 A sincatu prajapatirdhata garbham dadhatu te, i.e., 'May Visnu make the female organ fit ; may Tvasta fix the limbs ; may Prajapati sprinkle ; may Dhata hold your embryo'), R.V., I. 32, 2 (Tvastasmai vajram svaryam tataksa, i.e., 'Tvasta made the thunderbolt for Indra, which could be far flung'), etc. He further finds ***references to temples (devagrhas) in such passages as R.V., VII. 56, 14*** *(Sahasriyam damyam bhagametam grhamedhiyam maruto jusadhvam, i.e., 'Oh! Maruts accept this your portion offered at the* ***temple****'), R.V., VII. 59, 10 (Grhamedhasa, i.e., the Maruts in the houses are munificent), etc. Venkateswara thinks that this inference from the passages is supported by the* ***finds of images of the storm gods in Babylonia****. He even finds allusion to processions of images in R.V., I. 10, 1 and III. 53, 5-6. "In the latest (Khila) Vedic texts, the goddess Sri is represented as a golden antelope adorned with garlands of silver and gold" (he obviously refers to the Sri Sukta in this statement)." (Pages 45 – 47) (emphasis added)*

1719. B.K. Mukherjea in **Hindu Law of Religious and Charitable Trusts (supra)** refers to "Gautama's Dharmasuttra" and says that there is some reference to idols but the age of the work is unknown, and it does not specify any particular idol or idols. It says that the gods that are popularly worshipped by the Hindus at the present day are, for the most part, Pouranic deities, descriptions of which occur in various Puranas. The

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"Puranas" literally mean ancient legends constitute a class of epic literature, didactic in character, which deal with various matters including cosmogony, the genealogies and exploits of gods, sages and kings, accounts of the different Avatars or incarnations of Vishnu, as well as the rites of worshipping gods by prayers, fasting, votive offerings, pilgrimages, etc. On page 25 B.K. Mukherjea further says :

> *" The Purans are sectarian, in the sense that some of them extol the merits of worshiping Vishnu, while many prefer Siva worship. The Upanishads which embody the philosophical concept of the Vedas describe Brahman or the Supreme Being as "that from which all things are born, that by which when born they live and into which they enter at death." These creative, preservative and destructive functions or aspects of the divinity constitute the Trinity of the Puranas and are symbolised respectively by Brahma, Vishnu and Siva. The Puranas say expressly that Brahma, Vishnu and Siva though three in form really constitute one entity and there is no difference amongst them except that of attributes. The reason is that each of the functions of creation, preservation and destruction implies the others and contains the others in a latent form. The worship of Brahma is not very popular, and I am not aware of any temple being dedicated to this creative deity except one at Pushkar, seven miles to the north-west of Ajmer in Rajasthan. The images that are worshipped are generally those of Siva or vishnu in their various forms or manifestations. The worship of Sakti or the female principle which is described as the consort of Siva in the different forms of Durga, Kali etc. is also popular and is*

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the special feature of the Tantric system. Besides Siva, Vishnu and Durga, the other deities, who are generally adored by the Hindus, are Ganesh and Surya (Sun), and the numerous temples that adorn the various sacred places of the Hindus are dedicated for the most part to one or other of these five gods or Pancha Devata as they are called."

1720. It is said that the Vedic mythology was merely elaborated in Puranas. In this regard, **B.K. Mukherjea**, on **pages 152 and 153 Para 4.3B** has observed "

"This is not wholly or even substantially true. The sources of some of the legendary stories occurring in the Puranas can, no doubt, be traced in the Vedas but ***it would not be correct to say that the Pouranic gods were mere reproductions of the Vedic gods****. There is nothing in the Vedas corresponding to the Pouranic Trinity of Brahma, Vishnu and Siva. Brahma in the Vedic text signified the Sun, or was a synonym of prayer. Vishnu in the Rigveda occupied a rather subordinate position. He was also identified with the Sun, and his three strides encompassing the three spheres of existence, as suggestive of all pervasiveness constituted the foundation of the Pouranic legend of the three steps of Vishnu in his incarnation of the "Dwarf." Siva hardly appears as the name of any deity in Vedic time. The expression "Siva" means propitious or benignant. Rudra, one of the Vedic deities, was in all probability, another name of Agni or fire, and the Puranas identified Siva with Rudra. We hear very little of Ganapati or Kartikeya in the Vedas. Kali, who is described in the Puranas as a consort of Siva, was spoken of in*

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Mandukopanishad as one of the seven tongues of fire, while the name of "Uma" occurs in the Kenopanishad, where she is described as a resplendent lady who gave lessons in divine knowledge to the gods. Sri Krishna, who looms so large in the Pouranic literature, is mentioned only as a scholar and not as a deity in the Vedas, though many of the legendary stories attributed to him in the Purans are traceable to similar legends associated with Indra in the Vedic literature.

It is not necessary for our present purpose to pursue these discussions any further. Though the Puranas are by no means uniform, the legends associated with the various gods are fairly well known and have been the basis of a considerable mass of poetic literature in later times. One cardinal principle underlying idol worship you would always bear in mind- and this has some bearing on the law relating to gift of property to idols- that ***whichever god the devotee might choose for purposes of worship and whatever image he might set up and consecrate with that object, the image represents the Supreme God and none else. There is no superiority or inferiority amongst the different gods****. Siva, Vishnu, Ganapati or Surya is extolled, each in its turn as the creator, preserver and supreme lord of the universe.* ***The image simply gives a name and form to the formless God and the orthodox Hindu idea is that conception of form is only for the benefit of the worshipper and nothing else****." (emphasis added)*

1721. Para 1.33 (page 26) of **B.K. Mukherjea's Hindu Law of Religious and Charitable Trusts (supra)** says that different images do not represent separate divinities; they are really

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symbols of the one Supreme Being, and in whichever name and form the deity might be invoked, he is to the devotee the Supreme god to whom all the functions of creation, preservation and destruction are attributed. In worshipping the image the Hindu purports to worship the Supreme Deity and none else. The rationale of image worship is thus given in a verse which is quoted by "Raghunandan":

"चिन्मयस्याद्वितीयस्य निस्कलस्याशरीरिण
साधकानां हिनाथयि ब्रहम्णी रुपकल्पना ।"

"It is for the benefit of the worshippers that there is conception of images of Supreme Being which is bodiless, has no attribute, which consists of pure spirit and has got no second."

1722. Some of the aspects of image worship have been referred to by Sri P.N. Mishra, Advocate which we have already quoted in extentio in para 1695 (A-J) which are also based on the Hindu scriptures against which nothing has been placed by the learned counsels appearing for pro-mosque parties and, therefore, we have no reason to doubt correctness thereof.

1723. The next step is the building and consecration of temples along with the establishment of idols worshipped in Hindu religion, elaborate rites and ceremonies. It appears to have been introduced by Brahminical writers. They have elaborated the procedure, steps regarding building of temples, consecration and purification of idols etc.

1724. A temple is the house of the deity and many of the rules of construction of a temple are practically the same as are prescribed for construction of a dwelling house, the additional rules being laid down to ensure greater sanctity of the structure that is meant for the abode of a deity. One who wants to built a

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temple has got to select proper time for building with reference to astrological calculations. There are detailed rules relating to selection of the site which include examination of the nature and colour of the soil, its odour, taste, solidity, etc. After the site is selected, it is ploughed up and seeds are sown in it. As soon as the seeds germinate, the crop is allowed to be grazed over by cows. The cardinal points are then to be ascertained for giving this structure an auspicious aspect and there are rules to be observed regarding the materials to be used and the location of doors, windows, etc. The important religious ceremony is the "Vastu Jaga" in honour of "Vastu Purusha" or "Vastu Debata" who presides over dwelling house, with oblation of milk, rice and sugar.

1725. A temple, in the original sense of the Latin word 'templum', meant a rectangular place marked out by the augur for the purpose of his observations which were taken within a rectangular tent and gave it meaning of a consecrated place or building of rectangular shape 'inaugurated' by an augur. It may be applied in this sense to the house of a God. In its primitive sense 'templum' means a place marked of as a road to God. In ancient Hindu Religious Texts, the word 'प्रासाद' has been taken to mean and denote 'temple'. In **Matsya Purana**, it is written:

''एवमेव पुराणेषु तड़ागविधिरूच्यते,
कूपवापीसु सर्वासु तथा पुष्परिणीषु च।
एषएव विधिदृष्टः प्रतिष्ठासु तथैव च,
मन्त्रतस्तु विशेषः स्यात प्रसादोद्यानभूमिषु।।

(The rules which are recognised for pratishtha and utsarga of tanks, water reservoirs, etc., should be observed in the case of garden and temples but with necessary variation in mantras.)

1726. The foundation of temples and consecration of an

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image in the temple are two different subjects. In Hindu system of worship, temple is not merely a place of idol, but is also a place of worship. In **'Hindu temple'** by Cramerish, it is said :

> *"The surface of the Earth, in traditional Indian Cosmology, is regarded as demarcated by sunrise and sunset, by the points where the sun apparently emerges above and sinks below the horizon; by the East and West and also by the North and South points. It is therefore, represented by the ideogram or mandala of a square (F.N. 44- The square does not refer to the outline of the Earth). It connects the four points established by the primary pairs of opposites, the apparent sunrise and sunset points East and West; South and North. The Earth is therefore called 'Caturbhrsti' four cornered (Rv. X. 58. 3) and is symbolically shown as Prithvi-Mandala, whereas considered in itself, the shape of the Earth is circular. (Rv. X. 89. 4; S.B. VII. I. I. 37). The identification of the square with the vedi is in shape only and not in size and belongs to the symbolism of the Hindu temple. The vedi represents and is levelled Earth, a place of sacrifice or worship: 'No part of the ground should rise above it: for it was from there that the God ascended to heaven' (S.B. III. I.I.I-2). The site, the Earth should be even and firm for it is the starting place of the ascent (S.B. VIII 5.2.16). The link between the Earth and the end of the ascent stretches upwards into space. The intermediate region (antriksa) from it also leads downward and rests on Earth. In it the temple has its elevation. The Vastupurusamandala, the temple diagram and metaphysical plan is laid out on the firm and level ground; it is the intellectual foundation of the building, a*

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forecast of its ascent and its projection on Earth."

1727. About the construction of the temple, it has been said:

''कृत्वा प्रभूवं सीललभराभन्विनिवेश्य च।
देवातयतनं कुर्याद्यशेधर्माभिवृद्धये।।
इष्टापूर्तेन लभ्यन्तेये लोकास्तान् बुभूषता।
देवानामालय कार्यो द्वयमप्यत्र दृश्यते।।

(On the land where, sufficient source of water is available, beautiful gardens of flowers and fruits are also available only there a founder should build a temple for the sake of religion and fame. From building a temple one gets benefit of both ishta and purta.)

1728. The Sanskrit word 'प्रासाद' 'Prasad's origin is said as:

प्रकष्रेण सदनं सादनं वायस्मिन् सः प्रसादः

(A building made of stones with mantras and other.)

1729. It was the ancient Indian tradition that ordinary people's houses had no walls or pillars made of stones, or puckka bricks. It was said:

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शिलाकुड् य शिला स्तम्भं नरावासेनयोजयेत नयोजयेत – (कामिकागम)

1730. Stone-made structures were reserved for worship and were known as mandir. With the lapse of time this restriction was given up. There is a separate branch of Temple Architecture for building temples. The shape of a temple must be like a man. It is said:

प्रसादं पुरुषं मत्वा पूजयेत मंत्रवित्तम।

1731. A Book said to have been written by Maharajadhiraj Bhoj Deo, i.e., **"Samrangan Sutradhar"** is considered to be classic book of architecture on temples. The **Mareechi Samhita** provides the Code for the construction of a temple:

"The Garbagruha (Sanctum) is so constructed as to resemble a human body in its vertical form. The entire structure from the base to the top (called Vasstu Purusha)

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is divided into six units, corresponding to six parts to the human body. Mareechi Samhita classifies the types of vimanas according to rituals, forms and materials used. Interestingly, the ritual-classification is based on the builder's mental attitude, health, success (pushti, shanthi, jayadam, adbhutam).

There are four types of temple architecture, the Nagara (North Indian), the Dravida (South Indian), the Vesara (a combination of both) and Kadamba Nagara (Pattadakal temples . . . . . Chalukyan style). There is no difference between Saiva and Vaishnava temples either in style or plan or form. All temples consist of the following integral parts, arranged in various forms, depending upon the era to which they belong to.

The principal part, the actual temple, is called Vimana and it includes the shrine and the spire. The mantapas or porches precede the door leading to the inner shrine. Mahadwara or main gateway is the principal feature at he entrance to the quadrangular enclosures that surround the temples."

1732. In **"Law of Hindu Religious Endowments"** by Ghosh, he stressed on the origin of temple:

"He has stated that during the Vedic times, offering were made to various deities by placing them on the fire which was named Hutaraha or the conveyor of offerings. The Rig Veda speaks of the fire as carrying the Homa articles after making them fragrant to the Gods. He has also pointed out that this type of worship was common among Semitic races and also in Rome.

This was in the primitive stages of civilization. At

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later stages elaborate and complicated divination, propitiation, sacrifice, prayer and other rites and ceremonies developed in Hinduism. This was not confined to Hinduism only. Parallel situations obtained in Shintoism, Confucianism, Roman, Greek slavic and German religions also. Different orders of priestly functionaries to perform different cultic acts came into existence. Words, formulae and rites had to be punctiliously pronounced and executed. Rituals in all their varieties and with all their paraphernalia had to be meticulously executed. The temple priests had to dedicate their lives to the service of God by solemn vows. This was the method of evolution of temple worship.

Out of the rituals for the establishment of endowments for Hindu temples, two stand out prominently. They are Pratishta and Sankalpa."

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1733. It has also been observed that the temples are also of two kinds. Ganapathi Iyer in his **"Law of Hindu Religious Endowments"** at page 214 said:

"Temples being the chief examples of Hindu religious endowments, ***they are of two kinds. Svayambhua Sthalams*** *are temples in which the idol or deity is said to have self-revealed, i.e. not established by man. The other is* ***Pratishta Sthalams****, namely, temples in which the deity is established newly by observing certain set of rules (page 206). The images are of kinds; Lekhya consisting of pictures, paintings on walls, canvas or vessels and (2) chiselled figures of wood or stone. Lepya may be of two kinds (1) moulded figures of clay, (2) metallic figures cast in moulds (page 210). The place in which temples have to*

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be built and the directions in which the images are to be placed are also mentioned in the book."

1734. About the description and kinds of images, **B.K. Mukherjea's Hindu Law of Religious and Charitable Trusts (supra), page 154 para 4.5** says:

"4.5. Images-their descriptions.- *Image, according to Hindu autho-rities, are of two kinds: the first is known as* ***Sayambhu or self-existent or self-revealed****, while the other is* ***Pratisthita or established****. The Padma Puran says :"The* ***image of Hari (God)*** *prepared of stone,* ***earth****, wood, metal or the like and established according to the rites laid down in the Vedas, Smritis and Tantras is called the established; .....where the* ***self possessed Vishnu has placed himself on earth in stone or wood for the benefit of mankind, that is styled the self-revealed****." A Sayambhu or self-revealed image is a product of nature, it is Anadi or without any beginning and the worshippers simply discover its existence. Such image does not require consecration of Pratistha. All artificial or man-made images require consecration. An image according to matsya Purana may properly be made of gold, silver, copper, iron, brass or bell metal or any kind of gem, stone or wood, conch shell, crystal or even earth.*

Some persons worship images painted on wall or canvas, says the Brihata Purana and some worship the spheroidical stones known as Salgram. Generally speaking, the Pouranic writers classify artificial images under two heads; viz. (1) Lepya and (2) Lekhya. Lepya images are moulded figures of metal or clay, while Lekhyas denote all kinds of pictorial images including chiselled figures of

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wood or stone not made by moulds. In the case of Goswami Geeridhariji v Ramanlalji which went up to the Privy Council, the subject matter of dispute was the pictorial image of the head of the Ballavacharya Sect and not of any deity. Images again may be permanent or temporary. Temporary images which are set up for periodical Pujas like Durga, Saraswati, etc. are generally made of clay and are immersed in a river or tank after the Puja is over."

1735. Worship of idol i.e., the procedure aspect, has been discussed in para 4.7 (page 156) of B.K. Mukherjea's **Hindu Law of Religious and Charitable Trusts (supra)** as under :

*"**4.7. Worship of the idol.-** After a deity is installed, it **should be worshipped daily according to Hindu Sastra**. The person founding a deity becomes morally responsible for the worship of the deity even if no property is dedicated to it. This responsibility is always carried out by a pious Hindu ..... The daily worship of a consecrated image includes the sweeping of the temple, the process of smearing, the removal of the previous day's offerings of flowers, the presentation of fresh flowers, the respectful oblation of rice with sweets and water and other practices. "**The deity in short is conceived of as a living being** and is treated in the same way as the master of the house would be treated by his humble servant. The daily routine of life is gone through, with minute accuracy, the vivified image is regaled with necessaries and luxuries of life in due succession even to the changing of clothes, the offering of cooked and uncooked food and the retirement to rest."*

(emphasis added)

1736. Existence of idol is not a necessary condition

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precedent for a temple. Para 4.10A [page 158] of B.K. Mukherjea's **Hindu Law of Religious and Charitable Trusts (supra)** says:

> *"While usually an idol is instituted in a temple, it does not appear to be an essential condition of a temple as such. In an Andhra case, it was held that* ***to constitute a temple, it is enough if it is a place of public religious worship and if the people believe in its religious efficacy, irrespective of the fact whether there is an idol or a structure or other paraphernalia****. It is enough if the devotees or the pilgrims feel that there is one superhuman power which they should worship and invoke its blessings. However, in almost all cases the temple does possess an idol."(emphasis added)*

1737. We may notice at this stage that in **Mulla's Hindu Law, 15th Edn., page 527**, it is said that a temple is not a juridical person, so no suit relating to the temple property can be instituted in the name of the temple. It refers to a decision of Lahore High Court in **Thakardwara Sheru Mal Vs. Ishar Das AIR 1928 Lah. 375** questioning if the temple has no idol in whom the property shall vest.

1738. We, however, do not find that the above wide proposition can be said to be a correct law in presenti. A temple answering the requisites of Hindu religious endowment may be a juridical person and if that being so not only it can sue or being sued but is also entitled to hold property. It would be suffice to mention at this stage that a detailed discussion in the light of judicial precedents would follow hereafter and, therefore, we are not straightway giving any authority on this aspect just now as the matter would be clear from our

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subsequent discussion.

1739. The Apex Court in **Guruvayur Devasom Managing Committee Vs. C.K. Rajan (Supra)** in para 40 said, *"As a Hindu temple is a juristic person ...."*. It also refers to Section 92 C.P.C. observing that it seeks to protect such juristic person and therefore power under Article 226 or 32 could also be taken recourse to.

1740. In **T.R.K. Ramaswami Servai Vs. H.R.E. Madras (supra)**, it was observed:

> *"The presence of an idol though an invariable feature of Hindu temples is not a legal requisite. If the public or a section of the public consider that there is Divine presence in a particular place, they are likely to be recipients of the bounty or blessings of God, then they are essential features of a temple."*

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1741. In **Venkataramana Moorthy Vs. Sri Rama Mandhiram (1964) 2 An.WR 457**, it was held that to constitute a temple, it is enough if it is a place of public religious worship and the people believe in its religious efficacy, irrespective of the fact there is no idol or structure or other paraphernalia. The Madras High Court reiterated the above view in **T.V. Durairajulu Naidu Vs. Commissioner (supra)** observing that for an institution to be a temple, it is not necessary that there should be *Dhwajasthambam, prakaram, hundi* or collection of *Kanikkai, utsava idols* and *utsavams*. A place which creates a sense of reverence in the belief that God resides there or an edifice devoted to divine worship is a temple. It was also held that the presence of idol is not a necessary ingredient to make an institution a temple.

1742. Relying upon several precedents, including a Supreme

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Court decision, it has however been held in **Adangi Nageswara Rao Vs. Sri Ankamma Devatha Temple (supra)** in para 6: "To constitute a temple, it is enough if it is a place of public religious worship and if the people believe in its religious efficacy irrespective of the fact whether there is an Idol or a structure or other paraphernalia"; it was further observed in para 8 (last passage) that the fact that the temple has ceased to exist or ceased to be used as a place of religious worship either before or after the commencement of the Act under consideration, is absolutely of no consequence.

1743. Even when an image is broken or lost and is substituted by another, it is not a new personality but the same 'Deity' and in this regard reference may be had to page 162 which says :

> *"the Smriti writers have laid down that if an image is broken or lost another may be substituted in its place; when so substituted it is not a new personality but the same deity, and properties vested in the lost or mutilated thakur become vested in the substituted thakur. Thus, a dedication to an idol is really a dedication to the deity who is ever-present and ever-existent, the idol being no more than the visible image through which the deity is supposed specially to manifest itself by reason of the ceremony of consecration."*

1744. Then there are temporary images, i.e., the images and deities prepared and destroyed periodically after worship, for example, Ganesha's image is prepared during Ganesh Chaturthi and after the festivities are over, the image is drowned in a holy river or in places like Maharashtra (Bombay) in the sea. Similarly, the images of *Durga, Kali* and other *Devatas* are also

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worshipped as temporary images during certain periods.

1745. A question arose as to whether there can be dedication of property to such deity, an image whereof has been created temporarily. The Calcutta High Court in **Purnachandra Chakrabarty Vs. Kaliopada Roy AIR 1942 Cal. 386** and **Asita Mohan Vs. Nivode Mohan AIR 1917 Cal 292** held that bequest made for worship of a deity by the name of *Sarat Kali*, which is the name of Goddess *Durga* and worshipped only once in a year and for whom there is no permanent image was valid. In fact a Full Bench of Calcutta High Court earlier took the view in **Bhupati Nath Vs. Ram Lal (supra)** that if a gift in favour of the deity whose image has to be prepared and destroyed periodically is valid, there is no reason why a gift in favour of a deity whose image is to be prepared once for all, except for any reason for reconstruction coming to pass, should be invalid. According to Hindu scriptures, the God, by whatever name adored, is ever existent and whether a particular image did or not did not exist at a particular time was not material. Temporary images are normally not consecrated images though Ganapathi Iyer in his **"Hindu Law of Endowment"** has said that even in the case of temporary images, consecration is observed but normally consecration or *Pratishta* is done according to the texts only for images in temples. But that does not make the unconsecrated temporary images less sacred.

1746. There is another aspect. When there is a defilement, *Punah-pratishthan* (re-consecration of images in temples) has to be observed. The Brahmapurana says that “when a image is broken into two or is reduced to particles, is burnt, is removed from its pedestal, is insulted, had ceased to be worshipped, is touched by beasts like donkeys or falls on impure ground or is

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worshipped with mantras of other deities or is rendered impure by the touch of outcasts and the like-in these then contingencies, God ceases to dwell therein.

1747. Then comes Chala and Sthira Vigrah. There are two forms of installation of idols in temples. The movable form is called Chala and the stationary form is called Sthira. In most of the consecrated temples, idols are found in both the forms. The Sthira idol should not be moved while Chala idol which is also called Utsava is to be taken out in procession etc. In the context of forms of idols besides the man made images which consist of pictures, paintings and chiselled figures of wood, stone etc., the another form of such idols, which is natural, are stones found in hills, river-beds or streams. One of such black stone is known as Saaligram and another as Lingam. They are not ordinary stones. The black Saaligraam stone symbolises Vishnu. Lingam represents Siva. There is another kind of Lingam, i.e., *Spatika Linga*, a white tiny crystal made of pure quartz. It is considered to be best representation of the Nirguna Brahman, attributeless all-pervading *Paramatma.* Then there are *Panchamukha Lingas* which are found in Nepal and Jambukeswaram in Tamil Nadu and Aihole in Western India. These stones etc. are a form of Chal Vigraha.

1748. In the context of the above, the concept of 'Deity' and 'juristic personality' in Hindu Law has to be considered to find out whether plaintiffs no.1 and 2 are "**juridical persons**".

1749. In legal terminology, the term 'person' normally signifies a human being. It is Human Being's personality which may possess the characteristics belong particularly to mankind, i.e., power of thought, speech and choice. In legal terminology, however, the concept of person or personality is not confined

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with the ordinary concept. Law is concerned basically with rights and duties, both of which involve the notion of choice. They will naturally, under any system of law, be held to inhere primarily in those Being which enjoy the ability to choose, i.e., Human Beings. In law, the persons, who are not man are also sometimes treated as person. Well renowned Jurist 'Salmond' has sought to describe the word 'person' as: “persons are the substances of which rights and duties are the attributes.

1750. In legal theory a person is any Being whom law regards as capable of rights or duties. The persons, so defined, may be placed in two categories; (a) natural person, and (b) legal person. Obviously a natural person is a human being. Legal person means Beings, real or imaginary, who for the purpose of legal reasoning are treated in greater or lessor degree in the same way as Human Beings. Legal persons commonalty and loosely are also sometimes termed as fictitious person, juristic person, artificial person or moral person. In this category, we may place a joint stock company, a statutory or local body and in Hindu law, an 'Idol'.

1751. For our purposes, we need not to discuss in detail the concept of “natural person”, but confine ourselves to the term “legal person”. A legal person is any subject-matter other than a human being to which the law attributes personality. This extension, for good and sufficient reasons, of the conception of personality beyond the class of human being is one of the most noteworthy feat of the legal imagination. The law, in creating legal persons, always does so by personifying some real thing. The thing personified may be termed the corpus of the legal person so created, it is the body into which the law infuses the animus of a fictitious personality. **“Salmond on**

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Jurisprudence" Twelfth Edition by F.J. Fitzgerald, on page 306, says:

> *"Although all legal personality involves personification, the converse is not true. Legal personality is a definite legal conception; personification, as such, is a mere artifice of speech devised for compendious expression."*

1752. Serious objection has been raised with the concept of juristic personality though not in the context of idol but in the context of place, inasmuch as, it is contended that everything, as believed by any person, may not be given a legal status in order to confer certain rights and privileges upon him. It is said that like a human being it is conceived in Hindu Shastras that a Deity shall be taken care of in the same manner as that a natural person, for example arrangement of food, cloth, sleep etc. As a matter of fact, however it does not actually and cannot actually happen for the reason that an idol, made of some kind of substance or material, cannot infuse life for all the said purpose. It is only the perception and religious belief. Like a natural person, a Deity cannot claim citizenship under the Constitution of India, cannot participate in election either by contesting or by exercising the right of vote and so on.

1753. The above concept obviously is well embedded in the concept of Hindu Dharma. The form of observance of Dharma vide Hindu scriptures also provides the procedure of worship in the form of Yagya. The Hindu scriptures also contain the procedure of worship in the form of "Yagya", sacrifices by chanting Mantras etc. and for the said purpose the existence of idol or temple may or may not be necessary.

1754. The Apex Court recognised the Hindu belief that

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worship consists of four forms of which idol worship is one such form. In **A.S. Narayana Deekshitulu Vs. State of Andhra Pradesh (supra)**, the Court observed that mode of worship varies among persons of different faith. It is an assimilation of the individual soul with the infinite. For its attainment diverse views and theories have been propounded and one of them is idol worship. In fact, the word "Dharma", which is normally read and misunderstood identifying the word "religion", has a different concept in Hindu vedic literature. According to **"Chhandogyopanishad"**:

> ''त्रयो धर्म स्कन्धायज्ञजध्ययनं दानमिति प्रथमस्तप एवेति द्वितीयों ब्रह्माचार्याचार्य कुलवासी तृतीयों त्यन्तमात्मामाचार्यकुलवसादयन्।
> सर्व एते पुण्यलोका भवन्ति ब्रह्मसंस्थो मतत्वमेति।''
>
> *There are three branches of Dharma 1. Yagna, study and donation (गृहस्थधर्म) 2. Tapsaya (तापसधर्म) 3. Brihcharitya (living in the company of Acharya)."*

However, according to **"Vaisheshik"**:

> ''अथातो धर्म व्याख्यास्मयामरू।
> यतोयुदयनिरू श्रेयरू ससिद्धिरू सधर्मरू।।''
>
> *(Dharma is that from which enjoyment (आनन्द) and Nishreyas is achieved.)*

The **"Manusmriti"**, defines "Dharma" as under:

> ''वेदरू स्मृतिरू सदाचाररू स्वस्थ च प्रियमात्मनरू।
> एतच्चतुर्विधं प्राह्वरू साक्षद्धर्मस्य नक्षणम्।।''
>
> *(Shruti, Smriti, Sadachar and satisfaction of one's soul are the four features of Dharma.)*

1755. In **A. S. Narayana Deekshitulu (supra)**, the Apex Court observed that the basis of Hindu Dharma is two fold, first is the *Vedas* and the second are *Agamas*. *Vedas*, in turn, consist of four texts, namely, *Samhitas*, *Brahmanas*, *Aranyakas* and *Upanishads*. *Samhitas* are the collections of mantras. *Brahmans*

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explain the practical aspects of the rituals as well as their meanings. They explain the application of the mantras and the deeper meanings of the rituals. *Aranyakas* go deeper into the mystic meaning of the rituals, and *Upanishads* present the philosophy of Vedas. In paras 95 to 100 of the judgment the Court said:

> ***"95.*** *The basis of Hindu Dharma is two-fold. The first is the Vedas and the second are the Agamas. Vedas, in turn, consist of four texts, namely Samhitas, Bramhanas, Aranyakas and Upnishads.*
>
> ***96.*** *Samhitas are the collections of mantras, bramhans explain the practical aspects of the rituals as well as their meanings. They explain the application of the mantras and the deeper meanings of the rituals. Aranyakas go deeper into the mystic meanings of the rituals, and Upnishads present the philosophy of the Vedas.*
>
> ***97.*** *From the point of view of content, they are viewed as Karma Kanda (sacrificial portion) and Jnana Kanda which explain in the philosophical portion. The major portion of the Vedic literature enunciates the Vedic sacrifices or the rituals which inevitably culminate in the philosophy of the Upanishads. That is why the Upanishads are called Vedantha or culmination of the Vedas.*
>
> ***98.*** *The essence of the Vedic religion lies in Vedic sacrifices which not only purify the mind and the heart of those participate in the sacrifices but also reveal the true and unfragmented nature of the Karman (Action). Erroneously, Western, scholars explained the Vedic sacrifice in terms of either sympathetic magic or an act of offering the fire to God emulating the mundane act of*

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offering gifts. Thus, for them Vedic religion is a primitive religion and Vedic Gods are simply representing insentient departments of Nature; but it is not so. On the contrary, the term used for Vedic Gods is "Deva" which literally means "the shining ones." The adorable ones-bestowing grace on the worshippers. The root Div also means that Devas are the embodiment of unfragmented consciousness, which is ultimately one and non dual. Likewise, the Vedic sacrifice is an act of re-enactment of the cosmic creation; in our mundane life, our life of action is simply a life of fragmented acts. This is because of Raga Dvesha whereby the perception is limited. The fragmented acts emanate from our deep rooted attraction and hatefulness. The Vedic sacrifice moves towards "Poorna", i.e., plenitude and thus overcoming the problems of fragmented action in our lives. Onwards, the seeker moves towards the knowledge of self or the Brahaman. So many Upasanas are taught in the Vedas but not elaborated. The Agams have elaborated these Upasanas such as Madhu Vidya and Dahra Vidya.

99. *Upanishads speak of Para Vidya and Apara Vidya. Apara Vidya deals with Jnana through various methods. Agams explain these Para Vidyas. The agamic texts contain four parts, namely, Vidya Pada, Kriya Pada, Charya Pada and Yoga Pada.*

100. *Each text of the Agams has the first portion, called 'Samhita' which contains the four parts namely the Vidya Pada, Kriya Pada, Charya Pada and Yoga Pada. Vidya Pada offers an elaborate enunciation of the philosophy, whereas Kriya Pada deals elaborately with act of worship. Worship is viewed as Samurta Archana. In*

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other words, the God are endowed with from and this form of worship culminates into Amurta or Nishkala Archana by which one worships and realises the formless. These are the steps to be treated upon one after another."

1756. In **Acharya Jagadishwarananda Avadhuta Vs. Commissioner of Police AIR 1990 Cal. 336**, the Court observed that according to Hindu concept, the idea of religion is relating to God and form of His worship which in short is called as religion. Swami Vivekananda in **"Complete Works"**, Vol. 2, page 396 said:

"Religion is realization; not talk, nor doctrine, nor theories... It is being and becoming, not hearing and acknowledging; it is the whole soul becoming changed into what it believes. That is religion."

1757. Religion, therefore, is a process which has two sides; from one point of view, it is a state of belief and feeling, and in a word "spiritual disposition"; from another point of view it is an expression of the subjective disposition in appropriate acts. Both aspects are essential to the nature of religion and they act and react on one another in the process of spiritual experience. The expression of belief and faith forms the worship and for this purpose it may take several aspects. Idol, deity, temple, religious endowments etc. are some of those objects through which the divine presence is felt, experienced, believed and enjoyed for fulfilment of one's wishes.

1758. God is omnipotent and omniscient. His presence is felt not by reason of a particular form or image but by reason of the presence of the omnipotent. He is formless and shapeless. According to Hindu belief, it is for the benefit of the worshippers that there is manifestation in the images of the

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Supreme Being. It is the human vision of the Lord of the Lords. One can say that it is the human concept of the Lord of Lords. That is how a image and idol comes into picture. It may be anything in the form of metal, like gold, silver, copper, etc. or a simple piece of wood or stone may or may not be given a shape by artisan so as to become an image or idol and divinity is attributed to it.

1759. There are two forms of idols, one "Svayambhu" and another "Pratishta". "Svayambhu" or self-revealed idol are referred in Padma Purana (Uttara Khand) where the self possessed Vishnu has placed himself on earth in stone or wood for the benefit of mankind, that is styled as self-revealed. A Svayambhu image does not require consecration. In this category comes Saaligraam, certain stone forming Lingam, Earth (places) etc. In respect to the idols, i.e., image formed of wood, stone, metal etc., a procedure of securing divine spirit in the image is normally followed as provided in the Hindu scriptures that is called "consecration".

1760. In **Ram Jankijee Deities (supra)**, the Court observed that it is customary that the image is first carried to the Snan Mandap and thereafter the founder utters the Sankalpa mantra and upon completion thereof the images is given a bath with holy water, ghee, dahi, honey and rose water. Thereafter, the oblation to the sacred fire by which the pran pratistha takes places and eternal spirit is infused in that particular idol and the image is then taken to the temple itself and the same is thereafter formally dedicated to the deity.

1761. In **Sri Venkataramana Devaru Vs. State of Mysore (supra)**, Agamas are described as the ceremonial law dealing with matters like construction of the temples, installation of

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idols and conduct of worship. There are separate *Agamas* for the *Saiva* temples and *Vaishanava* temples. The important *Saiva Agamas* are *Kamikagama*, *Karnagama* and *Suprabathagama*. The principal *Vaishanava Agamas* are *Vaikanasa* and *Pancharathra*. The purpose of this ritual came of be noticed by the Apex Court in **Seshammal Vs. State of T.N. AIR 1972 SC 1586**. It is said that the rituals have twofold object; one is to attract the lay worshippers to participate in the worship carried on by the Priest or *Archaka*. It is believed when a congregation of worshippers participate in the worship of a particular attitude, aspiration and devotion is developed and confers great spiritual merit. The second object is to preserve the image from pollution, defilement and desecration. Regarding a dispute arising as to whether *Prana Pratishta* of an idol installed in a temple was properly performed, the Court held that when an idol is installed, the presumption is that such ceremonies have properly been performed.

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1762. In **Deoki Nandan (supra)**, the Court observed that no particular kind of ceremony and its performance is necessary to be shown to constitute or to demonstrate that there is a valid dedication or *Prana Pratishta*.

1763. The question of asking of evidence relating to *Prana Pratishta* ceremony is relevant only in the context of judging whether a temple is a public temple or a private temple. An idol gets conferred the spiritual and divine spirit if the believers or the worshippers visit for its *Darshan, Pooja* as a matter of right believing the existence of such divine presence and nothing more is required. Senior Sankaracharya of Kanchi Kamakoti Peeta in **"Aspects of our Religion, Bhavan's Book University"** has made observations on the manner and effect of the

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consecration as follows:

"Before an idol or image is worshipped, a process of divinising it is gone through. The image is made instinct with God. This is known as the process of Prana-pratishta. Every human being is a compendious expression of the cosmos. Man is a microcosm of the universe. He is made of the five physical elements, the pancha bhootas, which are also the substance of the universe. God in His cosmic form, inheres in the Pancha boothas, which are crystallised in the human body and expressed as the five sense organs each functioning in terms of those elements. Before an idol or image is worshipped, it has to be consecrated. The process of consecration is called as stated earlier Prana-pratishta. The devotee first performs aatma pooja; that is, he meditates on his inner aatman encased in his body. By appropriate mantras he first purifies his body including his pranas and his sense organs. The vital airs and the organs of perception and activity animating him as the microcosm of the universe which is the macrocosm are transferred by gestures to the accompaniment of mantras on to the idol or the image wherein the manifestation of the Supreme (the ishta devata) is devoutly invoked. The following prayer is uttered before the prana pratishta:

svaatmasamsttham ajam suddham tvaamadya paramesvara aranyaamiva havyaasam moortau aavaahayaam-yaham

'O Lord of the Worlds, you are unborn and pure. You are in my heart. I invoke You in this moorti. Make yourself visible to me in my concentration even as the agni comes out by friction.'

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Thereupon it becomes instinct with divinity and becomes fit for worship. After this is done the worshipper does not consider it any longer as a material object. It becomes God Himself. Then follow the sixteen items of ritualistic worship which are offered with fervour and devotion."

1764. **"Bhagavadgita"** says *"whatever may be the form in which each devotee seeks to worship with faith, I make their faith steadfast in that form alone."*

1765. It is believed by Hindus that worship consists of four forms of which idol worship is one of such form. Mode of worship varies amongst persons of different faith. It is an assimilation of the individual soul with the infinite. For its attainment diverse views and theories have been propounded and one of them is idol worship. Hindus believe that the Supreme Being manifests himself with three aspects as Brahma, the Creator, Vishnu, the Preserver and Shiva, the Destroyer. Those who believe and are devoted to the worship of Vishnu are called "Vaishnavas" and those who worship Shiva are called "Shaivites". Vaishnavas believe that God manifest himself in different incarnations. In other words, manifesting himself in the flesh which is also termed by Hindus as avatara, something which is expressive, absolute and immaculate. Vaishnavas believe in Deity 'Vishnu' who has manifested himself in 10 avatars. Further, according to Hindu belief, Vishnu as preserver exists in five forms, viz., Para, Vyuha, Vibhava, Arca and Antaryamin. Para is the transcendental form. Vibhav includes the ten divine descends (avatars) and also thirty nine forms which he takes from time to time. Arca represents God in the form of idol, which though formless, takes this finite form to

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show favour of His devotees. The form of Antaryamin is to remain within the self and control it by directing it to lead a virtuous way of life in accordance with the residues of the deeds done by it.

1766. The purpose of religious experience is to integrate human life, socially, materially and morally. Worship is certainly specifically religious and it is an attitude of mind which is not compatible with science. Science does not worship. It enquires, analyses, classifies and does sums. Religion is not merely worship of God but knowledge of God, for if it does not know its God then God is a figment of imagination and it worships it knows not what. All honest religions necessarily involve a strenuous effort to know the supreme reality and the knowledge of God must involve all knowledge in its scope. It can thus be said that religious experience is an internal experience and the deity in Temple is supposed to provoke the inner experience. Temple, therefore, forms an integral part of Hindu religion and idol installed therein forms the main symbol of religious worship manifesting the dignity of God. The Image of Lord in a Temple after *Pran Pratishtha* is a centre of reference, a symbol of the Great Consciousness whose attainment is ultimately the pinnacle of religious experiences. According to Hindu belief, worship of God is of four kinds, viz., Japa-chanting of Mantras; Home- giving oblation into fire; Archana-worship of God in form of idol in temple; and Dhyana-concentration of God alone. Of these four, Archana gained an established form of worship in temple.

1767. The concept of conferring legal personality upon a Hindu idol/Deity has undoubtedly been developed and in fact established for the first time by the Courts of British India in

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19th Century. With the expansion of East India Company towards ruling this country, it followed the policy of non-interference with the personal laws of inhabitants and therefore the subject within the reigning territory of East India Company was allowed to be governed by their personal laws so long as the same were not inconsistent with the enacted statutes governing the East India Company and the subject under its reigning arena. The British Parliament also followed the same policy while enacting laws for Indian subcontinent under the reign of East India Company by laying down that a dispute between the parties belong to one particular religion may be decided according to their personal laws. For example where both the parties are Hindu, by the principles of Hindu Law and where both the parties are Muslim according to the principles of Muslim Law. No clear cut or uniform law was existing in a matter where both the parties belong to different religions and there the matter was left to be decided according to equity and good conscience by the concerned Courts. To the extent the matter was governed by statutory laws there was no problem as the same was followed over and above the personal laws. It is this policy which made it necessary for the judicial officers to learn the personal laws of the inhabitants i.e. Hindu Law and Muslim Law. No doubt, for better administration and to lay down their policies which may enable the Britishers to continue to rule for long, they studied and made several surveys etc. about the local administration, customs, traditions etc. but due to the requirement of knowledge of personal laws for deciding the disputes, it became utmost necessary for the Judges of the Courts to acquaint themselves with the two kinds of personal laws of this country. It is in this context we find the foremost

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name of Sir William Jones, the founder of Asiatic Society of Bengal who ventured in translation of several Hindu ancient scriptures written in Sanskrit, into English. He was a Judge appointed to the Supreme Court of Fort William, Calcutta and came to India in the later part of 18th Century. The another well known name in this regard is F.E.Pargitor who was also a Judge of Calcutta High Court.

1768. The Britishers knew well and were fond of the system of Roman Laws. According to them, Roman Law was the most ancient, well drafted and planned system of law and therefore, they could not conceive of existence of any earlier ancient culture with well planned system of law having its own separate identity and principles. With this frame of mind, they studied ancient Hindu Law comparing it with Roman Law on each and every aspect thereof, even if the two were distinct and dissimilar, wherever possible, they compared it with Christianity and the rules of Church followed in England. Some such work was done by Col. Brook, West and Buhler and Sir Henry Maine. One of such earliest identification of Hindu Religious Endowment i.e. temple and idols with the corporate bodies as known in England and the legal personality i.e. juridical persons was made by West and Buhlor in their work "Hindu Law".

1769. In **Vidyapurna Tirtha Swami Vs. Vidyanidhi Tirtha Swami and others (supra)** Honble Justice Subrahmania Ayyar of Madras High Court said:

> *"It is to give due effect to such a sentiment, widespread and deep-rooted as it has always been, with reference to something not capable of holding property as a natural person, that the laws of most countries have sanctioned the creation of a fictitious person in the matter*

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as is implied in the felicitous observation made in the work already cited "Perhaps the ***oldest of all juristic persons is the God, hero or the saint"*** *(Pollock and Maitland's History of English Law, Volume 1, 481).”*

1770. One of the earlier cases in this regard came before the Bombay High Court in **Manohar Ganesh Tambekar & Ors. Vs. Lakhmiram Govindram (supra)**. The question arose about the title and use of the offerings made at the shrine or the temple of Shri Ranchhod Raiji at Dakor. The defendants frequently acted in contravention of the rules, set up a proprietary title to the offerings made at the shrine, appropriated part of the offerings to their own use, and refused to render an account of the property held as trustee for the idol. The suit was filed with the consent of the Advocate General under Section 539 CPC (Act X of 1877). The High Court dealt with the relationship of idol with such trustees and on pages 263-265 held:

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“The ***Hindu law, like the roman law and those derived from it****, recognizes, not only corporate bodies with rights of property vested in the corporation apart from its individual members, but also the juridical persons or subjects called foundations (West and Buhler, H.L.., 201, 185, 553, 555). A Hindu, who wishes to establish a religious or charitable institution, may, according to his law, express his purpose and endow it (West and Buhler, H.L., 99, 197, 216), and the ruler will give effect to the bounty, or at least protect it so far, at any rate, as it is consistent with his own dharma or conceptions of morality (West and Buhler, H.L., 33; Manu VIII, 41 ; Coleb, Dig., B.III, Ch. II, T.28). A trust is not required for this purpose: the necessity of a trust in such a case is indeed a*

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peculiarity and a modern peculiarity of the English law (Spence Eq. Juris., 440 ; Sav. Syst., s. 88). In early times a gift placed, as it was expressed, " on the altar of God" sufficed to convey to the church the lands thus dedicated (See Elton's Ten. of Kent, 17, 18). Under the Roman law of pre-Christian ages such dedications were allowed only to specified national deities [W. & B., H.L., 185 (b) ; Ulpain Fr. XXII, s. 6. They were thus placed extra commercium. Sav. Syst., sec. 88 (c c)]. After Christianity had become the religion of the empire, dedications to particular churches or for the foundation of churches and of religious and charitable institutions were much encouraged (Sav. Syst., sec. 88 ; comp. W. & B., 197). The officials of the church were empowered specially to watch over the administration of the funds and estates thus dedicated to pious uses (Sav. Syst., sec.88), but ***the immediate beneficiary was conceived as a personified realization of the church hospital or fund for ransoming prisoners from captivity*** *(Sav. Syst., sec. 88). Such a practical realism is not confined to the sphere of law; it is made use of even by merchants in their accounts, and by furnishing an ideal centre for an institution to which the necessary human attributes are ascribed- Dhadphale v. Gurav (I.L.R., 6 Bom., 122)-* ***it makes the application of the ordinary rules of law easy as in the case of an infant or a lunatic*** *(Sav. Syst., sec. 90 ; comp. Kinlock v. Secretary of State for India in Council, L.R., 15 Ch. Div., at p. 8).* ***Property dedicated to a pious purpose is, by the Hindu as by the Roman law, placed extra commercium****, (W & B., H.L., 185, 197) with similar practical savings as to sales of superfluous articles*

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for the payment of debts and plainly necessary purposes (See Cod. Lib. I, Tit. 2, Fr. 21 ; W. & B., H.L., 555, 557. See also ***Rupa Jagset v. Krishnaji Govind, I.L.R., 9 Bom., p. 169). Mr. Macpherson admitted for the defendants in this case that they could not sell the lands bestowed on the idol Shri Ranchhod Raiji****. This restriction is like the one by which the Emperor forbade the alienation of dedicated lands under any circumstances (Vyav. May., Chap. IV, S. VII, p.23 ; Nov. 120, cap., 10). It is consistent with the grants having been made to the juridical person symbolized or personified in the idol at Dakor. It is not consistent with this juridical person's being conceived as a mere slave or property of the shevaks whose very title implied not ownership, but service of the god. It is indeed a strange, if not wilful, confusion of thought by which the defendants set up the Shri Ranchhod Raiji as a deity for the purpose of inviting gifts and vouchsafing blessings, but, as a mere block of stone, their property for the purpose of their appropriating every gift laid at its feet. But if there is a juridical person, the ideal embodiment of a pious or benevolent idea as the centre of the foundation, this artificial subject of rights is as capable of taking offerings of cash and jewels as of land. Those who take physical possession of the one as of the other kind of property incur thereby a responsibility for its due application to the purposes of the foundation-compare Griffin v. Griffin (1 Such. & Lef., 352); Mulhallen v. Marum (3 Dr. & War., 317) ; Aberdeen Town Council v. Aberdeen University (L.R., 2 Ap. Cas., 544). They are answerable as trustees even though they have not*

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consciously accepted a trust, and a remedy may be sought against them for mal-administration (comp. Ind. Trusts Act II of 1882, ss. 88, 95) by a suit open to any one interested, as under the Roman system in a like case by means of a popularis actio." (emphasis added)

1771. In **Jogendra Nath Naskar (supra)** the Apex Court referred to both the aforesaid judgements of Bombay and Madras High Court and also observed in para 6 that same view has been expressed by the judicial committee in **Maharanee Shibessoureea Debia Vs. Mathooranath Acharjo, 13 MIA 270** and **Prosanna Kumari Debya Vs. Golab Chand Baboo, LR 2 IA 145.**

1772. In **Prosanna Kumari Debya (supra)** the judicial committee observed:

"It is only in an ideal sense that property can be said to belong to an idol and the possession and management must in the nature of things be entrusted with some person as shebait or manager. It would seem to follow that the person so entrusted must of necessity be empowered to do whatever may be required for the service of the idol and for the benefit and preservation of its property at least to as great a degree as the manager of an infant heir"-words which seem to be almost on echo of what was said in relation to a church in a judgment of the days of Edward I: "A church is always under age and is to be treated as an infant and it is not according to law that infants should be disinherited by the negligence of their guardians or be barred of an action in case they would complain of things wrongfully done by their guardians while they are under age' (Pollock and Maitland's 'History of English Law',

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Volume 1, 483".

1773. In **Khetter Chunder Ghose Vs. Hari Das Bundopadhya (supra)** it was found that *the household idol was made over to relatives, owing to the family, whose idol it was, being unable to carry on the worship on account of the paucity of profits of the endowed lands, and it was held that the transfer was justified in the interests of the idol. It was a proper and a pious act. The Shebait being charged fundamentally with the duty of seeing to the worship being carried on, and, having the concurrence of the entire family to the transaction, did have power to carry through the transaction "for the purpose of performing its worship regularly through generation to generation. The members of the family were thereby deprived of no right of worship. The interests of worshippers and idol were conserved.* ***Their Lordships do not think that such cases form any ground for the proposition that Hindu family idols are property in the crude sense maintained, or that their destruction, degradation or injury are within the power of their custodian for the time being***. *Such ideas appear to be in violation of the sanctity attached to the idol, whose legal entity and rights as such the law of India has long recognised." (emphasis added)*

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1774. In **Khetter Chunder Ghose (supra)** the Court also held that sale of an idol is prohibited in Hindu Law though in certain circumstances, gift of an idol is not prohibited. The Court on page 559 observed as under:

> *"It is true that the* ***Hindu law prohibits the sale of an idol*** *(see the Padma Purana, Patalakhanda, Chapter 79), and also the partition of it (see Dayabhaga, Chapter VI, s. II, 26), though when there are several idols, partition is*

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recognised by custom (see West and Buhler's Digest of Hindu Law, 2nd edition, page 396). ***But there is no absolute prohibition against the gift of an idol****. An idol is not mentioned as an unfit subject of gift by Hindu lawyers in their enumeration of what are, and what are not, fit subjects of gift (see Colebrooke's Digest, Book II, Chapter IV); but on the contrary the gift of an idol under certain circumstances is considered a laudable act (see the Varaha Purana, Chapter 185; see also Hemadris, Chaturvarga Chintamani, Danakhanda, Chapter II).*

1775. In **Avadh Kishore Dass v. Ram Gopal (supra)**, Plaintiffs instituted a suit for replacement of the Mahants of a temple. The suit was contested by the then Mahants on the ground that the suit property was the personal property of the Mahants, and not that of the temple. The suit was decreed by the District Judge, and his decree was substantially affirmed by High Court. Supreme Court accepted the findings, on the basis of certain exhibits, that the suit property belonged to the temple as a juristic person:

> *"Properly constructed, this Wajibularz shows that the entire revenue estate of village Bhawalpura vests in the Temple or the Math as a juristic person."; and "****that the entire property in suit is the absolute property of the God, Thakurji as a juristic person****"; and the result "No extract from the revenue records to show that Bhumidhari rights were granted not to the idol or the Temple as a juristic person, but to the appellant personally."*

1776. The right of a Shebait to institute a suit in his own name to recover property belonging to the deity was recognised in **Jagadindra Nath Vs. Hemanta Kumari, 31 Ind App 203 at**

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p.210.

1777. In **Bhupati Nath Smrititir the Bhattacharjee (supra)** in concurring judgment of Full Bench, Justice Mookerjee observed that *"The Hindu Law recognises dedications for the establishment of the image of a deity and for the maintenance and worship thereof. The property so dedicated to a pious purpose is placed extra commercium .....It is immaterial that the image of the deity has not been established before the death of the testator or is periodically set up and destroyed in the course of the year."*

1778. Justice Chatterjee also in the concurring judgment (above) observed: *"Shastri's Hindu Law page 420 : shews the Hindu idea of the forms attributed to God for the convenience of worship :* ***a particular image may be insentient until consecrated but the deity is not****. If the image is broken or lost, another may be substituted in its place and when so substituted it is not a new personality but the same deity and properties previously vested in the lost or mutilated Thacoor become vested in the substituted Thacoor.* ***A Hindu does not worship the "idol" or the material body made of clay or gold or other substance,*** *as a mere glance at the mantras and prayers will show.* ***They will have the eternal spirit of the deity or certain attributes of the same in a suggestive form which is used for the convenience of contemplation as a mere symbol or emblem****. It is the incantation of the mantras peculiar to a particular deity that causes the manifestation or presence of the deity or, according to some, the gratification of the deity." (emphasis added)*

1779. However, we find from the judgment of Hon'ble Jenkins, C.J. in **Bhupati Nath (supra)** that he noticed a slightly

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different view based on **Saraswati's Hindu Law of Endowment** on page 647 of the report but His Lordship declined to make any final comment thereon. The report says :

> *" In favour of this view we have the doctrine of Medhatithi cited to us in the course of the argument that the primary meaning of property and ownership is not applicable to God, and the train of reasoning that is suggested by the teaching of the Aditya Purana that the gods cease to reside in images which are multilated, broken, burnt and so forth (Sarswati's Hindu Law of Endowment, page 129).*
>
> *But whatever may be the true view on this obscure and complex question, this at least seems clear that the rule which requires relinquishment should be to a sentient person does not forbid the gift of property to trustees for a religious purpose though that purpose cannot in strictness be called a sentient person."*

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1780. The real question considered by the Full Bench in **Bhupati Nath (supra)** and decided unanimously was as under:

> *"The principle of Hindu Law, which invalidates a gift other than to a sentient being capable of accepting it, does not apply to a bequest to trustees for the establishment of an image and the worship of a Hindu deity after the testator's death, and does not make such a bequest void"*

1781. In **Rambrahma Chatterjee Vs. Kedar Nath Banerjee AIR 1923 Cal 60** it was observed that a Hindu deity is treated in many respects certainly individual.

1782. In **Ananda Chandra Chakrabarti vs. Broja Lal Singha and others 1923 Calcutta 142** it was held:

> *" It is well-settled that **dedication vests the property in the idol, only when the founder has title**. The ceremony*

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divests the proprietorship of the temple from the builder and ***vests it in the image****, which* ***by process of vivification has acquired existence as a juridical personage****."*

1783. Observing that Hindu deity is a living being and is treated in the same way in **Rambrahama Chatterji Vs. Kedar Nath Banerji (supra)** the Court said:

"We need not describe here in detail the normal type of continued worship of a consecrated image—the sweeping of the temple, the process of smearing, the removal of the previous day's offering of flowers, the presentation of fresh flowers the respectful oblation of rice with flowers and water, and other like practices. It is sufficient to state that the deity is, in short, conceived as a living being and is treated in the same way as the master of the house would be treated by his humble servant. The daily routine of like is gone through with minute accuracy: the vivified image is regaled with the necessaries and luxuries of life in due succession even to the changing of clothes, the offering of cooked and uncooked food, and the retirement to rest."

1784. In **Pramath Nath Vs. Pradyumna Kumar (supra)** the above observation of Hon'ble Mukherji J in **Rambrahma Chatterjee (supra)** were approvingly quoted.

1785. In **Tarit Bhusan Vs. Sri Iswar Sridhar Salagram Shila Thakur AIR 1942 Cal 99** a Division Bench of Calcutta High Court said that a Hindu idol although a juristic person but this juristic person is of a peculiar type. It is conceived by Hindus as a living being with its own interests apart from the interests of its worshippers, and it is recognised as a juristic person capable of being the subject of legal rights and duties but only in an ideal sense. Pal J. at page 532 observed:

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"Though an idol is thus recognised as a juristic person capable of suing and being sued, strictly speaking it has no material interest of its own. The efficient subject of the rights ascribed to an Idol must ultimately be some human beings. It must be they who enjoy such rights and, if law protects such rights, it is because of the existence of such ultimate human concern. The Idol, as the juridical person only affords the technical means of developing the juristic relations between those ultimately interested in the endowed property and the strangers. ***The so-called interest of the Idol is merely an ideal interest very different from the interest which an infant has in his property****. The introduction of the Idol and its* ***recognition as a juristic person are more a matter for the procedure and the procedure in India recognises the Idol as having a locus standi in judicio."***

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1786. In **Parmanand Vs. Nihal Chand AIR 1938 PC 195** it was held that where a property is dedicated to an idol for the object of performing its puja and other necessary ceremonies the person managing such property is only a shebait, **idol being a juristic person** in Hindu Law **capable of holding such property**. This decision has been followed by the Apex Court in **The Bihar State Board of Religious Trust Vs. Mahanth Sri Biseshwar Das AIR 1971 SC 2057**.

1787. In **Mahant Ram Saroop Dasji Vs. S.P. Sahi (supra),** the effect of damage to the idol was considered and in para 10 of the judgment, the Court observed:

"Further, it is difficult to visualise that a Hindu private debutter will fail, for a deity is immortal. Even if the idol gets broken or is lost or stolen, another image may be

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consecrated and it cannot be said that the original object has ceased to exist." (Para 10)

1788. In **Narayan Bhagwantrao Gosavi Balajiwale (supra)** regarding the removal of the idol from one place to another, the Court held:

"The case is an authority for the proposition that the ***idol cannot be removed permanently to another place****, because that would be* ***tantamount to establishing a new temple****. However, if the public agreed to a temporary removal, it could be done for a valid reason."* (para 36)

1789. Holding Hindu idol as juristic entity the Apex Court in J**ogendra Nath Naskar (supra)** in para 5 the Court said:

"5. It is well established by high authorities that a Hindu idol is a juristic person in whom the dedicated property vests."

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1790. In the context of above authorities the Apex Court in J**ogendra Nath Naskar (supra)** explained that any Hindu idol has a legal personality and is not the material image but it is like to be treated as a "natural person" and said:

"Such ascription of legal personality to an idol must however be incomplete unless it be linked to a natural person with reference to the preservation and management of the property and the provision of human guardians for them variously designated in different parts of the country." (para 6)

"It should however be remembered that the juristic person in the idol is not the material image, and it is an exploded theory that the image itself develops into a legal person as soon as it is consecrated and vivified by the Pran Pratishta ceremony. It is not also correct that the supreme

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being of which the idol is A symbol or image is the recipient and owner of the dedicated property. This is clearly laid down in authoritative Sanskrit Texts. Thus, in his Bhashya on the Purva Mimamsa, Adhyaya 9, Pada 1, Sabara Swami states :

''देवग्रामों, देवक्षेत्रमिति, उपचारमात्रम् । यो यदभिप्रेतं विनियोक्तर्महति,तत्तस्य स्वम् । न च ग्रामं क्षेत्रं वा यथाभिप्रायं विनियुक्तडे। तस्मान्न संप्रच्दातीति। देवपरिचार काणां तु ततो भूतिर्भवति, दवतामुद्दिश्प यत् त्यक्तम् ।''

"Words such as 'Village of the Gods', 'land of the Gods' are used in a figurative sense. That is property which can be said to belong to a person, which he can make use of as he desires. God however, does not make use of the, village or lands, according to its desires". Likewise, Medhathithi in commenting on the expression 'Devaswam' in Manu, Chapter XI, Verse 26, writes:

''देवानुछिश्य, यागादि क्रियार्थ धनं यदुत्सृश्टं, तछेवस्वम् मुख्यस्य स्वस्वामिसबंन्धस्य, देवाना असंभवात् ।''

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"Property of the Gods, Devaswam, means whatever is abandoned for Gods, for purposes of sacrifice and the like, because ownership in the primary sense, as showing the relationship between the owner and the property owned, is impossible of application, to Gods". Thus, according to the texts, the Gods have no beneficial enjoyment of the properties, and they can be described as their owners only in a figurative sense (Gaunartha). ***The correct legal position is that the idol as representing and embodying the spiritual purpose of the donor is the juristic person recognised by law and in this juristic person the dedicated property vests. As observed by Mr. Justice B. K. Mukherjea:***

"With regard to Debutter, the position seems to

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be somewhat different. What is personified here, is not the entire property which is dedicated to the deity but the deity itself which is the central part of the foundation and stands as the material symbol and embodiment of the pious purpose which the dedicator has in view. "The dedication to deity", said Sir Lawrence Jenkins in Bhupati v. Ramlal, 10 CLJ 355 at 369, "is nothing but a compendious expression of the pious purpose for which the dedication is designed". It is not only a compendious expression but a material embodiment of the pious purpose and though there is difficulty in holding that property can reside in the aim or purpose itself, it would be quite consistent with sound principles of Jurisprudence to say that a material object which represents or symbolises a particular purpose can be given the status of a legal person, and regarded as owner of the property which is dedicated to it."

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The legal position is comparable in many respects to the, development in Roman Law. So far as charitable endowment is concerned Roman Law-as later developed recognised two kinds of juristic persons. One was a corporation or aggregate of persons which owed its juristic personality to State sanction. A private person might make over property by way of gift or legacy to a corporation already in existence and might at the same time prescribe the particular purpose for which the property was to be employed e.g. feeding the poor, or giving relief to the poor distressed. The recipient corporation would be in a position of a trustee and would be legally bound to spend

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the funds for the particular purpose. The other alternative was for the donor to create an institution or foundation himself. This would be a new juristic person which depended for its origin upon nothing else but the will of the founder, provided it was directed to a charitable purpose. The foundation would be the owner of the dedicated property in the eye of law and the administrators would be in the position of trustees bound to carry out the object of the foundation. As observed by Sohm:

> *"During the later Empire--from the fifth century onwards-foundations created by private individuals came to be recognised as foundations in the true legal sense, but only if they took the form of a ipia cause' ('piumcorpus') i.e. were devoted to 'pious uses', only in short, if they were charitable institutions. Wherever a person dedicated property-whether by gift inter vivos or by will--in favour of the poor, or the sick, or prisoners, orphans, or aged people, he thereby created ipso facto a new subject of legal rights-the poor-house, the hospital, and so forth-and the dedicated property became the sole property of this new subject; it became the sole property of the new juristic person whom the founder had called into being. Roman law, however, took the view that the endowments of charitable foundations were a species of Church property. Piae causas were subjected to the control of the Church, that is, of the bishop or the ecclesiastical administrator, as the case might be. A pia causa was regarded as an ecclesiastical, and consequently, as a public*

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institution, and as such it shared that corporate capacity which belonged to all ecclesiastical institutions by virtue of a general rule of law. A pia causa did not require to have a juristic personality expressly conferred upon it. According to Roman law the act-whether a gift inter vivos or a testamentary disposition-whereby the founder dedicated property to charitable uses was sufficient, without more, to constitute the pia cause a foundation in the legal sense, to make it, in other words, a new subject of legal rights".

We should, in this context, make a distinction between the spiritual and the legal aspect of the Hindu idol which is installed and worshipped. From the spiritual standpoint the idol may be to the worshipper a symbol (pratika) of the Supreme God-head intended to invoke a sense of the vast and intimate reality, and suggesting the essential truth of the Real that is beyond all name or form. It is basic postulate of Hindu religion that different images do not represent different divinities, they are really symbols of One Supreme Spirit and in whichever name or form the deity is invoked, the Hindu worshipper purports to worship the Supreme Spirit and nothing else.

''इन्द्र मित्रं बरुणम् अग्निम् आहर्–
एकं सद् विप्रा वहुधा वदन्ति। '' (Rig Veda I-164)

(They have spoken of Him as Agni, Mitra, Varuna, Indra; the one Existence the sages speak of in many ways). The Bhagavad Gita echoes this verse when it says:

''वायुर यमोअ ग्बिर वरुणः शशांक
प्रजापतिस् त्वं प्रपितामहश्च।'' (Chap. XI-39)

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(Thou art Vayu and Yama, Agni, Varuna and Moon; Lord of creation art Thou, and Grandsire).

Samkara, the great philosopher, refers to the one Reality, who, owing to the diversity or intellects (matibheda) is conventionally spoken of (parikalpya) in various ways as Brahma, Visnu and Mahesvara. It is however possible that the founder of the endowment or the worshipper may not conceive on this highest spiritual plane but hold that the idol is the very embodiment of a personal God, but that is not a matter with which the law is concerned. Neither God nor any supernatural being could be a person in law. But so far as the deity stands as the representative and symbol of the particular purpose which is indicated by the donor, it can figure as a legal person. The true legal view is that in that capacity alone the dedicated property vests in it." (pages 558-560)

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1791. It is thus well established by high authorities that a Hindu idol is a "juristic person" in whom the dedicated property vests. In **Manohar Ganesh vs. Lakshmiram (supra)** called the Dakor temple case. West and Birdwood, JJ., state:

"The Hindu Law, like the Roman Law and those derived from it, recognises not only incorporate bodies with rights of property vested in the corporation part form its individuals members but also juridical persons called foundations. A Hindu who wishes to establish a religious or charitable institution may according to his law express his purpose and endow it and the ruler will give effect to the bounty or at least, protect it so far at any rate as is consistent with his own Dharma or conception of morality. A trust is not required for the purpose; the necessity of a

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trust in such a case is indeed a peculiarity and a modern peculiarity of the English Law. In early law a gift placed as it was expressed on the alter of God, sufficed it to convey to the Church the lands thus dedicated. It is consistent with the grants having been made to the juridical person symbolised or personified in the idol". The same view has been expressed by the Madras High Court in Vidyapurna Tirtha Swami Vs. Vidyanidhi Tirtha Swami, (1904) ILR 27 Mad 435, in which Mr. Justice Subramania Ayyar stated.

> *"It is to give due effect to such a sentiment, widespread and deep-rooted as it has always been with reference to something not capable of holding property as a natural person, that the laws of most countries have sanctioned the creation of a fictitious person in the matter, as is implied in the felicitous observation made in the work already cited "Perhaps the oldest of all juristic persons is the God, hero or the saint" (Pollock and Maitland's History of English Law, Volume I, p.481.)*

That the consecrated idol in a Hindu temple is a juridical person has been expressly laid down in Manohar Ganesh's case (supra), Which Mr. Prannath Saraswati, the author of the Tagore Lectures on Endowments" rightly enough speaks of as one ranking as the leading case on the subject, and in which West J., discusses the whole matter with much erudition. And in more than one case, the decision of the Judicial Committee proceeds on precisely the same footing (Maharancee Shibessouree Debia vs. Mothooranath Acharjo, (1869-70) 13 Moo Ind App 270 (PC), and Prosunno Kumari Debya vs. Golab Chand Baboo, (1874-

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*75) 2 Ind App 145 (PC). Such ascription of legal personality to an idol must however be incomplete unless it be liked to a natural person with references to the preservation and management of the property and the provision of human guardians for them variously designated in different parts of the country. In (1874-75) Ind App 145 (PC) the judicial Committee observed thus: "It is only in an ideal sense that property can e said to belong to an idol and the possession and management must in the nature of things be entrusted with some person as shebait or manger. It would seem to follow that the person so entrusted must of necessity be empowered to do whatever may be require for the service of the idol and for the benefit and preservation of its property at least to as great a degree as the manager of an infant heir" - words which seem to be almost on echo of what was said in relation to a church in a judgment of the days of Edward I: "**A church is always under age and is to be treated as an infant and it is not according to law that infants should be disinherited by the negligence of their guardians or be barred of an action in case they would complain of things wrongfully done by their guardians while they are under age**" (Pollock and Maitlands's 'History of English Law'. Volume I, p. 463)".*

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1792. It should however be remembered that the juristic person in the idol is not the material image, and it is an exploded theory that the image itself develops into a legal person as soon as it is consecrated and vivified by the Pran Pratishta ceremony. It is not also correct that the supreme being of which the idol is a symbol or image is the recipient and owner of the dedicated

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property. This is clearly laid down in authoritative Sanskrit Texts. Thus, in his Bhashya on the Purva Mimamasa, Adhyaya 9, para 1, Sabara Swami states:

दैवग्रामो, दैवक्षैत्रमिति, उपचारमित्रम्, यो पदमभिप्रैतम् विनयोक्तमहति, तत्रस्य स्वम् ।

न च ग्रामम् क्षत्रम् वा यथाभिप्रायम् विनियुक्त दैवता, तस्मान्न सम्प्रयच्छतोति ।

देवपरिचारकाणाम् तु ततो भतिर्भवति, देवतामुधिश्च यत् त्यक्तम् ।

"Words such as 'village of the Gods,' 'land of the Gods' are used in a figurative sense. That is property which can be said to belong to a person, which he can make use of as he desires. God however does not make use of the village of lands, according to its desires".

1793. The legal position is comparable in many respects to the development in Roman Law. So far as charitable endowment is concerned, Roman Law, as later developed recognised two kinds of juristic persons. Once was a corporation or aggregate of persons which owed its juristic personality to State sanction. A private person might make over property by way of gift or legacy to a corporation already in existence and might at the same time prescribe the particular purpose for which the property was to be employed e.g. feeding the poor, or giving relief to the poor or distressed/. The recipient corporation would be in a position of a trustee and would be legally bound to spend the funds for the particular purpose. The other alternative was for the donor to create an institution or foundation himself. This would be a new juristic person which depended for its origin upon nothing else but the will of the founder provided it was directed to a charitable purpose. The foundation would be the owner of the dedicated property in the

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eye of law and the administrators would be in the position of trustees bound to carry out the object of the foundation. As observed by Sohm:

> *"During the later Empire - from the fifth centre onwards - foundations created by private individuals came to be recognised as foundations in the true legal sense, but only if they took the form of a 'pia causa' ('Pium corpus') i.e., were devoted to 'pious uses', only in short, if they were charitable institutions. Wherever a person dedicated property - whether by gift inter vivos or by will - in favour of the poor, or the sick, or prisoners, orphans, or aged the dedicated property became the sole property of this new subject: it became the sole property of the new juristic person whom the founder had called into being. Roman law, however, took the view that the endowments of charitable foundations were a species of Church property, Piae causac were subjected to the control of the Church, that is, of the bishop or the ecclesiastical administrator, as the case might be. A poa causa was regarded as an ecclesiastical, and consequently, as a public institution, and as such it shared that corporate capacity which belonged to all ecclesiastical institutions by virtue of a general rule of law. A pia causa did not require to have a juristic personality expressly conferred upon it. According to Roman law the act - whether a gift inter vivos or a testamentary disposition - Whereby the founder dedicated property to charitable uses was sufficient, without more to constitute the pia causa a foundation in the legal sense, to make it, in other words, a new subject of legal rights"*

1794. We should in this context, make a distinction between

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the spiritual and the legal aspect of the Hindu idol which is installed and worshipped. From the spiritual stand point the idol may be to the worshipper a symbol (Pratika) of the Supreme God-head intended to invoke a sense of the vast and intimate reality and suggesting the essential truth of the Reaj that is beyond all name of form, It is a basic postulate of Hindu religion that different images do not represent different divinities, they are really symbols of One Supreme Spirit and in which ever name or from the deity is invoked, the Hindu worshipper purports to worship the Supreme Spirit and nothing else.

(Rig Veda I. 164)

They have spoken of Him as Agni, Mitra, Varuna, Indra, ***the one Existence the sages speak of in many ways****). The Bhagavad Gita echoes this verse when it says:*

(Thou art Vayu and Yama, Agni, Varuna and Moon: Lord of Creation art Thou, and Grandsire). Sankara - the great philosopher – ***refers to the one Reality, who, owing to the diversity of intellects (Matibheda) is conventionally spoken of (Parikalpya) in various ways as Brahman****, Visnu and Mahesvara. It is however possible that the founder of the endowment or the worshipper may not conceive on this highest spiritual plane but hold that the idol is the very embodiment of a personal God, but that is not a matter with which the law is concerned.* ***Neither God nor any supernatural being could be a person in law. But so far as the deity stands as the representative and symbols of the particular purpose which is indicated by the***

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> ***donor, it can figure as a legal person***. *The true legal view is that in that capacity alone the dedicated property vets in it. There is no principle why a deity as such a legal person should not be taxed if such a legal person is allowed in law to own property even though in the ideal sense and to sue for the property, to realise rent and to defend such property in a Court of law again in the ideal sense...* ***Our conclusion is that the Hindu idol is a juristic entity***.. *capacity of holding property and of being taxed through its shebaits who are constructed with the possession and management of its property.*

1795. In **Kalanka Devi Sansthan (supra)** reiterating that a Hindu idol is a juristic person, with respect to the vesting of property, it held:

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> *"The distinction between a manager or a Shebait of an idol and a trustee where a trust has been created is well recognised. The properties of the trust in law vest in the trustee whereas* ***in the case of an idol or a Sansthan they do not vest in the manager or the Shebait. It is the deity or the Sansthan which owns and holds the properties***. *It is only the possession and the management which vest in the manager"* (Para 5)

1796. When property is given absolutely for the worship of an idol it vests in the idol itself as a juristic person. However, the idol cannot take advantage of the provision contained in the Act by which possession can be claimed from the tenant on the ground **that it is required for personal cultivation. The position of idol is not the same as minor and the idol does not fall within Explanation 1 to S.2 (12).**

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1797. Physical or mental disability as defined by Section 2 (22) lays emphasis on the words "personal labour of supervision". The dominating idea of anything done personally or by a person is that the thing must be done by the person himself and not by or through some one else. It is true that the idol is capable of holding property in the same way as a natural person. It has a juridical status with the power of suing and being sued. Its interests are attended to by the person who has the deity in his charge and who is in law its manager with all the powers which would. In such circumstances, on analogy, be given to the manager of the estate of an infant heir. But the requirement of personal supervision under the third category of personal cultivation provided for in the definition under S. 2 (12) does not admit of an intermediary between the landlord and the laborers, who can act as agent of landlord, it cannot be said that it is possible in the case of another landlord merely because the landlord in the latter case is a juristic person. The cultivation of the land concerned must be by natural persons and not by legal persons. The provisions of the Berar Regulation of Agricultural Leases Act (C.P. Act 2 of 1951) which is already repealed, are of no help in deciding whether idol can cultivate personally within meaning of Explanation 1 to Section 2 (12) of the Bombay Act.

1798. In **Official Trustee of West Bengal Vs. Commissioner of Income-tax (supra)** the Hon'ble Apex Court referring number of decisions reached to a conclusion that *"a Hindu Deity is a juristic person is a well-established proposition and has been so for a long time."*

1799. In **Smt. Panna Banerjee and Ors. Vs. Kali Kinkor Ganguli (supra)** the Court held against sale of deity and in

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paras 65 and 66 held:

> *"65. Moreover the alleged custom, if any, as to the sale of these deities is wholly void. An idol can never be the subject matter of commerce. The sale of an idol is prohibited by Hindu Law, (See Khettar Chunder Ghose v. Haridas Bundopadhyay, (1890) I.L.R.17 Cal. 557 at p. 559).* ***A deity is not a chattel but a juridical person. No custom can ever validate a sale of any deity****. The legal necessity of the deity cannot destroy the very existence of the deity by selling it in the open market. The very thought of it is opposed to the fundamental concept of the Hindu Jurisprudence. It is against public policy. It is wholly unreasonable. It is absolutely repugnant to the Hindu Law. It is so repulsive to the judicial mind that every Court is bound to strike it down in limine.*
>
> *66. No one has ever heard that a deity can be served or be sold by bits and bits. The deity is indivisible. It is the supreme Being.* ***The deity is not a property and no one can be its owner not even its founder****. The shebaits are the managers of the deities though in reality they are its glorified servants.* ***No shebait can ever be the owner of any deity****. He is the custodian of the idol but this custody does not nor can it ever confer any right on him to sell the deity." (emphasis added)*

1800. The Calcutta judgment went in appeal to the Apex Court. Affirming the judgment of the High Court, in **Kali Kinkor Ganguly Vs. Panna Banerjee (supra),** the Apex Court in paras 24 and 25 said:

> *"24. Dr. B.K. Mukherjea in his Tagore Law Lectures has pointed out that the decision in Prasanna Kumari's case*

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(supra) was that the rule of necessity extended only to an alienation of the temporality of the idol and it does not and cannot apply to alienation to the spiritual rights and duties. Dr. Mukherjea illustrated this with reference to the decision in Nagendra Nath v. Rabindra I.L.R. 53 Cal. 132=(AIR 1926 Cal 490) and an earlier decision in Rajeswar v. Gopeswar (supra). The doctrine of alienation of shebaitship on the ground of necessity or benefit to the deity is said by Dr. Mukherjea to be of doubtful authority and based upon a misconception of certain pronouncements of the Judicial Committee.

25. In the present case, the appellant cannot invoke the doctrine of transfer of shebaiti right for the benefit of the deity because the transfer by Pramila Debi to Upendra Nath Ganguli is illegal for the principal reason that ***neither the temple nor the deities nor the shebaiti right can be transferred by sale for pecuniary consideration.*** *The transfer by sale is void in its inception." (emphasis added)*

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The Apex Court, however, expressed its disagreement with the reasons contained in the concurring judgment of the High Court.

1801. In **Ram Jankijee Deities Vs. State of Bihar (supra)** the concept of "idol" or "deity" in Hindu Law was considered and in paras 11, 13 and 14 the Court observed :

"11. "Hindu Law recognizes Hindu idol as a juridical subject being capable in law of holding property by reason of the Hindu Shastras following the status of a legal person in the same way as that of a natural person. It is not a particular image which is a juridical person but it is a

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particular bent of mind which consecrate the image. How one sees the Deity : how one feels the deity and recognizes the deity and then establishes the same in the temple upon however performance of the consecration ceremony…"

13. Divergent are the views on the theme of images or idols in Hindu Law. One school propagates God having Swayambhu images or consecrated images: the other school lays down God as omnipotent and omniscient and the people only worship the eternal spirit of the deity and it is only the manifestation or the presence of the deity by reason of the charm of the mantras.

14. Images according to Hindu authorities, are of two kinds: the first is known as ***Swayambhu or self-existent or self-revealed****, while the other is* ***Pratisthita or established****. The Padma Purana says: "the image of Hari (God) prepared of stone earth, wood, metal or the like and established according to the rites laid down in the Vedas, Smritis and Tantras is called the established images.....where the self- possessed Vishnu has placed himself on earth in stone or wood for the benefit of mankind, that is styled the self-revealed." (B.K. Mukherjea - Hindu Law of Religious and Charitable Trusts: 5th Edn.) A Swayambhu or self-revealed image is a product of nature and it is Anadi or without any beginning and the worshippers simply discover its existence and such images do not require consecration or Pratistha but a manmade image requires consecration. This manmade image may be painted on a wall or canvas. The Salgram Shila depicts Narayana being the Lord of the Lords and represents Vishnu Bhagwan. It is a Shila - the shalagram form*

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partaking the form of Lord of the Lords Narayana and Vishnu." (emphasis added)

1802. The concept of image and deity in Hindu Law has been told in para 16 to 19 of **Ram Jankijee Deities (supra)**:

"16. The observations of the Division Bench has been in our view true to the Shastras and we do lend our concurrence to the same. If the ***people believe in the temples' religious efficacy no other requirement exists as regards other areas*** *and the learned Judge it seems has completely overlooked this aspect of Hindu Shastras-In any event, Hindus have in Shastras "Agni" Devta; "Vayu" Devta-these deities are shapeless and formless but for every ritual Hindus offer their oblations before the deity. The Ahuti to the deity is the ultimate - the learned Single Judge however was pleased not to put any reliance thereon.* ***It is not a particular image which is a juridical person but it is a particular bent of mind which consecrate the image.***

17.One cardinal principle underlying idol worship ought to be borne in mind:

> *"that whichever god the devotee might choose for purposes of worship and whatever image he might set up and consecrate with that object, the image represents the Supreme God and none else. There is no superiority or inferiority amongst the different gods. Siva, Vishnu, Ganapati or Surya is extolled, each in its turn as the creator, preserver and supreme lord of the universe. The image simply gives a name and form to the formless God and the orthodox Hindu idea is that conception of form is*

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only for the benefit of the worshipper and nothing else." (B.K. Mukherjea - on Hindu Law of Religious and Charitable Trusts-5th Edn.).

18. In this context reference may also be made to an earlier decision of the Calcutta High Court in the case of Bhupati Nath Smritititirtha v. Ram Lal Maitra, wherein Chatterjee, J. (at page 167) observed:-

> ***"A Hindu does not worship the "idol" or the material body made of clay or gold or other substance**, as a mere glance at the mantras and prayers will show. **They worship the eternal spirit of the deity or certain attributes of the same**, in a suggestive form, which is used for the convenience of contemplation as a mere symbol or emblem. It is the incantation of the mantras peculiar to a particular deity that causes the manifestation or presence of the deity or according to some, the gratification of the deity." (emphasis added)*

*"19. God is Omnipotent and Omniscient and its presence is felt not by reason of a particular form or image but by reason of the presence of the omnipotent: **It is formless**, **it is shapeless** and it is **for the benefit of the worshippers** that there is manifestation in images of the Supreme Being. 'The Supreme Being has no attribute, which consists of pure spirit and which is without a second being, i.e. God is the only Being existing in reality, there is no other being in real existence excepting Him - (see in this context Golap Chandra Sarkar, Sastri's Hindu Law: 8th Edn.). It is the human concept of the Lord of the Lords - it is the human vision of the Lord of the Lords: How one sees the deity:*

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how one feels the deity and recognises the deity and then establishes the same in the temple (sic depends) upon however performance of the consecration ceremony. The Shastras do provide as to how to consecrate and the usual ceremonies of Sankalpa and Utsarga shall have to be performed for proper and effective dedication of the property to a deity and in order to be termed as a juristic person. In the conception of Debutter, two essential ideas are required to be performed: In the first place, the property which is dedicated to the deity vests in an ideal sense in the deity itself as a juristic person and in the second place, the personality of the idol being linked up with natural personality of the shebait, being the manager or being the Dharam karta and who is entrusted with the custody of the idol and who is responsible otherwise for preservation of the property of the idol. The Deva Pratistha Tatwa of Raghunandan and Matsya and Devi Puranas though may not be uniform in their description as to how Pratistha or consecration of image does take place but it is customary that the image is first carried to the Snan Mandap and thereafter the founder utters the Sankalpa Mantra and upon completion thereof, the image is given bath with Holy water, Ghee, Dahi, Honey and Rose water and thereafter the oblation to the sacred fire by which the Pran Pratistha takes place and the eternal spirit is infused in that particular idol and the image is then taken to the temple itself and the same is thereafter formally dedicated to the deity. A simple piece of wood or stone may become the image or idol and divinity is attributed to the same. As noticed above, it is formless, shapeless but it is the human

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concept of a particular divine existence which gives it the shape, the size and the colour. While it is true that the learned Single Judge has quoted some eminent authors but in our view the same does not however, lend any assistance to the matter in issue and the Principles of Hindu Law seems to have been totally misread by the learned Single Judge." (emphasis added)

1803. In **Shiromani Gurudwara Prabandhak Committee Amritsar Vs. Shri Som Nath Dass (supra)**, the question before the Hon'ble Apex Court was whether Guru Granth Sahib was a juristic person or not. While dealing with the issue, the Court observed that certain places of worship which were endowed and recognized by public, like a Gurudwara, a church etc. can also be juristic persons:

"Thus, it is well settled and confirmed by the authorities on jurisprudence and Courts of various countries that for a bigger thrust of socio-political-scientific development evolution of a fictional personality to be a juristic person became inevitable. This may be any entity, living, inanimate, objects or things. It may be a religious institution or any such useful unit which may impel the Courts to recognise it. .... Similarly, where there is any endowment for charitable purpose it can create institutions like a church, hospital, gurudwara, etc. The entrustment of an endowed fund for a purpose can only be used by the person so entrusted for that purpose in as much as he receives it for that purpose alone in trust. When the donor endows for an idol or for a mosque or for any institution, it necessitates the creation of a juristic person. The law also circumscribes the rights of any person receiving such

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entrustment to use it only for the purpose of such a juristic person. The endowment may be given for various purposes, may be for a church, idol, gurdwara or such other things that the human faculty may conceive of, out of faith and conscience but it gains the status of juristic person when it is recognised by the society as such."

1804. In the above case the Apex Court in para 30 and 35, also held:

"30. ***An idol is a "juristic person" because it is adored after its consecration, in a temple****. The offering are made to an idol. The followers recognise an idol to be symbol for God. Without the idol, the temple is only a building of mortar, cement and bricks which has no sacredness or sanctity for adoration. Once recognised as a "juristic person", the idol can hold property and gainfully enlarge its coffers to maintain itself and use it for the benefit of its followers. On the other hand in the case of mosque there can be no idol or any images of worship, yet the mosque itself is conferred with the same sacredness as temples with idol, based on faith and belief of its followers. Thus the case of a temple without idol may be only brick, mortar and cement but not the mosque. Similar is the case with the church. As we have said,* ***each religion have different nuclei, as per their faith and belief for treating any entity as a unit****."* (Para 30)

"In our view, ***no endowment or a juristic person depends on the appointment of a manager****. It may be proper or advisable to appoint such a manager while making any endowment but in its absence, it may be done either by the trustees or courts in accordance with law. Mere absence of*

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a manager (sic. does not) negative the existence of a juristic person. As pointed out in Manohar Ganesh Vs. Lakhmiram (approved in Jogendra Nath Naskars case) referred to above, if no manager is appointed by the founder, the ruler would give effect to the bounty. (Para 35)

1805. The Court in **Shiromani Gurdwara Prabandhak Committee, Amritsar Vs. Som Nath Dass & Ors. (supra)** held ultimately Guru Granth Sahib a legal person and rules that a juristic person may be entity, living being, object or thing.

1806. The status of Hindu idol, therefore, as juridical person cannot be disputed in view of the aforementioned authority/ pronouncement on this aspect. It is true that the initial verdict of Privy Council in **Vidya Varuthi Thirtha Vs. Baluswami Ayyar (supra)** and **Pramatha Nath Mullick (supra)** did attract some otherwise opinion from certain jurist like Dr.S.C. Bagchi in his Ashutosh Mookerjee Lectures, 1931 on Juristic Personality of Hindu Deities, has illustrated in Lecture III, pp. 51-78 and Sir Frederick Pollock in 41 Law Quarterly Review at page 421 but it is too late in the day. Now answer to admit of any exception in the matter in the case of an idol, therefore, is quite easy though in the context of requirement of consecration, as argued by the learned counsels for Muslim parties, it is yet to be seen as to when and in what circumstances an idol can be said to be a Deity having conferred with the juridical personality. It is no doubt true that every idol is not treated to be a Deity. Some Shastric procedure is provided for the said purpose but what is that procedure, how it is to be observed and in what manner the rules travel in much wider plane.

1807. In **Damodar Das Vs. Adhikari Lakhan Das (1909-10) 37 IA 147,** debuttar property vested in an idol and managed by

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Mahant. On his death, his two Chelas, represented by plaintiff and defendant settled a disputed right to succession by an ikrarnama in 1874 under which each chela obtained possession of the share of debottar properties allotted to him. The suit brought in 1901 to eject the defendant from the property allotted to him was held barred by limitation, treating his possession adverse to the idol and also to the plaintiff. It is a short judgment. The report of the judgment shows that it was not contested by the respondents before the Judicial Committee. The Privy Council though held that the property prior to the execution of Ikrarnama vested in idol, the legal entity and Mahant was only his representative and manager but then proceeded to hold that on execution of Ikrarnama the possession of junior Chela pursuant to the Ikrarnama became adverse to the right of the idol and of the senior chela, representing that idol and therefore, the suit was barred by limitation. (Subsequently the Apex Court in **Bishwanath Vs. Sri Thakur Radha Ballabhi (supra)** has held that an idol is a minor and that being so, it could not have filed a suit by itself.) In a case where two Chelas executed Ikrarnama themselves, it was unexpected that one of them would have filed suit for restoration of the possession of the property of the idol. Moreover, if both the chelas could have been treated to be co-shebaits of the idol's property, the possession of the property would be permissive and in case there was any trespass, the property being that of minor, the question of adverse possession would not come. The limitation would not commence as held subsequently by the Apex Court. It is well settled now that the judgments of the Privy Council are binding on the High Courts only if there is no otherwise judgments or authority of the Apex Court but where there is

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authority of the Apex Court otherwise, it being the law of the land under the Constitution of India, the judgment of the Privy Council has not a binding precedent.

1808. A Full Bench of Bombay High Court in **State of Bombay Vs. Chhaganlal Gangaram Lavar, AIR 1955 Bom. 1** considered the question of binding nature of decisions of the Privy Council after independence and enforcement of Constitution on 26.01.1950 and held:

> *"So long as the Supreme Court does not take a different view from the view taken by the Privy Council, the decisions of the Privy Council are still binding upon us, and when we say that the decisions of the Privy Council are binding upon us, what is binding is not merely the point actually decided but an opinion expressed by the Privy Council, which opinion is expressed after careful consideration of all the arguments and which is deliberately and advisedly given."*

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1809. This decision has been referred to with approval by the Apex Court in **Pandurang Kalu Patil and another Vs. State of Maharashtra, AIR 2002 SC 733.** It is thus clear that it is only an opinion expressed by the Privy Council after careful consideration of all the arguments which is deliberated and advisedly given, which is binding and not merely a point actually decided. We, however, propose to consider the above judgment in **Damodar Das Vs. Adhikari Lakhan Das (supra)** in detail to show as to what actually was held therein while discussing issue no. 13 pertaining to limitation in Suit-5 and leave this as it is at this stage.

1810. A Full Bench in **Jodhi Rai Vs. Basdeo Prasad, 8 ALJ 817=(1911) ILR 33 Allahabad 735** held that a suit on behalf of

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an idol must be carried on by some person who represents the idol usually as manager of the temple, in which the idol is installed.

1811. In **Darshan Lal and others Vs. Shibji Maharaj Birajman, AIR 1923 All. 120,** the question arose as to whether Swami Lachhmi Nand, priest of the temple was entitled to file a suit as a next friend of the idol. He said that he looked after the management of the temple which the Court understood as if he conducted the worship and dispensed such charities, if any, as were customary at the said shrine and held that Sri Lachhmi Nand was entitled to bring suit as a next friend of the idol. It said:

> *" The fact that he is not the manager or trustee under the particular deed of endowment which he desires to set up for the benefit of the aforesaid idol would not prevent him from having a right to act on behalf of the idol in this litigation, if he occupied a position of manager or trustee qua the performance of these ceremonies of worship or charities for the benefit of which the trust monies were directed to be applied."*

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1812. However, the Court further held that a person claiming a mere benevolent interest in the fortunes of an idol cannot be permitted to sue in the name and as next friend of the idol.

1813. In **Sheo Ramji Vs. Ridhnath Mahadeo Ji AIR 1923 All. 160** the Court permitted a suit brought by the idol through Sri Vivekanand as next friend to recover possession of the property said to be wrongly sold by a relative of one Ajudhia Puri who was the original manager of the temple property. The Court found that Ajudhia Puri was the original manager of the temple property and had died. His Chela and successor was a

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minor. Amongst others one Ram Kishna Das was appointed to supervise the management who in his turn appointed one Sri Vivekanand as guardian of the property of the idol on behalf of the minor. Some property of the idol was sold by a relative of Ajudhia Puri and to recover its possession Vivekanand filed the suit. The Court held that Vivekanand had sufficient interest in the subject matter of the suit to bring the same in the name and on behalf of the idol.

1814. In **Pramatha Nath Mullick (surpa),** on page 143, held that an idol is a juristic person and the Shebait is its representative. It is not movable property and cannot be willed away by the Shebait and observed:

> *"There may be, in the nature of things, difficulties in adjusting the legal status of the idol to the circumstances and requirements of its protection and location and there may no doubt also be a variety of other contracts of such a persona with mundane ideas. But* ***an argument which would reduce a family idol to the position of a mere moveable chattel is one to which the Board can give no support. They think that such an argument is neither in accord with a true conception of the authorities, nor with principle****. The Board does not find itself at variance with the views upon this subject taken in the Appellate Court or with the analysis of the authorities there contained.*

1815. In **Pramatha Nath Mullick vs. Pradyumna Kumar Mullick (supra)** the Could also said that an idol may appear by its interested next friend. The Judicial Committee observed:

> *"One of the questions emerging at this point, is as to the nature of such an idol and the services due thereto. A*

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Hindu idol is, according to long established authority, founded upon the religious customs of the Hindus, and the recognition thereof by Courts of Law, a "juristic entity." It has a juridical status with the power of suing and being sued. Its into rests are attended to by the person who has the deity in his charge and who is in law its manager with all the powers which would, in such circumstances, on analogy, be given to the manager of the estate of an infant heir. It is unnecessary to quote the authorities; for this doctrine, thus simply stated, is firmly established." (page 140)

"The person founding a deity and becoming responsible for those duties is de facto and in common parlance called shebait. This responsibility is, of course, maintained by a pious Hindu, either by the personal performance of the religious rites or—as in the case of Sudras, to which caste the parties belonged—by the employment of a Brahmin priest to do so on his behalf. Or the founder, any time before his death or his successor likewise may confer the office of shebait on another." (page 141)

"It must be remembered in regard to this branch of the law that the duties of piety from the time of the consecration of the idol are duties to something existing which, though symbolising the Divinity, has in the eye of the law a status as a separate persona. The position and rights of the deity must in order to work this out both in regard to its preservation, its maintenance and the services to be performed, be in the charge of a human being." (page 141)

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> *9. "A fortiori it is open to an idol acting through his guardian the Shebait to conduct its own worship in its own way at its own place always on the assumption that the acts of the Shebait expressing its will are not inconsistent with the reverent and proper conduct of its worship by those members of the family who render service and pay homage to it." (page 145)*

1816. It shows that a Hindu deity though treated as an individual but not an ordinary individual in all sense in all respects. A Deity is not only an individual but individual plus something else.

1817. In **Administrator General of Bengal Vs. Balkissen, ILR 51 Cal 953=AIR 1925 Cal 140** the Court held that after the appointment of Shebait the right to sue for possession of the property with which the idol is endowed, belongs to the Shebait and not to the idol. With great respect, we find that the observation that the right to sue belongs to Shebait and not the idol has to be read in the context of the dispute before the Court. It cannot be read that even though the property is debutter property, that belong to an idol yet idol itself has no right to sue or being sued but this would belong to Shebait. Such an understanding and interpretation of the judgement would reduce the status of idol qua Shebait who otherwise is not held to be the owner of the debutter property since idol being a juristic person is the owner. As usually happen, since a juristic person cannot act on its own, for the purpose of procedure the action on behalf of juristic person is initiated and taken by its manager, and, in the case of an idol by the Shebait, if any, otherwise the next friend but that does not mean that the idol itself is denuded of its right to protect its property by filing a suit at all.

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1818. The case of **Gopalji Maharaj Vs. Krishna Sunder Nath Kaviraj AIR 1929 All. 887** was decided by an Hon'ble Single Judge of this Court in the peculiar facts of that case. A suit was filed by Sri Swami Keshwanandji in the name of Sri Gopalji Maharaj, an idol of a Hindu temple claiming himself as a Manager of the shrine. As a matter of fact, the Court found that the shrine was founded by one Jagdish Pandit and successors to him in his family were Madho Sudan Das Goswami, Narhari Das Goswami, Naudip Chand Goswami and then Brij Gopal Goswami. Shebaitship or Mutwalliship vests in the family of Jagdish Pandit the founder and Sri Brij Gopal Goswami, the sole surviving member of the founder's family and Swami Keshwanand had no right in the matter. He claimed himself to be the manager of the plaintiff idol through one Mt. Basant Kumari and the Court found that she had no right to appoint Swami Keshwanand as manager of the shrine. In these circumstances, the question arose whether the suit was properly framed having been filed on behalf of the plaintiff idol by a person who was neither Mutwalli nor Shebait of the temple nor was appointed Shebait or manager of the temple by or on behalf of Brij Gopal Goswami who was the sole surviving member of the founder's family. This question was answered against Swami Keshwanand and the suit was held not maintainable. This Court recorded a finding of fact that it was not shown what interest Swami Keshwanand had in the idol or in the property belonging to the idol.

1819. In **Manohar Mukherji Vs. Bhupendra Nath AIR 1932 Cal 791** a Full Bench observed:

> *"But this analogy of a human transfer need not be carried too far, for the deity is not in need of property, nor*

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does it hold any; what is given to the deity becomes available to all.

The deity is the recipient of the gift only in an ideal sense; the dedicated property belongs to the deity in a similar sense; in reality the property dedicated is in the nature of an ownerless thing. In ancient times, except in cases of property dedicated to a brotherhood of sanyasis, all endowments ordinarily were administered by the founder himself and after him his heirs. ***The idea of appointing a shebait is of more modern growth****. When a Hindu creats an endowment, its management is primarily in him and his heirs,and unless he appoints a shebait he himself fills that office and in him rests that limited ownership, - notwithstanding that, on the one hand, he is the donor and, on the other, the recipient on behalf of the deity, the juridical person, - which has to be exercised until the property offered to the deity has been suitably disposed of. The true principle of Hindu Law is what is mentioned in the Chhandogya Upanishada, namely, that the* ***offerings to the gods are offerings for the benefit of all beings*** *(Chap. 5, p. 24 K. 2-5). And Raghunandan has quoted a text of Matsya Sukta which says:*

Having made offerings to a God, the sacrificial fee also should be given to the God. The whole of that should be given to a Brahmin otherwise it is fruitless."

1820. In **Deoki Nandan Vs. Murlidhar (supra)** the Apex Court considered the question as to who are beneficiaries when the temple is built and idol installed therein and the property endowed therefor. In paragraph no.6 of the judgment the Court held that under the Hindu law an idol is a juristic person capable

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of holding property and the property endowed for the institution vests in it but it is only in an ideal sense that the idol is the owner of the endowed property and it cannot itself make use of them; it cannot enjoy them or dispose of them, or even protect them. In short, the idol can have no beneficial interest in the endowment. In para 7 the Court held that the true beneficiaries of religious endowments are not the idols but the worshippers, and that the purpose of the endowment is the maintenance of that worship for the benefit of the worshippers. It held:

> *"(7) When once it is understood that the true beneficiaries of religious endowments are not the idols but the worshipers, and that the purpose of the endowment is the maintenance of that worship for the benefit of the worshipers, the question whether an endowment is private or public presents no difficulty. The cardinal point to be decided is whether it was the intention of the founder that specified individuals are to have the right of worship at the shrine, or the general public or any specified portion thereof. In accordance with this theory, it has been held that when property is dedicated for the worship of a family idol, it is a private and not a public endowment, as the persons who are entitled to worship at the shrine of the deity can only be the members of the family, and that is an ascertained group of individuals. But where the beneficiaries are not members of a family or a specified individual, then the endowment can only be regarded as public, intended to benefit the general body of worshippers."*

1821. In **Angurbala Mullick v. Debabrata Mullick (supra)**, while examining the nature of Sevayatship as a property,

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Hon'ble Supreme Court distinguished between the English trust and Hindu religious endowment as:

> *"It is settled by the pronouncement of the Judicial Committee in Vidya Varuti v. Balusami, 48 I.A. 302 that the relation of a Shebait in regard to debutter property is not that of a trustee to trust property under the English law. In English law the legal estate in the trust property vests in the trustee who holds it for the benefit of cestui que trust. In a Hindu religious endowment on the other hand the entire ownership of the dedicated property is transferred to the deity or the institution itself as a juristic person and the Shebait or Mahant is a mere manager."*

1822. Distinction between right of the idol to file a suit itself or a suit filed by Shebait for the benefit of an idol has been noticed by a Division Bench of Bombay High Court in **Shree Mahadoba Devasthan Vs. Mahadba Romaji Bidkar & Others AIR 1953 Bombay 38.** There **Jagadindra Nath Vs. Hemanta Kumar Devi (supra)** was relied on to argue that the right to sue vested in the Shebait and not in the idol. This aspect has been dealt with in a lucid manner in paras 2 and 3 of the judgment, which says:

> *"2. ...The contention, however, which was urged by the defendants and which found favour with the learned trial Judge was that even though the image of Shree Mahadoba was a juridical person the whole management of the properties belonging to the image could be and was carried on by its shebait or its vahivatdar and the right to sue for the protection of the properties belonging to the image of Shree Mahadoba was vested in the shebait and not in the image or the idol. Reliance was placed in support*

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of this contention on the observations of their Lordships of the Privy Council in ***Jagadindra Nath v. Hemanta Kumari Debi, 32 cal. 129 P.C****. where Sir Arthur Wilson observed (p. 141) :*

> *"But assuming the religions dedications to have been of the strictest character, it still remains that the possession and management of the dedicated property belongs to the shebait. And this carries with it the right to bring whatever suits are necessary for the protection of the property. Every such right of suit is vested in the shebait, not in the idol, and in the present case the right to sue accrued to the plaintiff when he was under age. The case therefore falls within the clear language of S.7, Limitation Act..."*

These observations were particularly relied on for the purpose of shewing that the suit for setting aside the alienations complained of could not be filed in the name of Shree Mahadoba Devasthhan at all but could only be filed in the name of the shebait for the time being who was Waman Chimnaji Waghule, original defendant 3. These observations of their Lordships of the Privy Council were, however, made in a suit which was a suit for recovering possession of the property belonging to the idol against the persons who had dispossessed the idol of the same. The shebait of the idol was then a minor. The idol was no doubt a juridical person and capable of suing or being sued, but even there the suit could be brought in the name of the idol by the shebait and the shebait was a minor with the result that their Lordships of the Privy Council held that the right of possession and management of the dedicated property

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having belonged to the shebait whatever suits were necessary for the protection of the property could also be brought by the shebait. ***There is no doubt that the words "not in the idol" are a part of the sentence which was used by their Lordships: "Every such right is vested in the shebait, not in the idol." Their Lordships of the Privy Council were, however, concerned with a case where even if the idol being a juridical person capable of holding the property could have filed the suit for recovering possession of the property of which it was dispossessed, that suit could only have been filed though in the name of the idol by its shebait and the shebait being a minor, they had got to consider what the position would be if the shebait was the person who could and should have filed the suit in the name of the idol for recovering possession of the property.*** *We are of the opinion that their Lordships had not their attention focussed on this aspect of the question, namely, whether a suit could have been filed in the name of the idol by the shebait apart from the shebait vindicating his right of possession and management of the dedicated property and filing a suit for the protection of the same. This dictum of their Lordships of the Privy Council was considered by a Division Bench of the Calcutta High Court in the case of* ***Jyoti Prosad v. Jahor Lal, AIR 1945 Cal 268****. In the course of the judgment Biswas J. observed as follows (p. 277) :*

> *"On the first point, the appellants' sheet anchor is the dictum of Sir Arthur Wilson in the Privy Council case in* ***Jagadindra Nath Soy v. Hemanta Kumari Debi, 81***

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Ind. App. 203**, that the right of suit is vested in the shebait, and not in the idol, but as has been explained in various decisions this does not and cannot mean that a Hindu idol is incapable of suing. The power of suing (as also being sued) undoubtedly resides in the idol, though ex necessitate rei the power must be exercised by and through a sentient being representing the idol. As was pointed out by Pal J. In. Tarit Bhusan v. Sri Iswaar Sridhar Salagram Shila Thakur, I.L.R. (1941) 2 Cal. 477 at page 531 where this question is discussed, **the suit in Jagadindra Nath Roy v. Hemanta Kumari Debi, 31 Ind. App. 203 (P.C.), was not by the idol represented by its shebait but by the shebait himself as such to enforce the proprietary right of the idol in certain properties**. The High Court had dismissed the suit as barred by limitation on the ground that as the interest was admitted to be in the idol, there was nothing to prevent a suit being brought on behalf of the idol by the plaintiff's mother during his minority, but the Judicial Committee reversed the decision, holding that **as the possession and management of the dedicated property belonged to the shebait and this carried with it the right to bring whatever suits were necessary for the protection of the property, the right to sue accrued to the plaintiff, and as he was a minor at the time, he could bring the suit within three years after he attained majority under Section** 7 **of** Act 15 of 1877 (corresponding to S. 6 of the present Limitation Act)**. It is in this connection that Sir Arthur Wilson made the observation on which the appellants rely."

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The learned Judge then proceeded to quote the observations of Lord Shaw in ***Pramatha Nath Mullick v. Pradhyumna Kumar Mullick, 52 Ind. App. 245*** *where their Lordships of the Privy Council dwelling on the nature of a Hindu idol expressly recognised it as a juristic entity and observed that it has a juridical status with the power of suing and being sued; and also the observations of the Judicial Committee in* ***Radha Benode Mandal v. Gopal Jiu Thakur, 54 Ind. App. 238 P.C****., where a clear distinction was drawn between a suit in which the idol itself was the plaintiff and the suit in which the plaintiffs wore shebaits of the idol. The learned Judge then observed (p. 277):*

> *"It is quite true that a Hindu idol is a juridical person capable of holding legal rights only in an ideal sense, and it may also be, as was indicated by Sir George Rankin in the Privy Council decision in Masjid Shahid Ganj v. Shiromani Gurudwira Parbandhak Committee, Amritsar, 67 Ind. App. 251 at p.264 (P.C.), that the procedure of our Courts only allows for a suit in the name of an idol,* ***but nevertheless the position remains incontestable that a Hindu idol may be a competent plaintiff in a suit in respect of property held or claimed by it, and that this is a right quite distinct from that which belongs to its shebait or shebaits to sue on its behalf****."*

(3) Normally speaking, a manager or an agent would not be competent to file a suit in his own name in regard to the affairs of his principal and such a suit even if brought by the manager would have to be in the name of the principal.

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The principal in the case of an image or idol is not an entity capable of acting on its own, with the result that it has of necessity got to act through its manager or an accredited agent, who under the circumstances is the only person capable of performing these functions in the name of the idol, The shebait is in possession and management of the property belonging to the image or idol, and laving such possession and management vested in him, it is only an extension of the principle of responsibility from the image or idol to the manager, or to use the other words, from the principal to the agent to vest the right of protection of the property which is incidental to the right of possession and management thereof by way of filing a suit in connection with the same, in the shebait. The extension of the right in the shebait however does not mean that the right which the image or the idol as a juridical person has by virtue of its holding the property to file a suit in regard thereto is by any process eliminated. Both these rights can exist simultaneously, so that if the suit is filed in the name of the image or idol, the image or the idol would be a proper plaintiff, though, as observed before, of necessity it would have to be represented in the suit by its manager or shebait. If the manager or the shebait on the other hand chooses in vindication of his right to sue for the protection of the properties to file a suit in his own name, he may just as well do so. But that would be no bar to the right of the image or the idol to file such a suit if it had chosen to do so. Of course these rights either by the image or the idol or by the manager or by the shebait could be exercised only by the one or the other and not by both; so that if the cause

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of action was prosecuted to judgment, it would be merged in a decree properly passed in favour of the plaintiff and the defendant could not be proceeded against any more in respect of that very cause of action." (emphasis supplied)

1823. In **Sri Iswar Radha Kanta Jew Thakur and others** V. **Gopinath Das and others AIR 1960 Cal. 741** Hon'ble P.C. Mallick, J. in para 18 said:

" .....According to Hindu Law, sebait represents the deity and he alone is competent to institute a suit in the name of the deity. In exceptional circumstances, however, where the sebait does not, or by his own act deprives himself of the power of representing the deity, a third party is competent to institute a suit in the name of the deity to protect the debutter property. Dr. Das contends that such a party must be a member of the family or a worshipper and that a total stranger, in law, is not competent to institute a suit in the name of the deity. I do not, however, consider this to be the correct view in law. A worshipper or a member of the family has no doubt his own right to institute a suit to protect his right to worship and for that purpose to protect the debutter property. That is, however, a suit by the member of the family or worshipper in his personal capacity and not a suit by the deity. ***The deity has also a right of its own to have a suit instituted by a next friend****. As I understand the law,* ***the person entitled to act as next friend is not limited to the members of the family or worshipper. Anybody can act as such next friend****, but the law requires that* ***anybody other than sebait*** *instituting a suit in the name of the deity* ***must be appointed as such by an order of the Court****."*

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(Para 18)

1824. In **Bishwanath & others Vs. Sri Thakur Radha Ballabhi (supra)** the Apex Court upheld the right of a deity to file a suit for declaration of its title and possession thereof. It also held that an idol of Hindu temple is a juridical person and when Shebait acts adversely to its interest, the idol being in the position of a minor, any person interested in the worship of idol can represent as its next friend to file a suit. The Court said :

> *"(9) Three legal concepts are well settled: (1) An idol of a Hindu temple is a juridical person; (2) when there is a Shebait, ordinarily no person other than Shebait can represent the idol; and (3) worshippers of an idol are its beneficiaries, though only in a spiritual sense....."*
>
> *"**An idol is in the position of a minor** and when the person representing it leaves it in a lurch, a person interested in the worship of the idol can certainly be clothed with an ad hoc power of representation to protect its interest. **It is a pragmatic, yet a legal solution to a difficult situation**. Should it be held that a Shebait, who transferred the property, can only bring a suit for recovery, in most of the cases it will be an indirect approval of the dereliction of the Shebait's duty, for more often than not he will not admit his default and take steps to recover the property, apart from other technical pleas that may be open to the transfer in a suit.....That is why decisions have permitted a worshipper in such circumstances to represent the idol and to recover the property for the idol." (Para 10)*

1825. A Single Judge in **Kishore Joo Vs. Guman Behari Joo Deo, AIR 1978 All.-1** also followed the ratio and in para 9 of the judgment observed:

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"It is settled law that normally it is the Shebait alone who can file a suit on behalf of the Idol, but it is also equally well settled that in exceptional circumstances persons other than a Shebait can institute a suit on behalf of an Idol."

1826. Now we come to some precedents about temple. In **N.C. Ramanatha Iyer Vs. Board of Commissioners for Hindu Religious Endowments, Madras AIR 1954 Madras 492** the Court observed:

"...The essential requirements of a temple are that it should be a place dedicated to, or founded for, the benefit of the Hindu community, or a section of it, and should be used as a place of worship. ..."

1827. The Apex Court in **Poohari Fakir Sadavarthy Vs. Commissioner (supra)** has laid down the requisite conditions for a religious institution to be a "temple" and observed as under:

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"A religious institution will be a temple if two conditions are satisfied. ***One is that it is a place of public religious worship and the other is that it is dedicated to or is for the benefit of, or is used as of right by the Hindu Community, or any section thereof, as a place of religious worship****."*

To constitute a temple it is enough if it is a place of public religious worship and ***if the people believe in its religious efficacy irrespective of the fact whether there is an idol or a structure or other paraphernalia****. It is enough if the devotees or the pilgrims feel that there is some super human power which they should worship and invoke its blessings." (Para 15) (emphasis added)*

1828. In the above case the Court also considered Clause 12,

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Section 9 of Madras Hindu Religious Endowments Act, 1927 which defines 'temple' and held:

> *"The institution in suit will be a temple if two conditions are satisfied. One is that is a place of public religious worship and the other is that it is dedicated to or is for the benefit of, or is used as of right by, the Hindu community, or any section thereof, as a place of religious worship. We are of opinion that the oral and documentary evidence fully establish the appellants' case that it is not a temple as defined in the Act." (Para 8)*

1829. In **Tilkayat Shri Govindlalji Maharaj Vs. State of Rajasthan AIR 1963 SC 1638** the question when the existence of a public temple can be conceived, was considered and in para 23, it says:

> *"23. . . . Where evidence in regard to the foundation of the temple is not clearly available, sometimes, judicial decisions rely on certain other facts which are treated as relevant. Is the temple built in such an imposing manner that it may prima facie appear to be a public temple? The appearance of the temple of course cannot be a decisive factor; at best it may be a relevant factor. Are the members of the public entitled to an entry in the temple? Are they entitled to take part in offering service and taking Darshan in the temple,? Are the members of the public entitled to the take part in the festivals and ceremonies arranged in the temple? Are their offerings accepted as a matter of right? The participation of the member of the public in the Darshan in the temple and in the daily acts of worship or in the celebrations of festival occasions. may be a very important factor to consider in determining, the character*

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of the temple."

1830. Various authorities have held that public institutions can be treated as juristic person. Relationship between a temple and an institution was discussed in **Commissioner for Hindu Religious and Charitable Endowments, Mysore v. Ratnavarma Heggade (supra)**, wherein the Hon'ble Supreme Court was to decide whether the temple in dispute was a "temple" as well as a "religious endowment" under the T.N. Hindu Religious Endowments Act, 1927. While deciding the matter, Hon'ble Court observed in paragraph 45:

> *"If the temple as a place of worship, is an integral part of an Institution, so that it is not separable as an institution, in itself ... In such a case the "institution" is not the temple,* ***although a temple can, by itself, be an institution****."*

1831. Construing the definition of "temple" under Section 6(20) of Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959, Hon'ble Mohan, J. (as his Lordship then was) in **T.V. Durairajulu Naidu Vs. Commissioner, (supra),** in para 18 of the judgment, observed:

> *"18. . . . If a sense of reverence is created by the place in the belief that God resides there or if an edifice devoted to divine worship, that would be enough to attract the definition of "Temple" under S. 6(20) of the Act. In other words, it is a sense of reverence that is very important. .....Nowhere the requirements as are ordinarily expected of a temple are insisted upon.* ***It is a faith that it is the abode of God that matters. It is that compelling faith, that by offering prayers, one will be the object of bounty, that is important****." (emphasis added)*

1832. In **Bala Shankar Maha Shankar Bhattjee and others**

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Vs. Charity Commissioner 1995 Suppl. (1) SCC 485 while laying down certain principles of law, after considering the earlier decision in respect to private and public temple, it was held as under:

> "*18. From the aforesaid discussion the following principles of law would emerge.*
>
> *19. A place in order to be a temple, must be a place for public religious worship used as such place and must be either dedicated to the Community at large or any section thereof as a place of public religious worship. The* ***distinction between a private temple and public temple is now well settled****. In the case of former the beneficiaries are specific individuals; in the latter they are indeterminate or fluctuating general public or a class thereof. Burden of proof would mean that a party has to prove an allegation before he is entitled to a judgment in his favour. The one or the other of the contending parties has to introduce evidence on a contested issue. The question of onus is material only where the party on which it is placed would eventually lose if he failed to discharge the same. Where, however, parties joined the issue, led evidence, such evidence can be weighed in order to determine the issue. The question of burden becomes academic.*
>
> *20.* ***An idol is a jurisitic person capable of holding property. The property endowed to it vests in it*** *but the idol has no beneficial interest in the endowment. The* ***beneficiaries are the worshippers****. Dedication may be made orally or can be inferred from the conduct or from a given set of facts and circumstances. There need not be a document to evidence dedication to the public. The*

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consciousness of the manager of the temple or the devotees as to the public character of the temple; gift of properties by the public or grant by the ruler or Govt.; and long use by the public as of right to worship in the temple are relevant facts drawing a presumption strongly in favour of the view that the temple is a public temple. The ***true character of the temple may be decided by taking into consideration diverse circumstances.*** *Though the management of a temple by the members of the family for a long time, is a factor in favour of the view that the temple is a private temple it is not conclusive. It requires to be considered in the light of other facts or circumstances. Internal management of the temple is a mode of orderly discipline or the devotees are allowed to enter into the temple to worship at particular time or after some duration or after the head man leaves, the temple are not conclusive. The nature of the temple and its location are also relevant facts. The right of the public to worship in the temple is a matter of inference.*

21. Dedication to the public may be proved by evidence or by circumstances obtainable in given facts and circumstances. In given set of facts, ***it is not possible to prove actual dedication which may be inferred on the proved facts that place of public religious worship has been used as of right by the general public or a section thereof as such place without let or hindrance****. In a public debutter or endowment, the dedication is for the use or benefit of the public. But in a private endowment when property is set apart for the worship of the family idol, the public are not interested. The mere fact that the*

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management has been in the hands of the members of the family itself is not a circumstance to a conclude that the temple is a private trust. In a given case management by the members of the family may give rise to an inference that the temple is impressed with the character of a private temple and assumes importance in the absence of an express dedication through a document. As stated earlier, consciousness of the manager or the devotees in the user by the public must be as of right. ***If the general public have always made use of the temple for the public worship and devotion in the same way as they do in other temples, it is a strong circumstance in favour of the conclusiveness of public temple****. The origin of the temple, when lost in antiquity it is difficult to prove dedication to public worship. It must be inferred only from the proved facts and circumstances of a given case. No set of general principles could be laid."*

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1833. In **A.S. Narayana (supra)**, dealing this aspect the Court has observed:

"101. *The temples are taken to be sanctified space where entire unfragmented Space and Time, in other words, the entire 'Universe' are deposited and the image of the Deity is worshipped symbolising the "Supreme." Although the Deities appear to be many, each and every Deity is again viewed as the Supreme One and, therefore, the Supreme Reality is one and non-dual. The multiplicity of the Gods has been effected in order to offer the paths which are required according to the entitlement and evolution of each and everyone."*

"108. Temple has become the most important

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centre of activities-religious, cultural and social-among the people, in particular rural India. Temple is conceived in the likeness of human body. Parts of the temple are named accordingly, by which the organic unity of the temple is emphasised. Obviously, therefore, religious people endow their property for upkeep of temples or propagation of religion. Majority people in India are dedicated to Vishnu, Shiva, Shakti, Ganpathi and Hanuman of Hindu Gods. The cardinal principle underlying idol worship is for one of four modes for self-realisation. Daily routine life in performing rituals to Deity will be gone through with minute accuracy of Abishek (bathing), changing of clothes, offerings of food and the retirement (rest). Religion, therefore, has occupied a significant place and role in the public life in our country. Hindus, therefore, believe that religion is an essential and powerful factor in raising humanity to higher level of thought and being. The priest (archaka or by whatever name called) would conduct rituals to the Deity as per prescribed Agamas, forms, practices and sampradayams."

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1834. In **Pritam Dass Mahant Vs. Shiromani Gurdwara Prabandhak Committee, AIR 1984 SC 858** the distinction between temple of Hindus and that of Sikhs came to be considered and the Apex Court held that temples are found almost in every religion but there are some differences between the sikh temples and those of other religions. The Apex Court thereafter pin pointed the distinctive features of Sikh Gurdwaras qua Hindu temples and held:

"(1) Sikh temples are not the place of idol worship as the Hindu temples are. There is no place for idol worship in a

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Gurdwara. The central object of worship in a Gurdwara is Sri Guru Granth Sahib, the holy book. The pattern of worship consists of two main items: reading of the holy hymns followed by their explanation by some learned man, not necessarily a particular Granthi and then singing of some passages from the Holy Granth. The former is called Katha and the second is called Kirtan. A Sikh thus worships the Holy Words that are written in the Granth Sahib, the Words or Shabada about the Eternal Truth of God. No idol or painting of any Guru can be worshipped.

(2) Sikh worship in the Gurdwara is a congregational worship, whereas Hindu temples are meant for individual worship. A Sikh does the individual worship at home when he recites Gurbani daily. Some scriptures meant for this purpose are Japji, Jaap, Rahras, Kirtan Sohila. Sangat is the collective body of Sikhs who meet very day in the Gurdwara."

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1835. The above dictum was followed in **Shiromani Gurdwara Parbandhak Committee Vs. Mahant Harnam Singh and others (supra) (**para 13 of the judgement) and after referring to the above mentioned observations in para 14 the Court said:

"14. The sine qua non for an institution, to be treated as Sikh Gurdwara, as observed in the said case, is that there should be established Guru Granth Sahib, and the worship of the same by congregation, and a Nishan Sahib. There may be other rooms of the institution made for other purposes but the crucial test is the existence of Guru Granth Sahib and the worshippers thereof by the congregation and Nishan Sahib."

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1836. In **Mukundji Mahraj Vs. Persotam Lalji Mahraj (supra),** holding that alienation of temple is not permissible, a Division Bench of High Court held in para 28 as under:

> *"28. Whatever may be said about a permanent alienation of endowed property other than a temple, in the very nature of things, having regard to the duties of a Manager or a Shebhait towards the idol or institution, there can be no necessity of alienating the temple or any portion of it in which the idol is installed. The maintenance of the entire building is the prime concern of the Manager or the Shebait.*
>
> *The temple has a special sanctity distinct from other endowed property. To alienate the temple itself is to cut at the root of the very existence of the idol in the habitation intended by the founder Hindu Sentiment views the alienation of a temple as a sacrilege. Not until the idol has been removed from the temple in accordance with shastric rites and has assumed a new habitation and the temple abandoned as a place of worship may the temple be alienated or sold in execution of a decree."*

1837. On pointing out to Sri Ravi Shankar that in some of the judgments like that of Madras High Court, the observations are with reference to the particular statute and the definition of temple therein, Sri Prasad replied that the definition of temple in the above Acts has to be read in the light of Shastric Laws of Hindus and if any other view is taken or the definition of temple is taken otherwise then it would be illegal, ultra vires and violative of Article 25 of the Constitution which confers fundamental right of religious customs etc. according to the religious scriptures.

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1838. In **Kasi Mangalath Illath Vishnu Nambudiri (supra)** the Court held that a public temple is "res extra commercium" and says :

> *".....Being **a public temple** and therefore **res extra commercium it is not open to a private individual to acquire by prescription any private ownership in regard thereto**. The character of the temple as a public temple cannot be taken away by any assertion of private right ....."*

1839. In **Hari Raghunath Patvardhan Vs. Antaji Bhikaji Patvardhan & Others 1919 (XLIV) ILR Bombay 466** a dispute arose about removal of image from its position and to install it in a new building. The Court said :

> *"Taking the most liberal view of the powers of the manager, I do not think that as the manager of a public temple he can do what he claims the power to do, viz., to remove the image from its present position and to instal it in the new building. The image is consecrated in its present position for a number of years and there is the existing temple. **To remove the image from that temple and to instal it in another building would be practically putting up a new temple in place of the existing temple**. Whatever may be the occasions on which the installation of a new image as a substitute for the old may be allowable according to the Hindu law, it is not shown on behalf of the defendant that the ruinous condition of the existing building is a ground for practically removing the image from its present place to a new place permanently. We are not concerned in this suit with the question of the temporary removal which may be necessary when the*

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existing building is repaired. The defendant claims the right to instal it in the new building permanently, and I do not think that as a manager he could do so, particularly when he is not supported by all the worshippers of the temple in taking that step"

1840. In **Kalikanta Chatterjee & Ors. Vs. Surendra Nath Chakravarty & Ors. AIR 1925 Calcutta 648** an interesting question came to be considered. There was an old temple having the image of deity Tara. The image was broken about 40 years ago by some ruffians, fragments of which were subsequently recovered from a tank. The temple also fell down at that time. Thereafter the worship of the deity was carried out with a ghot (earthen pot) on an an adjoining piece of land. With the passage of time, the shrine lost its popularity. The defendant no.2 thereafter with an idea of restoring the glory of shrine, made efforts, as a result whereof a new temple was erected, and a new image was brought and installed therein. A question was raised whether there is restoration of old image by substituting a new one. The Calcutta High Court referred to a passage in a Nirnaya Sindhu and also said:

"With regard to the second contention viz., that there could be no restoration of the old image in the present case according to the Shastras, it is urged that the image is admitted in the plaint to be (Self-revealed) and reliance is placed upon a passage in the Nirnaya Sindhu (see also Dharma Sindhu) which runs as follows:

अथ जीर्णोद्धारः। स च लिंगादौ दग्धे भग्रे अलिते वा

कार्य्यः।

अयञ्च अनादिसिद्ध प्रतिष्ठित लिंगादौ भंगादिदुष्टेपिन

कार्य्यः

तत्रतु महाभिषेकं कुर्य्यदिति विविक्रमः।

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10. Now renewal of Decayed (Image is considered) that is to be performed when a Linga and the like are burnt or broken removed (from its proper place). But this is not to be performed with respect to a Linga or like which is established by a Sadhu or one who has become successful in the highest religious practices, or which is Anadi i.e., of which the commencement is not known or which has no commencement. But there Mahabhishika or the ceremony of great appointment should be performed. This is said by Tre-Vikrama:-Nirnaya Sindhu of Kamala-kara Bhatta, Bombay Edition of 1900, age 264 (See Golap Chandra sarkar's Hindu Law, 4th Edition 473). But according to the plaintiff the image was installed by some remote ancestor of his, while according to the defendants it was installed by one Jantridhar. The image therefore does not appear to be Anadi. It is then urged even if the image bad a commencement, the restoration had not been made within the time prescribed. But the text from Haya Sirsha upon which reliance is placed, while laying down that the restoration after the prescribed period is blameworthy does not say that it is altogether invalid."

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1841. The Court also held that it should be seen as to how the people concerned treat and if they believe and proceed that it is a restoration of old image and continue with the worship, nothing more is required.

1842. In **Purna Chandra Bysack Vs. Gopal Lal Sett & Ors. 1908 (VIII) Calcutta Law Journal 369**, Special bench of Calcutta High Court observed:

*"The image or idol is merely the symbol of the Deity, and the **object of worship is not the image but the***

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> ***God believed to be manifest in the image for the benefit of the worshipper who cannot conceive or think of the Deity without the aid of a perceptible form on which he may fix his mind and concentrate his attention for the purpose of meditation****. If the image be cracked, broken, mutilated or lost, it may be substituted by a new one duly consecrated."*

1843. In **Idol of Thakurji Shri Govind Deoji Maharaj, Jaipur (supra)** the Apex Court observed in para 6 as under:

> *"It is obvious that in the case of a grant to the Idol or temple as such there would be no question about the death of the grantee and, therefore, no question about its successor. An Idol which is a juridical person is not subject to death, because the Hindu concept is that the Idol lives for ever, and so, it is plainly impossible to predicate about the Idol which is the grantee in the present case that it has died at a certain time and the claims of a successor fall to be determined."* (Para 6)

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1844. In para 15 of the judgment in **Ram Jankijee Deities (supra)** it was held, while usually an idol is consecrated in a temple, it does not appear to be an essential condition. The Apex Court affirmed the Division Bench decision of Madras High Court in **Board of Commissioners for H.R.E. Vs. Pidugu Narasimham (supra)** and **T.R.K. Ramaswami Servai (supra)** reiterated:

> *"The test is not whether it conforms to any particular school of Agama Shastras. The question must be decided with reference to the view of the class of people who take part in the worship. If they believe in its religious efficacy, in the sense that by such worship they are making*

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themselves the object of the bounty of some super-human power, it must be regarded as "religious worship"..... If the public or that section of the public who go for worship consider that there is a divine presence in a particular place and that by offering worship there they are likely to be the recipients of the blessings of God, then we have the essential features of a temple as defined in the Act." (Para 15)

1845. A Division Bench of Andhra Pradesh High Court in **Venkataramana Murthi Vs. Sri Rama Mandhiram (supra)** observed that the existence of an idol and a dhwajasthambham are not absolutely essential for making an institution a temple and so long as the test of public religious worship at that place is satisfied, it answers the definition of a temple. This decision is also referred and approved in **Ram Jankijee Deities (supra)**.

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1846. A Division Bench of Madras High Court in **Board of Commissioners for H.R.E. Vs. Pidugu Narasimham (supra)** on page 135 held :

"we think that the question must be decided with reference to the view of the class of people who take part in the worship. If they believe in its religious efficacy, in the sense that by such worship they are making themselves the object of the bounty of some super-human power, it must be regarded as "religious worship." (Page135)

1847. In **T.R.K. Ramaswami Servai Vs. Board of Commissioners (supra)** with reference to Section 9 (12) of Madras Hindu Religious Endowments Act, 1927, the Court in para 47 observed as under:

*"**Consecration**, according to the ceremonial rites prescribed by the Agama Sastras, **is not a legal requisite**,*

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though it is a sacredotal necessity according to the views of the orthodox. The test is not whether the installation of an idol and the mode of its worship conform to any particular school of Agama Sastras. ***If the public or that section of the public who go for worship consider that there is a divine presence in a particular place and by offering worship at that place, they are likely to be the recipients of the bounty or blessings of God, then, you have got the essential features of a temple as*** *defined in S. 9, cl. (12) of the Act.* ***The presence of an idol****, though an invariable feature of Hindu temples,* ***is not a legal requisite*** *under the definition of a temple in S. 9, cl. (12) of the Act. The word "institution" which is used in S. 84(1) of the Act is a term of very wide import, capable of different meanings according to the context in which it is used. It means, among other things, a foundation, a system, a constitution, an establishment, or organisation, a place designed for the promotion of some religious, charitable or other object of public utility and so on." (para 47) (emphasis added)*

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1848. In **Saraswathi Ammal Vs. Rajagopal Ammal (supra),** the Court while holding that, a "religious purpose" under Hindu Law must be determined according to Hindu notions, observed:

"(6) It was held in the Madras decisions above noticed that the building of a samadhi or a tomb over the remains of a person and the making of provision for the purpose of Gurupooja and other ceremonies in connection with the same cannot be recognised as charitable or religious purpose according to Hindu law. This is not on the ground that such a dedication is for a superstitious use and hence invalid. Indeed the law of superstitious uses as such has no

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application to India. The ground of the Madras decisions is that a trust of the kind can claim exemption from the rule against perpetuity only if it is for a religious and charitable purpose recognised as such by Hindu law and that Hindu law does not recognise dedication for a tomb as a religious or charitable purpose. It is, however, strenuously argued by the learned counsel for the appellants that the perpetual dedication of property in the present case, as in the Madras cases above referred to, must be taken to have been made under the belief that it is productive of spiritual benefit to the deceased and as being some what analogous to worship of ancestors at a sradh.

It is urged, therefore, that they are for religious purposes and hence valid. The following passage in Mayne's Hindu Law, 11th Edition, at page 192, is relied on to show that

> ***"What are purely religious purposes and what religious purposes will be charitable must be entirely decided according to Hindu law and Hindu notions."***

It is urged that whether or not such worship was originally part of Hindu religion, this practice has now grown up and with it the belief in the spiritual efficacy thereof and that ***courts cannot refuse to accord recognition to the same or embark on an enquiry as to the truth of any such religious belief, provided it is not contrary to law or morality****. It is further urged that unlike in English law, the element of actual or assumed public benefit is not the determining factor as to what is a religious purpose under the Hindu law.*

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Now, it is correct to say that ***what is a religious purpose under the Hindu law must be determined according to Hindu notions****. This has been recognised by courts from very early times. Vide- 'Fatma Bibi v. Advocate-General of Bombay' , 6 Bom 42 (D). It cannot also be disputed that under the Hindu law religious or charitable purposes are not confined to purposes which are productive of actual or assumed public benefit. The acquisition of religious merit is also an important criterion. This is illustrated by the series of cases which recognise the validity of perpetual endowment for the maintenance and worship of family idols or for the continued performance of annual sradhs of an individual and his ancestors. See- 'Dwarkanath Bysack v. Burroda Persaud Bysack', 4 Cal 443 (E) and 'Rupa Jagashet v. Krishnaji', 9 Bom 169 (F). So far as the textual Hindu law is concerned what acts conduce to religious merit and justify a perpetual dedication of property therefor is fairly definite. As stated by the learned author Prananath Saraswathi on the Hindu Law of Endowments at page 18-*

> *"From very ancient times the sacred writings of the Hindus divided work productive of religious merit into two divisions named 'ishta' and 'purtta', a classification which has come down to our own times. So much so that the entire object of Hindu endowments will be found included within the enumeration of 'ishta' and 'purtta'."*

The learned author enumerates what are 'ishta' works at pages 20 and 21 and what are 'purtta' works at page 27. This has been adopted, by later learned authors

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on the law of Hindu Religious Endowments and accepted by Subrahmania Ayyar J., in his judgment in- 'Parthasarthy Pillai v. Thiruvengada Pillai'. 30 Mad 340 at p. 342 (G). These lists are no doubt not exhaustive but they indicate that what conduces to religious merit in Hindu law is primarily a matter of Shastraic injunction. To the extent, therefore, that any purpose is claimed to be a valid one for perpetual dedication on the ground of religious merit though lacking in public benefit,it must be shown to have a Shastraic basis so far as Hindus are concerned. No doubt since then other religious practices and beliefs may have grown up and obtained recognition from certain classes, as constituting purposes Conducive to religious merit. If such beliefs are to be accepted by courts as being sufficient for valid perpetual dedication of property therefore without the element of actual or presumed public benefit it must at least be shown that they have obtained wide recognition and constitute the religious practice of a substantial and large class of persons. That is a question which does not arise for direct decision in this case. But it cannot be maintained that the belief in this behalf of one or more individuals is sufficient to enable them to make a valid settlement permanently tying up property. The heads of religious purposes determined by belief in acquisition of religious merit cannot be allowed to be widely enlarged consistently with public policy and needs of modern society."

1849. The concept of idol, juristic personality and its co-relation with consecration came to be considered before a Division Bench of this Court in **Gokul Nathji Maharaj and**

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another Vs. Nathji Bhogi Lal (supra). The Court observed in para 4 of the judgement:

> *"According to the traditions these idols that were handed over by Ballabhacharyaji to his seven grandsons were self-revealed idols of Lord Krishna and it is on that account that the learned Judge came to the conclusion that there could not have been due consecration according to law and it could not be said that the spirit of God ever came to reside in them. As it was pointed out by the learned Munsif in his very careful judgment that according to true Hindu belief the idol is not worshipped as such but it is the God behind the idol which is the object or worship.*
>
> *The learned Munsif has pointed out that there are elaborate provisions in Hindu Law which enable a stone image or an image made of wood to be changed and replaced by another. It cannot be said that the stone image or image made of wood or of gold or other materials is the real object of worship or the real person owning the property. The real owner of the property is deemed to be God Himself represented through a particular idol or deity which is merely a symbol.*
>
> *From the evidence it is clear that plaintiff 1 as such a symbol has been the object of worship by a large sect of people known as 'Nimar Yas' for over three hundred years and extensive properties are owned by and are in the possession of the said idol. In the circumstances, we think it was unreasonable for the learned Judge to expect that there would be any direct evidence of consecration, nor is it reasonable after such a length of time to require the plaintiffs to prove affirmatively that such ceremonies were*

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performed as would entitle the plaintiff to claim to be a juristic personality." (para 4)

1850. Further with respect to consecration the Court said:

"5. From the fact that the idol was said to be self-revealed that learned Judge assumed that there could have been no consecration of it. It is impossible after this length of time to prove by affirmative evidence whether there was or there was no consecration and we have not been referred to any book of authority or any evidence which would go to show that in the cases of idols which were deemed by their followers to be self-revealed no consecration takes place. From the fact and circumstances, however, it is abundantly clear that the idol was duly recognised by all those who believed in it as an idol of Lord Krishna and was worshipped as such. Properties were dedicated to it and properties have been brought to its use through centuries that it has existed.

After all the question whether a particular idol is or is not duly consecrated must depend upon the religious faith and belief of its followers and we have no doubt that all that was necessary to deify it must have been done by those who believed in the said idol."

1851. In **Ganpat Vs. Returning Officer (1975) 1 SCC 589**, the Court noticed varied religious practices of Hindus and observed that Hindu is inclined to believe the divine in every manifestation, whatever it may be, and is doctrinally tolerant. The Hindu is deposed to think synthetically. To regard other forms of worship of strange Gods and divergent doctrines as inadequate rather than wrong or objectionable; he (Hindu) tends to believe that the highest divine powers co-complement each

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other for the well-being of the world and mankind. Religion, therefore, is one of the personal beliefs, is more a cultural attitude towards a physical thinking in that way of life and is worship of the image of God in different manifestation.

1852. In **Sri Adi Visheshwara of Kashi Vishwanath Temple, Varanasi (supra),** in para 30 of the judgment, it was held:

> *"30. Hinduism cannot be defined in terms of Polytheism or Henotheism or Monotheism. The nature of Hindu religion ultimately is Monism/Advaita. This is in contradistinction to Monotheism which means only one God to the exclusion of all others, Polytheism is a belief of multiplicity of Gods: On the contrary, Monism is a spiritual belief of one Ultimate Supreme and manifests Himself as many. This multiplicity is not contrary to on-dualism.* ***This is the reason why Hindus stall adoring any Deity either handed down by tradition or brought by a Guru or Swambhuru and seek to attain the Ultimate Supreme****."*
>
> *(emphasis added)*

1853. In **Shastri Yagnapurushdasji & others Vs. Muldas Bhundardas Vaishya and another AIR 1966 SC 1119**, the Court considered the question as to whether Swaminarayan sect is a religion distinct and separate from Hindu religion or not:

> *"26. That takes us to the main controversy between the parties. Are the appellants justified in contending that the Swaminarayan sect is a religion distinct and separate from the Hindu religion, and consequently, the temples belonging to the said sect do no fall within the ambit of s. 3 of the Act ? In attempting to answer this question, we must inevitably enquire what are the distinctive features of*

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Hindu religion? The consideration of this question, prima facie, appears to be somewhat inappropriate within the limits of judicial enquiry in a court of law. It is true that the appellants seek for reliefs in the present litigation on the ground that their civil rights to manage their temples according to their religious tenets are contravened; and so, the Court is bound to deal with the controversy as best as it can. The issue raised between the parties is undoubtedly justiciable and has to be considered as such; but in doing so, we cannot ignore the fact that the problem posed by the issue, though secular in character, is very complex to determine; its decision would depend on social, sociological, historical, religious and philosophical considerations; and when it is remembered that the development and growth of Hindu religion spreads over a large period nearly 4,000 years, the complexity of the problem would at once become patent.

27. Who are Hindus and what are the broad features of Hindu religion, that must be the first part of our enquiry in dealing with the present controversy between the parties. The historical and etymological genesis of the word "Hindu" has given rise to a controversy amongst indologists; but the view generally accepted by scholars appears to be that the word "Hindu" is derived from the river Sindhu otherwise known as Indus which flows from the Punjab. "That part of the great Aryan race", says Monier Williams, "which immigrated from Central Asia, through the mountain passes into India, settled first in the districts near the river Sindhu (now called the Indus). The Persians pronounced this word Hindu and named their

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Aryan brethren Hindus. The Greeks, who probably gained their first ideas of India from the Persians, dropped the hard aspirate, and called the Hindus "Indoi". ("Hinduism" by Monier Williams, p.1.)"

28. The Encyclopaedia of Religion and Ethics, Vol. VI, has described "Hinduism" as the title applied to that form of religion which prevails among the vast majority of the present population of the Indian Empire (p. 686). As Dr. Radhakrishnan has observed; "The Hindu civilization is so called, since its original founders or earliest followers occupied the territory drained by the Sindhu (the Indus) river system corresponding to the North-West Frontier Province and the Punjab. This is recorded in the Rig Veda, the oldest of the Vedas, the Hindu scriptures which give their name to this period of Indian history. The people on the Indian side of the Sindhu were called Hindu by the Persian and the later western invaders". ("The Hindu View of Life" by Dr. Radhakrishnan, p. 12.) That is the genesis of the word "Hindu".

29. When we think of the Hindu religion, we find it difficult, if not impossible, to define Hindu religion or even adequately describe it. Unlike other religions in the world, the Hindu religion does not claim any one prophet; it does not worship any one God; it does not subscribe to any one dogma; it does not believe in any one philosophic concept; it does not follow any one set of religious rites or performances; in fact, it does not appear to satisfy the narrow traditional features of any religion or creed. It may broadly be described as a way of life and nothing more.

30. Confronted by this difficulty, Dr. Radhakrishnan

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realised that "to many Hinduism seems to be a name without any content. Is it a museum of beliefs, a medley of rites, or a mere map, a geographical expression?" ("The Hindu View of Life" by Dr. Radhakrishnan, p. 11.) Having posed these questions which disturbed foreigners when they think of Hinduism, Dr. Radhakrishnan has explained how Hinduism has steadily absorbed the customs and ideas of peoples with whom it has come into contact and has thus been able to maintain its supremacy and its youth. The term 'Hindu', according to Dr. Radhakrishnan, had originally a territorial and not a credal significance. It implied residence in a well-defined geographical area. Aboriginal tribes, savage and half-civilized people, the cultured Dravidians and the Vedic Aryans were all Hindus as they were the sons of the same mother. The Hindu thinkers reckoned with the striking fact that the men and women dwelling in India belonged to different communities, worshipped different gods, and practiced different rites ("The Hindu View of Life" by Dr. Radhakrishnan, p. 12) (Kurma Purana)

31. Monier Williams has observed that "it must be borne in mind that Hinduism is far more than a mere form of theism resting on Brahmanism. It presents for our investigation a complex congeries of creeds and doctrines which in its gradual accumulation may be compared to the gathering together of the mighty volume of the Ganges, swollen by a continual influx of tributary rivers and rivulets, spreading itself over an ever-increasing area of country and finally resolving itself into an intricate Delta of tortuous steams and jungly marshes ..... The Hindu

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religion is a reflection of the composite character of the Hindus, who are not one people but many. It is based on the idea of universal receptivity. It has ever aimed at accommodating itself to circumstances, and has carried on the process of adaptation through more than three thousand years. It has first borne with and then, so to speak, swallowed, digested, and assimilated something from all creeds." ("Religious Thought & Life in India" by Monier Williams, P. 57.)

32. We have already indicated that the usual tests which can be applied in relation to any recognised religion or religious creed in the world turn out to be inadequate in dealing with the problem of Hindu religion. Normally, any recognised religion or religious creed subscribes to a body of set philosophic concepts and theological beliefs. Does this test apply to the Hindu religion? In answering this question, we would base ourselves mainly on the exposition of the problem by Dr. Radhakrishnan in his work on Indian Philosophy. ("Indian Philosophy" by Dr. Radhakrishnan, Vol. I, pp. 22-23.) Unlike other countries, India can claim that philosophy in ancient India was not an auxiliary to any other science or art, but always held a prominent position of independence. The Mundaka Upanisad speaks of Brahma-vidya or the science of the eternal as the basis of all sciences, 'sarva-vidya -pratishtha'. According to Kautilya, "Philosophy" is the lamp of all the sciences, the means of performing all the works, and the support of all the duties. "In all the fleeting centuries of history", says Dr. Radhakrishnan, "in all the vicissitudes through which India has passed, a certain marked identity is visible. It has held

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fast to certain psychological traits which constitute its special heritage, and they will be the characteristic marks of the Indian people so long as they are privileged to have a separate existence." The history of Indian thought emphatically brings out the fact that the development of Hindu religion has always been inspired by an endless quest of the mind for truth based on the consciousness that truth has many facets. Truth is one, but wise men describe it differently. The Indian mind has, consistently through the ages, been exercised over the problem of the nature of godhead the problem that faces the spirit at the end of life, and the inter-relation between the individual an the universal soul. "If we can abstract from the variety of opinion", says Dr. Radhakrishnan, "and observe the general spirit of Indian thought, we shall find that it has a disposition to interpret life and nature in the way of monistic idealism, though this tendency is so plastic, living and manifold that it takes many forms and expresses itself in even mutually hostile teachings". (Ibid, p.32.)

33. The monistic idealism which can be said to be the general distinguishing feature of Hindu Philosophy has been expressed in four different forms : (1) Non-dualism or Advitism; (2) Pure monism; (3) Modified monism; and (4) Implicit monism. It is remarkable that these different forms of monistic idealism purport to derive support from the same vedic and Upanishadic texts. Shankar, Ramanuja, Vallabha and Madhva all based their philosophic concepts on what they regarded to be the synthesis between the Upanishads, the Brahmasutras and the Bhagavad Gita. Though philosophic concepts and principles evolved by

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different Hindu thinkers and philosophers varied in many ways and even appeared to conflict with each other in some particulars, they all had reverence for the past and accepted the Vedas as the sole foundation of the Hindu philosophy. Naturally enough, it was realised by Hindu religion from the very beginning of its career that truth was many-sided and different views contained different aspects of truth which no one could fully express. This knowledge inevitably bred a spirit of tolerance and willingness to understand and appreciate the opponents point of view. That is how "the several views set forth in India in regard to the vital philosophic concepts are considered to be the branches of the self-same tree. The short cuts and blind alleys are somehow reconciled with the main road of advance to the truth." (Ibid p. 48.) When we consider this broad sweep of the Hindu philosophic concepts, it would be realised that under Hindu philosophy, there is no scope for ex-communicating any notion or principle as heretical and rejecting it as such.

34. Max Muller who was a great oriental scholar of his time was impressed by this comprehensive and all-pervasive aspect of the sweep of Hindu philosophy. Referring to the six systems known to Hindu philosophy, Max Muller observed : "The longer I have studied the various systems, the more have I become impressed with the truth of the view taken by Vijnanabhiksu and others that there is behind the variety of the six systems a common fund of what may be called national or popular philosophy, a large manasa (lake) of philosophical thought and language far away in the distant North and in the distant

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past, from which each thinker was allowed to draw for his own purposes". ("Six Systems of Indian Philosophy" by Max Muller, p. xvii.)

35. Beneath the diversity of philosophic thoughts, concepts and ideas expressed by Hindu philosophers who started different philosophic schools, lie certain broad concepts which can be treated as basic. The first amongst these basic concepts is the acceptance of the Veda as the highest authority in religious and philosophic matters. This concept necessarily implies that all the systems claimed to have drawn their principles from a common reservoir of thought enshrined in the Veda. The Hindu teachers were thus obliged to use the heritage they received from the past in order to make their views readily understood. The other basic concept which is common to the six systems of Hindu philosophy is that "all of them accept the view of the great world rhythm. Vast periods of creation, maintenance and dissolution follow each other in endless succession. This theory is not inconsistent with belief in progress; for it is not a question of the movement of the world reaching its goal times without number, and being again forced back to its starting point..... It means that the race of man enters upon and retravals its ascending path of realisation. This interminable succession of world ages has no beginning". ("Indian Philosophy" by Dr. Radhakrishnan, Vol. II., p. 26) It may also be said that all the systems of Hindu philosophy believe in rebirth and pre-existence. "Our life is a step on a road, the direction and goal of which are lost in the infinite. On this road, death is never an end of an obstacle but at most the beginning of new steps". (‘‘Indian

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Philosophy by Dr. Radhakrishnan, Vol. II, p. 27) Thus, it is clear that unlike other religions and religious creeds, Hindu religion is not tied to any definite set of philosophic concepts as such.

36. Do the Hindus worship at their temples the same set or number of gods ? That is another question which can be asked in this connection; and the answer to this question again has to be in the negative. Indeed, there are certain sections of the Hindu community which do not believe in the worship of idols; and as regards those sections of the Hindu community which believe in the worship of idols their idols differ from community to community and it cannot be said that one definite idol or a definite number of idols are worshipped by all the Hindus in general. In the Hindu Pantheon the first goods that were worshipped in Vedic times were mainly Indra, Varuna, Vayu and Agni. Later, Brahma, Vishnu and Mahesh came to be worshipped. In course of time, Rama and Krishna secured a place of pride in the Hindu Pantheon, and gradually as different philosophic concepts held sway in different sects and in different sections of the Hindu community, a large number of gods were added, with the result that today, the Hindu Pantheon presents the spectacle of a very large number of gods who ar worshipped by different sections of the Hindus.

37. The development of Hindu religion and philosophy shows that from time to time saints and religious reformers attempted to remove from the Hindu thought and practices elements of corruption and superstition and that led to the formation of different sects.

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Buddha started Buddhism; Mahavir founded Jainism; Basava became the founder of Lingayat religion, Dnyaneshwar and Tukaram initiated the Varakari cult; Guru Nanak inspired Sikhism; Dayananda founded Arya Samaj, and Chaitanya began Bhakti cult; and as a result of the teachings of Ramakrishna and Vivekananda, Hindu religion flowered into its most attractive, progressive and dynamic form. If we study the teachings of these saints and religious reformers, we would notice an amount of divergence in their respective views; but underneath that divergence, there is a kind of subtle indescribable unity which keeps them within the sweep of the broad and progressive Hindu religion.

38. There are some remarkable features of the teachings of these saints and religious reformers. All of them revolted against the dominance of rituals and the power of the priestly class with which it came to be associated; and all of them proclaimed their teachings not in Sanskrit which was the monopoly of the priestly class, but in the languages spoken by the ordinary mass of people in their respective regions."

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1854. Thereafter, the Court considered the teachings and followings of the Swaminarayan sect and upheld the decision of the High Court that it is not a sect distinct and separate from Hindu religion.

1855. Construing the right protected under Articles 25 and 26 of the Constitution, the Apex Court in para 31 **Sri Adi Visheshwara of Kashi Vishwanath Temple (supra)** said*:*

31. The protection of Articles 25 and 26 of the Constitution is ***not limited to matters of doctrine. They***

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extend also to acts done in furtherance of religion and, therefore, they contain a guarantee for rituals and observances, ceremonies and modes of worship which are integral parts of the religion*. . . . Religion undoubtedly has its basis in a system of beliefs which are regarded by those who profess religion to be conducive to the future well-being. It is not merely a doctrine. It has outward expression in acts as well. It is not every aspect of the religion that requires protection of Articles 25 and 26 nor has the Constitution provided that every religious activity would not be interfered with. Every mundane and human activity is not intended to be protected under the Constitution in the grab of religion. Articles 25 and 26 must be viewed with pragmatism. ..... **The right to observe and practice rituals and right to manage in matters of religion are protected under these Articles**. But right to manage the Temple or endowment is not integral to religion or religious practice or religion as such which is amenable to statutory control. These secular activities are subject to State regulation but the religion and religious practices which are integral part of religion are protected. It is well settled law that administration, management and governance of the religious institution or endowment are secular activities and the State could regulate them by appropriate legislation. . . .”*

1856. In **Sri Venkataramana Devaru Vs. State of Mysore (supra)** in reference to Article 26 (b) the Court said that practices which are regarded by the community as part of its religion and under the ceremonial law pertaining to temples, who are entitled to enter into them for worship and were they

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are entitled to stand for worship and how the worship is to be conducted are all matter of religion.

1857. Construing the scope of Article 25 and 26 insofar as it confers fundamental right protecting religious freedom, the Apex Court in **A.S. Narayana (supra)** said that religion as used in these Articles must be construed in its strict and etymological sense. Religion is that which binds a man with his Cosmos, his creator or super force. It is different and rather impossible to define or delimit the expressions "religion" or "matters of religion" used in Article 25 and 26. Essentially, religion is a matter of personal faith and belief of personal relations of an individual with what he regards as Cosmos, his Maker or his Creator which, he believes, regulates the existence of insentient beings and the forces of the universe. Religion is not necessarily theistic and in fact there are well-known religions in India itself like Budhism and Jainism which do not believe in the existence of God. In India. Muslims believe in Allah and have faith in Islam; Christians in Christ and Christianity; Parsis in Zorastianism; Sikhs in Gurugranth Sahib and teachings of Gurunanak Devji, its founder, which is a facet of Hinduism like Brahamos, Aryasamaj etc. The Court in para 89 of the judgment further observed :

> *"89. A religion undoubtedly has its basis in a system of beliefs and doctrine which are regarded by those who profess religion to be conducive to their spiritual well-being. A religion is not merely an opinion, doctrine or belief. It has outward expression in acts as well. It is not every aspect of religion that has been safeguarded by Articles 25 and 26 nor has the Constitution provided that every religious activity cannot be interfered with. Religion,*

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therefore, be construed in the context of Articles 25 and 26 in its strict and etymological sense. Every religion must believe in a conscience and ethical and moral precepts. Therefore, whatever binds a man to his own conscience and whatever moral or ethical principle regulate the lives of men believing in that theistic, conscience or religious belief that alone can constitute religion as understood in the Constitution which fosters feeling of brotherhood, amenity, fraternity and equality of all persons which find their foot-hold in secular aspect of the Constitution. Secular activities and aspects do not constitute religion which brings under its own cloak every human activity. There is nothing which a man can do. Whether in the way of wearing clothes or food or drink, which is not considered a religious activity. Every mundane or human activity was not intended to be protected by the Constitution under the guise of religion. The approach to construe the protection of religion or matters of religion or religious practices guaranteed by Articles 25 and 26 must be viewed with pragmatism since by the very nature of things, it would be extremely difficult, if not impossible to define the expression religion of matters or religion or religious belief or practice."

1858. Again in para 90, the Court observed :

"Therefore, the right to religion guaranteed under Article 25 or 26 is not an absolute or unfettered right to propagating religion which is subject to legislation by the State limiting or regulating any activity-economic, financial, political or secular which are associated with religious belief, faith, practice or custom. They are subject

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to reform on social welfare by appropriate legislation by the State. Though religious practices and performances of acts pursuance of religious belief are as much a part of religion as faith or belief in a particular doctrine, that by itself is not conclusive or decisive. What are essential parts of religion or religious belief or matters of religion and religious practice is essentially a question of fact to be considered in the context in which the question has arisen and the evidence- factual or legislative or historic- presented in that context is required to be considered and a decision reached."

1859. It would also be useful to refer the observations made in para 91 of the judgment :

"91. The Court, therefore, while interpreting Articles 25 and 26 strikes a careful balance between the freedom of the individual or the group in regard to religion, matters of religion, religious belief, faith or worship, religious practice or custom which are essential and integral part and those which are not essential and integral and the need for the State to regulate or control in the interest of the community."

1860. In **Durgah Committee, Ajmer Vs. Syed Hussain Ali AIR 1961 SC 1402**, the Constitution Bench said :

"While we are dealing with this point it may not be out of place incidentally to strike a note of caution and observe that in order that the practices in question should be treated as a part of religion they must be regarded by the said religion as its essential and integral part; otherwise even purely secular practices which are not an essential or an integral part of religion are apt to be

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clothed with a religious form and may make a claim for being treated as religious practices within the meaning of Art. 26. Similarly, even practices though religious may have sprung from merely superstitious beliefs and may in that sense be extraneous and unessential accretions to religion itself. Unless such practices are found to constitute an essential and integral part of a religion their claim for the protection under Art. 26 may have to be carefully scrutinised; in other words, the protection must be confined to such religious practices as are an essential and an integral part of it and no other."

1861. In the above judgement, the Court also held:

"If the right to administer the properties never vested in the denomination or had been validly surrendered by it or has otherwise been effectively and irretrievably lost to it, Art. 26 cannot be successfully invoked."

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1862. The Court further held:

"It is obvious that Art. 26 (c) and (d) do not create rights in any denomination or its section which it never had; they merely safeguard and guarantee the continuance of rights which such denomination or its section had. In other words, if the denomination never had the right to manage the, properties endowed in favour of a denominational institution as for instance by reason of the terms on which the endowment was created it cannot be heard to say that it has acquired the, said rights as a result of Art. 26(c) and (d), and that the practice and custom prevailing in that behalf which obviously is consistent with the terms of the endowment should be ignored or treated as invalid and the administration and management should now be given

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to the denomination. Such a claim is plainly inconsistent with the provisions of Art. 26."

"If the practice in question is purely secular or the affairs which is controlled by the statute is essentially and absolutely secular in Character, it cannot be urged that Art. 25(1) or Art. 26(b) has been contravened. The protection is given to the practice of religion and to the denomination's right to manage its own affairs in matters of religion."

"Art. 26(b) relates to affairs 754 in matters of religion such as the performance of the religious rites or ceremonies or the observance of religious festivals and the like; it does not refer to the administration of the property at all. Article 26(d), therefore, justifies the enactment of a law to regulate the administration of the denomination's property and that is precisely what the Act has purported to do in the present case. If the clause "affairs in matters of religion" were to include affairs in regard to all matters, whether religious or not the provisions under Art. 26(d) for legislative regulation of the administration of the denomination's property would be rendered illusory."

1863. Following the above decision in **State of Rajasthan Vs. Sajjanlal Panjawat and others, 1974 SCC (1) 500** the Court held:

"*Bearing in mind the scope of clauses (b) and (d) of Art. 26 as expounded in the decisions of this Court, if, as we have held, the right of management of Rikhabdevji temple is lost as it is vested in the State. The respondents cannot complain of any infringement of their fundamental rights to manage and administer its affairs, and as such the High*

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Court was in error in giving the impugned directions."

1864. Considering as to what "practices" would constitute part of "religion" in **Durgah Committee, Ajmer Vs. Syed Hussain Ali (supra)** a Constitution Bench of the Apex Court in para 33 of the judgment held:

> *" .....in order that the practices in question should be treated as a part of religion they must be regarded by the said religion as its essential and integral part; otherwise even purely secular practices which are not an essential or an integral part of religion are apt to be clothed with a religious form and may make a claim for being treated as religious practices within the meaning of Art. 26. Similarly, even practices though religious may have sprung from merely superstitious beliefs and may in that sense be extraneous and unessential accretions to religion itself. Unless such practices are found to constitute an essential and integral part of a religion their claim for the protection under Art. 26 may have to be carefully scrutinised; in other words, the protection must be confined to such religious practices as are an essential and an integral part of it and no other."*

1865. In para 37 with reference to the scope of Article 26 (c) and (d), the Court said:

> *"It is obvious that Art. 26(c) and (d) do not create rights in any denomination or its section which it never had; they merely safeguard and guarantee the continuance of rights which such denomination or its section had. In other words, if the denomination never had the right to manage the properties endowed in favour of a denominational institution as for instance by reason of the terms on which*

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the endowment was created it cannot be heard to say that it has acquired the said rights as a result of Art. 26(c) and (d), and that the practice and custom prevailing in that behalf which obviously is consistent with the terms of the endowment should be ignored or treated as invalid and the administration and management should now be given to the denomination. Such a claim is plainly inconsistent with the provisions of Art. 26. If the right to administer the properties never vested in the denomination or had been validly surrendered by it or has otherwise been effectively and irretrievably lost to it Art. 26 cannot be successfully invoked.

1866. Next comes **Gedela Satchidananda Murthy (supra)** where the Court reproduced the quotation from Madras High Court's judgment in **Pidugu Narasimham (supra)** in para 16. Further in para 17, the Apex Court held:

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"Religious practices vary from State to State, region to region, place to place and sect to sect. When the legislature makes a legislation, the existing state of affairs and the basis on which such legislation has been made would be presumed to have been known to it. Whereas the property for construction of a samadhi or tomb by itself may not amount to a permanent dedication involving public character of such institution, a distinction must be borne in mind about a tomb constructed on the samadhi of an ordinary man and a saintly person. In a case falling within the latter category, the answer to the question, in our opinion, should be rendered in the affirmative."

1867. In **Raja Muttu Ramalinga Setupati Vs. Perianayagum Pillai, 1 IA 209** (p. 234) the Privy Council held:

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"*The important principle to be observed by Courts in dealing with constitution and rules of religious brotherhoods attached to Hindu Temples is to ascertain, if possible,* ***the special laws and usages governing the particular community whose affairs have become*** *subject of litigation*."

1868. It further observed: *"The subject of devastanum lands is of a great importance to the happiness of the people, and the attention paid to the interest of the pagodas ……. has been attended with most beneficial consequences to the people in different parts of peninsula"* (i.e India).

1869. In **Sarangadeva Periya Matam v. Ramaswami Goundar (supra)**, relying on **Pramatha Nath Mullick v. Pradhyumna Kumar Mullick (supra)**, Counsel for the Respondents therein submitted that a math, like an idol, has a juridical status with the power of suing and being sued. Hon'ble Supreme Court accepted this contention and held:

> *"****Like an idol, the math is a juristic person*** *having the power of acquiring, owning and possessing properties and having the capacity of suing and being sued. Being an ideal person, it must of necessity act in relation to its temporal affairs through human agency." See Babajirao v. Luxmandas, (1904) ILR 28 Bom 215 (223).* ***It may acquire property by prescription and may likewise lose property by adverse possession****."*

1870. In **Kamaraju Venkata Krishna Rao (supra)**, the controversy before the Hon'ble Apex Court was whether a tank can be considered as a charitable institution under Section 2 (E) of the Andhra Inams (Abolition and Conversion into Ryotwari Act) 1956. Hon'ble Court quoted from a DB judgment of the Mysore High Court, **V. Mariyappa Vs. B.K. Puttaramayya,**

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ILR (1957) Mys 291:AIR 1958 Mys 93:

> *"The maintenance of Sadavartas, tanks, seats of learning and homes for the disabled or the destitute and similar institutions is recognized by and well known to Hindu Law, and when maintained as public institutions they must be taken to have a legal personality as a Matha or the deity in a temple has, and the persons in charge of the Management would occupy a position of trust."*

1871. There Court also held, when maintained as public institutions, then, not only temples and mutts, but also sadavartas and tanks etc take up a legal personality. An excerpt:

> *"It has been held that though Mutts and temples are the most common forms of Hindu religious institutions, dedication for religious or charitable purposes need not necessarily take one of these forms and* ***that the maintenance of Sadavartas, tanks, seats of learning and homes for the disabled or the destitutes and similar institutions*** *are recognised by and well known to Hindu Law and* ***when maintained as public institutions, they must be taken to have a legal personality as a Matha or the deity in a temple*** *has, and the persons in charge of the management would occupy a position of trust."*

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1872. In the above holding, there is a presumption that Mutts and temples, when maintained as public institutions, take up a legal personality - and this proposition is extended to the case of sadavartas and tanks etc.

1873. In **Pooranchand Vs. The Idol Shri Radhakrishnaji & another AIR 1979 MP 10**, a Division Bench considered and explained meaning of the term "religious endowment" and said that dedication of the property for religious purposes such as

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establishment and worship of an idol is a religious endowment and consequently a trust. Regarding the capacity of filing suit by an idol through a next friend, it observed in para 8 of the judgment:

> *"In our opinion, the proposition, that an idol or deity is a juristic person and can sue as such admits of no doubt, as it has been established by a series of authorities that an idol as a juristic person, can sue through a next friend."*

1874. Considering the nature of property dedicated for use as "Dharamchatra", resting place for the travellers and pilgrims, in **Thayarammal Vs. Kanakammal (supra),** the Court in para 16 of the judgment said:

> *"16. A religious endowment does not create title in respect of the property dedicated in anybody's favour.* ***A property dedicated for religious or charitable purpose for which the owner of the property or the donor has indicated no administrator or manager becomes res nullius which the learned author in the book (supra) explains as property belonging to nobody. Such a property dedicated for general public use is itself raised to the category of a juristic person****. Learned author at p. 35 of his commentary explains how such a property vests in the property itself as a juristic persons. In Manohar Ganesh Tambekar v. Lakhmiram Govindram it is held that: (ILR p. 263)*
>
> > *"The Hindu law, like the roman law and those derived from it, recognises, not only corporate bodies with rights of property vested in the corporation apart from its individual members, but also the juridical persons or subjects called foundations."*

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(emphasis supplied)

The religious institutions like mutts and other establishments obviously answer to the description of foundations in Roman law. The idea is the same, namely, when property is dedicated for a particular purpose, ***the property itself upon which the purpose is impressed, is raised to the category of a juristic persons*** *so that the property which is dedicated would vest in the persons so created. And so it has been held in Krishna Singh v. Mathura Ahir that a mutt is under the Hindu law a juristic person in the same manner as a temple where an idol is installed." (emphasis added)*

1875. In **Sri Iswar Dashabhuja Thakurani & others Vs. Sm. Kanchanbala Dutta & others AIR 1977 Cal. 473**, a Single Judge of Calcutta High Court in para 17 and 18 held:

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*"**17.** A Hindu deity is a juristic person and has the right to sue or be sued. There are preponderance of decisions to the effect that a shebait has a right on his own to institute and proceed with the suit on behalf of the deities making other shebaits as parties to the suit. On the death of Hari Mohan Roy, Rash Behari Roy became one of the shebaits jointly with other defendants. So on his own right Rash Behari Roy can, not only bring a suit but also proceed with the suit on behalf of the plaintiff deities as a prospective shebait in case of family endowment even though not appointed by Court as guardian, can maintain a suit on behalf of the deity. This is more so when a prospective shebait brings a suit on behalf of the idol making all other shebaits as parties to the suit. (AIR 1966 Pat 235, Ram Ratanlal v. Kashinath Tewari). In a case*

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reported in AIR 1931 Cal 776 (Girih Chandra v. Upendra Nath) it has been held that a person interested in a private trust as a member of the family and who has further the prospect of holding the office of shebait, can maintain a suit challenging the alienation of debutter properties by a shebait. A future shebait can maintain a suit to have it declared that alienation made by a shebait is unauthorised and does not affect the deity.

18. *Rash Behari Roy is not only a shebait but also a member of the settlor's family. In Nirmal Chandra v. Jyoti Prosad reported in 45 Cal WN 709: (AIR 1941 Cal 562) it has been held that a shebait as a party interested in the endowment can bring an action. In the first place a co-shebait can bring a suit on the principle that a suit on behalf of the deity can be brought by some of the co-shebaits that the rest are unwilling to join the plaintiff or have done acts precluding them from doing so. In the second place it can be justified on the ground that the deity can sue through a next friend who has no interest adverse to it and it is immaterial that such next friend happens to be one of the shebaits.*

"In respect of a debutter in this country a founder or his heirs may invoke the assistance of a judicial Tribunal for the proper administration thereof on the allegation that the Trusts are not properly performed."

1876. In **Profulla Chorone Requitte Vs. Satya Choron Requitte AIR 1979 SC 1682** the Court said :

"Property dedicated to an idol vests in it in an ideal sense only; ex necessitas, ***the possession and management has to be entrusted to some human agent****. Such an agent of*

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the idol is known as Shebait in Northern India. The legal character of a Shebait cannot be defined with precision and exactitude. Broadly described, he is the human ministrant and custodian of the idol, its earthly spokesman, its authorised representative entitled to deal with all its temporal affairs and to manage its property."

1877. Hon'ble Bose J in **State of West Bengal Vs. Anwar Ali Sarkar (supra),** about development of Hindu Law, observed in para 84:

"Much of the existing Hindu law has grown up in that way from instance to instance, the threads being gathered now from the rishis, now from custom, now from tradition. In the same way, the laws of liberty, of freedom and of protection under the Constitution will also slowly assume recognisable shape as decision is added to decision. They cannot, in my judgment, be enunciated in static form by hidebound rules and arbitrarily applied standards or tests." (para 84)

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1878. It was also observed that dedication in Hindu Law does not require acceptance of property dedicated for a religious or a public purpose.

1879. Learned counsels for the Muslim parties, however, submit that in view of plethora of legal authorities it is now beyond doubt that a Hindu idol, duly consecrated is a legal person, but they further submit that same thing would not apply to a place which has no such definite concept. The question raised obviously is not only interesting but important and has far reaching consequences. It has to be considered very cautiously and carefully.

1880. So the question now is, whether a place can be a Deity

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or not. Some of the authorities already referred, in our view, answer this question. In **Ram Jankijee Deities & Ors. (supra)** the Apex Court in para 14 of the judgment referred to Padam Puran and observed that a *Swayambhu* or self-revealed image is a product of nature and it is Anadi or without any beginning and the worshippers simply discover its existence and it does not require consecration or Pratistha.

1881. Sri R.L.Verma, learned counsel for the defendant no.3 however submitted that a *Swayambhu* Deity is only one i.e. the Salgram Shila which depicts Lord Narayana i.e. Vishnu Bhagwan and nonelse. He could not dispute that Hindu worship several places like Kedarnath (State of Uttarakhand); Vishnupad temple at Gaya; rivers like "Sangam" at Allahabad (U.P.); natural formation of snow as "Linga" at Amarnath (State of Jammu and Kashmir); Fire Hills (Jawala Ji) in Himachal Pradesh Goverdhan (Mathura (U.P.); etc. as Swayambhu Deity.

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1882. How and in what manner the people should believe a place or an image having supreme power to cherish the wishes of worshipper has to be considered from the belief of the worshippers and cannot be placed in a straight jacket formula. In para 15 of the judgment in **Ram Jankijee Deities & Ors. (supra),** the Apex Court said that the question must be decided with reference to the view of the class of people who take part in the worship. If they believe in its religious efficacy, in the sense that by such worship they are making themselves the object of the bounty of some super-human power, it must be regarded as "religious worship". It further says that if the public or that section of the public who go for worship consider that there is a divine presence in a particular place and that by offering worship there, they are likely to be recipients of the blessings of

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God, it has the essential features of a temple. In para 16 of the judgment the Apex Court further observed that if the people believe in the temples' religious efficacy no other requirement exists as regards other aspects. The Court observed that it is not a particular image which is a juridical person but it is a particular bent of mind which consecrate the image. There is no apparent reason to deny the status of Deity to a place which is worshipped by a large section of people as sacred and pious being the birthplace or the place of manifestation which normally is the term used when according to Hindu belief the Lord of Universe takes natural form i.e. human being or otherwise for the benefit of the people at large. It is in this context ten incarnations of Lord Vishnu are treated.

1883. The above discussion and the authorities show the concept of idol, Deity, religious endowment, their legal status, manner in which they are worshipped as also the concept of temple etc., as it is written, preached and practised by Hindus as per their ancient scriptures, and also as considered and simplified by various Courts from time to time. This is how plethora of authorities are there, some of which, on various aspects, we have referred hereinabove. Various terms like "idol", "deity", "temples", "Math", "religious endowments" etc., though in one or the other manner have interconnection and sometimes integrally woven also but still they have different context, concept, meaning etc. altogether. Hindu law comprehends various notions of all the above concepts and much more. There are several shades and nuances of these terms. They are not mere terms of art but are living concept and a huge mass actually live and virtually has merged and absorbed itself therein. These terms are their identity, perception, source

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of life, inspiration and zeal to live and what not. It is really very difficult to concise them in a few words or norms. While discussing Issue No. 17 (Suit-3), we have already dealt with the terms "religion" and "Math" but to some extent, it is true that confining the word "religion" in a definition is one of the most arduous and complicated task.

1884. One of the basic thing in religious experience is a unique feeling, a solemn reverend attitude. It denotes the insight conviction of human being that there is something entirely transcending everything human. Core of the religion is "belief", and, the manner of expressing that belief, i.e. overt performances, sometimes called "acts of worship". The acts of worship do vary. This variance is denoted sometimes in terms of different religions or faith like Hindu, Muslim, Christian etc. and sometimes different sects within the same group of religion.

1885. There is no certainty in the ancient Hindu scriptures as to whether the concept of worship in the religion commenced with the natural forces, like sun, air, water, sky etc. or it was contemporary with the image worship. One of the set of scholars believe that there was no idol worship in Vedic days, but there is another set of scholars who have their own reservations about the said opinion. We have referred to certain Brahmin literature which contain references of idols and temples even in Vedic days. This, however, is a tentative opinion and need not be taken as a final adjudication. We leave it for further research by scholars and geniuses to go in further details and find out correct version. For the present case, we do not find that this aspect will make any impact on issues concerned. For our purpose suffice it to hold that image (idol) worship exist since before Christ and sufficient evidence exist therefor.

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1886. We do not find any parallel to the dispute before us where a particular 'Place' is claimed to be a deity, a juridical personality in the shape of an undefined idol, by itself a temple, for the reason of belief of Hindu public that Lord Rama, incarnation of Lord Vishnu, was born thereat and this divine manifestation of the Supreme Lord at a particular place make it sacred and due to belief of Hindu people that God resides there and the 'Place' possesses all such divine and supreme power so as to cherish the wishes of the people and salvation to those who come to worship and *Darshan* of such place. It is stressed that this itself is sufficient to make the 'Place' a deity and satisfy the requirement of the legal personality. The proposition appears to be quite simple but if we put on tests with the precedents, religious and legal, it become difficult to be answered simplicitor.

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1887. What would be the meaning of word "Place" and what shall be its extent? Whether it would be a small place which normally is required for birth of a human being or whether it will cover an area of the entire room, house, locality, city or sometimes one can say even more than that. We know that Hindus worship rivers and lakes like, Ganga, Yamuna, Narmada, Mansarovar etc. They are very sacred and pious. At several places a number of temples etc. on the bank or near the said rivers have been constructed. The very origin of such sacred rivers is also a place of worship for Hindus like, Gangotri, Yamunotri (State of Uttaranchal) and Amarkantak (for river Narmada). Can it be said that the entire length these rivers cover would constitute and satisfy the requirement of a "juristic personality". It is not out of place that at several places, the temples of Ganga, Narmada, Yamuna etc. have been

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constructed and they are religious endowments in their own rights, enjoy all such legal rights and obligations etc. as are available to such Endowments. Similarly certain hills or mountain or hilly terrains as such are treated to be the places of worship like, Kailash, Gobardhan, Kamathgiri etc.

1888. When asked theses questions, learned counsels for Hindu parties also felt difficult to reply. Sri M.M.Pandey submitted that in the present dispute, it is the belief of the Hindu people that the fort of King Dashrath situated at Ayodhya included the part of the building wherein Lord Rama was born according to Hindu belief and the disputed area covered that house. It is believed that it is this place which is so pious and sacred for Hindu people being the birthplace of Lord Rama and, therefore, in this particular case, it is not necessary to go into larger question since it is not the claim of the Hindu parties that the entire city of Ayodhya or the entire locality is birthplace of Lord Rama. He was born at Ayodhya is a well known fact. In Ayodhya, it is the disputed place where the Lord of Lords was manifested in the form of natural person and, therefore, it is believed to be the birthplace of Lord Rama by Hindus for time immemorial and they visit it to worship and Darshan. This satisfies the requirement of a "deity". He submits that "deity" in the name of birthplace of Lord Rama is a legal person considering the concept of legal personality of Hindu deity as discussed above. It is evident that it is a place where the public visit it as a matter of right, offer *Darshan, Pooja* etc. continuously and from time immemorial.

1889. The submission is not wholly without substance. The relevant evidence need be analyzed in the light of the principles in general which discern from the discussions above, which in

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brief may be culled out as follows.

1890. There exist a Supreme Being which controls everything and fulfills the wishes and salvation to the human beings. Hindus believe that the Supreme Being manifests himself in human form (incarnation) with all the powers of Supreme Being subject to self imposed human limitations. This reincarnation or manifestation is known as "Swayambhu". The place of reincarnation is treated sacred. This kind of belief that the place becomes sacred which relates to birth or some other activities of a Holy sole is common in other religions also like, Mekka in Islam, Bethlehem/Jerusalem in Christianity.

1891. The concept of deity is deeply embedded amongst Hindus. The Hindu Dharma has elevated the concept of sacredness into an object of divinity fit for worship. However, this is only symbolic. A Hindu does not worship the idol or the material body but it is the eternal spirit of the deity and the image is a mere symbol. The incarnation of Mantras peculiar to a particular deity causes manifestation of a deity. The idols or images which are man made are consecrated with the spirit of Supreme Being through Vedic rights. The process is known as "Pran Pratistha". The Supreme Being is bodyless, shapeless and, therefore, through the concept of images it is visualized and worshipped.

1892. The deity, i.e., the consecrated image or the Swayambhu deity has a juridical status. Law recognises its power of suing and being sued. This power can be exercised by the person who is entrusted with its care and management normally called "Shebait". In the context of Shebait the deity is treated to be an "infant heir" or "with the status of a minor" since it cannot act on its own.

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1893. The deity is a class by itself conceived of a living being and is treated like a master of the house. The property dedicated to a deity belongs to it and not to Shebait though is managed by Shebait as a trustee or its manager who has no otherwise right into property except that it can be managed for the benefit of the deity.

1894. A temple is the house of the deity. Even if the image is broken or otherwise get damaged, the Supreme Being continued to exist and by replacement of the image that continuity is maintained symbolically. A temple and deity is res extra commercium. Presence of idol is not decisive to ascertain the status of a temple.

1895. The worshippers are the beneficiaries though in a spiritual sense.

1896. If the public goes for worship considering that there is a divine presence and offer worship thereat believing that they are likely to be the recipient of the bounty of God then it satisfies the test of a temple. Installation of an idol or the mode of worship are not the relevant and conclusive test.

1897. It leaves no doubt in our mind that according to the well recognised and accepted concepts of Hindu Law in regard to deity and idol, it cannot be disputed now that an idol is a juridical person, can sue and be sued, can acquire property and deal with it in a manner it likes though obviously this user is through a Shebait or the person who takes care of the idol since it cannot act on its own not being a natural person.

1898. Besides, to constitute an idol, a deity, the concept of Pran Pratishtha and that too in a particular manner is not always conclusive and is not the only test. In the case of a "Swayambhu deity", the Shastrik procedure of Pran Pratishtha as such is not at

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all required. A deity can be in the form of an idol or even in natural form like stone, wood, earth, river, mountain etc. The only requirement in our view would be that in case of place, it must be ascertainable as to what place is believed to be sacred and pious by the worshippers.

1899. The pivotal requirement is that the Hindus must believe the existence of supreme power therein, must be worshipping it with the belief of getting attainment and fulfillment of wishes due to the divine powers existing thereat and this belief must have continued for time immemorial and may be in the form of a continued custom, tradition etc.

1900. The learned counsels appearing for various Hindu parties unanimously contended that the place in dispute has always been believed to be the birthplace of Lord Rama where Lord Vishnu manifested himself in human form as incarnation and, therefore, it is a place which possesses the supreme and divine powers capable of fulfilling wishes of the worshippers by mere Darshan thereof and visit the place. They submit that since the place being the birthplace of Lord Rama is most pious and with full of divinities to Hindus, this has always been visited by Hindus for Darshan and worship as such, hence the requirement of any idol etc. thereat of Lord Rama cannot be insisted upon. Mere placement of an idol thereat is nothing but a symbolic act of Hindus to provide more concentration for worship etc. but the absence of an idol shall not destroy the status of deity to the "Place" being divine and holy to Hindus. The Place is a deity and it does not require observance of Shastrik procedure of 'Pran Pratishtha' since this divinity of 'Place' makes it a "Swayambhu deity" capable of worship by the believers. This status is non destructible, permanent, and can neither be altered nor otherwise

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be damaged or diminished or extinguished by an act of human being. It is a perennial and continued status of the Place concerned.

1901. The evidence to show that the Hindu people used to visit the fort of Lord Rama and its nearby area believing it to be the birthplace of Lord Rama finds mention in a number of books of authorities, some of which we have already discussed in the course of discussing issues pertaining to "date of construction" etc. Much more we shall discuss while considering issue pertaining to birth place, existence of temple etc. But here some evidence necessary for the issues in question has to be seen.

1902. Goswami Tulsi Das in his "Ramcharitmanas" has referred the observance of a grand festival on the day of birth of Lord Rama at Ayodhya. The worship by Hindus in the place called fort of Lord Rama has been referred in the Travellers Account of William Finch.

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1903. Tieffinthaler has specifically observed the manner in which the Hindu people used to worship at the place in dispute, i.e., by laying prostrate and making 'Parikrama' (circumambulation) around the building. This is a unique feature of this case. At the time of Tieffinthaler admittedly the disputed building had come into existence and was standing thereat. It was known as a mosque having been built by a muslim ruler. Tieffinthaler has termed it as "a muslim temple with triple domes". However, there existed a Bedi, i.e., the cradle for which the Hindus' believe that there was a house where Lord Vishnu manifested and reincarnated in the form of Ramlala. Then he mentioned, *"however, there still exists some superstitious cult in some place or other. For example, in the place where the native house of Ram existed, they go around 3 times and prostrate on*

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the floor." After about hundred years by which time the premises in dispute was divided by an iron grilled wall with an indication that the muslims may worship in the inner courtyard and the Hindus may continue to worship in the outer courtyard, in actuality the Hindus continue with their practice of entering the inner courtyard and worshipping thereat in one or the other manner. This is evident from some documents which we are discussing hereinbelow. There is no evidence on record to show that from 1856 to 1949, at any point of time there was a restriction effected in such a manner that only the people of one faith would enter the inner courtyard and not all. It is the admitted case of muslims and their several witnesses had also admitted that till 22nd December, 1949 the doors of the iron grilled dividing wall were never locked. There is nothing on record to show that by posting a guard or otherwise the entry of Hindus was restricted in the inner courtyard. Even with respect to the contention of offering of Namaz, the evidence, which we will be discussing later on, will show that from 1855 till 1934 atleast there is no evidence whatsoever that Namaz was actually offered in the inner courtyard of the disputed site. So far as the outer courtyard is concerned, it is virtually admitted by the muslim parties that there existed atleast three non Islamic structures which were visited by Hindus and they also offered worship thereat. Tieffinthaler has specifically referred to the place in dispute observing the visit of Hindus thereat. Various gazetteers, survey reports etc. which we have referred earlier while discussing the issues pertaining to date of construction also are similarly worded.

1904. Let us proceed to ponder over some other evidence. One of the document is an application dated 30.11.1858, Exhibit

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20 (Suit-1), submitted by Syed Mohammad, claiming himself to be Khatib of Janamsthan mosque, i.e., the disputed building. It says as under:

بمقام جنم استھان کا صدہا برس کے نشان پڑا رہتا تھا و اہل ہنود پوجا کرتے تھے

''मुक़ाम जनम स्थान का सदहा बरस के निशान पड़ा रहता था व अहले हुनूद पूजा करते थे'' (Hindi Transliteration by the Parties)

"Previously the symbol of Janam had been there for hundreds of years and Hindus did puja." (E.T.C)

1905. This document refers the above creation in the premises inside the dividing wall. The existence of divided premises is clearly mentioned and one Chabutara in outer Courtyard was already there. The context shows that it talks of creation of a Chabutra under/near the dome structure and open land in its front. This document is admitted to plaintiffs (Suit-4) also. This is the oldest individual and private document which throws light on the spot situation as prevailed in November 1858 and prior thereto of the disputed site and building. There is nothing to contradict it. It is thus clear that even the inner courtyard had some Hindu religious signs/symbols therein and used to be worshipped by Hindus for last several hundreds years.

1906. As already said, P.Carnegy in his report published in 1870 has observed that both worshipped in the disputed building. This also fortify the fact that Hindus not only used to go inside but were also worshipping in the disputed premises.

1907. The dispute pertaining to this place amongst the two communities is centuries old. Record, prior to 1860 AD, atleast fortify, continuance of such dispute. In fact, it could not have

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been disputed. Several witnesses of the plaintiffs (Suit-4) had admitted that the Hindus used to come to the disputed place for worship believing it the birthplace of Lord Rama.

1908. Record of Suit-1885 shows that the defendant no. 2 therein, i.e., Mohd. Asghar, who contested the said suit in his capacity as Mutawalli of the disputed building (alleged waqf), in his own written statement admitted that the Chabutara constructed in the outer courtyard on south east side of the disputed building was used to be attended by Hindus for worshipping, believing it to be the birthplace of Lord Rama. No doubt, he also pleaded simultaneously that the said construction was unauthorised and impermissible but the fact remains that existence of Chabutara, according to the pleadings, had continued at least since about 1855 and this position remained undisturbed till 6th December, 1992. The premises of Mosque, as depicted by letters ABCD in Suit-4, thus had a structure, non-Islamic which has been worshipped by Hindus for the last atleast one and half century.

1909. A place if identified by a name given to the deity by its worshippers/believers and if it can be shown that it relates to a divine or otherwise important phenomena related with religious matters making it a pious and important religious place, it can be held 'deity' and thereby satisfy the requirements of being a 'juridical person'. Whether such a place reflected by the known name of the deity is smaller one or larger one, or, what is its extent, is a different matter but a deity can be known by its name which its followers/worshippers have given to it. In the present case the plaintiff no. 2 (Suit-5) is known as "Asthan Sri Rama Janam Bhumi, Ayodhya". The Hindu believers and worshippers who go and worship the said place identify it by the

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name of Lord Rama's birthplace and this identity ascertain and admits no doubt in the mind of those who believe, follow and worship. That being so, we find no reason in denying the status of deity to the said place and the consequential juridical personality upon it. It cannot be disputed that property can be dedicated in the name of the plaintiff no. 2 which can be utilized for the benefit of the said deity. This of course is subject to the issues decided in favour of Hindu parties which pertain to the site in dispute whether is or believed to be the birthplace of Lord Ram for time immemorial and is being worshipped accordingly.

1910. Whether the idol or deity, worshipped by Hindus, was consecrated or not, has to be seen from the point of view and belief of those who worship the idol and not others who had no such belief. If an idol is faithfully recognised by all those who believe the idol of a particular deity, it is a deity. In the present case idol of Lord Rama, and its worship as such satisfy the requirement of a validly consecrated deity. No further inquiry need be gone into. We agree with the views expressed by the Division Bench in **Gokul Nath Ji Maharaj (supra)** that the question whether a particular idol is or is not duly consecrated must depend upon the religious faith and belief of its followers. We are also fortified in taking the above view from the Apex Court's decision in **Ram Jankijee Deities (supra)** where in para 15 it has observed, while quoting and approving the two decisions of Madras High Court, that the test is not whether it conforms to any particular school of Agama Shastras. The question must be decided with reference to the view of the class of people who take part in the worship. If they believe in its religious efficacy, in the sense that by such worship they are making themselves the object of the bounty of some super-

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human power, it fulfill the requirement. If the public or that section of the public who go for worship consider that there is a divine presence in a particular place and that by offering worship thereat they are likely to be the recipients of the blessings of God, it satisfy the requirement of a deity. In fact the Apex Court in para 16 of the judgment in **Ram Jankijee Deities (supra)** went to observe that the people, if believe in the religious efficacy, no other requirement exists as regards other areas. It is not a particular image which is a juridical person but it is a particular bent of mind which consecrate the image.

1911. In **Shiromani Gurdwara Prabandhak Committee, Amritsar Vs. Som Nath Dass (supra)** the Court virtually set out easier guidelines as to how an untangible image or institution or otherwise can be decided whether it is a juristic person or not particularly in religious matters. The Court observed that the very words "juristic person" cannot get recognition of an entity to be in law a person which otherwise it is not. In other words it is not an individual natural person but an artificially created person which is to be recognised to be in law as such. When a person is ordinarily understood to be a natural person, it only means a human person. Essentially every human person is a person but in the history of the world the concept of different notions had different times. In sub-countries even human beings were not treated person in law. Under the Ancient Roman Law a slave was not a person. He had no right to a family. He was treated like an animal or chattel. In French colonies also, before slavery was abolished, the slaves were not treated to be legal persons. They were later given recognition as legal persons. The recognition was given later on through an statute. In United States also African-Americans had no legal rights though they

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were not treated as chattel. The Court also quoted the following passage from **Roscoe Pounde's Jurisprudence, Part, IV, 1959 Edition**, page 192-93:

> *"In civilized lands even in the modern world it has happened that all human beings were not legal persons. In Roman law down to the constitution of Antoninus Pius the slave was not a person. 'He enjoyed neither rights of family nor rights of patrimony. He was a thing, and as such like animals, could be the object of rights of property.' ... In the French colonies, before slavery was there abolished, slaves were 'put in the class of legal persons by the statute of April 23, 1833' and obtained a 'somewhat extended juridical capacity' by a statute of 1845. In the United States down to the Civil War, the free Negroes in many of the States were free human beings with no legal rights."*

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1912. The evolutionary development of a socio-political-scientific system made it necessary to consider certain non-human beings as person which were termed as legal person or juristic person etc. Having said so, the Apex Court in above case further observed that a juristic person like any other natural person is in law also conferred with rights and obligations and is dealt with in accordance with law. The entity acts like a natural person but only through a designated person, whose acts are processed within the ambit of law. When an idol was recognised as a juristic person it was known that by itself it cannot act. Like the case of a minor where a guardian has been appointed, so in the case of an idol, a Shebait or manager is appointed to act on its behalf. In that sense, relation between an idol and Shebait is akin to that of a minor and a guardian. As a minor cannot express himself, so the idol, but like a guardian, the Shebait and

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manager have limitations under which they have to act. The Court observed that an idol is a juristic person because it is adored after its consecration in a temple. The offerings are made to an idol. The followers recognised an idol to be symbol of God. Without the idol the temple is only a building of mortar, cement and bricks which had no sacredness or sanctity for adoration.

1913. Let us apply these tests in respect to the plaintiffs 1 and 2 in the case in hand. Sri Ramjanambhumi, the place in dispute is visited by Hindus under the faith and belief that Lord of Universe Sri Vishnu appeared in his Chaturbhuj Roop before Queen Kaushalya one of the wife of King Dashratha at a particular date and time mentioned in **Balmiki Ramayan** as well as **Ramcharitmanas of Goswami Tulsi Das**. On the prayer made by Kaushalyaji Sri Vishnu took the form of Sri Ramlala and manifested himself in human form. The place, therefore, bears the spirit and power of Lord of Lords and it is believed that by visiting the place having its Darshan, i.e., adoration and worship one will get all happiness and fulfilment of his wishes. It will confer upon him all merits as well as salvation. The visit to birthplace itself has been said to be sufficient to confer all the merits and salvation upon the believer. It is with this faith and belief it is said that the Hindus are visiting the birthplace of Lord Rama at Ayodhya since time immemorial and despite several adverse situation the belief and worship has continued unrelented.

1914. It is well settled that faith and belief cannot be judged through any judicial scrutiny, it is a fact accomplished and accepted by its followers. In fact this faith necessitated the creation of a unique to be recognised as a juristic person. The

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juristic person, in view of the above discussion, it is evident, cannot be roped in a defined circle. With the changing thoughts, changing needs of the society fresh juristic personalties were/are created from time to time. In the context of Guru Granth Sahib whether it is a juristic person or not an argument was raised though an idol can be recognised to be a juristic person but not a temple and on the same parity neither a Gurudwara can be treated to be a juristic person nor Guru Granth Sahib which is only a sacred book. Repelling this argument the Apex Court in **Shiromani Gurdwara Prabandhak Committee, Amritsar Vs. Som Nath Dass (supra)** said that Gurudwara or Guru Granth Sahib cannot be equated with an idol. Sikhism does not believe in worshipping any idol but that does not mean that Guru Granth Sahib in order to treat to be a juristic person should be equated with an idol. When belief and faith of two different religions are different there is no question of equating one with the other. If Guru Granth Sahib by itself could stand the test of its being declared as such, it can be declared to be so. The Court peeped into the fundamentals of Sikh religion though as a matter of caution observed that to comprehend any religion fully may indeed be beyond the comprehension of anyone and also beyond any judicial scrutiny for it has its own limitations. But then it is added with that silver lining could easily be picked up from the tenets and dictates of the concerned religion. In the Sikh religion the Guru is revered as the highest reverential person. The first of such most revered Guru was Guru Nanak Dev followed by the succeeding Gurus and the 10th being the last living Guru Gobind Singh Ji. It is believed that Adi Granth or Guru Granth Sahib was compiled by the fifth Guru Arjun and it is this book that is worshipped in all the Gurudwaras. Besides being read, people

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go down on their knees to make reverential obeisance and place their offerings of cash and kind on it, as it is treated and equated to a living Guru. The composition of Gurus were always considered sacred by their followers. Guru Nanak said that in his hymns the true Guru manifested himself, because they were composed at His orders and heard by Him. The fourth Guru, Ram Das said, "look upon the words of the true Gurus as the supreme truth, for God and the Creator hath made him utter the words." When Guru Arjun formally installed the Granth in the Hari Mandir, he ordered his followers to treat it with the same reverence as they treated their Gurus. By the time of Guru Gobind Singh, copies of the Granth had been installed in most gurdwaras. He asked his followers to turn to the Granth for guidance and look upon it as the symbolic representation of the ten Gurus. The Granth Sahib is the central object of worship in all gurdwaras. It is with this faith that it is worshipped like a living Guru. This faith and conviction results, when installed in a Gurudwara to turn in a sacred place of worship. Sacredness of Gurudwara is only because of placement of Guru Grath Sahib in it. It also held that a restrictive meaning to the words juristic person ought not be given otherwise it would erase the very jurisprudence which gave birth to it.

1915. Applying all these observations to the two plaintiffs we find no hesitation to observe that every condition or ingredient is fully satisfied so as to confer legal personality upon the two. In respect to the plaintiff no. 1 the defendants, pro-mosque parties, have no dispute that an idol duly consecrated would constitute a legal person and, therefore, their only objection is that the idol in question being not consecrated in accordance with the Shastrik laws is not a deity constituting a

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legal person. With respect to the plaintiff no. 2 their objection is much stronger and virtually travels on the same causes as were argued in **Shiromani Gurdwara Prabandhak Committee, Amritsar Vs. Som Nath Dass (supra)** to outclass Guru Granth Sahib from the status of juristic person. We have already observed much with respect to the plaintiff no. 1 which in our view suffice to constitute it a legal person capable of maintaining a suit through a Shebait or a next friend as the case may be. The procedure of filing the suit we shall discuss later on in detail. So far as the place is concerned, it is almost admitted by most of the witnesses of pro-mosque parties, i.e., of plaintiff (Suit-4) that Hindus regularly visit Ayodhya for worshipping the birthplace of Lord Rama and several fairs are also held thereat periodically wherein a very large number of people across the country and even abroad come and participate. It is also admitted by some of the pro-mosque parties witnesses that the disputed place was used to be visited by Hindus believing it to be the birthplace of Lord Rama. The manner of worship and Darshan has been explained by the witnesses produced by Nirmohi Akhara as well as the plaintiff (Suit-5) in one or the other ways. It is true that most of the part of the evidence of most of the witnesses is either irrelevant hence inadmissible or otherwise is not creditworthy which we have pointed out or shall be referring later as the case may be but that does not mean that the entire statement of a witness for this reason can be rejected. It is always permissible to a Court to take out the part of the statement of a witness which is believable and also sometimes when the statement amounts to an admission on behalf of party who has produced that witness, i.e., the part of the evidence of a witness which is against the party in whose

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favour the witness is deposing.

PW-1, Mohd. Hashim

''22/23 दिसम्बर, 1949 को जिस स्थान की कुर्की हुई हिन्दू लोग उसे राम जन्म भूमि कहते थे और मुसलमान बाबरी मस्जिद कहते हैं।'' (पेज 40)

"The Hindus called the place attached on 22nd - 23rd December, 1949, Ram Janam Bhumi and the Muslims call it Babri mosque." (E.T.C.)

''जैसे मक्का मुसलमानों के लिए अहमियत रखता है उसी तरह अयोध्या भगवान राम को लेकर हिन्दुओं के लिए महत्व रखता हैं।''(पेज 44)

"As Mecca holds importance for Muslims, similarly Ayodhya holds importance for Hindus because of Lord Rama."(E.T.C.)

''हिन्दुस्तान से बाहर के देशों के लिए लोग भी अयोध्या में दर्शन के लिए आते हैं।''(पेज 73)

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"People from abroad also come to have darshan at Ayodhya." (E.T.C.)

''यह ठीक है कि अयोध्या हिन्दुओं का एक तीर्थ स्थल है। . . . .यह ठीक है कि 22 दिसम्बर 1949 से इस भूमि पर जो मुकदमा में मुतदाविया है, हिन्दू लोग देश–विदेश से दर्शन करने के आते हैं।''

(पेज 120)

"It is true that Ayodhya is a place of pilgrimage for Hindus. . . . . It is true that from 22nd December, 1949, Hindus come from within the country and from abroad to have darshan on this land, which is disputed in litigation."(E.T.C.)

''हिन्दू लोग हिन्दुस्तान के हर कोने में रहते हैं उनके लिए अयोध्या मुतबर्रिक है।''(पेज 128)

"Hindus live in every corner of Hindustan. Ayodhya is a holy place for them."(E.T.C.)

''यह भी ठीक है कि इस परिक्रमा को हिन्दू लोग कई सौ सालों से

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कर रहे हैं एक परिक्रमा चौदह कोशी भी है। एक चौदह कोसी परिक्रमा भी है, जिसको लेने में यह पॉच कोसी परिक्रमा भी शामिल हो जाती है। ये दानों परिक्रमायें दो–तीन दिन के फर्क में होती हैं, ... यह परिक्रमायें सिर्फ हिन्दू लोग करते हें यह उनकी अपनी समझ है कि वह इसे राम जन्म भूमि समझकर करते हैं या किसी और वजह से करते है। यह भी ठीक है कि इन मौकों पर हिन्दू लोग कल्पवास भी करते हैं । साधू–सन्त, वृद्ध आदि लोग कल्पवास करते हैं यह त्योहार कार्तिक के महीने में आता है।''

(पेज 141)

"It is also true that Hindus have been doing this parikrama (circumambulation) for hundreds of years. There is also a parikrama known as 'chaudah kosi'. There is also a 'chaudah kosi' parikrama in doing which this 'paanch kosi' parikrama also gets done. These two parikramas are done on the interval of two- three days. . . . . Only Hindus do these parikramas. It is their understanding whether they do so considering it to be Ram Janam Bhumi or due to any other reason. It is also true that Hindus also observe 'kalpvaas' on these occasions. Saints, seers, elderly persons and others observe 'kalpvaas'. This festival is celebrated in the month of Kartik." (E.T.C.)

PW-2, Haji Mahboob Ahmad

''यह ठीक है कि रामचन्द्र जी की पैदाइश अयोध्या की है। जब से यह तुफान उठा है तब से देश के कोने कोने से हिन्दू लोग विवादित परिसर को उनकी जन्मभूमि कहते हैं और पूजते हैं वरना उनकी सारी अयोध्या है। पहले कनक भवन और जन्म स्थान को उनकी जन्मभूमि कहते थे। यह बताया गया जन्म स्थान मस्जिद से अलग दूसरी जगह पर है।''

(पेज 90)

"It is true that Ram Chandra's birthplace is Ayodhya. From when this turmoil has erupted, the Hindus from nooks and corners of the country call and worship the

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disputed premises as his Janam Bhumi. Otherwise, the whole of Ayodhya is theirs. Earlier, they called the Kanak Bhawan and the Janam Sthan as his birth-land. It was told that Janam Sthan is at another place, separately from the mosque." (E.T.C.)

"पंचकोसी परिक्रमा पूरे अयोध्या में है . . . . . .आम तौर से सर्दियों में होती हैं। परिक्रमा पर भीड़ होती है काफी लोग बाहर से आते हैं काफी लोग शहर के होते हैं।" (पेज 101)

"Panchkosi Parikrama covers the whole of Ayodhya. . . . . It usually takes place in winters. The Parikrama attracts a crowd. A number of people come from outside. A number of people hail from the city." (E.T.C.)

PW-3, Farooq Ahmad

"अयोध्या में हिन्दू मेले होते हैं जैसे कि रामनवमी, परिक्रमा मेला और सावन मेला, इन मेलों पर हिन्दू लोग इकट्ठा होते हैं ये लोग मस्जिद भी देखने आया करते हैं। इस चबूतरे को देखने की गरज से बहुत से हिन्दू और मुस्लिम लोग सभी जाते हैं। ..... मेले के वक्त भी हर मजहब के लोग चबूतरा देखने आते थे।" (पेज 29)

"Hindu fairs are held at Ayodhya such as Ramnavami, Parikrama Mela and Sawan Mela. Hindus gather in these fairs. They also come over to see the mosque. Many Hindus and Muslims used to come over to see this platform (Chabutara). ..... Even on occasion of the fairs, people of all religions used to come to see the platform (Chabutara)." (E.T.C)

PW-4, Mohd. Yaseen

"वह हिन्दू लोग अपने ख्याल के मुताबिक इस जगह के दर्षन भगवान राम के जन्म स्थान के तौर पर करते होगें।" (पेज 70)

"In my view, the Hindus must have had the darshan of this place as birthplace of Lord Rama."(E.T.C)

"उनका यह अकीदा है कि यह श्री राम का जन्म स्थान है

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(अजखुद कहा कि उनका अकीदा उनके साथ है) हिन्दू लोग इस जगह को पाक और पवित्र समझ कर इसकी पूजा करते हैं।'' (पेज 71)

"It is their belief that it is the birthplace of Sri Rama (stated on his own that their belief lies with them). The Hindus revere this place as sacred and pious."(E.T.C)

PW-7, Hasmat Ulla Asnsari

''मैं अयोध्या का मूल निवासी हूं। वहॉ पर सावन का मेला होता है एक मणि पर्वत का मेला होता है वशिष्ठ कुण्ड पर भी मेला लगता है चैत के महीने में रामनवमी का मेला भी होता है। यही कहते हैं कि रामनवमी का मेला भगवान राम के जन्म दिन के उपलक्ष्य में मनाया जाता है। उस मौके पर बाहर के लोग भी अयोध्या में आते हैं। . . . . . वहॉ परिक्रमा भी होती हैं। दो परिक्रमायें हैं एक पंचकोशी और एक चौदह कोशी। जगह जगह से हिन्दू लोग आते हैं और इस मौके पर परिक्रमायें भी करते हैं।'' (पेज 73)

"I am a native of Ayodhya. Sawan Mela takes place there and so does Mani Parvat fair. A fair is also organised at Vashishtha Kund. Ram Navami fair too takes place in the month of Chaitra. It is said that Ram Navami fair is organised to commemorate the birth anniversary of Lord Rama. People even from outside come to Ayodhya on that occasion. . . . . Circumambulation also takes place there. There are two circumambulations, one is called Panchkoshi and the other Chaudahkoshi. Hindus come from different places and also do circumambulations on this occasion." (E.T.C.)

PW-8, Abdul Ajij

''यह ठीक है कि अयोध्या हिन्दुओं की एक तीर्थस्थली है। बहुत दूर–दूर से हिन्दू लोग वहॉ आते हैं।'' (पेज 33)

"It is true that Ayodhya is a pilgrimage of Hindus. Hindus come here from far off places." (E.T.C)

PW-9, Syed Akhlak Ahmad

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''यह ठीक है कि अयोध्या हिन्दुओं का तीर्थ स्थल करके मशहूर है अयोध्या में हजारों मंदिर तो जरूर हैं।'' (पेज 3)

"It is true that Ayodhya is famous as pilgrimage of Hindus. There are certainly thousands of temples in Ayodhya." (E.T.C.)

''मैं सुनता हूँ कि हिन्दू हजरात यह यकीदा रखते हैं कि अयोध्या उनका जन्म स्थान है अयोध्या में श्रीराम जन्मभूमि को वो उनका जन्मस्थान मानते हैं।'' (पेज 42)

''I hear that Hindus have the belief that Ayodhya is his birthplace. They believe Sri Ramjanmbhumi at Ayodhya to be his birthplace.'' (E.T.C)

''अयोध्या में हर साल चौदहकोसी और पंचकोसी परिक्रमाएं होती है। यह ठीक है कि इनमें लाखों हिन्दू नंगे पांव भाग लेते हैं। स्थानीय लोग भी होते हैं और देश के दूसरे हिस्सों से भी काफी लोग आते हैं।

अयोध्या में रामनवमी का मेला होता है। लाखों में तीर्थ यात्री अयोध्या आते हैं और भगवान श्री राम का जन्म मनाते हैं और मंदिरों को भी सजाया जाता है। सावन के महीने में झूला मेला भी होता है। यह भी एक बड़ा मेला है। लाखों में हिन्दू लोग बाहर से आते हैं। इनके अलावा भी तकरीबन हर रोज ही साधारण तौर पर भी बाहर से काफी हिन्दू यात्री तीर्थ के लिए आते जाते रहते हैं।'' (पेज 94)

"'Chaudahkosi' (fourteen kose, one kose being equal to two miles) and 'Panchkosi' (five kose) circumambulations are performed every year in Ayodhya. It is true that lakhs of Hindus participate in them, barefoot. (They) include local people as well as people coming over from other parts of the country.

Ramnavami fair is held at Ayodhya. Lakhs of pilgrims come to Ayodhya and celebrate the birth of Lord Sri Rama and the temples are also decorated. The 'Jhula' fair is also held in the month of Shravana. It is also a big fair. Lakhs of Hindus come from outside. Besides these,

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usually almost everyday many Hindu travelers keep coming from outside for pilgrimage." (E.T.C)

''मैंने सुना है कि हिन्दू लोग इस बीच वाले हिस्सों को भगवान राम का जन्म स्थान और गर्भगृह मानते हैं।'' (पेज 130)

"I have heard that the Hindus consider this central part to be the birthplace of Lord Rama & sanctum sanctorum." (E.T.C)

PW-12, Ram Shankar Upadhyay

"भगवान राम को हम भगवान विष्णु का साक्षात अवतार मानते है।"

(पेज–6)

''We regard Lord Rama as a manifest incarnation of Lord Vishnu.'' (E.T.C.)

"लेकिन वास्तविकता यह जरूर है कि आयोध्या एक तीर्थ है।"

(पेज–7)

''But it is certainly a reality that Ayodhya is a site of pilgrimage.'' (E.T.C.)

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"क्योंकि हम सनातनी है। मैने भगवान राम का दर्शन किया।"

(पेज–17)

''Since I am a Sanatani (orthodox Hindu), I had a sight of Lord Rama.'' (E.T.C.)

"मेरी जानकारी में विवादित स्थल और ऊपर बताये गये राम जन्म स्थान के अलावा अयोध्या में कोई और मंदिर या जगह राम जन्म भूमि के नाम से नहीं है।" (पेज–52)

''To my knowledge, except for the disputed site and Rama Janam sthan mentioned above, there is no temple or place in Ayodhya in the name of Ram Janam Bhumi."

(E.T.C.)

"भगवान राम का जन्म चैत की राम नवमी को हुआ था इसलिए उनका जन्म दिन मनाने के लिए यह मेला होता है।" (पेज–52)

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"Lord Rama was born on Ramnavami of Chaitra; so, this fair is held to celebrate his birth anniversary."(E.T.C.)

"यह ठीक है कि अयोध्या का महत्व इसलिए है कि वहां मर्यादा पुरूषोत्तम श्री राम का जन्म हुआ था।" (पेज–53)

"It is correct that Ayodhya holds importance because Maryada Purushottam Sri Rama(Supreme Being Sri Rama epitomizing dignified behaviour) was born there."

(E.T.C.)

"यह ठीक है कि विवादित स्थल मोहल्ला रामकोट में स्थित था ..... कोट का अर्थ किला होते है। मोहल्ले का नाम रामकोट है उसका शब्दार्थ रामजी का किला हो सकता है ..... मेरे इल्म से तो इस मोहल्ले को रामकोट के नाम से ही जाना जाता है।" (पेज–58)

"It is correct that the disputed site was situated in Ramkot Mohalla. ..... Kot means fort. The name of the Mohalla is Ramkot. It may literally mean the fort of Ramji ..... To my knowledge, this Mohalla is known only by the name of Ramkot." (E.T.C.)

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PW-13, Suresh Chandra Misra

"ग्रन्थों के आधार पर यह तथ्य आता है कि श्री राम का जन्म अयोध्या में हुआ।" (पेज 36)

"On the basis of treatises it comes to knowledge that Sri Rama was born in Ayodhya." (E.T.C.)

"मुझे यह जिज्ञासा थी और यह जानने का प्रयास भी किया कि श्रीराम किस स्थान पर पैदा हुए थे। लोगों ने मुझे यह बताया कि अमुक स्थान पर यानी विवादित स्थान पर श्री राम का जन्म हुआ था।"

(पेज 146)

"I had a curiosity and also tried to know at which place Sri Rama was born. People told me that Sri Rama was born on a particular place, that is, the disputed site."

(E.T.C.)

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''प्रश्न– जो लोग भगवान श्रीराम की आराधना करते हैं वे लोग अयोध्या को उनकी जन्मस्थली मानते हैं?

उत्तर– यह ठीक है।'' (पेज 177)

"Question:- Do those worshipping Lord Sri Rama regard Ayodhya as his birth-place?

Answer:- It is true." (E.T.C.)

PW-23, Mohd. Qasim Ansari

''यह ठीक है कि खिलजी एवं लोधी वंश की हुकूमत के दौरान और उससे पहले भी बहुत से सूफी भारतवर्ष आये। ख्वाजा मोइनुद्दीन चिश्ती, चिस्त एक जगह है, वहॉ के रहने वाले थे। यह शायद सेन्ट्ल एशिया में है।'' (पेज 19)

"It is true that many Sufis came to India during the reign of Khilji and Lodhi dynasties and even earlier. Khwaja Moinuddin Chisti was a resident of a place called Chist. It is perhaps in Central Asia." (E.T.C.)

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''पंचकोसी परिक्रमा साल में एक बार होती है यह शायद परिक्रमा कार्तिक माह मे होती है शायद कार्तिक मेले के आस पास होती है यह कहना सही है कि इस मौके पर अयोध्या में भारी मेला लगता है। यह कहना सही है कि लाखों की तादाद में तीर्थ यात्री दर्शन करने को आते हैं। . . . . .लाखों लोग पंचकोसी मार्ग पर परिक्रमा करते हैं। यह कहना सही है कि जो तीर्थ यात्री परिक्रमा करते हैं वे हनुमानगढ़ी, कनक भवन और रामजन्मभूमि का दर्शन भी करते हैं। . . . . .मैं चौदह कोसी परिक्रमा के बारे में भी जानता हूॅ।। इस चौदह कोसी परिक्रमा मार्ग में अयोध्या और फैजाबाद आते हैं यह कहना भी सही है कि चौदह कोसी परिक्रमा भी कार्तिक के माह में होती है। यह कहना भी सही है कि इस परिक्रमा में भी लाखों की संख्या में तीर्थ यात्री और भक्तगण शिरकत करते हैं।'' (पेज 34)

"The 'Panchkosi' (distance of five kose, one kose being equal to two miles) circumambulation is performed annually, possibly in the 'Kartika' month, possibly around the Kartika fair. It is true that a very big fair is held at Ayodhya on this occasion. It is true that lakhs of pilgrims

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come to have darshan. . . . . Lakhs of people perform circumambulation on the 'Panchkosi' path. It is true that such pilgrims, who perform circumambulation, also have darshan of Hanumangarhi, Kanak Bhawan and Ramjanmbhumi . . . . . I also know about 'Chaudahkosi' (distance of fourteen kose) circumambulation. Ayodhya and Faizabad fall in this 'Chaudahkosi' circumambulation path. It is also true that the 'Chaudahkosi' circumambulation also commences in the month of 'Kartika'. It is also true that lakhs of pilgrims and devotees participate in this circumambulation as well." (E.T.C)

''यह ठीक है कि हिन्दू लोग जिसे मैं बाबरी मस्जिद कहता हूँ उसे जन्मभूमि कहते हैं।'' (पेज 36)

"It is true that what is termed as Babri mosque by me, is called Janmbhumi by Hindus." (E.T.C)

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''यह ठीक है कि चैत में भी राम नवमी का मेला होता है। यह भी ठीक है कि उस मेले में लोग लाखों की संख्या में आते हैं और काफी भीड़ भाड़ होती है।'' (पेज 39)

"It is true that the Ramnavami fair is also held during 'Chaitra'. It is also true that lakhs of people come in that fair and a huge gathering takes place." (E.T.C)

''सावन मेला भी अयोध्या में बहुत धूमधाम से होता है।'' (पेज 39)

"Sharavana fair is also held with great pomp and show at Ayodhya." (E.T.C)

''यह ठीक है कि इस मेले में जो आते हैं, सरयू में स्नान करते हैं, कनक भवन मंदिर, जन्मस्थान मंदिर और जन्मभूमि का दर्शन करते हैं।''

(पेज 39)

"It is true that the visitors of this fair, take a holy dip in the Saryu and have darshan of Kanak Bhawan temple, Janmsthan temple and Janmbhumi." (E.T.C)

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''यह कहना ठीक है कि उपरोक्त तीनों मेले मैं अपनी याददाश्त से देखता चला आ रहा हूं। यह कहना सही है कि यह तीनों मेले में लाखों की संख्या में श्रद्धालु आते हैं कुछ रेल से आते हैं, कुछ बस से आते हैं और कुछ अपनी गाड़ी से आते हैं पहले कुछ लोग बैलगाड़ी और घोडो से भी आते थे। . . . . .यह ठीक है कि जो विवादित जगह है उसे हिन्दू लोग जन्म भूमि कहकर अपना हक जता रहे हैं। . . . . . .यह कहना ठीक है कि उपरोक्त मेले के दिनों में हिन्दू और मुसलमानों के बीच भेदभाव खत्म हो जाता है और लोग प्यार से रहते थे।'' (पेज 39–40)

"It is true that I have seen these three fairs since my memory. It is true that lakhs of devotees visit on occasion of these three fairs, some come by train, some by bus and some by their private vehicles. Earlier some people used to come by bullock-carts and horses as well . . . . . .It is true that by terming the disputed site as Janmbhumi, the Hindus are staking their right over the same . . . . . It is true that the mutual differences between Hindus and Muslims stood extinguished during the aforesaid fairs and people used to live in harmony.'' (E.T.C)

''यह ठीक है कि अयोध्या को हिन्दुओं का एक तीर्थ स्थल माना जाता है।'' (पेज 41)

''It is true that Ayodhya is considered a pilgrimage of the Hindus." (E.T.C)

''तीर्थ स्थान पहले भी था ..... यह ठीक है कि हिन्दु लोग भगवान राम को अपना देवता मानते हैं। यह कहना सही है कि हिन्दुओं का ऐसा विश्वास है कि भगवान राम अयोध्या में पैदा हुए थे। यह भी कहना ठीक है कि अयोध्या में भगवान राम से सम्बन्धित कई कुण्ड और स्थान हैं।''

(पेज 42)

It was a pilgrimage in past as well ..... It is true that Hindus consider Lord Rama, their God. It is true that it is the belief of Hindus that Lord Rama was born in Ayodhya. It is also true that there are many 'Kundas' and

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places related to Lord Rama in Ayodhya." (E.T.C)

"मैं जानता हूँ कि भगवान राम हिन्दुओं के आराध्य देवता हैं। . . . . . मैंने ऐसा सुना और पढ़ा है कि अयोध्या कई बार पलटी है जिसके आज भी निशान मौजूद हैं। . . . . मैंने ऐसा पढ़ा है कि अयोध्या दो तीन बार पलटी है जिसके निशानात आज भी मौजूद हैं जिसे मैंने देखा है।"

(पेज 64)

"I know that Lord Rama is the favoured deity of Hindus. . . . . I have heard and read that Ayodhya has over turned many times traces of which exist even today. . . . . . I have read that Ayodhya has overturned two-three times traces of which are found even today; I have seen them."

(E.T.C.)

"सरयू नदी के किनारे से झुनझुनियॉ घाट तक जो सामान दिखता है वह सब उल्टा मिलता है अर्थात् कुऑ भी उल्टा मिलता है।" (पेज 65)

"All things seen from the river bank of Saryu up to Jhunjhuniya Ghat are found to be upside down, that is to say, the well is also found upside down." (E.T.C.)

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OPW-1, Mahant Ramchandra Das Digambar

"जिस समय शिखर गिरा उस समय शिखर के नीचे रामलला की कोई मूर्ति नहीं थी शिखर की नीचे की भूमि पर पूजा पाठ होता था। ..... मध्य शिखर के नीचे प्रसूति भूमि, जहां पर भगवान राम का जन्म हुआ था वह स्थान था। मध्य शिखर के नीचे का जो भाग गर्भ गृह के रुप में था वह स्थान तथा उसके चारो तरफ उस स्थान को मैं गर्भगृह का स्थान मानता हूँ। तीनों गुम्बजों के नीचे की भूमि तथा परिक्रमा मार्ग की सम्पूर्ण भूमि गर्भगृह के अन्तर्गत थी।"(पेज 42)

"When the dome collapsed, there was no idol of Ram Lala beneath it. 'Pooja-Paath' used to be performed on the land beneath the dome. ..... 'Prasuti Bhumi' - the land where Lord Rama was born – was beneath the middle dome. I take the part beneath the middle pillar – which was in the shape of the sanctum sanctorum – as also the

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place surrounding it, to be the sanctum sanctorum. The sanctum sanctorum encompassed the land beneath the three domes and the entire land of the circumambulation path." (E.T.C.)

"रामजन्मभूमि स्थल के संबंध में पूरे दुनिया के हिन्दुओं की आस्था उसी प्रकार से है जैसे मुस्लिम सम्प्रदाय की आस्था काबा के संदर्भ में है। रामजन्मभूमि मंदिर पूरी दुनिया में केवल एक स्थान पर है जबकि राम के मंदिर हजारों की संख्या में होंगें।" (पेज 54)

"Hindus of the whole world have the same faith in reference to the place of Ramjanmbhumi as the Muslim community has in reference to Kaba. The Ramjanmbhumi temple is only on one place in the whole world but Rama temples are thousands in number." (E.T.C.)

"जन्मभूमि स्थल बाहरी तथा भीतरी स्थान तथा उसके चारो तरफ की भूमि को मै मानता हूँ यह सभी स्थान पूज्य स्थल हैं। यह पूरा स्थान भगवान राम का जन्मस्थान होने के कारण मेरे लिए निष्ठा तथा आस्था का प्रतीक है।" (पेज 66)

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"The Janmbhumi site is considered by me to be the outer and inner part and the land surrounding it from all four sides. All these are revered places. This entire place is a symbol of faith and belief for me on account of being the birthplace of Lord Rama." (E.T.C)

"1934 के पूर्व में रामचबूतरा के दर्शन के बाद बीच के शिखर के नीचे स्थिति गर्भगृह का दर्शन करता था इसके अतिरिक्त खम्भों पर जो मूर्तियां अंकित थी उनका दर्शन करता था तथा फूल तुलसी पत्ती आदि चढ़ाता था। . . . . . पश्चिमी दिवार के समीप एक अलमारीनुमा चीज बनी हुई थी उस स्थान पर भी लोग पूजा सामग्री चढ़ाते थे तथा वह स्थान भी गर्भगृह से संबंधित था।" (पेज 97)

"Prior to 1934, after having darshan of Ramchabutara, I used to have darshan of 'Garbh-grih' (sanctum sanctorum) situated beneath the mid dome.

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Besides this, I used to have darshan of the idols existing over the pillars and used to offer flower, Tulsi (Holy Basil) leaves etc. over them. . . . . .. There was a almirah shaped structure near the western wall. People used to offer worship articles over there and that place was also related to 'Garbh-grih' (sanctum sanctorum).'' (E.T.C)

''प्रत्येक वह स्थान, जहां पर मूर्ति रहती है, उसे गर्भगृह नहीं कहा जाता है, जिस स्थान पर देवता विशेष प्रकट होता है, उस स्थान को गर्भगृह कहते हैं।'' (पेज 134)

''Every such place, where idols exist, is not called 'Garbh-grih' (sanctum sanctorum). The place of descension of a particular God, is called the 'Garbh-grih' (sanctum sanctorum).'' (E.T.C)

OPW-5, Ramnath Mishra alias Banarasi Panda

''विवादित भवन की तीन तरह की परिक्रमा होती है, पहली चौदह कोसी, दूसरी पांच कोसी और तीसरी अन्तर्गृही अर्थात विवादित भवन के चारों तरफ।''(पेज 42)

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''Three types of circumambulation are performed at the disputed structure, the first one being '14 kosi' (circumambulation of 14 kosas), the second one being '5 kosi' (circumambulation of 5 kosas) and the third one being the inner circumambulation, that is, round the disputed structure.''(E.T.C.)

''सन् 1932 से 1970 तक मैं बराबर दर्शन करने विवादित स्थल पर जाया करता था। सन् 1932 से 1970 तक मैं यात्रियों को लेकर वहां दर्शन कराने जाता था, इसलिए सरसरी तौर पर देखता था, और मैं उनके पूजा कराने, दर्शन कराने और अपनी दक्षिणा में ज्यादा ध्यान देता था।''

(पेज 44)

''From 1932 to 1970, I used to go to have darshan at the disputed structure. From 1932 to 1970 I used to take along pilgrims to that place for darshan; hence, I used to

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see things cursorily and used to pay more attention to arranging Pooja and darshan for them and to taking 'Dakshina' (gift for religious services)." (E.T.C)

''विवादित परिसर के अन्दर मैं तीन जगह दर्शन करता था, पहले बायें वाले चबूतरे पर दर्शन करता था फिर शिखर वाले गर्भगृह का बाहर जंगले से दर्शन करता था और फिर उत्तर की ओर सीता रसोई के दर्शन करने जाता था। वहां सीता रसोई से कभी मैं उत्तरी फाटक से निकल जाता था, और कभी वापस आकर पूर्वी द्वार से बाहर निकल जाता था, जब ज्यादा भीड़ होती थी।''(पेज 45)

"Inside the disputed structure I used to have darshan at three places; I used to have darshan first at the left Chabutra, then at the domed 'Garbh-Grih' (sanctum sanctorum) through the outer grill and then at Sita Rasoi in the north. I sometimes came out of Sita Rasoi from the northern gate and sometimes returned to the eastern gate to go out through it, particularly when there were sizeable crowds." (E.T.C.)

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''हमने उन यजमानों को केवल जन्म भूमि के पूजा व दर्शन कराया था।'' (पेज 78)

"I had helped said 'Yajmans' in worship and darshan of Janmbhumi only." (E.T.C)

OPW-7, Ram Surat Tiwari

''मैंने सन् 1942 से लेकर 15 दिसम्बर 1949 के बीच में विवादित भवन के अन्दर गर्भगृह में जाकर कभी दर्शन नहीं किए। विवादित भवन के गर्भगृह में कोई मूर्तियां नहीं थीं। सीखचों की दीवार के बाहर से ही फूल, प्रसाद और दव्य चढ़ा दिया करते थे।'' (पेज 10)

"Between 1942 to 15th December, 1949, I never had darshan by going into the sanctum sanctorum inside the disputed structure. There were no idols in the sanctum sanctorum of the disputed structure. I used to offer flowers, 'Prasad' and other materials only from outside the grill

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wall." (E.T.C.)

"अयोध्या में जहॉ पर राम जन्म भूमि मंदिर स्थित है, उसी को कुछ मुसलमान लोग तथाकथित बाबरी मस्जिद कहते हैं।" (पेज 22)

"That very place in Ayodhya where Ramjanmbhumi is situated, is called the so called Babri mosque by some Muslims." (E.T.C.)

"तीन गुम्बद वाले भवन में सीखचे वाली दीवार के बाहर से मैंने केवल उपरोक्त स्थल का ही दर्शन किया था, और उसी को प्रणाम किया था और वहां किसी चीज का दर्शन नहीं किया था।" (पेज 71)

"From outside the grill wall in the three domed structure, I had 'darshan' only of the aforesaid place and paid obeisance to that very place."(E.T.C.)

OPW-16, Jagadguru Ramanandacharya Swami Ram Bhadracharya

"शाश्वत पूज्य स्थलों में महंतो की आवश्यकता नहीं होती है। ऐसे शाश्वत पूज्य स्थलों में रामेश्वरम, जगन्नाथपुरी, द्वारिकाधाम, बद्री नारायण भी हैं, जहॉ महंत नहीं हैं। मथुरा के श्रीकृष्ण जन्मभूमि मंदिर पर भी कोई महंत नहीं है।" (पेज 56)

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"Mahantas are not required at the eternally revered places. Among such eternally revered places are 'Rameshwaram', 'Jagannath', Dwarikadhaam', and 'Badri Narayan' as well, where there are no Mahantas. There is no Mahanta even at Mathura situated Sri Krishna Janam Bhumi temple."(E.T.C.)

"पूजा अर्चना की बात सन् 1528 से लेकर सन् 1949 तक परम्पराओं के आधार पर हम सुनते चले आ रहे हैं और यह परम्परा लगातार सुनी हुई बातों पर आधारित है। उपरोक्त परम्परा मैंने अपने जीवनकाल में अपने पूर्वजों से सुनी और यह मेरे विश्वास की बात है कि यह बात मेरे पूर्वजों से सुनी और यह मेरे विश्वास की बात है कि यह बात मेरे पूर्वजों को उनके पूर्वजों ने बताई होगी। स्वयं कहा कि "अविच्छिन्न जनश्रुति" का ही नाम परम्परा है।" (पेज 63)

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"We have been hearing of 'Pooja- Archana' (worship and prayer) from 1528 to 1949 on the basis of traditions and this tradition is based on the things heard consistently. I have heard of the aforesaid tradition from my forefathers in my life time and it is my belief that my forefathers may have been told this thing by their forefathers. (Himself stated) 'Avichchhhinna Janshruti' (anything being heard consistently) itself is called tradition." (E.T.C.)

DW-3/9, Shri Ram Ashrey Yadav

"तीन गुम्बद वाले विवादित भवन के बीच के गुम्बद के नीचे भगवान राम का जन्म हुआ था, ऐसा हिन्दू लोग मानते हैं। हिन्दुओं की यह मान्यता है कि राम जन्म भूमि का दर्शन करने से मोक्ष मिलता है।" (पेज 13)

"The Hindus so believe that Lord Rama was born under the mid dome of the three dome disputed structure. It is the belief of the Hindus that 'Moksha' (salvation) is obtained by 'Darshan' (offering of prayer by sight) of Ramjanmbhumi." (E.T.C.)

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DW-3/14 Swami Haryacharya

"मैं तीन गुम्बद वाले भवन में दर्शन करने पहले जाता था। ..... मैंने दर्शन इसीलिए किया था क्योंकि मेरा यह विश्वास है कि वहॉ दर्शन मात्र से मोक्ष की प्राप्ति होती है।" (पेज 25)

"Earlier I use to go for darshan to the three domed building. ..... I had the said sight because I believe that one can attain liberation by merely having sight of the said place." (E.T.C.)

"अयोध्या में केवल जन्मभूमि पर गर्भगृह है। इसके अतिरिक्त अयोध्या के अन्य किसी मन्दिर में गर्भगृह नहीं है।" (पेज 107)

"In Ayodhya, the 'Garbh-grih' (sanctum santoram) exists only at the Janmbhumi. Apart from this, Garbh-grih is not found in any other temple at Ayodhya." (E.T.C.)

1916. As long back as in 18th century even **Tieffenthaler** in

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his work **"Description : Historique Et Geographique : Del'Inde" (supra)**, **Exhibit 133 (Suit-5) (Register 21, pages 273-289**) has recognised the belief of Hindus with respect to the place on which they continue to worship despite its being razed as is evident from the following:

> *"The Hindus call it Bedi i.e. 'the cradle. The reason for this is that once upon a time, here was a house where Beschan was born in the form of Ram. . . . . Subsequently, Aurengzebe or Babor, . . . got this place razed in order to deny the noble people, the opportunity of practising their superstitions. However, there still exists some superstitious cult in some place or other. For example, in the place where the native house of Ram existed, they go around 3 times and prostrate on the floor. . . . ."*

1917. He also recognised the celebration of the birthplace of Rama on 24th of the month of Chaitra.

1918. In view of the above, we find force in the submissions of the learned counsels that the plaintiffs 1 and 2 are juridical person and considering the fact that they are being visited as a matter of right by Hindus for Darshan and worship believing the Place as birthplace of Lord Rama, and the idols being the image of Supreme Being having divine powers which may cherish their wishes, provide happiness and salvation. This faith and belief cannot be negatived on the challenge made by those who have no such belief or faith. How it was created, who created, what procedure of Shastrik law was followed are not the questions which need be gone at their instance. We find that such faith and belief is writ large by a long standing practice of Hindus of visiting the place for Darshan and worship.

1919. Now the question is what should be the procedure

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where an idol is to be sued or sue. The suit in the name of the idol can be filed by Shebait. Similarly, idol can be made a defendant through Shebait. In certain circumstances, however, a suit can be allowed to be filed or defended through next friend.

1920. The term 'next friend' has been used in Order 32 Rule 1 CPC. This brings into picture Order 32 Rule 1 CPC which reads as under:

> *"**1. Minor to sue by next friend.-** Every suit by a minor shall be instituted in his name by a person who in such suit shall be called the next friend of the minor.*
>
> Explanation.- *In this Order, "minor" means a person who has not attained his majority within the meaning of section 3 of the Indian Majority Act, 1875 (9 of 1875), where the suit relates to any of the matters mentioned in clauses (a) and (b) of section 2 of that Act or to any other matter."*

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1921. Meaning of the expression "a next friend" in Order 32 Rule 1 CPC came to be considered in **Amar Chand Vs. Nem Chand AIR (29) 1942 All.150** where an Hon'ble Single Judge **(Hon'ble Braund J.)** observed :

> *"The expression "a next friend" originally denoted the person through whom an infant acts without any necessary reference to litigation but in modern times it has come to assume a technical meaning of the person by whom a minor or an infant, as the case may be, is represented as a plaintiff in litigation. The real object of having a next friend is that there may be somebody to whom the defendant or the opposite party may be able to look for costs. The next friend himself does not actually become a party to the litigation. It is the minor who is the*

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party and the next friend is a person- so to speak in the background- who can act on the minor's behalf and to whom the opposite party can look for costs.

1922. The Court also considered the difference between "guardian" and "a next friend" and said:

"As every one knows, a minor who is a defendant to a suit is represented by a guardian ad litem. There is this difference between a guardian ad litem and a next friend that, whereas a guardian ad litem is constituted by an order of the Court, a next friend automatically constitutes himself by taking steps in the suit."

1923. About the procedure of filing a suit under Order 32 Rule 1 C.P.C. the Court said:

"Now, O. 32, R. 1 provides for the manner in which a suit is to be instituted by a minor. It says that every suit by a minor shall be instituted in his name by a person who in that suit shall be called his next friend. From that it is quite clear that a person who does, in fact, institute a suit in the name of a minor becomes his next friend and, according to the Code, that would apparently happen at the instant a plaint is presented on a minor's behalf."

1924. In **Annapurna Devi** Vs. **Shiva Sundari Dasi, AIR 1945 Cal 376** a different view was taken holding that the appointment of next friend by the Court was not necessary.

1925. For the purpose of procedure, recourse was taken to Order 32 CPC but not accepted by this Court in **Doongarsee Shyamji vs. Tribhuvan Das, AIR 1947 All 375** observing where the Shebait of a temple has done something which is obviously adverse to the interest of the institution, the Court may allow a disinterested third party to file a suit, but such a suit must be

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filed in the interest of the foundation or the deity, as the case may be. This proposition was expanded and enlarged by a Division Bench of this Court in **Bihari Lal Vs. Thakur Radha Ballabh Ji and another AIR 1961 Allahabad 73** holding that the person who has beneficial interest in the temple property can take steps to see that the temple property is preserved to the idol and may file a suit for that purpose as the next friend of the deity, bringing the suit in the name of the deity himself.

1926. This Court in **Dongarsee Syamji Joshi (supra)** held :

> ***"The analogy of a deity being treated as a minor is a very imperfect analogy and we cannot carry it far enough to make O. 32, Civil P.C. applicable.*** *In cases where the sebaits of a temple have done something which is obviously adverse to the interest of the institution it may be that the Courts would allow a disinterested third party to file a suit, but such suits must be filed in the interest of the foundation or the deity, as the case may be. the cases relied on by learned counsel where a sebait transferred property belonging to the deity and a stranger was allowed to file a suit as next friend can be distinguished on that ground." (para 8)*
>
> *"The result of accepting the argument of learned counsel would be that any person can constitute himself as the next friend of a deity and file a suit in the name of the deity for possession of the property by the dispossession of a de facto sebait who may be managing the property and looking after the deity to the satisfaction of everybody and get hold of the property in the name of the idol till such time as he is dispossessed again by somebody else. We are not prepared to hold that such is the law that any third*

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person can constitute himself as next friend and file a suit and claim an absolute right to possession of the property simply because he has filed the suit in the name of the deity." (para 12)

"An idol, though it is a juristic person, is in charge of its sebait who, for all practical purposes, represents it. But there maybe cases where the right of the sebait and the right of the idol are at conflict and in such a case it may be that the idol may bring a suit for the vindication of its rights through a disinterested third party as its next friend. We do not think we can accept the contention of learned counsel for the respondent that an idol has no right of suit at all, though we agree with him that a suit in the name of the idol can be filed only in the interest of the idol and not with the object of getting hold of its property by the person purporting to act as next friend." (para 13)

"There is really no such thing as an idol which is the private property of an individual or a family or which belongs to the public. According to Hindu philosophy, an idol, when it is installed in a temple is the physical personification of the deity and after consecration the stone image gets its soul breathed into it. Before an idol can be installed in a temple, the temple must be dedicated to it and it becomes its private property. The books of ritual contain a direction that before removing the image into the temple the building itself should be formally given away to God for whom it is intended. The sankalpa, or the formulae of resolve, makes the deity himself the recipient of the gift which, as in the case of other gifts has to be made by the donor taking in his hands water sesamum, the sacred kush

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grass and the like. It is this ceremony which divests the proprietorship of the temple from those who had built it and vests it in the image which by the process of vivification has acquired existence as a juridical personage. A temple building, therefore, under the strict Hindu law is the property of God and the idol and cannot be the private property of an individual or a family or a section the public. The property dedicated to an idol in an ideal sense vests in the deity, though no Hindu professes to give the property to God. He only dedicates it to the worship of God and under the strict Hindu law the King, who is the servant and the protector of the deity, is the custodian of the property." (para 15)

1927. In **Sri Nitai Gour Radheshyam Vs. Harekrishna Adhikari and others AIR 1957 Cal. 77** it was held that non-filing of application seeking permission to prosecute a suit on behalf of an idol as Shebait is only an irregularity and such application if filed later on and allowed by the trial court, the suit cannot be held to be filed wrongly or not maintainable for this reason alone.

1928. When a suit can be filed by an idol through a next friend was considered by a Single Judge in **Angoubi Kabuini and another Vs. Imjao Lairema and others AIR 1959 Manipur 42** wherein it was held:

"Similarly, there is no force in the contention that such a next friend must be appointed as the next friend by the Court before he can institute a suit on behalf of the idol. No provision of law was shown in support of it, rather the provisions in this respect in the Civil Procedure Code do not make such a course necessary. It is a different

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matter that the defendants can question that suitability of the next friend after the suit is instituted and then the Court will have to decide that point, but that is no authority for the proposition that a next friend must be appointed by the Court before the suit can be instituted by him. This point was dealt with in Sri Annapurna Debi v. Shiva Sundari, AIR 1945 Cal 376 at some length and I am in respectful agreement with the view taken by the learned Judge in that case. The case reported in Kalimata Debi v. Narendra Nath, 99 Ind Cas 917: (AIR 1927 Cal 244) which was relied upon on the side of the petitioners also does not support their contention. What was stated in that case was that the Shebait alone can maintain a suit on behalf of an idol except perhaps in a case where the Shebait has refused to institute a suit. The observations in Sri Sri Sridhar Jew v. Manindra K. Mitter, AIR 1941 Cal 272 were also to the same effect, namely, that when the interests of the Shebait are adverse to that of the idol then the idol should be represented through a disinterested next friend. It will be thus clear that in a case like the present one it is permissible for a person who is not the Shebait to bring such a suit." (Para 4)

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1929. It was contended in **Bhagauti Prasad Khetan Vs. Laxminathji Maharaj etc. AIR 1985 All. 228** that no suit through next friend is maintainable unless an application is filed seeking leave of the Court to sue as a next friend of the idol. The Court found that no such procedure is prescribed in Order 32. It also concurred with a similar view that no such application is necessary, expressed in **Ram Ratan Lal Vs. Kashi Nath Tewari, AIR 1966 Patna 235** and **Angoubi Kabuini** vs. **Imjao**

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Lairema (supra). It is true that the two decisions of the Calcutta High Court in **Smt. Sushma Roy Vs. Atul Krishna Roy AIR 1955 Cal 624** and **Iswar Radha Kanta Jew Thakur V. Gopinath Das (supra)** in which it was held that if anybody else other than Shebait has filed suit on behalf of of the idol, he must be appointed as next friend by the Court on filing of such an application by him, have been dissented by this Court and it pointed out contradictory authorities of the Calcutta High Court in **Annapurna Devi (supra).**

1930. Dealing with the right of deity to file suit, the Division Bench of this Court in **Bhagauti Prasad Khetan (supra)** in para 18 and 19 of the judgment said :

> ***"18.*** *The third point argued by the learned counsel for the appellants in connection with the maintainability of the suit is that in the present case Atma Ram did not apply for leave of the Court to sue as a next friend of the idol and as such the suit filed by him was not maintainable. In support of this argument he placed reliance upon Smt. Sushma Roy v. Atul Krishna Roy, AIR 1955 Cal 624 and Iswar Radha Kanta Jew Thakur v. Gopinath Das, AIR 1960 Cal 741. It was held in these cases that anybody other than Shebait suing on behalf of the idol must be appointed as next friend by the Court on application by him to that effect. After having carefully gone through these cases we find ourselves unable to agree with these observations. A glance on the judgment reported in AIR 1955 Cal 624, shows that the decisions of Calcutta High Court are not uniform on the appointment of the next friend by the Court. It has been held in Annapurna Devi v. Shiva Sundari Dasi, AIR 1945 Cal 376 that appointment of the next friend by*

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the Court is not necessary. Moreover in AIR 1960 Cal 741 it was observed at page 748 that :

> *"A worshipper or a member of the family has no doubt his own right to institute a suit to protect his right to worship and for that purpose to protect the debutter property. That is, however, a suit by the member of the family or worshipper in his personal capacity and not a suit by the deity. The deity has also a right of its own to have a suit instituted by a next friend ....Anybody can act as such next friend, but the law requires that anybody other than Shebait instituting the suit in the name of deity must be appointed as such by an order of the Court."*

19. It indicates that no appointment is necessary, if the suit is filed by a worshipper. Here Atma Ram has joined the suit as worshipper also. Thus the maintainability of the suit remains unaffected. Apart from this, in Ram Ratan Lal v. Kashi Nath Tewari, AIR 1966 Pat 235 and Angoubi Kabuini v. Imjao Lairema, AIR 1959 Manipur 42 it was held that such an appointment is not necessary. The Supreme Court has clearly held in Bishwanath vs. Sri Thakur Radha Ballabhji, AIR 1967 SC 1044 that the worshipper has an ad hoc power of representation of the deity when the Shebait acts adversely. It follows from this the worshipper having right to represent the deity can represent the deity without any specific order from the Court about his appointment. There is no definite procedure laid down in the Civil P.C. relating to suits on behalf of idol. The provisions of order 32 C.P.C. which relate to minor do not specifically provide for the

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appointment of the next friend. It may also be added in this connection that the defendants, appellants did not raise any objection before the trial Court that Atma Ram should first make an application for his appointment as next friend of the deity and then the suit can proceed. Atma Ram clearly alleged in para 1 of the plaint that he is representing the deity as its next friend. The manner in which he was allowed to continue the suit indicates that he should be deemed to have been accepted as next friend of the deity. Thus the suit cannot be held not maintainable because Atma Ram did not make an application and was not appointed as next friend of the idol plaintiff 1 in the trial Court."

1931. As a proposition of law we are inclined to express our respectful agreement with the above view taken in **Bhagauti Prasad Khetan (supra)** and learned counsel for the parties could not place before us any binding authority or otherwise material to pursue us to take a different view.

1932. In **Sri Thakur Kirshna Chandramajju vs. Kanhayalal and others AIR 1961 Allahabad 206** another Division Bench followed the view of this Court in **Bihari Lal Vs. Radha Ballabh Ji (supra)** by observing in paragraph 39 of the judgment, where the acts of the alleged Shebait are being impugned, then the idol may sue through a next friend who has beneficial interest in the property.

1933. In **Sri Sri Gopal Jew Vs. Baldeo Narain Singh and others, 51 CWN 383** the question of maintainability of suit of a deity through a person who was not a Shebait came to be considered in detail. Initially, the suit was filed in the name of deity alone through one Sri Rajendra as its next friend.

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Subsequently, Rajendra was also impleaded as second plaintiff. The Court referred to general rule enunciated by James, L.J. in **Sharpe Vs. San Paulo Railway Co., L.R. 8 Ch. App. 597 at pp.609 and 610 (1873)** observing :

> *"..... a person interested in an estate or trust fund could not sue a debtor to that trust fund, merely on the allegation that the trustee would not sue; but that if there was any difficulty of that kind, if the trustee would not take the proper steps to enforce the claim, the remedy of the cestui que trust was to file his bill against the trustee for the execution of the trust or for the realisation of the trust fund and then to obtain the proper order for using the trustee's name, or for obtaining a Receiver to use the trustee's name, who would, on behalf of the whole estate, institute the proper action, or the proper suit in this Court."*

1934. Hon'ble Das J. in **Gopal Jew (Supra)** however, proceeded to hold at page 390 of the judgment as under:

> *"In special circumstances, however, e.g., where the trustee is unwilling or refuses to sue or has precluded himself, by any act, omission or conduct, from suing, a cestui que trust may himself institute the action adding as Defendants every trustee and every other cestui que trust as the cases cited in the notes in Halsbury's Laws of England, 2nd Edn., Vol.33, paragraph 505 at pages 288 and 289 will show."*
>
> *".....Can it be expected, in the circumstances, that the trustees, who perpetrated the fraud on the deity, will themselves come forward to take proceedings to get the consent decree set aside on the ground of their own fraud ? It may be that in law there is nothing to prevent the*

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defaulting trustees from filing a suit as Plaintiffs, but from a practical point of view will not their presence in the category of Plaintiffs seriously jeopardise the chances of success of such a suit? Will it not be said that the solicitude now shown by them for the beneficiaries including a deity whose interest they had not thought of for all these years is a mere pretence. One of the major beneficiaries is a deity of whom after the death of the daughter and grand daughter of Sreegopal the trustees and their brothers and/or their sons will be the shebaits. Will not the trustees, if they themselves bring a suit lay themselves open to a double charge of fraud, fraud on the deity in the first instance and fraud on the purchasers now? Is there no risk of there being personally made liable for costs? The trustees may be penitent, as both Bonwari and Madho say or pretend they are, or they may be unrepentant sinners as the Defendants maintain they are; but will not the considerations mentioned above weigh with them equally in either case? However genuinely repentant they may be, they may yet be not willing to face the Court as Plaintiffs for fear of being made to pay the costs or of prejudicing the deity. They may be willing or even anxious to render assistance to the beneficiaries, yet they may be reluctant to figure as Plaintiffs. On the other hand, if they are unrepentant and their sole object is to benefit themselves they will out of policy keep themselves behind the scenes. In either case they cannot for a moment be expected to take proceedings in their own name. Is the deity who is one of the beneficiaries to suffer? The law recognises the deity as a juridical entity capable of having legal rights. If a fraud

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has been perpetrated on the deity and its right, such as is alleged in this suit, the deity is entitled to be reinstated in its original rights. Such reinstatement may indirectly benefit the very persons who perpetrated the fraud on the deity. It may be – indeed, I am strongly inclined to think it is – that the defaulting trustees are behind this litigation and have set up a son of one of them to file this suit for their own ends but their evil motive or rascality cannot effect our extinguish the deity's rights. As long as the deity is recognised as a legal entity capable of holding properties, its right must necessarily be recognised on its own merits. The Court cannot ignore the deity's rights or deny protection to the deity merely because of the misconduct of its unmeritorious trustees or shebaits or of the possibility of those very unmeritorious persons indirectly reaping the benefit of such protection. The fact that the deity may be again defrauded can be no ground for declining to remedy the fraud that has already been perpetrated on its rights. In my judgement, in the exceptional circumstances of the present case and in view of the allegations in the plaint it must be held that the trustees are unwilling or have refused or at any rate by their act or conduct rendered themselves incompetent to maintain a suit for setting aside the decree in 1926 and the beneficiaries themselves must be allowed to take legal proceedings.

1935. The Court held in **Gopal Jew (Supra)** that the suit is maintainable but it chose to rely on Order 32 Rule 4(1) of the Code of Civil Procedure for the said purpose.

1936. Considering Order XXXII Rule 1 C.P.C., a Single

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Judge of Andhra Pradesh High Court in **Duvvuri Papi Reddi and others Vs. Duvvuri Rami Reddi AIR 1969 AP 362**, held in para 14:

> *"It must however, be remembered that Order XXXII deals only with procedure. It does not confer on minors or persons of unsound mind any right of any sort. Under Rule 1 of Order XXXII, every suit by a minor shall be instituted in his name by a person who in such suit shall be called the next friend of the minor. Where the suit is instituted without the next friend, according to Rule 2, the defendant is entitled to apply to have the plaint taken off the file, with costs to be paid by the pleader or other persons by whom it was presented. After hearing the objections, the Court is empowered to pass such order as it thinks fit under Rule 2. Order XXXII, Rule 1 states that along with such a suit an application by the next friend should be filed for the purpose of appointing him as the next friend it is necessarily implied"*

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1937. Some of the judgments, which we have already referred, show that the same were given by holding that a Deity does not suffer any disability as it is not minor, in order to argue that Order XXXII, Rule 1 has no application, drawing a parallel with Section 6 of the Limitation Act. An attempt was made that the Deity having been held not a minor for the purpose of Section 6 of the Limitation Act and therefore for the purpose of Order XXXII, Rule 1 C.P.C. also it cannot be treated to be a minor and that provision will have no application.

1938. Relying on Privy Council's decision in **Damodar Das Vs. Adhikari Lakhan Das (supra)** and a Division Bench decision of Patna High Court in **Naurangi Lal Ram Charan**

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Das AIR 1930 Patna 455 an attempt was made to argue that a Hindu idol/deity cannot be included within the term "minor". In the context of Section 6 of the Limitation Act this view was taken by the Patna High Court in **Naurangi Lal (supra),** hence it was argued that on the same principle Order 32 Rule 1 has no application in this case and an idol cannot be allowed to be sued through next friend treating it to be a minor but with great respect we find that the issue is already concluded by the decision of the Apex Court in **Bishwanath vs. Sri Thakur Radha Ballabhji (supra).** We also find that the Patna High Court referred to an earlier decision of this Court in **Chitar Mal Vs. Panchu Lal AIR 1926 All.392** and the Oudh Chief Court in **Prakash Das** Vs. **Janki Ballabha Saran AIR 1926 Oudh 444** holding that property can be acquired as against an idol by adverse possession which will run from the date of the alienation inasmuch as an idol does not suffer from any disability under the Limitation Act and in reference thereof it was held that the idol cannot be treated to be a 'minor' so as to suffer a disability under Section 6 of the Limitation Act.

1939. To the same effect is a Division Bench decision of Orissa High Court in **Radhakrishna Das Vs. Radha Ramana Swami & others AIR (36) 1949 Orissa 1**. In that case also there was a family idol of Thakur Radharamna Swami. It belonged to the family of Ranganath Deb Goswami whose father executed a deed on 21st November 1909, transferring his Shebait right as inam lands endowed for the service of the deity and the idol itself to Mahant of the Gangamatha Math at Puri and put him in possession of the plaintiff deity. The Government of Madras resumed the inam grant on 4th November 1921 on the ground it has been alienated. Hence, the purpose of grant has failed.

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Ranganath Deb Goswami requested the Government to hand over the net assessment of the village so that Seva Pooja of the deity may be continued. The Mahant of Gangamatha Math at Puri raised an objection. The Government left the parties to establish their rights in a Civil Court and collection from village were kept in the treasury subject to final adjudication of the title. Ranganath Deb Goswami filed a suit against the Mahant of Gangamatha Math at Puri praying for a declaration that the plaintiff idol has not been removed from the Goswami Math to Gangamatha Math, as falsely stated in the deed executed on 21st November 1909. The suit was decided against Goswami Math as a result whereof the inam village was re-granted to Gantamatha Math. Thereafter, a suit was filed by zamindars of Takkali as next friend of the idol seeking a declaration that the retention of idol at Gangamatha Math by its Mahant is wrongful and a continuing wrong, the idol be restored to its original place, i.e., Goswami Math. The next frient of the idol claimed to be the successor of the original founder of the endowment, i.e., Goswami Math and as such interested in the location of the idol at proper place and claimed that it is the will of the idol to be returned at the original place and to be worshipped thereat. The cause of action was claimed to be a continuing one. The Trial Court formulated several issues and with respect to the validity of the transfer from Goswami Math to Gangamatha Math observed that the said transfer is not illegal and cannot be questioned by the next friend of the idol. He held the retention not illegal and the suit was held barred by limitation. The judgment was reversed in appeal. The High Court allowed the appeal and restored the judgment of the Trial Court in the background of the above facts. High Court found that there was

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no difference in the customary mode of worship in Goswami Math and Gangamatha Math. The plea of different of customary mode of worship was found a pure myth and unsubstantiated. Secondly, it held that the lower Appellate Court erred in observing that the Mahant of Goswami Math being a married person was capable of conducting worship though the Mahant of Gangamatha Math, Sanyasi, could not have been capable thereof. The Court observed that this finding is erroneous and the lower Appellate Court has proceeded on some unfortunate confusion between an "ascetic" and a 'Sanyasi. The aforesaid words have been explained by the Court as under:

> *"There has been an unfortunate confusion in the lower Courts between an "ascetic" and a 'Sanyasi.' The only difference that I can find between defendants 1 and 2 is that the former is a perpetual Brahmachari or Virakta of the Vaishnab sect while the latter is a Gruhi or married man. Both worship deities, both perform the annual ceremonies of their Gurus or ancestors, and also perform other Vaidio Karmas. Sanyasi should have no Gods or temple. Their only vocation is the contemplation of the absolute truth and not the worship of any God. A Brahmachari or student, according to Golap Chandra Sarkar is of two descriptions, namely, Upakarvana or ordinary student and Naishtika or life long student. The former became a house-holder in due course, while the latter was a student for life, devoted to the study of science and theology, felt no inclination for marriage, did not like to become a house-holder, and chose to life, as a perpetual student, the austere life of celibacy. There are persons belonging to certain religious sects of modern origin such*

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as the Vaishnabs that do in some respect resemble lifelong students and itinerant ascetics. They are connected with the well-known Maths or Mahants.... Most of the Vaishnabite Maths of Bengal, Bihar and Orissa were founded by Bengalee Brahmins and Kayasthas who were the disciples and followers of Chaitanya and they were not merely founded by celibates but by house-holders. The three Peabhus who are the chief spiritual preceptors or masters of this order are Obaitanya, who is believed to be the incarnation of Lord Krishna, Adwaitanand and Nityanand. Adwaitanand's descendants residing at Santipur are now chief spiritual preceptors along with the male and female descendants of Nityananda. Besides these three Prabhus, the Vaishnabs of this order acknowledge six Goaains as their original and chief teachers and founders, in some instances of the families now existing, to whom as well as to the Gokulashta Gosains, hereditary veneration is due. These six are Rupa, Sanatan, Jeeva, Raghunath Bhat, Baghunath Das, and Gopal Bhat. They appear to have settled at Brundaban and Mathura. The post of spiritual Guide is not confined only to the Brahmins: some of the well-known Gosains' belong to the Vaidya caste. Chaitanya, the founder of these cults, nominated Adwaitacharya or Adwaitanand and Nityanand to preside over the Bengal Vaishnabs, and Bupa and Sanatan over those of Mathura: See Wilson's works, vol. I. It is said that defendant 1 claims descent through Gadadhar Prabhu and defendant 2 through Nityanand Prabhu who were both followers of Lord Chaitanya. A reference to Chaityanya Charitamruta and Baishnab Abidhana shows that

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Gadadhar who was also known as Pandit Prabhu Gadadhar Pandit and Godai, was the disoiple of Pandarik Bidyanidhi who was himself a disciple of Advaitanand. Gadadhar came to Orissa along with Sri Chaitanya and lived the life of a perpetual Brahmachari till his death in 1533. Gangamudri was an Oriya lady and was a disciple of Gadadhar's branch. Gadadhar was a great scholar and wrote commentaries on the Gita. Besides he was a life-long associate of Lord Chaitanya and is regarded by the Vaishnabs as one of the Pancha Tatva. The appellant's Math is obviously named after Gangamudri, who was a Vaishnab herself and is known as the Gangamatha Math."

1940. Coming to the question of limitation, the Court in **Radhakrishna Das Vs. Radha Ramana Swami (supra)** has dealt with this issue in paras 13 and 19 at length. Certain propositions which it has accepted as well settled are:

(a) As a general rule according to Hindu law, property given for the maintenance of religious worship is inalienable. (Reliance is placed on Mac Naughton's **"Precedents of Hindu Law"** Vol. II, p. 305; **Sri Sri Ishwar Lakshi Durga Vs. Surendra Nath Sarhar 45 C.W.N. 665** and **Surendra Narayan Sarbadhikari Vs. Bholanath Roy Choudhuri AIR (30) 1943 Cal. 613**)

(b) The manager of an endowment has the same powers as a guardian of an infant to incur loans for necessary purposes and such loans will bind the idol's estate.

(c)Where the temple is a public temple, the dedication may be such that the family itself could not put an end to it, but in the case of a family idol the consensus of the whole family might give the estate another direction.

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(Reliance is placed on **Kunwar Darganath Vs. Ramchunder 4 I.A. 52 (P.C.)** and **Tulsidas Vs. Sidahinath (9) I.C. 650)**

(d) It is only in an ideal sense that property can be said to belong to an idol, and the possession and management of it must in the nature of things be entrusted to some person as the Shebait or Manager. (Reliance is placed on **Prosunno Kumari Debya v. Gulabahand (supra)** and **Kunwar Darganath Vs. Ramchunder (supra).**

(e) Person so entrusted must of necessity be empowered to do whatever may be required for the service of the idol and for the benefit and preservation of its properties, at least to as great a degree as the manager of an infant heir.

(f) A Shebait can borrow for legal necessity and for necessaries of the deity and bind the estate of the deity.

(g) Right to be worshipped at a particular place or by a person may be regarded as intangible property (Reliance is placed on **Mahamaya Devi Vs. Hari Das Haldar AIR (2) 1915 Cal. 161**)

1941. Having said so, the Court observed that in the eyes of law, idols are property and placed reliance on **Subbaraya Gurukkal Vs. Chellappa Mudali 4 Mad. 315.** It referred to a Calcutta High Court decision in **Bali Panda Vs. Jadumani 7 I.C. 475**, wherein it was held that being a juridical person, the idol is not movable property though it is property for which a suit is governed by Article 120 Limitation Act. Having referred to the above two decisions, the Orissa High Court proceeded not to record any final opinion as to whether the idol can be regarded as movable or immovable property as is evident from para 13 of the judgment. However for our purpose, we find that

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this question needs some consideration. If an idol can be held to be a property, it will be a judicial proposition to treat it as a juridical person capable of holding the property as a right to sue or be sued or other consequences in law which are available to a legal person. It is inconceivable that a legal person, i.e., idol itself is a property and can also hold property. What appears to us is that the man made idols made of precious metals may have their value in the economic sense, not in the form of image but on account of the preciousness of the metal of which it consists. In modern days, the Hindu religious idols of ancient period have also become precious and antique market internationally though it is a crime under some statutes of this Country. Therefore, beyond India, antique Hindu idols by the persons of other religions may have economic worth for different reasons but for the worshippers it is a matter of faith and belief and not the economic worth. Normally, a Hindu worshipper cannot think of selling an idol being worshipped by all Hindus treating it to be a property consisting of gold, silver or any other metal since it is against the civilized motion of the Hindu society who believe and have faith in the religion. But if the idol has lost its efficacy as deity for one or the other reason and the precious metal of which it was made for one or the other reason has converted into form of that metal itself, obviously it will be a property of the value that metal would be. In short, what we intend to say is that a consecrated man made idol, irrespective of preciousness of the metal of which it is made, is not treated to be property in any manner by the worshippers of that deity and, therefore, it cannot be said to be a property as a matter of legal proposition. But the right to worship the idol and possession of the deity for the purpose of its management, *sewa*, *pooja* etc. constitute the rights

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of Shebait, which is an office, and can be said to be an intangible property right. The High Court further said that Thakur Ji can be the subject of possession and adverse possession. This wide proposition again is difficult to accept. A person, whether legal or natural, by itself can be subject of possession or adverse possession is a bit difficult to understand. The property of an idol or deity may be subject of possession and adverse possession in law if it is so permissible but the deity itself, in our view, cannot be said to be subject of possession and adverse possession in the manner it is being said and here also what we have observed with respect to the concept of idol as property can be read here also.

1942. Then comes the next proposition. The Orissa High Court held, *"An idol is no doubt in the position of an infant as it can act only through a sebayat or a manager."* Having said so, it proceeded further to observe that there is no authority to show that this infant can be treated to be a perpetual infant so that transaction by or against him will not be governed by Limitatin Act. It further proceed to hold that *" The doctrine that an idol is a perpetual minor is an extravagant doctrine as it is open to the sebayat, or any person interested in an endowment, to bring a suit to recover the idol's property for devottar purposes."* (Reliance for the said proposition has been placed on **Damodar Das Vs. Lakhan Das (supra)** and **Surendra Krishna Roy Vs. Bhubaneswari Thakurani AIR (2) 1933 Cal. 295**). The Court further observed:

(i) An idol can also acquire rights by adverse possession just as much as there can be adverse possession against the idol. [**Anand Chandra Vs. Brojalal (supra)**]

(ii) A suit by the idol or the manager of the idol on

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behalf of the idol for recovery of possession must be brought within 12 years from the date of alienation.

(iii) An idol is as much subject to the law of limitation as a natural person and cannot claim exemption on the ground that he is a perpetual infant, nor is a Hindu deity to be regarded as a minor for all purposes. (reliance is placed on **Anantakrishna v. Prayag Das I.L.R (1937) 1 Cal. 84**

(iv) A idol cannot claim exemption from the law of limitation. (reliance is placed on **Surendrakrishna Roy Vs. Ishree Sree Bhubneswari Thakurani (supra)** as confirmed by Privy Council **Bhubaneswari Thakurani Vs. Brojanath Dey AIR (24) 1937 PC 185)**

1943. Reliance is also placed on a Division Bench decision on Orissa High Court in **Jagannath vs. Tirthnanda Das AIR 1952 Orissa 312** where following **Talluri Venkata Seshayya and others Vs. Thadikonda Kotiswara Rao (supra)** the Court expressed its opinion against treating idol as perpetual minor and said in para 11:

*".....But it is well-settled that an **idol cannot be regarded as a perpetual minor** and the special protection given to a minor does not apply to an idol. The protection of a minor against the negligent actings of a guardian is a special one and statutory provision has been made for safeguarding a minor's interest."*

1944. In **Tarit Bhusan Rai and another Vs. Sri Sri Iswar Sridhar Salagram Shila Thakur (supra)** the Court said:

"In view of the religious customs of the Hindus which have been recognised by Courts of law a Hindu idol like a juristic person under the English system has been vested with the capacity of holding properties and with the

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powers of suing or being sued (Ibid). A juristic person under the English system has no body or soul. It has no rights except those which are attributed to it on behalf of some human beings. The lump of metal, stone, wood or clay forming the image of a Hindu idol is not a mere moveable chattel. It is conceived by the Hindus as a living being having its own interests apart from the interests of its worshippers. It is a juristic person of a peculiar type.

The points of similarity between a minor and a Hindu idol are :(1) Both have the capacity of owning property. (2) Both are incapable of managing their properties and protecting their own interests. (3) The properties of both are managed and protected by another human being. The manager of a minor is his legal guardian and the manager of an idol is its shebait. (4) The powers of their managers are similar. (5) Both have got the right to sue. (6) The bar of S. 11 and Order 9, R. 9, Civil P.C., applies to both of them.

The points of difference between the two are: (1) A Hindu idol is a juristic or artificial person but a minor is a natural person. (2) A Hindu idol exists for its own interest as well as for the interests of its worshippers but a minor does not exist for the interests of anybody else. (3) The Contract Act (Substantive law) has taken away the legal capacity of a minor to contract but the legal capacity of a Hindu idol to contract has not been affected by this Act or by any other statute. (4) The Limitation Act (an adjective law) has exempted a minor from the operation of a bar of limitation but this protection has not been extended to a Hindu idol.

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*From the above it is clear that there is some analogy between a minor and a Hindu idol but the latter is neither a minor nor a perpetual minor. Although in law an idol has the power of suing it has no physical capacity to sue. This absence of physical capacity is perhaps referred to by the Judicial Committee when they said in 31 I.A. 203 t**hat the right of suit is not vested in the idol. Who is then entitled to exercise the idol's power of suing**? This is a matter of substantive law:*

Its (idol's) interests are attended to by the person who has the deity in his charge and who is in law its manager with all the powers which would in such circumstances on analogy be given to the manager of the estate of an infant heir: 52 I.A. 245.

"The manager of the estate of an infant heir" apparently means the legal guardian of an infant. The powers of the legal guardian of an infant include the power to sue on behalf of the infant. The shebait of a Hindu idol is its manager in law. On the analogy of the power of the legal guardian of an infant the shebait of a Hindu idol has the right to sue on behalf of the idol, for the protection of its interests. In this sense it may be said as was said by the Judicial Committee in 31 I.A. 203 that the right of suit vests in the shebait." (page 103)

"A Hindu idol as has been already stated is a juristic person having its own interests apart from the interests of its worshippers. 31 I.A. 203 and 52 I.A. 245 are authorities for the proposition that its power of suing for protecting its own interests is to be exercised by it through its de jure or de facto shebait. The worshippers of the idol are interested

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in the idol and as such are interested in the property dedicated to it for its maintenance. Their right to sue for the protection of the idol's property is founded upon their own interest viz., the right of worship apart from and independent of the idol's right to sue for the protection of its own interests and properties. They have no right to exercise the idol's power of suing." (page 104)

"The introduction of the idol and its recognition as a juristic person are more a matter for the procedure and the procedure in India recognises the idol as having a locus standi in judicio." (page 119)

1945. All these propositions as laid down, wide as they are, we find difficult to subscribe. Once it is held that an idol is in position of an infant, we fail to understand as to how it is infant or minor for one purpose and not for another. In our sense whether a minor is entitled to act, not to act or protect it, that would apply without any distinction to alike minor who is looked after by his/her guardian, may be natural or otherwise and manner in which his property can be dealt with by such guardian all will apply to a deity also. To that extent, deity, once a minor, will continue to be treated as minor for all purposes and we find no authority to show as to how and in what circumstances and why there can be a distinction between the status of deity as minor and natural person as minor. If by nature of thing, a deity is such kind of minor which can never attain majority, this by itself would not deprive it from protections or otherwise which are available to a natural minor. One can have no dispute about the proposition that minor's estate can be encumbrance by a person, who is entitled to manage his affairs, may be a guardian in case of natural minor and Shebait in case

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of idol so long such encumbrance is necessary for the benefit of the minor or the idol, as the came may be. The proposition that an idol can claim somebody's property under possession adversely and his property also can be subject to same consequences has to be understood in the facts of the things. Obviously, an idol cannot move on its own. If there comes a question of unauthorized possession of some other's property by an idol, this would have to be through some natural person. The benefit may ultimately go to the idol if such unauthorized possession completes the statutory period of limitation to be converted into a title, but that does not mean that it has been done by the idol on its own inasmuch if a suit for eviction is to be filed before expiry of period of limitation, that will be against the idol represented through a Shebait or the natural person who is responsible for such possession. Similarly, the property of an idol, if unauthorizedly possessed by a person there can be two types of cases; where a caretaker, i.e, Shebait or whatever name it is called is available, but does not take any action allowing the unauthorized possession by another person to continue for the period of limitation resulting in extension of rights of the minor to the property,if inaction on the part of Shebait or caretaker, as the case may be, is not found to be collusive, fraudulent or deliberate mismanagement of the property of the minor, one may raise the plea of limitation but we have serious doubt in successful representation of such right for the reason that for claiming adverse possession an open hostile possession to the knowledge of owner is an integral constituent of the plea of adverse possession. Such a knowledge to the owner of the property, i.e., idol cannot be perceived for the reason such a knowledge to the minor's inaction on his part is not recognised

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in law. It is this distinction which has been pointed out by the Privy Council in the case of **Masjid Shahid Ganj v. Shiromani Gurudwira Parbandhak Committee, Amritsar, 67 Ind. App. 251 at p.264 (P.C.)** where the plea of legal person qua a mosque has been turned down by the Privy Council observing that unlike a Hindu idol a mosque cannot be held to be a juristic personality or a legal person in law. The Court held the Mosque as property and, therefore, capable of adverse possession. The property of a juristic personality cannot be said to be inalienable in all circumstances, for example, it can be transferred by Shebait for managing funds for managing the affairs of the idols and so on, but not in all circumstances. This distinction has to be understood in order to appreciate the concept of idol, deity, legal personality etc. of Hindu law as recognised by British India Courts before independence. Regarding the juristic personality of the idol, virtually there was no difference but regarding the statute of idol as a minor or perpetual minor, there appears to be some difference among various Courts. The Apex Court in **Bishwanath Vs. Shri Thakur Radhaballabhji (supra)** has made it clear that a Hindu idol enjoy status of a minor. There is no restriction in such declaration that such concept of minor of the idol should be understood in a restricted manner and it would be a minor only for certain purposes and not for other purposes. In the light of the above discussion, respectfully we are of the view that the wider observations of the Orissa and Calcutta High Courts cannot be concurred by us.

1946. The matter thus now stand settled by the Apex Court in **Bishwanath & another Vs. Sri Thakur Radha Ballabhli & others (supra)** holding the Deity a minor, all the judgments which have taken a different view of the High Courts or Privy

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Council cannot be treated to be a good law or a binding precedent.

1947. This question that a Deity being minor can be represented by a next friend has been reiterated by the Apex Court in another case i.e. in **Vemareddi Ramaraghava Reddi Vs. Kondaru Seshu Reddi (supra)** at page 440 the Court said:

> *"The legal position is also well-established that the worshipper of a Hindu temple is entitled, in certain circumstances, to bring a suit for declaration that the alienation of the temple properties by the de jure Shebait is invalid and not binding upon the temple. If a Shebait has improperly alienated trust property a suit can be brought by any person interested for a declaration that such alienation is not binding upon the deity but no decree for recovery of possession can be made in such a suit unless the plaintiff in the suit has the present right to the possession. Worshippers of temples are in the position of cestui que trustent (Sic) or beneficiaries in a spiritual sense.*
>
> .....
>
> *The possession and management of the property with the right to sue in respect thereof are, in the normal course, vested in the Shebait, but where, however, the Shebait is negligent or where the Shebait himself is the guilty party against whom the deity needs relief it is open to the worshippers or other persons interested in the religious endowment to file suits for the protection of the trust properties. It is open, in such a case, to the deity to file a suit through some person as next friend for recovery of possession of the property improperly alienated or for*

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other relief. Such a next friend may be a person who is a worshipper of the deity or as a prospective Shebait is legally interested in the endowment."

1948. An attempt was made to bring in Section 92 C.P.C. where the interest of Deity is not properly observed but we find that this issue also stands settled by the Apex Court in **Bishwanath & another Vs. Sri Thakur Radha Ballabhli & others (supra)** holding that Section 92 in such a matter has no application. The Court in para 9, 10, 11 and 12 held as under:

*"**9.** Three legal concepts are well settled : (1) An idol of a Hindu temple is a juridical person; (2) when there is a Shebait, ordinarily no person other than the Shebait can represent the idol; and (3) worshippers of an idol are its beneficiaries, though only in a spiritual sense. It has also been held that persons who go in only for the purpose of devotion have according to Hindu law and religion, a greater and deeper interest in temples than mere servants who serve there for some pecuniary advantage see Kalyana Venkataramana Ayyangar v. Kasturi Ranga Ayyangar, ILR 40 Mad 212 at p. 225: (AIR 1917 Mad 112 at p. 118). In the present case, the plaintiff is not only a mere worshipper but is found to have been assisting the 2nd defendant in the management of the temple.*

***10.** The question is, can such a person represent the idol when the Shebait acts adversely to its interest and fails to take action to safeguard its interest. On principle we do not see any justification for denying such a right to the worshipper. **An idol is in the position of a minor** and when the person representing it leaves it in a lurch, a person interested in the worship of the idol can certainly be*

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clothed with an ad hoc power of representation to protect its interest. ***It is a pragmatic, yet a legal solution to a difficult situation****. Should it be held that a Shebait, who transferred the property, can only bring a suit for recovery, in most of the cases it will be an indirect approval of the dereliction of the Shebait's duty, for more often than not he will not admit his default and take steps to recover the property, apart from other technical pleas that may be open to the transferee in a suit. Should it be held that a worshipper can file only a suit for the removal of a Shebait and for the appointment of another in order to enable him to take steps to recover the property, such a procedure will be rather a prolonged and a complicated one and the interest of the idol may irreparably suffer. That is why decisions have permitted a worshipper in such circumstances to represent the idol and to recover the property for the idol. It has been held in a number of decisions that worshippers may file a suit praying for possession of a property on behalf of an endowment; see Radhabai v. Chimnaji, (1878) ILR 3 Bom 27, Zafaryab Ali v. Bakhtawar Singh, (1883) ILR 5 All 497 Chidambaranatha Thambirarn v. P. S. Nallasiva Mudaliar, 6 Mad LW 666 : (AIR 1918 Mad 464), Dasondhay v. Muhammad Abu Nasar, (1911) ILR 33 All 660 at p. 664: (AIR 1917 Mad 112) (FB), Radha Krishnaji v. Rameshwar Prasad Singh, AIR 1934 Pat 584, Manmohan Haldar v. Dibbendu Prosad Roy, AIR 1949 Cal 199.*

11. *There are two decisions of the Privy Council, namely, Pramatha Nath Mullick v. Pradyumna Kumar Mullick, 52 Ind App 245: (AIR 1925 PC 139) and*

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Kanhaiya Lal v. Hamid Ali, 60 Ind App 263: (AIR 1933 PC 198 (1)), wherein the Board remanded the case to the High Court in order that the High Court might appoint a disinterested person to represent the idol. No doubt in both the cases no question of any deity filing a suit for its protection arose, but the decisions are authorities for the position that apart from a Shebait, under certain circumstances, the idol can be represented by disinterested persons. B. K. Mukherjea in his book "The Hindu Law of Religious and Charitable Trust" 2nd Edn., summarizes the legal position by way of the following propositions, among others, at p. 249 :

> *"(1) An idol is a juristic person in whom the title to the properties of the endowment vests. But it is only in an ideal sense that the idol is the owner. It has to act through human agency, and that agent is the Shebait, who is, in law, the person entitled to take proceedings on its behalf. The personality of the idol might, therefore, be said to be merged in that of the Shebait.*
>
> *(2) Where, however, the Shebait refuses to act for the idol, or where the suit is to challenge the act of the Shebait himself as prejudicial to the interests of the idol, then there must be some other agency which must have the right to act for the idol. The law accordingly recognises a right in persons interested in the endowment to take proceedings on behalf of the idol."*
>
> *This view is justified by reason as well by decisions.*
>
> ***12.*** *Two cases have been cited before us which*

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took a contrary view. In Kunj Behari Chandra v. Shyam Chand Jiu, AIR 1938 Pat 384, it was held by Agarwala, J., that in the case of a public endowment, a part of the trust property which had been alienated by the Shebait or lost in consequence of his action could be recovered only in a suit instituted by a Shebait. The only remedy which the members of the public have, where the property had been altenated by a person who was a Shebait for the time being was to secure the removal of the Shebait by proceedings under S. 92 of the Code of Civil Procedure and then to secure the appointment of another Shebait who would then have authority to represent the idol in a suit to recover the idol's properties. So too, a Division Bench of the Orissa High Court in Artatran Alekhagadi Brahma v. Sudersan Mohapatra. AIR 1954 Orissa 11, came to the same conclusion. For the reasons given above, with great respect, we hold that the said two decisions do not represent the correct law on the subject."

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1949. We, therefore, answer Issue No. 1 (Suit-5) insofar as it relates to plaintiff no. 2 (Suit-5) that it is juridical persona and can sue or be sued through a next friend. However, this is subject to our further answer to the issues relating to birthplace of Lord Rama at disputed site in affirmance which we shall discuss separately.

1950. We could have answered about plaintiff no. 1 (Suit-5) also at this very stage but we intend first to consider the Issues No. 12 (Suit-4) and 3 (a) (Suit-5) and to find out their effect, if any, on the status of plaintiff 1 (Suit-5) and then shall give our final opinion thereon. The issue whether the idol in question and the object of worship were placed inside the disputed property

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or the building in the night of 22nd/23rd December, 1949 has to be considered in the light of the concept of the "building" or the "mosque" to the parties in the suit concerned.

1951. In para 2 of the plaint (Suit-4) the mosque has been denoted by the letters "A, B, C, D" which covers the entire area of outer and inner courtyard including the building (excluding the extreme south portion which is denoted by the word "Chabutara" on the west-south side and behind Ram Chabutara on east-south side on the map prepared by Sri Shiv Shankar Lal, Commissioner on 25.05.1950). No distinction has been made by the plaintiff (Suit-4) about the disputed building within the inner courtyard and the area and structure comprising the outer courtyard.

1952. This pleading has made the issue slightly complicated for the reason that onus lie initially upon the plaintiffs (Suit-4) to show that no idols whatsoever existed upto or before 22.12.1949 in this entire area A, B, C, D which they claim to be the "area of mosque". In fact to the same effect is their pleading in para 1 of the written statement in Suit-5 where defendant no. 4 (Sunni Board) says that, "*As a matter of fact there has never been any installation of the deity within the premises of disputed place of worship known as Babari Mosque and the idol in question was stealthily and surreptitiously kept in the mosque in the night of 22nd/23rd December, 1949."* The defendant no. 4 also deny the very existence of "Charan" or "Sita Rasoi" within the premises of Babari mosque but then in para 22 of the written statement (Suit-5) it says, *"there is no **Charan** or **Sita Rasoi** within the premises of Babari Mosjid and the place known as **Sita Rasoi** is situated outer side the premises of the said mosque."*

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1953. Sri Deoki Nandan Agarwal, who initially filed Suit-5 and was plaintiff no. 3 therein, made a statement under Order X, Rule 2 C.P.C. that the idols were kept under central dome inside the building in the night of 22nd/23rd December, 1949. He, however, admits his absence at the site on that day and stated that he got this information from Mahant Paramhans Ram Das, OPW-1. Sri Deoki Nandan Agarwal, however, added that the above placement inside the building of the idols was done after due ceremony. The above statement of Sri D.N. Agarwal could not have been controverted by the learned counsel for the plaintiffs (Suit-4). Though the process of *Pran Pratishtha* was tried to be inquired from OPW-1 during cross examination by learned counsels appearing for the Muslim parties in Suit-5 as is evident from pages 46, 58, 78 and 124, but no question has been asked from OPW-1 as to whether idol in question were placed under the dome with or without ceremony as stated by Sri Deoki Nandan Agarwal, plaintiff no. 3 (Suit-5) in his statement under Order X Rule 2 C.P.C. Therefore, the said statement remained uncontroverted particularly for the reason that none of the witnesses, i.e., PW 1 to 32 has claimed that he was present when the alleged incident of 22nd/23rd December, 1949 took place and none could say anything on this aspect either way.

1954. OPW-1, Mahant Paramhans Ram was also examined. He supported the version of placement of idol under the central dome, inside the disputed building, in the inner courtyard, in the night of 22nd/23rd December, 1949. OPW-1 has commenced his deposition in December 1999 and at that time his age was 90 years. On page 41 and 42, he stated about the incident of 1934 and said that a dome was damaged at that time:

> *"1934 की घटना में शिखर का आधा भाग (मध्य/बीच के शिखर) का टूटा था। बीच वाले शिखर का आधा भाग चारो तरफ से टूटा था। बीच वाले*

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शिखर के अतिरिक्त वहॉ स्थिति निर्माण का कोई अन्य भाग नहीं टूटा था।'' (पेज 41)

"In 1934 incident, the half portion of the dome(the middle/ central dome) was broken. The half part of the middle dome was broken from all sides. Except for the central dome, no other part of the construction situated there was broken." (ETC)

1955. On page 42 he said that when central dome was damaged in 1934, no idol of Ram Lala was present thereunder. He also said that people used to worship the place as also the pillars whereunder the images were affixed:

''जिस समय शिखर गिरा ***उस समय शिखर के नीचे रामलला की कोई मूर्ति नहीं थी शिखर की नीचे की भूमि पर पूजा पाठ होता था शिखर के नीचे जो खम्भे थे उसमें जो मूर्तियां लगी थी उनका लोग पूजा अर्चना करते थे*** *उन खम्भों में देवी –देवताओं की मूर्तियां थीं। मूर्तियों में हनुमान आदि देवों की मूर्तियां थी।* ***मध्य शिखर के नीचे कोई खम्भा नहीं था। मध्य शिखर के नीचे प्रसूति भूमि, जहां पर भगवान राम का जन्म हुआ था वह स्थान था।*** *मध्य शिखर के नीचे का जो भाग गर्भ गृह के रुप में था वह स्थान तथा उसके चारो तरफ उस स्थान को मैं गर्भगृह का स्थान मानता हूँ। तीनों गुम्बजों के नीचे की भूमि तथा परिक्रमा मार्ग की सम्पूर्ण भूमि गर्भगृह के अन्तर्गत थी।''(पेज 42)*

''When the dome collapsed, ***there was no idol of Ram Lala beneath it. 'Pooja-Paath' used to be performed on the land beneath the dome. People used to offer 'Pooja-Archana' to the idols carved out in the pillars beneath the dome;*** *those pillars had idols of male and female deities engraved in these pillars. The idols included those of demigods like Hanuman and so on. There was no pillar beneath the middle dome.* ***'Prasuti Bhumi' - the land where Lord Rama was born – was beneath the middle***

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dome. *I take the part beneath the middle pillar – which was in the shape of the sanctum sanctorum – as also the place surrounding it, to be the sanctum sanctorum. The sanctum sanctorum encompassed the land beneath the three domes and the entire land of the circumambulation path." (E.T.C.)*

1956. Then, about the placement of idols in 1949, he said:

''मूर्ति रखने का सन् शायद 1949 था।'' (पेज 108)

"The idols were placed probably in the year 1949."(E.T.C)

''जब मूर्ति रखी गई, तब ब्रम्हमुहूर्त था। ब्रह्ममुहूर्त का समय 12.00 बजे के पश्चात अर्थात रात्रि में तीन बजे के बाद ब्रम्ह मुहूर्त होता है।''

(पेज 108)

"It was 'Brahm Muhurt' when the idols were installed. 'Brahm Muhurt' is the time after mid night i.e. at 3 AM." (E.T.C)

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''जिस दिन मूर्ति रखी गई उसके आठ नौ रोज पहले से वहॉ पर जलसा चल रहा था। जलसा से मेरा तात्पर्य रामायण पाठ तथा अखण्ड कीर्तन से है। भवन के अन्दर तथा बाहर दोनों स्थानों पर रामायण पाठ हो रहा था। भवन के अन्दर भी लोग बैठे थे। ***उस समय जो लोहे के सीखचे दीवार में लगे थे, उसमें कोई ताला नहीं लगा था।*** *उन फाटकों में यह ताला मूर्ति रखने के एक – दो माह बाद लगाया गया अथवा साल भर बाद लगाया गया, यह मैं नहीं कह सकता।* ***यह कहना गलत है कि 22 दिसम्बर 1949 की रात में विवादित भवन के अन्दर के भाग में कोई पाठ नहीं हुआ।''*** *(पेज 109)*

"A function was going on for last 8-9 days, prior to the day of installation of the idols. By function I mean, recitation of Ramayana and Akhand (non-stop) 'Kirtan'. The recitation of Ramayana was taking place at both outside and inside of the structure. People were there inside the structure as well. ***At that time, no lock had been put at the iron grills in the walls.*** *I cannot tell whether*

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locks were put on those gates about one or two months or an year after installation of the idols. ***It is wrong to say that no recitation took place in the inner part of the disputed structure in the night of 22nd December, 1949."***

(E.T.C)

''22/23 दिसम्बर, 1949 को मैं प्रातः 7–8.00 बजे तक वहॉ पर रहा । वहॉ पर पुलिस पहले से थी तथा बराबर आती –जाती थी।

जिस दिन चमत्कार की घटना हुई, उस समय चमत्कार के रुप में प्रकाश के देखे जाने के बाद ही अर्थात लगभग 3.00 बजे ***रात में चबूतरे से मूर्ति को हटाकर गर्भगृह में स्थापित कर दिया गया।***

प्रश्न– जिस समय आप चमत्कार की बात कर रहे हैं, उस समय आप विवादित भवन के अन्दर थे अथवा बाहरी सहन में थे?

उत्तर– ***उस समय मैं बाहरी आंगन (आउटर कोर्टयार्ड) में था।''*** *(पेज 110)*

"I remained there till 7-8 AM on 22/23 December, 1949. Police was already present there and kept visiting regularly.

On the day of the miraculous incident i.e. just after seeing the light as a miracle, the idols were removed from the platform and installed in the 'Garbh-grih' (sanctum sanctorum) at about 3 AM.

Question:- Where were you at the time of the said miracle, whether inside the disputed structure or in the outer courtyard?

Answer:- At that time I was in outer courtyard."(E.T.C)

''23 दिसम्बर 1949 को ***जो मूर्ति चबूतरे से उठाकर शिखर के नीचे गर्भगृह में रखी गई,*** *वह पहले से ही प्राण–प्रतिष्ठित मूर्ति थी, उसकी प्राण प्रतिष्ठा मेरे सामने नहीं हुई। साक्षी ने स्वयं कहा कि* ***चबूतरे पर जो भी मूर्तिया थी उनकी प्राण प्रतिष्ठा पहले से हुई थी।''*** *(पेज 124)*

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"The idol placed in the sanctum sanctorum beneath the dome after being removed from the chabutara *on 23rd December, 1949, was deified from before; its deification did not take place in my presence. The witness himself stated-****Whichever idols were placed on the chabutara were deified from before."*** *(E.T.C.)*

"जिस स्थान को गर्भगृह बताता हूँ वह स्थान मेरे विश्वास के अनुसार तथा समस्त हिन्दुओं के अनुसार रामचन्द्र जी का जन्मस्थान है। ***23 दिसम्बर 1949 को चबूतरे से उठाकर जिस स्थान पर मूर्ति रखी गयी उसी को ही मैं जन्मस्थान मानता हूँ तथा मूर्ति रखने के पूर्व भी उसी स्थान को मैं जन्मभूमि मानता था।"***

(पेज 142)

"The place termed as 'Garbh-grih' (sanctum sanctorum) by me, is the birthplace of Ramchandra according to my belief and all the Hindus. ***The very place where the idols were placed on 23rd December, 1949, after being removed from the platform, is considered as Janmsthan by me and even before installation of the idols, that place was considered Janmbhumi by me."***

(E.T.C)

"जो मूर्ति चबूतरे से उठाकर बीच के शिखर के नीचे रख दी गयी उसमें एक बड़ी तथा एक छोटी मूर्ति थी दोनों मूर्तियां रामलला जी की थीं।" (पेज 143)

"The idols, which were removed from the platform and placed beneath the central dome, had one big and one small idol. Both the idols were of Ramlala." *(E.T.C)*

1957. The above statement of OPW-1 shows that idols were already there on the Chabutara which was in the outer courtyard prior to 1949 and were only shifted from that Ram Chabutara (outer courtyard) to the building under the central dome (inner courtyard). About the existence of idol on Ram Chabutara, he

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deposed on page 55 and 75:

> *''अनादि काल से रामचबूतरा इसीप्रकार रामलला की मूर्ति रामचबूतरे पर अनादि काल से स्थापित है।'' (पेज 55)*
>
> *"From time immemorial, the Ram Chabutara (has been) like this, the idol of Lord Ramlala has existed over the Ram Chabutara from time immemorial." (ETC)*
>
> *''जब मैं प्रथमवार अयोध्या आया तो उसके बाद से तथा उपरोक्त प्रण करने के बीच की अवधि में रामचबूतरे पर मैंने बराबर रामलला के दर्शन किया।'' (पेज 75)*
>
> *"Between my first arrival at Ayodhya and the aforesaid resolution, I regularly had darshan of Ramlala at Ramchabutara." (E.T.C)*

1958. Further, he claims to be an eye witness of shifting of idol from Chabutara to the inner courtyard, i.e., under the central dome.

1959. Sri D.N. Agrawal, plaintiff no. 3 (Suit-5) in his statement under Order X Rule 2 dated 30.04.1992 has said that the idols were kept under the central dome inside the building in the night of 22nd/23rd December, 1949 after due ceremonies. There is no evidence produced on behalf of the defendant no. 4 or 5 to disprove the above statement of plaintiff no. 3 or that of OPW No. 1.

1960. In fact none of the witnesses of plaintiffs (Suit-4), i.e., defendant no. 4 (Suit-5) was present in the night of 22nd/23rd December, 1949 on the disputed site when the alleged incident took place. They had no occasion to say either way as to whether the placement of idol was in accordance with due ceremonies of Hindu scriptures or not, whether the same was shifted from Ram Chabutara to the Central Dome or brought from outside. Though in the written statement of defendant no. 5 (Suit-5), para 28, it is said, *"However, Namaj has been offered in*

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the mosque in question after 23rd December 1949 also and Ajan has also been called." This statement, however, has not been supported by any of the witnesses produced by the plaintiffs (Suit-4) and defendant no. 4 (Suit-5). On the contrary, it is an admitted position that since 23rd December, 1949 no muslim person has entered the disputed premises (inner and outer courtyard) as also that the idols placed inside the building under the central dome are being continuously worshipped by Hindus.

1961. With respect to the term "mosque" used in plaint (Suit-4), statement by the counsel for the plaintiffs (Suit-4) was made on 28.08.1963 under Order X Rule 2 CPC that *"mosque lies in A B C D as shown in the plaint map (sketch map)."*

1962. Another statement dated 20.01.1964 under Order X Rule 2 CPC made by Mohd. Ayub counsel for plaintiff (Suit-4) before the Civil Judge, says:

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"बाबरी मस्जिद के रेलिंग के बाहर और सदर फाटक के बाउण्ड्रीवाल के अन्दर पूरब दक्खिन की तरफ एक 17 x 21 फीट का चबूतरा है जिस पर लकड़ी के स्ट्रैक्चर का एक वुडन टैम्पल बना है जिसमें कोई भी हिन्दू की मूर्तियां न कभी थी न अब तक है। वह जगह भी मुसलमानों की मास्क का हिस्सा है। . . . . . बाबरी मस्जिद के सदरी फाटक से अन्दर दाखिल होने पर उसके दाहिनी तरफ जो भी तामिरात है वह दिसम्बर 1949 के पहले वहां पर कभी नहीं थी। उन्हें दिसम्बर 1949 के बाद किसी ने तामीर कर लिया होगा। बाबरी मस्जिद के मेन बिल्डिंग के उत्तर तरफ चाहरदीवारी के अन्दर भी दिसम्बर 1949 तक कभी कोई तामीरात वराकम इमारत या चबूतरा वगैरह कभी नहीं रहे। उस जगह पर जो चबूतरा सीता रसोई के नाम से मुद्दालहम कहते हैं उसे दिसम्बर 1949 के बाद ही मुद्दालहम ने या किसी ने बनाया है।''

"on the outer side of railing of Babri mosque and inside the boundary of main gate towards south-east, there is a platform measuring 17/21 feet over which a wooden temple is built in wooden structure. No idols of Hindus ever

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existed nor exist inside the same. The place is also a part of mosque of Muslims.. . . .On entering through the main gate of Babri mosque, the construction lying on right side, were never in existence prior to December, 1949. The same must have been constructed by someone after December 1949. Towards north of main building of Babri Mosque inside the boundary wall, upto December 1949 A.D. there was never any construction or building or Chabutara etc. Over that place, the Chabutara termed as Sita Rasoi by the defendants has been constructed either by defendants or some else after December 1949." (E.T.C.)

1963. In para 5 of the plaint (Suit-4), the plaintiffs have tried to make a distinction between mosque and the building by stating that in the mosque but outside the main building of the mosque there was "Chabutara". It is thus evident that the case of the plaintiffs (Suit-4) is that inside the mosque (which they denote as A B C D) which means the inner and outer courtyard of the building, there was no idol prior to 22nd December, 1949 and it was placed surreptitiously in the night of 22nd/23rd December 1949.

1964. Most of the witnesses produced by Hindu parties have clearly stated that idols were kept on Ram Chabutara even before 1885 and that was being continuously worshipped by Hindus. Sita Rasoi and Bhandar in the outer courtyard also existed prior to 1885 and in any case before 22.12.1949.

1965. OPW 1 and OPW 2 have said that the idol of Ram Lala kept on Ram Ram Chabutara in the outer courtyard was placed in the inner courtyard under the central dome on 22nd/23rd December, 1949. This pre-supposes and admits the position that the idols of Ram Lala existed in the mosque denoted by the

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letters A B C D in Suit-4 since much before 22nd December, 1949 and was not kept in the mosque as denoted by the letters A B C D for the first time in the night of 22nd/23rd December, 1949. The premises known to the plaintiffs (Suit-4) as mosque already had the idols of Lord Ram Lala and in the night of 22nd/23rd December, 1949, was shifted from outer courtyard to inner courtyard. In the statement under order Order X Rule 2 CPC the plaintiffs through counsel have tried to dispute even the structures named as "Sita Rasoi" and "Bhandar" in the outer courtyard till 22.12.1949 though many of their witnesses have admitted their existence prior to the said date.

1966. It is an admitted case of the plaintiffs (Suit-4) that in Suit-1885 a map was prepared by the Court's Commissioner which is Exhibit A 25 (Suit-1). There, in the outer courtyard, three structures were shown, one on the north-west side termed as "Sita Rasoi", another on the east side but right to the eastern entry gate termed as "Chappar" or "Bhandar" and third on the east-south side which was called "Ram Chabutara" and which was the subject matter of Suit-1885. This map was never doubted in Suit 1885 by defendant no. 2 therein.

1967. PW 1, on page 24 of his statement, while admitting the said Chabutara measuring about 17x21 feet did not deny presence of idols thereon.

> *''इस चबूतरे पर हिन्दू देवताओं की मूर्ति आने जाने वालों को दिखायी नहीं देती। . . . . . .यह नहीं बता सकते कि चबूतरे पर मूर्तियां किसी लकड़ी के सिंहासन पर थी या नहीं मैं नहीं बता सकता।''*
>
> *"Idols of Hindu deities on this Chabutara are not visible to the visitors. ..... I cannot tell whether idols were seated on any wooden throne or not." (E.T.C.)*

1968. Thus, in the pleadings, they have tried to dispute the very existence of any structure of worship of Hindus even in the

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outer courtyard since their stand is that the idols were kept for the first time in the Mosque on 22nd/23rd December, 1949 and while saying so, they have treated the Mosque as a whole, i.e. denoted by letters ABCD in the map appended to plaint (Suit-4) which comprised of the entire area of inner courtyard and outer courtyard. This stand, we find, stood contradicted by their witnesses who have admitted not only the existence of certain structures in the outer courtyard but also visit of Hindus to those structures and is palpably wrong.

1969. The extract of relevant statement of some other witnesses of plaintiffs (Suit-4) are as under:

(a)PW-1, Mohd. Hashim

''पूरब के बाहरी दरवाजे से दक्षिण की तरफ जो चबूतरा है वह 17 x 21 फिट है। इसकी ऊँचाई एक मीटर है। इसके ऊपर छपपर पड़ा है।''

(पेज 24)

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"Towards the south of the outside gate in the east lies a chabutra measuring 17x24 feet. Its height is 1 metre. It has a thatched roofing." (E.T.C.)

''जब अयूब साहब के यहॉ लखनऊ नोटिस बनवाने आये थे तब तक यह छप्पर चबूतरे पर कायम था। मैंने नोटिस में छप्पर की बात इसलिए नहीं लिखवाई क्योंकि 1885 में दूसरे लोग मुकदमा हार चुके थे। (पेपर नं0 44क जो नोटिस अंग्रेजी में है उसको हिन्दी में तरजुमा करके गवाह को सुनाया गया और पूछा कि इस नोटिस में लिखा है कि चबूतरे पर लकड़ी का तम्बू नुमा स्ट्क्चर है यह सही है या नहीं। गवाह ने उत्तर दिया) यह अन्दर से था और जो नोटिस में लिखा है वह सही लिखा है। . . इसके बारे में मुझे नहीं मालूम कि चबूतरा 17 ग 21 वाला कब से कायम है। . . .इस चबूतरे के पूरब उत्तर की तरफ एक पेड़ था।'' (पेज 25–26)

''The chabutra had this thatched roofing till I went to the house of Ayub Sahib in Lucknow to get notice prepared. I did not get the thatched roofing mentioned in the notice because other people had lost the case in 1885. (Paper no.

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44Ka being a notice in English was read out to the witness after being translated into Hindi and a question was put to him as to whether or not it was mentioned in this notice that there is a wooden tent shaped structure on the chabutra. On being so queried, the witness replied) It was so from within, and what is written in the notice, is correct. . . . . .In this behalf I do not know from when the chabutra, with the dimension of 17x21, exist. . . . . Towards the east-north of this chabutra lay a tree." (E.T.C.)

''प्रश्न– पश्चिम की तरफ जब मस्जिद के लिए जाते थे तो चबूतरे को इसलिए नहीं देखते थे कि हिन्दू लोग पूजा करते थे?

उत्तर– हम वहदानियत और निरंकार को मानने वाले हैं इसलिए कोई तसवीर देखना नहीं पसंद करते।

प्रश्न– क्या आपको मालूम था कि चबूतरे पर तस्वीर या मूर्ति है जिससे आप उस तरफ नहीं देखते थे?

उत्तर– चबूतरे की बाबत मुकदमा हारा हुआ था इसलिए हम कोई तववजो नहीं देते थे।'' (पेज 26)

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"Question:- While going to the mosque towards the west, did you not see the chabutra because Hindus worshipped there?

*Answ*194*.er:- We believe in 'vahdaniyat' and 'nirankar' (formless God); that's why I do not want to see any picture.*

Question:- Did you know there to be a picture or idol, due to which you did not see towards that side?

Answer:- We had lost the case in connection with the chabutra, hence we did not attach any importance to it.''(E.T.C.)

''जो पहले मैंने कहा था पुजारी चबूतरे पर बैठते थे वह गलत है वहॉ पर कुछ लोग बैठते थे ओर यह बात सही हैं यह आम आदमी हिन्दू थे पर पुजारी या साधु नहीं थे ये लोग अयोध्या के नहीं थे। . . . . .मैंने सिर्फ एक नजर देखा और सिर्फ एक बार देखा'' (पेज 27)

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"My earlier statement that priests used to sit on the chabutra, is wrong. Some people used to sit there, and this fact is true. These ordinary people were Hindus, but not priests or saints. . . . . I threw just one glance and saw only once." (E.T.C.)

*"चबूतरे के उत्तर एक नीम का दरख्त था। . . . . . .**सन् 1949 में सीतारसोई फर्श के बराबर थी सीतारसोई पर चूल्हा चौकी बेलना चूने गारे का बना था वर्ष 1949 में।** . . . . . .शुरू में हम लोग भी उसको करीब से देखते थे उस समय कोई तनाव नहीं था। **उसको आम लोग सीता रसोई कहते थे।** हमने यह नहीं देखा कि आम लोग सीता रसोई का दर्शन करने जाते थे।" (पेज 27)*

*"There was a neem tree to the north of chabutra. . .**In 1949, Sita Rasoi was on a level with the floor. The 'chulha' (hearth), 'chauki' and 'belna' (rolling pin) at Sita Rasoi, was made of lime and brick powder in the year 1949.** . . In the beginning, we also looked at it from a close range. There was no tension at that time. **People in general called it Sita Rasoi.** We did not see general public going to have darshan of Sita Rasoi."(E.T.C.)*

*"**पूर्वी फाटक से अन्दर आने पर बाहरी दीवाल के अन्दर उत्तर तरफ एक लम्बा सा छप्पर था वह भण्डार पर था** या नहीं यह नहीं बता सकता। यह लम्बा सा छप्पर नीम के पेड़ के नीचे था लोग उस छप्पर में रहते थे पर मुझे नहीं मालूम कौन लोग रहते थे। **इस छप्पर के नीचे हिन्दू लोग रहते थे मुसलमान लोग नहीं रहते थे।** . . . . . कुर्क शुदा स्थान के **पश्चिम की तरफ जो परिक्रमा बनी थी** वह परिक्रमा के लिए नहीं दीवाल की मरम्मत के लिए बनी थी।" (पेज 31–32)*

***"On coming inside through the eastern gate there was a spacious shed towards the north inside the outside wall.** I cannot tell whether it was a store house or not. This*

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long shed was beneath the neem tree. People lived in the shed but I do not know who they were. ***Those who lived under this shed were Hindus, not Muslims****.. . . . . .* ***The Parikrama (circumambulation), which was built towards the west of the attached place****, was for the repair of the wall, not for parikrama." (E.T.C.)*

*''**कुर्क शुदा जायदाद की बाहरी दीवाल के अन्दर दो छप्पर थे एक चबूतरा पर था और दूसरा पूर्वी दीवाल से सटकर नीम के पेड़ के नीचे था।**'' (पेज 32)*

"Inside the exterior wall of the attached property were two sheds and a chabutra (rectangular terrace). Another chabutra was adjacent to the eastern wall and was beneath the neem tree*." (E.T.C.)*

*''**फोटो नं. 56 जायदाद मुतदाविया के बाहरी दीवार के पूर्वी गेट से अंदर जाने की बाद दक्षिण की तरफ जो 21 x 17 का चबूतरा है की है** । लेकिन उसमें 1949 के बाद तब्दीलियां की गयी थीं। . . . . . .फोटो नं. 57 उस लकड़ी के टेंटनुमा चबूतरे पर बनायी गयी चीज है जिसका जिक्र पहले आया है लेकिन उसे 1949 के बाद खूबसूरत बना दिया गया। पहले ये मामूली तरह से बना हुआ था बाद में इसे खूबसूरत बनाया गया था। पहले नहीं था बाद में बना होगा।''*

(पेज 62)

"Photograph no. 56 represents 21 x 17 chabutra which is seen in the southern side on going inside through the eastern gate of the outer wall of the disputed property. *But changes were effected after 1949. . . . . . Photograph no. 57 represents an object made on wooden tent-shaped chabutra which has found mention earlier but it was beautified after 1949. Earlier it had been constructed in an ordinary manner but later it was beautified. It did not exist earlier. It may have been constructed later." (E.T.C.)*

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''उस याचिका में मैंने 1885 के महन्त रघुबर दास के मुकदमें का तमाम जिक्र किया था। रघुबर दास अयोध्या के रहने वाले थे लेकिन मैं नहीं कह सकता कि निर्मोही अखाड़ा से उनका क्या ताल्लुक था। . . . . . .महन्त रघुबर दास बाबरी मस्जिद में बीच की दीवार के साथ जो चबूतरा था उसे मंदिर बनाने के दावेदार थे। मुझे मालूम नही कि रघुबर दास इस चबूतरा पर गैर कानूनी ढंग से काबिज थे। असगर अली उस मुकदमें में प्रतिवादी थे। यह ठीक है कि उस मुकदमें में ***असगर अली ने जवाबदावा दायर किया था और यह दलील दी थी कि 1857 की गदर में महन्त रघुबर दास ने जबरदस्ती कब्जा करके चबूतरा बनाकर उस पर एक लकड़ी का मंदिर बना दिया और उस पर यानी खाली चबूतरे पर पूजा–पाठ बतौर मंदिर के की जा रही है।*** *हमने उस दावे को नहीं पढ़ा इसलिए नहीं कह सकते कि असगर अली ने अपने जवाब दावे में लिखाया हो कि पूरब के दरवाजे से अन्दर आकर उत्तर की तरफ बैरागियों ने अपना भण्डार बना लिया हो या सीता रसोई बना ली हो या चकला, बेलन और चूल्हा बनाकर पूजा–पाठ करते हों।'' (पेज 67–68)*

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"In that petition, I had considerably made mention of the 1985 case of Mahanta Raghubar Das. Raghubar Das was a resident of Ayodhya but I cannot say what relation he had with the Nirmohi Akhara. . . . . . Mahanta Raghubar Das was claimant for the construction of a temple on the chabutra which stood along the central wall in the Babri mosque. I do not know whether Raghubar Das was an illegal occupant of this chabutra. Asgar Ali was a respondent in that case. It is true that Asgar Ali had filed reply in the said litigation and contended that in the 1857 revolt Mahanta Raghubar Das had forcibly captured and constructed a chabutra and had made a wooden temple thereon. On that, that is, on the vacant chabutra, pooja-paath is being performed as in a temple. I did not go through that claim; hence, I cannot say whether Asgar Ali

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had mentioned in his counter claim that on entering through the eastern gate the Bairagis (recluses) had constructed a store house towards the north or had constructed Sita Rasoi or they used to perform pooja-paath by constructing chakla (rolling disc), belan (rolling pin) and chulha (hearth).'' (E.T.C.)

''फिर कहा कि 1885 का दावा पूरे एरिया का था जिसे महंत रघुबर दास हार गये थे। मुझे उस मुतनाजा एरिया का रकबा मालूम नहीं हैं सीता रसोई के बारे में उस मुकदमें में कोई झगड़ा नहीं था वह मुकदमा सिर्फ चबूतरा के बारे में था जिसे वह मंदिर बनाना चाहते थे।''(पेज 72)

''(Again stated) The 1885 claim was for the whole area and Mahanta Raghubar Das lost it. I do not know the dimension of the disputed area. There was no dispute over Sita Rasoi in that case. This case was only in respect of the chabutra which he wanted to change into a temple.''(E.T.C.)

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''जो जगह चबूतरा की सूरत में हिन्दू लोगों के कब्जे मे है फिर कहा वहॉ हिन्दुओं का कोई कब्जा नहीं है तमाम जगह मस्जिद की है।''(पेज 113)

"The place being in the shape of chabutra is in the possession of Hindus. (Then stated) Hindus have no possession over there; most of the place belongs to the mosque.'' (E.T.C.)

''योग्य वकील साहब ने गवाह का ध्यान उसके बयान 6.8.96 वाले की ओर दिलाया जहां उसने कहा था ''चबूतरे पर छप्पर और तम्बूनुमा लकड़ी के मंदिर पर बाहर के एक दो लोग हिन्दुओं के रहा करते'', सुनकर गवाह ने जबाब दिया मैंने ऐसा बयान नहीं दिया मैंने यह कहा था कि पब्लिक के लोग बैठते थे और मैंने छप्पर के बारे में बयान दिया था मंदिर के बारे में नहीं कहा था।'' (पेज 126)

''When the learned counsel drew the attention of the witness to his 6.08.1996 statement wherein he had stated

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one or two Hindus used to reside at the shed and tent-like wooden temple on the chabutra, the witness responded, saying that he had not given any such statement and that the public used to sit there and that he had given a statement about the shed but not about the temple."(E.T.C.)

"यह गलत है कि कुर्क होने के पहले भी अन्दर पूजा या दर्शन के लिए किसी पर पाबन्दी नहीं थीं 1885 के बाद वहॉ पूजा पर जाने का कोई मतलब ही नहीं था।" (पेज 163)

"It is wrong that before the attachment there had been no restriction on anybody's offering prayer or having darshan inside. There were no cause at all to go there to perform pooja after 1885." (E.T.C.)

'मैंने मिसल दावा नम्बर 1/89 में लगा हुए ***नक्शा*** *जो लटठा पर तैयार किया गया है,* ***देख लिया है,*** *यह 1885 वाले मुकदमें की मिसल से लिया गया है, उसकी* ***सही नकल है*** *और यह मुसद्दका है,* ***यह एक्जि0 ए–25 है। यह नक्शा सही हैं*** *खुद कहा कि* ***इसी नकशे का बुनियाद पर हमारे हक में डिकी 1885 में पास हुई थीं।"*** *(पेज 166)*

"I have ***seen the map*** *prepared on the cotton plot and filed on the record of claim no. 1/89. It is taken from the record of the 1985 case;* ***it is its true copy*** *and it is certified and* ***it is exhibit no. A-25. This map is correct****. (Himself stated)* ***On the basis of this very map a decree was passed in 1885 in our favour****." (E.T.C.)*

"सिर्फ यही चबूतरा 1885 के मुकदमा में सम्मिलित मुतनाजिया था, विवादित था। ***इस नक्शे में जो बाकी जायदाद या दूसरी विशेष चीजें दिखाई गई हैं, उनके बारे में कोई तनाजा या विवाद नहीं था।*** *यह ठीक है कि महन्त रघुबर दास ने 1885 वाले मुकदमें में इस चबूतरे पर मन्दिर बनाने की इजाजत मॉगी थी।" (पेज 167)*

"Only this very chabutra was involved and disputed

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in the 1885 case. ***There was no dispute over the rest of property or other particular things shown in this map.*** *It is true that Mahanta Raghubar Das had by means of the 1885 case sought permission for construction of temple on this chabutra." (E.T.C.)*

(b)PW-2, Hazi Mahboob Ahmed

*''**सीता रसोई का चुल्हा चौका बेलना हम लान में देखा करते थे जब हम मस्जिद में जाते थे। . . . लोग कहते थे कि यह सीता रसोई है।** मैंने वहॉ पर किसी को दर्शन करते जाते नहीं देखा।'' (पेज 54)*

*''**When we went to the mosque, we saw chulha (hearth), chauka, belna (rolling pin) of Sita rasoi (Sita's kitchen). . . . . People said that it was Sita Rasoi.** I did not see anybody going there for darshan." (E.T.C.)*

'यह मालूम है मुझे कि बाहर का लान, चबूतरा और सीता रसोई का मुकदमा 1884 में चला था।'' (पेज 62)

''I know that a case went on in 1884 in connection with the outside lawn, chabutra and Sita Rasoi." (E.T.C.)

''प्रश्नः– क्या यह समझा जाये कि सीता रसोई चबूतरा और छप्पर से मुसलमानों को कोई ताल्लुक नहीं था?

उत्तर– जी नहीं, वह जमीन हमारी थीं

***वहॉ उस लान में हिन्दू लोग आते जाते जरूर थे।** मैं नहीं बता सकता कि वह क्या करने आते जाते थे।'' (पेज 89)*

''Question:- Should I have the impression that Muslims had no concern with Sita Rasoi, Chabutra and shed ?

Answer:- No, Sir. That land was ours.

The Hindus certainly frequented the lawn there. *I cannot say what was the purpose of their doing so."(E.T.C.)*

*''**सीता रसोई** वहां से कितनी दूरी पर थी मैं नहीं बता सकता*

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*लेकिन वह **वहीं पर थी** और लान की लम्बाई और चौड़ाई मैं पहले ही बता चुका हूं।'' (पेज 98)*

*"But I cannot tell how much away **Sita Rasoi** was from there. But it **was at that very place** and I have already told the length and width of the lawn." (E.T.C.)*

''जब हम मस्जिद में दाखिल होते थे तो सहन में बायी तरफ एक चबूतरा था। वह चबूतरा कम्पाउण्ड के बीच मे था बायी तरफ। यह चबूतरा 21 X 17 स्कवायर फुट के करीब था।'' (पेज 115)

"When we entered the mosque, there was a chabutra (rectangular terrace) to the left of court-yard. The chabutra was in the middle of the compound and was towards the left. This chabutra was nearly 21x17 square feet." (E.T.C.)

''इस चबूतरे पर कुछ नहीं होता था यह खाली पड़ा रहता था कभी कभी लोग इस पर बैठे नजर आते थे। इस पर एक फुस का छप्पर भी रखा गया था।'' (पेज 115)

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"Nothing was done on this chabutra. It remained vacant. People were sometimes seen sitting on it. It also had a thatched roof." (E.T.C.)

(c)PW-3, Farooq Ahmad

*''अयोध्या में हिन्दू मेले होते हैं जैसे कि रामनवमी, परिक्रमा मेला और सावन मेला, इन मेलों पर हिन्दू लोग इकट्ठा होते हैं ये लोग मस्जिद भी देखने आया करते हैं। **इस चबूतरे को देखने की गरज से बहुत से हिन्दू और मुस्लिम लोग सभी जाते हैं।** ऊपर बताये गये मेलों के वक्त इकट्ठा होने वाले हिन्दू लोग खास तौर से इस चबूतरे पर नहीं जाते क्योंकि वहॉ कोई चढ़ावा नहीं है। **मेले के वक्त भी हर मजहब के लोग चबूतरा देखने आते थे।** . . ..यह गलत है कि इस छप्पर में लकड़ी का और चॉदी का मढ़ा हुआ तम्बूनुमा कोई मंदिर भी बना हुआ हो।'' (पेज 29)*

''Hindu fairs are held at Ayodhya such as Ramnavami, Parikrama Mela and Sawan Mela. Hindus

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gather in these fairs. They also come over to see the mosque. Many Hindus and Muslims used to come over to see this platform (Chabutara). The Hindus assembling at time of the said fairs, did not particularly visit this platform (Chabutara) because there was no offering (chadhawa). ***Even on occasion of the fairs, people of all religions used to come to see the platform (Chabutara)****. . . . . It is wrong that there was any tent like temple covered by silver and made of wood, under this thatched roof."*

(E.T.C)

"रंगीन फोटो का एलबम की ओर दिलाया फोटो नं0 57 को देखकर गवाह ने जबाब दिया ***यह फोटो उसी चबूतरे और छप्पर का है*** *जिसका जिक्र चल रहा है लेकिन इसमें बहुत सी ऐसी चीजें दिखायी गयी है जो उन दिनों वहॉ पर नहीं थी।" (पेज 30)*

"(On looking at photograph no. 57 of the colored photo album, the witness stated) ***this photograph is of the same platform (Chabutara) and thatched roof,*** *which are currently being discussed, but it has many such things in it which were not there in those days." (E.T.C)*

"राम नाम का जब कीर्तन होता था तो हम भी खड़े हो जाते थे राम नाम ले लेते थे राम अल्लाह और खुदा सब एक ही हैं।" *(पेज 36)*

*"****Whenever the Kirtan in the name of Rama was performed, we also used to stand up, take the name of Rama. Rama, Allah and Khuda are all same.****" (E.T.C)*

"ये ठीक है कि ***इस एलबम में लगाए गए तमाम फोटो हमारे वकील साहब की मौजूदगी में खींचे गए थे। ये तमाम फोटोज विवादित जमीन और जायदाद के हैं।"*** *(पेज 61)*

"It is true that ***all the photographs contained in this album, had been taken in the presence of my counsel. All these photographs are of the disputed land and***

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property." *(E.T.C)*

*''**जो चकला बेलन और चूल्हा के निशानात बने थे, वह हमने 1949 से पहले भी देखे थे।**'' (पेज 95)*

*"**The existing marks of chakla, belan and hearth (chulha), had been seen over there by me even before 1949."** (E.T.C)*

(d)PW-4, Mohd. Yasin

*''मेरी होश में इन जगहों पर यानी मस्जिद के बाहरी सहन में कभी कोई हिन्दू नहीं आता था। **मैंने किसी हिन्दू को न कभी चकला बेलना के पास देखा और न ही ऊपर बताये गये उत्तरी या दक्खिनी छप्पर के पास देखा।**'' (पेज 18)*

*"In my memory, no Hindu ever came to these places i.e. in the outer courtyard of the mosque. **I never saw any Hindu near the Chakla-Belna nor near the aforementioned northern or southern thatched roof."***

(E.T.C)

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(e)PW-6, Mohd. Yunus Siddiqui

*''यह मैंने जान लिया था कि यह **चबूतरा 1885 से चला आ रहा था।**'' (पेज 11)*

"I came to know that this chabutra had been in existence since 1885."(E.T.C.)

(f)PW-7, Sri Hashmat Ullah Ansari

*''इस **बाहरी सहन में जहॉ ये चबूतरे थे कभी नमाज नहीं पढी गयी।**'' (पेज 30)*

***"Namaz was never offered at the place where these Chabutras (raised platforms) were built in** this **outer courtyard."** (E.T.C.)*

*''यह ऊपर बताया गया **चबूतरा मस्जिद में शामिल नहीं था। इस चबूतरे पर दूसरे लोग यानी हिन्दू लोग बुत रखने से पहले भजन–कीर्तन बगैरह किया करते थे।**'' (पेज 85)*

"This Chabutra**, mentioned above, **did not form

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part of the mosque. Other people, that is, Hindus, before laying idol, used to perform 'Bhajan-Kirtan', etc. on this Chabutra." *(E.T.C.)*

(g)PW-8, Sri Abdul Aziz

''वहॉ पर एक चबूतरा था जो दक्खिन की तरफ था उस पर कोई लकड़ी का सिंहासन नहीं था वह चबूतरा खाली था। पूर्वी फाटक से अन्दर दाखिल होने पर यह चबूतरा बाये हाथ की ओर आता था।'' (पेज 43)

''There was a platform towards south. It did not have any wooden throne over it. The platform was vacant. On entering through the eastern gate, this platform lay on the left side.'' (E.T.C)

(h)PW-23, Mohd Qasim Ansari

''यह नक्शा भी ठीक है पर इसमें जो राम चबूतरा या सीता रसोई या अन्य बातें लिखी हैं उसे मैं नहीं मानता। ***इस नक्शे में जहां चबूतरा दिखया गया है वह चबूतरा तो था पर इसमें जो राम चबूतरा लिखा गया है वह गलत है इसी प्रकार इस नक्शे में दिखायी जगह तो उस समय भी थी पर इसमें जो नाम दिखाया गया है वह गलत है।''*** *(पेज 42)*

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''This map is also correct, but I do not take to be correct Ram Chabutra or Sita Rasoi or other things that are marked herein. ***There was certainly a Chabutra but marking it as Ram Chabutra herein is incorrect. In this very manner, the place shown in this map existed at that time also but the name shown herein is incorrect****.''(E.T.C.)*

1970. Almost all the witnesses produced on behalf of the Hindu parties, other than those who have appeared as experts, have stated that they were worshipping the idols of Lord Rama at Ram Chabutara since much earlier from 1949 besides Sita Rasoi where there were images of Chakla, Belan, Chulha etc. Only witnesses of Nirmohi Akhara, i.e., DW 1 to DW 3/20 have

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also added and claimed that they also worshipped the idols inside the building under central dome in the inner courtyard since Nirmohi Akhara is claiming the building as temple throughout and existence of idols therein simultaneously.

1971. Be that as it may, in view of the overwhelming evidence as also the evidence of Muslim side, we have no manner of doubt that in the outer courtyard, there existed at least three structures; (1) A Chabutara, called as 'Ram Chabutara'; (2) A Chhappar, termed as 'Bhandara' on north east side of gate of outer boundary wall and a place called as 'Sita Rasoi' or 'Kaushalya Rasoi' or "Chhathi Pooja Sthal" on the north west side. All these three places existed since prior to 1885 inasmuch in Suit-1885 Commissioner's map denoted all these places and existence thereof in the map is not disputed, though the terminology used is sought to be disputed by some of witnesses of the Muslim parties. Further in the map prepared by Sri Shiv Shankar Lal, Pleader, submitted to the Court along with his report on 25.5.1980, these three places have been shown. In the objections filed by the defendants no. 1 to 5 (Suit-1) at that time, we find that there is no allegation regarding wrong preparation of the map but what was objected is that in respect to certain parts, nomenclature given by Sri Shiv Shankar Lal was not acceptable to them. In this context, it was observed by the Civil Judge, Faizabad in his order dated 20.11.1950 admitting Commissioner's report as evidence, that the nomenclature given by Sri Shiv Shankar Lal shall not be final and shall be considered in the light of the evidence adduced by the parties.

1972. Now in Suit-4 the pleadings of the plaintiffs are that the idols and object of worship were placed inside the "building" in the night intervening 22nd/ 23rd December, 1949 as

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alleged in para 11 of the plaint and the term "building" according to the averments made in the plaint means the area denoted by letters ABCD in the map appended to the plaint. This area covers the entire disputed area, i.e., outer courtyard and inner courtyard. It is not their case that the idols though existed inside the said building but were kept under the three dome structure for the first time on 22nd/23rd December 1949. In view of the fact that three non-Islamic structures were continuing in the outer courtyard for the last several decades and used to be visited by the Hindus for worship, onus lies upon them to prove that in this entire building which they claim to be the area covered by the letters ABCD in the map appended to the plaint (Suit-4) no idol at all ever existed before 23rd December 1949. They have miserably failed to prove it.

1973. The case of the plaintiffs (Suit-5) and other Hindu defendants (except Nirmohi Akhara) is very clear that the idols were already present on Ram Chabutara in the outer courtyard and in the night of the 22nd/23rd December 1949, the same were placed under the central dome of three dome structures in the inner courtyard. There is enough evidence to prove, as per the above discussion, that the idols kept at Ram Chabutara were being worshipped by Hindus since a long time. No doubt or dispute has ever been raised earlier about the consecration of those idols, nor in the present cases it is pleaded that those idols (at Ram Chabutara) were not consecrated in accordance with the Shastrik procedure.

1974. Sri Deoki Nandan Agarwal in his statement under Order X Rule 2 has also said that idol which was kept under the central dome in the three dome structure in the inner courtyard on 22nd/23rd December 1949 was a *Chal Vigrah* and this

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statement he has made again on the basis of the information received from OPW 1. We find from a perusal of the cross examination of OPW 1 that on this aspect and in respect to the idol so placed, no question has been asked whether the statement of Sri Deoki Nandan Agarwal on this aspect is correct or not and whether OPW 1 gave this information to him or not. This statement of plaintiff 3, Sri D.N. Agarwal, therefore, remained uncontroverted.

1975. The existence of Ram Chabutara and Sita Rasoi in the precinct of disputed site since long in our view cannot be doubted though a serious attempt has been made on this aspect also. We presume at this stage that the building in dispute was constructed in 1528 AD at the command of Babar by Mir Baqi. The dividing wall having windows etc. was not constructed at that time. This partition was made after 1855 AD as they claimed. The suggestion of pro mosque parties is that the alleged Chabutara came into existence sometime between 1855 to 1860 and despite some orders passed by the authorities of the then Government, for removal of the said Chabutara the same continued to exist and was not removed, but this also, we find, has not been proved.

1976. The fact remains that it is now a established fact which is not challenged by the Muslim parties that the Chabutara on the south eastern side of the disputed building has been continuing atleast from 1857 and onwards. Though an attempt has been made to dispute whether any idol was kept on the said Chabutara and whether worship was continuously going on thereat but this also has not been proved. On the contrary, we find that there is abundant evidence to show that Hindus were worshipping the said Chabutara believing that it symbolises and

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depicts the birthplace of Lord Rama and that some idol(s) also existed thereat.

1977. There are documentary as well as oral evidence available on record some of which we discuss hereinafter.

1978. The application dated 25.09.1866, **Exhibit A-13 (Suit-1) (Register 6, page 173-177)** submitted by Mohd. Afzal, Mutawalli Masjid Babari situated at Oudh says:

> *''करीब महीना के अर्सा होता हैं कि तुलसीदास वगैरा बैरागियान जनम स्थान ने एक छोटी सी कोठरी ब–इरादा रखने मूरत वगैरा के चोरी से पहर भर के अर्सा में अन्दरून इहाता तय्यार करली ..... शबाशब हमा चबूतरा बैरागियान ने बनवालिया उसके बन जाने से किस कदर फसाद बढ़ गया अब छोटी कोठरी बनाई है ..... अर्ज हाल करके उम्मीदवार इंसाफ हूं कि वास्ते गिराने कोठरी मजकूर के हुक्म हुजूर सादिर हो कि फसाद बैरागियान से मस्जिद महफूज़ रहे वाजिब था अर्ज किया।''*
>
> *"About a months back the respondents Tulsidas etc. with the intention of planting idols etc in it have constructed a Kothri in an illegal way, within the compound of the Masjid.....**Bairagiyan got the Chabootra constructed overnight**. Because of this construction, there occurred so much rioting in the local populace. Now a small Kothri has been constructed. ..... it is requested that before the riot is created by Bairagis this Kothri may kindly be dismantled and the Masjid may be protected from the fury of Bairagis." (E.T.C.)*

1979. **Exhibit 30 (Suit-1) (Register 5 page 107-116-C)** is a copy of an application of 1877 seeking execution of the order dated 7th November 1873 for removal of the idol, i.e., Charan Paduka said to have been created in the disputed building. A perusal of the said document shows that despite the order having been passed on 7th November 1873 the same continued to exist and was not removed. In para 6 it says:

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یعنی ابھی تک وہ مورتی مطابق حکم حضور نہیں اٹھای گی۔
.....چنانچہ اندر احاطہ مذکور کے جو چولہ بنایا ہے اور رسوی کرتا ہے کہ یہ امر پہلے کبھی نہ ہوا وہاں فقط ایک چھوٹا چولہا واسطے پوجہ کے لاءق تھا۔ اسکو بھی اسنے واجبے کر لیا ہے۔

''यानी अभी तक वह मूरत मुताबिक़ हुकम हुज़ूर नहीं उठाई गई .....चुनांचे अन्दर अहाता मज़कूर के चूलहा बनाता है और रसोई करता है कि यह अम्र पहले कभी न हुआ वहां फ़क़त एक छोटा सा चूलहा वास्ते पूजा के साबिक़ में था उस को भी उस ने वसीअ कर लिया है।''

"That is to say that as per orders the idol has not yet been removed. ..... So he has made a Chulha within the said compound which has never been done before. There was a small Chulah for puja which he has got extended." (E.T.C.)

1980. Besides, it also shows that in 1877 there also existed a Chulha in the aforesaid premises, complaint whereof was also made.

1981. Exhibit 15 Suit 1 (Register 5 Page 41-43) : It is a copy of the report dated Nil of Deputy Commissioner Faizabad submitted pursuant to the Commissioner Faizabad's order dated 14th May, 1877 passed in Misc. Appeal No.56, Mohd. Asghar Vs. Khem Dass. This report appears to have been called by the Commissioner in respect to a complaint made against raising of a doorway in the northern wall of the disputed building. The justification thereof was to provide a separate room on fair day to visitors to the Janam Asthan. The document being old there appears to be certain mistakes may be on account of legibility. It reads as under:

"A doorway has recently been opened in the wall of the Janum-Ashtan not at all in Baber's mosque, but in the wall which infront is divided from the mosque by a railing. This opening was necessary to give a separate route on fair days to visitors to the Janum-Asthan. There was one

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opening only, so the cruch (sic:rush) was very great and life was endangered. I marked out the spot for the opening myself so there is no need to depute any Europe officer. This petition is merely an attempt to annoy the Hindu by making it dependent on the pleasure of the mosque people to open or close the 2nd door in which the Mohammedans can have no interest.

2. No objection was made to the opening of this second door.

3. On the 10th November 1873 Baldeo Das was ordered in writing by the Deputy Commissioner to remove an image place on the janam-Asthan platform. A report was made by someone (probably a police officer) that he had gone to the house of Baldeo dass and found that the latter had gone to Gonda. The order was explained to Gyandas and other priests who said could not carry out the order. The order passed on this (15) was that if the other party (i.e. the complainant) would name person on whom an order of removal could be served-such should be served.

(c) There apparently the matter rested. There is no later on the file."

1982. Pursuant to this report, the Commissioner decided the appeal on 13th December, 1877, and rejected the same. The copy of the said order is **Exhibit 16 (Suit-1) (Page 45 Register 5)** and it reads as under:

"As the door in question was opened by the Deputy Commissioner in the interests of the public safety I decline to interfere. Appeal dismissed."

1983. Exhibit 34 (Suit-1) (Register 5 page 131) is a copy of the order dated 12.01.1884 passed by Assistant Commissioner,

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Faizabad. It says as under:

> *"..... **The outer door will be left open. No lock will be allowed upon it. It is absolutely essential to observe the strictest neutrality and maintain the status quo."***

1984. This shows that in order to prevent any obstruction to anyone from entering the disputed premises he directed for not keeping lock on the doors and left the same open.

1985. **Exhibit 17 (Suit-1)(Page 47-53 Register 5)** is a copy of a judgment dated 18th June, 1883 passed by Sri Hari Kishan, Sub-Judge, Faizabad in Suit No.1374/943 of 1883 dismissing the claim of Syed Mohd. Asghar filed against Raghubar Dass claiming rent for user of *Chabutara* and *Takht* which admits the possession of Raghubar Das but failed to sustain his claim for rent.

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1986. The aforesaid documents disprove the claim of Muslims. It appears that Mohd. Asghar in Suit No. 1374/943 of 1883 produced a witness namely Ganga Prasad, Qanungo, who made some statement in favour of Mohd. Asghar but the same was disbelieved by the Sub Judge. He also severely castigated the conduct of the said Qanungo, an official of the Government, making statement in favour of a private party in a private dispute which was not supported by any documentary evidence though the nature of the dispute warranted some documentary evidence.

1987. **Exhibit 18 (Suit-1)(Page 55-57 Register 5)** is an application dated 2nd November, 1883 of Mohd. Asghar showing himself as Mutawalli and Khatib Masjid Babari situated at Oudh complaining that he is entitled to get the wall of the mosque white-washed but is being obstructed by Raghubar Das though

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he has right only to the extent of *Chabutara* and *Rasoi* but the wall and the gate etc. is part of the mosque and the complainant is entitled to get it white-washed. The order passed on the said application is Exhibit 27 (Suit-1) (Page 95-97 Register 5). The Assistant Commissioner Faizabad passed the following order dated 22nd January, 1884:

آجمقدمہ می فرد فریقین پیش ہوا فریقین کو حکم
صاحب ڈپٹی کمیشنر سے اطلع دی گی اور رگھوبر داس کو فھمایش کی
گی کہ اندورنی بہ بیرہونی احاطہ و دروازہ مسجد کی مرمت وغیرہ نہ
کریں اور محمد اصغر کو سمجھا دیا گیا کہ بیرونی دروازہ کفل نہ
لگایا جاوے یہ نہایت ضروری ہے کہ عمل درآمد قدیم بحال رکھا جاوے
اور کوءی دست اندازی و مداخلت نہ کی جاوے-
حکم ہوا کی
کاغذات ھذا داخل دفتر ہو المرقوم '

''आज मुकदमा बहाजिरी फरीकैन पेश हुआ फरीकैन को हुक्म साहब डिप्टी कमिश्नर से इत्तिला दी गई और रघुबर दास को फहमाइश की गई कि अन्दरुनी व बैरुनी अहाता व दरवाजा मसजिद की मरममत वगैरह न करें और मुहम्मद असगर को समझा दिया गया कि बैरुनी दरवाजा कुफ्ल न लगाया जावें यह निहायत जरुरी है कि अमल दरामद कदीम बहात रखा जावें और कोई दस्त अन्दाजी व मदाखलत न की जावे ।

हुक्म हुआ कि

कागजात हाजा दाखिल दफ्तर हो अल्मरकूम''

(Hindi Transliteration)

Today the case was put up in the presence of the parties, who have been informed of the orders of the Deputy Commissioner and Raghubar Das has been restricted not to repair the inner or outer portion of the Masjid and Mohammad Asghar has been admonished that the outer gate of the Masjid should not be locked. This was important that long tradition should be maintained and no intervention should be done in it. Ordered these papers

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should be consigned to office." (E.T.C.)

1988. Exhibit A-25 (Suit-1) (Register 7, page 277-281) is a copy of a map prepared and submitted on 06.12.1885 by Sri Gopal Sahai Amin, Court's Commissioner appointed by Sub-Judge, Faizabad in Suit-1885 of the disputed place. It mentions in the outer courtyard, existence of Sita Rasoi and Ram Chabutara and this has continued to exist in the outer courtyard even in 1950 as is evident from the map prepared by Sri Shiv Shankar Lal Pleader, Commissioner appointed by Civil Judge, Faizabad in Suit-1 submitted on 25.05.1950.

1989. So far as the existence of Sita Rasoi which was on the north west side in the outer courtyard is concerned, nothing has come on record to show as to when it was actually constructed. On the contrary, the record shows that it existed prior to 1885. Its actual time and period when it was constructed is unascertainable. It is beyond comprehension that Mir Baqi or anyone else, while constructing a mosque at the disputed place could have spared some Hindu structure(s) to continue, may be smaller in size, in the precinct of mosque so as to be worshipped by Hindus inside the premises of mosque. We put this question to Sri Jilani also and he frankly stated that no Muslim would allow idol worship in the precinct of a mosque.

1990. Considering the evidentiary admissions in **Avadh Kishore Dass Vs. Ram Gopal (supra)** the Court said:

> *"It is true that evidentiary admissions are not conclusive proof of the facts admitted and may be explained or shown to be wrong, but they do raise an estoppel and shift the burden of proof on to the person making them or his representative-in-interest. Unless shown or explained to be wrong, they are an efficacious proof of the facts admitted."*

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(para 23)

1991. In **Sitaramacharya Vs. Gururajacharya, 1997(2) SCC 548** the Court said:

> *"Under Section 18 of the Evidence Act the admission made by the party would be relevant evidence. Section 31 provides that "admissions are not conclusive proof of the matters admitted but they may operate as estoppel under the provisions hereinafter contained". In view of the admissions referred to earlier they appear to be unequivocal and the finding recorded by the appellate Court is cryptic. On the other hand, the trial Court has gone into the evidence on issues in extenso and considered the evidence and the appellate Court has not adverted to any of those valid and relevant consideration made by the trial Court. The High Court has dismissed the second appeal holding that they are findings of fact recorded by the appellate Court on appreciation of evidence. We think that the view taken by the High Court is not correct in law. The admissions in the written statement in the earlier proceedings, though not conclusive, in the absence of any reasonable and acceptable explanation, it is a telling evidence heavily loaded against the respondent." (para 6)*

1992. In **United India Insurance Co. Ltd. and another Vs. Samir Chandra Chaudhary, 2005(5) SCC 784** the Court said:

> *"Admission is the best piece of evidence against the persons making admission. As was observed by this Court in Avadh Kishore Das v. Ram Gopal and Ors., AIR (1979) SC 861 in the backdrop of Section 31 of Indian Evidence Act, 1872 (in short the `Evidence Act') it is true that evidentiary admissions are not conclusive proof of the facts*

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admitted and may be explained or shown to be wrong; but they do raise an estoppel and shift the burden of proof placing it on the person making the admission or his representative-in-interest. Unless shown or explained to be wrong, they are an efficacious proof of the facts admitted. As observed by Phipson in his Law of Evidence (1963 Edition, Para 678) as the weight of an admission depends on the circumstances under which it was made, these circumstances may always be proved to impeach or enhance its credibility. The effect of admission is that it shifts the onus on the person admitting the fact on the principle that what a party himself admits to be true may reasonably be presumed to be so, and until the presumption is rebutted, the fact admitted must be taken to be established. An admission is the best evidence that an opposing party can rely upon, and though not conclusive is decisive of matter, unless successfully withdrawn or proved erroneous. (See Narayan Bhagwantrao Gosavi Balajiwale v. Gopal Vinayak Gosavi and Ors., AIR (1960) SC 100)." (para 11)

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1993. In **Mahendra Manilal Nanavati Vs. Sushila Mahendra Nanavati, AIR 1965 SC 364** the Court said:

"The provisions of the Evidence Act and the Code of Civil Procedure provide for Courts accepting the admissions made by parties and requiring no further proof in support of the facts admitted." (para 22)

"23. Section 58 of the Evidence Act inter alia provides that no fact need be proved in any proceeding which the parties thereto or their agents agree to admit at the hearing or which by any rule of pleading in force at the time they

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are deemed to have admitted by their pleading. Rule 5 of O. VIII, C.P.C., provides that every allegation of fact in the plaint, if not denied specifically or by necessary implication or stated to be not admitted in the pleadings of the defendant, shall be taken to be admitted except as against a person under disability."

"24. Both these provisions, however, vest discretion in the Court to require any fact so admitted to be proved otherwise than by such admission. Rule 6 of O. XII of the Code allows a party to apply to the Court at any stage of a suit for such judgment or order as upon the admissions of fact made either on the pleadings or otherwise he may be entitled to, and empowers the Court to make such order or give such judgment on the application as it may think just. There is therefore no good reason for the view that the Court cannot act upon the admissions of the parties in proceedings under the Act."

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"25. Section 23 of the Act requires the Court to be satisfied on certain matters before it is to pass a decree. The satisfaction of the Court is to be on the matter on record as it is on that matter that it has to conclude whether a certain fact has been proved or not. The satisfaction can be based on the admissions of the parties. It can be based on the evidence, oral or documentary, led in the case. The evidence may be direct or circumstantial."

"29. . . it is quite competent for the Court to arrive at the necessary satisfaction even on the basis of the admissions of the parties alone. Admissions are to be ignored on grounds of prudence only when the Court, in the circumstances of a case, is of opinion that the

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admissions of the parties may be collusive. If there be no ground for such a view, it would be proper for the Court to act on those admissions without forcing the parties to lead other evidence to establish the facts admitted, unless of course the admissions are contradicted by the facts proved or a doubt is created by the proved facts as regards the correctness of the facts admitted."

1994. In **State of Bihar and others Vs. Sri Radha Krishna Singh and others, AIR 1983 SC 684** various aspects of the Evidence Act came to be considered. With respect to genealogy the Court said:

"18. . . . . the plaint genealogy is the very fabric and foundation of the edifice on which is built the plaintiff's case. This is the starting point of the case of the plaintiff which has been hotly contested by the appellant. In such cases, as there is a tendency on the part of an interested person or a party in order to grab, establish or prove an alleged claim, to concoct, fabricate or procure false genealogy to suit their ends, the courts in relying on the genealogy put forward must guard themselves against falling into the trap laid by a series of documents or a labyrinth of seemingly old genealogies to support their rival claims."

"19. The principles governing such cases may be summarized thus:

(1) Genealogies admitted or proved to be old and relied on in previous cases are doubtless relevant and in some cases may even be conclusive of the facts proved but there are several considerations which must be kept in mind by the

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courts before accepting or relying on the genealogies:

(a) Source of the genealogy and its dependability.

(b) Admissibility of the genealogy under the Evidence Act

(c) A proper use of the said genealogies in decisions or judgments on which reliance is placed.

(d) Age of genealogies.

(e) Litigations where such genealogies have been accepted or rejected.

(2) On the question of admissibility the following tests must be adopted:

(a) The genealogies of the families concerned must fall within the four-corners of s.32 (5) or s. 13 of the Evidence Act.

(b) They must not be hit by the doctrine of post litem motam.

(c) The genealogies or the claim cannot be proved by recitals, depositions or facts narrated in the judgment which have been held by a long course of decisions to be inadmissible.

(d) Where genealogy is proved by oral evidence, the said evidence must clearly show special means of knowledge disclosing the exact source, time and the circumstances under which the knowledge is acquired, and this must be clearly and conclusively proved,."

"24. It is well settled that when a case of a party is based on a genealogy consisting of links, it is incumbent on the party to prove every link thereof and even if one link is found to be missing then in the eye of law the genealogy cannot be said to have been fully proved."

1995. With respect to Section 5 of the Evidence Act the

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Court said:

"32. . . . . Ex.J. being an entry in a Register made by a public officer in the discharge of his duties squarely falls within the four corners of s. 35 of the Evidence Act and is, therefore, doubtless admissible. In this connection, the learned Judge observed thus:

" . . . . There can thus be no doubt that it is admissible under section 35 of the Evidence Act."

33. . . . . We agree with the unanimous view of the High Court that Ex. J is admissible. . . . . all the conditions of s. 35 of the Evidence Act are fully complied with and fulfilled. . . . . It is a different matter that even though a document may be admissible in evidence its probative value may be almost zero and this is the main aspect of the case which we propose to highlight when we deal with the legal value of this document."

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"35. In our opinion, Ex. J. squarely falls within the four corners of s. 35 of the Evidence Act which requires the following conditions to be fulfilled before a document can be admissible under this section.

(1) the document must be in the nature of an entry in any public or other official book, register or record,

(2) it must state a fact in issue or a relevant fact,

(3) the entry must be made by a public servant in the discharge of his official duties or in performance of his duties especially enjoined by the law of the country in which the relevant entry is kept."

"36. . . . . he was entrusted with the task of and enjoined the duty of ascertaining the possession of various landlords

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for the purpose of taking suitable steps in the matter. . . . . The question as to whether the relevant fact is proved or not is quite a different matter which has nothing to do with the admissibility of the document but which assumes importance only when we consider the probative value of a particular document. . . . . Thus, all the aforesaid conditions of s. 35 are fully complied with in this case."

"38. In P.C. Purushothama Reddiar v. S. Perumal, (1972) 2 SCR 646 this Court while considering the effect of s. 35 of the Evidence Act observed as follows:-

". . . . . The first part of s. 35 of the Evidence Act says that an entry in any public record stating a fact in issue or relevant fact and made by a public servant in the discharge of his official duty is relevant evidence. Quite clearly the reports in question were made by public servants in discharge of their official duty."

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1996. With respect to admissibility of document and probative value the Court in **State of Bihar and others Vs. Sri Radha Krishna Singh (supra)** said:

"40. We may not be understood, while holding that Ex.J is admissible, to mean that all its recitals are correct or that it has very great probative value merely because It happens to be an ancient document. Admissibility of a document is one thing and its probative value quite another—these two aspects cannot be combined. A document may be admissible and yet may not carry any conviction and weight or its probative value may be nil."

"47. We would like to mention here that even if a document may be admissible or an ancient one, it cannot carry the same weight or probative value as a document

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which is prepared either under a statute, ordinance or an Act which requires certain conditions to be fulfilled. This was the case in both Ghulam Rasul Khan's (AIR 1925 PC 170) and Shyam Pratap Singh's cases (AIR 1946 PC 103) (supra).”

1997. In various gazetteers also this has been noticed. The entry of Hindu public before December, 1949 inside the building premises has not been disputed even by the witnesses of plaintiffs (Suit-4).

1998. Considering as to how a fact can be said to have been proved in **T. Shankar Prasad Vs. State of A.P., 2004(3) SCC 753** the Court said that direct evidence is one of the modes through which a fact can be proved but that is not the only mode envisaged in the Evidence Act. In para 11, 12, 13 and 14 the Court said:

“11. Proof of the fact depends upon the degree of probability of its having existed. The standard required for reaching the supposition is that of a prudent man acting in any important matter concerning him. Fletcher Moulton L.J. in Hawkins v. Powells Tillery Steam Coal Co. Ltd. (1911 (1) KB 988) observed as follows:

> *"Proof does not mean proof to rigid mathematical demonstration, because that is impossible; it must mean such evidence as would induce a reasonable man to come to a particular conclusion".*

12. The said observation has stood the test of time and can now be followed as the standard of proof. In reaching the conclusion the Court can use the process of inferences to be drawn from facts produced or proved. Such

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inferences are akin to presumptions in law. Law gives absolute discretion to the Court to presume the existence of any fact which it thinks likely to have happened. In that process the Court may have regard to common course of natural events, human conduct, public or private business vis-`-vis the facts of the particular case. The discretion is clearly envisaged in Section 114 of the Evidence Act.

13. Presumption is an inference of a certain fact drawn from other proved facts. While inferring the existence of a fact from another, the Court is only applying a process of intelligent reasoning which the mind of a prudent man would do under similar circumstances. Presumption is not the final conclusion to be drawn from other facts. But it could as well be final if it remains undisturbed later. Presumption in law of evidence is a rule indicating the stage of shifting the burden of proof. From a certain fact or facts the Court can draw an inference and that would remain until such inference is either disproved or dispelled.

14. For the purpose of reaching one conclusion the Court can rely on a factual presumption. Unless the presumption is disproved or dispelled or rebutted the Court can treat the presumption as tantamounting to proof. However, as a caution of prudence we have to observe that it may be unsafe to use that presumption to draw yet another discretionary presumption unless there is a statutory compulsion. This Court has indicated so in Suresh Budharmal Kalani v. State of Maharashtra (1998 (7) SCC 337):

> *"A presumption can be drawn only from facts—and not from other presumptions—by a*

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process of probable and logical reasoning".

1999. Though plaintiffs (Suit-3) have pleaded that the idols in question were already there under the central dome of the disputed building inside the inner courtyard for time immemorial and nothing happened in the night of 22nd/23rd December, 1949 but the plaintiffs (Suit-4 and 5) have categorically pleaded that the idol(s) were placed in the disputed building in the night of 22nd/23rd December, 1949. We propose to find out whether plaintiffs (Suit-3) have discharged burden of showing idols under the central dome prior to 22nd/23rd December, 1949.

2000. Sri Deoki Nandan Agarwal who earlier represented the plaintiffs 1 and 2 (Suit-5) as their next friend made a statement under Order X Rule 2 C.P.C. on 30.04.1992 and said:

> *"In the early hours of December 23, 1949, the idol of Bhagwan Sri Ram Lala, which was already on Ram Chabutra was transferred to the place where He presently sits, that is, under the central dome of the disputed building. I was not personally present at that time at the place. This information was conveyed to me by Paramhans Ram Chandra Das of Digamber Akhara. This transfer of the idol was done by Paramhans Ram Chandra Das and Baba Abhi Ram Das and certain other persons whose names I do not remember at the moment...."*

2001. DW 2/1-2 has also said on page 12, 42 and 128:

> *"सन् 1949 में विवादित परिसर का बीच वाला भाग अर्थात् गर्भगृह कुर्क हुआ था। गर्भगृह से तात्पर्य तीन गुम्बद वाले भवन के नीचे का भाग तथा उसके सामने की सहन एवं सीखचे वाली दीवार तक का भाग था।* ***कुर्कशुदा सम्पत्ति के पूरब तरफ़ रामजन्मभूमि का भण्डार तथा राम चबूतरा था। उत्तर तरफ़ चार चरण चिन्ह तथा चौका बेलन वाला स्थान था।*** *" (पेज 12)*

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"In 1949 the central portion of the disputed premises, i.e, sanctum (Garbh Grih) was attached. Garbh Grih meant the portion below the three domed building and the appurtenant land in front thereof upto the grill wall. ***Towards east of the attached property, the store of Ram Janmbhumi and Ram Chabutara existed. Towards north, the places of four-footprints and Chauka-Belan (Utensils used in Indian kitchen) existed.*** *" (ETC)*

"जब तक बाबरी मस्जिद ध्वस्त नहीं हुई थी, तब तक उसी भवन से लगा हुआ 17 फिट X 21 फिट लम्बा–चौड़ा रामचबूतरा मौजूद था। विवादित ढॉचे के साथ–साथ वह रामचबूतरा भी ध्वस्त हो गया।" (पेज 42)

"Till the Babri mosque was not demolished, there was an appurtenant 17 feet x 21 feet Ramchabutara. Along with the disputed structure, the Ramchabutara was also demolished." (E.T.C)

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"मैंने यह लिखा है कि 1859 ई0 में वाजिद अली शाह के समय में रामचबूतरा व सीता रसोई के नष्ट होने के प्रयास होते रहे, यद्यपि कोई सफलता नहीं मिली। इस अंश को मैंने पढ़ने के आधार पर लिखा है। यह अंश मैंने किस किताब में पढ़ा था, यह मुझे याद नहीं है। मुझे यह याद नहीं है कि नवाब वाजिद अली शाह का कार्यकाल 1858 ई0 में समाप्त हो गया था या नहीं। मुझे न तो इस बात की जानकारी है और न इस संबंध में याद है कि 1859 ई0 में वाजिद अली शाह नवाब थे या नहीं। यह कहना गलत है कि 1859 ई0 में रामचबूतरा व सीता रसोई के नष्ट करने के प्रयास से संबंधित कोई घटना नहीं हुई।" (पेज 128)

"I have written that in 1859, during the time of Wajid Ali Shah, attempts had been made to vandalise Ram Chabutra and Sita Rasoi but to no avail. I have written this portion on the basis of my study. I do not remember in which book I had read this portion. I do not remember whether the reign of Wajid Ali Shah had come to an end or not in 1858. I neither know nor remember whether Wajid

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Ali Shah was Nawab or not in 1859. It is wrong to say that no incident occurred in 1859 which involved attempts to damage Ram Chabutra and Sita Rasoi." (E.T.C)

2002. The State authorities have filed their written statement in Suit-1 and 3 wherein they have also taken this stand that the idols were kept under the central dome of the disputed building in the night of 22nd/23rd December, 1949. Though this fact has been seriously disputed by plaintiffs (Suit-3) and a large number of witnesses have been produced by them to demolish this fact but we find a self contradiction in those statements and for reasons more than one as we shall discuss now, the statements of most of such witnesses produced on behalf of plaintiff (Suit-3) are uncreditworthy.

2003. Plaintiffs (Suit-3) have examined twenty witnesses i.e. D.W.-3/1 to 3/20. Almost all the witnesses have filed their affidavits under Order XVIII Rule 4 C.P.C., as permitted by this Court, to depose their statement in-chief and all these affidavits are virtually similar, containing prototype statements with minor corrections or variations here and there.

2004. The basic submission is that the building has all along been worshipped by Hindus, managed by the priest and agents of Nirmohi Akhara and idols were already there under the central dome of the disputed building much before 1949. Hindus were regularly worshipping by entering into the disputed building, i.e., inner courtyard prior to 1949. They have also denied any incident of 22/23rd December, 1949 with respect to placement of the idols inside the building under the central dome since it was already there.

2005. For the purpose of Suit-3, the disputed site means only "the inner courtyard". The aforesaid Suit-3 has not been filed

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with respect to any part of the premises constituting part of the outer courtyard. Therefore, qua Suit-3, the "disputed site" or "disputed area" or "disputed building" means only the "inner courtyard" and the building existed thereat. As per the plaint statement in Suit-3, the temple of Lord Rama existed at the disputed site since time immemorial. They denied any battle of Babar with the then ruler at Ayodhya, construction by Babar or his agent in 1528 AD, riot or dispute of 1934 as also the alleged incident of placement of idol in the night of 22/23 December, 1949 in the disputed building. It is in support of these averments, twenty witnesses have been produced on behalf of the plaintiff (Suit-3). In fact, in the plaint, nothing has been said about 1528 or 1934 except that no Muslim was ever allowed or admitted to enter atleast ever since the year 1934, as is evident from para 5 thereof but in replication, these incidents have been disputed.

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2006. The respondents no.6 to 8 in their written statement gave the date of construction of the disputed building as mosque in 1528 AD by Babar, its maintenance through the grant received from the then Emperor and thereafter by State authorities etc. and continued Namaz till 16th December, 1949. In reply thereto, the replication filed by the plaintiff states that no property was constructed by Babar as mosque but throughout it has been a temple of Lord Rama and that the plaintiffs are in possession of the said temple since time immemorial from the date of the construction of the temple.

2007. Clarifying their stand, Sri Sarab Jeet Lal Verma, Advocate appearing on behalf of the plaintiffs (Suit-3) before the Civil Judge made a statement on 17th May, 1963 under Order X Rule 2 C.P.C. that the property in suit is believed to be the

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birth place of Lord Ram Chandra and so there is a temple of Lord Ram Chandra on it. The management and control of this temple is that of plaintiffs and property is not dedicated to the idol though the temple is made on the land which is the birth place of lord Ram. It is owned by the plaintiffs and the temple was made by the plaintiffs. He further clarified that the suit is confined to the property shown by letters E F G H I J K L in the map appended to the plaint (Suit-3).

2008. All the witnesses of plaintiff (Suit-3) have been cross-examined at very great length to contradict them and to extract truth from it. In **T. Shankar Prasad Vs. State of A.P. (supra)** in respect to the testimony of a witness cross-examined and contradicted with the leave of the Court by the party calling him with reference to Section 154 of the Evidence Act the Court said:

> *"It is for the judge of fact to consider in each case whether as a result of such cross-examination and contradiction, the witness stands thoroughly discredited or can still be believed in regard to a party of his testimony. If the judge finds that in the process the credit of the witness has not been completely shaken, he may after reading and considering the evidence of the said witness, accept in the light of the other evidence on record that part of his testimony which he found to be creditworthy and act upon it." (para 24)*

2009. It is now in the context of the above stand of the plaintiffs (Suit-3) we would examine the statements made by their witnesses.

2010. DW 3/1 Mahant Bhaskar Das, Sarpanch Shri Manch Ramanandiya Nirmohi Akhara, Ramghat, Ayodhya

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besides other, firstly said in para 9 of the affidavit that Ram Janam Bhumi and all the surrounding, small and big temples and religious place like Chathi Poojan Sthal, Ram Chabutara Mandir Sthan, Shashthamukhi Shankar Bhagwan, Ganesh Ji, Seeta Koop Mandir, Gufa Mandir, Sumitra Mandir, Lomash Samadhi etc. are all the property of Nirmohi Akhara. It is in their possession and management for last several hundred years prior to the attachment and they have continued to look after the same till acquisition.

2011. Then in para 10 of the affidavit he has specifically said that from 1946 to 1949, in the internal part of the main temple, Nirmohi Akhara through its Pujaries have continued worship including other religious places like Ram Chabutara, Shashtha Mukhi Shankar Bhagwan Sthal and Chathi Poojan Sthal and that no Namaz has been offered in the disputed site from 1946 to 1949. In para 81 he said that Bhagwan Ram Lala is inside the disputed building prior to 1934, and, since 1934, Nirmohi Akhara is continuously having its possession. It, however, admits in para 48 that there was police surveillance at the eastern gate of Mandir Ram Janam Bhoomi prior to 22/23 December, 1949 and Police Chauki was also established in the north-east corner of temple. In para 56, he has admitted that Raghubar Das was the Mahant of Nirmohi Akhara prior to 1885 and had filed a case in respect to *Ram Chabutara* in his own name and not on behalf of Nirmohi Akhara. In para 62, however, he has denied about shifting of idol from Ram *Chabutara* on 22/23 December, 1949.

2012. Having said so, he has made very interesting statements in cross examination. Firstly he has admitted that a mosque was constructed in 1528 AD after demolition of Sri

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Ram Janam Bhoomi temple in page 47:

''प्र0–बाबरी मस्जिद का निर्माण कब हुआ था?

*उ0– **सन् 1528 में श्रीराम जन्मभूमि मंदिर तोड़ करके मस्जिद बनाई गई थी।''** (पेज 47)*

"Question:- When was Babri mosque built?

*Answer:- **The mosque was built in the year 1528 by demolishing Sri Ramjanmbhumi temple.** (ETC)*

*''यह झगड़ा शुरु से चलता था जब से सन् 1528 से वहां विवादित भवन बना यह बातें मैंने अपने पूर्वजों से सुनी हैं, कहीं पढ़ी नहीं हैं। यह झगड़ा 76 बार हुआ है। यह झगड़ा बाबर के ज़माने से अंग्रेजों के ज़माने तक हुआ है और **आखिरी बार यह झगड़ा सन् 1934 में हुआ था।''***

*"This conflict used to take place since beginning, when the disputed structure was built over there in the year 1528. I have heard this from my ancestors, but have not read it anywhere. This conflict broke out on 76 occasions. **This conflict** has continued from the time of Babar to the British period and it **last broke out in the year 1934."** (E.T.C.)*

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*''विक्रमादित्य द्वारा बनवाये गये भवनों को ढ़ाई हजार वर्ष चूँकि हो गये हैं, इस कारण वे **स्वयं गिर गये थे** और जन्मभूमि मंदिर सन् 1528 में गिरवाया गया था। **जो भवन सन् 1528 में तोड़वाया गया था, वह मूल रुप से विक्रमादित्य द्वारा बनवाया गया था और बीच–बीच में उसका जीर्णोद्धार होता रहा था।***

*यह कहना गलत है कि सन् 1528 में जब विवादित भवन बनवाया गया, तब किसी मंदिर को तोड़कर नहीं बनवाया गया था। यह भी कहना गलत है कि उस समय वहां कोई मंदिर नहीं था। मैंने सन् 1528 में मंदिर तोड़कर विवादित भवन बनवाने वाली बात व विक्रमादित्य द्वारा जन्मभूमि मंदिर बनवाये जाने की बात **पूर्वजों से सुनी थी, कहीं पढ़ी नहीं थी।''***

(पेज 119)

*"Since the buildings built by Vikramaditya were 2500 years old, **they collapsed on their own** and the Janmbhumi temple was demolished in the year 1528. **The building which***

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was demolished in the year 1528, was originally built by Vikramaditya with intervening renovations from time to time.

It is wrong to say that when the disputed structure was built in the year 1528, it had not been built by demolishing any temple. It is also wrong to say that no temple existed over there at that time. The factum of building of disputed structure in the year 1528 by demolishing a temple, and the building of Janmbhumi temple by Vikramaditya, ***were heard by me from my ancestors****, and I have not read it anywhere."*

(E.T.C)

2013. This statement of the witness is directly contrary to the pleading and the basic case of the plaintiffs (Suit-3).

2014. Moreover having said so that is about construction of mosque nowhere he has said as to when the above mosque ceased to be a mosque and when worship by Hindus started in the disputed building. He however has confined the period of worship by Hindus prior to 1934. On page 47, 63, 98, 108 and 109, he has said:

''प्र0– उपरोक्त मस्जिद कब तक कायम रही थी?

*उ0– **सन् 1934 के पहले से वहां पर पूजा–पाठ होता चला आ रहा है।''** (पेज 47)*

Question:- Till when did the aforesaid mosque exist?

Answer:- ***Prayer-worship has been continuing over there from before the year 1934."*** *(E.T.C)*

*''निर्मोही अखाड़ा ने **पहली बार विवादित भवन के लिए पुजारी सन् 1934 से पहले नियुक्त किया था** परन्तु यह याद नहीं है कि सन् 1934 से कितने पहले विवादित भवन के लिए निर्मोही अखाड़े ने पुजारी नियुक्त किया था।'' (पेज 63)*

"The first priest for the disputed structure was appointed before the year 1934 *by the Nirmohi Akhara,*

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but (I) do not remember as to how much before the year 1934, was the priest appointed by the Nirmohi Akhara for the disputed structure." (E.T.C)

*"**सन् 1934 के पहले से वहां मूर्ति रखी थी,** जिसे अखाड़े के किसी महन्त ने प्रतिष्ठित कराया था।*

*वहां पर रामलला जी की मूर्ति, लक्ष्मण जी की मूर्ति, हनुमान जी की मूर्ति, सालिग राम भगवान आदि की मूर्तियां रखी थी। ये **सब मूर्तियां सन् 1934 के पहले से विवादित भवन के अन्दर रखी थी।** विवादित भवन के मध्य वाले गुंबद के नीचे सीढ़ियों पर ये मूर्तियां रखी हुई थी।" (पेज 98)*

***"Idol existed over there from before the year 1934,** which had been installed by some Mahant of the Akhara.*

*The idols of Ramlala, Laxman Ji, Hanuman Ji and Lord Saligram existed over there. **All these idols were inside the disputed structure from before the year 1934.** These idols existed at the stairs beneath the middle dome of the disputed structure." (E.T.C)*

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*"विवादित भवन में **मूर्ति सन् 1934 के पहले रखी गई थी**, परन्तु किस सन् में रखी गई थी अथवा किसने रखी थी यह मुझे ज्ञान नहीं है।" (पेज 108)*

*"The **idol had been installed** in the disputed structure **prior to the year 1934**, but I have no knowledge as to when was it installed or by whom." (E.T.C)*

*"मैंने यह बात **अपने पूर्वजों से सुनी है** कि सन् 1934 के पहले वहॉ मूर्ति रखी हुई थी। मैं यह भी **नहीं बता पाऊॅगा कि तीन गुम्बद वाले विवादित भवन के निर्माण यानी सन् 1528 के कितने समय बाद विवादित भवन में मूर्ति रखी गई थी।"***

(पेज 109)

*"I had **heard it from my ancestors** that the idols existed over there from before the year 1934. I **will also not be able to tell how many years after the construction***

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of the three domed disputed structure i.e. after the year 1528, were the idols installed in the disputed structure."

(E.T.C)

2015. So far as his own visit to the disputed site is concerned, he claimed it since 1946, at page 46:

''मैं विवादित स्थल पर सन् 1946 से जाता रहा हूँ और वहां पर मैं रहता भी था। मैं वहां पर मंदिर पर पूजा–पाठ करता था, बहैसियत पुजारी।'' (पेज 46)

"I have been going to the disputed site from the year 1946 and I also used to stay over there. I used to carry out prayer-worship in the temple over there as a priest."

(E.T.C)

2016. The visit of Muslims at the disputed site is also disputed by him since 1946 at page 53 and 127:

''सन् 1946 में मुसलमान लोग विवादित भवन पर नहीं आते–जाते थे। मैंने सन् 1946 में किसी मुसलमान को विवादित भवन में आते–जाते नहीं देखा। दिसम्बर सन् 1949 तक विवादित भवन में नमाज नहीं हुई।''

(पेज 53)

"In the year 1946, the Muslims did not visit the disputed structure. In the year 1946, I did not see any Muslim visit the disputed structure. Namaz was not offered in the disputed structure till December, 1949." (E.T.C)

*''सन् 1946 में जो लोग दर्शन करने आते थे, वह विवादित भवन के अन्दर आकर दर्शन करते थे। **सन् 1946 में सीखचों वाली दीवार के दोनों दरवाजे दर्शनार्थियों के लिए खुले रहते थे** और मन्दिर सुबह 8 बजे से 12 बजे तक और सायं चार बजे से नौ–साढ़े नौ बजे रात तक खुला रहता है।'' (पेज 127)*

*"The people who used to come to have darshan in the year 1946, used to have darshan from inside the disputed structure. **In the year 1946, both the gates of the grill wall used to remain open for the devotees** and the temple*

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used to remain open between 8 am to 12 noon and 4 pm to 9/9.30 pm." (E.T.C)

2017. His statement apart the affairs of Nirmohi Akhara has attained importance for he is Panch of Nirmohi Akhara since 1950 and presently Sarpanch and Mukhtare Aam:

''मैं सन् 1950 में निर्मोही अखाड़े का पंच हुआ था और महन्त रघुनाथ दास जी का मुख्तारेआम भी था। ***सन् 1950 से मैं बराबर पंच चला आ रहा हूँ।*** *उसके बाद उप–सरपंच हुआ था और* ***आज से कई साल पहले मैं उसका सरपंच हो गया और आज भी मैं निर्मोही अखाड़े का सरपंच व मुख्तारेआम हूँ।*** *मैं निर्मोही अखाड़े के महन्त जगन्नाथ दास जी का मुख्तारेआम हूँ।'' (पेज 72)*

"I became the 'Panch' of Nirmohi Akhara in the year 1950 as also the 'Mukhtar-e-aam' (power of attorney holder) of Mahant Raghunath Das. ***I have regularly continued as a 'Panch' from the year 1950****. Thereafter, I became its 'Up-Sarpanch' and* ***today for last many years, I am its 'Sarpanch', and even today I am 'Sarpanch' and 'Mukhtar-e-aam' of Nirmohi Akhara****. I am the 'Mukhtar-e-aam' of Nirmohi Akhara's Mahant Jagannath Das."*

(E.T.C)

2018. Regarding the incident of 22/23 December, 1949, he said at page 77/78 and 80:

''22/23 दिसम्बर सन् 1949 की रात को विवादित भवन में कोई घटना नहीं हुई थी। *यदि कोई यह कहता है कि 22/23 दिसम्बर 1949 की रात को विवादित भवन में कोई घटना हुई, तो वह गलत कहता है। मैं 22/23 दिसम्बर सन् 1949 की रात को विवादित परिसर में ही मौजूद था। मैं रात्रि में साढ़े ग्यारह बजे सोता हूँ और साढ़े चार बजे उठ जाता हूँ, उस रात यानी 22/23 दिसम्बर सन् 1949 की रात को उसी प्रकार सोया हूँगा। उस समय यानी उस रात को मैं गुम्बद के नीचे वाले स्थान पर सोया था।'' (पेज 77–78)*

"No incident occurred in the disputed structure in

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the night of 22/23 December, 1949. *If somebody claims that some incidents occurred in the disputed structure in the night of 22/23 December, 1949, then he is stating wrongly. In the night of 22/23 December, 1949 I was present in the disputed premises. I go to bed at 11.30 PM and get up at 4.30 AM. I must have slept so in that night i.e. in the night of 22/23 December, 1949. At that time i.e. in that night, I had slept at the place beneath the dome."*

(E.T.C)

''यदि उस रिपोर्ट में यह लिखा हो कि 22/23 दिसम्बर सन् 1949 की रात में कुछ लोगों ने मस्जिद में दाखिल होकर मस्जिद नापाक किया, तो यह बात गलत लिखी है। ***जिन रामशकल दास जी का नाम इस रिपोर्ट में लिखा है, वही मेरे साथ 22/23 दिसम्बर सन् 1949 की रात को गुम्बद वाले भवन में सोये थे*** *और जिन सुदर्शन दास जी का नाम इस रिपोर्ट में लिखा है वह वही सुदर्शनदास जी हैं, जो उस रात सन्त निवास में सोये थे और अभयरामदासजी वहीं हैं, जो 22/23 दिसम्बर सन् 1949 की रात कथा मण्डप में सोये थे और जिन* ***रामदासजी*** *का नाम रिपोर्ट में आया है,* ***वह उस समय रामचबूतरे के पुजारी थे और उस रात विवादित परिसर में ही सोये थे।*** *'' (पेज 80)*

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"If it is so mentioned in that report that in the night of 22/23 December, 1949, some people had entered the mosque and de-sanctified the mosque, then the said fact has been mentioned wrongly. ***The Ramshakal Das named in this report, had slept along-with me in the domed structure in the night of 22/23 December, 1949 ,*** *and the Sudarshan Das named in this report, is the same Sudarshan Das who had slept in the saints' accommodation in that night and Abhay Ram Das is the same person who had slept in the 'Katha Mandap' in the night of 22/23 December, 1949 and the* ***Ram Das Ji*** *named*

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in the report, ***was the priest of Ramchabutara at that time and he had slept in the disputed premises in that night****."*

(E.T.C)

2019. The contradictions and incorrectness in his statement is evident from the following:

*''**यह सिंहासन विवादित भवन में सन् 1950 के पहले से था।** यह सिंहासन विवादित भवन में सन् 1950 के दस साल पहले से था। यह सिंहासन विवादित भवन में सन् 1950 में था परन्तु इसकी कुर्की नहीं हुई थी।'' (पेज 104)*

"This throne existed in the disputed structure from before the year 1950. *This throne was present in the disputed structure, from ten years before the year 1950. This throne was in the disputed structure in the year 1950, but it had not been attached." (E.T.C)*

*''**सन् 1986 के पहले इन चित्रों में दिख रहा सिंहासन विवादित स्थल पर नहीं था।** यह हो सकता है कि यह सिंहासन सन् 1986 में विवादित भवन का ताला खुलने के बाद वहां रखा गया हो।''*

(पेज 147)

"Before 1986, the throne, visible in these photographs, did not exist at the disputed site. *This throne may have been placed in the disputed building after its lock was opened in 1986." (E.T.C.)*

*''**विवादित भवन में रामलला जी की दो मूर्तियां थीं।** . . . ये दोनों मूर्तियां सन् 1934 के पहले से चली आ रही हैं।'' (पेज 107)*

"There were two idols of Ramlala in the disputed structure *. . . . . Both these idols were in existence from before the year 1934." (E.T.C)*

''अभिराम दास जी . . . .विवादित भवन के पुजारी भी थे फिर कहा कि–अभिराम दास जी निर्मोही अखाड़े के पुजारी नहीं थे।'' (पेज 123)

"Abhiram Das. . . . . was also the priest of the disputed structure. Then stated that Abhiram Das was not

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the priest of Nirmohi Akhara." (E.T.C)

''त्रुटिवश मैंने रामलला जी की दो मूर्तियों के बारे में बता दिया था। *जबकि एक राम लला जी की मूर्ति थी और एक लक्ष्मण लला जी की मूर्ति थी।*

रामलला जी की एवं लक्ष्मण लला जी की दो मूर्तियॉ सन् 1934 के पहले से चली आ रही थी।'' (पेज 127)

"Inadvertently I had stated about two idols of Ramlala, *when there was one idol of Ramlala and one of Laxmanlala.*

The two idols of Ramlala and Laxmanlala, have been in existence from before the year 1934." (E.T.C)

''मुख्य परीक्षा के शपथ–पत्र का पैराग्राफ 25 दिखाया गया, जिसे देखकर गवाह ने कहा कि इस पैराग्राफ में जो कुछ लिखा है, वह सही लिखा है।

उपरोक्त पैराग्राफ 25 गवाह को दिखाया गया और यह पूछा गया कि इस पैराग्राफ में लिखी बात कि श्याम–श्वेत एलबम का चित्रद सं0 81 एवं 82 में दिख रहा सिंहासन चबूतरे का है अर्थात् रामचबूतरे का है?

उपरोक्त को देखकर गवाह ने कहा कि इस पैराग्राफ में चित्र की संख्या गलत लिख गयी है।

इस पैराग्राफ में जो ***मैंने चित्र सं0–81 एवं 82 का हवाला दिया है, उसका उल्लेख गलत हो गया है, जो टाइप की गलती है।*** *इसी पैराग्राफ़ 25 को गवाह को दिखाकर पूछा गया कि इस पैराग्राफ में जो फ़ोटो नं0–83 एवं 84 के संबंध में आपने उल्लेख किया है, वह किसी ऊपरी भाग का उल्लेख है? उपरोक्त को देखकर गवाह ने कहा कि* ***मेरा पैराग्राफ 25 का कथन गलत हो गया है।''(****पेज 137)*

''Paragraph 25 of affidavit filed at the examination-in-chief was shown to the witness following which he stated – Whatsoever is stated in this paragraph, is correctly written.

The aforesaid paragraph 25 was shown to the witness and a query was put to him as to whether the

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throne, visible in photographs 81 and 82 of the black-white album represented chabutra or Ram Chabutra.

Seeing the aforesaid photographs, the witness stated that photographs in this paragraph had been wrongly numbered.

In this paragraph, ***photographs 81 and 82 have been quoted wrongly; that is due to typographical error.*** *This very paragraph 25 was shown to the witness and he was queried as to which upper portion found place in his description about photographs 83 and 84 of this paragraph. Looking at the aforesaid, the witness stated that* ***his statement in paragraph 25 had gone wrong."****(E.T.C.)*

''उनके मुख्य परीक्षा शपथ–पत्र के इसी पैराग्राफ के 24 का अंश ''जन्म भूमि जिसके सामने दुकान बताशे वाला, 29–30 चबूतरा है'', दिखाया गया और पूछा कि इससे आपका क्या तात्पर्य है तो गवाह ने कहा कि ***यह भी गलत लिख गया है। यह पूरा अंश टाइप की गलती से लिख गया है।''*** *(पेज 138)*

''A portion of this very paragraph 24 of affidavit filed at examination-in chief – which portion runs as 'Janmbhumi, opposite to which lie a Batasha-selling shop and 29-30 chabutras – was shown to the witness and he was queried as to what he meant by the said words. Thereupon the witness stated – ***It is also incorrectly written. This portion in its entirety has come to be written due to typographical error."*** *(E.T.C.)*

2020. Regarding the period of construction of *Ram Chabutara*, he said :

''इस मूर्ति को अकबर के जमाने में निर्मोही अखाड़े के महन्त ने रखा था, उस का नाम मुझे नहीं मालूम। यह बात मैंने अपने पूर्वजों से सुनी है, कहीं पढ़ा नहीं है। ***रामचबूतरे पर जितनी भी मूर्तियॉं थीं, वह सब मुगल बादशाह अकबर के जमाने में रखी गई थीं।***

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बादशाह अकबर के जमाने में भी यह रामचबूतरा 17 फिट x 21 फिट का था, और उस जमाने में भी इस पर उसी तरह का छप्पर पड़ा हुआ था, जैसा कि सन् 1950 में पड़ा हुआ था।'' (पेज 109–110)

"This idol was installed in the period of Akbar by Mahant of Nirmohi Akhara, I do not know his name. I have heard this from my ancestors, and have not read it anywhere. ***All the idols at the Ramchabutara, had been installed in the period of Mughal emperor Akbar.*** *In the period of emperor Akbar also, this Ramchabutara was of the dimension 17 feet x 21 feet and in that period also, it had a similar thatch, as was there in the year 1950."*

(E.T.C.)

*''**इस राम चबूतरे के सम्बन्ध में एक दावा सन् 1885 में दाखिल हुआ था।** यह दावा महन्त रघुबर दास जी ने दाखिल किया था, जो निर्मोही अखाड़े में महन्त थे। यह दावा सब–जज फैजाबाद की अदालत में दाखिल हुआ था और पहले इस मुकदमें का निर्णय रघुबर दास जी के पक्ष में हुआ था। बाद में वे अपील में हार गए। इसकी अपील रघुबर दास जी ने नहीं की थी। ज़िला जज की अपील में उस निर्णय के बाद दूसरी अपील लखनऊ में दाखिल नहीं हुई।'' (पेज 109–110)*

"A suit had been filed regarding this Ramchabutara in the year 1885*. This suit had been filed by Mahant Raghubar Das, who was Mahant of Nirmohi Akhara. This suit had been filed in the court of Sub-Judge, Faizabad, and earlier this suit was decided in favour of Raghubar Das. Subsequently, he lost in appeal. This appeal had not been preferred by Raghubar Das. No Second Appeal was filed at Lucknow against the decision of District Judge in that appeal." (E.T.C.)*

*''**उस समय राम चबूतरे को जन्म स्थान कहा जाता था, जन्मभूमि नहीं कहा जाता था।** उसे जन्मभूमि आज से सौ वर्ष पहले से कहा जाने लगा। उस समय भी इस राम चबूतरे का क्षेत्रफल 17 x 21*

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फिट ही था।'' (पेज 110)

"At that time, Ramchabutara was called Janmsthan and not Janmbhumi. *It started being referred as Janmbhumi about 100 years ago. At that time also, the area of this Ramchabutara was 17 x 21 feet." (E.T.C)*

2021. About the grated dividing wall between the outer and inner courtyard, he has said:

''यह सीखचों वाली दीवार वाजिद अली शाह के जमाने में बनी थी, जो सन् 1885 व 1950 में भी कायम रही थी। नवाब वाजिद अली शाह के जमाने में सींखचे वाली दीवार बनने की बात मैंने सुनी है, कहीं पढ़ी नहीं है। ***मैंने यह सुना है कि वाजिद अली शाह के जमाने में वहॉ पर बराबर झगड़ा हुआ करता था और इस कारण यह सीखचों वाली दीवार बनवाई गई थी कि झगड़ा शान्त हो जाए, परन्तु यह झगड़ा शान्त नहीं हुआ।*** *यह झगड़ा हिन्दुओं और मुसलमानों में हुआ करता था।'' (पेज 110–111)*

"This grill wall was built in the period of Wajid Ali Shah, which existed in the year 1885 and 1950 as well. I have only heard about the fact of construction of grill wall in the period of Nawab Wajid Ali Shah, and have not read it anywhere. ***I have heard that in the period of Wajid Ali Shah, there were regular conflicts over there and the grill wall was built only to end the conflicts, but the conflicts did not end.*** *These conflicts used to break out between Hindus and Muslims." (E.T.C)*

2022. Though on the one hand he claims that Namaz has never been offered from the days of Babar in the disputed building but about existence of idol of Ram Lala in the disputed building, he said that it is since prior to 1934 but exact date and period is not known to him:

''बाबर के जमाने से आज तक विवादित भवन में कभी नमाज नहीं हो पाई थी। रामलला जी विवादित भवन में सन् 1934 के पहले से हैं,

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*परन्तु यह जानकारी मुझे नहीं है कि वे सन् 1934 के कितने पहले से वहां थे। **मुझे यह भी जानकारी नहीं है कि बाबर के जमाने से सन् 1934 के पहले तक वहां रामलला जी थे या नहीं।**''*

(पेज 112–113)

*"Namaz has never been possible in the disputed structure till date from the times of Babar. Ramlala has existed in the disputed structure from before the year 1934, but I do not have knowledge of the fact as to for how long before the year 1934, was He present over there. I **also do not have knowledge of the fact whether Ramlala existed over there or not from the times of Babar to the year 1934."** (E.T.C)*

2023. He admitted the riots of 1934 but says that it did not cause any damage to the disputed building and only the outer wall was damaged:

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''सन् 1934 के दंगे में विवादित भवन को कोई नुकसान नहीं पहुॅचा था, केवल विवादित परिसर की बाहरी चहारदीवारी को क्षति पहुॅची थी।''

(पेज 127)

''In the 1934 riot, no damage was caused to the disputed structure but damage was caused only to the outer boundary wall of the disputed premises.''(E.T.C.)

***''सीखचों वाली दीवार जो पहले लकड़ी की थी, उसे लोहे की बनवाया गया था। सीखचों वाली दीवार में लोहे के सींखचे सन् 1934 में लगवाए गए थे** और यह लोहे के सीखचे जो दंगा टैक्स वसूल हुआ हुआ था, उसी से लगवाए गए थे, परन्तु मुझे यह जानकारी नहीं है कि ये किसने लगवाए थे। सीखचों वाली दीवार के दरवाजे सन् 1934 के पहले से लोहे के थे या बाद में लोहे के हुए थे, इसकी जानकारी मुझे नहीं है।'' (पेज 128)*

***"The grill wall which had earlier been made of wood, was built using iron. Iron-grills came to be used in the grill wall in 1934** and the expenses incurred on*

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fixing these iron-grills had come from riot taxes which had been realised; but I do not know as to who had carried out this work. I do not know whether the gates of the grill wall came to be made of iron prior to or subsequent to 1934."(E.T.C.)

2024. Regarding preparation of his affidavit, he said:

''प्रश्न– तो क्या आपके मुख्य परीक्षा के शपथ–पत्र के पैरा 24 में उल्लिखित चित्र सं0 आपने केवल अनुमान से लिख दिये हैं?

उत्तर– ***मेरे वकील साहब श्री रंजीत लाल वर्मा ने मुआयना करके अपने से इस पैराग्राफ में चित्रों के नम्बर डाल दिये हैं।''*** *(पेज 146)*

"Question: Have you mentioned the number of the photograph in paragraph 24 of the affidavit filed at the examination-in-chief only on the basis of guess-work?

Answer: ***My counsel, Sri Ranjeet Lal Verma, after carrying out inspection, has numbered photographs of this paragraph on his own."*** *(E.T.C.)*

''मेरे इस शपथ–पत्र का कुछ भाग मेरे वकील साहब के ज्ञान पर आधारित है, परन्तु वह कौन सा भाग है, यह मुझे याद नहीं है *और मैं इसे बता भी नहीं पाऊँगा।'' (पेज 231)*

"Some portion of this affidavit of mine is based on the knowledge of my counsel. But I do not remember which portion it is, *I am also not in a position to tell about it."(E.T.C.)*

''यह शपथ–पत्र 29.8.2003 को लिखाया गया, उसी दिन टाईप किया गया और उसी दिन सत्यापित किया गया। ***हलफ़नामा तैयार करते समय मुझे कोई कागज नहीं दिखाये गये थे।''*** *(पेज 264)*

"This affidavit was dictated on 29.08.2003 and it was typed and verified on the same day. ***While preparing the affidavit I was shown none of the papers."*** *(E.T.C.)*

2025. Then on page 152, when he was asked whether the

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claim that the God has manifested (Prakat) in the night of 22nd December, 1949 as stated in the book "Sri Ram Janam Bhoomi Ka Rakt Ranjit Itihas" written by late Pt. Ram Gopal Pandey Shaarad on page 95 is incorrect, he could not say that this is incorrect and did not happen and instead gave a vague reply :

''पूछा गया कि – इस पुस्तक के पृष्ठ–95 पर जिस घटना का उल्लेख 22.12.1949 के सम्बन्ध में किया गया है, क्या वह गलत है? उपरोक्त को देखकर गवाह ने कहा कि – भगवान का अवतार जब हुआ, तब प्रगट ही हुए और बार–बार जब जरूरत हुई तब प्रगट हुए, इसमें 22/23 सन् 1949 का प्रश्न नहीं है और इसमें जो कुछ भी लिखा है वह गलत है।'' (पेज 152)

''Page 95 of this book was shown to the witness and he was queried as to whether the description of an incident therein in reference to 22.12.1949, is incorrect. Looking at the aforesaid page the witness stated – Whenever God incarnated Himself, He certainly appeared, and He appeared on frequent occasions as per requirement. It does not concern 22nd - 23rd December, 1949, whatsoever is written herein, is incorrect.''(E.T.C.)

2026. About Mahant Raghubar Das, he said:

''महंत रघुबर दास जी का ज़माना सन् 1880 से 1890 के लगभग तक का रहा होगा। *उस समय अर्थात् 1880 के लगभग उपरोक्त ठेका महंत रघुवर दास जी ही उठाते थे।* ***महंत रघुबर दास जी के ज़माने के इस ठेके से संबंधित कागज़ इस न्यायालय में इन मुकदमात में दाखिल हैं।*** *महंत रघुबर दास जी के बाद जो महंत निर्मोही अखाड़े के हुए थे, उनके ज़माने के कागज भी इन मुकदमात में दाखिल हैं।'' (पेज 164)*

"The period of Mahant Raghubar Das would have been from 1880 to circa 1890. *It was Mahant Raghubar Das Ji who used to take the aforesaid contract at that time, that is, around 1880.* ***Papers related to this contract***

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belonging to the time of Mahant Raghubar Das are filed in this case before this Court. *Papers belonging to the period of successor to Mahant Raghubar Das Ji as Mahanta of Nirmohi Akhara, are also filed in this case."(E.T.C.)*

*"**महंत रघुवर दास जी वही हैं, जिन्होंने सन् 1885 वाला दावा दाखिल किया था।**" (पेज 199)*

*"**Mahant Raghubar Das is that very person who filed the 1885 claim**."(E.T.C.)*

"प्रश्न– महंत रघुनाथ दास जी रामचबूतरे के महंत थे अथवा पुजारी थे?
*उत्तर– **वे रामचबूतरे के महंत थे।**" (पेज 165)*
"Question:- Whether Mahant Raghunath Das Ji was Mahant or 'Pujari' (priest) of Ramchabutara?
*Answer:- **He was Mahant of Ramchabutara**." (E.T.C)*

2027. About the police surveillance he said:

*"यह पूछा गया कि 22/23 दिसम्बर सन् 1949 के पहले विवादित भवन पर पुलिस का पहरा क्यों रहता था? उपरोक्त को देखकर गवाह ने कहा कि पहरा इस कारण लगता था कि मुसलमान लोग एवं मुस्लिम पुलिस कर्मचारी वहॉ की मूर्ति हटा देना चाहते थे। **यह पहरा एक–आध साल से चल रहा था।** यह पहरा सरकार की तरफ से लगा था, पहरा लगाने की दरख्वास्त नहीं दी थी। यह पहरा सन् 1947 में आजादी मिलने के बाद से लगा था।" (पेज 179)*

*"When asked why the disputed building used to be under the police watch prior to 22*nd-*23*rd *December, 1949, the witness stated that the deployment of the police as guards was due to the reason that Muslim public and Muslim cops and officials wanted to remove idols from there. **This deployment of police as guards had been for a year or so**. This deployment was at the behest of the government; no application had been moved for such police deployment. This deployment of police as guards*

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had been since 1947, that is, since the time of independence."(E.T.C.)

2028. About Nawah Path and Bhandara inside the building, he made certain contradictions:

"विवादित भवन के अन्दर नवाह पाठ और भण्डारा सन् 1949 के पहले मेरे सामने हुआ था, परन्तु कितनी बार हुआ था, यह मुझे याद नहीं।

विवादित परिसर के बीच वाले गुम्बद के नीचे वाले स्थान पर नवाह पाठ हुआ करता था। *" (पेज 207–208)*

"Nawah Paath and Bhandara (religious rituals) had taken place in my presence inside the disputed building before 1949; but I do not remember how many times such rituals had been performed therein.

Nawah Paath used to take place at a place below the central dome of the disputed premises.*"(E.T.C.)*

"मैंने विवादित भवन के अन्दर बीच वाले गुम्बद के नीचे नवाह पाठ होते देखा था।" (पेज 209)

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"I had seen Nawah Paath being performed below the central dome inside the disputed building."(E.T.C.)

"विवादित भवन के गुम्बद वाले भाग के बाहर और सीखचों वाली दीवार के अन्दर वाले सहन में नवाह पाठ नहीं होता था।" *(पेज 210)*

"Nawah Paath did not take place outside the dome portion of the disputed building and in the courtyard inside the grill-wall." *(E.T.C.)*

"भण्डारा विवादित भवन के अन्दर कभी नहीं होता था।"

(पेज 211)

"'Bhandara' (collective feast) was never held inside the disputed premises." *(E.T.C)*

"मैंने जो पृष्ठ 211 पर यह कहा कि भण्डारा विवादित भवन के अंदर कभी नहीं होता था, से मेरा मतलब यह था कि वहां भण्डारा कभी बनाया नहीं गया परन्तु भोजन कराया जाता था।" (पेज 215)

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"When I on page 211 stated that Bhandara never took place inside the disputed building, I meant that Bhandara(food prepared for mass feeding) was never prepared there but food used to be served."(E.T.C.)

"गुम्बद वाले भवन के बाहर सहन में भोजन कराया जाता था।"

(पेज 216)

"Food used to be served in the courtyard outside the domed building."(E.T.C.)

2029. He admits that ownership or possession on the disputed building was not claimed in 1885 Suit but since 1934 Nirmohi Akhara is arranging worship continuously and therefore is claiming right of possession and ownership thereon:

"सन् 1885 के दावे में विवादित भवन पर अपना स्वत्व या अधिकार उन्होंने नहीं दिखाया था, ***लेकिन सन् 1934 से बराबर पूजा–पाठ निर्मोही अखाड़े के द्वारा वहां होता चला आ रहा है, इसलिए अब हम उस पर स्वत्व या अधिकार क्लेम कर रहे हैं।"***

(पेज 229)

"They had not shown their title or right over the disputed building in the 1885 claim; ***but we are now laying our title or right over the same as Pooja-Paath has always been performed by the Nirmohi Akhara since 1934.****"(E.T.C.)*

2030. The idol of Ram Lala, placed in the disputed building, is Chal Vigrah:

"रामलला जी की जो मूर्ति विवादित भूमि में सिंहासन पर रखी थी उसे ***हम चल विग्रह कहेंगे।"*** *(पेज 232)*

*"****We will call*** *the idol of Ramlala Ji, seated on the throne in the disputed building,* ***'Chal-vigrah' (movable form of deity****)."(E.T.C.)*

2031. About Pran Prathishtha, DW 3/1 says:

"आमतौर से प्राण, प्रतिष्ठा की विधि में कम से कम पॉच दिन लगते

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हैं और कम से कम पॉच, पंडित मिलकर प्राण प्रतिष्ठा करते हैं। जहॉ पर प्राण प्रतिष्ठा करना होता है, उसके पास में मण्डप बनता है और वहां यज्ञ होता है, जिसमें जलाध्विास, अन्नाधिवास, शैय्याधिवास आदि प्रकरण होते हैं और हवन होता है, तथा नगर की परिक्रमा होती है, तब जहॉ पर मंदिर में मूर्ति स्थापित किया जाना होता है, वहॉ मूर्ति को स्थापित किया जाता है।''

(पेज 233)

''The ritual of 'Pranpratishtha' (vivification) normally takes at least five days and at least five Pandits (scholarly men) collectively perform 'Pranpratishtha'. 'Mandap' (canopy-like structure) is erected near the place where 'Pranpratishtha' is to be performed, and 'Yajna' (sacrifice) is performed there which comprise 'Jaladhiwas', 'Annadhiwas', 'Shaiyyadhiwas' etc.; and 'Hawan' is also performed and 'Parikrama' is also done of the town in whose temple idol is to be installed or is installed.''(E.T.C.)

2032. He explained about the temple on the north of the disputed site:

''गुदड़तड़ वाले मंदिर को जन्मभूमि मंदिर नहीं कहते हैं लेकिन जन्मभूमि मंदिर का प्राचीन नाम जन्म स्थान है, बाद में यह जन्मभूमि के नाम से प्रचलित हुआ और काग़ज़ातों में इसका नाम जन्मस्थान करके ही दर्ज है। सैकड़ो वर्ष पहले से इस जन्मस्थान को जन्मभूमि कहा जाने लगा। यह परिवर्तन कब, कैसे हुआ, इसकी कोई मुझे जानकारी नहीं है।''

(पेज 244)

''The Gudadtad temple is not called Janmbhumi temple but the old name of the Janmbhumi temple is Janmsthan, which later came to be known as Janmbhumi and its name is recorded only as Janmsthan in records. Hundreds of years ago, this Janmsthan came to be called Janmbhumi. I have no knowledge as to how and when this change came to be.''(E.T.C.)

2033. However, about maintenance of building, he could not

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say anything very clearly:

> *''**सन् 1946 से 29 दिसम्बर सन् 1949 के बीच विवादित भवन की चूनाकारी अथवा पुताई हुई थी।** यह पुताई लगभग हर वर्ष होती थी। एक बार विवादित भवन में पुताई में **कितना व्यय होता था, इसकी जानकारी मुझे नहीं है।**'' (पेज 253)*
>
> ***"Between 1946 and 29th December, 1949, the disputed building was lime-washed or white-washed.** This white washing used to be done almost every year. **I do not have the knowledge as to how much expenditure was incurred** in white washing the disputed building once."(E.T.C.)*

2034. **DW 3/2 Raja Ram Pandey** claims to have visited disputed site for worship of Sri Ram Lala since 1930:

> *''मैं सन् 1930 से रामजन्मभूमि पर दर्शन करने जाता रहा हूं। मैंने रामजन्मभूमि की परिक्रमा भी बराबर की है। यह सही है कि हनुमत द्वार वाली दीवार में ही दाहिनी तरफ वाराह भगवान की प्रतिमा ताखा में थी। ताखा, पूर्वी दीवार में दक्षिण की तरफ था।'' (पेज 20)*
>
> *"I have been going to have darshan at Ramjanmbhumi since 1930. I have always also performed circumambulation at Ramjanmbhumi. It is true that an idol of Lord Varah was on a niche to the right of the wall itself having the Hanumat Dwar. The niche was on the southern side in the eastern wall."(E.T.C.)*
>
> *''**विवादित भवन में मैं जब से भी दर्शन करने जा रहा हूँ, उसी समय से मूर्ति वहाँ पर विराजमान है, पर कब से थी, इसका मुझे ज्ञान नहीं है। विवादित भवन में जब मैं पहली बार सन् 1939 में गया था,** उस समय वहां भगवान विराजमान थे और मैं उनकी पूजा व दर्शन करके चला आया था। **सन् 1930 के बाद से मैं विवादित भवन** में भगवान/मूर्ति को विराजमान देख रहा हूँ।'' (पेज 26)*
>
> *"**The idol is present there since the time I have***

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been going to have 'Darshan' at the disputed building. But I do not know since when it has been there. In 1939, when I first went to the disputed building, *'Bhagwan' was seated there and I returned from there after performing 'Pooja' and having 'Darshan' of Him. I have been seeing Bhagwan/idol of Bhagwan seated* ***in the disputed building since 1930.****"(E.T.C.)*

"मैंने हज़ारों बार कुर्क़ी के पहले आधा घन्टा से एक घण्टा तक बीच वाले गुम्बद के नीचे बैठकर रामकीर्तन किया था।" (पेज 39)

"Prior to the attachment, I had thousands of times performed 'Ramkirtan' by sitting beneath the central dome for half an hour to an hour."(E.T.C.)

2035. He denied construction of mosque by Babar in 1528:

"यह कहना गलत होगा कि बाबरी मस्ज़िद सन् 1528 में बनी थी।" (पेज 25)

"It would be wrong to say that the Babri mosque was built in 1528 AD."(E.T.C.)

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2036. In the zeal of denying existence of any mosque at the disputed sight he gave different versions about his knowledge of the word "Babri Masjid":

"मैं सन् 1949 के बाद से बाबरी मस्जिद का नाम सुन रहा हूँ, *उससे पहले मैंने बाबरी मस्जिद का नाम नहीं सुना था। सन् 1949 से जिस बाबरी मस्जिद के बारे में सुन रहा हूँ, वह अयोध्या में कहाँ पर स्थित है या थी, इसकी मुझे जानकारी नहीं है। उसका मुकदमा चल रहा है, इसकी जानकारी मुझे है।" (पेज 62)*

"I have been hearing of the Babri mosque since 1949; *I had not heard of the Babri mosque earlier. I do not know where in Ayodhya the Babri mosuqe – about which I have been hearing since 1949 – is or was situated. I have the knowledge that a case in this connection is going on."(E.T.C.)*

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''मन्नान साहब के जिरह करने पर मुझे यह मालूम हुआ था कि जिस भवन को मैं जन्मभूमि मन्दिर कहता हूँ उसी को मुसलमान लोग बाबरी मस्जिद कहते हैं।'' *(पेज 62)*

"From Mannan Sahib's cross-examination I came to know that the building which I call Janmbhumi temple is called the Babri mosque by Muslims." *(E.T.C.)*

''विवादित भवन की कुर्की के बारे में समाचार मैंने सन् 1949–50 में पढ़ा था। उन समाचारों में भी बाबरी मस्जिद का नाम नहीं आया था।''

(पेज 63)

"In 1949-50 I went through the news regarding the attachment of the disputed building. The words 'Babri mosque' had not occurred in those pieces of news."(E.T.C.)

''मैंने ऐसा नहीं सुना कि वह ढॉचा बाबर के समय था, इस कारण लोग उसे गिराना चाहते थे। मैं उस विवादित भवन को मंदिर समझता था।'' *(पेज 72)*

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"I have not so heard that the structure was of the time of Babar, therefore, people wanted to demolish the same. As regarded that disputed building as temple."

(E.T.C)

''मेरी मुसलमानों से मुलाकात होती रही थी और सन् 1992–93 में भी मुलाकात होती रहती थी, परन्तु किसी मुसलमान ने मुझसे यह नहीं कहा कि 6 दिसम्बर सन् 1992 को बाबरी मस्जिद गिरा दी गयी थी।'' *(पेज 73)*

"I had been meeting Muslims and I used to have meetings with them in 1992-93 as well; but none of the Muslims told me that the Babri mosque had been demolished on 6th December, 1992. "(E.T.C.)

''जब श्री अब्दुल मन्नान साहब की जिरह में बाबरी मस्जिद का नाम आया तब मैंने यह समझ लिया था कि यह उसी विवादित भवन से संबंधित है, जिसको मैं राम जन्म भूमि समझता रहा हूँ।'' *(पेज 74)*

"When the name of Babri mosque appeared in the

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cross-examination of Sri Abdul Mannan, I understood that the same related to the same disputed building which I have been regarding as Ramjanambhumi."

(E.T.C)

''मैं 22 सितम्बर सन् 2003 को लखनऊ हाईकोर्ट आया, तो एक कमरे पर मैंने लिखा हुआ पढ़ा ''रामजन्मभूमि–बाबरी–मस्जिद'', तो मेरी समझ में आया कि ''रामजन्मभूमि मन्दिर'' का ''बाबरी मस्जिद'' से कोई सम्बन्ध है।'' *(पेज 152)*

"On 22nd September, 2003 I came to Lucknow High Court and read 'Ramjanmbhumi-Babri Masjid' written outside a room, when I came to understand that 'Ramjanmbhumi temple' has some relation with 'Babri mosque'." *(E.T.C)*

2037. When faced with certain problem due to long drawn cross examination, he immediately took recourse to age old defence of "weak memory" and says:

''मेरी आयु 87 वर्ष हो गयी है और ***मेरा विवेक ठीक कार्य नहीं करता है,*** *इस कारण* ***मुझे याद नहीं रहता है कि मैंने कब क्या कहा।*** *मेरे उपरोक्त बयानों में से आज वाला उपरोक्त बयान सही है, कल दिनांक 30.9.2003 वाला बयान त्रुटिवश दे गया हूँ।'' (पेज 70)*

"I have grown 87 years old and ***my discretion does not work in a proper manner.*** *For this reason,* ***I fail to remember*** *which particular thing I stated at a particular time. Of the aforesaid statements, the above mentioned statement given by me today is correct; I have wrongly given the statement dated 30.09.2003."(E.T.C.)*

2038. About the period as to when the idols were kept in the disputed building he says:

''मुझे यह ज्ञान नहीं है कि विवादित तीन गुंबदों वाले भवन में मूर्तियां कब और किसने रखवाई, परन्तु जब से मैं वहॉ जा रहा हूँ, तब से

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उन्हें वहां देख रहा हूँ। उत्तर वाला फाटक केवल मेला में खुलता था।''

(पेज 76)

"I do not have knowledge of the fact as to who installed the idols in the three dome disputed structure and when, but ever since I have been going there, I have seen them over there. The northern gate used to open only during fairs." (E.T.C)

2039. Regarding the dividing wall between outer and inner courtyard as well as 1934 damage, he says:

''जिस दीवार में लकड़ी के जंगले लगे होना मैं बता रहा हूँ, यह वही दीवार है, जिसमें सन् 1949 के पहले से लोहे के सीखचे लगे हुए थे। ***इस दीवार में लोहे के सीखचे सन् 1949 से लगे हैं, उससे पहले सन् 1930 से लकड़ी के जंगले लगे हुए थे****, फिर कहा कि लकड़ी के जंगले सन् 1930 के पहले से लगे हुए थे।* ***इसी दीवार को सन् 1934 में मामूली क्षति पहुँची थी। इस दीवार के अलावा विवादित भवन के अन्य किसी भाग को सन् 1934 में मैंने क्षतिग्रस्त नहीं देखा।*** *विवादित स्थल के करीब सन् 1934 के दंगे में कोई भी मुसलमान नहीं मारा गया था, अयोध्या में 8–10 मुसलमान मारे गए थे। मेरी जानकारी में नहीं है कि विवादित भवन की जिस दीवार को क्षति पहुँची थी, उसकी मरम्मत कराई गई थी, या नहीं।* ***उस दीवार को क्षतिग्रस्त रूप में मैं सन् 1949 तक देखता रहा।''****(पेज 88)*

"The wall in which I am stating about fixation of wooden 'Jangla' (grating), is the same wall in which iron grills were fixed prior to the year 1949. ***The iron grills in this wall are fixed since 1949, prior to it were wooden 'Jangla' since 1930****, then stated that the wooden 'Jangla' were fixed before the year 1930.* ***This very wall had suffered minor damage in the year 1934. Apart from this wall, I did not see any other part of the disputed structure damaged in the year 1934****. No Muslim was killed near the disputed structure in the riot of the year*

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1934. 8-10 Muslims were killed in Ayodhya. It is not within my knowledge whether the wall of the disputed structure, which had suffered damage, had been repaired or not. ***I had seen that wall in a damaged state till the year 1949."*** *(E.T.C)*

*''**यह कहना गलत है कि सन् 1934 के दंगे में विवादित भवन के शिखर** उसकी पश्चिमी दीवार एवं फ़र्श आदि को **क्षतिग्रस्त किया गया था।**'' (पेज 89)*

***"It is wrong to say that the dome**, western wall and floor **of the disputed structure had been damaged in the riot of the year 1934."** (E.T.C)*

(Note: This is contradictory to DW 3/1, page 127.)

''यह कहना भी गलत है कि जिस दीवार में लकड़ी के जंगले होना मैंने बताया है, उनमें कभी लकड़ी के जंगले नहीं लगे थे। यह भी कहना गलत है कि उक्त दीवार में सन् 1930 के पहले से ही लोहे के सीखचे/जंगले लगे थे।'' (पेज 89)

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"It is also wrong to say that the wall, in which the wooden windows are stated to have been fixed, never had wooden 'Jangla' . It is also wrong to say that iron grill/'Jangla' had been fixed in the said wall before the year 1930." (E.T.C)

2040. On the one hand he admits weak memory due to old age but on the other hand he is able to tell as to what actually happened when for the first time he went to visit the disputed site in 1930 and that too after almost 73 years:

''मेरे पिता जी प्रथम दिन जब मुझे लेकर विवादित भवन में दर्शन कराने गए तो फाटक पर ही उन्होंने बताया कि देखो इन खम्भों में हनुमान जी की मूर्ति लगी है और इसे हनुमत द्वार कहते हैं और उन्हीं के बताने के आधार पर मैंने यह बात कही है।'' (पेज 150)

"On the first day when my father took me to the disputed structure for 'darshan', he told me at the gate-

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look, these pillars contain the idol of Hanuman Ji and it is called Hanumatdwar and it is on basis of facts told by him that I have stated these facts." (E.T.C)

2041. **DW 3/3, Satya Narain Tripathi** claims to have visited the disputed building since 1941 several times and has seen the idol of Lord Ramlala in the Garbhgrih, i.e., under the central dome of the disputed building. He is not resident of Ayodhya but resides at Village Mahawan, Tahsil Bikapur, District Faizabad and was born on 08.09.1931. His village is about 35 kms from Ayodhya. He did not deny, as such, any incident whether took place in the night of 23/12/1949 on page 22.

''मुझे पता नहीं कि दिनांक 23.12.1949 की रात को कुछ लोगों ने घुस कर मूर्तियां रखी या नहीं।''

"I do not know whether or not some persons had entered and placed idols on the night of 23.12.1949. "(E.T.C.)

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2042. On page 37 he claims that the disputed building was constructed by Vikramaditya. On page 80 he said about the size of the three domes as under:

*''विवादित भवन में तीन गुम्बद थे। **तीनों गुम्बद एक ही आकर के थे।''***

*"There were three domes in the disputed building. **All the three domes were of the same size."** (E.T.C.)*

2043. This statement is ex facie incorrect since the central dome was bigger than the rest two and it is virtually the admitted position by all the parties. We also find it from the bare perusal of the photographs of the disputed building available to us. Most of the statement of this witness is based on assumption and hearsay, i.e., the information he has received. On the one hand he gave statement about his visit to the disputed site very accurately but regarding placement of various items thereat he

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made contradictory statement. On page 24 he said that there were idols of Ramji, Lakshmanji and Hanumanji kept on Sinhasan which remained there from 1941 to 1992 (page 25) but then on page 26 he retracted from the said statement after looking to the photographs and said that it was not clear to him when he used to visit and in what manner the idols were kept.

2044. DW 3/4, Mahant Shiv Saran Das, a Bairagi of Ramanandi Sampraday, claims that he is visiting Ram Janambhumi since 1933 and has worshipped the idols of Lord Ramlala inside the disputed building under the central dome, i.e., Garbhgrih. On page 13 he, however, improved upon his statement by stating that he was born in 1920 and since 1930 to 1942 he remained at Ayodhya continuously.

''अयोध्या में मैं 10 वर्ष की आयु से सन् 1942 तक लगातार रहा हूँ। मेरा जन्म वर्ष 1920 में हुआ था। सन् 1930 में मैं दस वर्ष का था और सन् 1930 से सन् 1942 तक मैं लगातार अयोध्या में रहा और यह अवधि लगभग 12 वर्ष की होती है।''

"From the age of 10 years up to 1942, I have always been at Ayodhya. I was born in 1920. I was 10 years old in 1930, and I continued to reside at Ayodhya from 1930 to 1942, and this period is of nearly 12 years."(E.T.C.)

2045. This statement is contradicted by him repeatedly.

''मैं अयोध्या सैकड़ों बार गया हूँ और वहाँ पर मैं रहा भी हूँ। . . . . अलीगंज में हमारे घर के सामने ही एक मस्जिद है। . . . . . 11 वर्ष की अवस्था में मेरा यज्ञोपवीत हो गया था, उसके बाद मैंने घर छोड़ दिया था।'' (पेज 28)

"I have been to Ayodhya hundreds of times and I have also resided there. . . . . There is a mosque right in front of our house at Aliganj. . . . . My 'Yogyopaveet' (sacrificial thread ceremony) was solemnised when I was 11 year old. After that I left the house."(E.T.C.)

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*''**12 वर्ष की अवस्था में मैं अयोध्या गया था** और उसी समय से मैंने मूर्तियॉ ही देखी हैं। मुझे ध्यान नहीं है कि जब मैं 12 वर्ष की आयु का था, उस समय सन् कौन सा था। मैं अंदाज से भी सन् नहीं बता सकता।'' (पेज 29)*

***"At the age of 12, I visited Ayodhya** and since then I have seen the idols only. I do not remember which year was in the running when I was 12 years old. I cannot tell the year even by guess."(E.T.C.)*

***''अयोध्या में मैं उस वक्त से रहा जब मैं महराज जी का शिष्य बना। मैं महाराज जी का शिष्य सन् 1945 में बना।** उसके बाद 5–6 साल तक मैं बड़ी छावनी में महाराज जी की सेवा करता था। उसके बाद अपने गुरू भाई राम मनोहर दास जी के साथ अहमदाबाद चला गया।'' (पेज 34)*

***"I began to reside at Ayodhya since I became the disciple of Maharaj Ji. I became disciple of Maharaj Ji in 1945.** After that, I served Maharaj Ji at Badi Chhavani (big cantonment) for 5-6 years. Thereafter I went to Ahmedabad with my Gurubhai (disciple of the same spiritual teacher), Ram Manohar Das Ji. "(E.T.C.)*

***''मैं 11 वर्ष की उम्र में गुजरात गया था। मैं वहॉ करीब 13 साल तक रहा।''** (पेज 38)*

***"I went to Gujrat while being 11. I resided there for about 13 years."** (E.T.C.)*

''मेरे महाराज जी बड़ी छावनी के श्री श्री 108 महन्त श्री स्वामी कौशल किशोर दास जी थे और वे 80 साल तक अयोध्या में रहे और उसी दौरान गद्दीशीन रहे। मैं श्री महन्त जी के साथ लगभग 10 साल अयोध्या में रहा। जहॉ श्री महन्त जी रहते थे, वहीं मैं भी रहता था। मैं उनके साथ सन् 1946 से सन् 1956 तक रहा। 1956 के बाद मैं अपने गुरुभाई के साथ श्री द्वारिका जी चला गया।'' (पेज 40)

"Sri Sri 108 Mahant Sri Swami Kaushal Kishore Das Ji of Badi Chhavani was my Maharaj Ji (spiritual teacher)

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and he resided at Ayodhya for 80 years and continued to assume the seat during that very period. I resided at Ayodhya along with Sri Mahant Ji for nearly 10 years. I resided wherever Sri Mahant Ji resided. I was with him from 1946 to 1956. After 1956 I went to Sri Dwarika Ji along with my Gurubhai."(E.T.C.)

''सन् 1945–46 के उज्जैन के कुम्भ में श्री श्री 108 श्री स्वामी निर्मल दास जी महाराज ने मुझे नागा बनाया। उस समय मैं अहमदाबाद में ही रहता था।'' (पेज 41)

"Sri Sri 108 Sri Swami Nirmal Das Ji Maharaj initiated me as a Naga at the Kumbh held in Ujjain in 1945-46. At that time I resided in Ahmedabad itself."(E.T.C.)

''मैं यह नहीं बता पाऊॅगा कि मैं अयोध्या में कितने वर्ष तक रहा, क्योंकि मुझे गिनती नहीं मालूम। मेरा यज्ञोपवीत 11 साल की उम्र में हुआ था और उसके दो माह बाद मैं अयोध्या चला गया और साधू बन गया था। यज्ञोपवीत 11 साल की आयु में ही होता है। यज्ञोपवीत में ब्राह्मण आते हैं। अयोध्या जाते ही मैं बड़ी छावनी में श्री श्री 108 श्री स्वामी कौशल किशोर दास जी का शिष्य हो गया। मेरी महन्त जी से पहली दफ़ा वहीं बड़ी छावनी में मुलाकात हुई थी और उनके शिष्य बनने के बाद मैं 10 साल वहॉ रहा था।'' (पेज 41–42)

"I am not in the position to tell for how many years I resided at Ayodhya because I do not know the numbers. My Yagyopaveet was solemnised while I was 11, and two months after that I went to Ayodhya and became a saint. Yogyopaveet is performed only at the age of 11 years. Brahmans come to attend Yagyopaveet. Immediately after going to Ayodhya I became the disciple of Sri Sri 108 Sri Swami Kaushal Kishore Das Ji of Badi Chhavani. I had first met my Mahant Ji at that very Badi Chhavani and I resided there for 10 years after becoming his

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disciple."(E.T.C.)

"विवादित भवन जो तीन गुम्बद का था, वहॉ मैं सन् 1936 से जा रहा हूँ। *जब मैं विवादित भवन में पहली बार सन् 1936 में गया था, तो बीच वाले गुम्बद के नीचे तक गया था।" (पेज 42)*

"Since 1936, I have been going to the disputed building which had three domes. *In 1936, when I first went to the disputed building, I went up to beneath the central dome."(E.T.C.)*

"सन् 1938 से सन् 1950 तक मैं अयोध्या में नहीं रहा, परन्तु अयोध्या आता था और इस दौरान जब मैं अयोध्या आता था, तो विवादित स्थल की तरफ नहीं जाता था और अगर जाता भी था तो बाहर से हाथ जोड़कर लौट आता था।" *(पेज 54)*

"I did not reside at Ayodhya from 1938 to 1950 but whenever I came to Ayodhya I did not go towards the disputed site and if I at all went there I returned from outside after saluting the place with folded hands."

(E.T.C.)

मैं सन् 1938 तक अयोध्या में रहा था और उसके बाद सन् 1938 से सन् 1957 तक अहमदाबाद, मध्य प्रदेश, काठियावाड़, बम्बई आदि में भ्रमण करता रहा और सन् 1958 में मैं कैलाश पर्वत और मान सरोवर की यात्रा के लिए गया था।" (पेज 54)

"I resided at Ayodhya until 1938 and after that kept travelling to Ahmedabad, Madhya Pradesh, Kathiyavad, Bomaby, etc. from 1938 to 1957, and went on journey to Mountain Kailash and Mansarovar in 1958. "(E.T.C.)

"मैं विवादित भवन के नीचे वाले भाग में कम से कम सैकड़ों बार गया होऊॅगा। स्वयं कहा कि मैं वहॉ पुजारी था, भंडारी था और भोग भी लगाता था। मैं श्री रामजन्म भूमि में पुजारी था। श्री राम जन्म भूमि से मेरा तात्पर्य तीन गुम्बद वाले विवादित भवन से ही है। मुझे सन् नहीं याद है कि किस सन् में मैं वहॉ पुजारी था, परन्तु राम जन्म भूमि जब राम जन्म भूमि

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नहीं थी, उसे विवादित नहीं कहा जाता था, तब मैं वहॉ पुजारी था और भण्डारी भी था।'' (पेज 66)

"I must have gone to the lower part of the disputed building at least hundreds of times. (Himself stated) I was a priest there; I was a Bhandari and I also performed 'Bhog' (offering of meal to deity). I was a priest at Sri Ramjanmbhumi. By Sri Ramjanmbhumi I mean three domed disputed building. I do not remember the year in which I was a priest there but at the time when Ramjanmbhumi was not Ramjanmbhumi and as such it was not fit to be termed as disputed, I was a priest as also a Bhandari there."(E.T.C.)

''मैं तीन गुम्बद वाले विवादित भवन में पुजारी भी रहा। मुझे यह याद नहीं है कि मैं तीन गुम्बद वाले विवादित भवन में 10–20 बार गया था या 100–200 बार गया या कितनी बार गया। मुझे याद नहीं है कि तीन गुम्बद वाले विवादित भवन में मैं कितने दिन पुजारी के रूप में रहा हूँ। मैं तीन गुम्बद वाले विवादित भवन में पुजारी के रूप में 2–4 साल रहा।''

(पेज 74)

"I was also a priest in the three domed disputed building. I do not remember how many times–10-20 times or 100-200 times – I went to the three- domed disputed building. I do not remember for how many days I have been as a priest at the three- domed disputed building. I was a priest at the three- domed disputed building for 2-4 years."(E.T.C.)

2046. He contradicted his own statement of page 74 on page 106.

''प्रश्न– आप अपने उपरोक्त स्वयं के बयान के अनुसार अयोध्या में सन् 1931 से सन् 1957 के बीच केवल 5–6 महीने लगातार रहे हैं। क्या यह सही है?

उत्तर– जी हॉ, यही सही है।

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प्रश्न– तो मेरा यह कहना है कि आपका 5 फरवरी 2004 के पृष्ठ–74 का यह बयान कि आप ''तीन गुम्बद वाले विवादित भवन में पुजारी के रूप में दो–चार साल'' रहे ग़लत हो जाता है। इस सम्बन्ध में आपको क्या कहना है?

उत्तर– उपरोक्त को देखकर गवाह ने कहा कि मेरा यह ***बयान गलत हो गया है।''***

''Question: As per the aforesaid statement of your own, you have been at Ayodhya continuously for only 5-6 months between 1931 and 1957. Is it true?

Answer: Yes, Sir. It is true.

Question: Then I have to say that your statement dated 5th February, 2004 – mentioned on page 74 and reading as 'You served as a priest at the three domed disputed building for 2-4 years' – goes wrong. What have you to say in this respect?

Answer: Going through the aforesaid the witness stated – ***this statement*** *of mine* ***has gone wrong.****''(E.T.C.)*

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2047. He also contradicted the very averment made in para 8 of his affidavit about his visit to Ramjanmbhumi since 1933 and said:

''विद्वान जिरहकर्ता अधिवक्ता द्वारा गवाह को उनके मुख्य परीक्षा के शपथ–पत्र के पैराग्राफ–8 का अंश ''श्रीरामजन्मभूमि में 1933 ई0 से दर्शन करने जाता रहा हूँ, ''दिखाया गया और यह पूछा गया कि क्या यह क्या यह बयान भी गलत हो गया है, क्योंकि उस समय आप अयोध्या में थे ही नहीं? उपरोक्त को देखकर गवाह ने ***उत्तर दिया कि इसमें सन् 1933 गलत लिख गया है।''***

''A portion of paragraph 8 in the affidavit filed at the examination-in-chief – which runs as 'I have been going for Darshan at Sri Ramjanmbhumi since 1933' – was shown to the witness by the learned cross-examining counsel and he was asked whether this statement of his has also turned

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incorrect because he was not at all present in Ayodhya. Going through the aforesaid, the witness ***replied – The year 1933 has come to be wrongly written in it."*** *(E.T.C.)*

2048. Then ultimately on page 108 he said:

''मुझे यह याद नहीं है कि मैं फरवरी सन् 1986 से पहले विवादित भवन में कभी गया या नहीं।''

"I do not remember whether I had ever gone or not to the disputed building before February, 1986." *(E.T.C.)*

2049. He also contradicted his statement on page 13 about his continuous stay from 1930 to 1942 on page 102.

''विद्वान जिरहकर्ता अधिवक्ता द्वारा गवाह को उनके दिनांक–14.11.2003 के पृष्ठ–13 के बयान का अंश ''अयोध्या में मैं दस वर्ष की आयु से सन् 1942 तक लगातार रहा हूँ'' और इसी पृष्ठ के बयान का अंश ''और सन् 1930 से सन् 1942 तक मैं लगातार अयोध्या में रहा और यह अवधि लगभग 12 वर्ष की होती है'' दिखाया गया और यह पूछा गया कि इन उपरोक्त दोनों बयानों में आपने जो सन् 1942 तक अयोध्या में लगातार रहने और 12 वर्ष रहने की बात कही है, क्या वह आपके ऊपर दिये गये बयान के मुताबिक गलत है? उपरोक्त को देखकर गवाह ने उत्तर दिया कि ***इसमें जो सन् 1930 से 1942 तक लगातार अयोध्या में रहने वाली बात लिखी है, वह मैं गलती से बता गया हूँ।''***

"The witness was shown by the learned cross-examining counsel a portion of the former's statement dated 14.11.2003 – mentioned on page 13 and running as 'I have continuously been at Ayodhya from the age of 10 years until 1942' – as also a portion of the statement mentioned on this very page – which runs as 'And I resided continuously from 1930 to 1942 at Ayodhya and this period is of nearly 12 years' – and a question was put to him whether his version as in the aforesaid two statements to the effect that he resided at Ayodhya continuously up to 1942 and this period spanned 12 years, was incorrect as

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per the statement given by him. Going through the aforesaid, the witness replied that ***the factum of*** *his* ***residing at Ayodhya continuously from 1930 to 1942 has wrongly been mentioned therein by him****."(E.T.C.)*

2050. **DW 3/5, Raghunath Prasad Pandey** is resident of village Sariyawan, a place about 16-17 kms from the disputed place. Later on page 34 he however rectified his statement of para 1 of the affidavit saying that the actual distance is about 14-15 kms. He was born in October, 1930 and his father died when he was six years of age, i.e., 1936. He claims to have visited Ayodhya alongwith his mother from 1937 to 1948 and that the idols of Lord Ramlala were inside the building under the central dome, i.e., Garbhgrih. Later on when he was confronted with various photographs of the disputed building he got confused and made contradictory statement. In order to justify his statement about location of Sumitra Bhawan, he even disputed the map prepared by Court Commissioner, Sri Shiv Shankar Lal, which map has not been disputed by most of the witnesses of Nirmohi Akhara as well Akhara itself, and ultimately he admitted on page 84 that his statement is wrong.

''उपरोक्त को देखकर गवाह ने कहा कि ***मेरा उपरोक्त बयान गलत हो गया है।*** *. . . .उपरोक्त को देखकर गवाह ने उत्तर दिया कि मेरा उपरोक्त* ***बयान ग़लत हो गया है,*** *क्योंकि सन् 1991 में यह सुमित्रा भवन उ0प्र0 सरकार द्वारा गिरा दिया गया था।''*

''Going through the aforesaid, the witness stated – ***the aforesaid statement of mine has turned incorrect.*** *. . . . . Going through the aforesaid the witness replied – The aforesaid* ***statement*** *of mine* ***has turned wrong*** *because this Sumitra Bhawan was demolished by the Government of Uttar Pradesh in 1991. ''(E.T.C.)*

2051. Most of his statement travelled in the facts of antiquity

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and, therefore, wholly irrelevant and inadmissible since admittedly he had no personal knowledge of those facts. So far as the statement of his personal belief that the disputed place is where Lord Rama was born, the same being matter of faith and belief, no comment is called for but rest of his statement about the history of the period of Lord Rama etc. is wholly inadmissible. When asked about the source of his knowledge he says on page 101 that he has heard the stories from his teachers. On page 102 he says that three domed structure was constructed by Raja Vikramaditya. Then he modified it on page 105 stating that the building constructed by Vikramaditya was demolished and thereafter the disputed building was constrcuted and for this information refers to Ayodhya Mahatam. Sri R.L. Verma, Advocate for Nirmohi Akhara, did not dispute that Ayodhya Mahatam nowhere mentions that the building constructed by Raja Vikramaditya was demolished and thereafter the disputed building was constructed. The witness is an educated man having worked in Indian Railway since 1948 till 1988. However, on page 170 he claims to have heard the name of 'Babari mosque' for the first time on 18.11.2003.

> ***''18 नवम्बर सन् 2003 को जब मैं यहाँ बयान देने आया था तब मैंने लखनऊ में पहली बार बाबरी मस्जिद का नाम सुना।*** *उससे पहले मैंने कभी बाबरी मस्जिद का नाम नहीं सुना। मैंने 18 नवम्बर सन् 2003 को ही यह बात पहली बार सुनी थी कि मुसलमान लोग विवादित भवन को मस्जिद मानते हैं।''*
>
> ***"I first heard the name of Babri mosque in Lucknow when I came here to give my statement on 18th November, 2003.*** *Prior to it, I had never heard the name of Babri mosque. On 18th November, 2003 itself I had heard for the first time that the Muslims considered the disputed structure to be a mosque." (E.T.C)*

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2052. Very interestingly he admits on page 172 that he has wrongly stated on page 45 that he read his affidavit after it was typed out but before its verification.

''प्रश्न– तो क्या आपके उपरोक्त पृष्ठ–45 के बयान में यह ग़लत लिख गया है कि आपने उपरोक्त शपथ–पत्र को टाईप होने के उपरांत और सत्यापित होने के पूर्व फैजाबाद में पढ़ा था?

उत्तर– जी हॉ, ***यह बात ग़लत हो गई है।''***

"Question:- Then have you wrongly stated at the aforesaid page-45 of your statement that you had read the aforesaid affidavit at Faizabad, after it was typed out and before it was verified?

Answer:- Yes, ***this mistake has occurred."*** *(E.T.C)*

2053. **DW 3/6 Sitaram Yadav** was born in 1943 and, therefore, virtually had no personal knowledge about the facts as they were, upto December 1949. Whatever he says is hearsay and inadmissible. We do not find that for the state of affairs as prevailed upto December, 1949 his statement can be treated to be relevant. Much of his averments are not relevant since he is basically a witness of fact produced to show firstly that the worship was going on inside the disputed building prior to December, 1949 and the idols of Lord Ramlala also existed thereat since before that and that all these things were in possession and management of Nirmohi Akhara which information also he has given based on information he has received, as he has no such personal knowledge.

2054. **DW 3/7, Mahant Ramji Das** was born on 13.04.1923 at Katni (Madhya Pradesh) and has visited Ayodhya at the age of 11 and 12 years.

*''**विवादित स्थल को हिन्दू** समुदाय के लोग अनादिकाल से **श्री रामचन्द्र जी की जन्म भूमि मानकर पूजा करते हैं।** . . . . भगवान राम का जब से जन्म हुआ, तब से उस स्थल की पूजा होती रही*

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है, उसके पहले भी उस स्थल की पूजा होती रही है।'' (पेज 18)

***"The followers of Hinduism have been worshiping the disputed site** since time immemorial **by considering it to be the birthplace of Sri Ramchandra**.. . . . . The said site has been worshiped since Lord Rama was born. The said place was worshiped even before that." (E.T.C)*

''सन् 1934 से सन् 1992 तक मैंने विवादित स्थल को एवं उसके पास स्थित चौका, चूल्हा, बेलन, अर्थात् कौशल्या रसोई को उसी रूप में देखा है।'' (पेज 20)

"From the year 1934 to 1992, I have seen the disputed site and the 'Chauka', 'Chulha' (hearth), 'Belan' i.e. the Kaushalya Rasoi, in the same form." (E.T.C)

***''हिन्दुओं की परम्परा, आस्था एवं विश्वास चला आ रहा है कि गुम्बद वाले विवादित भवन के बीच वाले गुम्बद के नीचे वाले भाग में रामचन्द्र जी का जन्म हुआ था** और यही आस्था व विश्वास मेरा भी हैं श्री रामजन्म भूमि स्थल रामचन्द्र जी के समय से पूज्य है और बराबर पूजित होती चली आ रही है। मैं विवादित परिसर के पूर्वी मुख्य द्वार से होकर अंदर दर्शन करने जाता था। जन्मभूमि का दर्शन करने के उपरान्त जब बाहर निकलते थे तो दक्षिण की ओर से घूम कर परिक्रमा करते थे।'' (पेज 22–23)*

***"The tradition, faith and belief of Hindus has been continuing that Ramchandra was born beneath the middle dome of the domed disputed structure** and I also have the same faith and belief. The Sri Ramjanmbhumi site is reverable since the times of Ramchandra and has been continuously worshiped. I used to go through the eastern main gate of the disputed structure to have darshan. On coming out after having darshan, (I) used to circumambulate by turning southwards." (E.T.C)*

''सन् 1934 में जब मैं अयोध्या गया था, तो उस समय मेरी आयु लगभग ग्यारह–बारह वर्ष थी। मुझे याद नहीं है कि मैं सन् 1934 में

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अयोध्या गया या नहीं।'' (पेज 27)

"In the year 1934, when I had gone to Ayodhya, at that time I was aged around 11-12 years. I do not remember whether I had gone to Ayodhya in the year 1934, or not."

(E.T.C)

''मुझे लोगों ने यह बताया था कि सन् 1934 के दंगे में विवादित भवन का एक शिखर टूटा था। विवादित भवन का शिखर के अलावा अन्य कोई भाग सन् 1934 के बलबे में नहीं टूटा था। . . . . . सन् 1934 के बलवे के पन्द्रह–सोलह साल बाद इन लोगों ने विवादित शिखर के टूटने के बाबत बताया था। . . . . . सन् 1934 के लगभग चौहद साल बाद मैं अयोध्या गया। इस चौदह वर्षों के दौरान भी मैं एक दो बार अयोध्या गया हूँ। . . . . .सन् 1934 और सन् 1948 के दौरान जब मैं एक दो बार अयोध्या गया था, तो मैं बड़ा स्थान अयोध्या में ठहरा था। उस समय मैं बड़े स्थान के महंत का शिष्य नहीं हुआ था।'' (पेज 28)

"I was told by people that in the riot of the year 1934, a dome of the disputed structure had fallen down. Apart from the dome of the disputed structure, no other part was damaged in the riot of the year 1934. . . . . .About 15-16 years after the riot of the year 1934, these persons had told about the damage to the disputed dome. . . . . .I went to Ayodhya about 14 years after the year 1934. In the period of 14 years as well, I had been to Ayodhya on couple of occasions.. . . . . .When I went to Ayodhya on couple of occasions between the year 1934 to 1948, I had stayed at 'Bada Sthan', Ayodhya. At that time, I had not become the disciple of the Mahant of 'Bada Sthan'." (E.T.C)

''मैं निश्चित रुप से यह नहीं बता सकता कि मैं सन् 1934 और 1948 के बीच में अयोध्या कितनी बार गया था। मुझे याद नहीं है कि सन् 1934 एवं सन् 1948 के बीच में जब मैं अयोध्या गया, उस समय मेरी आयु क्या थी। जब मैं अपने पिताजी के साथ गया था। मुझे यह याद नहीं है कि सन् 1934 के बाद पहली बार मैं अयोध्या कब गया था परन्तु जब मैं सन्

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1934 के बाद पहली बार जब मैं अयोध्या गया था, तो तीन चार दिन रहा था।'' (पेज 29)

"I cannot definitely tell as to on how many occasions had I gone to Ayodhya between the years 1934 to 1948. I do not remember as to what was my age, when I visited Ayodhya between the years 1934 to 1948. When I had gone along with my father. I do not remember as to when did I first go to Ayodhya after the year 1934, but when I first went to Ayodhya after the year 1934, I stayed for 3-4 days."

(E.T.C)

''विवादित भवन में मूर्ति सन् 1949 के पहले से ही थी।'' (पेज 31)

"The idol existed in the disputed structure from before the year 1949." (E.T.C)

''सन् 1949 के बाद विवादित भवन से संबंधित कोई घटना नहीं हुई।'' (पेज 36)

"After the year 1949, no incident occurred regarding the disputed structure." (E.T.C)

''मैंने अयोध्या में स्थायी निवास सन् 1948 से प्रारम्भ किया था।''

(पेज 37)

"I started living permanently in Ayodhya from the year 1948." (E.T.C)

''सन् 1948 के बाद मेरे पिता जी कभी अयोध्या नहीं गए। मेरे पिताजी का देहावसान सन् 1947–48 में हुआ था। मेरी माता जी का देहान्त सन् 1947 में हुआ था।''

"After the year 1948, my father never visited Ayodhya. My father expired in the year 1947-48. My mother expired in the year 1947." (E.T.C)

2055. Contrary to the stand of Nirmohi Akhara, on page 75 he admits the construction of Babar of the disputed building:

''विवादित भवन जिसे 6 दिसम्बर सन् 1992 को गिराया गया, ***बाबर द्वारा सीता–पाक की शक्ल में बनाया गया था,*** *मस्जिद*

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*की शक्ल में नहीं। . . . . . **विवादित भवन में अकबर के समय में मुसलमानों को जुमा की नमाज़ पढ़ने की इजाज़त थी और बाकी समय में हिन्दुओं को पूजा अर्चना की इजाज़त थी।** साहित्य या इतिहास में इस बात का पता नहीं चलता है कि बाबर से अकबर के बीच में विवादित भवन के अंदर मुसलमानों द्वारा नमाज पढ़ी जाती थी या नहीं या राम की पूजा–अर्चना होती थी या नहीं। जहॉ तक मेरी जानकारी है और जैसा मुझे बताया गया है, **विवादित भवन में सन् 1934 के दंगे के बाद कभी नमाज़ नहीं हुई**, बल्कि उसके बाद से वहां पूजा अर्चना बराबर होती रही। जो मेरी जानकारी है और जो जनश्रुति पर आधारित है, अकबर के समय से सन् 1934 तक विवादित भवन में जुमे की नमाज़ होती थी। बाकी दिन नमाज़ नहीं पढ़ी जाती थी।'' (पेज 75)*

*"The disputed structure, which was demolished on 6th December, 1992, **was built by Babar in the shape of 'Sita Pak',** (and) not in shape of mosque. . . . . **In the period of Akbar, Muslims had the permission to offer Jumma namaz in the disputed structure and for the remaining period, Hindus were permitted to carry out prayer-worship.** It is not found in literature or history as to whether in the period between Babar to Akbar, namaz was offered by Muslims in the disputed structure or not, or whether the prayer-worship of Lord Rama was carried out or not. To the best of my knowledge and as told to me, **namaz was never offered in the disputed structure after the riot of the year 1934** and instead prayer-worship was regularly carried out over there in the later days. As per my knowledge, which is based on hearsay, the Jumma namaz was offered at the disputed structure from the times of Akbar till the year 1934. Namaz was not offered on other days." (E.T.C)*

*''विवादित स्थल परिसर को सीता पाक के नाम से **बाबर द्वारा***

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मन्दिर तोड़कर बनवाया गया था, *मस्जिद नहीं और तभी से इसे सीता पाक और रामजन्मभूमि के नाम से जानते हैं।'' (पेज 96).*

"The site of the disputed structure ***was built by Babar under the name 'Sita Pak',*** *(it was) not a mosque and since then it is known as 'Sita Pak' and Ramjanmbhumi."*

(E.T.C)

''विवादित स्थल पर ही सीता पाक शब्द लिखे हुए थे, परन्तु बाबरी सीता पाक यानी बाबर के नाम के संदर्भ में नहीं और न ही बाबर के नाम से था। स्वयं कहा कि विवादित भवन पर रामचन्द्र जी का तारक यन्त्र का षटकोण यन्त्र बना हुआ था। स्वयं कहा कि बाबर ने विवादित भवन पर सीता पाक इसलिए लिखवाया था, क्योंकि जब–जब बाबर ने मस्जिद बनवाने का प्रयास किया, उसमें विफल रहा, हनुमान जी भवन को गिरा देते थे, तब साधू सन्तों की राय के मुताबिक बाबर ने उस पर सीता पाक लिखवाया और मीनारों को गिरवा दिया तथा आदेश दिया कि मुसलमान सिर्फ जुमे की नमाज़ पढ़ेगें, बाकी दिन देव पूजा, ऋषि पाठ सब होगा।''

(पेज 96–97)

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"The words 'Sita Pak' were inscribed at the disputed site itself, however, (it) was neither in reference to 'Babri Sita Pak' i.e. name of Babar nor with the name of Babar. Stated on his own that Lord Ramchandra's 'Shatkon Yantra' of 'Tarak Yantra' were there at the disputed structure. Stated on his own that Babar had got 'Sita Pak' inscribed at the disputed structure in view of the fact that whenever Babar attempted to build the mosque, he remained unsuccessful, (as) Hanuman Ji used to demolish the building, and then as per the advice of saints-sages, Babar got 'Sita Pak' inscribed over it and dismantled the minarets and ordered that Muslims would offer only the Jumma namaz and on the remaining days 'Dev Puja' (worship of deities), 'Rishi Path' (orations by sages) would all take place." (E.T.C)

2056. After long drawn cross-examination ultimately when

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he found several mistakes in his affidavit, said on page 169:

*''**शपथ पत्र पर दस्तखत करते समय मैंने उसे नहीं पढ़ा था।** मैंने इस शपथ पत्र को न्यायालय कक्ष में आने के बाद न्यायालय कक्ष में पढ़ा था।''*

***"I had not read the affidavit at time of signing it.** I had read this affidavit after entering the Court room, in the Court room." (E.T.C)*

2057. **DW 3/8, Pt. Shyam Sunder Mishra** born in 1914, has claimed to visit the disputed premises and worship Lord Rama inside the disputed building from the age of 14 years. However, on page 119 he says that the disputed building was attached on 23.12.1949 and this was told to him by Baldev Das and Bhaskar Das when he visited the premises for Darshan.

''23 दिसम्बर 1949 के प्रातःकाल बल्देव दास तथा भाष्कर दास ने विवादित भवन के कुर्क होने की बात मुझे बताया था। जब मैं सुबह दर्शन करने गया तो बल्देव दास तथा भाष्कर दास ने कुर्की होने के संबंध में मुझे बताया था। . . . . . 23 दिसम्बर 1949 की सुबह से कोई भी व्यक्ति अन्दर दर्शन करने नहीं जा सकता था, बाहर से ही लोग दर्शन करते थे। दर्शन लोग रामलला की मूर्ति का करते थे।''

"In the morning of 23rd December, 1949 Baldev Das and Bhaskar Das had told me about attachment of the disputed structure. When I had gone in the morning to have darshan, Baldev Das and Bhasker Das had told me about the attachment. . . . . From the morning of 23rd December, 1949 no person could go inside to have darshan, (and) people used to have darshan from outside. People used to have darshan of the idol of Ramlala." (E.T.C)

2058. About his belief he said:

*''विवादित स्थल पर शुरू से ही राम जन्म भूमि के रूप में पूजा होती रही है। शुरू से मेरा तात्पर्य यह है कि जब मैं 14 साल की उम्र से वहॉ आने लगा तब से मैंने उसे राम जन्म भूमि के रूप में देखा है। **अपने***

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होश में आने अर्थात 14 साल की उम्र के पहले विवादित स्थल पर पूजा होने अथवा न होने के बारे में मुझे कोई जानकारी नहीं है। विवादित स्थल पर श्री राम चन्द्र जी पैदा हुए थे। *मैं यह नहीं बता पाऊँगा कि राम चन्द्र जी आज से कितने साल पहले पैदा हुए।''*

"The disputed structure has been worshiped as Ramjanmbhumi from the very beginning. By 'very beginning', I mean that since I started coming there from the age of 14 years, I have seen it as Ramjanmbhumi. ***I have no knowledge about observance or non-observance of worship at the disputed site, prior to my attainment of maturity i.e. before the age of 14 years. Lord Shri Ramchandra was born at the disputed site.*** *I will not be able to tell as to how many years ago, was Lord Ramchandra born." (E.T.C)*

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2059. **DW 3/9, Ram Ashrey Yadav** is 72 years of age, which brings his year of birth to about 1932. He claims to have visited the disputed place at the age of 12-14 or 15 years. Interestingly about his affidavit he say:

''मैंने आज इस न्यायालय में शपथ–पत्र दाखिल किया है। ***मैं स्वयं यह नहीं पढ़ पाया कि मेरे द्वारा दाखिल इस शपथ–पत्र में क्या लिखा है।*** *इस शपथ–पत्र को मुंशी जी ने मुझे पढ़कर सुनाया था, परन्तु मुंशी जी का नाम मुझे नहीं मालूम है। मैंने अपने शपथ पत्र में, सुनने के बाद केवल दस्तखत कर दिये थे, परन्तु* ***उसमें क्या लिखा है, यह मुझे नहीं मालूम।*** *यह शपथ–पत्र तीन या चार पन्ने का था।'' (पेज 6)*

''Today, I have filed an affidavit in this Court. ***I was not able to read on my own as to what was written in the affidavit filed by me.*** *This affidavit was read out to me by the 'Munshi' (advocate clerk), but I do not remember his name. I had only put my signature on the affidavit after hearing the same, but* ***I do not know about its contents.***

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This affidavit ran into three or four pages." (E.T.C.)

2060. Then on page 8 he says:

*''**मैंने अभी तक जो सवालो के जवाब दिये हैं, वह सही भी हो सकते हैं और गलत भी। जो चीज़ हमें नहीं याद है, उसके बारे में सवाल का जवाब गलत भी हो सकता है।** इस समय हमारा ब्लडप्रेशर हाई है, इस कारण **हमारा दिमाग ठीक नहीं है।** मैं फैजाबाद में 7–8 बजे सुबह गाड़ी में बैठा था, तब मैं ठीक था। रास्ते में मेरी तबियत खराब लगने लगी और बाराबंकी पहुंचते–पहुंचते मेरा ब्लडप्रेशर बढ़ा लगने लगा। इस समय मेरी तबियत खराब लग रही है और **मेरा दिमाग काम नहीं कर रहा है** और मैं चाहता हूं कि आज के बजाय मेरा अन्य दिन बयान लिख लिया जाये।'' (पेज 8)*

***"All my answers till now, may be right or wrong. My answer can be wrong as regards the facts I do not remember.** Presently I have high blood pressure, as such **my mind is not functioning properly.** I was alright when I took the train at 7-8 AM at Faizabad. My health started deteriorating on the way and my blood pressure increased by the time I reached Barabanki. At present I am not feeling well and **my mind is not working properly** and I want that instead of today, my statement be recorded on some other day." (E.T.C.)*

2061. On his request the cross-examination was adjourned but on the next day also when he found difficulty in replying the cross-examination claiming his bad health he says:

*''**आज भी मेरा स्वास्थ ठीक नहीं है।** तथा आज भी मुझे हाई ब्लड प्रेशर है।'' (पेज 11)*

*"**My health is not good even today** and I have high blood pressure today as well." (E.T.C.)*

2062. Further on page 18 he said about his bad health:

*''**आज भी मेरी तबियत ठीक नहीं है।**'' (पेज 18)*

*"**Today also I am not well**." (E.T.C.)*

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2063. Then he took the plea of weak memory.

''मेरा दिमाग 8–10 माह के ठीक से काम नहीं कर रहा है। मेरी याद्दाश्त कमजोर हो गयी है। *आज के बयान में धनपत यादव की मृत्यु 2–3 वर्ष पूर्व होना मैंने इसलिए बताया है क्योंकि* ***दिमाग की कमजोरी के कारण, वह ठीक से काम नहीं कर रहा है।''***

(पेज 27)

"My brain has not been working properly for 8-10 months. My memory has weakened. *In my statement of the day, I have stated the death of Dhanpat Yadav to have occurred 2-3 years ago,* ***due to weakness of my brain, which is not working properly on that account.****" (E.T.C.)*

''साक्षी को उसके शपथ पत्र की धारा 10 को पढ़कर सुनाया गया। ***इस धारा में लिखी बातों को मैंने लिखवाया था या नहीं, मुझे याद नहीं है।*** *. . . . . इस धारा की दूसरी व तीसरी लाइन में मैंने यह लिखा है कि ''22–23 दिसम्बर को गर्भगृह के भाग में मूर्ति रखना एकदम गलत बात है'', यह बात 1949 की घटना से संबंधित है अथवा नहीं, यह मुझे याद नहीं है। इसी धारा में मैंने यह भी लिखा है कि '' कुछ मुकामी मुसलमानों ने . . . .फर्जी कार्यवाही करा दिया।'' यह फर्जी कार्यवाही किस संबंध में थी, यह मुझे याद नहीं है।* ***स्वयं कहा जिस फर्जी कार्यवाही का मैंने उल्लेख किया है, वह सन् 1934 की घटना से संबंधित है अथवा नहीं, यह मैं नहीं बता सकता।''***

(पेज 31–32)

''The paragraph 10 of his affidavit, was read out to the witness. ***I do not recollect whether the facts mentioned in this paragraph, had been got incorporated by me or not.****. . . .. In second and third line of this paragraph, I have mentioned that 'the placement of idols in the 'Garbh-grih' portion on 22-23 December, is totally wrong'. I do not remember whether this fact is related to the incident of 1949 or not. In this very paragraph, I have also mentioned that 'few local Muslims. . . . . .got the*

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forged action taken'. I do not recollect as to in which behalf, was this forged action. ***Stated on his own that I can not tell whether the forged action mentioned by me was related to the incident of year 1934 or not."*** *(E.T.C.)*

'इस समय ***मेरा दिमाग काम नहीं कर रहा है।''*** *(पेज 33)*

*"****My brain is not working*** *presently." (E.T.C.)*

*"****जो मैं आज बयान दे रहा हूँ, उसका बिस्मरण दो घण्टे बाद हो जायेगा।*** *जब मैं बयान देता हूँ तो जो मुझे स्मरण रहता है, मैं बताता हूँ।* ***मेरी स्मरण शक्ति कमजोर हो गयी है,*** *अतएव इस संबंध में मैं क्या कर सकता हूँ। मैं यह बता चुका हूँ कि मेरी स्मरण शक्ति कमजोर है, अतः मैं तथ्यों को भूल जाता हूँ तथा परिवार के सदस्य को भी कभी–कभी नहीं पहचानता हूँ।* ***मेरे अन्दर यह क्षमता नहीं है कि मैं तथ्यों को कहने के पहले यह सुनिश्चित कर लूँ कि बताये गये तथ्य सही हैं।''*** *(पेज 51–52)*

"The statement being given by me today, will be forgotten after two hours. *Whenever I give statement, I tell whatever I remember.* ***My memory has become weak,*** *and I can do nothing in this behalf. I have told that my memory has become weak, as such I forget the facts and sometimes fail to recognise even the family members.* ***I do not have the capacity to ensure before stating that the facts are correct."*** *(E.T.C.)*

2064. **DW 3/11, Shri Bhanu Pratap Singh** is also a resident of Village Haliyapur, district Sultanpur and is aged about 70 years in April 2004, meaning thereby his year of birth comes to 1934. He claims to have visited Ayodhya before 1949 and that the idols were kept inside the building in the inner courtyard prior to 1949. The idols of Bhagwan Ram Lala and others were also there on Ram Chabutara. He visited the disputed building for about 40-50 times upto 1949. The distance of his village

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from Ayodhya is 54 Kms. On page 29 he virtually admits of having given his wrong age as is evident from the following:

''मेरी जन्म तिथि हाईस्कूल प्रमाण–पत्र में 1 जुलाई 1936 लिखी हुई है।'' (पेज 29)

"My date of birth is mentioned as 1st July, 1936 in the High School certificate." (E.T.C)

2065. His father expired in 1945 as said by him on page 30. He used to visit Ayodhya with his grandfather. There are several contradictions in his statements but for us suffice to mention about his admission regarding weak memory.

''तो क्या मैं यह समझूँ कि आपकी स्मरण शक्ति इतनी क्षीण हो गई है कि आप पॉच मिनट में बात भूल जाते हैं और फिर पॉच मिनट बाद आपको याद आ जाती है?

*उ0– **मेरी स्मरण शक्ति कुछ कमज़ोर है।''** (पेज 46)*

"Should I consider that your memory is so weak that you forget facts within five minutes and then you recollect after five minutes?

*Answer:- **My memory is a bit weak."** (E.T.C)*

*''मेरे उपर्युक्त बयान का अंश ''चारों तरफ़ मंदिर हैं'' ग़लत है, क्योंकि मंदिर मात्र दो ही तरफ़ थे। . . . . .इस संबंध में मैं ग़लत बयान देने का कोई कारण नहीं बता सकता, **मैं कुछ तथ्यों को भूल जाता हूँ**, जिसके कारण इस प्रकार के बयान दे दिये जाते हैं। भूलने का तात्पर्य यह है कि वे तथ्य उस समय मुझे याद नहीं रहते हैं।'' (पेज 105)*

*"The portion 'temples all around' of my above statement, is wrong because temples were only on two sides. . . . .In this behalf, I cannot give any reason for making wrong statement. **I forget few facts** due to which such statements are made. By forgetting, I mean that I do not remember those facts at that time." (E.T.C)*

''दिनांक 29.4.2004 के पृष्ठ 20 पर अभिलिखित बयान का अंश ''मैंने तीन गुम्बद नहीं देखे थे, तीन शिखर देखे थे, गुम्बद तथा शिखर एक

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ही नहीं होता है'' ग़लत हो सकता है, गुम्बद तथा शिखर एक ही होता है। बयान की इस ग़लती का कोई कारण नहीं बता सकता। . . . . .कभी–कभी ***भूल जाने के कारण मुझसे ग़लती हो जातीहै।''*** *(पेज 106)*

"The portion 'I had not seen the three domes, had seen the three vertexes, dome and vertex are not same' of my statement dated 29.04.2004 at page 20, may be wrong. Dome and vertex are same. I cannot give any reason for this mistake in the statement..... Sometimes ***such mistakes creep in on account of loss of memory****" (E.T.C)*

2066. DW 3/12, Ram Akshyawar Pandey:

''मैंने रामजन्मभूमि मंदिर के चारों तरफ परिक्रमा नहीं किया है। रामचबूतरे की परिक्रमा किया है।'' (पेज 17)

"I have not performed circumambulation of the Ramjanmbhumi temple. I have performed the circumambulation of Ramchabutara." (E.T.C.)

''वहां पर स्थित मंदिर जहां पर रामलला विराजमान थे, वहां पर तीन गुम्बद थे। राम चबूतरा से रामलला मंदिर तक की अंदर से चौड़ाई लगभग 60 हाथ की थी।'' (पेज 25)

"The temple, where Ramlala was present, had three domes. The inside width from Ramchabutara to Ramlala temple was about 60 yards." (E.T.C.)

''यह कहना गलत है कि दिनांक–23.12.1949 की रात में मूर्तियां रखी गई थीं। . . . . .मेरे गांव वालो ने मुझसे इस संबंध में बताया था कि रामजन्मभूमि जिसमें रामलला बैठे है, पुराना था, वह गिर गया।''

(पेज 27–28)

"It is wrong to say that the idols had been placed in the night of 23-12-1949. . . . . The villagers of my village had told me in this behalf that the Ramjanmbhumi, in which Ramlala was present, had collapsed as it was old." (E.T.C.)

''इस समय मेरे सिर में बहुत तेज दर्द तथा आंखे लाल हैं, इसलिए मैं ठीक

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से नहीं देख पा रहा हूँ और नहीं बता पाउगा कि सुन्दरकाण्ड मे कितने दोहे व कितनी चौपाईयां हैं।'' (पेज 39)

"I have severe headache and my eyes are infected, hence I am not able to see properly and as such I will not be able to give the number of 'Doha' and 'Chaupai' in the 'Sundar Kand'." (E.T.C.)

''क्योकि मेरे सिर में दर्द है और मेरी आंखे दर्द कर रही हैं। . . . . आज मैं इसका अर्थ नहीं बता पाऊँगा, क्योंकि मेरा सिर दर्द कर रहा है। . . . . ***वह दर्द के कारण भूल जा रहा हूँ।''*** *(पेज 40)*

"Because I have headache and also have pain in my eyes. . . . . I will not be able to give its meaning today because of headache.. . . . . . ***My memory is failing because of the pain****." (E.T.C.)*

''विवादित भवन, जिसमें तीन गुम्बद थे, उसको किसने और कब बनाया था, इसके बारे में मैंने न तो कहीं सुना और न पढ़ा।'' (पेज 42)

"I have nowhere read or heard as to who constructed the disputed structure with three domes, and when." (E.T.C.)

''इस सम्बन्ध ***में मैंने यह सुना है कि यह स्थान रामचन्द्र जी का जन्मस्थान है।*** *भगवान राम का जन्म तीन गुम्बद वाले भवन के बीच वाले गुम्बद के नीचे वाले स्थान पर हुआ था।'' (पेज 44)*

*"****I have*** *so* ***heard that this place is the birthplace of Lord Rama****. Lord Rama was born at the place below the mid dome of the three dome structure." (E.T.C.)*

''जब मैं अपने बाबा के साथ आखिरी बार अयोध्या गया था, तब मेरी आयु 12 वर्ष की थी। जब मैं अपने बाबा के साथ पहली बार अयोध्या गया था, तब मेरी आयु क्या थी, यह मैं नहीं बता सकता, *क्योंकि उस समय मैं बहुत छोटा था।''*

(पेज 48)

"When I last visited Ayodhya along with my grandfather, I was aged 12 years. I do not remember my

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age at the time when I first visited Ayodhya, *since I was quite young at that time." (E.T.C.)*

''प्रष्न– तो क्या आपकी याददाष्त इतनी कमजोर है कि आप थोड़ी देर पहले कही गयी बात भूल जाते हैं?

उत्तर– मेरी याददाष्त कमजोर नहीं है, परन्तु सिर में दर्द होने के कारण कभी–कभी दिमाग में चक्कर आ जाता है।'' (पेज 54)

"Question:- Is your memory so weak that you are unable to recollect what you have stated sometime back?

Answer:- My memory is not weak, but on account of headache, sometimes there is dizziness." (E.T.C.)

''मैं यह नहीं बता सकता कि जब मैं अपने बाबा के साथ पहली बार अयोध्या गया था, उस समय मेरी आयु 9 वर्ष की थी अथवा नहीं। ..... पंडित लोगों ने मुझे यह बताया कि इस समय मेरी उम्र 70 वर्ष की हो चुकी है। . . . . .मैं कभी स्कूल में पढ़ने नहीं गया। एक टेम्पेरेरी स्कूल खुला था, जिसमें मैं पढ़ने गया वहां पर मैंने तीसरे चौथे दर्जे तक षिक्षा पाई।''

(पेज 59)

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"I can not tell whether I was aged nine years or not, when I first went to Ayodhya along with my grandfather. .....The priests told me that I am aged 70 years now. ..... I never went to school. A temporary school had been established and I received education there upto Class III-IV." (E.T.C.)

''ऐसा प्रतीत होता है कि मैं बयान देते समय भूल गया था।'' *(पेज 69)*

"It appears that I had forgotten at the time of my statement." *(E.T.C.)*

''आज बयान देते समय मेरा दिमाग सही नहीं था।''

(पेज 78)

"I was not in my senses during my deposition of the day." *(E.T.C.)*

2067. The above extract is self evident to make this witness

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unreliable.

2068. **DW 3/13, Mahant Ram Subhag Das Shastri,** aged about 86 years in 2004 meaning thereby his year of birth comes to 1918, came to Ayodhya in 1933 and since then is continuously visiting Ram Janam Bhumi Temple. He has confirmed existence of Ram Chabutara, Chhati Pujan Sthal, Charan Chinh, Chakla and Belan as well as Bhandara in the outer courtyard of the site in dispute. He says that various idols of Lord Rama, Lakshmanji etc. were present on Ram Chabutara as well as Garbhgrih when he used to visit Ram Janam Bhumi Temple for Darshan and worship of Lord Ramlala. The incident of 23rd December, 1949, he claims to be a fictitious one and says that the entire disputed building was in possession of Nirmohi Akhara who were managing and serving. It was a temple of Nirmohi Akhara and Math. He also denies that any Namaj was offered in the entire building in dispute. Three documents he has annexed alongwith his affidavit to show that he had to sign a bond alongwith Baba Abhiram Das, Baba Brindaban Das, Baba Ram Vilas Das, Naga Sudarshan Das and Ram Shatrudhan since proceedings were initiated against them under Section 295/448 after the incident of 23rd December, 1949. However, in cross-examination the witness gave contradictory statement to the stand of the plaintiffs (Suit-3), as is evident from the following:

> *''सन् 1934 के अप्रैल माह में अयोध्या में झगड़ा हुआ था। इस झगड़े के बाद अयोध्या में रहने वालों पर टैक्स लगा था। स्वयं कहा कि गोकुषी हो गयी थी जिसमें कुछ मुसलमान मारे गये थे, उसके बाद रामजन्मभूमि के ऊपर जो ढांचा था उसको हिन्दू लोग गिराने लगे, उस समय अंग्रेजों का राज्य था, फौज ने आकर भीड़ को तितर–बितर कर दिया, उसके बाद ही हिन्दुओं पर जुर्माना लगाया गया था। 85 हजार रूपये जुर्माने के रूप में लगाये गये।'' (पेज 15)*
>
> *''A riot had broken out in Ayodhya in the month of*

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April of the year 1934. After this riot, a tax had been imposed on the residents of Ayodhya. Stated on his own that cow slaughter had taken place, in which few Muslims had been killed and thereafter the Hindus started demolishing the structure standing over Ramjanmbhumi. At that time there was British rule and the army had come and scattered the crowd. The fine was imposed on the Hindus only after that. A sum of Rupees 85 thousand had been imposed as fine." (E.T.C)

''सन् 1933 के पूर्व ***लोग कहते थे कि बाबरी मस्जिद है, परन्तु जब मैं उसका स्वरुप देखता था तो लगता था कि यह मंदिर है।''*** *(पेज 23)*

"Prior to the year 1983, ***people used to say that (it) was Babri mosque, but when I used to see, it appeared to be a temple."*** *(E.T.C)*

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''स्वयं कहा कि इसे मंदिर को ध्वस्त करके बनवाया गया था।'' *(पेज 23–24)*

"Stated on his own that it had been built after demolishing the temple." (E.T.C)

''बाबरी मस्जिद में तीन गुम्बद ऊपर थे। *बाबरी मस्जिद लगभग पचास फ़िट लम्बी तथा लगभग उतनी ही चौड़ी थी। स्वयं कहा कि लम्बाई तथा चौड़ाई लगभग बराबर थी। यह कहना ग़लत है कि खाली जगह पर मस्जिद बनायी गयी,* ***बल्कि यह मस्जिद, मंदिर तोड़कर बनायी गयी थी।*** *जब से मैं अयोध्या गया हूँ, तब से बाबरी मस्जिद में नमाज़ नहीं पढ़ी गयी। बाबरी मस्जिद अपने स्थान पर जिस प्रकार थी, उसी प्रकार कायम रही। . . . . .22/23.12.1949 की रात में विवादित भवन में कोलाहल हुआ, उस रात में क्या व्यवस्था हुई, यह मुझे पता नहीं, परन्तु* ***इतना विदित हुआ कि नवीन मूर्ति बैठा दी गयी।''***

(पेज 24)

"There were three domes on top of the Babri mosque. *Babri mosque was about fifty feet long and*

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equally wide. Stated on his own that length and breadth were almost similar. It is wrong to say that mosque was built at vacant place , and ***instead this mosque was built after demolishing the temple.*** *Since I have been to Ayodhya, namaz has not been offered in the Babri mosque. Babri mosque as it was stood at this place.. . . . . .. There was disturbance in the night of 22/23.12.1949 in the disputed structure, but I do not know as to what arrangements were made in that night. However,* ***this much transpired that new idols had been installed."****(E.T.C)*

*''बाबर द्वारा निर्मित भवन 500 साल पुराना होगा। स्वयं कहा कि जिस समय बाबर थे, उसी समय यह भवन बना। जिस समय बाबर ने यह भवन बनवाया, उसको लोग मस्जिद के रूप में बनाना बताते हैं, परन्तु भवन को देखने से यह भवन, मंदिर मालूम देता था। **जिस रुप में बाबर ने विवादित भवन बनवाया था, उसी रुप में वह भवन सन् 1992 तक चला आया।**'' (पेज 35)*

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"The structure built by Babar would be 500 years old. Stated on his own that this structure was build in the period in which Babar existed. At the time when Babar built this structure, it is said by people that he built as a mosque, but on looking at the structure, it appeared to be a temple. ***The shape in which Babar had built this structure, continued as such till the year 1992."*** *(E.T.C)*

*''सन् 1949 का बलवा विवादित भूमि पर हुआ था। **यह बलवा 23 दिसम्बर 1949 की रात में हुआ था,** इसकी जानकारी दूसरे दिन अर्थात 24 दिसम्बर 1949 को हुई। यह सही है कि यह बलवा 22/23 दिसम्बर की मध्य रात्रि में हुआ था। **यह बलवा विवादित भवन में मूर्ति रखने के संबंध में हुआ था।** कोई कहता था कि भगवान स्वयं प्रकट हो गये हैं, कोई कहता था कि मूर्ति रख दी गई है। उस रात मैं विवादित भवन में नहीं गया था। मैं रात में विवादित भवन पर नहीं गया*

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था, फिर भी मेरा नाम सम्मिलित कर दिया गया।'' (पेज 41)

''The riot of the year 1949, occurred at the disputed premises. ***This riot broke out in the night of 23rd December, 1949****. I came to know about it on the next day i.e. on 24th December, 1949. It is correct that this riot broke out in midnight of 22/23 December.* ***This riot had broken out in respect of installation of idols in the disputed structure.*** *Some claimed that the deity had Himself appeared, some said that the idols had been installed. I had not been to the disputed structure that night. I had not gone to the disputed structure in the night, still my name was included.'' (E.T.C)*

''मैंने दिनांक 7.7.2004 को पृष्ठ 41 पर यह बयान दिया है कि 22/23 दिसम्बर 1949 को बलवा हुआ था, जो विवादित भवन में मूर्ति रखने के संबंध में था, कोई कहता था कि भगवान प्रकट हो गये हैं, कोई कहता था मूर्ति रख दी गयी हैं मेरा यह बयान सही है।'' (पेज 54)

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''On 7.7.2004 at page-41, I have stated that 'a riot had broken out in the night of 22/23 December, 1949, which was in respect of installation of idols in the disputed structure. Few used to say that the deity had Himself appeared, few used to say that the idols had been installed', this statement of mine is correct.'' (E.T.C)

''सन् 1934 में वैरागियो ने विवादित भवन को मंदिर समझकर उसके ऊपर हमला किया था। *वे वैरागी लोग उस समय भी विवादित भवन में पूजा करने जाते थे।'' (पेज 98)..*

"In the year 1934, the recluses had attacked the disputed structure, considering it to be temple. *At that time also, the recluses used to go to the disputed structure for worship." (E.T.C)*

''बाबर ने मंदिर के ढांचे को तोड़कर मस्जिद बनाया था, *परन्तु वह पूर्ण रुप से मस्जिद नहीं बना पाया। 14 खंभे इस भवन में*

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लगे हुए थे, जिनमें मूर्तियां बनी हैं, इसलिए वह बुतखाना हो गया।''

(पेज 107)

"Babar had built the mosque by demolishing the structure of temple, *but he was unable to make it a mosque completely. 14 pillars were fixed in this structure, which had idols engraved over them, and as such it became a place of idol." (E.T.C)*

2069. He admits weak memory.

''स्वयं कहा कि ***अवस्था अधिक होने के कारण मुझे विस्मृति हो जाती है।''*** *(पेज 20)*

"Stated on his own that ***on account of advanced age, my memory fails me."*** *(E.T.C)*

''यह संभव है कि सन् 1933–34 के बाद की बातें भी मुझे विस्मृत होना शुरू हो गई हों अर्थात् ***सन् 1933–34 के बाद की बातें भी मैंने भूलना शुरू कर दिया है।''*** *(पेज 28)*

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"It is possible that the post 1933-34 facts are also fading away from my memory i.e. ***I have also started forgetting the post 1933-34 facts.*** *" (E.T.C)*

''यह सही है कि ***बयान देते समय उल्टी–पुल्टी बातें निकल जाती हैं*** *तथा हो सकता है कि मेरा यह बयान कि फैजाबाद, अयोध्या में शामिल है, गलत हो।'' (पेज 106)*

"It is true that ***I make unnecessary utterances at time of giving my statement*** *and it is possible that my statement 'Faizabad is included in Ayodhya' may be wrong." (E.T.C)*

*''***मेरा मस्तिष्क इधर–उधर होता रहता है।''*** *(पेज 109)*

"My mind tends to lose concentration." *(E.T.C)*

2070. His statement about the existence of Chhati Pujan Sthal, Charan and Ram Chabutara in the outer courtyard of the disputed building could not be discredited in the cross-examination where he has categorically and in clear terms,

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consistently made similar statement. Then on some occasions he has also made contradictory statement.

''22/23 दिसम्बर 1949 की रात में विवादित भवन में जिस समय नय्यर साहब मजिस्ट्रेट थे, मूर्तियां नहीं रखी गई, ये मूर्तियां पहले से थीं।''

(पेज 102)

"These idols were not installed in the disputed structure in the night of 22/23 December, 1949, when Mr. Nayyar was the Magistrate, these idols were already in existence." (E.T.C)

2071. The statement of DW 3/13 does not support Nirmohi Akhara, plaintiff (Suit-3). In fact, it is contrary to their pleadings. It is well settled that evidence which are totally contrary to the pleadings ought not be entertained by the Court. A Division Bench of Patna High Court in **Parmeshwari Devi and others Vs. Khusali Mandal and others, AIR 1957 Patna 482** has observed:

".....evidence at variance with the pleadings is not permissible and, if adduced, cannot be looked into to sustain a claim which was never put forward in the pleadings."

2072. The entire case of Nirmohi Akhara is that there never existed any mosque and nothing was constructed by Babar or Mir Baqi at the disputed site which all through was a temple in the management, control and possession of Nirmohi Akhara and no riot or disturbance occurred either in 1934 and nothing happened in the night of 22/23 December, 1959 but the same stand totally belied by DW 3/13.

2073. **DW 3/14, Jagadguru Ramanandacharya Swami Haryacharya.** He is the head of Ramanandi Sampraday since 1985-86. His statement is not relevant as to whether the idols were already existing prior to December 1949 inside the

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disputed building but he in general gave history about the birth of Lord Rama. He has explained the concept of Panchkoshi Parikrama on page 64 as under:

''महाराजा दशरथ के राजमहल का क्षेत्रफल जैसा कि वाल्मीकि रामायण में उल्लिखित है, अयोध्या के पांच कोस के अन्तर्गत स्थित है। यह पांच – कोस पंचकोसी परिक्रमा के अन्तर्गत है, दशरथ के राजमहल की ही परिक्रमा होती है। जहॉ से पंचकोसी शुरू होती है, वहॉ से महराजा दशरथ का राजमहल शुरू होता था तथा जहॉ पर पंचकोसी परिक्रमा समाप्त होती है वहॉ पर समाप्त होता था।'' (पेज 64)

''The area of King Dashrath's palace as mentioned in the Valmiki Ramayana, is located within 5 kosas (unit of distance) of Ayodhya. This distance of five kosas is within the panchkosi prikrama, which is only the circumambulation of Dashrath's palace. The panchkoshi starts from the place from where the palace of King Dashrath started and the panchkoshi circumambulation terminates at the place where it (the palace) ended.''

(E.T.C.)

2074. Similarly on page 67 he explained 84 Koshi Parikrama observing that it encompasses the then entire Ayodhya. On page 118, 120, 127 and 128 however he said:

''इस प्रकार विवादित भवन के अन्दर सीढ़ियों पर रामलला जी की मूर्ति को रखे हुए मैंने सन् 1946–47 में देखा था'' *(पेज 118)*

"I saw the idol of Ramlala installed inside the disputed structure on the stairs, in the year 1946-47."*(E.T.C.)*

''जब मैंने पहली बार 15 फ़िट की दूरी से मूर्ति का दर्शन किया था, तब मैंने गुम्बद के नीचे खड़े होकर दर्शन नहीं किया था, बल्कि सहन में खड़े होकर दर्षन किया था।'' (पेज 120)

''When I first had 'Darshan' (offering worship to the

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idol) from a distance of 15 feet, I did not have 'Darshan' from under the dome and instead it was done from the courtyard." (E.T.C.)

"कुर्की के पहले जब मैं दर्शन करने जाता था, तो सायंकाल साढ़े पॉच बजे दर्षन करता था तथा दर्शन करके प्रायः सात बजे तब वापस आताा था। जाड़े के मौसम में हमेशा अंधेरा हो जाता था। उस समय गुम्बद वाले भवन में कभी लालटेन तथा कभी लैम्प रखा रहता था, उस समय वहॉ बिजली नहीं थी। मैं सीख़चे वाली दीवार, जिसमें एक प्रधान फाटक तथा एक छोटा फाटक था, से होकर दर्षन करने जाता था। कभी–कभी बड़ा वाला फाटक जब बन्द रहता था तो मैं सीखचे वाले फाटक से चला जाता था।" (पेज 120)

"Prior to the attachment whenever I went for 'Darshan', I had 'Darshan' at 5.30 PM and usually I returned by 7'O' clock. It always turned dark during winters. Sometimes lantern and sometimes lamp was kept in the domed building. There was no electricity at that time. I used to go through the main gate and a small gate in the grill wall to have 'Darshan'. Whenever the main gate was locked, I used to go through the grill gate." (E.T.C.)

"मेरी मुख्य परीक्षा के शपथ–पत्र की धारा–45 में 3 फ़िट ऊॅचे, 20 फ़िट लम्बे तथा 17 फ़िट चौड़े चबूतरे का उल्लेख है, यह उल्लेख राम चबूतरे के बारे में है। मैंने अपने बयान मे आज रामचबूतरे को 40 फिट लम्बा तथा 20 फ़िट चौड़ा बताया है, ***मेरी मुख्य परीक्षा के शपथ–पत्र की धारा–45 में राम चबूतरे की लम्बाई जो उल्लिखित है, वह सही नहीं है।*** *मैंने अपनी मुख्य परीक्षा के शपथ–पत्र की धारा – 46 में जिस छठ्ठी पूजन स्थल का उल्लेख किया है उसके बारे में विवरण वाल्मीकि रामायण में मात्र छठ्ठी पूजन के रूप में मिलता है, उसमें छठ्ठी पूजन स्थल का उल्लेख नहीं है, रामचरित्र मानस मे भी छठी महोत्सव मनाने का उल्लेख है परन्तु छठ्ठी पूजन स्थल का उल्लेख नहीं है। रामचरित मानस तथा वाल्मीकि रामायण में मात्र छठ्ठी का उल्लेख है, छठ्ठी महोत्सव का उल्लेख नहीं है।" (पेज 127)*

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"In para 45 of the affidavit of my examination-in-chief, there is mentioned about a platform 3 feet high, 20 feet long and 17 feet wide. This mention is about Ramchabutara. In my statement today, I have mentioned the Ramchabutara to be 40 feet long and 20 feet wide. ***The length of Ramchabutara mentioned in para 45 of the affidavit of my examination-in-chief, is not correct.*** *The detail about the 'Chhathi' (the sixth day after the birth of a child) worship place mentioned in para 46 of the affidavit of my examination-in-chief, is found only as 'Chhathi' worship in Valmiki Ramayana, but it does not mention about 'Chhathi' worship place. The Ramcharit Manas also mentions about observance of the function of 'Chhathi', but there is no mention about 'Chhathi' worship place. The Ramcharit Manas and Valmiki Ramayana only mention about 'Chhathi' but there is no mention about the function of 'Chhathi'." (E.T.C.)*

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"चरण चिन्ह, बेलना, चकला व चूल्हे का कोई उल्लेख न तो रामचरित मानस में है न ही वाल्मीकि रामायण में है। मेरी मुख्य परीक्षा के शपथ–पत्र की धारा–46 में जिन चरण चिन्हों का उल्लेख है, वे पाषाण के थे। इन चरण चिन्हों की संख्या 4 थी। चकला भी पाषाण का था, बेलना भी पाषाण का था, चूल्हा हो सकता है मिट्टी का रहा हो क्योंकि इसे मैंने दूर से देखा था। ये सब चीजें 8 X 10 फिट की एक बेदी पर था। बेदी का तात्पर्य चबूतरे से है। यह चबूतरा चार अंगुल ऊँचा रहा होगा। ***यह चबूतरा जिस पर चौका, बेलना तथा चूल्हा था, इसे कौशल्या पाक तथा सीता रसोई भी कहा जाता था।*** *. . . .* ***.कौशल्या पाक तथा कौशल्या रसोई एक ही चीज़ है*** *अपनी–अपनी आस्था से लोग उसे अलग–अलग पुकारते हैं कौशल्या रसोई से तात्पर्य उस रसोई से है, जिसका प्रयोग कौशल्या जी करती थी। यह भी संभव है कि कौशल्या रसोई का प्रयोग सीताजी भी करती रही हों। मैंने अपने बयान में बताया है कि रामजी तथा सीताजी अलग महल में रहते थे*

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तथा कौशल्या जी अलग महल में रहती थीं।'' (पेज 127–128)

''Neither in Ramcharit Manas nor in Valmiki Ramayana, is there any mention about foot sign, 'Belna' (traditional utensil used for rolling breads), 'Chakla' (traditional utensil used as base for rolling breads) & stove. The foot signs mention in para 46 of affidavit of my examination-in-chief were of stone and were four in number. The 'Chakla' and 'Belna' were also of stone, but the stove may have been of earth because I had seen it from a distance. All these items were on a 'Vedi' (platform) of 8x10 feet. Vedi means platform. This platform must have been four finger tall. ***The platform over which were these 'Chauka', 'Belna', stove, was also called Kaushalya Pak and Sita Rasoi.***. . . . . ***Both Kaushalya Pak and Sita Rasoi are the same thing,*** *and people refer them differently out of their faith. Kaushalya Rasoi implies that kitchen which was used by Kaushalya. It is possible that Kaushalya's kitchen was used by Sita ji. I have stated in my statement that Lord Rama and Sita lived in a separate palace and Kaushalya lived in separate palace.'' (E.T.C.)*

2075. On page 136 he made a statement contrary to the stand of Nirmohi Akhara.

''6 दिसम्बर सन् 1992 को विवादित भवन के गिरने से उसमें रखी मूर्तियॉ इसलिए नहीं टूटी क्योंकि रोधाच्छादन (पुष्ट तरीके से) उस पर कुछ गिरने से रोक दिया गया था। ***6 दिसम्बर सन् 1992 को प्रातः काल जो मूर्तियॉ विवादित भवन में रखी हुई थी, वह मूर्तियॉ भवन गिरने के दौरान भी वहीं रखी रहीं।*** *आज भी वे मूर्तियॉ वहीं पर रखीं हुई हैं। जो सिंहासन व झूला विवादित भवन के गिरने के पूर्व वहॉ रखे हुए थे तथा जिसमें मूर्तियॉ रखी हुई थीं, वह सिंहासन तथा झूला आज भी उसी प्रकार रखा हुआ है। इस बारे में मैंने सुना था क्योंकि 6 दिसम्बर 1992 के बाद मैं वहॉ पर दश्न करने नहीं गया। यह बात मैंने*

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विवादित भवन के गिरने के दूसरे दिन आश्रम में विद्यार्थियों तथा साधुओं से सुनी थी। इसके बाद भी इस संबंध में मैने सुना था। मैंने यह बात रामदेव शास्त्री, शाशिकान्त, रामदास अम्बरीष मिश्र, कमलदास जो आश्रम में रहने वाले विद्यार्थी तथा साधु हैं, ये सुनी थी। यह सभी लोग अभी जीवित है तथा मेरे आश्रम में रहते हैं।'' (पेज 150)

''The idols present in the disputed structure did not break down due to collapse of the structure on 6th December, 1992 because by a protective cover, nothing was allowed to fall over it. ***The idols present in the disputed structure in the morning of 6th December, 1992, were present at that place even during the collapse of the structure****. Even today the said idols are at that very place. The throne and swing, in which the idols were placed, were there in the disputed structure before its collapse and even today the said throne and swing are kept in the same manner. I had heard about this, because after 6th December, 1992 I have not been there to have 'Darshan'. I had heard this on the next day of the collapse of the disputed structure, from students and saints in the Ashram. I heard about this even subsequently. I had learnt this from Ramdev Shastri, Shashikant, Ramdas, Ambrish Mishra, Kamaldas who are students and saints of the Ashram. They all are alive even today and live in my Ashram." (E.T.C.)*

2076. About observance of Namaz in the disputed building on page 151 he says:

''अयोध्या आने के पूर्व यदि वहॉ पर नमाज़ होती रही हो, तो इसकी जानकारी मुझे नहीं है।'' *(पेज 151)*

"I have no information if Namaz was offered there, before I came to Ayodhya." *(E.T.C.)*

2077. About the place of dispute he admits that there is no mention in the plaint.

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''जिस विवादित स्थल तथा विवादित भवन के बारे में मैं इस न्यायालय में बयान दे रहा हूँ, उसके बारे में इस वाद–पत्र में कुछ नहीं लिखा है।'' (पेज 168)

*''**Nothing has been written in this plaint about the disputed site and the disputed structure regarding which I am giving statement in this Court.**'' (E.T.C.)*

2078. On page 183 his statement did not rule out placement of idols inside the disputed building in 1949:

*''**यह संभव है कि सन् 1949 का जो विवाद हुआ तथा विवादित भवन में जो मूर्ति रखी गयी** उसमें अयोध्या के स्थानीय हिन्दू भाईयों का कोई योगदान नहीं था बल्कि बाहर के बैरागी साधु लोग जिम्मेदार हैं।'' (पेज 183)*

***"It is possible that in the dispute that occurred in 1949 and in the incident in which idol had been placed in the disputed building,** the local Hindus of Ayodhya had no role; rather, outsider ascetic saints were responsible for the same." (ETC)*

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2079. It is worthy to mention that on page 159 he has said that:

*''**मैं यह गवाही निर्मोही अखाड़ा के पक्ष में दे रहा हूँ।**'' (पेज 159)*

***"I am giving this evidence in favour of Nirmohi Akhara."** (E.T.C.)*

''उत्तर– मैं केवल एक ही मुकदमें ''निर्मोही अखाड़ा बनाम प्रिया दत्त'' के मुकदमें में गवाही दे रहा हूँ, किसी अन्य मुकदमे के बारे में गवाही नहीं दे रहा हूँ।'' (पेज 161)

''Answer:- I am giving evidence only in one case viz. 'Nirmohi Akhara versus Priya Dutt', and not about any other case.'' (E.T.C.)

2080. **DW 3/15, Narendra Bahadur Singh.** According to age he has disclosed, his year of birth comes to 1932 and he

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claims to have visited the disputed site at the age of 15 years.

''मैं 15 वर्ष की आयु में रामजन्मभूमि का दर्षन करने जाने लगा था, परन्तु इसके पहले भी मैं अपने माता–पिता के साथ यह दर्षन करने जाया करता था।'' (पेज 12)

"I had started going to have Darshan of Ramjanmbhumi at the age of 15 years, but even before that I used to go to have Darshan there along with my parents."(E.T.C.)

2081. He is resident of Village Rajapur Saraiya which is about 35 kms away from Faizabad. On page 27-28 he did not deny the construction of the building by demolition of the then temple by Babar.

*''**मैंने ऐसा सुना है कि बाबर ने रामजन्मभूमि पर स्थित मंदिर को तोड़कर कुछ मसिजद का रूप देने का प्रयत्न किया,** परन्तु अब भी सारे सबूत जन्मभूमि के वहां पर विद्यमान हैं। **ऐसा सुना जाता है कि सन् 1528 में बाबर ने मंदिर को गिराकर यह निर्माण किया।** बाबर के समय में मीरबाकी थे, जिन्होंने निर्माण संबंधी कुछ कार्य किया था। मैं यह सही रूप से नहीं बता सकता हूँ कि यह निर्माण–कार्य सन् 1528 में हुआ था। यह कहना गलत है कि सन् 1528 के बाद विवादित भवन में बराबर नमाज़ होती रही हो। **मीरबाकी ने कोई निर्माण नहीं किया था, उसने केवल तोड़फोड़ करके कुछ परिवर्तन किया था।''** (पेज 27–28)*

***"I have so heard that after demolishing the temple existing at the Ramjanmbhumi, Babar attempted to shape it like a mosque,** but even today all the evidences of Janmbhumi exist there. **It is so heard that in the year 1528, Babar had raised this construction after demolishing the temple.** There was one Mir Baqi in the period of Babar, who had carried out some construction. I can not tell correctly that this construction was carried out in the year 1528. It is wrong to say that from the year 1528,*

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Namaz was regularly offered at the disputed structure. ***Mir Baqi had not carried out any construction, and instead had only carried out minor modification after destruction."*** *(E.T.C.)*

2082. About belief he said:

''मेरी ऐसी आस्था है तथा विष्वास भी है कि विवादित स्थल ही रामचन्द्र जी की जन्मभूमि है परन्तु इसके बारे में धार्मिक पुस्तकों में जिनका मैंने अध्ययन किया है, कहीं नहीं पढ़ा है।'' (पेज 34)

"It is my faith as well as belief that the disputed site is the birth place of Lord Rama, but I have not read so in the religious books studied by me." (E.T.C.)

2083. He subsequently admitted to have visited the disputed place twice before its attachment.

''दोनों बार जब मैं विवादित भवन में कुर्की के पूर्व गया था तो वहां पर 10–15–30 मिनट तक रूका था।'' (पेज 40)

"On both the occasions, when I had been to the disputed structure prior to the attachment, I had stayed there for 10-15-30 minutes." (E.T.C.)

''अपनी मुख्य –परीक्षा के षपथ–पत्र की धारा – 16 में यह कहा है कि ''मैने अपने होष में वहां कभी किसी मुसलमान को नमाज पढ़ने नहीं देखा है।'' देखने का तात्पर्य यह है कि ***जब मैं वहां उपस्थित रहूगा, तभी देखूगां। सन् 1950 के पूर्व विवादित परिसर में मैने तीन बार जाना बताया है। इन्हीं तीन अवसरों के सम्बन्ध में मैंने यह कहा है कि ' मैंने किसी मुसलमान को नमाज पढ़ते नहीं देखा है' ।''*** *(पेज 51)*

"In para 16 of the affidavit of my examination-in-chief, (I) have mentioned that 'in my senses, I have never seen any Muslim offer Namaz at that place'. By 'seen' I mean that I would see only ***when I will be present there. I have stated to have been to the disputed site on three occasions prior to the year 1950. It is in respect of these***

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very three occasions that I have stated that 'I have not seen any Muslim offer Namaz'."*(E.T.C.)*

2084. DW 3/16, Shiv Bheekh Singh:

''रामजन्मभूमि मंदिर, जहॉ पर मैं दर्षन करने जाता था, वहॉ पर राम लला की मूर्ति विराजमान थी। ..... वहॉ पर तीन गुफाएं थी।''(पेज 8)

"The idol of Ramlala existed in the Ramjanmbhumi temple, where I used to go to have 'Darshan' (offering of prayer by sight). ..... There were three caves." (E.T.C.)

''विवादित स्थल जहॉ पर रामलला विराजमान हैं उनको रामजन्मभूमि इसलिए कहा जाता है क्योंकि वहीं पर रामचन्द्र जी का जन्म हुआ था। इसलिए यह स्थान बहुत पवित्र माना जाता है। हिन्दुओं को ऐसा विष्वास है कि ***इस स्थान के दर्षन मात्र से ही मोक्ष की प्राप्ति होती है।*** *. . . . . विवादित परिसर या रामजन्मभूमि में किसी मुसलमान को आते–जाते या नमाज पढ़ते कभी नहीं देखा।'' (पेज 10)*

"The disputed site where Ramlala exists, is called Ramjanmbhumi because Lord Rama was born there. This is why this place is considered to be very sacred by the Hindus. It is the belief of Hindus that only by 'Darshan' of this place, 'Moksha' (salvation) is obtained. . . . . I never saw any Muslim either visit or offer Namaz at the disputed site or the Ramjanmbhumi." (E.T.C.)

''मेरा गॉव फैजाबाद चौक से 48 किलोमीटर दूर है। अयोध्या से मेरा गॉव 54–55 किलोमीटर की दूरी पर होगा। *. . . . मैं अधिकांष रूप से बैलगाडी से अयोध्या जाता था कभी अयोध्या इक्के से जाता था। . . . . . .मैं 2–4 वर्ष के लिए सन् 1940 में बम्बई गया था, उसके अलावा अपने गांव में ही रहा हूॅ। . . . . . 3–4 वर्ष तक मैं बम्बई में साइकिल तथा ताष बनाने के कारखाने में अस्थायी रूप से कार्यरत था।'' (पेज 11–12)*

"My village is 48 kilometres away from Faizabad Chowk. My village would be 54-55 kilometres from Ayodhya. *. . . . . Mostly I went to Ayodhya on bullock-cart*

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and sometimes by Tonga. . . . . In the year 1940, I had gone to Bombay for 2-4 years, and except for that period I have always remained in my village.....I temporarily worked in Bombay for 3-4 years in factories of cycle and playing cards." (E.T.C.)

"मैं अपने गांव से अयोध्या अनुमान से आज तक 24–25 बार गया होऊॅगा।" (पेज 14)

"Till today, I may have gone to Ayodhya from my village on approximately 24-25 occasions." (E.T.C.)

"मैं यह नहीं मानता हूं कि सन् 1528 में बाबरी मस्जिद बनी थी। स्वयं कहा कि सन् 1528 या कभी भी बाबरी मस्जिद नहीं बनी थी।"

(पेज 15)

"I do not accept that Babri mosque was built in the year 1528. Stated on his own that Babri mosque was not built either in the year 1528 or on any other occasion."

(E.T.C.)

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"इसको मेरे बाप–दादा भी नहीं बता सकते हैं कि यह मूर्ति कब रखी गयी। अतएव इसे मेरे द्वारा बताया जाना सम्भव नहीं है।" (पेज 18)

"Even my forefathers can not tell as to when this idol had been placed. Hence, it is not possible for me to tell."

(E.T.C.)

"यह कहना गलत है कि 23 दिसम्बर सन् 1949 को विवादित भवन में मूर्तियां रखी गयीं।" (पेज 18)

"It is wrong to say that idols had been placed in the disputed structure on 23rd December, 1949."(E.T.C.)

"जब से मैंने होष संभाला, तब से रामजन्मभूमि परिसर में किसी मुसलमान का आवागमन मैंने नहीं देखा है।" (पेज 19)

"Since I attained maturity, I have never seen any Muslim visit the Ramjanmbhumi premises."(E.T.C.)

"उत्तर– रामजन्मभूमि परिसर में मेरे वाप–दादाओं के जमाने के और पहले से मूर्तियॉ विराजमान थीं।" (पेज 20)

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"Answer:- The idols existed at the Ramjanmbhumi premises even before the period of my forefathers."(E.T.C.)

*'मैं फैजाबाद – अयोध्या एक साल में अधिक से अधिक 3–4 बार आता हूँ। **अपने पूरे जीवनकाल में फैजाबाद–अयोध्या 26–28 बार आया होऊँगा।** अयोध्या में रामनवमी, सावनझूला, परिक्रमा तथा कार्तिक पूर्णिमा ये चार मेले होते हैं। इनमें से दो मेलों के अवसर पर मैं प्रतिवर्ष आता था।' (पेज 22)*

*"I go to Faizabad- Ayodhya, a maximum of 3-4 times a year. **In my entire life, I may have been to Faizabad-Ayodhya on 26-28 occasions**. The four fairs of Ramnavami, Sawan Jhula, Parikrama and Kartik Purnima are held at Ayodhya. Out of these, I used to go to two fairs every year." (E.T.C.)*

'विवादित भवन रामजन्मभूमि मंदिर था। यह मैं तथा सारी दुनिया कही रही है।'' (पेज 23)

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"The disputed structure was Ramjanmbhumi temple. This is being claimed by me and the whole world." (E.T.C.)

*'मैं अपने बयान में पहले कोतवाली के पास जिस दषरथ महल के होने का उल्लेख किया है वह उल्लेख गलती से वृद्धावस्था के कारण **स्मृति के क्षीण होने के कारण ऐसा कह दिया है।''***

(पेज 27–29)

*"My earlier **statement** regarding the Dashrath palace being near the Kotwali, **was made** inadvertently **on account of fading memory in old age.**" (E.T.C.)*

*'राम ने मानव देह धारण किया है, इसलिए उनका जन्म लेना कहा जाता है। . . . . .स्वयं कहा कि मेरा इस संबंध में **बयान सुनी–सुनाई बातों पर आधारित है।''** (पेज 30)*

*" Lord Rama had taken human form, and due to this His birth is claimed. . . . . Stated on his own that my **statement** in this behalf **is based only on hearsay**."(E.T.C.)*

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''रामजन्मभूमि मंदिर मैं जिसे बता रहा हूँ वह वही तीन गुम्बद वाला भवन है जिसका विवाद है।'' (पेज 31)

''The Ramjanmbhumi temple according to me, is the same three dome structure about which is the dispute.''

(E.T.C.)

''मेले के अवसर पर पांच मिनट से कम समय ही मंदिर में दर्षन करने के लिए मिलता था क्योंकि भीड के कारण तुरन्त निकाल दिया जाता था। . . . . . तीन गुंबद वाले भवन जिसमें मूर्तियां रखी थी वहां पर दो–तीन मिनट से ज्यादा दर्षन करने के लिए नहीं मिलता था। . . . . . .परिक्रमा सीख़चे वाली दीवार के अंदर होती थी। विवादित परिसर में पूरब तरफ रामचबूतरा था। विवादित परिसर में स्थित रामचबूतरे की परिक्रमा नहीं होती थी।'' (पेज 35)

''On occasion of fair, less than five minutes were afforded to have 'Darshan' in temple, because the crowd was immediately pushed out. . . . . Not more than 2-3 minutes were afforded for 'Darshan' in the three dome structure, where the idols existed. . . . . The circumambulation was performed inside the grill wall. Ramchabutara was to the east of the disputed structure. The Ramchabutara situated inside the disputed structure, was not circumambulated.'' (E.T.C.)

''विवादित परिसर में सीता रसोई नामक स्थान नहीं था। कौषल्या जी का छट्ठी पूजन स्थल था। *छट्ठी पूजन स्थल की भी परिक्रमा नहीं होती थी।'' (पेज 35)*

"There was no place called Sita Rasoi in the disputed premises. There was the 'Chhathi' (the sixth day after birth) worship place of Kaushalya ji. *The 'Chhathi' worship place was also not circumambulated."*

(E.T.C.)

''तीन गुम्बद वाले विवादित भवन में राम–लक्ष्मण थोड़ा ऊपर थे। भरत, षत्रुघ्न थोडा नीचे थे। बग़ल में गुफा थी उसमें माता कौषल्या

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रामलला को गोंद में लिये बैठी थी। . . . . .कौषल्या जी की मूर्ति सीढ़ी के बगल में एक छोटी सी गुफा के अंदर थी।'' (पेज 36)

"In the three dome disputed structure, Rama-Laxaman were at some elevation. Bharat, Shatrughan were a bit lower. There was cave on side wherein mother Kaushalya had Ramlala in her laps. . . . . .The idol of Kaushalya ji was inside the cave adjacent to the steps."

(E.T.C.)

''जब मैं पहली बार तीन गुम्बद वाले भवन में गया था तब मैं गुंबद के ठीक नीचे नहीं गया था। **गुंबद वाले भाग के नीचे सामने जो गेट था वहां से मैंने दर्षन किया था।''** (पेज 38)

"When I had first gone inside the three dome structure, I had not been exactly under the mid dome. ***I had the 'Darshan' from the gate in front of the lower side of the dome."*** *(E.T.C.)*

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''**मेरा जन्म सन् 1926 में हुआ था।** . . . . . जब मैं पहली बार विवादित स्थल पर गया था। तब उस समय सन् 1937–38 रहा होगा। . . . . . मैंने दिनांक 24–8–2004 को पेज 14 पर **यह बयान दिया है कि ''मैं अपने गांव से अयोध्या 24–25 बार गया होउंगा।' मेरा यह बयान विवादित भवन के गिरने तक की अवधि का है।** . . . . . साक्षी ने कहा कि मैं अयोध्या वर्ष में अधिकांषतः दो बार गया। कभी – कभी एक बार वर्ष में गया परन्तु ऐसा कभी नहीं हुआ कि मैं किसी वर्ष अयोध्या एक बार भी न गया हूँ।'' (पेज 42–43)

"I was born in the year 1926. *. . . . . When I first went to the disputed site, it was probably the year 1937-38. . . . . On 24.08.2004,* ***I stated*** *at page 14* ***that 'I must have been to Ayodhya from my village on about 24-25 occasions'. This statement of mine is for the period upto the demolition of the disputed structure****. . . . . The witness stated that mostly I went to Ayodhya twice a year. Sometimes I went once a year, but it never so happened*

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that I did not go to Ayodhya even once a year." (E.T.C.)

*"**मैं साईकिल से लगभग बीस बार दूसरों के साथ आया होऊँगा।** जब मैं पहली बार विवादित स्थल पर सन् 1938 में गया था तब भी वहां पर भाष्कर दास जी को देखा था।" (पेज 47)*

***"I must have visited along with others by cycle, on about 20 occasions.** When I first went to the disputed site in the year 1938, then I had seen Bhaskar Das over there." (E.T.C.)*

2085. **DW 3/17, Mata Badal Tiwari,** born in 1920, has stated visiting Ramjanm Bhumi at the age of 12 years. Ayodhya was about 18-19 kos from his place of residence. About the construction of the disputed building by Babar on page 30-31 he said:

*"अयोध्या की बाबरी मस्जिद के बारे में मैं नहीं जानता हूँ मुझे यह जानकारी नहीं है कि बाबरी मस्जिद कब बनी थी। मैं यह नहीं बता सकता हूँ कि बाबरी मस्जिद को बीर बाकी ने बनवाया था या नहीं। **यह हो सकता है कि सन् 1528 में मीरबाकी ने बाबरी मस्जिद बनवाई हो।" (**पेज 30)*

*"I do not know about Ayodhya's Babri mosque. I have no knowledge about the date of construction of the Babri mosque. I can not tell whether the Babri mosque had been built by Mir Baqi or not. **It may be that Mir Baqi had built the Babri mosque in the year 1528."** (E.T.C.)*

2086. Then on page 35 he took a different stand:

"यह कहना गलत है कि मीरबाकी ने सन् 1528 में मस्जिद का निर्माण कराया था और बराबर इसमें नमाज होती रही। " (पेज 35)

"It is wrong to say that Mir Baqi had built the mosque in the year 1528 and that Namaz was regularly offered there." (E.T.C.)

2087. Again about the Babari mosque on page 35 and 53 he made contradictory statement.

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''मैं यह जानता ही नहीं हूँ कि बाबरी मस्जिद कहां है।''(पेज 35)

"I just do not know where is Babri mosque situated."

(E.T.C.)

''मैंने बाबरी मस्जिद का नाम सुना है।''(पेज 53)

"I have heard the name of Babri mosque." (E.T.C.)

2088. Fallacy of his statement is evident from what he has said on page 56, 57, 61 and 62.

''मैंने अयोध्या के दंगे का उल्लेख किया है। यह दंगा सन् 1934 में हुआ था। उस समय विवादित भवन का कुछ हिस्सा क्षतिग्रस्त कर दिया गया था। उन गुम्बदों को बहुत से लोगों ने क्षति पहुँचाया था। क्षतिग्रस्त करने वाले हिन्दू धर्म के अनुयायी थे।''(पेज 57)

"I have mentioned about the riot of Ayodhya. This riot occurred in the year 1934. Some part of the disputed structure had been damaged at that time. Those domes were damaged by many people. The damagers were followers of Hindu religion."(E.T.C.)

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*''इस घटना में जो गुम्बद क्षतिग्रस्त हुआ था, उसे बनवाया गया या नहीं, यह मुझे ध्यान नहीं है। ..... **सन् 1934 में जो गुम्बद क्षतिग्रस्त हुआ था, उसकी कोई मरम्मत सन् 1992 के पूर्व तक नहीं हुई थी। सन् 1934 में तीनों गुम्बदों को क्षतिग्रस्त किया गया था। बीच वाला गुम्बद पूरा गिर गया था।** तीनों गुम्बदों में थोड़ा–थोड़ा नुकसान हुआ था।''(पेज 61–62)*

*"I do not remember whether the dome damaged in this incident, was repaired or not. ..... **The dome damaged in the year 1934, was not repaired till the year 1992. All the three domes had been damaged in the year 1934. The mid dome had completely collapsed.** All three domes were damaged slightly."(E.T.C.)*

2089. **DW 3/18, Mahant Banshidhar Das @ Uriya Baba**, born in 1905, came to Ayodhya in 1930 and since then is continuously visiting the disputed place and worshipping the

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idols in the inner courtyard under three dome structure as also on Ram Chabutara etc. In his cross-examination he has also made statement which demolishes the case of Nirmohi Akhara about the existence of temple since time immemorial and no construction or demolition by Babar in 1528 AD or his agent, no riot or damage to the building in 1934 and no incident on 22/23 December, 1949. On page 34 he states to have come to Ayodhya at the age of 28 which takes to the period of his coming to Ayodhya from 1930 to 1933. He admits of his weak memory.

''साक्षी ने बताया कि ***अधिक आयु होने के कारण मेरा मस्तिष्क काम नहीं करता है।''*** *(पेज 41)*

"The witness stated – ***Due to advanced age my mind does not work."*** *(E.T.C)*

''क्योंकि ***मैं वृद्ध व्यक्ति हूँ और मेरा दिमाग ज़्यादा काम नहीं करता है।''*** *(पेज 50)*

"Since ***I am an old man, my mind does not work much."*** *(E.T.C)*

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2090. On page 59 he states that all the temples of Ayodhya were demolished during the reign of Mohammad Tughlaq and in 1325 the temple of the disputed place was also demolished by him.

''मोहम्मद तुग़लक़ का शासनकाल 1320 ई0 से शुरू हुआ था तथा ***1325 ई0 में विवादित स्थल पर स्थित मंदिर को गिराया गया था।*** *(यह बात साक्षी ने अपने द्वारा लाई गयी डायरी को पढ़ने के बाद बताया)। मोहम्मद तुग़लक द्वारा विवादित स्थल पर बने मंदिर को गिराये जाने के बाद इस स्थान पर मंदिर, रामानंद स्वामी के शिष्य अनंतानंद ने बनवाया था। इस मंदिर को अनंतानंद ने फ़िरोजशाह तुगलक के समय में बनवाया था। फ़िरोजशाह तुग़लक, मोहम्मद शाह तुग़लक का लड़का था।* ***स्वयं कहा कि मंदिर गिराये जाने के बाद बहुत समय तक वह गिरा पड़ा रहा। मंदिर गिराये जाने के बाद उसका दुबारा निर्माण 30–40 वर्षों के बाद हुआ।''*** *(पेज 59)*

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"The tenure of Mohammad Tughlaq commenced in 1320 and ***the temple situated on the disputed site was demolished in 1325.*** *(The witness stated this thing after going through a diary which he had brought along). After the mosque situated at the disputed site had been demolished by Mohammad Tughlaq, Anantanand, disciple of Ramanand Swami, got a temple built on that place. Anantanand got this temple built in the time of Firoz Shah Tughlaq. Firoz Shah Tughlaq was the son of Mohammad Shah Tughlaq.* ***(Stated on his own) The temple after having been demolished had remained as such for a considerable time. The temple after having been demolished was reconstructed after 30-40 years."****(E.T.C)*

"जो मंदिर अनंतानंद जी ने विवादित स्थल पर बनवाया था उसे फ़िरोज शाह तुग़लक़ ने पुनः गिरवा दिया। उसके बाद स्वामी अनुभवानंद जी ने वहाँ पर मंदिर बनवाया। अनुभवानंद जी द्वारा बनाये गये मंदिर में श्यामानंद जी रहे। ***श्यामानंद जी के समय में बाबर के सेनापति मीरबाकी ने इस मंदिर को गिरवाया।*** *स्वयं कहा कि बाबर ने मीर बाक़ी को इस संबंध में कोई निर्देश नहीं दिया था, मीर बाक़ी ने स्वयं गिरवाया था। मीर बाक़ी ने मंदिर को गिरा कर मस्जिद नहीं बनवाया। उसने इस स्थान को मंदिर के गिरने के बाद उसी प्रकार छोड़ दिया। श्यामानंद जी के शिष्य गोविन्ददास ने विवादित स्थल पर फिर मंदिर बनवाया। गोविन्ददास जी ने विवादित स्थल पर मंदिर बाबर के समय में ही बनवाया था। जो मंदिर गोविन्ददास ने बनवाया था वही मंदिर 6 दिसम्बर 1992 को गिरा दिया गया था।" (पेज 60)*

"Firoz Shah Tughlaq again ensured demolition of the temple which Anantanand Ji had got built on the disputed site. After that Swami Anubhavanand Ji got a temple built there. Shyamanand stayed in the temple built by Anubhavanand Ji. ***In the time of Shyamanand Ji, Babur's commander Mir Baqi got this temple***

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demolished. *(Stated on his own) Babur had not given any directions in this respect; Mir Baqi had himself got it demolished. After demolishing the temple Mir Baqi had not got a mosque built there. In the wake of demolition of the temple he had left this place as it was. Shyamanand's disciple Govind Das again got a temple built on the disputed site. Govind Das Ji had got the temple built in the disputed site only on the time of Babur. That very temple which Govind Das had got built, was demolished on 6th December, 1992."(E.T.C)*

"1930 के बाद मुसलमानों ने विवादित स्थल पर पॉच साल बाद आक्रमण किया था। मुसलमानों द्वारा पहला आक्रमण मेरे समय में सन् 1934 में हुआ था। आख़िरी आक्रमण विवादित स्थल पर तब हुआ, जब रामदेव दूबे दरोग़ा था। यह वही रामदेव दूबे था, जिसने 22/23 दिसम्बर 1949 की घटना के अनुसार रिपोर्ट 23 दिसम्बर 1949 को लिखायी थी। इस रामदेव दूबे को मैं अच्छी तरह जानता था।" (पेज 61)

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"Five years after 1930, Muslims attacked the disputed site. The first invasion of Muslims had taken place in my time, that is, in 1934. The last invasion on the disputed site was at a time when Ram Dev Dubey was an inspector. It was the same Ram Dev Dubey who had on 23rd December, 1949 got a report lodged as per the incident of 22nd-23rd December, 1949. I was well acquainted with this Ram Dev Dubey."(E.T.C)

"वास्तविकता यह है कि ***1934 में मस्जिद को जो हानि हुई थी,*** *उसे हिन्दू साधुओं ने स्वयं चन्दा एकत्र करके जिसकी राषि 35 हज़ार थी, बनवा दिया।" (पेज 89)*

"Reality is that Hindu saints got repaired the ***damage, caused to the mosque in 1934****, by themselves collecting subscription which had aggregated to Rs. 35,000."(E.T.C)*

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*''**यदि सन् 1930 के पूर्व विवादित स्थल पर मुस्तक़िल तौर पर नमाज़ पढ़ी जाती रही हो, तो उसके बारे में मुझे जानकारी नहीं है।** यदि मेरी अनुपस्थिति के दौरान सन् 1930 से 1949 के बीच विवादित स्थल पर नमाज़ पढ़ी जाती रही हो, तो इसकी भी जानकारी मुझे नहीं है।'' (पेज 93–94)*

***"If namaz may have regularly been offered on the disputed site prior to 1930, I do not have the knowledge about the same.** If namaz may have been offered on the disputed site between 1930 to 1949 in my absence, I also do not have the knowledge about the same."(E.T.C)*

''यह भी कहना गलत है कि 22 दिसम्बर सन् 1949 तक विवादित भवन के किसी भी भाग में कोई भी मूर्ति नहीं रखी थी।'' (पेज 96)

"It also incorrect to say that no idol had been placed in any part of the disputed building up to 22nd December, 1949."(E.T.C)

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2091. **DW 3/19, Ram Milan Singh** has sought to prove the existence of idols in the disputed building, i.e., under the Central Dome in the inner courtyard and also on Ram Chabutara which he had been visiting for Darshan and worship since 1940 till 1949. According to the age given in his affidavit, year of birth comes to 1929. He is resident of Mauja Haliyapur, Pargana Isauli, Tahsil Musafirkhana, District Sultanpur. He claims to have mainly visited in the three fairs held at Ayodhya. First of all with respect to the averments contained in his affidavit which he has filed under Order 18 Rule 4 on page 70 he says:

*''**इस शपथ पत्र को तैयार करने वाले व्यक्ति ही इस बारे में बता सकते हैं।** मुख्य परीक्षा के शपथ पत्र पर हस्ताक्षर करने के पूर्व मैंने पूरा नहीं पढ़ा था। . . . .श्शपथ पत्र पर हस्ताक्षर मैंने उच्च न्यायालय, लखनऊ में किया है। यह शपथ पत्र लखनऊ में टाईप हुआ था या नहीं, यह मैं नहीं बता सकता। मेरे इस शपथ पत्र का प्रारूप जब तैयार किया गया था, तब मैं अयोध्या में अपने वकील साहब के घर पर*

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था। उन्होंने यह बताया था कि मैं आपके शपथ पत्र का मज़मून तैयार कर रहा हूं। ***शपथ पत्र का मज़मून तैयार होने के बाद मैंने उसे नहीं देखा।''*** *(पेज 70)*

*"**The person having prepared this affidavit, can only tell about this.** I had not completely read the affidavit of examination-in-chief before signing it. . . . . I had put my signature on the affidavit at the High Court, Lucknow. I cannot tell whether this affidavit had been typed out at Lucknow or not. At the time when the draft of this affidavit of mine had been prepared, I was at the place of my counsel in Ayodhya. He had told that 'I am preparing the draft of your affidavit'. **I had not seen the contents of the draft of the affidavit, after it was prepared."** (E.T.C)*

2092. This itself makes his entire deposition doubtful and unreliable. He also admits of having never entered three dome disputed structure prior to 1986.

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''सन् 1972 के पूर्व 1940, 1941, 1942 में जब मैं विवादित स्थल पर जाता था, तो गुम्बद के नीचे गया था। ***पुनः कहा कि मैं सन् 1940, 1941 व 1942 में गुम्बद के नीचे वाले भाग में नहीं गया था।''*** *(पेज 34)*

*"Prior to the year 1972, whenever I used to go to the disputed site in the years 1940, 1941, 1942, I had gone beneath the dome. **Again stated that I had not gone to the place beneath the dome in the years 1940, 1941 and 1942."** (E.T.C)*

''यह कहना सही है कि ***तीन गुम्बद वाले विवादित भवन के अंदर मैं सन् 1986 के पूर्व कभी नहीं गया।''*** *(पेज 56)*

*"It is correct to say that **I had never been inside the three domed disputed structure before the year 1986."**(E.T.C)*

2093. Distance of disputed site from the witness's residence

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is about 54 Kms. The witness says that in 1940, 1941 and 1942 he came to Ayodhya on a bullock-cart and thereafter on foot till 1948 and then by bus in 1948 and onwards. He has however admitted his date of birth on page 67 as 15.01.1930.

2094. **DW 3/20, Mahant Rajaram Chandracharya**, aged about 76 years in 2004, must have born in the year 1930, came to Ayodhya in 1944 at the age of 14 years. He claims to become pupil of Mahant Raghunath Das who was Mahant of Nirmohi Akhara at that time. He was assigned duties to perform worship at Janambhumi Temple where he worked from 1943 to 1949 and claims continuous worship of the idols placed in the internal part of the disputed building, i.e., under the three domed structure. Very clearly he has given topography of various structures in regard to the disputed site which is almost consistent with various maps prepared by different Commissioners appointed by the Civil Judge in different proceedings including that of Commissioner's map prepared in Suit 1885. The following part of his statement are relevant for our purposes.

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''मैं इस मुक़दमें में निर्मोही अखाड़ा के पंच तथा पक्षकार के रुप में बयान दे रहा हूँ।'' (पेज 41)

"I am testifying in this case as a 'Panch' of the Nirmohi Akhara and as a party."(E.T.C)

''सन् 1943 में जब मैं प्रथम बार अयोध्या आया था, तब वहॉ पर बाबरी मस्जिद का अस्तित्व ही नहीं था। सन् 1943 में विवादित स्थल पर कोई मस्जिद नहीं थी, क्योंकि उस समय वहॉ पर मूर्ति पूजा होती थी। मैंने बाबरी मस्जिद का नाम सुना है। ***विवादित भवन बाबरी मस्जिद है। पुनः कहा कि यह बाबरी मस्जिद नहीं है, यह मंदिर है।*** *विवादित भवन में तीन गुम्बद हैं। यह मस्जिद नहीं है। यह भगवान राम की जन्मभूमि है। सन् 1943 में जब मैं प्रथम बार अयोध्या गया था, तब मैंने बाबरी मस्जिद देखी ही नहीं। विवादित भवन में मैंने कभी नमाज़ होते हुए*

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नहीं देखा। मैंने वहॉ पर पूजा होते देखी है। स्वयं कहा कि जहॉ पर पूजा होती है, वहॉ पर नमाज़ होने का प्रश्न ही नहीं उत्पन्न होता। सन् 1943 में जब मैं प्रथम बार अयोध्या गया था, तब विवादित स्थल पर मैंने मस्जिद नहीं देखा था, मन्दिर देखा था। स्वयं कहा कि वहॉ पर पूजा–सेवा होती थी। विवादित भवन में तीन गुम्बद बने हुए थे।'' (पेज 51)

''In 1943, when I first came to Ayodhya, the Babri mosque was not at all existing there. There was no mosque on the disputed site in 1943, because there used to be worship of idols over there. I have heard the name of the Babri mosque. ***The disputed building is the Babri mosque. (Again stated) It is not the Babri mosque; it is a temple****. The disputed building has three domes. It is not a mosque. It is the birthplace of Lord Rama. In 1943, when I first visited Ayodhya I did not see the Babri mosque at all. I never saw namaz being offered in the disputed building. I have seen Pooja being performed there. (Stated on his own) No question arises of offering namaz at a place where Pooja is performed. In 1943, when I first visited Ayodhya, I saw a temple, not a mosque, on the disputed site. (Stated on his own) There used to be Pooja-Sewa (offering worship and rendering service) over there. Three domes were built in the disputed building.''(E.T.C)*

''अयोध्या में मैं अंदाजन लगभग 8–9 वर्षों तक रहा हूँ। सन् 1943 से लेकर सन् 1949–50 तक विवादित भवन में नमाज़ नहीं होती थी, बल्कि पूजा होती थी।'' (पेज 54)

''I guess to have resided at Ayodhya for about 8-9 years. Namaz was not offered at the disputed building from 1943 to 1949-50; rather, Pooja (worship) was performed.''(E.T.C)

''मैंने यह सुना है कि बाबर ने सन् 1528 में मन्दिर को तोड़कर मस्जिद बनवाई थी *और उसी को लेकर विवाद संघर्ष*

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का रूप लिए चलता आ रहा है।'' (पेज 56)

"I have heard that Babur had got the mosque built by breaking down the temple in 1528, *and the dispute over that very construction has been continuing, taking the shape of struggle."(E.T.C)*

''विवादित भवन के सम्बन्ध में ***यह कहा जाता है कि यह मन्दिर तोड़कर सन् 1528 में मस्जिद बनाई गई।*** *यह कहना ग़लत है कि विवादित स्थल पर बराबर नमाज़ होती रही है।'' (पेज 57)*

*"**It is said** about the disputed building **that demolishing this temple the mosque was constructed in 1528.** It is incorrect to say that namaz has regularly been offered on the disputed site."(E.T.C)*

''विवादित भवन के तीनों गुम्बद के नीचे का भाग गर्भगृह था। *आजकल जहॉ तम्बू के अंदर भगवान रामलला हैं, वह एक छोटा स्थान है। गर्भगृह से मेरा तात्पर्य यह है कि जहॉ किसी का जन्म होता है, उसी स्थान को गर्भगृह कहते हैं।'' (पेज 72)*

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"The part beneath the three domes of the disputed building was 'Garbh-Grih' (sanctum sanctorum). *The place where Lord Ramalala rests under a tent today, is a small place. By 'Garbh-Grih' I mean that a place where someone is born, is called 'Garbh-Grih'. "(E.T.C)*

''मैंने कल यह बयान दिया था कि 1943 से 1951 तक मैं गुम्बद वाले भवन में रहता था। रहने से मेरा आशय पूजा–पाठ करने व आराम करने से था, सोने के लिए मैं विवादित स्थल में बने सन्त निवास में जाता था। . . . . .यह सन्त निवास विवादित भवन के परिसर की उत्तरी दीवार से मिला हुआ था।'' (पेज 82)

"I had given a statement yesterday that I resided in the domed building from 1943 to 1951. By 'residing' I mean 'offering Pooja-Paath' and 'taking rest'; I used to go to Sant Niwas built on the disputed site to take sleep. . . . . This Sant Niwas abutted on the northern wall of the

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disputed building premises."(E.T.C)

"जो विवादित भवन 6 दिसम्बर 1992 को तोड़कर गिरा दिया गया था, वह भवन मेरे ज्ञान के मुताबिक 500 वर्ष से ज्यादा पुराना था। वह भवन, राममंदिर था, जो बाबर के शासनकाल के पहले से था और जिसे बाबर ने परिवर्तित किया था, फिर कहा कि परिवर्तित करने की कोशिश की। ***उक्त भवन बाबर के शासनकाल से पहले से निर्मित था। बाबर के शासनकाल में उस भवन की तोड़फोड़ हुई थी तथा पुनर्निर्माण हुआ था।*** *मेरे कहने का आशय है कि पूर्व निर्मित भवन को बाबर के शासनकाल में तोड़फोड़ करने के बाद पुनर्निर्माण की कोशिश की गई, जिसमें उसे सफलता नहीं मिली और वह संघर्ष के रुप में बदल गया और वह संघर्ष आज भी चल रहा है।" (पेज 98)*

"The disputed building, demolished on 6th December, 1992, was, as per my knowledge, older than 500 years. That building was Rama Temple, which existed from before the reign of Babur and which Babur changed, (further stated) tried to change. ***The said building was built from before the tenure of Babur. During the reign of Babur that building had been damaged and reconstructed.*** *I mean to say that during the reign of Babur attempts were made for reconstruction after damaging the earlier built building. He had not succeeded in his attempt and the situation had turned into a struggle, which is continuing even today."(E.T.C)*

"बाबर के ज़माने में जब मंदिर तोड़कर विवादित भवन बनाया गया था, तब 84 में से 70 खंभे लोग उठा ले गये होंगे या क्या हो गये, इसका मुझे पता नहीं, क्योंकि वह कसौटी पत्थर था, कीमती पाषाण था।"

(पेज 100)

"I do not know whether 70 out of 84 pillars may have been picked up by people at the time when the disputed building was constructed by demolishing the temple in the time of Babur or what happened to such pillars, because

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there were of Kasauti stone, costly stone."(E.T.C)

"आज जो मूर्तियॉ विवादित स्थल पर देखने को मिलती हैं, वे वही मूर्तियॉ हैं, जो बाबा श्यामानन्द जी के द्वारा उत्तराखण्ड लेकर चली जाने वाली मूर्तियों में से हैं। बाबा श्यामानन्द जी वह मूर्तियॉ बाबर के आक्रमण के समय उत्तराखंड लेकर चले गये थे। गोविन्ददास जी बाबा श्यामानन्द के अंगरक्षक व शिष्य थे। गोविन्ददास जी ने मूर्तियों को ले आकर पुनः उसी स्थान पर स्थापित कर दिया।" (पेज 101–102)

"The idols which are now seen on the disputed site, are among the idols which had been taken along by Baba Shyamanand Ji to Uttarakhand. Baba Shyamanand Ji had gone to Uttarakhand at the time of Babur, taking along those idols. Govind Das Ji was the body guard and disciple of Shyamanand. Govind Das Ji took the idols along and reinstalled them on that very place."(E.T.C)

"राम चबूतरा की स्थापना भी उसी समय हुई, जब बाबा गोविन्द दास जी ने मूर्तियों की पुर्नस्थापना उसी स्थान पर की, जहॉ पर वह मूर्तियां पहले थीं। यह बाबर के शासनकाल का आख़िरी समय था। इस राम चबूतरे पर भी रामलला, भरत जी, लक्ष्मण जी, शत्रुघ्न जी व कौशिल्या जी की मूर्तियां गोविन्द दास के शिष्यों में से किन्हीं शिष्यो द्वारा स्थापित की गयीं। उस शिष्य का नाम याद नहीं है।" (पेज 103)

"Ram Chabutra was also built at that very time when Govind Das Ji had reinstalled the idols on that very place where they existed earlier. It was the concluding period of Babur's tenure. Idols of Ramlala, Bharat Ji, Lakshman Ji, Shtrughn Ji and Kaushalya Ji were installed on this Ram Chabutra, too, by certain disciples of Govind Das. I do not remember the names of those disciples."(E.T.C)

"सन् 1934 में जो दंगा हुआ था उससे बाबरी मस्जिद को नुकसान हुआ था उसके बाद हिन्दुओं पर टैक्स लगा और उसी पैसे से मस्जिद की मरम्मत पुनः कर दी गई।"

(पेज 106)

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"Damage was caused to the Babri mosque due to the riot which had broken out in 1934. After that tax was imposed on Hindus and the mosque was repaired from that very fund." *(E.T.C)*

''मैं विवादित स्थान पर सन् 1943 में आया था और तभी से मैंने गोविन्द दास जी को पुजारी के रूप में वहॉ देखा था। वे जब तक जीवित रहे, वहॉ पर पुजारी रहे। उनकी मृत्यु लगभग सन् 1950 में हुई। श्री बलदेवदास जी जो गोविन्द दास जी के समय सहायक पुजारी थे उनकी मृत्यु के बाद बड़े पुजारी के रूप में कार्य करने लगे।'' (पेज 208)

"I came to the disputed site in 1943 and since then I saw Govind Das Ji as a priest there. As long as he was alive, he was priest there. He died in around 1950. At the time of Govind Das Ji, Sri Baldev Das Ji was assistant priest. After the former's death the latter began to work as chief priest."(E.T.C)

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NOTE: This statement shows that during this period of 1943 to 1950 Mahant Bhaskar Das was not there as Pujari at the disputed site though it has been so claimed by other witnesses and that stand contradicted.

2095. Sri Jilani, learned counsel for plaintiffs (Suit-4) has taken great pains in placing before us the apparent contradiction and incorrectness in the statement of these witnesses at several places and in particular in recognising places, topography, various structures etc. in the photographs which are part of record, some of which were obtained by Sri Bashir Ahmad, Civil Court's Commissioner appointed in 1950 and most of them were prepared by the State Archaeological Survey through its Director, Dr. Rakesh Tiwari in 1990 pursuant to an order passed by this Court on 10.01.1990 which reads as under:

"Sunni Central Waqf Board has filed this application in Suit No. 4 of 1989 for:

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I- permitting and authorising the plaintiff or its representatives to enter upon the property in suit with a photographer and others to take the photographs of the building and the surrounding area;

II- taking measurements of the buildings and its boundaries;

III- permitting a video tape of the same for being placed as evidence in Court and

IV- such other direction as the Court deems fit and proper.

Another application has been moved by defendant no. 2 (Paramhans Ram Chandra Das) purporting to be under Order XXXIX Rule 7 of the Code of Civil Procedure through Sri Tilhari, Advocate, in Suit No. 4 of 1989, and the permission sought for is the same as in the application mentioned above.

A third application has also been filed in Suit No. 2 of 1989 by the defendant no. 3 of the said suit for appointing a survey commissioner for preparing a report in accordance with the map and Abadi Khasra (Annexures I and II) filed along with this application.

Sri Abdul Mannan, counsel appearing for the plaintiff in Suit No. 4 of 1989, referred to an application filed on its behalf in the Court below for appointment of a survey commissioner.

The last prayer made was contested on the ground that as the application filed in the trial court stood disposed of the prayer made by Sri Abdul Mannan could not be acceded to. This submission is not correct. The

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application was not rejected. It was kept in abeyance directing that an order for survey commissioner would be made after final hearing. Since we are of the opinion that a survey commissioner be appointed at this stage, therefore, we direct that the Registrar/Secretary of the Board of Revenue to appoint any officer, not below the rank of P.C.S. Officer, having knowledge of survey work, to survey the site and to report the location of the plots. The survey commissioner to be appointed would take assistance from the municipal records and such other records which he considers to be useful for the same purpose. The commissioner would give notices of the date, on which he would like to survey, to the Sunni Central Waqf Board and the defendants nos. 2 and 13, namely, Paramhans Ram Chandra Das and Mahant Dharam Das, in Suit No. 4 of 1989. Since ***we are of the opinion that the photographs of mosque and temple, including all the pillars, may also be helpful for deciding the controversy in this suit, as well as other connected ones, we direct that the photographs of the mosque, temple, including pillars be taken and prepared****.*

The question as to who would be fit for purposes of carrying out the directions of the Court was considered by us at length. In the circumstances, ***we consider that the Director, U.P. Archaeological Department, be asked to do the same. He would also prepare carbon dating of the pillars, mosque and temple****. For purposes that the directions given by us are effectively complied with and no unnecessary rush gets collected, we consider that out of the two sides, that is, Sunni Central Waqf Board and*

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defendants 2 and 13 would be entitled to take not more than seven persons with themselves, one of them can be a photographer.

So far as defendant no. 3 is concerned, we consider, for purposes of settlement of controversy involved in the suit, its interest is not adverse to that of the defendants nos. 2 and 13, therefore, it can take with itself three persons.

***The Director, Archaeological Department, would also get video cassettes prepared of the mosque, temple and pillars**. The district administration will make arrangement for security.*

The Advocate General had made a statement in the Court that the expenses would be borne by the State of all the proceedings, such as the present. Consequently, we direct that for making the survey commission, taking photographs, video cassettes etc. the expenses would be borne by the State itself.

The applications are decided accordingly."

(emphasis added)

2096. Dr. Rakesh Tiwari, OPW 14 has proved the aforesaid photographs and also the video recording made of the disputed building. He (Sri Jilani) says, since the witnesses have failed to identify most of the photographs and in fact made apparently wrong statements, showing that they never visited the disputed place, their statements are basically wrong and should be rejected.

2097. It is no doubt true that almost all the witnesses have failed to identify correctly location, site or the objects shown in one or the other of the above photographs, but then we have to consider certain well settled principles in the matter of oral

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evidence. Memory of a man may be very good or may not be, depending upon the individual. Some people's memory is so sharp that they can continue the things in their mind for several years, decades and may tell very accurately the things happened 20, 30 or 40 years back but this is not a normal phenomena. Normal period of memory of human being is not so long. All the witnesses who have appeared before us have deposed their statements after more than 50 years of the incident. To expect meticulous details, these witnesses can recollect, what transpired or what they observed more than 50 years ago and that too when they must not have any idea that at some point of time they will have to depose statement in a Court of Law and, therefore, could not watch everything very carefully and minutely, is too much. Such lacking is quite normal. No one has a flashing computerised memory. Such expectation and that too from those who are simple rural folks, is too much. We have to consider the overall credibility of the statement of the witnesses as that could be of an ordinary human being.

2098. In fact similar kind of error has occurred virtually with all the witnesses of facts who have deposed their statements whether on behalf of plaintiffs or defendants. It is for this reason, we have not delved into the statements of all the witnesses of facts with respect to the events of 1950 and earlier thereto by looking into contradiction of each line, each word and each page, i.e., on every aspect. We have tried to find out truth in the statements of witnesses by judging their credibility by narrowing down the facts which they intend to prove in their examination-in-chief and thereafter looking to the general conduct, attitude and some other circumstantial state of affairs as discerned from the statement of the witnesses in cross-

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examinations. Wherever oral evidence is corroborated with the documentary evidence then obviously one has to take more reliable one than the one which is totally based on the statement of a person which is slippery and appears to be tutored. For a particular fact, if one gives statement of a fact which occurred 50 and more years back with minute details but not able to recollect or tell the Court about such event the dates of which are much more recent, normally very important for a man's life, for example the date or year of birth of children, marriage etc. which must be known by him, then his statement becomes suspicious and needs to be seen with care.

2099. So far as claim of Nirmohi Akhara is concerned that nothing had happened on 22/23 December, 1949 and idols existed under the central dome in the inner courtyard much prior thereto is not only unbelievable and incorrect but in fact many of their own witnesses have proved their case wrong. Many of the witnesses appeared on behalf of Nirmohi Akhara have made statement which is wholly inconsistent to the basic pleadings of Nirmohi Akhara, plaint and replication in Suit-3 and in written statement in Suit-4 and 5.

2100. Though twenty witnesses have been produced on behalf of Nirmohi Akhara and it is strange but unfortunate that we find almost all of them uncreditworthy so far as this aspect of the matter is concerned that the idols in dispute were placed inside the building under central dome long back and much before 22nd December, 1949 and nothing happened on that day. It is well settled that the quantity of evidence does not matter but it is the quality of evidence which matters.

2101. On the point where there is some variance between pleadings and proof, in **Ananda Chnadra Chakrabarti vs.**

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Broja Lal Singha (supra), the Court while taking the view that every variance is not fatal has held:

> *" The rule that the pleading and proof must correspond is intended to serve a double purpose; first, to apprise the defendant distinctly and specifically of the case he is called upon to answer; and, secondly, to preserve an accurate record of the cause of action as a protection against a second proceeding upon the same allegations. The test thus is, whether the defendant will be taken by surprise if relief is granted on the facts established by the evidence, or, as has sometimes been said, a variance between a pleading and what is proved is immaterial unless it hampers a defence or unless it relates to an integral part of the cause of action."*

2102. In **Sewkissendas Bhatter & others Vs. Dominion of India AIR 1957 Cal. 617** and **Basant Kumar Roy Vs. Secretary of State for India & others AIR 1917 PC 18**, it was held that where a matter requires consideration of facts, a new fact ought not be allowed unless supported by pleadings since it is only the matters of law which can be allowed to be raised and not those where factual investigation is required.

2103. Extending the diluted approach as observed by the Culcutta High Court in **Ananda Chandra Chakrabarti vs. Broja Lal Singha (supra)** yet we find that it is really unfortunate that even this approach may not help the plaintiffs (Suit-3) for the reason that the variance in pleadings and proof is so inconsistent that virtually it amounts to a mutually destructive plea and when the variance is so wide, it cannot but fatal to the case of the plaintiffs (Suit-3). It demolishes their case virtually in its entirety for the purpose of their claim in respect to the

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premises inside the courtyard.

2104. We have no hesitation in holding and recording our finding that under the central dome of the disputed building, idols were kept in the night of 22nd/23rd December, 1949.

2105. Now the question about the consecration of the said idols and whether the idols were kept after observing the procedure meant for consecration, and, if the idols were same as were kept on Ram Chabutara up to 22nd December, 1949, whether on shifting, fresh exercise of consecration was required and its effect etc., if any.

2106. The crucial aspect would be whether the idols kept under the central dome in the night of 22nd/23rd December, 1949 were placed in such a manner that the people who visit to worship believe, that there exists a divine spirit, it is a deity conceived of as a living being, capable of providing spiritual salvation and it is a deity having supreme divine powers. As we have discussed, an idol itself is not worshipped but it is a particular image wherein on consecration it is believed by the Hindus that it has attained such divinity and supreme power so as to provide human salvation and fulfillment of wishes of the beneficiary. The idol is only a material symbol and embodiment of pious purpose though the real worship is that of a supreme power. In **T.R.K. Ramaswami Servai (supra)** as we have already observed the test was not whether the installation of an idol and the mode of its worship conform to any particular school of Agama Sastras but if the public or that section of the public who go for worship consider that there is a divine presence in a particular place and by offering worship at that place, they are likely to be the recipients of the bounty or blessings of God then it is a temple, a deity capable of worship

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and no further ceremonial right is required to be shown. This has been approved and affirmed by the Apex Court in **Ram Jankijee Deities (supra)**. None of the witnesses of plaintiffs (Suit-4) have said that he was present at the time of such placement. On the contrary, plaintiff no. 3 (Suit-5) , i.e., OPW 2 in his statement under Order X Rule 2 has clearly said that due ceremonies were performed when the idols were transferred. Paramhans Ramchandra Das also appeared in the witness box as OPW 1 and has proved the state of affairs. His presence on the site at the relevant time has not been doubted either by the plaintiffs (Suit-4) or their witnesses or before us during the course of arguments by learned counsels. Some other witnesses have also proved this fact.

2107. It thus cannot be said that the idol(s) placed therein were not properly consecrated. Atleast the status of deity cannot be assailed by those who do not believe in idol worship since it is to be seen from the angle of those who go and worship thereat. They conform the test of being a juridical person in the eyes of law.

2108. The plaintiffs (Suit-4) have failed to prove that idols and objects of worship were placed inside the building as described in plaint by letters ABCD read with the map appended to the plaint in the night intervening 22nd/ 23rd December, 1949. Consistent with the pleadings in plaint (Suit-4), the building denoted by the area ABCD of the map appended to the plaint (Suit-4), the idols and object of worship were existing even prior to 22nd December 1949 at Ram Chabutara, in the outer courtyard.

2109. **We accordingly answer Issue No. 12 (Suit-4) in negative.** The effect of this answer shall be considered at the

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relevant stage and need not be answered at this stage.

2110. **Issue No. 3 (a) Suit-5 is answered in affirmance** i.e. in favour of the plaintiffs (Suit-5). It is held that the idol(s) in question was/were installed under central dome of the disputed building (since demolished) in the early hours of 23rd December 1949 as alleged by the plaintiff in para 27 of the plaint and clarified by the plaintiffs in the statement under Order X Rule 2 C.P.C. The **Issue No. 1 (suit-5) is, also, accordingly, answered in its entirety, in affirmance.** It is held that the plaintiffs 1 and 2 both are juridical person. **Issue No. 21 (Suit-5) is answered in negative**, i.e., against the defendants no. 4 and 5.

2111. Having said so, immediately Issue No. 21 (Suit-4) need be considered as to whether the Suit is bad for non-joinder of the said deity.

2112. An idol being a legal/juristic person, is a necessary party in a suit where relief is sought against it. The idol represents a Deity or a spiritual being whose existence is recognized by Hindu Law. The Deity or spiritual being is supposed to exist for ever. It cannot suppose to act like an ordinary human being but has to be represented by someone. Where a suit is filed seeking a relief against an idol without its impleadment, the suit cannot be decreed against the idol and has to be dismissed for the reason that decree, if any, is passed, would not be binding upon the idol.

2113. In **Mukundji Mahraj (supra)**, para 31 of the judgment, the Court said :

> *"As the idol was not properly represented in the aforesaid suits, the decrees were nullities as against the idol. In such cases the principle laid down by the Privy Council in Rashidunnisa Vs. Muhammad Ismail, ILR 31All 572 (PC)*

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(I) and by this Court in Dwarika Halwai v. Sitla Prasad, 1940 All LJ 166: (AIR 1940 All 256) (J) applies. ***The decree is not merely voidable, but null and void.*** *The decrees being nullities can be ignored and the plaintiff is not under the necessity of having them set aside before suing for possession."*

2114. In **B. Jangi Lal Vs. B. Panna Lal and another AIR 1957 Allahabad 743** a Division Bench of this Court said that an idol can bring a suit to defend its interest and also has right to defend itself in a suit instituted claiming a relief which impairs the idols rights. Whether it is a necessary party or not depends upon the facts and circumstances of each case. Where the interest of the idol are directly affected or its own existence seriously impaired appearance of idol before the Court is necessary. However, while observing so in para 5, the Court proceeded further to observe where it is found that idol must be impleaded being a necessary party, it should do so.

2115. In our view this later observation in **B. Jangi Lal (supra)** would require a little clarification. It is suffice if the plaintiff is made known of the fact that idol being a juristic personality, a necessary party. Wherever its interest is sought to be impaired, no relief can be granted without impleading it. Despite this aspect having been pointed out by the defendants in suit, if no attempt is made by the plaintiff to implead the idol and on the contrary this is defended by objecting to the issue, the matter would have to be considered in a different manner and if at the time of final adjudication the Court finds that the suit was filed without impleading a necessary party and continuing as such it would have to face the logical consequences.

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2116. In **K. Manathunainatha Desikar Vs. Sundaralingam (supra)** a Full Bench of the Madras High Court in para 20 of the judgment observed:

> *".....The Deity, a juristic entity, is the proprietor who never dies but labours under physical disability which renders it necessary that its* ***interests should be looked after in perpetuity****."*

2117. In **Jodhi Rai Vs. Basdeo Prasad and Ors. (supra)** a Full Bench of this Court held:

> *".....An idol has been held to be a juristic person who can hold property. Therefore, when a suit is brought in respect of property held by an idol, it is the idol who is the person bringing the suit or against whom the suit is brought, the idol being the person beneficially interested in the suit."*

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2118. The Court in **Jodhi Rai (supra)** however on merits found that though the idol was impleaded through Manager but it was not properly described. In these circumstances, the Court held that the correction in the description could have been permitted to the plaintiff and this by itself does not warrant dismissal of suit since correction would not have the effect of introducing third party, on record after expiry of period of limitation. However where the necessary party has not been impleaded within the period of limitation, the position may be different.

2119. In **Bimal Krishna Ghose and Ors. Vs. Shebaits of Sree Sree Iswar Radha Ballav Jiu and Ors. AIR 1937 Cal 338** the Court referring to its earlier decision in **Rabindra Nath Vs. Chandi Charan AIR 1932 Cal 117** observed that in India, the Crown is the constitutional protector of all infants and as the

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Deity occupies in law the position of an infant, the Shebaits who represent the Deity are entitled to seek the assistance of the Court in case of mismanagement or maladministration of the deity's estate and to have a proper scheme for management framed which would end the disputes amongst the guardians and prevent the debutter estate from being wasted or ruined.

2120. In para 7 of the judgment the Court relied and referred to the Privy Council decision in **Kanhaya Lal Vs. Hamid Ali, AIR 1933 PC 198** and observed :

> *"The Privy Council held that they could not deal with the appeal **in the absence of the idol** whose interest arose under the Wakf ....."*

2121. In **Kasturi Vs. Iyyamperumal and Ors. 2005 (6) SCC 733** referring to Order I Rule 10 as to who would be the necessary party in para 7 and 13 it said :

> *7. In our view, a bare reading of this provision, namely, second part of Order 1 Rule 10 sub-rule (2) CPC would clearly show that the necessary parties in a suit for specific performance of a contract for sale are the parties to the contract or if they are dead, their legal representatives as also a person who had purchased the contracted property from the vendor. In equity as well as in law, the contract constitutes rights and also regulates the liabilities of the parties. A purchaser is a necessary party as he would be affected if he had purchased with or without notice of the contract, but a person who claims adversely to the claim of a vendor is, however, not a necessary party. From the above, it is now clear that two tests are to be satisfied for determining the question who is a necessary party. Tests are – (1) there must be a right to some relief against such*

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party in respect of the controversies involved in the proceedings; (2) no effective decree can be passed in the absence of such party.

13. From the aforesaid discussion, it is pellucid that necessary parties are those persons in whose absence no decree can be passed by the court or that there must be a right to some relief against some party in respect of the controversy involved in the proceedings and proper parties are those whose presence before the court would be necessary in order to enable the court effectually and completely to adjudicate upon and settle all the questions involved in the suit although no relief in the suit was claimed against such person.

2122. In **J. Jaya Lalitha Vs. Union of India & another AIR 1999 SC 1912,** the Court observed that "necessary" means that is indispensable, needful and essential in respect of which, nothing is vague or nebulous.

2123. In **Udit Narain Singh Malpaharia Vs. Additional Member, Board of Revenue AIR 1963 SC 786**, the Court said that a necessary party is one without whom no effective order can be made; a proper party in whose absence an effective order can be made but whose presence is necessary for a complete and final decision on the question involved in the proceedings.

2124. In **Prabodh Verma & others Vs. State of U.P. and others AIR 1985 SC 167** it was considered as to who are necessary and proper parties. The Court observed that a person who may be adversely affected directly by a decision of the Court is a necessary party, for the reason any order passed behind his back may not be binding upon him having been passed in violation of the principles of natural justice.

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2125. In **Ramesh Hirachand Kundanmal Vs. Municipal Corporation of Greater Bombay & others (1992) 2 SCC 524**, the Court said that parties whose presence before the Court is necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit, are necessary parties. What makes a person a necessary party is not merely that he has relevant evidence to come on some of the questions involved nor it is merely that he has interest in the correct solution of some questions involved, and has relevant arguments to advance. The only reason which makes it necessary to make a person a party to an action is so that he should be bound by the result of the action, and the question to be settled, therefore, must be a question in the action which cannot be effectually and completely settled unless he is a party.

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2126. It has also been held in a catena of decisions that non impleadment of a necessary party is fatal as provided in the principles enshrined in proviso to Order 1, Rule 9 C.P.C. Recently, a Division Bench of this Court also taken the above view in **Satya Narain Kapoor Vs. State of U.P. & others 2007 (2) ARC 308.**

2127. In **Narayan Bhagwantrao Gosavi Balajiwale (supra)** the Apex Court in para 41 of the judgment observed:

> *".....The difficulty in the way of the appellant is real. He refrained from joining the Deity, if not as a necessary, at least as a proper party to the suit. If he had joined the deity and the deity was represented by a disinterested guardian, necessary pleas against his contention could have been raised by the guardian, and it is likely that some evidence would also have been given.*

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The appellant seeks to cover up his default by saying that the suit was one under O. 1, R. 8 of the Code of Civil Procedure, and that the Hindu public was joined and the Deity was adequately represented. In a suit of this character, it is incumbent to have all necessary parties, so that the declaration may be effective and binding. It is obvious enough that a declaration given against the interests of the deity will not bind the Deity, even though the Hindu Community as such may be bound. The appellant would have avoided circuity of action, if he had acceded to the very proper request of the respondents to bring on record the Deity as a party. He stoutly opposed such a move, but at a very late stage in this court he has made an application that the Deity be joined. It is too late now to follow the course adopted by the Privy Council in 52 Ind App 245: (AIR 1925 PC 139) and Kanhaiya Lal Vs. Hamid Ali, 60 Ind App 263: (AIR 1933 PC 198 (1),....."

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2128. The plaintiffs (Suit-4) have sought a relief of eviction of idol from the building in dispute. The idol in question is a Deity and a juridical person in law. That being so, if a relief is sought against the idol, a juridical person, its impleadment was necessary as it is a necessary party. The consequences of non impleadment of a necessary party is that the suit cannot proceed and deserves to be dismissed on this ground. The principle in this regard is that relief cannot be granted in a suit against a person who has no opportunity to place his case before the Court as one cannot be condemned unheard.

2129. In ordinary circumstances, we ought to have dismissed Suit-4 for non impleadment of necessary party. However, there are certain peculiar facts and circumstance in the present sets of

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cases. There was a serious dispute regarding the status of the idol in question. Besides, four suits have been clubbed. The legal person i.e. Deity is fully represented in this Court and has placed its case in the best possible manner through a battery of learned counsels and we find nothing more could have been said if technically the impleadment of idol would have been there in Suit-4. The basic principle that no one should be condemned unheard therefore does not exist in the case in hand. If a relief is to be given to a plaintiff, an order may not be passed against a person who is not a party to that suit. This would make at the best, in case Suit-4 is to be allowed, not to grant relief in respect of the eviction of the idol from the premises in question but would have no impact on the matter of declaration.

2130. After due and careful consideration of the matter and having placed this question before the learned counsels, who argued the matter as to what else could have been their defence if the idol would have been a party in Suit-4, they could not place before us on behalf of the idol, who is plaintiff no.1 in Suit-5 and is placing his case before us to which they could not reply or add anything.

2131. We, accordingly, in the facts and circumstances and discussion made above, decide **issue 21 (Suit-4) in negative i.e. in favour of the plaintiff (Suit-4)** and hold that the suit is not bad for non-joinder of the Deities.

2132. **Issues no.2 and 6 (Suit-5)** relate to the capacity of plaintiff no.3 to file suit on behalf of plaintiffs no. 1 and 2 as their next friend and relate to the maintainability of the suit in the manner it has been filed or even if plaintiffs no.1 and 2 are held to be juridical person, are entitled to sue or be sued in their own name.

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2133. Now, so far as the issue No.2 and 6 (Suit-5) are concerned, we really find it surprising that there is no averment at all in the entire plaint that plaintiff no. 3 is a worshipper of lord Ram and that of plaintiffs 1 and 2. Besides it is also not the case that there is no Shebait at all or the Shebait, if any, is not managing the affairs properly.

2134. An idol or deity in Hindu law, as we have already discussed,is a juridical person and can file a suit for protection of its rights etc. and similarly can also be sued. Not being a natural person, it cannot litigate on its own as but its interest has to be watched through a natural person. Here we come up to the concept of Shebait or Mahant. He look after the interest of the idol or deity, can sue or be sued. Where the suit is in respect of the rights of the idol, it is to be filed in the name of the idol through the concerned Shebait or Mahant who is held to be the manager of such deity, under an obligation to look after its interest. No specific procedure in this regard has been mentioned in the Code of Civil Procedure. However, by process of interpretation and by judicial precedence the Courts have taken recourse to the principles of Order 32 Rule 1 CPC. In B.K. Mukherjea's **Hindu Law of Religious and Charitable Trusts (supra)** at page 265 the learned author clearly opined that a deity being a juristic person has undoubtedly, right to institute a suit for protection of its interest. So long as there is a Shebait in the office functioning properly, the rights of the deity, as stated above, practically lie dormant and it is the Shebait alone who can file suits in the interest of the deity. When, however, the Shebait is negligent or is himself the guilty party against whom the deity needs relief, it is open to worshippers or other persons interested in the endowment to file suit for the protection of the

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Debutter. It is open to the deity also to file a suit through some person as next friend for recovery of possession of property improperly alienated or for other relief. Such a next friend may not unoften be a person who as a prospective Shebait or a worshipper is personally interested in the endowment.

2135. The learned author has further considered as to how we can distinguish the two classes of cases and ascertain whether it is a suit by the deity or by the worshipper personally. He has answered this question observing that it would certainly depend upon the nature of the suit and the nature of the relief claimed. If the suit is not in the name of the deity, it cannot be regarded as a deity's suit, even though the deity is to be benefited by the result of the litigation. It would be the personal suit of the worshipper, the family members or the prospective Shebait, as the case may be. These persons are not entitled to claim any relief for themselves personally, e.g., by way of recovery of possession of the property improperly alienated or adversely possessed by a stranger.

2136. It appears that there was some variation in the opinion of different courts on this aspect as to how and in what manner a suit be filed on behalf of a deity or idol. Sri Jilani and other learned counsels appearing for Sunni Board as well as other Muslim parties have not gone to the extent of denying any right of filing a suit by a deity and it is not, in fact, disputed that a deity consecrated in accordance with Shashtrik law is a juridical person entitled to sue or be sued and such a suit can be filed through its Shebait or Mahant, as the case may be. Their objection is that plaintiffs no.1 and 2 are not deity in accordance with recognised tenets of Hindu law and, therefore, Suit-5 itself is not maintainable. This issue we have already considered and

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replied.

2137. In continuation, the next objection is that plaintiffs no.1 and 2 cannot be represented through the next friend i.e., the plaintiff no.3, and Suit-5 by plaintiffs no.1 and 2 through plaintiff no.3 as next friend is not in accordance with law, hence not maintainable.

2138. The defendant no. 4 though has pleaded in para 1 of his written statement (Suit-5) that there is no installation of deity within the premises of the disputed place of worship and that the idol in question was stealthily and surreptitiously kept inside the mosque in the night of 22nd/23rd December, 1949 and, therefore, are not a juridical person being not a deity but nothing has been brought on record to prove it. Similar assertions have also been made in paras 6, 11, 12, 14, 18 and 21 of the written statement of defendant no. 4, Suit-5. Regarding plaintiff no. 1 (Suit-5) the assertion that it is a *Chal Vigrah* and was kept in the night of 22nd/23rd December, 1949 after due ceremonies and the fact that since 23rd December, 1949 it is continuously being worshiped by Hindus leaves no option for us but to disagree with the stand of the defendant no. 4 (Suit-5) that it is not a deity in terms of Hindu *Shastras* and, therefore, not a juridical person. So far as the plaintiff no. 2 is concerned, the discussion made above make it clear that a place by itself can also be a deity for worship of Hindus and in such a case being a *Swyambhu* and permanent deity, no particular kind of consecration is required to be observed in such a case. Subject to our findings in respect to the issues whether the disputed site is the place of birth of Lord Rama or that it is believed to be the place of birth of Lord Rama by Hindus from time immemorial, the issues which are separately under consideration, if answered in affirmance, i.e.,

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in favour of Hindu parties, we have no hesitation in holding that the plaintiffs no. 1 and 2 cannot be denied the status of deity and, therefore, are juridical persons as known in Hindu laws. It is not the case of any of the parties that there is or there was any shebait appointed or working to look after or managing the plaintiffs no. 1 and 2. The idol while existing on Ram Chabutara, its worship etc. was being managed by the priest of Nirmohi Akhara as claimed by them and also not seriously disputed by other Hindu parties but after its shifting in the disputed building under the central dome, there is nothing on record to show that any person as shebait of plaintiff no. 1 continued to look after.

2139. So far as plaintiff no. 2 is concerned, we find that there is no pleading by the defendants no. 4 and 5 or any other muslim party that there was any shebait to manage the affairs of plaintiff no. 2. The plaintiff no. 3 has stated in para 1 that he is a Vaishnav Hindu. The Vaishnavas are those who worship Lord Rama. He was allowed to represent the plaintiffs no. 1 and 2 as their next friend by Civil Judge while entertaining the suit in question vide order dated 01.07.1989. After death of Sri D.N. Agrawal he was replaced by Sri T.P.Verma vide order of the Court who was made next friend of plaintiffs no. 1 and 2. Recently Sri Triloki Nath Pandey has been allowed as next friend to represent plaintiffs no. 1 and 2. In view of the law laid down by the Apex Court in **Bishwanath Vs. Sri Thakur Radha Ballabhi (supra)** in the absence of Shebait, a suit on behalf of a Hindu idol can be filed and pursued by a worshipper as an idol's next friend.

2140. A suit on behalf of a minor or a Deity can be filed through next friend only if the above conditions are satisfied.

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This could have been a serious deficiency in respect to maintainability of Suit-5 through next friend but we have noticed that here is not a case where Suit-5 was entertained on behalf of plaintiffs 1 and 2 through next friend without the intervention of the Court. The record shows that before entertaining the suit, the Court considered the prayer of the plaintiff 3 to permit him to represent the plaintiffs no.1 and 2 as next friend. The Civil Judge passed order on 01.07.1989 permitting the plaintiff no.3 to present the said suit as next friend of the plaintiffs no.1 and 2. The said order of the Civil Judge has never been challenged by any of the parties and the same has attained finality. In fact after the death of Sri Deoki Nandan Agarwal the then next friend of plaintiffs no.1 and 2, an application was filed for another next friend by Sri T.P.Verma which was allowed by this Court. Thereafter when a further change was requested, another application was filed on behalf of Kamleshwar Nath to represent as next friend of plaintiffs 1 and 2 but it was dismissed by this Court against which an appeal was taken to the Apex Court and vide judgment dated 08.02.2010, the Apex Court permitted him to be impleaded and pursue the present suit as next friend of plaintiffs no. 1 and 2 subject to certain conditions, which he complied with and accordingly he was substituted as next friend by this Court's order dated 18.03.2010.

2141. In view of the above discussion, we are of the view that Suit-5 cannot be held not maintainable merely on account of some defects in pleading with respect to the status of the next friend or Shebait. We **decide Issues no. 2 and 6 (Suit-5) in negative i.e. in favour of the plaintiffs (Suit-5)**. We hold that the suit is maintainable and plaintiff no. 3 can validly represent

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plaintiffs no. 1 and 2 as their next friend and is competent on this account.

(H) Limitation

2142. In this category fall four issues namely Issue No. 3 (Suit-4); 10 (Suit-1); 9 (Suit-3); and 13 (Suit-5).

2143. The above issues though pertain to a common statute of "limitation" but since the situation, relevant facts and arguments cover different angles in all the cases, we propose to deal the said four issues separately and suitwise.

2144. First we proceed with the leading case, i.e., **Issue No. 3 (Suit-4)** which reads as under:

> **"***Is the suit within time?"*

2145. The plaintiffs in para 23 of the plaint have alleged that the cause of action arose on 23rd December, 1949 when the Hindus unlawfully and illegally entered the mosque, desecrated the same by placing idols therein, caused obstruction and interference with the rights of Muslims in general in offering prayers and other religious ceremonies in the mosque, caused obstructions to Muslims going to the grave-yard and reciting Fatiha to the dead persons buried therein; the said injury is continuing and renewed de-die-indiem; the cause of action against defendants 5 to 9 arose on 29th December, 1949 on which date the defendant No. 7 attached the mosque in suit and handed over possession to Receiver (defendant No. 9) who assumed charge of the same on 5th January, 1950 and the State Government and its officials, defendants No.6 to 8, failed in their duty to prosecute offenders and safeguard interest of Muslims. Para 23 of the plaint reads as under:

> *"23. That cause of action for the suit against the Hindu public arose on 23.12.1949 at Ajodhiya District Faizabad*

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within the jurisdiction of this Hon'ble Court when the Hindus unlawfully and illegally entered the mosque and desecrated the mosque by placing idols in the mosque thus causing obstruction and interference with the rights of the Muslims in general, of saying prayers and performing other religious ceremonies in the mosque. The Hindus are also causing obstructions to the Muslims going in the grave-yard (Ganj-Shahidan) and reciting Fatiha to the dead persons buried therein. The injuries so caused are continuing injuries and the cause of action arising therefrom is renewed de-die-indiem and as against defendants 5 to 9 the cause of action arose to the plaintiffs on 29.12.1949 the date on which the defendant No. 7 the City Magistrate Faizabad-cum-Ajodhiaya attached the mosque in suit and handed over possession of the same to Sri Priya Dutt Ram defendant no. 9 as the receiver, who assumed charge of the same on January 5, 1950.

The State Government and its officials defendants 6 to 8 failed in their duty to prosecute the offenders and safeguard the interests of the Muslims"

2146. The defendants No.1 and 2 in para 23 of written statement dated 12th March, 1962 have denied it. In additional pleas, para 28 they have pleaded that the suit is time barred. The plaintiff's were not in possession of the disputed property since 1934. The relevant pleading is as under :

"23. That para 23 of the plaint is wrong. The suit is hopelessly time barred. The Muslims have not been in possession of the property in dispute ***since 1934, and earlier****."*

"28. That the suit is time barred as the plaintiffs were

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*never in possession over the temple in dispute **since 1934**, and the Hindus were holding it adversely to them, overtly and to their knowledge."*

2147. Another written statement filed on behalf of defendants No. 1 and 2 dated 25th January, 1963 is similarly worded in para 23 and 28 thereof.

2148. The defendants No. 3 and 4 in their written statement dated 22nd August, 1962, while denying para 23 of the plaint in para 23 of the written statement, have stated in para 34 (part of additional pleas) that the suit is barred by time.

2149. The defendant No.10 in his written statement dated 15th February, 1990 has denied para 23 of the plaint and in additional pleas has alleged in para 29 and 79 that the suit is barred by time. Para 79 of the written statement says:

"79. That the suit as framed is a suit for declaration only and the relief for delivery of possession is in the words that "In case in the opinion of the court . . . . . " which means that the plaintiffs are not seeking relief of possession and leave it to the court to grant possession suo motu. The reason is obvious that the suit was barred by limitation and so specific prayer has not been made."

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2150. Though a replication has been filed to this written statement of defendant No.10 but para 79 was inserted in the written statement pursuant to the amendment allowed by Court's order dated 23rd November, 1992 and there is no reply to para 79 of the written statement. The part of relief sought in the plaint i.e. para 24 (bb) is also pleaded barred by time in para 12, additional written statement dated 12th September, 1995 of defendant No.10 (Baba Abhiram Dass, substituted by defendant No.13/1 vide Court's order dated 27th January, 1992). In written

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statement dated 20.7.1968, paras 23, 27 and 28 he pleads that the suit is hopelessly time barred. The defendant No.13/1 in his separate written statement dated 4th December, 1989 in para 23 and 39, while asserting that the suit is barred by time, has averred:

> *"23. That paragraph 23 of the plaint is denied. The cause of action pleaded therein is fictitious. It could in no case be said to be renewed de-die-indiem, inasmuch as the imaginary injury complained of does not constitute a continuing injury or a continuing wrong in the eye of law.* ***The suit is hopelessly time-barred by the limitation of 6 years prescribed by Article 120*** *of the Schedule to the Indian Limitation Act, 1908, which squarely applies to the allegations and the cause of action pleaded in the plaint, though the answering defendant submits that there was in fact no cause of action for the suit, and the suit is only a malicious exercise in futility which is fit to be dismissed as such."*
>
> *"39. That the relief for possession by the removal of the idols and other articles of Hindu worship, is in fact and in law a relief for mandatory injunction, and is* ***barred*** *the 6 years' limitation prescribed* ***by Article 120*** *of the Schedule to the Indian Limitation Act, 1908. Otherwise too a person other than the Mutwalli of a Mosque cannot sue for its possession, and can only sue for a declaration that it is a mosque and, if out of possession or dispossessed, that its possession be made over to the Mutwalli, and to such suit also Article 120 applied, and* ***neither*** *of the* ***Article 142*** *or* ***144 of*** *the Schedule to the Indian Limitation Act, 1908* ***had any application****. Further, on the pleas raised in the plaint,*

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the plaintiffs having claimed to have been effectively and completely dispossessed by the Preliminary order of attachment and appointment of a Receiver to maintain the worship of the Deity inside the three-domed building, passed on 29.12.1949 under Section 145 of the Code of Criminal Procedure, 1898, the suit is ***barred by Article 14*** *of the Schedule to the Indian Limitation Act, 1908. Inasmuch as the* ***Plaintiffs have claimed that they were completely and effectively ousted*** *from the building and the premises in suit* ***by the Defendants act of 'placing' of Idols within the 'mosque',*** *on December 23, 1949,* ***their cause of action was finally complete*** *and closed that day,* ***and did not recur thereafter****, according to their own allegations. It could not be said to arise thereafter die-in-diem, as it was not the case of a continuing wrong, within the meaning of Section 23 of the Indian Limitation Act, 1908. In any view of the matter the suit is hopelessly barred by limitation, even on the allegations of the Plaint which is liable to be rejected under Order 7, Rule 11 of the Code of Civil Procedure, 1908, and Section 3 of the Indian Limitation Act, 1908, casts a duty on the Court to dismiss the suit and not to proceed with its trial any further."*

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2151. Defendant No.17 in para 18 of additional written statement dated 14th September, 1995 has pleaded that the suit is barred by time in the following words :

"18. That the suit as framed is a ***suit for declaration*** *and the* ***relief for delivery of possession has not been made in specific terms*** *as the said relief was time-barred on the date of institution of the suit. Now by way of amendment, relief of possession from statutory receiver is being sought*

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and as such the plaintiffs are stopped from claiming possession of the property at this stage and the said claim has also become time-barred."

2152. Similarly, defendant No.18 in para 23 of the written statement has denied and in para 28 has said that the suit is barred by limitation; Defendant No.20 has denied para 23 and in para 48 has pleaded that the suit is barred by limitation.

2153. Sri P.N.Mishra, Advocate, assisted by Miss Ranjana Agnihotri appearing on behalf of defendant No.20 submitted that Sri Zahoor Ahmad-plaintiff No.10 (since deceased) was impleaded as defendant No.1 in Suit-1. Mohammad Faiq-plaintiff No.4 (since deceased) was defendant No.3 in Suit-1 and defendant No.7 in Suit-3. Similarly, plaintiff No.10/1 Farooq Ahmad substituted after the death of the plaintiff No.10 Zahoor Ahmad is defendant No.11 in Suit-3. In the plaint (Suit-4), the plaintiffs have taken a stand in para 11 that the disputed building was in peaceful possession of Muslims and they used to recite prayer therein till 23rd December, 1949 when a large crowd of Hindus with mischievous intention of destroying, damaging or defiling the said mosque and thereby insulting Muslim religion and religious feelings, entered and desecrated the mosque by placing idols therein. Shri Mishra pointed out that plaintiff No.4-Mohd. Faiq and plaintiff No.10-Zahoor Ahmad had filed written statement dated 21st February, 1950 in Suit-1 and in para 22 therein have pleaded that Namaz was offered in the building in dispute till 16th December, 1949 and till then there was no idol in the said building; if it has been placed subsequently in the disputed building, the same was wholly illegal. Similarly, the plaintiff No.4 along with two others had filed written statement dated 28.03.1960 in Suit-3 and in para 26 thereof he

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has pleaded that Namaz was offered in the disputed building till 16th December, 1949 and upto that time there was no idol inside the building. The above stand has been changed by the said two plaintiffs in Suit-4 though it is a futile and illegal attempt; will not bring the suit in dispute within the limitation prescribed therefor.

2154. Sri Mishra contended that Suit-4 was presented and filed in the court on 18th December, 1961. Plaintiff No.1 (Suit-4), who was impleaded as defendant No.9 (Suit-3) pursuant to the Court's order dated 23rd August, 1989 on application for impleadment, made a statement through his counsel that he is adopting written statement already filed on behalf of the defendants No.1 to 5 in Suit-1 and the defendants No.6 to 8 in Suit-3. Sunni Central Waqfs Board was also impleaded as defendant No.10 in Suit-1 pursuant to the Court's order dated 7th January, 1987. Thus the stand taken by plaintiffs No. 4 and 10 is binding on plaintiff No.1. The change in stand in Suit-4 with respect to the date on which last Namaz was offered in the disputed building cannot be pleaded otherwise than what they have already pleaded. They are estopped from changing the stand and cannot be permitted to cover up the deficiency in regard to limitation by such altered stand.

2155. It is contended by Sri P.N. Misra that in the earlier pleadings of Muslim parties their specific case was that last Namaz was offered on 16.12.1949 hence the subsequent improvement in the later pleadings shall not improve upon their case. They are bound by the stand they have taken in earlier pleadings. He argued that post litem motum is inadmissible on the ground that the same thing must be in controversy before and after the statement is made. The statement in Suit-4,

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therefore, is inadmissible where improving upon their earlier stand it has been pleaded that Namaz was offered lastly on 22.12.1949. Sri Misra placed reliance on a decision of the Apex Court in **State of Bihar & Ors. Vs. Sri Radha Krishna Singh (Supra)** and in particular para 132 and 138 which read as under:

"132. Same view was taken by a full Bench of the Madras High Court in Seethapti Rao Dora v. Venkanna Dora & Ors, (1922) ILR 45 Mad 332: (AIR 1922 Mad 71). Where Kumaraswami Sastri, J. Observed thus:

> *"I am of opinion that Section 35 has no application to judgments, and a judgment which would not be admissible under Sections 40 to 43 of the Evidence Act would not become relevant merely because it contains a a statement as to a fact which is in issue or relevant in a suit between persons who are not parties or privies. Sections 40 to 44 of the Evidence Act deal with the relevancy of judgments in Courts of justice."*

"138. In Hari Baksh v. Babu Lal & Anr., AIR 1924 PC 126, their Lordships observed as follows.

> *"It appears to their Lordships that these statements of Bishan Dayal who was then an interested party in the disputes and was then taking a position adverse to Hari Baksh cannot be regarded as evidence in this suit and are inadmissible."*

2156. Referring to the reliefs sought in Suit-4, it is contended by Sri Mishra that for the purpose of limitation, Suit-4 would be governed by Article 120 of Limitation Act, 1908, *(hereinafter referred to as "L.A. 1908")*. The period prescribed therein is only six years. Admittedly the suit has been filed by

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the plaintiffs after more than 12 year. Therefore, it is liable to be dismissed on the ground of limitation itself. He argued that though presently the L.A. 1908 has been repealed by Limitation Act, 1963, (*hereinafter referred to as "L.A.1963")*, but for the purpose of ascertaining as to whether the suit in question was filed within the period prescribed in law, the statute as it was enforced on the date of filing of the suit would have to be considered. Applying Article 120 of L.A. 1908, Suit-4 is hopelessly barred by limitation.

2157. The submission is that in a suit for declaration, only Article 120 of L.A. 1908 is applicable since no other Article applies. Even if the date of cause of action, as mentioned in para 23 of the plaint, is taken to be correct, the suit in question having been filed after expiry of six years, is hopelessly barred by limitation.

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2158. He also submitted that there is no question of continuing wrong. It is not a case where the cause of action accrued *de die indiem* i.e. every day. The suit in question cannot be treated to be within limitation. Alternatively he contended that even if Article 120 is found inapplicable, due to Article 142 or 144 of L.A. 1908, the cause of action having arisen on 16th December, 1949, and, not being a continuous cause of action running *de die indiem,* the suit in question is barred by limitation having been filed after expiry of 12 years i.e. 2 days later after expiry of 12 years. Sri Mishra submits that once the suit stands barred by limitation, there is no question to consider or apply any sympathy or equity in the matter. A suit, which is barred by limitation, cannot be held within time for trial on any such ground like equity, conscience, justice, sympathy, leniency etc.

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2159. He further pleaded that Articles 142 and 144 of L.A. 1908 are mutually exclusive. In any case, both have no application to the dispute in hand in view of the relief sought by the plaintiffs. The party to a suit, if has taken in an earlier proceedings, a particular stand, is estopped from taking a different stand in a subsequent proceeding. It amounts to approbate and reprobate at the same time, which is impermissible. In such a matter, doctrine of 'election' would apply which binds the party to adhere to the first stand taken and not to take advantage of subsequent stand, which is an after thought.

2160. To attract Article 142 of L.A. 1908, possession of the defendants was necessary on the date of suit filed by it. There are two words used in Article 142 namely "discontinuation from possession" and "dispossession". Both have different meaning and context. Since the defendants were not in possession on the date the suit was filed, Article 144 of L.A. 1908 would not come into picture.

2161. Sri Mishra further submits that the order of attachment passed as a preliminary order under Section 145 Cr.P.C. would make no difference, inasmuch as, a Receiver appointed by the Magistrate in proceedings under Section 145 Cr.P.C. is not adversary to any of the party but he holds and receive the property, entering into the shoes of the original and real owner. Hence the date from which receiver is appointed, would not confer any advantage to the plaintiffs in the present case so as to bring the matter within limitation.

2162. The above arguments have been buttressed by the learned counsel Sri Mishra from various angles relying on a catena of decisions i.e.: **Shyam Sunder Prasad & Others Vs.**

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Raj Pal Singh & Anr. 1995(1) SCC 311, Chairman & M.D., N.T.P.C. Ltd. Vs. M/s Reshmi Construction Builders & Contractors AIR 2004 SC 1330, Draupadi Devi & Ors. Vs. Union of India & Ors. (2004) 11 SCC 425, Mohima Chundar Mozoomdar & Ors. Vs. Mohesh Chundar Neogi & Ors. 16 Indian Appeals (1888-1889) 23, Nawab Muhammad Amanulla Khan Vs. Badan Singh & Ors. 16 Indian Appeals (1888-1889) 148, Jamal Uddin & Anr. Vs. Mosque at Mashakganj & Ors. AIR 1973 Allahabad 328, Raja Rajgan Maharaja Jagatjit Singh Vs. Raja Partab Bahadur Singh AIR 1942 Privy Council 47, Mt. Bolo Vs. Mt. Koklan and others AIR 1930 Privy Council 270, Partab Bahadur Singh, Taluqdar Vs. Jagatjit Singh AIR 1936 Oudh 387, Yeknath Vs. Bahia AIR 1925 Nagpur 236 (1), Rajah of Venkatagiri Vs. Isakapalli Subbiah & Ors. ILR (26) Madras 410, Abinash Ch. Chowdhury Vs. Tarini Charan Chowdhury and others AIR 1926 Cal. 782, The Firm of Eng Gim Moh Vs. The Chinese Merited Banking Co. Ltd. and another AIR 1940 Rangoon 276, Annamalai Chettiar and others Vs. A.M.K.C.T. Muthukaruppan Chettiar & anr. AIR 1931 Privy Council 9, Mst. Rukhmabai Vs. Lala Laxminarayan & Ors. AIR 1960 SC 335, Garib Das and others Vs. Munshi Abdul Hamid and others AIR 1970 SC 1035, State of Bihar & Ors. Vs. Sri Radha Krishna Singh (supra), C. Beepathumma and others Vs., Valasari Shankaranarayana Kadambolithaya and others, AIR 1965 SC 241.

2163. Sri M.M.Pandey, Advocate on behalf of defendant no.2/1 Mahant Suresh Das submitted that the property is under attachment. There is no cause of action for claiming the relief of possession and hence a suit for declaration lies which attracts

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limitation under Article 120. He placed reliance on **Deo Kuer & Anr. Vs. Sheo Prasad Singh & Anr. AIR 1966 SC 359** and submitted that since the suit has been filed after more than 11 years, it is highly barred by limitation. He also submitted that limitation once start running, shall not stop and placed reliance on **Bank of Upper India Vs. Mt. Hira Kuer & Ors. AIR 1937 Oudh 291.** Explaining "right to sue", he placed reliance on **Annamalai Chettiar and others Vs. A.M.K.C.T. Muthukaruppan Chettiar & anr (Supra)** and **Mt. Bolo Vs. Mt. Koklan and others (Supra)**.

2164. Besides above, he also placed reliance on **Partab Bahadur Singh, Taluqdar Vs. Jagatjit Singh (Supra)**, **C. Natrajan Vs. Ashim Bai & Anr. AIR 2008 SC 363; Shyam Sunder Prasad (supra); Panna Lal Biswas Vs. Panchu Raidas AIR 1922 Cal 419; Bhinka and others Vs. Charan Singh 1959 (Supp.) 2 SCR 798, Abdul Halim Khan Vs. Raja Saadat Ali Khan & Ors. AIR 1928 Oudh 155** and **Brojendra Kishore Roy Chowdhury & others Vs. Bharat Chandra Roy and others AIR 1916 Cal. 751**.

2165. Sri G.Rajagopalan, Senior Advocate, appearing on behalf of defendant No.12 also towing the same line contended that the suit is only for declaration and there is no prayer for possession. It is covered by Article 120 of the L.A.1908 hence barred by limitation. Referring to Order VII Rule 6 C.P.C., he submits that the plaintiffs when filed the suit beyond the period of limitation must state the grounds upon which exemption from such law is claimed. No such ground or exemption has been stated in the plaint therefore, it is ex facie barred by limitation. He also contended that the plaintiffs have also not sought any exemption under Public Waqf (Extension) of Limitation Act,

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1959 and even otherwise the said Act would not be applicable to the plaintiffs.

2166. Sri Ravi Shankar Prasad, Senior Advocate, contended that the suit of plaintiffs-Muslims is actually a suit for immoveable property governed by Article 120 of L.A. 1908 and neither Article 142 nor 144 is applicable. Any attempt to construe the suits filed by the plaintiffs as anything but a suit for possession of immovable property is incorrect. They are not in possession of the property in dispute since 22/23rd December, 1949 and therefore, the limitation was only for six years which having elapsed the suit is barred by limitation. He placed reliance on **Raja Ramaswamy Vs. Govinda Ammal, AIR 1929 Madras 313 (Para 19 to 25)**; **Pierce Leslie & Co. Ltd. Vs. Miss Violet Ouchterlony Wapshare AIR 1969 SC 843 (Para 7)**; **Janki Kunwar Vs. Ajit Singh (1888) ILR 15 Cal 58 (Para 8)**; **Jafar Ali Khan & Ors. Vs. Nasimannessa Bibi AIR 1937 Cal 500 (Para 7)**.

2167. On the contrary, Sri Siddiqui refuting all the submission vehemently contended that here is a continuous cause of action since the proceedings of 145 Cr.P.C. have not been finalized so far. The deprivation for the Muslims is on day-to-day basis and that it was a suit for possession wherein the limitation would commence from 22/23 December, 1949 and the suit having been filed on 18th December, 1961 is well within time. He also cited certain authorities namely **Kali Prasad Misir and others Vs. Harbans Misir 1919 All 383**; **Mata Palat Vs. Beni Madho AIR 1914 All 184**; **Prajapati and others Vs. Jot Singh and others AIR 1934 All 539**; **Jagat Mohan Nath Sah Deo Vs. Pratap Udai Nath Sah Deo & Ors. AIR 1931 PC 302**; and **Suryanarayana & Ors. Vs. Bullayya & Ors. AIR 1927**

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Madras 568.

2168. Before coming to the question as to whether Suit-4 (leading suit) is barred by limitation or not, it would be appropriate, first to consider, the relevant provisions, namely, Article 120, 142 and 144 of L.A. 1908 and a few other relative provisions to find out scope, effect and the circumstances in which they would operate since it is this Act which was in operation at the time when Suit-4 was filed.

2169. The nature of the statute on limitation has been considered in **C. Beepathuma (supra)** and it say:

> *"There is no doubt that the Law of Limitation is a* ***procedural law and the provisions existing on the date of the suit apply to it****."*

2170. Before the British, during the period when Muslims ruled the Country (in particular Oudh), it appears that personal laws governed all matters. The Muslim law does not recognize limitation; while in Hindu personal laws, on certain aspects, in different schools, some provisions for limitation are prescribed which are not common to all the Hindus. Hindu Law recognizes both prescription and limitation while Muslim jurisprudence recognises neither of them. In some of the *Smritis* a period of 20 years was prescribed for acquisition of title by prescription. It appears that since agriculture was the main occupation of the people, *Smritis* concentrated more on land and on the rights therein.

2171. Thus prior to 05.05.1859 there was no common law of limitation applicable to whole of India. The Provincial Courts in each Presidency established by East India Company were governed by certain Regulations, like; Regulation III of 1793 (Bengal); Regulation II of 1802 (Madras); Regulation I of 1800

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(Bombay) and the Acts particularly applicable to them like Act I of 1845; Act XIII of 1848; Act XI of 1859. The Non-Regulation Provinces i.e. Punjab and Oudh etc. were governed by Codes of their own and sometimes by Circular Orders of Judicial Commissioner. The three Supreme Courts established by Royal Charter adopted the English law of limitation.

2172. Cause of action with respect to the statutes of Limitation as applicable in England in one of the earliest cases came to be considered in 1849 as to when it would run. Privy Council in **The East India Company Vs. Oditchurn Paul 1849 (Cases in the Privy Council on Appeal from the East Indies) 43** held that the Statute runs from the time of breach, for that constitutes the cause of action. With reference to the East India Company, it observed that the statute of limitation was extended to India by Indian Act No.XIV of 1840. The appeal against the Supreme Court of Judicature at Fort William in Bengal (Calcutta) was allowed by Privy Council. It also observed therein if the matter would have been tried by Hindu law, the limitation of suits, under the Hindu law, would have been twelve years.

2173. The first codified statute was Act No. XIV of 1859, enacted to amend and consolidate laws relating to limitation of suits. This Act received the assent of Governor General on 5th May, 1859. It was repealed by Act No. IX of 1871, Act XV of 1877 and thereafter by Act IX of 1908 (i.e. L.A. 1908). Presently, even L.A. 1908 has been repealed and the Courts in India are now governed by Limitation Act, 1963 (i.e. L.A. 1963).

2174. Act XIV of 1859 provided limitation of suits only. Section I, Clauses12 and 16, said :

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*"12. To suits for the **recovery of immovable property or of any interest in immovable property** to which **no other provision of this Act applies-** the period of twelve years from the time the cause of action arose."*

*"16. To **all suits for which no other limitation** is hereby expressly provided- the period of six years from the time the case of action arose." (emphasis added)*

2175. Sections XI, XII, XV and XVI of the Act XIV of 1859 read as under:

*"XI. If, at the time when the **right to bring an action first accrues, the person to whom the right accrues is under a legal disability,** the action may be brought by such person or his representative within the same time after the disability shall have ceased as would otherwise have been allowed from the time when the cause of action accrued, unless such time shall exceed the period of three years, in which case the suit shall be commenced within three years from the time when the disability ceased; but, if, at the time when the cause of action accrues to any person, he is not under a legal disability, no time shall be allowed on account of any subsequent disability of such person or of the legal disability of any person claiming through him."*

*"XII. The following persons shall be deemed to be under legal disability within the meaning of the last preceding Section-**married women in cases to be decided by English law, minors, idiots, and lunatics**."*

"XV. If any person shall, without his consent, have been dispossessed of any immovable property otherwise than by due course of law, such person, or any person

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claiming through him, shall, in a suit brought to recover possession of such property, be entitled to recover possession thereof notwithstanding any other title that may be set up in such a suit, provided that the suit be commenced ***within six months from the time of such dispossession.*** *But nothing in this Section shall bar the person from whom such possession shall have been so recovered, or any other person,* ***instituting a suit to establish his title to such property and to recover possession thereof within the period limited by this Act****."*

"XVIII. All suits that may be now pending, or that shall be instituted within the period of two years from the date of the passing of this Act, shall be tried and determined as if this act had not been passed; but all suits to which the provisions of this Act are applicable that shall be instituted after the expiration of the said period shall be governed by this Act and no other law of limitation, any Statute, Act, or Regulation now in force notwithstanding."

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2176. Section I of Act XIV of 1859 says that no suit shall be maintained in any Court of Judicature within any part of the British territories in India in which this Act shall be in force, unless the same is instituted within the period of limitation hereinafter made applicable to a suit of that nature, any Law or Regulation to the contrary notwithstanding. The territory upon which the said Act was made operative, is provided in Section XXIV as under:

"XXIV. This Act shall take effect throughout the Presidencies of Bengal, Madras, and Bombay, including the Presidency Towns and the Straits Settlements; but shall not take effect in any Non-Regulation Province or place

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until the same shall be extended thereto by public notification by the Governor-General in Council or by the Local Government to which such Province or place is subordinate. Whenever this Act shall be extended to any Non-Regulation Province or place by the Governor-General in Council or by the Local Government to which such Province or place is subordinate, all suits which, within such Province or place, shall be pending at the date of such notification, or shall be instituted within the period of two years from the date thereof, shall be tried and determined as if this Act had not been passed; but all suits to which the provisions of this Act are applicable that shall be instituted within such Province or place after the expiration of the said period, shall be governed by this Act and by no other law of limitation, any Statute, Act, or Regulation now in force notwithstanding."

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2177. Though Act No. XIV of 1859 was drafted in a language much more precise than the loose phraseology of earlier Regulations, but the Privy Council in **The Delhi and London Bank Vs. Orchard, I.L.R. 3 (1876) Calcutta 47 (PC)** observed it as an "inartistically drawn statute".

2178. Act IX of 1871 extended the scope and made provisions relating to limitation to suits, appeals and certain applications to Courts. It received the assent of Governor General on 24th March, 1871. Second Schedule, First Division, Articles 118, 143 and 145 provided limitation for possession of immovable property and read as under :

	Description of suit	Period of limitation	Time when period begins to run
118	Suit for which no period of	Six years	When the right to

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	limitation is provided elsewhere in this schedule.		sue accrues.
143	For possession of immovable property when the plaintiff, while in possession of the property, has been dispossessed or has discontinued the possession.	Twelve years	The date of the dispossession or discontinuance.
145	For possession of immovable property or any interest therein not hereby otherwise specially provided for	Twelve years	When the possession of the defendant, or of some person through whom he claims, became adverse to the plaintiff.

2179. Some of the feature of Act IX of 1871 are:

(a) Section-3 defines term 'minor means a person who has not completed his age of eighteen years;

(b) Section-7 deals with legal disability, Section 9 provides continuous running of time, Sections 23 and 24 deals with continued cause of action or renewal of cause of action and 29 for the first time provides for extinction of rights of a person in respect to any land or hereditary office and read as under:

"7. If a person entitled to sue be, at the time the right to sue accrued, a minor, or insane, or an idiot, he may institute the suit within the same period after the disability has ceased, or (when he is at the time of the accrual affected by two disabilities) after both disabilities have ceased, as would otherwise have been allowed from the time prescribed therefor in the third column of the second schedule hereto annexed. When this disability continues upto his death, his

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representative in interest may institute the suit within the same period after the death as would otherwise have been allowed from the time prescribed therefor in the third column of the same schedule.

Nothing in this section shall be deemed to extend, for more than three years from the cessation of the disabilities or the death of the person affected thereby, the period within which the suit must be brought"

" 9. When once time has begun to run, no subsequent disability or inability to sue stops it : Provided that where letters of administration to the stage of a creditor have been granted to his debtor, the running of the time prescribed for a suit to recover the debt shall be suspended while the administration continues."

"23. In the case of a suit ***for the breach of a contract****, where there are successive breaches, a fresh right to sue arises, and a fresh period of limitation begins to run, upon every fresh breach; and where the breach is a continuing breach, a fresh right to sue arises, and a fresh period of limitation begins to run, at every moment of the time during which the breach continues.*

Nothing in the former part of this section applies to suits for the breach of contracts for the payment of money by instalments, where, on default made in payment of one instalment, the whole becomes due."

"24. In the case of a ***continuing nuisance*** *a fresh right to sue arises, and a fresh period of limitation begins to run at every moment of the time during which the nuisance continues."*

"29. At the determination of the period hereby limited

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to any person for instituting a suit for possession of any land or hereditary office, ***his right to such land or office shall be extinguished****."*

2180. Drafting of this statute received better observation from Privy Council in **Maharana Futtehsangji Vs. Dessai Kullianraiji, (1873) LR 1 IA 34** and it commented as a "more carefully drawn statute".

2181. The Act gave for the first time some recognition to the doctrine of prescription by the Legislative Council of India, *viz*. the doctrine of extinctive prescription as to land and hereditary offices, and of positive prescription as to easements. It lived short and was replaced by Act 15 of 1877 which extended the principle of extinctive prescription to movable property and the principle of positive or acquisitive prescription to profits a *prendre*.

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2182. The Law of Prescription prescribes the period at the expiry of which not only the judicial remedy is barred but a substantive right is acquired or extinguished. A prescription by which a right is acquired, is called an "acquisitive prescription". A prescription by which a right is extinguished is called "extinctive prescription". The distinction between the two is not of much practical importance or substance. The extinction of right of one party is often the mode of acquiring it by another. The right extinguished is virtually transferred to the person who claims it by prescription. Prescription implies with the thing prescribed for is the property of another and that it is enjoyed adversely to that other. In this respect it must be distinguished from acquisition by mere occupation as in the case of res nullius. The acquisition in such cases does not depend upon occupation for any particular length of time.

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2183. Doctrine of limitation and prescription is based upon the broad considerations. The first, there is a presumption that a right not exercised for a long time is non-existent. Where a person has not been in possession of a particular property for a long time, the presumption is that he is not the owner thereof. The reason is that owners are usually possessors and possessors are usually owners. Possession being normally evidence of ownership. The longer the possession has continued the greater is its evidentiary value. The legislature it appears, therefore, thought it proper to confer upon such evidence of possession for a particular time a conclusive force. Lapse of time is recognised as creative and destructive of right instead of merely an evidence for and against their existence. The other consideration on which the doctrine of limitation and prescription may be said to be based is that title to property and matters of right in general should not be in a state of constant uncertainty, doubt and suspense. It would not be in the interest of public at large. The object of the statute of limitation is preventive and not creative but in a matter covered by the principle of adverse possession it also creates. It interposes a statutory bar after a certain period and gives a quietus to suits to enforce an existing right.

2184. Act XV of 1877 received the assent of Governor General on 19th July, 1877 and came into force on 1st October, 1877. Articles 120, 142 and 144 , Second Schedule-First Division of the said Act reads as under :

	Description of suit	Period of limitation	Time when period begins to run
120	Suit for which no period of limitation is provided elsewhere in this schedule.	Six years	When the right to sue accrues.

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142	For possession of immovable property, when the plaintiff, while in possession of the property, has been dispossessed or has discontinued the possession.	Twelve years	The date of the dispossession or discontinuance.
144	For possession of immovable property or any interest therein not hereby otherwise specially provided for.	Twelve years	When the possession of the defendant becomes adverse to the plaintiff.

2185. Section 2 of Act XV of 1877 makes it very clear that the right to sue if already barred shall not revive by said enactment. It reads as follows:

> *"2. All reference to the Indian Limitation Act, 1871, shall be read as if made to this Act; and nothing herein or in that Act contained shall be deemed to affect any title acquired, or to revive any right to sue barred, under that Act, or under any enactment, thereby repealed; and nothing herein contained shall be deemed to affect the Indian Contract Act, section 25."*

2186. Section 4 makes it obligatory for the Court to dismiss a suit if presented after the expiry of the period of limitation. Section 7 deals with the legal disability which is virtually *pari materia* with the earlier provision of 1871 Act though slightly worded differently and says:

> *"7. If a person entitled to institute a suit or make an application be, at the time from which the period of limitation is to be reckoned. A minor, or insane, or an idiot, he may institute the suit or make the application within the same period, after the disability has ceased, as would otherwise have been allowed from the time prescribed*

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therefor in the third column of the second schedule hereto annexed.

When he is, at the time from which the period of limitation is to be reckoned, affected by two such disabilities, or when, before his disability has ceased, he is affected by another disability, he may institute the suit or make the application within the same period after both disabilities have ceased, as would otherwise have been allowed from the time so prescribed.

When his disability continues up to his death, his legal representative may institute the suit or make the application within the same period after the death as would otherwise have been allowed from the time so prescribed.

When such representative is at the date of the death affected by any such disability, the rules contained in the first two paragraphs of this section shall apply.

Nothing in this section applies to suits to enforce rights of pre-emption, or shall be deemed to extend, for more than three years from the cessation of the disability or the death of the person affected thereby, the period within which any suit must be instituted or application made."

2187. Section 9 talks of continuous running of time, Section 23 deals with the continuing breach of contract and Section 28 talks of extension of right to property and say:

"9. When once time has begun to run, no subsequent disability or inability to sue stops it:

Provided that, where letters of administration to the estate of a creditor have been granted to his debtor, the running of the time prescribed for a suit to recover the debt

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shall be suspended while the administration continues."

"23. In the case of a continuing breach of contract and in the case of a continuing wrong independent of contract, a fresh period of limitation begins to run at every moment of the time during which the breach or the wrong, as the case may be, continues."

"28. At the determination of the period hereby limited to any person for instituting a suit for possession of any property, his right to such property shall be extinguished."

2188. There were several amendments in the above statute and ultimately it was repealed and replaced by Act 9 of 1908.

2189. L.A. 1908 came into force on 1st January, 1909. It continued with the provision imposing obligation upon the Court to dismiss a suit if, while it is instituted, is already barred by limitation vide Section 23.

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2190. The arrangement of above Articles 120, 142 and 144 in L.A. 1908 remained the same, i.e., Articles 120, 142 and 144 and is verbatim:

	Description of suit	Period of limitation	Time when period begins to run
120	Suit for which no period of limitation is provided elsewhere in this schedule	Six years	When the right to sue occurs.
142	For possession of immovable property when the plaintiff, while in possession of the property, has been dispossessed or has discontinued the possession.	Twelve years	The date of the dispossession or discontinuance.
144	For possession of immovable property or any interest therein not hereby otherwise specially	Twelve years	When the possession of the defendant becomes

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	provided for.		adverse to the plaintiff.

2191. The doctrine of limitation is founded on considerations of public policy and expediency. It does not give a right where there exist none, but to impose a bar after a certain period to the remedy for enforcing an existing right. The object is to compel litigants to be diligent for seeking remedies in Courts of law if there is any infringement of their right and to prevent and prohibit stale claims. It fixes a life span for remedy for redressal of the legal injury, if suffered, but not to continue such remedy for an immemorial length of time. Rules of limitation do not destroy the right of the parties and do not create substantive rights if none exist already. However, there is one exception i.e. Section 28 of L.A. 1908, which provides that at the determination of the period prescribed for instituting suit for possession of any property, his right to such property shall stand extinguished and the person in possession, after expiry of the such period, will stand conferred title. The law of limitation is enshrined in the maxim *"interest reipublicae ut sit finis litium"* (it is for the general welfare that a period be part to litigation).

2191A. This statute is based upon two broad principles. First, there is a presumption that a right not exercised for a long time is non existent. Where a person has not been in possession of a particular property for a long time, the presumption is that he is not the owner thereof. The owners are usually possessors and possessors are usually owners. Possession thus being normally evidence of ownership. Longer the possession has continued the greater is its evidentiary value. The law therefore has deemed it expedient to confer upon such

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evidence of possession for a particular time, a conclusive force.

2192. In **Motichand Vs. Munshi, AIR 1970 SC 898,** the Court noticed the maxim *vigilantibus non dormientibus jura subventiunt* (the law assists the vigilant not those who sleep over their rights). Though there is a general principle *ubi jus ibi remedium* i.e. where there is a legal right there is also a remedy, but there are certain exceptions to this general rule.

2193. Mere expiry of limitation could have extinguished remedy but the principle embodied in Section 28 extinguishes the right also and thereby makes the said general principle inapplicable. Once the right of getting possession extinguished it cannot be revived by entering into possession again **[See Salamat Raj Vs. Nur Mohamed Khan (1934) ILR 9 Lucknow 475; Ram Murti Vs. Puran Singh AIR 1963 Punjab 393; Nanhekhan Vs. Sanpat AIR 1954 Hyd 45 (FB)** and **Bailochan Karan Vs. Bansat Kumari Naik 1999 (2) SCC 310].**

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2194. In this matter the plaintiffs (Suit-4) have attempted to bring their case within the precinct of Article 142 and in the alternative Article 144 while the defendants intend to bulldoze the plaintiffs by stressing upon to apply Article 120. An attempt to out class the bar of limitation has also been made by pleading that the wrong is *de-die indium*, hence being a continuing wrong, no obstruction of limitation is there.

2195. Article 120 is completely a residuary provision and where limitation cannot be found in any other provision, only then it would be attracted. We can say safely that Article 120 L.A. 1908 would be attracted only when Articles 142 and 144 are inapplicable. We, therefore, at this stage defer to consider scope and extent of Article 120 so as to be discussed a bit later.

2196. Between the Articles 142 and 144 the later one is a

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kind of residuary provision while Article 142 applies in a specific type of case **[See Sidram Lachmaya Vs. Mallaya Lingaya AIR (36) 1949 Bom. 137 (Para 9); Ranchordas Vandravandas Vs. Parvatibai 29 I.A. 71 (P.C.)]**.

2197. A Full Bench of this Court in **Bindyachal Chand Vs. Ram Gharib, AIR 1934 Alld. 993 (FB)** held where Article 142 is applicable, Article 144 cannot be applied. First it has to be seen whether Article 142 applies in the case or not and when it clearly becomes inapplicable only then resort can be taken to Article 144.

2198. Article 142 applies where the plaintiff while in possession has been dispossessed or has discontinued his possession. Where a person has been dispossessed or discontinued of his possession of the property, he can bring an action seeking restoration of possession of the immoveable property within 12 years. It pre-supposes the possession of such person over the immoveable property before he is dispossessed or discontinued. Article 144, however, applies where any other provision specifically providing for restoration of immoveable property or interest therein is not available and there also though the period of limitation is 12 years but the limitation runs from the date when the possession of the defendants becomes adverse to the plaintiff and commonly it is said that this provision is in respect to the cases where the defendant's possession is said to be adverse. Though the distinction is quite evident but in the complex nature of the society and the disputes which arise, at times the courts find difficulty in maintaining distinction between the two and there appears to be some conflicting views also as to the scope of Article 142 L.A. 1908 and its applicability. What has been ultimately realised is that the

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question would basically that of pleading.

2199. In reference to Articles 143 of Act 9 of 1871 the Privy Council in **Bibi Sahodra Vs. Rai Jang Bahadur, (1881) 8 Cl. 224:8 I.A. 210** said:

> *"refers to a suit for possession of immovable property, where the plaintiff, while in possession of the property, has been dispossessed or has discontinued the possession, and it allows twelve years from the date of the dispossession or discontinuance. But in order to bring the case under that head of the schedule, he must show that there has been a dispossession or discontinuance."*

2200. The view, therefore, was that Article 143 of Act 9 of 1871 which is corresponding to Article 142 of Act 15 of 1877 and L.A. 1908 would not be attracted where pleadings distinctly show that there was no dispossession or discontinuance of possession of the plaintiff.

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2201. In **Karan Singh Vs. Bakar Ali Khan, (1882) 5 All 1** the question of application of Article 145 of Act 9 of 1871 (this corresponds to Article 144 of the statute with which we are concerned) arose. Sir Peacock observed that a suit can be brought within 12 years from the time when the possession of the defendant or of some persons through whom he claims, became adverse to the plaintiff.

2202. In both the type of cases what we find is that possession by itself is of much relevance and importance. The courts took the view that by reason of his possession a person may have an interest which can be sold or devised. One has to prove first his possession before making complaint of dispossession or discontinuance of possession. He need not prove the title or the capacity in which he had the possession for

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the purpose of Article 142. However, after title is proved, the presumption of possession goes with it unless proved otherwise.

2203. Privy Council in **Sundar Vs. Parbati, (1889) 12 All 51** agreed with the view of this court that possession is a good title against all the world except the person who can show a better title. By reason of his possession such person has an interest which can be sold or devised.

2204. In **Mohima Chundar Mazoomdar (supra)** considering Article 142 of Act 15 of 1877, the Judicial Commissioner held that onus lies upon the plaintiffs to prove their possession prior to the time when they were dispossessed, and at sometime within twelve years before the commencement of the suit so as to save suit from limitation prescribed under Article 142.

2205. Articles 142 and 144 of Act XV of 1877 came up for consideration before the Judicial Commissioner in **Nawab Muhammad Amanulla Khan (supra).** It held that Article 142 applies where the plaintiff while in possession of the immovable property earlier had been dispossessed or has discontinued the possession and in such a case to bring a suit for possession, limitation would be 12 years. However, Article 144 applies only as to adverse possession where there is no other Article which specifically provides for the same. In the aforesaid case there was a refusal on the part of the plaintiffs and their ancestors to make the engagement for payment of revenue. The Government made engagement with the villagers (defendants). It was held that this amounted to dispossession or discontinuance of possession of the plaintiff within the meaning of Article 142 of Act 15 of 1877 and this case would not be governed by residuary Article 144 as to adverse possession.

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2206. Explaining inter relationship of the two Articles Punjab Chief Court in **Bazkhan Vs. Sultan Malik, 43 P.R. 1901** held that suit for possession of immoveable property upon discontinuance of possession or dispossession is barred after 12 years under Article 142 of the Limitation Act although no adverse possession is proved. Articles 144 and 142 cannot both apply. Article 144 in terms is applicable only when no other Article is found applicable.

2207. Privy Council in **Dharani Kanta Lahiri Vs. Gabar Ali Khan, (1913) 18 I.C. 17** said:

> *"it lay upon the plaintiffs to prove not only a title as against the defendants to the possession, but to prove that the plaintiffs had been dispossessed or had discontinued to be in possession of the lands within the 12 years immediately preceding the commencement of the suit."*

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2208. In the above case a suit was filed for ejectment of persons who were admittedly in possession of land from which they were sought to be evicted.

2209. In **Secretary of State Vs. Chelikani Rama Rao, (1916) 39 Mad. 617** Lord Shaw on page 631 of the report observed:

> *"nothing is better settled than that the onus of establishing title to property by reason of possession for a certain requisite period lies upon the person asserting such possession. It is too late in the day to suggest the contrary of this proposition. If it were not correct it would be open to the possessor for a year or a day to say, 'I am here; be your title to the property ever so good, you cannot turn me out until you have demonstrated that the possession of myself and my predecessors was not long enough to fulfil*

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*all the legal conditions.' .....**It would be contrary to all legal principles to permit the squatter to put the owner of the fundamental right to a negative proof upon the point of possession."** (emphasis added)*

2210. In **Kanhaiya Lal Vs. Girwar, 1929 ALJ 1106** this Court said:

*"this article applies to suit in which the plaintiff claims possession of the property on the ground that while in possession he was dispossessed or his possession was discontinued by the defendant. In other words that article is restricted to cases in which the relief for possession sought by the plaintiff is based on what may be styled as **possessory title."***

"possession is in itself title and good against every body except the true owner. In short, there may be cases in which a person, though not the true owner, has been in peaceful possession of property and his possession is disturbed. In such cases the person dispossessed has a right to be restored back to possession on proving the fact of his possession and his dispossession or discontinuance of his possession by the defendant within a period of 12 years prior to the institution of the suit. To such cases Art. 142 applies."

2211. It thus appears that the Court followed the principles that the correct article to apply in cases based upon the allegation of title and possession is Article 144 because if plaintiff's title is proved he is entitled to succeed unless the defendants prove that the title has been lost on account of adverse possession on the part of defendants. But the plaintiff though not able to substantiate his title, is in a position to prove

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his possession and dispossession by defendants within 12 years, if that be the case, Article 142 will apply and the burden will lie on the plaintiff. This was in fact misunderstood in the sense that a suit of owner who also had actual possession, if dispossessed or discontinued possession was not treated to be covered by Article 142. This is evident in **Kallan Vs. Mohammad Nabikhan, 1933 ALJ 105**. Fortunately this mistake was soon realised and the view otherwise was overruled by a Full Bench in **Bindyachal Chand Vs. Ram Gharib (supra)** where it was held that Article 142 is not restricted to suits based on possessory title only as distinguished from suits in which plaintiff proved his proprietary title as well. This view of the Full Bench was followed by a Full Bench of Lahore High Court in **Behari Lal Vs. Narain Das, 1935 Lah. 475.**

2212. In **Shyam Sunder Prasad (supra)** in reference to Article 142 and 144 of L.A. 1908 the Apex Court said:

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> *"Under the old Limitation Act, all suits for possession whether based on title or on the ground of previous possessions were governed by Article 142 wherein the plaintiff while in possession was dispossessed or discontinued in possession. Where the case was not one of dispossession of the plaintiff or discontinuance of possession by him, Article 142 did not apply. Suits based on title alone and not on possession or discontinuance of possession were governed by Article 144 unless they were specifically provided for by some other articles. Therefore, for application of Article 142, the suit is not only on the basis of title but also for possession."*

2213. Thus, the judicial consensus now binding on this Court is to the effect that Article 142 is one of the specific

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provisions governing suits for possession of immoveable property and contemplates a suit for possession when the plaintiff, while in possession has been dispossessed or has discontinued possession [See also **Abbas Dhali Masabdi Karikar, (1914) 24 I.C. 216 (Cal.)**].

2214. Article 144 in the matter of an occasion for possession of immoveable property or an interest therein is a residuary Article hence the allegations made in the plaint if brings the suit within Article 142, there is no justification or occasion to take the matter out of that Article and then to apply Article 144. It is only when Article 142 is not applicable and no other article applies, based on the pleadings, then if attracted, Article 144 may be applied. Article 142 is neither subordinate nor subject to Article 144 but will have application on its own and independent. Article 144 thus is a kind of residuary article and will have application when no other article has application to the matter. In **Bindyachal Chand (supra)** Justice Mukharjee observed that if on the allegations made in the plaint suit falls within Article 142 there is no justification to take it out of Article 142 and attempt to bring Article 144 into picture.

2215. We may notice at this stage that the view taken by the Courts that Article 142 would apply to a suit by the owner of the property as well as a person suing on the basis of possessery titles and thereby seems to favour even a trespasser, as observed in **Bindyachal Chand (supra)** and some other Courts that its applicability to a suit is based on possessary title constitute one of the relevant aspect resulted in possibility of helping miscreants. This view, besides other, caused in a specific and clear provision in the new statute i.e. L.A. 1963 where words "or has discontinued the possession" were omitted in column 3

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and the words “based on previous possession and not on title” were inserted in column 1 in Article 64 thereof.

2216. In **C. Natarajan Vs. Ashim Bai (supra)**, the Apex Court noticed the distinction between Article 142 and 144 of LA 1908 and Article 64 and 65 of LA 1963 in para 15 of the judgment as under:

> *“15. The law of limitation relating to the suit for possession has undergone a drastic change. In terms of Articles 142 and 144 of the Limitation Act, 1908, it was obligatory on the part of the plaintiff to aver and plead that he not only has title over the property but also has been in possession of the same for a period of more than 12 years. However, if the plaintiff has filed the suit claiming title over the suit property in terms of Articles 64 and 65 of the Limitation Act, 1963, burden would be on the defendant to prove that he has acquired title by adverse possession.”*

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What is Dispossession

2217. Article 142 contemplates earlier possession before dispossession or discontinuance thereof. This bring us to understand the term 'Possession'. It has a variety of meanings. It is a juristic concept distinct from title and can be independent of it. It is both physical and legal concept. The concept of possession implies “corpus possession” coupled with “animus possidendi”. Actual user without animus possidendi is not a possession in law. In fact, possession is a polymorphous term having different meanings in different context. It has different shades of meaning and very elastic in its connotation. We intend to discuss with the term “possession” in much detail while dealing with the issues “pertaining to possession/adverse possession” and hence do not intend to elaborate hereat. For the

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purpose of the plea of limitation, we shall confine ourselves to the pleadings and the evidences available to find out its consequence on the case whether the suit in question is saved from limitation or not.

2218. The pivotal point to attract Article 142 and to run limitation is the date of "dispossession" or "discontinuation of possession". The period of limitation thus would commence, in a case governed by Article 142, from the date the plaintiff is "dispossessed" or "discontinued". The two terms *ex facie* do not and cannot have the same meaning.

2219. The dictionary meaning of the term "dispossession" is:

(A) In "**Mitra's Legal & Commercial Dictionary"** 5th Edition (1990) by A.N. Saha, published by Eastern Law House Prv. Ltd., at pages 232-233:

> *"**Dispossession**. The term 'dispossession' applies when a person comes in and drives out others from possession. It imports ouster; a driving out of possession against the will of the person in actual possession. This driving out cannot be said to have occurred when according to the case of the plaintiff the transfer of possession was voluntary, that is to say, not against the will of the person in possession but in accordance with his wishes and active consent. The term 'discontinuance' implies a voluntary act and abandonment of possession followed by the actual possession of another. Qadir Bux v. Ramchand AIR 1970 All 289.*
>
> *Unless the possession of a person prior to his alleged dispossession is proved, he cannot be said to have been dispossessed. Rudra Pratap v Jagdish AIR 1956 Pat 116."*

(B) In "**Black's Law Dictionary"** Seventh Edition (1999),

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published by West, St. Paul, Minn., 1999, at page 485:

> *"**dispossession** Deprivation of, or eviction from, possession of property; ouster."*

(C) In "**The Judicial Dictionary of Words and Phrases Judicially Interpreted, to which has been added Statutory Definitions"** by F. Stroud Second Edition Vol. 1 (1903), at page 485:

> *"**DISPOSSESSION**.-"Dispossession, or Discontinuance of Possession," s.3, Real Property Limitation Act, 1833, means the ABANDONMENT of possession by one entitled to it (Rimington v. Cannon, 22 L.J. C.P. 153; 12 C. B. 18), followed by actual possession by another (Smith v. Lloyd, 23 L.J. Ex. 194; 9 Ex. 562: McDonnell v. MeKinty, 10 Ir.L.R. 514); ignorance on the part of the rightful owner that such adverse possession has been taken making no difference (Rains v. Buxton, 49 L.J. Ch. 473; 14 Ch. D. 537; 28 W. R. 954).*
>
> *Acts of user which do not interfere, and are consistent, with the purpose to which the owner intends to devote the land, do not amount to Discontinuance of Possession by him (Leigh v. Jack, 5 Ex. D.264; 49 L. J. Ex. 220); Dispossession "involves an animus possidendi with the intention of excluding the owner as well as other people" (per Lindley, M.R., Littledale vs. Liverpool College, 69 L.J. Ch. 89, cited DISCONTINUANCE).*
>
> *SMALL ACTS by the rightful owner will disprove "Dispossession or Discontinuance,"- e.g. small repairs (Leigh v. Jack, sup), or, as regards a boundary wall, an inscription claiming it (Phillipson vs. Gibbon, 40 L.J. Ch. 406; 6 Ch. 428).*

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Vh, Watson, Eq. 574, 575; and for a full examination of the cases on "Dispossession" and "Discontinuance," V. 35 S. J. 715, 742, 750."

(D) In **"Corpus Juris Secundum"** A Complete Restatement of the Entire American Law as developed by All Reported Cases (1959), Vol. 27, published by Brooklyn, N.Y. The American Law Book Co., at pages 600-601:

*"**DISPOSSESSION.** The act of putting out of possession, the ejectment or exclusion of a person from the realty, if not to his injury, then certainly against his interest and without his consent, ouster.*

The term has been held not to imply necessarily a wrongful act; and, although it has been defined as a wrong that carries with it the amotion of possession, an act whereby the wrongdoer gets the actual possession of the land or hereditament, including abatement, intrusion, disseisin, discontinuance, deforcement, it has been said that it may be by right or by wrong, that it is necessary to look at the intention in order to determine the character of the act, and that, in this respect, the word is to be distinguished from "disseisin."

(E) In **"Words and Phrases"** Legally Defined, Vol. 2 (1969), published by Butterworth & Co. (Publishers) Ltd., at pages 89-90:

*"**DISPOSSESSION [**A partnership was dissolved, and the continuing partner, Hudson, agreed, in consideration of an assignment to him of the partnership property, to pay an annuity to the retiring partner. In order to carry into effect this agreement an indenture was entered into and executed between the parties; and Hudson bound himself to trustees,*

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in the sum of £ 2,000, by a bond of even date conditioned to be void on payment of the annuity "or in case he should at any time after the expiration of the then existing lease, be dispossessed of and be compelled and obliged to leave and quit the premises without any collusion, contrivance, consent, act, or default" on his part.] "It seems that the species of dispossession in contemplation was a compulsory eviction; and they meant to provide that, if Hudson should be evicted, not through any fault of his own, he should no longer be burthened with payment of the annuity .... The expulsion intended to be provided for, was such an expulsion as would leave Hudson no benefit from the premises." Heyland v. De Mendez (1817), 3 Mer. 184, per Grant, M.R., at p. 189."

(F) In **P Ramanatha Aiyar's "The Law Lexicon" with Legal Maxims**, Latin Terms and Words & Phrases, Second Edition 1997), published by Wadhwa and Company Law Publishers, at page 573:

*"**Dispossession.** Where the heirs of the deceased could not realise rent owing to successful intervention of another person, it must be taken that they were dispossessed. "**Dispossession" implies ouster**, and the essence of ouster lies in that **the person ousting is in actual possession.***

Dispossession implies some active element in the mind of a person in ousting or dislodging or depriving a person against his will or counsel and there must be some sort of action on his part.

The word "dispossession" in the third column of the article is dispossession by the landlord or by an authorised agent of the landlord acting within the scope of his

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authority.

Dispossession obviously presupposes previous possession of the person dispossessed. ***If a person was never in possession, he will be said to be out of possession, but he cannot be said to have ever been dispossessed."***

2220. Similarly the meaning of term "discontinuance" in various dictionaries is as under:

(A) In "**The New Lexicon Webster's Dictionary of the English Language"** (1987), published by Lexicon Publications, Inc. at page 270:

*"**Dis-con-tin-u-ance**-a discontinuing (law) the discontinuing of an action because the plaintiff has not observed the formalities needed to keep it pending"*

(B) In "**Mitra's Legal & Commercial Dictionary"** 5th Edition (1990) by A.N. Saha, published by Eastern Law House Prv. Ltd., at pages 229:

*"**Discontinuance of Possession.** Discontinuance of possession connotes adandonment of possession by the owner followed by the taking of possession by another. Hashim v. Hamidi AIR 1942 Cal 180: 46 CWN 561.*

Discontinuance implies a voluntary act and abandonment of possession followed by the actual possession of another. Quadir Bux v. Ramchand AIR 1970 All 289."

(C) In "**Black's Law Dictionary"** Seventh Edition (1999), published by West, St. Paul, Minn., 1999, at page 477:

*"**discontinuance** 1. The termination of a lawsuit by the plaintiff; a voluntary dismissal or nonsuit. See Dismissal; Nonsuit. 2. the termination of an estate-tail by a tenant in*

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tail who conveys a larger estate in the land than is legally allowed."

(D) In "**The Judicial Dictionary of Words and Phrases Judicially Interpreted, to which has been added Statutory Definitions"** by F. Stroud Second Edition Vol. 1 (1903), at page 540-541:

"***DISCONTINUANCE***.- *" 'Discontinuance' is an ancient word in the law" (Litt. s. 592). "A discontinuance of estates in lands or tenements is properly (in legall understanding) an alienation made or suffered by tenant in taile, or by any that is seized in auter droit, whereby the issue in taile, or the heire or successor, or those in reversion or remainder, are driven to their action, and cannot enter" (Co. Litt. 325 a). Vf, Termes de la Ley: 3 Bl. Com. 171.*

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"Discontinuance of POSSESSION," s. 3, 3 & 4 W. 4, c. 27; V. Leigh v. Jack, 5 Ex. D. 264; 49 L. J. Ex. 220: Littledale v. Liverpool College, 1900, 1 Ch. 19; 69 L. J. Ch. 87; 81 L.T. 564; 48 W.R. 177."

(E) In **"Corpus Juris Secundum"** A Complete Restatement of the Entire American Law as developed by All Reported Cases (1956), Vol. 26A, published by Brooklyn, N.Y. The American Law Book Co., at pages 971-972:

*"**DISCONTINUANCE.** The word "discontinuance" is defined generally as meaning the **act of discontinuing; cessation; intermission; interruption of continuance.***

As defined in Dismissal and Nonsuit; 2, the word "discontinuance" means an interruption in the proceedings of a case caused by the failure of the plaintiff to continue the suit regularly as he should, and it is either

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voluntary or involuntary, and is similar to a dismissal, nonsuit, or nolle prosequi, but differs from a retraxit.

In a particular connection, it has been held that the term connotes a voluntary, affirmative, completed act, and that it cannot mean a temporary nonoccupancy of a building or a temporary cessation of a business.

The term may be employed as synonymous with "abandonment."

(F). In **"Words and Phrases"** Permanent Edition, Vol. 12A (1954), published by St. Paul, Minn. West Publishing Co., at pages 276-277:

*"**DISCONTINUANCE-**A "discontinuance" of case is a gap or chasm in proceeding after suit is pending.*

The term "discontinuance" means voluntary withdrawal of a suit by a plaintiff.

There exists no essential difference between a "discontinuance" and a "voluntary nonsuit."

A criminal suit may be discontinued, "discontinuance" being a gap or chasm in prosecution after suit is pending.

The word "discontinuance" is synonymous with "abandonment," and connotes a voluntary, affirmative, completed act.

The word "discontinuance" as it is used in the ordinance is synonymous with "abandonment". It connotes a voluntary, affirmative, completed act.

Word "discontinuance" as employed in deed of land from city to county providing in effect that property was deeded to county to be used for park purposes and that city reserved all right of reversion in event of discontinuance of

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property for park purposes was equivalent to abandonment.

Narrowing of street held not "discontinuance" within statute requiring written petition as basis for action by village board.

"Discontinuance," generally speaking, is failure to continue case regularly from day to day and from term to term from commencement of suit until final judgement.

The word "discontinue" as used in ordinance, providing that, if nonconforming use of premises was discontinued future use should be in conformity with ordinance, means something more than mere suspension, and did not mean temporary nonoccupancy of building or temporary cessation of business, but word "discontinuance" as used was synonymous with abandonment, and connoted voluntary affirmative completed act. Zoning ordinance did not destroy owner's right to continue nonconforming use of premises merely because tenant became insolvent."

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(G) In **P Ramanatha Aiyar's "The Law Lexicon" with Legal Maxims**, Latin Terms and Words & Phrases, Second Edition 1997), published by Wadhwa and Company Law Publishers, at page 562:

*"**Discontinuance.** Default; a discontinuance in practice is the interruption in proceedings occasioned by the failure of plaintiff to continue the suit from time to time as he ought, or failure to follow up his case: A break or chasm in a suit arising from the failures of the plaintiff to carry the proceedings forward in due course of law.*

Discontinuance is either voluntary, as where plaintiff

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withdraws his suit or involuntary, as where in consequence of some technical omission, mispleading, or the like, the suit is regarded as out of courts, A discontinuance means no more than a declaration of plaintiff's willingness to stop the pending action; it is neither as adjudication of his cause by the proper tribunal nor an acknowledgement by him that his claim is not will founded."

(H) In **"Jowitt's Dictionary of English Law"** Vol. 1 Second Edition-1977, Second Impression-1990, published by London Sweet & Maxwell Limited, at pages 621-622:

"Discontinuance, *an interruption or breaking off. This happened when he who had an estate tail granted a larger estate of the land than by law he was entitled to do; in which case the estate was good so far as his power extended to make it, but no further (Finch L. 190;1 Co. Rep. 44).*

Formerly, in the law of real property, discontinuance was where a man wrongfully alienated certain lands or tenements and dies, whereby the person entitled to them was deprived of his right of entry and was compelled to bring an action to recover them,. The term was specially applied to alienations by husbands seised jure uxoris, by exxlesiastics seised jure ecclesiae, and by tenants in tail: thus, if a tenant in tail alienated the land and died leaving issue, the issue could not enter on the land but was compelled to bring and action (Litt. 470, 592, 614; Co. Litt. 325A; Termes de la Ley; 3 Bl. Comm. 171).

The principal action appropriate to discontinuance were formedon, cui in vita, and cui ante divortium. The effect of discontinuance was taken away by the Real

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Property Limitation Act, 1833, s. 39. See Miscontinuaunce; Recontinuance; Withdrawal.

In the procedure of the High Court discontinuance is where the plaintiff in an action voluntarily puts an end to it, either by giving notice in writing to the defendant not later than fourteen days after service of the defence (R.S.C. Ord. 21, r. 2(1)) or later with leave of the court (r.3). The effect of discontinuance is that the plaintiff has to pay the defendant's costs (R.S.C. Ord. 62, r. 10(1)) and any subsequent action may be stayed until these costs are paid (R.S.C. Ord. 21, r. 5). A defendant may withdraw his defence at any time and may discontinue a counterclaim by notice not later than fourteen days after service of a defence to the counterclaim (r. 2(2)). A counterclaim may be discontinued later by leave of the court (r.3). He must pay the costs of the plaintiff (R.S.C. Ord. 62, r. 5). If all the parties consent the action may be withdrawn without leave of the court (r.2(4)).

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2221. The term "dispossession" and "discontinuance of possession" in Article 142, Act IX of 1908 came to be considered before the Calcutta High Court in **Brojendra Kishore Roy Chowdhury (supra)** and the Court held:

"Dispossession implies the coming in of a person and the driving out of another from possession. Discontinuance implies the going out of the person in possession and his being followed into possession by another."

2222. In **Basant Kumar Roy (supra)**, the Court explained the term 'dispossession' in Article 142 of Limitation act of 1877:

"The Limitation Act, of 1877, does not define the term "dispossession", but its meaning is well settled. A man may

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cease to use his land because he cannot use it, since it is under water. He does not thereby discontinue his possession : constructively it continues until he is dispossessed; and, upon the cessation of the dispossession before the lapse of the statutory period, constructively it revives. "There can be no discontinuance by absence of use and enjoyment, when the land, is not capable of use and enjoyment", ... It seems to follow that there can be no continuance of adverse possession, when the land is not capable of use and enjoyment, so long as such adverse possession must rest on de facto use and occupation."

2223. The distinction between "dispossession" and "discontinuance" has been noticed in **Gangu Bai Vs. Soni 1942 Nagpur Law Journal 99** observing that "dispossession" is not voluntary, "discontinuance" is. In dispossession, there is an element of force and adverseness while in the case of discontinuance, the person occupying may be an innocent person. For discontinuance of possession, the person in possession goes out and followed into possession by other person.

2224. In **Agency Company Vs. Short, 1888 (13) AC 793** the Privy Council observed that there is discontinuance of adverse possession when possession has been abandoned. The reason for the said observation finds mention on page 798 that there is no one against whom rightful owner can bring his action. The adverse possession cannot commence without actual possession and this would furnish cause of action.

2225. Dispossession is a question of fact. The term refers to averments in the plaint exclusively and cannot be construed as referring to averments in the plaint in the first instance and at

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a later stage to the finding on the evidence. The indicias of discontinuance are also similar to some extent. It implies going out of the person in possession and is being followed into possession by another. In **Abdul Latif Vs. Nawab Khwaja Habibullah 1969 Calcutta Law Journal 28,** the Court observed that discontinuance connotes three elements i.e. actual withdrawal, with an intention to abandon, and another stepping in after the withdrawal. Same is the view taken by this Court and Kerala High Court in **Qadir Bux Vs. Ram Chandra AIR 1970 Alld. 289 (FB)** and **Pappy Amma Vs. Prabhakaran Nair AIR 1972 Kerala 1 (FB).**

2226. In order to wriggle out of the limitation prescribed under Article 142 of the Limitation Act, it has to be shown by the plaintiff that he was in possession of the disputed land, within 12 years of the suit and has been dispossessed, as observed by the Apex Court in **Sukhdev Singh Vs. Maharaja Bahadur of Gidhaur (supra).**

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2227. In **Wahid Ali & another Vs. Mahboob Ali Khan AIR 1935 Oudh 425**, referring to Article 142 of Limitation Act, 1908 the Court held where the plaintiff or the Muslim community whom they represent were dispossessed from the land in question belonging to the graveyard by the erection of a house thereon and the suit is filed after 12 years therefrom, it would be barred by Article 142 of the Limitation Act.

2228. In **R.H.Bhutani Vs. Miss Mani J. Desai AIR 1968 SC 1444,** the Court said that dispossession means to be out of possession, removed from the premises, ousted, ejected or excluded. It applies when a person comes in and drives out others in possession.

2229. In **Shivagonda Subraigonda Patil Vs. Rudragonda**

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Bhimagonda Patil 1969 (3) SCC 211, the Court held that dispossession for the purpose of this Article must be by the defendant and that must be the basis of the suit. If there is no dispossession by the defendant, this Article would have no application. The dispossession, therefore, implies taking possession without consent of the person in possession and is a wrong to the person in possession. It must result in termination of possession of the person in possession earlier.

2230. Application of Article 142 and 144 of L.A. 1908 was considered in **Jamal Uddin and (supra)** and in para 29 the Court said:

> *"29. The next point that was urged by the counsel for the appellants was that the courts below committed a legal error in applying Art. 144 of the Limitation Act, 1908, to the suit and placing the burden on the defendants to prove their adverse possession for more than twelve years, while the suit on the allegations contained in the plaint clearly fell within the ambit of Art. 142 and the burden was on the plaintiffs to prove their possession within twelve years. This contention also is quite correct. It was clearly alleged by the plaintiffs that they had been dispossessed by the contesting defendants before the filing of the suit. As such, the suit would be governed by Article 142 and the residuary Article 144 will have no application. The courts below have unnecessarily imported into their discussion the requirements of adverse possession and wrongly placed the burden on the defendant to prove those requirements. Now the trial Court has approached the evidence produced by the parties would be evident from the following observation contained in its judgment.*

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"The onus of proving adverse possession over the disputed land lies heavily upon the defendants and their possession has to be proved beyond doubt to be notorious, exclusive, openly hostile and to the knowledge of the true owner as laid down in AIR 1938 Mad 454."

After a consideration of the documentary and oral evidence produced by the defendants to prove their possession the trial Court has opined that the document on record do not prove the title and possession of the defendants to the hilt in respect of the disputed land. So far as the plaintiffs' evidence is concerned it was disposed of by the trial Court with the following observations:

". . . . .No doubt, the oral evidence of the plaintiffs about the use of the land for saying the prayers of 'Janaze Ki namaz' and about the letting out of the land in suit for purposes of 'D or Sootana' is equally shaky and inconsistent. But as already pointed out above the plaintiffs have succeeded in proving their title over the disputed land and as such possession would go with the ownership of the land. The defendants cannot be allowed to take advantage of the plaintiffs foulty evidence and it was for them to prove beyond any shadow of doubt that they were actually in possession over the disputed land as owners and that they exercised this right openly hostile to the plaintiffs with the latter's knowledge. Judged in this context, the evidence of the defendant falls short of this requirement."

2231. The learned counsel for the Pro-Mosque parties as well as Nirmohi Akhara sought to argue that since the property in dispute was attached by the Magistrate under Section 145 Cr.P.C. and this attachment continued, the question of

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dispossession by an individual private party as such may not arise or is of no consequence. The Magistrate was not handing over possession to the rightful owner, it gave a (fresh) cause of action, which was continuing and hence Articles 142 or 144 or even 120 need not be gone into in these cases.

2232. This requires us to have a bird eye view not only of Section 145 Cr.P.C., its connotation, implication, scope and consequences in the matter. What is evident from record is that the property in dispute, as specified in Suit-4, was not in its entirety placed under attachment.

2233. The case of the plaintiffs (Suit-4) is that in the night of 22nd/23rd December, 1949 some Hindu people surreptitiously placed the idols inside the disputed building under the central dome and thereby interferred and obstructed the right of worship of the Muslim parties. It is admitted by almost all the witnesses of the plaintiffs (Suit-4) that on and after 23rd December 1949, no Muslim has entered the disputed premises and no Namaz has been offered therein. In fact, this is what has been the case set out by the plaintiffs, as is evident from para 11 of the plaint, which reads as under:

> *"That the Muslims have been in peaceful possession of the aforesaid mosque and used to recite prayer in it, till 23.12.2949."*

2234. The possession of the parties of the inner courtyard thereafter was disturbed inasmuch on 29th December, 1949, the City Magistrate passed an order under section 145 Cr.P.C. attaching the property due to apprehension of breach of peace and appointed Receiver giving in his possession a part of the disputed property, i.e., the inner courtyard which, in fact, was taken in charge by Receiver, Priya Dutt, on 5th January, 1950.

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2235. Nirmohi Akhara has claimed that the possession of the outer courtyard remained with them, as it was earlier, till 1982, when in some other suit between the people of Nirmohi Akhara, the same was also attached and placed in the hands of a Receiver. It has also been said that infact the same Receiver was given charge, who was already having the charge of the premises in the inner courtyard. These facts we find have not been disputed by any of the parties and in fact there is nothing on record to contradict it.

2236. It would thus be appropriate first to consider Section 145 Cr.P.C., 1898 as it stood in 1949-50 when the proceedings were initiated thereunder.

2237. Section 145 Cr.P.C., 1898, as it stood then, i.e., prior to its amendment by Amendment Act, 1955, was as under:

> *"145. (1) Whenever a District Magistrate, Sub-Divisional Magistrate or Magistrate of the first class is satisfied from a police report or other information that a dispute likely to cause a breach of the peace exists concerning any land or water or the boundaries thereof, within the local limits of his jurisdiction, he shall make an order in writing, stating the grounds of his being so satisfied, and requiring the parties concerned in such dispute to attend his Court in person or by pleader, within a time to be fixed by such Magistrate, and to put in written statements of their respective claims as respects the fact of actual possession of the subject of dispute.*
>
> *(2) For the purposes of this section the expression "land or water" includes building, markets, fisheries, crops or other produce of land, and the rents or profits of any such property.*

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(3) A copy of the order shall be served in manner provided by this Code for the service of a summons upon such person or persons as the Magistrate may direct, and at least one copy shall be published by being affixed to some conspicuous place at or near the subject of dispute.

(4) The Magistrate shall then, without reference to the merits or the claims of any of such parties to a right to possess the subject of dispute, peruse the statements so put in, hear the parties, receive all such evidence as may be produced by them respectively, consider the effect of such evidence, take such further evidence (if any) as he thinks necessary, and, if possible, decide whether any and which of the parties was at the date of the order before mentioned in such possession of the said subject:

Provided that, if it appears to the Magistrate that any party has within two months next before the date of such order been forcibly and wrongfully dispossessed, he may treat the party so dispossessed as if he had been in possession at such date:

Provided also, that if the Magistrate considers the case one of emergency, he may at any time attach the subject of dispute, pending his decision under this section.

(5) Nothing in this section shall preclude any party so required to attend, or any other person interested, from showing that no such dispute as aforesaid exists or has existed; and in such case the Magistrate shall cancel his said order, and all further proceedings thereon shall be stayed, but subject to such cancellation, the order of the Magistrate under sub-section (1) shall be final.

(6) If the Magistrate decides that one of the parties

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was or should under the second proviso to sub-section (4) be treated as being in such possession of the said subject, he shall issue an order declaring such party to be entitled to possession thereof until evicted therefrom in due course of law, and forbidding all disturbance of such possession until such eviction and when he proceeds under the second proviso to sub-section (4), may restore to possession the party forcibly and wrongfully dispossessed.

(7) When any party to any such proceeding dies, the Magistrate may cause the legal representative of the deceased party to be made a party to the proceeding and shall thereupon continue the inquiry, and if any question arises as to who the legal representative of a deceased party for the purpose of such proceeding is, all persons claiming to be representatives of the deceased party shall be made parties thereto.

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(8) If the Magistrate is of opinion that any crop or other produce of the property, the subject of dispute in a proceeding under this section pending before him, is subject to speedy and natural decay, he may make an order for the proper custody or sale of such property, and, upon the completion of the inquiry, shall make such order for the disposal of such property, or the sale-proceeds thereof, as he thinks fit.

(9) The Magistrate may, if he thinks fit, at any stage of the proceedings under this section, on the application of either party, issue a summons to any witness directing him to attend or to produce any document or thing.

(10) Nothing in this section shall be deemed to be in derogation of the powers of the Magistrate to proceed

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under section 107."

2238. The nature of the proceedings under Section 145 Cr.P.C. are not judicial. The Magistrate is not supposed to deal with the matter as if it is a Civil Suit. A party to a proceeding under Section 145 is not in a position of a plaintiff in a Civil Suit who has set the Court in motion and has a right to require a decision upon the questions raised by him.

2239. Privy Council in **Dinomoni Chowdhrani & Brojo Mohini Chowdhrani 29 IA 24 (PC)** observed that the proceedings under Section 145 do not constitute a trial and are not in the nature of a trial. They are in the nature police proceedings in order to prevent the commission of offence. The nature of the proceedings under Section 145 Cr.P.C. has been described in different terms like quasi-civil **(Bande Ali Vs. Rejaullah 25 Cr.L.J. 303)**, quasi-executive **(Madho Kunbi Vs. Tilak Singh AIR 1934 Nagpur 194)**, quasi-judicial **(Muhammad Araf Vs. Satramdas Sakhimal & others AIR 1936 Sind 143)**, quasi-criminal **(K.S. Prahladsinhji Vs. Chunilal B. Desai AIR 1950 Saurashtra 7)**.

2240. The object of section is merely to prevent breach of peace by maintaining one or the other of the parties in possession and where it is not possible to place any of the parties in possession, to appoint Receiver and to take the property in the custody of the Court, i.e., *custodia legis*. These proceedings are not to protect or maintain any body in possession **(Musammat Phutania Vs. Emperor 25 Cr.L.J. 1109)**.

2241. In **Doulat Koer Vs. Rameshwari Koeri alias Dulin Saheba (1899) ILR 26 Cal. 635**, the Court said that this Section is to enable a Magistrate to intervene and pass a temporary order

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in respect to the possession of the property in dispute having effect until the actual right of one of the parties is determined by any competent Court in more lengthy proceedings. In order to attract proceedings under Section 145, Lahore High Court in **Agha Turab Ali Khan Vs. Shromani Gurdwara Parbandhak Committee AIR 1933 Lahore 145** has said that the power or competency of the Magistrate to interfere depends on the very fact that the possession of the land is in dispute. The dispute means actual disagreement, struggle, scramble or quarrel for possession of the land existent between the disputants at the time of proceedings with reference to the merits of their respective claim to possess the land. It is nobody's case that such proceedings were not initiated or that the same were initiated wrongly or that the procedure prescribed thereof under the statute was not followed.

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2242. The order dated 29.12.1949 is a preliminary order referable to Section 145 Sub-section (1) read with Sub-section (4) second proviso. It is an admitted position by all the parties that the Receiver appointed by Magistrate took the possession of the property and such possession continued till it was replaced by the statutory Receiver under the Act of 1993. It is pointed out that when a Receiver is appointed by the Court, his possession is the possession of the Court. He is Officer through whom the Court exercises its power of management. Such an officer cannot be correctly described as party interested in the dispute likely to cause a breach of peace. No final order in the case in hand could be passed by the Magistrate. It appears that on 16.1.1950 an injunction order was passed by the Civil Judge in Suit-1. The aforesaid order was modified on 19.1.1950 and the modified order was confirmed by the Civil Judge as well as this

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Court on 26.04.1955.

2243. Despite filing of the civil suit and injunction order passed therein, the City Magistrate could not drop the proceedings and passed an order for deferring the said proceedings. Sri Jilani & Siddiqui, learned counsels for the plaintiffs have castigated the said approach of the Magistrate stating that he ought to have passed final order in one or the other manner or should have dropped the proceedings but by keeping the matter pending, parties were left in lurch, and therefore, for such a situation created by City Magistrate, the plaintiffs' suit cannot be held barred by limitation and it should be deemed that every order passed by the City Magistrate resulted in a fresh cause of action for filing civil suit by the plaintiffs.

2244. We however, find it difficult to agree. From perusal of injunction order passed by the Civil Court, we find that on 16th January, 1950 a simple order, in terms of the prayer made in the interim injunction application, was passed directing the parties to maintain status quo. Thereafter on 19th January, 1950, the order was modified but the Civil Court did not appoint a Receiver of its own and also did not direct the City Magistrate to get the possession transferred to any other person or another Receiver of the Court instead of the Receiver appointed by the Magistrate. On the contrary, in Suit-1, the City Magistrate was also impleaded as one of the defendant and the Civil Court passed an order directing the defendants to maintain status quo. It also clarified that the Sewa, Puja as was going on, shall continue. Quite visible, the Magistrate could not have ignored this order by dropping the proceedings as that would have resulted in discharge of Receiver and release of the property

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attached and placed in his charge. In other words, it could have construed by the Civil Judge as an order disobeying the order of statue quo. Had the Civil Judge passed an order appointing a Court's Receiver and directing the Magistrate to hand over possession of the property to him, the position might have been different. In these circumstances, if the Magistrate did not drop the proceedings but deferred it, we find no fault on his part. Moreover, when the earlier order of the Magistrate, attaching the property and placing it in the charge of Receiver, could not have resulted in giving a cause of action to the plaintiffs to file suit, we fail to understand as to how the subsequent order, which merely deferred the pending proceedings, would lend any help. The order of attachment passed by the Magistrate itself does not give a cause of action and on the contrary it only makes the things known to the party that there appears to be some dispute about the title and/or possession of the property concerned and also there is apprehension of disturbance of public peace and order. The cause of action virtually is known to the party that there exists some dispute and not the order of the Magistrate whereby he attached the property in question and placed it in the charge of the Receiver.

2245. We find that in the context of Section 145 Cr.P.C., 1973, a three-Judge Bench of the Apex Court in **Amresh Tiwari Vs. Lalta Prasad Dubey & another 2000 (4) SCC 440** following an earlier decision in **Ram Sumer Puri Mahant Vs. State of U.P. and others 1985 (1) SCC 427** said:

> ***"12.*** *The question then is whether there is any infirmity in the order of the S.D.M. dicontinuing the proceedings under Section 145 Criminal Procedure Code. The law on this subject-matter has been settled by the*

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decision of this Court in the case of Ram Sumer Puri Mahant v. State of U.P., reported in, (1985) 1 SCC 427 : (AIR 1985 SC 472 : 1985 Cri LJ 752). In this case it has been held as follows:

> *"When a civil litigation is pending for the property wherein the question of possession is involved and has been adjudicated, we see hardly any justification for initiating a parallel criminal proceeding under Section 145 of the Code. There is no scope to doubt or dispute the position that the decree of the civil court is binding on the criminal Court in a matter like the one before us. Counsel for respondents 2-5 was not in a position to challenge the proposition that parallel proceedings should not be permitted to continue and in the event of a decree of the civil Court, the Criminal Court should not be allowed to invoke its jurisdiction particularly when possession is being examined by the civil court and parties are in a position to approach the Civil Court for interim orders such as injunction or appointment of receiver for adequate protection of the property during pendency of the dispute. Multiplicity of litigation is not in the interest of the parties nor should public time be allowed to be wasted over meaningless litigation. We are, therefore, satisfied that parallel proceedings should not continue."*

13. We are unable to accept the submission that the principles laid down in Ram Sumers case (AIR 1985 SC 472 : 1985 Cri LJ 752) would only apply if the civil Court has already adjudicated on the dispute regarding the property and given a finding. In our view Ram

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Sumers case is laying down that multiplicity of litigation should be avoided as it is not in the interest of the parties and public time would be wasted over meaningless litigation. *On this principle it has been held that when possession is being examined by the civil Court and parties are in a position to approach the civil Court for adequate protection of the property during the pendency of the dispute,* ***the parallel proceedings i.e. Section 145 proceedings should not continue.***

14. *Reliance has been placed on the case of Jhummamal alias Devandas v. State of Madhya Pradesh reported in, (1988) 4 SCC 452 : (AIR 1988 SC 1973 : 1989 Cri LJ 82). It is submitted that this authority lays down that merely because a civil suit is pending does not mean that proceedings under Section 145, Criminal Procedure Code should be set at naught. In our view this authority does not lay down any such broad proposition. In this case the proceedings under Section 145, Criminal Procedure Code had resulted in a concluded order. Thereafter the party, who had lost, filed civil proceedings. After filing the civil proceedings he prayed that the final order passed in the Section 145 proceedings be quashed. It is in that context that this Court held that merely because a civil suit had been filed did not mean that the concluded order under Section 145 Criminal Procedure Code should be quashed.* ***This is entirely a different situation.*** *In this case the civil suit had been filed first.* ***An Order of status quo had already been passed by the competent civil Court.*** *Thereafter Section 145 proceedings were commenced. No final order had been passed in the proceedings under*

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Section 145. In our view on the facts of the present case the ratio laid down in Ram Sumers case (AIR 1985 SC 472 : 1985 Cri LJ 752) (supra) fully applies. ***We clarify that we are not stating that in every case where a civil suit is filed. Section 145 proceedings woud never lie.*** *It is only in cases where civil suit is for possession or for declaration of title in respect of the same property and where reliefs regarding protection of the property concerned can be applied for and granted by the civil Court that* ***proceedings under Section 145 should not be allowed to continue. This is because the civil court is competent to decide the question of title as well as possession between the parties and the orders of the civil Court would be binding on the Magistrate****."*

2246. In **Sadhuram Bansal Vs. Pulin Behari Sarkar and others 1984 (3) SCC 410**, a three-Judge Bench of theApex Court observed in para 62, that the pendency of the proceeding under Section 145 Cr.P.C. and order, if any, passed thereon does not in any way affect the title of the parties to the disputed premises though it reflects the factum of possession. It followed an earlier decision in **Bhinka and others Vs. Charan Singh (supra)**.

2247. The provision as existed in Cr.P.C. in 1989 before its amendment in 1955 though went under some change in 1955, but it appears that under the new Cr.P.C., 1973 Section 145 is virtually same as was before 1955 amendment. This has been noticed by the Apex Court in **Mathura Lal Vs. Bhanwar Lal and another 1979 (4) SCC 665** as under:

"The provisions of Sections 145 and 146 of the 1973 Code are substantially the same as the corresponding

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provisions before the 1955 amendment. The only noticeable change is that the second proviso to Section 145 (4) (as it stood before the 1955 amendment) has now been transposed to Section 146 but without the words "pending his decision under this Section" and with the words "at any time after making the order under Section 145(1)" super-added. The change, clearly, is in the interests of convenient draftsmanship. ..."

2248. The above discussion, in our view, would show that the proceedings under Section 145 Cr.P.C. and the orders passed therein would not help the plaintiffs in the matter of limitation particularly when it is virtually admitted in the plaint that they discontinued with possession at least from 23rd December, 1949. It is their own version and this disturbance is on account of a title dispute of the property in question. Moreover, all the plaintiffs do not claim themselves to be the owner of the property in question or the legal custodian thereof. None of the plaintiffs is claimed to be Mutwalli of the alleged waqf. It is only a Mutwalli of a waqf who can claim possession of the property in question according to Islamic Law. However, no such person is before us seeking the relief of possession or to seek a declaration in his capacity as Mutwalli. Plaintiffs No.1 Sunni Central Waqf Board is a supervisory controlling body of the Sunni Waqfs in the State of U.P. but on its own has no power to claim possession or custody of any waqf. At least no such provision has been shown. The other individual plaintiffs claimed themselves to be the worshippers i.e. the beneficiaries of the alleged waqf. If there is any obstruction in the right of worship of an individual, he can come to the Court for protection of such right of worship but cannot claim possession

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of such property since he is neither owner nor legal custodian of the property. Similarly, right of worshipper is confined for the period the subject matter is in existence and vanishes as soon as the right of the owner or that of legal custodian goes or the subject matter disappears, as observed in the case of **Masjid Shahid Ganj (Supra).**

2249. Had it been a suit for a mere injunction for protection of right of worship, something might have been said, but no such relief has been sought by the plaintiffs in the case in hand and we cannot read a prayer which is neither incidental nor otherwise connected but totally different to the real prayer made in the suit. The effect of the property being attached by the Magistrate shall neither result in extension of limitation for the plaintiffs nor in exclusion of certain period for the purpose of limitation to some extent or to the extent of the period the property remained under attachment or in any other manner.

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2250. We may consider whether the effect of the property being attached by the Magistrate will give any benefit to the plaintiffs either for extension of limitation or for excluding some period for the purpose of limitation to some extent or to the extent the property remained under attachment or in any other manner can help.

2251. Where one person claims to be in possession to the exclusion of others and alleges that some other person seeks unlawfully or by force to interfere with his possession and if it is likely to lead to a breach of peace, it will be justifiable and necessary for a Magistrate to take action under Section 145(1) Cr.P.C., (in the present case Cr.P.C. of 1898). Such an order passed is only a police order and in no sense is a final one. The possession contemplated under Section 145 is actual physical

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possession on the subject matter. The possession, so taken over by Receiver, appointed by a criminal Court after attachment, merely passes the property into custodia legis and is not dispossession within the meaning of Article 142 of L.A. 1908, as observed in **Pappy Amma (supra).** The legal possession of the land attached, for the purpose of limitation, will be constructively with the person who was entitled to the property on the date of attachment. Magistrate cannot be regarded as having dispossessed either party and he cannot legally be made a party to the suit of either of the claimants.

2252. It is submitted that since no final order has been passed by the Magistrate so far, there is no question of limitation applying in this case and, therefore, it cannot be pleaded that the suit is barred by limitation under any of the provisions of L.A. 1908. Article 142 and 144 would not apply. Let us examine the legal position when the property is attached.

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2253. The possession of the part of the property (the inner courtyard of the disputed premises) was placed with a Receiver by an order of City Magistrate passed under section 145 Cr.P.C.. At the time when the suit was filed the possession was not with any adversary but in the hands of a statutory authority who has been held to possess the property on behalf of real owner.

2254. In **Everest Coal Company Pvt. Ltd. Vs. State of Bihar and others, 1978 (1) SCC 12** though in a different context, expressing its opinion on the status/capacity of receiver appointed by the Court, the Apex Court said, "*when a court puts receiver in possession of a property, the property comes under court's custody, the receiver being merely an officer/agent of the Court."* It further says that *"receiver represents neither party being an officer of the Court."*

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2255. In **Rajah of Venkatagiri Vs. Isakapalli Subbiah & others (supra)**, the Madras High Court held, if a suit is filed for declaration of title to immovable property, Article 142 of the Second Schedule to Act XV of 1877 would not be attracted. But where a suit for possession is filed by a person who was earlier in possession and was dispossessed or discontinued of possession, it would be governed by Article 142. However, it was further clarified where the property has been attached by a Magistrate under Section 145, Article 142 will not be attracted since the Magistrate cannot be regarded as having dispossessed either parties or that has discontinued possession thereof. The Nature of attachment by Magistrate vis-a-vis possession of the property is explained as under :

> *"Under section 146, Criminal Procedure Code, the Magistrate is bound to continue the attachment and have statutory possession of the lands for purposes of continuing the attachment until a competent Civil Court determines the rights of the parties to the dispute before him or the person entitled to the possession of the lands and he cannot deliver the property to any of the parties or other person without an adjudication by a Civil Court. During the continuance of the attachment, the legal possession for purposes of limitation will constructively be in the person who had the title at the date of the attachment and such title cannot be extinguished by the operation of section 28 of the Limitation Act, however, long such attachment may continue."*

2256. The Court also held that to commence limitation or whether a cause of action is a continuing one, the criteria would be "whether the wrong is a continuing one" and not "whether

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the right is a continuing one". It reiterated the view that attachment of property does not amount to either dispossession

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of owner or discontinuance of his possession.

2257. In **Yeknath Vs. Bahia (supra)** the Nagpur High Court said where the property in dispute has been attached by Magistrate under Section 146 Cr.P.C., the right to sue accrued when the attachment was made and the limitation would begin to run under Section 23 after the date of attachment by the Magistrate. The Court said:

> *". . . . . what led the Magistrate to take possession is that it was either his inability to decide who was in actual possession or his decision that neither party was in possession. Neither of these can be said to be a wrong by the defendant. . . . . In the circumstances of these cases it is the attachment by the Magistrate and not any wrongful act of the defendants that gave rise to the right to sue and the right accrued when the attachment was made. In this view no fresh period of limitation began to run under S. 23 of the Limitation Act after the date of the attachment by the Magistrate in 1908." (page 236)*

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2258. In **Abinash Ch. Chowdhury Vs. Tarini Charan Chowdhury and others (supra)** the Calcutta High Court said:

> *"In the case of Ismail Ghani Ammal Vs. Katima Rowther, (1912) 22 MLJ 154 the Madras High Court, in dealing with a case in which a Receiver had been appointed prior to the institution of proceedings under S. 145, Criminal P.C., held that the possession of the Receiver may, for the purpose of S. 145, Criminal P.C., be properly regarded as possession on behalf of the party who should be ultimately found by the Magistrate to be in possession immediately before the date of his appointment, as, for the purpose of limitation, the possession of the Receiver is held*

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to be the possession of the party entitled to possession. . . . . In the case of Rajah of Venkatagiri Vs. Isakapalli Subbiah, (1903) 26 Mad 410 it was held that an attachment under S. 146, Criminal P.C., operated in law for purposes of limitation, simply as a detention of custody, pending the decision by a civil Court, on behalf of the party entitled, and for such purposes the seisin or legal possession was, during the attachment, in the true owner. It was observed that:

such attachment operates in law for the purposes of limitation simply as detention or custody of the property by the Magistrate, who, pending the decision by a civil Court of competent jurisdiction, holds it merely on behalf of the party entitled, whether he be one of the actual parties to the dispute before him or any other person. For the purposes of limitation the seisin or legal possession will, during the attachment, be in the true owner and the attachment by the Magistrate will not amount to dispossession of the owner or to his discontinuing possession." (page 784)

In Brojendra Vs. Bharat Chandra, AIR 1916 Cal 751, it was held that during an attachment under S. 146, Criminal P.C., the seisin or legal possession is in the true owner and that the attachment does not amount to either dispossession of the owner or the discontinuance of his possession. The learned Judges in that case relied for their conclusion upon the decision of the Judicial Committee in the case of Khagendra Narain Chowdhury Vs. Matangini Debi, (1890) 17 Cal 814 in which the attachment under the 530th and 531st section of the Code of 1872 was considered as placing the Government really in the position of stake-

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holders, the decision in the case of Ramaswami Vs. Muthusamy, (1907) 30 Mad 12, to which reference has already been made, the decision in the case of Beni Prasad Vs. Shahjada, (1905) 32 Cal 856, in which the possession of the Magistrate after attachment under S. 146 was held to be one on behalf of such of the rival parties as might establish a right to possession on their own account and the decision of the Judicial Committee in the case of Karan Singh Vs. Bakar Ali Khan, (1882) 5 All 1 in which the possession of the Government in the Revenue Department of land which had been attached by the Collector to secure payment of revenue which has been endangered in consequence of disputes relating thereto was considered to be possession not adverse to the owner though the Collector had subsequently paid over the surplus proceeds of the estate to a stranger. Reliance also was placed in that decision upon the principles deducible from the decisions of the Judicial Committee in the case of Trustees and Agency Company Vs. Short, (1888) 13 AC 798 and Secretary of State Vs. Krishna Mani Gupta, (1902) 29 Cal 518 and the observations of Baron Parke in Smith Vs. Lloyd, (1854) 9 Ex 562. The same view was taken of the effect of an attachment under S. 146, Criminal P.C. In a later decision of this Court in the case of Sarat Chandra Maiti Vs. Bibhabati Debi, AIR 1921 Cal 584, in which it was observed that the authority of the decision in the case of Deonarain Vs. Webb, (1900) 28 Cal 86 in which the plaintiff had been dispossessed from his raiyati lands and subsequent to such dispossession there was an attachment under S. 146, Criminal P.C., and it was held that the

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plaintiff was not entitled to have a fresh start of limitation from the date of the attachment, as he had already been dispossessed before that date, ***must be considered as shaken by the decision of the Judicial Committee in the case of Secretary of State Vs. Krishna Mani, (1902) 29 Cal 518.*** *The intervention of public authorities for the preservation of peace was considered as operating in the same way as the vis major of floods and by analogy it was held that the constructive possession of the land after such intervention remains, if anywhere, in the true owner." (Page 784-785)*

"The purposes of the two attachments, one under the proviso to Cl. (4) of S. 145 and the other under S. 146, Criminal P.C., are different, and the stakes are not the same. ***In the case of the former, the attachment subsists till the decision under S. 145, Cl. (4), that is to say, till it is decided which party was in possession at the date of the proceedings; in the latter case it lasts until a competent Court has determined the rights of the parties or the person entitled to possession.*** *It may be that an attachment under S. 145, Cl. (1) may terminate on the proceedings being dropped or attachment under S. 146, Criminal P.C., may be withdrawn when the Magistrate is satisfied that there is no longer any likelihood of a breach of the peace; but that does not affect the character of the attachments. The objects of the two attachments are obviously different. The possession in the case of the one enures to the benefit of the party who was in possession at the date of the proceedings and in the case of the other to the party or to any person, either a party to the*

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proceedings or not, who may be adjudged, on the basis of his rights to be entitled to possession. Proceedings under Ch. 12, Criminal P.C. are of a quasi civil character and the Magistrate intervenes and attaches the property much on the same lines and with a similar purpose as when a Receiver is appointed by the Court in a civil action, in order to prevent a scramble and to preserve the property until the rights of the parties are ascertained. The possession of a Receiver appointed under such circumstances is exclusively the possession of the Court, the property being regarded as in the custody of the law in gremio legis for the benefit of whoever may be ultimately determined to be entitled thereto. The object of proceedings under S.145, Criminal P.C., being to determine which party was in possession at the date of the proceedings and to declare such party to be entitled to retain possession, the possession of the Court during attachment in the course of those proceedings should enure for the benefit of such party in whose favour such a declaration is made. The object of an attachment under S. 146, Criminal P.C., is to hold the property in anticipation of an action in which the right or title to possession is to be declared by a competent Court and the possession of the Court during such attachment should enure for the benefit of the party or person in whose favour a competent Court would make such a declaration." (Page 785-786)

"The rightful owner may not be a party to the action, in which case time will run against him, but not in his favour."

"For the foregoing reasons, in our judgment, the

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common manager and not the plaintiffs must be treated as having been in possession during the attachment under S. 145, Cl. (4), Criminal P.C., and consequently the plaintiffs' suit is barred by limitation." (Page 786)

2259. With reference to Receiver's possession and application of Article 144 L.A. 1908, in **P. Lakshmi Reddy Vs. L. Lakshmi Reddy, AIR 1957 SC 314** the Apex Court considered the nature of Receiver's possession. It referred to Woodroffe on the Law relating to Receivers (4th Edition) at page 63 stating, "*The Receiver being the officer of the Court from which he derives his appointment, his possession is exclusively the possession of the Court, the property being regarded as in the custody of the law, in gremio legis, for the benefit of whoever may be ultimately determined to be entitled thereto."*

2260. The Apex Court said further in para 6 of the judgement:

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*"**A Receiver is an officer of Court** and is not a particular agent of any party to the suit, notwithstanding that in law his possession is ultimately treated as possession of the successful party on the termination of the suit. To treat such Receiver as plaintiffs agent for the purpose of initiating adverse possession by the plaintiff would be to impute wrong-doing to the Court and its officers. The doctrine of the Receiver's possession being that of the successful party cannot, in our opinion, be pushed to the extent of enabling a person who was initially out of possession to claim the tacking on of Receiver's possession to his subsequent adverse possession. The position may conceivably be different where the defendant in the suit was previously in adverse possession against the*

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real owner and the Receiver has taken possession from him and restores it back to him on the successful termination of the suit in his favour."

2261. In **Deo Kuer Vs. Sheo Prasad (supra) AIR 1966 SC 359** the Court observed that the property in attachment under Section 145 Cr.P.C. would mean that it is "custodia legis". Where the property is custodia legis it would mean that it is not in possession of any private individual and, therefore, there is no need to seek a relief of restoration of possession in a suit filed by the affected party but a simple suit for declaration of title would be sufficient. In **Deo Kuer (supra)** the Apex Court has further held that when the property is under attachment under Section 145 Cr.P.C. no relief for delivery of possession need be sought but the suit ought to be filed only for declaration of title for the reason that the property being in custodia legis no defendant would be in a position to deliver the same to the plaintiff but when a declaration of title is made, the natural consequences would follow. In para 4 of the judgement the Apex Court held:

"In our view, in a suit for declaration of title to property filed when it stands attached under S. 145 of the Code, it is not necessary to ask for the further relief of delivery of possession."

2262. Further the Court held that the Magistrate holds possession during the period of attachment on behalf of the party who ultimately is found entitled for possession. The Apex Court in **Deo Kuer (Supra)** followed and approved Madras High Court's decision in **K. Sundaresa Iyer Vs. Sarvajana Sowkiabi Virdhi Nidhi Ltd., AIR 1939 Madras 853** and Privy Council decision in **Humayun Begam Vs. Shah Mohammad**

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Khan, AIR 1943 PC 94 and **Sunder Singh Mallah Singh Sanatan Dharm High School Trust Vs. Managing Committee, AIR 1938 PC 73** but overruled the Patna High Court's decision in **Dukham Ram Vs. Ram Nanda Singh, AIR 1961 Pat. 425.**

2263. **Ases Kumar Misra & others Vs. Kissori Mohan Sarkar & others AIR 1924 Cal. 812** has been relied on to claim that a decision of the Civil Court, if not inter parties, can be relied on by the Magistrate to pass an order for delivery of possession under Section 145/146 Cr.P.C. Therein, a suit was filed for recovery of some money wherein the ownership rights with respect to some part of the immovable property was also considered. The Civil Court passed an order on the same issue. Later on, the immovable property itself became subject matter of a dispute between one of the parties in the suit and another. The Magistrate initiated proceedings under Section 145 Cr.P.C. And placed the property under attachment. Thereafter, relying on the decision of the Civil Court, it passed an order under Section 146 Cr.P.C. for delivery of possession to the party in whose favour the Civil Court decided the issue with respect to the ownership. It was contended that since others were not party in earlier proceedings, the earlier judgment of the Civil Court is not binding on them and, therefore, it would not have been relied by the Magistrate. Rejecting this argument, the Division Bench held that even though a Civil Court's judgment may not be binding on the parties who were not party before the Civil Court, but that would not prevent a Magistrate to look into that judgment for the purpose of passing an order for delivery of possession under Section 146 (1) Cr.P.C. This Judgment would not apply to the case in hand inasmuch it is not a case where the Magistrate has passed order under Section 146 (1) Cr.P.C.

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taking into consideration the judgment in Suit-1885 nor it can be said that in the said judgment, the Court has determined the issues of ownership in favour of one or the other party at all. This aspect as to what was the issue and what has been decided in Suit-1885, we have already dealt with in detail while considering the issues relating to res judicata, estoppel etc. and need not be repeated. This judgment, in our view, has no application to any of the issues in these cases.

2264. **Ellappa Naicken Vs. K.Lakshmana Naicken & others AIR (36) 1949 Madras 71** is not an authority for what it has been referred. With respect to the proceedings under Section 146 Cr.P.C., the judgment only says that a suit for declaration ought to be filed within six years from the date of the order passed under Section 146 Cr.P.C., failing which, however, the parties are not left remedy-less for the reason that even then a suit for recovery of profits can be filed within the period of limitation from the date the profits are received by receiver and while adjudicating the rights to receive profits, the Civil Court has to decide the title also and that decision of Civil Court would be a determination according to which the Magistrate would have to deliver possession of the property attached by him under Section 146 Cr.P.C. It is in respect to this kind of decision, the learned Single Judge says that a decision on the title by the Civil Court in a suit pertaining to recovery of profit will be binding and will have the force of res judicata for the purpose of Section 146 Cr.P.C. and would practically operate as a determination of right of the successful plaintiff to the land under attachment as well as the amount in deposit. In our view, this judgment does not help the parties in any manner in respect to the issues in question.

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2265. In **Jurawan Singh & Ors. Vs. Ramsarekh Singh & Others AIR 1933 Patna 224,** the concept of possession and dispossession with reference to the proceedings under Section 145 Cr.P.C. came to be considered for the purpose of attracting limitation. There was two sets of cases. In the first one, about 400 bighas of land remained submerged under water for about 13-14 years and on reappearance, the dispute arose with regard to possession. Consequently, proceedings under Section 145 Cr.P.C. commenced resulting in an order dated 15th December, 1916 attaching the property under Section 146 Cr.P.C. being unable to find which party was in actual possession of the land, and the Collector was appointed as receiver.

2266. In the second set of case about 1000 bighas of land was involved which was also submerged and on reappearance in 1918, Section 145 Cr.P.C. proceedings were initiated which ultimately resulted in a final order dated 08th July, 1931 declaring 200 bighas of land in possession of defendants-appellants while remaining 800 bighas was attached under Section 146 Cr.P.C.

2267. In respect to the second case, the argument raised is that the suit having been filed after more than two years from the date of order dated 8th July, 1931, is barred by limitation specially provided under Article 3 Schedule 3 of the Bengal Tenancy Act. It was contended that the land stood 'abandoned' when it was submerged under water and on its reappearance, possession was not taken by the tenants as their holding. Since there was no dispossession by the landlord hence special limitation would not apply.

2268. The High Court said that an attachment made under Section 146 is for the purpose of preventing a breach of peace,

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and the attachment is to last until a competent Court has determined the rights of the parties to the land in dispute or the person entitled to possession thereof. When a competent Court has determined the rights of the parties or the person entitled to possession of the land in dispute, it is the duty of the Magistrate to withdraw the attachment and make over possession to such party. Any act done by the Receiver appointed under Section 146 during the period of attachment cannot and ought not prejudicially affect the rights of the party found by the Court to be entitled to possession of the land in dispute. It however agreed with a Division Bench decision of the Calcutta High Court in **Brojendra Kishore (supra)** that it is a continuing wrong under Section 23 of the Act.

2269. If limitation begins to run before the date of the order of attachment under Section 146 Cr.P.C., it is clear that the plaintiffs in a declaratory suit cannot have a fresh start of limitation from the date of the subsequent attachment.

2270. In the case before the Patna High Court as a matter of fact the Court found that there was no dispossession by the landlord before any order of attachment under Section 145 was passed and in these circumstances the matter was decided holding:

> *"....The attached lands being jungle, sandy and waste lands were not capable of actual possession by either party and therefore there was no actual possession by the plaintiffs and dispossession by the defendants after the re-appearance of the lands. The entire 1,400 bighas admittedly went under water between 1901 and 1903 and the raiyats lost possession on account of the submersion, and it is therefore contended that as there was no actual*

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possession by the plaintiffs and dispossession by the defendants, Article 3, Schedule 3, Bengal Tenancy Act, did not apply."

"....I am therefore of opinion that having regard to the fact that there was no actual possession of the raiyati holding by the plaintiffs after re-appearance, and no actual dispossession by the landlords in the present case, the special limitation of two years under Article 3, Schedule 3, Bengal Tenancy Act, did not apply in respect of the lands claimed in Schedule 2 of the plaint, and that the period of limitation applicable is that provided in Article 47, Limitation Act, and as such the suit is within time."

2271. The Apex Court in **Shanti Kuamr Panda Vs. Shakuntala Devi JT 2005 (11) SC 122** has said:

"10. *Possession is nine points in law. One purpose of the enforcement of the laws is to maintain peace and order in society. The disputes relating to property should be settled in a civilized manner by having recourse to law and not by taking the law in own hands by members of society. A dispute relating to any land etc. as defined in sub-section (2) of S. 145 having arisen, causing a likelihood of a breach of the peace, S. 145 of the Code authorises the Executive Magistrate to take cognizance of the dispute and settle the same by holding an enquiry into possession as distinguished from right to possession or title. The proceedings under Ss. 145/146 of the Code have been held to be quasi-civil, quasi-criminal in nature or an executive on police action. The purpose of the provisions is to provide a speedy and summary remedy so as to prevent a breach of the peace by submitting the dispute to the*

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Executive Magistrate for resolution as between the parties disputing the question of possession over the property. The Magistrate having taken cognizance of the dispute would confine himself to ascertaining which of the disputing parties was in possession by reference to the date of the preliminary order or within two months next before the said date, as referred to in proviso to sub-section (4) of S. 145, and maintain the status quo as to possession until the entitlement to possession was determined by a Court, having competence to enter into adjudication of civil rights, which an Executive Magistrate cannot. The Executive Magistrate would not take cognizance of the dispute if it is referable only to ownership or right to possession and is not over possession simpliciter; so also the Executive Magistrate would refuse to interfere if there is no likelihood of breach of the peace or if the likelihood of breach of peace though existed at a previous point of time, had ceased to exist by the time he was called upon to pronounce the final order so far as he was concerned."

***"12.** What is an eviction "in due course of law" within the meaning of sub-section (6) of S. 145 of the Code? Does it mean a suit or proceedings directing restoration of possession between the parties respectively unsuccessful and successful in proceedings under S. 145 or any order of competent Court which though not expressly directing eviction of successful party, has the effect of upholding the possession or entitlement to possession of the unsuccessful party as against the said successful party. In our opinion, which we would buttress by reasons stated shortly hereinafter, ordinarily a party unsuccessful in*

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proceedings under S. 145 ought to sue for recovery of possession seeking a decree or order for restoration of possession. However, a party though unsuccessful in proceedings under S. 145 may still be able to successfully establish before the competent Court that it was actually in possession of the property and is entitled to retain the same by making out a strong case demonstrating the finding of the Magistrate to be apparently incorrect."

***"15.** It is well settled that a decision by a Criminal Court does not bind the Civil Court while a decision by the Civil Court binds the Criminal Court (See Sarkar on Evidence, Fifteenth Edition, page 845). A decision given under S. 145 of the Code has relevance and is admissible in evidence to show:- (1) that there was a dispute relating to a particular property; (ii) that the dispute was between the particular parties; (iii) that such dispute led to the passing of a preliminary order under S. 145(1) or an attachment under S. 146(1), on the given date, and (iv) that the Magistrate found one of the parties to be in possession or fictional possession of the disputed property on the date of the preliminary order. The reasoning recorded by the Magistrate or other findings arrived at by him have no relevance and are not admissible in evidence before the competent Court and the competent Court is not bound by the findings arrived at by the Magistrate even on the question of possession through, as between the parties, the order of the Magistrate would be evidence of possession. The finding recorded by the Magistrate does not bind the Court. The competent Court has jurisdiction and would be justified in arriving at a finding inconsistent with the one*

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arrived at by the Executive Magistrate even on the question of possession. Sections 145 and 146 only provide for the order of the Executive Magistrate made under any of the two provisions being superseded by and giving way to the order or decree of a competent Court. The effect of the Magistrate's order is that burden is thrown on the unsuccessful party to prove its possession or entitlement to possession before the competent Court."

2272. In **M.P. Peter Vs. State of Kerala & others JT 2009 (13) SC 1**, the Apex Court after referring the above observations in **Shanti Kuamr Panda (supra)** in para 29 of the judgment observed:

"29. *The correctness of some of the observations made therein although may be open to the question, we need not enter into said controversy at present."*

2273. However, in para 30 in **M.P. Peter Peter (supra)**, the Court referred following extract from **Shanti Kumar Panda (supra)**:

(3) A decision by a Criminal Court does not bind the Civil Court while a decision by the Civil Court binds the Criminal Court. An order passed by the Executive Magistrate in proceedings under Sections 145/146 of the Code is an order by a Criminal Court and that too based on a summary enquiry. The order is entitled to respect and wait before the competent Court at the interlocutory stage. At the stage of final adjudication of rights, which would be on the evidence adduced before the Court, the order of the Magistrate is only one out of several pieces of evidence.

(4) The Court will be loath to issue an order of interim injunction or to order an interim arrangement inconsistent

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with the one made by the Executive Magistrate. However, to say so is merely stating a rule of caution or restraint, on exercise of discretion by Court, dictated by prudence and regard for the urgent/emergent executive orders made within jurisdiction by their makers; and certainly not a tab on power of Court. The Court does have jurisdiction to make an interim order including an order of ad interim injunction inconsistent with the order of the Executive Magistrate. The jurisdiction is there but the same shall be exercised not as a rule but as an exception. Even at the stage of passing an ad interim order the party unsuccessful before the Executive Magistrate may on material placed before the Court succeed in making out a strong prima facie case demonstrating the findings of the Executive Magistrate to be without jurisdiction, palpably wrong or self-inconsistent in which or the like cases the Court may, after recording its reasons and satisfaction, make an order inconsistent with, or in departure from, the one made by the Executive Magistrate. The order of the Court final or interlocutory, would have the effect of declaring one of the parties entitled to possession and evicting therefrom the party successful before the Executive Magistrate within the meaning of sub-section (6) of S. 145."

2274. Dilemma on the part of the plaintiffs is further writ large from the fact that they have also claimed title to the property in dispute based on adverse possession. Somebody, if has taken the plea of adverse possession, presupposes that on the date of filing the suit he continued to be in possession of the property in dispute otherwise an adverse possession if has discontinued for one or the other reason before maturing in title,

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would dispel the claim based on adverse possession. Here we are not discussing the ingredients of "adverse possession" etc. in detail since dealing with the issues pertaining to "adverse possession", we shall discuss the meaning, scope and ingredients etc. of "adverse possession" thereunder but suffice it to say that for the purpose of issues pertaining to limitation we can say that if a plaintiff has sought to set up a case that he has matured his right by virtue of adverse possession, it presupposes that he continued to be in possession on the date of filing the suit or matured his title after completion of prescribed period and this completely mitigate the condition for attracting Article 142 that the cause of action has arisen due to dispossession or discontinuance of possession of plaintiff.

2275. It is contended that no party can simultaneously plead that either the matter is governed by Article 142 or 144 for the reason that the ingredients of both the provisions are different. The pleadings in one or the other manner are virtually self destructive and that is why both the provisions cannot be pleaded simultaneously. It is contended that the plaintiff has to exercise his option, i.e, right to elect one or the other case and he cannot plead both simultaneously. Article 142 is applicable for recovery of possession of immovable property when the plaintiff's possession of the property has been taken away i.e. he is dispossessed or had discontinued possession. Under Article 142 the burden of proof lies upon the plaintiffs to prove their possession within 12 years before the suit. While Article 144 is a residuary and is applicable for recovery of possession of immovable property or an interest therein not specifically provided for by the Act and in that case burden of proof lies upon the defendants to prove their possession and expiry of 12

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years before the suit.

2276. Reliance is placed on **Chairman and M.D., N.T.P.C. Ltd. (supra)** where the Apex Court has held that none can be allowed to approbate and reprobate at the same time. Relevant paras 36 and 37 of the judgment read as follows:

> *"36. In Halsbury's Laws of England, 4th Edition, Vol.16 (Reissue) para 957 at page 844 it is stated:*
>
> *"On the principle that a person may not approbate and reprobate a special species of estoppel has arisen. The principle that a person may not approbate and reprobate express two propositions:*
>
> *(1) That the person in question, having a choice between two courses of conduct is to be treated as having made an election from which he cannot resile.*
>
> *(2) That he will be regarded, in general at any rate, as having so elected unless he has taken a benefit under or arising out of the course of conduct, which he has first pursued and with which his subsequent conduct is inconsistent."*
>
> *"37. In American Jurisprudence, 2nd Edition, Volume 28, 1966, Page 677-680 it is stated:*
>
> *"Estoppel by the acceptance of benefits:*
>
> *Estoppel is frequently based upon the acceptance and retention, by one having knowledge or notice of the facts, of benefits from a transaction, contract, instrument, regulation which he might have rejected or contested. This doctrine is obviously a branch of the rule against assuming inconsistent positions.*
>
> *As a general principle, one who knowingly accepts the benefits of a contract or conveyance is estopped to deny the*

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validity or binding effect on him of such contract or conveyance.

This rule has to be applied to do equity and must not be applied in such a manner as to violate the principles of right and good conscience."

2277. In order to attract Article 142, the plaintiff has to show that either he is owner based on a valid title or that he was in possession over the property in question but has been dispossessed in the past in a period less than twelve years. In case, he pleads that he is the owner but the possession was admittedly with the defendants and such possession has not completed twelve years therefore the ownership or the title of the plaintiff is not extinguished, in such case it is Article 144 which will apply. The ingredients of the two are apparently different and the pleadings have to be made differently. Tentatively it can be said that in a given case simultaneously it may not be possible for a plaintiff to plead a case either of Article 142 or that of Article 144.

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2278. Moreover, to attract Article 142 the person who ascertain dispossession has to prove it since the presumption in law is in favour of continuity of possession.

2279. In **Nathoo Lal Vs. Durga Prasad AIR 1954 SC 355** it was held that in order to attract Article 142 of the Limitation Act, it is incumbent to show that dispossession took place and more than 12 years since then had expired. The presumption in law being in favour of continuity of possession, the person who assert dispossession, has to be proved.

2280. To some extent, what has been argued does not appear to be wholly without substance. It cannot be disputed that the question of limitation is a mixed question of law and

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facts. The submission of Sri P.N.Mishra and other learned counsels is that the plaint ought to have been rejected at the threshold being *ex facie* barred by time. Suffice it to mention that it is not always correct that a plaint can be rejected on the ground of limitation since many a times, question of limitation is not a pure question of law but a mixed question of law and facts. In such cases, rejection of plaint *ex facie* is not justified. It is always open to the parties to raise plea of limitation and the Court shall consider the same and decide the issue even at the time of final hearing along with other issues.

2281. In **Ramesh B. Desai and others Vs. Bipin Vadilal Mehta and others 2006 (5) SCC 638**, the Court said, *"A plea of limitation cannot be decided as an abstract principle of law divorced from facts as in every case the starting point of limitation has to be ascertained which is entirely a question of fact."*

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2282. Considering the question as to whether a plaint can be rejected under order 7 Rule 11 (d) C.P.C. in the absence of proper pleadings relating to limitation, in **Balasaria Construction (P) Ltd. Vs. Hanuman Seva Trust and Ors. 2006 (5) SCC 658**, it was held that it cannot not be done since the limitation is a mixed question of law and facts. Similar is the view expressed in **Narne Rama Murthy Vs. Ravula Somasundaram and others 2005 (6) SCC 614**. The above proposition has been followed recently in **Kamlesh Babu and others Vs. Lajpat Rai Sharma and others JT 2008 (4) SC 652** with a further rider that there are cases where the question of limitation can be decided or determined only on a mere perusal of the plaint and in such case even without adverting to recording of evidence etc. the issue can be decided at the very

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threshold or at the later stage since Section 3(1) of the Limitation Act bars the jurisdiction of a Court to entertain a suit which is beyond the period of limitation. The Court relied and referred to **Lachhmi Sewak Sahu vs. Ram Rup Sahu & Ors. AIR 1944 PC 24**. On this aspect, we find a consistent view of the Apex Court in some other cases also, i.e, **Kamala and others Vs. K.T. Eshwara Sa and others AIR 2008 SC 3174**; **P.T. Munichikkanna Reddy and others Vs. Revamma and others 2007 (6) SCC 59**; **C. Natrajan (supra)**; **Panchanan Dhara and others Monmatha Nath Maity and another 2006 (5) SCC 340**.

2283. The reading of the entire plaint (Suit-4) nowhere shows an averment that the plaintiffs were dispossessed of a property which they already possess. The case on the contrary is that while placing idol in the building in dispute, which was a mosque, the same has been desecrated which has the effect of obstructing and interfering in the right of the plaintiffs of worship thereat.

2284. However, the relief sought by the plaintiffs (Suit-4) is not to continue to exercise their right of worship but instead a declaration has been sought with respect to the status of the property in dispute that it is a "mosque". Meaning thereby the defendants have been called upon to defend an issue about the very status of the property in dispute. A dispute of status and nature of the building as such has been raised and a declaration about its status that it is a mosque has been prayed for. The plaintiff's cause of action and relief, therefore, are quite divergent. At several stages some statements here and there in the plaint and replication were made endeavouring to bring the suit in question within the period of limitation. The counsel for

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the plaintiffs have contended that this is an assumption on the part of the defendants that the plaintiffs are dispossessed of the property in question and, therefore, it is this assumption which will attract Article 142 of L.A. 1908 in this case.

2285. We, however, find no substance in the submission. Pleadings have to be clear, specific and unambiguous. Probably to clear the ambiguity in the pleadings, statement was made under Order X, Rule 2 on behalf of plaintiffs (Suit-4) through their counsel explaining that the entire premises, marked as ABCD in the map appended to the plaint, is the disputed premises and it is a mosque which is an Islamic structure and it has no other structures except "*Chabutara"* called as *"Ram Chabutara"* on the south-east side in the outer courtyard and therefore, it should be declared as a mosque.

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2286. The evidentiary value of the statement under Order X, Rule 2 C.P.C. has been considered in a catena of decisions. This Court in **Miss Talat Fatima Hasan Vs. His Highness Nawab Syed Murtaza Ali Khan Sahib Bahadur and others AIR 1997 All. 122** in para 42 has said:

> *"A statement of a party, its counsel or agent under Order X, Rule 2 C.P.C. is for all practical purposes a part of pleading and is binding on the party, who makes it or on whose behalf it is made....."*

2287. To the same effect is the decision in **Balmiki Singh Vs. Mathura Prasad & Ors. AIR 1968 All. 259**.

2288. It is contended by the learned counsel for plaintiffs (Suit-4) that though the objection regarding limitation has been raised, but no fact has been pleaded to show as to how the case is barred by limitation. It is, therefore, contended that the declaration by the plaintiffs in the plaint that the cause of action

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is continuing one must be deemed to be admitted and the Court is not required to look into the matter further.

2289. This submission is evidently misconceived. Section 3 of the Limitation Act imposes an obligation upon the Court to dismiss a suit which has been filed beyond the period prescribed in the statute. The Court cannot admit a case in the absence of the plea of limitation raised by the defendants though the suit was filed beyond the period prescribed in the statute. We have already referred in this regard **Maqbul Ahmad Vs. Onkar Pratap Narain Singh, AIR 1935 PC 85**. The Apex Court has also taken the same view in **Jetmull Bhojraj Vs. The Darjeeling Himalayan Railway Co. Ltd. And others AIR 1962 SC 1879**; **Rama Shankar Singh & another Vs. Shyamlata Devi & another others AIR 1970 SC 716** and **Rajendra Singh & others Vs. Santa Singh AIR 1973 SC 2537**.

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2290. In **Manindra Land And Building Corporation Ltd. Vs. Bhutnath Banerjee and others AIR 1964 SC 1336**, it was held that the Court has no choice in the matter and the Court is bound to dismiss the suit which is barred by limitation. The burden of proof in the matter of limitation lies upon the plaintiff. It is only when the prima facie plaintiff shows that his case is within limitation, the onus may shift upon the defendants to prove otherwise.

2291. In **District Basic Education Officer and another Vs. Dhananjai Kumar Shukla and another (2008) 3 SCC 481**, it was held that even if no counter affidavit is filed, on the legal issues, the Court has to apply its mind and consider the matter. If a fact is not disputed or expressly admitted, the same in terms of Section 56 of the Evidence Act need not be proved but that does not mean that what constitutes ultimately an issue

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formulating a legal question would also not be considered by the Court and it shall proceed as if there was an admission on that aspect also. It held that the principle underlying order VIII Rule 5 C.P.C. does not mean that despite non filing of written statement, Court may not call upon the plaintiff to prove his case.

2292. In order to construe as to whether it would be a case governed by Article 142, we find that the pleadings are extremely vague. In fact the learned counsel for the plaintiffs (Suit-4) also finds it difficult to bring out the requisite pleadings so as to attract Article 142 in the present case. What has been said in para 23 of the plaint is that the cause of action for suit arose on 23.12.1949 when Hindus unlawfully and illegally entered the mosque, desecrated it by placing idols and thus caused obstruction and interference with the rights of Muslims in general of saying prayers and performing their religious ceremonies in the mosque. The above assertions are insufficient to constitute a case of "dispossession" or "discontinuance of possession" of the plaintiffs (Suit-4) of the property in dispute. Placement of idols or desecration of mosque is one thing but dispossession of Muslims from the disputed property is another thing. Dispossession or discontinuance contemplates a total deprivation on the part of the person concerned who was earlier in possession but obstruction or interference means that though possession continues but is not smooth, peaceful and continuous but being disturbed by others.

2293. The dictionary meaning of the word “obstruction” is:

(A) In “**The New Lexicon Webster's Dictionary of the English Language”** (1987), published by Lexicon Publications,

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Inc. at page 693:

> *"**ob-struc-tion-**an obstructing or being obstructed; something which obstructs; prevention of legislative enactment by filibuster"*

(B) In "**Oxford Advanced Learner's Dictionary of Current English"** first published 1948 by Oxford University Press, at page 1050:

> *"**ob-struc-tion--1.** the fact of trying to prevent sth/sb from making progress: the obstruction of justice. He was arrested for obstruction of a police officer in the execution of his duty. 2. the fact of blocking a road, an entrance, a passage, etc: obstruction of the factory gates. The abandoned car was causing an obstruction. 3. something that blocks a road, an entrance, etc. It is my job to make sure that all pathways are clear of obstruction. 4. something that blocks a passage or tube in your body; a medical condition resulting from this."*

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(C) In "**Mitra's Legal & Commercial Dictionary"** 5th Edition (1990) by A.N. Saha, published by Eastern Law House Prv. Ltd., at pages 517:

> *"**Obstruction.** The word 'obstruction' connotes some overt act in the nature of violence or show of violence. It cannot be said that a man obstructed another if that man runs away from other. Phudki v. State AIR 1955 All 104: 16 Cr LJ 278.*
>
> *Section 283 of the Indian Penal Code punishes a person who causes obstruction to another person in any public way. Anybody obstructing a public service in the discharge of his public duties is punishable under s. 186 of the Code.*

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Obstruction to a driver is banned by s. 83 of the Motor Vehicles Act 1939. the leaving of a vehicle in a dangerous position so as to obstruct other users of the road is prohibited by s. 81 of the Act."

(D) In "**The Chambers Dictionary (Deluxe Edition)**" (1993) published by Allied Chambers (India) Limited New Delhi, at pages 1167:

"obstruc'tion *the act, or an act of obstructing; a state of being obstructed; that which hinders progress or action; an obstacle; the offence of obstructing another player; opposition by delaying tactics"*

(E) In **P Ramanatha Aiyar's "The Law Lexicon" with Legal Maxims**, Latin Terms and Words & Phrases, Second Edition 1997), published by Wadhwa and Company Law Publishers, at page 1338:

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*"**Obstruction.** An obstacle, an impediment, a hindrance, that which impedes progress. Prevention, making hard, retarding the progress of any business. The word 'obstruction' in S. 186 of the Penal Code is not confined to physical obstruction only. Threats of violence made in such a way as to prevent the public servant from carrying out his duty might easily amount to obstruction of the public servant. (1937) AWR 1179=1937 ALJ 1344."*

2294. Similarly the meaning of term "interference" in various dictionaries is:

(A) In "**The New Lexicon Webster's Dictionary of the English Language"** (1987), published by Lexicon Publications, Inc. at page 504:

*"**in-ter-fer-ence-**the act of interfering; (games) obstruction, e.g. (football) the illegal blocking of the*

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receiving of the pass"

(B) In "**Oxford Advanced Learner's Dictionary of Current English"** first published 1948 by Oxford University Press, at page 813:

*"**inter-fer-ence-1.** the act of interfering, 2. interruption of a radio signal by another signal on a similar wavelenght, causing extra noise that is not wanted."*

(C) In "**The Chambers Dictionary (Deluxe Edition)**" (1993) published by Allied Chambers (India) Limited New Delhi, at pages 872:

*"**interfer'ence-**the act of interfering; the effect of combining similar rays of light, etc."*

(D) In "**Black's Law Dictionary"** Seventh Edition (1999), published by West, St. Paul, Minn., 1999, at page 818-819:

*"**interference,** 1. The act of meddling in another's affairs. 2. An obstruction or hindrance. 3. Patents. An administrative proceeding in the U.S. Patent and Trademark Office to determine which applicant is entitled to the patent when two or more applicants claim the same invention. This proceeding occurs when the same invention is claimed (1) in two pending applications, or (2) in one pending application and a patent issued within a year of the pending applications' filing date."*

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(E) In **P Ramanatha Aiyar's "The Law Lexicon" with Legal Maxims**, Latin Terms and Words & Phrases, Second Edition 1997), published by Wadhwa and Company Law Publishers, at page 970:

*"**Interference.** The action or fact of interfering or intermeddling."*

2295. We are not trying to read the pleadings in plaint of

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Suit-4 by construing the words and sentences like that of a statute. But in the absence of anything otherwise to suggest from the entire pleadings, we cannot help the plaintiffs by filling in the gaps and cover up the lacuna. What actually has happened is a matter of fact and better known to the plaintiffs. If the plaintiffs themselves have not been able to say in clear and categorical terms that they are dispossessed or their possession is discontinued, we are clearly of the view that at least this Court cannot provide such pleadings for the plaintiffs and read the requisite averments in pleadings i.e. the plaint.

2396. The time runs from the date of dispossession or discontinuance in the case of Article 142 and from the date the defendant's possession becomes adverse vide Article 144. This in fact provides the cause of action to the plaintiff to file a suit and that is how the limitation comes into picture and begins.

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2297. A bit lack of clarity on the part of the plaintiffs (Suit-4) in this regard we find is apparent even in the written argument submitted by them. Instead of putting the same in our words, we find it useful to reproduce the same. Sri M.A. Siddiqui, while dealing with Issue No. 3 (Suit-4), has made the following submissions in his written arguments:

> 3.1. Almost pleas of bar of limitation have been taken by each of defendants in their respective written statements. However, **except a bare assertion that the suit is barred by limitation, nothing has been said that on what account and when it became barred.** Undisputedly issue of limitation is not a pure question of law but a mixed question of law and fact. The facts are necessarily to be seen in the light of the pleadings and evidence of parties.
>
> 3.2. In the plaint necessary averment regarding limitation

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finds place in para 21 where issuance of notice to the State and its official and the service on 19.6.1961 - 23.6.1961 is mentioned and in para 23 the accrual of cause of action has been stated to be as 23.12.1949 when the idols were stealthily and surreptitiously kept in the building and Muslims stood prevented from offering their prayer freely and the relief (a) as sought in the plaint is for a declaration that the property indicated by the letters …. is mosque and public Muslim graveyard and the relief (b) is that in case in the opinion of the court delivery of possession is deemed to be proper remedy a decree for delivery of possession of the mosque and the graveyard in suit by the removal of the idols and other articles which the Hindus may have placed in the mosque as objects of their worship, be passed in plaintiffs' favour against the defendants. Vide an order of the court dated 25.5.1995 after the matter being remitted by the Hon'ble Supreme Court vide its judgment and order dated 24.10.1994 clause (bb) in the relief clause has also been added, wherein the relief has been claimed that the statutory receiver be commanded to handover the property in dispute described in schedule "A" of the plaint by removing the unauthorised structure erected thereon. The pleadings have been read over again and again and a perusal of the plaint reveals that plaintiffs felt some cloud to be casting on their title and as such with a view to remove such an anticipated cloud the relief for declaration as a main relief was sought.

3.3. That Para 20 of the plaint deserves to be seen wherein it is stated that the building in suit claimed by the

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Muslims as Muslim Waqf is in the possession of the receiver holding for the real owner and would be released in favour of the plaintiff in case the plaintiff's claim succeeds. But if for any reason in the opinion of the court a relief for possession is proper relief to be claimed, the plaintiffs in the alternative pray for recovery of possession. It has been contended on behalf of the other side property being attached and under custody of court receiver the possession of the receiver is of none but party succeeding in the case and as such relief of possession which has been half heartedly claimed is not at all required. The great reliance has been placed on a decision of Calcutta High Court which lays down that in the case where property is attached in a proceedings under Section 145 Cr.P.C. there is no requirement at all for seeking the relief of recovery of possession and the plaintiffs in the circumstances could only seek the relief of declaration. In this case as order of attachment has been passed on 29.12.1949 and the idols were kept on 23.12.1949 and removal of the idols is must and as such it is submitted that relief of possession is necessary and the plaintiffs basing their claim on title the suit is governed by Article 142 of the Limitation Act 1908 and the period of limitation being 12 years and the date of alleged interference in the possession being 23.12.1949 and the suit having been filed on 19.12.1961 the suit is very much in time.

3.4. As regards applicability of Article 120 providing the limitation of six years, it is submitted that Article 120 comes into play where no other article is applicable and

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once Article 142-144 is applicable this Article 120 could not apply and the suit is very much within the time.

3.5. The contention of other side is that the plaintiff stood ousted not on 23.12.1949 but on 16.12.1949 and as such the suit is barred by time even for the purpose of Article 142. This contention is based upon certain averments in the written statement of two earlier suits which read that last Juma prayer was offered on 16.12.1949 and there being no further averment of prayer from 16.12.1949 to 22.12.1949. In 1960 the averment in the plaint of offering prayer up to 22.12.1949 is incorrect and deserves to be rejected.

3.6. An affidavit of one Anisurrahman, copy of which was filed in the Ho'ble High Court at Allahabad in support of transfer application is relied which also avers that last Friday Prayer was offered on 16.12.1949 and the above contention is buttressed on such averment. It is stated that 16.12.1949 was Friday and on 23.12.1949 it was again Friday and Friday prayer comprising a larger gathering as evident as it has come in evidence that even from Faizabad and the adjoining area of Ayodhya city viz Shahjahanpur etc. people came to offer Friday prayer and as regards 5 time daily prayer that being confined to local people, this has been a reason for such assertion. However, assuming for a moment that even if on account of fear no prayer was offered after 16.12.1949 that is absolutely immaterial as regards the suit for possession and even if a mosque is not used for 50 years, it remains a mosque and limitation in case the suit is for possession of such a mosque has to be reckoned from the day from

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which the plaintiff discontinued to be in possession. There is lot of difference in non-user and discontinuation and as such such an averment has got no bearing. Moreover, as provided in sub-section (2) of Section 15 of the Limitation Act in a suit where the notice is required under law to be served, the period of notice has to be excluded and as such two months being the period of notice has to be excluded and the suit is in all corners within the period of limitation as a notice was must as provided in Section 80 of the CPC for defendants No. 5 to 8 and as per requirement of the law such a notice was issued and served as such this period of two months further has to be counted and the suit is absolutely within time as regards Article 142/144 of the Limitation Act 1908.

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3.7. In the peculiar situation the country passed due to partition special law was enacted extending the period of limitation for suits for recovery of possession relating to waqf property and this matter is expressly covered under the provisions of the said Act and as such as regards suit for recovery of possession seen with either angle it is absolutely within time even assuming non offering of prayer from 16.12.1949.

3.8. The other submission that relief of recovery of possession being not required the suit is only and only for a declaration and limitation for declaration Article 120 of the Limitation Act being only 6 years, this suit for declaration is barred by time. Now in this case it has to be seen what is the effect of such barring. It is still insisted that despite the Hon'ble Calcutta High Court’s pronouncement or other such verdicts the relief of

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possession in this regard is necessary. However, as regards effect of not filing a suit within a period of limitation, Section 28 of 1908 Act and Section 27 of 1963 Act does provide "At the determination of the period hereby limited to any person for instituting a suit for possession of any property his right to such property shall be extinguished."

3.9. Now as regards the extinguishment of the right by non-filing a suit for recovery of possession, only the right is extinguished. From the side of the defendant itself it has been strenuously contended that in the given circumstances the property being custodia-legis relief of possession was not at all required and as such even if the suit has not been filed or even the plaint is rejected as being barred by time for the purposes of declaration the right and title of the plaintiffs continues and as such there is no consequence of the same. In the plaint as regards relief for declaration, in para 23 it has been specifically stated the injuries so caused or continuing injuries and the cause of action arising there from is renewed de die in diem. As a matter of fact such averments have not been disputed and such plea is based on Section 23 of 1908 Act and Section 22 of 1963 Act. Now in this case it has to be seen that if by not filing the suit for declaration in time or even by rejection of plaint for such plea if the same enures to the benefit of anybody then it can be said that it has got some value. In case not filing the suit in time produces any result it may have some effect but if not filing the suit for declaration is of no consequence at all the same produces no result. Section 23 of the Limitation Act strictly applies and as regards the fear in the mind of the plaintiffs as

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regards cloud being cast upon their title the cause of action for the same is renewed day by day.

3.10. The pronouncement of Hon'ble Calcutta High Court as relied by the other side itself provides that the property in custodia-legis and being so held for the benefit of the true owner, cause of action for such a suit is renewed day by day. In this case on 29.12.1949 an order of attachment is passed, on 5.1.1950 the said order is effected. In January and April 1950 two suits viz suit No. 2 of 1950 and subsequently suit no. 25 of 1950 = OOS No. 1/89 and 2/89 are filed. On 16.1.1950 an order of temporary injunction is passed, 'issue notice and the defendants are refrained from removing the idols and creating any obstruction in Puja being carried on by the plaintiffs. On 19.1.1950 on behalf of the State District Government Counsel moved an application that such an order amounts to allowing one party and prohibiting the other party and is bad, and the learned Civil Judge appreciated and modified its order maintaining the order as regards refraining from removal of the idols but restricting the Puja as being carried on. No order prohibiting the Muslims to offer prayer and go in the mosque has been passed till this date but the entry being restricted being subject to permission of City Magistrate, or Receiver. Now as regards the "Puja as being carried on" directed by the City Magistrate an scheme was prepared, it was approved by the City Magistrate and as per this scheme only the Pujari appointed by receiver could go inside and nobody else can go. The expenses of Puja are to be borne by both the parties and said Puja as per courts order

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continued up to 1.2.1986. It is abundantly clear that this order restricted right of entry of Hindus and Muslims both and this cannot be said at all to confer any benefit to anybody and such order being passed by the Civil Court and being affirmed by this Hon'ble Court with the observation that the suit be decided within a period of 6 months, the City Magistrate passed the order on 30.7.1953 that in such a situation there appears no necessity to continue 145 Cr.P.C. proceeding and it may be kept in abeyance till the decision of the suit and file to be consigned to record. This situation continued up to 6.12.1992 and as such the act of ordering attachment and attachment on the spot producing no result affecting the title of the plaintiffs, non-filing of the suit within 6 years is absolutely of no consequence and Section 23 of the Limitation Act is absolutely for such a situation. Even if a plaint is rejected for the reason of being barred by Limitation a fresh suit is not barred and if a fresh suit is not barred then there can be no objection to the continuation of the suit already pending.

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3.11. Order VII Rule 11 CPC provides:

"A plaint shall be rejected in the following cases:

(a) where it does not disclose the cause of action;

(b)

(c)

(d) where the suit appears from the statement in the plaint to be barred by time any law."

Now Limitation Act being a law, the plea of bar is based on Section 3 of the Limitation Act and it is this clause (d) of Order VII Rule 11 which is invoked for

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dismissing the suit. Rule 12 provides for procedure which reads: "Where a plaint is rejected the Judge shall record an order to that effect with the reasons for such order." Rule 13 is little material which reads: "The rejection of the plaint on any of the grounds here-in-before mentioned shall not on its own force preclude the plaintiff from presenting a fresh plaint in respect of the same cause of action."

3.12. Assuming the worst that the plaint is rejected as being barred by time – limitation, then for the fresh cause of action fresh suit being permissible, in no circumstance the continuation of this dispute could be disputed.

3.13. As regards the embargo in Rule 13 ‘of its own force’ there is nothing to indicate that anything otherwise has been done which may be said to preclude the plaintiffs from filing the suit. As a matter of fact till 7.2.1993 there was no encroachment on the right of the plaintiffs. The Ordinance providing for acquisition and the subsequent Act No. 33 of 1993 take away the right of the plaintiffs even their title is snatched away. Such action was immediately challenged by moving applications on behalf of the plaintiffs in this suit, thereafter the Hon'ble Supreme Court requisitioned all the files and on 24.10.1994 order was passed, and thereafter, the pleadings have been amended and the relief (bb) has been added which is of substantive relief and cause of action for the said relief have accrued on 7.2.1993 even in May 1995 when the relief was allowed to be added by this Hon'ble Court it was absolutely within time, whereas the law of pleading is that the amendment relates back to the

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Original pleading even ignoring for a moment even if it is taken to be from the day on which the amendment is allowed, the same being 25.5.1995 which is absolutely within time.

3.14. Filing a suit involves the volition of the plaintiff. It is why the plaintiff is said to be master of the suit and the principle of dominus litus applies. As regards seeking a relief for declaration now if one hears that a particular person disputes his residence, caste, he may just file a suit for declaration, although nothing is going to affect him materially and for such a situation as regards the effect of a suit being barred by time, the principle of compulsory accrual of cause of action is to be seen as laid down by the Hon'ble Supreme Court in its judgment as reported in AIR 1960 SC page 335 and in case a person sleeps to file the suit for such compulsory accrual cause of action only then he has to face the consequences.

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3.15. The pronouncements are that if an incorrect entry is made in the khewat the right of the proprietor is not to be as such affected by such incorrect entry in the khewat and he may altogether ignore the same for decades. In the like manner there are large number of pronouncement that a person is not at all required to rush to court for each invasion of his right unless the invasion is so effective bringing his right to an end and in the case of sporadic invasion each invasion gives a fresh right to sue.

3.16. As regards continuation of proceedings in the revenue court, civil court or 145 Cr.P.C., if such proceedings are not in the denial of anybody's right altogether but are to determine as to who is entitled by

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initiation of such proceedings and by continuation of such proceedings, as a matter of right no compulsory cause of action accrues. Hon'ble Supreme Court as reported in AIR 1975 SC page 813 as extracted in AIR 1983 Gujarat page 47, has observed that both parties litigate with an expectation to get the case decided in its favour and as such unless the proceedings are finally decided no cause of action arises against the same. This principle has been followed by Gujarat High Court as reported in AIR 1983 Gujarat page 47. In such situation even the right to file suit has been held to have occurred after the decision of the second appeal, the second appeal also being continuation of the suit.

3.17. In the instant matter the 1993 Ordinance and the Act has given a fresh cause of action and a fresh suit could be filed. However, the relief having been sought by amending the plaint, now the question of bar of limitation stands excluded keeping in view the principle that amendment of pleadings relates back to the original date of filing the suit. **AIR 1969 SC page 1267** at page 1270 and **AIR 1921 PC page 50**. The courts have taken a view that by bar of limitation even the cause of action is not destroyed and the title of a person subsisting despite the earlier suit being barred by time or the earlier suit having also been dismissed as barred by time, the second suit is very much permissible as nothing having decided as regards the right and tile and if the title subsists there would be no resjudicata. In many situations a suit for accounting, declaration of rights in mortgage matters at one stage may be held to be barred by time as for such fractional cause

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and as such rejecting the plaint following the mandate of Section 3 Limitation Act and Order 7 Rule 11, but right of the plaintiff being intact at a subsequent stage, he is very much entitled even to bring the fresh suit. It has been held that keeping in view the provisions of Section 3 Limitation Act and order 7 Rules 11 clause (d) a court is bound to reject the plaint. See **AIR 1932 Calcutta page 146** and **AIR 1928 Oudh page 495**. The Hon'ble Supreme Court as reported in **1997 Volume 10 Supreme Court Cases at page 1992** in Delhi Waqf Board Versus Jagdish Kumar Narang and others has upheld the filing of second suit in such a situation.

3.18. **The two suits of 1950 only for individual rights and the third suit of 1959 only for the right of management and the controversy going on and the plaintiff of 1950 suit despite being required to convert their suit in a representative suit, the Muslims impliedly being prohibited to offer the prayers inside the mosque, entry inside the mosque being subject to permission of City Magistrate or Receiver it was thought proper to file a declaratory suit to bring to an end the controversy once for all.** Suit No. 12 of 1961 was filed and the title of Muslim Parties being intact there can be no bar of Limitation by such a suit and even if such a pre-mature suit is dismissed without adjudication on merits the title subsisting it has got no effect.

3.19. As regards the principle of continuing cause of action in large number of cases it has been held that if the right has not been extinguished then on each day a fresh cause of action arises. See **AIR 1927 Madras page 568**,

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Head Note 'C' column I page 570 and the above proposition is based on large number of decisions as referred in the judgment itself. In **AIR 1927 All page 296** a Division Bench has taken a view that revenue court proceedings furnish a new cause of action and by deleting the name from revenue record the title is not extinguished and unless the title is extinguished every fresh invasion gives a fresh right. In the like manner the Division Bench as reported in **AIR 1934 All 539**, has gone to hold that a fresh cause of action may arise to a plaintiff and he may bring the suit even though the prior cause of action has arisen to him beyond the period of 6 years and this proposition is based upon the decision of the Privy Council. **AIR 1931 PC 302, AIR 1914 All 184, AIR 1919 All page 383**, Column I page 541. A Division Bench of Patna High Court as reported in **AIR 1935 Patna page 33** has laid down that as long as plaintiff's title is not lost by adverse possession of defendant each invasion gives fresh cause of action. **AIR 1935 All 174** is also to the same effect.

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3.20. That the Orissa High Court as reported in **AIR 1968 Orissa page 36** has considered the scope at length viz a viz the proceedings under Section 145 Cr.P.C. and has even gone to the extent that even after final decision of the 145 Cr.P.C. proceeding and thereafter not filing the suit even then the right is not extinguished. **AIR 1961 Bombay Division Bench page 266**, head note B para 32 also says so . A Lahore High Court, **AIR 1940 page 154** lays down that if plaintiff is in possession then a suit for declaration of plaintiffs occupancy right is maintainable and denial of his title furnishes a fresh cause of action.

3.21.In the above circumstances in no circumstance it

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could be said that the instant suit is barred by time. Now after 1994 judgment particularly the acquisition of the land itself by a Central Act everything has to be seen in that light.

2298. Sri Jilani has adopted the arguments of Sri Siddiqui stating that the question of limitation would be covered by Sri Siddiqui. The different aspects which Sri Siddiqui has raised in his written arguments much of which is not very clear, yet we shall try to deal with the same as best as possible for the reason that much of the submissions in the written arguments having been taken for the first time therein, we had no occasion to seek any clarification from him but still we will try to find out the real spirit and sense in which they have been advanced and shall deal with the same.

2299. Now, we proceed to consider applicability of Article 142 in the light of the pleadings and relief sought by the plaintiffs and evidence placed on record. The suit has been filed for the property identified as "ABCD" in the sketch map appended to the plaint of the suit, which we reproduce as under:

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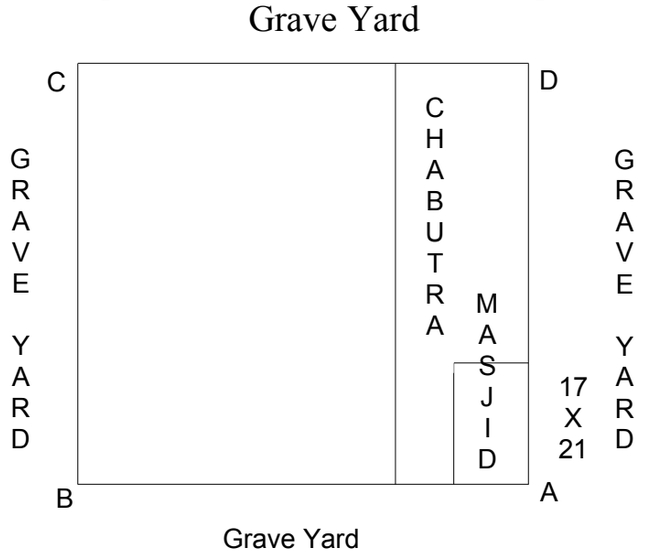

2300. The outer line in this map does not include the complete four walled structure, as it was, but some part on the extreme southern side is left out which on south west is marked, 'Chabutara' and on south east, just behind 'Ram Chabutara'.

2301. The correctness of this map has seriously been

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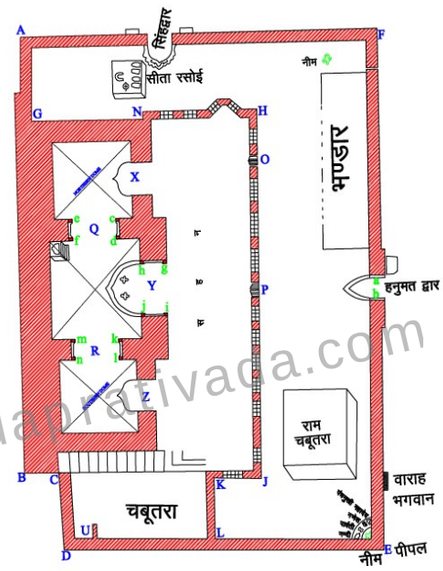
doubted by all the defendants (Suit-4) and in fact, the defendants no. 3 and 4 along with their written statement dated 22/24.8.1962 have filed another sketch map (Annexure-8) a copy whereof is appended herewith. For the convenience purpose, the relevant part of the said sketch map which is now the area of dispute with which we are concerned in view of the Apex Court decision in **Dr. M. Ismail Faruqi (supra)** as a result of the Acquisition Act of 1993 is reproduced as under:



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2302. A copy of the complete map is appended as **Appendix No. 2 (2A,B,C)** to this judgment. It may also be mentioned that part of the property shown in this map on the southern side as "CDKL" and the entire part just opposite on the south eastern side parallel to "CDKL" has not been shown in the map appended to the plaint (Suit-4) and therefore, this part has been left for claiming any relief and cannot be treated to be a part of property in dispute for the purpose of Suit-4.

2303. The sketch map filed by defendants no.3 and 4 extract whereof is quoted above, is from the map prepared by Sri Shiv Shanker Lal, Advocate Commissioner on 25th May 1950, pursuant to an order passed by Civil Judge, Faizabad in Suit-1, appointing him as Commissioner for preparing the site

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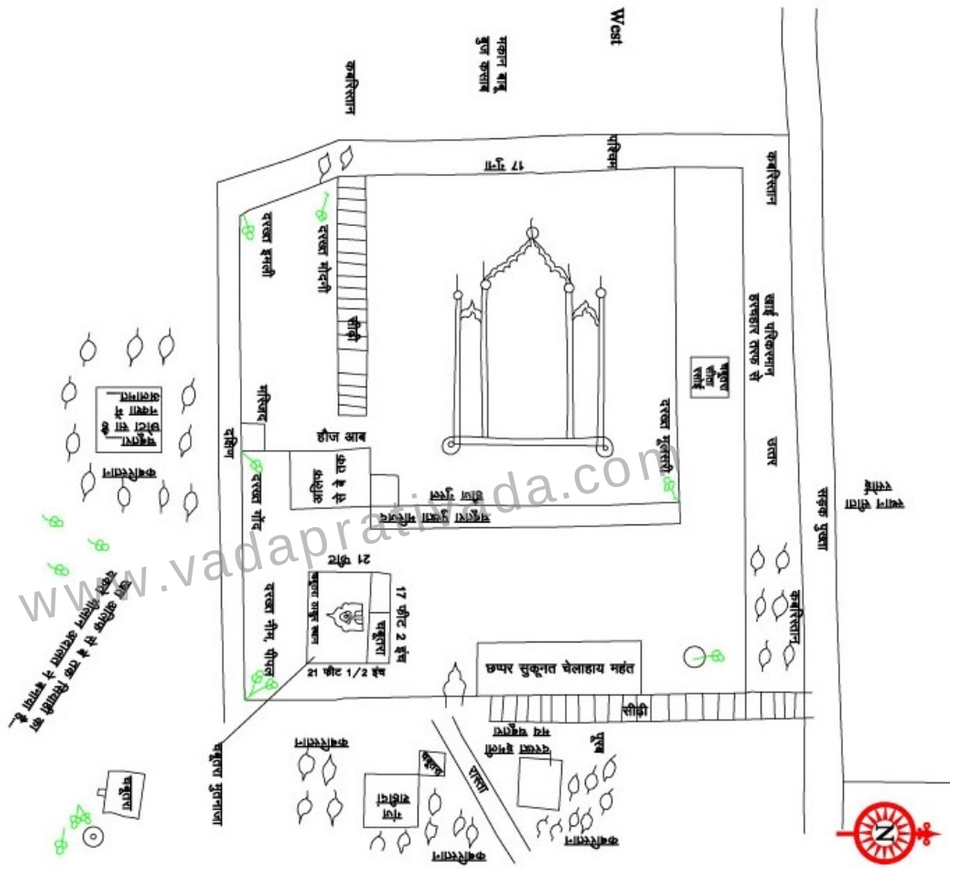
plan and submit his report after spot inspection thereof. Besides above, there is another map which is part of record prepared in Suit 1885, filed by Sri Gopal Sahai, Amin, Commission appointed by the Sub-Judge, Faizabad, copy whereof is appended herewith, and according to the said map the disputed property was as under:



A copy of the complete map is appended as **Appendix No. 3 and 3A** to this judgment.

2304. There is one more record which may be taken note of at this stage. The plaintiffs (Suit 4) in order to prove two documents i.e. letter issued by the District Magistrate, Faizabad in December, 1949 moved an application no. 20(O) of 2002 for summoning the original record from the State Government. Pursuant thereto the District Magistrate, Faizabad produced a file containing official correspondence and other documents which was placed under a sealed cover by this Court's order dated 29.05.2009.

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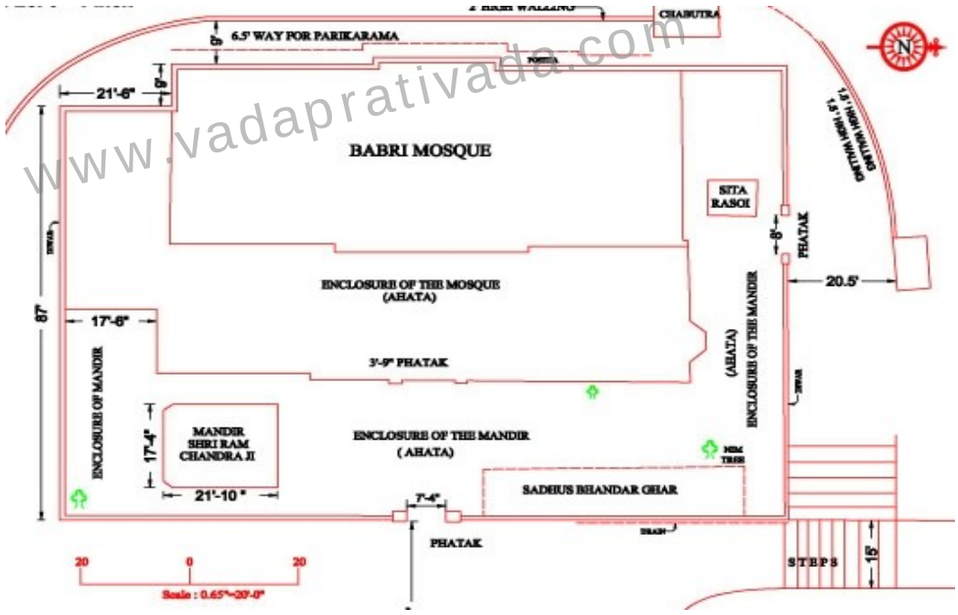
2305. The aforesaid file contains a letter dated 16th December, 1949 of the District Magistrate, Faizabad accompanied by a blue print of the map of the disputed site duly scaled. The position of various structures shown therein is not in any manner different than what is contained in the two maps, one prepared by Gopal Sahai Amin in Suit 1885 and another by Sri Shiv Shankar, Court's Commissioner in Suit-1 on 25.05.1950.

2306. Since it is a scaled map, having been prepared by Government authorities duly signed by the City Magistrate Faizabad, we find no reason not to place reliance thereon particularly in view of the power possessed by this Court under Section 165 read with 35 of the Evidence Act, 1872. The position shown in this map is as under:



A complete map is being appended as **Appendix No. 4** to this judgment. Map of Ayodhya showing distances from disputed site is also filed as Appendix No. 4A and 4B.

2307. We have referred to and relied on the above map prepared by the District Authorities as long back as on 16th December, 1949 which has become available to us pursuant to

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the order issued to the authorities for production of certain record. Along with the said record, the above map is made available to the Court. Whether such a document can be utilized or not, which is not an evidence produced by any of the parties, we find the power vested in the Court by virtue of Section 165 of Evidence Act.

2308. The chief function of a judge is to see that justice is done between parties. For inaction or flaw of the parties, the Court should not be guilty of defeating the ends of justice due to lack of information. The position of a judge is not that of a moderator between contestants in a game with no inclination to interfere till the violation of rules. He has a much superior duty to perform which is commonly believed by the people in India the 'divine function'. The proceedings are not only to be conducted strictly in accordance with law but it is the duty of a judge to administer justice and to find out the truth. We are not supposing even for a moment that the judge is being given a *carte blanche* by which the rules of evidence may be relaxed or set at naught. The aid of the section is invoked only with the object of discovering relevant facts or obtaining proper proof of such facts. A judge must always keep in mind that every trial is a voyage of discovery in which truth is the quest.

2309. In **Govind Raghunath Sawant Vs. B.A. Kakade & Anr. 1975 ILR Bombay 829** at page 835 observed that Section 165 confer powers on every court to compel any party to produce any document to meet the ends of justice subject to the restrictions mention in that section.

2310. Similarly in **Shankar Lal & Anr. Vs. Mahbub Shah & Anr. AIR 1923 Oudh 59,** the Court said :

"...it may also be pointed out that under section 165 of the

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Evidence Act, the Judge may himself, in order to discover or obtain proof of relevant facts, order the production of any document where Order 13, rule 1 and 2, or section 151 of the Civil Procedure Code do not serve his purpose."

2311. The record in fact has been summoned pursuant to the application no.20(O) of 2002 filed on behalf of the plaintiffs (Suit-4) praying for production of certain documents constituting correspondence between the State Government and District Magistrate, Faizabad pertaining to entry of 1949. The Government filed copies of two letters dated 26th December, 1949 and other documents could not be produced. Thereafter pursuant to our order dated 15th May, 2009 and 26th May, 2009 the District Magistrate, Faizabad produced the above file and we kept it in the custody of the Court in sealed cover after having prepared copies of the documents contained in the file and providing the same to the State Government. The correspondence between the State and the District Magistrate, Faizabad in December, 1949 has also been referred in the judgment of this Court in Mohd. Hashim Vs. State of U.P. & Ors. UPLBEC Vol.1 576 at page 593 and 656 to find out the spot situation in December 1949. The map sent by the District Magistrate, Faizabad to the State Government along with his letter dated 16th December, 1949, which is official document, comes within the definition of "public document" can be looked into particularly when it corroborates the already available maps prepared by the Court's Commissions in the two suits i.e. Suit 1885 and Suit-1.

2312. It is not in dispute that the entire disputed area ABCD consists of two parts, (1) inner court, which included the disputed building and, (2) outer courtyard. This division of the

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disputed premises in the inner courtyard and outer courtyard came to exist in 1856-1857 when it is said that an iron-grilled wall was erected separating the disputed building along from the other constructed parts including the Chabutara called Ram Chabutara. The exact date or period is not on record nor the parties could throw any light thereon except that its existence has been noticed in P. Karnegi's **Historical Sketch (supra)** published in 1870 and that shows that it was constructed sometime after 1855 and also admitted by Mohd. Asghar, defendant no.2 in Suit 1885 in his written statement.

2313. Whether the building in dispute was constructed in 1528 AD or not are the issues we have dealt with separately. We have found that there is no reliable evidence to prove that the building in dispute was constructed in 1528 A.D. by Babar or at his command or instance by Mir Baqi or anyone else. The entire belief in this regard is based on certain Gazetteers and documents available from the commencement of 19th century and they, in turn, are founded on the inscriptions, the text and the time of fixation whereof has not been found reliable.

2314. Be that as it may, even if for the purpose of the issues in question we assume that the building in dispute was so constructed in 1528 A.D., there is no evidence whatsoever that after its construction, it was ever used as a mosque by Muslims at least till 1856-57. Sri Jilani fairly admitted during the course of arguments that historical or other evidence is not available to show the position of possession or offering of Namaz in the disputed building at least till 1855. He has also disputed seriously the alleged riots of 1855. For the time being we do not intend to concentrate on this aspect whether this denial of Sri Jilani and Siddiqui and other Muslim counsels about 1855 riot is

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correct or not and proceed to consider further material and other aspects.

2315. The first document which Sri Jilani could place before us to show that the building in dispute was in possession of Muslims in its entirety is **Exhibit 19 (Suit 1) (Register 5 Page 61-63)**. It is a report of Sheetal Dubey, Thanedar dated 28th November, 1858 complaining about the worship offered by a Nihang Singh Fakir Khalsa in the middle of the Masjid Janam Asthan and also erecting a religious symbol (flag) thereat. He says that 25 Sikhs were also present for erection of the religious flag at the Masjid Janam Asthan. The complaint reads as under:

نقل درخواست شیتل دوبے تھانےدار اودھ مورخہ ۲۸ نومبر ۱۸۵۸ء
مقدمہ نمبر ۸۸۴ عرضی تھانےدار اودھ دوبارہ کھڑا کرنے نشان در مسجد جنم استھان سنتھ ٹیک سنگھ فقیر خالصہ محلہ رام کوٹ (کوٹ رام چندر) پرگنہ حویلی اودھ تھسیل و ضلع فیض آباد مورخہ ۱۵ دسمبر ۱۸۵۸ء

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غریب پرور سلامت

خداوندآج کے روز مسمی نہگ سنگھ فقیر خالصہ ساکن ملک پنجاب بیچ مسجد جنم استھان کہ ہون اور پوجا گورگوبند سنگھ مقرر کیا اور نشان شری بھگوان کہ کھڑا کیا اور پچیس نفرسیکھ بہی واسطے حفاظت وقت کھڑا کرنے نشان کہ وہاں پر- واجب تھا عرض کیا~افتاب دولت اقبال کا روشن ہو فقط

عرضی

فدوی سیتل دوبے تھانے دار اودھ مورخہ ۲۸ نومبر ۱۸۵۸ء

''नकल दरख़्वास्त शीतल दुबे थानेदार अवध मोरखा 28 नवम्बर सन् 1858 ई0 मुकद्दमा नं0 884 अर्ज़ी थानेदार अवध दोबारा खड़ा करने निशान दर मस्जिद जन्म अस्थान सन्त टेक सिंह फ़क़ीर ख़ालसा मुहल्ला राम कोट (कोट राम चन्द्र) परगना हवेली अवध तहसील व जिला फ़ैज़ाबाद मोरखा 15 दिसम्बर सन् 1858 ई0

गरीब परवर सलामत,

खुदावन्द आज के रोज़ मुसम्मी निहंग सिंह फ़क़ीर खालसा साकिन

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मुल्क पंजाब बीच मसजिद जन्म अस्थान के हवन और पूजा गुरू गोाबिन्द सिंह मुकर्रर किया और निशान श्री भगवान के खड़ा किया और पच्चीस नफ़र सिख भी वास्ते हिफ़ाज़त वक़्त खड़ा करने निशान के वहां पर हैं। वाजिब था अर्ज़ किया। आफ़ताब दौलत इक़बाल का रौशन हो खुश।

फ़क़त

अर्जी

फ़िदवी शीतल दुबे थानेदार अवध मोरखा 28 नवम्बर सन् 1858 ई॰

(Hindi Transliteration)

"Copy of the application of Sheetal Dubey Thanedar Oudh, dated November 28, 1858, along with the application of Thanedar Oudh for re-erecting symbol within the Masjid Janam Asthan Sant Tek Singh Faqir Khalsa resident of Mohalla Ram Kot (Kot Ramchandra Pargana Haweli, Oudh, Tahsil and District Faizabad. Dated December 15, 1858.

Gareeb Parwar salamat Khuda wand,

Today Mr. Nihang Singh Faqir Khalsa resident of Punjab, organised ***Hawan and Puja of Guru Govind Singh and erected a symbol of Sri Bhagwan, within the premises of the Masjid****. At the time of pitching the symbol, 25 Sikhs were posted there for security. Deemed necessary so requested. May your regime progress. Pleasure.*

Applicant.
Your obedient servant
Sheetal Dubey, Thanedar Oudh
Dated November 28, 1858.

2316. This document only shows worship by a non-Muslim inside the building in dispute. We find no help from the above document in support of the plaintiffs' case that the Muslims were offering Namaz in the building. The report does not say that erection of symbol and Havan and Puja by the said non-Muslim person was complained of by Muslims as

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obstructing in offering Namaz.

2317. **Exhibit 20 (Suit-1) (Register 5 Page 65-68B)** is a complaint dated 30th November, 1858 submitted by Syed Mohd. Khateeb Muazzim Masjid Babari at Oudh, i.e., Ayodhya. This document has been heavily relied by both the parties. It says:

نقل درخواست محمد خطیب موزن مسجد بابری واقع اودھ
مورخہ ۳۰ نومبر ۱۸۵۸ء مقدمہ نمبر ۸۸۴ متعلقا عرضی تھانےدار
اودھ دوبارہ کھڑا کرنے نشان در مسجد جنم استھان مھنت ٹیک سنگ
فقیر خالصہ کے محلہ رام کوٹ کوٹ رام چندر پرگنہ حویلی اودھ
تہصیل وضلع فیض آباد مفصلے ۱۵ دسمبر ۱۸۵۸ء

غریب پرور عادلے جماں سلامت جناب عالی سانحہ جدید سرزد
ہوا ہے کہ مسمی نیھنگ سنگھ سکنی پنجاب سکھان ملازم سرکاردولت
مالداراعوامی بیراگیان جنم استہان پر بانی فساد ہیں- بیچ مسجد بابری
واقع اودھ قریب محراب و ممبر کہ ایک چبوترہ مٹی کا بہ بلندی چ ہار
انگشت بناءی کنکرو نسےمامورکرکے کی جاےعقیدت-----بوجہ روشنی
اتش کے قرار دیا ہر وہ چبوترہ مسجد اندر کٹہرے کے اوپر چبوترہ مسجد
کے چبوترہ جدید ہےکہ موقوف ہوا ہے یہ بلندی تخمینہناً سواگز کی تیار
کرکے نشان تصویر بت پر استفادہ کیا ہے و برابر اسی کے ایک گڑھا
کھودکر منڈیر پختا کرکے اسکو تیار کرکے اتش روشن کی ہے پوجا و ہوم
میں مصروف ہیں-و جابجا مسجد میں کوئلہ سے رام رام لکھا ہے عادل
زمانہ یہ مقام انصاف کا ہے کی صریحاً ظلم و زیادتی اہل ہنود ا ہل اسلام
پر کرتے ہیں و حضور مالک فریقین کے ہیں- و مضمون امیتاز بادشاہ
سے صاف مترشح ہی کہ وہیں پرکوی فریق بغرض کرنے بنادےگا و
اگراصباباً ---------بہادری کرےگا تو سرکار سے سزایاب ہوگا جناب عالی
مقام غور کا ہے مسجد مقام عبادت مسلمانان ہے نہ کہ بخیلاف اسکے
بوجہے ہنود کی و سابق میں قبل میں عملداری سرکار بمقام جنم استھان
کا صدہا برس کے نشان پڑا رہتا تھا و اہل ہنود پوجا کرتے تھے چبوترہ
کوشازش شیو غلام تھانےدار اودھ کے بیراگیوں نے شباشب میں تا
صدور حکم سرکار کے واسطے ممانعت کے نافذ ہوا تھا بہ بلندی ایک
بالشت تیار کرا لیا- اس وقت صاحبِ ڈپٹی کمیشنر بہادور نے بموجب

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حکم جناب صاحب کمیشنر بہادور کے تھانےدار کو موقوف کیا و بیراگی پر جرمانہ متعین ہوا اب فلحال اس چبوترے کی بہی تخمیناً سوا گزتیار کرا لیا ہے اس صورتِ صریح زیادتی ثابت ہے لیہذاامیدوار ہوں کی بنام مرتضی خان کوتوال شہر صودور حکم ہوے کہ کوتوال بہ چشم خود معانہ کرکے امورات جدید کھدواڈالیں و مردمان ہنود کو بابرمسجد سے کریں و نشان بت اٹھواں دیں ہنود کو باہر مسجد کریں و نشان بت الہ ٹوا دیں و نام ہاہ لکھے کو دھلواڈالیں وآیندہ کو حکم ہوے (پہٹاہوا ہے) کریں۔

واجب جانکی عرض کیا۔

سید محمد خطیب

مؤزن مسجد بابری واقع اودہ

۔ ۳۰نومبر ۱۸۵۸

''नक़ल दरख़वास्त मोहम्मद ख़तीब मोअज़्ज़िन मस्जिद बाबरी वाक़ै अवध मोर्रख़ा 30 नवम्बर 1858 ई0 मुकदमा नं0 884 मुतालिक़ा अरज़ी थानेदार अवध दोबारा खड़ा करने निशान दर मस्जिद जन्म स्थान महन्त निहंग सिंह फ़क़ीर ख़ालसा के मोहल्ला राम कोट (कोट राम चन्द्र) परगना हवेली अवध तहसील व ज़िला फ़ैज़ाबाद मुन्फसले 15 दिसम्बर 1858 ई0

ग़रीब परवर आदिले ज़हां सलामत जनाब आली सानेहा जदीद सरज़द हुआ है कि मुसम्मी निहंग सिहं सकनी पंजाब सिक्खान मुलाज़िम सरकार (दौलतमदार बअवामी बैरागियन जनम स्थान पर बानी–ए–फ़साद हैं। बीच मस्जिद बाबरी वाक़ै अवध करीब मेहराब व मेम्बर के एक चबूतरा मिट्टी का ब बुलन्दी चहार अन्गुश्त बना कर कंकरों से मामूर करके की जाय अक़ीदत बवजेह रौशनी आतिश के क़रार दिया है ***व चबूतरा मस्जिद अन्दर कटेहरा के ऊपर चबूतरा मस्जिद के चबूतरा जदीद है के मौकूफ़ हुआ है यह बुलन्दी तख़मीनन सवा गज़ की तय्यार करके निशान तसवीर बुत पर इस्तफादा किया है व बराबर उसी के एक गढ़ा खोदकर मुंडेर पुख़्ता कर व उसको तय्यार करके आतिश रौशन की है व पूजा व होम में मसरुफ़ हैं व जा बजा मस्जिद में कोयला से राम राम लिखा है*** *आदिले ज़माना यह मुक़ाम इन्साफ़ का है कि सरीह जुल्म व ज़ियादती अहले हुनूद अहले इसलाम पर करते हैं व हुजूर मालिक फ़रीक़ैन के हैं। व*

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मज़मून इस्तियाज़ वादशाही से साफ मुतर्रश्शह है कि वहीं पर कोई फ़रीक बग़रज़ करने बना देगा (अपठनीय) अगर असबाबन बहादुरी करेगा तो सरकार से सज़ायाब होगा जनाब आली मुक़ाम ग़ौर का है मस्जिद मुक़ाम इबादत मुसलमानान है न कि बख़ेलाफ़ उस के बवजेह हुनूद की व साबिक़ में क़ब्ल में अमलदारी सरकार ***मुक़ाम जनम स्थान का सदहा बरस के निशान पड़ा रहता था व अहले हुनूद पूजा करते थे।*** *चबूतरा बसाजिश शिव गुलाम थानेदार अवध के बैरागियों ने शबाशब में ता सुदूरे हुक्म सरकार के वास्ते मुमानियत के नाफिज़ हुआ था बबुलन्दी एक वालिश्त तैयार करा लिया। उस वक़्त साहेब डिप्टी कमिश्नर बहादुर ने बमोजिब हुक्म जनाब साहब कमिशनर बहादुर के थानेदार को मौकूफ़ किया व बैरागी पर जुर्माना मुतअय्यन हुआ अब फ़िलहाल इस चबूतरे की भी तरवमीनन सवा गज़ तैयार करा लिया है इस सूरत सरीह जियादती साबित है लेहाज़ा उम्मीदवार हूँ कि बनाम मुरतजा खां कोतवाल शहर सुदूर हुक्म होवे कि कोतवाल बचश्म खुद मोआईना करके उमुरात जदीद खुदवा डालें व मरदुमान हुनूद को बाहर मस्जिद करें व निशान बुत उलटवा दें व नाम हाय लिखें को धुलवा डालें व आयन्दा को हुक्म होवे (फटा हुआ है) करें। वाज़िब जानकर अर्ज़ किया।*

सैय्यद मोहम्मद ख़तीब
मोअज़्ज़िन मस्जिद बाबरी वाक़ै अवध
30 नवम्बर 1858 ई''

"Copy of the application of Mohammd Khatib Moazzin of the Masjid , dated Novermber 30, 1858 case no. 884 regarding application of Thanedar Oudh, for reconstructing the symbol within the Masjid Janam Sthan Mahant Nihang Singh Faqir Khalsa Mohalla Ram Kot, Kot Ram Chander Pargana Haweli, Oudh, Tahsil and District Faizabad decided on December 15, 1858.

Gharib Parwar Aadil-e-Zaman Salamat

Sir, In a recent incident one Nihang Sikh resident of Punjab Sikkhan, a government employee (Sic) is creating riot on Janam Sthan Masjid situated in Oudh. ***Near***

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Mehrab and Mimber, he has constructed, inside the case, an earth Chabutra *measuring about four fingers by filling it with Kankars (concrete). Lighting arrangement has been made. . . . and after raising the height of Chabutra about 1¼ yards* ***a picture of idol*** *has been placed and after digging a pit near it, the* ***Munder wall has been made Pucca. Fire has been lit there for light and Puja and Home is continuing there.*** *In whole of this Masjid 'Ram Ram' has been written with coal. Kindly, do justice. It is an open tyranny and high handedness of the Hindus on Muslims. You are the master of both the parties since the Shahi era (sic) if any person constructs forcibly he would be punished by your honour. Kindly consider the fact that Masjid is a place of worship of the Muslims and not that of Hindus.* ***Previously the symbol of Janamasthan had been there for hundreds of years and Hindus did Puja.*** *Because of conspiracy of Shiv Ghulam Thandedar Oudh Government, the Bairagis constructed overnight a Chabutra up to height of one 'Balisht' until the orders of injunction were issued. At that time the Deputy Commissioner suspended the Thanedar and fine was imposed on Bairagis. Now the Chabootra has been raised to about 1¼ yards. Thus sheer high-handedness has been proved. Therefore it is requested that Murtaza Khan Kotwal City may be ordered that he himself visit the spot and inspect the new constructions and get them demolished (sic) and oust the Hindus from there; the* ***symbol and the idol may be removed from there and writing on the walls be washed.*** *Orders may be issued for the future (paper torn). Deemed necessary, so requested .*

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Sd/- Syed Mohammad Khatib,
Moazzim Masjid Babri sites in Oudh
Dated November 30, 1858."

2318. The above letter referred to something which happened in the disputed building i.e. inner courtyard. In fact, the learned counsels for the defendants Hindu parties have submitted that the complaint of Syed Mohd. Khateeb was in respect to the disputed building and the premises in the inner courtyard wherein worship by Hindus said to have continued from hundred of years. The genuinity of this document has not been disputed by the plaintiffs (Suit-4) and on the contrary they also rely upon it. Being one of the earliest document, in our view, it is a very important Exhibit. It is contended by the various learned counsels appearing for defendants Hindu parties, that the same being a document of one of the earliest period available having been written by a person whose identity and authority is not disputed by the Muslim parties. Being an admission must be treated as a sole conclusive evidence to prove that the disputed building and premises throughout has been in possession of Hindus and not of Muslims. Hindus have continuously offered prayer inside the disputed building as well as the premises in the inner courtyard as also at the Ram Chabutara and Seeta Rasoi which was in the outer courtyard. It is not stated anywhere in the said application that Muslims ever offered Namaz in the disputed building or were obstructed. The only averment is that, being a mosque, it is a muslim religious place which is being defiled and defaced by Hindus by offering their worship and keeping their religious marks etc. for the past hundreds of years ("*Sadaha Baras*").

2319. We find substance. It thus appears that in 1858 a

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Chabutara was constructed in the inner courtyard also and the complaint was made in respect thereto. Had the building in dispute and the inner courtyard been in possession of Muslims, such an act on the part of the Hindus could not have been possible at all.

2320. It appears that some order was passed on 30th November, 1858 pursuant whereto Sheetal Dubey, Thanedar visited the disputed premises and informed Nihang Faqir about the order but he replied that the entire place is of Nirankar and the government of the country should impart justice.

2321. Sri Sheetal Dubey Thanedar submitted his report dated 1st December, 1858; **Exhibit 21 (Suit 1) (Register 5 Page 69-72A)**. The report says:

نقل رپورٹ شیتل دوبے تھانیدار آوده مورخہ ۱ دسمبر سن ۱۸۵۸ء مقدمہ نمبر ۸۸۴ بمقدمہ عرضی تھانیدار اوده دو بارہ کھڑا کرنے نشان در مسجد جنم استھان سنت نیہنگ سنگھ فقیر خالصہ واقع محلہ رام کوٹ (کوٹ رام چندر) پرگنا حویلی اوده تحصیل و ضلع فیض آباد منفسلہ ۱۵ دسمبر سن ۱۸۵۸ء

غریب پرور سلامت

خداوندِ پرواز

حضور واسطے طلبی نیھنگ سنگھ فقیر جو کی مسجد جنم استھان میں مقیم ہیں ، تاریخ ۳۰ نومبر سن ۱۸۵۸ء کو صادر ہوا چنانچہ بطورواسطے پروانہ وقار والوں کے تابیدارجومقرر تھانہ نزدیک فقیر مزکورکے کیا اور مضمون پروانہ سے بخوشی اطلاع کی و زبانی بھی ہرچند کے فہماش کر کے کہا لیکن فقیر مزکورنے صرف یہ بات کہی کی راجگ□نیرنکار کی □□و صاحب ب□ادر ما لک الملک انصاف کرنا چاہئے اور اپنےجانے کے بارےمیں کچھ نہیں کہا و نہ جاتا ہے- آنیدہ جو حکم ہوئے مطابق اسکے تعمیل کریں-

فضا میں تلوار ایک سرحد ہے -

واجب جان کر گزارش کیا مورخہ ۱ د سمبر ۱۸۵۸ء

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العبد

شیتل دوبے تھانیدار اودھ

''नकल रिपोर्ट शीतल दुबे थानेदार अवध मोरखा 1 दिसम्बर सन् 1858 ई0 मुकद्दमा नं0 884 बमुकद्दमा अर्ज़ी थानेदार अवध दोबारा खड़ा करने निशान दर मसजिद जन्म अस्थान सन्त निहंग सिंह फ़क़ीर ख़ालसा वाकै मुहल्ला राम कोट (कोट राम चन्दर्र) परगना हवेली अवध तहसील व जिला फ़ैज़ाबाद मुनफ़सिला 15 दिसम्बर सन् 1858 ई0

गरीब परवर सलामत,

खुदावन्द परवाज़ हजूर वास्ते तलबी निहंग सिंह फ़क़ीर जो कि मस्जिद जन्म अस्थान में मुक़ीम है, तारीख़ 30 नवम्बर सन 1858 ई0 को सादिर हुआ चुनॉचे बतौर वास्ते परवाना वकार वालों के ताबेदार जो मुक़र्रर थाना नज़दीक फ़कीर मज़कूर के किया गया और मज़मून परवाना से बखूबी इत्तला किया, यह ज़बानी भी हर चन्द के फहमाइश करके कहा लेकिन फ़क़ीर मज़कूर ने सिर्फ यह बात कही कि यह जगह निरंकार की है व साहब बहादुर मालिके मुल्क इन्साफ़ करना चाहिए और अपने जाने के बारे में कुछ नहीं कहा न वो जाता है। आइन्दा जो हुकुम होवे मुताबिक उसके तामील करें बतौर फिजा में तलवार एक सरहद है (अपठनीय)। वाजिब जान कर गुजारिश किया। मोरखा 1 दिसम्बर सन् 1858 ईस्वी ।

अलअब्द

शीतल दुबे थानेदार अवध

"Copy of the report of Sheetal Dubey, Thanedar Oudh dated December 1, 1858 in the case no. 884, application of Thandedar Oudh regarding erecting Darbar and pitching on symbol within masjid Janam Sthan. Sant Nihang Singh Faqir Khalsa resident of Mohalla Ram Kot (Kot Ramchandra) Pargana Haweli Oudh, Tahsil and District Faizabad, decided on December 15, 1858.

Khudawand-e-Parwaz Huzoor for summoning ***Nihang Singh*** *Faqir who is* ***residing within the Masjid.*** *Order passed on November 30, 1858. So the parwana was taken to the said Faqir by this obedient servant who is*

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posted there and the subject/contents thereof was explained to him. He was explained the text of 'it' orally also - He was admonished (for his act) but the said ***Faqir continued to insist that every place belonged to Nirankar and justice should be done to him.*** *Neither he said a word about leaving the place he was illegally occupying nor left. Therefore, I am here to carry out any further orders given in the matter. Deemed necessary so requested*

Dated Dec. 1, 1858

Sd/- Sheetal Dubey Thanedar Oudh"

2322. Another report about service of the order on 6th December, 1858 vide **Exhibit 22 (Suit-1) (Register 5 page 73-75)** reads as under:

نقل رپورٹ تھانیدار اودھ مورخہ ۶ دسمبر سن ۱۸۵۸ء و مقدمہ نمبر ۸۸۴ عرضی تھانیدار اودہ در بارہ کھڑا کرنے نشان در مسجد جنم استھان سنتھ نیھنگ سینگھ فقیر خالصہ کے واقع رام کوٹ (کوٹ رام چندر) پرگنہ حویلی اودھ تحصیل و ضلع فیض آباد منفصلہ ۱۵ دسمبر ۱۸۵۸ء-

غریب پرور سلامت

پروانہ قار الطلب نیھنگ سینگھ فقیر ساکن مسجد جنم استھان کے وارد ہوا چنانچہ حسبل حکم حضوروالا کے بذریعہ رپورٹ ہذا فقیر مزکور بخدمت بندگان والا ہے حاضر ہوتا ہے- واجب جان کر گذارش کیا فقط مورخہ ۶دسمبر سن ۱۸۵۸ء

العبد

شیتل دوبے تھانیدار اودھ

"नकल रिपोर्ट थानेदार अवध मोरखा 6 दिसम्बर सन् 1858 इस्वी व मुकद्दमा नं0 884 अर्ज़ी थानेदार अवध दर बारह खड़ा करने निशान दर मस्जिद जन्म अस्थान सन्त निहंग सिंह फ़क़ीर ख़ालसा के वाकै राम कोट (कोट राम चन्दर) परगना हवेली अवध तहसील व जिला फ़ैज़ाबाद मुनफ़सिला 15 दिसम्बर सन् 1858 ई0।

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परवाना वकार तलब निहंग सिंह फ़क़ीर साकिन मस्जिद जन्म अस्थान के वारिद हुआ चुनॉचे हस्बुल हुक्म हज़ूरे वाला के वजरिये रिपोर्ट हज़ा फ़कीर मज़कूर व ख़िदमत बन्दगान वाला है हाज़िर होता है। वाजिब जानकार गुज़ारिश किया फ़क़त मोरखा 6 दिसम्बर सन् 1858 ईस्वी

अलअब्द

शीतल दुबे थानेदार अवध''श्श

"Copy of the report of Thanedar Oudh dated December 6, 1858 in case no. 884. Application of Thanedar Oudh regarding erecting Darbar and pitching a symbol in the Masjid Janamasthan Sant Nihang Singh Faqir Khalsa resident of Ram Kot (Kot Ram Chandra) Pargana Haweli Oudh, Tehsil and District Faizabad, decided on December 15, 1858.

Ghareeb Parwar Salamat,

***Parwana** Wakarul Talab Nihang Singh **Faqir** resident of Masjid Janamasthan **has been received.** The Faqir has appeared and is present. As per orders a report in respect of the above said Faqir is being submitted for perusal deemed necessary, so requested.*

Dated December 6, 1858.
Sd/- Sheetal Dubey Thanedar Oudh.

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2323. It appears that some order was passed by the authority concerned that the Faquir sitting in the mosque be ousted and if he does not move therefrom, he should be arrested and sent to the Court.

2324. Exhibit A-70 (Suit-1) (Register 8, page 573) is a copy of the order dated 05.12.1858 and reads as under:

نقل حکم مقدمہ ۵۸ءمقدمہ ۸۸۴ عرضی تھانیدار اودہ دوبارہ کھڑا کرنے نشان در مسجد جنم استھان ٹیک سنگھ فقیر خالسہ کے منفصلے ۶دسمبرسن ۱۸۵۸ء

آج یہ مقدمہ روبکار ہوکہ دریافت ہوا کہ حسب حکم ۳۰ نومبر سن

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فقیرکو جو مسجد بابری میں بیٹھا ہے روانہ کیا۔

حکم ہواکہ

پروانہ بنام تھانیدار آودہ کہ جاوے کہ اگر فقیر نہیں آتا ہے تو اسکو گرفتار کرکے روانہ حضور کریں۔ ۵ دسمبر سن ۵۸ء

''नकल हुकुम मुकदमा 10 दिसम्बर 1858 मुकदमा नं0 884, अर्जी थानेदार अवध दोबारा खड़ा करने निशान दर मस्जिद जन्मस्थान टेक सिंह फकीर खालसा के मुनफसला 5 दिसम्बर 1858 ई0

आज यह मुकदमा रोबकार होके दरयाफ्त हुआ कि हस्वे हुकुम 30 नवम्बर सन् . . . .फकीर को जो मस्जिद बाबरी में बैठा है रवाना किया।

परवाना बनाम थानादार अवध को जावे कि अगर फकीर नही आता है तो उसको गिरफ्तार करके रवाना हुजुर करे 5 दिसम्बर 1958

"Copy of the order dated 05.12.58, Suit No.884. Application of Thanedar Oudh for re-erecting the symbol in the Majid Janam Asthan, Tek Singh Faqir Khalsa..... (Sic)...decided on December 5, 1858.

In the case Robekar was issued today. It was noticed that as per order dated November 30, 1858, Robekar was issued that the Faqir sitting in the Masjid Babri be ousted. Parwana issued to the Thanedar Oudh that if the Faqir does not move from there, he should be arrested and sent to the Court. December 5, 58."

2325. Exhibit A-69 (Suit-1) (Register 8, page 569) is a report dated 10.12.1858 submitted by Thanedar P.S. Oudh and order thereon and reads as under:

نقل حکم مورخہ ۱۰ دسمبر ۱۸۵۸ء مقدمہ نومبر ۸۸۴ عرضی تھانیدار اودہ دربارہ کھڑا کرنے نشان درمسجد جنم استھان سنت ٹیک سنگھ فقیر خالصہ کے محلہ رام کوٹ (کوٹ رام چندر) منفصل ۱۵ دسمبر سن ۱۸۵۸ء

آج روبکار ہوا جسمیں جھنڈا مسجد جنم استھان سے اکھاڑا گیا جو فقیر آ کے رہا تھا نکالا گیا۔

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حکم ہوکہ

مقدمہ خارج ہوکے داخل دفتر ہو ۱۰ د سمبر ۱۸۵۸ء

''نکل हुकुम मोरखा 10 दिसम्बर 1858 ई0 मुकदमा नं0 884 अर्जी थानादार अवध खड़ा करने निशान दर मस्जिद जन्मस्थान सन्त टेक सिंह फकीर खालसा के मोहल्ला रामकोट कोट रामचन्दर मुनफसला 15 दिसम्बर 1758 आज रोबकार हुआ जिसमें झंडा मस्जिद जन्मस्थान से उखाड़ा गया जो फकीर आके रहता था निकाला गया।

हुकुम हुआ कि मुकदमा खारिज होके दाखिले दफ्तर हो।''

"Copy of the order dated December 10, 1858 Suit No.884 on the application of Thanedar Oudh for re-erecting the symbol within Masjid Janam Sthan. Saint Tek Singh Faqir, Khalsa, resident of Mohalla Ram Kot, (Kot Ram Chandra), decided on December 15, 1858. Robekar issued today in which Jhanda (flag) was uprooted from the Masjid Janam Asthan and the Faqir residing therein was ousted. Ordered that the case be consigned to the office. Dec. 10, 1858."

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2326. It thus appears that the order of ouster of Faquir and removal of *Jhanda* from the mosque was complied with. Here also it does not say anything about observance of Namaz or its revival by the Muslims in the said mosque.

2327. **Exhibit 23 (Suit -1) (Register 5 Page 77-80 A)** is an application dated 9th April, 1860 filed by Dwadgo Mohammadi Shah R/o Ramkot complaining that the Government has declared Mauza Ramkot Nazul, he was required to get a lease deed executed in his favour of the property he claimed possession, though he had raised objection there against, therefore matter may be examined properly. Its contents are:

نقل درخواست محمدی شاہ ساکن رام کوٹ مورخہ ۹ اپریل ۱۸۶۰ء

بروے مثل ۸۸۴ مقدمہ عرضی تھانےدار اودھ دربارہ کھڑا کرنے نشان

در مسجد جنم استھان ٹیک سینگھ فقیر خالصہ محلہ رام کوٹ (کوٹ

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رام چندر) پرگنہ حویلی اودھ تحصیل و ضلع فیض آباد منفصلہ ۱۵ دسمبر سن ۱۸۵۸ء

دعا گومحمدی شاہ ساکن محلہ رام کوٹ ساءل بدرخواست ملتوی فرمایا جاے پٹہ آراضی موضع رام کوٹ تصفیہ نزول

غریب پرور سلامت

جناب عالی

گذارش یہ ہے کہ حسب الحکم سرکار اقدس عالی کے حضور میں موضع رام کوٹ کو نزول قرار دیا اور اظہار جمعی گواہ کا سرکار نے قلم بند فرمایا اور دو قطہ سند حقیت آراضی ذرے خرید محکمہ نزول کہ تعدادی ۳ بیگہ پختہ و دو بیگہ خام مثل مقدمہ داخل سرکار ہے و تاریخ ۱۴ واسطے تحقیقات جمعیی سوساءٹی و بیراگیان مہنتان اودھ کے مقرر فرمایا اب منسیلم صاحب واسطے دینے پٹہ کے ہم کو طلب کرکے کہتے ہیں کہ پٹہ لے لو اور ہمکو بوجہ زمینداری جدید ہونے------ محمد جعفر کے پٹہ لینا منظور نہیں ہے اور حق تلفی ہماری متصوری ہے و بعد تحقیقات نزول کے جیسے رای حضور کی ہوگی ویسا بجالاوینگے لہذا امیدوار ہے کہ بنام منتسم صاحب کہ حکم ہو تصفیہ حضور کے پٹہ ملتوی رکھا جاوے۔

واجب جان کر عرض کیا

دعا گو محمدی شاہ ساکن رام کوٹ مورخہ ۹ اپریل ۱۸۶۸ء

''नक़ल दरख्वास्त मुहम्मदी शाह साकिन राम कोट मोरख़ा 9 अप्रैल सन 1860 ई0 बरुए ***मिसल नं0 884*** *मुक़द्दमा/अर्ज़ी थानेदार अवध दर बारह खड़ा करने निशान दर मस्जिद जन्म अस्थान सन्त टेक सिंह फ़क़ीर ख़ालसा मुहल्ला राम कोट (कोट राम चन्दर) परगना हवेली अवध तहसील व ज़िला फ़ैजाबाद मुन्फ़सला 15 दिसम्बर सन् 1858 ई0*

दुआगो मुहम्मदी शाह साकिन मुहल्ला राम कोट सायल

बदरख़्वास्त मुल्तवी फरमाया जाय पट्टा आराजी मौज़ा राम कोट तसफिया नज़ूल

ग़रीब परवर सलामत,

ज़नाब आली, गुज़ारिश यह है कि हस्बुल हुक्म सरकार उक़दस आला के हज़ूर ने मौज़ा राम कोट को नज़ूल क़रार दिया और इज़हार जमा गवाह का सरकार ने क़लम बन्द फ़रमाया और दो क़िता सनद हक़ियत आराज़ी ज़रे ख़रीद महकमा नज़ूल के तादादी 3 बीघा पुख़्ता व दो बीघा

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ख़ाम मिसिल मुक़द्दमा दाख़िल सरकार है व तारीख 14 वास्ते तहकीक़ात जमींह सुसाइटी व बैरागियान महन्तान अवध के मुक़र्रर फ़रमाया अब मुत्सिम साहब वास्ते देने पट्टा के हमको तलब करके कहते हैं कि पट्टा ले लो और ***हमको बवजह ज़मींदारी जदीद होने*** *(अपठनीय)* ***मुहम्मद ज़ाफ़र के पट्टा लेना मन्जूर नहीं है*** *और हक़तल्फी हमारी मुतसव्वर है व बाद तहक़ीक़ात नजूल के जैसी राय हजूर की होगी वैसा बजा लावेंगे। जिहाज़ा उम्मीदवार है कि बनाम मुन्सलिम साहब के हुक्म हो तसफिया ताफैसला हजूर के पट्टा मुल्तवी रखा जावे। वाजिब जान कर अर्ज़ किया।*

दुआगो मोहम्मदी शाह साकिन राम कोट मोरखा 9 अप्रैल 1868 ई0''

"Copy of the application Mohammadi Shah resident of village Ramkot dated April 9, 1860. (According to file no. 884, the application of a Station Officer Oudh for re-erecting the symbol within Masjid Janmsthan Sant Tek Singh Fakir Khalsa Mohalla Ramkot (Kot Ram Chandra) Pargana Haveli Oudh Tahsil and District Faizabad decided on December 15, 1858).

Dwago Mohammadi Shah resident of Mohalla Ram Kot. . . . . .Applicant.

The application for postponing grant of lease in respect of village Ramkot till the decision of Nuzul.

Garib Parwar Salamat,

Respected Sir,

It is requested that under the orders of your honour Mauja Ram Kot has been declared Nuzul and statement of all the witnesses were recorded and they proved documents of rights, two documents regarding purchase of Arazi from the department of Nuzul, three Bigha Pokhta and two Bigha Kham and the file has been placed in the case and date 14 has been fixed for inquiry in the land of society and Bairagies, Mahants of Awadh. Now Mutsim Saheb calls us

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and offers lease and says to accept it but we do not agree because of it being new Zamidari of Mohd. Zafar and will forfeit our rights. Whatsoever orders would be of your honour after the inquiry regarding Nuzul, we shall abide by the same. Therefore, it is prayed that orders may be issued to Mutsim Saheb that grant of lease may kindly be postponed till the decision of the case. Being proper, so requested.

Applicant Dwago Mohammadi Shah resident of Ram Kot dated 9th April 1868."

2328. This document shows an admission that the entire Mauja Rampur was entered as Nazul. This fact is admitted before us by the learned counsel for the parties. Sri Jilani though sought to argue that the entry of disputed land as Nazul in the records of the British Government at that time was wrongly made but the fact remains that in the first settlement of 1861 also, the land was shown Nazul and this was never disputed by anyone or challenged before the appropriate Forum in appropriate proceedings and has continued as such.

2329. **Exhibit 31 (Suit-1) (Register 5 page 117-121)** is a copy of the application dated 05.11.1860 filed by Mir Rajab Ali. The aforesaid document has also been relied upon heavily by learned counsels for the parties and it reads:

نقل درخواست میر رجب علی مورخہ ۵ نومبر ۱۸۶۰ء مقدمہ نمبر ۲۲۳

ساکن محلہ کوٹ رام چندر پرگنہ حویلی اودھ ضلع فیض آباد اجلاسی

جناب ڈپٹی کمشنر صاحب بہادور فیض آباد منفصلہ ۱۸ مارچ ۱۸۶۱ء

میر رجب علی بنام اسکالی سنگھ

میر رجب علی خطیب مسجد بابری ساکن اودھ

درخواست ہے کہ با ملاحظہ مضمون عرضی ہذا جو چبوترہ تھا کہ فرق مسجد بابری واقع اودھ مدعا علیہ بنا لیا ہے بعد تحقیقات منہدم فرمایا جاے و نیز مجھکو مدعا علیہ سے عدم مزاحمت واسطے داد رسی انڈل

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طلب لے لیا جاوے۔

غریب پرور سلامت

حال خودی حاکمی نشوہ پیشتر و نیز ہنگی مدعا علیہ کاہوگا حضور میں کیا گذارش کروں عرصہ قریب تیس روز کہ ہوتا ہے کہ مدعا علیہ نے ایک چبوترہ ازراہ زبردستی و خلاف عمل درامد قبرستان ملحقہ مسجد بابری میں پاس قبر قاضی قدوہ مرحوم کہ بنا لیا ہے وہ ہرروز چبوترہ بڑہتا جاتا ہے حالانکہ اس کو منع کیا جاتا ہے مگر کسی طرح باز نہیں اتا ہے امادہ ہنگامہ و تکرار ہوتا ہے و فدوی بخوف سرکار طرح دیتا ہے ساءبکان عرصہ قریب ڈیڈہ برس کہ ہوا ہوگا۔ ہری داس مہنت ہنومان گڈہی نے زبردستی مکان بنوانا چاہتا تھا کہ وہ مقدمہ داءر عدالت ہو کر ڈیگری بحق مدعی صادر ہوی و فیصلہ ضلع تامحکمہ عالیا کمیشنری بحال رہا بلکہ مچلکہ عدم مزاحمت ہری داس مزکور سے لیا گیا کہ وہ مثل سیرستہ میں موجود ہے و نیز کمیشنری صاحب بہادر مدعا علیہ مذکورنے جہنڈا واسطے پہروا ہونےکے قریب مسجدکے سامنے صحن مینصب کیا تھا کہ جناب صاحب محتمم الیہ نے بعد ملاحظہ جنڈا نسب ساختہ مدعا علیہ اوک پہڑاوا ڈالا و نیز پیمایش فرمایا تھا کہ سراقوں کبھی اسکی مدعا علیہ ازراہ عدل حکمی سرکارمرتب قرب جوار کا مقرر ہے اور ورثانی قبرستان ہوے ایسی بدعت سے بہت پریشان ہیں علاوہ اسکے جب موزن مسجد میں اذان دینا ہی تو وہ ناخوش یعنی سنکھ بجاتا ہے تو عالی جا ایسا کبھی نہیں ہوا و سرکار حاکم دونوں فریق کہ ہیں لہذا درخواست لہذا حضور میں گزارش کر امیدوار ہے کہ مدعا علیہ حرکت بیجا سے باز رکھا جاکر بعد تحقیقات چبوترہ جدید تعمیر ساختہ مدعا علیہ سے جو کبھی وہاں نہ تھا بنا لیا ہے منہدم فرمایا جاوے و نیز قطع مچلکہ عدم مزاحمت دی جاے بجانے سنکھ وقت اذان مدعا علیہ سے لے لیا جاوے کہ ہم غریب پرور مدعا علیہ سے نجات پاوے ۔

واجب جان کر عرض کیا۔

عارض

میر رجب علی

خطیب مسجد بابری واقع اودہ ساکن اودہ

مورخہ ۵ نومبر سن ۱۸۶۰ء

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''नकल दरख्वास्त मीर रज्जब अली मोरखा 5 नवम्बर 1860 ई0 मोकद्दमा नं0 223 साकिन मोहल्ला कोट रामचन्दर परगना हवेली अवध जिला फैजाबाद

इजलासी जनाब डिप्टी कमीश्नर साहब बहादुर फैजाबाद मुनफसला 18 मार्च 1861 मीर रज्जब अली बनाम असकाली सिंह

मीर रज्जब अली खतीब मस्जिद बाबरी साकिन अवध

दरख़ास्त यह है कि बमुलाहिजा मजमून अर्जी दावा हाजा जो चबूतरा था कि फर्क मसजिद बाबरी वाकै अवध मुद्दाअलेह ने बना लिया है वाद तहकीकात मुनहदिम फरमाया जाय वो नीज मुझको मुद्दाअलेह से अदम मजाहिमत वास्ते दादरसी अन्दुल तलब ले लिया जावेः

गरीब परवरसलामत,

हाल खुद हाकिमी नशूह नेहन होगी मुद्दाअलेह का होगा हुजूर मै। क्या गुजारिश करूं अरसा करीब 30 रोज का होता है कि मुद्दाअलेह ***ने एक चबूतरा*** *अजराह जबरदस्ती वो खिलाफ अमल दरामद कबरिस्तान मुलाहिका* ***मसजिद बाबरी में*** *पास कबर काजी किदवा मरहूम के बना लिया है वो हर रोज चबूतरा बढ़ता जाता है हालांकि उसको मना किया जाता है मगर किसी तरह बाज नहीं आता बल्कि आमादा हंगामान को तकरार होता है वो फिदवी बखौफ सरकार तरह देता है साविकान अरसा करीब डेढ़ बरसा के हुआ होगा कि हरी दास सन्त हनुमान गढ़ी ने जबरदस्ती मकान बनाना चाहता था कि वह मोकदिमा दायर अदालत हो कर डिगरी बहक मुद्दई सादिर हुई वो फैसला जिला ता मोहकिमा आलिया कमिश्नरी बहाल रहा बल्कि मुचलिका अदम मजाहिमत हरी दास मजकूर से लिया गया कि वह मिसिल शिरिस्ता में मौजूद है (अपठनीय) व नीज कमिश्नरी साहब बहादुर मुद्दाअलेह मजकूर ने झण्डा वास्ते (अपठनीय) होने (अपठनीय) के करीब* ***मसजिद के सामने सहन में नसब किया था कि साहब मोहतमिम अलैह ने बाद मुलाहिजा झण्डा नसव साख्ता मुद्दाअलेह उखडवा डाला व नीज पैमाइश फरमाया था कि शराकूं उसकी कभी (अपठनीय) मुद्दाअलेह अजराह अदूल हुक्म सरकार मुरत्तव कुरवाजवार (अपठनीय) और नजवाज*** *का मुकर्रर है और वरसानी कबरिस्तान होने ऐसी बिदात से बहुत परेशान हैं अलावा इसके जब मुअज्जिन मसजिद में अजान देता है तो वह नाखूश यानी शंख बजाता है तो आली जा ऐसा कभी नहीं हुआ व सरकार*

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हाकिम दोनों फरीक के है लिहाजा दरखास्त हाजा हुजूर में गुजारिश कर उम्मीदवार है कि मुद्दाअलेह हरकत बेजा से राज रख्खा जाकर बाद तहकीकात चबूतरा जदीद तामीर शाख्ता मुद्दाअलेह का जो कभी वहां न था बना लिया है मुनहदिम फरमाया जावे व नीज किता मुचलका अदम मुजाहमत दी जाय व बजाने शंख वक्त अजान मुद्दाअलेह से ले लिया जावे कि हम गरीब पर मुद्दाअलेह से नजात पावें वाजिब जान कर अर्ज किया :

आरजी

मीर रज्जब अली

खतीब मसजिद बाबरी वाके अवध साकिन अवध

मोरखा 5 नवम्बर सन 1860 ई0''

"Copy of application filed by Mir Rajjab Ali, dated 05.11.1860 case no. 223, resident of Mohalla Kot Ram Chander, Pargana Haveli, Oudh, District Faizabad.

In the Court of Janab Dy. Commissioner Saheb Bahadur decided on 18.03.1861.

Mir Rajjab Ali Vs. Askali Singh.

Mir Rajjab Ali Khatib Babri mosque resident of Oudh.

The application is to the effect that as per the text of the plaint the ***Chabutra which had been constructed within Babri Masjid Oudh may kindly be removed after due enquiry.*** *Moreover the respondent may be ordered to furnish proper undertaking/personal bond (Muchalka) for not interfering in the matter."*

Garib Parwar Salamat,

The story of mucelemanship of the Nihang respondent is being told in this Hon'ble Court. ***About 30 days back*** *the respondent made a small* ***Chabootra in violation of law, in the graveyard, adjacent to Babri Masjid****, between the graves of late Qazi Hadood which he*

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is extending day by day. Although he is told not to do so , but he does not refrain from doing so and at times, he becomes violent. But the applicant owing to fear of law avoids occurrence of any untoward incident or situation which may arise in future. About half year back, Hari Das Mahant of Hanuman Garhi tried to build his house forcibly. Against this act, a case was registered in the court wherefrom a decree was issued in favour of the applicant which was affirmed and continued as such from the district level upto the commissionary. Even the said Mahant Hari Das was made to execute personal bond/undertaking for non-interference, which is available in Sarishta (file). ***The commissioner found that a flag within the lawn of the Masjid was pitched to create tension and terror. The commissioner after seeing himself on the spot, got the flag unpitched.*** *He also noted the measurement of the place. (sic). That the opposite party has broken every law and order of the Government putting the owners of the Qabristan and the applicant in trouble. Besides,* ***When the Moazzin recites Azaan, the opposite party begins to blow conch (Shankh/Naqoos).*** *This has never happened before. I would pray that your honour is the Judge for both the parties. The opposite partiy should be restrained from his unlawful act and after proper* ***inquiry the newly constructed Chabootra which had never existed, may kindly be demolished and a bond be got executed from the opposite party to the effect that he will not unlawfully and illegally interfere in the Masjid property and will not blow conch (Shankh/Naqoos) at the time of Azaan.*** *We are poor and weak persons and cannot protect*

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our rights from the opposite party. Deemed necessary so prayed.

Yours faithfully,

Khatib Masjid and Warsi

Resident of Oudh, Dated November 5, 1860"

2330. This is the first document which we have with us going to the extent that in the inner courtyard, the muezzin used to recite Adhan (ajjan) which obviously call the Muslim people for offering Namaz otherwise there do not arise any reason for calling Adhan (ajjan). The document of 5th November, 1860 thus is evident that a Muezzin used to recite Adhan (ajjan) in the building in dispute i.e. inner courtyard.

2331. Exhibit 54 (Suit 4) (Register 12 Page 359) is another application dated 12th March, 1861 by Mohd. Asgar, Mir Rajab Ali and Mohd. Afjal reiterating the complaint already made on 5th November, 1860 that some Imkani had made Chabutara near Babari Masjid at Janam Asthan Oudh and despite orders, has not removed the same. There is no further information on record about the consequences.

2332. The decision on the said application was taken by Deputy Commissioner, Faizabad on 18.03.1962 directing to consign the record to office.

2333. **Exhibit A-12 (Suit-1) (Register 6, page 167-171)** is a copy of register namely *"Nakal Intkhab register no. 6 (jeem) maffi shartiya Tahsil Faizabad mashmula fehrist register no. 6 Mauza Bahoranpur Pargana Haveli Oudh, Tahsil wa Zila Faizabad."* It mentions in column 6 the name of Mohd. Asghar and in column 7 the name of Mohd. Asghar and Rajjab Ali. In column 14 it is mentioned:

"14. Navaiyat wa Tarikh Hukm Government.

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*Chitthi numberi 2321 Mubrikha **29 June 1860** Ei. Meem Baj Taq Mahasil Deh Sirf Masjid Mein Rahe Yani Bawajah Timawat Dawami."*

In column 15 it mentions as follows:

"***Jabti Maafi wa Wajah Khilaf Vajri Sharawat***

x "

2334. **Exhibit A-10 (Suit-1) Register 6** is copy of the Register Tehkikat Maafi filed in Case No. 53 register Misil Band Mukadma Rajab Ali relating to village Sahnawa Pargana Haveli It has several columns and different columns contained therein have been translated in Hindi by Sri Jilani and supplied to the Court. It reads as under:

S.N.	*Particulars*	
1.	*Number:*	*51*
2.	*Name of Tehsildari and Talluqa*	*Faizabad, Pargana Haveli, Oudh*
3.	*Name of Village wherein Maafi is granted.*	*Sahanwa*
4.	*Tadad Aarazi Maafi Khwahkul, Mauza Khawahajaj, May Shumar Chah Wa Tadad Arazi, Baqaid Acre.*	*Naqadi (Cash)*
5.	*Tadad Zama Salana (Total Annual receipt)*	*Rs.302-3 Anna, 6 Pie.*
6.	*Name Wahib*	*Babur Shah, Badshah Delhi. Ajrue Ijharat (Courtesy Babar Shah Emperor, Delhi)*
7.	*Register Tehqikat (Register of inquiry)*	
	A. Taarikh Ata (Date of grant)	*Unknown*
	B. Name Mauhoob May Quaumiyat	***Syed Baqi resident of Oudh MoazzinMasjid Babri situated***

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	(Name of the person to whom Maafi was granted)	***at Oudh***
	C. Tafsil Kism Maafi Ki Yani Kab Di Gayi Aur Har Ek Maafidar Ke Baras Tak Kabij Raha (details of nature of Maafi i.e. when granted and for how many years every Maafidar had been in possession)	*Ye Maafi Azruye Izaharat Barwaqt Taiyari Masjid Babri Bake Oudh Babar Shah Ne Vaste Sarf Masjid.... Moazzin wa Khatib Ke Mukarrer Kiye Bataur Waqf sun wa Tarikh La Maloom Syed Baqi Tahyat Baad Unke Syed .... Ali Ladka Uska Ta Hayat Baad Uske Syed Husain Ali Ladka Uska Ausatan Sath Baras Kabiz Raha Ab Syed Rajab Ali Damad Uska wa Mohammad Asghar Nawasa Uska Maujud Hai Sun 1263 Fasli Tak Bamojib Dehanid Naqdi Amdani Mauza Shahnawa Se Bazriye Rasid .... Pata Raha sun 1264 Fasli Mein Tahkiqat maafi Shuru Hui Thi Ki Balwa Ho Gaya ... Fasli ... sun 63 Fasli Paya Gaya .... Asal ... Ke Aur Dastavez Hai .... Babat Maafi Ke ... Hai Bandobast Mauza Mazkoor Ka Banam ... (This grant was given at the time of construction of Babri mosque situated at Oudh by Babar Shah to meet the expenses to Syed Baqi appointed as Moazzin and Khatib of Waqf (date and year not known) till his lifetime, thereafter his son Ali till his lifetime, thereafter his son Syed Husain Ali who was in possession of about sixty years. Now Syed Rajab Ali his son-in-law and Mohammad Asghar his grandson were presently Moazzin till 1263 Fasli and used to receive the income from village Shahnawa against*

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		receipt. Tahkiqat Maafi commenced in 1264 Fasli when riot broke out. . . 63 Fasli noticed. . . original document regarding Maafi illegible. Settlement regarding village aforesaid illegible . . . (sic) regarding)
	D. Name Kabiz Hal Bakaid Waldiyat Wa Quamiyat Wa Umar Wa Rishta Maafidar Sabiq Ke (Name of the person in possession with parentage, caste, age and relation with previous grantee.)	*Rajab Ali Wald Fatehali Quam Syed Umra Takhminan 70 Saal* ***Asal Maafidar Ke Pote Ka Damad Hai Mohammad Asghar*** *Wald Rajab Ali Quam Syed Umra Takhminan 30 Saal Asl Maafidar Ke Pote Ka Nawasa Hai. (Rajab Ali son of Fateh Ali Caste-Syed aged about 70 years is the son-in-law of grandson of real grantee (Maafidar) and Mohammad Asghar son of Rajab Ali Caste-Syed aged about 30 years is the Navasa of grandson of real grantee (Maafidar)*
8.	*Kaifiyat Sahab Mohatmim Tahkiqat (Details of enquiry officer)*	*Chunki Naksha Angrezi Mein Tahrir Munasib Ho Chuka Hai Isliye Hukm Hua Ki Shamil Misil Ke Rahe 14 March sun 1860 Ie. Bamako Dastkhat Hakim Bakhat Shikayat (since the map prepared in English was accepted, so ordered that it be kept on file. 14th March 1860 Sd/)*
9.	*Tajbiz Hukkam Tahkiqat Upar Chaal wa Chalan Maafidar Ke Babat Anjam Ujra (Recommendation of the authorities after enquiry about character of grantee and result of objection)*	

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10.	*Hukum Sahab Commissioner Bahadur (Order of the Commissioner)*	
11.	*Hukum chief Commissioner Bahadur (Order of the Chief Commissioner)*	
12.	*Hukum Board (Order of the Board)*	*Bamojib Hukm Government Chiththi Numberi 2321 Morkha 29 June Sun 1860 Ie. Jis Kaam ke Waste Yeh Maafi Di Gayi Hai Jab Tak Wah Kayam Rahe Tab Tak Yeh Bakhshish Hayat Rahe Isliye Hukm Hua Ki Sanad Maafidar Ko Wa Rasid Hasb Sarishta Li Jave Markooma 6 October Sun 1860 Ie.* *Dastkhat Angrezi Bakhat Shikast* *Nakal Kiya* *Muqabla Kiya* *Verified to be* *Hindi Transliteration* *(Z.Jilani)* *Advocate* *(Order of the Government vide letter no. 2321 dated 29th June 1860 to the effect that the grant for which it has been granted, will continue till the purpose for which it has been granted survives it was ordered that Maafidar receipt certificate to grantee and receipt be taken and the placed on file dated 6th October 1860)*

2335. **Exhibit A-3 (Suit-1) (Register 6, page 33)** and **Exhibit 1 (Suit-4) (Register 10, page 27)** is copy of a certificate of grant executed in favour of Rajjab Ali and Mohd. Asghar

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(father and son). It bears the seal of Chief Commissioner. It reads:

> *"It having been established after due inquiry that Rajjab Ali and Mohd. Asghar received a Cash Nankar of (Rs. 302-3-6) Rupee Three Hundred and two three annas six pie from Mauza Shahanwa District Fyzabad, in rent free tenure under the former Government. The Chief Commissioner, under the authority of the Governor General in Council is pleased to maintain the grant for so long as the object for which the grant has been made is kept up on the following conditions. That they shall have surrendered all sunnds title deeds and other documents relating to the grant in question. That* ***they and their successors shall strictly perform all the duties of land holders in matters of Police, and any Military or Political service that may be required of them by the Authorities and that they shall never fall under the just suspicion of favouring in any way the designs of enemies of the British Government****. If any one of these conditions is broken by Rajjab Ali and Mohammad Asghar or their successor the grant will be immediately resumed."*

2336. The above documents though show that some grant was allowed to Mir Rajjab Ali and Mohd. Asgar but it does not appear that any kind of inquiry was made by the authorities concerned and if so, what was the basis therefor. According to the claim of Muslims, the Commander of Babar, who was responsible for construction of the building in dispute was Mir Baqi while Mir Rajjab Ali claimed himself to be the son-in-law of the daughter of grand son of Syed Baqi. Mohd. Asgar was son of Mir Rajjab Ali, therefore, the son and father claimed

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relation with the 4th generation of the alleged original Mutwalli and staked their claim for grant. No material exists to show that earlier such grant was awarded by any one though stated by the aforesaid two persons. If we go by the averments of the plaint that the alleged waqf was created in 1528, it is wholly untrustworthy to find out that in the last more than 325 years, it could only be the fourth generation or at the best 5th generation. The authorities in 1860-61 were not under a duty to act judicially in this matter and therefore, might not have given any details of their enquiry as to on what basis the alleged enquiry was conducted. Ex facie, to us, the genealogy of Mir Rajjab Ali commencing from Syed Baki who must have existed in 1528 is unbelievable. It is not out of context that the story of grant might have been set up by the two persons i.e. father and son for the purpose of obtaining valuable grant from Britishers in their favour. In any case, these documents only show that a financial assistance was provided by the British Government for the purpose of the mosque in question but this by itself may not be a proof that the building in dispute was used by Muslims for offering Namaz or for Islamic religious purposes to the extent of ouster of Hindu people or otherwise.

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2337. **Exhibit A-15 (Suit-1) (Register 7, page 183)** is a copy of the letter dated 6th September (probably of 1863) sent by the Financial Commissioner, Oudh to the Commissioner Faizabad Division stating as under:

> *"Janamsthan mosque in Ajudhia.*
>
> *In reply to his no. 3 dt/ 4th January last approval the selection of land made by the Offg. Deputy Commissioner of Fyzabad for above."*

2338. **Exhibit A-16 (Suit-1) (Register 7, page 185-191)** is

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a copy of the order-sheet (Roobkar) of 9th, 16th, 28th and 30th September, 1863 and reads as under:

روبکار کچہری کلیکٹری ضلع فیض آباد باجلاس مسٹر بابرک کارنیگی صاحب بہادور ڈپٹی کمشنر واقع تاریخ ۳۱ماہ اگست ۱۸۶۳ء چٹھی نمبری ۲۴۸۲مورخہ ۲۵ماہ اگست ۱۸۶۳ء مرسلہصاحب سکریٹری چیف کمیشنر بہادورذریعہ ڈاکٹ نمبری ۱۱۰۶ مورخہ ۲۸ماہ اگست ۱۸۶۳ء صاحب کمیشنر بہادور بدی مضمون موصول ہوی کہ بعوض مبلغ ۳۰۲-۳-۶پای- جو واسطے مسجد جنم استھان دوام کے لئے گورمینٹ نے منظور کیا تھا کسی زمین نزول قریب ایودیا بلاادا ئے محصول سرکاربطور معافی دوام بہ جمعی آمدنی مبلغ ۳۰۲-۳-۶ پای سالانہ کے ہوے- صاحب ڈپٹی کمشنر بہادوریک نقشہ زمین جو دینے کیواسطے تجویز کی جاوے بھیجیں- اس نقشہ میں سرحد صاف صاف واقع ونا چاہئ ہ اور وے نقشہ بحساب پیمانہ تیارونا چاہئیے معہ ایک رپوٹ صاحب کمشنر بہادور کے بھیجا جاو ئ- حکم ہوا کہ بجنسہ ہی روبکار بجلاس منسی رائے رام دیال صاحب اکسڑا اسیسٹنٹ کمیشنر بہادور حسب تعمیل کاروای کرنے کے پیش ہوے- اور لکھا جاوے کی منشی صاحب باتفاق راءے مسٹر بابرق کارنگی صاحب بہادور کے کاروائ اسکی کریں-

فقط

د ستخط حاکم

اجلاس رائے رام دیال صاحب ہادور

اکسٹرا اسیسٹینٹ کمیشنر نمبر روزنامچہ ۲۰۸

حکم ہوا کہ

مع مثل سابقہ کے پیش ہوے- المرقوم تاریخ ۹ ستمبر ۱۸۶۳ء

دستخط حاکم

بعد ملاحظہ مثل کے دریافت ہوا کہ رجب علی و محمد اصغر حاضر نہیں ہے-اور انسے دریافت اس امر کا ضرور ہے کہ حسب منشہ حکم کوئ زمین کی خواہش ہے اسلئےحکم ہوا کہ

آج ۱۴ ستمبر سن ۱۸۶۳ء کو پیش ہوے ۱۲ ماہ ستمبر سن ۱۸۶۳ء

دسخط حاکم

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-۱۶ستمبر ۱۸۶۳ء

بعدازینکہ بمقابلہ رجب علی و محمد اصغرواسطے تجویز پیش ہوا- نا مبردگان نے کہا کہ زمین مسمولہ شولہ پوری اور بہورن پور جو متعلق نزول کہ ہیں عیوض ۳۰۲ روپیہ کے مل جاوے دریافت سرشتہ سے واضح ہوا کہ جمعی ادابے موضع بہورن پور ۱۹۳ روپیہ اور جمعی آراضی شعلہ پوری ۱۶۲ روپیہ جملہ ۳۵۵ روپیہ ادا سال تمام ہے- یعنی ۶-۱۲-۵۲ بشرط کہ دیا جانا قطعات مذکورین کا صاحب اسیسٹینٹ کمیشنر بہادور منظور فرماویں- توزمین جمعی ۲۲-۵۲-روپیہ کہ زمیں شعلہ پوری سے منتخب ہو سکتی ہیں اور موضع بہورن پور موضع سالم بدستور رہے اس لے

حکم ہوا کہ حمراہ صدور حکم واجلاس صاحب اسیسٹینٹ کمیشنر بہادور انچارج ضلع پیشہو ٔ- ۱۶ ماہ ستمبر ۱۸۶۳ ء

د ستخط حاکم اجلاس

ڈاکٹر ہیگ صاحب اسیسٹینٹ کمیشنر صاحب بہادور ضلع فیض آباد -

حکم ہوا

منشی را ٔے رام دیال صاحب ایکسٹرا اسیسٹینٹ کمیشنر بہادور صاحب تجویز اپنی زمین جس کے ۵۲،۱۲،۶ روپیہ منتخب و منہ کرکے بقیہ ہر دو قطعات کا نقشہ حسب منشا چ ٹھی صاحب سیکریٹری چیف کمیشنربہادور مرتب فرما کر ارسال فرمایں- تب رپیورٹ باضابطہ بھیجا جاءگادر مقدمہ میں ڈاکٹ تاکیدہے آج برائے مہربانی جلد ارسال فرمایں-

دستخط حاکم

ستمبر سن ۶۳ء- ۲۸

اجلاس منشی راءے رام دیال صاحب بہادور حاکم

آج پیش ہوا اور سایل سے پونچھا گیا کہ اجرت امین تم داخل کروگےبیان کیا کہ ہم داخل کرینگے- اس لے حکم ہوا کہ ایک امین اجرت پر مقرر ہو کہ اس کے معارفت نقشہ بہورن پور بطورحلقہ حد بستہ اور نقشہ صاف تیار کیا جاوے اور جو زمین جمع ۶-۱۲-۵۲ سرکاری حلقہ شعلہ پوری میں رہیگا زمین رنگ زرد سے اس میں واسطے شناخت نزول سرکارپورا

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کر دیوے- المرقوم تاریخ ۳۰ ستمبر سن ۱۸۶۳ء
دستخط حاکم لچھمن پرساد

रोबकार कचेहरी कलेक्टरी जिला फैजाबाद बइजलास मिस्टर बाबरक कारनेगी साहब बहादुर डिप्टी कमिश्नर वाकेय तारीख 31 माह अगस्त 1863 चिट्ठी नम्बरी 2482 मोर्रिखा 25 माह अगस्त सन् 63 ई0 मुरसला साहेब सिक्रेटरी चीफ कमिश्नर बहादुर जरिये डाकट नम्बरी 1106 मोर्रिखा 28 अगस्त सन 1863 ई0 साहब कमिश्नर बहादुर बरी ***''मज़मून मौसूल हुई कि बाएवज मुबलिग 302रू0 3 आ0 6 पाई0 जो वास्ते मस्जिद जन्म–स्थान दोआम के लिये गवनमेंट ने मन्जूर किया था।*** *किसी ज़मीन नजूल करीब अयोध्या बिला अदाय महसूल सरकार बतौर माफी दोआम मजमू आमदनी मोबल्लिग 302 रू0 3 आ. 6 पा0 सालाना के हो, दिया जावे। साहेब डिप्टी कमिश्नर साहेब बहादुर एक नक्शा जमीन जो देने के वास्ते तजबीज़ किये जावें भेजे, उस नक्शे में सरहद साफ–साफ वाकै होना चाहिये और वह नक्शा बहिसाब पैमाना तैयार होना चाहिये मय एक रिपोर्ट साहेब कमिश्नर बहादुर के भेजा जावे।*

हुकम हुआ कि

बजिन्सहू रोबकार बइजलास मुन्शी राय राम दयाल साहब इक्सट्रा असिस्टेन्ट कमिश्नर बहादुर हस्ब तामील व कार्यवाही करने को पेश होंवे। और लिखा जावे कि मुन्शी साहेब बइत्तफाक राय मिस्टर बाबरक कारनेगी साहब बहादुर के कार्यवाही उसकी करें।

ह0 हाकिम
इजलास राय राम दयाल साहेब बहादुर
इक्सट्रा असिस्टेन्ट कमिश्नर,
नं. रोजनामचा 408´

हुकुम हुआ कि

मिसिल साबिका के पेश होवे। अलमरकूम तारीख 9 सितम्बर 1863 ई0 दस्तखत हाकिम।

बाद मुलाहिजा मिसिल के दरयाफ्त हुआ कि रज्जब अली व मोहम्मद असगर हाजिर नहीं हैं। और उनसे दरयाफ्त इस अमर का ज़रूर है कि हस्ब मन्शा हुकुम कोई ज़मीन की ख्वाहिश है इसलिये हुकम हुआ कि आज़ 14 सितम्बर सन् 1863 ई0 को पेश होवे 12 माह सितम्बर सन् 1863 ई0द0 हाकिम

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16 सितम्बर सन् 1863 ई0 बाद आं जां के बमुकाबिले रज्जब अली व मोहम्मद असगर वास्ते तजवीज पेश हुआ। नम्बरदिगान ने कहा कि जमीन मशमूला शोलापुरी और बहोरनपूर जो मुतालिक नुजुल के है एवज 302रू0 3 आ0 6 पा0 के मिल जावे दरियाफत सरिश्ता से वाज़े हुआ कि जमा अदाये मोजे बहोरनपुर 193 रूपया और जमा आराजी शोलापुरी 162 रूपया जुमुला 355 रू0 अदा साल तमाम है। यानी 52–12–6 रूपये अदा कर बशर्ते दिया जाना कताआत मज़कूरैन का साहेब असिस्टेन्ट कमिश्नर बहादुर मन्जूर फरमावें। तो जमीन जमई 52–12–6 रूपये के ज़मीन शोलापुरी से मुनतखिब हो सकती है और मौजा बहूरनपूर मौजा सलिम बदस्तूर रहे इसलिये हुकुम हुआ कि . . . . हमराह सुदूर हुकुम बइजलास साहेब असिस्टेन्ट कमिश्नर बहादुर इन्चार्ज जिला पेश होवे। 16 माह सितम्बर 1863 ई0 दस्तखत हाकिम . . . . . इजलास डा0 हेग साहेब असिस्टेन्ट कमिश्नर साहेब बहादुर जिला फैजाबाद।

हुकुम हुआ कि

मुन्शी राय राम दयाल साहेब इक्सट्रा साहेब कमिश्नर साहेब बहादुर हस्ब तजवीज़ अपनी जमीन जिसके 52–12–6 मुन्तखिव करके बकिया हर दो कतआत की नक्शा हस्ब मन्शा चिट्ठी साहेब सेक्रेटरी चीफ कमिश्नर बहादुर मुरत्तब फरमा कर इरसाल फरमाये। तब रिपोर्ट बाज़ावतान भेजा आवेगा दर मुकदमा मय डाकेट ताकीद है आज बराह मेहरबानी जल्द इरसाल फरमायें। 28 सितम्बर सन् 63 ई0।

द0 हाकिम

इजलास मुन्शी राय राम दयाल साहेब बहादुर द0 हाकिम आज पेश हुआ और सायल से पूछा गया कि हुजरत अमीन तुम दाखिल करोगे। बयान किया कि हम दाखिला करेंगे। इसलिए हुकुम हुआ कि एक अमीन उजरत पर मुकर्रर हो के उसके मारफत नक्शा बहुरनपूर बतौर हल्का हद बस्त और नक्शा शोलापुरी किस्तवार साफ तैयार कराया जाये। और जो ज़मीन सरकारी हल्का शोलापुरी में रहेगी ज़मीन रंग ज़रद से उसमें वास्ते शिनाख्त नजूल सरकार पूरा कर देवे। अलमरक्म तारीख 30 सितम्बर सन् 1863 ई0 द0 हाकिम लक्ष्मण प्रसाद नकलनवीस ।''

"Robekar Kutchery Collectorate, District Faizabad.

In the Court of Mr. Babrak Carnegi, Deputy commissioner, dated August 31, 1863, letter no. 2482, dated August 25,

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1863 from the Secretary, Chief Commissioner, Docket number 116 dated August 28, 1863, received on the subject for ***providing a piece of Nazul land exempted from rent near Ayodhya as Maafi Dawam fetching annual rent of Rs.302/3/6 (Rupees Three hundred two Annas three and Pai six) which was sanctioned by the Government as Maafi Dawam (forever) to the Masjid Janam Sthan.*** *The map of the proposed land marked for the purpose should clearly indicate boundaries and be prepared on scale and be sent by the Deputy Commissioner to the Commissioner alongwith report and Naksha Amin.*

It was ordered

That this Robekar be sent, as it is, to the Extra Commissioner, Munshi Rai Ram Dayal. Put up for compliance and necessary action. It should be mentioned that Munshi Saheb may take necessary action in consultation with Mr. Babrak Carnegi.

Sd/- Rai Ram Dayal
Extra Asst. Commissioner.
No. Roznamcha 208 (sic)

Ordered:

Put up along with the previous file.

Dated September 9, 1863 Sd/- Officer.

After perusal of the file it appeared that Rajjab Ali and Mohammad Asghar are not present. It is to be ascertained from them whether they require the land as per the orders. So it was ordered to be put up today, the 12th of September 1863(sic) Sd/- officer 16th September, 1863.

Later on the case of Rajjab Ali and Mohammad Asghar was put up for proposal. The Numbardargaan told that

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land including Sholapuri and Bahoranpur which is that of Nazul, fetching rent of Rs. 302, 6 Annas and 6 Paie may be given to them. Inquiry from the 'Sharishta' record revealed income of Rs. 193 from Bahoranpur and Rs. 172 from the land in Sholapuri (total Rs. 355 annually). The land as requested above may be given to us with suitable conditions by the Asstt. commissioner for the land. The land fetching rent of Rs. 52-12-6 can be selected from Shoplapuri and the entire village of Bahoranpur should remain intact.

Order:

Put up along with the orders of Assistant Commissioner, In-charge district.

Dated September 16,1863
Sd/- officer

Court of Dr. Hegh Saheb Asstt.

In-charge District Faizabad.

Munshi Rai Ram Dayal Extra Commissioner as per his own choice selected land 52-12-6 – the map of the two plots–as per orders of the secretary to the Chief Commissioner, alongwith the proper report be sent as per instructions. Therefore, the report will be duly sent. Compliance be ensured. May be sent today.

Dated September 28, 1863.

Ijlasi Munshi Rai Ram Dayal. Presented for orders. ***The applicant was asked as to whether he would deposit 'Ujrat' (fees) of Amin. He said that he would.*** *Therefore, it was ordered that an Amin may be appointed who would prepare clear maps of the lands of Bahoranpur and Sholapur, indicating their respective boundaries clearly with Kishtwar details. The land of Government Nazul should be marked by yellow colour, for identification.*

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Dated September 30, 1863.

Sd/- Officer Lachhman Prasad."

2339. **Exhibit A-14 (Suit-1) (Register 7, page 181)** is said to be a copy of the letter dated 25.08.1863 sent by the Secretary, Chief Commissioner Oudh to the Commissioner Faizabad Division stating as under:

> *"With reference to your letter no. 826 dt. 9th ..... I am directed to inform you that the* ***Governor General has sanctioned the Chief Commr's proposal for the commutation of the cash payment of Rs. 302.3.6 granted in perpetuity for the support of the Janamsthan mosque at Fyzabad*** *to a grant of land rent free estimated to yield a yearly rental of that amount and to request that you will provide for the change by a grant of some Nazool land near Ajudhia."*

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2340. **Exhibit A-17 (Suit-1) (Register 7, page 193-197)** is also a copy of the order-sheet dated 16th September, 1865 of the office of Assistant Commissioner Faizabad and reads as under:

نقل بطور سند

روبکار کچہری کلکٹری ضلع فیض آباد باجلاس مسٹر بابرک کارنیگی صاحب بہادر ڈپٹی کمیشنر واقع ۱۳ ستمبر ۱۸۶۵ء ڈاکٹ نمبری ۲۱۰۵ مورخہ ۶ ستمبر سن ۱۸۶۵ء مرسلہ صاحب فانینسیل کمیشنربہادور بذریعہ ڈاکٹ نمبر ۸۶۷ مورخہ ۹ ستمبر سن ۱۸۶۵ء صاحب کمیشنر بہادور بدیں مضمون صادر ہوا جو زمین واسطے معاوضہ مسجد جنم استھان کے پسند کیا ہے منظور کی گی۔

لہذا حکم ہوا کہ

روبکار ہٰذا خدمت میں منشی نند کشور صاحب بہادور ایکسٹرا اسیسٹنٹ کمیشن میں رپورٹ پیش ہوے کہ بہت جلد ساتھ صحت کہ زمین موضعہ کے کریں۔

فقط دستخط حاکم اجلاس منشی نند کشور صاحب بہادور۔

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حکم ہوا کہ

جو زمین معاوضہ میں تحریر کی گی ہے اس پر دخل دے دیا جاوے- اور دخل نامہ لیا جاوے المرقوم ۱۴ ستمبر ۱۸۶۵ء دستخط حکم

جناب عالی دام حسمتہ

زمین جمعی ۳۰۲ روپیہ ساڑھے ۳ آنے حسب تجویز ہوی ہے- بہرن پور معاوضہ مسلم آراضی شولہپوری مگرور ۱۲۷۳ فصلی مبلیغ ۷ روپیہ جمعی معاوضہ بہرن پور ہوکر پٹہ دیا گیا ہے- یعنی ۱۹۳ مبلیغ ۲۰۰ روپیہ کا پٹہ ہوا چنانچہ رپورٹ ۶ ستمبر سن ۱۸۶۵ء میں مفصل عرض کیا- لہذا قبل دخل دیہانی کے مقرر عرض رساں ہوں کہ بلا لیحاظ پیشی جمع زمین تجویز شدا سابقہ پر دخل دلایا جاوے یہ جسطرح سے کہ ارشاد ہو معروضہ ۱۴ ستمبر ۱۸۶۵ء

اجلاس منشی نند کیشور

صاحب ایکسٹرا اسیسٹنیٹ کمیشنر بہادور معلوم ہوتا ہے- کہ وقت تجویز معاوضہ جمعی ہے کہ معاوضہ بہورن پور کے مبلیغ------ ۱۹۳ روپیہ ہے- کہ سن ۱۲۷۱ و ۱۲۷۲ امیں وہی جمعی قائم رہی اب وقت بندوبست سن ۱۲۷۳ء کہ جمع مذکور میں ۷ روپیہ اضافہ ہوکر ۲۰۰ روپیہ کا پٹہ قبولیت ہوا اس صورت میں اب حکام تجویز معاوضہ و بندوبست حال سے سات روپے کا اضافہ ہے جب کہ نقشہ معاوضہ مرتب ہوکر واسطے منظوری ارسال ہوا تھا تو جمع ۱۹۳ تھے تواب تعمیل صدور منظوری جو اضافہ قلیل ۷ روپیے کے فیصدی ڈاھی روپیے ہوتا ہے ہو گیا ہے- چندالاءق لیحاظ نہیں ہے- مگر اطلاع اسکی ضروری ہے- اس واسطے حکم ہوا کہ اطلاعاً یہ کاغذ بحضور جناب صاحب ڈپٹی کمیشنر بہادورپیش ہوی کہ بلالحاظ لحافہ دخل دلایا جاوے اور اسکی مجرای زمین شعلہ پوری سے کرلی جاوی ۱۶ ستمبر ۱۸۶۵ء

دستخط حاکم

لچھمن پرساد حاکم

''نکل بتاور سند

روبکار کچہری کلیکٹری جلا فیجاباد بإجلاس مسٹر بابریک کارنیگی صاحب بہادر ڈپٹی کمشنر واکیا 13 ستمبر سن 1865 ای0 ڈاکٹ نمبری 2105 مورخہ 6 ستمبر سن 1865 مرسلہ صاحب فائنینشیل کمشنر بہادر بجریہ ڈاکٹ نں0 867 مورخہ 9 ستمبر

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सन 1865 ई. साहब कमिश्नर बहादुर बदीं मज़मून सादिर हुआ, डिप्टी कमिश्नर बहादुर ने जो जमीन वास्ते मुआवजा मस्जिद जन्म–स्थान के पसन्द किया है मन्जूर की गई लिहाजा।

हुकुम हुआ है कि

रोबकार हाज़ा खिदमत में मुन्शी नन्द किशोर साहब बहादुर एक्सटरा एसिस्टेन्ट कमिश्नर मय रिपोर्ट पेश होवे कि बहुत जल्द साथ सेहत के ज़मीन मुआवजा करें फक्त दस्तखत हाकिम इजलास मुन्शी नन्द किशोर साहब बहादुर।

हुकुम हुआ कि

जो ज़मीन मुआवजा में तहरीर की गयी है उस पर दखल दे दिया जावे। और दखलनामा लिया जावे अलमरकूम 14 सितम्बर 1865 दस्तखते हाकिम।

जनाबे आली दाम हश्मतहू

ज़मीन जमा 302 (अपठनीय) रू0 साढ़े 3 आने हस्ब जेल तजबीब हुई है। बहूरनपूर मौज़ा मुसल्लम आराज़ी शोलापुरी मजरूर सन् 1273 फसली मुबलिक 7 रू0 जमा मौजा बहूरनपूर इजाद होकर पट्टा दिया गया है। यानी बजाय 193 मुबलिक 200 रू0 का पट्टा हुआ चुनांचे रिपोर्ट 6 सितम्बर सन् 1865 ई0 में मुफस्सल अर्ज किया। लिहाजा कबल दखल देहानी के मुकरर्र अर्जे रसा हूं कि बिलालिहाज पेशी जमा जमीन तजवीज शुदा साबिका पर दखल दिलाया जावे। या जिस तरह से इरशाद हो। मोरखा 14 सितम्बर सन् 1865 ई0

इजलास मुंशी नन्द किशोर साहब एक्सटरा असिस्टेन्ट कमिश्नर बहादुर

मालूम होता है कि वक्त तजवीज़ मोअवजा जमा है कि मौजा बहूरनपूर के मुबलिग 193 रू है के सन् 1271 व 1272 में वही जमा कायम रही अब वक्ते बन्दीबस्त सन् 1273 के जमा मजकूर में 7 रू0 इज़ाफा होकर 200 रूपये का पट्टा कबूलियत हुआ इस सूरत में अब हुकाम तजवीज मुआवजा व बन्दोबस्त हाल से सात रूपये का इजाफा है जबकि नक्शा मुआवजा मुरत्व होकर वास्ते मन्जूरी इरसाल हुआ था तो जमा 193 थे। तो अब तामील सुदूर मन्जूरी जो इज़ाफा कलील 7 रुपये के फीसदी ढाई रूपये हो गया है। चन्दा . . . . .लायके लिहाज़ नहीं है। मगर इत्तिला इसकी ज़रूरी है। इस वास्ते हुकुम हुआ कि इत्तिलान यह कागज़ बहुजूर जनाब साहब डिप्टी कमिश्नर बहादुर . . . .पेश होवे बिला इजाफा

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अज़ाफा दखल दिलाया जाये और उसकी मुजराई ज़मीन शोलापुरी से कर ली जाये। 16 सितम्बर सन् 1865 दस्तखत हाकिम लक्षमन प्रसाद ।''

"Robekar Collectrate, District Faizabad, before the Court of Mr. Babrak Carnegi Deputy Commissioner, Dated – September 1865- docket number 2105 dated September 6, 1865 passed by the Financial Commissioner through docket no. 867 dated September 9, 1865, according approval of the land selected for compensation for Masjid Janam Sthan, Sd/-

Ordered.

Roobkar be put up before Munshi Nand Kishore, Extra Assitt. Commissioner and the land may be allotted.

Sd/-Munsi Nand Kishore.

Ordered:

Possession over the land for compensation as proposed be given and receipt/certificate of possession be obtained..

Sd/- Munshi Nand Kishore.
Dated September 16, 1865. Sd/-.

Respected Sir,

The land yielding revenue of Rs. 302, 3 and half Annas has been selected. The lease of village Bahooranpur (whole) and Aarazi Sholapuri (Part) as per 1273 Fasli was given on deposit of Rs. 7/- , i.e., instead of Rs. 193/ lease was granted for Rs. 200/- the details whereof have been given in the report dated September 6, 1865. Therefore, before handing over the possession, I would pray once again that the possession over the demarcated land be given or as your honour may deem proper.

Dated September 16, 1865.

Ijlas Munshi Nand Kishore, Extra Asstt. Commissioner.

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It seems that at the time of proposing the land as compansation, for Bahooranpur revenue was Rs. 193/-. The same figure continued during 1271 and 1272 Fasli.. But at the time of Bandobast in 1273 F, Rs. 7/- was increased, making the total amount to Rs. 200/- at which the lease was accepted/approved.. In these circumstances, there was an increase of Rs. 7/- whereas, when the map was prepared and submitted, the said amount was Rs. 193/- only. Now after the orders of approval Rs. 7/- which is 2.5%.. Though it does not deserve attention/consideration but furnishing of the information regarding it is necessary. Therefore it was ordered that necessary papers be put up before the Deputy Commissioner—sic—that possession may be given without considering the increase and its adjustment be made from the land in village Sholapur.

Dated September 16, 1865

Sd/- Officer."

2341. **Exhibit A-18 (Suit-1) (Register 7, page 199-205)** is a copy of the order dated 30th October 1865 from the office of the Assistant Commissioner, Faizabad and reads as under:

جناب عالی دامم حشمتہ

تعمیل حکم رقم زدہ ۵ ستمبر سن ۱۸۶۵ء درباب دیے جانے نقد ی وزمین خطیب مسجد جنم استھان کو عرض رساں ہوں- کہ حال دیے جانے نقد اور نیز یہ کہ اب کس سال سے سیال کو ملنا چاہیے- مفصیل رپورٹ ایکاونٹینٹ سے دریافت بزرگان عالی ہوگا اور صورت عیوضانہ یہ ہے کہ بتاریخ ۱۶ ستمبر ۱۸۶۳ء بہرنپور موضع مسلم جمع ۱۹۳ اور زمین جمع ۱۰۹ روپیہ ساڑھے ۳ آنا حلقہ آراضی شعلہ پوری واقع صاحب گنج سے حمانگیں ۳۰۲،۳۰۱۰۹ ------کے آراضی تجویز ہو کے- ۲۳ دسمبر سن ۱۸۶۴ء رپورٹ بحضور صاحب کمیشنربہادور صاحب

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بھیجا گیا کہ یہ سب کارواءی مثل میں موجود ہے- اور وہ سن ۱۲۷۳ءمثل پٹہ موضع بہرنپور جمع ۲۰۰ روپیہ اور پٹہ آراضیات شعلہ پوری مطابق جمع ۱۲۷۲ روپیہ تقسیم ہو گیں-

مورخہ ۶ ستمبر ۱۸۶۵ء

العبد

بھولا ناتھ

اجلاس منشی نند کشور صاحب بہادور ایکسٹرا اسیسٹنٹ کمیشنر چونکہ حسب واقعہ روبکار علاحدہ کے حکم دخل دیہانی کا دیا گیا- اس لے حکم ہوا کہ یہ رپورٹ شامل مثل کے رہے-

المرقوم ۱۴ ستمبر ۱۸۶۵ء

دستخط حاکم

اجلاس مسٹر بابرک کارینگی صاحب بہادور

بعد ملحظہ حکم منشی نند کشور صاحب بہادور ڈپٹی کمیشنر کےحکم ہوا کہ بلا لیحاظہ اضافہ کے فےالعوز بایندہ معاوضہ کو دخل دلایا جاوے- بجینسہ باجلاس منشی نند کشور صاحب پیش ہو کہ براء مہربانی بلالیحاظ رپورٹ داروغہ کے شاید ابھی کوئ رپورٹ نہ دیویں بایندہ معاوضہ کو دخل دیا جاوےجو ایک سوال سالٔ بابت پانے نقدی جوسابق سے مقرر تھا شامل مثل کےہے اسکی بابت بھی ڈپٹی صاحب بدریافت رشتے خزانہ کے ایسی تجویز فرمادیں کہ جسمیں فوراً یہ مقدمہ ختم و طے ہو جاوے-

تاریخ ۱۰ اکتوبر ۱۸۶۵ء

دستخط حاکم روزنامچہ

اجلاسی منشی نند کشور صاحب بہادور ۱۰۱۱

فوراً دخل دلایا جاوے اور دخل نامہ لیا جاوے اوراس طرح دلای جاوے نقدی کے یہ کاروای بھیجیا جاوے کہ دوسری دفا میں تحریرکیفیت مفصل بنام اکانٹنٹ دیا گیا - بعد گزرے رپورٹ کے حکم مناسب دیا جایگا-

اکتوبر ۱۸۶۵ء دستخط حاکم ۱۰

جناب عالی دام حشمتہ کاروای دی جانے زمین کے ختم ہوئ اور ایندہ کو دخل دلایا گیا اور دخل نامہ بھی روبرو حضور کے و تصدیق ہو گیا- اب نسبت ان کاغذات کے حکم مناسب ہوجاتا ہے-

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معروضہ ۱۹ اکتوبر ۱۸۶۵ء

کمترین بھولا ناتھ اجلاس منشی نند کشور صاحب بہادور۔

بعد ملاحظہ کیفیت تعمیل کے حکم ہوا کہ موضع بہرون پور آراضی شعلہ پوری جو معاوضہ میں دی گی رجسٹر سے خارض ہو اور بعد تکمیل کاغذات داخل دفتر ہو اور اگر ضروت جواب کہ ہو توانگریزی میں لکھا جاے۔

المرقوم ۳۰ اکتوبر سن ۱۸۶۵ء

دستخط حاکم

जनाबे आली दामै हशमतहु।

तामील हुकुम रकम जदा 5 सितम्बर सन् 1865 ई0 दरबाब के दिये जाने नगदी व ज़मीन खतीब मस्जिद जन्म स्थान को अर्ज रसा हूं। हालाकि दिये जाने जर नगदी और नीज यह कि अब किस साल से सायल को मिलना चाहिए। मुफस्सल रिपोर्ट एकाउन्टेन्ट से दरयाफ्त बन्देगानी आली होगा और सूरते एवजाना यह है कि बतारीख 16 सितम्बर सन् 1863 बहूरनपूर मौजा मुसल्लम जमा 193 और ज़मीन जमा 109 रूपया साढ़े तीन आना हल्का आराजी शोलापुरी वाकेया साहेब गंज से हमांगी 302–2–6109 के आराजी तजवीज हो कर 23 दिसम्बर सन् 1864 ई0 रिपोर्ट बहुजूर साहेब कमिश्नर साहेब भेजा गया कि यह सब कार्यवाही मिस्ल में मौजूद है और यह सन् 1273 फ0 पट्टा मौजा बहोरनपुर बजमा 200 रूपया और पट्टा आराजियात शोलापुरी मुताबिक जमा 1272 फ0 तक्सीम हो गयी मारूजा 6 सितम्बर 1865

अलअब्द भोलानाथ

इजलास मुन्शी नन्द किशोर साहेब एक्सटरा असिस्टेन्ट कमिश्नर चूंकि हस्ब वाकया रोबकार अलहदा हुकुम दखल देहानी का दिया गया इसलिए–हुकुम हुआ कि यह रिपोर्ट शामिल मिसिल के रहे। अलमरकूम 14 सितम्बर सन् 1865 ई0 द0 हाकिम

इजलास मिस्टर बाबरक कारनेगी साहेब बहादुर बाद मुलाहिजा मुन्शी नन्द किशोर साहेब बहादुर के हुक्म हुआ कि ब लिहाजा इज़ाफा के फिलआवाज बाईन्दा मुआवजा को दखल दियाया जावे। बजिन्सहुबइजलास मुन्शी नन्द किशोर साहब पेश हो कि बराय मेहरबानी बिला लिहाज रिपोर्ट दरोगा के कि शायद अब भी कोई रिपोर्ट न देवे या बन्दा मुआवजा को दखल दिलाया जावे जो एक सवाल सायल बाबत पाने नगदी जो साबिक

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से मुकर्रर था सामल मिस्ल की है उसके बाबत भी डिप्टी साहेब बदरियाफ्त सरिश्ते खज़ाना के ऐसी तजवीज फरमावे कि जिसमें फौरन यह मुकदमा खत्म व तय हो जावे। तारीख 10 अक्टुबर 1865 दस्तखत हाकिम

बइजलास मुन्शी नन्दकिशोर साहेब बहादुर फौरन दखल दिलाया जावे और दखल नामा लिया जावे और वास्ता दिलाये जाने नगदी के यह कार्यवाही भेजे कि दूसरी दफा आज तहरीर कैफियत मुफस्सल बनाम इकाउन्टेन्ट दिया गया बाद गुज़रने रिपोर्ट के हुकुम मुनासिब दिया जायेगा 10 अक्टुबर 1865 द0 हाकिम

जनाबे आली दाम हशमजहू कार्यवाही दी जाने ज़मीन के खत्म हुई और आयन्दा को दखल दिलाया गया और दखलनामा भी रूबरू हुजूर के तस्दीक हो गया। अब निस्बत उन कागज़ात के हुकुम मुनासिब होना चाहिये–मारूजा 19 अक्टुबर 1865 ई0

इजलास मुन्शी नन्द किशोर साहेब बहादुर कमतरीन भोला नाथ वाद मुलाहिजा कैफियत तामीली के . . . .हुकुम हुआ कि . . . . मौजा बहूरन पूर आराजी शोला पूरी जो मावजा में दी गयी रजिस्टर से खारिज हो और बाद तकमील . . . . कागज़ात तामीर दाखिल दफ्तर और अगर जरूरत जवाब के हो तो अंग्रेजी में लिखाया जाये। अलमरक्म 30 अक्टुबर सन् 1865 ई0 दस्तखत हाकिम''

"Before Munshi Nand Kishore Extra Asstt. Commissioner Respected Sir,

In compliance of the order dated September 5, 1865 for giving cash and land to the Khatib Masjid Janamm Sthan, I pray as under:

That it is to be decided as to from which year the aforesaid cash should be payable to the applicant. *A detailed report may be required from the Accountant. A report dated December 23, 1864 was sent to the Commissioner which contained the position of compensation as follows: On September 16, 1863, Moawza Musallm Jama 193/- and land Jama Rs 109/- and 3 and a half anna, Halka Aarazi Sholapuri, situated at Sahebganj*

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—sic—306, 302–was marked/proposed. The proceedings are available in the file. In 1273 F. lease of Mauza Bahooranpur Jama Rs. 200/- and for Aaraziat Sholapuri, previous deposit .....1272 F. (sic) was allotted..

Dated September 6, 1865 commissioner Bhola Nath.

Ijlasi Munshi Nand Kishore Extra Asstt.Commissioner

Since in this matter orders for handing over possession was given through robekar separately, it was ordered that report may be placed in the related file.

Dated September 14, 1865.

Order

In the Court of Mr. Babrak Carnegi.

After perusal of the order of Munshi Nand Kishore it was ordered that without taking into account the increase, the allottee should immediately be given Dakhal (Possession) sic—Ijlas Munshi Nand Kishore Saheb. Possession may kindly be given without waiting for the report of Inspector because he may not give one. The allottee may be given possession. Another question/matter regarding the fixation of the year from which the cash amount would be payable, is enclosed in the file. The Deputy Commissioner after enquiry from the Treasury, may pass suitable orders so that the case is disposed of immediately.

Dated October 10, 1865 Sd/- Officer.

Order.

Possession may immediately be given and Dakhal Nama/acknowledgement thereof be taken. For payment of cash, file may be sent for necessary action. For the second time, detailed orders have been given to the Accountant.

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After a proper report is obtained, and after perusal thereof, suitable orders would be passed.

Dated October 10, 1865 Sd/- Officer.

Respected Sir,

Proceedings regarding handing over of the possession over the land have been completed and the land has been given to the applicant and Dakhal Nama has also been verified/confirmed before your honour. Now suitable orders may be issued regarding these documents.

Dated October 19, 1865

yours faithfully.

Bhola Nath.

Ijlas Munshi Nand Kishore Saheb.

After perusal of the details regarding service, it was ordered --- Mauza Bahoranpur and – sic—Sholapuri which have been in Moawza (compensation), may be struck off from the register and after completing all the papers, be consigned to the office. If there is any need of answer to any query, it should be written in English. Dated October 30, 1865

Sd/- Officer. Lachhman Prasad Naqal Nawees."

(E.T.C.)

2342. The above documents refer to the cash grant and thereafter the grants of land in lieu of cash grant to Mir Rajab Ali and Mohd. Asgar. Here also there is nothing to support or even to suggest that the Muslims actually attended the disputed building or site for offering Namaz at all.

2343. The factum of grant, as is evident from the above record, has been heavily relied by Sri Jilani contending that this is an impeccable evidence that the premises in dispute was in

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possession, control and management of Muslims since 1860 and onwards. It is contended that this grant was allowed after due enquiry by the authorities at that time, as is mentioned in the order passed by the Commissioner. Official acts are presumed to have been done in accordance with law unless shown otherwise. He, therefore, submits that no other evidence need be required to show that the property in dispute remained throughout in possession of Muslims as is fortified from the factum of the grant being allowed for maintaining the mosque in question. It is submitted on behalf of the other side that this grant was allowed on account of personal service and on certain conditions mentioned in the certificate unattached with the mosque in question and therefore, it does not prove anything.

2344. We take the documents as it is and having gone through the same very carefully, find that Mir Rajab Ali and Mohd. Asgar claim to be 4th and 5th in generation in genealogy and that too as the daughter's son of the 4th generation claimed for grant which was allowed by the British authority. There is no occasion for us to look into its correctness or validity since it is a fact accomplished. However, *ex facie* it is absolutely unbelievable that commencing from 1528, Mir Rajjab Ali and Mohd. Asgar had rightly shown the genealogy running only in five generations within a period of more than 325 years.

2345. Besides, the grant, no doubt was allowed to them in their names, though for maintaining the mosque in question but the fact remains that there is not even a whisper in any of the above documents that the Muslims visited the place in dispute and offered namaz thereat. On the contrary, continuous visit of Hindus and worship by them at the disputed site is mentioned in a number of documents as well as in the historical records.

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2346. It is really a peculiar case of its own kind where despite the fact that the building commonly known as mosque existed yet it continued to be visited by Hindus and they performed Darshan, Puja etc. therein ignoring the apparent nature and shape of the construction as also the fact as to who made it.

2347. **Exhibit A-13 (Suit-1) (Register 6, page 173-177)** is a copy of an application dated 25.9.1866 said to have been given by Mohd. Afzal Mutwalli Masjid Babari making a complaint of construction of a Kothari Chabutara and placement of idols within the compound of the disputed building which reads as under:

نقل درخواست مورخہ ۲۵ ستمبر ۱۸۶۶ء بمشولہ مقدمہ نمبری ۲۲۳ مفصلہ

۱۸ مارچ ۱۸۷۱ء

محلہ کوٹ رام چندر اجودھیا اودہ ضلع فیض آباد

میر رجب علی خطیب مسجد بابری

مدعی

بنام

امیبکا سنگھ

مدعا علیہ

	خلاصہ	مسجد
تلسی داس وغیرہ بیراگیان جنم استھان رام ساکنان اودہ مدعا علیہ	بدرخواست کھودے جانے ایک کوٹھری جدید جو مدعاعلیہ نے جدید مالکانا رکھنے مورت وغیرہ اندورنی دروازہ مسجد محلق چبوترہ بنا لیا ہے-	سید محمد افضل متولی بابری واقع اودہ خاص سایل مدعی

غریب پرور سلامت

مسجد بابری واقع قریب جنم استھان مقام اودہ خاص میں بنای ہوی شاہ بابر کی کہ جسکی وجہ صفای جاروں بکشی بنام فدویان متولی مسجد مذکور سرکار دولت مدار انگریز بہادر سے تھی آج تک معین و بحال ہے- ہنود کو ہمیشہ سے کدوکاوش امر مسجد میں چلی آتی ہے چنانچہ پیش ازیں دوبارہ امتناع امرجدید موقوفہ سکستہ بجاے میں مچلکہ واقرارنامےنقد فرمان داخل

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سرکار ہو چکا ہے- دفتر سرکار میں اکثر نابش ان مقدمات کے ملیں موجود ہیں- فقط اعانت و انصاف سرکار ہے آج تک مسجد محفوظ رہی تھوڑی عرصہ سے بیراگیان جنم استھان نے بہیت فکریں کیں کہ ایک شوالہ قریب مسجد بنا دیں مگر ہم فدویان کے اطلاع حال کرنے سے ممانیت سرکار اس فساد سے نجات رہی- قریب مہنے کے عرصہ ہوتا ہے کہ تلسی داس غیرہ بیراگیان جنم استھان نے ایک چھوٹی کوٹھری بارادہ رکھنے مورت وغیرہ کے چوری سے پھر بھر کے عرصہ میں اندرون احاطہ طیار کر لیے فدوی فوراً بعد دریافت روز نامچہ تھانہ میں خبر دی اور لکھوایا-مگر اب تک کوی حکم سرکار بنا پر انہدام اسکے صادر نہیں ہوا- چونکہ اس کوٹھری کے رہنے سے روز بروز فساد بیراگیان مقصود ہے گویا بنانے شوالہ قایم ہونے سابق میں تازمانے کمشنری گولڈن صاحب بہادر کمشنر یہ چبوترہ بھی جسکے پاس کوٹھری بنای تھی میں نے نہیں پایا-عین شروع غدر میں کہ حاکم منصف رہا- دو دن کے عرصہ میں شباشب یہ چبوترہ بیراگیان نے بنوالیا- اسکے بن جانے سے کس قدر فساد بڑھ گیا- اب چھوٹی کوٹھری بنانے سے تھوڑی عرصہ میں آہستہ آہستہ جیسا انکا طریقہ ہے زیادہ تعمیر کر سکتے ہیں- لہذا عرض حالی کر کے امید وار انصاف ہوں کہ واسطے گرانے کوٹھری مذکور حکم حضور صادر ہو کہ فساد بیراگیان سے مسجد محفوظ رہے واجب تھا عرض کیا-

عرض دشت فدوی محمد افضل متولی مسجد بابری واقع مورخہ ۲۵ ستمبر ۱۸۶۶ء-

''नकल दरख्वास्त मोरखा 25 सितम्बर 1866 ई0 बमशमूला मय नम्बरी 223 मुंफसिला 18 मार्च 1861 ई0 मोहल्ला कोट राम चन्द्र अजोध्या अवध जिला फ़ैज़ाबाद

मीर रजब अली खतीब मस्जिद बाबरी ——— मुद्दई

बनाम

अम्बिका सिहं ——— मुद्दआ अलैह

मस्जिद	***खुलासा***	
सय्यद मोहम्मद अफजल मुतवल्ली बाबरी वाके अवध खास सायल मुद्दई	*बदरख्वास्त खोदे जाने एक कोठरी जदीद जो मुद्दआ अलैह ने जदीद माल्काना रखने मूरत वगैरा अन्दरून दरवाजा मस्जिद मुहलर चबूतरा बना लिया है।*	*तुलसीदास वगैरा बैरागयान जनम स्थान राम साकिनान अवध मुद्दआ अलैह*

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गरीब परवर सलामत

मस्जिद बाबरी वाके करीब जनम स्थान मुकाम अवध खास में बनाई हुई शाह बाबर की कि जिसकी वजह सफाई जारोबक्शी बनाम फिदवियान मुतवल्ली मस्जिद मजकूर सरकार दौलतमदार अंग्रेज़ बहादुर से थी आज तक मुअय्यन व बहाल है हुनूद को हमेशा से कदोकाविश अम्र मस्जिद में चली आती है चुनांचे पेश अज़ी दुबारा इमतनाअ अम्र जदीद व मौकूफी शिकस्ता बजाये मय मुचलका व इकरारनामा नक्द जुर्माना दाखिल सरकार हो चुका है दफतर सरकार में अकसर नालिश इन मुकदमात की मिसलें मौजूद हैं फकत इआनत व इंसाफ सरकार से आज तक मस्जिद महफूज़ रही थोड़े अर्से से बैरागियान जनम स्थान ने बहुत फिकरें कीं कि एक शिवाला करीब मस्जिद बनादें मगर हम फिदवियान की इत्तला हाल करने से मुमानियत सरकार इस फसाद से निजात रही। करीब महीने के अर्सा होता हैं कि तुलसीदास वगैरा बैरागियान जनम स्थान ने एक छोटी सी कोठरी ब–इरादा रखने मूरत वगैरा के चोरी से पहर भर के अर्सा में अन्दरून अहाता तैयार कर लिये, फिदवी फौरन बाद दरायाफ़्त रोज़नामचा थाना में खबर दी और लिखवाया मगर अब तक कोई हुक्म सरकार बिना वर इंहदाम इसके सादिर नहीं हुआ चुंकि इस कोठरी के रहने से रोज बरोज फसाद बैरागियान मकसूद है गोया बनाने शिवाला कायम होने साबिक में ताजमाने कमिशनरी गोल्डेन साहब बहादुर कमिशनर यह चबूतरा भी है जिसके पास कोठरी बनाई थी मैंने नहीं पाया। ऐन शुरू गदर में कि हाकिम मुंसिफ रहा दो दिन के अर्से में शबाशब यह चबूतरा बैरागियान ने बनवालिया उसके बन जाने से किस कदर फसाद बढ़ गया, अब छोटी कोठरी बनाने से थोड़े अर्से में आहिस्ता आहिस्ता जैसा उनका तरीका है ज्यादा तामीर कर सकते हैं लिहाजा अर्ज हाल करके उम्मीदवार इंसाफ हूं कि वास्ते गिराने कोठरी मजकूर के हुक्म हुजूर सादिर हो कि फसाद बैरागियान से मस्जिद महफूज़ रहे वाजिब था अर्ज किया।

अमान सरकारी सामान है।

अर्जदास्त फिदवी मोहम्मद अफज़ल मुतवल्ली मस्जिद बाबरी वाके अवध मोर्खा 25 सितम्बर 1866 ई0

Copy of the application dated 25th of September 1866 included with case no. 223, decided on March 18, 1861 Mohalla Kot Ram Chander, Ayodhya, Oudh, District

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Faizabad

Mir Rajab Ali Khatib Masjid Babri -- Petitioners
Vs.
Ambika Singh -- Respondent

Masjid	*Details*	
Syed Mohammad Afzal Mutawalli Babri situated at Oudh Khas Applicant/plaintiff	*Application for* ***demolishing the new Kothri which has been newly constructed*** *by the respondent for placing idols etc* ***inside the door of the Masjid where he has constructed a Chabootra.***	*Tulsidas etc Bairagiyan Janam Sthan Ram residents of Oudh-Defendants.*

Gharib Parwar Salamat

Masjid Babri situated near Janam Sthan in Oudh Khas constructed by Shah Babar. ***The work of scavenging and cleaning was given to the applicants by the Mutawalli by the British Government, which still continues.*** *There had always been a tussle with Hindus who have ever been expressing their interests in the affairs of the Masjid. Therefore on complaints several undertakings and sureties have been filed and a compromise has also been entered by them not to interfere with it. A good number of files of frequent such complaints in past are kept in the Collectorate, Yet, only due to the wisdom and justice of the Court,the Mosque could remain safe and protected. But for the last few days the Bairagis of Janam Sthan are trying to build a Shivala near Masjid. But due to our vigilance and reporting of the matter to the authorities and restriction imposed by the Government it remained free from any*

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dispute. ***About a month back the defendants Tulsidas etc., Bairagis Janamasthan with the intention of planting idols etc in it have constructed a Kothri in an illegal manner within few hours inside the compound of the Mosque. The applicant informed the police vide Roznamcha Thana but till now no orders regarding demolition of the Kothri have been issued by the Government.*** *Since owing to continuance of the existence of Kothari, there is apprehension of daily tussle and clash caused by Bairagiyan. Mr. Goldane Commissioner did not find even the Chabootra built near the Kothri in the past. At the time of Gadar,* ***within two days Bairagiyan got the Chabootra constructed overnight.*** *Because of this construction, there occurred so much rioting in the local populace.* ***Now a small Kothri has been constructed within a short span of time.*** *They can increase such constructions gradually as is their nature or habit. Therefore, after putting the real situation before your honour, it is prayed that* ***mosque may remain protected from the dispute or quarrel of Bairagis and orders for dismantling the Kothari may be passed.*** *I deemed it my duty to inform you. Applicant Mohammad Afzal Mutawalli Masjid Babri situated at Oudh, dated September 25, 1866"*

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2348. **Exhibit 29 (Suit-1) (Register 5 page 103-105)** is a copy of the order dated 12.10.1866 of Deputy Commissioner, Faizabad in case No. 223 Mohd. Afzal against Tulsi Das and others directing for consignment of record to office. It says:

نقل حکم مورخہ ۱۲ اکٹوبر ۱۸۶۶ء برطبق درخواست محمدافضل متولی مسجد بابری واقع اودھ خاص خلاف تلسی داس وغیرہ بہراگیان جنم استھان معروضہ ۲۵ ستمبر سن ۱۸۶۶ء بمقدمہ نمبر ۲۲۳ ساکن محلہ

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کوٹ رام چندر پرگنہ حویلی اودھ ضلع فیض آباد اجلاسی جناب ڈپٹی کمیشنر صاحب بہادر فیض آباد منفصلہ ۱۸ مارچ سن ۶۱ء

مسٹر رجب علی بنام اسکالی سنگھ

حکم ہوا کہ

داخل دفتر ہووے ۱۲ اکتوبر سن ۱۸۶۶ء

دستخط بہ انگریزی

''नकल हुकुम मोरखा 12 अक्टुबर सन 1866 ई0 वरतबक दरख्वास्त मुहम्मद अफजल मुतवल्ली मसजिद बाबरी वाके अवध खास खिलाफ तुलसी दास वगैरह बैरागियान जन्म स्थान मकरूजा 25 सितम्बर सन 1866 ई0 बमुकदमा नम्बर 223 साकिन मुहल्ला कोट राम चन्द्र परगना हवेली अवध जिला फैजाबाद इजलासी जनाब डिप्टी कमिश्नर साहब बहादुर फैजाबाद मुनफसिला 18 मार्च सन 61 ई0।

मिस्टर रज्जब अली बनाम असकाली सिंह

हुकुम हुआ कि

दाखिल दफ्तर होवें *12 अक्टुबर सन् 1866 ई0*

दस्तखत बखत अंग्रेजी''

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"Copy of the order dated 12.10.1866, on the application of Mohd. Afzal Mutawalli Masjid Babri situated at Oudh Khas against Tulsi Das and others, Bairagiyan, Janamsthan, dated September 25, 1866 in case no. 223, resident of Mohalla Kot Ramchandar Pargana Haveli Oudh District Faizabad; In the Court of Deputy Commissioner Saheb Bahadur Faizabad decided on March 18, 61. Mr. Rajab Ali vs. Askali Singh

order.

Be consigned to office.

Dated October 12, 1866.
Sd/ in English"

2349. **Exhibit A-19 (Suit-1) (Register 7, page 207-213)** is a copy of the order and decree dated 03.02.1870 of Settlement Officer's Court Faizabad in Case No. 5, Mohd. Afzal Ali and

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Mohd. Asgar Vs. Government regarding Mauja Bahoranpur Taluka, Pargana Haveli Awadh. The dispute pertains to superior propriety right revenue free. The order reads as under:

"Parties present. The plaintiff who has been present at all the sittings in the other cases connected with this village is today absent, but as all the other cases are now concluded and his suit is under a grant from the British Government, his case is proceeded with.

I find that in answer to the Chief Commr's circ. 43/1463 of 21st May 1863 enquiring about endowment for support of mosques and other religious purposes in the Fyzabad District, a letter (No. 53 of 2nd July 1863) was sent by the D.C. stating that a sum of 302/2 was paid annually from the imperial revenue for the support of the Janamsthan mosque in Ajudhia. On the 28th Augt. the Commr. forwarded copy of the letter from the Secretary to the Chief Commr. to his address No. 2492 of 25th August 1863 which is as follows:

"With reference to your letter no. 829- of 9th ult I am directed to inform you that the Governor General has sanctioned the Chief Commr's proposal for the commutation of the cash payment of Rs. 302-2-0 granted in perpetuity for the support of the Janamsthan mosque at Fyzabad to a grant of land rent free estimated to yeild a yearly rental of that amount and to request that you will provided for the change by a grant of some Nazool land near Ajudhia."

In obedience to these orders a proposal was made and statement submitted (D.C's No. 381 dt. 16th Nov. 1864) to

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give over mauja Sholapur and Bahoranpur.

To this Commr replied in no. 1289 of 20th Nov: Reply to No. 381 dt/ 16th inst. states that the land included in Bahoranpur and Sholapur seems exactly to suit the requirement of the case. The cultivated area gives the exact nikasi wanted and there is no land likely to come under cultivation and thus give the muafidar larger income at the expanse of the state. ..... Beg D.C. will take an agreement from the manager of the Cantonment (Endowment) and Offg. Commr. will then report the grant for the sanction of suit Finl. Commr.

In No. 493 of 23rd Dec: 1964 submitted this argument.

The argument is on record under signature of Mohammad Asghar and Mohammad Afzal Ali.

Commr: in his No. 867 Dt/ 9th Septer: 1865 forwarded copy of J. C.'s 2105 dT/ 5/6 Septer: approving of the selection of land made by the Off: Dy. Commr. of Fyzabad for Janamsthan mosque.

In accordance with these orders all other suits relating to the village having been disposed of, I now decree as follows:

Decree

The superior proprietory right in Mauza Bahoranpur is decreed revenue free to Mohammad Asghar and Mohammad Afzal Ali."

2350. **Exhibit 26 (Suit-1) (Register 5 page 91-93)** is the plaint dated 22.02.1870 of the suit filed by Mohd. Asghar. It says:

نقل عرضی دعوی مشمولہ مثل حقیت موضع کوٹ رام چندر پرگنہ حویلی اودہ تحصیل وضلع فیض آباد جلد سوم بستہ ۱۳۲ محمد اصغر وغیرہ

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مدعیان بنام سرکار بہادر مدعا علیہ دعوی عرضی رام کوٹ پرگنہ حویلی اودہ

فیصلہ ۲۲ اگست ۱۸۷۱ء

بصیغہ بندوبست ۱۲۵ نمبر

سرکار بہادور مدعا علیہ

سیدمحمد اصغر و محمد افضل نواسہ سید حسین علی متوفی خطیب و موزن مسجد بابری واقع جنم استھان اودہ

بدعوی فیصلہ اوپر ۲-/۷ بیگھ غاضربی میں ۲۱ درختان املی وکھنڈل واقع دروازہ مسجد بابری واقع مسجد جنم استھان اودہ بموجب نمبر خسرہ حسب عملدرآمد قدیم

غریب پرور سلامت

عہدہ خطابت و موزن جامع مسجد بابری وقع جنم استھان اودہ پشتہ پشت سے و نسلاً بعد نسل بیچ فیض و تصرف بزرگان ہم ساءل کے چلا اتا ہے بلکہ درختان ۲۱ املی پنچ و تصرف ہم ساءلان و بزگان ہم ساءلان کہ رہا ہے مدت ہوا کہ اس پر قابضہ و متصرف ہوں و سبب مصیعت حقیت کہ رجب علی شاہ فقیر آباد کچھ بزرگان ہم ساءل کا دھا و ملازم ہم ساءل کا رہا ہے جس وقت فقیر مذکور نے عہد شاہی میں خلاف رائے ہم ساءل کا ہوا تب اسکو باہر مکان سے کر دیا تب سے قبضہ اس پر نام (نشان پھٹہ ہوا ہے) کنڈیل کے بحال ہے وہ کبھی کچھ مداخلت مدعا علیہ کو نہیں ہوی بلکہ مداخلت جانب ہم مدعیان و مقابلہ برمداس وغیرہ ہو کہ ڈگری ہم ساءل لانےکی ہوی ہے وہ صدر حاکم بحال رہا ہے وہ قبضہ حقیت میں بمقدمہ مادہو داس چیلا برم داس مدعی بنام سرکار بہادر مدعا علیہ مثل میں موجود ہیں اس میں اجردار تھا کہ ڈگری ہم ساءلان کے ہوے لیکن عدالت سے ہدایت داءر کرنے مقدمہ ثانی میں نمبرخسرہ کے ہوے اسکے علاوہ اسکے اور ہم مدعیان عدالت ضلع تحت قبضہ موجود ہے اسلیے درخواست میں نمبرداری حضور سے کرا دی گی- امیدوار ہوں کہ بعد تحقیقات لوازمہ عدالت ڈگری تکیہ و درختان املی و کنڈیل بنام ہم مدعیان کہ فرماءی جاوے واجباً عرض کیا معروضہ ۲۲ فروری ۷۰ء

ہم محمد اصغر و محمد افضل کہ نام پر و عرضی دعوی میں موجود ہے

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اقرار یہ ہےکہ جو کچھ عرض کیا ہے ازروے علم ویقین کے صحیح ہے

----------محمد اصغر و محمد افضل

نواسہ سید حسین علی و خطیب و موزن مسجد بابری

''नकल अरजी दावा मशमूला मिसिल हकीयत मौजा कोट राम चन्द्र परगना हवेली अवध तहसील व जिला फैजाबाद जिल्द सोयम, बस्ता 132 मोहम्मद असगर वगैरह मुद्दैयान बनाम सरकार बहादुर मुद्दालेह दावा आराजी राम कोट परगना हवेली अवध फैसला 22 अगस्त सन् 1871 ई0

वसेगा बन्दोबस्त 125 न0 हदबस्त

सैय्यद मुहम्मद असगर व मोहम्मद अफजल नैवासा सैय्यद हुसैन अली मुतबफ्फी खतीव व मुतवल्ली मसजिद बाबरी वाके जन्म स्थान अवध

सरकार बहादुर मुद्दालेह

बदावा फैसला ऊपर कब्जा 7/–2 जरीवी बीघा में 21 दरख्तान इमली वजो खन्डहल वाकै दरवाजा मसजिद बाबरी वाके मसजिद जन्म स्थान अवध बमौजिव नम्बर खसरा हस्व अमलदरामद कदीम।

गरीब परवर सलामत,

ओहदा खिताबत व मुअज्जिन जामा मसजिद बाबरी वाके जन्म स्थान अवध पुश्ताहापुश्त से व नसलन वाद नस्ल बीच फैज वो तसरूफ बुजुरगान हम सायल के चला आता है बल्कि दरख्तान 21 इमली पंच जो तसवरु हम सायलान व बुजुरगान हम सायलान रहा है मुद्दत हुआ उस पर काबिज व मुतसरिफ हूं वो सबबे मशीयत हकीयत के रजब अली शाह फकीराबाद बुजुरगान हम सायल का था बे मुलाजिम हम सायल का रहा है जिस वक्त फकीर मजकूर ने अहद शाही में खिलाफ राय हम सायल का हुआ तब उसको बाहर मकान से कर दिया तब से कब्जा इसपर नाम सनिशान फटा हुआ है। आपके (अपठनीय) खन्डहल के बहाल है वो कभी कुछ मोद्दाअलेह को नहीं हुई बल्कि मुदाखलत जानिब हम मुद्दैयान व मौकालमा ब्रह्मदास वगैरह हो के डिग्री हम सायलान की हुई है वो तासदूर हाकिम बहाल रहा है वो कब्जा हकीयत में बमोकदमा माघो दास चैला वरम दास मुद्दई बनाम सरकार बहादुर मुद्दालेह मिसिल में मौजूद हैं उसमें उजुरदार था कि डिग्री.

हम सायलान की हुई है लेकिन बअदालत से हिदायत दायर करने मोकदमा सानी में नम्बर खसरा के हुए इसके अलावा उसके और हम मुद्दयान अदालत जिला तहत कब्जा मौजूद है इसलिए दराख्वास्त में नम्बरदारी हुजूर से करा दी गई उम्मेदवार हूं कि बाद तहकीकात लबाजमा

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बदालत डिग्री तखलिया दरख्तान इमली की खण्डहल बनाम हम मुद्देयान के फरमाई जाये बाजबन अर्ज किया।

ता0 22 फरवीर 70 ई0

हम मो0 असगर वो मो0 अफजल कि नाम मेरा अरजी दावा में मॉजूद है इकरार यह है कि जो कुछ अर्ज किया है अजरुये इल्म व यकीन के सहीह है।

(अपठनीय) मो असगर वो मो0 अफजल

नेवासा सै0 हुसैन अली खतीम मोउज्जुन मसजिद बाबरी।

"Copy of plaintiff included in the file of Haqiyat; Mauza Kot Ram Chandar Pargana Haveli Oudh, Tehsil and District Fazabad Vol. 3, Basta 132, Mohd Asghar etc. Plaintiffs vs. State defendant. Dawa Arzi Ram Kot Pargana Haveli Oudh, decided on August 22, 1871 Bandobast 125 No. Hadbast. ***Syed Mohd. Asghar and Mohammad afzal maternal grandsons (Nawasa) of*** *Late Syed Husain Ali, Khatib and Moazzin Masjid Babri situated at Janamsthan Oudh vs. the Government-defendant. Claim over 71.2 Jaribi 21 trees of tamarind according to Khasra number as per Amaldaramad Qadeem (old).*

Garib Parwar Salamat,

The ***post of Khatib and Moazzin****, Jama Masjid Babri situated at Janamsthan Oudh* ***is ancestral*** *(Pusht Dar Pusht and Naslan Baad Naslan).....21 Imli trees have been in the possession and use of the applicants and their ancestors since ancient times. The said right was of Rajab Ali Shah, Fazirabad, ancestor of the applicants. The Faqir was residing there with the permission of the plaintiff's ancestors. He was our servant. During the Shahi period, when the said Faqir became against the plaintiffs' ancestor\, he was ousted from the premises. Since then we have been in possession over Bagh Imli (sic) There was*

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interference/resistance by us and against Baram Das and others a decree was issued by the Court in favour of the objector, i.e. the applicant which remained in force in case of Haridas Chela Baram Das but on filing of another case Khasra number was given and the applicants are in possession thereof..... . .It is requested that this Hon'ble Court may after due inquiries, ***pass decree for eviction from trees of Imli, Khandhal and graveyard may be issued in favour of applicants****. Deemed necessary, so prayed.*

Dated Febraury 22, 70.

We Mohd. Asghar and Mohd. Afzal aver that our names are there in theplaint. Whatever is said is correct to the best of our knowledge and belief.

Sd/ Mohd. Asghar and Mohd Afzal. Mohd. Asghar and Mohd. Afzal are the matriarchic grandsons of Khatib and Moazzin Masjid Babri.

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2351. **Exhibit 25 (Suit-1) (Register 5 page 87-89)= Exhibit A-20 (Suit-1) (Register 7, page 231)=Exhibit 9 (Suit-4) (Register 10 Page 45)** is a copy of the judgment dated 22.08.1871 dismissing the claim of Mohd. Asghar regarding ownership of Kabristan in the vicinity of Masjid Babar Shah Mauja Kot Ram Chandar while decreeing the claim over the tree of Tamarind *(Imli).* The contents are:

نقل تجویزمورخہ ۲۲ اگست ۱۸۷۱ء متمولہ مثل حقیت موضع کوٹ رام چندر پرگنہ حویلی اودھ تحصیل فیض آباد جلد سوم محمد اصغر وغیرہ مدعیان بنام سرکار بہادورمدعا علیہ دعوی آراضی رام کوٹ پرگنہ حویلی اودھ فیصلہ ۲۲ اگست ۱۸۷۱ء-

اظہار گواہان مدعی تحریر ہوکر روداد ملاحظہ میں درآے مدعی داویےداحقیت عالی آراضی قبرستان ی درختوان املی واقعے اسکے جو حایل

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دروازہ مسجد بابر شاہ و جنم استھان کے ہیں- تحقیقات سے قبضہ مالکانہ درختوان املی دعوی مدعی کا ثابت ہوتا ہے مگرزمین ملکیت مدعی کی نہیں ہے- یہ قبرستان عام و صحن دروازہ مسجد جنم استھان کے ہیں- ایسے آراضی میلکیت کسی کی نہیں ہو سکتی لہذا

حکم ہوا کہ

ڈگری حق ملکیت مدعی درختان املی واقع قبرستان عام مندرجہ ---- خسرہ مثل اندر موضع رام کوٹ برگنہ حویلی اودھ بحق مدعی کے ہو- دعوی مدعی بابت ملکیت اراضی قبرستان نقشہ ڈگری فریقین کو دیا جاے و پروانہ بنام صدر منصرم واسطے عمل در آمد بیچ گاغذات بندوبست کے تحریر ہوکر مثل مقدمہ داخل دفتر ہو لکھا-

اگست ۱۸۷۱ ۲۲

دستخط بخط انگریزی شیکشت

''नक़ल तजवीज़ मोरखा 2 अगस्त 1871 मसमूला मिसिल हकीयत मौजा कोट रामचंदर परगना हवेली अवध तहसील व जिला फैजाबाद जिल्द सोयम वास्ता 134 मा मोहम्मद असग़र वग़ैरह मुद्दईयान बनाम सरकार बहादुर मुद्दाअलय दावा आराज़ी रामकोट परगना हवेली अवध। फैसला 22 अगस्त 1871

इज़हार गवाहान मुद्दई तहरीर होकर रुदाद मुलाहज़ा में दर आये मुद्दई दावेदार हक़ीयते आ़ला आराज़ी कब्रिस्तान व दरख़्ताने इमली वाक़ै उसके जो हायल दरवाज़ा मस्जिद बाबर शाह व जनम स्थान के हैं। तहक़ीक़ात से क़ब्ज़ा मालिकाना दरख़्ताने इमली मुतदाविया मुद्दई का साबित होता है मगर ज़मीन मिलकियत मुद्दई की नहीं हो सकती। यह कब्रिस्तान आम व सहन दरवाज़ा मस्जिद जनम स्थान के हैं। ऐसी आराज़ी मिल्कियत किसी की नहीं हो सकती लेहाज़ा

हुक्म हुआ कि

डिग्री हक़ मिलकियत मुदई दरख़्ताने इमली वाक़ै कब्रिस्तान आम नम्बरी ख़सरा मशमूला मिस्ल (अपठनीय) मौज़ा रामकोट परगना हवेली अवध बहक़ मुद्दई के हो। दावा मुद्दई बाबत मिल्कियत आराज़ी कब्रिस्तान के डिसमिस हो व नक्शा डिग्री फ़रीक़ैन को दिया जाये व परवाना बनाम सदर मुंसरिम वास्ते अ़मल दरआमद बीच काग़ज़ात बन्दोबस्त के तहरीर होकर मिस्ल मुक़दमा दाख़िल दफ़्तर हो लिखा

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22 अगस्त सन् 1871

दस्तख़त बख़त अंग्रजी शिकस्त''

"*Copy of the judgment dated August 22, 1871, included in the Haqqiat , Village Kot Ram chandra, Pargana Haveli Oudh. Tehsil and District Faizabad Vol. 3 Basta no. 132. Mohd. Asghar and others petitioners vs. Government respondent. Claim over Arzi Ram Kot, Pargana Haveli Oudh.*

Judgment dated August 22, 1871.

Statements of the witnesses of the plaintiffs were recorded and perused. The plaintiffs are the claimants of the ownership right of Arazi Qabristan and trees of Tamarind (Imli), ***in front of the door of Masjid Babar Shah and Janamsthan****. Enquiries reveal that possession of the plaintiffs over the tamarind trees is well established,* ***but the right of the ownership of the land cannot be of the plaintiffs.*** *This is a general graveyard and courtyard* ***in front of the door of the Masjid Janamsthan.*** *Therefore such an Arazi (piece of land) cannot be a private property. As such it was ordered.*

Decree for the ownership of 21 tamarind trees standing in the Qabristan, bearing Khasra number, (included the file) in Mauza Ram Kot pargana Haveli Oudh in favour of the plaintiffs is passed but suit regarding ownership of the plaintiffs with respect to the aforesaid Arazi qabristan (graveyard) is dismissed. . . . . Copies of the decree be given to the parties. Parwana be issued to Sadar Munsarim for necessary action. Except necessary documents, the file be consigned to office.

Dated August 22, 1871.

Sd/- Secretary (Urdu)"

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2352. **Exhibit 30 (Suit-1) (Register 5 page 107-116-C)** is a copy of memo of appeal no. 56. It was filed by Syed Mohd. Asghar Ali before the Commissioner, Faizabad against the order dated 03.04.1977 of Deputy Commissioner, Faizabad. This appeal was decided by the Commissioner, Faizabad on 13.12.1877. The contents of the memo of appeal are as under:

دفہ ۱ :- ہر گاہ دیوار احاطہ مسجد کی ہے تو جو تعمیارات مسجد کی ہے وہ متولی مسجد کے جسکو معافی مسجد کی سند سرکار سے مرحمت ہوی تھی متعلق ہونا چاہیے نہ ہندو سے

دفہ ۲:- یہ کہ یہ اصول عام ہے کہ کل امور متولی مساجد مسلمانوں کی مسلمانوں کے سپرد ھونا چاہیے امور متعلق شیوالہ و منادر ہندوں کو سپرد ہونا چاہیےبلکہ کسی قانون کےمنشہ بھی خلاف ان اصول کہ نہیں ہے باوجود اسکے حاکم ماتحت نے اجازت بنانے دروازہ جدید و دیوار احاطہ مسجد جانب شمال رسپانڈیڈ کردی ہے- یہ امر خلاف اصول عام ونیز خلاف عمل درامدقدیم ہے کیونکہ زمانہ قدیم سے رسپونڈیڈ کو کچھ علاقہ دیوارمسجد سےنہ رہا انصاف اسکا حضور سے امید کیا گیا ہے کہ حضور فیض گنجور امور متعلق مذھب اہلے اسلام کو اور متعلق مذھب اہل ہنود سے علاحدہ فرماونگیں-

دفہ ۳ :- ملاحظہ مثل مقدمہ محمد اصغر اپیلانٹ بنام مہنت بلدیو داس مورخہ ۷ نومبر سن ۱۸۷۳ء اجلاسی حضور کہ واقع ہوگا کہ ایک پشتگاہ حضور کے حکم اٹھا دی جاےگی- مورت یعنی چڑن پادوکا ہو چکا ہے- بس جب کی اختیار رکھے جانے مورت کا چبوترے پر نہ دیا گیا تو وایسی کسی صورت میں اخیتار دی جانے دیوار مسجد کا رسپورنڈینٹ دیا جا سکتا ہے اور اس طور کا اختیار رکھے جانے مورت کا چبوترے پر نہ دیا گیا تو پس کسی صورت میں اخیتار بنانے دیوار مسجد کا رسپورڈنٹ دیا جا سکتا ہے اور اس طرح اختیار دیا جانا ایک امر خلاف انصاف عدالت ہے-

دفہ ۴:- یہ کہ ثبوت تحریری جو حاکم ماتحت نے مندرجہ حکم فرمایا ہے کیفیت اسکی یہ ہے کہ ایک عمدہ ثبوت یہ ہے کہ دیوار احاطہ بیرونی مسجد کہ دروازے پر نام اللہ کا کندہ و تحریر ہے- چونکہ یہ ثبوت

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تحریری سے حسب و حرکت------ بے لاءق ملاحظہ موقع کہ ہے پس کیونکہ عدالت ماتحت میں پیش ہو سکتا تھا اندریں اس ثبوت اپلیلانٹ امیدوار ہے کہ بنظر انصاف ملاحظہ موقع فرمایا جاوے تاکہ ثبوت بوجہ اصل وبحق اپلیلانٹ ظاہر ہو جاوے-

دفہ ۵:-جس حالت میں کہ اپیلانٹ کی درخواست یہ تھی کہ اسی خرچہ اپیلانٹ پر دروازہ بنوایا جاے جس پر اپیلانٹ حمایت مستعد بھی تھا اور تیار ہونا دروازہ کا ۱۰ یا ۱۵ روپیہ میں ممکن تھا اس صورت میں اپیلانٹ کو اجازت میلانا چاہے تھا اوریا خود سرکار اپنے احتیمام سے تیار کرا دیتی- ریسپانڈنڈ خلاف مذہب کو کسی طرح اجازت نہیں میلنا چاہے تھا- یہ صرف چالاقی ریسپانڈنڈ بنظر فساد آءندہ کی ہے کہ رسپانڈیٹ اصول اجازت تعمیر دروازہ کی حیلا سے زیادہ روپیہ صرف کرنے دروازہ میں مورت حاے معاقف مذھب کے رکھنے کا ہو رہا ہے- انصاف کا مقام ہے کہ دیوار دروازہ مطلق مسجد پر مورتی کا بننا کس قدر خلاف مذھب اہلے اسلام بلکہ ظلم بت پرستان اوپر اہلے مسلمان کے ہے- لہذا اپیلانٹ با امید استنداد فصاد اپندہ کی مستدعی انصاف حضور کا ہے-

دفہ ۶ :- قدیم سے اپیلانٹ و ریسپانڈیٹ سے تنازع چلا آ رہا ہے اور حکم سرکار قدیم سے یہ ہے کہ ریسپانڈیٹ کوی امر جدید نہ کرے پوجہ روپوش ہونے بلدیوداس بیراگی کی حکم مورخہ ۷ نومبر سن ۱۸۷۳ء تعمیل نہیں ہوا- یعنی ابھی تک وہ مورت مطابق حکم حضور نہیں اٹھای گی- ریسپانڈنٹ و بغرض قبضہ کرلے دیوار مسجد پر انواؤ و اقسام کے امور تا ہے *होता है मगर* جدید کیا کرتا ہے- وہ وقت ممانیعت کے عمدہ فساد ہو چنانچہ اندر احاطہ مذکور کے چولہ بنایا ہے اور رسوی کرتا ہے کہ یہ امر پہلے کبھی نہ ہوا وہاں فقط ایک چھوٹا سا چولہا واسطے پوجہ کےسابق میں تھا اسکو بھی اسنے وسیع کر لیا ہے-

دفہ ۷:- اپیلانٹ شیتم رشیدہ امیدوار انصاف حضورکا ہے کہ بعد ملاحظہ مثل حکم مورخہ ۷ نومبر سن ۱۸۷۳ء کہ سررشتہ میں موجود ہے- ملاحظہ فرما کر ان امور جدید کا جو بنیاد باعث فساد و تقرار ہے تدارک و انستعدادفرمایا جاوے و حق رسی اپیلانٹ کی ہو- واجب تھا عرض کیا فقط

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العبد

عرضی

''दफा अव्वलः— हर गाह दीवार अहाता मस्जिद की है तो जो तामीरात मस्जिद की है वह मुतवल्ली मस्जिद जिस को माफ़ी मस्जिद की सनद सरकार से मरहमत हुई थी मुतालिक़ होना चाहिए न रेसपान्डेन्ट हिन्दू से । दफाः—2 यह एक उसूल आम है कि कुल उमूर मुताललिक़ मसाजिद मुसलमानों के मुसलमानों के सिपुर्द होना चाहिए व उमूर ***मुताल्लिक़ शिवाला व मनादिर हिन्दुओं के सुपुर्द होना चाहिए*** *बलकि किसी कानून का मन्शा भी ख़ेलाफ इन उसूल के नहीं है बावजूद इसके हाकिम मातहेत ने* ***इजाज़त बनाने दरवाज़ा जदीद दीवार अहाता मस्जिद जानिब शुमाल रेसपांडेन्ट को दी जो यह अम्र ख़ेलाफ़ उसूल आम व नीज़ ख़ेलाफ़ अमलदरआमद कदीम है*** *क्योंकि ज़माना क़दीम से रेस्पांडेन्ट को कुछ एलाक़ा दीवार मस्जिद से न रहा इन्साफ उस का हुजूर से उम्मीद किया गया है कि हुजूर फ़ैज़ गंजूर उमूर मुताललिक़ मज़हब अहले इसलाम को उमूर मुताललिक़ मज़हब अहले हुनूद से अलादेहा फ़रमावेंगे*

दफा 3 :— बमुलाहेज़ा मिसिल मोक़दमा मोहम्मद असग़र अपीलान्ट बनाम महंत बलदेवदास मोरख़ा 7 नवम्बर 1873 ई0 इजलासी हुजूर के वाजेह होगा कि एक पेशगाह हुजूर के हुकम उठा दिये जाने मूरत यानी चरन पादुका का हो चुका है पस जब कि अख़तियार रख्खी जाने मूरत का चबूतरा पर न दिया गया तो ऐसी किसी सूरत में अख़तियार (अपठनीय) दीवार मस्जिद का रेसपांडेन्ट दिया जा सकता है और इस तौर का अख़तियार रख्खी जाने मूरत का चबूतरा पर न दिया गया तो पस किस सूरत में अख़तियार बनाने दीवार मस्जिद का रेसपांडेन्ट दिया जा सकता है और इस तरह का अख़तियार दिया जाना एक अम्र ख़ेलाफ़ इन्साफ़ अदालत है।

दफा 4 :— यह कि सुबूत तहरीरी जो हाकिम मातेहत ने मुनदरिज हुकुम फ़रमाया है कैफ़ियत उस की यह है कि एक उम्दा सुबूत यह है कि दीवार अहाता बेरुने मस्जिद के दरवाज़े पर नाम अल्लाह का कुन्दा व तहरीर है चूंकि यह सुबूत तहरीरी बेहिस वहरकत है लायक़ मुलाहेज़ा मौक़ा के है पस क्योंकि अदालत मातहेत में पेश हो सकता था अन्दरीन सूरत अपीलांट उम्मीदवार है कि बनज़र इन्साफ़ मुलाहेज़ा मौक़ा फ़रमाया जावे ताकि सुबूत

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बवजेह बहक़ अपीलांट ज़ाहिर हो जाये ।

दफा 5 :– जिस हालत में कि अपीलांट की दरख़ास्त यह थी कि उसी ख़रचा अपीलांट पर दरवाज़ा बनवाया जावे जिस पर अपीलांट हिमायत मुस्तएद भी था और तैय्यार होना दरवाज़े का 10–15 रुपया में मुमकिन था उस सूरत में अपीलांट को (अपठनीय) इजाज़त मिलना चाहिये था या खुद सरकार अपने एहतेमाम से तैय्यार करा देती रेस्पांडेन्ट ख़ेलाफ़ मज़हब को किसी तरह इजाज़त नहीं मिलना चाहिए था यह सिर्फ चालाकी रेसपांडेन्ट बनज़र फ़साद आइन्दा के है कि रेसपान्डेंट असूल इजाज़त तामीर दरवाज़ा के है कि ज़्यादह रुपया सर्फ़ करे दरवाज़ा मय मूरतिहाय मुवाफ़िक मज़हब के रखने का हो रहा है। इन्साफ़ का मुक़ाम है कि दीवार दरवाज़ा मुतालिक़ मस्जिद पर मूर्ती का बनना किस क़दर ख़ेलाफ मज़हब अहले इसलाम बल्कि जुल्म बुतपरस्तान ऊपर अहले मसलमान के है लिहाज़ा अपीलांट वउम्मीद इन्सदाद फ़साद आयन्दा के मुस्तदई इन्साफ़ हुजूर का है ।

दफा 6 :– क़दीम से अपीलांट व रेस्पानडेंट से तनाज़ा चला आ रहा है और हुकुम सरकार क़दीम से यह है कि रेस्पान्डेंट कोई अम्र जदीद न करे । बवजेह रु पोश होने बलदेव दास वैरागी के हुक्म मुसदिदरह 7 नवम्बर 1873 ई0 तामील नहीं हुआ ***यानी अभी तक वह मूरत मुताबिक़ हुकम हुजूर नहीं उठाई गई*** *रेस्पान्डेन्ट बग़रज़ क़ब्ज़ा करने के मय दीवार मस्जिद पर उनवाव व अक़साम के उमूर जदीद किया करता है वह वक़्त मुमानेयत से आमादा ब फ़साद होता है* ***चुनांचे अन्दर अहाता मज़कूर के चूलहा बनाता है और रसोई करता है*** *कि यह अम्र पहले कभी न हुआ वहां फ़क़त एक छोटा सा चूलहा वास्ते पूजा के साबिक़ में था उस को भी उस ने वसीअ कर लिया है ।*

दफा 7 :– अपीलांट सितमरसीदा उम्मीद वार इन्साफ़ हुजूर का है कि वाद मुलाहिज़ा मिसिल हुकुम मसदूरा 7 नवम्बर 1873 ई0 के सरिश्ता में मौजूद है मुलाहिज़ा फ़रमाकर इन उमूर जदीद का जो बुनियाद व बायसे फ़साद हैं तदारुक व इन्सेदाद फ़रमाया जावे व हक़ रसी अपीलांट की हो वाजिब था अर्ज़ किया फ़क़त''

"Section 1. Whereas each and every place within the boundary wall of the mosque is that of the Mosque and its wall being the construction of Masjid itself which had been

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gifted Maafi. It should be ***entrusted to the Mutawalli of the mosque and not to Hindu defendants****.*

Section 2. That it is a general principle that matters related to Masjid should be handed over to Muslims and matters regarding Shivala and Temples should be handed over to the Hindus. No law intends nor is against this principle. In-spite of this, ***the subordinate officer accorded permission to the defendants for erecting a new door in the wall of the Masjid northwards.*** *This act is in contravention of the general principle and rules and can not be acted upon simply because the defendants had never any concern with the wall of the Masjid. It is, therefore, requested that as per old tradition matters of the Muslims may be left to Muslims and religious matters regarding Hindus should be left to them.*

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Section 3. That from a perusal of the file of case Mohammad Asghar Appellant vs Mahant Baldeo Das dated November 7, 1873 in this court, it becomes clear that ***the order for removing the idol that is Charan Paduka has already been passed by this Court.*** *Now since there is no permission to install an idol on the Chabootra, i, how can right over the wall of the Masjid could be given to the defendant, inasmuch as, giving such a permission would be violative of law and justice.*

Section 4. That a written evidence as entered in the order of the officer, is to the effect that on the door of the outer wall of the Masjid the name of " Allah" is engraved, which is material written evidence and deserves to be taken into consideration. This could have been presented in the lower court in support of the appellant as required under the law.

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This fact can be ascertained by spot inspection so that evidence in favour of the appellant may come to light.

Section 5. That wherein that appellant had himself requested that he could erect the door on his own expenses and he was ready to do so and that door could have been prepared and installed with cost of Rs.10-15. In that event, the appellant could have been granted permission or the Government itself could have done it. The defendant belonging to other religion could not have been accorded permission to construct the door against religious canons.. The respondent has cleverly done so for creating trouble in future. He wanted to spend more money to place idols along-with the door (sic). It is a matter of justice ***that how idols could be placed on the wall of the Masjid which would be against all the canons of Islam.*** *It is a Sheer high-handedness of the idol worshippers against the Muslims. Therefore the appellant, demands justice from your honour so that likelihood of any possible riot in future could be avoided.*

Section 6. That there has been old controversy between the respondent and the appellant and the Hon'ble Court has ordered that the ***respondent should not do any thing new on that place. But because of Baldeo Dass Baigragi being underground, the order dated November 7, 1873 could not be served upon him. That is to say, that the idol has not yet been removed as per orders.*** *The respondent with the intention of occupying it continues to indulge in several activities on the wall and on being restrained by someone, he becomes aggressive and is bent upon to fight with him.* ***So he has made a Chulha within***

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the said compound which has never been done before. In the past, there was mere a small Chulha (kitchen) for Pooja which he has got extended.

Section 7. That the aggrieved appellants pray your honour to administer justice to him and after perusal of the order dated November 7, 1873, which is enclosed in the Sarishta, file and recent and ***new constructions may be removed*** *and the appellant may kindly be given his rights . Deemed proper so prayed." (ETC)*

2353. Exhibit 15 Suit 1 (Register 5 Page 41-43) : It is a copy of the report dated Nil of Deputy Commissioner Faizabad submitted pursuant to the Commissioner, Faizabad's order dated 14th May, 1877 passed in Misc. Appeal No.56, Mohd. Asghar Vs. Khem Dass. This report appears to have been called by the Commissioner on a complaint made against raising of a doorway in the wall of the disputed building. It appears that in the wall dividing mosque by a railing, the justification thereof was to provide a separate room on fair days to visitors to the Janam Asthan. The document being old there appears to be certain mistakes may be on account of legibility. It reads as under:

"A doorway has recently been opened in the wall of the Janum-Ashtan not at all in Baber's mosque, ***but in the wall which infront is divided from the mosque by a railing. This opening was necessary to give a separate route on fair days to visitors to the Janum-Asthan. There was one opening only, so the cruch (sic:rush) was very great and life was endangered.*** *I marked out the spot for the opening myself so there is no need to depute any Europe officer. This petition is merely an attempt to annoy*

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the Hindu by making it dependent on the pleasure of the mosque people to open or close the 2nd door in which the Mohammedans can have no interest.

2. No objection was made to the opening of this second door.

3. On the 10th November 1873 Baldeo Das was ordered in writing by the Deputy Commissioner to remove an image place on the janam-Asthan platform. A report was made by someone (probably a police officer) that he had gone to the house of Baldeo dass and found that the latter had gone to Gonda. The order was explained to Gyandas and other priests who said could not carry out the order. The order passed on this (15) was that if the other party (i.e. the complainant) would name person on whom an order of removal could be served-such should be served.

(i) There apparently the matter rested. There is no later on the file."

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2354. The documents collectively filed and accepted as **Exhibit A-8 (Suit-1) (Register 6, page 75-149)** are of different dates. Page 89 is a document of 3rd June 1878 executing a decree with respect to evacuation and cancellation of sale deed dated 10th August 1876 and its English translation by Court reads as under:

ڈگری عدالت ابتدای

بموجب درخواست

نمبر مفصلہ ۲۷۲۵ سن ۱۸۷۷ء تعداد مالیت ۵۱۵ تعداد

اسٹامپ ۲۹ روپیہ تاریخ رجوع ۱۱می ۱۸۷۷ء عدالت بندوبست ضلع

فیض آباد

محمد اصغر مدعی

بنام

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مسماۃ حمرہ بی بی و سندر تیواری و بہولا تیواری و
کانشی رام

دعوای ۸/۳ واقع موضع بہورن پور پرگنہ حویلی اودہ

آج یہ مقدمہ باجلاس رائے شیو پرساد صاحب اکسٹرا
اسیسٹینٹ کمشنر بہادر ضلع فیض آباد بحاضری وکیل مدعی و وکیل
مدعا علیہ واسطے سماعت و بحث کے پیش ہوا اور جو بحث فریقین نے
بیان کیا اسپر کما حقہ غور ہوا عدالت دیتی ہے اور ڈگری کرتی ہے بحق
محمد اصغر مدعی مقردخل یابی بمنسوخی بے نامہ مورخہ ۱۰ اگست
۱۸۷۶ء بابت حصہ زمینداری موضع بہورن پور پرگنہ حویلی اودہ
برسہ مدعا علیہ ۲سے ۴ تک بنام مدعا علیہم
نمبر ۱ کے ہو خرچہ مدعی بمعہ سود فیصدی ۶ روپیہ بابت آج سے تا
تاریخ وصول زمہ مدعا علیہم کے عاید کیا جاوے لکھا ۳ جون ۱۸۷۶ء

حصہ مدعی
اسٹامپ ۲۷
محنتانہ ۳/روپیہ طلبانہ
وکیل ۲۵ روپیہ
متفرقیات ۱روپیہ
۶۹

'' डिग्री अदालत इब्तदाई बमुअजिव दरख्वास्त न0 फैसला 4725 सन् 1877 ई0

तादाद मालियत 515 रूपया स्टाम्प 29 रूपया तारीख रूजू 01 मई 1877

अदालत बन्दोबस्त जिला फैजाबाद

मुद्दई मो0 असगर बनाम मोसमात हुमैरा बीबी व सुन्दर तिवारी व भोला तिवारी व काशीराम

दावा 8/3 वाके मौजा बहोरनपुर परगना हवेली अवध

आज यह मुकदमा बइजलास राय शिवप्रसाद साहब एक्स्ट्रा असिस्टेन्ट कमिश्नर बहादुर जिला फैजाबाद बहाजिरी वकील मुद्दई व वकील मुद्दालेह वास्ते समाअत व बहस के पेश हुआ और जो बहस फरीकैन ने बयान किया

उस पर कमा हक्कु गौर हुआ अदालत . . .देती है और डिग्री करती है बहक मो0 असगर मुद्दई मुकर दखलयाबी ब मन्सूखी बैनामा

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मोरखा 10 अगस्त 1876 ई0 बाबत हिस्सा जमींदारी मौजा बहोरनपुर परगना हवेली अवध नाबस्ता मुददालहत दो से चार तक बनाम मुददालहिम न0–1 के हो यानी मुद्दई मय शूद फीसदी 6 रूपया सालाना बाबत आज बतारीख वसूल मुददालैय के आयद किया जावे लिखा 3 जून 1878

खर्चा मुददईन स्टैम्प –27
मेहनतानान 3 रूपया
तलबाना वकील 25 रूपया
मुतफर्रिख वकील 1 रूपया।"

"Claim petition no. 2775/1877, value 515/-, Stamp value 29/- date of Ruju 12th of May 1877. Adalat Bandobast District Faizabad. Plaintiff Mohammad Asghar Vs. Musammat Humaira Bibi and Sunder Tiwari and Bhola Tiwari and Kanshi Ram defendaants. ***Claim of 3/8th part of Zamindari rights of Mauza Bahoranpur*** *Pargana Haveli Oudh. Today this claim was presented in the Court of Shiv Prasad Saheb Extra Assistant Commissioner District Faizabad. The counsels of the plaintiff and defendants were present to contest the case. Whatever the parties claimed was considered fully. Therefore this Court allows the decree in favour of Mohammad Asghar, the plaintiff who has prayed for the evacuation and cancellation of the sale deed dated August 10, 1876 for part of Zamindari Mauza Bahoranpur Pargana Haveli Oudh executed by the defendants no. 2 to 4 in favour of defendant no.1. The cost of plaintiff with interest at the rate of Rs. 6/- percent per annum from today till the date of deposit will be paid by the defendants to the plaintiff. This 3rd day of June 1876."*

2355. **Exhibit A-8 (Suit 1) (Register 6, page 75)** is claimed to be a copy of the statement of income and expenditure submitted by the earlier Mutwallis in the court of Civil Judge,

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Faizabad in Suit no. 29 of 1945. It is said that the aforesaid document gives the details of expenditure of the period of 1299 Fasli, 1306 Fasli and 1307 Fasli. This document and its contents have not been proved. It is said that the same were marked Exhibits by the trial judge himself on 26th August 1950 since they were filed after obtaining copy thereof from the record of the Court of Civil Judge where they were filed in earlier litigation. Sri Jilani learned counsel for Sunni Waqf Board could not tell as to how the contents of the said documents can be said to have been proved or treated to be correct in the absence of any witness having proved the same. It is not the case of the defendants no.1 to 5 (Suit-1) that any legal presumption can be drawn in respect of correctness of the contents thereof under law or that the said document constitutes a public document having been filed before any competent authority in accordance with law.

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2356. In **Sri Lakhi Baruah & others Vs. Sri Padma Kanta Kalita & others JT 1996 (3) SC 268**, the Court considered the presumption of old documents under Section 90 of the Evidence Act and held in paras 15 to 18 as under:

> *"Section 90 of the Evidence Act is founded on necessity and convenience because it is extremely difficult and sometimes not possible to lead evidence to prove handwriting, signature or execution of old documents after lapse of thirty years. In order to obviate such difficulties or improbabilities to prove execution of an old document, Section 90 has been incorporated in the Evidence Act, which does away with the strict rule of proof of private documents. Presumption of* ***genuineness may be raised if the documents in question is produced from proper***

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custody. It is, however, the discretion of the Court to accept the presumption flowing from Section 90. *There is, however, no manner of doubt that judicial discretion under Section 90 should not be exercised arbitrarily and not being informed by reasons. ... The Privy Council, upon review of the authorities, however, did not accept the decision rendered in Khetter and other decisions of the High Court, where the presumption was attached also to copies, as correct. It was indicated that in view of the clear language of section 90 the production of the particular document would be necessary for applying the statutory presumption under Section 90.* ***If the document produced was a copy admitted under Section 65 as secondary evidence and it was produced from proper custody and was over thirty years old, then the signature authenticating the copy might be presumed to be genuine; but production of the copy was not sufficient to justify the presumption of due execution of the original under Section 90.*** *In this connection, reference may be made to decisions in Seethayya v. Subramanya (56 IA 146: AIR 1929 PC 115) and Basant v. Brijraj (AIR 1935 PC 115). In view of these Privy Council decision, disproving the applicability of presumption under Section 90 to the copy or the certified copy of an old document, in the subsequent decisions of the High Courts, it has been consistently held by different High Courts that production of a copy or a certified copy does not raise the presumption under Section 90. . . . . .But if a foundation is laid for the admission of secondary evidence under Section 65 of the Evidence Act by* ***proof of loss or destruction of the***

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> ***original and the copy which is thirty years old is produced from proper custody, then only the signature authenticating the copy may under Section 90 be presumed to be genuine****. . . . .In the facts of this case, the presumption under Section 90 was not available on the certified copy produced by the . . . . .it is the discretion of the Court to refuse to give such presumption in favour of a party, if otherwise, there is occasion to doubt due execution of the document in question."*

2357. Had it been a document filed by the defendants Hindu-parties, even if not proved, it could have been relied against them. But when the plaintiffs have filed said document, it was their obligation to prove it. A document filed in an earlier litigation in a Court of law, and after obtaining a copy thereof from that Court, if it is filed in another Court, it would not be either a public document merely because a certified copy has been issued by the Court, or an old document received from the proper custody. The person who is filing it has to prove the same.

2358. We, therefore, find it difficult to place any reliance thereon.

2359. In any case, we have gone through the said documents also. The expenditure documents with respect to 1306 and 1307 Fasli in the initial part mention the words "Masjid Babri" but in respect of 1299 Fasli (i.e. 1892 AD) it does not mention the words "Masjid Babri". Instead it mention "Jama Masjid" or "Jama Masjid Oudh" or "Masjid Idgah" situated at Ranopali and Idgah. The English translation of the details of the expenditure as contained on **page 93 and 94 (Register 6) of Exhibit A-8 (Suit-1)** in respect of income and expenditure account with

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respect to 1299 Fasli reads as under:

"State of income and expenditure Mauza Bhooranpur and Sholapuri Pargana Haveli Oudh. Milkiat and Maafi Mohd. Asghar for 1299 Fasli, the copy of which submitted to Mr. Munshi Mahadeo Prasad Deputy Collector.

	Mauza Bhooranpur	*Mauza Sholapuri*
No. of Bighas	*114-19-0*	*12-7-0*
Lagani Khan	*307-13-3*	*160-0-0*
Realized	*200/-*	*150/-*
Balance	*107/-*	*10/-*

Petty expenditure as per amaldaramad and Malguzari of the Government.

Amount Sewai Jama	*14/12*
Patwari	*9/12*
Salary of Chaukidar	*16/-*
Raghubar Dayal Patwari	*3/12*
Cash 1/- adjustment of lagan	*3/12*
Haq Tehsil Numberdari	*30/-*
Miscellaneous etc	*5/-*
Banwai-self	*9/12*
applications.2	*1/-*

	262/12

*Expenditure for **Jama Masjid** and **Eidgah** and other expenses related to them* *217/15*

*Petty expenditure regarding **Jama Masjid Oudh*** *81/11, 93/3*

*Salary of **Mansoor Ali Moazzin**, Annual* *36/-*

*Salary **Haji Ahmad Mir for pesh Namazi and Juma** Annually* *18/-*

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Tel Batti 3 peepa @ 2/7 *7/5*

Clay utensils, Matkey, Ghara, Lota etc. -/8/-monthly 6/-

Patti Chatai 100 *6/2*

Farsh Chandani *5/-*

Candle stick for lighting on the roof 10 Paun@-/5/-per pon 3/2/ 29/8/-

White wash of Jama Masjid: *25/-*

Lime 15 monds @ Rs. 1/- *15/-*

Contractor for white washing *9/-*

Qand-e-Siyah *-/8/-*

Moonj Kuchi *-/8/-*

Making of Bamboo ladder *-/9/-*

Utensils Matkey *-/4/- 24/-*

156/11/-

*Expenditure in respect of **Masjid Eidgah** situated at **Rano Pali***

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Eidul Fitra *11/8/-*

Gilauri Pan *3/-1/-*

Itra 2 tola *2/-1/-*

*White wash of **Eidgah*** *4/-1/-*

Zoroof Matkey etc. *-/8/-*

Bhishti (Waterman) *-/8/-*

Charity etc. *1/-1/-*

Cartage for Farsh etc *-/8/-*

*Safedi Baqreed at **Rano Pali*** *4/4/-*

Gilori Pan *1/4/-*

Itra one tola *152.* *1/-1/-*

Zurrof Matkey *-/2/-*

Beggars *1/-1/-*

Cartage *-/8/-*

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Judicial expenditure regarding various cases	*24/-*
Regarding case of Bhagwat and Kalyan Das - graves of Haji Qudwa etc	*9/-*
Judicial expenditure for Eidgah	*10/-*
Contribution for Qabristan	*5/-"*

2360. The documents pertaining to grant show that the same have nothing to do with any Idgah or Muslim religious place at Ranopali**,** which is quite at some distance from Mauza Ramkot. The expenses shown in the above documents in respect to 'Jama Masjid' and 'Idgah' as well as on the two village Bhooranpur and Sholapuri, e*x facie* do not appear to have any relevance with the building in dispute.

2361. Moreover, Page 81 Register 6 is a document in the form of an application by one Revati Ram Tewari Zamindar, resident of village Bahoranpur filed at the time of payment of Muavaza (compensation) before the Dy. Commissioner, District Faizabad on 16th April 1866. He claims to maintain his Patta regarding collection of fish; Abadi and building of Patta Kham Tahsil. The Dy. Commissioner, it appears to have ordered for consignment to office on 16th April 1866. In fact all the documents refer to some dispute in respect of the land at Bahoranpur and have no relevance for the site in dispute..

2362. **Exhibit 24 (Suit-1) (Register 5 page 83-85)** is a copy of the plaint dated 22.10.1882 of Suit No. 374/943 of 1882 filed by Mohd. Asghar against Raghubar Das claiming rent for use of Chabutara near the gate of the disputed building for the period 1288-1289 Fasli (1881-1882 AD). The contents of the plaint are as under:

عدالت جناب سب جج صاحب بہادر فیض آباد

نقل عرضی دعوی مشمولہ مثل مقدمہ الف نمبری نمبر ۱۳۷۴ء ۱۸۸۳

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۹۴۳ بمقدمہ سید محمد اصغر بنام، رگھوبر داس فیصلہ ۱۸ جون ۱۸۸۳ء

جناب منصف بہادر تحصیل فیض آباد

سید محمد اصغر ولد سید رجب علی قوم سید پیشہ زمینداری و معافیداری عمر ۵۵برسا کن و زمیندار موضع سہنواں پرگنہ حویلی اودہ تحصیل فیض آباد

مدعی

بنام

رگھوبر داس مہنتہ چیلہ تلشی مہنتہ چبوترہ جنم استھان و نر موہی اکھاڑہ واقع اودہ

ڈہری مراؤ ساکن اودہ

مدعا علیہ

مدعی حسب ذیل عرض کرتا ہے

تصریح دعوای دلاپانے ۳۰ روپیہ کرایہ بیٹھ کی چبوترہ و تخت واقع دروازہ مسجد بابری اودہ بابت میلہ کاتکی رام نومی پر بنیاد حقیت بابت ۱۲۸۸ فصلی و بابت ۱۲۸۹ فصلی بحساب تصنیف بروی پٹہ

۱- یہ کہ صحن و چبوترہ پیش دروازہ مسجد بابری جنم استھان ملکیت مدعی ہے کہ جسپر قدیم الایام سے بروز میلہ کاتکی و رام نومی معہ دیگر ایام میں دوکانات پہول و بتاشہ اہل حرفہ یعنی اہل شہرر کہتے ہیں کہ جسکا ٹھیکہ ہمیشہ سے ۳۵ روپیہہ سے سالانہ پر ہوتا ہے تجویز مدعی ومدعا علیہ منجملہ اسکے نصف حق مدعی و نصف مدعا علیہ ہے باہم تقسیم کر لیتے ہیں-

۲- یہ کہ ۱۲۸۸ فصلی میں قبل نہان کاتکی و رام نومی مدعا علیہ نے براہ بدنیتی بجاءے ۳۵ روپیہ کے ۳۰ روپیہ پٹہ ٹھیکہ خلاف عملدار بلا تجویز مدعی محض ٹھیکہ بنام فقیری مراؤ ساکن اودہ بابت ہر دو میلہ کے کر کے متصرف ہر دو حصہ کا ہوا و مطابق اسکی بابت ۱۲۸۹ فصلی میں کاروای کیا-

۱۲۸۸-فصلی برای پٹہ ۳۰- روپی		۱۲۸۹-فصلی برای پٹہ ۳۰- روپیہ	
حصہ مدعی	حصہ مدعی علیہ	حصہ مدعی	حصہ مدعی علیہ

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۱۵ روپیہ	۱۵ روپیہ -	۱۵ روپیہ	۱۵ روپیہ -

مدعی مستغیث ہے کہ بعد تحقیقات لوازمہ عدالت ڈگری باضافہ خرچہ کے فرماءی جاوے-

بنای دعوی ۱۲۸۸ فصلی

-۷نومبر ۱۸۸۰ء

بابت ۱۲۸۸ فصلی ۶ نومبر ۸۲ء

مدعی مقر ہے کہ جو کچھ عرضی دعوی میں عرض کیا ہے صحیح ہے

العبد

دستخط

محمد اصغر زمیندار

بابت ۱۲۸۹ فصلی ۶نومبر ۸۳ء

عرض

سید محمد اصغر زمیندار و خطیب متولی مسجد

بابری واقع اودھ مورخہ ۲۲ اکتوبر ۸۲ء

'' अदालत जनाब जज साहब बहादुर, फैजाबाद,

1. नकल अरजी दावा मसमूले मिसिल मोकदमा अलिफ नम्बरी नं0 1374/943 ,1883 सं0 93 बमुकदमा सै0 मोहम्मद असगर बनाम रघुबर दास फैसला 18.6.83 जनाब मुनसिफ साहेब बहादुर तहसील फैजाबाद सै0 ***मोहम्मद असगर वल्द सै0 रजव अली कौम सैयद पेशा जिम्मीदारी*** *वो माफीदारी उम्र 55 बरस की जिमींदारी मौजा सहिनवा प्रगना हवेली अवध त0 फैजाबाद . . . मुद्दई*

बनाम

रघुबर दास महन्थ चेला तुलसी महन्थ चबूत्रा जन्म स्थान वो निरमोही अखाड़ा वाके अवध।

वा फरीक मुराद सा0 अवध मुद्दालैह

मुद्दई इस्व जेल अर्ज करता है।

तसरीह दावा दिलापाने 30 रू0 केराया बैठकी चबूत्रा जो तख्त वाके दरवाजा मसजिद बाबरी अवध बाबत मेला कातकी वो रामनवमी वरविनाय हकीयत बावत सं0 1288 फ0 वो बाबत सं0 1289 फ0 बहिसाब ... . बरूये पट्टा

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1. यह कि सहन चबूत्रा पेश दरवाजा मसजिद बाबरी जन्म स्थान मिलकियत मुद्दई है कि जिस पर कदीमुल अय्याम से बरोज मेला कातकी जो राम नौमी दी गई अययाम में दुकानात फूल वो बताशा अहले हरफा यानी अहले शहर रखते हैं कि जिस का ठीका हमेशा से 35 रू0 सालाना पर होता है बतजबीब मुद्दई व मुद्दालेह मिनजुमिला उसके निस्फ हक मुद्दई वो निस्फ हक मुद्दालेह है। वाहम तकसीम करते हैं।

2. यह कि सं0 1288 फ0 में कव्ल नहान कातकी जो राम नौमी मुद्दालेह ने वराह बदनियती बजाय 35 रू0 के 30 रू0 पट्टा ठीका खिलाफ अमलदरामद बिला तजबीज मुद्दई महज ठीका बनाम फकीर मुराब सा0 अवध बाबत हर दो मेला के करके मुतसररिफ हर दो हिस्से का हुआ वो मोताविक उसके बाबत सं0 1289 फसली में कार्रवाई किया।

1288 फसली बराये पट्टा 30 रूपया	1289 फसली बराये पट्टा 30 रूपया
हिस्सा मुद्दई हिस्सा मुदआलेह 15 रूपया 15 रूपया	हिस्सा मुद्दई हिस्सा मुदआलेह 15 रूपया 15 रूपया

मुद्दई मुस्तगीस है कि बाद तहकीकात लवाजिम अदालत डिग्री बइजाफा के फरमाई जावें।

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बिनाय दावा 1288 फ0 बाबत सं0 1289 फ0

——————————— ———————————

7.11. 82 6.11.82 ई0

मुद्दई मुकिर है कि जो कुछ अरजी दावा में अर्ज किया है सही है अलबद द0 मोहम्मद असगर जिमीदार से0 मो0 असगर जिमीदार के ..

मार्च 22.10.82''

"Janab Sub-Judge Sahab Bahadur Faizabad.

Copy of plaint, included in the file of case no. Alif 943-1883-1884 Syed Mohd. Asghar vs. Raghubar Das decided on June 18, 1883.

Janab Munsif Bahadur, Tehsil Faizabad Syed Mohd. Asghar s/o Syed Rajab Ali caste Syed, occupation-Zamindari and Maafidari, aged about 55 years, Zamindari Muaza Shahnawa pargana Haveli Oudh, Tehsil Faizabad-Plaintiff vs. Raghubar Das Mahant Chela and Nirmohi

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Akhara situated at Oudh resident of Oudh (defendant).

The plaintiff begs to pray as under:

Description of the claim for Rs.30/- as ***rent for user of Chabutra and Takht situated near the door of Babri Masjid Oudh and regarding organizing Kartik Mela at the occasion of Ram Navami.***

.... Haqqiat (Right) regarding 1288 Fasli and regarding 1289 Fasli at the rate based on its use as described in the lease.

1- That the courtyard and the Chabutra before the Masjid Janamsthan is the property of the plaintiff whereupon, ***from ancient times, is organized Mela Kartiki and Ram Navami. In other days shops of flowers and Batasha were being stalled****, the contract wherefor was of Rs.35/- per year. The plaintiff and the defendant had agreed to distribute this amount between themselves in the ratio of 50-50.*

2- That in 1288 Fasli, before Kartik Asnan and Ram Navami the defendant with mala fide intentions, as against the contract of Rs. 35/- made two shares of Rs.30/- only without consent of the plaintiff for both the festivals/fairs, whereas, the contract was given in favour of Faqir Murao, resident of Oudh. Action in this regard was taken in 1289 Fasli.

In 1288 Fasli Patta share of the plaintiff and the opposite party:

Rs.30/-=Rs.15+Rs15

1289 according to Patta

Rs30/-

The plaintiff prays that after due inquiries and

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observing judicial requirements a decree with costs may kindly be passed.

Claim under 1288 Fasli

8th November 82

The petitioner is the claimant whatever he has written in the application, is correct, Alabda.

Sd/- ***Mohd. Asghar Zamindar****.*

Syed Mohd. Asghar Zamindar, ***Khatib****,* ***Mutwalli*** *Masjid Babri situates in Oudh."*

(E.T.C.)

This suit was dismissed by the trial Court on 18th June, 1883.

2363. **Exhibit 18 (Suit 1) (Page 55-57 Register 5)** is an application dated 2nd November, 1883 of Mohd. Asghar showing himself as Mutawalli and Khatib Masjid Babari situated at Oudh complaining that he is entitled to get the wall of the mosque white-washed but is being obstructed by Raghubar Das though he has right only to the extent of *Chabutara* and *Rasoi* but the wall and the gate etc. is part of the mosque and the complainant is entitled to get it white-washed.

2364. **Exhibit 34 (Suit-1) (Register 5 page 131)** is a copy of the order dated 12.01.1884 passed by Assistant Commissioner, Faizabad in case No. 19435 in respect of Nazool of Ram Janma Bhumi, Pargana Haveli Oudh, Tehsil and District Faizabad. The suit was filed by Mohd. Asghar against Raghubar Das. The order reads as under:

"Mr. Khudadad Beg will call up Khem Das ..... and .....him to do any repair to the wall or gateway to the mosque either of the outer or inner enclosure. ***The outer door will be left open. No lock will be allowed upon it. It***

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is absolutely essential to observe the strictest neutrality and maintain the status quo."

2365. **Exhibit 27 (Suit-1) (Register 5 page 95-97)** is a copy of the order dated 22.01.1984 of Assistant Commissioner, Faizabad in case No. 19435 Syed Mohd. Asghar and Raghubar Das directing to consign record of the case. It says:

نقل فرد منفصیلہ احکام مورخہ ۲۲ جنوری ۱۸۸۴ء مقدمہ نمبر ۱۹۴۳۵

واقع جنم استھان اودھ ۲۲ جنوری ۱۸۸۴ء اجلاسی جناب اسیسٹینٹ

کمیشنر صاحب بہادر فیض آباد

سید محمد اصغر

بنام

رگھوبر داس

آج مقدمہ بحاضری فریقین پیش ہوا فریقین کو حکم صاحب ڈپٹی

کمیشنربہادر سے اطلاع دی گی اور رگھوبر داس کو فہماش کی گی کہ

اندرونی و بیرونی احاطہ و دروازہ مسجد کی مرمت وغیرہ نہ کریں

اور محمد اصغر کو سمجھا دیا گیا کہ بیرونی دروازہ قفل نہ لگایا جاوے

یہ مناسب ضروری ہے کہ عمل درامد قدیم بحال رکھا جاے اور کوءی

دستہ اندازی و مداخلت نہ کہ جاو۔

حکم ہوا کہ

کاغذات ہذا داخل دفتر ہو المرقوم ۲۲ جنوری ۸۴ء

''नकल फर्द अहकाम मोरखा 22 जनवरी 1884 ई0 मुकदमा नं0 19435

वाके जन्म स्थान अवध मुनफसला 22 जनवरी 1884 ई0 इजलासी जनाब असिस्टेन्ट कमिश्नर साहब बहादुर फैजाबाद

सैय्यद मुहम्मद असगर बनाम रघुबर दास

आज मुकदमा बहाजिरी फरीकैन पेश हुआ फरीकैन को हुक्म साहब डिप्टी कमिश्नर से इत्तिला दी गई और रघुबर दास के फहमाइश की गई कि अन्दरूनी व बेरूनी अहाता व दरवाजा मसजिद की मरम्मत वगैरह न करे और मुहम्मद असगर को समझा दिया गया कि बाहरी दरवाजा कुफ़्ल न लगाया जावें यह निहायत जरूरी है कि अमल दरामद कदीम बहाल रखा जावे और कोई दस्त अन्दाजी न मदाखलत न की जावे।

हुक्म हुआ कि

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कागजात हाजा दाखिल दफ्तर हो अत्मरकूम

22 जनवरी 84 ई0

"Copy of the order sheet dated January 22, 1884 in case no. 19435-Janamsthan, Judgement dated January 22, 1884, Ijlasi Janab Assistant Commissioner Sahab Bahadur Faizabad.

Syed Mohd. Asghar vs. Raghubar Das.

Today the case was called out in presence of the parties. As per orders of the Deputy Commissioner, parties were informed accordingly. Raghubar Das was restrained from carrying out repairs etc in the internal and outer part of the compound and Mohd. Asghar was advised not to lock the outer door of the mosque. It is necessary that the old existing orders be observed and complied with and there should be no interference in it.

Order.

All the papers be consigned.

Dated January 22, 84.

Sd/- English."

2366. **Exhibit 28 (Suit-1) (Register 5 page 99-101)** is a copy of the application of Raghubar Das dated 27.06.1884 requesting the Assistant Commissioner, Faizabad to make spot inspection of the premises complaining that the muslims despite restraint from whitewashing the wall of the building, are violating the same and whitewashing the wall. It reads as follows:

نقل درخواست رگوبرداس مورخہ ۲۷ جون ۱۸۸۴ء مقدمہ نمبر ۱۹۴۳۵

واقع جنم استھان اودھ اجلاسی جناب اسیسنٹ کمیشنر صاحب بہادر فیض آباد فیصلہ ۱۸۸۴

سید محمد اصغر بنام رگوبر داس

باجلاس صاحب ڈپٹی کمیشنر بہادرمہنتھ رگوبر داس جنم استھان واقع اجودیا-

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مدعی

تشریح داعوی درخواست ساءل پربعد سماعت عذرات توجہ فرمای جاوے غیریب پرور سلامت

گذارش ہے کہ اگر حضور کسی روز تکلیف فرما کر موقع کو ملاحظہ فرماں لیں تو پھر کوی شکایت کبھی نہ ہوگی ساءل مطمین ہو جاویگا۔ دوم حضور نے حکم مسلمانوں کو سفیدی کرنے کا نہیں دیا اور جہانسابق میں مسلمانوں نے کبھی سفیدی نہیں کی تھی وہاں پر اس مرتبہ سفیدی کرتے ہیں یہ امربھی ملاحظہ موقع سے صاف ہو جاویگا اور چوں کہ اسی مقدمہ میں تحقیقات معرفت مرزا محمود بیگ صاحب ہیادر ہوے ہے یس اگر حضور موقع ملا حظہ فرماینگے توصداقت بیان ساءل بخوبی ہو جاوے گی۔ فقط

عرضی

فدوی رگھوبر داس قبرستان جنم استھان واقع اجودیا

معروضہ ۲۷ جون ۸۴ء

''نکل दरख्वास्त रघुबर दास मोरखा 27 जून 1884 मु0 नं0 19435 वाके अवध स्थान अवध इजलासी जनाब असिस्टेन्ट कमिश्नर साहब बहादुर फैजाबाद

फैसला 22 जनवरी 1884

सैय्यद मुहम्मद असगर बनाम रघुबर दास

बइजलास डिप्टी कमिश्नर बहादुर

महन्थ रघुबर दास अस्थान जन्म स्थान वाके अयोध्या जी मुद्दई

तशरीह दावा दरख्वास्त सायल पर वाद समात उजरात तवज्जह फरमाई जावें।

गरीब परवर सलामत,

*गुजारिश है कि अगर हुजूर किसी रोज तकलीफ फरमा कर मौके को मुलाहिजा फरमा लें तो फिर कोई शिकायत कभी न होगी सायल मुतमैय्यैना हो जावेगा। दोयम हुजूर ने हुक्म मुसलमानों का सफेदी करने का नहीं दिया और जहां **साबिक में मुसलमानों ने कभी सफेदी नहीं की थी वहां पर पर इस मरतबा सफेदी करते हैं** यह अम्र भी मुलाहिजा मौका से साफ हो जावेंगा और चूंकि इसी मुकदमा में तहकीकात मारफत मिर्जा महमूद बेग साहब बहादुर हुई है यस अगर हुजूर,*

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मौका मुलाहिजा फरमा लेगें तो सदाकत बयान सायल बखूबी हो जावेगी। फक्त

अर्जी फिदकी रघुबर दास महन्थ
जन्म स्थान वाकै अयोध्या जी
मार्खे 27 जून 1884 ई0

"Copy of the application of Raghubar Das dated 27.06.1884 no. 19435 at Janamsthan Oudh in the Court of Janab Assistant Commissioner Sahab Bahadur Faizabad. Date of Judgment. .22nd January 1884. Syed Mohd. Asghar vs. Raghubar Das before the Court of Deputy Commissioner Bahadur.

Mahant Raghubar Das, Janamsthan situated at Ayodhyaji – plaintiff.

Interpretation of the claim application of the applicant. After considering the objections may kindly be heard.

Gharib Parwar Salamat.

It is prayed that your honour may be pleased to make the spot inspection on any day, then we shall never have any grievance and the applicant will be satisfied. ***Secondly your honour has not allowed Muslims to carry out white wash. They are doing white wash at places where they never have done so.*** *This fact will become clear from the spot inspection. Inquiries in this very case have been carried out by Mirza Mahmood Beg. Therefore, if your honour makes a spot inspection, the truth of the applicant's averments would also be ascertained and as such, it is prayed, that the spot inspection may be made by your honour so that truth may come to surface.*

Yours faithfully Raghubar Das, Qabristan Janamsthan at Ayodhya. Dated June 27, 84."

2367. **Exhibit A-22 (Suit-1) (Register 7, page**

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237)=Exhibit 13 (Suit-4) (Register 10 Page 61)=Exhibit 26 (Suit-5) (Register 23 Page 659) is a copy of the plaint dated 19.01.1885, Mahant Raghubar Das Vs. Secretary of State (Suit 1885) seeking injunction against the defendants from interfering with the construction over Chabutara size 21/17. Its contents are:

باجلاس منصف جج صاحب بہادر

تحریر عرض داعوی نمبری ۶۱/۴۸۰ ۱۸۸۵ء

مقدمہ نمبر ۴۸۰ سن ۱۸۸۵ء

مہنت رگھور داس بنام سکریٹری اسیسٹینٹ فیصلہ ۱۲ دسمبر ۱۸۸۵ء

باجلاس منصف صاحب بہادر

رگوبر داس جنم استھان واقع اجودھا--- مدعی

بنام

جناب سیکریٹری آف اسٹیٹ ہند باجلاس کونسیل---- مدعا علیہ

مدعی مذکور حسب ذیل عرض کرتا ہے

دعوی واسطے اجازت فرمائے جانے تعمیر مندر یعنی ممانعت فرمای جانے مدعاعلیہ کو کہ مدعی کو تعمیر مندر سے اوپر چبوترہ جنم استھان واقع اجودھیا اتر ۱۷ فیٹ پورب ۲۱ فیٹ دچھن ۱۷ فٹ پچھیم، ۲۱ فیٹ نہ روکیں-

مالیت دعوی کا تعین بموجب نرخ بازار نہیں ہو سکتا ہے- اس لے بموجب مد نمبر ۱۷ فقرہ ۶ضمیمہ دوم ایکٹ سن ۷۰ ء کورٹ فیس لگایا گیا و نقشہ منسلک سے کیفیت موقع کے بخوبی معلوم ہو سکتی ہے-

دفہ ۱:- یہ کہ مقام جنم استھان واقع ایودھیا شہرے فیض آباد ایک نہایت قدیم اور متبرک معابد گاہ اہل ہنود کا ہے اور مدعی اس معابد گاہ کا مہنت ہے-

دفہ ۲ :- یہ کہ چبوترہ جنم استھان پورب پچھیم ۲۱ فیٹ اتر دچھن ۱۷ فیٹ ہے اس پر چرن پادوکا گہڑی ہوی ہے اور ایک چھوٹا سا مندر رکھا ہوا ہے کہ جسکی پرستیش ہوتی ہے-

دفہ ۳ :- یہ کہ چبوترہ مذکور قبضہ مدعی ہے اس پر کوی عمارت نہ ہونے سے ہر موسم میں مدعی اور دیگر فقرا کو نہایت تکلیف ہوتی ہے-

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گرمی میں تپش سے و برسات میں پانی سے و سردی میں شدید سردی سے و اس چبوترے پر مندر تعمیر ہونے سے کسی طرح کا کوی حرج کسی کا نہیں ہے بلکہ تعمیر مندر سے مدعی و دیگر فقراء و یاتریوں وغیرہ کو ہر طرح کا آرام میلگا۔

دفہ ۴:- یہ کہ جناب ڈپٹی کمیشنر بہادر فیض آباد نے قریب مارچ یا اپریل سن ۸۳ء میں بوجہ اجرداری چند مسلمانان کے تعمیر ہونے مندر کی ممانعیت کی۔ اس پر سایل نے ایک عرضداشت بحضورلوکل گاورنٹ روانہ کی۔ وہ جب کوی جواب نہ عطا ہوا تو مدعی نے نوٹس محکومہ دفہ ۴۲۴ ضابطہ دیوانی بتاریخ ۱۸ اگست سن ۸۴ء بدفتر صاحب سیکریٹری لوکل گاورمنٹ داخل کی لیکن اس کا بھی کوی جواب نہ ملا۔ پس ظہور بنائے دعوی تاریخ ممانعیت سے بمقام ایودھیا اندرحدود سماعت عدالت کہ پیدا ہوی۔

دفہ ۵:- یہ کہ ایک خیرخواہ رعیایا کو اختیار ہے کہ جس طرح کی عمارت چاہے اپنی مقبوجہ و مملوقہ زمین پر تعمیر کرے و گاورمینٹ عادل اور منصف پر فرض ہے کہ رعیایا کی حفاظت کرے اور ان کے حقوق کے ملنے میں مدد دے و واسطے قاءم رہنے امن و امان کے مناسب بندوبست فرمائے لیہذا مدعی مستدی فیصلہ کا کہ ڈگری بنانے مندر اوپر چبوترہ جنم استھان واقع ایودھیا اتر ۱۷ فیٹ پورب ۲۱ فیٹ دچھن ۱۷ فیٹ پچھیم ۲۱ فیٹ کہ فرمای جاوے کہ مدعا علیہ ممانعیت و مزاہمت مدعی نسبت بنانے مندر کے نہ کریں و خرچہ مقدمہ ذمے مدعا علیہ عاید فرمایا جاوے۔

میں رگھور داس مہنت جنم استھان اودھ مدعی تصدیق کرتا ہوں کہ مضمون عرضی دعوی ہر پانچ دفات کا بعلم و یقین میرے سب صحیح و درست ہے۔

فدوی مہنت رگھور داس مدعی

مورخہ ۱۹ سن ۱۸۸۵ء

تفصیل گاغذات

رشید ڈاکخانہ بابت نوٹس

''بइजलास मुनसिफ़ साहब बहादुर

महन्त रघुबर दास महन्त स्थान जन्म स्थान वाक़े अयोध्या . . . . मुद्दई

बनाम

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जनाब सेक्रेटरी आफ़ स्टेट हिन्द बइजलास कौंसिल . . .मुद्दालैह

मुद्दई मज़कूर हस्ब ज़ैल अर्ज़ है–

दावा इजाजत फ़रमाई जाने तामीर मन्दिर यानी मुमानियत फ़रमाई जाने मुद्दालैह को कि मुद्दई को तामीर मन्दिर से ऊपर चबूतरा जन्म स्थान वाक़े अयोध्या उत्तर 17 फ़िट पूरब 21 फिट दक्षिण 17 फिट पच्छिम 21 फिट न रोकें मालियत दावे का तायुन बमोजिब निर्ख़ बाज़ार नहीं हो सकता है। इसलिये बमोजिब मद नं0 17 फ़िक़रा 6 ज़मीमा दोएम ऐक्ट सन् 70 ई0 कोर्ट फ़ीस लगाया गया व नक़्शा मुनसलिक से कैफ़ियत मौक़ा के बखूबी मालूम हो सकती है।

दफा–1 यह कि मकाम जन्म स्थान वाकै अयोध्या शहेर फ़ैज़ाबाद एक निहायत क़दीम और मुतबर्रिक मुआबिदगाह अहले हुनूद का है और मुद्दई इस मुआबिद गाह का महन्त है।

दफा–2 यह कि ***चबूतरा जन्म स्थान पूरब पच्छिम 21 फुट उत्तर दक्षिण 17 फ़िट है उस पर चरण पादुका गड़ी हुई है और एक छोटा सा मन्दिर रखा हुआ है कि जिसकी परस्तिश होती है।***

दफा– 3 यह कि ***चबूतरा मज़कूर बक़्ब्जा मुद्दई है*** *उस पर कोई इमारत न होने से हर मौसम में मुद्दई और दीगर फुक़रा को निहायत तक़लीफ़ होती है। गर्मी में तपिश से व बरसात में पानी से व सरदी में शिद्दते सरदी से व इस चबूतरे पर मन्दिर तामीर होने से किसी तरह का कोई हर्ज किसी का नहीं है बल्कि तामीर मन्दिर से मुद्दई फुकरा व यात्रियों को हर तरह का आराम मिलेगा।*

दफा–4 यह कि जनाब डिप्टी कमिश्नर बहादुर फ़ैजाबाद ने करीब मार्च या अप्रैल सन् 83 ई0 में बवजह उज़्रदारी चन्द मुसलमानान के तामीर होने मन्दिर की मुमानियत की। उस पर सायल ने एक अर्ज़दाश्त बहुजूर लोकल गर्वन्मेंट रवाना की। व जब कोई जवाब न अता हुआ तो मुद्दई ने नोटिस महेकूमा दफ़ा 424 ज़ाब्ता दीवानी बतारीख 18 अगस्त सन् 84 ई0 बदफ़्तर साहेब सेक्रेटरी लोकल गर्वनमेंट दाख़िल की लेकिन उस का भी कोई जवाब न मिला। पस ज़हूर बिनाए दावा तारीख़ मुमानियत से बमुकाम अयोध्या अन्दर हदूद अदालत के पैदा हुई।

दफा–5 यह कि (अपठनीय) एक ख़ैर ख़्वाह रियाया को इख़्तेयार है कि जिस तरह की इमारत चाहे अपनी मुकबूजा व ममलूका ज़मीन पर तामीर करे व

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गवर्नमेन्ट आदिल और मुनसिफ़ पर फ़र्ज है कि रियाया की हिफ़ाज़त करे और उन के हुकूक के मिलने में मदद दे व वास्ते कायम रहने अमन व अमान के मुनासिब बन्दोबस्त फ़रमाये लेहाजा मुद्दई मुस्तदई फैसला है कि डिग्री बनाने मन्दिर ऊपर चबूतरा जन्म स्थान वाक़ै अयोध्या उत्तर 17 फिट पूरब 21 फिट दक्षिण–17 फिट पच्छिम 21 फ़िट के फ़रमाई जावे कि मुद्दालैह मुमानियत व मुज़ाहिमत मुद्दई निस्बत बनाने मन्दिर के न करें व ख़र्चा मुक़दमा ज़िम्मे मुद्दालैह आयद किया जावे।

तफ़सील काग़जात

रसीद डाकखाना बाबत नोटिस

फ़िदवी महन्त रघुबर दास मुद्दई

मोर्रख़ा 19 जनवरी सन् 1885 ई0

मैं रघुबर दास महन्त जन्म स्थान अयोध्या मुद्दई तस्दीक़ करता हूँ कि मज़मून अर्जी दावा हर पॉच दफ़ात का बइल्म व यक़ीन मेरे सब सही व दुरूस्त है।

ह0 महन्त रघुबर दास''

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(Hindi Transliteration)

"Ba Ijlas Munsif Sahab Bahadur. Mahant Raghubar Das Mahant Janamsthan situated at Ayodhya-Plaintiff vs. Secretary of state India Ba Ijlas Council. . . . . Defendant.

The abovenamed plaintiff begs to submit as under:

Permission for construction of temple over the Chabutra Janamsthan Ayodhya measuring towards north 17 feet, towards east 21 feet, towards south 17 feet and towards west 21 feet may kindly be granted to the plaintiff and the defendants may be restrained from interfering with such work. Thhe valuation of the claim cannot be assessed on market rate. Therefore as per Section no.17, Sub-section (6)Appendix no. 2 of the Act of. 70, court fees has been paid. From the enclosed map, the situation of the place would become clear.

1- That ***the Janamsthan situated at Ayodhya city***

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Faizabad is ***an ancient religious and sacred monument of Hindus*** *and the applicant is the Mahant of this religious place.*

2- That the ***Chabutra Janamsthan measures east-west 21 feet, North-south 17 feet, wherein Charan paduka are stalled and a small Mandir is placed there****, which is worshipped by the Hindus.*

3- That the ***Chabutara is in the possession of the plaintiff*** *and there being no building or shed, the petitioner and other Faqirs have to face all the seasons (in the open). In summer, we face sunheat, in rainy season rains and in winter severe cold. There is no harm to anybody if a temple is constructed there, rather by the construction of temple, the petitioner, Faqirs and other travellers would rest there and will get all comfort.*

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4- That on the objections of some Muslims the Deputy Commissioner Faizabad, in March or April 83, restrained construction upon which the plaintiff sent an application to the local Government. When no reply was received, the plaintiff filed a notice under section 424 C.P.C. on August 18, 84 in the office of the Secretary, Local Government but this one also met the same fate. As such the cause of the action arose in Ayodhya within the jurisdiction of this Court, on the date injunction order was granted.

5- That a well wisher citizen has a right to construct a building as he likes, on the land under his possession and ownership. It is the responsibility of a just Government to protect rights of the citizens and help them secure their rights so that peace and order may prevail and things

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could be managed. Therefore, the plaintiff prays your honour that a decree may be issued in his favour for constructing a Mandir over the Chabutra Janamsthan situated at Ayodhya, North 17 feet, South 17 feet East 21 feet and West 21 feet. The respondent may be restrained from creating any interference in the construction of Mandir. The cost of the case may be imposed on the defendant.

Details of documents.

Receipt from the post office.

Yours Faithfully Mahant Raghubar Das, Mahant Janamsthan Ayodhya-plaintiff, dated January 19, 1885.

I Raghubar Das Mahant Janamsthan Ayodhya-Petitioner, verify that the foregoing paras 1 to 5 are correct to the best of my knowledge and belief.

Sd/- Raghubar Das."

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(E.T.C.)

2368. **Exhibit A-24 (Suit-1) (Register 7, page 271-275)** is a copy of the report dated 09.12.1885 submitted by Gopal Sahai Amin a Commission appointed by the Sub-Judge Faizabad in Suit No. 61/280 of 1885. The report says:

عدالت جناب سب جج صاحب بہادر فیض آباد

نقل رپورٹ امین مدخلہ گوپال سہاے کمیشن مورخہ ۹ دسمبر سن ۱۸۸۵ء مشمولہ مثل مقدمہ ۶۱ ـ ۲۸۰ ، ۸۵ء

بمقدمہ مہنت رکھور داس بنام صاحب سیکریٹری آف اسٹیٹ منفصلہ ۲۴ دسمبر ۱۸۸۵ء

عالی جاہ

بتعلیم حکم عدالت موقع متنازع پر واقع اودہ میں جاکر و موجودگی فریقین نقشہ موقع مرطب کیا گیا کہ ہم دشتہ رپورٹ ہذا پیش کرتا ہوں اور مبلیغ ۱ روپیہ ذر فیس کمیشن عطا ہوی مدخلا مدعی مورخہ ۶ د

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سمبر سن ۱۸۸۵ء اور پیماءش کرکے زمین چبوترہ متانزع کے بے تحریر ہوا۔

د ستخط گوپال سہاے کمیشن

नकल रिपोर्ट अमीन मदख़ला गोपाल सहाय कमीशन मुवर्रख़ा 9 दिसम्बर सन 1885 मसमूला मिस्ल मुकदमा 61/ 280 सन् 85 ई0

बमुकदमा महंत रघुबर दास बनाम साहब सेक्रेट्री आफ स्टेट

मुनफसिला 24 दिसम्बर, 1885 ई0

आलीजाह

बतामील हुक्म बअदालत मौका मुआनाजा पर वाकै अवध में जाकर बमौजूदगी फरीकैन नक्शा मौका मुरत्तव किया गया कि हमदस्ता रिपोर्ट हाजा पेश करता हूँ और मुवलिग 1 रूपया जर फीस कमीशन अता हुई मदाखला मुद्दई मुवर्रखा 6 दिसम्बर सन् 1885 और पैमाइस करके जमीन चबूतरा मुतनाजा के तहरीर हुआ।

दस्तखत गोपाल सहाय कमीशन''

"In the Court of Sub-Judge, Faizabad.

Copy of the report of Amin filed in Gopal Sahai Commissioner dated December 9, 1885, included in the file of the case 61, 280, 685, Mahant Raghubar Sahai vs. Secretary of State, decided on December, 24, 1885.

Respected Sir,

In compliance of the orders of the Court ***an inspection of the spot was carried out in the presence of the parties and a map was prepared on the basis*** *of which the report is being submitted and a fee of Rs. 1/- deposited on December 6, 1885 and* ***after due measurement this Chabutra was described as disputed****.*

Sd/- Gopal Sahai, Commissioner"

2369. **Exhibit A-25 (Suit-1) (Register 7, page 277-281)** is a copy of the map submitted by Gopal Sahai Amin's Commission on 06.12.1885 in the Court of Sub-Judge, Faizabad regarding the disputed place as it stood at that time showing

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Ram Chabutara, Sita Rasoi and Bhandara in the outer courtyard.

(Exhibits A-24 and A-25 are also filed collectively as **Exhibit 15 (Suit 4) Register 10 Page 75**)

2370. **Exhibit A-23 (Suit-1) (Register 7, page 255-269)= Exhibit14 (Suit-4) (Register 10 Page 65)** is a copy of the written statement dated 22.12.1885 filed by Mohd. Asgar in the suit filed by Raghubar Das against the Secretary of State wherein he was allowed to be impleaded as defendant no. 2. It reads:

عرضی دعوی بحضور صاحب سب جج بہادر

من جانب علیہ

رگھوبر داس مہنت نرموہی اکھاڑا واقع اودہ

مدعی

بنام

سرکار بہادر قیصرے ہند و محمد اصغر خطیب متولی جامع مسجد واقع اودہیا

مدعا علیہ

تصریح دعوی تعمیر مندر اوپر چبوترہ اندر احاطہ مسجد بابری

غریب پرور عادل و سلامت

دفہ ۱:- یہ کہ مقدہم بہت صاف محتاج انصاف ہے و اگر چہ بحث دلایل بہت کچھ تردید دعوی مدعی گذارش ہوسکتی ہیں مگر بتقویت عادل مصافت مختصر گزارش کرتا ہوں کہ

اول یہ کہ جب بابر شاہ مالک الملک بادشاہ وقت نے یہ مسجد تعمیر کیا و احاطہ مسجد کے دروازے کے اوپر سنگی پر لفظ اللہ کندا کرنسب کیا و معافی اسکے مصارف کو تحریر فرمای تو بمقابلہ مالک ملک مکانسن تعمیر گاہ بادشاہ وقف کے اندر ملکیت دوسرے شخص کی کہاں باقی رہی پس تا وقت بادشاہ تعمیر کنندہ مسجد نے اپنی مسجد کے احاطے کے اندر یا اسکے قاعم مقام دوسرے بادشاہ نے کوی جز زمین یہ زمین جس پر چبوترہ ہے مورثان مدعی کو نہ دی ہو مدعی مالک اس زمین کا نہیں ہو سکتا ہے- مدعی نے یہ ثبوت اس بلانیت نسبت چبوترہ کوی دستاویزکہ

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نہ بادشاہ موصوف یا کسی اور بادشاہ و حاکم وقت پیش نہیں کے پس جبکہ مدعی نے نسبت اس ٹکڑہ زمین کے ملکیت اسپر حاصل نہیں کی تو غیر کے ملکیت میں قانوناً و انصافاً کوی حق اسکو مندر بنانے کا نہیں ہے۔

دفہ ۲:- اگر مدعی اندر احاطہ مسجد کے آمدورفت ہوا کہ برعجم باطل ہے اپنی دلیل ملکیت اپنے یا ان پر اہل ہنود کے سمجھتا ہو تو یہ صحیح نہیں ہو سکتا کیونکہ ظاہر ہے کہ اکثر امام باڑہ و مسجد و مقابر عمارت عمدہ مجاہد اہل اسلام میں با ایام تقریبات مخصوص و دیگر ایام میں ہمیشہجوق تا جوق ہنود جاتے ہیں-اور نذروں نیاز چڑھاتے ہیں اہل اسلام کی ممانعت نہیں ہوتی اسی طرح اہل اسلام مجاہد ہنود میں جاتے و آمدورفت رکھتے ہیں تو کسی مقام پر آمدورفت رکھنے سے یا نذروں نیاز چڑھانےسے وہ مقام انکی ملکیت نہیں ہو جاتا۔

دفہ ۳:- ظاہر ہے کہ وقت تعمیر مسجد سے تا ۱۸۵۶ء اس مقام پر چبوترہ نہیں تھا۔ ۱۸۵۷ء میں بنا اور جب استغاثہ مسلمانان حکم کھودنے چبوترے کا صادر ہوا پس ظاہر ہے کہ بنا اس چبوترے کی ۱۸۵۷ء سے ہوی ہے۔

دفہ ۴:- اب لاءق غور فرمانے یہ امر ہے کہ بعد مدت چبوترہ جدید کن اختیارات سے نشیشت برخاست و آمدو رفت ہنود کے اس چبوترے پر رہی ہے- ظاہر ہے کہ نشیشت برخاست مدعی اور اسکے فرقے کے بشرطہ و شرط رہا بقدراس امر کے کہ کوی امر جدید نہ کرنے پاے قایم رکھے گے- پس ۱۸۵۷ء سےھی اختیارات مالیکان مدعی کو حاصل نہ ہوا بلکہ اگر مدعی یا کسی ہندو نے کوی امر جدید اندر احاطہ مسجد کرنا چاہا اسکی سرکار سے ممانعت کی گی اور ایک فقیر نے بطریق کوٹی چھپر ڈالا تھا وہ مسمار و دفہ کرا دیا گیا تو یہی مقام انصاف ہے کہ جب ۳۶۸ برس سے عموماً ۱۸۵۷ء سے خصوصاً کوی سند اپنی ملکیت کے یا کسی فیل مالیکانا کے جس سے ملکیت مدعی ظاہر ہو حاصل نہ کی تو کوی حق اسکو اندراحاطہ مسجد و عین فرش مسجد پر مندر بنانے کا دعوی نہیں ہو سکتا ہے پس یہ خیال مدعی کہ چبوترہ ہمارا ہےجب کہ چبوترہ ہمارا ہے تو اس پر مندر بنانے کا بھی اختیار ہمکو ہے محض منصفانیت مذہبی غلط فہمی ہوگی ہے کیوں کہ اس چبوترے پر بیٹھنا یا چڑہوا چڑھانے کا

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بھی اختیار مالیکانا بلا کسی تعروض کے نہیں ہے-

دفہ ۵:- نقل احکام متعدد جو باوقات مختلف بمقابلہ ہم مدعا علیہ نسبت ممانعت امرجدید وانہدام مکان عین رسوی سیتا جی کہ بہ انہدام کوٹی جو فقیر نے بنای تھی بلحاظ عملدرآمد قدیم وعدم ملکیت مدعی انتظاماً و بنظر کشت وخون مابین اہل اسلام و ہنود جو پشتر ہوا تھا قانون باختیار جاءز خود صغہ مجازسے جاری کے ہیں- وہ واقع متعلقہ اس مقدمے کے اور یہ ثبوت کامل ہمارے بیانات کے ہیں اور انہی احکام سے خصوصاً حکم ۲۳ فروری سن ۱۸۵۷ء مدعی کو ظہور بنائے دعوی پیدا ہوی و حد سماعت عارض دعوی ہذا ہوی اور ان جملہ احکام واجباً منظوری سے عدالت دیوانی بھی چشم پوشی نہیں فرما سکتی- برابر وہ نافظ و جاری ہے مدعی نے انکو منسوخ نہیں کرایا اور بلا دعوی جاری تنسیخ اس مقدہم میں منسوخ نہیں ہو سکتی اور کوی احکام کے خلاف کوی فیصلہ صادر ہونا خلاف قانون ہے کیونکہ منسوخ ان احکام ناطقہ کے بلا دعوای داری کے لازم آتی ہے اس لے امیدوار ہوں کہ بادملاہزہ کاغذات وعذرات سے بہ اختیار دعوی مدعی حقیر سے فرمای جاوے، واجب تھا عرض کیا-

فدوی میر محمد اصغر متولی مسجد بابری، مدعی علیہ مورخہ ۲۲ دسمبر سن ۱۸۸۵ء

معارفت محمد نظیر خاں و مولوی محمد افضل

وکلا مدعاعلیہ-

''अर्ज़ी दावा बहुजूर जनाब सब जज बहादुर

(अपठनीय) मिनजानिब मुद्दाअलैह

रघुबर दास महन्त निरमोही अक्खाड़ा वाक़ै अवध . . . . . .मुद्दई

बनाम

सरकार बहादुर क़ैसरे हिन्द व मोहम्मद असग़र ख़तीम व मुतवल्ली जामे मस्जिद वाक़ै अवध . . . .मुद्दाअलैय

तसरीह दावा तामीर मन्दिर ऊपर चबूतरा अन्दर अहाता मस्जिद बाबरी ग़रीब परवर आदिल ज़मा सलामत

दफ़ा 1— यह कि मुकदमा बहुत साफ मोहताज इन्साफ है व अगरचे बहस दलायल बहुत कुछ बतरदीद दावा मुददई गुज़ारिश हो सकती है मगर बतकवियत आदिलुल मसाफ़त मुख्तसर गुज़ारिश करता हूँ (1) अव्वल यह कि जब बाबर शाह मालिके मुल्क व बादशाहे वक्फ़ ने यह

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मस्जिद तामीर किया व अहाता मस्जिद के दरवाज़े के ऊपर संगी पर लफ़्ज़ अल्लाह कुन्दा कराके नसब किया व माफ़ी उसके मसारिफ को तहरीर फ़रमायी तो बमुक़ाबिला मालिके मुल्क मकॉ तामीर गाह बादशाह वक़्त के अन्दर मिलकियत दूसरे शख़्स की कहां बाक़ी रही पस तावकक्तेके बादशाह तामीर कुनिन्दा मस्जिद ने अपने मस्जिद के अहाते के अन्दर या उसक क़ायम मुक़ाम दूसरे बादशााह ने कोई जुज ज़मीन यह ज़मीन जिस पर चबूतरा है मूरिसान मुद्दई को न दी हो मुद्दई मालिक उस ज़मीन का नहीं हो सकता है। मुद्दई ने यह सबूत इस मिलकियत निस्बत चबूतरा कोई दस्तावेज कि न बादशाह मौसूफ़ या किसी और बादशाह व हाकिमे वक़्त पेश नहीं किये पस जब कि मुद्दई ने निस्बत इस टुकड़ा ज़मीन के मिलकियत उस पर हासिल नहीं की तो गैर की मिलकियत में कानून व इनसाफ़न कोई हक़ उसको मन्दिर बनाने का नहीं है।

दफ़ा– 2 अगर मुद्दई अन्दर अहाता मस्जिद के आमदरफ़त हुआ कि अज्म व बातिल है अपने दलील मिलकियत अपने या उन पर अहले हुनूद के समझता हो तो यह सही नहीं हो सकता क्योंकि ज़ाहिर है कि अक्सर इमाम बाड़ा व मस्जिद व मुकाबिर इमारात उम्दा मुजाहिदे अहले इस्लाम में बअय्याम तक़रीबात मख़सूस व दीग़र अय्याम में हमेशा जौंक ता जौंक हुनूद जाते हैं और नज़री नियाज़ चढ़ाते हैं। अहले इसलाम की मुमानियत नहीं होती इसी तरह अहले इसलाम मआविद हुनूद में जाते व आमदरफ़त रखते हैं तो किसी मुक़ाम पर आमदरफ़त रखने से या नज़रों नियचाज़ चढ़ाने से वह मुक़ाम उनकी मिलकियत नहीं हो जाता।

*दफ़ा 3– **ज़ाहिर है कि वक़्त तामीर मस्जिद से ता 1856 ई0 इस मुक़ाम पर चबूतरा नहीं था। 1857 ई0 में बना** और जब इस्तिग़ासा मुसलमानान हुकुम खोदने चबूतरे का सादर हुआ पस ज़ाहिर है कि बिना इस चबूतरे की 1857 ई0 से हुई है।*

दफ़ा 4– अब लायक ग़ौर फ़रमाने यह अमर है कि बाद (अपठनीय) चबूतरा जदीद किन अख़तियारात से नशिस्त बरख़ास्त व आमदरफ़्त हनूद के इस चबूतरे पर रही हैं जाहिर हैं कि नशिस्त बर्खास्त मुद्दई और उसके फ़िरके के बशर्तहा व शुरूतहा बकद्र इस अम्र के है कोई अम्र जदीद न करने पावे कायम रखे गये। पस 1857 ई0 से भी अख़्तियारात मालिकाना मुद्दई को हासिल न हुआ बल्कि अगर मुद्दई या किसी हिन्दू ने कोई अमर जदीद अन्दर अहाता मस्जिद करना चाहा उसकी सरकार से

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मुमानियत की गई और एक फ़क़ीर ने बतरीक़ कुटी छप्पर डाला था वह मिसमार व दफ़ा करा दिया गया तो यही मुक़ाम इन्साफ है कि जब 368 वर्ष से उमूमन 1857 ई0 से खुसूसन कोई सनद अपने मिलकियत के या किसी फ़ेल मालिकाना के जिससे मिलकियत मद्दई ज़ाहिर हो हासिल न की तो कोई हक़ उसको अन्दर अहाता मस्जिद व ऐन फ़र्श मस्जिद पर मन्दिर बनाने का दावा नहीं हो सकता है पस यह ख़्याल मुद्दई कि चबूतरा हमारा है, और जब कि चबूतरा हमारा है तो उस पर मन्दिर बनाने का भी अख़तियार हमको है महज़ बनफ़ूसानियत मज़हबी ग़लत फहमी मुद्दई की है क्योंकि उस चबूतरे पर बैठना या चढ़ावा चढ़ाने का भी अख़तियार मालिकाना बिना किसी तारूज के नहीं है।

दफ़ा 5– नुकूल एहकाम मुतादिद जो बअवकात मुख़तलिफ़ बमुक़ाबिला हम मुद्दाअलैह निस्बत मुमानियत अमरे जदीद बइनहिदाम मकान ऐन रसोई सीता जी के बइनहिदाम कुटी जो फ़क़ीर ने बनायी थी बलिहाज़ अमलदरामद क़दीमें व अदम मिलकियत मुद्दई इन्तिज़ामन व बनज़र कुश्त खून माबैन अहले इस्लाम व हुनूद जो पेश्तर हुआ था क़ानून बअख़्तियार जायज खुद सीग़ा मजाज़ से जारी किये हैं। वह वाक़ै मतालिका इस मुक़दमें के और यह सुबूत कामिल हमारे बयानात के हैं और उन्हीं एहकाम से खुसूसन हुकुम 23 फरवरी, सन् 1857 ई0 मुद्दई को ज़हूर बिनाये दावा पैदा हुई व हद समाअत आरिज दावा हाज़ा हुई और उन जुमला एहकाम बाजाब्ता के मन्जूरी से अदालते दीवानी भी चश्मों पोशी नहीं फ़रमा सकती। बराबर वह नाफ़िज व जारी है मुद्दई ने उनको मन्सूख़ नहीं कराया और बिला दावा जारी तनसीख़ इस मुकदमा में मन्सूख़ नहीं हो सकते और उन एहकाम के ख़िलाफ़ कोई फ़ैसला सादिर होना खिलाफ कानून है क्योंकि मन्सूखी उन एहकाम नातिका के बिला दारी तनसीख़ लाजिम आती है इसलिये उम्मीदवार हूँ कि बाद मुलाहिजा काग़ज़ात व उज़रात बएखराज दावा मुद्दई हक़ीर से फ़रमाई जावे, वाजिब था अर्ज़ किया।

फ़िदवी मीर मोहम्मद असग़र मुतवल्ली मस्जिद बाबरी, मुद्दाअलैह मोर्रिख 22 दिसम्बर, रसन् 1885 ई0 मारफ़त मोहम्मद नज़ीर खं व मौलवी मोहम्मद अफ़जल वुकला मुद्दाअलैह''

(Hindi Transliteration)

" Application before the Sub-Judge Bahadur filed by the opposite party.

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Raghubar Das Mahant Nirmohi Akhara situated at Oudh-Plaintiff vs. Sarkar Bahadur Qaisere Hind and Mohd. Asghar Khatib and Mutawalli Jama Masjid situated at Oudh. . . . . Defendant.

Suit for the construction of a Mandir over the Chabutra in the compound of the Masjid Babri. Gharib Parwar, Adiley Zamam Salamat.

1- That the case is very clear and needs justice. Though the arguments and objections of the plaintiff could be detailed here but with the fear of the lengthy process, the plaintiff submits in brief as under:

(i) When the Babar Shah Maalike Mulk and the king, constructed this mosque and got engraved Allah on the Sangi of the door of the Ahata Masjid and granted ***Maafi*** *for the expenses, nobody else can claim the right of construction over there. Therefore until the king who has constructed the Masjid, allows to carry out construction within the compound of the Masjid or any successor of the King gives permission with respect to any part of the land of Masjid for construction or has given any part of the land to successors of the plaintiff, he could not become the owner of the land. The plaintiff has not submitted any documentary evidence regarding the ownership of the Chabutra. Neither the said Badshah nor any of the successors, or any other designated officer has given its ownership rights and as such in the eyes of law and justice he has no right to construct a Mandir over the said piece of land.*

2- If the plaintiff thinks, he or the Hindus have any ownership right over it, the same is not correct, because it

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is clear that ***sometimes in Imambaras, Masjids and tombs and in other monuments, Muslims organize different congregations on different occasions. During other days Hindus also offer Nazr-o-Niaz. The Muslims do not stop their entry into the building. Similarly Muslims go into the religious buildings of Hindus also. Therefore, going of a person into and out of any building for offering Nazr-o-Niyaz does not make him owner or confers proprietory right of that place****.*

3- It is also clear that from the time of the construction of the Masjid ***till 1856, there was no Chabutra at this place. This was constructed in 1857 and on application of the Muslims the order of digging out the Chabutra was passed. Therefore, it is clear that the Chabutra was constructed in 1857****.*

4- Now it deserves a tension as to how a new Chabutra has been constructed for the meeting of Hindus. *Their entry was subject to condition that nothing new would be done. As such since 1857 the petitioner has no ownership rights, instead if the plaintiff or any other Hindu tried to carry out any new activity, the Government restrained them. One Faqir made a thatched hut (chhappar) as Kuti which was demolished and he was ousted from that place. This requires justice inasmuch as for 368 years generally and from 1857, in particular, the plaintiff could not produce any document to show his ownership. He can never have any right to construct any temple on the floor of the Masjid. The claim of the plaintiff that the Chabutra is theirs and thereby acquired right to construct any temple, it is a mere misunderstanding*

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because the plaintiff has no ownership right or liberty to use the Chabutra or offer gift (Charhawa) over the Chabutra.

5- Copies of various orders passed at different times restraining the plaintiff from carrying out construction activities and ***orders for demolition of the house and Rasoi of Sita Ji and the Kuti which the Faqir has made, as per record are not the property of plaintiff. It would cause violence between Muslims and Hindus, which had taken place earlier. Orders have been issued under the authority of the Government.*** *They are all related to this suit and are proof of our claim. The same orders, particularly the* ***order dated February 23, 1857 gave rise to cause of action as such limitation for hearing has expired.*** *Therefore the Civil Court could not overlook these facts. Therefore, the orders are in force. The petitioner did not get them cancelled. They could not be set aside without proper judicial verdict. Any such decision in contravention of the aforesaid order would be illegal and unlawful, as the same are self speaking and have not yet been set aside. Therefore, it is requested that after perusal of the documents and objections the claim of the obedient applicant objector may kindly be considered sympathetically. Deemed necessary so requested.*

Yours faithfully Mir Mohd. Asghar, Mutawalli Masjid Babri, respondent. Dated December 22, 1885 through Mohd. Nazir Khan and Maulvi Mohd. Afzal, counsel for the respondents.

2371. There are three judgments i.e. of the trial Court, first appellate and second appellate Court in Suit 1885:

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(a) **Exhibit A-26 (Suit-1) (Register 7, page 283-317)=Exhibit16 (Suit-4) Register 10 Page 79)** is a copy of the judgment dated 24.12.1885 of Sub-Judge Faizabad in Suit No. 61/280 of 1885, Mahant Raghubar Das Vs. Secretary of State and another.

(b) **Exhibit A-27 (Suit-1) (Register 7, page 319-323)=Exhibit 17 (Suit-4) Register 10 Page 87)** is a copy of the judgment dated 18/26 March 1886 of the District Judge, Faizabad in Civil Appeal No. 27 of 1885, Mahant Raghubar Das Vs. Secretary of State for India of another.

(c) **Exhibit A-28 (Suit-1) (Register 7, page 325-329)=Exhibit 18 (Suit-4) Register 10 Page 93)** is a copy of the decree dated 18/26 March 1886 in Civil Appeal No. 27/1887, Mahant Raghubar Das Vs. Secretary of State and another. In the said decree the order passed in appeal is as under:

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> *"This appeal bring on for hearing on the 18th day of March 1886 before Collector, F.E.A. Chamier, District Judge in the presence of B. Kuccumul vakil for the appellant and P. Bishambhar Nath, Government Pleader .....(sic).....vakil for the respondents it is ordered that the appeal be dismissed with* ***the remarks of the Sub-Judge quoted in the judgement of this Court declaring the right of property to rest in plaintiffs be cancelled and the cost of this appeal amounting to Rs. 72/5/- as noted below*** *are to be paid by plaintiff accepting 16/- Mahomad Asghar's pleader's fees. The cost of the original suit are to be paid by the plaintiff with above exception .....given under the hand and*

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seal of the Court this 18/26 day of March 1886."

We have already dealt with these three documents in detail while discussing the issues relating to res judicata, estoppel etc.

2372. Exhibit 49 (Suit-4) (Register Vol. 11, page 271 to 329) is a copy of the nakal khasra Abadi, Kot Ram Chandra, pergana Haveli Awadh, Tahasil and District Faizabad of 1931 A.D. of nazul register. At page 311, the Hindi transliteration of the aforesaid Exhibit, original whereof is in Urdu, the entry of Nazul plot 583 is as under:

(Name of building) (1) : Masjid Ahad-e-Shahi
Number Aarazi (2/1) : 583
Raqba Aarazi (Area of Plot) (2/2): 305/9 B. 15 Biswansi 4 Kach.
Number Sabiq (Old) (3/1): Abadi 444
Raqba Sabiq (Area old) 3/2): 7 B. 11 Biswansi 14 Kach.
Name Malik Aarazi (Owner) (4) : Masjid Waqf Ahde Shahi
Name Matahaddar (Subordinate), if any (5):
Name Kabiz Haal (Presently occupied by) (6) : Masjid
Kism (Nature) (7) : -
(9) Raqba (Area) : 9 B. 15 Biswansi 4 Kachh.
(1) Baadaye Lagan (2) Bila Lagan (Without Rent)
Kandhal (10) Bajariye Missil Numbari 427 No. 6/47
Dastandazi (11) Raiganj, Munfasla 26 February San 41
(12) Indraz Raghunath Das Janambhumi Ke
Raqba (13) Mahant Mukarrar Kiye Gaye, Ke Bajaye
Lagan (14) Mahant Ram Sharan Das."
Khet numbari (15) No. of plot
Kaifiyat (Details) (16) Masjid Pokhta Waqf Ahde Shahi andar Sahan Masjid Ek Chabutara Jo

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Janambhumi Ke naam Se Mashhoor Hai, Darakhtan Goolar Ek Imli Ek Mulsiri Ek, Pipal Ek, Bel Ek..Masjid Mausma Shah Babur Shar Marhoom.

14.6.41

(Note : Though the original document is horizontal, but for the purpose of convenience, it has been typed vertically.)

On page 331, Nazul khasra map's copy has also been filed, which is part of the Exhibit 49.

2373. **Exhibit A-49 (Suit-1) (Register Vol. 8, page 477)** is a copy of order dated 12th May 1934 showing that Muslims were permitted to start the work of cleaning and repairs of the disputed building from 14th May 1934 onwards. It reads as under:

"The Mohammadans have been permitted to start the work of cleaning of the Babri mosque from Monday 14th May. I have also asked them to get estimates needed for the repair of the mosque. For the purpose their contracting I would be allowed access to the mosque when necessary.

Once the mosque is cleaned up, it will be possible to use it for religious services. *This can be allowed but processions & demonstrations should not be allowed.*

The guard should be returned on it.

S.P. to be informed."

2374. Exhibit A-51 (Suit-1) (Register Vol. 8, page 483) is an application dated 25.2.1935 submitted by the contractor concerned complaining about non-payment of his claim despite repair work having been performed. It says:

غریب پردرسلامت جناب عالی

گذارش ہے کہ تابیدار کو بابری مسجد کا ٹھیکہ دیا گیا تھا اسکا کام عرصہ ہوا تیار کر دیا اسمیں کچھ سو دو سو روپیہ کا کام باقی رہ گیا

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ہے بغیر روپیہ کے تابیدار کوبہت سخت تکلیف ہے یہ جو سو دو سو روپیہ کا کام باقی ہے اسکو مکمل کرنے سے مجبور ہے اور کوی دوسرا کاروبار بھی بغیر روپیہ کے نہیں چلتا جس سے کہ اپنی ونیز بچوں کی تکلیف دور کریں- اسکےعلاوہ جسوقت کام کرنے کے لۓ حکم دیا گیا تھا اسوقت ساتھ ہی یہ حکم ہوا تھا جیسے جیسے روپیہ وصول ہوگا ویسے ہی روپیہ تمکو دیا جاوےگا معلوم ہوا کہ وصولیابی عرصہ سے ہورہی ہے اور کافی روپیہ وصول ہوچکا عرصہ ہوا زبانی حضور سے تکلیف بیان کیا تھا اس درمیان تابیدار کی طبعت اچھی نہیں تھی اسوجہ سے حضور سے دوبارہ اپنی مصیبت بیان نہ کر سکا- دویم مکانات جوکی بوجہ بلوہ کے جل گۓتھے جسکو تعمیر کرنے کے لۓ تابیدار کو حکم دیا گیا تھا جسمیں سے ۱۳ مکان کی کھپریل وغیرہ قبل بارش کے درست کر دیا- کچھ دروازہ وغیرہ کا کام باقی رہ گیا ہے جسمیں کہ کچھ درختان اور جھاڑوغیرہ بحکم جناب ڈپٹی کمشنر صاحب فیض آباد ذریعہ نزول ناءب تحصیلدار صاحب بہادر فیض آباد کے تابعدارکو عطا ہوا تھا اور یہ کہا گیا تھا کہ جب تمکو روپیہ ملے گا اسوقت تمھارے بل سے اسکی قیمت لیا جاوئیگا علاوہ جو مکان نامکمل ابھی پڑے ہیں اسکے مطابق بھی سامان اکٹھا کر رکھا ہے مگر بدرجہ مجبوری روپیہ نہ ہونے کے وجہ سے بیٹھہ رہا- لہذا ذریعہ درخواست ہاذا گذاران کر امیدوار ہوں کہ تابعدار کی اس مصیبت پر حضور خیال کر کے روپیہ دینے کا حکم صادر فرماویں گے-

واجب جانکر عرض کیا آندہ مالک حضور

تفصیل جو مکانات بنائے گے ہیں مسمات(۱) مقصوداً (۲)حبیب اللہ (۳) حاجی نور محمد (۴) خیرات حسین محلہ مگل پورا (۵) شہادت علی (۶) رحمت علی محلہ بیگم پورا (۷) عابد علی (۸) امین اللہ (۹) افضال اللہ (۱۰) محمد کریم محلہ سوٹ ہٹی (۱۱) مولا بخش (۱۲) محمد بخش محلہ قاضیانہ (۱۳) ظہور علی -

عرضی فدوی تہور خاں ٹھکیدار ساکن لال باغ فیض آباد

- ۲۵فروری سن ۳۵ء

''गरीब परवर सलामत, जनाब आली,

गुजारिश है कि ताबेदार को बाबरी मस्जिद का ठेका दिया गया था

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इसका काम अरसा हुआ तैयार कर दिया इसमें कुल सौ दो सौ रुपये का काम बाकी रह गया है और रुपये के ताबेदार को बहुत ही सख्त तकलीफ है कि यह जो सौ दो सौ रुपये का काम बाकी है इसको मुकम्मल करने से मजबूर है और कोई दूसरा कारोबार भी बगैर रुपये के नहीं चलता जिससे कभी अपनी व नीज बच्चों की तकलीफ दूर करें इसके अलावा जिस वक्त काम करने के लिये हुक्म दिया गया था उस वक्त साथ ही यह हुक्म हुआ था कि जैसे जैसे रुपया वसूल होगा वैसे ही रुपया हमको दिया जावेगा मालूम हुआ कि वसूलयाबी अरसे से हो रही है और काफी रुपया वसूल हो चुका अरसा हुआ जबानी हुजूर से तकलीफ बयान किया था इस दरमियान ताबेदार की तबियत अच्छी नहीं थी इस वजह से हुजूर से दोबारा अपनी मुशीबत बयान नहीं कर सका। दोयम मकानात जो कि बवजह बलवे के जल गये थे जिसको तामीर करने के लिये ताबेदार को हुक्म दिया गया था जिसमें से 13 मकान की खपरैल वगैरह कव्ल वारिस के दुरुस्त कर दिया कुछ दरवाजे वगैरह का काम बाकी रह गया है जिसमें कुछ दरख्तान और झाड़ वगैरह बहुकुम जनाब डिप्टी कमिश्नर साहब बहादुर फैजाबाद के जरिये नजूल नायब तहसीलदार साहब बहादुर फैजाबाद के ताबेदार को अता हुआ था और यह कहा गया था कि जब तुमको रुपया मिलेगा उस वक्त तुम्हारे बिल से उसका कीमत दिया जावेगा अलावा जो मकान नाममुकम्मल अभी पढ़े हैं उसके मुतालिक भी सामान इकट्ठा कर रखा है मगर ब वजह मजबूरी रुपयान होने की वजह से बैइ रहा लिहाजा जरिये दरख्वास्त हाजा गुमरान कर उम्मीदवार हूँ कि ताबेदार की इस मुशीबत पर हुजूर खयाल कर के रुपया देने का हुक्म सादिर फरमायेगें वाजिब जान कर अर्ज किया आहन्दा मालिक हुजूर।

तफसील जो मकानात बनाये गये हैं मुसम्मात मकसूदन, हबीबुल्ला (2) 3. हाजी नूर मुहम्मद 4. खेरात हुसेन मुहल्ला मुगलपुरा 5. सहादत अली 6. रहमत अली मुहल्ला बेगम पुरा 7. आबिद अली 8. अमीन उल्ला 9. अफजाल उल्ला 10. मुहम्मद करीम मुहल्ला सौटहटी 11. मौला बक्स 12. मुहम्मद बख्श मुहल्ला कजियाना 13. जहूर मियां।

अर्जी फिदवी तहव्वर खां ठेकेदार साकिन लालबाग फैजाबाद दस्तखत

तहव्वर खॉ

25.2.35''

Most Respected Sir,

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I beg to say that ***I was granted*** *contract* ***of Babri Masjid****. The work has already been completed about a year before, barring certain small piece of work for a value of Rs. 100/- or 200/-. The applicant is in dire need of money and only little work to the extent of Rs. 200/- is remaining, which I cannot carry out. The applicant has no other business. Kindly provide relief to me and my family. Besides, at the time of contract, it was agreed upon that part payments will be made according to Vasoolyabi. I have come to know that the enough revenue has been collected. I have already told orally to you that I was in trouble and needed money. During this time the applicant was not feeling well, so, he could not convey his grievance again.* ***Secondly, the applicant was required to construct the houses which were burnt during the riot,*** *out of which 13 houses of Khaprail have been repaired before the rains commenced. A small piece of work in relation to doors etc is remaining. Further under the orders of the Deputy Commissioner Faizabad through Tehsildar (Nuzul) Faizabad, certain trees and shrubs were allotted to the applicant with the assurance that whenever the applicant gets money the price of the aforesaid would be deducted from the bill. The applicant has already collected material for repairs of the remaining houses. But due to paucity of of required money the applicant remained idle. So, I would request you to kindly consider my grief sympathetically and provide money to me and for this purpose. kindly issue necessary orders. Deemed necessary, so prayed.*

Malik Hujoor.

Details of the lhouses constructed : (1) Mst. Maqsudan, (2)

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Habibullah, (3) Haji Noor Mohammad (4) Khairat Hussain, Mohalla Mughalpura, (5) Sahadat Ali 6. Rahmat Ali, Mohalla Begumpura (7) Abid Ali (8) Aminullah (9) Afzalullah (10) Mohd. Karim Mohalla Sothati (11) Maula Bux (12) Mohd. Bux Mohalla Kaziana (13) Zahoor Miyan.

Applicant Tahavvar Khan Contractor, r/o Lal Bagh Faizabad

25.2.35."

2375. **Exhibit A-50 (Suit-1) (Register Vol. 8, page 479)** is a letter of Tahawar Khan Thekedar regarding repair work in the disputed structure and says:

نقل درخواست تہور خاں ٹھیکہدارمورخہ ۱۶ اپریل ۱۹۳۵ء مشمولہ
مثل بابری مسجد اجودھیا، فیض آباد

بحضور جناب حاکم تحصیل صاحب بہادر فیض آباد دام اقبالہ

غریب پردرسلامت

گزارش ہے بابری مسجد کے بل دینے میں دیری ابھی سے ہوئی کہ کلسہ دوم کا بنارس میں تیار ہو رہا ہے ابھی تک آیا نہیں مگر اب بل بحکم حضور فوراً داخل کر رہا ہوں پتھرسنگ مرمر بھی جسمیں اللہ لکھا جاویگا مکمل نہیں کیا یہ دونوں کام جو کہ اندر ایک ہفتہ میں ہو جاوئیگا مکانات کے بل کچھ اس ہفتہ کے اندر داخل کر دونگا جو کچھ کام باقی تھا وہ ہو رہے واجباً غرض ہے-

فدوی تہور خاں ٹھیکہدارے ساکن لال باغ، فیض آباد

تہور خاں ۱۶-۴-۳۵

''नकल दरख्वास्त तहव्वर खॉ ठेकेदार मोरखा 16 अप्रैल, सन् 1935 ई0

मशमूला मिसल बाबरी मस्जिद अयोध्या, फैजाबाद

बहूजूर जनाब हाकिम तहसील साहब बहादुर फैजाबाद दामेएकबालहू

गरीब परवर सलामत

जनाबे आली गुजारिश है कि बाबरी मस्जिद के बिल देने में देर इस वजह से हुई है कि कलसा डोम का बनारस में तैयार हो रहा है। अभी तक आया नहीं मगर अब बिल बहुकुम हूजूर फौरन दाखिल कर रहा हूॅ। पत्थर संगमरमर भी जिसमें अल्ला लिखा जायेगा मुकम्मल नहीं किया यह दोनों

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काम जो कि अन्दर एक हफ्ते में हो जायेगा मकानात के बिल कुद इस हफ्ते के अन्दर दाखिल कर दूंगा। जो कुद काम बाकी था हो रहा है। वाजिवन अर्ज है।

अर्जी फिदवरी तहव्वर खां ठेकेदार साकिन लालबाग, फैजाबाद

ह0 तहव्वर खां

16.4.35''

"Copy of the application of Tahawar Khan Thekedar dated 16.4.1935 included in the file of Babri Masjid, Ayodhya, Faizabad.

To the Tehsildar Saheb Bahadur, Faizabad

Gharib Parwar Salamat.

I beg to say that delay in submitting the bill for Babri Masjid occurred ***because Kalsa (pitcher) of the Dome is being prepared in Banaras and has not yet been received.*** *But under your orders I am submitting the same now.* ***The piece of marble stone on which "Allah" will be engraved, has not yet been got ready****. I hope both the said jobs would be done within a week. The bills in respect of houses will be submitted within this week. The remaining work is in progress. Yours sincerely, Tahauwar Khan Thekedar resident of Faizabad 16-04-35." (ETC)*

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2376. **Exhibit A-53 (Suit-1) (Register Vol. 8, page 493)** is a copy of the application of Tahavvar Khan, Contractor, dated 2nd January 1936 for early payment of his dues in respect of repairs of Babri mosque filed before the Tehsildar and reads as under:

حضور جناب کے محسن صاحب صدر فیض آباد

غریب پرور سلامت

جناب عالی گزارش ہے کہ مکامات جوکی اجودھیا بلوہ میں جل گءے تھے مکمل کے ہوےکافی عرصہ ہوا اور تابیدار کو ابھی تک روپیہ نہیں ملا اور دریافت سے معلوم ہوا کہ اسٹمٹ مکامات غایب ہوگیا

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اسوجہ سے جناب امیر صاحب پی- ڈبلو-ڈی- بابری مسجد کا بل چیک کر کے دوبارہ مثل کو واپس کر دیا مکامات کا بل بغیر اسٹیمٹ کے رہ گیا- عالیجاہ اس اسٹیمٹ کو جناب نایب تحصیل دارنزول ریٹ پی- ڈبلو-ڈی- سے چیک کراکے دوبارہ تابیدار سے اسٹیمٹ لیاگیاجسکی اردو کاپی میرے پاس موجود ہے اگر حکم ہو تابیدار اسکوکاپی پیش کر سکتا ہےمہربانی کر کے میرے مکانوں کا بل جناب انجینیر صاحب کے پاس روانہ کر دیا جاے تاکہ بل چیک ہو جاوے تابیدار کو مل جاوے کیونکہ روپیہ کی سخت ضورت ہے-

واجباً عرض ہے-

عرضی

فدوی تہور خان ٹھیکیدار ساکن لال باغ فیض آباد

۲-۱-۳۶-

''गरीब परवर सलामत जनाबे आली गुजारिश है कि मकानात अयोध्या जो कि बलवे में जल गये थे। जिसको ताबेदार को मुकम्मल किये हुये बहुत अरसा हुआ और ताबेदार को रुपया अभी तक नहीं मिला और दरयाफ्त से मालूम हुआ कि स्टीमेट मकानात का गायब हो गया इस वजह से जनाब इन्जीनियर पी0डब्लू0डी0 बाबरी मस्जिद का बिल चेक करके मिस्ल को वापस कर दिया। मकानात का बिल बगैर स्टीमेट के रह गया आली जाहा इस स्टीमेट को जनाब नायब तहसीलदार साहेब नजूल रेट पी0डब्लू0डी0 से चेक कराके दोबारा ताबेदार से स्टीमेट लिया गया। जिसकी उर्दू कापी मेरे पास मौजूद है अगर हुकुम हो ताबेदार इसको या इसकी कापी पेश कर सकता है मेहरबानी करके मेरा मकानों का बिल जनाब इंजीनियर साहेब के पास रवाना कर दिया जावे ताकि बिल चेक हो जाये ताबेदार को रुपया मिल जाए क्योंकि रुपये की सख्त जरूरत है बाजिबन अर्ज है।

अर्जी

फिदवी तहव्वर खां ठेकेदार साकिन लालबाग फैजाबाद।

2.1.36 *ह0 तहव्वर खां।*

"Garib Parvar Salamat,

Janabe Ali, Respectfully it is submitted that certain houses in Ayodhya were burnt in the riots, which were constructed by the contractor long back but the contractor could not

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get the money so far. The query in this behalf revealed that estimate concerning those houses had been lost somewhere and due to which the Engineer of PWD after perusing the bill returned the file. The payment of bill could not be made in absence of estimate. Respected Tehsildar Saheb, Estimate of Nazul rate was obtained from the contractor again, Urdu copy whereof is available with the applicant. If ordered, the applicant can produce the same or copy of the said, My bills in respect of houses may very kindly be sent to Engineer Saheb so that the bills may be checked and contractor may get money because he is in dire need of money.

Applicant Tahavvar Khan, Contractor, R/o Lal Bagh 2.1.36."

2377. **Exhibit A-46 (Suit-1) (Register Vol. 8, page 469)** is a copy of report of Mubarak Ali, Bill Clerk dated 27th January 1936 which reads as under:

"The bill of the contractor regarding the construction of the mosque is herewith put up as ordered. As regards the bill for the burnt houses, the estimates of which have been lost, has recently been sent to the Nazul Naib Tahsildar under the orders of D.C. for checking the work done by the contractor on the spot."

2378. **Exhibit A-52 (Suit-1) (Register Vol. 8, page 489)** is another copy of the complaint made by Tahavvar Khan, contractor on 30th April 1936 to the Deputy Commissioner, Faizabad, complaining about certain claims disallowed by the PWD authorities and reads as under:

غریب پرور سلامت

گزارش ہے کہ سایل کا بل بابت مرمت مکانات واقع اجودھیا مبلغ ۳۶۰۴

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روپیہ ۹ آنا کا تھا جسمیں سےسایل کو صرف 3287 روپیہ ۱ آنا ۶ پای دیاگیا ہے کمی کی جہیہ معلوم ہوتی ہےجانب نزول نایب تحصیلدار صاحب فیض آباد نے دوران خاطر کام مرمت یہ تجویزکر دیا کہ دو،تین دوروازے کی ڈیڑہ انچ ،دروازوں کی قیمت مالیتی ۲۳ روپیہ ۱۲ آنا، ۱۶ روپیہ ۱۱ آنہ ۳ پای کے مبلغ ۱۶، ۱۱ روپیہ کر دی جاے اور کھڑکیوں کی قیمت بجاے مبلغ ۷ روپیہ کےمبلغ ۴ روپیہ کر دی جاے - عالی جاہ بوقت جانچ اسٹیمٹنٹ ۳ دروازوں کی مو ٹای ڈیڑہ انچ اور کہڑکیوں کی قیمت کم کرکے مجھ کو پی ڈبلو ڈی نے ۲۳ روپیہ ۱۲ آنہ ۱۶ روپیہ ۱۱ آنہ ۳ پاءی ۷ روپیہ منظور کی تھی اور اسی کے مطابق سایل نے دروازے اور کھڑکیاں سالوں پہلے لگا یا تھا اور جانچ کے وقت آفیسر انچارج جانچ کنندہ کو وہ نی حالت میں ہی ملی- غالباً اس وجہ سے یہ کمی تجویز کی گی ہے- حالانکہ نےدروازہ اور کھڑکیاں تجویز شدہ رقم میں ہر گز تیار نہیں ہو سکتی ہیں- بجو بات بالا ساءل امیدوار ہے کہ ۳ ڈور دروازہ سوا انچ اور کھڑکیوں کے ریٹ کی جانچ پی ڈبلو ڈی سے دوبارہ کرالی جاے اور ساءل کا بقیہ روپیہ مرہمت فرمایا جاے- سایل کا بل بابت مسجد بابری ۷۲۲۹ روپیہ کا تھا جسمیں سے ساءل کو ۶۸۲۵ روپیہ ۱۲ آنہ دیا گیا ہے یعنی ۴۰۳ روپیہ ۴ آنا کم برامد کیا گیا - حالانکہ اسٹیمیٹ جو منظور ہوا تھا وہ ۷۲۲۹ روپیہ کا تھا اور سایل نے اسٹیمیٹ سے کم بل دیا تھا لہذا ساءل کو سمجھایا جاے کہ کون کون سی رقم ساءل کی نہیں برامد کی گی جس میں حضور سے سایل اس کے متعلق عرض کر سکے -

فدوی تہور خاں ٹھیکیدار مورخہ ۳۰ اپریل ۳۶ء

''गरीब परपर सलामत,

गुजारिश है कि सायल का बिल बाबत मरम्मत मकानात वाके अयोध्या मुबलिग 3604 रुपया 9 आना का था जिसमें से सायल को सिर्फ 3287 रुपया 1 आना 6 पाई दिया गया है। कमी की वजह यह मालूम होती है कि जनाब नजूल नायब तहसीलदार साहब फैजाबाद ने दौरान खातिर काम मरम्मत यह तजबीज कर दिया कि दो तीन दरवाजे की मोटाई डेढ़ इंच दरवाजों की कीमत मालियती 23 रुपया 12 आना, 16 रुपया 11 आना 3 पाई के मुबलिग 16 रुपया, 11 रुपया कर दी जाय और खिड़कियों की कीमत बजाय मुबलिग 7 रुपये के मुबलिग 4 रुपये कर दी जाय आलीजहा

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बरवक्त जांच स्टेटमेंट 3 दरवाजों की मोटाई डेढ़ इंच और खिड़कियों की कीमत कम कर के मुझको पी0डब्लू0डी0 ने 23 रुपया 12 आना, 16 रुपया 11 आना 3 पाई, 7 रुपया मन्जूर की थी और इसी के मुताल्लिक सायल ने दरवाजा व खिड़किां सालो पहले लगाया था और जांच केवल आफिसर इंचार्ज कुन्निदा को वह नई हालत में नही मिली गालबन इस वजह से यह कमी तजवीज की गई है हालांकि नये दरवाजा व खिड़कियां तजबीज शुदा रकम में हरगिज तैयार नहीं हो सकतीं। बवजूहात बाला सायल उम्मीदवार है कि 3 डोर दरवाजे सवा इंच व खिड़कियों के रेट की जांच पी0डब्लू0 डी0 से दोबारा करा ली जाय और सायल को बकिया रुपया मरहमत फरमाया जावे सायल का बिल बावत मसजिद बाबरी 7229 रु0 का था जिसमें से सायल को 6825 रु0 12 आ0 दिया गया है। यानी 403 रु0 4 आ0 कम बरामद किया गया हांला कि स्टीमेट जो मन्जूर हुआ था वह 7329 रु0 का था और सायल ने स्टीमेट से कम बिल दिया गया लिहाजा सायल को समझाया जावे कि कौन कौन सी रकमें सायल की नहीं बरामद की गई जिसमें हुजूर से सायल इसके मुताल्लिक अर्ज कर सके।

फिदवी तहव्वर खां ठेकेदार

ता0 30 अप्रैल सन् 36''

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" Gharib Parwar Salamat. I beg to state that my bill for the repair work of the houses was to the tune of Rs. 3604/- out of which the applicant has been paid 3287/1/6 only the reason for the officer under payment seems to be that the officer Nazul and Naib Tahsildar Faizabad at the time of inspection during repairs, proposed that the thickness of the two doors of 1-1/2 inch, valued at Rs 23/12 and Rs 16/11/3 be reduced to Rs 16/- and Rs 11/- respectively, the price of the windows was reduced to Rs. 4/ instead of Rs 7/. Sir, at the time of inspection of the after reducing the thickness of the three doors to 1-1/2 inches and that of windows the P.W.D. after revision of the price, approved Rs 23/12/-, Rs 16/11/3 and Rs 7/- respectively, and accordingly fixed the doors and windows years back. At the

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time of inspection of the officer incharge, those were found not in new condition, that is why deduction was proposed although the new doors and windows could certainly not be prepared at the proposed price. Therefore it is requested that inspection and revaluation of 3 doors- 1-1/4 inches and rates of the windows may be made by the P.W.D. and the applicant may kindly be paid his remaining amount. Applicant's bill in respect of Masjid Babri was of Rs. 7229/- out of which he has been paid Rs, 6825/12/- i.e. short by Rs 403/41- though the estimate was approved for Rs. 7329/- and the applicant has been paid lesser amount. Therefore the applicant may kindly be furnished details as to which amount has been deducted so that the applicant may move your honour. Applicant: Tahauwar Khan the thekedar dated April 30, 1936."

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2379. Exhibit A-7 (Suit 1) (Register 6, page 63-73)=Exhibit 24 (Suit-4) Register 10 Page 137) is claimed to be an agreement between Syed Mohd. Zaki and Abdul Gaffar on 25th July 1936 with respect to payment of arrears of salary of Abdul Gaffar who is said to have worked as Pesh Imam in the waqf mosque Babri and contains further details about payment schedule etc. This document has been filed to show that the building in dispute was not only in possession of Muslims after 1934 but Pesh Imam and Mutwallis were there which shows that Namaz was also offered in the disputed building after 1934. However, entire document nowhere shows or even make a suggestion that Namaz was being offered in the disputed building for the period said document refers or otherwise. It is solely confined to the dispute of payment of salary to Sri Abdul Gaffar. Moreover, this document ex facie does not satisfy the

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requirement of a public document under Section 74 of Evidence Act, 1872 and nothing has been placed on record to show that it was filed after obtaining a copy thereof from a public authority in whose possession it ought to be. Evidently, it is a private document under Section 75 of Evidence Act and its contents have not been proved in accordance with law i.e. by any appropriate witness.

2380. The said document was filed in an earlier litigation i.e. O.S.No.29 of 1945 filed by U.P. Shia Central Waqf Board against U.P. Sunni Central Waqf Board where it was marked as Exhibit A-20 but that fact by itself would not result in treating the said document proved in accordance with law and in any case the contents thereof having not been proved, cannot be taken to be correct. The above document, Exhibit A-7, does not qualify such degree, presumption in respect whereto under Section 80 of the Evidence Act could be drawn for the purposes mentioned therein. Certified copy of the said documents obtained from the Civil Court would only mean that such a document was filed thereat but the presumption as available to the certified copies of public document would not apply to the above documents, Exhibit A-7. Moreover, nothing spell out therefrom which may help plaintiffs (Suit-4) or the defendants no.1 to 5 and 10 (Suit-1) to prove their claim about the possession and offering of Namaz in the disputed premises.

2381. **Exhibit A-4 (Suit-1) (Register 6, page 35-44)=Exhibit 21 (Suit-4) (Register 10, page 119-124)** is claimed to be the report dated 16th September 1938 written by the District Waqf Commissioner, Faizabad addressed to the Chief Commissioner of Waqf, U.P. and it reads as under:

"Chief Commissioner of Waqfs, U.P.

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These papers are submitted to you in the matter of Babari or Janam Asthan mosque at Ajudhya, which was built by Emperor Babar in 935 A.H.

A short history of the State grant made for the maintenance of this mosque is given below.

It appears that in 935 A.H. Emperor Babar built this mosque and ***appointed one Syed Abdul Baqi as the Mutawalli and Khatib of the mosque*** *(vide cl.2 of written statement filed by* ***Syed Mohd. Zaki*** *to whom a notice was issued under the Waqf Act). An annual grant of Rs. 60/- was allowed by the Emperor for maintenance of the mosque and of the family of the first Mutawalli Abdul Baqi. This grant was continued till of the fall of the Moghal kingdom at Delhi and the ascendancy of the Nawab of Oudh.*

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According to Cl.3 of the written statement of Mohd. Zaki, Nawab Sa'adat Ali Khan, King of Oudh increased the annual grant to Rs. 302/3/6. No original papers about this grant by the King of Oudh are available.

After the mutiny, the British Government also continued the above grant in cash upto 1864 and in the latter year, in lieu of the cash grant the British Govt ordered the grant of some revenue free land in villages Bhuranpur and Sholeypur. A copy of this order of the British Govt has been filed by the objector Syed Muhammad Zaki (Vide flag A). This order says that "the Chief Commissioner under the authority of the Governor General in Council is pleased to maintain the Grant for so long as the object for which the grant has been made is kept up on the following conditions." These conditions

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require Rajab Ali and Mohd. Asghar to whom the Sannad was given, to perform duties of land holder in the matter of police, military or political service etc. The object mentioned above is elucidated in the Urdu translation as follows:

اوسی نانکارکو جب تک کہ مسجد جس کے واسطے یہ
نانکار دی گی تھی برقرار رہے حسب شراءط مفصلہ ذیل قاءم فرماتے
ہیں۔

"Thus the original object of the State grant of Emperor Babar and Nawab Saadat Ali Khan is continued in this Sunnad by the British Govt. also, i.e., maintenance of the mosque. The Nankar is to be enjoyed by the grantees for so long as the object of the grant i.e the Mosque, is in existence.

***Syed. Mohd. Zaki, the objector, who is known as the Mutawalli of the Babari Mosque**, and also calls himself as such raises an objection to the land in Sholeypur and Bhuranpur being regarded as a waqf, because he says the grant has been made for his subsistence only (نانکار). I do not agree with this view of his. The written filed by Mohammad Zaki himself is sufficient to show that the grant has been continued ever since 935 A.H. only because he and his ancestors were required to look after the mosque and keep it in proper condition out of the income allowed to them and also to provide for the maintenance of himself and his ancestors out of a part of the same grant.*

Clearly them the grant of land to Mohammad Zaki must be regarded as a Waqf, the purpose of which is the maintenance of the religious building known as the Babari Mosque.

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The learned counsel for Mohammad Zaki has also argued.

1) That the particular grant of land in Sholeypur and Bhureypur has been made by the British Government. A Non-Muslim body and hence the grant cannot be regarded as Muslim Waqf.

(2) that the grant is a conditional one, being subject to resumption on non fulfilment by the grantee of any of the police Military or duties enjoined in the Sunnad, and that on account of these conditions the grant cannot be classed as a Muslim Waqf.

I do not agree with eitherview. Firstly the British Government only continued a grant which had been made by the Muslim Government originally and in these circumstances, I cannot but regard the grant as a Waqf.

2) As for the second point the conditions have been imposed upon the grantee, and not upon the way in which the grant is to be utilized, which latter purpose is recognised as maintenance of the mosque. It is clear that if the conditions are broken the enjoyment of the grant by the Mutwalli himself for his sustenance is to be withdrawn apparently implying that any other Mutwalli will then be appointed to administer the grant for the original purpose of maintaining the mosque. I am strengthened in this view because I find the mention of the object of the grant i.e. maintenance of the mosque at the very outset of the Sunnad and the desirability thereof seems to be clear from the whole Sunnad.

I also find that after the Ajodhya riot of 1934, ***Syed Mohammad Zaki*** *presented an application (Ex. A) to D.*

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C., in which he clearly described himself as Mutwalli or trustee of the mosque and of the trust attached thereto.

I also find that this same Mohammad Zaki submitted accounts in 1925 in Tahsildar's court in which he stated that the income from the grant managed by him was utilized for maintenance of the mosque, pay of Imam Muezzin and the provisions of Iftari etc., during Ramzan after deduction of Rs 20/- per month for sustenance of the Mutwalli himself. The pay of Mutwalli in column 7 has not been stated by Mohd. Zaki. In view of the statement filed in Tahsildar's Court, this may be regarded as Rs. 20/- per month, although there is no reason to believe that the present Mutwali spends a much greater portions of the income on his own personal needs.

The present Mutwalli is of course a Shia. ***There is no information as to the sect to which Abdul Baqi himself belonged****, but the founder Emperor Babar- was admittedly a Sunni, the Imam and Muezzin at the mosque are Sunni and* ***only Sunnis say their prayer in it. I think therefor that this should regarded a Sunni trust.***

I must say in the end that from the reports that I have heard about the present Mutwalli, he is an opium addict (vide his statement Flagged-) and most unsuited to the proper performance of the duties expected of a Mutwali of an ancient and historical mosque, which is not kept even in proper repairs. It is desirable that, if possible, a committee of management should be appointed to supervise the proper maintenance and repairs of the mosque and discharge of his duties by the Mutwalli.

Sd/-
Distt. Waqf Commissioner

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Fyzabad.
16.9.38."

2382. **Exhibit A-5 (Suit-1) (Register 6, page 45-48)** is copy of another report dated 8th February 1941 submitted by A. Majeed District Waqf Commissioner, Faizabad. It appears that earlier report of the District Waqf Commissioner was returned by the authorities vide letter dated January 19, 1939 informing that the post of Chief Commissioner Waqf was terminated and it is the District Waqf Commissioner who was empowered under section 4 of 1936 Act to decide Waqf cases and in this context he was to pass a fresh order. The District Waqf Commissioner instead of passing any order says that he entirely agrees with the findings of his predecessor and then submitted report which reads as under:

> *"The report was submitted to you in the matter of Babari and Janam Asthan Mosque at Ajudhya, which was built by Emperor Babar in 935 A.H. by Mr. Mohammad Owais, My predecessor, which was returned with letter no. 509/XV-W-39 dated January 1939 with the intimation that the post of Chief Commissioner of Waqf was terminated District Waqf Commissioner are empowered under sec.4 of United Provinces Acts (Act XIII of 1936) to decide waqf cases finally. I made further enquiries and examined the Pesh Newaz who filed certain papers. I entirely agree with the finding of my predecessor and I submit my report.*
>
> *A short history of the State grant made for the maintenance of this mosque is given below.*
>
> *It appears that in 935 A.H. Emperor Babar built this mosque and appointed one Syed Abdul Baqi as the Mutawalli and Khatib of the mosque (vide cl.2 of written statement filed by Syed Mohd. Zaki to whom a notice was*

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issued under the Waqf Act). An annual grant of Rs. 60/- was allowed by the Emperor for maintenance of the mosque and of the family of the first Mutawalli Abdul Baqi. This grant was continued till of the fall of the Moghal kingdom at Delhi and the ascendancy of the Nawab of Oudh.

According to Cl.3 of the written statement of Mohd. Zaki, ***Nawab Sa'adat Ali Khan, King of Oudh increased the annual grant to Rs. 302/3/6. No original papers about this grant by the King of Oudh are available.***

After the mutiny, the British Government also continued the above grant in cash upto 1864 and in the latter year, in lieu of the cash grant the British Govt ordered the grant of some revenue free land in villages Bhuraipur and Sholeypur. A copy of this order of the British Govt has been filed by the objector Syed Muhammad Zaki (Vide flag A). This order says that "the Chief Commissioner under the authority of the Governor General in Council is pleased to maintain the Grant for so long as the object for which the grant has been made is kept up on the following conditions." These conditions require Rajab Ali and Mohd. Asghar to whom the Sannad was given, to perform duties of land holder in the matter of police, military or political service etc. The object mentioned above is elucidated in the Urdu translation as follows:

'اوسی نانکارکو جب تک کہ مسجد جس کے واسطے یہ نانکار دی گی تھی
برقرار رہے حسب شراءط مفصلہ ذیل قاءم فرماتے ہیں۔'

"*Thus the original object of the State grant of Emperor Babar and Nawab Saadat Ali Khan is continued in this*

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Sunnad by the British Govt. also, i.e., maintenance of the mosque. The Nankar is to be enjoyed by the grantees for so long as the object of the grant i.e the Mosque, is in existence.

Syed. Mohd. Zaki, the objector, who is known as the Mutawalli of the Babari Mosque, and also calls himself as such raises an objection to the land in Sholeypur and Bhuranpur being regarded as a waqf, because he says the grant has been made for his subsistence only (نانکار*). I do not agree with this view of his. The written statement filed by Mohammad Zaki himself is sufficient to show that the grant has been continued ever since 935 A.H. only because he and his ancestors were required to look after the mosque and keep it in proper condition out of the income allowed to them and also to provide for the maintenance of himself and his ancestors out of a part of the same grant.*

Clearly them the grant of land to Mohammad Zaki must be regarded as a Waqf, the purpose of which is the maintenance of the religious building known as the Babari Mosque.

The learned counsel for Mohammad Zaki has also argued.

1) That the particular grant of land in Sholeypur and Bhurey pur has been made by the British Government. A Non-Muslim body and hence the grant cannot be regarded as Muslim Waqf.

(2) that the grant is a conditional one, being subject to resumption on non fulfilment by the grantee of any of the police Military or duties enjoined in the Sunnad, and that on account of these conditions the grant cannot be classed

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as a Muslim Waqf.

I do not agree with either view. Firstly the British Government only continued a grant which had been made by the Muslim Government originally and in these circumstances, I cannot but regard the grant as a Waqf.

2) As for the second point the conditions have been imposed upon the grantee, and not upon the way in which the grant is to be utilized, which latter purpose is recognised as maintenance of the mosque. It is clear that if the conditions are broken the enjoyment of the grant by the Mutwalli himself for his sustenance is to be withdrawn apparently implying that any other mutwalli will then be appointed to administer the grant for the original purpose of maintaining the mosque. I am strengthened in this view because I find the mention of the object of the grant i.e. maintenance of the mosque at the very outset of the Sunnad and the desirability thereof seems to be clear from the whole Sunnad.

I also find that after the Ajodhya riot of 1934, Syed Mohammad Zaki presented an application (Flag Ex. A) to Deputy Commissioner, in which he clearly described himself as Mutwalli or trustee of the mosque and of the trust attached thereto.

I also find that this same Mohammad Zaki submitted the accounts in 1925 in Tahsildar's court in which he stated that the income from the grant managed by him was utilized for maintenance of the mosque, pay of Imam Muezzin and the provisions of Iftari etc., during Ramzan after deduction of Rs 20/- per month for sustenance of the Mutwalli himself. The pay of Mutwalli in column 7 has not

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been stated by Mohd. Zaki. In view of the statement filed in Tahsildar's Court, this may be regarded as Rs. 20/- per month, although there is no reason to believe that the present Mutwali spends a much greater portions of the income on his own personal needs.

The present Mutwalli is of course a Shia. There is no information as to the sect to which Abdul Baqi himself belonged, but the founder Emperor Babar- was admittedly a Sunni, the Imam and Muezzin at the ***mosque are Sunni and only Sunnis say their prayer in it****.* ***Abdul Ghaffar the present Pesh niwaz was examined by me.*** *He swear that the ancestors of Mohammad Zaki were Sunnis who latter on was converted to Shia.* ***He further said that he did not receive his pay during the last 11 years.*** *In 1936 the Mutwalli executed a pronote promising to pay the arrear of pay by instalment* ***but upto this time nothing actually was done.*** *I think therefore that this* ***should be regarded as a Sunni Trust.***

I must say in the end that from the reports that I have heard about the present Mutwalli, he is an opium addict (vide his statement Flagged-) and must unsuited to the proper performance of the duties expected of a Mutwali of an ancient and historical mosque, which is not kept even in proper repairs. It is desirable that, if possible, a committee of management should be appointed to supervise the proper maintenance and repairs of the mosque and discharge of his duties by the Mutwalli.

Sd/-A. Majeed
Distt. Waqf Commissioner
Fyzabad.
Feb. 8, 1941"

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2383. The said documents show that the (Waqf Commissioner) proceeded to treat the disputed building a mosque pursuant to some statement received from Syed Mohd. Zaki to whom he had issued notice under U.P.Act 1936 and thereafter took into consideration the genuineness of the grant of Rs. 302/3/6 though admitted that the original documents of the said grant alleged to be issued by the King of Oudh were not available.

2384. Sri P.N. Mishra as well as Sri M.M. Pandey learned counsel appearing for some of the Hindu parties drew our attention to the factum mentioned by the District Waqf Commissioner in his report that the object of the grant was to maintain the mosque and for the said purpose he has reproduced certain words in Urdu which is incorrect. They are right. We also do not find as to wherefrom the alleged original object in Urdu was found mentioned by aforesaid District Waqf Commissioner. It also appears from the aforesaid report that Syed Mohd. Zaki did not agree to the fact that the grant of land in village Sholapur and Bahoranpur was in connection with the Waqf, i.e. mosque but his stand was that the said grant was given to Sri Rajjab Ali and Sri Mohd. Asghar. The officer concerned however showed his disagreement on the ground that the original grant having been allowed since the period of Emperor Babur i.e., 935 A.H., i.e. 1528 AD the claim of Mohd. Zaki that the grant was personal was not correct. Further to treat the successors of Mutwalli the name of the first one is mentioned as Abdul Baqi but we are not shown by any of the counsels as to whether any such person existed in 1528 AD and had any relationship with the building in dispute or Emperor Babur. Another factum mentioned in the report is that one

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Abdul Gaffar, according to the officer concerned, was the then Pesh Nawaz who was examined by him and he told that Mohd. Zaki was earlier Sunni and later on converted to Shia and for this reason also, since Emperor Babur was Sunni, the officer concerned recorded his opinion that it should be treated as Sunni Trust. He also found that the then Mutwalli was an opium addict and recommended for the constitution of a committee of management for maintenance of the building.

2385. **Exhibit A-6 (Suit-1) (Register 6, page 49-61)** is said to be an application/petition dated 1.10.1945 filed under section 15 of the Police Act (Act No.5 of 1861). There are eleven petitioners: 1. Mohd. Zaki, 2. Imtyaz Ali, Advocate, 3. Haji Agha Mirza Saudagar, 4. Sheikh Abdul Gaffar, 5. Meer Farjand Ali, 6. Meer Masum Ali, 7. Maulvi Syed Waziruddin, 8. Muhammad Yusuf, 9. Iqramullah, 10. Rahim Baksh, 11. Syed Rahmat Hussain, Advocate.

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2386. The said application was filed for claiming damages of Rs. 15000/- on account of loss caused to the building in dispute on 27th March 1934 and removal of movable property kept in the said building and their residential houses. It gives the list of movable property which was lost in the said agitation worth Rs. 269/- and reads as under:

> *''सैय्यद मोहम्मद ज़की मुतवल्ली बाबरी मस्जिद ने बहल्फ़ बयान किया कि मै बाबरी मस्जिद का मुतवल्ली हूँ। इस दरख़्वास्त पर मेरे दस्तख़त है। मेरा ख़ानदान मुतवल्ली रहा है। **मैं कुल इन्तिज़ाम बाबरी मस्जिद करता हूं।** अलावा नुकसान इमारत मस्जिद के बकिया हस्ब ज़ैल सामान भी एहले हुनूद ने ज़ाया कर दिया और जला दिया*
>
> | | | | | |
> |---|---|---|---|---|
> | *चटाई* | *फ़र्श कपड़ा* | *सन्दूक चोबी* | *सन्दली* | *परदा कपड़ा* |
> | *तीन अदद* | *छः अदद* | *एक अदद* | *दो अदद* | *छः अदद* |
> | *30/—* | *40/—* | *15/—* | *15/—* | *30/—* |
>
> *मटका मिट्टी बधना मिट्टी हांडी (अपठनीय) चहाड़ (अपठनीय) घ*

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ाड़ा मिट्टी

पांच अदद पांच सै अदद चार अदद एक अदद (अपठनीय)

1/4 7/13/– Rs.24/- Rs. 50/- Rs. 1/8/-

(अपठनीय) पत्थर कसौटी तारीख़ी सीढ़ी गगरा लोहा

तीन अदद 3x1½ Sqr ft. दो अदद दो अदद

Rs.25/- एक अदद Rs.4/- Rs.2/8/-=कुल माल की कीमत Rs.269 होती है। मैंने मुफ़स्सल फ़ेहरिस्त सामान नुक़सान शुदा की पुलिस में दाख़िल कर दी है। यह क़ीमत अलावा माविज़ा नुक़सान इमारत मिलना चाहिये।श्श

सुनकर तसदीक़ किया

(द0 उर्दू) सैय्यद मोहम्मद ज़की मुतवल्ली बक़लम खुद

(Sd/- English) R.R. Sinister Day"

"I syed Mohammad Zaki Mutawalli Babri Masjid described on oath that he is Mutawalli of Babri Masjid and has signed this application. The Mutawallis are selected from his family, under he traditions. He looks afterall the arrangements of the Masjid that besides the harm caused to the building the Hindus destroyed and set on fire the following things.

Chatai 3 nos, 30/- Cloth for furse 6 nos 40/- wooden box 15/-. Parda Kapra (cloth) sandali 30/-, matka hardin 5 nos. 1/4-. Clay Badhni 7/13. Handi—Sic—7/13. Handi 4 nos 24/- Chahar-sic- 1 nos 50/- Clay pitchers 1/8. Illigible 3 nos. 25 Rs. Stone Kasuti historical 3x1, 1/2 Sqfeet. 1 nos. lader 2 nos.4/- Gagra iron 2 nos. 2 Rs 8 Anns. Total values comes to Rs 269.

I have submitted to the police a detailed list of the articles. This value should also be given, along-with the compensation for the loss incurred on the building of the Masjid.

Listened and verified

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Sd/- (urdu) syed Mohammad Zaki Baqulam Khud.

Sd/- English R.R. Senister Day."

(E.T.C.)

2387. The above document is not a public document and when it was filed, could not have been said to be 30 years old document. Even otherwise, it does not satisfy the requirement of Section 90 of the Evidence Act. This document, therefore, cannot be held proved. It is therefore difficult to place reliance on the contents of this document. In any case, it only shows that Syed Mohd. Zaki claimed himself to be Mutwalli, Babari Masjid and that he was managing the said mosque. It further says that besides damage to the building of the mosque, the other items kept in the said building have also been set on fire and therefore, he sought compensation of Rs.269/- on that account.

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2389. **Exhibit A-11 (Suit-1) (Register 6, page 163-165)** appears to be a copy of some register but it is an extremely torn document and the contents on page 163 are almost illegible. Sri Jilani however placed reliance on entry contained in columns 13 and 14 thereof. Column 13 refers to order of the Chief Commissioner and reads as under:

> *"So long the Masjid is kept up and the Muhammadans conduct themselves properly I recommend the continuance of the grant (signature illegible, officiating Chief Commissioner)"*

2390. Column 14 is headed '*Final order of Government*' and thereunder it is mentioned as under:

> *"Released so long as the object for which the grant has been made is kept up vide Govt. order number 2321 dated 29th January 60"*

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(Obviously it must be 1860)

(The same document has also been filed as **Exhibit 2 (Suit-4) Register 10 Page 31)**

2391. **Exhibit A-10 (Suit-1) (Register 6, page 153-155)** is a document which has been heavily referred by both the sides. Its heading is as under:

> *"Nakal register tahkikat maafi mashmula misil tahkikat maafi number mukdama 53 register misil band mukdama Rajab Ali (Apathniya)*
>
> *Mauza Shahnawa Pargna Haveli Oudh Munfasla 14 March 1860 Ei."*

2392. **Exhibit A-21 (Suit-1) (Register 7, page 233-235)** is a copy of the Khasra pertaining to 1277 Fasli (1884 AD) showing entry of Plot No. 163 as Araji Juma Masjid.

2393. The above documents show that in order to justify the amount received by Mir Rajjab Ali and Mohd. Afjal and their successors in the form of the grant, they made some expenses on the maintenance of disputed structure and that was shown in the records also, which was inspected and found correct by the Government officials namely Tehsildar etc. The interesting thing discern from all these documents is that none of them throws any light on the fact whether the Muslim public visited the disputed premises for offering namaz during all this period. From the stand taken by Mohd. Zaki before the Waqf Commissioner, it is evident that the grant of the two villages was treated as personal grant and in one or the other documents, besides the word 'Mutwalli'/'khatib', it also mentions "Zamindar" qua the two villages grant whereof was allowed. Moreover in respect to Hindu fairs at Ayodhya i.e. Ram Navmi fair, they shared income of rental when some of the part of the land was

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allowed to be used by outsiders for keeping shops, with the Priest of Nirmohi Akhara, who were managing and possessing Ram Chabutara and other Hindu religious structures and places existing in the outer courtyard.

2394. Sri Jilani suggested when the building was maintained by a Muslim person, the said management was for the purpose of convenience to Muslim public for holding namaz. We find difficult to agree with this bald oral proposition for the reason that a presumption cannot substitute a fact. When a fact is seriously disputed, there has to be an evidence to prove that fact. Assumption cannot be stretched too far i.e. to that extent which is not even apparent or justified from the documents produced by the party concerned upon whom onus to prove lie.

2395. In support of the contention that the namaz was continuously offered in the building in dispute, a number of witnesses have been produced on behalf of the plaintiffs (Suit-4). They deposed to have offered namaz in the building in dispute (inner courtyard) before December, 1949 and upto 16th December, 1949 or 22nd December, 1949. That evidence will be considered a bit later. Here what we find is that realizing the problem, which the plaintiffs were having in the matter, instead of filing a suit for possession, they have sought a declaration about the status of the premises in dispute. Ex facie the provision of Limitation Act, which would be attracted, is not Article 142. The pleadings as well as other documents leave no doubt that the plaintiffs (Suit-4) have not made out any case of adverse possession; admitting the ownership of the property in dispute of the defendants and showing open, hostile, continuous and peaceful possession. However, we shall consider the

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question of adverse possession in detail separately.

2396. So far as Article 144 is concerned, we are clearly of the view that the same has no application. It contemplates plea of adverse possession by the defendant and not plaintiff. Learned counsel for the plaintiffs (Suit-4) could not place anything to persuade us to take a different view and therefore, in our view, Article 144 is not applicable to Suit-4. However, this aspect we propose to discuss in detail while discussing issues pertaining to adverse possession/ possession.

2397. This leads us to consider the scope and extent of Article 120 L.A. 1908 and whether it will be applicable in this case.

2398. In **Janki Kunwar Vs. Ajit Singh (1888) ILR 15 Cal 58** Articles 91 and 94 Schedule II, Limitation Act (Act No.XV of 1877) came to be considered. The Court found that though the suit purported to have been filed claiming possession of immoveable property in dispute and thereby claiming limitation for the same being 12 years but it was in fact not so since without getting the deed of sale set aside, the possession of immoveable property could not have been recovered and therefore necessarily a suit for setting aside the sale deed executed on 29th July, 1872 while the suit was filed on 16th February, 1884 hence barred by limitation under Article 91 of the said Act. The court held that if all the facts were known to the parties and yet he chose not to litigate upon the matter within the period of limitation prescribed in the statute, the suit would have to fail, hit by limitation prescribed in the statute.

2399. Similar view was expressed in **Jafar Ali Khan (supra)** where the Court said that without seeking a declaration, relief of recovery of possession cannot be stressed upon. In such

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a case the provision of limitation pertaining to recovery of possession would not apply. The Court relied on its earlier decision in **Jagadamba Chowdhurani Vs. Dakhina Mohan (1886) 13 Cal 308** while observing that in such a case, prima facie, title remains with the defendant, and until that title is defeated or displaced, the possession of the defendant cannot be disturbed. The Court in para 7 held :

> *".....It may be taken to be established now that where in a suit for recovery of possession there is an obstacle in the way of granting relief in the shape of gift or settlement, the plaintiff cannot get any relief until such instrument is set aside; and as it has been said, if it is too late for setting aside the document, the suit for possession should also fail."*

2400. In **Pierce Leslie (supra)** in para 7 the Court held:

> *"Even if the suit is treated as one for recovery of possession of the properties it would be governed by Article 120 and not by Article 144. The old company could not ask for recovery of the properties until they obtained a re-conveyance from the new company. The cause of action for this relief arose in 1939 when the properties were conveyed to the new company. A suit for this relief was barred under Article 120 on the expiry of six years. After the expiry of this period the old company could not file a suit for recovery of possession."*

2401. In **Raja Ramaswami (supra)** suit was filed for possession of the property in dispute and in the alternative prayed for a decree for Rs.1500, the consideration paid by her to the defendant for sale with interest thereon. In defence the plea of limitation was taken stating that the sale deed was executed

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on 6th February, 1905 though the suit was filed on 1st December, 1924. In para 19, the Court held :

> *"As regards the first point, it has been well-settled by several decisions of their Lordships of the Privy Council that it is not the form of the relief claimed which determines the real character of the suit for the purpose of ascertaining under which article of the Limitation Act the suit falls. Though the relief claimed in the suit is possession of immovable property, yet if the property sued for is held by the contesting defendant under a sale or other transfer which is not void, but only voidable, and he cannot obtain possession without the transfer being set aside, the suit much be regarded as one brought to set aside the transfer though no relief in those terms is prayed for, but the prayer is only for possession of the property."*

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2402. The suit in question has been instituted on 18.12.1961. Cause of action arose, as per the own pleadings of the plaintiffs (Suit-4) in para 23 of the plaint, on 23.12.1949 and 29.12.1949. Admittedly the suit is much beyond the period of limitation if it it is to be governed by Article 120 of L.A. 1908. In that case, whether the prayer (Namaj) was held till 16.12.1949 or 22/23.12.1949 in the disputed building by Muslims would be of no consequence. The question of prayer or the prayer continued till December, 1949 may be relevant only if the applicability of Article 120 of L.A. 1908 is ruled out. In a suit for declaration of title Article 142 and 144 as such are not applicable and in the absence of any other provision, prescribing a different limitation, it is Article 120 which is attracted Limitation of six years is provided in Article 120.

2403. The plaint shows as also admitted by the plaintiffs

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that their possession was obstructed and interfered in the night of 22/23.12.1949 when idols of Lord Ramlala were placed under central dome in the inner courtyard of the disputed building, and, apprehending public tranquillity and disturbance of peace, the City Magistrate attached that the part of the disputed area namely, the inner courtyard and placed it in the possession of a Receiver. Therefore, on 29.12.1949 and thereafter the property covered by the inner courtyard including the disputed building was not in possession of any of the defendants (Hindu Parties) who could have restored the same to the plaintiffs (Suit-4). The order dated 29.12.1949 was passed by the City Magistrate in exercise of his power under Section 145 Cr.P.C.. Neither the validity of the said order could have been challenged by filing a civil suit under Section 9 CPC, 1908, nor the same actually has been challenged in Suit-4 nor it would mean that the property which was attached by the Magistrate under Section 145 Cr.P.C. is in the hands of any individual defendant.

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2404. In **Partab Bahadur Singh, Taluqdar (supra)** the Court held where an order under Section 145 CR.P.C. was made by the Magistrate for attachment of the disputed property and Tahsildar was appointed receiver, the possession of receiver in the eyes of law was the possession of the true owner and, therefore, in such a suit Article 120 L.A. 1908 shall be attracted and a suit brought within six years of the last invasion is in time. On page 395 of the judgment the Court said:

> *"For the present it would be enough to say that in our opinion the attachment made in 1932 in pursuance of the order passed in the proceedings under S. 145, Criminal P.C., clearly gave rise to an independent cause of action for the plaintiff instituting the present suit for a declaration*

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and the said suit having been brought within six years of the attachment is not barred by Art. 120, Limitation Act, if it is found that he had a subsisting title on the date of attachment. Next it was contended that the suit was governed by Art. 142 Sch. 1, Limitation Act, and that the plaintiff's suit had rightly been dismissed because he had failed to prove his possession within limitation. The Subordinate Judge also has laid great emphasis on it and his decision appears to be mainly based on this ground. In our opinion this position is altogether untenable. It is common ground between the parties that in S. 145 Criminal P.C., proceedings the Magistrate passed an order for attachment of the property. The Tahsildar who was appointed receiver took possession of the property on 23rd February, 1932. The property was admittedly in possession of the Tahsildar as receiver at the time when the present suit was instituted. The possession of the receiver was in the eye of law the possession the true owner. In the circumstances the plaintiff could undoubtedly maintain a suit for a mere declaration of his title and it was not necessary for him to institute a suit for possession. The suit is neither in substance nor in form a suit for possession of immoveable property. Art. 142 has therefore no application."

2405. In **Raja Rajgan Maharaja Jagatjit Singh (supra)** the ratio laid down in **Partab Bahadur Singh, Taluqdar (supra)** was upheld. The Privy Council affirmed that in a suit for declaration of plaintiff's title to the land in possession of the receiver under attachment in proceeding under Section 145 Cr.P.C. by virtue of Magistrate's order, Article 142 and 144 L.A.

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1908 are inapplicable and the suit is governed by Article 120 thereof. On page 49 the Privy Council observed:

> *"With regard to the statutory period of limitation, Art. 47 of the Act does not apply, as there has been no order for possession by the Magistrate under S. 145, Criminal P.C. as the suit is one for a declaration of title, it seems clear that Arts. 142 and 144 do not apply, and their Lordships agree with the Chief Court that the suit is governed by Art. 120."*

2406. In **Ponnu Nadar and others Vs. Kumaru Reddiar and others, AIR 1935 Madras 967** the Court held that the real cause of action was the date of the order of the Magistrate and limitation started from the date of order. Article 120 of the Limitation Act, 1908 was applicable and not Section 23 of the said Act. The relevant portions of the said judgment read as follows:

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> *"What in fact appears to have given rise to the Joint Magistrate's order was a police report of an apprehended breach of the peace between the rival fractions and all that the opposite party did was to adopt an attitude which gave rise to that apprehension. So far as that attitude itself is concerned, it is impossible to find in it a continuing wrong, nor do we find it easier to hold that when the Joint Magistrate passed the order with a view to prevent a breach of the peace there was a "continuing wrong" caused by the defendants' party. There is nothing to show that it was passed at their instance and even if it were, responsibility for passing it must be taken by the Court and not laid upon the party. Again, once an order was passed, the matter was taken out of the hands of the defendant*

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party, and it lay with the Nadars themselves to establish their right by suit.

From this point of view too we are not disposed to hold that even if there was a continuing wrong the defendant party was responsible for its continuance. Where the applicability of S. 23, Lim. Act, is doubtful the proper course must be, we think, to enforce against the plaintiffs the ordinary principles of limitation, and in the present case to apply Art. 47 would be applied to the case of an order under S. 145, Criminal P.C., time being taken to run from the date of the order. Adopting this view, the persons affected by the order of 1900 had a period of six years within which to establish their right, and we are not greatly impressed by the argument that, if the right itself may be indestructible, the remedy ought not to have been permanently lost by their failure to take action within that time. We must hold in agreement with 26 Mad. 410(1) that the suit is barred under Art. 120, Limitation Act."

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2407. In **Annamalai Chettiar (supra),** Privy Council held that in case of an accrual of the right asserted in the suit and its infringement or at least clear and unequivocal threat to infringe that right by the defendant against whom the suit is instituted for the purpose of limitation Article 120 of the Limitation Act, 1908 is applied. Relevant para of the judgment from page 12 reads as under:

"In their Lordships view the case falls under Art. 120, under which the time begins to run when the right to sue accrues. In a recent decision of their Lordships' Board, delivered by Sri Binod Mitter, it is stated, in reference to Art. 120."

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2408. In **Mst. Rukhma Bai Vs. Lal Laxminarayan (supra)** the Supreme Court held where there are successive invasion or denial of right, the right to sue under Article 120 accrues when the defendant has clearly and unequivocally threatened to infringe the right asserted by the plaintiff in the suit. Whether a particular threat gives rise to a compulsory cause of action depends upon the question whether that threat effectively invites or jeopardizes the said right. Para 33 of the judgment says:

> *"33. The legal position may be briefly stated thus: The right to sue under Art. 120 of the Limitation Act accrues when the defendant has clearly and unequivocally threatened to infringe the right asserted by the plaintiff in the suit. Every threat by a party to such a right, however ineffective and innocuous it may be, cannot be considered to be a clear and unequivocal threat so as to compel him to file a suit. Whether a particular threat gives rise to a compulsory cause of action depends upon the question whether that threat effectively invades or jeopardizes the said, right."*

2409. In **C. Mohammad Yunus (supra)** the Hon'ble Supreme Court has held that a suit for declaration of a right and an injunction restraining the defendants from interfering with the exercise of that right is governed by Article 120. Under the said Article there can be no right to sue until there is an accrual of the right asserted in the suit and its infringement or at least a clear and unequivocal threat to infringe the right. Relevant extract of para 7 of the judgment reads as under:

> *"7. . . . The period of six years prescribed by Art. 120 has to be computed from the date when the right to sue accrues*

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and there could be no right to sue until there is an accrual of the right asserted in the suit and its infringement or at least a clear and unequivocal threat to infringe that right. If the trustees were willing to give a share and on the record of the case it must be assumed that they being trustees appointed under a scheme would be willing to allow the plaintiffs their legitimate rights including a share in the income if under the law they were entitled thereto, mere denial by the defendants of the rights of the plaintiffs and defendant No. 2 will not set the period of limitation running against them."

2410. In **Garib Das (supra)** the Apex Court held that in a suit for recovery of possession after cancellation of sale deed in favour of the defendants on the ground that a previous valid waqf had been created, Article 142 was not applicable, the suit was to be filed within a period of six years that is to say Article 120 was applicable. Para 13 of the judgement reads as follows:

"13. The fourth point has no substance inasmuch as Article 142 of the Limitation Act was not applicable to the facts of the case. The suit was filed in 1955 within six years after the death of Tasaduk Hussain who died only a few months after the execution of the documents relied on by the appellants."

2411. In **Dwijendra Narain Roy Vs. Joges Chandra De, AIR 1924 Cal 600** (page 609) the Court said:

"The substance of the matter is that time runs when the cause of action accrues, and a cause of action accrues when there is in existence a person who can sue and another who can be used . . . . . The cause of action arises when and only when the aggrieved party has the right to

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apply to the proper tribunals for relief. The statute (of limitation) does not attach to the claim for which there is as yet no right of action and does not run against a right for which there is no corresponding remedy or for which judgment cannot be obtained. Consequently the true test to determine when a cause of action has accrued is to ascertain the time when plaintiff could first have maintained his action to a successful result."

2412. This has been approved by the Apex Court in **P. Lakshmi Reddy (supra).**

2413. It is no doubt true that in the suit the plaintiffs have sought necessarily relief of declaration that the premises in dispute is a mosque. The premises in dispute has been demarcated by them as 'ABCD' in the map appended to the plaint. Relief -2 is worded in a manner showing that the same has not been asked from the Court but has been left to the discretion of the Court if it finds expedient then it may grant.

2414. The settled proposition about the property *custodia legis* is "the possession on behalf of the true owner". If the plaintiffs are true owner, possession on their behalf is already with the Receiver but realizing the fact that without settling dispute regarding status and nature of the disputed site and building, claim of the plaintiffs for possession from the Receiver would not succeed, they have sought the above declaration, which therefore constitute the actual and real relief in the suit and thus attract Article 120.

2415. For relief sought in the nature of declaration, Section 42 of the Specific Relief Act provides:

"Any person entitled to any legal character, or to any right as to any property may institute a suit against any person

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denying or interested to deny, his title to such character or right, and the Court may in its discretion make therein a declaration that he is so entitled, and the plaintiff need not in such suit ask for any further relief." . . . . "Provided, that no Court shall make any such declaration where the plaintiff, being able to seek further relief than a mere declaration of title omits to do so."

2416. Certain provisions have been made in L.A. 1908 for certain suits, declaratory in nature for example Articles 92, 93, 118, 119, 125 and 129 but a suit for declaration of plaintiff's title or right to property is governed by Article 120 L.A. 1908 which provides a period of six years from the date of accrual of cause of action or right to sue.

2417. In **Satya Niranjan Vs. Ramlal, 1925 P.C. 42** it was observed that the claims declaratory in their nature falling under Section 42 of the Specific Relief Act are governed by Article 120 of L.A. 1908.

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2418. In **Draupadi Devi (supra)** the Court said:

"73. We may notice here that under the Code of Civil Procedure, Order VII Rule 1(e) requires a plaint to state "the facts constituting the cause of action and when it arose". The plaintiff was bound to plead in the plaint when the cause of action arose. If he did not, then irrespective of what the defendants may plead in the written statement, the court would be bound by the mandate of Section 3 of the Limitation Act, 1908 to dismiss the suit, if it found that on the plaintiff's own pleading his suit is barred by limitation. In the instant case, the plaint does not plead clearly as to when the cause of action arose. In the absence of such pleadings, the defendants pleaded nothing on the issue.

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However, when the facts were ascertained by evidence, it was clear that the decision of the Government of India not to recognise the suit property as private property of the Maharaja was taken some time in the year 1951, whether in March or May. Dewan Jarmanidass, the plaintiff and the Maharaja were very much aware of this decision. Yet, the suit was filed only on 11.5.1960.

74. The Division Bench was, therefore, right in applying Article 120 of the Limitation Act, 1908 under which the period of limitation for a suit for which no specific period is provided in the Schedule was six years from the date when the right to sue accrues. The suit was, therefore, clearly barred by limitation and by virtue of Section 3 of the Limitation Act, 1908, the court was mandated to dismiss it.

75. As rightly pointed out by the Division Bench, the learned Single Judge ought to have permitted the plea to be raised on the basis of the facts which came to light. The Division Bench has correctly appreciated the plea of limitation, in the facts and circumstances of the case, and rightly came to the conclusion that the suit of the plaintiff was liable to be dismissed on the ground of limitation. We agree with the conclusion of the Division Bench on this issue."

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2419. In **Mt. Bolo Vs. Mt. Koklan (supra)** right to sue for the purpose of Article 120 Limitation Act was considered and it was held:

"There can be no "right to sue" until there is an accrual of the right asserted in the suit and its infringement or at least clear and unequivocal threat to infringe that

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right by the defendant against whom the suit is instituted." (Page 272)

2420. In **M.V.S. Manikyala Vs. Narashimahwami AIR 1966 SC 470**, the words "right to sue" under Article 120, LA 1908 was considered by the Apex Court and it was held that right to sue occurs for the purpose of the said Article. There is an accrual of the right asserted in the suit and unequivocal threat by the respondents to infringe it. Every threat by a party to such a right, however, ineffective and innocuous it may be, cannot be considered to be a clear and unequivocal threat so as to compel him to file a suit. Whether a particular threat gives rise to a compulsory cause of action depends upon the question whether that threat effectively invades or jeopardizes the said right. [See: **Mst. Rukhmabai Vs. Lala Laxminarayan (supra)]**. It has been held in a catena of decisions that in a suit for declaration of title to immovable property, it is Article 120 LA 1908 and Article 113 LA 1963 which would be applicable.

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2421. In **Mohabharat Shaha Vs. Abdul Hamid Khan (1904) 1 CLJ 73**, it was held when a plaintiff being in possession sues for a declaration of his title to immovable property, the residuary provision would apply, i.e., Article 120.

2422. In **Aftab Ali Vs. Akbor Ali (1929) 121 IC 209 (All)**, the Court said that Article 120 undoubtedly applies to all declaratory suits except where separate provision is made. In such a case of declaration, it is no doubt has been held by this Court in **Must. Salamat Begam Vs. S.K. Ikram Husain (1933) 145 IC 728** and **Prarjapati Vs. Jot Singh (supra)** that where owner is in possession, he acquires a cause of action on each occasion on which his rights are denied.

2423. There appears to be a consensus of opinion that

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Article 120 applies to all suits of a declaratory nature where no consequential relief is sought or is necessary.

2424. From the pleadings and prayer 1 (Suit-4) of the plaint it appears that the status of the disputed premises claimed to be mosque by plaintiffs was threatened and disturbed by the defendants, i.e., the Hindu parties, by placing idols in the disputed building allegedly in the night of 22/23.12.1949 and this gave a cause of action to the plaintiffs to seek a declaration from the Court that the disputed premises is a mosque. For the said purpose the question of possession, dispossession and restoration of possession of the building in dispute is neither necessarily consequential nor in the absence of such relief the suit could have been dismissed under proviso to Section 42 of Specific Relief Act, 1877.

2425. The inter relationship qua Article 120 of Limitation Act, Section 42 of Specific Relief Act as also 146 Cr.P.C. came to be considered before the Division Bench of Calcutta High Court in **Panna Lal Biswas (supra)**. The plaintiff-appellant Panna Lal Biswas was dispossessed sometimes in April 1904 by the defendant. Property in dispute was attached by the Magistrate under Section 146 Cr.P.C. on 10.6.1904. Ultimately a suit was filed for recovery of possession on 2.5.1906. The Court below dismissed the suit on the ground of bar of limitation observing that attachment shall not confer a fresh start for limitation from the date of attachment. The Court considered whether in such a case the suit is one for possession or for a mere declaration. It observed that in **Goswami Ranchor Lalji Vs. Sri Girdhariji (1897) 20 All. 120** it was held that the suit is not for possession and, therefore, would be governed by 12 years rule of limitation. However, there is another decision of

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Madras High Court in **Rajah of Venkatagiri Vs. Isakapalli Subbiah (supra)** wherein it was held that the suit was not for declaration and governed by Article 120, there was no continuing wrong.

2426. A Similar view was taken by Calcutta High Court in **Brojendra Kishore (supra)** but therein it further observed that it is a continuing wrong within the meaning of Section 23 of the Limitation Act and, therefore, the suit would not be barred by limitation.

2427. In **Panna Lal (supra)** the Court agreed that the view that the suit cannot be treated to be that of possession because possession is not with the defendants but with the Magistrate who is not, and cannot be a party to the Suit. It also agreed that Article 120 of the Limitation Act would apply.

2428. Then comes a question of continuing wrong. The Calcutta High Court observed that in **Brojendra Kishore (supra)** there was no dispossession prior to the attachment by the Magistrate and the cause of action might be said to have accrued from day to day commencing from the date of the attachment, but here in **Panna Lal's case**, dispossession took place in April 1904 and attachment was made in 10the June 1094. The cause of action, therefore, arose in April 1904 and rule of six years' limitation would apply. The Court, thereafter, proceeded to consider whether attachment would confer a fresh starting point, whether the suit is barred under Article 120 or 142. It agreed with the view that the possession of Magistrate is that of a stake holder and during continuance of attachment, the property was in legal custody i.e. custodia legis which must be held to be for the benefit of the true owner. In order to bring the case within the concept of continuing wrong, Calcutta High

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Court in **Panna Lal** relied on **Agency Company Vs. Short (supra)** where it was held if a person enters upon the land of another and holds possession for a time and when without having acquired title under the statute, abandons possession, the rightful owner, on the abandonment is in the same position in all respect as he was before the intrusion took place.

2429. In **Panna Lal's case**, the possession was taken by the Magistrate and by that time the plaintiff was out of possession only for about two months. He had a subsisting title at that time and since Magistrate's possession was constructive possession of the true owner, the case would be covered within the principle of the **Secretary of State Vs. Krishnamoni Gupta (1902) 29 Cal. 518.** The Privy Council held "dispossession by the vis major of floods had the same effect as voluntary abandonment". If the possession of Magistrate was in law the possession of the true owner, the defendant's possession was determiend upon the Magistrate's taking possession under the attachment. In other words, the plaintiff must be taken to have been restored to possession constructively on the date of the attachment. He, therefore, got a fresh starting point, and that being so, the case would fall within the principle of **Brojendra Kishore (supra)** and thus can be treated as on of continuing wrong under Section 23 of the Limitation Act. The Court also referred an earlier decision of Calcutta High Court in **Deo Narain Chowdhury Vs. C.R.H. Webb (1990) 28 Cal. 86** where it was held that limitation having already commenced to run from date of actual dispossession, the plaintiff could not have a fresh start of limitation from the date of subsequent attachment by the Criminal Court. The above case was distinguished by observing that the effect of attachment upon the question of

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possession, so far as the true owner is concerned, was not considered in the earlier case.

2430. We find no simile with the present case inasmuch as, the plaintiffs are not claiming to be the owner but being the beneficiaries of the waqf, they have sought a declaration about the status of the property in suit. The question of providing a fresh cause of action on day-to-day basis would not arise to the plaintiffs. So far as the declaration is concerned, we are satisfied that it would be governed by Article 120.

2431. We are in agreement with the argument of the learned counsels for the defendants that a suit, if is barred by limitation, it is the statutory obligation on the part of the Court to dismiss it on the said ground by virtue of Section 3 of the Act and in such matters there is no question of any sympathy, hardship etc.

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2432. In the matter of limitation sympathy, hardship, discretion etc. have no place. In **Maqbul Ahmad Vs. Onkar Pratap Narain Singh (supra),** Lord Tomlin observed, *"there is no judicial discretion to relieve the appellants from the operation of the Limitation Act in a case of hardship or any authority in the Court to dispense with its provision."* This has been followed in **The Firm of Eng Gim Moh (supra)** by a Full Bench of Rangoon High Court. In the above judgement the Court also disapprove the contention that continued attachment would confer a continuous cause of action.

2433. In **Siraj-ul-Haq Khan (supra)** the Court said:

> *"But, in our opinion, there would be no justification for extending the application of S. 15 on the ground that the institution of the subsequent suit would be inconsistent with the spirit or substance of the order passed in the*

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previous litigation. It is true that rules of limitation are to some extent arbitrary and may frequently lead to hardship; but there can be no doubt that in construing provisions of limitation, equitable considerations are immaterial and irrelevant, and in applying them effect must be given to the strict grammatical meaning of the words used by them: Nagendra Nath Dey Vs. Suresh Chandra Dey, 34 Bom I.R. 1065: (AIR 1932 PC 165).” (para 19)

2434. Mere addition of the relief of possession would not attract a larger period of limitation provided by another provision namely, Article 142 or 144 of L.A. 1908 when on the basis of the pleadings itself it would be clear that a mere suit for declaration was necessary and the prayer for restoration of possession is superfluous for the reason that the defendants who dispossessed the plaintiff are not continuing in possession of the property in dispute on the date when suit was filed. The property in dispute came to be under attachment of the Court, i.e., custodia legis.

2435. It may also be mentioned that the relief no.3 has been added in 1995 after the decision of the Apex Court in Dr. M. Ismail Faruqui's case. In our view, if the suit as framed, was already barred by limitation at the time when it was filed, the subsequent addition of prayer therein would not bring it within the period of limitation on the principle that the amendment shall relate back to the date of filing of the suit. This is what has been held in **Vishwambhar & Ors. Vs. Laxminarain & Anr. 2001 (6) SCC 163.** Mere allowing an amendment would not deprive the defendants from raising the plea of limitation as held by the Apex Court in **Ragu Thilak D.John Vs. S. Rayappan & Ors. 2001 (2) SCC 472**.

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2436. Mere by adding the statutory authority who pass the order for attachment as one of the defendants would not change the nature of the suit for the relief.

2437. Before concluding on this aspect, we may also refer to the submissions of Sri Siddiqui as contained in paras 3.4, 3.7, 3.8, 3.9 and 3.10 of his written submissions, which pertain to the applicability of Article 120 L.A. 1908. He has not referred to any provision other than Limitation Act where there is any extension of the period of limitation. The suggestion was made during the course of the argument that placement of idols inside the premises in dispute results in obstructing the right of worship of Muslims in general and this is a continuing cause of action. Hence Section 23 would be applicable and suit cannot be held barred by limitation. The submission needs consideration.

2438. It is true that in the paragraph, dealing with cause of action in the plaint, it is alleged by the plaintiffs (Suit-4) that the cause of action arose on 22/23 December, 1949 when some Hindus defiled and desecrated the mosque by placing the idol inside the building under the central dome and thereby interfered and obstructed the right of worship of the plaintiffs. If a suit is filed seeking a relief against obstruction to right of worship, probably it may attract the principle of continuing wrong, as provided in Section 23 of L.A. 1908 in view of law laid down by the Privy Council in **Hukum Chand & Ors. Vs. Maharaj Bahadur Singh & Others AIR 1933 Privy Council 193**. However, from the relief sought in the plaint, we find that the plaintiffs have not filed the suit seeking injunction for enforcement of right of worship but they have sought a declaration about the nature of the building in dispute and also for delivery of the possession in the capacity of possessory title

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holder. Where a declaratory relief is sought, Section 23 L.A. 1908 is inapplicable. Section 23 reads as under:

> *"23. In the case of a continuing breach of contract and in the case of a continuing wrong independent of contract, a fresh period of limitation begins to run at every moment of the time during which the breach or the wrong, as the case may be, continues."*

2439. One has to make a distinction between a continuing wrong and continuance of the effect of wrong. In the case in hand, the facts pleaded by the plaintiffs show that they were ousted from the disputed premises on 22/23rd December, 1949 and the wrong is complete thereon since thereafter they are totally dispossessed from the property in dispute on the ground that they have no title. Hence, we find it difficult to treat the alleged wrong to be a continuing wrong. In **Maulvi Mohammad Fahimal Haq Vs. Jagat Ballav Ghosh AIR 1923 Patna 475** it was held that the principle of Section 23 would have no application to a declaratory suit. In **Mohd. Ata Husain Khan Vs. Husain Ali Khan, AIR 1944 Oudh 139** this Court took the view that Section 23 has no application to a suit for declaration of title. It has been held by the Apex Court recently, if the wrongful act causes an injury, which is complete, there is no continuance wrong even though the damages resulting from the act may continue. In **Raja Ram Maize Products Vs. Industrial Court of M.P. 2001 (4) SCC 492 (Para 10)** the workers demanded that they should be allowed to resume work but it was disallowed. The Court held that the cause of action is complete and it cannot be said to be a continuing wrong.

2440. In **Radhakrishna Das Vs. Radha Ramana Swami (supra)** the concept of continuing wrong has also been

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explained by Orissa High Court and the Coury says:

> *"Where the wrongful act produces a state of affairs, every moment's continuance of which is a new tort, a fresh action for the continuance lies in which recovery can be had for damages caused by the continuance of the tort to the date of the writ. And it may be added where the wrong consists in the omission of a legal duty, if the duty is to continue to do something, the omission constitutes a continuing wrong during the time it lasts, ... Where the wrong consists in an act or omission it must not be fleeting or evanescent like a slander uttered, but such as to produce a change in the condition of things which is a continual source of injury. There is a real distinction between continuance of a legal injury and continuance of the injurious effects of a legal injury. Thus, in the case of a bodily injury there is no continuing wrong as the injury ceases though the injurious effect may persist. In other words there must not be a single wrongful act from which injurious consequences follow, but a state of affairs every moment's continuance of which is a new tort. The commonest examples of continuing wrongs are found in interference with water supply and obstructions to rights of way and of light and air. Where adverse possession is claimed on the strength of the erection of a wall there is no continuing wrong within Section 23. The effect may continue but this does not extend the time of limitation ... Where, therefore, trespass amounts to a complete ouster the wrong is not a continuing one and successive actions will not lie on the principle of interest reipublica ut sit finis litium. ... Where a man suffers in respect of one and the same right, whether of the person,*

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property, or reputation, as the case may be, then if the act is not a continuing act but one over the consequences of which, when done, the doer has no further control, the cause of action is one and after recovery in an action for damage first accruing, no further action can be brought. In a case of trespass, the cause of action accrues when the trespass is committed. When the properties of the deity and the idol itself were taken possession of, the act which causes an encroachment of the plaintiff's right was at once complete and there is no continuance of damage or wrong within the meaning of the statute. The effect of the damage may continue but this does not extend the time of limitation. ... When the wrong amounts to dispossession of the plaintiff then even although it may be a continuing wrong the plaintiff cannot recover possession after 12 years because under Section 28, Limitation Act, he himself has got no right left which he can enforce. The real question is not whether the wrong is continuing or not, but whether the wrong amounts to a complete ouster of the plaintiff that is to his dispossession."

2441. In our view, the Orissa High Court has been right in observing that if a suit is filed for enforcing right on the property as such, the provisions of the Limitation Act would immediately be attracted, but if the suit is filed by a worshipper for enforcing his right of worship not based on any right to property of the idol or to an office, the only scrutiny which is to be made by the Court is whether there is any obstruction or prevention to the plaintiff for exercising his right of worship and nothing more than that. The question of title or ownership of the property would not be considered in such a case and there in

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such a matter, the plea of limitation may not come into way.

2442. We hereat would also consider the authorities cited by Sri Siddiqui in his written arguments. **(Lala) Shiam Lal Vs. Mohamad Ali Asghar Husain AIR 1935 All 174** was a case where a suit for declaration of title was filed which was decreed by both the Courts below. The question raised as to whether Article 120 will apply when initially there was a denial of title and right to sue accrued or if there is any fresh denial at a later point of time which may give a cause of action to maintain suit and the limitation would run therefrom. The Court considered an earlier decision in **Akbar Khan v. Turban (1909) 31 All. 9** and said that it is now well established that a mere entry of names does not debar the person against whom the entry is made for all times to come from suing for a declaration and any new invasion of rights which amounts to fresh denial of title confers on the owner in possession a fresh right to sue. The Court said that once right to sue accrue and period of limitation was allowed to lapse, there is no question of renewal of period of limitation applicable to declaratory suits otherwise it shall frustrate the very statue itself. An argument was raised therein that ignoring the earlier cause of action, which accrued in 1895, the right to sue to the plaintiff accrued on 23rd December, 1929, when he got the sale deed executed from Mt. Kaniz Bano and anything which took place prior thereto should not be taken into consideration for the purpose of limitation. This Court held, "I am not prepared to accede to this submission on behalf of the respondent because this would lead to the anomaly that a person who himself might have allowed limitation to run against him confers a right to sue unfettered by the plea of limitation by transferring the property to another. Indeed this would amount

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to saying that no rule of limitation applies to a declaratory suit where the defendants are interested in denying the plaintiff's right within the meaning of Section 42, Specific Relief Act. As observed by their Lordships of the Privy Council in Balo Vs. Koklan 1930 PC 270, the right to sue accrues when there is an accrual of the right asserted in the suit and its infringement or at least a clear and unequivocal threat to infringe that right by the defendant against whom the suit is instituted. The fresh act must be on the part of the defendants which can be said to amount to a fresh invasion of plaintiff's right or a fresh attempt to cast a cloud on the plaintiff's title and not merely a denial of the plaintiff's title when the plaintiff's attempt to assert his title because this denial would be merely a continuation of the denial made long ago."

2443. This judgment, instead of helping the plaintiff's goes against them. In the case in hand, threat to plaintiff's title, if for the moment we can say so, assuming what the plaintiffs say correct, was infringed or threatened at number of times, and the period was allowed to lapse repeatedly which was more than the statutory period of limitation.

A. As admitted by the plaintiffs, a dividing wall (iron grilled) was constructed separating the disputed structure from the non-Islamic structure, i.e., Ram Chabutra existing on the south-east side so that Muslims may worship in inner courtyard and Hindu may continue their worship in the outer courtyard in 1856-57. This was never assailed by the Muslims claiming an infringement of their right on the property in dispute.

B. When, according to them, the structures like Sita Rasoi, Chhappar (Bhandar) were created between 1955 to 1973, as

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is evident from the complaint of Mohd. Asgar, in this regard, and despite the orders passed by the authorities on the executive side the same were not removed.

C. In the year, 1934 Hindus tried to damage the building in dispute causing serious damage to the domes and enclosure walls. The building came in the custody of the authorities. Though request was made to permit Muslim to offer namaj therein, but there is no record to show as to whether it was actually allowed and if so when.

D. When the idols were placed under the central dome in the night of 22nd/23rd December, 1949, and regular daily Puja commenced according to Hindu Shastric Laws ousting Muslims from entering the property in dispute. Assuming that the latest cause of action in respect to the premises in the inner courtyard occurred on 22nd /23rd December, 1949, threatening the very authority and title of the said mosque, the suit ought to be filed in six years.

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2444. **Kali Prasad Misir (supra)** is a judgment of a Division Bench of this Court wherein it was observed that the cause of action for the purpose of limitation actually arose when danger of actual dispossession faced by him in respect to plot no. 655 and this was altogether independent of any cause of action which may have been furnished to the plaintiff by the settlement entries made in the year 1887. For the said purpose this Court relied on an earlier decision in **Rahmat-ullah Vs. Shamsuddin 1913 (11) ALJ 877** and **Allah Jilai v. Umrao Husain (1914) I.L.R., 36 All., 492.** We do not find how this judgment helps the plaintiffs, inasmuch as, after 22/23 December, 1949, no such further incident gaving rise to the plaintiffs to fresh cause of action has happened till the suit was

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filed. So far as the attachment proceedings by the Magistrate are concerned, they neither dispossessed the plaintiffs from the property in dispute nor otherwise caused any threat to the assumed title or ownership of plaintiffs or to the status of the disputed structure. The demolition of the building in 1992 and entrustment of the property in dispute with a statutory Receiver under Act 1993 would not give any benefit to the plaintiffs in the matter of limitation, inasmuch as, Relief no. 3 has been inserted by the plaintiffs (suit 3) by way of amendment in 1995 only. If the suit filed in 1961 was already barred by limitation, any subsequent amendment and addition of relief would not give a fresh lease of limitation to the plaintiffs. Limitation once starts running shall not stop and shall meet its natural consequence.

2445. **Mata Palat (supra)** is a Division Bench judgment in respect to a question as to whether leave to withdraw an application for execution of decree to make fresh application is permissible with regard to proceedings after decree. This Court held that Section 375A of C.P.C. 1882 did not apply to an application subsequent to the decree. The reliance placed on the above judgment is wholly misconceived and it has no relevance with the issue in question.

2446. Next is **Prajapati Vs. Jot Singh (supra).** It was a reference made by the local Government whether a decree of the Commissioner is correct or not. From the judgment it appears that no question of law was framed while making reference but the Court found that since the decree of the Commissioner proceeds merely on the point of limitation hence the reference was entertained and answered. This Court approving the judgment in **Kali Prasad (Supra)** held that a fresh cause of

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action has arisen to plaintiff to bring a suit, even though a prior cause of action had arisen to him beyond the period of six years of limitation laid down by Art. 120. No issue pertaining to limitation was considered therein and we find no relevance of the said judgment to the present dispute.

2447. **Jagat Mohan Nath Sah Deo (surpa)** is a decision pertaining to rights of tenent to sub-soil and we find nothing therein which may have any relevance to the case in hand.

2448. **Suryanarayana (supra)** is a single Judge decision holding that entry in the record of rights affords a fresh cause of action to the plaintiffs for filing a declaratory suit. If a suit is brought within six years from such date, it is not barred by limitation under Article 120 of the Limitation Act. The learned Single Judge followed an earlier decision in **Anantharazu Vs. narayanarazu 1913 (36) Mad. 383.** However, we find that the view taken in the above case is not consistent with the view of Allahabad High Court which was taken as long back in 1909 in **Akbar Khan (Supra)** followed in **(Lala) Shiam Lal (Supra)** and thereafter consistently. Even otherwise, it is not the case of the plaintiffs (Suit-4) that the cause of action record afresh after 22nd December, 1949 and in any case before six years before filing of suit in December, 1961. Therefore, also the above decision of Madras High Court does not help the plaintiffs.

2449. **Muktakeshi Patrani & Ors. Vs. Midnapur Zamindari Co. Ltd. AIR 1935 Patna 33** is a Division Bench judgment stating that for a suit for a declaration and injunction, the period of limitation is six years from the date of the invasion of the plaintiff's right. As long as the title of plaintiff is not lost by adverse possession of the defendant, each invasion gives him a fresh cause of action. Again the position is same since there is

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no averment in the plaint as to how a fresh cause of action accrued to the plaintiffs and that too within six years from the date of filing of the suit, no credence can be lend to the plaintiffs with the support of the said judgment.

2450. **Shankarrao Sitaramji Satpute & Ors. Vs. Annapurnabai AIR 1961 Bombay 266** again is a Division Bench decision which also does not help the plaintiffs. This is evident from para 32 of the judgment which says:

> *"This disposes of the main point in the case. The next question to be considered is that of limitation. Now, according to Mr. Bobde, the learned Judge, was wrong in holding that the provisions of Sec. 28 of the Limitation Act extinguished the Plaintiff's right only with respect to two fields and not the remaining. It seems to us that the learned Judge of the Court below was wrong even in respect of those two fields also and that the Plaintiff's claim with regard to them should have been decreed, that is to say, both these fields should have been included int he list of property available for partition. In so far as the nine fields are concerned, it is not disputed that prior to the commencement of the proceedings under Sec. 145 of the Code of Criminal Procedure, they were being cultivated by Parasram who was a lessee from Gopalrao. When Gopalrao gave the lease, he was the sole surviving member in the family and as such he was in a position to grant the lease. In setion 145 proceedings, the learned Magistrate confirmed the possession of Parasram with respect to these fields. Now Parasram is not a party to the suit and the Plaintiff is not claiming any possession from him. The possession of Parasram would enure to the benefit of the*

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members of the family who had interest in that property. There was no order by the Sub-Divisional Magistrate that only the Defendants Nos. 1 to 4 would be deemed to be in possession of the property or that Punjabrao was in possession of the property on their behalf. In these circumstances, the learned Judge of the Court below was right in holding that the Plaintiff's suit in respect of those fields was not barred."

2451. Nata Padhan & Ors. Vs. Banchha Baral & Ors. AIR 1968 Orissa 36 does not have any implication on any of the issue and help the plaintiffs in any manner. The learned Single Judge Orissa High Court found that during the pendency of suit before the Revenue Court, proceedings under Section 145 Cr.P.C. was initiated and hence held that if the possession was given by the Magistrate pursuant to the final order passed under Section 145 Cr.P.C. that will have no impact since it is always open to the Civil Court to take a different view with respect to title and ownership and it is the order of the Civil Court which is ultimately prevail. It also held that no fresh suit is necessary to be filed to seek possession challenging the order of the Magistrate. We need not make any comment on these proposition for the reason that they have no relevance with the facts and dispute involved in the present case and therefore, this judgment also has no application.

2452. We are clearly of the view that suit in question is barred by limitation under Article 120 of the L.A. 1908.

2453. **Issue no.3 (Suit-4)** therefore, is liable to be answered in negative. However, before answering it finally, we also intend to test it on the anvil of Article 142 in the light of the oral evidence produced by the plaintiffs (Suit-4) as to whether

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even that can help the plaintiffs or not.

2454. In order to attract Article 142 what is necessary is that the plaintiffs were in possession of the property in dispute but dispossessed or discontinued the possession within 12 years within the date of filing of the suit by the defendants. The point in essence whether the suit has been filed within 12 years from the date, the plaintiffs is so dispossessed or discontinued of possession of the property in dispute.

2455. The submission of Sri Iyer, Senior Advocate, Sri P.N. Mishra and Sri M.M. Pandey, Advocates is that since 1934 no namaz has been offered in the inner courtyard or inside the alleged mosque and, therefore, the suit is hopelessly barred by limitation. In the alternative it is submitted that the last prayer was offered by the plaintiffs in the disputed premisses on 16.12.1949. The suit having been filed on 18.12.1961, it is beyond the period of 12 years and, therefore, is barred by limitation. They submitted that initially the plaintiffs, some of whom are also defendants in Suit-3 have pleaded that the last prayer was offered in the alleged mosque on 16.12.1949 but subsequently they took a contrary stand in the plaint (Suit-4) filed much after the date of filing their written statement in Suit-1 and Suit-3 and also in Suit-5. The admission of the plaintiffs in the written statement with respect to the date of offering Namaz is binding. The subsequent change in the stand needs to be ignored. In these circumstances, they submit that even if Article 142 would apply, Suit-4 is barred by limitation.

2456. Per contra Sri Jilani and Sri Siddiqui, Advocates submitted that 16.12.1949 was mentioned as the last Friday prayer but so far as the daily prayer is concerned it was continued and last offered on 22.12.1949. Several witnesses

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examined by plaintiff (Suit-4) have deposed in its favour.

2457. The burden to prove initially lie upon the plaintiff to bring in the suit within the period of limitation.

2458. In **Shyam Sunder Prasad (Supra)** the Court also considered the question of burden of proof and observed:

> *"4. The question, therefore, is on whom the burden of proof lies in a suit based on title and for possession. In view of Article 142 of the old Act, the burden, undoubtedly, is on the plaintiff-appellant to prove that he has title to and has been in possession and he was dispossessed and discontinued his possession within 12 years from the date of the filing of the suit. . . . . The defendant did not come to the court to establish his adverse possession by prescription. The burden of proof, therefore, does not rest on him. It is, therefore, for the plaintiff/appellant to prove that not only he had title to the plaint schedule property but also he had possession within 12 years and he was dispossessed or discontinued his possession within the period of limitation prescribed under Article 142. The burden, therefore, is always on him to prove that he had possession within 12 years from the date of the filing of the suit and he has title to the property."*

2459. Let us examine first, how the right/interest in the disputed premises has been claimed by the plaintiff to be exercised and up to what time, in order to bring their suit within limitation vis a vis Articles 142.

2460. **PW-1, Mohd. Hashim** son of Karim Baksh is himself plaintiff no. 7 in Suit-4. He deposed in his examination-in-chief on 24.07.1996:

> *''पहली बार 1938 में बाबरी मस्जिद में नमाज पढ़ने गये थे।. . . . .*

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बाबरी मस्जिद में पाचों समय की नमाज होती थी। कभी–कभी पॉचों वक्त की नमाजें पढ़ी है और जुम्मे की व तरावी नमाज पढ़ी है। . . . . मैंने अन्तिम नमाज 22 दिसम्बर 1949 की पढ़ी।'' (पेज 1)

"For the first time I went to offer namaz at the Babari mosque in 1938. . . . . Namaz used to be offered five times at the Babari mosque. I have sometimes offered namaz five times and have also offered Jumma and Taravi namaz.. . . . . I offered the last namaz on 22nd December, 1949." (E.T.C)

2461. He also said that at that time Maulvi Abdul Gaffar was Imam and one Ismail was Moazzim of the said mosque. His age is 75 years in July, 1996, meaning thereby his year of birth comes to 1921. The dispute arises in December, 1949 and after more than 45 years the witness at the age of 75 could categorically recollect that he offered Namaj for the first time in 1938 but when asked about the month or the season, he could not tell and in fact gave interesting reply that had it be known to him that this would be necessary for deposing statement in the dispute he would have noted it down and kept in memory. On page 19, PW1 said:

''हमें यह नहीं मालूम कि किस मौसम में या किस माह में हम पहली बार बाबरी मस्जिद में नमाज पढ़ने गये। 1938 में जब पहली बार हम नमाज पढ़ने गये तो हम अकेले गये। हमारा घर मस्जिद के करीब था।''(पेज 19)

"I do not know in which season or in which month I went to offer namaz at the Babari mosque for the first time. In 1938, I was alone when I had gone to offer namaz for the first time. Our house is near the mosque." (E.T.C)

2462. Then on page 21 he says that he used to visit disputed building for Namaj hundreds of times in a year but does not remember name of anyone who offered Namaj in the

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said building alongwith him though he admits that some persons of his locality used to come. He could also recollect that in 1938 when he offered Namaj for the first time in the disputed building, about 15-20 persons were there. In order to test the veracity of the statement pertaining to alleged visit to the mosque for hundreds of times, he was cross-examined about the topography of the building and site. On page 23-24 he said:

''विवादित मस्जिद के दो भाग हैं एक अन्दरूनी एक बाहरी। बाहर की दीवार पर दो फाटक हैं एक पूरब की तरफ एक उत्तर की तरफ थे। अन्दरी भाग में लोहे के जंगले लगे हैं ***उस जंगले की दिवार में तीन दरवाजे हैं। उसमें एक दरवाजा उत्तर की तरफ था।*** *वह विवादित स्थल के बाहरी तरफ जो दरवाजा है उसी के सामने अन्दर वाले बंगले में ही दरवाजा था। यह अन्दरूनी भाग वाला दरवाजा लोहे की सरिया का बना हुआ था। उत्तरी भाग में जो बाहरी दीवार पर दरवाजा था वह लकड़ी का था। पूरब की तरफ कोई फाटक नहीं था। अपने होश से पूरब की तरफ दरवाजा न होने की बात देख रहा हूँ। पूरब वाले दरवाजे की ऊँचान हमसे तीन फुट ऊँचा थी। स्वयं कहा उस पर दोनों तरफ अल्लाह लिखा है।..... पूरब के बाहरी दरवाजे से दक्षिण की तरफ जो चबूतरा है वह 17 x 21 फिट है। इसकी ऊँचाई एक मीटर है। इसके ऊपर छपपर पड़ा है।.....इस चबूतरे पर हिन्दू देवताओं की मूर्ति आने वालो को दिखायी नहीं देती।'' (पेज 23–24)*

''The disputed mosque has two portions – interior and exterior. The outside wall has two gates of which one was towards the east and the other towards the north. The inside portion has iron-made windows and ***the wall with those windows has three gates***. ***Of them one gate lay towards the north.*** *Facing the outside gate of the disputed site, the inside bungalow itself had a wall. This inside gate was made of iron rods. The gate at the outer wall located in the northern portion, was made of wood. There was no gate towards the east. With all my understanding, I am*

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looking at there being no gate towards the east. The eastern gate was 3 feet higher than me. (Himself stated) The word 'Allah' is written on both of its sides. . . . . Towards the south of the outside gate in the east lies a chabutra measuring 17x24 feet. Its height is 1 metre. It has a thatched roofing. . . . . Idols of Hindu deities on this chabutra are not visible to visitors." (E.T.C.)

2463. His statement that there are three doors in the internal dividing wall made of iron angles etc. and that no gate was there on the eastern site, falsifies his knowledge about the topography of the disputed building. On page 33 he says that he offered Isha Namaj on 22.12.1949 in the night at 8.30 pm. Thereafter on page 54 he clarified that Friday Namaj was offered on 16.12.1949 but thereafter five times prayer continued till the night of 22.12.1949.

2464. On page 64 he said:

*"22 दिसम्बर 1949 से पहले जायदाद मुतदाविया में इस्माइल की है ड्यूटी हर वक्त वहां रहती थी लेकिन उसकी रिहाइश वहां नहीं थी। **इस जायदाद में रिहाइश किसी की नहीं थी।** इस्माइल के अलावा इस जायदाद की देखभाल और कोई नहीं करता था सिर्फ इस्माइल को ही मुतवल्ली ने नियुक्त किया हुआ था।" (पेज 64)*

*"Prior to 22nd December, 1949, Ismail was always on duty at the disputed property but he had no residential facility there. **Nobody had any residential facility at this property.** Except for Ismail, nobody else took care of this property. Mutvalli had appointed only Ismail for this purpose." (E.T.C.)*

2465. He also confirmed that there was no place for sleeping in the disputed building on page 70:

*"इस जायदाद में यानी **विवादित जायदाद में सोने की कोई जगह नहीं थी** कोई मुसाफिर यहॉ बसेरा नहीं करता था।" (पेज 70)*

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*"This property, that is, the **disputed property, had no place for sleeping** and no tourist stayed there."(E.T.C.)*

2466. On page 174 PW 1 says about placement of lock by Zahur Ahmad in the month of November, i.e., 22.11.1949 at the instance of police who had apprehension of danger. The witness is so simple that in a long cross-examination when he find some difficulty, on page 177, on 27.08.1996, he says:

''हमारे वकील साहब को मालूम होगा कि उस मुकदमें का पता हमें कब लगा। मुझे याद नहीं कि इस बाबत 21 अगस्त, 1996 को मैने अपना बयान वकील साहब के बताने पर या अपनी निजी सूझबूझ या जानकारी से दिया।'' (पेज 177)

"Our counsel must be in the know of the time when we had come to know of this case. I do not recall whether I gave statement in this regard on 21st August, 1996 on being tutored by the counsel or on my own understanding or knowledge." (E.T.C.)

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2467. Then ultimately on page 186 (the cross-examination recorded on 29.08.1996) he admits about his weak memory and said:

*''यह ठीक है कि **उम्र की वजह से मेरी याददाश्त कमजोर हो गई** है, यह बातें वकील साहब को याद होंगी।'' (पेज 186)*

*"It is true that **my memory has weakened due to age.** These points must be in the memory of the learned counsel." (E.T.C.)*

2468. One thing he consistently said that he offered Namaj for the first time in the disputed building in 1938 and this he reiterated on page 190 also. There is a serious dispute about the age of PW-1. He admits to have filed a writ petition before this Court in 1986 where in the affidavit he mentioned his age as 55 years. If that is taken to be correct, his year of birth comes to 1931. He claims to have studied up to Class-5 and on page 66

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says that he passed class 1 at the age of 8-9 and regularly passed subsequent classes within five years. Thereafter he studied Arabic from Imam Saheb. He admits that in 1949 he was studying. These facts are self speaking and, therefore, we find it difficult to believe the statement of PW 1 that he offered Namaj for the first time in the disputed building in 1938 and continuously thereafter or that he offered last prayer in the said building on 22.12.1949 in the evening.

2469. **PW-2 Hazi Mahboob Ahmad** son of Hazi Feku commenced his statement on 27.09.1996. He has disclosed his age as 58 years, meaning thereby his year of birth comes to 1938 but he has admitted to have passed High School and B.A. and on page 3 of the statement he admits that his year of birth in his High School certificate is mentioned as 1944 and he passed High School in 1961. He has also stated on page 3 that at the time of passing High School his age was 21 years since he took two years in the passing of High School but if that is also taken to be correct his year of birth would come to 1940 and not 1936. On page 11 he says:

> *"मैंने आठ साल की उम्र में होश संभाल लिया था। जब मैंने होश संभाला तो उस वक्त तक मुतदाविया इमारत कुर्क नहीं हुई थी।" (पेज 11)*
>
> *"At the age of 8 years I came of age. When I came of age, the disputed building was not attached." (E.T.C.)*

2470. His father Hazi Feku was defendant no. 3 in Suit-1 and defendant no. 6 in Suit-3. Since he has died, in Suit-1 there is no substitution but in Suit-3, PW 2 has been impleaded as defendant no. 6/1. On the one hand he has said in his examination-in-chief to have offered Namaj for hundreds of times in the disputed building, i.e., Friday Namaj as well as five times Namaj and and last one was on 22.12.1949. In view of his

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admitted age mentioned in the High School certificate, i.e., 1944 it is unbelievable that in 1949 when he was just about 5 years of age had been offering Namaj and that too he had earlier offered for hundreds of times. On page 19 he says:

''जब मैंने होश संभाला तो मैं देखता था कि विवादित जायदाद की तरफ लोग आते जाते थे, लेकिन मैं उस रास्ते से ज्यादा नहीं जाता था, इसलिए मैं नहीं कह सकता कि आमतौर पर आने–जाने वालों पर कोई रूकावट थी या नहीं।. . . .जब हमने होश संभाला तो उसके बाद हम विवादित जायदाद की तरफ कभी गये ही नहीं, क्योंकि वहॉ पर बुत रख दिया गया था और मुसलमान डर की वजह से वहॉ जाते ही नहीं थे।'' (पेज 19)

''When I came of age, I used to see that people frequented the disputed property but I did not go by that way most of the time, hence, I can not say whether or not there was any bar on to-and-fro movements of visitors. . . After coming of age I certainly never went to the disputed property, because idol had been installed there and the Muslims did not go there out of fear.'' (E.T.C.)

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2471. If he is correct in saying that he used to visit the disputed building for hundred times there was no occasion for him to say that he did not travel the way towards disputed property for most of the time and after coming to the age of understanding he did not go since idols were placed therein. The statement of PW 2, is unrealistic and lack trustworthiness.

2472. **PW3, Farooq Ahmad** has said that he used to offer Namaj in the disputed building, i.e., Babri Masjid. He offered Friday prayer. Last prayer was offered in this building by him in December, 1949. He went after offering Isha Namaj. This was the end of December, 1949. This statement was given by PW 3 on 07.10.1996 disclosing his age as 90 years, meaning thereby he claims his year of birth as 1906. However, he was confronted with an application filed on his behalf in Suit-4 in the year 1990,

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i.e., Application No. 42-O of 1990 wherein mentioned his age in the affidavit as 65 years. He admitted to have put in his thumb impression on the said affidavit and says:

> *''वकील साहब ने गवाह का ध्यान पेपर नं0 101–सी जो कि दरख्वास्त 42–ओ 90 परदावा ओ0 एस0 नं0 4/89 की ओर दिलाया दस्तावेज देखकर गवान ने कहा मैंने हलफनामा देख लिया है इस पर मेरा निषान अंगूठा है। लेकिन दस्तखत मेरे नहीं है क्योंकि कि यह दस्तखत हिन्दी में है जब कि मैं उर्दू में दस्तखत करता हूँ।* ***इसमें मेरी उम्र 65 साल लिखी है*** *लेकिन यह उम्र मैंने नहीं बतलाई* ***यह उम्र मैंने वैसे ही अंदाजे से लिखवा दी थी।*** *'' (पेज 19)*
>
> *''The learned counsel drew the attention of witness towards paper no. 101-C, which is Application 42-O/90 in OS no. 4/89. After looking at the document, the witness stated that I have seen the affidavit and it bears my thumb impression. However, the signature is not mine because the signature is in Hindi and I sign in Urdu.* ***My age is mentioned as 65 years in it****, but this age was not given by me.* ***I had got this age mentioned casually by guess work****.'' (E.T.C.)*

2473. On page 70 he was confronted with another application which he filed on 18.03.1986 mentioning his age in the affidavit as 60 years. On page 70 he said:

> *''****मैंने अपने हलफनामें में अपनी उम्र का अन्दाजा देकर 60 लिखवाई*** *थी। इस वक्त मेरी उम्र अन्दाजन 90 साल है। मेरी उम्र 90 साल के करीब होने वाली बात सही है, हलफनामें में उम्र अन्दाजे से वकील साहब ने लिखवा दी होगी। हमारी दरख्वास्तें 1986 वाली वहॉ से खारिज हो गई थीं। . . . . .****मुझे ख्याल नहीं क्योंकि पुरानी बात हो चुकी है कि 1949 वाली मेरी वह दरख्वास्त मन्जूर हुई या नहीं।''*** *(पेज 70)*
>
> *''****I had got my age mentioned as 60 years in the affidavit by guess work.*** *At that time I was aged about 90 years. The fact about my age being around 90 years, is*

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correct. The age in affidavit must have been mentioned by the advocate out of guess." (E.T.C.)

2474. He admits to have filed a suit against his cousins and brothers, i.e., Suit No. 138 of 1993 and therein he mentioned his age as 67 years in 1993. When confronted, he did not deny but says that he does not remember. On page 91 he says:

''यह भी ठीक है कि जमीन–जायदाद की बाबत मैंने अपने भाई–भतीजों पर और उन लोगों ने मुझ पर कई मुकदमें किये हुए है। . . . . .उसका मुकदमा नं0 138/93 है। मुझे ख्याल नहीं है कि मैंने उस मुकदमा में अपनी उम्र 67 साल लिखाई हो। . . . . . मुझे याद नहीं कि उस दरख्वास्त में मैंने अपनी उम्र 70 साल लिखाई हो।'' (पेज 91)

"It is also true that I have filed cases against my brother-nephews regarding land-property and they have also filed many cases against me. . . . . .It is case no. 138/93. I do not remember that I have mentioned my age as 67 years in it. ..... I do not remember that I had mentioned my age as 70 years in that application." (E.T.C)

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2475. He does not understand the dates and admits it on page 71.

''मुझे तारीखों की मालूम नहीं।'' (Page 76)

"I have no knowledge of the dates." (E.T.C)

2476. Then ultimately he also admits of his weak memory on page 101:

''यह बात सही है कि ***उम्र की वजह से मेरी यादष्त कमजोर हो चुकी है।*** *'' (पेज 111)*

"It is true that my ***memory has grown weak on account of age.*** *" (E.T.C.)*

2477. What we actually notice is that mainly he was produced to depose statement about putting lock in the disputed building in the night of 22.12.1949 and in reference thereto in a casual way he has said about offering of Namaj also. His

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statement about placement of lock is also self contradictory as shown below:

''मै ताला लेकर उनके साथ गया था और ताला लगाकर जब वापस आया तो वह मुझे मेरे वालिद के हवाले करके गये थे।. . . . . ताला बंद करने के लिए मुझे दरोगा साहब ने हिदायत दी थी।

प्रष्नः– यह हादसा जब हुआ दरोगा जी ने ताला बन्द करने को कहा तो क्या उसके पहले विवादित जायदाद में ताला नहीं बन्द होना था?

उत्तरः– नहीं बन्द होता था।'' (पेज 12)

"I had gone with him with a lock and on return after putting the lock, he went back after giving me in the custody of my father. . . . . .. The inspector had instructed me to put the lock.

Question:- When the inspector asked to put the lock, does it mean that prior to it the disputed property was not locked?

Answer:- It was not locked." (E.T.C)

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'जंगले वाली दीवार में एक दरवाजा उत्तर की तरफ था और एक पूरब की तरफ/पूरब की तरफ 2 थे, मैंने ताला बीच में लगाया था।''

(पेज 21)

"The grill wall had gates in north and east. There were two towards east and I had put lock in between them.

(E.T.C.)

*''**यह बात गलती से कह गया था** कि मैंने एक ताला बीच में लगाया था, दरअसल मैंने दो अलग–अलग ताले लगाये थे।''*

इन मुकदमात में मैंने ऐसी कोई दरख्वास्त नहीं गुजारी कि मेरे मर्जी दावा या अवाब –दावों को तरमीम करके यह लिखा जाये कि 1949 में ताले मैंने लगाये थे।'' (Page 72)

*"**I had incorrectly stated** that I had put lock in between. Actually I had put two different locks on the two gates."*

"I moved no such application in these cases to effect

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that my plaint or written statement be amended and it be mentioned that I had put the locks in 1949." (E.T.C)

"मेरे अब्बा हजूर ने तालों का जिक्र हाईकोर्ट में भी नहीं किया होगा। " (Page 79)

"My father must have not mentioned about the locks before the High Court as well." (E.T.C.)

*"जो ताले मेरे अब्बा हजूर ने दिये थे उनमें से एक लाल था और एक हरा था। वह नये ताले थे घर के अंदर रखे हुए थे। उस वक्त कहॉ से खरीद का दिये होगें। . . . . . .उस वक्त रात के 10–11 बजे का वक्त था। . . . . **मैंने पहले कुछ भूल से कह दिया होगा** कि रामदेव दरोगा हमारे यहॉ रात को 12.00 बजे आये थे। **मेरे अब्बा हजूर करीब की दुकान से लाये थे, हो सकता है कि वह शाम को ही ताले ले आये हों।" (Page 85)***

*"The locks given by my father, were red and green in color. They were new locks and had been kept inside the house. He could not have purchased it at that time . . . .. . It was around 10-11 PM by that time . . . . . **I may have stated erroneously** that inspector Ramdev had come over to my place at 12 in the mid night. **My father had brought it from a nearby shop. It could be that he had brought the locks in the evening**." (E.T.C)*

"खाना खाकर सो गये। मेरे वालिद साहब ने मुझे सोते हुए को जगाया था। उससे पहले राम देव दरोगा मेरे वालिद के पास पहुंच चुके थे।" (Page 86)

"(We) went to sleep after having dinner. My father woke me up. Inspector Ramdev had already reached my father."(E.T.C)

*"**उस दिन से पहले इस मस्जिद में ताला नहीं लगता था।** उस वक्त जब मैंने ताला लगाया मोअज्जिम मस्जिद के अंदर ही था। वह सहन दरवाजा में था। अंदर वाले हिस्से में नहीं था। वह बाहर वाले सहन में था। **जब मै ताला लगाने गया तो मोअज्जिम छप्पर के***

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नीचे सोने लग रहा था। हमने उसको नहीं जगाया। हम ताला लगाकर वापस अपने घर आ गये मोअज्जिम इत्मीनान से सोता रहा।'' (Page 87)

*"**Locks were not put at the mosque prior to that day.** When I put the locks, the Muazzim was inside the mosque. He was in the courtyard gate and not in the inner part. He was in the outer courtyard. **When I went to put the locks, the Muazzim was sleeping under the thatched roof. I did not wake him up. I returned home after putting the lock and the Muazzim kept sleeping peacefully.**"(E.T.C)*

''मुझे वह तारीख याद नहीं लेकिन जुम्मे रात का दिन था जब दरोगा जी ने हमारे वालिद को ताला लगाने के लिए कहा था। हम दरोगा जी के साथ चले गये और ताला लगा दिया। वापसी पर आकर चाबी अपने वालिद को दे दी थी। यही ताले अदालत के हुकुम से 1986 में खोले गये। बीच में मुतवातिर ताला लगा रहा।'' (Page 100)

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"I do not remember the date, but it was Jumme Raat, when the inspector had asked my father to put the locks. I had gone with the inspector and put the locks. After return home, I gave the keys to my father. These very locks were opened in 1986 by order of court. In meantime, it remained continuously locked." (E.T.C)

2478. On page 87 PW 3 says that when he visited the disputed building to place lock in the night of 22.12.1949 Moazzim was inside the mosque and was sleeping under thatched roof *(Chappar)* in the outer courtyard but this stand contradicted the statement of PW 1 where he said that there was no place for sleeping or studying in the disputed building. With respect to thatched roof in the outer courtyard, PW 1 on page 31/32 said:

''पूर्वी फाटक से अन्दर आने पर बाहरी दीवाल के अन्दर उत्तर

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*तरफ एक लम्बा सा छपपर था वह भण्डार पर था या नहीं यह नहीं बता सकता। यह लम्बा सा छप्पर नीम के पेड़ के नीचे था लोग उस छप्पर में रहते थे पर मुझे नहीं मालूम कौन लोग रहते थे। **इस छप्पर के नीचे हिन्दू लोग रहते थे मुसलमान लोग नहीं रहते थे।** . . कुर्क शुदा स्थान के पश्चिम की तरफ जो परिक्रमा बनी थी वह परिक्रमा के लिए नहीं दीवाल की मरम्मत के लिए बनी थी। . . . . कुर्क शुदा जायदाद की बाहरी दीवाल के अन्दर दो छप्पर थे एक चबूतरा पर था और दूसरा पूर्वी दीवाल से सटकर नीम के पेड़ के नीचे था।'' (पेज 31–32)*

*"On coming inside through the eastern gate there was a spacious shed towards the north inside the outside wall. I cannot tell whether it was a store house or not. This long shed was beneath the neem tree. People lived in the shed but I do not know who they were. **Those who lived under this shed were Hindus, not Muslims**.. . . . . The Parikrama (circumambulation), which was built towards the west of the attached place, was for the repair of the wall, not for parikrama. . . . . Inside the exterior wall of the attached property were two sheds and a chabutra (rectangular terrace). Another chabutra was adjacent to the eastern wall and was beneath the neem tree." (E.T.C.)*

2479. PW1 on page 174 has said that on 22.11.1949 Zahur Ahmad had put a lock.

''नवम्बर के महीने में 22 नवम्बर 1949 को ताला जहूर अहमद ने लगाया था , उसने ताला पुलिस के कहने पर लगाया था ,पुलिस को खतरे का एहसास था '' (पेज 174)

"On the 22nd of November, 1949 Jahoor Ahmad had put a lock. He had put the lock at the behest of the police. The police had the apprehension of danger." (E.T.C.)

2480. This contradiction could not be explained by learned counsel for the plaintiffs and, therefore, we find difficult to believe the statement of PW 3 also about offering of Namaj in

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the disputed building.

2481. **PW 4, Mohd. Yaseen** has confined his statement about offering of Namaj on Friday and says that last time he offered Namaj in the disputed building about 47 years ago and since in the night of 22/23.12.1949 idols were placed therein, Namaj could not be offered on 23.12.1949. On page 1 he says:

*''मैं जुम्मे की नमाज उसमें बराबर पढ़ता था। **जुम्में के अलावा मैंने उसमें और कोई नमाज नहीं पढ़ी।** आखिरी बार मैंने उसमें जुम्मे की नमाज आज से तकरीबन 47 साल पहले पढ़ी थी। 22/23 दिसम्बर 1949 की रात को उसमें मूर्ति रख दी गयी थी। इसलिए नमाज पढ़ना रूक गया।'' (पेज 1)*

*"I consistently offered Jumma namaz (Fridays' congregational prayers) thereat. **Except for Jumma namaz, I did not offer any other prayer thereat.** I, for the last time, offered Jumma namaz thereat nearly 47 years back. The idol was placed therein on the intervening night of 22nd/23rd December, 1949. This was the reason why the offering of the namaz came to an end." (E.T.C.)*

2482. PW 4 has deposed his age as 66 years on 29.10.1996 when his examination commenced which takes his year of birth to 1930. On page 51 he says that prior to the incident of 1949 the Babari mosque was never locked. However on page 20, 21, 23 and 59 regarding Namaj he says:

''इस मस्जिद में जब मैं नमाज पढ़ने जाता था तो कम से कम 4–5 सौ आदमी तो हुआ ही करते थे।'' (Page 20)

"When I used to go to offer namaz at this mosque, there were at least 4-5 hundred people over there."(E.T.C)

''जिस रोज इस मस्जिद में नमाज पढ़ना बन्द हो गया उससे पिछले जुम्मे को भी हाषिम मियॉ मुझे इस मस्जिद में नमाज पर मिले थे और हमने एक–दूसरे की खैरियत पूछीं थी।'' (Page 21)

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"In the Jumma preceding the day on which offering of namaz was stopped at this mosque, Hashim had met me at this mosque at time of namaz_and we both had inquired about each other's welfare."(E.T.C)

"मैं इस मस्जिद में आजादी मिलने के पॉच साल पहले जाने लगा था।" (Page 23)

"I started going to this mosque from 5 years before independence." (E.T.C)

*"**मैंने नमाज पढ़ना 1938 में पढ़ना शुरू किया था** लेकिन बराबर नहीं पढ़ता था। 1938 में नमाज मस्जिद में पढ़ता था।"(Page 59)*

*"**I started offering namaz in 1938** but I was not regular. In 1938, I used to offer namaz in mosque."(E.T.C)*

2483. When in the cross-examination several questions were asked about the internal topography etc. he said on page 59:

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*"**मेरी याददाष्त अब कुछ कमजोर हो गयी है।"***

(Page 59)

*"**My memory is now feeble**" (E.T.C.)*

2484. When his statement was found contradictory to the statement of PW 1 who is plaintiff no. 7 in Suit-4 he justified himself by stating that PW 1 must have given wrong statement as is evident from the following:

*"**अगर हाशिम मियां ने कोई ऐसा बयान दिया हो** कि उस छप्पर के नीचे पुजारी लोग बैठते थे **तो उनका कहना गलत है।***

***अगर हाजी महबूब ने ऐसा कुछ कहा है** कि इस जगह को एक तरफ से पिछले 15–20 दिनों से बैरागियों ने घेरा हुआ था **तो उनका कहना गलत है।**" (पेज 48)*

*"**If Mr. Hashim has given any such statement** that*

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priests used to sit under said thatched roof, ***then his statement is wrong****.*

If Hazi Mahboob has stated *that the recluses had surrounded this place from one side for last 15-20 days,* ***then his statement is wrong****." (E.T.C)*

"1949 के हादसे तक जकी साहब मुतवल्ली थे उनके बाद ही जव्वाद साहब मुतवल्ली बने थे। . . .फारूख साहब का अगर ऐसा कुछ कहना है कि इस हादसे के वक्त मस्जिद का इंतजाम जहूर साहब करते थे तो इस बात की सही या गलत होने की जिम्मेदारी उनकी है। मैं तो सिर्फ यह जानता हूं कि मस्जिद का अंतजाम जकी साहब करते थे।"(Page 50)

"Mr. Zaki was the Mutwalli till the incident of 1949. Mr. Javvad became Mutwalli after him. . . . . If Mr. Farooq has made any such statement that Mr. Zahoor used to manage the mosque at time of the incident, then the responsibility for its correctness or incorrectness lies with him. I know only this much that the mosque was managed by Mr. Zaki."(E.T.C)

"अगर हाषिम मियां ने कोई ऐसा बयान दिया हो कि उन्होंने सिलाई का काम सिर्फ 1966 से 1976 तक किया है तो यह उनकी गलत बयानी है।" (Page 51)

"If Mr. Hashim has given a statement that he had carried out tailoring work only between 1966 to 1976, then it is his wrong statement."(E.T.C)

2485. This is really surprising that after almost 47 years from the date of dispute the PW 4 though could recollect that he offered Friday prayer regularly in the disputed building and that too he started at the age of 8 but when the internal topography sought to be enquired in cross-examination by placing before him the photographs of the disputed building, he finds it

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difficult in identifying the same and try to justify by taking recourse to his weak memory. The extent of his memory may be seen from what he has said on page 59:

''जब हिन्दुस्तान आजाद हुआ तब की मुझे होष है। उस वक्त मैं 11–12 साल का था (फिर कहा कि मैं 17 साल था)'' (पेज 59)

"I have remembrance of the time of independence of India. I was aged 11-12 years at that time (then stated that I was 17 years old)." (E.T.C)

2486. The veracity of statement can also be examined from what he has said on page 6:

''मैंने जो मकान मस्जिद के साथ लगता हुआ बनाया है इसकी जमीन रियासत अयोध्या से ली थी। जब मैंने यह जमीन ली उस वक्त मेरी उम्र 40–45 साल के करीब थी। मैंने यह जमीन माल गुजारी पर ली थी। मैंने इस बात के बाबत विकास प्राधिकरण के पास भी इन्दराज दर्ज करा दिया था, वहां से नक्शा पास होता है। मैंने यह मकान 1966 में बनवाया था उसके 2 साल बाद इस पर नगरमहापालिका का टैक्स लग गया था। मुझे अब याद नहीं कि जमीन लेने के कितने दिन बाद मैंने मकान बनवाया था, गालिबन 10–12 साल तो हो ही गये होंगें जमीन लेने और मकान बनवाने के बीच में।'' (पेज 6)

"The house built by me adjacent to the mosque, exists over the land obtained from Ayodhya Estate. When I got this land, I was aged about 40-45 years. I had taken this land on rent. I had also got an entry in this respect entered in the records of the Development Authority, from where map is approved. I had built this house in 1966. Municipal tax came to be imposed in connection with the same, two years later. As of now I do not remember after how many years of obtaining this land, I had built the house. There might have been an intervening period of nearly 10-12 years between the obtaining of land and the

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construction of house." (E.T.C)

2487. His year of birth comes to 1930. If he acquired land when he was 40-45 years old, the question of construction of house on the said land in 1966 does not arise particularly when he says that there was a gap of 10 to 12 years between acquiring of land and construction of house.

2488. **PW 5, Abdul Rahman** son of Saiuddin has deposed to have pronounced Holy Quran in the disputed building in 1945 and 1946. During the period he stayed at Ayodhya for pronouncing Holy Quran in Ramzan Taravi, he used to offer Namaj in the disputed building. He is not a local resident of Ayodhya but of Ibrahimpur, Pargana Mangalasi, District Faizabad. He has given his age 71 years on 05.11.1996 when his examination commenced. It means that his year of birth is 1925. In 1945-46, therefore, he must be of 20-21 years. He does not remember the age of his father at the time of death as well as his own age at the time of death of his mother. He admits of his marriage at the age of about 22 years but neither could tell the date when he was conferred with the certificate and Dastarbandi nor even the age or date of birth of his children.

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*"मेरे 11 बच्चे हैं 7 लड़के 4 लड़कियॉ। **मैं उनकी पैदाईश के सन या साल सही न बता सकूँगा।**" (Page 36)*

*"I have 11 children, including 7 sons and 4 daughters. **I am not in a position to correctly tell the years of their birth.**"(E.T.C.)*

"अपने होश संभालने के 5–6 साल बाद हमने पढ़ाई शुरू की थी। उस वक्त मेरे वालिद साहब जिन्दा थे। मैं यह सही नहीं बता पाऊॅगा कि मेरे होश संभालने के कितने दिनों बाद उनका इन्तकाल हुआ था। अन्दाजन यह 10–15 साल का वक्फा हो सकता है।

"मैंने लखनऊ में भी पढ़ाई की है। मैं जबानी नहीं बता पाऊॅगा कि

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कौन से सन या साल में लखनऊ में पढ़ाई की थी। . . .लखनऊ में मैंने अपनी तालीम मदरसा आलिया फुरकानिया, चौक में हासिल की थी। . . लखनऊ के मदरसा में भी दाखिले का कोई फार्म नहीं भरा गया था, बल्कि मेरे मामू ने जाकर मेरा नाम लिखवा दिया था।'' (पेज 54–55)

"5-6 years after I started understanding things, I started my education. My father was at that time alive. I cannot correctly tell how long after my having come of age, he died. I guess it to be 10-15 years.

I have had my schooling in Lucknow also. I cannot orally tell in which year I studied in Lucknow. . . . . I got schooling at Madarsa Aaliya Phurkania at Chowk in Lucknow. . . . . .No form had been filled up for admission to the Lucknow school also; rather, my maternal uncle had gone there to get me admitted." (E.T.C.)

2489. Further about his visit at Ayodhya on page 27 and 31-32 he has said:

''जब मैं पहली बार अयोध्या कुरान शरीफ सुनाने गया तो अंग्रेजों की हुकूमत थी। इन दो दफे के इलावा यानि कि जब मैं इन 12–12 दिनों के लिए कुरान शरीफ सुनाने अयोध्या गया था मैं कभी बाबरी मस्जिद में नहीं गया। (खुद कहा कि मैं एक बार बहराइच गया था तो रास्ते में एक वक्त की नमाज मैंने बाबरी मस्जिद में भी पढ़ी थी।)उस समय सरयू दरिया में स्टीमर चलता था। बारिश के दिन थे। ये वाक्या 1947 में आजादी मिलने से पहले का था। मैं जब कुरान शरीफ वहॉ सुनाकर आया तो उसके दो–चार महीने बाद ही यह मौका आया था। . . . . ***शाम हो गयी थी मैंने नमाज या तो मगरिब की पढ़ी थी या असिर की पढ़ी थी।*** *अब तक जो मुझे याद है यह नमाज मगरिब की नहीं थी।* ***जिस वक्त मैंने नमाज पढ़ी उस वक्त वहॉ पर केवल मोअज्जिम थे जो अजान दिया करते थे।*** *. . . .**हम स्टीमर में बैठकर रात को गए थे।** यह कहना गलत है कि शाम के बाद स्टीमर सेवाएं बन्द हो जाती हों।'' (पेज 27)*

"When, for the first time, I went to Ayodhya to recite

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*the holy Quran, it was English Rule. I never visited the Babri mosque except on these two occasions, that is, when I visited Ayodhya to recite the holy Quran for these spells of 12 days each. (Stated on his own) Once, on my way to Bahraich I had offered namaz one time at the Babri mosque. At that time, steamer was in use in the stream of the river Saryu. Those were rainy days. This episode preceded 1947 when independence was achieved. I had this chance only 2-4 months after I had returned from there after having recited the holy Quran. . . . . **It was evening time; I had offered namaz, whether 'Magrib' or 'Asir'.** As far as I remember, it was not 'Magrib' namaz. **The moment I offered namaz, only muazzim was present there, who used to give 'Azan' calls.** . . . . **I had gone to Bahraich in a steamer during the night time.** It is wrong to say that steamer services used to be in operational after evenings." (E.T.C.)*

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"जब मैं अयोध्या पहली बार कुरान शरीफ सुनाने गया तो रमजान के महीने की पहली तारीख थी। (खुद कहा कि 29 शाबान को हम वहां पहुॅच जाते थे अगर चांद वहॉ नजर आ जाता तो वहां पढ़ा देते थे उसी रात को) मुझे सही याद नहीं कि मैं किस खास रोज (फिर कहा कि मुझे याद है कि मैं शाबान की 29 तारीख को अयोध्या पहुॅच गया था।) जब मैं अयोध्या पहुॅचा और वहां से वापस हुआ तो इस वक्फे में कितने जुम्मे पड़े मैं सही नहीं बता सकता लेकिन एक जुम्मा तो यकीनन आया था। यही तरीका अयोध्या आने–जाने का दूसरे साल भी रहा था। . . . .हो सकता है कि हमने वहां एक भी जुम्मा न किया हो और अपने घर चले आए हों लेकिन एक जुम्मा तो किया था। . . . . हमें याद नहीं है कि इस नमाज में मो0 हाशिम हाजी फेंकू, हाजी फायक या कयामत अली साहब थे या नहीं लेकिन हाजी फेंकू जरूर थे।" (पेज 31–32)

"When I for the first time went to recite the holy Quran at Ayodhya, it was the first day of the Ramzan

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month. (Stated on his own that we had reached there on 29th. When the moon was sighted there, we used to recite it that very night.) I do not correctly remember the particular day. (Further stated) I remember that I went to Ayodhya on 29th of the lunar month. I cannot tell how many Fridays intervened between the day I reached Ayodhya and the day I returned from there. But one Friday had certainly intervened. This was the very way in which we visited the Ayodhya the next year also. We may not have performed even a single Jumma and may have come back home; but one Jumma was certainly performed. . . . . We do not remember whether Mohammad Hashim, Hazi Pheku, Hazi Fayak or Qayamat Ali were present at this namaz or not, but Hazi Pheku certainly attended it." (E.T.C.)

2490. He claims to be related with Hazi Feku and said that he was invited for reading of Holy Quran at Ayodhya by Hazi Feku (i.e., father of PW 2) (at page 21-22).

2491. **PW 6, Mohd. Unus Siddiqi** son of Late Hafij Ahmad, a Pleader enrolled at Lucknow on 09.07.1955. He did his High School in 1948 and Intermediate in 1950 from Faizabad and thereafter he went to Lucknow for Graduation and to Aligarh for Post-Graduation and Law degree. He was earlier counsel of the plaintiffs in the suit but has stopped appearing since 1965. He claims to have offered Namaz in the disputed building for the first time at the age of 12-13 years in Shab-e-barat and thereafter every year during Shaberat except once when he offered Namaz in day time, i.e., on the Friday before placement of idols therein. His statement commenced on 29.11.1996 when he was 63 years of age meaning thereby his year of birth comes to 1933. In his cross-examination he admits

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that he is connected with this case since 1961. In his cross-examination on page 8 he admits his date of birth mentioned in the High School certificate as 27.08.1932. He visited the disputed building as Survey Commission in 1991 though the nature of this commission is not clear. Some part of his statement may be noticed as under:

''मैं अयोध्या के कुछ मोहल्लों को जानता हूं सभी को नहीं।

1957 और 1965 के बीच मुझे इस जायदाद के बाबत मालूम हुआ था कि यह कब और किसने बनवाई थी। *मैं नहीं बता पाऊॅगा कि बुनियादी तौर पर इस जायदाद का कितना रकबा था।'' (पेज 9)*

''I know some of the localities of Ayodhya, but not all of them.

Between 1957 and 1965 I came to know as to when this property was erected and by whom. *I am not in the position to tell how much area this property basically had.'' (E.T.C.)*

''जब रात को मैं वहां जाता था तो अक्सर लोग छप्पर में सोते हुए दिखाई देते थे।'' (पेज 11)

''When I went there during nights, people were often seen sleeping in sheds. '' (E.T.C.)

''हमारे मोहल्ले के कुछ लोग भी हमारे साथ थे। ***हमारा मोहल्ला फैजाबाद में है न कि अयोध्या में।*** *हमारे साथ अयोध्या का कोई आदमी नहीं था। हम लोग कई साईकिलों पर आये थे। 4–6 आदमी जरूर थे।*

मेरे ख्याल से जिस वक्त हम विवादित जायदाद पर पहुंचे तो रात के 10 या 11 बज चुके थे। *. . . . . मौके पर मुतदाविया जायदाद में चिराग जल रहे थे। मुझे मालूम नहीं कि चिरागों का इंतजाम किसने किया था। हम चिराग लेकर नहीं गये थे। लोग आते जाते रहते थे* ***मेरे ख्याल से 50–60 आदमी तो वहां पर जरूर थे।***

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*. . . . . **हमने साढ़े 11 बजे नफिल पढ़ी थी।**'' (पेज 15)*

*"Some other people of our locality were also with us. **Our locality is in Faizabad, not at Ayodhya.** No body from Ayodhya was with us. We had come on many cycles. We were certainly 4-6 persons. None of the persons who had gone with us are now alive; all of them are no more.*

***It was, as I guess, 10 or 11 O'clock at night when we reached the disputed property**.. . . . Lamps were lighted at the disputed property on the site. I do not know who had arranged the lamps. We had not taken along the lamps. People frequented there. **I guess that 50-60 people were certainly present there. . . . . I had offered 'Nafil' at half past 11**." (E.T.C.)*

''यह सबसे पहली मर्तवा वहां जाने का और फातिया पढ़ने का वाका दिसम्बर, 49 के हादसे से तकरीबन 10–12 साल पहले का है। दिसम्बर, 1949 के हादसे से जो फौरी पिछला जुम्मा गुजरा था उस रोज मैंने वहॉ मुतदाविया जायदाद में नमाज पढ़ी थी। वह जुम्मे की नमाज थी।

मेरे खालाजाद भाई मो0 महमूद साहब भी मेरे साथ जुम्मे की नमाज में शरीक थे। यह नमाज दोपहर बाद तकरीबन सवा बजे के करीब पढ़ी गयी थी। मेरे ख्याल से चार पॉच सौ नमाजी तो जरूर थे। नमाजियों में अयोध्या और फैजाबाद दोनों जगह के लोग थे। . . . . मौलवी अब्दुल गफ्फार साहब ने इमामत की थी।'' (पेज 16)

"This incident of going and offering 'Fatiya' there for the first time, precedes December, 1949 incident by nearly 10-12 years. I had offered namaz at the disputed property on Friday immediately preceding the December, 1949 incident. That was Jumma Namaz.

My cousin, Mohammad Mahmood, had also attended the Friday Namaz with me. This namaz had been offered around a quarter past one in the afternoon. I guess that

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namazists were certainly 400-500 in number. Among namazists were included people both from Ayodhya and Faizabad. . . . . Maulvi Abdul Gaffar had performed the job of Imam. "(E.T.C.)

"दिसम्बर 1949 के जिस जुम्मा को मैं नमाज पढ़ने मस्जिद में गया तो कुतबा हो रहा था। ..... उस समय में सोलह सत्रह साल का था।" (पेज 17)

"On which particular Friday in December, 1949 I went to the mosque to offer namaz, 'qutba' was in progress. . . . . At that time I was aged 16-17 years. (E.T.C.)

2492. On page 35, 39 and 41, PW 6 said:

"जब मैं बाबरी मस्जिद गया था पहली बार तब अपने होश संभाल चुका था (फिर कहा कि पहली और आखिरी बार दिन में एक ही दफा गया था और उस समय तक मैं होश संभाल चुका था) रातों के वक्त मैं चार पॉच दफे शब्बे बरात के मौके पर वहॉ गया था।"

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"When I went to the Babri mosque for the first time, I had begun to understand the things. (Further stated that I had gone there only once a day, for the first and last time). I went there 4-5 times during nights on the occasion of 'shab-e-barat'." (Page 35)

"उससे पहले मै। 22/23 दिसम्बर 1949 के पिछले जुम्मे की नमाज पर ही दिन के वक्त गया था।" (Page 39)

"Earlier, I had gone there only at the time of the Friday Namaz preceding 22/23rd December, 1949, in the day time.

"दिसम्बर 1949 में जब मैं जुम्मे की नमाज पढ़ने इस मस्जिद में गया तो अंदरूनी सहन के बीच में दक्षिण की तरफ खड़ा हुआ था। जुम्मे की नमाज थी काफी भीड़ थी। 400–500 आदमी उसमें शरीक थे।" (Page 41)

"In December, 1949, when I visited this mosque to

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offer the Friday Namaz, I was standing south-wards in the middle of the inner courtyard. There was Friday Namaz; there was much crowd. People attending it were 400-500 in strength." (E.T.C.)

2493. However, regarding memory, when PW 6 was confronted with some contradiction in his statement he said on page 33:

*"(अजखुद कहा कि **मेरी याददाश्त कमजोर है)। मेरी याददाश्त की कमजोरी 1986 से होनी शुरू हुई है।** (फिर कहा कि सन् 1987 से शुरू हुई है।) यह ठीक है कि अब आलम यह है कि **वाजवकात मैं अपने लड़कों के नाम भी भूल जाता हूँ।** .. . . .उसी वक्त से यानी 1987 से मेरी बिनाई भी कमजोर हो गयी है। मुझे उस वक्त सर में चोट लगी थी।" (पेज 33)*

*"(Stated on his own that **my memory is weak**). **I began to develop weakness in my memory from 1986.** (Again stated that it has started from 1987). It is true that condition has now become so serious that **I forget even the name of my sons**. . . . . My 'binai' (vision) has also weakened since that time, that is, from 1987. I had sustained head injuries at that time."(E.T.C.)*

2494. **PW 7, Hasmat Ulla Ansari**, son of Niyamat Ulla has also deposed to have offered Namaz in the disputed building for hundreds of time starting from 1943. The last Namaz he offered in the disputed building about a week before the date when idol was placed therein, i.e. night of 22nd/23rd December, 1949. He further said that he offered Namaz till two days earlier from the date when the idol was placed. However, Namaz was offered in the disputed building till 22.12.1949 is also his statement. He has shown his age as 65 years in 1996, meaning thereby his year of birth comes to 1931. He is High School passed and in the High School certificate he admits to have

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mentioned his date of birth 8.1.1934 though he claims that his correct year of birth is 1932. He studied upto Class 4th in a Madrasa at Kaziyana and, thereafter got admission in Katra Middle School at Suthati and studied thereat upto Class 6th and then went to Kolkata, sought admission in Class 8th thereat in Fafas Inter College wherefrom he passed High School. On page 12 he says:

''जब मुझे फाफस कालेज से सार्टीफिकेट मिला अपनी तालीम पूरी करने का तथा मुझे मालूम हो गया था कि मेरा तारीख पैदाइश गलत लिखी गयी है। मैंने आज तक उस गलती को दुरूस्त कराने का कोई कार्य वाही नहीं की।'' (पेज 12)

"When I got a certificate from the Fafas College on completion of my schooling and I came to know about incorrect mentioning of my date of birth, I have not till date taken any steps for rectification of the said mistake." (ETC)

2495. On page 35, PW 7 stated:

''1949 के दिसम्बर के हादसे के वक्त मैं नाबालिग था।'' *(पेज 35)*

"I was a minor at the time of December, 1949 incident." *(ETC)*

2496. About his date of birth, on page 44 he says:

''मैंने जब से होश संभाला तभी से अपनी पढ़ाई शुरू कर दी थी। हम घर में तो पढ़ते ही थे फिर मदरसे में भी जाने लग गये। मेरे वालिद साहब एक सरकारी प्राईमरी स्कूल के टीचर थे उनको इस बात का इल्म था कि बच्चों को दाखिल करते वक्त किस किसी चीज की सूचना देनी जरूरी होती है। मेरा दाखिला आठवें दर्जे से पहले की पढ़ाई के लिए स्कूल में मेरे वालिद साहब ने ही खुद करवाया था। यह भी जरूरी है कि मेरी तारीख पैदाईश मेरे वालिद साहब ने खुद लिखवाई थी। यह जाहिर है कि जो तारीख पैदाईश उन्होंने लिखवाई थी वह सही होगी।'' (पेज 44)

"I started my learning since the time I had come to understand things. I did study at home and then began to

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go to school as well. My father was a teacher at a government primary school. He had the knowledge about which particular information is necessary to be given at the time of admission of children. My father had himself got me admitted to school for my pre-class VIII schooling. It is also natural for my father to have got my date of birth recorded on his own. It is explicit that the date of birth which he had got recorded must be true."(E.T.C.)

2497. On page 51, about his education he said:

''1962 से मैं शहर फैजाबाद में रहता आ रहा हूँ। . . . . जब मैं फार्ब्स इन्टर कालेज में पढ़ता था तब हर रोज अयोध्या से आता जाता था। मैं यहॉ पर जुलाई 1948 से मार्च 1951 तक पढ़ा था। हमारा स्कूल सुबह 10 बजे तक चलता था लेकिन शुक्रवार को सुबह 8 बजे से दोपहर 12 बजे तक चलता था। . . . . .कलकत्ता मैं 1946 से 48 तक डेढ साल तक रहा। वहॉ पर मेरे मामू थे मैं उनके यहॉ रहा था। मैं डेढ साल तक सुतहटी के मिडिल स्कूल में पढ़ा था। उसके पहले मैं चार साल तक मदरसे में पढ़ा था।" (पेज 51)

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"I have been visiting the city of Faizabad since 1962. When I was a student of Forbes Inter College, I took to and fro trip to Ayodhya everyday. I studied here from July 1948 to March 1951. Our school used to run up to 10'O clock in the morning; but on Fridays it used to run from 8'O clock in the morning to 12:00 noon. . . . . I was in Kolkata for 1½ years between 1946 and 1948. my maternal uncle was there; I stayed at his place. I studied for 1½ years at the Suthati Middle School. Before that I had studied at Madarasa for four years." (E.T.C.)

2498. On page 60-61, 64 and 74, PW 7 said:

*''इस मस्जिद में बुत रखे जाने वाला हादसे से **2 दिन पहले मैंने आखिरी बार नमाज पढ़ी थी।** उस वक्त तक मैं वहां पर मुतवातिर नमाज पढ़ता आ रहा था यह कहना गलत होगा कि मैंने वहां पर मुतवातिर*

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नमाज बुत रखे जाने के हादसे से एक हफ्ता पहले तक पढ़ी थी। मैंने अपना 5 दिसम्बर, 96 वाला यह बयान सुन लिया है जिसमें लिखा गया है ''जब बुत रखा गया उसके एक हफ्ता पहले तक मैं वहां मुतवातिर नमाज पढ़ता था। यह बुत 22 /23 दिसम्बर, 1949 की दरमियानी रात को रखा गया था। यह मेरा बयान सही है लेकिन ***यह भी सही है कि इस हादसा से 2 दिन पहले मैंने इस मस्जिद में अखिरी बार नमाज पढ़ी थी।*** *यह बात मैंने ऊपर लिखे गये बयान से पहले कही थी।*

जिस वक्त मैंने पहली बार बाबरी मस्जिद में 1943 में नमाज पढ़ी तब मेरी उम्र तकरीबन 11–12 साल थी और मैं होश सम्भाल चुका था। यह कहना गलत है कि मैं अपनी उम्र को जानबूझ कर बढ़ा चढ़ाकर बता रहा हूँ या इस बाबत सच्चाई को तोड़ता मोड़ता हूं। . . .जब कजियाना वाले मदरसे में मैं दाखिल हुआ तो मेरी उम्र तकरीबन 9–10 साल रही होगी। . ..हाजी महबूब मुझसे उम्र में तकरीबन 8 साल छोटे हैं।'' (पेज 60–61)

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*''**I had for the last time offered namaz two days before** the incident of idol being placed in this mosque. I had been consistently offering namaz there at that time. It would be wrong to say that I had continued to offer namaz only up to a week ahead of the incident of idol being placed. I have heard the December 5, 1996 statement of mine which says 'I consistently offered namaz up to one week preceding the time when idol was placed. This idol was placed on the intervening night of 22/23rd December, 1949'. This statement of mine is correct but **it is also correct that I had for the last time offered namaz at this mosque two days prior to this incident.** I had stated this thing earlier to the statement mentioned above.*

When I, for the first time, offered namaz at the Babri mosque in 1943, I was aged 11-12 years and had begun to understand things. It is wrong to say that I am deliberately

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over-stating my age or that I have distorted the truth in this regard. . . . When I was admitted to Kaziana-situated Madarsa, my age would have been nearly 9-10 years. . . Hazi Mahboob is nearly 8 years younger to me."(E.T.C.)

"इस बयान में गलत लिखा गया है कि मुझे वहां पढ़ाई करने का सार्टीफिकेट मिला था। दरअसल मुझे कभी कोई सार्टीफिकेट नहीं मिला। यह कहना गलत है कि इस बाबत मैं कोई झूठ बोलता हूं।" (पेज 64)

"It is incorrectly written in this statement that I had been given a certificate for having studied there. As a matter of fact, I never got any certificate. It is wrong to say that I tell a lie in this respect."(E.T.C.)

"अयोध्या में हमारे मकान के अगल बगल मस्जिदें हैं 1949 से पहले भी मैं वहॉ नमाज पढ़ने जाता रहा हूँ। क्योंकि बाबरी मस्जिद जामा मस्जिद थी इसलिए मैं यहॉ भी नमाज पढ़ने जाता था यहॉ पर मैं जुम्मे की नमाज पढ़ता था और तराबी भी। जुम्मे की नमाज हर मस्जिद में नहीं पढ़ी जाती। कुछ खास खास मस्जिदों में ही पढ़ी जाती है।" (पेज 74)

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"There are mosques in the vicinity of our house at Ayodhya. I had been to that place to offer namaz even earlier to 1949. Since the Babri mosque was Jama Masjid, I used to go to this place too in order to offer namaz. I used to offer Jumma namaz as also Taravi namaz here. Jumma namaz is not offered at every mosque. It is offered only in some particular mosques."(E.T.C.)

2499. On page 77 and 81 again he (PW-7) said:

"22 दिसम्बर, 1949 को मैंने इस मस्जिद में नमाज नहीं पढ़ी थी। 21 दिसम्बर 1949 को भी मैंने वहां नमाज नहीं पढ़ी थी। *मैंने यह बयान ठीक किया है कि जब वहां बुत रखा गया तो उसके एक हफ्ता पहले तक मैं वहॉ पर मुतवातिर नमाज पढ़ता रहा था। मैं वहां पर पांचो नमाज तो नहीं पढ़ता था लेकिन असर की नमाज जरूर पढता था।" (पेज 77)*

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*"**I did not offer namaz at this mosque on 22nd December, 1949. I did not offer namaz there on 21st December, 1949 too.** I have correctly deposed that I had continued to offer namaz there up to a week prior to the time when idol was placed there. I certainly did not offer namaz for five times but certainly offered 'Asr' namaz."(E.T.C.)*

''मैंने मदरसा 1944 में छोड़ा था। सुतहटी का मिडिल स्कूल 1945 में छोड दिया था। फौर्ब्स इण्टर कालेज में मैंने दाखिला 1948 में लिया था। मैं वहॉ पढ़ने के लिए हर रोज अयोध्या से जाया करता था। पढ़ाई के वक्त मौसम और दिनों के साथ बदलते रहते थे। मैं साईकिल पर सवार होकर पढ़ने जाया करता था। जब मैं कालेज में जाता था तो नमाज फैजाबाद में ही पढ़ लिया करता था। शाम की नमाज घर के पास वाली मस्जिद में पढ़ता था। . .1949 तक जब मैं फैजाबाद में रहता था तो जुम्मे की नमाज फैजाबाद में पढ़ लेता था और अयोध्या में होता था तो बाबरी मस्जिद में पढ़ता था।

बाबरी मस्जिद में वजू के लिए हौज भी बना हुआ था। वह 4–5 फुट ऊॅचा था और तकरीबन 5 फिट लम्बा भी रहा होगा। हमारे सामने वह हौद इस्तेमाल में नहीं था पानी मटकों में भरा जाता था।'' (पेज 81)

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"I left the Madarsa in 1944. I left the Suthati Middle School in 1945. I was admitted at Forbes Inter College in 1948. I used to go to study there every day from Ayodhya. At the time of my education, season would change with the progress of days. I used to go to school by cycle. When I would go to college, I would offer namaz in Faizabad itself. I would offer the evening prayer at the mosque situated near our house. . . .. Till 1949, whenever I was in Faizabad I would offer Jumma namaz in Faizabad, and whenever I was at Ayodhya, I would offer namaz at the Babri mosque.

A tank was also built at the Babri mosque to supply water for 'vaju'. It was 4-5 feet high and would have been nearly 5 feet in length. That tank was not in use within my sight; water used to be filled in 'Matkas' (water

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pots).''(E.T.C.)

2500. About his age, on page 78 the witness (PW-7) says:

''मेरी सही पैदाइश 1932 की है न कि 1934 की। मेरी शादी 1955 में हुई थी। मैंने 1951 में हाईस्कूल पास किया था। 1943 में जब मैं इस मस्जिद में नमाज पढ़ने जाता था तो अपने वालिद साहब की उंगली पकड़कर नहीं जाता था। . . मैंने 9 साल की उम्र में मदरसा शुरू किया था।'' (पेज 78)

''The correct year of my birth is 1932, not 1934. I was married in 1955. I passed my high school in 1951. In 1943, whenever I went to offer namaz at this mosque I did not go holding the fingers of my father. . . . I started my schooling at Madarsa at the age of nine years.'' (E.T.C.)

2501. On page 85, PW 7 stated:

''नक्शा नजरी पेपर नं0 2/16क . . . .मैंने नक्शा नजरी देख लिया है, इसमें कुछ लाइने लगी हुई हैं। यह ठीक है कि इसमें पश्चिम की तरफ भी कब्रिस्तान दिखलाया गया है। लेकिन मौके के मुताबिक ऐसा नहीं था और इस तरह से यह नक्शा इस दह तक गलत है। . . . . . इस नक्शा–नजरी के हिसाब से कुछ मालूम नहीं पड़ता कि मस्जिद किस खास जगह पर कायम थी। जायदाद मुतदाविया तमाम मस्जिद की ही थी। . . . . यह उपर बताया गया चबूतरा मस्जिद में शामिल नहीं था। इस चबूतरे पर दूसरे लोग यानी हिन्दू लोग बुत रखने से पहले भजन–कीर्तन बगैरह किया करते थे। . . यह कहना गलत है कि बुत रखने वाली तारीख से 15 दिन पहले ही उस तरफ मैंने आना–जाना बन्द कर दिया हो। बुत रखने के एक महीना पहले ही वहॉ पर भजन कीर्तन शुरू हो गया था। यह भजन कीर्तन बैरागी लोग कर रहे थे। लेकिन ऐसा नहीं है कि वहॉ पर नेताओं के जोशीले भाषण मुसलमानों के खिलाफ होते रहे हों। यह बैरागी लोग संख्या में तीस–चालीस के करीब होंगे। जब हम लोग नमाज पढ़ने जाते थे, तो यह बैरागी लोग दंगा–फसाद या झगड़ा नहीं करते थे। यह लोग शंख–घड़ियाल या घण्टा नहीं बजाते थे। जब हम असर की नमाज पढ़ने जाते थे तो 8, 10 या 15 तक की तादाद में हुआ करते थे, जुम्मे की नमाज के वक्त यह तादाद काफी ज्यादा हो जाती थी।'' (पेज 85)

''Site plan (paper no. 2/16 Ka). . . . I have seen the

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site plan with some lines drawn therein. It is true that a graveyard is shown towards the west as well but it was not so at the site and in this way this site plan is incorrect. . . . . From this site plan nothing is known about a particular place where the mosque stood. The disputed property belonged mostly to the mosque. . . . . This Chabutra, mentioned above, did not form part of the mosque. Other people, that is, Hindus, before laying idol, used to perform 'Bhajan-Kirtan', etc. on this Chabutra. . . . . It is wrong to say that I had stopped visiting that site15 days before the day of laying idol. 'Bhajan-Kirtan' had started there a month before the laying of idols. 'Bairagis' (recluses) were performing 'Bhajan-Kirtan'. But it is not that leaders were delivering provocative speeches against Muslims there. These recluses would be nearly 30-40 in number. Whenever we would go to offer namaz, these recluses would not engage in riot, affray or quarrel. These people would not blow conchs, or ring gongs or bells. When we would go to offer 'Asr' namaz, we used to be 8, 10 or 15 in number. This number would rise considerably at the times of Jumma namaz."(E.T.C.)

2502. **PW 8 Abdul Ajij**, resident of Shahjahanpur, District Faizabad claims to have offered Namaz in the disputed building for hundreds of time starting at the age of ten years. He has stated his year of birth as 1926. His shop of making shoes is in Angooribagh, which he opens in the morning at 8, 9 or 10 and he returns therefrom in the evening as is evident from page 4:

''मेरा कारखाना टाट शाह मस्जिद के पास नही था। यह अंगूरी बाग में वाका था। यह कारखाना कंघी गली में नही था। हमारा कारखाना एक दुकान थी जिसमें हम जूता बनाते थे। हमारी दुकान बाजार के साथ सुबह

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आठ बजे, नौ बजे, दस बजे खुलती थी। हम अपने कारखाने से शाम को घर लौटते थे।'' (पेज 4)

"My workshop was not near Tat Shah Mosque. It was situated in Angooribagh. This workshop was not in Kanghi Gali. My workshop was a shop, in which I used to make shoes. My shop used to open along with the market at 8, 9, 10 AM. I used to return home from my workshop in the evening." (ETC)

2503. Chowk Faizabad is at the distance of a mile from his residence while Ayodhya, Sinharhat is about three miles. On page 19 he said:

''मैंने न कहीं लिखा है न मुकम्मल याददाश्त है कि वहां जुम्मे की कुल कितनी नमाज पढ़ी हैं लेकिन 10–12 तो पढ़ी ही होंगी। ये नमाज 1949 के बाद की भी हैं। कुछ पहले की हैं।'' (पेज 19)

"Neither have I written it anywhere nor do I properly remember as to total how many namaz of Jumma were offered by me over there, but must have offered 10-12. These namaz include the post 1949 as well. Few are of earlier period." (E.T.C)

2504. On page 25, he (PW-8) said:

''शाहजहॉपुर की मस्जिद के बाद मैंने नमाज अपने मदरसे की यानी यतीमखाने की मस्जिद में पढ़ी है। यतीमखाना मदरसे की मस्जिद में मैं अपनी निजी तौर पर आराम से नमाज पढ़ लेता था। मुझे यह याद नहीं कि उसके कितने दिनों बाद मैं शाहजहॉपुर के बाहर की यानी फैजाबाद और अयोध्या की मस्जिदों में नमाज पढ़ने जाने लगा था।'' (पेज 25)

"After the mosque of Shahjahanpur, I have offered namaz at the mosque of my 'Madarsa' (school) i.e. the mosque of 'Yatimkhana' (orphanage). I used to privately offer namaz, as per my convenience, at the mosque of 'Yatimkhana Madarsa' (orphanage school). I do not remember as to

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after which period thereafter had I started going to offer namaz outside Shahjahanpur i.e. at the mosques of Faizabad and Ayodhya." (E.T.C)

2505. He further said:

''झगड़े वाली जायदाद को मै जानता हूँ। मैं वहां का रहने वाला तो नही हूं लेकिन फिर भी चौहद्दी के बाबत कुछ बता सकता हूँ। गालबन इसके पूरब में गंजे शहीदा था। उत्तर की तरफ एक सड़क थी और उसके उपर जन्मस्थान वाका था। दक्खिन की तरफ कब्रिस्तान था। पश्चिम की तरफ मैदान था। झगड़ेवाली जायदाद तमाम की तमाम छत से ढकी हुई थी। मुझे ख्याल नही कि 1942 में ''भारत छोड़ो'' नाम का कोई आन्दोलन चला हो। मुझे ख्याल नही कि उन दिनों में सारी दुनिया में कोई जंग चल रही हो या 1945 में जापान पर कोई एटम बम गिराया गया हो। मैं सबसे पहली बार इस मस्जिद में नमाज पढ़ने आजादी से पहले गया था। मै यह नही बता सकता कि आजादी मिलने के कितने महीने या वर्ष पहले पहली मर्तबा इस मस्जिद में नमाज पढ़ने गया था। बहुत मुद्दत हो चुकी है इसलिए मैं नही बता सकता कि मैंने सबसे पहली बार इस मस्जिद में कौन सी नमाज पढ़ी थी। मैने उस मौके के नमाजियों की तादाद नही गिनी और मेरा बताया गया अंदाजा गलत भी हो सकता है। इसलिए मैं नही कह सकता कि उस मौके पर कितने नमाजी थे। मुझे इतना याद जरूर है कि मै अकेला नही था कुछ लोग और भी थे। उनमें हमारे गाव के लोग भी थें उनमें मो0 युसुफ साहब, सरदार अली भी शामिल थे। फैजाबाद शहर के लोगो की बाबत मैने ख्याल नही कियां। मुश्ताक नाम का चिकवा फैजाबाद का वहॉ पर था और इखलाक साहब भी थे। उस वक्त मो0 हाशिम नही थे वैसे वो वहॉ जाते रहते थे। हाजी महबूब वहॉ पर थे। अब्दुल आहद भी वहॉ पर मौजूद थे।'' (पेज 25.–26)

"I know the disputed property. Although I am not a resident of that place, instead I can give some information regarding the boundary. Probably in its east, was Ganje-Shahida. There was road towards north and the Janamsthan was situated above it. There was a graveyard towards south. There was a ground towards west. The

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entire disputed property was covered by roof. I do not recollect whether any 'Quit India' movement was launched in 1942. I do not recollect whether in that period some war had broken out in the whole world or that in 1945 some atom bomb had been dropped over Japan. I had gone to offer namaz in this mosque for the first time before independence. I cannot give as to how many months or year before independence, had I gone to this mosque to offer namaz for the first time. Much time has passed, as such I cannot tell as to which namaz was first offered by me in this mosque. I did not count the number of Namazists at that place at that time and the estimate given by me can also be wrong. As such, I cannot tell as to how many Namazists were there at that site. I do remember that I was not alone and few other persons were also there. They included people of my village as well. Mohd. Yusuf, Sardar Ali were also included in them. I did not care about the people of Faizabad city. Mushtaq, a Chikwa of Faizabad and Ikhlaq were also present there. At that time, Mohd. Hashim was not present there. However, he used to visit that place. Hazi Mehboob was present there. Abdul Ahad was also present over there." (E.T.C)

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2506. On one hand he stated to have offered Namaz in the disputed building for hundreds of time but simultaneously repeatedly he has said of not being conversant with Ayodhya:

"मैंने अयोध्या को इतना नहीं देखा कि मैं इस सवाल का जवाब दे सकूँ कि इखलाक साहब के मकान में उनकी अपनी मस्जिद है या नहीं।" (पेज 27)

"I am not so much conversant with Ayodhya that I can answer whether Ekhlak has his own mosque in his

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house, or not*. (ETC)*

*''**मैं अयोध्या का रहने वाला नहीं बल्कि फैजाबाद का रहने वाला हूँ।**'' (पेज 41)*

*"**I am a resident of Faizabad and not Ayodhya**." (E.T.C)*

''मैं अयोध्या में ज्यादा घूमा हुआ नहीं हूँ।'' (पेज 59)

"I have not traveled much in Ayodhya." (ETC)

''अयोध्या के बारे में ज्यादा नहीं कुछ जानकारी है।'' (पेज 71)

"I do not have much knowledge about Ayodhya." (E.T.C)

2507. For verification of his age on page 16, he said that he was issued a certificate in 1942 wherein his date of birth is mentioned and he possesses the said certificate and has also brought it but then he said that the same he has left at the residence. However, he did not deny that in the last voter-list his age might have been mentioned as 60 years. On page 37, he claims to have offered Namaz in the disputed building on the last Friday before 22nd December 1949. He reached there at 12.00 and the Friday Namaz started at 1.00 PM. Razzak Saheb, Hashim Saheb and Hazi Ahad Saheb were present thereat and till the time of Namaz, the total attendance became 400-450. There were 8 or 10 pitchers containing water for Vazoo. On page 61, he says that the Country became independent in 1947 and before then he had been offering Namaz at the disputed building for about 13 to 14 years. For the first time, Namaz was offered in the disputed building when he was 11 or 12 years of age. Having given his year of birth as 1926, this statement does not appear to be correct being self contradictory.

2508. **PW-9 Syeed Akhlak Ahmad** S/o Syed Haji Abdul Sattar has also deposed to have offered Namaz in the disputed building prior to 1949. He claims that he used to offer Friday prayer (Jumma Namaz) but sometimes he offered all five

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prayers in the day. He did not offer Namaz after 22/23 December, 1949 since idol was placed thereafter and the mosque was closed for Namaz. The relevant part of the examination-in-chief to this effect are:

> *''1949 से पहले जुम्मे की नमाज में बाबरी मस्जिद में पढ़ता था। कभी–कभी मुस्तकिल तौर से मैंने पांच वक्त की नमाज भी बाबरी मस्जिद में पढ़ी है। .....22–23 दिसम्बर 1949 के बाद मैंने वहॉ पर नमाज नहीं पढ़ी है। क्योंकि वहॉ पर बुत रख दिया गया था और मस्जिद नमाज के लिए बंद कर दी गयी थी।''*
>
> *"Prior to 1949, I used to offer Jumma's Namaz in the Babri mosque. Occasionally, I have offered five times Namaz in Babri mosque on regular basis. ..... I did not offer Namaz at that place after 22-23 December, 1949, because idols had been installed there and the mosque had been closed for Namaz." (E.T.C.)*

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2509. His year of birth comes to 1937 as he disclosed his age 60 years in February, 1997 when his deposition commenced.

2510. PW-9 has gone to the extent of stating that the Namaz was offered in the disputed premises even after the alleged incident of 22/23 December, 1949 and on page 8 he said:

> *''यह याद है कि 1949 के 22/23 दिसम्बर वाले हादसे के बाद भी वहॉ पर लोगों ने नमाज पढ़ा है। लेकिन मुझे अब ध्यान नहीं कि उस वक्त मेरी उम्र क्या थी।'' (पेज 8)*
>
> *"(I) remember that even after the incident of 22/23 December, 1949, people had offered namaz over there, but I do not remember at present as to what was my age at that time." (E.T.C)*

2511. Though, he specifically remember about the date

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and the time of his Namaz 50 years back but his memory is so disturbed that he is not able to tell the age of his father at the time of his death, the age of his sister or how much younger she is or when his father actually died, as is also evident from page 11 and 12:

> *''**मेरे वालिद फौत हो चुके हैं। मैं उनकी फौतिगी की तारीख बतला सकता हूँ, लेकिन यह नहीं बता पाऊँगा कि उस वक्त उनकी क्या उम्र थी।**'' (पेज 11)*
>
> ***"My father has expired. I can give the date of his death, but I will not be able to tell as to what was his age at that time."** (E.T.C)*
>
> *''मैं शादीशुदा हूँ। मेरी शादी तकरीबन 35 साल पहले हुई थी। . . . . मेरी अपनी शादी के वक्त मेरी उम्र अन्दाजन 22 से 24 साल के बीच में रही होगी। मेरी शादी के लगभग चार या पॉच साल के बाद मेरे वालिद साहब का इन्तकाल हो गया था। **मेरे लिए यह बता पाना भी मुश्किल है कि मेरी वह बहन जिसकी शादी का जिक्र हुआ है, मुझसे कितनी छोटी है।** जिस वक्त मेरे वालिद साहब का इन्तकाल हुआ, तो मैं कोई काम नहीं करता था। मैं उस वक्त बालिग हो चुका था, मेरी उम्र 27 या 28 साल के करीब थी।'' 'पेज 11–12)*
>
> *"I am married. My marriage was solemnized about 35 years ago.. . . . . At time of my marriage, my age must have been around 22-24 years. My father had expired about 4-5 years after my marriage. **It will also be difficult for me to tell as to how much younger my sister is to me,** reference of whose marriage has been made. When my father died, I was jobless. At that time I had become major and my age was nearly 27 or 28 years." (E.T.C)*

2512. He has a mosque in his own premises, which, according to him, is 200 years old but could not explain as to why instead of offering Namaz in his own premises, he went elsewhere for offering Namaz and that too a daily Namaz on

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22nd December, 1949 particularly when the disputed building was about one and half furlong from his residence. His admission about a mosque in his own premises and distance from his residence is on page 16 and 19:

''जो हमारी मस्जिद इस अहाते में है वह लखैरी ईटों से बनी है, उसे आलमगिरी कहते हैं और मेरे अंदाजे से यह ढाई सौ वर्ष पुरानी है। इस मस्जिद का कोई मुतवल्ली नहीं है। इस मस्जिद को कहीं से कोई ग्रान्ट नहीं मिलती।'' (पेज 16)

"My mosque within this campus, is made of 'Lakhairi' bricks. It is called Alamgiri and in my opinion, it is about 250 years old. This mosque has no Mutwalli. This mosque does not receive grant from anywhere." (E.T.C)

''मेरे मकान से विवादित जायदाद का फासला तकरीबन डेढ़ फर्लांग होगा।'' (पेज 19)

''The disputed property would be nearly one – a half furlongs away from my house.'' (E.T.C)

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2513. On page 35, he said that for the first time he offered Namaz in the disputed building probably during summer time and it was *Magrib* Namaz. Then on page 37 he said that when he went for the first time for offering Namaz in the disputed building, he was about 13 or 14 year old and when he offered the last Friday Namaz in this building, he was 14 years of age whereafter he could not offer Namaz therein since it was closed. No namaz was allowed to be offered on 23rd December, 1949.

''यह बताना गैर–मुमकिन है कि मैंने सबसे पहली बार मुतदाविया इमारत मे जब नमाज पढ़ी तब हिज्री कैलेण्डर का कौन सा महीना था क्योंकि इस बात को एक मुद्दत हो चुकी है। मेरे ख्याल से मौसम बताना भी मुश्किल है लेकिन मेरा अंदाजा है कि मौसम गर्मी का रहा होगा। . . . . . आजादी मिलने के बाद तो मुझे इस मस्जिद में जाकर नमाज–पढ़ने की बात याद है उससे पहले भी गए होंगे लेकिन अच्छी तरही से याद नहीं

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है। जहां तक मुझे याद है आजादी के बाद जो पहली नमाज मैंने इस मस्जिद में पढ़ी थी वह मगरिब की थी। लेकिन उसका मौसम बताना अब मुमकिन नहीं है।'' (पेज 35)

''It is difficult to tell which month of the Hizri calendar was going on when I went to offer namaz at the disputed structure for the first time, because a long time has passed since then. In my opinion, it is also difficult to tell the season but I guess that it would have been summer season. . . . . I do remember having gone to this mosque to offer namaz after attaining independence but I might have gone even earlier but I do not properly remember in this respect. As far as I remember, the first namaz that I offered at this mosque after independence, was Magrib namaz. But now it is not possible to tell its season.'' (E.T.C)

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''जब मैं इस मस्जिद में पहली बार मगरिब की नमाज पढ़ने गया तो मेरी उम्र गालबन 13–14 साल की थी। जब यह आखिरी जुम्मे की नमाज मैंने इस मस्जिद में पढ़ी तो मेरी उम्र तकरीबन 14 साल थी। उस रोज की नमाज के बाद मैं इस मस्जिद में नमाज नहीं पढ़ सका क्योंकि उसे बन्द कर दिया गया था। . . . . .23 दिसम्बर को वहां पर नमाज नहीं पढ़ने दी गयी।'' (पेज 37)

''When I went to offer Magrib namaz at this mosuqe for the first time, I was perhaps aged 13-14 years. When I offered Jumma namaz at this mosque for the last time I was nearly 14 year old. After the namaz of that day, I could not offer namaz at this mosque because it was closed. . . . . Namaz was not allowed to be offered there on 23rd December.'' (E.T.C)

2514. The above statement would be interesting to see in the light of the fact that he has disclosed his age as 60 years in

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February, 1997 in accordance whereto his year of birth comes to 1937 and if he offered first Namaz in the disputed building at the age of 13 even then it comes to 1950 though he admits that after 23rd December, 1949 Namaz was not allowed to be offered in the disputed building. This exercise shows the incorrectness and unreliability of his statement about the last date of offering Namaz as 22nd December, 1949. About his year of birth, he himself has stated on page 43 and he tried to make some improvement about his year of birth on page 48:

''लेकिन मैंने अपने बालदैन से सुना है कि मै सन् 1937 के आसपास पैदा हुआ था।'' (पेज 43)

"But I have heard from my mothers that I was born in or around 1937." (E.T.C)

''मैं अपनी शादी के वक्त अपनी एक्जेक्ट उम्र नहीं बता सकता क्योंकि मुझे अपनी पैदाइश का ऐक्जेक्ट तारीख सन् महीना इल्म नहीं है। मेरी पैदाइश सन् 1937 के आस पास की है जैसा कि मैं पहले कह चुका हूँ।''(पेज 48)

"I cannot tell my exact age at the time of my marriage because I do not know the exact date, month and year of my birth. I was born in or around 1937 as I have already stated." (E.T.C)

2515. Then we find that he also admits to have gone to Gonda for education at the age of 8/9 where he stayed for three years i.e. upto the age of 11/12.

''मैं जिस वक्त गोण्डा तालीम हासिल करने गया तो मेरी उम्र तकरीबन 8–9 वर्ष की थी। मैंने वहॉ पर हिफ्ज की तालीम तीन साल के लिए ली थी। . . . . . मैं तकरीबन 11–12 साल की उम्र में गोण्डा से अपनी तालीम पूरी करके वापस आ गया था।'' (पेज 49)

"When I went to Gonda to have schooling I was nearly 8-9 year old. I had acquired schooling in 'Hifz'

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there for three years. . . . . I came back from Gonda after completing my education at the age of about 11-12 years." (E.T.C)

2516. Taking his year of birth as 1937, we find it extremely difficult to accept that when he was at Gonda, how occasion came to offer Namaz in the disputed building at all particularly when he claims that he offered Namaz in the disputed building after independence 1947:

''इन लोगों के साथ ज्यादातर मैंने जुम्मे की नमाज पढ़ी है और यह 1947 के बाद पढ़ी गयी है।'' (पेज 50)

"I have mostly offered Jumma namaz with these persons and I have done so after 1947." (E.T.C)

2517. On page 36 he said that he went in the disputed building about five or six days earlier to 22/23 December, 1949 for offering Namaz which was a Friday Namaz which again is a contradiction:

''मेरा अंदाजा है कि 22–23 दिसम्बर 1949 के हादसे से 5–6 रोज पहले मैं इस मस्जिद में नमाज पढ़ने गया था। वह जुम्मे की नमाज थी।'' (पेज 36–37)

"I guess to have gone to offer namaz at this mosque five-six days before the 22nd/23rd December, 1949 incident. That was a 'Jumma namaz' (congregational prayer of Friday)." (E.T.C)

2518. **PW-14 Jalil Ahmad** son of Mohd. Yakub also deposed about offering Namaz in the disputed building prior to 1949 i.e. before the placement of idol therein. He however confined his claim of offering Namaz on Fridays only and said:

''मैंने आखिरी बार इस मस्जिद में नमाज इसमें बुत रखने के ***पहले जुम्मा पर पढ़ी थी।*** *मैंने उस मस्जिद में ईषा व जुमा दोनों की नमाजें पढ़ी हैं।''*

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"My last Namaz in this mosque was the Jumma preceding the installation of idol therein. I have offered both Isha & Jumma Namaz in this mosque." (E.T.C.)

2519. **PW-21 Dr. M. Hashim Qidwai** S/o Abdul Mazid Qidwai had the occasion of visiting Fyzabad between July 1939 to October 1941 when his father was posted thereat. He was a student at Lucknow and used to visit Fyzabad in holidays during the period of posting of his father. For the first time he claimed to have visited Fyzabad in December, 1939. Regarding offering of Namaz, he said:

"दिसम्बर सन् 39 में मैं अपने परिवार के सदस्यों के साथ बाबरी मस्जिद देखने गया और वहीं पर मगरिब की नमाज पढ़ी उसके बाद मैं बराबर मई सन् 41 तक हर छुट्टी में फैजाबाद जाता रहा। इस दौरान मैंने 15–20 बार मगरीब की नमाज़ और चार–पांच बार असिर की नमाज और दो तीन जुमे की नमाज बाबरी मस्जिद में पढ़ी।"

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"In December, 1939 I had gone to see the Babri mosque along with my family members and had offered the Magrib Namaz there. Thereafter, in every holiday I regularly visited Faizabad till the year 1941. In this period I offered the Magrib Namaz for 15-20 times, the Asir Namaz for 4-5 times and 2-3 Jumma Namaz, in the Babri mosque." (E.T.C.)

2520. On page 16 however he said:

"मैने पहली बार अलीगढ़ में अक्टूबर 1948 में नमाज अदा किया।"

"I offered Namaz first time in October 1948 at Aligarh."

(E.T.C.)

2521. The witness had mentioned the factum about offering Namaz since 1942 to 1948 almost six years with such specification but when he was confronted that where was a mosque near the residence of his father at Fyzabad and details

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were asked he said :

"फैज़ाबाद कैण्ट में जहां हमारे पिता जी रहते थे उससे थोड़ी दूर पर एक मस्जिद है। मुझे इस समय उस मस्जिद का नाम याद नहीं है। चूँकि यह बात 60 वर्ष पुरानी है।" (पेज–31)

"In Faizabad cantt, there is a mosque just ahead of the place where my father lived. At this moment, I do not recollect the name of that mosque in as much as this matter is 60 years old." (E.T.C.)

"मैं नमाज पढ़ने कार से जाता था। उस मस्जिद में मेरे ख्याल में 10–15 दफे जुमे की नमाज पढ़ी थी।" (पेज–31)

"I used to go to offer Namaz by car. As far as I remember, I offered Namaz of Jumma(Friday prayers) 10 to 15 times in that mosque." (E.T.C.)

"इस समय मुझे मस्जिद का एरिया याद नहीं है अर्थात यह मस्जिद कितनी लम्बी व चौड़ी है।" (पेज –32)

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"At this time, I do not recollect the area of the mosque, that is, its length and breadth." (E.T.C.)

2522. He was in B.A. in Lucknow University during 1939-41, however, he added further and on page 38-39 said:

"जब मै अपने ससुर के साथ विवादित स्थल पर गया तो नमाज भी हम लोगो ने पढी थी। हमारे ससुर हमारे साथ बाबरी मस्जिद मगरिब की नमाज पढने 2–3 बार गये थे। हमारे ससुर हमारे साथ पहली बार सन् 1940 की पहली या दूसरी जनवरी को गये थे।" (पेज –38)

"When I went to disputed site, along with my father-in-law, we offered Namaz there. My father-in-law, along with me, had gone to Babari mosque twice or thrice to offer Namaz of Magrib(prayer offer just after sunset). For the first time, on 1st or 2nd January, 1940 my father-in-law, along with me, went there." (E.T.C.)

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"हम लोग जब पहली बार अयोध्या देखने गये थे और जब मगरिब का वक्त हो गया तो नमाज पढ लिया खास मकसद अयोध्या देखना और मस्जिद को देखना दोनो ही था। ***अयोध्या देखने का एक मंशा यह भी था कि रामचन्द्र जी कहां पैदा हुए और दूसरा बाबरी मस्जिद को देखना था।"*** *(पेज 38–39)*

"It was the time of Magrib(prayers offered just after sunset) When we arrived at Ayodhya first time, we offered Namaz, our main purpose was to see Ayodhya and mosque both. ***The motive behind visiting Ayodhya was to see the birth place of Ramchandra Ji as well as Babari mosque****." (E.T.C.)*

2523. On page 41, he gave the exact date on which he visited the disputed building for the first time which reads:

"अपने वालिद के फैजाबाद वाले मकान से तकरीबन पौन घन्टा लगा था। ***पहली दफा जब मै बाबरी मस्जिद विवादित ढॉचा में गया था तो 27 दिसम्बर 1939 का दिन था।"*** *(पेज –41)*

"It took nearly forty five minutes in reaching there from my father's house at Faizabad. ***It was 27th December, 1939, when I visited first time the disputed Babari mosque****." (E.T.C.)*

2524. On page 47 he says that on the first and second visit on the disputed building he saw everything inside and outside which reads:

"मै जब विवादित भवन में पहली और दूसरी बार गया तो वहां सब चीजें मस्जिद के अंदर और बाहर देखा था। मस्जिद के अंदर गुम्बद थे खम्बे थे और दालान या हाल था मेरे ख्याल में 10–12 खम्बे रहे होगे।। स्वयं कहा कि मस्जिद के अंदर मेम्बर, मेहराब बना था। खम्बे मेरे ख्याल में पत्थर के थे। सीमेंट और चूने के नही थे। खंबे कई अर्थात मुखतलिफ रंग के थे। मुझे इस वक्त तफसील याद नही है पर कई रंग के थे। एक आध पत्थर लाल भी थे और एक आध काले भी रंग के थे। इन पत्थरों पर कुछ

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नक्काशी थी। उन खंबो पर किसी जानदार का चित्र नहीं बल्कि नक्काशी थी। यह नक्काशी मुखतलिफ किस्म की कुछ फूल पत्ती अरायशी और कुछ तसवीर बनी थी।" (पेज–47)

"When I went to the disputed building at first and second time, I saw all the things inside and outside the mosque. Inside the mosque there were a dome, pillars, and a dalan or hall. As far as I remember, there would be 10-12 pillars. Stated that an arch & a member were built in the mosque. As far as I remember, there were pillars of stone. They were not made of cement and lime. The pillars were of different colours. At this moment, I do not recollect in detail about their colours, but they were of various colours. One or two stones were of red colour and other one or two of black colour. There were some engravings on these stones. There was no painting of any living things but only engraving on these pillars. Some flowers, leaves , Arayashi and paintings of different colours were used in this engraving." (E.T.C.)

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2525. Then on page 54 he says:

"अजखुद कहा कि उस समय इतने सारे खम्बे वहॉ मौजूद नही थे।" (पेज –54)

"On his own stated that at that time pillars were not present there in such a large numbers." (E.T.C.)

2526. He gave further particulars of his first time visit the disputed building on 27th December, 1939 on page 61-62:

"जब मै पहली बार विवादित भवन में अपनी फैमिली के साथ गया था तो मैने मगरिब की नमाज वहां अदा की थी। मै पहली बार 27 दिसम्बर सन 1939 में गया था। हमारे साथ हमारे फैमिली के मेम्बर्स ने भी नमाज अदा की थी सिवाय मेरी कजिन सिस्टर के। जब हम पहली बार विवादित स्थल पर गये थे तो मेरी गाड़ी उस विवादित भवन के पूरब सडक पर खड़ी थी फिर कहा कि पूरब के गेट की ओर खड़ी थी। फिर कहा कि पूरब की

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सड़क पर खड़ी थी।" (पेज 61–62)

"When I, along with my family, went to the disputed building at first time, I offered Namaz there just after sunset (Namaz of Magrib). I went there first time on December 27, 1939. Also, the other members of my family except my cousin sister offered Namaz, along with me. When I went to the disputed site at first time, my vehicle was parked on the eastern road of the disputed building. Then stated that the vehicle was parked at the eastern gate. Then stated that it was parked on the eastern road." (E.T.C.)

2527. His residence at Fyzabad Cantt. was about 5-6 miles from the disputed building. Subsequently at page 68 said:

"पर मेरी याददाश्त ने मेरा साथ नही दिया।" (पेज –68)

*"**But my memory failed me**." (E.T.C.)*

2528. He also made corrections in his earlier statement about the topography of the building and on page 73 said:

***"मैने बाद में जब अपने बयान को पढ़ा तो मुझे ख्याल आया कि यह सही नहीं है और वास्तव में वहॉ जंगलेनुमा दीवार से पार्टीशन था।** चूँकि 12 दिसम्बर के बाद आज ही मुझे मौका मिला इसलिए इस गल्ती को दुरूस्त करने के लिए पहले नहीं कहा।"*

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(पेज –73)

*"**Later on when I read my statement, I realized that it was not correct and in fact there was a partition by window shaped wall.** Since I got opportunity just today after December 12, I could not say earlier to rectify this mistake." (E.T.C.)*

2529. According to him he did not visit Fyzabad or Ayodhya after May, 1941.

"मई 41 के बाद मेरा फैजाबाद और अयोध्या जाना नहीं हुआ।" (पेज –80)

*"**After May 41, I had no occasion to visit Faizabad and Ayodhya**." (E.T.C.)*

2530. **PW-23 Mohd. Kasim Ansari** also said to have offered Namaz in the building for about 8-9 years before its attachment in 1949 and last Namaz on 22nd December, 1949. He says:

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"आखरी मर्तबा वहां मैंने सन् 1949, 22 दिसम्बर को नमाज पढ़ी थी।"

"I last offered Namaz over there on 22 December, 1949." (E.T.C.)

2531. PW-23 is real brother of Mohd. Hashim i.e. PW-1. This he has stated and admitted on page 3 of the statement. Some part of his cross-examination may be noticed herein below to consider the reliability of his statement:

*"यह ठीक है कि 22 दिसम्बर 49 के कब्ल से विवादित स्थल से कुछ दूरी पर नेतागण आदि आते थे, मजमा लगता था जिसमें भाषण आदि भी होता था। . . . . . **उस रोज़ मैंने ईशा की नमाज सवा सात बजे पढ़ी थी।** . . . . . मैं नमाज पढ़ने उस मस्जिद में अपने घर से गया था और फिर वापस घर लौट आया था। मैं उस समय मस्जिद में लगभग आधा घंटा तक रहा था।" (पेज 4–5)*

"It is true that prior to 22nd December, 1949, leaders etc. used to visit upto a short distance of the disputed site,

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and gathering used to take place in which speech etc. were also given. . . . . ***On that day, I had offered the Isha namaz at 7.15 PM****. . . . . I had gone from my house to that mosque to offer namaz and had returned thereafter. I remained in the mosque for about half an hour." (E.T.C)*

"जब मैं पहली मर्तबा विवादित ढाँचे में नमाज पढ़ने गया तो मेरी उम्र 12 वर्ष थी।" (पेज 43)

"When I, for the first time, went to offer namaz at the disputed structure, I was aged 12 years." (E.T.C.)

"विवादित मसजिद में 22 दिसम्बर, 1949 को इशा की नमाज शाम के करीब 7.30 बजे अदा की थी। . . . . . इशा की नमाज में मेरे साथ कितने और कौन लोग शामिल थे, इसकी अब गिनती याद नहीं है, न ही मैंने गिना था। नमाजियों की गिनती न करने की कोई खास वजह नहीं थी, बल्कि ***मन में दहशत होने की वजह से नमाज पढ़कर जल्दी घर लौट आया।*** *" (पेज 50–51)*

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"I offered 'Isha' namaz at the disputed site on 22nd December, 1949 at around 7:30 PM. . . . . As regards how many and which persons participated with me in the 'Isha' namaz, I now do not remember their number nor did I count them. There was no particular reason for not counting the strength of namazists; as a matter of fact, ***I hurried back home after offering namaz, due to fear in mind****." (E.T.C.)*

"जब मैं आखिरी इशा की नमाज़ विवादित इमारत में पढ़ने गया था ***तब फारुक मेरे साथ थे।*** *. . . . . 22 दिसम्बर 1949 को अदा की गई इशा की नमाज़ में* ***मेरे साथ हशमत उल्लाह भी शरीक थे।*** *" (पेज 51–52)*

"Farooq was with me when I had gone to offer Isha namaz at the disputed structure for the last time. . . . . . I was also ***accompanied by Hashmat Ullah*** *at the 'Isha'*

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namaz offered ***on 22nd December, 1949.*** *" (E.T.C.)*

Note: This statement is not corroborated by these two persons Farooq (PW-3) and Hashmat Ullah (PW-7).

2532. PW-3 on page 23 said:

"*22 दिसम्बर, 1949 की ईशा की नमाज़ में रहमान साहब और यूनुस साहब मेरे साथ थे।'' (पेज 23)*"

"Rahman Saheb and Unus Saheb were with me at the Isha namaz on 22nd December, 1949." (E.T.C.)

PW-3 therefore, did not corroborate the statement of PW-23.

2533. **PW-7 Hashmat Ullah** on page 60 said :

''हम मस्जिद मे बुत रखे जाने वाला हादसा से 2 दिन पहले मैने आखरी बार नमाज पढ़ी।''

"I had for the last time offered namaz at the mosque two days before the incident in which the idol was placed there." (E.T.C.)

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Then on page 77, P.W.-7 categorically said:

''22 दिसम्बर,1949 को मैने इस मस्जिद मे नमाज नहीं पढ़ी थी।''

"I did not offer namaz at this mosque on 22nd December, 1949." (E.T.C.)

He (PW-7) at page 77 also denied offering of Namaz on 21.12.1949.

''21 दिस0 1949 को भी मैने वहां नमाज नहीं पढ़ी थी।''

"I did not offer namaz there on 22nd December, 1949 as well." (E.T.C.)

2534. PW-23 further said:

''मैं अब यह नहीं बता पाऊॅगा कि सन 49 में कुर्की होने के पहले मैं किस आखिरी जुमे में विवादित स्थल पर नमाज पढ़ने लगा। यह ठीक है कि कुर्की के पहले मैंने जुमे की नमाज पढ़ी थी लेकिन वह कौन सी तारीख थी और वह कौन सा जुमा था यह भी नहीं बता पाऊॅगा पर इतना जरूर याद है कि जिस महीने में कुर्की हुई थी उसमें एक या दो बार पहले

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मैंने वहां जुमे की नमाज पढ़ी थी।'' (पेज 56–57)

"Now I am not in a position to tell on which Friday, prior to the 1949 attachment, I had started offering namaz at the disputed site. It is true that I had offered Friday namaz before the attachment but I am not in a position to tell what the date was and which Friday it was. However, I certainly remember that I had earlier offered Friday namaz there once or twice in the month the attachment had taken place."(E.T.C.)

''सबसे पहली बार विवादित ढॉचे में मैंने कौन सी नमाज और किस समय पढ़ी थी यह नहीं बता पाऊॅगा। शुरू में बचपन में मैं वहॉ खेलने भी जाया करता था पर जब बड़ा हो गया तो नमाज पढ़ने जाने लगा। . . . . . .जुमे की नमाज़ मैंने विवादित भवन के अंदर वाले भाग में पढ़ी थी। . . . . . .जुमे के अलावा जब मैं जमायत से वहां नमाज पढ़ने जाता था तो वहां दो चार छह से ज्यादा लोग होते थे मैंने कोई गिनती नहीं गिनी अंदाजन 10–15–20 रहते थे और कभी कभी उससे ज्यादा भी हो जाते थे। अर्थात पचास हो जाते थे।'' (पेज 58–62)

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"I am not is a position to tell as to which namaz I offered at the disputed structure first of all and at what time. In the beginning, in my childhood, I used to go to play there but when I grew up I started going there to offer namaz. . . . . I had offered the Friday namaz in the inner part of the disputed structure. Besides on Fridays, whenever I lined up to offer namaz there used to be more than two or four or six people. I did not count their number. I guess their number to have been 10-15-20 and sometimes their number grew even greater, that is, up to fifty." (E.T.C.)

''विवादित ढॉचे में मैंने तरावी की नमाज भी पढ़ी है। मैं यह नहीं बता पाऊॅगा कि मैंने कै साल की उम्र में तरावी की नमाज पढ़ी थी। तरावी की नमाज रमजान शरीफ के महीने में पढ़ी जाती है। हमने जो नमाज

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तरावी की पढ़ी थी उनमें कुरान पन्द्रह दिन में खत्म की गयी थी हाफिज़ नमाज़ पढ़ा रहे थे पर कौन पढ़ा रहे थे उनका नाम क्या था मैं यह भी नहीं बता पाऊॅगा। . . . . .उस समय अयोध्या में कोई हाफ़िज थे ही नहीं।''

(पेज 63–67)

"I have also offered Taravi namaz at the disputed structure. I am not in a position to tell at what age I offered Taravi namaz. Taravi namaz is offered in the holy month of Ramzan. In the Taravi namaz which I had read, we were through the Quran in 15 days. Hafiz was teaching namaz but I am also not in a position to tell the name of the person who was teaching it. . . . . There was no Hafiz at all in Ayodhya at that time."(E.T.C.)

2535. **PW-25 Sibtey Mohd. Nadvi** himself has not claimed to have offered Namaz in the disputed building but says that he had been visiting Ayodhya in 1948 and thereafter and had seen people going to Babri Maszid for offering Namaz. His statement reads as under:

*''1948 से ही मैंने नमाज़ियों को नमाज़ पढ़ने के लिए बाबरी मस्जिद जाते देखा है। **नमाज़ पढ़ते नहीं देखा।.....मैंने ऐसा सुना है** कि सन् 1948 के पहले भी बाबरी मस्जिद में नमाज हुआ करती थी।''*

*"Since 1948 I have seen Namazists going to Babri mosque to offer Namaz. **I had not seen them offer Namaz. ....I have heard** that Namaz was offered in Babri mosque even before year 1948." (E.T.C.)*

2536. The statement of PW-25 about offering of Namaz in the disputed building prior to 1948 is purely hearsay hence inadmissible. He is not personally aware of the same. His visit to Ayodhya was in election canvessing during which he roamed various localities at Ayodhya for about 4-6 days

''इस चुनाव प्रचार के सिलसिले में मैं चार छः दिन अयोध्या घूमा था। . . . . .मैं चुनाव प्रचार के दौरान फैजाबाद में ठहरा करता था।'' (पेज

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13–14)

"I had travelled in Ayodhya for four – six days in connection with the said election campaign. .. . . During the election campaign, I used to stay at Faizabad."

(E.T.C.)

2537. However, he did not visit any mosque during the said period.

"1948 में चुनाव के दौरान जाने से पहले मुझे इस बात की जानकारी थी कि विवादित ढॉचे के अलावा भी अयोध्या में दसियों मस्जिद हैं। मैं दसियों मस्जिदों में से किसी में नहीं गया।" (पेज 14–15)

"Before proceeding for election of 1948, I knew that apart from the disputed structure there were tens of mosques in Ayodhya. I did not visit any of the tens of mosques." (E.T.C.)

2538. He claims to have visited Ayodhya once or twice after the election campaign of 1948 but did not offer Namaz in any mosque.

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*"चुनाव प्रचार के बाद 1948 में एक दो बार फिर अयोध्या गया था। **मैंने अयोध्या में कभी भी किसी मसिजद में नमाज अदा नहीं की।**" (पेज 15)*

*"After the election campaign, I again visited Ayodhya on couple of occasions in 1948. **I never offered Namaz in any mosque in Ayodhya**." (E.T.C.)*

2539. He, however, says that during election campaign Makbool Ahmad and Mukhtar Ahmad Kidwai went to offer Namaz and PW-25 stayed back in the vehicle. On page 16, however, he says:

*"**मैंने विवादित मस्जिद में मुख्य दरवाजे के अन्दर घुसते किसी को नहीं देखा।**" (पेज 16)*

*"**I did not see anybody entering the disputed mosque through the main gate.**" (E.T .C.)*

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2540. Though he is well educated but did not give date of birth mentioned in his certificates and said that his real date of birth is 22nd September, 1926:

''मुझे याद नहीं है कि प्रमाण पत्रों में मेरी जन्मतिथि क्या है। परन्तु मेरी असली जन्मतिथि 22 सितम्बर 1926 है।'' (पेज 49)

*"**I do not remember what is my date of birth in the certificates. But my actual date of birth is 22nd September, 1926.**" (E.T.C.)*

2541. When asked as to whether he was present when Makbool Ahmad and Mukhtar Ahmad Kidwai went to offer Namaz, on page 50-51 he said:

''इतना निश्चित कि जहॉ मैं खड़ा व बैठा था वह स्थान विवादित भवन के पिछवाड़े था।'' (पेज 50–51)

"It is definite that the place where I stood and sat, was on the back side of the disputed building." (E.T.C.)

2542. This itself shows that with respect to Namaz in the disputed building, the witness has no personal knowledge and everything is hearsay. Hence, on this aspect, his evidence is inadmissible.

2543. On behalf of plaintiff (Suit-3) i.e. defendant No.3 (Suit-4) number of witnesses have been produced to assert in general that they never saw any Muslim visiting the disputed place or offering Namaz therein. DW 2/1-2 Ram Saran Srivastava, who was posted as a District Magistrate, Fyzabad in July, 1987 and remained there for about three and a half years, in para 23 of his affidavit said that according to his studies and information, Namaz had not been offered in the disputed premises inside the disputed building since after 1934 and the same has not been used by Muslim community collectively or individually to offer Namaz. DW 2/1-2 appears to have born sometimes in 1937, his age being 68 years as per his affidavit

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dated 20th January, 2005, the statement in the affidavit obviously is based on personal knowledge of the witnesses, therefore, hearsay for this purpose and to this extent is inadmissible in evidence. However, since he had an occasion to remain in an official capacity at Faizabad and, therefore, could have an opportunity to go through the official records also. Extracts of his statement which throw some light on the position as to how and in what manner, Namaz, if any, was offered in the disputed building or not, we may refer from pages 158 and 175:

DW-2/1-2, Sri Ram Saran Srivastava

*''**यह रिपोर्ट 23.12.49 की है।** इस रिपोर्ट में विवादित भवन से संबंधित दिनांक – 22.12.49 व 23.12.1949 की स्थिति का उल्लेख है। **इस रिपोर्ट के पृष्ठ 2 की पांचवी तथा नवीं पंक्ति में यह लिखा हुआ है कि ताला जुमे के रोज़ महज़ दो–तीन घण्टे के लिए खोला जाता है और इसी दौरान मस्जिद की सफ़ाई वगैरह और जुमे की नमाज़ होती है।** अगले पृष्ठ पर यह लिखा हुआ है कि आज भी जुमा है तथा मुसलमान लोग जुमे की नमाज़ पढ़ने के लिए फैजाबाद से जरूर आवेंगे। न मालूम क्या हश्र हो। इसमें ''आज'' दिनांक 23.12.49 के लिए कहा गया है।'' (पेज 158)*

*''**This report is of 23.12.1949**. This report makes mention of the position of the disputed building as on 22.12.1949 and 23.12.1949. **In the fifth and ninth lines on page 2 of this report it is written that the lock is opened only for two to three hours on the day of 'Zuma' and during this period cleaning etc. of the mosque is done and the Zuma Namaj (congregational prayer of Friday) is performed.** It is written on the next page that it is also Friday today and Muslims will certainly come from Faizabad to offer congregational prayer of Friday. It cannot be said what will happen. Its 'today' stands for 23.12.1949.'' (E.T.C)*

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''यह सही है कि उपरोक्त पत्र व्यवहार डिप्टी कमिश्पर फैजाबाद द्वारा किए गए हैं।

उपरोक्त संलग्नक–ए के पृष्ठ –3 की तीसरी तथा चौथी पंक्तियों में यह लिखा हुआ है कि मस्जिद शुक्रवार की नमाज़ को एक घण्टे को छोड़कर शेष अवधि में ''विरान'' डेजर्टेड रहती है।'' *(पेज 175)*

"It is true that the afore said correspondence has been done by Deputy Commissioner Faizabad.

In third and fourth lines on page 3 of the afore-said Annexure-A, it is written that the mosque wears a deserted look, except for one hour during which congregational prayer of Friday is offered." *(E.T.C)*

2544. To the same effect is the statement of DW 2/1-3 as per para 17 of his affidavit, though he was not even born in 1934, his year of birth being 1944 (he gave his age as 51 years in affidavit dated 16th February, 2005).

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2545. DW 3/1 to DW 3/20 in general have denied user of disputed building as mosque by Muslims and offering of Namaz in the disputed building but their statement is confined to the fact that they did not see any Muslim visiting the disputed place or offering Namaz. The statements in this regard are extremely vague and throw no light on the specific question as to whether Friday prayer on 16th December, 1949 or 5 times prayer on 22nd December, 1949 were offered by any Muslims in the disputed premises or not.

2546. For the purpose of issues in hand regarding limitation under Article 142 L.A. 1908, the question is whether last prayer in the disputed building was offered on 16th December, 1949 or 22nd December, 1949. In our view, none of these witnesses could have thrown any light on this aspect. The other witnesses produced are basically such who either have

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deposed about the belief and faith of birth of lord Rama at the disputed place, and/or the existence of temple, and that they and other had been visiting the disputed site and building for worship believing that it was the place of birth of lord Rama. Some of the witnesses are in the category of Expert Historian, Archeologist etc.

2547. Most of the witness have sought to give statement in respect to the events took place more than four and a half decades ago and even more than that. Most of them have also ultimately admitted of their weak memory. On one hand they were very precise to give the date, period and day when they visited the premises in dispute for offering namaz such long back but at the end of the day most of them admitted of their weak memory. Their statements are so contradictory also that erode the degree of trustworthiness thereof. In **State of Bihar Vs. Sri Radha Krishna (supra)** the Apex Court said;

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> *"208. Indeed, as a mortal man is not infalliable so is human memory. It records facts and events seen with some amount of precision and accuracy, but with the lapse or distance of time, unless the facts or events are noted or recorded in writing, the facts or events fade, sequences get lost, consistency gives way to inconsistency, realities yield to imagination, coherence slowly disappears, memory starts becoming blurred, confusion becomes worse confounded, rememberance is substituted by forgetfulness resulting in an erosion of facts recorded by the memory earlier. This equally applies to facts merely heard by one from some other person. Thus, if a person having only heard certain facts or events repeats them after a long time with mathematical precision or adroit accuracy, it is*

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unnatural and unbelievable and smacks of concoction and fabrication being against normal human conduct, unless he repeats some special or strikingly unusual incident of life which one can never forget or where a person is reminded of some conspicuous fact on the happening of a particular contingency which lights up the past such as marriage, death, divorce, accident disappointment, failure, wars, famine, earthquake, pestilence, (personally affecting the subject and the like) etc., and revives the memory in respect of the aforesaid incidents. Of course, if the person happens to be an inimitable genius or an intellectual giant possessing a very sharp and shocking memory, the matter may be different. But, such persons are not born every day. To say, in this case, that all the witness one after the other, were geniuses is to tell the impossible. Weakness and uncertainty of human memory is the rule. The witnesses of the plaintiffs examined in this case are normal human beings suffering from the usual defects and drawbacks of a common man."

"209. Describing the vagaries of human memory, Ugo Betti so aptly and correctly observes:

"Memories are like stones, time and distance erode them like acid."

(p. 395, The International Theasaurus of Quotations: Rhoda Thomas Tripp)"

210. . . . . :

"How strange are the tricks of memory, which, often hazy as a dream about the most important events of a man's life, religiously preserve the merest trifles."

"211. Similarly, Baltasar Gracian in 'The Art of Worldly

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Wisdom' very aptly puts the frailties of human memory thus:

"The things we remember best are those better forgotten."

"219. .....there is a tendency on the part of the villagers to support a case of this kind by overstating their age so as to introduce an element of personal knowledge in order to prove old genealogies. On the other hand, the Pleader-Commissioner, who recorded the evidence being a lawyer and an educated person, would be in a much better position to estimate the correct age of the witness. However, nothing much turns on this discrepancy and we shall presume that in view of the very old age of the witness, his evidence merits serious consideration. There is no doubt that this witness was closely connected with the family of Bhagwati Prasad Singh, father of the Plaintiff Radha Kirshan Singh as he has admitted to. have scribed many documents on behalf of the family of Bhagwati Prasad Singh. Mukherji, J. also found that the witness was intimately connected with the family of Bhagwati Prasad Singh as this witness and his ancestors have scribed numerous documents for different members of the family and on this ground the learned Judge thought that he would be a more competent witness to depose about the genealogy than any other witness. Assuming what Mukherji, J. says is correct, the fact remains that being intimately connected with the family of the plaintiffs the witness cannot be said to be an independent one and he was deeply interested in the success of their case. Therefore, while this may not be a sole ground for rejecting

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his testimony his evidence has to be taken with great care and caution particularly when he is not deposing as an eye-witness but as a witness to the genealogy which he may have heard from his ancestors."

"226. Indeed, of this is the primordial and rudimentary reflex of his memory, then it is strongest possible circumstance to discredit his testimony and it leads to an irresistible inference that the story of repeated narration of the plaintiffs' genealogy is nothing but a pure figment of his imagination concocted to help and oblige his relation, friend, philosopher and guide (Bhagwati Prasad Singh). . . . . How can it be believed that if he could not even remembe r the names of his own near relations, he would remember the names in genealogies running into 12 degrees. . . . . we entirely agree with the conclusion of the dissenting Judge that it is impossible to place any reliance on the evidence of this witness."

"233. . . . . This important circumstance shows that his memory is very weak, in which case it is well-high impossible to believe that he would remember the genealogy narrated to him by his grand uncle though he could not give the names of the persons in whose presence the genealogy was narrated to him. He does not appear to have made any note of the genealogy on any paper when his grand uncle repeated the same, nor has he mentioned any particular occasion on which the genealogy was narrated to him . . . . Moreover, human memory, faint and vulnerable as it is not likely to reflect facts of 40-50 years back unless there is something in the shape of a particular document, mode, occasion or something to remind him."

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"234. ....his evidence is inadmissible under Section 35 of the Evidence Act on a point of law, viz., being hit by the doctrine of post litem motam. . . . . He relates the facts of the battle of Marui which took place as far back as 1719."

"239. . . . . It is not understandable how he could remember the genealogy narrated to him long before if he could not remember the facts which were directly within his personal knowledge, viz., either the year of his marriage or of the death of his mother. Another person from whom the witness is said to have acquired knowledge of the genealogy is, according to him, Vashist Singh. He admits that he does not remember the time, year or even the occasion for hearing the genealogy from Vashist Singh nor does he remember how many other persons were present when Vashist Singh narrated the genealogy."

"243. Having regard, therefore, to the glaring inconsistencies arid discrepancies in his statement, the shortcomings of his memory which has been demonstratively shown by his subsequent statements as referred to above, it seems that his evidence regarding the narration of the genealogy by various persons is nothing but a cock and bull story."

"244. . . . His evidence also, therefore, us a rule of prudence has to be examined with great care and caution because he is interested in making statements which may go to support his case."

"247. . . . he has been asked to depose parrot like just to support his case. .. . . and gives a most feeble and unconvincing explanation that the omission was due to the fact that Ramruch Singh had gone away to Baraini."

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"248. . . . .In this view of the matter, his statement is most unnatural and improbable and even if believed it does not prove the vital missing links."

2548. The stand taken by the Government authorities in their written statement filed in Suit-1 is that due to law and order situation the inner courtyard premises used to remain under lock and opened only for 2-3 hours on Fridays enabling Muslims to offer prayer thereat. No witness, however, has been produced on behalf of the State authorities.

2549. The evidence produced by the plaintiffs (Suit-4) is not creditworthy so as to believe what they have said. There is a report of Waqf Inspector of 10th December 1949 (**Exhibit A-63 (Suit-1) (Register 8, page 523-527)** wherein he has said:

نقل رپورٹ مسٹر محمد ابراھیم صاحب وقف الیکز مورخہ ۱۰ ۴۹ء
مابنہ مسجد بابری مشمولہ مثل 26 پوسی بابری فیض آباد
مسجد بابری اجودھیا

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سکرٹری صاحب- مسجد بابری اجودھیا کے متولیان پہلے یکے بعد دیگر میر اصغر صاحب- محمد رضی صاحب محمد ذکی صاحب- کلب حسین صاحب نق متولی کا انتقال ہو گیا ہے لہذا دوسرے سوال پیدا ہوا- مبلغ ستو ان مسجد مذکورہ لے وقف ہے مسجد مذکور کا متولی ہمیشہ مبلغ سوقان کا نمبردار ہوگا- چلایا ہے کہ جو نمبردار ہوتاہے وہی مسجد مذکور کا متولی بھی ہوتا ہے- مبلغ میں دریافت سے اور تحقیات سے معلوم ہوا کہ مبلغ سوان کے موجودہ نمبردار جناب جواد حسین صاحب میں اور یہی وصول تحصیل کرتے ہیں اور مسجد مذکور کا انتظام بھی کرتے ہیں- سید انجر حسین صاحب بکھیا مبلغ سوان نے بیان دیا کہ موجودہ نمبردار جناب جواد حسین صاحب ہیں اور یہی وصول تحصیل کرتے ہیں اور مسجد مذکور کے متولی بھی ہیں- جناب جواد حسین صاحب کا بیان قلمبند کیاانہونے اقرار کیا کہ میں نمبردار ہوں اور متولی ہوں اور انہونے اپنابیان دیا کہ محنت سے تو بہت کا کام انجام دونگا اور مسجد کا ایک پیسہ بھی غبن نہ کردنگا اور باقاعدہ حساب کتاب رکھونگا اور وقف

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بورڑ کے پر حکم کی تعمیل بھی کرونگا۔ اسی حالت میں مناسب سے معلوم ہوتا ہے کہ جناب جواد حسین صاحب کا نام بطور متولی طے کر لیا جاوے۔ شہر فیض آباد میں سے معلوم ہوا کہ ہندوں اور سیکھوں کے خوف سے کوی شخص عشای کیوقت نماز مسجد مذکور میں نہیں پڑھتا ہے اور رات کو اگر کوء مسافر مسجد میں رہ جاتا ہے تو ارسکو ہندونمربہت تنگ کرتے ہیں۔ مسج تمن بابری ہندوں کا ایک سند ہے جہاں بہت سے نیڑا دار ہتے ہیں اور جو مسجد میں مسلمان جاتا ہے اسے ہزار بھلا کہتے ہیں موقعہ پر گیا اور تحقیقات سے معلوم ہوا کہ مندرجہ بالا باتیں صحیح ہیں۔ لوگوں نے یہاں تک کیا کہ مسجد کو پیڑوں سے کافی خطرہ ہے کہ اسکی دیوار وغیرہ کمزور کریں مناسب یہ معلوم ہوتا ہے کہ ایک تحریر ڈپٹی کمسنر فیض آباد باس روانہ کر دیا جاوے کہ مسلمانوں کو جو مسجد میں نماز پڑھنے جاتے ہیں ان کو تنگ نہ کریں اور مسجد مذکور ایک شاہی عمارت ہے اسکے کا کافی حتال کیا جاوے۔

دستخط مسٹر محمد ابراہیم اسکر نت وسط اسگری ۱۰-۱۲-۴۹

"Copy of the report Mr. Mohammad Ibrahim Saheb waqf... (sic)..... dated 10-12-1949 with regard to Babri Masjid included in the file 26 U.C. Babri, Faizabad. Masjid Babri Ayodhya. To the secretary. The previous Mutawalli of Masjid Babri, respectively Mir Asghar Saheb, Mohammad Razi Saheb, Mohd Zaki Saheb and Kalbe Husain Naqvi ... (sic)..... have expired therefore there arises the question of the successor Mutawalli Rs. ... (sic)..... for the aforesaid Masjid which is a waqf. It is an old tradition that the Mutawalli of the Waqf Masjid will be ... (sic)..... the Numberdar of Mauza Sahanwa. As such the same tradition is still alive and the Numberdar of Sahanwa becomes the Mutawalli of the Masjid. From inquiries in the Mauza it was revealed that the present Numberdar of Sahanwa ... (sic)..... is Mr. Jawad Husain and he does Tahsil Wasool and Manages the affairs of the Masjid. Syed Anjar Husain

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Saheb Bakhiya Mauza Narhwan stated that the present Numberdar Jawad Husain who does all the work of Tehsil wasool and is the Mutawalli of the said Masjid. The statement of Jawad Husain was recorded where in he stated that he was the Numberdar and also the Mutawalli. He further stated that he would work sincerely and honestly. I will not even touch imbezzle a single paisa of the Masjid and shall keep proper accounts. I will follow every instruction of the waqf Board. Under these conditions it seem proper that the name of Mr. Jawad Husain may be proposed and accepted as Mutawalli. On investigation in faizabad city it was revealed that because of the fear of Hindus and Sikhs ***no one goes into the Masjid to pray Namaz Isha*** *If by chance any passenger stay in the Masjid he is being threatened and teased by the Hindus ... (sic)..... There are number of Numberdars ... (sic)..... if any Muslim into the Masjid, he is harassed and abused. I made on the spot enquires which reveal that the said allegations are correct. Local people stated that the Masjid is in great danger because of Hindus ... (sic)..... Before they try to damage the wall of the Masjid, it seems proper the Deputy Commissioner Faizabad may be accordingly informed , so that no Muslim, going into the Masjid may be teased. The Masjid is a Shahi monument and it should be preserved . Sd/- Mr. Mohd. Ibrahim... (sic)....."*

2550. There is another report dated 23.12.1949 also (**Exhibit A-64 (Suit-1) (Register 8, page 529-535)** which says:

نقل رپورٹ مسٹر ابراہم صاحب ابولبکر مورخہ ۴۹ ء مشمولہ وقف ۲۶
وقف مسجد بابری ضیلع فیض آباد

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موجودیت مسجد بابری اجودھیا

سکریٹری صاحب- میں ۲۲ دسمبر ۴۹ء کو اجودھیا بعض تحقیات موجودیت مسجد بابری و قبرستان تحقیقات کرتا ہے جس سے مندرجہ ذیل حالات اور واقعات معلوم ہوے- عرصہ تین ماہ کا ہوتا ہے کہ بابری جنم استھان پر رام ین کا پاٹ ہوناچاہیے- اس بات کی شہرت تمام اطراف وجوات میں ہوگی- بابا راگھوداس کے چلے جانے پر اور ایک ماہ کے بعد راماین کے پاٹ کیلیے ہزاروں ہندو اور پوجاری اور پنڈت جمع ہوے- ہفتوں پاٹ رہا- اس درمیان میں سیراگیوں نے مسجد کے باہر سامنے اور دکھن والے قبرستان کا زیادہ تر حصہ ہودکر برابر کر دیا- اور جھنڈی لگا دیا اور چند قبروں کی جگہ پر پتھر رکھ دیا ہے- راماین کے پاٹ کیوقت بھی پولیس کا نتظام تھا مگر تب بھی قبروں کو کھود دیا گیا- پولیس نے چار ادمیوں کو پکڑا جو بعد کو ضمانت پر رہا ہوگے- خواجہ شہی رحمتہ الہہ علہ کا مزار جو ٹیلہ پر اس قبرستان کے قریب ہی ہے اس مزار کو کھود کر برابر کر دیے- اور وہاں ایک سیراگی جھنڈا لگا کر جنم ہو گیا ہے مسجد کے دروازہ صحن پر جو پختہ قبر ہے اسکو برابر کر سیراگی پتھر رکھکر بیٹھے ہیں- مسجد کے کنواں پاس ایک سیراگی چھپر ڈالکر بیٹھا ہے- پاٹ سے پیشتر کی اسپر مسجد کا گھڑا اورلوٹا توڑا گیا- موذن کو مارا- اسکے بعد مسجد کبہ کی کھودنیکی کوشش کی پھر دو پردیسی مسلمانوں کو مارا اور وہ کافی زخمی ہوے- اب مسجد کے باہر دو ضمیہ ہے ایک میں پو ۳لہس کے سیلانی اور ایک میں بٹالین پولیس کے سیلانی اور ایک میں بٹالیں کے سپاہی رہتے ہیں اور دونوں کی ملکر تعداد ۸،۹ہے- اب مسجد میں برابر تالا بند رہتا ہے یعنی بجز بروز جمعہ کے کسی وقت نماز اور اذان نہیں ہوی- مسجد کے تالا کی کنجی مسلمانوں کے پاس رہتی ہے- پولیس تالا نہیں کھولنے دیتی- تالا جمعہ کے روز محض ۳-۴ گھنٹہ کے لے کھولا جاتا ہے اور اسی دوران میں مسجد کی ضروتی وغیرہ اور جمعہ کی نماز ہوتی ہے پھر تالابدستور بند کر دیا جاتاتھا- جمعہ کی نماز ہوتے وقت بیراگی بہت شور کرتے ہیں اور سیڑھی سے جب نمازی نیچے جاتے ہیں تو متصل مکانات سے نمازیوں پر جوتا اور ڈھیلا اتا ہے- مسلمانان خوف کیوجہ سے کچھ نہیں بولتے- راکھوداس کے بعد مسٹر لوہیا بھی اجودھیا اتے تھے اور

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لیکچر وغیرہ دیا اور کہا کہ قبروں کی جگہ پر پھول وغیرہ کے درختان لگادو- پھر حال میں لکھنؤ سے کوی مسٹرصاحب آے تھے ان سے بیراگی نے کہا کہ مسجد جنم بھوم ہے دلا دو انہیں نے زیادتی کرنے کو منع کیا اسپر بیراگی ان پر خفا ہوے اور وہ پولیس کی حفاظت میں فیض آباد واپس چلے گے- اسی دوران میں اجودھیا کے کنک بہون کے مقدر میں فتنہ بڑا استہان سبھی رگ ہویر مرے- ومانتی جی- دیونراین درسی- اچاری جی اشرنی بہون کے ان لوگوں نے مسلمانوں کو بلانا چاہا- پھر بخبر ظہور احمد کے کوءی نہیں گیا- ہندوں نے ظہور سے کہا کہ مسلمانوں سے مسجد ہمکو دلا دو اور تو بھای بھای ورنہ دشمن - میں رات کو اجودھیا ٹہرگیا- صبح کو معلوم ہوا کہ بیراکی مسجد پر زبردستی قبضہ کر رہے ہیں- اج جمعہ بھی ہے- میں موقعہ پر گیا تو کیا دیکھتا ہوں کہ دس پندرہ بیراگی ڈنڈی اور بھوڑ وغیرہ لیکر مسجدکے صحن میں موجود ہیں بہت سے بیراگی مسجد کے دروازہ پر ڈنڈا وغیرہ لیکربیٹھے ہیں- اور اطراف و جو اپنے اندر جمع ہوے ہیں- سٹی مجسٹریٹ کوتوال شہر اور پولیس وغیرہ کا کافی انتظام ہے مسلمان جمعہ کی نماز -----ادا کر --ضرور اسکے نہ معلوم کیا حشر ہو- میں اب دریا پار کر کے لکڑی منڈی گونڈہ کہتے ہیں-

"Copy of the report of Ibrahim Saheb Abul Bakra dated 23-12-1949 included in the waqf file no. 26 waqf Babri Masjid district Faizabad. The present condition of Babri Majid. To the secretary, on December 22, 1949 I visited Ayodhya to inquire into certain affairs of the Masjid Babri and Qabristan. It revealed the following facts: About 3 months back ...(sic).... a word was around that there should be organized path of Ramayan in the ***Babri Janam Sthan*** *After Baba Raghudas went back, for about a month back big number of Hindus, Pujaris and Pandits collected. The path continued for weeks. During this period the Bairagis damaged and levelled the land before the Masjid and Qabristan in south ward, they pitched a Jhandi over*

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there and placed stones on certain graves. Sufficient police force was posted at the time of Ramayan Path, even the certain graves were demolished. The police arrested four persons who were later bailed out The Mazar of Khwaja Shabhi which is situated near the Qabristan, has been demolished and a Bairagi has erected Bairagi Jhanda. On the door of the lawn of the Majid there was a pucca grave which has been levelled and the Bairagis are sitting there placing stones. Near the well of the Masjid a Bairagi is living under a thatched roof. Before the path was held, the earthen pot and lota of the masjid was broken. The Moazzin was beaten up. They tried to dig the wall of the Masjid Two Muslim pilgrims were beaten up and as such they received serious injuries. Now there are two tents outside the Masjid. One of them is occupied by ...(sic).... police constable. In one of the other tents, constables of Batallion are living. They would be 8 to 9 in number. ***Now the door of the Masjid remains locked. That is to say that except for Fridays. There held no Namaz or Azaan. The keys of the Masjid are with the Muslims, but the police does not allow to open the lock, which is opened only on Friday for 3-4 hours. During this period dusting of the place is done and then Namaz is held. After this is over, the Masjid is again locked. During Friday prayer the Bairagis make hue and cry.*** *When the Namazis pass through the stairs, shoes and rubbish is thrown on them from the adjourning houses. The Muslims are so scared that they do not protest. After Raghu Das Mr. Lohia also visited Ayodhya and delivered a lecture in which he urged the people to grow flower trees in place of graves. After*

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that some officer from lucknow visited this place. The Bairagis told him that the Masjid was the Janam Sthan which should be handed over to them. He warned them against any violence. On this, Bairagis became angry with him, so he returned back to Faizabad with police escorte. Meanwhile Kanak Bhawan Ayodhya ...(sic).... Mahant ... (sic).... Raghubir, Vedanti ...(sic).... Deo Narain Darsi, Acharyaji Ashrmi ...(sic).... Bhawan invited Muslims for a talk. But no Muslim except for Zahoor Ahmad, turned up. The Hindus told him that the Masjid should be handed over to them. Then they will be treated as brothers otherwise enemies. I did not go to Ayodhya in the night. In the morning I came to know that Bairagis are trying to take possession of the Masjid forcefully. Today is Friday I visited the place to see that 10-15 Bairagis armed with ... (sic).... and phaora ...(sic).... were collected in the lawn of the Masjid. Many of the Bairagis were collected outside the door of the Masjid. ...(sic).... City Magistrate Kotwal city and police force are posted there. What will happen to the Muslims who would come here for Friday prayers. Now I am proceeding to Lakar Mandi, Gonda....(sic)...."

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2551. This also shows that regular prayers could not have been held in the property in dispute. The overall situation, evidence etc. however, show that on some days, atleast weekly prayer on Friday held in the premises in dispute, and, at least, so far as 16th December, 1949 is concerned, it appears that on that date, Friday prayer was actually held in the inner courtyard but not thereafter.

2552. DW 2/1-2 Ram Saran Srivastava has stated on the basis of the official record that the premises of inner courtyard

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kept in lock and allowed to be opened only on Friday for Jumma namaz for about 2-3 hours during which period cleaning and namaz used to be accomplished. This is also fortified from the document exhibit A-64 (Suit-1), which is a report of the Waqf Inspector. The other documents, which we have earlier referred to, also show that occasionally on certain days Adhan (ajjan) was called in the disputed building. On the contrary, no reliable evidence could be placed by the defendants that no Muslim ever entered building in dispute i.e. inner courtyard from 1934 or earlier till the night of 22nd/23rd December 1949. Therefore, while the visit of Hindu public in the inner courtyard and worship during the entire period has been proved, simultaneously it also cannot be said that the Muslims could never enter the disputed building for offering namaz at any point of time since 1934 and onwards.

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2553. We, therefore, are inclined to believe that on 16th December, 1949, Friday prayer was held in the inner courtyard i.e. in the disputed building but the claim of the muslims that daily prayers used to be held therein cannot be believed. To this extent, Muslim parties have failed to prove. This does not mean that the entire premises in dispute shown by the letters 'ABCD' in the map appended with the plaint (Suit-4) was in the possession of the plaintiffs but it is only the inner Courtyard which remained open for all.

2554. The entire evidence however does not touch upon the area covered by the outer courtyard except suggesting that only for entering inner Courtyard, right of passage was utilised and nothing more than that. It is evident that the plaintiffs were never in possession thereof. In the outer courtyard on the south-east side there was a Ram Chabootara which was in possession

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of persons other than plaintiffs and this has continued at least from earlier to 1885 as is evident from the plaint where reference has been given to suit 1885 and the decision of the Court recognising existence of the said Chabootara in outer courtyard. On the north-west side, there is Sita Rasoi/Kaushalya Rasoi which is also being worshipped by Hindus continuously.

2555. At the best it may be said that the plaintiffs or other muslims were exercising right of egress and ingress for offering prayer in the respective part of the disputed building but otherwise in respect to the area covered by outer courtyard there is no averment in the entire suit that it was ever in the exclusive possession of the plaintiffs. It is not the case of the plaintiffs that they were dispossessed from the said part of the land at any point of time within preceding six years or 12 years from the date of filing of the suit. The possession of the area covered by Ram Chabutara and Sita Rasoi in outer courtyard, it appears, the plaintiffs have reconciled that it had been in possession of Hindus since long and, therefore, in respect to this part, we are of the view that Suit-4 is barred by limitation.

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2556. The written statement of Mohd. Asgar, para 3 and 4 filed in Suit-1885 makes it clear that *Chabutara* was constructed in the outer courtyard in 1857 and it was never interfered or obstructed by muslims at any point of time. After the enforcement of L.A. 1859, the period of limitation, in such a case, was 12 years and therefore, in 1869 limitation expired for claiming possession of the said part of the land.

2557. In 1885 suit, the map prepared by the Court Amin shows three non Islamic structures in the outer courtyard and against that no action, as permissible in law, was taken by the Muslims or the said Mutawalli. Assuming that the ownership

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lies elsewhere, after expiry of a period of 12 years, the title extinct by virtue of Section 27 of the Limitation Act, 1877 and therefore, even before the enactment of L.A.1908, the right, if any, possessed by the plaintiffs or anyone else in respect to the premises in outer courtyard extinct and stood conferred upon the persons who were in possession thereof.

2558. So far as the inner courtyard is concerned, we have already held that atleast on Friday, if not regularly, then occasionally, muslims had visited disputed building and that visit obviously could be for offering namaz. The official documents, proved by the defendants witness DW 2/1-2 Sri Ram Saran Srivastava show that Friday namaz used to be observed therein. OPW-9 has also admitted that both communities used to worship in the inner courtyard. We find no reason to disbelieve it. But here is not a case of exclusive possession since the defendant Hindu parties and Hindus in general had also been visiting inner courtyard for darshan and worship according to their faith and belief, hence, it can be said that the inner courtyard was virtually used jointly by the members of both the communities, may be to a large extent by the Hindus since Ayodhya is one of the most prominent, sacred and reverend place for Hindus, being the city of Lord Rama, and the place in dispute, they believe to be the birthplace of Lord Rama, it cannot be doubted that must have been visited in a very large number everyday, swollen multi-fold on special occasions of fares that is Ramnavami etc. The importance of Ayodhya from the point of view of Hindus has fairly been accepted and admitted by many of the witnesses of even the plaintiffs (Suit-4) i.e. muslims parties though same thing is not applicable for others. If Hindu people were already visiting the inner courtyard

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and the disputed building for worship etc., we do not find any occasion of dispossession of muslims from the premises in dispute or discontinuation of possession as a result whereof somebody else has taken possession in order to attract Art. 142. The only thing which is claimed to have occurred on 22/23 December, 1949, is the placement of idol which according to OPW 1 and some other witnesses is mere shifting of idols of Sri Ram Chandra from the outer courtyard (Ram Chabutara) to inner courtyard. This placement of idol by itself cannot be termed as dispossession of muslims from the inner courtyard or the disputed building in the light of the meaning of 'dispossession' as we have discussed above. This is also not covered by the phrase "discontinuation of possession". It is probably for this reason that in the entire plaint there is not even a whisper that the muslim parties or the muslims or the plaintiffs were dispossessed or discontinued of possession by anyone on any particular date. The averments are different. Most of the witnesses have admitted that since the idols were kept inside the building, they did not go to the disputed building on and after 23 December, 1949. In this view of the matter we do not find that Art. 142 even has any application in this case.

2559. There is another aspect of the matter from which angle this argument may be seen. Suit has been filed for a declaration in respect to the entire area of the disputed building which included inner courtyard as well as outer courtyard. For the purpose of cause of action, the placement of idols in the mosque on 23rd December, 1949 has been pleaded in para 23 of the plaint. Sri Mohd. Ayub, counsel for plaintiffs (Suit-4), who had appeared before the Civil Judge, Fyzabad made statement under Order X, Rule 2 on 28th August 1963 and said:

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"Sri Mohd. Ayub states that the mosque lie in A B C D as shown in the plaint map (sketch map) and the land around A B C D is graveyard of the Muslims as shown in it."

2560. He again made another statement on 20th January, 1964 to the following effect:

"The property in dispute includes Babri Masjid and appurtenant to its boundary graveyard towards east, north and south .... On the outer side of railing of Babri Masjid and inside the boundary of main gate towards east-south, there is a Chabutara measuring 17 x 21 feet over which a wooden temple of wooden structure is built. In it, neither there were any idols of Hindus in past nor are till now. That place is also a part of mosque of Muslims. He does not know that the place had ever been any use of Hindus or not. It is also not known that the place had ever been in use of Muslims or not. ...."

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2561. Therefore, plaintiffs admitted the existence of a *Chabutara* measuring 21 x 17 feet in the outer courtyard, which has a wooden temple structure thereon. This is also admitted by PW-1 on page 24. Infact it is said in the plaint also. Its existence, as referred to, was the subject matter of suit 1885 meaning thereby the said Chabutara was existing at least since 1885 and always in the outer courtyard of the disputed building. Besides, in the north of the disputed building, there existed *Sita Rasoi/Kaushalya Rasoi* and on the east-north side, in the outer courtyard, there was a *Chappar* which is also called *Bhandar*.

2562. About the above three structures, statement of various witnesses of plaintiffs (Suit-4) are:

(a) **PW-1 (Mohd. Hashim)**

''पूरब के बाहरी दरवाजे से दक्षिण की तरफ जो चबूतरा है वह 17 x 21

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फिट है। इसकी ऊँचाई एक मीटर है। इसके ऊपर छपपर पड़ा है। . . . . . इस चबूतरे पर हिन्दू देवताओं की मूर्ति आने वालो को दिखायी नहीं देती।'' (पेज 24)

"Towards the south of the outside gate in the east lies a chabutra measuring 17x24 feet. Its height is 1 metre. It has a thatched roofing. . . . . Idols of Hindu deities on this chabutra are not visible to visitors." (E.T.C.)

''जो पहले मैंने कहा था पुजारी चबूतरे पर बैठते थे वह गलत है वहॉ पर कुछ लोग बैठते थे ओर यह बात सही हैं यह आम आदमी हिन्दू थे पर पुजारी या साधु नहीं थे ये लोग अयोध्या के नहीं थे।'' (पेज 27)

"My earlier statement that priests used to sit on the chabutra, is wrong. Some people used to sit there, and this fact is true. These ordinary people were Hindus, but not priests or saints."(E.T.C.)

''सन् 1949 में सीतारसोई फर्श के बराबर थी सीतारसोई पर चूल्हा चौकी बेलना चूने गारे का बना था वर्ष 1949 में। . . . . . .शुरू में हम लोग भी उसको करीब से देखते थे उस समय कोई तनाव नहीं था। उसकी आम लोग सीता रसोई कहते थे। हमने यह नहीं देखा कि आम लोग सीता रसोई का दर्शन करने जाते थे।'' (पेज 27)

"In 1949, Sita Rasoi was on a level with the floor. The 'chulha' (hearth), 'chauki' and 'belna' (rolling pin) at Sita Rasoi, was made of lime and brick powder in the year 1949. . . . . In the beginning, we also looked at it from a close range. There was no tension at that time. People in general called it Sita Rasoi. We did not see general public going to have darshan of Sita Rasoi." (E.T.C.)

''पूर्वी फाटक से अन्दर आने पर बाहरी दीवाल के अन्दर उत्तर तरफ एक लम्बा सा छपपर था वह भण्डार पर था या नहीं यह नहीं बता सकता। . . . . . इस छपपर के नीचे हिन्दू लोग रहते थे मुसलमान लोग नहीं रहते थे। . . . . कुर्क शुदा जायदाद की बाहरी दीवाल के अन्दर दो छप्पर थे एक चबूतरा पर था और दूसरा पूर्वी दीवाल से सटकर नीम के

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पेड़ के नीचे था।''(पेज 31–32)

''On coming inside through the eastern gate there was a spacious shed towards the north inside the outside wall. I cannot tell whether it was a store house or not. . . . Those who lived under this shed were Hindus, not Muslims. . . Inside the exterior wall of the attached property there were two sheds, of which one was on a chabutra (rectangular terrace) and the other one was under the Neem tree adjacent to the eastern wall.'' (E.T.C.)

''. . .वह मुकदमा सिर्फ चबूतरा के बारे में था जिसे वह मंदिर बनाना चाहते थे।'' (पेज 72)

''. . . This case was only in respect of the chabutra which he wanted to change into a temple.''(E.T.C.)

''जो जगह चबूतरा की सूरत में हिन्दू लोगों के कब्जे मे है फिर कहा वहॉ हिन्दुओं का कोई कब्जा नहीं है तमाम जगह मस्जिद की है।'' (पेज 113)

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''The place being in the shape of chabutra is in the possession of Hindus. (Then stated) Hindus have no possession over there; most of the place belongs to the mosque.'' (E.T.C.)

''अगर यह नक्शा अदालत द्वारा जारी किये गये कमीशन ने दाखिल किया है तो यह सही है। . . . मैं यह नहीं कह सकता कि जो इसमें सीता रसोई और चबूतरा दिखाये गये हैं वह 1949 में उसी तरह से थे। अगर शिवशंकर लाल सरकारी कमीशन थे तो उनका दिया गया नक्शा सही होगा लेकिन वह सन् 1949 के बाद की बात है। . . . . . .अगर यह नक्शा सरकारी कमीशन का है तो सही होगा।'' (पेज 115)

''If this map has been filed by the commission appointed by the Court, it is correct. . . I cannot say that Sita Rasoi and chabutra existed in the same way in 1949 as they are shown in it. If Shivshankar Lal was on official commission, the map filed by him must be correct but it

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pertains to post-1949 position. . . . . If this map is of the official commission, it must be correct." (E.T.C.)

"मुझे मालूम नहीं कि सीता रसोई और चबूतरा जिस हालात में 1934 में था, उसी हालात में 1949 में कुर्की होने तक रहा।" (पेज 116–117)

"I do not know that Sita Rasoi and the chabutra remained to be in the same position in 1949 as they existed in 1934." (E.T.C.)

(b) <u>PW-2 (Haji Mahboob Ahmad)</u>

"सीता रसोई का चुल्हा चौका बेलना हम लान में देखा करते थे जब हम मस्जिद में जाते थे। . . . . . .लोग कहते थे कि यह सीता रसोई है। मैंने वहॉ पर किसी को दर्शन करते जाते नहीं देखा। . . . . वह मस्जिद थी जिसे दूसरे लोग मंदिर कहते है।" (पेज 55)

"When we went to the mosque, we saw chulha (hearth), chauka, belna (rolling pin) of Sita rasoi (Sita's kitchen). . . . . People said that it was Sita Rasoi. I did not see anybody going there for darshan. . . . . It was a mosque, which other people call temple." (E.T.C.)

"यह मालूम है मुझे कि बाहर का लान, चबूतरा और सीता रसोई का मुकदमा 1884 में चला था।"

(पेज 62)

"I know that a case went on in 1884 in connection with the outside lawn, chabutra and Sita Rasoi." (E.T.C.)

". . हॉ, यह ठीक है कि बाहरी लॉन में कोई भी आ–जा सकता था।" (पेज 104)

". . . Well, it is true that anybody could have to-and-fro movement to the outside lawn." (E.T.C.)

(c) <u>PW-3 (Farooq Ahmad)</u>

"अयोध्या में हिन्दू मेले होते हैं जैसे कि रामनवमी, परिक्रमा मेला और सावन मेला, इन मेलों पर हिन्दू लोग इकट्ठा होते हैं ये लोग मस्जिद भी देखने आया करते हैं। इस चबूतरे को देखने की गरज से बहुत से हिन्दू

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और मुस्लिम लोग सभी जाते हैं। ऊपर बताये गये मेलों के वक्ता इकट्ठा होने वाले हिन्दू लोग खाष तौर से इस चबूतरे पर नहीं जाते क्योंकि वहॉ कोई चढ़ावा नहीं है। मेले के वक्त भी हर मजहब के लोग चबूतरा देखने आते थे।'' (पेज 29)

"Hindu fairs are held at Ayodhya such as Ramnavami, Parikrama Mela and Sawan Mela. Hindus gather in these fairs. They also come over to see the mosque. Many Hindus and Muslims used to come over to see this platform (Chabutara). The Hindus assembling at time of the said fairs, did not particularly visit this platform (Chabutara) because there was no offering (chadhawa). Even on occasion of the fairs, people of all religions used to come to see the platform (Chabutara)." (E.T.C)

(d) <u>PW-4 (Mohd. Yaseen)</u>

''मैंने किसी हिन्दू को न कभी चकला बेलना के पास देखा और न ही ऊपर बताये गये उत्तरी या दक्खिनी छप्पर के पास देखा।'' (पेज 19)

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"I never saw any Hindu near the Chakla-Belna nor near the aforementioned northern or southern thatched roof." (E.T.C)

(e) <u>PW-6 (Mohd. Yunus Siddiqui)</u>

''जब रात को मैं वहां जाता था तो अक्सर लोग छप्पर में सोते हुए दिखाई देते थे। . . . . . .यह मैंने जान लिया था कि यह चबूतरा 1885 से चला आ रहा था।''(पेज 11)

"When I went there during nights, people were often seen sleeping in sheds. . . . . I came to know that this chabutra had been in existence since 1885." (E.T.C.)

(f) <u>PW-7 (Hasmatulla Ansari)</u>

''उत्तर की तरफ जो छप्पर था सुनते हैं कि उसमें इमाम रहा करता था। लेकिन मैंने कभी वहॉ इमाम को आते जाते या रहते नहीं देखा। इस बाहरी सहन में जहॉ ये चबूतरे थे कभी नमाज नहीं पढ़ने गया।''(पेज 30)

"It is heard that Imam used to reside in a shed

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located towards the north. But I never saw the Imam come, go or live there. I never went to offer namaz at the place where these Chabutras (raised platforms) were built in this outer courtyard. "(E.T.C.)

(g) <u>PW-8 (Abdul Ajij)</u>

"दूसरी तरफ यानि उत्तर वाले छप्पर में मैंने कभी किसी को खाना बनाते या चूल्हा जलाते नहीं देखा। . . . . .उस छप्पर के नीचे लोग बैठते थे या मोअज्जिम रहते थे इसके अलावा वह और किसी के इस्तेमाल में नहीं आता था।" (पेज 36)

"I never saw anyone either preparing meals or lighting stove on the other side i.e. in the northern 'Chhapper' (thatched roof). . . . . Either people or 'Muajjim' used to sit under that 'Chhapper', and it was not used for any other purpose." (E.T.C)

". . . हमारी जानकारी में बाबरी मस्जिद के अन्दर सीता रसोई बनी हुई नहीं थी। न हम उधर गये न हमने ऐसा देखा कि वहॉ चूल्हा चकला बेलना और हुडसा बने हुए हों हमने वहॉ चरण चिन्ह भी नहीं देखें।" (पेज 43)

". . . In my knowledge, Sita Rasoi had not been built inside Babri mosque. Neither did I go in that direction nor did I see the 'Chulha', 'Chakla', 'Belna' and 'Hudsa' (all kitchen utensils) over there, nor did I see the footmarks over there." (E.T.C)

"वहॉ पर एक चबूतरा था जो दक्खिन की तरफ था उस पर कोई लकड़ी का सिंहासन नहीं था वह चबूतरा खाली था। पूर्वी फाटक से अन्दर दाखिल होने पर यह चबूतरा बाये हाथ की ओर आता था।" (पेज 43)

"There was a platform towards south. It did not have any wooden throne over it. The platform was vacant. On entering through the eastern gate, this platform fell on left side." (E.T.C)

2563. The site map prepared by Gopal Sahai Amin in Suit

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1885 mention all these three structures in the outer courtyard and that map was never disputed. **Exhibit 14 (Suit-4) (Register 10 Page 65)** is the copy of the written statement filed by Mohd. Asgar claiming himself to be Mutwalli of Masjid Babari on 22nd December, 1885 and in para 3 thereof he himself said that the Chabutara was constructed in 1857. Para 5 of the written statement mentions about the existence of *Sita Rasoi* and *Kuti* also. His further assertion is that orders were issued about their removal but the same was not removed which in effect admits the existence of these two structures also in 1885 and prior thereto. The same has continued till 1950, as is evident from the map prepared by the Court's Commissioner Sri Shiv Shankar Lal Advocate. That be so, it is evident that virtually the entire outer courtyard had remained in possession of Hindus who have regularly visited thereat and worshipped. This is also fortified from **Exhibit 15 (Suit -1),** the report of the Deputy Commissioner Faizabad pursuant to the Commissioner order dated 14th May 1877 which describes the outer courtyard as Janam Asthan and building as Babar's mosque. Justification given for providing a separate room is rush of people/visitors to the Janam Asthan on fair day. This order also refers to the existence of an image on the Janam Asthan platform for which one Baldeo Das was ordered by Deputy Commissioner on 10th November, 1873 to remove the same. The report, however, does not show that the same was removed at all.

2564. Therefore, in respect to the outer courtyard, claim of the plaintiffs is clearly barred by limitation. In fact it stood barred long back but without making any distinction and without specifying the area of outer courtyard, the suit has been filed to claim the entire premises which includes the area in

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respect whereto such claim is barred long back and has actually extinct. We find it difficult to separate it and hence, the suit in its entirety has to be held barred by limitation. This is another reason.

2565. In view of the above discussion we have no option but to answer **Issue No. 3 (Suit-4) in negative i.e. against the plaintiffs. We hold that Suit-4 is barred by limitation**.

2566. **Issue 10 (Suit-1)** reads as under:

"Is the present suit barred by time?"

2567. Nobody pressed this issue before us. In respect to Suit-1 nobody advanced any argument even to suggest that Suit-1 is barred by limitation. The cause of action according to the plaintiffs arose on 5th January, 1950 when he visited, for offering worship, the disputed premises and allegedly obstructed. The suit having been filed within 10 days thereafter apparently it cannot be said to be beyond limitation. **It is accordingly answered in negative i.e. in favour of the plaintiff (Suit-1).**

2568. **Issue No. 9 (Suit-3)** reads as under:

"Is the suit within time?"

2569. The plaintiffs, in para 10 of the plaint dated 17.12.1959 (Suit-3) have pleaded that cause of action for the suit arose on 5th January, 1950 when defendant No. 4 (City Magistrate, Faizabad) illegally took over the management and charge of the temple with the articles kept therein and entrusted the same to the receiver- defendant No.1.

2570. In para 24 of the written statement dated 28.3.1960 filed on behalf of the defendants No. 6 to 8, it is pleaded that the suit in question is not within limitation.

2571. Defendant No. 9, Sunni Board, has not raised any

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separate objection with respect to limitation in Suit-3. In fact it had filed an application under Section 68 of U.P. Muslim Wakf Act, 1916 on 17/18 March, 1986 for its impleadment as one of the defendant and the same was allowed by this Court vide order dated 23rd August, 1990 wherein the statement of the learned counsel for the defendant No. 9 was also recorded that he adopts the plaint of suit 4 as a written statement in this suit. Defendant No.11 Mohd. Farooq, S/o Paddur Ahmad was allowed to be impleaded by order dated 09.12.1991 passed on his own impleadment application No.179/Ka-1 dated 01.4.1989. This Court also recorded the statement of Sri Jilani, Advocate, appearing for defendant No.11 that he will not file separate written statement and adopts the written statements filed on behalf of defendants No.6 to 8 and Sunni Board i.e. defendant No.9. The Court's order dated 23rd August, 1990 is as under.

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> *"No objections have been filed against this application. Apart from it, the applicant has statutory right to be impleaded under Section 68 of the U.P. Muslim Wakfs Act, 1960. Accordingly the application is allowed. The plaintiff shall amend the memorandum of plaint so as to implead U.P. Sunni Central Board of Waqfs as defendant No.9. Learned counsel for the plaintiff shall carry out the amendment in the plaint within twenty four hours.*
>
> *Sri Jilani, learned counsel for the newly added defendant has stated that* ***he adopts the plaint of Suit No.4 of 1989 as a written statement of this suit.*** *He states that no separate written statement shall be filed in this Court."*

2572. In the replication dated 13th May, 1963, the plaintiffs, in para 24, while denying para 24 of the written statement has said as under :

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"24. The contents of para 24 of the written statement are denied. ***The plaintiffs have ever been in possession of the temple in suit and no question of expiry of the period of limitation arises."***

2573. The defendant No.10-Umesh Chandra Pandey in his written statement dated 21st October, 1991 has also pleaded bar of limitation in para 10, 16 and 17 as under:

"10. That the contents of para 10 of the plaint are not admitted. On the own showing of the plaintiffs, the cause of action arose in their favour on 5.1.1950, whereas the suit was filed by them in the year 1959. Thus the suit has been ***filed beyond the prescribed period of limitation.*** *Further the* ***plaintiffs, being not the Manager or the next friend, of the Deity, are not entitled to file the suit."***

"16. That the plaintiffs' suit is barred by the provisions of Indian Limitation Act, as the same is much beyond the period of limitation prescribed by law."

"17. That the plaintiffs had adequate remedies under the provisions of the Code of Criminal Procedure (as it then stood) against the order, passed by the Additional City Magistrate, Faizabad under Section 145 of the Cr.P.C. The plaintiffs, having not availed of the said remedy within the time prescribed therefor and having not filed the suit within limitation prescribed therefor, their suit is liable to be dismissed on that score"

2574. Here also learned counsel for the plaintiffs could not dispute during the course of the argument that the suit in question would not be covered by Article 142 and 144 L.A. 1908 and therefore, it is Article 120 L.A. 1908 which would be applicable in the case in hand. He sought to rely on Article 47

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also. In the light of own averments of plaintiffs (Suit-3) the cause of action arose on 5th January, 1950, the suit having been filed in 1959, it also suffers with the vice of limitation and has to be held barred by time for the reasons we have considered above while deciding Issue No. 3 (Suit-4). Article 47 has no application at all. The learned Counsel Sri Verma also could not show as to how it would cover this case.

2575. Learned counsel for the plaintiffs, however, submitted that for the purpose of limitation, the order dated 30.07.1953 of the City Magistrate Fyzabad deferring the proceedings, should be taken to be the commencement of period for limitation, but from that also we find that the limitation expired on 31st July, 1959. The suit was filed in October, 1959 and in that circumstance also it is barred by limitation prescribed under Article 120 L.A. 1908. We, however, would like to point out some more and different aspects in the matter.

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2576. Suit-3 is confined to the premises covered by inner courtyard. The plaintiffs are neither seeking any declaration about the title nor claim that they have been dispossessed by anyone wrongly or illegally. What they actually plead is that the defendant no. 4 City Magistrate, Faizabad, has illegally taken over management and charge of the temple with articles kept therein and entrusted the same to Receiver defendant no. 1.

2577. The City Magistrate, Faizabad, had passed a statutory order in exercise of his powers under Section 145 Cr.P.C. 1898. Neither any declaration has been against the said order that it is illegal or bad, nor, in our view, such order could have been challenged in a suit. Enough remedy was available to the plaintiffs if aggrieved by the said order, by taking recourse to the provisions under Cr.P.C. 1898 itself. The plaintiffs did not

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avail any such remedy.

2578. We have discussed in detail that possession taken by a Receiver pursuant to an attachment order u/s 145/146 Cr.P.C. does not amount to deprivation of possession to the real owner but the Receiver holds property on behalf of the true owner. Assuming that any cause of action the plaintiffs had, the same could have been enforced firstly by showing their title or seeking a declaration about title, particularly when the title dispute had arisen, inasmuch as, the Muslim parties had already filed their objections claiming that the entire premises, i.e., inner and outer courtyard was a mosque and this was also being contested in another suit, i.e., suit no.1. The plaintiffs have not shown anything as to how they got title on the property in dispute. The prayer in effect made by the plaintiffs is nothing but a circuitous way of wriggling out of the real question of title and possession knowing it well that the declaration of title has already met the fate i.e. stand barred by limitation. There is no dispossession of plaintiffs by any person, either unauthorisedly or otherwise. Also there is no question of discontinuation of possession. The question of adverse possession does not arise. Therefore, Arts. 142 and 144 rightly have been conceded inapplicable. In the absence thereof the only provision which would be applicable in suit-3 is Art. 120.

2579. The question of continuing wrong also would not apply in the case in hand, inasmuch as, the law laid down by the Calcutta High Court in **Panna Lal (Supra)** could have been applicable if the plaintiffs could have shown to be the **true owner** of the property in dispute (i.e. inner courtyard) and not otherwise.

2580. Sri Verma stated that in the revenue entries, the

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name of the Mahant of Nirmohi Akhara was directed to be entered in 1941 and this shows the title of the plaintiffs over the entire property in dispute. We find no reason to agree. An entry in revenue record does not confer any title. When the dispute of title was already raised, the plaintiffs had to get this dispute settled in one or the other way failing which they would not succeed in claiming possession of the property in dispute (i.e. inner Courtyard). In any case, since Arts. 144, 142 and 47 are inapplicable and the counsel for the plaintiffs has also not been able to show any continuing wrong in the matter, we find that the suit is barred by limitation vide Art. 120 of the Limitation Act. **Issue No. 9 (Suit-3) is accordingly answered in negative and against the plaintiffs 41(Suit-3)**.

2581. **Issue No. 13 (Suit 5)** reads as under:

"Whether the suit is barred by limitation?"

2582. In Suit-5, the plaintiffs in para 36 of the plaint have asserted that the cause of action for filing the suit has been accruing from day to day. It reads as under :

"36. That the cause of action for this suit has been accruing from day to day, particularly since recently when the plans of Temple reconstruction are being sought to be obstructed by violent action from the side of certain Muslim communalist."

2583. The defendant No.3 in para 36 of written statement dated 14th August, 1989 has denied the contents of para 36 of the plaint. However, specifically no plea with respect to limitation has been taken in the written statement. In the additional written statement dated 20th April, 1992 , the defendant No.3 in para 46 has said that the suit is heavily time barred. The defendant No.4 in paras 36 and 42 of written statement dated 26/29 August 1989

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has averred, that the suit is barred by limitation:

> *"36. That the contents of para 36 of the Plaint are also incorrect and hence denied as stated. No cause of action ever accrued to the plaintiffs to file the instant suit as they have never remained associated with the management or administration of the property in question. In any case if any cause of action in respect of the property in suit can be said to have accrued to the plaintiff No.3, the same must be deemed to have accrued in December, 1949 when the property in question was attached and when the muslims had categorically denied the alleged* ***claim of the Hindus to perform Pooja in the mosque in question*** *and that being so the instant suit is highly time barred. It is also relevant to mention here that the plaintiff no.3 was required to give the specific date, month and year since when the alleged cause of action is said to have accrued and no such description having been given, the averments of the cause of action are incomplete and defective and the plaint is liable to be rejected on account of there being* ***no cause of action as per averments of the Plaint."***
>
> *"42. That the instant suit is highly belated and the same is barred by the Law of Limitation and as such the same is liable to be dismissed on this account alone."*

2584. Defendant No.23- Javvad Husain in para 49 of the written statement dated 18.9.1989 has said that the suit is barred by limitation and similar is the plea of defendant No.24 in para 32 of written statement dated 4th September, 1989.

2585. Sri M.M. Pandey, learned counsel for the plaintiffs (Suit-5), however, sought to over come the difficulty which has arisen on account of objection about limitation by relying on

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Oudh Laws Act 1876 and contended that it shall override and have precedence over the statute of limitation. He submitted that the Hindu Law since ancient time as it stood remained unchanged either by any Emperor or by any Legislature, hence the law as found originally in India relating to Hindu Deity must be applied. In the case of **S. Darshan Lal Vs. Dr. R.S.S. Dalliwall, 1952 All 825 (DB)**, it is stated in para 16: "In an inhabited country, obtained by conquest or cessation, law already prevailing therein continues to prevail except to the extent English Law has been introduced, and also except to the extent to which such law is not civilised law at all……." The Court reiterated that view in para 18.

2586. This dictum which was laid down in the context of applicability of English Law in Indian territories conquered/ceded, constitutes a reasonable premise for application of then prevailing Hindu law at the time of conquest by Babar. Indeed, Privy Council held in **Mosque known as Masjid Shahid Ganj Vs. Shiromani Gurdwara Prabandhak Committee , Amritsar, 1940 PC 116** at page 120 Col. 2, that "There is every presumption in favour of the proposition that a change of sovereignty would not affect private rights to property". It is nobody's case nor any evidence is led that during the Muslim rule commencing from late 12th/early 13th Century (Mohd Ghauri/Qutubbin Aibak who established 'Slave Dynasty' from 1206 AD) any of these laws was modified. Similarly, it is nobody's case nor any evidence that during Mughal rule from Babar till the advent of governance by East India Company (from 1757 with the Battle of Plassey) or that of British rule from 1858 (with Queen's Proclamation), any modification in these provisions of Hindu Law was made. The British had

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established regular COURTS to administer justice; Oudh ceded to East India Company in 1856 only. OUDH LAWS ACT (18 of 1876) provided what laws were to be administered in OUDH which includes Ayodhya and Faizabad. This Statute holds good even today by virtue of Article 372(1) of Constitution of India. A number of Acts were enacted governing relationships and situations in the Hindu Society, like Hindu Women's Right to Property Act, Hindu Succession Act, Hindu Marriage Act, Hindu Minority & Guardianship Act etc., both during the British times and post-independence of India, but none was framed to set out the rights, obligations and antecedents of Hindu Deity; **hence Hindu Law as known to Dharma Shastras continue to apply to Hindu Deities.**

2587. The Code of Civil Procedure covers a variety of Suits, e.g. relating to persons of Unsound Mind, Minors, Corporations, State Agencies but is totally silent on Hindu Deities. The general provisions of Limitation Act would not over-ride the special and clear Hindu Law found in Dharma Shastras which had ensured the rights of Deity to hold good in perpetuity, without interference by the State (King). Only those provisions of period of limitation laid down by Dharma Shastras could be affected by Limitation Act which were modified by any statute on specific subjects of Dharma Shastra provisions. There has never been any statute law governing Hindu Deity & Deity's property including the Temple which is 'His house'. The rights of Deities, Ram Janam Bhumi and Bhagwan Shri Ramlala, have to be determined exclusively/solely on the basis of the Hindu Law as known to Dharma Shastras and not imperfect analogies drawn from imperfect comparisons. He relied on **Bhyah Ram Singh Vs. Bhyah Ujagar Singh, 13 MIA**

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373, PC which ruled firmly, where a text of Hindu Law is directly on a point, nothing from any foreign source should be introduced into it, nor should Court interpret the text by application to the language of strained analogies.

2588. It is pointed out that at pages 67 to 69 of **Mulla's "Principles of Hindu Law"** that in a very early decision (4 MIA 97-98) Privy Council conceded that 'it is quite impossible for us to feel any confidence in our opinion…….founded upon authorities (Hindu Dharmashastras) to which we have access only through translations, and when the doctrines themselves, and the reasons by which they are supported or impugned, are drawn from religious traditions, ancient usages and more modern habits of Hindoos, with which we cannot be familiar". He contended that these suits are very different from any litigation which figured in the past; they are admittedly of National importance and must be dealt with on a thorough scrutiny of what the true law is. With the adoption of Constitution of India with promises contained in Articles 13, 14 and Preamble, the decisions of Privy Council have only 'persuasive' rather than 'binding' effect: (See **1968 SC 1165, Nair Service Society Vs. K.C.Alexandar)**. Full effect must be given to Hindu Dharmashastras in these cases specially in the light of Oudh Laws Act.

2589. Preamble to Oudh Laws Act of 1876, "declares and amends the laws to be administered in Oudh" and only in Oudh. It is exhaustive of the Laws which the Courts of Oudh must apply in matters covered by the Act. This position continues even today by virtue of Article 372(1) of the Constitution of India. Section 3(b)(1) lays down what laws are to be applied in questions regarding 'any religious usage or institution, and

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requires the Courts to apply "custom applicable to the parties concerned which is not contrary to justice, equity_or good conscience, or has not been by this or any other enactment, altered or abolished and has not been declared to be void by any competent authority". Section 3(b)(2) requires to apply "the Muhammadan law in cases where parties are Muhammadans, and the Hindu law in cases where parties are Hindus, except in so far as such law has been, by this or any other enactment, altered or abolished, or has been modified by any such custom as is above referred to". Reading the two clauses together, the Section sets out the laws which must be applied to 'parties concerned'. In rights/obligations concerning Muhammadans, the Muslim law must be applied; in those concerning Hindus, the Hindu Law must be applied and after determination of those rights/obligations, if rights/equities have to be judged between Muhammedans and Hindus, then Equity, Justice and Good Conscience have to be applied for determination of 'Relief'. Section 3(f) requires to apply ".…….all enactments for the time being in force and expressly, or by necessary implication, applying to ……. Oudh or some part of Oudh". This demands that the Statute Law in force for the time being must be applied. It would be appreciate that this provision itself is Statutory so that the provision makes the Hindu/Mohammedan Law, so to say, to be a Statutory Law akin to 'referential legislation'. Instead of incorporating specific provisions of Hindu/Mohammedan Law into the Oudh Laws Act, it simply require those laws to be applied, wherever they may be found.

2590. Sri Pandey argued that in **Bajya Vs. Gopikabai, 1978 SC 793**, two categories of referential incorporation are recognised: (1) provision of another Statute is incorporated and

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(2) the 'law concerning a particular subject as a genus' is incorporated. In later case, the legislative intent is to include all subsequent amendments made from time to time in the general law on the adopted subject. Oudh Laws Act belongs to second category; the important point is that there has never been any legislation on Hindu Deities, hence the original Dharmashastra law continues to apply.

2591. Section 3(g) requires that "in cases not provided for by the former part of this section, or by any other law for the time being in force, the Courts shall act according to justice, equity and good conscience". Section 4 says that "all local customs and mercantile usages shall be regarded as valid, unless they are contrary to justice, equity or good conscience……." Simply put, the provision accords primacy to 'personal law' (subject to any other law for the time being in force) and applies justice, equity and good conscience only when there is no personal law and that although local custom shall be deemed to be valid, yet Custom will have to stand the test of justice, equity and good conscience. Fundamentally, therefore, Hindu Law has to be applied on the rights/property and incidental matters concerning Hindu Deity and Temples unless such law has been modified by any statute or Custom; no such statute was ever enacted and no case of any modifying Custom ever arose in these cases.

2592. He further argued that, Section 16 of Oudh Laws Act lays down "Rule of Limitation" and applies Act XIV of 1859 to Oudh with effect from 4.7.1862. Act XIV of 1859 provided for one uniform law of limitation for all Courts in British India, but had not provided for extinction or acquisition of rights/title on the basis of possession. Section 16 of Oudh

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Laws Act goes no further. Even so, Section 3(f) mentioned that "all enactments for the time being in force and expressly or by necessary implication applying to the territories…….of Oudh or some part of Oudh" will be applied by the Courts; Limitation Act of 1871 could fall within this category but for its exclusion as shall appear shortly. Extinction/acquisition of rights came to be provided for the first time by Sections 27 to 29 of Limitation Act IX of 1871 (vide page 8 of Vol. 1 of "Obhrai's Limitation and Prescription" on Limitation Act IX of 1908 published by Eastern Law House, Lahore and page 7 of Vol. 1 of Sanjiva Row's "Limitation Act 1963" Edn 1987 published by Law Book Co, Allahabad). Since the substantive rights of Deity under Hindu Law clearly provided that its rights are perpetual and cannot be extinguished under any circumstance, it must be treated to be a Statute Law under the Oudh Laws Act; it has only to be found out whether the provision for extinction under Act IX of 1871 is such as falls within the restrictive clauses of Section 3(b)(2) of the Oudh Laws Act. The only restrictive stipulation in that clause is: "except insofar as such law has been, by this or any other enactment, altered or abolished". Firstly, an Act of 1871 cannot alter or abolish any provision of 1876 Act. It is also significant that although Limitation Act 1871, which had provided for extinction/acquisition of ownership right on the basis of possession, was already on the Statute Book when Oudh Laws Act was enacted four years later and gave Statutory status to Hindu Law by 'referential legislation', Oudh Laws Act did not make a specific provision to curtail the substantive right of the Deity under Hindu Law. Secondly, the provision of 'altering/abolishing' enactment must alter or abolish the Hindu Law, it is not enough to provide for

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alteration/abolition of rights 'generally.' Limitation Acts of 1877 and 1908 similarly contained provision for extinction of rights similar to Act of 1871, which is not enough to alter or abolish the Hindu Law regarding Hindu Deities. The Hindu Law of Deities and law of limitation under these enactments need to be harmoniously construed. In this exercise, the procedure provided in a Statute for enforcement of substantive rights conferred thereby should be construed as far as possible so as to give effect to and not nullify those rights (**1941 Mad 158, Palani Goundan Vs. Peria Gounden)**. Procedural enactments should be construed in such a manner as to render the enforcement of substantive rights effective: (**1959 SC 422 (426), Velluswami Vs. Raj Nainar; 1989 SC 2206, M.V.Vali Press Vs. Fernandee Lopez)**. Finally, stipulations of Hindu Law regarding Deity, recognised by Section 3(b)(2) of Oudh Laws Act are 'particular' and 'special'; they shall over-ride the 'general' stipulation of Limitation Acts. There is no essential Jurisprudential or Constitutional requirement that for every right/remedy a period of limitation must be enacted; more so in respect of Hindu Deity which is conceived of by Hindu Dharmashastra Law as Immortal, Indefeasible, Timeless, Omnipresent & Eternal. After all, Transfer of Property Act or Indian Trusts Act admittedly does not apply to Hindu Deity. Hence, provisions of extinction of rights under any of the Limitation Acts would be ineffective over the perpetual rights of Deity under Hindu Law. Here, notice may be taken of Manu's edict no. 200 of Chapter 8 (at page 174 of "**The Laws of Manu", Penguin Classics, Edn 2000**) which lays down: 'If a man is seen to be making use of something, but no title at all is to be seen, then the title is the proof (of ownership), not the use;

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this is a fixed rule'. Thus, according to Hindu Law, 'title' not 'possession' establishes ownership and that concept cannot be disturbed summarily through vague interpretations of general provisions relating to Limitation.

2593. Sri Pandey continued to submit vociferously that same result seems to flow from the principle of Reading Down a general provision in the context of the law as a whole, vide **All Saints High School Vs. Govt of A.P. (1980) 2 SCC 478** para 112. Since the plain meaning of Section 3(b)(2) of Oudh Laws Act specifically confines the laws of Hindu religious institutions to the Hindu Personal Law, i.e., the Dharmashastra Law, which unmistakably confers absolute perpetual and indefeasible rights on Deity and His property, a mere general provision that the law of limitation would apply to any suit instituted in respect of 'any' property which may also include Deity and/or His property, thereby denying right of suit after expiry of a certain period of limitation will have to be 'Read Down' to prevent deprivation of Deity's clear perpetual rights.

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2594. From the angle of Limitation Act, since the Deity who is the owner of the property, suffers from physical disability, its interests have to be looked after in perpetuity. Reliance is placed on **Manathu Naitha Desikar Vs. Sundarlingam 1971 Mad 1**(FB – para 20).

2595. In a bunch of WPs, decided by a DB of Rajasthan High Court, **Ram Lal & another Vs. Board of Revenue & Others, 1990 (1) RLR 161,** the DB held in para 8: 'It will not be out of place here to mention that there are series of judgments of Hon'ble Supreme Court and the Hon'ble Supreme Court has held that the Deity or Idol should ordinarily be considered as minor in perpetuity'. In para 10, the High Court again said: "For

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the reasons mentioned above, we are of the view that the deity/idol should be treated as a minor in perpetuity……" When the offerings are made to the deity, they become property of the deity and not of the temple. Deity owns the offerings and the Pujari or the Shebait shall not be the owner of the offerings and the property of the deity'. This decision was followed in **Temple of Thakurji Vs. State of Rajasthan & others, 1998 Raj 85** (para 11). These decisions also laid emphasis on the obligation of the State to protect the interests of the Deity as a perpetual minor. In **Sri Banamali Neogi & others Vs. Sri Asoke Kumar Chattopadhyayay & others, 96 CWN 886** (para 10), Calcutta High Court held Deity to be a perpetual minor. Similarly, in **Trilochan Das Adhikari & another Vs. Simanchal Rath & others, 1994(II) OLR 602**, Orissa High Court held Deity to be perpetual minor. In foot-note (j) at page 12 of **Mulla's Principles of Hindu Law**, it is stated that grounds of disability were recognised in Hindu Law, for instance there was exemption from limitation in case of minors, property of King and deposits involving the element of Trust; obviously, dedication to Deity involves "Trust"; Indian Trusts Act does not apply, vide Section 1 of the Act. In **Bishwanath Vs. Radha Ballabh ji, 1967 SC 1044**, it was held that an Idol is in the position of a minor and when the person representing it leaves it in a lurch, a person interested in the worship can certainly be clothed with an adhoc power of representation to protect its interests.

2596. According to Katyayana, Temple property is never lost even if it is enjoyed by strangers for hundreds of years (**P.V.Kane Volume III page 327-328**); even the king cannot deprive temples of their properties. In **Ramareddy Vs. Ranga**

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(1925 ILR 49 Mad 543) it is held that managers and even purchasers from them for consideration could never hold the endowed properties adversely to the Deity and there could be never adverse possession leading to acquisition of title in such cases. The Idol/Deity which is an embodiment of Supreme God and is a Juristic Person, represents the 'Infinite – the Timeless' cannot be confined by the shackles of Time. **Brihadaranakya Upanishad** (referred to in **Mulla's Principles of Hindu Law** at page 8) lays down: Om Purnam adah, purnam idam, purnat purnam udachyate; purnasaya purnam adaya, purnam evavasisyate ['That is Full, this is Full. From the Full does the Full proceed. After the coming of the Full from the Full, the Full alone remains' – at page (v) of **Brihadaranyaka Upanishad by Krishnanand, pubished by the Divine Life Society, P.O. Shivananadanagar, District Tehri-Garhwal UP- 1984 Edn.**] In **Mahant Ram Saroop Das Ji Vs. S.P.Sahi, Special Officer-in-charge of Hindu Religious Trusts, 1959 SC 951** (para10), it recognised that "a Deity is immortal and it is difficult to visualise that a Hindu private debutter will fail …… Even if the Idol gets broken, or is lost or is stolen, another image may be consecrated, and it cannot be said that the original object has ceased to exist". In Idol of **Thakurji Govind Deoji Maharaj Jaipur Vs. Board of Revenue Rajasthan, Jaipur, 1965 SC 906** (para 6), it is laid down: "An Idol which is juridical person is not subject to death because the Hindu concept is that the Idol lives for ever ……" Timelessness, thus, abounding in the Hindu Deity, there cannot be any question of the Deity losing its rights by lapse of time. Jurisprudentially also, there seems to be no essential impediment in a provision which protects the property rights of disabled persons, like a Deity, to remain outside the

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vicissitudes of human frailties for ensuring permanent sustenance to it and therefore to keep it out of reach of human beings, including the King. Every law is designed to serve some social purpose; the vesting of rights in Deity, which serve the social purpose indicated above since ancient times, is quite in order to serve social good.

2597. Oudh Laws Act has laid emphasis on application of principles of equity, justice and good conscience; but it is necessary to appreciate in what fields or areas, the Act requires those principles to be applied. Clause (g) of Section 3, lays down the broad principle that "in cases not provided for by the former part of this section or by any other law for the time being in force", Court has to act in accordance with justice, equity and good conscience. Section 3(b)(2) clearly stipulates that in matters relating to Hindu religious institutions, the Hindu Law shall apply; hence Clause (g) will not apply. Justice, equity and good conscience is made applicable to 'Custom' under Section 3(b)(1), but the law regarding Deity is part of 'personal law' under Section 3(b)(2) as distinguished from 'customary law'. Mulla mentions at page 65, that principles of Equity, Justice & Good Conscience were invoked only in cases for which no specific rules existed. In **Gurunath Vs.Kamalabai 1955 S.C. 206**, it has been held that in the absence of any clear Shastric text, Courts have authority to decide on principles of justice, equity and good conscience.

2598. It is a settled principle that 'Equity' follows 'Law', i.e. where Law is applicable, considerations of Equity do not come into play (vide, **Halsbury's Laws of England 4th Edn, Vol 16, para 1204**). Since Hindu Law specifically prescribes that the rights of Deity are not destroyed by another's possession

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howsoever long, 'equity' cannot be applied to deprive the rights of Deity on the basis of possession.

2599. Since the deities themselves are the Plaintiffs No. 1 and 2, being akin to a perpetual minor, no limitation runs, and any bona fide group of worshippers or even a single worshipper, which the Plaintiff No.3 is and represents, can act in the name of the deity/ deities to defend it's/their rights.

2600. In **Acharya Maharishi Narendra Prasad ji Vs. State of Gujarat, (1975) 1 SCC 2098** (para 26), while upholding the right of State to acquire property of Deity under Article 31 of the Constitution, laid down an exception by holding: "If on the other hand, acquisition of property of religious denominations by the State can be proved to be such as to destroy or completely negative its right to own or acquire movable and immovable property **for even the survival of a religious institution**, the question may have to be examined in a different light". This dictum was reaffirmed by Apex Court in **Dr. M. Ismail Faruqui's case, 1995 SC 605** (para 79); it was further held in para 77: "The protection under Article 25 and 26 of the Constitution is to religious practice which forms an essential and integral part of the religion"; the law stated in para 78 is: "While offer of prayer or worship is a religious practice, its offering at every location where such prayers can be offered would not be an essential part of such religious practice **unless the place has a particular significance for that religion so as to form an essential or integral part thereof.** Places of worship of any religion having particular significance for the religion, stand on a different footing and have to be treated differently and more reverentially". This decision is in this very case and has to be respected fully. In the summary contained in para 82,

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the Court observed: "Obviously, the acquisition of any religious place is to be made only in unusual and extraordinary situations for a larger public purpose keeping in view **that such acquisition should not result in extinction of the right to practice the religion, if the significance of that be such"**. Undoubtedly, Asthan Ram Janma Bhumi , Plaintiff No. 2 of OOS 5 of 1989, belongs to this very category of Deity – Class entirely by itself; hence the State can not acquire either the Deity or its property.

2601. As an independent special Class of person, there is no constitutional impropriety or illegality in having laws exclusively applicable to the Plaintiff-Deities of OOS 5 of 1989. A recent analogy is provided by The Public Waqfs (Extension) of Limitation Act, 1959 which accords a privilege to all the Muslim Public Waqfs in the period of limitation for certain types of civil suits upto 31st day of December 1970 for the only reason that in the wake of the partition of India Mutawallis of certain properties had migrated to Pakistan or those who stayed behind could not institute civil proceedings for recovery of possession of these properties. On this basis limitation has been extended in respect of all Public Waqfs. Similarly, laws exclusively applicable to Hindu deities could be had and read in the light of Oudh Laws Act, 1876, could apply the Hindu Dharma Shastra Law, which contains substantive as well as provisions relating to Limitation qua Hindu Deities. The legal position under the Hindu Dharma Shastra Law being as the one indicated above, destruction of Hindu Temple at the site of disputed structure or erection of Babri Masjid over it could never deprive the two Deities, Ram Janma Bhumi & Bhagwan Shri Ramlala of their ownership of the disputed property/area;

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the Indian Law of Limitation is not applicable at all. Decision of Supreme Court in Shah Bano's case was upset by the Parliament on the ground of sensitivities of Muslim Community for Muslim Personal Law. Muslim Personal Law (Shariat) Application Act, 1937 was framed to apply personal law to Muslims. Sensitivities of Muslims stand even today in the way of adoption of a Common Civil Code for India envisaged by Article 44 of Directive Principles of State Policy in our Constitution. The Constitutional protection, if any, for such laws should also support special laws in the case of Hindu Deity, on principles of equality, particularly in view of Oudh Laws Act 1876 and Article 372(1) of the Constitution, he submitted.

2602. He relied on **"The Hindu Law of Religious and Charitable Trusts" by B.K. Mukherjea** para 4.10, page 158 which says:

> *"A Hindu idol is, according to long-established authority, founded upon the religious customs of the Hindus, and the recognition thereof by courts of law, a 'juristic entity.' It has a juridical status, with the power of suing and being sued. Its interests are attended to by the person who has the deity in his charge and who in law is its manager, with all the powers which would, in such circumstances, on analogy, be given to the manger of the estate of an infant heir. It is unnecessary to quote the authorities; for this doctrine, thus simply stated, is firmly established."*

2603. He refers to the **"History of Dharma Shastra" by P.V. Kane, Vol. III Page 327-328–Narad IV, Page-83**, where it states that women's property (Streedhana) and state property (land) is not lost even after hundreds of years when it is enjoyed without title. **Katyayana (330)** adds to the above list Temple

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Property and what is inherited from the father or mother.

2604. Akin to an infant, in law the rights of the deity cannot be extinguished by limitation and he fortified this proposition referring to **Pramatha Nath Mullick Vs. Pradyumna Kumar Mullick (supra),** (Page 140) and **Bimal Krishna Ghosh Vs. Shebaits of Sree Sree Ishwar Radha Ballav Jiu (supra)** (Page 340).

2605. Referring to **K. Manathunaitha Desikar Vs. Sundaralingam, AIR 1971 Madras 1 (FB)** Sri Pandey submitted that since deity who is the owner of property suffers from physical disability, its interests have to be looked after in perpetuity.

2606. Sri Pandey also referred to Chapter 7 of the "**Laws of Manu**" (Penguin Classics, Edn 2000) at page 149, Manu's edicts nos. 201 to 203 lay down that on conquest, the King-conqueror "should make authoritative their own laws (i.e. of the vanquished) as they have been declared……"

2607. Ram Janmabhumi continued to exist as a Swayambhu Deity, owning Itself and the Temple, hence no question of extinction of title by Limitation or dispossession could arise. The important aspect of Hindu Law relating to Deities, thus, is that the Deity is never divested of its rights in its property; in the case of self-revealed Idol, coupled with the faith of its followers, there is no independent consecration and the real owner of the property dedicated to a Temple, is deemed to be God Himself represented through a particular Idol or Deity which is merely a symbol.

2608. Sri K.N. Bhat, Senior Advocate sought to argue that the deity being a minor, is entitled to have the protection under Section 6 of the Limitation Act and hence Suit-5 in the case in

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hand cannot be said barred by limitation.

2609. Sri Bhat contended that Suit-5 was filed seeking a declaration for the entire premises described and delineated in Annexures 1, 2, and 3 of Sri Ramjanambhumi at Ayodhya as belong to plaintiff-deities but after the decision of the Apex Court in **Dr. M. Ismail Faruqui (supra)**, the land in dispute would automatically confine to that which is occupied by the disputed stricture, i.e., inner and outer courtyard. Suit was filed in July 1989 and, hence, for the purpose of limitation it would be governed by LA 1963. Article 58 thereof is relevant which deals where a suit is filed to obtain any other declaration and limitation prescribed therefor is three years from which the period begins to run, i.e., **right to sue first accrues**. He submits that this period prescribed is subject to Section 4 to 24 of LA 1963. Section 6 (1) deals with legal disability and reads as under:

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> *"Where a person entitled to institute a suit ...at the time from which the prescribed period is to be reckoned is a minor...he may institute the suit...within the same period after* ***the disability*** *has ceased".*

2610. For the purpose of attracting Article 58, the relevant date is when the right to sue first accrues. In this regard Sri Bhat submits that in the long history of this case on what date according to the defendants the period began to run is the moot question. Unless the defendants prove otherwise the plaint averments as to the cause of action should be the basis for applying the provisions about limitation. Plaint paragraph 18 explains why the present suit was filed despite the pendency of several other suits. In paragraph 30, it is pleaded, among others, that the Hindus were publicly agitating for the construction of a

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grand temple in the Nagar style. “Plans and a model of the proposed Temple have already been prepared by the same family of architect who built the Somnath temple. The active movement is planned to commence from September 30, 1989 and foundation stone of the new temple building, it has been declared, shall be laid on November 9, 1989.” The plaint also sets out the details of the pending proceedings under Sec.145 Cr.P.C. and before any of the steps mentioned in paragraph 30 could be taken like laying of the foundation stone, the title of the plaintiffs had to be declared. That is why on July 1, 1989, the suit was filed. Paragraph 36 of the plaint has to be read along with the other relevant averments. The defendant No.4 in response to the above paragraphs has asserted that the whole Rama temple was imaginary. It is no longer imaginary. It is a matter of public knowledge that the agitation for building a temple at the disputed area had gathered momentum throughout India, particularly from about the year 1989 culminating in the destruction of the structure on December 6, 1992. The averment that in 1989, there was a particular reason why the suit had to be filed is properly pleaded and justified. Therefore the suit is within the prescribed period of limitation."

2611. Per contra learned counsels for pro mosque parties submitted that it has been held by a Division Bench of this Court in **Chitar Mal Vs. Panchu Lal (supra)** that an idol is not a perpetual minor hence Section 7 of the Limitation Act (now Section 6) has no application and this view has also been followed by a Division Bench of Orissa High Court in **Radhakrishna Das Vs. Radha Ramana Swami (supra)**, there is no question of giving benefit of Section 6 to the plaintiffs 1 and 2 (Suit-5). They further submit that the building in dispute

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having been constructed several hundred years ago, the suit in question is ex facie barred by limitation.

2612. Sri Siddiqui, learned counsel appearing for the Muslim Parties, whose submission on the question of limitation has been adopted by Sri Jilani, contended that the entire reading of the plaint of Suit-5 **does not show any accrual of right to sue within the period of limitation** and, therefore, firstly there is no cause of action, whatsoever, and secondly in any case, the suit is ex facie barred by limitation. He submits that even if there existed any temple at site in dispute and as claimed by the plaintiffs (Suit-5) that it was demolished in 1528 so as to construct the disputed structure, a mosque, is taken to be correct, that shows that **the right to sue accrued in 1528**. The building had continued to exist at the site in dispute till Suit-5 was filed and when for the last four hundred years no remedy, as permissible in law, was availed by the plaintiffs, the same could not have been availed by the plaintiffs in 1989. He further submits that the latest cause of action, if any, at the best accrued on 29th December 1949 when the premises constituting inner courtyard was attached by the Magistrate in the proceedings initiated under Section 145 Cr.P.C. and if that be so, the point of commencement of limitation is the date of order passed under Section 145 Cr.P.C., i.e., 29th December, 1949. The suit having not been filed within the period of limitation of six years, as provided at that time under Article 120 of LA 1908, the present suit is ex facie barred by limitation particularly in the absence of any fresh cause of action having accrued to the plaintiffs as no such fresh cause of action has been demonstrated or specified in the plaint.

2613. Whether Suit-5 is barred by limitation or not is

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really a vexed question in the peculiar facts and circumstances of this case. We have already held that the two plaintiffs no. 1 and 2 are juridical persons and have decided the concerned issues accordingly. The question as to whether the disputed structure was constructed in 1528 by Babar or any of his agent has also been decided by us holding that the parties concerned have failed to prove the said issues.

2614. Be that as it may, it cannot be disputed that by the time Father Joseph Tieffenthaler visited the area of Avadh between 1766 to 1771, the disputed structure had already come into existence. As per local belief, it was caused by Aurangzeb after demolishing the then existing temple of Lord Rama at that very place. Though we have not expressed any final opinion as to whether it was actually constructed during the reign of Aurangzeb or not, but once it is certain that the disputed structure had come into existence by the time Father Joseph Tieffenthaler visited Ayodhya i.e. before 1766, even from that date more than two hundred years have passed. The question would be, can an issue be raked up after more than two centuries particularly when nothing governed at that time by any codified law but it was the rule of the King and his command was law of the land.

2615. Lots of authorities have been cited before us to suggest as to what is said in law of Shariyat when a Ruler conquers a territory vis a vis the subject of that territory. Similarly, what is said in Hindu laws in similar circumstances has also been placed before us. In the context of the modern International law also, various charters of United Nations dealing with the rights of the two sovereign authorities, dealing with the matter of transfer of power etc. have been cited. It is

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said that by mere change of King, the laws by which the subject was governed or was being governed would not automatically change and shall continue to be governed by the then existing personal laws. On behalf of plaintiffs (Suit-5), it is pointed out that under Hindu law the rights and privileges of the deity are well protected and it is also the obligation of the King to extend such protection since a deity is treated to be a minor and, therefore, the obligation of protection of minor's right has been imposed upon the King. The law of Shariyat also does not make any change. Further at that time there was no period of limitation prescribed under the statute, hence, the present suit cannot be said to be barred by limitation.

2616. First of all, let us examine the occasion and the purpose for which Suit-5 has been filed. Paragraphs 3 to 10 refer to various suits filed regarding the property in dispute between 16.1.1950 to 18.12.1961 in the Court of Civil Judge, Faizabad and the interim injunction orders passed therein. Paras 11, 12, 13 and 14 complain about non disposal of those matters despite passage of more than 25 years since the first suit was filed. It also says that the plaintiffs deities and their devotees are unhappy with the prolonged delay in disposal of those cases and distorted affairs of temple in the hands of Receiver. A large amount of money offered by worshippers is being misappropriated by Pujaries and other temple staff uncontrolled by Receiver. The devotees of plaintiffs deities desire to construct a new temple at the disputed site after removing the old structure. Then para 15 to 17 relates to creation of a Trust, its object and purpose. In para 18, it says that in pending suits, the deities who are juridical persons have not been impleaded though they have a distinct personality of their own, separate

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from their worshipers and servers etc. Considering the events of previous four decades, the plaintiff-deities feel that their point of view also need be placed before the Court for a just determination of the dispute relating to Sri Ramjanambhumi, Ayodhya and the land and building and other things appurtenant thereto. It is in these circumstances that the plaintiffs are advised to file a fresh suit of their own. Then in paras 19 to 23 certain historical facts have been averred which we have already given, thus not repeating. In para 24, it is said that building constructed in the shape of mosque could not have been so for the reason that it did not conform to tenets of Islam in various ways. Paras 25 and 26 deny the averments that despite construction of the building and called as Mosque, prayer was never offered therein by the Muslims and on the contrary, the plaintiffs deities were continued to be worshipped thereat by Hindus. Paras 27 and 18 relate to the incident of 22nd/23rd December, 1949 when the idol of Bhagwan Sri Ram was installed under the central dome of the building and there was no obstruction by the Muslims since neither any one resided near the place in dispute nor otherwise they offered any resistance. The facts regarding attachment proceedings under Section 145 Cr.P.C., handing over premises within the inner courtyard to the Receiver are also mentioned. Para 29 says that the deities being legal persons own the property in dispute also and having been placed in inner courtyard from 22nd/23rd December, 1949 have perfected their title by all means since they are not party to any of the proceedings. It is also said that in the absence of impleadment of deities, if somebody otherwise is claiming title, the possession of plaintiffs is adverse since 22nd/23rd December, 1949 and they have perfected title as the others' title, if any, extinguished after

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twelve years from 22nd/23rd December, 1949. Having said so, paras 30 and 31 say that Hindu public and devotees of plaintiff-deities having decided to proceed for construction of a new temple and since the plaintiff-deities are not party in the litigation pending in the Court, they are not bound by those proceedings in any manner, but in order to remove any doubt or obstruction in the path of fulfillment of desire of the construction of a new temple, the present suit has been advised to be filed. Thereafter, it is said that the defendants 4, 5 and 6, i.e. the Muslims parties and Sunni Board, have confined their claim in Suit-4 to the building and area encroached in the inner courtyard. It is also said that the right of management of a Mosque, Muslim waqf, is within Mutwalli and the defendant no. 23, Late Javvad Husain was disclosed to be Mutwalli of the so claimed Mosque upto 1940 and hence he has been impleaded in the present suit, but he did not file any suit or joined as plaintiff seeking possession of the property in dispute being its Mutwalli. This also shows that there existed no Mosque according to Shariyat law. Thereafter, History from 1990 to 1995 including the enactment of Act, 1933 and the Apex Court's decision in **Dr. M. Ismail Faruqui (supra)** is mentioned. Then in para 36, it is said that cause of action for suit is accruing from day to day, particularly, since recently when the plan for re-construction of temple is sought to be obstructed by violent action from the side of Muslim community. Based on the above pleadings, the two reliefs have been sought; one is for declaration and another for perpetual injunction.

2617. The facts, as are pleaded, in fact, are a bit puzzle-some and make it very difficult at first flush to understand as to what really cause of action was which the plaintiffs claim to

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have accrued day to day and how the suit is protected from the clutches of the statute of limitation.

2618. To understand the things, let us first summarize the facts as pleaded, mostly whereof, we have already referred and some of which already considered in the earlier part of this judgement.

(a) The place in dispute is believed by Hindus as the birthplace of Lord Rama. Since time immemorial continuously being visited and worshipped by Hindus.

(b) At the place in dispute a non-Hindu structure was raised by or on behalf of or at the command of a Muslim Ruler before the visit of Tieffenthaler, i.e., 1766-71 AD in Oudh. This structure was treated and called as 'Mosque' by the local people throughout and others also.

(c) Despite construction of a building by Muslim Ruler, called and understood by the local people as 'Mosque', Hindu people continued to visit and offer worship according to their faith and belief that the place is where Lord Rama was born and, therefore, sacred and pious.

(d) Construction of the building, which though treated as Mosque, caused no impact on the belief of Hindus about the sacredness or piety in any manner.

(e) Within the premises of the undivided Mosque, there existed a non Islamic structure, i.e. a Bedi which was noticed by Tieffenthaler in his Traveller's Account when he visited Avadh area between 1766 to 1771 and the travel account published in 1786.

(f) This place of worship and non Islamic structures added with the passage of time, i.e., Sita Rasoi/ Kaushalya Rasoi/ Chhati Pujan Sthal, Chhappar/ Kuti/ Bhandar and

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Ram Chabutara.

(g) These structures were noticed in 1858, 1873, 1885, 1949, 1950 and continued till demolition of the entire disputed structure on 6th December 1992. (This is as per the record of this case.)

(h) Despite the entire disputed structure called Mosque, the British Government also recognised the rival claims of two communities; inasmuch, to pacify violent dispute among the two communities, they divided the disputed area in two parts so that two sections may separately offer their prayer/ worship and may not have any occasion to clash with each other.

(i) Despite this division, on one hand Hindus kept possession of the portion for which Britishers allowed them to continue their worship i.e. outer courtyard, but also continued to enter the portion meant for Muslims for their religious activities (i.e. inner courtyard). Entry of Hindus in that area (inner courtyard) continued unabashed despite repeated complaints, removal orders, actions etc. (Record from 1858 to 1885 fortify it.)

(j) The disputed structure, treating a Mosque, the Britishers, allowed a Nankar/ grant to two Muslim persons, namely, Mir Razzab Ali and Mohd. Asghar, who claimed to be the fourth/fifth in succession of the alleged founder Mutwalli of the building in dispute, i.e. Syed Abdul Baki and pursuant to that grant the said persons claimed to have incurred expenses on the maintenance of building in dispute such as white washing, cleaning repairing etc.

(k) On 22nd/23rd December, 1949, the idols of Ram Lala

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were kept by Hindus in the inner courtyard i.e. the premises meant to be used by Muslims by the Britishers after dividing premises sometimes in 1856-57.

(l) Thereafter, on 29rd December 1949 though the internal part of the disputed premises, i.e. inner courtyard was attached by the Magistrate by an order under Section 145 Cr.P.C. yet the fact remains that he also ensured worship of the idols kept under the central dome in the inner courtyard according to Hindu Shastrik laws and to the same effect an injunction order was also passed by Civil Court on 16.1.1950 clarified on 19.1.1950, confirmed on 3.3.1951, which attained finality after dismissal of F.A.F.O. No. 154 of 1951 by this Court on 26th April 1955.

(m) Worship, as permitted, has continued by Hindu people and admittedly since 23rd December 1949 no Muslim either has entered the entire premises in dispute or offered Namaz thereat.

(n) However, worship by Hindus in general since 29.12.1949 also had continued from the iron grilled door of the dividing wall and only priests/ Pujaries were allowed to enter the premises for worship in accordance with Shastrik procedure.

(o) In 1986, the District Judge Faizabad by order dated 1.2.1986 directed for removal of locks, to open the doors so that the Hindu public may worship the idols under the inner courtyard by entering the site.

2619. The above facts show that despite several litigations, in one or the other way, so far as the plaintiffs in the present suit are concerned, their status or their worship continued to be

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observed and followed in one or the other manner. No action or inaction in the meantime was such whereagainst the plaintiffs could claim a grievance and a right to sue which ought to have been availed by them within a particular period of limitation. It is an admitted position that under Islamic laws, no concept of limitation is recognised while in Hindu laws, the rights earned by prescription on certain matters are provided which excludes deity.

2620. In this entire episode, taking it back to a few hundred years, the only occasion which to some extent could have been said to be adverse to the plaintiffs was when the disputed structure was raised. Neither at that time the concept of legal principles, as we have today under the codified laws of British India and thereafter, was recognised and/or known, nor the plaintiffs, in view of the subsequent events, had any cause of action. Moreover, as a matter of fact, the place in dispute continued to be visited by the Hindus for the purpose of worship, Darshan etc. The religious status of plaintiff-deities remained intact. We do find mention of the factum that despite construction of the building as Mosque, the Hindus visited there and offered worship continuously, but we find no mention, whatsoever, that the Muslims also simultaneously offered Namaz at the disputed site from the date it was constructed and thereafter till 1856-57. At least till 1860 we find no material at all supporting the claim of the Muslim parties in this regard. On the contrary, so far as the worship of Hindus in the disputed structure is concerned, there are at least two documents wherein this fact has been noticed and acknowledged. There is nothing contradictory thereto.

2621. Father Joseph Tieffenthaler in his book

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"Description : Historique Et Geographique : Del'inde" has written:

> *"Emperor Aurengzebe got the fortress called Ramcot demolished and got a Muslim temple, with triple domes, constructed at the same place. Others say that is was constructed by 'Babor'. (Page 253)*
>
> *"On the left is seen a square box raised 5 inches above the ground, with borders made of lime, with a length of more than 5 ells and a maximum width of about 4 ells. The Hindus call it Bedi i.e. 'the cradle. The reason for this is that once upon a time, here was a house where Beschan was born in the form of Ram. It is said that his three brothers too were born here. Subsequently, Aurengzebe or Babor, according to others,* ***got this place razed in order to deny the noble people,*** *the opportunity of practising their superstitions.* ***However, there still exists some superstitious cult in some place or other. For example, in the place where the native house of Ram existed, they go around 3 times and prostrate on the floor.*** *The two spots are surrounded by a low wall constructed with battlements. One enters the front hall through a low semi-circular door."*
>
> *(Page 253-254)*

2622. Same thing has been said in the **Edward Thornton's Gazetteer (supra)** published in 1858. It also said as under:

> *"A quadrangular coffer of stone, whitewashed, five ells long, four broad, and protruding five or six inches above ground, is pointed out as the cradle in which Rama was born, as the seventh avatar of*

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Vishnu; and is accordingly ***abundantly honoured by the pilgrimages and devotions of the Hindoos."***

2623. The factum that in the premises within the inner courtyard, Hindus used to worship for hundred of years has been admitted by the alleged keeper of the disputed structure namely, Mohammad Asgar who in his complaint application dated 30th November 1858 (Exhibit No. 20, Suit 1) has said:

بمقام جنم استھان کا صدہا برس کے نشان پڑا رہتا تھا و اہل

ہنود پوجا کرتے تھے

''मुक़ाम जनम स्थान का सदहा बरस के निशान पड़ा रहता था व अहले हुनूद पूजा करते थे'' (Hindi Transliteration by the Parties)

"Previously the symbol of Janam had been there for hundreds of years and Hindus did puja." (E.T.C)

2624. The first document, which mentions about the worship in the disputed structure by Muslims also is **P. Carnegi's Historical Sketch (supra**) published in 1970 where he has mentioned:

"It is said that ***up to that time the Hindus and Mahomedans alike used to worship in the mosque-temple.*** *Since British rule a railing has been put up to prevent disputes, within which in the mosque the Mahomedans pray, while outside the fence the Hindus have raised a platform on which they make their offerings."*

2625. In **"Gazetteer of Oudh" by Mr. W.C. Benett (1877) (Book No. 11) (Supra)** what was observed by Carnegy has been repeated verbatim as is evident from the following:

"It is said that ***up to that time the Hindus and Muhammadans alike used to worship*** *in the mosque-*

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temple. Since British rule a railing has been put up to prevent disputes, within which, ***in the mosque, the Muhammadans pray;*** *while* ***outside the fence the Hindus have raised a platform on which they make their offerings."***

2626. Same thing was repeated in A.F. Millitt's **"Report on Settlement of Land Revenue of the Faizabad" (supra)** (para 669); **"Fyzabad A Gazetteer being Vol. XLIII of the District Gazetteers of the United Provinces of Agra and Oudh" (supra)** (at page 174); **Fyzabad-A Gazetteer being Volume XLIII of the District Gazetteers of the United Provinces of Agra & Oudh" (1928) (supra)** (at page 180)

2627. In **"Uttar Pradesh District Gazetteers-Faizabad" (1960) (supra)**, however, there is slight difference and it says as under:

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"Attacks and counter-attacks continued, culminating in the bloodshed of 1855 under the leadership of Maulvi Amir Ali. As a result, ***in 1858 an outer enclosure was put up in front of the mosque and the Hindus, who were forbidden access to the inner yard, had to perform their puja on a platform outside.*** *Since 1949 the position has changed and the Hindus have succeeded in installing the images of Rama and Sita in the mosque owing to which the spot has become the object of much litigation. Now the inner yard is protected by an armed guard and only a few Hindu pujaris (priests) are allowed access to the inner sanctum."*

2628. The facts mentioned by P. Carnegy recognise this fact that so far as the Hindus are concerned, their visit and worship at the disputed site and disputed structure continued unabated and uninterrupted despite having been raised threat a

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structure which was known and treated by the local people as Mosque. Even the new structure did not in any manner influenced the belief and faith of Hindus on the disputed area. This continued to constitute core of their belief and faith about birthplace of Lord Rama, its continued sanctity, status and piety and that it had not lost merely on account of that construction. That is how their worship continued throughout.

2629. After 1956-57, when partition wall was raised, the administrative intention was that Hindus should stay in outer courtyard and not enter in the inner courtyard but in fact that could not accomplish as is evident from several complaints made by Mohammad Asgher, self claimed Mutwalli of the Mosque in dispute.

2630. If we look at the entire issue in the light of the above facts, we find that there was no occasion for the plaintiffs to feel aggrieved that on a particular date, any right has accrued to sue. Article 58 of LA 1963 provides the period of limitation, which is to commence from the date right to sue first accrued. Unless it is shown as to when right to sue first accrued, the suit in question cannot be thrown on the ground of limitation. While considering Issue No. 3 (Suit-4), we have already discussed that right to sue does not mean a mere fanciful apprehension but it ought to be a substantive threat to the very sustenance of the plaintiff concerned leaving with him no option but to approach the Court, failing which he is bound to loose all kind of his interest. It may happen that in a particular case, unsubstantial occasions may arise frequently pursuant whereto if a person files a suit asserting that the same has given him an occasion to sue, the suit may not be dismissed on the ground that apprehension or the possible injury is so negligible that he/she

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ought not have filed the suit. That is the choice of the plaintiff, but, in our view, the "right to sue" accrued for the first time would be when there is a substantial threat necessitating the person concerned to seek remedy and only then it can be said that the limitation would start running which shall not stop thereafter. In the present case, the defendants have not been able to show any such occasion. Therefore, we are of the view that the plaintiffs cannot be non suited on the ground of limitation. In these circumstances, to avoid any misconception in the mind of others and to place the record straight, if they approach a Court of law seeking a declaration of their rights which are continuously, unabatedly have continued, it cannot be said that the suit is impermissible by attracting any particular provision of the limitation. It cannot be said that the Suit-5, in the above facts and circumstances, is bad on account of the statute of limitation and any provision thereunder.

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2631. There are some more angles. The first, the Gods are described in view of the hymns and meaning, human attributes – in necessity of the human mind and language but it does not necessarily follow therefrom that images of these Gods clothe in such human attributes were artificially prepared and worshipped. It is to the Puranik age that we owe their existence.

2632. In the ancient Hindu scriptures, temples or idol's property is said not to be lost even if enjoyed by strangers for hundreds of years. Katyayan says that temple's property is never lost even if it is enjoyed by strangers for hundreds of years. In P.V.Kane's History of Hindu Shastra Vol.3 it is said that even the king cannot deprive temples or their properties. Under Hindu laws though right based on prescription to some extent are provided but they are not applicable in the case of women,

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minor and king's property.

2633. "**Manusmrti"**, Discourse VIII, Verse CXLIX (149) says:

"A pledge, a boundary, minor's property, a deposit, a property enjoyed by favour, women, King's property, and the property of a Vedic scholar are not lost by adverse possession."

2634. In "**Brihaspati Smriti"** says, *"Female slaves can never be acquired by possession, without a written title; nor does possession create ownership in the case of property belonging to a King, or to a learned Brahman, or to an idiot, or infant.*

2635. **"The Naradasmrti"**, says:

"73. A pledge, a boundary, the property of children, unsealed and sealed deposits, women, the King's property, and a learned brahman's property are not lost through possession."

"75. The property of women and kings is never lost, even if it is, possessed without title for hundreds of years."

2636. ***"Yagyavalkyasmritih"***, says:

''आधिसोमोपनिक्षेपजडबालघनैर्विना।
तथोपनिधिराजस्त्रीश्रोत्रियाणां धनैरपि।।25।।

''भाषा– आधि (बन्धक), सीमा, उपनिक्षेप, **जड़ (मंदबुद्धि), बालक का धन**, उपनिधि, राजधन, **स्त्रीधन**, श्रोत्रिय का धन दूसरे द्वारा दस या बीस वर्ष तक भोगे जाने पर भी अपने स्वामी के अधिकार से हीन नहीं होते हैं।।25।।

2637. "Shukranitih"Chapter IV, Part 5, Verse 225 says:

''आधिः सीमा बालधनं निक्षेपोपनिधिस्तथा।
राजस्वं श्रोत्रियस्वं च न भोगेन प्रणश्यति।।''

''हिन्दी– बंधक रखी गई वस्तु, गॉव की सीमान्त भूमि, **नाबालिग का धन**, धरोहर, **स्त्रीधन**, राजधन तथा **वेदपाठी ब्राह्मण के धन** पर कब्जा कर लेने से ही कोई उसे पा नहीं सकता।''

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2638. It may be noticed that the Sanskrit word 'बाल' has been defined in Sanskrit-English Dictionary of Sir Monier Monier Williams, first published in 1899, corrected Edn. 2002, reprint Delhi 2005 by Motilal Banarsidass Publishers, Delhi at page 728 and reads as under:

> बाल- young, childish, infantine, not full-grown or developed (of persons and things); simple, foolish, child, boy (esp. one under 5 years); a minor (minors are classified as Kumara or boys under 5 years of age; Sisu under 8, poganda from the 5th to the end of the 9th or till the 16th year, and kishora from the 10th to the 16th year); a fool, simpleton …

2639. The first meaning which is applicable on persons and things includes within its ambit a "deity" also.

2640. In the area of Oudh, British Rule came into force in 1856 and not prior thereto. During Muslim Rule, Governors were appointed but no material has been brought to our notice that in the matter of Hindu Laws, any interference was made by the Islamic Rulers. It is mostly in the administration of criminal justice, to some extent, there was an interference and control by Islamic Rulers otherwise the people used to approach the locally constituted bodies like Gram Panchayat etc. for resolving their disputes in accordance with their personal laws. It does not appear to be interfered or altered by the command of the king.

2641. When Subedar of Oudh declared himself an independent ruler and conferred Nawab Wazir in the second half of 18th Century, then also with respect to the dispute redressal system there was no major change and the personal laws and tenets continued to occupy high position as it was. In 1801, East India Company entered into a treaty with the Nawab of

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Lucknow but even that treaty did not cause any impact upon the personal laws of Hindus within the territorial area of Oudh province with which we are concerned. It is only in 1856 AD, when the area of Oudh or the Oudh province was annexed to the East India Company, the Britisher's Laws came to be imposed upon the citizens of Ayodhya and Faizabad. But then also so long as the matters were not caused by statutory laws, the two communities continued to be governed by their personal laws.

2642. The first Limitation Act was enacted in 1859 AD which did not contain any provision regarding prescription or extinction of right which was introduced vide Limitation Act 1871. In 1876, in the peculiar nature of the territory of Oudh as also considering different circumstances prevailed thereat, Oudh Laws Act, 1876 was enacted which was applicable only to Oudh. Section 3 thereof talks of the statutory law to be administered in Oudh and says as under:

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> ***"Statutory law to be administered in Oudh.-*** *The law to be administered by the Courts of Oudh shall be as follows:--*
>
> *(a) the laws for the time being in force regulating the assessment and collection of land- revenue;*
>
> *(b) in questions regarding succession, special property of females, betrothal, marriage, divorce, dower, adoption, guardianship, minority, bastardy, family relations, wills, legacies, gifts, partitions or* ***any religious usage or institution****, the rule of decision shall be-- (1) any custom applicable to the parties concerned which is not contrary to justice, equity or good conscience, and* ***has not been, by this or any other enactment, altered or abolished,*** *and has not been declared to be void by any competent*

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authority;

(2) the Muhammadan law in cases where the parties are Muhammadans, and the Hindu law in cases where the parties are Hindus, except in so far as such law has been, by this or ***any other enactment, altered or abolished****, or has been modified by any such custom as is above referred to:*

(c) the rules contained in this Act:

(d) the rules published in the Official Gazette as provided by section 40, or made under any other Act for the time being in force in Oudh:

(e) the Regulations and Acts specified in the second schedule hereto annexed, subject to the provisions of section 4, and to the modifications mentioned in the third column of the same schedule:

(f) subject to the modifications hereinafter mentioned, all enactments for the time being in force and expressly, or by necessary implication, applying to the territories which, immediately before the 1st November, 1956, were comprised in Part A States and Part C States or Oudh, or some part of Oudh:

(g) in cases not provided for by the former part of this section, or by any other law for the time being in force, the Courts shall act according to justice, equity and good conscience."

2643. Section 16 thereof provides for Rule of Limitation and reads as under:

"16. Rule of limitation.- *The Judicial Commissioner's Circular No.* ***104 of July, 1860,*** *shall be held to have been a notification within the meaning of section 24 of Act 14 of*

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1859, and such Act shall be deemed to have been in force ***in Oudh from the fourth day of July, 1862****; and all orders and decrees passed under the rules contained in the said Circular, or under the said Act, shall be deemed to have been passed under a law in force for the time being.*

Nothing in this section affects the provisions of section 102, 104, 105, 106, 107 and 108 of the Oudh Rent Act (19 of 1868) with regard to the limitation of suits under that Act."

2644. Thus the personal Laws in the matter of religious usage of institution and also in the matter of minority etc. were to continue. Hindu idol or the deity was always treated as a person to be protected by the king like a minor or women and that legal position has not been shown to us having gone under change by any authority at any point of time. We have some earliest judgments on this aspect and do find nothing contrary.

2645. In **Prosunno Kumari Debya & Anr. Vs. Golab Chand Baboo 1875 L.R. 2 I.A. 145,** a decision of Privy Council dated 3rd February, 1875 in para 18 said:

"The authority of the sebait of an idol's estate would appear to be in this respect analogous to that of the manager for ***an infant heir****, ..."*

2646. It also held in para 14 that the debuttor property in Hindu Law is unalienable:

"There is no doubt that, as a general rule of Hindu law, property ***given for the maintenance of religious worship*** *and of charities connected with* ***it is inalienable****."*

2647. However, in the interest of the idol, for its maintenance etc. it found that if the Shebait, the person responsible for managing the affairs of the idol, is not given power to deal with the property to the extent it is required for

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meeting necessities of the deities, that would be against the interest of the deity and its sustenance. In para 19 of the judgment, accordingly, it says:

> *"It is only in an ideal sense that property can be said to belong to an idol; and the possession and management of it must in the nature of things be entrusted to some person as sebait, or manager. It would seem to follow that the person so entrusted must of necessity be empowered to do whatever may be required for the service of the idol, and for the benefit and preservation of its property, at least to as great a degree as the manager of an infant heir. If this were not so, the estate of the idol might be destroyed or wasted, and its worship discontinued, for want of the necessary funds to preserve and maintain them."*

2648. The Privy Council relied on an earlier decision in **Hunooman Persaud Panday Vs. Mmsumat Bdbooee Manraj Koonweree 6 Moore's Ind. App. Ca. 243** in observing the idol as 'infant heir'.

2649. Then Division Bench of Calcutta High Court in **Girijanund Datta Jha & Anr. Vs. Sailajanund Datta Jha 1896 ILR 23 Ca1. 645** considered the question as to whether 'Charao' to the idol would be the property of the priest or shebait or not. It was noticed that about the religious endowment virtually nothing has been said in the religious scriptures, may be for the reason that it was sought to be managed by the person who had highest respect and belief that they shall deal with the situation effectively. The court rejected argument that an idol is only an emblem of God, and offerings made to the God, not for use of the idol but for the use of the God's creatures and by priests in particular and said *"it cannot, we think, prevail in its broad*

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generality in a Court of law at the present day. Decisions too clear and authoritative to be doubted or disregarded have repeatedly laid down that ***an idol in Hindu law is capable of holding property, and that property dedicated to an idol belongs to an idol****."*

2650. Again in **Palaniappa Chetty and Anr. Vs. Deivasikamony Pandara 1917 L.R. 44 I.A. 147** in para 7 the Court said:

> *"In Prosunno Kumari Debya v. Golah Chand Baboo L.R. 2 Ind. Ap. 145, 151 the Rajah Baboo, the shebait of an idol, a man of profligate habits, having spent the income of the debottar property on his own pleasures, borrowed a sum of Rs. 4000 from the respondent, and, by a bond and rahinama, pledged the debottar property for the payment of this sum. In both these securities it was stated that the money was borrowed for the services of the idol and the expenses of the temple. The Zillah Judge before whom the case was tried held as a fact that the money had been borrowed and expended for these purposes. Two decrees were obtained by the respondent, the lender, against the shebait, each directing that the debt should be paid by the shebait personally, or else be realized out of the profits of the debottar land. The appellant, the successor in office of Rajah Baboo, instituted a suit to set aside these decrees and have the debottar property released from an attachment issued in execution of them. The point decided was that the decrees, being untainted by fraud or collusion, and having been passed after the necessary and proper issues had been raised and determined, had the force of judgments of a competent Court and were binding on the*

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appellant, the succeeding shebait, who was a continuing representative of the idol's property. Though the question was not raised whether the debottar lands themselves could be sold under the above-mentioned decrees, the passage from the judgment of Knight Bruce L.J., above extracted, was quoted, and some observations were made by Sir Montague E. Smith, who delivered the judgment of the Board, touching the alienability of debottar land which have been relied upon. First, the learned judge said : "There is no doubt that ***as a general rule of Hindu law property given for the maintenance of religious worship and of charities connected with it is inalienable,"*** *and then, after quoting a passage from the judgment of Lord Chelmsford in a case to be presently referred to, he proceeds thus: "But notwithstanding that property devoted to religious purposes is, as a rule, inalienable, it is in their Lordships' opinion competent for the shebait of property dedicated to the worship of an idol, in the capacity as shebait and manager of the estate, to incur debts and borrow money for the proper expenses of keeping up the religious worship, repairing the temples or other possessions of the idol, defending hostile litigious attacks and other like objects. The power however to incur such debts must be measured by the existing necessity for incurring them. The authority of the shebait of an idol's estate would appear to be in this respect analogous to that of the manager for an infant heir as denned in a judgment of this Committee delivered by Knight Bruce L.J." On the next page he adds : "It is only in an ideal sense that property can be said to belong to an idol;* ***the possession***

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and management of it must, in the nature of things, be entrusted to some person as shebait or manager*. It would seem to follow that the person so entrusted must of necessity be empowered to do whatever may be required for the service of the idol and* ***for the benefit and preservation of its property at least to as great a degree as the manager of an infant heir.*** *If this were not so the estate of the idol might be destroyed or wasted and its worship discontinued for want of the necessary funds to preserve and maintain them."*

2651. The status of idol as a minor has not been disputed or challenged in any authority whether of High Court or judicial committee/Privy Council in the pre-independent period or thereafter in the Apex Court. It is only with respect to Section 7 or Section 6, as the case may be, in various statutes of limitation where special provision in respect to legal disability have been made, some of the authorities have said that for the purpose of the aforesaid statutory provision idol cannot be considered 'a minor' for all the purposes i.e. in perpetuity.

2652. In **Kuarmani Singha Vs. Wasif Ali Murza 1915(28) I.C. 818; Rami Kuar Mani Singh Vs. Nawab of Murshidabad AIR 1918 PC 180; Sarat Kamini Dasi Vs. Nagendra Nath Pal AIR 1926 Cal. 65** and **Deutsch Asiatische Bank Vs. Hiralal Burdhan & Sons 1918 (47) I.C. 122** it was observed that Section 6 of the Limitation Act recognises only three classes of persons being under legal disability namely minor, insane and idiot and thus it cannot be extended any more. A Division Bench of Patna High Court in **Naurangi Lal & Others Vs. Ram Charan Das AIR 1930 Patna 455** noticing the above decisions and also that there appears to be some

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deficiency in the existing law of limitation, held that the Court is bound by the said decisions and therefore, benefit of section 6 cannot be made available to a minor. This decision of Patna High Court was set aside in appeal by the Privy Council in **Mahanth Ram Charan Das. Vs. Naurangi Lal (1933) L.R. 60 I.A. 124**.

2653. What we find is that three kinds of legal disability provided in the Limitation Act do not talk of the nature of person whether legal or natural. We have referred to some of ancient Hindu scriptures to throw some light on the concept, status and position of idol in Hindu religion for the purpose that the idol was treated to be in the position of a minor not because of the recognition or declaration by British Indian Courts about its being a legal person or juridical person but because of the then existing and continuing position of the idol in Hindu law being treated as minor and capable of holding and acquiring property and in furtherance thereof, its recognition as legal person was granted. Therefore, the idol enjoyed the status of a minor not by virtue of subsequent declaration of law but on account of the recognition of its pre-existing status before the application of the codified laws during British regime whether it was prior to the take over by the British Government or subsequent thereto.

2654. No decision has doubted the status of idol as a minor or infant. Then the next question comes up if it enjoys the status of minor or infant, can it be said that this status is good for a few purposes and not for others, and, if so, what is the logic or rationality of this differentiation and the basis thereof.

2655. It is true where an idol's property is being looked after by a Shebait, the law expected him to discharge duties

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effectively and honestly. Similarly, beneficiaries of the deity i.e. the worshippers can also take appropriate action for protection of idol and its property, as and when they found something wrong. But in a case where both do not act to the degree of expectation, or where there is no Shebait at all, and the worshippers simply confine their attention to the benefits and not to the moral duties of protecting the idol's property etc., can it be said for that reason, the idol shall suffer though it is an admitted position that it being a legal person or a juridical person in law cannot act on its own. The maxim **contra non valentem agere non currit praescriptio** (Prescription does not run against a person who is unable to act) comes into effect and should be made applicable in the case of idol. We find no reason as to why in such a case it should not be observed. Here we are not concerned with all the juridical persons or legal person and it is not necessary for us to consider whether every juridical person or legal person would enjoy the status of minor or infant or not. Suffice it for us to concentrate only to the case of idol or deity in respect to Hindu law where its status is well recognised under the ancient Hindu scriptures which had continued and recognised as such by the British Indian Courts also. The only exception is that a restricted alienability of the debuttor's property has been allowed and that too for the benefit of the idol so that the necessary expenses and funds for maintenance of deity may be available without any obstruction. In fact this restricted alienability of debuttor's property is consistent with the rights of minor.

2656. This is how in various authorities, status of 'deity' as minor has been considered. In **K. Manathunainatha Desikar Vs. Sundaralingam AIR 1971 Madras 1,** a Full Bench of

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Madras High Court in para 20 of the judgment, observed:

> *"The deity, a juristic entity, is the proprietor who never dies but labours under physical disability which renders it necessary that its interests should be looked after in perpetuity. ...."*

2657. Following the decision of the Apex Court in **Bishwanath Vs. Sri Thakur Radha Ballabhji, AIR 1967 SC 1044,** a Single Judge of Rajasthan High Court (Hon'ble Dr.B.S.Chauhan as His Lorship then) in **Temple of Thakurji Vs. State of Rajasthan & Ors. AIR 1998 Rajasthan 85** in para 10, said:

> *"there is no doubt that by fiction, the deity/idol is to be treated as minor and physically disabled person. It has been recognised by the Court from time and again ....."*

2658. The Court followed an earlier decision of Rajasthan High Court in **Ram Lal (Supra).**

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2659. A Single Judge in **Trilochan Das Adhikari & Anr. Vs. Simanchal Rath & Ors. 1994 (11) Orissa Law Reviews 602** has also said:

> *"Defendant No.9 (Sri Madan Mohan Swamy Bije) is a deity who is a perpetual minor."*

2660. The plaintiffs 1 and 2 are deities and juridical persons, as we have already held. A juridical person cannot act in the materialistic world on its own but has to be represented by a natural person. In the context of a Hindu deity, normally it is represented and managed by a Shebait who has the right to manage the affairs of the deity and in furtherance thereof takes all such actions, as are needed for discharge of its obligations of maintenance of a deity, which includes right to file suit or be sued also. This, however, does not mean that the basic right

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vested in the deity stands disappeared or extinguished and the deity becomes, in its status, subordinate to Shebait as if right of protection which every owner possess stands transferred to a person who has authority to manage and possess on behalf of deity. These two things are different and on this aspect some of the authorities we have already discussed while considering Issue No. 3 (Suit-4) and issues relating to juridical personality of plaintiffs 1 and 2 (Suit-5). Though it may be a bit repetition at this stage also but we find no escape therefrom in order to avoid any confusion in the matter and also realising the importance and wide ramifications. It is rather more important as the learned counsels for the Muslim parties have raised serious doubt. Thus also, it needs to be dealt with carefully in detail hereat despite bearing criticism of repetition which normally a Court of law avoids.

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2661. An idol or deity in Hindu law enjoys a different status and class in itself. As we have already noticed, the Apex Court In **Jogendra Nath Naskar (supra)** and **Deoki Nandan Vs. Murlidhar (supra)** recognised that an idol is a juridical person capable of holding property. A Full Bench of this Court in **Jodhi Rai Vs. Basdeo Prasad (supra)** held that a suit respecting the property in which the idol is interested is properly brought and defended in the name of the idol, although *ex-necessitate resi* the proceedings in the suit must be carried on by some person who represents the idol usually the manager or shebait.

2662. To be more precise, it is not disputed before us that an idol/deity is like an infant or minor and, therefore, has to be acted through a guardian but what is contended is that the provisions specially made for minor like Order XXXII Rule 1

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C.P.C. and Section 6 LA 1963 would not apply to the case of an idol/deity since it is not a minor in perpetuity.

2663. Let us consider first the authorities cited against the proposition that a deity is a minor in perpetuity as to what reasons have been assigned therein. We intend to proceed with Division Bench decision of this Court in **Chitar Mal Vs. Panchu Lal (supra)**. This has been relied on in support of the contention that an idol is not under disability under Section 7 of the Limitation Act (Section 6 in the existing Act) since it cannot be deemed to be a perpetual minor for the purpose of limitation. This Court relied on two decisions of Privy Council in **Jagadindra Vs. Hemanta (supra)** and **Damodar Vs. Lakhan Das (supra)**. The former is a decision rendered in 1904 and later was handed down in 1910. These two decisions have been followed in some other cases subsequently also. Therefore, it would be necessary to consider them also in detail.

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2664. In **Chitar Mal Vs. Panchu Lal (supra)** one Ram Narain brother of Jai Narain made gift of his share in a joint house property to the idol of Shri Chaturbhujji Maharaj installed in a temple in Ajmere. This gift was executed on 9th January, 1903. The Manager of the temple sold the gifted portion to Smt. Bishni, widow of a son of Ram Narain. On 5th December 1908 Chitar Mal, son of Jai Narain sued for a declaration that the property in suit consisting of half the house formerly owned by his father was trust property and transfer of the said property to Smt. Bishni was null and void and that the property be made over to the trustees of the temple of Shri Chaturbhujji after dispossessing the defendant. The suit was filed after 12 years from the date the Manager of the temple sold the gifted portion to Smt. Bishni. It was pleaded in para 11 of the plaint that bar of

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limitation is saved by virtue of Section 10 of the Limitation Act. This plea was decided against the plaintiff and Section 10 of the Limitation Act was held inapplicable. The matter came up before this Court in a reference made by the District Judge formulating three questions under Section 17 of Regulation No. 1 of 1877 Regulations. The applicability of Section 10 was not subject matter of reference, as is evident from following:

> *"The suit was instituted more than 12 years after the date of sale, so it was pleaded in para. 11 of the plaint that under the provisions of Section 10 of the Limitation Act the bar of limitation was saved. This plea was decided against the plaintiff and the ence to us does not cover that point."*

2665. Three questions formulated by the lower Appellate Court in **Chitar Mal (supra)** where as follows:

> *"(1) Whether the deed, dated the 17th April, 1905, could constitute an alienation of the dedicated property (*318T*waqf) which was under the management of the Marwari faction of the Biradri of Agarwals at Ajmere and thereby give rise to adverse possession.*
>
> *(2) Whether Respondent No, 1 could acquire any title to the said property.*
>
> *(3) Whether in the circumstances of the present case Respondent No. 1 could claim the benefit of the law of limitation especially in view of paras. 1 and 2 of he written statement."*

2666. In respect to issue no. 2, the argument put forth on behalf of the plaintiff, Chitar Mal, before the Court was that idol suffered the disability of perpetual minority, so any suit by idol at any period of time after the date of transfer would be saved from bar of limitation under Section 7 of LA 1908. It is this

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argument which was to be dealt with by this Court in the facts of that case.

2667. Reliance was placed on the comments of a learned author in **Sastri's Hindu Law**, 5th Edn., Chapter XIV on page 726 which says:

> *"As regards limitation it should be considered whether S. 7 of the Limitation Act is not applicable to a suit to set aside an improper alienation by a shebait of the property belonging to a Hindu god. As the god is incapable of managing his property he should be deemed a perpetual minor for the purpose of limitation."*

2668. It was not disputed before the Court that idol enjoyed the status of a minor. This Court also noticed that a transfer by minor is void ab-initio and in that case the question of proper or improper alienation would not arise. For this purpose reference was made to **Mohori Bibee Vs. Dharmodas Ghose (1902) 30 I.A. 114 (P.C.)**. **T**hereafter, the Court proceeded to consider two judgments of the Privy Council in **Jagadindra Vs. Hemanta (supra)** and **Damodar Vs. Lakhan Das (supra)** so as to refute the argument of the plaintiff's counsel on the applicability of Section 7 of the Limitation Act in that case.

2669. In the first case, i.e., **Jagadindra Vs. Hemanta (supra)**, what we find is, at the time of wrong alienation of property, the person entitled to manage the dedicated property of the idol, i.e., Shebait himself was a minor. After attaining majority, he brought a suit for restoration of the property and this suit was filed within three years from the date of attaining majority by the Shebait. Privy Council held the suit within time by referring to Section 7 of Limitation Act observing that it is in

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ideal sense the property is owned by the idol but in effect the right to sue and be sued vests in Shebait or Manager of the property and, therefore, if he was minor at the time when cause of action with respect to dedicated property arose, on attaining majority, he could have filed suit. It appears that in some of the later cases, these words that "it is only in ideal sense that the property vests in the idol and being a juridical person, he can sue or be sued but in effect the right is vested in Shebait have been read by as if the Shebait has snatched away the vested right and status of the idol and everything would only be governed by the status of Shebait with respect to the property in debuttar. In fact, in subsequent authorities, where the above decision was relied, the Court read it by saying that the right is vested in shebait and not in idol. This negative declaration of the right of a idol to file a suit or not in its own name was neither in consideration before the Privy Council in **Jagadindra Vs. Hemanta (supra)** nor any such declaration was made but it appears that the above sentence was read as a natural corollary that the idol loses any right, whatsoever, to sue or be sued. With great respect, we find that it is this addition of the words which has resulted in some authorities denying something to idol which otherwise probably never intended by the Privy Council.

2670. We find it difficult to chew this decision for more than one reason. The observations are in respect to the practicability of the thing since by its very nature, the idol neither can move nor can act in a particular manner nor can think or understand as to what is good or bad, being a legal person and not a natural person. The faith of the people on the power and status of idol is well known and is beyond the pale of judicial review. It is the spirit and the existence of the Supreme

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Being which is worshipped in the symbolic form of image but otherwise the existence of Supreme Being is not dependent on the existence of the images or idols. The worshippers believe in existence of such Supreme Being which is capable of providing all kind of happiness, salvation etc. to the worshipper but then in respect to the worldly affairs, the rights, obligations, privileges whatever may be of the idol, they have to be looked after by some natural person. To this extent, the position is same in respect to all legal persons. Their right for sue or be sued is always looked after and acted upon by an individual or group of individuals of natural persons. It does not mean that every thing which is vested in the legal person, can be deemed to be actually vested in the individual natural person to the effect of excluding the legal person to any extent or divesting him of his own right. Besides every legal person or juridical person whether is a minor or not, is a matter which is yet to be considered but qua a Hindu idol, it can not be disputed that in Hindu Laws, it has always been treated a minor, and this has neither ever been doubted nor found otherwise. Earlier British India Courts normally used the word 'Infant'.

2671. In the matter of idol, one can presume a situation where there is no Shebait or Manager or an identified person for managing the affairs. By its very nature, the people on their own go and worship and the procedural aspect of worship is looked after by a section of people on their own. For example where Hindus go for worship at a place where there is no individual who works as Shebait but a section of the people called “Pandas” etc., who, on their own take care of the procedural aspects of worship and for that purpose get remuneration called *Dakkshina* or *Dan.* If a property dedicated to such place in the

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name of the idol or deity exists thereat and there is no identified Shebait or Manager, would it mean that the property shall not vest in anyone and that if somebody occupies the dedicated property of idol unauthorizedly, the plea of adverse possession can be taken against the idol which being not a person cannot take care of property of its own.

2672. Similarly, even where a Shebait or Manager is there, but if he or she itself indulges in some unauthorized act or mismanagement of the property of the idol and wrongly alienates or allows a possession to continue in collusion with a third party, can it be said that the idol is bound by such act of the Shebait and after lapse of certain period, a well wisher of the idol or the idol itself though a bonafide worshipper cannot take action on account of the application of provisions of limitation.

2673. In both the two cases of Privy Council which were relied on in **Chitar Mal (supra)**, we find that there was a Shebait for managing the affairs of the property of the idol. He entered into certain transactions of dedicated property of idol with third person. It was not a case where the Court found that the act of Shebait was unauthorized in the sense that it was not initiated for the benefit of the idol. No case of fraud, collusion etc. found. The attempt on the part of the parties, who initiated litigation later on, was to wriggle out of such transaction of property which was entered by earlier Shebait within their own rights on behalf of idol.

2674. To our mind, a contract with minor is void but where the guardian of a minor or guardian of an infant has dealt with the property of minor/infant and alienate some part of the same for the benefit of the minor or infant, such transaction of guardian has always been upheld otherwise very purpose of

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having a guardian or caretaker would stand frustrated and may result in serious consequences to the very existence and subsistence of the minor. In none of the two cases of the Privy Council which were relied on by the Division Bench in **Chitar Mal (supra)**, these questions were involved and as a matter of proposition of law, the Privy Council in none of these two cases has said that an idol cannot be treated to be a perpetual minor. To us it appears that this inference has been read in by the Court in the above decisions considering the provisions of limitation relied by the Privy Council in the two cases but that was in the context of the facts of those cases and not as a matter of legal proposition as to whether idol is a perpetual minor or not.

2675. Though we are not doubting the correctness of the decision of the Privy Council nor it is necessary for us to suggest that the judgments of the Privy Council are not binding upon us in the absence of otherwise law declared by the Apex Court, but it would be necessary to consider as to what was the issue before the Privy Council and what has been decided by it and whether it constitutes a binding precedent upon this Court.

2676. In **Jagadindra Vs. Hemanta (supra)**, the Calcutta High Court held that the idol being a juridical person is capable of holding property. Limitation, therefore, would start running against it from the date of transfer and a suit filed beyond the period of limitation from that date is barred by limitation. It does not appear that the question as to whether idol is a minor or not was considered by the Calcutta High Court. The Privy Council in absence of any such issue before it, obviously had no occasion to look into this question but then from the facts of that case it found that the Shebait himself was a minor at the time when the property in suit of idol was transferred. He had filed

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suit on attaining majority within the period of three years as contemplated under Section 7 of the Limitation Act. Privy Council held that since the person who was managing the affairs of the idol himself was minor, considering the peculiar circumstances that a legal person itself cannot take action but has to be acted by a natural person who also was under disability, Section 7 would apply to such natural person and held the suit within time.

2677. The matter in effect was decided in favour of the idol though the reason may be different. But a strange question arises. Can there be a guardian of a minor who himself is a minor. The law of the land on the date, as applicable to minor, does not contemplate a guardian or a care taker of a minor who himself is minor. In other words, it is inconceivable that a minor can be assigned duties to take care and manage the affairs of another minor. Such a situation may have arisen more than hundred years back and what were the reason behind it, we need not go into that. We are satisfied that such a situaiton cannot arise in law of independent India governed by the Constitution where such right of management can be exercised by a guardian who has to be, by necessity, a major and not a minor. Secondly, the judgment in **Jagadindra Vs. Hemanta (supra)** nowhere says that an idol is not minor, what to say of perpetual minor or not.

2678. Now we come to the second case of **Damodar Das Vs. Lakhan Das (supra)**. There it appears that the idol again was being looked after and managed by a Shebait, i.e., Senior Chela or Mahant of the Math. Under an agreement with another, who has been termed as Junior Chela, half of the property of the Math was transferred to him. The successor in the office of

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Senior Chela/Mahant of the Math, filed a suit against Junior Chela for recovery of the transferred half of the property. This suit was filed after twelve years from the date of transfer. Privy Council held it barred by limitation on the ground that from the date of agreement, the possession of the property by Junior Chela, by virtue of terms of agreement, was adverse to the right of the idols and that of the Senior Chela representing that idol. Therefore, the suit is barred by limitation. Here again what we find is that the property was transferred to Junior Chela by Senior Chela, i.e., Shebait of the idol under an agreement. While observing that the possession became adverse from the date of transfer under the agreement, with great respect we find that the very ingredients of adverse possession were not being in issue before the Court hence the same were not addressed inasmuch whether such transfer can constitute adverse possession or not, it does not appears to be an issue raised, argued and decided before the Privy Council. The Apex Court in a catena of decisions, which we have considered in detail, while discussing the issues relating to possession/adverse possession, has held as to what constitute adverse possession in law. It is a well settled dictum that in order to constitute adverse possession there has to be a hostile possession with the *animus possidendi,* open, peaceful and continuous. An intention to possess the property against the owner against his interest is one of the necessary ingredient held by the Apex Court in a catena of decisions to constitute adverse possession. In **Damodar Vs. Lakhan Das (supra)**, the property was transferred to Junior Chela under an agreement by a person who was competent and duly authorized to manage the property of the idol, a minor. The intention on the part of the transferee to hold the property adverse against the

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owner obviously was lacking. Junior Chela got possession under an agreement that was a permissive possession. This aspect has not been raised, argued and decided. It appears that proceeding on the assumption that there existed an adverse possession on that date, the matter has been decided. In the matter of adverse possession, we are bound by the law laid down by the Apex Court in view of Article 145 of the Constitution and in such a case, the judgment of Privy Council is not binding on this Court.

2679. Moreover, it does not appear that the questions as to whether the idol is a minor or whether Section 7 has any application in the matter were at all raised and decided. On the contrary, the Court has upheld the finding of the High Court that in law, the property is vested not in Mahant, but in the legal entity, i.e., the idol and the Mahant is only its representative and manager. Once this finding is accepted, the transfer of a property unauthorizedly or possession of a property by another even otherwise can not be treated to be adverse to the idol, a minor, when it cannot act on its own and protect itself from such unauthorized act. In any case, it need not be necessary to go into this aspect for the reason that if a transaction has been made by a proper and validly appointed Shebait or a person about whose status there is no dispute, on behalf of minor, one may not wriggle out of the transaction on the ground that the contract was on behalf of minor and, therefore, void for the reason that the guardian of a minor can enter into certain transactions for the benefit of minor. The said proposition has nothing to do where it is not shown that the minor or the idol has any Shebait at all to look after its interest.

2680. In our view, the decisions of this Court in **Chitar Mal Vs. Panchu Lal (supra)** has extended the two decisions of

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the Privy Council in **Jagadindra Vs. Hemanta (supra)** and **Damodar Vs. Lakhan Das (supra)** to the extent of a proposition in so many words which do not appear to have been laid down therein and, therefore, with respect to the Hon'ble Judges, we find ourselves unable to agree with the same.

2681. Relying on **Jagadindra Vs. Hemanta (supra)** an argument was raised in **Shree Mahadoba Devasthan Vs. Mahadba Romaji Bidkar and others, AIR 1953 Bombay 38** that since the right to file suit is vested in the shebait or manager as observed by the Privy Council in **Jagadindra Vs. Hemanta (supra)** hence a suit by idol is not maintainable. This was exactly what has been read by some of the High Courts in the above two judgements which was sought to be argued before the Bombay High Court also. The Division Bench, however, rejected the submission. It said that it is only an extension of the principle of responsibility from the image or idol of the manager, or to use the other words, from the principal to the agent to vest the right of protection of the property which is incidental to the right of possession and management thereof by way of filing a suit in connection with the same, in the shebait. The extension of the right in the shebait however does not mean that the right which the image or the idol as a juridical person has by virtue of its holding the property to file a suit in regard thereto is by any process eliminated.

2682. Be that as it may, in our view, reference to Section 6 of LA 1963 need not at all be necessary. It is not required in this case to go into the question whether a deity suffers a "legal disability" to attract the aforesaid provision or not. The matter can be decided without going into this aspect and without considering the question as to whether the judgements taking the

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contrary view, which one thereof is correct and ought to be followed by us. The nature of the Hindu idol/deity and its various facets have been considered by us while dealing the issue pertaining to juridical personality and above also. What we are now going to discuss may at times reflect on repetition to what we have already said but in this case we have not much bothered about it for the reason that the issue involved is of extraordinary nature and we do not want to leave any occasion or doubt or confusion particularly when the judgement in this case is already so voluminous.

2683. We may crystalise hereat what are settled notions qua an idol/deity, its property as also the rights powers and duties of a Shebait as argued by the other side also. They are:

(i) A Hindu idol duly consecrated is a juridical person, can acquire property, sue and be sued and enter into transactions with others like a natural person;

(ii) By its very nature since an idol or deity is a fictitious person cannot act on its own. It has to work on being represented by a natural person. In the case of Hindu idol, it is the Shebait who has right to possess and manage property of the idol and also to discharge duties of daily services to be rendered to the idol. Its position is that of a custodian of a property and the idol itself but it does not mean that he is the owner. In case of necessity, i.e., for the benefit of the idol i.e. for necessity, the property of the idol can be alienated by the Shebait but no more no less. The Shebait is a peculiar kind of office with which attach duties and obligations. Only in a very restricted sense it can be transferred;

(iii) Qua the property of the idol, the position of Shebait is

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that of a manager or guardian of an infant or minor;

(iv) The position of idol as a minor though recognised for some purposes but not for all purposes since they are considered to be a major from the date of its consecration but for entering into transactions with natural persons it needs to be represented by a natural person, i.e., Shebait and none else; (5) The right to file suit for the benefit or on behalf of the idol vests in a Shebait but with certain exceptions namely, where the Shebait is guilty of maladministration etc. or where there is no Shebait, in such a case a worshipper as a next friend may bring a cause representing the idol but not otherwise; (6) The difference between Shebait and next friend is that a Shebait is under an obligation to take such steps as are necessary for the protection of an idol but a worshipper may be permitted to represent idol for its benefit but has no legal obligations as such to do so. Moreover, a worshipper must be such who is a beneficiary and not more benevolent.

2684. It is in the context of these principles we may consider the question of limitation vis a vis Section 6 of LA 1963 but before doing so we feel it expedient to have a glance over some of the relevant well considered authorities throwing light on the above propositions.

2685. Deity is conceived as a living being and is treated in the same way as the master of the house would be treated by his humble servant. In **Rambrahma Chatterjee Vs. Kedar Nath Banerjee (supra)** Mookerjee, J. recognised the above concept of Hindus and observed that the normal type of continued worship of a consecrated image includes the sweeping of the temple, the

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process of smearing, the removal of the previous day's offerings of flowers, the presentation of fresh flowers, the respectful oblation of rice with flowers and water, and other like practices. It also observed that the daily routine of life is gone through with minute accuracy; the vivified image is regaled with the necessaries and luxuries of life in due succession, even to the changing of clothes, the offering of cooked and uncooked food, and the retirement to rest. The religious customs of Hindus in respect to Hindu idol have been recognised by the Court of Law life a juristic person under the English system. A juristic person under English system has no body or soul. It has no rights except those which are attributed to it on behalf of some human beings. But in the concept of Hindus belief the lump of metal, stone, wood or clay forming the image of Hindu idol is not a mere moveable chattel. As already observed it is conceived by Hindus as a living being having its own interest apart from the interest of its worshippers. The observations of Mookerjee, J. in **Rambrahma Chatterjee Vs. Kedar Nath Banerjee (supra)** were approved by the Judicial Committee in **Pramath Nath Mullick Vs. Pradhyumna Kumar Mullick (supra).** It can thus be said that a Hindu idol/deity is a juristic person of a peculiar type.

2686. The various services of a deity, some of which we have referred above, cannot be performed or observed by deity itself for the simple reason that it is not a natural person. Besides, the daily services of the deity in a case where the deity has been dedicated with some property moveable or immoveable, its possession, management and protection is also needed to be cared by a natural person. After dedication of the property to the deity the proprietary title to the property is

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vested in the idol. But because of its very nature it may not actually possess or manage the said property hence the need of Shebait arises. It is also a well recognised custom amongst Hindus.

2687. Sheba (i.e., in Hindi 'Sewa') means 'service' and the person who renders it is called 'Shebait' (i.e., in Hindi 'Sewaiat'), i.e., "one who render service".

2688. It is true that the ancient Hindu scripture is mainly silent on the subject of Shebaity rights and duties but in the last almost one and half century and more, a lot of judicial precedents have come throwing light on the subject and many of the propositions laid down therein have also got approval of the Apex Court in the post independent era. In normal course whenever an image or idol is set up and consecrated, there, needs be a Shebait to serve and sustain the deity whose tabernacle the image is.

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2689. Duties and privileges of a Shebait primarily are those of one who feels it sacred. He must take the image into his charge and custody; he must see that it is washed, fed, clothed and tended and that due provision for its worship is made. The main concern of a Shebait appears to be to carry out duly the sacred duties of its office which he may perform personally or if permitted by the customs may appoint a qualified assistant to help in his stead. As already observed when an image is consecrated, usually property is also dedicated to its use. This is a common practice. Such property vests in the idol but the right to possess and the duty to manage the property vests in the Shebait. It would be important to mention the distinction that the right to possess and duty to manage does not cloths the Shebait with the right of ownership or title over the property but what

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we have said should be taken no more and no less. It is only the right to possess and duty to manage and nothing else. With regard to such property the position of Shebait is that of a trustee though in true sense he cannot be said to be a trustee as per the provisions of the Indian Trust Act or like.

2690. But then there has to be seen distinction between the property owned by a deity and the deity itself. With regard to the service of deity and duties appertained to it a Shebait is in the position of the holder of an office in the dignity.

2691. In **Maharanee Shibessouree Debia Vs. Mothornath Acharjo (1869) 13 M.I.A. 270** an issue was raised whether a Shebait was entitled to sell certain Jammas connected with a Taluk. The Judicial Committee held that Taluk itself, with which these Jammas were connected by tenure, was dedicated to the religious services of the idol. The rents constituted, therefore, in legal contemplation, its property. The Shebait had no legal property, but only the title of a manager of a religious endowment. In the exercise of that office, it could not alienate the property, though it might create proper derivative tenure and estates comfortable to usage.

2692. Then came in 1875 another decision in **Prosanna Kumari Debya Vs. Gulab Chand (supra).** In this case the powers of Shebait were considered qua debutter property and the Judicial Committee observed that the Shebait had no title to the legal property but has a title of manager of a religious endowment. In the exercise of that power, it may not alienate the property, but may create proper derivative tenures and estates conformable to usage. It said that it is competent for the Shebait in the capacity of Shebait and Manager of the estate, to incur debts and borrow money for the proper expenses of

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keeping up the religious worship, repairing the temples or other possessions of the idol, defending hostile litigious attacks, and other like objects. The power, however, to incur such debts must be measured by the existing necessity for incurring them. Judicial Committee referred to a judgment of Lord Justice Knight Bruce in **Hunooman Persaud Pandey Vs. Mussumat Babooee Munraj Koonweree 6 Moore's Ind.App. Ca. 243** observing:

> *"The power of the manager for an infant heir to charge an estate not his own is, under the Hindu law, a limited and qualified power. It can only be exercised rightly in a case of need or for the benefit of the estate. But where, in the particular instance the charge is one that a prudent owner would make in order to benefit the estate, the bona fide lender is not affected by the precedent mismanagement of the estate. The actual pressure on the estate, the danger to be averted, or the benefit to be conferred upon it, in the particular instance, is the thing to be regarded. But, of course, if that danger arises or has arisen from any misconduct to which the lender is or has been a party, he cannot take advantage of his own wrong to support a charge in his own favour against the heir grounded on a necessity which his own wrong has helped to cause. Therefore the lender in this case, unless he is shewn to have acted mala fide, will not be affected, though it be shewn that with better management the estate might have been kept free from debt."*

2693. In this context, the Judicial Committee in **Prosanna Kumari Debya (supra)** said:

> *"there is no doubt that, as a general rule of Hindu*

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Law, property given for the maintenance of religious worship and of charities connected with it is inalienable. . . . . But, notwithstanding that property devoted to religious purposes, is as a rule, inalienable, it is, in their Lordships' opinion, competent for the shebait of property dedicated to the worship of the idol, in his capacity as shebait and manager of the estate, to incur debts and borrow money for the proper expenses of keeping up the religious worship, repairing the temples or other possessions of the idol, defending hostile litigious attacks, and other like objects. The power, however, to incur such debts must be measured by the existing necessity for incurring them."

2694. The disputes which have arisen before the Courts time and again are mostly in two context, i.e., (1) Relating to the transfer of property of idol; and, (2) Relating to the assignment/transfer/ alienation of the rights, duties, obligations or tests with the Shebait. The various authorities, therefore, from time and again have dealt with these issues in the context thereof differently for the simple reason that they did not find any specific answer on these questions in Hindu religious scriptures and, therefore, mostly rely on the common law of the land as well as principle of equity, justice and good conscience. We would refer hereafter both the sets of authorities to give a clear idea of the distinguishing features of the two.

2695. There is a third aspect also on which some authorities have come, i.e., the alienation of the deity or its temple itself. In **Pramath Nath Mullick Vs. Pradhyumna Kumar Mullick (supra)** the Privy Council held that the idol cannot be regarded a mere chattel. It is not property in true sense

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and their destruction, degradation or injury is not within the power of their custodian. An idol is extra commercium. It can never be the subject matter of commerce as also held in **Khetter Chunder Ghose Vs. Hari Das Bundopadhya (supra).**

2696. In **Smt. Panna Banerjee and Ors. Vs. Kali Kinkor Ganguli (supra)** Justice Deb in his concurring judgement observed that a deity is not a chattel but a juridical person. No custom can ever validate sale of any deity. Even legal necessity of the deity cannot destroy the very existence of the deity by selling it in open market. His Lordship said that the very thought of it is opposed to the fundamental concept of Hindu jurisprudence. It is against public policy. It is wholly unreasonable. It is absolutely repugnant to Hindu law. It is so repulsive to the judicial mind that every court is bound to strike it down in limine. In para 66 of the judgment His Lordship observed:

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> *"66.* ***No one has ever heard that a deity can be served or be sold by hits and bits. The deity is indivisible. It is the Supreme Being. The deity is not a property and no one can be its owner not even its founder****. The shebaits are the managers of the deities though in reality they are its glorified servants.* ***No shebait can ever be the owner of any deity. He is the custodian of the idol*** *but this custody does not nor can it ever confer any right on him to sell the deity."*

2697. This judgment was confirmed by the Apex Court in appeal and is reported in AIR 1974 SC 1932 holding that the transfer of Shebaity rights was illegal for the principal reason that neither the temple nor the deity nor the Shebaity right can be transferred by sell in pecuniary consideration. The transfer by

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sale is void in its inception. We may mention hereat that various reasons were assigned in the concurrent judgment but they have not been approved by the Apex Court except the reason that the transfer of Shebaity rights of temple of deity by way of sell is illegal.

2698. What was observed with respect to deity, the same sanctity was extended to the abode of deity, i.e., the temple in which deity live and it has been distinguished from other endowed property of the deity. This we find, recognised by this Court in **Mukundji Mahraj Vs. Persotam Lalji Mahraj (supra).** Therein the plaintiff deity was installed in a temple at Mathura. Defendant purchased half of the temple in execution sale and took its possession. Deity brought action for recovery of possession of the said part of temple from the defendants. The Division Bench of this Court observed:

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> *"Whatever may be said about a permanent alienation of endowed property other than a temple, in the very nature of things, having regard to the duties of a Manager or a Shebait towards the idol or institution, there can be no necessity of alienating the temple or any portion of it in which the idol is installed. The maintenance of the entire building is the prime concern of the Manager or the Shebait.*
>
> *The temple has a special sanctity distinct from other endowed property. To alienate the temple itself is to cut at the root of the very existence of the idol in the habitation intended by the founder. Hindu Sentiment views the alienation of a temple as a sacrilege. Not until the idol has been removed from the temple in accordance with shastric rites and has assumed a new habitation and the temple*

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abandoned as a place of worship may the temple be alienated or sold in execution of a decree...."

2699. To the same effect is another decision in **Madan Mohan Saha Banik and Ors. Vs. Rakhal Chandra Saha Banik and Ors., AIR 1930 Calcutta 173.**

2700. Here we may understand the meaning of the term temple. The meaning of the word "temple" vide "**Concise Oxford Dictionary",** page 1261 is *"edifice dedicated to service of God; or place in which God resides."* The "**New English Dictionary, Vo. IX, Part II"** says, "*an edifice or place regarded primarily as the dwelling place or 'hose' of a deity; hence an edifice devoted to divine worship. Historically, the word is applied to a sacred building of Egyptians, Greeks, Romans, etc. but now to those of Hinduism, Budhism, Confucianism, Todism, Shudasm, etc."*

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2701. The legal principle which are applicable to the endowed property have to be distinguished from the case where such power of alienability is sought to be conceived or pleaded in respect to the very deity itself or its temple in which it is consecrated or which is the permanent abode of the deity. The preservation and not destruction of the deity and its property is the paramount and highest duty of each and every Shebait is the general law laid down by the Judicial Committee in pre-Indian constitutional era and thereafter to the same effect is the law laid down by the Apex Court also. The legal necessity of a deity cannot be so unruly that it can rule over the deity. The alienation of the endowment as a whole is not bounded by Hindu Law. The endowment as a whole can never be the subject matter of alienation even for the legal necessity of a deity for it would destroy the very purpose and the object for which the

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endowment is created. It will not only destroy the endowment but will devour the deity too. The temple is the residential house of a deity. The deity is entitled to be worshipped in its permanent abode. Its permanent residence cannot be disturbed. The idol cannot be removed like a chattel. The temple cannot be vivisected. It is impartible. No part of it can be sold even for the deity's legal necessity. It is res extra commercium. Every Hindu regards it as a sacred place. To sell a part of the temple is to endanger the very existence of the consecrated idol and to put an end to the sanctity attached to it.

2702. This is how the distinction of the property owned by deity and its temple where it is consecrated needs to be considered and seen.

2703. The Apex Court also in **Shiromani Gurdwara Prabandhak Committee, Amritsar Vs. Som Nath Dass (supra)** recognised the relationship between an idol and Shebait and said:

> *"When an idol was recognised as a juristic person, it was known it could not act by itself. As in the case of minor a guardian is appointed, so in the case of idol, a Shebait or manager is appointed to act on its behalf. In that sense, relation between an idol and Shebait is akin to that of a minor and a guardian.* ***As a minor cannot express himself, so the idol, but like a guardian,*** *the Shebait and manager have limitations under which they have to act."*

2704. In **Jogendra Nath Naskar (supra)** while recognising the juridical personality of an idol consecrated in a Hindu temple the Apex Court quoted with approval the following extract amongst others of West J. in **Manohar Ganesh Tambekar & Ors. Vs. Lakhmiram Govindram**

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(supra):

> *"A Hindu who wishes to establish a religious or charitable institution may according to his law express his purpose and endow it and* ***the ruler will give effect to the bounty or at least, protect it so far at any rate as is consistent with his own Dharma or conception or morality."***

2705. An idol is a juridical person because it is adored after its consecration in a temple. The followers recognise an idol to be symbol for God.

2706. Here we may also keep in mind that all these cases are in the context of a Pratisthit idol and not Swayambhu. In the context of Swayambhu its juridical personality and concept of juridical person would remain the same but therein the concept of appointment of Shebait etc. may be a little bit different. In the case of a Swayambhu, i.e., self created deity since there is no founder or creator of endowment the question of appointment of Shebait by founder does not arise. Either by custom or otherwise by intervention of the Court, as the case may be, a Shebait may be appointed or that a Swayambhu deity if continued to be worshipped by believers without having any identified Shebait, there may be a section of persons performing duties of Shebait without any formal appointment or undertaking such job and in such a case it cannot be said that the idol cannot be dedicated any property but whenever a property is dedicated for the purpose of possession and management someone has to be appointed and if necessary by the Court also. Non appointment of Shebait, however, in case of Swayambhu deity will not either destroy the deity itself or will nullify or make ineffective the very existence of such deity. Deity will continue since it is the belief of the followers of the worshippers who come with the

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belief that there exists a Supreme Being which is bodiless and shapeless and is capable of fulfilling all their wishes and to provide them happiness and salvation. It is a deity which the worshippers discover. Therefore, in order to consider a case where the deity is in the form of a Swayambhu more particularly in the form of a place, the concept of alienability whether under the statutory law or otherwise is to be seen in the light whether it pertains to some property constituting part of the endowment or the very existence of the deity. When something relates to the very existence of a deity, since it is a juridical person the question of alienability does not arise as a juristic person like Hindu deity cannot be alienated though in respect to several other judicial person like commercial etc. the position may be different but that will not apply to a case of deity governed by Hindu Laws.

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2707. Now we proceed to consider, in this context, the law vesting right to sue or be sued upon the Shebait. The Shebait since was entitled to possess and manage the property of the deity, it was observed that normally the debutter's property is inalianable but for the benefit of the deity the Shebait may transfer the property, create charge thereupon. In **Jagadindra Nath Vs. Hemanta Kumari (supra)** the Judicial Committee observed that the only person competent to act or sue on behalf of the idol is the Shebait or in the case of Math the manager. This observation has been approved subsequently by the Apex Court in **Bishwanath Vs. Sri Thakur Radha Ballabhji (supra).**

2708. The right to sue on behalf of idol, therefore, is conferred on a natural person and if that is so the question would be whether the provisions of limitation would apply to a case where there is no such person who possesses right to sue or

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be sued. It is true that this decision of Privy Council in **Jagadindra Nath Vs. Hemanta Kumari (supra)** has been doubted by a Single Judge of Calcutta High Court in **Nagendra Nath Palit Vs. Robindra Narain Deb, AIR 1926 Cal. 490** and this has also been noticed by the Apex Court in **Sarangadeva Periya Matam Vs. Ramaswami Goundar (supra)** but the Apex Court has not expressed any final opinion either way.

2709. We also mention at this stage another decision in **Damodar Das Vs. Adhikari Lakhan Das (supra)** wherein the Privy Council gave benefit of Section 6 though otherwise the limitation had expired on the ground that on the date when the cause of action accrued the Shebait was minor and as soon as he attained majority he filed suit within the period of limitation provided under Section 6 hence the suit was not barred by limitation. If it is presumed that whether there existed Shebait or not but once the property is alienated or cause of action has accrued the limitation must be held to commence and shall not stop, it would be difficult to understand the legal proposition laid down in **Damodar Das Vs. Adhikari Lakhan Das (supra)** by taking recourse to Section 6 of the Limitation Act when it held that the Shebait on attending the majority can file the suit. We find that the decision of the Patna High Court in **Naurangi Lal & Others Vs. Ram Charan Das (supra)** was reversed by Privy Council in appeal in **Mahanthram Charan Das Vs. Naurangi Lal and others, (1933) LR 60 IA 124.** The Patna High Court took the view that Article 144 of the Limitation Act shall attract from the date of alienation of property which was illegal and, therefore, the possession became adverse from that very date. But the Privy Council reversing the judgment held that the Mahant was at liberty to dispense the property of a Math

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during the period of his life and, therefore, it was good to the extent of Mahant's life interest and the possession would become adverse thereafter since for the subsequent period the alienation was bad. We have no doubt in our mind that whenever a suit is filed for and on behalf of an idol or deity it is the idol or deity which is normally a party though represented through a Shebait. But in a case where no Shebait is available, the deity or idol being in a position of minor since the right to sue vests in the Shebait, as such may not go unless some beneficiary comes forward to undertake to file a suit as next friend. The difference between Shebait and next friend is that the Shebait is under a kind of obligation to protect the interest of the idol or the deity but the worshipper is not under any such obligation though if he comes to the Court and show his bonafide i.e. approach to the Court for filing a suit for the benefit of an idol, his suit cannot be dismissed as not maintainable.

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2710. Basically we have got two sets of decisions. Though on our own we do not find much difficulty in reconciling them but it appears that sometimes due to non raising of the relevant issues in the matter and sometimes as obiter the decisions have gone in wider terms creating a difficult situation in a given case.

2711. The case of **Jagadindra Nath Vs. Hemanta Kumari (supra)** and its follow up decisions are those where right to sue were held vested in the manager alone or in other words it is the manager who is entitled to represent the juristic person and can speak or act on its behalf. The second set of decisions where the temple or math are juridical personality, and said that the property is not vested in the manager but in the idols or institutions, i.e. **Jodhi Rai Vs. Basdeo Prasad (Supra),**

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Pramath Nath Mullick Vs. Pradhyumna Kumar Mullick (Supra), etc.

2712. In the second set of cases it is quite obvious that an argument could have been raised that the limitation must be held to start from the date of alienation irrespective of the non-existent or incapacity of the Shebait or manager. The reason is that in **Jagadindra Nath Vs. Hemanta Kumari (supra)** the Privy Council says that the possession and management of the dedicated property belong to Shebait and this carries with it the right to bring whatever suit are necessary for the protection of the property. Every such right is vested in the Shebait not in the idol. The declaration is quite clear. This decision has been referred to with approval **Bishwanath Vs. Sri Thakur Radha Ballabhji (supra). Dwijendra Narain Roy Vs. Joges Chandra De (Supra)** in the matter of application of limitation the Court held:

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> *"The substance of the matter is that time runs when the cause of action accrues, and a cause of action accrues when there is in existence a person who can sue and another who can be sued. . . . . The cause of action arises when and only when the aggrieved party has the right to apply to the proper tribunals for relief. . . . The statute (of limitation) does not attach to a claim for which there is as yet no right of action and does not run against a right for which there is no corresponding remedy or for which judgment cannot be obtained."*

2713. These observations receive approval of the Apex Court **P. Lakshmi Reddy Vs. L. Lakshmi Reddy (Supra).**

2714. Be that as it may, all these authorities which make observations in one or the other way relates either with the

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property of the idol/deity or a math or the rights of the office of Shebait but in no case the question arose as to what would happen when it is a case pertaining to the very existence of the deity and no natural person in the form of Shebait is available. Now it is beyond doubt that in order to be a temple or deity, test of public religious worship on that place as a matter of right needs to be satisfied and nothing more than that. In **Ram Jankijee Deities (supra)** the Apex Court has observed:

> *"It is further to be noticed that while usually an idol is consecrated in temple, it does not appear to be an essential condition."*
>
> *"If the people believe in the temples' religious efficacy no other requirement exists as regards other areas."*
>
> *"It is a human concept of a particular divine existence which gives it the shape, the size and the colour."*

2715. While considering the applicability of limitation in the case of the deity and its property a distinction has to be seen in a case where the endowment's property is involved and where the very deity or the corpus of the deity itself is involved. Where the corpus of the deity is involved it being a juridical person, the Limitation Act as such would have no application. It applies to the rights and obligations of the parties concerned but not to the very person and its personality. If a dispute arose whether a person is alive or dead, it cannot be said that the dispute arose 10 years or 20 years back but he is seeking a declaration after expiry of the period of 6 years or three years, therefore, the suit is barred by limitation or he cannot seek declaration. Such a case, in our view, would be a case of continuous wrong and, therefore, no limitation will stand in his way. Similarly, where the very existence of a juridical person like deity or idol comes

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into picture or that it seeks declaration about itself from a Court of Law, the position would be different.

2716. We may point out that earlier when the suit was filed it was in respect to a much wider area which included not only the place which we have held as deity, but also appurtenant land which was claimed by the deity as property belong to it. But now the matter is confined only to the place which is being claimed by Hindus that according to their belief and faith, it is the most revered, sacred and pious place being birthplace of Lord Rama over which they have been visiting since time immemorial, offering their worship continuously despite change of structure or no structure, as the case may, over the said land. Here the nature of the deity is different as it is in the form of a place, can never be destroyed nor could be destructed, therefore, if the deity claims a declaration from the Court, the plea of limitation, in our view cannot be made applicable. There is thus no question of taking recourse to Section 6 or 7 of the Limitation Act. In **Bishwanath Vs. Sri Thakur Radha Ballabhji (supra**), the Court in respect to the capacity in which a deity can act observed that it is in the position of minor but there is nothing to suggest that the Apex Court sought to undo all judgments otherwise wherein to certain other aspects the statutory provisions had been made applicable observing that it cannot be treated to be a minor in perpetuity for the purpose of those provisions only.

2717. It would be useful to refer a Division Bench decision in **Tarit Bhusan Rai (supra)** where the point of similarity and dissimilarity between a natural minor and a Hindu idol had been noticed in para 12 and 13 as under:

"12. The points of similarity between a minor and a

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Hindu idol are : (1) Both have the capacity of owning property. (2) Both are incapable of managing their properties and protecting their own interests, (a) The properties of both are managed and protected by another human being. The manager of a minor is his legal guardian and the manager of an idol is its shebait. (4) The powers of their managers are similar. (5) Both have got the right to sue. (6) The bar of Section 11 and Order 9, Rule 9, Civil P.C, applies to both of them.

13. The points of difference between the two are : (1) A Hindu idol is a juristic or artificial person but a minor is a natural person. (2) A Hindu idol exists for its own interest as well as for the interests of its worshippers but a minor does not exist for the interests of anybody else. (3) The Contract Act (Subs-tantive law) has taken away the legal capacity of a minor to contract but the legal capacity of a Hindu idol to contract has not been affected by this Act or by any other statute. (4) The Limitation Act (an adjective law) has exempted a minor from the operation of the bar of limitation but this protection has not been extended to a Hindu idol."

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2718. But this decision also makes it clear that the physical capacity is lacking in an idol to sue as it is vested in Shebait. The Court also referred to an earlier decision in **Bimal Krishna Ghose and Ors. Vs. Shebaits of Sree Sree Iswar Radha Ballav Jiu (supra)** stating:

"In India, the Crown is the constitutional protector of all infants and as the deity occupies in law the position of an infant. . . "

2719. Drawing parity with infant Calcutta High Court in

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Tarit Bhusan Rai (supra) held:

> *"The case of an idol is similar to that of an infant only to this extent that both must act through some agents. But the analogy does not seem to extend beyond this. An idol from its very nature is a perpetual dependent and its incapacity in this respect is perpetual. It would therefore be reasonable to expect that the law which recognised its personality must have made some provision for supplementing this perpetual incapacity. As has been pointed out above, the law recognises the shebaits for this purpose and appoints them, as it were, to be the persons who are to represent the idol for all juridical purposes. In fact, though the idol is recognised as the owner, it is owner only in an ideal sense. The right of suit is really in the shebait." (para 49)*

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2720. It further said in para 50 of the judgement referring to the Judicial Committee in **Masjid Shahid Ganj v. Shiromani Gurudwira Parbandhak Committee (supra):**

> *"50. As has recently been observed by the Judicial Committee in Masjid Shahidganj v. Shiromani Gurdwara Parbandhak Committee, Amritsar, the procedure of our Courts allows for a suit in the name of an idol or deity though the right of suit is really in the shebait. No doubt an idol is recognized as a, juridical person capable of having interests demanding legal protection. But this is so only in an ideal sense. Strictly speaking, the law of the present age at least does not concern itself with anything outside human interest and all the recognitions and protections accorded to the idol must have been thought necessary because of the existence of some ultimate human interests."*

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2721. To some extent the care in this context has been taken by making provisions like Section 92 in the Code of Civil Procedure. The fact remains where the question of deity or the idol itself comes and it seeks a declaration for itself, the provisions of Limitation Act, in our due consideration, would not be attracted.

2722. The Fourth angle: It is a deity which has filed the present suit for enforcement of its rights. The religious endowment in the case in hand so far as Hindus are concerned, as they have pleaded in general, is a place of a peculiar and unique significance for them and there cannot be any other place like this. In case this place is allowed to extinguish/extinct by application of a provision of statutes, may be of limitation or otherwise, the fundamental right of practicing religion shall stand denied to the Hindus permanently since the very endowment or the place of religion will disappear for all times to come and this kind of place cannot be created elsewhere.

2723. In **Ismail Farooqui (supra),** Supreme court has considered the plea of validity of acquisition of land under Land Acquisition Act that once a waqf of mosque is created, the property vests in almighty and it always remain a waqf hence such a property cannot be acquired. While negativing this plea, the Apex Court said that a plea in regard to general religious purposes cannot be said to be an integral part of religion which will deprive the worshippers of the right of worship at any other place and therefore, such a property can be acquired by the State. However, the position would be otherwise if the religious property would have been of **special significance** and cannot be one of several such kind of properties. It will be useful to reproduce the relevant observation in this regard:

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"78. It appears from various decisions rendered by this Court, referred later, that subject to the protection under Articles 25 and 26 of the Constitution, places of religious worship like mosques, churches, temples etc. can be acquired under the State's sovereign power of acquisition. Such acquisition per se does not violate either Article 25 or Article 26 of the Constitution. The decisions relating to taking over of the management have no bearing on the sovereign power of the State to acquire property."

"82. While offer of prayer or worship is a religious practice, its offering at every location where such prayers can be offered would not be an essential or integral part of such religious practice ***unless the place has a particular significance*** *for that religion* ***so as to form an essential or integral part thereof. Places of worship of any religion having particular significance for that religion, to make it an essential or integral part of the religion, stand on a different footing*** *and have to be treated differently and more reverentially."*

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2724. The above observations show if the religious endowment is of such nature, which is of specific significance or peculiar in nature, could not have been found elsewhere, the acquisition of such property by the Government will have the effect of depriving the worshippers their right of worship under Article 25 of the Constitution and such an acquisition even under the statutory provision, cannot be permitted. We find sufficient justification to extend this plea to the statute of limitation also, inasmuch as, if the statute pertaining to acquisition cannot be extended to a religious place of special significance which may have the effect of destroying the right of

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worship at a particular place altogether, otherwise the provision will be ultra vires, the same would apply to the statute of limitation also and that be so, it has to be read that the statute of limitation to this extent may not be availed where the debutter's property is of such a nature that it may have the effect of extinction of the very right of worship on that place which is of peculiar nature and specific significance. This will be infringing the fundamental right under Article 25 of the Constitution.

2725. In fact this reason could have been available to the plaintiffs (Suit-4) also had it been shown by them that the mosque in question for them was a place of special significance but this has already been observed by the Apex Court in respect to this particular mosque that like others it is one of the several mosques and by acquisition of the place it will not have the effect of depriving such fundamental right of Muslims. It is always open to them to offer prayer at any other place like they could have done here but Hindus are not placed on similar footing. According to Hindus, this is a place of birth of lord Rama and that be so, there cannot be any other place for which such belief persists since time immemorial. Once this land is allowed to be lost due to the acts of persons other than Hindus, the very right of this section of people, as protected by Article 25, shall stand destroyed. This is another reason for not attracting the provisions of limitation in the present case.

2726. **The fifth angle:** Last aspect is also an important one. The suggestion is that the first cause of action arose when at the disputed site the structure was raised but no action for redressal of grievance was taken within reasonable time. Thereafter the cause of action must have arisen when the property in dispute was attached and the suit for declaration

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having not been filed within six years thereafter. Hence the suit is barred by limitation. If we take as if the disputed structure was raised in 1528 AD, whether any remedy was available to the plaintiffs 1 and 2 and whether inaction on their part cause any irreparable loss to the extent of preventing from raising the dispute after a long time. The reign of Babar in India was only for four years i.e. from April, 1526 to 1530. We have not been informed as to what changes he made in the judicial system and in what way a dispute could have been raised by the idol at that time. The king, normally, enjoyed all powers whether legislative, judicial or administrative except only to the extent he authorised somebody to exercise his power otherwise. His command was supreme and constituted law. Even the religious law could have prevailed at that time only to the extent the king would have permitted it. None could have sought justification of the king's action before any authority. At least nothing has been brought before us to show otherwise. Some light has been thrown on this aspect in **"India During Muslim Rule"** by **Maulana Hakim Syed Abdul Hai** translated by Mohiuddin Ahmad published by Academy of Islamic Research and Publications, Lucknow first edition in English in 1977 (Series No.111) Chapter II page 77 which deals with the "Administrative System" of Muslim Monarchs.

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2727. About the political system, it says that the muslim kings follow the rule governed by 'Shariah' and also policies guided by political exigency. For the period of Chingiz Khan, it says that he himself formulated a code of laws:

> *"Chingiz Khan had also formulated a code of laws, called Yassa—from which Siyasah meaning politics is derived-which continued to be the supreme law of the lands*

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ruled by his progeny. They scrupulously adhered to the Yassa until they captured the sough eastern lands of Kirghiz steppe, Iran, Iraq and other countries. But by the time Mangols entered India they had accepted Islam and had become conversant with the Shariah, the teachings of the Quran and Islamic way of life. Nevertheless, instead of accepting the Shariah as the only rule of conduct governing both public and private life, they contrived an amalgam of laws, some divinely ordained and others upheld by their national conventions. On the one hand, they allowed the Qazis to guide them in religious matters, to administer the trusts and settle personal affairs having a direct bearing on religion, such as, marriages, inheritance, etc. But, on the other hand, they continued to follow the Yassa in political affairs and other matters taken out of the purview of Shariah as, for example, interdiction of quarrels amongst them. The Mongols used to appoint another dignitary known as Hajib for the administration of these customary usages.

Theft, adultery, wilful lies, lying or giving of false evidence, sorcery, spying were punishable by death under the Yassa. It dealt with in a similar manner with those who caused loss to their business partners thrice or did not restore the runaway slave to his owner. If the arms left behind or dropped by a soldier were not restored to him by the man following him, he too was to be put to death.

The code of Chingiz Khan treated matters of religion indulgently. Religious teachers, mendicants, physicians, criers of the mosque and persons performing burial ceremonies were exempt from taxes and all religions were

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equally respected."

2728. The muslim dynasties of India can be termed as Slaves, Khiljis, Tughlaqs, Saiyids, Afghans and Moghuls. The administrative system followed by them, which included the dispute settling forum, is mentioned as follows:

"(1) Slave and Khilji Dynasties

The Slave and Khilji kings followed more or less the same type of administrative system with a fairly extensive official hierarchy, of which the important offices are mentioned here.

Wazir*-As the head of the imperial secretariat, he held the highest post and was next only to the King. His functions included administration of the realm, supervision of the state revenues and expenditure and all other important matters related to these. The Wazirs were assisted by Mushrif (accountant) and Mustaufi (auditors) who used to keep him posted with the necessary details of income and expenditure. The Wazirs were also known as Khwaja-i-Jahan.*

Arz-ul-Mam-lik-*The post was equivalent to Chief of the Staff of modern times. Being responsible for the maintenance and administration of armed forces, he also inspected the troops and approved the appointment to all ranks. Anybody desiring recruitment as an archer had to bend the different types of bows kept by the 'Arz-ul-Mamalik. The rank of the candidates depended on his ability and prowess to bend these bows. Similarly, an intending horsemen had to strike a drum while riding a galloping horse. The candidate for archer horseman had to shoot an arrow into a ball lying on the ground from the*

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galloping horseback. The more expertise one showed in taking the correct aim, the higher one rank was given.

Hajib-*There were different grades of Hajibs. Under the Chief Hajib were his deputies call Naib Hajib, and then Sharaf-ul-Hujjab, Saiyid-ul-Hujab and their assistants.*

Quazi-*The Qazis were required to enforce the rules of the Sharian and decide the civil and criminal suits of the people. A Qazi was appointed in every pargana while the Chief Justice or Qazi-ul-Quzat had his headquarters in the imperial capital. He was a member of the imperial court and was known as Sadr-i-Jahan.*

Amir Dad-*The officer was charged with the responsibility of deciding the disputes between the grandees of the king. The expenditure on this office, paid as remuneration to the officer, was 50,000 dinars annually.*

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Kotwal-*Combining the duties of committing magistrate and police, the officer was required to maintain law and order as well as to punish the criminals.*

Amir Kalid-dar-*A noble was appointed for the safe custody of the keys of royal apartments. It was his duty to open the gates, when required, and keep a watch over imperial Haram and its officers.*

Amir-Wakil-dar-*As the Chief dignitary of the royal household, he supervised the royal kitchen, managed the supplies and held the charge over the imperial household servants.*

Amir Jamdar- *The officer was responsible for the preparation of royal dresses and all purchases relating to it.*

Amir Salahdar-*The officer held the charge of royal*

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armoury as well as commanded the royal bodyguards during public and private audience of the king.

Amir Tuzak-*Amir Tuzak was the master of ceremonies. It was his duty to notify the royal audience, make arrangements for functions and ceremonies and allocate seats to the dignitaries according to the ranks held by them.*

Diwan-i-Arz-*He presented the incoming despatches before the king and acted as an intermediary through whom the king communicated with his officials and the grandees.*

Dabir-A*ll the edicts, proclamations and books on which royal seal had to be affixed were presented to the king by Dabir. He also dictated letters on behalf of the king in accordance with the directions given to him.*

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Mushrif-*He were charged with the duty of keeping an account of all State expenditure.*

Al-Mustaufi or Mustaufi-ul-Mamalik *was the Accountant General who checked all accounts and kept a record of State expenditure.*

Majmua'dar-*The officer was the book-keeper responsible for maintaining accounts of both the incomings and outgoings of the State exchequer.*

Aqt adar-*was the governor or deputy of the king in the provinces. He held the command of the troops stationed in the provinces and supervised the collection of revenues.*

Muqatta *was the administrative head of the parganas.*

Akhor Begi*. Was the dignitary who headed the officers and servants attached to royal stables and grazing*

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grounds reserved for the royal animals.

***Shahna-e-il**. was the superintendent of royal elephants who controlled the expenses on elephant stables, mahawants, etc.*

***Shahna-e-marat**. The officer equivalent to Engineer-in-Chief was responsible for the execution of public works specially, the castles and palaces.*

(ii) The Moghuls

The administrative set-up of the Moghuls practically remained unchanged during the long period of their rule. They, too, had a long list of dignitaries which has been given here under two categories.

In the first category were included those nobles and dignitaries who always accompanied the emperor in camps and cantonments, and counselled him in the management of the State affairs.

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***Wakil-i-Mutlaq.** He was the prime-minister, and one of the highest grandees, who was the custodian of the royal seal. The importance of his office placed him only next to the emperor, above all other nobles and dignitaries.*

***Wakil-i-Mutlaq** normally held one of the ranks between Panj-hazari and Nuh-Hazari.*

***Madar-ul-Muham** held the rank of a Wazir and his business was to keep a watch over State expenses. The officer could be deemed as the Chief Secretary of the emperor, He was assisted by a number of Mustafis.*

Nobles holding the rank of Chahar-hazari to Haft-hazari were appointed as Madar-ul-Muham.

***Ddiwan-i-Ala** was the auditor of State revenues and expenditure. An officer holding the rank of a Hazari was*

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appointed to this post.

***Mir-Bakshi** supervised the administration of armed forces, approved the appointment of new recruits, presented them before the emperor and fixed their ranks and pay. The Mir-Bakshi had three more Bakshis under him, one each for the horsemen, archers and artillery. The Mir bakshi was also appointed from amongst the nobles holding the rank of the commanders of a few thousand troops.*

***Sadr-us-Sudur**. The function of the Sadar-us-Sudur was to look after the welfare of religious teachers, men of piety, orphans, widows and other poor and needy persons, to sanction stipens for them and to appoint the Qazis. He had also to be a grandee holding the rank of the commander of a few thousand troops.*

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***Qazi-ul-Quzat** was required to enforce the rules of the sharian and ensure their observance by the people in their daily lives. He also decided cases relating to dissolution of marriages, payment of loans etc. Qazi-ul-Quzat was also a dignitary of the State holding a high rank.*

***Mufti-ul-Askar.** Appointed from amongst the grandees of rank and authority, his function was to pronounce juristic opinion in accordance with the Hanafite school of jurisprudence.*

***Muhtasib** acted as the censor of public morals. It was his duty to check the use of intoxicants like liquor, opium and hashish, to suppress immoral practices and to interdict the entry of women of dissolute character in public gatherings and fairs. He was also required to control the market and put down hoarding, fraud and other*

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malpractices.

***Daroga-i-Adalat**. Acting as a special court of appeal for those who could not gain access to the king, he held the court daily from morning till noon and decided the law-suite in accordance with the rules of the Shariah or the customary usages, as the case required. Such cases as he thought fit to be decided personally by the king, were referred to the latter for hearing in the imperial court held on each Wednesday.*

Dabir was the royal amanuensis who took down the royal orders and edicts which were later copied by calligraphers. Such letters or orders bore king's titles as the top in golden letters and the royal seal was affixed by the Amir-ul-Umra before being despatched.

***Mir Tuzak** was the Lord Chamberlain responsible for enforcing court etiquettes and making arrangements for the royal functions. It was his duty to obtain the orders of the emperor and notify the holding or cancellation of such functions.*

***Mir Atish-**As the lord of Artillery, he supervised all the affairs relating to the established of the imperial heavy and light artillery.*

***Mir Saman** looked after the royal wardrobe, jewellery and ornaments.*

***Khan-i-Saman**, a trusted grandee; had the charge of the imperial kitchen.*

***Darogha-i-Ibtiya**. The officer was responsible for the purchases required for the royal household.*

***Darogha-i-Jawahirkhana** A Darogha was appointed for the imperial treasury of precious stones. The*

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officer had to be a skilful jeweller capable of classifying the jewels and other precious stones.

***Darogha-i-Kutub Khana**. It was his duty to properly maintain the royal library.*

***Darogha-i-Ghusalkhana**. This officer was charged with the responsibility of informing the emperor about the presence or absence of dignitaries entitled to attend the Diwan-i-Khas (court of private audience).*

***Darogha Arz-i-Mukarrar**. The cases relating to revenue affairs and grant of jagirs requiring a revision of the earlier orders were brought to the notice of the emperor by Darogha Arz-i-Mukarrar.*

***Darogha Dak Chauki**. He read out all letters and communications to the emperor received from outlying areas and subas.*

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***Darogha-i-Khawasan**. He was the superintendent of all the menial and maid servants attached to the royal household.*

***Akhor Begi** was responsible to the emperor for proper maintenance of royal stables, grazing grounds reserved for them and the establishment required for these.*

***Shahna-i-Fil** was responsible for the royal stables of elephants and all matters relating thereto.*

***Kotwal** was the custodian of law and order with extensive powers to protect the life and property of the citizens and to root out theft and brigandage.*

The provincial set-up of the Moghul administration consisted of the following officers:

***Subedar** was head of the civil administration as well as the armed forces stationed in a suba. Holding a mansab*

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between she-Hazar and Haft-Hazari, he had the overall charge of provincial administration ranging from maintenance of law and order and collection of revenues to the maintenance of imperial forces. Normally the Subedars were paid 24 lakh rupiahs annually but they were also granted a Jagir and were occasionally rewarded for meritorious work. The Subedars had their headquarters in the capital of the provinces or in some important and central town of the Suba.

Bakshi was also a mansabdar, appointed by the Emperor. His duties comprised selection and posting of military personnel, superintendence of the mustering for branding and verifying the troopers' horses and similar other matters connected with the armed forces.

***Diwan**. Being the book-keeper of the provincial government, he was responsible for keeping the accounts of income and expenditure of the suba. The Diwan was appointed by the emperor but the order for his appointment was issued under the seal of the prime-minster. He was assisted by a Peshkar (Personal Assistant), Darogha Kachehri (Court Inspector), Mushrif Daftar (Accountant) and Tahwildar (Treasurer). These officers were provided with a contingent of subordinate staff consisting of Munshi Kachehri, Huzur Nawis, Suba Nawis, Muharir Khalsa, Muharir Daftartan, Muharir Daftar-pai-baqi and Muharir sar-rishta.*

***Faujdar**. He was the officer, at the provincial level, charged with the responsibility for maintaining law and order, imposing punishment on the criminals and gangs of the robbers and putting down rebellions.*

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***Sadar**. He was an officer appointed by the emperor on the recommendation of the Sadr-us-Sadur, and was attached to the Subedar to look after the welfare of theologians, mystics and the poor. He was authorised to grant stipends to such persons.*

***Qazi.** A Qazi was appointed in every pargana for the administration of Justice. His office consisted of a Mufti (Legist), Wakil Shara'I (expounder of the SharI'ah laws), Muharir Munaskha (registrar of law suits) and Mushrif (accountant).*

***Muhtasib**. Like the Muhtasib of the imperial capital, one was appointed in each city or a Mohal, by the Sadr-us-Sudur. His monthly remuneration was one hundred and fifty rupiahs in addition to a horse allowance of ten rupiahs.*

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***Darogha-i-Adalat** was required to hold his court from early morning till afternoon for the hearing of cases instituted against nobles and dignitaries so that the persons who could not approach the king or the governor should not be deprived of justice. The plaintiffs were allowed to present their cases in person or through their attornies. The Darogha tried to compound the cases through mutual agreement of the parties but if his efforts failed, he asked the witnesses to be produced and communicated his decision to the civil authorities for execution of his judgement. The civil authorities were also required to devote two days in a week for this purpose.*

***Waqa-i-Nigar**. Reporters were appointed in each suba, sakar and pargana to inform the centre about every event, big or small. They sent two despatches every day; in*

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the evening covering the news of the day and in the morning covering the happening during the night. These despatches were delivered to Darogha Dak Chauki who immediately sent them to the capital for the perusal of the monarch. Thus the emperor kept himself informed of all happenings from Qandahar to Bengal. Since the Waqa-i-Nigars could distort or misrepresent any event, four other officials holding different ranks viz. Special Waqa i Nigars, Sawaneh Nigars (biographers), Khufia Nawais (Secret agents) and Karkaras (postmen) were also required to send their reports. If any discrepancy was found in the reports received from different sources, the emperor instituted enquiries through other agencies.

Kotwal was posted in a each city by the Mir Atish. His duties were analogous to the Kotwal in the Capital.

Thanakar performed the duties of the Kotwal in the parganas.

***Amal Guzar**. It was his duty to collect Ushr and Khiraj as well as to adopt measures for the improvement of the quality of land and bringing waste land under cultivation.*

***Khazanadar**. The officer was the local custodian of state income and was responsible for remitting it to the imperial treasury.*

***Qanungo**. A qanungo or registrar of cultivated lands was appointed in every pargana to supervise the measurement of area sown and to maintain necessary records in this connection.*

***Tipakchi**. A junior official was charged with the responsibility of recording the units of cultivated area,*

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quality of land, name of cultivators, the yield harvested and the revenues assessed thereon. One tipakchi was appointed for each big village or a group of villages."

2729. Then on page 100, in the aforesaid book, he has mentioned about the judicial policies which reads as under:

"As stated elsewhere, the administrative policy of the Muslim monarchs, from the very beginning, was based on the canons of the Shraiah and what they called Siyasat, the principles devised by them from usage for running the administration. Accordingly, they gave over the administration of religious matters to the Qazis but kept their own grip over temporal affairs like punishment of the criminals, social justice and fair deal to their subjects. The sultans of the Slave dynasty as well as the kings succeeding them allowed the Qazis only to enforce the five fundamental religious duties enjoined by Islam, to look after the trusts and welfare of orphans and to try cases relating to marriages, inheritance and loans. Qazi-ul-quzat, holding charge of the Qazis at lower levels was a grandee of the king. Similarly, an Amir-ul-Umra was appointed over the grandees of the State. He had to be a man of piety with commanding personality, for, acting as Amir-i-Dad, he was empowered to hear the cases against persons of rank and authority. Kotwal was responsible for enforcing social security and maintenance of peace in the realm. Another officer, known as Muhtasib, kept in check the unsocial practices like gambling, drunkeness, promiscuousness, supervised wieghts and measures and took action against short weighing and fraudulent practices in business affairs. All such cases were also

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brought to the notice of the king or the Subedar in the province.

Reform By Sher Shah

In addition to the Qazis, Muftis and Kotwals, Sher Shah appointed another officer, known by the name of Amin, to decide the revenue and criminal cases and also to see that the populace was not oppressed by the administrative wing. Such Amins, appointed in each pargana, had a Sadar Munsif in the district to supervise over them. If any such case was brought before the Sadar Munsif, he decided the matter and then sent a report to the King.

Reforms of the Moghuls

During the Moghul period, a Qazi was appointed in every city, big or small. At the top was Qazi-ul-Quzat, a dignitary of the state and counsellor of the emperor. Since he always accompanied the king, he was also called Qazi-ul-Askar. All religious matters were entrusted to his charge and he was assisted by a Mufti, Wakil Shara-i, Muharir Manakhsha, Mushrif and few other officers.

In the provinces the Sadar Qazi was the superintendent of the Qazis in the districts, parganas and cities, Similarly, the provincial Kotwal had the charge of Thanedars in the parganas. Another officer, normally a man known for his piety and wisdom, was appointed by the Central Government to supervise the working of the religious courts of the Qzais. Known as Darogha-i-Adalat, he held his court daily from morning till afternoon so that all those persons who could not approach the king or a grnadee could appear before him. Darogha-i-Adalat, either

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himself decided the cases in accordance with the Shari'ah law or customary usage or referred them to the Subedars or Faujdars. The last mentioned officers were also required to devote one or two days in every week for deciding all cases referred to them after making due enquiries.

Imperial Court

The mughal emperors held a court of justice once in a week. Wednesday was earmarked for the purpose when they sat in the Diwani-i'Am attended by a group of Qazis, Muftis and religious doctors. Nazir-i'Adlia or Mir'Adl, a special officer appointed for the purpose, presented the complainants one by one before the emperor who sympathetically listened to the grievances of the subjects and decided the cases on the advice of theologians.

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If the case produced before the emperor pertained to a far off place, and edict was issued to the Subedar to restore justice to the plaintiff or produce both the parties before the emperor.

The French traveller Bernier writes that 'the emperor (Alamgir) used to hold a court of justice once in every week when Nazir ' Adlia presented the petitions before him one by one'.

Aurangzeb's sense of Justice

Aurangzeb gave the highest priority to the dispensation of justice. In addition to holding the Imperial Durbar daily, he sat in a special court known as Daulat Khana, every day after the afternoon prayers where Nazir-i'Adlia presented the petitions of complainants before him. Thereafter the emperor held courts in the Diwan-i-'Am and

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Diwan-i-Khas, where again Nazir-i-Adlia produced the plaintiffs deserving a personal hearing before the emperor. The emperor gave a patient hearing to them and either wrote the orders with his own hand or dictated the orders passed by him. His industry in administration of justice was marvellous; for he often devoted the entire period between the afternoon prayers and the 'asr to decide the cases brought to him, and then attended to other official matters with a smiling and cheerful countenance.

Wakalat-i-Shari'ah

Aurangzeb was the first monarch of India who appointed Wakil-i-Share'is in all suba courts with a wide jurisdiction over the subordinate courts in the districts and parganas. He always selected just and pious men for this post and charged them with the responsibility of making enquiries in all cases including even those brought against his own Imperial majesty. He had also allowed the populace, through an imperial proclamation, the permission to lodge cases in the courts of Qazis against the Emperor. He improved and systematised the practice followed in the appointment of Muhtasibs."

2730. We do not find any system in the above which empowered at that time, subject to challenge a Firman of the king or an order of the king particularly in the matter of desecration of religious place of idolaters by the king himself or under his command or with his approval. In any case, it is nobody's suggestion that at that time there existed any provision of limitation. The Nawab Subedar of Oudh separated sometime in the later half of 18th century from Mughal kingdom but so far as the policy towards religious matters qua Muslim and Hindus

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are concerned, there does not appear to be any change. Moreso, in the meantime, as we have already shown, the Hindus continued to enter the disputed structure, offer worship and Darshan thereat and therefore, vis a vis plaintiffs, the piety and sacredness as also the belief of Hindus continued along with worship.

2731. The Hindu worshippers tried to enforce their right to the exclusion of Muslims sometime in 1853-55 but with the intervention of the British Government, sometime in 1856-57, a partition wall said to have been raised dividing the area between the two communities. However, this arrangement could not detain Hindus as we have noticed from several documents. They continued to enter the arena provided for Muslims (i.e., inner Courtyard) and it appears therefrom that Hindus continuously worshipped in the inner courtyard also though at time the Muslims Friday prayers were also held thereat, may be under the safety provided by the administration. In 1949, though it is true that the property was attached, but simultaneously it is also true that the worship of deities in the disputed structure has continued not only in the outer courtyard but also in the inner courtyard.

2732. Thus for all practical purposes, since the worshippers continued to be benefited by worship and darshan for which the public temple is meant, it cannot be said any cause of action accrued to the plaintiffs to file a suit at any stage earlier.

2733. The benefit of a temple or deity is not for the idols but the real beneficiaries are the worshippers and the purpose of endowment is the maintenance of that worship for the benefit of the worshippers. We have already referred to the relevant

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authorities on this aspect and add one more i.e. **Kapoor Chand & Others Vs. Ganesh Dutt and others 1993 (Supp.) 4 SCC 432** where following the earlier decision in **Deoki Nandan Vs. Murlidhar 1956 (1) SCR 756,** the Court said as under:

> *"The temple has been found to be a public temple. In respect of a public temple, the law is well-settled that the true beneficiaries of religious endowments are not the idols but the worshippers and that* ***the purpose of the endowment is the maintenance of that worship for the benefit of the worshippers.*** *The worshippers have a right to file a suit to set aside a transfer of immovable property comprised in a Hindu religious or charitable endowment made by a manager thereof for valuable consideration."*

2734. The pleading in the suit for filing the same is that a decision was taken by majority of the worshippers to construct a new temple but apprehending some dispute thereupon, to have clarity in the matter, the present suit has been filed.

2735. A person can always approach a Court seeking declaration whenever there is some doubt though in true sense it may not be said that any of his right has been infringed by the other side giving a cause of action to file a suit. From the pleadings of the defendant also we have not been able to find out as to how and in what manner they claim that the limitation arises for the purposes of the present suit on a particular date and commencing therefrom the suit is barred by limitation.

2736. Coming to the submission of Sri M.M.Pandey that on account of the Oudh Laws Act, the limitation statute would not be applicable to the present matter we find difficult to agree for the reason that a bare reading of Section 3 shows that if the matter is covered by the statute, that will prevail. Where the

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personal laws and statute operate in the same field, it is the statute which shall prevail as also held by the Privy Council in **Mosque known as Masjid Shahid Ganj (supra)** which has been approved by the Apex Court in **Ismail Farooqui (supra)**.

2737. In this particular and peculiar case, one most important aspect is that the disputed place is believed to be the birth place of Lord Rama by Hindus. We have already held that it is a deity and therefore, a legal person. Thus the position of the place in this case is in dual capacity. This constitutes a legal person and simultaneously it is also the property of the legal persons i.e. a deity. The possession can be on a property and not the person. Regarding the declaration, which the plaintiffs 1 and 2 have sought before us, we have not been shown the exact date from which such period would have commenced so as to non-suit the plaintiffs on the ground of limitation. Neither the plaintiffs 1 and 2 were disturbed at any point of time in 1949 or even prior thereto. The only one occasion which at the best could have been there of disturbance is the structure of the temple which is said to have been disturbed sometime in the late 17th century or early 18th century. However, that disturbance does not appear to have caused any interference in the maintenance of worship of the place in dispute and that is how the worshippers continued to be benefited. This has continued even when the property was attached on 29th December, 1949 but it was ensured that the worship by Hindus shall continue. We, therefore, find no period of commencement wherefrom it can be said that the suit stand barred by limitation. Mere filing of some other suit by some other persons, in which the deity is not impleaded, cannot necessarily give a cause of action to the deity necessarily to file a suit or to suffer the cause of limitation.

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2738. In the entirety of the matter, we are of the view that suit in question cannot be dismissed on the ground of limitation. **The Issue No.13 (Suit-5) is answered in negative i.e. in favour of the plaintiffs.** The suit is not barred by limitation.

(I) Issues relating to Possession/Adverse Possession:

2739. Issues no. 7 (Suit-1); 3 and 8 (Suit-3); 2, 4, 10, 15 and 28 (Suit-4); and 16 (Suit-5) fall in this category.

2740. The **issues no. 7 (Suit-1)** reads as under:

"*Have the Muslims been in possession of the property in suit from 1528 A.D. continuously, openly and to the knowledge of plff and Hindus in general? If so, its effect?"*

2741. The related pleadings are in paras 9, 10, 16 and 17 of the written statement filed by defendants no. 1 to 5, which read as under:

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"दफा 9. यह कि जिस जायदाद का मुद्दई ने दावा किया है वह शहन्शाह हिन्द बाबर शाह की तामीर करदा मस्जिद मौसूमा बाबरी मस्जिद है. जिसको शहन्शाह मज़कूर ने बाद फतेहआबी हिन्दुस्तान दौरान कयाम अयोध्या अपने वजीर व मुदारुल मोहाम मीर बाकी के यह तमाम से सन् 1528 ई0 में तामीर कराया और तामीर करके तमाम ***मुसलमान के लिए वक्फ आम कर दिया. जिसमें तमाम मुसलमान का हक इबादत है.****"*

"Para 9. That the property which has been claimed by the plaintiff is the Babri Mosque built by Babar Shah, Emperor of India in his name, who got it built through his Minister and Commander Mir Baqi in 1528 AD on his arrival at Ayodhya during his expedition of conquering India and thereafter ***he made a waqf*** *and* ***consecrated to Muslims wherein Muslims have right of worship****."*

(ETC)

"दफा 10– यह कि बाद तामीर मसजिद मजकूर शहन्शाह बाबर ने

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मसजिद मजकूर की खिताबत व मरम्मत व दीगर इखराजात के लिए मु0 60 रू0 सालाना का अतिया अपने खजाना शाही से मुकरर किया। जो दौरान कयाम सलतनत मुगलिया मस्जिद मजकूर को बराबर मिलता रहा। और जमाना जवाल सलतनत मुगलिया नवाबीन अवध ने भी इस अतिया को कायम रक्खा और अपने जमाना हकूमत में रकम अतिया मजकूर को इजाफा करके मु0 302 रू0 3 आना 6 पा0 सालाना अता करना मन्जूर किया जो रकम बाद इंतजाय सलतनत अवध ब्रिटिश गवर्नमेन्ट ने भी जारी रक्खा और जमाना बन्दोबस्त अव्वल में गवर्नमेन्ट बर्तानिया ने मुतवल्लियान को बजाय नकद अतिया मजकूर के मवाजियात सोलापुरी व बहोरनपुर मुतखिल अयोध्या बतौर माफी बिनावर मुसारिफ मसजिद बाबरी अता किया।''

"Para-10 That after construction of the disputed mosque, emperor Babar made a grant of Rupees 60/- per annum from his royal treasury towards 'Khitabat' (recitation of Khutb), repair and miscellaneous expenses of the disputed mosque, which was continuously paid to the disputed mosque during the Mughal regime and even after the Mughal regime, this grant was maintained by the Nawabs of Awadh and in their period this amount of grant was enhanced to Rupees-302, Anna-3, Paisa-6 per annum, which was maintained by the British Government even after the Awadh regime, and at the time of the First Settlement, the land of Villages-Sholapur and Bahuranpur, 'Mutkhil' (situated) at Ayodhya, were 'Mafi' (exempted) for the expenses of the Babri mosque." (E.T.C)

''दफा 16– यह कि ***कब्जा मुसलमानान बतौर वक्फ मसजिद बाबरी पर सन् 1528 ई0 से आज तक मुसलसल चला आता है।*** *इस वजह से अगर किसी जमाने में* ***मुद्दई या कोई और हिन्दू यह साबित भी करे कि मसजिद बाबरी की तामीर के पहले कोई मन्दिर मुकाम मस्जिद मजकूर पर था जिससे मुद्दालेहुम मुजीब को कतअन इन्कार है।*** *तो उस हालत में भी*

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कब्जा मुसलमानान जायद अज 400 साल और बहरसूरत जायद अज 12 साल से बइल्म व आगाही मुद्दई बदजुमला अहेले हिनूद बतौर मस्जिद वक्फआम चला आता है। ***इस वजह से अहले हिन्दू व नीज मुद्दई का कोई हक बाकी नहीं रहा।***"

"Para-16 That the ***possession of Muslims over the Babri mosque as a Waqf, has been continuous till date since the year 1528 AD****. As such, even if the* ***plaintiff or any other Hindu establishes that there was any temple at the site of the disputed mosque prior to construction of Babri mosque, which is wholly denied by the answering opposite party.*** *Then in that situation also the possession of Muslims has been existing over the property for 400 hundred years and for 12 years in the knowledge of plaintiff and other Hindus, as a universal Waqf mosque.* ***Due to this, no right of the Hindus or personal right of the plaintiff subsists****."(E.T.C)*

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"दफा 17– यह कि ***मुद्दई का कब्जा या कोई हक इमारत मुतदाविया में न कभी था और न है।*** *इस वजह से दावा इस्तकरारिया हसब दफा 42 कानून दादरसी खास नाकाबिल पजीराई अदालत है।"*

"Para-17 That ***no right or possession of the plaintiff ever existed nor exists over the disputed property****. Due to this the suit is barred under section 42 and is not fit to be allowed by the court." (E.T.C)*

2742. In the replication filed by the plaintiff, para 10 of the aforesaid written statement has been replied as irrelevant. Para 16 has been denied and para 17, as pleaded, has been denied. It is said that Section 42 of the Specific Relief Act has no application in the matter. In para 31, possession of Muslims of the disputed premises atleast since 1934 has been denied stating:

"धारा 31– जैसा कि प्रतिवादीगण कहते हैं कि यह बाबरी मस्जिद है। इसे

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प्रमाणित करने में यदि वह सफल भी हों तो भी क्योंकि ***सन 1934 ई0 से कभी कोई मुसलमान इस मन्दिर के भीतर जाने नहीं पाया।*** *और हिन्दुओं का ही तबसे अविराम रूप से स्पटतः प्रत्येक व्यक्ति के ज्ञान में अधिकार बना रहा। इसलिए* ***प्रतिवादीगण अथवा अन्य किसी मुसलमान का यदि कोई हक रहा भी हो तो उस सब का अन्त हो गया और वह हक निराकृत हो गया। इस स्थान को मन्दिर मानकर हिन्दू होने के नाते प्रत्येक हिन्दू उस में बराबर आता जाता रहा है। जिस से मन्दिर का होना निष्चित रूप से परिपक्व हो गया है।*** *यदि कभी किसी मुसलमान ने कुछ भी हक प्रदर्शित करने का प्रयत्न किया तो उसके हक को अस्वीकार करते हुए हिन्दुओं ने विशेषतः उस स्थान में रहने वालों ने उनको मार भगाया। पता चला है कि मुसलमानों ने परस्तपर एक जाली तथा फर्जी व षडयन्त्री अभियोग किसी सिविल जज के इजलास में योजित करके कुछ फर्जी कार्रवाइयां कराई है। जिस से वादी को इन्कार है। और उसका कोई प्रभाव इस व्यवहार पर नहीं पड़ सकता है। विशेषतः जब कि किसी हिन्दू को उसका पता भी न था। सब कार्यवाही व फर्जी की गई है। उस अभियोग के कागजात बिल्कुल अप्रासंगिक है। किसी प्रकार भी इस व्यवहार में मानने योग्य नहीं है।''*

"Para-31 That the defendants claim that it is Babari mosque, and even if they succeed in establishing the same, then also in view of ***failure of Muslims to enter this temple after the year 1934 AD*** *and in view of continuance of the right of Hindus in the knowledge of all,* ***the rights of the defendants or any other Muslim, if any, stood extinguished. Every Hindu has been regularly visiting the said place as a Hindu by taking it to be a temple, which has certainly made it a temple****. If any Muslim ever tried to exert his right then by denying the same, the Hindus, particularly the locals, drove them away. It has come to knowledge that the Muslims have got some fake proceedings carried out from the court of Civil Judge by*

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filing a farzi and collusive suit, which is denied by the plaintiff and it has no bearing over him particularly so when the Hindus had no knowledge of the same. The entire proceeding is fake. The papers of that case are irrelevant and not acceptable under any circumstance." (E.T.C)

2743. The defendant no. 6, in para 12 of his written statement has said that the disputed premises was known as "Babari mosque" and for a long period has been used as mosque for the purpose of worship by Muslims. It has not been used as a temple of Sri Ram Chandraji. The defendant no. 8 has not said anything in the written statement on this aspect while defendant no. 9 in para 12 has taken the same stand as that of defendant no. 6. The defendant no. 10 in its written statement has taken a stand similar to that of defendant no. 1 to 5 and in paras 11, 15, 17 and 18 has further pleaded:

"11. That the Emperor Babar had given a grant of Rs. 60/- per annum for the maintenance and annual repairs and other expenses relating to the said mosque which had remained being paid during the Moghal regime, and during the regime of Nawabs of Avadh the said grant was enhanced and the British Government had also continued the said grant and at the time of the First Settlement, the land of Mauza Sholapur and Bahuranpur was settled as Mafi for the expenses of the said mosque.

15. That ***muslims had all along remained in possession of the said mosque right from 1528 upto the date of attachment of the said mosque under section 145 Cr.P.C.*** *made in December, 1949.*

17. That as the ***plaintiff has never remained in possession or occupation of the building in suit, he has***

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no right, title or claim over the said property *and as such the suit is even barred by the provisions of Section 42 of the Specific Relief Act.*

18. That the ***plaintiff's suit is even barred by the Law of Limitation*** *as the* ***muslims have remained enjoying the possession over the property in suit at least from 1528 A.D.****"*

2744. The **issues no. 3 and 8 (Suit-3)** read as under:

"*Have plaintiffs acquired title by adverse possession for over 12 years?" (Issue 3)*

"Have the ***rights of the plaintiffs extinguished for want of possession for over 12 years prior to the suit****?"*

(Issue 8)

2745. Paras 2, 4 and 5 of the plaint says:

"2. . . . . plaintiff no. 1 who through its reigning Mahant and Sarbrahkar has ***ever since been managing it*** *and receiving offerings made there at in form of money, sweets, flowers and fruits and other articles and things.*

4. That the said temple has ***ever since been in the possession of the plaintiff no. 1*** *and none others but Hindus have ever since been allowed to enter or worship therein and offerings made there which have been in form of money, sweets, flowers and fruits and other articles and things have always been received by the plaintiffs through their pujaris.*

5. That ***no Mohammadan could or ever did enter in the said temple building****. But even if it be attempted to be proved that any Mohammadan ever entered it, which would be totally wrong and is denied by the plaintiffs,* ***no Mohammadan*** *has ever been* ***allowed*** *to enter it or has*

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even attempted to enter it ***at least ever since the year 1934***.

2746. The defendants no. 6 to 8 have denied the above paragraphs of the plaint and in paras 15, 16, 22 and 23 have pleaded:

''धारा 15– यह कि जायदाद का मुदैयान ने दावा किया है वह शहनशाह हिन्द बाबर बादशाह के तामीर करदा मसजीद मासूमें बाबरी मसजिद है जिसको शहनशाह मजकूर ने अपने बजीर व मदारूल मोहाम मीरबाकी के सहतनाम से 1528 ई0 में तामीर कराया। और मुसलमानान के लिये ***वक्फ आम कर दिया*** *जिसमें तमाम मुसलमानान का हक हबायत है।''*

''Section 15 – That the plaintiffs claiming the property have contended that it is the Babri Masjid, which was built by Emperor Babur. The said emperor got it constructed through his secretary and commander, Mir Baqi, in 1528 and ***it was given as a public waqf to the*** *Muslims in which the right of Muslims in general is vested.'' (E.T.C.)*

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धारा 16– यह कि बाद तामीर मसजिद मजकूर शहनशाह बाबर रहमुतल्ला अलैह ने मसजिद मजकूर की हिफाजत व मरम्मत व दीगर अखराजात के लिए मु0 60 रुपया सालाना का अतिया अपने खजाने शाही से मुकरर किया। जो दौरान कयाम सलतनत मुगलिया मसजिद मजकूर को बराबर मिलता रहा। बाद जमाने जबाल सलतनतमुगलिया नौआबीन अवध ने भी इस अतीये को कायम रखा और अपने जमाने हुकुमत में रकम अतिये मजकूर को इजाफा करके मु0 302 रुपये 3 आना 6 पाई सालाना कर दिया। जो रकम बाद रखते ताम सलतनत अवध ब्रिटिश गवर्नमेन्ट ने भी जारी रखा। और उस जमाने में बनेबस्त अव्वल में गवर्नमेन्ट बतानिया ने मुतबलियान को बजाए नकद अतिया मजकूर के मुआबिजियात सोलापुरी व घूरनपुर व बहोरनपुर मुतसीर अयोध्या बतौर माफी बिना बरमसारित मसजिद बाबरी अता किया।''

''Section 16 – That Emperor Babur had granted Rs. 60 per annum, from his Royal Treasury, for safety and maintenance of the said mosque and to meet other

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expenses incurred on it. The said grant continued to flow in to the said mosque during the Mughal rule. Even after the Mughal Rule, Nawabs of Awadh also continued this grant and during their regime they enhanced the said grant to three hundred two rupees three annas six paise per annum. The British government also continued the grant of the said amount. At the time of the First settlement, the British government, instead of giving the said grant in cash, settled the land of Ayodhya-situated villages, namely, Sholapuri, Ghooranpuri and Bahoranpur as Mafi, to meet the expenses of the said mosque." (E.T.C.)

धारा 22– यह कि कब्जा मुसलमानान बतौर बक्फ मसजिद बाबरी पर सन् 1528 ई0 से आज तक मुसलसल चला आता है। ***बजहसे अगर किसी जमाने में मुद्दैयान या कोई और हिन्दू यह साबित भी करे कि मसजिद बाबरी की तामीर के पहले कोई मंदिर मुकाम मसजिद मजकूर पर था जिससे मुद्दालुेहम मुजेबको कतान इनकार है सो इस सूरत में भी कब्जा मुसलमाना न जायद अज 400 साल और बहर सूरन जायज अज 12 साल से बहल्म आगाही मुद्दैयान जुमला आहले हिनदू बतौर मसजिद बकफ आम चला आया है इस बजहसे अहले हिनदू व नीज मुद्देयान का कोई हक बाकी नहीं रहा।''***

"Section 22 – That the Muslims have continued to have possession in the shape of waqf over the Babri mosque from 1528 up to the present. ***If at any time plaintiffs to the suit or any other Hindus prove that prior to the construction of Babri mosque there existed any temple on the site of the said mosque, which contention the defendants deny, even in that case Muslims have been in possession of the said property for 400 years, and their possession in the shape of public waqf over the mosque, has been in the knowledge of plaintiffs to the suit or***

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other Hindus. For this reason, Hindus and the plaintiffs to the suit do not have any right over it. *" (E.T.C.)*

धारा 23– यह कि मुद्दैयान का कबजा या कोई हक इमारत मुतदाबिया में न कभी थी और न है। इस बजहसे दावा नाकाबिल पिजेराई अदालत है।''

"Section 23 – The plaintiffs never had possession or title over the disputed building nor do they have such possession or title. For this reason, the claim is not fit to be allowed by the Court." (E.T.C.)

2747. In the replication filed by the plaintiff, para 16 of the written statement of defendants 6 to 8 has been denied and in paras 22, 23, 24, 30 and 34, it further pleads as under:

"22. The contents of para 22 of the written statement are totally false and are denied. The Muslims were never in possession of the building in suit and the allegation regarding the perfecting of the right of the muslims over the building in question by adverse possession is a pure fiction, concocted for the purposes of the suit.

23. The contents of para 23 of the written statement are totally false. ***The plaintiffs have always been in peaceful possession of the building in suit****.*

24. The contents of para 24 of the written statement are denied. The plaintiffs have ever been in possession of the temple in suit ***and no question of expiry of the period of limitation arises****.*

30. In reply to para 30 of the written statement the plaintiffs contend that they have been in possession and management of the temple of Janma Bhumi ever since the living memory of man. ***The said temple always belonged to the plaintiff*** *used and was managed through his Sarbarahkar the plaintiff no. 2 being the present Sarbarahkar.*

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34. The contents of para 34 of the written statement are denied. The plaintiffs claim is perfectly justified. The ***plaintiffs*** *have been* ***in possession of the temple in suit for an immemorial time*** *and even through the evidence of the construction of the temple by the plaintiff no.1 through his Mahant and Sarbarahkar may not be traced due to the lapse of immemorial age and want of written records* ***the plaintiffs have acquired title to it by open and adverse possession for a period of time which is longer than the living memory of man.****"*

2748. The defendant no. 9 has filed an additional written statement but in respect to the above issues there is no specific pleading.

2749. The defendant no. 10 in its written statement has denied paras 2, 4 and 5 and says:

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"2. That the contents of para 2 of the plaint are denied. However, it is submitted that the JANMA ASTHAN is a holy place of worship and belongs to the deity of Bhagwan SHRI RAM LALLA VIRAJMAN there. It never belonged to and could not have belonged to the plaintiff no. 1. It is denied that the plaintiff no. 1 ever managed it.

4. That the contents of para 4 of the plaint are not admitted. ***A Hindu Temple is deemed to be possessed and owned by a deity. The principal deity of SHRI RAM JANMA BHUMI is BHAGWAN SHRI RAM****. Any offerings must have been received by the Manager of the same from time to time.*

5. That the contents of para 5 of the plaint are not admitted in the form they have been pleaded. Although it is made to appear that in the first war of independence in the

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year 1857 A.D., the British, to divide the Hindus and Muslims, mala fide ***acted by dividing the said ASTHAN by creating an inner enclosure and describing the boundary within the inner enclosure as a mosque but no Muslim who was a true Muslim, would appear to have frequented it for offerring his prayer as the same is prohibited by the SHARIYAT****. Moreover even ALAMGIR (EMPEROR AURANGZEB) issued a mandate, known as FATWA-E-ALAMGIRI which clearly prohibits the offering of prayer by Muslim at such places. More so the KASAUTI pillars and the carvings of gods and Goddesses thereon will clearly show that this place could not be used by a true Muslim for offerring his prayers therein. It will also be seen that the place wrongly alleged as mosque* ***virtually stood land-locked by Hindu Temple****, wherein there was the worship of the deity going on. Entry to this inner enclosure was also obstructed.*

The British tried to set up the descendents of MIR BAQI, a Shiya Muslim, as the MUTWALLI, but he denied the TAULAAT and never looked after the disputed place in any capacity, what to say of looking after as as MUTWALLI thereof."

2750. In replication, while replying written statement of defendant no. 10, the plaintiffs have said that Nirmohi Akhara through its Pujaris has always been managing the disputed premises. However, in para 16 it has made averments regarding "ownership" and "management of only outer enclosure" and says as under:

"16. That ***outer enclosure was owned and managed by Nirmohi Akhara, plaintiff****. . . . . Since 1982 the outer*

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enclosure is in possession of Receiver appointed by Court in Reg. Suit No. 39/82 pending in the Court of Civil Judge III Faizabad."

2751. The **issues no. 2, 4, 10, 15 and 28 (Suit-4)** read as under:

"Whether the plaintiffs were in possession of the property in suit upto 1949 and were dispossessed from the same in 1949 as alleged in the plaint?" (Issue 2)

*"Whether the Hindus in general and the devotees of Bhagwan Sri Ram in particular have **perfected right of prayers at the site by adverse and continuous possession** as of right for more than the statutory period of time **by way of prescription as alleged by the defendants**?" (Issue 4)*

*"Whether the plaintiffs have perfected their rights by adverse possession **as alleged in the plaint**?" (Issue 10)*

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"Have the Muslims been in possession of the property in suit from 1528 A.D. continuously, openly and to the knowledge of the defendants and Hindus in general? If so, its effect?" (Issue 15)

*"Whether the defendant no.3 has ever been in **possession of the disputed site** and the plaintiffs were never in its possession?" (Issue 28)*

2752. The relevant pleadings are in paras 2, 11 and 11(a) of the plaint which read as under:

*"2. . . . . The **mosque and the graveyard is vested in the Almighty**. The said mosque has since the time of its construction been used by the Muslims for offering prayers and the graveyard has been used as graveyard. . . .*

*11. That the **Muslims have been in peaceful possession***

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of the aforesaid mosque and used to recite prayer in it, ***till 23.12.1949 when*** *a large crowd of* ***Hindus****, with the mischievous intention of destroying, damaging or defiling the said mosque and thereby insulting the Muslim religion and the religious feelings of the Muslims,* ***entered the mosque and desecrated the mosque by placing idols inside the mosque****. The conduct of Hindus amounted to an offence punishable under sections 147, 295 and 448 of the Indian Penal Code.*

11(a) That assuming, though not admitting, that at one time there existed a Hindu temple as alleged by the defendants representatives of the Hindus on the site of which emperor Babar built the mosque, some 433 years ago, the Muslims, by virtue of their long exclusive and continuous possession beginning from the time the mosque was built and continuing right upto the time some mischievous persons entered the mosque and desecrated the mosque as alleged in the preceding paragraphs of the plaint, the Muslims perfected their title by adverse possession and the right, title or interest of the temple and of the Hindu public if any extinguished."

2753. The defendant no. 1 while denying paras 2 and 11 of the plaint in paras 23 and 25 of his written statement have said:

"23. That para 23 of the plaint is wrong. The suit is hopelessly time barred. ***The Muslims have not been in possession*** *of the property in dispute* ***since 1934 and earlier****.*

25. That ***the Muslims*** *were* ***never in possession*** *of the temple called Ram Janam Bhumi. If ever they were in possession of the so-called Babri mosque,* ***there possession***

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***ceased thereon in 1934**, and since then **Hindus are holding that temple in their possession** and their possession has **ripened into statutory adverse possession thereon since 1934**. Prior to 1934 continuous daily Hindu puja is being done in that temple and the Muslims have never said their prayers since 1934 in the temple falsely described as Babri Mosque."*

2754. Similar is the stand taken in the written statement of defendant no. 2. Paras 23, 25 and 28 are not quoted being almost verbatim.

2755. In the common replication filed in reply to the written statement of defendants no. 1 and 2, plaintiffs in paras 25, 28, 34 and 35 have pleaded:

*"25. The allegations contained in para 25 of the written statement are denied. The **Hindu Public never held the** mosque and Ganje-Shahidan in their **possession** nor **did puja therein since 1934** as alleged by them.*

*28. Denied. The Muslim public has been in **possession** of **the property in suit as mosque for the last 450 years when the mosque was constructed**.*

*34. That it is absolutely wrong that the Hindu Public took possession of the property in dispute in 1934 and is holding possession of it as temple since then and have thus completed title by adverse possession. The **possession of the Muslims community continued as ever** and they have been saying their prayers in the mosque as such. The Hindu public of course in 1934, did some mischief to destroy the mosque and damage was caused to some extent, which was got repaired by the Government at the cost of the Government and the Hindu public was charged with*

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punitive tax. It is absolutely baseless that the Hindu public came in possession much less peaceful possession of the property in suit.

35. That the ***Muslim public as representative of the wakf has been in continuous possession of the property in suit for last 450 years, i.e., since the time the mosque was constructed and even if the Hindu public had any interest whatsoever in the property in suit before that period the Muslim public representing the wakf perfected his title to the property in suit by their long undisturbed open possession against the interest of the Hindu public which amounts to adverse possession of the wakf and thus title or interest if any, of Hindu public has extinguished.***

2756. The defendants no. 3 and 4 in their written statement in paras 11, 13(C), 29, 30, 34 and 35 have said as under:

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"11. . . . . the question of any Muslim or the Muslim community having been in peaceful possession of the same and having recited prayers till 23-12-49 does not arise. . . .

13(C). . . . . The said Temple Ram Chabutra had an history of judicial scanning since 1885 A.D. and it existence and possession over temple Ram Chabutra was ever since in possession of Nirmohi Akhara and no other but Hindus allowed to enter and worship there and put offering in form of money, sweets, fruits, flowers etc. which has always been received by Panches of Nirmohi Akhara.

29. That the said temple has ever since been in the possession of the defendant no. 3 and none other but Hindus have ever since been allowed to enter or worship therein and offerings made there, which have been in form

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of money, sweets, flowers and fruits and other articles and things, have always been received by the defendants 3 and 4 through their Pujaris.

30. That no Mohamedan could or ever did enter in the said temple buildings. But even if it be attempted to be proved that any Mohamedan ever entered it which would be totally wrong and is denied by the answering defendants, no Mohamedan has ever been allowed to enter or has ever attempted to enter it atleast ever since the year 1934.

34. . . . . plffs for the Muslim community or any of its members have not been in possession within limitation over the property in dispute.

35. That even if the plaintiffs succeed in showing that any Muslim ever said prayers in the building in question or used the same as a Mosque, or that the possession of the answering defendant and the Deity (Shri Thakur Ram Janki) was for any period of time disturbed by the Muslims or any of them, the answering defendant and the Deity, have again matured their title by continuous and adverse possession, open and hostile to the plaintiff and their community by remaining in continuous possession of the said building, that is, the temple of Janam Bhoomi for more than 12 years and in any case ever since 1934, during which period the Hindus have been continuously doing worship and making offerings to the deity installed therein and the answering defendant have been managing the said temple and taking offerings made thereat."

2757. In the additional written statement dated 28/29 November, 1963, the defendants no. 3 and 4 in paras 38 and 39

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have said:

> *"38. The **building in question was always a temple** as shown in the written statement of the answering defendants. **Emperor Babar never built a mosque** as alleged by the plaintiffs and **Muslims were never in possession** of the building in question.*
>
> *39. The allegation of the plaintiffs in their amended paragraph 11(a) of the plaint that "some mischievous persons entered the mosque and desecrated" it is only the mischievous concoction. No question of the Muslims perfecting their title by adverse possession or of the extinction of the right, title or interest of the temple and of the Hindu public at all arises as the Muslims were never in possession."*

2758. In the replication the plaintiffs in paras 27, 30, 32, 34, 35, 37, 38 and 39 have said:

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> *"27. Denied. The **property in suit is not a temple** as alleged and **has never been in possession of the defendants** as alleged.*
>
> *30. Denied. The **Muslim public has always been saying prayers** and **visiting the Mosque** and Ganje-Shahidan which is the property in suit **for last 450 years when the mosque was built**.*
>
> *32. Denied. The defendants have never been in possession or in-charge of the property in suit as alleged. The filing of the suit mentioned in this para is admitted. Rest is denied.*
>
> *34. Denied. **The plaintiffs and Muslims public have been in possession for last 450 years**.*
>
> *35. Denied. The plaintiffs have been in possession of the*

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property in suit as Mosque and Ganje-Shahidan for last 450 years and it is absolutely wrong that the Hindu public ever had possession of any sort over the property in suit as temple, as alleged by the defendants in this para.

37. That the Muslim public had been in continuous and open possession of the mosque and Ganje-Shahidan for last 450 years, i.e., the time when the mosque was built. In 1934 of course the Hindu public out of mischief attempted to destroy the mosque and in their attempt they damaged the mosque at places which damage was repaired by the Government at the expense of the Government and Hindu public was penalised by punitive tax for their unlawful actions.

38. That the ***possession of the Muslim public was not disturbed*** *and they remained in possession of the property as mosque and saying their usual prayers continuously upto December 1949 when Hindu public by force entered the mosque, by breaking open the lock of the mosque and* ***desecrated the mosque by placing idols inside the mosque*** *which being made by the police proceedings under section 145 Cr.P.C. were started and to avoid apprehension of breach of peace the mosque was placed in custody of a Receiver.* ***The Receiver is still holding the property for the benefit of Muslim public****.*

39. That the Muslim public as representative of wakf has been in continuous possession of the property in suit for last 450 years i.e. since the mosque was built and even ***if the Hindu public had any interest whatsoever in the property in suit before that period of 450 years*** *the Muslim public as representative of wakf* ***has perfected title***

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to the property in suit by their long undisturbed open possession *against the interest of Hindu public to their knowledge which amounts to* ***adverse possession of the wakf*** *and thus the title or interest, if any, of the Hindu public has been extinguished."*

2759. The additional written statement dated 21st August, 1995 of defendant no. 3, para 2 and 3(i) says:

"2. That the contents of para 20 of the plaint is evasive and plaintiffs who are not in possession ***nor they were in possession ever over the disputed inner or outer site****. The narration of* ***Receiver's possession*** *in this para by plaintiffs* ***can only be clubbed with the inner disputed site*** *i.e. the main temple bounded* ***by letters B, B1, B2, B3, D2, D1*** *and letters D.C.B. Shown in annexure. A map of this additional W.S.* ***The outer part of disputed sites comprises with Sri Ram Chabutara temple, Chhatti Pujan Sthal, Panch Mukhi Shankar Ganesh Ji Kirtan Mandap, Bhandar House of Panches of Nirmohi Akhara. All belonging to Nirmohi Akhara*** *and has ever been in the possession of Nirmohi Akhara through Panches of Nirmohi Akhara from before the human memory. Even on the date of attachment under the order of Additional City Magistrate, Faizabad dated 29.12.1949 an attachment Fard was prepared. A true copy is being attached as Annexure 'C' to this Additional Written statement.*

3(1) . . . . . The ***Chabutara is in possession of the defendant no. 3****, Nirmohi Akhara."*

2760. The defendant no. 10 while denying the above mentioned paragraphs of the plaint has said in paras 25 and 26 as under:

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"25. That the plaintiffs have never been in possession of the property in dispute, nor they have any right to take possession thereof or make any constructions thereon, under the law of the country as aforesaid.

26. That the land and property in dispute has been throughout in uninterrupted possession of the Hindu community as a whole and in the ownership of Lord Sri Ram, and the plaintiffs never had or have any concern with the land and property in dispute."

2761. In the additional written statement dated 12th September, 1995 the defendant no. 10 in para 1 says:

"1. . . . . The Hindus have all along been in possession over the entire area of Shri Ram Janma Bhoomi. The land in question has all along been in possession of Hindus and devotees of Lord Shri Ram."

2762. Defendant no. 13, Baba Abhiram Das and defendant no. 14, Pundarik Mishra have contested the claim of plaintiffs, stating in paras 23, 25 and 28 as under:

"23. . . . . The Muslims have not been in possession of the property in dispute since 1934 and earlier.

25. That the members of the Hindu Community have from time immemorial been worshipping the site of Janam Bhum upto this time by virtue of their right and the Muslims were never in possession of the temple called as "Ram Janam Bhawan". If ever they were in uninterrupted possession of the falsely called "Babri Mosque" their possession ceased there on in 1934 and since then Hindus are holding that temple in their possession and their possession has ripened into statutory adverse possession therein since 1934. Even prior to 1934 continuous daily

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Hindu Puja is being done in that temple and the Muslims have never offered their prayers since 1934 in the temple falsely described as 'Babri Mosque'.

28. . . . . the plaintiffs were never in possession over the temple in dispute since 1934 and the Hindus were holding it adversely to them to their knowledge."

2763. The defendant no. 13/1 in its written statement in paras 11, 11A and 31 says as under:

"11. That the contents of paragraph 11 of the plaint are denied. The ***Muslims were never in possession of the alleged 'mosque'****. They* ***never could recited prayers therein****, and never recited any prayers therein till 23.12.1949, or any date even remotely within 12 years of the institution of the suit. Correct facts are stated in the Additional Pleas.*

11A. . . . . There was and there could be no question of any exclusive or continuous possession by the Muslims ***over the site of the ancient Hindu Temple or any part or portion of Sri Rama Janma Bhumi, which was by itself an object of worship by the Hindus and as such a Deity having the status of a juridical person in the eye of law****. . . . . The act of Mir Baqi was a fleeting act of trespass and not an act of entering into adverse possession by a person claiming ownership against the true owner, and no Muslim could by any such act of trespass or its repetition, confer any right, title or interest in the nature of a Waqf in favour of ALLAH for the purposes of a 'mosque'. According to Muslim law, ALLAH alone is the owner in possession of all Waqf property. A Mutwalli is a mere manager, and neither the Mutwalli nor the beneficiaries of a Muslim Waqf, can claim*

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or have any right of ownership or possession as an owner for, or on behalf of ALLAH. ***Title by way of a Muslim Waqf, cannot, therefore, be acquired by adverse possession****, for Allah does not accept the Waqf of property by a wrongful act of adverse possession. The Deity of BHAGWAN SRI RAMA VIRAJMAN in the ancient Temple at Sri Rama Janma Bhumi, and the ASTHAN SRI RAMA JANMA BHUMI* ***which was by itself a Deity and worshiped as such since ever*** *and* ***had a juristic personality of its own****, continued to own and possess the property rights of ownership and possession of the space of Sri Rama Janma Bhumi at Ayodhya, without any dent on them by any such acts of trespass as the demolition of the Temple or the attempt to raise mosque—like structure thereat. . . . . The Muslims did not get any title by adverse possession, and the* ***pre-existing right, title and interest of the Deities continued to exist uninterrupted****, by any such act of Mir Baqi as is said to have been committed during Babar's time over 400 years ago. . . . . that the Muslims having lost whatever fleeting possession they might have had by trespass over a part of the area of Sri Rama Janma Bhumi, that was finally and effectively brought to an end, and they have no right, title or interest whatsoever in the land or the mosque-like structure at Sri Rama Janma Bhumi, Ayodhya."*

31. That after the annexation of Avadh and the first war of independence, miscalled the Sepoy Mutiny by the British, ***an inner enclosure for the three-domed structure was created by raising a boundary wall*** *with iron gratings in the courtyard of the building, which separated and Rama*

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Chabutra and the Charans and the Sita Rasoi, from the building and divided the courtyard into two parts. ***The inner part in which the three-domed structure was situated, was land-locked from all sides by the outer part in which the Rama Chabutra, the Charan and the Sita Rasoi were situate****. The British thus tried to confine the Hindus to worship their Deities in the outer part of the courtyard, but* ***no Muslim could enter the inner part of the courtyard or the three-domed structure within it****, except by passing through the outer courtyard, which had Hindu places of worship in it and was in their exclusive and constant occupation.* ***This laid the seeds of trouble off and on whenever any Muslims wanted to go inside****. The result was that no Namaz was offered inside the three-domed structure, inspite of the attempt of the British Government to induce the Muslims to do so by raising the inner boundary wall.* ***This was a calculated attempt by the Britishers to encourage the Muslims to use the abandoned place as a 'mosque' and create differences between their Hindu and Muslim subjects****, with the object of maintaining their power, particularly in the context of the First War of Independence in which the Hindus and the Muslims had fought the British power shoulder to shoulder like brothers. However, the attempt to induce the Muslims to use the building inside the inner enclosure as a 'mosque' did not succeed. There was an over-helming number of Hindus living all round the place, and the local Muslim population knew that the place was not a proper place for offering Namaz, as it was not a "mosque" according to the true tenets of Islam.* ***The Hindus never left the place and***

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continued to worship the ASTHAN through such symbols of *the DIVINE SPIRIT as the CHARANS, the SITA-RASOI and the Idol of BHAGWAN SRI RAMA LALA VIRAJMAN on the Rama Chabutra within its precincts."*

2764. In the additional written statement the defendants no. 13/1, Mahant Dharam Das in para 48 says:

"48. . . . . site always was and continues to be a place of worship for the Hindus and owned and possessed by Shir Ramalala Virajman at Sri Ram Janma Bhumi.. . . . ."

2765. The defendant no. 17 in his additional written statement dated 14.09.1995 has averred in paras 1 and 23 as under:

"1. . . . . The Hindus have all along been in possession over the entire area of Shri Ram Janambhoomi. ***The land in question has all along been in possession of Hindus and devotees of Lord Shri Ram****. . . . ."*

23. That it is pertinent to mention that no suit has been brought by any person or body of persons from the Muslim side claiming dispossession of the deity. Thus the possession of the deity is hostile to the interest of the plaintiffs which is in their knowledge, but no suit has been filed against the deity i.e. Shri Ram Lala Virajman. Thus the deity has perfected his title by remaining in adverse possession and the plaintiffs are stopped from challenging the existence of deity now and claiming possession which has become time barred."

2766. The defendant no. 18 in his written statement in para 29 said:

"29. That contesting defendant does not take even a drop of water without the darshan of the said Lord Rama

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installed in the disputed place known as Janam Bhumi Lord Rama is a stadio of the answering defendants. The answering defendant is doing such darshan of the said Lord Rama continuously for 30-32 years. And thus accrued a right of Darshan of the said Lord Rama by prescription and long user which the answering defdt. have enjoined peacefully and without any interruption for more 30-32 years."

2767. The defendant no. 20 in para 44 and 48 of his written statement said:

"44. That before the middle of the 19th century, as mentioned above, Ayodhya was regarded as a stronghold of Hindus and the Ram Janma Bhumi was at all material time accessible to Hindus. Since then Hindus are in peaceful possession of the place and the temple in dispute and are performing the worship therein peacefully and uninterruptedly.

48. That, in the above circumstances, ***the ouster of Hindu community from Ram Janma Bhumi did not ever take place****. The Hindus have always been and are still today in lawful possession and shall always be deemed to be in lawful possession of the site in dispute. In the alternative, even supposing without admitting that the Hindus were ousted, yet they have thereafter regained possession and have been exercising their rights of worship peacefully and to the knowledge of the plaintiffs for more than twelve years and thus perfected their title in the eyes of law. The suit is barred by limitation."*

2768. The **issue no. 16 (Suit-5)** read as under:

"*Whether the title of plaintiffs 1 & 2, if any, was*

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extinguished as alleged in paragraph 25 of the written statement of defendant no.4? If yes, have plaintiffs 1 and 2 reacquired title by adverse possession as alleged in paragraph 29 of the plaint?"

2769. The above issue has been framed with reference to para 29 of the plaint and para 25 of the written statement of defendant no. 4 which (relevant extract) read as under:

(Plaint)

"29. The Receiver was not authorised to remove any person from the possession or the custody of the premises, and in fact the ***Receiver never interfered with the possession of the Plaintiff Deities****. No party to a proceeding could dispossess a third party, nor could the Receiver interfere with the possession of a person who is not a party to the proceedings. At the highest, the Receiver acted like a Shebait. He did not disturb the possession of the plaintiff Deities. Their possession over the building premises in dispute ever since the installation of the first Plaintiff's Idol on the night between the 22nd and 23rd December, 1949, is admitted by all the concerned parties. Thus,* ***independently of the original title of the Plaintiff Deities which continued all along, the admitted position of their possession places the matter of their title beyond any doubt or dispute****. Even if there had been any person claiming title to the property adversely to the Plaintiff Deities, that would have been extinguished by their open and long adverse possession, which created positively and affirmatively and proprietary title to the premises in the Plaintiff Deities."*

(Written statement of defendant no. 4)

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"25. That the contents of para 25 of the plaint are also incorrect and hence denied as stated and in reply thereto it is submitted that ***there never remained any deity in the mosque in question****. It is also incorrect to say that no valid waqf of the mosque was ever created and the reference of command of law made in the para under reply is also incorrect and misleading.*

It further submitted that the ***muslims' possession has remained uninterrupted and continuous of the mosque in question since its construction*** *and upto 22-12-1949 (and as such the alleged right or title, if any, of anyone else over the same has ceased to exist and the alleged right and title shall be deemed to have extinguished) on account of the uninterrupted and adverse possession of the muslims over the mosque in question for more than 420 years."*

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2770. From the above pleadings it is evident that on one hand the Muslim parties claim to possess the disputed building since the date of its construction and offering prayer (Namaz) thereat but simultaneously have taken the plea of adverse possession and have claimed the right of ownership on the basis of expiry of limitation for re-entering into possession by the alleged Hindu owner in case they are able to prove their case of ownership. The Hindus similarly have staked their claim otherwise.

2771. The pleadings and evidence in support of the above issues divide the period of dispute since 1528 AD into four, (1) prior to 1528 AD; (2) prior to 1855 AD; (3) from 1855 AD to 1934 AD; and (4) from 1934 AD to 22/23 December 1949.

2772. Sri Jilani, learned counsel for the plaintiff has drew our attention to some documents, namely, (1) Exhibit 19, Suit-1

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(Vol. 5 page 61) which is a report dated 28.11.1858 submitted by one Sri Sheetal Dube, Thanedar Awadh removing the unauthorised construction made in the inner courtyard; (2) Exhibit 20, Suit-1 (Vol. 5 page 65) letter dated 30.11.1858 of Mohd. Khateen Moazim abour encroachment by the aesthetic in the inner courtyard; (3) Exhibit A-70, Suit-1 (Vol. 8 page 573) dated 05.12.1858; (4) Exhibit 21, Suit-1 (Vol. 5 page 69) dated 15.12.1858 the report of Sheetal Dube, Thaendar Awadh; (5) Exhibit 22, Suit-1 (Vol. 5 page 73) dated 15.12.1858; (6) Exhibit A-69, Suit-1 (Vol. 8 page 569) dated 15.12.1858; (7) Exhibit 23, Suit-4 (Vol. 10 page 135) dated 9.4.1860; (8) Exhibit 4, Suit-4 (Vol. 10 page 35) dated 1861; (9) Exhibit 54, Suit-4 (Vol. 12 page 359) dated 12.03.1861; (10) Exhibit 55, Suit-4 (Vol. 12 page 365) dated 16.3.1861; (11) Exhibit A-15, Suit-4 dated 5/6.9.1863; (12) Exhibit 6, Suit-4 (Vol. 10 page 39) dated 30.10.1865; (13) Exhibit 7, Suit-4 (Vol. 10 page 41) dated 30.10.1865; (14) Exhibit A-13, Suit-1 (Vol. 6 page 173) dated 25.09.1866; (15) Exhibit 29, Suit-1 (Vol. 5 page 105) dated 12.10.1866; (16) Exhibit 8, Suit-4 (Vol. 10 page 43) dated 22.08.1871; (17) Exhibit 26, Suit-1 (Vol. 5 page 91) dated 22.08.1871; (18) Exhibit A-20, Suit-1 (Vol. 7 page 231) dated 22.8.1871; (19) Exhibit 15, Suit-1 (Vol. 5 page 43) dated 14.05.1877; (20) Exhibit 16, Suit-4 (Vol. 10) dated 13.12.1877; (21) Exhibit 16, Suit-1 (Vol. 5 page 45) dated 13.12.1877; (22) Exhibit 30, Suit-1 (Vol. 5 page 107) dated 13.12.1877; (23) Exhibit 17, Suit-5 (Vol. 20 page 187) dated 18.6.1883; (24) Exhibit-17, Suit-4 (Vol. 10 page 87) dated 18.6.1883; (25) Exhibit 24, Suit-1 (Vol. 5 page 83) dated 18.06.1883; (26) Exhibit 18, Suit-1 (Vol. 5 page 57) dated 02.11.1883; (27) Exhibit 34, Suit-1 (Vol. 5 page 131) dated 12.01.1884; (28)

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Exhibit 27, Suit-1 (Vol. 5 page 95) dated 22.01.1884; (29) Exhibit 28, Suit-1 (Vol. 5 page 99) dated 27.06.1884; (30) Exhibit A-22, Suit-1 (Vol. 7 page 237) dated 19.1.1885; (31) Exhibit 26, Suit-5 dated 19.01.1885; (32) Exhibit A-24 and 25, Suit-1 (Vol. 7 page 271 and 277 dated 06.12.1885; (33) Exhibit A-23, Suit-1 (Vol. 7 page 257) dated 22.12.1885; (34) Exhibit A-26, Suit-1 (Vol. 7 page 283) dated 24.12.1885; (35) Exhibit A-27, Suit-1 (Vol. 7 page 319) dated 18/26.3.1886; (36) Exhibit A-49, Suit-1 (Vol. 8 page 477) dated 12.05.1934; (37) Exhibit A-6, Suit-1 (Vol. 6 page 556) dated 5.6.1934; (38) Exhibit A-43, Suit-1 (Vol. 8 page 459) dated 06.10.1934; (39) Exhibit A-51, Suit-1 (Vol. 8 page 483) dated 25.02.1935; (40) Exhibit A-50, Suit-1 (Vol. 8 page 479) dated 16.04.1935; (41) Exhibit A-48, Suit-1 (Vol. 8 page 473) dated 21.11.1935; (42) Exhibit A-53, Suit-1 (Vol. 8 page 493) dated 02.01.1936; (43) Exhibit A-46, Suit-1 (Vol. 8 page 471) dated 27.1.1936; (44) Exhibit A-52, Suit-1 (Vol. 8 page 489) dated 30.4.1936; (45) Exhibit 53, Suit-4 (Vol. 12 page 355) dated 26.3.1946; (46) FIR dated 23rd December, 1949, Exhibit 51, Suit-4 (Vol. 12 page 337); (47) Exhibit 13, Suit-4 dated 14.2.1950; (48) Exhibit 9, Suit-4 (Vol. 10 page 45) dated 16.2.1950; (49) Exhibit 25, Suit-4 (Vol. 10 page 141) dated 30.7.1953; (50) Exhibit A-44 and A-45, Suit-1 (Vol. 8 page 461 and 467); (51) Exhibit A-21, Suit-1 (Vol. 7 page 233); (52) Exhibit 49 and 50, Suit-4. Besides, he referred to the statement of PWs 1-9, 14, 21, 23 and 25 to show that there was continuous prayer (Namaz) in the disputed building.

2773. On the contrary, Hindu parties have claimed their continuous possession on the property in dispute since time immemorial and in any case since 1934 AD. They say that no prayer (Namaz) has been offered in the disputed building earlier

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and in any case since 1934 AD and, therefore, possession of Hindus on the disputed site cannot be disturbed after expiry of the period of limitation within which they could have been dispossessed by the Muslim parties. Plaintiff (Suit-3) has also got examined a number of witnesses deposing about worship prior and since 1934 till 1949 and thereafter and the possession of Nirmohi Akhara throughout.

2774. Sri P.N.Mishra, assisted by Miss Ranjana Agnihotri, Advocates appearing on behalf of defendant No.20 (Suit-4) submitted that the defence taken by defendant No.20 is that there was no mosque at all at any point of time and it was throughout a temple wherein Lord Ram was being worshipped by Hindus, being his birth place. However, in any case, the plea of "adverse possession" on the part of plaintiffs (Suit-4) is wholly misconceived. He pointed out that the basic ingredients to prove a case of "adverse possession" are that there should be hostile, open, continuous possession against the "rightful owner". The possession should be peaceful, uninterrupted and must have continued for 12 years. There should be *animus possidendi* with the person claiming adverse possession against rightful owner. He submits that the plaintiffs (Suit-4) have not pleaded anywhere in the plaint as to who was the owner of the disputed property whereagainst the plaintiffs (Suit 4) held property in dispute and that too open, hostile and peaceful. There is no date of possession on which the same became adverse to the real owner and in any case the possession was never peaceful since throughout interruption and interference of Hindus had continued. He contends that in fact the evidence on record shows that the disputed property continued to be in possession of the Hindus, if not in entirety the substantial part

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thereof, and it cannot be said that the plaintiffs (Suit-4) have matured their right thereat. He further submits that on one hand the plaintiffs have claimed themselves to be the owner of the property in question but simultaneously the plea of adverse possession continuing for 12 years and more, maturing in title, has been taken though the law is well settled that inconsistent and mutually destructive pleas cannot be taken. He submits that if the plaintiffs (Suit-4) intended to raise the plea of adverse possession maturing in title, it was incumbent upon them to give up the title, which is not the case and therefore, the case set up by the plaintiffs (Suit-4) in respect to adverse possession is liable to be rejected. On the various aspects, connected with the plea of adverse possession, he cited and relied on the following authorities: **Qadir Bux Vs. Ramchand (supra)**; **Hemaji Waghaji Jat Vs. Bhikhabhai Khengarbhai Harijan & Others AIR 2009 SC 103**; **Ejas Ali Qidwai & Ors. Vs. Special Manager, Court of Wards, Balrampur Estate & Ors. AIR 1935 Privy Council 53; Mosque known as Masjid Shahid Ganj & Ors. Vs. Shiromani Gurdwara Parbandhan Committee (supra)**; **P.T. Munichikkanna Reddy Vs. Revamma (supra)**; **T. Anjanappa and others Vs. Somalingappa and another 2006 (7) SCC 570**; **Amrendra Pratap Singh Vs. Tej Bahadur Prajapati & Ors. AIR 2004 SC 3782**; **Abubakar Abdul Inamdar & Ors. Vs. Harun Abdul Inamdar & Ors. AIR 1996 SC 112**; **Dr. Mahesh Chand Sharma Vs. Smt. Raj Kumari Sharma & Ors. AIR 1996 SC 869**; **Hari Chand Vs. Daulat Ram, AIR 1987 SC 94**; **Sm. Bibhabati Devi Vs. Ramendra Narayan Roy & others AIR 1947 Privy Council 19**; **Raja Rajgan Maharaja Jagatjit Singh (supra)**; **Maharaja Sir Kesho Prasad Singh Bahadur Vs.**

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Bahuria Mt. Bhagjogna Kuer and others AIR 1937 Privy Council 69; **Nair Service Society Limited Vs. K. C. Alexander (supra)**; **Ram Charan Das Vs. Naurangi Lal & Ors. AIR 1933 Privy Council 75**; **Bhupendra Narayan Sinha Vs. Rajeswar Prosad Bhakat & Ors. AIR 1931 Privy Council 162**; **P.Lakshmi Reddy Vs. L.Lakshmi Reddy (supra)**, **Ramzan & Ors. Vs. Smt. Gafooran Ors. AIR 2008 All 37**, **Prabhu Narain Singh Vs. Ram Niranjan & Ors. AIR 1983 All 223**; **Smt. Bitola Kuer Vs. Sri Ram Charan & Ors. AIR 1978 All 555**; **Shyam Sunder Prasad (supra)**; **D. N. Venkatarayappa & Anr. Vs. State of Karnataka & Ors. 1997 (7) SCC 567**; **Babu Lal Sharma Vs. State of Madhya Pradesh 2009 (7) SCC 161**; **S.M. Karim Vs. Mst. Bibi Sakina AIR 1964 SC 1254**; **B. Leelavathi Vs. Honnamma and another, (2005) 11 SCC 115**; **Dharamarajan & Ors. Vs. Valliammal & Ors., 2008 (2) SCC 741**; **A.S. Vidyasagar Vs. S. Karunanandam 1995 Supp (4) SCC 570**; **P.Periasami Vs. P.Periathambi & Ors., 1995 (6) SCC 523**.

2775. Sri Mishra also submitted that in the case of adverse possession, if continued for 12 years maturing in title extinguishing the title of the rightful owner, no equity lie in favour of the person who has raised the plea of adverse possession. The claim of adverse possession needs to be examined strictly and if there is any gap, the plea must have to fail. Time creates title and therefore animus, who possesses the property adversely against true owner to his knowledge, is the essence of the matter. It is said that in Mohammedan Law, the concept of limitation is not recognised. Nor that of adverse possession. The suit, as pleaded in the plaint, does not prove the case of adverse possession. It is said that the doctrine of

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'election' is also applicable here since the plea with respect to ownership as well as adverse possession maturing in ownership simultaneously cannot be taken.

2776. It is contended that, in law, if a person does not acquire title, the same cannot be vested only by reason of acquiescence or estoppel on the part of others and reliance is placed on **National Insurance Co. Ltd. Vs. Mastan and another 2006 (2) SCC 641, R.N. Gosain Vs. Yashpal Dhir 1992 (4) SCC 683**, **Nagubai Ammal and others Vs. B. Shama Rao and others AIR 1956 SC 593** and **C. Beepathumma (supra)**.

2777. In order to show that there was no possession of Muslims and in any case, since 1934, the Muslims have never visited the disputed site and it was continuously in possession of the Hindus, he referred to certain statements and affidavits filed before the City Magistrate, Faizabad in proceedings under Section 145 Cr.P.C. He referred to the statements of Peeru dated 11th February, 1950 which is on record of the proceedings under Sections 145 Cr.P.C. (Register Vol.1, page 99) and the written statement of Anisurrahman (Vol. 2 Page 215) which has been adopted by Mohd. Hasim, one of the plaintiff of Suit-4. Placing reliance on **M/s Kamakshi Builders Vs. M/s Ambedkar Educational Society and others AIR 2007 SC 2191; Dinomoni Chowdharani (supra)**, **Baroda Prosad Roy Chaudhry Vs. Rai Manmath Nath Mitra 41 Indian Cases 456** and **State of T.N. Vs. T. Thulasingam and others 1994 Supp. (2) SCC 405**, he submitted that the statements before the Magistrate in proceedings under Section 145 Cr.P.C. can be taken and considered in evidence in a civil suit.

2778. Sri M.M. Pandey, learned counsel for the plaintiffs

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(Suit-5) in the context of Issue No. 16 (Suit-5) has submitted:

(A) Apart from the indefeasible rights of the Deity as mentioned by Katyayana (see para 54 supra), and King's duty to protect the Deity (see para 43 supra) the fundamental claim of Plaintiffs of OOS 5 of 1989 is that under Hindu Law, neither the Deity nor Deity's property is 'alienable', hence alienation thereof is void; consequently no right or title thereto can be prescribed by 'Adverse Possession'. This claim is supported by very recent decision of Supreme Court in the case of **Amarendra Pratap Singh Vs. Tej Bahadur Prajapati and others, 2004 SC 3782 = (2004) 10 SCC 65**. The matter related to sale of certain lands by aboriginal tribal to a certain non-tribal purchaser without the statutory permission of the Competent Authority under Orissa Scheduled Areas Transfer of Immovable Property (by Scheduled Tribes) Regulation 1956; Para 3 of the Regulation provided that any transfer of immovable property by a member of a Scheduled Tribe to a non-tribal shall be absolutely null and void and of no force or effect unless made in favour of another member of a Scheduled Tribe "or with the previous consent in writing of the Competent Authority". Previous permission not having been obtained, the purchaser claimed to have perfected title to transferred land by Adverse Possession for over 12 years under Limitation Act. In para 22, dealing with Article 65 and Section 27 of Limitation Act, the SC emphasised a distinction between acquisition of title 'as of own right' and due to 'default or inaction of the true owner to protect the property', and held the person in adverse possession

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"acquires title not on his own but on account of default or inaction on the part of the real owner, which stretched over a period of 12 years results into extinguishing of the latter's title. It is that extinguished title of the real owner which comes to vest in the wrong-doer. The law does not intend to confer any premium on the wrong doing of a person in wrongful possession; it pronounces the penalty of extinction of title on the person who though entitled to assert his right and remove the wrong-doer and re-enter into possession, has defaulted and remained inactive for a period of 12 years, which the law considers to be reasonable for attracting the penalty." In para 23, the SC held: "The right in the property ought to be one which is alienable and is capable of being acquired by the competitor. Adverse possession operates on an alienable right. The right stands alienated by operation of law, for it was capable of being alienated voluntarily and is sought to be recognised by doctrine of adverse possession……." Reliance was placed, in para 24, on **Mahdav Rao Waman Vs Raghunath Venkatesh, AIR 1923 PC 205** holding that it was somewhat difficult to see how a stranger to a Watan can acquire a title by adverse possession for 12 years, the alienation of which is, in the interests of the State, inalienable; the SC noticed that this decision of PC was followed in Karimullah Khan Vs. Bhanu Pratap Singh, AIR 1949 Nag 265 holding that "title by adverse possession on Inam land, Watan land **and Debutter was incapable of acquisition**". Debutter is 'dedicated' property, like property of Deity. Rejecting the claim of adverse possession, SC held in para 25: "It is clear that the

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law does not permit a right in immovable property vesting in a tribal to be transferred in favour of or acquired by a non-tribal unless permitted by the previous sanction of the Competent Authority …… It is so because a tribal is considered by the Legislature not to be capable of protecting his own immovable property …….. The State is the custodian and trustee of the immovable property of Tribal and is enjoined to see that the Tribal remains in possession of such property. No period of limitation is prescribed by Para 3A of the Regulation of 1956. The prescription of period of 12 years in Article 65 of Limitation Act becomes irrelevant so far as the immovable property of a Tribal is concerned. The Tribal need not file a Civil Suit which is governed by the law of limitation. It is enough if he, or anyone on his behalf moves the State, or the State itself moves into action to protect him and restores the property to him. To such an action, neither Article 65 of Limitation Act nor Section 27 thereof would be attracted." This ruling of the Supreme Court applies fully to these Suits. The antecedents of a Tribal, under the Orissa Regulation, strongly resemble those of a Hindu Deity. Manu's edict no. 163 of Chapter 8 says: 'an act done by a person……wholly dependant …… is invalid' ("**The Laws of Manu" Penguin Classics, Edn 2000** page 170). Similar proposition is set out in Verse 35 of Chapter 1 in Part 2 (English page 288-89; Sanskrit page 106) of **Naradsmriti** ("Critical Edition and Translation" 1st Edn 2003 by Richard W. Larviere – Shri Jainendra Press, New Delhi): "Those who know the teaching of Shastra say that anything done by a minor or by one who

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is not independent is invalid." Protection of disabled persons rights in Hindu Law is mentioned in Yajnavalkya Smriti in verse 25 of 2nd Prakarnam of 2nd Chapter at page 94 (Translated by M.N.Dutta, First Edn 2005, Parimal Publications, Delhi) as follows: "But these limitations of 20 & 10 years respectively do not hold good in the case of …….. properties of invalid and minor……."**Deity is 'wholly dependant' and 'perpetual minor', hence Deity's immovable property is inalienable**; the Deity is unable to manage it's affairs which are managed by a Shebait, and if the Shebait mismanages or fails to protect its interests, a 'next friend' or 'worshipper' is competent to move the machinery of law and the State, too, is under an obligation to protect its rights/interests. Since Hindu Law alone contains the provisions applicable to Hindu Deity – in the absence of any Statute setting out the rights/obligations/antecedents of a Hindu Deity – and contains the law that rights of the Deity are not lost by adverse possession for any length of time, Indian Limitation Act (including Article 65 or Section 27) cannot be applied to the Deity, hence its rights cannot be lost by adverse possession. In this connection a very significant observation by PC may be noticed in the case of Mosque known as **Masjid Shahidganj Vs. Shiromani Gurdwara Prabandhak Committee 1940 PC 116** on the possible effect of the Mosque being treated to be a 'juristic person', the suit having been filed in the name of the Mosque as Plaintiff. At page 119, Col. 2, Sir George Rankin observed as follows: "The choice of this curious form of suit was motivated apparently by a notion

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that if the Mosque could be made out to be a juristic person, this would assist in establishing that a mosque remains a mosque for ever, that Limitation cannot be applied to it, that it is not property but owner of the property." This is precisely what the Plaintiffs of OOS 5 of 1989 claim; Plaintiffs 1 & 2 are Hindu Deities/Juristic Entities in their own right in accordance with the Hindu Law, are Owners of Themselves, everlasting, incapable of being destroyed, and are not mere properties, hence law of Limitation cannot be applied to them. Another significant observation by the PC, in the context of application of Limitation Act to suits relating to Muslim or Hindu religious institutions, at page 122 col. 1 is: "At the same time, the procedure of the Courts in applying Hindu or Mahomedan Law has to be appropriate to the law which they apply. Thus the procedure in India takes account necessarily of the polytheistic and other features of the Hindu religion and recognises certain doctrines of Hindu Law as an essential thereto, e.g. **that an Idol may be the owner of property**". This necessarily called for application of the principles of Hindu Dharmashastra Law to the question of limitation in respect of the Hindu Deity, but in stead of doing so, the PC simply made a broad observation at page 122 col. 1, that 'there has never been any doubt that the property of a Hindu religious endowment – including a thakurbari – is subject to the law of limitation'. Citations noted by PC are: **37 I.A. 147, Damodar Das Vs. Lakhan Das** and **64 I.A. 203 (= AIR 1937 PC 185), Ishwari Bhubanshwari Thakurani Vs. Brojo Nath Dey**. The expression, 'there has never been

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any doubt…….' only indicates that PC was simply relying upon previous decisions which, did not really examine the Hindu Dharmashastras or the **Oudh Laws Act pointed out by us above. Indeed in Ishwar** Bhuvaneswari's case, the property had ceased to be 'dedicated' by virtue of a 'consent decree of 1904', hence point of adverse possession over Deity's property did not survive (see page 188-89); even so, the PC held (at page 187 col. 2) that the efffect of a valid deed of dedication is to place the property comprised in the endowment extra commercium and beyond the reach of creditors. The decision, therefore, is not an authority on the point of 'adverse possession/Limitation Act'. Rulings holding that Limitation Act applies to Hindu Deity or that Deity is not a perpetual minor or does not suffer from disability, suffer from a common deficiency, viz., they do not deal with Hindu Dharmashastra Law or Oudh Laws Act or effect of Referential Legislation contained in Oudh Laws Act or the doctrine of "Reading Down" a statutory provision; they were rendered 'per Incuriam', hence are not binding precedents: **State of UP & another Vs. Synthetics & Chemicals Ltd, (1991) 4 SCC 139** (paras 40 & 41), **Sunita Devi Vs. State of Bihar, (2005) 1 SCC 608** (para 19) and **Mayuram Subramanian Vs. CBI, (2006) 5 SCC 752** (para 11).

(B) Referring to an English decision, the SC has noticed in paras 30 and 31 of **2007 (25) LCD 1374 (SC), RT. Munichikanna Reddy Vs. Revamma** that in Adverse Possession, 'Force' is excluded (so forcible demolition of Hindu Temple and erection of Babari Mosque, would not

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qualify for adverse possession' – indeed, such place is Ankah, taken Ghasbi, i.e. by force where saying of Namaz is held to be illegal by Islamic scriptures. Manu's edict no. 168 in Chapter 8, on use of force is as follows: "What is given by force, enjoyed by force, and also what is written by force, indeed all matters that are done by force Manu has declared to be undone" ("The Laws of Manu", Penguin Classics Edn 2000, page 170). That is what must be done to DS.

(C) Katyayana Smriti clearly lays down that mere wrongful possession for any length of time of Temple property would not confer ownership on anybody. 'Temple' takes within its ambit, both the Deity and the structure within which it resides; Temple is the Home of the Deity. Since Hindu Deity is a juristic person, it enjoys right of 'constructive possession'. There can be no 'ouster' of Swyambhu Deity; trespass by an outsider, adversely to the Deity, only constitutes temporary suspension of user of the property by Deity which stands automatically restored when the trespass terminates or is sought to be terminated through Court process. Since Law of Limitation does not apply to a Hindu Deity, termination of trespass at any point of time revives Deities' actual possession supplementing its constructive possession. This concept of 'revival' is not to be confused with a case where title/right to property is lost under Section 27 of Limitation Act or by adverse possession – there is no 'revival of right'; the title/right of a Hindu Deity is never lost, what is revived is actual possession only.

(D) The record of these suits establish that members of

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Muslim Community of Ayodhya could not enjoy peaceful or uninterrupted possession over DA so as to enable them to acquire title by adverse possession. The law of Adverse possession was created by Statute for the first time in 1871; but between 1608-11, William Finche found Hindus treating DA/DS to be the birthplace of Ram, in 1786 Tieffenthaler found Hindu devotees worshipping DA/DS as birthplace of Ram and in 1853 itself, Muslims ceased to enjoy exclusive possession of DS, as DA including DS – i.e. the building itself – within the boundary walls of disputed area, were forcibly taken possession of by Hindus, leading to fierce fighting in which Muslims were killed of whom 75 (or so) were buried outside the disputed premises (called Ganj Shaheedan), that although in 1855, the British administrators erected a wall through the platform in front of DS to separate the areas of possession of Hindus & Muslims, a determined group of Sikhs re-occupied DS in 1858 and could not be dislodged despite Administration's intervention and that worship was done by Hindus inside the DS. Ext. 2 of SB Suit dated 29.6.1880, the Register of Muafi clearly record that this is the Masjid in Ayodhya for possession of which Hindus and Muslims fight and are rival claimants. This proves that throughout the period from 1853 to 1880 Muslims could never be in continuous peaceful possession of DS/DA. In application dated 02.11.1883, Ext. 18, Md. Asghar admitted possession of Mahant Raghubar Das not only on the Chabutra Janmasthan but also on Sita Rasoi abutting towards North of DS which is mentioned by Tieffenthaler too. In 1885 came the Suit of Mahant

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Raghubar Das. Md. Asghar/Md. Javed as Mutawalli of Babri Basjid stated in their written statement Ext. A-23 that the Ram Chabutra was constructed in 1857 which the Muslims had complained of and applied for demolition and orders were passed for its demolition and that the plaintiffs and other Hindus used to have ingress/egress into the campus of the Masjid, had been assembling/dispersing, coming/going and making offerings as they do at other religious places like Imambaras/Masjids for their spiritual benefit. This proves that the Hindu devotees had access to DS and were worshipping and making offerings inside the DS. Thus SB have failed to establish continuous peaceful possession for any specific period of 12 years to acquire title by adverse possession.

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(E) It is admitted that in the year 1934 during communal riots caused by cow slaughter by some Muslims at Ayodhya the domes of DS and substantial part thereof were destroyed by the Hindus. The damage was repaired by the government and not by SB or the Muslim community on their own. In Para 22 of written statement dated 21.2.1950 (In reply to Plaint of Gopal Singh Visharad's Suit OOS 1 of 1989), Defendant Nos. 1 to 5 (all local Muslims including Zahoor Ahmad D-1, Haji Pheku D-2 and Md. Faiq D-3) stated that Namaz had been offered in DS till 16.12.1949. The truth of this statement is challenged on behalf of the Plaintiff, particularly in view of important contradictions appearing in evidence on behalf of SB, and the significant position is that SB filed the Suit OOS 4 of 1989 on 18.12.1961, i.e., at least two

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days after the expiry of 12 years from the date (16.12.1949) when the last Namaz was allegedly offered. Indeed two reports dated 10.12.1949 (**Ext. A-63**) and dated 23.12.1949 (**Ext. A-64**) of Waqf Inspector Md. Ebrahim addressed to the Secretary of SB establish that at least from September 1949 no Namaz or Azan was being offered in DS except on Fridays and that too under great stress and fear of Hindus, Sikhs and Bairagis. Considering all the material on record it is established that DS was not used by Muslims peacefully and regularly for any specific period of 12 years during any time at least from 1853 to 22.12.1949 and that, on the contrary, Hindu devotees had continued to offer their prayers throughout that period and specifically from 1934 Plaintiffs 1 and 2 had been in possession of DS to the exclusion of Muslims.

2779. Except Suit No.1, ownership of the disputed property has been claimed in all the remaining suits. The plaintiffs (Suit-3) have claimed disputed site and the building as property of Nirmohi Akhara. In Suit-4 the plaintiffs' claim that the disputed building being a mosque is a waqf and therefore, it belongs to Almighty. In Suit-5, the plaintiffs No.1 and 2 claimed to be the Deity (a juristic personality) and therefore, owner of the disputed site.

2780. Since some of the parties have claimed their title matured due to inaction on the part of true owner for the last more than twelve years despite possession, hostile to them, therefore, the title of the true owner having extinguished, they have become owner by virtue of adverse possession and for this reason, the aforesaid nine issues have been framed to consider the above pleas.

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2781. To understand the concept of "adverse possession" it would be necessary to have a clear idea about the concept of "possession" and "ownership" in respect to immovable property and also the law, if any, before the codification of law during British regime, i.e., on and after 1857 AD, and also during the period of East India Company when the matter used to be governed by the Regulations framed by the East India Company. Here we propose to consider the above concept also in the context of laws followed by Hindus and Muslims prevailing at the relevant time.

2782. First we come to the English Law on the subject.

2783. **"Ihering"** defines possession, "*whenever a person looks like an owner in relation to a thing he has possession, unless possession is denied to him by rules of law based on convenience".* Apparently this definition does not give any explicit idea on the subject. It only states that the concept of possession is an ever changing concept having different meaning for different purposes and different frames of law.

2784. **"Pollock"** says, "*In common speech a man is said to be in possession of anything of which he has the* ***apparent control*** *or from the use of which he has the* ***apparent powers of excluding others****".* The stress laid by Pollock on possession is not on *animus* but on *de facto* control.

2785. **"Savigny"** defines possession, *"****intention*** *coupled with* ***physical power to exclude others*** *from the use of material object."* Apparently this definition involves both the elements namely, *corpus possesssion is* and *animus domini*.

2786. The German Jurist 'Savigny' laid down that all property is founded on adverse possession ripened by prescription. The concept of ownership accordingly as observed

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by him involve three elements-Possession, Adverseness of Possession, (that is a holding not permissive or subordinate, but exclusive against the world), and Prescription, or a period of time during which the Adverse Possession has uninterruptedly continued.

2787. **"Holmes"** opined that possession is a conception which is only less important than contract.

2788. According to **Salmond on "Jurisprudence"**, 12th Edition (1966) (First Edition published in 1902) by P.J. Fitzgerald, Indian Economy Reprint 2006 published by Universal Law Publishing Co. Pvt. Ltd. Delhi *(hereinafter referred to as "Salmond's Jurisprudence")*. On page 51, it says that the concept of "possession" is as difficult to define as it is essential to protect. It is an abstract notion and is not purely a legal concept. It is both a legal and a non-legal or a pre-legal concept. He tried to explain the concept of possession with reference to different factual and legal concepts.

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2789. The first one is "possession in fact". It is a relationship between a person and a thing. The things one possesses in his hand or which one has in his control like clothes he is wearing, objects he is keeping in his pocket etc. For such things it can be said that he is in possession of the things in fact. To possess one would have to have a thing under his physical control. If one captures a wild animal, he get possession of it but if the animal escapes from his control, he looses possession. It implies that things not amenable in any manner to human control cannot form the subject matter of possession like one cannot possess sun, moon or the stars etc. Extending the above concept, "Salmond" says that one can have a thing in his control without actually holding or using it at every given moment of

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time like possession of a coat even if one has taken it off and put down or kept in the cupboard. Even if one fall asleep, the possession of the coat would remain with him. If one is in such a position, has to be able in the normal course of events to resume actual control when one desires, the possession in fact of the thing is there. Another factor relevant to the assessment of control is the power of excluding other people. The amount of power that is necessary varies according to the nature of the object.

2790. The possession consisted of a "*corpus possessionis"* and "*animus possidendi"*. The former comprised both, the power to use the thing possessed and the existence of grounds for the expectation that the possessor's use will not be interfered with. The latter consisted of an intent to appropriate to oneself the exclusive use of the thing possessed.

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2791. Then comes "possession in law". A man, in law, would possess only those things which in ordinary language he would be said to possess. But then the possessor can be given certain legal rights such as a right to continue in possession free from interference by others. This primary right in rem can be supported by various sanctioning rights in personam against those who violates the possessor's primary right; can be given a right for compensation for interference and a dispossession and the right to have his possession restored from the encroacher.

2792. Another facet of possession is "immediate" or "mediate possession". The possession held by one through another is termed "mediate" while that acquired or retained directly or personally can be said to be "immediate or direct". There is a maxim of civil law that two persons could not be in possession of the same thing at the same time. (*Plures eandem*

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rem in solidum possidere non possunt). As a general proposition exclusiveness is of the essence of possession. Two adverse claims of exclusive use cannot both be effectually realised at the same time. There are, however, certain exceptions, namely, in the case of mediate possession two persons are in possession of the same thing at the same time. Every mediate possessor stands in relation to a direct possessor through whom he holds. Two or more persons may possess the same thing in common just as they may own it in common.

2793. Then comes "incorporeal possession". It is commonly called the possession of a right and is distinct from the "corporeal possession" which is a possession of the thing.

2794. In **"The Elementary Principles of Jurisprudence"** by **G.W. Keeton**, II Edition (1949) published by Sir Isaac Pitman and Sons Ltd. London (First published in 1930), "possession" has been dealt in Chapter XV. It says:

> "'*Possession,' says an old proverb, "is nine points of law." Put in another way, this implies that he who has conscious control of an object need only surrender his control to one who can establish a superior claim in law."*

2795. The essentials of possession in the first instance includes a fact to be established like any other fact. Whether it exists in a particular case or not will depend on the degree of control exercised by the person designated as possessor. If his control is such that he effectively excludes interference by others then he has possession. Thus the possession in order to show its existences must show "*corpus possessionis"* and an "*animus possidendi"*.

2796. *Corpus possessionis* means that there exists such physical contact of the thing by the possessor as to give rise to

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the reasonable assumption that other persons will not interfere with it. Existence of corpus broadly depend on (1) upon the nature of the thing itself, and the probability that others will refrain from interfering with the enjoyment of it; (2) possession of real property, i.e., when a man sets foot over the threshold of a house, or crosses the boundary line of his estate, provided that there exist no factors negativing his control, for example the continuance in occupation of one who denies his right; and (3) acquisition of physical control over the objects it encloses. Corpus, therefore, depends more upon the general expectations that others will not interfere with an individual control over a thing, then upon the physical capacity of an individual to exclude others.

2797. The *animus possidendi* is the conscious intention of an individual to exclude others from the control of an object.

2798. Possession confers on the possessor all the rights of the owner except as against the owner and prior possessors. "Possession in law" has the advantage of being a root of title.

2799. There is also a concept of "constructive possession" which is depicted by a symbolic act. It has been narrated with an illustration that delivery of keys of a building may give right to constructive possession all the contents to the transferee of the key.

2800. It would also be useful to have meaning of "possession" in the context of different dictionaries.

2801. In **"Oxford English-English-Hindi Dictionary"** published by Oxford University Press, first published in 2008, 11th Impression January 2010, at page 920:

> *"**possession-**1. the state of having or owning something. 2. Something that you have or own"*

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2802. In "**The New Lexicon Webster's Dictionary of the English Language**" (1987), published by Lexicon Publications, Inc. at page 784:

> *"**pos-ses-sion-**a possessing or being possessed II that which is possessed II (pl.) property II a territory under the political and economic control of another country II (law) actual enjoyment of property not founded on any title of ownership **to take possession of** to begin to occupy as owner II to affect so as to dominate."*

2803. In "**Chambers Dictionary"** (Deluxe Edition), first published in India in 1993, reprint 1996 by Allied Publishers Limited, New Delhi at page 1333 defines 'possess' and 'possession' as under :

> ***"possess** poz-es', vt to inhabit, occupy (obs.); to have or hold as owner, or as if owner; to have as a quality; to seize; to obtain; to attain (Spenser); to maintain; to control; to be master of; to occupy and dominate the mind of; to put in possession (with of, formerly with in); to inform, acquaint; to imbue; to impress with the notion of feeling; to prepossess (obs)."*
>
> ***"possession** the act, state or fact of possession or being possessed, a thing possessed; a subject foreign territory"*

2804. In **"Corpus Juris Secundum",** A Complete Restatement of the Entire American Law as developed by All Reported Cases (1951), Vol. LXXII, published by Brooklyn, N.Y., The American Law Book Co., at pages 233-235:

> *"Possession expresses the closest relation of fact which can exist between a corporeal thing and the person who possesses it, implying an **actual physical contact**, as by sitting or standing upon a thing; denoting custody*

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coupled with a right or interest of proprietorship*; and "possession" is inclusive of "custody." although "custody" is not tantamount to "possession." In its full significance, "possession" connotes domination or supremacy of authority. It implies a right and a fact; the right to enjoy annexed to the right of property, and the fact of the real detention of thing which would be in the hands of a master or of another for him. It also implies a right to deal with property at pleasure* ***and to exclude other persons from meddling with it****. Possession involves power of control and intent to control, and all the definitions contained in recognized law dictionaries indicate that the element of custody and control is involved in the term "possession."*

The word "possession" is also defined as meaning the thing possessed; that which anyone occupies, owns, or controls; and in this sense, as applied to the thing possessed, the word is frequently employed in the plural, denoting property in the aggregate; wealth; and it may include real estate where such is the intention, although this is not the technical signification.

It is also defined as meaning dominion; as, foreign possessions; and, while in this sense the term is not a word of art descriptive of a recognised geographical or governmental entity, it is employed in a number of federal statues to describe the area to which various congressional statutes apply.

"Possession" in the sense of ownership, and as a degree of title, and as indicating the holding or retaining of property in one's power or control, is treated in Property."

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2805. In **"Black's Law Dictionary"** Seventh Edition (1999), published by West Group, St. Paul, Minn., 1999, at page 1183:

> *"**possession. 1.** The fact of having or holding property in one's power; the exercise of dominion over property. **2**. The right under which one may exercise control over something to the exclusion of all others; the continuing exercise of a claim to the exclusive use of a material object. **3**. (usu. pl.) Something that a person owns or controls; PROPERTY (2). **4**. A territorial dominion of a state or nation."*

2806. In **Black's Law Dictionary (supra)** the following categories of possession have also been referred and explained:

> *"Actual possession, adverse possession, bona fide possession, civil possession, constructive possession, corporeal possession, derivative possession, direct possession, effective possession, exclusive possession, hostile possession, immediate possession, incorporeal possession, indirect possession, insular possession, mediate possession, naked possession, natural possession, notorious possession, peaceable possession, pedal possession, possession in fact, possession in law, possession of right, precarious possession, quasi possession and scrambling possession."*

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2807. Since the nature of possession, its various ingredients and effect etc. in the peculiar kind of this case may be required to be considered at the appropriate state, we find it necessary to see the manner in which the above kinds of categories of possession have been described in **Black's Law Dictionary (supra)**:

> ***actual possession.*** *Physical occupancy or control over*

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property.

adverse possession. *A method of acquiring title to real property by possession for a statutory period under certain conditions, esp.* ***a non-permissive use of the land with a claim of right when that use is continuous, exclusive, hostile, open, and notorious****.*

constructive adverse possession. *Adverse possession in which the claim arises from the claimant's payment of taxes under color of right rather than by actual possession of the land.*

bona fide possession. *Possession of property by a person who in good faith does not know that the property's ownership is disputed.*

civil possession. *Civil law. Possession existing by virtue of a person's intent to own a property even though the person no longer occupies or has physical control of it.*

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constructive possession. *Control or dominion over a property without actual possession or custody of it. - Also termed effective possession; possessio fictitia.*

corporal possession. *Possession of a material object, such as a farm or a coin. - Also termed natural possession; possissio corporis.*

derivative possession. *Lawful possession by one (such as a tenant) who does not hold title.*

direct possession. *Something that a person owns or controls.*

effective possession. *See constructive possession.*

exclusive possession. *The exercise of exclusive dominion over property, including the use and benefit of the property.*

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hostile possession. *Possession asserted against the claims of all others, including the record owner. See Adverse Possession.*

immediate possession. *Possession that is acquired or retained directly or personally. - Also termed direct possession.*

incorporeal possession. *Possession of something other than a material object, such as an easement over a neighbour's land, or the access of light to the windows of a house. - Also termed possessio juris; quasi-possession.*

indirect possession. *See mediate possession.*

mediate possession. *Possession of a thing through someone else, such as an agent. - Also termed indirect possession.*

naked possession. *The mere possession of something, esp. real estate without any apparent right or colorable title to it.*

natural possession. *Civil law. The exercise of physical detention or control over a thing, as by occupying a building or cultivating farmland.*

notorious possession. *Possession or control that is evident to others; possession of property that, because it is generally known by people in the area where the property is located, gives rise to a presumption that the actual owner has notice of it. - Also termed open possession; open and notorious possession.*

peaceable possession. *Possession (as of real property) not disturbed by another's hostile or legal attempts to recover possession.*

pedal possession. *Actual possession, as by living on the*

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land or by improving it.

possession in fact. *Actual possession that may or may not be recognized by law. - Also termed possessio naturalis.*

possession in law. 1. *possession that is recognized by the law either because it is a specific type of possession in fact or because the law or some special reason attributes the advantages and results of possession to someone who does not in fact possess.* ***2.*** *see constructive possession. - Also termed possessio civilis.*

possession of a right. *The de facto relation of continuing exercise and enjoyment of a right as oppose to the de jure relation of ownership. - Also termed possession juris.*

precarious possession. *Civil law. Possession of property by someone other than the owner on behalf of or with permission of the owner.*

quasi possession. *See incorporeal possession.*

scrambling possession. *Possession that is uncertain because it is in dispute.*

2808. In **"Words and Phrases"** Permanent Edition, Vol. 33 (1971), published by St. Paul, Minn. West Publishing Co., at pages 91-92:

"'Possession' as used in statute is not synonymous with physical bodily presence of adverse claimant; continuous bodily presence is not required, but ***rather question is one of fact which must be determined from circumstances of each case****.*

"Possession" is a common term used in every day conversation that has not acquired any artful meaning.

"Possession", in any sense of term, ***must imply, first, some actual power over the object possessed, and,***

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secondly, some amount of will to avail oneself of that power.

"Possession" is one of the most vague of all vague terms, and shifts its meaning according to the subject-matter to which it is applied,--varying very much in its sense, as it is introduced either into civil or into criminal proceedings.

Possession is that condition of fact under which one can exercise his power over a corporeal thing to the exclusion of all others.

To constitute possession, there must be such appropriation of the land to the individual as will apprise the community in its vicinity ***that the land is in his exclusive use and enjoyment****, and* ***notice of possession to be sufficient must be of the open and visible character****, which from its nature will apprise the world that* ***the land is occupied****, and* ***who the occupant is****."*

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2809. In **"Jowitt's Dictionary of English Law"** Vol. 2 Second Edition-1977, Second Impression-1990, published by London Sweet & Maxwell Limited, at pages 1387-1389:

*"**Possession,** the **visible possibility of exercising physical control over a thing, coupled with the intention of doing so**, either against all the world, or against all the world except certain persons. There are, therefore,* ***three requisites of possession. First****, there must be actual or potential physical control.* ***Secondly****, physical control is not possession, unless accompanied by intention; hence, if a thing is put into the hand of a sleeping person, he has not possession of it.* ***Thirdly****, the possibility and intention must be visible or evidenced by external signs, for if the thing*

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shows no signs of being under the control of anyone, it is not possessed; hence, if a piece of land is deserted and left without fences or other signs of occupation, it is not in the possession of anyone, and the possession is said to be vacant. The question ***whether possession of land is vacant is of importance in actions for recovering possession***.

Possession is actual, where a person enters into lands or tenements conveyed to him; apparent, which is a species of presumptive title, as where land descended to the heir of an abator, intruder, or disseisor, who died seised; in law, when lands had descended to a man and he had not actually entered into them, or naked, that is, mere possession, without colour of right.

The primary meaning is physical control. A secondary meaning is physical control by an agent or servant, or by relation back, e.g., by the owner having entered without remaining in physical possession (Ocean Accident etc., Corporation v. Ilford Gas Co. [1905] 2 K.B. 493).

Possession may also extend over a thing in itself uncontrolled within an inclosure which is controlled, such as horses, sheep or cattle within a fenced field. See Animals Ferae Naturae.

Possession may connote different kinds of control according to the nature of the thing or right over which it is being exercised. A man may possess an estate of land; if he leases it he will be in possession of the rents and profits and the reversion, but not of the land which is in the lessee who may being an action of trespass against the lessor. In regard to real property a mere right without possession is

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not sufficient to found an action of trespass; for instance, until 1926 a lessee before entry having a mere interesse termini could not bring an action for trespass on the land demised (Wallis v. Hands [1893] 2 Ch. 75). See Possessio Fratris.

The adage, ***possession is nine parts of the law, means that the person in possession can only be ousted by one whose title is better than his****; every claimant must succeed by the strength of his own title and not by the weakness of his antagonist's.*

Possession does not necessarily imply use or enjoyment.

Possession gives rise to peculiar rights and consequences. The principal is that a possessor has a presumptive title, that is to say, is presumed to be absolute owner until the contrary is shown, and is protected by law in his possession against all who cannot show a better title to the possession than he has.

With reference to its origin, possession is either with or without right.

Rightful possession is where a person has the right to the possession of (that is, the right to possess) property, and is in the possession of it with the intention of exercising his right. This kind of possession necessarily varies with the nature of the right from which it arises; a person may be in possession of a thing by virtue of his right of ownership, or as lessee, bailee, etc.; or his possession may be merely permissive, as in the case of a licensee; or it may be a possession coupled with an interest, as in the case of an auctioneer (Woolfe v. Horne (1867) 2 Q.B.D. 358). So

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the right may be absolute, that is, good against all persons: or relative, that is, good against all with certain exceptions; thus a carrier or borrower of goods has a right to their possession against all the world except the owner.

In jurisprudence, the possession of a lessee, bailee, licensee, etc., is sometimes called derivative possession, while in English law the possessory interest of such a person, considered with reference to his rights against third persons who interfere with his possession, is usually called a special or qualified property, meaning a limited right of ownership.

Possession without right is called wrongful or adverse, according to the rights of the owner or those of the possessor are considered. Wrongful possession is where a person takes possession of property to which he is not entitled, so that the possession and the right of possession are in one person, and the right to possession in another. Where an owner is wrongfully dispossessed, he has a right of action to recover his property, or, if he has an opportunity, he can exercise the remedy of recaption in the case of goods, or of entry in the case of land."

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2810. In **"Legal Thesaurus"** Regular Edition-William C. Burton (1981), published by Macmillan Publishing Co., Inc. New York., at page 391:

*"**POSSESSION** (Ownership), **noun***

authority, custody, demesne, domination, dominion, exclusive, right, lordship, occupancy, possessio, proprietorship, right, right of retention, seisin, supremacy, tenancy, title

***ASSOCIATED CONCEPTS:** action to recover*

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possession, actual possession, adverse possession, chain of possession, constructive possession, continuity of possession, continuous possession, debtor in possession, estate in possession, holder in possession, hostile possession, lawful possession, mortgagee in possession, naked possession, notorious possession, open and notorious possession, party in possession, peaceable possession, person in possession, physical possession, purchaser in possession, quiet possession, right of possession, tenant in possession, undisturbed possession, uninterrupted possession, unlawful possession, wrongful possession.

FOREIGN PHRASES: Traditio nihil amplius transferre debet vel potest, adeum qui accipit, quam est apud eum qui tradit. *Delivery ought to, and can, transfer nothing more to him who receives than is in possession of him who makes the delivery.* ***Jus triplex est,-propietatis, possessionis, et possibilitatis.*** *Right is threefold,-of property, of possession, and of possibility.* ***In aequali jure melior est conditio possidentis.*** *In a case of equal right the condition of the party in possession is the better.* ***Pro possessione praesumitur de jure.*** *A presumption of law arises from possession.* ***Nihil praescribitur nisi quod possidetur. There is no prescription for that which is not possessed.*** ***Privatio praesupponit habitum.*** *A deprivation presupposes something held or possessed.* ***Duorum in solidum dominium vel possessio esse non potest.*** *Sole ownership or possession cannot be in two persons.* ***Cum de lucro duorum quaeritur, melior est causa possidentis.*** *When the question of gain lies between two persons, the*

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cause of the possessor is the better. ***Longa possessio parit jus possidendi, et tollit actionem vero domino.-****Long possession creates the right of possession, and deprives the true owner of his right of action.* ***Aliud est possidere, aliud esse in possessione. It is one thing to possess; it is another to be in possession****.* ***Quod meum est sine facto meo vel defactu meo amitti vel in alium transferri non potest.*** *That which is mine cannot be transferred to another without my act or my default.* ***Quod meum est sine me auferri non potest.*** *What is mine cannot be taken away without my consent.* ***Nul charter, nul vente, ne nul done vault perpetualment, si le donor n'est seise al temps de contracts de deux droits, sc. Del droit de possession et del droit de propertie.*** *No grant, no sale, no gift, is valid forever, unless the donor, at the time of the contract, has two rights, namely, the right of possession, and the right of property.* ***Donatio perficitur possessione accipientis.*** *A gist is perfected by the possession of the receiver.* ***Melior est conditio possidentis, et rei quam actoris.*** *The condition of the possessor and that of the defendant is better than that of the plaintiff.* ***In pari delicto melior est conditio possidentis.*** *When the parties are equally in wrong, the condition of the possessor is the preferable one.* ***Longa possessio jus parit.*** *Long possession begets right.* ***Donator nunquam desinit possidere, antequam donatorius incipiat possidere.*** *A donor never ceases to possess until the donee begins to possess.* ***Non valet donatio nisi subsequatur traditio.*** *A gift is invalid unless accompanied by possession.* ***Nemo dare potest quod non habet.*** *No one is able to give that which he has not.* ***Terra***

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manens vacua occupanti conceditur. Land remaining vacant is given to the occupant. ***Non potest videri desisse habere qui nunquam habuit.*** *A person who has never had cannot be deemed to have ceased to have it.* ***In pari causa possessor potior haberi debet.*** *In an equal cause he who has the possession has the advantage.* ***Cum par delictum est duorum, semper oneratur petitor et melior habetur possessoris cause. When there is equal fault on both sides, the burden is always placed on the plaintiff, and the cause of the possessor is preferred***.

POSSESSION *(Property),* ***noun***

asset, belonging, bona, chattel effect, goods, holding, item, item of personalty, money, movable, possessio, res, resource, treasure, valuable.

FOREIGN PHRASES: Non possessori incumbit necessitas probandi possessiones ad se pertinere. It is not incumbent on the possessor of property to prove that his possessions belong to him.

POSSESSIONS, noun

assets, belongings, bonorum, capital, chattels, colonies, domain, dominions, earnings, effects, equity, estate, fortune, funds, goods, holdings, items of personalty, material wealth, movables, pecuniary resources, personal property, personalty, possessio, private property, property, res, resources, stock, stock in trade, territory, treasure, wealth, worldly belongings."

2811. In **"Mitra's Legal & Commercial Dictionary"** 5th Edition (1990) by A.N. Saha, published by Eastern Law House Pvt. Ltd., at pages 558-559:

Possession, *the visible possibility of exercising physical*

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control over a thing, coupled with the intention of doing so, either against all the world, or against all the world except certain persons. There are, therefore, three requisites of possession. First, there must be actual or potential physical control. Secondly, physical control is not possession, unless accompanied by intention; hence, if a thing is put into the hand of a sleeping person, he has not possession of it. Thirdly, the possibility and intention must be visible or evidenced by external signs, for if the thing shows no signs of being under the control of anyone, it is not possessed.

Possession is a polymorphous term which may have different meanings in different contents. It is impossible to work out a completely logical and precise definition of "Possession" uniformly applicable to all situations in the context of all statutes. Supld. And Legal Rememberancer v. Anil Kumar AIR 1980 SC 52:1979 Cr LJ 1390: (1979) 2 SCWR 334: 1979 Cr App R (SC) 282. ***Possession must be conscious possession****. S.D.O., Shiv Sagar v Goapl Chandra AIR 1971 SC 1190. Possession must be de facto possession as also precarious possession. Bishambhar v State of Bihar 1979 Cr LJ (NOC) 197: 1979 BLJ 319.*

Possession or occupation may take various forms and even keeping the household affects by the owner in the premises is act of occupation. Bimal Devi v Kailash Nandan AIR 1984 SC 1376.

There are two varieties of possession--(a) real or actual possession, and (b) constructive or symbolical possession.

The meaning of ***possession depends on the context in which it is used****. English law has never worked out a*

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completely logical and exhaustive definition of possession. Towers & Co. Ltd. v Gray (1961) 2 All ER 68: (1961) 2 QB 351.

Possession need not be physical possession, but can be constructive, having power and control over the gun. Gunwantlal v State AIR 1972 SC 1756."

2812. In **P Ramanatha Aiyar's "The Law Lexicon" with Legal Maxims**, Latin Terms and Words & Phrases, Second Edition 1997), published by Wadhwa and Company Law Publishers, at pages 1481-1483:

"1. Physical control, whether actual or in the eyes of law, over property; the condition of holding at one's disposal (S. 66, T.P. Act); 2. the area in one's possession (S. 37, Indian Evidence Act).

Possession is a detention or enjoyment of a thing which a man holds or exercise by himself or by another, who keeps or exercise it in his name.

"Possession is said to be in two ways-either actual possession or possession in law.

"Actual Possession," is, when a man entreth into lands or tenements to him descended, or otherwise.

"Possession in Law, is when lands of tenements are descended to a man, and he hath not as yet really, actually, and in deed entered into them: And it is called possession in law because that in the eye and consideration of the law, he is deemed to be in possession, inasmuch as he is liable to every mans action that will sue concerning the same lands or tenements."

The term has been defined as follows: Simply the owning or having a thing in one's power; the present right and power

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to control a thing; the detention and control of the manual or ideal custody of anything which may be the subject of property, for one's use of enjoyment, either as owner or as the proprietor of a qualified right in it, and either held personally or by another who exercises it in one's place and name; the detention or enjoyment of a thing which a man holds or exercise by himself or by another who keeps or exercises it in his name; the act of possession a having and holding or retaining of property in one's power or control; the sole control of the property or of some physical attachment to it; that condition of fact under which one can exercise his power over a corporeal thing at his pleasure, to the exclusion of all other persons. 171 IC 159=1937 ALJ 951=1937 ALR 913=1937 AWR 823=AIR 1937 All 735; 12 Bom LR 316=5 IC 457; 6 Bom LR 887; 16 CPLR 13; 4 NLR 78=8 Cr LJ 18.

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There can be no possession without intention or consciousness or will. ***Norendranath Masumdar, v. The State, AIR 1951 Cal 140.*** *(S. 19(f) Arms Act. 1878).*

Possession need not be physical possession but can be constructive, having power and control over the gun, while the person to whom physical possession is given holds it subject to that power or control. ***Gunwantlal v. The State of M.P., AIR 1972 SC 1756, 1759****.*

Possession is a polymorphous term which may have different meanings in different contents. The possession of a fire arm must have the element of consciousness or knowledge of that possession and when there is no actual physical possession a control or dominion over it, there is no possession.

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The word "possession" naturally signifies lawful possession. The possession of a trespasser could not be a possession of a tenant so as to attract Sec. 14(1). ***Bhagat Ram v. Smt. Lilawati Galib, AIR 1972 HP 125, 130****.*

The word 'possessed' means the state of owning or having in one's hand or power but even this broad meaning will not apply in the case of a share or a woman when there has been no partition by metes and bounds. ***Modi Nathubai Motilal v. Chhotubhai Manibhai Besai, AIR 1962 Guj. 68,*** *77.*

Obtaining a symbolic possession is in law equivalent to obtain actual physical possession and has the effect of terminating the legal possession of the person bound by the decree and order. ***Umrao Singh v. Union of India; AIR 1975 Del. 188, 191.***

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The word 'possession' implies a physical capacity to deal with the thing as we like to the exclusion of every one and a determination to exercise that physical power on one's own behalf. In ***Re Pachiripalli Satyanarayanan, AIR 1953 Mad 534****.*

Where an estate or interest in realty is spoken of as being "in possession", that does not, primarily, mean the actual occupation of the property; but means, the present right thereto or to the enjoyment thereof.

*The word "****possession" in S. 28 of the Limitation Act*** *XV of 1877,* ***embraces both actual possession and possession in law****, 6 CWN 601.*

The word "possession" in C.P. Code, includes constructive possession, such as possession by a tenant. 25 B. 478(491).

Possession in Specific Relief Act (I of 1877), S. 9 does not

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include joint possession, but refers to exclusive possession. 23 IC 618 (619).

The word "possession" means the legal right to possession. ***Health v. Drown, (1972) 2 All ER 561, 573 (HL).***"

2813. There is a distinction between the terms "possession", "occupation" and "control". The distinction between "possession" and "occupation" was considered in **Seth Narainbhai Ichharam Kurmi and another Vs. Narbada Prasad Sheosahai Pande and others, AIR 1941 Nagpur 357** and the Court held:

*"**Bare occupation and possession are two different things**. The concept of possession, at any rate as it is understood in legal terminology, is a complex one which need not include actual occupation. It comprises rather the right to possess, and the right and ability to exclude others from possession and control coupled with a mental element, namely, the animus possidendi, that is to say, knowledge of these rights and the desire and intention of exercising them if need be. The adverse possession of which the law speaks does not necessarily denote actual physical ouster from occupation but an ouster from all those rights which constitute possession in law. It is true that physical occupation is ordinarily the best and the most conclusive proof of possession in this sense* ***but the two are not the same. It is also true that there must always be physical ouster from these rights but that does not necessarily import physical ouster from occupation especially when this is of just a small room or two in a house and when this occupation is shared with others.***

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The nature of the ouster and the quantum necessary naturally varies in each case.”

2814. The distinction between “possession”, “occupation” or “control” was also considered in **Sumatibai Wasudeo Bachuwar Vs. Emperor, AIR (31) 1944 Bom. 125** and the Court held:

“Some documents containing perjudicial reports were found in a box in the house occupied by the applicant and her husband. When the house was raided by the police, the husband was out and the applicant (wife) produced the keys with one of which the box could be opened. In addition to perjudicial reports, there were some letters in the box addressed to the applicant. Held,. (1) that, prima facie, the box containing the documents would be in the possession of the husband and the mere fact that in his absence he had left the keys with the applicant (wife) would not make her in joint possession with himself; nor did the fact that there were letters in the box addressed to the wife mean that she was in joint possession of all the contents of the box; (2) that the wife was in the circumstances in possession of the box within the meaning of R. 39(1) of the Defence of India Rules; (3) that occupation in R. 39 (2) of the Defence of India Rules meant legal occupation, and the applicant could not be held to be in occupation or control of the house so as to render her guilty under R. 39 of the Defence of India Rules.”

2815. In “**Mitra's Law of Possession and Ownership of Property”** reprint 2010 published by Sodhi Publication, Allahabad, certain kinds of possession in the light of Courts' verdict have been provided as under :

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Continuous possession.- *The meaning of the word "continue" means to keep existing or happening without stopping and the word "continuous" describes something that continues without stopping. In a case where the plaintiff was in possession for a period of five years at a time on the basis of a lease, the moment the period of lease expired, the Court held in* ***Kartik Mandal Vs. State of Bihar AIR 2009 Pat. 33*** *that he was bound to restore before the possession of the settler and cannot claim to be in continuous possession.*

Effective possession.- *Where* ***the plaintiff did not get*** *the possession of the land as to control it* ***as per his desire means that he is not having effective possession of the land*** *as held in* ***Alkapuri Co-operative Housing Society Ltd. Vs. Jayantibhai Naginbhai AIR 2009 SC 1948****.*

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De jure possession.- *A possession deemed in law though actually it is in possession of another is de jure possession as held in* ***Kottakkal Co-operative Urban Bank Vs. Balakrishna AIR 2008 Ker. 179****.*

Exclusive possession.- *In* ***Nirmal Kanta (Smt.) Vs. Ashok Kumar 2008 (7) SCC 722****, the respondent no. 2 was accommodated by respondent no. 1 to assist him in his cloth business by helping customers to assess the amount of cloth required for their particular purposes. The said activity did not give respondent no. 2 exclusive possession for that part of the shop room from where he was operating and where his sewing machine had been affixed. This view taken by the Court below was upheld by the Apex Court.*

Hostile possession A possession against the real owner within his knowledge constitute hostile possession.

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Where a person is ***not sure who is the true owner, the question of his being in hostile possession does not arise*** *and it would also not result in assuming that he was denying title of true owner. This is what was held by this Court in* ***Ramzan Vs. Smt. Gafooran (supra)****. When a person claims possession over a property showing himself to be the owner, the question of showing hostile possession would not arise. Similarly, in* ***Gopendra Goswami Vs. Haradhan Das AIR 2009 Gau 41****, it was held that* ***mere possession over a land cannot be treated hostile to the title of the real owner unless it is shown that the real owner has the knowledge and thereupon the possession of the stranger continued****.*

Physical possession.- *It is the actual possession over the land. (See :* ***Dhara Singh Vs. Fateh Singh AIR 2009 Raj. 132)***

Wrongful possession*.- Possession contrary to law is the wrongful possession.*

2816. Possession can also be classified as under:

(a) De facto possession (b) De jure possession (c) Symbolic possession (d) Joint possession (e) Concurrent possession. Besides, some more categories are forcible possession, independent possession, lawful possession, permissive possession and settled possession.

2817. A retrospect of ancient post, the concept of possession in ancient laws in different civilizations was known to the mankind. A comparative study we find, in the work of "Sir Henry Summer Maine" (in short 'Maine'). He is considered to be the founder of comparative jurisprudence of ancient laws. Much earlier in 1861 AD, comparative jurisprudence under the

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heading **"Ancient Law"-Its connection with the Early History of Society and its Relation to Modern Ideas**, was written by **"Sir Henry Sumner Maine"**. The edition before the Court is one published by Dorset Press in 1986 at United States of America.

2818. "Sir Maine" was highly influenced by Roman Law. He observed in Chapter-I under the heading "Ancient Codes":

> *"The most celebrated system of jurisprudence known to the world begins, as it ends, with a Code. From the commencement to the close of its history, the expositors of Roman Law consistently employed language which implied that the body of their system rested on the Twelve Decemviral Tables, and therefore on a basis of written law. . . ."*
>
> *"The ancient Roman code belongs to a class of which almost every civilized nation in the world can show a sample, and which, so far as the Roman and Hellenic worlds were concerned, were largely diffused over them at epochs not widely distant from one another." (Page 1)*

2819. In respect to the **Laws in East** and in particular **Hindus,** he observed:

> *"But in the East, as I have before mentioned, the ruling aristocracies tended to become religious rather than military or political, and gained, therefore, rather than lost in power; while in some instances the physical conformation of Asiatic countries had the effect of making individual communities larger and more numerous than in the West; and it is a known social law that the larger the space over which a particular set of institutions is diffused, the greater is its tenacity and vitality. From whatever*

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cause, the codes obtained by Eastern societies were obtained, relatively, much later than by Western, and wore a very different character. The religious oligarchies of Asia, either for their own guidance, or for the relief of their memory, or for the instruction of their disciples, seem in all cases to have ultimately embodied their legal learning in a code; but the opportunity of increasing and consolidating their influence was probably too tempting to be resisted. Their complete monopoly of legal knowledge appears to have enabled them to put off on the world collections, not so much of the rules actually observed as of the rules which the priestly order considered proper to be observed. The Hindoo code, called the Laws of Menu, which is certainly a Brahmin compilation, undoubtedly enshrines many genuine observances of the Hindoo race, but the opinion of the best contemporary orientalists is, that it does not, as a whole, represent a set of rules ever actually administered in Hindostan. It is, in great part, an ideal picture of that which, in the view of the Brahmins, ought to be the law. It is consistent with human nature and with the special motives of their authors, that codes like that of Menu should pretend to the highest antiquity and claim to have emanated in their complete form from the Deity. Menu, according to Hindoo mythology, is an emanation from the supreme God; ***but the compilation which bears his name, though its exact date is not easily discovered****, is, in point of the relative progress of Hindoo jurisprudence,* ***a recent production****." (Page 14)*

2820. Further he says:

"*The fate of the Hindoo law is, in fact, the measure of*

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the value of the Roman code. Ethnology shows us that the Romans and the Hindoos sprang from the same original stock, and there is indeed a striking resemblance between what appear to have been their original customs. Even now, Hindoo jurisprudence has a substratum of forethought and sound judgment, but irrational imitation has engrafted in it an immense apparatus of cruel absurdities. From these corruptions the Romans were protected by their code. It was compiled while the usage was still wholesome, and a hundred years afterwards it might have been too late. The ***Hindoo law has been to a great extent embodied in writing, but, ancient as in one sense are the compendia which still exist in Sanskrit, they contain ample evidence that they were drawn up after the mischief had been done****." (Page 16-17)*

2821. The concept of possession has been discussed by "Sir Maine" in Chapter-VIII under the heading "The Early History of Property". Referring to the natural modes of acquiring property known in Roman law he observed:

"The wild animal which is snared or killed by the hunter, the soil which is added to our field by the imperceptible deposits of a river, the tree which strikes its roots into our ground, are each said by the Roman lawyers to be acquired by us naturally." (Page 203)

2822. Therefore, one of the **mode of possession** is **occupation** or occupancy.

2823. "Sir Maine" further says :

"Occupancy is the advisedly taking possession of that which at the moment is the property of no man, with the view (adds the technical definition) of acquiring

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property in it for yourself. The objects which the Roman lawyers called ***res nullius—things which have not or have never had an owner****—can only be ascertained by enumerating them. Among things which never had an owner are wild animals, fishes, wild fowl, jewels disinterred for the first time, and lands newly discovered or never before cultivated. Among things which have not an owner are moveables which have been abandoned, lands which have been deserted, and (an anomalous but most formidable item) the property of an enemy. In all these objects the full rights of dominion were acquired by the Occupant, who first took possession of them with the intention of keeping them as his own—an intention which, in certain cases, had to be manifested by specific acts." (Page 203)*

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"If the Roman law of Occupancy is to be taxed with having had permicious influence on any part of the modern Law of Nations, there is another chapter in it which may be said, with some reason, to have been injuriously affected. In applying to the discovery of new countries the same principles which the Romans had applied to the finding of a jewel, the Publicists forced into their service a doctrine altogether unequal to the task expected from it. Elevated into extreme importance by the discoveries of the great navigators of the 15th and 16th centuries, it raised more disputes than it solved. The greatest uncertainty was very shortly found to exist on the very two points on which certainty was most required, ***the extent of the territory which was acquired for his sovereign by the discoverer, and the nature of the acts which were necessary to***

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complete the adprehensio or assumption of sovereign possession. *Moreover, the principle itself, conferring as it did such enormous advantages as the consequence of a piece of good luck, was instinctively mutinied against by some of the most adventurous nations in Europe, the Dutch, the English, and the Portuguese. Our own countrymen, without expressly denying the rule of International Law, never did, in practice, admit the claim of the Spaniards to engross the whole of America south of the Gulf of Maxico, or that of the King of France to monopolise the valleys of the Ohio and the Mississippi. From the accession of Elizabeth to the accession of Charles the Second, it cannot be said that there was at any time thorough peace in the American waters, and the encroachments of the New England Colonists on the territory of the French King continued for almost a century longer. Bentham was so struck with the confusion attending the application of the legal principle, that he went out of his way of eulogise the famous Bull of Pope Alexander the Sixth, dividing the undiscovered countries of the world between the Spaniards and Portuguese by a line drawn one hundred leagues West of the Azores; and, grotesque as his praises may appear at first sight, it may be doubted whether the arrangement of Pope Alexander is absurder in principle than the rule of Public Law, which gave half a continent to the monarch whose servants had fulfilled the conditions required by Roman jurisprudence for the acquisition of property in a valuable object which could be covered by the hand." (Page 206-207)*

"To all who pursue the inquiries which are the

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subject of this volume Occupancy is pre-eminently interesting on the score of the service it has been made to perform for speculative jurisprudence, in furnishing a supposed explanation of the origin of private property. It was once universally believed that the proceeding implied in Occupancy was identical with the process by which the earth and its fruits, which were at first in common, became the allowed property of individuals. The course of thought which led to this assumption is not difficult to understand, if we seize the shade of difference which separates the ancient from the modern conception of Natural Law. The Roman lawyers had laid down that Occupancy was one of the Natural modes of acquiring property, and they undoubtedly believed that, were mankind living under the institutions of Nature, Occupancy would be one of their practices. How far they persuaded themselves that such a condition of the race had ever existed, is a point, as I have already stated, which their language leaves in much uncertainty; but they certainly do seem to have made the conjecture, which has at all times possessed much plausibility, that the institution of property was not so old as the existence of mankind. Modern jurisprudence, accepting all their dogmas without reservation, went far beyond them in the eager curiosity with which it dwelt on the supposed state of Nature. Since then it had received the position that the earth and its fruits were once res nullius, and since its peculiar view of Nature led it to assume without hesitation that the human race had actually practised the Occupancy of res nullius long before the organisation of civil societies, the inference immediately

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suggested itself that Occupancy was the process by which the 'no man's goods' of the primitive world became the private property of individuals in the world of history." (Page 207-208)

2824. **"Maine"** has quoted **"Blackstone"** as under:

*"'**The earth**,' he writes, '**and all things therein were the general property of mankind from the immediate gift of the Creator**. Not that the communion of goods seems ever to have been applicable, even in the earliest ages, to aught but the substance of the thing; nor could be extended to the use of it. For, by the law of nature and reason he who first began to use it acquired therein a kind of transient property that lasted so long as he was using it, and no longer; or to speak with greater precision, the right of possession continued for the same time only that the act of possession lasted. Thus the ground was in common, and no part was the permanent property of any man in particular; yet whoever was in the occupation of any determined spot of it, for rest, for shade, or the like, acquired for the time a sort of ownership, from which it would have been unjust and contrary to the law of nature to have driven him by force, but the instant that he quitted the use of occupation of it, another might seize it without injustice.' He then proceeds to argue that "when mankind increased in number, it became necessary to entertain conceptions of more permanent dominion, and to appropriate to individuals not the immediate use only, but the very substance of the thing to be used." (Page 208-209)*

2825. Explaining occupancy, Maine observes :

"Occupancy first gave a right against the world to

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an exclusive but temporary enjoyment, and that afterwards this right, while it remained exclusive, became perpetual. Their object in so stating their theory was to reconcile the doctrine that ***in the state of Nature res nullius became property through Occupancy****, with the inference which they drew from the Scriptural history that the Patriarchs did not at first permanently appropriate the soil which had been grazed over by their flocks and herds." (Page 209-210)*

2826. Referring to 'Savigny', 'Sir Maine' observed:

"It is not wonderful that property began in adverse possession. It is not surprising that the first proprietor should have been the strong man armed who kept his goods in peace. But why it was that lapse of time created a sentiment of respect for his possession—which is the exact source of the universal reverence of mankind for that which has for a long period de facto existed—are questions really deserving the profoundest examination, but lying far beyond the boundary of our present inquiries." (Page 212)

"Occupancy is the advised assumption of physical possession; and the notion that an act of this description confers a title to 'res nullius', so far from being characteristic of very early societies, is in all probability the growth of a refined jurisprudence and of a settled condition of the laws. It is only when the rights of property have gained a sanction from long practical inviolability, and when the vast majority of the objects of enjoyment have been subjected to private ownership, that mere possession is allowed to invest the first possessor with dominion over commodities in which no prior proprietorship has been

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asserted. The sentiment in which this doctrine originated is absolutely irreconcilable with that infrequency and uncertainty of proprietary rights which distinguish the beginnings of civilisation. Its true basis seems to be, not an instinctive bias towards the institution of Property, but a presumption, arising out of the long continuance of that institution, that everything ought to have an owner. When possession is taken of a 'res nullius', that is, of an object which is not, or has never been, reduced to dominion, the possessor is permitted to become proprietor from a feeling that all valuable things are naturally the subjects of an exclusive enjoyment, and that in the given case there is no one to invest with the right of property except the Occupant. The Occupant in short, becomes the owner, because all things are presumed to be somebody's property and because no one can be pointed out as having a better right than he to the proprietorship of this particular thing." (Page 212-213)

2827. Referring to "laws of ownership" followed in India by Hindus, 'Sir Maine' says:

"The Roman jurisprudence will not here assist in enlightening us, for it is exactly the Roman jurisprudence which, transformed by the theory of Natural Law, has bequeathed to the moderns the impression that individual ownership is the normal state of proprietary right, and that ownership in common by groups of men is only the exception to a general rules. There is, however, one community which will always be carefully examined by the inquirer who is in quest of any lost institution of primeval society. How far soever any such institution may have

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undergone change among the branch of the Indo-European family which has been settled for ages in India, it will seldom be found to have entirely cast aside the shell in which it was originally reared. It happens that, among the Hindoos, we do find a form of ownership which ought at once to rivet our attention from its exactly fitting in with the ideas which our studies in the Law of Persons would lead us to entertain respecting the original condition of property. The Village Community of India is at once an organised patriarchal society and an assemblage of co-proprietors. The personal relations to each other of the men who compose it are indistinguishably confounded with their proprietary rights, and to the attempts of English functionaries to separate the two may be assigned some of the most formidable miscarriages of Anglo-Indian administration. ***The Village Community is known to be of immense antiquity****. In whatever direction research has been pushed into Indian history, general or local, it has always found the Community in existence at the farthest point of its progress. A great number of intelligent and observant writers, most of whom had no theory of any sort to support concerning its nature and origin, agree in considering it the least destructible institution of a society which never willingly surrenders any one of its usages to innovation. Conquests and revolutions seem to have swept over it without disturbing or displacing it, and the most beneficient systems of government in India have always been those which have recognised it as the basis of administration.*

The ***mature Roman law, and modern jurisprudence***

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following in its wake, look upon co-ownership as an exceptional and momentary condition of the rights of property. *This view is clearly indicated in the maxim which obtains universally in Western Europe, Nemo in communione potest invitus detineri ('No one can be kept in co-proprietorship against his will').* ***But in India this order of ideas is reversed, and it may be said that separate proprietorship is always on its way to become proprietorship in common***. *The process has been adverted to already. As soon as a son is born, he acquires a vested interest in his father's substance, and on attaining years of discretion he is even, in certain contingencies, permitted by the letter of law to call for a partition of the family estate. As a fact, however, a division rarely takes place even at the death of the father, and the property constantly remains undivided for several generations, though every member of every generation has a legal right to an undivided share in it. The domain thus held in common is sometimes administered by an elected manager, but more generally, and in some provinces always, it is managed by the eldest agnate, by the eldest representative of the eldest line of the stock. Such an assemblage of joint proprietors, a body of kindred holding a domain in common, is the simplest form of an Indian Village Community, but* ***the Community is more than a brotherhood of relatives and more than an association of partners***. *It is an organised society, and besides providing for the management of the common fund, it seldom fails to provide, by a complete staff of functionaries, for internal government, for police, for the administration of justice, and for the apportionment of*

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taxes and public duties." (Page 215-217)

2828. Regarding village communities and their system of holding land, Sir Maine observed:

> *"The process which I have described as that under which a Village Community is formed, may be regarded as typical. Yet it is not to be supposed that every Village Community in India drew together in so simple a manner. Although, in the North of India, the archives,* ***as I am informed****, almost invariably show that the Community was founded by a single assemblage of blood-relations, they also supply information that men of alien extraction have always, from time to time, been engrafted on it, and a mere purchaser of a share may generally, under certain conditions, be admitted to the brotherhood. In the South of the Peninsula there are often Communities which appear to have sprung not from one but from two or more families; and there are some whose composition is known to be entirely artificial; indeed, the occasional aggregation of men of different castes in the same society is fatal to the hypothesis of a common descent. Yet in all these brotherhoods either the tradition is preserved, or the assumption made, of an original common parentage. Mountstuart Elphinstone, who writes more particularly of the Southern Village Communities, observes of them (History of India, i. 126): 'the popular notion is that the Village landholders are all descended from one or more individuals who settled the village, and that the only exceptions are formed by persons who have derived their rights by purchase or otherwise from members of the original stock. The supposition is confirmed by the fact*

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that, to this day, there are only single families of landholders in small villages and not many in large ones; but each has branched out into so many members that it is not uncommon for the whole agricultural labour to be done by the landholders, without the aid either of tenants or of labourers. The rights of the landholders are theirs collectively and, though they almost always have a more or less perfect partition of them, they never have en entire separation. A landholder, for instance, can sell or mortgage his rights; but he must first have the consent of the Village, and the purchaser steps exactly into his place and takes up all his obligations. If a family becomes extinct, its share returns to the common stock." (Page 217-219)

2829. On page 223 he further says:

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"In India, not only is there no indivisibility of the common fund, but separate proprietorship in parts of it may be indefinitely prolonged and may branch out into any number of derivative ownerships, the de facto partition of the stock being, however, checked by inveterate usage, ***and by the rule against the admission of strangers without the consent of the brotherhood****."*

2830. The Hindu Dharam-shastras containing legal principles are mainly in Smritis. ***Narada-smriti*** *or* ***Naradiya Dharmasastra*** contains the laws with regard to 'property' or and 'possession' are stated as under:

"43. All transactions depend on wealth. In order to acquire it, exertion is necessary. To preserve it, to increase it, and to enjoy it : these are, successively, the three sorts of activity in regard to wealth.

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44. Again, wealth is of three kinds : white, spotted, and black. Each of these (three) kinds has seven subdivision.

45. White wealth is (of the following seven sorts) : what is acquired by sacred knowledge, valour in arms, the practice of austerities, with a maiden, through (instructing) a pupil, by sacrificing, and by inheritance. The gain to be derived from exerting oneself to acquire it is of the same description.

46. Spotted wealth is (of the following seven sorts) : what is acquired by lending money at interest, tillage, commerce, in the shape of Sulka, by artistic performances, by servile attendance, or as a return for a benefit conferred on some one.

47. Black wealth is (of the following seven sorts) : what is acquired as a bribe, by gambling, by bearing a message, through one afflicted with pain, by forgery, by robbery, or by fraud.

48. It is in wealth that purchase, sale, gift, receipt, transactions of every kind, and enjoyment, have their source.

49. Of whatever description the property may be, with which a man performs any transaction, of the same description will the fruit be which he derives from it in the next world and in this.

50. Wealth is again declared to be of twelve sorts, according to the caste of the acquirer. Those modes of acquisition, which are common to all castes, are threefold. The others are said to be ninefold.

51. Property obtained by inheritance, gifts made from love, and what has been obtained with a wife (as her

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dowry), these are the three sorts of pure wealth, for all (castes) without distinction.

52. The pure wealth peculiar to a Brahman is declared to be threefold : what has been obtained as alms, by sacrificing, and through (instructing) a pupil.

53. The pure wealth peculiar to a Kshatriya is of three sorts likewise : what has been obtained in the shape of taxes, by fighting, and by means of the fines declared in lawsuits.

54. The pure wealth peculiar to a Vaisya is also declared to be threefold : (what has been acquired) by tillage, by tending cows, and by commerce. . . . .”

2831. Similarly, ***Brihaspati Smriti*** deals with 'possession' as under:

*“2. I**mmovable property** may be acquired in seven different ways, viz. by learning, by purchase, by mortgaging, **by valour**, with a wife (as her dowry), by inheritance (from an ancestor), and by succession to the property of a kinsman who has no issue.*

3. In the case of property acquired by one of these seven methods, viz. inheritance from a father (or other ancestor), acquisition (in the shape of a dowry), purchase, hypothecation, succession, valour, or learned knowledge, possession coupled with a legitimate title constitutes proprietary right.

4. That possession which is hereditary, or founded on a royal order, or coupled with purchase, hypothecation or a legitimate title : possession of this kind constitutes proprietary right.

5. Immovable property obtained by a division (of the

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estate among co-heirs), or by purchase, or inherited from a father or other ancestor), or presented by the king, is acknowledged as one's lawful property ; it is lost by forbearance in the case of adverse possession.

6. He who is holding possession (of an estate) after having merely taken it, occupying it without meeting with resistance, becomes its legitimate owner thus; and it is lost (to the owner) by such forbearance.

7. He whose possession has been continuous from the time of occupation, and has never been interrupted for a period of thirty years, cannot be deprived of such property.

8. That property which is publicly given by co-heirs or others to a stranger who is enjoying it, cannot be recovered afterwards by him (who is its legitimate owner).

9. He who does not raise a protest when a stranger is giving away (his) landed property in his sight, cannot again recover that estate, even though he be possessed of a written title to it.

10. Possession held by three generations produces ownership for strangers, no doubt, when they are related to one another in the degree of a Sapinda ; it does not stand good in the case of Sakulyas.

11. A house, field, commodity or other property having been held by another person than the owner, is not lost (to the owner) by mere force of possession, if the possessor stands to him in the relation of a friend, relative, or kinsman.

12. Such wealth as is possessed by a son-in-law, a learned Brahman, or by the king or his ministers, does not become legitimate property for them after the lapse of a

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very long period even.

13. Forcible means must not be resorted to by the present occupant or his son, in maintaining possession of the property of an infant, or of a learned Brahman, or of that which has been legitimately inherited from a father.

14. Nor (in maintaining possession) of cattle, a woman, a slave, or other (property). This is a legal rule.

15. If a doubt should arise in regard to a house or field, of which its occupant has not held possession uninterruptedly, he should undertake to prove (his enjoyment of it) by means of documents, (the depositions of) persons knowing him as possessor, and witnesses.

16. Those are witnesses in a contest of this kind who know the name, the boundary, the title (of acquisition), the quantity, the time, the quarter of the sky, and the reason why possession has been interrupted.

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17. By such means should a question regarding occupation and possession be decided in a contest concerning landed property ; but in a cause in which no (human) evidence is forthcoming, divine test should be resorted to.

18. When a village, field, or garden is referred to in one and the same grant, they are (considered to be) possessed of all of them, though possession be held of part of them only. (On the other hand) that title has no force which is not accompanied by a slight measure of possession even.

19. Not to possess landed property, not to show a document in the proper time, and not to remind witnesses (of their deposition) : this is the way to lose one's property.

20. Therefore evidence should be preserved carefully; if

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this be done, lawsuits whether relating to immovable or to movable property are sure to succeed.

21. Female slaves can never be acquired by possession, without a written title; ***nor (does possession create ownership) in the case of property belonging to a king, or to a learned Brahman, or to an idiot, or infant****.*

22. It is not by mere force of possession that land becomes a man's property ; a legitimate title also having been proved, it is converted into property by both (possession and title), but not otherwise.

23. Should even the father, grandfather, and great-grandfather of a man be alive, land having been possessed by him for thirty years, without intervention of strangers.

24. It should be considered as possession extending over one generation ; possession continued for twice that period (is called possession) extending over two generations ; possession continued for three times that period (is called possession) extending over three generations. (Possession continued) longer than that even, is (called) possession of long standing.

25. When the present occupant is impeached, a document or witness is (considered as) decisive. When he is no longer in existence, possession alone is decisive for his sons.

26. When possession extending over three generations has descended to the fourth generation, it becomes legitimate possession, and a title must never be inquired for.

27. When possession undisturbed (by other) has been held by three generations (in succession), it is not necessary to produce a title ; possession is decisive in that

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case.

28. In suits regarding immovable property, (possession) held by three generations in succession, should be considered as valid, and makes evidence in the decision of a cause.

29. He whose possession has passed through three lives, and is duly substantiated by a written title, cannot be deprived of it ; such possession is equal to the gift of the Veda.

30. He whose possession has passed through three lives and has been inherited from his ancestors, cannot be deprived of it, unless a previous grant should be in existence (in which the same property has been granted to a different person by the king).

31. That possession is valid in law which is uninterrupted and of long standing ; interrupted possession even is (recognised as valid), if it has been substantiated by an ancestor.

32. A witness prevails over inference ; a writing prevails over witnesses ; undisturbed possession which has passed through three lives prevails over both.

33. When an event (forming the subject of a plaint) has occurred long ago, and no witnesses are forthcoming, he should examine indirect witnesses, or he should administer oaths, or should try artifice."

2832. Thus in brief, the concept of possession in ancient laws may be stated that Possession in Roman law recognised two degrees of possession, one is being detentio (or *possessio naturalise)* of the object/thing; and the other is *possessio strictly* or *possessio civilise.* Roman law appears to be mainly concern

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with developing a theory to distinguish between detention and possession from each other. Physical control of an object by sale, a bailee or an agent was considered only as detention and all other kinds of physical control were treated as possession.

2833. In Muslim law a man in possession of property although by wrongful means has obvious advantages over the possessor. The possessor is entitled to protection against the whole world except the true owner. [The Principles of Mohammedan Jurisprudence (1911)].

2834. In 'Ancient Indian Law' possession was nothing but a legal contrivance based on the considerations of *dharma.* Use and enjoyment of property was restricted and controlled by the holy scriptures. In old Hindu law possession was of two kinds. (a) with title; and (b) without title where possession continued for three generations. Enough importance, however, was given to title (agama) to prove possession. Katyayana said, "*there can be no branches without root, and possession is the branch".*

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2835. Possession, therefore, has two aspects. By itself it is a limited title which is good against all except a true owner. It is also prima facie evidence of ownership. In **Hari Khandu Vs. Dhondi Nanth, (1906) 8 Bom.L.R. 96,** Sir Lawrence Jenkins, C.J. observed that possession has two fold value, it is evidence of ownership and is itself the foundation of a right to possession. The possession, therefore, is not only a physical condition which is protected by ownership but a right itself.

2836. In **Supdt. & Remembrancer of Legal Affairs, West Bengal Vs. Anil Kumar Bhunja & Ors. AIR 1980 SC 52** the possession was described by the Court in paras 13, 14 and 15 as under:

"13. "Possession" is a polymorphous term which may have

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different meanings in different contexts. It is impossible to work out a completely logical and precise definition of "possession" uniformly applicable to all situations in the contexts of all statutes. Dias & Hughes in their book on Jurisprudence say that if a topic ever suffered from too much theorizing it is that of "possession". Much of this difficulty and confusion is (as pointed out in Salmond's Jurisprudence, 12th Edition, 1966) caused by the fact that ***possession is not purely a legal concept. "Possession", implies a right and a fact; the right to enjoy annexed to the right of property and the fact of the real intention. It involves power of control and intent to control****. (See Dias and Hughes, ibid)*

14. According to Pollock & Wright "when a person is in such a relation to a thing that, so far as regards the thing, he can assume, exercise or resume manual control of it at pleasure, and so far as regards other persons, the thing is under the protection of his personal presence, or in or on a house or land occupied by him or in any receptacle belonging to him and under his control, he is in physical possession of the thing.

15. While recognising that "possession" is not a purely legal concept but also a matter of fact; Salmond (12th Edition, page 52) describes "possession, in fact", as a relationship between a person and a thing. According to the learned author the test for determining "whether a person is in possession of anything is whether he is in general control of it".

2837. In this case we are concerned with the concept of adverse possession. A person other than owner, if continued to

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have possession of immoveable property for a period as prescribed in a Statute providing limitation, openly, without any interruption and interference from the owner, though he has knowledge of such possession, would crystallise in ownership after the expiry of the prescribed period or limitation, if the real owner has not taken any action for re-entry and he shall be denuded of his title to the property in law. 'Permissible possession' shall not mature a title since it cannot be treated to be an 'adverse possession'. Such possession, for however length of time be continued, shall not either be converted into adverse possession or a title. It is only the hostile possession which is one of the condition for adverse possession.

2838. Ordinarily an owner of property is presumed to be in possession and such presumption is in his favour where there is nothing to be contrary. But where a plaintiff himself admits that he has been dispossessed by the defendant and no longer in proprietary possession of the property in suit at the time of institution of the suit, the Court shall not start with the presumption in his favour that the possession of the property was with him. Mere adverse entry in revenue papers is not relevant for proof of adverse possession. Possession is prima facie evidence of title and has to be pleaded specifically with all its necessary ingredients namely, hostile, open, actual and continuous.

2839. In **Gunga Gobind Mundul Vs. Collector of the 24-pergunnahs 11 Moore's I.A., 345** it was observed by the Privy Council that continuous possession for more than twelve years not only bars the remedy, but practically extinguishes the title of the true owner in favour of the possessor. This was followed by a Division Bench of Calcutta High Court in **Gossain Das**

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Chunder Vs. Issur Chunder Nath 1877 III ILR 3 (Cal.) 224.

2840. In **Gossain Das Chunder (supra)** the High Court held that 12 years continuous possession of land by wrong doer not only bars the remedy also extinguishes the title of the rightful owner. It confers a good title upon the wrong doer.

2841. In **Bhupendra Narayan Sinha (supra)** the Privy Council held where a person without any colour of right wrongfully takes possession as a trespasser of a property of another, any title which he may require by adverse possession will be strictly limited to what he has actually so possessed. That was an interesting case of dispute of ownership in respect to subsoil. It was held that there can be separate ownership of different strata of subsoil, at all events where minerals are involved. If a grant of surface right was given by the owner and the licensee is given possession to carry out the said right, by quarrying stones etc. possession of subsoil in the eyes of law remain with the owner though it is only a constructive possession but in the absence of anything to show that with the knowledge of the owner the licensee held possession of subsoil and minerals therein and continued with that possession for statutory period of limitation to continue its ownership such plea of adverse possession in respect to subsoil cannot be accepted.

2842. In **Basant Kumar Roy Vs. Secretary of State for India & others AIR 1917 PC 18**, it was held:

> *"An exclusive adverse possession for a sufficient period may be made out, in spite of occasional acts done by the former owner on the ground for a specific purpose from time to time. Conversely; acts which prima facie are acts of dispossession may under particular circumstances fall short of evidencing any kind of ouster. They may be*

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susceptible of another explanation, bear some other characters or have some other object. ... If, as their Lordships think, no dispossession occurred, except possibly within twelve years before the commencement of this suit, article 144 is the article applicable, and not article 142."

2843. In **Board Nageshwar Bux Roy Vs. Bengal Coal Co. AIR 1931 PC 18** the observation in respect to adverse possession similar to what has been noted above were made and the said judgement was followed in **Bhupendra Narayan Sinha (supra).**

2844. The law in respect to adverse possession, therefore, is now well settled. It should be nec vi nec clam nec precario. (**Secretary of State for India Vs. Debendra Lal Khan, AIR 1934 PC 23, page 25).** This decision has been referred and followed by the Apex Court in **P. Lakshmi Reddy (supra)** (para 4). The Court further says that the possession required must be adequate in continuity, in publicity and in extent to show that it is possession adverse to the competitor. [**Radhamoni Debi Vs. Collector of Khulna, 27 Ind App. 136 at p. 140 (PC)].** The case before the Apex Court in **P. Lakshmi Reddy (supra)** was that of co-heirs where the plea of adverse possession was set up. In this regard it was held:

"But it is well settled in order, to establish adverse possession of one-co-heir as against another it is not enough to show that one out of them is in sole possession and enjoyment of the profits, of the properties. Ouster of the non-possessing co-heir by the co-heir in possession who claims his possession to be adverse, should be made out. The possession of one co-heir is considered, in law, as possession of all the co-heirs. When one co-heir is found to

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be in possession of the properties it is presumed to be on the basis of the joint title. The co-heir in possession cannot render his possession adverse to the other co-heir, not in possession, merely by any secret hostile animus of his own part in derogation of the other co-heir title. It is settled rule of law that as between co-heirs there must be evidence of open assertion of hostile title, coupled with exclusive possession and enjoyment by one of them to the knowledge of the other so as to constitute ouster."

2845. In **Thakur Kishan Singh Vs. Arvind Kumar, AIR 1995 SC 73** the Court said:

"A possession of a co-owner or of a licensee or of an agent or a permissive possession to become adverse must be established by cogent and convincing evidence to show hostile animus and possession adverse to the knowledge of real owner. Mere possession for howsoever length of time does not result in converting the permissive possession into adverse possession."

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2846. In **Sheo Raj Chamar & another Vs. Mudeer Khan & others AIR 1934 All. 868**, it was held:

""If, indeed it did, the defendants have acquired a right by sheer adverse possession held and maintained for more than 12 years. The adverse possession to be effective need not be for the full proprietary right."

2847. In **Saroop Singh Vs. Banto and others, 2005(8) SCC 330** the Court held in para 30:

"30. Animus possidendi is one of the ingredients of adverse possession. Unless the person possessing the land has a requisite animus the period for prescription does not commence. . . . ."

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2848. In **T. Anjanappa (supra)** the pre-conditions for taking plea of adverse possession has been summarised as under:

> *"It is well-recognised proposition in law that mere possession however long does not necessarily mean that it is adverse to the true owner. Adverse possession really means the hostile possession which is expressly or impliedly in denial of title of the true owner and in order to constitute adverse possession the possession proved must be adequate in continuity, in publicity and in extent to as to show that it is adverse to the true owner. The classical requirements of acquisition of title by adverese possession are that such possession in denial of the true owner's title must be peaceful, open and continuous. The possession must be open and hostile enough to be capable of being known by the parties interested in the property, though it is not necessary that there should be evidence of the adverse possessor actually informing the real owner of the former's hostile action."*

2849. In **P.T. Munichikkanna Reddy (supra)** it was held:

> *"It is important to appreciate the question of intention as it would have appeared to the paper-owner. The issue is that intention of the adverse user gets communicated to the paper-owner of the property. This is where the law gives importance to hostility and openness as pertinent qualities of manner of possession. It follows that the possession of the adverse possessor must be hostile enough to give rise to a reasonable notice and opportunity to the paper-owner."*

2850. In the above case the Apex Court discussed the law in detail and observed:

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"Adverse possession in one sense is based on the theory or presumption that the owner has abandoned the property to the adverse possessor on the acquiescence of the owner to the hostile acts and claims of the person in possession. It follows that sound qualities of a typical adverse possession lie in it being open, continuous and hostile." (Para 5)

"Efficacy of adverse possession law in most jurisdictions depend on strong limitation statutes by operation of which right to access the court expires through effluxion of time. As against rights of the paper-owner, in the context of adverse possession, there evolves a set of competing rights in favour of the adverse possessor who has, for a long period of time, cared for the land, developed it, as against the owner of the property who has ignored the property. Modern statutes of limitation operate, as a rule, not only to cut off one's right to bring an action for the recovery of property that has been in the adverse possession of another for a specified time, but also to vest the possessor with title. The intention of such statutes is not to punish one who neglects to assert rights, but to protect those who have maintained the possession of property for the time specified by the statute under claim of right or colour of title."(Para 6)

"Therefore, to assess a claim of adverse possession, two pronged enquiry is required:

1. Application of limitation provision thereby jurisprudentially "willful neglect" element on part of the owner established. Successful application in this regard distances the title of the land from the paper-owner.

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2. Specific positive intention to dispossess on the part of the adverse possessor effectively shifts the title already distanced from the paper owner, to the adverse possessor. Right thereby accrues in favour of adverse possessor as intent to dispossess is an express statement of urgency and intention in the upkeep of the property" (Para 9)

2851. In para 12 of the judgment, referring to its earlier decision in **T.Anjanappa (supra),** the Court held that if the defendants are not sure who is the true owner, the question of their being in hostile possession and the question of denying title of the true owner do not arise. It also referred on this aspect its earlier decision in **Des Raj and others vs. Bhagat Ram(Dead) by LRs. And others 2007(3) SCALE 371** and **Govindammal v. R. Perumal Chettiar and others JT 2006(1) SC 121.**

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2852. In **Annakili Vs. A. Vedanayagam and others, AIR 2008 SC 346** the Court pointed out that a claim of adverse possession has two elements (i) the possession of the defendant becomes adverse to the plaintiff; and (ii) the defendant must continue to remain in possession for a period of 12 years thereafter. Animus possidendi is held to be a requisite ingredient of adverse possession well known in law. The Court held:

"It is now a well settled principle of law that mere possession of the land would not ripen into possessor title for the said purpose. Possessor must have animus possidendi and hold the land adverse to the title of the true owner. For the said purpose, not only animus possidendi must be shown to exist, but the same must be shown to exist at the commencement of the possession. He must continue in said capacity for the period prescribed under the

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Limitation Act. Mere long possession, it is trite, for a period of more than 12 years without anything more do not ripen into a title."

2853. In **Vishwanath Bapurao Sabale Vs. Shalinibai Nagappa Sabale and others, JT 2009(5) SC 395** the Court said:

". . . . for claiming title by adverse possession, it was necessary for the plaintiff to plead and prove animus possidendi.

A peaceful, open and continuous possession being the ingredients of the principle of adverse possession as contained in the maxim nec vi, nec clam, nec precario, long possession by itself would not be sufficient to prove adverse possession."

2854. The title of property can vest in idols also by adverse possession as held in **Ananda Chandra Chakrabarti vs. Broja Lal Singha and others 1923 Calcutta 142** wherein reliance was also placed on **Balwant** vs**. Puran (1883) 10 I.A. 90; Ramprakash** vs**. Ananda Das 43 Cal.707; Vidya** vs. **Balusami (1921) 48 IA 302; Khaw Sim** vs. **Chuah Hooi (1922) 49 I.A.37; Damodar Das** Vs. **Lakhandas 37 I.A. 147=1910 (37) ILR (Cal.) 885.**

2855. In **Dasami Sahu Vs. Param Shameshwar Uma Bhairabeshwar Bam Lingshar and Chitranjan Mukerji (1929) A.L.J.R. 473**, Hon'ble Sulaiman, J. of this Court held that there can be adverse possession, not only as against the idols but over the idols themselves. That adverse possession can be acquired against idols in respect of property dedicated in their favour and for the said purpose, reliance was placed on **Maharaja Jagadindra Nath Roy Bahadur V. Rani Hemanta Kumari Debi (1904) 1 A.L.J.R.585; Rao Bahadur Man Singh**

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Vs. Maharani Nawlakhbati (1926) 24 A.L.J.R. 251 and **Damodar Das Vs. Lakhan Das (Supra).** It further held:

> *"In our opinion the same principle applies whether the adverse possession is exercised by a total stranger or by the donor himself. So long as such decision is exercised to the ouster and knowledge of Chittaranjan's mother, who alone can hold the property on behalf of the idols, it would mature into title after the lapse of the prescribed period."*

2856. On the question of whether the claim of adverse possession may succeed against the idol and over the idol, we have already discussed the matter while considering issues relating to limitation. The judgements of Privy Council in **Maharaja Jagadindra Nath Roy Bahadur (supra)** and **Damodar Das Vs. Lakhan Das (supra)** have also been considered and explained thereat. They were also explained by the Privy Council in **Mahanth Ram Charan Das. Vs. Naurangi Lal (supra)** where the Privy Council set aside the judgment of Patna High Court which had followed the said two judgments.

2857. In certain circumstances, it may not be doubted that a deity may acquire property by adverse possession and that the property of a deity may also be lost by adverse possession. Those circumstances where it may happen are quite restricted and we need not go in depth on this aspect in this judgment. However, suggestion that an idol /deity can itself be acquired by adverse possession, with great respect cannot be accepted for the reason that if an idol truly consecrated is a legal person, the question of application of the doctrine of adverse possession would wholly be inapplicable since it applies to a property and not a person. The person's property may be subject matter of possession but the person itself cannot be.

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2858. In **Secretary of State Vs. Debendra Lal Khan (supra)** it was held that the period of possession of a series of independent trespassers cannot be added together and utilized by the last possessor to make up the statutory total period of adverse possession. This was followed in **Wahid Ali & another Vs. Mahboob Ali Khan AIR 1935 Oudh 425**.

2859. Applying the principle of adverse possession on a waqf property of Oudh, a Single Judge in **Ramzan & Anr. Vs. Mohammad Ahmad Khan AIR 1936 Oudh 207** held:

> *"If a takiadar in possession of a graveyard sells a portion of it to some other person who builds a house, and if the Mohammadan community are apathetic in the matter and allow the encroachment to remain for more than 12 years, then it might will be held that the person in possession had perfected his title by adverse possession for more than 12 years over the portion of the graveyard sold to him. In my opinion it could not be further held that the takiadar by asserting a right of adverse possession in respect of one portion of the graveyard has thereby perfected his title by adverse possession in respect of the whole graveyard."*

2860. However, the Court further held that the possession of a takiadar started as a permissive possession and the mere building of kothris on the land by the takiadar would not imply renunciation of the takiadar's permissive possession or the open and public assertion of a hostile title and therefore decline any relief on the ground of alleged adverse possession.

2861. In **Mosque known as Masjid Shahid Ganj and others (supra)** the very question cropped up for consideration is as to whether the principle of adverse possession can be applied to a mosque or not. It is necessary to have facts in brief which

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led to the said dispute. There stood a structure having three domes and five arches at Naulakha Bazar, Lahore constructed as a mosque having projecting niche (*mehrab*) in the centre of the west wall and claimed to have been established in the year 1134 A.H. (1722 A.D.) by one Falak Beg Khan. Sikhs claimed that the mosque having been built by demolishing a Gurdwara, they took possession and occupation of the said building alongwith courtyard, well and adjacent land sometime about 1762 A.D. when the Sikh power grown in that part of India. After taking possession at some point of time and during the Sikh domination, the land adjacent to the mosque building (but the north of Naulakha Bazar) became the site of a Sikh shrine (gurdwara)and the tomb of a Sikh leader named Bhai Taru Singh situated thereon. Sikh rule after 1762 continued and expanded under Maharaja Ranjit Singh who in 1799 A.D. established him as the Ruler of Punjab. After his death and ten years thereafter in 1849 the area of Punjab became part of British India by annexation when the Sikhs lost what is called by the Britishers as "second Sikh War". A part of the building in the meantime was also used for the worship of Guru Granth Sahib or the holy book of Sikhs and the other parts were being used for secular purposes. The reason of occupation and possession taken by Sikhs as explained by them, mentioned in the trial court's order was that the land adjacent to the building was a place of martyrs on which spot Bhai Taru Singh and other Sikhs suffered for religious reasons at the hands of the then Muslim rulers and a lot of women and children had been executed thereat. It came to be established that after the Sikhs having taken possession and control of the above property did not allow the Muslims to have access to the building for any

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purpose whatsoever upto 1853. For the first time in 1850 a criminal case was brought by one Nur Ahmad claiming himself to be Mutawalli. He also brought proceedings before the Settlement Department in 1853. As he was out of possession since long, nothing helped him. Hence, a civil suit was filed on 25th June 1855 in the Court of Deputy Commissioner, Lahore against Sikhs in possession of the property. The suit was dismissed on 14th November 1955 by that officer and further on 9th April 1856, by the Commissioner. The appeal was also dismissed by the Judicial Commissioner on 17th June 1856. In 1925 the Sikh Gurdwaras Act (Punjab Act 8 of 1925) was enacted pursuant whereto a Government notification was issued on 22nd December 1927 including the old mosque building and the land adjacent thereto belonging to Sikh Gurdwara named "Shahid Ganj Bhai Taru Singh". Several claims were filed claiming rights and one of that was by Anjuman Islamia of Punjab on behalf of Muslims filed on 16th March 1928 claiming that the land and property were dedicated for a mosque and did not belong to the Gurdwara. The claim of Anjuman Islamia failed before the Sikh Gurdwaras Tribunal on 20th January 1930 on the ground of adverse possession and the previous decision operating as res judicata. In 1935 the building was demolished causing much resentment amongst the Muslims. A civil suit was filed on 30th October 1935 in the Court of District Judge, Lahore against the Shiromani Gurdwara Prabandhak Committee and the Committee of Management for the Notified Sikh Gurdwaras at Lahore, who were in possession of the disputed property. The relief claimed therein was a declaration that the building was a mosque in which the plaintiffs and all followers of Islam had right to worship and an injunction restraining from any

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improper use of the building and any interference with the plaintiffs' right of worship. A mandatory injunction was also sought to reconstruct the building. The suit was dismissed on 25.5.1936 and the first appeal was dismissed by a Full Bench of Lahore High Court on 26th January 1938. The judgment of the Full Bench is reported in **AIR 1938 Lah. 369 (FB).** The majority decision of the High Court held that the suit in question was governed by Limitation Act 1908 and the defendants having completed their possession maturing in the right of ownership, the plaintiffs have lost it on the principle of adverse possession and the defence of the plaintiff appellant that the principle of adverse possession does not apply to Muslim religious place, i.e., mosque, was rejected. The Privy Council upheld the decision of the High Court. Before the Privy Council the relief was confined to the actual site of the mosque building. The first question which was considered by the Privy Council was who possessed the title when the sovereignty of that part of the territory passed on to the British Government in 1849. In this context the Privy Council observed:

> *"It may have been open to the British on the ground of conquest or otherwise* ***to annul rights of private property at the time of annexation as indeed they did in Oudh after 1857****. But nothing of the sort was done so far as regards the property now in dispute. There is nothing in the Punjab Laws Act or in any other Act authorizing the British Indian Courts to uproot titles acquired prior to the annexation by applying to them a law which did not then obtain as the law of the land. There is every presumption in favour of the proposition that a change of sovereignty would not affect private rights to property."*

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2862. For the above proposition the Privy Council placed reliance on **West Rand Gold mining Co.** Vs. **The King (1905) 2 KB 391.** The Privy Council also observed that before considering the claim of the plaintiffs regarding application of Muslim Law in respect of limitation and adverse possession to the above property certain important questions need to be considered which are:

(a) Who then immediately prior to the British annexation was the local sovereign of Lahore ?

(b) What law was applicable in that State to the present case ?

(c) Who was recognized by the local sovereign or other authority as owner of the property now in dispute ?

2863. It was held that before calling upon the courts to apply Mahomedan Law to events taking place between 1762 and 1849 first it was necessary to establish that this was the law of the land at that time recognized and enforced as such. The Privy Council observed in this regard:

"If it be assumed, for example, that the property in dispute was by general law or by special decree or by revenue-free (muafi) grant vested in the Sikh gurdwara according to the law prevailing under the Sikh rulers, the case made by the plaintiffs becomes irrelevant. It is not necessary to say whether it has been shown that Ranjit Singh took great interest in the gurdwara and continued endowments made to it by the Bhanji Sardars as was held by Hilton J. (20th January 1930) presiding over the Sikh Gurdwaras Tribunal. Nor is it necessary that it should now be decided whether the Sikh mahants held this property for the Sikh Gurdwara under a muafi grant from the Sikh

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rulers. It was for the plaintiffs to establish the true position as at the date of annexation. Since the Sikh mahants had held possession for a very long time under the Sikh State there is a heavy burden on the plaintiffs to displace the presumption that the mahants' possession was in accordance with the law of the time and place. There is an obvious lack of reality in any statement of the legal position which would arise assuming that from 1760 down to 1935 the ownership of this property was governed by the Mahomedan law as modified by the Limitation Act, 1908."

2864. Then considering the question of application of Limitation Act, the Privy Council held that the rules of limitation which apply to a suit are the rules enforced at the time of institution of the suit, the limitation being a matter of procedure. Since the suit was filed in 1935 when Limitation Act 1908 was in force, hence that would obviously apply to the suit in question. It held:

"But the Limitation Act is not dealing with the competence of alienations at Mahomedan law. It provides a rule of procedure whereby British Indian Courts do not enforce rights after a certain time, with the result that certain rights come to an end. It is impossible to read into the modern Limitation Acts any exception for property made wakf for the purposes of a mosque whether the purpose be merely to provide money for the upkeep and conduct of a mosque or to provide a site and building for the purpose. While their Lordships have every sympathy with a religious sentiment which would ascribe sanctity and inviolability to a place of worship, they cannot under the Limitation Act accept the contentions that such a building cannot be

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possessed adversely to the wakf, or that it is not so possessed so long as it is referred to as "mosque" or unless the building is razed to the ground or loses the appearance which reveals its original purpose."

2865. The attempt on the part of the plaintiffs to demonstrate that the land and building of a mosque are not mere property but a juristic person was not accepted by the Privy Council and to that extent, the otherwise view taken by Lahore High Court was also reversed by observing :

"The argument that the land and buildings of a mosque are not property at all because they are a "juristic person" involves a number of misconceptions. *It is wholly inconsistent with many decisions whereby a worshipper or the mutwalli has been permitted to maintain a suit to recover the land and buildings for the purposes of the wakf by ejectment of a trespasser. Such suits had previously been entertained by Indian Courts in the case of this very building. The learned District Judge in the course of his able and careful judgment noted that the defendants were not pressing any objection to the constitution of the suit on the ground that the mosque could not sue by a next friend. He went on to say:*

It is proved beyond doubt that mosques can and do hold property. There is ample authority for the proposition that a Hindu idol is a juristic person and it seems proper to hold that on the same principle a mosque as an institution should be considered as a juristic person. It was actually so held in 59 P R 1914, p. 200 (Jindu Ram v. Hussain Bakhsh, (1914) 1 AIR Lah 444) and later in Maula

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Bux v. Hafizuddin, (1926) 13 AIR Lah 372.

That there should be any supposed analogy between the position in law of a building dedicated as a place of prayer for Muslims and the individual deities of the Hindu religion is a matter of some surprise to their Lordships*. The question whether a British Indian Court will recognize a mosque as having a locus standi in judicio is a question of procedure.* ***In British India the Courts do not follow the Mahomedan law in matters of procedure*** *(cf. Jafri Begum v. Amir Muhammad Khan, (1885) 7 All 822 at pp 841.2, per Mahmood J.)* ***any more than they apply the Mahomedan criminal law or the ancient Mahomedan rules of evidence****. At the same time the procedure of the Courts in applying Hindu or Mahomedan Law has to be appropriate to the laws which they apply. Thus the procedure in India takes account necessarily of the polytheistic and other features of the Hindu religion and recognizes certain doctrines of Hindu Law as essential thereto, e.g.* ***that an idol may be the owner of property. The procedure of our Courts allows for a suit in the name of an idol or deity though the right of suit is really in the shebait****: 31 IA 203 (Jagadindranath v. Hemanta Kumari (1905) 32 Cal 129)*

Very considerable difficulties attend these doctrines- in particular as regards the distinction, if any, proper to be made between the deity and the image : cf. 37 Cal 128 at p 153 (Bhupati Nath V. Ram Lal (1910) 37 Cal.128), Golap Chandra Sarkar Sastri's Hindu Law, Edn. 7, pp. 865 et seq. But there has never been any doubt that the property of a Hindu religious endowment-including a thakurbari- is

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*subject to the law of limitation: 37 I A 147 (Damodar Das V. Lakhan Das (1910) 37 Cal 885); 64 IA 203 (Iswari Bhubaneshwari Thakurni V. Brojo Nath Dey (1937) 24 AIR PC 185). From these considerations special to Hindu law no general licence can be derived for the invention of fictitious persons. It is as true in law as in other spheres "entia non sunt multiplicanda praeter necessitatem." **The decisions recognizing a mosque as a "juristic person" appear to be confined to the Punjab**:153 P R 1884 (Shankar Das Vs. Said Ahmad (1884) 153 PR 1884) ; 59 P R 1914 (Jindu Ram v. Hussain Bakhsh, (1914) 1 AIR Lah 444), Maula Bux v. Hafizuddin, (1926) 13 AIR Lah 372. In none of these cases was a mosque party to the suit, and in none except perhaps the last is the fictitious personality attributed to the mosque as a matter of decision. But so far as they go these cases support the recognition as a fictitious person of a mosque as an institution–apparently hypostatizing an abstraction. This, as the learned Chief Justice in the present case has pointed out, is very different from conferring personality upon a building so as to deprive it of its character as immovable property.*

***It is not necessary in the present case to decide whether in any circumstances or for any purpose a Muslim institution can be regarded in law as a "juristic person**." The recognition of an artificial person is not to be justified merely as a ready means of making enactments-well or ill-expressed -work conveniently. It does not seem to be required merely to give an extended meaning to the word "person" as it appears in the Punjab Preemption Act, 1905, or in the definition of 'gift' contained in S. 122, T.P.*

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Act. It is far from clear that it is required in order that property may be devoted effectively to charitable purposes without the appointment of a trustee in the sense of the English law. It would seem more reasonable to uphold a gift, if made directly to a mosque and not by way of wakf as having been made to the mutwalli than to do so by inventing an artificial person in addition to the mutwalli (and to God in whom the ownership of the mosque is placed by the theory of the law).

There Lordships do not understand that in this respect a mosque is thought to be in any unique position according to the authorities on Mahomedan law**. "A gift may be made to a mosque or other institution" (Tyabji's Principles of Mahomedan Law, Edn.2, 1919, page 401, cf. Abdur Rahim's Muhammadan Jurisprudence, page 218). A gift can be made to a madrasah in like manner as to a masjid. The right of suit by the mutwali or other manager or by any person entitled to a benefit (whether individually or as a member of the public or merely in common with certain other persons) seems hitherto to have been found sufficient for the purpose of maintaining Mahomedan endowments. At best the institution is but a caput mortuum, and **some human agency is always required to take delivery of property and to apply it to the intended purposes. Their Lordships, with all respect to the High Court of Lahore, must not be taken as deciding that a "juristic personality" may be extended for any purpose to Muslim institutions generally or to masques in particular. On this general question they reserve their opinion; but they think it right to decide the specific

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question which arises in the present case and hold that suits cannot competently be brought by or against such institutions as artificial persons in the British Indian Courts.

2866. The nature of the right of an individual to offer prayer in the disputed building treating it to be religious one was also considered in reference to the application of the provisions of Limitation Act, i.e., Article 144 and the Privy Council said:

> *"The property now in question having been possessed by Sikhs adversely to the waqf and to all interests thereunder for more than 12 years,* ***the right of the mutawali to possession for the purposes of the waqf came to an end under Art, 144****, Limitation Act, and the title derived under the dedication from the settlor or wakif became extinct under S. 28. The property was no longer for any of the purposes of British Indian Courts, "a property of God by the advantage of it resulting to his creatures." The main contention on the part of the appellants is that the* ***right of any Moslem to use a mosque for purposes of devotion is an individual right like the right to use a private road****, 7 All 178 (Jawahra v. Akbar Hussain, (1884) 7 All.178) that the infant plaintiffs, though born a hundred years after the building had been possessed by Sikhs, had a right to resort to it for purposes of prayer; that they were not really obstructed in the exercise of their rights till 1935 when the building was demolished; and that in any case in view of their infancy the Limitation Act does not prevent their suing to enforce their individual right to go upon the property. This argument must be rejected.* ***The right of a Muslim worshipper may be regarded as an individual***

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right, but what is the nature of the right? It is not a sort of easement in gross, but an element in the general right of a beneficiary to have the waqf property recovered by its proper custodians and applied to its proper purpose. Such an individual may, if he sues in time, procure the ejectment of a trespasser and have the property delivered into the possession of the mutawali or of some other person for the purposes of the waqf. As a beneficiary of the religious endowment such a plaintiff can enforce its conditions and obtain the benefits thereunder to which he may be entitled*. But the title conferred by the settlor has come to an end by reason that for the statutory period* ***no one has sued to eject a person possessing adversely to the waqf and every*** *interest thereunder* ***the rights of all beneficiaries have gone****: the land cannot be recovered by or for the mutwali and the terms of the endowment can no longer be enforced: cf. 41 Mad 124 at p. 135 (Chidambranatha Thambiran v. Nallasiva Mudaliar (1918) 5 AIR Madras 464).* ***The individual character of the right to go to a mosqe for worship matters nothing when the land is no longer waqf and is no ground for holding that a person born long after the property has become irrecoverable can enforce partly or wholly the ancient dedication****."*

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2867. It also held that rights of worshipers stand or fall with the wakf character of the property and do not continue apart from their right to have the property recovered for the wakf and applied to its purpose. As the law stands, notice of the rights of individual beneficiaries does not modify the effect under the Limitation Act of possession adverse to the wakf.

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2868. **Gnanasambanda Pandara Sannadhi Vs. Velu Pandaram and another (1899) 27 IA 69** is a decision by the Judicial Committee, pertains to application of Article 144 of Act XV of 1877 (Limitation). It held that "there is no distinction between the office and the property of endowment. The one is attached to the other; but if there is, Art.144 of the same schedule is applicable to the property. That bars the suit after twelve years' adverse possession."

2869. We may also notice at this stage that the Privy Council also deprecated the practice adopted by the trial court therein permitting the parties to produce religious experts and obtain their opinion when the matter was to be seen in the light of codified law. The Privy Council also observed that system of expert adviser has gone long back and ought not have been continued in that case. It would be appropriate at this stage to refer the above observations:

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> *"A third feature of the suit has reference to the method of trial, the learned District Judge having been persuaded that the mode by which a British Indian Court ascertains the Mahomedan law is by taking evidence. The authority of Sulaiman J. to the contrary, 47 All 823 at p.835 (Aziz Banu Vs. Muhammad Ibrahim Hussain (1925) 12 AIR All.720), was cited to him but he wrongly considered that S. 49, Evidence Act, was applicable to the ascertainment of the law. He seems also to have relied on the old practice of obtaining the opinions of pandits on questions of Hindu law and the reference made thereto in 12 MIA 397 at pp. 436-9 (Collector of Madura v. Moottoo Ramalinga Sathupathy (1868) 12 MIA 397). No great harm, as it happened, was done by the admission of this*

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class of evidence as the witnesses made reference to authoritative texts in a short and sensible manner.

But it would not be tolerable that a Hindu or a Muslim in a British Indian Court should be put to the expense of proving by expert witnesses the legal principles applicable to his case and it would introduce great confusion into the practice of the courts if decisions upon Hindu or Muslim law were to depend on the evidence given in a particular case, the credibility of the expert witnesses and so forth. ***The Muslim law is not the common law of India; British India has no common law in the sense of law applicable prima facie to everyone unless it be in the statutory Codes, e.g. Contract Act, transfer of Property Act****. But the Muslim law is under legislative enactments applied by British Indian Courts to certain classes of matters and to certain classes of people as part of the law of the land which the Courts administer as being within their own knowledge and competence.* ***The system of "expert advisers" (muftis, maulavis or in the case of Hindu law pandits) had its day but has long been abandoned, though the opinion given by such advisers may still be cited from the reports****. Custom, in variance of the general law, is matter of evidence but not the law itself. Their Lordships desire to adopt the observations of Sulaiman J. in the case referred to:*

It is the duty of the Courts themselves to interpret the law of the land and to apply it and ***not to depend on the opinion of witnesses however learned they may be****. It would be dangerous to delegate their duty to witnesses produced by either party. Foreign law, on the other hand,*

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is a question of fact with which Courts in British India are not supposed to be conversant. Opinion of experts on foreign law are therefore allowed to be admitted."

2870. This decision of the Privy Council has been followed by the Constitution Bench of the Apex Court in **Dr. M. Ismail Faruqui (supra)** involving the property in dispute before us to discard the contention on behalf of the parties (pro mosque) that a property of a waqf or mosque cannot be a subject matter of compulsory acquisition under the provisions of Land Acquisition Act, 1894 since a Muslim religious property cannot be compulsorily acquired.

2871. In **(Sm.) Bibhabati Devi (supra)** it was observed that in order to claim a right of ownership applying the principle of adverse possession it is a condition precedent that the possession must be adverse to a living person. Herein the appellant was possessing the property under a mosque after the death of the defendant, it was held that the possession cannot be said to be adverse.

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2872. In **Chhote Khan & others Vs. Mal Khan & others AIR 1954 SC 575**, the Court observed that no question of adverse possession arises where the possession is held under an arrangement between the co-sharers.

2873. The Court in **P. Lakshmi Reddy (supra)** quoted with approval Mitra's Tagore Law Lectures on Limitation and Prescription (6th Edition) Vol. I, Lecture VI, at page 159, quoting from Angell on Limitation:

"An adverse holding is an actual and exclusive appropriation of land commenced and continued under a claim of right, either under an openly avowed claim, or under a constructive claim (arising from the acts and

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circumstances attending the appropriation), to hold the land against him (sic) who was in possession. (Angell,

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sections 390 and 398). It is the intention to claim adversely accompanied by such an invasion of the rights of the opposite party as gives him a cause of action which constitutes adverse possession."

2874. It further held:

"Consonant with this principle the commencement of adverse possession, in favour of a person, implies that that person is in actual possession, at the time, with a notorious hostile claim of exclusive title, to repel which, the true owner would then be in a position to maintain an action. It would follow that whatever may be the animus or intention of a person wanting to acquire title by adverse possession his adverse possession cannot commence until site animus."

2875. In **Karbalai Begum Vs. Mohd. Sayeed (1980) 4 SCC 396** in the context of a co-sharer, it was held:

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"...It is well settled that mere non- participation in the rent and profits of the land of a co-sharer does not amount to an ouster so as to give title by adverse possession to the other co-sharer in possession."

2876. In **Annasaheb Bapusaheb Patil Vs. Balwant (1995) 2 SCC 543** the Court, in para 15, said:

"15. Where possession can be referred to a lawful title, it will not be considered to be adverse. The reason being that a person whose possession can be referred to a lawful title will not be permitted to show that his possession was hostile to another's title. One who holds possession on behalf of another, does not by mere denial of that other's title make his possession adverse so as to give himself the benefit of the statute of limitation. Therefore, a person who

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enters into possession having a lawful title, cannot divest another of that title by pretending that he had no title at all."

2877. In **Vidya Devi Vs. Prem Prakash (1995) 4 SCC 496** the Court in paras 27 and 28 held:

"27...it will be seen that in order that the possession of co-owner may be adverse to others, it is necessary that there should be ouster or something equivalent to it. This was also the observation of the Supreme Court in P. Lakshmi Reddy case which has since been followed in Mohd. Zainulabudeen v. Sayed Ahmed Mohideen.

28. 'Ouster' does not mean actual driving out of the co-sharer from the property. It will, however, not be complete unless it is coupled with all other ingredients required to constitute adverse possession. Broadly speaking, three elements are necessary for establishing the plea of ouster in the case of co-owner. They are (i) declaration of hostile animus, (ii) long and uninterrupted possession of the person pleading ouster, and (iii) exercise of right of exclusive ownership openly and to the knowledge of other co-owner. Thus, a co-owner, can under law, claim title by adverse possession against another co-owner who can, of course, file appropriate suit including suit for joint possession within time prescribed by law."

2878. In making above observations, the Court also relied on its earlier decisions in **P. Lakshmi Reddy (supra)** and **Mohd. Zainulabudeen Vs. Sayed Ahmad Mohideen (1990) 1 SCC 345.**

2879. In **Roop Singh Vs. Ram Singh (2000) 3 SCC 708** it was held that if the defendant got the possession of suit land as a

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lessee or under a *batai* agreement then from the permissive possession it is for him to establish by cogent and convincing evidence to show hostile animus and possession adverse to the knowledge of the real owner. Mere possession for a long time does not result in converting permissive possession into adverse possession. The Court relied on its earlier decisions in **Thakur Kishan Singh (supra).**

2880. In **Darshan Singh Vs. Gujjar Singh (2002) 2 SCC 62** in para 7 and 9, the Court held:

> *"...It is well settled that if a co-sharer is in possession of the entire property, his possession cannot be deemed to be adverse for other co-sharers unless there has been an ouster of other co-sharers."*
>
> *"9. In our view, the correct legal position is that possession of a property belonging to several co-sharers by one co-sharer shall be deemed that he possesses the property on behalf of the other co-sharers unless there has been a clear ouster by denying the title of other co-sharers and mutation in the revenue records in the name of one co-sharer would not amount to ouster unless there is a clear declaration that title of the other co-sharers was denied."*

2881. In order to defeat title of a plaintiff on the ground of adverse possession it is obligatory on the part of the respondent to specifically plead and prove as to since when their possession came adverse. If it was permissive or obtained pursuant to some sort of arrangement, the plea of adverse possession would fail. In **Md. Mohammad Ali Vs. Jagadish Kalita & Ors. (2004) 1 SCC 271** with reference to a case dealing with such an issue amongst co-sharers it was observed that *"Long and continuous possession by itself, it is trite, would not constitute adverse*

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possession. Even non-participation in the rent and profits of the land to a co-sharer does not amount to ouster so as to give title by prescription.

2882. It was also observed in para 21 that for the purpose of proving adverse possession/ouster, the defendant must also prove animus possidendi.

2883. In **Amrendra Pratap Singh (supra)** considering as to what is adverse possession, the Court in para 22 observed :

> "*What is adverse possession? Every possession is not, in law, adverse possession. Under Article 65 of the Limitation Act, 1963, a suit for possession of immovable property or any interest therein based on title can be instituted within a period of 12 years calculated from the date when the possession of the defendant becomes adverse to the plaintiff. By virtue of Section 27 of the Limitation Act, at the determination of the period limited by the Act to any person for instituting a suit for possession of any property, his right to such property stands extinguished. The process of acquisition of title by adverse possession springs into action essentially by default or inaction of the owner. A person, though having no right to enter into possession of the property of someone else, does so and continues in possession setting up title in himself and adversely to the title of the owner, commences prescribing title into himself and such prescription having continued for a period of 12 years, he acquires title not on his own but on account of the default or inaction on part of the real owner, which stretched over a period of 12 years results into extinguishing of the latter's title. It is that extinguished title of the real owner which comes to vest in the*

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wrongdoer. The law does not intend to confer any premium on the wrong doing of a person in wrongful possession; it pronounces the penalty of extinction of title on the person who though entitled to assert his right and remove the wrong doer and re-enter into possession, has defaulted and remained inactive for a period of 12 years, which the law considers reasonable for attracting the said penalty. Inaction for a period of 12 years is treated by the Doctrine of Adverse Possession as evidence of the loss of desire on the part of the rightful owner to assert his ownership and reclaim possession."

2884. However, the Court further observed that if property, by virtue of some statutory provisions or otherwise, is alienable, the plea of adverse possession may not be available and held. :

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"23. *The nature of the property, the nature of title vesting in the rightful owner, the kind of possession which the adverse possessor is exercising, are all relevant factors which enter into consideration for attracting applicability of the Doctrine of Adverse Possession. The right in the property ought to be one which is alienable and is capable of being acquired by the competitor. Adverse possession operates on an alienable right. The right stands alienated by operation of law, for it was capable of being alienated voluntarily and is sought to be recognized by doctrine of adverse possession as having been alienated involuntarily, by default and inaction on the part of the rightful claimant, who knows actually or constructively of the wrongful acts of the competitor and yet sits idle. Such inaction or default in taking care of one's own rights over property is also*

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capable of being called a manner of 'dealing' with one's property which results in extinguishing one's title in property and vesting the same in the wrong doer in possession of property and thus amounts to 'transfer of immovable property' in the wider sense assignable in the context of social welfare legislation enacted with the object of protecting a weaker section."

2885. The Court also observed that the judicial precedents should not be stressed too harsh and observed:

"A judicial decision is an authority for what it actually decides and not for what can be read into it by implication or by assigning an assumed intention to the Judges, and inferring from it a proposition of law which the Judges have not specifically laid down in the pronouncement." (Para 28)

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2886. In para 14 of the judgment in **Amrendra Pratap Singh (supra)**, the Court also deprecated the practice of following dictionary meaning as absolute while interpreting statute and said :

"Dictionaries can be taken as safe guides for finding out meanings of such words as are not defined in the statute. However, dictionaries are not the final words on interpretation. The words take colour from the context and the setting in which they have been used. It is permissible to assign a meaning of a sense, restricted or wider than the one given in dictionaries, depending on the scheme of the legislation wherein the word has been used."

2887. In **L.N. Aswathama & another Vs. V.P. Prakash JT 2009 (9) 527** the Court, in para 17 and 18 said:

"17. *The legal position is no doubt well settled. To*

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establish a claim of title by prescription, that is adverse possession for 12 years or more, the possession of the claimant must be ***physical/actual, exclusive, open, uninterrupted, notorious and hostile to the true owner for a period exceeding twelve years****. It is also well settled that long and continuous possession by itself would not constitute adverse possession if it was either permissive possession or possession without animus possidendi. The* ***pleas based on title and adverse possession are mutually inconsistent and the latter does not begin to operate until the former is renounced. Unless the person possessing the property has the requisite animus to possess the property hostile to the title of the true owner, the period for prescription will not commence****."*

"18. *...When a person is in possession asserting to be the owner, even if he fails to establish his title, his possession would still be adverse to the true owner. Therefore,* ***the two pleas put forth by the defendant in this case are not inconsistent pleas but alternative pleas available on the same facts****. Therefore, the contention of the plaintiffs that the plea of adverse possession is not available to defendant is rejected."*

2888. Further, in para 25 the Court said :

"25. *When* ***defendant claimed title and that was proved to be false or fabricated, then the burden is heavy upon him to prove actual, exclusive, open, uninterrupted possession for 12 years****. In this case we have already held that he did not make out such possession for 12 years prior to the suit."*

2889. Where a plea of adverse possession is taken, the

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pleadings are of utmost importance and anything, if found missing in pleadings, it may be fatal to such plea of adverse possession. Since mere long possession cannot satisfy the requirement of adverse possession, the person claiming it must prove as to how and when the adverse possession commenced and whether fact of adverse possession was known to real owner. (**R.N. Dawar Vs. Ganga Saran Dhama AIR 1993 Del. 19**). In **Parwatabai Vs. Sona Bai 1996 (10) SCC 266**, it was stressed upon by the Apex Court that to establish the claim of adverse possession, one has to establish the exact date from which adverse possession started. The claim based on adverse possession has to be proved affirmatively by cogent evidence and presumptions and probabilities cannot be substituted for evidence. The plea of adverse possession is not always a legal plea. It is always based on facts which must be asserted, pleaded and proved. A person pleading adverse possession has no equities in his favour since he is trying to defeat the right of the true owner and, therefore, he has to specifically plead with sufficient clarity when his possession became adverse and the nature of such possession. (See **Mahesh Chand Sharma Vs. Raj Kumari Sharma AIR 1996 SC 869**.

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2890. In **Parsinnin Vs. Sukhi (1993) 4 SCC 375**, it said that burden of prove lies on the party who claims adverse possession. He has to plead and prove that his possession is *nec vi, nec clam, nec precario* i.e., peaceful, open and continuous.

2891. Article 144 L.A. 1908 shows that where a suit for possession is filed, it is the defendant to whom the plea of adverse possession is available and it is he who has to take necessary pleadings. A suit by a plaintiff based on adverse possession is not contemplated by Article 144 inasmuch the suit

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contemplated therein is for restoration of possession and where a person is already in possession, though adverse possession, the question of filing a suit for possession would not arise. If the chain of possession or continued possession ceased or interrupted, particularly at the time of filing of the suit, the adverse possession extinguishes and the earlier long possession, may be of more than the statutory period, would not give any advantage if the possession has been lost at the time of filing of the suit.

2892. Besides, alternative plea may be permissible, but mutually destructive pleas are not permissible. The defendants may raise inconsistent pleas so long as they are not mutually destructive as held in **Biswanath Agarwalla Vs. Sabitri Bera & others JT 2009 (10) SC 538**.

2893. In **Gautam Sarup Vs. Leela Jetly & others (2008) 7 SCC 85**, the Court said that a defendant is entitled to take an alternative plea but such alternative pleas, however, cannot be mutually destructive of each other.

2894. In **Ejas Ali Qidwai and others (supra)** certain interesting questions cropped up which also attracted certain consequences flowing from annexation of province of Oudh in 1857 by the British Government. It appears that one Asghar Ali and his cousin Muzaffar Ali granted a mortgage by conditional sale of the entire estate of Ambhapur (commonly known as the Taluka of Gandara) and certain villages to the then Maharaja of Balrampur. The mortgaged property situated in District Bahraich, which was in the Province of Oudh. The mortgagee brought an action to enforce his right, got a decree in his favour and ultimately possession of the property in 1922. The sons of Asghar Ali thereafter brought an action in civil court for

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recovery of their share of the mortgaged property on the ground that it was the absolute property of their father and on his death devolved on all the persons who were his heirs under the Mahomedan Law. They challenged Iqbal Ali's right to mortgage the whole of estate and impeached the mortgaged transaction on various grounds. The claim was resisted on the ground that succession to the estate was governed by the rule of primogeniture according to which the whole of the estate descended first to Asghar Ali and after his death to his eldest son Iqbal Ali. The defence having been upheld the claim was negatived by the trial court as well as the court of appeal. Before the Privy Council the only question raised was whether the succession to the property was regulated by the rule of primogeniture or by Mahomedan Law.

2895. The Privy Council while considering the above question observed that the Province of Oudh was annexed by the East India Company in 1856 but in 1857 during the first war of independence by native Indians much of its part was declared independent. Soon after it was conquered by the British Government and it got reoccupation of the entire province of Oudh. Thereafter in March 1858 the British Government issued a proclamation confiscating, with certain exceptions "the proprietary right in the soil of the Province" and reserved to itself the power to dispose of that right in such manner as to it may seem fit. On 10th October 1859 the British Government (the then Government of India) declared that every talukdar with whom a summary settlement has been made since the re-occupation of the Province has thereby acquired a permanent, hereditary and transferable proprietary right, namely in the taluka for which he has engaged, including the perpetual

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privilege of engaging with the Government for the revenue of the taluka. Pursuant to that declaration, Wazir Ali with whom a summary settlement of Taluka has already been made was granted a Sanad which conferred upon him full proprietary right, title and possession of the estate or Ambhapur. In the said grant, there contained a stipulation that in the event of dying intestate or anyone of his successor dies intestate, the estate shall descend to the nearest male heir according to rule of primogeniture. Subsequently, in order to avoid any further doubt in the matter, Oudh Estates Act I of 1869 was enacted wherein Wazir Ali was shown as a Tallukdar whose estate according to the custom of the family on or before 13.2.1856 ordinarily devolved upon a single heir. However, having noticed this state of affairs, the Privy Council further observed that this rule was not followed after the death of Wazir Ali and the Taluka was mutated in favour of his cousin Nawazish Ali. He was recorded as owner of Taluka. Thereafter in 1892 Samsam Ali entered the joint possession with Nawazish Ali and after death of Nawazish Ali, Samsam Ali was recorded as the sole owner. The system of devolution of the property was explained being in accordance with the usage of the family and when the name of Asghar Ali was recorded, he also made a similar declaration. Faced with the situation the appellant sought to explain the possession of Nawazish Ali as adverse possession but the same was discarded by the Privy Council observing:

> *"The principle of law is firmly established that a person, who bases his title on adverse possession, must show by clear and unequivocal evidence that his possession was hostile to the real owner and amounted to a denial of his title to the property claimed."*

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2896. It appears that the plaintiffs initially sought to maintain their claim of continued ownership, possession and disruption against the Government authorities but later on the plea of adverse possession against the defendant-Muslim parties has been taken which makes the stand of the plaintiffs inherently inconsistent and mutually destructive. The plaintiffs ought to have elected one or the other case and could not have taken a plea which is not an alternative but mutually destructive.

2897. In **Nagubai Ammal and others Vs. B. Shama Rao and others, AIR 1956 SC 593** the Court considered the doctrine of election and observed:

> *"18. An admission is not conclusive as to the truth of the matters stated therein. It is only a piece of evidence, the weight to be attached to which must depend on the circumstances under which it is made. It can be shown to be erroneous or untrue, so long as the person to whom it was made has not acted upon it to his detriment, when it might become conclusive by way of estoppel.*
>
> *.....*
>
> *Reliance was placed on the well-known observations of Baron Park in Slatterie v. Pooley, (1840) 6 M & W 664 (669) (C) that "what a party himself admits to be true may reasonably be presumed to be so", and on the decision in 34 Ind App 27 (B), where this statement of the law was adopted. No exception can be taken to this proposition. But before it can be invoked, it must be shown that there is a clear and unambiguous statement by the opponent, such as will be conclusive unless explained."*
>
> *"The ground of the decision is that when on the same facts, a person has the right to claim one of two reliefs and with*

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full knowledge he elects to claim one and obtains it, it is not open to him thereafter to go back on his election and claim the alternative relief. The principle was thus stated by Bankes, L. J.:

*"**Having elected to treat the delivery to him as an authorised delivery they cannot treat the same act as a misdelivery**. To do so would be to approbate and reprobate the same act".*

The observations of Scrutton, L. J. on which the appellants rely are as follows :

*"**A plaintiff is not permitted to 'approbate and reprobate'**. The phrase is apparently borrowed from the Scotch law, where it is used to express the principle embodied in our doctrine of election- namely, that **no party can accept and reject the same instrument**. Ker v. Wauchope (1819) 1 Bligh 1 (21) (E) : Douglas-Menzies v. Umphelby 1908 AC 224 (232) (F). The doctrine of election is not however confined to instruments. A person cannot say at one time that a transaction is valid and thereby obtain some advantage, to which he could only be entitled on the footing that it is valid, and then turn round and say it is void for the purpose of securing some other advantage. That is to approbate and reprobate the transaction".*

*It is clear from the above observations that the maxim that a **person cannot 'approbate and reprobate' is only one application of the doctrine of election, and that its operation must be confined to reliefs claimed in respect of the same transaction and to the persons who are parties thereto**. The law is thus stated in Halsbury's Laws of England, Volume XIII, page 454, para 512:*

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*"On the principle that **a person may not approbate and reprobate, a species of estoppel** has arisen which seems to be intermediate between estoppel by record and estoppel in pais, and may conveniently be referred to here. Thus a party cannot, after taking advantage under an order (e. g. payment of costs), be heard to say that it is invalid and ask to set it aside, or to set up to the prejudice of persons who have relied upon it a case inconsistent with that upon which it was founded; nor will he be allowed to go behind an order made in ignorance of the true facts to the prejudice of third parties who have acted on it". (para 23)*

2898. The Doctrine of election was described by **Jarman on Wills, 6th Edn. Page 532** as under :

"The doctrine of election may be thus stated. That he who accepts a benefit under a deed or will must adopt the whole contents of the instrument conforming to all its provisions and renouncing every right inconsistent with it. It therefore a testator has affected to dispose of property which is not his own, and has given a benefit to the person to whom that property belongs, the devisee or legatees accepting the benefit so given to him must make good the testator's attempted disposition, but if, on the contrary, he choose to enforce his proprietary rights against the testator's disposition, equity will sequester the property given to him, for the purpose of making satisfaction out of it to the person whom he has disappointed by the assertion of those rights."

2899. This has been followed in several cases noticed and followed by a Division Bench of Madras High Court in **Ammalu Achi Vs. Ponnammal Achi & others AIR 1919**

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Madras 464. The above judgment, however, shows that the doctrine of election as followed therein was that of applicable in England based on English decision since Sections 35 of Transfer of Property Act, 1882 and 172 of Succession Act, 1865 were found by the Court as enunciating the doctrine of election as enforced in England but those sections were not applicable to Hindus in India.

2900. In **R.N. Gosain Vs. Yashpal Dhir (supra),** the Court said:

> *"10.* ***Law does not permit a person to both approbate and reprobate****. This principle is based on the doctrine of election which postulates that no party can accept and reject the same instrument and that "a person cannot say at one time that a transaction is valid any thereby obtain some advantage, to which he could only be entitled on the footing that it is valid, and then turn round and say it is void for the purpose of securing some other advantage". [See:Verschures Creameries Ltd. Vs. Hull and Netherlands Steamship Co. Ltd. (1921) KB 608, 612 (CA), Scrutton, LJ]. According to Halsbury's Laws of England, 4th Edn., Vol. 16, "after taking an advantage under an order (for example for the payment of costs) a party may be precluded from saying that it is invalid and asking to set it aside". (para 1508).*

2901. In **National Insurance Co. Ltd. Vs. Mastan (supra)** the Court said:

> *"23. The 'doctrine of election' is a branch of 'rule of estoppel', in terms whereof a person may be precluded by his actions or conduct or silence when it is his duty to speak, from asserting a right which he otherwise would*

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have had. The doctrine of election ***postulates that when two remedies are available for the same relief the aggrieved party has the option to elect either of them but not both****. Although there are certain exceptions to the same rule but the same has no application in the instant case."*

2902. The question of effect of gap in continuous possession came to be considered in **Devi Singh Vs. Board of Revenue for Rajasthan and others, (1994) 1 SCC 215** and in para 5 the Court held as under:

"The salutary principle of appreciation of evidence in possessory matters is that when a state of affairs is shown to have existed for a long course of time but a gap therein puts to doubt its continuity prudence requires to lean in favour of the continuity of things especially when some plausible explanation of the gap is forthcoming."

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2903. Since adverse possession is a plea to usurp title over immovable property which otherwise the claimant does not possess and its successful claim would mean that the real owner shall be denuded of his title and the same would stand conferred upon the claimant, the pleadings in this aspect, have been held of utmost importance. They have to be very clear, emphatic and to the extent of covering every necessary ingredient to satisfy the claim of adverse possession. The claimant cannot take advantage of default on the part of the other side but has to set up his case on his own failing which it is he, who has to suffer. Since this kind of claim has the result of defeating the very right of an otherwise rightful person, the law is very strict on this aspect. It needs a thorough and minute inquiry into the claim of the person who asserts title on the basis of adverse possession.

2904. In **Abubakar Abdul Inamdar (supra)** in the context

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of Articles 64 and 65 of L.A. 1963 emphasizing the importance of pleadings in para 5 of the judgment the Apex Court said :

> *"With regard to the plea of adverse possession, the appellant having been successful in the two Courts below and not in the High Court, one has to turn to the pleadings of the appellant in his written statement. There he has pleaded a duration of his having remained in exclusive possession of the house, but nowhere has he pleaded a single overt act on the basis of which it could be inferred or ascertained that from a particular point of time his possession became hostile and notorious to the complete exclusion of other heirs, and his being in possession openly and hostilely. It is true that some evidence, basically of Municapal register entries, were inducted to prove the point but no amount of proof can substitute pleadings which are the foundation of the claim of a litigating party. The High Court cought the appellant right at that point and drawing inference from the evidence produced on record, concluded that correct principles relating to the plea of adverse possession were not applied by the courts below. The finding, as it appears to us, was rightly reversed by the High Court requiring no interference at our end." (Para 5)*

2905. In **Ram Charan Das (supra)** the property of a Mutt was alienated by Mahant by executing a Mukararri (permanent lease) in favour of one Munshi Naurangi Lal. The sale deed of the land in dispute was also executed to another one and in both the documents it was said that they were executed to meet the expenses and necessities of the Mutt. After the death of Mahant, a suit was filed by successor in office against the lessee and purchaser etc. claiming possession of the property in dispute to

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Mutt. The defendants besides others, took the plea of adverse possession also. The question was did the possession of the concerned defendant became adverse to Mutt or Mahant representing the Mutt on the date of relevant assurance or date of death of the concerned Mahant. The trial court held the latter date to be correct while the High Court took a contrary view and upheld the former date. The Privy Council held:

> *" In other words a mahant has power (apart from any question of necessity) to create an interest in property appertaining to the Mutt which will continue during his own life, or to put it perhaps more accurately, which will continue during his tenure of office of mahant of the mutt, with the result that adverse possession of the particular property will only commence when the mahant who had disposed of it ceases to be mahant by death or otherwise. If this be right as it must be taken to be, where the disposition by the mahant purports to be a grant of a permanent lease, their Lordships are unable to see why the position is not the same where the disposition purports to be an absolute grant of the property nor was any logical reason suggested in argument why there should be any difference between the two cases. In each case the operation of the purported grant is effective and endures only for the period during which the mahant had power to create an interest in the property of the mutt."*

2906. Recently, the Apex Court has considered in detail the various authorities on the question of adverse possession in **Hemaji Waghaji Jat (supra)** and in para 18 observed that plea of adverse possession is not a pure question of law but a blended one of fact and law. Therefore, a person who claims adverse

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possession should show : (a) on what date he came into possession, (b) what was the nature of his possession, (c) whether the factum of possession was known to the other party, (d) how long his possession has continued, and (e) his possession was open and undisturbed. A person pleading adverse possession has no equities in his favour. Since he is trying to defeat the rights of the true owner, it is for him to clearly plead and establish all facts necessary to establish his adverse possession.

2907. The Court also referred to its earlier decision in **D.N. Venkatarayappa (supra)** observing :

> *"Therefore, in the absence of crucial pleadings, which constitute adverse possession and evidence to show that the petitioners have been in continuous and uninterrupted possession of the lands in question claiming right, title and interest in the lands in question hostile to the right, title and interest of the original grantees, the petitioners cannot claim that they have perfected their title by adverse possession."*

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2908. In **D.N. Venkatarayappa (Supra)**, the Court emphasized the importance of pleading as also the pre requisites of plea of adverse possession and said :

> *"3. ...What requires to be pleaded and proved is that the purchaser disclaimed his title under which he came into possession, set up adverse possession with necessary animus of asserting open and hostile title to the knowledge of the true owner and the later allowed the former, without any let or hindrance, to remain in possession and enjoyment of the property adverse to the interest of the true owner until the expiry of the prescribed period. The*

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classical requirement of adverse possession is that it should be nec vi, nec clam, nec precario."

"... ordinary classical requirement of adverse possession is that it should be nec vi, nec clam, nec precario and the possession required must be adequate in continuity, in publicity and in extent to show that it is possession adverse to the competitor."

"apart from the actual and continuous possession which are among other ingredients of adverse possession, there should be necessary animus on the part of the person who intends to perfect his title by adverse possession."

"A person who under the bona fide belief thinks that the property belongs to him and as such he has been in possession, such possession cannot at all be adverse possession because it lacks necessary animus for perfecting title by adverse possession."

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"... one of the important ingredients to claim adverse possession is that the person who claims adverse possession must have set up title hostile to the title of the true owner."

"...there is not even a whisper in the evidence of the first petitioner with regard to the claim of adverse possession set up by the petitioners. It is not stated by the petitioners that they have been in continuous and uninterrupted possession of the lands in question."

"But, the crucial facts to constitute adverse possession have not been pleaded. Admittedly, the appellant came into possession by a derivative title from the original grantee. It is seen that the original grantee has no right to alienate the land. Therefore, having come into

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possession under colour of title from original grantee, if the appellant intends to plead adverse possession as against the State, he must disclaim his title and plead his hostile claim to the knowledge of the State and that the State had not taken any action thereon within the prescribed period. Thereby, the appellant's possession would become adverse. No such stand was taken nor evidence has been adduced in this behalf. The counsel in fairness, despite his research, is unable to bring to our notice any such plea having been taken by the appellant."

"Therefore, in the absence of crucial pleadings, which constitute adverse possession and evidence to show that the petitioners have been in continuous and uninterrupted possession of the lands in question claiming right, title and interest in the lands in question hostile to the right, title and interest of the original grantees, the petitioners cannot claim that they have perfected their title by adverse possession"

"...person, who comes into possession under colour of title from the original grantee if he intends to claim adverse possession as against the State, must disclaim his title and plead his hostile claim to the knowledge of the State and the State had not taken any action thereon within the prescribed period."

"5. ... in claiming adverse possession certain pleas have to be made such as when there is a derivative title as in the present case, if the appellants intend to plead adverse possession as against the State, they must disclaim their title and plead this hostile claim to the knowledge of the State and that the State had not taken any action within

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the prescribed period, it is only in those circumstances the appellants' possession would become adverse. There is no material to that effect in the present case. Therefore, we are of the view that there is no substance in any of the contentions advanced on behalf of the appellants."

2909. In **Mahesh Chand Sharma (supra)**, the necessity of pleading was emphasized and the Court in para 36 said :

"In this connection, we may emphasise that a person pleading adverse possession has no equities in his favour. Since he is trying to defeat the rights of the true owner, it is for him to clearly plead and establish all the facts necessary to establish his adverse possession. For all the above reasons, the plea of limitation put forward by the appellant, or by Defendants Nos. 2 to 5 as the case may, be is rejected."

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2910. Here we may also refer to some more judgements which have been cited by Sri P.N. Mishra, Advocate, advancing his arguments on the issues pertaining to adverse possession.

2911. In **Smt. Bitola Kuer (supra)** in para 16 the Court said :

"It is well settled that tile ordinarily carries with it the presumption of possession and that when the question arises is to who was in possession of land, the presumption is that the true owner was in such possession. In other word" possession follows title. The inevitable Corollary from this principle is that the burden lies on the person who claims to have acquired title by adverse possession to prove his case."

2912. In **Prabhu Narain Singh (supra)** in para 6 the Court observed :

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"A person claiming title to any land by adverse possession has to be very specific about the area of the land and the period over which he has been in possession."

2913. In **Ramzan Vs. Smt. Gafooran (supra)** the Court observed :

"27. *It is, therefore, explicit that unless there is specific plea and proof that adverse possessor has disclaimed his right and asserted title and possession to the knowledge of the true owner within a statutory period and the true owner has acquiesced to it, the adverse possessor cannot succeed to have it established that he has perfected his right by prescription."*

"29. *As pointed out above, where the defendants are not sure who is the true owner and question of their being in hostile possession then the question of denying title of true owner does not arise. At the most, the defendants have claimed and which is found to be correct by the trial court that they have been in possession of the disputed property since the inception of the sale deeds in their favour. They came in possession, according to their showing, as owner of the property in question. It follows that they exercised their right over the disputed property as owner and exercise of such right, by no stretch of imagination, it can be said that they claimed their title adverse to the true owner."*

2914. In **Raja Rajgan Maharaja Jagatjit Singh (supra)** it was held that the defendant-appellant has to establish that the title to the land in suit held by the owner under the First Settlement of 1865 had been extinguished under Section 28 of the Limitation Act due to the adverse possession of the

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defendant-appellant or his predecessors for the appropriate statutory period of limitation and completed prior to the possession taken under attachment by Tehsildar who thereafter held it for the true owner. It also says:

> *"It is well established that adverse possession against an existing title must be actual and cannot be constructive."*

2915. In **Md. Mohammad Ali Vs. Jagdish Kalita (supra)** also the change brought in 1963 under Article 65 qua the earlier Act of 1908 was pointed out and the Court observed:

> "By reason of the Limitation Act, 1963 the legal position as was obtaining under the old Act underwent a change. In a suit governed by Article 65 of the 1963 Limitation Act, the plaintiff will succeed if he proves his title and it would no longer be necessary for him to prove, unlike in a suit governed by Articles 142 and 144 of the Limitation Act, 1908, that he was in possession within 12 years preceding the filing of the suit. On the contrary, it would be for the defendant so to prove if he wants to defeat the plaintiffs claim to establish his title by adverse possession."

2916. **Mahadeo Prasad Singh and others Vs. Karia Bharthi, AIR 1935 PC 44** is a judgment which deals with the issue of commencement of limitation under Article 144 of Limitation Act 1908. It was held therein that a person in actual possession of Math is entitled to maintain a suit for recovery of property pertaining to Math not for his own benefit but for the benefit of Math. On the matter of limitation the Court held:

> *"It is common ground that the article of the Indian Limitation Act of 1908 applicable to the claim is Article 144, which prescribes a period of 12 years from the date*

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when the possession of the appellants became adverse to the math. Their case is that in 1904, when Rajbans settled his dispute with the plaintiff, he ceased to be the mahant of Kanchanpur and repudiated the title of the math of the village of Saktni as well as to the other villages which he got in pursuance of the compromise. On that date, it is contended, he began to hold the property adversely to the institution, and the action, which was brought after the expiry of 12 years from that date, was barred by time."

2917. To the same effect is the view taken in **Gopal Datt Vs. Babu Ram, AIR 1936 All 653**.

2918. From the above discussion what boils down is that the concept of adverse possession contemplates a hostile possession, i.e., a possession which is expressly or impliedly in denial of the title of the true owner. Possession to be adverse must be possession by a person who does not acknowledge the other's right and in fact deny the same. A person who bases his title on adverse possession must show by clear and unequivocal evidence that his possession was hostile to the real owner and amounted to denial of his title to the property claimed. In order to determine whether the act of a person constitutes adverse possession is 'animus in doing that act' and it is most crucial factor. Adverse possession commences in wrong and is aimed against right. A person is said to hold the property adversely to the real owner when that person in denial of owner's right excluded him from the enjoyment of his property. Adverse possession is that form of possession or occupancy of land which is inconsistent with the title of the rightful owner and tends to extinguish that person's title. Possession is not held to be adverse if it can be referred to a lawful title. The persons

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setting up adverse possession may have been holding under the rightful owner's title, i.e., trustees, guardians, bailiffs or agents, such person cannot set up adverse possession. Burden is on the defendant to prove affirmatively.

2919. An occupation of reality is inconsistent with the right of the true owner. Where a person possesses property in a manner in which he is not entitled to possess it, and without anything to show that he possesses it otherwise than an owner, i.e., with the intention of excluding all persons from it, including the rightful owner, he is in adverse possession of it. Where possession could be referred to a lawful title it shall not be considered to be adverse. The reason is that a person whose possession can be referred to a lawful title will not be permitted to show that his possession was hostile to another's title. One who holds possession on behalf of another does not by mere denial of other's title make his possession adverse so as to give himself the benefit of the statute of limitation. A person who enters into possession having a lawful title cannot divest another of that title by pretending that he had no title at all.

2920. Adverse possession is of two kinds. (A) Adverse from the beginning or (B) that become so subsequently. If a mere trespasser takes possession of A's property, and retains it against him, his possession is adverse ab initio. But if A grants a lease of land to B, or B obtains possession of the land as A's bailiff, or guardian, or trustee, his possession can only become adverse by some change in his position. Adverse possession not only entitles the adverse possessor, like every other possessor, to be protected in his possession against all who cannot show a better title, but also, if the adverse possessor remains in possession for a certain period of time produces the effect either

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of barring the right of the true owner, and thus converting the possessor into the owner, or of depriving the true owner of his right of action to recover his property although the true owner is ignorant of the adverse possessor being in occupation.

2921. In **Hari Chand Vs. Daulat Ram (supra)** the Court held if the encroachment was not new one but the structure was in existence prior to acquiring title over the property the decree on the basis of adverse possession cannot be granted in favour of the plaintiff. Paras 10 and 11 of the judgment read as under:

> *"10. On a consideration of these evidences it is quite clear that the disputed kachha wall and the khaprail over it is not a new construction, but existed for over 28 years and the defendant has been living therein as has been deposed to by Ramji Lal vendor of the plaintiff who admitted in his evidence that the land in dispute and the adjoining kachha walls had been affected by salt and the chhappar over the portion shown in red was tiled roof constructed about 28 years back. This is also supported by the evidence of the defendant, D.W. 1, that the wall in dispute was in existence when the partition was effected i.e., 28 years before. On a consideration of these evidences the Trial Court rightly held that the defendant had not trespassed over the land in question nor he had constructed a new wall or khaprail. The trial court also considered the report 57C by the court Amin and held that the wall in question was not a recent construction but it appeared 25-30 years old in its present condition as (is) evident from the said report. The suit was therefore dismissed. The lower appellate court merely considered the partition deed and map Exts. 3/1 and 3/2 respectively and held that the disputed property fell to the*

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share of the plaintiff's vendor and the correctness of the partition map was not challenged in the written statement. The court of appeal below also referred to Amin's map 47 A which showed the encroached portion in red colour as falling within the share of plaintiff's vendor, and held that the defendant encroached on this portion of land marked in red colour, without at all considering the clear evidence of the defendant himself that the wall and the khaprail in question existed for the last 28 years and the defendant has been living there all along. P.W. 1 Ramji Lal himself also admitted that the wall existed for about 28 years as stated by the defendant and the kachha walls and the khaprail has been effected by salt. The lower appellate court though held that P.W. 1 Ramji Lal admitted in cross-examination that towards the north of the land in dispute was the khaprail covered room of Daulat Ram in which Daulat Ram lived, but this does not mean that the wall in dispute exists for the last any certain number of years, although it can be said that it is not a recent construction. Without considering the deposition of defendant No. 1 as well as the report of the Amin 57 C the IInd Addl. Civil Judge, Agra wrongly held that the defendant failed to prove that the wall in dispute and the khaprail existed for the last more than 12 years before the suit. The Civil Judge further held on surmises as "may be that the wall and khaprail have not been raised in May, 1961 as is the plaintiff's case, but they are recent constructions." This decision of the court of appeal below is wholly incorrect being contrary to the evidences on record."

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"11. On a consideration of all the evidences on record it is clearly established that the alleged encroachment by construction of kuchha wall and khaprail over it are not a recent construction as alleged to have been made in May 1961. On the other hand, it is crystal clear from the evidences of Ramji Lal P.W. 1 and Daulat Ram D.W. 1 that the disputed wall with khaprail existed there in the disputed site for a long time, that is 28 years before and the wall and the khaprail have been affected by salt as deposed to by these two witnesses. Moreover the court Amin's report 57 C also shows the said walls and khaprail to be 25-30 years old in its present condition. The High Court has clearly came to the finding that though the partition deed was executed by the parties yet there was no partition by metes and bounds. Moreover there is no whisper in the plaint about the partition of the property in question between the co-sharers by metes and bounds nor there is any averment that the suit property fell to the share of plaintiff's vendor Ramji Lal and Ramji Lal was ever in possession of the disputed property since the date of partition till the date of sale to the plaintiff. The plaintiff has singularly failed to prove his case as pleaded in the plaint."

2922. In **Maharaja Sir Kesho Prasad Singh Bahadur (supra)** the Hon'ble Privy Council has held that mere receipt of rent by persons claiming adversely is not sufficeint to warrant finding of adverse possession. The possession of persons or their predecessors-in-title claiming by adverse possession must have "all the qualities of adequacy, continuity and exclusiveness" necessary to displace the title of the persons

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against whom they claim. Relevant extracts from page 78 of the said judgment reads as follows:

> *"the mere fact that many years after the sale the Gangbarar maliks or persons depriving title from them are obtaining rent for the land is in itself very significant. Even in a locality exposed to dilution by the action of the river this circumstance alone might be given considerable weight. But without sufficient proof to cover the intervening years it was most reasonably held by the learned Subordinate Judge to be insufficient. The circumstance that the Maharaja was not in possession or in receipt of rent is, it need hardly be said, insufficient under Art. 144 to warrant a finding of adverse possession on behalf of the respondents or their predecessors-in-title. Their Lordships are of opinion that on the materials produced it cannot be contended that the learned Subordinate Judge was obliged in law to find that the possession of the principal respondents had "all the qualities of adequacy, continuity and exclusiveness" (per Lord Shaw 126 CWN 66610 at p. 673) necessary to displace the title of the Maharaja, and they think that no reason in law exists why his finding of fact in this respect should not be final."*

2923. In **Ramzan and others Vs. Smt. Gafooran (supra)** the Hon'ble Allahabad High Court has held that unless there is specific plea and proof that adverse possession has disclaimed his right and asserted title and possession to the knowledge of the true owner within the statutory period and the true owner has acquiesced to it, the adverse possessor cannot succeed to have it established that he has perfected his right by prescription. Where the adverse possessor was not sure as to who was the

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true owner and question of his being in hostile possession, then the question of denying title of true owner does not arise. Relevant paras 27, 29 and 30 of the said judgment read as follows:

> *"27. It is, therefore, explicit that unless there is specific plea and proof that adverse possessor has disclaimed his right and asserted title and possession to the knowledge of the true owner within a statutory period and the true owner has acquiesced to it, the adverse possessor cannot succeed to have it established that he has perfected his right by prescription."*
>
> *"29. As pointed out above, where the defendants are not sure who is the true owner and question of their being in hostile possession then the question of denying title of true owner does not arise. At the most, the defendants have claimed and which is found to be correct by the trial court that they have been in possession of the disputed property since the inception of the sale deeds in their favour. They came in possession, according to their showing, as owner of the property in question. It follows that they exercised their right over the disputed property as owner and exercise of such right, by no stretch of imagination, it can be said that they claimed their title adverse to the true owner."*
>
> *"30. Viewed as above, on the facts of the present case, the possession of the contesting defendants is not of the variety and degree which is required for adverse possession to materialise."*

2924. In **Qadir Bux Vs. Ramchand (supra)** the Hon'ble Allahabad High Court has held that the term "dispossession"

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applies when a person comes in and drives out others from the possession. It implies ouster; a driven out of possession against the will of the person in actual possession. The term "discontinuance" implies a voluntary act and openness of possession followed by the actual possession of another. It implies that a person discontinuing as owner of the land and left it to be dispossessed by any one who has not to come in. Relevant para 30 of the said judgment reads as follows:

> *"30. The main point for consideration is whether in such circumstances it can be said that the plaintiff had been dispossessed or had discontinued his possession within the meaning of Article 142 of the First Schedule to the Indian Limitation Act. The term "dispossession" applies when a person comes in and drives out others from the possession. It imports ouster: a driving out of possession against the will of the person in actual possession. This driving out cannot be said to have occurred when according to the case of the plaintiff the transfer of possession was voluntary, that is to say, not against the will of the person in possession but in accordance with his wishes and active consent. The term "discontinuance" implies a voluntary act and abandonment of possession followed by the actual possession of another. It implies that the person discontinuing has given up the land and left it to be possessed by anyone choosing to come in. There must be an intention to abandon title before there can be said to be a discontinuance in possession, but this cannot be assumed. It must be either admitted or proved. So strong in fact is the position of the rightful owner that even when he has been dispossessed by a trespasser and that trespasser abandons*

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possession either voluntarily or by vis major for howsoever short a time before he has actually perfected his tittle by twelve years' adverse possession the possession of the true owner is deemed to have revived and he gets a fresh starting point of limitation – vide Gurbinder Singh v. Lal Singh, AIR 1965 SC 1553. Wrongful possession cannot be assumed against the true owner when according to the facts disclosed by him he himself had voluntarily handed over possession and was not deprived of it by the other side."

2925. In **Gurbinder Singh and another Vs. Lal Singh and another, AIR 1965 SC 1553** the Hon'ble Supreme Court held that in order that Article 142 is attracted the plaintiff must initially be found in possession of the property and should have been dispossessed by the defendant or someone through whom the defendants claim or alternatively the plaintiff should have discontinued possession. It has also been held that in a suit to which Article 144 attracted the burden is on the party who claims adverse possession to establish that he was in adverse possession for 12 years before the date of suit and for computation of this period he can avail of the adverse possession of any person or persons through whom he claims but not the adverse possession of an independent trespasser. Relevant paras 6, 8 and 10 of the said judgment read as follows:

"6. In order that Art. 142 is attracted the plaintiff must initially have been in possession of the property and should have been dispossessed by the defendant or someone through whom the defendants claim or alternatively the plaintiff should have discontinued possession. It is no one's case that Lal Singh ever was in possession of the

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property. It is true that Pratap Singh was in possession of part of the property--which particular part we do not know--by reason of a transfer thereof in his favour by Bakshi Singh. In the present suit both Lal Singh and Pratap Singh assert their claim to property by success on in accordance with the rules contained in the dastur ul amal whereas the possession of Pratap Singh for some time was under a different title altogether. So far as the present suit is concerned it must, therefore, be said that the plaintiffs--respondents were never in possession as heirs of Raj Kaur and consequently art. 142 would not be attracted to their suit."

"8. Mr. Tarachand Brijmohanlal, however, advanced an interesting argument to the effect that if persons entitled to immediate possession of land are somehow kept out of possession may be by different trespassers for a period of 12 years or over, their suit will be barred by time. He points out that as from the death of Raj Kaur her daughters, through one of whom the respondents claim, were kept out of possession by trespassers and that from the date of Raj Kaur's death right up to the date of the respondents' suit, that is, for a period of nearly 20 years

trespassers were in possession of Mahan Kaur's, and after her death, the respondents' share in the land, their suit must therefore be regarded as barred by time. In other words the learned counsel wants to tack on the adverse possession of Bakshi Singh and Pratap Singh to the adverse possession of the Raja and those who claim through him. In support of the contention reliance is placed by learned counsel on the decision in Ramayya v.

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Kotamma, ILR 45 Mad 370: (AIR 1922 Mad 59). In order to appreciate what was decided in that case a brief resume of the facts of that case is necessary. Mallabattudu, the last male holder of the properties to which the suit related, died in the year 1889 leaving two daughters Ramamma and Govindamma. The former died in 1914. The latter surrendered her estate to her two sons. The plaintiff who was a transferee from the sons of Govindamma instituted a suit for recovery of possession of Mallabattudu's property against Punnayya, the son of Ramamma to whom Mallabattudu had made an oral gift of his properties two years before his death. Punnayya was minor at the date of gift and his eider brother Subbarayudu was managing the property on his behalf. Punnayya, however, died in 1894 while still a minor and thereafter his brothers Subbarayudu and two others were in possession of the property. It would seem that the other brothers died and Subbarayudu was the last surviving member of Punnayya's family. Upon Subbarayudu's death the properties were sold by his daughters to the third defendant. The plaintiffs- appellants suit failed on the ground of limitation. It was argued on his behalf in the second appeal before the High Court that as the gift to Punnayya was oral it was invalid, that consequently Punnayya was in possession as trespasser, that on Punnayya's death his heir would be his mother, that as Subbarayudu continued in possession Subbarayudu's possession was also that of a trespasser, that as neither Subbarayudu nor Punnayya completed possession for 12 years they could not tack on one to the other and that the plaintiff claiming through the nearest reversioner is not

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barred. The contention for the respondents was that there was no break in possession so as to retest the properties in the original owners, that Punnayya and Subbarayudu cannot be treated as successive trespassers and that in any event the real owner having been out of possession for over 12 years the suit was barred by limitation. The High Court following the decision of Mookerjee J. in Mohendra Nath v. Shamsunnessa, 21 Cal. LJ 157 at p. 164:(AIR 1915 Cal. 629 at p. 633), held that time begins to run against the lastfull owner if he himself was dispossessed and the operation of the law of limitation would not be arrested by the fact that on his death he was succeeded by his widow, daughter or mother, as the cause of action cannot be prolonged by the mere transfer of title. It may be mentioned that as Mallabattudu had given up possession to Punnayya under an invalid gift Art. 142 of the Limitation Act was clearly attracted. The sons of Govindamma from whom the appellant had purchased the suit properties claimed through Mallabattudu and since time began to run against him from 1887 when he discontinued possession it did not cease to run by the mere fact of his death. In a suit to which that Article applies the plaintiff has to prove his possession within 12 years of his suit. Therefore, so long as the total period of the plaintiff's exclusion from possession is, at the date of the plaintiff's suit, for a period of 12 years or over, the fact that this exclusion was by different trespassers will not help the plaintiff provided there was a continuity in the period of exclusion. That decision is not applicable to the facts of the case before us. This is a suit to which Art. 144 is

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attracted and the burden is on the defendant to establish that he was in adverse possession for 12 years before the date of suit and for computation of this period he can avail of the adverse possession of any person or persons through whom he claims--but not the adverse possession of independent trespassers."

"10. This view has not been departed from in any case. At any rate none was brought to our notice where it has not been followed. Apart from that what we are concerned with is the language used by the legislature in the third column of Art. 144. The starting point of limitation there stated is the date when the possession of the defendant becomes adverse to the plaintiff. The word "defendant" is defined in S. 2(4) of the Limitation Act thus:

'defendant' includes any person from or through whom a defendant derives his liability to be sued".

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No doubt, this is an inclusive definition but the gist of it is the existence of a jural relationship between different persons. There can be no jural relationship between two independent trespassers. Therefore, where a defendant in possession of property is sued by a person who has title to it but is out of possession what he has to show in defence is that he or anyone through whom he claims has been in possession for more than the statutory period. An independent trespasser not being such a person the defendant is not entitled to tack on the previous possession of that person to his own possession. In our opinion, therefore, the respondents' suit is within time and has been rightly decreed by the courts below. We dismiss this appeal with costs."

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2926. In **S.M. Karim Vs. Mst Bibi Sakina (supra)** the Hon'ble Apex Court has held that the alternative claim must be clearly made and proved, adverse possession must be adequate in continuity, in publicity and extent and a plea is required at the least to show when possession becomes adverse so that the starting point on limitation against the party affected can be found. A mere suggestion in the relief clause that there was an uninterrupted possession for "several 12 years" or that the plaintiff had acquired "a possible title" was not enough to raise such a plea. Long possession is not necessarily adverse possession and prayer clause is not a substitute for a plea. Relevant paras 3 to 5 of the said judgment read as follows:

> *"3. In this appeal, it has been stressed by the appellant that the findings clearly establish the benami nature of the transaction of 1914. This is, perhaps, true but the appellant cannot avail himself of it. The appellant's claim based upon the benami nature of the transaction cannot stand because S. 66 of the Code of Civil Procedure bars it. That section provides that no suit shall be maintained against any person claiming title under a purchase certified by the Court on the ground that the purchase was made on behalf of the plaintiff or on behalf of someone through whom the plaintiff claims. Formerly, the opening words were, no suit shall be maintained against a certified purchaser and the change was made to protect not only the certified purchaser but any person claiming title under a purchase certified by the Court. The protection is thus available not only against the real purchaser but also against anyone claiming through him. In the present case, the appellant as plaintiff was hit by the section and the*

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defendants were protected by it."

"4. It is contended that the case falls within the second sub-section under which a suit is possible at the instance of a third person who wishes to proceed against the property, though ostensibly sold to the certified purchaser, on tie ground that it is liable to satisfy a claim of such third person against the real owner. Reliance is placed upon the transfer by Syed Aulad Ali in favour of the appellant which is described as a claim by the transferee against the real owner. The words of the second sub-section refer to the claim of creditors and not to the claims of transferees. The latter are dealt with in first sub-section, and if the meaning sought to be placed on the second sub-section by the appellant were to be accepted, the entire policy of the law would be defeated by the real purchaser making a transfer to another and the first sub-section would become almost a dead letter. In our opinion, such a construction cannot be accepted and the plaintiff's suit must be held to be barred under S. 66 of the Code."

"5. As an alternative, it was contended before us that the title of Hakir Alam was extinguished by long and uninterrupted adverse possession of Syed Aulad Ali and after him of the plaintiff. The High Court did not accept this case. Such a case is, of course, open to a plaintiff to make if his possession is disturbed. If the possession of the real owner ripens into title under the Limitation Act and he is dispossessed, he can sue to obtain possession, for he does not then rely on the benami nature of the transaction. But the alternative claim must be clearly made and proved. The High Court held that the plea of adverse

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possession was not raised in the suit and reversed the decision of the two courts below. The plea of adverse possession is raised here. Reliance is placed before us on Sukan v. Krishanand, ILR 32 Pat 353 and Sri Bhagwan Singh and others v. Ram Basi Kuer and others, AIR 1957 Pat 157 to submit that such a plea is not necessary and alternatively, that if a plea is required, what can be considered a proper plea. But these two cases can hardly help the appellant. No doubt, the plaint sets out the fact that after the purchase by Syed Aulad Ali, benami in the name of his son-in-law Hakir Alam Ali continued in possession of the property but it does not say that this possession was at any time adverse to that of the certified purchaser. Hakir Alam was the son-in-law of Syed Aulad Ali and was living with him. There is no suggestion that Syed Aulad Ali ever asserted any hostile title against him or that a dispute with regard to ownership and possession had ever arisen. Adverse possession must be adequate in continuity, in publicity and extent and a plea is required at the least to show when possession becomes adverse so that the starting point of limitation against the party affected can be found. There is no evidence here when possession became adverse, if it at all did, and a mere suggestion in the relief clause that there was an uninterrupted possession for "several 12 years" or that the plaintiff had acquired "an absolute title" was not enough to raise such a plea. Long possession is not necessarily adverse possession and the prayer clause is not a substitute for a plea. The cited cases need hardly be considered, because each case must be determined upon the allegations in the plaint in

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that case. It is sufficient to point out that in Bishun Dayal v. Kesho Prasad, A.I.R. 1940 P.C. 202 the Judicial Committee did not accept an alternative case based on possession after purchase without a proper plea."

2927. In **B. Leelavathi Vs. Honamma (supra)** the Hon'ble Supreme Court has held that the adverse possession is a question of fact which has to be specifically pleaded and proved and in the absence of any plea of adverse possession, framing of an issue and adducing evidence it would not be held that the plaintiffs had perfected towards the title by way of adverse possession. Para 11 of the judgment read as follows:

"11. Plea of adverse possession had been taken vaguely in the plaint. No categorical stand on this point was taken in the plaint. No issue had been framed and seemingly the same was not insisted upon by the plaintiff-respondent. Adverse possession is a question of fact which has to be specifically pleaded and proved. No evidence was adduced by the plaintiff-respondent with regard to adverse possession. Honnamma, the plaintiff in her own statement did not say that she is in adverse possession of the suit property. We fail to understand as to how the High Court, in the absence of any plea of adverse possession, framing of an issue and evidence led on the point, could hold that the plaintiff-respondent had perfected her title by way of adverse possession."

2928. In **Dharamarajan Vs. Valliammal (supra)** the Hon'ble Supreme Court has held that in a claim of adverse possession openness and adverse nature of the possession has to be proved against the owner of the property in question. Relevant para 11 of the said judgment reads as follows:

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"11. In our opinion none of these questions could be said to be either question of law or a substantial question of law arising out of the pleadings of the parties. The first referred question of law could not and did not arise for the simple reason that the plea of adverse possession has been rightly found against the plaintiff. Karupayee Ammal's possession, even if presumed to be in a valid possession in law, could not be said to be adverse possession as throughout it was the case of the appellant Dharmarajan that it was a permissive possession and that she was permitted to stay on the land belonging to the members of the Iyer family. Secondly it has nowhere come as to against whom was her possession adverse. Was it adverse against the Government or against the Iyer family? In order to substantiate the plea of adverse possession, the possession has to be open and adverse to the owner of the property in question. The evidence did not show this openness and adverse nature because it is not even certain as to against whom the adverse possession was pleaded on the part of Karupayee Ammal. Further even the legal relationship of Doraiswamy and Karupayee Ammal is not pleaded or proved. All that is pleaded is that after Karupayee Ammal's demise Doraiswamy as her foster son continued in the thatched shed allegedly constructed by Karupayee Ammal. There was no question of the tacking of possession as there is ample evidence on record to suggest that Doraiswamy also was in the service of Iyer family and that he was permitted to stay after Karupayee Ammal. Further his legal heirship was also not decisively proved. We do not, therefore, see as to how the first substantial question of

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law came to be framed. This is apart from the fact that ultimately High Court has not granted the relief to the respondents on the basis of the finding of this question. On the other hand the High Court has gone into entirely different consideration based on reappreciation of evidence. The second and third questions are not the questions of law at all. They are regarding appreciation of evidence. The fourth question is regarding the admissibility of Exhibit A-8. In our opinion there is no question of admissibility as the High Court has found that Exhibit A-8 was not admissible in evidence since the Tehsildar who had issued that certificate was not examined. Therefore, there will be no question of admissibility since the document itself was not proved. Again the finding of the High Court goes against the respondent herein. Even the fifth question was a clear cut question of fact and was, therefore, impermissible in the Second Appeal."

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2929. In **A.S. Vidyasagar (supra)** the Hon'ble Supreme Court has held that permissive possession is not adverse possession and can be terminated at any time by the rightful owner. Relevant para 5 of the judgment reads as follows:

"5. Adverse possession is sought to be established on the supposition that Kanthimathi got possession of the premises as a licensee and on her death in 1948, the appellant who was 4 years of age, must be presumed to have become a trespasser. And if he had remained in trespass for 12 years, the title stood perfected and in any case, a suit to recovery of possession would by then be time-barred. We are unable to appreciate this line of reasoning for it appears to us that there is no occasion to

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term the possession of Kanthimathi as that of a licensee. The possession was permissive in her hands and remained permissive in the hands of the appellant on his birth, as well as in the hands of his father living then with Kanthimathi. There was no occasion for any such licence to have been terminated. For the view we are taking there was no licence at all. Permissible possession of the appellant could rightfully be terminated at any moment by the rightful owners. The present contesting respondents thus had a right to institute the suit for possession against the appellant. No oral evidence has been referred to us which would go to support the plea of openness, hostility and notoriety which would go to establish adverse possession. On the contrary, the Municipal Tax receipts, Exts. B-39 and 40, even though suggestedly reflecting payment made by the appellant, were in the name of Kuppuswami, the rightful owner. This negates the assertion that at any stage did the appellant assert a hostile title. Even by examining the evidence, at our end, we come to the same view as that of the High Court. The plea of adverse possession thus also fails. As a result fails this appeal. Accordingly, we dismiss the appeal, but without any order as to costs."

2930. In **Goswami Shri Mahalaxmi Vahuji Vs. Shah Ranchhoddas Kalidas, AIR 1970 SC 2025** the Hon'ble Supreme Court held that a party cannot be allowed to set up a case wholly inconsistent with that pleaded in its written statement. Relevant para 8 of the said judgment reads as follows:

"8. We may now proceed to examine the material on

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record for finding out 'the true character of the suit properties viz. whether they are properties of a public trust arising from their dedication of those properties in favour of the deity Shree Gokulnathji or whether the deity as well as the suit properties are the private properties of Goswami Maharaj. In her written statement as noticed, earlier, the Ist defendant took up the specific plea that the idol of Shree Gokulnathji is the private property of the Maharaj the Vallabh Cult does not permit any dedication in favour of an idol and in fact there was no dedication in favour of that idol. She emphatically denied that the suit properties were the properties of the deity Gokulnathji but in this Court evidently because of the enormity of evidence adduced by the plaintiffs, a totally new plea was taken namely that several items of the suit properties had been dedicated to Gokulnathji but the deity being the family deity of the Maharaj, the resulting trust is only a private trust. In other words the plea taken in the written statement is that the suit properties were the private properties of the Maharaj and that there was no trust, private or public. But the case argued before this Court is a wholly different one viz., the suit properties were partly the properties of a private trust and partly the private properties of the Maharaj. The Ist defendant cannot be permitted to take up a case which is wholly inconsistent with that pleaded. This belated attempt to bypass the evidence adduced appears to be more a manor than a genuine explanation of the documentary evidence adduced. It is amply proved that ever since Mathuranathji took over the management of the shrine, two sets of account books have been maintained,

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one relating to the income and expenses of the shrine and the other relating to that of the Maharaj. These account books and other documents show that presents and gifts used to. be made to the deity as well as to the Maharaj. The two were quite separate and distinct. Maharaj himself has been making gifts to the deity. He has been, at times utilising the funds belonging to. the deity and thereafter reimbursing the same. The account books which have been produced clearly go to show that the deity and the Maharaj were treated as two different and distinct legal entities. The evidence afforded "by the account books is tell-tale. In the trial court it was contended on behalf of the Ist defendant that none of the account books produced relate exclusively to the affairs of the temple. They all record the transactions of the Maharaj, whether pertaining to his personal dealings or dealings in connection with the deity. This is an obviously untenable contention. That contention was given up in the High Court. In the High Court it was urged that two sets of account books were kept, one relating to the income and expenditure of the deity and the other of the Maharai so that the Maharai could easily find out-his financial commitments relating to the affairs of the deity. But in this Court Mr. Narasaraju, learned Counsel for the appellant realising the untenability of the contention advanced in the courts below presented for our consideration a totally new case and that is that Gokulnathji undoubtedly is a legal personality; in the past the properties had been dedicated in favour of that deity; those properties are the properties of a private trust of which the Maharaj was the trustee. On the basis of this

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newly evolved theory he wanted to explain away the effect of the evidence afforded by the account books and the documents. We are unable to accept this new plea. It runs counter to the case pleaded in the written statement. This is not a purely legal contention. The Ist defendant must have known whether there was any dedication in favour of Shri Gokulnathji and whether any portion of the suit properties were the properties of a private trust. She and her adviser's must have known at all relevant times the true nature of the accounts maintained. Mr. Narasaraju is not right in his contention that the plea taken by him in this Court is a purely legal plea. It essentially relates to questions of fact. Hence we informed Mr. Narasaraju that we will not entertain the plea in question."

2931. In the matter of plea of adverse possession, mutually inconsistent or mutually destructive pleas must not be taken in the plaint. Whenever the plea of adverse possession is raised, it pre supposes that onwer is someone else and the person taking the plea of adverse possession is not the actual owner but has perfected his title by prescription since the real owner failed to initiate any proceeding for restoring the possession within the prescribed period under the statute.

2932. In **P Periasami Vs. P Periathambi (supra)** it was said:

"Whenever the plea of adverse possession is projected, inherent in the plea is that someone else was the owner of the property."

2933. In **Mohan Lal v. Mirza Abdul Gaffar (1996) 1SCC 639**, the Court said"

"As regards the first plea, it is inconsistent with the

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second plea. Having come into possession under the agreement, he must disclaim his right thereunder and plead and prove assertion of his independent hostile adverse possession to the knowledge of the transferor or his successor in title or interest and that the latter had acquiesced to his illegal possession during the entire period of 12 years, i.e., up to completing the period his title by prescription nec vi, nec clam, nec precario."

2934. In **Karnataka Board of Wakf Vs. Government of India & others (2004) 10 SCC 779**, the Court held that whenever the plea of adverse possession is projected, inherent therein is that someone else is the owner of the property. In para 12 it said:

"The pleas on title and adverse possession are mutually inconsistent and the latter does not begin to operate until the former is renounced."

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2935. The decision in **Mohal Lal (supra)** has also been followed in **Karnataka Board of Wakf (supra)** and in para 13, the Court said:

"As we have already found, the respondent obtained title under the provisions of the Ancient Monuments Act. The element of the respondent's possession of the suit property to the exclusion of the appellant with the animus to possess it is not specifically pleaded and proved. So are the aspects of earlier title of the appellant or the point of time of disposition. Consequently, the alternative plea of adverse possession by the respondent is unsustainable."

2936. The propositions laid down above, in our view, admit no exceptions and we are in general respectful agreement.

2937. Thus in the light of the above legal principles, we

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shall endeavour to find out whether Muslims are in possession of the property in suit i.e. Suit-1 from 1528 AD continuously, openly and to the knowledge of plaintiff and Hindus in general, and, if so, its effect. Here we may remind that property in suit with reference to Suit-1 means the inner courtyard and the building.

2938. First of all, the pleadings need be seen to find out entry of Muslims for taking possession of the property in suit, as claimed, from 1528 AD. Their case is that (a) the disputed structure was raised by Emperor Babar after conquering India and during the period when he stayed at Ayodhya through his Governor/Commander/Counselor (Vazir) Mir Baqi in 1528 AD. (b) After construction of the disputed structure he dedicated it as Waqf in general for the benefit of entire Muslim and Muslims, therefore, have a right of worship therein. (c) Emperor Babar after the above construction of the disputed mosque (disputed structure) made a grant of Rs. 60/- per annum from his royal treasury towards Khitabat (recitation of Khutb), repair and miscellaneous expenses of disputed mosque. (d) The above grant continued during Mughal regime. During the period of Nawabs of Awadh, the amount of grant was increased to Rs. 302 Anna 3 paissa 6 per annum. The above grant continued by British Government also and at the time of first settlement.

2939. It is in fact not disputed by learned counsels for the parties that Babar-Nama, whether translated by A.S.Beveridge or others i.e. John Layden, William Erskine, F.G.Talbot, Elphinstone etc. none contains anything to show that Babar ever entered Ayodhya city or crossed Saryu river or otherwise reached thereto. The description available in Babar-Nama (the description for the period 3rd April, 1528 to 17th September,

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1528 is not available), shows that Babar reached near Ayodhya on 28.3.1528 AD and stayed about 2-3 kos away but with respect to his visit or entry in Ayodhya, at least in Babar Nama, there is nothing. Therefore, the question that he himself visited Ayodhya and commanded for construction of a mosque thereat does not arise. Similarly whether he issued such a command to anyone is also not shown. Al least it is not proved at all. The claim of the Muslim parties that as a result of dedication by Babar, they came in possession, therefore, is rendered baseless and falls on the ground.

2940. It is also not in dispute that there is no evidence, documentary or otherwise, which may show that Babar or any of his agent made any waqf or dedicated any property for public use or that the Muslims in general or in particular were placed in possession of any part of the land comprising the disputed site and no direct evidence is available.

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2941. We do find the situation improbable due to lapse of long time but then in order to find out correctness of such a positive averment, we have an option to look into other material to search for other probabilities. Reason being that these are the facts pleaded by defendants 1 to 5 (Suit-1), as is evident from para 9 and 16 of the plaint. This is a fact in issue, therefore, evidence has to be adduced by the defendants 1 to 5 (Suit-1). The burden lie on them. Since all the four suits were clubbed together and evidence has been recorded permitting to be used interchangeably we make no distinction in evidence if led on behalf of muslim parties. On this aspect, their stand is substantially same.

2942. The burden primarily lie on the party who desires the Court to give judgment as to any legal right or liability

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dependent on the existence of fact which he asserts. In other words, a person who has invited a Court to give judgment on any legal right or liability and in support thereof has pleaded existence of certain facts to prove the existence of those facts, the result of the person failing to do so, would go against him. When the muslim parties plead that the Muslims have possession over the wakf Maszid Babri since 1528, the burden of proof lie upon the plaintiffs to prove existence of the said facts. There cannot be any defence that the matter relates back to an event which occurred 433 years back, and suit was filed after more than 400 years, therefore, it is not possible to produce any direct evidence. Since it is a fact not admitted by the other side, i.e., the Hindu parties, burden of proof lie upon the muslim parties to prove the aforesaid facts. In a issue relating to the title no presumption can help. This would also not be a matter of public history for which the Court may resort for its aid to appropriate books and documents of reference under Section 57 of the Indian Evidence Act, 1872 (hereinafter referred to as "Evidence Act"). In a title suit, the contents of Gazetteer etc. also cannot be relied to prove title of the party concerned but they have to prove the same by producing relevant evidence. Though we have not excluded various historical documents and books made available to us to find out the truth, primarily onus lie upon the muslim parties to place relevant evidence so as to claim successful execution of the plea of continuous possession.

2943. Issue No. 7 (Suit-1) though not very specifically but is based on the claim of Muslim parties that they have matured their title due to adverse possession, whereupon this issue has been framed and, therefore, requisite pleadings and proofs, i.e., onus would lie upon the defendants no. 1 to 5 and 10. We have

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reproduced the pleadings of the defendants 1 to 5 and 10 relevant for the aforesaid Issue No. 7 (Suit-1) and it is evident therefrom that the claim for title on account of adverse possession was pleaded only in para 16 of the written statement of defendants no. 1 to 5 but no such pleading find mention in the written statement filed on behalf of defendant no. 10. The defendants no. 1 to 5 have died long back and there is no substitution in Suit-1 except of defendant no. 2/1. Therefore, strictly speaking, except defendant no. 2/1, the defendants no. 1 and 3 to 5 cease to be party in Suit-1. However, no evidence led on behalf of these defendants.

2944. The pleadings of defendant no. 10 are much short of the requirement of such a case of possession. Despite our best endeavour, we find no clear averments or something even suggesting their claim with regard to title on the basis of adverse possession. The principles laid down for defence based on adverse possession necessitates party to plead who is the owner of the property against whom he is possessing the land to his knowledge, and is continuously, openly enjoying it peacefully for the period of limitation prescribed under the statute and that too exclusive and uninterrupted. We find no such pleading in the written statement of defendant no. 10 (Suit-1). In fact, the defendant no. 10 in para 19 of its written statement has pleaded that the plaintiff has neither shown any personal claim or title over the property in suit nor has been able to set up any right or title over the said property on the basis of customary or easementary right. Para 19 of the written statement of defendant no. 10 in Suit-1 is reproduced as under:

> *"That the plaintiff has neither shown any personal claim or title in the plaint over the property in suit nor he has been*

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able to set up any right or title over the said property on the basis of customary or easementary right,"

2945. This shows that the defendant no. 10 was aware that the suit has not been filed by the plaintiff claiming himself to be the owner of the property in dispute or having a title over the same in any other manner. Further, from a reading of para 10, 11 and 25 of the written statement of defendant no. 10 together, it appears that the claim of defendant no. 10 throughout in Suit-1 is that the ownership of the property in dispute vest in God almighty after the creation of Wakf and construction of a Mosque by Mir Baki during the regime of Emperor Babar and since then, it is continuously being used and possessed by Muslims for worship and none else. In para 17 of the written statement, defendant no. 10 has pleaded that the plaintiff has never remained in possession or occupation of the building in suit, he has no right, title or claim over the said property and as such the suit is barred by the provisions of Section 41 of the Specific Relief Act. In para 15, the case set up is that Muslims had all along remained in possession of the said mosque right from 1528 AD upto the date of attachment of the said mosque under Section 145 Cr.P.C. We may add that the date of attachment is 29th December, 1949. Therefore, in the entire written statement of defendant no. 10, we fail to find any case of adverse possession set up by defendant no. 10. So far as simple possession since 1528 AD is concerned, even in that respect no evidence has been placed.

2946. It would be useful to refer certain observations of a Single Judge of this Court in **Abdul Halim Khan Vs. Raja Saadat Ali Khan and others, AIR 1928 Oudh 155**, which, in our view, squarely applies to the facts and pleadings of this case

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and we are in respectful agreement therewith:

> *"One of the general principles governing the law of limitation is that a person can only be considered to be barred, if he has a right to enter and does not exercise that right within the period fixed by the Limitation Act. The maxim of law is contra non valentem agree nulla currit praescriptio (prescription does not run against a party who is unable to act); vide Broom's Legal Maxims, 9th edn., p. 576. Accordingly possession cannot become adverse against a person as long as he is not entitled to claim immediate possession. Ex facie it must follow that a person who is not in existence cannot be considered to be in a position to claim whether immediate or otherwise. It is evident that in the eyes of the law the plaintiff did not come into existence as long as he was not adopted. His adoption took place on 27th July 1914. He must be deemed to have come into existence only then. It was, therefore, obviously not possible for him to claim possession of the property before that date, and if he was not in a position to claim it at all, having not been then in existence, it would be absurd to say that another person was in possession adversely to him. One might fairly ask:* ***"Adverse against whom?" It certainly cannot be adverse against the plaintiff, who was not then in existence.*** *It may have been adverse against any other person, but we are not concerned with such person unless the plaintiff can be shown to have derived his title from such person." (page189-190)*

2947. Recently, in **Vishwanath Bapurao Sabale (supra)**, the Apex Court in respect to a claim of title based on the pleading of adverse possession said as under:

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"*for claiming title by adverse possession, it was necessary for the plaintiff to* ***plead and prove animus possidendi.***

A peaceful, open and continuous possession being the ingredients of the principle of adverse possession as contained in the maxim nec vi, nec clam, nec precario, long possession by itself would not be sufficient to prove adverse possession."

2948. What should have been pleaded and what a person claiming adverse possession has to show has been laid down by the Apex Court categorically in **Karnataka Board of Wakf (supra)** :

> ***"11.*** *In the eye of the law, an owner would be deemed to be in possession of a property so long as there is no intrusion. Non-use of the property by the owner even for a long time won't affect his title. But the position will be altered when another person takes possession of the property and asserts a right over it. Adverse possession is a hostile possession by clearly asserting hostile title in denial of the title of true owner. It is a well- settled principle that a party claiming adverse possession must prove that his possession is "nec vi, nec clam, nec precario", that is, peaceful, open and continuous. The possession must be adequate in continuity, in publicity and in extent to show that their possession is adverse to the true owner. It must start with a wrongful disposition of the rightful owner and be actual, visible, exclusive, hostile and continued over the statutory period. ..... Physical fact of exclusive possession and the animus posdendi to hold as owner in exclusion to the actual owner are the most important factors that are to be accounted in cases of this nature. Plea of adverse*

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possession is not a pure question of law but a blended one of fact and law. Therefore, a person who claims adverse possession should show: (a) on what date he came into possession, (b) what was the nature of his possession, (c) whether the factum of possession was known to the other party, (d) how long his possession has continued, and (e) his possession was open and undisturbed. A person pleading adverse possession has no equities in his favour. Since he is trying to defeat the rights of true owner, it is for him to clearly plead and establish all facts necessary to establish his adverse possession."

2949. Earlier also, a three-Judges Bench of Apex Court in **Parsinni & another Vs. Sukhi (supra)** laid down the following three requisites for satisfying the claim based on adverse possession:

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"5. The appellants claimed adverse possession. The burden undoubtedly lies on them to plead and prove *that they remained in possession in their own right adverse to the respondents. .... Possession is prima facie evidence of title. Party claiming adverse possession must prove that his possession mast be "nee vi nee clam nee precario" i.e. peaceful, open and continuous. The possession* ***must be adequate, in continuity, in publicity and in extent to show that their possession is adverse to the true owner."***

2950. In **Maharaja Sir Kesho Prasad Singh Bahadur (supra)**, it was held that in order to obtain a favourable finding of adverse possession, one must have to satisfy all the qualities of adequacy, continuity and exclusiveness. Reliance was placed on **Kuthali Moothavur Vs. P. Kunharankutty AIR 1922 PC 181**.

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2951. We can look into this issue from another angle. A perusal of the entire plaint (suit-1) would show that the plaintiff's case is not that of title or ownership of the property in dispute. What he actually claim is that he believes and treat the site in dispute being the birth place of Lord Rama having certain religious symbols like, idol of Lord Rama, Charan Paduka etc. which is worshipped by Pooja and Darshan since long past without any obstruction and is entitled to exercise his aforesaid right of worship without any interference. He expressed an apprehension of removal of existing idols of Lord Rama kept at the place in dispute, the boundary whereof is mentioned at the bottom of the plaint (suit-1), hence, he has sought a declaration that he is entitled to visit and worship the place in dispute without any obstruction according to religious scriptures of Hindus and the defendants have no right to interfere in the aforesaid right of the plaintiff. He further has sought a permanent mandatory injunction restraining the defendants from removing idols of Lord Rama from the place they are, not to put lock on the entry door and not to create any obstruction in Pooja and Darshan in any manner. The boundary given at the bottom of the plaint shows that the premises in dispute in Suit-1 constitute only the "inner courtyard" and "building" existed thereat. In fact, the plaintiff has not even mentioned the existence of any building but he has simply said that at the place at which the idols of Lord Rama were existing on the date of filing of the suit be not removed. The plaint is verified and signed on 13th January 1950 and filed in the Court on 16.1.1950. Therefore, averments in various paragraphs of the plaint obviously relate at least to that date.

2952. There is no claim of ownership or title by the

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plaintiff. It is a simple suit seeking continuous enforcement of right of worship and a restraint order against the defendants from creating any obstruction in exercise of the said right. In the absence of any claim set up by the plaintiff about his title etc., we find no occasion on the part of the defendants to claim that they are possessing property in dispute continuously, openly and to the knowledge of the plaintiff, and Hindus in general, when all this has nothing to do with the plaintiff's right of worship which he claims to have been exercising much before the date of filing of the suit and want continuance of that right without any interference. So far as the plea of holding possession of the property in dispute against the Hindus in general is concerned, we find that a statement under Order X Rule 2 C.P.C. was made on behalf of the plaintiff on 15.09.1951 wherein it has clearly been stated that Suit-1 is not a representative suit but has been filed for enforcing personal right of worship of the plaintiff, as is evident from following:

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> ***"Q***. *In what capacity does the plaintiff seek to exercise the relief which he seeks in the plaint.*
>
> ***Ans***. *In my individual capacity.*
>
> ***Q***. *What is your individual capacity.*
>
> ***Ans***. *My individual capacity is distinct from public capacity and in this matter an idol worshipper."*

2953. The case set up by the defendant-muslim parties against the plaintiffs in this case is a bit in deviation to what actually the dispute is. The plaintiffs neither asserted his possession over the property in dispute nor disputed anybody's possession. 'Possession' means what we understand even if it has to be seen in the context every time as defined and discussed in detail above. The consensus of the meaning of the word

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possession or what the term "possession" connotes is something showing actual power over the object concern, amount of will one can exercise, and intention to possess something. Not the least, the power of authority to exclude others is also an integral part thereof. Possession is nine parts of the law means the person in possession can only be ousted by one whose title is better than his. All these factors, in our view, are absent when a person claims exercise of a right other than based on possession. The plaintiff has sought to assert right of worship at the place in dispute, alleging some kind of interference at the end of defendants. He has sought a declaration about his right of worship, and, its enforcement without any restriction and further that the place in dispute as it stood on the date he filed the suit should remain undisturbed since he had been exercising his right of worship with the same status in the past also. The later question necessarily give birth to another question as to whether the status of the place in dispute, as stated on the date of filing of the suit, was actually the same for sufficiently past time as claimed by the plaintiff. That may be one which need to be decided on the basis of evidence, but so far as principal question is concerned it remains the same, i.e., enforcement of right of worship only, without claiming title, ownership or possession of the property. A worshipper when go to a religious place does not come into possession of the place of worship since it is a kind of incorporeal right not connected directly with the possession of the property in the sense, the term "possession in law" usually is known but it is a kind of enjoyment of a property and that too temporarily, for a small time, though frequently. As stated by the Privy Council in **Mosque known as Masjid Shahid Ganj (supra)** the right of worshipper may be regarded

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as an individual right. It is not a sort of easement in gross but an ultimate in general right of a beneficiary. This individual character of the right to go to a mosque or temple for worship matters nothing when the land is no longer a waqf or a temple. If for one or the other reasons the subject itself goes or disappear the right of all beneficiaries would also go and then the worshipper cannot ask for recovery or reconstruction of the endowment on the ground that since he had a beneficiary right of worship, for his right cannot extend beyond subject matter. In this case, the defendant, probably to defeat this assertion of the plaintiff that the property in dispute is a temple open for worship by a Hindu, pleaded the construction of mosque in 1528 AD and continuous possession and worship by muslims since then. The initial onus lie upon the plaintiff, but having discharged the same, it shifts to the muslim side. The onus is different than burden. Onus may continue to shift. That being so, obviously the onus lie upon the muslim parties to prove it. To start, they proceeded with two inscriptions claimed to be fixed on the property in dispute since the time it was constructed. Those inscriptions, we have already discussed in detail while discussing issues relating to period of construction, and have held that it is not proved that those inscriptions were installed in 1528 AD or that the building in dispute itself was constructed in 1528 AD and the muslim parties pleading this fact have not been able to prove it. The two inscriptions have been held unworthy of any reliance.

2954. Next comes a complaint dated 28.11.1858 submitted by Thanedar Sheetal Dube and some other documents which we shall discuss a bit later. But at this stage we may point out that the claim of adverse possession in the light of Article 144 or

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extinction of title vide Section 27 of the Limitation Act, in a case where enforcement of a right of worship is involved, may not be attracted.

2955. When a right of worship is claimed and it is said that no obstruction should be created therein, it is a *de die indium* right and interference, if any, as and when made also would confer a fresh cause of action. The Privy Council in **Hukum Chand Vs. Maharaj Bahadur Singh (supra)** has said that the section of the Swetambari in placing charans with the nails in three of the shrines is a wrong of which the Digambaris are entitled to complaint and is a continuing wrong, as to which under Section 23 a fresh period begins to run at every moment of the day on which the wrong continues.

2956. That being so, since the cause of action is a continuing one, the question of any benefit under Article 144 of LA 1908 even otherwise would not arise.

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2957. If we take the Issue 7 (Suit-1) as if it only talks of possession of the property in suit continuously, openly from 1528 to the knowledge of plaintiff, and Hindus in general, and having no concern with the building, the nature of possession, whether adverse or otherwise, even then we find that Muslims have completely failed to prove the same. Except of bare pleadings, nothing has been brought on record to prove that the Muslims kept possession of the property in Suit from 1528 and onwards. The issues pertaining to date of construction have already been decided by us and we have recorded a finding that the Muslim parties have failed to prove that the disputed structure was constructed in 1528. In view of the aforesaid finding, the question of possession of property in dispute by Muslims in 1528 even otherwise would not arise. There are a

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few published documents, i.e., books which throw some light about the persons visiting the disputed site between 1528 to 1858. The first one is a Travellers' Account of William Finch who visited India between 1607 to 1611. Therein neither he found any such Mosque in the area called fort of Ram Chandra nor he found any Muslim person visiting that area. Instead he has mentioned that Hindus visit the place in the belief that it is the place belong to Lord Rama. This Traveller's Account has been published by William Foster in his book **"Early Travels in India" (supra) (Book No. 60)**. At page 176 thereof (Exhibit 19 Suit 5, Register 21 Page 271), William Finch has said:

> *"the castle built foure hundred yeeres agoe. Heere are also the ruines of Ranichand(s) castle and houses, which the Indians acknowled(g)e for the great God, saying that he tooke flesh upon him to see the tamasha of the world. In these ruines remayne certaine Bramenes, who record the names of all such Indians as wash themselves in the river running thereby; which custome, they say, hath continued foure Iackes of yeeres ..."*

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2958. Then comes the Traveller's Account of Father Joseph Tieffenthaler, who visited Oudh area sometimes between 1766 to 1771. He mentions, Emperor Aurengzebe got the fortress called Ramcot demolished and got a Muslim temple, with triple domes, constructed at the same place. Others say that is was constructed by 'Babor'. Fourteen black stone pillars of 5 span high, which had existed at the site of the fortress, are seen there. Tieffenthaler did not find any Muslim visiting the said place which is clearly the place in dispute. Tieffenthelar, however, has referred to the visit of Hindus and their worship in the disputed site by going for *parikrama* thrice and prostrating

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on the ground.

2959. Then comes Walter Hamilton's **"East India Gazetteer" (supra)** (first published in 1828). On page 353 under heading 'Oude', he says:

> *"This town is esteemed one of the most sacred places of antiquity."*
>
> *Pilgrims resort to this vicinity, where the remains of the ancient city of Oude, and capital of the great Rama, are still to be seen; but whatever may have been its former magnificence it now exhibits nothing but a shapeless mass of ruins. .... among which are the reputed site of temples dedicated to Rama, Seeta, his wife, Lakshman, his general, and Hanimaun (a large monkey), his prime minister. The religious mendicants who perform the pilgrimage to Oude are chiefly of the Ramata sect,* ***who walk round the temples and idols,*** *bathe in the holy pools, and perform the customary ceremonies."*

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2960. In 1858 came another **"Gazetter" of Edward Thornton (supra)** (Book No. 10) (Exhibit 5, Suit-5). There also is a mention of building of a Mosque after demolition of a temple. It also says that the Mosque is embellished with fourteen columns of only five or six feet in height, but of very elaborate and tasteful workmanship. It also talks of a quadrangular coffer of stone, whitewashed, five ells long, four broad, and protruding five or six inches above ground as the cradle in which Rama was born as the seventh avatar of Vishnu; and is accordingly abundantly honoured by the pilgrimages and devotions of the Hindus. This clearly show the existence of the Bedi found by Tieffenthaler at the disputed site, reiterated by Edward Thornton in his Gazetteer published in 1858, and that

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the Hindus used to visit the property in suit but there is nothing to show that at any point of time Namaz was offered by Muslims and they used to visit it.

2961. There are some documents also and their effect may be perused hereat. The first document is a letter/application dated 28th November, 1858 of Sheetal Dubey, Thanedar **(Exhibit-19, Suit-1) (Register -5, page 61)** which says as under:

غریب پرور سلامت

خداوندآج کے روز مسمی نہگ سنگھ فقیر خالصہ ساکن ملک پنجاب بیچ مسجد جنم استھان کہ ہون اور پوجا گورگویند سنگھ مقرر کیا اور نشان شری بھگوان کہ کھڑا کیا اور پچیس نفرسیکھ بہی واسطے حفاظت وقت کہڑا کرنے نشان کہ وہاں پر- واجب تھا عرض کیا~افتاب دولت اقبال کا روشن ہو فقط

عرضی

فدوی سیتل دوبے تھانے دار اودہ مورخہ ۲۸ نومبر ۱۸۵۸ء

''गरीब परवर सलामत,

खुदावन्द आज के रोज़ मुसम्मी निहंग सिंह फ़क़ीर खालसा साकिन मुल्क पंजाब बीच मसजिद जन्म अस्थान के हवन और पूजा गुरू गोाबिन्द सिंह मुकर्रर किया और निशान श्री भगवान के खड़ा किया और पच्चीस नफ़र सिख भी वास्ते हिफ़ाज़त वक़्त खड़ा करने निशान के वहां पर हैं। वाजिब था अर्ज़ किया। आफ़ताब दौलत इक़बाल का रौशन हो खुश।

फ़क़त

अर्जी

फ़िदवी शीतल दुबे थानेदार अवध मोरखा 28 नवम्बर सन् 1858 ई.

(Hindi Transliteration)

Gareeb Parwar salamat Khuda wand,

Today Mr. Nihang Singh Faqir Khalsa resident of Punjab, organised ***Hawan and Puja of Guru Govind Singh and erected a symbol of Sri Bhagwan, within the premises of the Masjid****. At the time of pitching the symbol, 25 sikhs were posted there for security. Deemed necessary*

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so requested. May your regime progress. Pleasure.

Applicant.
Your obedient servant
Sheetal Dubey, Thanedar Oudh
Dated November 28, 1858."

2962. A perusal of the said letter/application shows that it was a kind of information conveyed by the above police official seeking instructions for further action but do not show either that the Muslims were in possession of the property or the building in dispute or the disputed site or that there used to be any Namaz therein. But this, however, shows that on the site in dispute, existence of Mosque is recognised.

2963. The letter dated 30th November, 1858 (Exhibit 20, Suit-1) (Register 5, page 65) is a complaint made by Syed Mohd. claiming himself to be a Khateeb (Moazzim Maszid Babri) at Oudh. The contents of this document have also been published in a Book which has been placed before us. **Exhibit 17 (Suit-5) (Register 20, pages 187-197)** contains photocopy of frontispiece and Annexure-4 from the book "Babri Masjid" by Syed Shahabuddin Abdurrhman, 3rd Edn. 1987 published at Azamgarh. It contains contents of a petition of Mohammad Asgar on 30.11.1858. The typed Hindi transliteration supplied by the plaintiffs (Suit-5) at page 197 Register 20 (paper no. 107C1/81) reads as under:

''(बाबरी मस्जिद)

जनाब आली मुक़ाम ग़ौर का है मस्जिद मुक़ाम इबादत मुसलमानान है न कि बख़ेलाफ़ उस के बवजेह हुनूद की व साबिक़ में क़ब्ल में अमलदारी सरकार ***मुक़ाम जनम स्थान का सदहा बरस के निशान पड़ा रहता था व अहले हुनूद पूजा करते थे।*** *चबूतरा बसाजिश शिव गुलाम थानेदार अवध के बैरागियों ने शबाशब में ता सुदूरे हुक्म सरकार के वास्ते मुमानियत के नाफिज़ हुआ था बबुलन्दी एक वालिश्त तैयार करा लिया। उस वक़्त साहेब डिप्टी कमिश्नर बहादुर ने बमोजिब*

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हुक्म जनाब साहब कमिशनर बहादुर के थानेदार को मौकूफ़ किया व बैरागी पर जुर्माना मुतअय्यन हुआ अब फ़िलहाल इस चबूतरे की भी तरवमीनन सवा गज़ तैयार करा लिया है इस सूरत सरीह जियादती साबित है लेहाज़ा उम्मीदवार हूँ कि बनाम मुरतजा खां कोतवाल शहर सुदूर हुक्म होवे कि कोतवाल बचश्म खुद मोआईना करके उमुरात जदीद खुदवा डालें व मरदुमान हुनूद को बाहर मस्जिद करें ।

सैय्यद मोहम्मद ख़तीब

मोअज़्ज़िन मस्जिद बाबरी वाक़ै अवध

30 नवम्बर 1858 ई''

Respected Sir, It is matter of your honour's attention. Kindly consider the fact that Masjid is a place of worship of the Muslims and not that of Hindus. ***Previously the symbol of Janamasthan had been there for hundreds of years and Hindus did Puja.*** *Because of conspiracy of Shiv Ghulam Thandedar Oudh Government, the Bairagis constructed overnight a Chabutra up to height of one 'Balisht' until the orders of injunction were issued. At that time the Deputy Commissioner suspended the Thanedar and fine was imposed on Bairagis. Now the Chabootra has been raised to about 1¼ yards. Thus sheer high-handedness has been proved. Therefore it is requested that Murtaza Khan Kotwal City may be ordered that he himself visit the spot and inspect the new constructions and get them demolished (sic) and oust the Hindus from there; the* ***symbol and the idol may be removed from there and writing on the walls be washed."****.*

Sd/- Syed Mohammad Khatib,

Moazzim Masjid Babri sites in Oudh

Dated November 30, 1858." (ETC)

Copy of letter dated 30.11.1858 is **Exhibit 20 (Suit-1) (Register-5 page 65)**.

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2964. This complaint is also in the same line as that of the letter dated 28th November, 1858 (Ex.-19, Suit 1). It also does not show that regular Namaz was offered in the disputed building or disputed site or that the Muslims used to visit regularly or occasionally treating it a place of worship. On the contrary, complaint says that the Hindu religious symbols have been placed inside and for hundreds of years Hindus are worshipping thereat. This goes against the claim that Namaz was going on. It proves that no namaz inside at least till 30th November, 1858 when the above complaint was made or offered. Further, at the disputed site, worship by Hindus was continuing and that too for the last hundreds of years.

2965. Exhibit 21 (Suit-1) (Register 5 page 69-72A) is a report dated 01.12.1858 submitted by Sheetal Dubey Thanedar Oudh communicating the order of higher authority to Sant Nihang Singh, Faqir for leaving the place but receive no reply. Sheetal Dubey reported what actually transpired. There is nothing to show that actually the aforesaid/Nihang was evicted from the disputed site or that symbol of worship etc., he had created, was removed. It also appear that Sheetal Dubey sought further instructions from higher authority. To us, this document also does not help the Muslims to prove their possession at the disputed site and the building.

2966. Exhibit 22 (Suit-1) (Register 5, page 73) is again a report dated 6th December, 1858 of Sheetal Dubey informing that the notice of eviction was served upon Nihang Singh Fakir. This also does not inform the consequences of such service.

2967. It appears that an order was passed to oust the Fakir and remove symbol and to arrest him and send to the Court. **Exhibit A-70 (Suit-1) (Register 8, Page 573)** is a copy of the

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said order dated 15th December, 1858.

نقل حکم مقدمہ ۵۸ءمقدمہ ۸۸۴ عرضی تھانیدار اودہ دوبارہ کھڑا کرنے نشان در مسجد جنم استھان ٹیک سنگھ فقیر خالسہ کے منفصلے ۶ دسمبرسن ۱۸۵۸ء

آج یک مقدمہ روبکار ہوکہ دریافت ہوا کہ حسب حکم ۳۰ نومبر سن نک فقیرکو جو مسجد بابری میں بیٹھا ہے روانہ کیا۔

حکم ہواکہ

پروانہ بنام تھانیدار آودہ کیا جاوے کہ اگر فقیر نہیں آتا ہے تو اسکو گرفتار کرکے روانہ حضور کریں۔ ۵ دسمبر سن ۵۸ء

دستخط حاکم

"Copy of the order dated 05.12.58, Suit No.884. Application Thanedar Oudh for re-erecting the symbol in the Majid Janam Asthan, Tek Singh Faqir Khalsa..... (Sic)...decided on December 6, 1858.

In the case was Robekar issued today. It was known that ***as per order dated November 30, 1858, the Faqir sitting in the Masjid Babri be ousted. Parwana to the Thanedar Oudh with the order*** *..... (Sic)... that* ***if the Faqir does not move from there, he should be arrested and sent to the Court****. December 5, 58.*

Signature of the officer in English.

Note .....is not legible."

2968. Pursuant thereto Thanedar P.S. Oudh submitted report i.e. **Ex. A-69 (Suit 1) (Register 8 Page 569)** on the same date of its compliance i.e. removal of religious symbol and ouster of Faqir from the mosque. It says:

نقل حکم مورخہ ۱۰ دسمبر ۱۸۵۸ء مقدمہ نومبر ۸۸۴ عرضی تھانیدار اودہ دربارہ کھڑا کرنے نشان درمسجد جنم استھان سنت ٹیک سنگھ فقیر خالصہ کے محلہ رام کوٹ (کوٹ رام چندر) منفصل ۱۵ دسمبر سن ۱۸۵۸ء

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آج روبکار ہوا جسمیں جھنڈا مسجد جنم استھان سے اک ھاڑا گیا جو فقیر آ کے رہا تھا نکالا گیا۔

حکم ہوا کہ

مقدمہ خارج ہوکے داخل دفتر ہو ۱۰ د سمبر ۱۸۵۸ء

''नकल हुकुम मोरखा 10 दिसम्बर 1858 ई0 मुकदमा नं0 884 अर्जी थानादार अवध खड़ा करने निशान दर मस्जिद जन्मस्थान सन्त टेक सिंह फकीर खालसा के मोहल्ला रामकोट कोट रामचन्दर मुनफसला 15 दिसम्बर 1758 आज रोबकार हुआ जिसमें झंडा मस्जिद जन्मस्थान से उखाड़ा गया जो फकीर आके रहता था निकाला गया।

हुकुम हुआ कि मुकदमा खारिज होके दाखिले दफ्तर हो।''

"Copy of the order dated December 10, 1858 Suit No.884 on the application of Thanedar Oudh for re-erecting the symbol within Masjid Janam Sthan. Saint Tek Singh Faqir, Khalsa, resident of Mohalla Ram Kot, (Kot Ram Chandra), decided on December 15, 1858. Robekar issued today in which Jhanda (flag) was uprooted from the Masjid Janam Asthan and the Faqir residing therein was ousted. Ordered that the case be consigned to the office. Dec. 10, 1858."

2969. Exhibit 31 (Suit 1) (Register 5, Page 117-121) is another application dated 05.11.1860 by Mir Rajab Ali complaining that a Chabootara and a pillar made within Babari Masjid Oudh may be removed after due enquiry as it is in violation of law. However, there is a mention that whenever the Moazzim calls for Azan, Bairagis create nuisance by blowing Conch shell. Nothing more is said therein.

2970. Exhibit 54 (Suit-4) (Register 12 page 359) is an application dated 12th March, 1861 by Mohd. Asghar, Mir Razab Ali and Mohd. Afzal as Khateeb/Moazzin, Masjid Babri situated Janam Asthan Oudh stating that some Imkani Singh has made a Chabutara near Masjid Babri at Janam Asthan Oudh and

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despite of order to remove, has not complied the same. There is nothing to show that there was any compliance even thereafter and at any point of time later.

2971. It appears that Deputy Commissioner Fyzabad on 18th March 1862 directed to consign the record to office.

2972. There are some further documents i.e. **Ex. A-16 (Suit 1) (Register 7, page 185-191); Ex. A-14 (Suit 1) (Register 7 Page 181); Ex. A-17 (Suit 1) (Register 7 page 193-197)** regarding the grant of village Bahooranpur and Sholapuri in lieu of the cash grant of Rs.302 and 3 and a half anna for maintaining the mosque subject to showing a conduct of peace and to perform all duties of landholders in matter of police and political service as required by them by the authorities and not to favour in any way the enemies of British Government. It appears that the three persons were more interested in obtaining the land grant and the building in dispute was used by them as object for such gain but no document shows that at any point of time either the Muslims attended the mosque to offer Namaz therein till then or that even those persons who were alleging or representing themselves as Khatib or Mutwalli of the mosque ever made any arrangement for ensuring offering of Namaz by Muslims therein.

2973. **Exhibit A-13 (Suit-1) (Register 6 page 173)** is an application dated 25.09.1866 by Mohd. Afzal Mutwalli Masjid Babri situated at Oudh complaining about a Kothari constructed by some Bairagis and that they are also trying to built a temple near mosque. The request was made to stop them and remove construction already made.

2974. The above complaint was made by Mohd. Afzal though earlier only Mohd. Asgar and Mir Rajab Ali has claimed

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themselves to be Mutwalli of the said mosque and obtained grant in their name. How and in what manner Mohd. Afjal became Mutwalli is not known.

2975. **Exhibit 29 (Suit-1) (Register 5, page 105)** dated 12th October, 1866 is an order of Deputy Commissioner, Faizabad on the complaint of Mohd. Afzal against Tulsidas and others directing consignment of record to office.

2976. It appears that Mohd. Asgar as Khatib and Mohd. Afjal as Muazzim Masjid Babari moved an application dated 22nd February, 1870 stating their claim on 21 trees of Imli on the ground that Masjid Babari situtated at Janam Asthan is ancestral and under the possession of them since ancient times hence a decree be issued in respect to graveyard and Imli trees in their favour.

2977. By order dated 22nd August, 1871 **Exhibit 25 (Suit 1) (Register 5 page 87)** the claim of Mohd. Asgar about ownership of graveyard was rejected but regarding the tamarind trees, his claim was allowed.

2978. **Exhibit 30 (Suit 1) (Register 5 page 107)** is a memo of appeal no. 56 filed against the order dated 3rd April 1877 of Deputy Commissioner Faizabad whereby he had granted permission to Hindus to open a new door in the northern outer wall of the disputed building. It was complained that the wall being that of the mosque, this alternation could not have been allowed to Hindus. It also complained that on 7th November, 1873 Mahant Baldev Das was ordered to remove idol i.e. Charan Paduka but has failed to comply. Hence permission to open a door in the wall of Masjid Babari could not have been given to him. He also complained of making of a "Chulha" in the compound for Puja by Baldeo Dass Bairagi and request was

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made for removal of this new construction.

2979. Exhibit 15 (Suit 1) (Register 5 page 41-43) is a report submitted by the Deputy Commissioner on the appeal of Mohd. Asgar permitting opening of a door on the northern outer wall of the disputed building. He treated outer compound i.e. the outer courtyard as Janam Asthan and the disputed building inside the grilled partition wall as mosque and said that for the convenience of visitors to Janam Asthan and rush on fair days, the said opening was allowed in public interest. He also declared attempt of Mohd. Asgar lacking bona fide.

2980. **Mohd. Asgar filed suit no.374/943 Exhibit 24 (Suit 1) (Register 5 page 83-85)** claiming rent against user of Chabutara and Takhat near the door of Babari Masjid for organizing Kartik Mela at the occasion of Ram Navmi regarding 1288-1289 Fasli. It shows that in the courtyard and Chabutara, since ancient times, Mela Kartiki and Ram Navmi was being organized. This suit was dismissed on 18th June, 1883.

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2981. An application dated 2nd November, 1883, **Exhibit 18 (Suit 1) (Register 5 Page 55)** was submitted by Mohd. Asgar as Mutwalli Masjid Babari claiming that he is entitled to get the wall of mosque whitewashed but is being obstructed by Raghubar Das though he has right only to the extent of *Chabutara* and *Rasoi*.

2982. The Assistant Commissioner thereafter passed the following order on 22nd January, 1884 **Exhibit 27 (Suit 1) (Register 5 Page 95):**

نقل فرد منفصیلہ احکام مورخہ ۲۲ جنوری ۱۸۸۴ء مقدمہ نمبر ۱۹۴۳۵

واقع جنم استھان اودہ ۲۲ جنوری ۱۸۸۴ء اجلاسی جناب اسیسٹینٹ

کمیشنر صاحب بہادر فیض آباد

سید محمد اصغر

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بنام

رگھوبر داس

آج مقدمہ بحاضری فریقین پیش ہوا فریقین کو حکم صاحب ڈپٹی کمیشنربہادر سے اطلاع دی گی اور رگھوبر داس کو فہماش کی گی کہ اندرونی و بیرونی احاطہ و دروازہ مسجد کی مرمت وغیرہ نہ کریں اور محمد اصغر کو سمجھا دیا گیا کہ بیرونی دروازہ قفل نہ لگایا جاوے یہ مناسب ضروری ہے کہ عمل درامد قدیم بحال رکھا جاے اور کوءی دستہ اندازی و مداخلت نہ کہ جاو۔

حکم ہوا کہ

کاغذات ہذا داخل دفتر ہو المرقوم ۲۲ جنوری ۸۴ء

''नकल फर्द अहकाम मोरखा 22 जनवरी 1884 ई0 मुकदमा नं0 19435 वाके जन्म स्थान अवध मुनफसला 22 जनवरी 1884 ई0 इजलासी जनाब असिस्टेन्ट कमिश्नर साहब बहादुर फैजाबाद

सैय्यद मुहम्मद असगर बनाम रघुबर दास

आज मुकदमा बहाजिरी फरीकैन पेश हुआ फरीकैन को हुक्म साहब डिप्टी कमिश्नर से इत्तिला दी गई और रघुबर दास के फहमाइश की गई कि अन्दरूनी व बेरूनी अहाता व दरवाजा मसजिद की मरम्मत वगैरह न करे और मुहम्मद असगर को समझा दिया गया कि बाहरी दरवाजा कुफ्ल न लगाया जावें यह निहायत जरूरी है कि अमल दरामद कदीम बहाल रखा जावे और कोई दस्त अन्दाजी न मदाखलत न की जावे।

हुक्म हुआ कि

कागजात हाजा दाखिल दफ्तर हो अत्मरकूम

22 जनवरी 84 ई0''

"Copy of the order sheet dated January 22, 1884 in case no. 19435-Janamsthan, Judgement dated January 22, 1884, Ijlasi Janab Assistant Commissioner Sahab Bahadur Faizabad.

Syed Mohd. Asghar vs. Raghubar Das.

Today the case was called out in presence of the parties. As per orders of the Deputy Commissioner, parties were informed accordingly. Raghubar Das was restrained

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from carrying out repairs etc in the internal and outer part of the compound and Mohd. Asghar was advised not to lock the outer door of the mosque. It is necessary that the old existing orders be observed and complied with and there should be no interference in it.

Order.
All the papers be consigned.
Dated January 22, 84.
Sd/- English."

2983. Raghubar Das made a complaint dated 27.06.1884 **Exhibit 28 (Suit 1) (Register 5 Page 99-101)** to the Assistant Commissioner requesting him to make spot inspection since the Muslims were violating the order of desisting from whitewashing the wall.

2984. Then comes the admitted litigation (mentioned in written statement) relied by the defendant Muslim parties heavily, i.e., 1885 Suit which also says that in the outer courtyard there existed Ram Chabutara, Sita Rasoi and the same visited by Hindus but there is not even a whisper that the Muslims at any point of time visited the disputed site and offered Namaz.

2985. In order to find out whether the words or phrases used by the parties in the plaint amounts to admission or not one has to find out whether the assertion is clear and unambiguous or it is sometimes a loose expression due to the reason of draftman casualness or otherwise. In **Mohd. Shah Vs. Fasihuddin Ansari (supra)** while observing that the assertions of one Gulab were nothing but loose expression, the Court observed:

"Inadvertent expressions of dubious and ambiguous meaning cannot be twisted into admissions against the maker's interest when the surrounding circumstances

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indicate that he had been consistently asserting the contrary over a series of years. Something stronger than that would be required. Had the assertions been clear and unambiguous the matter would have been different but "Imambara mosque compound" is anything but clear."(Para 33)

2986. It is true that P. Carnegy in his book **"Historical Sketch" (supra)** has mentioned in detail about Ramkot and thereafter he has dealt with the disputed place on pages 20 and 21. Under the heading "Hindu Muslim Differences", he has said:

"The Janmasthan is within a few hundred paces of the Hanuman Garhi. In 1855, when a great rupture took place between the Hindus and Muhammadans, the former occupied the Hanuman Garhi in force, ***while the Musalmans took possession of the Janmasthan****.....**T**he Hindus then followed up this success, and at the third attempt took the Janmasthan, at the gate of which 75 Mahomedans are buried in the "Martyrs' grave" (Ganj-Shahid.)* ***..... It is said that up to that time the Hindus and Mahomedans alike used to worship in the mosque-temple****. Since British rule a railing has been put up to prevent disputes,* ***within which, in the mosque, the Mahomedans pray; while outside the fence the Hindus have raised a platform on which they make their offerings****.*

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2987. This report was published in 1870. If we consider the above observations of P. Carnegy in the light of the documents placed on record of the corresponding period, i.e., 1858 to 1885 as discussed above, we find that till 1885 the property in dispute remained in possession of Hindus in which

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they continued to visit for worship. In the alleged riot of 1855 temporarily Muslims took possession but thereafter the Hindus regained it. Then the British authorities tried to resolve dispute by creating a dividing wall sometimes in 1856-57 but it is evident from the report of 28th November, 1858 and complaint dated 30th November, 1858 (Exhibit 20, Suit-1) (Register 5, page 65), that despite grilled dividing wall erected by the British authorities restraining Hindus from entering the inner courtyard, worship by Hindus in the inner courtyard continued against which complaints were made frequently. Sometimes when they made some new structure for worship, orders were passed for removal thereof but whether all such orders were executed, is not known. Amongst all these things, one thing which we find missing is mention of Namaz or possession of by Muslims of the disputed building and/or the property in dispute.

2988. Even if we assume some truth in what has been said by P. Carnegy, it does not mean that the property in dispute (inner courtyard) was in possession of any particular community or individual. It shows on the contrary that both Hindus and muslims, freely, frequently and openly were visiting the place in dispute for worship and that being so this itself belie the claim of muslim parties in this suit necessitating answer of the issue in question in negative, i.e., against the defendants.

2989. The issue in question needs to be answered whether the muslims being in possession of the property in suit from 1528 AD continuously, openly and to the knowledge of plaintiff and Hindus in general and if so its effect. Therefore, in order to get answer of this issue in favour of the defendants at whose pleading it has been framed, unless it is shown by cogent material that the muslims came into possession of the property

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in suit in 1528 AD, they cannot succeed. As we have already held while discussing issues relating to period of construction, this itself could not have been proved that the building in dispute was constructed in 1528 AD, and therefore the question of possession of property in suit in 1528 AD would not arise. No material to show possession of muslims from 1528 AD atleast till 1855 is on record. When the first aspect itself is not proved, the further occasion to suggest that such imaginary possession was continuous, open, to the knowledge of the plaintiff does not arise. Moreover the plaintiff could not have the knowledge of the possession of muslims from 1528 AD since he claimed to be a mere worshipper at the property in dispute and on this aspect also the defendants muslim parties have failed to discharge their burden. The knowledge and opinion need be qua real owner. No such owner is pleaded. It is suggested that since a lot of complaints etc. were made by Rajjab Ali and Mohammad Asghar since November 1858 and onwards, and they were also sanctioned grant by the British Government for maintenance of the mosque in respect whereto no Hindu party raised any objection, hence by the conduct of Hindus, a presumption can be drawn that the muslims were in possession of the property since very beginning.

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2990. The conduct of the parties, though is a relevant fact, but in a title suit cannot succeed simply by referring to one or the other party, but one has to prove his own case. In **M/s Kamakshi Builders (supra)** the Court said:

> *"24. . . . . Conduct may be a relevant fact, so as to apply the procedural law like estoppel, waiver or acquiescence, but thereby no title can be conferred.*
>
> *25. It is now well-settled that time creates title.*

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26. Acquisition of a title is an inference of law arising out of certain set of facts. If in law, a person does not acquire title, the same cannot be vested only by reason of acquiescence or estoppel on the part of other.

28. . . . by reason of presumption alone, the burden is not discharged, a title is not created.

29. A claim of title by prescription by Respondent No. 1 again is not tenable. ***It based its claim on a title.*** *It had, therefore, prima facie,* ***no animus possidendi****."*

2991. Neither the conduct of the plaintiff or other Hindu parties can help the defendants nor in the absence of any evidence to show entry of muslims in property in suit from 1528 AD, we find an occasion to decide issue in question in affirmance. Though not specifically worded but the ingredients mentioned in issue 7 (Suit-1) reflects to the claim of adverse possession taken by the defendants muslim parties (Suit-1). We have no hesitation in holding that such a claim has not been proved at all.

2992. In order to set up a claim based on adverse possession, it is incumbent upon the person who has set up this plea to prove that:

(1) So and so is the owner of the property.

(2) The defendant is possessing the property from a particular date.

(3) The possession is to the knowledge of the owner, hostile, continuous, exclusive, uninterrupted and peaceful with an intention of possession i.e. *animus possidendi.*

(4) The possession has continued for twelve years and more and, therefore, the title of owner stands extinguished creating a title by prescription in such defendant.

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2993. Though there are some documents showing the account statements of the Mosque in dispute but the fact remains that the defendants have completely failed to discharge burden of proof even prima facie of the facts as pleaded by them so as to succeed on this issue. **Issue No. 7 (Suit-1) is, accordingly, decided in negative i.e. against the defendant-Muslim parties.**

2994. Now coming to **Issue No. 3 (Suit-3)**, it has to be kept in mind that this suit is also confined to the premises within the inner courtyard and not to the entire premises, i.e., the outer and inner courtyard including the building. This is what stated by the counsel for Nirmohi Akhara in his statement made on 17.5.1963 under Order X Rule 1 CPC.

2995. Sri Sarabjeet Lal, Advocate, counsel for the plaintiff Suit-3) on 17th May, 1963 got his statement recorded and besides other said:

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> "*The present suit is confined to property shown by letters E F G H I J K L although the entire area shown by letters E F G H P N M L E belongs to the plaintiff."*

2996. He also stated that the plaintiffs are the owner of the property in dispute and further said:

> *"This property* ***is not dedicated to the idol although the temple is made on the land which is the birth place of Lord Ram.*** *It is owned by the plaintiff and the temple was made by the plaintiff."*

2997. There is no averment in the entire plaint that any of the defendant is the owner of the property in dispute, that the plaintiffs are having possession of the said property in the knowledge of the true owner, with an intention to possess it adversely, i.e., hostile possession, continuous and peaceful.

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What is said in para 5, if the muslims attempted to prove that they have ever entered it, it would be wrong, they have not been allowed to enter it atleast ever since the year 1934. The basic pleadings to claim adverse possession and necessary ingredients are ex facie absent. Mere long possession does not constitute adverse possession [See **S.M. Karim Vs. Mst. Bibi Sakina (supra)].**

2998. As already discussed above in detail in order to set up and succeed on a plea of adverse possession, one has to show as to who is the true owner, the date from which he is possessing the property, the knowledge of the true owner of such possession as also that the possession is hostile and the possessor has intention to hold possession denying the title of the true owner or in defiance of the right of the true owner. The possession is continuous, uninterrupted, peaceful and has continued for more than 12 years. The entire plaint is conspicuously missing of all the above kind of pleadings, in the absence whereof, the plea of adverse possession cannot succeed.

2999. Moreover the statement of the plaintiff's counsel is that the property is owned by the plaintiff; the temple is made by the plaintiffs, hence question of holding property in dispute in a hostile possession, against true owner, does not arise. It also show that the plaintiffs (Suit-3) had no animus possidendi. That is completely absent. In the absence of pleadings, though no evidence is admissible, but we may add at this stage that no document whatsoever to support the necessary ingredients of adverse possession even otherwise had been placed on record by the plaintiffs (Suit-3). Most of the evidence is in respect to the structures which are in the outer courtyard and the right and possession of the plaintiffs on the said property in the last

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several decades. But so far as the inner courtyard is concerned, only oral evidence has been produced and the attempt also had been to show that they use to visit the premises in the inner courtyard to offer worship of Ram Lala's idol thereat and that Pujaris of Nirmohi Akhara used to perform Sewa thereat. We have discussed these witnesses and it has been demonstrated that virtually all of them on this aspect lack creditworthiness, hence unreliable.

3000. A lot of documentary evidences have also been filed by the plaintiff (Suit-3) in support of his claim for possession, but we find that the same do not help the plaintiff (Suit-3) for throwing light in respect to the premises within inner courtyard. Most of the documents are of the period subsequent to the date of attachment and they are concerned with the premises in outer courtyard. These are:

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(A) Exhibit M1 (Suit-4) (Register Vol. 17, page 7) is a copy of the application dated 11.06.1956 of Abhiram Das addressed to Additional District Magistrate, Faizabad in Case No. 58/73 seeking his permission for change of thatch.

(B) Exhibit M2 (Suit-4) (Register Vol. 17, page 9) is a copy of the order dated 26.06.1956 passed by the Additional District Magistrate, Faizabad to the following effect:

> *"S.O. Ayodhya*
>
> *There is no objection if the thatch is repaired. Please inform the applicant."*

(C) Exhibit M3 (Suit-4) (Register Vol. 17, page 11) is a copy of the application dated 21.12.1962 by Abhiram Das addressed to the City Magistrate, Faizabad seeking

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permission of celebrating anniversary from 21s to 29th December, 1962 in the disputed site.

(D) Exhibit M4 (Suit-4) (Register Vol. 17, page 13) is a copy of the report of Sri Priya Dutt Ram, Receiver of the disputed premises addressed to the City Magistrate, Faizabad and it reads as under:

> *"I am connected with only the premises under dispute within the railings and the walls on the so-called Anniversary Day, only two vedic Pundits enter it, and perform HAWAN on a temporary clay after, and the same should be allowed this year as well.*
>
> *As far as function outside the premises, they have no concern with me.*
>
> *Of course, it is in my knowledge that on so-called Anniversary Day, some functions were organized by Sri Abhiram Dass and also by the Janambhumi Sewa Samity for the last five years, I have been out of Faizabad."*

(E) Exhibit M5 (Suit-4) (Register Vol. 17, page 15) is a copy of the order dated 21.12.1962 passed by the District Magistrate, Faizabad allowing the applicant Abhiram Das to hold the Ramayan Path and religious ceremonies in the ground of Janambhumi temple from 21st to 29th December, 1962.

(F) Exhibit M6 (Suit-4) (Register Vol. 17, page 17) is a copy of the order dated 26.12.1962 of Sri S.N. Sharma, the then City Magistrate, Faizabad on an application filed by Sri Abhiram Das directing S.O. Ayodhya to take steps for maintaining law and order in the observance of religious function by Sri Abhiram Das in the ground of

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Janambhumi temple and one Baba Baldev Das at Sumitra Bhawan and to prevent any disturbance from Baba Baldev Das at the Janambhumi temple site.

(G) Exhibit M7 (Suit-4) (Register Vol. 17, page 29) is a copy of Khatauni 1374 Fasli which has been filed to show that some land was gifted by worshipper in the name of Janambhumi Ayodhya in respect whereto the entries were made in khatauni in December, 1967. The aforesaid land situate at Tahsil Navabganj, District Kunda.

(H) Exhibit 2 (Suit-3) (Register Vol. 9, page 49) is a copy of the order dated 9.2.1961 of City Magistrate, Faizabad permitting replacement of the covers or sirki covers by the sheets on the applicant's own land uncovered by attachment provided it is in accordance with the laws of Municipality. Sri R.L. Verma submitted that this shows continuous possession of plaintiff (Suit-3) on the disputed land but we do not find anything to fortify the above submission in the above document and in our view it is not relevant for the purpose of suit in question.

(I) Exhibit 3 (Suit-3) (Register Vol. 9, page 51) is a copy of some certificate issued by Municipal Board, Faizabad. The document is torn and the handwriting part therein is illegible. In our view, such a document cannot be relied or accepted for any purpose. In any case, one of the remark contained therein is as under:

> *"(3) There will arise no right of ownership over the land from this certificate on which permission is granted to build the house or building but the applicant himself will be responsible of all sort of dispute whatever may arise in respect of title."*

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This remark is self speaking and, therefore, lends no credence to the plaintiffs (Suit-3).

(J) Exhibit 4 (Suit-3) (Register Vol. 9, page 53-57) contains two copies of the Architect's map and a certificate no. 397 dated 6th September 1963 of Executive Officer, Municipal Board, Faizabad for the period 25.3.1964 to 24.3.1965 permitting some construction pertaining to tin shed. It is sought to argue that since Ram Chabutara was in the possession of the plaintiff (Suit-3), they were also permitted to make construction thereon by Municipal Board, Ayodhya. In any case, it pertains to outer courtyard.

(K) Exhibit 5 (Suit-3) (Register Vol. 9, page 59) is a copy of the letter dated 6.2.1961 submitted by Vedanti Rajaram Chandracharya to the City Magistrate, Faizabad complaining that they have been permitted by Nagar Palika, Faizabad to place a tin shed on the outer side of Janambhumi but the Police is preventing it and says that they have no authority. Therefore, the Police may be directed not to create any obstruction in the said function.

(L) Exhibit 6 (Suit-3) (Register Vol. 9, page 61-64) is a copy of the application dated 27.9.1950/29.12.1950 against the order passed by the City Magistrate under Section 145 Cr.P.C.

(M) Exhibit 7 (Suit-3) (Register Vol. 9, page 65-67) is a copy of the order dated 30.7.1953 passed by Sri Prem Shankar, City Magistrate, Faizabad for consigning record of 145 Cr.P.C. proceeding since the civil suit was already pending and, therefore, he directed that subject to further orders in those matter or when the temporary injunction is

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vacated till then the proceedings are being consigned to record.

3001. Some documents of an earlier period have also been filed but they also show an arrangement made by the plaintiff (Suit-3) outside the inner courtyard rather outside the premises in dispute and, therefore, do not help the plaintiff (Suit-3) for deciding the issue in question in their favour. These are:

(A) Exhibit 8 (Suit-3) (Register Vol. 9, page 69) is a copy of the agreement permitting Jhingoo son of Gaya for providing drinking water to the pilgrimages visiting Ramjanambhumi site at Ayodhya. It is said to be written on 11.6.1900.

(B) Exhibit 9 (Suit-3) (Register Vol. 9, page 73-75) is a copy of agreement of Theka Shop of Janambhumi Ramkot Ayodhya by Gopal son of Babu in favour of Narottamdas on 13.10.1942.

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(C) Exhibit 10 (Suit-3) (Register Vol. 9, page 77-79) is a copy of the agreement dated 29.10.1945 regarding Theka Shop in favour of Narottamdas.

(D) Exhibit 12 (Suit-3) (Register Vol. 9, page 93 to 99) is a copy of the judgment dated 22.10.1923 of Additional Subordinate Judge, Faizabad in Appeal No. 10 of 1923 Mahant Narottamdas Vs. Ramswaroop Das. It appears that a suit claiming possession over a plot no. 163 measuring 2 bigha 2 biswa was raised but the said suit was dismissed by the Trial Court vide judgment dated 22.10.1923. It is unrelated with disputed site. The order of the Court said as under:

"Judgment

The applt as Mahant & manager of the temple

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Janam Asthan alias Janam Bhumi, Akhara Nirmohi situat in M. Kot Ramchandar, Ajudhya sued the respdt in the Court of the Munsif of Fyzabad for the recovery of possession of 3 bis. 17 bisw. land out of a plot no. 163 measuring 2 big 3 bis situate in M. Kot Ramchandar, Ajudhya Parg. Haweli Oudh on the allegations that he was the owner for the said plot as being in possession of the same since a long time. That in Dec. 1921 the deft wrongfully dispossessed the plff appt out of the aforesaid land in building A compound with a chabutra (platform) thereon. Hence the suit.

The respdt admitted the building of a compound & chabutra on the plot in question but denied the claim. He pleaded that the applt had no right in the land in suit nor had he ever been in possession of the same. That the land in suit ***appertained to the temple of Mast Ram as its sahan.*** *That it belonged to Mast Ram, who was in possession of the same. That Bhagwan Das & Gopal Das chelas of Mahant Mast Ram gave the land in suit to Bhagwan Das Udasi chela of Mahanta Madho Ramji by a registered deed dated 25th Oct.. 1892. That Bhagwan Das Udasi gave the land in suit to Narayan Das by a registered deed dated 11th January, 1896. That (Narayan Das) on the death of Narayan Das, the deft as his chela was in possession of the land in suit. That the deft & his predecessors in interest had been in adverse proprietary possession of the land in suit for the last 30 years. That the claim*

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was barred by time & plff had not right to sue. The plff applt in his replication said that the land in suit marked red in the plan drawn by the amin appointed for the purpose was all along parti land till the deft made the chabutra in dispute. That the land in suit belonged to the nazul and ***the plff or mahant of the Janam Ashthan & his predecessors had all along been in possession and in leased his title on possession.*** *That no lease from the nazul had been taken. The deft denied the land in suit to have ever belonged to the nazul department. The learned Munsif dismissed the claim. The plff has preferred this appeal on various grounds taken in the memorandum of appeal. Now the main point for determination in this appeal is whether the plff has been in possession of the land in suit for a long time and as such is he entitled to recover possession from the deft.*

It is ***admitted by the plff that the land in suit belongs to the nazul & that no lease has been taken from the nazul. The deft is admittedly now in possession of the land in suit****. Under these circumstances the plff cannot sue the deft for possession,* ***because possession is, in general, a good title against all but the true owner, i.e. the nazul Department****.*

Again it is admitted by the plff in his replication that the land in suit was all along parti land till the deft made the chabutra in dispute. Now the land in suit bring admittedly parti land, the plff

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cannot acquire any right in it by placing a takht on it as he swear. The deft, therefore, who is in possession, may not have an indefeasible right as against the nazul, has yet a better right than the plff & therefore he may set up the right of the nazul with land in suit in order to disprove that of the plff.

Besides the plff evidence goes to show that his lessee used to keep their shops just in front of the Janam Ashthan gate (vide evidence of PW1). Assuming that the plff was in possession of any portion of the plot no. 163 by leasing the same to the sellers of flowers & batashas he cannot be in possession of the land in suit thereby, because the front of the Janam Ashthan is a long way off the land in suit as is shown by the amin's plan inasmuch as it has been held that a wrong-two rights by adverse possession must be confined to the land of which he is in actual possession. The plff has not been proved to be in actual possession of the land in suit. It may be in actual possession of a portion of the plot no. 163 on portion of which is the land in suit, just in front of the Janam Ashthan gate, ***but the land in suit far off the front of the said gate. Hence his rights be confined to the portion of the plot no. 163 just in front of the Janam Ashthan gate & not to the land in suit.*** *Under these circumstances I am of opinion that this appeal must fail. I therefore dismissing the appeal with costs confirm the decree of the Court below. Order 41 rule 30 C.P.C.*

22/10/23 Mahmud Hussain"

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3002. There are some other documents which, in our view, cannot be considered as an evidence in favour of the plaintiff (Suit-3) i.e. **Exhibit 1 (Suit-3) (Register Vol. 9, page 15-47)**, being a copy of the agreement said to be executed by Panches of Nirmohi Akhara on 19.3.1949 duly registered in Sub-Registrar's office, Faizabad. This lays down about the constitution, functioning etc. of Nirmohi Akhara.

3003. Whatever is stated in the above document is something to which the defendants are not party at all and, therefore, on the question of title or possession, the above document, in our view, is not relevant.

3004. Some documents have been filed to show that the land in dispute was recorded in revenue records as Nazul land and the name of Mahant of plaintiff (Suit-3), i.e. Mahant Raghubar Das was directed to be entered showing that he was in possession of the entire property in dispute, which are:

(A) Exhibit 11 (Suit-3) (Register Vol. 9, page 89) is a copy of the Nazul department's certificate dated 30.10.22 stating that the land belong to Nazul and the plaintiff as Mahant of Janamsthan and his predecessors have all along been in possession and he has title or possession.

(B) Exhibit 52 (Suit-4) (Register Vol. 12, page 347 to 352) is a certified copy of the Khasra abadi of Mauza Ramkot, Ayodhya 1931 AD issued by Nazul Office, Faizabad in February, 1990.

(C) Exhibit 49 (Suit-4) (Register Vol. 11, page 271 to 329) is the copy of the nakal khasra Abadi, Kot Ram Chandra, pergana Haveli Awadh, Tahasil and District Faizabad of 1931 A.D. of nazul register. At page 311, the Hindi transliteration of the aforesaid Exhibit, original

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whereof is in Urdu, the entry of plot 583 is as under :

''नाम महल (1) : मस्जिद अहदे शाही

नम्बर आराजी (2/1) : 583

रकबा जदीद (2/2) : 305/ 9 बि0 15 बिसवांसी 4 कछ0

नम्बर साबिक (3/1) : आबादी 444

रकबा साबिक (3/2) : 7 बि0 11 बिसवांसी 14 कछ0

नाम मालिक आला (4) : —

नाम मातहतदार अगर कोई हो (5) : —

नाम काबिज हाल (6) : मस्जिद वक्फ अहदे शाही

किस्म (7) : मसाजिद

रकबा (8) : 9 बि0 15 बिसवांसी 4 कछ0

अलिफ बअदाये लगान (2) बिला लगान (9) :

बजरिये मिसिल नम्बरी 427 नं0 6/ 47

रायगंज मुनफसला 26 फरवरी सन् 41 ई0

दाखिल खारिज बनाम महन्त रघुनाथ दास

महन्त जनम स्थान मुकर्रर किये गये

बजाये रामचरन दास

द0का0

14.6.41

कण्डहल (10) :

दस्त अंदाजी (11) :

मुरलस मय तारीख (12) :

रकबा (13) :

लगान (14) :

खेत नम्बरी (15) :

कैफियल (16) :— मस्जिद पोख्ता वक़्फ़ अहदे शाही अन्दर सहन मस्जिद एक चबूतरा (अपठनीय) जो जनमभूमि के नाम से मशहूर है दरख्तान गूलर एक इमली एक मूलसिरी एक, पीपल एक, बेल एक (अपठनीय) मस्जिद मौसूमा शाह बाबर शाह मरहूम''

(Note : Though the original document is horizontal, but for the purpose of convenience, it has been typed

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vertically.)

On page 331, Nazul khasra map's copy has also been filed, which is part of the Exhibit 49.

3005. It is no doubt true and also admitted by the parties that the land in dispute commencing from the first settlement of 1861 AD has been mentioned as Nazul and there is no change in its status. It is also evident from Exhibit-49 (Suit-4) that in plot no. 583 and the area mentioned therein, name of Mahant Raghubar Das was directed to be mutated in place of Ram Charan Das by order dated 6th February, 1941 but this by itself, in our view, would not be conclusive evidence to show that the entire property possessed by plaintiff (Suit-3), particularly when the details of property in respect whereto the mutation was observed is also mentioned in Clause 16 which refers to the construction in outer courtyard and even outside the premises in dispute.

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3006. There is an Auditor's report, i.e., **Exhibit 32 (Suit-4) (Register 11 Page 177)** for the period 1947-48, but that document, in our view does not help the plaintiff (Suit-3) for adjudication of the issues in question.

3007. A copy of the F.I.R. Dated 23rd December 1949 has been filed by the plaintiff which shows the placement of idols inside the inner courtyard and it goes against the plaintiff. **Exhibit 51 (Suit-4) (Register Vol. 12, page 337 to 338)** is a copy of the FIR No. 167 dated 23rd December 1949 under Sections 147, 295, 448 I.P.C. alleging the placement of idols under the central dome of the disputed building in the night of 22/23.12.1949. The FIR was registered on the information given by Pandit Ramdev Dubey, Sub-Inspector, In-charge Police Station, Ayodhya, District Faizabad.

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3008. Showing the system and functioning of Nirmohi Akhara, a document has been filed by the plaintiff (Suit-3) which, in our view, is not relevant at all, i.e. **Exhibit 80 (Suit-4) (Register Vol. 16, pages 59-64)** which is photocopy of the title page, introduction and pages no. 1 to 6 of "Srimaddev Murari Ji Ki Jeevani Tatha Sri Guru Parampara Prakash" 1994 Edn. by Sri Ram Tahal Das Ji. Page 5 of this work shows that in Samvat 1729 (1672AD) Sri Balanand Ji established Akharas.

3009. The defendants, on the contrary, have filed certain documents, which are also of subsequent period, i.e, post 1950 to show that plaintiff could not have been in possession of the inner courtyard as they could enter the same with the permission of Receiver only.

3010. **Exhibit A-12 (Suit-4) (Register Vol. 16, pages 120-123)** is a copy of the statement of Sri Abhiram Das dated 18.3.1978 recorded by District Judge, Faizabad and para 3 thereof reads as under:

> *'3.. जन्म भूमि मन्दिर में पूजा पुजारी करता था मन्त्र और बोलता था। मन्त्र बोलने वाले का नाम लक्ष्मण दत्त शासनी पुत्र अम्बिका पांडे है जो यहॉ अदालत में खड़े हैं। वहॉ शुरू में बाबू प्रिया दत्त राम की नियुक्ति में पुजारी था विष्टिाद्यत्र शैली के मतलब है कि हम भगवान की पूजा के समय भगवान, माया और जीव तीनों की भावना की जाती है और वैदिक मन्त्र बोलते हैं। और भगवान के स्नान से लेकर सोलह प्रकार की पूजा होती है यह पूजा एक आदमी द्वारा नहीं हो सकती। अगर पुजारी को मन्त्र मालूम है तो वक्त पड़ने पर वही पूजा कर सकता है।* ***मन्दिर के अन्दर प्रवेश करने के लिये परमीशन का अधिकार बाबू प्रिया दत्त राम को था।''***

3011. After attachment, the Receiver took charge and obviously thereafter none could have entered the attached portion without permission of Receiver or the Court.

3012. Some further documents filed by the defendants,

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which, in our view, not relevant, are:

(A) Exhibit A-14 (Suit-4) (Register Vol. 16, pages 143-146) is a certified copy of objection dated 16.7.1982 of Sri Dharam Das filed before Additional District Magistrate (Administration/Nazul Officer) Faizabad in mutation proceeding no. 101/133/26/866. It was mentioned therein that there is a public temple in the disputed premises where the existing temple was constructed about 450 years ago at the commencement of Mughal Empire and since then, it is a subject matter of dispute between Hindus and Muslims. Rest of the part is not relevant for our purposes.

(B) Exhibit A-15 (Suit-4) (Register Vol. 16, pages 150-153) is a copy of affidavit dated 16.7.1982 of Dharam Das before the Nazul Officer, Faizabad in mutation proceeding. It is almost a true copy of Exhibit A-14.

(C) Exhibit A-3 (Suit-4) (Register Vol. 16, pages 136-142) is a certified copy of FIR against Dharam Das under Section 395 I.P.C. in Case Crime No. 87 dated 17.2.1982. We, however, find no relevance of the said document with the issue in question.

3013. There are some documents, which contain some judgements etc. of criminal proceedings, which have been filed to show that in the matters related to the premises in dispute, some proceedings were initiated against Mahant of Nirmohi Akhara showing that Nirmohi Akhara was in possession of entire premises in dispute, i.e.:

(A) Exhibit C-2 (Register 24, Page 13-22) is a copy of the judgment dated 03.08.1957 passed by Sri R.K.Sercar, Ist Addl. Sessions Judge, Fyzabad in Criminal Appeal No.50 of 1951 (Bhashkar Dass Vs. State). This appeal was

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preferred against the order of Shri R.B.Saxena, sentencing the appellant Bhaskar Das to one month simple imprisonment and fine of Rs.50/-. The appeal was allowed and the conviction order was set aside.

(B) Exhibit C3 ((Suit-5) (Register 24 Page 23-28) is a copy of the order dated 5th September, 1966 passed by Sri B.S.Shukla, City Magistrate, Faizabad in Case No.533 of 1966 (State Vs. Prem Das & Others) under Section 107/117 Cr.P.C. The allegation pertains to the disturbance created by the accused persons at Ram Janam Bhumi on 25th March, 1966 on account of a dispute regarding Pujariship and possession of Ram Janam Bhumi Ayodhya.

(C) Exhibit C4 (Suit 5) (Register 24, Page 29-36) is a copy of the judgment dated 22.10.1923 of Additional Sessions Judge, Faizabad in Civil Appeal No.10 of 1923 (Mahant Narottam Das Vs. Ram Swaroop Das). The aforesaid appeal was filed against the judgment dated 12th December, 1922 of Sub Judge, Fyzabad dismissing the suit with costs. The appeal was also dismissed.

(D) Exhibit C7 (Register 24, Page 54-56) is a copy of the judgment dated 13th May, 1983 of K.K.Singh, IV Addl. Sessions Judge, Faizabad in Criminal Revision No.60 of 1982 (Dharam Das Vs. Sri Panch Rama Nandi Nirmohi Akhara through Ram Kewal Das & 2 others). The revision was filed against the City Magistrate, Faizabad order dated 6th March, 1982 under Section 145 Cr.P.C.

(E) Exhibit C8 (Suit-5) (Register 24, Page 57-71) is a copy of the Commissioner's report dated 13.10.1973 submitted by Sri Pareshwari Dutt Pandey, Advocate Commissioner in Original Suit No.9 of 1973 (Nirmohi

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Akhara Vs. Ram Lakhan Saran Das) in the Court of Civil Judge, Faizabad. The Commissioner has also submitted a map which included the disputed site also.

(F) Exhibit C9 (Suit 5) (Register 24, Page 73-77) is a copy of written statement dated 29th December, 1950 submitted by Baba Abhay Ram Das in the proceedings under Section 145 Cr.P.C. before the City Magistrate, Faizabad. In para 6 thereof Abhay Ram Das has said that outside the disputed premises there is some land and building which is property of Nirmohi Akahara which they are entitled to use being in possession. In para 8 it says that no muslim has entered the disputed premises since 1935 and no prayer has been offered by them.

(G) Exhibit C11 (Suit-5) (Register 24, Page 99-101) is a copy of the notice dated 22.12.1934 published by Sri J.P.Nikalsan, District Magistrate, Faizabad with respect to the fine imposed under Section 15A(2) of the Police Act and for its realization from the Hindu resident of Ayodhya.

3014. However, we do not find that the said judgements are admissible and relevant for the issue in question in view of the law laid down in **Seth Ramdayal Jat Vs. Laxmi Prasad AIR 2009 SC 2463**, which we have already discussed above.

3015. Another set of documents, i.e. Exhibit C1, C5, C6, C10, brief details whereof is as under, are also not much relevant to the point in issue:

(A) Exhibit C1 (Suit-5) (Register 24 Page 11) is a photocopy of the charge certificate dated 5th January 1950 by Priya Dutt Ram Receiver.

(B) Exhibit C5 (Suit 5) (Register 24, Page 37-45) is a

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copy of the plaint in suit no.426 of 1989 (Mahant Ram Gopal Das & others Vs. Ashok Singhal & Others) filed in Court of Civil Judge Fyzabad. The above suit was decided on 04.12.1991.

(C) Exhibit C6 (Suit 5) (Register 24, Page 47-51) is a copy of a Commissioner's report dated 08.11.1989 in O.S. No.426 of 1989 (Mahant Gopaldas & Others Vs. Vishwa Hindu Parishad & Others) submitted by Sri Uma Kant Malviya, Court Amin, Civil Court, Faizabad.

(D) Exhibit C10 (Suit-5) (Register 24, Page 81-92) claims to be a copy of the statement of expenditure from December, 1985 to April, 1987 incurred by Sri Ram Janmabhumi Nyas and also contains some details of the said trust.

3016. These documents also, in our view, do not lend any help to the plaintiff (Suit-3). Even otherwise fail to serve any purpose for adjudication of the issue in question with respect to possession either way.

3017. On behalf of defendants, it was pointed out that other Hindu parties have also supported their claim that the idol under the central dome inside the inner courtyard was placed in the night of 22nd/23rd December, 1949, meaning thereby till then there could not have been any occasion of possession for Nirmohi Akhara, hence, the question of possession or loss of possession of the premises within the inner courtyard for the last 12 years does not arise at all. In this regard, the argument of Sri P.N. Mishra in respect to Register 3 was pointed out, which was as under:

(A) Record of proceedings of Suit-2 (contained in Register 3) which has already been dismissed as withdrawn was

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referred by Sri Mishra. He sought to rely on the written statement filed therein on behalf of the defendant No.1 to 5 i.e. Zahoor Ahmad, Haji Feku, Haji Mohd. Faiq, Mohd. Shami and Mohd. Achhan Miya dated 18th January, 1951 (Page 41-46 Register Vol. 3) to show that it has consistently been the case of the Muslim parties that Namaz was offered in the disputed building till 16th December, 1949 and he strongly relied on para 22 thereof which read as under:

> *''दफा 22. यह कि मुद्दाअलेहुम मुजीब को इल्म नहीं है कि जायदाद मुतदाविया यानी मस्जिद बाबरी के अन्दर कोई मूर्ति है. 16 दिसम्बर सन् 1949 ई0 तक उसमें नमाज हुई. उस वक्त तक उस मे कोई मूर्ति न थी लेकिन अगर कोई मूर्ति मस्जिद के अन्दर किसी शख्स ने चोरी व बदनियती से बाद तारीख मजकूर रख दिया है. तो उससे मस्जिद की सरीही बेहुरमती व नापाकी मुतसव्विर है. और फेल मजकूर कानूनन मुजरिमाना है. और अगर मुद्दई या कोई दूसरा शख्स मस्जिद मजकूर में मूर्ति पूजने या दर्शन करने के ग़रज से मस्जिद के अन्दर दाखिल होना चाहता है तो वह जुर्म का मुर्तकिब है. चुनाचे ऐसी हालत मे अदालत दीवानी दादरसी मतलूबा देने से कासिर है. बहर हाल उससे मुद्दई या किसी गैर मुस्लिम को मस्जिद मजकूर मे कोई हक नहीं पैदा हो सकता।''*
>
> *"Section 22. The respondent Mujib has no knowledge of any idol in this controversial building that is Babri Masjid. Upto December 16, 1949 Namaj was offered in it upto that time there was no Murti. But after that if any person with wrong intentions, has placed one, it would be considered as desecration and would be treated as a criminal act and if the petitioner or any other person enters the Masjid with the intention of doing Puja of the idol or for Darshan, it would be considered as a criminal act. Therefore in such*

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circumstances the civil court cannot provide any relief. However as a result of this the petitioner or any non Muslims would have no right in the Masjid." (E.T.C.)

(B) He (Sri Mishra) submitted that for the first time the stand was changed when suit 4 was filed and that changed stand continued thereafter, as is also evident from the written statement filed on 11.5.1989 (Page 125-141 Register 3) on behalf of U.P.Sunni Central Wakf Board in Suit 2 wherein in para 22 he tried to explain his earlier stand to bring in Suit 4 within the period of limitation. Para 22 reads as under:

"That the muslims have remained regularly offering prayers in the mosque in question upto 22.12.1949 and Friday prayers were also offered upto 16.12.1949 and as such the idols kept in the mosque in a stealthy and mischievous manner in the night of 22nd/23rd December, 1949 will not confer any right or title upon the plaintiff or upon anyone else to perform Pooja in the said mosque."

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3018. Referring to the above submissions, it is said that even if it is found that Namaz was last offered in the inner courtyard on 16th December, 1949, it rule out any possibility of claim of possession of the plaintiff (suit-3). Learned counsel for the parties submitted that the record of Suit-2 has not been detached since the evidence was filed collectively after clubbing all the suits.

3019. **Register 4** contains Exhibit- 1 to 15 (Suit-2). The said documents have been retained in view of the order passed by this Court while dismissing Suit 2 as withdrawn since all the

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suits were proceeding collectively and the evidence were allowed to be adduced and relied on interchangeably. It contains exhibits 1 to 15 filed by plaintiffs (suit 2). However, none of the party has placed reliance on any of the said documents during the course of the argument, therefore, we refrain from referring any of the above document of Register 4.

3020. **Register 5** contains 34 exhibits filed by plaintiffs (Suit 1). Exhibits 1 to 14 are copies of the affidavits/ statements filed by certain Muslims before the Magistrate in proceedings under Section 145 Cr.P.C. wherein they have admitted that since 1935 Muslims have not offered any Namaz in the disputed building and it is continuously in possession of the Hindus and also they have no objection in case the disputed building is handed over to Hindus. The aforesaid documents to the extent to prove the fact that the same were filed before the Magistrate and constitute part of the record of 145 Cr.P.C. proceeding before the City Magistrate is not disputed but to believe the contents thereof, in our view, it was necessary to produce the authors of the documents and to give an opportunity of cross-examination to the other parties against whose interest the documents contain certain averments. None of the author of the said documents have produced and they are also not party to the proceedings individually. We have no benefit of testifying the correctness of the contents of the said documents. In the absence of any one available to prove the contents of the said documents, in our view, the same cannot be relied and therefore, nothing turn out from the aforesaid documents either in favour or against any of the parties.

3021. The question as to whether the idols were kept in the disputed structure under the central dome on 22nd/23rd

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December, 1949 or were already there, has been considered and decided above, and, therefore, in view of those findings, it cannot be said that the plaintiff (Suit-3) possessed the premises in dispute in the capacity as Shebait or manager or owner twelve years prior to the date of accrual of cause of action.

3022. **S**ome of the Hindu parties including plaintiffs (Suit-5) have taken a categorical stand that the idols were placed inside the building under central dome in the inner courtyard in the night of 22/23 December, 1949. OPW 1, witness produced by the plaintiffs (Suit-5) though has made statement to much extent in favour of the plaintiff (Suit-3) in respect to various other aspects, but so far as the inner courtyard is concerned, about the idols, he has also joined stand with the plaintiffs (Suit-5). This issue we have already decided and, therefore, need not to discuss further hereat. But what at this stage we say is that issue 3 (Suit-3) was the responsibility of the plaintiffs (Suit-3) to prove, which they have miserably failed.

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3023. Whatever the evidence has been produced by the plaintiffs (Suit-3), none has said anything about the adverse possession of the plaintiff and that too in regard to premises in inner courtyard. Twenty witnesses have been produced but even a single one has not uttered a word about adverse possession of plaintiffs on the suit property. Adverse possession is a question of fact. It has to be specifically pleaded and proved. In the absence of proper pleading, evidence, oral or documentary, the claim of title based on adverse possession neither can be entertained nor can be accepted.

3024. Besides, when the plaintiffs have stated that they are the owner of the property in dispute and the disputed structure which according to the plaintiffs (Suit-3) was a temple, owned

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by them, the question of entertaining the plea of adverse possession does not arise at all. In any case, the assertion of the plaintiff that the defendants have never entered the premises in dispute since 1934 pre supposes that prior to 1934 their entry in the disputed premises is admitted. With regard to the period subsequent to 1934, we find that the evidence placed by the plaintiff (Suit-3) did not prove that the defendant-Muslim parties could never enter the premises in dispute till its attachment by the Magistrate under Section 145 Cr.P.C. This aspect we have already considered in detail while discussing Issue No. 12 (Suit-4) and Issue No. 3 (a) (Suit-5) and have recorded a finding that in all probabilities Namaz in the building in dispute i.e. inner courtyard was offered on 16th December, 1949. In view of the above, we have no hesitation in deciding **Issue No. 3 (Suit-3) in negative i.e. against the plaintiff.**

3025. **Issue No. 8 (Suit-3)** is virtually a reversal of the previous one. It is based on the plea of the defendant muslim parties that the property in dispute is in their possession since its very inception and, therefore, if the plaintiffs have any right whatsoever, it has extinguished due to expiry of more than 400 years since the date when the Babari mosque was constructed i.e. 1528 AD.

3026. At the outset we would like to mention that question of extinction of right of plaintiff would arise only if they have such right. On the one hand the plaintiffs have miserably failed to prove any title or ownership in respect to the property in dispute and secondly they themselves have pleaded acquisition of title by adverse possession on account whereof issue no. 3 (Suit-3) has been framed but having failed therein, in our view, the question of conferring a right upon the defendants, as a

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result of extinction of such illusory right of the plaintiff, would not arise. This issue in effect is in reference to Section 27 of LA 1908 which is not attracted.

3027. Besides others, two documents are heavily relied by the defendant-Muslim parties on this issue i.e. the judgments in Suit-1885 as well as dated 30.3.1946 of Civil Judge, Faizabad in Regular Suit No. 29 of 1945, Shia Central Board of Wakf Vs. Sunni Central Board of Wakf (Exhibit A-42, Suit-1) (Register 8, Pages 431-432). It is contended that Mahant Raghubar Das in Suit-1885 had not disputed that on the west side of Chabutara, there was a Mosque and the District Judge, Faizabad on his spot inspection found that the said mosque was constructed more than 300 years ago by Babar, the said observation is nothing but his finding which had not been disturbed in the Second Appeal by the Judicial Commissioner and, hence, the claim of the defendant-Muslims parties on the said Mosque since 1528 is duly proved. The plaintiffs cannot wriggle of the said judgment and findings recorded therein, to stress upon their claim otherwise. Referring to the judgment dated 30.3.1946 it is contended that there also the Civil Judge has recorded a finding that the Mosque was constructed by Babar and not by Mir Baki in 1528 and that being a finding recorded in a judgment, which is judgment in rem, the issue stands closed for all purposes. The defendants' claim on the Mosque since 1528, therefore, is duly proved.

3028. The effect of the judgment in Suit-1885 we have already discussed in detail while considering the issues relating to res judicata, estoppel etc. Without going in details and repeating all the things again, suffice is to mention that Mahant Raghubar Das sought permission to make a temple on Ram

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Chabutara, which existed in the outer courtyard measuring 21"X17" and for the said permission filed the aforesaid Suit. There was no dispute about the nature of any structure in the vicinity and other connected issues as to who constructed it, when it was constructed etc. Whatever has been observed by the District Judge in his judgment, cannot be said to be a finding on an issue since there was no such issue at all and, hence, the same would not help the defendant-Muslim parties in the present suits.

3029. Various authorities on the question of res judicata we have already referred to above, but since for the purpose of the issue in question again those very documents have been relied, we propose to give more authorities on the subject which make the things further clear as to how such observation cannot be treated to be an adjudication of an issue creating a right in the party.

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3030. In **Prosunno Kumari Debya Vs. Golab Chand (supra)**, the Judicial Committee said that to attract the principle of res judicata one has to see that necessary and proper issues were raised, tried and decided in suit and the decree is untainted by fraud or collusion.

3031. In **Profulla Chandra Vs. Prabartak Trust AIR 1954 Cal. 8**, in para 15, 16, 18, 19 and 20, the Court observed:

> *"Res judicata or as it is also sometimes called Res Adjudicata literally means "the thing adjudged", and the doctrine known by that name rests on the principle that a matter, once adjudged cannot be reopend. In its practical application the doctrine or the rule of res judicata bars the trial of an issue, previously decided. In essence, therefore, the rule postulates a previous decision or adjudication & a*

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recurrence of the matter of issue, there or then adjudiced or decided. It is the decision or adjudication which operates as res judicata ..... In the application, therefore, of the rule as res judicata, what matters is the decision and not the reasoning of the Court and one requirement of the rule is the identity of the issue or eadem questio. ..... As pointed out by Bankes L. J. in the case of --'Jones v. Lewis (1919) 1 KB 328 (A), it is the "decision and not the reason of the decision"- which operates as res judicata. This is clearly supported by the pronouncement of the Judicial Committee in the case of -'Broken Hill Proprietary Co. Ltd. v. Municipal Council of Broken Hill, (1926) AC 94 (B) .....the plea of res judicata succeeded because in each of them the 'res' in the later proceeding had already been adjudged in the earlier and the issue in either was eadem questio. .... what mattered was the decision and not the reasoning of the Court on the former occasion. .... The principle enunciated by Bankes L. J. as set out above, and affirmed or recognised in the other cases cited, as shown in the preceding paragraph, was accepted by the Full Bench of this Court in -- 'Santosh Kumar v. Nripendra Kumar', AIR 1949 Cal 430 (FB) (F) and also by our earlier Full Bench in the well-known and oft-quoted case of - 'Tarini Charan v. Kedar Nath AIR 1928 Cal 777 (FB) (G) where Rankin, C. J. observed at pages 782 of the Report that

> *"what is conclusive between the parties is the decision of the Court and that reasoning of the Court is not necessarily the same thing as its decision. The object of the doctrine of res judicata is not to fasten upon parties special principles of law as applicable*

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to them inter se, but to ascertain their rights and the facts upon which those rights directly and substantially depend, and to prevent this ascertainment from becoming nugatory by precluding the parties from reopening or recontesting that which has been finally decided.

The first part of this observation clearly restates the above principle and in the lines that follow, read in the light of the later Full Bench case, above cited, there appears to be nothing which detracts from the correctness or efficacy of the said principle or whittles down its scope. That this is so becomes abundantly clear when we turn to the submission which was accepted by the Full Bench in this latter case of AIR 1949 Cal 430 (FB) (F)'. That submission appears at page 431 of the Report and is in these terms:

"What is res judicata is the point directly decided or the order passed & not the reason thereof."

The language shows a full and complete acceptance of the principle, quoted above, from (1919) 1 KB 328 (A) and the Full Bench must be taken to have put upon it the seal of its own authority. .... The position is thus well established that I what is res judicata is the decision and not the reason thereof."

3032. This decision very succinctly elaborate as to when the principle of res judicata would be attracted and, in our view, apply with full force in this case.

3033. Now coming to the judgment dated 30.3.1946, we propose to consider it in a bit detail though we are satisfied that even this judgment cannot be relied for the purpose for which defendant-Muslim parties have referred the same. It has been

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relied on by the defendants-Muslim parties to show that the building in dispute has already been held to be a Sunni mosque and that judgment of the Civil Judge, Faizabad has attained finality. Our attention was drawn to the following finding of the Civil Judge, namely, *"My conclusion therefore is that the mosque in suit was founded by Babar Shah and not by Abdul Baqi. I answer the issue accordingly."* Having gone through the above judgment, firstly we find that it was an *inter se* dispute between Shia Central Board of Waqf and Sunni Central Board of Waqf. In the present case the judgment is relevant only to show that such a suit was filed and decided by the concerned Court as also its result. The findings are recorded on various issues inter parties, i.e. those who were before the Civil Judge Faizabad in the above case are binding but the learned counsel for the defendants Muslim parties could not show as to how the same would bind the plaintiffs Suit-1 or other Hindu parties in rest of the suits since none was impleaded in the aforesaid suit. Besides a careful reading of the said judgment shows the following facts:

1. It was an admitted case by both the parties that the mosque in dispute known as Babri mosque was constructed during the reign of Babar four centuries ago.

2. The said mosque was included in the list of Sunni Waqfs prepared by Chief Commissioner of Waqfs under section of U.P. Act 13 of 1936 i.e. U.P. Muslim Waqf Act and notified on 26th February 1944. The claim of Shia Waqf Board was that the said mosque is a Shia Waqf together with Idgah attached to it at Jalpa Nala, Ajodhia and village Bahranpur Pargana Haveli and 20 Bighas additional land known as Sholapur grove in Mohal

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Bahoranpur Tahsil and District Faizabad.

3. Five issues were framed therein and for our purposes issues no. 1, 2 and 3 are relevant which are reproduced as under:

> *"1(a) Was the mosque in suit built by Abdul Baqi as alleged by the plff ? If so, was he a Shia as alleged ?*
>
> *or*
>
> *(b) Whether the mosque was constructed by Babar Shah as alleged by deft ?*
>
> *2. Is the suit within time ?*
>
> 3. Has the mosque in suit being used by the members of the Sunni sect as alleged by the deft for over 12 years ? If so, its effect ?"

4. In respect of issue no. 1 the Court has taken note of pedigree of Abdul Baqi which was pleaded by the defendant Sunni Waqf Board and says as under:

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S.A. Baqi
/
S. Hizabi Ali
/
Hussain Ali
/
Sukoowat Bibi=Rajab Ali
/
Ali Naqi — M. Afzal — M. Asghar
/
T.M. Razi
/
Kalab Husain — M. Zaki

5. In March 1945 when the suit was filed Kalab Husain came to be represent Mutwalli and a year ago, M. Zaki was Mutwalli.

6. Referring to Babur Digest part II, page 1 (2nd

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Edition), the Civil Judge has quoted an Arabian adage that *"All people follow the religion of their kings"*. He further noted:

> *"It is said that the saying was exemplified to the fullest extent in Persia where whole of the people have become Shias since the occasion of the Safee (Safavi) dynasty in AD 1499. The process of assimilation was less rapid in India, where though several of Nawabs or local Governors were Shias (Shias.....). This was eminently the case in Oude (Oudh), the Nawabs of which were predictory Viziers (Wazirs) of the empire."*

7. The mosque in suit was admittedly built during the time of Babar who ruled from 1526-1530 and it is clear from the passage quoted above that the Persians have become Shias before that period.

8. The Civil Judge besides oral evidence considered the following two documentary evidence:

(i) Documents pertaining to grant of cash Nankar; and

(ii) Documents relating to grant received from the Government.

9. A gazetteer making reference of disputed mosque at page 173 and 174 was considered by the Civil Judge and in regard to the disputed mosque the Civil Judge observed as under:

> *"It shows that according to local affirmations Babar came to Ajodhia in 1528*

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AD and halted there for a week during which he destroyed the Janamasthan temple and on its site built a mosque using largely the materials of the old structure. The author then goes on to remark that no record of the visit is to be found in Musalman historians but it must have occurred about the time of Babar's expedition to Bihar. ***The first Settlement Report also gives the same history of this mosque and adds that according to Leyden's Memoirs of Babar, the Emperor encamped about 5 or 6 miles from Ajodhia*** *and stayed for a week settling the surrounding country through it was remarkable that his doings at Ajodhia were wanting in his own memoirs (Baburnama)."*

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10. Serious arguments advanced raised against the authenticity and admissibility of the facts stated in the gazetteer aforesaid in respect whereof the Civil Judge held as under:

"The history of the mosque in the Gazetteer & the Settlement Report was also sought to be impugned on the ground that Babar's visit to Ajodhia was not mentioned in any historical work & the Settlement Officer was not required to make any such investigation. I am unable to accept these contentions also as the works are works of reference and admissible u/s 57 of the Evidence Act. Moreover, in dealing with the matters like the present when no direct evidence is available, such works based on

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investigations on the spot and local tradition assume great importance & unless disproved by superior evidence must be accepted as containing a correct history of the subjects mentioned therein."

11. The Civil Judge thereafter referred to two inscriptions which were also referred in gazetteer and discussed in the same as under:

"Lastly, there are the two inscriptions in the mosque which have been reproduced in my inspection notes. These are also referred to in the Gazetteer & ***according to the date in the inscription on the pulpit it was built in 923 hijri while according to the other it was in 935 H. corresponding with 1528 A.D.*** *These inscriptions were the sheet-anchor of the plff's case but I am of the opinion that they are inconclusive.*

The first inscription contains three couplets in Persian & when translated runs as follows;

"By the order (بفرمودہ) of Shah Babar, whose justice went up to the skies (i.e. was well known) Amir (Noble) Mir Baqi of lofty grandson built this resting place for angels in 923 hijri".

The second inscription is more elaborate and contains in the usual high-flown language an eulogy of Babar and describes Mir Baqi of Sophahian as his admirer & the builder of the mosque. This inscription no doubt supports the plffs' case, because it does not say that it was by the order of Babar Shah & it only refers to the reign of Babar but 1st couplet in the 1st inscription near the pulpit clearly supports the

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theory that Babar had ordered the building of the mosque as stated in the Gazetteer & the settlement report."

3034. The above judgment shows that on the question that the building in dispute was constructed in 1528 there was no dispute between the parties since it was a *lis inter se* between two Wakfs Board. The nature of building that it was a Mosque was also not in dispute. The only question was whether it is a Shia Wakf or a Sunni Wakf. The entire matter had proceeded in this context. We have no hesitation to say that this judgment is neither binding upon the plaintiffs before us nor can be relied on to contend that a particular finding recorded therein is final and that it should be treated to be a judgment in rem.

3035. One more aspect. The judgment shows that in the year 1928, Syed Abdul Baki, claimed to be the first Mutwalli appointed by Babar itself, and in genealogy Mohammad Zaki was seventh in generation. It is apparently unbelievable that commencing from 1528 till 1945, i.e. more than 400 years, there could be only seven generations in the entire genealogy. We have no hesitation in not accepting the same.

3036. Before us, the case set up and argued by the defendants is that Babar never entered Ayodhya and, hence, there did not arise any occasion for him either to get the alleged temple demolished or direct for construction of a Mosque, but it was Mir Baki who had been there and got it constructed. In the judgment relied on by the defendants, an issue was raised, whether Mosque was built by Abdul Baki or Babar. A finding was recorded that it was constructed by Babar as pleaded by Sunni Board. Evidently, the case set up before this Court is wholly different and inconsistent to what was pleaded and

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ultimately decided in the above judgment.

3037. Further, there is nothing on record to show that name of the Mir Baki was Syed Abdul Baki or that Syed Abdul Baki was the same person as Mir Baki. In "Babarnama" no person is named as Mir Baki or Syed Abdul Baki. No document showing that there existed person in the name of Mir Baki or Abdul Baki in 1528 has been placed before us. When Babar himself never entered Ayodhya, the question of appointment by him of a Mutwalli would not have arisen. Even otherwise, on the question as to who constructed the disputed structure and when, we have already recorded a finding that the plaintiffs (Suit-4) or the Muslim parties have failed to prove that the disputed structure was constructed in 1528 either by Babar or any of his agent on his command.

3038. Moreover, a judgment by itself is not a piece of evidence except to the extent it is provided under Section 41 to 43 of the Evidence Act.

3039. In the context of Section 43 of Evidence Act, it is no doubt true that a judgment is admissible provided it is a relevant fact in issue as held in **Seth Ramdayal Jat Vs. Laxmi Prasad (Supra)**. In a civil case, the judgment of a Criminal Court may be relevant where the fact in issue is about the existence of such a judgment or not, but not more than that. The evidence discussed in the judgment of a Criminal Court or the fact that a person has confessed his guilt in his statement is not admissible in evidence in a civil suit. This is what was held in **Perumal Vs. Devarajan & others AIR 1974 Mad. 14** and was quoted with approval in **Seth Ramdayal Jat (supra)**. The Apex Court also approved a Patna High Court decision in **Lalmani Devi & others Vs. Jagdish Tiwary & others AIR 2005 Pat. 51.** The

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Court said that acquittal or conviction in a criminal case has no evidentiary value in a subsequent civil litigation except for the limited purposes of showing that there was a trial resulting in acquittal or conviction, as the case may be. The findings of the Criminal Court are inadmissible. The Apex Court also followed its earlier decision in **Anil Behari Ghosh Vs. Smt. Latika Bala Dassi & others AIR 1955 SC 566** taking the same view. There appears to be a somewhat different authority in **Shanti Kumar panda (supra)** where an observation was made that an order passed by the Executive Magistrate in proceedings under Section 145/146 Cr.P.C. is an order by a Criminal Court based on a summary inquiry. The order is entitled to respect and weight before the competent Court at the interlocutory stage. In **Ramdayal Jat (supra)**, the Apex Court observed that this observation in **Shanti Kumar Panda (supra)** is *per incurrium* being in conflict of a three-Judges decision in **K.G. Premshanker Vs. Inspector of Police & another JT 2002 (8) SCC 87**. The argument of possibility of conflict in decisions was rejected in **Seth Ramdayal Jat (supra)** stating:

> ***"27.*** *In regard to the possibility of conflict in decisions, it was held that the law envisages such an eventuality when it expressly refrains from making the decision of one Court binding on the other, or even relevant, except for certain limited purposes, such as sentence or damages. It was held that the only relevant consideration was the likelihood of embarrassment."*

3040. The Court further held that the Civil Court must decide a suit on its own keeping in view the evidence which have been brought on record before it and not in the light of the evidence brought on record in the criminal proceedings. The

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Court also observed that an earlier decision in **M/s Karam Chand Ganga Prasad & another Vs. Union of India & others 1970 (3) SCC 694** holding that the decision of the Civil Court will be binding on the Criminal Courts but the converse is not true was overruled in **K.G. Premshanker (supra)** and this fact has been noticed also in **Syed Askari Hadi Ali Augustine Imam & another Vs. State (Delhi Administration) & another JT 2009 (4) SC 522**.

3041. Then it considered the question of admissibility of an admission made by a party in a previous civil proceeding. It was held that admission in the civil suit is admissible. With respect to an admission made in a pleading, the Court relied on **Gautam Sarup Vs. Leela Jetly (supra)** where it was held that an admission made in a pleading is not to be treated in the same manner as an admission in a document. An admission made by a party to the lis is admissible against him *proprio vigore*. The same thing was reiterated in **Ranganayakamma & another Vs. K.S. Prakash JT 2008 (8) SC 510**.

3042. Here the admission in Suit 29/1945 was that of Sunni Board that the disputed structure was constructed by Babar and therefore this admission may operate against it but the findings of civil court shall not bind the plaintiffs.

3043. Yet another angle, the plaintiffs set up the case of being owner of the property in dispute, i.e., the land and building both having constructed the building also. However, no evidence whatsoever has been put forth to support the ownership or title over the property in dispute. In the entire plaint there is no averment as to how the plaintiff claim to own the property in dispute. In para 2 they have asserted that Janamsthan, i.e., Janambhumi is the birthplace of Lord Rama

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situate in Ayodhya and always belong to the plaintiff no.1. How and in what manner it belong to plaintiff no. 1 is not stated. Then in para 3 of the plaint it is said that a temple building of Janambhumi existed on the disputed land and the said temple ever since is in possession of the plaintiff no. 1 (para 4). But here also it is not said as to how and when they came into possession of the property in dispute. In the statement under Order X Rule 2 CPC the plaintiffs have said that the temple was made by the plaintiff and the land which is the birthplace of Lord Rama is owned by the plaintiff. But in support of the above two statements no evidence has been placed at all. Sri Verma sought to rely on a registered deed of the bye-laws of Nirmohi Akhara wherein Janamsthan is also mentioned amongst the properties of Nirmohi Akhara and submits that this document clearly shows that the place in dispute is owned by the plaintiffs (Suit-1). We fail to understand as to how a document sought to be prepared by plaintiff himself can create a right or title on a property and in any case can be used as an evidence against a third party. Merely because they got it registered and have placed on record a certified copy thereof, that does not mean that the contents thereof and their truth stand proved. The only effect of filing a certified copy of a document after obtaining from the authority in whose possession legally it ought to be is that a formal proof stands dispensed with but that does not mean that the correctness of the contents thereof also will stand proved unless it is proved by producing cogent evidence. When a certified copy is filed or when an old document of thirty years is produced from proper custody, what shall be deemed to stand proved has been considered time and again.

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3044. In **V. Seethaya & Ors. Vs. P. Subramanya Somayajulu & Anr. A.I.R. 1929 Privy Council 115**, it was held:

> *"Their Lordships agree with the learned Chief Justice and his coleagues in the High Court that the document was admissible as evidence of the terms of the lost original. The document* ***is over 30 years old and is produced from proper custody****. By S. 90, Evidence Act of 1872, the Court may* ***therefore presume the signatures authenticating the copy to be genuine.****"*

3045. In the context of Sections 65 and 90 of the Evidence Act, a Single Judge of Calcutta High Court in **Khetter Chunder Mookerjee Vs. Khetter Paul Sreeterutno 1880 ILR 5 (Calcutta) 886** observed that Section 90 provides where any document, purporting or proved to be thirty years old is produced from any custody which the Court in the particular case considers proper, the Court may presume that the signature and every other part of such document, which purports to be in the handwriting of any particular person, is in that person's handwriting; and, in the case of a document executed or attested, that it was duly executed and attested by the persons by whom it purports to be executed and attested. The Court said that the execution of a document produced from proper custody, and more than thirty years old, need not be proved, if the document is produced.

3046. In **Land Acquisition Officer and Mandal Revenue Officer Vs. V. Narasaiah (2001) 3 SCC 530** it was held that the certified copy of a registered sale deed would be admissible in evidence. The above decision was approved by the Constitution Bench of the Apex Court in **Cement Corpn. Of India Ltd. Vs.**

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Purya (2004) 8 SCC 270.

3047. In **Sarabjit Rick Singh Vs. Union of India (2008) 2 SCC 417** the Court in para 39 said :

> *"It may be true that a document does not prove itself. Its contents, unless admitted, should be proved in terms of the provisions of the Evidence Act, unless the contents of the documents are said to be admissible by reason of a provision of a statute, as for example, Section 90 of the Evidence Act. But what misses the aforementioned submission/contention is that whereas the contents of the document is to be proved for the purpose of trial but not for the purpose of arriving at an opinion in regard to existence of a prima facie case in an enquiry."*

3048. Sri Verma, relying on the work of Sri A. Ghosh in the **"Law of Endowment (Hindu & Mahomedan)"** by A. Ghosh, Second Edn. published by Eastern Law House, Calcutta (page 148-149) submitted that even hearsay statements are admissible in suit for recovery of possession filed by Shebait who is wrongly ousted and reads as under:

> *"In a suit to recover property claimed by the plaintiffs as shebaits lately in possession and wrongfully ousted therefrom, it was held that the statements made by the ancestors of plaintiffs and defendants were receivable as evidence. It is enough to say that possibly, possession and user in the apparent capacity of shebaits might, if unrebutted by any other evidence at all, be sufficient as evidence of title (so far as it goes) to make out a prima facie case in favour of the plaintiffs. In Srish Chandra v. Rakhalananda 41 C.W.N. 1103 Guha and Mitter, JJ. discussing the question whether hearsay statements in*

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regard to instalation and sheba of a deity are admissible or not, held that "the evidence given on the side of the plaintiffs, so far as it consisted of the statements by the plaintiffs in their evidence given in Court in support of the position that the deities Radha Gobinda and Lakshmi Narain Jiu were worshipped by them and maintained by the Kashimbazar Estate from generation to generation, that the plaintiffs' family had been doing the worship at the cost of the said Estate; that one of the plaintiffs, 65 years of age, heard about the origin of vritti from his father and the tradition descended from father to son, and the worship of the deities continued on the expenses paid, Rs. 4000 as vritti or annual grant, by the Kashimbazar Estate: that the vritti was received from the last five generations and the history of its origin came down as tradition in the family from father to son, as deposed by another plaintiff aged 63 years, was subjected to the comment that it was altogether inadmissible inasmuch as it was hearsay evidence. It was also contended on the 'authority' of the decisions in Lekraj Kuer v. Baboo Mahpal Singh 7 I.A. 63 : 5 C. 744 that regard being had to the provisions of Sec. 2 of the Indian Evidence Act, which has repealed all rules of evidence, not contained in any of the statutes or regulations, it was for the plaintiffs to make out that the evidence given by them was admissible under some provisions of the Indian Evidence Act. It is to be noticed in this connection that Sec. 2 (1) of the Indian Evidence Act repeals the whole of the English Common Law on Evidence so far as it was in force in British India before the passing of the Indian Evidence Act, and that provisions of the law, in effect, prohibits the

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employment of any kind of evidence not specifically authorised by the Act itself. It must be recognised, however, that the principle of exclusion adopted by the Indian Evidence Act, should not be applied so as to exclude matters which may be essential for the ascertainment of truth. Applying this principle to the case before us, the evidence of tradition in the family of the plaintiffs, can not be characterised and placed in the category of mere hearsay evidence inadmissible under the law .... The evidence coming from the plaintiffs' side, consisted of a tradition handed from time immemorial; and the evidence given by some of the plaintiffs was admissible as statement of opinion as to a family tradition, which was founded upon information derived from deceased persons. The relaxation of the rule as to reception of hearsay evidence must be held to be permissible where such a course tends to the due investigation of truth, and the attainment of justice."

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3049. In a title suit, complete evidence showing ownership has to be placed on record. In **Karnataka Board of Wakf Vs. Government of India & others (2004) 10 SCC 779**, the Apex Court said that in a title suit, concrete evidence showing ownership must be placed on record. In para 8, the Court said:

"The contention of appellants that one Arabian saint Mahabari Khandayat came to India and built the Mosque and his lineal descendents possessed the property, cannot be accepted if it is not substantiated by evidence and records. ***As far as a title suit of civil nature is concerned, there is no room for historical facts and claims****. Reliance on borderline historical facts will lead to erroneous conclusions.* ***The question for resolution herein is the***

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factum of ownership, possession and title over the suit property. Only admissible evidence and records could be of assistance to prove this."

3050. Further, with respect to Section 4 of Wakf Act, 1954, it observed that the Wakf Board could exercise its rights only over existing wakf properties since the suit property itself is not an existing wakf property. The appellant cannot exercise any right over the same. It further observed in para 12 that a plaintiff filing a title suit should be very clear about the origin of title over the property. He must specifically plead it.

3051. The defendants muslim parties have set up a claim that the building in dispute got constructed by Babar through his Commander Mir Baqi in 1528 AD and was given as public waqf to muslims resulting in a right vested in muslims in general. It is also said that the muslims have continued to keep possession in the shape of waqf over the Babari mosque from 1528 AD up to the present. It is further said that in case it is found that any temple existed on the site of the disputed structure, in that case also since the possession of the defendant muslim parties over the property in dispute continued for the last 400 years which is in the knowledge of the plaintiff to the suit or other Hindus and, therefore, they have lost any right over the property in dispute. It is not the case of the defendants that the Hindus in general or the plaintiffs are the owner of the property in question.

3052. In order to decide issue 8 (Suit-3), whether the rights of plaintiff have extinguished for want of possession over 12 years prior to the suit it has to be seen as to in which capacity the plaintiffs are claiming possession, what they have proved and only then the question of extinction will arise. A right extinguished, if somebody is deprived of possession of a

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property for more than 12 years under Section 28 of the LA 1963 and Section 27 of LA 1908 which are pari materia. The question of extinction of right would arise if somebody has right over the property and that too in the capacity as owner. If one is not owner of the property in question the occasion of loss of right or extinction of such right does not arise. In the case in hand since the plaintiffs have completely failed to show that they have right as owner over the property in dispute, or a title vested in the plaintiffs regarding the property in question, the occasion of loss of such right or extinction of such right does not arise at all. It is also not the case where the defendants have admitted title or ownership of the plaintiffs and hence they have no occasion to lead any evidence to prove such title. Had it been so, something could have been said and there could have been an occasion for this Court to consider whether the plaintiffs had the possession in the property in dispute for preceding 12 years prior to the date of filing of the suit or not.

3053. **Mohammad Shah Vs. Fasihuddin Ansari & others AIR 1956 SC 713** is the case where the plaintiffs admit that the defendant is in possession of certain property but they (plaintiffs) assert **that the possession of the defendant is on behalf of Sunni Mohammad community.** For this reason, the plaintiffs say that a declaratory suit will lie and no need to sue for possession. It is also contented that no question of limitation or adverse possession can arise because firstly the possession is and always has been that of the community through the defendant and secondly because the defendant is a trustee under a trust for a specific purpose and so cannot set up a title hostile to the trust. In that case neither of the side possessed any document of title. **It was held that the burden lies upon the**

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plaintiffs. Defendant is admittedly in possession and except for the fact that he (defendant) is in possession on their (plaintiffs') behalf (a fact which the defendant denies), the plaintiffs are out of possession. Hence, the **plaintiffs must prove that the defendant is in possession on their behalf.** It also held that a stranger to the trust could have encroached on the trust estate and would in course of time have acquired a title by adverse possession. But a Mutwalli cannot take up such a position.

3054. Sri Verma, however, submitted that before the Magistrate, in the proceedings under Section 145 Cr.P.C., a number of evidences were filed by the Muslim parties admitting that the possession of the property in dispute is with the Hindus. Muslims have never visited since 1934 the said building and the same may be handed over to Hindus. It is contended that the said documents are admissible in evidence having been filed in statutory proceedings and that would show that the defendants' claim for adverse possession has no basis at all.

3055. We may clarify at this stage since we are referring and mentioning at many places the register number and page number in respect to the documentary evidence filed by the parties that the documents (exhibits) are running in a few thousand pages. Condition of most of the documents is also precarious being quite old. Many were already in torn conditions and it was difficult to preserve so as to be used by the Court during arguments. In the circumstances, various documents filed by the parties in these cases marked 'exhibits', for the convenience of the parties, were directed to be scanned and bound in the form of registers, which have been prepared and are 42 in numbers. We, therefore, while discussing the exhibits and other documents filed by the parties, for

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convenience, refer the register number and page number thereof for tracing it out smoothly.

3056. Register Nos.1 and 2 contain documents and papers relating to the proceedings conducted under Section 145 Cr.P.C. and have in all, 322 pages (Register 1 page 1-132 and Register 2 pages 133-322).

3057. Our attention is drawn to written statement dated 17th January, 1950 (Page 69-75 Register 1) of one Srivastava Narayan Prasad Sinha raising the question of ownership/ proprietorship of the disputed premises stating that he is representative of Raja Ram Narain, who enter into a treaty on 22nd August, 1757 and 23rd February, 1758 claiming possession including Faizabad Nazul area. He submitted that under the orders of Emperor Babur, a temple of Lord Ram Chandra Ji and Vishnu, situated at the place, was dismantled and using the material including pillars affixed there, the disputed building was constructed. He also refers to the existence of two places of worship within the enclosure of the disputed premises and continued worship by Hindus in the said two places. He gave some other facts showing how Raja Ram Narain came into picture, who own and possess the disputed premises Sri Sinha, however, neither has come up in the Civil Court to raise such a claim nor is represented before us. The version contained in his written statement filed before the Magistrate in the proceedings under Section 145 Cr.P.C. remain his ex parte version having not been proved as per the prescribed procedure in law. Therefore, we find it difficult to look into those aspects, as said by him in the aforesaid written statement.

3058. Our attention was also drawn to the affidavit filed by Sri Anisur Rahman, S/o Maulvi Vaziruddin along with his

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criminal transfer application No.208 of 1950 (Page 87-94 Register 1) wherein para 2 he said *"...the courtyard of the mosque is separated by a wall from a small temple which is situated to its East."* It also says *"Hindus and muslims of Ajodhya have been peacefully and calmly carrying on their worship in the temple and prayers in the mosque respectively from times immemorial."*

3059. Sri P.N. Mishra, and Sri Verma, learned counsels drew our attention to paragraphs 4 and 5 of the affidavit which reads as under:

> *"4. That on the 9th of November, 1949 it was found that two tombs and about 25 graves which lay outside the compound of the Babari mosque had been levelled down and the mosque in the cemetery known as the "Qanati" mosque had been dug up and a new platform adjacent to the aforesaid mosque was constructed and an idol placed on that platform."*
>
> *"5. That from 22.11.1949 the Hindus of the place started their 'Jap' (worship) on that place in which a large number of Hindus were collected and for that reason the police advised the muslims not to say their prayers in the surviving Babari mosque all the 5 times while the 'Jap' continued but confine it to Fridays only. In order to avoid a communal clash the muslims acted on the advice and* ***continued to say their prayer every Friday upto December 16, 1949. Except for the Friday prayers the mosque used to be kept locked and guarded by the Police."***

3060. It is contended that though the above affidavit is a part of the transfer application filed before this Court, which has

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already been rejected vide judgment dated 30th May, 1950 by **Hon'ble B. Bhargava** as His Lordship then was, but the facts asserted therein amounts to admission on the part of the Muslims and therefore, facts contrary to what have been pleaded by them subsequently can validly be ignored. They are estopped from changing their statement. It is said that it is an admission and therefore, is binding on the Muslim parties. They cannot take a stand which has been taken by them through their representative Anisur Rahman in the above matter.

3061. They also drew our attention to certain affidavits filed by Sri Hasnu, S/o Aladin and Wali Mohammad S/o Hasnu dated 8th February, 1950 (Register 1, Page 95) stating that the disputed building was constructed by demolition of Janam Bhumi temple. Hindu and Muslim both were offering worship. After 1857, Muslims were offering Namaz on Friday inside the mosque. In the outer enclosure, Hindus were worshipping Lord Ram Chandra Ji and except of Friday they were also worshiping inside the mosque. There has been consistent agitation between Hindu and Muslim. In 1934 some part of the mosque was damaged but all Hindus were acquitted. Thereafter Muslims stopped offering Namaz and Hindus are continuously worshipping since then and till date. The deponents have no objection if the said mosque is handed over to Hindus. Copies of affidavits filed by Sri Peeru S/o Varati dated 11.02.1950 (Page 101 Register 1); Mohd. Umar S/o Wazir dated 11.02.1950 (Page 105 Register 1); Azimullah S/o Razab dated 13.02.1950 (Page 109 Register 1); Latif S/o Abdul Aziz dated 13.02.1950 (Page 113 Register 1); Mohd. Hussain S/o Wasau dated 14th February, 1950 (Page 119 Register 1); and Abdul Jalil S/o Abdul Wahid dated 14th February, 1950 (Page 121 Register 1) were also

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placed before us. Besides the affidavits, the aforesaid persons also filed their separate written statements before the concerned Magistrate in the proceeding initiated under Section 145 Cr.P.C., which are also part of the record i.e. Register 1. All these affidavits have similar contents.

3062. Register 2 also contain copies of affidavits worded in the similar languages, as noticed above, which have been filed by the following:

1. Jaan Mohammad S/o Husaini dated 14.02.1950 (Page 137)
2. Abdul Sattar S/o Shamsher Khan dated 16.02.1950 (Page 141)
3. Abdul Ganni S/o Allah Bux dated 16.02.1950 (Page 143)
4. Rozeed S/o Tunnu Dated 16.02.1950 (Page 147)
5. Hosaldar S/o Ghirau dated 16.02.1950 (Page 151)
6. Ramzan S/o Jumman dated 16.02.1950 (Page 153)
7. Gulley Khan S/o Nawab Ali dated 16.02.1950 (Page 157)
8. Mohd. Ismail dated 16.02.1950 (Page 161)
9. Abdul Shakur S/o Eedan dated 16.02.1950 (Page 165)
10. Abdul Razzak S/o Wazir dated 16.02.1950 (Page 171)
11. Naseebdar S/o Jahan dated 24.02.1950 (Page 177)

3063. The above affidavits in Register 2 are also accompanied with the written statement of the said persons. It is mentioned on the back of the written statement that the same were received by the Magistrate, verified by the persons claims to have filed the same and thereafter were taken on record.

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3064. The admissibility of the aforesaid affidavits and the contents thereof was disputed by Sri Jilani, and other counsels who have adopted his arguments, stating that said documents were filed before the Magistrate but the averments therein, at the best, are ex parte version and those deponents have neither been examined as witnesses nor the Muslim parties had any occasion to cross examine them. Therefore, the aforesaid documents are inadmissible.

3065. On the contrary, Sri P.N.Mishra and Sri R.L.Verma, learned counsels submitted that the documents filed in statutory proceedings are admissible in evidence to the extent that the facts stated therein amounts to an admission and the same can be relied on by the other party in subsequent judicial proceedings. No authority in support of the above submission covering the issue directly cited by the learned counsels. We are, however, of the view that in the absence of the authors being available for cross-examination by the other side their ex parte version, if any, contained in the documents filed even before a statutory authority, cannot be relied on and cannot partake the nature of an admission binding on a party in the subsequent judicial proceedings.

3066. We may notice at this stage the reply dated 05.04.1950 (Page 195 Register 2) submitted by the then City Magistrate, Faizabad i.e. Sri Markandeya Singh before this Court in the criminal transfer application filed by Sri Annisur Rahman wherein para 3 he said :

> *"Regarding allegations contained in para 8, I beg to say that on being satisfied from credible sources that a dispute likely to lead to a breach of the peace between Hindus & Muslims in Ayodhya over the question of rights of*

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proprietorship & worship in the buildings claimed variously as Babri Masjid & Janam Bhumi Mandir, I passed an order u/s 145 Cr.P.C. and attached the said building. The parties were called upon to put in written statement of their respective claims with regard to the fact of actual possession of the subject of the dispute. As a matter of fact the order u/s 145 Cr.P.C. was meant to check an imminent breach of the peace."

3067. So far as the District Magistrate is concerned, on page 199 Register Vol.2 is a letter dated 6th April, 1950 by Sri J.N.Ugra, while forwarding explanation of Sri Markandeya Singh, City Magistrate, Faizabad wherein he has said that he himself (Sri Ugra) has taken charge as District Magistrate, Faizabad on the afternoon of 14th March, 1950 and had nothing to do with the case at any stage. At the cost of repetition we may place on record hereat these two documents which were taken into consideration by this Court and thereafter the transfer application was rejected. There are two written statements filed by Sri Baba Abhayram Das dated 29th December 1950 (Page 203 Register 2) and Baba Baldev Das dated 27.09.1950/29.12.1950 (page 207 Register 2) wherein it has been said that the property in dispute for the last more than 12 years is in possession of Nirmohi Akhara and also owned by it. From 1935, no Muslim person has ever enter the disputed premises and has also not offered any prayer (Namaz) therein.

3068. On Page 211 Register 2 is a statement of Sri Sattar Mohammed S/o Barsani dated 21.04 (year is illegible) stating that the building in dispute was constructed by Babur in 1528 A.D. and was made a public wakf for the benefit of Muslims in general and since then for several hundreds years

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uninterruptedly Muslims are offering Namaz therein till December, 1949.

3069. Sri Anisur Rahman also filed his separate written statement dated 08.07.1950/29.12.1950 (Page 215-219 Register 2) and with respect to the nature of the disputed property, period of construction/possession and worship etc. from para 1 to 9 it says as under:

''दफा 1. यह कि इमारत मुतनाजिया वाके मोहल्ला रामकोट शहर अयोध्या शहनशाह हिन्द बाबर शाह की तामीर करदा मस्जिद मौसूम बबाबरी मस्जिद है. जिस को शहनशाह मजकूर ने बाद फतेहयाबी हिन्दोस्तान दौरान क्याम अयोध्या सन 1528 ई0 में तामीर कराया. और तममीर करके तमाम मुसलमानान के लिए वक्फ आम कर दिया. जिस में आम मुसलमानान का हक इबादत है.

दफा 2. यह कि बाद तामीर मस्जिद मजकूर शहनशाह बाबर ने मस्जिद मजकूर की खिताबत व दीगर अखराजात के लिए एक रकम अतिया सालाना अपने खजान्ना शाही से मोकर्रर किया. जो दौरान सलतनत मुग़लिया मजकूर को बराबर मिलता रहा. और बाद जवाल सलतनत मुगलिया नवाबीन अवध ने इस अतिया को कायम रक्खा. और नवाब आसफुद्दौला बहादुर ने अपने जमाना हुकूमत में रकम अतिया मजकूर को इजाफा करके मुबलिग 302 रू0 3 आना 6 पाई सालाना अता करना मंजूर किया. जो रकम बाद इन्तजा सलतनत अवध ब्रिटिश गवर्नमेन्ट ने भी जारी रक्खा. और जमाना बन्दोबस्त अव्वल में गवर्नमेन्ट बरतानिय ने मुत्तवल्लियान को बजाय नक्द अतिया मज़कूर के मवाजियात शोलापुरी व बहोरनपुर मुत्तसिल अयोध्या बतौर माफी बिनाबर मसारिफ मस्जिद बाबरी अता किया.

दफा 3. यह कि आम मुसलमानान और फरीक दोयम का कब्जा बतौर वक्फ आम इमारत मुतनाजिया यानी मस्जिद बाबरी पर 1528 ई0 से आज तक मुसलसल चला आता है.

दफा 4. यह कि फरीक दोयम व आम मुसलमानान जायद अज 400 साल बइल्म व आगाही फरीक अव्वल व आम अहेले हिनूद इमारत मुतनाजिया में बतौर मस्जिद वक्फ आम बिला किसी रोक टोक के अपनी इबादत करते और नमाज पढ़ते चले आए है.

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दफा 5. यह कि फरीक अव्वल या आम अहेले हिनूद का कोई हक इमारत मुतनाजिया यानी मस्जिद बाबरी में न था और न है. और न उनका कब्जा कभी इस पर रहा है और न है.

दफा 6. यह कि इमारत मुतनाजिया यानी मस्जिद बाबरी न कभी मन्दिर जन्म भूमि थी और न है. और न कभी श्री रामचन्द्र जी का मन्दिर रहा.

दफा 7. यह कि फरीक दोयम व दीगर मुसलमानान ने इमारत मजकूर यानी मस्जिद बाबरी में 16 दिसम्बर सन् 49 ई0 तक नमाज जुमा बजमात अदा की.

दफा 8. यह कि कुछ शोरिश पसन्द अहेले हिनूद ने जिस में कुछ मुकामी फरीक अव्वल भी शामिल थी. 12 नवम्बर सन् 1949 ई0 को इमारत मुतनाजिया यानी मस्जिद बाबरी के करीब मगर . . . . मस्जिद से बाहर में जाप शुरू किया. जिस में एक अम्बोह कसीर अहेले हिनूद का जमा हुआ जिस ने कि कुछ कत्रे और कनाती मस्जिद की बेहुरमती की. जब फरीक दोयम ने इस की खबर हुक्काम जिला को दी तो उन्होंने एक पुलीस गार्ड इस मुकाम पर तैनात कर दिया कि आइन्दा इस किस्म की हरकत सरज़द न हो.

दफा 9. यह ***कि 22 नवम्बर सन् 49 ई0 को जब यह मशहूर हुआ कि इमारत मुतनाजिया बाबरी मस्जिद पद कुछ शोरिश पसन्द मुफसिद हमला करना चाहते है. तो उसकी इत्तला हुक्काम जिला को दी गई. तो उन्होंने पुलीस गार्ड में इजाफा कर दिया और हर नमाज के बाद मस्जिद मजकूर में ताला लगाया जाने लगा.''***

"Section 1. That the controversial building situated in Mohalla Ram Kot Ayodhya city was built by the king of Hind Shah Babar and is a Masjid known as Babri Masjid. This Masjid was built by the said king Babar after he won Hindustan in 1528 A.D. in Ayodhya and made it a general Waqf for all the Muslims who have a right to offer prayers there.

Section 2. That after getting the Masjid constructed Shahanshah Babar, for khitabat and other expenses in respect of the Masjid sanctioned an amount as a recurring

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gift fund from the Royal Treasury which continued to be given during the royal regime of Moghuls. After the down fall of this royal kingdom, Nawabeen of Oudh continued the tradition and the recurring grant for the Masjid was regularly paid. Not only this Nawab Asifuddaula of Oudh, increased this amount of grant for the Masjid to Rs. 302-3annas and 6pies. This amount of recurring gift later continued in the British regime after the down fall of Oudh. During Bandobast first the British Govt. did not paid cash to the Mutawallis, instead they allotted two Mawaziat of Sholapuri and Bahoranpur adjacent to Ayodhya as moafi for the expenditure of Babari Masjid.

Section 3. That the possession of the general Muslim as well as the party number2 as Waqf Aam over the controversial building that is Babri since 1528 continues till date.

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Section 4. That the party number2 and general Muslim possess the controversial premises as Masjid offer prayers and recite Namaz in it for more than 400 years, without any hindrance what soever and this fact is well in the knowledge of party number 1 and the Hindus.

Section 5. That neither the party number 1 nor the Hindus had any right over the controversial building that is Babri Masjid. They never had nor have any possession over it.

Section 6. That the controversial building that is Babri Masjid was never or is Mandir Janam Bhoomi. It has never been a Mandir of Ram Chandraji :

Section 7. That party number 2 and general Muslims offered Namaz Juma till December 16, 1949.

Section 8. That some mischievous Hindus including the

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party number1, On November 12, 1949 began Jaap near the controversial building that is Babri Masjid in which large number of Hindus gathered and they damaged some of the graves and outer wall of the Masjid. That the party number 2 informed the district officers and they simply posted a guard there so that this act might not be repeated again.

*Section 9. That o**n November 22,1949 when a word was around that some unlawful elements would attack the controversial building that is Babri Masjid, the district officers were informed who increased the number of guards on the spot who began locking the Masjid after every namaz."**(E.T.C.)*

3070. In para 13 thereof Sri Anisur Rahman also said that Sunni Central Board of Wakf U.P. is a necessary party and that he has right to offer worship in the said building hence the idols placed therein be immediately removed and his right of worship be restored.

3071. Since all these persons have neither been examined nor cross examined before this Court, therefore, these documents can not be read in evidence. Be that as it may, what we find is a piquant situation in this case. The plaintiffs have set up a case claiming ownership of the property in dispute but have failed to discharge their burden particularly when the defendants have not admitted their title. The defendants at the first instance have set up a case based on their title and possession but, thereafter, have pleaded that in any case their possession having continued for hundred years, the title, if any, of the plaintiff stands extinguished. The plea of extinction of title will depend on a proven fact that the other person has a title, only then the

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question of extinction will arise. If the title has not extinguished of that person, and no one else is pleaded by the defendant as owner against whom he claims to have matured a title by prescription, the defendants' plea of adverse possession would also fail. We have already referred to various authorities showing necessary ingredients of adverse possession, how and in what manner it has to be pleaded and proved. All these legal mandatory requirements are apparently missing not only in the pleading but parties have also failed to prove their case so far as the question of adverse possession is concerned. We have considered witnesses of Muslim parties i.e. PW 1 to 9 and few others. Many of them have categorically stated that in the entrance gate of dividing wall, no lock ever put till 22nd December 1949. It is also not the case that there was some other arrangement made to check entry of the members of one community and it was confined to another community. It appears to us, that, no person was restricted from entering the premises in dispute (inner courtyard) and in fact there was no restriction at all whatsoever to any one's visit to the premises in dispute (inner courtyard) for the purpose of worship. The mere entry of Muslims in the premises in dispute in such manner, by no mean can be termed as 'possession' what to say of "exclusive possession" so as to meet the requirement of plea of adverse possession.

3072. The documents or orders under Section 145 Cr.P.C., since do not decide the matter of title, only to a limited extent can been seen. On a question as to who is entitled for possession, it was held in **Dinomoni Chowdhrani Vs. Brojo Mohini Chowdharani (supra)** that the Police orders referable to Criminal Procedure Act applicable in 1867 and 1876 for

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preventing breaches of peace are admissible in evidence on general principles as well as under Section 13 of the Evidence Act to show that such orders were made. They decide no question of title. Under Section 145 Cr.P.C., the Magistrate, if possible, is to decide which of the parties is in possession of the land in dispute and once he take such a decision, he would pass an order declaring such party entitled to retain possession until evicted in due course of law. The Judicial Committee held:

> *"This necessarily makes them evidence of the following facts, all of which appear from the orders themselves, namely, who the parties to the dispute were; what the land in dispute was; and who was declared entitled to retain possession. For this purpose, and to this extent, such orders are admissible in evidence for and against every one when the fact of possession at the date of the order has to be ascertained."*

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3073. Even otherwise it cannot be said that the plaintiffs had "possession" of the property in dispute i.e. inner courtyard. They never entered the premises exclusively, prior to 22.12.1949, for the purpose of managing, maintaining or worshipping in the capacity of priest, Pujari or Mahant and, therefore, the question of extinction of their right even otherwise does not arise. OPW 1 a witness produced on behalf of plaintiffs (Suit-5) has stated that in the night of 22nd/23rd December, 1949 idols from Ram Chabutara in the outer courtyard were shifted to the building in the inner courtyard and placed under the central dome of three domed structure. He has also said that from 23rd December, 1949 and onwards Pooja etc. of the idols were observed by the Mahants and priests of Nirmohi Akhara till the property was attached under Section 145 Cr.P.C. vide order

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dated 29th December, 1949 of Magistrate. On this aspect neither any evidence contradicting the said statement has been placed by the defendants muslim parties nor OPW 1 has been cross-examined on this aspect but this is not admitted by plaintiffs and hence cannot be read in their favour.

3074. However, as we have already said, the Hindus continue to visit inner courtyard for the purpose of worship. It may be said that the members or people of Nirmohi Akhara were not included in those persons, i.e., Hindus. The nature of worship has also been clarified by some of the witnesses that they used to worship the place which they believe as birthplace of Lord Rama in inner courtyard as also images of Gods and Goddesses carved on the black Kasauti stone pillars which were there in the disputed building in the inner courtyard. Therefore, entry of plaintiffs in the inner courtyard as a mere worshipper atleast till the date when the property was attached may not be doubted but the issue in question is about extinction of their rights which means the right in the capacity of the owner or title as contemplated under Section 27 of LA 1908. In this context we find that the plaintiffs have failed to prove any such right, and the question of extinction thereof does not arise.

3075. The suit having been filed in 1959, it cannot be said that in the preceding 12 years the plaintiffs never had possession over the property in dispute (inner courtyard). Neither the plaintiffs could discharge burden of proof that they own the property in dispute nor the defendants could prove by leading trustworthy evidence that the plaintiffs were the owner but remain dispossessed from the property in dispute for over 12 years and that prior or upto the date of the suit, defendants fulfilled all the requirement to clear the plea of adverse

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possession. **Issue no. 8 (Suit-3) is decided accordingly in negative**.

3076. **Issue 2 (Suit-4)** relates to the possession of the property in dispute of the plaintiffs upto 1949. The burden to prove this issue lie upon the plaintiffs. The concept of property in Suit is different than what it was in Suits-1 and 3. Suits-1 and 3 were confined to the premises covered by the inner courtyard of the disputed site. Suit-4, however, relates to the entire premises, i.e., inner and outer courtyard both excluding a small area in the southern side. The plaintiffs, therefore, have to prove first that they were in possession of the entire property, i.e., inner and outer courtyard both upto 1949 and only then the question of their dispossession from the same in 1949 would arise.

3077. Besides, we may also mention at this stage and shall discuss it later in detail that there is no factual averment in the plaint that the plaintiffs were dispossessed at any point of time in 1949. On the contrary their case is that in the night of 22nd/23rd December, 1949 idols were kept in the building in dispute, i.e., the premises marked as A B C D in the map appended to the plaint which means the inner and outer courtyard both. This placement of idols resulted in obstructing the right of worship of plaintiffs, as well as defiled and desecrated the mosque. These are three different things and their ingredients are also different. However, we shall discuss it in detail later on.

3078 At this stage, we are concentrating on the question whether the plaintiffs have discharged burden of proof about their possession of property in suit as a whole, i.e., inner and outer courtyard, up to 1949.

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3079. In para 5 of the plaint (Suit-4) itself the plaintiffs have averred:

> *"5. That in the mosque, but outside the main building of the mosque, there was Chabutara 17' x 21' on which there was a small wooden structure in the form of a tent which is still there."*

3080. Regarding this Chabutara they have read certain averments pertaining to an earlier litigation between Mahant Raghubar Das and the State in 1885 in which one Mohd. Asghar claiming himself Mutwalli of Babari Mosque also appeared as defendant no. 2. Paragraphs no. 6, 6A, 6B, 6C, 6D, 6E, 6F and 7 relate to the said litigation and various judgements passed therein. It read:

> *"6. That in 1885, one Mahant Raghubar Dass alleging himself to be the Mahant of Janam Asthan instituted a suit (Original Suit No. 61/280 of 1885) against the Secretary of State for India in Council and Mohd. Asghar, Mutawalli of the Babri mosque, for permission to build a temple on the Chabutra 17' x21' mentioned in para 5 above, in the court of the learned Civil Judge, Faizabad which was dismissed, and an appeal from the said decree was also dismissed.*
>
> *By the learned District Judge, Faizabad (Civil Appeal No. 27 of 1885). In the* ***sketch map filed alongwith the plaint in Suit No. 61/280 of 1885 the entire building, with the exception of the Chabutra 17' x 21' was admitted to be mosque and was shown as such****.*
>
> *6A. That the cause of action for the suit in Suit No. 61/280 of 1885 in the Court of the Civil Judge, Faizabad, arose on the refusal of the Dy. Commissioner of Faizabad on the representation of some Muslims to grant permission*

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to Mahant Raghubar Dass, Mahant of Janam Asthan for the construction of a temple on the ground that a temple could not be permitted to be built on land adjoiing the mosque (meaning thereby the Babri Masjid).

6B. "In that suit Regular Suit No. 61/280 of 1885 of the Court of Civil Judge, Faizabad Mahant Raghubar Dass was suing on behalf of Himself, on behalf of Janam Asthan, and on behalf of the whole body of persons interested in Janam Asthan and Mohd. Asghar, Mutawalli of the Babir Masjid was made a defendant."

6C. Mohammad Asghar Defendant Mutawalli of Babir Masjid contested the suit inter-alia on the ground that the ***land on which the temple is sought to be built is not the property of the plaintiff or of the Asthan, that the said land lies within the Ahata of Babari Masjid and is the property of the Masjid****.*

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6D. That in the suit mentioned above the matter directly and substantially in issue was:-

(i) the existence of the Babari Masjid.

(ii) the right of Hindus to construct a temple on land adjoining the Masjid.

The existence of the mosque was admitted by the plaintiff in that suit and the Suit of the plaintiff was dismissed on the further ground of public policy.

6E. If the building was not a masjid but a temple as alleged in the present suit the matter might and ought to have been pleaded by Mahant Raghubar Dass in the former suit (suit No. 61/280 of 1885 mentioned above) and shall be deemed to have been a matter directly and substantially in issue in that Suit and the plea that the

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building is not a Masjid but a temple cannot be raised in the present suit. For the reasons mentioned above the decision in the former suit operates as resjudicate in the present Suit.

6F. That on the admission contained in the plaint of Regular Suit No. 61/280 of 1885 mentioned in the preceding paragraphs it must be taken an established fact that the building now claimed by the Hindus as the temple of Janam Asthan was and is a mosque and not a temple.

7. That the suit mentioned above was a sensational case, in which the entire Hindu public and more specially all the Mahants of Ajodhiya and other respectable Hindus of Ajodhiya and Faizabad were deeply interested."

3081. The sketch map filed alongwith the plaint in Suit-1885 has been relied upon by plaintiffs as is evident from para 6 of the plaint stating that the said Chabutara was shown therein in the mosque premises. In para 6 referring to the order of the Deputy Commissioner, the plaintiffs said, *"a temple could not be permitted to be built on land adjoining the mosque (meaning thereby Babari masjid)."* It shows that the plaintiffs also believed that the actual building structure only constitute mosque and rest of the area between the outer wall and the building was land adjoining the mosque and not the mosque itself or part of the mosque itself. The written statement filed by Mohd. Asghar in 1885 suit has been referred to in para 6(C) and copy thereof has also been placed on record as Exhibit A-23, Suit-1, Register 7, page 255, Admitting that the said Chabutara was constructed in 1857, he, however, submitted that the said action was unauthorised. In para 5 he admits that Sita Rasoi and a Kuti has also been constructed and despite of the orders

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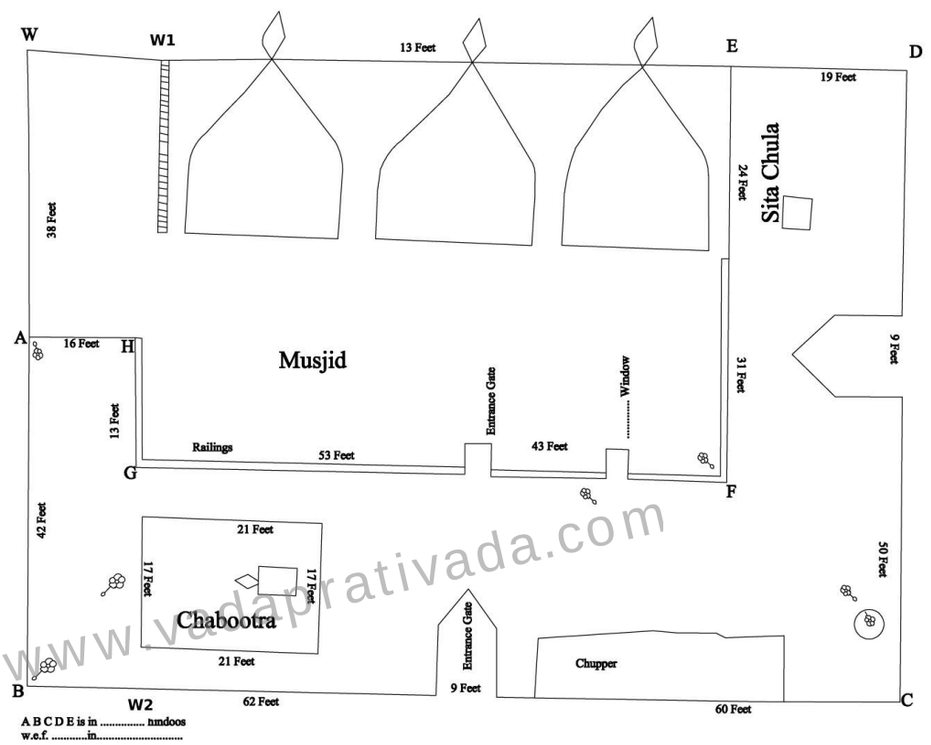
having been issued the same are not removed.

3082. The map appended to the plaint in Suit-1885 is also on record as **Exhibit A 22 (Suit-1), (Register 7 page 239)** and it would be appropriate to reproduce the said map (only disputed site):



Note: The rectangular area covered by letters W B W1 W2 on the extreme southern side is not the part of property in dispute in Suit-4.

3083. There is an endorsement at the bottom of the said map as under:

> *"A B C D E is in the possession of the Hindus. W E F G H is in possession of Mohammedans."*

3084. It also shows that the partition wall 'F G' has one entrance gate and on its northern side there was a barbed window. In the outer courtyard three structures are shown, i.e., Chabutara, Chappar and Sita Chulha. (also called Sita Rasoi and Chhatti Pujan Sthal)

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3085. The correctness of the map was not disputed in 1885 Suit. The Court in 1885 appointed Gopal Sahai Amin's Commission to prepare the map by spot inspection and submit report. This map was submitted alongwith report dated 6th December 1885. The report is Exhibit A 24 (Suit-1) (Register 7, page 275) and the Gopal Sahai Amin Commissioner's map is Exhibit A 25, (Suit-1) (Register 7, page 277). There is nothing on record to show that this map was ever disputed by defendant no. 2, i.e., Mohd. Asghar in the said suit. Therefore, as long back in 1885 in the outer courtyard three non Islamic structures existed and the premises of the outer courtyard was claimed to be possessed by Hindus which by itself was not disputed. Only this much was contested that this possession is unauthorised. Issue no. 5 (Suit-1885) pertains to the correctness of the measurement of Chabutara and in the judgement dated 24.12.1885 of the trial court, i.e., Sri Hari Kishan, Sub-Judge Faizabad, he said:

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> *''निस्बत तनकीह पन्जुम के मौक़े पर पैमाइश की और* ***पैमाइश नक़्शा सही है जो मुताबिक़ मुन्दर्जा दावा है कि मुहम्मद असग़र को भी उस तादाद मुन्दर्जा अर्ज़ी दावा में अब कुछ उज्र न रहा*** *बल्कि वह कुछ तादाद कुछ इन्च में कम है तादाद फ़ीट सही है।''*
>
> *"Regarding Issue no. 5 I took the measurement on-the-spot and* ***found the map to be correct which is in consonance with the plaint. Mohd. Asghar also does not have any objection whatsoever*** *with regard to the figure mentioned in the plaint, rather the measurement is a few inches less but number of feet is correct."*

3086. For Chabutara and other things, the finding recorded by trial court, not disputed in appeal, and also before us by the plaintiffs (Suit-4), who in fact, rely on the said judgement, are as

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follow:

"निस्बत तनक़ीह शशुम बमुलाहिजा मौक़ा ज़ाहिर है कि ***चरन यानी पादुका नक़्श है कि जिसकी परसतिश होती है*** *सिवाय इसके चबूतरे से मन्दिर बाक़ैय चबूतरे पर एक मूरत ठाकुर जी रखी हुई है जिसकी परस्तिश होती है। चबूतरा मक़बूजा मुद्दई है कि जो कुछ उस पर चढ़ावा चढ़ता है वह मुद्दई लेता है कि इस बात यानी चढ़ावा को इस वक़्त मुहम्मद असग़र मुद्दालैह भी तसलीम करते हैं। गवाहान मुद्दई से कब्ज़ा मुद्दई का बखूबी साबित है कि इस वजह से दीवार कटहरेदार हद हिन्दू मुसलमान अलहदा अर्से से क़ायम हुई है जिसका ज़िक्र आइन्दा मौक़े पर होगा। गवाहान मुद्दालैह क़ब्ज़ा चबूतरा मुद्दई से नवाक़फ़ियत ज़ाहिर करते हैं। दरमियान मस्जिद व चबूतरे के एक पुख्ता दीवार कटहरेदार है कि नक़्शा मुरत्तिबा अमीन इसलाहे दावा के मुलाहिजा से बखूबी कैफियत मौक़ा मुनकशिफ़ हो सकती है और साफ़ ज़ाहिर है कि हुदूद दरमियान मस्जिद व चबूतरे की क़ायम की गई है और इसकी ताईद सरकारी ग़ज़ेटियर से जो क़ब्ल मुतानाजा हाल के मुरत्तिब हुआ बखूबी हासिल है कि पेशतर हिन्दू व मुसलमान दोनों इस मुक़ाम पर परस्तिश करते थे सन् 1855 में बाद लड़ाई दरमियान हिन्दू व मुसलमान एक दीवार कटहरे की वास्ते रफ़े निज़ा के बना दी गई कि अन्दर उसके मुसलमान व बाहर हिन्दू लोग परस्तिश करें।"*

"Regarding Issue no. 6 it is clear from the spot inspection that ***'Charanpaduka' is placed there which is being worshipped****. Besides this Chabutra,* ***an idol of Thakur Ji is also placed there which is also being worshipped****. The* ***Chabutra is occupied by the plaintiff*** *and whatever offerings are offered are taken by the plaintiff. The respondent* ***Mohd. Asghar also accepts this fact concerning offerings and its acceptance by the plaintiff****. From the statements of the witnesses of the plaintiff his possession is well established and, therefore,* ***barbed wire wall exists since long separating Hindus from Muslims*** *which will be mentioned at the appropriate stage. The*

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witnesses of the respondent express ignorance about the possession of the plaintiff over the Chabutra. ***There is a barbed wire wall between the Masjid and the Chabutra*** *which may be evident from a perusal of the map prepared by Amin and the situation becomes clear from it that limit has been created between Masjid and the Chabutra which is verified by Government Gazetteer which was prepared prior to the dispute in question.* ***Earlier, both Hindus and Muslims used to worship at this place****. In 1855, after the riot between Hindus and Muslims, a barbed wire fencing was erected to avoid any clash between Hindus and Muslims so that Muslims may offer prayers inside and Hindus outside."*

3087. In appeal, the District Judge, with respect to the existence of the structures at the premises in dispute, in judgment dated 18.03.1886, Exhibit A 27 (Suit-1), Register 7, page 319/320, observed:

"The entrance to the enclosure is under a gateway which pears the superscription "Allah" ---- immediately on the ***left is the platform a chabutara of masonry occupied by the Hindus. On this is a small superstructure of wood in the form of a tent.***

This ***chabutara is said to indicate the birthplace of Ramchandra****. In from of the gateway is the entry to the masonry platform of the masjid. A wall pierced here and there with railings divides the platform of the masjid from the enclosure on which stands the "Chabutara"."*

3088. This position of the outer courtyard had continued thereafter inasmuch as when Suit-1 was filed on 16th January, 1950 the Civil Judge appointed an Advocate Commission of Sri

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Shiv Shankar Lal who also prepared a map wherein the three structures, i.e., Chabutara, Bhandar and Sita Rasoi have been shown to exist in the outer courtyard in same way. The plaintiffs have not placed any evidence to show that so far as the premises in outer courtyard, and these three structures are concerned, possession of Hindus was ever disturbed or denied or they were ever dispossessed. It is also not said that Muslims ever entered and visited premises in outer courtyard with *animus possidendi*, On the contrary it appears that during the fairs held at Ayodhya, i.e., Ramnavami fair etc., the rush of Hindu public used to swell so much so that the executive authorities found it necessary to have another gate for safety purposes and sometimes in 1873-74 this gate was constructed and opened in the northern wall which the defendants Hindu parties called "Singh Dwar".

3089. So far as the premises in the inner courtyard is concerned, it appears to be true that the Britishers divided the premises with the intention that the Muslims shall worship in the inner courtyard and Hindus in the outer courtyard but immediately since thereafter, i.e., from 1858 and onwards we find a lot of documents on record demonstrating that the Hindus continued to enter the premises in the inner courtyard also and offered worship thereat. There was no restriction in the entry inside the inner courtyard in any manner. The entrance door in the dividing grilled wall was never locked. It is difficult to hold that the possession of the premises inside the inner courtyard remain only with the plaintiffs. Here the "possession" means right possession, uninterfered possession by the unwanted person and capacity to control others interference.

3090. There is no evidence that the Muslims had the possession of the property in dispute after its construction in the

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form of mosque by a Muslim Ruler before Tieffenthaler' visit but on the contrary, Hindus continued to enter the disputed premises and worship thereat as we find mention, as long back as in 18th century, in the Travellers Account of Joseph Tieffinthaller who visited Oudh area between 1766-1771 and his write up was published in 1786. We have already quoted the relevant extract above. This fact was also reiterated in the subsequent Gazetteers of Edward Thornton which was published in 1858.

3091. The plaintiffs (Suit-4), however, have filed certain Statements of Account and Auditor's Report, orders under Section 92 CPC, waqf related documents etc. to claim that the maintenance of the building in dispute was entrusted to Mutawalli who was looking after the mosque and, therefore, symbolic possession of the building in dispute had to be with Muslims. We may have a bird eye view of these documents also.

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3092. These documents can be placed in five categories, (i) copies of revenue records; (ii) income-expenditure accounts; (iii) the documents relating to repair of the damaged building in 1934 riot; (iv) the orders under Section 92 C.P.C.; and (v) correspondence with the Sunni Board regarding wakf and its registration etc.

3093. In the first category, i.e. copies of revenue records, comes the following:

(A) **Exhibit A-30 (Suit-1) (Register 7, page 333-335)** is a copy of the Khewat Patwari Mauza Bahoranpur of the period 1332 Fasli (1929 A.D.). In respect of certain plot number, it mentions the name of Mir Mohammad Zaki as Numberdar and in the column of partners it mentions the

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name of Mohd. Zaki, Amzad Ali and Mir Nazim.

This document relates to Mauza Bahoranpur's property wherein Mir Mohammad Zaki is shown as Numberdar. His successor, in his reply dated 20th November 1945 (Exhibit A-66, Suit-1), in para 9 has claimed that his property is not wakf but Nankar Maafi. We are not concerned with the said property of Mauza Bahoranpur and, therefore, do not propose to make any comment on the said document. Suffice it to say that this document does not help Muslim parties in any manner.

(B) **Exhibit A-37 (Suit-1) (Register 7, page 417)** is a copy of Khasara Abadi Mashmoola Misil bandobast Sabik relating to Mauza Ramkot Pargana Haweli Awadh Tehsil and District Faizabad dated 20.03.1950.

(C) **Exhibit A-38 (Suit-1) (Register 7, page 419)** is a copy of the Naqual Khasara Mashmoola Misil bandobast Sabik Mauza Ramkot Pargana Haweli Oudh Tehsil and District Faizabad.

(D) **Exhibits A-39 and A-40 (Suit-1) (Register 7, pages 421 and 423)** are the copies of the map Kishtwar Misil Bandobast Sabik Mauza Ramkot Pargana Haweli Tehsil and District Faizabad dated 09.03.1950 and Intekhab Naksha Abadi Mauza Ramkot Pargana Haweli Tehsil and District Faizabad.

(E) **Exhibit A-41 (Suit-1) (Register 7, page 425)** is a copy of the Khewat Mauza Bahoranpur.

3094. These revenue documents have been placed to show that there is mention of existence of a mosque in the area in dispute by referring plot area. The revenue entries do not create any right. When contested, particularly in a title suit, the facts

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have to be proved on their own. Even otherwise what is contained in the revenue entries would not show that a particular party was in possession. As we have already discussed above, the possession of the plaintiffs (Suit-4) even if we assume what they claim to be correct, is not of a continuous nature. The alleged Mutawalli of the disputed structure or the disputed waqf is not before the Court. Even the so called Pesh-Emam or Moazzim have not appeared even as a witness in this case. On the one hand the plaintiffs claim that till 1949 there was a Mutawalli, a Pesh-Emam and a Moazzim for maintaining the mosque as also taking care of regular Namaj by muslims but strangely none of them have taken any step as a result of the incident of 22/23 December 1949. There is not even a complaint by any of them what to say of their deposition as witness in these cases. It is contended that an affidavit of Pesh-Emam, Abdul Gaffar was filed in a writ petition pending before this Court against the order dated 01.02.1986 passed by the District Judge for opening of locks. We cannot take notice of such affidavit since the deponent has not appeared in the witness box offering himself for testifying creditworthiness of his averments. These revenue records, therefore, to our mind do not help the plaintiffs in any manner on the issue with which at present we are confronted with.

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3095. The legal status of entry in revenue record was considered and the Court held that it does not confer ownership or title. Relying on an earlier decision in **Jattu Ram Vs. Hakam Singh, 1993 (4) SCC 403,** in **Suraj Bhan Vs. Financial Commissioner, 2007 (6) SCC 186** the Apex Court said:

> *"9. ....It is well settled that an entry in revenue records does not confer title on a person whose name*

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appears in record-of-rights. It is settled law that entries in the revenue records or jamabandi have only "fiscal purpose" i.e. payment of land revenue, and no ownership is conferred on the basis of such entries. So far as title to the property is concerned, it can only be decided by a competent civil court (vide Jattu Ram v. Hakam Singh 1993 (4) SCC 403)."

3096. In the second category, i.e, income-expenditure accounts comes:

(A) Exhibit A-72 (Suit-1) (Register 7, page 337-355) is a copy of the accounts alleged to be submitted by Syed Mohd. Zaki in Case No. 64 in the Court of Tahsildar Faizabad on 9th July 1925 **for the period 18.04.1923 to 06.04.1924** with respect to the income from the grant of **Mauza Bahoranpur and Sholapur.**

(B) Exhibit A-31 (Suit-1) (Register 7, page 357-377) is a copy of the accounts alleged to be submitted by Syed Mohd. Zaki in Case No. 64 in the Court of Tahsildar Faizabad on 31.03.1926 for **the period 07.04.1924 to 28.03.1925** with respect to the income from the grant of **Mauza Bahoranpur and Sholapur.**

(C) Exhibit A-32 (Suit-1) (Register 7, page 379-399) is a copy of the accounts alleged to be submitted by Syed Mohd. Zaki in Case No. 64 in the Court of Tahsildar Faizabad on 23.08.1927 for the **period 29.03.1925 to 24.04.1926** with respect to the income from the grant of **Mauza Bahoranpur and Sholapur.**

(D) Exhibit A-33 (Suit-1) (Register 7, page 401-407) is a copy of the accounts alleged to be submitted by Syed Mohd. Zaki in Case No. 64 in the Court of Tahsildar

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Faizabad for the **period 25.09.1941 to 12.09.1945** with respect to the income from the grant of **Mauza Bahoranpur and Sholapur.**

(E) Exhibit A-35 (Suit-1) (Register 7, page 413) is a copy of accounts of income and expenditure relating to **1.4.1947 to 31.03.1948** as per Section 57 of U.P. Muslim Waqf Act, 1936.

(F) Exhibit A-36 (Suit-1) (Register 7, page 415-416)=Exhibit A-54 (Suit-1) (Register 8, page 501) is said to be a copy of the auditor's report for the period **1947-1948** finalized on 27.07.1948 and contains following noting on page 416:

وقف ۲۶ فیض آباد کے خدمات کی جانچ کی گءی- انہوں نے بتایا کہ سابق متولی کے بیان سے نہ توکاغذات وقف بنے ہیں اور نہ یہ معلوم ہوسکا کہ کیا بقایا ہے اور کیا تحویل ہے - وقف کی امدنی ۵۰۰ روپیہ سے زاءد ہیں- جسکی وصولی تحصیل جواد حسیر صاحب نے اکتوبر ۱۷ سے کی ہے جسکی وجہ سے صرف ۸۲ روپیہ وصول ہو سکیں ہیںپیچھلا مطالبہ بورڈ بھی معلوم نہیں کہ وصول ہوا ہے یا نہیں دفتر سے ڈیمانڈ نوٹس جاری کیا جاءے تاکہ متولی جواد حساین کو معلوم ہو سکے کہ کیا بقایا ہے انہوں نے استدعا کی ہے کہ پیچھلا مطالبہ سابق متولیان سے لیا جاءے دفتر سے اس سلسلہ میں مناسب اقدام کیا جاءے میں نے ان کو ہدایت کر دی ہے کہ وہ حسابات وغیرہ باقاعدہ لکھیں-

دستخط

27.8.48

دفتر کے متعلقہ کلارک ڈیمانڈ نوٹس جاری کرتے وقت مطالبہ بورڈ کی تسخیص ۵۰۰ روپیہ پر کریں اطلاعاً تحریر ہے لکھیں تحریر ہے لکھیں تاکہ ڈیمانڈ رجسٹر میں غلط اندراج نہ ہو جاءے-

"Inspected the accounts of Imam Waqf number 26. He told that the previous Mutwalli did not possess any documents and as such it could not be ascertained as to how much

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amount is due and how much is in arrears. The income of the Waqf is more than Rs. 500/- which is realized by Jawad Husain Saheb from October 17, as a result of which only Rs. 82/- could be realized and it is also not known as to whether previous dues or arrears are being recovered or not. Demand notice be issued by the office so that Mutwalli Jawad Husain may know as to the amount in arrears. He has desired that earlier accounts be demanded from the previous Mutwalli. Appropriate steps be taken by the office in this behalf. I have instructed him to maintain proper accounts.

Concerned clerk in the office while issuing demand notice should write separately that the amount of demand fixed by the Board is Rs.500/- so that no incorrect entry is incorporated in the demand register." (E.T.C.)

(G) Exhibit A-60 (Suit-1) (Register 8, page 513) is a copy of the statement in Form 38 U.P. Muslim Waqf Act NO. 13 of 1936 with respect to annual income of the waqf property from rural property, Hajjam (Barbars), houses and shops etc containing the note dated 27.9.1943 of Inspector Wakfs that amount realized under a particular head has not been shown. It reads:

دفتر سنی سنٹرل بورڈ آف وقف یو۔ پی۔ لکھنوء

ذیل فارم رجسٹری وقف زیر دفعہ ۳۸۔ یو۔پی۔ مسلم وقف ایکٹ۔نمبر ۱۳ سن ۱۹۳۶ مشمولہ مثل۔۔

نمبر سلسلہ ۲۶

ضلع کا نام و تحصیل و گاءوں جاءداد موقوفہ موضع بہورن پور و آراضی شعلہ پوری بحال بہورن پور پرگنہ حویلی اودھ تحصیل و ضلع فیض آباد نام وقف مع ولدیت و سکونت--- کوءی وقف نہیں ہے۔ عطیہ شہنشاہ بابر و نواب سعادت علی خاں

متولیان و دیگر اشخاس کے نام جو انتظام وقف سے مطعلق ہوں مع پورا پتہ

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محمد ذکی و کلب حسین ایک قتہ ۴/۵

جواد حسین و محمد حسین و عابد حسین ۴/۵

نورالحسن و ابو محمد و غلام اصغر ۴/۵

دستاویز وقف یا رسم و رواج کے مطابق متولیان کے عہدہ کی جانشینی کا طریقہ نمبردار بحال معافی انتظامات کرتا رہتا ہے کوءی خاص قاعدہ اور نہیں ہے

انتظام وقف کی اسکیم کی تفصیلات--- مسجد مذکور کی سفیدی و مرمت و فرش روشنی وغیرہ اور تنخواہ معذن و پیش امام و خرچہ رمضان شریف و عیدگاہ حالیہ کا انتظام بھی ہوتا ہے جو فرد حساب میں درج ہے

وقف کے متعلق تمام دستاویزات استحقاق اور دیگر دستاویزات متعلقہ کی بابت تفصیلات ---- موضع بہورن پور ۳۵۱/۶۰

آراضی شعلہ پوری بحال بہورن پور ۱۷۷/۸

جاءدادہاے موقوفہ کی تفصیلات جو شناخت کے لءے کافی ہوں---- کوءی وقف نامہ نہیں ہے- صرف سند نانکار ہے منجانب گورنمنٹ

جاءدادہاے موقوفہ کی سالانہ آمدنی ----- ۱۵۲روپیہ

آراضی دیہات سے---- ججام مرطب ۱۴ روپیہ

مرمت مکانات وغیرہ ---

دیگر ذراءع سے----- ۳۰۵ روپیہ

میزان

۱۰	سرکاری مالگذاری ابواب- لگان اور ٹیکس جو جاءداد ہاءے موقوفہ بابتہ سالانہ ابواب رقم سے گورمنٹ کو سالانہ واجب الادا ہو

سالانہ مصارف کی تفصیلات بموجب دستاویز یا رسم ورواج

۱۱		خرچ تحصیل وصول مبلغ ------ بطورحق نمبرداری ملک حسن نمبردار----------
۱۲	الف	تنخواہ متولی-----محمد ذکی حسین 240/00 جواد حسین وغیرہ ۸۴-۵- نمبر لازمی معہ جمعہ ۲۶۵ نورالحسن وغیرہ ----------
	ب	خیراتی اغراض-------مخصوص مذہبی کام کے لءے

خاندان سے مراد ۱ واقف کے والدین ۲ واقف کی زوجہ یا وافقہ کا شوہر ۳ واقف کی اولاد ۴ دیگر افراد جو واقف سے اسکے کسی مورثا مرد عورت کے ذریعہ رشتہ رکھتے ہوں ۵ وہ افراد جو واقف کے ساتھ رہتے ہوں یا اسکے زیر پرورش ہوں-

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۱۳	کل پس ماندہ رقم جو متولی کے پاس جمع ہو ---کوءی رقم جمع نہیں ہے-
۱۴	دیگر تفصیلات - جاءداد مذکور میں بہت سے کھوٹ دار ہیں سالانہ حصہ پاتے ہیں- جو مسجد کے سالانہ خرچہ سے بچتا ہے اور نمبردار کو حق نمبرداری ملتا ہے-
۱۵	تاریخ جسمیں رجسٹرکیلءے درخواست دی گءی ہو------۴۶ستمبر ۱۹۴۳ء
	کیفیت- نوٹ- فی الحال جملہ کھوٹ داران وقف نہیں تسلیم کرتے ہیں بلکہ نانکار معافی کہتے ہیں لہذا ہم لوگوں کو اپنے حق کے لءے استقرار کا دعوی عدالت مجاز میں کرنے کا ارادہ ہے جسکا موقعہ بضابطہ عطا فرما یا جاوے

میں بحلف تصدیق کرتا ہوں کہ مندرجہ بالا اطلاعات بالکل صحیح اور درست ہیں اور میں نے کوءی بات سنی سنٹرل بورڈ آف وقف سے پوشیدہ نہیں رکھی ہے-

Office of the Sunni Central Board of Waqf, U.P., Lucknow.

Register under Section 38 of U.P. Muslim Waqf Act No.13 of 1936.

1. Serial No.	26
2.Name of the District and Tehsil, village and property Mauqoofa	*Village Bahoranpur and Arazi Sholapuri Bahal, Pargana Havei, Oud, District Faizabad.*
3. Name of the Waqf, parentage and the place of its existence	***There is no waqf,** Atiya Emperor Babar and Nawab Saadat Ali Khan*
4. Name of Mutwallis and other persons related to management of Waqf with complete address	***Mohd. Zaki, Kalbe Husain*** *Rs. 4/5 (Numberdar Moazzin Kalbe Hussain)* *Javvad Hussain. Mohammad Hussain and Abid Hussain Sheikh..... Rs.4/5* *Nurul Hasan, Abu Mohammad and Ghulam Asghar.....Rs.4/5*
5. Documents of Waqf or the method of selection for the	***Numberdar Bahal Mafi makes arrangement and there is no other special rule.***

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office of Mutwallis as per custom.	
6.Details of scheme of Waqf	*Arrangement of whitewash and repairs of the aforesaid Mosque, lighting, salary of Moazzin and Pesh Imam,* ***expenditure on Ramzan Sharif and Masjid Eidgah and other necessary works are*** *done, which are entered in the account sheet.*
7. Details of various documents relating to Waqf as well as other documents	*Mauza Bahoranpur... 351/6/- Arazi Sholapuri 177/8*
8.Details of Maukufa property which is adequate for identification	*There is no waqfnama. Only certificate of Nankar issued by the Government is there.*
9.Annual income of Maukoofa property *From Aarazi village* *From shops etc.* *Total:*	*152/-* *14/- (Hazam Murattab)* *-* *Rs.305/-*
10. Govt. Malguzari, Abwab, Lagaan and Taxes which is to be paid annually regarding maukoofa property and was paid to the Government annually.	*Illegible*

Details of annual expenditure according to documents or customs.

11. Expenditure on Tehsil and recovered Rs..... as right of Numbardari, Numberdar Malik Hasan *(a) Salary to Mutwalli*	*Mohd. Zaki and Nikhat Hasan.....74/50* *Javvad Hussain etc..84/50* *Nurul Hasan etc.. 84/50* *.....Rs.240/-* *Towards wages: Rs. 265* *For special religious work and other work.....(illegible)*

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(b) For donation purposes	
11.Total remaining balance with the Mutawalli.	*No amount is in balance with the Mutawalli.*
12. Other details	*There are a number of Khewatdaar in the Waqf property aforesaid who are being PAID their share out of the remaining amount after annual expenditure of the Masjid and the Numberdars gets their right of Numberdari.*
13. Date in application for registration was moved	*26th September 1943*

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Note: ***At present all the Khewatdaars do not recognize it as waqf, instead they call it Nankar Maafi.*** *Therefore we are intending to file a suit in the Court for our rights for which permission be granted.*

I state on oath that the above information are correct to the best of my knowledge and belief and nothing has been concealed from the Waqf Board."

(H) Exhibit A-55 (Suit-1) (Register 8, page 503) is a copy of the account of income and expenditure with respect to the year 1947-48 and reads as under:.

سنی سنٹرل وقف بورڈ یو پی لکھنؤ

ذیل حساب آمدنی و خرچ بابتہ سال یکم اکتوبر ۱۹۴۷ء لغایت ۳۱مارچ ۱۹۴۸ء حسب دفعہ ۵۷ یوپی مسلم وقف ایکٹ ۱۹۳۶ء..... مشمولہ مثل دفعہ ۲۶ مسجد بابری ضلع فیض آباد

نام ضلع ---فیض آباد نمبر وقف ۲۶ نام وقف یا واقف بادشاہ بابر

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نام متولی جواد حسین

۱	الف	رقم غیر وصول شدہ سال گزشتہ نسبت جاءداد موقوفہ زرعی و سکنی	
	ب	ڈگریات	
۲	الف	لگان نسبت جاءداد زرعی جوبابتہ سال حال واجب الوصول ہو	۹۸
	ب	آمدنی سیر و خود کاشت	۱۶
	ج	آمدنی ساءر (باغات تالاب جنگلات وغیرہ معہ تفصیل	
	د	کرایہ مکانات دو کانات و آراضی سکنی	
	ر	دیگر آمدنی	
۳		مال گزاری سرکاری ٹیکس واجب الاداہو	۲۷/۴
۴		خالص آمدنی بعد منہاءی مال گزاری ٹیکس	۷۰/۱۲
۵	الف	رقم جو ادس کی اولاد یا خاندان کیلءےیا کسی نجی کام کیلءے ازروءے وقف نامہ واجب الاداہو	
	ب	رقم جو ازروےوقف نامہ براءے کار خیر واجب الادا ہو	
۶		کسی قسم کا قرضہ یا باریاداءیگی جو ذمہ جاءد موقوفہ شروع سال واجب تھا (مثلاً بار کرایہ مالگزاری ابواب ٹیکس و تنخواہ یا مال گزارہ یا ڈگری وغیرہ	
۷		کسی قسم کا قرضہ یا باریاداءیگی جو ذمہ جاءد موقوفہ آخر سال واجب تھا (مثلاً بار کرایہ مالگزاری ابواب ٹیکس و تنخواہ یا مال گزارہ یا ڈگری وغیرہ	
۸		قرض دیا ہوا روپیہ یا بینک میں جمع شدہ جو سال کے شروع میں تھا-	
۹		قرض دیا ہوا روپیہ یا بینک میں جمع شدہ جو سال کے آخر میں تھا-	

		واقعی آمدنی اندرون سال	پا	آ	ر		واقعی خرچ اندرون سال	پ	آنہ	ر
۱	الف	وصولی ازبقایا سال گزشتہ بابتہ جاءداد زرعی و سکنی				۱	سرکاری مالگذاری و ابواب ٹیکس	-	4	27
	ب	وصولی ازبقایا سال گزشتہ بابتہ ڈگریات				۲	مطالبہ وقف بورڈ معہ حوالہ نمبر و تاریخ رسید			
۲	الف	لگان	-	-	82		----------			
	ب	سیر و خود کاشت	-	-	16	۳	صرف تحصیل وصول و انتظام جاءداد	-	8	12
	ج	ساءر باغات جنگلات تالاب وغیرہ معہ تفصیل				۴	صرفہ مرمت و تعمیرجاءداد			
-	-	----------				۵	اخراجات مقدمات			
-	-	----------				۶	مسجد			56
-	-	----------				۷	مدرسہ			
-	-	----------				۸	نزر دینا زد فاتحہ			

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	د	کرایہ مکانات و دوکانات و آراضیات سکنی				۹	خیرات و امداد و غرباء و مساکین			
	ر	دیگر آمدنی معہ تفصیل				۱۰	دیگر امور خیر مطابق وقف نامہ			
۳	الف	جو روپیہ بینک سے نکالاگیا				۱۱	تنخواہ متولی اگر ہو			
	ب	جو روپیہ قرض کا وصول ہوا				۱۲	رقم جو واقف یا واقف کے خاندان کو ازروے وقف نامہ دی گءی ہو-			
						۱۳	اخراجات متفرق			
						۱۴	جو روپیہ بینک میں جمع کیا گیا-			
						۱۵	جو روپیہ قرض دیا گیا-			
		میزان کل تحویل جو شروع سال تھی مطابق نو ٹ ۲) دکھلاءی جاوے	-	-	98		میزان اخراجات پسماندہ رقم معہ تفصیل جہان جمع ہو مطابق نو ٹ ۲ دکھلاءی جاوے	-	124	952
		میزان کل	-	-	**98**		**میزان کل**	-	-	**98**

کل رقم مطالبہ جو واجب الوصول میں سے وصول ہونے سے باقی رہ گءی -------

میں بحلف تصدیق کرتا ہوں کہ مندرجہ بالا اندراجات و رسیدات متعلقہ جنکی صحت و اصلیت کی جانچ میں نے کرلی ہے میرے علم و یقین میں صحیح و درست ہیں اور میں نے کوءی بات پوشیدہ نہیں رکھی-

دستخط متولی معہ پورا پتہ

جواد حسین بقلم نورالحسن ساکن سنہواں

ڈاکخانہ درشن نگرضلع فیض آباد

Sunni Central Waqf Board U.P. Lucknow

*Statement of income and expenditure from **1st October 1947 to March 31, 1948** under section 57 U.P. Muslim Waqf Act 1936, included in File no. 26 Masjid Babri.*

Name of District : Faizabad

Number of Waqf. : 26.

*Name of the Waqf or Waqif ..**Badshah Babar**.*

*Name of Mutawalli- **Jawad Husain**.*

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1(Alif) Outstanding amount of the previous year in respect of Waqf property. Agricultural and residential plots.

(Bay).....

2 (Alif) Rent in respect of agricultural land of previous year which is yet to be realized Rs. 98/-.

(Bay) Income from seer and self cultivation Rs. 16=98

(Jeem) Income (Sair orchards, ponds, forests etc) with details..

(Dal) Rent from houses and shops and residential plots..

(Rey) other income. ....

3 Malguzari of the Govt. and taxes to be paid Rs.27/4/-

4 Net income after deducting Malguzari and taxes...Rs. 70/12

5 (Alif) Amount to be paid to the relations of the Waqif, or reserved for some other personal as per waqfnama....

(Bey) Amount which is to be spent on charitable purposes.

6 Any debt or encumbrances outstanding in the beginning of the year, e.g. Rent, Malguzari Abwab, Tax and Salaries or Pension or Degrees etc.

7 Any loans or outstanding debt on the waqf property e.g. rent at the end of the year.(e.g.Rent, Malguzari Abwab, Tax and Salaries or Pension or Degrees etc.

8 Amount given as loan and the amount deposited in the bank, in the beginning of the year.

9 Amount of loan or deposited in the bank at the end of the year.

Total Net Income of the Waqf during the year	*Rs. As. Ps.*	*Total expenditure during the year*	*Rs. As.Ps.*

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1.(A) Receipt of arrears of the previous year in respect of agricultural land and residential plots. *(Bey) Receipt from the degrees of the previous year.* *2.(Alif) Lagan* *(Bey) Seer and self cultivation* *(Jeem) Sair, orchards, forest, ponds etc. (give details)* *(Dal) , Rent of houses, shops and residential plots.* *(Rey) other income with details* *1.(Alif) Amount with drawan from the bank*	*82-0-0* *16-0-0*	*1. Govt. Malguzari Abwab Tax* *2.Demand of the Board with reference no. and date of the receipt.* *3.Expenditure on Tehsil wasool and management of property.* *4. Expenditure on repair of waqf property.* *5. Expenditure on litigation* *6. Litigation on mosque* *7. Madrasa litigation* *8. Nazro, Niyaj and Fateha* *9. Charity and help to the poor.* *10. Other charities as per Waqf Names* *11. Salary of Mutawalli, if any.* *12. Amount paid to the Waqif or his family as per Waqf nama.* *13. Miscellaneous expenditure* *14. Amount deposited in the bank.* *15. Amount given as loan.* ***Total amount*** *Previous balance* ***Total expenditure Balance with details where it is deposited as per note no. 2***	*27-4-0* *12-8-0* *56-0* ***95-12*** *02-4-0* ***98-0-0***

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(Bey) Amount of loan received. ***Total Balance as per note no. 2***	***98-0-0***	***Total expenditure Balance with details where it is deposited as per note no. 2***	***98-0-0***
Grand Total	***98-0-0***	***Grand Total***	***98-0-0***

Total amount of the demand of the Board which is yet to be realized.

I verify on oath that I have checked the entries and receipts there of which are correct to the best of knowledge and belief and nothing has been concealed.

Signature and Address of the Mutawalli.

Sd/- Jawad Husain S/o Noorul Hasan R/o Sahanwa."

(I) Exhibit A-57 (Suit-1) (Register 8, page 507) is a copy of account of income and expenditure with respect to the period from **1.4.1948 to 31.3.1949** and reads as under:

سنی سنٹرل وقف بورڈ یو پی لکھنؤ

ذیل حساب آمدنی و خرچ بابتہ سال یکم اکتوبر ۱۹۴۷ء لغایت ۳۱مارچ ۱۹۴۸ء حسب دفعہ ۵۷ یوپی مسلم وقف ایکٹ ۱۹۳۶ء مشمولہ میں ۴۶ مسجد بابری ضلع فیض آباد

نام ضلع فیض آباد نمبر وقف ۲۶ نام وقف یا واقف بادشاہ بابر نام متولی جواد حسین

۱	الف	رقم غیر وصول شدہ----- سال گزشتہ نسبت جاءداد موقوفہ زرعی و سکنی	
	ب	----------ڈگریات----------	
۲	الف	لگان نسبت جاءداد زرعی جوبابتہ سال حال واجب الوصول ہو-	
	ب	آمدنی سیر و خود کاشت-	531/2/-
	ج	آمدنی ساءر باغات تالاب جنگلات وغیرہ معہ تفصیل	
	د	کرایہ مکانات دو کانات و آراضی سکنی	
	ر	دیگر آمدنی	
۳		مال گزاری سرکاری ٹیکس واجب الاداہو----------ابواب	39/9/6

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		ٹیکس	
۴		خالص آمدنی بعد منہاءی مال گزاری ٹیکس----------70/12	
۵	الف	رقم جو ادس کی اولاد یا خاندان کیلءےیا کی نجی کام کیلءے ازروءے وقف نامہ واجب الاداہو	
	ب	رقم جو ازروےوقف نامہ براءے کار خیر واجب الادا ہو----------	
۶		کسی قسم کا قرضہ یا باریاداءیگی جو ذمہ جاءد موقوفہ شروع سال واجب تھا (مثلاً بار کرایہ مالگزاری ابواب ٹیکس و تنخواہ یا گزارہ یا ڈگری وغیرہ	
۷		کسی قسم کا قرضہ یا باریاداءیگی جو ذمہ جاءد موقوفہ آخر سال واجب تھا (مثلاً بار کرایہ مالگزاری ابواب ٹیکس و تنخواہ یا گزارہ یا ڈگری وغیرہ	
۸		قرض دیا ہوا روپیہ با بینک میں جمع شدہ جو سال کے شروع میں تھا۔	
۹		قرض دیا ہوا روپیہ با بینک میں جمع شدہ جو سال کے آخر میں تھا۔	

		واقعی آمدنی اندرون سال	**پ**	**آ**	**ر**		**واقعی خرچ اندرون سال**	**پ**	**آ**	**ر**
۱	الف	وصولی ازبقایا سال گزشتہ بابتہ جاءداد زرعی و سکنی				۱	سرکاری مالگذاریو ابواب ٹیکس	6	9	39
	ب	وصولی ازبقایا سال گزشتہ بابتہ ڈگریات				۲	مطالبہ وقف بورڈ معہ حوالہ نمبر و تاریخ رسید			
۲	الف	لگان	-	-	400		----------			
	ب	سیر و خود کاشت	-	-		۳	صرف تحصیل وصول و انتظام جاءداد	-	-	12
	ج	ساءر باغات جنگلات تالاب وغیرہ معہ تفصیل				۴	صرفہ مرمت ع تعمیرجاءداد			
-	-	----------				۵	اخراجات مقدمات			
-	-	----------				۶	مسجد	-	-	202
-	-	----------				۷	مدرسہ			
-	-	----------				۸	نزر دینا زد فاتحہ			
	د	کرایہ مکانات و دوکانات و آراضیات سکنی				۹	خیرات و امداد و غرباء و مساکین			
	ر	دیگر آمدنی معہ تفصیل				۱۰	دیگر امور خیر مطابق وقف نامہ			
۳	الف	جو روپیہ بینک سے نکالاگیا				۱۱	تنخواہ متولی اگر ہو			
	ب	جو روپیہ قرض کا وصول ہوا				۱۲	رقم جو واقف یا واقف کے خاندان کو ازروے وقف نامہ دی گءی ہو۔			
						۱۳	اخراجات متفرق			
						۱۴	جو روپیہ بینک میں جمع کیا گیا۔			
						۱۵	جو روپیہ قرض دیا گیا۔			
		میزان کل تحویل جو شروع سال	-	-	400		میزان اخراجات پسماندہ رقم معہ تفصیل	6 6	9 6	253 156

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		تھی مطابق نوٹ ۲ □) دکھلاءی جاوے					جہان جمع ہو مطابق نوٹ ۲ □دکھلاءی جاوے		
		میزان کل	-	-	**400**		**میزان کل**	-	-	**400**

کل رقم مطالبہ جو واجب الوصول میں سے وصول ہونے سے باقی رہ گءی ۱۳۱/۲

میں بحلف تصدیق کرتا ہوں کہ مندرجہ بالا اندراجات و رسیدات متعلقہ جنکی صحت و اصلیت کی جانچ میں نے کرلی ہے میرے علم و یقین میں صحیح و درست ہیں اور میں نے کوءی بات پوشیدہ نہیں رکھی۔ مجھے متولی جواد حسین صاحب نے مجاز کیا ہے کہ ان کی طرف سے حساب جانچ کر آوں۔

دستخط متولی معہ پورا پتہ

نورالحسن ساکن سنہوان ڈاکخانہ درشن نگر

ضلع فیض آباد

Sunni Central Waqf Board U.P. Lucknow

*Statement of income and expenditure from **1st April 1948 to 31st March, 1949** under section 57 U.P. Muslim Waqf Act 1936, included in File no. 26 Masjid Babri*

Name of the District: Faizabad

Waqf no. : 26.

*Name of the Waqf and Waqif ..**Badshah Babar**.*

*Name of Mutawalli- **Jawad Husain**.*

1. (Alif) Outstanding amount of the previous year in respect of Waqf property, agricultural and residential plots.

(B).....

2. (Alif) Rent in respect of agricultural land of previous year which is yet to be realized Rs. 531/-20

(Bay) Income from seer and self cultivation ....

(Jeem) Income (Sair orchards, ponds, forests etc) with details..

(Dal) Rent from houses and shops and residential plots..

(Rey) other income. ....

3. Malguzari of the Govt. and taxes to be paid Rs.39/9/6

4. Net income after deducting Malguzari and taxes...

5. (Alif) Amount to be paid to the relations of the Waqif, or

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reserved for some other personal as per waqfnama....

(Bey) Amount which is to be spent on charitable purposes.

6. Any debt or encumbrances outstanding in the beginning of the year, e.g. Rent, Malguzari Abwab, Tax and Salaries or Pension or Degrees etc.

7. Any loans or outstanding debt on the waqf property e.g. rent at the end of the year.(e.g.Rent, Malguzari Abwab, Tax and Salaries or Pension or Degrees etc.

8.Amount given as loan and the amount deposited in the bank, in the beginning of the year.

9. Amount of loan or deposited in the bank at the end of the year.

Total Net Income of the Waqf during the year	*Rs. As. Ps.*	*Total expenditure during the year*	*Rs. As.Ps.*
1.(A) Receipt of arrears of the previous year in respect of agricultural land and residential plots. *(Bey) Receipt from the degrees of the previous year.* *2.(Alif) Lagan*	 *400/-*	*1. Govt. Malguzari Abwab Tax* *2.Demand of the Board with reference no. and date of the receipt.* *3.Expenditure on Tehsil wasool and management of property.* *4. Expenditure on repair of waqf property.* *5. Expenditure on litigation* *6. Litigation on mosque* *7. Madrasa litigation* *8. Nazro, Niyaj and Fateha* *9. Charity and help to the poor.* *10. Other charities as per Waqf Names* *11. Salary of Mutawalli, if any.*	*39-9-6* *12/-* *202-0*

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(Bey) Seer and self cultivation *(Jeem) Sair, orchards, forest, ponds etc. (give details)* *(Dal) , Rent of houses, shops and residential plots.* *(Rey) other income with details* *2.(Alif) Amount withdrawn from the bank* *(Bey) Amount of loan received.*		*12. Amount paid to the Waqif or his family as per Waqf nama.* *13. Miscellaneous expenditure* *14. Amount deposited in the bank.* *15. Amount given as loan.* ***Total amount*** *Previous balance* ***Total expenditure*** ***Balance with details where it is deposited as per note no. 2* www.vadaprativada.com	 ***253-9-6*** ***156-6-6***
Total	***400/-0***	***Total***	***400-0***

Total amount of the demand of the Board which is yet to be realized. Rs.131-2 Anna

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I verify on oath that I have checked the entries and receipts there of which are correct to the best of knowledge and belief and nothing has been concealed.

Signature and Address of the Mutawalli.

Sd/- Jawad Husain S/o Noorul Hasan R/0 Sahanwa, Darshan Nagar, district Faizabad."

(J) Exhibit A-59 (Suit-1) (Register 8, page 511) is a copy of the Statement of income and expenditure for the period from **1.4.1949 to 31.3.1950** under section 57 U.P. Muslim Waqf Act 1936, included in 26 Masjid Babri District Faizabad. It reads:

سنی سنٹرل وقف بورڈ یو۔پی لکھنؤ

ذیل حساب آمدنی و خرچ بابتہ سال یکم اکتوبر ۱۹۴۹ء لغایت ۳۱مارچ ۱۹۵۰ء حسب دفعہ ۵۷ یو۔پی مسلم وقف ایکٹ ۱۹۳۶ء مشمولہ مثل وقف نمبر ۴۶ مسجد بابری ضلع فیض آباد نام ضلع فیض آباد نمبر وقف ۲۶ نام وقف یا واقف بادشاہ بابر نام متولی ----جواد حسین

۱	الف	رقم غیروصول شدہ------ سال گزشتہ نسبت جاءداد موقوفہ زرعی و سکنی	روپیہ ۱۰۰
	ب	----------ڈگریات----------	
۲	الف	لگان نسبت جاءداد زرعی جوبابتہ سال حال واجب الوصول ہو۔	۵۳۱/۱۰/۱
	ب	آمدنی سیر و خود کاشت۔	
	ج	آمدنی ساءر باغات تالاب جنگلات وغیرہ معہ تفصیل----------	۵۳۱/۱۰/۱
	د	کرایہ مکانات دو کانات و آراضی سکتی----------	
	ر	دیگر آمدنی----------	
۳		مال گزاری سرکاری ٹیکس----------واجب الاداہو	۴۱/۳/۴
۴		خالص آمدنی بعد منہاءی مال گزاری ٹیکس۔	
۵	الف	رقم جو ادس کی اولاد یا خاندان کیلءیا کی نجی کام کیلءے ازروءے وقف نامہ واجب الاداہو----------	
	ب	رقم جو ازروےوقف نامہ براءے کار خیر واجب الادا ہو----------	
۶		کسی قسم کا قرضہ یا باریاداءیگی جو ذمہ جاءد موقوفہ شروع سال واجب تھا مثلاً بار کرایہ مالگزاری ابواب ٹیکس و تنخواہ یا گزارہ یا ڈگری وغیرہ	
۷		کسی قسم کا قرضہ یا باریاداءیگی جو ذمہ جاءد موقوفہ آخر سال واجب تھا مثلاً بار کرایہ مالگزاری ابواب ٹیکس و تنخواہ یا گزارہ یا ڈگری وغیرہ	
۸		قرض دیا ہوا روپیہ با بینک میں جمع شدہ جو سال کے شروع میں	

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		تھا۔	
۹		قرض دیا ہوا روپیہ یا بینک میں جمع شدہ جو سال کے آخر میں تھا۔	

		واقعی آمدنی اندرون سال	پ	آنہ	روپیہ		واقعی خرچ اندرون سال	پ	آنہ	روپیہ
۱	ا	وصولی ازبقایا سال گزشتہ بابتہ جاءداد زرعی و سکنی	-	-	۱۰۰	۱	سرکاری مالگذاریو ابواب ٹیکس	۴	۳	۴۱
	ب	وصولی ازبقایا سال گزشتہ بابتہ ڈگریات				۲	مطالبہ وقف بورڈ معہ حوالہ نمبر و تاریخ رسید			
۲	ا	لگان	-	۱۰	۵۳۱		----------	-	۶	۴۹
	ب	سیر و خود کاشت	-	-		۳	صرف تحصیل وصول و انتظام جاءداد	-	-	۱۲
	ج	ساءر باغات جنگلات تالاب وغیرہ معہ تفصیل				۴	صرفہ مرمت ع تعمیرجاءداد	-	-	۵۶
-	-	----------				۵	اخراجات مقدمات			
-	-	----------				۶	مسجد	-	-	۱۸۰
-	-	----------				۷	مدرسہ			
-	-	----------				۸	نزر دینا زد فاتحہ			
	د	کرایہ مکانات و دوکانات و آراضیات سکنی				۹	خیرات و امداد و غرباء و مساکین			
	ر	دیگر آمدنی معہ تفصیل				۱۰	دیگر امور خیر مطابق وقف نامہ			
۳	ا	جو روپیہ بینک سے نکالاگیا				۱۱	تنخواہ متولی اگر ہو			
	ب	جو روپیہ قرض کا وصول ہوا				۱۲	رقم جو واقف یا واقف کے خاندان کو ازروے وقف نامہ دی گءی ہو۔	-	-	۲۴۰
						۱۳	اخراجات متفرق			
						۱۴	جو روپیہ بینک میں جمع کیا گیا۔			
						۱۵	جو روپیہ قرض دیا گیا۔			
		میزان کل تحویل جو شروع سال تھی مطابق نوٹ ۲ □) دکھلاءی جاوے	۱	۱۰	۶۳۱		میزان اخراجات پسماندہ رقم معہ تفصیل جہاں جمع ہو مطابق نوٹ ۲ □دکھلاءی جاوے	۴ ۸	۹ -	۵۷۸ ۵۳
		میزان کل	۱	۱۰	**۶۳۱**		**میزان کل**	-	۱۰	**۶۳۱**

کل رقم مطالبہ جو واجب الوصول میں سے وصول ہونے سے باقی رہ گءی

میں بحلف تصدیق کرتا ہوں کہ مندرجہ بالا اندراجات و رسیدات متعلقہ جنکی صحت و اصلیت کی جانچ میں نے کرلی ہے میرے علم و یقین میں صحیح و درست ہیں اور

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میں نے کوءی بات پوشیدہ نہیں رکھی۔

دستخط متولی معہ پورا پتہ
جواد حسین بقلم عابد حسین
ساکن سہنوان ڈاکخانہ درشن نگر
ضلع فیض آباد

Sunni Central Waqf Board U.P. Lucknow

*Statement of income and expenditure from **1st April 1949 to 31st March, 1950** under section 57 U.P. Muslim Waqf Act 1936, included in File no. 26 Masjid Babri*

Name of the District: Faizabad

Waqf no. : 26.

*Name of the Waqf and Waqif ..**Masjid Babri.***

*Name of Mutawalli- **Jawad Husain**.*

1. (Alif) Outstanding amount of the previous year in respect of Waqf property, agricultural and residential plots.

Rs.100/-

(B)……

2. (Alif) Rent in respect of agricultural land of previous year which is yet to be realized Rs. 531/-10-1

(Bay) Income from seer and self cultivation ….

(Jeem) Income (Sair orchards, ponds, forests etc) with details.. Rs. 531-1--1

(Dal) Rent from houses and shops and residential plots..

(Rey) other income. ….

3. Malguzari of the Govt. and taxes to be paid Rs.41-3-4

4. Net income after deducting Malguzari and taxes...

5. (Alif) Amount to be paid to the relations of the Waqif, or reserved for some other personal as per waqfnama....

(Bey) Amount which is to be spent on charitable purposes.

6. Any debt or encumbrances outstanding in the beginning of the year, e.g. Rent, Malguzari Abwab, Tax and Salaries or

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Pension or Degrees etc.

7. Any loans or outstanding debt on the waqf property e.g. rent at the end of the year.(e.g.Rent, Malguzari Abwab, Tax and Salaries or Pension or Degrees etc.

8.Amount given as loan and the amount deposited in the bank, in the beginning of the year.

9. Amount of loan or deposited in the bank at the end of the year.

Total Net Income of the Waqf during the year	*Rs. As. Ps.*	*Total expenditure during the year*	*Rs. As.Ps.*
1.(A) Receipt of arrears of the previous year in respect of agricultural land and residential plots. *(Bey) Receipt from the degrees of the previous year.* *2.(Alif) Lagan* *(Bey) Seer and self cultivation* *(Jeem)*	*100/-* *531-10-1*	*1. Govt. Malguzari Abwab Tax* *2.Demand of the Board with reference no. and date of the receipt.* *3.Expenditure on Tehsil wasool and management of property.* *4. Expenditure on repair of waqf property.* *5. Expenditure on litigation* *6. Litigation on mosque* *7. Madrasa litigation* *8. Nazro, Niyaj and Fateha* *9. Charity and help to the poor.* *10. Other charities as per Waqf Names* *11. Salary of Mutawalli, if any.* *12. Amount paid to the Waqif or his family as per Waqf nama.* *13. Miscellaneous expenditure* *14. Amount deposited in*	*41-3-4* *49-6-* *12/-* *56/-* *180-0* *240/-*

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Sair, orchards, forest, ponds etc. (give details) *(Dal) , Rent of houses, shops and residential plots.* *(Rey) other income with details* *3.(Alif) Amount with drawan from the bank* *(Bey) Amount of loan received.*		*the bank.* *15. Amount given as loan.* ***Total amount*** *Previous balance* ***Total expenditure*** ***Balance with details where it is deposited as per note no. 2*** ***Grand Total***	***578-9-4*** ***53-0-8*** ***631-10***
Grand Total	***631-10-1***	***Total***	***631-10***

Total amount of the demand of the Board which is yet to be realized.

I verify on oath that I have checked the entries and receipts there of which are correct to the best of knowledge and belief and nothing has been concealed.

Signature and Address of the Mutawalli.

Sd/- Jawad Husain S/o Noorul Hasan R/0 Sahanwa, Darshan Nagar, district Faizabad."

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(K) Exhibit A-56 (Suit-1) (Register 8, page 505) is a copy of another Auditor's report for 1948-49 signed by the Auditor on 23.2.1950.

(L) Exhibit A-58 (Suit-1) (Register 8, page 509) is a copy of another Auditor's report for 1948-49 signed by the Auditor on 23.12.1950. The observations of the Auditor read as under:

"REPORT OF AUDITOR FOR 1949-50 included in Waqf

File no. 26 of

Babri Masjid, Distt. Faizabad

1. No.of Waqf 26. (b) Name of Waqf or Waqif Masjid Babri Faizabad

2. Name of Mutavalli and his address . Jamad Hussain Sahab village Shahnawan P.O. Darshan Nagar ,Distt Faizabad.

3.Gross Annual income which should have been realized during the year 1949-50 Rs.531/10/1

4. Land Revenue and taxes which should have been paid during the year Rs.41/3/4

5. Net income for the year Rs.490/6/9

6. Amount applied for the benefit of the waqif or his descendants or family or any other private purpose under the terms of the deed of waqf. Rs. X

7. Contribution to the board u/s 54 :Rs. 24/8/3

8.Arrears on the opening date of the year :Rs.100/-/-

9. Amount actually realized by the Muttwali during the year 1949-50 Rs.631/10/1

10. Unrealized amount on the closing date: Rs..x

(col. No. 3+8-9)

11.A. Balance in he hands of the Mutwalli at the close of

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year Rs.53/-/8

Total Rs.53/-/8

B. Balance with the Bank at the close of the year: Rs.x

Name of Bank .....x...

12. The amount of liabilities on waqf at the close of the year Rs.....

13. A. Certified that the entries as above have been reported by me on the basis of the original or certified copies of documents and records by the Mutwalli.

B. Certified that the expenditure of Rs.....x.....as detailed overleaf incurred by the mutwalli is illegal and improper or due to failure to recover money or other property or loss or waste of money or other property caused by the neglect or misconduct of the Mutwalli (section 41 of Muslim Waqf Act, 1936).

C. Certified that the list of waqf property appended to the statement of accounts submitted by the mutwalli is verified by me from records produced by the mutawalli.

(Sd) M. Husain 23.12.50

Signature of Auditor

14. Main defects of the administration of the waqf with suggestion, if any:-

.....Please see overleaf.....

(Sd) M. Husain

(Please fill in the form with care and add a page if necessary)

Waqf No. 26 مسجد بابری (Masjid Babri) Faizabad.

***"Mutwalli's nephew Hamid Husain presented the accounts, as Mutwalli was not feeling well**.*

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(i) As regards the property of this Waqf it consists of موقوت زمیندار واقعہ بہرن پور شعلہ پوری ضلع فیض آباد *(Maukoof Zamindar, r/o Bahoranpur, Sholapuri, District Faizabad) according to a Royal grant by Shahehnshah Babar.*

(ii) The income of this Waqf is Rs. 531/10/1, in proof of his income the ***Mutwalli sent his*** کھتونی ***(Khatauni) which was not a certified*** *copy. He should be asked to keep a certified copy of* کھتونی ***(Khatauni).***

1. *As regards the* ***expenditure no receipts were genuine except the receipt of land revenue and the Waqf contribution.*** *They have shown an amount of Rs. 240/- for* خاندان وقف *(Family of Waqf) In proof of this amount they show no paper to me therefore I assess this amount* خاندان وقف *(Khandan Waqf) also therefore they should be asked that how they take this amount.*

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(iv) In Dec. 1949 ***the mosque has been taken by the Govt. due to disturbances*** *therefore they (Mutwalli Javad Hussain) should be asked to keep this amount in Bank, because there is no expenditure on the mosque at present.*

(v) The متولی *(Mutwalli) should be given instructions that he should keep his accounts properly and at present there is no need of expenditure therefore from Dec. 1949 all the income should be deposited in Bank.*

At present a case is going on and the expenditure is met by contribution. In my opinion the income of the property should be deposited in Bank through office."

3097. These documents said to have been submitted by the so called Mutawalli Javvad Hussain or Syed Mohd. Zaki. Except of the Exhibit A72, A31 and A33 all other documents

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claimed to be submitted with the Sunni Board and true copies received therefrom have been filed. These documents cannot be termed to be "public documents" under Section 74 of the Evidence Act. Nobody has proved the truth of the contents of the said documents. One of the document which is said to be duly audited, i.e., Exhibit A58, for our benefit, the auditor's comments are also on record and it says, "*as regards the expenditure no receipts were genuine."*

3098. So far as the Exhibits A72, A31, A32 and A33 are concerned, the same contains the details of the income earned from Mauja Bahoranpur and Sholapur. The purpose for which these documents are sought to be relied, therefore, remain untouched qua the property in dispute.

3099. In the third category i.e. documents relating to repair of damaged building in 1934 riot, comes:

(A) **Exhibit A-49 (Suit-1) (Register Vol. 8, page 477)** is a copy of order dated 12th May 1934 showing that Muslims were permitted to start the work of cleaning and repairs of the disputed building from 14th May 1934 onwards. It reads as under:

"The Mohammadans have been permitted to start the work of cleaning of the Babri mosque from Monday 14th May. I have also asked them to get estimates needed for the repair of the mosque. For the purpose their contracting I would be allowed access to the mosque when necessary.

Once the mosque is cleaned up, ***it will be possible to use it for religious services.*** *This can be allowed but processions & demonstrations should not be allowed.*

The guard should be returned on it.

S.P. to be informed."

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(B) **Exhibit A-43 (Suit-1) (Register 8, page 459)** is a copy of order dated 6th October 1934 passed by Deputy Commissioner/District Magistrate Faizabad for payment of compensation. It reads as under:

"These amounts for payment of compensation are approved subject to any orders that may be passed on objections."

(C) **Exhibit A-51 (Suit-1) (Register Vol. 8, page 483)** is claimed to be an application dated 25.2.1935 submitted by the contractor concerned complaining about non-payment of his claim despite repair work having been performed. This also reads as under:

غریب پرورسلامت جناب عالی

گذارش ہے کہ تابیدار کو بابری مسجد کا ٹھیکہ دیا گیا تھا اسکا کام عرصہ ہوا تیار کر دیا اسمیں کچھ سو دو سو روپیہ کا کام باقی رہ گیا ہے بغیر رپیہ کے تابیدار کوبہت سخت تکلیف ہے یہ جو سو دو سو رپیہ کا کام باقی ہے اسکو مکمل کرنے سے مجبور ہے اور کوئی دوسرا کاروبار بھی بغیر روپیہ کے نہیں چلتا جس سے کہ اپنی ونیز بچوں کی تکلیف دور کرے اسکے علاوے جسوقت کام کرنے کے لئے حکم دیا گیا تھا اسوقت ساتھ ہی یہ حکم ہوا تھا جیسے جیسے روپیہ وصول ہوگا ویسے ہی روپیہ تمکو دیا جاوےگا معلوم ہوا کہ وصولیابی عرصہ سے ہورہی ہے اور کافی روپیہ وصول ہوچکا عرصہ ہوا زبانی حضور سے تکلیف بیان کیا تھا اس درمیان تابیدار کی طبعت اچھی نہیں تھی اسوجہ سے حضور سے دوبارہ اپنی مصیبت بیان نہ کر سکا۔ دویم مکانات جوکی بوجہ بلوہ کے ٹوٹ گئے ہیں انکو تعمیر کرنے کے لئے تابیدار کو حکم دیا گیا تھا جسمیں سے ۱۳ مکان کی کھپریل وغیرہ قبل بارش کے درست کر دیا۔ کچھ دروازہ وغیرہ کا کام باقی رہ گیا ہے جسمیں کہ کچھ درختان اور جھاڑ وغیرہ بحکم جناب ڈپٹی کمشنر صاحب فیض آباد ذریعہ نزول ناءب تحصیلدار صاحب بہادر فیض آباد کے تابعدارکو عطا ہوا تھا اور یہ کہا گیا تھا کہ جب تمکو روپیہ ملے گا اسوقت تم ہمارے بل سے اسکی قیمت لیا جاوئیگا علاوہ جو مکان نامکمل ابھی پڑے ہیں اسکے مطابق

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بھی سامان اکٹھا کر رکھا ہے مگر بدرجہ مجبوری روپیہ نہ ہونے کے وجہ سے بیٹھہ رہا۔ لہذا ذریعہ درخواست ہاذا گذاران کر امیدوار ہوں کہ تابعدار کی اس مصیبت پر حضور خیال کر کے روپیہ دینے کا حکم صادر فرماویں گے۔

واجب جانکر عرض کیا آئدہ مالک حضور

تفصیل جو مکانات بنائے گے ہیں مسمات(۱) مقصوداً (۲)حبیب اللہ (۳) حاجی نور محمد (۴) خیرات حسین محلہ مگل پورا (۵) شہادت علی (۶) رحمت علی محلہ بیگم پورا (۷) عابد علی (۸) امین اللہ (۹) افضال اللہ (۱۰) محمد کریم محلہ سوٹ ہٹی (۱۱) مولا بخش (۱۲) محمد بخش محلہ قاضیانہ (۱۳) ظہور علی -

عرضی فدوی تہور خاں ٹھیکیدار ساکن لال باغ فیض آباد

- ۲۵فروری سن ۳۵ء

''गरीब परवर सलामत, जनाब आली,

गुजारिश है कि ताबेदार को बाबरी मस्जिद का ठेका दिया गया था इसका काम अरसा हुआ तैयार कर दिया इसमें कुल सौ दो सौ रुपये का काम बाकी रह गया है और रुपये के ताबेदार को बहुत ही सख्त तकलीफ है कि यह जो सौ दो सौ रुपये का काम बाकी है इसको मुकम्मल करने से मजबूर है और कोई दूसरा कारोबार भी बगैर रुपये के नहीं चलता जिससे कभी अपनी व नीज बच्चों की तकलीफ दूर करें इसके अलावा जिस वक्त काम करने के लिये हुक्म दिया गया था उस वक्त साथ ही यह हुक्म हुआ था कि जैसे जैसे रुपया वसूल होगा वैसे ही रुपया हमको दिया जावेगा मालूम हुआ कि वसूलयाबी अरसे से हो रही है और काफी रुपया वसूल हो चुका अरसा हुआ जबानी हुजूर से तकलीफ बयान किया था इस दरमियान ताबेदार की तबियत अच्छी नहीं थी इस वजह से हुजूर से दोबारा अपनी मुशीबत बयान नहीं कर सका। दोयम मकानात जो कि बवजह बलवे के जल गये थे जिसको तामीर करने के लिये ताबेदार को हुक्म दिया गया था जिसमें से 13 मकान की खपरैल वगैरह कव्ल वारिस के दुरुस्त कर दिया कुछ दरवाजे वगैरह का काम बाकी रह गया है जिसमें कुछ दरख्तान और झाड़ वगैरह बहुकुम जनाब डिप्टी कमिश्नर साहब बहादुर फैजाबाद के जरिये नजूल नायब तहसीलदार साहब बहादुर फैजाबाद के ताबेदार को अता हुआ था और यह कहा गया था कि जब तुमको रुपया मिलेगा उस

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वक्त तुम्हारे बिल से उसका कीमत दिया जावेगा अलावा जो मकान नाममुकम्मल अभी पढ़े हैं उसके मुतालिक भी सामान इकट्ठा कर रखा है मगर ब वजह मजबूरी रुपयान होने की वजह से बैइ रहा लिहाजा जरिये दरख्वास्त हाजा गुमरान कर उम्मीदवार हूँ कि ताबेदार की इस मुशीबत पर हुजूर खयाल कर के रुपया देने का हुक्म सादिर फरमायेगें वाजिब जान कर अर्ज किया आहन्दा मालिक हुजूर।

तफसील जो मकानात बनाये गये हैं मुसम्मात मकसूदन, हबीबुल्ला (2) 3. हाजी नूर मुहम्मद 4. खेरात हुसेन मुहल्ला मुगलपुरा 5. सहादत अली 6. रहमत अली मुहल्ला बेगम पुरा 7. आबिद अली 8. अमीन उल्ला 9. अफजाल उल्ला 10. मुहम्मद करीम मुहल्ला सौटहटी 11. मौला बक्स 12. मुहम्मद बख्श मुहल्ला कजियाना 13. जहूर मियां।

अर्जी फिदवी तहव्वर खां ठेकेदार साकिन लालबाग फैजाबाद दस्तखत

तहव्वर खॉ

25.2.35''

Most Respected Sir,

I beg to say that ***I was granted*** *contract* ***of Babri Masjid****. The work has already been completed about a year before, barring certain small piece of work for a value of Rs. 100/- or 200/-. The applicant is in dire need of money and only little work to the extent of Rs. 200/- is remaining, which I cannot carry out. The applicant has no other business. Kindly provide relief to me and my family. Besides, at the time of contract, it was agreed upon that part payments will be made according to Vasoolyabi. I have come to know that the enough revenue has been collected. I have already told orally to you that I was in trouble and needed money. During this time the applicant was not feeling well, so, he could not convey his grievance again.* ***Secondly, the applicant was required to construct the houses which were burnt during the riot,*** *out of which 13 houses of Khaprail have been repaired before*

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the rains commenced. A small piece of work in relation to doors etc is remaining. Further under the orders of the Deputy Commissioner Faizabad through Tehsildar (Nuzul) Faizabad, certain trees and shrubs were allotted to the applicant with the assurance that whenever the applicant gets money the price of the aforesaid would be deducted from the bill. The applicant has already collected material for repairs of the remaining houses. But due to paucity of of required money the applicant remained idle. So, I would request you to kindly consider my grief sympathetically and provide money to me and for this purpose. kindly issue necessary orders. Deemed necessary, so prayed.

Malik Hujoor.

Details of the houses constructed : (1) Mst. Maqsudan, (2) Habibullah, (3) Haji Noor Mohammad (4) Khairat Hussain, Mohalla Mughalpura, (5) Sahadat Ali 6. Rahmat Ali, Mohalla Begumpura (7) Abid Ali (8) Aminullah (9) Afzalullah (10) Mohd. Karim Mohalla Sothati (11) Maula Bux (12) Mohd. Bux Mohalla Kaziana (13) Zahoor Miyan.

Applicant Tahavvar Khan Contractor, r/o Lal Bagh Faizabad

25.2.35."

(D) **Exhibit A-45 (Suit-1) (Register 8, page 467)** is the copy of the order dated 26th February 1935 of the Deputy Commissioner Faizabad for payment of Rs. 7000/- to the contractor for the work he had discharged at the disputed mosque.

(E) **Exhibit A-44 (Suit-1) (Register 8, page 461-465)** is copy of the estimate submitted by **Zahoor Khan,** contractor, Lal Bagh Faizabad on 15th April 1935 for

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repairs of the building in dispute.

(F) **Exhibit A-48 (Suit-1) (Register 8, page 473-476)** is a copy of inspection report dated 21st November 1935 of Sri Zorawar Sharma, Assistant Engineer Faizabad verifying the work performed by contractor and recommending for payment as claimed by him but after making some alternation therein.

(G) **Exhibit A-46 (Suit-1) (Register Vol. 8, page 469)** is a copy of report of Mubarak Ali, Bill Clerk dated 27th January 1936 which reads as under:

*"The bill of the contractor **regarding the construction of the mosque** is herewith put up as ordered. As regards the bill for the burnt houses, the estimates of which have been lost, has recently been sent to the Nazul Naib Tahsildar under the orders of D.C. for checking the work done by the contractor on the spot."*

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(H) **Exhibit A-47 (Suit-1) (Register 8, page 471)** is a copy of report dated 29th January 1936 of checking/verification submitted by A.D. Dixon which reads as under:

*"The **repairs to the Babri mosque has been checked by the P.W.D.** The payment for this work, amounting to Rs. 6825/12/-, should, I think, be paid now."*

(I) **Exhibit A-52 (Suit-1) (Register Vol. 8, page 489)** is another copy of the complaint made by Tahavvar Khan, contractor on 30th April 1936 complaining about certain claims disallowed by the PWD authorities and reads as under:

غریب پرور سلامت

گزارش ہے کہ سایل کا بل بابت مرمت مکانات واقع اجودھیا مبلغ ۳۶۰۴ روپیہ ۹ آنا کا تھا جسمیں سےسایل کو صرف 3287 روپیہ ۱ آنا ۶ پای

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دیاگیا ہے کمی کی وجہ یہ معلوم ہوتی ہےجانب نزول نایب تحصیلدار صاحب فیض آباد نے دوران جانچ کام مرمت یہ تجویزکر دیا کہ دو،تین دوروازے کی موٹاءی ڈیڑہ انچ ،دروازوں کی قیمت مالیتی ۲۳ روپیہ ۱۲ آنا، ۱۶ روپیہ ۱۱ آنہ ۳ پای کے مبلغ ۱۶، ۱۱ روپیہ کر دی جاے اور کھڑکیوں کی قیمت بجاے مبلغ ۷ روپیہ کےمبلغ ۴ روپیہ کر دی جاے -عالی جاہ بوقت جانچ اسٹیمٹنٹ ۳ دروازوں کی مو ٹای ڈیڑہ انچ اور کہڑکیوں کی قیمت کم کرکے مجھ کو پی ڈبلو ڈی نے ۲۳ روپیہ ۱۲ آنہ ۱۶ روپیہ ۱۱ آنہ ۳ پاءی ۷ روپیہ منظور کی تھی اور اسی کے مطابق سایل نے دروازے اور کھڑکیاں سالوں پہلے لگا یا تھا اور جانچ کے وقت آفیسر انچارج جانچ کنندہ کو وہ نءی حالت میں نہیی ملی- غالباً اسی وجہ سے یہ کمی تجویز کی گی ہے- حالانکہ نےدروازہ اور کھڑکیاں تجویز شدہ رقم میں ہر گز تیار نہیں ہو سکتی ہیں- وجو ہات بالا ساءل امیدوار ہے کہ ۳ ڈور دروازہ سوا انچ اور کھڑکیوں کے ریٹ کی جانچ پی ڈبلو ڈی سے دوبارہ کرالی جاے اور ساءل کا بقیہ روپیہ مرہمت فرمایا جاے- سایل کا بل بابت مسجد بابری ۷۲۲۹ روپیہ کا تھا جسمیں سے ساءل کو ۶۸۲۵ روپیہ ۱۲ آنہ دیا گیا ہے یعنی ۴۰۳ روپیہ ۴ آنا کم برامد کیا گیا - حالانکہ اسٹیمیٹ جو منظور ہوا تھا وہ ۷۳۲۹ روپیہ کا تھا اور سایل نے اسٹیمیٹ سے کم بل دیا تھا لہذا ساءل کو سمجھایا جاے کہ کون کون سی رقم ساءل کی نہیں برامد کی گی جس میں حضور سے سایل اس کے متعلق عرض کر سکے -

فدوی تہور خاں ٹھیکیدار مورخہ ۳۰ اپریل ۳۶ء

''गरीब परवर सलामत,

गुजारिश है कि सायल का बिल बाबत मरम्मत मकानात वाके अयोध्या मुबलिग 3604 रुपया 9 आना का था जिसमें से सायल को सिर्फ 3287 रुपया 1 आना 6 पाई दिया गया है। कमी की वजह यह मालूम होती है कि जनाब नजूल नायब तहसीलदार साहब फैजाबाद ने दौरान खातिर काम मरम्मत यह तजबीज कर दिया कि दो तीन दरवाजे की मोटाई डेढ़ इंच दरवाजों की कीमत मालियती 23 रुपया 12 आना, 16 रुपया 11 आना 3 पाई के मुबलिग 16 रुपया, 11 रुपया कर दी जाय और खिड़कियों की कीमत बजाय मुबलिग 7 रुपये के मुबलिग 4 रुपये कर दी जाय आलीजहा बरवक्त जांच स्टेटमेंट 3 दरवाजों की मोटाई डेढ़ इंच और खिड़कियों की

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कीमत कम कर के मुझको पी0डब्लू0डी0 ने 23 रुपया 12 आना, 16 रुपया 11 आना 3 पाई, 7 रुपया मन्जूर की थी और इसी के मुताल्लिक सायल ने दरवाजा व खिड़किां सालो पहले लगाया था और जांच केवल आफिसर इंचार्ज कुन्निदा को वह नई हालत में नही मिली गालबन इस वजह से यह कमी तजवीज की गई है हालांकि नये दरवाजा व खिड़कियां तजबीज शुदा रकम में हरगिज तैयार नहीं हो सकतीं। बवजूहात बाला सायल उम्मीदवार है कि 3 डोर दरवाजे सवा इंच व खिड़कियों के रेट की जांच पी0डब्लू0 डी0 से दोबारा करा ली जाय और सायल को बकिया रुपया मरहमत फरमाया जावे सायल का बिल बावत मसजिद बाबरी 7229 रु0 का था जिसमें से सायल को 6825 रु0 12 आ0 दिया गया है। यानी 403 रु0 4 आ0 कम बरामद किया गया हांला कि स्टीमेट जो मन्जूर हुआ था वह 7329 रु0 का था और सायल ने स्टीमेट से कम बिल दिया गया लिहाजा सायल को समझाया जावे कि कौन कौन सी रकमें सायल की नहीं बरामद की गई जिसमें हुजूर से सायल इसके मुताल्लिक अर्ज कर सके।

फ़िदवी तहव्वर खां ठेकेदार

ता0 30 अप्रैल सन् 36"

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" Gharib Parwar Salamat. I beg to state that my bill for the repair work of the houses was to the tune of Rs. 3604/- out of which the applicant has been paid 3287/1/6 only the reason for the officer under payment seems to be that the officer Nazul and Naib Tahsildar Faizabad at the time of inspection during repairs, proposed that the thickness of the two doors of 1-1/2 inch, valued at Rs 23/12 and Rs 16/11/3 be reduced to Rs 16/- and Rs 11/- respectively, the price of the windows was reduced to Rs. 4/ instead of Rs 7/. Sir, at the time of inspection of the after reducing the thickness of the three doors to 1-1/2 inches and that of windows the P.W.D. after revision of the price, approved Rs 23/12/-, Rs 16/11/3 and Rs 7/- respectively, and accordingly fixed the doors and windows years back. At the time of inspection of the officer incharge, those were found

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not in new condition, that is why deduction was proposed although the new doors and windows could certainly not be prepared at the proposed price. Therefore it is requested that inspection and revaluation of 3 doors- 1-1/4 inches and rates of the windows may be made by the P.W.D. and the applicant may kindly be paid his remaining amount. Applicant's bill in respect of Masjid Babri was of Rs. 7229/- out of which he has been paid Rs, 6825/12/- i.e. short by Rs 403/41- though the estimate was approved for Rs. 7329/- and the applicant has been paid lesser amount. Therefore the applicant may kindly be furnished details as to which amount has been deducted so that the applicant may move your honour. Applicant: Tahauwar Khan the Thekedar dated April 30, 1936."

(J) **Exhibit A-50 (Suit-1) (Register Vol. 8, page 479)** is a letter of Tahawar Khan Thekedar regarding repair work in the disputed structure and reads as under:

نقل درخواست تہور خاں ٹھیکہدارمورخہ ۱۶ اپریل ۱۹۳۵ء مشمولہ
مثل بابری مسجد اجودھیا، فیض آباد

بحضور جناب حاکم تحصیل صاحب بہادر فیض آباد دام اقبالہ

غریب پردرسلامت جناب عالی

گزارش ہے بابری مسجد کے بل دینے میں دیری ابھی سے ہوئ کہ کلسہ ڈرم کا بنارس میں تیار ہو رہا ہے ابھی تک آیا نہیں مگر اب بل بحکم حضور فوراً داخل کر رہا ہوں پتھرسنگ مرمر بھی جسمیں اللہ لکھا جاویگا مکمل نہیں کیا یہ دونوں کام جو کہ اندر ایک ہفتہ میں ہو جاوئیگا مکانات کے بل کچھ اس ہفتہ کے اندر داخل کر دونگا جو کچھ کام باقی تھا وہ ہورہا ہے واجباً عرض ہے-

فدوی تہور خاں ٹھیکہدار، ساکن لال باغ، فیض آباد

تہور خاں ۱۶-۴-۳۵

''नकल दरख्वास्त तहव्वर खॉ ठेकेदार मोरखा 16 अप्रैल, सन् 1935 ई0 मशमूला मिसल बाबरी मस्जिद अयोध्या, फैजाबाद

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बहूजूर जनाब हाकिम तहसील साहब बहादुर फैजाबाद दामेएकबालहू
गरीब परवर सलामत

जनाबे आली गुजारिश है कि बाबरी मस्जिद के बिल देने में देर इस वजह से हुई है कि कलसा ड्रम का बनारस में तैयार हो रहा है। अभी तक आया नहीं मगर अब बिल बहुकुम हूजूर फौरन दाखिल कर रहा हूँ। पत्थर संगमरमर भी जिसमें अल्ला लिखा जायेगा मुकम्मल नहीं किया यह दोनों काम जो कि अन्दर एक हफ्ते में हो जायेगा मकानात के बिल कुछ इस हफ्ते के अन्दर दाखिल कर दूंगा। जो कुछ काम बाकी था हो रहा है। वाजिबन अर्ज है।

अर्जी फिदवी तहव्वर खां ठेकेदार साकिन लालबाग, फैजाबाद

ह0 तहव्वर खां

16.4.35''

"Copy of the application of Tahawar Khan Thekedar dated 16.4.1935 included in the file of Babri Masjid, Ayodhya, Faizabad.

To the Tehsildar Saheb Bahadur, Faizabad
Gharib Parwar Salamat.

I beg to say that delay in submitting the bill for Babri Masjid occurred ***because Kalsa (pitcher) of the Dome is being prepared in Banaras and has not yet been received.*** *But under your orders I am submitting the same now.* ***The piece of marble stone on which "Allah" will be engraved, has not yet been got ready****. I hope both the said jobs would be done within a week. The bills in respect of houses will be submitted within this week. The remaining work is in progress. Yours sincerely, Tahauwar Khan Thekedar resident of Faizabad 16-04-35." (ETC)*

(K) **Exhibit A-53 (Suit-1) (Register Vol. 8, page 493)** is a copy of the application dated 2.1.1936 of Tahavvar Khan, Contractor for early payment of his dues and reads as under:

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حضور جناب کے محسن صاحب صدر فیض آباد

غریب پرور سلامت

جناب عالی گزارش ہے کہ مکانات جوکی اجودھیا بلوہ میں جل گءے تھے جسکو تابیدار کو مکمل کے ہوےکافی عرصہ ہوا اور تابیدار کو ابھی تک روپیہ نہیں ملا اور دریافت سے معلوم ہوا کہ اسٹیمٹ مکانات غایب ہوگیا اسوجہ سے جناب انجینیر صاحب پی- ڈبلو-ڈی- بابری مسجد کا بل چیک کر کے دوبارہ مثل کو واپس کر دیا مکانات کا بل بغیر اسٹیمٹ کے رہ گیا- عالیجاہ اس اسٹیمٹ کو جناب نایب تحصیل دارنزول ریٹ پی- ڈبلو-ڈی- سے چیک کراکے دوبارہ تابیدار سے اسٹیمٹ لیاگیاجسکی اردو کاپی میرے پاس موجود ہے اگر حکم ہو تابیدار اسکی کاپی پیش کر سکتا ہےمہربانی کر کے میرے مکانوں کا بل جناب انجینیر صاحب کے پاس روانہ کر دیا جاے تاکہ بل چیک ہو جاوے تابیدار کو مل جاوے کیونکہ روپیہ کی سخت ضورت ہے-

واجباً عرض ہے-

عرضی

فدوی تہور خان ٹھیکیدار ساکن لال باغ فیض آباد

۲-۱-۳۶-

''गरीब परवर सलामत जनाबे आली गुजारिश है कि मकानात अयोध्या जो कि बलवे में जल गये थे। जिसको ताबेदार को मुकम्मल किये हुये बहुत अरसा हुआ और ताबेदार को रुपया अभी तक नहीं मिला और दरयाफ्त से मालूम हुआ कि स्टीमेट मकानात का गायब हो गया इस वजह से जनाब इन्जीनियर पी0डब्लू0डी0 बाबरी मस्जिद का बिल चेक करके मिस्ल को वापस कर दिया। मकानात का बिल बगैर स्टीमेट के रह गया आली जाह इस स्टीमेट को जनाब नायब तहसीलदार साहेब नजूल रेट पी0डब्लू0डी0 से चेक कराके दोबारा ताबेदार से स्टीमेट लिया गया। जिसकी उर्दू कापी मेरे पास मौजूद है अगर हुकुम हो ताबेदार इसको या इसकी कापी पेश कर सकता है मेहरबानी करके मेरा मकानों का बिल जनाब इंजीनियर साहेब के पास रवाना कर दिया जावे ताकि बिल चेक हो जाये ताबेदार को रुपया मिल जाए क्योंकि रुपये की सख्त जरूरत है वाजिबन अर्ज है।

अर्जी

फिदवी तहव्वर खां ठेकेदार साकिन लालबाग फैजाबाद।

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2.1.36 *ह0 तहव्वर खां।*

"Garib Parvar Salamat,

Janabe Ali, Respectfully it is submitted that certain houses in Ayodhya were burnt in the riots, which were constructed by the contractor long back but the contractor could not get the money so far. The query in this behalf revealed that estimate concerning those houses had been lost somewhere and due to which the Engineer of PWD after perusing the bill returned the file. The payment of bill could not be made in absence of estimate. Respected Tehsildar Saheb, Estimate of Nazul rate was obtained from the contractor again, Urdu copy whereof is available with the applicant. If ordered, the applicant can produce the same or copy of the said, My bills in respect of houses may very kindly be sent to Engineer Saheb so that the bills may be checked and contractor may get money because he is in dire need of money.

Applicant Tahavvar Khan, Contractor, R/o Lal Bagh

2.1.36."

3100. All these documents pertaining to repairing etc. of the building in dispute pursuant to its damage in 1934 riot and show that there was a substantial damage to building including its domes, stones inscriptions etc., which were repaired by Muslim contractors. However, no order has been placed before us to show that as a matter of fact, premises in dispute was ever handed over to Muslims or they were allowed to offer Namaz in the building in dispute. At least their documents do not help the Muslim parties so far as this aspect of the matter is concerned.

3101. In the fourth category, i.e. orders under Section 92 C.P.C., comes:

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(A) **Exhibit A-29 (Suit-1) (Register 7, page 331)=Exhibit 28 (Suit-5) (Register 23, page 667)** is a copy of the order dated 18.12.1929 of Legal Remembrancer of Government of U.P. communicating sanction for institution of a suit under Section 92 C.P.C. The subject matter is mentioned as under:

"The mosque built by Emperor Babar and known as Babar's mosque in village Ramkot, Ajodhya city, and the proceeds and profits of village Bahuranpur and of about 12 Bighas of village Sholapur pergana Haveli, set apart for the upkeep of the said mosque."

It is addressed to the following:

"1. Hafiz Mumtaz Hosain, son of S.Tafazzul Hasain, resident of Bazar Salarganj

2. Haji Agha Mirza, son of Mirza Azam Beg, resident of Mohalla Sabzimandi,

3.Haji Mohammed Yasin, son of S.Mohammed Hafeez resident of Mohalla Rakabganj, Fyzabad.

4. Hakim Abdul Wahab son of Dr. Khuda Bux, resident of Singarhat.

5. Zahoor Ahmad, son of Noor Mohammad, resident of Mohalla Naugazi and

6. Mohammad Shafi, son of Ghorey, Mohalla Sotahti, Ajodhya."

(B) **Exhibit A-68 (Suit-1) (Register 8, page 559)** is a copy of the order dated 19.01.1929 passed by Deputy Commissioner Faizabad directing the applicant to file application seeking sanction for filing a suit u/s 92 C.P.C. in respect of Bahoranpur Sahnawa.

(C) **Exhibit 27 (Suit-5) (Register 23, Page 665)**(the

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document appear to be incomplete. Neither the date of the order is legible nor to whom it was addressed is mentioned therein and therefore cannot be relied on. However, it is claimed to be copy of the Government order according sanction under Section 92 C.P.C. for institution of a suit. The subject matter is mention as under:

"The mosque built by Emperor Babar and known as Babar's mosque in village Ramkot, Ajodhia city, and the proceeds and profits of village Bahuranpur and of about 12 bighas of village ***Sholapur pergana Haveli Oudh, set apart for the upkeep of the said mosque."***

3102. These documents on the one hand show that some muslim persons obtained permission from the Government under Section 92 for institution of the suit but it is an admitted fact that no record is available to show that any suit actually filed by anyone. In fact what we find is that sanction was granted under Section 92 CPC but further details as to how and why the said sanction was granted and what thereafter happened is not known to us. Due to lack of attending information we are not in a position to take these documents into consideration for forming opinion either way in the context of the issue in question.

3103. In the fifth category, there is correspondence with Sunni Board with regard to Wakf, its registration etc.:

(A) **Exhibit A-67 (Suit-1) (Register 8, page 547-558)** is a copy of the reply dated 19/20 July 1938 filed by Mohd. Zaki to Waqf Commissioner pursuant to notice u/s 4 of U.P. Waqf Act 1936.

بعدالت جناب وقف کمشنر صاحب بہادر فیض آباد

سیدمحمد ذکی ولد سید محمد رضی ساکن شہنوان برگنہ حویلی اودہ

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تحصیل و ضلع فیض آباد

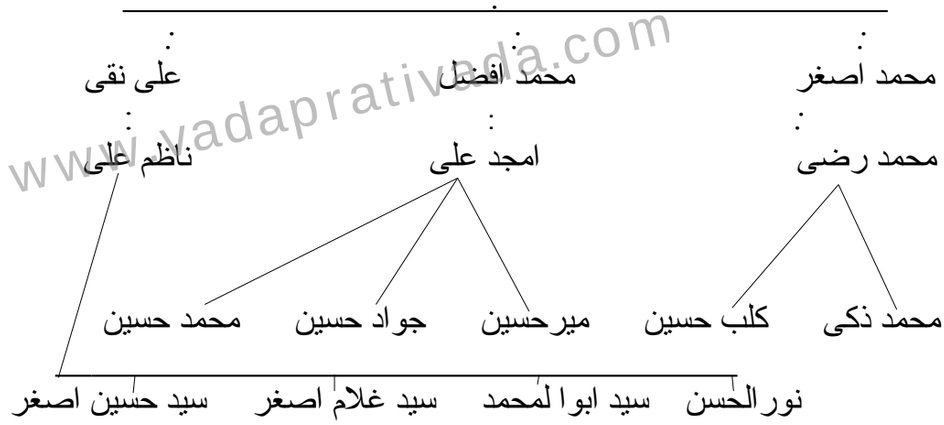
درخواست عذرداری

غریب پرور سلامت جناب عالی

بمقدمہ مندرجہ عنوان گذارش ہے کہ سایل کےنام ایک نوٹحس جب دفعہ ۴ قانون مسلم اوقاف ۱۹۳۶ء عدالت ہذا سے جاری ہو کر تعمیل ہوا ہے چنانچہ اسکے جواب میں سایل کے حسب ذیل عذرات ہیں

دفعہ ۱ - یہکہ ضروری شجرہ خاندان سایل یہاں پر انکشاف واقعات مقدمہ ہذا درج ذیل ہے اور اشخاص مندرجہ شجرہ مذکور کو پابند مذہب شیعہ اثنا عشری تھے اور ہیں-

سید عبدالباقی
:
سید ------ علی
:
سید حسین علی
:
مسماۃ سکونت بی بی
:



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دفعہ ۲-: یہ کہ بابربادشاہ دہلی نے ایک قطعہ مسجد واقع جنم استھان شہر اجودھیا تعمیر کرایا - اور اسکو مسجد بابری کے نام سے موسوم کیا اور منصب تو لیت و خطابت مسجد مذکور کو سپرد سید عبدالباقی مورث سایل مندرجہ شجرہ کے کیا- اور مبلغ ۴۰ روپیہ سالانہ نقد و موازی قدیمہ کہ پختہ آراضی بطور پٹہ سید عبدالباقی مذکور کو بطور مد و معاش عطا فرمایا- جو یکے ب دیگرے اولاد مورث مذکور کو ملتا چلا آیا

دفعہ : ۳ یہکہ زمانہ سلطنت اودہ وعہدہ نواب سعادت علیجان بہادر وزیر اورہ مابین بجاے رقم مذکور کے مبلغ تین سو دو روپیہ تین آنہ چھہ پای بطور نانکارو مد و معاش مورث سایل کو ملنا شروع ہوا اور برابر ملتا رہا-

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دفعہ: ۴ - یہ کہ ابتدا سے زمانہ سلطنت برطانیہ اور المحاق صوبہ اودہ سے سند نا نکار نقد گورنمنٹ سے عطا ہوی اور ۱۸۶۴ء تک مبلغ ۳۰۶ نقد سالانہ
خزانہ گورنمنٹ سے برامد ہوکر مورث سایل کو ملتا رہا۔
دفعہ:۵ یہ کہ بعد ازانجب تجویذ حکام گورنمنٹ موضع بہورن پور و آراضی شعلہ پوری پرگنہ حویلی بانقوش زر نقد--- مذکور کے محمد اصغرو محمد افضل مورثاں و پیش رواں سایل مندجہ شجرہ کو نانکان معافی عطا کیا گیا جب سے مورثان سایل و سایل بمشمول دیگر سرکار کے چلے آتے ہیں۔
دفعہ:۶ یہ کہ زمانہ بندوبست پختہ اول میں عدالت بندوبست سے ڈگری حقیت ملکیت اعلی مواصفات مذکور کی بابت بحق محمد اصغر و محمد افضل مذکور بتاریخ ۳ فروری ۱۸۷۰ صادر ہوءی چنانچہ بعد صدور ڈگری مذکور و ڈگریداران و ورثاءے ڈگریداران مذکور بشمول سایل بحیثیت مالک اعلی قابض و متصرف جاءداد کو چلے آتے ہیں۔
دفعہ:۷ یہ کہ مورثہ سایل و سایل مسجد بابری مذکور کے تحفظ و قیام کے لءے ضروری اخراجات یہی کرتے رہے ہیں۔
دفعہ:۸ یہ کہ بلحاظ واقعیات مندرجہ بالا علی الخصوص بالحاظ اس عمل کے کہ گورمنٹ برطانیہ نے بعد اسحاق صوبہ اودھ اپنی جانب سے رقم نانکار و مدو معاش مذکور و بعد ازاں مواصحات بشکرہ بالا مورث سایل کو عطا فرمایاو نیز بوجہ اس کے کہ بندوبست سابق پختہ سے موزمان و پیش رواں سایل کے حق میں ڈگری ملکیت اعلی کی صادر ہوءی۔ جاءداد مذکور مسلم وقف کی تعریف میں ہرگز نہیں آ سکتی اور جاءداد مذکور کی طرح سے ایکٹ قانون مسلم اوقاف نہیں متصور ہو سکتے۔ خصوصاً یہی وجہ ہے کہ عطیہ جاءداد گورمنٹ برطانیہ یعنی غیر مسلم کا ہے اور مشروط ہے۔
دفعہ:۹ یہ کہ بہر صورت جاءداد مذکور بموجب دفعہ ۴ ایکٹ مسلم قانون ۱۹۳۶ قانون مذکور کی دفعات کی پابندی سے مستثنی ہے کیوں کہ بہت زیادہ حصہ آمدنی کا بطور مد و معاش سایل شرکاہان سایل مندرجہ کھیٹ کےذاتی مصارف میں صرف ہوتاچلا آیا ہے۔
دفعہ:۱۰ یہ کہ بالحاظ رفع حجت و بالحاظ مطالعت حکم عدالت امور

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دریافت طلب کا جواب درج فہرست (الف) یہ کہ اگر عدالت سایل کی منظوری کے لۓ اظہار واقعات مندرجہ درخواست ہذا کافی نہ متصور ہو تو سایل کو موقع عطا فرمایا جاوے کہ وہ اپنے عذرات کو اپنے وکیل کے ذریعہ سے عدالت مجاز میں بتاریخ معینہ پیش کرے۔

فدوی
سید محمد ذکی سایل
۱۹/۱/۱۹۳۸

"Before the Court of the Commissioner Faizabad. Syed Mohd.Zaki S/o Syed Mohd.Razi R/o Mauza Shahnawan Pargana Haweli Oudh Tehsil and District Faizabad.

Objection

Gharib Parwar Salamat.

In the matter of the above subject, it is submitted that a notice under Section 4 of the Muslim Waqf Act 1936 has been issued by the Court and served upon me. Therefore in reply to the same, the applicant submits the following objections:

(1) That the necessary pedigree of the applicant belonging to the Shia Sect case is as under:

Syed Abdul Baqi
:
Hajbar Ali
:
Syed Hussain Ali
:
Mst. Sakunat Bibi
:

Mohd. Asghar	*Mohd. Afzal*	*Ali Taqi*
:	:	:
Mohd. Razi	*Amzad Ali*	*Nazim Ali*
:	:	:
Mohd. Zaki	*Kalbe Hussain*	

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*(Applicant) (alive) : : :

Section 6: *That from First Settlement ownership right of the property aforesaid was entered in favour of Mohd. Asghar and Mohd. Afzal, ancestors of the applicant vide order dated 3rd February 1870 passed by the Settlement Officer and the applicant and their ancestors have been in continuous possession over the said property.*

Section 7*: That the ancestors and the applicant have been incurring required expenditure for the protection and upkeep of the mosque.*

Section 8*: That in view of the fact that after annexation of Oudh the British Government granted cash Nankar to the ancestors of the applicant as compensation and thereafter a decree of right over the property in dispute in favour of the ancestors of the applicant was passed; therefore, the property cannot vest in Waqfs and the same is not covered under Muslim Waqf Act since the property has been granted by the British Government, i.e. Non-Muslim.*

Section 9*: That in any case the property in dispute is out of the purview of the restriction imposed by Section 2 of Muslim Waqfs Act 1936 because a considerable portion of income is spent by the applicant towards persona requirement.*

Section 10: *That the applicant is filing this objection in compliance of the order of the Hon'ble Court which may kindly be accepted and taken on record . In case the objections are not found sufficient or satisfactory, the applicant be afforded opportunity to plead his case through counsel before the Hon'ble Court.*

Applicant Syed Mohd. Zaki

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(B) **Exhibit A-65 (Suit-1) (Register 8, page 537)** is a copy of the notice dated 11.04.1945 given by the Secretary Shia Waqf Board to Sunni Central Waqf Board.

(C) **Exhibit A-66 (Suit-1) (Register 8, page 539-545)** is a copy of the letter/reply dated 20.11.1943 of Kalbe Husain Mutwalli of the disputed building which reads as under:

ملاحظہ جناب سیکریٹری صاحب سنی وقف بورڈ لکھنؤ

جواب چیٹی نمبر 527 مورخہ ۲۷اکتوبر سن ۴۳ء

۱۔ یہ بلکل غلط ہےکہ ہندوساد ھو مسجد میں کوی زیادتی کر ر ہا ہے ھے۔ مسجد کے بیرونی احاطہ کے اندر جہاں وہ لوگ جسکی بابت انکو عدالت سے حق حاصل ہے اس چپریہ کا شمالی حصہ گر گیا ہے جو اسی طرح پڑا ہوا ہے۔ ممکن ہے کہ کچھ ٹیڑھا ہو گیاہو یا گر جانے سے کچھ زیادہ معلوم ہوتا ہو۔ جس وقت وہ چپریہ نبوانے لگیں گے اسی کی پیماءش کرکے حضور کو مطلع کرونگا۔ اس چپر سے مسجد کا کوءی تعلق نہیں ہے۔

نمبر ۲ : یہ کہ چٹای فرش جاءنماز وغیرہ صرف روزمرہ کی ضورت بھر کو موجود رہتا ہے باقی فرش جاءنماز وغیرہ علحدہ مولوی عبدالغفار پیش امام کے یہاں رکھا رہتا ہے۔ جسکو موذن ہر جمعہ کو لے اتا ہے اور نماز جمعہ پھر وہیں رکھ دیا جاتا ہے کیوں کہ اکثر فرش وغیرہ مسجد سے چوری ہو گیا ہے۔ اس وجہ سے کل فرش ہروقت نہیں رہتا۔

نمبر ۳: یہ کہ سفیدی اور مرمت اکتوبر سن ۴۱ میں ہوی تھی۔ ٹھکیدارسفیدی کی ایک نقل رسید مزدوری خانہ خدمت ہے۔ دوسرے سال بوجہ ہواءی اڈہ کی تعمیر سے اینٹ اور مسالہ نہیں ملتا تھا بوجہ سفیدی نہیں ہو سکی۔ صرف زینا باہر سے ہوا تھا امسال ضرورت سفیدی اور مرمت کی ضرورت ہے جسکی میں فکر کر رہا ہوں

نمبر ۴: پیش امام کی تنخواہ ماہ اگست سن ۴۳ آخر شوال حال تک صرف ۷روپیہ باقی ہے اور کوی بقایا نہیں ہے۔ ایک نقل رسید پیس امام ارسال خدمت ہے۔

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نمبر ۵: مسجد کہ متعلق نہ کوی وقف ہے نہ کوی اسوقت تک کوی متولی مقرر ہوا۔ جاءداد متعلقہ شاھی معافی ہے جو مورثان کو ملی تھی اور جاءداد مذکور کا بحیثیت مسلمان ہونےکے انتظام و دیکھ بھال و مرمت وغیرہ کیا کرتا پھر اسطرح میں بھی۔ ۱۷فروری ۴۱ء سے نمبردار مقرر ہوا ہوں اور مسجد کا کام انجام دیتا ہوں۔

نمبر ۶: یہ کہ بموجب حکم ۲۷ اکتوبر ۴۳ سنی وقف بورڈجناب سید رحمت حسین صاحب ایڈوکیٹ کے پاس بغرض جانچ حسابات گیا تھا اڈیٹر صاحب نے ۴۱ نومبر یوم اتوار کو جانچ کیلے بلایا ہے۔

نمبر ۷: ہملوگوں کو اسکی بلکل خبر نہیں ہے کہ وقف کمیشنر صاحب نے کیا فیصلہ کیا تھا چونکہ وقف بورڈ نے جایداد سنی وقف بورڈ میں شامل کی گی ہے اسوجہ سے مجبوراً اسکے احکامات کی پانبدی کر رہا ہوں اسکے متعلق عدالت دیوانی سے مجبوراً چارہ جو ہونگیوں کہ بیناءے مخاصمت بعد گرفت پیدا ہوگی جسکا منتظر ہوں۔

نمبر ۸: یہ رقم چندہ اس کاغذ کے ساتھ جمع ہونا چاہے کہ جایداد جسکی امدنی سے یہ رقم ادا کی جاتی ہے وقف نہیں بلکہ ناانکار معافی ہے جسکی نقلیں فراہم کر کے آیندہ روانہ کرونگا جو روپیہ بوقف چندہ فراہم ہے کل حسابات پیش کرنے کے بعد روانہ کرونگا اگر کچھ کمی رہ جاوےگ تو پھر روانہ کرونگا۔

نمبر ۹: یہ جایداد وقف نہیں ہے بلکہ نانکار معافی ہے جسکی نقلیں فراہم کرکے روانہ کرونگا۔

نمبر ۱۰: حساب خرچ بالکل صحیح ہےجسکی تصدیق حاکم تحصیل صاحب بہادر کر چکے ہیں یہ غلط ہے کہ سفیدی مسجد نہیں ہوءی حساب سفیدی صحیح ہے امسال سفیدی نہیں ہوءی انتظام کر رہا ہوں۔

نمبر ۱۱: پیش امام کی تنخواہ ماقبل والے سال کی ۳۵ روپیہ باقی تھی اور حال کی ۴۰ روپیہ تھی جو اس سال ادا کی گی اس طرح موزن کی تنخواہ باقی رہ گی تھی جسکا حساب مداخلہ عدالت کو بھی دکھا چکا ہوں۔ نقل رسید پیش امام روانہ ہے۔

نمبر ۱۲: یہ بدنظمی کی شکایت بالکل غلط ہے۔ عالیجاہ مسجد ایسے موقعہ پر واقعہ ہے کہ اکثر بلوے ہوچکے ہیں اور ہر وقت ایدنشہ نقص امن کا رہتا ہے اسوجہ سے صورتحال کو دیکھ کر انتظام کیا جاتا ہے۔

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دوسری وجہ شکایت کی محض میرے شیعہ ہونے مولوی پیش امام وغیرہ کرتے ہیں اور دوسروں کو بھی امادہ کرتے ہیں ورنہ ایسا کچھ نہیں ہے۔

لہذا یہ ادب گزارش ہے کہ ہمارےجوابات کو حضور ملاحظہ فرماءیں اگر کسی الفاظ میں کوی گستاخی ہوءی ہو تو معاف فرمادیں اگر کچھ کمی رہ گی ہو تو اس سے مطلع فرمادیں

المرقوم ۲۰ نومبر ۱۹۴۳ء

بقلم خود سید کلب حسین ولد سید محمد رضی

ساکن بہورن پور ڈاکخانہ درشن نگر ضلع فیض آباد۔

''वमुलाहिजा बनाम सेक्रेट्री साहेब सुन्नी वक्फ बोर्ड, लखनऊ बनाम चिट्ठी नम्बरी 527 मोवरिखा 27 अक्टुबर, सन् 43 ई0

नं0 1– यह बिलकुल गलत है कि हिन्दू साधू मस्जिद में कोई ज्यादती कर रहा है **मस्जिद के बेरूनी हाते के अन्दर जहां वह लोग जिसकी बाबत उनको अदालत से हक हासिल है उस पर छप्पर या का सुमाली हिस्सा गिर गया है** जो उसी तरह पड़ा हुआ है। मुमकिन है कि कुछ टेढ़ा हो या गिर जाने से कुछ ज्यादा मालूम होता है। जिस वख्त वह छपरिया बनवाने लगेगें उसकी पैमाइस करके हुजुर मुत्तला करूंगा। **उस छप्पर से मस्जिद का कोई तमल्लुक नहीं है।**

नं02– यह कि चटाई फर्श जानमाज़ वगैरह सिर्फ रोजमर्रा की जरूरत भर को मौजूद रहता है। वाकी फर्श जानमाज़ वगैरह **अलाहिदा मौलवी अब्दुल गफ्फार पेस इमाम के यहां रक्खा रहता है जिसको मुअज्जिन हर जुमे को ले आता है और बाद नमाज़ जुमा फिर वहीं रख दिया जाता है क्योंकि अकसर फर्स वगैरह मस्जिद से चोरी हो गया है। उस वजह से कुल फर्श हरवख्त नहीं रहता।**

नं03– सुफेदी और मरम्मत अक्टूबर सन् 41 से हुई थी। ठेकेदार सुफेदी की एक नक़ल रसीद मज़दूरी खाना खिदमत है। दूसरे साल बवजह हवाई अड्डे की तामीर के ईंटे और मसाला नहीं मिलता था। इस वजह से सुफेदी नहीं हो सकी। सिर्फ ज़ीना बाहर हुआ था। इमसाल जरूरत सुफेदी और मरम्मत की जरूरत है जिसकी मैं फिक्र कर रहा हूं।

नं04– पेश इमाम की **तनख्वाह माह अगस्त सन् 43 आखिर शाबान हाल तक सिर्फ 7 रू0 बाकी है और कोई बकाया नहीं**

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है। एक नकल रसीद पेस इमाम हरसाल खिदमत है।

दफा 5– मस्जिद के मुतालिक न कोई वजह है और **न कोई उस वख्त तक कोई मुतवल्ली मुकर्रर हुआ है।** जायदाद मुतालिका साही मुआफी है जो मूरिसान को मिली थी और **जायदाद मज़कूर का नम्बरदार वहैसियत मुसलमान होने** के इन्तजाम व देखभाल व मरम्मत वगैरह किया करता है। **इस तरह से भी 16 फरवरी, 41 से नम्बरदार मुकर्रर हुआ हूं और मस्जिद का काम अनजाम देता हूं।**

दफा6–यह कि वमौजिव हुक्म 26 अक्टुबर सन् 43 ई0 सुन्नी वक्फ बोर्ड जनाव से रहमत हुसैन साहेब, एडोकेट के पास वगरज जांच हिसाबात गया था। आडीटर साहेब ने 21 नवम्बर यौम इतवार को जांच के लिये बुलाया है।

दफा 7– हम लोगों को इसकी बिलकुल खबर नहीं है कि वक्फ कमिश्नर साहेब ने यह फैसला किया था चूँकि वक्फ् बोर्ड ने जायदाद सुन्नी वक्फ् बोर्ड में शामिल की गई है। इस वजह से मजबूरन उसके अहकामात की पाबन्दी कर रहा हूं। इसके मुतालिक अदालत दीवानी से मजबूरन चाराजुई करने का हूं। बिनाय मुखासिमत बाद गजट पैदा होगी जिसका मुन्तजिर हूं।

दफा 8– यह रकम चन्दा इस उज़ के साथ जमा होनी चाहिये कि . . . जिसकी आमदनी से यह रकम अदा की जातीह है वक्फ़ नहीं है बल्कि मालिकाना मुआफी है जिसकी नकलें फरायम करके आहन्दा रवान.. करूंगा जो रुपया बाबत चन्दा बोर्ड फराह्म के कुल हिसाबात पेश करने के बाद रवाना करूंगा अगर कुछ कमी रह जायेगी तो फिर रवाना करूंगा।

दफा 9– **यह जायदाद वक्फ् नहीं है बल्कि नानकार माफी है** जिसकी नकलें फराहेम करके रवाना करूंगा।

दफा 10– हिसाबात खर्च बिल्कुल सही है जिसकी तस्वीक हाकिम तहसील साहेब बहादुर कर चुके हैं। यह गलत है कि सफेदी मस्जिद नहीं हुई हिसाब सुफेदी सही है। इमसाल सुफेदी नहीं हुई है इन्तजाम कर रहा हूँ।

दफा 11– पेश इमाम की तन्ख्वाह माह कब्ल वाले साल की 23 रू0 बाकी थी और हाल की 40 रू0 थी जो इस साल अदा की गई। इस तरह मुअज्जिन की तनख्वाह बाकी रह गई थी जिसको हिसाब मुदविखला अदालत में भी दिखा चुका हूं। नकल रसीद पेश इमाम रवाना है।

दफा 12– यह बवनज्मी की शिकायत बिल्कुल गलत है। **आलीजाहा यह**

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मस्जिद ऐसे मौके पर वाके है कि अकसर बलवे हो चुके है और हर साल . . .अन्देशा नुख्स अमन का रहता है। इस वजह से सूरतहाल को देखते हुये . . इन्तजाम किया जाता है। दूसरी वजह शिकायत की महक मेरे शिया होने से मौलवी पेश इमाम बगैरह करते हैं और दूसरों को भी अमादा करते हैं। वरना ऐसा नही है लिहाजा वअदव गुजारिस है कि हमारे अबा हुजूर मुलाहिजा करमा कर अगर कोई अलफाज गुस्ताखी . . . .माफ फरमायेगें। अगर कुछ कमी रह गई हो तो . . . . अलमरकम 20 नवम्बर सन् 1943 ई0''

'' Before Secretary, Sunni Waqf Board, Lucknow, letter no. 5607 dated 27.10.43, reply letter no. 527 dated 27.10.43.

1. That it is totally wrong that Hindu Sadhus are exceeding their limits in the mosque. The northern portion of the thatch over the land over which they own right conferred by the Court, has fallen down and is lying as it was. It is possible that on account of being bent or fallen it appears to be bigger in size. When they will start erecting the thatch, your honour will be informed after measurement. That cottage has no concern with the mosque.

10.That floor mats (used for sitting at the time of offering Namaz) are available only to the extent of routine use. Remaining floor mattress etc. are separately kept with Maulvi Abdul Gaffar, Pesh Imam, which are brought by the Moazzin on Fridays and are kept back at the same place after Namaz because most of the mattresses have been stolen from the mosque and for that reason the entire mattresses are not available at all times.

3. Whitewashing and repairs were carried out in October 1941. Copy of the contractor's receipt of whitewash with respect to wages to labourers is filed. The following year due to construction of aerodrome there was

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paucity of bricks and sticking material. For this reasons whitewashing could not be carried out. Only the outer stairs was whitewashed. This year, there is requirement of whitewashing and repairs for which I am concerned.

4. Salary of Pesh Imam from August 43 till the month of Shaban to the tune of Rs. 7/- is in arrears and there is no other dues except it. Copy of a receipt of payment of salary to Pesh Imam is filed.

*5. T**here is neither any waqf in respect of the mosque nor any Mutwalli has been appointed till date**. The property is Nankar Shahi Maafi which was granted to the ancestors of the applicant on account of being a Mussalman and Numberdar and they looked after the management and repairs etc. Likewise, from 17.2.1941 I have been appointed Numberdar and performs the work of mosque.*

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6. That order dated 27.10.1943 of Sunni Waqf Board was sent to Sri Syed Rahmat Hussain, Advocate for purposes of audit of accounts. Wadekar Saheb called for scrutiny on 21 November , Sunday.

7. We are not aware as to what decision had been taken by the Waqf Commissioner since Waqf Board. Since the property in question has been included in the Sunni Waqf Board, for this reason, being helpless I am abiding by this order. For this purpose, being left with no option I intend to approach the Civil Court since cause of action will arise after gazette publication for which I am waiting.

8. This amount of subscription should be deposited with the stipulation that the property from which this amount is fetched, is not a waqf rather it is Malikana Maafi, copy of

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which would be submitted after procuring the same. The amount which is available will be submitted after complete accounting and in case there is any defect, that would be again sent.

9. ***This property is not Waqf rather it is Nankar Maafi****, copy of which will be sent after procuring it .*

10. Account of expenditure is totally correct which has been verified by the Tehsildar. It is wrong that the mosque was not whitewashed. Account of whitewashing is correct. This year no whitewash was carried out and I am managing for the same.

11. Salary of Pesh Imam was in arrears of Rs. 35/-of the previous year and for the current year Rs. 40/- which has been paid to him. In this way, the salary of Moazzin stands due and the account regarding it has been given to the Court. Copy of receipt of Pesh Imam is filed.

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12. That the complaint of mismanagement is wholly wrong. Sir, ***this mosque has been built on such a place where often riots took place*** *and every year there is apprehension of breach of peace. Therefore, seeing the situation, arrangement is made. The second reason of compliant is since I am a Shia, Maulvi, Pesh Imam are against me and also provoke others too. Otherwise, it is not so. Therefore, it is respectfully prayed that my reply may kindly be considered and in case it contains anything mischievous I may be pardoned and if any defects has crept in, the same may kindly be communicated to me.*

Syed Kalabe Husain, s/o Mohd. Razi, r/o Bahoranpur, P.O. Darshan Nagar, Fyzabad. 20.11.1943."

This document shows that the movable items

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necessary for namaz were not kept in the building in dispute and were brought every time on Friday by Muazzin and after namaz, the same were taken away. This also shows an admission of the author that there was only Friday namaz in the building in dispute and the outer courtyard has nothing to do with mosque.

(D) **Exhibit A-62 (Suit-1) (Register 8, page 519)** is a copy of the notice dated 25.11.1948 from Secretary Sunni Waqf Board Lucknow to Munshi Javvad Husain to the following effect:

نقل مراسلہ ۵۰۰۷ مورخہ ۲۵ نومبر ۴۸

منجانب سکرٹری سنی سنٹرل وقف بورڈ، یوپی لکھنؤ۔

منشی جواد حسین صاحب مشمولہ مثل وقف نمبر 26

مسجد بابری ضلع فیض آباد

منشی جواد حسین صاحب مسجد بابری ابودھیا فیض آباد۔ نورالحسن صاحب کے خط سے معلوم ہوا کہ وقف ۲۶ فیض آباد کے متولی سید کلب حسین کا انتقال ہو گیا ہے اور ۲۷ جون سے اپ ان کی جگہ بطور متولی کام کر رہے ہیں مگر اس امرکی اطلاع اپ نے دفتر وقف بورڈمیں نہیں دی تحریر کیجئے کہ کلب حسین صاحب کے بعد حق تولیت آپ کو کس طرح حاصل ہے ۔ نیزدرخواست تو لیت معہ ایک روپیہ فیس درخواست بھی روا نہ کیجئے۔

دستخط سکرٹری

"Copy of Murasla 5007/26/7 dated 25.11.1948 from Secretary Sunni Central Waqf Board U.P. Lucknow. Munshi Jawad Husain Saheb included in the Waqf No. 26, Masjid Babri, District Faizabad.

To,

Munshi Jawad Husain, Masjid Babri, Oudh, Faizabad.

I have come to know from a letter from Noorul Hasan that on November 26 ***Mutawalli Syed Kalbe-Husain of***

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Faizabad *expired and* ***since June 27 you are working as Mutawalli.*** *But you have not informed the Board about this so far. Please inform us as to how you inherit right of Tauliat through Syed Kalbe Husain. More over the also sent Rs. 1/- as fees along with application for Tauliat . Sd/- Secretary (English) 25/11/48."*

It appears that earlier Mutwalli Syed Kalbe Husain died in June 1948 and, thereafter, Jawad Husain took over charge to function as mutwalli on 27.6.1948.

(E) **Exhibit A-61 (Suit-1) (Register 8, page 515)** is a copy of the application filed by Abdul Gaffar Pesh Imam sent to the Waqf Commissioner Faizabad complaining about non payment of salary by the Mutwalli Syed Mohd. Zaki of the disputed building.

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نقل درخواست عبد الغفار پیش امام مسجد بابری واقعہ رام کوٹ شہر
اجود ھیا قبض آباد ۲۰ اگست ۱۹۳۸ء
پیش کردہ روبرو جناب وقف کمشنر بہادر
ضلع فیض آباد
مشمولہ مثل دفعہ ۲۶ ضلع فیض آباد

بحضور جناب وقف کمیشنر بہادر ضلع فیض آباد۔ جناب عالی دامہ اقبالہ۔ فدوی منجاب محمد سید ذکی صاحب مہتمم بابری مسجد (واقع موضع رام کوٹ شہر اجودھیا)بطور پیش امام مسجد مذکور مشارہ--- مقرر ہے مہتمم مزکور کبھی تنخواہ باقاعدہ ادا نہیں کرتا ہے چنانچہ ۳۱ دسمبر ۱۹۳۵ء تک مبلغ روپیہ ۲۷۴ ذمہ مہتمم مذکور فدوی کا بابت تنخواہ یا فتنی تھا جسکی بابت مہتمم مذکورنے ایک اقرار نامہ بتاریخ ۲۵ جولاءی ۳۶ء تحریر کر دیا۔ جسکی رو سے -- ۳۱ اکتوبر ۳۸ء کل رقم بامشتاط ادا ہونا تحریر تھا مگر اسوقت تک صرف مبلغ ۵۰ روپیہ محصول ہوا اور مبلغ ۲۳۴ روپیہ ہنوز غیر سودی تھا۔ ابتداء رقم مذکور کے مبلغ ۱۵۵ روپیہ یکم جنوری ۳۶ء من تہ ۳۱ جولاءی ۳۸ء مبلغ پابند تنخواہ اور یاتنی مہتمم مذکور سے دلایا جاءے گا۔ لہذا اقبال

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ادب گزارش ہے کہ از راہ خاوندی رقم یاتنی مہتہم مذکور سے دلایا جاءیگا حکم صادر فرمایا جاوے ---المرموم ۲۰ اگست ۱۹۳۸ء دستاویز اقرار نامہ محمولہ در منسلک درخواست ہذا ہے- بعد معاینہ درج ہذا سے عرضی مدعی عبدالغفار پیش امام مسجد بابری واقع رام کوٹ شہر ایودھیا ساکن محلہ قضیانہ شہر اجودھیا- دستخط عبدالغفار

"Copy of the application of Abdul Ghaffar Pesh Imam Babri Masjid situated at Ram Kot, Ayodhya City dated August 20, 1938 submitted Before the Waqf Commissioner, District Faizabad in respect of Waqf No.26.

Before the Waqf Commissioner, District Faizabad

Sir,

That the applicant was appointed as Pesh Imam on monthly salary of Rs. 5/- by ***Mahammad Syed Zaki Mutawalli Babri Masjid*** *Situated at Mohalla Ram Kot, Ayodhya city. The Mohtamim (Manager/Mutwalli) never pays his salary regularly. As such upto December 31, 1935. Rs 274/- fell due against the said Mohtamim, regarding which the said Mohtamim executed an agreement on July 25, 1936 according to which, the entire amount due was to be paid by October 31, 1938. But till now only Rs 40/- could be paid and Rs.234/- without interest is still due. Besides, a sum of Rs. 155/- towards salary from 1.1.1936 to 31.7.1938 @ Rs.5/ per month is also due. As such, total Rs. 389/- is still due. Therefore with all the due respect, it is prayed that the arrears of my salary may kindly be ordered to be paid. Sd/-August 20, 1938.*

The document of agreement as referred to above is enclosed. It may be returned after perusal. Applicant: Abdul Ghaffar, Pesh Imam Masjid Babri Situated at RamKot, Ayodhya City, R/o Mohalla Kaziana,Ayodhya

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City."

(F) **Exhibit A-63 (Suit-1) (Register 8, page 523-527)** is a copy of the report dated 10.12.1949 of Mohd. Ibrahim in respect of Waqf No. 26 Masjid Babri. It reads as under:

نقل رپورٹ مسٹر محمد ابراھیم صاحب وقف سکریٹری مورخہ ۱۰دسمبر ۴۹ء بابت مسجد بابری مشمولہ مثل 26 یوسی بابری فیض آباد

مسجد بابری اجودھیا

سکرٹری صاحب- مسجد بابری اجودھیا کے متولیان پہلے یکے بعد دیگرے میر اصغر صاحب- محمد رضی صاحب محمد ذکی صاحب- کلب حسین صاحب سابق متولی کا انتقال ہو گیا ہے لہذا دوسرے متولیان میں تکرار سوال پیدا ہوا کہ موضع سہنواں مسجد مذکور کے لۓ وقف ہے مسجد مذکور کا متولی ہمیشہ موضع سہنواں کا نمبردار ہوگا- چلایا ہے کہ جو نمبردار ہوتا ہے وہی مسجد مذکور کا متولی بھی ہوتا ہے- محلہ میں دریافت سے اور تحقیقات سے معلوم ہوا کہ موضع سہنواں کے موجودہ نمبردار جناب جواد حسین صاحب ہیں اور وہی وصول تحصیل کرتے ہیں اور مسجد مذکور کا انتظام بھی کرتے ہیں- لہذا نذیر حسین صاحب مکھیا موضع سہنواں نے بیان دیا کہ موجودہ نمبردار جناب جواد حسین صاحب ہیں اور یہی وصول تحصیل کرتے ہیں اور مسجد مذکور کے متولی بھی ہیں- جناب جواد حسین صاحب کا بیان قلمبند کیاانہونے اقرار کیا کہ میں نمبردار ہوں اور متولی ہوں اور انہوں نے اپنا بیان دیا کہ محنت سے تو بہت کام انجام دونگا اور مسجد کا ایک پیسہ بھی غبن نہ کردنگا اور باقاعدہ حساب کتاب رکھونگا ور وقف بورڑ کے ہر حکم کی تعمیل بھی کرونگا- اسی حالت میں مناسب یہ معلوم ہوتا ہے کہ جناب جواد حسین صّحب کا نام بطور متولی درج کر لیا جاوے- شہر فیض آباد میں سے معلوم ہوا کہ ہندوں اور سکھوں کے خوف سے کوی شخص عشاء کیوقت نماز مسجد مذکور میں نہیں پڑھتا ہے اور رات کو اگر کوئ مسافر مسجد میں رہ جاتا ہے تو اسکو ہندو وغیرہ بہت تنگ کرتے ہیں- مسجد کے سحن کے باہر ہندوں کا ایک مندر ہے جہاں بہت سے پنڈہ رہتے ہیں اور جو مسجد میں مسلمان جاتا ہے اسے برا بھلا کہتے ہیں موقعہ پر گیا اور تحقیقات سے معلوم ہوا کہ مندرجہ بالا باتیں صحیح

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ہیں- لوگوں نے یہاں تک کیا کہ مسجد کو ہندوں سے کافی خطرہ ہے کہ اسکی دیوار وغیرہ کمزور نہ کریں مناسب یہ معلوم ہوتا ہے کہ ایک تحریر ڈپٹی کمشنر فیض آباد کے پاس روانہ کر دیا جاوے کہ کوءی مسلمانوں کو جو مسجد میں نماز پڑھنے جاتے ہیں ان کو تنگ نہ کریں اور مسجد مذکور ایک شاہی عمارت ہے اسکے تحفظ کا کافی خیال کیا جاوے-

دستخط مسٹر محمد ابراہیم انسپکٹر وقف بورڈ

۱۰/۱۲/۴۹

"Copy of the report Mr. Mohammad Ibrahim Saheb waqf Inspector, dated 10-12-1949 with regard to Babri Masjid included in the file 26 Waqf Masjid Babri, District Faizabad.

Masjid Babri Ayodhya.

To the secretary.

The previous Mutawallis of Masjid Babri, were Mir Asghar Saheb, Mohammad Razi Saheb, Mohd Zaki Saheb *and* ***Kalbe Husain. Kalbe Hussain the previous Mutwalli has expired.*** *Therefore, the question of successor Mutwalli has arisen. Village Sahanwa is Waqf for the aforesaid Masjid. Numberdar of village Sahanwa has been continuously appointed as Mutwalli of the aforesaid mosque. The person who is numberdar becomes Mutwalli of the mosque in question. From query in the village it came to light that the present Numberdar of Mauza Sahanwa is Sri Javvad Hussain* ***and he recovers Tehsil and is also Mutawalli of the Waqf Masjid****. Statement of Janab Javvad Hussain Saheb was recorded. He admitted that he was Numberdar as well as Mutwalli. He also stated that he would discharge duties of Tauliyat sincerely, would not embezzle even a single pie of the mosque and would*

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maintain regular account and will comply each and every order of the Board. Under these circumstances, it seems proper that the name of Mr. Jawad Husain may be entered as Mutawalli. ***On investigation in Faizabad city it was revealed that because of the fear of Hindus and Sikhs no one goes into the Masjid to pray Namaz Isha. If by chance any passenger stays in the Masjid he is being put in trouble by the Hindus.*** *Out of the Sahan of Masjid there is a temple where many Pandas reside and they harass the Muslims whosoever visit inside the mosque.* ***I went at the spot and from inquiries it was revealed that the said allegations are correct.*** *Local went on saying to the extent that there is great danger to mosque from Hindus that they may harm its wall etc. Seems proper that a written complaint be sent to the Deputy Commissioner Faizabad so that nobody harasses the Muslims, going into the Masjid to offer Namaz. The Masjid is a Shahi monument and it should be preserved . Sd/- Mr. Mohd. Ibrahim. 10.12.1949"*

(G) **Exhibit A-64 (Suit-1) (Register 8, page 529-535)** is a copy of the report dated 23.12.1949 of Mohd. Ibrahim, Waqf Inspector in respect of Waqf No. 26 Masjid Babri regarding its present condition. It reads as under:

نقل رپورٹ مسٹر محمد ابراہیم صاحب وقف انسپکٹر

مورخہ ۲۳ دسمبر ۴۹ ء مشمولہ مثل وقف ۲۶

وقف مسجد بابری ضلع فیض آباد

موجودہ حالت مسجد بابری اجودھیا

سکریٹری صاحب- میں ۲۲ دسمبر ۴۹ء کو اجودھیا بعض تحقیقات

موجودہ حالت مسجد بابری و قبرستان تحقیقات کرتا رہا جس سے مندرجہ

ذیل حالات اور واقعات معلوم ہوے- عرصہ تین ماہ کا ہوتا ہے کہ بابا

رھگو داس جنم استھان دیکھنے ایودھیا آئے تھے اور یہاں آکر

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بیراگیوں سے پجاریوں سے زوردار الفاظوں میں کہا تھا کہ جنم استھان پر راماین کا پاٹھ ہونا شاہ ے اس بات کی شہرت تمام اطراف وجوار میں ہوگ ےی- بابا رگھوداس کے چلے جانے کے ایک ماہ کے بعد راماین کے پاٹھ کیلیے ہزاروں ہندو اور پوجاری اور پنڈت جمع ہوے- ہفتوں پاٹھ رہا- اس درمیان میں بیراگیوں نے مسجد کے باہر سامنے اور دکھن والے قبرستان کا زیادہ تر حصہ کھدوا کربرابر کر دیا اور جھنڈی لگا دیا اور چند قبروں کی جگہ پر پتھر رکھ دیا ہے- راماین کے پاٹھ کیوقت بھی پولیس کا نتظام تھا مگر تب بھی قبروں کو کھود دیا گیا- پولیس نے چار ادمیوں کو پکڑا جو بعد کو ضمانت پر رہا ہوگے- خواجہ ہٹی رحمتہ اللہ علیہ کا مزار جو ٹیلہ پر اس قبرستان کے قریب ہی ہے اس مزار کو کھود کر برابر کر دیا- اور وہاں ایک بیراگی جھنڈا لگا کر مقیم ہو گیا ہے مسجد کے دروازہ صحن پر جو پختہ قبر ہے اسکو برابر کر کے بیراگی پتھر رکھکر بیٹھے ہیں- مسجد کے کنویں کے پاس ایک بیراگی چھپر ڈالکر بیٹھا ہے- پاٹھ سے پیشتر مسجد کا گھڑا اورلوٹا توڑا گیا- موذن کو مارا- اسکے بعد مسجد کے کتبہ کوکھودنیکی کوشش کی پھر دو پردیسی مسلمانوں کو مارا اور وہ کافی زخمی ہوے- اب مسجد کے باہر دو خیمہ ہیں ایک میں پولس کے سپاہیان ہیں اور ایک میں بٹالین کے سپاہی رہتے ہیں اور دونوں کی کل تعداد ۸۰۹ ہے- اب مسجد میں برابر تالا بند رہتا ہے یعنی بجز بروز جمعہ کے کسی وقت نماز اور اذان نہیں ہوتی- مسجد کے تالا کی کنجی مسلمانوں کے پاس رہتی ہے- پولیس تالا نہیں کھولنے دیتی- تالا جمعہ کے روز محض ۳-۴ گھنٹہ کے لے کھولا جاتا ہے اور اسی دوران میں مسجد کی سفاءی وغیرہ اور جمعہ کی نماز ہوتی ہے پھر تالا بدستور بند کر دیا جاتاتھا- جمعہ کی نماز ہوتے وقت بیراگی بہت شور کرتے ہیں اور سیڑھی سے جب نمازی نیچے جاتے ہیں تو متصل مکانات سے نمازیوں پر جوتا اور ڈھیلا آتا ہے- مسلمانان خوف کیوجہ سے کچھ نہیں بولتے- رگھوداس کے بعد مسٹر لوہیا بھی اجودھیا اءے تھے اور لیکچر وغیرہ دیا اور کہا کہ قبروں کی جگہ پر پھول وغیرہ کے درختان لگا دو- پھر حال میں لکھنؤ سے کوی منتری صاحب آے تھے ان سے بیراگیوں نے کہا کہ مسجد جنم بھومی ہے دلا دو انہیں نے زیادتی کرنے کو منع کیا اسپر بیراگی ان پر خفا ہوے اور

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وہ پولیس کی حفاظت میں فیض آباد واپس چلے گئے- اسی دوران میں اجودھیا کے کنک بھون کے مہنت بڑا استھان مسمی رگھور پرساد ویدانتی جی دیونراءن درسی، آچاریہ اشرفی بھون میں ان لوگوں نے مسلمانوں کو بلانا چاہا- پھر بخبر ظہور احمد کے کوءی نہیں گیا- ہندوں نے ظہور سے کہا کہ مسلمانوں سے مسجد ہمکو دلا دو اور تو بھای بھای ورنہ دشمن - میں رات کو اجودھیا ٹہرگیا- صبح کو معلوم ہوا کہ بیراگی مسجد پر زبردستی قبضہ کر رہے ہیں- آج جمعہ بھی ہے- میں موقعہ پر گیا تو کیا دیکھتا ہوں کہ دس پندرہ بیراگی ڈنڈا اور بھالا وغیرہ لیکر مسجد کے صحن میں موجود ہیں اور بہت سے بیراگی مسجد کے دروازہ پر ڈنڈا وغیرہ لیکربیٹھے ہیں- اور اطراف و جوانب کے ہندو جمع ہورہے ہیں- سٹی مجسٹریٹ کوتوال شہر اور پولیس وغیرہ کا کافی انتظام ہے مسلمان جمعہ کی نماز ادا کرنے ضرورآوینگے نامعلوم کیا حشر ہو- میں اب دریا پار کر کے لکڑمنڈی گونڈہ کے لءے جا رہا ہوں-

"Copy of the report of Mohd. Ibrahim Saheb, Waqf Inspector Abul Bakra dated 23-12-1949 included in the Waqf file no. 26.

Present condition of Babri Mosque , Ayodhya.

To the secretary,

On December 22, 1949 I visited Ayodhya to inquire into current state of affairs of the Masjid Babri and Qabristan and continued throughout the day. It revealed the following facts:

*Three months back Baba Raghu Das came to Ayodhya to see Janamasthan and said emphatically to Bairagis and priests that r**ecitation of Ramayan should be organized at Janamasthan.** This news spread all around the nearby areas. After one month of departure of Baba Raghu **thousands of Hindus, Pujaris and Pandits assembled there. The path (recitation) continued for***

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weeks. *During this period the Bairagis dug and levelled the most of the land in front of the Masjid and southern* عشری تھے اور ہیں-

سید عبدالباقی

سید ------ علی

سید حسین علی

مسماۃ سکونت بی بی

محمد اصغر	محمد افضل	علی نقی
محمد رضی	امجد علی	ناظم

علی

حسین احمد

محمد ذکی کلب حسین میرحسین جواد حسین محمد حسین

نورالحسن سید ابوا لمحمد سید غلام اصغر سید حسین اصغر

Qabristan and pitched flag over there and placed stones on certain graves. Sufficient police force was deployed at the time of Ramayan recitation, even then certain graves were dug. The police arrested four persons who were later on bailed out. The Mazar of Khwaja Hati Rahamatullah which is situated on a mound near the Qabristan, has been demolished and a Bairagi after pitching a Jhanda (flag) stayed there. On the door of the lawn of the Masjid there was a pucca grave which has been levelled and the Bairagis are sitting after placing stones thereon. ***Near the well of the Masjid a Bairagi is living under a thatched roof.*** *Before the path was held, the earthen pot and lota of the masjid were broken.* ***The Moazzin was beaten up. They tried to destroy the inscription of the Masjid. Two Muslim pilgrims were beaten up and as such they sustained severe injuries.*** *Now there are two tents outside the Masjid. One of them is occupied by police personnel. In*

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other tent, sepoy of Batallion are living. Total number of these sepoys would be 8 to 9. ***Now the door of the Masjid remains locked. That is to say, except for Fridays, there held no Namaz or Azaan. The keys of the Masjid are with the Muslims, but the police does not allow to open the lock, which is opened only on Friday for 3-4 hours. During this period cleaning of the place is done and then Namaz is held. After this is over, the Masjid is again locked. During Friday prayer the Bairagis make hue and cry and*** *when the Namazi pass through the stairs, shoes and rubbish is thrown on them from the adjoining houses.* ***The Muslims are so scared that they do not protest.*** *After Raghu Das, Mr. Lohia also visited Ayodhya and delivered a lecture in which he urged the people to grow flower trees in place of graves. However, some officer from Lucknow visited this place.* ***The Bairagis told him that the Masjid was the Janam Sthan which should be handed over to them.*** *He warned them against any violence. On this, Bairagis became angry with him, so he returned back to Faizabad under police protection. Meanwhile Mahant of Kanak Bhawan, Ayodhya, Raghubar Das, Vedanti Ji, Deo Narain Darsi, Acharyaji Ashrmi, attempted to invite Muslims for a talk. But no Muslim except for Zahoor Ahmad, turned up. The Hindus told him that the Masjid should be handed over to them, only then the two communities would be brothers otherwise enemies. I did stayed at Ayodhya in the night. In the morning, I came to know that Bairagis are trying to take possession over the Masjid forcefully. Today is Friday I visited the spot when I saw that 10-15 Bairagis armed Dandas and spears had*

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assembled in front of the door of the mosque. Many of the Hindus of nearby localities were also asssembled there. City Magistrate, Kotwal city and police force were posted there. I do not know as to what will happen to the Muslims who would certainly come here for offering Friday prayers. Now I am proceeding to Lakad Mandi, Gonda. Sd/- 23.12.49" (ETC)

3104. These documents show at the best that, Namaj, only on Friday, used to be offered in the disputed structure in the inner courtyard and for rest of the period the building remain unattended by muslim. So far as the report of Waqf Inspector dated 10.12.1949 and 23.12.1949 are concerned almost all the witnesses of plaintiffs (Suit-4) who have been examined on this aspect have expressed their ignorance about his visit on the dates on which Mohammad Ibrahim claimed to have prepared the said reports. Neither the author has been examined nor even otherwise the two documents have been proved. The documents cannot be termed to be "public document" merely because the copy thereof has been issued by the Sunni Board since they do not answer the description of "public document" under Section 74 of the Evidence Act. Even otherwise the truth of the contents of these two documents, in accordance with law, was necessary to be proved. Mere filing of a document or marking as 'exhibit' does not mean, that the truth of the facts mentioned therein shall be deemed correct unless proved otherwise. We have already referred to the relevant law on this aspect and need not to repeat hereat.

3105. Besides above, there is a copy of the notification dated 26th February, 1944 under U.P. Act of 1936 (**Exhibit A-34 (Suit-1) (Register 7, page 409-411)** but this document is no

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more relevant since it has already been held invalid so far as the property in dispute is concerned vide the Civil Judge, Faizabad's order dated 21.04.1966. The plaintiffs have sought to mention that it is a Government Gazette but a perusal of the document shows that it is a document of the Sunni Board titled as a notification and not a copy of the Government Gazette.

3106. Exhibit A-71 (Suit-1) (Register 8, page 577) is a copy of Shajra Nasab (family tree) of owners of Mauza Bahooranpur, Pargana Haweli Oudh, Tahsil and district Faizabad Haqqiat Maafi in the form of Zammdari. A major portion of the document is illegible and could not be read or transliterated in Hindi and as such the portion which could be read is being quoted hereunder along with English translation.

شجرہ نسب مالیکان موضعہ بہورن پور پرگنہ حویلی اودھ تحصیل
ضلع فیض آباد حقیقت معافی بشکل زمینداری مالداری

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سید عبدالباقی
:
سید ------ علی
:
سید حسین علی
:
مسماۃ سکونت بی بی
:

----------	محمد افضل	علی نقی
۴/۵	۴/۵	۴/۵

"Shajra Nasab (family tree) of owners of Mauza Bahooranpur, Pargana Haweli Oudh, Tahsil and district Faizabad Haqqiat Maafi in the form of Zammdari

Mooris Ali Caste: Syed.
:
Syed Abdul Baqi
:
Syed Zuber Ali
:

Syed Husain	*Mohd. Gaus*

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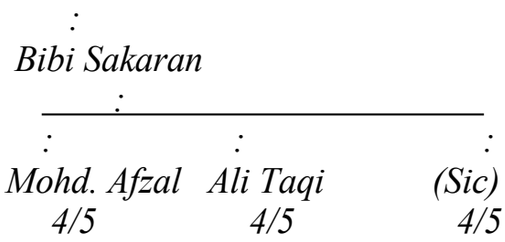

3107. Considering the entirety of the above evidence and discussion and in the absence of anything contrary, we are satisfied that prior to 1855, there is no evidence of possession by Muslims of the property in suit. They did not have possession of the premises in outer Courtyard atleast since 1856-57 when the dividing wall was raised by the Britishers. They at the best might have enjoyed only the right of passage so as to enter the inner courtyard. The entry in the outer courtyard using part of the premises as passage would not constitute 'possession'. As we have already discussed in detail, the possession means power of control over the matter of subject. If it is a physical control, it should be either actual or a possession of a nature which is so treated in the eyes of law. Possession is a polymorphous term. It has different meanings in different contexts. One of the simple definition is a visible possibility of exercising physical control over a thing compelled with the intention of doing so either against all the world or against all the world except some persons. All these things are missing so far as the premises within the outer courtyard is concerned wherein there existed non Islamic structures which were visited and worshipped by Hindus continuously since as long back as noticed by Tieffenthaler in 18th century i.e. between 1766 to 1771 when he visited Avadh area. The possession in the outer courtyard was open and to the knowledge of Muslim parties, inasmuch, a person, claiming himself to be the Mutwalli of the Mosque in dispute, made several complaints, as is evident from the

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documents of 1858 and onwards, but the fact remains that those structures continued in the said premises and the entry of Hindus and their worship also continued. In this context, the claim of the plaintiffs that the entire property in dispute i.e. the outer and inner courtyard had been in their possession upto 1949 cannot be accepted.

3108. However, so far as the inner courtyard is concerned, though it cannot be said that the muslims never visited the premises in the inner courtyard or no Namaj ever was offered therein till 1949, but that by itself would not constitute possession of the property in dispute in the manner the term 'possession' is known in law. This is a beneficiary enjoyment by the plaintiffs muslim parties shouldering with their Hindu brethren and visiting premises within the inner courtyard for the purpose of worshipping in their own way. On this aspect various angles we have already noticed above. An additional factor is that on the one hand it is the claim of plaintiffs that since regular Namaj used to be held in the disputed building and the requisite material like Farsh, pitchers, broom etc. was also present and in the custody of Moazzim, but, no such material was found by the Receiver when he took charge of the premises in the inner courtyard pursuant to Magistrate's order dated 29.12.1949. The inventory which he had prepared, nowhere mention any item which relates to muslim use for Namaj and instead all the items relates to worship by Hindus. None has made any complaint that the goods meant for Namaj have been damaged, looted or stolen by anybody. There is a complete silence on this aspect of the matter. In 1934 when there was a riot and there was substantial damage to the building, in respect to the goods allegedly kept in the disputed building a claim was made by Syed Mohd. Zaki

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giving details of those items but nothing of that sort has happened in December, 1949 or thereafter. Meaning thereby we have no option but to draw an inference that no such material existed thereat. This also weaken claim of the muslim with regard to exclusive possession, in the form of continuous worship.

3109. This is not the end. The documents referred above may not prove the claim of possession of the property in suit as such, but cumulative effect thereof is explicit that there was no abandonment by Muslims of the property in dispute. They continued to exercise their claim over it, got its recognition from Britishers in the form of grant. The maintenance of building by Muslims to the extent of disputed structure and partition wall is also evident. The defendants have not shown anything otherwise. The entry of Muslims in inner courtyard for Friday Prayer is also evident. The status of Hindus and Muslims both, in visiting the place in dispute is common i.e. worshippers. The only difference is that Hindus visit entire property while for Muslims it was confined to inner courtyard. Once the possession, may be a part of the premises, is proved, it relates back unless proved otherwise.

3110. Subject to what we have said above, the plaintiffs have failed to prove that the property in suit, i.e., **premises marked as A B C D in the map appended to the plaint was in possession of the plaintiffs up to 1949.** However, we may clarify that so far as the premises constituting inner courtyard is concerned this much can be said that Muslims and Hindus alike used to go therein and, therefore, possession of premises in the inner courtyard, if technically it can be said, remained with the members of both the communities. But so far as the outer

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courtyard is concerned, the plaintiffs lost possession thereof atleast from 1856-57 and onwards.

3111. So far as dispossession from the property in suit in 1949 is concerned, we are of the view that the question of dispossession of plaintiffs from outer courtyard does not arise since it was not in their possession in 1949 and prior thereto, as we have already discussed. So far as the inner courtyard is concerned they have discontinued with the possession atleast from 23rd December, 1949 and onwards while possession of Hindus which was earlier enjoyed by them alongwith members of Muslim communities continues. So far as dispossession is concerned, neither the plaintiffs have alleged that they were dispossessed at any point of time nor have proved the same. **Issue no. 2 (Suit-4) is, therefore, answered in negative and against the plaintiffs**.

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3112. Issue No. 10 and 15 (Suit-4) are covered by our findings already recorded in relation to issues 7 (Suit-1), 3 and 8 (Suit-3) and 2 (Suit-4) and, therefore, for the reasons stated therein, both these issues **are answered in negative and against the plaintiffs and Muslims in general.**

3113. So far as **Issue No. 28 (Suit-4) is concerned**, in view of our discussion and findings qua Issues No. 3 and 8 (Suit-3), it is evident that the disputed site has to be understood bifurcated in outer courtyard and inner courtyard. So far as outer courtyard is concerned, it is evident that the Hindu religious structures existed therein since last more than 150 years i.e. sometimes after 1856-57 and they are being managed and administered by the Priest of Nirmohi Akhara, defendant no. 3, Therefore, to that extent, i.e. to the extent only upto outer courtyard, the disputed site can be said to be possessed by defendant no. 3 and the

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plaintiff ceased to have possession of outer courtyard accordingly. So far as the inner courtyard, which is another part of the disputed site is concerned, it does not appear that the same remained in possession of any of the parties exclusively. This aspect also we have already considered above. The premises within inner courtyard remained to be visited by the members of both the communities meaning thereby there was no obstruction to any one to enter the same. This continued till 22nd December, 1949 and since thereafter the plaintiffs are ousted even therefrom but this ouster is immaterial since it was under the orders of District authorities initially and Court's order subsequently. Hence, not being voluntary, it would not make any difference.

3114. However, the defendants no. 3 is not able to prove that it was in possession of the disputed site, which for the purpose of the present suit, means the premises shown by letters A B C D in the map appended to the plaint, i.e., the inner courtyard and outer courtyard including the disputed structure. In the same manner plaintiffs have also failed to prove the same. These aspects we have already discussed in detail while considering issues no. 7 (Suit-1), 3 and 8 (Suit-3) and 2 (Suit-4). For the reasons and discussions therein, **we answer issue 28 (Suit-4)** holding that since the plaintiffs have already failed to prove their possession of the disputed premises as we have said while considering issue no. 2 (Suit-4), the further question whether the plaintiffs were never in possession does not arise. It is covered by our above discussions, reasons and findings. The defendant no. 3, however, has also failed to prove its possession of the disputed site (i.e., outer and inner courtyard including the disputed building) in its entirety ever. This we have discussed

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above. **Issue 28 (Suit-4) is answered accordingly**.

3115. So far as I**ssue No. 4 (Suit-4)** is concerned, it is again based on the plea of adverse possession. None of the defendants in the suit in question has pleaded the ingredients as are necessary to encompass a claim of adverse possession. On the contrary, pleadings are that the place in dispute itself is a deity being birthplace of Lord Rama, has continuously been visited by Hindus for worship. In any case exclusive possession by Hindus of the premises in dispute has not been proved for the entire land in dispute, i.e., the disputed site. It is only the premises covered by the outer courtyard, as we have already discussed, since 1856-57, i.e., after the erection of dividing wall by the Britishers, muslims people have not used the same for any purposes, but so far as inner courtyard is concerned, the premises therein has not remained confined to be used only by Hindus. At times muslims have also visited to offer Namaj thereat. Therefore, so far as the outer courtyard is concerned, it may be said that the right of prayer by Hindus had perfected having continued exclusively for more than a century but the same would not apply so far as the premises within the inner courtyard is concerned, which has been used by both the sides may be more frequently by Hindus and occasionally or intermittently by muslims. **Issue 4 (Suit-4) is answered accordingly**.

3116. **Issue 16 (Suit-5)** at the first instance is covered by what we have discussed and held in regard to issues no. 7 (Suit-1), 3 and 8 (Suit-3) and 2, 4, 10, 15 and 28 (Suit-4). Only one more aspect need be considered hereat. We have already answered the issues regarding plaintiffs 1 and 2 that they are juridical persons. The premises in dispute insofar as held to be

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the birthplace, if any, having been held to be a juridical person, question of its possession and the application of doctrine of adverse possession would not be attracted. Therefore, the question of loss of title would not arise. Consequently, the question of reacquisition of title also would not arise.

3117. The issue in question (latter part) has been framed based on the pleadings in para 29 of the plaint. It says that the idols were kept in the building in dispute in the night of 22/23 December, 1949. They remain thereat continuously. The attachment of the premises within inner courtyard by Magistrate and giving charge to Receiver did not affect the position of idol since they continued to stay where they were and continued to remain in possession of the property in dispute thereat. For their ejectment from the premises in question a suit could have been filed within 12 years. Suit-4 was filed on 18th December, 1961. Though it is true that the plaintiffs 1 and 2 were not party to the said suit and, therefore, an order of ejectment in their absence may not be passed against them but this is also true that their continuance in the inner courtyard is not on account of a total inaction on the part of muslim parties but due to the interim injunction order passed by the trial court directing the parties to maintain status quo. Later on similar orders were passed by this Court and Apex Court also. It is well settled that act of the Court shall prejudice none. Irrespective of whether the plaintiffs 1 and 2 are party in any suit or not but the order of injunction benefits them and restrain muslim parties from taking any action otherwise. The injunction order was passed on 16th January 1950 in one or the other manner is continuing till date. Later on similar orders were passed by others including this Court also. Therefore, the plaintiffs 1 and 2 in effect are the beneficiaries of

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judicial orders for retaining their position in the inner courtyard of the disputed site. It is well established that *actus curae neminem gravabit*.

3118. In **Kerala State Electricity Board and another Vs. M.R.F. Limited and others, 1996 (1) SCC 597** the Court said:

> *".....it has been held by the Privy Council that one of the first and highest duties of all the Court is to take care that* ***act of the Court does not cause injury to any of the suitors."***
>
> *"There is no manner of doubt it is an imperative duty of the court to ensure that the party to the lis does not suffer any unmerited hardship on account of an order passed by the Court. The principle of restitution as enunciated by the Privy Council in rodger's case (Supra) has been followed by the Privy Council in later decisions and such principle being in conformity to justice and fair play be followed."*

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3119. In **Gursharan Singh and others Vs. New Delhi Municipal Committee and others, AIR 1996 SC 1175,** it has been held:

> *"In view of the legal maxim* ***"acts curiae neminem gravidity"*** *which means that an act of court shall prejudice no man, N.D.M.C. is justified in making a claim for interest over the arrears which have remained unpaid for more than 12 years because of the interim orders passed by this Court. This aspect of the matter has been examined by this Court in the case of Raj Kumar Dey and Ors. v. Tarapada Dey and Ors. [1988]1SCR118 . Although in the interim orders it has not been stated that in event of dismissal of the appeals and the writ petition, the appellants and the*

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writ petitioner shall be liable to pay interest over the arrears of the licence fee, but that shall not debar this Court from passing any order in respect of payment of reasonable interest over the said amount."

3120. In **Kanoria Chemicals and Industries Ltd and others Vs. U.P. State Electricity Board and others, JT 1997(2) SC 545** the Court said:

"It is equally well settled that an order of stay granted pending disposal of a writ petition/suit or other proceeding comes to an end with the dismissal of the substantive proceeding and that it is the duty of the court in such a case to put the parties in the same position they would have been but for the interim orders of the court. Any other view would result in the act or order of the court prejudicing a party (Board in this case) for no fault of its and would also mean rewarding a writ petitioner inspite of his failure. We do not think that any such unjust consequence can be countenanced by the courts."

3121. In **South Eastern Coalfields Ltd. Vs. State of M.P. and others 2003 (8) SCC 648**, the Court recognized the principle that wrong order should not be perpetuated by keeping it alive. Recognizing the maxim auctus curiae neminem gravabit**,** it was held that no one shall suffer by an act of the Court and such a rule is not confined to an erroneous act of the Court but act of the Court embraces within its purview all such acts as to which the Court may form an opinion in any legal proceedings that the Court would not have so acted had it been correctly apprised of the facts and law. It is duty of the Court to apply the restitution putting the parties in the same position as they would have been, had the order, subsequently found to be

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erroneous by the Court, would not have been passed. In para 28 of the judgment, it was held-

> *"The injury, if any, caused by the act of the court shall be undone and the gain which the parties would have earned unless it was interdicted by the order of the court would be restored to or conferred on the party by suitably commanding the party liable to do so. Any opinion to the contrary would lead to unjust if not disastrous consequences. Litigation may turn into a fruitful industry. Though litigation is not gambling yet there is an element of chance in every litigation. Unscrupulous litigants may feel encouraged to approach the Courts, persuading the Court to pass interlocutory orders favourable to them by making out a prima facie case when the issues are yet to be heard and determined on merits and if the concept of restitution is excluded from application to interim orders,* ***then the litigant would stand to gain by swallowing the benefits yielding out of the interim order even though the battle has been lost at the end. This cannot be cannot be countenanced."*** *(emphasis added)*

3122. The decision in **South Eastern Coalfields Ltd. (supra)** taking note of the above principle has also been followed by this Court in **Civil Misc. Writ Petition No. 41872 of 1992, Shesh Mani Tiwari Vs. District Inspector of Schools, Jaunpur and another**, decided on 17.12.2009.

3123. In this context we are not inclined to admit the claim of the plaintiffs 1 and 2 which is based on the situation which has arisen, amongst other also, due to the judicial orders. We, therefore, **answer issue no. 16 (Suit-5)** by observing that in this case plea of adverse possession is not attracted either for the

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plaintiffs 1 or 2 or as claimed by defendant no. 4 and, therefore, relying on the plea of adverse possession neither there was any occasion of extinction of title, if any, of plaintiffs 1 and 2 nor reacquisition thereof. **Issue no. 16 (Suit-5) is answered accordingly**.

(K) Issues relating to characteristics of Mosque, dedication by Babur and whether a valid waqf was created.

3124. Issues no. 6 (Suit 3), 1, 1(B)(b), 1(B)(c), 19(d), 19(e), 19(f) (Suit 4) and 9 (Suit 5) fall in this category.

3125. **Issue no.6 (Suit 3)** is:

> *"Was this alleged mosque dedicated by Emperor Babar for worship by Muslims in general and made a public waqf property?"*

3126. The necessary pleadings relevant for the above issue are in para 15 of the written statement of defendants no.6 to 8 and in para 15 of the replication filed by plaintiffs (Suit 3), which are as under:

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> *"धारा 15– यह कि जिस जायदाद का मुद्दैयान ने दावा किया है वह शहनशाह हिन्द बाबर बादशाह की तामीर करदा मशजीद मौसूमे बाबरी मसजिद है जिसको सहनशाह मजकूर ने अपने वजीर .... के एहतमाम से .... तामीर कराया। और मुसलमानान के लिये वक्फ आम कर दिया जिसमें तमाम मुसलमानान का हक इबादत है।" (Written Statement)*
>
> *Para 15- That the property which has been claimed by the plaintiffs is the Babri Mosque built by Emperor Babar of India in his name, who got it built through his Minister . . . . and thereafter he made a waqf and consecrated to Muslims wherein Muslims have right of worship." (E.T.C.)*
>
> *"Para 15.- The allegations contained in para 15 of the written statement are totally incorrect and are denied. The property in suit is neither a mosque nor is it known as*

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Babri Mosque, nor was it built by Emperor Babar through Mir Abdul Baqi. Nor was it made wakf. The property in suit is the temple of Janma Bhumi." (Replication)

3127. Issues No. 1, 1-B(b), 1-B(c), 19(d), 19(e) and 19(f) (suit 4) are:

Issue No.1 *"Whether the building in question* ***described as mosque*** *in the sketch map attached to the plaint (hereinafter referred to as the building)* ***was a mosque as claimed by the plaintiffs****?"*

Issue No.1-B(b) *"Whether the building stood dedicated to almighty God as alleged by the plaintiffs ?"*

Issue No.1-B(c) *"Whether the building had been used by the members of the Muslim community for offering prayers from times immemorial? If so, its effect?"*

Issue No. 19(d) *"Whether the building in question could not be a mosque under the Islamic Law in view of the admitted position that it did not have minarets?"*

Issue No. 19(e) *"Whether the building in question could not legally be a mosque as on plaintiffs' own showing it was surrounded by a graveyard on three sides?"*

Issue No. 19(f) *"Whether the pillars inside and outside the building in question contain images of Hindu Gods and Goddesses? If the finding is in the affirmative, whether on that account the building in question cannot have the character of Mosque under the tenets of Islam?"*

3128. In the plaint (Suit 4), the relevant pleadings are in paras 1, 2 and 21-B. Defendants no.1 and 2 in para 2 of their written statement hence denied that the alleged mosque was built as dictated by Babar. Similar is the denial by defendant no.3 in his written statement.

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3129. In the written statement of defendant no.13, the relevant pleadings are in paras 11-A , 25 and 28 in which it is said:

> *"11-A....The attempt to raise a mosque-like structure did not succeed; and no 'mosque', deemed to be Waqf according to Muslim Law, ever came into existence. The act of Mir Baqi was a fleeting act of trespass . . . ., and no Muslim could by any such act of trespass or its repetition, confer any right, title or interest in the nature of a Waqf in favour of ALLAH for the purposes of a 'mosque'.*
>
> *"25. That the building in suit was no 'mosque' and its surrounding area was not a grave-yard. . . . . ALLAH DOES NOT accept Namaz offered at a place taken by force, or in a 'mosque' built on land obtained by Gasba or forcibly without title. It seems, therefore, that the three-domed structure raised at Sri Rama Janma Bhumi . . . ., was not intended to be used as a 'mosque', and it was never used as 'mosque'. . . . . The alleged existence of a grave-yard all round it, also shows that the Muslims could not have gone to offer Namaz in the* ***building, which was abandoned and never used as a 'mosque' by the Muslims.****"*
>
> *28. That the following facts would show that the three-domes structure so raised by Mir Baqi was not a 'mosque' at all, namely---*
>
> *(A) ALLAH does not accept a dedication of property for purposes recognised as pious and charitable, that is, as waqf under the Muslim Law,* ***from a person who is not its rightful owner****, for instance, ALLAH would not accept the dedication of stolen property from a thief. By his act of*

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trespass supported by violence, for erecting a 'mosque' ....."

(B) Inspite of all that Mir Baqi tried to do with the Temple, the space always continued to best in possession with the Deities of BHAGWAN SRI RAMA VIRAJMAN and the ASTHAN SRI RAMA JANMA BHUMI. THEIR ***worshippers continued to worship THEM through such symbols as the CHARAN and the SITA RASOI,*** *and the idol of BHAGWAN SRI RAMA LALA VIRAJMAN on the Chabutra, called the Rama Chabutra.* ***No one could enter the three domed structure except after passing through these places of Hindu worship****. According to the tenets of Islam there can be* ***no Idol worship within the precincts of a 'mosque****', and the passage to a 'mosque' must be free and unobstructed and open to the 'Faithful' at all times. It can* ***never be land-locked by a Hindu place of worship****; and there can be* ***no co-sharing in title or possession with ALLAH****, particularly in the case of a 'mosque'. His possession must be exclusive.*

(C) A 'mosque', which is a public place of worship for all the Muslims, ***must have a minaret for calling the AZAN****. According to Baillie-*

"When an assembly of worshippers pray in a masjid with permission, that is delivery. But it is a condition that the prayers be with izan, or the regular call, and be public not private, for though there should be an assembly yet if it is without izan, and the prayers are private instead of public, the place is no masjid, according to the two disciples." ***(Pt. 1, BK. IX, Ch. VII, Sec. I, p. 605)***

Indeed, according to ***P.R. Ganpathi Iyer's Law Relating***

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***to Hindu and Mahomedan Endowments**, (2nd Edition, 1918, Chap. XVII, at p. 388) there has been **no 'mosque' without a minaret after the first half century from the Flight**."*

*(D) There was **no arrangement for storage of water** for Vazoo, and there were the Kasauti pillars with the figure of Hindu Gods inscribed on them and the Sandalwood beam. Such a place could never be a 'mosque'.*

(E) There is mention in the Fyzabad Gazetteer of the burial of 75 Muslims at the gate of the Janmasthan and the place being known as Ganj Shahidan, after the battle of 1855 between the Hindus and the Muslims in which the Hindus succeeded in resuming control over the premises, including the three-domed structure. There have been no graves anywhere near the building or its precincts or the area appurtenant thereto, or surrounding it, for the last more than 50 years at least, but if the building was surrounded by a grave-yard soon after the annexation of Avadh by the British, the building could not be a 'Mosque' and could not be used as a 'mosque', for the offering of prayers or Namaz, except the funeral prayers on the death of a person buried therein, that is, the Namaz-Janaz, is prohibited in a grave-yard according to the Muslim authorities."

3130. The defendant no.17 in his additional written statement has denied para 21-B and further says:

"....Muslim cannot use any open piece of land in question for offering prayers and they also cannot encroach upon the land of religious places of Hindus."

3131. Defendant no.20 has replied the relevant averments

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of the plaintiffs in respect to the above issues in para 2 and 41 of its written statement:

"2. That the contents of paragraph 2 of the plaint are absolutely wrong and denied. ***There has never been any battle between Emperor Babar and the previous Ruler of Ayodhya*** *nor any grave yard or mosque as alleged has been built or dedicated by Emperor Babar."*

"41. That the following facts also establish that the ***mosque in dispute has not been built by Babur at all in 1528 nor is a mosque at all****:-*

(1) The tomb of this disputed Masjid if it is to be looked from behind would show that it is not in the style developed by Turkis during fifteenth century, nor the Mehrab of the Masjid in that style is to be found. Thus ***there is no tomb in the disputed Masjid*** *as is to be found in other mosques generally.*

(2) On the ***north door in the front facing each other there are two tigers.*** *They are in the style of taking leaps and their tails are just in the same style when a tiger takes the leap. Between these two tigers there is a peacock. This is not a characteristic of a mosque.*

(3) The various Hindu idols are painted or their scriptions are to be found in the disputed mosque.

(4) In the disputed mosque there is no provision for reciting Namaz. To this day it has ***no minerettes****,* ***no place for storage of water for Vazoo****.*

(5) The Muslim Faith as adumbrated in Holy Koran ***does not permit the construction of a mosque on the site of temple after demolishing the temple****.*

(6) ***Babur never dedicated the property*** *of disputed*

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mosque to ALLAH. Even supposing without admitting that Babur constructed the disputed mosque, yet as it has been done by committing trespass, demolishing the Temple, the abode of God, either by Babur or at his instance by Mir Baqi, the Governor of Oudh, the dedication is wholly invalid and void. ***The material of the old temple was largely employed*** *in building the mosque and a few if the original columns are still in good preservation. They are of closed* ***grained black stone (Kasauti) bearing various Hindi Bas-reliefs.*** *The outer beam of the main structure being of sandal wood, the height of the columns is 7 to 8 ft., the shape of the base, the middle section and the capital is square, the rest being round or octagonal . . . . . Subsequently, Aurangjeb also desecrated the shrines of Ayodhya which led to prolonged bitterness between Hindus and Musalmans. Latter also occupied Janmasthan by force and also made an assault on Hanumangarhi. Attacks and counter attacks continued under the leadership of Maulvi Amir Ali (See page 352 of Faizabad Gazetteer 1960).*

(7) A mosque must be built in a place of peace and quiet and near a place where there is a sizeable and large number of Muslim population. According to the Tenets of Islam, a mosque cannot be built at place which ***is surrounded on all sides by temples where the sound of music, of Conch shells or Ghanta Ghariyalis must always disturb*** *the peace and quiet of the place.*

(8) ***A mosque must have minerette*** *for calling the Ajan. According to Baille "When an assembly of*

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worshippers pray in Masjid with permission, i.e. delivery. But it is a condition that prayers be with Ajan or the regular call and be public and not private, for though there should be an assembly yet if it is without Izah and the prayers are private instead of public, the place is no Masjid according to the true desciples." Indeed there has been no mosque without a minerette after the first half century fight. (See ***P.R. Ganapati Iyer's law relating to Hindu and Muhammadan Endowments 2nd Edition 1918 Chapter XVII, page 388****).*

(9) According to the claim laid by the Muslims in the present suit, the building is surrounded on sides by a grave yard known as Ganj Shahidan. There is a mention in the Faizabad Gazetteer also of the burial of seventy five Muslims at the gate of Janmasthan and the place being known as Ganj Shahidan after the battle of 1855. Although there are no graves anywhere near the building at Sri Rama Janma Bhumi or in its precincts or the area appurtenant thereto for the last more than 50 years and if the building was surrounded by a graveyard during the British times soon after the annexation of Audh by them the building could not be mosque and could not be used as a mosque for offering of prayers except the funeral prayers."

3132. In the additional written statement, the defendant no.20 while denying para 21-B of the plaint, in para 2, has further said in para 5:

"That by destruction of the structure, the pillars were also destroyed which were evidence of Hindu Temple. It is not

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the destruction of Babri Mosque but a Hindu temple. The answering defendant No. 20 is entitled to claim the land in dispute for constructing a temple of Bhagwan Ram on the disputed land."

3133. **Issue No.9 (suit 5)** is as under:

"Was the disputed structure a mosque known as Babri Masjid?"

3134. The necessary pleadings relevant for the above issue are in para 24 of the plaint which are:

"That such a structure raised by the force of arms on land belongings to the Plaintiffs Deities, after destroying the ancient Temple situate thereat, with its materials including the Kasauti pillars with figures of Hindu gods carved thereon, could not be mosque and did not become one in spite of the attempts to treat it as a mosque during the British rule after the annexation of Avadh. Some salient points with regard thereto are noted below.

(A) According to the Koran, ALLAH spoke to the Prophet thus--

" And fight for the religion of GOD against those who fight against you; but transgress not by attacking them first, for GOD loveth not the transgressors. And kill them wherever ye find them; and turn them out of that whereof they have dispossessed you; for temptation to idolatry is more grievous than slaughter, yet fight not against them in the holy temple, until they attack you therein; . . . . . "

(B) According to all the Muslim authority and precedents and the decided cases also. ALLAH never accepts a dedication of property which does not belong to the Waqf that is, the person who purports to dedicate property to

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ALLAH for purposes recognised as pious or charitable, as waqf under the Muslim law. By his acts of trespass and violence for raising a mosque on the site of the Temple after destroying it by force, Mir Baqi committed a highly un-Islamic act. His attempts to convert the Temple into a mosque did not, therefore, create a valid dedication of property to ALLAH, whether in fact or in law, and it never became a mosque.

(C) That in spite of all that Mir Baqi tried to do with the Temple, the land always continued to vest in the Plaintiff Deities, and they never surrendered their possession over it. Their possession continued in fact and in law. The Asthan never went out of the possession of the Deity and HIS worshippers. They continued to worship HIM through such symbols as the CHARAN and Sita Rasoi, and the idol of BHAGWAN SRI RAMA LALA VIRAJMAN on the Chabutra, called the Rama Chabutra, within the enclosed courtyard of the building directly in front of the arched opening of its Southern dome. No one could enter the building except after passing through these places of Hindus worship. According to the Muslim religion and law there can be no Idol worship within the courtyard of a mosque and the passage to a mosque must be free and unobstructed and open at all times to the 'Faithful'. It can never be through a Hindu place of worship. There can be no co-sharing of title or possession with ALLAH in the case of a mosque. His possession must be exclusive.

(D) A mosque must be built in a place of peace and quiet, but not to a place where there is a sizeable Muslim population, according to the tenets of Islam, and as

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insisted upon by it, a mosque cannot be built in a place which is surrounded on all sided by Temples, where the sound of music or conch shells or Ghanta Ghariyals must always disturb the peace and quiet of the place.

(E) A mosque must have minaret for calling the Azan. According to Baillie. "When an assembly of worshippers pray in a masjid with permission, that is delivery. But it is a condition that the prayers be with izan. or the regular call, and be public not private, for though there should be an assembly yet if it is without izan. and the prayers are private instead of public, the place is no masjid. According to the two disciples." ***(Pt. I. BK. IX, Ch, VII Sec. i.p. 605).*** *Indeed, there has been no mosque without a minaret after the first half century from the Flight.* ***(See-P.R. Ganapati Iyer's Law relating to Hindu and Mahomedan Endowments, 2nd Edition, 1918. Chap. XVII, P. 388.)***

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(F) According to the claim laid by the Muslims in their suit No. 12 of 1961, the building is surrounded on all sides by grave-yard known as 'Ganj Shahidan'. There is a mention in the Fyzabad Gazetteer also, quoted herein above, of the burial of 75 Muslims at the gate of the Janmasthan, and the place being known as Ganj Shahidan. After the battle of 1855. Although there are no graves anywhere near the building at Sri Rama Janma Bhumi, or in its precincts, or the area appurtenant thereto, for the last more than 50 years, if the building was surrounded by a grave-yard during the British times soon after the annexation of Avadh by them, the building could not be a mosque, and could not be used as a mosque, for the offering of prayers, except the funeral prayers on the death of a person buried therein, is

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prohibited in a grave-yard according to the Muslim authorities.

(G) As already stated, there is no arrangements for storage of water for Vazoo and there are the Kasauti pillars with the figures of Hindu Gods and Godesses inscribed thereon in the building."

3135. The defendant no.4 in para 24 has replied as under:

"That the contents of para 24 of the Plaint are also incorrect and hence denied as stated. At ***no point of time there ever existed any temple at the site of the Babri Masjid*** *and it is absolutely* ***incorrect to say that the said mosque was constructed, after destroying any ancient temple, with the material of the alleged temple.*** *The mosque in question has* ***always*** *been* ***used as a mosque since its construction during the regime of Emperor Babar.***

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The contents of the sub-paras (A) to (G) of the para under reply are also incorrect and the same are also denied as stated:

(A) : That the contents of para 24(A) of the plaint are also denied as stated. The quotation of Quran is totally out of context and the same is not even correct and complete.

(B) That the contents of para 24(B) of the Plaint are also incorrect and hence denied as stated. ***The land in question undoubtedly belonged to the State when the mosque in question was constructed on behalf of the State and as such it cannot be said that it could not be dedicated for the purposes of the mosque.*** *Emperor Babar was a Sunni Muslim and the vacant land on which the Babari Masjid was built lay in his territory and* ***did not***

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belong to anyone *and it could very well be used by his officers for the purposes of the mosque and* ***specially so when the Emperor Babar himself consented and gave approval for the construction of the said mosque.*** *. . . . .*

(C) That the contents of para 24(C) of the Plaint are also absolutely false and incorrect and hence denied as stated. . . . . The ***alleged Ram Chabutra has also not remained in existence since the time of Babar but rather the same is the creation of around 1857 period.***

It is also incorrect to say that the entry of the mosque could not be possible except after passing through any place of Hindu worship. The concept of the mosque has also been wrongly and incorrectly described in the para under reply.

(D) That the contents of para 24(D) of the Plaint are also incorrect and hence denied as stated. There is no such requirement for the construction of any mosque – that the same should be built in a place of peace and quiet and near to a place where there is a sizeable Muslim population. It is also incorrect to say that the mosque cannot be built in a place which is surrounded by temples, where the sound of music and Konch shell, Ghante Gharyal disturbs the peace and quiet of the place.

(E) That the contents of para 24 (E) of the Plaint are also incorrect and hence denied as stated and in reply thereto it is submitted that ***there is no specific shape of building a mosque and there is no requirement of existence of any minarets for calling the Azan****. The quotations given in the para under reply are also irrelevant and out of the context and the same do not even present a correct law.*

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(F) That the contents of para 24 (F) of the Plaint are also incorrect and hence denied as stated. Whatever was mentioned in the Plaint of Suit No. 12 of 1961 would appear from the copy of the same and the averments of the Faizabad Gazetteer referred to in the para under reply are neither authentic and nor correct. It is also incorrect to say that there were no graves near the building of the said mosque. The fact is that ***many graves existing in the Ganj-Shaheedan have now been mostly demolished by the Bairagis and that is why they are not now visible.*** *It is reiterated that the mosque is question has been offering regular 5 times prayers upto 22nd December, 1949 and even Friday prayers have been offered in the same till 16th December, 1949 and the Imam of the said mosque who used to lead the prayers even in 1949 namely Maulvi Abdul Ghaffar son of late Mohd Abdul Qadir. He had even filed his affidavit in writ No. 746 of 1986 : Mohd Hashim Vs. District Judge, Faizabad and others, which is still pending in this Court.*

(G) That the contents of para 24 (G) of the Plaint are also incorrect and hence denied as stated and in reply thereto it is submitted that ***there is a pucca well also outside the mosque in question*** *for taking water for the purpose of Vazoo."*

3136. Defendant no.5 has denied para 24 of the plaint in para 24 of his written statement.

3137. In brief, the case of the plaintiffs (Suit 4) or the pro-mosque parties is that the building in dispute was constructed in 1528 AD at the command of Emperor Babar by his commander Mir Baqi, when Babar had conquered Hindustan. He dedicated

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the said building to Almighty and made it a public wakf. Since then it is being used for offering namaz by muslims in general. It is a public wakf and cannot be treated a Hindu temple.

3138. It is also said that the matter being almost 500 years old, one cannot be expected to adduce evidence to show the facts as to what occurred at that time or what actually existed or happened in 1528 AD, to demonstrate the manner in which waqf of disputed property was created. If the property in dispute has been used as mosque and Namaz has been offered therein, this itself is sufficient evidence to prove the building in dispute as mosque i.e. a waqf validly created. It is the evidence by "user" which must be taken into account by the Court to find out whether there existed waqf or not and whether the building in dispute was dedicated as waqf to God or not. Once there is a waqf, the building and site both belong to God and cannot be treated otherwise so as to change its nature, whether by placing idols or by offering worship etc.

3139. On the contrary, all the learned counsels for pro-temple parties (Hindus) supporting the case of Hindu temple contended that the disputed site itself is a place of specific significance for Hindus being the "birth place of Lord Rama", "an incarnation of Lord Vishnu". This place whether was occupied by Hindus or not but on its own is a "Deity" having been worshipped by Hindus for time immemorial and much earlier from the period when it is said that the disputed building was constructed. The site in dispute was not owned by any private individual but it belong to a Deity. Neither Babar nor Mir Baqi was owner of the property. There is nothing to show that they obtained or acquired this property by valid means i.e. gift, purchase, etc. In order to constitute a waqf in accordance

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with Shariyat law one of the crucial factor is that the land must belong to the *Waqif*. Neither Babar nor Mir Baqi were owner of the property in dispute therefore, had no occasion or right to create a waqf in accordance with Shariyat Law. Construction of a Muslim religious place on the place of another religion is not permitted and that too by demolishing a religious structure of another religion. That was not and cannot be a valid dedication to God. No question arose to create a valid waqf in accordance with Shariyat Law. Once a valid waqf was never created, the claim of the disputed building as a mosque, existing since 1528 AD, is wholly baseless and imaginary. In the absence of existence of a valid waqf, the mere fact that Muslims at some point of time offered Namaz in the disputed building, assuming though not admitting, would not make the same a waqf i.e. mosque (The factum that Namaz was offered in the disputed building is seriously disputed but the argument has been advanced in the alternative).

3140. Besides the documentary and oral evidence, a lot of precedents, judicial and religious literature and history books on the subject have been cited.

3141. In view of our findings recorded on the issues, whether the building in dispute was constructed in 1528 AD by Emperor Babar or any of his agent in negative, the issues in question immediately would also stand negatived. When the building in dispute itself was not constructed in 1528 AD by Babar or any of his agent, the question of creation of a waqf by dedication to Almighty by any of them would not arise. All these issues without any further discussion thus deserve to be answered against the pro-mosque parties. However, we shall consider these issues further on merits, presuming for the

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purpose of these issues only, at this stage, that the building in dispute, if constructed in 1528 AD by Babar or any of his officer under his dictates, whether it satisfies the requirement of a waqf, as is known in Sharii i.e. according to tenets of Islamic law or otherwise and other aspects involved in these issues.

3142. The first question, as would crop up immediately, is what is a waqf in law of Shariyat, how it can be created or could be created and what the religious sanctions are in this regard, as also the relevant judicial precedents, if any.

3143. Some aspects of the matter pertaining to waqf have already been discussed while considering the issues relating to U.P. Act 1936 and 1960 but there it was confined only to the extent, it was necessary for adjudication of those issues. Here the issues are simply related with Islamic law on waqf as also the power, privileges, obligations etc. of conqueror or a king or a emperor or an invader, as the case may be.

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3144. The Islamic religious scriptures in this regard, relevant for our purposes, have been referred in sufficiently great detail by Sri P.N.Mishra, Advocate assisted by Ms. Ranjana Agnihotri counsel for defendant no.20 (Suit 4) and that itself give enough idea on this subject.

3145. Firstly, he submits that Islam guarantees religious freedom and tolerance. It does not permit usurpation of sacred religious places of others. There does not arise any question of a valid construction of a mosque at a place where a Hindu temple existed or a place which, for its peculiar nature and specific religious importance, very pious to the persons of another religion, i.e., Hindu. In this regard he referred Holy Quran, Hadith & several other books on islamic laws.

3146. The Holy Quran and the Holy prophet has

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commanded that no one should be compelled to change religion. Idolater should be allowed to worship in their own way. The Holy prophets have appeared in every community and they should not be compared but respected and a Muslim can maintain good relation with his Pagan (i.e. worshipper of multi-deities) relative.

3147. The Noble Qur'an, Surah-2 Al-Baqarah, Ayat 256 at P. 42 reads as follows:

> *"256.* ***There is no compulsion in religion.*** *Verily, the Right Path has become distinct from the wrong path. Whoever disbelieves in Taghut and believes in Allah, then he has grasped the most trustworthy handhold that will never break. And Allah is All-Hearer, All-Knower."*

3148. The **Holy Quran (The Noble Qur'an, Surah 109 Al-Kafirun, Ayat 1-6**, page 603) permits people of other religion to carry out their religious practices according to their own religion. English translation of the said Ayat reads as follows:

> *"1. Say (O Muhammad .. .. .. to these Mushrikun and Kafirun): "O Al-Kafirun (disbelievers in Allâh, in His Oneness, in His Angels, in His Books, in His Messengers, in the Day of Resurrection, and in Al-Qadar)!*
>
> *2. I worship not that which you worship,*
>
> *3. Nor will you worship that which I worship.*
>
> *4. And I shall not worship*
>
> *that which you are worshipping.*
>
> *5. Nor will you worship that which I worship.*
>
> *6.**To you be your religion, and to me my religion** (Islâmic Monotheism).*

3149. The **Holy Quran (The Noble Qur'an, Surah-10**

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Yunus, Ayat 47 at page 214) recognizes birth of Messengers of the Almighty in every community or nation. English translation of the said Ayat reads as follows:

> *"47. And for every Ummah (a community or a nation) there is a Messenger; when their Messenger comes, the matter will be judged between them with justice, and they will not be wronged."*

3150. Sacred Compilation **Hadith Sahih Bukhari 3.595** p. 610-611 reveals that Holy Prophet commanded not to give a Prophet superiority over another. Relevant portion of the said Hadith reads as follows:

> *"The Prophet said, "**Do not give a prophet superiority over another**, for on the Day of Resurrection all the people will fall unconscious and I will be the first to emerge from the earth, and will see Moses standing and holding one of the legs of the Throne. I will not know whether Moses has fallen unconscious or the first unconsciousness was sufficient for him."*

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3151. The Sacred Compilation **Hadith Sahih Bukhari 4.407** reveals that Holy Prophet allowed a Muslim to keep good relation with his mother who was pagan i.e. idolater. The said Hadith reads as follows:

> *"Narrated Asma 'bint Abi Bakr: During the period of the peace treaty of Quraish with Allah's Apostle, my mother, accompanied by her father, came to visit me, and she was a pagan. I consulted Allah's Apostle, "O Allah's Apostle! My mother has come to me and she desires to receive a reward from me, shall I keep good relation with her?" He said, "Yes, keep good relation with her."*

3152. Sri Mishra contended that freedom of religion and

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religious practices to Hindus during Islamic Rule was granted to the Hindus and they were not forced to be governed by Islamic Law.

3153. Law of Shar as interpreted by Great Imam Abu Haneef recognized right of freedom of religion & religious practices of the Hindus of India under Islamic Rulers. Sultan Sikandar Lodi was dissuaded by the Greatest Alim of that age Miyan Abdullah Ajodhani from demolishing a Hindu Temple & putting ban on religious practices of the Hindus. Even Emperor Aurangzeb who later on caused demolition of several Temples of the Hindus throughout his Empire, in his Firman dated 1659 admitted that Shariyat do not permit to demolish old Temples and impose restriction on performance of customary and other religious rituals of the Hindus.

3154. Ibn Battuta tells that Muhammad bin Tughlaq had granted permission to rebuild demolished Idol Temples to the King of China. **During the reign of Caliphs, the people of other faith i.e. Zimmis were allowed to carry out processions, observe festivals, beat drums, erect places of worship & maintain images therein.**

3155. In **Waqiyat-i-Mutaqi** written by **Rizkulah Mutaqi** (b. 1491-92 & d. 1581 A.D.), **Tabkats I Akbari** by **Khwaja Nizamuddin Ahmad** (completed in 1592-93 A.D.) and **Tarikh-i-Shahi** (completed in the beginning of Emperor Jahangir's reign) it has been narrated that once upon a time when Sultan Sikandar Lodi (1488-1517 A.D.) was the Crown prince and known as Nizam Khan, he sought opinion of Alims for the purpose of demolishing an ancient temple of Hindus at Thaneshwar and putting ban on Hindus from taking holy dip in the Sacred pond at Thaneshwar. Alims unanimously made a

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request to him for putting that question to Greatest Alim of the age Miyan Abdullah Ajodhani who was available at that place. On being asked, the Great Alim Abdullah Ajodhani replied that Shar does not permit destruction of ancient temple and prohibition of customary rites of the Hindus. From said answer Sikandar Lodi became very much annoyed and drew his sword inter alia stating that 'first I will kill you and thereafter attack Thaneshwar'. Then Alim fearlessly answered that 'everyone has to die on one day and when anyone goes near a tyrant then he does it knowing fully well that his death is certain. I am not worried about my life but I say that if you had nothing to do with Shar then there was no need to put this question to me but since you asked me that question of Shar I replied it in accordance with Shar'. In **"Uttar Taimoorkalin Bharat Bhag.1" (History of the Part-Taimoor Sultans of Delhi, Part 1)** pages 104, 228 and 322 narrates it as follows:

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*''**कुरुक्षेत्र पर आक्रमण की योजना***

*बाल्यावस्था में ऐसा हुआ कि एक बार उसने कुरुक्षेत्र पर आक्रमण करना निश्चय किया। इस विषय पर आलिमों का मत ज्ञात करने के लिए उसने उन्हें एकत्र किया। उस युग के सबसे बड़े आलिम (मियां अबदुल्लाह अजोधनी भी उपस्थित थे। सभी ने उनकी ओर संकेत किया कि, ''इनकी उपस्थिति में हम कुछ भी नहीं कह सकते।'' मियां निजाम ने मियां अबदुल्ला से इस विषय में पूछा। उन्होंने पूछा, ''वहां क्या होता है?'' मियां निजाम ने कहा कि, ''उस स्थान पर प्रत्येक प्रदेश से काफिर एकत्र होकर स्नान करते हैं।'' मियां अबदुल्लाह ने पूछा कि, ''यह प्रथा कब से चल रही है?'' शहजादे ने कहा कि, ''यह बड़ी प्राचीन प्रथा है।'' मियां अबदुल्लाह ने पूछा कि, ''आपके पूर्व मुसलमान बादशाहों ने इस सम्बन्ध में क्या किया?'' शहजादे ने कहा कि, ''इसके पूर्व किसी बादशाह ने कुछ भी नहीं किया।'' मुल्ला ने कहा कि, ''इसका उत्तरदायित्व उन लोगों पर है। **प्राचीन मंदिर को नष्ट करना उचित नहीं।**'' मियां निजाम ने रुष्ट होकर, कटार निकाल ली और कहा कि, ''सर्वप्रथम मैं तुम्हारी हत्या करूँगा तदुपरान्त वहां आक्रमण करूँगा।'' उन्होंने कहा कि, ''सभी के लिए मरना*

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अनिवार्य है। बिना ईश्वर के आदेश के कोई भी नहीं मरता। जब कोई भी व्यक्ति किसी अत्याचारी के पास जाता है तो अपने लिए मृत्यु निश्चय करके जाता है। जो कुछ होना है वह होगा किन्तु आपने मुझसे शरा की समस्या के विषय में प्रश्न किया तो मैंने उसका उत्तर दिया। यदि आपको शरा की चिन्ता नहीं है तो पूछने की कोई आवश्यकता नहीं।'' सुल्तान ने अपने क्रोध को रोका और कहा कि, ''यदि अनुमति प्रदान कर देते तो कई हजार काफिरों को नरक पहुँचा देता और अधिकांश मुसलमान उससे लाभान्वित होते।'' मियां अब्दुल्लाह ने कहा कि, ''मुझे जो कुछ कहना था मैंने कह दिया, अब आप जानें।'' वह दरबार से उठ खड़ा हुआ। अन्य आलिम लोग उसके साथ चल दिये। मलिकुल उलमा अपने स्थान पर खड़े रहे। मियां निजाम ने किसी अन्य ओर ध्यान न दिया और कहा, ''मियां अब्दुल्लाह आप कभी–कभी मुझसे भेंट करते रहें।'' यह कह कर उन्हें विदा कर दिया। बाल्यावस्था में उसकी यह दशा थी।

थानेश्वर के स्नान के विरोध का प्रयत्न

उसने अपनी बाल्यावस्था में जब कि वह शहजादा था यह सुना कि थानेश्वर में एक कुण्ड है, जहाँ हिन्दू एकत्र होकर स्नान करते हैं। उसने आलिमों से पूछा कि ''इसके विषय में शरा का क्या आदेश है?'' उन्होंने उत्तर दिया कि ''प्राचीन मंदिरों को नष्ट करने की अनुमति नहीं है। जब कि उस कुण्ड में प्राचीन काल से स्नान करने की प्रथा चली आ रही है, उसमें स्नान का निषेध आपके लिए उचित नहीं।'' शहजादे ने कटार निकाल ली और उस आलिम की हत्या का संकल्प करते हुए कहा कि, ''तू काफिरों का पक्षपाती है।'' उस बुजुर्ग ने उत्तर दिया कि, ''जो कुछ शरा में लिखा है उसे मैं कहता हूँ और सत्य बात कहने में कोई भय नहीं।'' शहजादा संतुष्ट हो गया।

धर्मान्धता

एक दिन उसने आदेश दिया कि ''थानेश्वर जाकर कुर्कक्षेत्र (कुरुक्षेत्र) को मिट्टी से पाट दिया जाय और वह भूमि वहां के धर्मनिष्ठ व्यक्तियों को वजहे मआश में नाप कर दे दी जाय।'' उस काल का मलिकुल उलमा उस स्थान पर उपस्थित था। उसने शहजादे से पूछा, ''वहां क्या है?'' उसने उत्तर दिया, ''एक हौज है जहां 1000, 2000 कोस से हिन्दू लोग स्नान हेतु आते हैं।'' उसने पूछा, ''कब से यह कार्य प्रारम्भ हुआ?'' शहजादे ने कहा, ''वर्षो से यह विदअत चल रही है।'' मलिकुल

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उलमा ने पुनः पूछा, ''आपके पूर्व के बादशाह इस विषय में क्या करते थे?'' उसने उत्तर दिया, ''कुछ नहीं।'' मलिकुल उलमा ने कहा, ''यह तुम्हारा उत्तरदायित्व नहीं कारण कि तुम्हारे पूर्व मुसलमान बादशाहों ने इस विषय में कुछ नहीं किया?'' शहजादा इस बात से बड़ा गरम हुआ। उसने कहा, ''इस काल(31)के आलिम बड़े विचित्र प्रकार के हैं।'' संक्षेप में, युवावस्था में वह इस्लाम का इतना बड़ा पक्षपाती था।''

3156. In his Farman/Manshur of Emperor Aurangzeb of 15th March, 1659 AD. has said that in accordance with the Sharia the ancient temples, are not to be destroyed as such there should be no interference in offering prayers in temples of the Hindus. In spite of the fact that subsequently this ruler himself caused demolition of several temples, in his Firman dated 1659 he has accepted that sharia neither permit to interfere with the worship of the Hindus nor allows to destroy their temples.

3157. Ibn Battuta who held the office of the Kazi of Delhi as also functioned as Mutawalli of the Mausoleum of Sultan Kutubuddin during the reign of Sultan Mahommed Bin Tughlaq has noted down that Sultan Mahommed Bin Tughlaq had granted permission to the King of China to rebuild the idol temples that were demolished by his army in Himalayan region subject to payment of Jizya. Page 214 of the book **'IBN BATTUTA Travels in Asia and Africa 1325-1354'** translated and selected by **H.A.R. Gibb** (first published in 1929 reprinted in 2007 by Low Price Publications, Delhi) reads as follows:

The king of China had sent valuable gifts to the sultan, including a hundred slaves of both sexes, five hundred pieces of velvet and silk cloth, musk, jewelled garments and weapons, with a request that the sultan would permit him to rebuild the idol-temple which is near the mountains called Qarajil (Himalaya). It is in a place known as Samhal, to which the Chinese go on pilgrimage; the

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Muslim army in India had captured it, laid it in ruins and sacked it.' The sultan, on receiving this gift, wrote to the king saying that the request could not be granted by Islamic law, as permission to build a temple in the territories of the Muslims was granted only to those who paid a poll-tax; to which he added "If thou wilt pay the jizya we shall empower thee to build it. And peace be on those who follow the True Guidance."

3158. Syed Amir Ali in his book **"The Spirit of Islam"** (at p. 272) substantiate that the **Islam itself has ever maintained the most complete tolerance** in respect of religion and **if any excesses was done, it was by the passions of the ruler, using religious element as a pretext.** Relevant extract thereof is as under:

"If we separate the political necessity which has often spoken and acted in the name of religion, no faith is more tolerant than Islam to the followers of other creeds. "Reasons of State" have led a sovereign here and there to display a certain degree of intolerance, or to insist upon a certain uniformity of faith; but the system itself has ever maintained the most complete tolerance. Christians and Jews, as a rule, have never been molested in the exercise of their religion, or constrained to change their faith. If they are required to pay a special tax, it is in lieu of military service, and it is but right that those who enjoy the protection of the State should contribute in some shape to the public burdens. Towards the idolaters there was greater strictness in theory, but in practice the law was equally liberal. If at any time they were treated with harshness, the cause is to be found in the passions of the

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ruler or the population. The religious element was used only as a pretext."

3159. The **'Spirit of Islam'** (at p. 273) records the facts that the Holy Prophet gave guarantee of freedom of religion to the Christians of Najran and the neighbouring territories, inter alia, stating that there would be no interference with the practice of their faith, monks would not be removed from their Monastery and no image would be destroyed. It says:

"Has any conquering race or Faith given to its subject nationalities a better guarantee than is to be found in the following words of the Prophet? "To (the Christians of) Najran and the neighbouring territories, the security of God and the pledge of His Prophet are extended for their lives, their religion, and their property—to the present as well as the absent and others besides; there shall be no interference with (the practice of) their faith or their observances; nor any change in their rights or privileges; no bishop, shall be removed from his bishopric; nor any monk from his monastery, nor any priest from his priesthood, and they shall continue to enjoy every thing great and small as heretofore; no image or cross shall be destroyed; they shall not oppress or be oppressed; they shall not practise the rights of blood-vengeance as in the Days of Ignorance; no tithes shall be levied from them nor shall they be required to furnish provisions for the troops."

3160. The **'Spirit of Islam'** (at p. 273-274) records the facts that during the reign of Caliphs, the people of other faith i.e. Zimmis were allowed to carry out processions, observe festivals, beat drums, erect places of worship. Relevant extract of the said book reads as follows:

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"After the subjugation of Hira, and as soon as the people had taken the oath of allegiance, Khalid bin-Walid issued a proclamation by which he guaranteed the lives, liberty and property of the Christians, and declared that "they shall not be prevented from beating their nakus and taking out their crosses on occasions of festivals." "And this declaration," says Imam Abu-Yusuf, "was approved of and sanctioned by the Caliph and his council."

The non-Moslem subjects were not precluded from building new churches or temples. Only in places exclusively inhabited by Moslems a rule of this kind existed in theory. "No new Church or temple," said Abdullah bin Abbas, "can be erected in a town solely inhabited by Moslems: but in other places where there are already Zimmis inhabiting from before, we must abide by our contract with them."

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. . .

The best testimony to the toleration of the early Moslem government is furnished by the Christians themselves. In the reign of Osman (the third Caliph), the Christian Patriarch of Merv addressed the Bishop of Fars, named Simeon, in the following terms: "The Arabs who have been given by God the kingdom (of the earth) do not attack the Christian faith; on the contrary they help us in our religion; they respect our God and our Saints, and bestow gifts on our churches and monasteries."

3161. Sri Mishra submitted that idolater Hindus were recognised as Zimmis by the Great Imam Abu Haneef. Since Empeor Babar was follower of Imam Abu Hanif's school, had no right to erect mosque over a Hindu shrine. Hindus were

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recognized as Jimmis in 712 AD by the Great Imam Abu Haneef by virtue of authorities conferred upon the Doctors of Islam by Hadiths for the purpose of showing the people right path on the basis of correct interpretation of Law of Shar. **Mahomed Kasim Feristha** in his book **"Tarikhe Feristha"** records that in reply to a question of Sultan Allaooddeen Khiljy, Kaji Mugdis answered him that the Hindus were granted status of Jimmi by the Great Imam Abu Huneef. Sri Mishra quoted page 198 of the English Translation of **"History of the rise of the Mahomedan Power in India till the year AD 1612"** translated by **John Briggs** (first published in 1829 reprinted in 2006 by Low Price Publications, Delhi) which reads as follows:

> *"First question. "From what description of Hindoos is it lawful to exact obedience and tribute?"--Answer. "It is lawful to exact obedience and tribute from all infidels, and they can only be considered as obedient who pay the poll-tax and tribute without demur, even should it be obtained by force; for, according to the law of the Prophet, it is written, regarding infidels, 'Tax them to the extent that they can pay, or utterly destroy them.' The learned of the faith have also enjoined the followers of Islam. 'To slay them, or to convert them to the faith;' a maxim conveyed in the words of the Prophet himself. The Imam Huneef, however, subsequently considers that the poll-tax, or as heavy a tribute imposed upon them as they can bear, may be substituted for death, and he has accordingly forbidden that their blood should be heedlessly spilt. So that it is commanded that the Juzeea (poll-tax) and Khiraj (tribute) should be exacted to the uttermost farthing from them, in order that the punishment may approximate as nearly as*

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possible to death."

3162. In 712 AD Imam Abu Hanifah recognised the Hindus of Sind and Multan as Jimmis. **'The Mughal Empire'** edited by Sri R.C. Majumdar (3rd Edn. 1990 published by Bharatiya Vidya Bhavan, Bombay) at page 538 reads as follows:

> *In 712 A.D. Muhammad bin Qasim, the conqueror of Sind, accorded the Hindus of Sind and Multan the status of zimmis which was the special privilege of Christians and Jews, the famous Muslim Jurist, Abu Hanifah, recognised this enactment as legal.*

3163. It is contended that the Sacred Compilation **Jami' At-Tirmidhi (Vol.-5) Hadith 2681, 2682 & 2685** reveal that a learned jurist is greater than a thousand worshippers. Commentator explains that as a learned jurist does not only correct himself and is safe from the illusion of the Saitan, but also he protects others against the plots, conspiracies and errors of the devil and he guides them correctly by teaching the issues of religion. He is superior than a dedicated worshipper who lacks firm knowledge, the benefit of his worship is restricted to his own self, and also it is easy for the Satan to misguide him. From the said Hadith it can be inferred that superiority to the learned jurist has been given only for the purpose to tell the people what is right or wrong according to religion. Said Hadiths read as follows:

> ***"2681**. Ibn Abbas narrated that the Messenger of Allah said: "The Faqih is harder on Ash-Shaitan than a thousand worshippers." **(Da'if)***
>
> ***Comments:***
>
> *A dedicated worshipper who does not have firm knowledge,*

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the benefit of his worship is restricted to his own self, and also it is easy for the Satan to misguide him; while a learned jurist does not only correct himself and is safe for the illusion of the Satan, but also he protects others against the plots, conspiracy and errors of the devil and he guides them correctly by teaching the issues of religion.

2682. *Qais bin Kathir said: "A man from Al-Madhinah came to Abu Ad-Darda when he was in Dimashq. So he said: "What brings you O my nephew? he replied: 'A Hadith has reached me which you have narrated from the Messenger of Allah'. he said: 'You did not come for some need?' He said: 'No'. He said: 'Did you come for trade?' He said: 'No, I did not come except seeking this Hadith'. So he said: 'Indeed, I heard the Messenger of Allah saying:* ***'Whoever takes a path upon which he seeks knowledge, then Allah makes a path to Paradise easy for him.*** *And indeed the angels lower their wings in approval of the one seeking knowledge. Indeed forgiveness is sought for the knowledgeable one by whomever is in the heavens and whomever is in the earth, even the fish in the waters. And superiority of the scholar over the worshipper is like the superiority of the moon over the rest of the celestial bodies.* ***Indeed the scholars are the heirs of the Prophets,*** *and the Prophets do not leave behind Dinar or Dirham. The only legacy of the scholars is knowledge, so whoever takes from it, then he has indeed taken the most able share. (****Da'if****)*

2685. *Abu Umamah Al-Bahili narrated: "Two men were mentioned before the Messenger of Allah. One of them a worshipper, and the other a scholar. So, the messenger of Allah said:* ***"The superiority of the scholar over the***

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worshipper is like my superiority over the least of you.' *Then the Messenger of Allah said: 'Indeed Allah, His angels, the inhabitants of the heavens and the earths – even the ant in his hole, even the fish – say Sulat upon the one who teaches the people to do good." (**Hasan**)"*

3164. Sri Mishra explained the concept of "Jeziyah" and contended that freedom of religion was subject to payment of Jeziyah. As the Hindus were paying the said tax which was in the nature of a protection tax, it was the duty of Islamic Rulers and army of Islam to protect religious Hindu shrine and life of Hindus. he elaborated the above submission in multifold ways.

3165. The Divine Law of Shar contained in Holy Quran and Hadiths guarantees freedom of religion and religious practices to the Jimmis/ Dhimmiz (protectees) who pay jizya (a tax taken from the non-Muslims who are in the protection of the Muslim government). There were 20 conditions of Jeziyah one of which permits **Muslim traveller to stay in Jimmis' temple** while other permits them to stay in Jimmis' home for three days. These terms and condition were in practice which is very much apparent from the disclosure of Ibn Battuta that he stayed in the house of an old lady who was a Jimmy as in the city there was only one House of the Governor. **Riyazu-S-Salatin, A History of Bengal** on its page 67 has recorded the fact that Bakhtiyar Khilaji stayed in a temple within the territory of Kamrup Kingdom during his retreat from Tibbat campaign without harming the Temple.

3166. Sacred Compilation **Hadith Sahih Bukhari** 4.386 p. 836-837 reveals that the Holy Prophet's command was for the Muslim army to fight against the persons of other faith till they worship Allah alone or agree to pay jizya. It say:

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*"Our Prophet, the Messenger of our Lord, has ordered us to **fight you till you worship Allah Alone or give Jizya** (i.e. tribute); and our Prophet has informed us that our Lord says:-"Whoever amongst us is killed (i.e. martyred), shall go to Paradise to lead such a luxurious life as he has never seen, and whoever amongst us remain alive, shall become your master."*

3167. The Sacred Compilation **Hadith Sahih Bukhari 4.404 p. 843-844** reveals that asylum to non-Muslims living in Muslim territory was granted by Allah and His Holy Apostle. Relevant extract of the said Hadith reads as follows:

". . . Narrated said: Abu Huraira once said (to the people), "What will your state be when you can get no Dinar or Dirhan (i.e. taxes from the Dhimmis)?" on that someone asked him, "What makes you know that this state will take place, O Abu- Huraira?" He said, "By Him in Whose Hands Abu Huraira's life is, I know it through the statement of the true and truly inspired one (i.e. the Prophet). "The people asked, "What does the Statement say?" He replied, "Allah and His Apostle's asylum granted to Dhimis, i.e non-Muslims living in a Muslim territory) will be outraged, and so Allah will make the hearts of those Dhimmis so daring that they will refuse to pay the Jizya they will be supposed to pay."

3168. Sacred Compilation **Hadith Sahih Muslim (Vol. III) Hadith 1731R1** p. 180-181 reveals that when Holy Prophet appointed anyone as commander of an army he specially commanded them to invite the enemies who are polytheists to three course of action and if they respond anyone of these the commander must accept it and keep from doing them any harm.

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Out of three options one was to demand Jizya from the people who refused to accept Islam and if they agree to pay no harm should be done to them. The said Hadith reads as follows:

> *"**(1731R1)** It has been reported from Sulaiman b. Buraid through his father that when the Messenger of Allah (may peace be upon him) appointed anyone as leader of an army or detachment he would especially exhort him to fear Allah and to be good to the Muslims who were with him. He would say: Fight in the name of Allah and in the way of Allah. **Fight against those who disbelieve in Allah.** Make a holy war; do not embezzle the spoils; do not break your pledge; and do not mutilate (the dead) bodies; do not kill the children. When you meet your enemies who are polytheists, **invite them to three courses of action.** If they respond to any one of these, you also accept it and keep from doing them any harm. Invite them **to (accept) Islam**; if they respond to you, accept it from them and desist from fighting against them. Then **invite them to migrate from their lands to the land of Muhajirs** and inform them that, if they do so, they shall have all the privileges and obligations of the Muhajirs. If they refuse to migrate, tell them that they will have the status of Bedouin Muslims and will be subjected to the Commands of Allah like other Muslims, but they will not get any share from the spoils of*

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war or fai' except when they actually fight with the Muslims (against the disbelievers). If they refuse to accept Islam, ***demand from them the Jizya.*** *If they agree to pay, accept it form them and hold off your hands. If they refuse to pay the tax, seek Allah's help and fight them. When you lay siege to a fort and the besieged appeal to you for protection in the name of Allah and His Prophet, do not accord to them the guarantee of Allah and his Prophet, but accord to them your own guarantee and the guarantee of your companions for it is a lesser sin that the security given by you or your companions be disregarded than that the security granted in the name of Allah and His Prophet be violated. When you besiege a fort and the besieged want you to let them out in accordance with Allah's Command, do not let them come out in accordance with His Command, but do so at your (own) command, for you do not know whether or not you will be able to carry out Allah's behest with regard to them."*

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3169. Sacred Compilation **Hadith Sahih Muslim (Vol. III) Hadith 1732 and 1733** p. 182 reveals that when Holy Prophet deputed anyone of his Companions on a mission he always directed him to show leniency and not to create aversion towards religion. The said Hadiths says:

*"**(1732)** It is narrated on the authority of Abu Musa that when the Messenger of Allah (may peace be upon him) deputed any of his Companions on a mission, he would say: Give tiding (to the people); do not create (in their minds) aversion (towards religion); show them leniency and do not be hard upon them."*

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*"**(1733)** It has also been narrated by Sa'id b. Abu Burda through his father through his grandfather that the Prophet of Allah (may peace be upon him) sent him and Mu'ath (on a mission) to the Yeman, and said (by way of advising them): Show leniency (to the people); don't be hard upon them; give them glad tidings (of Divine favours in this world and the hereafter); and do not create aversion. Work in collaboration and don't be divided."*

3170. Sacred Compilation **Hadith Sahih Bukhari** 2.559 p. 381, 4.387 p. 837, and 5.351 p. 1103-1104 reveal that Holy Prophet allowed the King of Aila as well as Bahrain who were non-Muslims to remain and rule over their respective countries subject to payment of Jizya. Relevant extract from the Hadith 2.559 and 5.351 as well as full text of hadith 4.387 is as under:

"....A strong wind blew at night and a man stood up and he was blown away to a mountain called Taiy, The King of Aila sent a white mule and a sheet for wearing to the Prophet as a present, and wrote to the Prophet that his people would stay in their place (and will pay Jizya taxation.)"

(Hadith Sahih Bukhari 2.559 at p. 381)

"Narrated Abu Humaid As-Saidi: We accompanied the Prophet in the Ghazwa of Tabuk and the king of 'Aila presented a white mule and a cloak as a gift to the Prophet. And the Prophet wrote to him a peace treaty allowing him to keep authority over his country."

(Hadith Sahih Bukhari 4.387 at p. 837)

"Allah's Apostle sent Abu 'Ubaida bin Al-Jarrah to Bahrain to bring the Jizya taxation from its people, for

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Allah's Apostle had made a peace treaty with the people of Bahrain and appointed Al-'Ala' bin Al-Hadrami as their ruler. So, Abu 'Ubaida arrived with the money from Bahrain."

(Hadith Sahih Bukhari 5.351 at p. 1104)

3171. Sacred Compilation of **Jami' At-Tirmidhi (Vol. 3) Hadith 1587 and 1588** p. 355 reveal that Holy Prophet took Jizya from the Zoroastrians of Hazar & Bahrain, Caliph Umar and Caliph Uthman took it in Persia from Persians. The said Hadiths read as follows:

"1587. Bajalah narrated that 'Umar would not take the Jizyah from the Zoroastrians until 'Abdur-Rahman bin 'Awf informed him that the Prophet took the Jizyah from the Zoroastrians of Hajar." (Sahih) There is no more dialogue in the Hadith than this. And this Hadith is Hasan Sahih."

"1588. Malik narrated from Az-Zuhri, that Saib bin Yazid said: "The Messenger of Allah took the Jizyah from the Zoroastrians of Bahrain, and 'Umar took it in Persia, and 'Uthman took it from the Persians."

(Jami' At-Tirmidhi (Vol. 3) Hadith 1587 and 1588 at p. 355)

3172. Sacred Compilation **Hadith Sahih Bukhari 2.475, 4.287, 4.388 and 5.50** reveal the recommendation of Caliph Umar to his successor to abide by the rules and regulations concerning the Jimmis/Dhimmis (protectees). Relevant portion of the said Hadiths reads as follows:

". . . I recommend him to abide by the rules and regulations concerning the Dhimmis (protectees) of Allah and His Apostle, to fulfill their contracts completely and fight for

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them and not to tax (overburden) them beyond their capabilities."

(Hadith Sahih Bukhari 2.475 at p. 355)

"Narrated 'Amr bin Maimum: 'Umar (after he was stabbed), instructed (his would-be-successor) saying, "I urge him (i.e. the new Caliph) to take care of those non-Muslims who are under the protection of Allah and His Apostle in that he should observe the convention agreed upon with them, and fight on their behalf (to secure their safety) and he should not over-tax them beyond their capability."

(Hadith Sahih Bukhari 4.287 at p. 798)

"Narrated Juwairiya bin Qudama at-Tamimi: We said to 'Umar bin Al-Khattab, O Chief of the believers! Advise us. "He said, "I advise you to fulfill Alla's Convention (made with the Dhimmis) as it is the convention of your Prophet and the source of the livelihood of your dependents (i.e. the taxes from the Dhimmis.)"

(Hadith Sahih Bukhari 4.388 at p. 837)

". . . I also recommend him concerning Allah's and His Apostle's protectives (i.e Dhimmis) to fulfill their contracts and to fight for them and not overburden them with what is beyond their ability."

(Hadith Sahih Bukhari 5.50 at p. 1004)

3173. The Sacred Compilation **Hadith Sahih Bukhari 4.657** reveals that the Holy Prophet said that incarnation of Jesus would abolish Jizyah from non-Muslims. The said Hadith reads as follows:

"Narrated Abu Huraira: Allah's Apostle said, "By Him in

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Whose Hands my soul is, surely (Jesus), the son of Mery will soon descend amongst you and will judge mankind justly (as a Just Ruler); he will break the Cross and kill the pigs and there will be no Jizya (i.e. taxation taken from non Muslims). Money will be in abundance so that nobody will accept it, and single prostration to Allah (in prayer) will be better than the whole world and whatever is in it." Abu Huraira added "If you wish, you can recite (this verse of the Holy Book):--'And there is none Of the people of the Scriptures (Jews and Christians) But must believe in him (i.e. Jesus as an Apostle of Allah and a human being) Before his death. And on the day of Judgment He will be a witness Against them."

3174. The Sacred Compilation **Hadith Sahih Bukhari** 8.809 and 8.825 reveal that the Holy Prophet administered justice to a Jew according to his scripture Torah. The said Hadith reads as follows:

Narrated Ibn 'Umar : A Jew and a Jewess were brought to Allah's Apostle on a charge of committing an illegal sexual intercourse. The Prophet asked them. "What is the legal punishment (for this sin) in your Book (Torah) ?" They replied, "Our priests have innovated the punishment of blackening the faces with charcoal and Tajbiya." 'Abdullah bin Salam said, "O Allah's Apostle, tell them to bring the Torah." The Torah was brought, and then one of the Jews put his hand over the Divine Verse of the Rajam (stoning to death) and started reading what preceded and what followed it. On that, Ibn Salam said to the Jew, "Lift up your hand." Behold ! The Divine Verse of the Rajam was

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under his hand. So Allah's Apostle ordered that the two (sinners) be stoned to death, and so they were stoned. Ibn 'Umar added : So both of them were stoned at the Balat and I saw the Jew sheltering the Jewess."

"Narrated 'Abdullah bin 'Umar: The jews came to Allah's Apostle and mentioned to him that a man and a lady among them had committed illegal sexual intercourse. Allah's Apostle said to them, "What do you find in the Torah regarding the Rajam?" they replied, "We only disgrace and flog them with stripes." 'Abdullah bin Salam said to them, 'You have told a lie the penalty of Rajam is in the Torah.' They brought the Torah and opened it. One of them put his hand over the verse of the Rajam and read what was before and after it. 'Abdullah bin Salam said to him, "Lift up you hand." where he lifted it there appeared the verse of the Rajam. So they said, "O Muhammad! He has said the truth, the verse of the Rajam is in it (Torah)." then Allah's Apostle ordered that the two persons (guilty of illegal sexual intercourse) be stoned to death, and so they were stoned, and I saw the man bending over the woman so as to protect her from the stones."

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3175. Sri Misra argued that according to the Holy Prophet, in one land there cannot be two Qibalahs and/or Idgah and Mosque as such Sri Ramjanmasthan temple and a mosque cannot and could not have co-exist in the disputed site.

3176. The Holy Prophet hascommanded that there must not be two sacred buildings of worship of two different religions in one land, in other words **there cannot be a Masjid and an Idol Temple in one land**. The Holy Prophet has said that as

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Jizyah cannot be imposed upon Muslim, two Qiblas cannot be in one land, **coexistence of two Qiblas one of Hindus and other of Muslims in one land is mandatorily forbidden according to Shar. The Holy Prophet also says that neither prayer can be offered by forming rows between two columns nor funeral prayer can be offered in a mosque.** An Idgah is a place where funeral prayers or the prayers of the two Ids are usually offered. As such same site cannot be a Masjid from very first day must be laid on piety not on hypocrisy and it must be always maintained by the Muslims. The Holy Prophet says that a Masjid must not be used as a home and place of gossiping. Imam Aboo Yoosuf and Imam Moohummud the disciples of the Great Imam Abu Haneef say that if at least two times prayer is not offered followed by Adhan/Ajan then the place is not a Public Mosque. The Mosque retained columns of Hindu Temple. Presence of Chulha, found during the ASI's excavation, indicates that said building was being used as home of Deities and Sevayats & Pujaris; it never acquired the status of a Masjid according to Muslim Law and belief.

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3177. The Sacred Compilation **Jami' At-Tirmidhi (Vol. 2) Hadith** 633 reveals that in one land there must not be two Religious buildings of two different religions. Said Hadith reads as follows:

> ***633***. *Ibn Abbas narrated that the Messenger of Allah said:* ***"Two Qiblahs in one land are of no benefit,*** *and there is* ***no Jizyah upon the Muslims."*** *(Da'if)*

3178. **Neil B.E. Baillie** in his Book **'A Digest of Mahommedan Law' Part-First** (Second Edition 1875) at its page 616 records that Imam Aboo Yoosuf and Imam

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Moohummud, the disciples of the Great Imam Abu Haneef say that if at least two times prayer is not offered followed by Adhan/Ajan then the place is not a Public Mosque. Relevant extract from the above referred pages reads as follows:

> *"When an assembly of worshippers pray in a musjid with permission, that is delivery. But **it is a condition that the prayers be with izan, or the regular call, two times or more, and be public, not private**. For though there should be an assembly, yet if it is without izan, and the prayers are private instead of public, the place is no musjid according to the two disciples. But if one person were appointed to officiate both as mooezzin and imam, and he should make the call, and then stand up and pray alone, the place would become a musjid by general agreement."*

3179. Divine **"The Holy Quran Surah 9 At-Taubah Ayat 107-110"** commands that foundation of a Mosque must be laid from the first day on piety not hypocrisy otherwise a mosque built by hypocrite is destined to crumble down. The said Holy Ayat reads as follows:

> ***"107.** And as for those who put up a mosque by way of harm and disbelief and to disunite the believers and as an outpost for those who warred against Allah and His Messenger (Muhammad) aforetime, they will indeed swear that their intention is nothing but good. Allah bears witness that they are certainly liars."*
>
> ***"108.** Never stand you therein. Verily, **the mosque whose foundation was laid from the first day on piety is more** worthy that you stand therein (to pray). In it are men who love to clean and to purify themselves. And*

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Allah loves those who make themselves clean and pure *[i.e. who clean their private parts with dust (which has the properties of soap) and water from urine and stools, after answering the call of nature.]"*

"109. *Is it then he who laid the foundation of his building on piety to Allah and His Good Pleasure better, or he who laid the foundation of his building on the brink of an undetermined precipice ready to crumble down, so that it crumbled to pieces with him into the Fire of Hell. And Allah guides not the people who are the Zalimun (cruel, violent, proud, polytheist and wrong-doer)."*

"110. *The building which they built will never cease to be a cause of hypocrisy and doubt in their hearts unless their hearts are cut to pieces. (i.e till they die). And Allah is All-Knowing, All-Wise."*

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(Be it mentioned herein that this Holy Ayat came down in respect of Masjid-i-Jarar built in Madina by the hypocrites with ulterior motive. Ultimately this Masjid was burnt and destroyed on command of the Holy Prophet.)

3180. The Sacred Compilation **Hadith Sahih Bukhari 4.403** reveals that the Holy Prophet has termed such a person hypocrite who breaks promise, did not honour covenant, tells lie and behave in a very imprudent and misleading manner. The said Hadith reads as follows:

"Narrated 'Abdullah bin 'Amr : Allah's Apostle said, "Whoever has (the following) four characteristics will be a pure hypocrite: "If he speaks, he tells a lie; if he gives a promise, he breaks it, if he makes a covenant he proves

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treacherous ; and if he quarrels, he behaves in a very imprudent evil insulting manner (unjust). And whoever has one of these characteristics, has one characteristic of a hypocrite, unless he gives it us."

3181. The Sacred Compilation **Jami' At-Tirmidhi (Vol. 5) Hadith 2684** reveals that two things will not be together in a hypocrite that is to say good manners and fiqh in the religion. Said Hadiths and comments thereto read as follows:

*"**2684**. Abu Hurairah narrated that the Messenger of Allah said: "Two things will not be together in a hypocrite: Good manners, and Fiqh in the religion." (Da'if)*

3182. The Sacred Compilation **Jami' At-Tirmidhi (Vol 1) Hadith 321** reveals that Masjid cannot be used as a home nor a place for gossiping. Relevant portion of said Hadith reads as follows:

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*"Ibn Abbas said, "It is **not to be used as a home nor a place for talking about this or that**."*

3183. In view of the fact that during the ASI's excavation at suit premises a Chulha (an oven) has been found. It leaves no doubt that said structure was being used as home of Hindu deity and Chulha was being used for preparing food for the deity as such said structure cannot be inferred to be a Masjid.

3184. Sacred Compilation **Jami' At-Tirmidhi (Vol. 1) Hadith 229** reveals that the Holy Prophet had commanded the Muslims not to pray between two columns. Said Hadith reads as follows:

*"**229**. Abdul-Hamid bin Mahmud said: "We prayed behind one of the Amirs, the people compelled us such that we prayed between two columns. When we had prayed, Anas*

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bin Malik said: 'We would be prevented from this during the time of Allah's Messenger." (Sahih)

3185. In the disputed structure there were several columns and in course of forming rows for offering prayer those columns were unavoidable, the said structure thus was not fit for offering prayer.

3186. Sacred Compilation **Hadith Sahih Muslim (Vol. II) 973** as interpreted by Imam Abu Hanifa on the basis of a Hadith recorded in Abu Dawud reveals that funeral prayer in the Mosque was prohibited.

*"**(973)** 'Abbad b. 'Abdullah b. Zubair reported that A'isha ordered that the bier of Sa'd b. Abu Waqqas be brought into the mosque, so she can pray for him. The people disapproved this (act) of hers. She said: How soon the people have forgotten that the Messenger of Allah (SAW) had offered the **funeral prayer of Suhail b. Al-Baida but in a mosque**."*

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3187. There is a difference of opinion among the jurists whether a funeral prayer can be offered in a mosque or not. It is on the basis of this hadith that Imam Shafi'i of the view that it can be offered in a mosque. Imam Abu Hanifa and Imam Malik on the basis of a hadith recorded in Abu Dawud (viz. The Messenger of Allah said: He who offers funeral prayer in the mosque has nothing for him) disapprove the funeral prayer in the mosque.

3188. In Idgahs/Musallas funeral prayers can be offered. In his book **"Mahommedan Law", Syed Ameer Ali,** describes Mosques and Idghas or Musalla as follows:

"The word masjid is derived from sijda, devotion, and

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means a place of devotion or a place where prayers are offered to the Almighty.

A very fair description of an ordinary mosque is given by Herklot in his Qanoon-i-Islam. Musallas are prayer-grounds, and the word is derived from the word salat or prayers. ***In India, they are generally called Idgahs or namaz-gahs, and consist of a plot of ground set apart for the performance of the daily prayers or the Id prayers****."*

"Every ground set apart for prayers is not necessarily a musallah and subject to the rules governing a mosque. A musalla is a place where funeral prayers or the prayers of the two Ids are usually offered. In such cases only the place where the congregation gather and the worship is performed that is governed by the rules governing a mosque."

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(Mahommedan Law by Syed Ameer Ali, 5th Edn. Reprint 2009, published by Hind Publishing House, Allahabad, p. 418, 419 and 420)

3189. The next submission is that structure having images/idols and designs cannot be a Masjid under Law of Shar as such the disputed structure as it was cannot be termed "mosque". This argument was elaborated and supported as under:

A. The holy prophet has said that **angles do not enter in a house which has images, portraits, pictures, idols etc. and even the designed garments detract attention from prayer** and, for that reason **prohibited to decorate a mosque with pictures.** As the disputed structure on its columns and other parts had engraved/chiseled

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images/idols of Load-bearing Yakshas, Devis, Divine – couples, Kalash, Lotus, Leaves, Varah, Swastikas, Srivatsa, Kapot-pallis, etc., it does not comes withing the definition of Masjid according to Muslim Religious Law ans belief but it comes within the definition of a Hindu Temple according to Hindu Personal Religious Law and belief.

B. The sacred Compilation **Hadith Sahih Muslim (Vol.-I) 528** reveals that the Holy Prophet prohibited to decorate Mosques with pictures. Said Hadith reads as follows:

> ***(528)*** *A'isha reported: Umm Habiba and Umm Salama mentioned before the messenger of Allah (may peace be upon him) a church which they had seen in Abyssinia and which had pictures in it. The Messenger of Allah (may peace be upon him) said:* ***When a pious man amongst them (among the religious group) dies they build a place of worship on his grave, and then decorate it with such pictures. They would be the worst of creatures on the Day of Judgement in the sight of Allah.****"*

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From the aforesaid Hadith it is crystal clear that there is forbiddance in Islam to decorate the Mosque with pictures. As such a building decorated with pictures can't be declared as a Masjid.

C. The sacred Compilations **Hadith Sahih Muslim (Vol.-III) 2104, 2105, 2106, 2107, 2108, 2109, 2110, 2111and 2112** as well as **Jami' At Tirmidhi (Vol.-V) Hadith 2804** reveal that the Holy Prophet has

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acknowledged that the Angles do not enter a house in which there is an object of images or a dog. Said Jami' At Tirmidhi read as follows:

"2804. *Ibn Abbas narrated: "I heard Abu Talhah saying: 'I heard the Messenger of Allah saying: "The* ***angels do not enter a house in which there is a dog or an object of images****." (Sahih)*

Comments:

The taking or drawing of a picture is not allowed, keeping it is also not permissible, and whoever does so is deprived of the blessed and merciful supplications of the angels; while a person is in need of mercy and blessing at every moment. Likewise, a dog is an impure animal and some are of a satanic nature and the angels despise the devil."

(Jami' At Tirmidhi (Vol.-V) Hadith 2804)

From the aforesaid Hadiths it is crystal clear that a building which contains images or dogs does not come within the definition of an "Abode of Angels" for the reasons of such building being hated by the angels.

D. The sacred Compilation **Hadith Sahih Muslim (Vol.-I) 556** reveals that the Holy Prophet prohibited to use designed garment at the time of prayer. Said Hadith reads as follows:

"(556) *A'isha reported: The Apostle of Allah (may peace be upon him) prayed in a garment which had designs over it, so he (the Holy Prophet) said: Take it to Abu Jahm and bring me a plain blanket from him, because its designs have distracted me."*

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From the aforesaid Hadiths it is known that designs detract attention from prayer wherefrom it can be necessarily inferred that a Masjid wherein prayer is offered to Almighty must not have design in it otherwise it will detract the attention of the worshippers from prayer and lose its status of being a Masjid.

E. The **Muwatta' Imam Malik (para 1743)** reveals that the Holy Prophet declined to use a pillow (mattress) painted with pictures and said that no angles enter the house that contains a picture as also that the makers of pictures will suffer punishment on the day of judgment said Muwatta 1743 reads as follows:

"(1743) 'A'ishah reported that she bought a pillow (mattress) on which were painted pictures. When the Messengers of Allah (may peace be upon him) saw it, he kept standing at the door of her apartment and did not enter and his face showed signs of displeasure. She said : Messenger of Allah, I repent and ask forgiveness of Allah and His Messenger ; what fault is mine? He asked : What pillow (mattress) is this? She said : I bought it, so that you may sit on it, recline on it. The Messenger of Allah (may peace be upon him) said : The makers of pictures will suffer punishment on the Day of Judgment. They will be told to give life to what they had painted in the world. Then he added : No angels enter the house that contains pictures."

3190. There cannot be a mosque in a place surrounded by graves as facing towards graves Namaz cannot be offered. This according to Sri P.N.Mishra, Advocate, is another reason for not

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treating the disputed building a mosque. Elaborating the above submission, Sri Misra said:

A. In the schedule of the plaint the suit premises has been shown to be surrounded on all four sides by the graves, and sacred Hadiths prohibit from – offering prayers towards graves, visiting the graces of strangers, sitting on graves and erecting tent over a grave as such according to Islamic Law and tenets the scheduled Premises was never appropriate place for offering prayers to Merciful Almighty Allah. As such no deceleration of Mosque as prayed for can be granted.

B. The Sacred Compilation Jami' At-Tirmidhi (Vol.-2) Hadith 1050 reveals that the Holy Prophet has commanded not to sit on the graves nor perform Salat i.e. prayer towards graves.

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1050. *Abu Marthad Al-Ghanawi narrated that the Prophet said: "Do not sit on the graves not perform Salat towards them." (**Sahih**)*

(He said:) There are narrations on this topic from Abu Hurairah,' Amr bin Hazm, and Bashir bin Al-Khasasiyyah.

(Another route) with this chain, and it is similar.

C. The Sacred Compilation **Jami' At-Tirmidhi (Vol.-2) Hadith 1054 and ibid (Vol.1) Hadith 230** reveals that the Holy Prophet had prohibited Muslims from visiting the graves except the grave of their mothers. The said Hadith reads as follows:

"1054*. Sulaiman bin Buraidah narrated from his father that the Messenger of Allah said: "I had prohibited you*

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from visiting the graves. But Muhammad was permitted to visit the grave of his mother: so visit them, for they will remind you of the Hereafter."

Jami' At-Tirmidhi (Vol.-2) Hadith 1054

*"320. Ibn 'Abbas narrated: "Allah's Messenger cursed the women who visit the graves, and those who use them as Masajid and put torches on them." (**Da'if**)*

Jami' At-Tirmidhi (Vol.-1) Hadith 230

As such to go an alleged Mosque surrounded on all four sides by graveyards means to visit the graves of strangers every day which act has been prohibited in Islam wherefrom it can be safely inferred that the Muslims are forbidden from offering prayers in a graveyard-locked place/building.

D. The Sacred Compilation **Jami' At-Tirmidhi (Vol.-5) Hadith 2890** reveals that even a tent cannot be erected over the grave as it incites sin.

***"2890.** Ibn Abbas narrated: "One of the Companions of the Prophet put up a tent upon a grave without knowing that it was a grave. When he realized that it was a person's grave, he recited Surat Al-Mulk until its completion. Then he went to the Prophet and said, 'O Messenger of Allah (Indeed) I erected my tent without realizing that it was upon a grave. So when I realized there was a person in it I recited Surat Al-Mulk until its completion.' So the Prophet said: 'It is a prevention, it is a salvation delivering from the punishment of the grave." (**Da'if**)*

E. Neil **B.E. Ballie** in his Book **'A Digest of**

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Mohommedan Law' Part- First (Second Edition 1875) containing the doctrines of the Hanifeea Code of Jurisprudence at page 621-22 records that the bodies buried in the ground can be exhumed by the rightful owner if the land was usurped. Relevant extract from the above referred paged reads as follows:

> *"When a body has been buried in the ground, whether for a long or short time, it cannot be exhumed without some excuse. But it may be lawfully exhumed when it appears that the land was usurped, or another is entitled to it under a right of pre-emption."*

Be it mentioned herein that the Plaintiff' witnesses have admitted that the graves were dug up by the Hindus after purchasing the lands wherein graves were located. It is settled law that public Graveyard can not be sold wherefrom it becomes crystal that it was not a public Graveyard meant for the Muslims.

F. The Sacred Compilation **Jami' At-Tirmidhi (Vol.-2) Hadith 1052** reveals that the Holy Prophet had prohibited plastering graves, writing on them, building over them and treading on them.

> *"**1052**. Jabir narrated:" The Messenger of Allah prohibited plastering graves, writing on them, building over them and treading on them."(**Sahih**)*

As such it cannot be inferred that the plasterd graves mentioned in Commissioner's report in 1950 were built by Emperor Babur of his soldiers who died in alleged war between him and the then ruler of Ajodhya because the Emperor Babur was a scholar of Hanafi School of Islamic

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Law which does not permit to built plastered graves of soldiers.

3191. Sri Mishra pointed out certain other prohibitions in Islamic Law which according to him amounts to a 'command' against construction of a mosque in violation thereof and said:

A. In vicinity of bells there cannot be a mosque because it is revelation of the holy Prophet that bell is abode of saitan, contrary to it bell is integral part of 16 organs of religious customs of worship of the hindus as such as all along bells remained in the disputed site it can't be a mosque.

B. In a Hindu Temple ringing of bell is integral part of worship while according to Shar bell is considered to be an instrument of Satan and angels do not enter such a house where bell is as such. A place where angels do not enter can't be a Masjid. The Gazetteer of 1877-78 and Millet's Settlement Report say that till 1855 Hindus were worshipping in the same and one building which was allegedly known as Mosque-temple said to be erected by Moghul Emperor Babur over the sacred site of Sri Ramajanamsthan by demolishing Hindu temple of that shrine and on annexation of Oudh to British India (on 13th February, 1856 and Lord Canning's proclamation on 15th March, 1859, confiscating all proprietary rights in the soil of the Oudh Province) the Administration made an enclosure bifurcating the Temple compound and thereby ordered Hindus not to enter inside the said building inconsequence whereof Hindus erected a platform in the Temple compound just after enclosure and started

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worshiping thereon. From the several applications of the persons claiming to be Mutvallis/ Muezzins/ Khattibs, it however is apparent that even after 1855 and onwards Hindus were continuously worshipping in the said temple and, from their application of 1883 it becomes crystal clear that in addition to performing Idol worship in the said disputed Temple-Mosque building Hindus were celebrating their festivals as such for all practical purposes said building was a Hindu temple and according to Musalman Law due to presence of Idols & Bells it was not at all a Masjid.

C. The Sacred Compilation **Hadith Sahih Muslim (Vol.-III) 2113 and 2114** reveal that the Holy Prophet had said that Angels do not accompany the person who has with him a bell because the bell is the musical instrument of the Satan. The said Hadiths read as follows:

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*"**(2113)** Abu Huraira reported Allah's Messenger (may peace be upon him) had said: Angels do not accompany the travellers who have with them a dog and a bell."*

*"**(2114)** Abu Huraira reported that Allah's messenger (may peace be upon him) had said: The bell is the musical instrument of the Satan."*

D. The Sacred Compilation **Hadith Sahih Muslim (Vol.-I) 377** as well as **Jami' At-Tirmidhi (Vol.-1) 190** reveal that the Holy Prophet did not approve the method of giving Ajan/ Adhan by ringing the bell like the persons of other faith; of course, reason behind this was that it was an instrument of Satan. Said Hadiths read as follows:

*"**(377)** Ibn Umar reported: When the Muslims came to*

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Medina, they gathered and sought to know the time of prayer but no one summoned them. One day they discussed the matter, and some of them said: Use something like the bell of the Christians and some of them said: Use horn like that of the Jews. Umar said: Why may not a man be appointed who should call (people) to prayer ? The Messenger of Allah (may peace be upon him) said: O Bilal, get up and summon (the people) to prayer."

(Hadith Sahih Muslim (Vol.-I) 377 at page 256)

*"**190**. Ibn ' Umar narrated. "When the Muslims arrived in Al-Madinah, they used to assemble for the Salat, and guess the time for it. There was no one who called for it (the prayer). One day they discussed that and some of them said that they should use a bell like the bell the Christians use. Others said they should use a trumpet like the horn the Jews use. But 'Umar [bin Al-Khattab] said: 'Wouldn't it be better if we had a man call for the prayer?" He said: "So Allah's Messenger said: 'O Bilal Stand up and call for the Salat."*

(Jami' At-Tirmidhi (Vol.-1) 190 at page 215)

E. In **'Ibn Battuta' Travels in Asia and Africa' (1325-1354)** on page 142, Ibn Battuta writes that he became surprised when he heard bells ringing on all sides of the mosque wherein he was staying. In his note on page 357 of the said book the editor/translator explains that the Muslim hold the ringing of bells in the greatest abhorrence and believe that the angles will not enter the house wherein bells are rung. As the suit premises was

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surrounded by all sides from the temples and even in the alleged Temple – Mosque building Hindus were worshipping by Ringing bells, according to Shar it cannot be termed as mosque. Relevant extracts from the said book read as follows:

> ***"We stayed as Kafa in the mosque of the Muslims. As hour after our arrival we heard bells ringing on all sides.*** *As I had never heard bells before, I was alarmed and bade my companions ascend the minaret and read the Koran and issue the call to prayer. They did so, when suddenly a man entered wearing armour and weapons and greeted us. He told us that he was the qadi of the Muslims there, and said "When I heard the reading and the call to prayer, i feared for your safety and came as you see.*
>
> *Muslim hold the ringing of bells in the greatest abhorrence, and attribute to the Prophet the saying : "The angels will not enter any house wherein bells are rung."*

F. The Sacred Compilation ***Hadith Sahih Muslim (Vol.-II) 851 & 851R3*** *reveal that it was commanded by the Holy Prophet that Muslims must observe silence during sermon on Friday. The said Hadiths reads as follows:*

> *"**(851)** Abu Huraira reported what Allah's Messenger (SAW) had said: If you ask your companion to be quiet on Friday while the Imam is delivering the sermon, you have in fact chattered."*
>
> ***(851R3)*** *On the authority of Abu Huraira that the Holy Prophet said: "If you said to your companion: Be quiet,*

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on Friday, and the Imam is delivering the sermon, you have in fact chattered.

From the aforesaid Hadith it becomes clear that in the noisiest place where bells were/are being rung and Conch Shells were/are being blown prayer could not be offered. As it is admitted by the then alleged Mutawalli that Conch Shell was being blown by the Pujari Neehang Singh even in 1861 said Structure can't be a Masjid but for all practical purposes it was/is only Temple.

G. As there was no provision of water for Wadu in the disputed structure it can't be a mosque it was all along a Hindu temple. Without performing wadu by pure water in a mosque one cannot offer prayer. One Hadith says that for Friday's prayer one should take a bath in his house and thereafter perform wadu (Vazu) in a Mosque and then he should offer prayer from which it becomes crystal clear that performing wadu in a mosque is mandatory pre condition for offering one's prayer to Almighty Merciful Allah. As Friday's prayer is offered in congregation at least on that day huge quantity of water is required but in the alleged Temple-Mosque premises there was no such provision of water for Muslims for performing wadu from which it can be safely inferred that said structure was neither meant for offering Salat nor was a Masjid at all but all along it was a temple, as such the same cannot be declared Baburi Masjid.

H. The Sacred Compilation **Hadith Sahih Muslim (Vol.-II)** 844 & 855 reveal that before offering Friday's prayer one should take a bath in his house and thereafter

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perform Wadu in a Mosque. Said Hadiths read as follows:

*(**844**) 'Abdullah reported that he heard Allah's Messenger (SAW) who said: When any one of you intends to come for Friday prayer, he should take a bath.*

*(**845**) 'Abdullah (b. 'Umar) reported from this father, that while he was addressing the people on Friday (sermon), a person, one of the Companions of the Messenger of Allah (SAW), entered (the mosque). 'Umar said to him loudly: What is the time hour (for attending the prayer)? He said: I was busy today and I did not return to my house when I heard the call (to Friday prayer), but I performed ablution (only). Upon this 'Umar said: Just ablution! You know that the Messenger of Allah (SAW) commanded (us) to take a bath (on Friday).*

I. The Sacred Compilation **Hadith Sahih Muslim (Vol.-I) 225; (Vol.-II) 844-847R1** and **Jami' At-Tirmidhi (Vol.-1) Hadith 1-5, 90, 200-201, 497-498** say that prior to offering prayer performance of Wadu by pure water is necessary and for Friday's prayer it is must to take bath in one's house then visit the Masjid and perform Wadu in it by water prior to offering prayer.

*"(**225**) Hammam b. Munabbih, who is the brother of Wahb. Munabbih, said : This is what has been transmitted to us by Abu Huraira from Muhammad, the Messenger of Allah (SAW), and then narrated a hadith out of them and observed that the Messenger of Allah (SAW) said: The prayer of no one amongst you would be accepted in a state of impurity till he performs ablution*

*(**844**) 'Abdullah reported that he heard Allah's*

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Messenger (SAW) who said: When any one of you intends to come for Friday prayer, he should take a bath.

(844R1) *'Abdullah b. 'Umar reported that the Messenger of Allah (SAW) said when he was standing on the pulpit: He who comes for Friday prayer he should take a bath.*

(844R2) *This Hadith has been narrated by Ibn 'Umar by another chain of transmitters.*

(844R3) *'Abdullah (b. 'Umar) reported on the authority of his father that he heard the same thing from the Messenger of Allah (SAW).*

(845) *'Abdullah (b. 'Umar) reported from this father, that while he was addressing the people on Friday (sermon), a person, one of the Companions of the Messenger of Allah (SAW), entered (the mosque). 'Umar said to him loudly: What is the time hour (for attending the prayer)? He said: I was busy today and I did not return to my house when I heard the call (to Friday prayer), but I performed ablution (only). Upon this 'Umar said: Just ablution! You know that the Messenger of Allah (SAW) commanded (us) to take a bath (on Friday).*

(845R1) *Abu Huraira reported: 'Umar b. Khattab was delivering a sermon to the people on Friday when 'Uthman b. Affan came there. 'Umar insinuated to him and said: What would become of those person who come after the call to prayer ? Upon this 'Uthman said: Commander of the faithful, I did no more than this, that after listening to the call, I performed ablution and came (to the mosque). 'Umar said: Just ablution! Did not you hear the Messenger of Allah (SAW) saying: When any*

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one of you comes for Friday prayer he should take a bath.

(846) *Abu said Al-Khudri reported what Allah's Messenger (SAW) had said: Taking a bath on Friday is essential for every adult person.*

(847) *A'isha reported: The people came for Friday prayer from their houses in the neighbouring villages dressed in woollen garment full of dust which emitted a foul smell. A person among them (those who were dressed so) came to the Messenger of Allah (SAW) while he was in house. The Messenger of Allah (SAW) said to him: Were you to cleanse yourselves on this day.*

(847R1) *A'isha reported: The people (mostly) were workers and they had no servants. Bad-smell thus emitted out of them. It was said to them: If you were to take bath on Friday.*

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'Jami' At-Tirmidhi'

1. Ibn Umar narrated that the Prophet said: "Salat will not be accepted without purification, nor charity from Ghulul" (Sahih) Hannad said in his narration, "except with purification" (Sahih)

2. Abu Hurairah narrated that Allah's Messenger said: "When a Muslim, or believer, performs Wudu, washing his face, every evil that he looked at with his eyes leaves with the water-or with the last drop of water, or an expression similar to that-and when he washes his hands, every evil he did with his hands leaves with the water-or with the last drop of water- until he becomes free of sin." (Sahih).

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3. 'Ali narrated that the prophet said: "The key to Salat is the purification, its Tahrim is the Takbir, and its Tahlil is the Taslim. (Hasan)

4. Jabir bin 'Abdullah, may Allah be pleased with them, narrated that Allah's Messenger said: "The key to Paradise is Salat and the key to Salat is Wudu." (Hasan)"

5. Anas bin Malik said: "When the Prophet entered the toilet he would say: 'O Allah! Indeed I seek refuge in You."'

Shu'bah (one of the narrators) said: "Another time he said: 'I seek refuge in You from Al-Khubthi and Al-Khabith.' Or: 'Al-Khubthi and Al-Khaba'ith.'" (Sahih)

90. Ibn 'Umar narrated: "A man greeted the Prophet (with Salam), and he was urinating, so he did not respond to him." (Sahih)

***200**. Abu Hurairah narrated that Allah's Messenger said: "None should call the Adhan except for one with Wudu." (Da'if)*

***201**. Ibn Shihab narrated than Abu Hurairah said: None should call for the prayer except for one with Wudu."*

***497**. Samurah bin Jundab narrated that Allah's Messenger said:"Whoever performs Wudu on Friday, then he will receive the blessing, and whoever performs Ghusl then Ghusl is more virtuous." (Hasan)*

***498**. Abu Hurairah narrated that Allah's Messenger said "Whoever performs Wudu', performing his Wudu' well, then he comes to the Friday (prayer), and gets close, listens and is silent, then whatever (sin) was*

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between that and (the last) Friday are forgiven for him, in addition to three days. And whoever touches the pebbles, he has committed Lagha (useless activity)." (Sahih)

J. **The Holy Quran Surah 5 Al-Maidah Ayat 6** and the Sacred Compilation **Hadith Sahih Muslim (Vol.I) 367-370** provides that Tayammum i.e. purification by clean earth can be done only in extreme exigency at the time of travelling or war campaign when water is not available otherwise Wadu must be performed by water.

"6. *O you who believe! When you intend to offer As-Salat (the prayer), wash your faces and your hands (forearms) up to the elbows, rub (by passing wet hands over) your heads, and (wash) your feet up to the ankles. If you are in a state of Janaba (i.e. after a sexual discharge), purify yourselves (bathe your whole body). But if you are ill or on a journey, or any of you comes from the Gha'it (toilet), or you have been in contact with women (i.e. sexual intercourse), and you find no water, then perform Tayammum with clean earth and rub therewith your faces and hands. Allah does not want to place you in difficulty, but He wants to purify you, and to complete His Favour to you that you may be thankful.*"

(367) *A'isha reported: We went with the Apostle of Allah (may peace be upon him) on one of his journeys and when we reached the place Baida or That Al-Jaish, my necklace was broken (and fell some where). The Messenger of Allah (may peace be upon him) along with other people stayed there looking for it. There was*

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neither any water at that place nor was there any water with them (the Companions of the Holy Prophet). Some people came to my father Abu Bakr and said: Do you see what' Aisha has done? She has detained the Messenger of Allah (may peace be upon him) and the people accompanying him, and there is neither any water here or with them. So Aby Bakr came there and the Messenger of Allah (may peace be upon him) was sleeping with his head on my thigh. He (Abu Bakr) said: You have detained the Messenger of Allah (may peace be upon him) and the people and there is neither water here for with them. She (Aisha) said: Aby Bakr scolded me and uttered what Allah wanted him to utter and nudged my hips with his hand. And there was nothing to prevent me from stirring but the fact that the Messenger of Allah (may peace be upon him) was lying upon my thigh. The Messenger of Allah (may peace be upon him) slept till it was dawn at a waterless place. So Allah revealed the verses pertaining to Tayammum and they (the Holy Prophet and his Companions) performed Taymmum. Usaid b. Al- Hudair who was one of the leaders said: This is not the first of your blessings, O Family of Abu Bakr. Aisha said: We made the camel stand which was my mount and found the necklace under it.

(368) *Shaqiq reported: I was sitting in the company of Abdulla and Aby Musa, when Abu Musa said: O' Abdel – Rahman (kunya of Abdullah b. Masud), what would you like a man to do about the prayer if he experiences a seminal emission or has sexual*

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intercourse but does not find water for a month? Abdullah said: He should not perform Tayammum even if he does not find water for a month. Abdullah said: Then what about the verse in Sura Maida: If you do not find water betake yourself to clean with dust ? Abdullah said: If they were granted concession of the basis of this verse, there is a possibility that they would perform Tayammum with dust on finding water very cold for themselves. Abu Musa said to Abdullah: You have not heard the words of Ammar: The Messenger of Allah (may peace be upon him) sent me on an errand and I had a seminal emission, but could find no water, and rolled myself in dust just as a beast rolls itself. I came to the Messenger of Allah (may peace be upon him) and mentioned that to him and he (the Holy Prophet) said: It would have been enough for you to do this. Then he struck the ground with his hands once and wiped his right hand with the help of his left hand and the exterior of his palms and his face. Abdullah said: Didn't you see that Umar was not fully satisfied with the words of Ammar only ?

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(369) *Umair, the freed slave of Ibn' Abbas, reported: I and Abdel-Rahman b. Yasir, the freed slave of Maimuna, the wife of the Apostle (may peace be upon him) came to the house of Abu'l -Jahm b. Al- Harith Al-Simma Ansari and he said: The Messenger of Allah (may peace be upon him) came from the direction of A-Jamal well and a man met him; he saluted him but the Messenger of Allah (may peace be upon him) made no*

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response, till the Holy Prophet came to the wall, wiped his face and hands and then returned his salutations.

***(370)** Ibn Ymar reported: A man happened to pass by the Messenger of Allah (may peace be upon him) when he was making water and saluted him, but he did not respond to his salutation.*

Since there was no provision of water reservoir in the disputed premises the question of performing wadu by huge crowd for Friday's prayer did not arise at all in other words the said structure was never used as Masjid for offering congregational prayer on Friday but all along remained as Hindus' Shrine.

3192. Besides above, there are some more references from Holy Quran relied and referred by Sri Mishra during the course of his arguments i.e.

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Surah 9 Part 10

"18. The Mosques of Allah shall be maintained only by those who believe in Allah and the Last Day; perform As-Salat (Iqamat-as-Salat), and give Zakat and fear none but Allah. It is they who are on true guidance."

"19. Do you consider the providing of drinking water for the pilgrims and the maintenance of Al-Masjid Al-Haram (at Makkah) as equal to the one who believes in Allah and the Last Day, and strives hard and fights in the Cause of Allah? They are not equal before Allah. And Allah guides not those people who are the Zalimun (polytheists and wrong-doers)." (Page 189)

Surah 9 Part 11

***"111**. Verily, Allah has purchased of the believers their*

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lives and their properties for (the price) that theirs shall be the Paradise. They fight in Allah's Cause, so they kill (others) and are killed. It is a promise in truth which is binding on Him in the Taurat (Torah) and the Injil (Gospel) and the Qur'an. And who is truer to his covenant than Allah? Then rejoice in the bargain which you have concluded. That is the supreme success.'' (Page 204)

3193. Sri Mishra referred to **Hadith, Volume 1, Bk. 23: Funerals (Al-Janaa'iz) Paras 2.475, 2.476, 2.477, 2.478 (extract)** and **2.559 (extract)**, which read as under:

''Narrated 'Amr bin Maimun Al-Audi: I saw 'Umar bin Al-Khattab (when he was stabbed) saying, "O 'Abdullah bin 'Umar! Go to the mother of the believers Aisha and say, 'Umar bin Al-Khattab sends his greetings to you, 'and request her to allow me to be buried with my companions." (So, Ibn 'Umar conveyed the message to 'Aisha.) She said, "I had the idea of having this place for myself but today I prefer him ('Umar) to myself (and allow him to be buried there). "When 'Abdullah bin 'Umar returned, 'Umar asked him, "What (news) do you have? " He replied, "O chief of the believers She has allowed you (to be buried there)." On that 'Umar said, "Nothing was more important to me than to be buried in that (sacred) place. So, when I expire, carry me there and pay my greetings to her ('Aisha) and say, 'Umar bind Al-Khattab asks permission; and if she gives permission, then bury me (there) and if she does not, then take me to the graveyard of the Muslims. I do not think any person has more right for the caliphate than those with whom Allah's Apostle (p. b. u.

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h) was always pleased till his death. And whoever is chosen by the people after me will be the caliph, and you people must listen to him and obey him," and then he mentioned the name of "Uthman, 'Ali, Talha, Az-Zubair, 'Abadur-Rahman bin 'Auf and sad bin Abi Waqqas.By this time a young man from Ansar came and said, "O chief of the believers! Be happy with Allah's glad tidings. The grade which you have in Islam is known to you, then you became the caliph and you ruled with justice and then you have been awarded martyrdom after all this." 'Umar replied, "O son of my brother! Would that all that privileges will counterbalance (my short comings), so that I neither lose nor gain anything. I recommend my successor to be good to the early emigrants and realize their rights and to protect their honor and sacred things. And I also recommend him to be good to the Ansar who before them, had homes (in Medina) and had adopted the Faith. He should accept the good of the righteous among them and should excuse their wrongdoers. I recommend him to abide by the rules and regulations concerning the Dhimmis (protectees) of Allah and His Apostle, to fulfill their contracts completely and fight for them and not to tax (overburden) them beyond their capabilities." (Page 354/355)

"Narrated 'Aisha :

The Prophet (p.b.u.h) said, "Don't abuse the dead, because they have reached the result of what they forwarded."

(Page 355)

“Narrated Ibn 'Abbas.: Abu Lahab, may Allah curse him, once said to the Prophet (p.b.u.h), "Perish you all the day."

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Then the Divine Inspiration came: "Perish the hands of Abi Lahab! And perish he!" (Page 355)

"Narrated Ibn 'Abbas: Thy Prophet sent Mu'adh to Yemen and said, "Invite the people to testify that none has the right to be worshipped but Allah and I am Alla's Apostle, and if they obey you to do so, then teach them that Allah has enjoined on them five prayers in every day and night (in twenty-four hours)...." (Page 355)

"....A strong wind blew at night and a man stood up and he was blown away to a mountain called Taiy, The King of Aila sent a white mule and a sheet for wearing to the Prophet as a present, and wrote to the Prophet that his people would stay in their place (and will pay Jizya taxation.) (1) When the Prophet reached Wadi-al-Qura he asked that woman how much her garden had yielded. She said, "Ten Awsuq," and that was what Allah's Apostle had estimated." (page 381)

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3194. Next, he cited from **Sahih Bukhari: Hadith Bk.30: Virtues of Madinah** paras 3.92, 3.425, 3.528, 3.529, 3.599, 3.627, 3.629, 3.632, 3.633, 3.634, 3.890 and 3.895 as under:

"Narrated Anas:

The Prophet came to Medina and ordered a mosque to be built and said, "O Bani Najjar! Suggest to me the price (of your land)". They said, "We do not want its price except from Allah" (i.e they wished for a reward from Allah for giving up their land freely). So, the Prophet ordered the graves of the pagans to be dug out and the land to be leveled, and the date-palm trees to be cut down. The cut date-palms were fixed in the direction of the Qibla of the

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mosque.” (Pages 476)

"Narrated Abu Huraira: Allah's Apostle said, "By Him in Whose Hands my soul is, son of Mary (Jesus) will shortly descend amongst you people (Muslims) as a just ruler and will break the cross and kill the pig and abolish the Jizya (a tax taken from the non-Muslims, who are in the protection, of the Muslim government). Then there will be abundance of money and nobody will accept charitable gifts.” (Page 557)

"Narrated 'Aisha:

The Prophet said, "He who cultivates land that does not belong to anybody is more rightful (to own it)." 'Urwa said, "Umar gave the same verdict in his Caliphate." (Page 591)

"Narrated 'Abdullah bin 'Umar: While the Prophet was passing the night at his place of rest in dhul-Hulaifa in the bottom of the valley (of Aqiq), he saw a dream and it was said to him, "You are in a blessed valley. "Musa said, "Salim let our camels kneel at the place where 'abdullah used to make his camel kneel, seeking the place where Allah's Apostle used to take a rest, which is situated below the mosque which is in the bottom of the valley; it is midway between the mosque and the road." (Page 591)

"Narrated 'Abdullah bin Mas'ud: Allah's Apostle said, "Whoever takes a false oath so as to take the property of a Muslim (illegally) will meet Allah while He will be angry with him." Al-Ash'ath said: By Allah, that saying concerned me. I had common land with a Jew, and the Jew later on denied my ownership, so I took him to the Prophet who asked me whether I had a proof of my ownership. When I

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replied in the negative, the Prophet asked the Jew to take an oath. I said, "O Allah's Apostle! He will take an oath and deprive me of my property." So, Allah revealed the following verse: "Verily ! Those who purchase a little gain at the cost of Allah's covenant and their oaths." (Page 611/612)

"Narrated Ibn 'Umar: The Prophet said, "Oppression will be a darkness on the Day of Resurrection." (Page 621)

"Narrated Abu Huraira: Allah's Apostle said, "Whoever has oppressed another person concerning his reputation or anything else, he should beg him to forgive him before the Day of Resurrection when there will be no money (to compensate for wrong deeds), but if he has good deeds, those good deeds will be taken from him according to his oppression which he has done, and if he has no good deeds, the sins of the oppressed person will be loaded on him."(Page 621)

"Narrated Sa'id bin Zaid : Allah's Apostle said, "Whoever, usurps the land of somebody unjustly, his neck will be encircled with it down the seven earths (on the Day of Resurrection)." (Page 622)

"Narrated Abu Salama: That there was a dispute between him and some people (about a piece of land). When he told 'Aisha about it, she said, "O Abu Salama! Avoid taking the land unjustly for the Prophet said, 'Whoever usurps even one span of the land of somebody, his neck will be encircled with it down the seven earths." (Page 622)

"Narrated Salim's father (i.e 'Abdullah): The Prophet said, "Whoever takes a piece of the land of others unjustly, he

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will sink down the seven earths on the Day of Resurrection." (Page 622)

"Narrated Ibn 'Umar: When the people of Khaibar dislocated 'Abdullah bin "Umar's hands and feet, 'Umar got up delivering a sermon saying, "No doubt, Allah's Apostle made a contract with the Jews concerning their properties, and said to them, 'We allow you (to stand in your land) as long as Allah allows you.' Now 'Abdullah bin 'Umar went to his land and was attacked at night, and his hands and feet were dislocated, and as we have no enemies there except those Jaws, they are out enemies and the only people whom we suspect, I have made up my mind to exile them." When Umar decided to carry our his decision, a son of Abu Al-Haqiq's came and addressed 'Umar, "O chief of the believers, will you exile us although Muhammad allowed us to stay at our places, and made a contract with us about out properties, and accepted the condition of our residence in our land?" Umar said, "Do you think that I have forgotten the statement of Allah's Apostle, i.e ; what will your condition be when you are expelled from Khabar and your camel will be carrying you night after night ?" The Jew replied, "That was joke from Abul-Qasim." 'Umar said,"O the enemy of Allah! You are telling a lie." 'Umar then drove them out and paid them the price of their properties in the form of fruits, money, camel saddles and ropes, etc." (Page 704/705)

"Narrated Ibn 'Umar: bin Khattab got some land in Khaibar and he went to the Prophet to consult him about it saying, "O Allah's Apostle I got some land in Khaibar

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better than which I have never had, what do you suggest that I do with it? The Prophet said, "If you like you can give the land as endowment and give its fruits in charity." So Umar gave it in charity as an endowment on the condition that would not be sold nor given to anybody as a present and not to be inherited, but its yield would be given in charity tot he poor people, to the Kith and kin, for freeing slaves, for Allah's Cause, to the travelers and guests; and that there would be no harm if the guardian of the endowment ate from it according to his need with good intention, and fed others without storing it for the future."(Page 714)

3195. Sahih Bukhari: Hadith Bk. 52: Fighting for the Cause of Allah (Jihaad) para 4.287:

"Narrated 'Amr bin Maimum: 'Umar (after he was stabbed), instructed (his would-be-successor) saying, "I urge him (i.e. the new Caliph) to take care of those non-Muslims who are under the protection of Allah and His Apostle in that he should observe the convention agreed upon with them, and fight on their behalf (to secure their safety) and he should not over-tax them beyond their capability." (Page 798)

3196. Sahih Bukhari: Hadith Bk. 53: One-fifth of Booty to the Cause of Allah (Khumus) paras 4.354, 4.386, 4.387, 4.388, 4.403, 4.404, 4.407, 4.417 and 4.418:

"Narrated Aslam:

'Umar said, "Were it not for those Muslims who have not come to existence yet, I would have distributed (the land of) every town I conquer among the fighters as the Prophet

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distributed the land of Khaibar." (Page 821)

"Narrated Jubair bin Haiya: 'Umar sent the Muslims to the great countries to fight the pagans. When Al-Hurmuzan embraced Islam, 'Umar said to him, "I would like to consult you regarding these countries which I intend to invade." Al-Hurmuzan said, "Yes, the example of these countries and their inhabitants who are the enemies of the Muslims, is like a bird with a head, two wings and two legs; if one of its wings got broken, it would get up over its two legs, with one wing and the head; and if the other wing got broken, it would get up with two legs and a head, but if its head got destroyed, then the two legs, two wings and the head would become useless. The head stands for Khosrau, and one wing stands for Caesar and the other wing stands for Faris. So, order the Muslims to go towards Khosrau." So, 'Umar sent us (to Khosrau) appointing An-Nu'man bin Muqrin as our commander. When we reached the land of the enemy, the representative of Khosrau came out with forty-thousand warriors, and an interpreter got up saying, "Let one of you talk to me!" Al-Mughira replied, "Ask whatever you wish." The other asked, "Who are you?" Al-Mughira replied, "We are some people from the Arabs; we led a hard, miserable, disastrous life: we used to suck the hides and the date stones from hunger; we used to wear clothes made up of fur of camels and hair of goats, and to worship trees and stones. While we were in this state, the Lord of the Heavens and he Earths, Elevated is His Remembrance and Majestic is His Highness, sent to us from among ourselves a Prophet whose father and mother

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are known to us. Our Prophet, the Messenger of our Lord, has ordered us to fight you till you worship Allah Alone or give Juizya (i.e. tribute) ; and our prophet has informed us that our Lord says:--- "Whoever amongst us is killed (i.e martyred), shall go to Paradise to lead such a luxurious life as he has never seen, and whoever amongst us remain alive, shall become your master." (Al-Mughira, then blamed An-Nu'man for delaying the attack and) An-Nu'man said to Al-Mughira, "If you had participated in a similar battle, in the company of Allah's Apostle he would not have blamed you for waiting, nor would he have disgraced you. But I accompanied Alla's Apostle in many battles and it was his custom that if he did not fight early by daytime, he would wait till the wind had started blowing and the time for the prayer was due (i.e. after midday)." (Page 836/837)

"Narrated Abu Humaid As-Saidi: We accompanied the Prophet in the Ghazwa of Tabuk and the king of 'Aila presented a white mule and a cloak as a gift to the Prophet. And the Prophet wrote to him a peace treaty allowing him to keep authority over his country." (Page 837)

"Narrated Juwairiya bin Qudama at-Tamimi: We said to 'Umar bin Al-Khattab, Jo Chief of the believers! Advise us. "He said, "I advise you to fulfill Alla's Convention (made with the Dhimmis) as it is the convention of your Prophet and the source of the livelihood of your dependents (i.e. the taxes from the Dhimmis.)" (Page 837)

"Narrated 'Abdullah bin 'Amr : Allah's Apostle said, "Whoever has (the following) four characteristics will be a pure hypocrite: "If he speaks, he tells a lie; if he gives a

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promise, he breaks it, if he makes a covenant he proves treacherous ; and if he quarrels, he behaves in a very imprudent evil insulting manner (unjust). And whoever has one of these characteristics, has one characteristic of a hypocrite, unless he gives it us." (Page 843)

“Narrated 'Ali:

We did not, write anything from the Prophet except the Qur'an and what is written in this paper, (wherein) the Prophet said, "Medina is a sanctuary from (the mountain of) Air to so and-so, therefore, whoever innovates (in it) an heresy or commits a sin, or gives shelter to such an innovator, will incur the Curse of Allah, the angels and all the people; and none of his compulsory or optional good deeds of worship will be accepted And the asylum granted by any Muslim Is to be secured by all the Muslims even if it is granted by one of the lowest social status among them. And whoever betrays a Muslim in this respect will incur the Curse of Allah, the angels and all the people, and his compulsory and optional good deeds of worship will not be accepted. And any freed slave will take as masters (befriends) people other than his own real masters who freed him without taking the permission of the latter, will incur the Curse of Allah, the angels and all the people, and his compulsory and optional good deeds of worship will not be accepted." Narrated sa'id: Abu Huraira once said (to the people), "What will your state be when you can get no dinar or dirhan (i.e. taxes from the Dhimmis)?" on that someone asked him, "What makes you know that this state will take place, O Abu- Hu raira?" He said, "By Him in

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Whose Hands Abu Huraira's life is, I know it through the statement of the true and truly inspired one (i.e. the Prophet). "The people asked, "What does the Statement say?" He replied, "Allah and His Apostle's asylum granted to Dhimis, i.e non-Muslims living in a Muslim territory) will be outraged, and so Allah will make the hearts of these Dhimmis so daring that they will refuse to pay the Jizya they will be supposed to pay." (Page 843/844)

"Narrated Asma 'bint Abi Bakr: During the period of the peace treaty of Quraish with Alla's Apostle, my mother, accompanied by her father, came to visit me, and she was a pagan. I consulted Allah's Apostle! My mother has come to me and she desires to receive a reward from me, shall I keep good relation with her? He said, :"Yes, keep good relation with her." (Page 845)

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"Narrated Muhammad bin Ibrahim bin Al-Harith : from Abu Salama bin 'Abdur-Rahman who had a dispute with some people on a piece of land, and so he went to 'Aisha and told her about it. She said, "O Abu Salama, avoid the land, for Alla's Apostle said, 'Any person who takes even a span of land unjustly, his neck shall be encircled with it down seven earths." (Page 849)

"Narrated Salim's father : The Prophet said, "Any person who takes a piece of land unjustly will sink down the seven earths on the Day of Resurrection." (Page 849)

3197. Para 5.50 from **Volume 5 of Sahih Bukhari: Hadith** (supra):

"Narrated 'Amr bin Maimun : I saw 'Umar bin Al-Khattab a few days before he was stabbed in Medina. He was

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standing with Hudhaifa bin Al-Yaman and 'Uthman bin Hunaif to whom he said, "What have you done ? Do you think that you have imposed more taxation on the land (of As-Swad i.e. 'Iraq) than it can bear ? " They replied, "We have imposed on it what it can bear because of its great yield. 'Umar again said, "check whether you have imposed on the land what it can not bear. " They said, "No, (we haven't)." 'Umar added, "If Allah should keep me alive I will let the widows of Iraq need no men to support them after me." But only four days had elapsed when he was stabbed (to death)..... I also recommend him concerning Allah's and His Apostle's protectives (i.e.Dhimmis) to fulfill their contracts and to fight for them and not overburden them with what is beyond their ability." (Page 1000/1004)

3198. Bk.59: Military Expeditions led by the Prophet (pbuh) (Al-Maghaazi) of Sahih Bukhari: Hadith paras 5.351, 5.542 and 5.543 are as under:

"Narrated Al-Miswar bin Makhrama : That 'Amr bin 'Auf, who was an ally of Bani 'Amir bin Luai and one of those who fought at Badr in the company of the Prophet, said, "Allah's Apostle sent Abu 'Ubaida bin Al-Jarrah to Bahrain to bring the Jizya taxation from its people, for Allah's Apostle had made a peace treaty with the people of Bahrain and appointed Al-'Ala' bin Al-Hadrami as their ruler. So, Abu 'Ubaida arrived with the money from Bahrain. When the Ansar heard of the arrival of Abu 'Ubaida (on the next day) they offered the morning prayer with the prophet and when the morning prayer had finished, they presented themselves before him. On seeing

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the Ansar, Allah's Apostle smiled and said, "I think you have heard that Abu 'Ubaida has brought something?" They replied, "Indeed, it is so, O Allah's Apostle !" He said, "Be happy, and hope for what will please you. By Allah, I am not afraid that you will be poor, but I fear that worldly wealth will be bestowed upon you as it was bestowed upon those who lived before you. So you will compete amongst yourselves for it, as they competed for it and it will destroy you as it did them." (page 1103/1104)

"Narrated 'Umar bin Al-Khattab: By Him in Whose Hand my soul is, were I not afraid that the other Muslims might be left in poverty, I would divide (the land of) whatever village I may conquer (among the fighters), as the Prophet divided the land of Khaibar. But I prefer to leave it as a (source of) a common treasury for them to distribute it revenue amongst themselves." (page 1183)

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"Narrated 'Umar:

But for the other Muslims (i.e. coming generations) I would divide (the land of) whatever villages the Muslims might conquer (among the fighters), as the Prophet divided (the land of) Khaibar." (page 1183)

3199. Bk.65: Food, Meals of Sahih Bukhari: Hadith paras 7.354:

"Narrated Jabir bin "Abdullah : There was a Jew in Medina who used to lend me money up to the season of plucking dates. (Jabir had a piece of land which was on the way of to Ruma). That year the land was not promising, so the payment of the debt was delayed one year. The Jew came to me at the time of plucking, but gathered nothing

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from my land. I asked him to give me one year respite, but he refused. This news reached the Prophet whereupon he said to his companions, "Let us go and ask the Jew for respite for Jabir." All of them came to me in my garden, and the Prophet started speaking to the Jew, but he Jew said, "O Abu Qasim ! I will not grant him respite." When the Prophet saw the Jew's attitude, he stood up and walked all around the garden and came again and talked to the Jew, but the Jew refused his request. I got up and brought some ripe fresh dates and put it in front of the Prophet. He ate and then said to me, "Where is your hut, O Jabir? " I informed him, and he said, "Spread out a bed for me in it." I spread out a bed, and he entered and slept. When he woke up, I brought some dates to him again and he ate of it and then got up and talked to the Jew again, but the Jew again refused his request. Then the Prophet got up for the second time amidst the palm trees loaded with fresh dates, and said, "O Jabir! Pluck dates to repay your debt." The Jew remained with me while I was plucking the dates, till I paid him all his right, yet there remained extra quantity of dates. So I went out and proceeded till I reached the Prophet and informed him of the good news, whereupon he said, "I testify that I am Allah's Apostle." (Page 1575/1576)

3200. Bk.80: Laws of Inheritance (Al-Faraa'id) of Sahih Bukhari: Hadith paras 8.755, 8.756 and 8.760 are as under:

“Narrated Abu Huraira: The Prophet said, "If somebody dies (among the Muslims) leaving some property, the property will go to his heirs; and if he leaves a debt or dependants, we will take care of them." (page 1903)

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"Narrated Usama bin Zaid: the Prophet said, ***"A Muslim cannot be the heir of a disbeliever, nor can a disbeliever be the heir of a Muslim."*** *(page 1903/1904)*

"Narrated Abu Huraira: Allah's Apostle said, "There were two women with whom there were their two sons. A wolf came and took away the son of one of them. That lady said to her companion, 'The wolf has taken your son.' The other said, 'But it has taken your son. ' So both of them sought the judgment of (the Prophet) David who judged that the boy should be given to the older lady. Then both of them went to (the Prophet) Solomon, son of David and informed him of the case. Solomon said, 'Give me a knife so that I may cut the child into two portions and give one half to each of you.' The younger lady said, 'Do not do so; may Allah bless you ! He is her child.' On that, he gave the child to the younger lady." Abu Huraira added : By Allah ! I had never heard the word 'Sakkin' as meaning knife, except on that day, for we used to call it "Mudya." (page 1904/1905)

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3201. Next comes **Bk. 81: Limits and Punishments set by Allah (Hudood)** from which paras 8.763 and 8.809 are as under:

"Narrated Abu Huraira : Allah's Apostle said, "When an adulterer commits illegal sexual intercourse, then he is not a believer at the time he is doing it; and ***when somebody drinks an alcoholic drink, then he is not believer*** *at the time of drinking, and when a thief steals, he is not a believer at the time when he is stealing: and when a robber robs and the people look at him, then he is not a believer at the time of doing it." Abu Huraira in another narration, narrated the same from the Prophet with the exclusion of*

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robbery."(Page 1905/1906)

"Narrated Ibn 'Umar : A Jew and a Jewess were brought to Allah's Apostle on a charge of committing an illegal sexual intercourse. The Prophet asked them. "What is the legal punishment (for this sin) in your Book (Torah)?" They replied, "Our priests have innovated the punishment of blackening the faces with charcoal and Tajbiya." 'Abdullah bin Salam said, "O Allah's Apostle, tell them to bring the Torah." The Torah was brought, and then one of the Jews put his hand over the Divine Verse of the Rajam (stoning to death) and started reading what preceded and what followed it. On that, Ibn Salam said to the Jew, "Lift up your hand." Behold ! The Divine Verse of the Rajam was under his hand. So Allah's Apostle ordered that the two (sinners) be stoned to death, and so they were stoned. Ibn 'Umar added : So both of them were stoned at the Balat and I saw the Jew sheltering the Jewess."(Page 1916/1917)

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3202. Para 9.447 of **Bk. 92: Holding Fast to the Qur'an and Sunnah** is as under:

"Narrated Abu Huraira : While we were in the mosque, Allah's Apostle came out and said, "Let us proceed to the Jews." So we went out with him till we came to Bait-al-Midras. The Prophet stood up there and called them, saying, "O assembly of Jews ! Surrender to Allah (embrace Islam) and you will be safe !" They said, "You have conveyed Allah's message, O Aba-al-Qasim" Allah's Apostle then said to them, "That is what I want: embrace Islam and you will be safe." They said, "You have conveyed the message, O Aba-al-Qasim." Allah's Apostle

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then said to them, "That is what I want," and repeated his words for the third time and added, "know that the earth is for Allah and I want to exile you from this land, so whoever among you has property he should sell it, otherwise, know that the land is for Allah and His Apostle." (Page 2069/2070)

3203. Referring to the above, it is contended by Sri Mishra, that what emerges from the above is that the Prophet never intended to get a mosque constructed at a place which has not been acquired validly and in this regard he set up very high principles which have to be treated "the law of Sharii" binding on all the Muslims and cannot be ignored at all.

3204. The next authority in this regard he placed is **Sahih Muslim** by Imam Muslim (1st Edition 2001, fourth edition 2005) (published by Islamic Book Service, New Delhi). He cited paras 142 and 142R1 (Chapter 63), paras 226 and 226R1 (Chapter 3), paras 227, 227R1, 227R2, 228, 229, 230, 231, 231R1, 232, 232R1 (Chapter 4), paras 240, 240R1, 240R2, 240R3, 241, 241R1, 241R2, 242, 242R1, 242R2 (Chapter 9), para 244 and 245 ((Chapter 11)) which are as under:

***"(142)** Hasan reported; Ubaidullah b. Ziyad paid a visit to Ma'qil b. Yasir Muzani in his illness which caused his death. Ma'qil said : I am going to narrate to you a hadith which I have heard from the Messenger of Allah (SAW) and which I would not have transmitted if I knew that I would survive. Verily I have heard the Messenger of Allah (SAW) saying : There is no one amongst the bondsmen who was entrusted with the affairs of his subjects and he died in such a state that he was dishonest in his dealing with those*

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over whom he ruled that the Paradise is not forbidden for him."

***"(142R1)** Hasan reported : 'Ubaidullah b. Ziyad went to see Ma'qil b. Yasir and he was in agony. He ('Ubaidullah) inquired (about his health) to which he (Ma'qil) replied : I am narrating to you a hadith which I avoided narrating to your before. Verily the Messenger of Allah (SAW) said : Allah does not entrust to his bondsman the responsibility of managing the affairs of his subjects and he dies as a cheater (ruler) but Paradise is forbidden but Allah for such a (ruler). He ((Ibn Ziyad) said : Why did you not narrate it to me before this day? He replied : I (in fact) did not narrate it to you as it was not (fit) for me to narrate that to you."*

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***"(226)** Humran, the freed slave of 'Uthman, b. 'Affan called for ablution. He performed ablution: He washed his hands thrice. He then rinsed his mouth and cleaned his nose with water (three times). He then washed his face three times, then washed his right arm up to the elbow three times, then washed his left arm like that, then wiped his head: then washed his right foot upto ankle three times, then washed his left foot like that, and then said: I saw the Messenger of Allah (SAW) perform ablution like his ablution of mine. Then the Messenger of Allah (SAW) said : He who performs ablution like this ablution and then stood up (for prayer) and offered two bows of prayer without his thoughts to be being distracted, all his pervious sins are expiated. Ibn Shihab said : Our scholars remarked: This is the most complete of the ablution performed for prayer."*

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"(226R1) *Humran, the freed slave of 'Uthman, said : I saw 'Uthman invoking in a vessel (of water) and poured water over his hands three times and then washed them. Then he put his right hand in the vessel and rinsed his mouth and cleaned his nose. Then he washed his face three times and his hands up to the elbow three times; then wiped his head, then washed his feet three times. Then he said that the Messenger of Allah (SAW) had said : He who performed ablution like this ablution and offered two bows of prayer without allowing his thoughts to be being distracted, all his pervious sins would be expiated."*

"(227) *Humran, the freed slave of 'Uthman, said : I heard from "Uthman b.'Affan and he was in the courtyard of the mosque, when the Muaththin (announcer of the prayer) came to him at the time of afternoon prayer. So then (Uthman) called for the ablution and performed it. He then said : By Allah, I am narrating to you a hadith. If there were not a verse in the Book of Allah, I would have never narrated it to you. I heard Allah's Messenger (SAW) saying:* ***If a Muslim performs ablution and does it well and offers prayer, all his (sins) during the period from one prayer to another would be pardoned by Allah****."*

"(227R1) *This hadith is also narrated on the authority with the same chain of transmitters. And in the hadith of Abu Usama the words are: He who performed the ablution well and then offered the obligatory prayer."*

"(227R2) *Humran reported when 'Uthman performed ablution he said : By Allah, I am narrating to you a hadith. Had it not been thise verse in the Book of Allah. I would*

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not have narrated it to you. Verily I heard the Messenger of Allah (SAW) saying : There is no man who performed ablution, and did it well, then offered prayer, but his sins (which he committed) were not pardoned between the prayer that he offered and the next one. "Urwa said : The verse is this : Those who suppress the clear proofs and the guidance which we have sent down.. to his words: The cursers. (ii.15)."

***"(228)** 'Amr b. Said b. Al-As reported: I was with Uthman that he called for ablution. He said: I heard Allah's Messenger (SAW) saying : When the time for a prescribed prayer comes, and any muslim perform ablution well and offers his prayer) with humility and bowing, it will be an expiation for his past sins, as long as he has not committed a major sin; and this applied on all times."*

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***"(229)** Humran, the freed slave of 'Uthman, reported : I brought for 'Uthman b. 'Affan the ablution. He performed it and then said: Verily the people narrate from the Messenger of Allah (SAW) a hadith. I do not know what these are, but (I know this fact) that I saw the Messenger of Allah (SAW) perform ablution like this ablution and then said: He who performed ablution like this, all his pervious sins would be expiated and his prayer and going towards the mosque would have an extra reward. In the tradition narrated by Ibn 'Abda (the words are)" I came to 'Uthman and he performed ablution."*

***"(230)** Abu Anas reported that 'Uthman performed ablution at Maqaid and said: Should not I show you the ablution performed by Allah's Messenger (SAW)? He then*

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washed (the different parts of the body) three times. Qutaiba has added in his narration the words: There were with him (with Uthman) some of the companions of Allah's Messenger (SAW).”

***“(231)** Humran b. Aban reported: I used to fetch water for 'Uthman for his purification. No day came but he took a bath with a small quantity of water. And "Uthman said: The Messenger of Allah (SAW) all the time of returning from our prayer told us (certain things pertaining to purification). Mis'ar said I find that it was afternoon prayer. He said: I do not know whether I should tell you a things or keep quiet. We said: Messenger of Allah, tell us if it is good and if it is other wise, Allah and his Apostle know better. Upon this he said : A muslim who purifies (himself) and completes purification as enjoined upon him by Allah and then prayer, that will expiate (his sins, he committed) between these (prayers).”*

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***“(231R1)** Jami'b. Shaddad reported: I heard Huimran b. Aban narrating to Abu Burda in this very mosque during the governorship of Bishr that 'Uthman b. 'Affan said : The Messenger of Allah (SAW) said: He who completed ablution as Allah, the Exalted, enjoined upon him, his obligatory prayers would be expiatious (for his minor sins that he would commit) during (the interval) between them. This hadith is transmitted by Ibn Muath, and in the hadith narrated by Ghundar, the words "during the governorship of Bishr" are ommitted and he did not mention the obligatory prayers.”*

***“(232)** Humran, the freed slave of 'Uhtman, reported: One*

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day "Uthman b. 'Affan performed the ablution well, and then said : I saw Allah's Messenger (SAW) performing ablution, the best ablution and then observed: He who performed ablution like this and then went towards the mosque and nothing (but the love of) prayer urged him (to do so), all his previous (minor) sins would be expiated."

***"(232R1)** Humrran, the freed slave of 'Uthman b. 'Affan, reported on the authority of 'Uthman b. Affan that he heard Allah's Messenger (SAW) saying : He who performed ablution for prayer, and performed it properly, and then went (to observe obligatory prayer and offered it along with people or with the congregation or in the mosque, Allah would pardon his sins.*

Chapter 9

The Washing of feet Properly is an integral part of Wudu"

***"(240)** Salim, the freed slave of Shaddad said: I came to Aisha, the wife of the Holy Prophet (SAW), on the day when sa'd b. abi Waqqas died. 'Abdel-rahman b. Abu Bakr also came there and he performed ablution in her presence. She (Hadrat A'isha) said: 'Abdel-Rahman, complete the ablution as I heard the Allah's Messenger (SAW) say: Woe to the heels because of Hell-fire."*

***"(240R1)** 'Abdullah, the freed slave of Shaddad, came to A'isha and transmitted from her a hadith like this (which she narrated) from the Holy Prophet (SAW)."*

***"(240R2)** Salim, the freed slave of Mahri, reported I and 'Abdel-Rahman b. abu Bakr went out (in order to join) the funeral procession of Sa'd b.Abi waqqas and passed by the*

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door of the residence if 'Aisha, and then transmitted a hadith like this from her who (narrated it) from the Holy Prophet (SAW).”

***“(240R3)** Salim, the freed slave of Shaddad b. Al-Had said: I was in the presence of 'A'isha, and then narrated on her authority a hadith like this from the Holy Prophet (SAW).”*

***“(241)** 'Abdullah b. 'Amr reported: We returned from Mecca to Medina with the Messenger of Allah (SAW), and when we came by water on the way, some of the people were in the hurry at the time of the afternoon prayer and performed ablution hurriedly; and when we reached them, their heels were dry, no water had touched them. The Prophet (SAW) said: Woe to (dry) heels, because of Hell-fire. Make complete ablution.”*

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***“(241R1)** In the hadith transmitted by Shu'ba these words are not there: Complete the Wudu, and there is the name of Abu Yahya Al-A'raj (a narrator).”*

***“(241R2)** 'Abdullah b. Amr reported: The Messenger of Allah (SAW) lagged behind us on a journey. We traveled (back) and he took him; and then came the time of the afternoon prayer, and as we were going to wipe our feet he (the Holy Prophet) called out: Woe to the heels because of Hell-fire.”*

***“(242)** Abu Huraira reported: Allah's Apostle (SAW) saw a man who did not wash his heels and he remarked: Woe to the heels because of Hell-fire.”*

***“(242R1)** Abu Huraira reported: He saw people perform ablution from a water jar. He said: Complete the ablution for I heard Abu al-Qasim (SAW) saying: Woe to the*

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hamstrings because of Hell-fire."

***"(242R2)** Abu Huraira reported: The Messenger of Allah (SAW) said: Woe to the heels because of Hell-fire."*

***"(244)** Abu Huraira reported: Allah's Messenger (SAW) said: When a bondsman (a Muslim or a believer) washes his face (in course of ablution), every sin he contemplated with his eyes will be washed away from his face along with water, or with the last drop of water; when he washes his hands, every sin they committed will be effacted from his hands by water, or with the last drop of water; and when he washes his feet, every sin towards which his feet have walked will be washed away with the water, or with the last drop of water, with the result that he comes out pure from all sins."*

***"(245)** 'Uthman b. 'Affan reported: The Messenger of Allah (SAW) said He who performed ablution well, his sins would come out from his body even coming out from under his nails."*

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3205. He placed before us **Book 4 Kitab Al-Salat** and placed reliance on para 377 (Chapter 1) paras 524, 524R1, 524R2 (Chapter 1), para 525, 525R1, 526, 526R1, 527 (Chapter 2), paras 528R1, 528R2, 529, 530, 530R1, 531, 532 (Chapter 3) as under:

*"**(377)** Ibn Umar reported: When the Muslims came to Medina, they gathered and sought to know the time of prayer but no one summoned them. One day they discussed the matter, and some of them said: Use something like the bell of the Christians and some of them said: Use horn like that of the Jews. Umar said: Why may not a man be*

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appointed who should call (people) to prayer ? The Messenger of Allah (may peace be upon him) said: O Bilal, get up and summon (the people) to prayer."

*"**(524)** Anas b. Malik reported: The Messenger of Allah (may peace be upon him) came to Medina and stayed in the upper part of Medina for fourteen nights with a tribe called Bani Amr b Auf. He then sent for the chiefs of Bani Al-Najjar, and they came with swords around their necks. He (the narrator) said: I percieve as if I am seeing the Messenger of Allah (may peace be upon him) on his ride with Abu Bakr behind him and the chiefs of Banu Al-Najjar around him till he alighted in the courtyard of Abu Ayyub. He (the narrator) said: The Messenger of Allah (may peace be upon him) said prayer when the time came for prayer, and he prayed in the fold of goats and sheep. He then ordered mosques to be built and sent for the cheifs of Banu Al-Najjar, and they came (to him). He (the Holy Prophet) said to them: O Banu Al-Najjar, sell me your hands. They said: No, by Allah, we would not demand their price, but (reward) from the Lord. Anas said: There (in these lands) were trees and graves of the polytheists, and ruins. The Messenger of Allah (may peace be upon him) ordered that the trees should be cut, and the graves should be dug out, and the ruins should be levelled. The trees (were thus) placed in rows towards the Qibla and the stones were set on both sides of the door, and (while building the mosque) they (the Companions) sang rajaz verses along with the Messenger of Allah (may peace be upon him):*

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O Allah: there is no good but the good of the next world,
So help the Ansar and the Muhajirin (emigrants).”

*“**(524R1)** Anas reported: The Messenger of Allah (may peace be upon him) used to pray in the folds of the sheep and goats before the mosque was built.”*

*“**(524R2)** Abu Al – Tiyyah reported: I heard from Anas a narration like this from the Messenger of Allah (may peace be upon him).”*

*“**(525)** Al – Bara' b. Azib reported: I said prayer with the Apostle (may peace be upon him) turning towards Bait – ul Maqdis for sixteen months till this verse of Surah Baqara was revealed: And wherever you are turn your faces towards it (ii. 144). This verse was revealed when the Apostle (may peace be upon him) had said prayer. A man amongst his people passes by the people of Ansar as they were engaged in prayer. He narrated to them (this command of Allah) and they turned their faces towards the Ka'ba.”*

*“**(525R1)** Abu Ishaq reported: I heard Al-Bara saying: We prayed with the Messenger of Allah (may peace be upon him) (with our faces) towards Bait -ul-Maqdis for sixteen months or seventeen months. Them we were made to change (our direction) towards the Ka'ba.”*

*“**(526)** Ibn Umar reported: As the people were praying at Quba'a man came to them and said: it has been revelaed to the Messenger of Allah (may peace be upon him) during the night and he has been directed to turn towards the Ka'ba. So turn towards it. Their faces were towards Syria and they turned round towards Ka'ba.”*

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*"**(526R1)** Ibn Umar reported: As the people were engaged in the morning prayer a man came to them. The rest of the hadith is the same."*

*"**(527)** Anas reported: The Messenger of Allah (may peace be upon him) used to pray towards Bait-ul-Maqdis, that it was revealed (to him): Indeed We see the turning of the face to heaven, where of we shall assurely cause thee to turn towards Qibla which shall please thee. So turn thy face towards the sacred Mosque (Ka'ba) (ii. 144). A man from Bani Salama was going; (he found the people) in prostration (while) praying the dawn prayer and they had said one bow. He said in a loud voice : Listen ! The Qibla has been changed and they turned towards (the new) Qibla (Ka'ba) in that very state."*

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*"**(528R1)** A'isha reported: They (some Companions of the Holy Prophet) were conversing with one another in the presence of the Messenger of Allah (may peace be upon him) during his last illness. Umm Salama and Umm Habiba mentioned the church, and then (the hadith was) narrated."*

*"**(528R2)** A'isha reported: The wives of the Apostle of Allah (may peace be upon him) mentioned the church which they had seen in Abyssinia which was called Marya, and the rest of the hadith is the same."*

*"**(529)** A'isha reported: The Messenger of Allah (may peace be upon him) said during his illness from which he never recovered: Allah cursed the Jews and the Christians that they took the graves of their prophets as mosques. She (A'isha) reported: Had it not been so, his (the Prophet's)*

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grave would have been in an open place, but it could not be because it may be taken as a mosque."

*"**(530)** Abu Huaira reported: The Messenger of Allah (may peace be upon him) said: Let Allah destroy the Jews for they have taken the graves of their apostles as places of worship."*

*"**(530R1)** Abu Huraira reported: The Messenger of Allah (may peace be upon him) said: Let there be curse of Allah upon the Jews and the Christians for they have taken the graves of their apostles as places of worship."*

*"**(531)** A'isha and Abdulla reported: As the Messenger of Allah (may peace be upon him) was about to breathe his last, he drew his sheet upon his face and when he felt useasy, he uncovered his face and said in this very state: Let there be curse upon the Jew and the Christians who have taken the graves of their apostles as places of worship. He in fact warned (his men) against what they (the Jews and the Christians) did."*

*"**(532)** Jundub reported: I heard from the Apostle of Allah (may peace be upon him) five days before his death and he said: I stand acquitted before Allah that I took any one of you as a friend, for Allah has taken me as His friend, as he took Ibrahim as His friend. Had I taken any one of my nation as a friend, I would have taken Abu Bakr as a friend. Beware of those who preceded you and used to take the graves of their prophets and righteous men as places of worship, but you must not take graves as mosque; I forbid you to do that."*

3206. He also referred to footnote 1, 2 and 3 at page 332:

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"(1) The Holy Prophet has explained now polytheism gradually develops. Is strats from the pious intention, i.e. building of a temple by the grave of a pious man so that there should be assocition of a religious piety to a place of worship. But steadily the people begin to look upon the religious man as a demigod and then elevate him to a higher status of Godhood. This undermines the belief in the oneness of Allah.

The pictures of the pious men are displayed in the temples in order to keep alive their sacred memories, but with the march of time the people begin to worship them.

(2) Perhaps this church was named after Mary, the mother of Jesus.

(3) The Holy Prophet was buried in the small room of Hadrat A'isha (Allah be pleased with her) where he died. It is a coferred place with walls built on all sides of it."

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3207. Next he placed reliance on **paras 556 and 556R1 (Chapter 15) and its footnote 1**, which say:

*"**(556)** A'isha reported: The Apostle of Allah (may peace be upon him) prayed in a garment which had designs over it, so he (the Holy Prophet) said: Take it to Abu Jahm and bring me a plain blanket from him, because its designs have distracted me."*

*"**(556R1)** A'isha reported: The Messenger of Allah (may peace be upon him) stood for prayer with a garment which had designs over it. He looked at these designs and after competing the prayer said: Take this garment to Abu Jahm b. Huthaifa and bring me a blanket for it has distracted me just now."*

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"Footnote (1) *It is permissible to say prayer with shoes on one's feet provided these are not soiled with impurities. Before saying prayer it is essential to remove the impurities by rubbing them against dust or on sand."*

3208. Reliance was also placed on "**Sahih Muslim"** by **Imam Muslim Vol. II** Book 7, the relevant paras are as under:

*"**(847R2)** 'Abdel-'Rahman son of Abu Said Al-Khudri reported on the authority of his father that the Messenger of Allah (SAW) said: Bathing on Friday for every adult, using of Miswak and applying some perfume, that is available, are essential. As far as perfume is concerned, it may be used by a lady."*

*"**(851)** Abu Huraira reported what Allah's Messenger (SAW) had said: If you ask your companion to be quiet on friday whiel the Imam is delivering the sermon, you have in fact chattered."*

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*"**(973)** Abbad b. Abdullah b. Zubair reported that A'isha ordered that the bier of Sa'd b. Abu Waqqas be brought into the mosque, so she can pray for him. The people disapproved this (act) of hers. She said: How soon the people have forgotten that the Messenger of Allah (SAW) had offered the funeral prayer of Suhail b. Al-Baida but in a mosque."*

*"**(973R1)** 'Abbad b. 'Abdullah b. Zubair reported on the authority of A'isha that when Sa'd b. Abu Waqqas died, the wives of the Apostle of Allah (SAW) sent a message to bring his bier into the mosque so that they can pray for him. They (the participants of the funeral) did accordingly. It was placed in front of their apartments and they prayed for him.*

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It was brought out of the door (known as) Bab al-Jana'iz which was towards the side of Maqa'id (seats). The news reached them (the wives of the Holy Prophet) that the people had criticised this (i.e offering of funeral prayer in the mosque) that it was not desirable to take the bier inside the mosque. This was conveyed to A'isha. She said: How quickly the people criticise about what they know little. They criticise us for carrying the bier in the mosque. The Messenger of Allah (SAW) did not offer the funeral prayer of Suhail b. Baida' but in the innermost part of the mosque."

*"**(973R2)** Abu Salama b. 'Abdel-Rahman reported on the authority of A'isha that when Sa'd b. Abu Waqqas died she said: Bring it (the bier) into the mosque so that I pray foe him. But this act was disapproved. She said: By Allah, the Messenger of Allah (SAW) prayed in the mosque for the two sons of Baida', viz, for Suhail and his brother."*

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*"**Footnote**: (1) There is a difference of opinion among the jurists whether a funeral prayer can be offered in a mosque or not. It is on the basis of this hadith that Imam Shafi'i of the view that it can be offered in a mosque. Imam Abu Hanifa and Imam Malik on the basis of a hadith recorded in Abu Dawud (viz. The Messenger of Allah said: He who offers funeral prayer in the mosque has nothing for him) disapprove saying the funeral prayer in the mosque. The scholars of Hadith."*

3209. Next is "**Sahih Muslim"** by **Imam Muslim Vol. III,** Chapter 30 paras 1610 and 1610R1 (Page 83) as under:

*"**(1610)** Sa'id b. Zaid b. 'Amr b. Nufail (Allah be pleased*

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with them) reported that Allah's Messenger (SAW) had said: ***He who wrongly took a span of land, Allah shall make him carry around his neck seven earths****."*

*"**(1610R1)** Said b.Zaid b. 'Amr b. Nufail (Allah be pleased with them) reported that Arwa (bint Uwais) disputed with him (about a part of the land) of his house. He said: Leave it and take off your claim from it, for I heard Allah's Messenger (SAW) saying: he who took a span of land without his right would be made to wear around his neck seven earths on the day of Resurrection. He (Sa'id b. Zaid) said: O Allah, make her blind if she has told a lie and make her grave, in her house. He (the narrator) said: I saw her blind groping (her way) by touching the walls and saying: The curse of Sa'id b. Zaid ha hit me. And if so happened that as she was walking in her house, she passed by a well in her house and fell therein and that became her grave."*

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3210. Next is "book of the **Holy Struggle-32"**, paras 1731, 1731R1(Chapter 2), paras 1732 and 1733 (Chapter 3), paras 1827, 1828 and footnote 2, para 1828 R1, 1829 and footnote 2 (Chapter 5), para 1839, 1839R1, 1840, 1840R1:

*"**(1731)** On the authority of Sufyan that the Holy Prophet (SAW) said: He dictated it one us."*

*"**(1731R1)** It has been reported from Sulaiman b. Buraid through his father that when the Messenger of Allah (may peace be upon him) appointed anyone as leader of an army or detachment he would especially exhort him to fear Allah and to be good to the Muslims who were with him. He would say:* ***Fight in the name of Allah and in the way of Allah. Fight against those who disbelieve in Allah. Make***

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a holy war; do not embezzle the spoils; do not break your pledge; and do not mutilate (the dead) bodies; do not kill the children. *When you meet your enemies who are polytheists, invite them to three courses of action. If they respond to any one of these, you also accept it and keep from doing them any harm.* ***Invite them to (accept) Islam; if they respond to you, accept*** *it from them and desist from fighting against them. Then* ***invite them to migrate from their lands to the land of Muhajirs*** *and inform them that, if they do so, they shall have all the privileges and obligations of the Muhajirs. If they refuse to migrate, tell them that they will have the status of Bedouin Muslims and will be subjected to the Commands of Allah like other Muslims, but they will not get any share from the spoils of war or fai' except when they actually fight with the Muslims (against the disbelievers).* ***If they refuse to accept Islam, demand from them the Jizya. If they agree to pay, accept it form them and hold off you hands.*** *If they refuse to pay the tax, seek Allah's help and fight them. When you lay seige to a fort and the beseiged appeal to you for protection in the name of Allah and His Prophet, do not accord to them the guarantee of Allah and his Prophet, but accord to them your own guarantee and the guarantee of your companions for it is a lesser sin that the security given by you or your companions be disregarded than that the security granted in the name of Allah and His Prophet be violated. When you beseige a fort and the beseiged want you to let them out in accordance with Allah's Command, do not let them come out in accordance with His*

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Command, but do so at your (own) command, for you do not know whether or not you will be able to carry out Allah's behest with regard to them."

*"**(1732)** It is narrated on the authority of Abu Musa that when the Messenger of Allah (may peace be upon him) deputed any of his Companions on a mission, he would say: Give tiding (to the people); do not create (in their minds) aversion (towards religion); show them leniency and do not be hard upon them."*

*"**(1733)** It has also been narrated by Sa'id b. Abu Burda through his father through his grandfather that the Prophet of Allah (may peace be upon him) sent him and Mu'ath (on a mission) to the Yeman, and said (by way of advising them): Show leniency (to the people), don't be hard upon them; give them glad tidings (of Divine favours in this world and the hereafter); and do not create aversion. Work in collaboration and don't be divided."*

*"**(1827)** It has been narrated on the authority of Abdullah b. 'Umar that the Messenger of Allah (may peace be upon him) said: Behold ! The Dispensers of Justice will be seated on the pulpits of light beside God, on the right side of the Merciful, Exalted and Glorious. Either side of the Being is the right side both being equally meritorious. (The Dispensers of Justice are) those who do justice in their rules, in matter relating to their families and in all that they undertake to do."*

*"**(1828)** It has been reported on the authority of Abdel-Rahman b. Shumasa who said: I came to A'isha to inquire something from them. She said: From which people art*

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thou? I said: I am from the people of Egypt. She said What was the behaviour of your governor towards you in this war of yours ? I said: We did not experience anything bad from him. If the camel of a man from us died, he would bestow on him a camel. If any one of us lost his slave, he would give him a slave. If anybody was in need of the basic necessities of life, he would provide them with provisions. She said: Behold! The treatment that was meeted out to my brother, Muhammad b. Abu Bakr, does not prevent me from telling you what I heard from the Messenger of Allah (may peace be upon him). He said in this house of mine: O God, who (happens to) acquire some kind of control over the affairs of my people and is hard upon them – be Thou hard upon him, and who (happens to) acquire some kind of control over the affairs of my people and is kind to them – be Thou kind to him."

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*"**(1828R1)** This hadith has been narrated on the authority of Abdel-Rahman b. Shumasa with another chain of transmitters."*

*"**(1829)** It has been narrated on the authority of Ibn 'Umar that the Holy Prophet (may peace be upon him) said: Beware, every one of you is a shepherd and every one is answerable with regard to his flock. The Caliph is a shepherd over the people and shall be questioned about his subjects (as to how he conducted their affairs). A man is a guardian over the members of his family and shall be questioned about them (as to how he looked after their physical and moral well being). A woman is a guardian over the household of her husband and his children and*

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shall be questioned about them (as to how she managed the household and brought up the children). A slave is a guardian over the property of his master and shall be questioned about it (as to how he safeguarded his trust). Beware, every one of you is a guardian and everyone of you is a guardian and every one of you shall be questioned with regard to his trust."

*"**Footnote** (2): In this tradition, the government's responsibility towards the citizens has been put on a par with father's or a mother's responsibility towards their children. Just as the father is a shepherd – that is, a guardian – morally and legally bound to ensure the maintenance and well being of his family, the government is morally and legally bound to endure the moral, spiritual, social and economic well-being of its citizens, whose affairs it has under-taken to as minister.*

The simile of a shepherd is highly significant in this connection. It recalls to one's mind the sympathetic tale of The Prophet as a guide of mankind going astray. The idea behind it is that the shepherd is more careful of the well-being of his flock then even the flock itself. He is always on the alert with regard to his flock and takes full care of the animals so that these may not go astray and fall victims to the beasts of prey. The Prophet is shepherd of humanity, always thinkings of their welfare, of their sufferings and always exhorting them to move along the path of righteousness and religious piety. There is a deep love in the hearts of The Prophet for the ailing humanity and a strong will to cure it. It is with a spirit of deep love,

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affection and self-sacrifice that the father serves his family and it should be with the same emotions of love and spirit of sacrifice that the rulers should serve the people of the State."

*"**(1839)** It has been narrated on the authority of Ibn 'Umar that the Holy Prophet (may peace be upon him) said: It is obligatory on a Muslim that he should listen (to the ruler appointed over him) and obey him whether he likes it or not, except that he is ordered to do a sin. If he is ordered to so a sinful act, a Muslim should neither listen to him nor should he obey his orders.*

*"**(1839R1)** This hadith has been transmitted on the authority of 'Ubaidullah."*

*"**(1840)** It has been narrated on the authority of Abu 'Abdel-Rahman from Ali that the Messenger of Allah (may peace be upon him) sent a force (on a mission) and appointed over them a man. He kindled a fire and said: Enter it. Some people made up their minds to enter it (the fire), (carrying out the order of their commander), but the others said: We fled from the fire (that's why we have some into the fold of Islam). The matter was reported to the Messenger of Allah (may peace be upon him). He said to those who contemplated entering (the fire at the order of their commander): If you had entered it, you would have remained there until the Day of Judgement. He commended the act of the latter group and said: There is no submission in matters involving God's disobedience or displeasure, submission is obligatory only in what is good (and reasonable)."*

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*"**(1840R1)** It has been narrated on the authority of 'Ali who said: The Messenger of Allah (may peace be upon him) sent an expedition and appointed over the Mujahids a man from the Ansar. (While making the appointment), he ordered that his word should be listened to and obeyed. They made him angry in a matter. He said: Collect for me dry wood. They collected it for him. Then he said: Kindle a fire. They kindled (the fire). Then he said: Didn't the Messenger of Allah (may peace be upon him) order you to listen to me and obey (my orders) ? They said: Yes. He said: Enter the fire. The narrator says: (At this), they began to look at one another and said: We fled from the fire to (find refuge with) the Messenger of Allah (may peace be upon him) (and now you order us to enter it). They stood quiet until his anger cooled down and the fire went out. When they returned, they related the incident to the Messenger of Allah (may peace be upon him). He said: if they had entered it, they would not have come out. Obedience (to the commander) is obligatory only in what is good."*

*"**(1854R2)** Another version of the tradition narrated on the same authority attributes the same words to the messenger of Allah (may peace be upon him). But he said: That who denied got free, and that who hated is saved."*

*"**Footnote** (1) This hadith gives a clear idea for how long and to what extent should the citizen exercise patience with an unjust government. Upholding and establishing of prayer on the part of a ruler is his main qualification for which he deserves obedience from the citizen in Ma'ruf and*

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which does not permit them to overthrow his government by violent means. The upholding of prayer says Muhammad Asad has a far wider meaning than the mere holding of congregational prayers, it denotes as it does at the beginning of the second chapter of the Qur'an a positive upholding of the faith.

The Holy Qur'an in Surat xxvv, verse 41, lays down in clear terms the main functions of the Head of an Islamic State: Muslim are those who, if We give them power in the land, establish prayer and Zakat (popor-due) and enjoin virtue and forbid evils."

*"**(2104)** 'A'isha reported that Gabriel (peace be upon him) promised Allah's Messenger (may peace be upon him) to come at a definite hour. That hour came but he did not visit him. And there was in his hand (in the hand of Allah's Apostle) a staff. He threw it from this hand and said: Never has Allah or His Messengers (angles) ever broken their promise. Then he case a glance (and by chance) found a puupy under his cot and said: 'A'isha, when did this dog enter here? She said: By Allah, I don't know. He then commended and it was turned out. Then Gabriel came and Allah's Messenger (may peace be upon him)said to him : You promised me and I wanted for you, but you did not come, whereupon he sad: It was the dog in your house which prevented me (to come), for we (angels) do not enter a house in which there is a dog or a picture."*

*"**(2104R1)** This hadith has been narrated on the authority of Abi Hazim with the same chain of transmitters that Gabriel had promised Allah's Messenger (may peace be*

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upon him) that he would come; the rest of the hadith is the same, but it is not so lengthy as the other one."

*"**(2105)** Maimuna reported that one morning Allah's Messenger (may peace be upon him) was silent with grief. Maimuna said: Allah's Messenger. I find a change in you mood today. Allah's Messenger (may peace be upon him) said : Gabriel had promised me that he would meet me tonight, but he did not meet me. By Allah, he never broke his promises, and Allah's Messenger (may peace be upon him) spent the day in this sad (mood). Then it occurred to him that there had been a puupy under their cot. He commanded and it was turned out. He then took some water in his hand and sprinkled it at that place. When it was evening Gabriel met him and he said to him: You promised me that you would meet me the previous night. He said: Yes, but **we do not enter a house in which there is a dog or a picture.** Then on that very morning he commanded the killing of the dogs until he announced that the dog kept for the orchards should also be killed, but he spared the dog meant for the protection of extensive fields (or big gardens)."*

*"**(2106)** Abu Talha reported that Allah's Apostle (may peace be upon him) had said: **Angels do not enter a house in which there is a dog or a picture."***

*"**(2106R1)** Abu hadith reported: I heard Allah's Messenger (may peace be upon him) saying: **Angles do not enter the house in which there is a dog or a statue."***

*"**(2106R2)** This hadith has been reported on the authority of Zuhri with the same chain of transmitters."*

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*"**(2106R3)** Abu Talha, the companion of Allah's Messenger (may peace be upon him), reported that Allah's Messenger (may peace be upon him) had said: Verily, **angles do not enter the house in which there is a picture.** Busr reported: Zaid fell ill and we went to inquire after his health and (found) that there was hanging at his door a curtain with a picture on it. I said to 'Ubaidullah Khaulani who had been under the patronage of Maimuna, the wife of Allah's Apostle (may peace be upon him): Did not Zadi himself inform us before about (the Holy Prophet's command pertaining to the pictures), whereupon 'Ubaidullah said: Did not you hear when he said: Except the prints on the cloth?"*

*"**(2106R4)** Abu Talha reported that Allah's Messenger (may peace be upon him) said: Angles do not enter a house in which there is a picture. Busr said: Zaid b. Khalid fell sick and we visited him to inquire after his health. As we were in his house (we saw) a curtain having a picture on it. I said to 'Ubaidullah Kahulam: Did not he narrate to us (the Holy Prophet's command pertaining to pictures) ? Thereupon he said: He in fact did that (but he also said): Except the prints upon the cloth. Did not you hear this? I said: No, whereupon he said: He had a mentioned this."*

*"**(2106R5)** Abu Talha Ansari reported that Allah's Messenger (may peace be upon him) had said: Angles do not enter the house in which there is a picture or portraits."*

*"**(2107)** I came to 'A'isha and said to her: This tells me what I have received from Allah's Apostle (may peace be*

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upon him) had said: Angles of not enter the house in which there is a picture or a dog, (and further added) whether she had heard Allah's Messenger (may peace be upon him) mentioning it. She said: No (I did not hear this myself), but I narrate to you what I saw him doing. I testify that he (the Holy Prophet) set out for an expedition. I took a carpet and screened the door with it. When he (the Holy Prophet) came back he saw that carpet and I perceived signs of disapproval on his face. He pulled it until it was torn or it was cut (into pieces) and he said: God has not commanded us to clothe stones and clay. We cut it (the curtain) and he (the Holy Prophet) did not find fault with it."

*"**(2107R1)** 'A'isha reported: We has a curtain with us which had portraits of birds upon it. Whenever a visitor came he found then in front of him. Thereupon Allah's Messenger (may peace be upon him) said to me: Change them for whenever I enter the room I see them and it brings to my mind (the pleasures) of worldly life. She said: We had with us a sheet which had silk badges upon it and we used to wear it."*

*"**(2107R2)** This hadith has been transmitted on the authority of Ibn Muthanna. But he added: Allah's Messenger (may peace be upon him) did not command us to tear that."*

*"**(2107R10)** This hadi'th has been narrated on the authority of Shu'ba with the same chain of transmitters."*

*"**(2107R11)** 'A'isha reported : Allah's Apostle (may peace be upon him) visited me when I had screened (my door) with a carpet having pictures on it. He removed it*

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and we made cushions out of that."

*"**(2107R12)** 'A'isha, the wife of Allah's Messenger (may peace be upon him), reported that she had hung a curtain which had pictures upon it. Allah's Messenger (may peace be upon him) entered (the room) and he pulled it, 'A'isha said: I then tore it and prepared two cushions out of that. A person who was then in that company and whose name was Rabi'a b. 'Ata the freed slave of Banu Zahr, asked Did you hear Abu Muhammad mentioning what 'A'isha has ..... that Allah's Messenger (may peace be upon him) used to recline upon them? Ibn Al-Qaa'sim said: No, but I heard Qa'sim b. Muhammad saying so."*

*"**(2107R13)** 'A'isha reported that she bought a carpet which had pictures on it. When Allah's Messenger (may peace be upon him) saw that, he stayed at the door and did not get in. I perceived or I was made to perceive upon his face signs of disgust. She said: Allah's Messenger, I offer repentance to Allah and His Messenger, (but tell me) what is the sin that I have committed. Thereupon Allah's Messenger (may peace be upon him) said: What is this carpet? She said: I bought it for you so that you might sit on it and take rest. Thereupon Allah's Messenger (may peace be upon him) said: 'The owners of these pictures would be tormented and they would be asked to bring to life what they tried to create. He then said: Angels do not enter the house in which there is a picture."*

*"**(2108)** Ibn 'Umar reported that Allah's Messenger (may peace be upon him) had said: Those who paint pictures would be punished on the Day of Resurrection and it would*

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be said to them: Breathe soul into what you have created."

***Footnote 1**: "...What is idolatry? It is nothing but the worship of someone else besides Allah. In old days pictures were employed as a means to propagate the worship of saints and apostles, but now in our days these pictures are used as a means to propagate hero-worship which is another name of idolatry. The idea of "personality cult" has been popularised mainly with the help of pictures and statues – the idea which has gone a long way in the defication of national horoes and leaders. This is nothing exterminated root and branch and there is no fear of its beings revived and hence no harm in painting of pictures, is not sound. The form of idolatry has in fact changed in the sense that now the idols of saints and apostles are not worshipped, but the pictures, but the pictures and statues of heroes are today revered with the same devotion and passion with which the demigods were worshipped in the past."*

***"(2110)** Muslem said: I read this before Nasrb, 'Ali Al-Jahdami and he read it before other narrators, the last one being Ibn Sa'id b. Abi Al-Hasan that a person came to Ibn 'Abbas and said: I am the person who paints pictures; give me a religious verdict about them. He (Ibn 'Abbas) said to him: Come near me (still further). He came near him so much so that he placed his hand upon his head and said: I am going to narrate to you what I heard from Allah's Messenger (may peace be upon him). I heard him saying: all the painters who make pictures would be in the fire of Hell. The soul will be breathed in every picture prepared by*

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him and it shall punish him in the Hell, and he (Ibn 'Abbas) said: If you have to do it at all, then paint the pictures of trees and lifeless things; and Nasrb. 'Ali confirmed it."

*"**Footnote (2)** These words of Ibn 'Abbas implied a sanction for the painting of lifeless things, for example, tress, flowers, landscpae, mountains and rivers, etc. But the style in which the eminent Companion of The Holy Prophet (may peace be upon him) expressed this sanction clearly indicated that it is not something very much desirable. It should not, however, lead on to conclude that Islam is opposed to art. Art is the expression of spiritual values in terms of beauty, arts is thus a response to the glory of God, to the beauty of god, and to Divine goodness also which it interprets in terms of beauty. Thus, as long as the sense of ideal beauty exists in the world, love for art cannot be banished from the human souls. Islam is not opposed to art; it is rather in one sense akin to religion as both art and religion are an expression of man's sense of spiritual significance of the universe. Both are an attempt to perceive, not the things which are temporal, but the things which are unseen and eternal. It is, however, wrong to conceive that the expressions of art should necessarily be the same as the so-called Lovers of art have suggested. These expressions differ with the fundamental attitude that the people adopt in regard to the unseen realities of the universe and to the ideals of beauty. The painting of pictures and the carving of statues are not, therefore, the only channels of artistic expressions. There are hundred and one other ways of giving captivating forms to one's*

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sense of beauty and to one's perception of unseen Reality. Islam has no doubt prohibited the paiting of living and the carving of human statues, but Muslim artists have expressed their artistic genius in so many other forms. The essense, almost the symbol, of that tradition was the arabesque: That rather involved arrangement of geometrical forms stylized plan-elements and lettering that has become the hail-mark of Islamic art, and on which so much of Islam's artistic genius has been expended.

*"**(2111)** Abu Zura' reported: I visited the house of Marwan in the company of Abu Huraira and he found pictures there, whereupon he said: I heard Allah's Messenger (may peace be upon him) saying : Allah, the Glorious and Exalted, said: Who is a wrongdoer than one who tries to create creation like My creation. Let him create an atom or a grain of wheat or that of barley."*

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*"**(2111R1)** This hadith has been transmitted on the authority of Abu Zura and he said: Abu Huraira went to the house of Sa'id or Marwan which they had built in Madina and he (Abu Huraira) saw a painter who had been paiting pictures in his house, whereupon he told that Allah's Messenger (may peace be upon him) had said like this, but he mentioned the words: "Let him create the grain of barley."*

*"**(2112)** Abu Huraira reported that: Allah's Messenger (may peace be upon him) had said: Angels do not enter the house in which there are portrays or pictures."*

*"**(2113)** Abu Huraira reported Allah's Messenger (may peace be upon him) had said: Angels do not accompany the*

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travellers who have with them a dog and a bell."

*"**(2113R4)** This hadith has been reported on the authority of Suhail with the same chain of transmitters."*

*"**(2114)** Abu Huraira reported that Allah's messenger (may peace be upon him) had said: The bell is the musical intrument of the Satan."*

3211. Sri Mishra placed before us English translation of **Jami' At-Tirmidhi Volume 1 to 5** compiled by Imam Hafiz Abu Eisa Mohammad Ibn Eisa At-Tirmidhi translated by Abu Khaliyl (USA), Ahadith edited and referenced by Hafiz Abu Tahir Zubair 'Ali Za'i, final review by Islamic Research Section Darussalam published by Maktaba Dar-us-Salam, 2007. The relevant paras are as under:

"190. Ibn ' Umar narrated. "When the Muslims arrived in Al-Madinah, they used to assemble for the Salat, and guess the time for it. There was no one who called for it (the prayer). One day they discussed that and some of them said that they should use a bell like the bell the Christians use. Others said they should use a trumpet like the horn the Jews use. But 'Umar [bin Al-Khattab] said: 'Wouldn't it be better if we had a man call for the prayer?" He said: "So Allah's Messenger said: 'O Bilal Stand up and call for the Salat." (Sahih) Abu 'Eisa said: This Hadith is Hasan Sahih Gharib as a narration of Ibn 'Umar.

Comments:

The prophet told 'Abdullah bin Zaid to teach Bilal these words, because he had a sweet and loud voice. Some said. Anda (In Hadith no 189) means 'beautiful and some said: 'loud'"

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“Adhan, he calls the Iqamah, (Da'if)

[He said:] There is something on this topic from Ibn Umar.

Abu Eisa said: We only know of the Hadith of Ziyad from the narration of Al-Ifriqi, and Al-Ifriqi is weak according to the people of Hadith Yahya bin Sa'eed Al-Qattan and others graded him weak. Ahmad said: 'I do not write the narrations of Al-Ifriqi."

He said: I saw Muhammad bin Isma'il strengthening his case, and he was saying: "He is Muqarab (average) in Hadith."

Most of the people of knowledge act according to this: (They say) [that] whoever calls the Adhan, he calls the Iqamah.”

Comments:

This Hadith is Weak. (for more details see: Ad-Daifah, Hadith: 35]. Therefore it is incorrect to prove the right of calling Iqamah by the Caller of Adhan only.”

“Chapter-55. What Has Been Related About The Dislike For Forming Rows Between Columns

229. 'Abdul-Hamid bin Mahmud said: "We prayed behind one of the Amirs, the people compelled us such that we prayed between two columns. When we had prayed, Anas bin Malik said: 'We would be prevented from his during the time of Allah's Iyas Messenger" (Sahih)

There is something on this topic from Qurrah bin Al-Muzani.

Abd Eisa said: The Hadith of Anas is a Hasan Sahih Hadith

There are those among the people of knowledge who

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disliked lines being formed between columns. This is the opinion of Ahmad and Ishaq.

And there are those among the people of knowledge who permitted it."

"Qutaibah bin Saeed narrated that to us (saying): "Nuh bin Qais narrated that to us: from 'Abdur Rahman the freed slave of Qais, from Ziyad Al-Numairi, from Anas, from the prophet.

Mahmud bin Labid (One of the narrators in no. 318) saw the prophet and Mahmud bin Ar-Rabi saw the prophet. They were both small boys in Al-Madinah.

Comments:

The mosques in the world are the houses of Allah, the centre of the spread of His religion and of preaching, an explicit place for His remembrance and every need will be compensated in the Hereafter accordingly: therefore the construction of a mosque is a deed of great fortune: the more sincerity there is in a deed the more marvellous the house will be in Paradise. Participating in the construction of a mosque is also a form of it."

"Chapter 121. Undesirability Of Taking The Grave As A Masjid

320. Ibn 'Abbas narrated: "Allah's Messenger cursed the women who visit the graves, and those who use them as Masajid and put torches on them." (Da'if)

He said: There are narrations on this topic from Abu Hurairah and Aishah.

Abu Eisa said: The Hadith of Ibn Abbas is a Hasan Hadith.

Comments:

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Women's wailing and crying over the graves, demonstrating indecency in dress or committing acts contrary to the Shari'ah is impermissible, but if they visit the graves merely for learning a lesson for the Hereafter and to take heed, which will decrease the interest of worldly life and increase the concerns about the Hereafter, then they are allowed. Likewise constructing a building over a grave or to kindle a lamp or candle over it is also prohibited."

*"**Chapter 122. What Has Been Related About Sleeping In The Masjid***

321. Ibn 'Umar narrated: "We would sleep in the Masjid during the time of Allah's Messenger and we were young men." (Sahih)

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Abu 'Eisa said: The Hadith of Ibn Umar is a Hasan Sahih Hadith.

There are those among the people of knowledge who allowed sleeping in the Masjid.

*Ibn Abbas said: **"It is not to be used as a home nor a place for talking about this or that."***

There are those among the people of knowledge who agreed with the saying of Ibn 'Abbas.

Comments:

*If the sleeping of a person in a mosque is for religious purposes, that it makes easy Congregational prayer. Night prayer, recitation and remembrances etc. then doubtlessly it is allowed, **but using it habitually as a relaxing place is not allowed**; yet it is allowed if there is an emergency and difficult circumstance."*

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"It has been reported that (Abdullah) bin al-Mubarak said about this Hadith: "Whoever bathes completely and 'Whoever performs Ghusl' means washes his head and performs Ghusl.

(He said:) There are narrations on this topic from Abu Bakr, 'Imran bin Husain, Salman, Abu Dharr, abu Sa'eed, Ibn 'Umar, and abu Ayyub.

Abu 'Eisa said: The Hadith of Aws bin Aws is a Hasan Hadith, and Abu Al-Ash'ath As-San'ani's name is Sharahil bin Adah.

(And Abu Janab is Yahya bin Habib Al-Qassab Al-Kufi).

Comments:

It is evident from this Hadith that ***if a person takes a bath with great care and sets out early for Friday prayers and he listens to the sermon attentively,*** *this will yield him a great reward and recompense. The reward of each step is equal to the standiing in prayer and observing fast for a whole year."*

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*"**Chapter 6. What Has Been Related About Going Ear'y To The Friday Prayer***

499. Abu Hurairah narrated that Allah's Messenger said: "Whoever performs Ghusl on Friday – the Ghusl for Janabah – then he goes, he is like one who gave a camel in charity. Whoever goes in the second hour, then he is like one who gave a cow in charity."

***"624**. Muhammad bin Bash-shar (Al-'Abdi) narrated to us, Muhammad bin Jafar narrated to us, from Shu'bah, from 'Amr bin Murrah who said: "I asked Abu 'Ubaidah bin Abdullah: 'Did yo remember anything from 'Abdullah?' He*

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said, 'No."

“Comments:

Some of the scholars divided Jizyah into two categories. A): Jizyah which is levied on the non-Muslims with their consent. It has no fixed amount. The ruler will decide the appropriate and affordable amount according to the circumstances. B): The second category of Jizyah is levied on non-Muslims after gaining victory and authority overthem; its due amount is fixed. Four Dirham monthly which will make forty-eight Dirham annually are due from a well off person, two Dirham monthly which will make twenty-four Dirham annually are due from a middle class, and one Dirham monthly which will make twelve Dirham annually are due from the poor.”

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“Chapter 11. What Has Been Related About: There is No Jizyah Required From The Muslims

633*. Ibn Abbas narrated that the Messenger of Allah said: "Two Qiblahs in one land are of no benefit, and there is no Jizyah upon the Muslims." (Da'if)*

*“**Comments:***

*Allamah Taur Bishti said, **two religions cannot function together equally in the same land.** No Muslim should be disgraced and humiliated in the country of disbelievers, and a disbeliever cannot live in an Islamic country without paying the Jizyah and neither is he allowed to preach and propagate his religion openly.”*

“Chapter 57. What Has Been Related About It Being Disliked to Tread On Graves, Sit On Them, (And Pray Towards Them)

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1050. Abu Marthad Al-Ghanawi narrated that the Prophet said: "Do not sit on the graves not perform Salat towards them."

(He said:) There are narrations on this topic from Abu Hurairah,' Amr bin Hazm, and Bashir bin Al-Khasasiyyah.

(Another route) with this chain, and it is similar.

1051. (Another chain) from Abu Marthad Al-ghanawl from the Prophet, similar (to no. 1050), but it does not contain "from Abu Idris" and this is what is correct.

Abu Eisa said: Muhammad said: "The narration of Ibn Al-Mubarak is mistaken, Ibn Al-Mubarak is the one who made the mistake, he added from Abu Idris Al-Khawlani which it is Busr bin Ubaidullah, from Wathilah."'

This is how it was reported by more than one from 'Abdur-Rahman bin Yazid bin Jabir, it does not contain Abu Idris Al-Khawlani. And Busr bin 'Ubaidullah heard from Wathilah bin Al-Asqa'.

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Comments:

It is not proper to destroy the graves. Sitting of walking over the graves is also not allowed. Praying or performing prayers facing the graves is unlawful."

"Chapter 58. What Has Been Related About It Being Disliked To Plaster Graves And Write On Them

1052. Jabir narrated:" The Messenger of Allah prohibited plastering graves, writing on them, building over them and treading on them."

Abu 'Eisa said: This Hadith is Hasan Sahih, it has been reported through other routes from Jabir.

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Some of the people of knowledge, among them Al-Hasan Al-Basri, permitted covering it with clay.

Ash-Shafi said: "There is no harm if the grave is covered with clay."

“Chapter 60. What Has Been Related About The Permission To Visit the Graves

1054. Sulaiman bin Buraidah narrated from his father that the Messenger of Allah said: "I had prohibited you from visiting the graves. But Muhammad was permitted to visit the grave of his mother: so visit them, for they will remind you of the Hereafter."

(He said:) There are narrations on this topic from Abu Saeed. Ibn Mas'ud, anas, Abu Hurairah, and Umm Salamah.

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Abu Eisa said: The Hadith of Buraidah is a Hasan Sahih Hadith. This is acted upon according to the people of knowledge. They did not see any harm in visiting the graves. This is the view of Ibn Al Mubarak, Ash-Shafi'i. Ahmad and Ishaq.”

“Chapter 65. What Has Been Related About Who The Martyrs Are

1063. *Abu Hurairah narrated that the Messenger of Allah said: "the martyrs are five: Those who die of the plague, stomach illness, drowning, being crushed, and the martyr in the cause of Allah." (Sahih)*

“Chapter 31. About Taking The Jizyah From The Zoroastrians

1586. *Bajalah bin 'Abdah narrated: "I was a scribe for Jaz bin Mu'awiyah at Manadhir when 'Umar's letter came to us*

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(saying): 'Inspect the Zoroastrians around you to take the Jizyah from them. For indeed 'Abdur-Rahman bin 'Awf informed me that the Messenger of Allah took the Jizyah from the Zoroastrians of Hajar.'"

(Abu 'Eisa said:) This Hadith is Hasan."

"1587. *Bajalah narrated that 'Umar would not take the Jizyah from the Zoroastrians until 'Abdur-Rahman bin 'Awf informed him that the Prophet took the Jizyah from the Zoroastrians of Hajar." (Sahih)*

There is more dialogue in the Hadith than this. And this Hadith is Hasan Sahih."

"1588. *Malik narrated from Az-Zuhri, that Saib bin Yazid said: "The Messenger of Allah took the Jizyah from the Zoroastrians of Bahrain, and 'Umar took it in Persia, and 'Uthman took it from the Persians." (Hasan)*

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I asked Muhammad about this, so he said: "It is: Malik from Az-Zuhri from the Prophet.'"

"Comments:

A tax (Jizyah) is imposed on non-Muslims living in a Muslim country against the security and protction provided to them to live in peace. They are supposed to help the Muslims in defense of the country as well as paying the tax."

"Chapter 32. What Has Been Related About What Is Lawful From The Wealth Of Ahl Adh-Dhimmah

1589. *'Uqbah bin 'Amir narrated: "I said: 'O Messenger of Allah! We come across a people and they do not host us, and they do not give us our rights, and we do not take anything from them. So the Messenger of Allah said: 'If*

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they refuse such that you can only take by force, then take." (Sahih)

(Abu Eisa said:) This Hadith is Hasan. It has been reported by Al Laith bin Sa'd from Yazid bin Abi Habib as well.

This Hadith only means that they would go out for battles and they would pass a people amount whom they would not find any food to buy for a price. So the Prophet told them: If they refuse to sell to you, such that you have to take it forcefully, then take it. This is how the explanation has been related in some of the Ahadith. And it has been related that Umar bin Al-Khatab, may Allah be pleased with him, would order similarly."

"Comments:

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Hospitality of Arabs was an exemplary tradition, but the conduct of non-Muslims was extraordinarily biased against the Muslims. They not only neglected their traditional hospitality, but also refused to sell food to Muslims to show their hatred against them. There was no way out against their harsh behaviour, so the Muslims were allowed to use force for obtaining food, as it is impossible to continue a journey without foodstuff."

"Chapter 33. What Has Been Related About Hijrah

1590. *Ibn Abbas narrated that on the day of the Conquest of Makkah, the Messenger of Allah said: There is no Hijrah after the conquest, there is only Jihad and intention, and when you are called to go forth (for battle), then go." (Sahih)*

(He said:) There are narrations on this topic from Abu

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Sa'eed, Abdullah bin Amr. And Abdullah bin Habshi.

(Abu Eisa said:) This Hadith is Hasan Sahih. Sufyan Ath-Thawri reported it similarly from Mansur bin Al-Mutamir."

"Comments:

After the conquest of Makkah, the people started entering the religion of Islam, and there was no problem with manifesting one's Islam in the land. People made homes where ever they wanted, and lived in different towns. Now there was no need for emigration. (from Makkah to Al-Madi'ah) but people moved from one place to another place for Hajj 'Umrah, Jihad and .....

"Then he passed the kettles and ordered that they be weighted, then he distributed it between them and equated a camel tp tem sheep." (Sahih)

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(Abu 'Eisa said:) Sufyan Ath Thawri reported it from his father, from 'Abayah, from his grandfather Rafi' bin Khadij, and he did not mention "from his father" in it.

This was narrated to us by Mahmud bin Ghailan (who said): "Wakf" narrated it to us from Sufyan," And this is more correct. 'Abayah bin Rifa'ah heard from him grandfather Fafi' bin Khadij.

He said: There are narrations on this topic from Tha'labah bin Al-Hakum, Anas, Abu Rihanah, Abu Ad-Durda', 'Abdur-Rahman bin Samurah, Zaid bin Khalid, Jabir, Abu Hurairah, and Abu Ayyab."

"Comments:

Most people of knowledge agree that when the warriors enter the land of the enemy, they are allowed to

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take food and fodder from there according to their needs, however it should be rationed as indicated in this naration. (Al-Mughni v. 13. p.176.)"

"1601. *Anas narrated that the Messenger of Allah said: "Whoever plunders then he is not of us." (Sahih)*

(Abu Eisa said:) This Hadith is Hasan Sahih Gharib as a Hadith of Anas."

"Comments:

Plundering and looting the property of others is an open violation of Islamic Law and against the basic concept of brotherhood in Islam, therefore, according to the words used in this narration "He is not from us".

"Chapter 55. What Has Been Related About Having Amicable Relations With People

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1987. *Abu dharr said: "The Messenger of Allah said to me: 'Have Taqwa of Allah wherever you are, and follow an evil deed with a good one to wipe it out, and treat the people with good behavior." (Hasan)*

He said: There is something on this topic from Abu Hurairah.

(Abu Eisa said:) This Hadith is Hasan Sahih.

(Another chain) with similar. And (another chain) from Mu'adh bin Jabal, from the Prophet with similar.

Mahmud said: "What is correct is the Hadith of Abu Dharr."

Comments:

The fountain head of all virtue and bulwark against all evil is the fear of Allah, and the remedy for all ills is goodness and virtue. As for the believer, all his grandeur

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and glory lies in inculcating virtuous behaviour."

"Comments:

Allah has, without a doubt, invested eloquence some speech, elegance of style, sweetness of the tongue and grandeur and aptness of the articulated phrases and words with such a power that they can keep the audiences spell bound and mesmerize the listeners."

"Chapter 83. What Has Been Relate About Oppression

2030. *Ibn Umar narrated that the Prophet said: "Oppression shall be darkness on the Day of Judgement." (Sahih)*

(Abu Eisa said:) There are narrations on this topic from 'Abdullah bin 'Amr, 'Aishah, abu Musa, Abu Hurairah, and Jabir. This Hadith is Hasan Gharib Sahih as a narration of Ibn Umar.

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Comments:

Tyranny and oppression in this world shall be requited by darkness and doom on the Day of Judgement to which the Qur'an refers when Allah rhetorically poses the question: "Who rescues you from the darkness of the land and sea?" (6.63)"

"Chapter 13. What Has Been Related About 'The Most Virtuous Jihad Is A Just Statement Before A Tyrannical Ruler'

2174. *Abu Sa'eed Al-Khudri narrated that the Prophet said: "Indeed, among the greatest types of Jihad is a just statement before a tyrannical ruler." (Hasan)*

(Abu Eisa said:) There is something on this topic from Abu Umamah.

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And this Hadith is Hasan Gharib from this route.

Comments:

The expression 'Kalimat Al-'Adl' (just statement) as used here, means commanding what is good and prohibiting what is evil. To enjoin good to a tyrannical ruler or prohibit him from doing wrong is inviting disaster for oneself, may perhaps signing one's own death warrant, while going out to face an enemy is not necessarily to court injury or death. That is why admonishing a tyrannical ruler has been described in the Hadith as the highest form of Jihad."

"Chapter 2. Whoever Guards Most Against The Unlawful, then He Is The Most Worshipping among The People.

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2305. Al-Hasan narrated from Abu Hurairan that the Messenger of Allah said: "Who will take these statements from me, so that he may act upon them, or teach one who will act upon them?" So Abu Hurairah said: "I said: 'I shall O Messenger of Allah! So he took my hand and enumerated five (things), he said: "Be on guard against the unlawful and you shall be the most worshipping among the people, be satisfied with what Allah has allotted for you and you shall be the richest of the people, be kind to your neighbor and you shall be a believer, love for the people what you love for yourself and you shall be a Muslim. And do not laugh too much, for indeed increased laughter kills the heart." (Daif)

(Abu Eisa said:) This Hadith is Gharib, we do not know of it except as a narration of Jafar bin Sulaiman (a narrator

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in the chain), and Al-Hasan did not hear anything from Abu Hurairah.

This is what was reported from Ayyub, Yunus bin 'Obaid, and Ali bin Zaid, he said, Al-Hasan did not hear from Abu Harairah Abu Ubaidah An Naji reported this Hadith from al Hasan as his saying he did not mention. "From abu Hurairah from the Prophet in it.

Comments:

a. Every one of us should learn the Ahadith with the mention of acting upon them in case due to some reason, he is not able to act upon them, he must teach them to those who would act upon them.

b. It is an accepted fact that warding off harm and destruction is of greater importance in life than going after gains and profits. It is also a patent truth that a person who has the gut to avoid unlawful acts also has the courage to perform virtuous deeds. It must also be noted that failing to carry out the commanded acts is an act of sin. Therefore, the greatest form of worship and obeisance to Allah is to avoid all things declared hateful or unlawful by Him."

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"Chapter 15. The Hadith: "The World Compared To The Hereafter Is But Like What One Of You Gets When Placing His Finger Into The Sea"

2323. *Qais bin Abi Hazim said: I heard Mustawrid, a member of Banu Fihr, saying. The Messenger of Allah said: "The world compared to the Hereafter is but like what one of you gets when placing his finger into the sea so look at what you draw from it." (Sahih)*

(Abu Eisa said) this Hadith is Hasan Sahih. (Ismail)

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bin abi Khalid's (a narrator in the chain) Kunyah is Abu Abdullah, and Qais bin Abi Hasim's father's name is 'Abd bin 'Awl and he was a Companion.

Comments:

The Hadith is in fact intended to convey the idea that the world, when compared to the Hereafter, is as insignificant as is the drop of water sticking to a man's finger in comparison with the sea. The parable has just been coined to deliver a message. Otherwise in reality, the world does not weigh even as much as we understand from the parable since the world, along with all its paraphernalia, is at best temporal and limited while the Hereafter is limitless and never ending. And it is a known fact that the limited and temporal cannot be compared with the never ending and limitless."

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"Chapter 16. What Has Been Related About "The World Is A Prison For The Believer And A Paradise For The Disbeliever'

2324. *Abu Huraitah narrated that the Messenger of Allah said: "The world is a prison for the believer and Paradise for the disbeleiver." (Sahih)*

(Abu Eisa Said:) This Hadith is Hasan Sahih.

Comments:

The main characteristic of a prison is that the prisoner in it is not free to lead a life of his choice, but is bound by the laws of the prison and the whims of its officers. He is neither free in eating and drinking, nor in sleeping and awakening, nor in moving about nor in meeting with the people at will. In short, he has no freedom

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of any kind in a prison house, and has willy-nilly to obey the orders of others. The second thing is that no prisoner loves his prison like home, but is always on the lookout to somehow get out of it. Paradise, one the other hand, is a place where the inhabitants will have no such restrictions. Each person will live a life of his choice, and every desire of his will be fulfilled, and he will never feel the desire to get out of it."

"Chapter 44. What Has Been Related About Angels Do Not Enter The House that Contains An Image Or A Dog

2804. *Ibn Abbas narrated: "I heard abu Talhah saying: 'I heard the Messenger of Allah saying: "The angels do not enter a house in which there is a dog or an object of images." (Sahih)*

(Abu 'Eisa said:) This Hadith is Hasan Sahih.

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Comments:

The taking or drawing of a picture is not allowed, keeping it is also not permissible, and whoever does so is deprived of the blessed and merciful supplications of the angels; while a person is in need of mercy and blessing at every moment. Likewise, a dog is an impure animal and some are of a satanic nature and the angels despise the devil."

3212. Next is **Muwatta' Imam Malik** translated by Professor Muhammad Rahimuddin (First Edition in 1981, Seventh improved edition in 2006) published by Kitab Bhavan, New Delhi. Para 958 (Chapter 272 page 205/206) is as under:

"Yahya b. Sa'id reported that when Abu Bakr Siddiq sent an army to Syria, he went on foot with Yazid b. Abu Sufyan

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who was the commander of a quarter of the forces. Yazid said to Abu Bakr : Either you mount up or I shall dismount. Abu Bakr replied : Neither you will dismount nor will I ride. I consider these steps to be a virtue in the path of the Lord. You will find some people who imagine they have devoted their lives to Allah (the hermits), leave them to their work; you will find some people who shave their heads in the middle (the Magi), strike them with your swords. I instruct you in ten matters : Do not kill women or children, nor the old and infirm; do not cut fruit-bearing trees; do not destroy any town; do not cut the gums of sheep or camels except for purposes of eating; do not burn date-trees nor submerge them; do not steal from booty and do not be cowardly."

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3213. Next is Chapter 273 Para 960 page 206 as under:

"(960) A man of Kufah reported that 'Umar b. al-Khattab wrote to a commander of the army: I have received information that some of you call an unbeliever when he mounts a hillock and gives up fighting, and ask him not to fear and then, getting the opportunity, kill him. I swear by Him Who is the Master of my life, if I should learn anyone doing so, I shall behead him."

3214. Then Chapter 284 at page 218 as under:

"***About the Land of the Dhimmi Who Embraces Islam***

Imam Malik was asked: If an imam levies jizyah on a nation of the non-believers, and one of them embraces Islam, will his land and property remain his or become the property of the Muslims? Imam Malik said : ***If the non-believers agree to pay jizyah amicably without resort to***

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fighting anyone converting to Islam his land and property will be his, but if they are subdued by the sword, their lands and other property will become Muslim property even if any one of them converts to Islam.*"*

3215. Book XXIV Kitab Al-Aqdiyah, Para 1393 (Chapter 430), para 1683 (Chapter 540) and Para 1741 (Chapter 560) are as under:

"***(1393)*** *Umm Salamah, wife of the Prophet (may peace be upon him), reported that the Messenger of Allah (may peace be upon him) declared: I am a human being too. You come to me disputing and quarreling. Perhaps some of you indulge in logic to prove your assertions and it may be that I give my decision on the strength of your argumentation. Should I, therefore, give one that which his brother is entitled to, he should not take it, for it would be as if I am giving him a coal of fire."*

*"****(1683)*** *'Abbad b. Tamim reported that Abu Bashir Ansari informed him that he was with the Messenger of Allah (may peace be upon him) on one of his journeys. The Messenger of Allah (may peace be upon him) sent word through a man when people were sleeping, to cut off from the necks of camels straps of wool or any kind of strap."*

*"****(1741)*** *Rafi b. Ishaq, who was the freedman of Shifa, reported : I and 'Abd Allah b. Abi Talhah went together to Abu Sa'id Khudri to see him in his illness. Abu Sa'id said : The Messenger of Allah (may peace be upon him) told me that angels did not enter a house where there were pictures and images. Ishaq is doubtful whether Abu Sa'id said*

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pictures or images."

3216. Then reliance was placed on "**The Spirit of Islam (A History of the Evolution and Ideals of Islam with a Life of the Prophet)"** by Syed Ameer Ali (First Published in 1923, reprinted in LPP 1990, 1995, 1997, 2002, 2010 published by Low Price Publications, Delhi), the relevant parts are as under:

"A mosque was soon built, in the erection of which Mohammed assisted with his own hands; and houses for the accommodation of the exiles rose apace. Two brothers, who owned the land on which it was proposed to build the mosque, had offered it as a free gift; but as they were orphans, the Prophet paid them its value.

The building was simple in form and structure, suited to the unostentatious religion he taught. The walls were of brick and earth, and the roof of palm leaves. A portion of the mosque was set apart as a habitation for those who had no home of their own.

Everything in this humble place of worship was conducted with the greatest simplicity. Mohammed preached and prayed standing on the bare ground or leaning against a palm tree, and the devoted hearts around him beat in unison with his soul-stirring words.

"He who is not affectionate to God's creatures and to his own children," he would say, "God will not be affectionate to him. Every Moslem who clothes the naked will be clothed by God in the green robes of Paradise."

In one of his sermons he thus dwelt on the subject of charity : "When God created the earth, it shook and trembled, until He put mountain upon it to make it firm.

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Then the angels asked, 'O God, is there anything in Thy creation stronger than these mountains?' And god replied, 'Iron is stronger than the mountains, for it breaks them.' 'And is there anything in Thy creation stronger than iron?' 'Yes; fire is stronger than iron, for it melts it.' 'Is there anything in Thy creation stronger than fire?' ' Yes, water, for it quenches fire.' 'O Lord is there anything in Thy creation, stronger than water?' 'Yes; wind, for it overcomes water and puts it in motion.' 'Oh, our Sustainer, is there anything in Thy creation stronger than wind?' 'Yes; a good man giving alms; if he give with his right hand and conceal it from his left, he overcomes all things." ***(Page 54)***

"It was about this time that the Prophet granted to the monks of the monastery of St. Catherine, near Mount Sinai, and to all Christians, a Charter which has been justly designated as one of the noblest monuments of enlightened tolerance that the history of the world can produce. This remarkable document, which has been faithfully preserved by the annalists of Islam, displays a marvellous breadth of view and liberality of conception. By it the Prophet secured to the Christians privileges and immunities which they did not possess even under sovereigns of their own creed; and declared that ***any Moslem violating and abusing what was therein ordered, should be regarded as a violater of God's testament, a transgressor of His commandments, and a slighter of His faith. He undertook himself, and enjoined on his followers, to protect the Christians, to defend their churches, the residences of their priests, and to guard***

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them from all injuries. *They were not to be unfairly taxed; no bishop was to be driven out of his bishopric; no Christian was to be forced to reject his religion; no monk was to be expelled from his monastery; no pilgrim was to be detained from his pilgrimage.* ***Nor were the Christian churches to be pulled down for the sake of building mosques or houses for the Moslems.*** *Christian women married to Moslems were to enjoy their own religion, and not to be subjected to compulsion or annoyance of any kind on that account. If Christians should stand in need of assistance for the repair of their churches or monasteries, or any other matter pertaining to their religion, the Moslems were to assist them. This was not to be considered as taking part in their religion, but as merely rendering them assistance in their need, and complying with the ordinances of the Prophet which were made in their favour by the authority of God and of His Apostle."* ***(Page 84)***

"Accordingly, towards the end of this year, during the month of pilgrimage, Ali was commissioned to read a proclamation to the assembled multitudes, on the day of the great Sacrifice (Yeum-un-Nahr), ***which should strike straight at the heart of idolatry and the immoralities attendant upon it : "No idolater shall, after this year, perform the pilgrimage; no one shall make the circuit (of the temple) naked ; whoever hath a treaty with the Prophet, it shall continue binding till its termination; for the rest, four months are allowed to every man to return to his territories; after that there will exist no obligation on the Prophet, except towards those with whom treaties***

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have been concluded." (Page 108)

"The great Teacher, who was fully conscious of the exigencies of his own times, and the requirements of the people with whom he had to deal,- people sunk in a slough of social and moral despond, - with his keen insight and breadth of views, perceived, and one may say foretold, that a time would come when the accidental and temporary regulations would have to be differentiated from the permanent and general. "Ye are in an age, "he declared, "in which, if ye abandon one-tenth of what is ordered, ye will be ruined. After this, a time will come when he who shall observe one-tenth of what is now ordered will be redeemed.

As we have already observed, the blight which has fallen on Musulman nations is not due to the teachings of the Master. No religion contained greater promise of development, no faith was purer, of more in conformity with the progressive demands of humanity.

The present stagnation of the Musulman communities is principally due to the notion which has fixed itself on the minds of the generality of Moslems, that the right to the exercise of private judgment ceased with the early legists, that its exercise in modern times is sinful, and that a Moslem in order to be regarded as an orthodox follower of Mohammed should belong to one or the other of the schools established by the schoolmen of Islam, and abandon his judgment absolutely to the interpretations of men who lived in the ninth century, and could have no conception of the necessities of the twentieth.

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Among the Sunnis, it is the common belief that since the four Imams, no doctor has arisen qualified to interpret the laws of the Prophet. No account is taken of the altered circumstances in which Moslems are now placed; the conclusions at which these learned legists arrived several centuries ago are held to be equally applicable to the present day. Among the Shiahs, the Akhbari will not allow his judgment to travel beyond the dictates of "the expounders of the law." The Prophet had consecrated reason as the highest and noblest function of the human intellect. Our schoolmen and their servile followers have made its exercise a sin and a crime." ***(Page 183/184)***

"And hence it is that most of the rules and regulations which govern now the conscience of so many professors of the faith are hardly derived from any express and positive declarations of the Koran, but for the most part from the lego-religious books with which the Islamic world was flooded in the later centuries. "Just as the Hebrews deposed their Pentareuch in favour of the Talmud," justly observes an English writer, "so the Moslems have abolished the Koran in favour of the traditions and decisions of the learned." "We do not mean to say," he adds most pertinently, "that any Mohammedan if asked what was the text-book of his religion, would answer anything but the 'Koran' , but we do mean that practically it is not the Koran that guides his belief or practice. In the Middle Ages of Christendom it was not the New Testament, but the Summa Theologica of Thomas Aquinas, that decided questions of orthodoxy; and in the present day, does the

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orthodox churchman usually derive his creed from a personal investigation of the teaching of Christ in the Gospels? Probably, if he refers to a document at all the Church Cateehism contents him; or if he be of a peculiarly inquiring disposition, a perusal of the Thirty-nine Articles will resolve all doubts. Yet he too would say his religion was drawn from the Gospels, and would not confess to the medium through which it was filtered. In precisely the same way modern Mohammedanism is constructed, and a large part of what Moslems now believe and practise is not to be found in the Koran at all."

And yet each system, each school contains germs of improvement, and if development is now stopped, it is not even the fault of the lawyers. It is due to a want of apprehension of the spirit of the Master's enunciations, and even of those of the fathers of the Church." ***(Page 185)***

"In the hour of his greatest triumph, when the Arabian Prophet entered the old shrine of Mecca and broke down the idols, it was not in wrath or religious rage, but in pity, that he said-"Truth is come, darkness departeth," -announcing amnesty almost universal, commanding protection to the weak and poor, and freeing fugitive slaves.

Mohammed did not merely preach toleration; he embodied it into a law. To all conquered nations he offered liberty of worship. *A nominal tribute was the only compensation they were required to pay for the observance and enjoyment of their faith.* ***Once the tax or tribute was agreed upon, every interference with their religion or the liberty of conscience was regarded as a direct***

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contravention of the laws of Islam. *Could so much be said of other creeds? Proselytism by the sward was wholly contrary to the instincts of Mohammed, and wrangling over creeds his abhorrence. Repeatedly he exclaims, "Why wrangle over that which you know not; try to excel in good works; when you shall return to God, He will tell you about that in which you have differed."* ***(Page 213)***

"...An examination, however, of the principles upon which the relations of Moslem states with non-Moslem countries were based, shows a far greater degree of liberality than has been evinced by Christian writers on international law. It is only in recent times, and under stress of circumstances that non-Christian states have been admitted into the "comity of nations." The Moslem jurists, one the other hand, differentiate between the condition of belligerency and that of peace. The expression, Dar ul-Harb, thus includes countries with which the Moslems are at war; whilst the States with which they are at peace are the Dar ul-Aman." The harbi, the inhabitants of the Dar ul-Harb, is an alien, pure and simple. He has no right to enter Islamic States without express permission. But once he receives the aman or guarantee of safety from even the poorest Moslem, he is perfectly secure from molestation for the space of one year. On the expiration of that period, he is bound to depart. The inhabitant of the Dar ul-Aman is a mustamin. The aman may be for ever or for a limited duration; but so long as it lasts, the mustamin's treatment is regulated in strict accordance with the terms of the treaty with his country." The mustamins were governed by their

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own laws, were exempt from taxation and enjoyed other privileges." ***(Page 215)***

"It has been said that a warlike spirit was infused into medieval Christianity by aggressive Islam! The massacres of Justiman and the fearful wars of Christian Clovis in the name of religion, occurred long before the time of Mohammed.

Compare, again, the conduct of the Christian Crosaders with that of the Moslems. "When the Khalif Omar took Jerusalem, A.D. 637, he rode into the city by the side of the Patriarch Sophronius, conversing with him on its antiquities. At the hour of prayer, he declined to perform his devotions in the Church of the Resurrection, in which he chanced to be, but prayed on the steps of the Church of Constantine, for, said he to the Patriarch, 'had I done so, the Musulmans in a future age might have infringed the treaty, under colour of imitating my example.' But in the capture by the Crusaders, the brains of young children were dashed out against the walls, infants were pitched over the battlements; men were roasted at fires; some were ripped up, to see if they had swallowed gold; the jews were driven into their synagogue, and there burnt; a massacre of nearly 70,000 persons took place;" ***(Page 220)***

"This latter document has, for the most part, furnished the guiding principle to all Moslem rulers in their mode of dealing with their non-Moslem subjects, and if they have departed from it in any instance the cause is to be found in the character of the particular sovereign. If we separate the political necessity which has often spoken and

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acted in the name of religion, no faith is more tolerant than Islam to the followers of other creeds. "Reasons of State" have led a sovereign here and there to display a certain degree of intolerance, or to insist upon a certain uniformity of faith; but the system itself has ever maintained the most complete tolerance. Christians and Jaws, as a rule, have never been molested in the exercise of their religion, or constrained to change their faith. If they are required to pay a special tax, it is in lieu of military service, and it is but right that those who enjoy the protection of the State should contribute in some shape to the public burdens. Towards the idolaters there was greater strictness in theory, but in practice the law was equally liberal. If at any time they were treated with harshness, the cause is to be found in the passions of the ruler or the population. The religious element was used only as a pretext." ***(Page 272)***

"The non-Moslem subjects were not preluded from building new churches or temples. Only in places exclusively inhabited by Moslems a rule of this kind existed in theory. "No new Church or temple," said Abdullah bin abbas, "can be erected in a town solely inhabited by Moslems; but in other places where there are already Zimmis inhabiting from before, we must abide by our contract with them." In practice, however, the prohibition was totally disregarded. In the reign of Mamun, we hear of eleven thousand Christian churches, besides hundreds of synagogues and fire-temples within the empire. This enlightened monarch, who has been represented as "a bitter enemy" of the christians, included in his Council the

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representatives of all the communities under his sway,- Moslems, Jews, Christians, Sabaeans and Zoroastrians; whilst the rights and privileges of the Christian hierarchy were carefully regulated and guaranteed.

It is a notable fact, with few parallels even in modern history, that after the conquest of Egypt the Caliph Omar scrupulously preserved intact the property dedicated to the Christian churches and continued the allowances made by the former government for the support of the priests.

The best testimony to the toleration of the early Moslem government is furnished by the Christians themselves. In the reign of Osman (the third Caliph), the Christian Patriarch of Mery addressed the Bishop of Fars, named Simeon, in the following terms: "The Arabs who have been given by God the kingdom (of the earth) do not attack the Christian faith, on the contrary they help us in our religion; they respect our God and our Saints, and bestow gifts on our churches and monasteries."

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In order to avoid the least semblance of high-handedness, no Moslem was allowed to acquire the land of a zimmi even by purchase. ***"Neither the Imam nor the Sultan could dispossess a zimmi of his property."***

The Moslems and the zimmis were absolutely equal in the eye of the law. *"Their blood, "said Ali the Caliph, "was like our blood."* ***(Page 274)***

"An examination of the political condition of the Moslems under the early Caliphs brings into view a popular government administered by an elective chief with limited powers. The prerogatives of the head of the State

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were confined to administrative and executive matters, such as the regulation of the police, control of the army, transaction of foreign affairs, disbursement of the finances, etc. But he could never act in contravention of the recognised law.

The tribunals were not dependent on the government. Their decisions were supreme; and the early Caliphs could not assume the power of pardoning those whom the regular tribunals had condemned. The law was the same for the poor as for the rich, for the man in power as for the labourer in the field.

As time advances the stringency of the system is relaxed but the form is always maintained. Even the usurpers, who, without right, by treachery and murder seized the reins of government and who in their persons represented the pagan oligarchy which had been displaced by the teachings of Islam, observed more or less the outward semblance of law-abiding executive heads of a representative government. And the rulers of the later dynasties, when they overstepped the bounds, often unlimited, of arbitrary power, were restrained by the sentence of the general body of jurisconsults, which in all Musulman States serves as a constitutional check on the sovereign. In the early times, however, the "Companions" of the Master formed as it were an effective Council of the State. The consideration attached to the title of "Companion of the Prophet "was as great in the camp as in the city. The powerful influence which they possessed increased with the conquests of the Moslems." ***(Page 278)***

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"The importance which Islam attaches to the duties of sovereigns towards their subjects, and the manner in which it promotes the freedom and equality of the people and protects them against the oppression of their rulers, is shown in a remarkable work on the reciprocal rights of sovereigns and subjects, by Safi-ud-din Mohammed bin Ali bin Taba Taba, commonly known as Ibn ut-Tiktaka. The book was composed in 701 A.H. (1301-2), and is dedicated to Fakhr ud-din 'Isa bin Ibrahim, Ameer of Mosul.

The first part deals with the duties of sovereigns to their subjects, and the rules of the administration of public affairs and political economy. The author describes the qualities essential for a sovereign,-wisdom, justice, knowledge of the wants and wishes of his people, and the fear of God; and adds emphatically that this latter quality is the root of all good and the key to all blessings, "for when the king is conscious of the presence of God, His servants will enjoy the blessings of peace and security." The sovereign must also possess the quality of mercy, and "this is the greatest of all good qualities." He must have an ever-present desire to benefit his subjects, and consult with them on their wants; for the Prophet consulted always with his Companions, and God hath said." "Consult with them on every affair." In the administration of public affairs, it is the sovereign's duty to superintend the public income, guard the lives and property of his subjects, maintain peace, check the evil-doer, prevent injuries. He must always keep his word, and then, adds the author significantly. "the duty of the subject is obedience, but no subject is bound to

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obey a tyrant." Ibn Rushd (the great Averroes) says, " the tyrant is he who governs for himself, and not for his people."

*The laws of the Moslems, based on equitable principles, and remarkable for their simplicity and precision, did not demand an obedience either difficult to render or incompatible with the intelligence of mankind. The countries where the Moslems established themselves remained exempt from the disastrous consequences of the feudal system and the feudal code. "Admitting no privilege, no caste, their legislation produced two grand results, -that of freeing the soil from factitious burdens imposed by barbarian laws, and of assuring to individuals perfect equality of rights." **(Page 288/289)***

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3217. Sri P.R.Ganpati Ayyer while adopting the submission of Sri Mishra also placed before us certain extracts from **"Hindu and Mahomedan Endowments" by Abdur Rahim 1918.** Chapter XIV relating to Mohammeden Law of Waqfs, to the following effect:

*"It may be a truism to say that the appropriator can only constitute such property as wakf as over which he has a disposing power. **If he is not the owner of the property, no wakf can attach.** This is also the Shiah Law. Although this may be a t.ism certain other consequences may appear to flow from this. It may be thought that if somehow the appropriator acquires the ownership later on or the true owner consents later on, the wakf will not be affected. The former part of the statement at that seems, however, not to represent the Mahomedan Law. Thus Baillie in his Digest*

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of Mahomedan Law says: "It is also a condition that the thing appropriated be the appropriator's property at the time of the appropriation; so that if one were to ...rp a piece of land, appropriate and then purchase it from the owner, and pay the price, or compound with him for other property, which is actually delivered up it will not be a wakf. Then a man make an appropriation for certain good purposes if had belonging to another, and then becomes the proprietor of the wakf is not lawful, though it becomes so if allowed by the proprietor." so also, according to the Shiah Law, "if one should appropriate a thing which is not his own, the wakf will not be valid. But if the real owner should sanction the appropriation, that will give it validity according to some of .doctors, the sanction being tantamount, in their opinion, to the new appropriation." If the appropriator is owner only of the shares out of 16 and purports to make the whole wakf it will good to the extent of the appropriator's share.

If possession is necessary for the validity of a wakf the some other consequences flow from the condition that a person should own the property which he appropriates as wakf. Thus it is said in Baillie : "If a bequest were made of land of which the legatee immediately makes a wakf, after which the testator dies, the land is not wakf; or if a donee of lands should make an appropriation of it before taking possession, and should make an appropriation of it before taking possession, and should thus take possession, the wakf will not be valid. Yet if possession were taken of land given by an invalid gift, and it were ten made a wakf, it will

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be lawful, the donee being responsible for its value; and if one should purchase by an invalid sale, take possession, and then make an appropriation of the subject of sale in favour of the poor, the wakf will be lawful, subject to the like responsibility for its value to the seller; but if the appropriation were made before taking possession, it will not be lawful. When a man buys land by a lawful sale and make an appropriation of it before taking possession and paying the price, the matter is in suspense until he pays the price and takes possession, when the wakf is lawful, but if he die without leaving any property, the land is to be sole, and the wakf is void. And if a right is established in the property or it is claimed by a shoofee, under his right of pre-emption, after the purchase has been made, the wakf is void." The principle deducible from the above is that a wakf of property before the full proprietary rights in it have vested in the person appropriating it is, generally and subject to certain exceptions, invalid."

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3218. He also placed reliance on the "**Principles of Mahomedan Law"** by Sir D.F.Mulla, First Edition 1906, 19th Edition revised by Mr. M. Hidayatullah in 1990 (Fourth Reprint in 1993). Paras 174 and 176 are as under:

"174. The dedication must be permanent.- The dedication must be permanent. A wakf, therefore, for a limited period, e.g., twenty years, is not valid. Further, the purpose for which a wakf is created must be of a permanent character."

"176. Subject of wakf must belong to wakif.- The property dedicated by way of wakf must belong to the wakif (dedicator) at the time of dedication. A person who is in

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fact the owner of the property but is under the belief that he is only a mutawalli thereof is competent to make a valid wakf of the property. What is to be seen in such cases is whether or not that person had a power of disposition over the property."

3219. Sri Ravi Shankar Prasad, Senior Advocate contended that the impugned mosque is contrary to Quranik injunctions and cannot be termed as mosque in terms of Islamic Law. Referring to "**Mulla's Principle of Mohammedan Law**" edited by M. Hidayatullah 19th Edition, he submitted that there is a consistent view of various authorities, i.e., Macnaghten, Amir Ali, Baillie and Hedaya as translated by Hamilton mentioned in the said book there is a consistent view that where the title of the land was disputed no valid mosque can be constructed thereat.

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3220. A mosque built without the consent of the land owner is against the wishes of Allah and is clearly prohibited. In "**Principles and precedents of Moohummudan Law**" by **W.H. Macnaghten**, 1825 (Second Edition), Chapter X, Case No. V page 335 which deals with the case of mosque built without the consent of the land owner. He refers to the following:

"Both land and building are included in the term mosque. It is neither simply land nor simply building but it comprises both. The land is the chief part of it because the foundation of the mosque stands upon it and the superstructure is dependent on the land. Under these circumstances without the consent of the Fakeer who is the landlord, the building cannot in the legal sense be termed a mosque because no one is at liberty to erect a building on

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the land of another without that other's consent and if he do so the law sanctions its being razed to the ground."

3221. He refers to page 336-337 of the aforesaid book of **W.H. Macnaghten** where the author has quoted Kazee Khan:

"The appropriation of a superstructure without its basis is not allowable, an edifice independently of its founder is not a mosque. Further as per ***Shurhi Viqya if anyone build or plant on the land of another let the thing built or planted be razed or rooted out****."*

3222. In "**The Law Relating to Gifts, Trusts and Testamentary Dispositions Among the Mahommedans**" by **Syed Ameer Ali** (Tagore Law Lectures, 1884) at page 236 and 337it says:

"A sovereign cannot give any portion of the land acquired by treaty and negotiation to be converted into a mosque without the consent of the owners, but he can give any portion of the land acquired by war, provided it does not interfere with the rights of way possessed by any individual."

Hedaya is quoted as " If a person usurps land and build and plant thereon , he will be desired to eradicate and raise his plants or buildings"

3223. He submitted that the above passage shows that if the right of way of an individual is important then the right of an entire community to offer worship at the land in question is of greater sanctity. He also referred to the following passage from "**A Digest of Moohummudan Law"** by **Neil B.E. Baillie** (1875), Chapter VII, page 616, title "How a Musjid is Constituted" says:

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"A sick man has made his mansion a Musjid and died but it neither falls within a third of his property nor is allowed by his heirs: the whole of it is heritage and the making of it a Musjid is void because the heirs having a right in it there has been no separation from the rights of mankind and a confused portion has been made a Musjid which is void."

3224. In "**The Hedaya**" (**A Commentary on the Mussulman Laws**) translated by the order of the Governor General by Charles Hamilton (Premier Book House, Lahore):

"If a person convert the centre hall of his house into a mosque giving general admission into it, still it does not stand as a mosque but remains saleable and inheritable because a mosque is a place in which no person possesses any right of obstruction; and wherever a man has such a right with respect to the surrounding parts the same must necessarily affect the place enclosed in them. The place, therefore, cannot be a mosque; besides it is necessarily a thoroughfare for the family and consequently does not appertain solely to God."

3225. Regarding "**The History of Islam**" by **Akbar Shah Najeebabadi**, revised by Safi-ur-Rahman Mubarakpuri, published by Darussalam, Riyadh, Saudi Arabia, he submitted that the said book was written in Urdu Language in 1972 and became a classic thereafter. It contains an authentic events in concise form from the famous histories of Islam written in Arabic and Persian languages. Its English translation was done by Darussalam in three volumes. He refers from Vol. I page 148. It narrates the histories of prophet into Al-Madinah. There is a

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specific reference about a deserted land being the property of two orphan boys Sahl and Suhail. The said land was offered by Muadhbin Afra for building a mosque as the two orphan boys were related to him and he would make them part of the land. But the Prophet asserted "*I want to buy it and will not take it without paying the price.*" Sri Prasad contended that authentic real life of Prophet shows that the Holy and Noble sole imposed strict injunctions for building a mosque, i.e., land of an orphan despite the consent of guardian was not agreed to be taken unless price is paid for, could the Babari mosque erected forcibly by breaking a temple at a place held sacred by Hindus, be at all described as a valid mosque and can the plaintiffs seek any declaration as such when the disputed structure is not a valid mosque in terms of Islamic Law. He also referred to certain extracts of Holy Quran by Mohammad Abdul Haleem Eliasi, translated in English by Abdullah Yusuf Ali, first published in 1934 revised edition 2000 by Eliash Family Book Service, Charminar, Hyderabad, India.

> *"Chapter-II (The Cow-II), Part-III, at Page 44, Verse 256:"Let there be no compulsion in religion".*
>
> *Chapter-II (The Cow-II), Part-I, Page 7, Verse 42:"And cover not Truth with falsehood nor conceal the Truth when ye know (what it is)."*
>
> *Chapter-III (The Family of Imran-III), Part-IV, at Page 71, Verse 140:"Allah loveth not those that do wrong."*
>
> *Chapter-VII (The Heights), Part-IX, Page 170, Verse 157:"For He commands them what is just and forbids them what is evil; He allows them as lawful what is good (and pure) and prohibits them from what is bad (and impure)."*

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3226. He pointed out that the meaning of the word Islam means peace and submission. Koran is Al-Furqan, i.e., one showing truth from falsehood and right from wrong. Hence any forcible construction of a mosque is against Quranik injunctions and void ab initio. The disputed structure known as Babari mosque is an invalid structure and has no protection in Islamic Law.

3227. Sri G. Rajagopalan, learned Senior Advocate advancing the submissions in the line of Sri P.N. Mishra, Advocate and Sri Ravi Shankar Prasad, Senior Advocate submitted that the meaning of the word mosque or a waqf needs satisfaction of certain essential ingredients required by Islamic texts. It is admitted by the plaintiffs that the disputed structure was built after a war between Babar and the then King of Ayodhya. There is no pleading that it was a vacant site and the mosque was built thereat for the benefit of muslims. It is well said that "*Men may lie but circumstances never*". A bare look of the photographs of the disputed structure would show that non islamic structure was converted into Islamic one. On the victory at Ayodhya, Babar or his commander built the structure in question with a view to deprive Hindus of their Holy spot, i.e., the revered and pious place of birth of Lord Rama. Their attempt to continue to maintain the building in question as mosque failed later, on the construction of Ram Chabutara and others which were non-Islamic structures and also continuous worshipping by Hindus. A mosque cannot have several Hindu features including idols carved on the pillars affixed in its building. Then he refers to the essential conditions of the arrangement of wazoo, absence of minarets to contend that the

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building in dispute could not be a mosque since these are the essential features of all mosque. For this purpose he placed reliance on "**Hindu and Mohammaden Endowments" by P.R. Ganapathy Iyer** 1918, page 388. Whether built or could not be built as a mosque, the portion of the site continued to be worshipped by Hindus. When the building had several Hindu idol carvings and the outer courtyard of the building was used for Hindu idol worship, the structure could not be used as mosque at all. It cannot be presumed that the muslims would offer prayer/Namaz at a structure which is against the tenets of Islam. He also contended that the necessary pleadings are absent. The details as to who was the wakif, whether Babar or his commander, what was the nature of dedication, whether he was owner of the site, in what manner the property was acquired and was there a divestment of interest are some important questions which have not been pleaded at all and in the absence of relevant pleadings and facts the same cannot be added by evidence only. He also pleaded that there is no evidence that Babar was sovereign as there was no coronation of Babar at all. Even if it is admitted that Babar was a king he has no proprietary right in the soil so as to dedicate the land in question to God. In India as well as in Islamic countries king never own the soil but only collect tax. If in Islamic countries only the king own soil, the concept of waqf itself would not have originated. He refers to **Dr. Paras Diwan's "Law of Endowments, Wakfs and Turst"** mentioning about first waqf in Islam, as follows:

> *"The Wakfs are founded on the two traditions of the Prophet though the fact of the matter is that they were developed in the later Islam by ijma, the consensus of the*

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learned. The first wakf is Islam came into existence in the following circumstances: The land on which the prophet laid the foundation of Masjid Navi in Medina in the first century of Islam belonged to two orphans. The Prophet insisted to pay the price of land, but the orphans entered. "No, by God we will not take the price, we will take it from God". The second tradition is:One omer Ibn-al-khattab on acquiring land in Khyber went to the Prophet and sought his counsel as to how could be make the best use of the land, for a pious and charitable purpose. The Prophet declared, "Tie up the property (corpus) and devote the usufruct to human beings, and it is not to be sold or made the subject of gift or inheritance; devote its produce to your children, your kindered and the poor in the way of God. "Acting accordingly, Omer laid down that the property would not be sold or given away in gift, nor would it devolve by succession; its income would be devoted to charity, for the poor, slaves should be freed, provisions should be made for travelers, and guests should be entertained."

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3228. In order to constitute a waqf ownership of land is mandatory and in case of conquer by a person as king, the only right he had is to collect tax but would not own the soil. He refers to various instances when the muslim kings had purchased lands for construction of Tombs etc. In the alternative he submitted that the outer courtyard is occupied by Hindus since long time and a property partly cannot be occupied by muslims and Hindus so as to constitute a waqf. If there is no valid creation of waqf the fact that prayers offered therein would

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not make it a waqf. He lastly submitted that Sunni Board has no right to file a suit since the property in question is not a waqf in accordance with the Islamic tenets.

3229. Sri R.L. Verma adopting all the above arguments advanced on behalf of learned counsels for various parties moved ahead with his arguments relying on **"Muslim Vidhi (A Text-Book of Mahomedan Law)"** by Mahesh Prasad Tandon, 5th Edn. published by Allahabad Law Agency wherein on page 212 the learned author has referred to Amir Ali's book (Vol. 1, 4th Edn. Page 201 to the following effect:

> *''परिणामतः यदि एक वक्फ, किसी ऐसी सम्पत्ति के लिए किसी व्यक्ति द्वारा सृजित किया जाता है जिसे कि विधि–विरूद्ध ढंग से अर्जित किया गया है, तो वह अवैध होगा।''*

3230. Sri R.L. Verma placed reliance on **"Law of Endowments (Hindu & Mahomedan)"** by A. Ghosh, Second Edn. published by Eastern Law House, Calcutta. It says that the waqf is the detention of a thing in the implied ownership of Almighty God, in such a manner that its profits may revert to or be applied for the benefit of mankind; and the appropriation is obligatory, so that the thing appropriated can neither be sold, nor given, nor inherited. Under Shia law, waqf is a contract while under the Sunni law, it is a unilateral disposition of property, and as such not subject to the rules of contract. In respect to the Shia law of waqfs, the author has further said on page 491-492 as under:

> *"Perhaps the most notable of these cases is Wasiq Ali Khan v. The Government which, though a case relating to a Shia Wakf, viz, the celebrated endowment under the will of Haji Muhammad Mohsin for the Imambara at Hooghly was*

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dealt with by the Sadar Dewani Adalat upon the principles of the Sunni school of Mahomedan law which was then prevalent as the Mahomedan law administered by the Courts of British India. The case was decided so long ago as the 22nd of September 1836, and it is a matter of doubt whether in those days the Shia law was ever administered by the Courts of the British India as the rule of decision, even when Shias were concerned. Mr. Baillie at the outset of the introduction to his Imameea law describes the history of the manner in which the Shia law came to be recognised in India, and it may be safely stated that it was not till the ruling of their Lordships of the Privy Council in Rajah Deedar Hossien v. Ranee Zahooroon-nissa decided in 1841 that the enforceability of the Shia law by the British Courts in India was placed upon a firm footing. In that case their Lordships observed, 'it is true that the Sunni law has generally prevailed, because the great majority of the Indian Mahomedans are Sunnis, there being very few families of the Shia sect except those of the reigning princes, which will account for the prevalence of the Sunni doctrines in the Courts, but there is no practice which excludes the application of the Shia law to the rights of persons professing the tenants of that sect."

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3231. In Sunni law, according to Abu Hanifa, a detaining of it in the ownership of the appropriator, but without the power of alienation, and a bestowing of its produce in charity. The learned author on page 498-499 says:

"It must, therefore, be taken that the Shia law recognises wakf not as a unilateral disposition of property, as it is

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recognised in the Sunni law, but as a contract which , according to the requirements of juristic notions, irrespective of either of these two systems, must be a transaction inter vivos, and this ex necessitate rei. The Sharayi-ul-Islam in describing the rule as to wakf goes on to say: Conditions that relate to the waqf itself, which are four in number, first, it must be perpetual; second, absolute and unconditional; third; possession must be given of the mowkoof, or thing appropriated , and, fourth it must be entirely taken out if the waqif or appropriator himself. So that if the appropriation is restricted to a particular time or made dependent on some quality of future occurrence, it is void.' Under the Shia law, a wakf can be created by will. A mental act although afterwards sufficiently expressed in conduct will not, unless clothed in appropriate words, create a wakf. A mere statement in a will of some gift in the past cannot be referred back to the date, still undetermined, when that gift is afterwards alleged to have been made, or such a narrative statement cannot in any view be an adequate substitute for the oral deceleration of dedication to God, which the Mahomedan law appears imperatively to require, synchronously with the act of dedication itself. There is a plain distinction between giving in charity and declaring that one had given in charity. And for the purpose of fixing the origin of the wakf, if there is a wakf at all, the mere statement in a will that at some past date the testator had set apart such and such funds for charitable objects, is of comparatively slight value. Where there has been no actual delivery a clear declaration is necessary to

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create a valid wakf. "The Mahomedan law, which only allows a testator restricted powers of disposition over his property, contains no such restriction as regards gifts inter vivos but does not recognise such gifts as valid unless possession is given to the donee. This also applies to wakfs or gifts for religious or charitable purposes, at any rate among Shias. Further, in the case of wakfs or gifts for charitable purposes, the Shia law imposes a further restriction that the wakif or settlor shall not retain for himself any interest in the subject or the gift. This restriction, for which reasons of a religious character are assigned, undoubtedly operates as check on the creation of wakfs not from purely religious motives, but with a view of defeating the rights of heirs and transmitting the possession and control of the settlor's property after his death to other persons in the character of mutawallis. This restriction is the last of the four conditions as to the validity of wakfs laid down in the Suraya, the leading Shia authority, as follows: '(i) It must be perpetual; (ii) absolute and unconditional; (iii) possession must be given of the mowkoof of the thing appropriated, and (iv) it must be entirely taken out of the wakif or appropriator himself. Where the settlor under colour of fixing her salary as mutawalli, was really reserving for her life-time a portion of the income or usufruct of the property far in excess of what was assigned in the deed to future mutawalis or could reasonably have been assigned to them, it was a clear violation of the condition."

3232. On page 600-601, with respect to Mosque, it says:

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"Where a mosque is a public mosque open to the use of all Mahomedans without distinction of sect, a Mahomedan who, in the bonafide exercise of his religious duties in such mosque, pronounces the word 'Amin' in a loud tone of voice, according to the tenets of his sect, does nothing which is contrary to the Mahomedan ecclesiastical law or which is either an offence or civil wrong, though he may by such conduct cause annoyance to his fellow worshippers in the mosque. But any person, Mahomedan or otherwise. Who goes into a mosque not bonafide for religious purposes, but malafide to create a disturbance there and interferes with the devotion of the ordinary frequenters of the mosque, will render himself criminally liable. ***A mosque, from its very nature, is dedicated for worship and is open to all Muslims local and others.*** *It is dedicated for a specific purpose and not to the local Muslims for such benefit as they may choose to derive therefrom. They cannot of right claim to use it for any other purpose however meritorious or beneficial it may be to the members of the local Muslim community. "It is a well recognised principal that if a person has an undoubted legal right to say his prayers in a mosque the Courts cannot refuse to recognise that legal right merely because an anticipated breach of peace is to be committed by the other side. A mosque does not belong to any particular sect; for once it is built and consecrated, any reservation for people of a particular locality or sect is void, and persons not belonging to that locality or sect are entitled to worship in it, whether or not any particular sect had*

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contributed towards the site or the building of the mosque and had been saying their prayers in it and every person who believes in the unity of God and the mission of Mahammad as a prophet is a Mussalman, to whatever sect he may belong, and that the Shias satisfy the test; and that ***there is no such thing as a Sunni or a Shia mosque*** *though the majority of the worshippers at any particular mosque may belong to one or other sect either generally or at various times." In Mahomedan law there can not be any private mosque. When* ***once a place is dedicated to be a mosque, it becomes public property, it is property of God.*** *Therefore where a person in charge of such a mosque claims the property as his private estate, he is liable to be removed from charge of such mosque. But there can be right of exclusion in case of mosques belonging to a particular sect."*

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3233. It also says that a place may be dedicated as mosque or Masjid without there being any building.

3234. In **Syed Mohd. Salie Labbai & others Vs. Mohd. Hanifa & others AIR 1976 SC 1569**, the Court observed:

"Once the founder dedicates a particular property for the purpose of a public mosque, the Mahomedan Law does not permit any one from stopping the Mahomedan public from offering prayers and reciting Koran etc. ...Under the Mohammedan Law if a land has been used from time immemorial for burial ground then the same may be called a wakf although there is no express dedication. ...in cases where a graveyard has existed from time immemorial or for a very long time, there can be a presumption of a lost

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grant. It is open to a Court to infer from circumstances that a plot of land covered by graves, which has been used as a graveyard, is in fact a graveyard and had been set apart as such by the original owners and made a consecrated ground even though a registered document is not now forthcoming."

"The word ***"wakf" means detention or appropriation.*** *According to the well recognized Hanafi School of Mahomedan Law* ***when a Mahomedan dedicates his property for objects of charity or to God, he completely parts with the corpus which vests in God and never returns to the founder****. Mahomedan Law contemplates two kinds of Wakfs- a wakf which is private in nature where although the ultimate object is public charity or God. but the property vests in a set of beneficiaries chosen by the founder who appoints a Mutawalli to manage the wakf property. We are, however, not concerned with private wakfs which are normally known as wakf-alal-aulad. We are concerned with public wakf i.e. dedication made for the purpose of public charity e.g. an Imam-Bada, a mosque, a Serai and the like.* ***So far as the dedication to a mosque is concerned, it is governed by special rules and special equity in the light of which a particular dedication has to be determined. A mosque is obviously a place where the Muslims offer their prayers.*** *It is well-known that there are certain formalities which have to be observed by the Muslims before they observe the prayers. These formalities are-*

(i) Wazoo i.e. washing of hands and feet in a manner

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prescribed by Shariat:

(ii) the recitation of "Azaah" and "Ikamat" which is usually done by the Pesh Imam or the Muayzin;

(iii) there must be a person who possesses virtuous qualities and a knowledge of Koran and other religious rites who should lead the prayers.

This is necessary in case of prayers offered in congregation.

3235. In "**Law of Endowments (Hindu & Mahomedan)**" by **A. Ghosh**, Second Edn. published by Eastern Law House, Calcutta, on page 602 it is provided that the questions raised in a Mahomedan community relating to a Mahomedan mosque and tomb ought to be decided by Mahomedan law so far as the same is applicable to the particular community and not expressly or impliedly negatived by the general law of the land. (See: **Advocate General of Bombay vs. Yusufally 24 Bom. L.R. 1060**).

3236. Sri M.M. Pandey, learned counsel for the plaintiffs (Suit-5) has submitted that according to established Mohammedan Law and evidence on behalf of Plaintiffs of OOS 4 of 1989, no Wakf can be created over property which is not owned by the Wakif and if a Masjid is erected at a religious place of another religion, Allah does not accept any Namaz offered at such place. Islam does not recognise Wakf of property which belongs to another or has been obtained by use of force or by demolishing place of worship of another religion. PW 3 Farookh Ahmad (at p. 16), PW 10 Mohd Idris (at p. 24 & 104) and PW 11 Mohd Burhanuddin (at p. 7 &14) admit this position under Islam. **Paper No. 107 C1/218 to 225** is write-up by Dr.

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Amaresh Arya, M.A., M.O.L., Ph D (formerly Dr. Amir Ali who taught Islamic theology at Medina in Saudi Arabia) captioned "Mosque, Mausoleum and Endowment in Islamic Shariat". At page **107C1/221** it is mentioned: "According to Shariat the site which has been occupied unauthoritatively should not be used for constructing any Mosque or for cultivation (Fathva Siddeeq-ul-Itasan)", and "Also all the temples which are deliberately replaced by Mosques, performing of 'Namaz' on such a place is also prohibited". Disputed building is therefore Un-Islamic.

3237. A compilation of 'Problems & Solutions' issued by the highest theological authority of Iran, sets out 9 Conditions for an appropriate place of worship. The publication, 73rd Edition, dt. 21 Ramzanul-mubarak 1413 Hijri (=1992), is captioned: "Tauzihul-masayal, mutabiq ba Fatwai, Murajja Azimushshan Jahan Tashbih, Hazrat Ayatullah Al-azami Aaqai-Haaj Syed Mohammad Raza Mausoovi Galpayagani, Madzallah-ul-Aala". It is published by Darul-Quranul-Karim, Iran. Problem No. 875 deals with 'Makan Namaz Guzar' and the solution sets out 9 conditions of which the 1st Condition is that the place is Ankah, i.e., saying Namaz at such a place is 'Batil' (=false/illegal) which is 'Ghasbi' (taken forcibly), and even if Namaz be said on land, or on own sheet (farsh) or wood (takhat) thereat, it would be Batil.

3238. One is reminded of what QURAN says. A 'Dar Al-Chaura, Beirut, Lebanon' publication of English Translation of Quran, approved by 'The Supreme Sunni and Shia Councils of Republic of Lebanon', quotes verse No. 2:186 (at page 20), 'Do not usurp another's property by unjust means ……' Verse No. 2:190 (at page 21) commands: ' Fight for the sake of Allah those

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that fight against you, but do not be aggressive. Allah does not love the aggressors. Similar Hindi translation of these verses is contained at page 67 of "Quran Sharif" 5th Edition 1981, of Hafiz Mohd. Hanif & Sons, Book-sellers, Mubarakpur Azamgarh (UP) published by "Lucknow Kitabghar", printed by 'Lucknow Publishing House", Lucknow. It is absolutely clear that if Babar ordered disputed structure to be erected at the site of a Hindu Temple or if Mir Baqi erected it, under Babar's order, at the site of a Temple demolished for the purpose, both the acts violated Quranic injunctions thereby both are guilty of erecting an Un-Islamic Mosque. The so-called Babri Masjid, therefore, was void ab initio, violated Islamic mandate and must be treated to be non-est, i.e, even if physically existent, it had no legal existence.

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3239. Sri Pandey relied on **Keshavan Madhava Menon v. State of Bombay, 1951 SC 128,** wherein the Hon'ble Supreme Court relied on Black's Law Dictionary (III Edn.) for the meaning of the word 'void' in para 18:

> "The meaning of the word "void" is stated in Black's Law Dictionary (3rd Edn.) to be as follows:-
>
> *"null and void; ineffectual; nugatory; having no legal force or binding effect; unable in law to support the purpose for which it was intended; nugatory and ineffectual so that nothing can cure it; not valid.""*

3240. A Masjid erected in violation of injunction of Islam was 'unable to support the purpose for which it was intended', namely offering namaz, but Allah could not accept namaz in such a masjid. He sought support from **Baljinder Singh v. Rattan Singh, JT 2008(10) SC 98** (para 25) where Hon'ble

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Supreme Court quoted from **"Words and Phrases by Justice R.P. Sethi"** and said: "Void- Black's Law Dictionary gives the meaning of the word "void" as having different nuances in different connotations. One of them is of course "null or having no legal force or binding effect" and the other is "unable in law, to support the purpose for which it was intended".

3241. He further submits that on facts, justice, equity and good conscience are in favour of plaintiffs of (Suit 5) rather than plaintiffs (Suit 4).

3242. In para 1204 of **Halsbury's Laws of England (supra)** it is stated that 'equity implies a system of law which is more consonant than the ordinary law with opinions current for the time being as to just regulation of mutual rights and duties of men living in a civilised society. When Babar became Emperor as a conqueror and did not frame any law governing Hindu Deities/Temples, the Hindu Law prevailing at that time had to be applied by him as indicated above.

3243. In general, when the word 'conscience' was used, this denoted the conscience of the Defdt., and the Court by decree in personam can prevent of making an unconscionable use of rights at common law. The correction of Defendant's conscience was the ground of the interference of equity in case of fraud, breach of trust and 'wrong and oppression generally (Ft.Note 1, HLE Supra). The special imperfections of medieval common law, as to its administration were that its judgments were not capable of being adapted to meet special circumstances or were turned into a means of oppression. The Court of Chancery, in so far as it remedied these defects, afforded an improved system of attaining justice, but this was the difference

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between law and equity. Law and equity have both the same end, which is to do right. Where it differed from the law, this was in order to moderate its rigour, to supply its omissions, to assist the legal remedy, or to relieve against the evasion of the law or the abuse of legal rights; it supplies omissions by exacting conscientious conduct from the defendant when the law recognised no binding obligation (Ft. Note 3, HLE Supra). Babar could not be permitted, in equity or good conscience, arbitrarily to deprive the Deity of its rights and possession at the disputed site.

3244. An application of these principles of equity to the present suits, entitles the plaintiffs (Suit 5) to the relief sought. The pith and substance of the plaint case in Suit 5 is that the disputed site is the birthplace of Bhagwan Shri Ram, that before Babar's invasion, a Temple stood there, that worship of the birthplace and the temple by Hindu public had been going on since ancient/immemorial time, that the temple was destroyed by the hordes of Babar and at its site Babri Masjid was constructed, that a structure raised by force of arms on Deities' land after destroying their temple, could not be treated to be a legal/valid mosque according to Islam, and the Quran as shown above. In view of this command of Quran, conversion of Temple into Mosque did not create a valid dedication of the property to Allah in fact or in law (para 24 of Plaint). In reply to these pleadings, Sunni Central Boards of Wakf, Defdt. No 4, stated (in para 24 of WS) that the quotation of Quran was 'out of context', 'not correct' 'nor complete'; but the Sunni Board did not set out any context, nor the 'correct' or 'complete' quotation in written statement or anywhere in evidence. Regarding Plaintiff's case of

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failed (lack of) dedication to Allah, the reply is that Babar was the Emperor, "the vacant land on which the Babri Masjid was built lay in the State territory and did not belong to anyone and it could very well be used for the purpose of the Mosque and specially so when the Emperor himself consented and gave approval for construction of the said Mosque". This is incorrect. Babar never became Emperor. The land was a Hindu Deity as birthplace of Bhagwan Shree Ram, hence was owned by the Deity, whose Temple was standing thereat, as Deity's House in possession of Bhagwan Shree Ram; therefore it could not vest in the Conqueror/Emperor. As conqueror, it was Babar's duty to protect the birthplace/temple. A significant fact stated by Supreme Court in **Ismail Farooqui's case, (1994) 6 SCC 360** (para 11) is that in the White Paper (Chapter II, para 2.8) of the Central Government preceding the Acquisition of Certain Areas at Ayodhya Ordinance No. 8 of 1993, re-enacted as Central Act No. 33 of 1993, Muslim leaders had stated that if it was proved that a Hindu Temple had existed on the site of the Disputed Structure and was demolished on Babar's orders for construction of Babri Masjid, the Muslims would voluntarily hand over the disputed shrine to Hindus. It is also important that according to para 4 of the Supreme Court Judgment, the Acquisition "Bill was introduced in the Parliament leading to the above enactment and the said Reference to this Court was made in the historical background set out in the White paper". The legal effect is that since these facts stand proved, the Central Govt. itself would be estopped from denying the remedy sought by the Plaintiffs in Suit 5, and would have to feed the estoppel by grant by the equitable doctrine of Estoppel, vide, **Renu Devi V. Mahendra**

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Singh & Others (2003)10 SCC 200.

3245. Lastly he submits that these very established facts would amount to "wrong and oppression" and "unconscionable use" of his rights as Emperor, if at all, in as much as he violated settled Usage/Custom of Hindu Community which Babar was bound to protect as 'conqueror' enjoined by Hindu Law (the Law of the 'Subject"). In the case of **S. Darshan Lal Vs. Dr. R.S.S Dalliwall, 1952 All 825 (DB),** it is stated in para 16: "In an inhabited country, obtained by conquest or cessation, law already prevailing therein continues to prevail except to the extent English Law has been introduced, and also except to the extent to which such law is not civilised law at all……." Earlier, Privy Council had ruled in Mosque known as Masjid Shahidganj Vs. Shiromani Gurdwara Parbandhak Committee, 1940 PC 116 at page 120, 'There is every presumption in favour of the proposition that a change of sovereignty would not affect private rights to property'. It also constituted violation of injunctions of Babar's own religion contained in the Quran, and equity would require Babar to purge his own conscience of the 'wrong, oppression, and violation of Holy Laws of his own Subjects and those of his own religion'. Similar equities would prevail between the present parties to these suits in as much as 'wrongs' committed by Babar, could not become 'right' by mere lapse of time, and would continue to be wrongs even today. The 'general law' of extinction of rights contained in the Limitation Act is not enough to over-ride the substantive rights of the Deity under 'special' Hindu Law; no law of limitation can apply to the rights and property of Deity.

3246. So far as the general principles of Islamic law as

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referred to in these very authenticated books are concerned, the same are not disputed by any of the learned counsels for the muslim party i.e. by Sri Jilani, Siddiqui and Irfan Ahmad. The authority and authenticity of the english translation of the aforementioned books are also not disputed.

Essentials of Waqf in Shariat Law

3247. Having given our anxious considerations, we find that in a simple and well elaborated manner various aspects of waqf are contained in above Islamic religious scriptures. It is really strange, despite such clarity in the thoughts and its solution contained in Shariyat scriptures exceptionally large number of cases have come up before British Indian Courts, as well as the Indian Courts after independence involving disputes relating to waqf and waqf property. We propose to consider some of the authorities, relevant on this aspect hereinunder:

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3248. A Division Bench of Bombay High Court in **Said Maher Hussain Vs. Haji Alimahomed Jalaludin and others, AIR 1934 Bombay 257** has summarised essential condition to constitute a waqf and on page 264 has held:

> *"there must be a declaration of dedication which should be made contemporaneously with the act of dedication ..... The wakif must divest himself of the ownership of the property ..... Physical delivery is not essential, but such possession as is possible must be given."*

3249. About mosques, it had been observed that there are some special rules. **Wilson's Anglo-Mahomedan Law, Amir Ali's Muhammadan Law** and **Tyabji's Principles of Muhammadan Law** are referred to and the Court has said:

> *"When once a building has been set apart as a*

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mosque it is enough to make it wakf if public prayers are once said there with the permission of the owner. But though a declaration of dedication and completion by some act giving practical effect to it are essential, it was not always necessary that there should be any direct evidence of these things. ***Dedication may be inferred from long user as wakf property*** *. . . . . there can be no doubt as to this principle which is recognised in all the text books."*

3250. In **Har Prasad and others Vs. Fazal Ahmad and others, AIR 1933 PC 83** it was held that the capacity and intention of wakif at the time of executing waqfnama is relevant and crucial. If subsequently it is found that the waqfnama was executed believing certain facts existing which subsequently found non existing, the waqf, merely because the waqfnama was executed, would not stand created.

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3251. In **Commissioner of Wakfs and another Vs. Mohammad Moshin, AIR 1954 Calcutta 463** a Division Bench of Calcutta High Court held that waqf is a purely Mohammedan institution and concept. Its creation and incidents are governed by the Mohammedan law. The Court cannot sanction creation of waqf contrary to the Mohammedan law. In Mohammedan law no one but the owner of the property can make a waqf of it. In that case a waqf was sought to be created on behalf of a minor by a guardian and that was claimed to be sanctioned by the District Judge under Section 29 of Guardians and Wards Act 1890. The Court held it impermissible in law for the reason that the Mohammedan law says that a minor cannot create a waqf. If the creation of waqf by the guardian is really an act of the minor through the guardian, then to uphold it would amount to

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allowing something being done indirectly which could not be done directly. It also observed that the idea of agency in relation to an infant is foreign to Muhammadan law and from that point of view also guardian under Muhammadan law has no power to make a waqf of the ward's property as the creator himself is not owner of the property.

3252. In **N.C.Ramanatha Iyer Vs. Board of Commissioners for Hindu Religious Endowments, Madras AIR 1954 Madras 492,** the Court observed that dedication is a fact which can be inferred from the circumstances of the particular case and need not necessarily be based upon documentary evidence. It also observed following the commendation of P. B. Ganapathi Aiyar's Hindu & Mahomedan Endowments at' page 136.

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3253. The term "waqf" has recently been considered in the light of the law of Islam in **Faqruddin Vs. Tajuddin 2008 (8) SCC 12** and in para 35, it says:

> *"`Wakf' would mean taking out something out of one's ownership and passing it on to God's ownership dedicating its usufruct - without regard to indigence or affluence, perpetually and with the intention of obtaining Divine pleasure - for persons and individuals, or for institutions or mosques and graveyards, or for other charitable purposes."*

3254. The question as to whether a public mosque is open for worship to all Muslims irrespective of the consideration that in different sects, there is difference in the manner of offering Namaz, came to be considered before a Full Bench of this Court in **Jangu & others Vs. Ahmad Ullah & others 1889-1891 ILR**

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13 (All.) 419. It was held that in a public mosque all Mohammadans were entitled to say their prayers. Justice Mahmood in his concurrent but separate judgement referred with approval his earlier observations in **Queen-Empress Vs. Ramzan ILR, 7 All. 461:**

> *"Now, it is the fundamental principle of the Muhammadan law of wakf, too well known to require the citation of authorities, that when a mosque is built and consecrated by public worship, it ceases to be the property of the builder and vests in God (to use the language of the Hedaya) 'in such a manner as subjects it to the rules of Divine property, whence the appropriator's right in it is extinguished, and it becomes a property of God by the advantage of it resulting to his creatures.' A mosque once so consecrated cannot in any case revert to the founder, and every Muhammadan has the legal right to enter it, and perform devotions according to his own tenets, so long as the form of worship is in accord with the recognized rules of Muhammadan ecclesiastical law. The defendants therefore were fully justified by law in entering the mosque in question and in joining the congregation, and they were strictly within their legal rights, according to the orthodox rule of the Muhammadan ecclesiastical law, in saying the word 'amin' aloud."*

3255. His Lordship further held :

> *"I have no doubt that under the Muhammadan law of wakf, and the Muhammadan ecclesiastical law, which we are bound to administer in such cases under s. 24 of the Civil Courts Act (VI of 1871), the provisions of which have been*

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reproduced in s. 37 of Act XII of 1887, a mosque when public is not the property of any particular individual or even a body or corporation of any other human organization which in the law has a personality. In the eye of the Muhammadan law a mosque is the property of God, it must be recognized as such, and subject only to such limitations as the Muhammadan ecclesiastical law itself provides, it is public property, being the property of God for the use of his servants, and every human being is entitled to go and worship there so long as he conforms to the rules of the Muhammadan ecclesiastical ritual of worship."

3256. In **Ata-Ullah & another Vs. Azim-Ullah & another 1889 ILR 12 (All.) 494** another decision was rendered by a five-Judges Bench of this Court on 5th November, 1889, i.e., the very next day when the Full Bench judgment in **Jangu Vs. Ahmad Ullah (supra)** was rendered wherein also a similar question was considered as to whether the Mohammedans of different sects as a matter of right can offer prayer in a public mosque built by one of the sect of Mohammedans. Facts show that the mosque was built by Hanafis sect of Mohammedans and used as their place of worship since inception. Plaintiffs described themselves as Muhammadis to whom the defendants, i.e., "the Hanafi sect of Muslims" called Wahabis sought to offer prayer in the above mosque which was objected to by the defendants saying that the system of prayer of two is different, therefore, the plaintiffs cannot offer prayer in the mosque established by Hanafi sect of Muslims. Rejecting this contention it was held by Sir John Edge, Kt., Chief Justice as under :

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"...no authority has been brought to our notice to show that a mosque which has been deviated to God can be appropriated exclusively to or by any particular sect or denomination of the Sunni Muhammadans, and without very strong authority for such a proposition, I for one could not find as a matter of law that there could be any such exclusive appropriation. As I understand, a mosque to be a mosque at all must be a building dedicated to God and not a building dedicated to God with a reservation that it should be used only by particular persons holding particular views of the ritual. As I understand it, a mosque is a place where all Muhammadans are entitled to go and perform their devotions as of right, according to their conscience."

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3257. It was also held that merely for the reason that there is some difference in the practice of offering prayer, it cannot be said that though these persons are Muhammadans but belong to category who are other than followers of prophet and it was observed :

"No authority has been brought before us to show that these persons by reason of any views which they may entertain as to ritual, could be treated by any orthodox Muhammadans as persons other than followers of the prophet."

3258. Hon'ble Justice Mahmood in his separate but concurrent judgment observed :

"...so long as a mosque is a mosque, that so long as the plaintiffs are persons who call themselves Muhammadans and entitled to worship, there is absolutely no authority to

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say that any sect or any creed or any portion of the community can restrain others who claim to have the right which to use the language of Muhammadan law, God and his Prophet gave them, from putting such right into exercise."

3259. In **Musaheb Khan Vs. Raj Kumar Bakshi, AIR 1938 Oudh 238** the question was whether a compound having a mosque, an Imambara and a number of tombs are liable to be attached and sold in execution of a decree obtained against their owner, inasmuch as they were alleged to have become dedicated property or waqf, on account of a term contained in the will executed by the owner, whereby he had transferred full proprietary rights to a legatee and his representatives in perpetuity, but had made a direction to continue certain religious celebrations on the premises. The Chief Court of Oudh referring to certain passages appearing in Baillie's **"Commentary on Mohammedan Law"; Syed Ameer Ali's "Principles of Mohemmadan Law"** and **Tyabji's "Mohammedan Law"**, held:

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"Even if a mosque, that is a building having the appearance of a mosque, is built in a place which is not enclosed, that is, is not situated in such a man's house, ***something more than the mere appearances of a mosque*** *are needed before it will become entitled to be treated as a mosque for all time. There* ***must be proof of dedication*** *or of* ***permission or of user*** *such as by the saying of prayers in congregational manner . . . . . the* ***mere construction of a mosque in a private house does not make it a mosque*** *in the sense of a public place of worship."*

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3260. In **Khalil Ahmad and another Vs. Sheikh Mohd. Askari and others, AIR 1965 Allahabad 320** the question came up for consideration was whether the building in dispute was a public mosque or a private place of worship. A Single Judge of this Court held that before a building can be said to be a public mosque, the requisite essentials are (i) the building must be set apart as a mosque; (ii) public prayers must have been said in it at least once, even with the permission of the owner; and (iii) there must have been long user of the same as a place of worship by the public at large. This Court also held that like a private chapel in England or a private Hindu temple in India there could also be a private mosque for offering prayers by the owners and the members of his family, and such private mosque are not unknown in India. The two glaring examples of such mosques are in the Red Fort at Delhi and Agra, where the members of Mughal Royal family used to offer prayers in the mosques situate within the four walls of their forts. The Court further observed, "*obviously it could not have been suggested that simply because those buildings were shaped and domed like mosques and the members of the royal family regularly offered prayers therein, the same had become wakf property so as to entitle the general public to get into such private mosques and offer prayers in congregation as of right.*"

3261. In **Garib Das and others Vs. Munshi Abdul Hamid and others, AIR 1970 SC 1035** it was held that a waqf inter vivos is completed by a mere declaration of endowment by the owner. It was also held that the founder of a waqf may constitute himself the first mutawalli and in such a case when the founder and the mutawalli are the same person, no transfer or physical

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possession is necessary. It is also not necessary in such a case that the property should be transferred from the name of the donor as owner into his name as mutawalli.

3262. In **Abdul Ghafoor Vs. Rahmat Ali & others AIR 1930 Oudh 245**, a learned Single Judge considered the question of proof of Waqf by user and held that once it is established that Mahomedan public used the land as burial ground, in the absence of direct evidence of dedication, the wakf can be established by evidence of user. The Court further said that if there is no authority to establish the land as public wakf, on the ground of user there must be evidence of continued use upto the present day. The rule which allows evidence of user to take the place of dedication is a rule of necessity. In the case of old wakf, it is not possible to secure direct evidence of dedication and so it has been ruled that even in the absence of such direct evidence, a Court can hold a wakf to be established on evidence of long user. It also observed that once land has been dedicated for the purpose of a cemetery, it must always be regarded as a cemetery unless for any reason the land turns out of the use as a cemetery. Once a wakf is established either by evidence of dedication or by evidence of user, it is in essence of the wakf that it should be permanent.

3263. In **Chhutkao Vs. Gambhir Mal AIR 1931 Oudh 45** it was reiterated by another Single Judge that it is a well understood principle of Mahomedan law that a wakf may be established by the evidence of user. It is also reiterated that land once used as a cemetery is always regarded as cemetery unless for any reason, it turns out to be unfit for use as such and that once a wakf is established either by evidence of dedication or by

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evidence of user, it is in essence of the waqf that it should be permanent.

3264. In **Punjab Wakf Board, Ambala Vs. Capt. Mohar Singh AIR 1975 SC 1891** it was held that mere mention of a property in a notification issued under Section 55 (2) of Wakf Act, 1954 showing the property to be an Idgah or the exercise of power by the Board under the Muslim Wakfs Act by itself would not establish and identify the property to be a wakf property unless it is shown that there was a valid wakf created and existed which was so notified under the Act.

3265. In **Anjuman Islamia & others Vs. Munshi Tegh Ali & others 1971 (3) SCC 814**, it was held that if there is a very big property, the mere fact that there existed a Mosque and a School which is probably a Wakf property would not mean that the entire area is a Wakf property unless the evidence is so made available. In order to show that the entire area is a wakf property by long and immemorable user, the evidence has to be produced to the effect that the entire property is a wakf and not only the Mosque or the School and the land occupied thereat.

3266. The question with respect to plot of land as to whether it is a graveyard in the sense of Mahomedan law, i.e. to say "extra commercium" and dedicated for the benefit of Mahomedans in general in such sense that private ownership therein does not exist, was considered in **Ballabh Das and another Vs. Nur Mohammad and another AIR 1936 Privy Council 83.** The matter had arisen from the judgment reported in **AIR 1931 Oudh 293**. History of dispute was set out by the learned Subordinate Judge, stating that in the mutiny of 1857 many people left the city of Lucknow. At the first Regular

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Settlement the Government found it extremely difficult to determine the title to the tenements of the persons who returned and occupied them. Seeing the previous insecurity of life and property from which the people had suffered at the hands of ruffians, it was not only difficult for them to prove their title, but an enquiry into title was bound to prolong the settlement operations to an inordinate length. The Government therefore ordered that persons in possession be recorded as proprietors of their tenements and the sites thereof. One Kale Khan was recognized by the Government as the owner of plot No. 108. Lord Canning's Proclamation of 15 March 1858 confiscated all land in Oudh, and every right in the soil in the city of Lucknow was vested in the Crown. By the letter of the Financial Commissioner of Oudh dated 7th August 1868, lands were granted to people whom the Crown liked to grant. It was at the first Regular settlement, therefore that for the first time in the city of Lucknow anybody's title was created to any land. All previous rights including those of the grandfather of Mirza Mahmud Beg, if any, had been swept away by confiscation. The subordinate Judge observed that neither it could be proved that Kale Khan made a Waqf nor that he ever divested himself of his rights so as to deprive him of the ownership of the plot in suit. The District Judge confirmed the judgement of the Subordinate Judge but it was reversed in the Chief Court of Oudh. The Privy Council disagreed with the view taken by the Chief Court that the land would become a Waqf immediately upon the burial of even a single person but observed that if a landowner allows one or two of his relatives to be buried in his orchard, he would not necessarily be held to have dedicated the land as a cemetery. It

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held:

> *"The owner who permits one or two burials to take place in his orchard would not describe his orchard as qabristan. If the plaintiffs had to make out dedication entirely by direct evidence of burials being made in the ground, and without and record such as the khasra of 1868, to help them, they would undoubtedly have to prove a number of instances adequate in character, number ad extent to justify the inference that the plot of land in suit was a cemetery. The plaintiffs however are not in this position."*

3267. It further held that when in Khasara of 1868 one comes across a description of certain land by the word "qabristan" or "grave-yard", this, prima facie at all events, means that the land is a grave-yard in the sense known to the Mohamedan Law. With respect to the entry in khasara of First Settlement the Privy Council observed that the khasara itself is the instrument which confers or embodies the right and there is no other document which creates title and khasra and map are not merely " historical materials" but are instruments of title or otherwise the direct foundation of rights. For this purpose reliance was placed on **Wali Mohammad V. Mohammad Bakhsh AIR 1930 PC 91**.

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<u>Status of Mosque and Mutwalli</u>

3268. In **Shanker Das Vs. Said Ahmad (1884) P.R. No.153 of 1884** Lahore High Court considered the rights of Mutawalli of a mosque and observed:

> "*We are of the opinion that though theoretically wakf property belongs to no human owner, nevertheless a*

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mosque, as a concrete example of wakf, is an institution, and its possession is legally maintained by its lawful guardian for the time being: in virtue of his position, the guardian can resist trespass, recover debts, make purchases and mortgages all in virtue of the right which resides in the institution. In the same way we think the mosque, as an institution, might acquire an easement by prescription; and that being so, we cannot think of any rule or principle by which we could deny to the mosque (as an institution) the same right of preventing strangers approaching its walls by the exercise of a right of pre-emption, as other house-holders have. The object of the right of pre-emption is to secure the cohesion of families, and obviate the inconvenience of a mixed or alien neighbourhood among private house-holders. Now it can hardly be denied that exactly the same convenience, which results to a private house from the exercise of the right may result also to a mosque.

"We have no hesitation in deciding, on this principle, that ***the mosque as an institution has practically proprietary rights exercised through the guardian, and that one of the rights is to claim, on the ground of vicinage a right of pre-emption in the case of sales of adjoining properties.****"*

3269. This has been followed in **Jindu Ram Vs. Hussain Baksh & Anr. AIR 1914 Lahore 444** where the Court observed:

".....all that is necessary for him to establish is that he is the sole guardian and manager of the mosque and of the property appertaining thereto; that the legal ownership in

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the mosque and the property attached does not vest in any other person; and that he alone deals and is entitled to deal with the outside world on behalf and for the benefit of the mosque in all its legal relation. It is in this sense that the muttawali of a mosque or the manager of a Hindu religious institution by whatever name he may be called, can be appropriately said to be "a person whose immovable property," though it is not his private property, clothes him with a right of pre-emption regarding property contiguous to the mosque or temple, as the case may be, under clause seventhly of S. 13(1) Punjab Pre-emption Act."

3270. In **Wahid Ali & another Vs. Mahboob ali Khan AIR 1935 Oudh 425**, the Court held that a Muslim Wakf is not a trust and a Mutwalli cannot be said to be trustee. This Court relied on two judgments of Privy Council in **Vidya Varuthi Thirtha Vs. Balusami Ayyar AIR 1922 PC 123** and **Abdur Rahim Vs. Narayan Das Aurora AIR 1923 PC 44** and also pointed out that contrary and otherwise view taken by the Bombay High Court in **Dattagiri Vs. Dattatraya (1904) ILR 27 Bom 236**; Allahabad High Court in **Behari Lal Vs. Muhammad Muttaki (1898) 20 All 482** and Calcutta High Court in **Nilmony Singh Vs. Jagabandhu Roy (1896) 23 Cal 536** wherein the persons holding properties generally for Hindu or Mohammadan religious purposes were treated as trustee were dissented by Privy Council. It held that a Muslim Wakf in which the property is vested in God, the Mutwalli has no power of alienation and he cannot be compared with a Mahant of a Hindu religious endowment.

3271. With respect to position of 'Mutawalli' and

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'sajjadanashin', also the Apex Court says in **Faqruddin (Supra)** in para 36:

> *"**It is beyond any doubt or dispute that a Mutawalli is the temporal head. He is the manager of the property. Office of Sajjadanashin, however, is a spiritual office. It has to be held by a wise person. He must be fit for holding the office.**"*

3272. With respect to a waqf, the Court considered as to who can file a suit to recover possession of a waqf and in para 55 and 58 held as under:

> *"55. It may further be true that the land in question were not Wakf lands but `Wakf Aulad'. Indisputably, however, both Wakf land as also the land in question are under the management of Mutawalli. He, apart from the Wakf land, holds the land in suit on behalf of the beneficiaries. The present appellants are also beneficiaries of the Wakf. If the right to recover possession must vest in a Mutawalli and if by reason of his status of `Matmi', Tajuddin did not become a Mutawalli, which declaration in his favour must be held to have been legally made by the High Court, the respondents relying on or on the basis of the purported Wills executed in their favour cannot claim independent right to recover possession."*
>
> *"58. The said principle was applied in a case of Debendra Nath Mitra Majumdar v. Sheik Safatulla AIR 1927 Cal 130, stating:*
>
> > *"That the right of the plaintiff to hold the properties of the wakf is a right appurtenant to his office as the Mutwalli cannot be disputed : Gnanasambandha*

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Pandara Sannadhi v. Velu Pandara (1899) 23 Mad. 271."

3273. Besides Sharii text and precedents, plaintiffs (Suit 4) produced six witnesses as Experts in "Islamic religious matters" to depose on the above aspect of the matter. These are PW 10, Mohd. Idris; PW 11, Mohd. Burhanuddin; PW 19, Maulana Atiq Ahmad; PW 22, Mohd. Khalid Nadvi; PW 25, S.M.Naqvi; and, PW 26, Kalbe Jawwad.

3274. **PW 10, Mohammad Idris**, claims to have appeared as an expert in religious matters:

*''**मैंने अपना जो भी बयान दिया है वह जातीय इल्म से दिया है।** जो कि ज्यादातर वाक्यात के बारे में है। **मैंने अपना बयान बतौर एक माहिर (एक्सपर्ट) होकर दिया है। यह दूसरी बात है कि कुछ वाक्यात का इल्म मुझे जातीय तौर पर भी है।** . . . जो बातें मैंने किताबों के द्वारा लिये गये इल्म से कही हैं वह भी मेरे जातीय इल्म की ही समझी जाये।'' (पेज 100)*

*''**My statement is based on my personal knowledge, which is mainly regarding incidents. I have given my statement as an expert, although I know few facts on personal basis as well .** . . . . The facts given by me to be on basis of books, be also considered to be on basis of my personal knowledge.''(E.T.C)*

3275. He also admits to have deposed statement on behalf of Waqf Board:

''मैं तो वक्फ बोर्ड की तरफ से अदालत में गवाही देने आया था मुझे पहले मालूम नहीं था कि मुझसे क्या सवालात किये जायेंगे। . . . . मुझे तो इस मुकदमें की निसबत सिर्फ हाशिम अंसारी ने बतलाया था।'' (पेज 103)

''I had come on behalf of Waqf Board, to give evidence in court. I did not know about the questions to be put to me. . .

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I was told about this case only by Hashim Ansari." (E.T.C)

3276. About his qualification etc., he says:

''फाजिल की तालीम के लिए मैं बनारस गया था। जब मैं बनारस गया तो मेरी उम्र तकरीबन 15 साल रही होगी। फाजिल का कोर्स करने के लिए दो साल लगाने होते हैं। ***आलिम होने की सनद मुझे इलाहाबाद कैन्ट बोर्ड से मिली है*** *और कहीं से नहीं मिली।'' (पेज 7)*

"I had gone to Benares to pursue 'Fazil' course. When I went to Benares, I would have been nearly 15 years of age. It takes two years to do 'Fazil' course. ***I have got certificate for successful completion of 'Aalim' course from the Allahabad Cant Board and from nowhere(else)."*** *(ETC)*

''बनारस में मैंने तारीख (हिस्ट्री) भी पढ़ी थी। . . . . .हिस्ट्री की किताबों को मैंने कुछ तो फारसी में पढ़ा कुछ उर्दू में और अरबी में भी पढ़ा था। . . . .अरबी की एक किताब का नाम था तारीखउल खुलफा जिसे मौलाना जलालुद्दीन सुयती ने लिखा है और दूसरी किताब रिजालुसिन्धवलहिन्द जिसे काजी अतहर मुबारकपुरी ने लिखा है वह मैंने पढ़ी थी।'' (पेज 8)

"I studied the history as well in Benares. . . Of the history books I read some in Persian some in Urdu and some in Arabic too. . . . An Arabic book was named 'Taarikh-ul-Khulfa', which Maulana Jalaluddin Suyati has written, and the other one was called Rizalusindhvalhind, which Kazi Athar Mubarakpuri has written; I had gone through that."(E.T.C)

''इनमें से पहली किताब जो मौलाना जलालुद्दीन साहब ने लिखी है हिजरी से शुरू होकर यानी हिजरी के पहले साल से शुय होकर हिजरी के 600 साल तक चलती है। जबकि दूसरी किताब जिसे हाजी अतहर मुबारकपुरी ने लिखा है, हिन्दुस्तान की तमाम तारीख उनकी किताब लिखने तक यानी आज से 20–25 साल के पहले तब के दौर को बतलाती है।

फारसी की किताब जो मैंने पढ़ी थी उसका नाम

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तारीखे फरिश्ता है। *इसे काशिम साहब ने लिखा है।* ***फारसी की मैंने और कोई तारीख की किताब नही पढ़ी।*** *यह किताब मुगलों का दौर आने से पहले तक के पीरीयड को बतलाती है।*

उर्दू जुबान में लिखी हुई मैंने बहुत सी किताबें पढ़ी हैं। मैंने बाबरनामा पढ़ा है। जनीब अकबराबादी की किताब ''औरंगजेब हिन्दुओं की नजर में'' और ''मुफ़्ती शौकत अली फहमी'' की किताब ''हिन्दुस्तान पर मुसलमानों का हजारसाला दौरे हुकूमत'' पढ़ी है।

ये जितनी किताबें मैंने बतलायी हैं और जिनको मैंने पढ़ा है मुसलमान लेखकों की लिखी हुई हैं। इनके अलावा किसी विदेशी लेखक की किताब या उसका तर्जुमा उर्दू या फारसी में था किसी मशहूर भारतीय इतिहासकार की तारीख की किताब नहीं पढ़ी।'' (पेज 9)

''Of them, the first book,written by Maulana Jalaluddin, begins with Hijri, that is, with the first year of Hijri and covers six hundred Hijri years. On the other hand, the other book, written by Hazi Athar Mubarakpuri, deals with the entire history of Hindustan up to the time of its being written, that is, up to 20-25 years back.

A Persian book which I studied is named 'Taarikh-e-Farishta'. 'Kasim Sahib has written it. I did not go through any other history book in Persian. *This book deals with the history of the period preceding the onset of the Mughal reign.*

I have written many books written in Urdu. I have read 'Baburnama'. I have gone through Janib Akbarabadi's book 'Aurangzeb Hinduon Ki Nazar Mein' and Mufti Shaukat Ali Fahmi's book 'Hindustan Par Musalmanon Ka Hajaar Saala Daur-e-Huqumat'.

All these books which I referred to and which I have gone through, are written by the Muslim writers. Except for these, I did not go through any book of foreign writer or

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through its translation in Urdu or Persian or through any history book of a famous Indian historian."(E.T.C)

*"मैंने सन् 76 में सदर मुदर्रिस की जगह संभाली थीं . . . . .बनारस की मैंने 1962 में छोड दिया था। बनारस से मुझे सनद मिली थी। . . . . .सबसे पहली नियुक्ति इस मदरसा में मेरी दर्जे आलिया के लिए हुई थी। **मैं भाषा और तारीख भी पढ़ाता हूँ।**" (पेज 10)*

*"I took over as the Head Master in 1976 . . . I had left Benares in 1962. I had got certificate from Benares. . . . . First of all I was appointed to teach class I in this school. **I teach language as also history."** (E.T.C)*

3277. He has disclosed his knowledge about Holy Quran and other Islamic literature as follows:

*"इस्लाम अरबी जबान का लफ्ज है जिसकी इस्तलाह में मसदर कहते हैं जिसका तर्जुमा फरमाबरदारी में गर्दन रख देना लिखा हुआ है। **ईश्वर एक है, वह सर्वशक्तिमान है, कुरान शरीफ उसकी देन है,** सारी कायनात उसने बनाई है, हजरत मोहम्मद साहब उसके पैगम्बर हैं, आदमी को नेकी के रास्ते पर चलना चाहिए।, यह चीजें इस्लाम में सिखाई जाती हैं। . . .जो इस्लाम में यकीन रखता है और इसका अनुयायी है, वह मुसलमान माना जायेगा। . . . **कुरान शरीफ उस किताबें पाक का नाम है, जो खुदा की तरफ से पैगम्बर साहब को मिली।** कुरान शरीफ पैगम्बर साहब को 23 साल के वक्फे में मुख्तलिफ मौकों पर मिली। इसमें कुल 113 सूरते हैं। इसमें 6666 आयतें हैं। मैं उन आयातों की तादाद नहीं बता पाऊँगा, जिनमें कानूनी मसलों को हल करने की हिदायत दी गई है। (अजखुद कहा कि ऐसी आयातें जिनमें एहकाम का बयान है, उन आयातों की एक तफसीर मुल्ला अहमद जीवन ने लिखी है, जिसका नामू तफशीराते अहमदिया है, यह साहब औरंगजेब के उस्ताद थे, लेकिन उसमें कितनी आयतें लिखी गई, उनकी तादाद मैं नहीं बता पाऊँगा।) कुरान शरीफ में इस चीज का हुक्म बार–बार है कि इन्सान को क्या करना चाहिए। बहुत से ऐसे भी एहकाम हैं, जिनके करने की मनाही है। यानी जिनमें कुछ काम न करने की हिदायत हैं। जो भी बाबा–आदम दुनिया के बनने पर सबसे पहली बार उतरे, वह इस्लाम लेकर आये, लेकिन वह*

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दुनिया के कौन से कोने पर उतरे, इस चीज के बारे में आज तक तय नहीं हो पाया।

जिरत मोहम्मद साहब अरब देश में पैदा हुए थे। इस्लाम की तबलीग यानी प्रचार मोहम्मद साहब ने की है। इनसे पहले भी मुसलमान होते थे, क्योंकि दुनिया का पहला आदमी ही इस्लाम लेकर आया था।

मोहम्मद साहब ने मक्का से मदीना हिजरत की थी। मक्का में उनकी लड़ाई बुतपरस्तों से थी और उन लोगों से थी, जो एक से ज्यादा खुदा मानते थे। उस वक्त अरब देश के बहुत से हिस्सों में मूर्ति पूजा चल रही थी। . . . . .उन्होंने जंग और लड़ाई जरूर की, कुछ इलाके भी जीते, लेकिन मकसद इलाके या मुल्क जीतने का नहीं था, बल्कि एक खुदा का कलमा पढ़ाने के लिए था। यह ठीक है कि उनका हुक्म था कि जो तुमसे जंग करता है, अल्लाह के नाम पर तुम उसके साथ जंग करो, लेकिन ***जो तुमसे जंग नहीं करता, उसके मुल्क पर जमीन पर, इबादतगाह पर या जिस्म पर जबरदस्ती कब्जा मत करो।*** *" (पेज 12–13)*

"Islam is an Arabic word, which is called 'Masdar' in Istlaah which is rendered in 'Farmabardaari' as 'laying the neck'. ***God is one; he is omnipotent; the holy Quran is his gift; he has created the whole universe;*** *Hazrat Muhammad Sahib was his Prophet; a man should follow the path of goodness. All these things are taught in Islam. . . . . One who believes in Islam and one who is its follower, will be considered to be the Muslim. . . . . .* ***The holy Quran is the name of that holy book which came to Prophet Muhammad from Khuda (God).*** *The holy Quran came to Prophet Muhammad on several occasions over the period of 23 years. It has 113 'suras' in all. There are 6666 'Ayats'. I am not in position to tell the number of 'Ayats' counseling on solution in legal matters. (Stated on his own – Mulla Ahmad Jivan has written 'Tafsir' (an explanation) on 'Ayats' containing rulings. It is*

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called 'Tafsirat-e-Ahmadiya'. This fellow was a teacher of Aurangzeb, but I am not in a position to tell how many 'Ayats' are written in it.) The holy Quran repeatedly ordains for what a man should do. There are many rulings forbidding certain things to be done, that is to say, they advise for certain things not to be done. The Adam who for the first time descended after the creation of the world , took Islam with him, but it is not still settled in which corner of the world he descended.

"Prophet Muhammad Sahib was born in Arab. Muhammad Sahib propagated Islam. Even before him there used to be Muslims, because the very first man of the world had come along with Islam.

Muhammad Sahib migrated from Mecca to Medina. In Mecca, he was pitted against idol worshipers and against those who believed in more than one God. The worship of idol was prevalent in several parts of Arab at that time. . . . . He was certainly engaged in war and battle; he conquered some hamlets as well, but his purpose was not to conquer regions or provinces. Rather, it was meant to pronounce the 'Kalma' of one God. It is true that his command was - 'Fight, in the name of God, against a person who fights with you, ***but in case of one who does not fight with you, do not forcibly capture his country, land, worship place and person.****"(E.T.C)*

"शिया और सुन्नी जमातें हजरत साहब के बहुत बाद बनी हैं। हजरत साहब के बाद पहले खलीफा हजरते अबूबकर सिद्दीकी हुए। उनके बाद हजरते उमर फारूक, तीसरे हजरते उसमान गनी। हजरत साहब ने अपनी हयात में किसी को खलीफा नामजद नहीं किया था। . . .. हजरते अबूबकर रिश्ते में मोहम्मद साहब के ससुर लगते थे। . . . . .

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खलीफा का पद मुसलमानों में हजरत साहब की जानशीनी को जाकिर करता है, इसलिए यह दीनी और दुनियाई दोनों तरीके से उनका जॉनशन माना जाता है।'' (पेज 15–16)

''There came to be Shia and Sunni communities much after Prophet Muhammad. Khalifa Hazrat-e-Abubakar Siddiqui preceded Prophet Muhammad. After him came Hazrat-e-Umar Farooq and the third Hazrat Usman Gani. Hazrat Sahib had not nominated any one as Caliph in his Hayat. . . . . Hazrat Abu Bakr was father-in-law of Muhammad Sahib by relation. . . . . The office of Caliph depicts the succession of Hazrat Sahib. Hence, Caliph is taken to be his successor both worldly and religiously.'' (E.T.C)

' 'यह दुरूस्त है कि हजरत अबूबकर साहब हजरत मोहम्मद की बेगम आइशा के वालिद थे। . . . . .हजरते उसमान, मोहम्मद साहब के दामाद थें हजरत मोहम्मद साहब की दो साहबजादियों की शादी एकेबाद दीगरे यानी पहली का इन्तमाल हाने के बाद दूसरी की, हजरत उसमान साहब से हुई थी।'' (पेज 16–17)

''It is true that Hazrat Abu Bakr was father of Ayesha, wife of Prophet Muhammad. . . . . Hazrat Usman was the son-in-law of Muhammad Sahib. The two daughters of Hazrat Muhammad Sahib were married to Hazrat Usman one after the other, that is, the second one was married after the death of the first one.'' (E.T.C)

''अबूबकर साहब तकरीबन तेरहवीं हिजरी के आसपास खलीफा बने। हजरते उसमान साहब का इन्तकाल चन्द बदमाशों के हाथ शहादत से हुआ था। . . . . .उनके बाद हजरत अली के खलीफा बनने में भी कुछ मतभेद हुए थे।'' (पेज 17)

''Abu Bakr Sahib became Caliph in or around the 13th Hijri year. Hazrat Usman embraced martyrdom at the

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hands of certain hooligans. . . . . After that some differences also cropped up over Hazrat Ali's becoming Caliph."(E.T.C)

''यह जंग 32 या 33 हिजरी साल के आसपास हुई हैं हजरत अली साहब का इन्तकाल भी चन्द बदमाशें द्वारा शहीद करने पर हुआ था। यह शहादत कूफा शहर की मस्जिद में हुई थी। उस वक्त हिजरी का 42 या 43 वां साल रहा होगा।'' (पेज 18)

"This battle took place in or around 32nd or 33rd Hijri year. Hazrat Ali Sahib had also to martyr himself at the hands of hooligans. This martyrdom took place at the mosque of Kufa city. At that time it would have been the 42nd or 43rd Hijri year."(E.T.C)

''कुल्फायेराशदीन चार हैं। इस शब्द का मतलब है–सब्बा खलीफा। हजरत अली साहब इन चार खलीफाओं में शामिल हैं, जो सच्चे माने जाते हैं।

बद्र एक मुकाम का नाम था। जंगे बद्र काफी मशहूर है। यह गालबन छः या सात हिजरी साल में हुई थी। यह लड़ाई पैगम्बर साहब के अनुयायियों और कबीला कुरैश के बीच में लड़ी गई थी।'' (पेज 18)

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"Khulafa-e-Rashideen are four in number. This word means Sabba Khalifa. Hazrat Ali Sahib is among these four Caliphs, who are considered to be truthful.

'Badra' is the name of a place. The battle of Badra is quite famous. It had taken place perhaps in 6th or 7th Hijri year. This battle was fought between the followers of Prophet and the Quraysh tribe." (E.T.C)

''सभी शिया, यह नहीं मानते कि हजरत अली पैगम्बर साहब के सबसे पहले, सबसे चहेते और सबसे ज्यादा योग्य खलीफा थे। . . . . . अली साहब के बाद 6 महीने तक इमामें हसन को खलीफा माना गया था।'' (पेज 19)

"All the Shias do not believe that Hazrat Ali was the foremost, most favourite and worthiest Caliph of Prophet

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Muhammad. . . . Imam-e-Hasan was regarded as Caliph up to six months after Ali Sahib." (E.T.C)

''हजरते माबिया के बाद उनकी जगह तख्त पर यजीद बैठा था। रवायत बयान की जाती है कि हसन साहब के पानी में किसी ने जहर मिला दिया, जिसे पीने के बाद आहिस्ता–आहिस्ता उनका इन्तकाल हो गया। इमामे हसन के छोटे भाई इमामे हुसैन खिलाफत के दावेदार बने थे। वह मदीना से मक्का गये और मक्का से कूफा की तरफ गये और यजीद से जंग की।

कर्बला की लड़ाई में 72–73 लोग शहीद हुए थे। . .छोटे साहबजादे हजरत अली असगर जरूर शहीद हुए थे उनकी बेगम और बहन को कैद कर लिया गया था। . .मोहर्रम पहले भी मनायी जाती थी वह पहले भी मुतबर्रिक थी। यह हादसा दसवीं मोर्हरम के रोज हुआ था इसलिए उसके बाद इसे और भी पुरजोश तरीके से मनाया जाने लगा। . . .मेरा कहना है कि शिया और सुन्नी दोनों हजरात मोर्हरम को मनाते हैं।'' (पेज 20)

"After Hazrat-e-Mabiya, Yazid sat on the throne in his place. It is said that somebody had poisoned the water offered to Hasan Sahib drinking which he passed away by and by. Imam-e-Hussain, younger brother of Imam-e-Hasan, had been a claimant to the office of Caliph. He had gone from Medina to Mecca and from Mecca to Kufa and was locked in battle with Yazid.

72-73 people had martyred in the battle of Karbala. . The younger son, Hazrat Ali Asgar, had certainly martyred and his wife and sister had been imprisoned. . . Muharram used to be celebrated even earlier and it was in existence earlier as well. This incident had taken place on the 10th day of Muharram. So, after that it came to be celebrated with much more fervour . . . . I have to say that both Shia and Sunni communities celebrate Muharram." (E.T.C)

''पैगम्बर साहब के कौल फेल और जो कुछ भी उनके सामने किया और उन्होंने मना नहीं फरमाया उसके मजमुएं का नाम हदीस है। ऐसे ही साहबा

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के औला और फैल और तकरीर के मजमुआं का नाम हदीस है और कुछ लोगों ने ताबीरी के औल और फेल और तकरीर को भीर हदीस कहा है।

हदीस इस तौर पर हजरत पैगम्बर साहब की हयात में लिखी नहीं गयी थी। यह बाद में तहरीर हुयी हैं सुन्नत के मायने हैं तरीका। पैगम्बर साहब के छोड़े हुए जितने भी तरीके हैं वह सब सुन्नत हैं। हजरत साहब के किए हुए अमाल को फैली सुन्नत कहते हैं। जो उन्होंने फरमाया उसे कौली सुन्नत कहते हैं।'' (पेज 22)

"The actions of Prophet Muhammad as also the actions not forbidden by him when done in his presence, are called 'Hadis. The name of Hadis is given to such words, actions and sayings, and some persons have called the words, actions and sayings of 'Tabiri' Hadis.

'Hadis' was not, in this way, written in the life time of Prophet Muhammad. It came to be written afterwards. Sunnat means method. All the methods introduced by Prophet Muhammad are Sunnat. The actions done by Prophet are called 'Faili Sunnat' and whatever he decreed is called 'Kauli Sunnat'. (ETC)

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''जो दूसरे लोगों ने हजरत साहब के सामने किया और उन्होंने उसे नामंजूर नहीं किया उसे तकरीरी सुन्नत कहते हैं। अगर कोई ऐसा सवाल हो जिसका जवाब कुरान शरीफ और हदीस में हमें न मिले तो उसकी तलाश इजमाए–उम्मत और क़याते मुजतहिद में की जाएगी। ***इज़मा उसे कहते हैं जो पैगम्बर साहब के जमाने के बाद दीने–इस्लाम के बड़े जानकार लोग, जिस बात पर सहमत हों गए हों वह इजमा है।*** *इजमा का फैसला एक जमाने तक महमूद नहीं रहता वह लगातार लागू रहेगा।'' (पेज 23)*

''Whatever others did in front of Prophet Muhammad and which did not attract disapproval from him, is called 'Takriri Sunnat'. If there is any question to which we do not come across any answer in the holy Quran and 'Hadis', we

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will look for the answer in 'Izma-e-Ummat' and 'Kayat-e-Muzat-Hid'. The point on which distinguished scholars of Islam agree after the time of Prophet Muhammad is called 'Izma'. 'Izma' does not hold good just for a particular time; rather, it will continue to be consistently in force." (E.T.C)

*"**इस्लामिक तौर और तरीकों की बुनियाद इन्हीं चार आधारों पर यानी कुरान शरीफ, हदीस, इज़मा और क़यास पर आधारित है। यही शरीयत कहलाता है।** शरीयत अरबिक भाषा का शब्द है और इस्लामिक कानून के मजमुंए का नाम है। यह ठीक है कि शरीयत के मायने हैं वह रास्ता जिस पर चलना चाहिए। फिकह शरीयत की एक शाख है। फिकह भी एक अरबि शब्द है। फिकह का तरजुमा समझ है।" (पेज 23)*

*"**Islamic ways and manners hinge on these very four bases, that is, the holy Quran, 'Hadis', 'Izma' and 'Kayas'. Only this is called Shariyat. Shariyat is a word of Arabic language and it is the name of Islamic law.** It is true that Shariyat means a path which should be followed. 'Fiqh' is a branch. 'Fiqh' means 'understanding'. "(E.T.C)*

"मजहब का ताल्लुक खुदा की इबादत से भी है। मजहब को पेश करने वाली एक शखसियत होती है जिसे पैगम्बर कहा जाता है और जब कभी उस मजहब का जिक्र होगा तो पैगम्बर का नाम सामने जरूर आयेगा। यह ठीक है कि अलग अलग वक्त पर दुनिया के अलग अलग हिस्सों में ऐसे बड़े बड़े लोग पैदा हुए जिन्होंने विगडे हुए समाज की दशा को सुधारने के लिए सही रास्ता दिखलाया। यह जो बड़े बड़े लोग पैदा हुए इन्होंने अपने जन्म स्थान के आसपास के माहौल को तो देखा होगा लेकिन काम वह किया जिसका उन्हें खुदा की तरफ से फरमान था।

मो0 हजरत साहब की पैदाईश मक्का में हुई थी। उन्होंने अपनी 40 साल की उम्र में मक्का में ही अपने पैगम्बर होने का एलान किया था।"

(पेज 41)

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"Religion is also concerned with worship of God. There is a figure, which presents/introduces religion, who is called Prophet and whenever religion is referred, the name of Prophet also comes to light. It is true that such renowned persons were born in different parts of world from time to time, who showed the correct way to improve the condition of an out of order society. These renowned persons must have seen the atmosphere surrounding their birthplace, but they did what was the command of God.

Prophet Mohammad was born in Mecca. He declared himself to be Prophet in Mecca itself at the age of 40 years." (E.T.C)

"यह ठीक है कि उन्होंने यह भी एलान किया था कि जो एक खुदा पर यकीन लायेगा और एक किताब यानी कुरान शरीफ पर यकीन लायेगा वह सच्चा मुसलमान कहलायेगा यह ठीक है कि उनके पहले इस तरह से कलमा पढ़कर बनने वाला कोई मुसलमान नहीं था। खुदा शब्द अरबी का नहीं है अल्लाह शब्द अरबी का है लेकिन यह कहना गलत होगा कि पैगम्बर साहब के नबी होने के ऐलान से पहले अल्लाह के शब्द का प्रयोग न होता हो। जिस वक्त हजूर का जन्म मक्का में हुआ उस वक्त वहां बहुत कम लोग पढ़े लिखे थे। छोटे छोटे कबीलों में लोग बढें हुए थे। उनकी आपस में लड़ाईयां होती थी। वह लोग बुतों की भी इबादत करते थे और अल्लाह का भी नाम लेते थे। . . .हजूर साहब को कुरान शरीफ का इलहाम एक नहीं बल्कि कई स्थानों पर हुआ। . . कुरान शरीफ को एक किताब की तरतीब दूसरे कातिबों ने दी है। कुरान शरीफ को हजूर साहब ने अपनी कलमी नहीं लिखा। . . .लेकिन किसी दूसरे के मजहब में जबरदस्ती मदाखलत करने की इजाजत उन्होंने मुसलमानों को नहीं दी।" (पेज 42)

"It is true that he had also declared that one who shall believe in one God and one book i.e. the holy Quran, shall be called a true Muslim. It is true that prior to him none could become Muslim in this manner by reading

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'Kalma'. The word 'Khuda' is not a Arabic word. The word 'Allah' is an Arabic word but it would be wrong to say that the word 'Allah' was not used prior to Mohammed Saheb being declared the prophet. At time of birth of Prophet Mohammad in Mecca, very few literate people existed over there. People lived in small tribes. They had mutual clashes. They also used to worship idols and take the name of 'Allah'. . . . . The holy Quran was revealed to Prophet Mohammad at not just one but many places. . . . . The holy Quran was given the shape of a book by other 'Qatibs' (scribe). The holy Quran was not penned down by Prophet Mohammad himself. . . . . However, he did not permit the Muslims to forcefully oppose any other religion." (E.T.C)

"फतेह मक्का से मेरा मतलब है कि हिजरी के आठवें साल में जब हजूर वापस मक्का आये तो बुतपरस्तों ने और उन लोगों ने जो उनकी मुखालफत किया करते थे अपने हथियार हजूर के कदमों में रख दिये, खाने–काबा से बुत उठवा लिये, उसे साफ सुथरा कर दिया और हजूर के अनुयायी बन गये। नमाज पढ़नी शुरू कर दी। इस काम में कोई तलवार नहीं चली और खानेकाबा में नमाज शुरू हो गयी। . . . . ***कुरान शरीफ में बुतपरस्ती के खिलाफ आयतें तो हैं हीं।"*** *(पेज 43)*

"By 'Fateh Mecca' I mean that when Prophet Mohammad returned to Mecca in the 8th year of Hizri era, the idolaters and his opposers, surrendered their weapons in his feet, removed idols from 'Khan-e-kaba', cleaned it and became followers of Prophet Mohammad. (They) started offering namaz. No force was used in this and namaz started in 'Khan-e-kaba'. . . . . . ***The holy Quran does contain 'Ayats' (a sentence of Quran) against idolatry.*** *" (E.T.C)*

"यह लड़ाईयॉ तकरीबन 8 हिजरी तक चली और उस वक्त तक

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तकरीबन सारा अरब ही मुसलमान बन चुका था।'' (पेज 45)

''These battles continued approximately till 8 Hizri era and by that time, almost the entire Arab had become Muslim.'' (E.T.C)

''कुरान शरीफ 23 साल में मुखतलिफ मौकों पर उतरता रहा उसे उसी तरह से तरतीब दिया जाना जारी रहा यानी कातिबों द्वारा लिखा जाना जारी रहा और इस बीच में हजूर की लड़ाइयॉ भी जारी रही थीं। तकरीबन सारा अरब देश ही इस्लामिक बन गया था किसी दूसरे मजहब को मानने वाला अरब देश में काबिले जिक्र तादाद में बाकी नहीं रहा था।''(पेज 46)

''The holy Quran was revealed on different occasions over a period of 23 years. It was written in the same manner and in the same period, the battles of Prophet Mohammad also continued. Almost the entire Arab country had turned Islamic and the population of followers of other religions, became negligible in Arab.'' (E.T.C)

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''किताब ''तफसीर जलालैन'' दो आलमों ने मिलकर लिखी है। उनके नाम है मौलाना जलाउद्दीन सूयती और दूसरे हैं ''मौलाना जलालुद्दीन महल्ली''। सूयती और महल्ली जगहों के नाम हैं जो समरकंद के आसपास थे। ये दोनों साहबान उन्हीं जगहों के रहने वाले थे। यह किताब अरबी जबान में लिखी गयी है।'' (पेज 51)

''The book 'Tafsir Jalalen' has been written together by two Alams. Their names are Maulana Jalaluddin Suyati and Maulana Jalaluddin Mahalli. 'Suyati' and 'Mahalli' are names of places around Samarkand. Both these gentlemen belonged to said places. This book has been written in Arabic.'' (E.T.C)

''दूसरी किताब का नाम ''मदारेकुत्तनजील यह किताब भी अरबी जबान में है इसके लेखक का नाम मुझे इस वक्त याद नहीं आ रहा।

किताब तफसीर बजाबी भी अरबिक में लिखी हुई है। . . . .तफसीराते अहमदिया'' भी अरबी जबान में है। इसे मुल्ला अहमद जीवन ने

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लिखा है। . . . . .किताब ''तफसीरे कबीर'' के लिखने वाले इमाम फखरूदीनराजी हैं। यह भी अरबी जबान में है।'' (पेज 52)

''The other book titled 'Madarekuttanjil' is also in Arabic. Presently, I am unable to recollect the name of its author.

The book 'Tafsir Bajabi' is also in Arabic. . . 'Tafsirate Ahmadiya' is also in Arabic. It has been written by Mulla Ahmad Jeevan. . . .The author of 'Tafsire Kabir' is Imam Fakhruddinraji. It is also in Arabic." (E.T.C)

''तफसीरे कस्साक भी अरबी जबान में है।

ये जितनी भी ऊपर बतलायी गयी किताबें हैं इन सबको लिखने वाले इस्लाम के हामी थे।

किताब बुखारीशरीफ के लेखक इमाम मोहम्मद इस्माइल साहब है। ये हिजरी की दूसरी सदी में लिखी गयी है। उस वक्त तक कुरान शरीफ को मुकम्मल तौर पर तरतीब की जा चुकी थी। ये किताब भी अरबी जुबान में है। किताब मुस्लिम शरीफ भी अरबी भाषा में है इसके लेखक का नाम इमामे मुस्लिम है। यह किताब बुखारी शरीफ के कुछ दिनों बाद लिखी गयी थी। तिरमिजी शरीफ किताब भी अरबी भाषा में है इसके लेखक का नाम इमाम अबू ईसा है।'' *(पेज 53)*

''''Tafsire Kassak' is also in Arabic.

The authors of all the books mentioned above, were 'Hami' (Protector/Patron/Supporter) of Islam.

Imam Mohammed Ismail was the author of the book 'Bukharisharif'. It has been written second century of Hizri era. By that time, the holy Quran had been formally prepared. These books are also in Arabic. The book 'Muslim Sharif' is also in Arabic and its author is Imame Muslim. This book was written subsequent to 'Bukhari Sharif'. The book 'Tirmiji

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Sharif' is also in Arabic and its author is Imam Abu Isa. *" (E.T.C)*

''किताब अबुदाउद शरीफ भी अरबी भाषा में है इसके लेखक का नाम अबूदाउद है ये ऊपर वाली दोनों किताबों के कुछ बाद लिखी गयी है।

किताब इब्नेमाजा शरीफ भी अरबी में है इस किताब के लेखक के अपने नाम पर है और यह भी उसी जमाने में कुछ आगे पीछे लिखी गयी है।

यह ठीक है कि इन सब किताबों के लेखक इस्लामी देशों के रहने वाले थे।

फिकह की किताब हिदाया अरबी भाषा में लिखी गयी है लेकिन इसके तरजुमे बहुत सी भाषाओं में किये गये हैं। इसके लेखक का नाम बुरहानुद्दीन अबुल हसन अली है। किताब सरे उकाया भी अरबी जबान में है और इसके लेखक का नाम मुझे याद नहीं आ रहा। किताब मुनियातुल–मुसल्ली अरबी जबान में है इसके लेखक का नाम भी मुझे याद नहीं है। किताब फतावा हिन्दीया अरबी में है जिसे बहुत सारे उलमाओं ने मिलकर तैयार किया है। किताब फतहुलकदीर भी अरबी जबान में है इसके लेखक का नाम मुझे याद नहीं आ रहा। एक किताब है दुर्रे मुख्तार जो कि अरबी में है जिसे एक अल्लामा साहब ने लिखा है उनका नाम मुझे याद नहीं आ रहा है। किताब रददुल मुहतार भी अरबी में लिखी गयी है। इसके लेखक का नाम मुझे याद नहीं है।'' (पेज 54)

''The book 'Abudawood Sharif' is also in Arabic and Abudawood is its author. It was written after the aforesaid two books.

The book 'Ibnemaza Sharif' is also in Arabic, and it is in the name of its author and it has also been written around that period.

It is true that the authors of all these books, were residents of Islamic countries.

'Hidaya', the book of 'Fiqh' is written in Arabic but it has been translated into many other languages. Its author is Burhanuddin Abul Hasan Ali. The book 'Sare

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Ukaya' is also in Arabic, but I do not remember the name of its author. The book 'Fatawa Hindiya' is in Arabic and has been prepared collectively by many Ulemas. The book 'Fathulkadir' is also in Arabic, whose author's name I am unable to recollect. There is a book 'Durre Mukhtar' is in Arabic, which has been written by one Allama, whose name I am unable to recollect. The book 'Raddul Muhtar' is also in Arabic. I do not remember the name of its author."(E.T.C)

"फतावा हिन्दीया आलमगीरी बहुत से उलेमाओं ने इकट्ठे होकर लिखी थी इनके सदर मौलाना निजामुद्दीन साहब थे जो कि हिन्दुस्तान के बाशिंदे थे।" (पेज 55)

"'Fatawa Hindiya Alamgiri' was written collectively by many Ulemas (clerics in Islam). Their head was Maulana Nizamuddin, because he was a resident of India."(E.T.C)

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"इस्लाम में चांद की अहमियत है। चांद की अहमियत मुस्लिम कैलेण्डर के त्योहारों की तारीख जानने के लिए है न कि कोई सजावट करने के लिए।" (पेज 55)

"Moon has importance in Islam. The importance of moon is for determining the dates of festivals in Muslims calender and is not for decoration purposes." (E.T.C)

"हजरत मो0 साहब से पहले नबी ईसा आये जिन्हे अंग्रेज लोग ईसा मसीह कहते हैं। . . हजरत ईसा से पहले जो रसूल आये उनकी मैं तरतीब नही बता सकता। लेकिन उनमें से बहुतों के नाम बता सकता हूँ और उन पर नाजिल हुई किताबों के नाम भी बता सकता हूँ। जैसे कि हजरत मूसा अल हिति सलाम, इन पर अल्लाह की किताब तौरेत, हजरते दाउद अल सलाम, उन पर अल्लाह की किताब ज़बूर नाजिल हुई यह 4 बड़ी आसमानी किताबें हैं। *और दूसरे रसूलों पर किताबें नाजिल नहीं हुई। . . . . बहुत से ऐसे नबी भी हुए जिन पर*

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अल्लाह ने कोई भी किताब छोटी या बड़ी नाजिल नहीं की। और कुछ ऐसे भी थे जिन पर छोटी किताब नाजिल की गयी। उन छोटी किताबों को शहीदा कहा जाता है।'' (पेज 58–59)

*''**Prophet Christ came before Prophet Mohammad, who is called Jesus Christ by the English people . ..I cannot tell the 'Tarteeb' (sequence) of the Prophets, who came prior to Jesus Christ. However, I can name many of them, as also the books revealed to them e.g. Allah's book 'Tauret' on Hazrat Musa Al Hiti Salam, Allah's book 'Zabur' on Hazrat Dawood Al Salam. These four books are major heavenly revelations.** Books were not revealed to other Prophets. . .There have been many such Prophets, on whom Allah did not make any minor or major revelation, and there were few on whom Allah made minor revelations. Such minor revelations are called Shahida."(E.T.C)*

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''दीन–ए–इस्लाम में सबसे पहले ईमान लाने वाले शख्स के बारे में कुछ इख्तलाख है, लेकिन बाद में एक राय यही बनी कि बुजुर्गो में ऐसा पहला आदमी अबूबकर साहब हुए, औरतों में हजूर खुदैजा हुई और बच्चों में हजरत अली हुए। एक राय यह भी है कि सबसे पहला शख्स हजरत खुदैजा को माना जायेगा, क्योंकि हजूर ने पहली बही उन्हीं को सुनाई थी।

हजूर को काफी जंगे लड़नी पड़ी थीं, जिन जंगों में उन्होंने खुद शिरकत की, उसके बारे में एक रवायत यह है कि उन्होंने 19 लड़ाईयों में खुद हिस्सा लिया था, जबकि दूसरी रवायत यह है कि ऐसी लड़ाईयों की तादाद जिसमें उन्होंने खुद शिरकत की, 17 थी। इन लड़ाईयों का बुनियादी सबब तो यही था कि हजूर दीन–ए–इस्लाम की तबलीग करते थे और दूसरे लोग उनकी मुखालफत करते थे।'' (पेज 65)

''There are some 'Ekhtlakh' regarding the first persons to have faith in the religion of Islam. However, it was subsequently decided that the first amongst the elderly

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people was Abu Baqr, Khudaija amongst women and Hazrat Ali amongst children. There is another view that Hazrat Khudaija would be considered to be the first person because the first 'Bahi' was read by Prophet Mohammad to him.

Prophet Mohammad had to contest many battles. As regards the battles participated by him, there is one line of thought giving the number of such battles to be 19, whereas another line of thought gives the said number to be 17. The basic cause of these battles was that Prophet Mohammad used to propagate the religion of Islam whereas others used to oppose the same." (E.T.C)

''पहले पैगम्बर बैतुल मुकद्दस की तरफ रूख करके नमाज पढ़ते थे, फिर खुदा के हुक्म के मुताबिक खान–ए–काबा की तरफ मुँह करके नमाज पढ़ने लगे।

हजरत बेलाल के बारे में मैं जानता हूँ। हजूर ने मस्जिदे नवबी पर सबसे पहली अजान देने का रूतबा इनको बख्शा था, इसी तरह से खान–ए–काबा को अजान देने का पहला मौका भी इन्हीं को बख्शा गया था। पहले यह गुलाम थे, हब्शी था। हब्शी से मतलब इस बात का है कि वह हब्शा के रहने वाले थे।'' (पेज 69)

*"**Originally Prophet Mohammad used to offer namaz facing sacred Baitul, and then on command of God, he started offering namaz facing 'Khan-e-Kaba**'.*

I know about Hazrat Bilal. Prophet Mohammad had given him the opportunity to give the first 'Ajaan' call from the Nabvi mosque. Similarly, the opportunity of giving the first 'Ajaan' call from 'Khan-e-Kaba', was also given to him. Earlier he was slave i.e. 'Habshi'. By 'Habshi', I mean he was resident of Habsha." (E.T.C)

''तिरमिजी शरीफ हदीस की किताब है, जिसे इमाम अबू ईसा

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तिरमिजी ने लिखा है। मैंने उसे भी पढ़ा है।

उन दोनों किताबों में मस्जिद पर मीनार और गुम्बद न होने की बात नहीं लिखी गई। . . . मैंने जामे सहीलिल बुखारी नाम की किताब पढ़ी है। इस किताब को इस्लामी कानून के बारे में सारी दुनिया में मान्यता दी जाती है।'' (पेज 92–93)

*''**'Tirmiji Sharif' is a book of 'Hadis', which is written by Imam Abu Isa Tirmiji. I have read it as well.***

***The absence of minarets and domes has not been in both the said books. . . . I have read the book titled 'Sahilil Bukhari'. This book is recognized all over the world as regards the Islamic law.**" (E.T.C)*

3278. Regarding the structure and construction of a Mosque, he says:

*''**जबरदस्ती किसी की जमीन पर जो इमारत बनायी गयी वह मस्जिद ही नहीं होगी इसलिए उसका जायज या नाजायज होने का कोई सवाल ही नहीं है।** किसी के भी इबादतखाने को तोड़ना इस्लाम में मना है इसलिए उसे तोड़कर मस्जिद बनाने का सवाल ही पैदा नहीं होता। अगर किसी गिरे हुए मंदिर के मलबे को मालिक लोग बेंच दें तो उसे खरीदकर मस्जिद बनाने की कोई मनाही नहीं है। यह दूसरी बात है कि वह इस मलबे को जबरदस्ती हथिया कर मस्जिद नहीं बना सकते।'' (पेज 24)*

*"**A building built on somebody's land by force will not be a mosque. So, there is no question of its being legitimate or illegitimate.** Demolishing any place of worship is forbidden in Islam. So, there is no question of breaking the same and building a mosque instead. If the debris of any fallen temple is sold by its owner, then there is no prohibition on building a mosque by purchasing such materials. It is another thing that they cannot build a*

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mosque by forcibly grabbing this debris." (E.T.C)

"मस्जिद साफ–सुथरी और पाक जगह पर बनायी जाती है। मस्जिद उस जगह का नाम है जहां अल्लाह की इबादत के लिए जमीन को वक्फ किया गया हो। चाहे वहां पर इमारत बनायी जाए या न बनायी जाए। ***वक्फ करने का काम उस जमीन का मालिक ही कर सकता है। हदीस में मस्जिद की शक्ल और सूरत के बारे में जिक आया है।*** *हदीस की मशहूर किताब–मिष्कात शरीफ है। एक हदीस तो यह है कि अपनी मस्जिद को चाहे बगैर मीनार के बनाओ मुण्डी बनाओ और दूसरी हदीस में सादगी रखने का भी हुक्म दिया गया है। यह किताब मिश्कात शरीफ अरबी जबान में है। इसका उर्दू में भी कई लोगों ने तरजुमा किया है।" (पेज 25)*

"A mosque is built at a tidy and holy place. Mosque is the name of a place where land is given in 'Waqf' for the worship of Allah, irrespective of the fact whether a structure is raised or not there. ***Only the owner of the land can give it in 'Waqf'. 'Hadis' speaks of the face and shape of the mosque. A famous book on 'Hadis' is 'Mishkat Sahrif'.*** *There is also a 'Hadis' to construct a mosque even without a minaret or in a bare shape. And the other 'Hadis' has ordained simplicity to be maintained. This book 'Mishkat Sharif' is in Arabic. Many people has rendered it in Urdu too." (E.T.C)*

"कुरान शरीफ में मस्जिद के शक्लों सूरत का जब जिक्र ही नहीं है तो यह सवाल ही पैदा नहीं होता कि उसके मुताबिक मीनारें बनायी जाएं या न बनायी जाएं मीनार बनाने का हुक्म कहीं किसी किताब में नहीं मिलता।" (पेज 25)

"When there is no mention of size and shape of mosque in the holy Quran, there is no question of minarets being built or not being built in accordance with it. There is no command in any book for building minarets." (E.T.C)

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''किसी भी किताब में गुम्बद के बनाए जाने या न बनाए जाने का भी हुक्म नहीं मिलता। हदीस में ऐसा हुक्म नहीं है कि मस्जिद के लिए एक दीवार ही काफी है। . . बिना किसी तामीर के भी मस्जिद बन सकती है।''(पेज 26)

''No book decrees for dome to be built or not to be built. There is no decree in 'Hadis' which says that a wall alone is sufficient for a mosque. . . .There may be a mosque even without any construction.'' (E.T.C)

''मस्जिद की हिफाजत के लिए अगर उसे बन्द करके कभी ताला लगाया जाये, तो कोई हर्ज नहीं है, . . . हर मस्जिद के लिए किसी मुतवल्ली का होना जरूरी नहीं है। मुतवल्ली के जिम्मे कोई मजहबी फरायज नहीं होते। उसका काम इन्तजाम देखने का है। इमाम का पद एक धार्मिक पद है। वह नमाज पढ़ाने का मुखिया होता है, तमाम मजहबी काम उसके जिम्मे नहीं होते। . . .मस्जिद में इमाम की नियुक्ति मुतवल्ली करता है। . . .कुछ मस्जिदों में बकायतदा बजाडता मोअज्जिम होते हैं और कुछ मस्जिदों में कोई भी नमाजी आान देने का काम कर देता है। मोअज्जिम की नियुक्ति भी मुतवल्ली करता है।'' (पेज 27)

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''If a mosque is ever closed and locked for its safety, that is not objectionable. . . . .Every mosque needs to have a Mutvalli. Mutvalli is not assigned with any religious functions. His job is to look after its management. The office of Imam is a religious post. He is the head pronouncing namaz. He is not assigned with many religious functions. . . . . Mutvalli appoints Imam at a mosque. . . . Some mosques have Muazzins in a due process, and in certain mosques, any namazist performs the job of giving 'Ajaan'(Ayaan) call.'' (E.T.C)

*''**मस्जिद की सफाई करना, सफे बिछाना या वजू के लिए पानी का इन्तजाम करना मोअज्जिन के फरायज में शामिल नहीं है, उसका काम अजान देने का होता है**' चाहे इमाम हो, चाहे मोअज्जिन हो या कोई दूसरा आदमी हो, जो एक ही जगह*

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पर काफी अर्से तक रहेगा, उसे उस जगह पर बनी हुई इमारत, उसकी बनावट, उसकी छत और दीवारों की सजावट इन सब चीजों की जानकारी वक्त के साथ अपने आप हो जायेगी। अगर किसी इमाम को इस बात की जानकारी हो कि किसी इमारत में पशु पक्षियों के चित्र या मूर्तियॉ बनी हुई हों, किसी मनुष्य की मूर्ति बनी हुई हो या किसी स्त्री की सीधी या टेढ़ी मूर्ति या चित्रण हो, तो नमाज पढ़ाने से पहले वह उन्हें हटाने की कोशिश करेगा, लेकिन अगर वह ऐसा नहीं करता है या कर पाता है, तो भी नमाज तो हो ही जायेगी। ऐसी नमाज की नवयत और सबाब के बारे में मैं पहले ही कह चुका हूँ कि वह कुछ हालात में मकरूह हो जायेगी और कुछ में मकरूह भी नहीं होगी। ***अगर इमाम इस किस्म के चित्र और आकृतियों को हटाने की कोशिश नहीं करता, तो यह उसका जुर्म है।***

अगर किसी मस्जिद की इमारत में बीच में कोई ऐसा पार्टीशन डाल दिया जाये, जो जंगले की दीवार टाइप का हो और जिससे वह दोनों हिस्से उस पार्टीशन के बावजूद भी आमने सामने नजर आते हों, तो भी नमाज पढ़ी जा सकती है, ऐसा पार्टीशन के एक तरफ अगर मूर्ति–पूजा हो तो भी दूसरी तरफ नमाज पढ़ी जा सकती है, लेकिन इस सूरत में इमाम का यह फर्ज होगा कि वह वहॉ से उन मूर्तियों को हटवाने की कोशिश करे।''

(पेज 28)

*''**Cleaning of the mosque, laying mattresses or arranging water for 'Vaju' is not included in the duties of Muazzin. It is his job to give 'Ajaan'(Ayaan) call.** With the passage of time, a person who stays at one and the same place for quite sometime – whether he is an Imam or a Muazzin or any other person – will naturally come to know all about the structure built there and about its construction, ceiling and wall decorations. If an Imam has the knowledge that pictures of animals and birds, or idols, or statues of human beings, or straight or crooked images or representations of any women are engraved in any structure , he will try to remove such engraving before the*

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recital of namaz. But if he does not do so even then the namaz will get offered. I have already spoken about the status and efficacy of such namaz. It will be Mawrooh in some circumstances and it will not be so in some circumstances. ***If the Imam does not try to remove this types of pictures and shapes, it will be a crime on his part.***

If any partition, which may be in the shape of grill wall and which may even allow both the portions to be seen face to face even after such partition, is made in the middle of the structure of any mosque, even then there may be idol worship on one side of such partition and namaz may be offered on its other side. But in this circumstance, it will be the duty of Imam to try to get those idols removed from there." (E.T.C)

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*"**मस्जिद कब्रिस्तान में भी बनाई जा सकती है, बशर्ते कि वह जगह, जहाँ मस्जिद बनाई जा रही हो, ऐसी हो, जिसमें किसी की कब्र न पड़ती हो।** इस तरह की मस्जिद तो हमारे मेंहदावल में ही है, जो कब्रिसतान के बीच में बनी हुई है। कुछ लोग कब्रिस्तान की हिफाजत के लिए और इन्तजाम के लिए मुलाजिम रख लेते हैं, ऐसे मुलाजिमीन को तकियेदार कहा जाता है।" (पेज 34)*

*"**A mosque may be built even at a graveyard, provided that there lies no grave at the place where such mosque is being built.** This type of mosque is certainly situated at our place 'Mehdawal' and it is built in the centre of the graveyard. Some people engage employees for safety and management of graveyard; such employees are called 'Takiyedaar'."(E.T.C)*

"लेकिन यह जरूरी नहीं है कि हर कब्रिस्तान के लिए तकियेदार हों।

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खानवाह उस जगह को कहते हैं, जहॉ कोई बड़ी मजहबी शक्सियत बैठकर, रहकर इबादत, रियाजत करती है और अपने मुरीदों को दीनी मजहबी बाते बताती है, उस जगह का नाम खानकाह है। . . . खानकाह के बनावट का कोई विशेष रूप नियमित नहीं है। खानकाह के लिए दरगाह का होना कोई जरूरी नहीं है। दरगाह में सज्जादा नसीन होते हैं। सज्जादा नसीन दो शब्दों का जोड़ है यानी कि ''सज्जादा जमा'' नशीन'' इसका अर्थ है जगह पर बैठने वाला। खानकाह पर भी सज्जादा नशीन होता है। सज्जाद के अर्थ हैं–बहुत ज्यादा सजदा करने वाला। सज्जादा के मायने हैं–बैठने वाली जगह। सज्जाद और सज्जादा दो मुख्तलिफ शब्द हैं। सज्जाद के मायने चादर या दरी नहीं है।'' (पेज 35)

''But it is not necessary for every graveyard to have a 'Takiyedaar'

The name of 'Khankah' is given to a place where any distinguished religious person seats himself, performs worship and tells his followers about religious matters. That place is called 'Khankah'. No particular shape is fixed for 'Khankah'. It is not necessary for any 'Khankah' to have a 'Dargah'. There are 'Sajjada Naseens' in a 'Dargah'. The term 'Sajjada Naseen' is coined by putting two words together. That is to say, 'Sajjada Jama Naseen' means 'one who sits at a place'. A Khankah also has a 'Sajjada Naseen'. 'Sajjad' means 'one who does Sajda a great deal'. 'Sajjada' means 'a sitting place'. 'Sajjad' and 'Sajjada' are two different words. 'Sajjad' does not mean 'Chadar'(sheet) or 'Dari'(mattress).'' (E.T.C)

''मैंने अपने बयान में जहॉ मन्दिर की जगह मस्जिद बनाये जाने की कही है, वह सीधी सी बात यह है कि अगर मन्दिर के गिरने के बाद साफ जमीन की मल्कियत पर कोई तनाजा न हो और मालिक अपनी मर्जी से उस जमीन को दे दे, तो उस पर मस्जिद बन सकती है। ***मैंने यह बात महज अपनी राय से नहीं की है, बल्कि शरियत के हिसाब से की है और जैसा किताबों में लिखा गया है, उसको***

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मद्देनजर रखते हुए भी है। यह बात शरियत की बड़ी किताबों में लिखी है, जैसे कि फतवाये–आलमगीरी। . . .यह बात उसके चेप्टर ''बाबुल मसाजिद'' में लिखी हुई है।'' (पेज 36)

''My statement about building a mosque at the site of the temple, basically means that if there is no dispute on the ownership of the land vacant after demolition of temple and if its owner donates the land out of his free will, then mosque can be built over there. ***I have not stated this only on basis of my views and instead it is in accordance with 'Shariyat' (the body of doctrines that regulate the lives of those who profess Islam) and the books. It is written in authentic books of 'Shariyat' such as 'Fatwaye Alamgiri'. .This fact is contained in its chapter 'Babul Masajid'.*** *''(E.T.C)*

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''इसी तरह से शरियत में यह भी लिखा हुआ है कि अगर मस्जिद की दीवारों या खम्बों पर किसी जानदार चीज की तस्वीरें या मूर्तियां बनी हुई हो, तो वहॉ चन्द सूरतों मे की गई नमाज मकरूह होगी। ***यह फिकह की ''हिदाया'' में लिखा हुआ है।*** *यह किताब भी मैं साथ लेकर नहीं आया, अगर हुक्म हो तो ला सकता हूँ।* ***यह हिदाया अव्वलेन में लिखा है।*** *मैंने यह बयान किया है कि अगर मस्जिद के किसी हिस्से में मूर्तियॉ रखी हुई हैं, तो भी नमाज जायज होगी। इसके साथ मैंने और भी जुमले कहे थे।* ***यह भी बात ऊपर वाली किताब हिदाया में आई है। यह बात भी अव्वलैन नामक चैप्टर में है। यह बात फिकह की सभी मशहूर किताबों में मिल सकती है। दूसरी किताबें हैं– आलमगीरी, फतावा काजी खॉं, दुर्रे मुख्तार, रद्दुल मोहतार वगैरह।*** *अगर किसी मस्जिद में कई वर्षो तक चाहे वह सैकड़ों या हजारों में क्यों न हो, नमाज नहीं पढ़ी जाये, तो भी कोई फर्क नहीं पड़ता, वह मस्जिद बरकरार रहेगी। अगर ऐसी मस्जिद पर हिन्दुओं का कब्जा रहा हो या वहॉ सैकडों वर्षो तक उनकी पूजा–पाठ भी होती रही हो, उसे बावजूद भी वह मस्जिद बरकरार रहेगी।* ***(अजखुद कहा कि***

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खानाये–काबा के गिर्दागिर्द बहुत से बुत बड़े जमाने तक रखे रहे, मगर उसके मस्जिद होने में कोई फर्क नहीं पड़ा)।" (पेज 37)

"Similarly it is mentioned in the 'Shariyat' that if picture or idol of any living being exists over the walls or pillars of mosque, then the namaz offered there would be 'Makruh' (undesirable) under certain situations. ***It is so mentioned in the 'Hidaya' of 'Fiqh'.*** *I have not brought along even this book, but if directed, I can bring it.* ***It is mentioned in 'Hidaya Awwalen'.*** *I have stated that even if idols have been kept in some part of a mosque, the namaz offered there would be proper. I had said many other things along with it.* ***This fact is also mentioned in the aforesaid 'Hidaya' book. This fact is also contained in the chapter titled 'Awwalen'. This fact can also be found in all famous books of 'Fiqh'. The other books are- Alamgiri, Fatwa Kazi Khan, Durre Mukhtar, Raddul Mohtar etc.*** *Even if namaz is not offered in any mosque for years, may be hundreds or thousands, it shall have no effect and it would remain a mosque. Even if the Hindus had been in possession of such mosque and had been offering their prayer-worship over there for hundreds of years, then also it would remain a mosque.* ***(Stated on his own that many big idols were kept of very long period around the Khane-kaba, but it had no effect on its status of mosque).*** *" (E.T.C)*

"हजरत मो0 साहब ने मस्जिद तामीर करवाई थी। मक्का से जब वह मदीना तशरीफ ले गये तो वहां उन्होंने एक मस्जिद बनवाई थी जो मस्जिद कबा के नाम से मशहूर है। फिर शहर मदीना में उन्होंने एक बड़ी मस्जिद तामीर कराई जो आज भी नबवी

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मस्जिद के नाम से मशहूर है। *इन मस्जिदों में दीवारों बनाई गयी और छत के लिए खजूर की पत्तियॉ और डालियों का इस्तेमाल किया गया। वहां पर गुम्बद बनने का सवाल ही पैदा नहीं होता था क्योंकि छते खजूर की पत्तियों और डालियों की थी। इनमें मीनारे भी नहीं बनवाई गयीं। बहुत से कैलेण्डर हैं जिनमें इन दोनों मस्जिदों की तस्वीरें छपती रहती है। लेकिन यह तस्वीरें मौजूदा तामीरात की है, न कि शुरू में बनाई गयी मस्जिदों की।'' (पेज 56)*

*''**Prophet Mohammad had built a mosque**. When he went to Medina from Mecca, he built a mosque over there **which is famous as Kaba mosque. Thereafter, he built a big mosque in the city of Medina, which is still famous as Nabvi mosque. Walls were built in these mosques and palm leaves & branches were used for roof.** The issue of construction of domes did not arise over there because the roof were made up of palm leaves & branches. Minarets were also not built in them. There are many calenders, which publish the photographs of these two mosques. However, these photographs are of the existing constructions, and not of the mosques built originally.''(E.T.C)*

''मैंने मस्जिदों की तर्जे तामीर की बाबत जो बयान दिया है, वह महज लोगों का सुनी–सुनाई बातों पर नहीं है, बल्कि मैं ने ऐसा किताबों में पढ़ा है। मैंने यह किताओं में पढ़ा है, सुना नहीं है। फिकेह की तमाम मशहुर किताबों में यह लिखा हुआ है कि मस्जिद कब्रिस्तान में भी बनाई जा सकती है। ***इस वक्त जहॉ तक मेरी याद जाती है, यह बात ''हिदाया'' में भी लिखी हुई है।*** *इस किताब को बुरहानुद्दीन अबुल हसन अली ने लिखा है। यह ताशकन्द के इलाके के रहने वाले थे। इसी किताब में उन्होंने यह भी लिखा है कि जहॉ पर बुत रखे हुए हों, वहॉ पर भी नमाज पढ़ी जा सकती है। उस किताब में यह भी लिखा हुआ है कि जहॉ पर गैरमुस्लिम लोग हों और अपनी पूजा–पाठ करते हों, वहॉ पर भी नमाज पढ़ी जा सकती है। यह किताब हिजरी की पॉचवी सदी में लिखी*

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गयी है।'' (पेज 62)

"My statement regarding the manner of construction of mosques, is not merely based on hearsay and instead I have read so in books. I have read it in books and not heard the same. In various famous books of 'Fiqh' (Islamic jurisprudence) it is mentioned that mosque can be built even in graveyards. ***To the best of my present memory, this fact is mentioned in 'Hidaya' as well.*** *This book has been written by Burhanuddin Abul Hasan Ali. He was a resident of Tashkand. In this very book he has also written that namaz can be offered even at places where idols have been kept. It has also been written in said book that namaz can be offered even at places where non-Muslims are present and perform their prayer-worship. This book has been written in fifth century of the Hizri era." (E.T.C)*

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''मस्जिद में मीनार बनाने की मनाही है, जैसा कि मैं पहले बयान कर चुका हूँ। लेकिन वह मनाही सख्ती वाली नहीं है, हल्की–फल्की है, जिसका मतलब है कि मीनार को बनाना पसन्द नहीं किया गया हैं यह बात मैंने हदीस शरीफ में पढ़ी है। यह रवायत मशहूर किताब ''बैहाकी'' में दर्ज है। इस बाबत हदीस शरीफ में यह हजूर पैगम्बर साहब का ही कौल है। कौली हदीस और कौली सुन्नत एक ही चीज है और यह बात मीनारों वाली इस दर्जे में आती है।'' (पेज 63)

"As already stated by me, building of minarets is prohibited in mosques. However, that restriction is not strict and instead is casual, which means that construction of minarets has not been appreciated. I have read this in 'Hadis Sharif'. This practice is contained in the famous book 'Baihaki'. The words of Prophet Mohammad in this behalf, are contained in 'Hadis Sharif'. 'Kauli Hadis' and 'Kauli Sunnat' are same and this fact of minarets, falls in

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this category." (E.T.C)

*''**मस्जिद बनाने के लिए जमीन को सिर्फ कामिल मालिक यानि जो मुक्कमल तौर पर उस जमीन का मालिक हो अपनी मर्जी से छोड़ेगा तो मस्जिद बनेगी।** वह उस जमीन को वक्फ करेगा और वक्फ अपनी मर्जी से होता है।'' (पेज 105)*

*"**A mosque can be built over a land only when its legal owner voluntarily donates the land for the same.** He would execute Waqf of that land, and the Waqf is executed voluntarily." (E.T.C)*

''किसी मस्जिद के लिए जमीन को वक्फ करने का सीधा तरीका है कि उसका मालिक उसे वक्फ कहकर छोड़ दे।'' (पेज 106)

"The simple manner of executing Waqf of land for any mosque, is that its owner leaves it by saying Waqf."(E.T.C)

''जिस चीज को भी वक्फ किया जाये, वाकिफ उसका पूरा कामिल मालिक होना चाहिए और वक्फ उसकी पूरी मर्जी से होना चाहिए। वक्फ चाहे जबान से इकरार करके करे और चाहे दिल से इकरार करके करे, वही काफी है। . .पहला मुतवल्ली वाकिफ ही होगा, फिर वह अपनी मर्जी से जिसे चाहे मुतवल्ली बना दे।. . .मैंने किसी तारीख की किताब में ऐसा नहीं पढ़ा कि विवादित भवन के बाहरी हिस्से में कोई चबूतरा रहा हो। इस तरह की बात मेरे जातीय इल्म में भी नहीं है। मुझे मालूम नहीं कि ऐसे किसी चबूतरे पर मूर्ति स्थापित करके हिन्दू लोग पूजा करते रहे हों।'' (पेज 112)

"Whatever is given in Waqf, must be wholly owned by its owner and the Waqf must be executed voluntarily. The execution of Waqf is good enough, whether executed orally or in writing. . . .The first Mutwalli is the Waqif (executor of Waqf) and then subsequently he may appoint anyone on his will. . . . I have not so read in any history book that there was any platform in outer part of the disputed structure. Such fact is not within my personal knowledge as well. I do not know that Hindus installed and worshiped

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idols over any such platform." (E.T.C)

*"**किसी मंदिर को तोड़ने की इस्लाम में इजाजत नहीं है।** हम किसी मंदिर को तोड़कर मस्जिद नहीं बनायेगें। अगर मंदिर में मूर्ति स्थापित हो तो मूर्ति को भी नहीं तोड़ेगे। उस मंदिर को या मूर्ति को तोड़कर वहां मस्जिद बनाने का सवाल ही पैदा नहीं होता। . . मुझे मालूम नहीं कि जिस जगह पर मुतदाविया इमारत बनी हुई थी वह नजूल सरकार थी या नहीं। . . . .मैं 1962 में अपनी तालीम पूरी करने के बाद ही पढ़ाने लगा था और 1976 में सदर मुदर्रिस (प्रधानाचार्य – प्रिन्सिपल) लग गया था।" (पेज 115)*

*"**Islam does not permit the demolition of any temple.** We would not demolish any temple and build a mosque. If idols have been installed in the temple, then would not damage the idols as well. The issue of building a mosque over there after demolishing that temple or idol, does not arise. . . . .I do not know whether the place where the disputed structure stood, was public Nazul or not. . . . I started teaching in 1962 just after completing my education and became the Principal in 1976." (E.T.C)*

3279. PW 11, Mohd. Burhanuddin has also towed the same line in his cross-examination. He has said:

"मुस्लिम कानून के चार उसूल है, जिन्हें अंग्रेजी बोलने वाले सोर्स कह सकते हैं। उनके नाम हैं– कुराने मजीद, सुन्ना (हदीस), इजमा, कयास। शरियत का मतलब है– वह कानून जो उल्लाह ने अपने बन्दों के लिए दिया है।" (पेज 3–4)

"There are four principles of Muslim law, which can be termed as 'source' by English speaking people. They are- holy Quran, 'Sunna' (Hadis), 'Ijma', 'Kayas'. 'Shariyat' means the law laid down by 'Allah' for his fellows." (E.T.C)

"यह ठीक है कि ऐसी कोई तफशील कुरान शरीफ में भी नहीं है कि मस्जिद की क्या शक्ल व सूरत हो या वहॉ पर पशु–पक्षी, देवी–देवता या

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आदमी व औरत के शक्लों के बनने पर क्या होगा या गिरी हुई मस्जिद भी मस्जिद मानी जायेगी या उसके चारो तरफ किसी इबादतगाह के होने का क्या असर होगा वगैरह–वगैरह।'' (पेज 4)

''It is true that the holy Quran does not contain any description either regarding the form & shape of a mosque, or as to what would happen in case of depiction of animals-birds, Gods-Goddesses or men & women faces over there, or will a collapsed mosque also would be considered a mosque, or as to what would be the effect of presence of any other worship place around it, etc.''(E.T.C)

''मस्जिद का मतलब है कि नमाज पढ़ने की जगह यानी सजदे की जगह। नमाज या सजदा हर पाक जगह पर अदा किया जा सकता है। इस मायने में मस्जिद के लिए किसी खास जगह की जरूरत नहीं है। मस्जिद अल्लाह के लिए बनाई जाती है, ताकि उसका नाम लिया जा सके। मैं यह बात हदीस की किताबों के मुताबिक बता रहा हूँ और कुरा शरीफ में भी यही कहा गया है। . . . . मस्जिद बनाने के लिए यह जरूरी नहीं कि वहॉ पर मुसलमानों की आबदी हो। मस्जिद मुसाफिरों के लिए भी बनाई जाती है। मुतवल्ली का ताल्लुक वक्फ से है, मस्जिद से नहीं, इसलिए जरूरी नहीं कि हर मस्जिद का मुतवल्ली हो। . . . .शरियत के मुताबिक मुतवल्ली उसी वक्फ का होगा जो अल्लाह के लिए किया गया है। जो जायदाद अल्लाह के लिए वक्फ की गई है, उसकी देखभाल करना मुतवल्ली का काम है। उस वक्फ से ताल्लुक रखने वाला जो भी काम है, चाहे वह दीनी काम है, चाहे इन्तजामिया काम है, उसको निभाना मुतवल्ली का काम है।'' (पेज 4–5)

''Mosque implies the place of offering namaz i.e. the place of 'Sajda' (bowing down in reverence). Namaz or 'Sajda' may be offered at all holy places. As per this meaning, no particular place is required for a mosque. A mosque is built for Allah, so that he can be remembered. I am stating this fact in accordance with the books of 'Hadis', and similar versions are found in holy Quran as

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well. . . . . .Existence of Muslim populace is not essential for building a mosque at that place. Mosque is built for travelers as well. A 'Mutwalli' is related to Waqf and not mosque, and as such it is not necessary that there is a 'Mutwalli' of every mosque. . . .According to 'Shariyat' (the body of doctrines that regulate the lives of those who profess Islam), a 'Mutwalli' shall exist in case of only such Waqf, which is executed in the name of Allah. It is the duty of the 'Mutwalli' to look after the property, whose Waqf has been executed in the name of Allah. It is the duty of the 'Mutwalli' to perform all the duties related to Waqf, whether religious or managerial." (E.T.C)

"अजान सुनने के बाद ही नमाज होती है, लेकिन अगर कोई मशवाता हालात हों तो इमाम साहब इस बात की तस्दीक कर लेंगे कि अजान दी गई है या नहीं और फिर नमाज पढ़ायेंगे। . . . .जुम्मे की नमाज के लिए भी यह लाजिम नहीं कि अजान हो। यह दूसरी बात है कि उसके लिए ताकीद दूसरी नमाजों से ज्यादा है। . . . .अजान के बगैर भी नमाज हो सकती है, यह फिकेह की किताबों में लिखा हुआ है।

शरियत के मजमुए का नाम फिकह है। डिक्शनरी के हिसाब से फिकेह का मतलब है "बुद्धि", "इण्टेलीजेन्स" और इस्तलाही (प्रैकिटल तौर) तौर से इसका मतलब है– कुरान, हदीस, इजमा, कयास से जो मसायल निकले हैं, उन्हें शरियत कहते हैं। . . . . .शरियत में नमाज से पहले अजान का पढ़ना सुन्नत है।" (पेज 6)

"Namaz is offered only after hearing the 'Ajaan' call, but in case of any 'Mashwata' (doubtful) circumstance, the Imam shall verify whether the 'Ajaan' call has been given or not, and thereafter shall administer the namaz . . . . It is not 'lajim' (necessary) to give 'Ajaan' call for the namaz of 'Jumma'. It is different that there is more 'Taqid' for it in comparison to other namaz. . . . .It is mentioned in the

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books of 'Fiqh' (Islamic jurisprudence) that namaz can be offered even in absence of 'Ajaan' call.

'Fiqh' is the summary of 'Shariyat'. The dictionary meaning of 'Fiqh' is 'wisdom', 'intelligence' and practically 'Shariyat' means the 'Masail' (problem/topic/ issue) of Quran, Hadis, Ijma, Kayas. . . . .Giving of 'Ajaan' call before namaz, is Sunnat in 'Shariyat'." (E.T.C)

"फिकेह की बहुत अहम किताबें कई हैं। . . मेरे हिसाब से बहुत अहम किताबों में – रद्दुलमुख्तार मशहूरे शामी के नाम से मशहूर है। इसके लेखक का नाम–मोहम्मद अमीन इबने आबीदीन शामी है। . . शरियत और फिकेह में कोई बुनियादी फर्क नहीं है। फिकेह में शरियत को तरतीब दी गई है। शरियत को पढ़कर ही और इस पर गौर करके फिकेह में तरतीब दी गई है। हिदाया में मस्जिद की बाबत काफी कुछ कहा गया है। लेकिन उसमें मस्जिद की शक्ल की बाबत कोई बुनियादी हिदायत नहीं है।. . . यह ठीक है कि किसी गैर की जमीन पर जबरदस्ती मस्जिद बनाने की मुमानियत भी है। अगर किसी दूसरे की जमीन साबित हो तो उसके मालिक की मर्जी के बगैर वहॉ पर मस्जिद कायम नहीं होगी। . . .अगर गैर मुसिलम की या चाहे मुस्लिम की भी अपने कोई जायदाद हो तो उसे किसी भी सूरत में तोड़कर या तरमीम करके वहॉ पर जबरदस्ती मस्जिद नहीं बनाई जा सकती। अगर ऐसा साबित हो जाता है तो वह मस्जिद जायज नहीं मानी जायेगी। यह बातें जो मैं बतला रहा हूँ, यह फिकेह की है और ऐसा हिदाया में पाया जाता है और भी कई किताबों में पाया जाता है। ऐसा फतावा आलमगिरी में भी पाया जाता हैं फतावा हिन्दीया और आलमगीरी एक ही किताब के नाम हैं। . . कम से कम 10–12 उलेमाओं ने औरंगजेब की रहनुमाई में यह किताब लिखी हैं। जिन बातों का मैंने जिक्र किया है, यह चीजें भी उस किताब में आई हैं।" (पेज 7–8)

"There are many important books of 'Fiqh' (Islamic jurisprudence). . . . . .According to me, out of the very important books 'Raddulmukhtar' is famous as 'Mashhoore Shami'. Its writer is Mohammed Amin Ibne Abidin Shami. . . . . There is no fundamental difference between

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'Shariyat' and 'Fiqh'. 'Shariyat' has been given 'Tartib' (sequence/arrangement) in 'Fiqh'. After reading the 'Shariyat' and giving it due thought, has it been given 'Tartib' in 'Fiqh'. The 'Hidaya' discuss mosques in detail, but it does not contain any fundamental instruction regarding the form of a mosque. . . . . It is true that there is a restriction on forcefully building a mosque over someone else's land. If the ownership of someone is proved over a land, then a mosque would not be built over there in absence of the consent of owner. . . .If any property belongs to a non-Muslim or even a Muslim, then a mosque cannot be forcibly built over there under any circumstance by demolishing the same. If it is so proved, then the mosque would not be considered legal/proper. The facts being stated by me, are of 'Fiqh' and are found in 'Hidaya' as well as in many other books. It is so found in 'Fatwa Alamgiri' as well. 'Fatwa Hindiya' and 'Alamgiri' are the names of the same book. . . . . .This book has been written by at least 10-12 Ulemas under the patronage of Aurangzeb. The facts stated by me, are also contained in that book." (E.T.C)

''सुन्ना और हदीस तकरीबन एक ही चीज हैं। हजरत मोहम्मद साहब ने जो काम किये या जो उन्होंने बाते फरमाई या जो बातें उन्होंने दूसरे आदमियों को करते हुए देखा और उनको मना नहीं किया या जिन बातों को उन्होंने मन्जूरी दे दी वह सब सुन्ना में आती हैं। फैली, कौली और तकरीरी इस तीन शाखाओं में सुन्ना को बॉटा जा सकता है। उनको बोलते हैं– सुन्नते फेली, सुन्नते कौली और सुन्नते तकरीरी। इन पर सैकड़ों किताबें लिखी गई हैं। इसी को हदीस कहते हैं। हदीस लिखने वालों में सबसे पहले अब्दुला इब्ने अम और इब्ने आस और अबूब इबने हज्म और हजरत अनस के नाम आते हैं। . . . . जो लोग पहले मुखतलिफ हदीसों को जबानी याद कर लेते

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थे, उनका निचोड़ सबसे पहले तरतीब देने वालों में इमाम थे, मालिक जिनकी किताब आज भी पाई जाती है। . . . . .उसमें मस्जिद की बनावट यानी शक्ल व सूरत के बारे में कोई जिक्र नहीं है।'' (पेज 8)

"'Sunna' and 'Hadis' are almost the same thing. The acts of Prophet Mohammad or his sayings or the things seen by him being done by others and not objected by him or the things approved by him, all fall within 'Sunna'. 'Sunna' can be divided in three branches viz. 'Faily' (acts), 'Kauli' (promises) and 'Takriri' (preachings). They are called 'Sunnate Faily', 'Sunnate Kauli' and 'Sunnate Takriri'. Hundreds of books have been written on them. This is called 'Hadis'. Amongst the first ones to write the 'Hadis' are Abdul Ibne Aam, Ibne Aas, Abu Ibne Hazm and Hazrat Anas. . . . . .The first Imam to have memorized different 'Hadis' and summarized them, was Malik whose book is still available. . . . . It does not mention about the construction i.e. form and shape of mosque." (E.T.C)

''मैंने कभी कोई कनाती मस्जिद नाम का शब्द नहीं सुना। अगर कोई जगह तीन तरफ से गैर मुस्लिम इबादतगाहों से घिरी हुई हो तो वहॉ पर नमाज पढ़ी जा सकती है, किसी हदीस में इस पर मुमानियत नहीं है। . . . . . अगर किसी इमारत में सिर्फ दो दरवाजे जाने के लिए हों, पूरब और उत्तर की तरफ और उन्हीं दोनो दरवाजों पर हिन्दुओं के पूजन स्थल हों, तो भी अन्दर नमाज पढ़ी जा सकती है, बशर्ते कि अन्दर जाने का रास्ता हो। ऐसा जिक्र फिकेह में आया है, हदीस में ऐसी तफसीलात नहीं हैं।'' (पेज 9)

"I never heard the name of Kanati mosque. If any place is surounded on three sides by non-Muslim worship places, then also namaz can be offered over there, and none of the 'Hadis' prohibit the same.. . . . . If there are only two gates, in east and north, for entering any building,

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and worship places of Hindus exist at both the said gates, then also namaz can be offered inside it provided there is a way leading to it. It is so mentioned in the 'Fiqh', but no such detail is found in the 'Hadis'." (E.T.C)

"अगर वजू न किया हुआ हो और मस्जिद में वजू करने का इन्तजाम भी न हो और दूर–दूर तक पानी दस्तयाब न हो तो तयमुम करके नमाज अदा की जा सकती है। . . . .मैंने भी ऐसी मस्जिदें देखी हैं, जहॉ वजू के लिए पानी का इन्तजाम न रहा हो।" (पेज 9)

"Namaz can be offered even by performing 'Taimum' (substitute for Vazoo), if 'Vazoo' has not been performed and there is no arrangement in the mosque for performing 'Vazoo' and water is not 'Dastyab' (available) even at distant places . . . I have also seen such mosques, where there was no arrangement for performing 'Vazoo'."

(E.T.C)

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"किसी जमाने के उलमा एक मसले पर जब एक राय हो जायें तो वह इजमा कहलाता है। . . . मस्जिद की बनावट या शक्ल सूरत के बारे में कोई इजमा नहीं हुआ। ऐसा मसला अब तक उठा ही नहीं कि जिस मस्जिद के चारो तरफ कब्रिस्तान हो तो वहां नमाज पढ़ी जाये या नहीं। . . इस बात पर भी कोई इखतलाफ नहीं हुआ कि जिस इमारत के दो तीन या चारों तरफ भी कोई गैर मुस्लिम इबादत गाह हो तो वहॉ पर नमाज पढ़ी जा सकती है या नहीं, दरअसल वहॉ पर नमाज भी पढ़ी जा सकती है। ये मुद्दे हाल के हैं इन्हीं दिनों में इन्हें उठाया गया है इन पर अभी गौर हो रहा है क्योंकि अभी तक इखतलाफ किसी ने नहीं किया।" (पेज 10)

"When the Ulemas of a period become unanimous on any issue, the same is called 'Ijma'. . . . . There is no Ijma regarding the form or shape of mosque. Such an issue has not arisen till date as to whether namaz be offered or not in a mosque, which is surrounded on all sides by graveyard. . . .There has been no 'Ekhatlaf' (disagreement)

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on this issue as well as to whether namaz can be offered or not in a building which is surrounded on 2-3 or all sides by non-Muslim worship places. Actually namaz can be offered over there as well. These issues are recent and have been raised recently. They are still being considered because none has done Ekhatlaf' as yet." (E.T.C)

"मस्जिद बनने के बाद कभी खत्म नही होती। अगर मस्जिद वजूद में आ गयी तो वहॉ पर चाहे नमाज पढ़ी जाये या न पढ़ी जाये वह हमेशा मस्जिद मानी जायेगी। अगर वहॉ पर जमाती नमाज न भी पढ़ी गयी हो तो भी वहॉ पर मस्जिद रहेगी। अगर मस्जिद बनाने वाले ने तामीर मुक्कमल करके उसे लोगों के हवाले कर दिया तो भी ***वह मस्जिद मानी जायेगी चाहे वहॉ एक बार भी नमाज न पढ़ी गयी हो।*** *अगर तामीर करने वाले की नियत मस्जिद की थी और लोगों को मस्जिद बनाकर दे दी तो मस्जिद बन गयी।" (पेज 11)*

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"A mosque never ceases to exist after it is built. If a mosque has come into existence, then it will always be treated as a mosque even if namaz is offered over there or not. It would remain a mosque, even if the 'Jamati' (collective) namaz is not offered over there. If the builder of the mosque has delivered the mosque to people after completion of its construction, then also ***it will be treated a mosque even if namaz has not been offered over there even once.*** *If the intention of the builder was a mosque and he delivers a mosque to people after its constructions, then a mosque comes into existence." (E.T.C)*

*"***अगर कोई दूसरे लोग मस्जिद को गिरा दें तो भी वह जगह मस्जिद कहलायेगी ऐसा इज्मा है। ऐसा हर किताब में लिखा है। लेकिन ऐसी कोई खास मिसाल देने के लिए मेरे इल्म में नहीं है जहॉ इस तरह की बात हो या जहॉ मस्जिद गिराई गयी हो।** *. . . गिरायी हुई मस्जिद के स्थान को मस्जिद माना*

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*जायेगा इस बाबत इज्मा हर दौर में हुआ है। अगर कहीं मस्जिद गिरती है तो वह मस्जिद ही रहेगी इस पर हर जमाने के मौलानाओं का इत्फिाक रहा है ऐसा मैंने पढ़ा है। **ऐसा मैंने फिकह में पढ़ा है।** ये इज्मा इसलिए भी जारी हुआ कि आने वाले दौर के बहुत से मसायल पर भी गौर होता था और इसी तरह से इस इमकान का भी इज्मा बना।''*

(पेज 12)

*''**There is a 'Ijma' to the effect that if others demolish a mosque, then also that place would be called a mosque. It is so written in every book. However, there is no specific example in my knowledge where such a situation exists or where mosque has been demolished**. . . . The site of a demolished mosque, would always be treated as a mosque and a 'Ijma' to said effect has taken place in all times. I have so read that if any mosque collapses, then it would remain a mosque and the clerics of all times have been unanimous in this regard. **I have so read in 'Fiqh'.** Such a 'Ijma' was also issued because many future issues were also considered and accordingly a 'Ijma' of this 'Imkan' (probability/situation) was also formed.'' (E.T.C)*

''ये जिक्र फिकह की किताबों में आया है कि अगर किसी इमारत की दीवारों पर या खम्भों पर या सिवाये किबला वाली दिवार पर पशु पक्षी देवी देवता या और जीव जन्तुओं की तस्वीरें हों तो भी नमाज हो सकती है और अगर ऐसी इलामात किबला वाली दिवार पर हो तो भी नमाज हो सकती है हलांकि वो मकरूह हो जायेगी। अगर सजदे वाली दिवार और नमाजी के बीच में कोई खम्भा हो जिस पर ऐसे इलामात हो तो भी नमाज होगी लेकिन अगर ये अलामात नमाजी के बिलकुल सामने होंगे, तो ये नमाज मकरूह हो जायेगी।'' (पेज 12)

''It is mentioned in the books of 'Fiqh' that namaz can be offered even if pictures of animal, bird, God,

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Goddesses or living being exist on all the walls or pillars of any building except for the wall facing Kibla, and if such 'Ilamat' (symbol) exist on the wall facing Kibla, then also namaz can be offered although it would be 'Makruh' (undesirable). If there are such 'Ilamat' over a pillar in between the wall of 'Sajda' and the namazist, then also namaz would be offered but if these 'Alamat' (symbol) are immediately opposite the namazist then the namaz would become 'Makruh'." (E.T.C)

"शरीयत के अहकाम की पांच किस्में हैं वे हैं– 1. फर्ज 2. हराम 3. मकरूह 4. मन्दूब 5. जायज। इनको धार्मिक हुक्म कहा जा सकता है। . . . . हराम की किस्म में वो काम आते हैं जिनकी मनाही की गयी है। वो मनाही बहुत सख्ती और पक्की दलीलों से की गयी हैं मकरूह में दिये गये कामों की मनाही की गयी है लेकिन उतनी सख्ती से नहीं। जायज की किस्म में वो काम आते हैं जो किये भी जा सकते हैं और न किये भी जा सकते हैं। उनके करने पर कोई सबाब नहीं और न करने पर कोई गुनाह नहीं।" (पेज 14)

"There are five kinds of 'Ahkam' (ordain) of 'Shariyat'- 1. 'Farz' (duty), 2. 'Haram' (forbidden act), 3. 'Makruh' (undesirable), 4. 'Mandub' (representative/ delegate), 5. 'Jayaz' (justified/legal). They can also be termed as tenets. . . . . 'Haram' includes such actions, which have been prohibited. The prohibition has been imposed by very strict and strong reasons. 'Makruh' includes the actions restrained but not that strictly. 'Jayaz' includes such acts, which can and cannot be done. Their performance does not yield any 'Sawab' (virtue) nor does their non-performance entail any offense." (E.T.C)

"यह सभी किताबों में आता है कि अगर किसी दूसरे मजहब की इबादतगाह को या किसी दूसरे आदमी की जगह को जबरदस्ती तोड़कर

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मसिजद बना ली गयी हो तो वह ठीक नहीं है।'' (पेज 14)

"It is contained in all the books that if a mosque has been built by forcibly demolishing the worship place of another religion or the place of any other person, then it is not proper." (E.T.C)

*''**वक्फ कभी खत्म नहीं होता।''** (पेज 18)*

*"**A Waqf never terminates**." (E.T.C)*

''पैगम्बर साहब ने इस्लाम नहीं चलाया यानी इस्लाम की शुरूआत नहीं की इसका आगाज तो आदम अलेहुसलाम से है। मोहम्मद साहब आखिरी पैगम्बर थे और उन्होंने इस्लाम को आखिरी मुक्कमल शक्ल दी। उनसे पहले इस्लाम की मुक्कमल शक्ल नहीं थी।'' (पेज 24)

"Prophet Mohammad did not found Islam i.e. he did not start it. It began with Adam Alehusalam. Mohammad Saheb was the last Prophet and he gave Islam its final shape. Prior to him, Islam did not have a final shape." (E.T.C)

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''मेरे इल्म में ऐसा नहीं है कि मोहम्मद साहब से पहले मक्का में कुदरत की इबादत होती थी। लेकिन यह ठीक है कि बुत की इबादत होती थी।'' (पेज 24)

"It is not in my knowledge that prior to Prophet Mohammad, nature was worshiped in Mecca. However, it is true that idols were worshiped." (E.T.C)

''इस्लाम के हिसाब से मालिकों की मर्जी के खिलाफ मंदिर तोड़ना नाजायज है।'' (पेज 27)

"According to Islam, demolition of temple without the consent of owners, is illegal/unjustified." (E.T.C)

''बुतपरस्ती इस्लाम के खिलाफ है। यह कहना गलत है कि जहॉ मूर्तियां स्थापित की गयी हो वहॉ पर मस्जिद नहीं बन सकती बशर्ते वो जमीन मुसलमानों ने जायज तरीके से हासिल की हुई हो। जायज तौर से हासिल करने का मतलब है मालिक ने अपनी मर्जी से दे दी हो, हिबा कर दिया हो या उसने बेच दी हो बशर्ते कि उस जमीन का कोई मालिक

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था। यह जमीन खुदा की भी हो सकती है, हाकिम की हो सकती है हकूमत की भी हो सकती है और किसी प्राइवेट आदमी की भी हो सकती है अगर जमीन हुकूमत की है तो उस पर हाकिम का पूरा अख्तियार है। अगर सरकारी जमीन है और हाकिम मुसलमान है और जायज हाकिम है तो उस जमीन पर हाकिम मस्जिद बना सकता है। अगर एक हाकिम पर दूसरा हाकिम असूल के मुताबिक फतह हासिल कर लेता है तो वह जमीन फतेहआब हाकिम की हो जायेगी।'' (पेज 27)

"Idolatry is contrary to Islam. It is wrong to say that mosque cannot be built at a place where idols have been installed, provided the land has been obtained legally/justifiably by Muslims. 'Obtaining legally/ justifiably' means given voluntarily by the owner or gifted or sold, provided the land had some owner. The land can be of God, of 'Hakim' (ruler), of Government and of some private person as well. If the land is of Government, then the 'Hakim' (ruler) would have total rights over the same. If the land is public and the 'Hakim' (ruler) is Muslim and is a legal/justified 'Hakim' (ruler), then the 'Hakim' (ruler) can build a mosque over that land. If one 'Hakim' (ruler) conquers another 'Hakim' (ruler) principally, then that land would become of the 'Fatehaab Hakim' (victorious ruler)" (E.T.C)

*''**कोई भी मुसलमान जो मस्जिद बनवायेगा उसके अन्दरूनी या बाहर वाले किसी हिस्से में किसी तस्वीर को नहीं बनवायेगा वो जानदार चीज की तस्वीर नहीं बनवायेगा।** किसी सुअर की तस्वीर बनवाने का सवाल ही नहीं पैदा होता। मुस्जिद की चारदीवारी के बाहरी हिस्से पर अगर किसी जानदारचीज की सूरत बनवा दी जाती है तो वह जायज नहीं है।''*

(पेज 29)

*"**No Muslim, who builds a mosque, would depict***

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any picture in any part of inside or outside of the mosque. (He) would not depict the picture of any living being. *The question of depicting the picture of any pig, does not arise at all. If the figure of any living being is made on outer part of the boundary wall of the mosque, the same is not legal/justified." (E.T.C)*

"कोई मुसलमान जब नये सिरे से मस्जिद बनवायेगा तो उसके अन्दर वो कोई जानदार चीज नहीं बनवायेगा चाहे वह पशु पक्षी हो चाहे नर नारी हो चाहे कोई देवी देवता हो और अगर वह ऐसा करेगा तो वह गुनहगार होगा। लेकिन वह मस्जिद फिर भी कहलायेगी अगर और शरायत पूरी होती हों तो।" (पेज 30)

"When any Muslim would build a mosque afresh, then he would not get the picture of any living being be it animal-bird or male-female or God-Goddess, depicted inside it and if he does so, he would be an offender. However, it would still be called a mosque if other 'Sharayat' are observed." (E.T.C)

"मैंने देवबन्द के दारूल उलम में हदीस, फिकह, तफसीर, मंतिक, फालसफा उसूलेहदीस, पढ़े। मैंने आलिम का दर्जा भी पास किया था। आलिम की पढ़ाई मे मेरे मजामीन नोह, सर्फ, बलागत, उसूलेफिक, उसूले तफसीर, अदब, फिकह, हदीस, तफसीर थे।" (पेज 31)

"I studied 'Hadith', 'Fiqh', 'Tafsir'(exhaustive explanation) , 'Mantik' (logic), 'Falsafa' (philosophy), 'Usulehadis' (principles of Hadith) at the Darul Uloom, Deoband. I also passed the 'Alim' (degree). During my 'Alim' course, 'Noh'(branch of grammar), 'Sarf' (branch of grammar), 'Balagat' (experts), 'Usulefik' (principles of Fiqh), 'Usuletafsir' (principles of exhaustive explanation), 'Adab' (literature), 'Fiqh', 'Tafsir' (exhaustive explanation) were my 'Majamin' (subjects)." (E.T.C)

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''नमाज के लिए वजू जरूरी है।'' (पेज 33)

"'Vazoo' is essential for namaz." (E.T.C)

''ऐसा मसलन तिरमिजी हदीस की किताब में भी लिखा है। आमतौर से इस तरह की बातें बाबुल वजू में लिखी होती हैं।'' (पेज 34)

"It is so written in the book of 'Tirmiji Hadis' as well. Usually such facts are mentioned in 'Babul Vazoo'."(E.T.C)

''इस्लाम की शुरूआत आदम अलेहुइस्लाम से हुई जिनके बारे में मशहूर है कि वह सबसे पहले लंका में आये थे। इस्लाम की आखिरी मुक्ममल शक्ल आखिरी पैगम्बर साहब ने दी और उन्होंने इसे बड़े पैमाने पर फैलाया। हजूर साहब अरब में ही पैदा हुए थे और वहीं से उन्होंने इस्लाम को फेलाने का काम शुरू किया था।

मस्जिदे हराम एक मुकद्दस मुकाम है वो अरब के मक्का शहर में है। हर वो मुसलमान जो माली ताकत रखता हो जिस्मानी ताकत रखता हो और जिसे सवारी हासिल हो उसके लिए यह फर्ज है कि वह उम्र में एक बार वहॉ जाकर हज करें यह फर्ज बालिग मुसलमानों के लिए है।''

(पेज 41)

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"Islam began with Adam Alehuislam, about whom it is famous that he had first arrived in Lanka. The final shape to Islam was given by the last Prophet, Mohammed Saheb and he propagated it on a large scale. Prophet Mohammad was born in Arab and from here he started propagating Islam.

'Masjide Haram' is a sacred place and is situated in the city of Mecca in Arab. It is the duty of each such Muslim, who is financially competent, physically fit and has the conveyance, to go there once in his life and perform Haj. This duty is for adult Muslims." (E.T.C)

''मदीना शरीफ से चलने पर फतेह हासिल करने के बाद जब मक्का शरीफ हजूर तशरीफ लाये तो ***काबा शरीफ पर खड़े होकर पहली अजान देने का रूतबा भी हजूर ने हजरते बिलाल को सौंप***

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था। *. . . . .जमात की नमाज पढ़ने के लिए नमाजियों को बुलाने के लिए अजान दी जाती है इस बात को मद्देनजर रखते हुए हजूर ने यह रूतबा हजरते बिलाल को इसलिए बक्शा था क्योंकि उनकी आवाज बहुत बुलंद थी। बुलंद आवाज इसलिए पसंद की गयी ताकि दूर दूर से सुनकर नमाजी आ सकें क्योंकि उपर चढ़कर आवाज देने से दूर दूर तक जाती है इसलिए हजरते बिलाल ने छत पर खड़े होकर अजान दी थी।'' (पेज 49)*

*"On proceeding from holy Medina and after registering victory when Prophet came to holy Mecca, h**e bestowed Hazrat-e-Bilal with a standing to give the first 'Azaan' by standing at holy Kaba.** . . . . . 'Azan' is given in order to call namazists to offer the mass prayer. Taking this point into account, Prophet bestowed this standing on Hazrat-e-Bilal because his voice was very eloquent. His eloquent voice was liked because it was audible enough for namazists to hear it from far away places because when a call is given from an elevated place it goes far and wide. This was the reason why Hazrate-e-Bilal had given the 'Azan' call by standing on the roof."(E.T.C)*

"वक्फ की जायदाद को जो कि खुदा की बन जाती है, कोई भी आदमी चाहे कितना छोटा और चाहे कितना बड़ा ही क्यों न हो, मालिकाना तौर पर हासिल नहीं कर सकता।'' (पेज 54)

"Nobody, howsoever big or small he may be, cannot as an owner acquire a Waqf property, which becomes that of 'Khuda' (God)." (E.T.C)

*"जिसका काबा नाम है उस इमारत पर कोई मीनार नहीं है और न ही पहले थी। **काबा के चारों तरफ जो मस्जिद है उस पर मीनारें हैं।''** (पेज 58)*

"There is no minaret over that structure which is

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named 'Qaba', nor did it exist earlier. ***There is minarets over the mosque surrounding 'Qaba'.*** *" (E.T.C)*

"हिदाया में यह लिखा हुआ है कि जहां पर एक दफा मस्जिद बन जाये वह हटाई नहीं जा सकती। वह जगह हमेशा ही मस्जिद रहेगी।"

(पेज 62)

"It is written in 'Hidaya' that a mosque once built at a particular place cannot be shifted from there. That place will always remain to be mosque." (E.T.C)

"वक्फ के लिए वाकिफ होना जरूरी हैं . . . . . ***अगर जबरदस्ती हथियाई जगह का वक्फ किया जाये तो वह हराम है वह वक्फ ही नहीं होगा।*** *. . . . मेरे इल्म में किसी हदीस में नमाज पढ़ने के वक्त रंगीन या बेल बूटे वाले कपड़े पहनने पर मनाही नहीं डाली गई।" (पेज 63)*

"It is necessary for there to be a 'Waqif'(executor of Waqf) for the purpose of 'Waqf'. . . . . ***If 'Waqf' is executed in respect of forcibly captured land, it is 'Haraam'(a forbidden act) and it would not certainly be 'Waqf'****. . . . . To my knowledge, no 'Hadith' imposes any restriction on wearing coloured clothes and the ones designed with embroidery at the time of offering namaz." (E.T.C)*

" ***विवादित जायदाद के अलावा हमारे यहॉ संभल में एक मस्जिद है जिसका नाम बाबरी मस्जिद के नाम से मशहूर है।*** *उसके बारे में मैंने कोई तारीख की किताब नहीं पढ़ी है मस्जिद के कदबा पर लिखा है वही पढ़ा है।" (पेज 66)*

*"****Besides the disputed structure there is also a temple at our place which is famous by the name of Babri mosque.*** *I have not read any history book about that. It is so mentioned in the mosque epitaph; I have read about it from that very source." (E.T.C)*

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''कुरान शरीफ में इस बात का जिक्र नहीं है कि मस्जिद किस तरह की जमीन पर बनाई जाये। . . . . .कुरान शरीफ में मूर्ति तोड़ने का हुक्म नहीं है। बहराल उसमें हजरत इब्राहिम का जिक्र है मूर्ति तोड़ने की बाबत। जिसे पसंद किया गया है।

किसी मस्जिद में भूत या शैतान को या किसी भी जानदार चीज की शक्ल और सूरत बनाना जायज नहीं है। किसी भी मस्जिद की दीवारों पर चाहे अन्दर की तरह हो या बाहर की तरफ हो किसी जानदार चीज की शक्ल और सूरत बनाना जायज नहीं है।'' (पेज 67)

''The holy Quran does not mention at what type of land a mosque should be constructed. . . . The holy Quran does not command the breaking of idols. Nevertheless, it approvingly mentions about Hazrat Ibrahim in connection with the breaking of idols.

It is not legitimate to construct the face and shape of any spirit or demon or of any animate thing at a mosque. It is not legitimate to carve the face and shape of any animate thing on either side-outer or inner- of the walls of any mosque.''(E.T.C)

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''मैं मुस्लिम लॉ के बारे में बतौर एक्सपर्ट बयान देने के लिए हाजिर हुआ हूँ।'' *(पेज 70)*

*''**I am present to depose as an expert in Muslim law**.'' (E.T.C)*

''अगर यह साबित हो जाये कि मालिकान ने खुशी से रजामन्दी नहीं दी है, तो वह मस्जिद जायज नहीं मानी जायेगी।'' (पेज 71)

''If it is proved that owners have not given their consent with pleasure, that mosque will not be taken to be legitimate.'' (E.T.C)

*''मेरी समझ में और **मेरे इल्म में इस वक्त हिन्दुस्तान में मेरे से ज्यादा मुस्लिम ला के बारे में जानकारी रखने वाला कोई आलिम नहीं है, मेरे बराबर के हो सकते हैं लेकिन मुझसे बेहतर नहीं हैं।''** (पेज 73)*

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"To my understanding and ***knowledge, there is no 'Aalim' in Hindustan having better knowledge of Muslim law than I. They may be equal to me but they cannot be better than I.****" (E.T.C)*

"मैं फिक की तालीम देता हूँ।" (पेज 77)

"I teach 'Fiqh'." (E.T.C)

"यहां मस्जिद से मतलब मस्जिद के लिए वक्फ का है न कि इमारत का। *दरसल अगर इमारत गिर भी जाये तो वक्फ कायम रहेगा। मुशा जमीन पर मस्जिद नहीं बन सकती। अगर किसी दूसरे आदमी का भी जमीन में हिस्सा हो या हक हो और वह उसे मस्जिद के लिए वक्फ करने की इजाजत न दे तो वहां मस्जिद नहीं बनेगी।" (पेज 81)*

*"****Here 'mosque' means 'Waqf for the mosque', not its structure.*** *Even if the structure crumbles, the Waqf will continue to be there. A mosque cannot be constructed on 'Musha' land. If any other person has a share or title in a particular piece of land and he does not allow the said land to be given in Waqf for the purpose of mosque, then mosque will not be built there." (E.T.C)*

"तस्वीर वाली बात कई फिकह की किताबों में मौजूद है मसलन बहयर राईक, रददुल मुख्तार, बदाय असनाय। ***मुझे इस वक्त याद नहीं कि किस खास किताब में मैंने यह पढ़ा था कि मस्जिद पर मीनारें या गुम्बदों की जरूरत नहीं या वहां पर वजू के इंतजाम की जरूरत नहीं।*** *यह बात मैंने मुख्तलिफ किताबों को पढ़कर मुजमुई तौर पर समझी है। मेरे यह बयान सही है कि कुरान शरीफ और हदीस में मस्जिद की शक्ल सूरत या तर्जे तामीर पर कोई खास हिदायत नहीं है।" (पेज 84)*

"A fact as to picture is present in many 'Fiqh' books i.e. 'Bahyar Raik', 'Raddul Mukhtar' and 'Baday Asnay'. ***At present I do not remember in which particular book I read that there is no requirement of minarets or domes***

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or of any arrangement for 'vaju' in a mosque. *I have developed an overall understanding about this thing by going through different books. This statement of mine is true that the holy Quran and 'Hadith' do not have any specific piece of advice regarding the face and shape of a mosque or its style of construction." (E.T.C)*

"लेकिन यह बात ठीक है कि नजायज तौर पर यानी शरई कानून के हिसाब से नाजायज हरकत कर के जो जमीन हथियाई जाती है उस पर मस्जिद बनाये जाने की मनाही है। उसमें पढ़ी नमाज मकरू हो जायेगी।

यह ठीक है कि हनफी कानून के मुताबिक अगर कोई मालिक किसी जमीन या जायदाद का वक्फ करे तो उसके लिए यह जरूरी है कि वह खुद मालिक हो।" (पेज 85)

"But it is true that it is forbidden to build a mosque on any land which is grabbed in an illegitimate manner or by resorting to illegitimate activities as per the 'Shariyat' law. Offering namaz at such a mosque will be 'Maqrooh' (undesirable).

It is true that under the 'Hanfi' law, in order to give any land or property in 'Waqf', it is not necessary for the person making such 'Waqf' to be its owner." (E.T.C)

"यह ठीक है कि हमारे अकीदे के मुताबिक ***जो कुछ कुरानशरीफ में कहा गया है और जो कुछ हजरत मोहम्मद साहब फरमा गये हैं और मन्सूस नहीं हुआ है उसमें कोई कमी बेशी नहीं की जा सकती।*** *" (पेज 91)*

"It is true that as per our tradition, ***no change can be effected in what is stated in the holy Quran or in what Hazrat Muhammad Sahib has ordained and what has not been forbidden****." (E.T.C)*

"हम सरकार का नहीं शरीयत का कानून पढ़ाते हैं। मैं नहीं कह सकता कि हमारे दारूलउलूम का पैसा कहॉ से आता है आया कि विदेशों

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से आता है या नहीं क्योंकि यह मेरा मजमून नहीं है मैं माली मामलात का जिम्मेवार नहीं हूँ। . . . .लेकिन यह मुझे मालूम है कि हम सरकार से कोई इमदाद नहीं लेते।'' (पेज 92)

''We do not teach laws framed by the British Government. We teach the law of 'Shariyat', not that of the Government. I cannot say from where money comes or came for our 'Darul Ulum' and whether such money came from abroad or not; because it is not my concern and I have no responsibility in financial matters. . . . . But it is know to me that we do not take any grant from the government.'' (E.T.C)

3280. PW 19, Maulana Atiq Ahmad:

''मुस्लिम काल के पहले शासक मो0 बिन कासिम हुए थे। . . . . मो0 बिन कासिम की राजधानी सिन्ध में थी। . . . . ऐसा नहीं है कि मौ0 बिन कासिम राजा दाहिर से हारने के बाद लौट गए। खुद कहा – वह जीते थे और खलीफा के बुलाने पर लौट गए। . . . . इससे पहले मुस्लिम ताजिर हिन्दुस्तान आ चुके थे और साहिल पर उनकी आबादियां थीं। इन ताजिरों की आबादी मौजूदा केरल राज्य एवं गुजरात राज्य में थी।''(पेज 6)

''Mohammad Bin Qasim was the first ruler of the Muslim period. . . . . The capital of Muhammad Bin Qasim was in Sindh. . . . . It is not that Muhammad Bin Qasim had returned after being defeated by King Dahir. (Stated on his own) he had won and had returned on being called back by the Caliph. . . . . Prior to that, the Muslim merchants had come to Hindustan and their settlements were found on sea-shores. These merchants had their settlements in the existing states of Kerala and Gujrat.''(E.T.C.)

''अल्लाह का सबसे पहला घर काबा यहीं बनाया गया था। हजरत मोहम्मद साहब की वहां पैदाइश थी यह भी एक कारण था। यह कहना ठीक नहीं होगा कि काबा मोहम्मद साहब के बाद बना बल्कि वह उनसे

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बहुत पहले बन चुका था।'' (पेज 8)

''The first abode of Allah was built at Qaba over here itself. Another reason was that Prophet Muhammad was born here. It would not be correct to say that Qaba came into existence after Prophet Muhammad; rather it had come into existence much earlier.''(E.T.C.)

''फाजिल की डिग्री एक एम0ए0 की डिग्री की तरह है। फाजिल में जुगराफिया वगैरह नहीं पढ़ाया जाता और खास तौर से इस्लामी उलूम पर पढ़ाया जाता है। मैंने फाजिल, हदीस, तफसीर, फिकह वगैरह में किया।''

(पेज 9)

''The degree of Fazil is like an M.A. degree. In Fazil course, geography etc. is not taught and Islamic disciplines are particularly taught. I did my Fazil in Hadis, Tafsir, Fiqh, etc.''(E.T.C.)

''मुअस्ता सबसे पुरानी हदीस की किताब है। इसके लेखक इमाम मालिक थे।

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हिदाया और शर्रेवकाया नामक किताबों में मस्जिद की बनावट के बारे में कोई तफसील नहीं दी गयी।'' (पेज 10)

''Muasta'(Muwatta) is the oldest book of Hadis. Imam Malik was its writer.

No details have been given about the construction of the mosque, in the books called 'Hidaya' and 'Shar-e-Vakaya'.''(E.T.C.)

''इस्लाम में कानून धर्म का हिस्सा है।'' (पेज 11)

''In Islam, law is a part of religion.''(E.T.C.)

''इस ऐकेडमी की आखिरी ***मीटिंग जो 13 से 16 अप्रैल, 2001 में हुई*** *उसमें मस्जिद की शरयी हैसियत के बारे में बातचीत हुई थी और* ***यह फैसला हुआ कि मस्जिद हमेशा मस्जिद रहती है उसको गिरा देने की वजह से मस्जिद की हैसियत खत्म नहीं हो जाती।*** *'' (पेज 17)*

''In the last ***meeting of this academy which was***

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held between 13th to 16th April, 2001*, deliberations were held about the religious status of the mosque and* ***it was decided that the mosque is always a mosque and it does not lose its status of mosque on account of being demolished****.''(E.T.C.)*

*''**लोधी वंश की हुकूमत के दौरान उलेमाओं का हुकूमत में कोई खास दखल नहीं होता था,** पर अदालती निजाम में उनका दखल होता था।'' (पेज 19)*

*''**During the reign of Lodhi dynasty, there used to be no particular interference on the part of Ulemas in governance,** but there used to be their interference in the court administration.''(E.T.C.)*

''मैं इस मत से सहमत नहीं हूँ कि ईश्वर को किसी भी नाम से पुकारा जा सकता है, बल्कि वह उसी नाम से पुकारा जा सकता है, जो उसने खुद अपने लिए पसन्द किया। . . . . . मुझे यह बात मालूम नहीं है कि ख्वाजा मोइनिउद्दीन चिस्ती ने अजमेर के पास अन्न सागर के तट पर एक हिन्दू राजा की कन्या से शादी की थी। मुझे यइ बात भी मालूम नहीं है कि उनसे जो लड़की पैदा हुई बेगम हफीजा, उसे देश–विदेश सूफी मत का प्रचार करने के लिए भेजा गया।'' (पेज 20)

''I do not agree to the view that God can be called by any name; rather, he can be called only by that very name which He liked to be used for Himself. . . . . I do not know that Khwaja Moinuddin Chisti got married with the daughter of Hindu King on the shore of 'Anna Sagar' near Ajmer. I also do not know whether Begum Hafiza, a daughter that he begot out of their wedlock, was sent in and outside the country for the propagation of Sufism.''(E.T.C.)

*''कुरान में छः हजार छः सौ सोलह आयते हैं। . . . . **कुरान में ऐसा कोई हुक्म नहीं है कि किसी दूसरे की जमीन पर***

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जबरदस्ती मस्जिद बनाई जाये। *. . यह ठीक है कि कुरान आने के पहले बुतपरस्ती हो रही थी। . यह ठीक है कि अरब में जो लोग बुतपरस्ती करते थे कुरान आने के पहले उन्हें काफिर कहा गया। कुरान में कोई ऐसा हुक्म नहीं है कि काफिर को मार दिया जाये। यह ठीक है कि इस्लाम धर्म आने के पहले हिन्दू मूर्ति पूजा भी करते थे। . . . . कुरान में मतइययन तौर से हिन्दू मूर्तियो को तोड़ने का कोई जिक्र नहीं है।'' (पेज 25–26)*

*"The Quran has six thousand six hundred sixteen 'Ayats'(verses). . .**The Quran does not ordain for forcibly constructing a temple on the land of any other person**. . . .It is true that idolatry was being practised even before the Quran. . . . It is true that those who performed idol worship in Arab were called 'Kafir'(a blasphemous person) before the advent of Quran. The Quran does not ordain for 'Kafir' to be killed. It is true that Hindus practised idolatry as well before the advent of the Quran. . . . .There is no specific mention about breaking the Hindu idols in the Quran."(E.T.C.)*

''पैगम्बर साहब की जिन्दगी में किसी हिन्दू देवी–देवताओं की मूर्ति को तोड़ने की कोई घटना नहीं हुयी। . . .यह ठीक है कि अगर कोई मस्जिद किसी दूसरे की जमीन पर जबरदस्ती बनायी जाती है तो ऐसा करना हराम होगा और वह मस्जिद नहीं है।'' (पेज 27)

"No incident of breaking idols of male and female Hindu deities occurred in the lifetime of Prophet Muhammad. . . . . It is true that if a mosque is constructed forcibly and on another's land, such an act will be 'Haram'(a forbidden thing) and it (such a construction) is not a mosque." (E.T.C.)

''यह ठीक है कि ***नमाज का सम्बन्ध खुदा से है। जमीन से नहीं है।*** *. . . . और यह* ***लाजमी है कि वक्फ करने वाला उस जमीन का मालिक हो।*** *'' (पेज 28)*

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"It is true that namaz relates to 'Khuda'(God), not to the earth. . . . . and it is natural for the person making the 'Waqf' to be owner of that land."(E.T.C.)

"चित्र संख्या–20 . . . .– इसमें यह कहना मुश्किल होगा कि इसमें सबसे ऊपर कोई शेर का चित्र बना हुआ है। दो आंखे बनी मालूम होती है। ***चित्र संत्रयश –32 को देखकर गवाह ने कहा कि :– इसमें मूर्तियों दिखायी पड़ रही हैं। ऐसी मूर्तियों के रहते हुए यदि नमाज हो तो वह नमाज मकरूह होगी।*** *मूर्तियों के रहते हुए वहां पर नमाज पढ़ना जायज नहीं होगा।" (पेज 29)*

"Picture No. 20. . . . – It is difficult to say that the image of a lion is carved on the top in it. Two eyes appears to be carved. Looking at Picture No. 32 the witness stated – Idols are seen in it. If namaz is offered in the presence of such idols, that namaz will be 'Maqrooh'. It will not be legitimate to offer namaz there in presence of the idols."(E.T.C.)

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"अगर मस्जिद के बाहरी सेहन में घण्टा घडियाल शंख भजन कीर्तन आदि होता रहे तो भी उस समय मस्जिद के अंदर नमाज अदा की जा सकती है। मस्जिद के अंदर कुयें का होना जरूरी नहीं है।" (पेज 31)

"Even if the outer yard of a mosque continues to witness ringing of bells and gongs, blowing of conchs, singing of devotional song etc., namaz may be offered inside that mosque. It is not necessary for there to be wells inside a mosque."(E.T.C.)

"इज्मा यह है कि किसी जमीन पर जो दूसरे की मिल्कियत हो उस पर जबरदस्ती कब्जा करके मस्जिद बनाना जायज नहीं है। इज्मा सरीह में ऐसा कोई दृष्टांत नहीं मिलता है कि अगर किसी इमारत में चित्र हो या मानव आकृति हो तो उन को ढककर नमाज पढ़ी जा सकती है पर उल्माओं में तकरीबन ऐसा इत्तिफाक है कि उस सूरत को ढककर कर नमाज पढ़ी जा सकती है।" (पेज 33)

"It is Izma that it is not legitimate to build a mosque

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by forcibly capturing a piece of land owned by somebody else. No instance is found in Islam allowing namaz to be offered by covering a picture or human figure, if there be any, in a building ; but Muslim clerics are almost one in opinion that namaz may be offered by covering that figure."(E.T.C.)

"मेरे इल्म में ऐसा नहीं है कि उ0प्र0 में या हिन्दुस्तान में कोई ऐसी मस्जिद हो जिसके तीनों तरफ दूसरे धर्म के इबादत गाह मंदिर या मूर्तियॉ हो क्योकि मैंने ऐसा कोई सर्वे नहीं किया है। . . . . मेरे इल्म में इस तरह की कोई जगह नहीं है जहॉ मस्जिद के तीन तरफ दूसरे मजहब मंदिर या मूर्ति हो।" (पेज 34–35)

"I do not have the knowledge as to whether there is any mosque in Uttar Pradesh or Hindustan which is surrounded by worship-places or idols of another faith on three sides, because I have not carried out any such survey. . . . . In my knowledge, there is no such type of place where there are temples or idols of another faith surrounding a mosque on its three sides." (E.T.C.)

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"मुतवल्ली और इमाम में फर्क है।" (पेज 36)

"There is difference between 'Mutvalli' and 'Imam'."(E.T.C.)

*"बाबरनामा में विवादित स्थल यानी बाबरी मस्जिद बनवाने का कोई जिक्र नहीं है। . . .**यह सही है कि मस्जिद में मंदिर नहीं बनाया जा सकता।**" (पेज 37)*

*"'Baburnama' does not have mention of building the disputed structure, that is, Babri mosque. . . **It is true that a temple cannot be constructed in a mosque.**"(E.T.C.)*

"कोई भी मुसलमान इस बात की इजाजत नहीं देगा कि मस्जिद के अन्दर हिन्दू देवी–देवताओं के चित्र बना दे।

सर्वप्रथम पहले नबी आदम अलैहिस्सलाम इस्लाम धर्म लेकर आए।

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. . . . . मोहम्मद साहब ही नहीं बल्कि अल्लाह के हर नबी ने यह पैगाम दिया कि बुतपरस्ती को खत्म किया जाए और सिर्फ अल्लाह की इबादत की जाए। . . . . इसी वजह से मस्जिदों में कहीं भी बुत नहीं बनवाए गए।''

(पेज 40)

*''**No Muslim will allow images of male and female Hindu deities to be built inside the mosque.***

The First Prophet Adam ('alayhis-salaam) introduced Islam first of all. . . . . Not only Muhammad Sahib but all other messengers of 'Allah' gave the message that idolatry be disbanded and God alone be worshipped. . . . . for this very reason idols were not constructed in mosques anywhere." (E.T.C.)

*''**इस्लाम की हिदायत तो यही है कि मस्जिद में मूर्ति न बनायी जाए पर यह हो सकता है कि उसकी खिलाफती करते हुए मस्जिद में मूर्ति बनाते हों।** . . . . मैं इससे सहमत नहीं हूँ कि ऐसे स्थान जहां मस्जिद में मूर्ति हो वहां मुसलमानों ने मंदिर में जबरदस्ती कब्जा करके मस्जिद बना लिया हो। . . . . .मुझे याद नहीं है कि कोई ऐसी मस्जिद है जिसमें पड़े हुए पत्थरों जिन पर देवी–देवताओं के चित्र हों उठाकर मस्जिद में लगा दिए गए हों।'' (पेज 41)*

*''**Islam does advise that an idol should not be carved in a mosque. It may be that people, while opposing him, carve idols in mosques.** . . . . . I do not agree to the view that the presence of idols in a mosque may be attributed to forcible capturing of a temple and converting the same into such mosque. . .I do not remember whether there is any mosque in which lying stones with pictures of male and female deities engraved on them may have been used."(E.T.C.)*

*''**यह सही है कि किसी मंदिर में जहां देवी–देवताओं के चित्र हों या स्थान हो वहां कोई मुसलमान नमाज पढ़ने***

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नहीं जाएगा।'' *(पेज 41)*

*"**It is true that no Muslim will go to offer namaz at any temple where there are images or places of male and female deities.**"(E.T.C.)*

''यह ठीक है कि मोहम्मद साहब के अलावा बहुत से रसूल अल्लाह ने भेजा है पर उनकी सही तादाद हमको पता नहीं है। उनमें से कुछ रसूलों के नाम मैं जानता हूँ। यह ठीक है कि हजरत मूसा अल्लाह के एक रसूल थे। उन पर तौरेत नाजिल हुई जो अल्लाह की एक किताब थी। यह भी सही है कि हजरत ईसा अल्लाह के रसूल थे और उन पर जहूर नाजिल हुई। मुझे नहीं मालूम कि वेद भी अल्लाह की किताब है या नहीं। या वह किन पर नाजिल हुई। नाजिल का मतलब है कि किसी चीज का ऊपर से नीचे आना।'' (पेज 55)

"It is true that Allah has sent many other Prophets besides Mohammed Saheb, but their exact number is not known to me. I know names of few of those Prophets. It is true that Hazrat Musa was a Prophet of Allah. Tauret, a book of Allah, was revealed to him. It is also true that Hazrat Isa was a Prophet of Allah and Zahoor was revealed to him. I do not know whether Veda is a book of Allah or not, or to whom was it revealed. 'Nazil' means something coming down (to earth) from top (heavens)."

(E.T.C.)

''हजूर मोहम्मद साहब के पहले काबे में बुत रखे हुए थे और उनकी पूजा होती थी।'' (पेज 56)

"Statues had been kept in Kaba prior to Prophet Mohammed and they were worshiped." (E.T.C.)

''यह सही है कि मोहम्मद साहब लिखना नहीं जानते थे इसलिए दूसरों से लिखवाते थे यह भी सही है कि लोग सुनते थे, याद करते थे और लिख लेते थे। मैं इससे सहमत हूँ कि कुरान पाक सुनने याद करने व अमल करने की श्रेणी में है। अर्थात सुनने याद करने एवं अमल करने की एक किताब है।'' (पेज 58)

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"It is true that Mohammed Saheb did not know to write and as such got others write down the same. It is also true that people used to hear, memorize and write. I agree that the holy Quran is in the category of being heard, memorized and acted upon i.e. it is a book to be heard, memorized and acted upon." (E.T.C.)

*"हुजूर ने ऐसा कोई हुक्म नहीं दिया है कि किसी दूसरे मजहब के धर्मस्थल को तोड़कर उसके मलबे से मस्जिद बनायी जायी। **यह ठीक है कि अगर किसी धर्मस्थल पर बनी इमारत को तोड़कर उसके मलबे से कोई मस्जिद बनायी जाती है तो ऐसा करना मकरूह है हुजूर के इहकाम के हिसाब से**।" (पेज 59)*

*"The Prophet did not give any command to demolish the worship place of some other religion and build a mosque out of its debris. **It is true that according to 'Ehkam' (sanction) of the prophet, if any building is demolished and mosque is built from its debris, then the same is 'Makruh' (not desirable)**." (E.T.C.)*

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"अक्सा की मस्जिद इस समय इजराइल के कब्जे में है। बैतुल मुकद्दस मस्जिदे अक्सा का ही दूसरा नाम है। यह सही है कि शुरू में मो0 साहब का हुक्म था कि नमाज बैतुल मुक्कदस की ओर मुंह करके पढ़ी जाये। उनका यह हुक्म वही के बुनियाद पर था।" (पेज 61)

"The Aksa mosque is presently in possession of Israel. Sacred Baitul is another name of Aksa mosque. It is true that it was always the command of Mohammed Saheb that namaz be offered facing sacred Baitul. This command of his, was on basis of 'Wahi'." (E.T.C.)

"मैं कुरान का हाफिज नहीं हूँ।" (पेज 61)

"I am not a 'Hafiz' (one who memorizes the complete Quran) of Quran." (E.T.C.)

"यह सही है कि हुजूर के वफात के बाद हजरत अबू वकर

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सिद्दीकी के जमाने में कोई शख्स कोई लिखी हुई चीज देता था और यह कहता था कि हुजूर ने लिखवाया था, तो शहादत यानी दो गवाहों की गवाही पर उसे मान लिया जाता था। . . . . इस कुरान पाक को हजरत अबू बकर के जमाने में जैद इब्ने साबित ने मुरत्तब किया था।'' (पेज 63)

"It is true that after the death of Prophet Mohammad, in the times of Hazarat Abu Waqar Siddiqui, if any person produced any written material and said that Prophet Mohammad had dictated the same, then it was accepted on evidence of two witnesses. . . . . This holy Quran was prepared by Zaid Ibne Sabit in the period of Hazarat Abu Baqr." (E.T.C.)

''यह ठीक है कि ***हिदाया में ऐसा कहा गया है कि पब्लिक प्लेस पर मस्जिद नहीं बनायी जाये।*** *'' (पेज 70)*

"It is true that ***it is contained in the 'Hidayas' that mosque be not built at a public place.***" *(E.T.C.)*

''हदीक में शोहदा नाम की किताब मैंने पढ़ी तो नहीं है पर देखी है। . . . . उसके मुसन्निफ का नाम शायद मिर्जा जान है। . . . . . ***मैं यहां गवाही देने मस्जिद शरयी हैसियत के बारे में एक्सपर्ट की हैसियत से गवाही देने आया हूँ।*** *'' (पेज 71)*

"As regards 'Hadiqs', I have not read but seen the book titled 'Shahda'. . . . . It was probably written by Mirza Jaan. . . . ***I have come to give evidence as an expert on 'Sharyi' (according to Islamic Shariyat) status of mosque.***" *(E.T.C.)*

''बाबरी मस्जिद विवादित स्थल पर मीरबाकी ने बनवाया था। पर बाबर के हुक्म से। बाबरी मस्जिद पर वह कत्बा लगा हुआ था उसमें यह बात लिखी हुई थी कि यह मस्जिद मीरबाकी ने बाबर के हुक्म से बनवाई है। वह कत्बा मैंने खुद नहीं देखा पर उपरोक्त किताब बाबरी मस्जिद में उसका हवाला है कत्बे के आसार उसमें छिपे हुए है।'' (पेज 76)

"Mir Baqi had built Babri mosque at the disputed site, but on the command of Babar. An inscription was fixed

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at the Babri mosque in which it was mentioned that this mosque had been built by Mir Baqi on command of Babar. I did not see this inscription myself, but the contents of the inscription have been published in the aforesaid book 'Babri Masjid'." (E.T.C.)

"विवादित ढांचा जिस जमीन पर स्थित था उसकी मिल्कीयत के बारे में मैंने जानकारी की . . . . . .जमीन की नवईयत क्या थी उसकी तफसील मुझे नहीं मालूम। चूँकि मस्जिद बहुत पुरानी थी इसलिए उस जमीन की मिलकियत के बारे में हमें नहीं पता। मैंने इतनी जानकारी की कि यह एक पुरानी मस्जिद थी पर उस जमीन की क्या नबईयत थी, मस्जिद से बनने से पहले क्या थी, इसकी जानकारी नहीं की।" (पेज 77)

"I inquired about the ownership of the land, over which the disputed structure stood. . . . . I do not know the details of status of the land. Since the mosque was very old, I did not get to know about ownership of the land. I inquired this much that it was an old mosque, but did not inquire about the status of said land or about its status prior to construction of the mosque." (E.T.C.)

"डा0 अमीर अली . . . . मैं उनकी इस बात से सहमत नहीं हूं कि किसी विवादित जमीन पर मस्जिद नहीं बन सकती।" (पेज 78)

"Dr. Amir Ali . . . . I do not agree with this version of his that mosque cannot be built over any disputed land. Shekhul Islam is not a name, and instead is a title."(E.T.C.)

*"**मेरे इल्म में कोई ऐसी किताब नहीं है जिसमें मस्जिद के ढांचा और मस्जिद बनाने के तरीके के बारे में कोई हिदायत दी गयी हो।** . . . . . शरियत के हिसाब से वह जमीन जो खाली हो उस पर कोई बिल्डिंग न हो वह भी मस्जिद हो सकती है यदि उसे मस्जिद के लिए वक्फ कर दिया गया हो।" (पेज 79)*

*"**There is no book in my knowledge, which lays down the shape of mosque and the manner of its***

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construction. . . . . *According to Shariyat, if any land is vacant and there is no building over it, then it can be a mosque if Waqf has been executed for a mosque." (E.T.C.)*

3281. PW 22, Mohd. Khalid Nadvi in his statement said that there is no reference about the form or shape in a particular manner to be observed for construction of a mosque in Holy Quran or Holy Hadis. No such reference is found in other books of Shariat law. Neither a dome nor a minarate nor a well nor arrangement of water for wazoo are essential conditions for constructing a mosque. He further said that once there constructed a mosque, it would remain for ever as it is and neither by placement of any idol nor otherwise its status or position would stand altered. Even if, followers of any other religion start practicing their religious faith in a mosque, that would not affect the status of mosque at all. In his cross-examination on pages 3 and 4 he says:

"कुरान के लुगवी मायने पढ़ना के हैं। कुराने शरीफ की व्याख्या कुछ इस प्रकार की जा सकती है कुराने पाक अल्लाह का नाजिल करदा आखिरी किताब है जो मोहम्मद (स0अ0व0) पर 23 साल की मुद्त में हजरत जिब्रील (अ0स0) के वास्ते से मक्के और मदीने मे नाजिल हुई।.....अग्रेंजी मायने मे भी कुरान को खुदा की किताब कहा जा सकता है।" (पेज–3)

" The Quran literally means 'to read'. The Quran can be explained as the last book of Allah(God) which descended to Muhammad(S.A.V. i.e. peace be upon him) in Mecca and Medina through Angel Gabriel(A.S. i.e. salutation to him) in the span of 23 years. The Quran, as per its English meaning also, may be called the Book of God." (E.T.C.)

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*"**कुराने पाक के कुल 30 पारे हैं।** हर पारे मे अलग अलग सूरा यानी चेप्टर हैं और हर सूरे मे आयते हैं।" (पेज–4)*

*"**There are total 30 'Paras'(parts) of the holy Quran.** Each part has separate 'Suras'(chapters) and each chapter has 'Ayats' (sentences)." (E.T.C.)*

3282. But then as pointed out by learned counsels for some of the defendants (Suit-4) he admits that a mosque cannot be constructed on a land which has not been acquired in a just and fair manner and further it cannot be constructed on the religious place of another religion or by desecrating a place of worship of another religion. He said:

*"**कुरान पाक में ऐसा कहीं नहीं कहा गया है कि किसी की जमीन या जायदाद का जबरन कब्जा या अतिकमण कर लिया जाये।** किसी की जमीन पर जबरन और बगैर उसकी रजामंदी के आम हालात में नहीं जाया जा सकता है। सुन्नत उसे कहते हैं जिसे हजूर मोहम्मद साहब ने कहा हो या" (पेज–6)*

*"**The holy Quran has ordained nowhere for anybody's land or property to be forcibly captured or encroached upon.** Capturing someone's land forcibly and without his consent cannot be taken to be valid in ordinary circumstances. Sunnat is what Prophet Muhammad has stated." (E.T.C.)*

"किसी इमारत को तोड़कर भी जबरन मस्जिद हजूर मोहम्मद स0अ0व0 ने नहीं बनवायी।" (पेज–8)

" Muhammad Sahib(S.A.V.) did not forcibly build any mosque even by demolishing any building." (E.T.C.)

*"मस्जिद के ताल्लुक से मैने ऐसा पढ़ा है कि मस्जिद जब बनायी जाये तो वह क़िबला रूख हो, किसी ऐसी जमीन पर बनायी जाये जिसे जायज तरीके से हासिल किया गया हो खाह मिल्कियत या वक्फ के जरिये/किसी ऐसी जगह पर जो दूसरे की हो, **जुल्म और जबरदस्ती***

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करके उस जगह पर मस्जिद नहीं बनायी जा सकती है।"(पेज–18)

"I have read in relation to mosque that whenever it is constructed, its face should be towards Quibla and it should be constructed on a piece of land acquired in a legitimate manner by way of ownership or waqf(gift for a religious purpose). ***A mosque cannot be constructed, forcibly and by inflicting excesses, at a place which belongs to another person.*** *" (E.T.C.)*

"यह ठीक है कि किसी मजहब की इबादतगाह को जबरन तोड़कर मस्जिद नहीं बनायी जायेगी। *इसी प्रकार किसी दूसरे मज़हब की इबादतगाह पर जबरन क़ब्ज़ा करके मस्जिद नहीं बनायी जा सकती है।" (पेज–18)*

*"****It is true that a mosque will not be constructed by forcibly demolishing a place of worship belonging to any religion.*** *Similarly it cannot be constructed by forcibly capturing a place of worship belonging to any other religion." (E.T.C.)*

"स्वयं कहा कि इस बयान की वजाहत यूं की जा सकती है कि जहॉ मस्जिद बनायी जाये और जो बनाये वह सच्चाई के साथ अल्लाह के लिए बनाये और किसी की जमीन पर ज़ालीमाना या गासीबाना कब्जा करके न बनाये।" (पेज–32)

"(Himself stated) This statement can be explained in such a way that wherever and by whosoever a mosque is built, it should be built for the sake of Allah(God) with truthfulness and not on anybody else's land by grabbing it in a fraudulent or forcible manner." (E.T.C.)

"यह ठीक है कि वह जमीन चाहे जिसके इस्तेमाल मे हो लेकिन अगर वह उस पर सहमति दे दे तो मस्जिद बनवाई जा सकती है।"(पेज–36)

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"It is true that whosoever may be using the land, a mosque can be constructed on it if he consents to that."(E.T.C.)

3283. He also says that Waqif must be the owner of the land:

"यह कहना भी सही है कि मस्जिद शिया बनाए या सुन्नी, उस जमीन को मस्जिद के नाम वक्फ करना ज़रूरी होगा। यह कहना सही है कि ***जो जमीन को वक्फ़ करेगा, वह मस्जिद वाली जमीन का मालिक होना जरूरी है।"*** *(पेज–21)*

" It is also correct to say that it will be necessary for land to be gifted in the name of mosque, no matter it is constructed by Shias or Sunnis. It is correct to say that ***a man making waqf of land needs to be the owner of the masjid land.****" (E.T.C.)*

3284. He has also said in his cross-examination that the land in dispute was vacant when the disputed building was constructed and it was in the ownership of muslims prior to 1528 AD.

"मेरी जानकारी के मुताबिक बाबरी ***मस्जिद जिस जमीन पर बनी थी वह जमीन मस्जिद बनने के पहले यानी 1528 से पहले खाली जमीन थी, उस पर कोई निमार्ण नहीं थे।*** *मेरी यह जानकारी कि 1528 से पहले विवादित स्थल खाली जमीन थी 1986 के बाद छपी छोटी किताबों से हुई।" (पेज–22)*

"To my knowledge, ***the land on which the Babri mosque was built was a vacant land before 1528, that is, prior to the construction of the mosque.*** *My knowledge that the disputed site was a vacant land before 1528, stemmed from little books published after 1986." (E.T.C.)*

"जहां तक मुझे याद है ***सबाहुददीन अब्दुल रहमान साहब ने अपनी पुस्तक में कई हवालों का जिक इस मुतलिक किया है***

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कि मस्जिद से पहले विवादित स्थल खाली जमीन थी। *इसी सम्बन्ध में उन्होने एलेक्जेंडर कनिंघम की रिपोर्ट का हवाला दिया है जो इस समय हमे याद है और दूसरे संदर्भ याद नहीं है।" (पेज–23)*

" As far as I remember, ***Sabah-ud-Din Abdur Rehman has, in his book, quoted several references saying that before the construction of the mosque the disputed site was a vacant land.*** *In this very regard, he has quoted the report of Alexander Cunningham which I remember as of now. But I do not remember other references." (E.T.C.)*

"यह कहना सही है कि किसी भी धर्म की इबादतगाह को यदि गिरा दिया जाये तो वह उसी धर्म की इबादतगाह रहेगी यह कहना सही है कि ***यदि मंदिर को तोडकर मस्जिद बना दी जाये तो उसकी हैसियत नहीं बदलेगी और वह मंदिर ही रहेगा*** *और यदि मस्जिद को तोडकर मंदिर बना दिया जाये तो वह मस्जिद ही रहेगी।* ***यदि यह साबित हो जाये कि विवादित स्थल पर मंदिर था जिसे जबरन तोडकर मस्जिद बनायी गयी तो वह मंदिर ही माना जायेगा। मेरी मालुमात में 1528 के पहले विवादित स्थल मुसलमानों की मिल्कियत थी।*** *यह जानकारी मुझे मज्कूराबाला किताब से हुई । .....का दूसरा प्रकाशन 1977 में प्रकाशित हुआ था।"*

(पेज 25–26)

"It is correct to say that if a place of worship belonging to a particular faith is demolished, it will remain to be a place of worship belonging to that very faith. It is correct to say that ***a temple will not lose its character and will remain to be a temple even if it is demolished to build a mosque.*** *If any mosque is demolished and a temple is constructed in its place, the mosque will remain to be a mosque.* ***If it is proved that there was a temple on the disputed site forcibly demolishing which a mosque was***

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constructed, then such a temple will continue to be treated as a temple. To my knowledge, the disputed site was the property of Muslims before 1528. *I came to know of this from the book mentioned above. The second publication of . . .came out in 1977." (E.T.C.)*

3285. With respect to his statement-in-chief about the characteristics of mosque he however has admitted on page 27 that he has not acquired any special knowledge in this regard as under:

"मैनें इस सिलसिले में कोई विशेष ज्ञान अर्जित नहीं किया कि मस्जिद का आकार व स्वरूप क्या हो। *फिकह की ब़ाज किताबो में मैने यह पढ़ा है कि मस्जिद के आदाब और अहकाम क्या हो। परन्तु उसकी बनावट के बारे में कहीं नहीं पढ़ा है। और न ही उसके तर्जे तामीर का कोई तरीका बताया गया है।" (पेज–27)*

*"**I did not acquire any specific knowledge as to what the shape and form of a mosque should be.** In certain books of Fiquah I have read what 'Aadab'(manners) and 'Ahkam'(orders) should be followed in a mosque. But I have nowhere studied about its structure, nor is there any mention of any style of its construction." (E.T.C.)*

3286. Neither he has ever visited Ayodhya nor has himself seen the disputed building, therefore, other part of his statement in cross-examination in this regard is wholly irrelevant. His admission about visit to Ayodhya is on pages 24/25:

"यह कहना सही है कि चूंकि मै कभी अयोध्या नहीं गया इसलिए मुझे इस बात की जानकारी नहीं है कि विवादित स्थल कहां पर है और किस स्थिति में है।" (पेज 24–25)

"It is correct to say that since I never visited Ayodhya, I do not know where the disputed site stands and

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in what position it is." (E.T.C.)

3287. He has tried to explain the reason of construction of disputed building of Babari Mosque by Mir Baqi while stating on pages 11/12 that Mir Baqi lived at Ayodhya and since there was a large population of muslims thereat he found it necessary to construct Babari mosque thereat since mosque is normally constructed where there is a settlement of muslims. He, however, denied any knowledge about the exact muslim population at the relevant time of Ayodhya and also any knowledge about the existence of any mosque at Ayodhya as is evident from page 11/12 and 22 as under:

*"मीर बाकी अयोध्या में रहता था। **बाबरी मस्जिद बनाने की जरूरत इसलिए थी कि वहॉ पर मुसलमानों की कसीर आबादी थी और इसलिए जहॉ मुसलमानों की आबादी होती है वहॉ मस्जिद बनाई जाती है।** आबादी की तादाद (संख्या) का इल्म मुझे नहीं है।" (पेज 11–12)*

*"Mir Baqi lived at Ayodhya. **The Babri mosque was needed to be constructed because there was a large population of Muslims. A mosque is constructed where there is a settlement of Muslims.** I do not know exact figures of the Muslim population." (E.T.C.)*

"विवादित ढॉचा/बाबरी मस्जिद तामीर करने के समय अयोध्या में और भी मस्जिदें थीं। कितनी मस्जिदें थीं, यह तफसील से नही बता सकता हूँ।" (पेज–22)

"At the time of constructing the disputed structure/ Babri masjid, Ayodha had certain other mosques as well. I cannot detail how many mosques were there." (E.T.C.)

3288. **PW 25, S.M. Naqvi** is of Shia sect and is active in politics as admitted on page 2:

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''मै शिया मत का हूॅ। मैंने शिया फिक्हा पर कुछ किताबों का अध्ययन किया है। . . .शिया फिक्हा को फिकहे जाफिरिया भी कहा जाता है।

राजनीति में मेरा ताल्लुक राजनीतिक दलों से रहा है। शुरू में मैं महीना दो महीना कांग्रेस में फिर सोशिलष्ट ग्रुप ने अपने आपको कांग्रेस पार्टी से अलग कर लिया तो मैं सोशलिस्ट पार्टी में आया गया और तब से मैं राजनरायण जी के साथ लगा रहा, राजनारायण जी की मृत्यु के बाद से मैं मुलायम सिंह जी की पार्टी में तीन चार साल पहले तक रहा। मैं अकबरपुर नगर निकाय का प्रधान रहा हूॅ। मैं वहां की आखिरी टाऊन ऐरिया कमेटी का चेयरमैन रहा हूॅ और पहली नगर परिषद का भी चेयरमैन रहा हूॅ। मैं एक इन्टर कालेज और एक हाईस्कूल का प्रबंधक हूॅ। ये दोनों जिला अम्बेदकरनगर में हैं। . . . मैं 1990 में अल्प संख्यक वित्त एवं विकास निगम उ0प्र0 का चेयरमैन रहा हूॅ।

मैं आल इंडिया शिया कान्फ्रेस की सेन्ट्रल कमेटी का बहुत दिनों तक मेम्बर रहा हूॅ।'' (पेज 2)

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''I am of Shia faith. I have read certain books on Shia Fiquah..... Shia Fiquah is also called Fiquahe Zafiria.

In politics I had contacts with political parties. Initially in Congress for a month or two. Then the Socialist group separated itself from the Congress party then I joined the Socialist party and since then I remained with Sri Raj Narayan. After the death of Sri Raj Narayan I was in the party of Sri Mulayam Singh till three to four years back. I was the Chairman of Akbarpur Municipal body. I was the Chairman of its last town area committee and the Chairman of its first Municipal board. I am the manager of an Intermediate college and one High school. Both of them are in District Ambedkar Nagar..... In 1990 I was the Chairman of Minorities Finance and Development Corporation U.P.''

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"I was member of central committee of All India Shia Conference for many days." (E.T.C.)

"अल्पसंख्यक वित्त एवं विकास निगम लि0, उत्तर प्रदेश सरकार ने गठित किया है। मैं इस बाडी का चेयरमैन था पर आजकल जिलों में इसकी शाखा स्थापित हो गई है। मुझे सरकार ने मनोनीत किया था, अर्थात् 1990 में मुलायम सिंह की सरकार ने किया था।" (पेज 10)

"The Minorities Finance and Development Corporation Limited has been constituted by the Uttar Pradesh Government. I was the Chairman of this body but these days its branches have been established in districts. I had been nominated by the Government, that is in 1990 by the Government of Sri Mulayam Singh." (E.T.C.)

3289. His statement is basically to the extent that since the mosque vests in Allah irrespective of sect a muslim belongs, he can offer Namaz and on the basis of sect, i.e., Shia or Sunni no difference can be made out. On page 6 he is said to have heard about offering of Namaz in the disputed building before 1948 as under:

*"**मैंने ऐसा सुना है कि सन् 1948 के पहले भी बाबरी मस्जिद में नमाज हुआ करती थी।**" (पेज 6)*

*"**I have heard that Namaz was offered in Babri masjid even before year 1948**." (E.T.C.)*

3290. On page 8 he admits of big difference in the manner of offering Namaz by Shia and Sunni and said:

"*शिया और सुन्नी में बहुत बड़ा फर्क है। . . . शिया और सुन्नी के नमाज पढ़ने के तरीके में भेद है।" (पेज 8)*

"There is much difference between Shia and Sunni. ..... There is difference in the manner of offering Namaz between Shia and Sunni." (E.T.C.)

3291. He, however, admits to have never offered Namaz at

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Ayodhay and said:

''चुनाव प्रचार के बाद 1948 में एक दो बार फिर अयोध्या गया था। मैंने अयोध्या में कभी भी किसी मसिजद में नमाज अदा नहीं की।'' (पेज 15)

''After the election campaign, I again visited Ayodhya on couple of occasions in 1948. I never offered Namaz in any mosque in Ayodhya.'' (E.T.C.)

3292. Though he says that he had seen some of his other acquainted persons to have visited the disputed building for offering Namaz but on page 16 he says:

''मैंने विवादित मस्जिद में मुख्य दरवाजे के अन्दर घुसते किसी को नहीं देखा। . . . मैंने उन्हें नमाज पढ़ते नहीं देखा।'' (पेज 16–17)

''I did not see anybody entering the disputed mosque through the main gate... .. .. I had not seen them offer Namaz.'' (E.T.C.)

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3293. Then further he could not explain the exact extent of difference in the manner of offering Namaz between Shia and Sunni as evidence from page 26:

''मैंने सुन्नी फिकह का अध्ययन नहीं किया इसलिए मैं शिया और सुन्नी लोगों के नमाज पढ़ने के तरीके में क्या क्या फर्क है पूरी तरह से नहीं बता सकता। लेकिन जाहिरा तौर पर शिया हाथ खोल कर नमाज पढ़ते हैं और सुन्नी हाथ बांधकर नमाज पढ़ते हैं। शिया और सुन्नी की अजान में यह अंतर है कि शिया जिन कल्मों को अजान में कहते हैं उन सबको सुन्नी अजान में नहीं कहते हैं। और उतनी बार नहीं कहते।''

(पेज 26)

''I have not studied Sunni 'Fiquah'. As such I can not fully tell about the differences in the manner of offering of Namaz by Shia and Sunni people. However, apparently Shia offer Namaz open handed and Sunni offer Namaz close handed. The difference in 'Ajan' (prayer call given

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from mosque) of Shia and Sunni is that the 'Kalmas' (Fundamental formula of the Quran) in 'Ajan' of Shia are not present in the Sunni 'Ajan' and they are not announced that number of time." (E.T.C.)

3294. Rest of his statements in respect to Babar, Mir Baqi, construction of building etc. are wholly irrelevant and inadmissible since he neither is an Expert Historian nor claims to possess any personal knowledge but whatever statement he has given are on hearsay basis.

3295. From the books of 'Sharii' and the relevant extracts mentioned above, broadly, some of the features, which are permissible or impermissible for a believer of Islam while offering Namaz in a mosque or for construction of a mosque or for spreading islamic religion and religious practices, are as under:

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i. No compulsion in religion.

ii. People of other religion are permitted to carry out other religious practices according to their own religion but if they are residing under an Islamic reign, he may have to pay certain amount.

iii. Messengers of the almighty born in every community or nation.

iv. No Prophet be given superiority over another. Superiority to a learned has been given only for the purpose to tell the people what is right or wrong according to religion.

v. Freedom of religion was subject to payment of Jizya. The Islamic Rulers and army of Islam are under duty to protect religions, shrine and life of those isolator who

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paid tax (Jazya) which was in the nature of a protection tax.

vi. The temples of non-islamic people could be utilized for stay by a muslim travellors.

vii. At one place, two separate building of worship or two religions cannot exist.

viii. No Jizya upon the Muslim.

ix. In a public mosque, there cannot be a prayer without adhan (Ajan)

x. An assembly of worshippers pray in a Masjid with permission, that is delivery.

xi. Foundation of a mosque must be laid on piety and not hypocrisy.

xii. A mosque cannot be used as a home nor a place of gossips.

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xiii. Prayer between two columns is prevented.

xiv. Funeral prayer in the mosque is not permitted.

xv. Images, portrait, pictures, idols etc. as also designed garments having pictures are prohibited in a mosque.

xvi. Sitting on the graves and performing of Salat towards graves is not permitted.

xvii. Musical instrument i.e. bell etc. is not permissible in the mosque or in the vicinity thereof.

xviii. Where bells are ringing or conch shells are blown, prayer would not be offered.

xix. Before offering Friday prayer, one should take a bath in a house and perform Wudu (ablution) in the mosque.

xx. Before other prayers, Wuzu i.e. cleanliness of hand, face and feet is necessary.

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xxi. A mosque is to be built on a land obtained in a valid manner and by the owner or with the permission of the owner. In other words, user of land for the purpose of mosque in an unjust manner strictly prohibited.

3296. For the purpose of a waqf, valid in Shariyat Law, one must satisfy the following requirements:

i. The land must belong to Waqif.

ii. There must be dedication which is permanent.

iii. For a public waqf, the delivery to Mutawalli or anyone else on his behalf.

3297. The above factors have been enumerated on a careful reading of the books of Sharii, as also the relevant authorities on the subject, noticed above. We find that the so called religious experts at several places have made statements which are strictly not in conformity to what has been said in the texts, the extract whereof, we have already referred, and at times is contrary thereto. It is now settled that in the matter of the principles or laws of Muslims or Hindus, the Courts are supposed neither to obtain opinion of those who claimed to be 'Expert' in religious matter nor must rely thereon but should consider itself the relevant religious scripture to find out the correct position. The decision in this regard we have already referred to i.e. **Mosque known as Masjid Shahid Ganj Vs. Shiromani Gurdwara Prabandhak Committee, Amritsar, 1940 PC 116.**

3298. The case of the plaintiffs is that Babar conquered Hindustan after defeating Ibrahim Lodhi in the battle of Panipat in 1526 AD and thereby became emperor of the entire territory over which Ibrhim Lodhi had been reigning at that time. The

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area of Oudh was within the reigning territory of Ibrahim Lodhi and therefore, it also fell under the authority of Babar. He being the conqueror of the territory was a sovereign authority enjoying complete ownership on the entire land which fell within his reigning territory and thus was entitled to use any land for the purpose as he liked. Mir Baqi, his agent, with the permission and approval of Babar used the land in question for construction of the disputed structure. Since the Babar as conqueror was owner of the entire land, it cannot be said that the land was not owned by him. In this regard Sri Jilani had placed reliance on the following:

A. **Travels in the Moghal Empire, AD 1656-1668 by Francois Bernier**, translated by Archibald Constable (1891), Second Edition revised by Vincent A.Smith published in 1916 by Oxford University Press, Page 5:

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> *"It is usual in this country to give similar names to the members of the reigning family. Thus the wife of Chah Jehan- so renowned for her beauty, and whose splendid mausoleum is more worthy of a place among the wonders of the world than the unshapen masses and heaps of stones in Egypt-was named Tage Mehalle, or the Crown of the Seraglio; and the wife of Jahan-Guyre, who so long wielded the sceptre, while her husband abandoned himself to drunkenness and dissipation, was known first by the appellation of Nour-Mehalle, the Light of the Seraglio, and afterwards by that of Nour-Jahan-Begum, the Light of the World.*
>
> *The reason why such names are given to the great, instead of titles derived from domains and seigniories, as*

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usual in Europe, is this: as ***the land throughout the whole empire is considered the property of the sovereign****, there can be no earldoms, marquisates or duchies. The royal grants consist only of pensions, either in land or money, which the king gives, augments, retrenches or takes away at pleasure."*

B. Under the title **"Letter to Colbert"** at page 204, in the above book, it mentions as under:

"The importation of all these articles into Hindoustan does not, however, occasion the export of gold and silver; because the merchants who bring them find it advantageous to take back, in exchange, the productions of the country.

Supplying itself with articles of foreign growth or manufacture, does not, therefore, prevent Hindoustan from absorbing a large portion of the gold and silver of the world, admitted through a variety of channels, while there is scarcely an opening for its return.

It should also be borne in mind, that the Great Mogol constitutes himself heir of all the Omrahs, or lords, and likewise of the Mansebdars, or inferior lords, who are in his pay; and, what is of the utmost importance, ***that he is proprietor of every acre of land in the kingdom, excepting, perhaps, some houses and gardens which he sometimes permits his subjects to buy, sell, and otherwise dispose of, among themselves."***

C. At page 205 it mentions:

"Second.-the empire of the Great Mogol comprehends sevral nations, over which he is not absolute master. Most

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of them still retain their own peculiar chiefs or sovereigns, who obey the Mogol or pay him tribute only by compulsion. In many instances this tribute is of trifling amount; in others none is paid; and I shall adduce instances of nations which, instead of paying, receive tribute."

D. **"The English Factories in India" (1668-1669) by Sir William Foster**, published at the Clarendon Press, Oxford (1927) on page 184, says:

*"..for here in this country there are noe firme estates in land to be purchased, the **whole country being the Kings and not held by any tenure**."*

E. **"The History of British India" by James Mill** (Vol.1) published by Associated Publishing House, New Delhi, First Published 1817, Second Edition in 1829 and Second Reprint in 1978, Page 136, says:

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"At different times, however, very different rights and advantages are included under the idea of property. At very early periods of society it included very few: originally, nothing more perhaps than use during occupancy, the commodity being liable to be taken by another, the moment it was relinquished by the hand which held it: but one privilege is added to another as society advances: and it is not till a considerable progress has been made in civilization, that the right of property involves all the powers which are ultimately bestowed upon it.

It is hardly necessary to add, that the different combinations of benefits which are included under the idea of property, at different periods of society, are all equally arbitrary; that they are not the offspring of nature, but the

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creatures of will; determined, and chosen by the society, as that arrangement with regard to useful objects, which is, or is pretended to be, the best for all.

It is worthy of remark, that property in moveables was established; and that it conveyed most of the powers which are at any time assigned to it; while, as yet, property ***in land had no existence.*** *So long as men continue to derive their subsistence from hunting; so long, indeed, as they continue to derive it from their flocks and herds, the land is enjoyed in common. Even when they begin to derive it partly from the ground, though the man who has cultivated a field is regarded as possessing in* ***it a property till he has reaped his crop, he has no better title to it than another for the succeeding year****.*

In prosecuting the advantages which are found to spring from the newly-invented method of deriving the means of subsistence from the ground, experience in time discovers, that much obstruction is created by restricting the right of ownership to a single year; and that food would be provided in greater abundance, if, by a greater permanence, men were encouraged to a more careful cultivation. To make, however, that belong to one man, which formerly belonged to all, is a change, to which men do not easily reconcile their minds. In a thing of so much importance as the land, the change is a great revolution. To overcome the popular resistance, that expedient which appears to have been the most generally successful, is, to vest the sovereign, as the representative of the society, with that property in the land which belongs to the society; and

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the sovereign parcels it out to individuals, with all those powers of ownership, which are regarded as most favourable to the extraction from the land of those benefits which it is calculated to yield. ***When a sovereign takes possession of a country by conquest, he naturally appropriates to himself all the benefits, which the ideas of his soldiers permit****.*

In many of the rude parts of Africa, the property of the land is understood to reside in the sovereign; it is in the shape of a donation from him, that individuals are allowed to cultivate; and when the son, as is generally the case, succeeds to the father, it is only by a prolongation of the royal bounty, which, in some places at least, is not obtained without a formal solicitation. It is known, that in Egypt the king was the sole proprietor of the land; and one fifth of the produce appears to have been yielded to him as revenue or rent. Throughout the Ottoman dominions, the Sultan claims to himself the sole property in land. The same has undoubtedly been the situation of Persia, both in ancient and modern times. "It is established", says the late intelligent Governor of Java, "from every source of inquiry, that the sovereign in Java is the lord of the soil." And when the fact is established in regard to Java, it is established with regard to all that part of the eastern islands, which in point of manners and civilization resembled Java. It is not disputed that in China the whole property of the soil is vested in the Emperor. By the laws of the Welsh, in the ninth century, all the land of the kingdom was declared to belong to the king; and we may safely, says Mr. Turner, believe,

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that the same law prevailed while the Britons occupied the whole island.

To those who contemplate the prevalence of this institutions, ***among nations contiguous to the Hindus, and resembling them in the state of civilization, it cannot appear surprising, that among them, too, the sovereign was the lord of soil.*** *The fact is, indeed, very forcibly implied, in many of the ancient laws and institutions. "Of old hoards," says one of the ordinances of Manu, "and precious minerals in the earth,* ***the king is entitled to half by reason of his general protection, and because he is the supreme lord of the soil."*** *The king, as proprietor, and as fully entitled to an equitable return for the land which he has let, is empowered to punish the cultivator for bad cultivation. "If land be injured, by the fault of the farmer himself, as if he fails to sow it in due time, he shall be fined ten times as much as the king's share of the crop, that might otherwise have been raised; but only five times as much, if it was the fault of his servants without his knowledge." Among other ancient memorials of Hindu institutions and manners, are certain inscriptions engraved on durable materials. Some of them are records of grants of land, commonly to favourite Brahmans; and afford strong indication of the proprietary rights of the sovereign. The sovereign gives away villages and lands, not empty, but already occupied by cultivators, and paying rent. It appears from an ordinance of Yagyavalkaya, one of the most sacred of the law sages, that the kings alienated the lands within their dominions, in the same manner, and by*

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the same title, as they alienated any portion of their revenues. On this point, it is of material importance to remark, that up to the time, when the interests of the Company's servants led them to raise a controversy about the rights of the Zamindars, every European visitor, without one exception that I have found, agrees in the opinion, that the sovereign was the owner of the soil.

Wherever the Hindus have remained under the influence of their ancient customs and laws, the facts correspond with the Inference which would be drawn from these laws. Under the direction of the Governor-General of Bengal, a journey was undertaken, in the year 1766, by Mr. Motte, to the diamond mines in the Province of Orissa. In a narrative of his journey, he gives an account of the distribution of the land as Sambalpur, which till that time had remained under the native government. Each village being rated to the government at a certain quantity of rice, which is paid in kind, the land is thus divided among the inhabitants: To every man, as soon as he arrives at the proper age, is granted such a quantity of arable land as is estimated to produce 242 1/8 measures of rice, of which he must pay 60 5/8 measures or about one fourth to the raja or king. Mr. Motte adds; "The reserved rent of three or four villages, being one fourth the produce of the land, is applied to the use of the raja's household. The reserved rent of the rest is given to his relations or principal servants, who by these means have all the inhabitants dependent on them." Dr. Buchanan gives a particular account of the manner in which the crop, in those parts of India which are

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most purely Hindu, is divided between the inhabitants and the government. In Bengal it is not allowed to be cut down till the rent or tax is first paid: but in those countries to which his journey principally relates, it is the custom, after the grain has been thrashed out in the field, to collect it into heaps and then to divide it. A heap generally consists of about 110 Winchester bushels, of which he presents the following distribution as a specimen of the partition which is usually made. For the gods, that is, for the priests at their temples, are deducted five seers, containing about one-third of a Winchester gallon each; for charity, or for the mendicant Brahmans, an equal quantity; for the astrologer and the Brahman of the village, one seer each; for the barber, the potmaker, the washerman, and the Vasaradava, who is both carpenter and blacksmith, two seers each; for the measurer, four seers; for the Aduca, a kind of beadle, seven seers; for the village chief, eight seers, out of which he has to furnish the village sacrifices; and for the accomptant, ten seers. All these perquisites are the same, whatever be the size of the heap beyond a measure of about twenty five Winchester bushels. When these allowances are withdrawn the heap is measured; and for every candaca which it contains, a measure equal to 5 1/20 Winchester bushels, there is again deducted half a seer to the village watchmen, two and a half seers to the accomptant, as much to the chief of the village; and the bottom of the heap, about an inch thick mixed with the cow-dung which in order to purify it had been spread on the ground, is given to the Nirgunty, or conductor of water.

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These several deductions, on a heap of twenty candacas, or 110 Winchester bushels, amount to about 5 ¼ per cent on the gross produce. Of the remainder, 10 per cent is paid to the collectors of the revenue, as their wages or hire; and the heap is last of all divided into halves between the king and the cultivator.

From these facts only one conclusion can be drawn, that the property of the soil resided in the sovereign: for if it did not reside in him, it will be impossible to show to whom it belonged. *The cultivators were left a bare compensation, often not so much as a bare compensation, for the labour and cost of cultivation: they got the benefit of their labour: all the benefit of the land went to the king.*

Upon the state of facts, in those places where the present practices of the Hindus have not been forced into a disconformity with their ancient institutions, the fullest light has been thrown, by those servants of the Company, who made the inquiries requisite for the introduction of a regular system of finance, into the extensive regions in the south of India added to the British dominions during the administrations of the Marquisses Cornwallis and Wellesley. Place, Munro, Thacheray, Hodgson, were happily men of talents; sufficiently enlightened to see the things which were before them with their naked eyes; and not through the mist of English anticipations. From the reports of these meritorious gentlemen, presented to their superiors, the Committee of the House of Commons, which inquired into East India affairs in 1810, have drawn the

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following as a general picture: "A village, geographically considered, is a tract of country, comprising some hundreds, or thousands, of acres of arable and waste land. Politically viewed, it resembles a corporation, or township. Its proper establishment of officers and servants consists of the following descriptions: The Patail, or head inhabitant, who has the general superintendence of the affairs of the village, settles the disputes of the inhabitants, attends to the police, and performs the duty of collecting the revenues within his village: the Curnum, who keeps the accounts of cultivation, and registers every thing connected with it: The Tallier and Totie; the duty of the former appearing to consist in a wider and more enlarged sphere of action, in gaining information of crimes and offences, and in escorting and protecting persons travelling from one village to another; the province of the latter appearing to be more immediately confined to the village, consisting, among other duties, in guarding the crops, and assisting in measuring them: The Boundaryman, who preserves the limits of the village on gives evidence respecting them in cases of dispute: The Superintendent of water courses and tanks, who distributes the water for the purposes of agriculture: The Brahman, who performs the village worship: The Schoolmaster, who is seen teaching the children in the villages to read and write in the sand: The Calendar Brahman, or astrologer, who proclaims the lucky, or unpropitious periods for sowing and thrashing: The Smith, and Carpenter, who manufacture the implements of agriculture, and built the dwelling of the ryot: The Potman

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or potter: The Washerman: The Barber: The Cow-keeper, who looks after the cattle: The Doctor: The Dancing Girl, who attends at rejoicings; The Musician, and the Poet.

*"**Under this simple form of municipal government, the inhabitants of the country have lived, from time immemorial**. The boundaries of the villages have been seldom altered: and though the villages themselves have been sometimes injured, and even desolated, by war, famine, and disease, the same name, the same limits, the same interests, and even the same families, have continued for ages. The inhabitants give themselves no trouble about the breaking up and division of kingdoms; while the village remains entire, they care not to what power it is transferred, or to what sovereign it devolves; its internal economy remains unchanged; the Potail is still the head inhabitant, and still acts as the petty judge and magistrate, and collector or renter of the village."*

These villages appear to have been not only a sort of small republic, but to have enjoyed to a great degree the community of goods. Mr. Place, the collector in the jaghire district at Madras, informs us, that "Every village considers itself a distinct society; and its general concerns the sole object of the inhabitants at large; a practice," he adds, "which surely redounds as much to the public good as to theirs; each having, in some way or other, the assistance of the rest; the labours of all yield the rent; they enjoy the profit, proportionate to their original interest, and the loss falls light. It consists exactly with the principles upon which the advantages are derived from the division of

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labour; one man goes to market, whilst the rest attend to the cultivation and the harvest; each has his particular occupation assigned to him, and insensibly labours for all. Another practice very frequently prevails, of each proprietor changing his lands every year. It is found in some of the richest villages; and intended, I imagine, to obviate that inequality to which a fixed distribution would be liable."

F. It is said that similar facts have been stated by certain other writers namely:

i. Letters from the Mughal Court, 1593-1617 Jerome Zenxavir translated by H.Hosten, Journal of Asiatic Society of bengal, NS, XXIII (1927), page 121-22, 105.

ii. John Fryer, A New Account of East India and Persia, being Nine Years' Travels, 1671-82, ed. W. Crooke, 3 Vols., Hakluyt Society, London, (1909, 1912, 1915), Vol. I, page 137

iii. Nicolao Manucci, Storia do Mogor, 1656-1712, translated by W.Irvine, 4 Vols., Indian Texts Series, Government of India, London, 1907-08, Vol. II, P.46.

3299. It is not disputed that king had purchased land at times. Regarding payment made by Shahjahan for acquiring land to construct Taj Mahal, it is stated that there existed a house built by Raja Maan Singh succeeded by Raja Jai Singh and therefore pursuant to an agreement certain other properties was transferred to him in lieu of the aforesaid land. A facsimile of Firman issued on 28th December, 1533 to Raja Jai Singh is available in "Jaipur Kapaddwar Collections" and copy thereof has been published recently in a book **"Tajmahal, the**

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Illumined Tomb" compiled and Translated by W.E.Begley and Z.A.Desai published by the University of Washington Press, 1989. At page 41 para 5.1 reads:

"QAZWINI

Body of the Queen Taken to Akbarabad

[fol. 235A] In short, after six months her blessed corpse was dispatched to the Abode of the Caliphate, Akbarabad, escorted by the branch of the tree of sovereignty and caliphate, prince Sultan Shah Shuja' Bahadur, the 'Umdat ul-mulk Wazir Khan, and the veiled lady possessing the virtues of Rabi'a Satti Khanam, who had attained the high rank of first Lady-in-Waiting of that recipient of divine pleasure in Paradise by her laudable services, sincere faith and purity of intention.

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As there was on the southern side of Akbarabad, adjoining the city, on the bank of the river Jumna, a tract of land (zamini), which formerly (sabiqa) was the house (khana) of Raja Man Singh, but at this time was in the possession of his grandson Raja Jai Singh, and which from the point of view of eminence and pleasantness appeared to be worthy of the burial of that one whose residence is Paradise, it was selected for this purpose. And the Raja as a token of his sincerity and devotion, donated the said land (zamin) and considered this to be the source of happiness. However, His Majesty, in exchange (iwad) for that, granted to the Raja a lofty house (khana-i-'ala) which belonged to the crown estate. And even though the Raja's consent was obvious, the Emperor obtained permission for the repose of that companion of the Houris of Paradise.

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And it was decided that her auspicious body should be buried in that heart-pleasing land (zamin); but until its arrival at the Abode of the Caliphate, everywhere on the roads, there should be distributed food and drink [fol. 235B] and innumerable coins should be given in alms to the poor and the deserving. And the prince of the people of this world and his companions, having carried the blessed dead body to the Abode of Caliphate, entrusted it to that holy earth. And having halted in the seat of the kingdom for three or four days, they returned to the exalted court.

And in compliance with the order which is obeyed by the World, the overseers (mutasaddiyan) of the affairs of the Abode of Caliphate hurriedly covered the top (bala) of that grave (turbat), having the signs of divine mercy, so that it remained hidden from the public gaze (nazar)."

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3300. At page 43, it says:

"*As there was a tract of land (zamini) of great eminence and pleasantness towards the south of that large city, on which there was before this the mansion (manzil) of Raja Man Singh, and which now belonged to his grandson Raja Jai Singh, it was selected for the burial place (madfan) of that tenant of Paradise. Even thought Raja Jai Singh considered the acquisition (husul) of this to be his good fortune and a great success, by way of utmost care, which is absolutely necessary in all important things, particularly in religious matters, a lofty mansion from the crown estates (khalisa-sharifa) was granted to him in exchange ('iwad).*

After the arrival of the dead body in that highly

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dignified city, on the 15th of Jumada II 1041 (8 January 1632] of the next regnal year, the luminous body of that heavenly essence was consigned to the holy earth. The overseers (mutasaddiyan) of the Abode of the Caliphate, under exalted orders, hastily concealed from the public gaze (nazar) the heaven-ranked grave (turbat) of that world of chastity."

3301. Firman dated 28th December, 1633 to Raja Jai Singh translated in English at page 169 reads as under:

"*Be it known through this glorious farman marked by happiness, which has received the honor of issuance and the dignity of proclamation, that the mansions (haveli) detailed in the endorsement (dimn), together with their dependencies, which belong to the august crown property, have been offered to that pride of peers and vassal of the monarch of Islam, Raja Jai Singh, and are hereby handed over and transferred to his ownership—in exchange for the mansion (haveli), formerly belonging to Raja Man Singh, which that pride of the grandees willingly and voluntarily donated for the mausoleum (maqbara) of that Queen of the ladies of the world and Lady of the ladies of the Age, that honor of the daughters of Adam and Eve and upholder of the stature of chastity of the Time, that Rabi'a of the world and chastity of the World and Religion, that recipient of Divine Mercy and Pardon, Mumtaz Mahal Begam.*

And it shall be incumbent upon all present and future governors, officials (amil), overseers (mutsaddiyan), agents and inspectors (mushrif), in the implementation and execution of this august lofty order, to hand over to his

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possession the said mansions, and convey to that one worthy of bounty their absolute ownership. Moreover they should never and by no means bring about any obstruction or deviation, nor should they ever require a fresh farman or deed; and they should neither depart or deviate from this order, nor fail to execute it promptly.

Written on this date, the 7th of the month of Dai, Ilahi year 6, corresponding to the 28th of Jumada II , year 1043 Hijri [28 December 1633].

Endorsement on Reverse of the Farman

....Sunday, the 28th of the month of Dai, Ilahi year 6, corresponding to the 14th of Rajab, year 1043 (?)

The memoranda (risala) of the Pillar of the State ('Umdat al-Mulk), the.....of the government and support of the kingdom, the trust of the great.....and organizer of the affairs of kingship, the Plenipotentiary of the government (Jumlat al-Mulk) and pivot of important affairs (Madar al-Maham) [i.e., the Prime Minister], 'Allami Fahami Afzal Khan; and that asylum of ministership of and minstay of good fortune and glory, Mir Jumla; and that asylum of ministership .....Makramat Khan; and the holder of the secretariat (diwani), the least of the servants, Mir Muhammad:

The ever-obeyed farman, as effulgent as the sun and axalted as the sky, was issued [to the effect that]:

> *The mansions (Haveli), together with their dependencies, belonging to the august crown estate, in exchange for the mansion (Haveli) belonging to Raja Jai Singh, which that Pillar of the State ('Umdat*

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al/Mulk), for the sake of the Illumined Tomb, willingly and voluntarily donated as a gift (peshkash namudand), have hereby been granted by us to the said Raja and settled on him in full ownership.

And by way of attestation, this note (ya'd-dasht) has been put into writing. And endorsement (sharh) in the handwriting of Jumlat al-Mulki Madar al-Mahami [Afzal Khan] is that: "This should be entered in to news-register." Another endorsement in the handwriting of Jumlat al-Mulki is that: "The haveli of the late Shahzada Khanam [?] which was granted to the said Raja is confirmed."

The endorsement in the handwriting of that asylum of ministership and mainstay of good fortune and glory, Mir Jumla, is that: "As specified in the memorandum (ba-risala) of Jumlat al-Mulki Madar al-Mahami, it should be entered in the news-register (waqi'a)." The endorsement in the handwriting of that asylum of good fortune and mainstay of glory, Makramat Khan, is that: "It should be entered in the news-register."

The endorsement on the margin (hashiya) is in the handwriting of the news-writer (waqi'a-navis), attesting its entry in the news-register [?].

Another endorsement in the handwriting of the Jumlat al-Mulki Madar al Mahami, 'Allami Fahami, is that: "It should be resubmitted." The endorsement in the handwriting of that favorite of the royal court, Hakim Muhammad Sadiq Khan, is that: "It should be placed again before the august notice on Tuesday."

Another endorsement in the handwriting of that

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favorite of the royal court, the administrator [?] of the foundations of the Gurgani rule and enforcer [?] of the rules of justice, the model of the lords of high station and choice of the peers of the world, Jumlat al-Mulki Mdar al-Mahami, 'Allami Fahami Afzal Khan, is that: "A farman of high dignity should be issued."

List of the Properties

Four " Properties" (manzil) have been granted to the Raja:

Haveli of Raja Bhagwandas.....

Haveli of Madho Singh.....

Haveli of Rupsi Bairagi, in the locality (mohalla)

of Atga Khan Bazar

Haveli of Chand Singh, son of Suraj Singh, in the aforementioned locality

Attestation and Seal

Certified as a true copy of the original:

THE SERVANT OF THE RELIGIOUS CODE OF MUHAMMAD

.....ABUL-BARAKAT"

3302. Clarifying the legal position of 'Firman' issued by a Ruler, the Apex Court in **Faqruddin (supra)** observed that Maharana of Udaipur possessed executive and legislative power both. The rule by him are therefore statutory. It relied on an earlier decision in **Tilkayat Shri Govindlalji Maharaj Vs. State of Rajasthan AIR 1963 SC 1638** and observed:

"In appreciating the effect of this Firman, it is first necessary to decide whether the Firman is a law or not. It

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is matter of common knowledge that at the relevant time the Maharana of Udaipur was an absolute monarch in whom vested all the legislative, judicial and executive powers of the State. In the case of an absolute Ruler like the Maharana of Udaipur, it is difficult to make any distinction between an executive order issued by him or a legislative command issued by him. Any order issued by such a Ruler has the force of law and did govern the rights of the parties affected thereby. This position is covered by decisions of this Court and it has not been disputed before us, vide Madhaorao Phalke v. State of Madhya Bharat AIR 1961 SC 298. Ameer-un-Nissa Begum v. Mahboob Begum AIR 1955 SC 352 and Director of Endowments, Government of Hyderabad v. Akram Ali AIR 1956 SC 60"

3303. Per contra Sri P.N.Mishra Advocate appearing for defendant no.20 (Suit-4) submits:

A. Plaintiffs' claim of creation of mosque and graveyards by Emperor Babur falls during the period of 1526 to 1530 AD ,the validity of the wakf and the title of the wakif which is precondition for creation of a wakf can be decided only by applying the law of 'Shar' (Haneefi School) which was the Law for the time being in force.

B. **Neil B.E. Baillie** in his Book '**A Digest of Mahommedan Law**' compilation and translation from authorities in the original Arabic on the subjects to which it was usually applied by British Courts of Justice in India in preface of its Part-First containing the doctrines of the **Hanifeea Code of Jurisprudence** at page vii-viii (Second Edition 1875 published by Smith Elder, & Co., London)

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records that in the Province of Oudh since inception of Muslim rules in India the Hanifeea Code was the general law of the country and after the assumption of regal dignity (on 19th October, 1818) by Ghazi-ooddeen Hyder, the Hanifeea was gradually superseded by the Imameea Code. In the preface of Part-Second of the said book at page xi-xii (2nd Edn. 1887 published by Smith Elder, & Co., London) he reiterated that in the United Provinces of Oudh since inception of Muslim rules in India and till the accession of Umjad Ally Shah (who reigned from 17th May, 1842 to 13th February, 1847) the law of the Oudh province was Soonnee Hanifite Law. Relevant extracts from the said compilations read as follows:

> *"The Moohummudan Sovereigns of India were Soonnees of the Hanifeea sect, and the Hanifeea code was the general law of the country, so long as it remained under the sway of Moohummudans. Even in Oude, where the actual rulers were of the Shia persuasion, yet, so long as they preserved a nominal allegiance to the Sovereigns of Delhi, the Hanifeea code remained the law of the province. After the assumption of regal dignity by Ghazi -ood-deen Hyder, the Hanifeea was gradually superseded by the Imameea code, until at length the latter had become the general law of the country at the time of its annexation to the British empire."*
>
> *"The Mussulmans of India are generally Soonnes of the Hanifite sect.*
>
> ...

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The process of assimilation was less rapid in India, where, though several of the Nawabs, or local Governors, were Sheeuhs, they acknowledged at least a nominal dependence on Delhi, and never ventured to make any ostensible change in the law of their provinces. This was eminently the case in Oude, the Nawabs of which were hereditary Viziers of the empire, and though long virtually independent, did not throw off their allegiance to it till the year 1818, when the Nawab Vizier Ghazi-ood-deen Hyder, with the consent, and, indeed, at the suggestion, of the British Government, assumed the title of Padshah or King. It was not, however, till the accession of Umjad Ally Shah, that any formal alteration was made in the law."

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C. The **Gazetteer of India (Vol.II at p.361-363)** records that during the Sultanat & Mughal period the medieval state under Muslim rule was a theocracy. The sovereignty of Allah was unquestioned. The supremacy of the Shar was always acknowledged. Relevant portion of the said Gazetteer reads as follows:

"The medieval state under Muslim rule was definitely a theocracy since it had all its essential elements- the 128 Argued by P N Mishra & assisted by R Agnihotri, Advocates on behalf of the Defendant No. 20. sovereignty of God and government by the direction of God through priests in accordance with divine laws. The Sultans of Delhi considered themselves as deputies or assistants of the Caliph

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who was God's viceregent. Sher Shah and Islam Shah assumed the title of Caliph and the Mughal emperors, from Akbar to Aurangzeb, those of 'Shadow of God', 'Caliph of God', and 'Agent of God on Earth'. The sovereignty of God was unquestioned. The supremacy of the shar was always acknowledged, though Akbar added to the shar the state-laws. Under him and his two immediate successors, Islamic law ceased to be the exclusive code of government. Jahangir and Shah Jahan, however, did not regard themselves as above Muslim law and the former even assumed the role of 'Protector' of Islam and Shar. The Shar is based on the Quran, the word of God, and Hadith or the Prophet's interpretation of the word of God. Hence, the Shar consists of divine commands and not human ordinances."

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D. The **Gazetteer of India (Vol.II at p.361-363)** records that during the Sultanat & Mughal period the law of Shar which is based on Quran, the word of God, and Hadith or the Prophet's interpretation of the word of God was the law of the land. Relevant portion of the said gazetteer reads as follows:

"The first question that arises in this context is whether the state under the Sultans of Delhi and the Mughal emperors was Islamic or otherwise. This has been the subject of a lively controversy among modern historians. According to Muslim constitutional law, the world is divided into dar-ul-

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harb or 'abode of war' and dar-ul-Islam or 'abode of Islam'; and a darul- Islam is a country which is under the rule of a Muslim sovereign and where the ordinances of Islam have been established. The Sultans of Delhi acknowledged the sovereignty of the Caliph and considered their kingdom as a part of Dar-ul-Islam of which the Caliph was the juridical head. India under the Mughal emperors was governed by the Muslim law Shar. The fact that the bold and daring Alau'ddin Khalji consulted the Qadi of Bayana to ascertain what was legal proves the supremacy of the shar; and neither he nor Muhammad Tughlaq with his revolutionary inclinations, dared violate it. Even Akbar the Great, considered infidel by orthodox Muslims, did not disregard Muslim law."

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E. The **Gazetteer of India (Vol. II at p.368-369)** records that till 1579 AD. the Muslim rulers of India acknowledged the legal sovereignty of the Caliph. Relevant portion of the said gazetteer reads as follows:

"The Sultans of Delhi acknowledged the legal sovereignty of the Caliph. According to Muslim political jurisprudence no Sultan had legal right to the throne unless he was recognized by the Caliph.

...

The claim of caliphal supremacy over the Mughal empire was finally overthrown when Akbar assumed the title of Imam and Amir-ul-muminin by virtue of the Mahdar (Declaration) of A.D.

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1579. The coins and the Khutba mention him as Caliph and Amir-ul-muminin. By becoming the chief mujtahid, he also challenged the pretensions of the Safavi Shahs of Persia who claimed suzerainty over the Mughal empire, on the ground that both Babur and Humayon had sought and obtained their military help. It was under Akbar that the monarchy in India became absolutely independent of any foreign or external authority. His successors maintained this tradition. The Mughal emperors from the time of Akbar assumed the authority of the Caliph and called their capital daru'l-khilafat.

F. In **(2008) 8 SCC 12, Faqruddin v. Tajuddin**, the Hon'ble Supreme Court held that a title does not remain in vacuum. It has to be determined keeping in view the law operating in the field viz. religious law or statutory law or customary law, etc. Relevant paragraph nos.44 & 45 of the said judgment read as follows:

"44. The jurisdiction of the Board of Revenue being limited, no title could have been conferred upon the plaintiff. Title in or over a land will depend upon the statutory provisions. A title does not remain in vacuum. It has to be determined keeping in view the law operating in the field viz. religious law or statutory law or customary law, etc.

45. Revenue authorities of the State are concerned with revenue. Mutation takes place only for certain purposes. The statutory rules must be held to be operating in a limited sense. The provisions of Rule

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13 of the Matmi Rules laying down a rule of primogeniture will have no application in relation to the offices of sajjadanashin and mutawalli, which are offices of different nature. They are stricto sensu not hereditary in nature. It is well settled that an entry in the revenue records is not a document of title. Revenue authorities cannot decide a question of title."

G. In **AIR 1980 SC 707 "Krishna Singh v. Mathura Ahir"** the Hon'ble Supreme Court held that in applying the personal law of the parties, a Judge cannot introduce his own concepts of modern times but should enforce the law as derived from recognised and authoritative sources of Hindu law, i.e., Smritis and commentaries referred to, as interpreted in the judgments of various High Courts, except where such law is altered by any usage or custom or is modified or abrogated by statute. Relevant paragraph no. 17 of the said judgment reads as follows:

"17. It would be convenient, at the outset, to deal with the view expressed by the High Court that the strict rule enjoined by the Smriti writers as a result of which Sudras were considered to be incapable of entering the order of yati or sanyasi, has ceased to be valid because of the fundamental rights guaranteed under Part III of the Constitution. In our opinion, the learned Judge failed to appreciate that Part III of the Constitution does not touch upon the personal laws of the parties. In applying the personal laws of the parties, he could not introduce his own concepts of

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modern times but should have enforced the law as derived from recognised and authoritative sources of Hindu law, i.e., Smritis and commentaries referred to, as interpreted in the judgment of various High Courts, except where such law is altered by any usage or custom or is modified or abrogated by statute."

H. In **AIR 1953 SC 394 "Rao Shiv Bahadur Singh v. State of Vindhya Pradesh** the Hon'ble Supreme Court held that on the change of sovereignty over an inhabited territory the pre-existing laws continue to be in force until duly altered. Relevant paragraph nos.10, 17 & 21 of the said judgment read as follows:

"10. In this contention our attention has been drawn to the fact that the Vindhya Pradesh Ordinance 48 of 1949 though enacted on 11-9-1949, i.e. after the alleged offences were committed, was in terms made retrospective by S. 2 of the said Ordinance which says that the Act "shall be deemed to have been in force in Vindhya Pradesh from the 9th day of August 1948", a date long prior to the date of the commission of the offences. It was accordingly suggested that since such a law at the time when it was passed was a valid law and since this law had the effect of bringing this Ordinance into force from 9-8-1949 it cannot be said that the convictions are not in respect of 'a law in force" at the time when the offences were committed. This, however, would be to import a somewhat technical meaning into the phrase

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"law in force" as used in Art. 20. "Law in force" referred to therein must be taken to relate not to a law "deemed" to be in force and thus brought into force but the law factually in operation at the time or what may be called the then existing law. Otherwise, it is clear that the whole purpose of Art. 20 would be completely defeated in its application even to 'ex post facto', laws passed after the Constitution. Every such 'ex post facto' law can be made retrospective, as it must be, if it is to regulate acts committed before the actual passing of the Act, and it can well be urged that by such retrospective operation it becomes the law in force at the time of the commencement of the Act. It is obvious that such a construction which nullifies Art. 20 cannot possibly be adopted. It cannot, therefore, be doubted that the phrase "law in force" as used in Art. 20 must be understood in its natural sense as being the law in fact in existence and in operation at the time of the commission of the offence as distinct from the law "deemed" to have become operative by virtue of the power of legislature to pass retrospective laws. It follows that if the appellants are able to substantiate their contention that the acts charged as offence in this case have become such only by virtue of Ordinance No. 48 of 1949 which has admittedly been passed subsequent to the commission thereof, then they would be entitled to the benefit of Art. 20 of the Constitution and to have their convictions set aside.

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This leads to an examination of the relevant pre-existing law."

17. It has been urged, however, that though this may have been the intention, the intention did not become operative for reasons to be presently stated. Section 2 of Ordinance No. 4 of 1948 while extending the laws of Rewa State to the rest of Vindhya Pradesh refers to the publication of such laws in the Rewa Gazette as a requisite therefor, and it is pointed out that the Rewa Gazette itself came into existence only in October 1930 (Vide page 386 of the printed Paper book), whereas the Penal Code and the Criminal Procedure Code were brought into operation in the Rewa State in 1921 and 1922. It is also pointed out that the deletion of the requirement of previous publication in the Rewa Gazette by Ordinance No. 20 of 1949 came into operation only when that Ordinance was published in the Vindhya Pradesh Gazette, i.e. on 15-5-1949 sometime after the commission of the offence in this case. To substantiate the view that only such of the Rewa laws which were previously published in the Rewa Gazette were understood as having been originally extended to Vindhya Pradesh by Ordinance No. 4 of 1948, a decision of the Vindhya Pradesh High Court dated 29-10-1949 in Criminal Appeal No. 27 has been brought to our notice which assumes that the Prisoners Act in force in India was not in force in Vindhya Pradesh as there was no previous publication of it, in the Rewa Gazette. On

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the other side a notification of Vindhya Pradesh Government dated 19-3-1949 and published in the Vindhya Pradesh Gazette dated 30-3-1949 has been brought to our notice which specifically mentions all the laws by then in force in Vindhya Pradesh and shows "Indian Penal Code - 'mutatis mutandis'- with necessary adaptations" as item 86 thereof. This is relied on to show that there must have been a previous publication thereof in the Rewa Gazette before integration. There seems to be considerable force in this argument that in respect of the various Rewa State laws which have been enumerated in the above-mentioned Gazette as having been brought into force in Vindhya Pradesh (some of these are Acts prior to 1930) there must have been previous publication in the Rewa Gazette sometime after 1930, and that neither Ordinance No. 20 of 1949 nor the decision of Vindhya Pradesh High Court relating to Prisoners' Act (which is not one enumerated in the above Gazette) can be taken to negative it. We are 'prima facie' inclined to accept this view and to think that the Indian Penal Code as in force in Rewa became extended to Vindhya Pradesh by Ordinance No. 4 of 1948. But even assuming that S. 2 of the Ordinance failed to achieve its purpose on account of misconception as to the previous publication of any particular Rewa law in the Rewa Gazette, it is clear that that Rewa law would continue to be in force in the Rewa portion of United State of Vindhya Pradesh,

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as the Vindhya Pradesh law therefor, on the principle recognised in - 'I Moo Ind App 175 (PC) (H)', that on change of sovereignty over an inhabited territory the pre-existing laws continue to be in force until duly altered. Since in the present case we are concerned with offences committed in relation to the Rewa State portion of Vindhya Pradesh, there can be no reasonable difficulty in holding that the Criminal Law of Rewa State, i.e., the Indian Penal Code and the Criminal Procedure Code with adaptations 'mutatis mutandis' was the relevant law for our present purpose by the date of integrated administration, viz., 9.3.1948."

21. It must therefore be held that the rulers of the native States had prior to 1947, the authority to pass extraterritorial laws relating to offences committed by their own subjects and vesting in their own courts the power to try them, except where the contrary is made out by evidence in the case of any individual State, and that so far at least as Rewa State is concerned, the contrary cannot be held to have been proved."

I. In **AIR 1940 P C 116 "Shahid Ganj v. S. G. P. Committee"** the Privy Council held that Court cannot uproot titles acquired prior to annexation by applying law which did not then obtain as law of land as also that there is every presumption in favour of the proposition that a change of sovereignty would not affect private rights. Relevant extracts of the said judgment reads as follows:

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"It has been made clear by learned counsel for the appellants that the plaintiffs do not now claim any relief extending beyond the actual site of the mosque building. The first question to be asked with reference to this immovable property is the question : In whom was the title at the date when the sovereignty of this part of India passed to the British in 1849? It may have been open to the British on the ground of conquest or otherwise to annul rights of private property at the time of annexation as indeed they did in Oudh after 1857. But nothing of the sort was done so far as regards the property now in dispute. There is nothing in the Punjab Laws Act or in any other Act authorising the British Indian Courts to uproot titles acquired prior to the annexation by applying to them a law which did not then obtain as the law of the land. There is every presumption in favour of the proposition that a change of sovereignty would not affect private rights to property : cf. (1905) 2 KB 391.3 3. West, Band Gold-mining Co. v. The King, (1905) 2 KB 391=74 LJ KB 753=93 LT 207=21 TLR 562.

Who then immediately prior to the British annexation was the local sovereign of Lahore? What law was applicable in that State to the present case ? Who was recognized by the local sovereign or other authority as owner of the property now in dispute? These matters do not appear to their Lordships to have received sufficient attention in the present case.

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The plaintiffs would seem to have ignored them. It is idle to call upon the Courts to apply Mahomedan law to events taking place between 1762 and 1849 without first establishing that this law was at that time the law of the land recognized and enforced as such. If it be assumed, for example, that the property in dispute was by general law or by special decree or by revenue-free (muafi) grant vested in the Sikh gurdwara according to the law prevailing under the Sikh rulers, the case made by the plaintiffs becomes irrelevant. It is not necessary to say whether it has been shown that Ranjit Singh took great interest in the gurdwara and continued endowments made to it by the Bhanji Sardars as was held by Hilton J. (20th January 1930) presiding over the Sikh Gurdwaras Tribunal. Nor is it necessary that it should now be decided whether the Sikh mahants held this property for the Sikh Gurdwara under a muafi grant from the Sikh rulers. It was for the plaintiffs to establish the true position as at the date of annexation. Since the Sikh mahants had held possession for a very long time under the Sikh State there is a heavy burden on the plaintiffs to displace the presumption that the mahants' possession was in accordance with the law of the time and place. There is an obvious lack of reality in any statement of the legal position which would arise assuming that from 1760 down to 1935 the ownership of this property was governed by the Mahomedan law as modified by the Limitation Act,

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1908.."

J. In **AIR 1922 Privy Council 123 "Vidya Varuthi v. Baluswami"** the Privy Council held that; from the year 1774, the Legislature, British and Indian, has affirmed, time after time, the absolute enjoyment by the Hindus and Muslims of their laws and customs so far as they are not in conflict with the Statutory laws. It would be a serious inroad into their rights if the rules of the Hindu and Muslim laws were to be construed with the light of legal conceptions borrowed from abroad. Relevant extracts of the said judgment reads as follows:

> *"From the year 1774, the Legislature, British and Indian, has affirmed time after time the absolute enjoyment of their laws and customs, so far as they are not in conflict with the statutory laws, by Hindus and Mahommedans. It would, in their Lordships' opinion, be a serious inroad into their rights, if the rules of the Hindu and Mahommedan laws were to be construed with the light of legal conceptions borrowed from abroad, unless perhaps where they are absolutely, so to speak, in pari materia. The vice of this method of construction by analogy is well illustrated in the case of Vidyapurna Tirthaswami v. Vidyanidhi Tirtha Swami (3)where a Mohant's position was attempted to be explained by comparing it with that of a bishop and of a beneficed clergyman in England under the ecclesiastical law. It was criticised, and rightly, in their Lordships' opinion, in the subsequent case, which arose also in the Madras*

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High Court, of Kailasam Pillai v. Nataraja Thambiran (4)To this judgment their Lordships will have to refer further later on."

K. The Oudh Laws Act, XVIII of 1876 made the Muslim Law and Hindu Law applicable to the persons of respective faiths. Section 3 of the said Act reads as follows:

"3. The law to be administered by the Courts of Oudh shall be as follows:-

(a) the laws for the time being in force regulating the assessment and collection of land revenue;

(b) in questions regarding succession, special property of females, betrothal, marriage, divorce, dower, adoption, guardianship, minority, bastardly, family-relations, wills, legacies, gifts, partitions, or any religious usage or institution, the rule of decision shall be—

(1) any custom applicable to the parties concerned which is not contrary to justice, equity or good conscience, and has not been, by this or any other enactment, altered or abolished, and has not been declared to be void by any competent authority;

(2) any Muhammadan law in cases where the parties are Muhammadans, and the Hindu Law in cases where the parties are Hindus, except in so far as such law has been, by this or any other enactment, altered or abolished, or has been modified by any such custom as is above referred to;

(c) the rules contained in this Act;

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(d) the rules published in the local official Gazette as provided by section 40, or made under any other Act for the time being in force in Oudh;

(e) The Regulations and Acts specified in the second schedule hereto annexed, subject to the provisions of Section 4 and to the modifications mentioned in the third column of the same schedule;

(f) subject to the modifications hereinafter mentioned, all enactments for the time being in force and expressly, or by necessary implication, applying to British India or Oudh, or some part of Oudh;

(g) in cases not provided for by the former part of this section, or by any other law for the time being in force, the Courts shall act according to justice, equity and good conscience.

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L. **In Moore's Indian Appeals (1863-1864) 9 MIA 387, The Advocate- General of Bengal on behalf of Her Majesty Vs. Ranee Surnomoye Dossee**; the Privy Council held that the law applicable to the Hindus prior to acquisition of the rights of sovereignty by the English crown unless altered by express enactment by the Crown those laws remained unchanged and applicable to them. Relevant extract from page 426-427 & 429 of the said judgment reads as follows:

"But, if the English laws were not applicable to Hindoos on the first settlement of the country, how could the subsequent acquisition of the rights of sovereignty by the English Crown make any alteration? It might enable the Crown by express

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enactment to alter the laws of the country, but until so altered the laws remained unchanged. The question, therefore, and the sole question in this case is, whether by express enactment the English law of felo de se, including the forfeiture attached to it, had been extended in the year 1844 to Hindoos destroying themselves in Calcutta.

We were referred by Mr. Melvill in his very able argument, to

the Charter of Charles II. In 1661, as the first, and indeed the only one which in express terms introduces English law into the East Indies. It gave authority to the Company to appoint Governors of the several places where they had or should have Factories, and it authorized such Governors and their Council to judge all persons belonging to the said Company, or that should live under them, in all causes, whether Civil or Criminal, according to the laws of the Kingdom of Engl and, and to execute judgment accordingly. The English Crown, however, at this time clearly had no jurisdiction over native subjects of the Mogul, and the Charter was admitted by Mr. Melvill (as we understood him) to apply only to the European servants of the Company; at all events it could have no application to the question now under consideration. The English law, Civil and Criminal, has been usually considered to have been made applicable to Natives, within the limits of Calcutta, in the year 1726, by the Charter, 13th Geo.

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I. Neither that nor the subsequent Charters expressly declare that the English law shall be so applied, but it seems to have been held to be the necessary consequence of the provisions contained in them. But none of these Charters contained any forms applicable to the punishment, by forfeiture or otherwise, of the crime of self-murder, and with respect to other offences to which the Charters did extend, the application of the criminal law of England to Natives not Christians, to Mahomedans and Hindoos, has been treated as subject to qualifications without which the execution of the law would have been attended with intolerable injustice and cruelty.

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...

We think, therefore, the law under consideration inapplicable to Hindoos, and if it had been introduced by the Charters in question with respect to Europeans, we should think that Hindoos would have been excepted from its operation. But that it was not so introduced appears to us to be shown by the admirable judgment of Sir Barnes Peacock in this case; and if it were not so introduced, then as regards Natives, it never had any existence."

M. In **Moore's Indian Appeals (1836-1837) 1 MIA 175 The Mayor of the City of Lyons Vs. the Hon'ble The East India Company** and His Majestry's Attorney General, the Privy Council held that a foreign settlement obtained in an inhabited country, if is allowed, then the

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law of the country continues until the Crown, or the Legislature change it. Relevant extract from page 270-272 of the said judgment reads as follows:

> *"It is agreed, on all hands, that a Foreign Settlement, obtained in an inhabited Country, by conquest, or by cession from another Power, stands in a different relation to the present question, from a settlement made by colonizing, that is, peopling an uninhabited Country.*
>
> *In the later case, it is said, that the subjects of the Crown carry with them the laws of England, there being, of course, no lex loci.* ***In the former case, it is allowed, that the law of the Country continues until the Crown, or the Legislature, change it.*** *This distinction, to this extent, is taken in all the Books; it is one of the six propositions, stated in Campbell v. Hall, as quite clear; and no matter of controversy in the case. And it had been laid, in Calvin's case; in Dutton v. Howell; (Shower, Parl. Ca.24) in Bl ankard v. Galdy (Salk 411), by Lord Holt, delivering the judgment of the Court; and nowhere more distinctly, and accurately, than in the decision of this Court (Anon.—2P.Will 75).* ***Two limitations of this proposition are added, to which it may be material that we should attend. One of these refers to conquests, or cessions.*** *In Calvin's case, an exception is made of infidel countries; for which, it is said, in Dutton v. Howell , that, though Lord Coke gives no authority, yet it must be admitted, as being*

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consonant to reason. But this is treated, in terms, as an "absurdity", by the Court, in Campbell v. Hall ; the other limitation refers to new plantations. Mr. Justice Blackstone (1 Bl. Com. 106) says, that only so much of the English law is carried into them, by the settler, as is applicable to their situation, and to the condition of an infant Colony. And Sir William Grant, in The Attorney- General v. Stewart (2 Mer 161) applies the same expression, even to the case of conquered or ceded territories, into which the English law of property has been generally introduced. Upon this ground, he held that the Statute of Mortmain does not extend to the Colonies governed by the English law, unless it has been expressly introduced there; because it had its origin in a policy peculiarly adapted to circumstances of the mother Country."

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N. Yajnavalkya-Smriti (I/343) lays down that in the acquired country the King should deliver justice according to custom, usage and law of the said conquered country. The said verse of the Yajnavalkya Smriti as well as Mitatakashara commentary thereon with its Hindi translation are reproduced as follows:-

"यस्मिन्देशे य आचारो व्यवहारः कुलस्थितिः।
तथैव परिपास्योऽसो यदा वशमुपागतः।।343।।

किंच, अदा परदेशो वशमुपागतस्तदा न स्वदेशाचारादिनकरः काचः किं तु अस्मिन्देशे च आचारः कुलस्थितिर्व्यवहारो चः तदैव प्राप्मसीत्तवैदासौ परिपालनीयो यदि आद्यविददो न अदति। यदा यक्षसुपागतः इन्द्रदेव यदोपगमनाप्रागनियम इति दर्शितम्। यथोक्तम् (मनुः 7/195) – उपगरिमासीत राष्ट्रं चास्योपपीडयेत। तदयेवास्य सततं अदस्राकोदकेपनम्।।

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इति ।।343।।

भाषा– अपने वश में आ जावे तो जिस देश में जो आचार, व्यवहार और कुल की मर्यादा हो उसका उसी रूप में वह पालन करें।।343।।

3304. The learned counsel further submits that 1526 AD when Babar became Ruler of Delhi, Agra and Oudh defeating Sultan Ibrahim Lodi in the battle of Panipat, these territories already comprised of 'Dur-ul-Islam' . When in the year 1526 A.D. King Babur acquired sovereignty over Delhi, Agra and Oudh defeating Sultan Ibrahim Lodi in the battle of Panipat those territories did not change their nature of being were constituent of '**Dar-ul-Islam** for the reason that outgoing Sultan was a Muslim and during his reign Law of Shar was Law of the Land. Therefore by defeating Sultan Ibrahim Lodi Emperor Babur acquired only those right of Sovereignty that a Islamic Ruler had under Shar and; as Shar does not extinguish title of land owner on the basis of change of sovereignty or religion of the subjects he didn't become owner of the land owned by his Hindu subjects and their endowments. As a Hindu Endowment Ramajanamsthan Temple was already existing, Emperor Babur did not acquire ownership of that place as such alleged creation of Wakf for erection of Masjid thereon rendered the said alleged Wakf null and void.

3305. Illustrated author and great jurist Syed Ameer Ali in his book the 'Spirit of Islam' (at p.215) describes the relationship between the citizens of three types of Nations Dar-ul-Islam i.e. an Islamic State, Dar-ul-Harb i.e. a State Ruled by belligerent non-Islamic Ruler, and Darul-Aman. i.e. a State Ruled by non-Islamic Ruler with which an Islamic State is at peace. Relevant extract of the said book reads as follows:

"The spirit of aggression never breathed itself into that

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code which formally incorporated the Law of Nations with the religion; and the followers of Mohammed, in the plentitude of their power, were always ready to say to their enemies, 'Cease all hostility to us, and be our allies, and we shall be faithful to you; or pay tribute and we will secure and protect you in all your rights; or adopt our religion, and you shall enjoy every privilege we ourselves posses."

3306. Syed Ameer Ali in his book **'Commentaries on Mahommedan Law'** also describes Dar-ul-Harb. Relevant extract from the foot note 1 of the said book reads as follows:

*"**The Moslem jurists,** like the jurists of Christendom, **until very recent times, divided the world into two portions, one the Dar ul-Harb, and the other the Dar ul-Islam,** the country of peace. **Juridically, all Mussulman nations were at peace with each other.** As a matter of fact, no Mussulman Sovereign could declare war against another without first pronouncing him to be a heretic and beyond the pale of Islam. **The non-Moslem subjects of Moslem States are called Zimmis.** The non-Moslem subjects of non-Moslem Sovereigns at peace with Islamic States are called Mustamins."*

3307. Fighting between two Muslim Rulers is not fighting between Dar-ul-Islam and Dar-ul-Herb but it is fighting between two armies of Islam for Superiority for the benefit of Islam and subject people. This is very much apparent from the extract quoted in the preceding paragraph from Syed Amir Ali's book as also, from the answer given by Sultan Sikandar Lodi to the Kalandar (i.e. a person who had no worldly desires). When said

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Darvesh conveyed the Sultan that he would attain victory in ongoing battle, the Sultan told him that when two Islamic armies are fighting decision should not be given in one's favour but only good wishes should be given stating that who will be beneficial for Islam and subject people will attain victory.

3308. The arguments extended contending that Muslims are not free to lead the life of their choice and they are bound by the law of Shar. Muslims should not transgress law as enunciated in Shar otherwise they will lose their status of being Muslim. According to Shar Plunderer & looters are not Muslims. Islamic Ruler and Muslims are subject to Divine Law of Shar according to which duty of an Islamic Ruler is to guard the lives, honour and property of his subjects, maintain peace, check the evildoer, and prevent injuries and; duty of Muslims is to disobey oppressive and sinful order of a Tyrant Ruler and refrain himself from such sinful acts. Muslims should not approve bad deed of the Amirs i.e. the rulers. Making a just statement before tyrannical ruler is a greatest type of Jihad. A person who acts as God against the unlawful, is kind to his neighbour and loves the people as he loves himself is Muslim, otherwise not.

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3309. The **Sacred Compilation Hadith Sahih Muslim (Vol.-III) 1854 & 1854R1** reveal that the Holy Prophet has commanded that Muslims should not approve bad deed of the Amirs i.e. the rulers. Said Hadith reads as follows:

> *"[1854]. It has been narrated on the authority of Umm Salama that the Messenger of Allah (may peace be upon him) said: In the near future there will be Amirs and you will like their good deeds and dislike their bad deeds. One*

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who sees their bad deeds (and tries to prevent their repetition by his hand or through his speech), is absolved from blame, but one who hates their bad deeds (in the heat of his heart, being unable to prevent their recurrence by his hand or his tongue), is (also) safe (as far as God's wrath is concerned). But one who approves their bad deeds and imitates them is spiritually ruined. People asked (the Holy Prophet): Shouldn't we fight against them? He replied: No, as long as they say their prayers.

[1854R1] It has been narrated (through a different chain of transmiters) on the authority of Umm Salama (wife of the Holy Prophet) that he said: The Amirs will be appointed over you, and you will find them doing good as well as bad deeds. One who hates their bad deeds is absolved from blame. One who disapproves their bad deeds is (also) safe (as far as Divine wrath is concerned). But one who approves their bad deeds and imitates them (is doomed). People asked: Messenger of Allah, shouldn't we fight against them? He replied: No, as long as they say their prayers. (Hating and disapproving refers to liking and disliking from the heart)."

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3310. The Sacred Compilation Hadith Sahih Muslim (Vol.-III) 1855R1 reveals that the Holy Prophet has commanded the Muslims to **condemn such act of their Rulers which is an act of disobedience to God** i.e. the Holy ordinances of the Allah and his Holy Messenger. Said Hadith reads as follows:

"[1855R1] It has been narrated on the authority of Abf b.Malik Al-Ashja'i who said that he heard the Messenger of Allah (may peace be upon him) saying: The best of your

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rulers are those whom you love and who love you, upon whom you invoke God's blessings and who invoke His blessings upon you. And the worst of your rulers are those whom you hate and who hate you, who curse you and whom you curse. (Those present) said: Shouldn't we overthrow them at this? He said: No, as long as they establish prayer among you. No, as long as they establish prayer among you. Mind you! ***One who has a governor appointed over him and he finds that the governor indulges in an act of disobedience to God, he should condemn the governor's act,*** *in disobedience to God but should not withdraw himself from his obedience."*

3311. The Sacred Compilation **Hadith Sahih Bukhari 3.628** reveal that the Holy Prophet has strictly commanded to avoid oppression. Said Hadiths read as follows:

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"Narrated Ibn `Abbas: The Prophet sent Mu`adh to Yemen and said, "Be afraid, from the curse of the oppressed as there is no screen between his invocation and Allah."

3312. The Sacred Compilation **Jami‘ At-Tirmidhi (Vol.-5) Hadith 2683** reveals that the Holy Prophet has directed the Muslims to refrain from any kind of major and minor sins. Said Hadith and comment thereto read as follows:

“2683. Ibn Ashwa narrated from Yazid bin Salamah Al-Ju ‘fi, he said: ‘Yazid bin Salamah said: ‘O Messenger of Allah! I heard so many narrations from you that I am afraid the last of them will cause me to forget the first of them. So narrate a statement to me that will encompass them.’ So he said: “Have Taqwa of Allah with what you learn.” (Da‘if)

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Comments:

The extract and a full outcome of the whole religion is Taqwa, for this objective the Prophets, Messengers and the Books were sent; and Taqwa is to refrain from any kind of major and minor sins, it big and small."

3313. The Sacred Compilation **Jami' At-Tirmidhi (Vol.-5) Hadith 2687** reveals that the Holy Prophet has commanded the Muslims to accept everything that is good and perfect setting aside the worldly benefits, objectives and lusts. Said Hadith and comments thereto read as follows:

"2687. Abu Hurairah narrated that the Messenger of Allah said: "The wise statement is the lost property of the believer, so wherever he finds it, then he is more worthy of it. ***(Da'if)***

Comments:

In the creation and nature of human, the passion of obedience and submission is planted, which is the origin and source of every good and righteousness, but because of worldly benefits, objectives and lusts it becomes neglectful of good and righteousness, whereas the demand of its nature and habit is to accept everything that is good and perfect."

3314. The Sacred Compilation **Jami' At-Tirmidhi (Vol.-5) Hadith 2826** reveals that if there is anyone to whom the Holy Prophet has made a promise it must be complied by the Rulers. Said Hadith read as follows:

"2826. Isma'll bin Abi Khalid narrated that Abu Juhaifah said: "I saw the Messenger of Allah (he was) white and turning grey. Al Hasan bin 'Ali resembles him most. He had

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promised thirteen young she-camels for us, so we went to get them. When we arrived he had died without giving us anything. So, when Abu Bakr (became the Khalifah) he said 'If there is anyone to whom the Messenger of Allah made a promise, then let him come forth.' I stood to inform him about it, and he ordered that they be given to us." (Sahih)

3315. The Muwatta' Imam Malik 959 reveals that the Muslims should neither break vows nor kill disbelievers breaking promise of protection given to him. Said Muwatta no. 959 read as follows:

"[959] It reached Malik that 'Umar b. 'Abd al-Aziz wrote to one of his administrators: We have learnt that whenever the Messenger of Allah (may peace be upon him) sent out force, he used to command them: Fight taking the name of the Lord. You are fighting in the cause of the Lord with people who have disbelieved and rejected the Lord ; do not commit theft, do not break vows ; do not cut ears and noses, do not kill women and children. Communicate this to your armies. If God wills ! Peace be on you."

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3316. By defeating Sultan Ibrahim Lodi in the battle of Panipat Emperor Babur acquired only those rights which the said Monarch had. As defeated Monarch was not Owner of the Sri Ramajanamsthan Temple at Ayodhya, according to Shar Emperor Babur did not acquire title of the said Temple. According to the Divine Law of Shar a Muslim can erect Masjid only on such land of which he is lawful owner and he can create Wakf only of his own lawful property. Unless the first prayer was offered with permission of the lawful owner even

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dedication of Masjid and Wakf by user can not be claimed. Shar does not permit conversion of a Temple into a Mosque and says that even if a mansion was given by a Jimmi to Muslims for their using it as Masjid, after death of such Jimmi his said mansion goes back to his heirs. Suffice to say that according to Shar the Wakif must be owner of the property at the time of its dedication otherwise Wakf is invalid. As Emperor Babur was not owner of the Suit-land, alleged creation of Wakf for Masjid and Graveyard was ab initio void and the Plaintiffs are not entitled for the reliefs as prayed for in the instant Suit.

3317. In the book **'Ibn Battuta Ki Bharat Yatra'** Ibn Battuta writes that he was given fund and permission by Sultan Muhamad bin Tughlaq for purchasing 20 villages for the purpose of increasing income of the endowment of Mausoleum of Sultan Kutubuddin. From said fact it becomes crystal clear that the Sultan was not owner of the land of the subject people and he had to purchase land for accretion of said wakf property. In other words private proprietorship of land was in existence during the Sultanate period. Relevant extract from page 158 of the the book **'Ibn Battuta Ki Bharat Yatra' (translated by Madan Gopal** published by National Book Trust of India **first published in 1933** reprinted in 1997) reads as follows:

''15. मकबरे का प्रबंध

''इसके पश्चात मैं सम्राट कुतुबउद्दीन के समाधि–स्थान के प्रबंध में दत्तचित्त हो गया। यहां पर सम्राट ने इराक के सम्राट गाजां शाह के गुंबद से भी बीस हाथ अधिक ऊँचा (अर्थात सौ हाथ का) गुंबद निर्माण करने की आज्ञा दी; और इस ***देवोत्तर*** *संपत्ति की आय बढ़ाने के लिए बीस गांव और मोल लेने की आज्ञा दी। उसमें दलाली के दशमांश का लाभ कराने के विचार से इन गांवो के मोल लेने का कार्य भी मेरे ही सुपुर्द कर दिया गया था।''*

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3318. From the Farman of Emperor Shah Jahan of 1633-34 AD, it becomes clear that the right of private proprietorship was in existence during the Mughal period and for the purpose of creation of wakf of Taj Mahal the Emperor had to acquire land of Raja Jai Singh by giving him other land in lieu of the acquired land. The extract of the Farman taken from page 53 and 54 the book **"Mughal Documents AD.1628-59"**, Volume-II compiled and **translated by S.A.I. Tirmizi** and published by Manohar Publishers, Delhi, 1995 Edn., reads as follows:

> *"56. Farman of Shah Jahan addressed to Raja Jai Singh informs the Raja that in lieu of the plot of land acquired for the construction of the mausoleum of Mumtaz Mahal the following four havelis have been granted to him (Jai Singh):*
>
> *1. Haveli of Raja Bhagwan Das.*
>
> *2. Haveli of Madhav Singh.*
>
> *3. Haveli of Rupsi Bairagi.*
>
> *4. Haveli of Chand Singh, son of Suraj Singh.*
>
> *The zimn on the reverse bears the risala of Afzal Khan and waqia of Makramat Khan. (MIM.IV,p.165; DLFMN,p.55,CHDKD.pp.176-177)."*

3319. In the Farman of Emperor Shah Jahan dated 3rd August, 1648 contained a Nishan of Prince Dara Shukoh, the then Viceroy of Gujrat, it has been held that conversion of temple of Sati Das into mosque by erstwhile Viceroy of Gujrat prince Aurangzeb was in violation of Islamic Law and as it was constructed over the property of another person it could not be considered a mosque according to the inviolable Islamic Law. On the basis of said finding of Law of Shar the Emperor

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directed authorities to hand over the said building to Sati Das for his using the same as his temple. The extract of the Farman taken from page 89 of the book **"Mughal Documents AD.1628-59" Volume-II (supra)**, reads as follows:

> *"199. Nishan of Prince Dara Shukoh addressed to the subadar, hukkam, and mutasaddis of suba gujarat, particularly Ghairat Khan, informs that a farman in connection with the temple of Sati Das Jawahari had been formerly issued to Umdatul Mulk Shaista Khan to the effect taht Prince Aurangzeb having constructed several mihrabs in the said temple had given it the name of a masjid and thereafter Mulla Abdul Hakim had represented to the Emperor that this building, by reason of its being the property of another person, could not be considered a mosque according to the inviolable Islamic law. The imperial orders were, therefore, issued stating that this building belonged to Sati and that because of its being mihrabi, no obstruction should be caused to the above mentioned person (Sati Das) and that the mihrabs should be removed and the said building be restrored to him (Sati Das). Now the royal orders are issued to the effect that the mihrab which the Prince above referred to had constructed there, may be retained and a wall be built close to the mihrab between the temple and miharab to serve as a screen. It is now ordered that since the Emperor had granted the said temple to Sati Das, he should be left in possession of it as usual and he may worship there according to his creed in any way he likes and no one should cause any obstruction or hindrance to him in this*

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regard. Some faqirs who have settled there be ejected and Sati Das be relieved of their obstruction and molestation. It has been represented to the Emperor that some of the Bohras have removed and carried away the masata (materials) of the said deohara (temple). If this be a fact the said material should be recovered from them and restored to (Sati Das) but if the said material has been used up, their price be recovered from them and paid to Sati Das. It bears the tughra of Shah Jahan in addition to the tughra and seal of Prince Dara Shukoh. there is a note on the top on the right hand side which begins with the word 'Huwa' and directs the hukkam to act in conformity with the nishan i ali. (JUB, IX, pp. 39-41).

13 Rajab 22 Julus/1058 A.H./3 August 1648 A.D.

3320. In his book **'Digest of Moohummudan Law'** (first part) Neil B. E. Baillie writes that wakif or appropriator must be owner of the subject of the wakf at the time of making it and if a person usurp a piece of land, create wakf and then purchase it from the owner, it would not be a wakf. And if Zimmee gives his mansion for using it as a masjid for Mussulmans, after his death it would become the inheritance of his heirs. Relevant portions of the said book from page 557, 558, 561 & 562 read as follows:

"THE legal meaning of wukf , or appropriation, according to Aboo Huneefa, is the detention of a specific thing in the ownership of the wakif or appropriator, and the devoting or appropriating of its profits or usufruct in charity on the poor, or other good objects."

"According to the two deciples, wukf is the detention of a

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thing in the implied ownership of Almighty God, in such a manner that its profits may revert to or be applied fof the benefit of mankind, and the appropriation is obligatory, so that the thing appropriated can neither be sold, nor given nor inherited."

"But if a zimmee should give his mansion as a musjid, or place of worship, for Mussulmans, and construct it as they are accustomed to do, and permit them to pray in it, and they should pray in it, and he should then die, it would become the inheritance of his heirs, according to all opinions."

"It is also a condition that the thing appropriated be the appropriator's property at the time of the appropriation; so that, if one were to usurp a piece of land, appropriate, and then purchase it from the owner, and pay the price, or compound with him for other property, which is actually delivered up, it would not be a wukf."

"And if a donee of land should make an appropriation of it before taking possession, and should then take possession, the wukf would not be valid."

"If the appropriation were made before taking possession, it would not be lawful."

3321. Great jurist **Syed Ameer Ali** in his book **'Commentaries on Mahommedan Law'** extracting the authority writes that the wakif must be lawful owner of the property at the time of creation of wakf. Otherwise a wakf is invalid. Relevant extract from page 225 of the said book reads as follows:

"The subject-matter of the dedication must be the lawful

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property of the wakif at the time the wakf is made, that is, he must be in a position to exercise dominion over it. Consequently, if a wakf is made by a person of some property which he has un-lawfully acquired, it would be invalid, although he may subsequently purchase it from the lawful owner. So also, when a man makes a wakf, for certain good purposes, of land belonging to another, and then becomes the proprietor of it, the (sic She) wakf is not lawful."

3322. In his book **'Principles of Mahomeddan Law'** D.F. Mullah writes that wakif must be owner at the time of dedication. Relevant extract from page 149 of the said book reads as follows:

"146C. Subject of wakf must belong to wakif.— The property dedicated by way of wakf must belong to the wakif (dedicator) at the time of dedication (s)."

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3323. In **AIR 1975 SC 2299 (Indira Nehru Gandhi v. Rajnarain)** the Hon'ble Supreme Court speaking through the Hon'ble Justice M. H. Bag, J. (as His Lordship then was) explaining the law of sovereignty in paragraph 526 to 571, in paragraph 527, 532-534 and 571 held that the Muslim Rulers as well as the Hindu Rulers were subject to their respective divine sacred law and the law was king of the kings. Relying on said judgment it is submitted that conversion of Sri Ramajanamasthan Temple into an alleged mosque either by the Emperor Babar or Aurangzeb in violation of the Law of Shar makes their such act null and ab initio and such building does not comes within the definition of a mosque. Paragraph nos. 527, 532-534 and 571 of the aforesaid judgment read as follows:

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“527. I must preface my observations here about the concepts of "sovereignty" and exercise of "sovereign power" between which I make a distinction, with two kinds of explanation. The first kind involves an exposition of a functional or sociological point of view. I believe that every social political, economic, or legal concept or doctrine must answer the needs of the people of a country at a particular time. I see the development of concepts, doctrines, and institutions as responses to the changing needs of society in every country. They have a function to fulfil in relation to national needs. The second type of explanation may be called historical or meant merely to indicate and illustrate notions or concepts put forward by thinkers at various times in various countries so as to appropriately relate them to what we may find today under our Constitution. We have to appreciate the chronology or stages of their development if we are to avoid trying to fit into our Constitution something which has no real relevance to it or bearing upon its contents or which conflicts with these. It must not, if I may so put it, be constitutionally "indigestible" by a constitution such as ours. Of course, it is not a secret that we have taken some of the basic concepts of our Constitution from British and American Constitutions in their most developed stages. That too must put us on our guard against attempts to foist upon our Constitution something simply because it happens to be either a British or American concept of some particular period which could not possibly be found in it today. Therefore, both types of explanation appear to

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be necessary to an exposition of what may or may not be found in our Constitution.

532. After the break-up of the Roman Empire, there were attempts in medieval Europe, both by the Church and the Kings, to develop spiritual and temporal means for checking wrong and oppression. Quests for the superior or a sovereign power and its theoretical justifications by both ecclesiastical and lay thinkers were parts of an attempt to meet this need. The claims of those who, as vicars of God on earth, sought to meddle with mundane and temporal affairs and acquire even political power and influence were, after a struggle for power, which took different forms in different countries, finally defeated by European Kings with the aid of their subjects. Indeed these Kings tried to snatch, and, not without success, to wear spiritual crowns which the roles of "defenders of the faith" carried with them so as to surround themselves with auras of divinity.

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533. The theory of a legally sovereign unquestionable authority of the King, based on physical might and victory in battle, appears to have been developed in ancient India as well, by Kautaliya, although the concept of a Dharma, based on the authority of the assemblies of those who were learned in the dharmashastras also competed for control over exercise of royal secular power. High philosophy and religion, however, often seem to have influenced and affected the actual exercise of sovereign power and such slight Lawmaking as the King may have attempted. **The ideal King in ancient India, was**

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conceived of primarily as a Judge deciding cases or giving orders to meet specific situations in accordance with the Dharma Shastras. It also appears that the actual exercise of the power to administer justice was often delegated by the King to his judges in ancient India. Indeed, according to some, the theory of separation of powers appears to have been carried so far (See: K. P. Jayaswal in "Manu and Yajnavalkya" - A basic History of Hindu Law - 1930 Edn. p. 82) that the King could only execute the legal sentence passed by the Judge.

534. We know that Semitic prophets, as messengers of God, also became rulers wielding both spiritual and political temporal power and authority although to Jesus Christ, who never sought temporal power, is ascribed the saying: "render unto Caesar the things that are Caesar's and to God things that are God's". According to the theory embodied in this saying, spiritual and temporal powers and authorities had to operate in different orbits of power altogether. Another theory, however, was that the messeng of God had been given the sovereign will of God Almighty which governed all matters and this could not be departed from by any human authority or ruler. In the practical administration of justice, we are informed, Muslim caliphs acknowledged and upheld the jurisdiction of their Kazis to give judgment against them personally. There is an account of how the Caliph Omar, being a defendant in a claim brought by a jew for some money borrowed by him for purposes of State, appeared in person in the Court of his own Kazi to answer the claim. The

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Kazi rose from his seat out of respect for the Caliph who was so displeased with this unbecoming conduct that he dismissed him from office. (See: Sir A. Rahim's "Muhammadan Jurisprudence", (1958) p. 21).

571. I find that the doctrine of the supremacy or sovereignty of the Constitution was adopted by a Bench of seven learned Judges of this Court in Special Reference No, 1 of 1964, (1965) 1 SCR 413 = (AIR 1965 SC 745) where Gajendragadkar, C. J., speaking for six learned Judges of this Court said (at p .446) (of SCR) = (at pp. 762-763 of AIR) :

"In a democratic country governed by a written Constitution, it is the Constitution which is supreme and sovereign. It is no doubt true that the Constitution itself can be amended by the Parliament, but that is possible because Art. 368 of the Constitution itself makes a provision in that behalf, and the amendment of the Constitution can be validly made only by following the procedure prescribed by the said article. That shows that even when the Parliament purports to amend the Constitution, it has to comply with the relevant mandate of the Constitution' itself. Legislators, Ministers, and Judges all take oath of allegiance to the Constitution, for it is by the relevant provisions of the Constitution that they derive their authority and jurisdiction and it is to the provisions of the Constitution that they owe allegiance. Therefore, there can be no doubt that the sovereignty which can be claimed by the Parliament in England, cannot be claimed by any Legislature in India in the literal absolute sense."

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3324. In **AIR 1994 SC 2663 (N. Nagendra Rao & Co. v. State of Andhra Pradesh)** the Hon'ble Apex Court has held when the law provides for compensation against confiscation, he must be compensated and confiscation cannot affect the right of owner to claim return of the goods. Relying on said judgment it is submitted that when the Law of Shar says that no one can acquire ownership of the property of others by virtue of adverse possession but it can be only by purchase, alleged erection of alleged mosque over a Sacred shrine of the Hindus by virtue of forceful occupation makes such building only ordinary private building and not the Mosque. Relevant paragraph 8 of the said judgment reads as follows:

> *"8. This sub-section ensures that a person who has been prosecuted or whose goods have been confiscated does not suffer if the ultimate order either in appeal or in any proceeding is in his favour. It is very wide in its import as it statutorily obliges the Government to return the goods seized or to pay the value of the goods if for any reason it cannot discharge its obligation to return it. The circumstances in which the goods are to be returned are;*
>
> *(a) an order under S. 6A is modified or annulled by the State Government;*
>
> *(b) where the goods were confiscated in consequence of prosecution of the person and he is acquitted;*
>
> *(c) and in all these cases where it is not possible for any reason to return the essential commodity seized. This provision cuts across the argument of the State that where even part is confiscated the person whose goods are seized is not liable to be compensated for the remaining. The*

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section is clear that if only part of the goods are confiscated then the remaining has to be returned. The very first part of the sub-section indicates that where the order of confiscation, is modified in appeal meaning thereby if confiscation is confined to part only the Government is bound to release or return the remaining or pay the value thereof. But what is more significant of this sub-section which widens its reach is the expression, 'and in either case it is not possible for any reason to return the essential commodity seized' then, the State shall be liable to pay the market price of the value with interest. The expression, 'for any reason' should be understood in broader and larger sense as it appears from the context in which it has been used. The inability to return, giving rise to the statutory obligation of deeming it as sale to the Government may arise for variety of reasons and extends to any failure on the part of the Government. For instance, the goods might have been sold in pursuance of interim arrangement under S. 6A(2). Or it might have been lost or stolen from the place of storage. The goods might have deteriorated or rusted in quality or quantity. The liability to return the goods seized does not stand discharged by offering them in whatever condition it was. Confiscation of part of the goods thus could not affect the right of owner to claim return of the remaining goods. Nor the owner is bound to accept the goods in whatever condition they are. The claim of the respondent, therefore, that the appellant was bound to accept the goods in whatever condition they were is liable to be rejected."

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3325. In **AIR 1971 SC 1594 (Union of India. v. Sudhangshu Mazumdar)** the Hon'ble Apex Court has quoted an extract from the **United States v. Juan Prechman, (1831-34) L.Ed. 604** with approval wherein it has been stated that the modern usage of nations would be outraged if private properties are confiscated or private rights annulled. Relevant paragraph 7 of the said judgment reads as follows:

> *"7. Dr. Singhvi says that the first premise on which the High Court has proceeded is that as a result of cession it would be competent for the Government of Pakistan to deal with the disputed territory as an absolute owner in complete disregard of the existing rights of the respondents. In other words it has been assumed that the Government of Pakistan will not recognise ownership or other similar rights of the respondents in the lands and properties which belong to them. This Dr. Singhvi claims, is contrary to the rule enunciated by Chief Justice Marshall in The United States v. Juan Perchman, (1831-34) 8 L. ed 604 in the following words:*
>
> *"The modern usage of nations, which has become law, would be violated: that sense of justice and of right which is acknowledged and felt by the whole civilised world would be outraged, if private property should be generally confiscated and private rights annulled. The people change their allegiance; their relation to their ancient sovereign is dissolved; but their relations to each other and their rights of property, remain undisturbed."*
>
> *The rule set forth in the Perchman case, (1831-34) 8 L. ed 604 has been followed in over forty American cases and*

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has been accepted as the rule of International law in English,

*French, German and Italian law**

** Extracts from the Law of Nations (2nd Edn. 1953), p. 237, Cf. F. B. Sayre, "Change of Sovereignty and Private Ownership of Land," 12 XII A. J. L L (1918), 475, 481, 495- 497"*

3326. In **1999 (4) SCC 663 (R.E.M.S. Abdul Hameed v. Govindaraju)** the Hon'ble Apex Court has held that under the Ancient Hindu Law there were two beneficial interests in land: (1) that of the sovereign or his representative, and (2) that of the cultivator or Ryot holding the land. The Ryot's right arose from occupation of the land, thus the grant of an Inam do not and could not have touched the cultivator's right in the land, except in rare cases where the grantor also hold the cultivator's interest at the time of the grant. Relying on Said judgment it is submitted that in our country since inception subjects were proprietor of their private properties and the Kings were only entitled for land revenue, Sri Mishra argued that Sri Ramajanamasthan was all along and is being owned by the Deity Sri Ramalala as such the right of private property of the Deity cannot be extinguished. Relevant paragraph 4 of the said judgment reads as follows:

"4. The central question in issue is the interpretation of clause (b) Explanation I to Section 2(11) of Act 26 of 1963. Learned counsel for the aforesaid respective appellants, Mr Tripurari Ray and Mr A.T.M. Sampath, Senior Counsel submit on the facts of this case that the disputed land cannot be construed to be "part-village inam estate" to fall

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within Act 26 of 1963 but is a minor inam to fall under Act 30 of 1963. Before taking up this issue of "part-village inam estate", it is necessary to look back to the history of inam lands, how it emerged, was recognised, canalised and dealt with through various enactments till it reached the legislative umbrella of both Acts 26 and 30 of 1963. The law relating to the landholdings, agrarian reform, in the Presidency town of Madras, with reference to the landlords and ryots started from the previous century and it is interesting to note a few of the essential features of this agrarian development. The origin of inam tenure is traced back to its grant made by Hindu rulers for the support of temples and charitable institutions, for the maintenance of holy and learned men rendering public service, etc. This practice was followed by the Mohammedan rulers and by British administrators until about a century ago. ***According to the ancient Hindu law, there were two beneficial interests in land, namely, (1) that of the sovereign or his representative, and (2) that of the cultivator holding the land. The sovereign's right to collect a share of the produce of the cultivated land was known by the name "melvaram", the share of the ryot or cultivator was known by the name "kudivaram".*** *The ryot's right arose from occupation of the land. Thus, the grant of an inam did not touch, and could not have touched, the cultivator's right in the land, namely, the kudivaram, except in rare cases where the grantor was also holding the cultivator's interest at the time of the grant."*

3327. In **AIR 1962 SC 342 (Sunka Villi Suranna. v. Goli**

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Sathiraju) the Hon'ble Apex Court held, where there was no evidence to show that the occupation of the lands by the Ryot commenced under the Zamindar and there was no evidence as to the terms at which the Ryots or his predecessors were inducted in land, commencement of the tenancy and the terms thereof were lost in antiquity but the Ryot's rights and his descendants were proved to have continued in possession of the land uninterruptedly till the enactment of the Madras States Land Act, 1908. In the light of the presumption that the Zamindar was, unless the contrary was proved, the owner of the melvaram and Ryot the owner of the kudivaram, the interference was irresistible that the Ryot was the holder of the occupancy rights in the land and thus rights developed upon his successors and the occupancy right in the land were not acquired by virtue of the provisions of Madras States Land Act, 1908. Relying thereon it is argued that prior to declaring the land as nazul land by the Governor- General in 1859, the Hindus were worshipping in the suit property as such the occupancy rights remained in the hands of the Hindus. Relevant paragraph 17 of the said judgment reads as follows:

> *"17. To summarise, there is no evidence to show that occupation of the lands by Thammiah commenced under the zamindar and there is no evidence as to the terms on which Thammiah or his predecessors were inducted on the lands: the commencement of the tenancy and the terms thereof are lost in antiquity, but Thammiah and his descendants are proved to have continued in possession of land uninterruptedly till the enactment of the Madras Estates Land Act, 1908. In the light of the presumption that*

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the zamindar is unless the contrary is proved, the owner of the melvaram and the ryot the owner of the kudivaram the inference is irresistible that Thammiah was the holder of the occupancy rights in the lands and that these rights devolved upon his successors and that the occupancy rights in the lands were not acquired by virtue of the provisions of Madras Act VI of 1908."

3328. In **(2001) 4 SCC 713 (Syndicate Bank. v. Prabha D. Naik)** the Hon'ble Apex Court has held that the Muslim jurisprudence neither recognised prescription nor limitation. Relying on the said judgment it is submitted that as Hindu Endowment was existing prior to acquisition of Kingship by the Emperor Babur and said ownership of the Deity existed till the day of confiscation of the rights of the proprietors in land in the year 1859 by the British government which right of the Deity again revived when the State of Uttar Pradesh gave up its said right by filing written statement in the instant Suit, as such the said sacred shrine of the Hindus is not liable to be declared as a mosque. Relevant paragraph 6 of the said judgment reads as follows:

*"**6**. Incidentally, it may be noted that though **the old Hindu law recognised both prescription and limitation but Muslim jurisprudence recognised neither of them**. The new Law of Limitation in terms of the Limitation Act of 1963 however, does not make any racial or class distinction since both Hindu and Muslim laws are amenable to the Law of Limitation as is presently existing in the statute-book (see in this context B.B. Mitra's Limitation Act ; 20th Edn.)."*

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3329. In **AIR 1968 SC 683 (V. D. Dhanwatey. v. Commissioner of Income Tax, M. P., Nagpur & Bhandara)** the Hon'ble Supreme Court held that while interpreting an ancient text, the Courts must give them a liberal construction to further the interest of the society by wisely interpreting the original texts in such a way as to bring them in harmony with the prevailing conditions. Relying on said judgment it is submitted that the Sthandil i.e. Sri Ramjanmasthan which has been recognized by the scriptures a means of conferring merit upon the devotees and granting salvation to them be recognized as Juridical entity and not mere property in crude sense to do justice in the greater interest of the citizens of India in general and the Hindu and Muslim community in particular to pave the way of permanent peace. Relevant paragraph 31 of the said judgment reads as follows:

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> *"31. Law is a social mechanism to be used for the advancement of the society. It should not be allowed to be a dead weight on the society. While interpreting ancient texts, the courts must give them a liberal construction to further the interests of the society. Our great commentators in the past bridged the gulf between law as enunciated in the Hindu law texts and the advancing society by wisely interpreting the original texts in such a way as to bring them in harmony with the prevailing conditions. To an extent, that function has now to be discharged by our superior courts. That task is undoubtedly a delicate one. In discharging that function our courts have shown a great deal of circumspection. Under modern conditions legislative modification of laws is bound to be confined to*

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major changes. Gradual and orderly development of law can only be accomplished by judicial interpretation. The Supreme Court's role in that regard is recognised by Article 141 of our Constitution."

3330. In **AIR 2008 SCW 1224=2008(3) SCC 481 (Dist. Basic Education Officer & Anr. v. Dhananjai Kumar Shukla & Anr.)** the Hon'ble Supreme Court has held that the rules of pleadings do not apply to question of law and new plea on question of law can be raised before the Supreme Court even it was not raised before the High Court. Relying on said judgment it is submitted that the questions of law which have been raised during the argument are sustainable in the eye of law and needed to be decided for doing complete justice between the parties who are representing two major community of India. Relevant paragraph 14 (13 in SCC) of the said judgment reads as follows:

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"14. Rules of pleading contained in the Code of Civil Procedure do not cover questions of law. If a fact stands admitted the same in terms of Section 56 of the Indian Evidence Act need not be proved. Only because such a question was not allegedly raised before the High Court, this Court could not shut its eyes to the legal position. Yet again only because an illegality has been committed, this Court would not allow its perpetration. Respondent's father was on leave for a temporary period. He thereby did not cease to be the Manager of the school. It is apparent that he went on leave only for defeating the statutory provisions. Such an act amounts to fraud on the administration."

3331. The vexed question is the religious status of the

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building in dispute. It is no doubt true that it has been argued very ably by placing lot of material on the subject. In our view it is not a mere simple controversy, whether the building in dispute is a mosque satisfying the Islamic tenets or not, but much more than that. As already held, the parties could not prove that the building in dispute was constructed in 1528 AD by Babar or any of his agent. Some of these issues would immediately stand covered by those findings. For example issue 6 (Suit-3) would have required a further investigation only if it was built by Babar and not otherwise. However, we would proceed ahead assuming, only for the purpose of these issues, if the building was constructed by Babar in 1528 AD, then how the concerned issues hereat would stand, and/or, to what extent the parties concerned are able to prove in one or the other way, their case.

3332. **Issue 6 (Suit-3)** is confined to the act of Emperor Babar i.e. whether the alleged mosque was dedicated by him for worship of muslims in general and made a public waqf property. This issue has been framed on the basis of the pleadings of muslim parties (defendants) in Suit-3. The result of failure to prove the issue would stand in a loss to the defendants muslim parties and therefore, burden to prove it lie upon the defendants muslim parties.

3333. There is no recorded history or/ for the period of 1528 to 1855 A.D., stating in black and white, that this building was constructed by Babar and then dedicated to muslims as a public waqf. In fact the reference of the building in dispute for the first time, we find, in the traveller's account of Tieffenthaler i.e. **DESCRIPTION : HISTORIQUE ET GEOGRAPHIQUE : D E L' I N D E under the title "TOME**

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1. NOUVELLE EDITION. Contenant la Geographic de l'Ind-Uftan, avec. 39,. Planches" (Supra). But what he mentions is that the place where there existed house of Vishnu, worshipped by Hindus, the disputed structure was raised, which as per local belief, constructed by Aurangzebe but some says Babar. This observation maintain a state of suspense. But then he kept on saying that Hindus used to worship by Parikrama and lying prostrate on the land.

3334. In 1828, the gazetteer of Walter Hamilton i.e. **"East India Gazetteer" (Supra)** also do not throw any light on it. The Robert Montegomary Martin, got published the Survey Report of Dr. Buchanan in 1838 under the title **'Eastern India' (Supra).** He mentions that though locally it is believed that the building was constructed by Aurangzebe after demolishing a temple at the site in dispute but the stone inscriptions fixed on the disputed structure mention names of Babar and Mir Baqi. It was thus not Aurangzebe but Babar. The contents of the inscriptions referred by Martin are not known and these aspects as also the text of inscriptions, as quoted subsequently, we have discussed in great detail above while considering issues relating to period of construction etc. of the disputed structure hence, not to be repeated. Suffice it to mention that whatever text of these stone inscriptions is treated to be correct even that do not clearly say that the building was constructed by Babar hence the question of his dedication for worship by muslims in general and making it a public waqf property would not arise.

3335. Existence of a mosque or construction of a mosque by somebody is another thing but the issue we are supposed to answer is quite specific, whether this dedication is by Emperor

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Babar or not. No doubt after 4 or 5 centuries one cannot expect an eyewitness to prove such an issue but then other circumstances or secondary evidence could have been produced to prove it. A presumption in respect to dedication in such a matter which involves a period of several centuries could have been raised if identity of the person, who constructed the building is not in dispute and the only question is whether there is a valid or de facto dedication or not. The doctrine of user etc. could have been resorted to in such a case. But where the dispute of identity of alleged waqif itself is involved, such doctrine would be of no help.

3336. During the oral arguments, Sri Z. Jilani, learned counsel appearing on behalf of Sunni Board, whose arguments have been adopted by other learned counsels appearing for muslim parties, also tried to highlight that Babar never entered Ayodhya and did not command Mir Baqi for construction of any mosque. In fact we find that in the entire plaint there is not even a whisper that Babar dedicated alleged mosque for worship by muslims in general and made a public waqf property. On the contrary, para 1 says that it was built by Mir Baqi under the command of Emperor Babar for use of muslims in general as a place of worship. It does not say at all that at any stage there was dedication of building in question as a public waqf or a waqf property for the benefit of muslims in general. One of the essential condition of creating a waqf is "dedication". In absence of other evidence, if, public prayer is once said there, with the permission of the owner, it can be treated to have been dedicated. Even if we assume that emperor Babar was owner, no material has been placed which may suggest or give even a faint

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indication that with his permission any public prayer was made in the building in dispute. In fact we do find no material to suggest that any public prayer was offered by Muslims, at least till 1860.

3337. We can go even to this extent that a dedication may be inferred from user as waqf property but when the issue is whether a particular person made dedication or not, the question of long user to our mind would not be relevant but it is the factum of dedication of the person concerned which has to be seen.

3338. In **Commissioner of Waqfs and another Vs. Mohammad Moshin (Supra),** it was held that none other than owner of the property can make a waqf. In that case guardian of a minor sought to create a waqf but that was not approved by the Division Bench of Calcutta High Court holding that idea of agency is foreign to Mohammedan Law and a waqf would not be created unless the creator himself is not owner of the property.

3339. It is not the case of the Sunni Board and other muslim parties that the property in dispute owned by Mir Baqi and he made dedication. The issue before us, up for consideration is whether the dedication was made by Emperor Babar or not. There is no suggestion during the course of argument that the issue has not been properly framed or needs any alteration. Two judgements, however, in this regard are sought to be relied by Sunni Board and other muslim parties. One is that of Suit-1885 and another is the judgment dated 30 March, 1946 in Suit No. 29 of 1945 (Exhibit A-42, Suit-1, Register 8, Page 431). It is contended that the question about the

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building in dispute that it is a mosque and constructed by Babar, hence, a Sunni mosque, stands concluded and these judgments since relates to the declaration of status of building in dispute itself, are judgements in rem, hence, final and binding. Therefore, the issue in question ought to be decided in the light of declaration made thereunder.

3340. The three judgements of trial court, and appellate courts in Suit-1885, we have discussed at length at various stages above. In brief, just to recapitulate, a suit was filed by Mahant Raghubar Das seeking permission to make construction of temple at a chabutra measuring 17x21 feet in the eastern-southern part of the disputed building in the outer courtyard which was in his possession as he claimed for a long time. One Mohd. Asghar got impleaded himself as defendant no. 2, as Mutwalli of the building in dispute. He did not deny possession of Raghbar Das on the aforesaid chabutra but suggested that it was unauthorised and illegal since no permission was obtained from waqif or his successors. The trial court decided the suit and observed from the pleadings as also the Gazetteer placed before it by the parties, that on the west side there was a mosque said to be constructed during the reign of Babar and in its vicinity, permission to make a new construction, that too, of a temple, may create a law and order situation. Hence, in public interest, it decline to grant any relief to the plaintiff therein. This ultimate decision of the trial court was confirmed by the District Judge as well as the Judicial Commissioner in appeal. There was no issue as to whether the building was a mosque and if so who constructed it, and whether there was any dedication by such person etc.

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3341. The second suit of 1945 is an inter se dispute between two muslim bodies, i.e. Shia Waqf Board and Sunni Waqf Board of State of U.P. contesting about the building in dispute whether it was a Sunni waqf or Shia waqf. The nature of the building as waqf, its construction by emperor Babar through its commander Mir Baqi in 1528 A.D. and dedication to muslim in general as public waqf were the facts admitted by both the parties, hence, there was no occasion for the trial court to look into those aspects of the matter. The trial court mentioned the facts pleaded by the parties on this aspect without there being any contest thereon, since the contest was confined only to the category it belonged to i.e. Shia or Sunni. Therefore, the aforesaid judgement cannot be said to be a judgement deciding the issue which is up for consideration before us. The judgements whether in rem or personam would make no difference.

3342. Moreover, admissibility of judgements as evidence has to be considered in the light of the provisions of Evidence Act. A document may be classified for this purpose in three heads, (1) documents which are per se inadmissible; (2) recitals in judgements not inter parties; and (3) documents or judgements post litem motam. If a judgement is not admissible, not falling within the ambit of Sections 40-42, it must fulfil the conditions of Sections 43 otherwise it cannot be relevant under Section 13 of the Evidence Act. The words 'other provisions of this Act' used in Section 43 would not extend to Section 13, because the Section 13 does not deal with judgements at all. The judgements in personam do not fulfil the conditions mentioned in Section 41 of the Evidence Act, hence, inadmissible. The

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judgements not inter parties are inadmissible in evidence barring exceptional cases. It would be useful to refer in this regard the Apex Court's decision in **State of Bihar and others Vs. Sri Radha Krishna Singh (supra)** paras, 123, 126, 127, 128, 129, 131, 133 and 134 as under:

> "*123. It is now settled law that **judgments not inter parties are inadmissible in evidence barring exceptional cases** which we shall point out hereafter. In Johan Cockrane v. Hurrosoondurri Debia and Ors.(1854-57) 6 Moo Ind App 494, Lord Justice Bruce while dealing with the question of admissibility of a judgment observed as follows:*
>
> > *"With regard to the judgment of the Supreme Court, it is plain, that considering the parties to the suit in which that judgment was given, it is not evidence in the present case.... We must recollect, however, not only that that suit had a different object from the present, independently of the difference of parties, but that the evidence here is beyond, and is different from, that which was before the Supreme Court upon the occasion of delivering that judgment."*
>
> *"126. In the case of Gujju Lall v. Fatteh Lall, (1881) ILR 6 Cal 171 a Full Bench exhaustively considered the ambit and scope of Ss 40 to 43 of the Evidence Act and observed thus:*
>
> > *"On the other hand, when in a law prepared for such a purpose, and under such circumstances, we find a group of several sections prefaced by the title "Judgments of Courts of Justice when relevant," that seems to be a good reason for thinking that, as far as*

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the Act goes, the relevancy of any particular judgment is to be allowed or disallowed with reference to those sections.

... ...

I have had the opportunity of reading the judgment which the Chief Justice proposes to deliver, as well the observations of my brother Pontifex, in both of which I generally concur, and for the reasons there stated, and those which I have shortly given, I consider the evidence inadmissible."

And Garth, C. J. made the following observations:

*". . . **it is difficult to conceive why, under Section 42, judgments though not between the same parties should be declared admissible so long as they related to matters of a public nature, if those very same judgment had already been made admissible under Section 13, whether they related to matters of a public nature or not**.*

... ...

I am, therefore, of the opinion that the former judgment was not admissible in the present suit."

(Emphasis ours)"

*"127. In Gadadhar Chowdhury and Ors. v. Sarat Chandra Chakravarty and Ors.(1940)44 Cal WN 935: (AIR 1941 Cal 193) it was held that **findings in judgments not inter parties are not admissible in evidence**."*

*"128. **This, in our opinion, is the correct legal position regarding the admissibility of judgments not inter parties**."*

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"129. . . . . so far as regards the truth of the matter decided a judgment is not admissible evidence against one who is a stranger to the suit has long been accepted as a general rule in English law.

"The judgment is not inter parties, nor is it a judgment in rem, nor does it relate to a matter of a public nature. The existence of the judgment is not a fact in issue; and if the existence of the judgment is relevant under some of the provisions of the Evidence Act it is difficult to see what inference can be drawn from its use under these sections"

"Serious consequences might ensue as regards titles to land in India if it were recognised that a judgment against a third party altered the burden of proof as between rival claimants, and much 'indirect laying' might be expected to follow therefrom"(Emphasis supplied)"

"131. We entirely agree with the observations made by the Privy Council which flow from a correct interpretation of Sections40 and 43 of the Evidence Act."

*"133. . . . . **judgment which is not inter parties is inadmissible in evidence except for the limited purpose of proving as to who the parties were and what was the decree passed and the properties which were the subject matter of the suit**. In these circumstances, therefore, it is not open to the plaintiffs-respondents to derive any support from some of the judgments which they have filed in order to support their title and relationship in which neither the plaintiffs nor the defendants were parties. Indeed, if the judgments are used for the limited purpose mentioned*

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above, they do not take us anywhere so as to prove the plaintiff's case."

"134. . . . .Declarations by deceased persons of competent knowledge, made ante litem motam, are receivable to prove ancient rights of a public or general nature. The admission of declarations as to those rights is allowed partly on the ground of necessity, since without such evidence ancient rights could rarely be established; and partly on the ground that the public nature of the rights minimises the risks of mis-statement."

3343. In respect to the delcarations made post litem the Apex Court in the above case made observations in para 135 and 136 as under:

"135. . . . . It is equally well settled that declarations or statements made post litem motam would not be admissible because in cases or proceedings taken or declarations made ante litem motam, the element of bias and concoction is eliminated. Before, however, the statements of the nature mentioned above can be admissible as being ante litem motam they must be not only before the actual existence of any controversy but they should be made even before the commencement of legal proceedings.....

"To obviate bias, the declarations must have been made ante litem motam, which means not merely before the commencement of legal proceedings, but before even the existence of any actual controversy, concerning the subject matter of the declarations. . . . ."

"136 . . . . The reason for this rule seems to be that after a dispute has begun or a legal proceeding is about to

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commence, the possibility of bias, concoction or putting up false pleas cannot be ruled out. This rule of English law has now been crystallised as one of the essential principles of the Evidence Act on the question of admissibility of judgments or documents. . . . In fact, Section 32(5) of the Evidence Act itself fully incorporates the doctrine of post litem motam the relevant portion of which may be extracted thus:

> *"32. Cases in which statement of relevant fact by person who is dead or cannot be found, etc., is relevant*
>
> *(5) ...the person making the statement had special means of knowledge, and when the statement was made before the question in dispute was raised."*

3344. Here we may also refer to para 143 of the above judgments where the Apex Court summerized ratio of the various authorities on the above aspects of the matter and said:

"143. Thus, summarising the ratio of the authorities mentioned above, the position that emerges and the principles that are deducible from the aforesaid decisions are as follows:

(1) A judgment in rem e. g., judgments or orders passed in admiralty, probate proceedings, etc., would always be admissible irrespective of whether they are inter parties or not,

(2) ***judgments in personam not inter parties are not at all admissible in evidence except for the three purposes mentioned above****.*

(3) On a parity of aforesaid reasoning, the recitals in a

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judgment like findings given in appreciation of evidence made or arguments or genealogies referred to in the judgment would be wholly inadmissible in a case where neither the plaintiff nor the defendant were parties.

(4) The probative value of documents which, however ancient they may be, do not disclose sources of their information or have not achieved sufficient notoriety is precious little.

(5) Statements, declarations or depositions, etc., would not be admissible if they are post litem motam."

3345. In the absence of any evidence direct, circumstantial or otherwise and also due to inapplication of any principle with respect to presumption etc., we are constrained to hold that **issue 6 (Suit-3) is not proved at all hence answered in negative.**

3346. Now we proceed to **Issues No. 1 (Suit-4) and 9 (Suit-5)** together.

3347. Both issues require an answer whether the building in question was a mosque or a mosque known as Babari Masjid. The most important thing is that this Court is not supposed to consider whether it is a mosque according to the tenets of law of Shariyat or could be a mosque under the Islamic Law but the only thing which we are asked to reply whether the building in question was a mosque as claimed by the plaintiffs (Suit-4) and obviously by defendants in Suit-5, and whether it is known as Babari mosque. But then we will also have to consider whether beyond Shariat, a mosque has any identity and recognition.

3348. The facts in this regard which are on record leave no doubt that the building in dispute was termed and called as "mosque" as long back as in 18th century, i.e., in the traveller's

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account of Tieffenthaler. i.e.. **DESCRIPTION : HISTORIQUE ET GEOGRAPHIQUE : D E L' I N D E under the title "TOME 1. NOUVELLE EDITION. Contenant la Geographic de l'Ind-Uftan, avec. 39,. Planches" (Supra).**

> *"Emperor Aurengzebe got the fortress called Ramcot demolished and **got a Muslim temple,** with triple domes, constructed at the same place. Others says that it was constructed by 'Babar'. Fourteen black stone pillars of 5 span high, which had existed at the site of the fortress, are seen there."*

3349. Robert Martin's Eastern India (supra) Vol. II published in 1838 on page 335 mentions:

> *"The bigot by whom the temples were destroyed, is said to have erected mosques on the situations of the most remarkable temples; but the **mosque at Ayodhya**, which is by far the most entire, and which has every appearance of being the most modern, is ascertained by an inscription on its walls (of which a copy is given) to have been built by Babur, five generations before Aurungzebe."*

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3350. Edward Thornton's Gazetteer, 1858 (supra) says on page 739/740:

> *"According to native tradition, they were demolished by Aurungzebe, **who built a mosque on part of the site**. The falsehood of the tradition is, however, proved by an inscription on the **wall of the mosque**, attributing the work to the conqueror Baber, from whom Aurungzabe was fifth in descent. The **mosque** is embellished . . . . ." (emphasis added)*

3351. In **P. Carnegy's Historical Sketch (supra)** on page

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20/21 he says:

> "*If Ajodhya was then little other than a wilderness, it must at least have possessed a fine temple in the Janamasthan; for many of its columns are still in existence and in good preservation, having been used by the Musalmans in the* ***construction of the Babari Mosque****. These are of strong, close-grained, dark-colored or black stone, called by the natives kasauti . . . ." (emphasis added)*

3352. In **Gazetteer of the Province of Oudh by W.C. Benett (1877) (supra)** he has said:

> "*It is locally affirmed that at the Muhammadan conquest there were three important Hindu shrines . . . . These were the "Janamasthan" . . . . .*
>
> *On the first of these the Emperor Babar* ***built the mosque****, which still bears his name, A.D. 1528.. . ."*

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3353. A.F. Millet's Report on Settlement of Land Revenue of the Faizabad (supra) (1880) in para 669 he says:

> *"It is said that up to that time the Hindus and Mahomedans alike used to worship in the* ***mosque-temple****. Since British rule a railing has been put up to prevent disputes, within which in the* ***mosque*** *the Mahomedans pray, while outside the fence the Hindus have raised a platform on which they make their offerings."*

3354. Fyzabad A Gazetteer by H.R. Nevill (1905) (supra) page 153 says:

> *"In 1528 Babar built the* ***mosque at Ayodhya*** *on the traditional spot where Lord Rama was borne."*

3355. Imperial Gazetteer of India (1908) (supra) says:

> *"At one corner of a vast mound known as Ramkot, or*

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*the fort of Rama, is the holy spot where the hero was born. Most of the enclosure is **occupied by a mosque** built by Babar from the remains of an old temple, and in the outer portion a small platform and shrine mark the birthplace.... Besides the **mosque of Babar**. . . .” (emphasis added)*

3356. **Nevill's Gazetteer of Fyzabad (1928) (supra)** says:

*“He destroyed the ancient temple and on its site built a mosque, still known as **Babar's mosque**.. . . .”*

3357. **"Imperial Gazetteer of India, Provincial Series, United Provinces of Agra and Oudh", Vol. II,** published in **1934** is another document containing similar averments. **Exhibit 10 (Suit-5) (Register 29 Page 87-89)** is photocopy of frontispiece and page 388 and 389 concerning Fyzabad Division. The relevant extract thereof, for our purposes, is as under:

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*“At one corner of a vast mound known as Ramkot, or the fort of Rama, is the holy spot where the hero was born. Most of the enclosure is occupied by a **mosque** built by Babar from the remains of an old temple, and in the outer portion a small platform and shrine mark the birthplace.... Besides the **mosque**. . . .”*

3358. The last Gazetteer placed before us, i.e., **Uttar Pradesh District Gazetter, Fyzabad (1960) (supra)** it says:

*“It seems that in 1528 AD Babar visited Ayodhya and under his order this ancient temple was destroyed and on the site was built what came to be known as **Babar's mosque**.”*

3359. Besides, there are certain documents on record, of the period of 1858 to 1885, where also the disputed structure has

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been termed as “mosque”. In the plaint of Suit-1885 the plaintiff, Mahant Raghubar Das described the disputed structure as mosque on the west side of the Chabutara, of which dispute was raised in 1885. The documents exhibits of 1858 to 1885 we have already referred while discussing issues pertaining to limitation/possession/adverse possession mentioned it a mosque.

3360. It seems that so far as the identity of the place is concerned, three things, remained unchallenged upto 1950, or, to be more precise, up to 22nd December, 1949, i.e., (a) the disputed structure was always termed and known as a "mosque", "Babari mosque" or "Masjid Janamsthan"; (b) it was always believed and nobody ever disputed that the said building was constructed after demolishing a temple, and (c) that the disputed site, as per belief of Hindus, is the birthplace of Lord Rama and was a part of a big Fort called Fort of Lord Rama and later on as "Ramkot".

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3361. Whether the disputed structure was consistent with the tenets of Islam and, therefore, qualify to be a mosque, validly constructed, according to the mandates of Holy Quran, Hedaya and other Islamic religious scriptures, was never sought to be bothered by the muslims who treated it as a mosque. Though it appears that it could be used with certain constraints and restrain and not in a free and independent manner as ought to be. Simultaneously Hindus also treated it a mosque, treated it a blot on the religious self respect but the fact remains that it was always termed and called a "mosque", "Babari mosque" or "Masjid Janamsthan". No documentary evidence has been shown to us which could have contradicted the above inference.

3362. An attempt was made that in a title suit reference to

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Gazetteers and the facts contained therein ought not to be considered. The statements contained in the official Gazettes/gazetteers, and, sometimes the statement of facts mentioned in official gazettes or Gazetteers are entitled to consideration though not to be treated conclusive in respect of the matters requiring judicial adjudication.

3363. In **Vimla Bai Vs. Hiralal Gupta & others (1990) 2 SCC 22**, it was held:

> ***"5.*** *The Statement of fact contained in the official Gazette made in the course of the discharge of the official duties on private affairs or on historical facts in some cases is best evidence of facts stated therein and* ***is entitled to due consideration but should not be treated as conclusive in respect of matters requiring judicial adjudication****. In an appropriate case where there is some evidence on record to prove the fact in issue but it is not sufficient to record a finding thereon, the statement of facts concerning management of private temples or historical facts of status of private persons etc. found in the Official Gazette may be relied upon without further proof thereof as corroborative evidence. Therefore, though the statement of facts contained in Indore State Gazette regarding historical facts of Dhangars' social status and habitation of them may be relevant fact and in an appropriate case the Court may presume to be genuine without any further proof of its contents but it is not conclusive."*

3364. In view of Section 35 read with Section 81 a gazette is admissible being an official record in respect to the facts pertaining to public affairs and the Court may presume the

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contents thereof genuine but when it reflects on historical material the Court may not treat it conclusive evidence but would consider corroborating material.

3365. In **Bala Shankar Maha Shankar Bhattjee & others Vs. Charity Commissioner AIR 1995 SC 167**, the Court held that Gazette of Bombay Presidency, Vol. III published in 1879 is admissible under Section 35 read with Section 81 of the Act. It was observed in para 22:

> *"The Gazette is admissible being official record evidencing public affairs and the **Court may presume their contents as genuine.** The statement contained therein can be taken into account to discover the historical material contained therein and the facts stated therein is evidence under S. 45 and the Court may in conjunction with other evidence and circumstances take into consideration in adjudging the dispute in question, though may not be treated as conclusive evidence."*

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3366. It is said that the Gazettes published by Government, is admissible under Section 35 read with Section 81 of the Act but this may not apply to Gazetteers. Notably there is a distinction between Gazetteer and Gazette. A Gazette is an official document having statutory backing. Prior to its repeal in 20th century, the requirement of publication of rules and regulations etc. in Gazette was governed by Section 1, Official Gazette Act, 1863 (Act XXXI of 1863) which reads as under:

> *"**I.** When in any Regulation or Act now in operation, or in any Rule having the force of law, it is directed that any order, notification or other matter shall be published in the Official Gazette of any Presidency or place, such order,*

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notification or other matter shall be deemed to be duly published in accordance with the requirements of the law, if it be published either in the Gazette in which it would have appeared but for the passing of this Act, or in the Gazette of India under the direction of the Governor-General of India in Council."

3367. The Evidence Act, Section 81 talks only of a Gazette and not the Gazetteer. It is no doubt true that the Gazettes are published under the authority of the Government and, therefore, may be considered to be a public document admissible in evidence, but no more than that. In any case, the purpose for which reliance is placed on **Bala Shankar Maha Shankar Bhattjee (supra)** for pursuing this Court to take historical facts stated in Gazetteers to be conclusive evidence cannot be accepted. The Gazetters are admissible but have to be seen alongwith other corroborative material.

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3368. A gazetteer is not a gazette. It cannot be placed at par with a gazette, reference whereof is contained in Section 81 of the Evidence Act. The facts contained in a gazetteer, however, can be taken into account not conclusive one but in the matter of history they are relevant facts. Some of the authorities on this aspect we have already referred to while dealing the issues relating to period of construction. It constitute a corroborative evidence. Therefore what is stated in old Gazetteer is relevant.

3369. It is contended that the building in dispute was treated a mosque, the people worshipped therein, offered Namaj for a long time, and, therefore, on account of its user, it is a mosque, i.e., a duly dedicated waqf. Reliance is placed on **Miru & others Vs. Ramgopal AIR 1935 All. 891**, where the Court

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held:

> *"Where there is a mosque or a temple, which has been in existence for a long time and the terms of the original grant of the land cannot now be ascertained,* ***there would be a fair presumption that the sites on which mosques or temples stand are dedicated property****. There can be no legal impediment to such a dedication, as the owner of the land can make a grant of the site even to persons of a different community and creed and allow them then to dedicate that site by building a place of worship on it. Where therefore the Court finds that a mosque or a temple has stood for a long time and worship has been performed in it by the public, it is open to the Court to infer that the building does not stand there merely by the leave and license of the owner of the site, but that the land itself is a dedicated property and the site is a consecrated land, and is no longer the private property of the original owner."*

3370. In my view the judgment as such has no application to the case in hand. The issue under consideration is whether it is a mosque as claimed by plaintiffs and whether the disputed structure is a mosque, known as Babari Masjid. The Hindu parties have challenged both. Whether it is a mosque in accordance with the tenets of Islamic law or constructed in accordance thereto or even if a mosque or whether it can be so only if constructed according to the tenets of Islam and not otherwise, both aspects have to be examined. Several authorities we have discussed above were cited to show the ingredient of waqf, how a valid waqf is created and is operated. Similarly when a mosque will become a public waqf. But when a building

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can be treated a mosque, if a building is not constructed in accordance with the tenets of Islam, will it not be called a mosque at all, though as such has been considered for a long time, its effect, are some of the questions on which virtually no useful assistance is provided.

3371. What a 'mosque' is? What does it mean? Let us first have some idea on it. The meaning of "mosque" in different dictionaries is as under:

3372. In "**The New Lexicon Webster's Dictionary of the English Language**" (1987), published by Lexicon Publications, Inc. at page 652:

*"**mosque** (mosk). A Moslem place of worship"*

3373. In **"Oxford Advanced Learner's Encyclopedic Dictionary"** published by Oxford University Press, first published in 1989, at page 582:

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*"**mosque-**building in which Muslims worship"*

3374. In "**Chambers Dictionary",** page 934:

*"**mosque-**A muslim place of worship."*

3375. In **P Ramanatha Aiyar's "The Law Lexicon"** The Encyclopaedic Law Dictionary with Legal Mxims, Latin Terms, Words and Phrases, Second Edition 1997, published by Wadhwa and Company Law Publishers, at page 1259:

*"**Mosque.** A Muhammadan church."*

3376. Therefore, it is clear that a mosque is necessarily something integrally connected with Islam and hence outside its tenets the term mosque shall have no significance and it would only be a plain building.

3377. Lots of arguments have been raised that unless one was not owner of the land, could not have built any mosque. The

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arguments of plaintiffs is that Babar being the conquerer of the territory, became owner of the entire land, and therefore, it was open for him to build a mosque at any place counqered by him. The other side contended that mere conquer or annexation of the territory would not make an Emperor or the king or the Sovereign, owner of the land of individual's residence or of the subject. For this purpose, besides various authorities, the historical facts that many a Mughal kings, as and when found necessary, had purchased land for religious purposes, sought to be relied.

3378. On the question of "sovereignty", various authorities cited, some of which are as follow:

3379. In **Vajesingji Joravarsingji Vs. Secy. of State for India in Council, AIR 1924 PC 216** Lord Dunedin said:

> *"When a territory is acquired by a sovereign state for the first time that is an act of State. It matters not how the acquisition has been brought about. It may be by conquest, it may be by cession following on treaty, it may be by occupation of territory hitherto unoccupied by a recognised ruler. In all cases the result is the same. Any inhabitant of the territory can only make good in the municipal courts established by the new sovereign* ***such rights as that sovereign has through his officers, recognised. Such rights as he had under the rule of predecessors avail him nothing****. Nay more, even if in a treaty of cession it is stipulated that certain inhabitants should enjoy certain rights, that does not give a title to those inhabitants to enforce these stipulations in the municipal courts. The right to enforce remains only with the high contracting*

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parties." (page 217)

3380. The aforesaid observations were approved by a Constitution Bench in **State of Gujarat Vs. Vora Fiddali Badruddin Mithibarwala, AIR 1964 SC 1043** and the concept of act of State was summerised as under:

"To begin with, this Court has interpreted the integration *of Indian States with the Dominion of India as an Act of State and has applied the law relating to an Act of State as laid down by the Privy Council in a long series of cases beginning with Secretary of State in Council for India v. Kamachee Boye Saheba, (1859) 12 Moore PC 22 and ending with Secretary of State v. Sardar Rustam Khan and other, (1941) 68 IA 109. The cases on this point need not be cited. Reference may be made to M/s Dalmia Dadri Cement Co. Ltd. v. Commissioner of Income-tax, AIR 1958 SC 816, The State of Saurashtra v. Menon Haji Ismali Haji, AIR 1959 SC 1383, Jaganath Agarwala v. State of Orissa, AIR 1961 SC 1361 and State of Saurashtra v. Jamadar Mohamed Abdulla and others, AIR 1965 SC 445. In these cases of this Court, it has been laid down that the essence of an Act of State is an arbitrary exercise of sovereign power on principles which are paramount to the Municipal Law, against an alien and the exercise of the power is neither intended nor purports to be legally founded. A defence that the injury is by an Act of State does not seek justification for the Act by reference to any law, but questions the jurisdiction of the court to decide upon the legality or justice of the action.* ***The Act of State comes to an end only when the new sovereign recognises either***

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expressly or impliedly the rights of the aliens. It does not come to an end by any action of subordinate officers who have no authority to bind the new sovereign. *Till recognition, either express or implied, is granted by the new sovereign, the Act of State continues."*

3381. The Court in **Vora Fiddali Badruddin Mithibarwala (supra)** further said:

"The decision also holds that merely because the issue of recognition of the new rights was pending with the Government, it cannot be postulated that the act of State had come to an end. ***The act of State could only come to an end if the Government recognises the rights which were granted by the erstwhile Ruler****."*

3382. In **Draupadi Devi and others Vs. Union of India and others, 2004(11) SCC 425** the Court said in para 43:

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"43. The rule that cession of territory by one State to another is an act of State and the subjects of the former State may enforce only those rights which the new sovereign recognises has been accepted by this Court. (See in this connection: M/s Dalmia Dadri Cement Co. Ltd. V. The Commissioner of Income-tax, AIR 1958 SC 816; Jagannath Agarwala v. State of Orissa, AIE 1961 SC 1361; Promod Chandra Deb and others v. The State of Orissa and others, AIR 1962 SC 1288 and State of Saurashtra v. Jamadar Mohamad Abdulla and others, AIR 1962 SC 445)."

3383. The rights available to the erstwhile Ruler and his subjects, on the change of the crown, were considered in **Draupadi Devi (supra)** and the Court said in para 64:

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"In our view, ***all the rights available to the erstwhile Ruler and his subjects are of no avail till there is recognition of such rights****."*

3384. In para 11 of the judgement in **State of Punjab Vs. Brigadier Sukhjit Singh, 1993(3) SCC 459** the Court said:

"11. Now it is beyond doubt that the ***Ruler of an Indian State was in the position of a sovereign and his command was the law. His farman had the strength and potency of a law made by an elected legislature and his acts, administrative or executive, were sovereign in character****."*

3385. However in **Draupadi Devi (supra)** the Apex Court held that the above proposition runs contrary to a seven judges Constitution Bench decision in **Vora Fiddali Badruddin Mithibarwala (supra)** and, therefore, does not lay down correct law.

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3386. In **Govindrao & others Vs. State of Madhya Pradesh & others AIR 1982 SC 1201**, the concept of Ruler and sovereignty was considered and it was held:

"***8.*** *The expression "Ruling Chief" has not been defined in the Act and must therefore be understood as in common parlance. The meaning of the word "Ruler" as given in Shorter Oxford English Dictionary, 3rd edn., vol. 2, p. 1867 is : "one who, or that which, exercises rule, especially of supreme or sovereign kind". Normally the expression "Ruling Chief" connotes "a person who is endowed with the content of sovereignty and also has the attributes of a sovereign". According to Blacks' Legal Dictionary, 5th edn., p. 1252 the legal conception of*

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"sovereignty" is stated thus :

> *"The supreme, absolute, and uncontrollable power by which any independent state is governed; supreme political authority, paramount control of the Constitution and frame of government and its administration; the self-sufficient source of political power from which all specific political powers are derived; the international independence of a state, combined with the right and power of regulating its internal affairs without foreign dictation; also a political society, or state, which is sovereign and independent.*

9. *"Sovereignty" means "supremacy in respect of power, dominion or rank; supreme dominion authority or rule".* ***"Sovereignty" is the right to govern****. The term* ***"sovereignty" as applied to States implies "supreme, absolute, uncontrollable power by which any State is governed, and which resides within itself****, whether residing in a single individual or a number of individuals, or in the whole body of the people." Thus,* ***sovereignty****, according to its normal legal connotation,* ***is the supreme power which governs the body politic, or society which constitutes the State, and this power is independent of the particular form of government, whether monarchial, autocratic or democratic****.*

10. *According to Laski in "A Grammar of Politics", 1957 Reprint Chap. II, p. 50*

> *"The legal aspect of sovereignty is best examined by a statement of the form given to it by*

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John Austin. In every legal analysis of the State, he argued, it is first of all necessary to discover in the given society that definite superior to which habitual obedience is rendered by the mass of men. That superior must not itself obey any higher authority. When we discover the authority which gives commands habitually obeyed, itself not receiving them, we have the sovereign power in the State. In an independent political community that sovereign is determinate and absolute. Its will is illimitable because, if it could not be constrained to act, it would cease to be supreme, since it would then be subject to the constraining power. Its will is indivisible because, if power over certain functions or persons is absolutely and irrevocably entrusted to a given body, the sovereign then ceases to enjoy universal supremacy and therefore ceases by definition to be sovereign."

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11. *It is not necessary to enter into the concept of sovereignty, one of the most controversial ideas in political science and international law, which is closely related to the difficult concepts of State and Government, of independence and democracy, except to touch upon the juristic character of the Indian State to discern the necessary attributes of sovereignty. The Indian States were neither independent nor sovereign but subject to the paramountcy of the British Crown. Sir William Lee Warner, the acknowledged authority on Indian States, in his work "The Native States of India, 1910" characterizes them as*

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"semi-sovereign". There is no question that there was a paramount power in the British Crown, but perhaps it is better understood and not explained. The indivisibility of the sovereignty on which Austin insists, did not belong to the Indian system of sovereign States.

***12.** The **degree of sovereignty exercised by the different rulers varied greatly as the areas under their dominion**. The greater princes administered the internal affairs of their States with almost complete independence, having revenues and armies of their own, and the power of life and death over their subjects. At the other end of the scale were petty chiefs with a jurisdiction hardly higher than that of an ordinary magistrate and between these extremes lay much gradation. The authority of each ruler was determined by treaties or engagements with the British Government or by practice that had grown up in the course of their relations with British India. The paramount power was with the British Crown and it had never parted with any of its prerogatives. As Sir Henry Maine said:*

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*"There may be found in India every shade and variety of sovereignty, **but there is only one independent sovereign, the British Government**.... The mode or degree in which sovereignty is distributed between the British Government and any Native State is always a question of fact which has to be separately decided in each case, and to which no general rules apply."*

3387. The concept of sovereignty, transfer of power, effect thereof as we know and understand in modern law in the light of the recent authorities whether actually as such was followed 500

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years ago is difficult to answer. We have different texts of the past in respect to Hindu as well as Muslim law as to how a king/conqueror should behave and what ought to be the policy vis a vis the subject of conquered area, but these are all ideal situations. When someone from outside the territory attack and conquer and there is a change of authority/sovereignty. If the ideal situation is followed by him or observed, it is really appreciable but the conqueror is not always bound to follow those policies. The conquered territories subject have no authority, option or courage either in fact or in law or otherwise to raise voice against the conqueror. He is the sole paramount authority, can take and execute his decisions in the manner he like. After hundred of years it would not be safe for this Court to assume as to what ought or actually was done or followed by conqueror, in order to make an adjudication of dispute involving two different communities with different religious texts and practices. Whether Babar or Aurangzebe or anybody else was an ideal king observed laws of Shariyat etc. strictly, in an ideal manner, may be a matter of investigation and debate between historians, but neither such acts can be within the purview of judicial scrutiny of this Court nor we can decide the factual dispute on the presumption that he must have acted in a particular manner since the Shariyat laws say so. We have illustrations enough of ancient past as well as recent past showing that in such kind of wars or battles, the real casualty were/are the ideal policies contemplated and expected to be observed by warring groups or countries or sovereignties. If the Babar or Aurangzebe or anybody else decided to do something even if it was not consistent with the principles of law of

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Shariyat, the same could not have been challenged at that time by the subject and today we are sure to lack any authority or jurisdiction to declare such an act of the then Ruler illegal or bad since their command was Supreme and beyond the pale of any scrutiny now and by this Court. Therefore, in our view, the question as to whether the building in dispute is a mosque, treated to be a mosque, believed to be a mosque and practiced as a mosque has to be decided not in terms of the tenets of Shariyat whether observed there or not but how the people believed, treated and behaved in the past long time.

3388. Sri Jain contended that Babar was an invader and not a king or Emperor. Sunni Board claimed Babar to be the owner of the site in his capacity as 'Emperor'; **but he never became Emperor.** Historians R.C. Majumdar, H.C. Raychaudhuri and Kalikinkar Datta in **"An Advanced History of India"**, Fourth Edition 1978, published by Macmillan India Ltd., set out the facts at Pages 419 to 424. They mention, at Page 420:

> *"But the Mughal conquest of Hindustan was not an accomplished fact as a result of Babar's victory over Ibrahim.* ***It did not give him the virtual sovereignty over the country*** *because there were other strong powers like the Afghan military chiefs and Rajputs under Rana Sanga who also then aspired for political supremacy and were thus sure to oppose him...The number of Afghan military chiefs (were a great obstacle) and each one of them exercised almost undisputed power within his dominion or Jagirs." At Page 423 they mention that Babar 'could effect nothing more than conquests which alone do not suffice to*

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stabilise an empire unless the work of administrative consolidation goes hand in hand with or immediately follows them'. They cite historian Erskine that "there was little uniformity in the political situation of the different parts of this vast empire. ***Hardly any law could be regarded as universal but that of the unrestrained power of the prince.*** *Each kingdom, each province, each district and (we may almost say) every village, was governed in ordinary matters by its peculiar customs...There were no regular Courts of Law spread over the kingdom for the administration of justice." They mention that "after his conquest Babar had hardly any time to enact new laws or to reorganise the administration, which continued to retain its medieval feudal nature with all its defects.". It is significant that although Babar declared himself to be Ghazi (victor in holy war – Pages 573-4 of Beverige's Babarnama) he did not declare himself to be an Emperor, nor he got coronation as an Emperor. Indeed in the Inscription installed inside the DS by Mir Baqi, Babar is described only as King Babar (Shah Babar) not as Emperor Babar (Shah en Shah Babar). In this state of affairs, Babar could never become an Emperor."*

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3389. We do not agree. The position of Babar, in our view, was that of independent sovereign, Sole Monarch, having paramount power. It was Supreme, uncontrollable and absolute, not answerable to anyone. Whether invader or anything else, the fact remains that he had been the supreme authority in the territory which he conquered. Nobody could have questioned him.

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3390. Sri M.M. Pandey sought to argue that Historian **Romila Thapar** writes in '**A History of India**' Vol.I (Pelican Books 1990, 13th Impression 2001), at Page 279 that the Temple had long been the centre of Hindu social life in the village, place where Hindus congregated; it 'was the Bank, the Landowner, the administrative centre for the village and place of major entertainment in the form of festivals'. Mentioning Katyayana (4th-5th Century AD – vide Mulla at page 14) on judicial process, Romila Thapar writes at page 154 that Judgments were based either on legal texts or social usage or edict of the King which could not contradict the legal text or Usage; at page 160, she writes Social Law based on man-made Tradition had already become the sacred law. That is why Temples were immune from influence of the King. Thus the temple existed at that time remain immune from Babar's authority.

3391. Page 28 of B.K. Mukherjea's authority mentions Yajnavalkya: 'Customary Law as well as Usages established by Kings should be carefully upheld, if not inconsistent with the revealed law'. Vijnaneswara commented upon this text as follows: Duties arising under any Custom, such as preservation of pastures for cow and of water and management of Temples (Devgriha) and the like should also be carefully observed without infringing the duties prescribed by Shrutis and Smritis. The same view finds expression in Shukra-Niti where the duty of protecting endowments has been spoken of as one of the primary duties of the King. Thus the duty of Kings to protect endowments rested on the basis of immemorial customs which were as sacred as written texts".

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3392. In Appendix I (Summary of **Pran Nath Saraswati's "Hindu Law of Endowments**") at page 507, mention is made that "On conquest the Temples should be respected".

3393. At page 81 of **"Yajnavalkyasmriti**", translated by Manmatha Nath Dutt, published by Parimal Publications Delhi (1st Edn 2005), verse no.343 reads as follows: 'When a foreign kingdom is brought under subjection, he should observe the conduct, law and family practices obtaining in the same kingdom'.

3394. In **D.F. Mulla's 'Principles of Hindu Law**', Chapter II on Sources of Hindu Law, Text No. 3 mentions: "Whatever Customs, Practices and Family Usages prevail in a Country shall be preserved intact when it comes under subjection by (conquest)– Yajnavalkya I, 343".

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3395. These citations relate to Hindu Dharmshastra. All these arguments could have some weight if it is shown that Babar or any of his successor was under an obligation to follow or observe Hindu religious texts. These principles are alright, when a dispute is between those who were obliged to follow those texts. Babar was not bound by those principles. If the subject continued to follow these principles, Babar or any Mughal Ruler was not obliged to act according to those principles, at least no authority to persuade us otherwise is shown.

3396. It is also tried to be submitted that in the revenue records of 1937 there is no marking in respect to the land in dispute as Kabristan or mosque and thus the disputed structure was never recognised as mosque.

3397. **Exhibit 32 (Suit-1) (Register 5 page 123-125)** is

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said to be a copy of the map (kistwar) of Mauza Rampur for 1344-45 Fasli (1937 AD). Learned counsels for the parties submit that in the plot in dispute in the aforesaid map there is no marking of any Kabristan or mosque, therefore, it cannot be said that there was any mosque known and treated to be as such in the revenue record as late as in 1937 AD.

3398. The disputed structure, after its construction, came to be known as a 'mosque' as is evident from the earliest documents available to us i.e. Tieffenthaler Travel Account published in 1786 etc. He, however, does not mention anything about worship on the place in dispute by Muslims and on the contrary did not fail to mention that Hindus in fact used to visit thereat and offer worship by lying prostrate on the ground and having three *Parikramas*. He also noticed presence of *Vedi,* which Hindus used to worship in the premises of the disputed site. It continued to be so recognized as also the worship by Hindus till the riots of 1855 took place. Though Sri Jilani and other learned counsels appearing for various Muslim parties vehemently disputed occurrence of any such riot but from the detailed narration, at different places, we find occurrence of riot and also creation of a partition wall in the premises, existence whereof is not disputed by Sri Jilani. We are satisfied about the occurrence of such riot and its consequence as are mentioned in various Gazetteers and also admitted by number of witnesses including those of plaintiffs (Suit-4). In this regard we have dealt with the matter while discussing the issues relating to 'place of birth'.

3399. For the present purpose, we may refer to facts given in a recent book. **Exhibit 25 (Suit-5) (Register 22, Page 513-**

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531) is a photocopy containing frontispiece and pages no.227-234 of the book **"A Clash of Culture, Audh, The British and the Mughals"** by Michael H.Fisher (published in 1987 by Manohar Publications, New Delhi). It narrates the riots of 1855 and says:

> *"The Fyzabad temple/mosque, a powerful but unalterably ambiguous and disputed religious symbol, provided the catalyst for a conflict of cultures. Each group living in Awadh held fast to its own values and world-vies and sought to impose that on the other. Since this particular conflict was insolvable, no group achieved a result satisfactory to itself.*
>
> *The building in question had been subject to dispute* ***even before the arrival of Sa'adat Khan, the founder of the ruling dynasty in Awadh.*** *Even today Hindus throughout Awadh assert that the building marks the site of the birth of Rama, the incarnation of great God Vishnu, whose identity remains so central to culture of the province. As such, its sanctity predates the Muslim presence in India. Muslims interviewed at the site counter that the Mughal Emperor Babur (1526-1530) had constructed a mosque there and thus consecrated the ground for Islam, thereby superceding any previous significance. Ambiguous in appearance, this building remains the object of a heated controversy which continues unresolved today. In fact, it generates intransigent and violent passion on both sides whenever it is raised.*
>
> *The incident which sparked the final crisis for the Awadh dynasty prior to annexation began in February*

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1855, when a party of Sunnis under one Shah Ghulam Husayn tried to oust a group of Hindus who had taken possession of the disputed building. Religious conviction on both sides seems to have been the sole cause to this particular confrontation, only the most recent of a long history of Hindu-Muslim clashes on the spot. Despite the ardor of their attack, the Sunnis were repulsed by the defending Hindus.

Following this unsuccessful initial assault, the Sunni party renewed their efforts a few months later. They assembled a force of from four to six hundred Muslims, men described by British observers as Faqirs, at a mosque near the controversial spot. While the Muslims involved to this point were apparently individuals (sufis and faqirs) with little military training, the Hindu party escalated the conflict by gathering, besides a large number of bayragis (Hindu wandering ascetics), the support of several of the Hindu landholders of the area, including the family of Raja Bukhtawar Singh (discussed earlier in this chapter). British eyewitnesses- drawn to the site by rumors of the impending clash-estimated the total number of bayragis, Hindu landholders with their retainers, and miscellaneous supporters at some eight thousand. While the officers of the Awadh army and district administration looked on uninvolved, a battle ensued between the two sides. The Muslims later asserted guaranteed by the British. The Hindu party denied any truce. Heavily outnumbered, the Muslims seem to have left the bulk of the seventy to eighty dead found on the field following the fight.

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So far, the conflict gives evidence only of the local tensions between the Muslim and Hindu communities, focussed on this powerful but ambiguous, religious symbol. The Hindu landholders sought to assert their authority in what they perceived to be an assault on the community they led. For many of these Hindu landholders who reverenced Ram as the model for their own kingship, the building marking the site of his birth was particularly powerful. For Muslims seriously dedicated to the tenets of their faith, the perceived desecration of a mosque by polytheists would have equal force. Further the magnitude of the casualty list in the encounter inflamed both communities and drew a number of hitherto uninvolved parties into the conflict.

Both the Awadh court and the district administration had strong interests in settling the conflict according to their own values. The ruler and his court apparently tended to support the Muslim side but, being Shi'i, felt little solidarity with the largely Sunni party of Shah Ghulam Husayn. The ruler instead worked to defuse the threat to order in the region. Further, the level of passion on both sides, however, demanded some response on his part. This conflict, indeed, became a test of his ability to rule Awadh effectively.

The district administration in the area was headed by a Shi'ite, Agha 'Ali Khan; most of the municipal administration of Fyzabad was also Shi'i. Like the Awadh ruler, they felt little identification with either Sunni faqirs or Hindu bayragis. They did, however, see the largely Hindu landholders as their rivals for local authority. They

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urged the Awadh court that "unless the Government interferes and gives orders for rebuilding the musjid (mosque) the Hindoos will become inflated and elated with their success and will proceed to other and greater extremities. . . ." The prestige of the administration was, in thier perception, threatened by the Hindu coalition's initial successes. In this way, the ongoing struggle for local control between the Shi'i dominated district administration and the Hindu landholders found voice in this conflict.

The Muslim religious establishments in Awadh, both Sunni and Shi'i, also entered the conflict. The leaders of the attacking Muslim party requested these authorities to issue fatwas, decreeing the official Muslim interpretation of the issues. The questions were carefully worded to make it an issue of the defense of Islam against polytheists and each of the fatwas decided against the Hindu party. The Mujtahid, recognized by the Awadh dynasty as the highest Shi'i interpreter of holy law, declared that the "wickedness" and "enormities" of infidels should be punished by the Muslim ruler. This was clearly unacceptable to the Hindus involved.

In order to achieve a negotiated solution, the Awadh ruler summoned the most prominent leader of the Muslim camp. Malawi Amir 'Ali, to his court. He further appointed a tripartite investigative commission, consisting of the district official. Agha 'Ali Khan, the leading Hindu landholder, Raja man Singh (nephew and heir of Raja Bukhtawar Singh), and the British officer in charge of Company troops in the area, the Oudh Frontier Force. This

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commission determined that no mosque had ever existed on the site, basing their judgement on the argument that no mosque would have been built so close to a Hindu temple. Neither the Sunnis encamped near the site nor the Muslim religious establishment accepted this judgement. The Mujtahid preached against Agha 'Ali Khan and his uncle, the local Tahsildar, asserting that they had taken bribes to decide in favor of the Hindus. Malawi Amir 'Ali gathered support while in Lucknow, notably from the Sunni scholars of Farangi Mahall, and then gathered his supporters for another march against the controversial building.

This effort to defuse the controversy having evidently failed, the Awadh ruler tried once again to find an acceptable solution. Wajid 'Ali Shah tried to set aside the commission's decision and refer the matter to the Mujtahid. The Resident vetoed this plan. Th ruler then suggested, as a compromise, that a mosque be built along an outer wall of the disputed building. The Hindu party seized upon the commission's decision and refused their compromise. The Muslim party seized upon the ruler's proposal as a commitment from his to build a mosque on the site. Both sides thus sought direct confrontation as the only solution.

So far, then, we can see how fundamentally opposing cultural values, focussed on this temple/mosque, have exposed the cleavages in the society of Awadh. The local Hindus and Muslims and the religious establishments disputed the cultural identity of a particularly symbolic building. The Hindu landholders and Shi'i district officials also perceived it as a test of local control between

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themselves. The Awadh ruler tried vainly to avoid any confrontation that would demonstrate a weakness on his part, while at the same time clearly retaining his court-centered view of the issue as peripheral to its main concerns.

To further legitimize his march against the Hindus as a holy war. Malawi Amir 'Ali declared a jihad and increased the scope of his appeal. Both propertied and landless Muslims entered his camp. The Begum of Bhopal state in central India was reported to have sent an elephant and sufficient funds for three hundred men. Nevertheless, few if any Shi'ites seem to have joined the march.

The Hindus at the disputed site and in proximity to the marcher's camp looked to the Awadh ruler for protection and to Hindu landholders for aid and support. The Hanuman Garhi, a Hindu fortress named for Rama's militant monkey lieutenant, which had been built on the occasion of an earlier conflict overlooking Rama's putative birthplace, was further strengthened. Financial and other aid was reported to have been received not only from numerous Hindu landholders in Awadh but from the Maharajas of Gwalior and Jodhpur states in western India as well. Thus, both sides drew upon prominent figures who shared their cultural values, both within Awadh and from elsewhere in India.

In addition to these forces aligned against each other, the Company also sought to use the confrontation for its own advantage. From the onset of the conflict, the Company favored the Hindu side, dismissing the faqirs as

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"fanatics" with little justification for their claims. When the commission-on which the Company had the deciding vote-ruled against the Muslims, the Resident exerted his influence on Wajid 'Ali Shah to force the ruler to subdue the faqirs. Further, the Resident suggested to the Governor General that this incident be manipulated to justify the Company's annexation of Awadh. He argued he ". . . .should retire from Lucknow to the Company's territories, and withdraw the brigade of British troops and formally declare the existing treaty at an end. . . ." The Resident felt certain that, suddenly deprived of his guiding presence and the major effective military force in the province at this crucial time, the Awadh administration would collapse and the province would beg for annexation.

The Governor General, while strongly favoring annexation and agreeing that the removal of Company support would precipitate a collapse of the Awadh administration, feared that the ensuing communal violence might spread to Company territory. Further, since the Court of Directors of the Company was currently considering his annexation proposal, he decided it would be impolitic to force their hand by this provocation. He therefore instructed the Resident to remain in Lucknow to continue to pressure the Padshah to destroy the faqirs, and to prevent the involvement of Company troops.

As the other parties prepared for the next round in the conflict, Wajid 'Ali Shah drew upon his position at the center of Awadh in order to control the situation. He summoned Malawi Amir 'Ali back to court and backed up

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his request with a royal warrant. He submitted his own carefully worded questions to the Mujtahid and various Sunni scholars leading them to issue fatwas stating that a jihad was not applicable in this case and that all people should obey the orders of their legitimate sovereign. Further, he sent Muslim leaders to preach to the marchers and dissuade them from violating his imperial decrees. Finally bolstered by the support of the Muslim religious establishment, he issued a proclamation proscribing all those pretending to jihad and ordering the confiscation of all property and the destruction of all houses belonging to Malawi Amir Ali's followers.

To enforce his position. Wajid 'Ali Shah called upon the Awadh army. He moved units into position to intercept the marchers should they move toward Fyzabad, from their main camp more than a hundred miles away. To reenforce the bonds between the largely Shi'i army and himself, he called officers of several of the units facing the marchers into his darbar-the first one held in a number of years-and awarded them Khil'ats.

In addition to the army, Wajid 'Ali Shah called upon landholders to demonstrate their loyalty to his reign. The Company predicted that the Muslim landholders would turn against hims and support the jihad. Some landholders simply repulsed Malawi Amir 'Ali's inducements to join him. Others, notably the Shi'i Raja of Mahmudabad, sent forces to support their ruler. This landholder sent a deputy with five hundred men and four cannons to co-operate with the army; another landholder, apparently also Shi'i, offered

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the services of a like number of soldiers to his Padshah. None of the landholders seem to have acted against the orders of Wajid 'Ali Shah by giving support to the marchers.

The Padshah's authority having deprived the marchers of any outside support, Malawi Amir 'Ali appealed to the ruler. He "sent in his pugree (turban) to the King in token of submission and proferring his readiness to come in on a promise being given that the Mosque should hereafter be built. . . .(the King refused to give any such promise." Thus rebuffed, the Malawi led his men in the direction of Fyzabad and into the cannon of the Awadh army. The Awadh troops stood firm and nearly all the marchers were killed. British observers estimating their dead at between three and four hundred. The Awadh army suffered casualties of thirty-three per cent. Testimony to the resolution shown by both sides. Despite this decisive action, the controversy of the Fyzabad temple/mosque has never been finally settled.

This incident dramatically reveals the conflicting cultural identities present in Awadh. The Padshah, his administration and army, the local landholders, Hindu and Muslim, the people of the province, and the East India Company all perceived the issue from their own diverse perspectives. Despite the dire predictions of the Resident and the destabilizing motives of the Company, Wajid 'Ali Shah and his administration weathered the crisis and demonstrated their continued authority. Even the marchers recognized his sovereignty; their opposition to him sprang

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from their higher commitment to Islamic truth as they perceived it. Thus, the two cultural worlds of the imperial court and the hinterland of Awadh continued to hold together, albeit tenuously and with friction, under Wajid 'Ali Shah." (Page 515-529)

3400. From the footnote it appears that the author has heavily relied and referred the contents of "**Hadiqa-i Shuhda**" by **Mirza** Jan published in 1855 itself, in respect whereto he has made following comments at footnote 71on page 228 of the book:

"Mirza Jan. Hadiqa-i Shuhda (no title page).pp. 10-12.15. This appears to have been an example of one of the "most inflamatory pamphlets on the Mussulman side. . . .being circulated throughout the country, notwithstanding the seizure of them wherever they can be found. . . ."decried by the Governor General. Private Letter of the Governor General, Coonoor, 6 October 1855, quoted in Baird. p. 357. Officiating Resident to Secretary to Government of India Foreign Department, 4 August 1855 FPC, 28 December 1855, No. 339."

3401. Suffice it to mention at this stage that a partition wall came into existence sometimes in 1856-57 as a result whereof the disputed structure was circumscribed by the said wall and the premises inside the partition wall, which we have termed as "inner courtyard". The area between the partition wall and the boundary wall we have termed as "outer courtyard" and that was allowed to be used by Hindus. Whether this arrangement was pursuant to any written agreement or any notification issued by the British authorities is not known. The

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only thing available is the partition wall and the local people's saying that it was done by the Britishers to calm down the two communities in respect to the property in dispute. The documents are on record commencing from 28th November, 1858 showing that this arrangement also, as a matter of fact, could not pacify the situation so far as Hindus are concerned, may be for the reason that according to their belief, it was place of birth of Lord Rama and therefore, they could not have acquiesced to a situation of not worshiping the place which they believed to be the birth place of Lord Rama. Evidently they felt unsatisfied by simply offering their worship at the religious structures existing in the outer courtyard. This interference and entry of Hindus in the inner courtyard is evident from the documents **Exhibit 19 (Suit 1) (Register 5 Page 61-63)** dated 28th November, 1858, **Exhibit 20 (Suit-1) (Register 5 Page 65-68B)** dated 30th November, 1858, **Exhibit 31 (Suit-1) (Register 5 page 117-121)** dated 05.11.1860, **Exhibit 54 (Suit 4) (Register 12 Page 359)** dated 12th March, 1861, **Exhibit A-13 (Suit-1) (Register 6, page 173-177)** dated 25.9.1866.

3402. Taking the advantage of the above partition, it also appears that two persons who were father and son i.e. Mir Rajjab Ali and Mohd. Asgar set up a claim of grant which was also accepted by the British Government and initially a cash grant of Rupee Three Hundred and two, three annas six pie was allowed and thereafter they were allowed the same revenue grant from village Bahoranpur and Sholapur but even that did not deter or prevent the Hindu people from entering the premises in dispute and offering their worship. The only evidence which may suggest that the Muslims also worshipped

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in the premises in dispute and/or in the inner courtyard are:

(i) Application dated 5th November, 1860 filed before the Deputy Commissioner Fyzabad (Exhibit 31 (Suit-1) Register 5 page 117-121) by Mir Rajjab Ali complaining about the disturbance created during the course of Adhan (Azan).

(ii) P. Carnagy Historical Sketch where he has mentioned that earlier to the partition created by the Britishers, both the communities used to worship in the premises in dispute but in view of the riots of 1855, the premises was divided permitting Muslims to offer worship in the inner courtyard and Hindus in the outer courtyard and reiteration of this fact is found in subsequent Gazettes. A similar factual position has been reiterated in subsequent **Gazetteer of Oudh** by **Mr. W.C. Benett, C.S., Assistant Commissioner (1877)**, **Report on the settlement of the Land Revenue of the Fyzabad District**, by **A.F. Millett**, C.S., Officiating Settlement Officer, published by North Western Provinces and Oudh Government press, Allahabad in **1880**, **Fyzabad-a Gazetteer being Vol. XLIII of the District Gazetteers of the United Provinces of Agra and Oudh** by **H.R. Nevill** published in 1905 etc., the contents whereof we have already quoted above at different places.

3403. Thereafter, till 1934, we do not get any evidence oral or written suggesting worship by Muslims in the premises in dispute whether inner courtyard or outer courtyard. But the counsel for the Muslim parties endeavored to persuade this Court to assume such worship considering the fact that the revenue earned by Mohd. Asgar and his successors was being spent regularly and detailed accounts were presented before the authorities concerned who also sometimes verified the same by

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visiting the disputed site. About 14 witnesses of fact i.e. PWs 1 to 9, 14, 21, 22, 23 and 25 have been produced to show that before 1949, Muslims were offering Namaz in the disputed building. Those evidence we have already discussed in detail about their trustworthiness. From the facts, one thing is very clear that the building was constructed, whosoever have built it, so as to give it a shape as a mosque. It was also known to the local people that the constructed structure was a mosque. Whether Muslims immediately thereafter could use it for offering worship or not has not been proved either way but we are satisfied that despite structure and knowing it a mosque, Hindus entered the same and offered their worship treating it a birthplace of lord Rama. May be subsequent, and there is some evidence **[P Carnegy's HIstorical Sketch (supra)]** that at times, Muslims were also visiting the premises in dispute to offer Namaz and after the partition wall was raised in 1856-57, worship confined to inner courtyard. Whether it could be offered regularly is a fact which could not have been proved but this much is clear that Namaz had been offered inside the building after 1857 and we have also recorded a finding that before its attachment, the last Namaz was offered in the inner courtyard on 16th December, 1949. The question whether the building in dispute could be a mosque as per the tenets of Shariyat loses its significance, in our view, for the reason that those who believe in a particular religion, if, under a belief, have worshipped, treating the place of a particular nature, and that belief is not of individual or only of their own, but even others (Hindus) have the same view, it would be outside the purview of judicial review to analyse and then say whether the structure constructed

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on such place was in accordance with the tenets of that religion or not.

3404. Lots of arguments have been advanced as to what could have been the concept of ownership in 16th Century or earlier or thereafter and what ought to have been the manner in which a mosque could have been constructed otherwise it may not be treated as mosque. The building in dispute was constructed at a time when neither the British codified law was applicable nor the Indian Constitution was there. It was a rule of solitary authority i.e. king whose words constitute the law. His command or mandate was supreme and none could have challenged it. At least nothing has been brought before us that such supreme power could have been over powered by anyone else. If he intentionally do something ignoring a particular system, no comments could have been made. But if he proceeds otherwise or with some deviation even then no comments, in our view, can be made after so many centuries by us. Whether Babar or Aurangzeb or anybody else, they were supreme authority. Whether their action was consistent with the tenets of Islam or not, in our view, is unchallengeable after so many centuries particularly when those supreme authorities were not subordinate to any system of justice. Even otherwise, we cannot examine as to whether they rightly or wrongly constructed a place terming it as mosque particularly when atleast the local people believe from the representation, whatever, it is, that construction which has been made, is that of a mosque.

3405. Something which took place more than 200 and odd years, we are clearly of the view, cannot be a subject matter of judicial scrutiny of this Court which is the creation of statute

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that came into force in a system which itself was born after more than hundred and odd years when the building in dispute might have been constructed. All the Expert religious witnesses have admitted that if a mosque is constructed, the picture or images of living being like human images or animal images shall not be allowed to remain thereat. The creator of the building in dispute thought otherwise, yet the followers of Islam did not hesitate in using the premises for the purpose of Namaz. Whether the belief of such persons, who visited this premises for such worship, is superior or inferior, whether such offering of Namaz was regular or frequent or occasional and intermittent would be of no consequence. Suffice, if there had been Namaz by the Muslim. The offering of worship by Hindus knowing the building in dispute that it is a mosque is something else but on that basis the manner in which the building in dispute has been known for the last more than 250 years and odd cannot be changed. What ought to have been the ideal system of suzerainty or the system or policy of a king ought to have been according to Shariyat or Hindu Dharm Shastra etc. are all the issues which travel in the realm of pious wishes on the subject, but that cannot be a criteria to adjudicate the supreme authority of the erstwhile kings who were not subordinate to anyone except of the higher sovereign authority, if any.

3406. One of the document filed by the plaintiff Hindu parties, i.e., plaintiff (Suit-1) may be referred hereat which is about 140 years old. **Exhibit 33 (Suit-1) (Register 5 page 127-129)** is a copy of the order dated 26.08.1868 passed by Major J. Reed, Commissioner Faizabad against the order dated 25.06.1868 passed by Officiating Deputy Commissioner,

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Faizabad in the case of Niyamat Ali and Mohd. Shah Vs. Gangadhar Shastri. The order is self speaking, dismissing the appeal, reads as under:

> *"26.08.68. Since writing the foregoing Bande Ali Niamat Ali Ashraf Khan have appeared and their statements show that their grievance is that Ganga Dhar has encroached on the* ***North-West corner of this Masjid building****. Now there are three maps with regard to the preparation of the last of which at all events special care was enjoined and these show that at this corner Ganga Dhar's house actually touched the wall of the masjid. The Mohammads urged that there was a second wall or pust beyond the wall of the building but though a "pust" is marked on another part of the map it is not noted here on the contrary the map shows clearly as already stated* ***that the house of Ganga Dhar touches the wall of the masjid and that nothing intervenes.*** *Mr. Marray's personal examination shows that thereafter the measurements may be incorrect which is not creditable to the surveyer the maps are correct in this particular. And such being the case it is manifist that as held by Mr. Marrey no encroach could have taken place* ***unless the wall of the masjid itself*** *had been dug into. It is not alleged that this has been done.* ***The Commissioner Simsons order of 27th Feb 1864 was that the Hindus should not encroach on the boundaries of the Mosque and Chabutra.*** *No such encroachment has proved there is no reason to interfere. Appeal dismissed."*

3407. This also shows that Hindu parties whenever contested a case, have throughout called it a mosque and there

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has not been any change to this stand atleast till 1950. It is also true that initially in 18th century Tieffenthaller may not have termed it as "Babari mosque" but later on in 19th century, in the second half, the people started calling it Babari Masjid or Babar's mosque or Babari mosque.

3408. The building in dispute, thus for the last more than 2 and half centuries and atleast about 200 years before the present dispute arose in 1950, has always been termed, called and known as a "mosque".

3409. In the absence of any material to show otherwise we are inclined to answer both the issues in positive. **Issue no. 1 (Suit-4) is answered in favour of plaintiffs and issue no. 9 (Suit-5) is answered against the plaintiffs (Suit-5).**

3410. **Issues no. 1(B)(b), 19(d) and 19(e)** can be taken together.

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3411. As we have already discussed while dealing issue no. 6 (Suit-3) no material has been placed before us by the plaintiffs (Suit-4) and/or other Muslim parties to show that the property in dispute was ever dedicated by the wakif at any point of time in his life time. In fact, who the real Waqif is, not known. Even the successors at any point of time allowed/dedicated it, has not been shown. It is contended that the matter relates to an event of several centuries back, hence any direct or primary evidence showing dedication may not be possible. Relying on certain judicial precedents which we have already referred, it is contended if a building was constructed as a mosque, has been used by muslim people for offering a public Namaj, it is sufficient evidence to assume that there is a valid dedication of the building to Almighty God. Initially reliance

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was placed in entirety to the stone inscriptions and the contents thereof to show that the spirit thereof makes it inevitable to hold that the building in dispute was a "mosque" dedicated to "Almighty God" and to be used by muslim public for religious purposes. We have discussed the texts of the alleged inscriptions in detail above and it has been demonstrated that those inscriptions are wholly unreliable, appears to have been placed later on, and in the language of Historian and Archaeologists, such inscriptions which were placed later on the building, normally termed as fictitious one. Therefore, the inscriptions cannot help the plaintiffs on this aspect. They placed reliance on **P. Carnegy's Historical Sketch (supra)** where he has observed that till the British rule the building in dispute was being used by both the communities for religious purposes but in order to avoid dispute, on the start of British rule, a dividing wall was constructed permitting muslims to use building in dispute in the inner courtyard and the outer courtyard was allowed to be used by the Hindus. It is said that this also leads to the conclusion that the building in dispute was dedicated or stood dedicated to Almighty God.

3412. In our view the submission is not correct. **Issue no. 1(B)(b) (Suit-4)** is whether the building stood dedicated to Almighty God as alleged by the plaintiffs. The plaintiff's have not alleged the dedication of the building in dispute to Almighty God in the manner it is sought to be argued. As we have already discussed and held the earliest evidence of user of the building in dispute we find is by Hindus mentioned in the traveller's account of Tieffenthaller published in 1786. He visited Awadh area sometimes between 1766-1771 AD. We did not find any

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user by the muslims of the disputed premises, atleast there is no mention of this fact. The first document which refers to the user of the building in dispute by the muslims is post 1857. Various authorities which refers to the principle of dedication by the user in the case of old matters are such where the user or non user of the alleged Islamic structure by non-Islamic people was not involved. Here is a case having a unique feature. The building in dispute though sought to be constructed as mosque, given the shape of mosque, but it was used by Hindu public continuously for offering worship therein. Within the premises itself there exist a number of Hindu religious structure, worshipped as mentioned in in the traveller's account of Tieffenthaler. i.e.. **DESCRIPTION : HISTORIQUE ET GEOGRAPHIQUE : D E L' I N D E under the title "TOME 1. NOUVELLE EDITION. Contenant la Geographic de l'Ind-Uftan, avec. 39,. Planches" (Supra).** Evidence of user by muslim is much later. Can it be said that in such a case, as and when the muslims started user of the building in dispute for Namaj, it shall be presumed that there is a dedication of the building or the dedication to Almighty God particularly when at that time also, besides, earlier and later worship by non-muslims in the same building continued unabated and uninterrupted. The plaintiffs (Suit-4) have not claimed dedication of the building in dispute to Almighty God in such circumstances and with these facts. Their claim is totally different in the plaint which has not been supported by cogent evidence.

3413. An incidental facet is whether Hindus could have allowed the building to be used by muslims if they were already using it for worship. The question is not whether it was

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allowable or not but it is a *fait accompli*: typical, peculiar but then it is. We may consider its effect and consequences and not whether it was allowable or could not have been allowed. We, however, may not fail to refer a Verse 23, Chapter 9 from Srimadbhagwadgita where Lord Krishna says:

> *''येऽप्यन्यदेवता भक्ता यजन्ते श्रद्धयान्विताः।*
>
> *तेऽपि मामेव कौन्तेय यजन्त्यविधिपूर्वकम्।।*
>
> *हे अर्जुन! यद्यपि श्रद्धासे युक्त जो सकाम भक्त दूसरे देवताओं को पूजते हैं, वे भी मुझको ही पूजते हैं; किन्तु उनका वह पूजन अविधिपूर्वक अर्थात् अज्ञानपूर्वक है।।23।।''*
>
> *"Arjuna, even those devotees who, endowed with faith, worship or profess other Gods, with some interested motive, in fact they too worship Me alone, though not in accordance with rules, i.e., without proper knowledge."*

3414. If one talk of existence of customs, traditions, practice etc., its recognition and protection under Article 25 of the Constitution, in our view, so far as inner courtyard is concerned, it applies to both the sides. If the Hindus are worshipping not only in the outer courtyard but in the inner courtyard of the premises in dispute from time immemorial and several centuries which has continued even after construction of the disputed structure, it is also there that the prayer by muslims atleast in the inner courtyard have also taken place, even if not in such regular and persistent manner as that of Hindus but in intermittent and disturbed manner for sufficiently long time of about 80 years and odd when the first suit was filed. The fact remains that it had continued, and, as we have already observed, the last prayer appears to have been observed on 16th December, 1949. It, therefore, constitutes customs and practice to both the sides. For Hindus, for several centuries but for Muslims almost

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100 years or more.

3415. What constitutes a custom has been considered time and again. Valid, ancient and unbroken practice obtaining from generation to generation in ascents is a custom and in the absence of any contrary statutory law can be treated to be a valid rule/law. In **Shakuntalabai and another Vs. L.V. Kulkarni and another, 1989 (2) SCC 526** the Apex Court observed that in order to constitute valid custom under law it must be of immemorial existence, reasonable certain and continuous. The Court observed:

> *"Every custom must have to be in existence preceding memory of man and if the proof was carried back as far as living memory would go, it should be presumed that the right claimed had existed from time of legal memory. This was reiterated in Mohammed Ibrahim v. Shaik Ibrahim, AIR 1922 P.C. 59. In Ramalakshmi Ammal v. Sivanantha Perumal Sethurayar, 14 M.I.A. 81 570, it was held that it was the essence of special usages modifying the ordinary law, (in that case of succession) that they should be ancient and invariable; it is further essential that they should be established to be so, by clear and unambiguous evidence and that it is only by means of such findings that the Courts can be assured of their existence and that they possess the conditions of antiquity and continuity and certainty on which alone their legal title to recognition depends. Custom must be proved and the burden of proof is on the person who asserts it."* (para 19)

3416. The Apex Court also quoted the following verse of Ancient Hindu Law in para 18 of the judgement:

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"18. Ancient Hindu law also said:

Tasmindeshe ya acarah paramparyakramagatah;

Varnanam santaralanam sa sadachara uchyate.

Practice that obtains from generation to generation among the pure and mixed classes is called sadachara."

3417. Besides, repair and maintenance of the building in dispute between 1860 to 1949 also appears to have been made by the muslims except of a riot case. Therefore, for them also irrespective of the fact whether a religious structure strictly in accordance with Islamic tenets came into existence or not, the fact remains that shouldering with their Hindu brethren, in the inner courtyard of the disputed site, for sufficiently long time, muslims also offered Namaj. This would fall within the term "custom", benefit whereof is being claimed by Hindus also and in our view shall extend to Muslims also.

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3418. Looking from this context, though it cannot be said that the building in dispute has never been used by the muslims but then that would not attract the doctrine of dedication by user to be applied to this particular case. All the authorities which we have referred and discussed as cited by the parties, also do not consider a case where the same building and the same premises was being used by the muslims and Hindus alike for offering worships according to their religious tenets pursuant to their religious faith and belief though largely by Hindus and to a lesser extent by Muslims.

3419. Islamic tenets clearly bar two religions at the same place. Meaning thereby the Islamic tenets prohibit non Islamic worship at a place meant for worship by muslim people. But that is not so under Hindu Dharmshastras. Atleast nothing has

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been shown to us. Something which is prohibited by Islam, said contrary thereto, an Islamic religious structure cannot be said to vests in Almighty God. Various religious expert witnesses produced by the plaintiffs (Suit-4) also admit this position that anything which is contrary to Islamic tenets cannot be accepted by Almighty God. Though religious experts we need not to refer for determining the principle of concerned religion but here they are the witnesses of the plaintiffs and, therefore, their statement atleast would bind the plaintiffs as it would amount to admission made by the plaintiffs.

3420. There is no law that as soon as the building is constructed it stands dedicated to Almighty God but the settler can always claim that it is not for particular purpose etc.

3421. In **Garib Das and others Vs. Munshi Adbul Hamid and others, AIR 1970 SC 1035** the Court said:

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> *"8. . . . . the law seems to be clear that a wakf inter vivos is completed by a mere declaration of endowment by the owner. According to Mulla's Principles of Mahomedan Law, 16th Edition, page 178, Article 186, this view had been adopted by the High Courts of Calcutta, Rangoon, Patna, Lahore, Madras, Bomday, Oudh Chief Court and recently by the Allahabad High Court and the Nagpur High Court. Further, the founder of a wakf may constitute himself the first mutawalli and when the founder and the mutawalli are the same person, no transfer of physical possession is necessary. Nor it is necessary that the property should be transferred from the name of the donor as owner into his name as mutawalli. An apparent transaction must be presumed to be real and the onus of proving the contrary is*

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on the person alleging that the wakf was not intended to be acted upon."

"9. It is also settled law that ***the settlor and those claiming under him are not precluded from showing that no wakf had been created and that the deed was not intended to operate as a wakf*** *but was illusory and fictitious.* ***This is a question of intention evidenced*** *by facts and circumstances showing that it was not to be acted upon. For the purpose of such enquiry subsequent conduct, if it is merely a continuation of conduct at the time of execution, is irrelevant."*

3422. In **Jamal Uddin and another Vs. Mosque at Mashakganj and others, AIR 1973 Allahabad 328** the court in para 27 said:

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"27. The trial Court has however fallen in a legal error in holding by relying on the Full Bench decision of this Court in Mohd. Yasin Vs. Rahmat Ilahi, 1947 All LJ 85=(AIR 1947 All 201) (FB), that in this case it was not necessary for the wakif to deliver possession to the mutawalli at the time of making the alleged oral wakf. That decision applied only to the wakf made by a Hanafi Muslim. In the present case Nasir Husain was admittedly a Shia. In the case of wakf made by a Shia Muslim delivery of possession is necessary as laid down in Sec. 186 of the Mulla's Mahomedan Law, Sixteenth Edition at page 180. The Privy Council also held in Ali Zamin Vs. Akbar Ali Khan, 167 Ind Cas 884 = (AIR 1937 PC 127) that under Shia Law actual delivery of possession by or by direction of the wakif is a condition precedent to the wakf having

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validity and effect.

Again, in Abadi Begum Vs. Bibi Kania Zainab, 99 Ind Cas 669=(AIR 1927 PC 2) the Privy Council held that for the creation of a valid wakf under Muhammadan Law, at any rate ***among the shias****, it is* ***necessary that there must be delivery of possession of the thing dedicated.*** *If the wakif constitutes himself as the first Mutawalli he must change the nature of his possession. In a case like the present one, where there is no document executed by the wakif at the time of making of the alleged wakf it is necessary that cogent evidence should be produced that he had delivered possession to the Mutawalli. An obvious method of doing so is to get the property in dispute recorded in the name of the wakf in the records maintained by the municipal board. It is an admitted fact that in the present case the land in dispute was not got recorded in the name of the mosque in the records maintained by the Municipal Board."*

3423. The concept of Wakf has been considered at length in **Syed Mohd. Salie Labbai Vs. Mohd. Hanifa AIR 1976 SC 1569**, wherein the Court held:

"once the founder dedicates the site for the purpose of building a mosque and prayers are offered in the mosque the site and the mosque become wakf properties and the ownership of the founder is completely extinguished. Under the Mahomedan Law no Muslim can be denied the right to offer prayers in a mosque to whatever section or creed he may belong. ... Once the founder dedicates a particular property for the purpose of a public mosque, the

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Mahomedan Law does not permit any one from stopping the Mahomedan public from offering prayers and reciting Koran etc. .... The word "wakf" means detention or appropriation. According to the well recognized Hanafi School of Mahomedan Law when a Mahomedan dedicates his property for objects of charity or to God, he completely parts with the corpus which vests in God and never returns to the founder. Mahomedan Law contemplates two kinds of Wakfs-a wakf which is private in nature where although the ultimate object is public charity or God, but the property vests in a set of beneficiaries chosen by the founder who appoints a Mutawalli to manage the wakf property. We are, however, not concerned with private wakfs which are normally known as wakf-alal-aulad. We are concerned with public wakf i.e. dedication made for the purpose of public charity e.g. an Imam-Bada, a mosque, a Serai and the like. So far as the dedication to a mosque is concerned, it is governed by special rules and special equity in the light of which a particular dedication has to be determined. A mosque is obviously a place where the Muslims offer their prayers. It is well-known that there are certain formalities which have to be observed by the Muslims before they observe the prayers. These formalities are-

(i) Wazoo i.e. washing of hands and feet in a manner prescribed by Shariat:

(ii) the recitation of "Azaah" and "Ikamat" which is usually done by the Pesh Imam or the Muayzin;

(iii) there must be a person who possesses virtuous qualities and a knowledge of Koran and other

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religious rites who should lead the prayers.

This is necessary in case of prayers offered in congregation. ...the moment a person is allowed to offer his prayers in a mosque, the mosque becomes dedicated to the public. .... All that is necessary is that there should be a declaration of the intention to dedicate either expressly or impliedly and a divestment of his interest in the property by the owner followed by delivery of possession. .....

It would thus appear that in order to create a valid dedication of a public nature, the following conditions must be satisfied:

(1) that the founder must declare his intention to dedicate a property for the purpose of a mosque. No particular form of declaration is necessary. The declaration can be presumed from the conduct of the founder either express or implied;

(2) that the founder must divest himself completely from the ownership of the property, the divestment can be inferred from the fact that he had delivered possession to the Mutawalli or an Imam of the mosque. Even if there is no actual delivery of possession the mere fact that members of the Mahomedan public are permitted to offer prayers with azan and ikamat, the wakf is complete and irrevocable; and

(3) that the founder must make some sort of a separate entrance to the mosque which may be used by the public to enter the mosque.

As regards the adjuncts the law is that where a mosque is

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built or dedicated for the public if any additions or alterations, either structural or otherwise, are made which are incidental to the offering of prayers or for other religious purposes, those constructions would be deemed to be accretions to the mosque and the entire thing will form one single unit so as to be Attention:

part of the mosque."

3424. In **Nawab Zain Yar Jung and others Vs. Director of Endowments and another AIR 1963 SC 985**, a Constitution Bench of the Apex Court found that there is a dispute between a trust; public, religious or charitable and a waqf under the law of Islam. The Court quoted with approval the following from the decision of the Privy Council in **Vidya Varuthi Thirtha (Supra)**:

"it is to be remembered that a "trust" in the sense in which the expression is used in English law, is unknown to the Hindu system, pure and simple. Hindu piety found expression in gifts to ideals and images consecrated and installed in temples, to religious institutions of every kind, and for all purposes considered meritorious in the Hindu social and religious system; to Brahmins, Goswamis, Sanyasis, etc..... When the gift is directly to an idol or a temple, the seisin to complete the gift is necessarily effected by human agency. Called by whatever name, he is only the manager or custodian of the idol or the institution.....In no case is the property conveyed to or vested in him, nor is he a trustee in the English sense of the term, although in view of the obligations and duties resting on him, he is answerable as a trustee in the general sense for mal-

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administration."

"the Mohammadan laws owes its origin to a rule laid down by the Prophet of Islam; and means "the tying up of property in the ownership of God the Almighty and the devotion of the profits for the benefit of human beings." As a result of the creation of a wakf, the right of wakif is extinguished and the ownership is transferred to the Almighty. The manager of the wakf is the mutawalli, the governor, superintendent, or curator. But in that capacity, he has no right in the property belonging to wakf; the property is not vested in him and he is not a trustee in the legal sense."

3425. As we have seen in **Syed Mohd. Salie Labbai Vs. Mohd. Hanifa (supra)** the Apex Court said that dedication to a mosque is governed by special rules.

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3426. Besides, the dedication by founder as contemplated by Apex Court and noticed in **Syed Mohd. Salie Labbai Vs. Mohd. Hanifa (supra)** could not have been proved by the plaintiffs at all. We may also refer to Nawab Zain Yar Jung (supra) where it is observed that Mohammedan Law owes its origin to a rule laid down by Prophet of Islam, meaning thereby outsiders, the question of creation of waqf or mosque etc. would not arise. The building may remain a building, a structure, but would form a religious structure only when it is made in accordance with the religious tenets.

3427. In **Ballabh Das & another Vs. Nur Mohammad & another AIR 1936 PC 83**, regarding the entry with respect to nature of disputed premises contained in Khasra of 1868, the Court observed that where khasra itself is the instrument which

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confers or embodies the right and there is no other document which create title, the khasra and the map are not merely historical materials, but are instruments of title or otherwise direct foundation of rights.

3428. The above discussion would be relevant where in a property dispute such issues are of utmost importance and its religious nature is in doubt amongst the members of the same community. But where the religious structure of a particular nature is treated, believed and practised as that of a religious nature and worship is also offered since a very long time, the question whether there is a dedication of the building to almighty or not, in our view, would be wholly irrelevant. According to the own beliefs, Hindu worship the building in dispute in the inner courtyard treating that there exist Supreme Being since the Lord of Lords manifested thereat in the human form and it is his birthplace, while Muslims on the contrary, treating it a Mosque have been visiting there and offering Namaz from time to time. Then whether the Muslims' belief was in accordance with the tenets of Shariyat or not, in our view, cannot be questioned by Hindus since it is again a question of faith and belief and once it is continuing for a long time from generations to generations, then after long time such a dispute cannot be raised. We have pointed out and reiterate hereat also that upto 1950, it was never doubted that the building in dispute was a Mosque and was constructed as an attempt to desecrate one of the most pious, sacred and revered place of specific and peculiar nature, i.e., the birthplace of Lord Rama which could not be at any other place and that the Muslims also believing that the same being a Mosque, had been offering Namaz thereat

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from time to time. Even a third party, i.e., the Britishers never doubted on the nature of the building and all the documents unequivocally have used the word 'Mosque' for the building in dispute at least upto 1950 when the said suit was filed. In these facts and state of affairs, to answer a question at this fag end whether there was a dedication to almighty or not, in our view, is a wholly irrelevant question and, therefore, it need not to be answsered.

3429. Considering the peculiar special facts of this case as also the law discussed above and the facts and evidence we leave **Issue** N**o. 1(B) (b) (Suit-4) unanswered** being irrelevant.

3430. **Issues no. 19(d) and 19(e) (Suit-4)** relates to the validity of the building in question as mosque on the basis of the attending characteristics, for example existence of minarats or graveyards surrounding the building on three sides. Though it is true that recitation of Azan has been held to be a necessary formality for a public prayer in a mosque dedicated to waqf, it is not shown to us by learned counsels for the defendants placing any religious Islamic texts, if the minarats are not constructed, the building would not be a mosque under the law of Shariyat. An attempt was made to place before us certain documents wherein the characteristics of mosque in general are mentioned but those documents having not been proved and marked as exhibit, we are then unable to look into those documents. The only document which throw some light on the construction of mosque is **Exhibit 68 (Suit-5) (Register 31 Page 163-177**) which is a photocopy of frontispiece and pages no. 1 to 5 Chapter I "Introduction" and two photographs from the book **"Indian Architecture (Islamic Period)"** by **Percy Brown**

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published by D.B. Taraporevala Sons & Co. Private Ltd. The relevant extract thereof reads as under:

"*Unlike the architecture of the Hindus, which, as may be seen was confined almost entirely to temples, Mohammedan architecture in India is represented by many different types of building, which however may be referred to the two conventional divisions of (a) Religious and (b) Secular. Those of a religious nature consist of two kinds only-- the mosque and the tomb. On the other hand the secular buildings are of a miscellaneous order, as among them may be include those intended for public and civic purposes, such as houses, pavilions, town-gates,wells, gardens, etc., besides the large imperial schemes of palace-forts and even entire cities.*

Taking the religious structures first, the mosque, or Masjid, literally "the place of prostration" as already shown, is not only the all-important building of the Faith, but it is also the key-note of the style. Derived originally from the somewhat humble dwelling of the founder of the creed at Medina in Arabia, traces of the shape of this domestic habitation are still to be detected in the developed mosque-scheme, as it is basically an open courtyard surrounded by a pillared verandah, in a work an elaboration and enlargement of an Arab's house. With the early followers of the religion everything was done according to suna or practice, tradition being regarded as sacred, sometimes carrying more force than the guiding light of reason. The original intention was to provide no specific structure for devotional purposes, as prayer could

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be performed in the open air with nothing between the devotee and his God. But those concerned had not calculated on the natural craving of mankind for an enclosed building in which worship could be conducted in an appropriate environment, away from the distractions of everyday life, and it was not long before a house of prayer came into being. This began with a rectangular open space or sahn, the four sides being enclosed by pillared cloisters or liwans, with a fountain or tank in the centre for ablutions, a ceremony described as "the half of faith and the key of prayer." To meet the demand for some focal point in the scheme, the cloisters on the Mecca side (in India on the west) of the courtyard were expanded and elaborated into a pillared hall or sanctuary, with a wall at the back containing a recess or alcove called a mihrab indicating the qibla or direction for prayer. On the right side of the mihrab stands the mimbar or pulpit, while a portion of the sanctuary is screened off into a compartment for women. An elevated platform from which the muezzin summons the faithful to prayer is also a necessity, and usually takes the form of a high tower or minaret. (Plate I.) In almost every city and large town, there is one mosque known as the Jamma Masjid (Al-Masjidu'l Jami, lit, "the Collecting Mosque"). This designation is given to the principal or congregational mosque in which the Faithful assemble for the Friday (Jum'ah) prayer.

Above are the main elements comprising the mosque structure, and it was soon found that to combine these traditional requirements into a well-balanced whole was

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not to be readily accomplished. Porticos similar entrance hall could be added to the exterior, but the treatment of the interior with its outstanding essential of a large open space, remained a problem. Obviously the sanctuary where was enshrined the mihrab, or symbol of "direction" of the Faith was the most significant portion, and this was eventually developed into the principal architectural feature, with the courtyard and its cloisters leading up to it. To produce the necessary structural effect of a house of prayer two important elements were imposed on to the exterior of the sanctuary, on the one hand a screen was thrown across its front to form a facade, and on the other, above the central space or nave corresponding to the "high place" of the Christian church, a dome was raised. It was in the task of co-ordinating these two dominating features, the facade and the dome, so as to form a unified architectural composition, that difficulties were encountered, and in fact were never entirely overcome by the Indian builders. For nearly every phase of mosque architecture in India illustrates in the front elevation a conflict between these two essential constituents of the conception, and the efforts made to bring about an agreement. As a rule, the view of the central dome over the nave is obstructed by the parapet crowning the facade which rises up in front, although this combination is sometimes not unpleasing as seen from the side or back of the building. The cause of this lack of coherence in the elevational aspect of the Indian mosque has been attributed to the immature design of the earliest examples, such as the

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Qutb at Delhi, and the Arhai-din-jhompra at Ajmir, the defects of which, owing to the force of tradition, were repeated, although in a lesser degree, in many of the subsequent buildings. In the mosques of Gujrat and of the south-west the design of the Ajmir frontage undoubtedly shows its influence, but the inconsistency here referred to appears to have an older origin, as it is inherent in the eastern type of mosque, beginning as early as in that raised by the Arabs at Samarra near Baghdad in the first half of the nigh century.

The other class or building of a religious order, the tomb, introduced into the country an entirely new kind of structure, as hitherto it had been custom of the people of India to raise no sepulchre to mark the resting place of the dead, their ashes being carried away on the broad bosom of the sacred rivers. Even with the Mohammedans the tomb-structure in the initial stages of the creed evolved slowly owing to all such memorials being prohibited. ***1*** *It is of no little psychological significance that a movement which began with restrictions against all forms of monumental art should eventually produce some of the most superb examples. Only the pyramids of the Pharoahs, and a few other funerary monuments, such as that raised in memory of Kind Mausoleus at Halicarnassus in Asia Minor, have excelled in size and architectural splendour the Islamic tombs of India. Many of these noble piles consist of an imposing composition of vaulted halls and towering domes, and enclosed within a spacious garden, all on a grand scale, yet enshrining in the centre a mere*

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handful of dust, laid in a plain mound of earth to be seen in the mortuary chamber below. (Plate LII). In the course of time, the tomb-building, especially in northern India, introduced itself into the landscape, much of the finest Indo-Islamic architecture being expressed in these structures. The tomb (Qabristan), usually consists of a single compartment or tomb-chamber, known as 'huzrah or estanah' in the centre of which is the cenotaph or zarih, the whole structure being roofed over by a dome. In the ground underneath this building, resembling a crypt, is the mortuary chamber called the 'maqbarah or takhana' with the grave or qabr in the middle. In the western wall of the tomb-chamber there is generally a mihrab, but some of the larger mausoleums also include a mosque as a separate building, the whole being contained within one enclosure, called a rauza, after the garden (ar-rauza) at Medinah in which is enshrined the Prophet's Tomb. Occasionally important tombs are designated dargahs, a word of Persian extraction signifying a court or palace.

In contrast to the religious architecture those buildings of a secular character, as already indicated comprise a large series of a kind so varied that no definite classification is possible, and they will therefore be dealt with either individually or in groups according to their position or purpose.

During the rule of the Mohammedans, architecture in India passed through three different and more or less successive experience. The first of these prevailed for only a limited period, but it was one of desecration and

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destruction inspired by the first white head of fanatical zeal. "It was the custom," relates a contemporary chronicler, "after the conquest of every fort and stronghold to ground its foundations and pillars to powder under the feet of fierce and gigantic elephants." In a like manner a large number of fortified towns were demolished, while temples and similar structures were included in the spoliation. This purely destructive phase was followed by a second one, in which the buildings were not ruthlessly shattered, but were purposely dismantled and the parts removed, to supply ready-made material for the mosques and tombs of the conquerors. The historian quoted above mentions that much of the demolition was effected by elephant power, these animals being employed to push the beams and pillars out of position, gather them up, and carry them to their new situation, much as they now stack timber, or haul teak wood logs for commercial purposes. It was during this phase that the temple buildings suffered most, as whenever any fresh territory was annexed, and the fouding of a capital city contemplated, these structures became the quarries from which supplies of cut stone were extracted. This accounts for considerable areas in Upper India being almost entirely denuded of any records of Hindu architecture, notably around such early Islamic centres as Delhi and Ajmir. The spoils of these temples, however, had to be supplemented in places by a certain amount of new and original masonry, as may be seen in mosques of the early type, so that the materials were obtained from two sources and, as tersely described by the

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chronicler- "the stones were dug out from the hills, and the temples of the infidels were demolished to furnish a supply." Finally, there was the third phase, when the Moslems having become firmly established in various parts of the country, found themselves in a position to plan and create building compositions constructed of masonry, not re-conditioned, but each stone prepared specially for its purpose. It was in these latter circumstances that Islamic architecture in India arrived and its true character and achieved its greatest splendour.

For the purpose of study, the architecture thus produced may be resolved into three main divisions, (I) the Delhi or Imperial, (2) the Provincial, and (3) the Mughul. The first of these divisions has hitherto generally been known as "Pathan," but not all those dynasties under which this type of architecture prevailed, can be so designated. Two of them were of Turkish extraction, one was Khalji, and one was of Arab descent. The architecture evolved under these dynasties was that associated mainly with their rule at Delhi, the capital city and centre of the imperial power. For, just as Rome had "classic" art of the capital city, differing greatly from that of the provinces, so the seat of the administration in Moslem India had its own form of architectural expression, which, although subject to variations and developments, never really lost its distinctive and imperial character. Beginning at the close of the twelfth century, on the establishment of Islamic rule at Delhi, this imperial style continued for nearly four centuries, when, in the middle of the sixteenth century it

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was succeeded by that of the Mughuls. The second of these styles, the Provincial, refers to those modes of building practised in some of the more self-contained portions of the country, usually after their governors had thrown off the allegiance to Delhi, when they proceeded to develop a form of architecture in accordance with their own individual ideals. What may be termed the "pivotal year" of this movement was A.D. 1400, when the central power at Delhi had been broken by the invasion of Timur (Tamerlane), and its original prestige declined from that date. It will be understood that these provincial manifestations of the building art in most instances prevailed for a period partly contemporary with that maintained by the central power at Delhi, and partly with that of the Mughuls, until the later brought the whole of India under their rule. The third style, the Mughul, was the latest and ripest form of Indo-Islamic architecture, which, emerging after the middle of the sixteenth century continued to flourish until the eighteenth century, by which time the empire founded by the descendents of the Timurids, the "Great Mughuls," had begun to approach its end." (pages 3-5)

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3431. Similarly though public prayer for religious purposes at graveyard is not permitted but it is not shown to us that a building would not be construed as a mosque if it is surrounded on three sides by graveyards.

3432. For the purpose of public namaz, Adhan (Ajan) is necessary but we have not been shown that a mosque, if constructed without having a 'Minar', that would not be a mosque and against the tenets of Shariyat. Similarly, namaz

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before graves is not permitted except for limited purpose but it is not shown to us that a mosque cannot be constructed or if constructed, may subsequently lose its status of a mosque if in a vicinity thereof there exist graveyard or the same are made later on.

3433. We, therefore, are of the view that the defendants have failed to prove issues 19(d) and 19(e) and therefore, both the issues i.e. **Issues No.19(d) and 19(e) (Suit-4) are answered in favour of the plaintiffs**.

3434. **Issue No.19(f)** is in two parts. Firstly; whether the pillars inside and outside the building in question contain images of Hindu Gods and Goddesses? If the finding is in affirmative, then it has to be seen whether on that account the building in question cannot have the character of Mosque under the tenets of Islam?

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3435. There are three sets of albums which contain photographs taken by the State Archaeological Department pursuant to order dated 10.01.1990 passed by this Court. Dr. Rakesh Tiwari, OPW-14 was Director of State Archaeological Department who deposed statement as OPW 14 and verified all these photographs. One album which the learned counsel for the parties have termed as "Album of Coloured Photographs" contain 204 photographs and has been marked as Paper No.200C1/1-204. The second one contains 111 photographs which are black & while and the parties counsels have commonly call it "The Album of Black & White Photographs" and it is Paper No.201C1/1-111. The relevant photographs of these pillars in the coloured album are Paper No.200C1/48, 200C1/50, 200C1/51, 200C1/52, 200C1/54, 200C1/87,

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200C1/104, 200C1/105, 200C1/109, 200C1/114, 200C1/115, 200C1/141, 200C1/146, 200C1/147, 200C1/166, 200C1/167, 200C1/181, 200C1/186, 200C1/187, 200C1/195, 200C1/199 and 200C1/200. Similarly, in the album of Black & White, photographs, the relevant one of concerning pillars are 201C1/55, 201C1/57, 201C1/76, 201C1/88, 201C1/91, 201C1/103, 201C1/104 and 201C1/106. All these photos are being appended collectively as **Appendix 5 (A) to 5 (DD)** to this judgment.

3436. We ourselves have perused all these photographs and apparently it appears from some of them that there were some images which have been tried to be erased or damaged so that it may not be identifiable or may stand removed. To the portion, where such images appears to be an attempt by external forces to desecrate the same is quite evident. We are not expert in this branch of archaeology but something which is otherwise apparent, we have mentioned. A lot of witnesses including those experts of various parties were also confronted with the same and their statement would also be of corroborative nature and therefore would be relevant. The photographs of the black kasauti pillars were seen and in respect to images therein, if any, PW 3, the plaintiff's own witness, said:

(A) PW-3 (Farooq Ahmad)

*''**फोटो नं. 57** में मूर्तियां बनी हुयी हैं जो उस वक्त नहीं थी। ये फोटो भी जायदाद मुतदाविया का है लेकिन हो सकता है बदल दिया हो। क्योंकि उस वक्त खंभे पर मूर्तियां नहीं थी। **फोटो नं0 – 58** में भी एक मूर्ति ऊपर के हिस्से में नजर आती है। फाटक में काला खंभा लगा हुआ था उसमें कोई मूर्ति नहीं हो सकती है कि बाद में बदल दिया गया हो। . . . .फोटो देखकर कह रहा हूँ कि खंभे बदल दिए गए होंगे। इन खंभों पर मूर्तियां बनी हुयी हैं उनको देखकर मैं बता रहा हूँ। कि ये खंभे बदले गए*

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हैं।'' (पेज 38)

*''Idols are visible in **photograph no. 57**, which were not present at that time. This photograph is also of the disputed property but it is possible that it may have been changed because at that time there were no idols over the pillars. An idol is visible in the upper part of **photograph no. 58** as well. There was a black pillar at the gate, which did not have any idol and it is possible that it may have been changed subsequently. . . . . It is only after looking at the photograph that I am stating that the pillars may have been changed. These pillars have idols on there top and it is only after looking at them that I am stating that these pillars have been changed.'' (E.T.C)*

*''**फोटो नं. 62** में जंगले के पास खंभा नुमा बना है जिसमें **मूर्तियां बनी हुयी हैं।** यह खंभा विवादित जायदाद के उत्तरी फाटक का है . . . . . **फोटो नं.–64** में भी सफेद रंग का नजर आता है और मूर्ति भी नजर आती है। . . . **फोटो नं.–65** सदर दरवाजे का है। लेकिन इसके खंभे पर मूर्तियां बनी हुयी हैं जो तब्दीली का नतीजा है। **फोटो नं. –66** भी पूर्वी तरफ का है लेकिन इस पर मूर्तियां बनी हैं जो तब्दीली का नतीजा है।'' (पेज 39)*

*''In **photograph no. 62** there is a pillar like structure near the grill, **which has idols.** This pillar is at the northern gate of the disputed property. . . . . It is visible in white color in **photograph no. 64** as well,and the idols are also visible. . . . The **photograph no. 65** is of the main gate. However, its pillar contained idols, which are result of change. The **photograph no. 66** is also of the eastern side but it has idols, which are result of change.'' (E.T.C)*

*''**फोटो नं.–72** काले रंग का खंभा जरूर है लेकिन उसके **ऊपर व नीचे मूर्तियां बनी हुयी हैं।** . . . . . .**यही हालात फोटो***

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नं0–71 के दोनों खंभों की है। वही हालत नं.–73 में दिखाए गए खंभे की है। इसमें भी मूर्तिया बनी हैं। फोटो नं.–74 की भी वही हालत है जिसके खंभे पर मूर्तियां बनी है। ये पूरा खंभा चारों तरफ से दिखाया गया है जो वहां पर चिपका हुआ था।'' (पेज 40)

*"**The photograph no. 72** does contain black pillars but it **has idols in upper and lower part**. . . . . **Similar is the position of the two pillars of photograph no. 71**. **Same is with the pillar shown in photograph on. 73. It also contains idols**. **The photograph no. 74** is also similar, which has idols over pillars. This pillar has been shown completely from all sides, which had been fixed over there." (E.T.C)*

*''**फोटो नं.–101** भी वहीं का है लेकिन इसमें बहुत तब्दीलियां की गयी हैं। **मूर्तियां भी बनी हैं और कलश भी खड़े मालूम होते हैं।**'' (पेज 42)*

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*"**The photograph no. 101** is also of that place, but many changes have been made therein. T**he idols are also existing and the pitchers (Kalash) are also existing**." (E.T.C)*

*''**ये ठीक है कि इस एलबम में लगाए गए तमाम फोटो हमारे वकील साहब की मौजूदगी में खींचे गए थे। ये तमाम फोटोज विवादित जमीन और जायदाद के हैं।**'' (पेज 61)*

*"**It is true that all the photographs contained in this album, had been taken in the presence of my counsel. All these photographs are of the disputed land and property**."(E.T.C)*

''जो पत्थर खंबों की सूरत में लगे थे उन पर कोई शैतानों या भूतो की शक्ल नहीं थी वह बाद में फर्जी बनाई गयी थी।'' (पेज 100)

The stones existing in form of pillar, did not have figures of ghost or demons over them, and the same was

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put subsequently in a fake manner." (E.T.C)

3437. The witnesses of Hindu parties have also made detailed statements wherein at time, there is some contradiction, but, in general, in some of the pillars certain images have been identified:

(A) In regard to coloured photographs **no. 47 to 50** and **51 to 54** and black -white photograph nos. **26 and 27** in respect to **pillars no. 1 and 2:**

(i) DW 3/5- Raghunath Prasad Pandey

*''**चित्र संख्या–47 व 48** में दिख रहे खम्भे में घट के ऊपर हनुमान जी की मूर्ति के दर्शन हो रहे हैं।'' (पेज 14)*

*"Idol of Hanuman Ji is seen above ghat (water- pot) in the pillar in a **photograph nos. 47 and 48."** (ETC)*

*''**चित्र संख्या 47** में हनुमान जी की मूर्ति के नीचे नरसिंह भगवान का मुख नज़र आ रहा है और हनुमान जी की मूर्ति के नीचे एक और मूर्ति नज़र आ रही है।'' (पेज 157)*

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*"In **photograph No. 47** the face of Lord Narshima is seen beneath the idol of Hanuman Ji and another idol is seen beneath the idol of Hanuman Ji." (ETC)*

*''**चित्र संख्या 52, 54 और 105** को देखकर गवाह ने कहाए ''इन चित्रों में जहां कलश बना है वहॉ घुटना मोड़े हुए किसी व्यक्ति की आकृति नज़र आ रही है।'' (पेज 14)*

*Seeing the **photographs no. 52, 54 and 105** the witness stated, "In these pictures, where the Kalash is inscribed, the idol of a person with bent knees is seen there." (ETC)*

*''**चित्र संख्या 54** में दिख रहे खम्भे को देखकर गवाह ने कहा कि ''इसमें जहॉ सिन्दूर लगा है, वहॉ हनुमान जी की मूर्ति नज़र आ रही है, और हनुमान जी की मूर्ति के दाहिनी तरफ मोर जैसी आकृति नज़र आ रही है।''(पेज 159)*

*Seeing the pillar visible in the **photograph no. 54** the*

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witness stated "At the place where vermilion is applied therein, the idol of Hanuman Ji is seen and peacock-like figure is seen to the right of the idol of Hanuman Ji."(ETC)

(ii) DW 1/2- Krishna Chandra Singh

चित्र संख्या 26, 27

''उपरोक्त चित्रों में दिख रहे खंभों में मुझे जय–विजय की मूर्ति नहीं दिख रही है।'' (पेज 45);

Photograph Nos. 26 and 27

"The idol of Jai-Vijai is not visible to me in the pillars appearing in the aforesaid photographs." (ETC)

चित्र संख्या 47 लगायत 54

''खंभों में मुझे जय–विजय की मूर्तिया नजर नहीं आ रही हैं, क्योंकि मेरी नजर कमजोर है . . . '' (पेज 45)

Photograph Nos. 47 to 54

" The idols of Jai-Vijai are not visible to me in the pillars, because my eye- sight is weak.(ETC)

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(B) In regard to Coloured **photographs no. 104 to 109** and Black and White **photographs No. 55 and 57** of Pillar No 3:

(i) DW 3/5- Raghunath Prasad Pandey

*''**चित्र संख्या 104** में दिख रहे खम्भे में ऐसी आकृति बनी हुई दिख रही है, जैसे कोई आदमी घुटना मोड़कर बैठा है और यही स्थिति **चित्र संख्या–106** में भी है। (पेज 14); **चित्र संख्या–104** में दिख रहे खम्भे में हनुमान जी की, गणेश जी की, देवी जी की मूर्ति तथा एक मोर जैसी आकृति दिख रही है। (पेज 147); **चित्र संख्या –105** में जहॉ सिन्दूर लगा है, वहॉ हनुमान जी की मूर्ति है और उसके नीचे कमलदल के पास गणेश जी की और देवी जी की मूर्ति नज़र आ रही है। . . . . '' (पेज 147)*

*"In the pillar appearing in the **photograph no.104,** such a figure is seen engraved as gives the impression that a person is sitting with his knees bent, and this very position*

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*is seen in the **photograph no. 106** as well. (page 14); The idol of Hanuman Ji, Ganesh Ji and Devi Ji as also a peacock-like figure is seen in the pillar visible in the **photograph no. 104.** (page 147); The idol of Hanuman Ji is at the point where vermilion is applied in the **photograph no. 105,** and the idol of Ganesh Ji and Devi Ji is seen near 'Kamal-Dal' (bunch of lotus flowers) beneath the said idol of Hanuman Ji." (ETC)*

(ii) DW 17/1 -Ramesh Chandra Tripathi

''चित्र संख्या 104 में मूर्ति के शरीर का कोई भाग नहीं नज़र आ रहा है। (पृष्ठ 86); चित्र संख्या 105 में शंकर की मूर्ति है . . .''(पृष्ठ 85)

"No part of the body of the idol is visible in Photograph No. 104. (page 86); Idol of Shankar is in Photograph No. 105." (ETC)

(iii) DW 3/5- Raghunath Prasad Pandey

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*''**चित्र संख्या 108** में जहॉ सिन्दूर लगा हुआ है, वहॉ पर हनुमान जी की मूर्ति नज़र आ रही है और उसके बग़ल में मोर जैसी आकृति नज़र आ रही है और हनुमान जी के नीचे वाले भाग में गणेश जी एवं देवी जी की मूर्ति नज़र आ रही है।'' (पेज 147)*

*"At the point where vermilion is applied in the **photograph no. 108**, the idol of Hanuman Ji is visible and next to it is seen a peacock-like figure and in the lower part of Hanuman Ji is seen the idol of Ganesh Ji and Hanuman Ji."(ETC)*

(iv) DW 13/1-1 - Mahant Dharmdas

*''**चित्र संख्या 109** में हनुमान जी की आकृति तथा कलश के ऊपर शंकर जी की आकृति नज़र आ रही है। चित्र संख्या 109 में मानव आकृति नज़र आ रही है। यह आकृति रामचन्द्र जी की है।'' (पृष्ठ 156)*

*"In the **photograph no. 109,** idol of Hanuman Ji is seen, and Shankar Ji is therein visible above 'Kalash'.A human*

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figure is visible in the Photograph No 109. This figure is of Ramchandra Ji." (ETC)

(C) In regard to Coloured Photographs **110 to 115** and Black – White Photographs **58 and 60 of Pillar Nos. 4:**

(i) DW 3/5- Raghunath Prasad Pandey

''इन मूर्तियों में देवी–देवताओं के उदर से लेकर सिर तक नजर आ रहा है, परन्तु चेहरा स्पष्ट नहीं हो रहा है।'' (पेज 151)

"In these idols, gods-goddesses are seen from stomach to head but their faces are not clear." (ETC)

(ii) DW 3/15 Narendra Bahadur Singh

*''इसी एलबम के **चित्र सं0 109 लगायत 127** में भी नज़र आरहे खंभों में किसी देवी देवता के चित्र नहीं नजर आ रहे है।'' (पृष्ठ 43)*

*"Figures of gods- goddesses are not visible in the pillars also appearing in the **photographs 109-127** of this very album." (ETC)*

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(iii) DW 3/5- Raghunath Prasad Pandey

*''इस खम्भे में जहॉ सिन्दूर लगा है, वहॉ पर हनुमान जी का आधा शरीर नज़र आ रहा है। हनुमान जी की मूर्ति के नीचे जहॉ कमल–दल है, वहॉ गणेश जी की मूर्ति नज़र आ रही है। उनका मुख और पेट दिख रहा है। हनुमानजी की मूर्ति के वग़ल जो देवता की मूर्ति है, उसके बग़ल मोर की आकृति नज़र आ रही है। इस **चित्र सं0–113** में जहां कमल–दल है, उसके बाई तरफ़ किसी देवी या देवता की मूर्ति नज़र आ रही है, परन्तु यह स्पष्ट नहीं हो रहा है कि यह मूर्ति किसकी है। **चित्र संख्या 114** में दिख रहे खम्भें में जहां सिन्दूर लगा है वहां हनुमान जी की मूर्ति नजर आ रही है''(पेज 152–153)*

"Half of Hanuman Ji's body is visible where vermilion is applied in this pillar. Where there is 'Kamal-Dal' beneath the idol of Hanuman Ji, that of Ganesh Ji is visible. His face and stomach is visible. Next to idol of a god which is beside that of Hanuman Ji, a peacock figure is seen. Left

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*to the point where 'Kamal-Dal' is seen in this **photograph (no.113)**, the idol of any god or goddess is seen but it is not getting clear as to whom this idol represents. The idol of Hanuman Ji is seen at the point where vermilion is applied in the pillar seen in the **photograph no.114**....."(ETC)*

(iv) DW 17/1 Ramesh Chandra Tripathi

''चित्र संख्या 113 में मूर्ति नहीं नजर आ रही है।''(पृष्ठ 86)

"No idol is visible in the Photograph No. 113." (ETC)

(v) DW 3/15- Narendra Bahadur Singh

*''इसी एलबम के चित्र सं0 **109 लगायत 127** में भी नज़र आरहे खंभों में किसी देवी देवता के चित्र नहीं नजर आ रहे हैं।''(पृष्ठ 43)*

*"Figures of gods and goddesses are not visible in the pillars also seen in the photograph **109 to 127** of this very album."(ETC)*

(D) In regard to coloured **Photographs 116 to 121** and black-white **Photographs 61 and 63 of Pillar No 5**:

(i) DW 3/5- Raghunath Prasad Pandey

*''चित्र **संख्या 116** में दिख रहे खम्भे में जहां सिन्दूर लगा है, वहां हनुमान जी का पूरा शरीर नज़र आ रहा है . . . .'' (पेज 154)*

*"The whole body of Hanuman Ji is seen where vermilion is applied in the pillar seen in the photograph **no. 116**...." (ETC)*

(ii) DW 3/11- Bhanu Pratap Singh

*''चित्र **सं0 116** में दिखायी दे रहे खम्भे में ऊपर की तरफ मूर्ति नज़र नहीं आ रही है।''(पृष्ठ 51)*

*"No idol is visible upwards in the pillar seen in the photograph **no. 116**." (ETC)*

(iii) DW 3/5- Raghunath Prasad Pandey

*''चित्र **संख्या 118** में सिंह जैसी आकृति नज़र आ रही है . . . उस सिंह से मेरा तात्पर्य नरसिंह भगवान से है।'' (पेज 154–155); ''चित्र*

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*संख्या 119 में वही मूर्ति व आकृति उसी स्थान पर नज़र आ रही है, जिस स्थान पर चित्र **सं0 118** में दिख रहे खम्भे में।'' (पेज 155)*

*"A lion-like figure is visible in the photograph no. 118.....By that lion I mean Lord Narsingh. (page 154-155); The same idol and figure is seen at the same point in the pillar in the photograph **no.118** as in the photograph **no. 119."**(ETC)*

(iv) DW 17/1 Ramesh Chandra Tripathi

''इसमें एक जगह गरूड़जी का चित्र दिखाई पड़ रहा है . . . ।''(पृष्ठ 50)

"The figure of Garun Ji is visible at a place in it....."(ETC)

(v) DW 13/1-1 Mahant Dharmdas

*''चित्र **संख्या –118 तथा 119** में नज़र आ रहे खम्भों में कोई चित्र नजर नहीं आ रहा है।''(पृष्ठ 157)*

*"No figure is visible in the pillars seen in the photographs **no. 118 and 119."** (ETC)*

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(vi) DW 13/1-1 Mahant Dharmdas

*''चित्र **संख्या 121** में हनुमानजी की मूर्ति नज़र आ रही है। यह मूर्ति उस स्थान पर है, जिस स्थान पर सिंदूर पुता है। जहॉ पर सिंदूर पुता हुआ है वहॉ एक जगह हनुमान जी की मूर्ति नज़र नहीं आ रही है। इन दोनों स्थानों के बीच में एक पट्टी पर रामचन्द्रजी की मूर्ति धनुष लिए हुए नज़र आ रही है।''(पृष्ठ 158)*

*"The idol of Hanuman Ji is visible in the photograph **no. 121.** This idol is at the place which is painted with vermilion. At the place where vermilion is applied, the idol of Hanuman Ji is not visible at one point. The idol of bow-wielding Ramchandra Ji is visible on the strip at the midpoint between these two places." (ETC)*

(vii) DW 20/1 Shashikant Rungta

*''चित्र **संख्या 120 तथा 121** में गणेश जी की मूर्ति नज़र आ रही है।''(पृष्ठ 33)*

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*"The idol of Ganesh Ji is seen in the photographs **120 and 121."** (ETC)*

(viii) DW 3/15 Narendra Bahadur Singh

''इसी एलबम के चित्र सं0 109 लगायत 127 में भी नज़र आरहे खंभों में किसी देवी देवता के चित्र नहीं नजर आ रहे हैं।''(पृष्ठ 43)

"Figures of any god-goddess are not visible in the pillars seen even in the photographs 109-127 of this very album.". (ETC)

(E) In regard to coloured **Photographs 136 to 143** and black-white **Photographs 71 and 73 of Pillar No 7:**

(i) DW 3/5- Raghunath Prasad Pandey

*''इस चित्र **संख्या–141** में हनुमान जी की खड़ी हुई पूरी मूर्ति नज़र आ रही है। . . . . चित्र **संख्या 142 एवं 143** में दिख रहे खम्भों में जहॉ सिन्दूर लगा है, उस भाग में हनुमान जी की मूर्ति नज़र आ रही है . .'' (पेज 160)*

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*"In this photograph **(no.141)**, the idol of Hanuman Ji in standing position is wholly seen. . . . The idol of Hanuman Ji is seen in that part in which vermilion is applied in the pillars seen in the photographs **142 and 143.** . . . ." (ETC)*

(ii) DW 17/1- Ramesh Chandra Tripathi

*''चित्र **सं0 141, 142 तथा 143** में गणेश जी की मूर्तियां हैं।''(पृष्ठ 87 –88)*

*"The idols of Ganesh Ji are seen in photographs **141, 142 and 143."** (ETC)*

(F) In regard to coloured **Photographs 142 to 147** and black-white **Photographs 74 and 76 of Pillar No 8:**

(i) DW 3/5- Raghunath Prasad Pandey

*''चित्र संख्या–**146 एवं 147** में दिख रहे खम्भों में जहॉ सिन्दूर लगा है, वहॉ हनुमान जी की मूर्ति नज़र आ रही है . . . '' (पेज 160)*

"The idol of Hanuman Ji is seen where vermilion is applied

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*in the pillars seen in the photographs **146 and 147**....."(ETC)*

(ii) DW 17/1- Ramesh Chandra Tripathi

*''चित्र **सं0 146 तथा 147** में गणेश जी की स्पष्ट मूर्तियां नज़र आ रही हैं।'' (पृष्ठ 88)*

*"The idols of Ganesh Ji are clearly seen in the photographs **146 and 147**."(ETC)*

(iii) DW 13/1-1 Mahant Dharmdas

*''चित्र **संख्या 146 तथा 147** में गणेश जी की मूर्ति नज़र आ रही है।'' (पृष्ठ 160)*

*"The idol of Ganesh Ji is seen in the photographs **146 and 147**." (ETC)*

(G) In regard to coloured Photographs **162 to 167** and black-white Photographs **89 and 91 of Pillar No 10:**

(i) DW 3/5- Raghunath Prasad Pandey

''हनुमान जी की मूर्ति के दाहिनी तरफ मोर जैसी आकृति बैठी हुई अवस्था में नज़र आ रही है . . .'' (पेज 160)

"To the right of the idol of Hanuman Ji is seen a peacock-like figure in the sitting position....."(ETC)

(ii) DW 20/1 Shashikant Rungta

*''चित्र **संख्या 166 तथा 167** में गणेश जी की सूड़ नज़र आ रही है . . ''(पृष्ठ 34)*

*"Ganesh Ji's trunk is visible in the photographs **166 and 167**...." (ETC)*

(H) In regard to coloured **Photographs 176 to 181** and black-white **Photographs 95 and 97 of Pillar No 11** and in regard to coloured **Photographs 182 to 187** and black-white **Photographs 98 and 100 of Pillar No 12** :

(i) DW 3/5- Raghunath Prasad Pandey

*''चित्र **सं0 176, 177 एवं 180** में दिख रहे खम्भों में मुझे हनुमान जी*

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की मूर्ति के अतिरिक्त मोर की आकृति नजर आ रही है . ..(पेज161–162)

*"Besides the idol of Hanuman Ji , a peacock figure is seen in the pillars represented in the photographs **176, 177 and 180.** . . .(ETC)*

(ii) DW 13/1-1 Mahant Dharmdas

*''चित्र **संख्या 180** में मूर्ति नज़र आ रही है, जो दुर्गा जी की है।'' (पृष्ठ 161)*

*"In the photograph **no. 180** is seen an idol, which is of Durga Ji.(ETC)*

(iii) DW 3/5- Raghunath Prasad Pandey

*''चित्र **संख्या 181 . . 183,** . . . में दिख रहे खंभों में हनुमान जी की मूर्ति के अतिरिक्त मोर की आकृति नज़र आ रही है . . . . '' (पेज 162)*

*"Besides the idol of Hanuman Ji, a figure of peacock is visible in the pillars seen in the photograph **181,....,183**....."(ETC)*

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(iv) DW 12/1- Ramesh Chandra Tripathi

*''चित्र **सं0 181, 183** में गणेश जी की मूर्ति है।'' (पृष्ठ 88)*

*"The idol of Ganesh Ji is there in the photograph nos. **181 and 183**." (ETC)*

(v) DW 3/5- Raghunath Prasad Pandey

*''चित्र संख्या . . . **186** में दिख रहे खंभों में हनुमान जी की मूर्ति के अतिरिक्त मोर की आकृति नज़र आ रही है . . . . '' (पेज 162)*

*"Besides the idol of Hanuman Ji, a peacock figure is visible in the pillars seen in the photograph no....**186**..."(ETC)*

(I) In regard to coloured **Photographs 188 to 194** and black-white **Photographs 102 and 103 of Pillar No 13** and in regard to coloured **Photographs 195 to 200** and black-white **Photographs 104 and 106 of Pillar No 14**:

(i) DW 3/5- Raghunath Prasad Pandey

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*''**चित्र संख्या 187 लगायत 190** में दिख रहे खम्भों में हनुमान जी की मूर्ति के अतिरिक्त मुझे मोर की आकृति नज़र आ रही है . . (पेज 162)*

*"Besides the idol of Hanuman Ji, a peacock figure is visible in the pillars seen in the **photographs 187 to 190.**"(ETC)*

(ii) DW 17/1- Ramesh Chandra Tripathi

*''**चित्र सं0 188, 189, 190** गणेश जी की मूर्तियां हैं, ये मूर्तियां नृत्य मुद्रा में हैं।'' (पृष्ठ 88)*

*"The idols of Ganesh Ji are seen in the **photographs 188, 189 and 190**. These idols are in dancing posture." (page 88) (ETC)*

(iii) DW 3/5- Raghunath Prasad Pandey

*''**चित्र संख्या 178, 179, 184, 191, 192, 197 एवं 198** में दिख रहे खंभों में मुझे कोई मूर्ति नज़र नहीं आ रही है . . ''(पेज 161)*

*"No idol is visible to me in the pillars seen in the **photographs 178, 179, 184 , 191, 192, 197 and 198**."(ETC)*

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(iv) DW 13/1-1- Mahant Dharmdas

*''**चित्र संख्या 191 तथा 192** में शेषनाग की मूर्तियां नज़र आ रही हैं।'' (पृष्ठ 163)*

*"The idols of Sheshnag are visible in the **photographs 191 and 192.**" (ETC)*

(v) DW 13/1-1- Mahant Dharmdas

*''**चित्र 195 व 196** में गणेश जी नज़र नहीं आ रहे हैं।''(पृष्ठ 165)*

*"Ganesh Ji is not seen in the **photographs 195 and 196.**"(ETC)*

(vi) DW 3/5- Raghunath Prasad Pandey

*''**चित्र सं0 199 एवं 200** में भी दिख रहे खंभों में भी मुझे हनुमान जी की मूर्ति के अतिरिक्त मोर की आकृति नज़र आ रही है।'' (पेज 162)*

*"Besides the idol of Hanuman Ji, a peacock figure is also visible in the pillars seen even in the **photographs 199 and***

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200.*"(ETC)*

(vii) DW 17/1- Ramesh Chandra Tripathi

''चित्र 199 तथा 200 में भी गणेश जी की नृत्य मुद्रा में मूर्तियां नज़र आ रही हैं।'' (पृष्ठ 88)

"The idols of Ganesh Ji in dancing posture are seen in the photographs 199 and 200 as well." (ETC)

(J) In reference to contradictory statements of the witnesses in context of coloured **Photographs (47 to 50) and (51 to 54)** respectively of the so called **Kasauti pillars (1 and 2)** fixed in the first gate and black-white **Photographs 26 and 27** respectively of the said two pillars:

(i) DW 3/1 - Mahant Bhaskar Das

(चित्र संख्या 47 एवं 48) *में जितनी दूर सिन्दूर लगा नजर आ रहा है उसी के अन्दर हनुमानजी की मूर्ति है।'' (पेज 258); (चित्र संख्या 50 एवं 54) देख कर गवाह ने कहा कि इनमें जहॉ जहॉ सिन्दूर लगा दिख रहा है वहॉ–वहॉ मूर्ति थी।'' (पेज 259)*

"The idol of Hanuman Ji is within the space as far as vermilion is seen applied (in the ***photographs 47 and 48)****. (page 258); Looking at (the photographs 50 and 54) the witness stated that idol was at the places where vermilion is seen applied in the said photographs."(page 259) (ETC)*

(ii) DW 3/5 Raghunath Prasad Pandey

''हनुमान जी की मूर्ति के नीचे नरसिंह भगवान का मुख नजर आ रहा है और हनुमान जी की मूर्ति के नीचे एक और मूर्ति नज़र आ रही है। नरसिंह भगवान की मुख बाये हुए मूर्ति नजर आ रही है। (पेज 157); ***चित्र सं0 49*** *में दिख रहे खंभे में ऊपर के भाग में नरसिंह भगवान के मुख की आकृति नज़र आ रही है।'' (पेज 158)*

"Below the idol of Hanuman Ji, the face of Lord Narsingh is visible and another idol is visible below the idol of

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Hanuman Ji. The idol of Lord Narsingh with the face towards the left, is seen.(page 157); The figure Lord Narsingh's face is seen in the upper part in the pillar appearing in the ***photograph no. 49****. (page 158)." (ETC)*

(iii) DW 13/1-1 Mahant Dharmdas

''इन चित्रों में ***चित्र संख्या 50, 51, 52 तथा 54*** *में मूर्ति नज़र आ रही है। ये मूर्तियां हनुमान जी तथा गरुड़ जी की हैं। (पेज 154);* ***चित्र संख्या– 108*** *में एक तरफ हनुमान जी की मूर्ति नज़र आ रही है, एक तरफ़ शंकर जी की मूर्ति जैसी नज़र आ रही है।'' (पेज 155).*

"Idols are seen in the ***photographs 50, 51, 52 and 54,*** *out of these photographs. These idols represent Hanuman Ji and Garun Ji. (page 54); In the* ***photograph no. 108****, the idol of Hanuman Ji is seen on one side and an idol looking like that of Shankar Ji is seen on the other side." (page 155) (ETC)*

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(iv) DW 17/1 Ramesh Chandra Tripathi

''खम्भों में जहॉ पर लाल रंग लगा है, उसके नीचे मुझे मूर्ति नज़र आ रही है। ***चित्र सं0 48*** *में हनुमान जी की मूर्ति नज़र आ रही है। यह मूर्ति वहीं पर है, जहॉ पर रंग लगा हुआ है। . . . .* ***चित्र 51*** *में यह मूर्ति हनुमान जी की हो सकती है। यह मूर्ति गणेश जी की भी हो सकती है। (पेज 84); मूर्ति रंग के अन्दर मुझे नजर आ रही है। इसमें या तो गणेशजी की मूर्ति या हनुमानजी की मूर्ति है।* ***चित्र सं0 47 लगायत 54*** *में नज़र आ रहे खम्भे गर्भगृह के हैं। (पेज 85);* ***चित्र संख्या 26*** *में खम्भे पर रगड़ा हुआ स्थान नज़र आ रहा है, परन्तु वहॉ किसकी मूर्ति थी या वहां पर क्या बना था, यह मुझे याद नहीं है। (पेज 82)*

"*Below the place where red colour is applied in the pillars, idol is visible to me. The idol of Hanuman Ji is seen in the* ***photograph no. 48.*** *This idol is at the same point where colour is applied. . . . . The idol in the* ***Photograph No. 51*** *may be of Hanuman Ji or of Ganesh Ji. (page 84); The*

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*idol is visible to me within the space of colour. Idol either of Ganesh Ji or of Hanuman Ji is therein. The pillars appearing in the **photographs 47 to 54** are of Garbh-Grih (sanctum sanctorum). (page 85); An abraded point of place is seen on the pillar appearing on the **photograph 26.** (I) do not remember whose idol was there or what was there." (page 82) (ETC)*

(v) DW 20/1 Shashikant Rungta

*''**चित्र संख्या 47 तथा 48** में हनुमत द्वार में लगे खम्भे नज़र आ रहे हैं। इन खम्भों में किसकी मूर्ति है, यह स्पष्ट नहीं है। मूर्ति उस स्थान पर है, जहॉ पर लाल रंग लगा हुआ है। यह मूर्ति कलश के ऊपर है। **चित्र संख्या–49** में विवादित भवन में लगे हुए खम्भों के चित्र हैं। इन चित्रों में देवताओं के चित्र अंकित हैं, परन्तु ये पहचान में नहीं आ रहे हैं। **चित्र संख्या–50** में पैर तथा हाथ नज़र आ रहा है, परन्तु चेहरा नज़र नहीं आ रहा है। इन चित्रों में **चित्र संख्या 54** में ऊपर की तरफ जहॉ लाल रंग पुता हुआ है, एक चेहरा नज़र आ रहा है, परन्तु यह किसका चेहरा है, यह मुझे समझ में नहीं आ रहा है।'' (पेज 31)*

*"The pillars embedded in Hanumat Dwar are seen in the **photographs 47 and 48.** It is not clear whose idols are engraved in these pillars. The idol is at the point of place where red colour is applied. This idol is above Kalash. The **photograph no. 49** represent the pillars embedded in the disputed building. Images of Gods are represented in these photographs but they are beyond recognition. Legs and hands are seen in the **photograph no. 50** but face is beyond sight. Out of these pictures, at the point of place where red colour is applied towards the upper portion in the **photograph no. 54**, a face is visible but it is beyond my perception as to whose face it is." (ETC)*

3438. In respect of identification of images in the

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photographs, we also notice that there are several contradictions in the statement of different witnesses about the identity of image(s) or whether it is clear or not, which is quite normal and probable since most of the witnesses are not experts in the field of iconography and, therefore, one cannot say whether they notice the same image or not. There may be some difference in identification of different people. However, the contradictions, as pointed out by Sri Jilani, may be referred to as under:

(A) In reference to contradictions in the statements of the various witnesses in context of coloured **photograph nos. 104 to 109** and the black-white **photographs 55 to 57** of the alleged touchstone pillar no.3 fixed at the gate in part 'A' of the central portion of the main structure and the coloured **photograph no. 110 to 115** and black and white **photograph no. 58 to 60 of pillar no. 4:**

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(i) DW 1/2-Krishna Chandra Singh

(श्वेत एलबम कागज संख्या 201 सी.1 ***चित्र संख्या 55 लगायत 66****, व* ***चित्र सं0 25 लगायत 27)****. . . . . खम्भों में मुझे जय विजय की मूर्ति नहीं दिख रही है–(पेज 45);* ***चित्र संख्या 58, 59 व 60*** *में दिख रहे खम्भों में कोई मूर्ति नज़र आ रही है– (पेज 47);* ***चित्र संख्या 57*** *में किसी मूर्ति का आकार दिख रहा है, इस मूर्ति का आकार इस चित्र में खम्भे के मध्य में दिख रहा है, परन्तु यह स्पष्ट नहीं है कि यह ताण्डव मुद्रा में हैं . .(पेज 47);* ***(चित्र संख्या 104 लगायत 127****). . . . . नज़र कमजोर होने के कारण मुझे स्पष्ट नहीं हो रहा है कि उक्त चित्रों में देवी देवताओं की मूर्तियां ताण्डव मुद्रा में व पद्मासन मुद्रा में हैं या नहीं।'' (पेज 48)*

"The idol of Jai Vijai is not visible to me in the pillars. . . . . (appearing in the ***photographs 55 to 66*** *and* ***25 to 27*** *of black-white album being paper no. 201C1). (page 45); Some idol is appearing in the pillars appearing in the* ***photographs 58, 59 and 60****. (page 47); The figure of an*

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*idol is appearing in **photograph no. 57** but it is not clear whether it is in 'Tandav Mudra' or 'Padmasan Mudra). The shape of this idol is seen in the midst of the pillar appearing in this photograph but it is not clear that it is in 'Tandav Posture'. . . . . (page 47); (**photograph nos. 104 to 127**). . . . . due to weak eye-sight it is not clear to me whether or not the idols of gods-goddesses are in 'Tandav Mudra' or 'Padmasan Mudra'." (page 48)(ETC)*

(ii) DW 3/5- Raghunath Prasad Pandey

*''**चित्र सं0 104** में दिख रहे खम्भें में ऐसी आकृति बनी हुई दिख रही है, जैसे कोई आदमी घुटना मोड़कर बैठा है और यही स्थिति चित्र **संख्या 106** में है –पृष्ठ 14चित्र **संख्या 108** में जहॉ पर सिन्दूर लगा हुआ है, वहॉ पर हनुमान जी की मूर्ति नजर आ रही है. . . . . .और हनुमान जी के नीचे वाले भाग में गणेश जी एवं देवी जी की मूर्ति नज़र आ रही है।'' (पृष्ठ 147); इसमें देवी जी का जो चेहरा है, वह दुर्गाजी जैसा मालूम पड़ रहा है– (पेज 151); **चित्र सं0 112** में दिख रहे खंभे में ऊपर देवताओं की मूर्तियां हैं, परन्तु मैं यह नहीं बता पाऊंगा कि किन–किन देवताओं की मूर्तियां हैं।'' (पेज 151); इस **चित्र सं0 112** में मुझे हनुमान जी, गणेश जी अथवा मोर की आकृति नज़र नहीं आ रही है।. . . . इस खंभे में जहां सिन्दूर लगा है, वहां पर हनुमान जी का आधा शरीर नज़र आ रहा है। (पेज 152); जहां कमल–दल है, वहां गणेश जी की मूर्ति नज़र आ रही है। (पेज 153); इस **चित्र सं0 –114** में दिख रहे खंभे में मुझे लक्ष्मी जी की मूर्ति नज़र नहीं आ रही है, परन्तु गणेश जी की मूर्ति नज़र आ रही है। (पेज 153); **चित्र सं0 109 लगायत 114** को देखकर गवाह ने कहा कि इन चित्रों मे मुझे लक्ष्मीजी, रामचन्द्र जी अथवा लक्ष्मण जी की मूर्ति नज़र नहीं आ रही है।(पेज 153); **चित्र सं0 55 लगायत 66** में दिख रहे खंभों में से किसी में मुझे रामचन्द्र जी, श्री कृष्ण जी देवकन्या, रामदरबार, गणेश जी या लक्ष्मी जी की कोई मूर्ति नज़र नहीं आ रही है।'' (पेज 164)*

*"The figure in the pillar appearing in **photograph no.104 and 105**, is like a person sitting with folded knees, and this*

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*very position is in the **photograph no. 106.** (page 14); The idol of Hanuman Ji is visible at the place where vermilion is applied in the **photograph no. 108**. . . . . and in the lower part of the idol of Hanuman Ji is visible the idol of Ganesh Ji and Devi Ji. (page 147) The face of the goddess appearing herein, looks like that of Durga Ji. (page 151); There are idols of gods towards the upper portion in the pillar appearing in the **photograph no. 112**, but I would not be able to tell which gods are represented by the said idols. . . . .Half of the body of Hanuman Ji is visible at the point of place where vermilion is applied in this pillar. (page 152); The idol of Ganesh Ji is visible where there is 'Kamal Dal' (lotus chain). (page 153); The idol of Laxmi Ji is not visible to me in the pillar appearing in this **photograph no. 114** but that of Ganesh Ji is visible therein. (page 153); Looking at the **photograph 108 to 109** the witness stated - The idol of Lakshmi Ji, Ramchandra Ji or Laxman Ji is not visible to me in these photographs. (page 153); The idol of Ramchandra Ji, Sri Krishna Ji, Dev Kanya, Ram Darbar, Ganesh Ji or Lakshman Ji is not visible in any of the pillars appearing in the **photographs 55 to 66."** (page 164)(ETC)*

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(iii) DW 3/7- Mahant Ramji Das

*''**चित्र सं0 113 व 114** को देखकर गवाह ने कहा कि इन चित्रों में दिख रहे खंभों पर भी मूर्तियां नजर आ रही है, परन्तु स्पष्ट नहीं हो रही है कि ये किसकी मूर्तियॉ हैं।'' (पेज 170).*

*"Looking at the **photographs 113 and 114** the witness stated - Idols are visible on the pillars appearing in these photographs but it is not clear as to whose idols they*

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are."(ETC)

(iv) DW 3/11- Bhanu Pratap Singh

*''**चित्र सं0 113, 114** में जो खम्भे दिखायी दे रहे हैं, उनमें शिव की मूर्ति नज़र आ रही है। (पेज 50); **चित्र सं0 113 एवं 114** में शिवजी की एक मूर्ति मात्र स्पष्ट दिखायी दे रही है। (पेज 50); यह मूर्तियां **चित्र सं0 112** में ऊपर की तरफ दिखायी दे रहा है।'' (पेज 50)*

*"The idol of Shiv Ji is visible in the pillars that appear in the **photographs 113 and 114.** (page 50); Just one idol of Shiv Ji is clearly seen in the **photographs 113 and 114.** (page 50); These idols appear towards the upper portion in the **photograph no. 112."** (page50) (ETC)*

(v) DW 3/15- Narendra Bahadur Singh

*''**चित्र संख्या 136 लगायत 147** में नजर आ रहे खंभों में किसी देवी या देवता के चित्र नज़र नहीं आ रहे हैं। . . . .**चित्र संख्या 157 लगायत 167** में नज़र आ रहे खंभों में भी किसी देवी–देवता का चित्र नज़र नहीं आ रहा है। . . . . .**चित्र संख्या 176 लगायत 200** में नज़र आ रहे खंभों में भी किसी देवी या देवता का चित्र नज़र नहीं आ रहा है।'' (पेज 43)*

*"No picture of God-Goddess is visible in the pillars appearing in the **photographs 136 to 147**. . . . . No picture of god goddess is visible in the pillars also appearing in the **photographs 157 to 167**. . . . . Picture of any god or goddess is not visible also in the pillars appearing in the **photographs 176 to 200.**"(ETC)*

(vi) DW 17/1- Ramesh Chandra Tripathi

*''**चित्र 104** में कलश के ऊपर वाले भाग में उस स्थान पर जहॉ लाल रंग लगा है, कोई मूर्ति नज़र आ रही हैं– (पेज 85); **चित्र 105** में शंकरजी की मूर्ति है (पेज 85); यह मूर्ति हनुमानजी की है। (पेज 86); **चित्र संख्या 115** में नज़र आ रहे खम्भे मे लाल रंग लगा नजर आ रहा है, वहॉ पर मूर्ति नज़र आ रही है। (पेज 86); परन्तु मूर्ति किसकी है, यह मैं नहीं बता पाऊॅगा परन्तु मूर्ति में पॅर–हाथ नज़र आ रहा है। (पेज 86) **चित्र***

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सं0 105 *में शंकर जी की मूर्ति है, यह मूर्ति उस स्थान पर है, जहां रंग लगा है। **चित्र सं0 106 तथा 107 में** कोई मूर्ति नहीं है। **चित्र सं0 108** में कलश के ऊपर जिस स्थान पर रंग लगा है तथा जहॉ पर रंग नहीं लगा है, यह मूर्तियां अगल–बगल हैं, परन्तु यह मूर्तियां किनकी हैं, यह मैं नहीं बता सकता। (पेज 85)*

*"Some idol is visible at a point in the upper portion of the 'Kalash' in the **photograph no. 104**, at which point red colour is applied.(page 85); The **photograph no. 105** shows the idol of Shankar Ji. (page 85); This idol is of Hanuman Ji.(page 86); An idol is seen at a point of place where red colour is applied in the pillar seen in the **photograph no. 115**.(page 86); But I would not be in a position to say whose idol is this but hands and legs are seen in the idol. (page 86); The idol of Shankar is shown in the **photograph no. 105**. This idol appears at a point where colour is applied. No idol is seen in the **photograph 106 and 107.** These idols are side by side at the places - where colour is applied and where colour is not applied - above Kalash in the **photograph no. 108.** (page 85) "(ETC)*

(vii) DW 20/1- Shashikant Rungta

*''**चित्र संख्या–104 लगायत 115** को दिखाए जाने पर साक्षी ने बताया कि इन चित्रों में नज़र आ रहे खम्भों में केवल **चित्र संख्या 113** में गणेश जी की मूर्ति नज़र आ रही है।'' (पृष्ठ 33)*

*"On the **photographs 104 to 115** being shown the witness stated that out of the pillars seen in these photographs, idol of Ganesh Ji is visible only in the pillars shown in the **photograph no. 113**. "(ETC)*

(viii) DW 13/1-1 Mahant Dharmdas

*''**चित्र 108** में एक तरफ हनुमानजी की मूर्ति, एक तरफ शंकर जी की*

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मूर्ति नज़र आ रही है।. . . . . ***चित्र संख्या 105*** *में भी हनुमान जी की मूर्ति नजर आ रही है। . . . . . इसमें हनुमान जी की भी मूर्ति नज़र आ रही है। राम दरबार हनुमान जी की मूर्ति के ऊपर है। (पेज 155);* ***चित्र संख्या 109*** *में हनुमान जी की आकृति तथा कलश के ऊपर शंकर जी की आकृति नज़र आ रही है।* ***चित्र संख्या 109*** *में मानव आकृति नज़र आ रही है। यह आकृति रामचन्द्र जी की है। (पेज 156);* ***चित्र संख्या 115*** *में खम्भे में जहॉ पर सिन्दूर लगा हुआ है, वहॉ पर हनुमान जी की मूर्ति नज़र आ रही है।''(पेज 157)*

"In the ***photograph 108****, the idol of Hanuman Ji is visible on one side and that of Shankar Ji on the other. . . . . The idol of Hanuman Ji is seen in the* ***photograph 105*** *as well. . . . . .An idol of Hanuman Ji is also seen in it. The idol of Ram darbar is above the idol of Hanuman Ji.(page 155); In the* ***photograph 109*** *the figure of Hanuman Ji is seen, that of Shankar Ji is seen above 'Kalash'. A human figure is visible in the* ***photograph no. 109****. This figure is of Ram Chandra Ji. (page 156); The idol of Hanuman Ji is seen at a point of place where vermilion is applied in the pillar appearing in the* ***photograph no. 115****. (page 157)"(ETC)*

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(ix) OPW 3/5- Dr. T. P. Verma

*''****चित्र संख्या 104, 105, 109, 110, 114, 115*** *पर जिन स्थानों पर सिन्दूर या लाल रंग पुता हुआ है, वहॉ पर मूर्तियां हो सकती हैं, लेकिन चित्रों में यह स्पष्ट नहीं दिख रही हैं कि इनमें किस देवी–देवता अथवा य क्ष–यक्षिणी अथवा जय विजय का चित्र है। उपरोक्त में से बाकी चित्रों में दिख रहे खंभों में जहॉ रंग नहीं लगा है, वहॉ यक्ष यक्षिणी या जय–विजय का चित्र नहीं दिख रहा है। (पेज 130–131); मैं इन खम्भों के श्वेत–श्याम चित्रों में किसी देवी देवता यक्ष–यक्षिणी या जय–विजय को नहीं पहचान पा रहा हूँ* ***चित्र संख्या 55*** *में घट कलश के ऊपर की अस्पष्ट आकृति है जो किसी देवी देवता या यक्ष–यक्षिणी का चित्र हो सकता है।''(पेज 145)*

"Idols may be present at the places where vermilion or red colour has been used in ***photographs no.104, 105, 109,***

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110, 114 and 115 *but it is not clearly visible in the photographs as to which god-goddess or Yaksha-Yakshini or Jay-Vijay are represented therein. The picture of Yaksha-Yakshini or Jay-Vijay is not visible at the place where colour has not been used in the pillars appearing in the rest of the photographs out of the aforesaid photographs. (page 130-131); I am not able to recognise any god-goddess, Yaksha-Yakshini or Jay-Vijay in the black-white photographs of these pillars. There is a hazy figure above the 'Ghat Kalash' in* ***photograph no.55****, which can be of some god-goddess or Yaksha-Yakshini. (page 145)"(ETC)*

(B) In reference to contradictory statements of the various witnesses in context of coloured **photograph nos. (116 to 121)** and the black-white **photograph nos. (61-63) of the pillar (no. 5)** fixed in eastern wall in southern back of inside of the central portion (A) of the main structure and the coloured **photograph no. 122 to 127** and black and white **photograph no. 64 to 66 of pillar no. 6:**

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(i) DW 3/5 Raghunath Prasad Pandey

*"**चित्र सं0 116** में दिख रहे खंभे में जहां सिंदूर लगा है, वहां हनुमान जी का पूरा शरीर नज़र आ रहा है और हनुमान जी की मूर्ति के नीचे दाहिनी तरफ़ किसी देवता जैसी आकृति नज़र आ रही है।" (पेज 154)*

"Full body of Hanuman Ji is visible in ***Photograph No. 116*** *where vermilion has been applied over the pillar appearing in it and to the right and below the idol of Hanuman Ji, some figure like a God is visible." (ETC)*

"इस चित्र में दिख रहे खंभे में मुझे गणेश जी की मूर्ति स्पष्ट नहीं दिख रही है, इसलिए मैं यह नहीं कह सकता कि इसमें गणेश जी की मूर्ति है या नहीं।. . . . . ***चित्र सं0 118*** *में सिंह जैसी आकृति नज़र आ रही है, बीच*

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के हिस्से में दाहिनी तरफ़ और बीच के हिस्से में बाई तरफ किसी देवी या देवता की मूर्ति नज़र आ रही है, परन्तु मैं यह नहीं बता पाऊंगा कि किन देवी या देवता की यह मूर्ति है।'' (पेज 154)

"The idol of Ganesh Ji is not clearly visible to me, in the pillar appearing in this photograph. As such I cannot tell whether it has the idol of Ganesh Ji or not." . . . . A lion like figure is visible in ***Photograph No. 118****. The idol of some God or Goddess is visible towards left in the centre and towards right in the centre. However, I will not be able to tell as to of which God or Goddess is this idol."(ETC)*

''ऊपर जो मैंने सिंह के बारे में बताया है, उस सिंह से मेरा तात्पर्य नरसिंह भगवान से है।'' (पेज 155)

"By the lion described above by me, I implied Lord Narsimha." (ETC)

*''***चित्र सं0 115 लगायत 120** *में दिख रहे खंभों में मुझे सरस्वती जी या श्री कृष्ण जी की मूर्ति नज़र नहीं आ रही है।'' (पेज 155)*

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"The idol of Saraswati Ji or Sri Krishna Ji, is not visible to me in the pillars appearing in ***Photograph Nos. 115 to 120."*** *(ETC)*

*''***चित्र सं0 121 लगायत 127** *दिखाये गये, जिन्हे देखकर गवाह ने कहा कि* **चित्र सं0 121** *में हनुमान जी की एक मूर्ति तो स्पष्ट हो रही है, जिसमें उनका पूरा शरीर नजर आ रहा है।'' (पेज 155)*

"(The witness) was shown ***Photograph Nos. 121 to 127****, after looking which the witness stated that one idol of Hanuman Ji is clear in* ***Photograph No. 121****, in which His complete body is visible." (ETC)*

''हनुमान जी की मूर्ति के नीचे गणेश जी की मूर्ति नज़र आ रही है, जिनकी सूंड जैसी आकृति नज़र आ रही है, इसीलिए हम इसे गणेश जी की मूर्ति बता रहे हैं और मोर की आकृति के नीचे भी एक मूर्ति है, परन्तु स्पष्ट नहीं हो रही कि यह देवी की है या देवता की। फिर कहा कि इस मूर्ति में हाथ दिख रहा है, इसलिए मैं यह कह सकता हूँ कि यह दुर्गा जी की मूर्ति हो

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सकती है, इसमें चेहरा स्पष्ट नहीं है, परन्तु बाकी शरीर स्पष्ट है।'' (पेज 156)

"The idol of Ganesh Ji is visible below the idol of Hanuman Ji, in which a trunk like figure is visible, due to which I am terming it to be an idol of Ganesh Ji, and there is an idol below the figure of peacock as well but it is not clear whether it is of God or Goddess. Then stated that hand is visible in this idol as such I can say that it can be an idol of Durga Ji. The face is not clear in it but the remaining body is clear." (ETC)

*''**चित्र सं0 124** में दिख रहे खंभे में नरसिंह भगवान का मुख नज़र आ रहा है और नीचे की भी आकृति नज़र आ रही है।'' (पेज 156)*

*"The face of Lord Narsimha is visible in the pillar appearing in **Photograph No. 124** and the figure of the lower part is also visible." (ETC)*

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*''**चित्र संख्या 121 लगायत 127** में मुझे किसी यक्ष, देव कन्या अथवा सरस्वती जी की मूर्ति या आकृति नज़र नहीं आ रही है।'' (पेज 157)*

*"No idol or figure of any Yaksha, nymph or Saraswati Ji is visible to me in **Photograph Nos. 121 to 127."** (ETC)*

*''**चित्र सं0 61** में मुझे कमलदल के ऊपर मोर की नाचती हुई अवस्था की आकृति नज़र आ रही है और कोई मूर्ति नज़र नहीं आ रही है। **चित्र सं0 62** में दिख रहे खंभे में मुझे कोई मूर्ति नज़र नहीं आ रही है। **चित्र सं0 63 एवं 64** में दिख रहे खम्भों में मुझे नाचते हुए मोर की आकृति नज़र आ रही है और किसी देवी–देवता की मूर्ति नज़र नहीं आ रही है। **चित्र सं0 65** में दिख रहे खंभे में मुझे कोई मूर्ति नज़र नहीं आ रही है। **चित्र सं0 66** में दिख रहे खंभे में बीच में नाचते हुए मोर की आकृति नजर आ रही है। **चित्र सं0 66** में दिख रहे खंभे में और कोई मूर्ति मुझे नज़र नहीं आ रही है।'' (पेज 163)*

*"In **Photograph No. 61**, the figure of a dancing peacock is visible to me above the lotus chain and no idol is visible. No idol is visible to me in the pillar appearing in*

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Photograph No. 62. *The figure of dancing peacock is visible to me in the pillars appearing in* ***Photograph Nos. 63 and 64*** *and no idol of any God-Goddess is visible. No idol is visible to me in the pillar appearing in* ***Photograph No. 65.*** *The figure of dancing peacock is visible in mid of the pillar appearing in* ***Photograph No. 66.*** *No other idol is visible to me in the pillar appearing in Photograph No. 66." (ETC)*

*''**चित्र सं0 55 लगायत 66** में दिख रहे खंभों में से किसी में मुझे रामचन्द्र जी, श्री कृष्ण जी देवकन्या, रामदरबार, गणेश जी या लक्ष्मी जी की कोई मूर्ति नज़र आ रही है। (पेज 164)*

"The idol of Ramchandra Ji, Sri Krishna Ji, Nymph, Ram Darbar, Ganesh Ji or Lakhsmi Ji is visible to me in the pillars appearing in ***Photograph Nos. 55 to 66****." (ETC)*

(ii) DW 3/11- Bhanu Pratap Singh

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*''**चित्र सं0 117** मे जहॉ पर लाल रंग लगा हुआ नज़र आ रहा है वहॉ पर कोई मूर्ति नज़र नहीं आ रही है। **चित्र सं0 118 व 119** में जो खम्भे दिखायी दे रहे हैं उसमें मूर्ति दिखायी दे रही है परन्तु यह स्पष्ट नहीं है।'' (पेज 50)*

*"No idol is visible at the place where red colour appears to have been applied over P****hotograph No. 117****. Idol is visible in the pillars appearing in* ***Photograph Nos. 118 and 119****, but it is not clear." (ETC)*

*''**चित्र सं0 118 तथा 119** में जो मूर्तियां नजर आ रही है वह देवी तथा देवताओं की मूर्तियॉ हैं। **चित्र सं0 118 तथा 119** में जो मूर्तियां नज़र आ रही है उनकी गणना करके मैं नहीं बता सकता कि इनकी संख्या कितनी हैं।'' (पेज 51)*

"The idols appearing in ***Photograph Nos. 118 and 119,*** *are the idols of Gods and Goddess. I will not be able to count and tell the number of idols appearing in* ***Photograph Nos. 118 and 119****." (ETC)*

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*''**चित्र सं0 122** में लाल रंग में जहॉ पर लाल रंग लगा हुआ है वहॉ पर हनुमान जी की मूर्ति दिखायी दे रही है परन्तु अन्य किसी की मूर्ति स्पष्ट नहीं हो रही है। **चित्र सं0 122** में लाल रंग वाले स्थान पर हनुमान जी की मूर्ति दिखायी दे रही है परन्तु अन्य किसी की मूर्ति स्पष्ट नहीं है।'' (पेज 52)*

*"The idol of Hanuman Ji is visible at the place where red colour has been applied in **Photograph No. 122** but the idol of no other is clear. The idol of Hanuman Ji is visible at the red coloured place in **Photograph No. 122** but the idol of no other is clear." (ETC)*

(iii) DW 3/15- Narendra Bahadur Singh

*''**चित्र सं0 104 लगायात 108** में नज़र आ रहे खंभों में किसी देवी–देवता के चित्र नजर नहीं आ रहे हैं। इसी एलबम में **चित्र सं0 109 लगायत 127** में भी नजर आ रहे खंभों में किसी देवी या देवता के चित्र नजर नहीं आ रहे हैं।' (पेज 43)*

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*"The pictures of no God-Goddess is visible in the pillars appearing in **Photograph Nos. 104 to 108**. The pictures of no God or Goddess is visible in the pillars appearing in **Photograph Nos. 109 to 127** of this album." (ETC)*

(iv) DW 3/19- Ram Milan Singh

*''**चित्र सं0 116** में रामचबूतरे पर बनी हुई गुफा में जहां पर कौशिल्या जी की मूर्ति थी, वहां का चित्र है।'' (पेज 51).*

*"The **Photograph No. 116** contains of the pictures of the place where the idol of Kaushalya Ji existed in the cave at the Ramchabutara." (ETC)*

(v) DW 20/1- Shashikant Rungta

*''**चित्र 120 व 121** में गणेशजी की मूर्ति नज़र आ रही है।'' (पृष्ठ 33)*

*"The idol of Ganesh Ji is visible in **Photographs 120 and 121.**"(ETC)*

(vi) DW 17/1- Ramesh Chandra Tripathi

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*''**चित्र सं0 118** में कसौटी का पत्थर अर्थात खम्भा नज़र आ रहा है चित्र में खम्भे का ऊपरी भाग नज़र आ रहा है। इसमें एक जगह गरुड़ जी का चित्र दिखाई पड़ रहा है।'' (पेज 50)*

*"A touchstone or pillar is visible in **Photograph No. 118.** The upper part of the pillar is visible in the photograph. The picture of Garun Ji is visible in it at one place." (ETC)*

*''**चित्र सं0 123** में जहॉ पर लाल रंग लगा है तथा खम्भे में एक सफेद पट्टी नज़र आ रही है, उसमें मूर्ति का सर तथा हाथ–पैर नज़र आ रहा है, यह मूर्ति किसकी है समझ में नहीं आ रहा है।'' (पेज 87)*

*"The head and hand-leg of an idol is visible in **Photograph No. 123** at the place where red colour has been applied and a white strip is appearing in the pillar."(ETC)*

*''**चित्र सं0 141, 142 तथा 143** में गणेश जी की मूर्तियां हैं फिर कहा कि **चित्र सं0 141** में गणेश जी की मूर्ति नहीं है बल्कि शंकर जी की नृत्य मुद्रा का चित्र है।'' (पेज 87–88)*

*"There are idols of Ganesh Ji in **Photograph Nos. 141, 142 and 143.** Then stated that it is not the idol of Ganesh Ji in **Photograph No. 141** and instead it is the dancing posture of Shankar Ji." (ETC)*

(vii) DW 1/2- Krishna Chandra Singh

*''**(चित्र संख्या 104 लगायत 127)** नज़र कमजोर होने के कारण मुझे स्पष्ट नहीं हो रहा है कि उक्त चित्रों में देवी देवताओं की मूर्तियां ताण्डव मुद्रा में व पद्मासन मुद्रा में हैं या नही।'' (पेज 48)*

*"**(Photograph Nos. 104 to 127)** in view of weak eye sight, it is not clear to me whether in the aforesaid photographs, the idols of God-Goddess are in 'Tandav Mudra' or 'Padmasan Mudra', or not." (ETC)*

(viii) DW 13/1-1- Mahant Dharmdas

*''**चित्र सं0 119** में गरुड़ जैसा सबसे ऊपरी भाग में नज़र आ रहा है। इसके अतिरिक्त छोटी–छोटी मूर्तियां खुदी हुई हैं। **चित्र सं0 121** में हनुमान जी की मूर्ति नज़र आ रही है। . . . . इन दोनों स्थानो के बीच*

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में एक पट्टी पर रामचन्द्रजी की मूर्ति धनुष लिए हुए नज़र आ रही है। (पेज 158)

*"A Garun like figure is visible at the top most part of **Photograph No. 119**. Besides it, small idols have been engraved. The idol of Hanuman Ji is visible in **photograph 121**. . . . . In between these two places, the idol of Ramchandra Ji with a bow is visible over a strip." (ETC)*

*''**चित्र सं0 127** पर आकृष्ट किया, साक्षी ने इस चित्र को देखकर बताया कि इसमें सिन्दूर पुता हुआ नजर आ रहा है परन्तु किसकी मूर्ति इस खम्भे में नजर आ रही है यह स्पष्ट नहीं है।'' (पेज 159)*

*"(Attention of witness) was drawn to **Photograph No. 127,** after looking which the witness stated that in it vermilion appears to have been applied but it is not clear as to whose idol is visible in this pillar." (ETC)*

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(C) In reference to contradictory statements of the various witnesses in context of coloured **photograph nos. (136 to 141)** and the black-white **photograph nos. (71-73)** of the **pillar (no. 7)** fixed in western wall in southern back of inside of the gate of the central portion A of the main structure and the coloured **photograph no. (142-147)** and black and white **photograph no. (74-76)** of **pillar (no. 8):**

(i) DW 3/5- Raghunath Prasad Pandey

*''**चित्र संख्या 136** में दिख रहे खम्भे में बीच में सिन्दूर लगे भाग में मुझे हनुमान जी की मूर्ति नज़र आ रही है और कोई मूर्ति नज़र नहीं आ रही है। **चित्र संख्या 137** में मुझे दो खम्भे नज़र आ रहे हैं। पहले दाहिनी तरफ वाले खम्भे में मुझे कोई मूर्ति नजर नहीं आ रही है और दूसरे बायी तरफ वाले खम्भे में सिन्दूर लगे भाग में हनुमान जी की मूर्ति नज़र आ रही है और कोई मूर्ति मुझे इस खम्भे में नज़र नहीं आ रही है।'' (पेज 159)*

*"The idol of Hanuman Ji is visible to me in the vermilion applied part in mid of the pillar appearing in **Photograph***

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No. 136, *and no other idol is visible. Two pillars are visible to me in* ***Photograph No. 137****. No idol is visible to me in the first pillar in right and the idol of Hanuman Ji is visible to me in the vermilion applied part of the second pillar in left and no other idol is visible to me in this pillar." (ETC)*

''इस ***चित्र संख्या 141*** *में हनुमान जी की खड़ी हुई पूरी मूर्ति नज़र आ रही है। इस खम्भे में और कोई मूर्तियां नज़र नहीं आ रही हैं।* ***चित्र संख्या 142 एवं 143*** *में दिख रहे खम्भों में जहॉ सिन्दूर लगा है, उस भाग में हनुमान जी की मूर्ति नज़र आ रही है, बाकी पूरे खम्भे में मुझे कोई मूर्ति नज़र नहीं आ रही है। इसी प्रकार* ***चित्र संख्या 144 एवं 145*** *में मुझे कोई मूर्ति नज़र नहीं आ रही है।* ***चित्र संख्या 146 एवं 147*** *में दिख रहे खम्भों में जहॉ सिन्दूर लगा है, वहॉ हनुमान जी की मूर्ति नज़र आ रही है और हनुमान जी की मूर्ति के दाहिनी तरफ मोर जैसी आकृति बैठी हुई अवस्था में नज़र आ रही है।'' (पेज 160)*

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"The complete idol of Hanuman Ji in standing pose is visible to me in this ***Photograph No. 141****. No other idols are visible to me in this pillar. The idol of Hanuman Ji is visible in the part where vermilion has been applied over the pillars appearing the* ***Photograph Nos. 142 and 143****. No other idol is visible to me in the remaining pillar. Similarly no idol is visible to me in* ***Photograph Nos. 144*** *and* ***145****. The idol of Hanuman Ji is visible at the place where vermilion has been applied over the pillars appearing in* ***Photograph Nos. 146 and 147****, and to right of the idol of Hanuman Ji, a peacock like figure is visible in sitting posture." (ETC)*

*''***चित्र सं0 74*** *में दिख रहे खंभे मे कमल–दल के ऊपर गणेश जी जैसी मूर्ति नज़र आ रही है। . . . . .* ***चित्र 76*** *में गणेश जी की मूर्ति और उनके बगल में मोर की नाचती हुई आकृति नजर आ रही और अन्य कोई मूर्ति इस खंभे पर मुझे नजर नहीं आ रही है।'' (पेज 164)*

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*"A Ganesh Ji like idol is visible above the lotus chain in the pillar appearing in **Photograph No. 74**. . . . The idol of Ganesh Ji and the figure of dancing peacock adjacent to Him, is visible in **Photograph 76**, and no other idol is visible to me in this pillar." (ETC)*

*''**चित्र सं0 71 लगायत 76** में मुझे रामदरबार की कोई मूर्ति नज़र नहीं आ रही है।'' (पेज 164)*

*" No idol of Ram Darbar is visible to me in **Photograph Nos. 71 to 76**."(ETC)*

(ii) DW 3/15- Narendra Bahadur Singh

*''**चित्र संख्या 136 लगायत 147** में नजर आ रहे खम्भों में कोई मूर्ति नहीं नजर आ रही है– (पेज 44)*

*"No idol is visible in the pillars appearing in the **Photograph Nos. 136 to 147**."(ETC)*

(iii) DW 1/2 Krishna Chandra Singh

*''**चित्र संख्या 71 व 72** में कोई मूर्ति बनी है या नहीं, यह स्पष्ट नहीं दिख रहा है।'' (पेज 47)*

*"It is not clearly visible whether some idol is there or not in **Photograph Nos. 71 and 72**." (ETC)*

*''**चित्र संख्या 74** में खम्भे में कोई मूर्ति नहीं दिख रही है। **चित्र संख्या 76** में पद्मासन मुद्रा में कोई मूर्ति दिख रही है, फिर कहा कि खड़ी हुई दिख रही है, यह मध्य भाग में दिख रही है। **चित्र सं0 75** में मुझे कोई मूर्ति नहीं दिख रही है।'' (पेज 48); **चित्र संख्या 140 लगायत 147** तक के चित्रों में खम्भों में जो लाल रंग लगा हुआ दिख रहा है, उसे देखकर लगता है कि उस पर उभरी हुई मूर्ति अथवा निशानों को खुरच दिया गया है। **चित्र संख्या 136 लगायत 139** में मुझे खम्भों पर कोई मूर्तियां नजर नहीं आ रही हैं। इसी प्रकार **चित्र संख्या 144 एवं 145** में मुझे खम्भों पर कोई मूर्तियां नजर नहीं आ रही है। **चित्र संख्या–146** में नीचे की तरफ बैठी हुई मूर्ति की छाया सी दिख रही है। **चित्र संख्या–146 एवं 147** में खुरचा हुआ सा लग रहा है।'' (पेज 49)*

*"No idol is visible in the pillar appearing in **Photograph***

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No. 74. *Some idol in 'Padmasan Mudra' is visible in* ***Photograph No. 76****. Then stated that it is visible in standing posture, it is visible in the mid part. No idol is visible to me in the* ***Photograph No. 75****. (page 48); On looking at the red colour applied over the pillars appearing in* ***Photograph Nos. 140 to 147****, it appears that the idol or marks engraved over them have been scratched. No idols are visible to me over the pillars appearing in* ***Photograph Nos. 136 to 139****. Similarly no idols are visible to me over the pillar appearing in* ***Photograph Nos. 144 and 145****. In* ***Photograph No. 146,*** *something like shadow of an idol in sitting posture is visible to me in the lower part. Something like a scratch appears in* ***Photograph Nos. 146 and 147****." (ETC)*

(iv) DW 13/1-1- Mahant Dharmdas

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*"****चित्र संख्या 146 तथा 147*** *में गणेश जी की मूर्ति नज़र आ रही है। यह मूर्ति उस स्थान पर नज़र आ रही है जिस स्थान पर सिंदूर लगा हुआ है। (पेज 160); स्थान – स्थान पर पर अनेक प्रकार की फूल पत्ती तथा भैरव जी की मूर्ति नज़र आ रही है। (पेज 160);* ***चित्र सं0 127*** *पर आकृष्ट किया साक्षी ने इस चित्र को देखकर बताया कि इसमें सिन्दूर पुता हुआ नजर आ रहा है परन्तु किसकी मूर्ति इस खम्भे में नज़र आ रही है यह स्पष्ट नहीं है।'' (पेज 159)*

"The idol of Ganesh Ji is visible in ***Photograph Nos. 146 and 147****. This idol is visible at the place where vermilion has been applied. (page 160); Different kinds of flower-leaves and the idol of Bhairav Ji are visible at different places.(page 160); (The attention of witness) was drawn towards* ***Photograph No. 127****, after looking which the witness stated that vermilion appears to be have been applied, but it is not clear as to whose idol is visible over*

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the pillar appearing in this photograph." (ETC)

(v) DW 17/1- Ramesh Chandra Tripathi

*"**चित्र सं0 141, 142 तथा 143** में गणेश जी की मूर्तियां हैं फिर कहा कि **चित्र सं0 141** में गणेश जी की मूर्ति नहीं है बल्कि शंकर जी की नृत्य मुद्रा का चित्र है। (पेज 87–88); **चित्र सं0 141** में गणेश जी की मूर्ति नहीं है बल्कि शंकर जी की नृत्य मुद्रा का चित्र है। **चित्र सं0 146** तथा **147** में गणेश जी की स्पष्ट मूर्तियां नज़र आ रही हैं। शेष चित्रों में इन तीनों में से किसी की मूर्तियां नहीं है।. . . . हनुमान जी की या और किसी की मूर्ति नहीं है।"" (पेज 88)*

*"There are idols of Ganesh Ji in **Photograph Nos. 141, 142** and **143**. Then stated that it is not the idol of Ganesh Ji in **Photograph No. 141** and instead it is the dancing posture of Shankar Ji. (page 87-88); It is not the idol of Ganesh Ji in **Photograph No. 141** and instead it is the dancing posture of Shankar Ji. The idols of Ganesh Ji are clearly visible in **Photograph Nos. 146** and **147**. The idols of none of them, are there in the remaining photographs. . . . . .There are no idols of Hanuman Ji or anybody else."(ETC)*

(vi) OPW 9- Dr. T. P. Verma

*"**चित्र संख्या 141, 146 व 147** पर रंग पुते हुए भाग में कुछ मूर्तियॉ हैं जो देवी देवताओं की हो सकती हैं लेकिन मैं पहचान नहीं सकता, बाकी चित्रों में मुझे कोई मूर्ति नहीं दिखाई दे रहा हैं। इन सभी चित्रों में जहॉ लाल रंग नहीं है वहॉ किसी भी देवी देवता, यक्ष–यक्षिणी या जय–विजय का चित्र नहीं देख पा रहा हूॅ।" (पेज 131)*

*"There are few idols in the coloured portion of **Photograph Nos. 141, 146** and **147**, which may be of Gods-Goddess but I cannot recognise them. No idol is visible to me in the remaining photographs. In all these photographs where red colour is not present, I am not able to see the pictures of*

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any God-Goddess, Yaksha- Yakshini or Jai-Vijai." (ETC)

''मैं इन चित्रों में दिख रहे खम्भों में भी किसी देवी–देवता, यक्ष–यक्षिणी या जय विजय की मूर्ति को नहीं पहचान पा रहा हूँ।'' (पेज 145)

"I am not able to recognize the idol of any God-Goddess, Yaksha- Yakshini or Jai-Vijai over the pillars appearing in these photographs." (ETC)

(D) In reference to contradictory statements of witnesses produced in context of coloured **Photograph Nos. (157 to 161)** and the black-white **Photograph Nos. (86-88)** of the **Pillar (no. 9)** fixed in western wall in northern back of the main gate of the central portion A of the main structure and the coloured **Photograph No. (162-167)** and black and white **Photograph No. (89-91)** of **Pillar (No. 10)**:

(i) DW 3/5 Raghunath Prasad Pandey

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*''गवाह को इसी रंगीन एलबम के **चित्र संख्या 157 लगायत 167** दिखाए गए, जिन्हें देखकर गवाह ने कहा कि **चित्र संख्या–157, 160, 161, 162, 163, 166, 167** में दिख रहे खम्भों में जहॉ सिन्दूर लगा है वहॉ हनुमान जी की खड़ी हुई अवस्था में मूर्ति नज़र आ रही है।'' (पेज 160)*

*"The witness was shown **Photograph Nos. 157 to 167** of this coloured album, after looking which the witness stated that the idol of Hanuman Ji in standing posture is visible in **Photograph Nos. 157, 160, 161, 162, 163, 166, 167** at places where vermilion has been applied over the pillars." (ETC)*

*''**चित्र सं0 157, 160, 161, 162, 163** में दिख रहे खम्भों में मुझे हनुमान जी की मूर्ति के अलावा अन्य कोई मूर्ति नज़र नहीं आ रही है। इसी एलबम के **चित्र संख्या 166** में हनुमान जी की मूर्ति के दाहिनी तरफ़ मोर जैसी आकृति बैठी हुई नाचने की मुद्रा में नज़र आ रही है और इसी प्रकार **चित्र संख्या 167** में दिख रहे खंभे में भी हनुमान जी की मूर्ति के*

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*दाहिनी तरफ़ मोर की आकृति बैठी हुई अवस्था में नाचने की मुद्रा में नज़र आ रही हैं। **चित्र सं0 166 एवं 167** में दिख रहे खंभे में कोई अन्य मूर्ति नजर नहीं आ रही है। **चित्र सं0 158 व 159** में दिख रहे खंभों में मुझे कोई मूर्ति नज़र नहीं आ रही है। **चित्र सं0 164 एवं 165** में दिख रहे खंभों में भी मुझे कोई मूर्ति नजर नहीं आ रही है। इन **चित्र सं0 157 लगायत 167** में दिख रहे खंभों मे से किसी खंभे में मुझे विष्णुजी, देवकन्या या यक्ष की कोई मूर्ति नज़र नहीं आ रही है।'' (पेज 161)*

*"No other idol other than that of Hanuman Ji is visible to me over the pillars appearing in **Photograph Nos. 157, 160, 161, 162, 163**. In **Photograph No. 166** of this album, a sitting peacock like figure in dancing posture is visible towards right of the idol of Hanuman Ji and similarly in the pillar appearing in **Photograph No. 167**, the figure of sitting peacock in dancing posture is visible towards right of the idol of Hanuman Ji. No other idol is visible over the pillars appearing in **Photograph Nos. 166 and 167**. No idol is visible to me over the pillars appearing in **Photograph Nos. 158 and 159**. No idols are visible to me over the pillars appearing in **Photograph Nos. 164 and 165** as well. No idol of Vishnu Ji, Nymph or Yaksha is visible to me over any of the pillars appearing in **Photograph Nos. 157 to 167**." (ETC)*

*''**चित्र संख्या 157 लगायत 167** मे दिख रहे खंभों में से किसी खंभे में मुझे विष्णुजी, देव–कन्या या यक्ष की कोई मूर्ति नज़र नहीं आ रही है।'' (पेज 161)*

*"No idol of Vishnu Ji, Nymph or Yaksha is visible to me over any of the pillars appearing in **Photograph Nos. 157 to 167**." (ETC)*

*''**चित्र संख्या 86 लगायत 91** में दिख रहे खंभों में मुझे ब्रह्मा जी या श्री कृष्ण जी की कोई मूर्ति नज़र नहीं आ रही है।'' (पेज 166)*

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*"No idol of Brahma Ji or Sri Krishna Ji is visible to me over the pillars appearing in **Photograph Nos. 86 to 91**." (ETC)*

*''**चित्र सं0 86** में दिख रहे खंभे में कमल दल के दाहिनी तरफ कोई मूर्ति नज़र आ रही है, परन्तु यह स्पष्ट नहीं है कि यह मूर्ति किसकी है।'' (पेज 164)*

"Some idol is visible towards right of the lotus chain over the pillar appearing in Photograph No. 86, but it is not clear as to of whom." (ETC)

*''मूर्ति का सिर झुका हुआ नजर आ रहा है और मूर्ति का हाथ बैठी हुई अवस्था में नजर आ रहा है, परन्तु चेहरा नज़र नहीं आ रहा है। इस एक मूर्ति के अतिरिक्त अन्य कोई मूर्ति इस चित्र में दिख रहे खंभे में नजर नहीं आ रही है। . . . . **चित्र सं0 88** में दिख रहे खंभे में कमल–दल के ऊपर कोई देव–मूर्ति नज़र आ रही है, जो सिर झुकाये हैं और हाथ को उठाये हैं और बैठी हुई मुद्रा की यह मूर्ति है।'' (पेज 165)*

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*"The head of the idol appears to be bowed down and the hand of the idol is visible in resting position, but the face is not visible. Apart from this idol, no other idol is visible over the pillars appearing in this photograph. . . .Some idol is visible above the lotus chain over the pillar appearing in **Photograph No. 88**, which has its head down and hands up and this idol is in sitting posture." (ETC)*

''परन्तु मैं यह नहीं बता पाऊंगा कि यह किसकी मूर्ति है। इस मूर्ति में पूरा शरीर नज़र आ रहा है, लेकिन चेहरा नजर नहीं आ रहा है।'' (पेज 166)

"However, I will not be able to tell as to of whom is this idol. The complete body is visible in this idol but the face is not visible." (ETC)

*''**चित्र सं0 91** में दिख रहे खंभे में कमल दल के ऊपर दाहिनी तरफ मोर की नाचती हुई आकृति नज़र आ रही है और उनके बीच में यानी बग़ल में गणेश जी जैसी मूर्ति नज़र आ रही है, अन्य कोई मूर्ति इस खंभे में स्पष्ट नहीं आ रही है।'' (पेज 166)*

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"The figure of dancing peacock is visible towards right and above the lotus chain over the pillar appearing in ***Photograph No. 91*** *and in between them i.e. near it, an idol resembling Ganesh Ji is visible. No other idol is clearly visible in this pillar." (ETC)*

(ii) DW 3/11 Bhanu Pratap Singh

' ***चित्र सं0 87 लगायत 90*** *में कोई मूर्ति स्पष्ट नज़र नहीं आ रही है। . . . .* ***चित्र सं0 91*** *में कोई मूर्ति स्पष्ट नजर नहीं आ रही है। (पेज 60);* ***चित्र सं0 157*** *में जहॉ लाल रंग लगा हुआ है वहां हनुमान जी की मूर्ति नजर आ रही है परन्तु* ***चित्र 158, 159*** *में कोई मूर्ति नज़र नहीं आ रही है ये मूर्ति छोटी हैं तथा स्पष्ट नहीं हैं।* ***चित्र सं0 157*** *में खम्भे में हनुमान जी की मूर्ति के अलावा अन्य किसी की मूर्ति नज़र नहीं आ रही है।* ***चित्र सं0 160, 161 व 162*** *में हनुमानजी की मूर्ति नज़र आ रही है अन्य कोई मूर्ति स्पष्ट न होने से नजर नहीं आ रही है।* ***चित्र सं0 163, 164, 165, 166, 167*** *एक ही खम्भे के चित्र हैं।* ***चित्र सं0 163 166 तथा 167*** *में हनुमानजी की मूर्ति नजर आ रही है परन्तु* ***चित्र सं0 164 तथा 165*** *में मूर्तियां छोटी होने के कारण स्पष्ट नहीं हैं।* ***चित्र सं0 163, 166, 167*** *में हनुमान जी के अतिरिक्त अन्य मूर्तियां छोटी होने के कारण नज़र नहीं आ रही हैं। (पेज 54)*

"No idol is clearly visible in the ***Photographs 87 to 90****.....No idol is clearly visible in the* ***Photograph No. 91****. (page 60); The idol of Hanuman Ji is visible where red colour is applied in the photograph no. 157 but no idol is seen in the* ***Photographs 158 and 159.*** *These idols are small and are not clear. Except the idol of Hanuman Ji, no other idol is visible in the pillar appearing in the* ***Photograph 157.*** *The idol of Hanuman Ji is visible in the* ***Photographs 160, 161 and 162*** *and no other idol, on account of not being clear, is seen. The* ***Photographs 163, 164, 165, 166*** *and* ***167*** *are the pictures of the same pillar.*

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*The idol of Hanuman Ji is visible in the **Photographs 163, 166** and **167** but the idols appearing in the **Photographs 164** and **165** are not clear because of being small. Except the idol of Hanuman Ji, other idols being small are not visible in the **Photographs 163, 166** and **167.** (page 54)"(ETC)*

(iii) DW 1/12 Krishna Chandra Singh

*''**चित्र सं0 86** में मुझे खम्भें पर कोई मूर्ति बनी हुई नही नजर आ रही है। (पेज 48) ;**चित्र संख्या 157 लगायत 167** में मुझे कोई मूर्ति बनी हुई नजर नहीं आ रही है। (पेज 49)*

*"No idol is visible to me carved on the pillar appearing in the **Photograph 86**. (page 48) ; I do not see any idol in the **Photographs 157 to 167**. (page 49)"*

(iv) DW 3/15 Narendra Bahadur Singh

*''**चित्र संख्या 157 लगायत 167** में नज़र आ रहे खंभों में भी किसी देवी–देवता का चित्र नजर नहीं आ रहा है। (पेज 44)*

*"The idol of any god-goddess is not visible in the pillars appearing in the **Photographs 157 to 167**.(page 44)"(ETC)*

(v) DW 20/1 Shashikant Rungta

*''**चित्र संख्या 166 व 167** में गणेश जी की सूड़ नज़र आ रही है, यह उसी स्थान पर नज़र आ रही है जहॉ पर लाल रंग लगा हुा है। . . .इन चित्रों में मैं किसी मूर्ति को पहचान नहीं पा रहा हूँ ।*

*"Ganesh Ji's trunkj is visible in the **Photograph 166 and 167.** It is seen at that very place where red colour is applied.....I am not able to recognise any idol in these photographs.."(ETC)*

(vi) DW 13/1-1 Mahant Dharmdas

*''**चित्र 166–167** में कोई मूर्ति स्पष्ट नहीं नज़र आ रही है।'' (पृष्ठ 161)*

*"No idol is clearly visible in **Photograph 166-167."** (ETC)*

(vii) OPW 9- Dr. T. P. Verma

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*''**चित्र संख्या 160 से 163, 166 व 167** में रंग लगे भाग पर कुछ मूर्तियों की आकृति दिखाई पड़ रहीं हैं, लेकिन उनको पहचानने में असमर्थ हूँ, अन्य खम्भों में जहॉ रंग नहीं लगा है मुझे वहॉ पर कोई मूर्ति या चित्र या आकृति नहीं दिखाई पड़ रही है– (पेज 131) ;**चित्र संख्या 87 लगायत 91** दिखाए गऐ जिन्हें देखकर गवाह ने कहा कि मुझे इन चित्रों में से केवल **चित्र संख्या 89 एवं 91** में कुछ आकृतियॉ दिखाई पड़ रही हैं, लेकिन उन्हें पहचानने में असमर्थ हूँ कि ये किसी देवी–देवता, य क्ष–यक्षिणी या जय–विजय के चित्र हैं, बाकी चित्रों में मुझे किसी देवी देवता, यक्ष–यक्षिणी या जय विजय की मूर्तियॉ नहीं दिखाई पड़ रहीं हैं। (पेज 145–146)*

*"The figures of a few idols are visible at the coloured portions of **Photograph Nos. 160 to 163, 166** and **167**, but (I) am unable to recognise them. I cannot see any idol or picture or figure at the points of places in other pillars where colour is no applied.(page 131); The **Photographs 87 to 91** were shown to the witness following which he stated- some figures are visible to me only in the **Photograph nos. 89 and 91**, out of these photographs, but I am unable to recognise and tell of which gods-goddesses, Yaksha - Yakshini or Jai-Vijai they are the pictures. The idols of any god-goddess or Yaksha-Yakshini or Jai-Vijai are not visible to me in the remaining photographs.(page 145-146) "(ETC)*

(E) In reference to contradictory statements of witnesses in context of the coloured album's **Photograph Nos. (176-181)** and the black-white **Photograph Nos. (95-97)** of the **Pillar (No. 11)** fixed in eastern wall in northern back of the main gate of the central portion A of the main structure and the coloured **Photograph No. (182-187)** and black and white **Photograph No. (99-100)** of **Pillar (No. 12)**:

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(i) DW 3/5- Raghunath Prasad Pandey

''मुझे हनुमान जी की मूर्ति के अतिरिक्त मोर की आकृति नज़र आ रही है, अन्य कोई मूर्ति नज़र नहीं आ रही है। इसी प्रकार ***चित्र सं0–181, 182, 183, 185 एवं 186*** *में दिख रहे खंभों में हनुमान जी की मूर्ति के अतिरिक्त मोर की आकृति नज़र आ रही है, अन्य कोई मूर्ति इन चित्रों में दिख रहे खंभों में मुझे नज़र नहीं आ रही है।* ***चित्र सं0 187 लगायत 190*** *में दिख रहे खंभों में हनुमान जी की मूर्ति के अतिरिक्त मझे मोर की आकृति नज़र आ रही है, अन्य कोई मूर्ति इन खंभों में मुझे नज़र नहीं आ रही । . . . .* ***चित्र सं0 176 लगायत 200*** *में मुझे गणेश जी, लक्ष्मी जी एवं दुर्गाजी की कोई मूर्ति नज़र नहीं आ रही है। (पेज 162);* ***चित्र सं0 95*** *में दिख रहे खंभे में कमल दल के बीच में नाचते हुए मोर की आकृति नज़र आ रही है।* ***चित्र सं0 96*** *में दिख रहे खंभे में मुझे कोई मूर्ति इस खंभे में मुझे नजर नहीं आ रही है।* ***चित्र सं0 97*** *में दिख रहे खंभे में मूर्ति तो कमल दल के ऊपर नजर आ रही है ।* ***चित्र सं0 98*** *में दिख रहे खंभे में कमल दल के बाई तरफ मोर की नाचती हुई आकृति नज़र आ रही है, कोई मूर्ति नज़र नहीं आ रही है।(पेज 166);* ***चित्र सं0 99*** *में दिख रहे खंभे में मुझे कोई मूर्ति या आकृति नज़र नहीं आ रही है।* ***चित्र सं0 100*** *में दिख रहे खंभे में कमल दल के ऊपर बाई तरफ नाचते हुए मोर की आकृति नज़र आ रही है। (पेज 167);* ***चित्र सं0 95 लगायात 106*** *में दिख रहे खंभों में से किसी खंभे में मुझे हनुमान जी, श्री कृष्ण या किसी देवकन्या की कोई मूर्ति नज़र नहीं आ रही है। (पेज 168)*

"Besides the idol of Hanuman J, a peacock figure is visible to me but no other idol is visible in these pillars. Similarly, in the pillars seen in the ***Photographs Nos. 181, 182,183, 185*** *and* ***186****, a peacock figure, besides idol of Hanuman Ji, is seen, no other idol is visible to me in the pillars appearing in these photographs. In the pillars seen in the* ***Photographs 187 to 190****, a peacock, besides the idol of Hanuman Ji, is visible to me, no other idol is visible to me in these pillars. . . . . The idols of Ganesh Ji, Lakshmi Ji and Durga Ji are not visible in the* ***Photographs 176 to***

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***200**. (page 162); A figure of peacock in dancing posture is visible in the midst of Kamal Dal seen in the pillar appearing in the **Photograph No. 95**. No idol is visible to me in the pillar appearing in the **Photograph No. 96.** A peacock figure in dancing posture is seen to the left of Kamal Dal seen in the pillar appearing in the **Photograph No. 98,** but no idol is seen thereat. (page 166). No idol or figure is visible to me in the pillar seen in the **Photograph No. 99.** A peacock figure in dancing posture is visible towards the left, above Kamal Dal seen in the pillar appearing in the **Photograph No. 100.** (page 167). No idol of Hanuman Ji, Sri Krishna or any Dev Kanya is visible in any of the pillars appearing in the **Photographs 95 to 106**. (page 168)." (ETC)*

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(ii) DW 3/11- Bhanu Pratap Singh

*"**चित्र सं0 176 177** तथा **180** में हनुमानजी की मूर्ति नज़र आ रही है इसके अलावा अन्य कोई मूर्ति छोटी होने के कारण दिखायी नहीं दे रही है। हनुमानजी की मूर्ति उस स्थान पर है जहॉ पर लाल रंग लगा हुआ है। **चित्र सं0 181 लगायत 186** एक ही खम्भे के चित्र हैं। यह खम्भा उत्तरी दर में लगा हुआ था। इन खम्भों में इन **चित्रों में 181 व 186** में हनुमान जी की मूर्ति नजर आरही है यह मूर्ति लाल रंग वाले स्थान पर नजर आ रही है हनुमान जी के अतिरिक्त किसी अन्य की मूर्ति छोटी–छोटी होने के कारण नज़र नहीं आ रही है। (पेज 55); **चित्र सं0 91** में कोई मूर्ति स्पष्ट नज़र नहीं आ रही है। . . . . चारो चित्र एक ही खंभे के जान पड़ते हैं। उन चारों चित्रों में कोई मूर्ति स्पष्ट नहीं नज़र आ रही है। इसी एलबम के **चित्र सं0 99 लगायत 102** में नजर आ रहे खंभे एक ही हैं। (पेज 60–61)*

*"The idol of Hanuman Ji is visible in the **Photograph Nos. 176, 177 and 180**. Besides this one no other idol is visible on account of being small. Idol of Hanuman Ji is at a point*

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*of place where red colour is used. The **Photographs 181 to 186** are of the same pillars. This pillar was fixed in the northern gate. Idol of Hanuman Ji is visible in these **Photographs (Nos. 181 and 186)** representing these pillars. This idol is seen at the red coloured point of place. Except the idol of Hanuman Ji, no other idol on account of being small is visible. (page 55). No idol is clearly visible in the **Photograph No. 91**. . . . . All the four pictures appear to be of the same pillar. No idol is clearly seen in those four pictures. The pillars seen in the **Photographs 99 to 102** of this very album are the same. (page 60-61) "(ETC)*

(iii) DW 3/15- Narendra Bahadur Singh

*''**चित्र संख्या –176 लगायत 200** में नजर आ रहे खंभों में भी किसी देवी या देवता का चित्र नजर नहीं आ रहा है।''(पेज 44)*

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*"No idol of god-goddess is visible also in the pillars appearing in the **Photographs 176 to 200**."(ETC)*

(iv) DW 1/12- Krishna Chandra Singh

*''**चित्र संख्या 176 से 185** में किसी देवी देवता की मूर्ति पद्मासन या ताण्डव मुद्रा में नहीं दिखाई दे रही है– (पेज 49)*

*"Idol of any god-goddess in 'Padmasan' or Tandava' posture is not seen in the **Photographs 176 to 185**." (ETC)*

(v) DW 20/1- Shashikant Rungta

*''**चित्र सं0 176 लगायत 200** की तरफ विद्वान जिरहकर्ता अधिवक्ता ने ध्यान आकृष्ट कराया, जिन्हे देखकर साक्षी ने बताया कि इन चित्रों में मैं किसी मूर्ति को पहचान नहीं पा रहा हूँ। (पेज 34)*

*"The learned cross-examining counsel drew the attention of the witness to the **Photographs 176 to 200**, looking at which he stated – I am not being able to recognise any idol seen in these photographs."(ETC)*

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(vi) DW 17/1- Ramesh Chandra Tripathi

*''**181, 183** में गणेश जी की मूर्ति है, बाकी किसी भी चित्र में शंकरजी, हनुमानजी या गणेशजी की मूर्ति है या नहीं यह मैं नहीं पहचान पा रहा हूँ। **चित्र सं0 95** में खम्भे में दाहिनी तरफ़ कोई चित्र है, परन्तु यह किसका चित्र है, यह मैं नहीं बता पाऊँगा। (पेज 83)*

*"There is an idol of Ganesh Ji in (the **Photographs) 181** and **183**. I am not able to recognise whether the idol of Shankar Ji, Hanuman Ji or Ganesh Ji is seen or not in any of the remaining photographs. There is some picture towards the right in the pillar appearing in the **Photograph No. 95** but I would not be in a position to tell as to whose picture it is."(ETC)*

(vii) DW 13/1- 1- Mahant Dharmdas

*''**चित्र संख्या 180** में मूर्ति नजर आ रही है, जो दुर्गाजी की है। (पेज 161); **चित्र सं0 184 लगायत 186** में कोई मूर्ति नज़र नहीं आ रही है। (पेज 162)*

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*"In **Photograph No.180** an idol is seen which is of Durga Ji. (page 161); No idol is seen in the **Photograph 184 to 186**.(page 162)"(ETC)*

(viii) OPW 1- Mahant Ramchandra Das

*''इन खम्भों के श्वेत श्याम (**चि0 97 से 100)** में जौ की बाली या पुष्प, गेहूँ की बाली, गमला व एक मूर्ति होना बताया है (पृष्ठ 146–147)।*

*"Barley spike or flower, wheat spike, flower pot and one idol are stated to be in black-white(**Photographs 97 to 100**) of these pillars."(ETC)*

(ix) OPW 9- Dr. T. P. Verma

*''**चित्र संख्या 176, 177, 180, 181, 183** पर रंग लगे भागों में देवी देवताओं की आकृतियॉ दिखाई पड़ रही हैं किन्तु मैं उन्हें पहचान नहीं पा रहा हूँ, शेष में तथा उपरोक्त खम्भों में लाल रंग लगे भाग के अलावा अन्य भागों में किसी देवी–देवता, यक्ष–यक्षिणी अथवा जय–विजय का चित्र मुझे*

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नहीं दिखाई पड़ रहा है– (पेज 131); ***चित्र संख्या 97, 101 और 103*** *में कुछ अस्पष्ट सी मूर्तियां दिखाई पड़ रहीं हैं, लेकिन मैं इन्हें भी पहचानने में असमर्थ हूँ कि ये किसी देवी–देवता, यक्ष–यक्षिणी या जय – विजय की मूर्ति है, बाकी चित्रों में मुझे किसी देवी देवता, यक्ष–यक्षिणी या जय–विजय की मूर्तियां नहीं दिखाई पड़ रही हैं। (पेज 146)*

"The figures of gods-goddesses are visible in the coloured portions of the ***Photographs 176, 177, 180, 181*** *and* ***183*** *but I am not being able to recognise them. I cannot see the picture of any god-goddess, Yaksha-Yakshini, or Jay-Vijay in the remaining (photographs) and in the parts other than the red coloured portion in the aforesaid pillars. (page 131); Somewhat hazy images are seen in the* ***Photographs 97, 101*** *and* ***103*** *but I am unable to recognise them as well and to tell whether they are idols of any god-goddess, Yaksha-Yakshini. Idols of any god-goddesses or Yaksha-Yakshini or Jay-Vijay are visible to me in the remaining photographs."(ETC)*

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(F) In reference to contradictions found in the statements made by the witnesses in context of coloured **Photographs (188-194)** - of the coloured album - representing the Pillar No. 13 of the main gate in the middle part 'A' of the main building and the **Photographs 101-103** - of the black-white album - representing this very pillar and the **Photographs 195-200** - of the coloured album - representing the **Pillar No. 14** and the **Photographs 104-106** - of black-white album - representing this very pillar:

(i) DW 3/5 Raghunath Prasad Pandey

*"****चित्र सं0 176, 177, 180, 181, 183, 185, 186, 187, 188, 189, 190, 193, 194, 195, 196, 199*** *एवं* ***200*** *में दिख रहे खम्भों*

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में जहां सिंदूर (लाल रंग) लगा है वहां में हनुमान जी और मोर की आकृति के अतिरिक्त किसी की मूर्ति नज़र नहीं आ रही है– (पृष्ठ 161); ***चित्र सं0 176 लगायत 200*** *में मुझे गणेश जी लक्ष्मी जी एवं दुर्गा जी की कोई मूर्ति नज़र नहीं आ रही है।. . . . .* ***.चित्र सं0 187 लगायत 190*** *में दिख रहे खंभों में हनुमान जी की मूर्ति के अतिरिक्त मुझे मोर की आकृति नज़र आ रही है, अन्य कोई मूर्ति इन खंभों में मुझे नजर नहीं आ रही है।* ***चित्र सं0 193 लगायत 196*** *में भी दिख रहे खंभों में मुझे हनुमान जी की मूर्ति के अलावा मोर की आकृति नजर आ रही है, अन्य कोई मूर्ति मुझे इन खंभों में नज़र नहीं आ रही है।* ***चित्र संख्या 199 एवं 200*** *में भी दिख रहे खंभों में भी मुझे हनुमान जी की मूर्ति के अतिरिक्त मोर की आकृति नज़र आ रही है।. . . . .* ***चित्र सं0 176 लगायत 200*** *में मुझे गणेश जी, लक्ष्मी जी एवं दुर्गा जी की कोई मूर्ति नजर नहीं आ रही है। (पेज 162);* ***चित्र सं0 95 लगायत 106*** *में दिख रहे खंभों में से किसी खंभे में मुझे हनुमान जी, श्री कृष्ण या किसी देवकन्या की कोई मूर्ति नज़र नहीं आ रही है।. . . . . .* ***चित्र सं0 106*** *में मुझे कोई देवता जैसी मूर्ति नज़र आ रही है, परन्तु मैं स्पष्ट नहीं बता पाऊंगा कि यह मूर्ति किसकी है। (पेज 168)*

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"In the pillars appearing in the ***Photographs 176, 177, 180, 181, 183, 185, 186, 187, 188, 189, 190, 193, 194, 195, 196, 199 and 200****, no idol is seen except the image of Hanuman Ji and peacock at the point or place where vermilion is applied. (page 161); No idol of Ganesh Ji, Lakshmi Ji and Durga Ji is not seen in the* ***Photographs 176 to 200*** *. . . . . Besides the idol of Hanuman Ji a peacock figure is visible to me in the pillars appearing in the* ***Photographs 187 to 190****; no other idol is visible to me in these pillars. In the pillars appearing in the* ***Photographs 193 to 196*** *as well, a peacock figure besides the idol of Hanuman Ji is visible to me; No other idol is visible to me in these pillars. In the pillars appearing in the* ***Photographs 199*** *and* ***200*** *as well, the peacock figure*

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besides Hanuman Ji idol is visible to me. . . . . Any idol of Ganesh Ji, Lakshmi Ji and Durga Ji is not visible to me in the ***Photographs 176 to 200****. (page 162); Any idol of Hanuman Ji, Sri Krishna or any Dev Kanya is not seen in any pillar, out of the pillars appearing in the* ***Photographs 95 to 106****. . . . . An idol looking like that of some god is visible in the* ***Photograph no. 106*** *but I am not in position to clearly say whose idol it is." (page 168) (ETC)*

(ii) DW 3/11- Bhanu Pratap Singh

*"**चित्र सं0 188, 189 तथा 190** में हनुमानजी की मूर्ति उस स्थान पर नज़र नहीं आ रही है, जहां पर लाल रंग लगा हुआ है। (पेज 55); **चित्र सं0 193, 194, 195 तथा 196** में हनुमानजी की मूर्ति लाल रंग वाले स्थान पर दिखायी दे रही है। . . . . . **चित्र सं0 199 व 200** में जिस स्थान पर लाल रंग लगा हुआ है, उस स्थान हनुमान जी की मूर्ति नज़र आ रही है और कोई मूर्ति छोटी होने के कारण नज़र नहीं आ रही है। (पेज 56); चारों चित्रों में कोई मूर्ति स्पष्ट नज़र नहीं आ रही है। (पेज 61); **चित्र सं0 103 तथा 104** में नज़र आ रहे खम्भे, एक ही खम्भे के चित्र है। इसी प्रकार चित्र सं0 105 तथा 106 में नज़र आ रहे खम्भे के चित्र एक ही खम्भे के चित्र है। **चित्र सं0 103 लगायत 106** में नज़र आ रहे खम्भों में मात्र **चित्र सं0 103** में मूर्तियां नज़र आ रही हैं, परन्तु वे स्पष्ट नहीं है। **चित्र सं0 104 105 तथा 106** में कोई मूर्ति नजर नहीं आ रही है। मुझे साक्ष्य के दौरान रंगीन तथा श्याम श्वेत एलबम के जितने भी चित्र दिखाये गये, उनमें से किसी भी चित्र में मुझे ब्रह्मा तथा विष्णु की कोई भी मूर्ति, जो स्पष्ट हो, दिखाई नहीं पड़ी। इन चित्रों में श्रीकृष्ण जी या लक्ष्मी जी की कोई भी मूर्ति किसी भी चित्र में मुझे स्पष्ट दिखाई नहीं दी। (पेज 63)*

"In the ***Photographs 188, 189, and 190,*** *the idol of Hanuman Ji is not visible at a place where red colour is applied. (page 55); Idol of Hanuman Ji is seen at the red coloured point of place in the* ***Photographs 193, 194, 195 and 196****. The idol of Hanuman Ji is seen at red colour*

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*point of place in the **Photographs 199 and 200**; no other idol, on account of being small, is seen. (page 56); No idol is seen in the four photographs. (page 61); The pillars appearing in the **Photographs 103 and 104** are the pictures of the same pillar. Similarly, pictures of the pillar seen in the **Photographs 105 and 106** are the pictures of the same pillar. Out of the pillars appearing in the **Photographs 103 to 106**, idols are visible only in the **Photograph no.103,** but they are not clear. No idol is visible in the **Photographs 104, 105 and 106.** In none of the photographs of black-white album that were shown to me in course of adducing evidence, I saw any idol of Brahma and Vishnu, which may be clear enough. I did not clearly see any idol of Sri Krishna Ji or Lakshmi Ji in any of these photographs. (page 63)" (ETC)*

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(iii) DW 3/15-Narendra Bahadur Singh

*''**चित्र संख्या–176 लगायत 200** में नज़र आरहे खंभों में भी किसी देवी या देवता का चित्र नज़र नहीं आ रहा है। (पेज 44)*

*"Image of any god or goddess is also not visible in the pillars appearing in the **Photographs 176 to 200.**"(ETC)*

(iv) DW1/12 Krishna Chandra Singh

*''**चित्र संख्या–188 लगायत 200** में मुझे कोई मूर्ति पद्मासन अथवा ताण्डव मुद्रा में नहीं दिख रही है।'' (पेज 49)*

*"No image in 'Padmasan' or 'Tandav' posture is visible to me in the **Photographs 188 to 200**." (page 49)*

(v) DW 17/1 Ramesh Chandra Tripathi

*''**चित्र सं0 102** में खम्भे के बीच वाले भाग में सफेद भाग में कोई मूर्ति है, परन्तु यह किसकी मूर्ति है, मैं नहीं बता पाऊॅगा। (पेज 83); **चित्र सं0 104** में खम्भे के बीच में जो सफेद भाग नज़र आ रहा है, उसमें किसी का चित्र है, परन्तु यह किसका चित्र है, यह मैं नहीं बता पाऊॅगा। **चित्र सं0***

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105 में खम्भे के बीच में चित्र जैसा कुछ नज़र आ रहा है, परन्तु यह किसका चित्र है, मैं नहीं बता पाऊंगा। चित्र सं0 106 में कोई चित्र नज़र आ रहा है, परन्तु यह किसका चित्र है, मैं नहीं बता पाऊँगा। (पेज 84)

*"In the white part of the middle portion of the pillar appearing in the **Photograph No. 102**, there is some idol but I am not in a position to tell whose picture it is.(page 83); In the midst of the pillar appearing in the **Photograph No. 105,** something, appearing as a figure, is visible but I am not in a position to tell whose figure it is. In the **Photograph No. 106,** some figure is seen but I am not in position to tell whose figure it is.(page 84)" (ETC)*

(vi) DW 13/1 Mahant Dharmdas

*''इन खम्भों के **चित्र संख्या 191–192** में शेषनाग की मूर्तियां नज़र आ रही हैं। **चित्र 187 से 190** में उस स्थान पर जहां पर सिन्दूर पुता हुआ है, हनुमान जी की मूर्ति नज़र आ रही है। . . . .**चित्र संख्या 193 लगायत 196** में उस स्थान पर जहॉ पर सिन्दूर पुता है, हनुमान जी की मूर्ति नज़र आ रही है। . . . **चित्र 197 तथा 198** में कोई मूर्ति नज़र नहीं आ रही है। **चित्र संख्या 199 व 200** में गणेश जी की मूर्ति नज़र आ रही है। **चित्र संख्या 195 व 196** में जहां पर सिन्दूर पुता हुआ है, वह खंभे का निचला भाग है। **चित्र संख्या 195 तथा 196** में हनुमान जी की मूर्ति नज़र आ रही है। (पेज 165); **चित्र संख्या 195, 196, 199 तथा 200** एक ही खम्भे के एक ही स्थान के चित्र हैं, जो सही है। एक ही स्थान का चित्र अलग–अलग पोर्शन से लिया गया है। (पेज 166); **चित्र संख्या 106** में कसौटी का खम्भा नज़र आ रहा है, जिस पर घड़ा बना हुआ है। घड़े के ऊपर ढक्कन जैसी चीज़ नज़र आ रही है, जिसके ऊपर फूल पत्ती बनी हुई है। इसके ऊपर हनुमान जी की मूर्ति बनी हुई है। (पेज 93)*

*"Idols of Sheshnag are visible in the **Photographs 191-192** of these pillars. Idol of Hanuman Ji is visible at the point of place where vermilion is applied in the **Photographs 187 to 190**. . . . . Idol of Hanuman Ji is visible at the point of*

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*place where vermilion is applied in the **Photographs 193 to 196**. . . . . No idol is visible in the **Photographs 197 and 198**. The idol of Ganesha Ji is visible in the **Photographs 199 and 200.** The point or place where vermilion is applied, is the lower part of the pillar. Hanuman Ji's idol is visible in the **Photographs 195 and 196**.(page 165); The **Photographs 195, 196, 199 and 200** are the pictures of the same pillar - of the same place, which is a correct fact. Photographs of the same place have been taken from different portions. (page 166); The **Photograph No. 106** shows a Kasauti pillar on which Ghara(water pot) is carved. Above Gharaa lid-like thing is visible on which flower-leaves are carved. Hanuman Ji's idol is carved on it." (page 93) (ETC)*

(vii) DW 20/1 -Shashikant Rungta

*"इन चित्रों में मैं किसी मूर्ति को पहचान नहीं पा रहा हूँ।" (पृष्ठ –34); **चित्र संख्या 104** में हनुमान जी की मूर्ति नज़र आ रही है। (पृष्ठ 31)*

*"I am not in a position to recognise any idol represented in these photographs (page 34). Hanuman Ji's idol is visible in the **Photograph No. 104**. (page 31)"(ETC)*

(viii) OPW 9 -Dr. T.P. Verma

*"**चित्र संख्या 188 व 193 से 195, 189 और 200** पर रंग लगे भागों में देवी देवताओं की आकृतियॉ दिखाई पड़ रही हैं किन्तु मैं उन्हें पहचान नहीं पा रहा हूँ शेष में तथा उपरोक्त खंभो में लाल रंग लगे भाग के अलावा अन्य भागों में किसी देवी – देवता यक्ष – यक्षिणी अथवा जय विजय का चित्र मुझे नहीं दिखाई पड़ रहे हैं। (पेज 131); इन श्वेत–श्याम चित्रों में **चित्र संख्या 97, 101 और 103** में ही कुछ अस्पष्ट सी मूर्तिया दिखाई पड़ रही हैं, लेकिन मैं इन्हे भी पहचानने में असमर्थ हूँ कि ये किसी देवी–देवता, यक्ष–यक्षिणी या जय–विजय की मूर्ति है, बाकी चित्रों में मुझे किसी देवी देवता, यक्ष–यक्षिणी या जय–विजय की मूर्तियां नहीं दिखाई*

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पड़ रही हैं। (पेज 146)

"Images of god and goddesses are seen in the coloured portions of the ***Photographs 188, 193-195,189 and 200*** *but I am not in a position to recognize them. Image of any god -goddesses, Yaksh -Yakshini or Jay -Vijay is not visible to me in the rest of the pillars and in any part other than red coloured ones in the aforesaid pillars.(page 131); Out of these black -white, somewhat hazy images are seen only in the* ***Photographs 97,101 and 103*** *but I am unable to recognize them too and to tell as to which god-goddess, Yaksha-Yakshini or Jay-Vijay they represent. Idols of any god -goddess or Yaksha -Yakshini or Jay -Vijay are not visible to me in the rest of the photographs."(ETC)*

3439. **PW24 Prof. D. Mandal** at page 60-61 of his cross examination while confirming the existence of images on black stone pillars said that since he is not an expert of Art and Architecture or Iconography, therefore, he is not able to identify as to whose image that was. He stated as under:

*''**चूँकि मेरे अनुसंधान का मुद्दा यह नहीं था कि ये पत्थर मस्जिद के अंग हो सकते हैं इसलिए इस कारण मैंने यह अनुसंधान नहीं किया। और इसी कारण से मैंने यह भी अनुसंधान नहीं किया कि ये मन्दिर के हो सकते हैं।** यह ठीक है कि ये सभी पत्थर जो पेपर संख्या – 118सी0–1/41 व 45 पर दिखाए गए हैं, ये पूर्ण पत्थर नहीं हैं बल्कि उनका एक खण्ड हैं। मैं इस बात से सहमत हूँ कि इन दोनों पेपर्स में दिखाए गए पत्थर प्रत्यक्षतः किसी भवन में प्रयोग किए गए पत्थर के अंश हैं। यह ठीक है कि पेपर संख्या–118सी0–1/44 और 46 में दिखाए हुए पत्थरों पर मानव आकृतियां बनी हुयी हैं। **चूंकि आर्ट और आर्किटेक्चर का विद्यार्थी नहीं हूँ इसलिए यह नहीं बता पाऊँगा कि ये हिन्दू देवी देवताओं की मूर्तियां हैं या नहीं।** स्वयं कहा कि **यह आइक्नोग्राफी का विषय***

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है जो कि बहुत ही स्पेशलाइज्ड है।''(पेज 60–61)

*"**Since it was not the issue of my research to see whether these stones can be a part of the Mosque, I did not make any research on them, and for this very reason I did not make any research to see whether they may be of the temple.** It is true that all these stones, as shown on paper no. 118C-1/41&45, are not full stones; instead, they are stone parts. I agree that the stones shown in these two papers are apparently pieces of stones used in any building. It is true that human figures are engraved on the stones shown in paper nos. 118C-1/44&46. **Since I am not a scholar of art and architecture, I am not in position to tell whether they are idols of Hindu divinities or not.** (Himself stated) **It is a subject of iconography, which is a very specialized branch of knowledge**."(E.T.C.)*

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3440. With regard to the study of symbols found on a deity discovered **PW 16 Prof Suraj Bhan** has stated at page 410 as under:

''आर्कियोलाजी में मूर्तियों के पाये जाने के आधार पर इन चिन्हों का अध्ययन किया जाता है। परन्तु इन पर विशेष रिसर्च करने वाले विद्वानों ने इनके धार्मिक ग्रन्थों का अध्ययन भी किया है।'' (पेज 409–410)

"In archaeology these symbols are studied on basis of discovery of deities. However, the scholars carrying out special research on them, have also studied their religious treatises."(E.T.C.)

''मूर्तियों की बनावट व उसके लक्षण तथा चिन्ह आदि की आइकेनोग्राफिस्ट ही स्टडी करते हैं।'' (पेज 410)

"The style of deities, their marks and symbols etc. are studied by Iconographist." (E.T.C.)

3441. **PW 15 Sushil Kumar Srivastava** admitted in his

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cross examination regarding the images found at the disputed site that they were Non-Islamic. At page 21 he stated as under:

''यह बात भी मैंने अपनी पुस्तक में लिखी है कि यह सब चित्र जो विवादित स्थल पर थे, वह गैर स्लामिक थे।'' (पेज 21)

"This fact which I have written in my book that these images which were on disputed site, all were Non-Islamic" (E.T.C.)

3442. **PW 18 Suvira Jaiswal** at pages 40-41 has said as under:

''गवाह का ध्यान ***पी.डब्लू.76 श्री सूरजभान के बयान की ओर पृष्ठ संख्या–69 के चित्र संख्या–55 में दिए गए वर्णन की ओर दिलाया*** *जिसमें उन्होंने यह कहा है कि उक्त खंभे की आयु नवीं सदी से लेकर 11वीं 12 वी सदी के बीच की होगी। ऐसा उन्होंने कहा है तो मैं उनके मत को मानूंगी। यदि उन्होंने कहा है कि खंभे पर घ ाटपल्लव बना है और ऊपर एक व्यक्ति का चित्र बना है तो सही होगा।''(पेज 40–41)*

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*''**Attention of the witness was drawn towards page 69 of the statement of PW 76 Surajbhan, containing description pertaining to photograph no. 55,** wherein he has stated that the age of the aforesaid pillar would have been between 9th century to 11-12th century. If he has said so, I will agree with him. If he has said that on the pillar. pitcher-leaf (Ghatpallav) and thereupon a picture of a man, were drawn, it might be true. '' (E.T.C.)*

3443. In view of the above, we have no hesitation in observing that the pillars fixed inside and outside the building in dispute contain some human images and at some places there appears to be some images of Hindu Gods and Goddesses.

3444. Now, the question is, what would be its impact on the building in question regarding its character as mosque under

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the tenets of Islam.

3445. So far as the tenets of Islam are concerned, it is very clear that the human or animal images which is at a place where namaz is to be offered cannot be allowed. The sole purpose of a mosque in Islam is to offer public namaz and nothing else. Though we are strengthened on this aspect from the Shariyat text, the relevant part whereof we have already quoted, but we may point out that almost all the five witnesses of plaintiffs (Suit-4) whom they claimed to be the Experts in Islamic religious matters have unhesitantly said that nobody will allow any image of human being or animal in a mosque. Therefore, under the tenets of Islam, if a place has a permanent structure, which contains human or animal images, it would not be a fit place for offering namaz since namaz if any offered at such a place, shall stand waste (the witnesses say that ''मकरुह हो जाएगी'').

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3446. The above position in law, however, whether would make any impact on the factual situation in this matter is the most important aspect to be seen. As we have already discussed above, despite existence of all these pillars in the building in dispute, the Muslim people not only believed and treated the building in dispute to be a Mosque but as and when visited and offered public Namaz thereat. This has continued at least for more than 80 years till the time when order of attachment was passed on 29th December 1949. Once the people, who are believer of a particular practice and worship, according to its tenets have believed in the status of a particular thing in a particular manner, is it open to a third party to contend after a long time that the thing was not in accordance with the tenets of religion and whatever worship etc. they have offered is of no

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use. This situation, it appears, has not come across in other cases, particularly a situation where two communities are using the same premises for their religious prayers. In these facts and circumstances, peculiar and particular to this case, we are of the view that the second part of this question becomes redundant and, hence, need not be answered.

3447. We, therefore, hold that despite existence of certain images on some of the pillars, inside and outside the building in question of Hindu Gods and Goddesses, the character of the building in dispute as a matter of fact would remain unaffected. **Issue 19(f) (Suit-4) is answered accordingly, i.e., in favour of the plaintiffs (Suit-4).**

3448. Now remains **Issue No. 1-B (c) (Suit-4)**. We have already held that the building in dispute, i.e., disputed structure in the inner courtyard had been continuously used by Hindus for worship pursuant to their belief that the site in dispute is the birthplace of Lord Rama and in this regard, we find recorded evidence at least from the second half of 18th century but regarding the user of the aforesaid premises by Muslims, no evidence has been placed to show anything till at least 1860. After considering the evidence and whatever material the learned counsel for the parties could place before us, we have recorded a finding that both the parties used the disputed structure and the premises within the inner courtyard despite the partition wall raised by the Britishers sometimes in 1856-57. The discussion and finding, which we have already recorded while discussing the issues relating to limitation and possession/adverse possession, in view thereof, we find no hesitation in holding that the members of both the communities i.e. Hindu and Muslim had been visiting the building in dispute

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in the inner courtyard. Regarding the visit of Hindus, the evidence which we have, commences from the second half of 18th century i.e. from the Tieffnthaller travels account and so far as the muslims are concerned, such evidence is available since 1860, the issue is answered accordingly. Since both the parties have been using the building in dispute in accordance with their system of worship, belief and faith, both continuing for last more than eighty years before filing of the first suit i.e. Suit-1 and therefore, it can be said that the premises within the inner courtyard and the building in dispute were not restricted for user of any one community. The issue in question is answered accordingly.

(J) ISSUES RELATING TO SITE AS BIRTHPLACE, EXISTENCE OF TEMPLE, WORSHIP ON THE DISPUTED SITE AS BIRTHPLACE OF LORD RAMA SINCE TIME IMMEMORIAL; DEMOLITION OF SOME STRUCTURE; IN PARTICULAR A HINDU TEMPLE :

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3449. Issues No.1 and 2 (Suit-1); 1 (Suit-3); 1 (b), 11, 13, 14, 19(b), and 27 (Suit 4); 14, 15, 22 and 24 (Suit 5) are under the above category.

3450. Issues No.1 and 2 (suit-1) reads as under :

> ***Issue No.1*** *"Is the property in suit the site of Janam Bhumi of Sri Ram Chandra Ji?"*
>
> ***Issue No.2*** *"Are there any idols of Bhagwan Ram Chandra Ji and are His Charan Paduka situated in the site in suit ?"*

3451. The defendants no.1 to 5 (Suit-1) have pleaded that property in suit is not the site of Janam Bhumi of Sri Ram Chandra Ji but is a mosque constructed by Babar in 1528 A.D. known as "Babri Mosque". Paras 2, 22 and 27 of their written statement, read as under:

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*''**दफा 2.** कुल मजमून दफा हाजा से इन्कार है जिस जायदाद का दावा किया जाता है वह जनम भूमि नहीं है बल्कि शहन्षाह हिन्द बाबर शाह की तामीर करदा मस्जिद है।''*

*"**Para 2.** That the contents of paragraph under reply are denied. The property regarding which the suit has been filed, is not Janmbhumi and instead is a mosque built by Babar, emperor of India." (E.T.C.)*

*''**दफा 22**. यह कि मुद्दालेह मुजीब को इल्म नहीं है जायदाद मुतदाविया यानी मसजिद बाबरी के अंदर कोई मूर्ति है। ता0 16.12.1949 ई0 तक उसमें नमाज हुई। उस वक्त तक उसमें कोई मूर्ति न थी। लेकिन अगर कोई मूर्ति मसजिद के अंदर किसी शख्स ने चोरी व बदनीयती से बाद ता0 मजकूर रख दिया है तो उससे मसजिद की सरीही बेहुरमती वद नापाकी मुतसव्वर है और फेल मजकूर कानूनन मुजरिमाना है। और अगर मुद्दई या कोई दूसरा शख्स मसजिद मजकूर से मूर्ति पूजने या दर्शन करने की गरज से मसजिद के अंदर दाखिल होना चाहता है तो वह जुर्म का मुतीकेब है। चुनान्चे ऐसी हालत में अदालत दीवानी दादरसी मतलूबा देने से कासिर है। बहरहाल उससे मुद्दईया किसी गैर मुसलिम को मसजिद मजकूर से कोई हक नहीं पैदा हो सकता।''*

"Para 22. That it is not in knowledge of the answering defendant that there is any idol inside the disputed property i.e. Babri Masjid. Namaz was offered over there till 16.12.1949 AD and till that time there was no idol over there. However, if any person has secretly and malafidely placed any idol inside the mosque after the said date, then, it is blatant dishonor and disrespect of the mosque and the aforesaid attempt is legally an offence (मुजरिमाना) and if the plaintiff or any other person desires to enter the said mosque with the intention of offering prayer to any idol, then he is guilty (मुतीकेब) of an offence. Hence, in the given circumstances, the civil court is incompetent to grant the

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relief prayed for. However, the plaintiff or any non-muslim cannot get any right from the same." (E.T.C.)

*"**दफा 27** . यह कि अयोध्या में एक मंदिर मौसूमा बमन्दिर जन्मस्थान श्री रामचन्द्र की जनम भूमि पर मुद्दत मदीद से कायम व मौजूद है। और उस मन्दिर में रामचन्द्र जी वगैरह की मूर्तियां विराजमान हैं। दावा हाजा निसबत मसजिदबाबरी बइजहार स्थान जनम भूमि मुद्दई व उसके दीगर फिरका परस्त व मुफसिदा परदाज साथियों की जिद्दत व इख्तराह का नतीजा है।"*

"Para 27: That a temple called Janmsthan temple exists and stands at the birthplace of Sri Ram Chandra in Ayodhya since long and idols of Ram Chandra Ji etc. are seated in that temple. The instant claim regarding the Babri mosque being located at Janamsthan/Janambhumi is an outcome of fabrication and concoction on the part of the plaintiffs and other fundamentalists and riot-mongers." (E.T.C.)

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3452. Paras 9 and 27 of the replication filed by the plaintiff (suit 1) says:

"धारा 9.. जो चौहद्दी वादी ने अपने वाद पत्र में जन्मभूमि स्थान की दी है उस में वाद पत्र प्रस्तुत करने के पूर्व से श्री रामचन्द्र जी की मूर्ति का प्रादुर्भाव हुआ था और उसका रूप तथा नाम वादी मन्दिर ही मानकर देखता है जो वास्तव में है। और फौजदारी के न्यायालय ने भी उस को (राम जन्म भूमि) मन्दिर के ही रूप में पाकर भगवान श्री रामचन्द्र जी के पूजा पाठ तथा भोग रागादिक के प्रबन्धार्थ बाबू प्रियादत्त राम चेयरमैन म्यूनिस्पलबोर्ड फैजाबाद को सिपुर्ददार नियत करके यह आदेश दिया कि पूजा पाठ इत्यादि पूर्ववत चलता रहे। फलतः मुसलमान लोग उस के भीतर नहीं प्रवेश कर पाते। सन् 1934 ई0 से मस्जिद के रूप में यह कभी भी व्यवहार में नहीं आया। ..... बाबर का वक्फ करना भी सर्वथा असत्य है। तमाम मुसलमानों को इबादत करने का अधिकार भी स्वीकार नहीं है।"

"Para-9. Even before the presentation of the plaint, the idol of Sri Ramchandra had appeared at the birthplace

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(Janambhumi), the boundary of which has been given by the plaintiff in the plaint, and the plaintiff has been treating it as a temple in form & name, which in-fact it is. After finding it to be (Ram Janam Bhumi) temple, the Criminal Court while appointing Babu Priya Dutt Ram, Chairman Municipal Board, Faizabad as Supurdar for management of worship, offering etc. of Lord Sri Ramchandra, had ordered that the worship etc. shall be continued as before. Consequently, the Muslims cannot go inside the same. It was never used as a mosque from the year 1934 AD. ..... The execution of Waqf by Babur is also wholly incorrect. Right of prayer to all the Muslims, is also not admitted."

''धारा 27.. मन्दिर जन्म स्थान जिस के सम्बन्ध में प्रतिवादियों ने इस धारा में कथन किया है। वह सर्वथा दूसरा मन्दिर है जिसकी चौहद्दी निम्न प्रकार है:

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उत्तर = हाता व परती व मन्दिर बकवजे कल्लू महापात्र।

दक्षिण = सड़क पुख्ता।

पूर्व = सड़क व सेहन व कुआं।

पच्छिम = हाता व परती।

श्री अयोध्या जी में लगभग सभी मन्दिरों में श्री रामचन्द्र जी की मूर्ति स्थापित है;जिन से झगड़े वाले स्थान से कोई सम्बन्ध नहीं है। निर्वाचन की चर्चा इस धारा में व्यर्थ तथा तथ्यहीन है। और सर्वथा अप्रासंगिक है।''

"Para 27. The Janamsthan temple mentioned by the defendants in this paragraph is another temple whose boundary is as under:

North: Campus, vacant land and temple in possession of Kallu Mahapatra

South : Pitch Road

East : Road, courtyard and well

West : Campus and vacant land

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The idol of Sri Ramchandra is installed in almost all the temples at Ayodhya, which have no concern with the disputed site. The discussion of election in this paragraph is futile and baseless and is wholly irrelevant." (E.T.C.)

3453. Defendant No. 6 (Suit-1), denies para 2 of the plaint, and, as additional plea, in para 12 of the written statement states :

12. That the property in suit is known as Babri mosque, and it has, for a long period has been in use as a mosque for the purpose of worship by the Muslims. It has not been in use as a temple of Shri Ram Chandraji.

3454. Defendants No. 8, 9 and 10 (Suit-1) also deny para 2 of the plaint. However, in para 12 of the written statement of defendant No.9, the stand is identical to para 12 of the written statement of defendant No. 6.

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3455. Defendant No.10 (Suit-1), while denying that the property in suit is the Janam Bhumi of Sri Ram Chandraji, in para 2 of written statement averred as under:

"2. That the contents of para 2 of the Plaint are absolutely incorrect and hence denied as stated. The building referred to in the para under reply is not the Janam Bhoomi of Sri Ram Chandraji and no idols of Sri Ram Chandraji were ever installed in the said building and as such there arises no question of any right or claim of the plaintiff to perform Pooja and Darshan over there. The fact is that the property in suit is a mosque known as Babri Masjid ..... Kindly see additional pleas also."

3456. Issues No.1 (Suit 3) read as under:-

Issue No.1 *"Is there temple of Janam Bhumi with*

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idols installed therein as alleged in para 3 of the plaint ?"

3457. The averments in plaint (Suit-3) with respect to the nature of the property in suit are in paras 2 and 3, as under:

"2. That Janma Asthan now commonly known as Janma Bhumi, the birth place of Lord Ram Chandra, situate in Ayodhya belongs and has always belonged to the plaintiff no. 1 ..."

"3. That the said Asthan of Janma Bhumi is of ancient antiquity and has been existing since before the living memory of man and lies within the boundaries shown by letters A.B.C.D. in the sketch map appended hereto within which stands the temple building of Janma Bhumi marked by letters E.F.G.K.P.N.M.L.E. and the building denoted by letters E F G H I J K L E is the main temple of Janma Bhumi wherein is installed the idol of Lord Ram Chandra with Lakshmanji, Hanumanji and Saligramji."

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3458. The defendants No.6 to 8 (Suit-3) in their written statement dated 28th March, 1960 while denying para 2 and 3 of the plaint, have averred in paras 16, 29 and 32 as under:

''धारा 16.. यह कि वाद तामीर मसजिद मजकूर षहनषाह बाबर रहमुतल्ला अलैह ने मसजिद मजकूर की हिफाजत मरम्मत व दीगर अखराजात के लिए मु0 60 रूपया सालाना का अतिया अपने खजाने शाह से मुकरर्र किया। जो दौरान कयाम सल्तनत मुगलिया मसजिद मजकूर को बराबर मिलता रहा। वाद जमाने जबाल सलतनत मुगलिया नौजाबीन अवध ने भी इस अतीये को कायम रखा। और अपने जमाने हुकुमत में रकम अतिये मजकूर को इजाफा करके मु0 302 रूपये 3 आना 6 पाई सालाना कर दिया। जो रकम बाद रखते सलतनत अवध ब्रिटिष गवर्नमेन्ट ने भी जारी रखा। और उस जमाने में बन्दोबस्त अव्वल में गवर्नमेंट बर्तानिया ने मुतबलियान को बजाए नकद अतिया मजकूर के मुआबिजियात सोलापुरी व घूरनपुर व बहोरनपुर मुतसीर अयोध्या बतौर माफी बिना बरमसारित

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मसजिद बाबरी अता किया।''

"Para 16. That Emperor Babur Rahmatulla Allaih had given annual grant of Rs.60 from his treasury for protection and maintenance of the said mosque, impugned in the suit, and also for other expenses, which continued to be given to the said mosque during the tenure of the Mughal Rule. During the Mughal Rule, the Oudh regime also continued this grant, and hiked the aforesaid amount of grant to 302 rupees, 3 aanas, 6 pais per annum, which amount the British Government also continued to give at a later stage. And during that period in course of settlement, the British Government gave Ayodhya situated Sholapuri, Ghooranpur and Bahoranpur instead of grant in cash." (E.T.C.)

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''धारा 29.. यह कि अर्जी दावा में निहायत मुवहम तरीके से जायदाद मुतदाबिया जाहिर की गई है और नक्षा नजरी भी बिलकुल गलत है और जितनी चीजे नक्षा नजरी में दिखलाई गई है वह बिलकुल गलत और फर्जी है। मसजिद के पूरब व दखिन व उत्तर कबरिस्तान है जिसमें पोख्ता खाम कबरे मौजूद हैं और न वहॉ शंकर चबूतरा है न सीता कोप है न लोमस चौरा है न हनुमान द्वार और बारा भगवान व समाध मारकन्डे बगैरह है नक्षा नजरी में जिस कदर चीजें दी हुई है वह बिलकुल गलत व फर्जी है और मनमाने है और बदनियती से जाहिर की गई है। अलावा इसके यह नहीं पता चलता कि ए0बी0सी0डी0 का नंबर खसरा या नंबर आबादी क्या है और उसकी लंबाई चौड़ाई और मुकाम बकू क्या है।''

"Para 29. That the property is shown as disputed in the claim application in an extremely doubtful manner and the site map is also entirely incorrect and all the things shown in the site map are absolutely incorrect and forged. Located to the east, south and north of the mosque is a graveyard with un-metalled graves, and there is neither

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Shankar Chabutra nor Sitakoop nor Lomas Chaura nor Hanuman Dwar nor Bara Bhagwan nor Samadh Markandey etc. there. Things have been given in the site map in an absolutely incorrect, forged and arbitrary manner, showing bad faith. Besides, it fails to divulge khasra number or abadi number of the plot marked as A, B, C, D and its length and width and also its present location. ''(E.T.C.)

''धारा 32. यह कि बाबरी मसजिद मुसल्लमा तौर से मसजिद है और गवर्नमेन्ट और साबिका और मौजूदा उसको मसजिद मानते चली आई है। ऐसी हालत में दावा मुद्दैयान नारबा और ना मुनासिब है और अकलियत करना नामुनासिब और बेजा जुल्म है।''

''Para 32. That the Babri Mosque is widely acknowledged as a mosque, and previous & present governments have been taking it to be a mosque. In such a circumstance, the plaintiff's claim is improper & untenable and to allow it is improper and unjust.''(E.T.C.)

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3459. In replication, the plaintiffs (Suit-3) in para 28 and 32 said as under:

"28. The contents of para 28 of the written statement are totally wrong and are scandalous. The only temple built on the sacred place of the birth of Lord Ram Chandra is the Janma Bhumi temple in suit. There is no temple known as temple Janma Asthan as suggested by the defendants built on the place of birth of Lord Ram Chandra. The temple of Janma Asthan which is situate to the north of the temple of Janma Bhumi in suit is a separate temple which is not at all connected with the place of birth of Lord Ram Chandra. The defendants seem to exploit the name of the said temple

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to create a confusion regarding the real place of birth of Lord Ram Chandra. They should point out clearly by correct location as to which is the Janma Asthan temple mentioned in this para of their written statement. The idols of "Ram Chandra ji and others" are installed in all the Hindu temples all the world over. The emphasis of communal bias alleged in the written statement is misplaced. The plaintiffs having been aggrieved by the invasion through the illegal proceedings under section 145 Cr.P.C. upon their fundamental rights of managing their own temple have taken recource to the court of law in defence of their own legal right. It is the said defendants who supported and instigated by their own fanatic friends are advancing a false and a preposterous claim to the temple of janma Bhumi by blaspheming it with the name of Babari Masjid. The plaintiffs claim has no relation with any election and to characterise the plaintiff's claim as an attempt to jeopardize the success of a secular state in India is simply scandalous. It is in fact the defendants and their supporters who by denying the plaintiffs' rights and by putting up a false and a fanatic claim to the sacred place of the birth of Lord Ram Chandra are out to blackmail the noble efforts of the Indian people to the attainment of a secular state."

"32. The contents of para 32 of the written statements are denied. If the former Government ever acknowledged the temple of Janma Bhumi in suit as Mosque it was simply preposterous and collusive."

3460. Defendant No.9, in additional written statement

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dated 24th August, 1995, in paras 3 and 4 pleaded:

"3. That the contents of para 4-G XI are also quite vague and ambiguous and hence are denied as stated. In this respect it is submitted that on 6th December, 1992 the so-called Ram Chabutra was demolished alongwith the Babri Masjid by the miscreants collected at the instance of Vishwa Hindu Parishad etc.

4. That in reply to para 4-G XII of the amended Plaint it is submitted that on 6th December, 1992 the building of the Mosque was demolished and the same could not be called or alleged to be the Main Temple."

3461. Defendant No.10 has supported plaintiff (Suit-3) to the extent that the property in dispute is not a "Mosque" known as "Babari Masjid" made by "Emperor Babar" but is "Janam Bhumi" or "Janam Sthan of Lord Ram Chandra Ji" and has said in paras 2, 3 and 5 as under:

"2. That the contents of para 2 of the plaint are denied. However, it is submitted that the JANMA ASTHAN is a holy place of worship and belongs to the deity of Bhagwan SHRI RAM LALLA VIRAJMAN there. It never belonged to and could not have belonged to the plaintiff no.1. It is denied that the plaintiff no. 1 ever managed it.

3. That the contents of para 3 of the plaint, as written, are denied. The holy JANMA ASTHAN or JANMA BHUMI is actually a very very old temple, whereas the plaintiff AKHADA on the other hand is an institution and owes its existence for no longer than 200 years. The correctness of the sketch map and the boundaries of the temple with reference to the map are not disputed. The main presiding

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deity of the temple is BHAGWAN SHRI RAM. Although there are several other idols of other deities, termed as RAM DARBAR and are worshipped, besides, there are other symbols, such as, 'CHARAN', 'SITA RASOI' etc. through whom the deity of BHAGWAN SHRI RAM therein is worshipped at SHRI RAM JANMA BHUMI, is addition to the ASTHAN of SRI RAM JANMA BHUMI, which by itself is a deity and worshipped as such.

5. That the contents of the para 5 of the plaint are not admitted in the form they ave been pleaded. Although it is made to appear that in the first war of independence in the year 1857 A.D., the British, to divide the Hindus and Muslims, mala fide acted by dividing the said ASTHAN by creating an inner enclosure and describing the boundary within the inner enclosure as a mosque but no Muslim who was a true Muslim, would appear to have frequented it for offering his prayer as the same is prohibited by the SHARIYAT. Moreover even ALAMGIR (Emperor AURANGZEB) issued a mandate, known as FATWA-E-ALAMGIRI which clearly prohibits the offering of prayer by Muslim at such places. More so the Kasauti pillars and the carvings of Gods and Goddesses thereon will clearly show that this place could not be used by a true Muslim for offering his prayers thereon. It will also be seen that the place wrongly alleged as mosque virtually stood land-locked by Hindu Temple, wherein there was the worship of the deity going on. Entry to this inner enclosure was also obstructed.

The British tried to set up the descendents of MIR

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BAQI, a Shia Muslim, as the MUTVALLI, but he denied the TAULAAT and never looked after the dispute place in any capacity, what to say of looking after as a MUTVALLI thereof."

3462. Issues No. 1 (b), 11, 13, 14, 19(b), 19(c) and 27 (suit 4) read as under:

Issue No.1 (b) *"Whether the building had been constructed on the site of an alleged Hindu temple after demolishing the same as alleged by defendant no.13? If so, its effect?"*

Issue No.11 *"Is the property in suit the site of Janam Bhumi of Sri Ram Chandraji?"*

Issue No.13 *"Whether the Hindus in general and defendants in particular had the right to worship the Charans and 'Sita Rasoi' and other idols and other objects of worship, if any, existing in or upon the property in suit ?"*

Issue No.14 *"Have the Hindus been worshipping the place in dispute as Sri Ram Janam Bhumi or Janam Asthan and have been visiting it as a sacred place of pilgrimage as of right since times immemorial? If so, its effect?"*

Issue No.19(b) *"Whether the building was land-locked and cannot be reached except by passing through places of Hindu worship? If so, its effect?"*

Issue No.19(c) *"Whether any portion of the property in suit was used as a place of worship by the Hindus immediately prior to the construction of the building in question? If the finding is in the affirmative, whether no mosque could come into existence in view of the Islamic*

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tenets at the place in dispute?"

Issue No.27 *"Whether the courtyard contained Ram Chabutara, Bhandar and Sita Rasoi ? If so, whether they were also demolished on 6.12.1992 along with the main temple ?"*

3463. The plaintiffs (Suit-4) with reference to the above issues, in paras 3, 4 and 21-B says :

"3. That for the upkeep and maintenance of the mosque and other connected expenses, a cash grant used to be paid from the Royal Treasury which was continues by the Emperors of Delhi and by Nawab Saadat Ali Khan, the Nawab Wazir of Oudh."

"4. That after the annexation of Oudh, the British Government also continued the cash Nankar till 1864, in which year instead of cash Nankar grant of revenue free land in village Sholapur and Bahoranpur, in the vicinity of Ajodhiya, was made by the British Government."

"21-B . That under the Muslim Law mosque is a place where prayers are offered publicly as a matter of right and the same neither requires any structure and nor any particular mode of structure is provided for the same. Even the open space where prayers are offered may be a mosque and as such even after the demolition of the mosque building by the miscreants, the land over which the building stood is still a mosque and Muslims are entitled to offer prayers thereon."

3464. Defendants no.3 and 4 (Suit-4), in written statement dated 22/24 August, 1962 have pleaded, in paras 8, 11, 27 & 28, as under:

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"8. The allegations contained in para 8 of the plaint are denied. The answering defendants deny the existence of the alleged Babri Mosque and allegation of its being damaged and of its being rebuilt and re-constructed at any body's cost or through any Thekedar is altogether fictitious. Even if any communal riot be proved to have occurred in Ajodhya in 1934, no mosque whatsoever was damaged in Ajodhya in 1934."

"11. That the contents of para 11 of the plaint are totally false and concocted. The alleged mosque never existed nor does it exist even now and ....The building which the plaintiffs have been wrongly referring as Babri Masque is and has always been the Temple of Janam Bhumi with idols of Hindu Gods installed therein. The plaint allegation regarding placing of idols inside any mosque is a pure falsehood."

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"27. That the temple in question known as Janam Bhumi, the birth place of Lord Rama Chandra situate in Ayodhya belongs and has always belonged to the defendant no. 3 who through its reigning Mahant and Sarbarahkar has ever since been managing it and receiving offerings made there at in form of money, sweats, flowers and fruits and other articles and things."

"28. That the said Asthan of Janam Bhumi is of ancient antiquity and has been existing since before the living memory of man and lies with in the boundaries shown in sketch map appended hereto as Annexure 'A' within which stands the temple building of Janam Bhumi shown therein with the main temple of Janam Bhumi wherein is installed

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the idols of Lord Ram Chandra with Lakshmanji, Hanumanji and Shaligramji."

3465. The additional written statement dated 28/29 November, 1963 of defendants No.3 and 4 (Suit-4), in para 38, state as under :

"38. The building in question was always a temple as shown in the written statement of the answering defendants ..."

3466. The additional written statement dated 12th September, 1995 filed by defendant No.10 (Suit-4) in paras 1, 2, 6, 8, 9 said as under:

"1. That the contents of para 21A of the amended plaint are not admitted. No Masjid or Babri Masjid ever existed at the land in question, and as such no Masjid was demolished on 6.12.1992. It is further false to allege that idols were placed only in the night of 22nd/23rd December, 1949, but the fact is that idols were in existence at the place in question from the time immemorial. It may be mentioned here that Babar was an invader and he had no legal authority to construct any Masjid at the sacred place of Hindus i.e. the birthplace of Lord Shri Ram. Mughal invader Babar through his commander Mir Baqi tried to demolish the old glorious temple of Lord Shri Ram at the place in question, but he could not succeed in his mission. After the riot in 1934, the three domes of the temple were damaged. It is submitted that before the said date, the outlook of the building was of pure Hindu temple, but while carrying out repair works, the Britishers tried to give it the shape of mosque and three domes were constructed

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over Kasauti pillars which were of temple. ... The worship of Lord Shri Ram Lala Virajman is going on since the time immemorial. It is further submitted that with a view to renovate the old temple and to construct a new one, Kar Sewa was performed and the said action cannot be said to be in violation of any order passed by any Court. There was no order in force against Hindus in respect of the temple property/structure. It is submitted that the people of the State had voted for Bhartiya Janata Party in the election as it was committed to fulfil the aspirations of the people to construct a glorious Shri Ram Temple at the place in question. It is true that the Bhartiya Janata Party Government did not resort to firing and barbarian action which was adopted earlier by the Government headed by Sri Mulayam Singh Yadav on 30.10.1990 and 2.11.1990. It is further submitted that the Government cannot suppress the will of the people and it has to honour and fulfil aspirations of the people in the democratic set up. The Bhartiya Janata Party has neither abetted for demolition of the structure, nor did anything in violation of law. The devotees of Lord Shri Ram who present in lacs decided to demolish the old structure. In fact no offence was committed and no law was violated in demolishing the structure of Hindu temple with an intent to construct a big temple. At this place, it may be mentioned here that the Hindus have never been fanatic; they allowed every religion to flourish in Bharatvarsh. There is no evidence in history to show that the Hindus ever demolished any mosque or place of worship of any other religion. The

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history speaks otherwise. Every Mughal invader and ruler from Mohammad-bin-Qasim to Aurangzeb and even thereafter demolished, destroyed and looted the temples of Hindus. The plaintiffs never has/have any concern with the land in question and also they are not entitled for restoration of the building or its possession."

"2. That the contents of para 21-B of the amended plaint are not admitted. The Muslim law cannot be made applicable in Bharatvarsh. Muslim law is also subject to the provisions of Constitution; it is the Constitution which is supreme and not any personal law, much less Muslim law. Muslims cannot use any open piece of land in question for offering prayers and they also cannot encroach upon the land of religious places of Hindus. Under Shastrik law applicable to Hindus, the property once vested in the deity continues to remain of the deity. It is specifically submitted that the entire property in question belongs to Shri Ram Lala Virajman who is in the existence from the time immemorial and is being worshipped by His devotees at the place in question without any interruption till date. According to the own averments of the plaintiffs, the place in dispute has got no significance for them as they can offer prayers at any place, even in open.

It would be appropriate and in consonance with the principles of 'secularism' that the Muslims do not offer prayers within the vicinity of the birthplace of Lord Shri Ram Lala Virajman, which is sacred for Hindus and offer their prayers beyond the area of Panchkoshi Parikrama. That will create brotherhood and peace everywhere. The

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para under reply itself shows that the alleged mosque was unnecessary and meaning less for Muslims too. It is further submitted that over the land in question, no mosque ever existed and the Muslims are not entitled to encroach upon the land in question or offer prayers at that place."

"6. That it is an undisputed fact that Lord Ram, Lord Krishna and Lord Shiv are cultural heritage of India which has been recognized by Constituent Assembly. In the original constitution, on which the members signed, the pictures of our recognized cultural heritage may be found which include the scene from Ramayana (conquest over Lanka and recovery of Sita by Lord Ram). Thus the citizens of this country are entitled to pay homage to their Lord at His birthplace and it being sacred place for Hindus cannot belong to Muslims or any other community or religious group. Therefore, the claim of Muslims over the land in question is unconstitutional and is also against Islamic laws and in the circumstances, the plaintiffs cannot claim themselves to be Muslims entitled to file the suit."

"8. That the entire area including the place in question belongs to deity Lord Shri Ram Lala Virajman and His devotees and worshippers are entitled to offer prayers, Pooja, Arti, Bhog etc. and to pay homage to their Great Lord. They have also right to construct a glorious temple."

"9. That it is remarkable to mention here that under the debris of demolished temple structure, a lot of signs and materials concerning temple have been found. The answering defendant believes that under the orders of this Hon'ble Court, they would be in safe custody. It may be

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mentioned here that a very big Chabutara beneath the present structure exists which also reveals that there existed a glorious and big temple of Lord Shri Ram. There is no evidence, signs or material at all to show that there was any mosque."

3467. Sri Dharam Das, defendant No.13/1 (Suit-4) in his written statement dated 24th December, 1989, (as amended vide Court's order dated 21st August, 1995), has said in paras 1, 2, 3, 4, 11-A, 25, 27 and 28 as under:

"1. That the contents of paragraph 1 of the plaint are denied. It is submitted that Babar was not a fanatic but a devout Muslim who did not believe in destroying Hindu temples, it was Mir Baqi, who was a Shia and commanded Babar's hordes, who demolished the ancient Hindu temple of the time of Maharaja Vikramaditya at Sri Rama Janma Bhumi, and tried to raise a mosque-like structure in its place with its materials. Babar was not an Emperor. He was marauder. What was constructed was not a 'mosque' nor was it constructed for the use of the Muslims in general. It was not known as 'Babari Masjid', but was described as 'Masjid Janmasthan' in British times. Objective evidence of the demolition of the ancient temple and attempted construction of the 'Mosque' at Sri Rama Janma Bhumi existed in the form of the 14 Kasauti pillars, the Sandal wood beam, and other structural features of the building, which are more fully detailed in the additional pleas. Mir Baqi did so on account of the superstitious influence of the so called Faqir named Fazal Abbas Qalandar who had demanded the destruction of the

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ancient temple at Sri Rama Janma Bhumi and the construction of a mosque at that place for him to offer prayers, although the doing so is opposed to the tenets of Islam as disclosed by the Quran and the Fatwas issued by Muslim theologians."

"2. That the contents of paragraph 2 of the plaint are denied. The sketch map annexed to the plaint is wholly wrong, vague and out of all proportion and does not made any sense. There is no grave-yard anywhere at Sri Rama Janma Bhumi, nor was there any such grave-yard as alleged at any time within 12 years of the institution of the suit. There was nothing, neither a mosque nor a grave-yard, which vested or might have vested in 'Almighty' of the Muslims, namely 'ALLAH'. According to the Islamic faith, as explained in the Fatawa-e-Alamgiri: Volume VI, page 214: "It is not permissible to build mosque on unlawfully acquired land. There may be many forms of unlawful acquisition. For instance if some people forcibly take somebody's house (or land) and build a mosque, or even Jama Masjid on it, then Namaz in such a mosque will be against Shariat." The allegation about the loss of many lives in the battle that is said to have ensued between Babar's hordes led by Mir Baqi and the Ruler of Ayodhya must be related to the demolition of the ancient Hindu temple at Sri Rama Janma Bhumi, Ayodhya, by Mir Baqi; and in that context it is not denied: but it is denied that any of the graves of the Muslims who lost their lives in that battle more than 450 years age were situated on, or anywhere near Sri Rama Janm Bhumi. It submitted that a

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Mosque and a grave-yard go ill together according to the tenets of Islam, for the offering of prayers except the funeral prayers on the death of a person buried there in is prohibited in a grave-yard. The Khasra numbers of the alleged 'Mosque' and the alleged 'grave-yard' are all imaginary and fictitious, and are not identifiable at site. Their correctness is denied."

"3. That the contents of paragraph 3 of the plaint are denied. There was no 'Mosque' and there could be no question of any grant for its upkeep or maintenance, or any such purpose. There is no evidence of any expenditure from the alleged grant on the upkeep or maintenance of the building alleged to be the 'Babri Masjid'.

"4. That the contents of paragraph 4 of the plaint are denied. The alleged grant, if any, in cash or by way of revenue free land described as 'Nankar', must have been for personal services rendered or promised to be rendered by the grantee to the British in enslaving India by suppressing the First War of Independence of 1857, miscalled the Sepoy Mutiny by them."

"11-A. That the contents of paragraph 11(a) of the plaint are denied. It is incorrect that the structure raised at Sri Rama Janma Bhumi, during the time of Babar after demolition of the Ancient Hindu Temple which existed there, was built by Babar, or that he was an Emperor, or that it was or could be a 'mosque'. . . The act of demolition of the ancient Hindu Temple and entering upon Sri Rama Janma Bhumi was a wrongful act of trespass, which did not, according to the tenets of Islam, commend itself to

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Allah, for HE does not accept the waqf of any property or thing taken by force or by an illegal act. A waqf cannot, according to Muslim law be made of a thing or property not belonging to the Waqif, as owner. The attempt to raise a mosque-like structure did not succeed; and no 'mosque', deemed to be Waqf according to Muslim Law, ever came into existence. . . . The act of installation of the Deity of BHAGWAN SRI RAMA under the central dome of the building at Sri Rama Janma Bhumi, in the form of the Idol of BHAGWAN SRI RAMA LALA, on Paush Shukla 3 of the Vikram Samvat 2006, by His worshippers, led by, among others, the answering defendants GURU, Baba Abhiram Das, was not a mischievous act, but a perfectly lawful exercise of their right by the Hindus to worship the Deity. . . . . The act of the Hindus on Pausha Shukla 3, of Vikram Samvat 2006, was in furtherance and re-assertion of the pre-existing property rights of the Deity and their own right of worship. And BHAGWAN SRI RAMA did MANIFEST HIMSELF that day at Sri Rama Janma Bhumi. Even the Muslim Havaldar, who kept guard at the Police Outpost, Abdul Barkat by name, experienced the Manifestation, by His Grace. The day is since then celebrated as the Prakatya Diwas, every year, at Ayodhya. At any rate, it is submitted, in the alternative. . ."

"25. It is a fact of history that there was an Ancient Temple of Maharaja Vikramditya's time at Sri Rama Janma Bhumi, and that was demolished by Mir Baqi. The dominant motive of Iconoclasts was the prejudice born of ignorance that Hindu temples were places of Idolatry,

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which was condemned by the Qoran. But as stated more fully, hereinbelow, those who are acquainted with the true knowledge of Qoran also know that a mosque cannot be built in the place of a Hindu temple after forcibly demolishing it, for ALLAH DOES NOT accept Namaz offered at a place taken by force, or in a 'mosque' built on land obtained by Gasba or forcibly without title. It seems, therefore, that the three-domed structure raised at Sri Rama Janma Bhumi after demolishing the Ancient Hindu Temple, was not intended to be used as a 'mosque', and it was never used as 'mosque'. It was an act of putting down Idolatry. The alleged killing of Muslims in the battle that ensued with the Hindus, and who are alleged to have been buried at the place, only shows unmistakeably that the demolition of the Temple led to a fierce struggle by the Hindus. The alleged existence of a grave-yard all round it, also shows that the Muslims could not have gone to offer Namaz in the building, which was abandoned and never used as a 'mosque' by the Muslims."

27. That it is indisputable that there was an ancient Temple of Maharaja Vikramaditya's time at Sri Rama Janma Bhumi, Ayodhya, and that it was partly demolished and an attempt was made, by Mir Baqi, commander of Babar's hordes, to construct a 'mosque' in its place. He was a Shia, and although demolition of a temple for constructing a 'mosque' is prohibited by Islam, he attempted to do so under the superstitious influence of the so called Faqir, named, Fazal Abbas Qalander. He did not, however, succeed, for, as the story goes, whatever was

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constructed during the day fell down during the night, and it was only after making certain material concessions in favour of the Hindus for the continued preservation of the place as a place of Hindu worship, that the construction of the three-domed structure was some-how completed, and the construction of the minarets and certain other essential features of a public 'mosque' was not undertaken.

28. That the following facts would show that the three-domes structure so raised by Mir Baqi was not a 'mosque' at all, namely---

(A) ALLAH does not accept a dedication of property for purposes recognised as pious and charitable, that is, as waqf under the Muslim Law, from a person who is not its rightfull owner, for instance, ALLAH would not accept the dedication of stolen property from a thief. By his act of trespass supported by violence, for erecting a 'mosque' on the site of the ancient Hindu Temple at ASTHAN SRI RAMA BHUMI, after demolishing it by the force of arms, Mir Baqi violated all the true tenets of Islam. It was highly un-Islamic action. ALLAH never forgave him for that, so much so that every time an attempt was made to convert the place into a 'mosque', by misguided iconoclasts like him, they were killed without mercy in the battles that ensued, for violating HIS injunctions, for ALLAH had spoken thus to the Prophet in the Qoran---

'And fight for the religion of GOD against those who fight against you; but transgress not by attacking them first, for GOD loveth not the transgressors. And kill them wherever ye find them; and termed them out of that whereof they

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have dispossessed you; for temptation to idolatory is more grievous than slaughter; yet fight not against them in the holy temple, unless they attack you therein. . . . . ..”

Indeed, the whole history of the rise and fall of the Mughal Empire in India will stand testimony to it. Babar, who did not believe in iconoclasm founded the rule of Mughals in India. Akbar his grandson, by tolerance and secularism expanded it on all sides and converted the Mughal Rule into an Empire. Aurangzeb, the iconoclast fanatic, destroyed the Empire which was at the pinnacle of its glory when he deposed and imprisoned his own father Shahjahan and grabbed the crown.”

(B) Inspite of all that Mir Baqi tried to do with the Temple, the space always continued to best in possession with the Deities of BHAGWAN SRI RAMA VIRAJMAN and the ASTHAN SRI RAMA JANMA BHUMI. THEIR worshippers continued to worship THEM through such symbols as the CHARAN and the SITA RASOI, and the idol of BHAGWAN SRI RAMA LALA VIRAJMAN on the Chabutra, called the Rama Chabutra.

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3468. Defendant No.18 (Suit-4) in written statement dated 19th July, 1969 , in paras 26 and 27 has averred as under:

“26. That the temple in question is known as Janam bhumi. The birth place of Lord Ramchandar situate in Ajodhya had always belonged to the defendant No.3 who through its resigning Mahanth and Sarbnarankar has ever since been managing it and receiving offering made there as in a form of money, sweets, flowers and fruits and other articles and things.”

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"27. That the answering defendant is a Vaishnav sadhoo of this holy city of Ajodhya and belonged to Nirmohi Akhara and is a perfect Bhagat of Lord Rama whose Idol is installed in the said temple of Janambhumi which is ancient and antiquity and has been existing since before the sitting memory of man."

3469. The defendant No.20 (Suit-4)'s written statement dated 5th November, 1989, in paras 7, 27, 32, 37 to 42, 46, 49 and 50, states:

"7. That the contents of paragraph 6-A, 6-B, 6-C, 6-E, 6-F of the plaint are denied. The building in dispute is a temple and not a mosque."

"27. That lord Rama, an incarnation of God, was born many many thousand years ago in Ayodhya and is birth place is known as Ram Janam Bhumi or Ram Janma Sthan. This birth place is worshipped for the last many thousand years by the Hindu public who believe in divine presence at Ram Janma Bhumi in Ayodhya and have a devout faith that by offering worship at that place they are the recipients of the bounties and blessings of God, and this by itself constitutes the feature of a temple in Hindu religion. However, a holy temple stood at this place in ancient times. At a later stage Maharaja Vikramaditya reconstructed and resusisticated Ran Janma Bhumi temple and for Hindus it is a spiritual base of Hindu religion."

"32. That in a very ancient book known as Ayodhya Mahatmya (A Guide for Travellers), the original of which is in Sanskrit but its translation by Ram Narain has been published in the journal of the Asiatic Society of Bengal,

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Vol. 54, Part I, Chapter-I-C-4-1875 Calcutta 1875 states that all the four sons of emperor Dashrath were born in the palaces of their respective mothers. At one place it is described that Sita Rasoi is in Kaushalya Bhavan, the Janmasthal. The researchers have concluded that this ancient book appears to have come into existence during the tenure of Emperor Akbar. ..."

"37. That there was no mosque even till 1855 is established from the following narration in Faizabad Gazetteer 1960 at p. 63, where it is stated as under:-

"In 1855 a serious conflict between Vairagis and the Muslims at the site of Hanumangarhi in Ayodhya, both claiming it to be a place of worship connected with their respective religions. King Wajid Ali Shah is said to have appointed a Committee to investigate this matter which held a public meeting in Gulab Bari. It appears that among those assembled no one testified the existence of the mosque. Therefore, the Committee unanimously decided the issue in favour of the Vairagis. When the report of the Committee reached Lucknow, it caused a sensation among the Muslims. A Council of action was formed of which Maulvi Amir Ali of Amethi (District Lucknow) was elected leader. He was staying at Suhali and succeeded in attracting a large number of followers. On learning this the Vairagis started arrangements for the defence of the place. Wajid Ali Shah then ordered a regiment to guard it. At last on November 7, 1855 Maulvi Amir Ali started for Rudauli with his followers. On refusing to retrace his steps when ordered to do so by Captain Barlow, a fight ensued in

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which he and most of his followers were killed."

The Gazetteer for the above has in the Footnote appended referred to Kawal-ud-din Haider: Qaisar-ut-Tawarikh or Tarikh-i-Avadh Part II pp. 110 & 128 Mirza Zan: Radiqa-i-Shuhda (Lucknow 1772 A.H./1855 AD)"

"38. That in Faizabad Gazetteer of 1905 at page 174 it is said "The desecration of the most sacred spot in the city caused great bitterness between the Hindus and Musalmans. On many occasions the feelings led to bloodshed and in 1855 and open fight occurred, the Musalmans occupying the Janmasthan in force and thence making a desperate assault on the Hanumangarhi. They charged up the steps of the temple but were driven back with considerable loss. The Hindus then made a counter attack and stormed the Janmasthan, at the gate of which seventy five Mussalmans were burried, the spot being known as the Ganj Shahidan or the martyr's resting place. Several of the king's Regiment were present but their orders were not to interfere Shortly afterwards Maulvi Amir Ali of Amethi in Lucknow organized a regular expedition with the object of destroying the Hanumangarhi; but he and his forces were stopped in Barabanki district. It is said that upto this time both Hindus and Musalmans used to worship in the same building but since the mutiny the outer closure has been put up in front of the mosque and the Hindus who are forbidden their access to the inner yard make their offerings on a platform which they have raised in the outer one."

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"39. That in Aine Akbari also no mention of the existence of Baburi Masjid is to be found."

"40. That in Faizabad Gazetteer of 1960 at pages 351 and 352 it is said that "With the departure of the Court, the Hindus were left to themselves and numerous temples and monestries sprang into existence. Naval Rai, the Deputy of Nawab Safdar Jung built a fine house in Ayodhya which still stands on the river front. Probably this rise in importance was due to the creating popularity of the Ramcharitra Manas of Tulsidas and the progress of this place became even more rapid after the annexation of the Avadh by the British. Before the middle of the nineteenth century Ayodhya was regarded as a strong hold of Hinduism....."

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"41. That the following facts also establish that the mosque in dispute has not been built by Babur at all in 1528 nor in a mosque at all:-

The material of the old temple was largely employed in building the mosque and a few if the original columns are still in good preservation. They are of closed grained black stone (Kasauti) bearing various Hindi Bas-reliefs. The outer beam of the main structure being of sandal wood, the height of the columns is 7 to 8 ft., the shape of the base, the middle section and the capital is square, the rest being round or octagonal."

"(7) A mosque must be built in a place of peace and quiet and near a place where there is a sizeable and large number of Muslim population. According to the Tenets of Islam, a mosque cannot be built at place which is

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surrounded on all sides by temples where the sound of music, of Conch shells or Ghanta Ghariyalis must always disturb the peace and quiet of the place."

"42. That the mere displacement in part of the ancient Hindu temple of Ram Janma Bhumi Sthan will not take away the religious sanctity of the temple and the site inasmuch as the Hindu religion believes the presence of the divine spirit at the Ram Janma Bhumi Sthan, worship whereat is conducive to the spiritual well being of the person as the place relates to the birth place of lord Ram and to constitute temple it is not merely the presence of idols as such which is required. The acts of vandalism perpetrated either by Babur or by any other person after him would not take away the religious sanctity of the place or destroy the religious belief of the Hindus attached to that place, nor the place as such could be deemed to be out of possession of the Hindus as such. As Carnegie puts it "Ayodhya which is to the Hindus as Macca is to the Muhammadans, Jerusalem to the Jews." has in the traditions of the Orthodox, a highly mythical origin, being founded for additional security not on earth for that is transitory but on the chariot wheel of the Great Creater Himself which will endure for ever." It is intimately connected with the mass of legend relating to Ram and Suryabanshi (solar) race and was certainly the capital of several reigning dynasties." It is a place of great antiquity. According to Hindu mythology, it represents the forehead of Vishnu and is the chief of the seven cities (Saptapuri) of pilgrimage in India (See 1960 Faizabad Gazetteer at page

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35). The worship at the place has continued since ever throughout the ages. The Hindus were never out of actual and legal possession. Their rights always remained and still exists on the land in dispute."

"46. That the same Gazetteer Faizabad 1960 records a very important fact by Sri William Finch when it mentions as follows at page 50:-

"William Finch, the English merchant who travelled through the Mughal Empire (1608-1611) says that Avadh is "a city of ancient note and seat of a Potan King, now much ruined; the castle built four hundred years ago. Here are also the ruins of (Rani Chand (s)3 Castle and housed which the Indians acknowledge for the great God saying that he took a flesh upon him to see Tamasha of the world. In these ruins remain certain Brahmans who record the names of all such Indians as work themselves in the river running thereby. Which custume, they say, hath continued four lackes of years (which is three hundred ninety four hundred thousand and five hundred years before the world's creation). At the bottom against the word '3' which is indicated in the citation against the word 'Rani Chand' it is explained as follows:-

"Rani Chandra, the Hero of Ramayan. The reference is to the mound known as Ramkot or fort of Ram."

Thus it shows that after Babur during the time of Akbar, Ram Janma Bhumi Sthan was being worshipped by the Hindus which was noticed by the English traveler as well. It may be mentioned here that Audh was equivalent to Ayodhya."

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"49. That Babur is alleged not to have made any endowment or waqf, nor he could. The emperor does not ip so facto became the owner of the whole earth of which he may be ruler. There is no such concept that the ruler becomes the true owner of all the land in his Kingdom ip so facto. The site in dispute admittedly belongs to Hindus for the last thousand years. The ruler might have superior right to levy taxes etc. but could not be deemed to be the actual owner. In these circumstances, the claim of the plaintiffs that Babur by annexation, which is emphatically denied, as there was no annexation as such, became the owner and made a Waqf when there was no battle between Babur and Raja of Ayodhya and no question of annexation of the territories arose. The general religious notions of the Hindu community prior as well as subsequent to Babur has always been that the temple and the Janma Bhumi Sthan, i.e. Ram Janma Bhumi, the birth place of the Creater and lord Ram, are and have always been for the religious benefit of the Hindus, for the benefit of the truth and good as against evils and vices, the worship for which the place was used and stood dedicated was at no relevant time displaced, nor taken away and hence neither the plaintiffs nor the Muslims acquired any rights, title or interest in the disputed property. In fact Babur had no rights to give religious place of Ram Janma Bhumi of Hindus in perpetuity to Muslims or create any rights in favour of Muslims in perpetuity over the religious place of Hindus, which is against all cannons of justice, morality and good conscience. Further a place already dedicated cannot be

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rededicated."

"50. That the birthplace of Ram is only located at one particular spot in Ayodhya. It cannot be shifted to any other place in the world. It is in the same position for Hindus as Macca for Muslims. As Macca cannot be shifted so Ram Janma Bhumi cannot be shifted. On the basis of national policy of assigning the weight of a particular place for a particular religion or a particular community, the belief and religious feelings of Hindus in this regard be given supreme importance as a mosque can be built in any other part."

3470. The additional written statement dated 17th October, 1995 of defendant No.20 (Suit-4) in paras 4, 5 and 7 is as under:

"4. That the disputed land is known as Ran Janma Bhoomi, which is very sacred for the Hindus from time immemorial. There was a temple of Hindu deity 'Ram' on the aforesaid land. When Babar invaded India he partly destroyed the said temple. It is alleged that he had constructed a mosque. In fact the upper structure was constructed and remaining temple was left as it is. In this construction the malba of the temple was used. The pillars of the temple were also used in the construction. On the pillars, the figures of Hindu deity & holy signs were evidence that Hindu Temple was not completely destroyed. Thus the temple structure existed and it is wrong to claim that a new mosque was constructed by Babar and handed over to Muslim community. The Muslims were not offering prayer in the disputed structure as there were engraved figures of Hindu deity on the 14 pillars of the disputed

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structure. It is also wrong to say that the Muslims offer Namaz for last more than 46 years the Muslims never offered Namazs. The land or place does not become mosque. Thus the claim of the plaintiff through amendment that the1.58" disputed land 'Ran Janam Bhom' will become Babari Masjid as the Muslims had offered Namaz in the structure is wrong and incorrect. It is further stated that the nature of Ram Janam Bhomi will never be changed and it shall always remain as Ram Janam Bhomi even if Muslims have ever offered Namaz in it and it will not become mosque under the eye of law. It is further stated that open land is the land of the temple and it can not be a mosque."

"5. That by destruction of the structure, the pillars were also destroyed which were evidence of Hindu Temple. It is not the destruction of Babri Mosque but a Hindu temple. The answering defendant No. 20 is entitled to claim the land in dispute for constructing a temple of Bhagwan Ram on the disputed land."

"7. That the building which was alleged as mosque is demolished and now the land is of the temple of Ram Janam Bhomi, which was demolished is claimed by the plaintiff through the amendment. The plaintiff has no right to claim the land of the temple which is the property of Hindus."

3471. Issues No. 14, 15, 22 and 24 (Suit-5) are as under:

Issue No.14 *"Whether the disputed structure claimed to be Babri Masjid was erected after demolishing Janma Sthan temple at its site."*

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Issue No.15 *"Whether the disputed structure claimed to be Babri Masjid was always used by the Muslims only regularly for offering Namaz ever since its alleged construction in 1528 A.D. to 22nd December, 1949 as alleged by the defendants 4 and 5 ?"*

Issue No.22 *"Whether the premises in question or any part thereof is by tradition,belief and faith the birth place of Lord Rama as alleged in paragraphs 19 and 20 of the plaint? If so, its effect?"*

Issue No.24 *"Whether worship has been done of the alleged plaintiff Deity on the premises in suit since time immemorial as alleged in para 25 of the plaint?"*

3472. The plaint (Suit-5) in paras 2, 19, 23 and 24 with respect to above issues said as under:

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"2. That the place Sri Rama Janma Bhumi is too well known at Ayodhya to need any description for purposes of identification of the subject matter of dispute in this plaint. However, for greater precision, two site plans of the building premises and of the adjacent area known as Sri Rama Janma Bhumi, prepared by Sri Shiv Shankar Lal pleader, in the discharge of his duty as a commissioner appointed by the court of Civil Judge, Faizabad, in Suit no. 2 of 1950 : Sri Gopal Singh Visharad Verses Sri Zahur Ahmad and others : along with his Report dated 25.5.1950, are being annexed to this plaint and made part of is as Annexures I, II and III, respectively."

"19. That it is manifestly established by public records of unimpeachable authority that the premises in dispute is the place where Maryada Purushottam Sri Ram Chandra Ji

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Maharaj was born as the son of Maharaja Dashrath of the solar Dynasty, which according to the tradition and the faith of the devotees of Bhagwan Sri Rama is the place where HE manifested HIMSELF in human form as an incarnation of Bhagwan Vishnu. The place has since ever been called Sri Rama Janm Bhumi by all and sundry through the ages."

"23. That the books of history and public records of unimpeachable authenticity, established indisputably that there was an ancient Temple of Maharaja Vikramaditya's time at Sri Rama Janma Bhumi, Ayodhya. That Temple was destroyed partly and an attempt was made to raise a mosque thereat, by the force of arms, by Mir Baqi, a commander of Baber's hordes. The material used was almost all of it taken from the Temple including its pillars which were wrought out of Kasauti or touch-stone, with figures of Hindu gods and godesses carved on them. There was great resistance by the Hindus and many battles were fought from time to time by them prevent the completion of the mosque. To this day it has no minarets, and no place for storage of water for Vazoo Many lives were lost in these battles. The last such battle occurred in 1855. Sri Rama Janma Bhumi, including the buildings raised during Babar's time by Mir Baqi, was in the possession and control of Hindus at that time. According to the 1928 Edition of the Fyzabad Gazetteer published by the Government Press, U.P. (at page 179)--- " Ayodhya is pre —eminently a city of temples.....It is locally affirmed that at the time of the Musalman conquest there were three

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important Hindu shrines at Ayodhya and little else. These were the Janmshtan temple, the Swargddwar and the Treta-ka-Thakur, and each was successively made the object of attention of different Musalman rulers. The Janmasthan was in Ramkot and marked the birthplace of Rama. In 1528 Babar came to Ayodhya and halted here for a week. He destroyed the ancient temple and on its site built a mosque, still known as Babar's mosque. The material of the old structure were largely employed, and many of the columns are in good preservation, they are of close-grained black stone, called by the natives kasauti, and carved with various devices. Their length is from seven to eight feet, and the shape square at the base, centre and capital, the rest being round or octagonal. The mosque has two inscriptions, one on the outside and the other on the polpit, both are in Persian and bear the date 935 Hijri . . . . . and again according to the same Gazetteer (at Page 180) :- "This desecration of the most sacred spot in the city caused great bitterness led to bloodshed, and in 1855 and open fight occurred, the Musalman occupying the Janmasthan in force and then making a desperate assault on the Hanuman Garhi. They charged up the the steps of the temple, but were driven back with considerable loss. The Hindus then made counter-attack and stormed the Janmasthan, at the gate of which seventy-five Musalmans were buried, the spot being known as the Ganj Shahidan or the martyr's resting place. Several of the King's regiments were present, but their orders were not to interfere. Shortly afterwords Maulvi Amir Ali of Amethi in Lucknow

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organised a regular expedition with the object of destroying the Hanuman Grahi, but he and his forces were stopped in the Bara Banki district. (Gazetteer of Barabanki, P. 168) It is said that upto this time both Hindus and Musalmans used to worship in the same building; but since the mutiny an outer enclosure had been put up in front of the mosque and the Hindus, who are forbidden access to the inner yard, make their offerings on a platform which they have raised in the outer one."

24. That such a structure raised by the force of arms on land belongings to the Plaintiffs Deities, after destroying the ancient Temple situate thereat, with its materials including the Kasauti pillars with figures of Hindu gods carved thereon, could not be mosque and did not become one in spite of the attempts to treat it as a mosque during the British rule after the annexation of Avadh. Some salient points with regard thereto are noted below.

(A) According to the Koran, ALLAH spoke to the Prophet thus--

" And fight for the religion of GOD against those who fight against you; but transgress not by attacking them first, for GOD loveth not the transgressors. And kill them wherever ye find them; and turn them out of that whereof they have dispossessed you; for temptation to idolatry is more grievous than slaughter, yet fight not against them in the holy temple, until they attack you therein; . . . . . "

(B) According to all the Muslim authority and precedents and the decided cases also. ALLAH never accepts a dedication of property which does not belong to the Waqf

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that is, the person who purports to dedicate property to ALLAH for purposes recognised as pious or charitable, as waqf under the Muslim law. By his acts of trespass and violence for raising a mosque on the site of the Temple after destroying it by force, Mir Baqi committed a highly un-Islamic act. His attempts to convert the Temple into a mosque did not, therefore, create a valid dedication of property to ALLAH, whether in fact or in law, and it never became a mosque.

(C) That in spite of all that Mir Baqi tried to do with the Temple, the land always continued to vest in the Plaintiff Deities, and they never surrendered their possession over it. Their possession continued in fact and in law. The Asthan never went out of the possession of the Deity and HIS worshippers. They continued to worship HIM through such symbols as the CHARAN and Sita Rasoi, and the idol of BHAGWAN SRI RAMA LALA VIRAJMAN on the Chabutra, called the Rama Chabutra, within the enclosed courtyard of the building directly in front of the arched opening of its Southern dome. No one could enter the building except after passing through these places if Hindus worship. According to the Muslim religion and law there can be no Idol worship within the courtyard of a mosque and the passage to a mosque must be free and unobstructed and open at all times to the 'Faithful'. It can never be through a Hindu place of worship. There can be no co-sharing of title or possession with ALLAH in the case of a mosque. His possession must be exclusive.

(G) As already stated, there is no arrangements for storage

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of water for Vazoo and there are the Kasauti pillars with the figures of Hindu Gods and Godesses inscribed thereon in the building.

3473. The defendant No.3 (Suit-5) disputed various other aspects, but so far as the claim of the plaintiff that the place in dispute is birth place of Lord Ram Chandra Ji, has not disputed the same and in para 5 of his written statement has said as under:

"5. That the contents of para-2 of the plaint are denied. The birth place of Rama is not in dispute. The whole world knows that his birth place is in Ayodhya. Where the Temple Ram Janma Bhumi stands. It is the temple known as Ram Janma Bhoomi Temple situate in mohalla Ram Kot Ayodhya which is in dispute in the various suit transferred to this Court, which by Muslims is said to be a mosque and which is claimed by the answering defendants as being the Temple of Bagwan Shri Ram under his charge and management, and where of the Nirmohi Akhara is the Shebait of Bhagwan Shri Ram. Annexure I, II and III are denied as incorrect. The plaintiffs should submit a fresh correct and complete plan. Many important places of the temple have not been shown in the said Annexures. They pertain to another suit and have no evident value in the present suit."

3474. Defendant No.4, (Suit-5) U.P. Sunni Central Board of Waqfs, Lucknow, denied the aforesaid paragraphs of the plaint and in paras 13, 14, 19, 23, 24, 33, 35 and 46 of the written statement has said as under:

13. That the contents of para 13 of the plaint are also

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incorrect and hence denied as stated and in reply thereto it is submitted that the defendant no. 20 had no right or title or locus standi to move the said application for the opening of the gate of the mosque for closer Darshan (and the defendant no. 20 mosque not at all a party to any of the aforesaid suits, he had no locus standi to file the Appeal before the District Judge, Faizabad and the order dated 1.2.1986 passed by the District Judge, Faizabad, was patently and manifestly illegal and without jurisdiction) and two writ petition are pending in the Hon'ble High Court against the afore-said order dated 1.2.1986.

It is further submitted that the building in dispute is not the Janam Bhoomi of Sri Ram Chandraji and no idols of Sri Ram Chandraji were ever installed in the said building and as such there arises no question of any right or claim of the defendant no. 20 or of anyone else to perform pooja and Darshan over there. The fact is that the property in suit is an old mosque known as Babri Masjid and the same was constructed during the regime of Emperor Babar.

14. That the contents of para 14 of the plaint are also incorrect and hence denied as stated and in reply thereto it is submitted that the buildings in dispute is not a temple and as such there arises no question of any Pooja and Darshan being allowed to be performed over there. (It is reiterated that the plaintiffs nos. 1 and 2 are not the deities recognised by Hindu Law and as such they have no legal entity)

It is further submitted that since the building in

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question is a mosque there arises no question of any new temple being constructed over the site of the said Babri Mashid (and the plaintiffs or anyone else have no right or locus standi to claim the removal of the old structure of the said mosque.)

It is also relevant to mention here that neither any idols were kept in the said mosque prior to the incident of the night of 22nd- 23rd December, 1949, when the idols were surreptitiously or stealthily kept in the mosque by some mischievous elements and nor the said mosque was ever used for performing Pooja and Darshan etc. prior to 23.12.49. As the plaintiffs nos. 1 and 2 cannot at all be treated as deities, there is no question of unhappiness of the so-called deities and their alleged devotees. It is, however, admitted that there has been unnecessary and unusual delay in the disposal of the suits referred to above and on account of the attachment of the mosque for the last about 39 years the condition of the building has also deteriorated. The Receiver appointed by the Court is not taking proper interest in the maintenance of the building and in spite of the orders of the Court, no repairs of the building has been undertaken for the last several years. The answering defendant is, however, not aware of the alleged mis-appropriation of the money by the staff appointed by the Receiver The answering defendant is further advised to state that the alleged desire of removing the structure of the mosque and of constructing a temple on the site of the said mosque is wholly uncalled for and unwarranted and mischievous and an such attempt will be

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fraught with very dangerous consequences (and instigation of such unholy design and illegal activity also amounts to offence apart fro being contemptuous) and in gross violation of the restraint order passed by the Hon'ble High Court in Writ Petition No. 746 of 1986 : Mohd. Hashim Verses State of U.P. And others.

19. That the contents of para 19 of the Plaint are absolutely false and incorrect and hence denied as stated. Neither there is any public record, much less any record of unimpeachable authority showing that the premises in dispute is the place of birth of Sri Ram Chandraji and nor there is any historical or judicial record to testify the averments of the para under reply. As a matter of fact the religious books as well as the writing of Hindu scholars themselves make it very doubtful as to whether the personality of Sri Ram Chandraji is a historical personality. Similarly there are several versions about the place of birth of Sri Ram Chandraji and it is not at all settled, even amongst the Hindu scholars, as to where and in what period such a religious leader known as Sri Ram Chandraji was born. The booklets being circulated at Ayodhya by the Vishwa Hindu Parishad and other Hindu Organizations and other books of Hindu mythology describe the period of Sri Ram Chandraji as that of Treata Yug meaning thereby that he was born more than 9 lakh years ago. According to Hindu mythology, there have been three Maha Prayleys during this period due to which the entire earth had submerged into water and as such according to Hindu mythology itself no specific place can

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be said to be the birth place of Sri Ram Chandraji. It is also pertinent to mention here that greatest authority of Hindu mythology on Sri Ramchandraji known in the recent history is that of Goswami Tulsidasji. He had written the book on Sri Ramchandraji known as Sri Ram Charitra Manas during the regime of Mughal Emperor Akbar who was the grandson of Mughal Emperor Babar and it is said that Sri Goswami Tulsidasji had composed the said Ram Charitra Manas at a place known as Datun Kund situated at a distance of about one kilometer from Ayodhya in district Faizabad and as such had there been any birth place of Sri Ramchandraji in Ayodhya, Goswami Tulsidasji must have specifically mentioned about the same in his Ram Charitra Manas and as a great devotee of Sri Ramchandraji Goswami Tulsidasji cannot be expected to have skipped over or concealed or kept quiet over such an important fact regarding the life history of Sri Ramchandraji and had there been any iota of truth in the story of Sri Ram Janam Bhoomi temple being there at Ayodhya at the site of the Babri Masjid during the regime of Emperor Babar or prior thereto and had there been any incident of demolition of any such temple and construction of Babri Masjid over the same, Goswami Tulsidasji must have taken up this matter in the Court (Darbar) of Emperor Akbar and Emperor Akbar must have undone the alleged wrong and specially so when the Court of Akbar was full of Advisors, councillors and ministers from Hindu community and his own Queen was also Jodha Bai. It is also relevant to mention here that even the location of

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present Ayodhya does not tally with the location of Ayodhya as given in the Balmiki Ramayan and this also creates doubt about there being any place of birth of Sri Ramchandraji in the present Ayodhya situated in district Faizabad. Ayodhya mentioned in the Balmiki Ramayan is said to be situated at a distance of about 1-1/2 Yojana (equivalent to about 14-1/2 miles) from river Saryu flowing East to West which is presently running quite adjacent to the present Ayodhya from West to East.

It is also absolutely incorrect to say that there is any historical or other evidence to the effect that Sri Ramchandraji had manifested himself in human form at the place where the idols are presently kept in the mosque in question.

It is also absolutely incorrect to say that the place known as Babri Masjid has ever been called as Sri Ram Janam Bhoomi prior to December, 1949.

23. That the contents of para 23 of the Plaint are also incorrect and hence denied as stated and in reply thereto it is submitted that there has never been any temple of Maharaja Vikramaditya 's time at the site of the Babri Masjid and no authentic books of history and no public record of any unimpeachable authenticity can be cited in this respect. It is also incorrect to say that the mosque in question was raised at the site of any temple or after destroying any temple by force and arms. It is also not correct to say that the material used in the construction of the said mosque was almost all of it taken from any temple, and it is also incorrect to say that the pillars of the said

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mosque were wrought out of Kasauti or touchstone with figures of Hindu Gods and Goddesses carved on them. The fact is that such pillars are available at some other places also. It is also absolutely false and baseless to suggest that any resistance was put by the Hindus or any battle was fought from time to time for prevent the construction of the mosque. Regarding the shape of the structure of the mosque it is submitted that there is no requirement of any mosque and existence of minarets or domes is not at all required for any mosque and so also there is no necessity of any place for storage of water for VAZOO for any mosque although in the close vicinity of Babri Mashid a well is very much there for taking out water for the purposes of Vazoo. There are several other mosque in India and even in Faizabad and Lucknow, which do not have minarets and even domes and one such mosque is situated within the premises of Dargah Hazrat Jahangir Samdani in Kashaucha Shareef District Faizabad in which there are no domes or minarets and one such mosque exists in the districts of Lucknow in which there are five five domes but no minarets. It is also incorrect to say that any life was lost in any battle fought in respect of Babri Masjid and no battle in respect thereto has taken place till 1885.

It is also incorrect to say that the building of Babri Masjid raised during Babar's time had ever remained in the possession and control of Hindus. The citation of Faizabad gazetteer given in the para under reply is based on hearsay information and the same cannot be said to be in anyway a reliable piece of evidence.

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It is also relevant to mention here that bitterness had been created between Hindus and Muslims in respect of the mosque situated inside Hanuman Garhi and it was on the report of the demolition of that mosque that some Muslims has tried to take up arms under the command of Maulavi Ameer Ali, but they could not succeed on account of the army of the Nawab as well as British army posted for facing their challenge. The expectation of Maulvi Ameer Ali had, therefore, no concern or connection with the Babri Masjid and the observations to the contrary in the gazetteer of Faizabad and Barabanki are, therefore, totally incorrect and no reliance can be placed upon the same. It is also incorrect to say that at any point of time Hindus and Muslims both used to worship in the same building known as Babri Masjid. Had there been any such practice of worshipping by both the communities inside the Babri Masjid, mention of the same should have been made in the Plaint of he Original Suit No. 61/280 of 1885: Mahant Rahunath Das Verses Secretary of State & another, decided on 14.12.85 by the Sub Judge, Faizabad.

24. That the contents of para 24 of the Plaint are also incorrect and hence denied as stated. At no point of time there ever existed any temple at the site of the Babri Masjid and it is absolutely incorrect to say that the said mosque was constructed, after destroying any ancient temple, with the material of the alleged temple. The mosque in question has always been used as a mosque since its construction during the regime of Emperor Babar.

The contents of the sub-paras (A) to (G) of the para

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under reply are also incorrect and the same are also denied as stated:

(B) That the contents of para 24(B) of the Plaint are also incorrect and hence denied as stated. The land in question undoubtedly belonged to the State when the mosque in question was constructed on behalf of the State and as such it cannot be said that it could not be dedicated for the purposes of the mosque. Emperor Babar was a Sunni Muslim and the ***vacant land on which*** *the Babari Masjid was built lay in his territory and* ***did not belong to anyone*** *and it could very well be used by his officers for the purposes of the mosque and specially so when the Emperor Babar himself consented and gave approval for the construction of the said mosque. It is absolutely incorrect to say that the site in question was the site of any temple and any temple was destroyed by Meer Baqi. Had nay such incident of demolition of any temple taken place, the same must have been reported in any authentic book of Mughal history but no such incident finds mention in any authentic book of history and as such it is mosque in question was constructed was constructed at the site of any temple.*

(C) That the contents of para 24(C) of the Plaint are also absolutely false and in correct and hence denied as stated. No temple had ever existed at the site of the said mosque and there is no question of vesting of the size in any alleged deity. Similarly no Asthan and deity could be said to have ever existed over there and as such there arises no question of the possession of any deity or Asthan on the sire in question. The alleged Ram Chabutra has also not

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remained in existence since the time of Babar but rather the same is the creation of around 1857 period.

It is also incorrect to say that the entry of the mosque could not be possible except after passing through any place of Hindu worship. The concept of the mosque has also been wrongly and incorrectly described in the para under reply.

(D) That the contents of para 24(D) of the Plaint are also incorrect and hence denied as stated. There is no such requirement for the construction of any mosque – that the same should be built in a place of peace and quiet and near to a place where there is a sizeable Muslim population. It is also incorrect to say that the mosque cannot be built in a place which is surrounded by temples, where the sound of music and Konch shell, Ghante Gharyal disturbs the peace and quiet of the place.

33. That the contents of para 33 of the Plaint are also incorrect and hence denied as stated. Neither there is any Presiding Deity of Plaintiff No.1 and nor here are other deities over the premises in question and I is also incorrect to say that the so-called Charan (footsteps) and Sita Rasoee etc. constitute one integral complex and have a single identity. It is also incorrect to say that the claim of the Muslims is confined to the building and the areas enclosed within inner boundary wall. The area being claimed by the Muslims is mentioned very specifically in the Plaint of Regular Suit No. 12 of 1961 and the description of the same can in no way be said to be vague and undefined. It is also incorrect to say that there are no

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graves in the vicinity of the said mosque for the last fifty years. It is not at all admitted that the defendant no. 3 is the present mutvalli of the Babri Masjid since before 1948. At present the said mosque has got a Managing Committee appointed by the answering defendant. It is also incorrect to say that only a mutvalli of the mosque can sue for its possession. The Board is a statutory Board having been created by the U.P. Muslim Waqf Act, 1936 and now continuing under the U.P. Muslim Waqf Act, 1960. The Waqf Act of 1960 was also passed to provide for better governance and administration and and supervision of the waqfs in Uttar Pradesh, and under section 19 of the said waqf Act, 1960 the Board has got the power of general supervision of all the waqfs and it is the duty of the Board to do all things reasonable or necessary to ensure that the waqfs under its superintendence are properly maintained, controlled and administered and under section 19(2)(4), the Board has also been conferred with the power to institute and defend suit and proceedings in any Court of Law relating to all waqfs. (It is, therefore, absolutely incorrect t say that the Board or other Muslims associated with the management and administration of the mosque in question count not file the suit or possession registered as Regular Suit. No. 12 of 1985.

35. That the contents of para 35 of the Plaint are quite vague and ambiguous and also incorrect and hence denied as stated. There can be no dispute to the averments that all human beings including the Muslims and Hindus are the creation of once and the same God and the plaintiffs of

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Regular Suit No. 12 of 1961 as well as other Muslims also believe in the policy of living in amity and goodwill with members of all communities and religious denomination. That does not mean that the gesture of goodwill and amity should be shown to such persons who are bent upon demolishing the mosque. It is also incorrect to say that the site in question has got anything to do with the place of birth of Sri Ramchandraji and as such the same has got no significance of alleged Asthan Sri Ramchandra Janam Bhoomi. The entire propaganda and publicity being carried out by the Vishwa Hindu Parishad and Ram Janam Bhoomi Yagya Samiti and their associates and allied bodies in this respect is nothing but sheer concoction and this is being done with the vested interests and political ambitions and as such it is not at all difficult for the plaintiffs of Regular Suit No. 12 of 1961 to abandon their claim over the mosque in question and to construct a magnificent and grand temple of Sri Ramchandraji at any other free site which may not be the property of any other person or community. It is also incorrect to say that under the tenets of Muslims law the mosque can be shifted under certain circumstances.

46. That even the reports of the Archaeological experts have been to the effect that there appear to be no symptoms of human habitation in the present Ayodhya of more than 700 B.C. And also there appear to be no symptoms of any Fort or Palace or Old temple being there at the site of the Babri Masjid."

3475. Defendant No.5 (Suit-5) has also disputed the entire

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claim of plaintiff (Suit 5), vide written statement dated 14/21 August, 1989, and in paras 2, 15, 23, 24, 34, 40, 47, 50, 51, 52, 53, 55, 67 and 69 has said :

"2. That the contents of para 2 of the plaints are denied. The area and the places indicated in Annexure Nos. 1, 2 and 3 of the plaint are neither Ram Janam Bhoomi nor Ram Janam Asthan. However, it is evident that there exists a mosque known as Babri Masjid, the existence of this mosque is established by record, Historic, Judicial and Revenue. The filing of the suit No.2 of 1950 are not denied. However, the suit is wholly misconceived. The plaintiff of suit. no. 2of 1950 had no legal right and the suit is misconceived.

15. That the contents of para 15 of the plaint are denied. There is no question of construction of any temple over the site in question. Answering defendant and his co-religionist have a right to resist any such attempt. There is no question of any management of the so called temple. The premises is a mosque and Muslims have a right to offer namaz in it and U.P. Sunni Central Board of Waqf has a right to supervise and manage it. Neither Jagadguru has any right or locus in the matter and nor he can execute any deed legally in respect of the premises in question. The answering defendant is not aware of the religious sect of the so called vairagies of Ayodhya.

23. That the contents of para 23 of the plaint are denied the narration of history in the plaint is false and baseless no authentic book of history has been referred in the plaint. The premises has always been a mosque since its

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construction in sixteenth century, it has always been used by the Muslim for offering namaz and for no other purpose. Remark in the gazette is no authentic record of history. It is only a generalised observation, the Gazette also does not make any reference of any authentic history or record. The pillars are not of Kasauti. However, it is not relevant as the fact remains that it is a mosque and has always been used as a mosque and it is wholly incorrect that anybody else other than Muslims worshipped in the building which is called Babri Masjid. The narration of history by the plaintiff is baseless and false. There is no evidence of the demolition of any temple for the construction of this mosque.

24. That the contents of para 24 of the plaint are vehemently denied, the quotation from Holy Quran has been incorrectly quoted and the same is out of context. There is no evidence of demolition of any temple. The contents of sub-paras are also denied, on the bases of judicial records and other evidence, it is clear that the premises in question has always been a mosque in which Muslim had been offering regular namaz upto 22nd December, 1949. No specific shape or specific design has been prescribed for the mosque in Islam. The shapes and architectural design of the mosque vary in different parts of the world and even in India. The Ganj-e-Shahidaan also belong to Muslims and vests in God Almighty. The plaintiff has misrepresented about the contents of suit No. 12 of 1961. The claim in the contents are clear in the plaint of suit No. 12 of 1961, there is also a pucca well outside the

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mosque for 'Vazoo'.

34. That the contents of para 34 of the plaint are vehemently denied. The premises has always been a mosque and it has been used as such and no one remove the structure.

40. ***That according to the inscription in the mosque, the said Babri Masjid was constructed by Mir Baqui, one of the commanders of the Babar in 1528*** *and since then it has been in use as mosque and the Muslims always regularly offered namaz in it till the attachment.*

47. That Babri Masjid (building in question) has always been a mosque and used as such, and only Muslims have right to offer Namaz in it and U.P. Sunni Central Board of Waqf has a right of supervision and control.

50. That ***Lord Rama*** *in whose name the controversy in question has been created, according to authoritative texts of the historians and other scholar of Hindu Religion* ***is mere an epic*** *and* ***imaginary figure and was never in experience****.* ***In India there have been authoritative pronouncements by the various historians and also by the seminars and symposium that Lord Rama never existed. It is mere an epic,*** *besides above no period and place could be fixed till this date.* ***After long research Holy Barahmins have come to conclusion that it is all mere an epic and legend.***

51. That ***as per Balmiki's Ramayan which is supposed to be the only authoritative source of Lord Rama, the city of Ayodhya where the property in question situates is not the place described in that book.*** *The averment that at the*

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site of of Babri Masjid there was some temple which was demolished at the behest of Babar is absolutely incorrect and false. Shri Tulsidas who by his book Ram Charit Manas has elevated the status of Lord Rama from Mariyada Prushottam to Bhagwan has not written about the demolition of any such temple in his book which was written after construction of Babri Masjid, at the Datoon Kund in Ayodhya itself which situates at a short distance from the Babri Masjid. Before Tulsi's Ram Charit Manas, there were temples of other gods and goddess and as such the contention regarding demolition of Ram Mandir is absolutely baseless and has been designed-ly thatched up to creates communal disharmony and hatred between the two communities.

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52. That ***the recent scientist investigation a, c-14 test which is radio carbon dating method has revealed the stones used in the building in question are less than 500 years in age*** *and this falsifies the claim that the temple was demolished and by the same material the mosque was built, however, it is clarified that all such averments made in the plaint are absolutely of no consequence in Courts of Law.*

53. That property in question is continuously recorded as graveyard and mosque in the revenue records from prior to first settlement and the said entry coming unchallenged and there being three Settlement also now the entries in revenue records are final and can not be questioned.

55. That initially there was provided a cash grant from the period of King Emperor and after British Rule in lieu of

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the said cash grant Zamindari of Villag Shanavan, Bhoranpur and Sholipur was given for the Babri Masjid and the masjid in question was inter alia maintained by the income of said Zamindari property and the salary of Imam and Moazin etc. was paid and other expenses were also made.

67. That there has been no concern of Lord Rama, Janki or of any person having faith in them with the land in question over which exists the Babri Masjid and adjoining area of grave yard. ***Admittedly the Mosque being in existence since 1528*** *and the deads having been burried the same could not be subject matter of any other type of Puja in Practice and ASTHA if any if the same could survive from 1528 onwards till this date without any access to the place in no circumstances that Astha could not give a right for demolition of the Mosque and the place where the deads or burried could not be purified to be used for any other purposes.*

69. That just the mosque was built and the deads were burried the site became waqf property vested in Almighty God and it will remain so vested eternally and the property once vested in the God can not be a mosque to the depth of the earth and even above the same and can not be removed or shifted to any other place at all. No person on the earth can accord a permission for its removal or shifting."

3476. Defendants No.11 and 17 (Suit-5) in written statement dated 14th August, 1989 have supported the plaintiff's suit.

3477. The defendant No.23 (Suit-5) vide written statement

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dated 18th September, 1989 has contested the entire suit and in paras 51 and 57 has said:

''51. यह कि बाबरी मस्जिद वक्फ़ सम्पत्ति है और सुन्नी व वक्फ़ बोर्ड उत्तर प्रदेष लखनऊ में बतौर वक्फ दर्ज है और इस सिलसिले में अदालत सिविल जज फैजाबाद में मुक़दमा चल कर फैसला हो चुका है और उस रजिस्ट्रेषन से हर शख्स पाबन्द है।''

"51. That the Babri Mosque is a waqf property and it is recorded as waqf with the Sunni & Waqf Board, Uttar Pradesh at Lucknow, and judgement in this regard had come after proceedings at Civil Judgeship, Faizabad and everybody is bound by that registration."

(E.T.C.)

''57. यह कि श्री राम चन्द्र जी की जो भी शख़सियततहॉ उनके नाम का जन्म स्थान मन्दिर अयोध्या में विवादित स्थल के उत्तर और सड़क के उत्तर पहले से काएम चला आ रहा है और उस के महन्त व पुजारी सब लोग हैं। वादी नं0 3 का उससे कोई ताअल्लुक नहीं है।''

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"57. That the locus of Sri Ram Chandra's identity, whatsoever, Ayodhya situated Janmsthan Mandir named after him, has already been existing to the north of the disputed site and also of the road, and all the people are its Mahantas and priests. Plaintiff no. 3 has no relation to it."(E.T.C.)

3478. Defendant No.24 (Suit-5) while contesting the suit, in para 2, 11, 12, 14, 15, 16, 26 and 31 has said :

"2. That as regards the contents of para 2 thereof the answering defendant has ***no knowledge of Sri Rama Janam Bhoomi, by which is meant the exact spot of birth of Lord Rama.*** *The site plans referred are alleged to be the part of court record, which can be verified by the Court, and are not admitted to be correct. Today, there are*

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*atleast **three spots in Ayodhya** claimed as the exact spots where Lord Rama was born, viz.:*

(a) The Spot being presently claimed by the plaintiff is being made known as Ram Janam Bhoomi only since 22.12.1949.

(b) The Ram Chabutra, in the court-yard outside the Babri Masjid structure, is being known as Ram Janam Bhoomi only since time immemorial.

*The **last 2 mentioned spots** have not been abandoned by the believing devotees in Ayodhya.*

11. The claim in paragraph 19 of the suit paint that " the premises in dispute is the palce where Maryada Purushottam Sri Ram Chandraji Maharaj was born" is denied and contested. This defendant submits that only since 22 December, 1949, about 40 years ago, such a belief has come into existence. If nay documentary or recorded evidence is produced by the plaintiff no.3 establishing beyond doubt that the present belief existed before 22.12.1949 also, this defendant will surrender all his opposition.

12. In this connection, this defendant further submits that when the Babri Masjid was being constructed in 1528 A.D. no such belief existed in Ayodhya, or elsewhere that the place where the mosque was being built was Ram Janam Bhoomi. Goswami Sant Tulsidas, The great biographer of Lord Ram was alive then, and wrote his epic biography "Ram Charit Manas" about the year 1558 A.D., but did not complaint that Babri Masjid was built on Ram Janam Asthan. The book Ram Charit Manas is a pulic document.

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In an earlier period, Valmiki wrote perhaps the first Ramayana. He also did not identify the presently contentious spot as Ram Janam Asthan.

In none of the several Ramayans is several languages, the said contentious spot has been mentioned as the place of birth of Lord Ram.

14. Religious sentiments of Plaintiff No. 3 contained in para 22 of the Suit Plaint are respected but the following passage it it is strongly contested :

"The place is deity. It as existed in this immovable form through the ages, and has ever been a juridical person. . . . . Thus Asthan Sri Rama Janam Bhumi is an indestructible and immovable Deity who has continued to exist throughout the ages."

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Fact of the whole matter is that ***idea of Rama Janmsthan was first floated by British East India Company's agents in 1855 in order to destabilise the regime of this Defendant's forebear, the King of he realm Wajid Ali Shah.*** *At that time a spot outside the structure of the Babri Masjid, in a corner of the court-yard was claimed as Ram Janam Asthan. But the King settled the dispute by partitioning out the Plot 17 ft. x 12 ft. naming it as Ram Chabutra and by giving it to the Hindus to do "paaths" of Ramayana, peace was then restored.*

Again, for the first time on 22.12.1949 the Ram Janam Asthan claim was shifted from Ram Chabutra to right inside the mosque just beneath the main large dome of the Babri Masjid.

Earlier than 1855, the undisputed Ram Janm Asthan

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was the old Janam Asthan Sita Rasoi Mandir across the street on a mound facing the Babri Masjid.

All the above mentioned three Ram Janam Asthans are now believed to be Lord Rama's probable places of birth, viz. (i) inside the Babri Masjid beneath the main dome since 1949, (ii) at Ram Chabutra in the court-yard of the Babri Masjid since 1855, (iii) at the old Ram Janam Asthan Mandir where Sita Rasoi is also situated, and whose present Mahant is Harihar Das, aged over 100 years.

15. That the statements made in the first two sentences of paragraph no. 23 of the Plaint are the most important, and all Muslims of India are wiling to make that as the issue and settle the dispute one way or other at this. Paragraph No. 23 opens thus :

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"That the books of history and public records of unimpeachable authenticity establish indisputably that there was an ancient temple of Maharaja Vikramaditya's time of Sri Rama Janam Bhumi Ayodhya. That Temple was destroyed partly and an attempt was made to raise a mosque thereat by the force of arms, by Mir Baqia commander of Babar's hordes."

The plaintiff No. 3 – Sri Deoko Nandan Agarwal, in a booklet named "Sri Rama Janam Bhumi" published by "Sri Ram Janam Mukti Yagna Samiti", 58 Rajendra Nagar, Lucknow, has written at page 2 as follows :-

"That there was an ancient Temple of Maharaja Vikramaditya's time at Sri Rama Janam Bhumi is a fact of history, which is indisputable, although there is some

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controversy as to which of the Vikramaditya resurrected the place and built the magnificent Temple."

In paragraph no. 23 of the Suit Plaint there is a reference to 1928 Edition of the Fyzabad Gazetteer published by the then British Government in Uttar Pradesh, wherein at page 179 there are stories of Moghul Emperor Babar coming to Ayodhya, halting there for a week, destroying the ancient temple at Janamsthan, and building the Babri mosque on its site the materials of the old destroyed Mandir. But it is the known fact of the history that Emperor Babar never came to Ayodhyan. And that the Babri mosque was built by Mir Baqi and not by Babar has been admitted in the Suit Plaint itself. Further-more, Babar in his Babar-nama, while recording his daily diary, has made no mention of visiting Ayodhya, destroying Mandir or building Mosque there, although in other pages of Babarnama many things adverse are also mentioned.

But the Fyzabad Gazetteer of 1877, this Defendant submits, does not contain any mention of destruction of any Mandir and building of Babri or any Masjid on the Mandir land. Of the two Gazetteers, the one contemporary ad more near to the date concerned will have to be relied on.

District Gazetteer of the British Government, as is well known, were no works of history. They only reflected the policy of the alien Government to divide the cast population of India by creating conflicts such as the present one, and to perpetuate the minority rule of the foreign imperialist power. This defendant submits that all the aforesaid and other conflicting facts need to be

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investigated by this Hon'ble Court or by a Commission of Experts of history and archaeology to arrive at the truth.

However, after all said and done, it is most respectfully submitted that if only this claim is proved that a Mandir was demolished and Babri Masjid was built on the Mandir land, this defendant and all other Muslims will gladly demolish and shift the mosque, and return the land for building thereon.

But if this is not a fact, the Babri Masjid must in all fairness be returned to Muslims.

In this connection, the following quotation of Swami Swaroopananda Saraswati, the Shaneracharya of Dwarka Peeth, and published in the national news-paper on 14th May, 1987, is being re-produced below from Qaomi Awaj – Urdu Daily of Lucknow :

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CONDITION FOR RETURN OF BABRI MASJID TO MUSLIMS:

Pune (Maharashtra) 13 May -

Jagadguru Shanakra-charya Swaroopananda Saraswati has proposed that to resolve the Ram Janam Bhumi Babri Masjid table an Authority should be constituted.

Addressing a gathering of the All India Virodhman Asthan Kwasi Jain Shraman Sangh here yesterday he said that if it is proved that Moghul Emperor Babar got the mosque constructed after demolishing Mandir, then surely the Hindus should get the Mandir. But if it is found that Hindu Administrators made the Mandir after destroying the mosque, then the place will have to be made over to

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Muslims."

In this connection, the celebrates Muslim historian and scholar Maulana Syed Sababuddin Abdur Rahman (since expired) in his welknown treatise "BABRI MASJID" wrote at page 5 at the very beginning of his preface thus : (translation from Urdu)

"On behalf of Muslims I also have right to say that if it is proved that Babri Masjid has been built after demolishin Ram Janam Bhoomi Mandir on its place, then such a mosque if built on such an usrped land deserves to be destroyed. No theologean or Aalim can give Fatwa to hold Namaz in it."

In the monumental theological work Fatwa-e-Alamgiri, Volume 6 Page 214, the following is the ruling : (translation).

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"It is not permissible to built mosque on unlawfully acquired land. There may be many forms of unlawful acquisition. For instance, if some people forcibly take somebody's house (or land) and build a mosque or even Jama Masjid on it, then Namaz in such a mosque will be against Shariat."

Other assertions made in paragraph 23 of the Plaint, not specifically dealt with above, are contested and denied. 16. Parts of the contents of paragraph 24 of the Suit Plaint have been answered in para 15 above. This defendant submits that Plaintiff No. 3 is not competent to interpret Koran, Islamic Shariat, and Islamic custom and practices which he has tried to do in sub-paragraphs A, B, C, D, E, F and G of paragraph 24. The interpretations given are

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strongly contested. The contentions in the Suit Plaint in this regard are wholly irrelevant with the points at issue. This defendant states :

(A) That Emperor Babar or Mir Baqi did not destroy or demolish any Mandir.

(B) Emperor Babar or his commander Mir Baqi did not construct the mosque on the land of on the ruins of any Mandir. Mir Baqi built the Babri Masjid on vacant land.

(C) Sanctity of Babri Mosque was not affected by the creation of Ram Chabutra on the courtyard, or by the mosque being surrounded by Mandirs.

(D) There is no tenet of Islam against existence of a mosque in a noisy place, or in a non-Muslim locality.

(E) Minaret is no essential part of a mosque/

(F) Non-existence of a water reservoir in it does not make a mosque as no mosque.

Finally speaking, if it is not a mosque how it is claimed that mosque was built after destroying the Mandir.

26. That as regards the contents of paragraph 34 and 35 of the Suit Plaint, the answering defendant being a representative of the Shia Muslims of India is deadly against any form of sacrilegious actions. He is of the firm view that no place of worship of any religion should be constructed on the ruins of the destroyed one. The answering defendant firmly believes that the Babri Masjid was certainly not built after destroying the Vikramaditya Mandir or any temple. Yet, at the same time if it is unequivocally proved in this Hon'ble Court in the light of historical archaeological and expert scientific evidence

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that the Babri masjid was really built after demolishing any Mandir land, only then this defendant will withdraw his opposition.

As a further concession to the Plaintiff No. 3 and to the Hindu community of India whose religious sentiments the said Plaintiff and his party are trying to wrongly arouse since last 3 years, this Defendant is prepared to withdraw his opposition also if it is unequivocally proved, in this Hon'ble Court that the belief, of Ram Janam Asthan being at the presently claimed spot inside the Babri Masjid, existed from before the Babri Masjid was built . And that the Babri Masjid was knowingly built n Ram Janam Asthan spot.

31. Once it is admitted that a mosque was built hundreds of years ago and was used as such it became Waqf by user, irrespective of the fact whether or not legal formalities for creating a Waqf were observed."

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3479. Defendant No.25 (Suit-5) in the written statement dated 16/18 September, 1989, in paras 2, 15, 23, 26, 33 and 34 has said :

"2. That the contents of para 2 of the plaint are denied. The area and the places indicated in Annexure No. 1, 2 & 3 of the plaint are neither Ram Janam Bhoomi nor Ram Janam Asthan. However, it is evident that there exists a Mosque known as Babri Masjid, the existence of this mosque is established by record, Historic, Judicial and Revenue. The filing of the Suit no. 2 of 1950 are not denied.

15. That the contents of para 15 of the plaint are denied. There is no question of construction of any temple over the

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site in question. Answering defendant and his co-religionists have a right to resist any such attempts. The premises is a mosque and Muslims have a right to offer namaz in it. Neither Jagadguru has any right or locus in the matter and nor he can execute any deed legally in respect of the premises in question. The answering defendant is not aware of the religious sect of the so called vairagies of Ayodhya.

23. That the contents of para 23 of the plaint are denied. The narration of history in the plaint is false and baseless. No authentic book of history has been referred in the plaint. The premises has always been a mosque since its construction in sixteenth century, it has always been used by the Muslims for offering namaz and for no other purpose. Remark in the gazette is not an authentic record of history. It is only generalised observation, the Gazette also does not make any reference of nay authentic history or record. The pillars are not Kasauti. However, it is not relevant as the fact remains that it is a mosque, and has always been used as mosque and it is wholly incorrect that anybody else other that Muslims worshipped in the building which is called Babri Mashid. The narration of history by the plaintiff is baseless and false. There is no evidence of the demolition of any temple for construction of this mosque.

26. That the contents of para 26 of the plaint are vehemently denied. The building known as Babri Masjid has always been in use as a mosque and the Muslims have offered namaz in it since its construction till 22nd

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December, 1949. Some of those who offered namaz in it are still available. Some part of the mosque was damaged in the communal riot of 1934 and the same was repaired soon thereafter. The threat contained it the para under reply is most unwarranted. There is no dispute between Shias and Sunnis over the mosque in question. Mosque is vested in almighty and every Muslim (Shia and Sunni) have the right to offer Namaz in nay Masjid. The averment in the para under reply are wholly incorrect and false.

33. That the contents of para 33 of the plaint are denied. It may be pointed out that the entire complex belongs to Waqf Babri Masjid, the existence of which cannot be denied.

34. That the contents of para 34 of the plaint are vehemently denied. The premises has always been a mosque and it has been used as such and no one can remove the structure."

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3480. Voluminous documentary and oral evidence has been adduced, besides referring a plethora of books on the subject of history, religion, culture, archaeology, architecture, gazetteer etc. to prove rival submissions. The learned counsels for the parties however have not specified and identified evidence separately with reference to the above issues. In general they have advanced their submissions referring to the evidence (documentary and oral, as well as the concerned books) the details whereof shall be mentioned later on.

3481. Sri Zafaryab Jilani, Mohd. Siddiqui and Syed Anwar Ahmad have appeared and argued for plaintiffs (Suit 4), Sunni Waqf Board and other Muslim defendants in other suits while Sri Ravi Shankar Prasad, Sri P.R. Ganpathy Iyer and K.N.Bhatt

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(Sr. Advocates), Sri P.N. Mishra, R.L.Verma, Madan Mohan Pandey, Rakesh Pandey, Hari Shankar Jain, Ranjana Agnihotri, A.K.Pandey, Ved Prakash, Tarun Verma and D.P.Gupta Advocates have advanced their submissions for various Hindu Parties.

3482. Sri Zafaryab Jilani, Advocate, counsel for the plaintiffs (Suit-4), contended that the published material, which may throw light on the above issues, may be categorized in five:

(i) Books of History;

(ii) Books containing Travellers account;

(iii) Gazetteers (published in pre-independence and post-independence era);

(iv) The religious books ; &

(v) Archaeology, Iconography, Architecture and others.

3483. In the first category, the books of history, he referred to the following:

(i) “Babar-Nama” by John Leyden and Erskin (Ex. 48, Suit-5 -Paper No. 107C-1/64-68)

(ii) “Babur-Nama (Memoirs of Babur)” by A.S. Beveridge (Ex. 16, Suit-5 -Paper No. 107C1/71-74)

(iii) “Memoirs of Babur” by Lt. Col.F.G. Talbot (Ex. 82, Suit-4 -Paper No. 218 C1/ 1- 20)

(iv) “Mughal Kaleen Bharat-'Babar'1526-1530 A.D.” by Syed Athar Abbas Rizvi (Ex. 85, Suit-4-Paper No. 224 C1/1–62)

(v) “Ain-e-Akbari” by Abul Fazal Allami translated in English by Col. H.S. Jarret in 1884 A.D., corrected and further annoted by Sri Jadunath Sarkar first published in 1927 A.D. (Ex. D1, Suit-5-Paper No. 320C1/1-6-; Paper

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No. 321 C1/3)

(vi) “Ayodhya ka Itihas” by Awadhwasi Lala Sitaram published in 1932 A.D. (Ex-50, Suit-5 -Paper No. 107C1/122-129)

(vii) “Sri Ram Janam Bhumi Aitihasik Avam Puratativik Sakshya” by T.P. Verma and S.P.Gupta (Ex. 3, Suit-5-Paper No. 289C1/1)

(viii) “Itihas Me Ramjanambhumi” by Rajendra Singh (published in March, 1991) (Ex. B4, Suit-4-Paper No. 206C1)

(ix) “Ramjanambhumi Ka Rakt Ranjit Itihas” by Pt. Radhey Shyam

(x) “Babur Nama” by Yugjeet Naval Puri published in 1974 (Hindi translation of “Memoirs of Babar” written in english by F.G.Talbot)

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(xi) “Ayodhya” by Han's Baker published in 1986.

(xii) “Shri Ramjanambhumi Pramanik Itihas” by Radhey Shyam Shukla (Ex. 24, Suit-5-Paper No. 107C1/154)

(xiii) “Fasana-i-Ibrat” by Rajab Ali Beg Surur

(xiv) “Amir Ali Shaheed Aur Marka-I-Hanuman Garhi” by Shah Mohd. Azmat Ali Alvi Kakorvi

(xv) “Zia-I-Akhtar: by Hazi Mohd. Hasan (1878)

(xvi) “Sri Ramjanambhumi Ka Rakt Ranjit Itihas” by Sri Ram Raksha Tripathi “Nirbheek” (Paper No. 110C1/52-54)

(xvii) “Sri Ramjanambhumi Ka Rakt Ranjit Itihas” by Ram Gopal Pandey “Sharad” (Paper No. 44 C1/1-8)

(xviii) “Society and Culture in Northern India in the 12th Century” by B.N.S. Yadav (Paper No. 300 C1/2)

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(xix) “The History of India As told by its own Historian” Elliot & Dowson (Ex. 87, Suit-4 -Paper No. 242 C1/1-5; Ex. 89, Suit-4 -Paper No. 246C1/1-7)

(xx) Sharki Architecture (Paper No. 301C1/1)

(xxi) “Mughal Empire in India” by Prof. S.R. Sharma (first published in 1934)

(xxii) “Destruction and Conservation of Cultural Property” (2001) (Paper No. 308C1/1-9)

(xxiii) “The Religious Policy of Mughals” (Paper No. 284 C1/1)

(xxiv) “Historians Report to the Indian Nation” by R.S. Sharma, M. Athar Ali, Suraj Bhan and D.N. Jha (Paper No. 288C1/1; Paper No. 190C2/1-20; Ex. 62, Suit-4-Paper No. 190C2/1-20)

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(xxv) “India Distorted - A Study of British Historians on India” Vol. III by S. C. Mittal (Ex. E5, Suit-5-Paper No. 323 C1/1-25)

(xxvi) “The Early History of India” by Vincent A. Smith (Ex. E6, Suit-5-Paper No. 324C1/1-28)

(xxvii) “Journey through the Kingdom of Oudh in 1849-1850” (Published in 1858) (Paper No. 311 C1/1-10)

(xxviii) “A Clash of Cultures; Oudh, the British and the Mughals” by Michel H. Fisher (Ex. 25, Suit-5-Paper No. 107 C1/155-164)

(xxix) “British Paramountcy and Indian Renaissance” - Part II by Dr. R.C. Majoomdar and others (Ex. D3, Suit-5 -Paper No. 313C1/1-14)

(xxx) “Encyclopedia Britannica” 1976 Edition (Paper No. 107C1/120)

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(xxxi) “Hindu World-Encyclopedic Survey of Hinduism” by Benjamin Walker (Ex. 4, Suit-5 -Paper No. 310C1/7/1-)

(xxxii) “Babri Masjid Kee Wajyabee Ke Liye” by Mohd. Hashim Ansari (Ex. 37, Suit-5-Paper No. 255C1/2/1-20)

(xxxiii) “Ram Janam Bhumi Ya Babri Masjid-Satya Kya Hai” published by Maktaba Islami Fyzabad (Ex. 41, Suit-5-Paper No. 255C1/12)

(xxxiv) “Ramayana” by Sri Raj Gopala Charya (Paper No. 110C1/60-67)

3484. In the category of “Travellers account” he cited “Early Travels in India” edited by “William Foster” (Paper No. 107C1/95-Ex. 19, Suit-5) (The chapter relating to India's travel in 17th Century in 1611 AD by William Finch).

3485. In the category of “Gazetteers”, Sri Jilani refers to the following :

(i) “The History, Antiquities, Topography and Statistics of Eastern India” by Robort Montgomry Martin (Vol-II) (first published in 1838 AD) (Ex. 20, Suit-5-Paper No. 107 C1/109-110)

(ii) “A Gazetteer of Territories under the Government of East- India Company and of the native States on the Continent of India” (Thornton's Gazetteer “1858 A.D.”) Pages No.739 and 740 of the aforesaid Gazetteer have been filed by plaintiffs (Suit-5) as Papers No.107C1/10-11 i.e. Exhibit No.5 (Suit -5) (Register Volume 20 Page 21-23).

(iii) “Archaeological Survey of India- Four Reports made during the years 1862-63-64-65” by Alexander

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Cunningham, Director General of the Archaeological Survey of India (First Published in 1871) (Paper No. 107C1/12-16A i.e. Ex. 6, Suit 5; Paper No. 258C1/1)

(iv) "A Historical Sketch of Tahsil Fyzabad, Zillah Fyzabad" by P.Carenegy (Paper No.107C1-23 i.e. Ex. 49, Suit-5).

(v) Gazetteers of Provinces of Audh by W.C.Benett (Published in 1877 A.D.) (Ex. 7, Suit-5-Paper No. 107C1/25-26)

(vi) "Report on the Settlement of Land Revenue of the Faizabad District" by A.F. Millett (1880 A.D.) (Ex. 8, Suit-5-Paper No. 107C1/27-30A)

(vii) "The Monumental Antiquities and Inscriptions in the north western provinces and Oudh" by A. Fuhror (Archaeological Survey of North Western Provinces of Oudh) (Published in 1891 A.D.)(Ex. 9, Suit-5-Paper No. 107C1/33)

(viii) "Imperial Gazetteer of India (Provisional Series) (United Provinces of Agra and Oudh)" -Vol-II (published in 1908 A.D.) (Ex. 10, Suit-5-Paper No. 107C1/37-39)

(ix) "Fyzabad Gazetteer being Vol.-XLIII of the District Gazetteers of the United Provinces of Agra and Oudh" by H.R. Nevill (published in 1905 A.D.) (Ex. 11, Suit-5-Paper No. 107C1/42-48)

(x) "Gazetteers of Faizabad" by H.R. Navill (published in 1928 A.D.) (Ex. 12, Suit-5-Paper No. 107C1/49-53)

(xi) "Uttar Pradesh District Gazetteers -Faizabad" by Smt. Esha Basanti Joshi (Published in 1960 A.D.)

3486. In the category of "books of religion" he referred

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to :-

(i) Balmiki “Ramayana” (Ex. J2/1, Suit-4-Paper No. 261C1/1; Ex. J2/2, Suit-4-Paper No. 261C1/2-)

(ii) “Ramcharit Manas” by Goswami Tulsidas (Ex. 42, Suit-5-Paper No. 258C1). Photocopy of the frontispiece and pages no. 921, 927, 940, 941, 946 and 947 from Goswami Tulsidas Krit "Sri Ramcharit Manas" by Pt. Triloki Nath Chaturvedi published by Manas Pratisthan, New Delhi has been filed as Exhibit T4 (Suit-4), register Vol. 18, pages 59-71.

(iii) “Sikh and Sikhism” by W.H. Mc Leod (Ex. 69, Suit-4-Paper No. 210 C1/1-10)

(iv) “Guru Nanak” (1469-1539) (Paper No. 208C1/3)

(v) “Geetawali” by Goswami Tulsi Das (Ex-A9, Suit-4-Paper No. 46C1/1)

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3487. In the category of books relating to Archeology and others, Sri Jilani refers to the following:

(i) “Stone Inscriptions” (1992 Discovery) (Paper No. 306 C1/2)

(ii) Copper Plate Inscription (Ex. D28, Suit-5-Paper No. 198C2/100; Ex. D29, Suit-5-Paper No. 198C2/107; Ex. D30, Suit-5-Paper No. 198C2/118, Paper No. 198C2/125; and, Ex. 105, Suit-4-Paper No. 196B-C2/27)

3488. Sri Jilani submitted that there is no historical event mentioned in any of the books of history etc. that Lord Ram was born at the site in dispute; that there existed a temple at the site in dispute; that it was demolished and thereafter the disputed structure was raised on the disputed site; that it continued to be in the possession of Hindus and the Mohamdamns were ousted;

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that it was not a mosque but a temple; that the Muslims never offered any prayer thereat; or, that there were consistent and frequent battles and wars or other dispute amongst Hindus and Muslims with respect to possession or otherwise over the disputed site etc.. He submitted that in some of the Gazetteers of 19th and 20th Century, the story of existence of a huge temple at the site in dispute, its demolition at the direction of Babur by his Commander Mir Baqi and construction of a Mosque has been mentioned but that is only hypothetical and refers to no reliable and then existing supporting material to fortify the same. He also took pains in showing different versions in different Gazetteers published from time to time and said that the same are not reliable. In respect to the "stone inscription" alleged to be discovered in December, 1992 (Paper No.306 C-1/2), he submits that in the light of its translation made by Sri K.V. Ramesh, O.P.W. 10, whose expertise on the subject is admitted by the witnesses of both sides, only this much is evident that there existed a Vishnu Hari Temple in 12th Century AD at Ayodhya, constructed by Gadhwal Rulers, and the said stone inscription itself is of 1100-1200 AD, but he submits that from the said inscription it cannot be inferred by any means that it was the site in dispute where the said temple existed or that the Lord Ram was born thereat.

3489. Coming to the documentary evidence, he placed before us the following exhibits in order to show that the Muslims had continued in possession over the site in dispute and disputed structure at least from 1855 to 1885 and then from 1934 to 1949. Further that in the absence of any otherwise material, there is no reason to doubt the claim of the Muslims

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that the property in dispute was in continuous possession of Muslims i.e. after the date of its construction till the night of 22/23 December, 1949, when the idols were kept inside the courtyard and Muslim's entry was restricted firstly under the order of the Executive Magistrate and thereafter by the Courts.

3490. At this stage we propose to mention only the exhibits number of the documents cited by Sri Jilani and shall deal with the same, in detail, later on. The documents he referred to are Exhibits No. A21, A19, 70, A14, A15, A16, A17, 18, A20, A8, 1306, A72, A68, A7, A4, A5, A33, A60, A66, A65, A42, A55, A56, A63, A64, A57, A58, 59, 19, 20, 21, A70, 22, A69, A13, 29, 26, A20, 24, 18, A22, A23, A24, A25, A26, A27, 15, 16, 30, 34, 27, 28, A2, A6, A49, A43, A51, 44, A45, A50, A48, A53, A46, A47, A52 **(Suit 1)**, 8, 9, 10 **(Suit-3)**, 105, 87, 102, 88, 92, 62, 90, 1, A10, A11, A12, 83, 52, 19, 20, 50, 49, 53, 54, 55, 13, A15, 16, 17, 7, 6, 8, 4, 9, 23, 51, 25, 42, 43, 44, 45, 46, 47, 48, A4, A5, A6 **(Suit-4)** and D28, D29, D30, D5, D36, 49, 132, 91, D36, E5, E6, 25, D3, 21, 4, E4, 37, 38, 39, 40, 41, D35, D34, 005-5-27, 1, 17, 26 **(Suit 5)**.

3491. Sri Jilani, thereafter, placed before us the oral deposition of various witnesses and read certain passages to show that the statement given by the witnesses produced by the defendants are not reliable or acceptable and what has been said by the witnesses of plaintiffs (Suit 4) is correct and deserves to be accepted.

3492. Broadly, he categorized the witnesses produced on behalf of the Muslim parties as under:-

i. Those, who gave statements to prove that prayer (Namaz) continued to be offered in the disputed

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building till December, 1949. These are PWs 1-9, 12, 14, 21, 23 and 25.

ii. The Muslim religious experts deposing about the characteristics of a Mosque to prove that the disputed building was a "Mosque" and was always treated to be a Mosque by all. These are PWs-10, 11, 19, 22 and 26.

iii. With respect to survey of the site in dispute PW-17 was produced.

iv. Expert Historians i.e. PWs.13, 15, 16, 18, 20, 24, 27, 28

v. Expert Archaeologists etc. who assailed the ASI report, i.e., PWs 16, 24, 29, 30, 31, 32.

3493. Sri Jilani placed before us ASI report in extentio and sought to argue that it contains numerous operational irregularities and shortcomings, misinterpretation of the artefacts found at the site during the course of excavation, and also shows bias of the members of ASI team, therefore, the conclusion drawn is incorrect and unreliable.

3494. He (Sri Jilani) lastly contended that though neither for the purpose of this case he has disputed the faith of Hindus in Lord Ram nor that of Ayodhya as it stands today but still he calls upon this Court to examine that the Indian Vedic Literature and in particular the epic "Ramayana" has been held to be a "myth" containing mythological belief, and therefore to suggest a particular place at Ayodhya as "birth place of Lord Ram" is neither intelligible nor tenable. The vedic literature lacks historicity in view of several historians and cannot be relied on to decide the question about the "place of birth of Lord Ram".

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The entire city of Ayodhya as per the belief of Hindus, though an extremely pious and sacred place, but in the absence of any positive material, a particular place can not be ascertained as a birth place of Lord Ram. It is not justified on the part of defendants-Hindus to assert their right of worship at a place whereat about 500 years ago a mosque was constructed which had remained in peaceful possession of Muslims throughout.

3495. The submissions advanced by Sri Jilani have been adopted by other learned counsels namely Sri Mushtaq Ahmad Siddiqui and Syed Anwar Ahmad, appearing for other Muslims parties.

3496. Sri R.L. Verma, Advocate arguing on behalf of defendant no. 3 on the one hand asserted and submits that the site in dispute is the place of extraordinary importance to Hindus since Lord Ram, incarnation of Lord Vishnu, was born in Treta Yug hereat; there was a temple existed at the disputed site which throughout was in possession of Nirmohi Akhara through its Pujaris, Mahant and Sarvarahkar till they were dispossessed under the order dated 29.12.1949 of City Magistrate passed under Section 145 Cr.P.C. appointing a Receiver. He referred to the oral deposition of the witnesses produced on behalf of Nirmohi Akhara to show that prior to 22/23rd December 1949 they were always and throughout performing Puja etc. on the disputed site and it all through remain in their possession. He disputed the very factum of any battle at Ayodhya in 1528 causing any interference in the possession of the alleged temple and construction of mosque by Baber himself or through his agent or any other dispute subsequently also. In the alternative he submits that the disputed

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site being the birthplace of Lord Ram had a temple constructed thereat, the outer courtyard had a Chabutara (17x21 ft.) on the south eastern side of the disputed building; and Sita Rasoi at the north west side of the said building, as also the place of Bhandara on the eastern side of the disputed site and all were always in possession of Nirmohi Akhara where it performed Puja etc. through its Pujaris and this state of affairs has never been disturbed by the plaintiffs (Suit-4) or any other muslim party at least since 1855-60 AD till December, 1949 and therefore, entitled for restoration of possession of the said property. He also referred to certain documents and in particular the documents pertaining to suit filed by Mahant Raghubar Das in 1885 AD.

3497. A large number of books including Gazetteers, Travellers Account of William Finch, Niccolao Manucci, William Irvin, the books written on Babar, Architecture etc. were placed by Sri Mishra before us. He also refers to the muslim religious literature in this regard including Holy Quran; Sahih Bukhari's Hadith; Sahih Muslim; Tirmidhi; Books of Mohammedan Law by Amir Ali, Mulla, Faizi, Baille to show that neither the mosque could have been constructed in the given circumstances at the disputed site nor it is so permissible nor was in accordance with muslim law, therefore, the suggestion that the disputed building was a formerly constructed 'mosque' is absolutely incorrect and contrary to law including Shariyat law. He further submits, referring to various gazetteers and documents on record including Exhibit 17 (Suit-1), Exhibit 18 (Suit-1), Exhibit 20 (Suit-1) and Exhibit 30 (Suit-1) that throughout Hindus have remained in continuous possession and

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doing worship at the place in dispute, there was never a mosque, it was never used as mosque, it was always used as temple by Hindus, possession of muslim, if any, ceased in 1934; and no Namaz ever was offered after 16.12.1949; and, in the circumstances, it cannot be said that the disputed place is not "birthplace of Lord Rama". The building in dispute could not have been said to be a mosque. The books and materials which he referred to, we shall discuss later.

3498. Sri Ravi Shankar Prasad, Senior Advocate and Sri Madan Mohan Pandey, Advocate for defendant No.2/1 in Suit-4, firstly sought to concentrate submission on issue 14 (Suit-4) and 22 (Suit-5).

3499. According to Sri Ravi Shankar Prasad, Senior Advocate, issue-14 (Suit-4), 22 and 24 (Suit-5) are the issues to establish that the disputed site since ancient and time immemorial has been held and believed to be the place of birth of Lord Rama according to the faith and belief of Hindus, which they worship by tradition, constantly, and this right of Hindus cannot be disturbed at all.

3500. With respect to power of King, he referred to **"Yagnovalkyasmriti"** translated by Manmath Nath Dutt Verse 343 and **"Mulla's Hindu Law"** 14th Edn. 1974 Page 84. It is argued that the criminal law immediately comes under the new religious King but civil law continued to be dealt with according to local laws without being changed by the change of Ruler of another religion. It is for this reason that Hindu law was allowed to continue and prosper by Muslims and this practice continued during British regime also. He pointed out that even Britishers only regulated the management of Temple and never

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dared to replace or alter the deity. Regarding continuance of Hindu law, he also referred to **S. Darshan Lal Vs. Dr. R.E.S. Dalliwall & another AIR 1952 Alld. 825 (para 16); Advocate General of Bombay Vs. Yusuf Alli Ebrahim & others 84 Indian Cases (1921) (Bom.) 759** (para 95-106)**; Jamshedji Cursetjee Tarachand Vs. Soonabai & others 1 Indian Cases (1907) 834 (Bom.)** (para 72, 166-171)**.** In support of the submission that the disputed place has been the birthplace of Lord Ram as per the beliefs, traditions and customs ancient, he refers to **"Valmiki Ramayan"** (translated by Chaturvedi Dwarka Prasad Sharma); **"Bhartiya Sanskriti Ke Char Adhyay"** by Ramdhari Singh Dinkar, First Edn. 1956, reprinted 2009 by Lok Bharti Prakashan; **"Skanda-Purana"** English translation by Dr. G.V. Tagore and, in particular, refers to Section VIII Chapter 10, i.e., Ajodhya Mahata. He says that Purans are 2000 to 3000 years old and Janamsthan itself is a deity. Custom and practice of Hindu religion are to be honoured and fortified his submission by relying on **Rais Ahmad Vs. State of U.P. & others (1999) 6 SCC 391** (para 10). He refers to **"The Bhagvad Gita"** Chapters 6 to 18 by Sri Paramhansa Yoganand and **"Bhagvad Gita As It is"** by A.C. Bhaktivedanta Swami Prabhupad and submits that all these books are admissible in evidence by virtue of Section 57 (13) of the Evidence Act. Thereafter, he refers to travellers' accounts of Tieffenthaler and William Finch, Gazetteer of 1858 by Edward Thornton, P. Karnegy's Settlement Report of 1870 and "**The New Encyclopaedia Britannica"**, Vol. 9, 15th Edn. Page 916 and Vol. 1 page 751. About legal status of Gazetteers, he submits About the legal status of Gazetteers, he submits that the

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same can be relied in evidence and refers to **Vimla Bai Vs. Hiralal Gupta & others (1990) 2 SCC 22** (para 4 and 5); **Bala Shankar Maha Shanker Bhattjee & others Vs. Charity Commissioner, Gujarat State 1995 suppl. (1) SCC 485** (para 22) and **Mahant Shri Srinivas Ramanuj Das Vs. Surjanarayan Das & another AIR 1967 SC 256** (para 26). About the faith of Hindus, he also cited the book written by Ranchor Prime titled as **"Hinduism And Ecology Seeds of Truth"** (page 36 and 49). It is argued that there is no other Ayodhya. Janamsthan at Ayodhya was always treated as sacred and except the place in dispute, no other place in Ayodhya from ancient time has been treated as birthplace of Lord Ram. It has been worshipped from generation to generation and, therefore, forms core of belief of Hindus that Lord Ram was borne at the aforesaid site at Ayodhya. He submits that the right of Hindus to worship at such a place is a fundamental right under Article 25 and 26 of the Constitution. The relief sought by plaintiffs (Suit-4) that the disputed building be declared as Mosque, if granted, shall extinguish the right of worship of Hindus and such a prayer cannot be allowed. In this regard, he placed reliance on **Most Rev. P.M.A. Metropolitan & others Vs. Moran Mar Marthoma & another 1995 Supp. (4) SCC 286** (para 43); **Ratilal Panachand Gandhi & others Vs. State of Bombay & others AIR 1954 SC 388** (para 10); **The Commissioner, Hindu Religious Endowments, Madras, Vs. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt AIR 1954 SC 282** (para 17); **Sardar Sarup Singh Vs. State of Punjab AIR 1959 SC 860** (para 7); **Sardar Syedna Taher Saifuddin Saheb Vs. State of Bombay AIR 1962 SC 853** (para 40 and 56); **Bijoe Emmanuel**

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& others Vs. State of Kerala & others (1986) 3 SCC 615.

3501. Sri Prasad argued that belief of Hindus that Lord Ram as incarnation of Vishnu having born at Ayodhya forms an integral part of Hindu religion which cannot be denied to be practised, observed and performed by them and refers to **Commissioner of Police & others Vs. Acharya Jagadishwarananda Avadhuta & another (2004) 12 SCC 770** (para 9) and **Sri Adi Visheshwara of Kashi Vishwanath Temple, Varanasi (supra)**. In order to show what constitutes public order under Article 25 of the Constitution, he also placed reliance on **Dalbir Singh & others Vs. State of Punjab AIR 1962 SC 1106** (para 8).

3502. Next he submits that applying the doctrine of Eminent Domain, the place in dispute, having special significance for Hindus, cannot be touched at all either by any particular person or even by State and the provisions of even acquisition would not apply to it though with respect to the alleged mosque, it has been already held and observed by the Apex Court that the disputed building could not be shown to be of any special significance to Muslims. He refers to **Dr. M. Ismail Faruqui & others Vs. Union of India & others (1994) 6 SCC 360** (para 65, 72, 75 and 96); **Acharya Maharajshri Narendra Prasadji Anandprasadji Maharaj & others Vs. State of Gujarat & others (1975) 1 SCC 11**. The relief sought by the plaintiff (Suit-4) is barred by Section 34 Specific Reliefs Act, 1963 and reliance is placed on **Executive Committee of Vaish Degree College, Shamli & others Vs. Lakshmi Narain & others (1976) 2 SCC 58** (para 20 and 27); **American Express Bank Ltd. Vs. Calcutta Steel Co. & others (1993) 2 SCC 199**

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(para 22).

3503. Lastly he submits that the disputed building in any case could not be a Mosque since its alleged construction, if any, was against the Muslim law or Shariyat. In this regard, he refers to the **"Mulla Principles of Mahomedan Law"**, 19th Edn., **"Outlines of Muhammadan Law"** by Asaf A.A. Fyzee, Second Edition 1955, **"Principles and Precedents of Moohummudan Law"** by W.H. Macnaghten (first published 1825); **"The Law Relating to Gifts, Trusts and Testamentary Dispositions among the Mahommedans"** (Tagore Law Lectures-1884) by Syed Ameer Ali; **"A Digest of Moohummudan Law**" by Neil B.E. Baillie; **"The Hedaya"** by Charles Hamilton (edited 1871); **"The History of Islam"** by Akbar Shah Najeebabadi (1922, reprinted in 2000 Vol. One, page 147 to 148) and **"The Holy Quraan"** translated by M.A. Haleem Eliasi.

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3504. Sri P.R. Ganpathi Iyar, Senior Advocate assisted by Sri Rakesh Pandey appeared on behalf of defendant No.13/1, in addition to what has been argued by Sri Prasad, submitted that the place in dispute has since long been worshipped as place of birth of Lord Ram in tradition uninterruptedly and even if any Muslim ruler has made some construction over it, the worship by Hindus has continued which leads to the conclusion that it is the place which is believed to be the place of birth of Lord Ram. He submits that issue No.11 (Suit-4) and 1 (Suit-1) in the manner they have been framed, needs slight modification and the issues which should be considered by this Court is, whether the property in suit is believed to be the site of Janam Bhumi of Shri Ram Chandra Ji by Hindus. He submits that Hindu scripture also contains the details of time, manner of its

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calculation etc. and it relates the time of birth of Lord Ram several thousands and lakhs of years back. Hence it is beyond the scope of judicial scrutiny at this stage to find out as to when and where Lord Ram took birth since no evidence direct or indirect in this regard by lapse of time would be expected. He submits that in religious matters, where things proceeds on belief, if such types of issues are raised in respect to other religions also, they shall be felt offended. Hence the same test and sanctity must be extended and applied to the belief of Hindus also. For thousands of years Lord Ram is being worshipped as incarnation of God by Hindus. If it can be shown that for a particular place the Hindu's belief is that it is the site of birth place of Lord Ram and such faith and belief can be shown to have existed for the time immemorial, the Courts must give respect to such belief and must take it correct without entering into correctness of such a belief since that would violate Article 25 of the Constitution of India. He also cited certain authorities in this respect, which have also been referred to by Sri Prasad. We propose to deal with all such authorities at the appropriate stage.

3505. Sri Madan Mohan Pandey, Advocate adopted arguments advanced on behalf of Hindu parties with respect to belief about the place in dispute as birth place of Lord Ram and the same stand has been taken by other counsels namely Sri Hari Shankar Jain, Sri Rakesh Pandey etc.

3506. Though we have referred to, in total, 13 issues relating to Site as Birthplace etc. but having heard learned counsels for the parties and after perusing the various documents and other material, we find it convenient to deal with

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the said issues after further sub-categorization or re-categorisation as under and thereafter to take up these issues accordingly. The sub-categorisation/recategorisation of only these issues for our consideration and analysis is as under:

(A) Whether a temple existed prior to the disputed building which was demolished and thereafter the disputed building was constructed i.e. **Issues No.1(b) (Suit-4) and 14 (Suit-5).**

(B) The existence of other Hindu religious places making the disputed building landlocked by religious places of Hindus and in this category is **Issue No.19(b) (Suit-4).**

(C) Whether the Hindus had been continuously worshipping at the place in dispute. **Issues No. 13, 14 (Suit 4) and 24 (Suit 5)** come in this category.

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(D) The presence of idol in the disputed building i.e. **Issues No.2 (Suit-1) and 5 (Suit-3).**

(E) **Issues No.1 (Suit-1), 11 (Suit 4) and 22 (Suit-5)** relates to the site of birthplace of Shri Ram, believed as such by Hindus by tradition etc.

(F) Others.

3507. These issues relate to the religious faith in respect to the place of birth of Lord Rama; determination of the exact place of birth; investigation into history of more than hundreds and thousands centuries; whether there existed a temple/religious structure of Hindus which was demolished to construct the disputed structure over the land in dispute; whether the disputed building was actually constructed. as a mosque by

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Babar or under his dictates by Meer Baqi; and who was/is carrying on religious practices like prayer etc. at the said place for the last more than 500 years etc.

3508. The very nature of these questions make it writ large that decision either side is bound to affect the religious sentiments of one or the other community. From the record, we have also seen that the dispute between two communities over the land in question is continuing atleast for more than one and a half century. At times efforts were made to resolve the dispute amicably by pursuing the two communities to arrive at a compromise, honourable and acceptable, to both sides. In the past, sometimes the efforts seemed to be successful but could not resolve permanently since the dispute revived time and again. Some of the questions, we doubt whether would come within the scope of judicial review in a Court of law. On other issues, we have more serious doubt about the availability of relevant material or evidence on the basis whereof a Court of law can record a finding of fact either way. Some individual observations by some persons at some point of time, the traditions and practices followed for a long time, continuous or interrupted, views of the people in the concerned locality, references made by the investigators/historians/visitors in one or the other way etc. whether constitute sufficient evidence for deciding such issues of far reaching consequences conclusively is really a task extremely difficult. The issues are complicated with a wide canvass and also sensitive involving highly versatile sentiments and religious pathos of two major communities of present India. We, therefore, with care, proceed to scrutinize rival claims to find out the truth objectively, dispassionately and

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without being influenced by any other factor except the truth and justice. We shall endeavour to arrive at a just conclusion so that the dispute amongst two communities may get settled permanently for all times to come.

3509. The parties before us not only have placed religious literature, historical books, gazetteers published in pre and post independence period, certain other literary books containing references to the matter in dispute, but have also examined a large number of witnesses including Expert Historians, Archaeologists, Epigraphists etc. This Court also tried to find out truth by permitting excavation through ASI which has also submitted its report giving its opinion. However some of the parties have filed their objections against the report of ASI which is also required to be considered.

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3510. The issues relates to history and historical events. The chronology of the occurrence thereof has to be found out, if any. Broadly, it appears that oral evidence would be of little help. The historical events have to be seen in the light of the history, other relevant books and corroborative material of relevant period, if any. The history and other books cited and referred also contain divergent views. One or the other party, during the course of argument, to some extent, has commented adversely in respect to one or the other books while trying to persuade this Court to accept the view they are propagating . These books in our opinion cannot be acted upon merely on their face value.

3511. The alleged history, placed before us, has to be considered in the light of the credentials of the author, his knowledge, understanding, level of investigation, discussion on

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the subject, the circumstances, the period when it is written, the motive or objective, if any, and such other similar factors. We know that most of the books written by renowned and esteemed persons enjoy a very high reputation amongst the historians and therefore, what they have written, may not easily be ignored. However, we also can not ignore the fact that while writing a history book the author sometimes is influenced by the institution or body who has employed him, some times though free lancer, but expresses his views and findings according to his own appreciation without having occasion of cross-check by other experts and some times the purpose of the writing may have domination over independent objective and fair assessment and instead of simply placing on record the events of history straight, he mould facts giving a totally different shade and colour. A Court of law, when comes across such documents which are placed for adjudication of an event or disputed fact of historicity, has to proceed with extreme caution and careful manner. It cannot just treat the views expressed by the historians as a gospel truth. We have noticed and shall demonstrate what was said two centuries back, was widely corrected with the passage of time and in modern times, a considerable number of persons have come forward with well documented and discussed version canvassing a totally different view which also cannot be brushed aside easily but worth consideration. Obviously, the historians, past and present, are not eye witnesses of the historical events, but by sheer dent of diligence and intelligensia, they have analysed past events in the light of material available to them to explain historical events and have tried to apprise the people thereof. But, when in a

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Court of law, the things are discussed threadbare with logic, rationality and positive material, the position many a times turns wholly different. Besides, a huge religious, cultural literature has been placed suggesting that there is a cemented faith and belief of the community in respect to certain facts about their existence. Such faith and belief may not be tested by a Court of law being beyond the scope of judicial review. It is suggested that such faith which is borne out from such ancient literature should be accepted on its face without any tinkering and the matter deserves to be decided accordingly. In a battle simply that of religious historicity, this Court has all odds to ponder over such a controversy. Moreover, considering sensitivity of the matter, the issues have to be analyzed delicately like a surgeon's hand, so as to reach a just decision which may cause harmony amongst the two major communities virtually covering the entire country. It would not be only in the interest of the litigating parties but also necessary for national integration, peace and tranquillity.

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3512. In this case the learned counsels who have referred to various books including that of a very large number of history etc., assisting us to make threadbare scrutiny of the matter and reach a just and correct decision.

(A) Existence of Temple & Demolition :

3513. The questions are whether there existed a temple before the alleged construction of disputed building which was demolished and thereafter the building in dispute was constructed. Here **issues no. 1(b) (Suit 4) and 14 (Suit 5)** need be answered.

"Whether the building had been constructed on the

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site of an alleged Hindu temple after demolishing the same as alleged by defendant no.13 ? If so, its effect ?"

"Whether the disputed structure claimed to be Babri Masjid was erected after demolishing Janma-Sthan temple at its site ?"

3514. The oldest document after the construction of the disputed structure wherein existence of a temple (building of Lord Rama) and its demolition has been mentioned is **Tieffenthaler's "Description : Historique Et Geographique : Del'Inde" (supra)** from Pages 252 to 256, **Exhibit 133 (Suit-5) (Register 21, page 273-289**).The relevant extract of the Tieffenthaler's work is reproduced as under:

(Page 252) *"Parmi les villes de cette province, Avad (ou Oude) & Lacnav font deux de principales & des plus anciennes, & meritent une mention particuliere.*

Avad, appelee Adjudea, par les Indous lettres, eft une ville de la plus haute antiquite. Ses maifons ne font (pour la plupart) que de limon, couvertes de paille, ou de tuiles; plufieurs (cependant) font de brique. Le rue principale va du Sud au Nord, & a un mille environ de longueur. La largeur (de la ville) eft un peu moins grande. Sa partie occidentale eft affife fur une colline de terre, ainfi que celle du Nord. Celle du Nord-eft repofe fur des eminences. Vers Bangla elle eft unie.

Aujourdhui cette ville n'eft gueres peuplee, depuis la fondation de Bangla ou Fifabad, ville nouvelle ou le Gouverneur a etabli fa refidence, & ou uu tres grand nombre (d'habitans d'Oude) fe font transplantes.

Sur la rive Sud (du Deva) fe trouvent divers

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batimens conftruits par les gentils, en memoire de Ram, qui fe prolongent du Laevant au Coucham (a)."

English Translation:

"Of all the cities of this region, Avad (or Oude) and Lacnav are the two of the major and very ancient cities which are worth mentioning.

Avad called as Adjudea, by the educated Hindus, is a city of very olden times its houses are (mostly) made up of mud only; covered with straw or tiles. Many (However), are made of bricks. The main street goes from South to North and it has a length of about a mile. The width (of the city) is a little lesser. ***Its western side and that of North as well, are situated on a mud hill. That of north-east is situated on knolls.*** *Towards Bangla it is united.*

Today, this city has been hardly populated, *since the foundation of Bangla or Fesabad – a new city where the Governor established his residence – and in which a great number (of inhabitants of Oude) settled in.*

On the South bank (of Deva) are found various buildings constructed by the nobles in memory of Ram, extending from East to West (a)"

(Page 253) *"Le lieu le plus remarquable eft celui que l'on nomme Sorgadoari, c'eft k dire: le temple celefte. Car ils difent que ram a enleve de la au cicl tous les habitans de la ville: Ce qui a quelque reffemblance avec l'afcenfion du Seigneur. La ville alore deferte fut repeuplce & rendue a fon premier ctat par Bikarmadjit, ce fameux Roi d'Oudjen.*

Il y avoit eci un temple conftruit fur le bord eleve du fleuve; mais Aurengzebe, toujours attentif a propager la

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fecte de Mahomet & ayant enhorreurles gentils, le fit demolir & remplacer par une mosquee accompagnee de deux obelisques, afin d'abolir jusqu'au fouvenir de la fuperftition Indoue. Une autre mofquee batie par les Maures eft contigue a celle – la vers le Levant."

English Translation"

*"The **most remarkable place** is the one which is called Sorgadaori, which means : **the celestial temple.** Because they say that **Ram took away all the inhabitants of the city from there to heaven** : This has some resemblance/similarity to the Ascent of the Lord. **The city, thus deserted, was repopulated and was brought back to its earlier status by Bikarmadjit -** the famous king of Oude (OUDH).*

There was temple in this place constructed on elevated bank of the river. But Aurengzebe, always keen to propagate the creed of Mohammed and abhorring the noble people, got it demolished and replaced with a mosque and two obelisks, with a view to obliterate even the very memory of the Hindu superstition. Another mosque built by the Moors is adjacent to the one towards the East."

***(Page 253)** "Mais un endroit fameux particulierement, eft celui qu'on appelle Sitha raffoi, c'eft a dire, la table de Sitha, femme de Ram. Ce lieu eft attenant a la ville, au Midi, & fitue fur une eminence de terre.*

L'empereur Aurengzebe a fait demolir la fortereffe appelee ramcot, & a eleve au meme lieu un temple mahometan, a triple coupole. D'autres difent qu'il a etc conftruit par Babor. On y voit I 4 colonnes de pierre

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noire, hautes de 5 empans, qui occupoient l'emplacement de la fortereffe. Douze de ces colonnes portent maintenant les arcades intericures de la Mosquee: deux (de ces I 2) font placees a la porte du cloitre. Les deux autres font partie du tombeau d'un certain Maure. On raconte que ces colonnes, ou plutot ces debris de colonnes artiftement travaillees ont etc apportees de l'ile de Lanca ou Selendip [appelee Ceylan par les Europeens] par Hanumann, Roi des Singes."

"But a ***place especially famous is the one called Sitha Rassoi i.e. the table of Sita****, wife of Ram,* ***adjoining to the city in the South, and is situated on a mud hill****.*

Emperor Aurengzebe got the fortress called Ramcot demolished and got a Muslim temple, with triple domes, constructed at the same place. Others say that is was constructed by 'Babor'. Fourteen black stone pillars of 5 span high, which had existed at the site of the fortress, are seen there. *Twelve of these pillars now support the interior arcades of the mosque. Two (of these 12) are placed at the entrance of the cloister. The two others are part of the tomb of some 'Moor'. It is narrated that these pillars, or rather this debris of the pillars skillfully made, were brought from the island of Lanca or Selendip (called Ceylan by the Europeans) by Hanuman, King of Monkeys."*

(Page 253-254) *"On voit fur la gauche une caiffe carree elevee a 5 pouces deterre, revetue de chaux, longue d'environ 5 aunes large tout au plus de 4. Les Indous la nomment Bedi, c'eft a dire, le berceau. La raifon en eft,*

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qu'il y avoit autrefois ici une maifon ou Befchan naquit en fe produifant fous la figure de Ram, & ou font auffi nes, dit-on; fes troi freres. Dans la fuite Aurengzebe ou felon d'autres, Babor, fit rafer ce lieu: afin d'oter aux gentils l'occafion d'y pratiquer leurs fuperftitions; neanmoins ils rendent encore un culte fuperftitieux a Pun & l'autre endroit : favoir, a celui ou etoit la maifon natale de Ram, en en faifant trois fois le tour, profternes par terre. Les deux endroits font entoures d'une muraille baffe garnie de creneaux. On entre dans l'avantfalle par une porte baffe ceintree.

Pas lin de la eft un endroit ou l'on creufe des grains de riz noirs convertis en petites pierres, que l'on dit etre caches fous terre depuis le tems de Ram.

Le 24 du mois Tfchet, un grand concours de peuple celebre ici le jour de naiffance de Ram fi fameux dans l'Inde entiere."

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English Translation

*"**On the left is seen a square box raised 5 inches above the ground**, with borders made of lime, with a length of more than 5 ells and a maximum width of about 4 ells. **The Hindus call it Bedi i.e. 'the cradle. The reason for this is that once upon a time, here was a house where Beschan was born in the form of Ram. It is said that his three brothers too were born here. Subsequently, Aurengzebe or Babor, according to others, got this place razed in order to deny the noble people, the opportunity of practising their superstitions. However, there still exists some superstitious cult in some place or other. For***

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example, in the place where the native house of Ram existed, they go around 3 times and prostrate on the floor. *The two spots are surrounded by a low wall constructed with battlements. One enters the front hall through a low semi-circular door.*

Not far from there is a place where one digs out grains of black rice, turned into small stones, which are said to have been hidden under the earth since the time of Ram.

On the 24th of the Tschet month, a big gathering of people is done here to celebrate the birthday of Ram, so famous in the entire India."

(Page 255) *"Goptargath eft un endroit plante d'arbres touffus, a un mille de Bangla, fur la rive Sud du Gagra. Il eft affis fur une colline peu rapide, & muni de petites tours de terre aux quatre cotes. On voit au milieu un trou fouterrain, couvert d'une coupole de grandeur mediocre. Tout aupres eft un arbre Tamarinier haut & age. Un portique regne a l'entour. On dit que Ram, apres avoir vaineu le Geant Ravan & etre revnu de Lanka, eft defeendu dans cette foffe & y a disparu: de la vient qu'on a donne a l'endroit le nom de Gouptar, qui fignifie: Depart pour les airs. Vous avez donc la une Defeente aux enfers, de meme que vous aviez a Oude une Montee au cicl. On pourra fe faire par la figure une idee du local & de la forme de cet endroit. (b)" (Page 255)*

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English Translation:

"Goptargath is a place planted with thick trees, a mile away from Bangla, on the southern bank of Gagra. It

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is situated on a hill which is less steep, and is provided with mud towers on four sides. An underground pit is seen in the middle, covered with a medium sized dome. Near it is a very old and big tamarind tree.

A portico extends around it. It is said that Ram, after having defeated the Giant Ravan and having returned from Lanka, descended into this pit and disappeared. Deriving from this, this place was named 'Gouptar' which means 'Departure for the Air'. Therefore, you have Descent into the Hell,there, which is similar to 'Rising into the Sky' that you had in 'Oude'. One will be able to have an idea about the locality and shape/form of this place (b) from the figure."

3515. In 1838, the report of Robert Montgomery Martin was published. **Exhibit 20 (Suit-5) (Register 21, pages 321-324)** contains photocopies of pages 335 and 336 of Vol. II of "The History, Antiquities, Topography And Statistics Of Eastern India" by Montgomery Martin first published 1838. The entire set in six volumes of the aforesaid work of Montgomery Martin first published 1838 and first Indian reprint 1976 is available, i.e. Book No. 35. The relevant extract from pages 331 to 336 has already been reproduced while discussing the issue pertaining to date of construction of the disputed building. For the purpose of issues in question hereat, a few lines relevant may be noticed as under:

*"The bigot by whom **the temples were destroyed**, is said to have **erected mosques on the situations of the most remarkable temples**; but the mosque at Ayodhya, which is by far the most entire, and which has every appearance of*

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being the most modern, is ascertained by an inscription on its walls (of which a copy is given) to have been built by Babur, five generations before Aurungzebe.....The only thing except these two figures and the bricks, that could with probability be traced to the ancient city, are some pillars in the mosque built by Babur. These are of black stone, and of an order which I have seen nowhere else, ... they have been taken from a Hindu building, is evident, from the ***traces of images being observable on some of their bases; although the images have been cut off to satisfy the conscience of the bigot.****"*

3516. In **Edward Thornton's Gazetteer, 1858 (supra)**, he also said:

"according to native tradition, they were demolished by Aurungzebe, who built a mosque on part of the site. The falsehood of the tradition is, however, proved by an inscription on the wall of the mosque, attributing the work to the conqueror Baber, from whom Aurungzebe was fifth in descent. *The mosque is embellished with fourteen columns of only five or six feet in height, but of very elaborate and tasteful workmanship, said to have been taken from the ruins of the Hindoo fanes, to which they had been given by the monkey-general Hanuman, who had brought them from Lanka or Ceylon. Altogether, however, the remains of antiquity in the vicinity of this renowned capital must give a very low idea of the state of arts and civilization of the Hindoos at a remote period. A quadrangular coffer of stone, whitewashed, five ells long, found board, and protruding five or since inches above*

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ground, is pointed out as the cradle in which Rama was as the seventh avatar of Vishnu; and is accordingly abundantly honoured by the pilgrimages and devotions of the Hindoos."

3517. **Exhibit 70 (Suit-5) (Register 20, pages 167-185)** contains photocopy of frontispiece and pages no. 4 to 7 of the Book **"Hadiqa-E-Shabda"** written by Mirza Jan published in 1855/56 AD at Kutub Khana, Habibganj, District Aligarh. On page 183 of the register, it says:

''अल हासिल जिस तरह मथुरा और बनारस वग़ैरह को ख़स व ख़ाशाके कुफ़ से साफ किया,फैजाबाद औरअवध को भी उसी तरह ज़लालत की नजासत से शफ़्फाक किया कि यह बड़ा परस्तिश का मुकाम था,

तख़्तगाहे पिदरे राम था। यहॉ के बुतखानों को तोड़ा, संगदिल बुतों को साबित न छोड़ा। ***जहॉ बड़ा बुतखाना था वहॉ बड़ी मस्जिद बनवाई*** *और जहॉ छोटा मण्डफ़ था, मस्जिदे मुख्तसेर क़नाती तामीर फ़रमाई। चुनांचे* ***बुतख़ाना ए जन्म अस्थान में मस्किते रासे राम है, उसके मुत्तसिल सीता की रसोई है, सीता उसकी जोरू का नाम है, वहॉ कैसी मस्जिदें सर बुलन्द बाबर शाह ने सन नौ सौ तेईस (23) में बऐहतमाम सैयद मूसा आशिक़ान बनवाई है कि उसकी तारीख़ ख़ैर बाक़ी (923) है। आज तक वह मस्जिद सीता की रसोई मशहूर नज़दीक व दूर है और पहलू में वह देर बाक़ी है।*** *और राम दरबार की मस्जिद फ़िदाई खान सूबेदार की बनाई थी जिसको काफिरों ने यहॉ तक सताया है कि एक दो मिनारी और मुत्हूदी दीवार अलग कर दी है बल्कि अमजद अली शाह के वक़्त में उसकी तामीर का हुक्म भी हुआ था मगर उसके मौत फ़ी मोहलत जुल की फ़ुर्सत मुदई यह हसरत साथ बही गई और किले की मस्जिद, कि बालफ़ाल क़िला लच्छमन महन्त को मुआफ़ हो गया है और मस्जिद को भी गोशा खुमारमें मकान हो गया है। वहॉ सदर मुसलबा ख़ान मीर से वह महन्त ने फिर ले ली। ऐसी मस्जिदों का हाल, जो कब्ज़ा अख़त्यार हनूद में हों, ज़ाहिर है, खुदा हाफिज़ व नासिर है। यह तो फ़क़त महंदी आराइश तस्वीर है। अब तरफ़ माजरा रहें, जिससे अव्वल वाव व मीम होता है जिगर*

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मर कर अलिफ़ लाम मीम होता है।''

''However, like Mathura and Banaras which were cleaned of the dirt, straws and garbage of the Kufra (infidelity), Faizabad and Oudh were also cleaned because it is a sacred place for worship. It was the capital of the father of Ram. The places of idols (But Khanas) were demolished and no idols were left unbroken. Big mosque was constructed on the place of big Butkhana and small mosques were built on the place of small ones. The Janam Sthan is the birth place of Ram and adjacent to it. There is Sita Rasoi. Sita is the name of the wife of Ram. Here Babar has built grand mosque in 923 under the supervision of Syed Musa Ashikan. The year 923 is still remembered for the construction of the mosque adjacent to Sita Rasoi for and near. The mosque of Ram Darbar was constructed by Fidai Khan Subedar who has been teased by the infidels who have separated the two minarets and the wall. In the period of Amjad Ali Shah, orders were issued for its construction but his sudden demise, he took this wish along with him while the Qila Masjid was given as Maafi to Lachhman Mahant. The mosque has become his house (sic). The Mahant has taken back this place from Khan Mir. The position of the mosques under the possession of Hindus, is well known. May God save you. Good bye. It is only the picture of only decoration of Mehandi (Urdu Couplet not clear) Ab Taraf Majra Rahein Jis Se Awwal Wao Ur Meen Hota Hai-Jigar Markar Aif, Lan Meem Hota Hai."

3518. Exhibit 18 (Suit-5) (Register 21, pages 201-229)

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contains a photocopy of frontispiece and pages 3, 70, 71, 72, 73, 9, 10 and 11 of the Book **"Amir Ali Shaheed Aur Marka-E-Hanumangarhi"** by **Shaikh Muhammad Azmat Ali Alvi Kakoravi** as arranged and published by **Dr. Zaki Kakoravi** in **1987** Markaj Adab Urdu, Lucknow. The Hindi transliteration has also been supplied and the relevant extract whereof is as under:

''अवध वह ***जो सीता रसोई मरकद है वहॉ अहद दौलत बाबर बादशाह में मस्जिद रफ़ीउल शान हमसरे आसमान बनाई, बाबरी थी,*** *उस ज़माने में हनूद को कहां मजाल, हमसरी थी, सन नौ सो तेईस, 923, में बाऐहतमाम सैयद मीर आशिक़ान बनी थी। इस की तारीख़ ख़ैर बाक़ी थी और राम दरबार में मस्जिद फ़िदाई ख़ान सूबेदार ने बनाई थी, इस्लाम की बुनियाद जमाई थी और उसके मुत्तविल एक टीला था। राज राम चन्दर ने वह मुक़ाम हनुमान अपने रफ़ीक़ को बसिला फ़तह लंका दिया था।''*

''फिर मस्जिद बाबरी में, जहॉ सीता की रसोई थी, शिर्कत की ऐलानिया पूजा होने लगी। मुन्तज़म चॉदी के जूते खा के सरंगों हुए। किसी ने ख़बर न की। पहले तो शेख़ अली हजी का कौल मुवाफ़िक हुआ था –:

बिबी करास्ते बुतख़ाना ए मरा ऐ शेख़ कि चूँ ख़राब शवद ख़ाना ए खुदा गर्दद

फिर इन्क़लाब फ़लक़ से ऐसा ज़माना हुआ ***कि मस्जिद तोड़ के बुतख़ाना हुआ।*** *यहॉ ग़फ़लत का पर्दा ऐसा आंखों पर पड़ा कि किसी को न सूझा। अजग़र्ज़ बारह सौ इकहत्तर (1271) हिजरी अहद दौलत वाजिद अली शाह में शाह गुलाम हुसैन नाम फ़क़ीर ने नवाब को अर्ज़ी दी, तौहीन इस्लाम की इत्तलाह की। यहॉ किसी ने न सुना। आख़िर शाह साहिब ने फेज़ाबाद का अज़्म किया। वहॉ सनाम बेग कोतवाल व आला अली चकलादार को यह कामा सुनाया मगर इनको मुख़ालिफ़ पाया। इस अश्ना में चन्द मुसलमान शाह साहिब के शरीक हुए और अवध में पहुँचे। मान सिंह और इतराफ़ के हिन्दू अन्बोह कसीर ले के बैरागियों की हिमायत को मौजूद हुए। गो सल्तनत इस्लामी थी, मगर मुसलमानों की किसी ने न सुनी। न मदद दी, न इयानत की। आमिल के बायस सब रस्ते मसदूद हुए।*

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न वजीर ने इस सदा पर कान लगाया, न बादशाह को अन्जाम का ध्यान आया। आख़िर माह ज़िलक़ीदा सन 1271 हिजरी जुम्मा को अटल खान के अहाते वाले मुसलमान शाह गुलाम हुसैन के शरीक हुए। उस तरफ़ दस–बारह हज़ार बैरागियों के मददगार बासाज़ व हथियार जमा हो गए। आला अली ने मुसलमानों से कहा : यहां फौज सुल्तानी कम है। तुम लोग थोड़े हो, हिन्दुओं का मजमा बहुत। ऐसा न हो भगोड़े हो। शाम तक आर साहिब की पलटन आती है, इस तरफ़ भी कसरत हुई जाती है। इस वक़्त तामल करो, सुबह होने दो। दूसरे रोज़ जब यह लोग जमा हुए तो फिर नया हीला पेश किया कि आर साहिब को बादशाह के हुक्म का इन्तजार है। थोड़ा तौक़फ़ दरकार है। इनको तो बातों में उलझा रखा। हिन्दुओं ने अवध में मुसलमानों का मुहल्ला घेरा लेकिन दिलावरों ने मुँह न फेरा। तलवार चलने लगी। क़ज़ा हाथ मलने लगी। यहाँ तो यह हंगामा था। इस दार ओगुबर में कई हजार हिन्दू मस्जिद पर झुका। वहाँ शाह गुलाम हुसैन और उनके साथी हाल माल से बेख़बर खाना पकाने में मशगूल थे। जब यह लोग सिर पर पहुँचे तो वह भी आवारह कारज़ार हुए। रुस्तम अली ख़ान, कि बेशक रुस्तम दौरा था, और इसका भाई अहमद अली खान, कि वह भी जरार यकतयाए जहां था, निकल के बड़ी बहादुरी व इस्तक़लाल से लड़े। बावजूद कसरत लश्करों के कदम उखड़ गए, भाग के रंग महल में पनाह गुजेर हुए। जब मुसलमान वहाँ पहुँचे तो वह नामर्द वहां से भी भाग निकले। बहादुरों ने उनका ताक़ब किया। बहुतों को जहन्नुम में पहुंचा दिया। आखिर भगोड़े मकानों की छतों पर चढ़ के बन्दूकें सर करने लगे। मगर चार शख्स मिसल अनाहर आगे बढ़े। चार तरफ़ से गोली बरसती थी। इस पर इनके हाथ से नाश पर नाश करती थी। इस में गोली खा के तीन आदमियों ने कलमा शहादत पढ़ के बहिश्त बरीस की राह ली। रुस्तम अली ख़ान ने हनुमानगढ़ी के जीने पर चढ़ के अज़ान कही। जिस दम अशहदान ला इलाह इल्लिल्लाह ज़बान से जारी हुआ, पेशानी पर गोली पड़ी रूह ने फ़िरदौस बरीस का रस्ता लिया। बैरागियों ने मस्जिद का मुहासिरा किया और दीवार तोड़ के एक कम सत्तर (69) आदमियों को शहीद कर दिया।''

''चुनांचे जिस तरह मथुराबिन्द्रावन वगैरह को ख़ास व ख़ाशाके बदअत से साफ़ किया, इसी तरह फैजाबाद अवध में जो बड़ा .....का मुकाम था, तख़्तगाहे पिदरे लच्छमन व राम था, कुतख़ाना जन्म अस्थान में सन 923 हिजरी में सैयद

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मूसा आशिक़ान के ऐहतमाम में मस्जिदे तैयार हुई, पुरनूर रही। वह हिन्दुओं में सीता की रसोई . . . .मशहूर थी। तारीख बनाई ''ख़ैर बाक़ी'' (923 हि0) है, बहुत यादगार से मिलाती है *और मुकाम राम दरबार की मस्जिद फिदाई ख़ान सूबेदार ने बनवाई जो हिन्दुओं ने खोद कर मिटा दी।''*

''Oudh is the central place of Sita Rasoi. At that place, in the period of king Babar, a grand and sky touching mosque Babri was constructed. At that time Hindus could not dare to oppose us. The mosque was constructed in 923 under the supervision of Syed Mir Ashiqan. Its name is there in the history. In Ram Darbar, a mosque was constructed by Fidai Khan Subedar and thus founded Islam there. Opposite to this place, there were a Teela. Raja Ram Chandra, being pleased with the conquest of Lanka, gifted it to his obedient friend Hanuman.''

''Then in the Babri Masjid, where Sita Rasoi is situated, pre-announced Puja began, (sic) participated. The administrators braving silver shoes, became their obedient servants. Nobody informed. Earlier the proverb of sheikh Ali Haji was true to the situation. "Be Bein Karastey Butkhana-e-Mera Ali A Seikh. Ki Choon Kharab Shawad, Khaana-e-Khuda Gardad.'' (i.e. the Butkhana on the way which was considered a bad place, became the abode of God)

Then a great change occurred, mosques were being pulled down and temples were constructed there. But we remained sleeping. Nobody awoke. Till 1271 Hijri, in the period of Wajid Ali Shah, some Faqir Shah Ghulam Husain, through an application requested that Islam was being ruined and insulted. But at that time, nobody heard

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his voice. Resultantly the Shah Saheb turned to Faizabad. Here Sanam Beg Kotwal and Aley Ali Chakladar were entrusted some work. But they were opposed to it. Meantime some Muslims along with Shah Sahab rushed to Oudh. A big mass of Hindus along with Man Singh of the neighbourhood was supporting the claim of Bairagis. Although there was Muslim Rule, but Muslims were not heard anywhere. Neither where was any help forthcoming nor there was anybody to solace Muslims. All the roads for them were closed because of Aamil. The minister turned a deaf ear to it. The king also did not pay attention towards the gravity and dire consequences of the situation. In the month of Zeequad, 1271 Hijri, Friday, the Muslims of Ahata Atal Khan, gathered in the leadership of Shah Ghulam Husain. On the other side, some 10 to 12 thousand Bairagis collected, armed with weapons. Aley Ali told the Muslims that there was scarcity of Sultani Fauj. You people are in minority while Hindus are in majority. But do not go away from here. By the evening, the army of R Saheb, would be forthcoming, on this side, we are increasing in number. Now wait a bit. Let the dawn come.

The next day when they gathered, the Administration again hid and told that the palton of R Saheb is awaiting king's orders. So you have patience. They only remained talking. In Oudh, the Hindus cordoned a Muslim Mohalla but the brave youths did not showed their back. Swords were crossed. The death started playing havoc. Here all this commotion was going on, in Dar Agubar, thousands of Hindus collected on the other side, Shah Gulam Husain

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and his companions unaware of the happenings were busy in cooking food. When they (Hindus) reached their heads, they began preparation to face them. Rustam Ali Khan who was "Rustam" in true sense and his brother Ahmad Ali Khan who was also a brave man fought well. Inspite of being in great number, the enemy ran away and took shelter in Rang Mahal. When the Muslims reached there the Namard (eunuch) ran away from there also. The brave persons followed them and killed many of them. At last some of them climbed on the roof of the houses and began using the guns. Four of them came forward. There was a shower of bullets which played havoc. Three of them became martyrs after reciting Kalma shahadat. Rustam Ali Khan recited Azaan, climbing on the door of Hanuman Garhi. At the same moment a bullet hit his forehead and the soul broke away every fetter to reach in the heaven. The Bairagis cordoned the mosque and killed 69 persons. They cleaned the place of the dirt and in religious activities. They did the same at Faizabad Oudh. Here the prominent place. . . . . belonged to the father of Ram and Lakshman. The mosque was build on the Kutub Khana of the Janam Sthan by Syed Musa Ashiqan in 923 and remained humming with life. This place was known as Sita Rasoi among Hindus. Date of construction is known as Khair Baqi 923 which is an important memory. Fidai Khan Subedar got the mosque constructed over Ram Darbar which was demolished by the Hindus."

3519. Exhibit 123 (Suit-5) (Register 21, pages 325) is photocopy of page 56 of **"Encyclopedia of India and of**

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Eastern and Southern Asia" by **Surgeon General Balfour, 1858** containing a very brief description of Ayodhya as Under:

> *"AJODHYA, on the right bank of the Gogra river, near Fyzabad in Oudh, is in lat. 27^0 48' 20" N., and long. 82^0 14' 40" E. It has now a population of 7518 of Hindus and Mohomedans, but in ancient times it was the capital of the kingdom of Kosala, the modern Oudh, ruled over by the great kind Dasaratha of the Solar line, and father of Rama Chandra. At one time it is said to have covered an area of 12 Yojana, equal to 96 miles. During buddhist supremacy Ajodhya declined, but on the revival of Brahmaism it was restored by kind Vikramaditya (A.D. 57). There are many Jain temples, and* ***three mosques on the site of three Hindu shrines,-the Janmasthan on the site where Rama was born****, the Swarga-dwara (Mandir) where his remains were burned, and the Tareta Ka Thakur, famed as the scene of one of his great sacrifices. A mausoleum is here of the Bahu Begum, and is that finest in Oudh."*

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3520. Exhibit 131 (Suit-5) (Register 21, pages 257-269) contains photocopies of frontispiece and pages no. 54, 572, 573 of **"Tarikh-E-Avadh (Hissa Doyam)"** by **Allama Muhammad Nazmul Gani Khan Rampuri (1859-1932 Isvi)** Revised by Dr. Zaki Kakoravi 1983 A.D. The relevant extract of Hindi transliteration provided by the plaintiffs (Suit-5) is as under:

> *"अजोध्या में मसाजिद*
>
> ***अजोध्या में जहाँ बुतखाना ए जन्म स्थान राम चन्दर जी था, इसके मुत्तसिल सीता जी की रसोई है। बाबर बादशाह ने वहाँ सन 932 हिजरी में एक आलीशान मस्जिद, जो जामा मस्जिद है, बऐहतमाम सैयद मूसा आशिक़ान बनवाई थी*** *जिसकी तारीख़ ख़ैर बाक़ी (923) है।* ***आज तक वह***

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मस्जिद सीता की रसोई कहलाती है और पहलू में वह मन्दिर बाक़ी है। *कहते हैं कि वक़्त फ़तहयाबी पहले इस्लाम बतन मन्दिर यानी जन्म अस्थान, जहॉ महाराजा श्री राम चन्दर जी की बलादत हुई थी और सर गिर दार उर्फ़ राम दरबार और त्रेता के ठाकुर का बाक़ी था,* ***बाबर ने जन्म अस्थान को मुंहदिम करके मस्जिद बनवाई।***

जब इलाक़ा पच्छम राठछ वग़ैरह की हकूमत राजा दर्शन सिंह के हवाले हुई तो इस इलाक़े के हिन्दुओं की कुव्वत ज़्यादा हो गई। आस पास इस टीले के पास अहाता खुदवाया, लड़ाई के क़ाबिल क़िला बनवाया। इसके सबब से रोज़ बरोज़ हिन्दू फ़क़रा ज़ोर पकड़ते गए। मस्जिद के आसार बिगड़ते गए। हिन्दुओं की लजामतें होने लगीं। महन्त जोर पकड़ते गए। मुसलमानों को इनके मुक़ाबिले की ताक़त न रही। इस मस्जिद के गिर्द दीवार क़ायम करके मकान गढ़ी मे मिला लिया और हनुमानगढ़ी इसका नाम रक्खा। परस्तिश करने लगे। इस मुसलमान फ़क़ीर को पहले तो कुछ देते रहे। जब वह मर गया तो महन्तों ने मस्जिद का निशान बाक़ी न रक्खा। जब इन्तहा को दर्शन सिंह की हकूमत पहुॅची ***तो अजोध्या में कई बरस तक अज़ान और गावकुशी बन्द रही। शायद अहद हकूमत मुहम्मद अली शाह में फिर अज़ान की रस्म जारी हुई और गावकुशी भी बदस्तूर रही हो।***

अल ग़र्ज़ यहॉ तक हंगामों की नौबत आई कि सिवाए मस्जिद मुंहदिमा हनुमानगढ़ी के ***मस्जिद बाबरी, जहॉ सीता की रसोई थी, इसके सेहन में भी हिन्दुओं ने बुतखाना बनाया और मस्जिद वाक़या राम घाट दरया को भी खराब करके इसके सेहन में अपने मुस्कन बनाये।*** *मस्जिद में कूड़ा डालने लगे और मुसलमानों की सैकड़ों कब्रें तोड़ कर ईटों और पत्थरों से बड़ी शान व शौकत के बुतखाने बनाये।*

सन् 1271 हिजरी में वाहिद अली शाह के अहद में श्याह गुलाम हुसैन ने मौलवी मुहम्मद आरअ की इमदाद से दोबारा मस्जिद की आबादी और बुतखाने की बरबादी के लिये बज्में जिहाद हैदराबाद में, कि गोमती के पार है, मुहम्मदी . . . .क़ायम किया। हसन अली ख़ान बॉके का बेटा अहसान अली ख़ान रिसालादार इनका मददगार हुआ बल्कि रुस्तम अली ख़ान और बहादुर अली ख़ान दोनों भाई शरीक हो के मुस्तैद कारिन्दा हुए। दूसरे बाज़ मुस्नाकीन भी इनके शरीक हाल हुए। और यह सब फ़ैज़ाबाद

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को चले। रदना ही तक पहुॅचे थे, आला अली कायम मुक़ाम आगाई नाज़म सुल्तानपुर के मुलाजमों ने रोका, जाने न दिया। शाह साहिब ने लखनऊ का रास्ता लिया और जो फेज़ाबाद पहुॅच गये थे उनको निसार हुसैन नायब कोतवाल और कप्तान ऐलग्ज़ेण्डर आर ने निकाल दिया। मुहाने से निकाल दिया। बाद चनदे परचा अख़बार फैजाबाद से हिन्दू मुसलमानों की तक . . . . में गुजरा। मिला ख़ते के बाद आगा अली ख़ान मारूफ़ आग़ाई नाज़म और मिर्ज़ा मुनाम बेग कोतवाल के नाम हुक्म हुआ कि मस्जिद की तहक़ीकात करो। इस सहारे पर शाह साहिब ने फिर चन्द मुसलमान क़ाज़ी नूर अली, साकिन मुज़ाफ़ात आज़मगढ़ के साथ अजोध्या को भेजे। यह लोग मस्जिद बाबरी में मुकीम हुए। थोड़े दिनों के बाद शाह साहिब भी दाखिल मस्जिद मज़कूर हुए। मौलवी आरअ भी इनके साथ हुए और किसी के कहने से वहॉ से निकले। इनके पास जमाअत कम थी और कुछ सामान भी न था मगर कमरे हिम्मत बैरागियों के हाथ से मस्जिद के निकालने की बॉधी। कप्तान आर साहिब और मिर्ज़ा मुनाम बेग कोतवाल और मिर्ज़ा अली ने मुसलमानों को इनकी शिर्कत से रोका और बैरागियों की मदद को राजा मान सिंह और राजा किशन दत्त राम पाण्डे चकलादार और दूसरे ज़मींदार गिर्द व पेश के जौक पहुॅच गये यहॉ तक कि इस हज़ार आदमी जमा हो गये और घाघरा के घाट रोक लिये कि शायद कोई मुसलमान मदद के लिये उधर का क़सद करे तो उतर न सके। मौलवी साहिब और शह साहिब के साथ तमाम आदमी थे और वह भी गुर्बा किसी ज़बरदस्त आदमी ने साथ न दिया। इस की यह हालत थी कि मिला तो रोज़ी नहीं तो रोज़ा। किसी ने इनकी कुमक न की और ख़बर न ली।

मस्जिद में मुसलमानों को ज़िबह और कुरआन को पामाल करना :

आख़िरशः दसवीं या बारहवीं ज़ई क़ादा सन 1271 हिजरी मुताबिक ***जुलाई सन 1855 ईसवी को तक़रीबन दो–तीन सौ मुसलमान नमाज़ के वास्ते मस्जिद बाबरी में, कि सीता की रसोई में है, जमा हुए****। शाह साहिब पेश हमाम हुए। यह ख़बर बैरागियों को पहुॅची। उन्होंने मस्जिद को घेर लिया। सरकारी आदमी, जो हिन्दुओं से रिख्वतें खा चुके थे, इधर उधर मुॅह फेर कर हट गए। मुसलमानों ने जो देखा कि ख़्वामख़्वाह घेरे में मरते हैं, वह भी कुक़ाबिले और लड़ने मरने को आमादा हुए। आख़िरकार कोतवाल के प्यादों और ऐलग्ज़ेडर आर के सवारों ने मुत्वस्ता होकर दफ़ा शर किया।* ***लेकिन इतनी देर हंगामा रहा कि***

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मुसलमान जुम्मा की नमाज़ अदा न ....''

''Masjid in Ayodhya.

There is a Sita Rasoi within the Butkhana Janam Sthan of Ram Chanderji. King Babar, in 923, built a grand mosque which is known as Jama Masjid under the supervision of Syed Musa Ashiqan, *the date of which is known as Khair Bagi 923.* ***Even today this mosque is known as Sita Rasoi and a temple is also there adjacent to it.*** *It is said that before the conquest of Islam, This place was the place of birth (Janam Sthan) of Maharaja Ram Chandraji. There was remains of Sar Girdar alias Ram Darbar and Treta Thakur.* ***Babar got the mosque constructed after demolishing the Janam Sthan****.*

When Raja Darshan Singh won the area of the west Rath etc. the Hindus gained strength. They paved the way around the Teela for fighting and thereby the population of Hindu Faqirs also increased. The signs of the mosque depreciated. Hindus organized their congregations. The Muslims had no sufficient strength to fight. They got a wall constructed around the mosque and named the place as Hanuman Garhi and began Puja there. They did care the Muslim Faqir residing there but after his death, the Hindu Mahant even removed the signs of the mosque. In the rule of Darshan Singh, ***no Azaan was held in Ayodhya for many years and there was no cow slaughter. Perhaps from the period of Mohammad Ali Shah, there began Azan and cow slaughter.***

At last, after great tussle, ***the Hindus got their abodes and temple built within the dilapidated Masjid***

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Hanuman Garhi, Babri Masjid. The Hindus also defaced Masjid, Ram Ghat. *They began throwing garbage in the mosque and by demolishing the graves made splendid temples.*

In 1271 Hijri, during the reign of Wajid Ali Shah, Shah Ghulam Husain with the help of Maulvi Mohammad Ariz (sic) got the mosque reconstructed and established Bazm-e-Jihad in Haidrabad across the river for removing the temple from there. The son of Bankey Hasan Ali Khan, Ahsan Ali Khan Risaldar became its leader. Moreover Rustam Ali Khan and his brother Bahadur Ali Khan also joined the said organization. Some other persons also joined and all of them started for Faizabad. They reached Radna where they were stopped by the men of in-charge of Agha-e-Nazim, Sultanpur and they did not allow them to move forward. Shah Saheb took the way to Lucknow and those who had reached Faizabad were evacuated by Naib Kotwal Nisar Husain and Captain Alexender R, through Mohana. Later on a news paper from Faizabad. . . . about Hindus and Muslims. After inspection, Agha Ali Khan alias Aghai Nazim and Nirza Munam Beg Kotwal were ordered to enquire into the matter At this occasion Shah Saheb sent to Ayodhya some Muslims accompanied by Noor Ali R/s Muzafal, Azamgarh. They stayed at Babri Masjid. After a few days Shah Saheb also reached the said mosque along with Maulvi Araz. They were small in number and had no luggage etc. but they were firm and persistent against the Bairagis. Captain R Sahed Mirza Munam beg Kotwal and Mirza Ali stopped Muslims from moving forward while for

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helping the Bairagis Raja Man Singh and Raja Kisan Dutta Ram Pandey Chakladar and other Zamindars reached on spot. About 80 thousand Hindus collected and closed Ghagra Ghat so that Muslims could not have any help from across the river. A good number of Muslims were with Maulvi Saheb and Shah Saheb. But except for the poor, no influential person helped. These poor persons were in the condition of hand to mouth, nobody helped them.

<u>The slaughter of Muslims in the mosque and desecration of Holy Kuran.</u>

In the last on 10th, on 12th of Zeeqad 1271 Hijri Corresponding to ***July 1855 about 2 to 3 hundred musli reached Babri Masjid for offering Namaj in Sita Rasoi.*** *Shah Sahab took over as Pesh Imam. This news reached Bahragis who cordoned the mosque. The Govt. Officers who had taken bribe from the Hindus, flee to the spot. When the Muslims saw that they would be killed, they came out to face the situation. However, men of Kotwal and riders of Alexander R save the situation form being worsen.* ***But because of great hue and cry, the Muslims could not offer Jumma Prayer."***

3521. P. Carnegi in **Historial Sketch (supra)** published in 1870 has noticed the above fact on page 20/21 as under:

*"**The Janamsthan marks the place where Ram Chandra was born**. The Sargadwar is the gate through which he passed into Paradise, possibly the spot where his body was burned. The Tareta-Ke-Thakur was famous as the place where Rama performed a great sacrifies, and which he commemorated by setting up there images of himself and*

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Sita.

If Ajudhia was then little other than a wild, ***it must at least have possessed a fine temple in the Janamsthan;*** *for many of its columns are still in existence and in good preservation,* ***having been used by the Musalmans in the construction of the Babari Mosque.*** *These are of strong close-grained dark slate-colored or black stone, called by the natives Kasoti (literally touch-stone,) and carved with different devices. To my thinking these strongly resemble Budhist pillars that I have seen at Benares and elsewhere. They are from seven to eight feet long, square at the base, centre and capital, and round or octagonal intermediately."*

3522. He was officiating Settlement Officer at Faizabad and relatively in a better position to know what the people believed at that time. Since the incident was quite old, i.e., hundred years or more, direct evidence was difficult to trace out but in comparison to recent rights set up, the facts mentioned by Carnegi obviously deserve more credence and weight.

3523. In 1877, Assistant Commissioner, Faizabad District **W.C. Benett** gave us **"Gazetteer of Oudh" (supra)**. He also said in para 6 of the Book:

*"The Janamasthan and other temples.--****It is locally affirmed that at the Muhammadan conquest there were three important Hindu shrines****, with but few devotees attached,* ***at Ajodhya****, which was then little other than a wilderness.* ***These were*** *the* ***"Janamasthan,"*** *the "Swargaddwar mandir" also known as "Ram Darbar," "Treta-ke-Thakur."*

On the first of these the Emperor Babar built the

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mosque, which still bears his name, A.D. 1528."

3524. In 1880, A.F. Millitt's **"Report on Settlement of Land Revenue of the Faizabad" (supra), Exhibit 8 (Suit-5) (Register Vol. 20, Pages 55-62)** took note of the above facts:

*"If Ajudhya was then little other than wild, it must at least have possessed **a fine temple in the Janmasthan**; for many of its columns are still in existence and in good preservation, having been **used by the Musalmans in the construction of the Babari mosque**. These are of strong close-grained dark slate-colored or black stone, called by the natives Kasoti (literally, touch-stone), and carved with different devices."*

3525. Report of Archaeological Survey of North West Provinces and Oudh 1889 (supra) (Exhibit 92 (Suit-5) (Register 20, Pages 63-65) says:

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"*The **old temple of Ramachandra** at Janmasthanam must have been a very fine one, for many of its columns have been used by **the Musalmans in the construction of Babar's masjid.** These are of strong, close-grained, dark-coloured or black stone, called by the natives Kasauti, "touch-stone slate" and carved with difference devices. They are from seven to eight feet long, square at the base, centre and capital, and round or octagonal intermediately."*

3526. A.Fuhrer's account published in 1891, **Exhibit 9 (Suit-5) (Register 20, page 67-73)** says:

"It is locally affirmed that at the Musalman conquest there were three important Hindu temples at Ayodhya: these were the Janmasthanam, the Svargadvaram, and the Treta-Ke-Thakur. On the first of these Mir Khan built a

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masjid, in A.H. 930 during the reign of Babar, which still bears his name. This old temple must have been a very fine one, for many of its columns have been utilized by the Musalmans in the construction of Babar's Masjid. These are of strong, close-grained, dark-coloured or black stone, called by the natives Kasauit, "touch-stone slate." and carved with different devices; they are from seven to eight feet long, square at the base, centre and capital, and round or octagonal intermediately."

3527. H.R. Nevill's Gazetteer of Faizabad published in 1905, i.e., **Fyzabad A Gazetteer being Vol. XLIII of the District Gazetteers of the United Provinces of Agra and Oudh"** at page 153 and 175 says:

***"In 1528 Babar built the mosque at Ajodhya on the traditional spot where Rama was born**." (page 153)*

***"The Hindus temples are all intimately connected with the history of Ajodhya**. Most of them are of comparatively recent origin, as **it would appear that almost all the ancient shrines were destroyed by Aurangzeb and other Musalman zealots**..... Above this on the hill to the **west stood the Janamasthan or birthplace of Rama**, and close by are the Kanak Bhawan, a very fine building erected by the Rani of Tikamgarh or Orchha; **the Sita Rasoi or Sita's kitchen; the Bara Asthan, the head-quarters of a fraternity called the Bara Akhara**; the Ratan Singhasan marking the place where Rama was installed after his return from exile; the Rang Mahal, Anand Bhawan, Kaushalia Bhawan or Janam Bhumi, and the temple of Amar Das, as well as many*

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smaller temples and shrines." (emphasis added) (page 190)

3528. "Imperial Gazetteer of India" published in 1908 **(Exhibit 10 (Suit-5) (Register 29 Page 87-89)** is photocopy of frontispiece and pages 388 and 389 of "Imperial Gazetteer of India Provincial Service United Provinces of Agra & Oudh, Vol. II, published in 1934 Faizabad Division is similarly worded. The relevant extract thereof is as follows:

"*The present town stretches inland from a high bluff overlooking the Gogra.* ***At one corner of a vast mound known as Ramkot, or the fort of Rama, is the holy spot where the hero was born. Most of the enclosure is occupied by a mosque built by Babar from the remains of an old temple, and in the outer portion a small platform and shrine mark the birthplace."***

3529. "Fyzabad Gazetteers" published by H. R. Nevill in 1928 (Supra) says:

"***It is locally affirmed that at the time of the Musalman conquest there were three important Hindu shrines at Ajodhya and little else.*** *These were the Janamasthan temple, the Swargaddwar and the Treta-ka-Thakur, and each was successively made the object of attention of different Musalman rulers.* ***The Janamasthan was in Ramkot and marked the birthplace of Rama.*** *In 1528 A.D. Babar came to Ajodhya and halted here for a week.* ***He destroyed the ancient temple and on its site built a mosque, still known as Babar's mosque. The materials of the old structure were largely employed, and many of the columns are in good preservation; they are of close-grained black stone,*** *called by the natives kasauti,*

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and carved with various devices.

3530. After independence, the U.P. Government published a Gazetteer in 1960, i.e., "**Uttar Pradesh District Gazetteers-Faizabad"** by Smt. Esha Basanti Joshi (Supra). There it mentions:

> "***The Janmasthan was in Ramkot and marked the birthplace of Rama. It seems that in 1528 A.D. Babur visited Ayodhya and under his orders this ancient temple was destroyed and on the site was built what came to be known as Babur's mosque****. The material of the old temple was largely employed in building the mosque and a few of the original columns are still in good preservations; they are of cloe grained black stone (kasauti) bearing various Hindu bas-reliefs (see Plate I), the outer beam of the main structure being of sandal wood.".*

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3531. Exhibit 50 (Suit-5) (Register 21, pages 349-361) contains frontispiece and pages no. 59, 60, 150, 151, 152, 153, 154 and Parishishtha “Gha” (Annexure-D) in two pages from the Book **“Ayodhya Ka Itihas”** by Lala Sitaram Awadhwasi, 1932 published by Hindustani Academy, Prayag. The complete book is also available to the Court, i.e., **Book No. 46**. There is slight difference in the Book No. 46 and the pages marked as Exhibit 50, though it is reprint of 2001, since the arrangement of contents in the pages on account of size of the fonts etc. is different. Substantially there is no difference in the contents. Pages 59 and 60, i.e., paper no. 107C1/123-124 are pages no. 44 and 45 in Book No. 46. Pages no. 150 to 154, i.e., paper no. 107C1/125-129 are pages no. 113 to 116. In the revised edition, Appendix "Gha" is not the same and in fact the text of the

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inscriptions which have been repeated in Appendix "Gha" at paper no. 107C1/130-131, has been excluded in the Reprint edition. It further appears that the translation of the two inscriptions given on paper no. 107Ca/127-128 differs from the translation given in Appendix "Gha", i.e., paper no 107C1/130-131. How and why it has happened is not known and we cannot make any comment on it. The author has given his own separate history with respect to the Babar's alleged visit at Ayodhya and it says:

''बादशाह बाबर ई0 सन् 1528 में दल बल के समेत अयोध्या की ओर बढ़ा और सेरवा और घाघरा के संगम पर उसने डेरा डाला। यह संगम अयोध्या से तीन कोस पूर्व था। यहाँ वह एक सप्ताह तक आस–पास के देश से कर लेने का प्रबन्ध करता रहा। एक दिन वह अयोध्या के सुप्रसिद्ध मुसलमान फ़कीर अब्बास कलंदर के दर्शन को आया। उस समय बाबर के साथ उसका सेनापति मीर बाकी ताशकंदी भी था। बाबर ने फ़कीर को बड़े महँगे कपड़े और रतन भेंट किए परंतु फ़कीर ने उन्हें स्वीकार न किया। बाबर सब वहीं छोड़कर अपने पड़ाव पर लौट गया। वहाँ पहुँचने पर उसने देखा कि सारी भेंट उसके आगे पहुँच गई। बाबर चकित हो गया और नित्य फ़कीर के दर्शन को जाने लगा। एक दिन फ़कीर ने कहा कि जन्म–स्थान का मंदिर तुड़वाकर मेरी नमाज के लिए एक मस्जिद बनवा दो। बाबर ने कहा कि मैं आपके लिए इसी मंदिर के पास ही मसिज़िद बनवाए देता हूँ। मंदिर तोड़ना मेरे 'उसूल के खिलाफ है।' इस पर आग्रही फ़कीर बोल उठा, ''मैं इस मंदिर को तुड़वाकर उसी जगह मसजिद बनवाना चाहता हूँ। तू न मानेगा तो तुझे बददुआ दूँगा।'' बाबर कॉप उठा और उसे अगत्या फ़कीर की बात माननी पड़ी और मीर बाक़ी को आज्ञा दे कर लौट गया। मसजिद बनवाने का एक दूसरा कारण 'तारीख पारीना मदीनतुल औलिया (تاریخ پارینہ مدیندۃ الولیا) में दिया हुआ है। और वह यह है :

''बाबर अपनी किशोरावस्था में एक बार हिंदुस्तान आया था और अयोध्या के दो मुसलमान फ़कीरों से मिला था। एक वही था जिसका नाम हम ऊपर लिख आए हैं और दूसरे का नाम था मूसा अशिक़ान। बाबर ने दोनों से यह प्रार्थना की कि मुझे ऐसा आशीर्वाद दीजिए जिससे मैं

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हिंदुस्तान का बादशाह हो जाऊँ। फ़कीरों ने उत्तर दिया कि तुम जन्म–स्थान के मंदिर तोड़कर मसजिद बनवाने की प्रतिज्ञा करो तो हम तुम्हारे लिए दुआ करें। बाबर ने फ़कीरों की बात मान ली और अपने देश को लौट गया।''

इसके आगे मसजिद बनाने का ब्यौरा महात्मा बालकराम विनायक कृत कनकभवन–रहस्य से उद्धृत किया जाता है:

''मीरबाक़ी ने सेना लेकर मंदिर पर चढ़ाई की। 17 दिनों तक हिंदुओं से लड़ाई होती रही। अंत में हिंदुओं की हार हुई। बाक़ी ने मंदिर के भीतर प्रवेश करना चाहा। पुजारी चौखट पर खड़ा हो कर बोला, 'मेरे जीते जी तुम भीतर नहीं जा सकते।' इस पर बाक़ी झल्लाया और तलवार खींचकर उसे क़त्ल कर दिया। जब भीतर गया तो देखा कि मूर्तियॉ नहीं हैं, वे अदृश्य हो गई हैं। पछता कर रह गया। कालांतर लक्ष्मणघाट पर सरयू जी में स्नान करते हुए एक दक्षिणी ब्राह्मण को मूर्तियॉ मिलीं। वह बहुत प्रसन्न हुआ। कहते हैं कि उसकी इच्छा भी यही थी कि कोई सुंदर भगवन्मूर्ति रखकर पूजा करे। अस्तु, पुजारी के वंशधरों ने जब सुना, तब तत्काल नवाब के यहॉ अपना दावा पेश किया। नवाब ने निर्णय किया कि जिसे मूर्तियॉ मिली हैं वही सेवा–पूजा का अधिकारी है। निदान, स्वर्गद्वार पर मंदिर बना, उसमें उन मूर्तियों की स्थापना हुई। उनकी सेवा–अर्चा अब तक उस ब्राह्मण के वंशधर करते हैं। ठाकुर जी काले राम जी के नाम से प्रसिद्ध हैं। इसमें एक बड़े काले पत्थर पर राम पंचायतन की 5 मूर्तियॉ खुदी हैं।

बाक़ी बेग ने मंदिर की ही सामग्री से मसजिद बनवाई थी। मसजिद के भीतर 12 और बाहर फाटक पर 2 काले, कसौटी के पत्थर के स्तंभ लगे हुए हैं। उक्त शाह जी की कब्र पर थे, जो अब फैज़ाबाद के अजायबघर में रखे हुए हैं। इन स्तंभों को देखकर प्राचीन मंदिर की सुंदरता का कुछ–कुछ अनुमान किया जा सकता है। इनकी लंबाई 7 से 8 फुट तक है। किनारों पर और बीच में चौखूँटे हैं और शेष भाग गोल अष्टपहल है। इन पर सुंदर नक्काशी का काम बना हुआ है। मसजिद के भीतर एवं फाटक पर 2 लेख खुदे हुए हैं उनसे मसजिद से संबंध रखने वाली बातें मालूम होती हैं। मसजिद के भीतर वाला लेख इस प्रकार है :

بفرمودہ شاہ بابر کہ عدلَس

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بنا کردہ ایں مُہبط قُدسیاں

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(उपर्युक्त शेरों का नागरी अक्षर में पाठ)

''(1) बफरमूद–ए–शाह बाबर कि अदलश;

बनाईस्त ता–काख़े गरदूँ मुलाक़ी।

(2) बिना कर्दे ईं महबते कुदसियॉ ;

अमीरे सआदत निशॉ मीर बाक़ी।।

(3) बुअद खैरे बाक़ी चूँ साले बिनायश;

अयॉ शुद चूं गुफतम बुवद ख़ैर बाक़ी।।

(अनुवाद)

(1) बाबर बादशाह की आज्ञा से, जिसके न्याय की ध्वजा आकाश तक पहुँची है।

(2) नेकदिल मीर बाक़ी ने फ़रिश्तों के उतरने के लिए यह स्थान बनवाया है।

(3) उसकी कृपा सदा बनी रहे। बुअद खैर बाकी–इसी के टुकड़ों से इसी इमारत के बनने का वर्ष 735 हिजरी भी निकल आता है।

मसजिद के फाटक पर लेख

بنام اں کہ دانا ہست اکبر

کہ خالق جملہ عالم لامکانی

درود مصطفیٰ بعد ازستایش

کہ سرور انبیائ دو جہانی

فسانہ در جہاں بابر قلندر

کہ شد در دورگیتی کامرانی

(इसका नागरी अक्षर में पाठ)

(1) बनामे आंकि दाना हस्त अकबर

कि खालिक जुमला आलम लामकानी

(1) दूरूदे मुस्तफा बाद अज सतायश

कि सरवर अंबियाये दो जहानी

(3) फसाना दर जहां बाबर कलन्दर

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कि शुद दर दौरे गीती कामरानी''

(अनुवाद)

(1) उस परमात्मा के नाम से जो महान और बुद्धिमान है, जो संपूर्ण जगत का सृष्टिकर्ता तथा स्वयं निवास–रहित है।

(2) उसकी स्तुति के बाद मुस्तफ़ा की तारीफ़ है, जो दोनों जहान तथा पैगंबरों के सरदार हैं।

(3) संसार में बाबर और कलंदर की कथा प्रसिद्ध है, जिसे उसे संसार–चक्र में सफलता प्राप्त हुई है।

यहॉ हम इतना और लिखना चाहते हैं कि बहुत थोड़े ही तोड़–फोड़ से मंदिर की मस्जिद बन गई है। पुराने रावटी के खंभे अब मस्जिद की शोभा बढ़ा रहे हैं। मूसा आशिकान की कब्र कटरे की सड़क पर वसिष्ठ कुंड के पास अब भी बताई जाती है परंतु कब्र का निशान नहीं है और वह जगह बहुत ही गंदी है। एक जगह जन्म–स्थान के 2 खंभे गड़े हैं। कहा जाता है कि जब मूसा आशिक़ान मरने लगे तो उन्होंने अपने शिष्यों से कहा कि जन्म–स्थान का मंदिर हमारे ही कहने से तोड़ा गया है। अतः इसके 2 खंभे बिछाकर हमारी लाश रखी जाय और 2 हमारे सिरहाने गाड़ दिए जाएँ।

मुग़ल साम्राज्य में अयोध्या की महिमा घट गई। इतना पता लगता है कि अकबर ने यहॉ तॉबे के सिक्कों की एक टकसाल स्थापित की थी।''

3532. In Chapter 6 paper no. 107C1/123-124, the author (Sitaram) has tried to trace out reference of Ayodhya in 'Vedas' and has said:

''छठा अध्याय

वेदों में अयोध्या

वेदत्रयी में स्पष्ट रूप से न कोशल का नाम आया है न उसकी राजधानी अयोध्या का। अथर्ववेद के द्वितीय खंड में लिखा है :

अष्टचका नवद्वारा देवानां पूः अयोध्या;

तस्यां हिरण्मयः कोशः स्वर्गो ज्योतिषावृतः।।

{देवताओं की बनाई अयोध्या में 8 महल, 9 द्वार और लौहमय धन–भंडार है, यह स्वर्ग की भॉति समृद्धिसंपन्न है।}

ऋग्वेद मं. 10, 64, 9 में सरयू का आह्वान सरस्वती और सिंधु के साथ किया गया है और उससे प्रार्थना की गई है कि यजमान को तेज बल

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दे और मधुमन घृतवत जल दे।

सरस्वती सरयुः सिन्धुरूर्मिभिः महोमही रवसायंतु वक्षणीः,
देवी रापो मातरः सूदयित्वो घृतवत्पयो मधुमन्नो अर्चत।।

इससे प्रकट है कि हमारे देश के इतिहास के इतने प्राचीन काल में भी सरयू की महिमा सरस्वती से घटकर न थी। पंजाब की दो नदियों के साथ सरयू का नाम आने से कुछ विद्वान यह अनुमान करते हैं कि इस नाम की एक नदी पंजाब में थी परंतु हमें यह ठीक नहीं जॅचता।

शतपथ ब्राह्मण में कोशल का नाम आया है और ऋग्वेद में कोशल के सूर्यवंशी राजाओं का कहीं–कहीं नाम है। ऋग्वेद मं. 10, 60, 4 का ऋषि राजा असमाती और देवता इंद्र हैं।

''यस्येक्ष्वाकुरुपव्रते रेवान्मराय्येधते। दिवीव पंच कृष्टयः।।''

इसमें इक्ष्वाकु या तो पहला राजा है या उसका कोई वंशज। और वह इंद्र की सेवा में ऐसा धनी और तेजस्वी है जैसे स्वर्ग में 5 कृष्टियॉ (जातियॉ) हैं।

इक्ष्वाकु से उतरकर 20वीं पीढ़ी में युवनाश्व द्वितीय का पुत्र मांधातृ हुआ। वह दस्युओं का मारने वाला बड़ा प्रतापी राजा था और ऋग्वेद मं. 8,39,9 में अग्नि से उसके लिए प्रार्थना की जाती है। वह मंत्र यह है :

''यो अग्निः सप्तमानुषः श्रितो विश्वेषु सिंधुषु।
तमागन्म त्रिपस्त्य मंधातुर्दुस्युहन्तममग्नियज्ञेषु
पूव्यं नभंतामन्यके समे।''

ऋग्वेद मं. 8,40,12 मांधातृ अंगिरस के बराबर ऋषि माना गया है।

''एवेन्द्राग्निभ्यां पितृवन्नवीयो मन्ध्यातृवदंगिरस्वदवाचि।
त्रिधातुना शर्मणा पातमस्मान्वयं स्याम पतयो रयीणाम्।।''

इसके आगे ऋग्वेद मं. 10,134 का ऋषि यही यौवनाश्व मांधता है। उस सूक्त का अंतिम मंत्र यह है :

''नकिर्देवा मनीमसि नत्किरायो पयामसि, मंत्रश्रुत्यं चरामसि।
एक्षेभिरभिकक्षे भिरत्रामि संरभामहे।।''

इसको ध्यान से पढ़िए तो ऋषि का अच्छा शासक होना प्रकट होता है। वह केवल अपने वैरियों का विनाश नहीं चाहता वरन यह भी कहता है कि हम उन दोषों से मुक्त रहें जिनके कारण राजा लोग अपने धर्म से विचलित होते हैं। इन मंत्रों में नाम कहीं मंधातृ है और कहीं मांधातृ है परन्तु दोनों के एक होने में संदेह नहीं।''

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3533. Exhibit 21 (Suit-5) (Register 21, page 345) is photocopy of pages 693 and 694 of "Encyclopedia Britannica, 15th Edition, 1978". This also gives some description of Ayodhya.

> *"**Ayodhya,** also called OUDH or AWADH, a city of ancient India, on the Ghaghara (Gogra) River in Faizabad district of Utter Pradesh, India. From it are derived later forms of the name, Avadh (Awadh) and Oudh. Ayodhya is regarded as one of the seven holy places of the Hindus. According to traditional history, it was the early capital of the kingdom of Kosala, while in Buddhist times (6th-5th centuries BC), Sravasti became the kingdom's chief city. Scholars generally agree that Ayodhya is identical with the city of Saketa, where the Budha is said to have resided for a time. Its later importance as a Buddhist centre can be gauged from the Chinese Buddhist monk Fahsien's statement in the 5th century AD that there were 100 monasteries there. There were also a number of other monuments, including a stupa (shrine) reputed to have been founded by Asoka (3rd century BC). Ayodhya is revered by Hindus because of its association in the Ramayana, a great Indian epic poem, with the birth of Rama and with the rule of his father, Dasaratha. According to the source, the city was prosperous, well fortified, and had a large population.*
>
> *The Kanauj kingdom arose in Oudh during the 11th and 12th centuries. The region was later included in the Delhi sultanate, the Jaunpur kingdom, and, in the 16th century, the Mughal Empire. Oudh gained a measure of*

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independence early in the 18th century but became subordinate to the British East India Company in 1764. In 1856 it was annexed by the British; the annexation and subsequent loss of rights by the hereditary land revenue receivers provide one of the causes of the India Mutiny in 1857. Oudh was joined with the Agra Presidency in 1877 to form the North-Western Provinces and later the United Provinces of Agra and Oudh, now Uttar Pradesh state.

There are few surviving monuments of any antiquity. ***Rama's birthplace is now marked by a mosque, erected by the Mughal emperor Babur in 1528 on the site of an earlier temple.*** *The numerous Vaisnava shrines and bathing ghats are of no great age. Close to the modern city are several mounds marking the site of ancient Ayodhya that have not yet been adequately explored by archaeologists. The region around the city, which the British called Oudh, is about 24,000 sq mi in area and coextensive with Lucknow and Faizabad divisions."*

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3534. In our view the description therein being of 1978 is of no importance as it reiterates virtually what is contained in the earlier books of reference.

3535. Exhibit 56 (Suit-5) (Register 21, page 369-411) is photocopies of frontispiece and pages no. 44, 45, 128, 129, 132, 133, 134, 135, 136, 137, 138, 139 and 140 of the Book **"Ayodhya" Part I by Hans Bakker 1986** and also pages no. 143, 144, 145, 146, 147, 148 and 149 of **Part II** of the aforesaid book. Hans Bakker's book in its entirety has been exhibited as **Exhibit 23 (Suit-5).**

3536. Besides, a number of pages from this book have

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been filed and they are differently exhibited as under:

(a) **Exhibit 57 (Suit-5) (Register 31 Page 41**) contains the photocopy of the Chapter "Introduction" running in four pages (from XV-XVIII) from Hans Bakker's book "Ayodhya" published in 1986.

(b) **Exhibit 58 (Suit-5) (Register 31 Page 49**) contains the photocopy of the page 43 of Hans Bakker's book "Ayodhya" published in 1986.

(c) **Exhibit 59 (Suit-5) (Register 31 Page 51-71**) contains a photocopy of Chapter 3 pages 49 to 59 of Hans Bakker's book "Ayodhya" published in 1986.

(d) **Exhibit 60 (Suit-5) (Register 31 Page 73-85**) contains the photocopy of the Chapter 4 pages 60 to 66 of Hans Bakker's book "Ayodhya" published in 1986.

(e) **Exhibit 61 (Suit-5) (Register 31 Page 87-92**) contains the photocopy of the Chapter 8 Part I pages 125 to 127 of Hans Bakker's book "Ayodhya" published in 1986.

(f) **Exhibit 62 (Suit-5) (Register 31 Page 93-99**) contains the photocopy of the Chapter 8 Part 1 pages 141, 143, 150, 151 of Hans Bakker's book "Ayodhya" published in 1986.

(g) **Exhibit 63 (Suit-5) (Register 31 Page 101**) contains photocopy of Chapter 23 "Introduction" of Hans Bakker's book "Ayodhya" published in 1986.

(h) **Exhibit 64 (Suit-5) (Register 31 Page 155**) is photocopy of Part 2 Chapter 25 pages 176 to 178 of Hans Bakker's book "Ayodhya" published in 1986.

(i) **Exhibit 65 (Suit-5) (Register 31 Page 159**) contains

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the photocopy of the Chapter 26 Part 2 page 178 of Hans Bakker's book "Ayodhya" published in 1986.

3537. Hans Baker made research in respect to Ayodhya pursuant to grant of Project of University of Groningen (Netherlands). He submitted thesis to the Faculty of Letters of University of Groningen in 1984. The book titled as "Ayodhya" is actually his published Thesis which is a part of Groningen Oriental Studies and was published in 1986. The relevant extract of the findings of Hans Baker which are relied by some of the learned counsels are as under:

"Vaisnavism no doubt received some impetus when Saketa/Ayodhya became one of the foremost cities of the Gupta empire. The ascendancy of Saketa, its identification with Ayodhya, the place of Vishnu's incarnation, the evidence of special reference to the Rama avatara in circles closely connected with the Gupta court at the beginning of the fifth century, the fact that the Gupta emperors from Candragupta II onwards styled themselves parambhagavatas and that Skandagupta even compares himself with Rama, the recording of the foundation of temples, notably of a Visnu temple dedicated to the 'God with the Bow' (Sarngin) by Skandagupta – all strongly endorse the assumption that Vaisnava temples also appeared in Saketa/Ayodhya during the 4th and 5th century. At least some of the ten Deva temples mentioned by Hsuan tsang may have been dedicated to Visnu. Yet, there is no archaeological or literary evidence to support this assumption.

The oldest pieces of archaeological evidence are the

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black columns which remain from the old (Visnu) temple that was situated on the holy spot where Rama descended to earth (Janmbhumi). This temple was destroyed by the first Mogul prince Babur in AD 1528 and replaced by a mosque which still exists. The following specimens of these pillars are known to exist: fourteen pillars were utilized by the builder Mir Baqi in the construction of the mosque and are still partly visible within it; two pillars were placed besides the grave of the Muslim saint Fazl Abbas alias Musa Ashikhan, who, according to oral tradition, incited Babur to demolish the Hindu temple. The grave and these two pillars (driven upside-down into the ground) are still shown in Ayodhya, a little south of the Kubertila. A seventeenth specimen is found in the new Janmsthana temple to the north of the Babur mosque. It is rather a door-jamb than a column.

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The pillars inside the mosque were ***described by Martin****: "These are of black stone and of an order which I have seen nowhere else, and which will be understood from the accompanying drawing. That they have been taken from a Hindu building, is evident from the traces of images being observable on some of their bases; although the images have been cut off to satisfy the conscience of the bigot. . . They are only 6 feet high." the same columns were* ***described by Carnegy:*** *"These are of strong, close-grained, dark slate-coloured, or black stone, called by the natives Kasoti" (kasauti), "('touchstone slate') and carved with different devices. . . they are from seven to eight feet long, square at the base, centre and capital, and round or*

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octagonal intermediately." ***I was not allowed to inspect the columns inside the mosque. From a distant glance and from the description above it is beyond doubt that they are the same as the two pillars found beside the grave.***

The two columns at the grave of Musa Ashikhan rise about 1m above the ground. They are carved at the base with a pot (kalasa) with overhanging creepers from which a decorative lotus rises up. On one of the octagonal sides of one pillar a female figure in tribhanga pose (measuring c. 15-20cm) is still visible although it is heavily mutilated. As far as they protrude above the ground the columns are octagonal passing into a square at the base. They may date from the tenth or eleventh century.

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The door-jamb found in the modern Janmsthana temple (it rests against the wall of the inner-court) consists of the same type of material as the other columns. It is 115cm long, and decorated with sculptured figures from top to bottom. At the base is a small arched recess in which stands an elegant image of make deity (25cm high). The deity wears a makuta (tiara), his right hand shows the vitarka-mudra, his left hand seems to hold something that most resembles a trisula. The figure wears a dhoti and vanamala and is standing in tribhanga posture. An identification of the image with Visnu would be unwarranted, since it may as well represent one of the (guardian) deities of the temple precincts. Above the niche are two vertical bands of decoration, the right one shows the petal, or rising creeper motif, the left one contains five

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figures of nymphs, one above the other, the uppermost one being a salabhanjika. The jamb may date from the same period as the columns, although they are not necessarily from one and the same temple. ***All these pieces are ascribed by local tradition to the Visnu temple that occupied the Janmbhumi site before the coming of Babur.***

Curiously enough, ***Laksmindhara who gave a survey of the well-known Hindu tirthas of the eleventh century mentions neither Ayodhya nor the birthplace of Rama.***

- The oldest Visnu idol (10th-11th century) found in the surroundings of Ayodhya is *the one lying among the debris of a temple at the holy place Dugdhesvara (Sitakunda) near the village Darabganj. It represents one of the 24 forms of Visnu, viz., Visnu Trivikrama. The sculpture (36x46cm) is much eroded, yet intact. Other fragments, among which a pedestal, are found at the same site.*

- Rather than testifying to an ancient Saiva temple the two medallions in the Guptahari/Cakrahari temple in the Gopratara compound may have belonged to a Visnu temple on this site. Gopratara is the oldest tirtha of Ayodhya. Cakrahari figures in the Vaisnava tour II(S), whereas TP, quoting the S recension of AM, reads Guptahari and Gopratara instead. The existence of a Visnu temple at the Gopratara ghat belonging to the early period seems therefore plausible. ***Gopratara is the only tirtha in the Ayodhyaksetra that is mentioned by Laksmindra.*** *The S*

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recension preserves the name of the Visnu temple (visnor ayatanam) in which the image of Visnu Guptahari was installed, namely Harismrti (AM 58.3). The relation between Cakrahari and Harismrti is not clear and the name Harismrti is deleted in the OA recension. ***From the data given above we tentatively conclude that there existed an ancient Visnu temple at the Gopratara ghat (possibly erected before AD 1000) named Harismrti.*** *The idol of the temple came to be known as Guptahari. The image and the Visnu temple Harismrti are not necessarily of the same date. The temple might have been provided with a new image (Guptahari) in the course of time (12th century?; cp. I,54).” (Pages 43-45)*

3538. Chapter 8 deals with the development of "Ayodhya" as Sacred Center from 13th to the middle of the 18th century with special reference to the Ayodhya Mahatum.

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“*The appointment of Malik Nasir-ud-din Mahmud governor of Avadh in AD 1226 initiated a period of Islamization of official life in the provincial capital. Although it did not mean, as will soon be seen, the developments in the Hindu fold were totally repressed or that an effective check was put upon its activities, it did precludes the building of Hindu temples of any significance and permanence until the 18th century.* ***This is proven by the existence of a gap in archaeological evidence with respect to Hindu artefacts, images and temples alike, from the thirteenth to the seventeenth century.*** *The few idols found that could belong to the seventeenth century might equally be assigned to the eighteenth century. In the*

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latter century great building activity was initiated again under the liberal rule of the Nawwabs of Oudh. The oldest temples in Ayodhya date from this time, and the majority of 'old' images found today likswise belong to this period at the earliest.

It would seem that under Muslim supremacy it was possible for Hindu religious life to continue on a modest scale in old temples which were built before Muslim rule, until they were eventually demolished. The first Hindu temple that is known to have succumbed to this fate was the temple on the Janmbhumi, which was replaced by a mosque by order of Babur. *Yet, besides in temples, congregations could be held at the bathing ghats on the river and at holy places, mostly tanks or kundas, in the town and its surroundings. On the occasion of festivals temporary structures like mandapas (awnings) could be raised to serve for worship.*

The oldest versions of the AM, as well as independent evidence, seem to endorse the view that the religious structure of Ayodhya as far as Hinduism is concerned was not essentially different in the 13th and 14th centuries from that in the 12th. ***Jinaprabhasuri, writing in AD 1332 mentions mainly tirthas that have been shown to exist in the 12th century:*** *the ghats on the Saryu river, Svargadvara and Gopratara, the naga sanctuary in the north of Ayodhya, now under the name of Sahasradhara, the confluence of the Sarayu and Gharghara, and the shrine of the yaksa Mattagajendra, said to be situated on top of the city wall (prakara). Further the Jain author mentions the*

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Sitakunda among the several other Hindu tirthas (anegani loiatitthani). ***The ban on building new temples may have left open the possibility of resorting to new holy bathing places in the river and in ponds.*** *In default of archaeological remains of bathing places it is generally difficult to ascertain whether and how many of the kundas described in later texts were existent in the 12th or earlier centuries.*

In order to complete our understanding of the sacred topography of Ayodhya and its surroundings we shall turn to the main source of information, the oldest version of the Ayodhyamahatmya. It will be shown in Intr.Pt.II that the oldest transmitted texts of the AM tradition are not only found in the recension of the Mahatmya that was included in the Vaisnavakhanda of the Skandapurana(siglum S). An additional collection of legends is preserved in a MS henceforth referred to as B. It will be shown that a chronological differentiation between S and B is not warranted on textual critical grounds. S as well as B appear to go back to a 'floating', possibly oral, tradition which will be designated by the phrase 'α-type-of-text'. The transmittors of the (oral) tradition composed and collected the legends of the holy centres which had begun to emerge in the eleventh and following centuries. Accordingly the α-type-of-text is not to be considered as a fixed body of sacred literature nor was it necessarily homogeneous, as is shown by differences between S and B and within S itself. It would have been a kind of compendium of sacred information about the holy places and their traditions

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which gradually assumed a more definite form in a tradition transmitted by local Pandits and priests, until it underwent the first literary redaction and was included by the composer of the Vaisnavakhanda in the body of smrti literature. Consequently the S recension is only an instance of a process that had begun long before and would continue afterwards.

A survey of the sacred topography of the holy ksetra as rendered in the α-type-of-text at the stage of its redaction in the S recension is presented in table I. We observe that specific Ramaite holy places are still in a minority, notably within the town itself. ***From the twenty seven Hindu places described in chapters 2-3 (i.e. before AD 1200) only three (11%) could be positively related to Ramaite mythology.*** *Taking together all places presented in table I we note that 31% of them are somehow connected with Rama Lore. We should treat these figures with caution, however, because the absence of literary evidence from before AD 1200 may seriously distort our view of that period.*

No sanctuaries within Ayodhya itself that were not already supposed to exist in the 12th century are described in B and S. the Varahasabha mentioned in B might refer to a temple dedicated to Varah near the confluence of the Sarayu and Gharghara. ***The two Ramaite palaces, Kaikeyi-bhavana and Sumitrabhavana, may refer to subsidiary shrines within the Janmasthana, compound or to the bare sites on either side of it rather than implying the existence of separate temples.*** *Both sites are*

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today still without a temple of any significances. Besides the Janmasthana, places within the precincts of the town that are explicitly connected with Ramaite mythology by legends of their origin are the naga sanctuary sahasradhara (where Laksmana reunited with Sesa), the yaksa shrine of Surasa, the river Tilodaki and the two tanks Ksirodaka and Sitakunda. MS B adds to this the ghat on the river on the eastern side of the city called Ramakunda. In addition S mentions seven ponds or tanks within the town of a general Hindu connotation and of unknown antiquity.

Besides being reflected in the sacred topography, the gradual Ramaization of Visnuism in Ayodhya may be gleaned from theological remarks in the S recension. It should be noted before-hand, however, that S is predominantly a non-sectarian Vaisnava text which conceives of the supreme deity as Visnu, Hari, or Bhagvat. Yet, this does not alter the fact that signs of Ramaization appear throughout the text.

In his introduction the narrator of the Mahatmya Romaharsana, speaks the words: namami paramatmanam ramam rajivalocanam/atasikusumasyamam ravanantakam avyayam//. As was already known from the Ags., Laksmana is conceived of as an incarnation of Sesa. Release (mukti) is said to be within reach of everybody by means of worship (puja) of Rama with incense, flowers, lamps, etc. A bath in the Ramaite tirthas such as the Sarayu or the Sitakunda leads to reunion with Rama (ramarupo bhaven narah, or ramam avapnuyat). The text further notes the meditation on Rama, and the installation of a Rama image (ramamurti).

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But, nor surprisingly for a mahatmya text, pilgrimage to Ayodhya ranks first among the means of salvation. Ayodhya is the place to be seen in the Kali age. The merits thereof are extolled in the usual way by comparing them with the fruits to be obtained in other holy places, notably Kasi, the river Ganga, Gaya and Purushottama. Finally S extols the visit and darshan (darsana) of Janmasthana on Rama's birthday, especially meritorious for one who observes the vow of Navami:

"A man who has seen (Janmasthana) will not be born again, even if he does not offer gifts, does not practise asceticism, does not go on (further) pilgrimages, or does not perform sacrifices: When the day of Navami has come a man engaged in the vow will be liberated from the bondage of rebirth due to the miraculous power of a bath and a gist. By seeing Janmbhumi he shall obtain the result that accrues to one who offers daily a thousand red cows.".

If we compare the text of MS B with that of S we observe that B has a less generally Vaisnava and more specially Ramaite stamp. The topography described in B taken by itself consists of approximately 45% Ramaite holy places. With regard to theology B adds to S the doctrine of Rama's grace (prasada). Two devices to reach Rama, comparatively absent in S, are accentuated: the darshan (darsana) of Rama, and the powerful means of release that is at the disposal of the devotee in the form of Rama's name (ramanamaprasada). Japa of the name yields bhukti and mukti. Concomitant with emphasis on the name is the high esteem in which the practice is held of participating in the

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recitation of Rama's exploits: "The deeds of Raghunatha comprise a hundred crores (of syllables): each syllable destroys a man's great sins." "And when one goes (on pilgrimage) to Ayodhya one should always (nitya) be engaged in recitation, singing the beautiful story of the incarnation (pradurbhavakatha) of the Lord." Other hymns mentioned in this context are the Namasahasra, the Stavaraja, and the Gajendramoksanastotra. Another significant difference between MS B and S is the concept n the former of a celestial Ayodhya which is replicated on earth by Visvakarman. Finally B accentuates the celebration of Ramanavami by describing a gathering (mela) that is held on the bank of the bank of the Sarayu near the Ramakunda on the occasion of the birthday:

"Gods and Asuraas, men, Nagas, Yaksas, Gandharvas, and Kinnaras, all the Planets and their foremost, the Sun, preceded by Rahu and Ketu, the Guardians of the world to begin with Indra, and Sesa along with the other Serpents, the Gods with Brahma at the head, and the (Divine) Mothers, Rudra and the others, all these have come to Ayodhya and reached the bank of the Sarayu. ***When the day of Navami has come men, Gods, and Asuras alike come for darshan to where God Rama is present, O great Goddess.****"*

Considering that both S recension as well as the legends preserved in MS B go back to the α-type-of-text, we are led to infer the the composer of the Vaisnavakhanda in selecting and editing his material was endeavouring to establish a traditional Vaisnava text of a non-sectarian

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character. The predilection of this 'smrti author' can be amended by considering B and S together.

To fix the period in which the α-type-of-text was redacted and included in the Vaisnavakhanda the following arguments may be considered. The fact that some of the holy places described in S appear to have been established at the end of the eleventh and in the twelfth century almost excludes the possibility that the redaction of S was made before AD 1200. The references to devotion to Rama that are found throughout S and the Ramaite form of Vaisnavism that is manifest in B only endorse this conclusion. At the time of the redaction the Rama cult must have been already well established in Ayodhya. In fact it may have been the principal cause for the transformation of local holy places into centres of pilgrimage, which again made the want of an authoritative text more acutely felt and encouraged the insertion of the local mahatmya tradition into an acknowledged smrti text. These historical circumstances point rather to the 13th or 14th century, if not later. The practice of wandering around singing the name of Rama referred to in B is a historically attested phenomenon at least from the time of Ramananda whose floruit was most probably in the 14th century.

A terminus ad quem is set by a quotation from the AM from the Skandapurana in the work of Jiva Goswami in the 16th century. Moreover that century witnessed the growth of a new conception, viz., that of the Ramadurga, which, as we shall see below, greatly altered the structure and appearance of Ayodhya as a holy town. This idea is

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still completely absent in S as well B. On the contrary the sacred topography described in S does not significantly differ from the situation in the 12th century, and tallies with the description given by Jinaprabhasuri in the beginning of the 14th century.

In view of the above consideration we are inclined to accept the close of the 13th or the 14th century as the most plausible date for the redaction of the α-type-of-text and its insertion in the Vaisnavakhanda (S).

On account of the more outspoken Ramaite character of B, notably the description of a (new) ghat (Ramakunda) and the conception of a celestial Ayodhya, features that represent significant modification with respect to the S recension, we are inclined to accept (despite the text-critical evidence) a somewhat later date for B (14th-15th century). B may have been culled from a later, modified and extended version of the α-type-of-text." (Pages 125-130)

"*In summarizing we may say that both religious as well as political sources testify to a prospering town in the fourteenth century; a growing centre of political and commercial activity, with which the development of a centre of pilgrimage went hand in hand.* ***Periodical fairs may have served commercial as well as spiritual ends. The most important of the festivals in those days was doubtlessly the birthday of Rama. On this and similar occasions the town attracted an increasing number of pilgrims in pursuit of darsana of the Janmasthana.*** *Among the devotees Sants like Ramananda, Saiva ascetics*

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like Siddhigiri, or Muslim pirs like Badi ud-din Madar Shah might equally have been found. Melas took place mainly, it seems, on the bank of the Sarayu river. The most frequented ghats of this period can be gathered from the pilgrimage tour described in S: 1) Svargadvara and both adjacent temples of Candrahari and Dharmahari, 2) Brahmakunda, 3) Cakratirtha with the temple of Visnuhari, and the ghats and temple of Gopratara a little outside of the town. This configuration is corroborated by a description of Ayodhya that occurs in a MS of the Nrsimhapurana. To ensure peace and the loyalty of the Hindu part of the population the Muslim governors appear to have tolerated these gatherings which no less contributed to their own welfare. Apart from the new Muslim quarter unnecessary provocation of Hindu resentment was avoided as is apparent from the fact that no buildings such as mosques and the like were raised on Hindu holy ground.

Muhammad Tughlaq's successor, Firuz Tughlaq founded the present city of Jaunpur in AD 1359. After the invasion of Timur-i-lang, when confusion prevailed throughout the Sultanate, the Wazir Khwaja-i-Jahan, who was endowed with the title ***Malik-ush-Sharq, was sent by the Sultan Nasir-ud-din Mahmud to recover the eastern dominions in AD 1394. He took his residence in Jaunpur, and soon proclaimed independence. Avadh became part of the Sharqi territory until it was eventually recovered by Bahlol Lodi, the Sultan of Delhi, who appointed his nephew Mian Kala Pahar Farmuli***

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Governor of Avadh in the last years of his reign (AD 1489). Ayodhya came under the control of the Lodis. *About the aforementioned Lodi governor, Abbas Khan Sarwani remarks; ". . . his jagirs were never disturbed and during all this time he gave his attention to nothing else except the accumulation of wealth. I have heard from persons of veracity that he had assured three hundred mans of red hard gold, and he did not purchase any other but golden jewelry."* ***Ayodhya might have been the right place for this hoarder since gold was found in its environs*** *(see below).*

Little is known as to the specific Historical situation in Ayodhya under the rule of the Sharqis and Lodis. In the political domain the town had to concede much ground to the city of Jaunpur. Along with the weakness of central authority Hindu chiefs gradually strengthened their hold on the situation. With regard to this period Joshi remarks: "Under the Jaunpur kings Avadh was administered in a better way than under the Sultans of Delhi. The local zammindars and rajas also appear to have strengthened their position and the Sharq rulers (surrounded as they were by petty though independent principalities) had to placate them to maintain peace and order in their kingdom."

Scarcity of sources inevitably obscures the progress of the town during the fifteenth century. Subsequent history proves that the foundations were laid for a period of blossoming. An idea of the prosperity and religious prestige which was attained on the eve of the age of the Great

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Moguls may be gleaned from the evidence left behind by the founder of the Mogul Empire.

The conqueror Zahir-ud-din Muhmmad Babur visited Ayodhya in Hijri 934 (AD 1527). The new emperor writes in his diary that he was on the march to Oudh and reached the town for the first time about March 29: "We stayed a few days on that ground (near Aud) in order to settle the affairs of Aud. People praised the land lying along the Sird(a) 7 or 8 kurohs (14-16 miles) above Aud, saying it was hunting ground." Unfortunately the diary breaks off after April 2 AD 1527, only to resume in September 18 AD 1528. ***In this interval a mosque was raised by order of Babur on the site of the Janmabhumi temple. Babur might therefore have stayed in Ayodhya somewhat longer or have returned later in the same year.*** *Beveridge gives the translation of a fragment which probably deals with Ayodhya and which has obviously been displaced in the codex on which the translation of Leyden and Erskine was partly based. "The passage contained in this section seems to be a survival of the lost record of 934 AD (f.339) . . . It may be a Persian translation of an authentic Turki fragment, found, perhaps with other such fragments in the Royal Library." The translation of its runs: "After spending several days pleasantly in that place, where there are gardens, running-waters, well-designed buildings, trees, particularly mango trees, and various birds of coloured plumage, I ordered the march to be towards Ghazipur."*

The columns of the Janmabhumi temple that were

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used in the construction of the mosque have been described above. ***The mosque itself contains two inscriptions, the translation of the one inside reading****:*

"By the command of the Emperor Babur, whose justice is an edifice reaching up to the very height of the heavens, the good-hearted Mir Baqi built this alighting-place of angels. Bavad Khair baqi: (May this goodness last forever). The year of building it was made clear likewise when I said buvad khair baqi" (=935 AD, i.e. AD 1528).

Another incomplete inscription is found above the entrance which provides no additional information. ***Mir Baqi Tashqandi was apparently appointed first Mogul Governor of Avadh****.*

By the time of Babur Ayodhya, particularly the temple of the Birthplace and evidently gained such prestige that it aroused the envy of the new emperor, possibly incited by local Mussulmans for whom the flourishing of this Hindu centre of pilgrimage had for long been a thorn in the flesh. ***Local tradition has it that it was especially the pir Fazl Abbas Musa Ashikhan (whose grave is still marked today by two temple columns), who instigated Babur to demolish this denounced centre of idolatry.****"*

(Pages 132-134)

3539. Based on the topography of the Janamsthan in "Ayodhya Mahatam" Hans Baker tried to find out the exact location and on page 144-146 mentioned as under:

"*When we leave aside the information contained in AM 21.2-4, the location of the Janmasthana as given in the carious recessions can be sketched as follows.*

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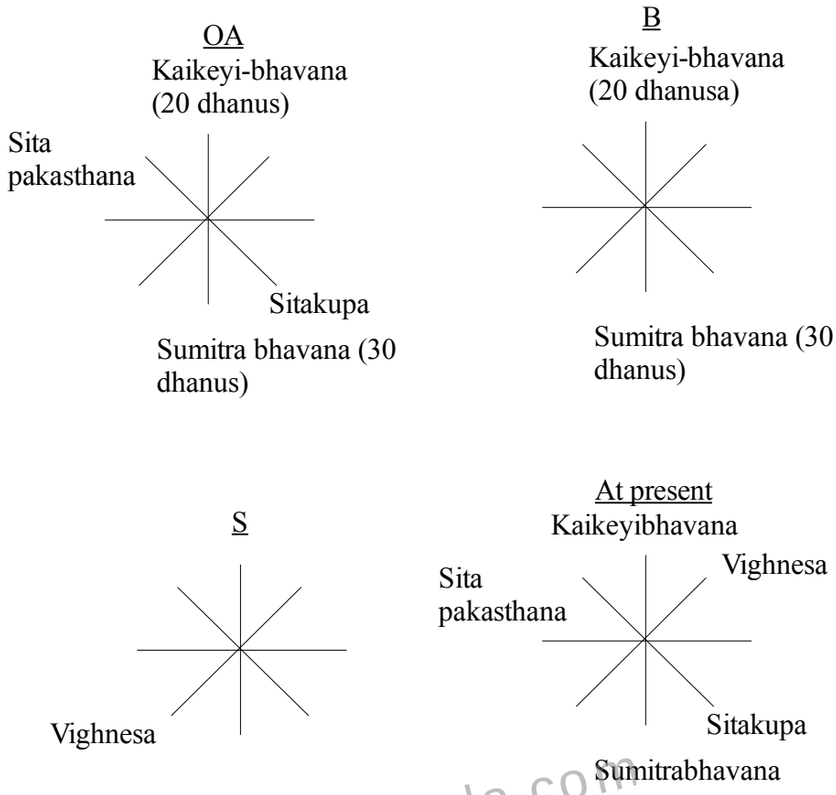
Situation (1):



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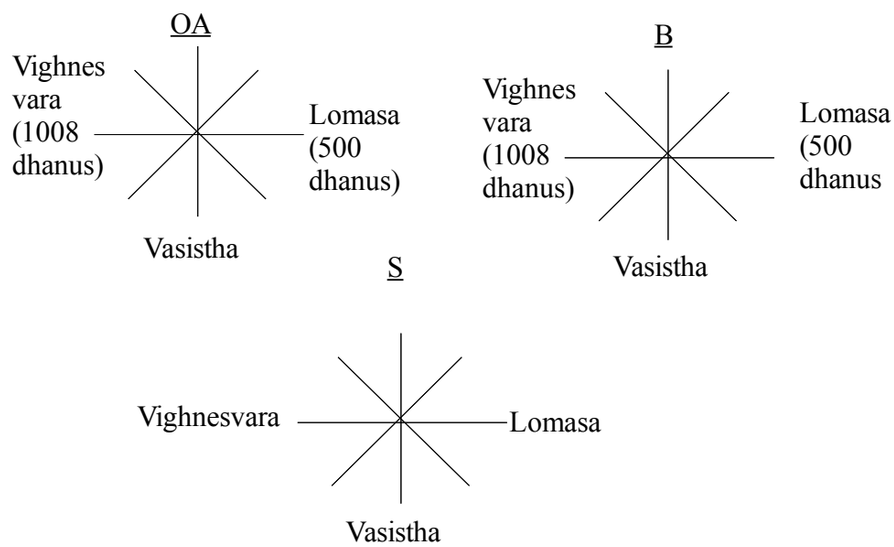
The topographical information contained in AM 21.2-4 can be sketched as follows:

Situation (2):



Slokas AM 21.2-4 (situation (2)) seem to define a ksetra, an area that is considered to be the birthplace of Rama. This are is said in OA and B to stretch more than

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500 dhanus (>910m) westwards of Lomasa, 1008 dhanus (=1835m) eastwards of Vighnesvara, and 100 dhanus (=182m) from Unmatta in an unspecified direction. In the middle of this ksetra the royal palace called Janmasthana is said to be situated. It is uncertain which places are meant in situation (2), and one is inclined to consider these three slokas as spurious. Unmatta and Lomasa do not occur elsewhere in the Mahatmya, while Vighneswara (if identified with Vighnesa) was said in S 21.1a to lie south-west of the Janmasthana instead of west. Moreover the Vighnesa referred to in S 21.1a lies somewhere in the area of the Ramkot (see Intr.AM 17), whereas the Vighneswara mentioned in S 21.2a is said in OAB 21.3c to lie 1,835m eastwards.

Nowadays a math named Ramgulela is believed to represent Lomasa, but this place lies about 350m east of the Janmasthana and its denomination as Lomasa seems to have arisen merely to justify these three verses. Vasistha might refer to the Vasisthakunda which lies c.450m south-west of the Janmasthana. Unmatta as a name of a tirtha is unknown to the Mahatmya as well as to local Pandits. One is tempted to think of Mattagajendra or Surasa/Surapa, which however lie c.900m north-west of the Janmasthana instead of the said 182m. We have conjectured that Unmatta could refer to the disappeared Bhairava shrine within the Ramkot, possibly situated on the Hanumantila (see Intr.AM 17 and ad OAB 21.3d). The absence of these three slokas in MS P could point to their spurious character, although the textual critical analysis would not

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directly warrant such conclusion.

When returning to situation (1) we observe that OA and B basically agree, albiet that OA has added Sitapakasthana and Sitakupa, places which only occur in the OA recension (see OA 24, and OA 26). The given distances of the Kaikeyibhavana and Sumitrabhavana (respectively 36m and 55m), when reckoned from the mosque of Babur, do not correspond with the modern situation. Today both sites (Sumitrabhavana c.100m S, Kaikeyibhavana c.250m N) are devoid of any significant religious buildings, as they might always have been. The directions in B and OA (see OAB 25.1, and OAB 25.3) may therefore be considered to refer only to spots or subsidiary shrines in the northern and southern precincts of the Janmasthana compound which were named after Sumitra and Kaikeyi merely for the sake of completion (see Intr.AM 25).

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More difficult to explain is the location of the Janmasthana with respect to Vighnesa as indicated in S 21.1. As has been said above an identification of Vighnesa referred to in S 21.1a (tasmad) with Vighnesvara of S 21.2a is problematic. The Vighnesa implied in S 21.1a might be identical to a place of the same name mentioned in OA which today, however, is considered to lie in the opposite direction, i.e. to the north-east of the Janmasthana (see Intr.AM17).

Notwithstanding all the difficulties discussed above, the original location of the Janmasthana temple is comparatively certain since it seems to be attested by

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the location of the mosque built by Babur, in the building of which materials of a previous Hindu temple were used and are still visible. The mosque is believed by general consensus to occupy the site of the Janmasthana.

After the destruction of the original temple a new Janmasthana temple was built on the north side of the mosque separated from it by a street."(Page 144-146)

3540. He (Hans Baker) has given synopsis on pages 146-149 as under:

"Assessment of the content.

The history of the birthplace of Rama, Janmasthana, has been treated in Pt.I. A synopsis may suffice here.

Specimens of pillars that formed part of the Hindu temple that was demolished by order of Babur in AD 1528 ***show that the original birthplace temple dated from the 10th or 11th century (I, 43-45). Before its destruction the temple must have been one of the main pilgrimage centres of Ayodhya, especially on the occasion of Ramanavami*** *(I, 128, 132). On the instigation of a Muslim saint Khwajah Fazl Abbas, as local tradition has it (or of another Muslim Faqir named Jalal Shah according to Sitaram 1933, 34f.), the first Mogul governor appointed by Babur, Mir Baqi, replaced the temple by a mosque in AD 1528 (I, 133f.).*

The destruction of the temple would not have implied the end of all forms of worship in and around the holy site. Just as they do today, pilgrims may have assembled near the mosque to have darshan of the

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tirtha, and in order to perform the puja special provisions may have been made. *Tieffenthaler describes a vedi erected in the court of the mosque which is three times circumambulated by the pilgrims who then make a prostration (Tieffenthaler I, 181; Cp. Tripathi 1969, 39 ff. Quoted below).* ***The ritual of Ramanavami described in OA 22, which is said to be carried out in the Janmasthana (OA 22.22), does not require a temple or the like and could therefore have been performed somewhere near the original holy spot in the 16th and following centuries.*** *Such perseverance and flexibility of Hinduism under Muslim repression, which was demonstrated throughout the history of North India, could have provided an objective reason for the compiler of the OA recension* ***not to delete or minimalize his description of the Janmasthana despite its occupation by a mosque.*** *The general pretentions of this sort of literature to describe an eternal situation created in an immemorial past, a kind of religious superstructure that is detached from the upheavals of the gross material world, may explain why no reference whatsoever to the actual situation found a place in the Mahatmya. Considerations of this kind lead inevitably to the conclusion that the historical event of the destruction of the Janmasthana temple is of no use in fixing a date (pre or post Babur) for the recensions of the AM.*

The Janmabhumi may be conceived of as a compound which has comprised and still comprises several holy site. The description is restricted to the Janmasthana temple itself in the S recension (OABS

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21), but B has added two apparently subsidiary shrines- the places of Sumitra and Kaikeyi *(OAB 25). The OA recension bears witness to a still further developed compound which comprised also two shrines of Sita, viz. her kitchen and her well (Sitapakasthana (OA 24) and Sitakupa (OA 26)). The above mentioned tirthas are today within a distance of 200m from the mosque of Babur. According to local tradition the shrines of Sumitra and Kaikeyi were destroyed alongwith the temple of Janmasthana. An interpolation occurring only in edition a connects the three palaces (Kausalya, Kaikeyi, and Sumitra) with three ghats (tirthas) at the Sarayu (III, App. 1 No. 4). Due to a shift in the bed of the river these ghats are nowadays much in decay. Thus glorification of the sacred complex Rama's birthplace spreads over AM 21-AM 26.*

The later history of the site is briefly as follows.

Although under some liberal Muslim rulers the tension between Hindus and Muslims with regard to the Janmasthana may have been temporarily alleviated by giving the Hindus permission to perform their puja on a platform near or even within the precincts of the mosque (Tripathi 1969, 39: akbar ne hindu janta ki prasamsa ke liye ahate me ek cabutara banvane ki ajna de hi, jis par ram parivar ki murtiya sthapit karke jhopari ke bhitar mandir ka rup diya), yet Babur's inheritance remained a bone of contention between both sections of the populace.

The slumbering conflict came to a head in the controversy that had arisen in 1855 between Hindus and Muslims in consequence of the Letter's claim to offer

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prayers at Hanumangarhi *(see ad OA 17.2c). About 300 fanatical Muslims had assembled in the mosque and resolved to launch an attack on the Vaisnava vairagis. The fight that ensued is described by Bhatnagar 1968, 119: "In the meantime the Muslims proposed to put a door in the enclosure-wall of the masjid and repair its defences. Some people were sent to bring a pair of strong doors from Begampura" (i.e. the area to the north of the Ramkot, H.T.B.). "While they were coming back, they were surrounded by the Vairagis who asked them to abandon their projected scheme. In a moment the news spread like wild fire and the Muslims rushed to the help of their comrades and attacked the Vairagis. Then ensued a regular fight between the two factions. While the conflict was in progress the Muslims tried to enter Hanumangarhi but the attempt failed and they had to retreat with the loss of their leaders who were left wounded at the garhi . . . "The Vairagis in the meantime shouting slogans fell on the masjid and cut the Muslims to pieces. Shah Ghulam Husain with a few followers escaped by jumping over the walls, leaving behind some 70 dead and many more wounded." (For the aftermath of this massacre, which led to the expedition of Amil Ali,* ***see Bhatnagar 1968, 117-140)****.*

Soon after this rupture, ***in February 1856, Oudh was annexed by the British Government and Ayodhya came directly under British rule. "A railing was put up" around the mosque "to prevent disputed, within which, in the mosque the Mahomedans pray, while outside the fence the Hindus have raised a platform on which they***

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make their offerings. *" (Carnegy 1870, 21).*

In December 1949 new riots broke out between Hindus and Muslims. During the night of December 23 the Hindus succeeded in installing idols within the mosque (Tripathi 1969, 60f.). "The agitation continued for more than three years. It had serious repercussions on the law and order situation in this town and resulted in some assaults and murders. During these years the relations between the Hindus and the Muslims remained strained and the services of the police were constantly on call. The site of the dispute (i.e. the mosque of Janmasthana) is in police custody pending the decision of the civil court. The police maintains an armed guard on the spot for the protection of the building and the prevention of any breach of peace, and a temporary out-post has been established near the site of the dispute." (Faiz-Gaz. 249). This situation continues up to the present day.

Modern situation.

Today the mosque and the railing set up by the British are still there. *The lawsuit is still pending in the Court of the Civil Judge Faizabad. A sentry stands outside the fence and more soldiers are permanently quartered inside the mosque.* ***No Muslims are allowed to enter the precincts and the Hindus may come only as far as the fence in front of the entrance gate where they have erected a small altar****. On a platform near the altar groups of Hindus are continuously engaged in Kirtana. A pamphlet circulated among the many pilgrims who visit the place for darshan reads " "Shri Ram Janma Bhumi of Ayodhya is a*

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very sacred place. Anticipating Hindu-Muslim friction the Govt. has declared it a disputed place and has taken possession over it. Regular case is being conducted in the civil and criminal court. Since December 27, 1949 day and night Akhand Kirtan is being performed with a determination that it will continue so long as "Ram Janma Bhumi" is not freed" . . . "It is the sacred duty of the entire Hindu Community to finance this holy cause donations (sic:) and thus earn immense "PUNYA". "A glimpse of the idols within the mosque can be seen. Offerings of food (sweets) can be given through the bars of the fence. At present only eleven Hindus are allowed to enter the mosque on special occasions to perform the puja of the idols (Sita and Rama).

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On the northern side of the mosque is a new Janmasthana temple. The place was founded by a sadhu called Ramadasa, pupil of Devamurari (Prayaga), in the 18th century (Tripathi 1969, 75 ff.). Gradually the hut built by Ramadasa evolved into the large temple that nowadays occupies the site. The temple is built around an inner court on the west side of which are two cellas. In one of these the images of Rama and his parivara deities are installed, the other one contains the idols of Dasarath and his entourage.

Against the wall of the court stands a piece of a door-jamb said to come from the old Janmasthana temple. It has been described in I, 44f. The temple is visited by many pilgrims."(Pages 146-149)

3541. This description of Baker is either a reiteration of the information supplied in various Gazetteers or that contained

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in History book. However, at places he has simply proceeded by assuming many things on his own without asigning such information.

3542. On behalf of plaintiffs (Suit-4), certain expert witnesses, (Historians) were examined to tell us that according to their expert opinion, which they have formed after due research and enquiry, the conclusion drawn is that no temple existed at the disputed site at the time when the said construction was made and there was no demolition of any alleged temple for constructing the disputed structure. The nature of the issues is such where one cannot expect a direct oral evidence. An incident of several hundred years ago, if occurred, what were the circumstances, when and how it happened, can only be seen/ inferred from the historical material, if any. By its very nature, there cannot be any direct evidence in the form of a witness. A documentary evidence in the form of inscription, if available, could be of immense help. One helping hand in such matters, where the issues pertain to science, art or other matters, the Court may form its opinion by taking help of opinions of Expert. Section 45 of the Evidence Act, 1872 enables the Court to consider opinion of the persons specially skilled in such matters. It reads as under:

> ***"45. Opinions of experts.-****When the Court has to form an opinion upon a point of foreign law, or of science or art, or as to the identity of handwriting or finger impression, the opinions upon that point* ***of persons specially skilled*** *in such foreign law, science or art, or in questions as to identity of handwritings or finger impressions* ***are relevant facts****.*

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Such persons are called experts."

(emphasis supplied)

3543. Section 5 of the Evidence Act says that evidence may be given in any suit or proceeding of the existence or non-existence of every fact in issue and of such other facts as are declared to be relevant under Part I Chapter 2 and of no others. Therefore, there is an embargo by the statute that except to the extent the evidence may be given under Section 5 no other evidence should be entertained by court.

3544. In **Collector, Gorakhpur Vs. Palakdhari ILR (1899) 12 All 1 at page 43** this Court observed that Section 5 excludes everything which is not covered by or comes within the purview of other sections which follow in the statute. A word of caution was added by Hon'ble Mookerji in **Emperor Vs. Panchu Das & Ors. AIR 1920 Cal 500 (FB)** that the principle of exclusion should not be so applied as to exclude matter which may be essential for the ascertainment of truth. To the same effect is the observation in **Queen-Empress Vs Abdullah ILR (1885) 7 All 385 (FB)**.

3545. In **Siris Chandra Nandy Vs. Rakhala Nanda AIR 1941 PC 16** it was held that it is not open to any Judge to exercise a dispensing power and admit evidence not admissible by the statute merely because it appears to him that irregular evidence would throw light upon the issue. The consensus of the opinion however, has been that in case of doubt about the admissibility of a particular piece of evidence, the Judge should declare in favour of admissibility, rather than of non-admissibility. In other words, admissibility is the rule and exclusion is the exception.

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3546. Then there is an exclusion of certain facts which need not be proved that is those covered by Section 56 to 58. Section 57 specifically enables the Court to resort to appropriate books or documents of reference where the matters are of public hostory, literature, science or art.

3547. Section 58, however, is of some importance in this matter since the question of admission by the parties in different ways i.e. pleadings, the evidences produced, having somehow connection with the property in dispute in general have been raised by all the parties at one or the other occasion. Section 58 says:

> ***"58. Facts admitted need not be proved.-*** *No fact need to be proved in any proceeding which the parties thereto or their agents agree to admit at the hearing, or* ***which, before the hearing, they agree to admit by any writing under their hands, or which by any rule of pleading in force at the time*** *they are deemed to have admitted by their pleadings:*
>
> *Provided that the Court may, in its discretion, require the facts admitted to be proved otherwise than by such admission."*

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3548. Admissions under Section 58 can be classified into two: (a) Judicial admissions; and (b) Extra-judicial. Judicial admissions are formal admissions made by a party during the proceedings of the case while extra-judicial admissions are informal admissions not appearing on the record of the case. Judicial admissions are binding on the party since they constitute a waiver of proof. They can be made the foundation of the rights of the parties.

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3549. Extra-judicial or informal admissions are also binding on the party against whom they are set up. Where they operate as, or have the effect of estoppel, in that case they are fully binding and constitute foundation of the rights of the parties otherwise they are binding partially and not fully, as observed by Privy Council in **Chandra Vs Narpat Singh 1906 (29) All 184 (PC).**

3550. An issue arises when a material preposition of fact or law is affirmed by one party and denied by the other. A Court has to try the questions at which the parties are at issue, and not those where they are agreed. Admissions made deliberately for the purpose of the suit, whether in the pleading or by agreement, will act as an estoppel to the admission of any evidence contradicting them.

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3551. Section 59 provides as to when a fact may be proved by oral evidence and says that all facts, except the contents of documents or electronic records, may be proved by oral evidence. Section 60 says that oral evidence must be direct and reads as under:

> ***"60. Oral evidence must be direct.-*** *Oral evidence must, in all cases whatever, be direct; that is to say-*
>
> *If it refers to a fact which could be seen, it must be the evidence of a witness who says he saw it;*
>
> *If it refers to a fact which could be heard, it must be the evidence of a witness who says he heard it;*
>
> *If it refers to a fact which could be perceived by any other sense or in any other manner, it must be the evidence of a witness who says he perceived it by that sense or in that manner;*

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If it refers to an opinion or to the grounds on which that opinion is held, it must be the evidence of the person who holds that opinion on those grounds;

Provided that the opinions of experts expressed in any treatise commonly offered for sale, and the grounds on which such opinions are held, may be proved by the production of such treatises if the author is dead or cannot be found, or had become incapable of giving evidence, or cannot be called as a witness without an amount of delay or expense which the Court regards as unreasonable:

Provided also that, if oral evidence refers to the existence or condition of any material thing other than a document, the Court may, if it thinks fit, require the production of such material thing for its inspection."

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3552. A question has repeatedly been raised in this matter in respect to certain documents, which were marked exhibit long back before Civil Judge. The normal system of marking of exhibit of a document is, when it is proved by witness or on admission of the other parties it is so granted. However, marking of document as exhibit would only means that the existence of document or genuineness thereof is admitted or proved and after marking it, no further proof is required for the purpose of its existence or genuineness.

3553. In **Saddiq Ali Vs. State 1981 CrLJ 379** a Full Bench of this Court observed when the genuineness of a document is admitted, the contents also stand admitted and need not be proved by further evidence.

3554. In **Purushotama Reddiar Vs. S Perumal AIR 1972 SC 608** it was held that the contents of a document admitted in

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evidence without objection may not be conclusive evidence but all the same the contents are also admitted by such admission.

3555. But one must make a distinction that the contents stand admitted does not mean the truth of the facts contained in the document or denoted by those contents also stand admitted. That is a totally different aspect. The party admitting a document does not accept the truth of the contents and is free to challenge the contents by cross-examination or otherwise.

3556. The Apex Court in **Sait Tarajee Khimchand Vs. Yelamarti Satyam AIR 1971 SC 1865** also observed that mere marking of an exhibit does not dispense with the proof of the truth of the contents of the document and it is always open to the opposite parties to impeach the document and the contents thereof in all other possible manner (See also **Sailendra Kishore Vs. Harekrishna AIR 1978 Orissa 125)**.

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3557. These provisions and some other of the Evidence Act may apply where a fact may be proved in the manner as permitted in the Evidence Act by oral evidence or by available document. But where a fact in dispute relates to events of history and science of hundreds and thousands years ago, availability of evidence is apparently difficult. The present one is such matter where this situation exists. The parties have produced a lots of witnesses to prove the facts one or the other way but most of such witnesses of fact, we find, their evidence inadmissible in view of the above provisions on the historical facts in issue.

3558. Basically, a witness is to be examined for what he has seen or directly heard in relation to a fact in issue or relevant fact. Formation of opinion on the set of the facts placed is within

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the exclusive domain and prerogative of the Court. Generally opinions and beliefs of third persons are inadmissible in evidence. However, there may be certain issues where the Court may feel necessity of expert opinion. These are outside the legal and judicial fields. A Judge is not supposed to possess the expert knowledge in such fields. Probably, it is for this reason that the law of evidence provides for expert opinion, to be adduced as evidence, subject to certain conditions prescribed in the Act. It is Section 45 which renders the opinion of such experts as relevant fact. An experts opinion, in any case, constitutes material for the Court to arrive at a proper conclusion.

3559. Section 45 refers to certain specified fields, i.e., foreign law, science, art, identify of handwriting and finger impressions. A bare reading thereof gives an impression that it is confined to certain fields mentioned therein. Initially the terms like Foreign Law, Science etc. were read very strictly. A question as to identification of typewriting whether by a particular typewriter or not would be included within the format of Section 45 came to be considered initially in **Hanumant Vs. State of Madhya Pradesh AIR 1952 SC 343** and the Court held that it would not be included. The correctness of the above judgment came to be considered before a Constitution Bench in **State Vs. S.J. Choudhary AIR 1996 SC** 1491, where the Court considered the meaning of the word 'science' in Section 45 of the Evidence Act and overruled its earlier decision in **Hanumant Vs. State of Madhya Pradesh (supra)** observing:

> *"The plain meaning of Section 45 is that the Court in order to form an opinion upon a point of foreign law, or of science, or art, or as to identity of handwriting, or finger*

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impressions can treat the opinion upon that point of person specially skilled in such foreign law, science or art, or in questions as to identity of handwriting, or finger impressions as relevant facts. In other words, the opinion of persons specially skilled in such foreign law, science, or art, or questions as to the identity of handwriting or finger impression, called experts therein, are relevant facts. The opinion of such experts is admissible in evidence as relevant facts by virtue of Section 45 of the Evidence Act.

6. *In our opinion, irrespective of the view taken on the question of meaning of the word 'handwriting' in Section 45 to include typewriting, the word 'science', occurring independently and in addition to the word 'handwriting' in Section 45, is sufficient to indicate that the opinion of a person specially skilled in the use of typewriters and having the scientific knowledge of typewriters would be an expert in this science; and his opinion about the identity of typewriting for the purpose of identifying the particular typewriter on which the writing is typed is a relevant fact under Section 45 of the Evidence Act. It is obvious that the Indian Evidence Act when enacted originally in 1872 did not specifically mention typewriting in addition to handwriting because typewriters were then practically unknown. However, the expression' science, or art' in Section 45 in addition to the expressions 'foreign law' and 'handwriting' used in the Section as originally enacted, and the expression 'finger impressions' inserted in 1899 is sufficient to indicate that the expression 'science, or art' therein is of wide import. This expression 'science, or art'*

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cannot, therefore, have a narrow meaning in Section 45 and each of the words 'science' and 'art' has to be construed widely to include within its ambit the opinion of an expert in each branch of these subjects, whenever the Court has to form an opinion upon a point relating to any aspect of science or art.

7. *The meaning of the word 'science' as understood ordinarily with reference to its dictionary meaning must be attributed to the word as used in Section 45 of the Indian Evidence Act. Some of the meanings given in the dictionaries are :*

The Oxford Encyclopedic English Dictionary :

"Science.....a systematic and formulated knowledge, esp. of a specified type or on a specified subject (political science). b. the pursuit or principles of this....."

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The New Shorter Oxford English Dictionary, Vol. 2.,:

"Science...2a Knowledge acquired by study; acquaintance with or mastery of a department of learning... 3a. A particular branch of knowledge or study; a recognized department of learning;..."

Collins Dictionary of the English Language:

"Science n. 1 the systematic study of the nature and behavior of the material and physical universe, based on observation, experiment, and measurement, and the formulation of laws to describe these facts in general terms. 2. the knowledge so obtained or the practice of obtaining it. 3. any particular branch of this knowledge: the pure and applied sciences. 4. any body of knowledge

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organized in a systematic manner. 5. skill or technique..."

It is clear from the meaning of the word 'science' that the skill or technique of the study of the peculiar features of a typewriter and the comparison of the disputed typewriting with the admitted typewriting on a particular typewriter to determine whether the disputed typewriting was done on the same typewriter is based on a scientific study of the two typewritings with reference to the peculiarities therein; and the opinion formed by an expert is based on recognized principles regulating the scientific study. The opinion so formed by a person having the requisite special skill in the subject is, therefore, the opinion of an expert in that branch of the science. Such an opinion is the opinion of an expert in a branch of science which is admissible in evidence under Section 45 of the Indian Evidence Act.

8. There cannot be any doubt that the opinion of an expert in typewriting about the questioned typed document being typed on a particular typewriter is based on a scientific study of the typewriting with reference to the significant peculiar features of a particular typewriter and the ultimate opinion of the expert is based on scientific grounds. The opinion of a typewriter expert is an opinion of a person specially skilled in that branch of the science with reference to which the Court has to form an opinion on the point involved for decision in the case. In our opinion, on a plain construction of Section 45 giving to the word 'science' used therein its natural meaning, this conclusion is inevitable; and for supporting that conclusion, it is not

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necessary to rely on the further reason that the word 'handwriting' in Section 45 would also include typewriting."

3560. In **United States Shipping Board Vs. The Ship "St. Albans" AIR 1931 PC 189** with respect to opinion of experts, the Privy Council said :

"The extent to which the opinions or conclusions of skilled persons are receivable by way of proof in point of fact has not been seriously in doubt from the time when, in 1782, in Folkes v. Chadd (1782) 3 Dougl, 157, Lord Mansfield stated the grounds on which the evidence of Smeaton, the famous constructive engineer, was to be admitted upon a disputed question of obstruction to a harbour:

"the opinion of scientific men upon proven facts may be given by men of science within their own science."

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Another Chief Justice, Lord Russell of Killowen, explained the rule in a modern case of Reg. v. Silverlock (1894) 2 Q.B. 766=63 L.J.M.C. 233=10 R. 431= 72 L.T. 298=43 W.R. 14=18 Cox. C.C. 104=58 J.P. 788. The witness must have made a special study of the subject or acquired a special experience therein. "The question is, "Lord Russell said: ***"Is he peritus: is he skilled; has he adequate knowledge?****"*

3561. In **Amar Nath Vs. Mrs. Amar Nath AIR (35) 1948 Lahore 126** a Special Bench of the Lahore High Court observed:

"What is admissible is evidence on the nature of this marriage ceremony, on the intention of the parties in going through the ceremony, and on the question of custom in

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variance of the general law, if such a custom is alleged. ***Evidence is not admissible for the purpose of ascertaining the principles of the ordinary Hindu Law of marriage****; that is purely a point of law which it is for the Court to decide. In 21 Lah. 493 their Lordships of the Privy Council* ***deprecated the practice of obtaining the opinion of experts for ascertaining the principles of Hindu or Muslim law.*** *Their Lordships observed on page 503:*

"... Hindu or Muslim law were to depend on the evidence given in a particular case. ....The system 'expert advisers' (muftis, and maulvis or in the case of Hindu law pandits) had its day but has long been abandoned, though the opinions given by such advisers may still be cited from the reports. Custom, in variance of the general law, is matter of evidence but not the law itself."

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In this judgment their Lordships expressly approved the observations of Sulaiman J. in Aziz Bano Vs. Mahomed Ibrahim Hussain 47 ALL. 823 on page 835. In holding that the ***so called expert evidence of a witness in regard to the Shia law on marriage was not admissible under the Indian Evidence Act,*** *the learned Judge observed :*

"The Shia law on marriage is the law of the land and is in force in British India. ..... It is the duty of Courts themselves to interpret the law of the land and apply it and not to depend on the opinion of witnesses however learned they may be."

These observations would apply equally to the interpretation of the Hindu Law of Marriage."

3562. In **Mosque known as Masjid Shahid Ganj Vs.**

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Shiromani Gurdwara Prabandhak Committee, Amritsar, 1940 PC 116 Privy Council also took the same view and condemned the practice of obtaining opinion of so called religious experts in the matter of principles of Hindu or Muslim Law.

3563. In **Forest Range Officer & others Vs. P. Mohammed Ali & others AIR 1994 SC 120**, it was observed :

> *"The expert opinion is only an opinion evidence on either side and does not aid us in interpretation."*

3564. The caution, the Court must exercise while considering opinion rendered by an expert is expressed in **Murarilal Vs. State of M.P. AIR 1980 SC 531**, where the Court held:

> *"But, the hazard in accepting the opinion of any expert, handwriting expert or any other kind of expert, is not because experts, in general, are unreliable witnesses- the quality of credibility or incredibility being one which an expert shares with all other witnesses-, but because all human judgment is fallible and an expert may go wrong because of some defect of observation, some error of premises or honest mistake of conclusion. The more developed and the more perfect a science, the less the chance of an incorrect opinion and the converse if the science is less developed and imperfect. The science of identification of finger-prints has attained near perfection and the risk of an incorrect opinion is practically non-existent. On the other hand, the science of identification of handwriting is not nearly so perfect and the risk is, therefore, higher. An expert deposes and not decides. His*

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duty is to furnish the judge with the necessary scientific criteria for testing the accuracy of his conclusion, so as to enable the judge to form his own independent judgment by the application of these criteria to the facts proved in evidence'." (Para 4)

"Reasons for the opinion must be carefully probed and examined. ... In cases where the reasons for the opinion are convincing and there is no reliable evidence throwing a doubt, the uncorroborated testimony of an handwriting expert may be accepted. ..." (Para 11)

3565. In **State Vs. Kanhu Charan Barik 1983 Cr.L.J. 133**, a Division Bench of Orissa High Court held :

"Evidence of experts after all is opinion evidence. The ***opinion is to be supported by reasons. The Court has to evaluate the same like any other evidence.*** *The reasons in support of the opinion, if convincing, make the opinion acceptable.* ***There is no place for ipse dixit of the expert.*** *It is for the court to judge whether the opinion has been correctly reached on the data available and for the reasons stated."*

3566. Hon'ble Subba Rao (C.J.) (as His Lordship then was) in **Guntaka Hussenaiah Vs. Busetti Yerraiah AIR 1954 Andhra 39** said :

*"**The expert's evidence is only a piece of evidence.** A Judge of fact will have to consider that evidence along with the other pieces of evidence. Which is the main evidence and which is the corroborative one depends upon the facts of each case."*

3567. In **Magan Bihari Lal Vs. State of Punjab AIR 1977**

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SC 1091, the Court held that it is now well settled that expert opinion must always be received with great caution and perhaps none so with more caution than the opinion of a handwriting expert. This type of evidence, being opinion evidence, is by its very nature, weak and infirm.

3568. A Single Judge of this Court also expressed the same opinion in **Saqlain Ahmad Vs. Emperor AIR 1936 Alld. 165** observing :

> *"The value of the expert evidence depends largely on the cogency of the reasons on which it is based. In general it cannot be the basis of conviction unless it is corroborated by other evidence."*

3569. In **Lalta Prasad Vs. Emperor 5 IC 355**, the Judicial Commissioner, Oudh observed :

> *"Expert testimony derived from comparison of handwriting is no doubt very valuable as evidence corroborating the direct evidence if any upon the point, but it is only in rare cases that it can take its place.*

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3570. It would be prudent to quote the following passage from Taylor's Law of Evidence, page 1344, para 1877 about the admissibility of evidence of experts :

> *"Still as experts usually come with a bias on their minds to support the cause in which they are embarked, little weight will in general be attached to the evidence which they give, unless it be obviously based on sensible reasoning."*

3571. In **Mt. Titli Vs. Alfred Robert Jones AIR 1934 All. 273**, it was observed:

> *"The opinion of an expert by itself may be relevant but would carry little weight with a Court unless it is supported*

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by a clear statement of what he noticed and on what he based his opinion. ***The expert should, if he expects his opinion to be accepted, put before the Court all the materials which induced him to come to his conclusion, so that the Court, although not expert, may form its own judgment on those materials.*** *... The mere mention that certain kind of tests knows as Binet and Simon tests were applied and certain results were obtained, might be relevant as piece of evidence but would not be conclusive."*

3572. In **Palaniswamy Vaiyapuri Vs. State AIR 1968 Bombay 127**, a Division Bench of Bombay High Court in para 11 of the judgment said :

"The opinion of an expert must be supported by reasons and it is the reasons and not ipse dixit which is of importance in assessing the merit of the opinion."

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3573. In **Sita Nath Basak Vs. Mohini Mohan Singh AIR 1924 Cal. 595**, a Division Bench of Calcutta High Court observed that in the matter of infringement of copyright, the Court should be reluctant to sit as an expert to decide the question of infringement of copyright and the proper course, in ordinary circumstances, is to get the opinion of experts. This was explained in **Government of West Bengal Vs. Nitya Gopal Basak & others 1985 CRI.L.J. 202** by a learned Single Judge of Calcutta High Court that the above view was expressed primarily on the ground that the Court would have to take great pains and would have to waste its valuable time to ascertain how far the piracy extended and it was desirable therefore to seek opinion of expert to compare the works and to ascertain the details to avoid excessive expenditure of time and labour. It was

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also pointed out that such a course was also necessary as the Court might not be conversant with the alphabets of the book.

3574. In the context of opinion of handwriting expert, in **Fakhruddin Vs. State of Madhya Pradesh AIR 1967 SC 1326**, the Court held that the opinion of handwriting expert though is relevant in view of Section 45 of the Evidence Act, but that too is not conclusive. Reliance was placed on earlier decisions in **Ram Chandra Vs. State of Uttar Pradesh AIR 1957 SC 381** (at page 388) and **Ishwari Prasad Misra Vs. Mohammad Isa AIR 1963 SC 1728** where it was observed that expert evidence as to handwriting is an opinion evidence and it can rarely, if ever, take the place of substantive evidence. It cannot be conclusive because it is after all opinion evidence. In para 11 of the judgment in **Fakhruddin (supra)**, the Apex Court further observed that where an expert's opinion is given, the Court must see for itself and with the assistance of the expert come to its own conclusion whether it can safely be held that the two writings are by the same person. This is not to say that the Court must play the role of an expert but to say that the Court may accept the fact proved only when it has satisfied itself on its own observation that it is safe to accept the opinion whether of the expert or other witness.

3575. In **re B. Venkata Row (1913) 36 Mad. 159** a quotation from **Dr. Lawson's** work on the **"Law of Expert and Opinion Evidence"** was quoted, which reads as under :

> *"The evidence of the genuineness of the signature based upon the comparison of handwriting and of the opinion of experts is entitled to proper consideration and weight. It must be confessed however that it is of the lowest order of*

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evidence or of the most unsatisfactory character. We believe that in this opinion experienced laymen unite with the members of the legal profession. Of all kinds of evidence admitted in a Court this is the most unsatisfactory. It is so weak and decrepit as scarcely to deserve a place in our system of jurisprudence."

3576. This was followed in **Indar Datt Vs. Emperor AIR 1931 Lahore 408**. A Similar observation was made by Division Bench of this Court in **Srikant Vs. King Emperor (1905) 2 ALJ 444** and **Kali Charan Mukerji Vs. Emperor (1909) 9 Cr.L.J. 498.**

3577. In **Sudhindra Nath Vs. The King AIR (39) 1952 Cal. 422**, it was observed :

"We are now left with the evidence of identification by the hand-writing Expert. With regard to this class of evidence, it is a rule of law that it is extremely unsafe to base a conviction upon the opinion of hand-writing experts. Without substantial corroboration; because it is well known that a comparison of hand-writing as a mode of proof is always hazardous & inconclusive, ***unless it is corroborated by other evidence****."*

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3578. In the context of a post mortem report, in **State of Haryana Vs. Ram Singh (2002) 2 SCC 426**, the Court said that the post mortem report though by itself is not a substantive piece of evidence, but can by no means be ascribed to be insignificant provided it is corroborated by other evidence.

3579. In **Perumal Mudaliar Vs. South Indian Railway Company Ltd. AIR 1937 Mad. 407** the manner of recording opinion of expert was considered and a Single Judge (Hon'ble

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Beasley, C.J.) said :

> *"The evidence of experts must be given in the ordinary way. Subject to certain exceptions- those exceptions being amongst others, the certificates of the Imperial Serologist touching the matter of bloodstains and of the Chemical Examiner, which are made admissible in evidence by themselves-it is quite obvious that* ***the opinion of an expert must be given orally and that a report merely or certificate by him cannot possible be evidence. Unless he goes into the witness box and gives oral evidence, there can be no cross examination of the expert at all.****"*

3580. Similarly, another Single Judge in **Coral Indira Gonsalves Vs. Joseph Prabhakar Iswariah AIR 1953 Mad. 858** said :

> *"Certificates, like these, do not prove themselves. They must be 'strictly proved' by the doctor who issues them. He has to state what tests he carried out to arrive at his conclusion and must stand cross-examination and convince the Court that his conclusion about the potency is correct."*

3581. In reference to an Excise Inspector as to whether he may be considered as expert within the meaning of Section 45 of the Evidence Act, the Apex Court in **Sri Chand Batra Vs. State of U.P. AIR 1974 SC 639** said :

> *"Another question before us is whether the Excise Inspector, whose evidence was under consideration, had sufficient knowledge to be deemed to be an expert within the meaning of Section 45 of the Evidence Act so that the tests adopted by him, together with all the attendant circumstances, could establish beyond doubt that the*

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appellant was in possession of illicit liquor. We think that these are also essentially questions of fact."

"We find that the Excise Inspector who had deposed, at the very outset of his evidence, that he had put in 21 years service as Excise Inspector and had tested lacs of samples of liquor and illicit liquor. As already pointed out, the competence of C.D. Misra to test the composition and strength of the liquid under consideration was not questioned at all. We, therefore, think that this particular Excise Inspector could be treated as an expert within the meaning of Section 45 of the Evidence Act."

3582. In **Haji Mohammad Ekramul Haq Vs. The State of West Bengal, AIR 1959 SC 488** the Court held that an opinion of expert unsupported by any reason is not to be relied on.

3583. In **The Forest Range Officer and others Vs. P. Mohammed Ali and others, AIR 1994 SC 120** the Court said:

"The expert opinion is only an opinion evidence on either side and does not aid us in interpretation." (para 8)

3584. Who an expert witness would be, has been considered in **State of Himachal Pradesh Vs. Jai Lal and others, AIR 1999 SC 3318** and it says:

"An expert witness, is one who has made the subject upon which he speaks a matter of particular study, practice; or observations; and the must have a special knowledge of the subject." (para 13)

"Therefore, in order to bring the evidence of a witness as that of an expert it has to be shown that he has made a special study of the subject or acquired a special experience therein or in other words that he is skilled and

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has adequate knowledge of the subject." (para 17)

"18. An expert is not a witness of fact. His evidence is really of an advisory character. The duty of an expert witness is to furnish the Judge with the necessary scientific criteria for testing the accuracy of the conclusions so as to enable the judge to form his independent judgment by the application of this criteria to the facts proved by the evidence of the case. The scientific opinion evidence, if intelligible, convincing and tested becomes a factor and often an important factor for consideration along with the other evidence of the case. The credibility of such a witness depends on the reasons stated in support of his conclusions and the data and materials furnished which form the basis of his conclusions."

"19. The report submitted by an expert does not go in evidence automatically. He is to be examined as a witness in Court and has to face cross-examination."

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3585. The relevance and importance of expert's evidence in the present dispute has also been noticed by the Apex Court in **Dr. M. Ismail Faruqui (supra)** and in para 154 it says:

"Thirdly, there is the aspect of evidence in relation to the question referred. It is not our suggestion that a court of law is not competent to decide such a question. It can be done if expert evidence of archaeologists and historians is led, and is tested in cross-examination. . . . . The Court being ill-equipped to examine and evaluate such material, it would have to appoint experts in the field to do so, and their evaluation would go unchallenged. Apart from the inherent inadvisability of rendering a judicial opinion on

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such evaluation, the opinion would be liable to the criticism of one or both sides that it was rendered without hearing them or their evidence. . . . ."

3586. Expert evidence thus is only a piece of evidence and external evidence. It has to be considered along with other pieces of evidence. Which would be the main evidence and which is the corroborative one depends upon the facts of each case. An expert's opinion is admissible to furnish the Court a scientific opinion which is likely to be outside the experience and knowledge of a Judge. This kind of testimony, however, has been considered to be of very weak nature and expert is usually required to speak, not to facts, but to opinions. It is quite often surprising to see with what facility, and to what extent, their views would be made to correspond with the wishes and interests of the parties who call them. They do not, indeed, wilfully misrepresent what they think, but their judgment becomes so warped by regarding the subject in one point of view, that, when conscientiously deposed, they are incapable of expressing a candid opinion.

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3587. In **Ramesh Chandra Agrawal Vs. Regency Hospital Ltd. & Ors. JT 2009 (12) SC 377** Apex Court considered the issue pertaining to expert opinion in a bit detail. In para 11, the Court has said:

"The law of evidence is designed to ensure that the court considers only that evidence which will enable it to reach a reliable conclusion. The first and foremost requrement for an expert evidence to be admissible is that it is necessary to hear the expert evidence. The test is that the matter is outside the knowledge and ecperience of the lay person. ...

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The scientific question involved is assumed to be not with the court's knowledge. Thus cases where the science involved, is highly specialized and perhaps even esoteric, the central role of expert cannot be disputed. The other requirements for the admissibility of expert evidence are:

i. that the expert must be within a recognized field of expertise

ii. that the evidence must be based on reliable principles, and

iii. That the expert must be qualified in that discipline."

3588. The Court has also said that in order to bring the evidence of a witness as that of an expert it has to be shown that he has made a special study on the subject or acquired a special experience therein or in other words that he is skilled and has adequate knowledge on the subject. Referring to this Court's decision in **Titli Vs. Jones (Supra)** the Court said that it is not the province of the expert to act as Judge or Jury. The real function of the expert is to put before the Court all the materials, together with reasons which induce to come to the conclusion, so that the court, although not an expert, may form its own judgment by its own observation of those materials. Again in para 15 of the judgment in **Ramesh Chandra Agrawal (Supra)**, the Court said:

"An expert is not a witness of fact and his evidence is really of an advisory character. The duty of an expert witness is to furnish the Judge with the necessary scientific criteria for testing the accuracy of the conclusions so as to enable the Judge to form his independent judgment by the application of these criteria to the facts proved by the evidence of the

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case. The scientific opinion evidence, if intelligible, convincing and tested becomes a factor and often an important factor for consideration along with other evidence of the case. The credibility of such a witness depends on the reasons stated in support of his conclusions and the data and material furnished which form the basis of his conclusions. (See Malay Kumar Ganguly v. Dr. Sukumar Mukherjee and Ors.) Criminal Appeal Nos. 1191-1194 of 2005 alongwith Civil Appeal No. 1727 of 2007, decided on 7.8.2009."

3589. It also referred to an earlier decision in **The State (Delhi Administration) Vs. Pali Ram AIR 1979 SC 14** where the Court said "No expert would claim today that he could be absolutely sure that his opinion was correct, expert depends to a great extent upon the materials as put before him and the nature of question put to him" and further in para 17 of the judgment in **Ramesh Chandra Agrawal (supra)** the Apex Court said:

"In the Article "Relevancy of Expert's Opinion" it has been opined that the value of expert opinion rest on the facts on which it is based and his competency for forming a reliable opinion. The evidentiary value of the opinion of expert depends on the facts upon which it is based and also the validity of the process by which the conclusion is reached. Thus the idea that is proposed in its crux means that the importance of an opinion is decided on the basis of the credibility of the expert and the relevant facts supporting the opinion so that its accuracy can be cross checked. Therefore, the emphasis has been on the data on basis of which opinion is formed. The same is clear from following

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inference: Mere assertion without mentioning the data or basis is not evidence, even if it comes form expert. Where the experts give no real data in support of their opinion, the evidence even though admissible, may be excluded from consideration as affording no assistance in arriving at the correct value."

3590. **Musheer Khan @ Badshah Khan & Anr. Vs. State of Madhya Pradesh AIR 2010 SC 762** is a very recent judgment where the Apex Court has said "under the Evidence Act the word 'admissibility' has very rarely been used. The emphasis is on relevant facts. In a way relevancy and admissibility have been virtually equated under the Indian Evidence Act." Further referring to the opinion of finger print expert in that matter it says that it is well known that the evidence of finger print expert falls under the category of expert evidence under Section 45 but it is also clear that this evidence of finger print expert is not substantive evidence. Such evidence can only be used to corroborate some items of substantive evidence which are otherwise on record.

3591. Lord Campbell in **Tracy Perrage Case (1843) 10 CI & F 154** said that, being zealous partisans, their belief becomes synonymous with faith as defined by the Apostle, and it too often is but "the substance of things hoped for, the evidence of things not seen". He also said that, skilled witnesses come with such a bias on their minds to support the cause in which they are embarked, that hardly any weight may be given to their evidence.

3592. Miller J in **Middllings P Co. Vs. Christian, 4 Dillon 448** said, *"By own experienced both in the local courts and in the*

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Supreme Court of the United States is, that whenever the matter in contest involves an immense sum in value, and when the question turns mainly upon opinions of experts, there is no difficulty in introducing any amount of them on either side."

3593. This is what we have found here also. Both sides have produced well qualified and highly trained Historians and others giving diametrically opposite opinion. It would be useful to quote from **Sarkar's Law of Evidence, 16th Edition, 2007 Vol. 1, page 1052**:

> *"The infirmity of expert evidence consists in this that it is mostly matters of opinion and is based on facts detailed by others or assumed facts or opinion against opinion and experts are selected by parties by ascertaining previously that they will give an opinion favourable to the party calling them. Expert evidence is however, of value in cases where the courts have to deal with matters beyond the range of common knowledge and they could not get along without it, eg in matters of scientific knowledge or when the facts have come within the personal observation of experts."*

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3594. The learned author on page 1053 **(supra)** also said "An expert is fallible like all other witnesses and the real value of his evidence consists in the logical inferences which he draws from what he has himself observed, not from what he merely surmises or has been told by others. Therefore in cross-examining him, it is advisable to get at the grounds on which he bases his opinion. There is special difficulty in dealing with the evidence of expert witnesses. Such evidence must always be received with caution; they are two often partisans- that is, they

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are reluctant to speak quite the whole truth, if the whole truth will tell against the party who had paid them to give evidence. At the same time such witnesses are in a position of advantage; for they have had that special training and experience which the judge and jury are without; and the absence of which renders necessary the presence of such witness. Expert witnesses are far too prone to take upon themselves the duty of deciding the questions in issue in the action, instead of confining themselves to stating fairly and clearly their real opinion on the matter.

3595. In **Gulzar Ali Vs. Sate of Himachal Pradesh 1998 (2) SCC 192** the Apex Court observed that the observation of the High Court that there is a natural tendency on the part of an expert witness to support the view of the party who called him, could not be downgraded. Many so-called experts have been shown to be remunerated witnesses making themselves available on hire to pledge their oath in favour of the party paying them.

3596. In **Hari Singh Vs. Lachmi, 59 IC 220** the Court observed that the evidence of skilled witness, howsoever eminent, as to what he thinks may, or may not have taken place under a particular combination of circumstances, howsoever confidently he may speak, is ordinarily a matter of mere opinion. Human judgment is fallible. Human knowledge is limited and imperfect. An expert witness howsoever impartial he may wish to be, is likely to be unconsciously prejudiced in favour of the side which calls him. The mere fact of opposition on the part of the other side is apt to create a spirit of partisanship and rivalry, so that an expert witness is unconsciously impelled to support the view taken by his own

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side. Besides it must be remembered that an expert is often called by one side simply and solely because it has been ascertained that he holds views favourable to its interests.

3597. We have given just in brief some of the principles, well settled, which may guide a Court while considering opinion of an expert. We have to weigh the experts' opinion made available to us in the matter in dispute though in two directions and will try to find out the most creditworthy and reliable opinion. In the light of the above, we proceed to consider the opinion of the experts, who have made their deposition as historians. On behalf of the pro-mosque parties i.e. Muslims, PW 13-Dr. Suresh Chandra Mishra, PW-15 Dr. Sushil Srivastava, PW-18 Prof. Suvira Jaiswal, PW 20 Prof. Shirin Musvi have been examined as Experts (**Historians**); PW 16-Prof. Suraj Bhan, PW 24 Prof. D Mandal, PW-27 Prof. Shereen F. Ratnagar, PW-28 Dr. Sita Ram Roy, PW 29 Dr. Jaya Menon, PW 30 Prof. R.C. Thakran, PW 31 Dr. Ashok Dutta, PW 32 Dr. Supriya Varma and DW 6/1-2 Mohd. Abid have been examined as Experts (**Archaeologists**). On the other hand pro-temple parties i.e. Hindus have examined, OPW-9 Dr. Thakur Prasad Varma, OPW 11 Dr. Satish Chandra Mittal, DW-13/1-3 Dr. Bishan Bahadur as Expert (**Historians**); OPW 10 Dr. K.V.Ramesh and OPW 15 Dr. M.N.Katti as Experts (**Epigraphist**); OPW 3 Dr. S.P. Gupta, OPW-17 Dr. R. Nagaswami, OPW-18 Arun Kumar, OPW 19 R.D.Trivedi and DW 20/5 Jayanti Prasad Srivastava as Experts (**Archaeologist**). The relevant statements of the Expert Historians of the two sides need be considered at this stage. However, there are two witnesses namely PW-16 and PW-24 who initially appeared as

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Historian Archaeologist.

3598. **PW 13, Suresh Chandra Mishra**, has deposed his opinion that as per in-depth study which he has made about the dispute of Babari Mosque, he has come to know that this Mosque was constructed by Mir Baqi and no demolition was made before its construction. No evidence he could find suggesting existence of any temple at the disputed site. Appointed as a Reader in Saraswati Co-educational College affiliated with Delhi University in August 1973, he did his Ph.D. in 1985 from the same University, while in service. He claimed his specialization in Ancient History:

''मेरा विशिष्टीकरण (महारथ) प्राचीन इतिहास पर है।'' (पेज 1)

"My specialization is in Ancient History." (ETC)

3599. An expert witness is like any other witness and has to be tested in the same manner. We find that the learned counsels of various defendants cross examined PW 13 very elaborately and his entire statement is running in 288 pages. All kinds of questions have been asked from him to test his veracity, competence, expertise etc. He claims to have visited disputed site in 1964 and on pages 33 said:

''विवादित स्थल और विवादित भवन की सम्बन्ध में मेरी गहन जिज्ञासा 1989–90 में जागृत हुई। लेकिन मुझे विवाद का ज्ञान तो पहले ही से था। इस विवाद का ज्ञान मुझे लगभग 1968 के आसपास हुआ था।''

(पेज 33)

"My curiosity about the disputed site and the disputed building cropped in 1989-90 but I had knowledge of the dispute from before. I came to have knowledge of this dispute in and around 1968." (ETC)

3600. On page 37, he says that after deep study, he could

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ascertain the place of birth of Lord Rama:

''मुझे पता लग चुका है कि उनका जन्म स्थान कहॉ है। यह स्थान अयोध्या ब्रह्मकुण्ड और ऋषि मोचन घाट के मध्य में पड़ता है। यह समस्त बयान और अपने निष्कर्ष मैंने अपने ग्रन्थों को पढ़कर सर्वेक्षण करके, खोजबीन करके, और पूछॅताछ करके दिये हैं।'' (पेज 37)

"I have learned where his birth-place is. This place lies between Ayodhya Brahma-kund and Rishi-Mochan ghat. I have given all this statement and my findings by going through books and by carrying out surveys, investigations and enquiries." (ETC)

3601. The material which he studied to form the said opinion has been detailed on page 38:

''इस संबंध में मूल ग्रन्थ बाल्मीकी रामायण, महाभारत, वह अन्य सेकेन्डरी वर्क्स का अध्ययन किया। सेकेन्डरी वर्क्स में आर0जी0 भण्डारकर कृत हिस्टी आफ वैष्णजीम डा0 सुबीरा जैसवाल द्वारा लिखी किताब डवलपमेंट आफ वैषनव इन इण्डिया, ई0 बनर्जी द्वारा लिखित राम के बारे में लिखी किताब, राइट्यस आफ रामा जो आर0एल0 ब्राकिउटन द्वारा लिखी किताब, अगस्त्य संहिता, उत्तर तापनीयोपनिषद, अयोध्या महात्म के अन्य तीन संस्करण वृदांवन रिसर्च इन्सटीट्यूट से प्राप्त पाण्डुलिपि और बाडलीयन लाइब्रेरी लंदन, तथा रामनारायण दास के संस्करण जो अयोध्या में राममयीकरण चिन्हों के या स्थलों के क्रमिक संवर्धन को विषद रूप से स्पष्ट करते हैं का अध्ययन किया है। एक और बहुत आवश्यक किताब जो मैंने अयोध्या पर पढ़ी है वो ग्रोनिंगगेन विश्वविद्यालय (नीदरलैण्ड) के हांस बेकर द्वारा लिखित अयोध्या को भी पढ़ा है। यह बाद वाली पुस्तक 1990 से पहले प्रकाशन में आ गयी थी और बाकी की किताबें अलग अलग समय में प्रकाशित हुई है।'' (पेज 38)

" In this respect, I studied the primary treatises like Valmiki Ramayana and Mahabharata and also certain secondary works. In the secondary works, I have studied 'History of Vaishnavism' by R.G.Bhandarkar, 'Development of Vaishnavas in India' by Dr.Suvira Jaiswal, a book on

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Rama by E. Banerjee 'Righteous of Rama' by R.L.Brokiuton, 'Agastya Samhita', 'Uttar Tapniyopnishad', other three editions of Ayodhya Mahatmya, manuscript received from the Vrindavan Research Institute, ... from Bodleiyan Library London and a memoir of Ram Narayan Das which vividly deals with the gradual growth of symbols or sites typical of Rama. Another very important book which I have studied on Ayodhya, is a book titled 'Ayodhya' authored by Hauns Bracker of Groningen University of Netherlands. The subsequent book had been published before 1990 and the rest of the books were published at different times." (E.T.C.)

3602. Following part of his statement, cross examination, in our view, would reflect on the reliability of the opinion of the aforesaid witness:

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"बाबर मेरा चुनिंदा विषय था।" (पेज 54)

"Babur was my favourite subject" (ETC)

"विवादित ढांचे के बारे में मैंने मौके पर भी अध्ययन किया। इतिहासिक दृष्टि से मैंने सबसे बड़ी बात पाई कि इस ढॉचे की गुम्बद (डोम) उस पर अंकित फूल की पॅखुडियां, तिकोन, उसका सहन, बाहरी दीवाल पर बना हुआ सिंह (शेर) तथा मस्जिद के नीचे भाग में मुस्लिम गलेज्ड वेयर जो इस बात के प्रतीक थे कि वह मस्जिद है।" (पेज 70)

"I made study with regard to the disputed structure, even at the site. The most important thing from the historical point of view which I found, was a dome of this structure depicting flower-petals, a triangular shape, its courtyard, a lion carved out on the exterior wall, and the Muslim glazed ware in the base part of the masjid, which features were the symbols showing it (this structure) to a mosque." (E.T.C.)

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''यह कहना भी गलत है कि मैंने उसमें यह गलत बयानी की हो कि जब मेरे माता–पिता इस भवन के अन्दर चले गये तो मैं बाहर खड़ा रह गया था। वैसे यह ठीक है कि सन् 66 और सन् 68 में भी इस विवादित परिसर के बाहरी मुख्य द्वार पर ताला बन्द था और कोई भी व्यक्ति अन्दर नहीं जा सकता था।'' (पेज 93)

"It is wrong to say that in the said testimony I have wrongly stated that when my parents went inside this building, I was left standing outside the building. However, it is true that even in 1966 and 1969 the main outdoor of this disputed premises was locked and none could go inside." (ETC)

''जब मैं अपने इस स्थल निरीक्षण पर 1990 में गया तो वहां जाने पर रोक–टोक थीं लेकिन उसके बावजूद भी मुझे लोगों ने वहां जाने दिया। मुझे अब महीना या मौसम याद नहीं है जब मैं स्थल निरीक्षण पर गया था। मैं मौके पर शाम के समय गया था। लेकिन निश्चित तौर पर समय नहीं बता सकता। मैं यह भी ठीक से नहीं कह सकता कि सूर्य छिपने से पहले गया था या सूर्य छिपने के बाद गया था। मैं यह नहीं कह सकता कि उस वक्त दर्शन करने का समय था या नहीं। उन बातों को 8 वर्ष हो चुके हैं। सड़क से परिसर के पूर्वी छोर पर जो सड़क आती है उससे मैं भीतर गया था। . . . . यह कहना गलत है कि 1990 में पूर्व की ओर से परिसर में अंदर जाने पर पूर्णरूप से रोक लगी हुई थी। मैं रोक के बावजूद भी इजाजत लेकर अंदर गया था। जो पुलिस वाले वहां बैठे थे मैंने उनसे यह इजाजत ले ली थी।'' (पेज 147)

"In 1990, when I went to this site for inspection, there was a bar on ingress to that place. But despite all that, people allowed me to go there. I do not remember the month or season when I visited the site. I visited the site in the evening. But I cannot definitely tell the time. I also cannot properly tell whether my visit preceded or followed the sunset. I cannot say whether it was the time of having darshan or not. 8 years has past since then I went inside

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through the road leading to the eastern end of the premises . . . . . It is wrong to say that in 1990 there was a complete ban on ingress to the premises from the east. Despite the ban, I went inside. I had taken the permission from the policemen on guard." (ETC)

"महमूद गजनवी के बाद अगला आक्रमण मोहम्मद गौरी का हुआ था।" (पेज 179)

"After Mahmud of Ghazni, the next invasion was made by Muhammad of Ghur." (ETC)

*"उसने अपना आखिरी युद्ध बारहवीं शताब्दी में जीता था उसने पृथ्वीराज चौहान को हराया था। मोहम्मद गौरी इस्लाम को मानने वाला था। **पृथ्वी राज चौहान गजनी के राजा थे, उसके आस पास के राजा था**।" (पेज 179)*

*"He won his last battle in the 12th century. He defeated Prithvi Raj Chauhan. Muhammad of Ghur was a follower of Islam. **Prithvi Raj Chauhan was king of Ghazni; he was a king of its adjoining area.** " (ETC)*

*"यह कहना गलत है कि युद्ध जीतने के बाद मो0 गोरी ने पृथ्वी राज चौहान की दोनों आंखे निकलवा दी थी और फिर सिर काट दिया था वास्तव में **यह हिन्दू कटट्रवादियों की अपनी कपोलकल्पना है।**" (पेज 180)*

*"It is wrong to say that after winning the battle Muhammad of Ghur caused both the eyes of Prithvi Raj Chauhan to be gouged out and then his head to be chopped off. Actually, **it is an imagination of the Hindu hard-liners**." (ETC)*

*"**मैने जजिया टैक्स का नाम सुना है।** मुझे याद नहीं आ रहा कि जजिया टैक्स किसके शासन में या किस समय लगा था। इस समय मुझे याद नहीं आ रहा कि यह कब और किसलिए लगाया गया था। **मुझे याद नहीं आ रहा कि जजिया टैक्स केवल हिन्दुओं पर लगता था**।" (पेज 184)*

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*"**I have heard of Jazia tax**. I fail to recall under whose rule or at which time the Jazia tax was imposed. At present I fail to recollect when and for what purpose it was levied. **I do not remember that the Jazia tax was levied only on Hindus.**" (ETC)*

*"**मेरी जानकारी में आज से एक सौ वर्ष पूर्व काशी मे विश्वनाथ मंदिर नहीं था।** . . . .मैं यह नहीं मानता कि ज्ञानव्यापी मस्जिद का निर्माण काशी विश्वनाथ मंदिर के आधे हिस्से को तोड़कर किया गया हो। मैं यह भी नहीं मानता कि यह कहा गया निर्माण औरंगजेब ने करवाया हो। **यह कहना गलत है कि काशी विश्वनाथ मंदिर के आधे भाग को तोड़कर औरंगजेब ने ज्ञानवापी मस्जिद का निर्माण करवाया हो।**'' (पेज 199)*

*"**In my knowledge, there was no Vishwanath temple in Kashi 100 years ago..** . . . . I do not think that the Gyanvapi mosque was constructed by demolishing half of the Kashi Vishwanath temple. I also do not take it to be true that the said construction was raised by Aurangzeb. **It is wrong to say that Aurangzeb built the Gyanvapi mosque by demolishing half of the Kashi Vishwanath temple**." (ETC)*

*''**मैं कभी भी गवाही देने के लिए हवाई जहाज से नहीं आया** ..... मैं रेल यात्रा करता हूं ..... यह ठीक है कि मैंने पिछली बार अदालत को बतलाया था कि **मैं 2 बार हवाई जहाज से भी वापस दिल्ली गया हूं।**'' (पेज 201)*

*"**I never came by air to give my testimony.** ..... I travel by rail ..... It is true that I told the court last time that **I had gone back to Delhi by aeroplane two times**." (ETC)*

*''उन्नीसवीं शताब्दी के आस–पास से विवादित स्थल मौजा कोट रामचन्द्र की सीमा में आता है। उससे पहले इसे अयोध्या कोट बोला जाता रहा है। **इस बात का जिक मुझे भुशुण्डि रामायण के अन्दर मिला था कि इसे अयोध्या कोट कहा गया है।** मुझे अब याद नहीं है कि मैने*

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ऐसा कहां पढ़ा है या किस जगह देखा है कि उन्नीसवीं शताब्दी से अयोध्या कोट की बजाय इस मौजे का नाम कोट रामचन्द्र पड़ गया हो।'' (पेज 211)

''The disputed site falls within the limit of mauja-Ram Chandra Kot from in and around the 19th century. Prior to it, it was called Eyodhya Kot. ***I came across its being called Ayodhya Kot, in the Bhushundi Ramayana.*** *At present I fail to remember where I have read or at which place I have seen that from the 19th century this mauja has come to be called Ram Chandra Kot instead of Ayodhya Kot .'' (ETC)*

'मैंने राम जन्म भूमि के बारे में जो निर्णय लिया है उसका आधार मेरा स्कन्द पुराण का अध्ययन मुख्य रूप से और तीर्थ सम्बन्धी तमाम लिटरेचर जो 17वीं शताब्दी तक चलता है और मेरे सर्वेक्षण के आधार पर हैं मैंने जो पुस्तक में मेजरमेंट दिये हैं उनको चेक करने की कोशिश की है। ***मैंने मौके पर नपाई नहीं की। लेकिन आंखों से देखकर उसकी सच्चाई का आंकलन किया है।*** *यह कार्य मैंने 1989–90 में कर लिया था।'' (पेज 215)*

''The finding which I have inferred in regard to Ram Janam Bhumi, is based mainly on my study of Skandha Purana and is also based on plenty of pilgrimage-related literature which extends up to the 17th century and on my survey. I have tried to check the measurements given in the book. ***I did not try to take measurements on the site. But I have tried to verify its veracity by observing them with the eyes.*** *I had done this work in 1989-90.'' (ETC)*

''जिस समय मैंने इस भवन का निरीक्षण किया ***तो यह पाया कि यह किसी पुराने भवन के खण्डहर पर एक टीले जैसे स्थान पर बना हुआ है।''*** *(पेज 216)*

''On observation of this building ***I found that it is built on a mound-like place on the remains of some old***

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***building**." (ETC)*

*''जहां तक मैं समझता हूँ, **मुझे इस अदालत में गवाही के लिए इस विषय पर बुलाया गया है कि जिस भूमि पर विवाद है आया कि वहॉ किसी मन्दिर को तोड़कर मस्जिद बनाई गई थी या नहीं मैंने यह बयान दिया है**'' (पेज 224)*

*"As far as I understand, **I have been summoned in this court to depose whether or not a mosque was constructed by demolishing a temple on the disputed site. I have given this statement,**" (E.T.C.)*

''मुझे मौके पर सीताकूप विवादित भवन के उत्तर–पूर्वी तरफ मिला था। यह सीताकूप विवादित स्थल की बाउण्ड्री से 10–20 गज की दूरी पर था। मैं इस बात से सहमत नहीं हूँ कि सीताकूप विवादित भवन से दक्षिण की तरफ था।'' (पेज 227)

"On the site, I found Sitakoop towards north-east of the disputed building. This Sitakoop was 10-20 yards away from the boundary of the disputed site. I do not agree to the point that Sitakoop was towards south of the disputed building." (ETC)

''जहां सीता कूप लिखा है उसके थोड़ा दाई तरफ हटकर लोमश भी दिखाया गया है। मेरे हिसाब से नक्शे में यह दिखायी गयी स्थिति बिलकुल गलत है।'' (पेज 232)

"The 'Lomash' is shown a bit right to the place where 'Sita Kup' is written. According to me, this location shown in the map is totally wrong." (ETC)

''मैं 1989 में जब वहां गया तो वहां पर श्री राम लला की प्रतिमा स्थापित थी। लेकिन ऐसा नहीं है कि यह वही मूर्ति थी जो सन् 1966 में भी वहां पर स्थापित रही हो। मैं यह बात निश्चित रूप से कह सकता हूँ कि 1989 में जो श्री राम लला की मूर्ति मैंने वहां पर देखी थी वह 1966 में वहां पर स्थापित नहीं थी। मेरे साथ कुछ लोग गाइड जरूर थे। उन्होंने मुझे यह बात बतलायी थी कि यह मूर्ति 1966 वाली नहीं है।'' (पेज 238)

"When I went there in 1989, the idol of Sri Ramlala was

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present there. But it is not so that it was the same idol which was present there in the year 1966. I can say this definitely the idol of Sri Ramlala which I saw in 1989, was not there in 1966. There were few guides with me, who told that this idol was not that of 1966." (E.T.C.)

''मुझे अपने गाइड्स का नाम, पता आदि कुछ मालूम नहीं है।'' (पेज 239)

" I do not know the name, address etc. of my guides."

(E.T.C.)

''वास्तव में वह गाइड भी नहीं थे। ऐसे ही कोई मिल गया था। . . . वास्तव में मेरा कोई गाइड ही नहीं था।'' (पेज 239)

"Actually he was neither a guide. He had just met by chance. . .. . .Actually I had no guide." (E.T.C.)

''मेरे विचार में वह मूर्ति ज्यादा से जयादा एक या दो साल पुरानी थी और क्योंकि उसमें चमक थी इसलिए नयी लग रही थी।'' (पेज 239)

"In my opinion this idol was hardly one or two years old, because it had shine. As such it appeared new."

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(E.T.C.)

''हां मैंने अपने अन्वेषण में इस तरीके को भी अपनाया कि जो कोई भी व्यक्ति मुझे मिल जाता था उसी से मैं पूछ–ताछ कर लेता था।'' *(पेज 240)*

"Yes, in my research I even adopted this practice that whosoever I met, I made inquiries from him." *(ETC)*

''बाबरी मस्जिद की तामीर के बाबत बाबरनामा के लिखे जाने के वक्त से लेकर 1989 तक के बीच में लिखी गयी तमाम पुस्तकें मैंने पढ़ी है। मुझे इस वक्त किसी भी किताब का नाम याद नहीं है। मैंने पढ़ी जरूर होगी।'' *(पेज 257)*

"I have read many books written from the time of Babarnama to 1989, regarding construction of Babri mosque. I do not remember the name of any book right now. I must have read it." *(E.T.C.)*

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''गवाह को पेपर नं0 107 सी 1 पेज नं0 97 आईटम नं0 26 जो कि ***टिफिनथ्रेलर द्वारा रचित पुस्तक का अंग्रेजी अनुवाद दिखाया गया।*** *गवाह ने कहा कि यह अनुवाद मूल पुस्तक का सही अनुवाद नहीं है। यह सही है कि इस संदिग्ध अनुवाद में यह नहीं लिखा गया है कि मंदिर तोड़कर बाबरी मस्जिद बनवायी गयी परन्तु* ***मूल पुस्तक में यह दर्शाया गया है कि यह हिन्दुओं का अन्ध विश्वास है।*** *मुझे फ्रेन्च भाषा तो नहीं आती। लेकिन उसका अनुवाद पढ़ा है। अनुवादक का नाम मुझे याद नहीं है। गवाह ने इस पुस्तक के अनुवाद को कोर्ट में दिखलाया जो कि उसके अनुसार सही अनुवाद है और उसकी फोटों स्टेट कापी रिकार्ड में दाखिल की जिस पर पेपर नं0 सी 2/154 डाला गया।''(पेज 258)*

''The witness was shown item no. 26 at page no. 97 of paper no. 107C-1, ***which is the English translation of the book of Trifenthelar.*** *The witness said that the translation was not the correct translation of the original book. It is true that in this doubtful translation it has not been written that the Babri mosque was built after demolishing a temple, but* ***in the original book it has been written that it is superstition of Hindus.*** *I do not know French language but I have read its translation. I do not remember the name of the translator. The witness produced the translation of said book in Court, which according to him was the correct translation, and filed its photocopy in record, which was numbered as paper no. C-2/154.'' (ETC)*

''मेरे साथ एक विशेषज्ञ था और यह नक्शा मुझे उस विशेषज्ञ ने दिया था लेकिन उस विशेषज्ञ का नाम, पता कुछ मुझे मालूम नहीं है। वह विशेषज्ञ मेरे साथ दिल्ली से चलकर आया था। (फिर कहा वह दिल्ली से अलग आया था लेकिन मुझे मौके पर मिल गया था) '' (पेज 273)

'' An expert was with me and the map had been given to me by that expert, but I do not remember the name & address of that expert. That expert had accompanied me from

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Delhi. (then said that he had come separately from Delhi but had met me at the spot)." (E.T.C.)

*''मैंने कुछ कदम उठाये थे विवादित भवन की ऐतिहासिकता को जानने के लिए। **मैंने पाटरी को खोजने की कोशिश की।** उस स्थल पर एक अभिलेख था, जो बाबरी मस्जिद में था, उसको देखा। **मुख्य रूप से यही दो कदम उठाये थे।** मैंने कोई उत्खनन नहीं किया। अभिलेख से मेरा मतलब बाबरी मस्जिद में लगे हुए इन्सक्रिप्सन से है।''*

(पेज 276)

*"I had made some attempts to know the history of the disputed structure. **I had attempted to trace out potteries.** I had seen a record at that place, which was within the Babri mosque. **I had mainly made only these two attempts.** I had not carried out any excavation. By record, I mean the inscription at the Babri mosque." (E.T.C.)*

*''**मैं इस बात को अतिशयोक्ति मानता हूँ कि राम नवमी, सावन झूला आदि पर्वों पर वहाँ लाखों की संख्या में लोग एकत्रित होते हों।**'' (पेज 278)*

*"**I consider it hyperbolic that lacs of people gathered there during the festival of Ramnavami, Sawan Jhula etc.**"(ETC)*

3603. About **PW 15, Sushil Srivastava,** we have already dealt in detail while considering the issues about the date of construction of the disputed building. The aforesaid witness has given a new theory that the building in dispute was constructed much earlier from the period when Babar came to India and must have been constructed before commencement of Mughal period. It is clearly against the pleadings of Muslim parties on whose behalf he has appeared as an expert witness. He also admits of teaching "Modern History" and on page 220, he admits that he has a very little knowledge of History. He,

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however, admits that there was a possibility of an earlier structure at the place where the disputed building was constructed:

''मैने अपनी पुस्तक के पृष्ठ 113 पर यह लिखा है कि इस प्रकार की ***संभावना से नकार नहीं सकते यानी पूर्ण रूप से नकार नहीं सकते कि यानी बाबरी मस्जिद के स्थान पर अन्य कोई प्राचीन निर्माण न रहा हो।*** *..... मेरा यह निष्कर्ष कनिघम की रिपोर्ट पर आधारित है।'' (पेज 238)*

''At page 113 of my book, I have written that ***this probability cannot be ruled out, i.e, cannot be completely ruled out, i.e, no other ancient construction would have existed at the place of Babri mosque****.....This conclusion of mine is based on Cunningham's report." (ETC)*

''यह सही है कि बाबरी मस्जिद के नीचे स्थित टीले में पत्थर पाये जाते थे। इस टीले में लगे हुए पत्थरों का आकार बहुत बड़ा था यानी वो बड़े–बड़े पत्थर लगे थे।'' (पेज 248)

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''It is true that stones were found in the mound below the Babri mosque. The size of the stones in this mound was very big, i.e. very large stones were present.'' (ETC)

''प्रश्नः– आपने जो अभी ऊपर बयान दिया है कि बाबरी मस्जिद के नीचे स्थित टीले में बड़े बड़े पत्थर लगे थे उससे आपका मतलब ''लागं साईजड विकस से है या लांग साईज स्टोनस से है?

उत्तरः– ***मेरा मतलब लांग साईज ब्रिकस से है।*** *''(पेज 249)*

''Q. You have just stated above that in the mound below the Babri mosque large stones were present, did you mean by ''long size bricks'' or ''long size stones?''

''Ans. ***I mean by long size bricks****.'' (ETC)*

3604. He has written a book "An Inquiry on the Disputed Mosque". On page 87 thereof, he has written that in 17th century, the people started claiming that the building in dispute was

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constructed by Babar after demolishing a temple but on page 256 of his cross examination, he said that the 17th century mentioned on page 87 of his own Book is wrong and it ought to be 19th century:

*''**इस पुस्तक के पेज 87 पर 17 सेन्चुरी लिखा है गलत है। सही में 19वीं सदी होना चाहिए**। फिर कहा कि यह मान्यता कि बाबर ने मंदिर गिराकर मस्जिद बनवाया है वह 19वी सदी के पहले आधे हिस्से में शुरू हुई। 19वी सदी प्रथम भाग से मेरा मतलब 1801 से 1850 बीच का है। अवध प्रदेश का विलय ईस्ट इण्डिया कंपनी यानी ब्रिटिश राज्य से 13 फरवरी 1856 में हुआ था।'' (पेज 256)*

*''**At page 87 of this book, 17 century is written, which is wrong. In fact, it should be 19th century.** Further said that the supposition that Babar had got constructed the mosque after demolishing the temple, commenced in the first half of 19th century. By first half of 19th century, I mean the period between 1801 to 1850. The amalgamation of Avadh Province in East India Company took place on13th Feburary 1856. i.e. since the British rule." (ETC)*

3605. He has further said:

''मेरी जानकारी में 1526 के पहले सैय्यद सलार मसूदी एवं इब्नबतुता के अलावा अन्य कोई विदेशी मुसलमान यात्री अयोध्या में नहीं आया था।'' (पेज 262)

''To my knowledge, prior to 1526, except Syed Salar Masoodi and Ibne Batuta, no any other foreign Muslim Traveller had come to Ayodhya." (ETC)

*''मतलब यह है कि **इस बात से पूरी तरह नकारा नहीं जा सकता कि जिस जगह पर बाबरी मस्जिद स्थित थी यहां पर पहले कोई पुराना स्ट्क्चर निर्माण अर्थात प्राचीन निर्माण था।''***

(पेज 267)

*''means that **it cannot be wholly ignored that where***

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***Babri mosque situated, earlier, there had been any old structure or ancient construction**." (ETC)*

*"यह बाबरी मस्जिद **1853 से 1855 तक मुसलमानों के कब्जे में नहीं रही है।**" (पेज 271)*

*"This Babari mosque **had not been in possession of Muslims during 1853 to 1855**." (ETC)*

3606. All the Muslims parties have denied of any riot or dispute among the two communities in 1855 but this witness gave a different stand and admitted such a clash:

"**1855 के बाद विवादित स्थल पर हिन्दुओं और मुसलमानों के बीच कोई झगड़ा नहीं हुआ।**" *(पेज 271)*

"After 1855, no clash took place at the disputed place between Hindus and Muslims." (ETC)

3607. Moreover, the expertise and authority of PW 15 has been challenged by PW 20, Prof. Shirin Musavi in her statement at page 129 observing that Shshil Srivastava is a Modern Historian and not an authority on Medieval History.

3608. **PW-16 Sri Suraj Bhan**, a Professor in the Ancient Indian Archaeological Department of Kurukshetra University, Rohtak, has deposed that according to his research, no evidence he could find whereupon it could be said that the Babari Mosque was constructed after demolition of a temple. He is co author of document, Exhibit 62 (Suit-4) (also Exhibit 45, Suit 5; Register 32 Page 231) which is a letter said to be prepared by four historians, namely, Dr. R.S. Sharma, M. Athar, Sri D.N. Jha and PW 16. He claims that the archaeological part in the said document was written by him.

3609. **Exhibit 45 (Suit-5) (Register 32 Page 231)** is a photocopy of a booklet claimed to be written by R.S. Sharma, M. Athar Ali, D.N. Jha and Suraj Bhan titled as **"Babari**

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Mosque or Rama's Birth Place? Historians Report to the Indian Nation" dated 13th May 1991. This document has been heavily relied by the plaintiffs (Suit-4) in support of the submissions that neither the site in dispute was ever believed to be the birthplace of Lord Rama nor there existed any temple which was demolished to construct building in dispute. Its relevant extract is:

"Introduction

For the last two years a furious agitation has been organised in this country under the aegis of the Vishwa Hindu Parishad and its allies over what has come to be known as the Ram Janambhumi-Baburi Masjid Dispute. Precious lives have been lost, communal riots have broken out, and for the first time since independence the secular nature of our State has come under serious threat, all seemingly over the issue of what is to be done to a 16th-century structure at Ayodhya.

The Vishwa Hindu Parishad demands that this structure, a mosque built in 1528-29 known as the Baburi Masjid, stands on the very site where Lord Rama was born ("Ram Janambhumi" or "Ram Janamsthan"), and at which sacred spot there existed a Rama temple, which was destroyed in order to build the mosque. This historical wrong done to the Hindu community nearly 450 years ago is now sought to be set right, the mosque pulled down or shifted, and a new, magnificent Rama temple built on the same spot. The legalities of the dispute – the entire case is before the Allahabad High Court (Lucknow bench) – are to be brushed aside, in view of the higher verdict of History,

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which the VHP has already beclared to be in its favour.

The government of India, under circumstances that are well known, began negotiations [December 1990] with the VHP and the Baburi Masjid Action Committee (BMAC), with a view to examine the historical and legal merits of the case of both the parties. Thus the dispute over the facts of history were now to be decided by the litigants, with the government of India as an umpire, and not by any independent forum of historians: a very unhappy procedure. We therefore approached the Government of India to include impartial historians in the process of forming judgement on historical facts and to let us have access to such evidence, archaeological and textual, as has been presented to it or is in possession of Government organisations, such as the Archeological Survey of India. We regret to say that the Government of India's response to this was largely on of silence. The BMAC declared that it was ready to abide by the findings of a set of independent historians, but this position was not acceptable to the VHP.

However, in spite of these obstacles, we thought that national interest required an unbiased and impartial inquiry, so that people should be clear about what the historical facts are. We scrutinised most carefully the evidence submitted to Government by the VHP and BMAC, and collected historical material on our own. Two of us went to Ayodhya to examine and survey the site and the structure of the Baburi Masjid. We also examined archeological material from Professor A.K.Narian's excavations at Ayodhya, now preserved at the Banaras

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Hindu University. To our regret, through no lack of trying on our part, material from B.B.Lal's excavations at Ayodhya was not made available for inspection for us; and we had to depend on published reports only.

Having undertaken this effort, we place in all humility the results of our enquiry before the nation. We will at least have the satisfaction that, within the limits of our capacity, we have done our duty.

The VHP's case rests on the following four major claims:

(1) The Hindus have always, and certainly over a long period before the construction of the Baburi Masjid, believed in there being a very sacred spot at Ayodhya, where Lord Rama was born.

(2) This spot was the very site where the Baburi Masjid now stands.

(3) A temple dedicated to Rama stood at this holy site long before the Baburi Masjid was built.

(4) The temple was pulled down to construct the Baburi Masjid at this spot.

We now proceed to examine these claims, largely in the order as they are listed above.

We have, first, to see what substance there is in claims (1) and (2), namely that Hindus have for a very long time believed in the sanctity of Ram Janamsthan at Ayodhya, and in its existence at the very site of the Baburi Masjid."

"No basis in Hindu scriptures

People will be surprised to find that the VHP has

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been unable to cite any ancient Sanskrit text in support of its claim that there has been an ancient Hindu belief in Ram Janamsthan at Ayodhya. Surely if there were such a strong belief, there would have been numerous Vaishbavite texts exhorting worshippers to visit the spot. The absence of any such reference makes it very dubious that the belief in Rama Janamsthan is of such respectable antiquity as is being made out. It is even doubtful if it is earlier than the late 18th century, as we shall see here.

The only Sanskrit text the VHP experts have produced in support of claims (1) and (2) is the Skanda Purana. They refer to the Ayodhya-mahatmya, that is, the merits of visiting Ayodhya given in Skanda Purana. We have used the printed version of the Skanda Purana (Kashemarian edn., Bombay, 1910) and two other versions found in Manuscripts in Vrindavan Reswarch Institute, Vrindaban, and the Bodleian Library, Oxford. These texts are of recent origin and the insertion of interpolations in the Ayodhya mahatmya section of the printed Skanda Purana seems to have continued at least till the 18th century. The internal contents of the Skanda Purana including the mention of Vidyapati, who passed away in the first half of the 16th century, show that the core of this Purana itself was not compiled until earlier than the 16th century. Ayodhya-mahatmya given n the printed version has not been compiled by one hand. For example, the course of the description of the tirathas [pilgrimage] in general is interrupted and all of a sudden the glorification of Ayodhya starts. In the case of Ayodhya itself the virtues

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of visiting and bathing in the Sarayu river are not given at one place, but at two places; in between the contexts have nothing to do with the Sarayu. We also find that in the description of the trithas, Visishta replaces Agastya as the narrator, and then again the narration is taken over by Agastya. This shows obvious interpolation. The description of Janamsthan occurs in the last chapter of the Ayodhya-mahamtya (Verses 18-25), and is clearly a later addition. It is easier to make insertions at the end of texts.

In spite of these various inconsistencies, even if we accept the location of the birthplace of Rama as given in Ayodhya-mahatmya, it does not tally with the site of the Baburi Masjid. Two terms are used for the birthplace of Rama, Janamsthan and Janambhumi. Even if we take the two to be identical, the Ayodhya-mahatmya information about the location of the birthplace does not take us to the Baburi Masjid site. Both the Vrindaban and Bodleian versions of the Mahatmya mention the compass directions and distance from a few states. According to verses 21.24 the birthplace is located 500 dhanus (910 meters) westward of Laumash and 1009 dhanus (1835 meters) eastward of Vighneshvara. According to local Hindu belief Laumash or the place of Lomash is identical with the present Rinamochana Ghat. On this basis the Rama Janambhumi should be located somewhere west, in the vicinity of the Bhahmakunda close to the bed of the Sarayu. Further according to the Mahatmya Rinamochana Ghat, or the place of Lomash, lies 700 dhanus (1274 meters) northeast of Brahmakunda. Both the direction and the

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distance have been found to be approximately correct by us. It is further stated that the Janamsthana lies northeast of Vighnesh. According to local tradition the place of Vighnesh is marked by a pillar, which lies southwest of Rinamochana Ghat. This again excludes the Baburi Masjid site and places the birthplace somewhere between Rinamochana and Bharmakunda on the bank of the Saraya. Thus, according to Hindu belief as given in the Ayodhya Mahatmya of the Skanda Purana, the birth place of Rama cannot be located on the site where the Baburi Masjid stands. It is argued by experts of the VHP that the location of Rama Janambhumi is given on the basis of solar directions and cannot be determined through the use of campus. But even if we take solar directions into account the Janambhumi of the Skanda Purana cannot be located on the site of the Baburi Masjid.

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The various versions of the Ayodhya-Mahatmya seem to have been prepared towards the end of the 18th century and the beginning of the 19th; even as late as that the birthplace was not considered to be important. It is significant that the Janamsthan is not mentioned even one in any itineracy of pilgrimage given in the Mahatmya.

The description of the tirthas in Ayodhya as given in the Ayodhya Mahatmya sow that the Svargadvara tirtha was far more important in the eyes of the compilers of the pilgrimage section than the Janambhumi. Svargadvara is believed to be the place where Rama left for heaven and is considered sacred because of that reason. The Skanda Purana speaks of two Svargadvara tirthas in Ayodhya.

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Whatever might be its real location there is no doubt that in Hindu belief it was far more meritorious to visit this place than other local places of pilgrimage. The earliest mention of this tirtha appears in a Gahandavala inscription of the 11th century, which speaks of the land grant made by king at the confluence of Sarayu and Ghaghara. This grant speaks of the worship of Vasudeva at the confluence site but not of any temple (D.C.Sirkar, Select Inscriptions, Volume II,PP.276-77, lines 20-23). It appears that the sanctity attached to the place of Rama's death was of greater importance in earlier times. It is significant that the Ayodhya-Mahtmya of the printed version of the Skanda Purana devotes one hundred verses to the description of the Svargadvara which is made to identical with Gopratara thirtha (b.112-211) and gives only eight verses to the description of the Janamsthana (10.18-25).

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No place Ayodhya in associated with Rama's birth either in the 11th century or even six centuries after. When a place is associated with his birth possibly in the late 18th century its location given in the various Mahatmyas does not tally with the present Baburi Masjid. It. Therefore, seems quite erroneous to hold that according to old Hindu belief the Rama Janambhumi temple was situated at the same site as is now occupied by the Baburi Masjid."

"Evidence in recorded History

The VHP has been unable to present any early textual evidence that Rama birth-place in Ayodhya was either spotted as such or recognised as a place. Its archiological evidence for the existing of a temple at the

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site of the Baburi Masjid is, to say the least week and dubious; in fact archaeology suggests proximity of a Muslim settlement to the mosque from the 13th century onwards.

What then, of the recorded evidence? What does this tell us about the VHP's claims of temple destruction at the hands of Babur's men?

Within the category of recorded historical evidence, the most primary source for the construction of the Baburi Masjid consists of the inscriptions in Persian that were put on the mosque, immediately upon its construction in A.D. 1528-29. These inscriptions were particularly published (with some inconsequential mistakes) in A.S. Beveridge's translation of Babur's memoirs as an appendix (Banurnama, London 1921, Vol. II, Appendix U, pp. Ixxvii-Ixxix), comprising six couplets only. But in actual fact, the original inscriptions consisted of as many as fourteen couplets, together with an invocation and the engraver's signature. The entire text has been retrieved and published in the Epigraphia Indica, Arabic & Persian Supplement, 1965, pp. 58-62, an authoritative publication of the Archaeological Survey of India.

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In view of the crucial importance of the record for the present enquiry, the full translation, is reproduced below, with a few linguistic corrections.

(a)

(1) By the order of the King Babur whose justice is an edifice, meeting the palace of the sky (i.e., as high as sky)

(2) This descending place of the angels was built by the

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fortunate noble Mir Baqi.

(3) *It will remain an everlasting bounty, and (hence) the date of its erection became manifest inmy words: It will remain an everlasting bounty*

(chronogram yielded A.H.935/A.D.1528-29).

(b)

(1) (a) *In accordance with the wishes of the ruler of the world, Babur,*

(b) *A lofty building like the palace of the spheres,*

(2) (a) *(that is to say) this lasting house (of God), was founded*

(b) *By the fortunate noble Mir (and Khan (Baqi).*

(3) (a) *May ever remain such a founder of its edifice,*

(b) *(and) such a kind of the world and age.*

(C)

(Invocation:) In the name of Allah, the Beneficent, the Merciful. And in Him is my trust.

(1) *In the name of One Who is Wise, Great (and) Greater of all universe (and) to spaceless).*

(2) *After His praising, the blessings be upon the chosen (i.e. the Prophet), who is the head of prophets and best in the world.*

(3) *The qalandar – like (i.e. generous) Babur has become celebrated (lit. a story) in the world since (in his time) the world has achieved prosperity.*

(4) *(He is) such (an emperor) as has braced (i.e.conquered) a; the seven climes of the world in the manner of the sky.*

(5) *In his court, there (is) a magnificent noble, named Mir Baqi, the second Asaf,*

(6) *Councillor of his government and administrator of his kingdom, who is the founder of this mosque and fort-wall.*

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(7) O' God, may he live for ever in this world, with fortune and life and crown and throne.

(8) The time of the building is this auspicious date, of which the indication is nine hundred and thirty five (A.H. 935 = 1528-29 A.D.)

(Engraver's signature:) Completed was this statement of Unity of God and praise of God, of Prophet and of kind, and the noble. May Allah illumine his proof, Written by the weak writer and humble creature, Fathullah Muhammad Gori.

The contemporaneity of inscriptions is shown by their text and date. Their accuracy is establised by the fact that Mir Baqi finds mention in Babur's memoirs as the governor of Awadh or Ayodhya at exactly this time (A.H. 935): see A.S. Beveridge;s trans., II, PP.684-85, also P.679. Even for the use of the world qalandar for Babur, we have the authority of his daughter Gulbadan Begum tha the sobriquet was popularly given to him (Humayun Nama, London 1904 P.12).

These fairly long inscriptions show that the construction of the Baburi Masjid was completed in 1528-29. But nowhere is any hint given in them that the edifice was built after destroying a temple or upon the site of a temple. If one accepts for the purposes of argument that there was a temple at the site, and the builder of the mosque (Mir Baqi) destroyed it to build a mosque, one has to answer why at all should all references to this fact should be omitted in the foundation inscriptions. Surely had Mir Baqi destroyed the temple, he would have deemed it a

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meritorious deed; and what would be more natural than that he should get this act recorded along with that of the building of the mosque to add to his religious reputation. That he did not get any such act recorded surely means that he in fact not destroyed any temple, and so found no reason to record something that had not happened.

Within fifty years or so of the construction of the Baburi Masjid, Tulsidas composed in 1575-76 his celebrated Ramcharitmanas, the most fervent exposition of the Ramayna story in Hindi. Is it possible to believe that Tulsidas would not have given vent to heartrending grief had the very birth site of his Lord been ravaged, its temple razed to the ground and a mosque erected at that place? Surely he could not but have known of the event, had the desecration and temple-destruction taken place in 1528-29, early in his life but long before the composition of his work. Knowing of it would be not have complained in his verses that fate (if anything else) was now preventing Rama's devotees from worshipping the very sacred seat of the Lord's birth? His silence can only mean that he knew of no such scandal; and, given his attachment to Rama and Ayodhya, this must then mean that no such event had infact taken place.

Tulsidas, on the contrary, suggests that it was not Ayodhya but Prayag that was to him the principal place of pilgrimage (tirath Raj); and so no tradition of the veneration of the any spot as that of Rama's birth at Ayodhya had yet taken shape.

In subsequent descriptions of Ayodhya of both the

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16th and 17th centuries no indication occurs that the baburi Masjid, or, for that matter, any other mosque, was built at the birth-site of Rama. Abul Fazl in his A'in-i-Akbari, completed in A.D. 1598, includes Ayodhya among the important places of pilgrimage of India. He says that the sacred ground extends "forty kos to the east and twenty from north to south" and thus is not confined to the city itself. It mentions the Ramnavmi festival here (III, Tr. Jarrett, rev. Sarkar, Calcutta, 1948. p.335). The same tradition about the very large area of the holy city is given in his account of Ayodhya in the chapter on the process of Awadh: "In ancient times its populous site covered an extent of 148 kos in length and 36 in breadth, and it it esteemed one of the holiest places of antiquity". Abul Fazl goes on to say that Ayodhya "was the residence of Ramchandra, who in the Treta age combined in his own person both the spiritual supremacy and the kindly office" (II, Jarrett, rev. Sarkar, Calcutta, 1949, p. 182). Clearly, the tradition till then did not confine Rams's place of birth to the existing town of Ayodhya, let alone the site occupied by Baburi Masjid. Had such tradition existed, Abul Fazl would surely have mentioned it, because he does mentioned the tradition that two Jewish prophets lie buried at Ayodhya; "Near the city stand two considerable tombs of six seven yards respectively. The vulgar believe them to be the resting places of Seth and prophet Job, and extraordinary tales are related of them" (Ibid). It can not escape notice that there is not the remotest reference to Rama's birth-site, let alone to any mosque being built on it.

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The same is found to be the case with William Finch's fairly extensive description of Ayodhya, which he visited during his stay in India during A.D. 1608-11. He says:

"Heere are also the ruines of Ranichand(s)[2] castle and houses, which the Indians acknowled(g)e for the great God, saying he took flesh upon him to see the tamasha of the world. In these ruines remayne certain Bramenes, who record the names of all such Indians as wash themselves in the river running thereby; which custome, they say, hath continued foure lackes of yeeres (which is three hundred ninetie before the worlds creation). Some two miles on the further side of the river is a cave of his with a narrow entrance, but so spacious and full of turnings within that a man may well loose himself there if he take not better heed; where it is thought his ashes were buried. Hither resort many from all parts of India, which carry from thence in remembrance certain graines of rice as blacka as gun-powder, which they say have been (p)reserved ever since. Out of the ruines of the castle is much gold tried." (Early Travels in India, 1583-1619, ed. W. Foster, reprint, New Delhi, 1968, p.176)

We have thus a reference to where Rama's ashes were buried, which, as we have seen from the Skanda Purana, as deemed of principal importance as svarga duara, but there is no reference to where Rama was born. We are told of "the ruins of the castle" (Ramkot) extensive enough for a search for gold to be undertaken, ***but not of any exact site of special veneration within that castle' – let alone a temple site desecrated by a mosque****.*

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In 1695-96, Sujan Raj Bhandari completed his work Khulasatu-t Twarikh. This contained in the first part a geographical account of India, in which the author devoted special attention to the holy places. While describing Mathura, he did not omit to mention that the temple of Keshav Rai here had been destroyed by Aurangzeb who had a mosque built in its place (ed. Zafar Husain, Delhi, 1918, p.40; tr. J. Sarkar, India of Aurangzeb, Calcutta, 1901, p.25). But his account of Ayodhya contains no reference to any destroyed temple here.

"In the Hindu books it is called Ayodhya, the birthplace of Ramchand. His building over the ocean, his going to Lanka (Ceylon) with a countless host of monkeys and bears, his slaying Ravan (the kind of that country), and his recovery of his wife (who was preserved chaste and pure during her captivity under Ravan) are well known. The history of Ramayan, is an account of his strange and wonderful deeds. As this city was the residence of king Ramchand, it is held to be one of the holiest place. One kos from it, the river Ghabar (Gora) having united with the river Saraju, passes by the foot of the fort (of Ayodhya). In the outskirts of the city they sift dust and get gold. In the town are the tombs of Shaish (Seth), the son of Lord Adam, (the peace of God be on him!) and Ayub (Job), the prophet – both places of pilgrimage to the Muhammadans". (text, p.42; Sarkar's tr., p.31)[3]

In A.D. 1759-60, Rai Chaturman completed his work Chahar Gulshan, which contained a geographical account of India. It has not been printed, and Sarkar's translation in

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his India of Aurangzeb mainly reproduces its statistics. The unpublished text has this to say of Ayodhya's association with Rama :-

"Ayodhya is deemed one of the select places of worship. It was the birth place (zadqah) of Raja Ramchandar, son of Jasrat, who was one of the ten avtars, that is, one of the ten visible incarnations of God: and he was married to Sita. Ram Chandar engaged himself in wielding worldly sovereignty with exercising spiritual authority". (Account of Suba Awadh: See MS Abdus Salam Coll., Maulana Azad Library, Aligarh, No. 292/62).

Thus until two hundred and twenty years after the construction of the Baburi Masjid, there was no suggestion anywhere, in the long contemporary inscriptions of the mosque or any other description of Ayodhya that there was a precise site of Rama's birth, where the holy structure had been destroyed and the mosque built – whether we take the writings of Hindus or of Muslims or the record left by single European observer."

"Source of Trouble

Religious myths have a tendency to grow despite the clearest evidence to the contrary. Now, where Hindu beliefs about the site of the mosque were clearly vague and contradictory, it was the turn of a section of Muslims to claim with pride that at Ayodhya mosques had, indeed, been built after the destruction of temples on the sites of Hindu holy places. It was this growth of bravado which exacerbated relations between the two communities, and which resulted in a serious clash at Ayodhya under the Awadh Nawabs in 1855. ***Under the shadow of bitterness***

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of that clash, a fiery tract was composed by Mirza Jan in A.H. 1272 A.D. 1855-56 under the title Hadiqa-i-Shuhada. This book contains a passage allegedly quoted from a persian work Sahifa-i-Chihal Nasaih-i Bahadur Shahi, said to be written by "a daughter of Bahadur Shah ' Alamgir (Sic)*".*

The other claims of the polytheistic Hindus situated in Mathura, Benaras, Awadh (Ayodhya) etc., which the wretched infidels believe to be the birth place of Kanahya (Krishna), or the rasoi (Kitchen) of Sita or the residence of Hanuman, in which, they say, Ram established on him after the conquest of Lanka, have been destroyed, and for the strengthening of Islam mosques have been established all these sites; let them not leave these mosques without firday prayers and congregation." (printed book, Habibganj Collection, Urdu, 32/115, Maulana Azad Library, P.114).

Since much has been made of this quotation supposedly from the pen of a Mughal princess, it is important to note that the author himself confess that he had read the book forty years before he was writing, and claims that he had then copied the passage. This on the face of it is very implausible. The princess remains unnamed, and her father Bahadur Shah is given the title 'Alamgir', which not he but his father Aurangzeb (d.1707) had borne. ***No work by a daughter of Bahadur Shah or bearing the title Sahifa-i Chihal Nasa-i Bahadur Shah is known to exist in any collection anywhere in the world****. One fails to locate it in C.A. Storey's Persian Leterature-a bio-bibliographical survey, or D.N. Marshall's*

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comprehensive Mughals in India – a Bibliographical Survey, Vol I: Manuscripts. It is very likely, therefore, that the work or the passage was a figment of Mirza Jan's imagination.

While in his so called quotation from the Counsels of the Mughal princess Mirza Jan only speaks of a temple at the site of Sita-ki-rasoi being destroyed he goes on himself to say that the Baburi Masjid was built at Rama's birthplace by destroying the temple of Ram Janamsthan, close to Sita-ki-Rasoi, so that the mosque, was then known as Sita-ki-rasoi. ***Thus the legent had grown to Rama's birth site had been added Sita's kitchen****; and Mirza Jan was exulting in the the supposed destruction of a temple here, of which generations of earlier Hindus and Muslims were unaware.*

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Subsequent to Mirza Jan's tract – in fact, subsequent to the clash over the Baburi Masjid in 1855 – the myth that the Masjid was built on the site of a destroyed temple became the common possession of the partisans of the two communities*. How the legend could grow, out of a sense of bravado and revenge on both sides, is illustrated by the series of Urdu tracts, which VHP triumphantly lists. Lack of space prevents an analysis of this material; but it is enough to say that no evidence, nor already discussed by us, is presented in this literature. It is only illustrative of the growth of the mentality of modern communalism; its authority for what stood at the site before the Baburi Masjid was built is nil. "*

"Conclusion

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The conclusion that we have reached after a careful consideration of the entire available evidence may be summarised as follows:-

1. No evidence exists in the texts that before the 16th century (and indeed before the 18th century), any veneration attached to any spot in Ayodhya for being the birth-site of Rama.

2. There are no grounds for supposing that a Rama temple, or any temple, existed at the site ***where Baburi Masjid was built in 1528-29****. This conclusion rests on an examination of the archeological evidence as well as the contemporary inscriptions on the mosque.*

3. ***The legend that the Baburi Masjid occupied the site of Rama's birth did not arise until late 18th century; that the temple was destroyed to build a mosque was not asserted until the beginning of the 19th century****, when the observer, before whom the assertion was made, disbelieved it.*

4. The full blown legend of the destruction of a temple at the site of Rama's birth and Sita-ki-rasoi, is as late as ***the 1850's. Since then what we get is merely the progressive reconstruction of imagined history based on faith****.*

It is for the people of this country to judge whether on the basis of such dubious evidence as the VHP has presented in support of its case, it is justifiable to mortgage the destiny and good repute of the country.

As historians it is also our duty to point out that in no civilised country of the world is a building of the 16th

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century permitted to be destroyed or tempered with.

In 1891 when a Fuhrer drew up his descriptive list of Antiquities and Inscription in the North-West Provinces and Oudh, 1891, he put the Baburi Masjid among the monuments of Class II (P.P. 296-7). On page i, he explained the implications of this classification; it meant that though the monument was "in possession of private bodies and individuals", it was possible or desirable to save (it) from further decay by such minor measures as the eradication of vegetation, the exclusion of water from the wells and the like". Being such a monument, ***the Baburi Masjid became a protected monument under the Ancient Monuments Act, 1904 (re-legislated, 1958)****. Besides being built nearly 450 years ago,* ***it is a significant example of Sharqi architecture****. It is a part of our common national heritage. Under law, Government must save and preserve it as a fully protected monument.*

If then, we have a care for historical facts, if we want to uphold the law, if we have love for our cultural heritage, we must protect Baburi Masjid. A country is surely judged by how it treats its past."

3610. The credentials of the authors are also mentioned as under:

3611. Prof. R.S. Sharma, Retired Professor of Delhi University and First Chairman of Indian of Indian Council of Historical Research; Prof. M. Athar Ali, Retired Professor of History of Aligarh Muslim University and the Former President of Indian History Congress; Prof. D.N. Jha, Professor of History, Delhi University; Prof. Suraj Bhan, Professor of

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Archaeology and Dean, Faculty of Social Sciences, Kurukshetra University, Haryana. This document, though claimed to be written by four historians, but as a matter of fact, it was not signed by Sri D.N. Jha, as admitted by Sri Suraj Bhan (PW 16), as expert witness.

3612. **PW 16, Prof. Suraj Bhan** was examined in three phases, namely, from 22.02.2000 to 10.08.2000; thereafter when the book of T.P. Verma and S.P. Gupta, i.e., "Ayodhya Ka Itihas Evam Puratatva-Rigved Kal Se Ab Tak" (Exhibit 3, Suit-5) was published, he deposed statement from 26.08.2002 to 12.09.2002 and lastly after the ASI report he deposed statement to castigate it and his statement was recorded from 20.03.2006 to 28.03.2006.

3613. About his qualification, experience and expertise, if any, he said:

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"मैंने स्नातक की उपाधि दिल्ली यूनिर्वसिटी से हासिल की थी। स्नातक में मेरे विषय एकनामिक्स और संस्कृत अंग्रेजी और हिन्दी के अलावा थे। स्नातक में हिस्ट्री मेरा विषय नहीं था। . . . देहली से मैंने संस्कृत में एम0ए0 किया बाद में एम0एस0यूनिर्वसटी बडौदा से आर्क्योलोजी एन्ड कल्चर से एम0ए0 किया।" (पेज–3)

"I got my graduation degree from Delhi University. In graduation, my subjects were Economics and Sanskrit besides English and Hindi. History was not my subject in B.A. . . . . I did my M.A. in Sanskrit from Delhi and later in archaeology and culture from M.S. University Baroda." (E.T.C.)

"अपने पढ़ाई करने के बाद अर्थात् एम0ए0 करने के बाद 1 वर्ष के लगभग मैंने कुछ नहीं किया उसके बाद बड़ौदा जाकर मैंने आर्क्यालाजिकल सर्वे आफ इण्डिया में पद ग्रहण कर लिया। आर्क्यालाजी में एम0ए0 मैंने सन् 1960 के आसपास बड़ौदा से किया था। यह डिग्री मैंने अपनी नौकरी

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के कार्यकाल में प्राप्त की थी। इसके बाद मैंने पी0एच0डी0 किया था। नौकरी मैंने 1956 में शुरू की थी और 1960 में मैंने एम0ए0 की डिग्री लिया था। . . . . पी0एच0डी0 की डिग्री मुझे 1975 में मिली थी। पी0एच0डी0 में मेरा टापिक ''प्रि हिस्टारिक आर्क्यालाजी आफ सरस्वती एण्ड दृषदवती वैलीज'' था। '' (पेज–11)

"After completion of my studies up to M.A. I did nothing for one year. Thereafter I went to Baroda and joined a post in the Archaeological Survey of India. I did my M.A. in archaeology in and around 1960. I had obtained my degree while being in service there. Thereafter I got my Ph.D. I had started service in 1956 and I got my M.A. in 1960. I was conferred Ph.D. Degree in 1975. My topic in Ph.D. was 'Historic Archaeology of Saraswati and Drishdavati Valleys'." (E.T.C.)

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''मेरी पी0एच0डी0 की थीसिस प्रकाषित नहीं हुयी है।'' (पेज–13): ''मैंने अपनी थीसिस के लिखने के समय सरस्वती वैली में कोई उत्खनन कार्य नहीं किया था पर यह खनन कार्य मैंने सरस्वती वैली में अपनी थीसिस लिखने के पहले किया था। . . . . उत्खनन करने का मेरा पहले से भी अनुभव था क्योंकि मैंने गुजरात में लोथल, भगतराव में उत्खनन कार्य किया था।'' (पेज–14)

"My Ph.D. Thesis is not published." (pages 13); "I had not undertaken any excavation work in Saraswati Valley at the time of writing my thesis. This excavation work in Saraswati Valley, however, was done by me before proceeding with the thesis.. . . . . I had a prior experience of excavation work because I had undertaken such work at Lothal and Bhagatrao in Gujarat." (E.T.C.)

''मैंने हरियाणा में सरस्वती क्षेत्र में उत्खनन के समय आर्क्यालाजिकल खनन किया। मैंने एरिया एक्सवेशन और वर्टिकल एक्सकवेशन दोनों ही किया।'' (पेज–20)

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"At the time of excavation in the Saraswati region of Haryana, I undertook archaeological excavation. I did both the area and vertical excavation." (E.T.C.)

"जिस समय मैंने अपनी सर्विस ज्वाइन किया था, उस समय मैं एम0ए0 संस्कृत था। मेरी नियुक्ति टेक्निकल अस्सिटेण्ट के पद पर हुई थी। मेरी नियुक्ति सन् 56 या 57 में हुई थी। लोथल में 56–57 से 59–60 तक उत्खनन कार्य किया था। उस समय मैं दफ्तर में एक टेक्निकल अस्सिटेण्ट के रूप में कार्यरत था। इसी हैसियत से मैं उस उत्खनन कार्य में लगा हुआ था।" (पेज–80–81)

"When I joined my service, I was an M.A. in Sanskrit. I was appointed to the post of technical assistant. I was appointed in 1956 or 1957. I undertook excavation work at Lothal from 1956-57 to 1959-60. At that time I was working as a technical assistant in the office. In that very capacity I was then engaged in the excavation work." (E.T.C.)

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"मैं संस्कृत भाषा में एम0ए0 हूँ। मैं संस्कृत बोल नहीं सकता और क्योंकि उसका काफी दिनो से प्रयोग नहीं किया है अतएव उसे पढ़ने व समझने में भी दिक्कत आती है।" (पेज–143); "मैंने बी0ए0 1953 में पास किया था। मेरे पास बी0ए0 मे संस्कृत व अर्थशास्त्र विषय थे। मेरे पास अंग्रेजी साहितय भी था। . . . . . मैंने बी0ए0 तक इतिहास व पुरातात्विक विषय का अध्ययन नहीं किया है। मैंने एम0ए0 की परीक्षा संस्कृत के अलावा आर्कियोलोजी एण्ड कल्चर में भी पास की थी। . . . . . इतना याद है कि ऐन्सिंयट हिस्ट्री एण्ड अर्ली मेडिवियल हिस्ट्री मेरे कोर्स में थीं उक्त दोनों हिस्ट्री केवल भारतवर्ष की थीं।" (पेज–168)

"I am an M.A. in Sanskrit language. I can not speak Sanskrit, and since I have not used it for quite some time, I face difficulty in reading as also in following it."; "I did my B.A. in 1953. Sanskrit and Economics were my subjects in B.A.. English literature, too, was my subject.. . . . I did not study history and archaeology as subjects up to B.A.. I

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passed the M.A.Examination with Sanskrit and also with Archaeology and Culture.. . . . I only remember that ancient history and early medieval history were not in my course. The said two parts of history was of India only." (E.T.C.)

''मैं आर्कियोलाजी का एक विद्यार्थी हूं। आर्कियोलाजी के अनेक क्षेत्र में कई विशेषज्ञ हैं। आर्कियोलाजी के क्षेत्र में मेरा विषय सतलज यमुना बेसिन की प्रोटो हिस्टोरी आर्कियोलाजी है, इस विषय पर मेरी विशेष स्टडी है और मैं फील्ड आर्कियोलाजिस्ट हूं। मैं फील्ड आर्कियोलाजी के नाते किसी भी आर्कियोलाजी के क्षेत्र में जहॉ उसका उपयोग हो सकता है वहॉ इस्तेमाल कर सकता हूॅ। . . . . . ''फील्ड आर्कियोलाजी का एक बेसिक मैथड है, ... और में उस विधा का अच्छा जानकार हूॅ।'' (पेज 73)

"I am a scholar of archaeology. There are many specialists in several areas of archaeology. My subject in the realm of archaeology is proto-historic archaeology of Satluj-Yamuna basin. I have a special study on this subject. I am a field archaeologist and as such can use field archaeology wherever it can be used in any sphere of archaeology.. . . ." Field archaeology has a basic method . . . . . and I am well conversant with that field."

(E.T.C.)

3614. In respect to certain dispute and aspects PW 16 clearly admitted his lack of expertise, studies etc. as under:

''मैंने वेदों का अध्ययन पूरी तरह से नहीं किया है बल्कि उतना ही अध्ययन किया है जितना कि मेरी पढ़ाई के कोर्स में था।'' (पेज–4); ''पुराण के बारे में मैं थोड़ा जानता हूॅ।'' (पेज–7); ''विष्णु पुराण मैंने नहीं पढ़ा है।'' (पेज–8); ''बाल्मीकि की रामायण के कुछ अंश मैंने पढ़े हैं।'' (पेज–15); ''मैंने इस विषय पर कोई शोध नहीं किया है कि बाल्मीकि के रामायण की लंका मध्यप्रदेश में हो सकती है या नहीं।'' (पेज–16); ''सोलर सिस्टम से दिशाओं के ज्ञान के बारे में मुझे कोई खास ज्ञान नहीं है। मैंने इस विषय पर कोई विशेष अध्ययन नहीं किया। . . . . विष्णु पुराण मैंने

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नहीं पढ़ा है।'' (पेज–18); ''राजशेखर की बाल रामायण मैंने नहीं पढ़ी है। . . . . . मैंने इतिहास वेत्ता होने के नाते भी यह जानने की कोशिश नहीं की कि तुलसीदास की रामायण में क्या लिख गया है।'' (पेज–19); ''मैंने तर्क शास्त्र नहीं पढ़ा है।'' (पेज–20); ''मैं यह नहीं बता सकता कि सिन्धु वैली की खोज कब हुयी। यह जुग्राफी का विषय है।'' (पेज–33)

"I have not studied Vedas wholly; rather, I have studied them only to the extent they were included in the curriculum of my study." (page 4); "I know a little about Puranas." (page 7); "I have not read Vishnu Purana." (page 8); "I have read some portions of Valmiki's Ramayana." (page 15); "I have not done any research on whether Lanka of Valmiki's Ramayana may or may not be in Madhya Pradesh." (page 16); "I do not have any specific knowledge of directions on the basis of the solar system. I did not make any special study on this subject. . . . I have not read Vishnu Purana." (page 18); "I have not read Rajshekhar's 'Balramayana'.. . . .As a historian too, I did not try to know what is written in the Ramayana by Tulsi Das." (page 19); "I have not read logic." (page 20); " I cannot tell when Indus valley was discovered. It is a subject of Geography." (page 33) (E.T.C.)

''मैंने इस बात का कोई अध्ययन नहीं किया कि रामायण या महाभारत में कौन पहले रचा गया लेकिन विद्वानों का ऐसा मत है कि महाभारत के कुछ अंश रामायण से पहले लिखे गए थे। . . . . . कौटिल्य के अर्थशास्त्र के सम्बन्ध में मेरा कोई विशेष ज्ञान नहीं है क्योंकि वह मेरा विषय नहीं है और न ही मेरा शोध इस पर था।'' (पेज–36); ''मैंने राजतंरगीणी पुस्तक पढ़ी नहीं।'' (पेज–38); ''कुतुबद्दीन के बाद का मुस्लिम इतिहास के सम्बन्ध में मैं मोटे मोटे तौर पर जानकारी रखता हूं मेरा इस पर कोई अध्ययन नहीं है।'' (पेज–42); ''मैंने यह नहीं पढ़ा कि मस्जिद में क्या–क्या चीजें नहीं हो

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सकती हैं।'' (पेज–75); ''एपीग्राफी, न्यूमिसमैटिक का मैं स्पेशलिस्ट नहीं हूँ।'' (पेज–82)

"I did not make any study regarding which of the two- Ramayana or Mahabharata was composed earlier, but scholars opine that some portions of Mahabharata were written prior to Ramayana.. . . . I do not have any special knowledge of Kautilya's Arthshastra, because it was not my subject nor was it a theme of my research." (page 36); "I did not read the book titled Rajtaringini." (page 38); "I have knowledge of post-Qutbuddin muslim history but not in its minute details; I do not have any study on it." (page 42); "I did not read what features a mosque may not have." (page 75); "I am not a specialist in epigraphy and numismatics." (page 82) (E.T.C.)

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''मैं जियोलाजिस्ट नही हूँ।'' (पेज–95); ''मैं ज्योलोजी का विद्यार्थी नहीं हूँ। . . . . . ''यह ठीक है पैलियों लाजी का विषय मैंने नहीं पढ़ा है ना ही इसका मुझे ज्ञान है।'' (पेज–110); ''चूंकि मंदिर को तोड़कर मस्जिद बनाना मेरे शोध का सब्जेक्ट नहीं है इसलिए मैंने उपरोक्त स्थानों का अध्ययन करने की कोशिश नहीं की वैसे भी मैं मध्यकाल का इतिहासकार नहीं हूँ ।'' (पेज–127) ; ''मैंने स्कन्द पुराण को नहीं पढ़ा। . . . . मैंने अन्य पुराणों को भी पढ़ने की आवश्यकता नहीं समझी चूंकि उनका अध्ययन मेरा विषय नहीं था।''(पेज–133)

" I am not a geologist." (page 95); "I am not a student of Geology. . . . . .It is correct that I have not studied paleology as a subject, nor do I have its knowledge." (page 110); "Since construction of mosques after demolishing temples is not the subject of my research, so I did not make an endeavour to make study of those places. Otherwise also, I am not a historian with regard to medieval period." (page 127); " I did not read Skandha

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Purana.. . . . I did not think it to be necessary to read other Puranas also as their study was not my subject"

(page 133)

"मैंने पूरे पुराण नहीं पढ़े हैं लेकिन वह अंश पढ़े हैं जो वी0एच0पी0 के डाकमेंट में थे। इसी तरह पूरे वेद भी नहीं पढ़े लेकिन कुछ अंश पढ़े हैं। इसी तरह तुलसी दास का राम चरित मानस व बाल्मीकी रामायण पूरी नहीं पढ़ी। मैंने कालीदास की रचना के कुछ अंश पढ़े है पूरा नहीं पढ़ा। .... मुझे एपीग्राफी नियोसमैटिक का पूरा ज्ञान नहीं है और न ही मैं उक्त दोनों विषयों का विशेषज्ञ हूं मुझे जियोलाजी का ज्ञान नहीं है।" (पेज–137); "बाबरनामा मैंने नहीं पढ़ा" (पेज–138); "मध्यकालीन इतिहास मेरा अध्ययन एवं अध्याय का विषय नहीं था।" (पेज–139)

"I have not read the Puranas completely; rather, I have read only those portions which were contained in the document of the VHP. Similarly, I have not read the whole of the Vedas but I have read some portions of them. Likewise, I did not read Tulsidas's Ramacharit Manas and Valmiki's Ramayana in entirety. I have read some parts of Kalidas's composition but I have not read it in whole.... I do not have full knowledge of epigraphy and numismatics, nor am I a specialist in the said two subjects. I do not have knowledge of geology too." (page 137); "I did not read Baburnama." (page 138); "Medieval history was not a subject of my study and teaching." (page 139)(E.T.C.)

"परन्तु यह सही है कि मैं इतिहास का विशेषज्ञ नहीं हूँ।" (पेज–169); "उत्तर प्रदेश में मैंने खुदाई करके कोई शोध कार्य नहीं किया। मैंने बिहार में कोई खुदाई का कार्य नहीं किया।" (पेज–170); "मैंने प्राचीन पुरातात्विक इमारतों अर्थात भवनों से संबंधित कोई शोधकार्य नहीं किया और न पुस्तक लिखी।" (पेज–179)

"But it is true that I am not a specialist in history." (page 169); "I did not do any research work after making

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excavations in Uttar Pradesh. I did not make any excavation in Bihar." (page 170); "I did not do any research work with respect to ancient archaeological buildings, nor did I write a book in this respect." (page 179)

''मैं जियोलाजिस्ट नहीं हूँ . . . . मैं इतिहास का विद्यार्थी नहीं हूँ।'' (पेज 26); ''मैं वास्तुकला का विशेषज्ञ नहीं हूँ। मुझे उसका साधारण ज्ञान है।'' (पेज 36);''मैं मूर्ति विज्ञान का विशेषज्ञ नहीं हूँ।'' (पेज 51); ''ऐपीग्राफी मेरा क्षेत्र भी नहीं है। '' (पेज 57); ''मेरा विशेष क्षेत्र फील्ड आर्कियोलोजी था, एथनोग्राफी नहीं।'' (पेज 71);''मैं हिस्ट्री आफ टेम्पिल आर्किटेक्चर का कोई विशेषज्ञ नहीं हूँ।'' (पेज 122) (Volume 2)

"I am not a geologist. . . . . I am not a student of History." (page 26); "I am not a specialist in architecture. I have an ordinary knowledge of it." (page 36); "I am not a specialist in sculpture." (page 51); "Epigraphy, too, is not my field." (page 57); "My speciality was field archaeology, not ethnography." (page 71): "I am not a specialist in history of temple architecture." (page 122) (E.T.C.)

3615. The following part of his statement is relevant to ascertain sincerity, genuineness and correctness in the alleged research of the witness and his statement:

''अयोध्या शोध के समय अयोध्या मैं एवं शर्मा ही गये थे।'' (पेज 23)

"Only Sharma and myself had gone to Ayodhya at time of Ayodhya research." (ETC)

''यह रिपोर्ट मैंने मई में दी है। अयोध्या मैं फरवरी–मार्च में गया होऊँगा।'' (पेज–62)

"I gave this report in May. I might have gone to Ayodhya in February-March." (ETC)

''हो सकता है कि मेरे पहले बयान में यह आया हो कि मैं विवादित स्थल

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पर पहले–पहल जून 1991 के पहले गया था।'' (पेज–65)

'' In my first deposition, I may have stated that I had gone to the disputed site before June 1991 for the first time.'' (ETC)

''बाबरी मस्जिद की तरफ से मेरे द्वारा आर0ए0शर्मा, डी0एन0 झा, अतहर अली द्वारा तैयार लेख व अन्य साक्ष्य बाबरी मस्जिद ने 13.5.91 की मीटिंग में दाखिल किये था। फिर कहा कि शायद हम लोगों द्वारा तैयार रिपोर्ट बाबरी मस्जिद कमेटी की तरफ से नही दी गई थी, बल्कि हमारे विचारों को अपने तर्क में उद्धृत किया था।'' (पेज–65)

''Article(s) written by me, R.A. Sharma, D.N.Jha and Atahar Ali and other evidences were produced in the 13-05-1991 meeting by Babri Masjid Committee on behalf of Babri Masjid. Further stated, our report had not possibly been prepared on behalf of Babri Masjid Committee. Rather our opinion was quoted in their arguments.'' (ETC)

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''हम चार निष्पक्ष इतिहासकारों में से दो इतिहासकार अयोध्या व बनारस हमारे साथ नहीं गए। मुझे नहीं पता कि वह अलग से अयोध्या या बनारस गए या नहीं।'' (पेज–88)

'' Out of the four impartial historians, two of us had not gone to Ayodhya and Banaras with us. I do not know whether they had gone to Ayodhya or Banaras separately or not." (ETC)

*''इस सारी स्टडी के लिए हमें सिर्फ 6 ही हफ्ते दिए गए थे। **बार–बार दबाव डाला जा रहा था इसलिए हमने अपनी रिपोर्ट बिना बी0बी0लाल की खुदायी का रिकार्ड देखे अपनी रिपोर्ट दे दी।**'' (पेज–103)*

*''we were given only six weeks' time for the entire study. **Pressure was being repeatedly exerted; so, we submitted our report without going through the record of the excavation work by B.B.Lal**." (ETC)*

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*'यह सही है कि जिस समय निर्माण हो रहा हो उस समय की संबंधित परिस्थितियों का प्रभाव निर्माण पर पड़ता है। **मैंने इतिहासकार की हैसियत से बनारस में एक ऐसी मस्जिद देखी है जो आधी मंदिर तोड़कर बनायी गयी है।**'' (पेज–126)*

Note: This part of the statement is in contradiction to what has been said by PW 13 at page 199.

*''It is true that constructions going on a particular time are influenced by the circumstances prevailing at that time. **As a historian I have seen a mosque in Benares which is built by demolishing a temple to half its size.**"(ETC)*

''श्री डी0एन0झा ऐशियंट इंडियन हिस्ट्री के इतिहासकार हैं। प्रो0 आर0एस0शर्मा का ज्ञान काफी विस्तृत है। वे सोशियो एकनामिक हिस्ट्री के विशेषज्ञ हैं।'' (पेज 132)

"Sri D.N.Jha is a scholar in regard to ancient Indian history. The knowledge of Prof.R.S. Sharma is fairly extensive. He is a specialist in socio-economic history."

(ETC)

*''**मैंने विवादित विषय से सम्बन्धित किसी रिकार्डेड हिस्ट्री का अध्ययन नहीं किया।**'' (पेज 134)*

***"I did not make any study of any recorded history with regard to the disputed subject"** (ETC)*

*''**मैंने मौके पर कोई एक्सविकिशन नहीं किया** और न यह करना मेरे अनवेषण का हिस्सा था।'' (पेज 137)*

*"**I did not make any excavation at the site,** nor was it a part of my investigation." (ETC)*

*''**रिकार्डेड हिस्ट्री भी मेरा विषय नहीं था और न ही मैं इसका विशेषज्ञ हूं।** आर्ट हिस्ट्री का भी मैं विशेषज्ञ नहीं हूँ लेकिन मुझे उसका सामान्य ज्ञान है।'' (पेज–137)*

"Recorded history, too, was not my subject, nor am I its

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specialist. *I am also not a specialist in art history but I have general understanding of it." (ETC)*

3616. Later on, the witness could not tell as to in which category of specialist he is appearing:

''यह सही है कि ***मैं इतिहास का विशेषज्ञ नहीं हूँ। ..... मुझे नहीं पता कि इस मुकदमें में मेरी गवाही बतौर पुरातात्विक के हो रही हो।''*** *(पेज–169)*

"it is true that I am not a specialist in history. I do not know that my testimony in this litigation has been only as an archaeologist." (ETC)

3617. The expertise and authority of PW 16 has been challenged by PW 20, Prof. Shirin Musavi in her statement at page 129 observing that Suraj Bhan is an Archaeologist and not an authority on Medieval History.

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3618. **PW-18 Suvira Jaiswal,** an ex Professor of Jawahar Lal Nehru University, New Delhi has deposed that according to her studies and research, there is no evidence that Babri Masjid was constructed after demolition of a temple of Lord Rama or that there existed any temple whatsoever where the Babari Masjid was situated. She also stated of not finding any evidence which may prove that the place in dispute was birth place of lord Rama. In her cross-examination, she said:

''इस तरह का भी कोई प्रमाण मेरी जानकारी में नहीं मिलता है, जिससे यह विदित हो कि बाबरी मस्जिद का निर्माण राम–मन्दिर को तोड़कर किया गया हो।''

"In my knowledge, no such evidence is found which may indicate that Babari mosque was constructed after demolishing Sri Ram's temple." (E.T.C.)

''यह ठीक है कि ***मैं प्राचीन इतिहास की विशेषज्ञ हूं।*** *यह भी ठीक है कि मैं इस अदालत में प्राचीन इतिहास के विशेषज्ञ के रूप में*

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गवाही देने आई हूं। . . . मेरी विशेषता लिखित श्रोतों में खोज पर आधारित है।'' (पेज 122)

"This is correct that ***I am expert in Ancient History.*** *It is also correct that I have come to this Court to tender evidence as specialist in Ancient History. . . . My specialization is based on investigation into written sources." (E.T.C.)*

''मैंने इस विषय पर कि मुसलमान शासकों ने मंदिर को तोड़कर मस्जिद बनायी, ***इस बात का न कोई अध्ययन किया और न ही मैने कोई इस सम्बन्ध में पुस्तकों का कोई संकलन किया। . . . न ही मैंने इस सम्बन्ध में कोई रिपोर्ट पढ़ी।''*** *(पेज 29)*

"On the topic that Muslim rulers constructed mosques after destroying temples, ***neither I conducted any study nor made any compilation of books in this respect. . nor I have read any report in this respect****." (E.T.C.)*

''मेरा उपरोक्त बयान कि जहॉ बाबरी मस्जिद स्थित थी, वहॉ पर पहले मन्दिर नहीं था, यह मेरी स्वयं की राय है। यह कहना सही है कि बाबरी मस्जिद के बारे में किसी प्रकार की खोज किये बगैर मैं शपथ पर मैं अपने ज्ञान के आधार पर नहीं, बल्कि राय के आधार पर बयान दे रही हूँ।'' *(पेज 82)*

*"****My aforesaid statement that at the place where Babari Mosque was situated, earlier no temple existed there, is my own opinion. It is correct to say that I am giving statement on oath regarding Babari Mosque without any probe and not on the basis of my knowledge, rather I am giving the statement on the basis of my opinion****." (E.T.C.)*

''मेरी खोज के अनुसार ***अयोध्या में कई स्थान ऐसे हैं जो श्री राम के जन्म स्थान होने का दावा करते हैं। मैं यह नहीं***

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बता सकती कि उन स्थानों का जहां राम जन्म स्थान का दावा किया जाता है, कौन–कोन से हैं, या कहां–कहां हैं। मैंने इस बात की खोज करने की आवश्यकता नहीं समझी। . . . मैंने बाबरी मस्जिद के इतिहास के बारे में अध्ययन नहीं किया।''

(पेज 86–87)

"As per my research, ***there are such several places in Ayodhya, which claim to be the birthplace of Sri Rama. I cannot point out specifically as to the places which are claimed to be the birthplace of Rama. I did not consider it necessary to research on this point.*** *. . . I did not study the history of Babari Mosque." (E.T.C.)*

*''**मैंने 12वी शताब्दी के बाद के इतिहास का अध्ययन नहीं किया**। लेकिन बतौर इतिहासकार मैं बता सकती हूँ कि 16वीं शताब्दी में बाबर ने अयोध्या में बाबरी मस्जिद बनवाई।'' (पेज 103)*

*"**I have not studied history of the period after 12th century** but as a historian I can tell that in 16th century Babar got constructed Babari Mosque in Ayodhya."(E.T.C.)*

*''**विवादित स्थल के बारे में जो भी जानकारी मुझे हुई वह अखबारों के आधार पर या जैसा दूसरे लोगेां ने बताया अर्थात इतिहासकारों की रिपोर्ट से ज्ञात हुई, वही है**।*

*इतिहासकारों की रिपोर्ट से मेरा मतलब हिस्टोरियन रिपोर्ट टू नेशन से है। यह रिपोर्ट वही रिपोर्ट है जो सूरजभान डा0 आर0एस0 शर्मा द्वारा बनायी गयी थी इस रिपोर्ट में डी0एन0झा इतिहासकार और अतहर अली इतिहासकार भी शामिल थे। मैंने भी अपने कुछ साथियों के साथ इतिहास का राजनैतिक दुरूपयोग बाबरी मस्जिद रामजन्मभूमि विवाद नामक पर्चा छापा था। . . . **यह पर्चा मैंने अखबारों मे छपी समाचार एवं अपने विभाग में मध्यकालीन विशेषज्ञ से चर्चा करके तैयार किया था**।'' (पेज 104–105)*

*"**Whatever knowledge I gained with respect to disputed site, was on the basis of newspaper or what the***

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others told, i.e., from the report of historians.

By historians' report I mean "Historian Report to Nation". This is the same report which was prepared by Surajbhan and Dr. R.S. Sharma. In this report, historians D.N. Jha and Athar Ali were also included. I alongwith my companions also published a pamphlet entitled "Rajnaitik Durupayog Babari Masjid Ram Janmabhumi Vivad" (Political Misuse, Babari Mosque-Rama Birthplace Dispute"). . ***I had prepared this Pamphlet from the news published in newspapers and after having a discussion with Medieval Expert of my Department****." (E.T.C.)*

*"**मैने बाबरी मस्जिद के बारे में कुछ नहीं पढ़ा** विशेष रूप से नहीं पढ़ा इसलिए मैं नहीं बता सकती कि बाबरी मस्जिद कब अस्तित्व में आयी। **मैं यह भी नहीं बता सकती कि बाबरी मस्जिद के अस्तित्व में आने के पहले उस स्थान पर क्या था।**" (पेज 105)*

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*"**I have read nothing about Babari Mosque**, I did not study thoroughly, therefore, I cannot say as to when Babari Mosque came into existence.* ***I cannot say as to what was there at the site before coming into existence of Babari Mosque****."(Page 105)*

"अर्थात मैं आर्क्यालाजिस्ट, न्यूमिसमैटिक्स और एपीग्रैफिक्स नहीं हूँ। . . . यह सही है कि भारत के मध्यकालीन इतिहास का ज्ञान भी मुझे बहुत अल्प है।" (पेज 54)

". . & means that I am not an Archaeologist, Numismatics or Epigraphist. . . . . It is true that my knowledge about medieval history of India is very little." (E.T.C.)

*". . **मैं इस पुस्तक में डा0 अजीज इतिहासकार ने जो अपना मत दिया है उससे मैं सहमत नहीं हूं** . .*

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*. . . **मैंने डा0 अजीज अहमद की किताब नहीं पढ़ी है।** परन्तु इसकी चर्चा विभाग में हुई थी। . . . . उस समय हमारे विभाग में मध्ययुग के विशेषज्ञयों ने इसकी चर्चा की थी। **यह ठीक है कि उन्हीं चर्चा को मैंने सही मान लिया, पर उस विषय पर कोई किताब पढ़ी नहीं, न ही लिखा है।**'' (पेज 64–65)*

*"**I do not agree with the opinion recorded in the book by the historian Dr. Aziz**. . .*

*. . . **I have not read the book of Dr. Aziz Ahmad**. But discussion about it was held in the Department. . . . this discussion was held amongst experts in medieval age in my department. **This is correct that I regarded the said discussion as true, but on that subject, I have neither read nor wrote any book.**" (E.T.C.)*

". . . पर मैं, उन लेखों से सहमत नहीं हूँ। . . प्रो0 बी0बी0लाल ने उन खम्बों को किसी मन्दिर का आधार स्तम्भ बताया था, उससे मैं सहमत नहीं हूँ।" (पेज 116)

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". . But I do not agree with those articles. . . . Prof. B.B.Lal had stated those pillars to be foundation pillars of a temple, with which, I do not agree."(E.T.C.)

*"**प्रो0 लाल ने खम्बों के बारे में जो अपनी राय व्यक्त की थी, उससे असहमति का मेरा आधार, दूसरे आर्कियोलाजिस्ट, की राय एवं रिपोर्ट्स पर है।** इस विषय पर मैंने डी0 मण्डल की, जो एक आर्कियोलाजिस्ट हैं, पुस्तक पढ़ा है। इस सम्बन्ध में मेरे सहयोगी प्रो0 रत्नाकर से मेरी बातचीत हुई थी और प्रो0 सूरजभान के लेख भी पढ़े थे।'' (पेज 116–117)*

*"**The basis of my disagreement with the opinion expressed by Prof. Lal about the pillars, is the opinion and reports of other archaeologists.** On this subject, I have read the book of D.Mandal, who is an archaeologist. In this connection I had discussed with my colleague Prof.*

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Ratnakar and also read the articles of Surajbhan." (E.T.C.)

3619. The above extracts of her statement are self speaking. It is really surprising that a witness, claiming to be an Expert Historian, can make such serious statements on historical facts and that too without any study or adequate enquiry into the matter. Newspaper reports or what was told by some others or otherwise cannot be equated with the research work expected from an expert on the subject. She could admit her disagreement with a historian author of a book not after reading it but merely on the basis of some discussion made in her department.

3620. Moreover, the expertise and authority of PW-18 has been challenged by PW-20 Professor Shirin Musavi in her statement at page 129 saying that Suvira Jaiswal is an Ancient Indian Historian and not an authority on Medieval History.

3621. In fact, what appears from her statement from pages 116-117 that she has deposed to support the statement of PW-16, 20 and 24. The reason is also apparent. She admits to have obtained her Ph.D. under the guidance of Dr. (Prof.) R.S.Sharma, who was at Patna University and later on came to Delhi University. He is a co-author of the article **"Historian Report to Nation"** along with Suraj Bhan- PW-16 and two others.

3622. We may mention here that though the said report claims to have been written by four persons but in fact it was not signed by Sri D.N.Jha. The opinion of an alleged expert, which is not based on her own study and research work but reflection of other's opinion, in our view, shall not qualify to be considered relevant under Section 45 of the Evidence Act as well as the law laid down by the Apex Court in **State of Himachal Pradesh Vs.**

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Jai Lal (supra).

3623. Normally, the Court does not make adverse comments on the deposition of witness and suffice it to consider whether it is credible or not but we find it difficult to resist ourselves in this particular case considering the sensitivity and the nature of dispute and also the reckless and irresponsible kind of statements, and the material got published by the persons claiming to be Expert Historian, Archaeologist etc. without making any proper investigation, research or study in the subject.

3624. This is really startling. It not only surprises us but we are puzzled. Such kind of statements to public at large causes more confusion than clear the things. Instead of helping in making a cordial atmosphere it tends to create more complications, conflict and controversy. Such people should refrain from making such statements or written work. They must be extremely careful and cautious before making any statement in public on such issues.

3625. The people believe that something, which has been said by a learned, well studied person, would not be without any basis. Normally they accept it as a correct statement of fact and affairs. Normally, these persons do not find a stage where their statement can be scrutinized by other experts like a cross-examination in a Court of law. In legal terminology, we can say that these statements are normally ex parte and unilateral. But that does not give a license to such persons to make statements whatsoever without shouldering responsibility and accountability for its authenticity. One cannot say that though I had made a statement but I am not responsible for its

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authenticity since it is not based on my study or research but what I have learnt from others that I have uttered. No one, particularly when he claims to be an expert on the subject, a proclaimed or self styled expert in a History etc. or the facts or events can express some opinion unless he/she is fully satisfied after his/her own research and study that he/she is also of the same view and intend to make the same statement with reasons.

3626. We do not know how much damage such kind of statements have already caused, but, if any, that has already been done. At this stage we can only hope and trust that the intelligentsia of this country particularly those who are experts in any discipline, shall live more responsible life, and before expressing any opinion or statement of fact particularly when that involves an extra ordinary sensitive matter, due care and caution shall be practised.

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3627. **PW-20 Prof. Shirin Musavi** Professor in the History Department, Aligarh Muslim University Aligarh also deposed that she did not find any evidence or material to show that Babri Masjid was constructed after demolishing any temple or that any temple ever existed at the disputed site. She also said that the place in dispute was never known as Ram Janam Bhumi or Ram Janam Asthan. Some of the extracts from her cross-examination are reproduced hereunder to throw light as to how much opinion of the above witness is creditworthy and honest, and is relevant under Section 45 of the Evidence Act:

> *''मेरे ज्ञान के अनुसार बाबर ने कोई मंदिर तोड़कर अपने कार्यकाल में मस्जिद बनाई हो इसका कोई रेफरेंस एतिहासिक तौर पर नहीं मिलता।* ***यह हो सकता है कि किसी मंदिर का मैटीरियल किसी मस्जिद को बनाने में इस्तेमाल किया गया हो क्योंकि उस जमाने में यह कामन प्रैक्टिस थी।*** *'' (पेज 79)*

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"As per my knowledge, reference of the fact that during his period after demolishing any temple Babar got constructed a mosque, is not historically found. ***It may be that material of any temple could have been used for construction of any mosque, as it was a common practice prevalent those days.*** *" (E.T.C.)*

"जहां तक मेरी नालेज है विवादित ढांचा 19वीं सदी में 2 हिस्सें में बंटा था। ***वहां कोई डिस्प्यूट था कि सीता की रसोई है इसलिए शायद एक हिस्सा विवादित ढांचे का अलग कर दिया गया था, पूजा के लिए।"*** *(पेज 86)*

"As per my knowledge, disputed structed was divided in two parts in 19th century. ***There was some dispute that there is Sita Rasoi, so, perhaps one portion of disputed structure was separated for worship.*** *"(E.T.C.)*

"यह ठीक है कि जयपुर में सवाई मान सिंह के नाम पर एक म्यूजियम बना है जो आज भी मौजूद है। यह भी ठीक है कि म्यूजियम में एक से ज्यादा अर्थात कई अयोध्या के नक्शे कपड़े पर बने हुए मौजूद हैं। इतिहासकार उस पूरे कलेक्शन को कपड़ द्वार कलेक्शन कहते हैं। यह ठीक है कि उस कपड़द्वार कलेक्शन में एक पेंटिंग है जो मैप के साथ है। ***जिसमें तीन कपोलास का मंदिर दिखाया गया।*** *(स्वयं कहा) कि कपड़द्वार का जो आफिशियल कैटलाग है उसमें जहां तक हमें याद है यह 176 नम्बर पर मेंशन है और लिखा है कि यह एक स्वामी से 5/– रू0 में खरीदा गया।* ***यह कपड़द्वार कलेक्शन 1717 ए0डी0 का नहीं है बल्कि लेट 18वीं सदी का है। लेट 18वीं सदी का मतलब है 1750 के बाद।"*** *(पेज 87)*

"This is true that there is museum in Jaipur built on the name of Sawai Man Singh which exists today also. It is also true that in that museum, there are more than one map of Ayodhya drawn on cloth. The historians say the entire collection as Kapad Dwar Collection. It is true that in that

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Kapad Dwar Collection there is a painting annexed with the map ***wherein temple of three Kapolas is indicated.*** *(of her own said) It is mentioned in Kapad dwar, which is an official catalogue, so far as I remember, at no.176 it is written that it had been purchased from a saint in Rs.5/-.* ***This Kapad Dwar collection is not of 1717 AD but of late 18th century. Late 18th century means after 1750.*** *"*

(E.T.C.)

"मेरे विचार से ***मेरे लिए विवादित स्थल को देखना आवश्यक नहीं था*** *यह जानने के लिए कि वह मन्दिर है या मस्जिद मेरे पास हिस्टारिकल लिटरेरी इवीडेंस थी, जिसे पढ़ने के बाद मैं इस नतीजे पर पहुँची कि यह विवादित ढांचा मस्जिद था या मन्दिर तोड़कर मस्जिद नहीं बनाई गई थी। मैंने जो साक्ष्य पढ़े थे, वह समकालीन साक्ष्य या समकालीन के पास के साक्ष्य थे तथा इस संबंध में लेट इवीडेंस का भी अध्ययन किया था।" (पेज 107)*

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"In my view, to ascertain whether it is temple or mosque, ***it was not necessary to see the disputed site.*** *I had historical literary evidence, on going through which, I reached the conclusion that this disputed structure was mosque or mosque was not constructed after demolishing temple. Whatever evidence I read, that were either contemporary evidence or nearing the contemporary and also studided late evidence in this connection." (E.T.C.)*

"बल्कि असलियत यह है कि मैंने किसी स्रोत में ऐसा नहीं पढ़ा कि किसी मन्दिर को तोड़कर यहॉ पर यह मस्जिद बनाई गई थी। यह बात कि कोई खाली जमीन पढ़ थी, वहॉ पर मस्जिद बनी, यह स्पेसेफिकली शब्दों में लिखा कहीं नहीं मिला।" (पेज 111)

" However, as a matter of fact, I did not read in any source that this mosque was built here after demolishing any temple. It is not specifically written anywhere that any

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vacant land was lying on which a mosque was built." (E.T.C.)

"मेरे पठन पाठन में डिसपुटेड स्ट्रक्चर कोर्स का भाग नहीं था बल्कि मैंने स्वयं पढ़ा था अर्थात अध्ययन आया है। मैंने इस विषय पर 1986 से पढ़ना शुरू किया था।" (पेज 120)

"The disputed structure was not a part of the course of my study, but I had myself studied about it. I started study on this topic from 1986." (Page 120)

*"**गजेटियर को हिस्ट्री में सोर्स नहीं माना जाता है इसलिए उसे मैंने सीरयसली कभी नहीं पढ़ा।**" (पेज 127)*

*"**The Gazetteer is not treated as a source of history; so, I never read it seriously**." (E.T.C.)*

"1854 के गजेटियर को 16वी सेन्चुरी के इतिहास के लिए मैं रेलेवंट नहीं समझती इसलिए मैने उसकी जानकारी नहीं की।"(पेज 127)

"I do not consider 1854 Gazetteer to be relevant to the study of history of 16th Century." (E.T.C.)

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*"1986 के बाद मैंने यह जानने की कोशिश की थी कि बाबरी मस्जिद जिस जमीन पर बनी थी उसका नेचर क्या था लेकिन चूंकि **किसी भी सोर्सेज में इसका उल्लेख नहीं मिलता है कि यह जमीन बाई फोर्स एक्वायर की गयी हो या किसी मन्दिर को तोड़कर उस पर मस्जिद बनायी गयी हो।**" (पेज 128)*

*"After 1986 I tried to know the nature of the land over which Babri Mosque was built but **since there was no mention in any of the sources that this land was acquired by force or was constructed after demolishing any temple**." (E.T.C.)*

*"**अयोध्या में राम जन्म स्थान होने का लीजेण्ड 17वीं षताब्दी से मिलता है** उससे पहले मध्यकालीन इतिहास में राम जन्म स्थान का कोई लीजेण्ड उपलब्ध नहीं है। " (पेज–136)*

*"**The legend of Ayodhya being the birth place of***

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Rama is found from 17th century *prior to which there is no legend about Rama's birth place in the medieval History. ” (E.T.C.)*

*“**आर्कियोलाजिकल सर्वे और एक्सप्लोरेषन और एक्सक्वेषन सर्वे से यह पता लगाया जा सकता है कि उस स्थान पर मंदिर था या नहीं**।”(पेज–137)*

*“**Through gynaecological survey and exploration and excavation survey, it can be discovered whether a temple existed or not at that place**.” (E.T.C.)*

*“**विवादित स्थल पर विवादित ढांचे के पहले कोई भवन था या नहीं इसकी साक्ष्य आर्कियोलोजिकल एक्सप्लोरेषन से ही मिल सकती है।**” (पेज–138)*

*“**Evidence of the fact whether any building prior to the disputed structure existed or not on the disputed site, can be had only through archaeological exploration.**” (E.T.C.)*

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“यह सही है कि विवादित स्थल पर विवादित ढांचे पर कोई इमारत थी या नहीं इसका कोई इतिहासिक साक्ष्य मेरे पास नहीं है अजखुद कहा कि परन्तु इस बात की निगेटिव इवीडेंस मौजूद है।

निगेटिव इवीडेंस इस प्रकार हैः–

1.यदि कोई खड़ी इमारत तोड़ी गई होती तो इन्सक्रिप्षन पर स्वाभाविक तौर पर लिखा जाता कि किसी इमारत या मंदिर को तोडकर यह मस्जिद बनायी गयी ।

2,निकट समकालीन इतिहासकार अपने अपने लेखों में इस बात का उल्लेख करते।” (पेज–138)

“ It is true that I do not possess any historical evidence whether any building existed on the disputed structure on disputed site. On her own, said that negative evidence in this regard is available.

Negative evidence is as follows:

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1. *Had any building been demolished , naturally, it would have been written in inscription that this mosque was built after demolition of any building or temple.*
2. *Recent contemporary historians would have made reference of this fact in their articles." (E.T.C.)*

'यह ठीक है कि सिक्ख साहित्य में यह एक ट्रेडीषन है कि गुरुनानक अयोध्या गये थे श्रीराम जन्म स्थान का दर्षन किया और सरजू में स्नान किया।'' (पेज–138)

"It is correct that in Sikh literature this is a tradition that Guru Nanak had visited Ayodhya, had Darshan of Sri Ram Janam Sthan and had bathed in the river Saryu." (E.T.C.)

''अयोध्या के इतिहास पर मैंने कोई अलग से किताब नहीं पढ़ी सिर्फ एस0पी0गुप्ता साहब की पुस्तक अयोध्या जो इवीडेंस में पेष है उसका अध्ययन किया है।'' *(पेज–143)*

"I have not studied any book on the History of Ayodhya separately. I have only studied S.P.Gupta's book 'Ayodhya' which is adduced in evidence."*(E.T.C.)*

3628. PW-24 Prof. D Mandal retired from the Department of Ancient History and Archaeology, Allahabad University, who was appointed on adhoc basis as Lecturer in 1972 but prior thereto he claimed to have worked as exploration assistant since 1960. Initially he appeared as an expert to depose that there is no archaeological evidence to show either existence of any temple at the disputed site or that a temple was demolished before construction of the disputed structure. The statements made by him in cross examination shows the shallowness of his knowledge in the subject:

''मैं अयोध्या कभी नहीं गया'' (पेज 25)

"I never visited Ayodhya" (E.T.C.)

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''मुझे बाबर के शासनकाल के इतिहास के बारे में विशेष जानकारी नहीं है।'' (पेज 26)

"I do not have any specific knowledge of history of Babur's reign." (E.T.C.)

''मुझे बाबर के बारे में जो साधारण जानकारी हासिल है, वह केवल इतनी है कि बाबर 16वीं सदी का शासक था, इसके अलावा मुझे बाबर के बारे में कोई जानकारी नहीं है।

मेरी पुस्तक प्रदर्श–63 में लिखे एडिटोरियल प्रिफेस बाई रोमिला थापर में दूसरे पैरा में लिखी यह बात कि विश्व हिन्दू परिषद, भाजपा और राष्ट्रीय स्वयं सेवक संघ ने पहली बार यह विवाद उठाया कि बाबरी मस्जिद उसी जगह खड़ी हे, जहॉ पहले राम का जन्म स्थान था, की मुझे जानकारी नहीं है। मुझे इस बात की भी जानकारी नहीं है कि उपरोक्त प्रिफेस में पेज 10 पर लिखी यह बात सही है या नहीं कि अयोध्या रामानन्दीय मत की तीर्थस्थली है।'' (पेज 26)

" Whatsoever little knowledge I have about Babur is only that Babur was the ruler of the 16th century. Except for this, I do not have any knowledge of Babur.

I do not have knowledge of anything in 2nd para of editorial preface to my book (exhibit 63) in which Romila Thapar has written that Vishwa Hindu Parishad, BJP and Rashtriya Swayam Sevak Shangh for the first time raised the issue of the Babri Masjid being located on the place which was earlier Rama's birth place. I also do not know whether or not it is correctly written on page 10 of the afore-said preface that Ayodhya is a site of pilgrimage for adherents of Ramanand school." (E.T.C.)

''कम्युनिस्ट पार्टी का रेड कार्ड होता है और मैं उसका धारक हूॅ। यह ठीक है कि धर्म में मेरा विश्वास नहीं है। मेरे द्वारा लिखी गयी पुस्तक एक्जिबिट–63 सिरीज में लिखी नहीं गयी है पर वह सिरीज में प्रकाशित हुयी है और इस सिरीज का नाम है ''ट्रैक्स फार द टाइम्स''। मुझे इस बात का ज्ञान नहीं है कि ''ट्रैक्स फार द टाइम्स सिरीज'' के अर्न्तगत

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कोई प्रकाशन सिर्फ धार्मिक संगठनों की आलोचना के लिए होता है। यह ठीक है कि इस सरीज के अन्तर्गत एक पुस्तक ''खाकी शार्ट्स एण्ड सैफरन फ्लैग्स'' छपी है पर इस पुस्तक को मैंने नहीं पढ़ा है।'' (पेज 30)

"The Communist Party issues a red card, and I am its holder. It is true that I have no faith in religion. A book written by me (exhibit 63) was not written in series; instead, it was published in series. This series is called 'Tracks for the Times Series'. I do not know whether there is any publication, under 'Tracks for the Times Series', which is only for the criticism of religious organizations. It is true that a book titled 'Khaki Shorts and Saffron Flags' has been published under this series, but I have not read this book." (E.T.C.)

''फ़ेथ का हिन्दी अनुवाद आस्था है। मुझे इसी सिरीज की पुस्तक ''द क्वेश्चन आफ फेथ'' का कोई ज्ञान नही है और न ही मैंने उसे पढ़ा है। मुझे मालूम है कि किस सिरीज के अन्तर्गत उपरोक्त पुस्तक छपी है। फेथ का कोई सम्बन्ध आक्र्यालाजिकल हिस्ट्री से नहीं है। मुझे ठीक से याद नहीं है कि इसी सिरीज के एडोटोरियल बोर्ड के दो सदस्यों का नाम मुझे याद है पहली– प्रो0 रोमिला थापर, और दूसरे श्री नीलाद्रि भट्टाचार्य हैं। बाकी सदस्यों का नाम मुझे याद नहीं है। यह ठीक है कि इस सिरीज के एडीटोरियल बोर्ड के एक सदस्य सर्वपल्ली गोपाल जी भी हैं।''(पेज 31)

"Hindi translation of faith is 'Aastha'. I have no knowledge of a book 'The Question of Faith' under this very series, nor have I read it. I know under which series the aforesaid book was published. Faith has nothing to do with archaeological history. I do not properly remember that 'Kashmir Towards Emergency' is published or not. I remember names of two members comprising the editorial board of this series, first of them being Prof. Romila Thapar and the other being Sri Niladri Bhattacharya. I do

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not remember names of the rest of members. It is true that Sarvapalli Gopal ji is also a member of the editorial board of this series." (E.T.C.)

"श्री एस0गोपाल कम्यूनिस्ट विचार धारा के हैं या नहीं मुझे नहीं मालूम पर प्रो0 रोमिला थापर मार्क्स वाद से प्रभावित हैं।" (पेज 31)

"I do not know whether Sri S. Gopal is of Communistic thought or not. But Prof. Romila Thapar is influenced by Marxism." (E.T.C.)

"यह ठीक है कि मेरी पुस्तक एक्जिबिट–63 का एडीटोरियल प्रोफेस प्रो0 रोमिला थापर ने लिखा है। प्रो0 रोमिला थापर जवाहर लाल नेहरू विश्वविद्यालय में प्रोफेसर थीं। इसी विश्वविद्यालय में शिरीं रत्नाकर भी थीं। जो एक अध्यापक थीं।" (पेज 31)

"It is true that Prof.Romila Thapar has written editorial preface to my book (exhibit 63). Prof. Romila Thapar was a professor at Jawahar Lal Nehru University. In this very University was Shereen Ratnagar also, who was a teacher." (E.T.C.)

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"प्रो0 सूरजभान का नाम एक पुरातत्व वेत्ता के रूप में मैं जानता हूँ।" (पेज 33)

"I know Prof. Suraj Bhan to be an archaeologist."(E.T.C.)

"यह ठीक है कि ***आज तक मैंने विवादित भवन को देखा नहीं।*** *विवादित भवन में जो शिलालेख की शिलायें लगी थी उनका मैंने भौतिक परीक्षण नहीं किया और इसी प्रकार बैसाल्ट स्टोन का भी भौतिक परीक्षण मैंने नहीं किया।" (पेज 36)*

"It is true that ***I have not seen the disputed building as yet****. I did not make any physical investigation of stone used in inscriptions carved out in the disputed building. Likewise, I also did not make physical investigation of basalt stone." (E.T.C.)*

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''मेरा निष्कर्ष मेरी पुस्तक एक्जीबिट 63 में किसी आर्टिकल पर ही आधारित नहीं हैं। मेरा निष्कर्ष इस सम्बन्ध में लिखी गयी वाद सं0 5/89 में दाखिल पुस्तक पेपर सं0 118 सी–1/35 में दी गयी सामग्री और मूल रूप से उसमें दिये गये वह फोटोग्राम (पेपर सं0 118 सी–1/36), जो प्रो0 बी0बी0लाल के बाबरी मस्जिद के पास किये गये उत्खनन का है, पर आधारित है। . . . यह कहना ठीक है कि ***मैंने अपना निष्कर्ष पेपर सं0 118 सी–1/35 (राम जन्म भूमिः अयोध्या) में दिये गये बी0बी0लाल की संक्षिप्त रिपोर्ट तथा उनके द्वारा ली गयी फोटो की पुनःप्रस्तुति को वेद वाक्य मानकर निष्कर्ष निकाला।*** *'' (पेज 38)*

''My finding in my book (exhibit 63) is not based only on any article. My finding is based on materials written in this connection and given in the book(paper no.118C-1/35) filed in Suit No.5/89, and chiefly on the photograph (paper no.118C-1/36) depicting the excavation undertaken by Prof.B.B.Lal near the Babri Mosque. . . . It is also correct to say that ***I drew findings, taking the brief report of B.B.Lal as given in paper no.118C-1/35 (Ram Janm Bhumi: Ayodhya) and the reproduction of the photograph taken by him to be sacrosanct.*** *'' (E.T.C.)*

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''पुस्तक प्रदर्श 63 को लिखने के लिए मुझे बहुत सारे सहयोगियों ने प्रेरणा दी थी।'' (पेज 39)

''Many of my colleagues inspired me to write the book (exhibit 63).'' (E.T.C.)

''यह भी सही है कि उनमें से एक से मैंने निवेदन किया कि मेरी पुस्तक का इण्ट्रोडक्शन लिखने को कहा और वह सहयोगी सुश्री शिरीं रत्नाकर हैं।'' (पेज 39)

'' It is also true that I had requested one of them to write an introduction to my book, and the colleague thus requested was Miss Shereen Ratnagar.'' (E.T.C.)

''लक्ष्मी कान्त तिवारी जिन्होंने मेरे लिए मेरी पुस्तक में फिगर्स की

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ड्राइंग बनाई थी, . .. यह कहना सही है कि उन्होंने मेरे कहने के मुताबिक ड्रापटिंग बना दिया। लक्ष्मी कान्त तिवारी एक कुशल ड्रफ्टसमैन थे।

मैं कभी अयोध्या गया ही नहीं।'' (पेज 40–41)

"It is correct to say that Laxmi Kant Tiwari, who drew figures for me in my book, went ahead with the drafting as I wished. Laxmi Kant Tiwari was a skilled draftsman.

***I never even visited Ayodhya**." (E.T.C.)*

''मेरे अनुसंधान का मुख्य उद्देश्य यह था कि बाबरी मस्जिद के नीचे मंदिर था या नहीं।'' (पेज 48–49)

"The main objective of my research was to see whether there was a temple below the Babri Mosque or not." (E.T.C.)

''मेरे अनुसंधान के मुताबिक अयोध्या में प्रारम्भिक आबादी मिलने के प्रमाण छठी – सातवीं शताब्दी ई0पू0 से मिलते हुँ।'' (पेज 54)

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"As per my research, initial signs of human population in Ayodhya are found from the 6th -7th century BC." (E.T.C.)

''इस्लामिक आबादी 13वीं शताब्दी ई0 से लेकर 15वीं –16वीं शताब्दी तक रही, मुझे इस बात का ज्ञान है।'' (पेज 55)

"I know that there was Islamic population from the 13th century to the 15th - 16th century." (E.T.C.)

''मैंने श्रोत सामग्री जिसका अपने अनुसंधान के दौरान का प्रयोग व अध्ययन किया, के आधार पर कहता हूँ कि विवादित ढॉचा बाबरी मस्जिद थी। **मैंने इस बात पर कोई अनुसंधान नहीं किया,** कि वह बाबरी मस्जिद थी चूंकि वह मेरा शोध का विषय नहीं था। यह कहना सही है कि मैंने उसी श्रोत सामग्री के आधार पर विवादित ढॉचे को बाबरी मस्जिद मान लिया।'' (पेज 57)

"On the basis of the source material which I used and studied in course of my research, I speak of the disputed structure as Babri Masjid. I did not make any

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research to see whether it was Babri Mosque inasmuch as it was not a subject of my research. It is correct to say that I took the disputed structure to be Babri Masjid on the basis of that very source material." (E.T.C.)

"यह कहना सही है कि जिस श्रोत सामग्री के आधार पर दूसरे लोग विवादित ढॉचे को बाबरी मस्जिद कहें हैं, उसी आधार पर मैं भी इसे बाबरी मस्जिद कहता हूँ। उसी वजह से मैं इसको बाबरी मस्जिद कहता हूँ, अन्यथा बाबरी मस्जिद का होना मेरे शोध का विषय नहीं है।" (पेज 57)

"It is correct to say that I term the disputed structure as Babri Mosque on that very source material on which others term it as such. For this very reason I term it as Babri Mosque, otherwise its being Babri Mosque is not a subject of my research." (E.T.C.)

"यह कहना सही है कि जिन लोगों ने विवादित ढॉचे को रामजन्म भूमि कहा, मैं उन पर विश्वास नहीं करता और इसी कारणवश मैंने उसी रामजन्म भूमि नहीं कहा है और वैसे भी यह मेरे शोध का विषय नहीं था।"(पेज 57)

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"It is correct to say that I do not believe those persons who termed the disputed sructure as Rama Janm Bhumi; for this very reason I have not described it as such, and as a matter of fact it was not a subject of my research."(E.T.C.)

"चूँकि मेरे अनुसंधान का मुद्दा यह नहीं था कि ये पत्थर मस्जिद के अंग हो सकते हैं इसलिए इस कारण मैंने यह अनुसंधान नहीं किया। और इसी कारण से मैंने यह भी अनुसंधान नहीं किया कि ये मन्दिर के हो सकते हैं। . . . यह ठीक है कि ***पेपर संख्या–118सी0–1/44 और 46 में दिखाए हुए पत्थरों पर मानव आकृतियां बनी हुयी हैं।*** *" (पेज 60–61)*

" Since it was not the issue of my research to see whether these stones can be a part of the Mosque, I did not

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make any research on them, and for this very reason I did not make any research to see whether they may be of the temple. . . . It is true that human figures are engraved on the stones shown in paper nos. 118C-1/44&46." (E.T.C.)

"मेरे ज्ञान का विषय पुरातत्व है और इसमें हमारी विशेष्ज्ञता फील्ड आर्कियोलाजी है और फील्ड आर्कियोलाजी के अन्तर्गत स्तर विन्यास (स्ट्रैटीफिकेशन) विधि में है।" (पेज 62)

"The subject of my knowledge is archaeology and my speciality is in field archaeology under it and in stratification method under field archaeology." (E.T.C.)

"प्रो0 सूरजभान को पुरातत्व वेत्ता के रूप में जानता हूं। इस मुकदमें में उनकी भी गवाही हुई है इस बात की भी मुझे जानकारी है।"(पेज 65)

"I know Prof. Surajbhan to be an archaeologist. He has also deposed in this litigation. I have knowledge of it also." (E.T.C.)

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*"**डा0 सुवीरा जायसवाल को भी मैं जानता हूं।** उनसे भी हमारी बातचीत होती है। . . . **उनके लेखों से ऐसा प्रतीत होता है कि उन पर मार्क्सवाद का प्रभाव है।**" (पेज 65)*

*" **I know Dr. Suvira Jaiswal too**. I have talks with her also. . . . . **From her articles it appears that she is influenced by Marxism**." (E.T.C.)*

"प्रो0 रोमिला थापर को भी मैं जानता हूं। वह भी मार्क्सवाद से प्रभावित हैं। .मैं श्री आर0एस0शर्मा, बी0एन0एस0यादव, डी0पी0अग्रवाल, एस0सी0भट्टाचार्य, एन0सी0घोष और नीलाद्रि भट्टाचार्य को जानता हूँ। और इनसे हमारी बातचीत भी हुई है।" (पेज 65)

"I know Prof. Romila Thapar too. She is also influenced by Marxism. . . . . .I know Sri R.S.Sharma, B.N.S. Yadav, D.P. Agarwal, S.C. Bhattacharya, N.C. Ghosh and Niladri Bhattacharya and also have talks with

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them." (E.T.C.)

''हमारा उद्देश्य यह अध्ययन अर्थात खोज करने का था कि बाबरी मस्जिद के नीचे मंदिर था या नहीं। जमीन के ऊपर के ढांचे से मेरे उद्देश्य का कोई संबंध नहीं था।

उस समयतक जितनी सामग्री प्राप्त हो चुकी थी हमारे विचार से यह निष्कर्ष निकालने के लिए पर्याप्त थी कि ढांचे के नीचे कोई मंदिर था या नही।'' (पेज 69)

''Our objective was to study or discover whether there was a temple below the Babri Mosque or not. My objective did not have any relation to the structure above the ground.

Whatsoever materials had been discovered by that time was, in my opinion, sufficient to derive a conclusion as to whether there was any temple below the structure or not." (E.T.C.)

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''यह ठीक है कि उत्खनन से प्राप्त मैटीरियल को देखकर मैं यह नहीं बता पाऊँगा कि यह मंदिर का है या मस्जिद का है।'' *(पेज 71)*

*''**It is true that by observing materials discovered through excavation I will not be in a position to tell whether there was a temple or a mosque**." (E.T.C.)*

*''यह सही है कि **मैं साम्यवादी विचारधारा का हूँ**।''(पेज 77)*

*''It is true that **I am of communistic thought**."(E.T.C.)*

*''मैंने पुरातत्व विषय पर ज्ञान प्राप्त किया है। **मैंने पुरातत्व विषय पर कोई डिग्री या डिप्लोमा की उपाधि हासिल नहीं की।''** (पेज 78)*

*" I have acquired knowledge of archaeology. **I did not get any degree or diploma in archaeology.**" (E.T.C.)*

''मेरे अध्ययन व जानकारी के अनुसार विवादित ढॉचा 12वीं शताब्दी ईसवी के बाद का था।'' (पेज 78)

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"As per my study and knowledge, the disputed structure was subsequent to the 12th century AD."(Page 78)

''मेरे मुताबिक सप्लीमेट में दिया गया नक्शा प्राथमिक श्रोत हैं। मैंने इस बात की कोई छानबीन नही की कि सप्लीमेंट में दिया गया नक्शा सही है अथवा नहीं।'' (पेज 91)

"The map given in the supplement is, in my opinion, a primary source. I did not enquire as to whether the map given in the supplement is correct or not." (E.T.C.)

''जहॉ तक मुझे ख्याल है पुस्तक सं0118सी1/35 मुझे जुलाई या अगस्त 1992 में उपलब्ध हुई थी'' (पेज 91)

"As far as I recall, the book 118C-1/35 was made available to me in July or August 1992." (E.T.C.)

''मेरी पुस्तक का प्राथमिक श्रोत पेपर सं0 118सी1/36 है।'' (पेज 94)

"Primary source of my book is paper no.118C1/36."(E.T.C.)

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3629. A bare perusal of the above makes it clear that he virtually made a critical analysis of the book that is Paper No.118C1/36, a small booklet published by Prof. B.B.Lal and beyond that made no further or other study/research etc.. Only on that basis, he wrote a book, and analyzed the belief of the people whether the disputed structure was constructed after demolishing a temple or that there existed any temple of 11th or 12th century which was demolished before its construction. The own admissions and clarification this witness has given, we find that the entire opinion of this witness is short of the requirement under Section 45 of the Evidence Act, 1872 to qualify as an opinion of an Expert which may be considered relevant on a fact in issue, by this Court.

3630. **OPW 9 Thakur Prasad Verma** was Reader in Kashi Hindu Vishwavidyalaya Varanasi and retired in 1993. He had

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worked in the Department of Ancient Indian History, Culture and Archaeology. He is graduate in Ancient Indian History Culture and Archaeology, Doctorate in Indian Ancient Paleography (Bhartiya Puralipi Shastra); Post Graduate Diploma in Numismatic. He was plaintiff no.3 in Suit 5 having been impleaded after the death of Sri B.N.Agarwal and was pursuing the aforesaid suit as next friend of plaintiffs no.1 and 2 but recently on his own request, has been replaced. He came to depose about the faith of Hindu public that Lord Rama was born at the disputed place at Ayodhya where a mosque was constructed after demolishing a temple. However, the disputed place has continuously been worshiped by Hindus having a special and peculiar importance. According to him Ram Janam Bhumi temple was initially constructed by Vikramaditya of Ujjain and thereafter it used to be renovated as and when it was required. In 1032-33 AD Salar Masood demolished the temple and thereafter was killed on 14th June, 1933 AD in the battle at Baharaich. A new temple was constructed during the reign of Govind Chandra of Garhwal Dynesty in 12th Century but the same was also damaged after about 17/18 years. It was again constructed by King Anaychand of Garhwal Dynasty but then demolished by Mir Baqi, Commander of Babar in 1528 AD. These facts he has written in **"Ayodhya ka Itihas Avam Puratatva Rigved Se Abtak" Exhibit No.3 (Suit 5)** wherein last chapter 11 has been written by Dr.S.P.Gupta and rest by him. The said book and some of the facts stated therein, we have already discussed while considering the issues relating to date of construction of the disputed structure. OPW 9 admitted that Salar Masood never came to Ayodhya and he mistook the place

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'Ajudhan' with 'Ayodhya' though 'Ajudhan' is in the State of Punjab. That being so, his statement that demolition was made by Salar Masood at Ayodhya in 1032-33 has proved wrong.

3631. In cross-examination, he admits of teaching Numismatic, Epigraphy, Paleography and Scriptology. Sometimes he also taught history since the department is of Indian History. He admits that the period of Ancient History was only upto 1206 AD. Some relevant extracts from his statements in his cross examination need be referred herein to consider the reliability of the opinion of this expert (Historian):

''मैंने अति प्राचीनकाल से लेकर 12वीं सदी तक का इतिहास मैंने पढ़ा है।'' (पेज 17)

"I have read history from very ancient times up to 12th century."(E.T.C.)

*''**मैं मुख्य रूप से इतिहासकार हूं।** मुझे प्राचीन लिपियों का भी ज्ञान है। . . . अशोक के काल की जो लिपि समस्त भारत में प्रचलित थी उसका नामकरण जार्ज ब्यूलर ने ब्राह्मी किया है। . . . अशोक कालीन ब्राह्मी लिपि को मैं बहुत अच्छी तरह से पढ़ सकता हूं। अशोक कालीन ब्राह्मी लिपि यूनानी लिपि से बिल्कुल मेल नहीं खाती है।'' (पेज 33–34)*

*"**I am mainly a historian.** I have the knowledge of ancient scripts too. . . . . George Beular has named as 'Brahmi' the script which was in prevalence in the time of Ashoka. . . . . I can read the 'Brahmi' script of the Ashokan time very well. The 'Brahmi' script of the Ashokan period does not at all correspond with the Greek script.'. "(E.T.C.)*

*''**मैंने अपने हलफनामें के पैरा–13 में लिखी हुई बातों का संदर्भ मार्टिन द्वारा लिखी हुई इस बात से लिया है** कि काले पत्थर के खम्भे संभवतः विक्रमादित्य द्वारा बनाये किसी मंदिर से लिये गये हों।'' (पेज 103–104)*

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*"**What is written in para 13 of my affidavit originates from the view of Martin** that the pillars of black stone have been taken from any temple perhaps built by Vikramaditya."(E.T.C.)*

*"**जब मैने बयान हलफी दाखिल किया तब तक मुझे यह नहीं मालूम था कि मार्टिन कौन था और उसकी पुस्तक जिससे उपरोक्त दो पृष्ठ उद्धरित किये गये, कब, कहां और किस भाषा में छपी थी।**" (पेज 105)*

"By the time I had filed my sworn statement I did not know who Martin was and when, where and in which language his book, from which the aforesaid two pages were extracted, was published."(E.T.C.)

"मेरा दावा सिर्फ विवादित परिसर के लिए है। विवादित परिसर से मेरा तात्पर्य भवन और उसके बाहरी चहारदीवारी के अंदर की सारी भूमि से है।" (पेज 115)

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"My claim is only for the disputed premises. By the disputed premises I mean 'the building and the whole land lying inside its outer boundary wall."(E.T.C.)

*"मैंने जो दस बार की लड़ाइयों का हवाला दिया है, उसे आंशिक रूप से सही मानते हुए वर्णित किया है। . . . . .**मैंने इस विषय पर अलग से कोई शोध नहीं किया कि इसमें कितनी सत्यता है।** . .**टाइफेंथेलर की पुस्तक फ्रांसीसी भाषा में है,** जिसको मैं नहीं जानता परन्तु **उसका अंग्रेजी अनुवाद मैंने पढ़ा है।** उनकी किताब का **अंग्रेजी अनुवाद कहीं छपा है या नहीं, मुझे इस बारे में मालूम नहीं है,** परन्तु मैंने उस पुस्तक के अयोध्या प्रकरण से संबंधित पृष्ठों का अंग्रेजी अनुवाद पढ़ा है।" (पेज 122–126)*

*". I have cited the battles having taken place on 10 occasions; I have made mention of them taking them to be partially correct. . . . . **On this point I have not separately carried out any research to ascertain how***

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much truth was there. . . . ***The book of Typhen Thaler is in French language,*** *about which book I do not know.* ***But I have read its English translation. I do not know whether English translation of his book was published anywhere or not,*** *but I have gone through the English translation of the pages related to the Ayodhya matter in that book."(E.T.C.)*

"वाद पत्र की धारा 23 दिखाई गई, जिसे देखकर गवाह ने कहा कि इस पैराग्राफ की प्रथम 6 लाइनों में जो बाते कही गई हैं, वे आंशिक रूप से सत्य हैं और आंशिक रूप से गलत हैं। . . . . .इस वाद पत्र के पैराग्राफ – 23 में जो यह बात लिखी गई है कि – "विक्रमादित्य द्वारा बनवाए गए मन्दिर को मीर बाकी ने तोड़ा था", यह बात सही नहीं है।" (पेज 147)

"Para 23 of the plaint was shown following which the witness stated – What is contained in first six lines of this paragraph is partially correct and partially incorrect. The submission in para 23 of this plaint saying that 'Mir Baqi demolished the temple built by Vikramaditya', is not correct."(E.T.C.)

"भगवान श्री राम ने अपने को विष्णु के अवतार के रूप में मानव शरीर में प्रकट किया। इसका अर्थ यही होता है कि दशरथ के पुत्र के रूप में कौशिल्या माता के गर्भ से रामचन्द्र जी ने जन्म लिया।" (पेज 154)

" that Lord Sri Rama embodied himself as an incarnation of Vishnu. It certainly means that as son of Dashrath Rama took birth from the womb of Mother Kaushalya."(E.T.C.)

"पेलियोग्राफी अर्थात लिपि शास्त्र मेरा विशेष विषय रहा है। . . . . . मैं केवल ब्राह्मी लिपि का ज्ञाता हूँ।" (पेज 190–191)

"Palaeography has been my speciality. . . . . I am an expert only in Brahmi script."(E.T.C.)

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"विवादित भवन के बीच वाले गुम्बद के नीचे के स्थान को परम्परागत राम जन्म स्थली माना जाता था और यह परम्परा कभी बदली नहीं थी, बल्कि एक समझौते के तहत राम चबूतरे को राम जन्म स्थली मानकर लोग पूजा–अर्चना करने लगे थे और इस तरह मेरे अनुसार बीच वाले गुम्बद के नीचे राम जन्म स्थली होने की परम्परा बरकरार रही।"

(पेज 211–212)

*"**The place beneath the central dome of the disputed building, is traditionally recognised to be Ram Janmsthali, and this tradition never changed. But under an agreement people began to perform 'Pooja-Archana'(worship & prayer), treating Ram Chabutra as Ram Janmsthali and in this way, I think that the tradition believing Ram Janmsthali to be beneath the central dome continued.**" (E.T.C.)*

*"**मैं यह भी जानता हूँ कि उसे एक मन्दिर को तोड़कर बनाया गया था।**"(पेज 255)*

*"**I also know that it had been built after demolishing a temple**." (E.T.C)*

*"यह कहना गलत होगा कि मीरबाकी ने उस विवादित स्थल पर बिना कोई मन्दिर तोड़े एक मस्जिद की स्थापना की थी, क्योंकि जिस किसी भी इतिहास लेखक ने बाबरी मस्जिद या अयोध्या के बारे में उल्लेख किया है, उन सभी ने एक स्वर से इस बात को दोहराया है कि मीर बाकी ने उस स्थल पर जन्मभूमि नामक मन्दिर को तोड़कर एक मस्जिद की स्थापना की थी। **जहाँ तक उस मन्दिर की लम्बाई–चौड़ाई और आकार–प्रकार व क्षेत्रफल के विषय की बात है, उस पर कोई शोध कार्य इसलिए नहीं किया जा सका है, क्योंकि इसके लिए विवादित स्थल के आस–पास की पुरातात्विक खुदाई अत्यन्त आवश्यक थी।**" (पेज 257)*

"It would be wrong to say that Mir Baqi built a mosque at the disputed site without demolishing any temple

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because all the historians, who have mentioned about Babri mosque or Ayodhya, have unequivocally mentioned that Mir Baqi had built a mosque over there after demolishing a temple named Janmbhumi. ***So far as the length-breadth, shape-form and area of that temple is concerned, no research work was possible on the same because it made archaeological excavation extremely necessary in the vicinity of the disputed site.*** *" (E.T.C)*

''मैं मध्य कालीन इतिहास का विद्यार्थी नहीं हूँ।'' (पेज 300)

"I am not a student of medieval history." (E.T.C)

*''**वैसे अयोध्या का इतिहास नामक यह पुस्तक मैंने शोध ग्रन्थ के रूप में नहीं लिखा है** वरन् एक लोकप्रिय पुस्तक के रूप में लिखा है और कुछ संदर्भो को संदर्भित किया है जिससे पढ़ने वालों को उसका (क्रास चेक) प्रति निरीक्षण करने का अवसर मिल सके।''*

(पेज 336–337)

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*"**I have not written the book 'Ayodhya Ka Itihas' as a research paper an instead as a popular book** and have quoted certain references so that the readers may get the opportunity to cross check them." (E.T.C)*

*''**17 वीं – 18वीं शताब्दी में रामकोट के एक हिस्से पर किला बनाकर वहां से अवध प्रान्त का प्रशासन चलाया जाता था** और नवाबों –वजीरों के काल में इसे ''किला मुबारक'' कहा जाता था।'' (पेज 346)*

*"**The administration of the Awadh province in the 17th -18th century was carried out from a fort built over a part of Ramkot** and in the period of Nawabs-Wazirs, it was called 'Qila Mubarak'." (E.T.C)*

*''**मुझे कहीं पर भी बाबर के अयोध्या शहर जाने एवं मंदिर गिराने का कोई उल्लेख नहीं मिलता है।**'' (पेज 389)*

*"**I have nowhere found any reference of Babar***

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***visiting Ayodhya and demolishing the temple**." (E.T.C)*

"मेरे विचार से राम की पूजा का प्रारंभ ईस्वी सन् की पहली, दूसरी शताब्दी अर्थात् कुषाण काल में भी होने के प्रमाण मिलते हैं क्योंकि कौशाम्बी से मिले खण्डित अभिलेख में "राम नारायण की प्रतिमा" को स्थापित करने का उललेख आता है, इसके अतिरिक्त गुप्त काल में प्रभावती गुप्ता नामक वकाटक वंश की रानी काल पॉचवी शताब्दी ईस्वी में नागपुर के समीप रामटेकक में राम की पूजा का उललेख मिलता है। . . . . मेरा यह निश्चित मत है कि भारत में विष्णु के अवतार के रूप में रामचन्द्र जी की पूजा ईसा के पहली शताब्दी के पहले से ही आम जनता में प्रचलन में थी।" (पेज 208)

"In my view, evidences of worship of Rama are found in 1st, 2nd century AD i.e. in the Kushana period as well, because a broken record, found at Kaushambi, contains reference of installation of 'deity of Ram Narayan'. Besides this, reference is found of Rama's worship by Prabhawati Gupta, queen of Vakatak dynasty, at Ramtekak near Nagpur in 5th century AD in the Gupta period. . . . It is my firm belief that the worship of Ramchandra as an incarnation of Vishnu, was prevalent in the general public much before 1 BC." (E.T.C)

*"मैंने अपनी मुख्य परीक्षा के शपथ–पत्र के उपरोक्त पैराग्राफ में जो मार्टिन को संदर्भित किया है, वह केवल इस संदर्भ में किया गया है कि बाबर ने इस मंदिर को तोड़कर उसके स्थान पर एक मस्जिद का निर्माण किया था, जिसका मार्टिन ने उल्लेख किया है। . .मेरी मुख्य परीक्षा के शपथ–पत्र की धारा–15 में जो यह लिखा है कि सालार मसूद 1032–33 में अयोध्या आया था और जन्मस्थल मंदिर को क्षतिग्रस्त किया, इस बात को मैं अब गलत मानता हूँ ..गवाह ने अपने शपथ–पत्र के पैरा–16 को देखकर कहा कि इसमें लिखी बात कि "इसके निर्माण की आवश्यकता इसलिए पड़ी कि वह लगभग 7.–80 वर्ष पहले क्षतिग्रस्त कर दिया गया था", यह बात भी अब निरस्त हो जाती है, जैसा कि सालार मसूद के बारे में मैं पहले कह चुका हूँ। . .. . **सन् 1528 में मंदिर के तोड़ने की बात कहीं भी***

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नहीं लिखी है, यह मेरा अपना अनुमान है।'' (पेज 424–425)

"The reference of Martin made by me in the said paragraph of the affidavit of my examination-in-chief, is limited to the extent of Babar demolishing this temple and raising a mosque in its place, which had been mentioned by Martin . . . . . The fact mentioned as 'Salar Masood had come to Ayodhya in 1032-33 and had destroyed the Janmsthal temple' in para-15 of affidavit of my examination-in-chief , is now considered wrong by me . . . . . After looking at para-16 of his affidavit, the witness stated that the fact mentioned in it as 'the need for its construction arose because it had been destroyed 70-80 years ago', also stands nullified, as already stated by me about Salar Masood. . . . . . ***The destruction of temple in the year 1528, is not written anywhere, and it is only my presumption.*** *" (E.T.C)*

3632. Dr. Satish Chandra Mittal OPW-11 Retired Professor since 1997 had specialization in "Modern Indian History". In para 2 of his affidavit, he says that his studies and teaching was in the subject of 'Modern History'. On the basis of various Gazetteers etc., details whereof are given in para 8 of his affidavit, he gave opinion that Ram Janam Bhumi temple was demolished by Babar, using its material, the mosque was constructed. This opinion is solely based not on his research but on the basis of the studies of various Gazetteers:

''मैंने जितने भी गजेटियर का अध्ययन किया, उससे मैं इस निष्कर्ष पर पहुँचा हूँ कि, विवादित स्थल पर हिन्दुओं द्वारा बराबर पूजा की जाती रही है।'' (पेज 12)

*"**From all the gazetteers read by me, I have arrived at the conclusion that Hindus have been regularly***

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***offering worship at the disputed site**." (E.T.C)*

He further said:

"मैंने जिन पुस्तकों एवं गजेटियर को देखा एवं पढ़ा उनमें इस बात का उल्लेख है कि विवादित स्थल पर हिन्दुओं द्वारा एक चबूतरा बनाया गया था, जिस पर पूजा होती थी।" (पेज 13)

"In the books and gazetteers read & seen by me, it is mentioned that a platform was built by the Hindus at the disputed site, over which worship used to take place."(E.T.C)

*"**मैं आधुनिक भारतीय इतिहास का विशेषज्ञ हूँ।** मोटे रूप से भारतीय आधुनिक इतिहास ब्रिटिश शासन काल का है यह काल सन् 1757 से 1947 तक का था। . . . 16वीं शताब्दी इतिहास के बारे में मेरा कोई विशेष अध्ययन नहीं है।" (पेज 20)*

*"**I am an expert of modern Indian history.** Broadly the modern Indian history concerns the British empire. This period falls between the year 1757 to 1947. . . . I have no special study about the history of 16th century." (E.T.C)*

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3633. In view of his own statement that he has no expertise with respect to the period during which he alleged that the said disputed building was constructed, in our view, his statement in this respect cannot be considered to be opinion of an Expert, which can be treated to be relevant under Section 45 of the Evidence Act.

3634. DW 13/1-3 Dr. Bishan Bahadur was working as Reader and incharge Head of the Department of History in Varshneya College, Aligarh. He is M.A. (History) and in English Literature and Ph.D. on the subject of "Hindu Resistance during Saltanat Period" awarded in 1975 from Agra University. His statement was also similar to OPW-9 and in para 13 and 14 in the affidavit dated 8th April, 2005 he has stated that according to

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his studies and knowledge, the then existing temple at Ram Janam Bhoomi was demolished and thereafter Mir Baqi got a construction made using the material of the temple. He also said that traditionally and as per the belief of Hindu, since time immemorial the place in dispute is being worshiped as birthplace of lord Rama. In his cross-examination, he said:

*''हिन्दू रेसिस्टेंस डयूरिंग सल्तनत पीरियड'' **सन् 1206 से लेकर 1526 तक का मध्यकालीन इतिहास का काल, मेरे शोध का विषय था।''** (पेज 8)*

*"Hindu Resistance During Sultanate Period" **the medieval history period from the year 1206 to 1526, was the topic of my research**." (E.T.C.)*

''भगवान राम का जन्मस्थान होने तथा हिन्दू होने के कारण मेरी आस्था अयोध्या में है।'' (पेज 8–10)

"I have faith in Ayodhya on account of being Hindu and it being the birthplace of Lord Rama." (E.T.C.)

''धारा 7 में पहली पंक्ति में गहडवाल वंश का उल्लेख किया है। इस वंश की उत्पत्ति प्रथम शासक राजा यशोविग्रह के समय में हुई थी इनके शासन काल के शुरु होने के वर्ष के संबंध में कोई सकारात्मक साक्ष्य नहीं है। गहड़वाल वंश के लोग कन्नौज के थे। . . . इसके प्रथम शासक चन्द्रदेव थे। जिनका शासन सन् 1085 से शुरू हुआ था। चन्द्रदेव, महिचन्द्र के पुत्र थे . . .गहडवाल वंश के राजाओं में गोविन्द्रचन्द्र का संबंध अयोध्या से था। चन्द्र देव प्रथम का संबंध भी अयोध्या से था। गोविन्द्रचन्द्र का शासनकाल सन् 1110 से सन् 1156 तक था। . . . . . चन्द्र देव की दो राजधानी क्रमशः क़न्नौज तथा काशी में थी। क़न्नौज में राजधानी इसलिए थी क्योंकि चन्द्रदेव ने क़न्नौज को जीता था, काशी उनकी द्वितीय राजधानी थी। मध्यकालीन शासक प्रायः दो राजधानी रखते थे।'' (पेज 14–15)

"In the first line of para 7 of the affidavit of my examination-in-chief, I have mentioned Gahadwal dynasty. This dynasty was established in the period of its first ruler King Yashovigrah. There is no affirmative evidence

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regarding the year of beginning of his reign. The Gahadwal dynasty people were of Kannauj. . . . . Its first ruler was Chandradev, whose reign began from the year 1085. Chandradev was son of Mahichandra . . . . Out of the kings of Gahadwal dynasty, Govindchandra was related to Ayodhya. Chandradev-I was also related to Ayodhya. Govindchandra's reign extended from 1110 to 1156. . . . . Chandradev had two capitals at Kannauj and Kashi respectively. Kannauj was the capital because Chandradev had conquered it, and Kashi was his second capital. The medieval rulers usually had two capitals." (E.T.C.)

''गहड़वाल वंश के लोगों ने राष्ट्कूटों से सत्ता प्राप्त की, ...ऐसा कहा जाता है कि गोविन्द्र चन्द्र देव ने अयोध्या में जन्मभूमि मंदिर का जीर्णोद्धार कराया था, यही ऐतिहासिक तथ्य है। ***यह गोविन्द्र देव वहीं हैं, जो गहड़वाल वंश के राजा थे। इसके संबंध में प्रमाणिक साक्ष्य के रुप में एक अधूरा शिलालेख प्राप्त हुआ हैं . . . . . यह शिलालेख अयोध्या में जन्म भूमि के स्थान पर प्राप्त हुआ है।*** *. . यह शिलालेख अभी हाल में प्राप्त हुआ है। इस शिलालेख की प्राप्त विवादित भवन के ध्वस्त होने के बाद हुई है। यह शिलालेख सन् 2003 में हुए उत्खनन में प्राप्त हुआ है। यह शिलालेख लाल पत्थर पर है। . . . . डा0 रोमा नियोगी द्वारा अपनी पुस्तक में जो उद्धरण दिये गये हैं, उनमें जिन शिलालेखों का उल्लेख है, उससे स्पष्ट है कि गहड़वाल शासकों के संरक्षण में शिवमंदिर, विष्णु के मंदिर तथा बौद्धों के मंदिरों का निर्माण हुआ। . . . . . गहड़वाल के अंतिम शासक, साक्ष्यों के अनुसार, जयचन्द्र के पुत्र हरिशचन्द्र थे। जय चन्द्र के पराजित होने व परास्त होने पर भी हरिशचन्द्र का शासन काफी बड़े क्षेत्र में सन् 1194 से सन् 1236 तक रहा। यह जय चन्द्र वहीं है जो गौरी तथा पृथ्वीराज चौहान के समय में थे।'' (पेज 15–17)*

"The Gahadwal dynasty people obtained the legacy from Rashtrakutas, ... It is so said that Govindchandra

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Dev had renovated the Janmbhumi temple at Ayodhya, this is the historical fact. ***This Govindchandra Dev is the same, who was a king of Gahadwal dynasty. As an authentic evidence in this behalf, an incomplete inscription has been found, ... This inscription has been found in Ayodhya at the site of Janmbhumi.*** *. . . This inscription is over red stone. . . . . From the inscriptions mentioned in the citations given by Dr. Roma Niyogi in her book, it is clear that Shiva temple, Vishnu temple and Buddhist temples were built under the patronage of Gahadwal rulers. . . . . As per evidences, the last ruler of Gahdwals was Harishchandra son of Jaichandra. Despite defeat of Jaichandra, the rule of Harishchandra extended over a quite big area from the year 1194 to 1236. This Jaichandra is the same, who existed in the period of Gauri and Prithviraj Chauhan." (E.T.C.)*

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''जो भी मंदिर थे, उन्हें ध्वस्त कर दिया गया और नया निर्माण किया गया। वह निर्माण मस्जिद के रुप में था। स्वयं कहा कि उसका स्वरुप मस्जिद का था। गोविन्द चन्द्र देव ने मंदिर का जीर्णोद्धार उसी स्थान पर कराया था।'' (पेज 18)

"Whatever temples were there, they were destroyed and new construction was carried out. This construction was in form of mosque. Stated on his own that its form was of mosque. Govindchandra Dev had renovated the temple at that very place."(E.T.C.)

''भारतवर्ष में सन् 1206 से मध्यकालीन भारतीय इतिहास का प्रशासनिक स्वरुप प्रारंभ होता है। यह क्रम प्लासी के युद्ध के साथ समाप्त होता है। इस धारा में दिये गये तथ्यों का अयोध्या के संबंध में यह महत्व है कि इससे काल क्रम सुनिश्चित होता है।'' (पेज 18)

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"The administrative form of medieval Indian history commences from the year 1206 in India. This came to an end with the Battle of Plassey. The facts mentioned in this paragraph are relevant for the purposes of Ayodhya, in the manner that they determine the chronology."(E.T.C.)

*''**शर्की वंश का उदय सन् 1393 में हुआ था।** दिल्ली में जब तुगलक वंश का पराभव हुआ तब मलिक सरवर को इस स्थान की व्यवस्था देखने के लिए भेजा गया तो उन्होंने अपने को जौनपुर नामक स्थान पर स्वतंत्र शासक घोषित कर लिया। इस प्रकार शर्की साम्राज्य की स्थापना हुई। शर्की वंश में बहुत से शासक हुए। शर्की वंश के राजाओं के नाम का मुझे स्मरण नहीं है। अन्तिम शासक महमूद थे, जो सन् 1480 में बंगाल की ओर चले गये थे। सन् 1480 में महमूद के बंगाल पलायित होने का कारण यह था कि शर्की वंश के शासन का अन्त हो चुका था। बहलोल लोदी तथा सिकन्दर लोदी से पराजित होने पर इस वंश की समाप्ति हो गयी थी। शर्की वंश के राज्य के क्षेत्र में बंगाल की सीमा तक का क्षेत्र था। अवध का सम्पूर्ण क्षेत्र तथा कन्नौज इसके अन्तर्गत था। इसके अन्तर्गत अयोध्या भी था तथा जौनपुर का पूरा परिक्षेत्र आता था। शर्की वंश द्वारा निर्मित भवनों के स्थापत्यकला का अवशेष जौनपुर में प्राप्त है, ऐसा इस कारण से है क्योंकि जौनपुर में शर्की वंश की राजधानी थी।'' (पेज 18–19)*

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***"The Sharqi dynasty advented in the year 1393**. When the Tuglaq dynasty in Delhi underwent downfall, Mallik Sarwar was sent to look after the management of this place, and there he declared himself an independent ruler at the place called Jaunpur. This is how Sharqi dynasty was established. The Sharqi dynasty saw many rulers. I do not remember the names of kings of Sharqi dynasty. The last ruler was Mahmud, who went towards Bengal in the year 1480. The reason for fleeing of Mahmud to Bengal in the year 1480, was that the rule of Sharqi dynasty had come to an end. This dynasty had come to an*

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end on being defeated by Bahlol Lodi and Sikandar Lodi. The limits of Sharqi dynasty empire extended up to the limits of Bengal. The entire area of Awadh and Kannauj fell under it. It included Ayodhya as well besides the entire zone of Jaunpur. The architectural remains of buildings built by Sharqi dynasty are found in Jaunpur, it is so because the capital of Sharqi dynasty was at Jaunpur."(E.T.C.)

''वाल्मीकि रामायण के रचना काल को बताना बहुत जटिल प्रश्न है। . . . .कुछ लोग इसका रचनाकाल ईसा से 5000 वर्ष पूर्व और कुछ 3000 वर्ष पूर्व मानते हैं।'' (पेज 22–23)

''It is a very difficult proposition to determine the time of composition of the Valmiki Ramayana. . . . . Some people attribute it to 5000 BC and some others to 3000 BC.'' (E.T.C)

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*''जिस समय बाबर समरकंद तथा फ़रगना से पराजित होने के बाद बहुत कठिन परिस्थितियों से जूझ रहा था उस समय ईरान के शाह सफ़वी ने उन्हें शर्तों के साथ मदद देने की बात कही थी, जिसे बाबर ने स्वीकार किया था।.. . . .**बाबर ने परिस्थितियों के अनुसार शिया सेक्ट को स्वीकार किया। बाद में बाबर ने पुनः सुन्नी सेक्ट को स्वीकार कर लिया।**'' (पेज 24–25)*

*''At a time when Babar was grappling with very tough circumstances after being defeated at Samarkand and Phargana, Shah Safavi of Iran had promised help to him with certain conditions, to which Bahar had agreed. . . . . **Babar embraced Shia sect due to the pressure of circumstances. Babar later embraced the Sunni sect.**'' (E.T.C)*

''भारत में बाबर का आगमन बाबर की आत्म–कथा तुजुके बाबरी के अनुसार सन् 1519 में पंजाब में हुआ। उन्होंने सन् 1525 तक पांच बार

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सैनिक अभियान किया। छठे अभियान में उन्होंने पंजाब के दौलतखॉ लोदी को पराजित किया और उनके क्षेत्र पर अधिकार किया। . . . . . पहले के पांचों आक्रमण अलग–अलग क़िले पर किये गये। स्थानीय जातियों ने उनका मुकाबला किया थां उपर्युक्त जिस पंजाब क्षेत्र का मैंने उल्लेख किया है, वह इस समय पाकिस्तान स्थित पंजाब है। ***बाबर का भारत में आगमन मुख्य रूप से दो कारणों से था, पहला कारण पैतृक राज्यों में विजय प्राप्त न होना, काबुल में नवीन साम्राज्य की स्थापना, जिसकी सुरक्षा के लिए दक्षिण पूर्व अर्थात् पंजाब की ओर बढ़ना आवश्यक था। दूसरा कारण बाबर ने अपनी आत्मकथा में यह बताया है कि दिल्ली पर उनके पूर्वजों का अर्थात तैमूर का कभी शासन था, इसलिए वह भी उनका अधिकार से पैतृक राज्य है।*** *'' (पेज 25–26)*

"As per Tuzuk-e-Babari, autobiography of Babar, his advent in India took place in Punjab in 1519. He carried out military expedition five times till 1525. In the sixth expedition, he defeated Daulat Khan Lodi of Punjab and captured his region. . . . . Different forts were the targets of the first five attacks. Local tribes offered challenge to him. The Punjab region about which I have mentioned, is presently situated in Pakistan-occupied Punjab. ***The invasion of Babar upon India was mainly due to two reasons. The first reason was his failure to conquer his parental states and the establishment of a new empire in Kabul for the safety of which it was necessary to march towards south east, that is, Punjab. As regards the second reason Babar has stated in his autobiography that Delhi was at a time under the rule of his forefathers, that is, of Taimur and because of this it was as a matter of right his parental state.*** *" (E.T.C)*

''28 मार्च सन् 1528 से 2 अप्रैल 1528 की अवधि में अयोध्या में

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कोई किला न होने के कारण बाबर ने अयोध्या नगर के बाहर कैम्प मे निवास किया था।. . बाबर ने आक्रमणकारी के रुप में दिल्ली की सत्ता इब्राहिम लोदी से प्राप्त की और वहॉ से राजस्थान के क्षेत्र में आगे नहीं बढ़ सका और ***अयोध्या के क्षेत्र में अफ़गान विद्रोहियों को शान्त करने के लिए इस दिशा में वह आक्रमणकारी की हैसियत से आया, यहॉ भी कोई सत्ता स्थापित नहीं हो सकी। उनके प्रतिनिधि मीरबाक़ी ताशकंदी तात्कालिक संदर्भों के आधार पर एक वर्ष कुछ माह के बाद यहॉ से चले गये।*** *'' (पेज 26–27)*

"Because of there being no fort at Ayodhya Babar resided in a camp outside the city of Ayodhya between 28th March 1528 and 2nd April 1528. . . . As an invader Babar took over the reigns of Delhi from Ibrahim Lodi and could not go forward in the region of Rajasthan from there, and ***with a view to subjugate the Afghan rebels in the region of Ayodhya he came as an invader, and no rule could be established here too. Contemporary references suggest that his representative Mir Baqi went away from here a year and some months later.*** *" (E.T.C)*

''मुख्य परीक्षा के शपथ–पत्र की धारा 13 पर आकृष्ट किया तथा साक्षी ने इसको पढ़ने के बाद बताया कि इसमें अयोध्या स्थिति श्री रामजन्मभूमि पर स्थित मंदिर को बाबर के सेनापति मीरबाकी द्वारा निर्माण किये जाने का उललेख है, इसके संबंध में डा0 राधेश्याम ने अपनी पुस्तक ''बाबर'' में लिखा है। डा0 राधेश्याम मान्यता प्राप्त लेखक हैं। वे इलाहाबाद विश्वविद्यालय में इतिहास विभाग में प्रोफ़ेसर रहे हैं। आलमगीरनामा में इस आशय का संदर्भ आया है कि श्री रामजन्मभूमि के स्थान पर चबूतरा ध्वस्त किया गया और ध्वस्त किये गये मलबे से, मस्जिद का निर्माण किया गया। . . . इस कृत्य को करने का उद्देश्य मुख्य रुप से मंदिर के स्थान को ध्वस्त करके एक ऐसी इमारत का निर्माण करने से था, जिसका उपयोग अपने लिए किया जा सके। नवीन निर्माण में जिस सामग्री का प्रयोग किया गया, उससे ऐसा लगता है कि पहले का भवन गहड़वाल वंशी गोविन्द चन्द्र

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के समय का था। . . .मुस्लिम शासनकाल जो सन् 1206 से लेकर सन् 1526 तक था को कई वंशों में विभक्त किया गया है। इन वंशों में सन् 1206 से लेकर 1290 तक तथाकथित गुलाम वंश का शासन था जबकि यह गुलामवंश (स्लेव डायनेस्टी) नहीं था क्योंकि इसमें तीन अलग शाखायें थी, मामलूक, इलबारी, तथा शमसी शाखाओं का शासन था। इस काल के राजाओं में, कुतुबुद्दीन ऐबक, सुल्तान आरामशाह, इल्तुतमिश, रुकुनुद्दीन फ़िरोज, रजिया सुल्तान, मुईजुद्दीन बहरामशाह, अलाउद्दीन मसूदशाह, नासिरउद्दीन महमूद, बलबन, कैकबाद और फिर कैमूर थे। सन् 1290 से सन् 1320 तक खिलजी वंश का शासन था, इन शासकों में जलालुद्दीन फ़िरोज खिलजी, अलाउद्दीन खिलजी, कुतुबुद्दीन मुबारक थे। सन् 1320 से सन् 1414 तक तुगलक वंश का शासन था। इन शासकों में गयासुद्दीन तुगलक मोहम्मद बिन तुगलक, फिरोजशाह तुगलक और उसके बाद तीन कमजोर शासन जिसमें अन्तिम शासक मोहम्मद शाह तुगलक हुए क्योंकि 1414 में सैयद वंश की स्थापना हो गयी। खिज्रखॉ सैयद इस वंश के संस्थापक थे। सैयद वंश सन् 1414 से सन् 1450 तक था। सन् 1450 से लोदी वंश की शुरूआत हुई, जिसके शासकों में बहलोल लोदी, सिकंदर लोदी तथा इब्राहिम लोदी शासक हुए। इसके बाद मुगद्वल शासन का प्रारंभ हुआ, इसका प्रारम्भ सन् 1526 से माना गया है।'' (पेज 27–28)

''The attention of the witness was drawn to para-13 of the affidavit filed in the Examination-in-Chief and on going through it he stated- It mentions of a construction having been raised by Mir Baqi, Commander of Babar at the temple situate at Sri Ramjanam Bhumi located in Ayodhya; in this respect Dr. Radhey Shyam has written in his book titiled Babar. Dr. Radhey Shyam is an acknowledged author. He has been a Professor in the History Department at the University of Allahabad. Alamgirnama contains a reference to the effect that a Chabutra situate at a place called Sri Ramjanam Bhumi was demolished and after the said demolition a mosque was constructed from its debris. . . . The aim of this act was

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mainly to demolish the place of the temple and to construct such a building thereat as could be utilized for personal use. From the materials used in the new construction, it appears that the earlier building belonged to the time of Govind Chandra of the Gahadwal dynasty. . . . . The Muslim period, which spanned between 1206 AD to 1526 AD, is divided into many dynasty. Out of these dynasty, the reign of the so-called Slave dynasty was from 1206 AD to 1290 AD. As a matte of fact, there was no dynasty with the name of Slave dynasty, because it had three different branches. Reigns of Mamulak, Ilbari and Shamsi branches were seen. Among the rulers of this period were included Qutub-ud-din Aibak, Sultan Aram Shah, Iltutmish, Rukun-ud-din Firoz, Razia Sultan, Muij-ud-din Bahram Shah, Alla-ud-din, Masood Shah, Nasir-ud-din Mahmud, Balban, Kaikbad and Kaimur. The period from 1219 AD to 1320 AD witnessed the reign of the Khilji dyansty. Among the ruler were included Jalal-ud-din Firoz Khilji, Alla-ud-din Khilji and Qutub-ud-din Mubaarak. The period from 1328 AD to 1414 AD witnessed the reign of Tughlaq dynasty. Among these rulers were included Gayas-ud-din Tughlaq, Muhammad Bin Tughlaq and Firoz Shah Tughlaq and after him came three weaklings among whom the last one was Muhammad Shah Tughlak, because 1440 AD saw the emergence of the Syed dynasty. Khijra Khan Syed was the founder of this dynasty. The Syed dynasty spanned between 1414 AD and 1450 AD. 1450 AD marked the beginning of the Lodi dynasty, whose rulers included Bahlol Lodi, Sikandar Lodi and Ibrahim Lodi. After that came the

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Mughal rule, the beginning of which is attributed to 1526 AD." (E.T.C)

''मैंने सतरख को अयोध्या अपने बयान के पृष्ठ –17 पर बताया था, ऐसा मैंने कनिंघम के सन्दर्भ से कहा था। यह कहना सही है कि सतरिख नामक स्थान बाराबंकी जनपद में इस समय स्थित है ***''सतरख'' तथा ''सतरिख'' एक ही स्थान के नाम हैं।*** *'' (पेज 29–32)*

"I had stated Satrakh to be Ayodhya on page-17 of my statement; I had stated so in reference to Cunningham. It is true to say that a place called Satrikh is presently situated in Barabanki district. ***'Satrakh' and 'Satrikh' are the names of one and the same place.*** *" (E.T.C)*

''बाबर द्वारा पुनः सुन्नी सेक्ट को स्वीकार करने का कारण यह था कि बाबर की राजनैतिक तथा प्रशासनिक स्थिति काबुल में बहुत मजबूत हो चुकी थी और सन् 1514 से 1525 तक उस इलाके में वह स्वतंत्र शासक की हैसियत से स्थापित हो चुका था, इसलिए ईरान के शासक के अन्तर्गत रहने का कोई औचित्य नहीं था।'' (पेज 32)

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"The reason of Babur's embracing the Sunni sect again was that his political and administrative position had got consolidated a great deal in Kabul and he had established himself as an independent ruler in that region; hence, there was no justification for him to have been under the ruler of Iran." (E.T.C)

''धारा–13 . . . . की अन्तिम दो पंक्तियों में ''मंदिर के मलबे का इस्तेमाल किया गया'' शब्दों का प्रयोग किया गया है। इससे मेरा तात्पर्य यह है कि ***कसौटी के पत्थरों का इस्तेमाल किया गया है। उन पर शक्लें अंकित हैं।*** *खम्भे ज्यों के त्यों हैं, जिनका भी इस्तेमाल किया गया है। इस आधार पर मैंने यह बात कही है। मेरी इस जानकारी का आधार बहुत सी किताबों में इसका संदर्भ होता है।'' (पेज 34)*

"The words 'the debris of the temple' have been used in the last two lines of. . . . . Para 13. By the said words I mean that ***Kasauti stones have been used. Images***

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are engraved on them. *Whichever pillars have been used, are as they were. I have stated this thing on this basis. This information of mine is based on references to them in many books." (E.T.C)*

*"**विवादित स्थान पर स्थित जिस भवन को मीरबाकी द्वारा तोड़ा गया था, उस भवन के पूर्व वहाँ पर गहड़वाल वंश के गोविन्द चन्द द्वारा जीर्णोद्धार किया गया मन्दिर स्थित था।**" (पेज 36)*

*"**On the disputed site, prior to the building demolished by Mir Baqi, there was a temple renovated by Govind Chandra of the Gahadwal dynasty.**" (E.T.C)*

"सिन्ध पर पहला आक्रमण मोहम्मद बिन क़ासिम ने सन् 711–712 ईस्वी में किया था। इस आक्रमण में सिन्ध के शासक दाहिर पराजित हुए थे और "ब्राह्मणवाद" नामक स्थान पर मोहम्मद बिन कासिम का अधिकार हुआ था।

*गजनी ने पंजाब होते हुए सभी हमले हिन्दुस्तान पर किए। जिस समय महमूद ग़जनी ने हिन्दुस्तान पर आक्रमण किया, उस समय दिल्ली में चौहानों का शासन था। यह आक्रमण सन् 1023 से 1027 तक लगातार हुआ। . . . . . .इन हमलों के बाद गज़नी का नियंत्रण पंजाब तक फैल गया, परन्तु दिल्ली उनके कब्जे में नहीं आया। ये हमले अलग–अलग हमले थे। इन हमलों में विध्वंस किया गया, लूटमार की गई तथा आक्रमणकारी वापस चले गये। . . . . . महमूद गज़नी ने कन्नौज तक आक्रमण किया। उन्होंने मथुरा, सोमनाथ पर आक्रमण किया था। जिस समय महमूद गज़नी ने कन्नौज पर आक्रमण किया, उस समय कन्नौज पर राष्ट्कूटों का शासन था। राष्ट्कूट एक प्रकार का क्षेत्रीय नाम है, जिनका कन्नौज के क्षेत्र पर अधिकार था। उनका सम्बन्ध दक्षिण से भी था। . . . . राष्ट्कूट लोग उत्तर क़न्नौज के रहने वाले नहीं थे। . . . . .ये लोग दक्षिणी राज्यों की सरहद से आए थे . . गहडवालों का शासन लगभग 100 वर्षों तक था। यह शासन लगभग सन् 1085 से लगभग सन् 1100 ईस्वी तक था। सन् 1100 के बाद एक राजा का शासन समाप्त हो गया, परन्तु **गहड़वाल वंश का शासन सन् 1225–1226 तक कायम रहा। . . गहड़वालों के***

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शासन की समाप्ति पर दिल्ली के शासकों ने अवध के क्षेत्र में इल्तुतमिश ने अपने बेटे नासिरउद्दीन को अवध का गवर्नर नियुक्त किया।'' (पेज 37–39)

''Mohammad Bin Qasim made his first attack on Sind in 711-712 AD. In this attack, Dahir, ruler of Sind, was defeated and a place called Brahmanwad came under the reigns of Mohammad Bin Qasim.

. . . . . Mahmud of Ghazni made all his attacks wading through Punjab. Delhi was ruled by Chauhans at the time when Mahmud of Ghazni attacked Hindustan. These attacks took place constantly between 1023 and 1027. . . . . After these attacks, the control of Mahmud of Ghazni extended up to Punjab but Delhi did not come under him. These attacks were separate ones. These attacks were marked by devastation, plunder and the ultimate return of the invader. . . . . Mahmud of Ghazni attacked Kannauj. He attacked Mathura and Somnath. When Mahmud of Ghazni attacked Kannauj, it was under the rule of Rashtakutas. Rashtrakuta is a type of regional name and they had control over the Kannauj region. They also had relations with Deccan as well. . . . . Rashtrakutas were not the inhabitants of north Kannauj. . . . . They came from the bordering areas of the southern states. . . . The reign of Gahadwals spanned nearly 100 years. This rule was from circa 1085AD to circa 1100 AD. After 1100 AD the rule of a particular king came to an end but ***that of the Gahadwal dynasty continued till 1225-1226 AD. . . . . At the end of the rule of Gahadwals, the ruler at Delhi, Iltutmish, appointed his son governor of Awadh for the Awadh***

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region. *" (E.T.C)*

"मैं इतिहास का प्रवक्ता हूँ। ***मै मध्यकालीन भारतीय इतिहास पढ़ाता हूँ। . . . अब तक 22 छात्र मेरे निर्देशन में पीएच0डी0 की उपाधि प्राप्त कर चुके हैं।''*** *(पेज 43–44)*

"I am a lecturer in history. ***I teach Medieval Indian History. . . . . 22 students have so far attained Ph.D. degrees under my guidance****." (E.T.C)*

*"****मध्य कालीन भारतीय इतिहास मेरे अध्ययन का विषय रहा है।***

मध्य कालीन भारतीय इतिहास के अन्तर्गत मुगलों का शासन भी आता है।'' (पेज 47)

*"****Medieval Indian History has been a subject of my study.***

Medieval Ancient History also comprises the reign of Mughals." (E.T.C)

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*"****मुगलों के समय में अवध बाबर के अधिकार में नहीं था। यहां पर मीरबाकी को उन्होंने इस क्षेत्र पर अधिकृत करके यहां की स्थिति को देखने के लिए नियुक्त किया था।*** *वह यहॉ पर जो तात्कालिक सन्दर्भ प्राप्त होते हैं, उसके अनुसार लगभग एक वर्ष तीन माह तक रहे तथा उसके बाद वापस चले गये। हुमायूँ के काल में मुगलो का अधिकार इस क्षेत्र पर नहीं था। अकबर के समय में इस पूरे क्षेत्र पर एक सूबे के रुप में मुगलों का नियन्त्रण था।"(पेज 47–48)*

*"****In the time of Mughals, Awadh was not under the control of Babur. Babur had authorised Mir Baqi for this region and had appointed him to handle its situation.*** *As per contemporary references obtained from here, that he stayed here for about one year three months and after that he went back. In the time of Humayun too, this region was not under the control of Mughals. In the time of Akbar this region in its entirety was under the*

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control of Mughals as a province." (E.T.C)

*''**सन् 1206 से लेकर 1757 तक मध्यकालीन इतिहास के सम्बन्ध में मेरा विशेष अध्ययन है।**'' (पेज 51)*

*"**I have a special study on the Medieval History from 1206 AD to 1757 AD."** (E.T.C)*

''सन् 1206 से लेकर सन् 1757 तक दिल्ली में मुसलमान राजाओं का ही शासन रहा है।'' (पेज 52)

"From 1206 to 1757, Delhi has been under the reign of Muslim rulers themselves." (E.T.C)

*''चंदेरी के युद्ध के बाद बाबर ने अपना रुख वर्तमान उत्तर प्रदेश के क्षेत्र में किया जहॉ पर बायजीद और बब्बन अफ़गान सरदार थे जिन्होंने स्वयं का स्वतंत्र घोषित कर दिया था। बायजीद उस समय कन्नौज और अवध क्षेत्र का स्वतंत्र शासक था। . . . . . .बाबर क़न्नौज से लखनऊ होते हुए अयोध्या गया था। बाबर ने अपना पड़ाव अयोध्या से दो से चार मील की दूरी पर सरयू के उस पार किया। . . . . . **मीरबाकी के अयोध्या में आने के पूर्व अयोध्या में बायजीद का नियंत्रण था।** मीरबाकी बाबर के सिपहसलार थे, उनको अयोध्या के प्रशासकीय तंत्र तथा सैनिक नियंत्रण में रखने के लिए बाबर ने भेजा था।'' (पेज 54–55)*

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*"After the battle of Chanderi, Babur proceeded towards the present day Uttar Pradesh region, where Baizid and Babban were Afgan chieftains who had declared themselves independent. At that time Baizid was the independent ruler of Kannauj and Awash regions. . . . . Babur came to Lucknow via Kannauj. In a way, he conquered Kannuaj. Across the Saryu river, Babur camped 2-4 miles away from Ayodhya. . . . .**Before the arrival of Mir Baqi Ayodhya had been under the control of Baizid.** Mir Baqi was the commander of Babur; Babur had sent him to exercise administrative and military control over Ayodhya." (E.T.C)*

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''किसी पुस्तक में ऐसा उल्लेख नहीं मिलता है कि ***मीरबाकी का अयोध्या में नियंत्रण करने के लिए किसी से कोई संघर्ष हुआ हो। . . . . .मीरबाकी की कोई लड़ाई हिन्दू राजाओं के साथ नहीं हुई।*** *'' (पेज 56)*

''There in nothing in any book suggesting that ***Mir Baqi was ever engaged in any struggle with anybody with a view to to have control over Ayodhya. . . .Mir Baqi was not locked in any battle with the Hindu kings****.''(E.T.C)*

''मीरबाकी सन् 1529 में बाबर से मिले थे, उसके बाद वह अयोध्या में लौटकर नहीं आये। बाबर व मीरबाकी की जो मुलाकात सन् 1529 में हुई वह मेरी जानकारी के अनुसार संभल में हुई थी।'' (पेज 56)

''Mir Baqi had met Babur in 1529; after that he did not come back to Ayodhya. As per my knowledge, the 1529 meeting between Babur and Mir Baqi had taken place at Sambhal.'' (E.T.C)

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''प्रोफेसर इरफान हबीब, प्रोफेसर अतहर अली और प्रोफ़ेसर शीरीं मुसवी द्वारा जो कुछ लिखा गया है अथवा जो कुछ उन्होंने शोध किया है, उसको शैक्षणिक जगत आसानी से नजरअंदाज नहीं कर सकता।''(पेज 61–62)

''Whatever is written by Prof. Irfan, Prof. Athar Ali and Prof. Shirin Musvi and about whatever they have researched, cannot be easily ignored in the academic circles."(E.T.C)

''मैंने केवल कनिंघम के लिखने के ही आधार पर सतरिख तथा अयोध्या को एक होना कहा है।. . . . . .कनिंघम द्वारा लिखित किसी किताब को मैंने नहीं पढ़ा है।'' (पेज 83–84)

''Only on the basis of Cunningham's write-up I have stated Satrikh and Ayodhya to be one and the same place. . . . . I have not read any book written by

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Cunningham."(E.T.C)

"कनिंघम की रिपोर्ट मैंने नहीं पढ़ी है। केवल उसके रेफरेंस, इलियट एण्ड डाउसन की पुस्तक में देखे हैं।" (पेज 85)

"I have not read the report of Cunningham. I have just seen his references in Elliot and Dowson's book."(E.T.C)

"कनिंघम की रिपोर्ट के आधार पर ***यह प्रतीत होता है कि सतरिख और अयोध्या एक स्थान के नाम नहीं हैं।"*** *(पेज 86)*

"From the report of Cunningham ***it appears that Satrikh and Ayodhya are not names of one and the same place."*** *(E.T.C)*

"सन् 1528 में विवादित भवन के बनने के बाद बाबर के काल से लेकर औरंगजेब के काल तक यह भवन बराबर मुसलमानों के कब्जे में रहा है। औरंगजेब के काल के बाद तथा सन् 1857 के पूर्व विवादित भवन पर बराबर मुसलमानों का कब्जा रहा है या नहीं, इसके बारे में मुझे जानकारी नहीं है। *अंग्रेजों के काल तक विवादित भवन पर कभी हिन्दुओं ने कब्ज़ा कर लिया हो, ऐसा मैंने इतिहास की पुस्तकों में कहीं नहीं पढ़ा है।* ***सन् 1528 से लेकर 22/23 दिसम्बर सन् 1949 तक विवादित भवन की इमारत मुसलमानों के क़ब्जे में रही है, परन्तु इसका प्रयोग मस्जिद के रूप में हुआ या नहीं हुआ है, यह नहीं कहा जा सकता है।"*** *(पेज 93)*

*"**After its construction in 1528 AD, this structure has constantly been in the possession of Muslims from the time of Babur to that of Aurangzeb. I do not have the knowledge as to whether or not the disputed structure has constantly been in possession of Muslims after the time of Aurangzeb and prior to 1857 AD.** I have nowhere read in the history books, about whether Hindus have ever been in possession of the disputed structure up to the English period. **The building of the disputed structure***

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has been in possession of Muslims between 1528 AD and 22nd / 23rd December, 1949 but nothing can be said about whether it has been used as mosque or not. *" (E.T.C)*

''सन् 1528 में विवादित भवन के बनने के बाद से सन् 1855 तक ऐतिहासिक पुस्तकों में विवादित भवन के बाहरी सहन में बने चबूतरे का उल्लेख नहीं है। . . . ***नमाज़ पढ़े जाने अथवा पूजा किये जाने का कोई साक्ष्य इतिहास में प्राप्त नहीं होता है।*** *'' (पेज 94)*

"The historical books from 1528 AD, that is, the year of construction of the disputed building up to 1855, have no mention of the chabutra constructed in the outer courtyard of the disputed building. . . . . . ***No evidence is available in history about the offering of namaz or about performing pooja.*** *" (E.T.C)*

''मेरा ऊपर दिया गया यह बयान गलत है कि शहाबुद्दीन ग़ौरी पंजाब से क़न्नौज गया था, बल्कि सही यह है कि पंजाब से वापस अपने देश ग़ौर चला गया था। शहाबुद्दीन ग़ौरी दोबारा फिर हिन्दुस्तान वापस नहीं आया। शहाबुद्दीन ग़ौरी का क़न्नौज पर कभी आक्रमण नहीं हुआ। शहाबुद्दीन ग़ौरी द्वारा क़न्नौज पर आक्रमण करने और वहॉ की फ़ौज को पराजित करने संबंधी ऊपर दिया गया मेरा बयान गलत है, क्योंकि शहाबुद्दीन ग़ौरी कन्नौज गया ही नहीं तथा वह पंजाब से वापस अपने देश चला गया।'' (पेज 105–106)

"My above-mentioned statement to the effect that Shahabuddin Ghori came to Kannauj from Punjab is incorrect; rather, it is true that he returned to his country Ghor from Punjab. Shahabuddin Ghori did not come back to Hindustan again. Shahabuddin Ghori never attacked Kannauj. My above statement about Kannauj having been attacked by Shahabuddin Ghori and the army of that place having been defeated by him, is incorrect because Shahabuddin Ghori did not even got to Kannuaj and he

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returned to his country from Punjab." (E.T.C)

"मोहम्मद ग़ौरी तथा शहाबुद्दीन ग़ौरी दोनों एक ही व्यक्ति हैं।"(पेज 113–114)

"Both Muhammad Ghori and Shahabuddin Ghori are one and the same person."(E.T.C)

"यह सब विवरण 934 हिजरी का है। अंग्रेज़ी सन् के अनुसार यह विवरण सन् 1529 का होना चाहिए। . .13 जून की घटनओं में बाक़ी ताशकन्दी के अवध की सेना के साथ बाबर के समक्ष उपस्थित होने का उल्लेख है। . .इसका तात्पर्य यह है कि जब बाबर "डलमउ" पहुॅचा, तब उस समय तक बाक़ी ताशक़न्दी अयोध्या में रह रहा था क्योंकि बाक़ी अयोध्या में एक साल तीन–चार महीने के करीब रहा था।" (पेज 133–134)

"All this description is of 934 hizri. According to the Gregorian calender, this should be of the year 1529. . . . . .In the incidents of 13th June, there is mention about presence of Baqi of Tashkand before Babar along with army of Awadh. . . . . It implies that when Babar reached Dalmau, Baqi of Tashkand was left behind in Ayodhya because Baqi remained in Ayodhya for about one year three four months." (E.T.C)

"अतहर अब्बास रिज़वी की पुस्तक में उपरोक्त शिलालेख के अतिरिक्त अयोध्या के किसी मंदिर को तोड़ने का कोई वर्णन नहीं है।"

(पेज 137)

"Besides the above inscription, there is no other reference in the book of Athar Abbas Rizvi regarding demolition of any temple in Ayodhya." (E.T.C)

"प्रो0 एस0आर0 शर्मा ने इस सम्बन्ध में अपना मत, शिलालेख, जो काग़ज संख्या 282सी–1/2 तथा 282सी–1/3 है, के आधार पर प्रगट किया है।" (पेज 138)

"डा0 आर0नाथ की पुस्तक में यह लिखा है कि बाबरी मस्जिद का स्थान बिना सन्देह के स्पष्ट रूप से वह स्थान है, जहां पर हिन्दू मंदिर स्थापित कर जो मौलिक रुप से सरयू के किनारे रामकोट पर स्थापित है

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और हिन्दू मंदिर की सामग्री इसके निर्माण में इस्तेमाल की गई। इसमें यह भी लिखा है कि ***यह दृढ़ विश्वास के साथ कहा जा सकता है कि इसका निर्माण खाली ज़मीन (वर्जिन लैण्ड) पर नहीं किया गया।''*** *(पेज 138–139)*

"Prof. S.R. Sharma has expressed his opinion in this behalf on basis of the inscription, which is paper no. 282C-1/2 and 282C-1/3.

"It is written in the book of Dr. R. Nath that the site of Babri Masjid is undoubtedly and clearly the place where Hindu temple was built, which was originally built on the banks of Saryu in Ramkot, and where articles of Hindu temples had been used in building the same. ***It has also been mentioned in it that it can be said with firm conviction that it was not built over virgin land."*** *(E.T.C)*

''अयोध्या एक तीर्थ स्थान है, राम की जनमस्थली है और विवादित स्थल जनमस्थान है और इसको मैं परम्परा के आधार पर मानता हूँ।

रामचन्द्र जी के निश्चित जन्मस्थान को मेरे द्वारा चिन्हित किया जाना इस समय स्मृति द्वारा संभव नहीं है।'' *(पेज 145)*

"Ayodhya is a pilgrimage, is the birthplace of Rama and the disputed site is Janmsthan and I accept this on basis of customs.

At present, it not possible for me to point out the exact birthplace of Ramchandra on basis of my memory." *(E.T.C)*

''रामचन्द्र जी का जन्म आज से छह हज़ार वर्ष पूर्व हिन्दू धर्म की मान्यता के अनुसार ''विष्णु'' के अवतार के रूप में राजा दशरथ के पुत्र के रूप में हुआ था। *अयोध्या में छह हज़ार वर्ष पूर्व के भवन या उन भवनों के अवशेष हैं या नहीं, इसके संबंध में पुरातात्विक ही बता सकते हैं।'' (पेज 146–147)*

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"According to the belief of Hindu religion, Ramchandra was born six thousand ago as son of king Dashrath, as an incarnation of 'Vishnu'. *Whether the remains of six thousand years old building or buildings are present in Ayodhya or not, can be told only by archaeologists." (E.T.C)*

''विवादित स्थल इस समय अयोध्या में स्थित है। . . ..यह स्थल एक टीले (माउण्ड) पर स्थित है। . . . विवादित स्थल का क्षेत्रफल वृहद है।'' (पेज 150)

"At present the disputed site is situated in Ayodhya. . . . . This site is situated over a mound . . . . . The area of the disputed site is extensive." (E.T.C)

*''. . .**कुछ इतिहासकारों के अनुसार भारत का मध्यकालीन इतिहास 1206 ईस्वी से शुरू होकर 1757 ईस्वी तक जाता है**, अर्थात् 1757 के प्लासी के युद्ध तक। मैंने भारत के मध्य कालीन इतिहास का 1707 ईस्वी तक की अवधि का ही गहन अध्ययन किया है।'' (पेज 161)*

*". . . . **According to few historians, the medieval history of India commences from 1206 AD and goes upto 1757 AD,** i.e. till the battle of Plassey of 1757. I have deeply studied the medieval history of India only upto 1707 AD." (E.T.C)*

*''**गहड़वाल वंश का शासन सन् 1226 तक रहा।** यह कहना सही नहीं होगा कि यह गहड़वाल वंश सन् 1193 में समाप्त हो गया क्योंकि सन् 1194 में जयचंद की मृत्यु हुई।'' (पेज 162)*

***"The rule of Gahadwal dynasty continued till the year 1226**. It will not be correct to say that the Gahadwal dynasty came to an end in the year 1193 because Jaichand had died in the year 1194." (E.T.C)*

*''**जौनपुर के शर्क़ी राज्य की समाप्ति सन् 1479 भी***

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मानी जा सकती है, *जब उसका शासक ''हुसैन शाह शर्की'' बंगाल भाग गया था।'' (पेज 169)*

"The end of Jaunpur's Shirky dynasty can be considered as the year 1479, *when its ruler 'Hussain Shah Shirky' fled to Bengal." (E.T.C)*

''बाबर ने अयोध्या, बायजीद को पराजित करके, अपने आधिपत्य में ली। . . . . .श्री एस0आर0शर्मा को मैं तथा अन्य लोग भी प्रामाणिक इतिहासकार मानते हैं। . . . से मैं सहमत हूॅ कि ऐसा साक्ष्य नहीं मिलता कि बाबर ने कभी भी हिन्दू मन्दिरों को नष्ट किया हो या अन्यथा हिन्दुओं का मात्र धर्म के आधार पर दमन किया हो।'' (पेज 176–178)

"Babar took Ayodhya in his possession after defeating Baizid. . . . . I and other persons also, consider Sri S.R. Sharma to be a recognized historian. . . . . I agree that no evidence is found that Babar had ever demolished Hindu temples or had suppressed Hindus only on basis of religion." (E.T.C)

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''श्री अतहर अब्बास रिजवी द्वारा शिलालेख का जो उक्त हिन्दी अनुवाद किया गया है, उसी के आधार पर मेरी यह धारणा बनती है कि मीरबाकी द्वारा बनायी गई इमारत के पहले वहां पर मंदिर था। उक्त शिलालेख के हिन्दी अनुवाद की प्रथम तीन पंक्तियों को, जैसा कि श्री रिज़वी ने अपने अनुवाद में दिया है, को ही यह बात करने के लिए आधार मानता हूॅ कि उस शिलालेख में मीरबाक़ी द्वारा बनायी गई इमारत के पहले मंदिर होने का उल्लेख है। उस इमारत के अन्य किसी इंसक्रिप्शन को उक्त बात कहने के लिए मैं आधार नहीं बना रहा हूॅ और ***इसी शिलालेख को अन्य इतिहासकारों, जैसे डा0 आर0 नाथ, डा0 राधेश्याम, प्रो0 एस0आर0शर्मा ने भी यह कहने का आधार बनाया है कि मीरबाक़ी द्वारा खाली जमीन पर विवादित इमारत नहीं बनाई गई।*** *'' (पेज 179–180)*

"Mr. Syed Athar Abbas Rizvi has only given translation of the said inscription, but has not given any comment. It is on the basis of the said Hindi translation of

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the inscription by Mr. Athar Abbas Rizvi, that my opinion has been formed that a temple existed over there prior to the building built by Mir Baqi. It is the first three lines of the Hindi translation of the above inscription, as given by Mr. Rizvi in his translation, which form the basis for me saying that the said inscription mentions about existence of temple prior to the structure built by Mir Baqi. I am not making any other inscription of that building, the basis of me saying so, and ***this very inscription has been made the basis by other historians such as Dr. R. Nath, Dr. Radheyshyam, Prof. S.R. Sharma, to say that the disputed structure was not built by Mir Baqi over virgin land****." (E.T.C)*

*"**जन्मभूमि से मेरा आशय उसी स्थल से है जो विवादित भूमि है, न कि सड़क के पार उत्तर मे स्थित रामजन्मस्थान मंदिर सीता रसोई से। .....मान्यता के अनुसार जन्मभूमि पर विष्णु के अवतार के रूप में श्रीराम का जन्म हुआ था।** जन्म ही अवतरण का पर्यायवाची है। ऐसा नहीं है कि जन्म यहां हुआ हो और अवतरण दूसरी जगह पर हुआ हो। मेरी जानकारी के अनुसार विवादित ढॉचे में बने तीन डोम के नीचे ही श्रीराम का जन्म हुआ था, उसी को रामजन्मभूमि मानते हैं। . . . . . मैं तीन डोम वाले भवन के नीचे की भूमि को रामजन्मभूमि मान्यता, आस्था और परम्परा के आधार पर मानता हूँ। मेरा बयान मान्यता, आस्था और परम्पराओं के बारे में पूर्व में हो चुका है।*

.रामजन्मभूमि का महत्व ज़्यादा है क्योंकि राम को विष्णु का अवतार माना गया है और वह महत्व अनादिकाल से चला आ रहा है।" (पेज 190)

"By Janmbhumi, I mean the place which is the disputed land, and not the Ramjanmsthan temple, Sita Rasoi situated in north across the road. . . . . According to belief, Sri Rama was born at the Janmbhumi as an

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incarnation of Vishnu. *Birth is synonymous to incarnation. It is not that birth took place here and incarnation at another place. According to my knowledge, Sri Rama was born beneath the three domes of the disputed structure, and the same is considered to be Ramjanmbhumi. . . . . On basis of belief, faith and tradition, I consider the land beneath the three dome structure to be Ramjanmbhumi. My statement regarding belief, faith and tradition, has already been recorded.*

. . . . Ramjanmbhumi has more importance because Rama has been considered as incarnation of Vishnu and this importance has been continuing since time immemorial." (E.T.C)

3635. A perusal of the above statements and in particular that of PW 16, 20, OPW 9 and 6, the Court finds opinion of the Expert Historians so varying that no definite conclusion can be drawn therefrom. However, on one aspect, some of the experts of both the sides were unanimous that if an excavation is made at Ayodhya, at the disputed site or near it, more relevant facts may be available which would help this Court to arrive at a just conclusion. This became more important in view of the fact that a stone inscription, sought to be relied by the plaintiffs (Suit-5), was claimed to have been found on 6/7 December, 1992 from the debris of the demolished disputed structure. It is a stone inscription of 115 cm. X 55 cm. size having several lines engraved in a language which is not decipherable atleast by this Court. The experts say that it is written in Sanskrit but the script is slightly different or at least a little difficult being much older. Under the orders of the Apex Court, ink estampage (Paper

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No.203 C1/1) was prepared. This estampage was deciphered by Dr. K.V.Ramesh, a renowned Epigraphists, whose competence, in fact remained undisputed by all the parties. This translation/text is **Exhibit 2 Suit 5 (Register 29, Page 5-25)**. In first two pages, the epigraphist has made his comments and observation and then there is sanskrit and English text and English translation.

3636. Dr. T.P.Verma and Dr. S.P.Gupta substantially relied on the translation of the contents of the said stone inscription asserting that there was a huge Vishnu Hari Temple at the site in dispute which was demolished and thereafter disputed building was constructed in 1528 AD. Some dispute arose about the correct translation made by Sri Dr. T.P.Verma and Dr. S.P.Gupta. Ultimately expert's translation was obtained by plaintiffs (Suit-5) from **Dr. Koluvyl Vyassrayasastri Ramesh-O.P.W.10 (Exhibit No.2, Suit 5) (Reg. 29, Page 5-25).** The said transliteration and English translation is as under:

> *"1. ..nama: siva[ya] (there is space enough in the erased portion for accommodating a verse in a lengthy metre like Sardulavikriditam).- - -U U – s – Trivkrama – tanor – a – U - - U - pramsutvena nikharva-so-*
>
> *2. dasa-samuddesam-dadhanas-tanum samvartta-pramad-oddhata:-kulagiri-grava-prahara-kvanad-bra hmandam kara-samputena vivu(bu)dhan-madhyo ha - - U – [II 2*] [srimad]-Bharggava vi U – U U U – dvamso (so') vatamso bhuva: I yasmin-ra*
>
> *3. U U – la-sanklimir-iva sthayiny-udancad-bhuja - - s-c-opacite parartha-ghatana vandhy-ananam jajnire II[3*] te Candipati-canda-tandava-calac-cuda U - - U -*

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brahmand-occa-kapala-randhra-sarani-prasthayi-satkirttaya: । viras-tatra kule janim jagrhi-

4. re ye Bharggaviy-ahava-ksina-ksatriya-sesa-raksana-vidhau-(ba)ddho' bhiyogagraha:| | [4] vamsyan-tad-eva-kulam-akulata-nivrtti-nirvyudham-apratima-[vikrama]-janmabhumi:l yatr-atisahasa-sahasra(sra)-samiddha-dhama Mame'janista jagad-istatam-otta-*

5.masri: II[5] ma me dayastu vapusi dravinesu trsna nisnatir-apy-avirasa sarasendriy-arthe I ity-udgrnann-anudinam sa Dinesavatso ma me pa – U jagade jagadeka[vira:] II [6*] tad- uddha-keli-dalit-akhila-Meda-Bhilla-palli-sahasra-vanitasu nikunjagasu|utkanta-*

6. ka vitapino vita-vistitani te sva-stanesu jaghanesumuhur-likhanta: | | [7] pura kirtya nyastan-tadanu tanun-adhyasitumana manasvi svarlokamparinatim-upe[ty-ati]sayinim sa sarvvasvam ksatram ka iva bhuvi Sallaksana-sute sriya s-arddhan-dadhre Hutabhuji viva-*

7. sva(sva)n-iva maha: | | [8] tad-dhama-nissimam-amahyam-anyai-any-aiva sa kacana dana-sakte: I amanusam paurusama-avirasit-Sallaksane visva-vilaksanan-tat | | [9*] khadga: srikara [valat-a]dhikam(ka)ranam va(ba)hur-mahavahini kirti: sambhrta-[su]pakara-vidhaye pacyam sada dam-*

8. sanam | rajyen-api vina nijopakaranany-etani ni:kantakam yat-samrajya-paricchadam viracire cinta-vitan-ojjhitam(tam) || [10] samar=ajira-bhajo'sya cirum nistrimsa eva sa:|[khadgas-c-a]pi dhrto mudhna yo jahar-asu(su) jivitam(tam)||[11*] [Malaya]-valayasy-ante sante*

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9. Viyattatini tate Himagiri-guha-geha-dvare darim-adhinaisadhim | prathama-likhitam siddhai-yasya prasasti-padavalim pathati nipunam strainam modan-nabhasthalacarinam(nam) || [12] Kaliasacala-mekhalasu Malaya-svacchesu mero:sirobhage svargga-tarangini-tatabhuvi-*

10. sthanesu c-anyesv-api l krtva tarppana-silpajam pratikrtim vrddh-opadesat-pati-praptyai khecarakanyakabhir-anisam yad-bahur-abhyarcyate | | [13] ejya-gva sa: pesalair-istasiddhi-pra- - -pahnaram svam jagadbhi: i gehe yasya sri-vilas-abhirame vya-*

11. gad-vai tam giyate caran-aughai: | | [14] Amarapura-purandhri-vandhutamavyalikam bhajati sukrtarasau tatra sallaksanakhye I prativapuriya tasya prapya sadyo'navadyam sutamuditavivekam lokakautuhalam tat || [15*] Alhana: pranaya-pesala: satam garjjatam krakaca-*

12. kotirytkata:l aninaya nayaninhavena ya: prahrtam prakrticancalam sriyam (yam) ||[16] lokottara: sa khalu ko'pi yadabhimukhye'hankararasiragalaccirasambhrto'pi I samsaripasabhudu – udrsaiva yasya jataslatha:sukrta du:krta kancukasca ||[17*]*

13. paurusapratirandhriti purandhriti ca bibhyatam I yena lokanuruddhapi pratisiddha nagonnati: | | [18] tadbhratrjo jagati meghasuta: srutadhya: srimanabhudanayacandrapadabhilanghya: I govindcandra dharanindra guruprasadatsaketamandalapatitvama-*

14. lambhi yena | | [19] sasvatsangararanganartitaripuskandhena yuddhohhjura*

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virastena na kevalam balavata ye durmmada mocita: I apyuddamacamupradananiratasvanena caikantato durarudhasvayasyatamadamasau kalpadrumasyajita: || [20] tankotkhatavi-*

15. salasailadikharasrenisilasamhativyuhairvisnyharerhiranya kalasa ri sundaram mandiram I purvvairapyakrtam krtam nrpatibhiryenedamityadbhutam samasararnava-sighra-langhana-laghupayan-dhiya dhyayata || [21] govindacandra-kstipala-rajya-*

16. sthairyaya-nistandra-bhujargalasya I atha prapede'sya padam kaniyan-Ayusyacandro'lhana-sunur-eva || [22] na Sahasankena na Sudrakena tasy-opamanam vidadhu: kavindra:I krtam bhiya yasya puro na kamad anyena manye dhanur-atataiyam (m)||[23*]*

17. uddama-saudha-vibudh-alayanim-Ayodhyam-adhyasya tena naya-ninhuta-vaisayena I Saketa-mandalam-akhandam-akri kupa- vapi-pratisraya-tagada-sahasra(sra)-misram(sram) ||[24] nidra-nirodha-vidhaye nija-vallabhanam Hemacala-amala-silatala-talpa-*

18. lina-kasturik-ena-aruni-sravan-opabhogya-yogyam jagu: sarasa-magna-raso yaso'sya || [25] avimukta-visalaksi lalit-anandita sada I kasiva yasya dehasri: satam nirvvana-karanam(nam) || [26*] asthibhyo vitaran-Hiranyaka-*

19. sipum samyamya Va(Ba)nam rane kurvvano Va(Ba)liraja-va(ba)hu-dalanam krtva va(ba)hun-vikraman I kurvvan-dusta-Dasananasya hanana- - U - - U ka: ko'py-anya: sa das-adhiko U U U - - - U punyo tata||[27] ady-*

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eha – U nrpate U U

20. to nihanti pascatya-bhiti-api bhisana-bahu-dandam: (m) I teja: prabhava-mahatam mahas-iyam-eva purvv-apara U U U - U U - U - - [28] [punyai]: prajanam prainamavadbhi: khyate ksitau raja . . . . .sri Ayusyaca . . . .*

English Translation

Line1 . . . . . Obeisance to [Lord] Siva. . . . . .*

Lines 1-2, verse 1. [This line is nearly totally erased. But there is enough space for a verse in a lengthy metre such as Sardulavikriditam]

Lines 1-2, verse 2. . . . . of the physique of [Lord] Trivikrama. . . . . by His height containing within His body the sixteen doctrines(or maha-vidyas) . . . . . in Whose palm He holds the universe like (holding) the Moon, whose kalugiri (in the case of Bharata-varsa, one of the seven great mountain ranges, viz., Mahendra, Malaya, Sahya, Suktimat, Rksa, Vindhya and Pariyatra) whose falling rocks(,while striking one another,) create noise had, out of wanton arrogance. . . . . .

Lines 2-3 verse3. The illustrious Bhargava (i.e., Parasurama) . . . . an ornament of the earth . . . like insects . . . . with firm hands upraised . . . . . having increased, events brought into existence, barren faces. . . . . .

Lines 3-4, verse4. during the violent dance of the Lord of (the goddess) Candi (i.e., Lord Siva), from thr rocking head jewel. . . . . .

genuine reputations which emanated from the opening in the skull-shaped spherical half of the universe. . . In that family heroestook their birth, who were determined to

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resurrect the warrior clan which had been rendered weak by the wars waged by Bhargava (Parasurama) (against them).

Lines 4-5, verse5. Noble was that very family which was the birth-place of valour which had successfully removed the sufferings of the other (Ksatriya clans) in which Mame, the abode of thousands of perfect and extremely valorous deeds and who was the utmost favourite of the world.

Lines 5, verse 6. That very Son of the Sun (i.e., Karna), Mame, the unequalled hero of the world, uttered everyday the words "may I have no mercy on (my) body, may I not hanker for material wealth, may I be diligently disinterested in sensual temptations . . . . . .

Lines 5-6, verse 7. The thorny trees, like the sensuous villains, repeatedly wrote (i.e., scratched) on the skins of the breasts and hips and loins of the womenfolk of the tribal villages of the plains and hills who had taken refuge in the thickets as a result of the destruction of their abodes in sportive wars waged by him.

Lines 6-7, verse 8. His fame alone having pervaded till then the heavens, the high-minded [Mame], wishing to go to the heavens in person and reside there in that wonderful world, he bequeathed his entire realm along with all the wealth to his son Sallaksana just as the Sun-god had bequathed all his lustre to the Fire-god.

Line 7, verse 9. As a result of some unknown power of the gift of that realm, which had no bounds and was other-worldly, a super-human valour manifested itself in Sallaksana; it was indeed an earthly exception.

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Lines 7 – 8, verse 10. The sword was at the tip of his fingers, his hand was verily the great army, his fame, like sumptuously cooked delicacies, were ever palatable; even without a kingdom to rule, these personal instruments enabled him to spread extensively an empire sans worries.

Line 8, verse 11. He who was for long intervals enjoying himself on battle-fields, bore on his head his ruthless sword, which was quick to end the lives (of his enemies).

Lines 8-9, verse 12. Within the serene surroundings of the Malaya mountain, on the banks of the heavenly Ganges, at the entrances of the cave-dwellings of the Himalayas, in the caverns in which the hunter-tribes dwell, the accomplished womenfolk gaily sing (literally, read) the strings of his eulogy composed for the first time by the semi-divine beings moving about in the skies.

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Lines 10-11, verse 13. On the advice tendered by the elders, in the terrains of the Himalayas, in the pristine pure regions of the Malaya (Mountains), in the lands along the banks of the heavenly Ganges as well as in other regions the semi-divine unmarried girls, with intent to gain husbands, ever offer worship to the hands of the satiating images sculpted in his (i.e., Sallaksana's) likeness.

Lines 10-11, verse 14. He who is to be offered oblations by the beautiful for the realization of their desires . . . . himself by the worlds . . . .in whose abode, which is pleasing with wealth and happiness, hi is sung about by multitudes of celestial singers.

Lines 11-12, verse 15. The people look upon as a phenomenon the fact that, Sallaksana, who was, through

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good fortune, enjoying the genuine company of the damsels of the heavens, had happily begotten a son who, by appearance, was no different from his father.

Lines 11- 12, verse 16. [That son] Alhana, who was the beloved of the good people, is like a pointed saw to the war-mongers. He retrieved the splendour of the habitually fickle-minded Goddess of wealth by means of fair and persuasive means.

Line 12, verse 17. He was indeed extraordinary and whenever he confronted (his foes the heap of their) arrogance, accumulated over a protracted period, melted away. The garb of good deeds and bad deeds (worn by them) slipped away by his mere looks.

Line 13, verse 18. He was the destroyer of (his enemies' manliness, and made those who were afraid effeminate; as against the belief among the people, his eminence far dwarfed that of the lofty mountains.

Lines 13-14, verse 19. His nephew (literally brother's son), the widely celebrated Meghasuta, the illustrious one, who superceded Anayacandra; he earned the lordship of Saketa-mandala through the grace of his elder, the Lord of the earth, Govindacandra.

Line 14, verse 20. Not only did he, who was powerful, put an end to the arrogant warriors who were dancing in unrestrained frenzy in the battles constantly fought by him, but he also gave (to his people) an excellent army which was replete with (soldiers comparable to) the wish-fulfilling trees.

Lines 14-15, verse 21. By him, who was meditating in his

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mind on the easiest means of quickly jumping across the ocean of worldly attachments, was erected this beautiful temple of [The god] Visnu-Hari, [on a scale] never before done by the preceding kings, compactly formed [i.e. built] with rows of large and lofty stones which had been sculpted out.

Lines 15-16, verse 22. The position of Alhana, whose tireless shoulders were like safety latches for the stability of the king Govindacandra's empire, was subsequently occupied by his younger (son?) Ayusyacandra.

Line 16, verse 23. Great poets dared not compare him with Sahasanka and Sudraka; out of sheer fear none save the God of Love dared draw the bow-sting in his presence.

Line 17, verse 24. By him, who was of good conduct, and abhorred strife, while residing at Ayodhya, which had towering abodes, intellectuals and temples, Saketa-Mandala was endowed with thousands of wells, reservoirs, alms-houses, tanks.

Line 17-18, verse 25. the young damsels, who were as attractive as the female musk-deer and does, while they rested on the cool surfaces of the Himalayan rocks, sang about his (i.e., Ayusyacandra's) fame.

Line 18, verse 26. Whose bodily splendour, which was ever characterised by glowing eyes, was at all times pleasant with gentle feelings, was a source of salvation for the good just as (the holy pilgrimage centre) Kasi is.

Lines 18-19, verse 27. Separating [the flesh and blood of the demon] Hiranyakasipu from his skeleton, subduing [the demon] Bana in battle, tearing asunder the arms of the

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[demon-] king Bali, and performing many valorous deeds, having killed the evil Ten-headed [demon Ravana], ...

Lines 19-20, verse 28. And now, the fierce arms of the ruler . . . annihilates even the fear caused by the westerns (i.e., the Islamic invaders from the west). The brilliance of the mighty great ones . . . . east and west . . . . . .

Line 20, verse 29. Because of the subjects' effective acts of merit, the king being famous in the world . . . . . the illustrious Ayusyacandra . . . . . ."

3637. Sri K.V. Ramesh, O.P.W. 10, has also submitted a report about the said inscription , which says:

"The subjoined stone inscription is engraved on a rectangular stone slab, the written area roughly covering an area of 115 cms X 55 cms. The slab as at present extant is diagonally broken in two leading to the loss of a couple of letters in almost every line. Besides, the first and last two lines have suffered heavy damage resulting in the loss of many letters. All in all, the loss of letters have proved a handicap to epigraphists and Sanskritists in the matter of fully interpreting the contents of the text. Nevertheless, the overall purport and the crux of its import are clear beyond doubt. In the first instance a hurriedly prepared estampage, and in recent times, a high quality estampage as well as some photographs were all provided by Dr. S.P. Gupta Chairman, Archaeological Society of India, New Delhi for which I am highly thankful to him.

The text of the inscription is written in fairly chaste Sanskrit, the orthographical features being regular for the

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period to which the inscription belongs, namely the middle of the 12th Century A.D. The inscription is not in any way dated, but may be assigned, with confidence, to the middle of the 12th Century on palaeographical grounds as well as the internal evidence provided by the inscriptional text in question.

But for the opening salutation to Siva at the very beginning, the entire text of the inscription is composed in Sanskrit verse of fairly high literary excellence. As has been stated above, the palaeographical and orthographical features are normal for the period to which the inscription belongs, viz, the middle of the 12th century A.D. This was an important period of transition from classical Sanskrit to the North Indian vernaculars. This can be easily identified in contemporaneous inscriptions, including the present one, in the confusion in the use of class nasals and anusvara, and in the employment of the sibilants and palatals.

As for the contents of the text, it is fully reflective of medieval vanity as far as the eulogies of the heroes mentioned in the inscription are concerned. The most important internal historical information we get from this epigraph is the mention of Govindachandra, obviously of the Gahadavala dynasty, who ruled over a fairly vast empire from 1114 to 1155 A.D.

Verse 1 is entirely lost. Verse 2, which is badly mutilated, refers to Trivikrama and, hence, may have been composed in praise of Lord Visnu. Verse 3, which is also badly damaged, seems to allude to the near-total

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decimation of the warrior clans by Bhargava-Parasurama. Verse 4 refers to the emergence of a Ksatriya family, heroes born in which successfully resurrected the decadent warrior clans. According to Verse 5, in that noble family was born the beloved of the people, Mame. Verse 7 speaks of his detachment from mundane things while Verse 8 informs us that he bequeathed his realm and wealth to his son Sallaksana. Verse 9 to 14 contain conventional praises showered on this Sallaksana in which the poet has displayed a high level of poetic imagination. Verse 15 refers to the birth of his son whose stunning resemblance to his father was the talk among the people. Verse 16 refers to this son as Alhana and credits him with retrieving the past power and glory of his family. While the next two verses (17 and 18) contain his conventional praise, verse 19 gives the information that his nephew, Meghasula by name, as superseding a certain Anayacandra and obtaining the Lordship of Saketa-mandala through the grace of the senior Lord of the earth, Govindacandra, While verse 20 lauds the military might of this hero, verse 21 gives the important information that, in order to ensure his easy passage into the heavens, Meghasuta built a lofty stone temple for the god Visnu-Hari. From verse 22 we learn that he, who was responsible for the stability of Govindacandra's empire, was succeeded by the younger Ayusyacandra as the Lord of Saketa-mandala. Verse 23 contains his conventional praise. According to verse 24, he set up residence in the city of Ayodhya, which was adorned with lofty abodes, intellectuals and temples, and added to

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the entire Saketa-mandala thousands of small and big water reservoirs. Verse 25 and 26 contain more conventional praises of Ayusyacandra. Verse 27, which is partly damaged, alludes to the well-known episodes of Visnu's incarnations as Narasimha, Krsna, Vamana and Rama. The badly damaged verse 28 refers to a King (probably Ayusyacandra) as warding off the danger of invasion from the west (i.e. from the invading Muslim forces). Verse 29, which is incomplete, mentions the king Ayusyacandra.

The reference to Saketa-mandala is interesting. It is well known that North India. Just as in the case of the South, was divided into administrate divisions called mandalas (see the word mandala in the indices to H.C. Ray's monumental two-volume work 'The Dynastic History of Northern India', II edn.' 1973, Delhi)"

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3638. The expertise of Dr. Koluvyl Vyassrayasastri Ramesh-OPW 10 as an Epigraphist could not be disputed by any of the parties. In fact some of the witnesses of both the sides admitted that he is the best authority so far as the translation of Sanskrit inscription is concerned. PW-16 Dr. Suraj Bhan in Part II page 6 has said about Dr. Koluvyl Vyassrayasastri Ramesh:

"मैं डा0 के0 बी0 रमेश को जानता हूँ, वह एपीग्राफिस्ट हैं और मान्यता प्राप्त है।" (पेज 6)

"I know Dr. K.B. Ramesh. He is an epigraphist and have recognition as such." (E.T.C.)

3639. Dr. Koluvyl Vyassrayasastri Ramesh himself appeared in witness box and proved the decipherment and translation of the contents of stone inscription and also the fact

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that it must belong to 12th Century A.D. From the reading of the contents, he also stated in para 14 of his affidavit that a temple of Vishnuhhari constructed by Meghasuta must have been in existence in the temple town of Ayodhya from 12th Century A.D.

3640. It would be appropriate to refer some extracts of the statement of OPW 10:

> *"While deciphering the inscription I have shown square brackets with numbers and star marks to indicate the numbers of the verses calculated by me although that number is not mentioned in the inscription." (Page 20)*
>
> *"The first two pages and the top portion of page No. 3 of my report have the introductive part of my observations. In other words it may be termed to be as an introduction part of my report." (Page 21)*
>
> "***According to me, the period of the inscription in question can be dated back to the 12th century*** *and wherever I have used specifically the period around middle of 12th Century, I meant that it was* ***from about 1130 to 1170*** *A.D. If once I have used the period around middle of the 12th Century, it will remain the same even if I subsequently refer it to as 12th Century." (Page 29)*
>
> "*After 2000-2001 I had studies many facsimiles of inscriptions of Gahadwala rulers, namely, Chandradeo, Govindchandra and Vijaychandra. I compared all such facsimiles with the estampage of the inscription in question from palaeographical point of view. I did not deem it necessary to mention in my report specifically hat while comparing the estampage of the inscription in question with other facsimiles." (Page 37)*

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"It is not correct to say that till 13th century, for temple, the word 'Devalaya' etc. but not Mandira was in use. *. . . . It will not be correct to say that up to 12th century, the word 'Mandira' was not being used for temples but for human dwellings." (Page 44)*

"My translation regarding verse 22 appears to be defective as it does not make the position clear regarding succession of Alhana and Ayusha Chandra. In my opinion, the ***correct translation of verse 22 of the inscription in question would be that Ayusha Chandra, son of Alhana occupied the position of Meghasuta as chieftain of Saketa Mandala****." (Page 46)*

"It is clearly mentioned in verses 19 & 24 of the inscription that Ayodhya was the headquarters of Saket Mandal. Since the Raja of Saket Mandal was residing in Ayodhya." (Page 51)

"Inscription specifically states that Ayushya Chandra was residing at Ayodhya when he was the ruler of Saket Mandal." (Page 52)

"The temple referred in this inscription was constructed by Meghasuta but the inscription was got written by his successor. *There is a gap between the period of construction of the temple and the inscription." (Page 53)*

". . . which the temple built by Meghsuta was in existence when his successor Ayushya Chandra got this inscription engraved." (Page 54)

"The inscription is engraved for the main purpose of recording the construction of the Vishnu Hari temple

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***by Meghasuta and the excavation of thousands of wells, tanks, reservoirs, etc. by Ayushya Chandra**." (Page 65)*

3641. From the above inscription, the following facts we can safely infer:

(A) There existed a temple of Vishnuhari at Ayodhya in 12th Century A.D.

(B) It was constructed by a Ruler of Garhwal Dynasty i.e. by Meghasuta.

3642. The inscription giving this information became available in December 1992 actually pertain to 12th Century A.D. Its genuinity and authenticity could not be doubted though it was argued on behalf of the Muslim parties that the manner in which it claimed to have been obtained cannot be decisive to hold that it was fixed in a building existing at the disputed site. The stone inscription therefore by itself cannot be decisive to hold that Vishnuhari Temple existed or was constructed at the disputed site.

3643. OPW-9 and 11, the authors of the book **"Ayodhya Ka Itihas Evam Puratatwa"** (Paper No. 289 C1) admitted several inaccuracies in the translation of the aforesaid stone inscription, they had published. They also admitted unequivocally whatever has been translated by Dr.Koluvyl Vyassrayasastri Ramesh- OPW 10, that is the most authentic and must prevail.

3644. In the meantime, Prof.D.Mandal PW-24 also published a book expressing his opinion that if further excavation is made at the site in dispute, it may be helpful to find out whether there existed any earlier religious structure of Hindus or not.

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3645. Exhibit 63 (Suit-5) (Register 30 Page 7-98) also **Exhibit D-26 (Suit-5)** is a photocopy of a Book titled as **"Ayodhya Archaeology After Demolition"** by D. Mandal first published in 1993, reprint in 1994 by Orient Longman Limited, Haidrabad. On page 13, there is an acknowledgement of the author as under:

> *"Any work done is never the outcome of one person's endeavours. This tract owes a great deal to several friends who have helped in various ways. For the inspiration and encouragement unstintingly provided,* ***I wish to thank especially Professors R.S. Sharma, B.N.S. Yadav, D.P. Agarwal, S.C. Bhattacharya and N.C. Ghosh****. I am also grateful to Mr. Ziaul Haq, a senior journalist based in Allahabad, Mr. Sanjay Kumar (photographer) and Mr. L.K. Tiwari (draftsman). I thank Dr. Also Rai who suggested that this work be published as a tract, and the editors of the series, especially* ***Prof. Neeladri Bhattacharya and Romila Thapar. I am grateful to Dr. Shereen Ratnagar*** *for providing a concise and clear introduction to archaeological methods. Not least, I thank my wife, Ms. Basanti Bose, for her valuable support. The responsibility for any shortcomings, however, is entirely mine."*

3646. The "Editorial Preface" which is published and is on record at page 17 to 22 Register 30 has been written by Romila Thapar and "Introduction" to the book which is on record from page 23 to 35 has been written by Shereen Ratnagar. It appears to have been written to counter the claim of some experts with respect to the site in dispute based on the stone inscriptions claimed to be recovered in December 1992 as also report of Sri

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B.B. Lal wherein he mentioned to have found some pillar bases during his excavation made in 1975-76.

3647. Shereen Ratnagar has tried to give an idea about the merits and demerits of the process of excavation, ascertainment of historical facts and also justification of a report or comments of a person, who himself has not gone in field archaeology vis-a-vis report of a person who has actually conducted excavation. The concluding two paragraphs may be referred as under:

> *"It must be reiterated that in excavation we actually destroy stratigraphic context without which the antiquities we find make little sense. At any excavation therefore, regular trench diaries; accurate drawings of sections and planning of walls, floors, or hearths; photography; and the management of multiple notebooks recording strata numbers and description and their corresponding batches of small finds are as important and as challenging as the actual digging, as these allow for re-examining of the data at a later stage when new finds, new techniques of analysis and new methods are developed in the subject. The data of archaeology do not simply lie in the ground awaiting recovery when they will 'speak for themselves;, it is when we excavate and record, when we make out typologies and classifications, that we generate date.*
>
> *The importance of excavation records will become evident when it is pointed out that even professional archaeologists cannot visit every excavated site. It is the excavation reports which they read with critical care; it is the report, its drawn and photographed sections and the chapter invariably entitled 'stratigraphy', which enable the*

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seasoned field excavator to distinguish the various features, the authentic from the inauthentic data and evaluate the stratigraphic skills of the excavator and thence the valid from the invalid conclusions. Such review and re-analysis of previously gathered information (artefacts, photographs and other records) by scholars not present at or involved with the original dig, is entirely valid and accepted in archaeological research."

3648. This book appears to have been published when a Presidential reference was pending before the Apex Court. D. Mandal, the author of the book, who has also deposed his statement as PW 24, on page 16 of his book (Register 30, Page 36), says:

*"**Evidence gathered from archaeological excavations at the site will be of vital importance making it pertinent to discuss the extent to which archaeology science can help resolve the question.** Admittedly, archaeological cannot answer questions relating to faith, or questions such as whether Rama was an historical figure, or problems about locating his birthplace. However, archaeology can answer with a considerable degree of certainty, many questions about various past activities of people, for which material evidence is available. It is for this reason that archaeological research continues and is of importance."*

3649. The report seems to have considered the question, whether there was a temple below the mosque. Though Prof. B.B. Lal's finding of a pillar bases and wall during his excavation in 1975 could not be disputed but the author refute that those structures did not belong to an erstwhile temple as

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claimed, and tried to justify his conclusions on page 39-40 of his book (Pages 65 to 66 Register 30) as under:

"The analysis of all the strands of information from Discovery 1 reveals that:

1. That ***various structural remnants claimed to be the vestiges of 'pillar bases' are not contemporaneous. They belong to at least five different, sequential structural phases*** *(rebuilding episodes).*

2. ***It is highly probable that the so-called pillar bases are actually the remnant portions of walls of different structural phases****.*

3. This rules out the possibility of there having been one structure raised on a series of pillars.

4. There is ***clear indication in the trench of the existence of at least two rooms or room clusters or parts of buildings belonging to two different phases,*** *but with the same general layout and construction methods.*

5. Constructed as they are of brickbats laid haphazardly, the so-called pillar bases were certainly not capable of bearing the vertical load of large-sized stone pillars, as has been suggested (RB-MH Pt II) and frequently reiterated.

6. The contention that a 'pillared building' was raised in the eleventh century A.D. is absolutely baseless. No structural feature or artefactual find points even in a circumstantial manner to a date approaching the eleventh century. ***Instead, what is firmly suggested for the poorly built structure unearthed in the trench, is a date between the thirteenth and fifteenth centuries A.D.***

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7. We can only surmise that the much publicized sherds of Islamic glazed pottery were found in all the deposits associated with the five structural phases. If this surmise is correct, then the use of this pottery was simultaneous with the habitation of the structure (through all five rebuildings of reparis). A time span of up to three hundred years that is indicated by this pottery, is quite consistent with the remains of the five occupational deposits, associated with the sequential structural phases, i.e., with the depth of material found. Such a discovery is fairly common in archaeology.

8. The discussions above reveal the ***selective manner in which some archaeologists had cited the archaeological finds to argues for the existence of a temple****. (In the process, the stratigraphy was paid scant attention). No reference has been made by Y.D. Sharma et al. In NAD, n.d. to the total range of pottery found in the trench. A study of this should be undertaken urgently. Attention must be paid to the ordinary red ware of everyday use associated with the de luxe glazed pottery, as also to other minor antiquities. These will shed light on the function of the structure, for example, whether it was any ordinary house with, say, cooking utensils, or not a residential structure devoid of domestic artefacts of everyday use."*

3650. The author suggested that the said structures might have been the residuance of some building of the period between 13th to 15th century. The author could not dispute the existence of some structure beneath the disputed structure but

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refuted the claim that it was a massive temple of 11th or 12th century and instead suggested that it could have been structure of 13th to 15th century.

3651. Be that as it may, one thing is very clear that there is not even a whisper in the entire work that there could have been possibly a structure like Idgah or Kanati Mosque underneath the disputed structure over which the disputed structure was constructed, though this book was published as long back as in 1993.

3652. The Court also had some other documents showing that certain inscription were found from time to time indicating the reign of Garhwal Dynasty at Kannauj, which had within its territory Ayodhya also.

3653. **Exhibit 28 (Suit-5) (Register 30 Page 119-132)** contains photocopy of frontispiece and pages 97, 98, 99, 100 and 101 of **"Epigraphia Indica"** Vol. IV 1996-97 published by ASI in 1979. It refers to 21 copper plates of the King of Kanauj, Vikram Samvat 1171-1233 **(AD 1114-1176)** written by F. Kielhorn. It is said that fourteen of these plates contain grants of the King Govindachandra of Kanauj, one is the grant of **King Vijayachandra and his son Jayachchandra and six are the grants of King Jayachchandra**.

3654. **Exhibit 29 (Suit-5) (Register 30 Page 133-154)** is photocopy of frontispiece and pages 192, 193, 197, 198, 199, 200, 201, 202 of **"Epigraphia Indica"** Vol. XIV 1917-18 published by ASI in 1982. This is in respect to **Chandravati plate of Chandra Deva Vikram Samvat 1150 to 1156. These six plates were found at Chandravati in State of Banaras.** On page 193 (Page 137, Register 20), it says:

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"The first document is inscribed on five plates, comprising a total of ninety lines. It begins with an invocation to the Goddess Sri, consoled to ***Vishnu, favourite deity of the kings of the Gahadavala family, and goes on to describe the genealogy of the donor, king Chandra-Deva, and his conquest of Kanauj.*** *This is followed by the royal order announcing that the Parama-bhattaraka Maharaj-adhiraja- Param- esvara- Parama-mahesvara Srimach-Chandraditya- Deva,* ***after bathing at the Svarga-dvara*** *at the confluence of the Sarayu and Gharghara* ***in Ayodhya,*** *conferred on a body of 500 Brahmanas (pamchasata-samkhyebhyah) the pattala of Kathehali with the exception of certain villages formerly given to temple, Brahmanas etc., on Sunday the fifteenth day of the dark half of the month of Asvina in the year Samvat 1150 (expressed both in words and figures), on the sacred occasion of a solar eclipse.* ***The date correspondence to AD 1093, October 23****. He also gave away the village of Sarisoda in the Vrihadrihevamkanai pattala for the residence of the same community of the Brahmanas. The document winds up with nine verses, the first seven of which are of the an imprecatory nature. The eighth mentions the name and the parentage of the scribe Hridayadhara, son of the illustrious Sivastambha and the last eulogizes the donor Chandra-Deva as the king by the resoundings of whose copper-plates bearing grants of land, "at the time of their being engraved with rows of closely written lines, the universe has become deafened."*

It is interesting to know that ***one of the ghats of***

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> ***Ayodhya still bears the name of Svarga-dvara.*** *The pattala of Kathehali is now known as Katehir, the largest pargana in the District of Benares. "It is bounded on the south by Athaganwan, Sheopur and Jablupur, on the east by the Ganges and the pargana Barah of Tahsil of Chandauli, on the west of Kolaslah and on the north of the small pargana of Sultanipur and the river Gumti." Its ancient boundaries (chatur-aghata), as recorded in this inscription, were "Kollakanandivara pattala the Gomati, Bhagirathi and Varana." We may assume that the pattala of Kathehali was nearly co-extensive with its modern representative; for, though one of the old boundaries, Kollakanandivara has not been identified with certainty, it is not impossible that it is the same as Kol Aslah which now marks the western limit of the Katehir pargana. We note in support of this that Kol Aslha is also a pargana and its first component may will be a remnant of "Kollaka".*

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3655. Exhibit D30 (Suit-5) (Register 30 Page 155-165) is photocopy of frontispiece and pages 54, 55, 56, 57, 58 of the book **"Epigraphia Indica"** Vol. XX 1929-30 published by ASI in 1983. It refers to a **Shunga inscription from Ayodhya authored by Rai Bahadur Daya Ram Sahni.** This inscription was found at Ranopali about a mile distance from Ayodhya. About this inscription on page 55 of the book (page 159, Register 30) it says:

> *"The inscription is important for more reasons than one.* ***It is the first inscription on stone or metal yet discovered which mentions the name of Pushyamitra,*** *the celebrated founder of the Sunga dynasty. Hitherto he*

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was only known from literary sources, e.g., the Divyavadana (XXIX), Patanjali's Mahabhashya (III-2-123), where references is made to a sacrifice performed by him, some of the Puranas, Kalidas's drama, the Malavikagnimitra, etc. ***The passages referring to the Sunga dynasty in the Vishnu and the Bhagvata Puranas are quoted in parallel columns in Pargiter's*** *The Purana Text of the Dynasties of the Kali Age, pp. 30-33. From the extract from the former we learn that the* ***dynasty was founded by the General Pushyamitra after he had slain the last Maurya king Brihadratha. His son was Agnimitra, who was succeeded by Vasujyeahtha. The latter's son was Vasumitra and his son Andhraka. He was succeeded by Pulindaka and the latter by Yomegha. He was followed by Vajramitra. He was followed by Samabhaga. The latter's son was Devabhumi.***

Kalidasa's drama mentions three of these kings, *i.e., the founder, his son Agnimitra and the latter's son Vasumitra and further informs us that Pushyamitra instituted a Rajasuya sacrifice and appointed Vasumitra as the guardian of the sacrificial horse, which in accordance with religious custom was to wander at will for a year and that the horse was seized by the cavalry of the Yavanas, whom Vasumitra successfully defeated and brought the horse back to his grandfather's sacrifice. The Rajasuya sacrifice was performed by universal monarchs and the sacrifice of this name mentioned in the drama of Kalidasa may have been the one performed by Pushyamitra on the occasion of his coronation.* ***The Ayodhya inscription,***

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however, records the performance of two Asvamedha sacrifices by Pushyamitra*. It is at present not known what necessitated the institution of the second sacrifice by him. It is to the credit of Pushyamitra that he revived this sacrifice which had long been in abeyance owing to Asoka's commandments prohibiting the immolation of animals even for sacrifices. Mr. Jayaswal thinks that the Asvamedha sacrifice mentioned in an inscription discovered at Nagari also referred to Pushyamitra. It is true that such an inscription was found by Dr. D.R. Bhandarkar when he was engaged in his excavations at Nagari. It has, however, been found by Rai Bahadur Gaurishankar H. Ojha to be only a fragment of the Ghosundi inscription and to supply the missing portion of the first line of that record. Thus restored, the epigraph shows that the son of Gajayana and Parasari mentioned in it was one Sarvatata, who had performed a horse-sacrifice, but makes no mention of Pushyamitra.*

The Ayodhya inscription is also interesting as it establishes the fact that the correct name of the founder of the Sunga dynasty was Pushyamitra , not Pushpamitra as found in some of the Sanskrit works. Dr. Buhler had already been led to this conclusion by the form Pusamitta which he found in certain Jaina Prakrit gathas, but epigraphical evidence was wanting.

The interpretation of this short records is rendered difficult by the uncertainty about the exact significance of the words Pushyamitra shashthena and I am afraid the difficulty will not solved until another inscription of the

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Sunga dynasty containing the genealogy of these kings comes to light. I propose here to recapitulate what has been said by the previous writers before I record my views of the point. Pandit Ratnakara rendered these words as the sixth descendent, brother or son of Pushyamitra and as with the last alternative, Phalgudeva would become identical with Pushyamitra, he thought he could overcome the difficulty by supplying a word like pujyasya between the words pituh and Phalgudevasya and interpret the expression as "in honour of Phalgudeva, a teacher or deity of this father." Rai Bahadur Gaurishankar Hirachand Ojha favoured the meaning "sixth in descendent from Pushyamitra," while Mr. Jayaswal preferred to interpret the expression as the sixth brother of Pushyamitra, making Phalgudeva the father of Pushyamitra. This view was endorsed by Dr. A. Banerji-Sastri, who rejected "the descent theory" for the reason that if Dhana[Deva] was sixth in descent from Pushyamitra and evidently proud of it, his name would have ended with the word mitra. This, as Mr. N.K. Bhattasali has shown, is no real obstacle as the names of several of the kings of the Sunga dynasty as given in the Puranas and found on their coins have different endings. Dr. Sastri also emphasis the fact that in the Smrit. 'descent' is signified by the termination of the 5th case, not the 6th as is the case in the expression under discussion. Mr. N.G. Majumdar has hunted up a parallel expression in verse 88 of the 16th Sarga of the Raghuvamsa. The expression in question is panchamam Takshakasya, which is interpreted by three commentators as meaning "grandson of grandson

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of Takshaka." Mr. Majumdar therefore sees no difficulty in interpreting Pushyamitra shashthah as "sixth in descent from Pushyamitra". In his third article on this inscription, however, Mr. Jayaswal points out that the example from the Raghuvamsa referred to above is actually interpreted by Mallinatha as meaning the fifth son of Takshaka. 'The sixth of Pushyamitra' in the Ayodhya inscription should therefore mean the sixth son of Pushyamitra. As, however, this interpretation would make Phalgudeva identical with Pushyamitra, he proposes to read Dharmarajna in the 2nd line as Dharmarajni, and to compound it with the following word pituh. He thus construes the record as meaning that Dhanadeva, the sixth son of Pushyamitra, erected a house in honour of Phalgudeva, the father of his lawful queen.

It will be seen from the above that the only parallel expression found by the ingenuity of Mr. Majumdar is capable of two divergent interpretations. As has been pointed out by Dr. Banerji Sastri, the inscriptions so far known fail to through light on the question and he is right in stating that the established custom in epigraphical records is either to name the generations in succession or not at all and that it is not usual to mention a distant stage by omitting the intervening ones. One such example I have indeed secured in verse 44 of the Vamsavali of the Chamba rajas, where we find the words "Meruvarman was the 10th from Jayastambha" after the nine intervening ancestors of Meruvarman have been duly referred to indirect succession. Even here, however, the vibhakti employed is the fifth, not the sixth or possessive case. An example of

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this kind with the sixth case ending occurs in the Raghuvamsa, Sarga 6, verse 29; -

त्वमेव कल्याणि तयोस्तृतीया

"Thou alone, fortunate lady, art fit to be their third. "

Sunanda, the attendant of Indumati, while narrating the achievements of the prince of the Angas observes that the goddesses Sri and Sarasvati, though naturally hostile to each other, together reside in him in peace, thus indicating the propriety of her union with him. It will be observed that though the grammatical construction in this case is the same as in the doubtful expression being discussed, the sense of descent is out of the question. Whether more exact parallels both in form and sense will or will not be found in the vast field of Sanskrit literature, I am unable to say. It seems, however, exceedingly difficult to disregard clear palaeographic evidence and to group this record with the other known documents of the early Sunga period. I would, therefore, with Pandit Ratnakara, supply a word like purushena after shashshena and translate "by the sixth descendent of Pushyamitra". It will be seen from the facsimile that only the first portion of the name of the chief who had this inscription engraved is preserved. Previous writers have restored it as ***Dhanadeva*** *and Mr. N.G. Majumdar identifies him with a chief of that name* ***whose coins have been found round about Ayodhya. Be the name, however, what it may, the inscription has established beyond doubt the fact that Ayodhya formed part of the Sunga Empire as late as the date of the inscription, which, on palaeographic grounds must be***

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assigned to about the 1st century A.D.”

3656. There is a reference of a pillar inscription of Lal Darwaja Masjid at Jaunpur in the book **"Sanskrit Inscriptions of Delhi Sultanate"** 1191-1526 by Pushpa Prasad, Reader in History, Aligarh University published in 1990 and on page 149-152 (Register 30 page 167 to 171) it refers to the said inscription as under:

“47. Pillar Inscription of the Lal Darwaza Masjid at Jaunpur

Edited by Cunningham, ASR, 1875-8, XI, p.126; pl. XXXVII, No. 3

Fuhrer, Sharqi Architecture, New Series, 1911, 1, pp. 50-1

This inscription is engraved on the two faces of the third octagonal pillar in the first row of the north-west cloister of the Lal Darwaza masjid at Jaunpur. ***It consists of ten lines in Sanskrit in Nagari script and is dated in the year Plava Samvat 1353****, Wednesday, the 12th day of the waning moon of the month* ***Jyestha/15 May A.D. 1296****.*

The inscription opens with an adoration of Ganapati (Ganesa). ***The purpose is to record the construction of a temple of Padamesvara on the north-side entrance of Visvesvara temple at Kasi by Padma Sadhu.***

The inscription itself indicated that its original site had been a temple (the Visvesvara temple) at Kasi (Varanasi). This must have been the same as 'the Bisheshwara temple' mentioned by Sherring in his account of Benares. The large mosque built by Aurangzeb presently stands on its site. But sherring records the tradition that ***'the Mohammedans as usual transferred its stone to***

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their own mosques and that relics (of the stones) are found at Jaunpur.

The transfer took place during the reign of Akbar when the Visvesvara temple, already deserted was demolished and its stones used by Bayizid Bayat. *The latter in his well-known memoirs records the incident thus:*

'At that time (1570-71) there was an idol temple which owing to passage of time had become deserted and become the place of trade of the market people. I purged that place of them and started erecting a madrasa for scholars. ***It was completed around those few days that Raja (Todarmal) came from a bath (in the river)****. In that temple there was pillar 12 gaz (32 fit) high; and there was a date in the Hindu characters inscribed on it stating that it had been* ***set up seven hundred years ago.*** *When Bayizid took it down, he had cut it into two parts, and the two parts into four portions each. Six parts of stone were used in the pillars and slabs of the mosque of the madarasa; and two parts were taken by Khwaja (Dost) Muhammad. Bakshi of the Khanan (Mun'im Khan) who put them on the door way of the mosque at Jaunpur.*

The remnant of the great pillar or lat mentioned by Bayizid survives in the mosuqe built at the site of the Visvesvara temle; it is thought originally to have been 40 feet high.

Bayizid does not say which mosque at Jaunpur obtained the relics from the temple destroyed by him. Mr. Iqtidar Alam Khan, to whom I am indebted for guidance on this source supposes it to have been the defaced Maukhari

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inscription at the Jami Mosque and the outer arch of the southern entrance. This would otherwise in with Bayizid's reference to the stone having been placed on the door of the mosque. ***But the explicit reference in the Lal Darwaza inscription to the Visvesvara temple of Kasi leaves little doubt that it comes from one of the two stone parts of the pillar which Bayizid Bayat had sent to Jaunpur. The mosque had been built much earlier in A.D. 1447 by the Sharqi queen Bibi Raji.***

Text (as read by Fuhrer):

औं नमो गणपतये।। अयोध्यायां
पुरावृतः सत्यवाकसजन प्रिय (।) स
ढे साधुरिति ख्यात सर्व्व सत्वाहिते रतः।।1।।
तस्य पुत्रोयभूवाथ साधुनिधेति विश्रु–
तः (।) तस्यात्मजः शुचि धीरः षद्मसाधुरयं
भुवि ।।2।। [Anustubh]
काश्यां विश्वेश्वर द्वारि हिमादिशि
षरोपमम (खरोपमं?)। पद्मेश्वरस्य देवस्य प्रासाद–
मत्करोत्सुधीः ।।3।। [Anustubh]
ज्येष्ठे मासि सिते पक्षे
द्वाश्याम्बुध वासरे (1) लिखितेयं सदा
याति प्रशस्तिः पल्ववत्सरे ।।4।। [Anustubh]
संवत् 1353।।

Cunningham's reading differs in many places as shown below:

Cunningham	*Fuhrer*
1.1 यमोनयामपुरा	*अयोध्यां*
1.2 वृद्ध	*वृत्तः*
1.3 सिद्धेस पुरी	*सढे साधुरिति*
1.6 यास्यां	*काश्यां*

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1.10 भाति यति

Translation:

Om, salute to Ganapati (Ganesa). ***Formerly in Ayodhya (lived)*** *Sadhe Sadhu, the speaker of truth beloved of good men, whose delight consisted in the welfare of all beings. His son was the famous Sadhu Nidhi, whose son Padma Sadhu, of steadfast virtue,* ***on the north-side of the entrance to the Visvesvara temple*** *(looking like a peak or Sikhra?)* ***at Kasi built a temple of God Padmesvara (Visnu).*** *On Wednesday, the twelfth day of the waning moon of the month of Jyestha, in the year of Plava Samvat* ***1353, this eulogy is written***."

3657. Another document placed before us as **Exhibit B-16 (Suit-4) (Register 33 Page 91-133)** is a copy of the Presidential Address by Sri S.P. Gupta at 23rd Annual Conference of Indian Archaeological Society held on Guntur (Andhra Pradesh) on 22nd December, 1989. The subject of the paper is **"Ram Janambhumi Controversy: Passions Apart what History and Archaeology Have to Say"**. On this issue, since Dr. S.P. Gupta himself has appeared as witness before us, we find no reason to refer his opinion contained in the said document and instead would prefer to consider his oral statement as and when it is needed. Besides, the learned counsels for the parties, during the course of argument or in their written statements have also not referred this document.

3658. Suffice at this stage to mention that in his own way Dr. S.P.Gupta sought to convey that the disputed structure came into existence after demolition a Hindu temple existed at the site in dispute and for that purpose he sought to support his

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inference based on some historical and archaeological facts. On the contrary another enquiry was made by Sri Sushil Kumar Srivastava PW-15 and he took a contrary view.

3659. **Exhibit Q-1 (Suit-4) (Register 34 Page 3-36); Exhibit Q-2 (Suit-4) (Register 34 Page 3-37-45); Exhibit Q-6 (Suit-4) (Register 34 Page 47-53); Exhibit Q-3 (Suit-4) (Register 34 Page 57-66); Exhibit Q-4 (Suit-4) (Register 34 Page 67); Exhibit J-11 (Suit-4) (Register 34 Page 69)** are the photocopies of a book **"The Disputed Mosque A Historical Inquiry"** written by PW 15 Sushil Kumar Srivastava.

3660. **Exhibit J-15 (Suit-4) (Register 34 Page 83)** and **Exhibit J-16 (Suit-4) (Register 34 Page 85)** are the page 72 and 95 respectively of the book **"The Disputed Mosque An Independent Enquiry"** written by PW 15 Sushil Kumar Srivastava.

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3661. **Exhibit 71 (Suit-5) (Register 36 Page 457-495)** is photocopy of pages 67, 68, 69, 70, 71, 72 and certain photographs of book **"The Disputed Mosque A Historical Inquiry"** written by Sri Sushil Srivastava, PW 15. The author himself has appeared as witness and the book is also available to the Court as Book No. 155.

3662. Since the author himself has appeared as witness on behalf of plaintiffs (Suit-4) and the book itself is on record as Book No. 155, we find no occasion to refer the said exhibit and, in fact, it has also not been referred by the learned counsels during the course of argument or written arguments.

3663. Reference is also made to **Exhibit J-18 (Suit-4) (Register 34 Page 89)** which is photocopy of **"Memoirs of Babar"** and **Exhibit J-28 (Suit-4) (Register 34 Page 91 to 115)**

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are photocopies of some pages of the book **"Babar"** by Dr. Radhey Shyam, 1st Edn. 1978. Sri Jain placed reliance on page 456 of the book (Register 34 page 111) where it reads as under:

> *"A parallel may perhaps be found in Ayodhya where the famous Janamstha temple remained till Babar's days, although the place, for more than two hundred years had been the capital of the Muslim province of Oudh."*

3664. On page 458 of the book, Sri Jain placed reliance on the following:

> *"Moving via Kalpi and Kanoor, he crossed the Ganges and passing through Lucknow he entered Oudh on Saturday 7th Rajab 934 H./28th 1528 and encamped on the confluence of the Ghagra and Sarju rivers. From 2nd April 1528 to 17th September 1528 there is a gap in his Memoirs. It appears that during this period and until the beginning of the rainy season he remained busy in dealing with the Afghans. Before returning to Agra he appointed Mir Baqi to hold charge of Ayodhya. Shortly after Babar's departure Mir Baqi, on his own account attacked the Hindu temple with a large army. It is related that for seventeen days the Hindus offered resistance. At last failing to stand the onslaught they bowed before the inevitable. Mir Baqi, somehow managed to enter the temple and thereafter he tried to reach the sanctuary. Here the Brahmin priest of the temple, Shyamanand and the members of his family offered resistance to him and did not allow him to approach the sanctuary. Mir Baqi seized and killed the priest and the members of his family. He entered the sanctuary, but to his utter surprise he could not find a single idol there. Whether*

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the temple was razed to the ground or not is still controversial issue. But it appears that he build the mosque over a part of the ruins or converted the temple into a mosque. The well known Baburi Masjid, which still stands there is claimed by the Hindus and Muslims both."

3665. In our view, the passage is noted to be rejected for the reason that the learned author has further said in continuation as under:

"The entire structure raises grave doubts. It may be observed that it would be quite injudicious to hold in any way Babar responsible for the destruction of the famous Janamsthan temple. Destruction of temples was neither in consequence with his policy not attitude, especially at a time when he needed the support of the non Muslim population."

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3666. Next was **Exhibit J-30 (Suit-4) (Register 34 Page 137-157)** which is copy of the extract of an article "Ayodhya in Ancient India" by B.C. Law published in journal of Ganga Nath Jha Research Institute Vol. I, 1943, pages 423 to 443. Sri Jain refers to the following:

"Political History

The Ramayana refers to the kings of Ayodhya and the system of administration prevalent there. It is interesting to note here the duties of an Iksvaku king. Aroused from his sleep at dawn by the hymns of prisoners and sutas, a king was served with water for washing hands and feet. Duly bathed a Ksatriya king offered oblations to fire and prayed before the images in temples inside his place. After finishing the morning duties he used to attend to the

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business of his state and then go to his court where he would meet his ministers. The kind with his ministers used to listen personally to the prayers and complaints of his subjects. Worthy treatment was given to state guests including kings and princes. The king used to spend the the first half of each day in doing the business of his state and the latter half of his time was spent in enjoying the company of the ladies of his harem.

The chief aim of a righteous monarch was to earn the loyalty and goodwill of his subjects. He used to hear the report of his trusted servants and reliable courtiers in order to ascertain the public opinion about his government. He used to redress the grievances of his subjects as far as possible. Nobody was detained or kept waiting at his door if he came to pray for something before the king. He was assisted in his administration by able ministers, eminent jurists and men well-versed in the sacred lore. Punishment was always in proportion to the nature and gravity of the offence. Life-long exile or transportation was an alternative for death sentence.

The king used to give private interviews to spies and special messengers for confidential talks. Divulging state-secrets, watching or overhearing such secret talks were highly punishable. The succession to the throne was generally determined according to the law of primogeniture in the Iksvaku family.

Rama's youngest brother Satrughna ruled Mathura which he founded. His younger brother. Bharata, with his two sons Taksa and Puskala conquered the Gandhara

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country. The cities of Taksasila and Puskalavati were ruled by the two sons of Bharata. Chandrakanta and Angadiya were ruled by the two sons of Laksana named Candraketu and Angada. Kusa and Lava were rulers of southern and northern Kosala respectively. Satrughna, Rama's younger brother, installed his two sons Suvahu and Satrughati as kings of Mathura and Vaidesa kingdoms respectively.

In the Mahabharata, the mentioned is made out sixteen celebrated kings (sodasa-rajika) some of whom belonged to Ayodhya, namely Mandhatr, Sagara, Bhagiratha, Ambarisa, Dilipa and Rama Dasarathi. In the Mahabharata mention is also made of Iksvaku, Kakutstha, Yuvanasva, Raghu, Nimi and others. The pious Dirghavajna was the king of Ayodhya when Yudhisthira ruled and performed his Rajasuya Sacrifice. Divakara was a king of Ayodhya who was the contemporary of Senajit, king of Magadha. Both of them were contemporaries of Asimakrsna. Iksvaku, one of the nine sons of Manu Vaivasvata reigned at Ayodhya who had two sons, Vikuksi-sasada and Nimi. From the former was descended the great Aiksvaku dynasty of Ayodhya generally known as the solar race.

The Iksvakus, Aiksvakus or Aiksvakas are the titles of the solar race. Iksvaku was so called because he was born from the sneeze of Manu. The Puranas give a list of the kings of Ayodhya.

The Ramayana genealogy, according to Pargiter must be treated as erroneous and the Pauranic genealogy is to be accepted. The Puranas say that there were two

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Dilipas, one father of Bhagiratha and the other father or grandfather of Raghu, but according to the Ramayana, there was only one Dilipa, father of Bhagiratha and great-grandfather of Raghu. According to the Ramayana, Raghu was the father of Kalmasapada and Aja is placed twelve generations below Raghu but the Puranas make Aja son of Raghu. The Raghuvamsa supports the Puranas that Aja was the son of Raghu. The Ramayana makes Kakutstha son of Bhagiratha and grandson of Dilipa but the Puranas say that he was the son of Sasada. The Mahabharata supports the Puranas. The Raghuramsa also supports the Puranas in saying that from his time the kings had borne the title of Kakutstha and that Dilipa was his descendant.

From Dasaratha to Ahinagu there is general agreement. After Ahinagu, most of the Puranas give a list of some twenty kings Paripatra to Brhadbala agreeing in their names though some of the lists are incomplete towards the end.

The Aiksvaku genealogy of Ayodhya mentions the following kings :- (1) Prasenajit who was the contemporary of Matinara; (2) Yuvanasva II, Mandhatr who married Sasabindu's daughter named Bindumati Citrarathi, (3) Purukutsa and (4) Trasadasyu.

Jahnu of Kanyakubja married the grand-daughter of Yanvanasva, that is, Mandhatr.

The Talajanghas attacked Ayodhya and drove the king Bahu from the throne. Mandhatr of Ayodhya had a long war with the Druhyu king Aruddha or Angara and killed him.

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Subahu, son of the Cedi king Virabahu and Rtuparna king of Ayodhya, were contemporaries. Jamadagni allied himself with the royal house of Ayodhya for he married Renuka, daughter of Renu.

Sumitra was the last of the Iksvaku kings in the Kali age who was contemporary with the Buddha. The royal house of Iksvaku sank into oblivion at the time of this king.

The kings of Ayodhya were connected with the Vasistha family. The Vasisthas were their hereditary priests. The earliest Vasistha was the famous priest of Ayodhya in the reigns of Trayyaruna, Satyavrata-Trisanku and Hariscandra. The next great Vasistha was the priest of Ayodhya in the time of Hariscandra's successor Bahu who was driven from his throne by the Haihaya-Talajanghas aided by the Sakas, Kambojas, Yavanas, Paradas and Pahlavas from the north-west but Vasistha maintained his position.

Mitrasaha Kalmasapada Saudasa, king of Ayodhya had the fourth noted Vasistha as his priest. The fifth was priest to Dilipa II Khatvanga and the sixth was priest to Dasaratha and his son Rama. King Kalmasapada Saudasa beguiled by a Raksasa offered Vasistha human flesh as food and was cursed by him.

Iksvaku obtained Madhyadesa and was the progenitor of the solar race, with its capital at Ayodhya.

The kingdom of Ayodhya rose to very great eminence under Yuvanasva II and especially his son Mandhatr. The latter married Sasabindu's daughter Bindumati. He was a very famous king, a Cakravartin and a Samraj and

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extended his sway very widely. Mandhatr or his sons carried their arms south to the river Narmada. The supremacy of Ayodhya waned and the Kanyakubja kingdom rose into prominence under its king Jahnu. The Haihayas overcame Ayodhya. The foreign tribes settled there after Ayodhya was conquered.

Ayodhya rose to prominence again under Amsumant's second successor Bhagiratha and Bhagiratha's third successor Ambarisa Nabhagi.

Of the Manva or solar kingdoms that existed originally three remained, those of Ayodhya, Videha and Vaisali. These three Manva kingdoms were not dominated by the Aila stock. The earliest Angirasas were connected with Mandhatr, king of Ayodhya, and the eariliest Angirasa Rsi was connected with Hariscandra, king of Ayodhya.

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Dasaratha called in the help of the rustic Rsyasruga from Anga. The eastern and southern kings and kings of the distant Punjab were invited to Dasaratha's sacrifice at Ayodhya. Ayodhya and the Vasisthas had no association then with the brahmanically elite region as Pargiter points. Out. The Kathasaritsagara refers to the camp of Nanda in Ayodhya.

In Buddhism we find that there was a king of Ayodhya named Kalasena whose city was surrounded by ten sons of Andhakavenhu (Andhakavenhudasaputta dasabhatika) who uprooted the trees, pulled down the wall, captured the king and brought his kingdom under their sway. The city of Ayujjha was governed by the descendants of king Arindama.

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In Jainism we find that Prasannajita, a king of Ayodhya, give his daughter named Prabhavati in marriage to Parsvanatha.

Ayodhya seems to have been included within the kingdom of Pusyamitra Sunga. ***An inscription found at Ayodhya mentions the fact that Pusyamitra performed two horse-sacrifices*** *or asvamedhas during his reign. According to a spurious Gaya plate,* ***Ayodhya was the seat or a Gupta jayaskandharara or 'Camp of victory,' as early as the time of Samudra Gupta.*** *Some coins of Pura Gupta have on the reverse the legend. "Sri Vikramah," which may be a shorter form of the full title 'Vikramaditya'. Allan identifies him with king Vikramaditya of Ayodhya, father of Baladitya, who was a patron of Buddhism through the influence of Vasubandhu. It may be assumed on the basis of this identification that the immediate successors of Skanda Gupta had a capital at Ayodhya probably till the rise of the Maukharis."*

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3667. It was also sought to argue that mere inscription or other things are not conclusive to make a final opinion since in similar kind of historical building the tempering of inscription or travelling of inscription etc. have been noticed. In this regard reference was made to **Exhibit J-29 (Suit-4) (Register 35 Page 237),** photocopy of **"Archaeological Survey of India report of Tours in the Central Doab and Gorakhpur in 1874-75 and 1875-76"** by A.C.L. Carlleyle Vol. XII consisting of frontispiece, Index, Introduction and pages 24, 25, 26, 27 and Plate II, III, IV and V of the said book. On page 24, it deals with the details of City of Sambhal near Moradabad and in particular

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that part where it deals with a mosque constructed therein claims to be constructed on a Hindu temple of Hari Mandir and this is supported by an inscription fixed thereat. It says:

> *"The old city of **Sambhal is situated on the Mahishmat Nadi, in the very heart of Rohilkhand**. In the Satyug its name is said to have been "Sabrit," or Sabrat, and also Sambhaleswar. In the Tretayug it was called Mahadgiri, and in the Dwapur, Pingala. In the Kaliyug it received its present name of Sambhala, or in Sanskrit Sambhala-grama. To the south-east of the city is Surathal Khera, which was called after Raja Surathal, a son of Raja Satyavana, of the Lonar race. Surathal Khera measured 1,200 feet in length from north-east to south-west, by 1,000 feet in breadth. Close to the south-south-west side of it there is another large khera, with a village on it called "Raja Sadun-ka-khera," or "Sadungarh," probably Satun or Sataun, for Satyavan.*
>
> *There are also many other smaller mounds between the two places. The two kheras of Surathal and Sadun together evidently once formed one large city. Another ancient place named Amrama-pati Khera is situated on the right bank of the Sat river, and near the village of Alipur.*
>
> *About a mile to the north-west of the last place, there is another mound called Chaudreswar Khera.*
>
> *Gumthal Khera, which is situated about 2 miles to the south-east from Surathal Khera, measures about 1,600 feet in length from east to west, by about 1,000 feet in breadth from north to south.*
>
> *All these places are situated to the south-east from*

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Sambhal and Chandausi.

The principal building in Sambhal is the Jami Masjid which the Hindus claim to have been originally the temple of Hari Mandir*. It consists of a central domed room upwards of 20 feet square, with two wings of unequal length, that to the north being 50 feet 6 inches, while the southern wing is only 38 feet 1 ½ inches. Each wing has three arched openings in front, which are all of different widths, varying from 7 feet to 8 feet.*

The Muhammadans ascribe the erection of the building to the time of the Emperor Babar, and point to an inscription inside the masjid, which certainly contains the name of Babar, but which the Hindus assert to be a forgery of late date. *At or on the back of this slab, they say that there is the original Hindu inscription belonging to the temple.* ***Several Musalmans of Sambhal confessed to me that the inscription containing Babar's name was a forgery, and that the Muhammadans did not get possession of the building until about the time of the mutiny, or a little before it, say about 25 years ago.*** *That they took possession of the building by force; and that there was then a trial about the case in Court before the Judge of the district, and* ***that the Muhammadans gained the case mainly by means of the forged inscription,*** *and also by all the* ***Muhammadans joining together and hearing false witness against the Hindus who were in minority.***

In the forged inscription of Babar in the Hari Mandir at Sambhal, it may be observed that the name of Babar is wrongly given. In the inscription I read as follows:

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Bani Aina Ilm o Amal

Shah Jamjah Muhammad Babar

ےا نبی انبیءہ علم و عمل	شام جم جاہ محمد بابر

But the real name of this king was "Shah Jahir-ud-din-Muhammad Babar."

The fine dome of this building is probably unique of its kind. It is a clear hollow shell from the keystone down to the ground. Its shape is very much like the hollow of the inside of a huge thimble. The interior shape of the dome is ovoid, or like the half of an ovoid ellipse rotated on its axis. ***The dome is built of brick, and it is said to have been rebuilt (as it now is) by the famous Prithvi Raja, who appears to have been a great benefactor to Sambhal.*** *The circular dome stands upon an octagon, and the octagon upon a square.*

The walls of the central square Hindu temple would appear to have been built with large bricks ceased with stone, but the plaster with which the Muhammadans have coated the walls conceals the material of which they are made; and I can only say that, on examining several spots where the plaster was broken. I found that in some places stone wax exposed. I believe that the Muhammadans stripped off most of the stone, especially such as bore traces of Hinduism, and made a pavement of the stones, turning the sculptures downwards. I observed traces which showed that the walls had once been much thicker when the stone casing was on. Underneath the outer steps of the outer court I dug out some fragments of sculpture in reddish sandstone, one of which was the upper portion of a

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fluted pillar.

The Muhammadan wings added to the building, in order to turn it into a masjid, are built of small bricks, that is, whenever the walls happened to be bare of plaster. I found that the bricks were small and set in mud mortar. There is a clear and distinct difference between the old Hindu work and the modern Muhammadan work, and the old Hindu temple is at once distinguishable from the Muhammadan additions.

The square Hindu temple would have had originally only one doorway in the east wall, about 8 feet in width, but the Muhammadans cut four more doors, each 6 feet wide, two in the northern and two in the southern wall of the square temple, in order to communicate with the aisles of the side wings which they added.

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Note by General Cunningham.

[The inscription in the masjid which the Hindu denounce as being forged appears to me to be quite genuine. The text is as follows:-

جامع اشیٴه فضل و کمال	رافع الوه ملک و مال
باسطہ اضجٴ امن و امان	ےا نبی انبیہ علم و عمل
شاه جم جاه محمد بابر	حفظ اللہ عز و جل
شمع دولت جو برافروخت بهند	روشن از بر توان شد سنبل
از پٴی ساختن ایٴن مسجد	کہ مصون باد ز نقصان و خلل
کردفرمان بکمین نده خویش	کہ بود عمده ارکلن دول
مےد با عقل و خرد هندوییک	ان باخلق نکر گشتہ مثل
چون بزمان شهنشاه جهان	ےافت اتمام بتوفیق ازل
سال تاریخ ذمہ دورش گشتہ	ےکم از شهر ربیع ال اول

The full date is given in a very ingenious manner

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with the last words:-

Ekum az Shahar Rabi-al-awal,

which mean literally "on the first day of the month of Rabi-al-awal,' while the sum of the individual letters give the year 933 A.H. according to the reckoning of the Abjad. The builder, or rather the converter of the Hindu temple into a masjid was Mir Hindu Beg.]

3668. Sri Jain placed before us **Exhibit J-24 (Suit-4) (Register 35 Page 273)** which is photocopy of **"The Monumental Antiquities And Inscription In The North Western Provinces And Oudh"** published by Indological Book House, **Varanasi in 1969**. This very book itself is book No. 94 with the Court. The Exhibit contains the frontispiece, Index, Preface and pages 5, 6, 7, 8, 9, 10, 11, 12, 20, 21, 30, 31, 34, 35, 36, 37, 38, 179, 182, 184, 185, 186, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313. Sri H.S. Jain, learned counsel has placed reliance on pages 296 and 297 (Register 35 Pages 341-343) of the said book:

> *"According to the Ramayana, the city of Ayodhya was founded by Manu, the progenitor of all mankind. In the time of Dasaratha, the father of Rama, it was fortified with towers and gates, and surrounded by a deep ditch. No traces of these works now remain, nor is it likely, indeed, that any portion of the old city should exist, as the Ayodhya of Rama is said to have been destroyed after the death of Brihadbala, after which it lay deserted until the time of Vikramaditya of Ujjayini, who, according to tradition, came in search of the holy city, erected a fort called*

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Ramgarh, cut down the jangal by which the ruins were covered and erected 360 temples on that spots sanctified by the extraordinary actions of Rama. The Vikramaditya of this story, General Cunningham takes to be Chandragupta II, of the Imperial Gupta dynasy, A.D. 395-415, whose rule certainly extended to Ujjayini, as his inscriptions have been found at Sanchi and Udayagiri Bhilsa.

There are several very holy Brahmanical and Jains temples about Ayodhya, but they are all of modern date and without any architectural pretensions whatever; but there can be no doubt that most of them occupy the sites of more ancient temples that were destroyed by the Muslamans. ***Thus Ramkot, or Hanuman Garhi, on the east side of the city, is a small walled fort surrounding a modern temple on the top of an ancient mound. This fort is said to have formerly covered a large extent of ground and according to tradition, it was surrounded by 20 bastions, each of which was commanded by one of Rama's famous generals after whom they took the names by which they are still known. Within the fort were eight royal mansions, where dwelt Dasaratha, his wives, and Rama, his deified son.*** *The name Ramkot is certainly old, but the temple of Hanuman is not older than the time of Aurangzib. Ram Ghat, at the north-east corner of the city, is said to be the spot where Rama bathed, and Svargadvaram, also called Ram Darbar, on the north-west, is believed to be the place where his body was burned. Treta-ke-Thakur is famous as the place where Rama performed a great sacrifice, and which he commemorated*

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by setting up there images of himself and Sita. Close by is the Lakshmana Ghat, where his brother Lakshmana bathed, and about one quarter of a mile distant in the very heart of the city, ***stands the Janmasthanam, or "birth-place temple," of Rama****. Almost due west, and upwards of five miles distant is the Guptar Ghat, with its group of modern white-washed temples. This is the place where Lakshmana is said to have disappeared, and hence, its name of Guptar, from gupta, "hidden or concealed." Some say that it was Rama who disappeared at this place, but this is at Variance with the story of his cremation at Svargadvaram.*

There are five Digambara temples at Ayodhya which were built in Samvat 1981, in the time of Shuja-ad-daulah, to mark the birth-places of five Tirthamkaras, viz., Adinatha, Ajitanatha, Abhinandanatha. Sumatinatha, and Anantajit, who are said to have been born at Ayodhya. The temple of Adinatha is situated near the Svargadvaram on a mound, known as Shah-Juran-Ka-tila, on which there are many Musalman tombs and a masjid. According to the local Musalman tradition, Makhdum Shah Juran Ghori, who came to Audh with Shahab-ad-din-Ghori, destroyed the ancient temple of Adinatha and erected on its ruins the Musalman edifices which gave to the mound the name by which it is still known. Besides these five temples of the Digambaras there is a sixth temple of the Svetambaras, dedicated to Ajitanatha, which was built in Samvat 1881.

It is locally affirmed that at the Musalman conquest there were three important Hindu temples at Ayodhya:

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these were the Janmasthanam, the Svargadvaram, and the Treta-ke-Thakur. On the first of these Mir Khan built a masjid in A.H. 930, during the reign of Babar, which still bears his name. This old temple must have been a very fine one, for many of its columns have been utilized by the Musalmans in the construction of Babar's Masjid. These are of strong, close-grained, dark-coloured, or black stone, called by the natives kasauti, "touch-stone slate," and carved with different devices; they are from seven to eight feet long, square at the base, centre and capital, and round or octagonal intermediately. On the second and third Aurangzib built masjids, which are now mere picturesque ruins. A fragmentary inscription of Jayachchhandra of Kanauj, dated Samvat 1241, and recording the erection of a temple of Vishnu, was rescued from the ruins of Aurangzib's Masjid, known as Treta-ke-Thakur, and is now in the Faizabad Museum."

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3669. Exhibit J-26 (Suit-4) (Register 36 Page 423) is photocopy of **"The Indian Antiquary A Journal of Oriental Research"** by Sir Richard Carnac Temple, Vol. XXXVII, 1908 published by Swati Publications Delhi, 1985 containing frontispiece and pages 191 and 192. It shows that in the area of Kashmir also similar activities took place and Buddhist temple made a mosque as is evident from the following:

"At first sight this text should make it appear that there were Bhottas among the subjects of the Kashmir Kings. This is not probable, for Ladakh as well as Baltistan where independent possessions during the 16th century. But the trade between the Punjab and Yarkand, through

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Kashmir and Leh, was probably carried on without any interruption and this trade brought many Ladakhis and Baltis to Kashmir. They had there not only a rest-house of their own, but apparently also a Buddhist place of worship. There is a masjid below the castle hill of Srinagar, which is still known as the Bodo Masjid, and that it was formerly a Buddhist temple is shown by the fact that behind the white-wash on the walls the picture of Buddhist saints are to be found. This is well known to all Ladakhis."

3670. Pursuant to the excavation conducted by B.B.Lal some photographs as well as his comments were published in the book of ASI i.e. :

(a) Exhibit E2/1 (Suit-5) (Register 37 Page 5) is photocopy of Plate No. XLIX and Plate No. L published in **"Indian Archaeology 1976-77-A Review"** edited by B.K. Thapar, Director General, ASI published, by ASI in 1980.

(b) Exhibit E 1/1 (Suit-5) (Register 37 Page 11) is photocopy of pages 40 and 41 of **"Indian Archaeology 1969-70 A Review"** edited by B.B. Lal, published by ASI in 1973.

(c) Exhibit E 4/1 (Suit-5) (Register 37 Page 17) is photocopy of page no. 28, 29, 30, 31 of **"Indian Archaeology 1968-69 A Review"** edited by B.B. Lal published by ASI in 1971.

(d) Exhibit E 3/1 (Suit-5) (Register 37 Page 35) is photocopy of pages 76, 77 and Plate XXII of **"Indian Archaeology 1979-80- A Review"**.

3671. Considering a lot of material, some of which

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discussed above, as well as relevant facts, it was found expedient by this Court to have a scientific investigation at the disputed site but without disturbing the position of the "makeshift structure" in respect whereto a status quo order was operating in various proceedings including the suits.

3672. What lie underneath? This question is of extreme complication ranging in a period of more than 500 years' of history. No clear picture emerges from various history books etc. In fact, the contemporary record did not answer the issues, one or the other way, with certainty but some record, authored after about 200 years i.e., 18th Century, state about existence of temple, its demolition and the construction of the disputed building, while some well known historians dispute it and some history books are silent. The case of muslim parties was that the mosque was constructed on an unoccupied, vacant land.

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3673. Extraordinary situations demand extraordinary steps and strategy. In the peculiar circumstances, this Court decided to appoint an Expert body for scientific investigation, well recognized in the field of archaeology/history and ordered ASI to go for excavation at the site in question and submit report. The question formulated for ASI, was "whether there was any temple/structure which was demolished and a mosque was constructed on the disputed site".

3674. The details of ASI proceedings, we have already mentioned above. We have also mentioned about the objections filed on behalf of plaintiffs (Suit 4), defendant no.5 (Suit 5) and defendants no. 6/1 and 6/2 (Suit 3) but details thereof are skipped so as to be discussed at appropriate stage. Here is that.

3675. During the course of the excavation by ASI, a large

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number of objections/complaints were filed by the parties to the Observers (Two Judicial Officers of the Cadre of Higher Judicial Service) appointed by this Court. Subsequently, most of the contents of those objections since have resulted in the objections which the parties have filed before this Court against the report of ASI, therefore, we find it appropriate to consider in brief those documents also, as that will not only give a complete picture of the proceedings but will also be helpful to determine and adjudicate upon the objections taken by the parties against the final report of ASI.

3676. Between 14th April, 2003 to 26th July, 2003, thirty four such objections were filed out of which nineteen were filed through Sri Zaffaryab Jilani, Advocate; two through Mohd. Saleem, Advocate; two by Sri Mohd. Hashim (one of the plaintiff of Suit-4); four through Sri A.A. Siddiqui, Advocate; four through Sri Mustaq Ahmad Siddiqui, Advocate; two by Sri R.L.Verma, Advocate and one by Haji Mehboob (one of the plaintiff of Suit-4). In nutshell thirty two objections were filed on behalf of muslim parties and two on behalf of Nirmohi Akhara.

3677. The first complaint is dated 14th April, 2003 submitted by Sri Mohd. Hashim and Mahmood Ahmad, plaintiffs in Suit 4 through their counsel Sri Mohd. Salim, Advocate. It is addressed to the Observers and says that as per the order dated 26th March, 2003 and 10th April, 2003 of this Court, ASI was supposed to keep in seal 'Bones' and 'Glazed ware' in regular manner but they have failed to do so and this is disobedience of the Court's order. The two Observers obtained comments from the in-charge, ASI team, and, put in the

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following note dated 14th April, 2003:

''प्रस्तुत प्रार्थनापत्र में अंकित आपत्तियों के सन्दर्भ में भारतीय पुरातत्व सर्वेक्षण (A.S.I.) के टीम प्रमुख श्री बी0आर0मणि का अभिमत प्राप्त किया गया। श्री मणि ने बताया कि विभिन्न ट्रेंचेज से प्राप्त अस्थियों (Bones) को सील करने में उन्हें यह व्यवहारिक कठिनाई है कि सीलबंद अस्थियॉ स्वमेव कुछ दिनों उपरान्त नष्ट हो जावेंगी इसके अतिरिक्त उन्हें उक्त अस्थियों को सीलबंद करने में कोई कठिनाई नहीं है। उन्होंने वह भी बताया कि प्राप्त अस्थियों की संख्या एवं लंबाई संबंधित पंजी में अंकित करके उन्हें रखने में भी उन्हें कोई कठिनाई नहीं है।

जहॉ तक ग्लेज्ड वेयर्स के सील किये जाने का प्रश्न हैं, इसके संबंध में श्री मणि ने बताया कि ट्रेंचों के विवरण में, संबंधित पंजी में, उनका सामान्य रूप से उल्लेख किया रहा है, चूॅकि ग्लेज्ड वेयर्स पुरावशेष (Antiquity) नहीं है, इसलिए अभी तक उन्हें सील नहीं किया जा रहा था। अबसे उन्हें सील करने में उनको कोई आपत्ति नहीं है। उन्होंने यह भी बताया कि अभी तक प्राप्त सभी ग्लैज्ड वेयर्स सुरक्षित हैं तथा उनका उल्लेख संबंधी पंजी में है।''

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"The opinion of Sri B.R. Mani, the in-charge of the team of Archaeological Survey of India (A.S.I) was obtained in context of the objections contained in the present application. Sri Mani has contended that the practical problem in sealing the bones obtained from various trenches, is that the sealed bones would de-generate automatically after a few days. Besides this, he has no other problem in sealing the said bones. He has also contended that he has no difficulty in maintaining and entering the number and length of the bones obtained, in the concerned register.

So far as the question of sealing the glazed wares is concerned, Sri Mani has contended in this behalf that in the details of trenches, they are being normally entered in

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the concerned pages. Since glazed wares are not antiquities, as such they are not being sealed at present. He has no objection in sealing them from now on. He has also contended that all the glazed wares discovered so far, are safe and their details are there in concerned registers."(E.T.C.)

3678. The objection dated 15th April, 2003 is again by the same two persons complaining that remains lying on the western side of the Babri Mosque are being removed without marking numbers and this act of ASI is contrary to the Court's order. The two Observers obtained comments from Sri B.R.Mani, Team Leader of ASI and mark following note dated 15th April, 2003:

''इस प्रार्थना पत्र पर भारतीय पुरातत्व सर्वेक्षण (A.S.I.) टीम लीडर श्री बी. आर.मणि का अभिमत प्राप्त किया गया। उन्होंने बताया कि ट्रेंचों में पड़े समस्त निर्णाण के अवशेष खण्डों की वीडियोंग्राफी, स्थिर फोटो ग्राफी करानें तथा उनका मोटे तौर पर रजिस्टर में विवरण अंकित करने में उन्हें कोई आपत्ति नहीं है तथा वे इस हेतु सहमत हैं। जहां तक अवशेष खण्डों पर संख्या डालने का प्रश्न है, इसके संबंध में उन्होंने व्यवहारिक कठिनाई बतायी तथा यह कहा कि अवशेष खण्ड़ों की ईंटें काफी जीर्ण शीर्ण दशा में है अतएव यदि वह ईंटें जिनपर संख्या डाली जावेगी यदि निकाल गयीं तो शिलाखण्डों पर संख्या डाले जानें का कोई प्रयोजन नहीं रह जावेगा। उन्होंने यह भी बताया कि संख्या डाले जाने पर उनसे इनके संरक्षण की भी अपेक्षा की जा सकती है जो उनके लिये व्यवहारिक रुप से संभव नहीं होगा।''

"The opinion of Sri B.R. Mani, the team leader of Archaeological Survey of India, was obtained on this application. He has contended that he has no objection in carrying out videography and still photography of the remains of all the constructions lying in the trenches and in broadly getting their details entered in the registers and

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that he agrees to it. So far as the question of numbering the remains is concerned, he has stated about the practical problems in this behalf and has contended that the brick of the remains are in very dilapidated state, hence if the bricks, which are numbered are removed, then no purpose would be served by numbering the stone blocks. He has also contended that after numbering them, their preservation can also be expected, which will not be practically possible for him." (E.T.C.)

3679. The complaint dated 7th April, 2003 (it appears that this complaint is wrongly dated and it ought to be 7th May, 2003 since in the complaint itself there is a reference of Court's order dated 10th April, 2003 hence it cannot be 7th April, 2003) is submitted by Sri Mohd. Hashim In Person, to the Observer complaining that the human bones, found in Trench ZG1, has been covered with soil without recording on the pretext that due to the objections of Muslims, it was not proceeded though no written objection was submitted by the Muslim parties and therefore, the bones recovered from Trench ZG1 as also from Trench F9 and G9 be directed to be recorded. The two Observers, after receiving comments from Sri Chandrabhan Mishra, Deputy Superintendent, the then incharge of ASI team, submitted its report as under:

*''इस प्रार्थना पत्र में वर्णित आपत्ति के संबंध में भारतीय पुरातत्व सर्वेक्षण दल के उपस्थित स्थानीय प्रभारी श्री चन्द्रभाल मिश्र उप अधीक्षण पुरातत्व विद से अभिमत प्राप्त किया गया। श्री मिश्र ने यह सहमति दी कि उनको ट्रेंच सं0 ZG1 व पूर्व में ट्रेंच सं0 F9, व G9 में प्रकट तथा वाद में आपत्ति करने पर उसे पुनः मिट्टी से दबाया गया अस्थियों को अभिलिखित करने में कोई आपत्ति नहीं है। **श्री मिश्र ने यह भी बताया कि ट्रेंच सं0 F9, G9 व ZG1 में पूर्व में जो अस्थियां व अस्थियों के***

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अवशेष प्रकट हुये थे, उनके संबंध में वाद के पक्षकार श्री हाजी महबूब अली द्वारा गंभीर आपत्ति की गयी थी जिसके कारण इन अस्थियों को ट्रेंच से न तो बाहर निकाला जा सका और न ही उन्हें अभिलिखित किया जा सका, अपितु उन्हें छायांकन के पश्चात उसी अवस्था में मिट्टी में दबा दिया गया था।''

"The opinion of Sri Chandrabhal Mishra, Deputy Superintendent Archaeologist and the local in-charge of Archaeological Survey of India, was sought on the objections contained in this application. Sri Mishra has consented that he has no objection in recording the bones, which were earlier found in Trench no. ZG1 and F9 and G9 and subsequently buried under soil on raising of objection. ***Sri Mishra has also contended that the plaintiff's representative Hazi Mahboob Ali had raised serious objections regarding the bones and bone remains found in Trench No. F9, G9 and ZG1, due to which these bones could neither be taken out of the trench nor were they recorded and after being photographed, they were covered by soil in the same stage****."*

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3680. Complaint dated 3rd May, 2003 was submitted by complainants through Sri Mushtaq Ahmad Siddiqui alleging that the procedure of putting seal on bags is not full proof and needs further modification by obtaining signatures of the parties on the seals put in by ASI. The team leader Sri B.R. Mani, ASI informed the two Observers that there is no objection in obtaining signatures of the parties or their advocates on the paper seal, put on the bags. Accordingly, the two Observers in their note dated 6th May, 2003 requested ASI to proceed accordingly.

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3681. The next letter is by Sri Mohd. Hashim, one of the plaintiffs (Suit-4) on 16th May, 2003 against the nomenclature of various artifacts recorded during excavation and says:

''खुदाई से प्राप्त सामग्री को जिस प्रकार संज्ञा दी जाती है उससे उलझाव पैदा हो सकता है। एक जली मिटटी का टुकड़ा एक कुर्सी मेज तथा किसी अन्य वस्तु का पाया या कोई और अंश हो सकता है वह किसी पशु, घोड़े, हाथी की टांग भी हो सकती हैं उसे तुरन्त संज्ञा देना उचित नहीं लगता संक्षिप्त वर्णन गोल, लम्बा, चौड़ा टेढ़ा, मेढ़ा उत्कीर्ण आदि दर्शाकर इससे बचा जा सकता है।

टूटी अधूरी व अस्पष्ट आकृति को कल्पना के आधार पर मनुष्य या पशु की आकृति की संज्ञा देना उचित नहीं है।

अतः श्रीमानगण से प्रार्थना है कि ***नियमानुसार वास्तविक व स्पष्ट आकृति प्राप्त होने पर ही उसे उचित संज्ञा दी जाने की व्यवस्था की जाय।''***

"Confusion can flow from the manner in which the articles found from excavation, are named. It can be a piece of burnt soil, a table chair and the leg or any other part of some article. It can be the leg of any animal, horse, elephant. It does not appear proper to immediately give it a name and this can be avoided by describing it briefly as round, long, wide, irregular, engraved etc.

It is not proper to name any broken, incomplete and un-clear figurine, as a human or animal figurine only on basis of imagination.

Hence, it is prayed that ***provision be introduced according to rules to give proper names only when actual and clear figurines are discovered."***

3682. Apparently this complaint is mischievous and worthless. The ASI experts identify such item/artifacts which ordinary people cannot. If only clear items were to be named, no

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expert would have been needed.

3683. A much more detailed complaint along with six sketch diagrams is submitted on 21st May, 2003 by Sri Haji Mahboob one of the defendant (Suit-3). It says that in Trench G2, digging has been made in such a way so as to create squarish structural base instead of a floor. This is tried to be explained by six sketch diagrams out of which three mention dates as 16th May, 2003, one 18th May, 2003 and two 20th May, 2003. The observers sought report from ASI officials. Sri A.R.Siddiqui, who at that time was incharge of ASI team, explained the matter whereupon following note was put by two Observers on 21st May, 2003:

> *"Enquiry was made from the incharge archeologist Sri A.R.Siddiqui with regard to the objections submitted by means of this application. He has given his views which are as under-*
>
> *1. All the members of A.S.I. Team are performing their duties as per normal excavation rules and archeological ethics.*
>
> *With regard to Trench G2, here also, digging of the trench has been done accordingly and each detail has been mentioned on the daily report.*
>
> *2. No violation of the archeological rules have been done in any trench including G2.*
>
> *3. The brickbats are still visible in the trench G2, which can be examined any time.*
>
> *4.* ***Entire area of Trench G2 has not been excavated hence objection in this regard is premature****. Recording and photography of exposed area has been done.*

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Photography of the entire trench will be done after the excavation is complete.

5. No enquiry has been made from Trench Supervisor Mr. S.K.Sharma as alleged in para 6 of his objection.

No other view was expressed by Mr. A.R. Siddiqui with regard to other points raised through this application."

3684. We have examined day to day register of ASI of 16th May, 2003 in respect to Trench No.G2. It says:

"*Operation Area 290 x 66 cm E.W.*

Digging closed at 48 cm

Floor 1 removed (3 cm in thickness); Floor-2 20 cm in thickness also removed. Floor with brickbats paving removed

Pottery: Red ware."

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It also appears that a bone of 35 cm was found besides one Glazed Tile fragment, terracotta. These proceedings are duly signed besides others by Sri Haji Mahboob also on 16th May, 2003 itself.

3685. The 18th May, 2003 proceedings in day to day register of Trench G2 mentions:

"Operation Area: 227 x 370 (EW) in the northern side

Digging closed at 63 cm.

Floor 2 removed. ***A pillar base on plan***.

Pottery: Red ware."

3686. Similarly, on 20th May, 2003, the following is mentioned in day to day register of Trench G2:

"Operation Area: Same

Digging closed at 79 cm in N & 91 cm in S. Floor of lime surfa.... in Kankar in S at 82 cm & another floor in N

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at 73 cm. Both the floors removed after recording ***and a brick paved floor noticed just below pottery****; Red ware, black slipped ware."*

3687. The proceedings of 18th May, 2003 and 20th May, 2003 are also duly signed by Sri Haji Mahboob.

3688. We have also perused site note book no.45 wherein recording of the proceedings pertaining to Trench G2 from 16th May, 2003 to 20th May, 2003 is noted at page 51 to 54. The Trench Observer Sri S.K.Sharma has recorded the proceedings as under:

"***Date – 16-05-03***

Trench No. - G2

Operation area- 300 cm (E.W.) x 200 cm (N.S.) in the northern side of the Trench

Digging started – 00 cm (Surface)

Digging closed – 48 cms.

Excavation was carried out in 290 (EW) x 66 cm (NS) area. ***A floor of lime surkhi with 3 cms of thickness was on plan which was removed. Another floor 1B of lime and surkhi was encountered and removed after recording. A floor of brick bat was exposed.*** *It might be the packing material for the above floor.* ***Below the brick bat ashy earth was noticed with kankar*** *and this layer (1) was removed partially in the southern part only.* ***A wall already on the floor 1 was left. It divides the Trench in two parts northern half*** *and southern half. Digging operation was undertaken only in southern part.*

Pottery – red ware

Antiquity. A glazed tile fragment, T.C. - 34 cm with green

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glaze.

Date – 17-05-03

Trench No. - G2

Operation area- 290 cm (East West) x 66 cm North South in the northern side of the Trench

Digging started – 48 cms

Digging closed – 57 cms.

The exposed area in the western side was cleared where a cluster of brick bats with a small dressed stone slab of 38 cm partially inside the western section encountered. The layer which is ashy with kankars was continuing.

Shell pieces were found during digging.

Pottery – red ware and are piece of glazed ware

No antiquity was found.

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Date – 18-05-03

Trench No. - G2

Operation area- 227 cm (NS) x 370 cm (E.W.)

Digging started – 57 cms in southern side

00 in northern side

Digging closed – 63 cms. in northern and southern

More area was taken for digging in the northern side of the trench. Digging was carried out in this side. A floor of lime, surkhi and kankar was exposed at a depth of 43 cms. It was removed. Layer (1) with compact clay with greyish colour was removed. ***A structure of brick bats and rectagonal in shape was encountered during digging. It has two calcreate stone kept side by side. It seems to be a pillar base already exposed in many trenches****. The base is*

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120 cm long. The calcrete stone measure 82 x 34 cm and second 61 x 10 cms with same part in the northern section. ***The pillar base has four (4) courses of brickbat****s. Layer (2) was partially removed.*

Pottery – red ware

No antiquity was found in course of excavation.

"***Date – 20-05-03***

Trench No. - G2

Operation area- 227 (North South) cm x 370 cm (East West)

Digging started – 63

Digging closed – 79 cms in the northern side 91 cms in southern side.

Digging was carried out in the northern and southern part of the trench leaving a section and ***earlier wall in between Floor No. 3 of lime and surkhi with kankars was exposed at a depth of 73 cms in the northern side and at a depth of 82 cms in southern side****. There were photographed and removed. Floor was made of lime and kankar in southern side while lime surkhi in northern one. A brickbat paved floor like structure was noticed below these floors. It may have been used as packing material for the floors exposed earlier.*

Pottery – red ware, black slipped ware."

3689. Thereafter, it appears that further digging in G2 Trench was made by Z.Ali, Assistant Archeologist and his notes in Site Note Book 32 (Page 21 to 49) are for the period 17th July, 2003 to 2nd August, 2003.

3690. Mohd. Hashim Ansari submitted complaint dated

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22nd May, 2003 to the Observer stating that Trench H4 and 5 on

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western side should further be excavated and white chabutara in Trench L8, be also excavated otherwise muslims shall treat as if the entire activities are for political gains and to harass the muslims.

3691. After obtaining comments from Sri A.R.Siddiqui, incharge/Deputy Superintendent, Archeology, the two observers endorsed the following comments:

''आपत्ति के सन्दर्भ में श्री ए0आर0सिद्दीकी, प्रभारी उप अधीक्षण पुरातत्वविद उत्खनन स्थल का अभिमत प्राप्त किया गया। उन्होंने यह अभिमत दिया कि–

(1) टेंच सं0 H4, H5 के पश्चिम तरफ की भूमि के उत्खनन के संबंध में मामला माननीय उच्च न्यायालय के समक्ष विचाराधीन है। माननीय उच्च न्यायालय के आदेश के अधीन इन ट्रेंचों में उत्खनन कार्य सम्पादित किया जायेगा। टेंच सं0 L8 में भी आवश्यकता होनें पर उत्खनन कार्य किया जावेगा।

(2) कंकरीट चबूतरे बाले ट्रेंच की खुदाई हो रही है।''

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"The opinion of Sri A.R. Siddiqui, in-charge/Deputy Superintendent Archaeologist Excavation Site, was obtained in context with the objections. He has given the opinion that:-

(1) The matter of excavation of the land in west of Trench Nos. H4, H5 is pending before Hon'ble High Court. The excavation in these trenches would be carried out under the orders of Hon'ble High Court. The excavation in Trench No. L8 would be carried out on requirement.

(2) The trench with concrete platform is being excavated."

3692. Next is a letter dated 28th May, 2003 of Sri Jilani informing the observers that some information/photographs has been leaked out to media by ASI people and therefore, the member of the team, who has made such disclosure to media, be

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immediately removed. This allegation was denied by Sri C.B.Mishra, Dy. Superintendent Archaeologist/Incharge ASI team and he declined to take action against the member of ASI since none is indulged in alleged activities. A note to this effect has been made by Sri H.S.Dubey, H.J.S. (Observer) on 29th May, 2003 on the complaint itself.

3693. To the same effect is the complaint dated 28th May, 2003 submitted by Sri Jilani on the photographs of an inspection alleged to have been found in Trench J3 whereupon again comments were obtained from Sri C.B.Mishra, Incharge Archeologist. Thereafter Sri Dubey, Observer recorded the following note on 29th May, 2003:

> *"In the light of the objections submitted through this application an enquiry was made from the Incharge Archeologist excavation, Sri C.B.Mishra Dy. Supt. Archeologist. Sri Mishra has given his views which are as under-*
>
> *1. So far as photograph of the inscription of Trench No.J3 is concerned no photograph of the inscription has been prepared so far. Only print art of the digital camera photography has been prepared and shown to the nominees/parties present on 4.5.2003. Signatures of the parties or their counsel have not been obtained on this print out.*
>
> *2. Photograph of the inscription published in the "Out-Look" of June 2, 2003, issue is not the actual and accurate photograph of the inscription found in J3,* ***but it has been prepared with the aid of computer and is dissimilar from the point of letter formation and size of the stone, which***

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is embeded in the aforesaid trench and till date has not been taken out of the trench.

3. No screen was even used by the A.S.I. Team for projecting the picture of the disputed inscription.

4. Photograph/estampage of the inscription published in June 2, 2003 issue of 'Out Look' is not available with the A.S.I. And no photograph/estampage has ever been supplied by any member of A.S.I., to Sri Sandeepan Deb Managing -Editor of the "Out-Look", or to any other person."

3694. Complaint dated 28th May, 2003 was made by Sri Jilani alleging entry of unauthorized persons at the excavation site. In this regard Observer obtained comments from the concerned Magistrate who was responsible to allow entry to Authorized Persons only. After receiving his comments, the Observer recorded as under:

"Information of this application was given to Authorised person. An enquiry was also made from the manas Bahawan Magistrate. Authorised persona nd Manas Bhawan Magistrate informed that no entry-pass was issued to Sri Sandipan Deb and he was not nominee of any party. They also informed that Mr. Sandipan Deb was never permitted by them to enter the excavation site and observe the excavation work. Instructions were given to Authorised-Person for not permitting entry of any one, how so ever high he may be, in the excavation area, who is not covered by the orders of the Hon'ble High Court. Same instructions were also given to manas Bhawan Magistrate."

3695. Sri Jilani, vide letter dated 31st May, 2003, sought

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permission to watch excavation work of Trench F-3 disallowed by security personnel on 30th May, 2003. We have seen the day to day register of 30th May, 2003. At the end of the proceedings, it contains signatures of four persons which included Haji Mahboob, one of the defendant in Suit-3, who had also appeared as witness, PW-2 on behalf of the plaintiffs (Suit-4). In fact on 29th May, 2003 also it appears that only four persons had signed the day to day register, which included the names of Sri Haji Mahboob and Mohd. Hashim Ansari, who are also plaintiffs in Suit-4. It is thus incorrect that parties or their representatives were not allowed to watch excavation work. It also cannot be said that any alleged discrimination was made by the authorities concerned for watching excavation work by the parties, their nominees or their representatives. Further, digging of Trench F3 commenced on 30th May, 2003 being a new Trench, and day to day register dated 30th May, 2003 contains the following note:

"Trench F3

New Trench (2.50 mt x 1.90 mt)"

3696. The above complaint was made on 31st May, 2003. The proceedings of 31st May, 2003, as is evident from day to day register, shows presence of seven persons, who have signed proceedings on page 218 which included Sri Haji Mehboob as well as Sri Jilani. The excavation observations pertaining to Trench F3 on page 216 in day to day register dated 31st May, 2003 are as under:

> *"Operation area (2.50 mt x 2.50 mt) today extended towards south and west. Digging started from .40 mt and closed at the depth of 1.63 mt from Dmt Surface.* ***A L shape wall running west to east and South to North has been***

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found made of Calerall, stone and sand stone block. The lime plaster over the wall partly damaged is noticed. Carved stone block contain two courses is also found in the section facing south."

3697. The Observer Sri H.S.Dubey obtained comments from the Authorized Person and made his observations as under:

"This objection was submitted at 11.10 a.m. today. Before information of this application could be given to the Authorised-Person, at about 12 Noon, message of Authorised Person was received through Nodal-Officer-Excavation site, RJB/BM, to the effect that Authorise-Person has no objection in the observation and watching of the excavation of Trench F3 or any other Trench by the parties, their counsels and nominees. It was also informed that no discrimination could be done on the basis of being Hindu or Muslim, in regard to the watching of the Trenches. Thus there is no necessity to take further step in this regard. After receipt of this application at about 12.10 p.m. Parties, their counsels, nominees visited the Trench F3. Thus the matter ends."

3698. The letter dated 7th June, 2003 is signed by several persons including Sri Jilani requesting Observer to ensure arrangement of waterproof Shamiyana over the entire area of Trenches to protect from damage due to water pouring etc.

3699. A much detailed complaint has been filed on 7th June, 2003 by Sri Jilani, Sri A.A. Siddiqui, Sri Haji Mehboob and Mohd. Hashim against the procedure followed by ASI Team in excavation. Allegations are made that in certain trenches i.e. G2 and ZF1, the brickbats randomly scattered over the

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excavated area were selectively removed by the Trench Supervisor to create a visual impression that the brickbats were confined to only a portion of the excavated area and that is how the structural bases have been discovered. It is said that these two trenches were monitored from 16th to 20th May, 2003 and 29th to 30th April, 2003 respectively. Lastly, it is complained that this kind of activities may have been followed in certain other trenches i.e. F10, F9, G9, F8, G8, F7, F6, G5, G2, F1, G1, H1, ZG1 and ZH1. To appreciate the complaint properly, we reproduce its contents hereunder:

> *"Excavation procedures, in general, comprise of two aspects: a) diggiing in layers in trenches and b) recording through drawing and photography. It is the accuracy and transparency with which the above are done that will eventually impact on the interpretation of what is unearthed. This applies not only to structures but also to artifacts. However, it is precisely the lack of accuracy and transparency in relation to both structures and artifacts that marks the ongoing excavations at Ayodhya.*
>
> *The Progress Report up to April 24, 2003 submitted by the ASI makes note of "squarish/circular structural bases having brickbats at the base with two rectangular blocks of calcrete stone over three or four courses of brickbats ... the same type of structural base, with a sandstone block at the top having encasing of sandstone slabs/pieces, on its four sides, were found in the northern side also." The excavation of two such structural bases was closely monitored in Trenches* ***G2 and ZF1****.*
>
> *A close observation of the excavation and recording*

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was done of ***Trench G2*** *from* ***May 16 to May 20, 2003****. It was found that brickbats randomly scattered over the entire excavated area were selectively removed so as to create a visual impression that the brickbats were confined to only a portion of the excavated area. An examination of the section even now reveals the fact that brickbats lay in the entire layer below Floor 1. When Floor 2 was dug through, once again a whole layer of brickbats was exposed which is still visible on the floor of the trench. Similar observations were made in* ***Trench ZF1 from April 29 to April 30, 2003****. Floor 1 was exposed at 40 cm bsl, Floor 2 at 57 cm bsl and Floor 3 at 80 cm bsl, all floors being lime-surkhi floors. Floor 1 was reached on April 29, 2003 that was cut through on April 30, 2003 exposing a complete brickbat layer. But during excavation, when a stone was observed as protruding out of the brickbats, the brickbats in the area immediately near the stone were left in place in a squarish shape while the rest of the brickbats were thrown. On April 30, 2003, when Floor 2 was cut through, the same kind of brickbat layer was exposed beneath it. This brickbat layer is easily seen even today by observing the south-facing section in* ***Trench ZF1*** *(see Fig. 1).*

A more accurate recording in both cases would have shown lime plaster and mortar above the brickbats as these are part of the same floor. Lime-surkhi floors appear to have been laid over a combination of stone blocks and brickbats. The stones are places at intervals, in some cases quite randomly (as evident from F6-see Fig.2), with intervening spaces filled with brickbats, mud and brick

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modules.

It is also apparent that this floor construction technique continued through successive phases of floor construction. At an early stage, at a depth of roughly 1.5m, resting on a brick-jelly filling, is structural base (henceforth sb) No. 5 in Trench F8 (see Fig.3). The same construction of brickbats underlying calcrete blocks is noticed here. This method of construction continued into the last building levels as seen in the case of sb No. 13 and also No. vi in ***Trench G2*** *(see Fig. 4). So also is the case in* ***Trench F6*** *where a rectangular sandstone slab, two calcrete blocks, bits of broken floor and a smaller sandstone piece in a tilted position were recovered lying in the northwestern part of the trench just under the top floor. Stones were also used as fillers and leveling mechanisms (apart from forming part of foundation walls) as evident from the sandstone blocks that extend over almost 4m in the northern part of the trench (see Fig. 2).*

These kinds of structural bases have been indentified in Trenches F10, F9, G9, F8, F7, F6, G6, G5, G8, G2, F1, G1, H1, ZF1, ZG1 and ZH1 (see No. 1-21 in Fig. 4). ***It appears*** *that in the above-mentioned trenches too, brickbats were selectively removed in order to create an inaccurate visual impression of circular/squarish structural bases as revealed by a section study.*

An examination of the sections of many of these trenches reveals that brickbats underlay the floors ***just as observed in the case of G2 and ZF1****. At the same time, it is disconcerting to note that brickbats have been removed*

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from the sections of various trenches: the south-facing section of ***G8/G9 baulk,*** *north-, south- and east-facing sections of* ***F1****, north- and south-facing sections of* ***G1****, north-facing section* ***H1*** *and east-facing section of the* ***H1/H2*** *baulk, south- and west-facing sections of* ***ZF1****, east- facing section of* ***G2*** *and east-facing section of* ***F9****. This is surprising as the sections of lower levels below 2 m bsl of Trenches F8, G7 and J5/J6 are left with large bricks and potsherds protruding while in the upper levels (roughly above 2 m bsl), brickbats are often pulled out or chipped off level with the section.* ***This is also the case with human bones found*** *at a depth of 1.30 m in Trench* ***ZG1*** *that have been cut off in the section.*

Inaccurate recording of artifacts recovered in excavation is equally worrying *as this will impact on the eventual interpretation of the archaeological evidence. More importantly, the dating of structures largely depends on artifactual evidence found in a particular stratigraphical context. If there are inaccuracies in the reporting of artifacts,* ***through selective collection, the dating of structures will also be inaccurate****. Methods of taking depth measurements of structures and artifacts, for example, are unsatisfactory as no spirit level is used to ensure that the measuring tapes are absolutely horizontal. Second, sorting is carelessly done for the excavation of the upper levels (roughly 2 m and above); very often what is picked up is what appears to strike the fancy of the labourers. On May 2, 2003, in* ***Trench ZH1****, an area covering 4 x 0.5 m up to a depth of 0.5 m was dug through*

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and the soil thrown away without sorting. Bones from a human skeleton too were mostly thrown away. ***This situation contrasts strongly with the excavation of the lower levels (below 2 m) where sieving was done for Trenches J3 and G7****. At the same time, it is intriguing to note that* ***very careful sorting and collection was done for the upper levels of Trench G5****.*

*There appears to have been a selective collection of artifacts with the labour instructed to collect particularly moulded bricks, sculpted stone fragments and terracotta figurines. These last are all seen as contextually recovered while others such as Islamic glazed pottery, glazed tiles and animal bones are regarded as part of fill or dump or from a pit, and in many cases are thrown away. In the most recent such case (****from May 24-27, 2003****), the dump (about 1.5 m deep) over the top floor in Trench G5 yielded in a 2.5 x 4.0 m area 26 sandstone slabs and blocks that were collected and individually photographed. In contrast, the 61 calcrete blocks and pieces, out of which 8 were dressed blocks were all thrown away, save two blocks. The calcrete blocks were significant pieces of evidence from the relative quantity recovered as well as the plaster and mortar on them that indicates that they were used in constructing the walls of the Babri Masjid. Bricks that would also have been used in the walls of the mosque were thrown away while modern fresh bricks, without morter or plaster, (moulded with the number ZKR33) had been collected.*

Other inaccuracies can be pointed out taking as an example just two days (May 21-22, 2003) out of over two

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months of excavation. ***Trench J1 was reported to have been excavated up to a depth of 1.06 m on May 21, 2003 and 1.45 m on May 22, 2003. Yet, a glazed tile reported from the trench on May 22, 2003 was said to have been found at 0.65 m.*** *The above was not reported as recovered through section scraping.* ***The depth recorded for F8 on May 21, 2003, was 2.70 m and on May 22, 2003 at 2.65 m****. With each subsequent dig, the depth of a trench is supposed to increase while* ***here the reverse seems to be taking place suggesting inaccuracy in measurements****.*

These kinds of inaccuracies are also reflected in the Progress Report (up to April 24, 2003) submitted to the Lucknow Bench of the Hon'ble High Court. The physical description of the structural bases, indicating uniformity in their construction, is imprecise. In most of the structural bases, brickbats are not placed in courses but are random, in many cases in a tilted position. The height of brickbats varies from 5-55 cm even within the same so-called structural base. Brickbats do not only lie under the stone but even over as in sb No. 11 and 12 in F7 and sb No. 2 in F10. Diameters range from 1.10 m in sb No. 9 to 1.90 in sb No. 12. What is also averred as two rectangular blocks in each structural blocks is not always the case as seen in Trench G1 where sb No. 19 has four pieces of broken and undressed calcrete of varying shapes and sizes. Sizes of stones vary in most of the structural bases; for example, sb No. 15 has three large calcrete slabs (70 x 15 cm; 65 x 20 cm; one with width 20 cm, length unknown). Sb No. 11 in F7 has two calcrete slabs (55 x 20 cm; 55 x 25 cm) and sb

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No. 10 has two sandstone blocks (55 x 25 cm; and a partially visible piece, 55 x at least 10 cm). Sb No. 12 in F7 has five pieces, four somewhat rounded calcrete blocks and a small sandstone piece in the center. Allthe larger pieces are roughly 30 x 20 cm. In fact, the shape of structural bases varies very often from square to rectangular to circular to oval.

As mentioned earlier, the Report claims that similar ***structural bases have been found in the northern area as well. However, this is not the case****. The* ***structural bases*** *recovered in the north (No. a-j in Fig. 4)* ***appear to have been part of a separate much later period structure****. These cover at least an area of 10 x 10 m. In the northern area are four clearly identifiable floors (including the top floor) and these sandstone structural bases are embedded in Floor 1 (see Fig. 1) and hence were contemporary with Floor 1. It appears that these sandstone bases had a calcrete block underneath. The impression being created by the ASI is of a brickbat base under the calcrete block. However, the brickbats underneath are only part of Floor 2 construction. Structural bases No. a-j are clearly differnt from No. 1021 not only in physical description but also in the sizes of the stones used. All the sandstones here measure 46 x 43 x 9 cm. This kind of uniformity is not the case with sb No. 1-21.*

While No. a-j appear to be structural bases, No. 1-21 are clearly not so. In the case of No. a-j the dressed and sometimes polished sandstone slab with the casing would have been visible with the supporting calcrete block under

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the floor and hence the latter would not have been visible. However, this does not appear to have been the case with sb No. 1-21. In the case of sb No. 8 in Trench F8 (see Fig. 3) and No. 11 in F7, for example, brickbats overlie the calcrete blocks and the whole is visible over the floor to which they are supposed to be contemporary. It clearly indicates that these cannot have been structural bases as this portion (brickbats and calcrete blocks) should logically have been under Floor 2. It also means that brickbat-cum-calcrete construction is post-Floor 2. It also means that brickbat-cum-calcrete construction is post-Floor 2. Further, sb No. a-j have no brickbats between the sandstone and the calcrete and this is not the case with sb No. 1-21. The brickbats overlying the calcrete blocks in sb No. 1-21 would have made the entire structure extremely unstable and incapable of supporting any superstructure. Brickbats would in fact get crushed under the weight of any superstructure. Moreover, if sb No. 1-21 were supposed to be structural bases, then surely those of circular shape would have been made of better and wedge-shaped bricks. Instead, what are found are brickbats very often of jagged shape (see Fig. 5), obviously achieved while being carved out during excavation.

That there is a problem with the interpretation of these structural bases is apparent from Trenches E6 and F6. What has been made out to be a structural base in Trench F6 appears to have been, on subsequent excavation, to be only part of an east-west running wall (see Figs. 6 and 7).

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It is requested that it may kindly be ensured that a more accurate recording of structures, artifacts and depth measurements, of structures and artifacts, be maintained and the fictitious and manufactured structural bases being sought to be created in Trenches ***F10, F9, G9, F8, G8, F7, F6, G5, G2, F1, G1, H1, ZF1, ZG1 and ZH1*** *be kindly not labeled as structural bases and that No. 1-21 be got dismantled."*

3700. Sri H.S.Dubey, Observer obtained comments from Sri B.R. Mani, Superintendent Archeologist, who was incharge of excavation site and his views have been noted down on 8th June, 2003 as under:

"The views of Incharge excavation site Sri B.R. Mani Supt. Archeologist were taken on this objection. Sri Mani expressed the following views:

1. There seems to be a calculated effort to defame the A.S.I. And demoralize it's team member by making statements through media and also through applications like the present one submitted by one of the parties in the case. A.S.I. being the premier institution of archaeology in the country has always been famous for accuracy and scientific approach in exploration and excavation work. For the first time a large scale excavation in a time bound manner in the presence of contesting parties, their advocates and nominees has been assigned to the A.S.I. by the Hon'ble Court for which two observers are also appointed. Under such circumstances there cannot be any lack of transparency and accuracy in relation to both structure and artifacts in digging and recording by the most

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experienced and expert excavators of the Country.

2. It is totally wrong to say that brickbats were selectively removed to create in accurate visual impression on structural bases. On the other hand in loose and fallen brickbats were removed and well laid brickbats were left at their position while digging which have given circular/squarish shapes of pillar bases in several courses, often topped by huge stone blocks.

3. It is not understood that the ***allegation is made about dating of structures when the final report itself has not yet been released****. The recording of artifacts is perfect and as per approved principles of excavation, the depth are being taken for which each and* ***every trench Supervisor is using Spirit-levels which are provided to them, mostly attached with their tapes, which is perhaps not noticed by the parties putting allegations****.*

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4. The collection of artifacts having decoration, designs, sculpted stone fragments, terracotta figurines, glazed tiles etc. are being made to suggest the concerned evidence. The feat usless material of universal type of not selected as archaeology finds and not sealed.

5. The materials found are being preserved after recording their find either in a particular layer or in dump or fill, in respective of their nature. ***They may be glazed pottery or tiles or animal bones, particularly the last one which are usually found in pits and not as groves****. These materials are being photographed, their drawing are being prepared and many of them being antiquities are sealed besides bones and glazed tiles.* ***Nothing of this sort is***

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thrown away. *Construction pattern of Babri Masjid is known very well for which collection of evidence is not required. Modern bricks have not been collected and nothing of archaeological importance has been thrown away.*

6. It is again informed that no structural base has been created which has been observed by everyone and structural remains are being brought to life and cannot be dismantled as desired by the party concerned as it is against the principles of excavation and archaeological norms.

No other view was expressed by Sri Mani, with regard to this objection."

3701. We have also examined the above complaint from the record. The excavation of Trench G2 commenced on 16th May, 2003. The recording of the proceedings by Sri S.K.Sharma, Trench Supervisor has already been mentioned above. This digging continued under the supervision of Sri Sharma for four days i.e. 16th May, 2003, 17th May, 2003, 18th May, 2003 and 20th May, 2003. On all these four days, as per day to day register, the parties or their nominees, as the case may be, were present and had signed the said register as under:

16.05.2003	Mahant Bhaskar Das, **Haji Mahboob**, Sri R.L. Verma, Advocate, **Mohd. Hashim Ansari**, P.Sahu
17.05.2003	P.Sahu, **Mohd. Hashim Ansari**, Sri R.L.Verma, Advocate, Mahant Bhaskar Das, **Sri Jilani, Haji Mahboob**
18.05.2003	P.Sahu, Sri R.L.Verma, Advocate, **Haji**

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Mahboob, Mahant Bhaskar Das, **Mohd. Hashim Ansari**

20.05.2003 P.Sahu, Sri R.L.Verma, Advocate, **Haji Mahboob**, Mahant Bhaskar Das, **Mohd. Hashim Ansari**

3702. No such complaint that the Trench Supervisor or ASI people are making excavation in a different way was reported, if they were so watched by the above complainants continuously. It does not appear that any of these complainants is a technical person. On 21st May, 2003, on the basis of four days excavation of trench G2, Haji Mahboob, defendant in Suit-3 submitted complaint dated 21st May, 2003, which is appended with six sketch diagram. Haji Mahboob, in his own oral statement, has admitted that he is not a technical man. Obviously, the said complaint must have been prepared by someone else who had not taken the responsibility nor the name of such person has been disclosed. It is a bit surprising that upto four days of digging, when Haji Mahboob and Mohd. Hashim Ansari were throughout present and signed day to day register, but did not find anything wrong. However, a well technically advised complaint was made on the very next day i.e. 21st May, 2003. Thereupon the Observers obtained comments from Sri A.R.Siddiqui, Incharge Archeologist on that very date and placed his note on record. After more than fifteen days thereafter, complaint dated 7th June, 2003 was prepared with a similar kind of allegations but now in respect to some more trenches. It is also accompanied by a large number of technical sketch diagrams.

3703. The two witnesses PW-29 Dr. Jaya Menon and PW-

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32 Dr. Supria Varma claim to have made the complaint of creation of pillar base by ASI people to the muslim parties. On page 79, PW -32 Dr. Supriya Varma has said:

> *"These complaints were filed by Dr. Jaya Menon and me. These complaints were handed over to muslim parties and their counsels."*

3704. **PW-32, Dr. Supriya Verma** was present at the site on the following dates:

(a) 5th April, 2003 to 12th April, 2003, (b) 11th May, 2003 to 31st May, 2003, (c) 22nd June 2003 to 27th June, 2003 and (d) 8th July 2003 to 19th July, 2003

3705. **PW 29 Jaya Menon** has given the period when she was present at the site, in para 2 of her affidavit, as under:

(a) 26th April, 2003 to 2nd May, 2003, (b) 20th May, 2003 to 31st May, 2003 (c) 22nd June, 2003 to 27th June, 2003 and (d) 19th July, 2003 to 26th July, 2003

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3706. Therefore, at Trench G2, between 16th May, 2003 to 19th May, 2003, according to the own admission, PW 29 was not present. Similarly at trench ZF1, PW 32 was not present (29.4.2003 and 30.4.2003). PW 29 in para 13M(i) of the affidavit under Order XVIII, Rule 4 has asserted that she observed Trench ZF1 from 29th to 30th April, 2003, noticed creation of pillar base and made a complaint.

3707. The Site Note Book no. 30 maintained by Sri A.R.Siddiqui, Trench Supervisor show at page 24 that digging of Trench ZF1 commenced on 29th April, 2003 and on that date digging could be made up to the depth of 40 cm. The note on the Site Note Book 30 dated 29th April, 2003 regarding Trench ZF1 is as under:

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"This trench ZF 1 is also measuring 4 x 4 Mtrs. But ***its half of the part towards northern side is occupied by the barbed wire fencing and flower trees. So the only southern portion of the trench could be possible for excavation i.e. 4 x 2 Mtrs****.*

After cleaning the debries and brushing the surface the digging work in this trench has been started from the 0 cm depth up to the depth of 40 cms. At the same depth a floor made of lime and surkhi exposed towards western side of the trench. At the same time a brick wall exposed running towards west-east attached with the southern section of the trench resting on lime floor. The width of the brick exposed wall was 40 cms.

Finding : a red sand stone piece showing lotus (sic)

a glazed tile piece of blue colour T.C. Red ware and bones."

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3708. On 30th April, 2003, the digging commenced at the depth of 40 cms. and closed at 65 cms.. The note of the Trench Supervisor Sri Siddiqui is as under:

"After digging up to the depth of 65 cms ***a brick structure or so called pillar base foundation was exposed*** *almost at the centre of the trench measuring 100 x 100 cms. At the same depth and same level a floor made of lime Surkhi was also exposed on either side of the brick structure which is the earlier one or if both these were constructed at the same time so what was the purpose of building of both these structure as there is no co-relation between the two with each other.*

Finding : glass bangle pieces

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Red ware T.C.

Bone pieces"

3709. We may note here the proceedings of 1st May, 2003, 2nd May, 2003 and 3rd May, 2003 of Trench ZF1 also, as under:

"Trench – ZF-1

Date – 01.05.03

Digging started – 65 cms.

Digging closed – 80 cms.

Digging again started in this trench at the depth of 65 cms. After reaching to ***the depth of 75 cms. again a floor made of lime and Surkhi was also discovered*** *on the western side attached with the section upto the almost half of the trench.*

At the same time and same depth a wall made of bricks also exposed in the northern section running from west to east direction of about 200 x 55 cms. area.

However again the exposed floor removed for further digging. The last depth of this trench was 80 cms.

thus the layer making in this trench could be ascertained as under

A Layer (1) at the depth of 40 cms in the shape of lime surkhi floor

B Layer (2) at the depth of 65 cms in the shape of lime surkhi floor

C Layer (3) at the depth of 75 cms in the shape of lime surkhi floor

Photo recording of this trench with layers and floor completed.

One iron nail piece, red ware pottery pieces, bone pieces,

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and black slipped recovered at a depth 65-80 cms.

*"Trench – **ZF-1 and ZE-1***

*Date – **02.05.2003***

Trench – Baulk removal between ZF-1 and ZE-1

Process of Baulk removal which was lying between ZF1 and ZE-1 started to find out position under the boulk. The size of this boulk was 200 x 100 x 60 cms.

After removal of baulk a floor made of lime and surkhi exposed partly in ZF.1 and partly ZE-1 trenches measuring 342 x 170 cms. the floor exposed running towards west east direction attached with the southern section at a depth of 75 cms.

*The archeological finds were, **Decorated Stone piece, stone beading, a wooden beading containing grove lining redware, bone pieces, and terracotta pottery pieces**. These were recovered during removal of above baulk.*

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***Photorecording done after removal of baulk and exposed floor**.*

Two pits also received on either side of the brick pillar base foundation.

"Date : 03.05.2003

Trench : ZF 1

Operation area : 4 x 2 Mtrs.

Digging Started : 80 cms. depth

Digging closed : 90 cms depth

Due to removal of baulk the further digging work could not be continued. However, after a gap of one day, again this trench taken into consideration. During the

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course of digging just at 08 cms below the lime floor at a depth of 83 cms a brick wall with lime plaster exposed in this trench extending up to the next trench i.e. ZE.1. The wall was 55 cms wide while the length was 7.40 mtrs resting on a brick bats.

Further digging was continued up to the depth of 90 cms where ***again Floor (4) made of brick exposed on both the sides of the brick structure called pillar base foundation****. This earlier exposed pillar base structure is measuring 118 x 102 cms. Thus in this trench No. ZF.1 the stratigraphic context may be ascertained as under:*

Layer (1) i.e. floor (1) at the depth of 40 cms.

Layer (2) i.e. floor (2) at the depth of 65 cms.

Layer (3) i.e. floor (3) at the depth of 75 cms.

Layer (4) i.e. at the depth of 90 cms.

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3710. The day to day register mentions following for the same period, as above, regarding Trench no.ZF1:

"Trench ZF 1

Operation Area : 4 x 2 mt.

Digging started at 25 cm & closed at 40 cms.

A lime surkhi floor exposed on plan, partly damaged in the central half. A brick wall towards south running east-west.

Pottery: Red ware, slipped black ware" (Page 110)

"Trench ZF 1

Operation Area : same

Digging started at 40 cm & closed at 65 cm

A lime surkhi floor exposed at western walls. Brick & stone pillar base also exposed (1 mt x 1 mt) in the centre of the trench.

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Pottery: Red ware, black slipped ware" (Page 115)

"Operation Area : Same

Digging started at 65 cm & closed at 80 cm.

Floor of lime surkhi at a depth of 72 cm and a brick wall running E-W.

Pottery: Red ware, black slipped" (Page 118)

"ZF1-ZE1

Baulk removed

Intermediate baulk between ZE1 & ZF1 was removed down to Floor 2 at the depth of 48 cm.

Pottery: Red ware, black ware etc." (Page 122)

"Trench ZF 1

Operation Area : 4 x 2 mt.

Digging started at 75 cm & closed at 90 cm.

A brickwall with lime plaster on outer face exposed upto 80 cm. The wall is 55 cm wide. A lime surkhi floor exposed on both sides of brick & ***stone pillar at 90 cm****.*

Pottery: Red ware, black slipped ware" (Page 129)

3711. The day to day register on all the five days, as above, has been signed by the parties or their representatives but none of the above two witnesses have signed it. The two witnesses did not remain at Ayodhya from 1st June to 21st June, 2003. Therefore, we do not find any occasion for them to play any role in preparation of the complaint dated 7th June, 2003 or that might have been prepared by them by 31st May, 2003 but submitted on 7th June, 2003. We do not find anything on record to show that besides these two, anyone else assisted the complainants in preparing the objections since only these two have claimed on it.

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3712. Now, the careless manner in which the complaints are made may be seen. On internal page three, in last paragraph, the complainants say that the depth recorded for trench F8 on May 21, 2003 was 2.70 m. and on May 22, 2003, it was found 2.65 m. It is complained that instead of increasing, the depth has gone decreasing. Had it been so, the complaint would have been absolutely correct. However, from perusal of Site Note Book No.44 maintained by Sameer Deewan, Trench Supervisor, on page 39 we find that the digging of trench F8, on 21st May, 2003, started at 220 cm depth and closed at 260 cm. On 22nd May, 2003, page 41 of the aforesaid site note book shows that the digging started at 260 cm and closed at 265 cm. The complainants instead of 260 cms. have mentioned 270 cm which showed that either they have deliberately tried to misguide the authorities or the complaints lack *bona fide*. This laxity is strengthened from the fact that in para 8(A) of the affidavit, PW 29 has said that on 2nd May, 2003 in Trench ZH1 area covering 4 x 0.5 metre dug upto a depth of 0.5 metre and soil was thrown without any sorting.

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3713. PW 32 on page 212 of statement has said:

> *"The Trenches G-2 and F-3 were excavated in my presence."*

3714. The Site Note Book No.16 pertaining to Trench F3 maintained by Sri Sujeet Nayan, Trench Supervisor, shows that digging of Trench F3 started on 30th May, 2003 and continued till 19th July, 2003. A pillar base was found on 5th June, 2003. Page 25, site note book says:

> *"A squarish brick structure (and in a "middle portion" scored out) seems to be a pillar base was noticed*

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at the depth of 2.86 metre from surface and continued upto 3.03 to 3.08 metre resting on floor 3."

3715. Admittedly, PW 32 was not present at the site from 1st June, 2003 to 21st June, 2003 and therefore, her claim that the excavation was made in her presence in Trench F3 as such is not correct. The correct position is that excavation of Trench F3 started when she claims to be at the site but on the date when pillar base was found, she was not present at the site. On page 211 about the objection dated 7th June, 2003 she said:

"I have clearly mentioned about the structural basis (which was later prescribed as pillar bases) in ***my objections dated 7th June, 2003, I do not know as to when the trenches referred in para 3 of objections dated 7th June, 2003 were excavated****. Since I was not present at the time of excavation of above referred trenches, I cannot exactly disclose as to when these trenches were excavated."*

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3716. PW 32 also said that the objection dated 21st May, 2002 was also her's, as is evident from page 212:

"It is wrong to suggest that except the objections dated May 21, 2003 and 7th June, 2003, I have not prepared any other objection for the party I represented. It is correct to say that ***my objections of May, 21, 2003 related to trench G-2 alone****. It is completely wrong to say that no irregularity had been committed as mentioned in the objection dated 21st May, 2003, vis-a-vis, the irregularity during excavation in trench G-2 and it is also wrong to say that there was no occasion to point out any irregularity."*

3717. From the texture and the over all facts and circumstances, some of which we have already discussed, it

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appears to us that as soon as underneath structures started appearing, the complainants, in consultation with their alleged experts, engaged in preparing a kind of anticipatory ground to assail the ASI people, their proceedings and report. What was submitted on spot does not show that it was a simultaneous preparation of something which was actually observed and found objectionable by the persons present thereat.

3718. PW 30, who claims to remain present at the site of excavation from March to August 2003 (para 2 of the affidavit), has said on page 118:

> *'यह सही है कि अयोध्या की खुदाई में अदालत के आदेशों के अनुसार सभी पक्षकार एवं उनके नामिनी की उपस्थिति में ही कोई मजदूर या ए0एस0आई0 टीम का कोई सदस्य उत्खनन क्षेत्र में जा सकता था। खुदाई के समय अदालत द्वारा नियुक्त पर्यवेक्षक उपस्थित रहते थे। .... खुदाई के समय मेरे साथ मुस्लिम पक्ष के एक, दो, तीन एक्सपर्ट – नामिनी रहते थे।'' (पेज 118)*

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> *"It is true that in the Ayodhya excavation, under the orders of the court, any labourer or any member of the ASI team could go to the excavation site only in the presence of all the parties or their nominees. Court-appointed supervisors used to be present at the time of excavation. ... At the time of excavation, I used to be accompanied with one or two or three experts or nominees from the Muslim side." (E.T.C.)*

3719. **PW 16, Suraj Bhan**, visited the site of excavation for three days in June 2003 and has admitted that consistent with the GPR survey anomalies, ASI has discovered certain walls, pillars, floors. He stated :

> *''जी0पी0आर0 सर्वे ने जो एनामलीज हिन्ट की थी, उनमें से कुछ पर उत्खनन में **वाल्स, पिलर्स और फ्लोर्स तो मिले थे**,'' (पेज 153)*

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"at some places in respect of which anomalies were hinted in the G.P.R. survey, ***walls pillars and floors were discovered*** *in the excavation" (E.T.C.)*

"मेरी दृष्टि में ए0एस0आई0 की रिपोर्ट में ***जो आलोचना न किए जाने वाली चीज़ थी****, वह यह थी कि* ***उन्होंने बाबरी मस्जिद के नीचे कई दीवारें, फर्श और कुछ पिलर बेसेज़ खोज निकाले हैं, यह साक्ष्य है****।" (पेज 199)*

"In my opinion, the ASI Report had ***a feature not amenable to criticism****. It was that they (the excavators)* ***have discovered many walls and floors and some pillar bases beneath the Babri mosque, and all these constitute evidence.****" (E.T.C.)*

3720. We find it a bit surprising that the two experienced experts i.e. PW-16 and 24 of plaintiffs (Suit-4) visited the site in June, 2003 yet they were not taken into confidence by disclosing full facts pertaining to the alleged creation of pillar bases.

3721. **Trench F10** was taken up for excavation on 18th May 2003 by the Trench Supervisor Z. Ali. Site notebook no. 9 from pages 37 to 45 deals with Trench F10 which was excavated on 18th, 20th, 21st and 22nd May, 2003 Sri Z.Ali found floors and brick structures which he mentioned in detail. The day to day register dated 18th May 2003 at page 178 says:

"Trench: F10 New Trench Opposite Areas: Norther half

Digging closed at 10 cm.

Squarish brickbats alignments noticed on plan

Pottery: Red ware."

3722. Similarly further details of other three days are on pages 183, 187 and 191. They are also duly signed by the representatives of the parties which do not include either PW 29 or PW 32.

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3723. In the complaint, about Trench F10, the only averment is:

> *"Brick bats do not only lie under the stone but even over as in SB No. 11 and 12 and **F7** and SB No. 2 in **F10**."*

3724. This is the only reference of Trench F10 mentioned in the aforesaid complaint. Thereafter, in the concluding part it has been included with the allegation that structural bases are being sought to be created in trenches. The site notebook no. 9 on page 37 shows that after initial excavation a floor was exposed and in order to go deep the floor was removed in the north half. It is just below the floor, a single course brick alignment partly squarish shape was noticed at 10 cm depth which was below the floor. Then again further structure was found on 20th May, 2003 going further deep, i.e., from 10 cm to 52 cm.

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3725. We find no reason to doubt the correctness of the above record. There does not exist any other reason to infer that there could have been any occasion for the Trench Supervisor, Sri Z. Ali to create any pillar base on his own and if so why.

3726. **Trench F9** is mentioned in the complaint with a general statement that brick bats have been removed from the sections. Amongst other, Trench F9 is also mentioned.

3727. Site notebook no. 18 contains the details of excavation of Trench No. F9 under the Trench Supervisor, Sujeet Narayan (Assistant Archaeologist). The work started on 8th April, 2003 and on the first day, digging was made up to the depth of 25 cm. Further digging was made on 9th April, 2003 from 25 cm to 55 cm, and on 17th April, 2003 from 55 cm to 80 cm. On page 6 of the notebook, discovery of a pillar base at the

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depth of 50 cm is mentioned on 9th April, 2003. PW 29 obviously was not present when the above digging took place though PW 32 was present at the site as claimed by her. There is no averment however by her that she witnessed anything wrong in Trench F9.

3728. In the day to day register dated 9th April, 2003, brief detail of the work of Trench F9 is mentioned at page 39 to 41. The register has been signed by nine persons which included Mohd. Abid, Mahfooz Ahmad, Khalid Ahmad Khan. We find no reason as to why after almost two months this kind of complaint was made when at the relevant time nothing of this sort was found by any party particularly when nine persons have signed day to day register showing that it was highly watched at that time.

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3729. Moreover GPR survey indicated anomaly at the depth of 0.5 meter and ASI actually found pillar base in Trench F9 at such depth which conform the said anomaly. PW 32 Dr. Supriya Verma has admitted that she is totally unaware of the GPR report and has not even gone through it. On page 133/134 she has shown her unawareness with GPR survey report. On page 132 she said "*such so called pillar bases appearing in the section were not created in my presence but from the close study of the section, I could say that there were created pillar bases."* This is purely imaginary and that too without giving reasons in support of such an opinion.

3730. In order to give weight to her statement she says that *"pillar base shown in the baulk of F2 G2 was created in my presence and I lodged complaint against ASI observations. It was created between 16th to 20th May, 2003. Besides me, Mohd. Abid*

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was also present at the time of aforesaid pillar base being created. This pillar base and pillar base no. 21 was created during aforesaid period of 5 days."

3731. Sri Abid on page 156 has said that he has seen only one person creating pillar bases in respect to whom a joint objection was given to observer though the complaint was not signed by him. The person concerned was some Sharma. On his complaint the observer also came to the site. His statement is:

> *''मैंने अपने जो बयान में कहा है कि पिलर बेसेज़ काटकर बनाये गये हैं, **वह ए0एस0आई0 के सभी लोग नहीं करते थे।** मैंने अपनी मौजूदगी में **एक साहब को बनाते हुए देखा था** उनके बारे में ज्वाइन्टली आब्जेक्शन आब्ज़र्वर्स को दिया था। **वो साहब का नाम शायद शर्मा जी था। उस एतराज़ पर हमारे दस्तख़त नहीं हैं।** बल्कि वह हाजी महबूब साहब या ज़फ़रयाब जीलानी साहेब आदि के दस्तखत से दाख़िल किया गया था। यह पिलर बेस ट्रेंच नं0 जी–2 के आस–पास था, **पर मुझे तारीख़ और समय अब याद नहीं है।** मैंने आब्ज़र्वर्स को जाकर बताया था कि वहॉ पर पिलरबेस बनाये जा रहे हैं। दोनों आब्ज़र्वर्स चेम्बर में बैठे रहते थे और वहीं जाकर दोनों को बता दिया करता था। **मेरी शिकायत पर आब्ज़र्वर्स मौके पर गये थे।** यह मुझे पता नहीं कि आब्ज़र्वर्स साहब ने इस न्यायालय को इस संबंध में रिपोर्ट दी थी या नहीं। पिलर बेस बनाने के दौरान ही अर्थात् प्रासेस के दौरान ही मैं आब्ज़र्वर्स साहब को वहॉ ले गया और दिखाया था। मुझे नहीं मालूम कि आब्ज़र्वर्स साहब ने ए0एस0आई0 वालों से कुछ कहा या नहीं। मैं जब आब्ज़र्वर्स साहब के साथ मौके पर गया तो आब्ज़र्वर्स साहबान वहॉ खड़े हो गये और वहीं खड़े रहे।'' (पेज 156)*

> *"The fact stated by me in my statement that the pillar bases have been carved out, **was not done by all the ASI people**. **I had seen one gentleman do the same in my presence.** I had given a joint objection to the observers regarding him. **That gentleman was probably known as Mr. Sharma. Said objection does not bear my signature***

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and instead had been filed under the signature of either Hazi Mahboob or Zafaryab Jilani etc. This pillar base was near the Trench No. G2, but ***I do not recollect the date and time now.*** *I had gone to the observers and told them that pillar bases were being carved. Both the observers used to remain seated in the chamber and I used to tell both of them over there.* ***The observers went to the spot on my complaint.*** *I do not know whether the observers had submitted a report in this behalf to this Court, or not. I had taken the observers to that place during the creation of pillar bases, i.e., during the process and had shown it to them. I do not know whether the observers told something to the ASI people, or not. When I visited the spot alongwith the observers, they stopped there and stood there." (E.T.C.)*

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3732. Now this statement of Sri Abid does not corroborate statement of PW 32 inasmuch as she has not said anything about such complaint to Observer and his coming to the concerned place etc.

3733. The excavation of Trench F2 commenced on 24th May 2003 under the Supervision of C.B. Patil vide site notebook no. 8. Excavation of Trench G2 admittedly commenced on 16th May 2003 under Sri S.K. Sharma Trench Supervisor which we have already discussed above. Therefore, this part of the complaint is also untrustworthy.

3734. Trench F6 was supervised by Gajanan L. Katade. The excavation commenced on 29th April 2003 on which date PW 32 was not present at site. It continued on 1st May 2003, 2nd May 2003 and 3rd May 2003. The pillar base is said to have been discovered on 01.05.2003. In day today register four persons

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have signed the report on page 122. Nothing has been said against the above Trench Supervisor as is evident from the statement of Mohd. Abid.

3735. Trench G9 though has been mentioned in the complaint alleging that the same was created but on page 25 DW 6/1-2 Mohd. Abid has admitted that there was no disturbance in the pillar base shown in plate 38, Vol. II, ASI report, which is pillar base no. 45, Trench G9. He says:

> *''प्रश्नः— क्या आप जब मौक़े पर थे तो प्लेट नं. 48 में छायांकित कथित पिलरबेस ऐज़ ईट इज़ ऊपर की सतह खोदने के बाद निकला।*
>
> *उत्तरः— इस कथित पिलर बेस के ऊपर लाइम सुर्ख़ी मौजूद थी और इसके ऊपर फ़लोर था इसलिए पिलर बेस नहीं कहा जा सकता हैं*
>
> *यह कहना सही है कि जिस शक्ल में यह दिखायी पड़ रहा है ऐसा ही फ़लोर हटाने के बाद दिखायी पड़ रहा था। यह कहना गलत है कि जितने भी कथित पिलरबेंसेज मिले हैं, उन सबमें प्लेट 48 जैसे ही कंकरीट या सैण्ड स्टोन का बेस मिला हो।* ***प्लेट 48 में जैसा कथित पिलरबेस दिखायी पड़ रहा है वैसा ही निकला था, इसमें काट—छाँट नहीं किया गया था।''*** *(पेज 25)*
>
> *"Question:- Whether the alleged pillar base appearing in Plate No. 48, had been recovered as it is on excavation of the upper surface, in your presence at the spot?*
>
> *Ans. Lime-'Surkhi' were present over this alleged pillar base and a floor existed above it, due to which it cannot be called pillar base.*
>
> *It is correct to say that after removal of the floor, it was appearing similar to the one appearing here. It is wrong to say that concrete or sand stone bases have been found in all the alleged pillar bases, as found in plate 48.* ***The alleged pillar base appearing in plate 48, was found***

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in the same form and it had not been cut." *(E.T.C.)*

3736. We may mention at this stage that there is a self contradiction in the statement of expert witnesses of Sunni Board and other muslim parties. While DW 6/1-2 on page 25 has not disputed the correctness of pillar base in Trench G9 as shown in page 48, Vol. II of ASI report, PW 29 Jaya Menon on page 230 has said:

"The Plate No. 48 shows some structure but the same is not pillar base. I do not know what it is."

3737. Similarly in the complaint the pillar bases in Trench ZF1, ZG1 and ZH1 have been alleged to be created by ASI people but PW 32, Dr. Supriya Verma on page 120 has admitted the pillar bases forming part of Z series:

"The pillar bases ***which are acceptable to me form part of Z series of trenches****. The area of the Z series of trenches was surveyed by the GPR survey team but I am not hundred percent sure as to whether they had covered that area or not."*

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3738. The pillar base in Trench ZH1 has been admitted to be there and correct by PW 29 on page 203 where she said:

"Plate no. 36, 37, 38 of the ASI report were shown to the witness who stated that all these photographs are INSITU photographs of pillar bases. These pillar bases were found in the north of dispute site. ***In my opinion these are the pillar bases****."*

3739. Plate no. 36 is pillar base no. 13 Trench ZH1 while plate No. 37 and 38 are pillar bases no. 1 and 5 of trenches ZH 3/ZH 2. The above discussion, therefore, shows that in respect to most of the pillar bases which are mentioned in the above

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complaint one or the other witnesses have said otherwise.

3740. There are three complaints of 8th June 2003, two by Sri A.A. Siddiqui and one by Sri R.L. Verma Advocates. The two complaints of Sri Siddiqui are about omission of recording of a glazed ware recovered from Trench F3 on 6th June, 2003 by the Trench Supervisor, Sujeet Narayan Singh and rest one is about some newspaper reports. Sri R.L. Verma had complained against stoppage of excavation in Trench F4 and G4. Complaint dated 05.06.2003 is by Sri Hazi Mahboob about the visit of Sri S.P. Gupta at the site but non mention of his name at the entry point. Complaint dated 07.06.2003 is by Sri Jilani for taking protective measures. The complaint dated 10.06.2003 in fact is not a complaint but a letter requesting the Observer asking ASI to inform about the trenches where excavation has completed so that his experts may enter the same and obtain necessary information. Then again the complaints dated 11.06.2003, 28.05.2003, 28.05.2003 are in respect to some news paper reports etc. The complaint dated 13.06.2003 is for arranging water proof tents for protection of trenches. The letter dated 08.06.2003 is about an inquiry pertaining to samples sent to various laboratories. Then letter/complaint dated 15.06.2003 of Sri Jilani is for ensuring the observances of principles of excavation by ASI team in preparation of report. It says:

> "*With reference to the orders of the court regarding maintenance of Transparency of the excavation work and digging to be done on the basis of the principals governing excavation, it is submitted that setting up Section Labels, indicating stratum numbers, on the key/important sections, was imperative and in the initial stages of digging this*

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practice was even adopted but, for the reasons best known to the ASI Team, this practice was not only abandoned but even the labels put earlier were removed making it almost impossible for our Nominees and Experts to check and observe the strata, specially with reference to the numbering of layers vis-a-vis the pottery kept in the pottery yard.

It may also be relevant to mention that ***sketch plans of the features (walls etc.) uncovered during excavation and*** *sketch of sections of certain key trenches should also be accompanied with any report filed by the ASI, whether progress report or any other report, and in future this essential component of the report should not be omitted.*

It is therefore requested that the ASI Team Leader may kindly be instructed to observe the aforementioned principles of excavation so that transparency may also be maintained in the excavation work and the digging/excavation may be completed and report may be submitted in accordance with the order/orders of the Court."

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3741. Thereupon the Observer has made the following note, after obtaining views of Sri Hari Manjhi ASI team leader at that time:

"*The views of the ASI team leader Shri Hari Manjhi on the objections raised in this application/objection are as follows:*

The ASI has been following the transparency in the excavation work right from the beginning and the work is being carried out strictly on the principle of excavations.

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There is nothing known as section labels as mentioned in the application dated 15.06.03 by the learned advocate. The layer labels and with them only the photograph of the trenches and their section are taken. All the sectional photographs contain layer labels and as such it is wrong to say that layer labels have not been put up on the sections. Due to wind, rains and other factors the labels have fallen and damaged. They have not been removed. ***Any trained excavator and archaeologist does not require the layer labels for study the strata and he can study the stratigraphy on the basis of his own knowledge. It is strange that the experts nominated by the party are finding it "almost impossible", "to check and observe the strata".*** *Relevant sketch plans of the features (walls etc.) would be definitely included in the final report and to far as periodic progress report is concerned they are not required as essential feature of the report.*

As the ASI team is following the principles of excavation/perfectly and observing full transparency in the work no instruction is required to be given to the team leader in this regard."

3742. The complaint dated 21.06.2003 by Sri M.A. Siddiqui is in respect to certain media reports. The complaint dated 21.06.2003 by Sri M.A. Siddiqui is for requesting ASI people to notice the existence of plaster on the walls in trench F1, F6, F8 and F9. The letter dated 01.07.2003 of Sri R.L. Verma is not a complaint but actually it is an objection against the complaint dated 07.06.2003 and 29.06.2003 submitted on behalf of muslim parties alleging that there is an attempt to put

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barrier and hurdle in the free functioning of ASI whithout there being any substance.

3743. Next is the complaint dated 28.06.2003 signed by several persons including Sri Jilani, Mohd. Afzal, Hazi Mahboob etc. as a supplementary objection to that of dated 07.06.2003. It requests that apart from the pillar bases ZH2/ZJ2 baulk other reported structures be not labeled as pillar base and be dismantled. Here complaint is in respect to Trenches G8, J1, H9 and H10.

3744. There are three more complaints of the same date. The second complaint dated 28.06.2003 by Sri Jilani and others is in respect to pillar base G5 and next one is with respect to the stratification in Trench G8.

3745. The complaint dated 02.08.2003 is for dismantling of pillar bases in Trench G2 and F2/G2 baulk. It is alleged that between 17.07.2003 to 26.07.2003 the excavation was made in such a manner that a pillar base in the baulk F2/G2 was created.

3746. So these are the total complaints. The substantial one are dated 21.05.2003, 07.06.2003 and 28.06.2003. Broadly we have seen and considered the same by perusing record and find no basis. It thus appears that these complaints were a brainchild of two experts PW-29 and 32 who could not support the same during cross examination. This is really unfortunate. As admitted by these two witnesses, they were partisan and interested, yet it was expected from the renowned Experts that they shall tender opinion objectively but here we found it lacking.

3747. Now we proceed to those objectives which were filed before us after ASI report. Such objections/additional

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objections/replies, in brief, are :

(a) Objection dated 8.10.2003 filed by plaintiff no.1 (Suit-4). The prayer made in the objection is to reject the ASI report dated 22.08.2003.

(b) An additional objection dated 3.2.2004 was also filed by plaintiff no.1 (Suit-4). It was filed on the ground that initially, only four out of ten video cassettes were displayed and unless all the video cassettes are displayed to the parties alongwith other concerned material, complete objection may not be filed. In the circumstances, while permitting all the cassettes/C.Ds to be made available to the party/parties concerned, they were also permitted to file additional objections. The prayer for rejection of ASI report was reiterated in the additional objections.

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(c) Objection dated 6/8th October 2003 filed on behalf of defendant no.5 (Suit-5) Mohd. Hashim praying for rejection of ASI report and in particular, Chapter X thereof, and further to direct ASI as under:

"(i) to make a tabulation of all the bone pieces, glazedwares and glazed tiles found during excavation in the manner the other finds have been tabulated, indicating the layer, trench, pit or dump with a comparative table of the other artefacts as well.

(ii) to place the whole situation of the entire spot on one sheet at one surface by making use of different inks as regards the structures, the floors, the walls with other materials found/noticed by the ASI during the course of excavation and if it is found difficult it

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may be done on the 5 sheets as the ASI has itself indicated to have partitioned the area in 5 blocks and below the same the necessary notes enabling the reader to get whole thing at one look instead of jumping through different chapters, figures, plates or appendixes."

Defendant no.5 (Suit-5) also filed a supplementary objection dated 16.2.2004.

(d) Plaintiff no.9 (Suit-4) filed objection dated 8/9thOctober 2004 praying for rejection of ASI report. Plaintiff no.9 in para 2 of objection adopted objections filed by other plaintiffs and raised his objection in addition thereto. In para 8 of his additional objections, plaitniff no.9 also adopted the additional objections filed by plaintiff no.1 (Suit-4).

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3748. There are several replies filed by other parties to the objections/supplementary objections referred to above but we find it unnecessary to refer in details at this stage.

<u>The Nature, Status and Scope of challenge to ASI Report</u>

3749. Order XXVI, Rule 10A of C.P.C. empowers the Court to issue a commission where the question involving a scientific investigation is involved and the Court is of the opinion that it would be convenient to have a commissioner appointed to enquire into such question and file report. The procedure of commission, as contained in Order XXVI rule 10, has been made applicable vide sub-rule 2 of Rule 10A. Order XXVI, Rule 10 and 10A of C.P.C. read as under:

"Rule 10. Procedure of Commissioner- *(1) The Commissioner, after such local inspection as he deems*

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necessary and after reducing to writing the evidence taken by him, shall return such evidence, together with his report in writing signed by him, to the Court.

(2) ***Report and depositions to be evidence in suit-*** *The report of the Commissioner and the evidence taken by him (but not the evidence without the report) shall be evidence in the suit and shall form part of the record; but the Court or, with the permission of the Court, any of the parties to the suit may examine the Commissioner personally in open Court touching any of the matters referred to him or mentioned in his report, or as to his report, or as to the manner in which he has made the investigation.*

(3) ***Commissioner may be examined in person-****Where the Court is for any reason dissatisfied with the proceedings of the Commissioner, it may direct such further inquiry to be made as it shall think fit.*

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Rule 10A. Commission for scientific investigation- *(1) Where any question arising in a suit involves any scientific investigation which cannot, in the opinion of the Court, be conveniently conducted before the Court, the Court may, if it thinks it necessary or expedient in the interests of justice so to do, issue a Commission to such person as it thinks fit, directing him to inquire into such question and report thereon to the Court.*

(2) The provisions of rule 10 of this Order shall, as far as may be, apply in relation to a Commissioner appointed under this rule as they apply in relation to a Commissioner appointed under rule 9."

3750. A bare reading of Rule 10A of C.P.C. shows that a

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discretion is vested in the Court to get any scientific investigation conducted only if it thinks necessary or expedient. It is only when the Court is of the opinion that scientific investigation may help it in extracting truth. The report of Commissioner appointed to make investigation together with the evidence enclosed therewith is an evidence in the suit. The parties having grievance, have two kinds of remedies. Firstly, they can file an objection to the report and secondly, they can also lead evidence to show that what has been said in the report is not correct.

3751. In **Vembagounder Vs. Pooncholai Gounder AIR 1996 Madras 347** the Court took the view that before asking parties to lead evidence on merit, if an objection has been raised to the report of Commissioner, it ought to be considered and decided.

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3752. In this case also parties have raised objections against the report and were to be decided by this Court, but then it was found that the nature of objections raised by the parties is such that unless the parties are allowed to lead evidence, as several factual aspects were involved, the decision on objection cannot be taken. Therefore, a detailed order was passed on 03.02.2005 directing that ASI report shall be admitted as an evidence but the objections raised by the parties shall be considered and decided at the time of final hearing by which time the evidence etc. would stand completed.

3753. In **Amena Bibi Vs. S.K. Abdul Haque AIR 1997 Cal. 59** the Court said that acceptance of Commission's report as an evidence does not mean that parties are precluded from challenging the report. The report of the commissioner is not

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binding on the Court. It may accept the facts arrived at by the commissioner or may not accept his conclusion or vice-versa as held in **Bibhuti Bhushan Vs. Sadhan Chandra AIR 1965 Cal. 199** and **Sankar Kumar Vs. Mohanlal Sharma AIR 1998 Orissa 117.**

3754. There is no requirement in law nor the reading of rule 10 or 10A C.P.C. which shows that unless the Commissioner is examined as a witness, his report cannot be treated to be a substantive evidence. None of the parties in this case has opted to examine the commissioner touching on any of the matter in the report submitted by ASI. In fact the detailed objections filed by the parties, particularly the plaintiffs (Suit-4), do not suggest that the entire report and finding are incorrect or perverse but what has been argued vehemently is that the conclusion drawn by ASI in its report in the penultimate paragraphs and chapter is wrong and should be ignored or rejected. However, allegations of bias or mala fide are also levelled and in case those allegations are found substantiated, it may result in vitiating the entire report.

3755. Sri P.N.Mishra, learned counsel for the defendant no.20 (Suit-4) supporting ASI report contended:

A. The report of ASI is an elaborate document and the persons comprising excavation team of ASI were working directly under the control and direction of this Court. Their integrity is unquestioned and as such the said report is entitled to be accepted in its entirety as an expert scientific report under Order XXVI Rule 9, 10 and 10A read with Section 75 C.P.C. as well as Section 45 of the Evidence Act.

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B. Section 75(e) of C.P.C. is part and parcel of Part III titled as 'incidental proceedings' whereunder the order can be passed by this Court to carry out excavation work and submit report to this Court. The report having been submitted in compliance thereof is a scientific report and an expert opinion under Section 45 of the Evidence Act. It is reliable and admissible being valuable piece of evidence.

C. The A.S.I. Report is result of incidental proceeding which is in aid of the final proceedings. The report has to be relied on to do complete and ultimate justice.

D. A.S.I. is a reputed institution. Integrity of its team members cannot be questioned hence its report must be accepted as it is.

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E. There are only wild allegations that the ASI people acted under the hands of the then BJP Government and Minister concerned but the same has not been substantiated by giving cogent evidence. The plaintiffs had several opportunities to make applications before this Court impeaching the integrity of the ASI but as the opportunity has not been availed of and no such thing was done. It is only when the report was submitted to this Court which goes against the plaintiffs (Suit-4) i.e. some of the defendants of other suits, the objections making reckless allegations have been filed therefore are liable to be rejected.

F. The plaintiffs, their experts, nominees, advocates have participated in excavation proceedings and the excavation proceedings were conducted in their presence

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and observance. It was also supervised by the Observers appointed by this Court. In these circumstances any challenge to the ASI report on the ground that the excavation has not been done faithfully and correctly cannot be accepted and the objections are liable to be rejected.

G. Since no party made an application for examination of ASI Archaeologist/Experts, there is no occasion for them to assail the report since it amounts to acceptance.

3756. He has also relied on some of the authorities of the Apex Court and High Courts which we may refer in brief since the principles laid down therein cannot be doubted.

3757. **Chandan Mull Indra Kumar & Others Vs. Chiman Lal Girdhar Das AIR 1940 PC 3** says that it is not safe for a Court to act as an expert and to overrule the elaborate report of a Commissioner whose integrity and carefulness are unquestioned, whose careful and laborious execution of task was proved by his report and who had not blindly adopted the assertions of either party.

3758. In **Vareed Jacob Vs. Sosamma Geevarghese 2004(6) SCC 378** the Court said that "incidental" and "ancillary" proceedings are taken recourse to in aid of the ultimate decision of the suit and any order passed therein would have a bearing on the merit of the matter. "Supplemental proceedings", however, mean a separate proceeding in an original action in which the court where the action is pending is called upon to exercise its jurisdiction in the interest of justice. Supplemental proceedings may not affect the ultimate result of suit and a supplemental order can be passed even at the instance of the defendants.

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3759. In **G.L. Vijan Vs. K. Shankar. 2006 (13) SCC 136** in the context of incidental and ancillary power, the Court said:

"11. Such a supplemental proceeding is initiated with a view to prevent the ends of justice from being defeated. Supplemental proceedings may not be taken recourse to in a routine manner but only when an exigency of situation arises therefor. The orders passed in the supplemental proceedings may sometimes cause hardships to the other side and, thus, are required to be taken recourse to when it is necessary in the interest of justice and not otherwise. There are well defined parameters laid down by the Court from time to time as regards the applicability of the supplemental proceedings.

13. The expression "ancillary" means aiding; auxiliary; subordinate; attendant upon; that which aids or promotes a proceeding regarded as the principal.

14. The expression "incidental" may mean differently in different contexts. While dealing with a procedural law, it may mean proceedings which are procedural in nature but when it is used in relation to an agreement or the delegated legislation, it may mean something more; but the distinction between an incidental proceeding and a supplemental proceeding is evident.

3760. In **Harihor Misra Vs. Narhari Setti Sitaramiah AIR 1966 Orissa 121** in para 4 the Court said :

"Rule 10 of O. 26 does not make the report of the Commissioner as concluding the question of valuation. On the contrary, the rule gives clear indication that the report of the Commissioner is only one of the pieces of evidence

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amongst other evidence to be led by the parties for determination of the issue on valuation of the suit. When the parties file no objection to the Commissioner's report, the court rightly accepts the report. Its acceptance by itself does not, however, mean that parties are precluded from challenging the evidence of the Commissioner and the witnesses examined by him or by giving any other evidence to countermand the effect of the Commissioner's report. "

3761. Following the above decision, Calcutta High Court in **Amina Bibi (Supra)** said:

"Thus, from the underlying principle emerging from the above cases, it is manifest that the party objecting to the Commissioner's report can lead best possible evidence at the time of hearing to countermand the report even if the same was accepted earlier. The Court on taking the comprehensive view decide the point at issue and arrive at right conclusion I do not find at this stage any justification to interfere with the findings of the learned trial court order accepting the Commissioner's report."

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3762. In **Bandhua Mukti Morcha Vs. Union of India AIR 1984 SC 802** in para 14 it was held:

"*It would be entirely for the Court to consider what weight to attach to the facts and data stated in the report of the Commissioner and to what extent to act upon such facts and data. But it would not be correct to say that the report of the Commissioner has no evidentiary value at all, since the statements made in it are not tested by cross-examination."*

3763. In para 81 of the said judgemnt the court said:

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"Interference with the result of a detailed and careful report so submitted should be made only for cogent and compelling reasons. In a case where an elaborate report is filed by the Commissioner, whose integrity, credibility and carefulness are not questioned, whose careful and laborious execution of his task is proved by the report itself, interference will be made only in exceptional circumstances, in cases where convincing evidence contra is available before Court."

3764. In **Sharda Vs. Dharampal 2003 (4) SCC 493** the Court held that the primary duty of the Court is to see that truth is arrived at. It also held that in certain cases scientific investigation by the experts in the field is not only to be found leading to the truth of the matter, but may also lead to the removal of misunderstanding between the parties.

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3765. There are some other authorities which are basically on the question that the report of the Commissioner cannot be rejected or ignored only on the ground that the Commissioner was not examined as witness or that in the absence of any allegation against the integrity and impartiality of the Commissioner the report must be admitted. These are not relevant for our purposes for the reason that there is no challenge to the ASI report on the ground that the members of the team of ASI have not been examined. So far as the second part is concerned, general allegations of bias have been levelled and they have to be considered and investigated.

3766. Sri Jilani referred to one part of his objection i.e., bias and *mala fide* of ASI in order to buttress his submission for rejection of the entire report but rest of his objections pertain to

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individual findings/interpretation of finds and artefacts and, therefore, basically travel into the realm of credibility of the evidence and not the mere procedural irregularity.

3767. The allegations of bias, lack of impartiality against ASI have been made in general in the objections filed by the plaintiffs (Suit-4), but perusal thereof makes it clear that no individual in particular or the group of persons as such has been named in respect of the said allegations. When an act of officials is challenged on the ground of bias etc., certain well established principles have to be observed.

3768. We may refer to **State of Bihar and Anr. Vs. P.P.Sharma 1992 Supp (1) SCC 222.** The Court in para 50, 51 and 52 said:

> *"50. Mala fides means want of good faith, personal bias, grudge, oblique or improper motive or ulterior purpose. The administrative action must be said to be done in good faith, if it is in fact done honestly, whether it is done negligently or not. An act done honestly is deemed to have been done in good faith. An administrative authority must, therefore, act in a bona fide manner and should never act for an improper motive or ulterior purposes or contrary to the requirements of the statute, or the basis of the circumstances contemplated by law, or improperly exercised discretion to achieve some ulterior purpose. The determination of a plea of mala fide involves two questions, namely (i) whether there is a personal bias or an oblique motive; and (ii) whether the administrative action is contrary to the objects, requirements and conditions of a valid exercise of administrative power.*

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51. The action taken must, therefore, be proved to have been made mala fide for such considerations Mere assertion or a vague or bald statement is not sufficient. It must be demonstrated either by admitted or proved facts and circumstances obtainable in a given case. If it is established that the action has been taken mala fide for any such considerations or by fraud on power or colourable exercise of power, it cannot be allowed to stand.

52. Public administration cannot be carried on in a spirit of judicial detachment. There is a very wide range of discretionary administrative acts not importing an implied duty to act judicially though the act must be done in good faith to which legal protection will be accorded. But the administrative act dehors judicial flavour does not entail compliance with the rule against interest and likelihood of bias. It is implicit that a complainant when he lodges a report to the Station House Officer accusing a person of commission of an offence, often may be a person aggrieved, but rarely a propone publico. Therefore, inherent animosity is licit and by itself is not tended to cloud the veracity of the accusation suspected to have been committed, provided it is based on factual foundation."

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3769. In **CEAT Ltd. Vs. Anand Abasaheb Hawaldar & Ors. 2006 (3) SCC 56** the words "favoritism" or "partiality" came to be considered. In para 11 to 16 the Court held:

"11. ....the Legislature has consciously used the words 'favoritism or partiality to one set of workers' and not differential treatment. Thus, the mental element of bias was necessary to be established by cogent evidence. No

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evidence in that regard was led. On the contrary the approach of the Industrial Court and the High Court was different. One proceeded on the basis of breach of assurance and the other on the ground of discrimination. There was no evidence brought on as regards the pre requisite i.e. favoritism or partiality. favoritism means showing favour in the matter of selection on circumstances other than merit. (per Advanced Law Lexicon by P.Ramanatha Aiyar, 3rd Edition, 2005). The expression 'favoritism' means partiality, bias. Partiality means inclination to favour a particular person or thing. Similarly, it has been sometimes equated with capricious, not guided by steady judgment, intent or purpose. favoritism as per the Websters' Encyclopedic Unabridged Dictionary means the favouring of one person or group over others having equal claims. Partiality is the state or character being a partial, favourable, bias or prejudice.

12. According to Oxford English Dictionary "favoritism" means - a deposition to show, or the practice of showing favour or partiality to an individual or class, to the neglect of others having equal or superior claims; under preference. Similarly, "partiality" means the quality or character of being partial, unequal state of judgment and favour of one above the other, without just reason. Prejudicial or undue favouring of one person or party: or one side of a question; prejudice, unfairness, bias.

13. Bias may be generally defined as partiality or preference. It is true that any person or authority required to act in a judicial or quasi-judicial matter must act

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impartially.

"If however, 'bias' and 'partiality' be defined to mean the total absence of preconceptions in the mind of the Judge, then no one has ever had a fair trial and no one ever will. The human mind, even at infancy, is no blank piece of paper. We are born with predispositions and the processes of education, formal and informal, create attitudes which precede reasoning in particular instances and which, therefore, by definition, are prejudices." (per Frank, J. in Linahan, Re. F 2d at p 652).

14. It is not every kind of differential treatment which in law is taken to vitiate an act. It must be a prejudice which is not founded on reason, and actuated by self-interest - whether pecuniary or personal.

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15. Because of this element of personal interest, bias is also seen as an extension of the principles of natural justice that no man should be a judge in his own cause. Being a state of mind, a bias is sometimes impossible to determine. Therefore, the courts have evolved the principle that it is sufficient for a litigant to successfully impugn an action by establishing a reasonable possibility of bias or proving circumstances from which the operation of influences affecting a fair assessment of the merits of the case can be inferred.

16. As we have noted, every preference does not vitiate an action. If it is rational and unaccompanied by considerations of personal interest, pecuniary or otherwise, it would not vitiate a decision.

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3770. In a case where mala fide or bias is substantiated by cogent material the act of the authority, howsoever high it may be, shall immediately get tainted and vitiated in law but mere dissatisfaction or displeasure of an individual or group of individual's perception about something cannot be a yardstick to hold, an otherwise valid act or report of an authority, invalid.

3771. In **People's Union for Civil Liberties Vs. U.O.I. 2005(5) SCC 363** the Court in para 11 and 12 observed :

> *"11. ....if public displeasure or perception were to be the yardstick to exclude people from holding constitutional or statutory offices then many such posts in the country may have to be kept vacant.*
>
> *12. Then again what is the yardstick to measure public perception. Admittedly, there is no barometer to gauge the perception of the people. In a democracy there are many people who get elected by a thumping majority to high legislative offices. Many a times public perception of a class of society in regard to such people may be that they are not desirable to hold such post but can such a public opinion deprive such people from occupying constitutional or statutory offices without there being a law to the contrary? There is vast qualitative difference between public prejudice and judicial condemnation of an institution based on public perception."*

3772. In **Kumaun Mandal Vikas Nigam Ltd. Vs. Girja Shankar Pant 2001 (1) SCC 182** explaining the concept of bias the Apex Court said:

> *"10. The word "bias" in popular English parlance stands included within the attributes and broader purview of the*

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word "malice", which in common acceptation means and implies "spite" or "ill-will" (Stroud's Judicial Dictionary, 5th Edn., Vol. 3) and it is now well settled that mere general statements will not be sufficient for the purposes of indication of ill-will. There must be cogent evidence available on record to come to the conclusion as to whether in fact there was existing a bias which resulted in the miscarriage of justice.

32. Lord Hutton also in Pinochet case 16 observed:

"There could be cases where the interest of the Judge in the subject-matter of the proceedings arising from his strong commitment to some cause or belief or his association with a person or body involved in the proceedings could shake public confidence in the administration of justice as much as a shareholding (which might be small) in a public company involved in the litigation."

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33. Incidentally in Locabail [Locabail (U.K.) Ltd. v. Bayfield Properties Ltd. 17] the Court of Appeal upon a detail analysis of the oft-cited decision in R. v. Gough 18 together with the Dimes case 19 Pinochet case 16, Australian High Court's decision in the case of J.R.L., ex p C.J.L., Re 20 as also the Federal Court in Ebner, Re 21 and on the decision of the Constitutional Court of South Africa in President of the Republic of South Africa v. South African Rugby Football Union22 stated that it would be rather dangerous and futile to attempt to define or list the factors which may or may not give rise to a real danger of bias. The Court of Appeal continued to the effect that everything will depend upon facts which may include the

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nature of the issue to be decided. It further observed:

"By contrast, a real danger of bias might well be thought to arise if there were personal friendship or animosity between the Judge and any member of the public involved in the case; or if the Judge were closely acquainted with any member of the public involved in the case, particularly if the credibility of that individual could be significant in the decision of the case; or if, in a case where the credibility of any individual were an issue to be decided by the Judge, he had in a previous case rejected the evidence of that person in such outspoken terms as to throw doubt on his ability to approach such person's evidence with an open mind on any later occasion; or if on any question at issue in the proceedings before him the Judge had expressed views, particularly in the course of the hearing, in such extreme and unbalanced terms as to throw doubt on his ability to try the issue with an objective judicial mind (see Vakuta v. Kelly23); or if, for any other reason, there were real ground for doubting the ability of the Judge to ignore extraneous considerations, prejudices and predilections and bring an objective judgment to bear on the issues before him. The mere fact that a Judge, earlier in the same case or in a previous case, had commented adversely on a party-witness, or found the evidence of a party or witness to be unreliable, would not without more found a sustainable objection. In most cases, we think, the answer, one way or the other, will be obvious. But if in any case there is real ground for doubt, that doubt should be resolved in favour of recusal. We repeat: every application

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must be decided on the facts and circumstances of the individual case. The greater the passage of time between the event relied on as showing a danger of bias and the case in which the objection is raised, the weaker (other things being equal) the objection will be."

34. The Court of Appeal judgment in Locabail 17 though apparently as noticed above sounded a different note but in fact, in more occasions than one in the judgment itself, it has been clarified that conceptually the issue of bias ought to be decided on the facts and circumstances of the individual case — a slight shift undoubtedly from the original thinking pertaining to the concept of bias to the effect that a mere apprehension of bias could otherwise be sufficient.

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35. The test, therefore, is as to whether a mere apprehension of bias or there being a real danger of bias and it is on this score that the surrounding circumstances must and ought to be collated and necessary conclusion drawn therefrom — in the event however the conclusion is otherwise inescapable that there is existing a real danger of bias, the administrative action cannot be sustained: If on the other hand, the allegations pertaining to bias is rather fanciful and otherwise to avoid a particular court, Tribunal or authority, question of declaring them to be unsustainable would not arise. The requirement is availability of positive and cogent evidence and it is in this context that we do record our concurrence with the view expressed by the Court of Appeal in Locabail case17."

3773. In **State of Punjab Vs. V.K.Khanna 2001 (2) SCC**

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330 it was decided that the test is whether there is a mere apprehension or there is a real danger of bias and it is on this score that the surrounding circumstances must and ought to be collated and necessary conclusion drawn therefrom. The court in para 8 and 8 said:

> *"5. Whereas fairness is synonymous with reasonableness- bias stands included within the attributes and broader purview of the word "malice" which in common acceptation means and implies "spite" or "ill will". One redeeming feature in the matter of attributing bias or malice and is now well settled that mere general statements will not be sufficient for the purposes of indication of ill will. There must be cogent evidence available on record to come to the conclusion as to whether in fact, there was existing a bias or a malafide move which results in the miscarriage of justice....In almost all legal enquiries, "intention as distinguished from motive is the all- important factor" and in common parlance a malicious act stands equated with an intentional act without just cause or excuse."*
>
> *"8. The test, therefore, is as to whether there is a mere apprehension of bias or there is a real danger of bias and it is on this score that the surrounding circumstances must and ought to be collated and necessary conclusion drawn therefrom. In the event, however, the conclusion is otherwise that there is existing a real danger of bias administrative action cannot be sustained. If on the other hand allegations pertain to rather fanciful apprehension in administrative action, question of declaring them to be*

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unsustainable on the basis therefor, would not arise."

3774. Since some general but serious allegations have been levelled against ASI regarding manner of excavation, interpretation and assessment, though not substantiated, but we shall examine all these aspects minutely since it is not a matter where we should leave even an iota of doubt in the mind of any party. Rather we intend to consider all the possible angles in the matter so that there may not remain a grievance that one or other aspect, howsoever minor it is, has escaped consideration of the Court.

3775. The origin, status, reputation and other credentials of ASI would be a relevant factor for considering credibility and reliability of its report, besides other aspects of the matter. The facts about ASI's origin, development, status etc. have been placed before us in the form of a computerized printout taken from Internet site of Archaeological Survey of India and this has not been doubted or objected by any of the parties. A perusal thereof shows that the ASI traced back its origin to 15th January 1784 when Sir William Jones formed “Asiatic Society” at Calcutta consisting of a group of antiquarians. This Society started archaeological, historical, monumental, cultural and religious researches in India and commenced its publication of periodical journal “Asiatic Researches” in 1788. The objective of the said research and publication was to make public aware of the antiquarian wealth of India.

3776. Since William Jones is referred as the point of commencement of ASI, some facts throwing light on his profile would be ancillary but important. Born on 28th September' 1746 in London, William Jones studied Arabic, Hebrew and also

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acquainted himself with French and Italian. In 1764, he entered University College, Oxford and continued his study of oriental literature. He learnt Persian and Arabic by the aid of one “Syrian Mirza”, whom, it is said, he discovered and brought from London. He added to his knowledge Spanish, Puertagese and Chinese also. In 1766, he obtained a fellowship. When King Christian VII of Denmark visited England in 1768 bringing with him a “Light of Nadir Shah” in Persian, Jones was requested to translate the manuscript in French. This translation appeared in 1770 with an introduction containing a description of Asia and short history of Persia. In 1771, he published a Dissertation “Sur Law Literature Orientale” defending Oxford scholars against the criticism made by Anquetil du Perron in the introduction to his translation of the “Zend Avesta”. In the same year, i.e. 1771 appeared his Crammer of Persian language. He then studied law and was called to the Bar at the Middle Temple in 1774. Appointed Commissioner in Bankruptcy in 1776 made Judge of Supreme Court of Judicature at Calcutta, then “Fort William” and was Knighted in 1783. He arrived in India sometime in 1783 (probably in December) and founded in January' 1784, the “Bengal Asiatic Society”. He remained its President till his death. In India, he studied Sanskrit. In 1789, he completed his translation of “Shakuntala” of Kalidasa. He also translated the collection of fables titled as “Hitopadesa”, “Geet Govind” and considerable portion of “Vedas”; besides editing the text of Kalidasa's poem “Ritusamhara”. He undertook in 1788, task of compiling a digest of Hindu and Mohammedan law, which he could not complete since died on 27.4.1794, but got published “Ordinance of Manu” and some items with respect to

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Mohammedan laws of succession of property by intestate and inheritance.

3777. This biography apparently shows his mettle but there existed something more. In "**Asiatic Researches**" Vol-I, first published in 1788, recently republished in 1979, pages 234-235, we find the following comments of Sir William Jones:

> *"As to the general extension of our pure faith in Hindustan there are at present many sad obstacles to it . . . . . We May assure ourselves that . . . . .* ***Hindus will never be converted by any mission from the Church of Rome, or from any other Church; and the only human mode perhaps, of causing so great revolution, will be to translate it to Sanskrit*** *. . . . . Such chapters of the prophets, particularly of Isaiah, as are indisputably evangelical together with one of the gospels, and a plain prefatory discourse, containing full evidence of the very distant ages, in which the predictions themselves, and the history of the divine person (Jesus) predicted, were severally made public; and* ***then quietly to disperse the work among the well educated natives.****"*

3778. He wrote an essay "On the Gods of Greece, Italy and India" in 1784 running in about 47 pages, which had the following comments:

> *"Since Gods of all shapes and dimensions may be framed by the boundless powers of imaginations or by the frauds and follies of men, in countries never corrected; but when features of resemblance, too strong to have been accidental, or observable in different systems of polytheism, without fancy or prejudice to colour them and*

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improve the likeness . . . . . It is my design, in this assay, to point out such a resemblance between the popular worships of the old Greeks and Italians and that of the Hindus."

*"**Rama and Crishna**, must now be introduced, and there several attributes distinctly explained. **The first of them, I believe, was the Dionysus of the Greeks**."*

*"The first poet of the Hindus was the great Valmic, and his Ramayan is an Epick Poem . . . . . Comparison of the two poems (the Dionysus and the Ramayan) would prove **Dionysus and Rama to have been the same person**; and I incline to think that he was **Rama the son of Kush**, who might have established the first regular Government in this part of Asia." (emphasis added)*

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3779. About "Manu", Jones writes:

"This epitome of the first Indian history . . . . . though whimsically dressed up of a form of allegory, same to prove a Primeval tradition in this country of the universal deluge described by Moses and fixes consequently the time when the genuine Hindu chronology actually begins."

*"We may suspect that all the 14 Menus are reducible to one, who was called Nuh by the Arabs and probably by the Hebrews; though we have disguised his name by an improper pronunciation of it. **Some mere relation between the 7th Menu and Grecian Menos may be inferred**."*

3780. He further said:

"The whole crowed of God and Goddess of ancient Rome and modern Varanes (Varanasi of India) mean only the powers of nature, expressed in a variety of males and a

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multitude of fanciful names."

"Be all this as it may, I am persuaded that a connection subsisted between the old idolatrous nations of Egypt, India, Greece and Italy, long before they migrated to their several settlements."

3781. This shows the approach, real motive and attitude with which the learned gentleman appears to give boost to the Indian literature. However, one must feel indebted to him for the reason that he and others like him gave birth to a local cadre of historians, academicians etc. to explore and research with sheer nationalistic instinct. Moreover, ultimately we got an institution which has been able to protect commendably a lot of ancient monuments and has also resulted in discovery of cultural wealth of this country.

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3782. Going back to our study about ASI, the research work, it claimed, resulted in collection of a large number of manuscripts of Hindu scriptures as also antiquities and other remains in the office of Asiatic Researches. A museum was established at Calcutta in 1814 where the above collection housed. Similar Societies were also statrted at Bombay (Mumbai) in 1804 and at Madras (Chennai) in 1818. In 1800 Dr. Francis Buchanan (a Physician) was appointed by Marquis of Wellesley to survey Mysore. Dr. Buchanan was also required to undergo a survey of Provinces subject to Presidency of Bengal by the Governor General in Council in 1807. This area of survey constituted parts of the present day Bihar and Uttar Pradesh. He was engaged to survey the monuments and antiquities in the area of survey. At that time it was East India Company which had commenced its transmission into a Ruler

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from its initial position of a Merchant. Dr. Buchanan was required to collect information upon the general topography of each District; the conditions of the inhabitants, their religious customs; the natural productions of the country; fisheries, forests, mines and quarries; the state of agriculture; the condition of landed property and tenures; the progress made in the arts and manufactures; the operation of commerce, and every particular that can be regarded as forming an element in the prosperity or depression of the people.

3783. To provide protection to antiques, monuments etc. the first legislation came in the form of Bengal Regulation, XIX of 1810 which empowered the Government to intervene in case of risks to monuments. In 1833 "James Prinsep" became Secretary of Asiatic Society. He was assisted by "Alexander Cunningham", a Second Lieutenant of the Bengal Engineers. They planned for an organization “Indian Archaeological Survey” and placed their proposal before the British Government in 1848. However, this attempt failed. After take over of reign by the British Government from East India Company, it appears that a fresh proposal was submitted by "Alexander Cunningham" which drew attention of Lord Canning who sanctioned a scheme of survey in Northern India and appointed "Alexander Cunningham" as the first Archaeological Surveyor with effect from December 1861. Cunningham’s survey stretched from Gaya in the East, to Indus, in the northwest, and from Kalsi in the north to Narmada in the south between 1861 to 1865. In this survey, it is said that Cunningham proceeded in the footsteps of Chinese traveller (pilgrim) Hieun Tsang and also submitted his report.

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3784. In 1863, Act No. XX of 1863 was passed which empowered the Government to prevent injury to and preserve buildings remarkable for their antiquity or for their historical or archaeological value. Lord Lawrence, however, abolished the archaeological survey in 1866 bringing to a sudden halt of the archaeological survey in Indian Sub-continent. Some minor work with respect to the state of archaeological style of India in Bombay, Madras, Bengal and the Northwestern Provinces continued but the revival of archaeological survey saw the light of the day in 1871 when it was revived as a distinct department of the Government. A. Cunningham was appointed as Director who assumed charge in February 1871. He was provided with three assistants J.D. Beglar, A.C. Carlleyle and H.B.W. Garrik. A new journal "Indian Antiquary" was also started in 1872. Cunningham got published "Corpus Inscriptionum Indicarum" which contains inscriptions of connected epigraphical material and pursuant to his suggestion the Government appointed J.F. Fleet as Government Epigraphist in January 1883 for deciphering and interpreting the inscriptions.

3785. The Indian Treasure Trove Act, 1878 was promulgated to protect and preserve the treasure found accidentally but had archaeological and historical value. This legislation was treated to be a landmark for confiscation and safety of treasures and antiquities found during chance digging. In 1878 when Lytton observed that conservation of ancient monuments be not left exclusively to the charge of the Provincial Governments and should be brought under the purview of the Government of India, it resulted in appointment of Major H.H. Cole as Curator of ancient monuments in 1881

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with an aim to assist the Provincial and Central Government in all matters related to conservation of monuments. A. Cunningham retired in 1885 followed by Burgess who was appointed Director in March 1886. Besides others, during his period, a new publication “Epigraphica Indica” started in 1888 and he got 20 volumes published of which seven formed part of Archaeological Survey of India, New Imperial Series. He suggested to abolish the post of Director General and to divide the entire country into two Circles which caused a lot of chaos and confusion. In 1895 the Government of India requested the Asiatic Society to bear the responsibilities of publication of survey report which it refused. Later on, a proposal was made for creation of five Circles with an Archaeological Surveyor as Head at Bombay with Sind and Berar ; Madras and Coorg ; Punjab, Baluchistan and Ajmer; Northwestern Provinces and central Provinces ; Bengal and Assam and to make provision for pension to those who joined survey department before that date. The said proposal was accepted in May 1899.

3786. John Marshall was appointed as the new Director General in 1901 and the entire Survey Department was centralized vesting power with the Director General of A.S.I. by Lord Curzon. Marshall started new series of publication, namely, Annual reports of the Director General which contained the works and research activities carried out by the Survey Department. A separate branch for Arabic and Persian in Epigraphy was also created and Dr. Ross was appointed for this purpose in 1904 Ancient Monuments Preservation Act, 1904 (Act no. 7 of 1904) was promulgated to provide effective preservation and authority over the monuments particularly

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those which were in the custody of individual for private ownership. The strength of the organization thereafter continued to increase by addition of Archaeological Chemist and Deputy Director General in 1917 and 1918. John Marshall relinquished the post of Director General in 1928 succeeded by H. Hargreaves and since thereafter this organization has continued with credit of making several discoveries, explorations and excavations of National and International repute. After the country achieved its independence in 1947, the Act no. 31 of 1947 "The Antiquities Export Control Act, 1947" was enacted to regulate export of antiques through Director General, ASI. Under the constitution which the people of India gave to themselves on 26.1.1950, the Archaeology was given due importance which is reflected from Entry 67 of List 1 ; Entry 12 of List 2 and Entry 40 of List 3 Seventh Schedule which read as under :

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List-1

"67. Ancient and historical monuments and records, and archaeological sites and remains, declared by or under law made by Parliament to be of national importance."

List-2

"12. Libraries, museums and other similar institutions controlled or financed by the State; ancient and historical monuments and records other than those declared by or under law made by Parliament to be of national importance."

List-3

"40. Archaeological sites and remains other than those declared by or under law made by Parliament to be of

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national importance."

3787. The Government of India also enacted "The Ancient and Historical Monuments and Archaeological Sites and Remains (Declaration of National Importance) Act" in 1951 (Act no. LXXI of 1951). All the protected ancient monuments already notified under Act no. VII of 1904 were redeclared as monuments and archaeological sites of national importance under Act no. LXXI of 1951. Another 450 monuments and sites of **part B States** were also added. Some more monuments and archaeological sites were also declared as of national importance under Section 126 of the States Reorganization Act 1956.

3788. Later on some more enactments came into existence, i.e., Ancient Monuments and Archaeological Sites and Remains Act, 1958 and Antiquities and Art Treasures Act, 1972. The former repealed Act no. LXXI of 1951 and the later repealed Act no. XXXI of 1947. Under the aforesaid legislations ASI and its Director General and other Authorities have been entrusted several statutory duties/obligations and powers besides the power of granting license for private individuals (natural or juristic) to undertake excavation work in the country.

3789. The above discussion beyond doubt shows that ASI is an organization under the Government of India and satisfies all the requisites to be termed as a "Department of the Central Government". Admittedly it is working under the Ministry of Culture and Human Resources. By all means ASI therefore, represents the Government of India being a Department thereof and in law, can be presumed to be an expert body of the Government on the subject.

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3790. The disputed site or the disputed building was not notified/declared as a Protected or Preserved Monument under the above enactments and the learned counsel for the parties neither could dispute it nor could show otherwise.

3791. Sri P.R. Ganpati Ayer, senior Advocate referring to the Act of 1904 and 1958 submitted that ASI and its officers including the Director General are part and parcel of the Government of India and a 'State' within the meaning of Article 12 of the Constitution of India. No substantial objection thereto could be raised by other learned counsels also. In view of discussion made above, we find substance in it.

3792. Now back to the objections, the substantive objections to the very credibility of ASI report and its functioning are by the plaintiffs (Suit 4) and defendant no. 5 (Suit 5). These objections were considered by this Court but vide order dated 3.2.2005. It held that objections can suitably be considered and appreciated after giving liberty to the parties to adduce relevant evidence and thereafter decide at the time of hearing.

3793. We propose to refer ASI report as well as the objections of the parties aforementioned and the relevant evidence (favour and against) in order to appreciate the genuineness thereof and to decide whether ASI report can be relied upon as an evidence wholly or partly in consideration of the aforesaid issues which are of prime importance to both the sides.

3794. The first allegation is that the ASI has prepared its report with prejudiced mind and one-sided presentation of evidence. It is under the pressure of the then BJP Government at

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the Centre (para-1 of the objection of plaintiff no.1 (Suit-4). The rest of the objections are under the headings "Archaeological evidence of 'massive structure'"; "The pillar bases are real and no myth as alleged"; "The alleged circular shrine"; "The Divine Couple and other architectural Members"; "Inadequacies of the stratigraphy"; "Terracotta figurines—Relevance of"; "Glazed wares and Glazed Tiles "Pottery"; "Bones"; "inscriptions"; and lastly "Other contradictions and discrepancies". We shall reproduce details at the relevant stage.

3795. In the objections filed by defendant no.5 (Suit-5) great stress has been laid on who wrote Chapter X. Para 2 thereof shows that he has proceeded by assuming that the disputed structure “indisputably” was raised in 1528 though the record shows that this fact itself is an issue and has to be adjudicated upon by this Court. Therefore, the question that it is an “indisputable fact” does not arise. About the identity of figurines and artefacts, defendant no.5 (Suit-5) says that they are not confined to only Hindus but Ayodhya was also an important religious centre for Muslims known as “Khurd Mecca” having graves of two sons of Adam i.e., Ayyub and Sheesh and also that of Buddhist, Jains and Shaivites. The terracotta, human and animal figurines are used and played by children of all irrespective of religious inclination, particularly during festivals like Diwali etc. but ASI has ignored this aspect. The divinity to any such figurine would not come unless there is deification by observing prescribed rituals i.e., Pran Pratishtha. Rest of the objections are basically in line with what has been said by plaintiff no.1 (Suit-5). Similar is the position to the objections filed on behalf of plaintiff no.9 (Suit-4).

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3796. One thing however is clear. Though the report of ASI on certain aspects including technical has been criticized by the Experts of Muslim parties but in general, what emerges, some undisputed facts, i.e. admission on the part of the objectors on many aspects, which are :

(i) A lot of structural and construction acitivities existed at the disputed site going back to the level of Shunga and Kushan period.

(ii) The exact number of floors, pillar bases and walls noted by ASI though objected but the very existence of several floors, walls, and pillar bases beneath the disputed stricture is not disputed.

(iii) The structure below the disputed structure was sought to be explained as Kanati mosque or Idgah. There is no suggestion that the structure below the disputed building was of non-religious nature.

(iv) Some of the constructions or artefacts are sought to relate to Jains or Buddhist but here also it is not the case that it was Islamic in nature or non religious.

(v) Though allegations of lack of independence in professional style etc. is sought to be supported from the alleged misinterpretation or wrong interpretation or omission or contradictions and discrepancies in some part of the report but no one of ASI team, individual or group has been named or shown to have worked in a manner lacking integrity, independence etc. (except where two nominees of Muslim side i.e. Dr. Jaya Menon (PW 29) and Dr. Supriya Verma (PW 32) reported creation of pillar bases in Trench G2 vide complaints dated 21.5.2003 and

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7.6.2003).

3797. 28 witnesses, i.e., PW 1 to 28 on behalf of plaintiffs (Suit-4) were examined between 24.07.1996 to 14.05.2005. The rest of four witnesses, i.e., PW 29 to 32 were examined between 28.09.2005 to 27.03.2006, i.e., against ASI report. Two witnesses were examined again i.e. PW 16 from 20.03.2006 to 28.07.2006 and PW 24 from 05.12.2005 to 04.01.2006 i.e. after ASI report. Similarly, on behalf of plaintiffs (Suit-5) 16 witnesses, i.e., OPW 1 to 16 were examined between 22.11.1999 to 21.07.2003. After the submission of ASI report three witnesses, i.e., OPW 17 to 19 were examined between 17.08.2006 to 05.12.2006. Defendant no. 1 (Suit-4) got all his three witnesses, i.e., DW 1/1 to 1/3 examined from 22.07.2003 to 21.08.2003 and did not produce any oral evidence after ASI report. Plaintiff (Suit-3) got his 20 witnesses, i.e., DW 3/1 to 3/20 examined from 29.08.2003 to 30.11.2004 and he also did not produce any witness either in support or against ASI report. Defendant no. 2/1 (Suit-4) got three witnesses, i.e., DW 2/1-1 to DW 2/1-3 examined from 01.12.2004 to 09.03.2005 and none was in respect to ASI report. DW 13/1 (Suit-4) got examined three witnesses, i.e., DW 13/1-1 to 13/1-3 from 10.03.2005 to 05.05.2005. Out of these three witnesses the statement of Mahant Awadh Bihari Das Pathak, DW 13/1-2 remained incomplete and, therefore, has to be excluded and cannot be read in evidence. Similarly, defendant no. 17 (Suit-4) examined sole witness DW 17/1 from 09.05.2005 to 17.05.2005; defendant no. 20 (Suit-4) got examined four witnesses, i.e., DW 20/1 to 20/4 from 25.05.2005 to 23.11.2005. Its fifth witness DW 20/5, Jayanti Prasad Srivastava deposed statement to

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support ASI report and was examined from 15.01.2007 to 23.03.2007. Defendant no. 6/1 (Suit-3) produced two witnesses, i.e., DW 6/1-1 and 6/1-2 who were examined from 29.08.2005 to 29.09.2005.

3798. Thus plaintiffs (Suit-4) produced eight witnesses called 'experts' (Archaeologist) to assail ASI proceedings, observations interpretations and findings. Similarly, plaintiffs (Suit 5) produced three witnesses, and defendant no.20 produced one witness in support of ASI report.

3799. We would refer hereat first that part of statements of the plaintiffs (Suit-4)'s Experts where they have concurred with ASI report and will find out the extent of consensus:

(a) PW 16, Surajbhan

''मेरी दृष्टि में ए0एस0आई0 की रिपोर्ट में जो आलोचना न किए जाने वाली चीज़ थी, वह यह थी कि ***उन्होंने बाबरी मस्जिद के नीचे कई दीवारें, फर्श और कुछ पिलर बेसेज़ खोज निकाले हैं, यह साक्ष्य है।*** *'' (पेज 199)*

''In my opinion, the ASI Report had a feature not amenable to criticism. It was that ***they (the excavators) have discovered many walls and floors and some pillar bases beneath the Babri mosque, and all these constitute evidence****.'' (E.T.C.)*

''बल्कि मस्जिद के नीचे सल्तनत काल के इस्लामिक ढॉचे ही रहे थे।'' (पेज 267)

''Rather, only the Islamic structures of the Sultanate period were beneath the mosque.'' (E.T.C.)

''वाल्यूम–1 के पेज–41 पर पीरियड–7 (मेडिवल लेबिल) के नीचे दूसरी तीसरी पंक्तियों में लिखी गयी बात पर साक्षी का ध्यान आकृष्ट किया गया। साक्षी ने बताया कि इस ढांचे को 12वीं से 16वीं सदी के बीच रखना सही नहीं है, बल्कि इसका निर्माण सल्तनत काल में ही दीवार नं0–17 के ढांचे

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के बाद किया गया था। इस ढांचे को मिडिवियल कहना ब्राड सेन्स में तो ठीक है, परन्तु मिडिवियल काल के भी कई फ़ेज़ेज़ माने जाते हैं और इसलिए मैं ***इस ढांचे को सल्तनतकाल के बाद के पार्ट में रखूंगा।*** *''(पेज 287)*

"When the attention of the witness was drawn to second and third lines below period-7 (medieval level) on page 41 of volume-1, he stated – It is not correct to place this structure between the 12th century and the 16th century; rather its construction followed the structure of wall no. 17 in the Sultanate period itself. To attribute this structure to the medieval period is certainly correct in a broad sense; but since the medieval period is also taken to have many phases, ***I will place this structure in the later part of the Sultanate period****" (E.T.C.)*

''ए सरकुलर सबसिडियरी श्राईन ... फीगर 24 व 24 ए पर आकृष्ट किया, साक्षी ने बताया कि यह कहना ठीक है कि यहां उसी सेमी सरकुलर कान्स्ट्क्शन का उल्लेख हुआ है जो ऊपर इन ट्रेंचज़ में बताई गयी है। मैं ब्राडली इस काल को अर्ली मिडिवल कहना उचित समझता हूँ और ***यह ढॉचा उस काल में स्थित होने के विरूद्ध मेरे पास कोई तर्क नहीं है।*** *'' (पेज 285)*

"When the attention of the witness was attracted to a circular subsidiary shrine ... Figures 24 and 24A, he stated – It is correct to say that the semi-circular construction which is mentioned here is same as stated above to be in these trenches. Broadly speaking, I think it proper to call this period early medieval period. ***I do not have any arguments contradicting this structure being attributed to that period.****" (E.T.C.)*

''रिपोर्ट की प्लेट सं0 59 व 60 को दिखाये जाने पर साक्षी ने बताया कि यह स्ट्क्चार 5ए के साथ उत्खनन के समय मिले हुए ***सरकुलर***

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श्राईन का इनसीटू फोटोग्राफ़ है। *यह कहना सही है कि प्लेट सं0 60 में नार्थ ओरियन्टेशन में एक नाली दिखायी दे रही है* ***यह कान्स्ट्क्शन इस्लामिक काल के पहले का है''*** *(पेज 482)*

"On being shown plate nos. 59 & 60 of the report, the witness stated that ***it was the in-situ photograph of the circular shrine*** *found along with structure 5A at time of excavation. It is correct to say that a drain is visible in north orientation of plate no.60.* ***This construction is prior to the Islamic period****." (E.T.C.)*

''जिस प्रकार की ईंटें प्लेट संख्या 67 में नजर आ रही है, उस प्रकार की ईंटों को मैंने उत्खनन स्थल अयोध्या में नहीं देखा था। उत्खननकर्ता इन ईंटों को सल्तनतकाल में रख रहे हैं, मुझे इसमें कोई आपत्ति नहीं है।''

(पेज 289)

"I had at the excavation site of Ayodhya seen such bricks as are seen in plate no.67. The excavators have placed these bricks in the Sultanate period to which I do not have any objection." (E.T.C.)

*''**वाल नं0–16 में एक डेकोरेटेड ब्रिक री–यूज की गई है। इस प्रकार की डेकोरेटेड ईटें गुप्तकाल से लेकर सल्तनत पीरियड के पहले तक बनती रही हैं।** प्लेट सं0–29 में नज़र आ रही दीवार इनसीटू है। जब मैंने इसे देखा था, तब शायद यह ट्रेच लगभग एक मीटर गहराई तक खोदी जा चुकी थी।'' (पेज 383)*

*"**One decorated brick has been re-used in wall no.16. Such decorated stones were built from the Gupta period to the Sultanate period.** The wall visible in plate no. 29 is in-situ. By the time I saw it, this trench had probably been dug about one metre deep." (E.T.C.)*

*''**उत्तर की तरफ कुछ पिलरबेसेज़ सही मालूम देते हैं, जिन पर स्तम्भ आदि खड़े रहे होंगे और छत भी रही होगी।**'' (पेज 301)*

*"**There appear to have been some actual pillar bases on***

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the north on which pillars etc. may have been standing and the roof may also have been based. *" (E.T.C.)*

*"**प्लेट सं0–48** को दिखाये जाने पर साक्षी ने बताया कि इस प्लेट में एक **गोल आकृति का कांसट्क्शन नजर आ रहा है,** जिसे उत्खननकर्ता ने **पिलरबेस कहा है।** फर्श जहॉ पर टूटी हुई हे, उसमे यह कान्सट्क्शन स्थित है। इस प्लेट में जो फ़र्श नजर आ रही है, उसकी मोटाई 2–3 सेमी0 रही होगी।" (पेज 387)*

*"On being shown **Plate No.-48**, the witness stated that **a round shaped construction is visible** in this plate, which has been **termed as pillar base** by the excavator. This construction is situated on the floor where it is broken. Thickness of the the floor visible in this plate might be 2-3 cm." (E.T.C.)*

*"ए0एस0आई0 द्वारा प्रदर्षित **पिलर बेसेज़ में एलाइनमेंट तो दिखाई देता है, परन्तु फिर भी इनमें अन्तर तो है ही** और रिपोर्ट में भी यही लिखा गया है। ए0एस0आई0 की रिपोर्ट में यह लिखा हुआ है कि **जी0पी0आर0 सर्वे में पाई गई कुछ एनामलीज के स्थान पर ए0एस0आई0 द्वारा कुछ पिलर बेसेज़ पाए गए थे,** परन्तु लगभग **180 आइडेंटीफाईड एनामलीज में से केवल 40 के करीब स्ट्क्चर्स को भौतिक रूप में खोजा गया था,** इस प्रकार का उल्लेख रिपोर्ट में किया गया है। कुछ तथाकथित पिलर बेसेज़ सेक्षन्स में भी देखे जा सकते हैं। **जो पिलर बेसेज़ सेक्षन्स में मिले हैं, उनमें से कुछ को मैंने देखा है।**" (पेज 464)*

*"**Alignment is visible in pillar bases shown** by ASI, **however, the difference is there** and the same has been written in the report. It has been mentioned in the ASI report that the **ASI had found few pillar bases instead of the few anomalies found in GPR survey**. **The report contains reference to the effect that out of approximately 180 identified anomalies, only about 40 structures had been physically traced out.** The sections of few alleged*

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pillar bases can also be seen. ***Out of the pillar bases sections found, I have seen few.*** *" (E.T.C.)*

''जो तथाकथित ***50 पिलर बेस ए0एस0आई0 ने दिखाए हैं, वे एक ही फ़र्ष पर नहीं हैं और न एक ही काल से सम्बन्धित हैं।*** *'' (पेज 465)*

"The alleged ***50 pillar bases shown by ASI, are not on the same floor and are also not related to the same period.*** *" (E.T.C.)*

''उत्तर की तरफ मस्जिद की बाउन्ड्री से जो सैण्ड स्टोन का प्रयोग किये हुए स्ट्क्चर्स हैं, वे पिलर बेसेज़ दिखाई देते हैं। ए0एस0आई0 ने स्वयं भी अपनी रिपोर्ट में यह लिखा है कि ***12 के करीब पिलर बेसेज स्पष्ट, खोदे गये हैं।*** *'' (पेज 467)*

"The sand stone structures in north from the boundary of the mosque, appear to be pillar bases. The ASI has also mentioned in its report that it had ***clearly dug out about 12 pillar bases.*** *" (E.T.C.)*

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''ए0एस0आई0 रिपोर्ट वाल्यूम – 1 के फ़ीगर 3–ए में, पी0बी.1, पी0बी0–3, पी0बी05, पी0बी0–6, पी0बी0–7, पीबी0–8, पी0बी0–9, पी.बी. 13 और 14 पिलर बेंसेज मालूम देते हैं,'' (पेज 468)

"P.B.-1, P.B.-3, P.B.-5, P.B.-6, P.B.-7, P.B.-8, P.B.-9, P.B.-13 & P.B.-14 of figure 3-A of ASI report Vol.-1, appear to be pillar bases." (E.T.C.)

''साक्षी का ध्यान ए0एस0आई0 रिपोर्ट वाल्यूम–2 के प्लेट संख्या 37,38, व 46 पर आकृष्ट किया, साक्षी ने इन प्लेटों को प्रष्न किये जाने पर बताया कि यह सही है कि यह कांस्ट्क्षन जिन्हें पिलर बेसेज़ कहा गया है, उत्खनन स्थल पर इन–सी टू दिखायी दे रहे हैं। ***मेरी दृष्टि में प्लेट संख्या 37 के पिलर बेस नं0 1 व 5 तथा प्लेट संख्या 38 के पिलर बेस संख्या 1 मुझे रिज़नेबिली पिलर बेसेज़ मालूम देते हैं।*** *'' (पेज 471)*

"The attention of the witness was drawn towards plate nos. 37, 38 and 46 of ASI's report Vol. II and on being

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questioned about these plates, the witness stated that it is true that these constructions, which have been termed pillar bases, are visible in- situ at the excavation site. ***The pillar base nos. 1 & 5 of plate no.37 and the pillar base no.1 of plate no.38, reasonably appear pillar bases to me****." (E.T.C.)*

''ए0एस0आई0 वाल नं0 16 के स्ट्क्चर के सबसे ऊपर वाले फ़र्श पर 50 पिलर बेसेज़ बता रही है। यह प्रापर इलस्ट्रेशन द्वारा प्रदर्शित किया जाना चाहिए, तभी उनकी संख्या और इनका फर्शों से संबंध स्पष्ट हो पायेगा।''

(पेज 473)

"The ASI is giving 50 pillar bases on the top floor of the structure of wall no.16. It should have been shown by proper illustration and it is only thereafter that the relationship between their number and floors would be established." (E.T.C.)

''यह सही है कि दीवार नं0–16 के फाउंडेशन में तथा कुछ ऊपर भी रियूज्ड मैटीरियल मिला है ***जो अर्ली मेडीवियल टाइम का होना मालूम होता*** *है, परन्तु यह तय नहीं हो जाता कि उसके ठीक नीचे कोई मन्दिर था, जिसे तोड़कर ये पत्थर आदि के अवशेष दीवार नं0–16 में इस्तेमाल किए गए।'' (पेज 331)*

"It is true that the reused material found in the foundation of wall no. 16 as well as slightly above it, ***appears to be of early medieval period*** *but that does not go on to establish that immediately below it lay any temple, which was demolished and its remains like stone etc. were used in wall no.16." (E.T.C.)*

*''****दीवार नं0–16, बाबर की बनाई हुई नहीं है, परन्तु उसमें जो स्कल्पचर्ड स्टोन लगे हैं, वे निश्चित रूप से पुराने ढांचों में इस्तेमाल हुए पत्थर हैं*** *और उन सभी कालों में जहॉ ढॉचों को नई सामग्री से बनाने की आर्थिक क्षमता का अभाव था या उस किस्म के*

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स्थेटिक संस का अभाव था, वहॉ जो भी उपलब्ध मैटीरियल आसानी से और कम खर्च से मिल जाता था, उसका प्रयोग किया जाता था।'' (पेज 331)

*''**The wall no. 16 has not been built by Babar however, the sculptured stones used in it, are certainly the stones used in old structures**. During those periods where there was lack of either financial means to build structures with new materials or aesthetic sense of that kind, all such materials were used, which were easily available at low cost.'' (E.T.C.)*

*''**प्लेट सं0–33** को देखने के बाद साक्षी ने बताया कि इस प्लेट में नज़र आ रहे भाग को **मैंने मौके पर देखा था। इस प्लेट में वाल –16 नजर आ रही है।** इस प्लेट को देखने से यह पता चलता है कि **वाल नं0–6, वाल–16 के ऊपर जा रही है** और इसलिए बाद में बनी थी।'' (पेज 385)*

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*''After looking at **plate no.33**, the witness stated that the portion visible in this plate had been **seen by me on the spot**. **The wall 16 is visible in this plate.** On looking at this plate it appears that the **wall no.6 was moving above the wall 16** and as such had been built subsequently . (E.T.C.)*

*''**वाल नं0 16 के नीचे का पोर्शन प्लास्टर्ड है। इससे स्पष्ट होता है कि यह किसी भवन की दीवार है।** वाल नं0 16 को वाल नं0 5 के आधार के रूप में इस्तेमाल किया गया है। वाल नं0 5 का पश्चिम की तरफ़ स्वतंत्र नींव भी पार्टली रही है तथा कुछ ट्रेंन्चेज़ में वाल नं0 16 वाल नं0 5 का आधार दिखायी गयी है।'' (पेज 477)*

*''**The portion beneath wall no.16 is plastered. It shows that it is the wall of some building**. The wall no. 16 has been used as foundation of wall no.5. There was a partly independent foundation of wall no. 5 towards west and in some of the trenches, the wall no.16 appears as foundation of wall no. 5.'' (E.T.C.)*

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''प्लेट सं0 25 को दिखाये जाने पर साक्षी ने बताया कि यह वाल नं0 16 का अन्दर का फ़ोटोग्राफ़ है। इसमें ब्रिक्स के 17 कोर्सेज दिखायी दे रहे हैं और इन ईंटों के नीचे पत्थर के स्लैब्स नींव में दिखायी दे रहे हैं। यह पत्थर के स्लैब्स इस दीवार की नींव के रूप में हैं।'' (पेज 478)

''On being shown plate no.25, the witness stated that it is the photograph of inside of wall no.16. Seventeen courses of bricks are visible in it and stone slabs are also visible beneath these bricks in the foundation. These stone slabs are in form of foundation of this wall.'' (E.T.C.)

'यह कहना सही है कि **वाल नं0 05 वाल नं0 16 पर रेस्ट कर रही है।**'' (पेज 477)

''It is correct to say that ***wall no. 05 is on rest against wall no.16****.'' (E.T.C.)*

''मौके पर वाल नं0–16 और वाल नं0–17 को मैंने देखा था। वाल नं0–17 उत्तर–दक्षिण दिशा में मोटे तौर पर 50 मीटर के लगभग लम्बी बताई गई है। वाल नं0–16 भी लगभग इतनी ही लम्बी बताई गई है। ये दोनों वाल थोड़े से डिविएशन को छोड़कर लगभग एक ही एलाइनमेंट में ऊपर – नीचे चल रही है।''(पेज 302–303)''

'' On the site I saw wall no.16 and wall no.17. From the north to the south wall no.17 is roughly stated to be nearly 50 metres in length. Wall no.16 is also stated to have nearly the same length. Except for certain deviations these two walls are in up and down positions nearly in the same alignment.'' (E.T.C.)

''**मैंने वाल नं0– 23 लगायत वाल नं0–27 की कालगणना के सम्बन्ध में स्वयं कोई रिसर्च या अध्ययन नहीं किया है। इन दीवारों की जो कालगणना ए0एस0आई द्वारा की गई हे, उसमें मुझको किसी प्रकार की कोई आपत्ति नहीं है।**'' (पेज 476)

*''**I have not carried out any research or study on my own regarding the period calculation of wall nos.23 to 27. I***

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***have no objection on the period calculation of these walls, as made by ASI**." (E.T.C.)*

*''**वाल नं0–16 के ऊपर बाबरी मस्जिद की पश्चिमी दीवार थी।** ए0एस0आई0 की रिपोर्ट में **इसे वाल नं0 – 5 कहा गया हैं** दीवार की जो संख्या ए0एस0आई द्वारा डाली गई है, से **मैं असहमत नहीं हूँ**।'' (पेज 333)*

*"**The western wall of the Babri mosque lay above the wall no. 16**. **It has been termed as wall no. 5** in the ASI report but **I do not agree** with the number assigned to the wall by the ASI." (E.T.C.)*

*''ए0एस0आई0 की रिपोर्ट्र वाल्यूम 1 के फ़ीगर चार (पृष्ठ 51 बी) देखकर बताया कि **विवादित स्थल के दक्षिणी भाग में एक फ़ाउन्डेशन वाल मिली है जो किसी हाल की दिखायी दे रही है।** इसकी लम्बाई 6.15 मीटर हो सकती है परन्तु इसकी चौड़ाई इस समय मालूम नहीं है। कंकरीट ब्लाकस के दो कोर्सेज नजर आ रहे हैं। इस फ़ीगर में जो कोर्सेज़ नज़र आ रहे हैं वो मौके पर कंकरीट स्टोन के थे।'' (पेज 380)*

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*"After looking at figure-4 (page-51B) of ASI's report vol.-1, (the witness) **stated that a foundation wall was found in south of the disputed site, which appears to be of some hall**. Its length may be 6.15 metres but its breadth is not known presently. Two courses of concrete blocks are visible. The courses which appear in this figure, are of concrete stone at the spot." (E.T.C.)*

*''**वाल नं0 –1 लगायत 15 विवादित भवन के अहाते की दीवारे हैं।** वाल नं0–16 उत्तर से दक्षिण लम्बाई में है तथा लगभग 50 मीटर लम्बी है। इसकी चौड़ाई अंदाजन 1.77 मीटर है। इसी के सामानान्तर वाल नं0 –17 है, यह भी लगभग उसी लम्बाई की है, जिस लम्बाई की वाल नं0 16 है। वाल नं0 17 में दक्षिण की तरफ पश्चिम दिशा में स्लाइट डेविएशन हे, जेसा कि उत्तर में यह डेविएशन पूरब की ओर है। **वाल नं0 16 बाबरी मस्जिद के निर्माण से पहले के भवन की दीवार है। यह दीवार, बाबरी मस्जिद की पश्चिमी दीवार से नीचे***

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स्थित है। ... वाल नं0–18ए , 18बी, 18 सी तथा 18डी – वाल नं0–16 के पीरियड की है तथा एक ही ढांचे की दीवारें मालूम देती हैं। *वाल नं0 – 19 बी, स्ट्क्चर –5, जिसे सर्कुलर श्राइन कहा गया है, के पश्चिम में है और वाल नं0 – 19ए, उसके पूर्व में स्थित है। वाल नं0–20 स्ट्क्चर नं0–5 के पूर्व में दर्शाई गई है।* ***मुझे इस बात पर कोई विवाद नहीं है कि वाल नं0–20, वाल नं0–19ए की फाउण्डेशन वाल के रूप में प्रयुक्त हुई होगी।*** *वाल नं0 21 सर्कुलर श्राइन के उत्तर पूर्व दिशा में दिखाई गयी है। फ़ीगर–3ए में शायद वाल नं0 21 डेढ़ दो मीटर लम्बी दिखाई गई है।'' (पेज 475–476)*

*"**Wall nos. 1 to 15 are walls of the courtyard of the disputed structure.** The wall no.16 runs from north to south and is about 50 meters long. Its breadth is approximately 1.77 meters. The wall no.17 runs parallel to it and is of almost the same length as that of wall no.16. The is slight deviation towards west in south of wall no.17, which deviation is eastwards in the north. **The wall no.16 is a construction prior to the construction of Babri mosque. This wall is situated beneath the western wall of the Babri mosque. … The wall nos. 18A, 18B, 18C & 18D are of the period of wall no.16 and appear to be walls of the same structure.** The wall no. 19B is to the west of structure-5, which has been stated termed circular shrine, and the wall no. 19A is situated in its east. The wall no.20 has been shown in east of structure no.5. **I do not dispute that wall no.20 may have been used as foundation wall of wall no.19A**. The wall no.21 has been shown in north-east of the circular shrine. The wall no. 21 has possibly been shown about 1½-2 meters longer in figure 3A." (E.T.C.)*

".वाल नं0–23 केवल आंशिक रूप में ही दिखाई दे रही है, सम्भवतः यह

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उत्तर–दक्षिण में रही होगी। ***वाल नं0–25 पूरब की तरफ उत्तर–दक्षिण दिशा में है।*** *यह दीवार, ट्रेंच जे–6 में है। मैं अकस्मात् बिना सन्दर्भ को जाने हुए यह नहीं बता सकता कि वाल नं0–25 गुप्तकाल की है, परन्तु* ***मुझे ए0एस0आई0 द्वारा इसे गुप्तकाल की बताने पर कोई आपत्ति भी नहीं है। वाल नं0 26*** *भी वाल नं0–25 से पहले की है या नहीं, यह इस फ़ीगर मात्र को देखने से स्पष्ट नहीं है, लेकिन ऐसा* ***सम्भव है कि यह दीवार वाल नं0–25 से पूर्वकालिक हो, क्योंकि मैंने वहां पर ट्रेंच में अर्लीयर पीरियड की दीवार देखी थी। ए0एस0आई0 द्वारा इसे कुषाण पीरियड में रखा गया है, तो मुझे इसमें कोई आपत्ति नहीं है।*** *'' (पेज 476)*

"Wall no. 23 is visible only partially. Probably it may have been in north-south. ***The wall no. 25 is eastwards in north-south direction****. This wall is in trench J-6. I can not tell at the spur of moment without knowing the context, as to whether the wall no. 25 is of the Gupta period. However,* ***I do not have any objection in ASI terming it to be of the Gupta period****. Whether the* ***wall no.26*** *is older than wall no.25 or not, is not clear only from perusal of this figure. However,* ***it is possible that this wall is earlier to wall no.25, because I had seen wall of earlier period over there in the trench. ASI has shown it to be of Kushana period, and I have no objection in it.*** *"* (E.T.C.)

*''****वाल नं0–28 ट्रेंच जे0–3 में है। यह कंकीट स्टोन वाल शुंग पीरियड की है, ऐसा रिपोर्ट में लिखा हुआ है। इस प्रकार की कालगणना से मुझे कोई आपत्ति नहीं है।*** *'' (पेज 477)*

*"****The wall no.28 is in trench J-3. It is so mentioned in the report that this concrete stone wall is of the Shunga period. I have no objection about such period calculation****." (E.T.C.)*

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*''**रिपोर्ट के ही प्लेट सं0127** को देखकर बताया कि इस प्लेट के फोटोग्राफ़ में एक पकी हुई **मिट्टी की हाथी की टूटी हुई आकृति नजर आ रही है।** वैदिक धर्म में हाथी इंद्र का वाहन था परन्तु हिन्दू धर्म में ब्रह्मा, विष्णु, महेश तीनों प्रमुख देवताओं से हाथी का संबंध नही है फिर भी हिन्दू धर्म एक विराट धर्म है और इसकी विविध शाखायें हैं और इसका बड़ा विकास हुआ है तो कहीं न कहीं किसी न किसी समुदाय में कोई पशु पौधा आदि महत्वपूर्ण धार्मिक चिन्ह के रूप में मौजूद हो सकते हैं **यह टेराकोटा भी बाबरी मस्जिद से पूर्ववर्ती सल्तनतकाल के ढांचों से सम्बन्धित नहीं है**।'' (पेज 309–310)*

*''Looking at **plate no.127 only of the report**, the witness stated – **A broken figure of elephant made of baked soil is visible** in the photograph of this plate. In the Vedic religion, elephant was a vehicle of Indra; but in Hinduism, three main deities – Brahma, Vishnu and Mahesh – are not associated with elephant. Nevertheless, Hinduism is a vast religion and it has various branches, and as it has developed considerably, animals, plants etc. may be found as important religious emblems somewhere or the other or in some community or the other. **This terracotta is not associated with the structures of the Sultanate period prior to the Babri masjid.**'' (E.T.C.)*

''यह कहना सही है कि हिन्दू धर्म से संबंधित अनेक अवशेष अयोध्या के विशेषस्तरों के उत्खनन से प्राप्त हुए हैं।'' (पेज 310)

'' It is correct to say that several remains associated with Hinduism have been discovered from the excavations of particular strata of Ayodhya.'' (E.T.C.)

'' जितना भी उत्खननकर्ताओं ने दिखाया है, वह निष्चित रूप से उत्खनन में ही मौजूद था। अर्थात् उतना पोर्षन इन–सी–टू मालूम देता है।'' (पेज 471)

''Whatever has been shown by the excavators, was

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definitely present in the excavation i.e. that portion appears to be in-situ." (E.T.C.)

''मन्दिर के बारे में ए0एस0आई0 ने जिन अवशेषों को अपनी रिपोर्ट में बताया है, उनसे मैं इस रूप में कई जगह सहमत हूँ कि वे अवशेष किसी मन्दिर के रहे होंगे।'' (पेज 337)

"I agree with the report of ASI about the remains of temple, to the extent that these remains may have been of some temple" (E.T.C.)

''ए0एस0आई0 की रिपोर्ट में यह बताया गया है कि देवनागरी लिपि का एक इंस्क्रिप्शन खुदाई के दौरान मिला था। जहॉ पर औंधें मुँह पड़ा था।''

(पेज 338)

"It has been mentioned in ASI's report that an inscription in Devnagari script was found during excavation, where it was lying upside down." (E.T.C.)

''औधें मुंह पड़े हुए शिलालेख का फोटोग्राफ ट्रेंच के अन्दर से ही लिया गया होगा। औधें मुह से मेरा तात्पर्य यह है कि शिलालेख की लिखावट नीचे की तरफ थी तथा वह भाग जिस पर नहीं लिखा था, वह ऊपर की तरफ था। जिस समय मै ट्रेन्च के अन्दर गया था, उस समय शिलालेख नीचे की तरफ थी। मैंने केवल इस पत्थर को वेरीफाई करने की कोशिश की थी कि इस पर कुछ लिखा है अथवा नहीं।'' (पेज 339)

"The photograph of the inscription lying upside down, must have been taken inside the trench. By 'upside down' I mean that the writing of the inscription was towards the lower part and the unwritten part was upwards. When I entered the trench, the inscription was facing the lower side. I had only tried to verify whether anything had been inscribed over this stone or not." (E.T.C.)

''यह कहना सही है कि लाइम मार्टर का प्रयोग थर्ड सेंचरी ए0डी0 में तक्षशिला और पाकिस्तान में होना कुषाणकाल में पाया गया है परन्तु यह बहुत सीमित मात्रा में था।'' (पेज 341)

"It is correct to say that lime mortar was found to have

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been used in the 3rd century AD during the Kushana period in Takshshila and Pakistan, but its use was very limited."

(E.T.C.)

''ए0एस0आई0 रिपोर्ट वाल्यूम–2 की प्लेट नं0–22 व 23 देखकर बताया कि दोनों फोटोग्राफ्स में डेकोरेटेड स्टोन रियूज किया गया दिखाई दे रहा है। यह फाउण्डेशन के उपरी भाग में वाल–5 में रियूज किया गया है। प्लेट सं0 –22 में प्लास्टर नज़र आ रहा है। ए0एस0आई0 द्वारा ***इसका नाम मकर प्रणाली दिये जाने में मुझे कोई आपत्ति नहीं है।*** *इसी रिपोर्ट की प्लेट* ***सं0–24*** *को दिखाये जाने पर साक्षी ने बताया कि इस प्लेट में* ***पत्थर की दीवार, जो दीवार नं0–5 से सम्बन्धित है, ईंटों की दीवार नं0– 16 के ऊपर जाती दिखाई दे रही है।*** *''(पेज 382)*

"After looking at plate nos. 22 & 23 of ASI report Vol.-2, (the witness) stated that in both the photographs decorated stones can be seen to have been re-used. They have been used in the upper part of the foundation of wall-5. Plaster is visible in plate no.-22. ***I have no objection in ASI naming it as Makar system****. On being shown* ***plate no.-24*** *of said report, the witness stated that in this plate* ***the stone wall related to wall no.-5, can be seen going above the stone wall no.-16.*** *" (E.T.C.)*

''मैंने इस ट्रेंच को मौके पर देखा था। इस ट्रेंच में नीचे की तरफ एक डेकोरेटेड री–यूज्ड स्टोन स्लैब नज़र आ रहा है। ऊपर से देखने पर यह पत्थर ब्रैकेट सा नजर आ रहा है। इस पत्थर को निकालकर देखने के बाद ही बताया जा सकता है कि यह पिलर का हिस्सा है या नहीं।'' (पेज 387)

"I had seen this trench at the spot. A re-used stone slab is visible in this trench towards bottom. If seen from above this stone appears like a bracket. Only after taking out this stone, can it be said whether it is a part of the pillar or not." (E.T.C.)

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''प्र0– बहुत से आर्किटेक्चरल मेम्बर जिनकी डिजाइन उपरोक्त प्लेट सं0 86 तथा 87 में नज़र आ रही है, स्टेंसिल कट वाली डिज़ाइन से मिलती जुलती थी, वाल–16 में रियूज़ किये हुए पाये गये थे। क्या आपने उनको देखा था?

उ0– जी हॉ। यह सही है कि मैंने उनको देखा था और ऐसे कुछ डेकोरेटेड स्टोन स्लैब्स, वाल नं0–16 की फाउंडेशन वाल में लगे थे। यह कोई बहुत ज्यादा दिखाई नहीं दे रहे थे और यह सभी अर्लीमिडीवियल पीरियड के थे और यह भी सभी डेकोरेटेड आर्किटेक्चरल मेम्बर हैं, जो ***अर्लीमिडीवियल काल की रचना हैं, परन्तु उन्हें सल्तनतकाल की वाल नं0–16 की फाउंडेशन वाल में रियूज किया गया है।*** *'' (पेज 424–425)*

''Question- Many architectural members, whose designs were appearing in aforesaid plate nos. 86 &87 and were resembling the stencil cut design, were found to have been re-used in wall-16. Did you see them?

Answer- Yes. It is correct that I had seen them and few such decorated stone slabs were used in the foundation wall of wall no.16. They were not much in number and were of early medieval period. There are all decorated architectural member, which ***are works of early medieval period, but have been re-used in the foundation wall of wall no.16 of the Sultanate period****.'' (E.T.C.)*

''ए0एस0आई0 ने सिक्स पीरियड को 11वीं व 12वीं सदी में रखा। मुझे ए0 एस0 आई0 द्वारा ***I से V की काल क्रम की गणना के निर्धारण के संबंध में कोई आपत्ति नहीं है, क्यों कि इसका इस समस्या से कोई संबंध नहीं है।*** *'' (पेज 455)*

''The ASI has marked the sixth period in 11th & 12th century. ***I have no objection in determination of period calculation of I to V by the ASI, because it is not related to the present dispute.*** *'' (E.T.C.)*

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*''मेरे हिसाब से VII पीरियड सल्तनत काल में पीरियड VI के बाद निष्चित होना चाहिए। **हालांकि सल्तनत के इन दोनों कालों की कोई निष्चित तिथि अभी तक उपलब्ध नहीं है**। मेरे अध्ययन के अनुसार उत्तर भारत में **सल्तनत काल 13वीं सदी से माना जाता है**। मेरे अनुसार VI पीरियड सलतनत काल में पहले आया और पीरियड VII उसके बाद। यह सम्भव है कि पीरियड VI 13वीं सदी से शुरू हुआ हो और पीरियड VII 16वीं सदी से षुरू तक रहा हो। ... वास्तव में इनको दो काल कहना भी गलत होगा। यह केवल दो भवनों के ढॉचें हैं, जो सल्तनत काल में बनाये गये और समाप्त भी हो गये। इनमें वाल नं0 17 वाला ढॉचा अर्थात् काल VI से संबंधित कहा जाने वाला ढॉचा पहले का है और केवल काल VII का ढॉचा बाद का है, सल्तनत काल का। इनके साथ पाये गये डायग्नोस्टिक अवषेषों तथा इनकी दीवार व फ़र्ष तथा प्लान आदि की समानता से देखा जा सकता है जो पीरियड V के पुरातात्विक अवषेषों और भवन निर्माण शैली से एकदम भिन्न हैं।'' (पेज 456–457)*

*''I feel that the VII period should be fixed during the Sultanate period after period VI. **However, no fixed date of both these Sultanate periods, is not available so far**. According to my studies, the **Sultanate period in north India is considered from the 13th century**. According to me, the VI period came first in the Sultanate period and the period VII followed. It is possible that the period VI started in the 13th century and the period VII in the 16th century. . . . Actually it be wrong to term them as two periods. They are only the remains of two buildings, which were built and saw their end during the Sultanate period. The structure of wall no. 17, said to be related to period VI, is a prior structure and only the structure of period VII is of subsequent period, Sultanate period. It can be seen in the similarity of diagnostic remains, their walls, floor, plan etc., which is entirely different from archaeological remains*

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and house construction pattern of period V." (E.T.C.)

*"**मुझे वाल नं0–16 व 17 के पीरियड की कालगणना पर आपत्ति है, मैं उसे गलत मानता हूँ। इससे पहले वाली दीवारों की कालगणना के सम्बन्ध में मुझे कोई आपत्ति नहीं है।**" (पेज 477)*

*"**I have objection regarding the period of wall nos.16 and 17, as worked out in the period calculation. I consider it to be wrong. I had no objection about the period calculation in respect of the other walls**." (E.T.C.)*

"प्र0– वाल नं0–1 ता 15 व 18 ता 28 के सम्बन्ध में ए0एस0आई0 द्वारा की गयी कालगणना के सम्बन्ध में आपको कोई आपत्ति नहीं है, जेसा कि आपके उत्तर से स्पष्ट है। इस सम्बन्ध में आपको क्या कहना है?

*उ0– **मुझे पीरियड –6 व पीरियड 7 के बाद की कालगणना अथवा उससे सम्बन्धित स्ट्क्चर्स की कालगणना को छोड़कर उसके पहले वाले स्ट्क्चर्स अथवा दीवारों की कालगणना में कोई आपत्ति नहीं है।**" (पेज 477)*

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"Question- From your reply it is clear that you have no objection about the period calculation made by ASI in respect of wall nos. 1 to 15 and 18 to 28. What you have to say in this behalf?

*Answer- **I have no objection regarding the period calculation of structures and walls except for the period calculation made in respect of structures subsequent to period 6 & 7.**" (E.T.C.)*

"वाल्यूम की फीगर 3ए (पेज 48ए) देखने के बाद बताया कि इस फ़ीगर में स्ट्क्चर्स का प्लान दिखाया गया है।

*इस फ़ीगर में उत्खनन के दौरान विभिन्न कालों के स्ट्क्चर्स, वाल्स, तथाकथित पिलर बेसेज आदि के प्लान दिखाये गए हैं। इस प्लान में जहॉ तक मैं देख पा रहा हूँ 28 दीवारें दिखाई गई हैं। **उत्खनन में इस की प्लान के अनुसार 28 दीवारों के अंश प्राप्त हुए। मैं पहले कह चुका हूँ कि मैं केवल तीन दिन उत्खनन के दौरान वहॉ***

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गया था *और ये सब की सब दीवारें उस समय तक उत्खनित नहीं हुई थीं। कुछ दीवारें ही उत्खनित हुई थीं। मेरे निरीक्षण तक जो दीवारें वहॉ स्पष्ट दिखाई दीं, उनमें दीवार नं0–5, 16, 17, 6, 7, 8, 9, 10, 11, 3, 25, 2 और कुछ अन्य दीवारें हैं। इस प्लान में ए0एस0आई0 द्वारा 50 तथाकथित पिलर बेसेज़ दिखाए गए हैं। . . . .**चूँकि मैंने इन सभी तथाकथित पिलर बेसेज़ को स्थल पर नहीं देखा था, कुछ को ही देखा था, इसलिए इनको सत्यापित करना मेरे लिए सम्भव नहीं है।*'' (पेज 460)*

"After looking at figure 3A (page 48A) of the volume, (the witness) stated that the plan of structures has been shown in this figure.

This figure shows the plan of structures, walls, alleged pillar bases etc. of different periods found during excavation. To the best of my ability, I can see that 28 walls have been shown in this plan. ***According to this plan, remains of 28 walls have been found in the excavation. I have already stated that during the excavation I had gone there on only three days*** *and all these walls had not been excavated by that time and only few walls had been excavated. At time of my inspection, the walls clearly visible were wall nos.5,16,17,6,7,8,9,10,11, 3, 25, 2 and few other walls. The ASI has shown 50 alleged pillar bases in this plan. . . . . .* ***Since I had not seen all these alleged pillar bases on the spot and had seen only few, as such it is not possible for me to verify them****." (E.T.C.)*

''यह सही है कि डे–टू–डे रजिस्टर (पेज 255) तारीख 13.6.2003 में ग्लेज्ड वेयर की डिटेल लिखी हुई हैं और पेज 256 पर श्री ज़फ़रयाब जीलानी के दस्तखत हैं।'' (पेज 514)

"It is true that the details of glazed ware are mentioned in the day-to-day register dated 13.06.2003 (page 255) and

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page 256 bears the signature of Mr. Zafaryab Jilani."(E.T.C.)

''यह कहना सही है कि ***सल्तनत काल से पहले भी भारत में ग्लेज्ड वेयर व ग्लेज्ड टाईल्स बनती रही हैं,*** *परन्तु बहुत कम मात्रा में है और सल्तनत व मुगलकाल की ग्लेज्ड वेयर व टाईल्स भिन्न प्रकार के हैं।'' (पेज 526)*

"It is true that ***glazed ware & glazed tiles were being made in India even prior to the Sultanate period****, but they were very less in number and different from the glazed ware & tiles of the Sultanate and Mughal period." (E.T.C.)*

''प्लेट नं0–59 और 60 में जो अर्द्धगोलाकार स्ट्क्चर बना है, वह बाबरी मस्जिद के मेन स्ट्क्चर से थोड़ी दूरी पर है। इन प्लेट्स में ब्रिक वाल भी दिखाई दे रही हैं। ए0एस0आई0 की रिपोर्ट ने इन दोनों चीजों को एक ही काल यानी पीरियड – 5 में रखा है। ***मैं ए0एस0आई0 द्वारा दिए गए पीरियड का प्रतिवाद नहीं कर पा रहा हूँ, क्योंकि मैंने इससे सम्बन्धित साक्ष्य नहीं देखा है। ....इन प्लेटों को देखने से ऐसा विदित होता है कि विवादित स्थल पर सक्सेसिव कंस्ट्क्शनल एक्टिविटी रही होंगी, यदि इनकी तिथियाँ ठीक हों।*** *इन तस्वीरों को देखने से यह भी स्पष्ट है कि ब्रिक वाल ''इन सी टू'' यानी अपने मूल स्थान पर है।'' (पेज 535)*

"The semi-circular structure in plate nos. 59 & 60, is a bit after the main structure of Babri mosque. Brick wall is also visible in these plates. Both of them have been marked in the same period-5, in the ASI report. ***I am unable to dispute the period given by ASI, because I have not seen the evidence related to it. … From perusal of these plates it appears that successive constructional activity must have existed at the disputed site, if their dates are correct.*** *From perusal of these photographs, it is also clear that the brick wall is in-situ i.e. at its original*

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place."(E.T.C.)

(b) **PW 24, D. Mandal:**

"यह सही है कि उत्खनन के समय स्थिर फोटोग्राफी तथा वीडियोग्राफी दोनों ही होती रही है। ***खुदाई के समय विवादित स्थल पर जो आर्टिफैक्ट जहॉ पर मिला उसके सम्बन्ध में ड्राफ्टमैंन उसकी स्थिति यानि वह किस स्थान पर कितने एंगिल तथा कितनी गहराई पर है, यह बनाता रहा है।*** *ड्राफ्टमैन खुदाई होने वाले स्थान का सर्वेक्षण करके यह निर्धारण करता है कि कहॉ पर खुदाई होगी तथा कहॉ–कहॉ पर कितने साईज़ की ट्रेंच बनेगी तथा उस पर नम्बर डालेगा। वर्तमान मामले में भी इसी प्रकार कार्यवाही हुई, परन्तु कहॉ और कितनी ट्रेंच कितने साईज की बनेगी यह ड्राफ्टमैन ने नही तय किया, बल्कि खुदाई करने वाले आर्कियोलाजिस्ट जो टीम का लीडर था उसने तय किया था।" (पेज 157)*

"It is true that both still-photography and videography were carried out at time of excavation. ***The drafts-man had been maintaining the location i.e. the place, angle and depth of the place where artefact was found during excavation at the disputed site.*** *The drafts-man surveys the site to be excavated and determines the place to be excavated, the place & size of the trenches to be dug up and numbers them. In the present matter also, similar action was taken but the drafts-man did not determine the place, number and size of the trenches to be dug up and instead it was decided by the archaeologist carrying out the excavation, who was also the team leader."(E.T.C.)*

"खुदाई के पहले खुदाई स्थल के ऊपर की सतह की फोटोग्राफी भी की जाती है।" (पेज 157)

"Prior to excavation, photography is also done of the upper surface of the excavation site." (E.T.C.)

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''मेरे अपने रूकने के दौरान मैं नहीं समझता कि पुरातत्ववेत्ताओं ने किसी पिलर आदि का निर्माण किया हो। मेरे सामने ऐसा कुछ नहीं हुआ कि उक्त पुरातत्ववेताओं ने छिपाकर या ज़बरदस्ती कुछ बनाया हो। खुदाई के दौरान मैंने यह देखा था कि उत्खनन के दौरान मिली सामग्रियों को अलग–अलग किया जाता था।'' (पेज 161)

***"I do not think that during my stay, the archaeologists had built any pillar etc. In my presence, nothing took place such as the said archaeologists building something secretly or forcibly. During the excavation, I had seen that the articles found in excavation were separated**." (E.T.C.)*

''यह कहना सही है कि 9 मीटर बाई 9 मीटर का एक कंकरीट फ़र्श का निर्माण जे–5, जे–6, जी–5, जी–6 के नीचे मिला था। उसी फ़र्श का एक्सटेंशन जी–7 ट्रेंच में मिला था।'' (पेज 161)

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"It is true that a concrete floor construction of 9 metre x 9 metre size was found beneath J-5, J-6, G-5, G-6. The extension of that very floor was found in Trench G-7." (E.T.C.)

''मैंने ए0एस0आई0 रिपोर्ट का अध्ययन स्ट्रेटीग्राफी की दृष्टि से गहन अध्ययन किया है और स्ट्रेटीग्राफ़ी किसी भी उत्खनन का बैक बोन होता है।'' (पेज 186)

"I have carefully studied the A.S.I. Report from the angle of stratigraphy. Stratigraphy is the backbone of any excavation." (E.T.C.)

''छठी शताब्दी ईस्वी के बाद का काल पोस्ट गुप्ता पीरियड कहा जाता है। मध्य काल भारत के इतिहास के काल में 12वीं शताब्दी के अंत से व 13वीं शताब्दी के शुरुआत से माना जाता है। सल्तनत पीरियड की शुरुआत 1206 ईस्वी से मानी जाती है।'' (पेज 242)

"The post 6th BC period, is called post-Gupta

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period. The Medieval period of Indian History is considered to be from last of 12th century to the beginning of 13th century. The beginning of Sultanate period is considered to be 1206 AD." *(E.T.C.)*

''उत्खनन में पीरीयडाईज़ेशन के दो तरीके हैं, पहला स्तरीकरण दूसरा प्राप्त अवशेष का स्तरीकरण से पारस्परिक संबंध। मैं ऐसा समझता हूॅ कि यह दोनों विधियॉ पीरीयडाईजेशन का आधार भी हैं और विधि भी हैं। पुरातत्व में डायनेस्टी के आधार पर भी काल निर्धारण होता है यदि प्रासंगिक अवशेष प्राप्त हुए हों। ***यह कहना सही है कि पुरातत्व में पीरीयडाईजेशन के लिए तीन तरीके हैं पहला लेयर वाइज़, दूसरा डायनेस्टी वाइज़, तीसरा सेन्चुरी वाइज़।*** *यह कहना सहीहै कि सेन्चुरी वाईज़ पीरीयडाईजेशन पुरातत्व में मान्यता प्राप्त व वैज्ञानिक विधि है। मैं एक पुरातत्ववेत्ता के रुप में इस बात से सहमत हूॅ कि सेन्चुरीवाइज़ पीरीयडाईज़ेशन के संबंध में एक चेप्टर रखा है। इस चैप्टर का मैंने अध्ययन किया है।* ***ए0एस0आई0 रिपोर्ट में तीनों विधियों अर्थात् लेयर वाइज़, सेन्चुरी वाइज़ तथा डाइनेस्टीवाहज़ पीरीयड, के आधार पर पीरीयडाइज़ेशन किया है।*** *ऐसा नहीं है कि ए0एस0आई0 ने काल गणना में इन तीनों विधियों का उल्लेख अलग–अलग किया हो।'' (पेज 269–270)*

"There are two methods of periodization in excavation. The first is stratification, the second is the mutual relation of the remains found with the stratification. I am of the view that both these methods form basis of periodization as also the methods. In archaeology, period determination is also made on basis of dynasties, if relevant remains are found. ***It is correct to say that there are three methods of periodization in archaeology. The first is layer-wise, second is dynasty-wise and third is century-wise.*** *It is correct to say that century-wise periodization is a recognised and scientific method of archaeology. As an archaeologist, I agree that there is a*

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chapter related to century-wise periodization. I have studied this chapter. ***Periodization has been done in the A.S.I. Report on basis of all the three methods i.e. layer-wise, century-wise and dynasty-wise period****. It is not that in period determination, the A.S.I. has mentioned all the three methods separately." (E.T.C.)*

''लेयर, डायनेस्टी तथा सेंचुरी विधियों को पुरातत्व की दृष्टि से दो भागों में विभाजित किया जा सकता है। पहला रेलेटिव डेटिंग मैथड दूसरा एबसोलूट डेटिंग मैथड।'' (पेज 271)

"From archaeological point of view the layer, dynasty and century methods can be divided in two parts. The first being relative dating method and the other being absolute dating method." (E.T.C.)

''.एब्सोल्यूट डेटिंग के अन्तर्गत कार्बन डेटिंग तथा अन्य विधियॉ आती हैं। कार्बन डेटिंग पीरियडाईज़ेशन का एक वैज्ञानिक तरीका है। सामान्यतः कार्बन डेटिंग से जो तिथि आती है, उसको सही मानते हैं।''

(पेज 271–272)

"Carbon dating and other methods fall under absolute dating. Carbon dating is a scientific method of periodization. Usually the date determined by Carbon dating, is considered correct." (E.T.C.)

''रेलेटिव डेटिंग तथा एब्सोल्यूट डेटिंग में मैं तुलनात्मक रूप से एब्सोल्यूट डेटिंग अधिक प्रमाणित मानूँगा। ***कार्बन डेंटिंग के आधार पर जो काल निर्धारण किया जाता है, वही प्रमाणित है।*** *यह कहना सही है।'' (पेज 272)*

"Comparatively I would consider absolute dating to be more authentic between relative dating and absolute dating. ***It is correct to say that the period determined on basis of Carbon dating is authentic****." (E.T.C.)*

''प्रश्नगत उत्खनन में ***ए0एस0आई0 ने डे–टू–डे रजिस्टर,***

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साइटनोट बुक तथा एंटीक्यूटी रजिस्टर–तीनों को मेन्टेन किया था। *डे–टू–डे रजिस्टर में उत्खनन के दौरान प्रतिदिन किये गये कार्य का विवरण तथा उत्खनन के दौरान प्राप्त सामग्रियों का ब्यौरा प्रथम दृष्टया अंकित किया जाता था। एंटीक्यूटी रजिस्टर में एंटीक्यूटी प्रथम दृष्टया जैसी लगती है, उसका विवरण नोट किया जाता है। साइट नोट बुक ट्रेंचवाइज मेन्टेन की जाती है।'' (पेज 284)*

"In the excavation in question, ***the A.S.I. had maintained all three–Day-to-day Register, Site Notebook and Antiquity Register****. The details of work done on each day of excavation and the prima facie description of articles found during excavation, were entered in the Day-to-day Register. The details of antiquities, as they appeared prima facie, were entered in the Antiquity Register. The Site Notebook was maintained trench-wise." (E.T.C.)*

''मैंने अपनी मुख्य परीक्षा के शपथ पत्र में ए0एस0आई0 द्वारा अनुरक्षित डे–टू–डे रजिस्टर को भी आधार माना है। मैंने साइट नोटबुक तथा एंटीक्युटी रजिस्टर, जो उत्खनन के आवश्यक रिकार्ड हैं, को देखने की आवश्यकता नहीं समझी, क्योंकि ए0एस0आई0 की रिपोर्ट तथा डे–टु–डे रजिस्टर में अध्ययन के लिए पर्याप्त सामग्री उपलब्ध हो गई थी।''

(पेज 285)

"In the affidavit of my examination-in-chief, I have also taken the Day-to-day Register maintained by A.S.I. as a basis. I did not deem it necessary to peruse the Site Notebook and Antiquity Register, which are essential records of excavation, because sufficient material was available for study from the A.S.I. Report and Day-to-day Register." (E.T.C.)

''मैं जे–3 टेंच में किसी भी लेयर का अंदर जाकर निरीक्षण नहीं कर पाया, ***केवल ऊपर से ही देखकर आबज़रवेशन किया था।*** *मैंने जे–4 और जे–5 ट्रेंनचेज का भी निरीक्षण किया था। यह सही है कि जे–3, जे–4 व जे–5 के बराबर* ***पूरब की ओर ईटों का फर्श मिला था***

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जो खुदाई वाली जगह पर ऊपरी सतह से करीब सवा मीटर नीचे था। *मैंने इन चौकोर ईंटों का अध्ययन नहीं किया। इसी सतह पर जे–1, जे–2 व के–1, के–2 ट्रेंन्चेज जो यात्रियों के गैंगवे के उत्तर में है, के नीचे उसी गहराई पर ठीक उसी तरह के ईटों का फर्श मिला था। अब मुझे यह याद नहीं है कि जे–3 ट्रेंच में खुदाई नेचुरल स्वायल तक हुई थी अथवा नहीं। (पेज 160)*

"I was not able to go inside and inspect any layer of Trench J-3, and had ***carried out observation from outside****. I had inspected Trenches J-4 and J-5 as well. It is true that* ***a brick floor was found towards east*** *in front of J-3, J-4 and J-5****, which was about 1¼ metre below the upper surface of the excavation site****. I did not study these square bricks. A similar brick floor was found at the same depth below Trenches J-1, J-2 & K-1, K-2, which are in north of traveler's gangway. I do not recollect as of now whether the excavation in Trench J-3 had been carried out upto the natural soil or not." (E.T.C.)*

*''****विवादित स्थल के उत्तरी भाग में एक मैसिव वाल पाई गई थी, जो उत्तर–दक्षिण दिशा में थी।*** *उस वाल की लम्बाई शायद 50 मीटर है तथा उसकी चौड़ाई मुझे ठीक से याद नहीं है, लेकिन यह दीवार काफ़ी चौड़ी थी तथा लगभग 1.60 मीटर के लगभग चौड़ाई में थी। इस मैसिव वाल के नीचे एक और दीवार पाई गई थी, जो उत्तर–दक्षिण में थी।'' (पेज 194)*

"A massive wall was found in the northern part of the disputed site, which was in the north-south direction. *The length of that wall was probably 50 metres and I do not properly remember its breadth. However, this wall was very thick, and was about 1.60 metres in thickness. Another wall was found under this massive wall, which was in north-south." (E.T.C.)*

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''ए0एस0आई0 की रिपोर्ट तथा स्वयं के स्थल निरीक्षण के आधार पर ***मैं इस निष्कर्ष पर पहुँचा हूँ कि विवादित स्थल पर कुषाण काल में तथा गुप्त काल में बड़े पैमाने पर स्ट्क्चरल ऐक्टीविटी हुई है।''*** *(पेज 274)*

"On basis of the A.S.I. Report and my own spot inspection, ***I have arrived at the conclusion that large scale structural activities were carried out at the disputed site during the Kushana period and Gupta period****."(E.T.C.)*

''विवादित स्थल पर जो स्ट्क्चर पाये गये हैं, उनका विवरण ए 0एस0आई0 ने अपने रिपोर्ट वाल्यूम के फ़ीगर 3 और 3ए में दिया है। ***विवादित स्थल पर पाये गये जिन स्ट्क्चरर्स का उल्लेख फ़ीगर 3 तथा 3ए में किया गया है, वे विवादित स्थल पर हैं, इससे मैं सहमत हूँ। ए0एस0आई0 ने अपनी रिपोर्ट में 4 फ्लोर्स का उल्लेख किया है, जिससे मैं सहमत हूँ।''*** *(पेज 275)*

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"The details of structures found at the disputed site, have been given by the A.S.I. in Figure 3 & 3A of its report volume. ***I agree that the structures found at the disputed site and mentioned in Figure 3 & 3A, are at the disputed site. The A.S.I. has mentioned four floors in its report, with which I agree."*** *(E.T.C.)*

''ए0एस0आई0 की रिपोर्ट वैल्यूम 1 के पृष्ठ 27 –ए पर दिये गये चार्ट में दर्शायी गयी ***ट्रेंच जी–7 के लेयर नं0 3 व 4 का काल अरली मिडीवल सल्तनत सही दर्शाया गया है। मैं इससे सहमत हूँ।''*** *(पेज 170)*

"The period of Layer Nos. 3 & 4 of ***Trench G-7 shown in the chart at page 27A of A.S.I. Report volume-1, has been correctly shown as early medieval Sultanate. I agree with it****." (E.T.C.)*

*''****जी–5 ट्रेन्च में लेयर 5 व 6 का काल भी अरली***

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मिडिवल सल्तनत सही दिया गया है। *यह कहना सही होगा कि जी–7 की लेयर 3 व 4 तथा जे–5 ट्रेंच की लेयर 5 व 6 की समकालीन थी। जे–5, जी–7 के फ़्लोर नं0 4 व 3 क्रमशः एक ही सतह पर हैं।''*

(पेज 170–171)

***"The period of Layer 5 & 6 of Trench G-5 has also been given correctly as early medieval Sultanate**. It would be correct to say that Layers 3 & 4 of G-7 and Layers 5 & 6 of Trench J-5, were contemporary. The Floor Nos. 4 & 3 of J-5, J-7 were of the same level." (E.T.C.)*

''ए0एस0 आई0 की रिपोर्ट वाल्यूम –1 फ़िगर –1 पृष्ठ –13ए एक ***कंटूर मैप है। मै इससे सहमत हूँ।''*** *(पेज 176)*

"Figure-1 at page 13A of Volume-1 of A.S.I. Report, ***is a contour map. I agree with the same**." (E.T.C.)*

*''**मेरे विचार में यह सर्कुलर श्राइन, गुप्तकाल का होगा।''** (पेज 177)*

***"In my view, this circular shrine would be of the Gupta period**." (E.T.C.)*

''गवाह ने ए0एस0आई0 रिपोर्ट वाल्यूम –2 की ***प्लेट –15 को देखकर कहा कि इसमें पॉच विभिन्न स्ट्क्चरल फ़ेज़ेज दिखाई दे रहे हैं।*** *यह कहना सही है कि प्लेट –15 के नीचे रामचबूतरे का पूर्वी दृश्य दिखाई पड़ना लिखा है।'' (पेज 187)*

*" After looking at **Plate-15 of A.S.I. Report Volume-2, the witness stated that five different structural phases appear in it.** It is correct to say that visibility of eastern view of Ramchabutra, is written below Plate-15." (E.T.C.)*

''यह कहना ठीक है कि ऊपरी सतह से बेस की सतह तक कई लेबिल विद्यमान थे। प्लेट 15 में जैसा कि दिखाई पड़ रहा है, ऊपरी सतह को छोड़कर चार विभिन्न लेविल्स हैं। यह कहना भी सही है कि हर सतह में सुर्खी लाइम का मार्टर है और कैलक्रीट के ब्लाक भरे हैं। यह कहना सही नहीं है कि सेकेण्ड लेविल में एक चौकोर पत्थर का टुकड़ा दिखाई दे रहा है। प्लेट नं0–15 में ऊपर से नीचे दूसरी सतह पर ग्राउण्ड लेविल

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पर एक चौकोर सफ़ेद छोटा सा प्लेटफ़ार्म दिखाई दे रहा है, जो मुख्य रूप से चूने से निर्मित है। इसकी मोटाई तक़रीबन 4–5 इंच होगी। मुझे यह ज्ञान नहीं है कि इस चौकोर जगह का इस्तेमाल यज्ञशाला में वेदी के रूप में किया जाता था। इस सम्बन्ध में मैं यह कहना चाहूँगा कि इस जगह का कोई पुरातात्विक प्रमाण यज्ञ की वेदी होने का नहीं मिला है। ***मैं न तो यज्ञ का मतलब जानता हूँ और न ही वेदी का।*** *'' (पेज 187)*

"It is correct to say that many levels existed from the upper surface to the surface of the base. As appearing in Plate-15, there are four different levels besides the upper surface. It is also correct to say that each layer has lime-surkhi mortar and are full of calcrete blocks. It is not correct to say that a square stone piece is visible in the second level. From top to bottom in Plate No.15, a small square shaped platform, made-up mainly of lime, is visible in the ground level of second layer. Its thickness would be about 4-5 inches. I have no knowledge that this square place was used as 'Vedi' of 'Yagyashala' (altar). In this behalf I would like to say that no archaeological evidence has been found about this place being the 'Vedi' of 'Yagya' (altar). ***I neither know the meaning of 'Yagya' nor of 'Vedi'****." (E.T.C.)*

'' ***मैं 10 जून, 2003 से 15 जून 2003 तक उत्खनन स्थल पर रहा था।*** *उस समय ज्यादातर उत्खनन कार्य समाप्त होने की अवसथा में था। उस समय तक ज्यादातर महत्वपूर्ण स्ट्क्चर एक्सपोज हो चुका था और ज्यादातर सेक्शन्स भी उत्घाटित हो चुके थे। मेरे उत्खनन स्थल पर रहने के दौरान स्ट्क्चर्स ही एक्सपोज़ हुए थे, कोई चल पुरावशेष मेरे उपस्थित रहने के दौरान वहां पर प्राप्त नहीं हुए थे।'' (पेज 198)*

"I remained at the excavation site from 10th June, 2003 to 15th June, 2003. *At that time, most of the excavation work was in conclusion stage. By that time most*

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of the important structures had been exposed and most of the sections had been explored. Only structures had been exposed during my stay at the excavation site, and no movable archaeological remain had been found over there during my stay." (E.T.C.)

*''**बीरबल साहनी इन्स्टीट्यूट, कार्बन डेटिंग की एक प्रमाणिक संस्था है।** ए0एस0आई0 ने अपनी रिपोर्ट में एन.बी0पी0डब्लू0 का काल जो पीरीयड 1 के रुप में छठी शताब्दी बी0सी0 से तीसरी शताब्दी बी0सी0 दिखाया है, **उससे मैं सहमत हूँ**।'' (पेज 272)*

***"Birbal Sahni Institute is a recognised institution of Carbon-Dating**. **I agree with** the period of NBPW given by A.S.I. in its report as Period-1 from 6th BC to 3rd BC."*

(E.T.C.)

''ए0एस0आई0 की रिपोर्ट में पृष्ठ 39 पर पीरियड 3 के रुप में कुषाण लेविल की अवधि पहली से तीसरी शताब्दी ए0डी0 निर्धारित की गयी है, जिससे मैं सहमत हूँ। इसी के नीचे पीरियड 4 के रुप में गुप्ता लेविल का उल्लेख है तथा इसका काल चौथी से छठी ए0डी0 निर्धारित किया गया है जिससे मैं सहमत हूँ।'' (पेज 273)

"At page-39 of the A.S.I. Report, the period of Kushana level has been determined from first to third century AD as Period-3, with which I agree. The Gupta level is mentioned under it as Period-4 and its period has been determined from 4th to 6th AD, with which I agree."

(E.T.C.)

''ए0एस0आई0 द्वारा दिये गये इन आइसोमेटिक व्यू में दर्शित पिलरवेसेज़ का सत्यापन मैंने विवादित स्थल से नहीं किया है।'' (पेज 275)

"The pillar bases visible in these isometric view given by A.S.I., have not been verified by me from the disputed site." (E.T.C.)

*''**फ्लोर 1 डिस्पुटेड स्ट्क्चर की फ्लोर है। फ्लोर 2,***

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फ्लोर 1 से पूर्ववर्ती फ्लोर है, जिसमें रिपोर्ट में सभी पिलरबेसेज़ व स्ट्क्चर्स को दिखाया गया है। . . . .वाल के संबंध में मेरी असहमति नहीं है परन्तु फ्लोर 3 से अटैच जो पिलर दिखाये गये हैं, उससे मैं सहमत नहीं हूँ। फ्लोर 4, 3 की पूर्ववर्ती फ्लोर है, जिससे अटैच्ड वाल तथा स्ट्क्चर से मैं सहमत हूँ।'' (पेज 275–276)

***"Floor-1, is the floor of the disputed structure. The Floor-2 lies to east of Floor-1, in which all the pillar bases and structures have been shown in the report**. . . . . **My disagreement is not regarding the wall**, but I do not agree with the pillars shown attached to Floor-3. Floor-4 lies to east of three, and I agree with the wall and structures attached to it." (E.T.C.)*

*''मैंने वाल नं0 16, 18ए, 18बी, 18 सी, 18डी के बारे में अध्ययन किया है। वाल सं0 18ए, 18बी, 18सी, 18 डी, वाल सं0 16 के समकालिक नहीं हैं। **वाल सं0 16 को मैं सल्तनत काल की वाल मानता हूँ। इसका प्रारम्भ 13वीं ए0डी0 से हुआ था**।'' (पेज 278)*

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*"I have studied about Wall Nos. 16, 18A, 18B, 18C and 18D. Wall Nos. 18A, 18B, 18C and 18D are not contemporary of Wall No. 16. **I consider the Wall No. 16 to be of the Sultanate period. It began in 13 AD."** (E.T.C.)*

''वाल सं0 5 का अस्तित्व मेकशिफ्ट स्ट्क्चर के उत्तर में थोड़ा और इसी प्रकार मेकशिफ्ट स्ट्क्चर के दक्षिण में है।'' (पेज 279)

"The existence of Wall No. 5 is partly in north of the makeshift structure and similarly in south of the makeshift structure." (E.T.C.)

***''वाल सं0 17 में एक डेकोरेटेड स्टोन लगा है। यह डेकोरेटेड स्टोन फ्लोरलमोटिफ है। इसका प्रयोग हिन्दू मंदिरों में होता है। वाल सं0 17 गुप्त काल की है। यह चौथी शताब्दी से छठी शताब्दी ए0डी0 के बीच की अवधि की है।''** (पेज 282)*

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"A decorated stone has been fixed in Wall No. 17. This decorated stone is floral motif. It is used in Hindu temples. Wall No. 17 is of the Gupta period. It is of the period between 4th to 6th AD." *(E.T.C.)*

''प्लेट सं0 22 में डिसप्यूटेड स्ट्क्चर की पश्चिम दिशा की आउटर वाल नज़र आ रही है। यह मौके का इन–सी–टू फ़ोटोग्राफ है। मैं यह नहीं बता सकता कि इसी वाल को वाल सं0 5 के रुप में जाना जाता है अथवा नहीं। ***इस दीवार में एक अलंकृत पत्थर का टुकड़ा नज़र आ रहा है, जिसमें मकर की आकृति बनी है। यह भी हिन्दू मंदिरों में प्रयुक्त होता है।*** *'' (पेज 283)*

"The outer wall in western side of the disputed structure, is visible in Plate No. 22. It is in-situ photograph of the spot. I cannot tell whether this wall is known as Wall No. 5 or not. ***A piece of decorated stone is visible in this wall, which has a crocodile figurine over it. It is also used in Hindu temples."*** *(E.T.C.)*

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''ए0एस0आई0 की रिपोर्ट में लेयर –5ए का जो उल्लेख किया गया है, उससे मैं सहमत हूँ। ***यह नान – इस्लामिक स्ट्क्चर है। स्तूप में परनाला संभवतः नहीं होता है।*** *फिर कहा कि मुझे इस बात की जानकारी नहीं है कि स्तूप में परनाला होता है कि नहीं।'' (पेज 294–295)*

"I agree with the layer 5A mentioned in A.S.I. Report. It is non-Islamic structure. ***A 'Parnala' (gargoyle) is possibly not there in Stupa****. Then stated that I do not have knowledge of the fact whether there is a 'Parnala' (gargoyle) or not in a Stupa." (E.T.C.)*

''यह कहना सही है कि ***मुगल काल के पहले भी विवादित स्थल पर निर्माण कार्य की गतिविधियां हुई थीं।'' (पेज 254)***

"It is correct to say that construction activities had been carried out at the disputed site even before the Mughal period." (E.T.C.)

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´एक पुरातत्वविद् के रूप में विवादित ढांचे के नीचे उत्खनन में स्ट्रक्चर के मिलने की बात मै स्वीकार करता हूं।´´(पेज 266)

***"As an archaeologist, I admit discovery of structures beneath the disputed structure during excavation**." (E.T.C.)*

(c) **P.W. 29, Dr. Jaya Menon** :

" I agree with N.B.P.W., Mughal and late post Mughal periods" (Page 71)

*"The **contour map given at page 13-A is correct.** To make a contour map Theodolite, tapes, and measuring staff are required and now a days a total station is used."*

(Page 71)

" After going through page no.1 of this site note book the witness stated that the location mentioned there, is correct." (Page 92)

"..the caption for plate 62, is correct." (Page 111)

*"Plate no. 36,37,38 of the ASI report were shown to the witness who stated that all these photographs are INSITU photographs of pillar bases. These pillar bases were found in the **north of dispute site**. **In my opinion these are the pillar bases**." (Page 203)*

"Floor 2, floor 3 and 4 were associated with the pre Babri Masjid structure.** . . . . . These floors may be dated from the end of the 12th century to the 16th century AD. **According to me walls and structures prior to 12th century were found in excavation but no floor prior to 12th century was found at the site. According to me the oldest wall found in excavation was of first to third century AD and the oldest structure found would be

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structure 5 which may be of 6th century AD." *(Page 205-206)*

"I agree with the observation of Prof. H.C. Bharadwaj at page 73 of his article that gypsum mortar/plaster was used in the Harappan period. I agree with the observation in the latter part of this para that gypsum was used as mortar in the Kalibangan period also. . . . . .Lime mortar was definitely used from Neolithic period." (Page 224)

3800. PW 30 Dr. R.C.Thakran (student of Prf. Surj Bhan PW 16) also deposed as an Archaeologist. He admits that he is a field archaeologist and does not possess enough knowledge of architecture. He, however, admits of having no proof which may justify any doubt on the integrity of ASI people and said:

"मुझे आर्किटेक्चर का बहुत ज्ञान तो नहीं है, *लेकिन पुरातत्व व इतिहास का विद्यार्थी होने के नाते* ***थोड़ी – बहुत जानकारी तो है।"*** *(पेज 41)*

*"**I do not have a good knowledge of architecture** but **I do have some knowledge** of it as a student of archaeology and history." (E.T.C.)*

*"**मैंने कभी कोई उत्खनन स्वयं किसी फील्ड में नहीं किया।** मुख्य तौर पर आर्कियोलाजी को फील्ड आर्कियोलाजी व टेबिल आर्कियोलाजी मे विभाजित किया जा सकता है। यह कहना गलत होगा कि **मैं फील्ड आर्कियोलाजी नहीं हूँ।** बल्कि केवल टेबिल आर्कियोलाजिस्ट ही हूँ। ... मैं अपने आप को फील्ड आर्कियोलाजिस्ट मानता हूँ, क्योकि मैं फील्ड आर्कियोलाजिस्ट का काम करता रहा हूँ।" (पेज 136)*

*"**I myself never did any excavation in any field.** Archaeology can be divided mainly into field archaeology and table archaeology. **It will be wrong to say that I am***

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not a field archaeologist; *rather, I am just a table archaeologist. I consider myself to be a field archaeologist because I have been doing the job of field archaeologist."(E.T.C.)*

"मेरे इस विषय का ज्ञान स्थापत्य कला एवं वास्तु कला से संबंधित है और अन्य बातों से भी जुडा हुआ है। अन्य बातों में ज्लेज्उ–वेयर, ग्लेज्ड टाइल्स तथा संबंधित मैटीरियल में शामिल हैं। मैंने इन सभी बातों का अध्ययन किया है। मेरा यह ज्ञान विभिन्न लेखों के अंशों मात्र पर ही आधारित नहीं है, बल्कि स्वयं मेरे अनुभव पर भी आधारित है। यह कहना सम्पूर्ण रूप से ठीक नहीं होगा कि मैं भवनों में प्रयुक्त उपरोक्त संदर्भित मैटीरियल एवं स्टाइल्स का विशेषज्ञ नहीं हूँ। मैं सम्पूर्ण ज्ञान के शब्द का प्रतिशत तो नहीं बता सकता, परन्तु मैं यह कह सकता हूँ कि मुझे विशेष ज्ञान उपरोक्त का है, जो मेरे अध्ययन के आधार पर आधारित है। ***मैंने इस विषय पर कोई खास पुस्तक नहीं पढ़ी है। मैंने किसी विज्ञान–प्रयोगशाला में भी इसका अध्ययन अर्जित नहीं किया है, परन्तु मुझे अनुभव एवं अध्ययन के आधार पर यह ज्ञान है।"*** *(पेज 167)*

"My knowledge of this subject is related to sculpture and architecture and also to other things. Other things include glazed ware, glazed tiles and concerned materials. I have made study on all these things. This knowledge of mine is based not only on some portions of several articles but also on my own experience. It would not be fully proper to say that I am not a specialist in the above referred materials and styles applied to buildings. I cannot quantify the word 'complete knowledge' in percentage but can say that I have special knowledge of the afore-said facts which is based on my study. ***I have not studied any particular book on this subject. I have not gained knowledge of it in any science laboratory too but I have this knowledge on the basis of***

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my experience and study. *" (E.T.C.)*

*''**मैं एक पुरातत्व विशेषज्ञ के रूप में यहॉ पर उपस्थित हुआ हूँ** ।''(पेज 187)*

*"**I am present here as an expert in archaeology"**. (E.T.C.)*

''मैं पुरातत्व शास्त्र की सभी विधाओं के विशेषज्ञ के रूप में बयान दे रहा हूँ।'' (पेज 151)

"I am giving statement as a specialist in all branches of archaeology." (E.T.C.)

*''**भारतीय, इतिहास को प्रो0 सूरजभान पढ़ाते थे।** प्रो0 सूरज भान विगत दस वर्षो से रिटायर हो चुके हैं प्रो0 सूरजभान वहीं हैं, जिनका बयान इस न्यायालय में हो चुका है।'' (पेज 31)*

*"**Prof. Suraj Bhan taught Indian history.** 10 years has passed since Prof. Suraj retired. Prof. Suraj Bhan is the same person that has given his statement in this court."(E.T.C.)*

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*''**मेरी जानकारी में ऐसा कोई इस स्थिति में प्रमाण नहीं है, जिससे यह साबित हो सके कि इनकी एंटीग्रिटी (सत्यनिष्ठा) पर संदेह किया गया हो।**''(पेज 52)*

*"**To my knowledge, there is no proof capable of establishing that their integrity has been doubted**."(E.T.C.)*

3801. PW 30 also makes it clear that it was not possible for anyone to take anything inside the area due to the security reasons.

*''**उत्खनन स्थल पर कोई बैग अथवा अन्य किसी प्रकार का ''लगेज'' लेकर नहीं जाने पाते थे। इसे ले जाना संभव ही नहीं था।** केवल मात्र हम लोग अपना पेन, पेंसिल व राईटिंग पैड लेकर वहॉ पर जाते थे।'' (पेज 50)*

"None was allowed to go to the excavation side along

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with any bag or any other type of luggage. ***It was not possible to take it along***. *Only we went there taking along our pens, pencils and writing pads." (E.T.C.)*

3802. The parts of his statement which show agreement on some aspects of ASI report are:

"मेरे अनुसार ए0एस0आई0 रिपोर्ट वाल्यूम – 2 (प्लेट्स) में जो चबूतरा दिखाया गया है, वह स्ट्क्चर है। यह चबूतरा फर्श पर टिका हुआ है। फ़र्श वैसे ही छोड़ दी गई है। फ़र्श तक सेक्शन भी कायम है। इस स्तर तक इसमें कोई गलती नहीं है।" (पेज 120)

"The Chabutra shown in plates of the ASI report volume-2, is, in my opinion, are structure. This chabutra is based on the floor. The floor has been left as it is. The section also exists up to the floor. Up to this level it has no flaw."(E.T.C.)

"इस आईसोमैट्रिक व्यू में जो एक से चार तक फ़्लोर दिखाये गये हैं या उनकी जो गणना की गयी है, वह सही है। लेकिन जिस तरह से चारो फ़्लोर को यहॉ पर प्रदर्शित करने की कोशिश की गयी है, वह उचित नहीं है।" (पेज 127)

"Showing of floors from one to four in the isometric view or whatsoever calculation of them has been done, is true. But the way in which an endeavour has been made to show the four floors here, is not proper." (E.T.C.)

"मुझे ए0एस0आई0 की रिपोर्ट वाल्यूम – 1 के पृष्ठ – 70ए पर फ़ीगर – 17 के नीचे वाले चित्र में दाहिनी ओर एक पतली सी नाली दिखाई पड़ रही है। यह कहना सही है कि इस फ़ीगर – 17 के अनुसार यह नाली उत्तर की ओर जा रही है। ***यह भी कहना सही है कि उत्तर की ओर जाती हुई ऐसी नाली बौद्ध स्तूप मे नहीं होती है।*** *...यह कहना सही है कि ए0एस0आई0 की रिपोर्ट वाल्यूम–2 के प्लेट संख्या–60 मे बाई ओर एक तीर का निशान बना हुआ है। इस प्लेट में एक पतली सी नाली नज़र आ रही है।" (पेज 150)*

"A slender drain is visible to me on the north side in the

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picture below figure 17 on page 70-A of the ASI report volume-1. It is correct to say that as per this figure 70, this drain is going northwards. ***It is also correct to say that the Buddhist stupas do not have such north- bound drains****. ..It is true to say that there is an arrow mark on the left side in plate no.60 of the ASI report, volume-2. A narrow drain is seen in this plate." (E.T.C.)*

*"**विवादित स्थल पर स्ट्रक्चरल एक्अीविटीज की शुरूआत मेरी जानकारी के अनुसार कुषाण काल से प्रारम्भ होती है और उसके बाद के कालो में किसी न किसी रूप में चलती रही हैं। निश्चित तौर पर विवादित स्थल पर जो ''विवादित भवन'' था उसे ''वर्जिन लैण्ड'' पर नहीं बनाया गया था।** जैसा कि मैंने पहले ऊपर बताया है विवादित भवन जिस स्थान पर बनाया गया उस भवन के स्थल पर निर्माण गतिविधियॉ। कुषाण काल से प्रारम्भ होकर पाश्चात् के कालों में किसी न किसी रूप में चलती रही हैं। पाश्चात् काल से मेरा तात्पय्र गुप्त काल, अर्ली मिडिवल पीरियड, सल्तनत और मुगल पीरियड व बाद के कालों से है। मैं यह नहीं कह सकता हूँ कि विवादित स्थल पर जो निर्माण या भवन रहे होंगे उन्हें तोड़ा भी गया होगा, क्योंकि **खुदाई के दौरान किसी भी पूर्व कालीन स्ट्क्चर के विध्वंस के कोई अवशेष नहीं मिले हैं**।" (पेज 218)*

*"**In my knowledge, the structural activities at the disputed site started from the Kushana period and continued in the subsequent periods in one form or the other. Certainly the disputed site, which was the 'disputed structure', had not been built over 'virgin land'**. As already stated by me, the site where the disputed structure had been built, had seen structural activities beginning from the Kushana period and continuing periods, in one form or the other. By subsequent periods, I mean the Gupta period, early medieval period, Sultanate*

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period, Mughal period and subsequent periods. I cannot tell that the constructions or buildings existing at the disputed site, must have been demolished because during the excavation, ***no remains were found of demolition of any earlier period structure****."(E.T.C)*

"विवादित स्थल पर मैंने फ़र्श देखी है। ***मैंने विवादित स्थल पर उत्खनन के दौरान चार फ्लोर देखे थे।*** *चौथी फ्लोर का पीरियड मेरे अनुसार मिडिवियल पीरियड है। फ्लोर थ्री भी मिडिवियल पीरियड की है। इसी प्रकार फ्लोर –टू भी मिडिवियल पीरियड की थी, परन्तु फ्लोर – वन इस पीरियड की नहीं थी। फ्लोर वन आधुनिक काल की है। चौथी फ्लोर में फर्श को बनाने के लिए लाइम तथा एक खास तरह की बढ़िया मिट्टी और ईंटों के पाउडर का प्रयोग हुआ है, जिसको लाइम –सुखी कहा जाता है।" (पेज 263)*

"I have seen floors at the disputed site. ***During the excavation, I had seen four floors at the disputed site****. According to me, the fourth floor is of the medieval period. The floor-three was also of the medieval period. Similarly, the floor-two was also of the medieval period, but the floor-one was not contemporary. The floor-one is of modern period. Lime and a special type of good quality earth and brick powder, called lime- surkhi, has been used in laying down the fourth floor." (E.T.C)*

"साक्षी का ध्यान ए0एस0आई0 रिपोर्ट वाल्यूम–2 के प्लेट संख्या 49, 50 तथा 55 पर आकृष्ट किया गया, साक्षी ने इन प्लेट्स को देखकर बताया कि प्लेट संख्या 50 व 55 में फ्लोर संख्या 1 व फ्लोर संख्या–2 दिखाई दे रहे हैं। इन प्लेट्स को देखने से यह स्पष्ट होता है कि ***यहाँ पर सक्सेसिव स्ट्क्चरल एक्टीविटीज रही****।" (पेज 264)*

"The attention of witness was drawn towards plate nos.49, 50 & 55 of the A.S.I report vol.-2. After looking at these plates, the witness stated that floor no.1 & floor no.2 are

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visible in plate nos.50 & 55. By looking at these plates, ***it transpires that successive structural activities existed over here.*** *" (E.T.C)*

प्र0–क्या फ्लोर संख्या –2 व 3 समकालीन फ्लोर है?

उ0–दोनों फ्लोर्स हू–ब–हू समकालीन नहीं है।

उ0 उससे मेरा तात्पर्य यह है कि दोनों फ्लोर्स एक समय की बनी हुई नहीं हो सकती हैं। फ्लोर संख्या–2 व 4 की भी यही स्थिति है।'' (पेज 265)

"Question:- Are floor nos.2 & 3, contemporary floors?

Answer:- Both the floors are not exactly contemporary.

Answer:- By it, I mean that both the floors cannot be contemporary. The position of floor nos.2 & 4, is also the same." (E.T.C)

''मैंने विवादित स्थल पर फ्लोर्स की जो स्थिति देखी थी, उसके अनुसार फ्लोर –2 व –3 को विवादित भवन से जोड़ा जा सकता है और उसी तरह से फ्लोर न0–1 को भी विवादित भवन के स्ट्क्चर के साथ जोड़ा जा सकता है। फ्लोर न0–1, 2 तथा 3 भी समकालीन नहीं थे। स्वयं कहा कि समकालीन होने का यहां पर विशेष अर्थ है, इसका तात्पर्य यह है कि जिस समय फ्लोर नं0–3 बनाया गया होगा, उसी समय फ्लोर नं0–2 भी बनाया गया हो। फ्लोर नं0–3, प्रीवियस स्ट्क्चर का फ्लोर है। यह उस स्ट्क्चर का फ्लोर है, जो विवादित भवन के नीचे मिला।फ्लोर नं0 1 व 2 विवादित भवन के ही फ्लोर हैं। मुझे ऐसा नहीं लगता है कि फ्लोर नं0–2 किसी प्रीवियस स्ट्क्चर का फ्लोर है।'' (पेज 267–268)

"According to the situation of floors seen by me at the disputed site, the floor nos.2 & 3 can be linked to the disputed structure and similarly the floor no.1 can also be linked to the structure of the disputed building. Floor nos.-1, 2 & 3 are not contemporary. The floor nos.2 & 3 were also not contemporary. Stated on his own that contemporary has a special meaning over here. It implies that when the floor-3 was laid, at the same time floor-2

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must also have been laid. Floor no.-3 is a floor of previous structure. It is the floor of that structure, which was discovered beneath the disputed structure. Floor nos.1 & 2 are floors of the disputed structure. It does not appear to me that the floor no.2, was the floor of any previous structure." (E.T.C)

*''ए0एस0आई0 रिपोर्ट वाल्यूम–2 की प्लेट संख्या–26 को दिखाये जाने पर साक्षी ने बताया कि इस प्लेट में भी दो पत्थर के डेकोरेटेड पीसेज़ का प्रयाग हुआ है। प्लेट संख्या–25 तथा प्लेट सं0 26 में जिन डेकोरेटेड पीसेज के बारे में मैंने अभी बताया है, को रियूज़ किया गया है। **यह पत्थर निश्चित तौर पर किसी न किसी स्ट्क्चर के कहीं न कहीं हिस्सा रहे होंगे और उस स्ट्क्चर के खण्डित होने के बाद ही इनका दोबारा प्रयोग इस नींव में किया गया होगा।** इन दोनों प्लेटों को देखने से यह स्पष्ट है कि इसमें ब्रिक तथा पत्थरों दोनों का प्रयोग किया जाना लग रहा है।'' (पेज 302)*

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*"On plate no. 26 of ASI Report, Volume-2 being shown the witness stated – Two decorated stone pieces are used in this plate as well. The decorated pieces in plate nos. 25 and 26 – about which I have just stated – have been reused. **These stones must have been somewhere parts of some structure or the other, and only after that structure having been demolished, they may have been reused in this foundation.** At the sight of these two plates it is clear that there is use of both bricks and stones in them."(E.T.C.)*

''साक्षी का ध्यान ए0एस0आई0 रिपोर्ट वाल्यूम 2 के प्लेट सं0–59 व 60 की ओर आकृष्ट किया तथा निम्न प्रश्न पूछाः–

प्रश्न– क्या प्लेट सं0 –59 तथा 60 में सरकुलर स्ट्क्चर के किनारे जो दिवार नज़र आ रही है, वह उसी पीरियड की है जिस पीरियड का सरकुलर स्ट्क्चर है?

*उत्तर– यह संभव है कि सरकुलर स्ट्क्चर तथा दीवार एक ही पीरीयड की हो। **सरकुलर स्ट्क्चर तथा दीवार गुप्त पीरीयड की होना***

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संभव है।

प्रश्न– क्या उपरोक्त प्लेटों को देखकर आप बता सकते हैं कि इस स्थान पर गुप्त पीरीयड के बाद भी स्ट्क्चरल एक्टीविटीज़ रही है?'

उत्तर– इन प्लेटों को देख कर इस बारे में बता पाना सम्भव नहीं हैं कि उस स्थान पर बाद में स्ट्रकचरल एक्टिविटीज हुई या नहीं।'' (पेज 329)

"The attention of the witness was drawn to plate nos. 59 and 60 of ASI report, volume-2 and the following question was asked:-

Question:- Is the wall, visible on the edge of the circular structure seen in Plate nos. 59 and 60, is of the same period as that of the circular structure?

Answer:- The circular structure and the wall may be of the same period. ***The circular structure and the wall are possibly of the Gupta period****.*

Question:- Can you, by looking at the aforesaid plates, tell whether structural activities have been witnessed at this place even after the Gupta period?

Answer:- By looking at these plates it not possible to tell whether structural activities were later seen or not at that place." (E.T.C.)

''पृष्ठ 37 ऐ पर जो कल्चरल डिपाजिट को दिखाने के लिए तालिका बनायी गयी है तथा जिसका शीर्षक ''टेन्टेटिव पीरीयडाईजेशन आफ़ दि डिस्पुटेड साईट ऐट अयोध्या'' है, को देखकर यह कहा जा सकता है कि ट्रेंच नं0–7 में गुप्ता व पोस्ट गुप्ता पीरीयड के डिपाजिट्स हैं जबकि ट्रेंच नं0 जे0 3 में इन दोनों ही कालों के अवशेष नहीं दिखाये गये हैं। इसके साथ–साथ इस फ़ीगर को देखकर यह भी कहा जा सकता है कि ट्रेंच नं0 जी – 7 में लेयर संख्या 9,10,11,12 कुषाण काल के डिपाजिट को दर्शाती है और इसी तरह से ट्रेन्च नं0 जे0 3 में लेयर सं0–7 व 8 कुषाण काल के कल्चरल डिपाजिट को दर्शाती है।'' (पेज 330–331)

"Looking at the table on page 37A, showing cultural

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deposits and having the caption 'Tentative Periodization of the Disputed Site at Ayodhya', it can be said that there are deposits of the Gupta and the post-Gupta period in Trench no. 7; whereas remains of both of these periods are not shown in Trench no. J-3. Besides by looking at this figure it can also be said that Layer nos. 9, 10, 11 & 12 of Trench no. G-7 show the deposits of the Kushana period; and in this very manner, Layer nos. 7 & 8 of Trench no. J-3 show cultural deposits of the Kushana period." (E.T.C.)

''उत्खनित स्थल पर यदि उपरोक्त कालों की वस्तुओं के बारे में पूछा जा रहा है तो उस संबंध में ***मैं केवल यही कह सकता हूँ कि जिन–जिन ट्रेन्चेज़ में कुषाण, गुप्ता, पोस्ट गुप्ता व राजपूत कालों के कल्चरल डिपाजिट्स सिलसिलेवार उपस्थित हैं, वहाँ पर इन कालों की पाटरी तो अवश्य मिली है।*** *'' (पेज 331)*

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"If I am asked about the things of the aforesaid periods present on the excavation site, ***I can only say that potteries of the Kushana, Gupta, post-Gupta and Rajput periods have certainly been discovered in the Trenches where cultural deposits of the said periods are serially present****."(E.T.C.)*

''यह स्पष्ट हो जाता है कि 12वीं शताब्दी के पहले भी इस स्थल पर मानव बस्तियों के अवशेष उपलब्ध हैं।

ज़ाहिर है कि अगर सरकुलर स्ट्क्चर और उसके आस–पास के अन्य स्ट्क्चरल अवशेष गुप्त काल से संबंधित हैं, तो ***12वीं शताब्दी से पूर्व यहाँ पर स्ट्क्चरल एक्अीविटीज के होने की पुष्टि करते हैं।*** *'' (पेज 331)*

"It gets clear that remains of human settlements, even prior to the 12th century, are there on the site.

It is clear that if the remains of the circular structure

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and ***other structures adjoining it, are related to the Gupta period, that establishes the presence of structural activities there prior to 12th century****." (E.T.C.)*

"इस बात की पूरी सम्भावना है कि फ़ाउण्डेशन के ऊपर जो ईंटों की दीवार है, उसको आगे चल करके फ़ाउण्डेशन के रुप में भी प्रयोग किया हो।

प्र0– आपने यह कहा कि ऐसा हो सकता है कि ईटों वाली दीवार का प्रयोग फ़ाउण्डेशन में किया गया हो, तो यह स्ट्क्चर की दीवार नहीं हो सकती है। क्या आप इस बात से सहमत हैं?

उ0– यहां पर ***यह सम्भव है कि पत्थरों के फ़ाउण्डेशन के ऊपर जो ईटों की दीवार है, वह पहले स्ट्क्चर का हिस्सा रही हो।****" (पेज 335)*

"There is every possibility that the brick wall above the foundation, may also have been used as the foundation afterwards.

Question:- You stated that the brick wall might have been used as the foundation; then it cannot be the wall of the structure. Do you agree on this point?

Answer:- Here ***it is possible that the brick wall above the stone foundation may have earlier been the part of the structure****." (E.T.C.)*

*"मेरे अनुसार इस फ़ीगर 1 में जो मेजरमेंट दिखाया गया है, वह ठीक है। . ...****मेरी जानकारी के मुताबिक उत्खनन के दौरान जी0पी0आर0 में दिखाई गई कुछ एनामिलीज की पुष्टि हुई।****" (पेज 344)*

"The measurement shown in figure no. 1 is, in my opinion, correct. ... ***As per my knowledge, the presence of some anomalies in the GPR got confirmed in course of the excavation****." (E.T.C.)*

*"****फ़्लोर नं0 3 व फ़्लोर नं0 4 से जुड़ी हुई दीवारें विवादित भवन के समय से पूर्व की थीं।*** *...मेरे विचार से फ़ीगर –23 में विवादित स्थल की जो स्थिति दिखायी गयी है, वह सही है।" (पेज 359)*

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*"**The walls connected with Floor No. 3 and Floor No. 4 were prior to the time of the disputed structure**. In my opinion, the position in which the disputed structure is shown in Figure 23 is correct." (E.T.C.)*

3803. **PW 31, Dr. Ashok Dutta** has assailed the ASI report only in respect to pillar bases by means of his affidavit dated 20.1.2006. However, while agreeing that underneath the disputed structure there exists earlier structure, he said in para 19 and 20 of the affidavit that the periphery region of the mound was inhabited by Islamic cultured people and the site was continuously occupied by Islamic cultured people right from the time of Sultanat period and the structure associated with this level belong to Islamic culture. Regarding the affidavit, he says on page 67:

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"I have gone through the report submitted by ASI, and on the basis of my personal observation I filed my affidavit in examination in chief in the court. The affidavit filed by me is my observation report." (Page 67)

3804. The following aspects in the proceeding and report of ASI has not been disputed by him:

*"**Human animal figurines in terracotta and stones were found from disputed site** also. ... It is correct to say that **terracotta figurine were recovered** during excavation and have been shown in the report of the ASI. " (Page 75)*

"The floors which have been shown in this figure are correct as four floors were found from excavation and the floors as shown in figure 23-A may be similar as this figure is the replica of floors found in the excavation" (Page 90)

"On the basis of these floors an archaeologist can draw

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conclusion that ***these floor represent structure of different periods.*** *It is very difficult to infer on the basis of these floors that it was an open space." (Page 92)*

"The floors which have been shown in this figure are correct as four floors were found from excavation and the floors as shown in figure 23-A may be similar as this figure is the replica of floors found in the excavation" (Page 96)

*"****I agree with the opinion of ASI that there lie a number of structure in the forms of walls and floors beneath the disputed structure.*** *Wall number 1-15 may be related to the disputed structure. Walls number 16 onwards are walls belonging to a period before the construction of disputed structure. (Page 249)*

"Figure 3B ... shown to the witness. The witness stated that it appears from this figure that it has used 3 different colours for structures belonging to 3 different periods 6,7 and 8. It is correct to say that in this figure walls and structures found during excavation are shown. I can identify wall no.16 and 17 in this figure 3B. Wall number 16 is a bit larger than wall no. 17. Wall no. 16 appears to be about 50 meters in length, where as wall no. 17 is approximately 35-40 meters if the measurement as done by ASI is correct. I have seen wall no. 17 on spot but I have not taken its measurement. The measurement shown by ASI in this figure 3B appears to be correct because it will be presumed that them measurement given by ASI is correct." (Page 249)

*"****The structures which were found beneath the structure, belong to earlier than 1528 AD.****" (Page 253)*

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3805. In cross examination, PW 31 has concurred with the periodization of ASI except that of period VI :

> *"I agree with the suggestion that the stratigraphy is it self a scientific mode of periodization. I agree with the periodization given by the ASI of period 1 from 6th to 3rd century B.C., period 2 is from 2nd to 1st century B.C., period third is from 1st to 3rd century A.D. and period 4 from 4th to 6th century A.D. The ASI has fixed period 5 from 7th to 10th century A.D. and period 6 has been fixed by ASI from 11th-12th century and period 7 is from 12th to the beginning of the 16th century A.D. It is true that in chapter 3 the ASI has given periodization on the basis of dynasty, Stratigraphy as well as on the basis of century wise but no stratigraphical sequence has been followed by the ASI. Moreover they have used both centurywise as well as dynasty wise periodization. Volunteered that* ***gross mistake of periodization is in the period 6 which is shown as medieval sultanate-period starting from 11th- 12th century A.D. when they were non existent****. This shows that the Stratigraphy was not followed properly. The ASI people had not done the carbon dating of different samples found from different level to support their periodization." (Page 254)*

3806. The parts of statement of **PW 32 Supriya Verma,** which shows agreement on some aspects of ASI report are:

> *"It is correct that the ASI in its report has shown it as a Ram Chabutara because a larger platform on the top of it was existing and known as Ram Chabutara. The ASI has also in its report said that this platform was a Vedi." (Page*

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"It is correct to say that from the findings of ASI, it is established that there was some structure beneath the floor of disputed site and I also concede that there was some structure beneath the site in dispute." (Page 131/132)

*"However, **I agree that the three floors were found**." (Page 134)*

*"All the three floors no. 2 to 4 are attached with wall no. 16. Wall no. 16 is the same wall which is just below the wall no. 5. Undisputedly, wall no. 5 was that of the disputed structure. **It is correct to say that below wall no. 16 is there wall no. 17.** Yes, it is correct to say that ASI has shown a circular shrine which according to me is Buddhist Stoop." (Page 135-136)*

"It is correct to say that this wall 22 lies below the foundation of wall 16 in west-side. This goes to show that wall no. 22 is earlier to wall 16. Wall no. 25 runs in north south direction which is situated in the east of the disputed structure. Wall No. 26 is earlier to wall no. 25. Just below wall no. 26 is wall no. 27 which is running in north south direction with a slight angle. The period of wall no. 27 has been indicated by ASI as Kushan period. I also date this wall to Kushan period. Huge calcrete blocks are attached to wall no. 28. It is in trench J-3. ASI has dated it to Shunga period and I agree with this conclusion. Shunga period can be dated between 2nd B.C. and 1st B.C. century. Kushan can be dated between 1st century A.D. to 3rd century A.D. Wall no. 16, 18-A, 18-B and 18-C are more or less contemporary." (Page 146)

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*"**I agree with the finding of the ASI regarding existence of the structure underneath the disputed structure** but I disagree with the interpretation arrived at by ASI. I do not agree with the procedure followed by ASI. I think, very categorically it is very difficult to say that some of the finds of ASI relate to Hindu religion structures because these finds could well have been a part of palaces Budhist structure, Jain structure and Islamic structure."(Page 147)*

*"As far as plans are concerned **except those concerning the pillar bases I agree with the rest of the plans given in the ASI report.**" (Page 151)*

*"**It is true that ASI has given concordance of some of the trenches showing relationship of different areas of the excavations. I agree with this chart.**" (Page 153)*

"It is true that plate 129 of ASI report is of cobra head. Similarly, plate 130 of the report is of bull head." (Page 162)

"Plate 133 of ASI report is of bull figurine." (Page 162)

"These animal figurines which are shown in plates 129 to 135 were recovered during excavation by the ASI." (Page 162)

*"**I agree with the ASI report in regard to the pillar bases 1 and 5 shown in plate 37 Vol II of the ASI report.**" (Page 167)*

*"**It is correct to say that the disputed structure was not constructed on the virgin land**." (Page 168)*

"Yes, in the foundation of the disputed structure, a few decorated stones were used which were found during

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excavation."(Page 171)

"From walls 16 to 28, except wall 18-D are the walls underneath the disputed structure." (Page 137)

3807. PW 24 though had disputed the several artefacts found at different level by ASI stating that they were not found therefrom, but PW 32 has contradicted on page 107 and said :

"I have no doubt about the depths of the antiquities mentioned in ASI report."

3808. Now we start with our journey of adjudicating the objections raised against the ASI's report and findings, in the light of the evidence adduced by the parties and the arguments of learned counsels.

3809. Initially the case set up by the plaintiffs (Suit-4) was that the building in dispute was constructed at a place where neither there existed any Hindu religious structure nor the place in dispute was place of worship nor there exist any evidence to show birth of Lord Rama thereat. However, when the excavation proceedings progressed, a marked change in the approach of plaintiffs (Suit-4) became evident. Some of the Archaeologist, who also deposed later in favour of plaintiffs (Suit-4), against ASI report, tried to set up a new case that there appears to be an Islamic religious structure existing beneath the disputed building or that there existed an Islamic religious structure when the disputed building was constructed. The suggestion was that it could be either an Idgah or a Kanati Masjid wherein only one long wall on the western side was constructed with a niche. The consensus appears to be amongst the eight experts of Muslim parties, more or less accepting the existence of a structure beneath the disputed structure. The

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above approach that the earlier structure was a Islamic religious structure excludes the possibility of a non religious structure at the disputed site beneath the disputed structure. It narrows down our enquiry to the question whether such structure could be an Islamic religious structure or non Islamic structure i.e. a Hindu Religious Structure.

3810. In the pleadings, specific case of the plaintiffs (Suit-4) was about non existence of any temple or building on the disputed site when the building in dispute was constructed. Subsequently, parties have not sought for any amendment in the pleadings and there is no case or suggestion even till date, in the pleadings that there could have been or there was any possibility of existence of an Islamic religious structure at the time when the disputed structure was constructed and it is after demolition of such earlier structure the subsequent one was constructed.

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3811. On the contrary, besides plaintiffs (Suit 5), defendant no.13 (Suit 4) had also pleaded that there existed a temple which was demolished and thereafter the disputed structure was constructed and the structure of the earlier demolished temple can be found beneath the disputed structure. It is in this context the OPW-9 had deposed that on excavation of the disputed site these facts can be fortified.

3812. The entire process of excavation and submission of report has been completed by ASI in a record period of about six months and ten days'. It commenced its work on 12th March 2003 and submitted report on 22nd August 2003. The report is in two Volumes. First consists of text of report and Second contains various plates (photographs) of the finds, excavated site, trenches etc. The report has been submitted by Sri Hari

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Manjhi and B.R. Mani with contribution from M/S Shubhra Pramanik, P.K. Trivedi, P. Venkatesan, L.S. Rao, C.B. Misra, A.R. Siddqui, T.S. Ravishankar, C.B. Patil, S.K. Sharma, M.V. Vishweshwara, G.S. Khwaja, Vishnu Kant, N.C. Prakash, D.K. Singh, Niraj Sinha, A.A. Hashmi, Bhuvan Vikrama, Sujeet Nayan, Gajanan L. Katade, Prabash Sahu, Zulfeqar Ali and S.K. Tewari.

3813. Volume I of the Report is in 10 Chapters as under:

A. Chapter 1 - "**Introduction**" written by B.R.Mani (Page 1-12)

B. Chapter II – "**Cuttings**" written by *B.R. Mani,C.B. Misra,C.B. Patil, A.A. Hashmi (Page 13-36)*

*C. Chapter III - "**Stratigraphy and Chronology**" written by L.S. Rao, Bhuvan Vikrama, N.C. Prakash, Zulfeqar Ali (Page 37-47)*

*D. Chapter IV – "**Structure**" written by B.R. Mani, D.K. Singh, Bhuvan Vikrama, Gajanan L. Katade, Prabhash Sahu, Zulfeqar Ali (Page 48-72)*

*E. Chapter V – "**Pottery**" written by B.R. Mani, P. Venkateshan, Vishnu Kant, Prabhu Sahu (Page 73 – 120)*

*F. Chapter VI - "**Architectural Fragments**" written by L.S. Rao, A.R. Siddiqui, Sujeet Nayan, (Page 121 – 173)*

*G. Chapter VII - "**Terracotta Figurines**" written by P.K. Trivedi, C.B. Patil, Gajanan L. Katade (Page 174 – 203)*

*H. Chapter VIII - "**Inscriptions, Seal, Sealings & Coins**" written by T.S. Ravishankar, G.S. Khwaja (Page 204 – 218)*

*I. Chapter IX - "**Miscellaneous Objects**" written by Shubhra Pramanik, S.K. Sharma, Prabhash Sahu (219 –*

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J. Chapter X – "**Summary of Result**" (Page 268 - 272)

3814. Besides, there are five Appendices (though numbered as Appendix I, IIA IIB, III and IV) and the contents thereof in summary are as under:

Appendix	*Contents*	*Page No.*
Appendix I	*C14 Dating of Charcoal Samples from Ayodhya-excavation*	*273*
Appendix IIA	*Report on the Chemical Analysis of Floor Samples pertaining to different trenches collected from Ayodhya*	*274-277*
Appendix IIB	*Report on the Chemical Analysis of Floor Samples pertaining to different trenches collected from Ayodhya*	*278-285*
Appendix III	*On-Site Chemical Treatment and Preservation of Excavated Artefacts*	*286-290*
Appendix IV	*Information on the Data-Form as per direction of Special Full Bench, Lucknow of the Hon'ble High Court, Allahabad.*	*291-309*

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3815. The complex nature of the job, time constraint, functioning constraint, continuous observance by a huge number of persons, disrupted peace and calm atmosphere of functioning in a matter which requires serious concentration, were some of the features in which this body, not habitual of, but worked. This is admitted by ASI as is evident from Chapter I, "Introduction", under the heading "Objections and Methodology" and "Constraints" which reads as under :

"Objectives and Methodology

The High Court ordered the Archaeological Survey of India to excavate the site attesting the statement of the GPR Survey that the exact nature of anomalies/objects has to be confirmed by systematic truthing such as provided by

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archaeological trench. Thus excavations at the disputed site were taken up with this objective only.

The excavation at the disputed site of Ayodhya is of a very special nature though with the limited but defined objective. All precautions by the Archaeological Survey of India under the High Court's direction were taken to plan it in such a way that the work could be taken up and completed as per the directions of the High Court. In planning the excavation, it was decided to adopt the latest technique of layout of trenches where limited spaces are available and therefore in place of general practice of lay out of 10x10 m. squares divided into four quadrants of 4.25x4.25 m. separated by 0.50 m. baulk all around, the change in the practice was made by fixing pegs at a distance of every 5 m in both north-south and east-west directions with cutting area of 4x4 m in leaving 0.5 m baulk all around which in contiguous trenches effectively left a space of 1.0 m in between two cuttings for the easy movement of archaeologists and labourers. One meter wide baulk was specially provided, considering the fact that due to modern fillings and debris the trench may not collapse due to earth pressure in a most sensitive area.

To avoid any confusion and for better understanding by even laymen, instead of the X, Y and Z areas of traditional layout, it was decided to put the initial reference peg Al at the north-west corner of the site and accordingly A, B, C, D etc. letters were put to denote trenches in the west to east direction and numerals 1,2,3 4 etc. attached with them in the north to south direction. Only at later

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stage to expand the excavated area in the north the Z area was included with this setup and layout of trenches. The entire area under excavation was designated as AYD-1 to differentiate it with other mounds in the nearby localities.

Full attention was given to the report and GPR Survey drawing submitted by the Tojo-Vikas International (Pvt.) Ltd and accordingly decision was taken to start excavation at first to the north of Ram Chabutra and also to its adjoining area ***where greater signals had been detected by the GPR Survey****. As the work of excavation required to be completed at a time bound programme, the archaeological* ***documentation including drawing and photography of the structural remains, pottery and antiquities were arranged to be done simultaneously.*** *Samples of plaster, floors, bones, charcoal, palaeo-botanical remains were also collected for scientific studies and analysis. Trenches were also laid in the entire disputed area on all sides excepting the area of the makeshift structure where Ram Lala is enshrined along with its periphery at a distance of 10 feet from Ram Lala as specified by the High Court.* ***The excavation work was planned in phased manner in particular areas as per significant signals for anomalies pointed out by the GPR Survey****.*

The entire proceedings of excavation and recording of structures and antiquities were documented by still and video cameras as per the directions of the Hon'ble High Court.

Constraints

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On the directions of the Hon'ble High Court, Archaeological Survey of India has excavated ninety trenches in a limited time of five months, soon after which the excavation report in required to be submitted within fifteen days. This is an unprecedented event in the history of one hundred and forty two years of the existence of the Survey. All through the period of excavations at the disputed site favourable as well as adverse criticism has been encountered in the press and the media. In view of the very sensitive and important issue involved, Archaeological Survey of India did not react or clarify the position as per the orders of the Hon'ble Court.

Throughout the period of excavation the team had to work under close presence of advocates, parties and their nominees involved in the title suit. As per the instructions of the High Court in order to maintain transparency, all the excavated material including antiquities, objects of interests, glazed pottery and tile and bones recovered from the trenches were sealed in the presence of advocates, parties and nominees and kept on the same day of their recovery in the strong room provided by the Authorised Person (The Commissioner of Faizabad Division) to the excavation team for the specific purpose which again was locked and sealed everyday when it was opened. Thus the time available for their documentation, study, photography, drawing and chemical preservations was limited to just a few hours only and that too not in the case of material recovered from the trenches towards closing of the work for the day. The Hon'ble High Court allowed the study,

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documentation and preservation of the material after opening the seals in the presence of advocates, parties or their nominees and again putting them under seal in their presence. Work was often affected and delayed due to formalities involved in securities checks and such other administrative requirements.

Working condition worsened at the onslaught of the monsoon from June onwards when the entire site was covered with multi-coloured waterproof sheets creating heat and humidity besides total darkness in a number of deep trenches. Monkeys started damaging the sheets as a result of which several layers of the sheets were spread over bamboo and wooden poles. They created further darkness. Photography was also affected due to bad light and natural colours were not easily obtained as the multi-coloured sheets reflected their colours on the surface and sections. Much difficulty was felt for the stratigraphical observations particularly for determining layers. These factors slowed the process of ongoing work. However, the Authorised Person was asked by the High Court to provide sufficient light and air in the covered area for further work. The excavation team had to lower electric lights several meters deep in the trenches where work was continuing at further deep levels. Grill barricading and poles fixed on baulks of traenches throughout the area made normal movements difficult. One team member fell down and fractured his hand and leg while others including some casual labourers received electric shocks by touching pedestal fans fixed on baulks. In spite of all such

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constraints the team of the Archaelogical Survey of India worked vigorously with full devotion and spirit.

In the task of synthesizing and analyzing the enormous data that excavation produced every care has been taken to avoid mistakes, however, due to voluminous data coupled with time constraint some typing errors may have inadvertently crept in the report."

3816. It is also mentioned at page 12 of the report that initially, excavation team of ASI consisted of 14 Members but it was enlarged at later stages to a total of 53 Members including two team leaders. Since ASI in this particular case proceeded on the report of GPR survey, carried out under the orders of this Court, it had the benefit of site information to some extent which obviously made it convenient to decide the working stretch with better certainty than that of a case of unknown excavation site. This is what has been said in **Chapter II (Cuttings)**:

*"The benchmark denoting **108.48** m above the Mean Sea level **was fixed at the spot on the stone slab, which represents the place where the outer eastern gateway of the disputed structure once stood.** The 108.0 m contour at the site clearly suggests the region, which covered the core area of structural activity (Fig.1). Though the surrounding ground level still contains the cultural deposits and debris accumulated for centuries, the contour map itself suggests that the deposits at the site are no less than 8.0 m. Radar signatures of foundation and the different levels of **stratigraphy shown in the GPR Survey had already suggested that anomalies mapped are not all***

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contemporaneous and they appear in different stratigraphic contexts noticed between the depths of 0.5 to 5 m (Fig.2)

In view of the above indications from GPR Survey followed by the contour survey, full precautions were taken for archaeological investigations through excavations ***planned in such a way that most of the area of strong amplitude and ringy signals, strong dipping reflectors, discontinuous anomaly alignments and scattered anomalies could be covered in the excavation trenches which were laid out in the form of 5 x 5 m grids with 4 x 4 m of cutting*** *line instead of larger trenches as already explained in the previous chapter. This was planned to take up excavations to be completed in accordance with the time bound programme with the intention to cover maximum GPR indications as per the directions of the High Court and also in order to simplify the layout with lesser chances of erosion of sections and easy movement on baulks.*

The area covered under GPR Survey comprises 132 trenches, which were all laid out, though many of them do not contain anomalies. ***Trenches having no anomalies were avoided*** *and they were taken up for excavation only when some structural alignments were found to be traced in them. Five trenches in the northern area were excavated though that area was not covered by the GPR survey but was essential for excavation for exposing the buried structural remains.* ***In total a number of 90 trenches were partly or fully excavated****.*

The entire site was divided into five areas – a) the

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eastern area, b) the southern area, c) the western area, d) the northern area and e) the raised platform. Excavations in all these five areas were taken up in phased manner (Fig.3) for better understanding the nature of structures and cultural deposits.

The Eastern Area

Excavations were taken up first in the eastern area where the eastern enclosure ***wall alongwith remnants of a gateway was noticed below whtich lie floors and walls of earlier phases (Pls. 1-2)****. The central part of the platform, locally called* ***Ram Chabutra was noticed in this area constructed in five stages.*** *The area is presently enclosed by barricaded gangway from three sides through which the visitors move.* ***Seventeen trenches fully or partly,*** *twelve within the above area and five outside the gangway within outer barricade towards east* ***were taken up for excavation in J,K and L series.*** *The main features exposed in this area include fourteen extant courses of reused brickbats and calcrete stone blocks in the enclosure wall with a part of 2.12 m in the middle of the wall suggesting the entrance doorway which was topped by marble slabs and the floor levels consisting of lime and cement floors by marble dedicatory slabs of the second half of the twentieth century.* ***Some elongated hearths and a furnace of late Mughal period were found (Pl.3). The enclosure wall was constructed over the lime floor connected with the disputed structure*** *and therefore, it seems to be a later addition. The lime floor has a platform, sloping towards east and a step to descend on the floor. Below the lime floor*

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a brick paved floor having large squarish burnt bricks was encountered running further to the north beyond the outer barricade. Towards west of the brick floor another pavement attached to it divided by a brick-on-edge pattern was found which is composed of brickbats. Another lime floor has been noticed below this pavement. These floors were damaged during construction or enlargement of the Ram Chabutra which is located abutting them on the southern side. ***In trench J3 excavations were conducted upto the depth of 10.85 m when natural soil was found****.*

The Southern Area

Twenty-three trenches were partly or fully excavated *towards the south of the raised platform, party covering it (Pl.4). This area covered the southern part of the disputed structure alongwith its southern enclosure wall moving towards west. Towards east the extended part of the Ram Chabutra was encountered abutting the floor of the courtyard of the disputed structure. Parts of the northern and western walls and their foundation and the foundation of the southern and eastern sides built of calcrete stone blocks of the disputed structure were exposed which were found resting directly in the west over a 1.77 m wide brick wall of earlier period, the lower part of which has decorated stone blocks and calcrete stone foundation* ***and over 50 pillar bases arranged at regular intervals connected with the lime plastered brick wall through a floor. The core of the wall of the disputed structure was filled with brickbats.*** *The pillar bases comprise some courses of brick bats in squarish or circular formations*

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over which two to five calcrete stone blocks are kept, possibly below sand stone blocks as found in the northern area, though only one decorated sand stone block was found in this area. Further below the above mentioned brick wall another brick wall was noticed on the top of which decorated stone blocks were found used. ***In the levels further down brick structures were noticed in trenches E8 and F8, though their full plan could not be exposed. At two points, below the pillar bases, traces of earlier pillar bases were also found in trenches F8 and F9 which were connected with the second floor below the floor with which most of the other pillar bases were connected.*** *The brick wall mentioned above was found badly damaged on the southern side,* ***possibly for taking out its bricks****. This wall was found extending in the northern side of the raised platform. A brick shrine, circular on its outer and squarish on its inner plan with a rectangular projection for entrance in the east and a chute on its northern side was found below the levels of above mentioned walls. Due to steep slope in the area further south of the trenches, it was not possible to excavate there.* ***The natural soil was reached in G7 at the depth of 10.84 m, which was confirmed by digging further upto the depth of 13.20 m (Pl.5)****.*

The Western Area

Trenches *laid out towards west of the raised platform on the slope* ***represented by B and C series of trenches fall under the western area****. During 1976-77 excavation in a trench gave the chronological sequence of*

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the site. The area was covered with fallen masonry blocks and stones of the disputed structure. In order to have a thorough probing to locate and study the anomalies indicated in the GPR Survey, the area was first of all cleared of the accumulated fallen material, the huge chunks of which weighing several tones were lifted with the help of a crane and stalked in the closeby area with out breaking them as emotions of many people are attached with them (Pl. 6). After cleaning the area (Pl.7), ***excavations in parts of nineteen trenches were conducted mainly to verify the anomalies mentioned in the GPR Survey.*** *At some places remains of a brick wall having nearly fifty courses were seen, particularly in the northern side.* ***In the rest of the trenches mostly accumulated debris was found resting over earlier levels or structures*** *(Pl.8).*

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The Northern Area

The area towards norths of the raised platform has the barricade with gate and is more often used by the priests and the security forces (Pl.9) ***Twenty-one trenches were fully or partly excavated in this area****. The massive brick wall located in the southern area was noticed running in north-south direction in this area and* ***below its level another wall was also found as seen earlier in the southern area. The top three floors and pillar bases attached with the top floor were exposed (Pl.10)****. The interesting feature of the pillar bases in this area was that over the calcrete stone blocks these bases were given proper finishing by providing squarish stone blocks of sand stone encased with four upright stone pieces placed on the*

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four sides for giving support to the pillar at the base in order to avoid any movement. The stone blocks project a little above the floor.

The squarish brick pavement noticed in a number of trenches in the eastern area was found extended in the northern area in northeastern part in trenches K1, ZK1 and ZL1 below the lime floor connected with the disputed structure. *The eastern enclosure wall was traced in this area in K1 and was found turning towards west in ZK1. A drain of recent origin was noticed alongwith flight of steps leading to the site from the northern road, which is no longer in use at present.*

The Raised Platform

After the demolition of the disputed structure, nearly 1.5 m to 2.0 m of structural debris has accumulated over central and northern part of the erstwhile structure. The makeshift structure is also located on it. The High Court allowed excavations by order dated 05 March 2003 on this raised platform with the condition that archaeologists shall not disturb any area where the idol of Shir Ram Lala is existing and approximately 10 feet around it and they shall not affect the worship of Shri Ram Lala and thus, status quo as regards His Puja and worshippers' right of Darshan shall be maintained.

Excavation partly in ten trenches on the raised platform was taken up besides part of the four trenches of southern area, which fall under the raised platform. *It was feared that if the excavation in the trenches on raised platform was done, the modern brick walls enclosing the*

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makeshift structure already having cracks may collapse (Pl.11) and the mound on which Shri Ram Lal is existing may also be damaged. In view of taking all the required precautions the High Court on 22 May 2003 directed the Chief Engineer, P.W.D. to remain present at the time of excavation and to ensure and make necessary arrangements so that no structure is affected. While excavations the P.W.D. provided G.I. sheets and wooden planks against the exposed sections to avoid erosion of debris and stones and packed the cavities with sand bags. ***Brick structures, floors and pillar bases were found below the floors and the walls of the disputed structure on the raised platform as well.***

Confirmation of G.P.R. Survey

As ordered by the Hon'ble Allahabad High Court, Lucknow Bench, Lucknow, the Archaeological Survey of India invited the Tojo-Vikas International (Pvt.) Limited, New Delhi to undertake the G.P.R. Survey at the disputed site at Ayodhya. The final report on GPR Survey submitted on 17 Feb 2003 concluded that the 'GPR Survey reflects in general a variety of anomalies ranging from 0.5 to 5.5 meters in depth that could be associated with ancient and contemporaneous structures such as pillars, foundations walls slab flooring, extending over a large portion of the site. However, the exact nature of those anomalies has to be confirmed by systematic ground truthing, such as provided by archaeological trenching.

The report further mentions that the accuracy of depth is normally within # 5%, 10% for homogeneous

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strata while X-Y accuracy could be and the measurements of Georadar are based on the returning signals by a dielectric constant change in addition to other limitations of the GPR Survey. The report also mentions that the anomalies are of different types like discrete anomaly such as pillar or wall foundation ; ringy signal indicating some kind of floor or platform structure made of concrete, bricks or stone slabs; rubbles of heterogeneous material or reworked materials from its original stratigraphy; the mounds containing the buried collapsed dwellings etc.

A word of caution was also included in the report that not all hyperbolas shaped radar anomalies correspond to pillars and wall foundation.

Keeping in view these parameters, the Archaeological Survey of India ***conducted the excavation at the disputed site at Ayodhya between 12th March 2003 to 07th August 2003 to verify the anomalies.*** *Spread over the disputed site, 184 anomalies indicated by the GPR Survey fell in 82 trenches. For the sake of convenience, these anomalies were numbered in the ascending order depending on their depth in each trench where they were indicated and the anomalies shown in between the baulks were also included to the nearest excavation trenches.*

Among 184 anomalies, 39 of them were confirmed during excavation at the specified depth and location where they were shown and 74 were not found in spite of digging up to the required depth*. In view of the importance of the structures found at the upper levels than the depths indicated in GPR Survey,* ***another 27 anomalies***

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could not be located. *It was not possible to verify the remaining 44 anomalies as their location restricted the probing due to either non availability of sufficient space like raised platform or the presence of gangways, barricades, pathways and trees etc. for conducting the excavation.*

3817. In the trenches no. B1 to B9, C1 to C9, L1 and L2 no anomaly was found though indicated in GPR survey. Trenches no. D3, D10, E3, E5, F5, G3, G4, H3, H8, J10, K9, K11 and L11 were not excavated due to area restriction on account of various reasons namely, gangway, pathway, fencing, barricading stone post and raised platform (make shift structure). In several other trenches excavation to some extent was made, but not proceeded further due to area restriction or for the safety of make shift structures etc. despite finding one or more anomalies as indicated by GPR survey.

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3818. The details of the trenches where the anomalies were found (completely or partly) as as under:

Sl No 20. *Trench No. D6: The GPR Survey indicated the anomaly at a depth of 3.20 m. The trench was excavated upto a depth of 1.80 m. However, the excavation was not conducted in the area where the anomaly was shown due to the presence of barricade.*

Sl No 21. *Trench No. D7: The GPR Survey indicated the anomaly at a depth of 4.0 m. The trench was excavated upto a depth of 1.70 m. However, the excavation was not conducted in the area where the anomaly was shown due to*

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the presence of barricade.

SI No. 23. *Trench No. ZE1: The GPR Survey indicated the anomalies at the depths of 0.6 and 2.0 m. The trench was excavated upto a depth of 2.55 m. The first anomaly was not found at the specified depth and location. A step like structure of stone and brick at 0.45 m that goes down to 1.90 m. was found where the second anomaly was shown.*

Sl No 24. *Trench No.E1: The GPR Survey indicated the anomalies at the depths of 0.5 m. and 1.0 m. The first anomaly was not found at the specified depth and location. However, a wall oriented north south was found at a depth 0.95 m. where the first anomaly was shown. The second anomaly was also not found at the specified depth and location. However, a brickbat pavment was found at a depth of 1.32 m. where the second anomaly was shown.*

Sl No. 25. *Trench No. E2: The GPR Survey indicated the anomalies at the depths of 1.50 and at 2.50 m and another anomaly in the form of an alignment at the depth of 2.50 m. The trench was excavated upto a depth of 2.70 m. The first anomaly was not found at the specified depth and location. However, a rectangular stone pillar base was found at a depth of 1.80 m where the first anomaly was shown. The second anomaly and the other anomaly of an*

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alignment were not found at the specified depth and location. However, a stone pavement was found at a depth of 1.60 m where the alignment was shown. In view of the importance of the exposed structure, further excavation was not conducted to the required depth were the alignment was shown.

Sl No 28. *Trench No. E8: The GPR Survey indicated anomalies at the depths of 0.7 and 5.2 m. The trench was excavated upto a depth of 3.54 m. The first anomaly was not found at the specified depth and location. However, a lime surkhi floor and a wall oriented east west were found respectively at the depths at 0.80 and 2.15 m where the first anomaly was shown. An important structure was found where the second anomaly was shown. In view of the importance of the exposed structure, further excavation was not conducted to the required depth where the anomaly was shown.*

Sl No 29. *Trench No. E9: The GPR Survey indicated the anomaly at a depth of 1.0 m. The trench was excavated upto a depth of 1.44 m. A floor with a pillar base was found at a depth of 0.60 m where the anomaly was shown. In view of the importance of the exposed structure, further excavation was not conducted up to the required depth where the anomaly was shown.*

Sl No 30. *Trench No. ZF1: The GPR Survey indicated*

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the anomaly at a depth of 3.0 m. The trench was excavated upto a depth of 1.14 m. A lime surkhi floor was found a t a depth of 0.60 m where the anomaly was shown. In view of the importance of the exposed structure, further excavation was not conducted up to the required depth where the anomaly was shown.

Sl No 31. *Trench No. F2: The GPR Survey indicated the anomalies in the form of alignments at the depths of 2.3-2.5 m. A wall oriented cast west was found at the depth of 1.50 m where the alignment was shown. In view of the importance of the exposed structure, further excavation was not conducted up to the required depth where the anomaly was shown.*

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Sl No 32. *Trench No. F3: The GPR Survey indicated anomalies at the depths of 1.50, 1.80, 2.0, 2.80 and 4.30 and 4.50 m and one more anomaly in the form of an alignment at the depths of 2.7-3.9-4.1 m. The trench was excavated up to a depth of 4.60 m. An 'L' shaped wall from 0.18 m down to a depth of 2.85 m and another structure at 3.95 m were found where second and third anomalies were shown. The excavation was not conducted in the area where the remaining anomalies and alignment were shown due to area restriction on raised platform.*

Sl No 33. *Trench No. F4: The GPR Survey indicated*

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anomalies at the depths of 1.0, 1.2, 2.4 and 4.5 m. The trench was excavated up to a depth of 4.70 m. The architectural members were found from the debris where the first and second anomalies were shown. A calcrete stoner structure was found at the depth of 2.37 m where the third anomaly was shown. The fourth anomaly was not found at the specified depth and location.

Sl No 35. *Trench No. F6: The GPR Survey indicated anomalies at the depths of 0.70, 1.0 and 2.70 m. The trench was excavated up to a depth of 1.70 m. A pillar base was found at the depth of 0.70 m where the first anomaly was shown. Another pillar base and a floor were found respectively at the depths of 0.55 m and 1.06 m where the second anomaly was shown. The third anomaly was not found at the specified depth and location. However, a pillar base was found at the depth of 1.60 m where the third anomaly was shown. In view of the importance of the exposed structures, further excavation was not conducted up to the required depth where the third anomaly was shown.*

Sl No 36. *Trench No. F8: The GPR Survey indicated anomalies at the depths of 1.5 and 2.0 m. The trench was excavated upto a depth of 2.65 m. A pillar base was found at a depth of 0.70 m where the first anomaly was shown. In view of*

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the importance of the exposed structure, further excavation was not conducted up to the required depth where the first anomaly was shown. The second anomaly was not found at the specified depth and location. However, a wall running east west was found at the depth of 2.65 m where the second anomaly was shown.

Sl No 37. *Trench No. F9: The GPR Survey indicated anomaly at the depth of 0.5 m. The trench was excavated upto a depth of 2.18 m. A pillar base was found on a floor at a depth of 0.50 m where the anomaly was shown.*

Sl No 38. *Trench No. ZG1: The GPR Survey indicated three anomalies at the depths of 1.0, 1.6 and 3.0 m. The trench was excavated upto a depth of 1.75 m. A lime floor and a pillar base were found respectively at the depths of 0.48 and 0.50 m where the first and second anomalies were shown. A brickbat structure was found at a depth of 1.75 m where the third anomaly was shown. In view of the importance of the exposed structures, further excavation was not conducted up to the required depth where the anomalies were shown.*

Sl No 39. *Trench No. G2: The GPR Survey indicated the anomaly in the form of an alignment at the depths of 2.0-2.01 m. The trench was excavated up to a depth of 2.62 m. No such alignment was*

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found at the specified depth and location. However, two pillar bases on a floor were found at a depth of 2.20 m where the anomaly was shown.

Sl No 42. *Trench No. G5: The GPR Survey indicated the anomalies at the depths of 2.5 and 3.5 m and another in the form of an alignment at the depths of 2-2-2.5 m. The trench was excavated up to a depth of 3.56 m. No such alignment was found at the specified depth and location. However, a pillar base and a calcrete stone block structure were found respectively at the depths of 2.05 and 2.70 m. The excavation was not conducted in the area where the remaining anomalies were shown due to area restrictions on raised platform.*

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Sl No 43. *Trench No. G6: The GPR Survey indicated the anomaly at the depth of 0.5 m. The trench was excavated up to a depth of 1.60 m. No anomaly was found at the specified depth and location. However, successive floors were found at the depths of 0.38, .082, 1.09 and 1.60 m where the anomaly was shown.*

Sl No 44. *Trench No. G7: The GPR Survey indicated the anomaly at a depth of 1.5 and another anomaly in the form of alignment at a depth of 2.5 m. The trench was excavated upto a depth of 13.45 m. Neither the anomalies nor the alignment were found at the specified depths*

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and locations. However, a brick structure and a wall running east west were found respectively at the depths of 1.75 and 2.85 m where the anomalies were shown.

Sl No 45. *Trench no. G8: The GPR Survey indicated the anomalies at the depths of 1.0, 2.0 and another anomaly in the form of an alignment at 2.2 m. The trench was excavated upto the depth of 2.37 m. A retaining wall of Ram Chabutra from surface and a pillar base underneath were found at a depth of 0.90 m where the first anomaly was shown. In view of the importance of the exposed structure, further excavation was not conducted up to the required depth where the anomaly was shown. The second anomaly was not found at the specified depth and location. The area where the third anomaly ringing signal was shown was not excavated upto the required depth because of the existing Ram Chabutara.*

Sl No 46. *Trench No. G9: The GPR Survey indicated three anomalies at the depth of 0.50 m each. The trench was excavated upto a depth of 1.55 m. A pillar base, and a floor were found respectively at the depths of 0.20 and 0.57 m where the first and second anomalies were shown. The third anomaly was not found at the specified depth and location. However, a brick structure was found at a depth of 1.15 m*

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where the third anomaly was shown.

Sl No 47. *Trench No. ZH1: The GPR Survey indicated the anomalies at the depths of 1.0 and 3.0 m. the trench was excavated up to a depth of 0.80 m. A floor and a pillar base were found respectively at the depths 0.70 and 0.55 m where the anomalies were shown. In view of the importance of the exposed structure, further excavation was not conducted up to the required depth where the anomalies were shown.*

Sl No 48. *Trench No. H1: The GPR Survey indicated three anomalies at the depths of 0.4, 0.5 and 1.6 m. The trench was excavated upto a depth of 1.20 m. The first and second anomalies were not found at the specified locations and depths. However, two pillar bases were found respectively at the depths of 1.50 and 0.70 m where the first and the second anomalies were shown. A brickbat floor was found at a depth of 1.15 m where the third shown. A brickbat floor was found at a depth of 1.15 m where the third anomaly was shown. In view of the importance of the exposed structure, further excavation was not conducted up to the required depth, where the anomaly was shown.*

Sl No 49. *Trench No. H2: The GPR Survey indicated the anomaly at the depth of 2.8 m. The trench was excavated upto a depth of 0.95 m. The area*

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where the anomaly was shown was not excavated due to area restriction of barricade and pathway.

Sl No. 51. *Trench No. H4: The GPR Survey indicated the anomaly at a depth of 2.2 m and another anomaly in the form of an alignment at 2.0 m. The trench was excavated upto a depth of 1.18 m. A lime floor was found at the depth of 1.15 m where the first anomaly was shown. In view of the importance of the exposed structure, further excavation was not conducted up to the required depth where the anomaly was shown. The excavation was not conducted in the area where the alignment was shown due to area restrictions of gangway and pathway.*

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Sl No 52. *Trench No. H5: The GPR Survey indicated three anomalies at the depths of 1.0, 1.7, and 3.0 m and another anomaly in the form of alignment at 1.18 m. The trench was excavated upto a depth of 1.15 m. A wall oriented north south was found at a depth of 0.60 m where the first anomaly was shown. A lime surkhi floor was found at the depth of 0.85 m where the second anomaly was shown. Another lime floor was found at the depth of 1.15 m where the third anomaly was shown. A pillar base was found at a depth of 0.82 m where the alignment was shown. In view of the importance of the exposed structure, further excavation was not*

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conducted up to the required depth where the anomaly was shown.

Sl No 53. *Trench No. H6: The GPR Survey indicated the anomalies at the depths of 0.7 and 2.0 m. The trench was excavated upto a depth of 0.80 m. No anomalies were found at the specified location and depth. However, a floor and a wall were found respectively at the depths of 0.80 and 0.58 m where the first anomaly was shown. The excavation was not conducted in the area where the second anomaly was shown due to existing Ram Chabutra.*

Sl No 54. *Trench No. H7: The GPR Survey indicated at the depth of 2.0 m. The trench was excavated up to a depth of 0.75 m. The excavation was not conducted in the area where the anomaly was shown due to existing Ram Chabutra.*

Sl No 56. *Trench No. H9: The GPR Survey indicated three anomalies at the depths of 0.5 m each. The trench was excavated upto a depth of 0.76 m. No anomalies were found at the specified locations and depths. However, a lime surkhi floor was found at a depth of 0.76 m respectively where the first two anomalies were shown. The third anomaly was not found at the specified and location.*

Sl No 57. *Trench No. H10: The GPR Survey indicated the anomaly at a depth of 0.5 m. The trench was excavated upto a depth of 0.66 m. No*

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anomaly was found at the specified location and depth. However, a floor was found at a depth of 0.60 m where the first anomaly was shown.

Sl No 58. *Trench No. ZJ1: The GPR Survey indicated the anomaly at a depth of 0.6 m. The trench was excavated up to a depth of 1.63 m. A brick wall oriented north south was found at a depth of 0.30 m. In view of the importance of the exposed structure, further excavation was not conducted up to the required depth where the anomaly was shown.*

Sl No 59. *Trench No. J1: The GPR Survey indicated the anomalies at the depths of 0.50 and 1.0 m. The trench was excavated upto a depth of 1.54 m. No anomaly was found at the specified depth and location where the first anomaly was shown. A lime floor and a large brick floor were found respectively at the depths of 0.90 and 0.95 m where the second anomaly was shown.*

SI No 60. *Trench No. J2: The GPR Survey indicated four anomalies, two at a depth of 0.50 m each, the third at 0.70 and the last at 2.0 m. The trench was excavated up to a depth of 0.95 m. A wall was found at a depth of 0.50 to 0.95 m where the third anomaly was shown. The excavation was not conducted in the area where the remaining three anomalies were*

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shown due to area restrictions of gangway and pathway.

Sl No 61. *Trench No. J3: The GPR Survey indicated seven anomalies, two at a depth of 0.5 m each, one at 0.6 and the remaining four at 1.0 m each. The trench was excavated up to a depth of 108.5 m. The first five anomalies were not found at the specified depth and location. However, a lime floor was found at a depth of 0.70 m where these three anomalies were shown. The fourth anomaly was not found at the specified depth and location. The excavation was not conducted in the area where the fifth anomaly was shown due to area restrictions of the presence of tree.*

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Sl No 62. *Trench No. J4: The GPR Survey indicated six anomalies, two at the depths of 1.0 m each, 1.5, 1.8, 2.5 and 3.2 m. The trench was excavated up to a depth of 2.55 m. A brick floor was found at a depth of 0.95 m where the first and second anomalies were shown. The third anomaly was not found at the specified depth and location. However, a brickbat paving was found at a depth of 1.70 m where this anomaly was shown. A brick floor was found at a depth of 0.95 m where the fourth anomaly was shown. In view of the importance of the structure found further excavation was not conducted. The remaining two anomalies were*

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not found at the specified depth and location.

Sl No 63. *Trench No. J5: The GPR Survey indicated the anomalies at the depths of 1.0 m and an arrow shaped alignment at the depths of 1.5-2.0-2.01 m. The trench was excavated up to a depth of 5.45 m. a large sized brick floor was found at a depth of 0.95 m where the first anomaly was shown. No such alignment was found at the specified depth and location.*

Sl No 64. *Trench No. J6: The GPR Survey indicated four anomalies, three at the depths of 1.5 m each the fourth at 2.0 m. The trench was excavated up to a depth of 5.45 m. The successive levels alternating with calcrete stone blocks run from surface down to a depth of.*

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Sl No 65. *Trench No. J7: The GPR Survey indicated the anomaly at a depth of 2.0 m. The trench was excavated at a depth of 5.12 m. The successive levels alternating with calcrete stone blocks run from surface down to a depth of 7.45 m.*

Sl No 66. *Trench No. J8: The GPR Survey indicated six anomalies, one at a depth of 1.0, two at 1.5 m each, one more at 2.0 and the remaining two respectively at 2.2 and 2.8 m. The trench was excavated upto a depth of 5.12 m. The area where the first, second, and sixth anomalies were shown was not excavated due to the*

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presence of the Ram Chabutra. The successive levels alternating with calcrete stone blocks run from surface down to a depth of 7.45 m where third, fourth and fifth anomalies were shown.

Sl No 68. *Trench No. K1: The GPR Survey indicated the anomalies at the depths of 0.7 and 2.2 m. The trench was excavated up to a depth of 2.45 m. A lime floor and large sized brick floor were found respectively at the depths of 0.95 and 1.0 m where the first anomaly was shown. The second anomaly was not found at the specified depth and location.*

Sl No 69. *Trench No. K3: The GPR Survey indicated the anomaly in the form of an alignment at the depth of 0.5 m. The trench was excavated up to a depth of 0.93 m. No such alignment was found at the specified depth, and location. A lime surkhi floor was found at a depth of 0.73 m where the anomaly was shown.*

Sl No 70. *Trench No. K4: The GPR Survey indicated five anomalies, at the depths of 0.7, and two at 2.0 m. each and another anomaly in the form of an alignment at the depths of 1-1.5 m. The trench was excavated up to a depth of 2.30 m. A lime surkhi floor and a large size brick floor were found respectively at the depths of 0.73 and 0.95 m where the first and third anomalies were shown. No such alignment was found at*

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the specified depth and location. However, a large size brick floor was found at these depths. In view of the importance of the structure found further excavation was not conducted. The remaining two anomalies were not found at the specified depth and location.

Sl No 71. *Trench No. K5: The GPR Survey indicated the anomaly in the form of alignment at the depths of 1.3-1.5-1.7-2.0 m. The trench was excavated up to a depth of 1.70 m. No such alignment was found at the specified depths and locations. However, a large brick wall oriented north-south runs from surface to a depth of 0.95 m where the alignment was shown. In view of the importance of the structure found further excavation was not conducted. The second and third anomalies were not found at the specified depth and location.*

Sl No 72. *Trench No. K6: The GPR Survey indicated three anomalies, two at the depths of 2.0 and the third at 2.3 m and one more anomaly in the form of an alignment at the depths of 1-1.5 m. The trench was excavated up to a depth of 5.40 m. No such alignment was found at the specified depths and locations. However, a large sized brick floor was found at a depth of . 95 m where this alignment was shown. In view of the importance of the structure found further*

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excavation was not conducted. The area where first and second anomalies were shown was not excavated due to the presence of Ram Chabutra, which runs to a depth of more than 2.0 m. The third anomaly was found at the specified depth and location. However, a wall running east-west at a depth of 3.5 m was found where this anomaly was shown.

Sl No 73. *Trench No. K7: The GPR Survey indicated the anomaly in the form of a floor in the western part of the trench. The trench was excavated up to a depth of 7.45 m. Successive levels alternating with calcrete stone blocks run from surface to a depth of 7.40 m where the anomaly was shown.*

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SI No 74. *Trench No. K8: The GPR Survey indicated the anomaly in the form of a floor in the western part of a floor in the western part of the trench. The trench was excavated up to a depth of 7.45 m. Successive floors alternating with calcrete stone blocks run from surface to a depth of 7.45 m where the anomaly was shown.*

Sl No 79. *Trench No. L3: The GPR Survey indicated four anomalies at the depths of 1.80, 2.20, 2.40 and 3.20 m in the northern portion of the trench. The trench was excavated up to a depth of 2.70 m. A pavement of brickbats was found at the depth of 2.40 m where the third anomaly was shown. The second anomaly was not found*

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at the specified depth and location. The excavation was not conducted in the area where the remaining two anomalies were shown due to area restrictions of gangway and barricade.

Sl No 80. *Trench No. L4: The GPR Survey indicated two anomalies at the depths of 1.9 and 2.4 m. The trench was excavated up to a depth of 2.65 m. A single coursed L shaped structure of the brickbats was found at the depth of 1.98 m where the first anomaly was shown. The second anomaly was not found at the specified depth and location.*

SI No 81. *Trench No. L7: The GPR Survey indicated two anomalies at the depths of 1.4 and 4.0 m. The trench was excavated up to a depth of 4.40 m. The first anomaly was not found at the specified depth and location. The stone platform was found at the depth of 4.40 m where the second anomaly was shown.*

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3819. Next comes the stratigraphy and chronology for periodization of site/trenches with respect to layers, finds, artefacts etc. ASI has divided the deposits into nine cultural periods based on the strength of combined and corroborative evidence of pottery sequence, structural remains and other datable finds etc. **Chapter III Vol.I,** of the Report deals with it, and says:

Stratigraphy and Chronology

Excavation at the disputed site of Ayodhya has

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yielded a continuous cultural sequence contained in the total deposition of about 10.80 m. Although the 10.80 m thick deposit can be divided into 9 cultural periods on the strength of combined and corroborated evidences of pottery sequences, structural remains and other datable finds, several disturbances cannot be discounted. It, therefore, becomes pertinent to refer to the nature and behaviour of the mound and the processes of accumulation of deposits, before venturing into the details of the stratigraphy of the site.

Excavations have made it amply clear that the site had seen successive structural activities which began from the middle of the Kushan level at the site. The brick and stone structures that were raised in Kushan and the succeeding periods of Gupta and post-Gupta times have added heights to the mound. To build further structures upon the earlier debris the later people added a deposit of earth excavated from the periphery of the mound, which belonged to the much earlier cultural periods. This is true for the rest of the structural phases also.

Existence of different structures at the site at different levels, in different orientation and in different formations, which has been evidenced from the excavation, has resulted in the differences of layers in different pockets of the site.

The C^{14} determination of the charcoal samples from the early levels (Periods I to III) provide dates which start from the last centuries of the second millennium B.C., which do not conform to the evidence gleaned from stratigraphy and ceramic tradition. However, they indicate

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early settlement of the site, which was not found in the two trenches sunk down to the natural soil (see Appendix-I)

Based on the act of correlating and synthesizing of various layers identified at different depths of all the excavated trenches, an account of the stratigraphy and chronology, as ascertained, is detailed below (Figs. 19, 20 and 22).

Period – 1*(Northern Black Polished Ware Level)*

The earliest people to settle at the site used Northern Black Polished Ware (NBP ware) and other associated ware (Grey ware, Black slipped ware and Red ware) which are diagnostic ceramics ***of a period from sixth to third century B.C.*** *In the limited operation areas in this level no structural activity of the period was noticed except reed impressions on burnt clay. The total accumulation of deposit of this period is about 1.00 m in trench G7 represented by layer 17 and 18 and a pit sealed by layer 18 (however, the material from this pit has been registered as those from layers 19, 20 and 21) and about 1.70 m in trench J3 represented by layers 12, 13 and 14. Besides the pottery, this level yielded broken weights, fragments of votive tanks, ear-studs, discs, hopscotches, a wheel made on disc, a broken animal figurine (all in terracotta), an iron knife (broken), glass beads, bone point etc. However, the most significant find from the level is a round bezel in greenish glass with legend 'sidhe' in high relief in Asokan Brahmi on the obverse while the reverse is plain (Rg. No. 778).*

Period – II *(Sunga Level)*

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Frequency of NBP sherds, however, decreases considerably in the upper levels of the period and finally it almost ***disappears from the horizon in layer 16 of G7 and layer 11 of J3, which marks the beginning of the Sunga level (circa second-first century B.C.) at the site.*** *This level attests its presence with a deposit averaging in thickness to 1.60 m represented by layers 13, 14, 15 and 16 in trench* ***G7*** *and by layers 9, 10 and 11 in* ***trench J3.*** *It is in this period that the site witnessed first structural activity in stone and brick, as noticed in J3.* ***The level is represented by terracotta objects comprising human and animal figurines, bangle fragment, ball, wheel and a broken sealing with only 'sa' letter in Brahmi extant*** *(Rg. No. 701), a saddle quern and part of a lid in stone, a glass bead, a hairpin and an engraver on bone and an ivory dice, besides the period pottery of the level.*

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Period – III *(Kushan Level)*

*Pottery of the previous period continues in the deposit of Kushan level (****circa first-third century A.D.****) which accounts for an average total thickness of 1.50 m recorded in layers 9, 10, 11 and 12, and in layers 7 and 8 in* ***trenches G7 and J3*** *respectively. Period-III is rich in pottery, typical of the period, however, in the number of antiquities the period is deficient.* ***In trench J3 a huge kiln was noticed in the lower levels which accounted for much of Kushan deposit in this particular trench as well as for the deficiency of other artifacts.*** *In trench G7, however, the limited area yielded animal and human figurines, bangle fragment and a portion of votive tank all*

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in terracotta, a hairpin in bone, a bead in glass and an antimony rod in copper. In trench J5, though the regular stratified deposit was not encountered in the operation area, the eastern section yielded a record of regular deposition and almost all the structural activity at the site. ***A massive brick construction, running into 22 courses above excavated surface, is noticed at the bottom of J5-J6 which belongs to this period. The Kushan period certainly gave a spurt to construction of structures of large dimensions which attest to their public status. Besides, the same trench provided evidence for a stone structure, nature of which is not very clear.***

From this period onward, tradition of stone and brick constructions is very much in vogue at the site and each successive period added some structures to the site increasing the height of the mound.

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Period – IV *(Gupta Level)*

Almost 2 m thick deposit, ***represented by layer 7 and 8 in G7, by layers 9 and 10 in J5-J6 and layers 7 and 8 in trenches E8 and F8****, above the remains of the preceding period belong to* ***Gupta times*** *(****circa fourth-sixth century A.D.****), the presence of which is attested mostly by terracotta figurines typical of the period and of course by* ***a copper coin*** *(3.75 m, layer 8, G7, Rg. No. 1030)* ***bearing image of king on the obverse and garuda standard in upper register and legend 'sri chandra(gupta)'*** *in lower register on the reverse. The structures which appear above those of Kushan, some times using the Kushan wall itself, as in J5-J6, belong to this period.* ***Structures of this period***

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have been exposed in trenches E8, F8, G7, J5, J6 and K6*. It is interesting to note that the deposits that go with these structures contain earlier material as well.* ***It appears that to raise the level plain, earth excavated from the nearby area of the mound is utilized at this level.*** *Among the pottery too majority of wares and shapes belong to earlier periods, only a few sherds are of the period concerned.*

Period – V (Post Gupta – Rajput Level)

The period is marked by the appearance of ***the knife-edge bowls and other types which belong to the period from seventh to tenth century A.D. In this period also structural activities were witnessed in numerous phases in trench E8 and F8. A circular subsidiary shrine belonging to the late level of this period was exposed in trench E8-F8 (Fig 24 and 24A)****. Among the pottery assemblage Kushan type is more frequent than the period pottery. Other finds also include earlier material like Kushan pestles and terracotta figurines of Sunga-Kushan type. The total deposit assignable to this period is about 90 cm represented by layers 5 and 6 in trench G7, by layers 7 and 8 in trenches J5-J6 and by layers 5, 5A and 6 in trenches E8-F8.*

Period – VI *(Medieval-Sultanete Level)*

A thick floor made of brick-crush floor appears, on the circumstantial evidence, to have been attached to a wide and massive looking north-sourth oriented brick wall *(No.17)* ***markedly inclined to east*** *(noticed in trenches D7 and E2-E1, F1 and ZF1) which was the major*

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*structural activity of the period (**circa eleventh-twelfth century A.D.**). **Another wall in same orientation has been noticed in G2 and ZG1 at a depth of 180 cm which is sealed by layer 6A in G2.** The red brick-crush floor is noticed extending in a large area of the mound covering trenches E8, F8, G7, J5 & J6 with varying thickness. At the same level, in trench G5, calcrete stone blocks have been noticed in formation which may be of large dimension. Since not many trenches have been excavated to that depth, it would be premature to speak about the nature and behaviour of the structure, however, **the structural activity appears to have lived a short life. In trench G2 from the same level (layer 6) were collected several knife-edge lipped lamps in red ware with soot/burnt marks at the lips.** Total deposit of this period, as ascertained in trench G7, is 70-74 cm belonging to layers 3, 3A and 4, layers 5 and 6 in J5-J6, layers 3 and 4 in E8-F8 and layers 5, 6 and 7 in tr. G2.*

***Period – VII** (Medieval Level)*

*Period VII is marked by **structural activities in three sub-periods A, B & C which together lasted from the end of the twelfth to the beginning of the sixteenth century A.D. In sub-period-A, a massive wall (no. 16) in north-sourth orientation was constructed,** the foundation trench of which cuts the red brick-crush floor of the previous period. A new style of construction is noticed in this period, however, in a limited area. Level of the mound was raised considerably by the material excavated from the vicinity to lay a floor of lime mixed with fine clay and brick-crush,*

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*over which a column-based structure was built (**evidence of pillar bases are available in trenches F9, F8 and G7**). This floor is traced within a thin wall enclosed area with N/S wall forming the back and covering trenches ZE1 to ZH1 in the northern area to E6 and to H5-H6, which in the second phase, was extended southwards up to G10 at a slightly elevated level out side the wall.*

In the sub-period B, the area enclosed by the thin wall is found earth filled and is over-laid with a brick-bat paving on top of which is laid a layer of rammed brick jelly as bedding to the 4-5 cm. thick floor of lime mixed with grit and fine brick nodules which runs over the broken/leveled wall. The finished surface is leveled at par with the southward extension of the earlier floor. Another thin wall which is erected resting over the earlier floor makes an enclosure which is slightly smaller. This floor also extended in the eastern area in trenches J4-J5-J6 and in the northern area it is found to the limits of the mound itself is found cut attached to this floor must have been some brick structure within the raised platform area as the deposit above it contains a lot of brick debris in the central part which can be witnessed in the northern section of E6 and in the western section of H4-H5. In the same period, to the east of J4-J5-J6 where the floor was bound by a flat row of bricks-on-edge, pavement of large square bricks was provided as an open court-yard to the floored complex, which extended upto the junction of trenches of K-series and L-series in the east and in the north upto ZK1 beyond which it is stopped by a lime floor. There is a circular depression specially

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made by cutting the large brick pavement (Pl.67), having the diameter of 1.05 m with a rectangular projection of 0.46 x 0.32 m towards west. It is interesting to note that the ***circular depression comes in the centre of the pavement if the central part is calculated on the basis of extant length of wall 16 or wall 17 and longitudinal length of the alignment of pillar bases from north to south. Thus, suggesting it as a place of importance. Besides, the circular depression faces the central part of the disputed structure over which 'Ram Lalla' is enshrined.*** *Bricks measuring 50x50x8 to 10 cm, 50x47x8 cm and 40x40x6 cm were used in the pavement as specially made floor titles.*

In sub-Period C, when the surface of the earlier floor (Floor No.) is weathered enough (as witnessed in the combined trenches H4-H5) to be replaced, debris of the brick (and stone) structures was leveled to attain height. In this deposit foundations to support pillars or columns were sunk which were overlaid with a 4-5 cm thick floor which ***had a grid of square sandstone bases for pillars projecting out, only a few still survive.*** *Floor around most of the pillar bases is found broken with pillar base foundations in much disturbed condition.* ***This floor is the most extensive on the mound, which is found spreading from the north-south wall of the sub-Period A in the west and is found broken with the mound towards north as well as south,*** *while in the eastern part it has been damaged by the later structural activities. (Fig. 23 and 23A).*

Total deposit of the period is approximately 50 to 60

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cm thick which includes layers 1 and 2 in almost all the trenches except those in the eastern area where the deposit was disturbed by the construction in the later periods and in the northern area where the floor of the period VII-C remained exposed and under use till late. In the northern area layers 2 and 3 belong to this period. The three floors of this period were not found in all the trenches uniformly. At some places due to differential coverage area of the floor itself while at some other places due to destruction or decadence one of these was found missing. During excavation in different trenches they were named according to their occurrence from 1 onwards. The relative levels can be seen in the cross sections of the mound and in the schematic cross section of the mound.

Period – VIII *(Mughal Level)*

Structural activities of this period are limited only to the raised platform and the area immediately adjacent to it particularly in the south and the eastern area covering trenches E2 – G2 in the north to E7 – G7 in the south. *This period through two successive floors, which account for total thickness of about 23 to 25 cm, not only registers the two continuous phases of the structure* ***but also document at least two horizontal expansion of the fore-court from the simple apron flooring to terraced platform towards the eastern side****.*

The floor of the previous (Period VII-C) is found cut by the stone block (mostly calcrete) foundations of the disputed structure (mosque). However, the north-south wall of the Period VII-A is retained as foundation for the back

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wall. Inside the foundation and in the immediate from part a layer of rammed earth is laid which is then overlaid with rammed deposit of grey coloured kankars and a thin layer of ashy deposit which contains riverine shells burnt white. The total deposit accounts for a thickness of about 20-25 cm, which acts as soling for the first floor of the Mughal period inside as well as out side of the structure to a short distance to the east forming an apron floor. The apron floor which extends out to the east for 4.45 cm is provided with an edge-wall of brick to withstand the stress of stepping. The edge wall rests on the floor of the Period VII-C.

In the next phase another floor of lime mixed with brick nodules and some grit is laid over the earlier floor after it was duly chiseled for grip. This floor extends from inside the structure out to the east. In this phase the apron wall is converted into an extended platform, which exceeds the apron by almost 4.00 m. An edge-wall is provided on north, east and south which uses chiseled calcrete stone blocks and some carved sandstone blocks as well.

An interesting feature of the layer sandwiched between the floors of this period and the last floor of the preceding period is that it contained least amount of pottery and other material, ***apparently much care and effort was taken for leveling the deposits before laying the floor and sinking the foundation of the structure. No deposit, definitely contemporary to this period, exists on the mound presently****.*

Period – IX *(Late and Post Mughal Level)*

In this period two successive floors were laid,

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another platform was added to the east forming a terrace and subsequently two successive enclosure walls were erected, one around the first platform of the structure and the other encompassing the second terrace and adjoining areas to the north and south of the structure covering an area under trenches ZE1-ZK1 in the north to E8/E9-K8/K9 in the south.

In this period to attache a terraced platform to the east of the existing one, deposits of the earlier periods were excavated and removed, in which the floor of the period VII-C was cut and destroyed from the eastern area. Slightly later, ***a partition wall was added attached to the first terrace platform along with a small step in the centre.*** *And then was added another floor inside the structure which ran out on the now enclosed platform and abutted to the partition wall.* ***Some times later an enclosure wall was added to the entire complex without any foundation which rested over the existing floor, which was provided with two gates, larger one to the north and a smaller one to the east.*** *Sometimes around this period dead bodies were buried in the north and south of the disputed structure which have cut the top floors and which are sealed by layer 1.*

This period has not been very fortunate in preserving the representative deposits of the period in primary context, as immediately after or even during this period the site was subjected to various damaging digging activities. Whatever contemporary material is shown in the plates has been gleaned from the deposits dumped in the various large pits.

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The accumulation above the floor of the period VII-C in the northern area is a very recent one and so is the deposit in the eastern area below the modern brick paving.

Finally a floor of cement was laid inside the structure which was painted over with arch-patterned blocks in bichrome. A brick paving was laid in the eastern part over which were laid inscribed (in Devanagri script) memorial marble slabs.

After the construction of the disputed structure at the site, practically no deposition, except that of floors, was allowed to settle. Most of the deposit in the northern area is post 1992. The site, thus, has stratified cultural material only from the first seven periods, while the last two periods are only represented by structural activities."

3820. For determining stratigraphy/periodization, ASI has given due credit to the disturbances in strata and has also explained its recording method :

"***Disturbances in Strata***

After the construction of the structures of Mughal period directly above the Floor of the Period VII-C, much disturbances have taken place at the site, some of which were for accommodating fresh construction while others were apparently aimless destruction to either retrieve bricks and other material or for no reason at all, which not only have disturbed the deposits but also have raised problems in understanding the site.

Huge pits have been excavated at different locations of the site, the purpose of some could be discerned while some others still remain a mystery.

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*Multiple pits in J5-J6 are understood as dug for the construction of the enigmatic structure at the place remembered in tradition as '**Ram Chabutra**', **but the successive digging of pits in the same spot has obliterated the earliest pit line that could have dated the construction of the first phase of this structure.** Similarly, another huge pit was excavated in J3-J4, the purpose of which could not be discerned by the data available at hands. During excavation in trench J3, however, the same could not be identified, as the pit was larger than the operation area and the pit line was not available, which was later confirmed in trench J4, and the material, therefore, from the trench has been marked as those from layers 1 to 6 but in effect it belongs to the pit and the layers are superficial.*

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It becomes important to note that both the pits in trenches J3-J4 and J5-J6 respectively are excavated down to some what equal depth and filled I with similar material. It may not be surprising at all if some of the potsherds and other finds from the two pits match to the broken ends.

Another huge pit was excavated damaging lower strata down to the depth of 1.70 m in trenches G6, G7, G8, G9 and H6 (confirmed and many more) for constructing the last and extended phase of the 'Ram Chabutra'. Several smaller pits were dug into the floor of the Period VII-C, where it remained open to the surface or was covered with a superficially thin accumulated deposit. These, pits are filled back by simple earth and the purpose of them becomes difficult to explore. In the northern area the

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deposition above this floor was used as a burial ground. ***Several graves, of course without any grave stones to indicate, were encountered during excavation****. Similarly in the south, the same floor which is found repaired by overlaying it with a new one in Period IX, probably during the construction of the second terrace in the eastern area, is found to have been used for burying the dead, apparently in this period only. Pits for all these graves have been cut into the top soil and are found seal by only humus. In the northern area these graves have disturbed the floor of the Pd. VII-C.*

Trench E8 and E8 have been badly damaged by pits dug in the last period and also by burrowing creatures. ***In trench E8 some amount of wall robbing has also been noticed in the south-western corner. There has been some digging activity in and along the baulk between trenches E8 and F8.***

Another huge digging exercise is witnessed in area falling in trenches K6-L6 to K8-L8 and beyond to south, *which was taken up some times in the Late/Post Mughal period with certain vengeance and resolution that propelled the diggers to cut and remove the layered structure built of lime concrete and calcrete stone blocks. In trenches K7 and K8, which fell in the centre of the pit, the material from the deposit were labeled as those of layers from 1 to 8, which fell in the centre of the pit, the material from the deposit were labeled as those of layers from 1 to 8. The pit later was confirmed, on the basis of the combined evidences gathered from tenches J5-J6, K6, K7*

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and K8, to have been sealed by layer 3. The material already registered as those from layers 4 to 8 is actually from the pit and has been treated in the same way. Similar is the case with the material from layers 2 to 6 in trench J3.

During the excavation several objects were encountered with though of recent origin were documented and recorded among antiquities with equal details and definitions like the camera lens from trench ZE1 and the pendants in whitish metal from D6 and D7.

Recording Method

Northern area, eastern area and the southern area being more or less in the same level plain showing marginal difference of about 10 to 15 cm, all the recordings ***in the excavation were made taking the surface as the zero level in the areas where the floor of the disputed structure were not found****. While in the raised platform area all depths were recorded from the floor of the disputed area."*

3821. Criticising this periodisation, Plaintiffs (Suit-4) in its objection dated 08.10.2003 in para 8, has said:

"8. INADEQUACIES OF THE STRATIGRAPHY :-

8.1. *That an essential requirement in an excavation report is a chapter that describes, one after the other, the main strata or levels found in the excavation, their nature (soil texture, colour, etc.) and contents. For example in H.D. Sankalia and S.B. Deo, Report on the Excavations at Nasik and Jorwe, Poona: Deccan College, 1951, Chapter Two, entitled "Strata and Structures" contains on pp. 9-19 a description of all the strata in the different excavated areas*

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of the site. Earth colours, textures, the presence of charcoal or ash, the slope of the strata, their depth, etc. are described. So also, in M.K. Dhavalikar et al., Excavations at Inamgagaon, Pune: Deccan College, 1988, Chapter 7 on "Cuttings and Stratigraphy" describes the 16 layers of the site (pp. 121-125). Even through Inamgaon was occupied only in the chalcolithic period and is not a multi-period site like Ayodhya, there is information on each of the 16 layers of the mound in this chapter. Veerapuram is a site on the Krishna river in Andhra Pradesh, with neolithic, megalithic (iron age), early historic, and early medieval (AD 300-400) levels. For this site too, the excavators have given a description of each of the 15 strata. See T.V.G. Sastri, M. Kasturi Bai, and J.V. Prasada Rao, Veerapuram: A type Site for Cultural Study in the Krishna Valley, Hyderabad: Birla Archaeological and Cultural Research Institute, 1984, pp. 15-19. But there is no such section, leave alone a chapter, in the Ayodya report. There are serious consequences of this lacuna in basic excavation and recording procedure. Moreover, the descriptions in Chapters II (Cuttings), III (Stratigraphy and Cuttings) and IV (Structures) very rarely allude to the drawn sections presented in the report while Sections present, in a sense, an "X-ray" of the history of a mound. It is on the basis of sections that the sequence and history of a mound is constructed.

8.2. *That it may also be pointed out that, the descriptions given in the report are not always matched by the sections. The reverse is also true. The text does not state the periods*

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to which the following layers belong:

(i) Trench J3: layer 6 with the inscribed stone (Figure 22):

(ii) Trenches ZE1-ZF1: Layers 4 to 6 (Section Facing South, West- East (K-L); and

(iii) Trench E7: Layers 3 to 6 (Section Facing South, West- East (E-F).

8.3. *That the text mentions (p.40, pp. 68-69) a red brick crush floor of Period VI, attached to Wall 17, and states (p.40) that this floor can be traced in Trenches E8 and F8, G7, J5 and J6 and ZF 1. It is seen in the east section of G1. As regards trench G7, we see this red floor in Photograph No. V, and we find a floor marked "Floor 4" in the Section Facing South, West-East (E-F). But as regards E8, the Section Facing South, West-East (C-D) marks (or numbers) Floors "1" and "2" only: which, the text indicates, belong to later periods, layers 3 and 4, below "Floor 2", are assigned to Period VI on p. 41. As for J5 and J6, the Section Facing South, West East (E-F) indicates, "Floor 2" below layer 4, at a lower level, a very thick layer or flooring of brickbats.*

The same problem is faced as regards ZF1: the Section Facing South, West-East (K-L), does not mark or number or floors in the layers 1 to 6. Layers 4 to 6, are not assigned to any of the periods of the sequence. ZF 1, was found to have been dug down 1 m against the north section, in which some broken bricks can be seen, but these are not the same as the red brick-crush floor. Thus the numbering of floors and other details are not according to the

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stratigraphy and the report is full of confusion.

8.4. *That chapters, II, III, and IV mention the actual layer numbers, in specific trenches, assigned to Periods I to VI. For instance, to Period VI, which lies below the "massive structure", belong the following (pp. 40-41).*

layers 5, 6, 7	*in Trench G2;*
layers 3, 3A, 4	*in Trench G7;*
layers 5, 6	*in Trench J5 and J6; and*
layers 3, 4	*in Trench E8 and F8.*

However, the text fails to mention which particular layers, in these and other trenches, pertain to Period VII (pp. 41-43), which very stratum is claimed to represent the alleged massive pillared hall. We could assume that in the published sections either one or two layers above those listed for Period VI would pertain to the so called "massive structure". Also, on page 42 is given the confusing information that the period is represented by

"... layers 1 and 2 in almost all the trenches except those in the eastern area where the deposit was disturbed ... and in the northern area where the floor of the period VII-C remained exposed and under use till late. In the northern areas layers 2 and 3 belong to this period. The three floors of this period were not found in all the trenches uniformly."

We can only assume that in the southern area it is layers 1 and 2 (with Floors "2" and "3" as marked on the Section Facing South, West-East (E-F) that represent this allegedly significant period, and, by default, that noting but the mosque floor lies over it. Significantly, and as stated

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above, we are not told the periods to which layers 3, 4, 5 and 6 of Trench E7 are assigned.

If G2 whose layers 5, 6 and 7 belong to Period VI, is counted as one of the "northern" trenches and layers 2 and 3 belong to Period VII as the paragraph quoted above indicates, to which period can we assign its layer 4? If it is counted as one of the "southern" trenches (where, the para quoted above says, layers 1 and 2 belong to Period VII, to which period do layers 4 and 3 belong? With no section drawing of G2 available, we are none the wiser. In the Schematic Cross Section of the Disputed Mound and the Tentative Periodization of the Disputed Site, in fact, no layer below layer 3 is mentioned in the relevant column.

Thus we see the consequences of the serious inadequacy of the report, mentioned above. Nowhere does the report tell us the content / colour / texture of the northern layers 2 and 3, or the southern layers 1 and 2. No evidence is cited to show that layers 1 and 2 in the south of the mound are contemporary with layers 2 and 3 in the north of the mound. The paragraph on P. 42 of the report, quoted above, remains without substance.

8.5. *That below "Floor 1", obviously belonging to the mosque, we except to see, in the sections and plans of the various trenches, a sequence of 3 floors, presumably from "Floor 2" downwards to a "Floor 4" of Period VII with a Floor 5 belonging to Period VI. But nowhere is there any section showing Floors numbered "4" (which we expect, from the text, to be the lowest floor of the alleged "massive structure" of Period VII) or "5" (which we would expect to*

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be of the Period VI below), and no section shown a sequence of floors numbered "1" to "5".

On p. 42 the text mentions the most extensive floor of the mound, assigned to Phase C of Period VII, but fails to state what number has been assigned to it in the relevant trenches.

In Photograph 24 of Trench E7, we see a floor marked "Floor 3" at the bottom of the trench, uniformly touching the remnant plaster on the east face of the western wall, within the South Chamber of the mosque. The acceptable inference would be that this "Floor 3", about 1 m below surface, belonging to the so called "massive structure", is actually in functional relationship with the brick-course levels of the north-south wall on the west.

Below Floor 3, which is very approximately 1 m below surface in various trenches (as seen in several sections), a floor is marked "4" in the Section Facing South, West-East (E-F), as also in Trench G7 (see also Photograph 5). This floor 4, however, is shown as lying between layers 4 and 3A in the section (between layers 3 and 4 in the photograph). These layers 3 and 4, the text tells us (p.41), belong to the earlier Period VI. Thus "Floor 4" in this section cannot belong to Period VII or the "massive structure". Moreover, this floor is quite different from the floors that lay above it in the west section of G7, as evident in Photograph # 5. Thus it would be "Floor 3" that belonged to Period VII, which means that in this trench only two floors, 3 and 2, may possibly be assigned to that Period.

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In Photograph # 53, "Floor 4" is mentioned in the caption as the "first" floor associated with the north-south wall. It is shown at the base of the excavation. The trench is without number in both photograph and caption. The floor at the base of the trench lies several (30-40?) centimeters below what is marked "Floor 1" on the section. Moreover, the section labels above this floor mark only layers 3 and 2, with "Floor 1" between these layers.

The only other mention of "Floor 4" is in the hypothetical isometric reconstruction of the mosque and 'temple' in Figure 23A. This is only a suggested reconstruction.

True, it is said (pp. 42-43) that the numbering of the floors of Period VII differs from trench to trench. Yet the question still remains as to which section in the report shows phases A to C of Period VII and their three floors, whatever the numbers assigned to them. As pointed out earlier, the report nowhere states the nature and content of the layers distinguished as VIIA, VIIB and VIIC.

In stratigraphic terms, then, the characteristics and content of the 3 phases of "Period" VII as given in the text of the report, are thrown in doubt by lacunae and inconsistencies. Lacunae include not only an absence of 3 sequential floors in the sections of the relevant layers, but also the absence of information as to the content of the strata below those assigned to Period VII in Trench E7, one of the more important on the mound as it contains an undisputed part of the mosque, the South Chamber.

***8.6.** That a simple stratigraphic principle is that no*

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wall can be accurately dated vis-a-vis floors, unless we can see from which level the foundation trench for the western wall was cut, and which floor seals (or runs over) that vertical foundation cut (running close along the wall). A wall can be used, even raised higher, in periods after it was originally built. If a floor runs right up to a wall, with no gap or interruption between them, we assume that the wall and floor are functionally related, i.e. that they belong to the same building; it may be that the floor was laid after the wall was built, but not vice versa. The stratum to which the first construction of the wall dates, is indicated by the level from which the cut was made for its foundation. That cut, in its turn, will be dated by the floor or surface that lies immediately above the cut, or, in the jorgon, the floor/surface that seals the cut. The report does not state which layer or floor seals the so-called foundation trench mentioned on p. 41 and p. 69.

Photograph no. 52 (Trench E8) purports to show a cut, indicating the date of the massive west wall, in the north face of the trench, but (a) this face or section (technically, the "Section Facing South") shows an animal burrow sloping away from the west wall towards the east. The burrow cuts the second floor from the top, and also the red crush floor below it. From the level of the latter, the red stratum, a cut goes down vertically, but is too far (about 75 cm) from the west wall to be appreciated as its foundation trench cut.

Besides, (b) there is no "proof" because in the photograph the cut in the floor at the bottom of the trench

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(this floor lies several centimeters below what is marked "Floor 2" on the section in the photograph) is neither close to, nor parallel to, the line of the wall, and does not therefore indicate the edge of a trench dug to make a wall.

In Photograph 55 of Trench ZE1 we see labels marking "Floor 1" and Floor 2" in the section, and a floor (without number) at the base of the excavated area below, but there is no cut visible in the trench section close to the east face of the north-south running wall. The upper and lower floors run right up to the east face of the wall. Thus we cannot say that either of these floors was earlier than, and cut to make room for, the upper courses of the north-south wall. The same observation follows from the Section Facing South, West-East (K-L), pertaining to Trench ZE1, east of Wall #5A.

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So too no cut is visible in the Section E-F, Facing South, in E7 inside the South Chamber of the mosque. All that we have in this is a sequence of surfaces or strata below "Floor 3" coming straight up to the western wall in E7. There is no cut line, vertical or sloping, near the vertical edge of the wall."

3822. The periodization/stratification made by ASI has also been criticized by some of the witnesses of plaintiffs (Suit 4). Real criticism has come from PW 16 Prof. Surajbhan, PW 24 Prof. D.Mandal, PW 29 Dr. Jaya Menon, PW 30 Dr. R.C. Thakran, PW 31 Dr. Ashok Dutta and PW 32 Dr. Supriya Verma. Some others who have supported the stratification/periodization by ASI are OPW 18 Sri Arun Kumar Sharma; OPW 19 Rakesh Dutt Dwivedi and DW 20/5 Sri

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Jayanti Prasad Srivastava.

3823. P.W. 16, Prof. Surajbhan, in his third appearance, has deposed in the matter of ASI report and the said statement is contained in Parts 3 and 4 (paras no. 135 to 556) of his oral deposition. He claimed to have actually visited the site of excavation for a period of three days in June, 2003 when the excavation was continuing:

''जिस समय अयोध्या में विवादित स्थल पर उत्खनन का कार्य चल रहा था, उस समय मैं तीन दिनों के लिए उत्खनन स्थल पर उसका निरीक्षण करने गया था।'' (पेज 135–136)

'' When excavation was going on at the disputed site in Ayodhya. I went to the site of excavation for three days.'' (E.T.C.)

''जब मैं जून 2003 में विवादित स्थल पर गया था तब मेरे साथ डा0 मंडल, डा0 शिरीन रत्नागर, एवं पटना से आये हुए पुरातत्व के एक अवकाश प्राप्त डायरेक्टर डा0 सीताराम राय गये थे।'' (पेज 145–146)

''When I went to the disputed site in June 2003, I was accompanied by Dr.Mandal, Dr.Shireen Ratnagar and Dr. Sita Ram Rai, a retired director of archaeology, who had come from Patna.'' (E.T.C.)

''ट्रेंच जे–3 में मैं किस तारीख को उतरा था, यह याद नहीं है, परन्तु जून माह के मध्य भाग के आस–पास मैं उत्खनन स्थल पर गया होऊँगा, परन्तु इसके बारे में मैं निश्चित तिथि नहीं बता पॉऊगा।'' (पेज 239)

'' I do not remember on which date I had descended into Trench J-3. However, I may have gone to the excavation site nearly in the middle of June but I cannot tell any definite date in this respect.'' (E.T.C.)

*''मैं यहॉ पर आम व्यक्ति की हैसियत से गवाही न देकर **पुरातत्व के विशेषज्ञ की हैसियत से गवाही दे रहा हूँ।**'' (पेज 315)*

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*"**I am giving testimony here as a specialist in archaeology**, not as a layman." (E.T.C.)*

''यह भी सच है कि मैं अपनी गवाही में ए0एस0आई0 की रिपोर्ट व उसके विभाग को तिरस्कृत करने अथवा उसे खण्डित करने के लिए उपस्थित हुआ हूँ।'' (पेज 336)

"It is also true that I have appeared to discard or reject the report of ASI and its department, through my evidence." (E.T.C.)

''इस नतीजे पर पहुँचा हूँ कि ए0एस0आई0 का कनक्लूजन गलत है।'' (पेज 337)

"I have drawn the conclusion that the conclusion of ASI is wrong." (E.T.C.)

''मैं अयोध्या के इस उत्खनन रिपोर्ट के बारे में अपना आंकलन देने आया हूँ और यह बताने आया हूँ कि इस रिपोर्ट के निष्कर्ष बाबरी मस्जिद के नीचे किसी मंदिर के होने के बारे में निराधार हैं।'' (पेज 343)

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"I have come to give my estimate about this excavation report of Ayodhya and also to tell that the conclusion of this report regarding existence of any temple beneath the Babri mosque, is baseless." (E.T.C.)

''प्रश्न– पहली बार जब आप इस न्यायालय के समक्ष गवाही देने उपस्थित हुए थे जब आप एक पुरातत्ववेत्ता की हैसियत से आये थे या एक इतिहासकार की हैसियत से आये थे?

उत्तर– मैं पुरातत्ववेत्ता होते हुए इतिहासकार भी हूँ क्योंकि पुरातत्व एक ऐतिहासिक विज्ञान है इसलिए मैं जब कोर्ट के सामने पेश हुआ, इस विषय पर समग्रता से अपनी गवाही देने के लिए पेश हुआ था।'' (पेज 352)

"Question- Your first appearance in this court to give evidence was as a archaeologist or historian?

Answer- Besides being an Archaeologist, I am also a historian because archaeology is a historical science and as such when I appeared before this court, I appeared to

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give my evidence on this topic in entirety." (E.T.C.)

"हर वर्थव्हाइल आर्कियोलाजिस्ट (पुरातत्ववेत्ता) इतिहासकार भी होता है और इतिहास एक व्यापक विज्ञान है पुरातत्व जिसका अंग है, मैं जब इतिहासकार के रूप में गवाही देने आया उसका यह तात्पर्य नहीं है कि मैं पुरातत्व के ज्ञान व विधि से वंचित होकर आया था।" (पेज 353)

"Every worthwhile archaeologist is also a historian. History is a detailed science with archaeology being its branch. When I came to give evidence as a historian, it did not mean that I had come without the knowledge and method of archaeology." (E.T.C.)

"साइट पर मैं जब गया, उस समय प्रो0 शीरीन रत्नागर, प्रो0 मण्डल तथा कुछ आब्जर्वर्स, जिनके नाम मुझे इस समय याद नहीं हैं, मौजूद थे और उत्खनन के बारे में वहां से उपलब्ध सामग्री के बारे में उनके साथ चर्चा होती रहती थी। यह दोनों व्यक्ति अयोध्या में उस समय मौजूद थे, जब मैं वहां गया था।" (पेज 391)

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"When I visited the site, Prof. Shirin Ratnagar, Prof. Mandal and few Observers, whose names I do not remember, were present and I had discussions with them about the excavation and the materials available there. Both these persons were present in Ayodhya, when I had gone there." (E.T.C.)

"'ये दोनों व्यक्ति वक्फ़ बोर्ड की तरफ से उत्खनन स्थल पर गये थे।" (पेज 391)

"Both these persons had been to the excavation site on behalf of Waqf Board." (E.T.C.)

"जिस समय काफी उत्खनन हो चुका था उस समय मैं वहॉ गया था परन्तु उस समय कुछ उत्खनन नये ट्रेंचेज में किया भी जा रहा था। जिस समय मैं वहां पर गया, ट्रेन्च नं0 जी–7 में उत्खनन चल रहा था। ई और एफ़ सीरीज की ट्रेंन्चेज में भी कहीं–कहीं उत्खनन चल रहा था। पूर्व में भी जे, के, सीरीज में जहॉ तहॉ उत्खनन चल रहा था।" (पेज 443)

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"I went there, when much excavation had taken place. However, at that time excavation was being carried out in few new trenches. When I went there, excavation was being carried out in trench no. G-7. Excavation in E & F series trenches was also being carried out at places. Earlier also the excavation was being carried out at places in J, K series." (E.T.C.)

"मैंने एक्सपर्ट के रूप में तीन दिन तक हुए उत्खनन के सैम्पल को देखा, उनके पाटॅफरीयार्ड को देखा," (पेज 446)

"As an expert, I examined the sample of three days excavation, their pottery yard," (E.T.C.)

"मैं कोर्ट की इजाजत से विवादित स्थल पर उत्खनन कार्य देखने के लिए गया था। इस हेतु न्यायालय में प्रार्थना पत्र वकील साहब ने दिया होगा। प्रार्थना पत्र इस संबंध में अवश्य दिया गया होगा। . ..इस संबंध में मेरी वार्ता श्री जीलानी साहब वकील साहब से हुई थी, जिन्होंने मुझसे यह बताया था कि मेरे उत्खनन स्थल पर जाने संबंधी इजाजत प्राप्त हो गयी है।" (पेज 501)

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"I had gone to the disputed site to inspect the excavation, under court permission. The advocate must have moved an application before the court in this behalf. Application must have been moved in this behalf. . . . I had a discussion in this behalf with Mr. Jilani, the advocate, who told that permission had been accorded for my visit to the excavation site." (E.T.C.)

".मेरे साथ कई और विद्वान लोग भी थे, जिनके साथ मैं पुरावशेषों को देखने गया था।" (पेज 502)

"Many other scholars had accompanied me, when I had gone to inspect the archaeological remains." (E.T.C.)

"पुस्तिका "अगेन्स्ट कम्युनलाइजेशन आफ़ आर्कियोलाजी – ए– क्रिटिक आफ़ दि ए0एस0आई0 रिपोर्ट में जो" सहमत" नामक संस्था से

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प्रकाशित है, मेरा भी लेख है। इसका शीर्षक ''बैड मैथड, पुअर रिज़ल्ट – ए– क्रिटिक आफ़ ए0एस0आई0 रिपोर्ट्र है।'' (पेज 504)

"My article is also included in the magazine 'Against Communalisation of Archaeology- A Critic of the ASI Report', published by institution named Sahmat. Its title is 'Bad Method, Poor Result-A Critic of ASI Report'."

(E.T.C.)

''सफ़दर हाशमी मेमोरियल ट्रस्ट है, जिसे इन शार्ट ''सहमत'' कहते हैं। मैं ''सहमत'' का सदस्य तो नहीं हूँ, पर उनके अनेक कार्यो में हिस्सा लेता रहा हूँ।'' (पेज 520)

"Safdar Hashmi Memorial is a trust, which is called Sahmat in brief. I am not a member of Sahmat, but I do take part in many of its activities." (E.T.C.)

''सहमत'' मैगजीन भी प्रकाशित करता है, पर उस मैगजीन का नाम इस समय याद नहीं आ रहा है। इस मैगजीन में मेरे भी कुछ आर्टिकिल्स छपे हैं।'' (पेज 520)

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"Sahmat also publishes a magazine, whose name I am not able to recollect at present. Few articles of mine have been published in this magazine as well." (E.T.C.)

''संभवतः मैं विवादित स्थल पर 11, 12, तथा 13 जून 2003 को गया था।'' (पेज 534)

"I had been to the disputed site possibly on 11th , 12th and 13th June, 2003." (E.T.C.)

3824. In respect to certain fields he also clearly admitted his lack of expertise and experience as under:

''आर्किटेक्चरल साइन्स पर मेरी कोई एकेडेमिक क्वालीफिकेशन नहीं है, बल्कि यह मेरे अनुभव और जनरल स्टडी पर आधारित है।'' (पेज 518)

"I have no academic qualification in architectural science and instead it is based on my experience and general study." (E.T.C.)

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''मैं न्यूमिसमैटिक्स (मुद्रा शास्त्र) का एक्सपर्ट नहीं हूँ'' (पेज 522)

"I am not an expert in numismatics." (E.T.C.)

'' इसी प्रकार मैं एपीग्राफी का भी एक्सपर्ट नहीं हूँ''

"Similarly I am not an expert in epigraphy," (E.T.C.)

''मैंने उत्खनन स्थल से प्राप्त हुई ग्लेज्ड टाईल्स व ग्लेज्ड वेयर साक्षात् नहीं देखे हैं,'' (पेज 526)

"I have not actually seen the glazed tiles & glazed ware found from the excavation site," (E.T.C.)

3825. PW 16, Prof. Suraj Bhan filed his affidavit dated 20.03.2006 in support of the objections filed on behalf of plaintiff 1 (Suit-4) against ASI report. He says that the ASI has misrepresented the true nature of the structure, floors and pillar bases underlying the Babri-Masjid ruins. With respect to stratification, PW 16 in para 5 says that though the stratigraphy of each trench is claimed to be finally co-related with the general sequence of culture at the site, the ASI having failed to give a list of layers and periods trench-wise for facilitating the testing of the conclusions of the excavators has distorted the facts and gave wrong findings with regard to structure 3 and 2. PW 16 asserted that a concordance ought to have been provided in the report. The conclusions drawn by ASI were alleged to be bound and it says that they have adopted a defective methodology and biased assumption (vide para 4 of the affidavit). Then general allegations in para 14 has been made that the report, on the whole, lacks scientific rigour, objectivity and professional integrity and such trend and tendency in Indian Archaeology may pose a serious challenge not only to the world of historians but also to those citizens who are interested in truth and nothing but the truth. In his cross-examination PW 16, however, said:

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''विवादित स्थल पर ए0एस0आई0 द्वारा जो उत्खनन कार्य किया गया था, उसकी रिकार्डिंग और स्तरीकरण ठीक ढंग से नहीं किया गया था। इसलिए ए0एस0आई0की रिपोर्ट में जो गैप्स हैं, उनको डेटा या रिकार्ड से बिना सत्यापित किया कोई अंतिम मत नहीं व्यक्त किया जा सकता।''

(पेज 145)

'' In case of the excavation done by A.S.I. at the disputed site, its recording as well as stratification was not properly done. That is why a final opinion cannot be given without verifying the gaps(wide divergences) of the A.S.I. report from the data or record.'' (E.T.C.)

''आमतौर पर विद्वान कुछ एक टर्म से सहमत हैं, जैसे एन0बी0पी0डब्लू0, शुंग, कुषाण, गुप्त। परन्तु ''पोस्ट गुप्त– राजपूत काल'' प्रचलित नहीं है। ''अर्ली मिडिवियल–सुल्जानेट'' भी प्रचलित नहीं है। मिडिवियल काल से मुगल काल को उपरोक्त चार्ट में अलग किया गया है। यह भी प्रचलित नहीं है, क्योंकि मुगल काल भी मीडिवियल काल का ही हिस्सा है।''

(पेज 149)

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''Generally, scholars are in agreement on the use of some terms such as N.B.P.W., Shunga, Kushan, Gupta. But the term like 'post-Gupta-Rajpoot era' is not in vogue. The term 'Early Medieval – Sultanate' is also not in use. In the afore-said chart, the Mughal period is shown separately from the medieval period. It is also not in vogue because the Mughal period is only a part of the Medieval Period.''

(E.T.C.)

''कुछ तिथियों के लिए कार्बन–14, सिक्कों और पाटरीज़ का भी इस्तेमाल किया है।'' (पेज 155)

'' In determination of some dates, Carbon-14, coins and potteries have been used.'' (E.T.C.)

''परन्तु जो इस रिपोर्ट में त्रुटि नजर आ रही है, वह यह है कि उन्होंने कुछ कूशियल साक्ष्य को प्राप्त करने अथवा उसका विश्लेषण करने मे कमजोरी दिखाई है तथा गलत निष्कर्ष निकालने के लिए कुछ साक्ष्यों को जरूरत से

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ज्यादा महत्व दिया है और उनका क्रिटिकल एनालिसिस नहीं किया है। दूसरी तरफ़ कुछ अन्य महत्वपूर्ण सामग्री को, जो इस समस्या पर विशेष महत्व रखती है, इग्नोर किया गया है व सप्रेस किया गया है, ताकि अपने पूर्वकल्पित निष्कर्ष को सिद्ध किया जा सके। इन्हीं तरीकों को मैं गलत मानता हूँ और इन प्रिजम्पशस को मैं बायस्ड कहता हूँ।'' (199–200)

"But an error perceptible in this report is that they have shown weakness in obtaining some crucial evidences or in analysing them and have given too much stress on some evidences so as to infer wrong findings and have not made any critical analysis of them. On the other hand, some other vital materials, which hold special significance to this problem, have been either ignored or suppressed, so that they may be able to establish their preconceived findings. I take these very methods to be faulty and term these presumptions as biased." (E.T.C.)

''स्तर को मार्क करने के लिए कई साक्ष्यों का आधार लेना पड़ता है, क्योंकि कई बार स्थिति बहुत काम्पलेक्स होती है।'' (पेज 236)

"Several pieces of evidence have to be relied upon so as to mark the level because the situation gets very complex many times." (E.T.C.)

''यह कहना सही है कि कई बार एक ही काल में कई स्तर हो सकते हैं और अन्य समय में अलग–अलग स्तर अलग–अलग कालों के ही सूचक हो सकते हैं। सांस्कृतिक काल गणना के लिए भौतिक अवशेषों का ही आधार होता है।'' (पेज 236)

"It is correct to say that many a time a single period may have various strata and at other times different periods may be indicative of different strata. Only the physical remains provide a base for the reckoning of a cultural period." (E.T.C.)

यह कहना सही है कि रोशनी की मौजूदगी में ही प्रायः स्तरों की पहचान

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बेहतर हो पाती है। इसके अलावा नज़दीक से स्तरों को देखने से और स्वयं उसके पहचानने के लिए अपने पुरातात्विक चाकू (आर्कियोलोजिकल नाइफ़) का प्रयोग करके बेहतर किया जा सकता है, परन्तु दूर से देखकर भी और फ़ोटोग्राफ़ तथा सेक्शनल ड्राइंग को देखकर भी स्तरों की भिन्नता का आभास हो सकता है। फोटोग्राफ को देखकर यह अनेक बार पहचान लिया जाता है कि अमुक उत्खनन में स्तरीकरण में कितना औचित्य और कितनी गल्तियॉ हैं। प्रायः फ़ोटोग्राफ़ में स्तरों की मिट्टी के टैक्सचर, उसके रंग की छाया भी पड़ती है। स्वयं कहा कि पिट आदि को बहुत सरलता से पहचाना जा सकता है।'' (पेज 237)

" It is correct to say that stratum is often better identified only in the presence of light. Besides, it can be better done by looking at the strata from a close range and by using one's archaeological knife for their identification. But one may have an impression as to difference in strata even by looking from a distance and also by looking at photograph and sectional drawing. From the sight of a photograph, many times it is known how much propriety and how many lacuna are there in the stratification done in a particular excavation. The soil texture of strata and their colour often gets reflected in the photograph too. (Himself stated) A pit etc. can be identified very easily." (E.T.C.)

''उ0–अयोध्या के उत्खनन में सेक्शन का तराशना बहुत सफाई से किया गया है, चाहे स्तरीकरण में कई जगह दोष हों।'' (पेज 237)

"Answer:- The section cutting has been done in a very fine manner in the excavation of Ayodhya, though there may be lacuna at several places in stratification." (E.T.C.)

***''अध्ययन करने के बाद ही यह पता चलेगा कि वे निष्कर्ष सही हैं अथवा नहीं।''** (पेज 238)*

*"**Only after study it will be known whether those findings are correct or not**." (E.T.C.)*

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*''**बेहतर यही रहता है कि संख्यात्मक ढंग से और राजनैतिक, आर्थिक आधार पर काल–निर्णय किया जाये।** विभिन्न डायनेस्टीज़ विभिन्न राजवंश इस काल–क्रम में आ जायेंगे, परन्तु विभिन्न राजवंशों के आधार पर किये गये काल–क्रम की कई सीमाएं होती हैं। **ए0एस0आई0 ने अपनी रिपोर्ट से केवल राजवंश के आधार पर ही काल–गणना नहीं की है। उसमें पुरातात्विक सामग्री के आधार पर, जैसे एन0बी0पी0 डब्लू0 पीरियड तथा ऐतिहासिक आधार पर, जैसे– मध्य काल, उत्तर व पोस्ट मुग़ल काल आदि भी नाम दिये हैं।** इस रिपोर्ट में ए0एस0आई0 ने कुषाण काल, शुंगकाल, गुप्तकाल, और राजपूत काल तथा मुग़लकाल अवश्य दिये हैं, जो डायनेस्टीज़ या राजवंशों से सम्बन्धित हैं या उनको समेटते हैं, परन्तु कुछ ऐसे कन्क्लूजन भी रिपोर्ट में दिखाई दे रहे हैं, जिनमें पूर्व मध्यकाल और सल्तनत पीरियड की विभाजन रेखा नहीं पहचानी गई है। सांस्कृतिक कालक्रम में ट्रेंड एण्ड कामर्स, जनरल सामाजिक संरचना का बंग ही अपने आप में किसी अलग काल का अथवा राजनैतिक, आर्थिक व्यवस्था का सूचक नहीं है।''(पेज 244)*

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*"**It is better that periodization is done numerically and on political and economic grounds.** Several dynasties and several royal lineages will be covered in this chronological order. But periodization based on several royal lineages has many limitations. **The ASI in its report has not proceeded with the reckoning of time merely on the basis of royal lineages. It has given the name of NBPW period on the basis of archaeological materials and those of medieval period, later or post Mughal periods etc., on historical basis.** The ASI, in this report, have certainly given the names of Kushan period, Shunga period, Gupta period, later Gupta period, Rajpoot period and Mughal period, which are related to dynasties/royal lineages or cover such dynasties/royal lineages. But the report contains certain conclusions in which no line of separation is seen*

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between the early medieval period and the Sultanate period. In cultural chronology, trade & commerce and general social structure by themselves are not indicative of any separate period or of any political and economic system." (E.T.C.)

*"**पूरे उत्खनन अवधि में मैं तीन दिन तक वहॉ पर रहा।** ..... ए0एस0आई0 ने उत्खनन के दौरान रिकार्डिंग ट्रेन्चेज में की गयी होगी परन्तु मेरी जो जानकारी है उसके अनुसार उत्खनन शुरू होने के लगभग एक महीने तक और कोर्ट के आदेश तक ग्लेज्ड वेयर, ग्लेज्ड टाईलस तथा हड्डियों की ठीक से रिकार्डिंग नहीं की गयी थी। मैंने केवल ट्रेन्चेज में स्ट्रेटीग्राफी तथा आर्कीटेक्चरल रिमेन्स का अध्ययन किया था, वहॉ बनायी जा रही ड्राईग को आंशिक रूप से देखा था, ट्रेन्चेज नोट बुक और डेली रजिस्टर नहीं देखा था। मुझे कोई उत्खननकर्ता स्थल पर साईट नोटबुक लिखता भी दिखाई नहीं दिया। मुझे यह पता है कि सुपरवाजर की नोटबुक तथा एन्टीक्विटी के रजिस्टर आदि बनाये गये हैं परन्तु क्या सुपरवाइजर ने साईट पर उत्खनन करते समय डायरी लिखी है, इस बारे में मुझे षक है। एन्टीक्विटी रजिस्टर पर भी मुझे शक है कि वह उस ढंग से नहीं लिखा है जिस ढंग से लिखा जाना चाहिए, बाद में कोई कोर्ट की जरूरत के अनुसार तैयार कर दिया लगता है। मेरा यह शक मेरे स्वयं का भी है तथा इस बारे में मैंने जानकारी भी प्राप्त की है। यह जानकारी मुझे डा0 मण्डल साहब ने, ठाकरान साहब ने षिरीन रत्नागर तथा और भी कई लोग जो वहॉ पर थे, ने दिया था। जब मैंने इसको देखा तो यह पाया कि यह उस ढंग से रिकार्डिंग ही नहीं है, जैसे सामान्य उत्खनन में की जाती है। जहॉ तक मुझे मालूम है कि उपरोक्त तीनों व्यक्तियों जिनसे मुझे जानकारी प्राप्त हुई उनमें ठाकरान साहब काफ़ी समय तक विवादित स्थल पर रहे होंगे। ..... जितने दिनों तक मैं उत्खनन स्थल पर रहा, मुझे यह पता चला कि उत्खनन के बाद षाम को एन्टीक्वीटीज डेली रजिस्टर में चढ़ाई जाती थी और शायद लोगों के दस्तखत भी लिये जाते थे। सुपरवाईजर की नोट बुक जो ट्रेन्च पर सुपरवाईजर लिखता है, वह मैंने लिखते हुए नहीं देखा बल्कि मैंने कुछ सुपरवाईजर को जब मैं ट्रेन्च देखने जाता था, तब वह वहॉ से अलग*

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जाकर बैठ जाने को भी देखा था। इससे मुझे लगता था कि सभी सुपरवाईजर्स एक जैसे सीरियस उत्खननकर्ता नहीं थे।'' (पेज 443–444)

*"**In the total excavation period, I stayed there for three days.** . . . . ASI may have carried out recording in the trenches during the excavation. However, to the best of my knowledge recording of glazed ware, glazed tiles & bones was not carried out properly for about one month from the beginning of excavation till the order of court. I had only studied the stratography of trenches and archaeological remains and had partially seen the drawing being made there but had not seen the trenches note book & daily register. I did not see any excavator writing the site note book at the site. I know that Supervisor's note book & antiquity register etc. have been prepared but I have doubt that the Supervisor has written the dairy at time of excavation. I also have doubts about the antiquity register that it has not been written in the manner it should have been written and appears to have been prepared subsequently according to requirement of court. This doubt is my own and I have also gathered information in this behalf. This information was given to me by Dr. Mandal, Mr. Thakran, Shirin Ratnagar and many other persons who were present there. When I looked at it, I found that the recording was not in the manner, as is done in usual excavation. To the best of my knowledge, out of the said three persons from whom I received the information, Mr. Thakran must have stayed at the disputed site for a long duration. . . . . In the period of my stay at the excavation site, I came to know that after the excavation,*

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the antiquities were entered in the evening in the daily register and probably signatures were also obtained. I did not see the Supervisor's note book being written, which is written by the Supervisor at the trench and instead at time of my visit to the trench I used to find some of the Supervisors sitting a side the trench. From this, it appeared to me that all the Supervisors were not equally serious excavators." (E.T.C.)

''रिपोर्ट से ऐसा ही पता चलता है परन्तु मेरी व्यक्तिगत जानकारी के अनुसार ट्रेन्चेज में सरफ़ेस से डेप्थ ली जाती थी न कि किसी न स्टैण्डर्ड डेटम लाइन से, ऐसा मुझे अषोक दत्ता जी से भी पता चला।'' (पेज 445)

"It appears so from the report but as per my personal knowledge the depth of trenches is measured from the surface and not from any standard datum line. I came to know the same from Mr. Ashok Dutta as well." (E.T.C.)

''मुझे यह जानकारी है कि ए0एस0आई0 ने अपनी रिपोर्ट के साथ वीडियों कैसेट्स तथा फ़ोटोग्राफ़्स दाखिल किये हैं। ...ए0एस0आई0 ने अपनी रिपोर्ट के साथ जो फोटोग्राफ़्स दाखिल किये गये है, उसके अतिरिक्त जो अन्य फ़ोटोग्राफ़्स जो ए0एस0आई0 ने दाखिल किये हैं, उनको षायद मैंने नहीं देखा है। मैंने 10–20 सी0डी0 देखी होगी। मैंने शायद ए0एस0आई0 द्वारा दाखिल ट्रेन्च नोट बुक नहीं देखी है। मुझे यह पता चला था कि ट्रेन्च नोट बुक ए0एस0आई0 द्वारा दाख़िल की गयी है।''''मैं अपने इस मत पर पहुॅचा हूॅ कि रिपोर्ट की कमजोरियॉ स्टाक में रखे फ़ोटोग्राफ़्स, सी0डी0, डायरियॉ अथवा ऐन्टीक्वीटीज़ रजिस्टर आदि से पूरी नहीं की जा सकती है।''

(पेज 445–446)

"I have the knowledge that along with its report, ASI has also filed video cassettes and photographs. . .. . . .The photographs filed by ASI in addition to the photographs filed along with its report, have probably not been seen by me. I may have seen 10-12 CD. I have probably not seen

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the trench note book filed by ASI. I had come to know that ASI had filed trench note book.

I have arrived at the conclusion that the shortcomings of report can not be made good by photographs kept in stock, CD, diaries or antiquities register." (E.T.C.)

*"**यह सही है कि स्थल पर उत्खनन वर्टिकल और हेरीजन्टल दोनों विधि से किया गया।** न्यायालय के आदेश का पालन करने के लिए जितना होरीज़न्टल और वर्टिकल उत्खनन आवश्यक था उससे कहीं ज्यादा उत्खनन किया गया है। . . . . . परन्तु ट्रेन्च जे 3 और जी 7 में नेचुरल स्वायल तक पहुॅचना और कार्बन 14 विधि सर्वे अर्लियर पीरीयड 1000 बी0सी0 से भी पुराना मनगढंत रूप से बना देना यह कोर्ट की अपेक्षा नहीं थी। दूसरी तरफ 100 ट्रेन्चेज को खोदकर पुरास्थल की सारी उस सामग्री को नष्ट कर देना जिसको भविष्य में बेहतर तकनीक के आने पर और बेहतर समझा जा सकता था, इसकी भी आवश्यकता नहीं थी।" (पेज 446-447)*

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"It is correct that the excavation at the site has been carried out by both vertical and horizontal methods. The horizontal and vertical excavation was carried out in excess of the required excavation, in order to comply with the court order. . . . . .However, it was not the intention of the court to go deep to natural soil in trench J-3 & G-7 and arbitrarily making the survey older than the earlier period 1000 BC by Carbon-14 method. Further, there was no necessity to dig up 100 trenches and destroy all its archaeological materials, which could have been better appreciated on advent of improved technology." (E.T.C.)

"उत्खनन ऊपर से नीचे को होता है। आज कल काल निर्धारण नीचे से ऊपर की ओर किया जाता है।. ... कार्बनडेटि।ग को एब्सोलूट डेटिंग की एक वैज्ञानिक तकनीक माना जाता है, परन्तु इसकी सीमाएं होती

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हैं।'' (पेज 450)

''The excavation takes place from top to bottom. These days the period determination takes place from bottom to top. ...The carbon dating is considered a scientific technique of absolute dating, but it has its limitation.'' (E.T.C.)

''प्र0– मैंने आपसे स्पष्ट रूप से यह पूछा था कि पूरातत्व में सेंचुरीवाइज कालगणना को प्रामाणिक माना गया है या नहीं, जिसका आपने स्पष्ट जवाब नहीं दिया?

उत्तर– सेंचुरीवाइज कालगणना यदि सांस्कृतिक कालगणना अथवा सोषियोइकोनामिक एवं सांस्कृतिक संरचना की गणना से मेल नहीं खाता, तो हम इसका उपयोग नहीं करेंगे।

ऐसी कोई पुरातत्व में फासिस्टिक कालगणना की यार्डस्टिक नहीं होती।'' (पेज 453)

''Question- I had specifically asked whether in archeology, the century wise period calculation has been considered to be reliable or not, which has not been clearly replied by you?

Answer- If the century wise period calculation does not match with cultural period calculation or the calculation of socio-economic & cultural structure, then we do not use it.

In archaeology, there is no yardstick for fossistic period calculation.'' (E.T.C.)

''मैंने ए0एस0आई0 की रिपोर्ट को शुरू से अन्त तक पढ़ा है। ***ए 0एस0आई0 ने इन तीनों अर्थात डायनेस्टी, शताब्दी तथा लेयर के अनुसार कालगणना बतायी है, परन्तु कालगणना का कुछ कालों में मूल–आधार ही नेगलेक्ट कर दिया है, जैसे काल सं0 –6 व 7 एकदम तथ्यों से अलग जाकर प्रीकंसीव्ड आइडियाज़ के तहत तय किये गये हैं*** *और उनकी तिथि पीछे ढकेली गई है, जो पुरातत्व के विषय में अनसमझी (अज्ञान) को दिखाता है या उनके मोटिव की तरफ़ इशारा करता है।*

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ए0एस0आई0 ने ***कालगणना के लिए सी–14 विधि का इस्तेमाल किया है, परन्तु कई जगह यह गलत है*** *और कई जगह ए0एस0आई0 ने अपनी रिपोर्ट में कार्बनडेटिंग सैम्पुल्स तथा उनके निष्कर्षो के बारे में एक चार्ट दिया है।*

ए0एस0आई0 वाल्यूम–1 के पेज–273 के अपेंडिक्स–1 . . . .तथा सैम्पुल नं0–2,3 4 बी तथा 5 बी के बारे में यह पूछा कि इनके अन्तर्गत जो कार्बनडेटिंग हुई तथा जो निष्कर्ष दिये गये हैं, उससे साक्षी सहमत है या नहीं। साक्षी ने बताया कि यह प्रष्न ए0एस0आई0 से पूछा जाना चाहिए, क्योंकि यहां पर न किसी सांस्कृतिक काल का जिक्र है और न किसी विषेष ट्रेंच के विषेष स्तर का जिक्र है, जिससे यह सैम्पुल लिए गये थे, इसलिए उत्खननकर्ता के अतिरिक्त कोई भी इस अधूरे एपेंडिक्स से क्या अर्थ लगायेगा।

प्र0– उपरोक्त चारों सैम्पुल्स, जिनका उल्लेख किया गया है, के बारे में ए 0एस0आई0 ने अपनी रिपोर्ट में कोई उल्लेख नहीं किया है अथवा नहीं?

उ0– इसका उल्लेख तो किया होगा, परन्तु इस एपेंडिक्स में यह अवष्य लिखा जाना चाहिए था।

प्र0– इस एपेंडिक्स में दिये गये सैम्पुल्स ए0एस0आई0 की रिपोर्ट में कहां–कहां किस ट्रेंच व किस लेयर से सम्बन्धित हैं, इसका आपने रिपोर्ट में कोई अध्ययन नहीं किया, इसी कारण आप सी–14 के रिजल्ट के सम्बन्ध में कोई स्पष्ट उत्तर न देकर केवल एपेंडिक्स अपूर्ण होने का बयान दे रहे हैं। इस सम्बन्ध में आपको क्या कहना है?

उ0– ***ऐसा कहना पुरातत्व के उत्खनन की रिपोर्ट्स को कैसे सुगम व स्पष्ट बनाया जाये, इससे मुँह मोड़ना है। वास्तव में जब भी कोई पुरातत्ववेत्ता अपने उत्खनन पर कोई रिपोर्ट लिखता हे, वह इसे पब्लिष करने के लिए होती है, ताकि लोगों को नई जानकारी अथवा नये ज्ञान का पता लग सके, परन्तु इस रिपोर्ट में केवल इसी एपेंडिक्स में नहीं, और भी कई जगहों पर, जहां ऐटीक्युटीज की लिस्ट दी गई है, वहां पर भी यह इन्फार्मेषन नहीं दी गई है कि अमुक ऐंटीक्युटी किस काल से है और किस स्तर से है।*** *फोटोग्राफ्स व ड्राइंग में भी यह कमी साफ देखी जा सकती है। मैं नहीं जानता कि मैं इस रिपोर्ट को प्रमाणिक कैसे मानूँ। यह कहना गलत है कि मैंने रिपोर्ट का अध्ययन*

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नहीं किया है।

*प्र0– **ए0एस0आई0 की रिपोर्ट में इस बात का उल्लेख किया है कि ये सैम्पुल कहॉं–कहॉं और किस लेयर से सम्बन्धित हैं। इस सम्बन्ध में आपको क्या कहना है?***

*उ0– **इन तिथियों का उल्लेख तो जहॉं तहॉं ए0एस0आई0 ने जितना ठीक समझा होगा, किया होगा।***

***ए0एस0आई0 ने सिक्स पीरियड को 11वीं व 12वीं सदी में रखा। मुझे ए0एस0आई0 द्वारा I से V की काल कम की गणना के निर्धारण के संबंध में कोई आपत्ति नहीं है,** क्योंकि इसका इस समस्या से कोई संबंध नहीं है।'' (पेज 454–455)*

*"I have read the complete ASI report. **The ASI has made the period calculation on basis of these three viz. dynasty, century and layer. However, the main basis of period calculation has been neglected in few periods such as the period nos. 6 & 7 have been decided contrary to facts on basis of pre-conceived ideas** and have been ante-dated, which only reflects on lack of knowledge in archaeology or the motive.*

***The ASI has used the C-14 technique for period calculation.** However, it is incorrect at many places. In its report, the ASI has given a chart at many places regarding the carbon dating samples and its conclusion thereon.*

The witness was asked whether he agreed or not with the carbon dating and conclusions contained in Appendix 1 page 273 ASI Vol. 1. ... and sample no. 2, 3, 4B and 5B. The witness stated that this question should be put to ASI because there is no mention of any cultural period or any particular layer of any particular trench, from where these samples had been taken and as such none other than the excavator would be able to decipher this incomplete

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appendix.

Question- Has the ASI made any mention about the said four samples in its report or not?

Answer- It must have been mentioned, but it should have been written in appendix.

Question- You have not studied the trench and layer, with which the samples given in this appendix are related to, due to which you are unable to give a specific reply regarding the result of C-14 and are only stating about the appendix being incomplete. What you have to say in this behalf?

Answer- ***The suggestion on making the archaeological excavation reports clear and comprehend-able, amounts to avoiding the issue. Actually whenever any archaeologists prepares report on his excavation, it is meant for publication so that people may get new information or knowledge. However, not only in the appendix of this report but at many other places as well, where the list of antiquities has been given, the information about the period and level of any particular antiquity has not been given.*** *This deficiency is clearly visible in photographs and drawing. I do not know how to accept this report as authentic. It is wrong to say that I have not studied the report.*

Question- ***It has been mentioned in the ASI report as to from where the samples were taken and to which layer were they related to. What you have to say in this behalf****?*

Answer- ***These dates must have been mentioned at***

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appropriate places by ASI, according to its wisdom.

The ASI has marked the sixth period in 11th & 12th century. I have no objection in determination of period calculation of I to V by the ASI, *because it is not related to the present dispute." (E.T.C.)*

*"**मेरे हिसाब से VII पीरियड सल्तनत काल में पीरियड VI के बाद निष्चित होना चाहिए। हालांकि सल्तनत के इन दोनों कालों की कोई निष्चित तिथि अभी तक उपलब्ध नहीं है।** मेरे अध्ययन के अनुसार उत्तर भारत में सल्तनत काल 13वीं सदी से माना जाता है। मेरे अनुसार VI पीरियड सलतनत काल में पहले आया और पीरियड VII उसके बाद। यह सम्भव है कि पीरियड VI 13वीं सदी से शुरू हुआ हो और पीरियड VII 16वीं सदी से ष्षुरू तक रहा हो। ... वास्तव में इनको दो काल कहना भी गलत होगा। **यह केवल दो भवनों के ढॉचें हैं, जो सल्तनत काल में बनाये गये और समाप्त भी हो गये। इनमें वाल नं0 17 वाला ढॉचा अर्थात् काल VI से संबंधित कहा जाने वाला ढॉचा पहले का है और केवल काल VII का ढॉचा बाद का है, सल्तनत काल का।** इनके साथ पाये गये डायग्नोस्टिक अवषेषों तथा इनकी दीवार व फ़र्ष तथा प्लान आदि की समानता से देखा जा सकता है **जो पीरियड V के पुरातात्विक अवषेषों और भवन निर्माण शैली से एकदम भिन्न हैं।''** (पेज 456–457)*

*"**I feel that the VII period should be fixed during the Sultanate period after period VI. However, no fixed date of both these Sultanate periods, is not available so far**. According to my studies, the Sultanate period in north India is considered from the 13th century. According to me, the VI period came first in the Sultanate period and the period VII followed. It is possible that the period VI started in the 13th century and the period VII in the 16th century. ...Actually it be wrong to term them as two periods.*

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They are only the remains of two buildings, which were built and saw their end during the Sultanate period. The structure of wall no. 17, said to be related to period VI, is a prior structure and only the structure of period VII is of subsequent period, Sultanate period. *It can be seen in the similarity of diagnostic remains, their walls, floor, plan etc.,* ***which is entirely different from archaeological remains and house construction pattern of period V.****"*

(E.T.C.)

*"**सल्तनत काल का समय इतिहासकारों ने पहले ही तय कर रखा है, जिसे सन् 1206 ईस्वी से 1526 ईस्वी के बीच में रखा जाता है।** यह मेरे शोध का विषय नहीं है।" (पेज 457)*

*"**The period of Sultanate period has already been determined by the historians, as falling between 1206 AD to 1526 AD.** It is not a topic of my research" (E.T.C.)*

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*"जो आर्किटेक्चर की हिस्ट्री का विषय है। ..... वास्तव में यह प्रष्न आर्किटेक्चर की कम्परेटिव स्टडी का सवाल हैं **उस युग विषेष के आर्किटेक्चर की यदि जानकारी है, तो यह बताया जा सकता है कि उत्खनन से प्राप्त ढांचे पिलर बेसेज़ हो सकते थे या नहीं मेरे इस उत्तर से उपरोक्त पूछे गए तीनों प्रष्नों का उत्तर पूर्ण हो जाता है।**" (पेज 463)*

"Which is the subject matter of history of architecture... Actually it is a matter of comparative study of architecture. ***If information is available regarding the architecture of that particular period, then it can be told whether the structures found in excavation were pillar bases or not. This reply of mine is good enough for the aforesaid three questions****." (E.T.C.)*

3826. About periodization PW 16 has made a very vague statement and failed to provide any proper reason to challenge

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the same. On page 244, PW-16 has simply said that there are some conclusions in the report which do not give any clear cut line of separation between the early Mughal period and Sultenat period. Regarding the allegations of lack of professional integrity, objectivity, scientific rigor, pursuing defective methodology and biased assumption, we find on the contrary, predetermined attitude of the witness against ASI which he has admitted. Even before submission of ASI report and its having been seen by the witness, he formed opinion and expressed his views against ASI. He said:

> *"यह सही है कि* ***कुछ इष्यूज़ पर मैंने अपने विचार ए 0एस0आई0 की रिपोर्ट के न्यायालय में प्रस्तुत होने के पहले अपनी जानकारी के आधार पर अपने निष्कर्ष निकाले और विचार व्यक्त किये।''*** *(पेज 446)*
>
> *"It is true that* ***my conclusions and views on certain issues are based on my knowledge existing prior to the submission of ASI's report in court."*** *(E.T.C.)*
>
> *"ए0एस0आई0 की इस मामले में रिपोर्ट आने के पश्चात् मैंने तथा प्रो0 इरफ़ान हबीब ने यह बात आने पर कि विवादित स्थल पर मन्दिर के अवशेष मिले हैं, यह वक्तव्य दिया था कि विवादित स्थल पर नीचे पुरानी मस्जिद या ईदगाह के अवशेष मिले हैं न कि मन्दिर के। अगर यह प्रोपोगैण्डा न होता कि विवातिद स्थल पर मन्दिर के अवशेष मिले हैं, तो मुझे व प्रो0 इरफ़ान हबीब को उपरोक्त वक्तव्य देने की आवश्यकता नहीं थी।'' (पेज 521)*
>
> *"Consequent to submission of ASI's report in the matter and the claim that remains of temple were found at the disputed site, I and Prof. Irfan Habib had given this statement that remains of old mosque or Eidgah had been found beneath the disputed site and not of any temple. If this propaganda that remains of temple were found at the*

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disputed site, had not taken place, there would have been no occasion for me and Prof. Irfan Habib to give the above statement." (E.T.C.)

"यह कहना सही है कि मैं बाबरी मस्जिद पर हुए उत्खनन तथा उस पर लिखे गए लेखों आदि पर अपनी टिप्पणी करता रहा हूँ तथा मत जाहिर करता रहा हूँ। यह सही है कि "सहमत" संस्था ने मुझे रिकग्नाइज किया तथा कई बार मुझे इस सम्बन्ध में टिप्पणी करने के लिए आमंत्रित किया।" (पेज 525)

"It is true that I have been making comments and expressing my opinion over excavation of Babri mosque and the articles etc. written over it. It is true that the institution Sahmat had recognized me and had invited me on number of occasions to comment in this behalf."(E.T.C.)

"मेरे ख्याल में अगस्त के अन्त या सितम्बर सन् 2003 शुरू में यह रिपोर्ट पार्टीज़ को दी गई थी। मुझे एक – डेढ़ हफ्ते बाद यह रिपोर्ट पढ़ने को मिली।

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मैंने ए0एस0आई0 द्वारा प्रस्तुत रिपोर्ट सितम्बर 2003 में पढ़ी थी। *विवादित स्थल से संबंधित कुछ मसलों पर पूछे जाने पर* ***मैंने ए0एस0आई की रिपोर्ट आने के पहले भी अपना मत दिया है। ....यह सही है कि ए0एस0आई0 की रिपोर्ट आने के पहले मैं अपना मत बना चुका था।*** *मैं वर्ष 1990 से विवादित स्थल के संबंध में अपना मत व्यक्त करता रहा हूँ। मैंने अपना यह मत खुदाई से पहले व्यक्त किया था कि खुदाई करने की आवश्यकता विवाद को सुलझाने के लिए आवश्यक नहीं है।" (पेज 547)*

"In my view, this report had been given to the parties in last of August or beginning of September, 2003. I got to read the report after about 1-1½ weeks.

I had read ASI's report in September, 2003*. Prior to submission of ASI's report* ***I had given my opinion on few issues related to the disputed site. ...It is true that I had formed my opinion prior to submission of ASI's***

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report. *I have been expressing my opinion regarding the disputed site, since the year 1990. This opinion of mine that there was no requirement of excavation to resolve the dispute, had been expressed by me earlier." (E.T.C.)*

3827. He also admitted to have made statement on the request of a party, i.e., plaintiff-1 (Suit-4) as under:

''मैंने पहले जिस पार्टी के पक्ष में बयान दिया है, उन्हीं की तरफ से मैं विवादित स्थल पर गया था।'' (पेज 138)

" I went to the disputed site on behalf of the party in favour of which I have earlier given statement." (E.T.C.)

''मैं जीलानी साहब की मार्फत से वहॉ गया था।'' (पेज 139)

" I went there through Gilani Sahib." (E.T.C.)

''यह आंशिक रूप से सही है कि मैं सुन्नी वक्फ़ बोर्ड की प्रार्थना पर पुरातत्व के विषय पर साईट पर गया हूँ ओर अपने विचार दिये हैं।''

(पेज 547)

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"It is partially correct that I had been to the site in connection with archaeology on the prayer of Sunni Waqf Board and had given my views." (E.T.C.)

3828. He visited excavation site during the course of excavation only for three days but even during that period did not make any proper study of the finds, but has tried to blame ASI. It is evident from his own statement:

''विवादित स्थल पर उत्खनन के दौरान मैं जून 2003 में गया था।'' पेज 138)

"I went to the disputed site in June 2003 in course of the excavation." (E.T.C.)

''जो डेटा थैलियों में पैक था, तथा जिसके लिए कोर्ट की भी अनुमति थी, वह मैं नहीं देख पाया क्योंकि इस संबंध में सुविधा नहीं मिल पाई। सुविधा न मिलने से मेरा तात्पर्य यह है कि कुछ ट्रेंचों का मैटीरियल हम लोग देखना चाहते थे, परन्तु ए0एस0आई0 व दूसरे पक्ष के लोगों का यह कहना

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था कि वह एक सिरे से ही इन मैटीरियल को दिखा सकते हैं ***जिसके लिए मेरे पास समय नहीं था। इस संदर्भ में मैंने अपना आब्जेक्शन लिखित रूप से नहीं दिया परन्तु इस संबंध में वहां चर्चा हुई थी।*** *'' (पेज 146)*

"I could not see the data which was packed in packets and access to which was permitted even by the court, inasmuch as I could not get the facility in this respect. By the expression 'not getting the facility', I mean that we wanted to see the materials of some trenches but the A.S.I. and people of other side insisted that they can show the materials only from an end; ***for which I did not have time. In this respect I did not give my objection in writing but held discussion there.*** *" (E.T.C.)*

''स्वयं कहा कि पाटरी यार्ड में मैं मेटीरियल को इसलिए नहीं देख पाया क्योंकि उसमें पुराना व बाद के काल का मैटीरियल बहुत सी ट्रेंचेज़ का मिक्सड रूप से पड़ा था उनको अलग–अलग क्लासीफाईड नहीं किया गया था और ***न ही इस बारे में कोई बताने वाला था।*** *इस संदर्भ में भी मैंने अपनी कोई लिखित आपत्ति प्रस्तुत नहीं की।'' (पेज 146)*

" (Himself stated) I could not see the materials in the pottery yard because old materials and those of a subsequent period were lying in mixed forms in several trenches. They were not distinctly classified, ***nor was there anybody to tell us in this regard****. I did not make any objection of mine in writing in this respect also." (E.T.C.)*

''चूंकि मैं केवल तीन दिन के लिए उत्खनन स्थल पर गया था इसलिए मैंने स्वयं कोई आपत्ति प्रस्तुत नहीं की।'' *(पेज 147)*

"Since I was at the disputed site for only three days, I myself did not move any objection." *(E.T.C.)*

''ए0एस0आई0 द्वारा विवादित स्थल पर उत्खनन के पश्चात रिपोर्ट को

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न्यायालय में प्रस्तुत कर दिये जाने के बाद, मैंने कभी विवादित स्थल का पुनः निरीक्षण नहीं किया। मेरे लिए इस स्थल पर रिपोर्ट के प्रस्तुत होने के बाद निरीक्षण करना संभव नहीं हो सका और ***पुरातत्व की टीम ने मुझे आमंत्रित भी नहीं किया।*** *'' (पेज 193)*

"On a report being submitted to the court after excavation had been carried out by the ASI at the disputed site, I never went to the disputed site for re-inspection. After the production of the report on this site, it could not be possible for me to make inspection of this site, ***nor did the archaeological team invite me for this****." (E.T.C.)*

''मैंने बाद में भी ट्रेंच जी–7 तथा ट्रेंच जे–3 के उत्खनन से प्राप्त पुरावशेषों को नहीं देखा। मैं इनको देखना चाहता था, परन्तु यह मुझे दिखाये नहीं गये। इसके बारे में मैं पहले भी अपने बयान में बता चुका हूँ। ट्रेंच जी–7 तथा ट्रेंच जे–3 के उत्खनन से किस स्तर से कौन से पुरावशेष मिले, यह ए0एस0आई0 की रिपोर्ट में भी वर्णित नहीं है।'' (पेज 221)

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"I did not see the antiquities discovered from Trench G-7 and Trench J-3 even later. I wanted to see them but they were not shown to me. In my statement, I have already stated in this regard. It is also not noted in the ASI report as to which antiquities were discovered from Trench G-7 and Trench J-3 and from which strata." (E.T.C.)

*''***मैंने डे–टू डे रजिस्ट्र, जो वर्तमान उत्खनन से संबंधित है, नहीं देखा।** *मेरी सूचना ए0एस0आई0 की रिपोर्ट पर . . . है तथा मैंने वहां पर जो अपने तीन दिन के रूकने के दौरान अध्ययन किया था, उस पर आधारित है।'' (पेज 222)*

*"**I did not see the day- to-day register, which pertains to the present excavation.** My knowledge is based on the ASI report and on the study which I had done during my three-day-stay there." (E.T.C.)*

''अयोध्या के इस की–प्लान में पूरे साइट की विभिन्न कालों के स्ट्क्चर्स के प्लान इक्ट्ठी कर दी गई है, जिसकी न तो उत्खनन के लक्ष्य की पूर्ति के

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लिए आवश्यकता थी और न ही उसे उस लक्ष्य को इस प्लान में अधिक स्पष्ट करने की कोशिश है। उत्खनन करने वाले और प्लान बनाने वाले विशेषज्ञ, हो सकता है कि इसे ठीक समझते हों और उन्हें इसकी सत्यता में भी विश्वास हो। मौक़े पर मुआइना करना उतना महत्वपूर्ण नहीं होता है, जितना उत्खनन करना और उसकी रिपोर्ट लिखना और उस रिपोर्ट के निष्कर्षो को स्पष्ट रूप से तर्कसंगत दिखाने के लिए इलस्ट्रेशन देना।

प्र0 मेरा यह साधारण सवाल है कि अयोध्या के उत्खनन स्थल को मौके पर मुआइना करने के बाद अगर आप उपरोक्त फ़ीगर 3ए (पेज 48) को देखने के बाद क्या यह समझा जा सकता है कि यह की–प्लान अच्छी तरह से बना है और इसको समझा जा सकता है?

उ0–मौक़े पर उत्खनन में विस्तृत अध्ययन के बाद इस प्लान को समझा जा सकता है और यदि इसमें कोई त्रुटियां हैं, वे भी पकड़ी जा सकती हैं।''

(पेज 295)

"In this key plan of Ayodhya, plan of structures of different periods has been collected from the whole of the site which was not needed for the fulfilment of objective of the excavation, nor does this plan make any attempt to make this objective clearer. The excavators and the plan makers may be considering it to be correct and they may be having belief in its veracity. To make inspection of the site is not so important as to make excavation, to write its report and to give illustrations to clearly show the findings of such report to be logical.

Question:- Supposing that you have an on-the-spot inspection of the excavation site of Ayodhya and you are shown the afore-said figure-3A (page 48), a plain question I would like to ask you is whether you can say that this key plan is properly prepared and can be understood?

Answer:- After making an on-the-spot extensive study in regard to the excavation this plan can be understood and

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its mistakes, if there be any, may also be detected." (E.T.C.)

"मैं पाटरी यार्ड में जब पाटरीज़ का अध्ययन करने गया तो वहॉ क्लासीफाईड ढंग से पाटरी नहीं रखी हुई थी मिक्स पाटरीज़ वहॉ पर थी इसलिए सीमित समय में उसका अध्ययन संभव नहीं था। ***पाटरी यार्ड में पाटरी को देखने से किसी ने मुझे रोका नहीं था परन्तु वहॉ कोई पुरातत्ववेत्ता भी नहीं आया था जो इस अध्ययन में मेरी मदद कर सकता।*** *.....वहॉ एन्टीक्वीटीज के साथ देखने की कोशिश की थी परन्तु वहॉ अवशेषों को हमें नहीं दिखाया गया। यह मैं पहले भी बता चुका हूँ।" (पेज 306–307)*

"When I went to the pottery yard to make study on potteries, I did not find potteries arranged in a classified manner. Potteries were lying there in a mixed form, hence it was not possible to make their study in a limited period. ***Nobody forbade me from observing the potteries in the pottery yard but no archaeologist was also there to help me in my study.*** *..... I had tried to see them along with antiquities but remains were not shown to us. I have already stated about it." (E.T.C.)*

"अयोध्या के उत्खनन में प्राप्त ग्लेज्ड वेयरर्स को मुझे दिखाया ही नहीं गया, इसलिए उसके परीक्षण या आब्ज़र्वेशन का अवसर ही मुझे प्राप्त नहीं हुआ। उत्खनन स्थल पर जब मैं तीन दिनों तक रहा, तब मुझे कोई ग्लेज्ड वेयर न तो साइट पर दिखाया गया और न ही एंटीक्युटी सेक्शन में ही मुझे दिखाया गया, जबकि इसको मैं देखना चाहता था। मुझे इस बारे में किसी सुपरवाइज़र ने कोई जानकारी नहीं दी कि मेरे तीन दिनों तक उत्खनन स्थल पर रहने की अवधि में कोई ग्लेज्ड वेयर उत्खनन स्थल से प्राप्त हुआ या नहीं। ***मेरे साथ उत्खनन स्थल पर जो मेरे तीन और सहयोगी थे, वह भी विद्वान थे, उनसे शायद इस विषय में मेरी चर्चा नहीं हुई थी कि मेरे उत्खनन स्थल पर रहने के दौरान ग्लेज्ड वेयर प्राप्त हुए या नहीं,*** *परन्तु हम सब कुछ ट्रेंचेज ग्लेज्ड वेयर व एंटीक्युटीज़ देखना चाहते थे और उसे देखने के लिए वहां गये भी, परन्तु हम लोगों को इसे दिखाया नहीं गया।" (पेज 512)*

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"The glazed wares found in the excavation at Ayodhya, were not shown to me and as such I did not get the opportunity to examine or observe them. When I remained at the excavation site for three days, no glazed ware was shown to me either at the site or in the antiquity section despite the fact that I wanted to see them. No Supervisor informed me whether during the period of my three days stay at the excavation site, any glazed ware was found at the excavation site or not. ***My three other associates at the excavation site, were also learned. I possibly did not have any discussion with them as to whether glazed wares were found or not during my stay at the excavation site.*** *However, we all wanted to see some trenches, glazed ware and antiquities and we even went there to see them, but they were not shown to us." (E.T.C.)*

"मुझे इस बात की जानकारी नहीं है कि 13 जून, 2003 को जब मैं वहॉ मौजूद था, ग्लेज्डवेयर खुदाई में निकला था या नहीं, बल्कि मेरी जिज्ञासा थी कि यदि कोई ग्लेज्ड वेयर निकला हो, तो मैं उसको देख लें। . . . हम लोगों ने ग्लेज्ड वेयर देखने की मांग की थी। ***उत्खनन स्थल पर चूंकि मैं ट्रेंचेज़ का मुआयना करने में लगा था इसलिए उस जगह पर ग्लेज्ड वेयर की मॉग मैंने नहीं की थी।*** *मुझे उस स्थान पर किसी ने ग्लेज्ड वेयर उस दिन पाये जाने की सूचना भी नहीं दी। 13 जून, 2003 को न तो मेरी मौजूदगी में डे–टू–डे रजिस्टर तैयार किया गया।" (पेज 514)*

"I have no knowledge whether glazed ware was found or not in the excavation on 13th June, 2003, when I was present there, and on the contrary it was my curiosity to see the glazed ware found there, if any. . . . . We had demanded to see the glazed ware. Since I was involved in inspection of trenches at the excavation site, I did not

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demand the glazed ware over there. Nobody intimated me on that day about discovery of any glazed ware at that place. The day-to-day register was not prepared in my presence on 13th June, 2003." (E.T.C.)

*''**यह सही है कि डे–टू–डे रजिस्टर (पेज 255) तारीख 13.6. 2003 में ग्लेज्ड वेयर की डिटेल लिखी हुई हैं और पेज 256 पर श्री ज़फ़रयाब जीलानी के दस्तखत हैं।**'' (पेज 514)*

*"**It is true that the details of glazed ware are mentioned in the day-to-day register dated 13.06.2003 (page 255) and page 256 bears the signature of Mr. Zafaryab Jilani**." (E.T.C.)*

3829. He repeatedly said that he has come to assail the conclusion given by ASI in its report:

*''मैं ए0एस0आई0 द्वारा अयोध्या में किए गए उत्खनन तथा उस पर तैयार की गई रिपोर्ट के निष्कर्षों के सम्बन्ध में जांच कर **यह बयान देने आया हूँ कि इस रिपोर्ट में यह निष्कर्ष तथ्यों के आधार पर सही नहीं है, बल्कि मस्जिद के नीचे सल्तनत काल के इस्लामिक ढाँचे ही रहे थे।**'' (पेज 267)*

*" With regard to the excavation carried out by the ASI in Ayodhya and the findings contained in the report prepared thereon, I, after examining facts, **I have come here to state that this finding in the report is not factually correct. Rather, only the Islamic structures of the Sultanate period were beneath the mosque**." (E.T.C.)*

*''यह भी सच है कि **मैं अपनी गवाही में ए0एस0आई0 की रिपोर्ट व उसके विभाग को तिरस्कृत करने अथवा उसे खण्डित करने के लिए उपस्थित हुआ हूँ।** वास्तव में मैंने इस रिपोर्ट का अध्ययन किया है और इसीलिए मैंने जो उपयुक्त तथ्य देखे हैं, उनका निष्कर्ष निकाला है कि ए0एस0आई0 की उत्खनन विधि तथा उनके एक्ज़ामिनेशन का भी असेसमेंट किया है और तब इस नतीजे पर पहुँचा हूँ कि **ए0एस0आई0 का कनक्लूजन गलत है।**'' (पेज 336–337)*

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"It is also true that ***I have appeared to discard or reject the report of ASI and its department, through my evidence.*** *Actually I have studied the said report and after seeing the aforesaid facts as well as carrying out the assessment of excavation method & its examination by ASI, I have drawn the conclusion that the* ***conclusion of ASI is wrong.****" (E.T.C.)*

"मैं अयोध्या के इस उत्खनन रिपोर्ट के बारे में अपना आंकलन देने आया हूँ और यह बताने आया हूँ कि इस ***रिपोर्ट के निष्कर्ष बाबरी मस्जिद के नीचे किसी मंदिर के होने के बारे में निराधार हैं।****" (पेज 343)*

"I have come to give my estimate about this excavation report of Ayodhya and also to tell that ***the conclusion of this report regarding existence of any temple beneath the Babri mosque, is baseless."*** *(E.T.C.)*

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3830. Prof. D. Mandal, P.W. 24, while commenting upon the ASI report, has said that the form in which ASI has excavated the site at Ayodhya does not appear to be justified for the reason that only vertical excavation in some of the trenches was sufficient for achieving the object and horizontal excavation at such a large scale was not only unrequired but misuse of the available resources. He has made comments based upon the information, which he received from the personal visit at the site of excavation firstly from 10.6.2003 to 15.6.2003 and thereafter from 27.9.2003 to 29.9.2003; the ASI report containing two volumes and day to day register maintained by the ASI officials during the course of excavation.

3831. Sri Mandal's comments in his affidavit pertaining to stratigraphy/periodisation are:

"6. यह कि ए0 एस0 आई0 रिपोर्ट में प्रतिपादित स्तरीकरण एवं कालक्रम

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से मैं सहमत नहीं हूँ। इस सम्बन्ध में अभिसाक्षी निम्न तथ्य प्रस्तुत करता है :–

A– *इस विषय के दो पहलू हैं। दोनों महत्वपूर्ण हैं।*

(i) *पहला स्तरीकरण, दूसरा कालक्रम। दोनों में पहले का महत्व अधिक है। क्योंकि कालक्रम का निर्धारण प्रधानतः स्तरीकरण पर निर्भर करता है, न कि इसके विपरीत। ए0 एस0 आई0 रिपोर्ट में "Stratigraphy and chronology" नामक अध्याय में स्तरीकरण से सम्बन्धित तथ्यों का नितान्त अभाव है। पूरा का पूरा अध्याय कालक्रम के ब्योरे से भरा है। वह भी प्रमाणित तथ्यों पर आधारित नहीं। उल्लेखनीय है कि उत्खनन से प्रकाश में आये स्तरों की संख्या तथा उनके नामकरण मात्र से ही स्तरीकरण का वास्तविक अर्थ में निर्धारण नहीं हो जाता।*

(ii) *सारगर्भित स्तरीकरण के लिए सम्बद्ध स्तरों के प्राकृतिक विशेषताओं (physical features) तथा अन्तर्वस्तुओ (contents) का विधिवत वर्णन एवं व्याख्या अत्यन्त आवश्यक है। इसमें प्रत्येक स्तर का रंग (Colour) गठन (texsture), संरचना (composition) तथा अन्तर्वस्तुओं का विस्तृत विवरण नितान्त अपेक्षित है। इन्हीं तथ्यों की व्याख्या के आधार पर किसी पुरास्थल के जमाव के इतिहास (depositional history) की रचना की जाती है। इससे कई गूढ़ तथ्यों पर प्रकाश पड़ता है। जैसे क्या अमुक पुरास्थल के सभी जमाव पुरातात्विक हैं? अथवा क्या उनमें से कुछ प्राकृतिक जमाव (natural deposit) भी हैं ? यदि उनमें से कुछ प्राकृतिक हैं तो उनका प्रकार क्या है? जैसे, क्या वे जल निर्मित है (water borne) या वायु निर्मित (air borne) आदि आदि। रिपोर्ट में इन तथ्यों का पूर्ण अभाव है। स्तरीकरण के सन्दर्भ में उनके किसी भी स्तर के रंग, गठन, संरचना आदि के विषय में कोई सूचना नहीं है। जमाव के इतिहास की तो कोई चर्चा ही नहीं।*

B- *(i) मुझे अपनी निरीक्षण अवधि के दरमियान उत्खनन से प्रकाश में आये सेक्शन (Section) का, जमाव के इतिहास की दृष्टि से, अध्ययन करने का अवसर मिला।* ***पुरातत्व का विद्यार्थी होने***

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के नाते G7 ट्रेंच को श्रद्धा पूर्वक नमन करता हूँ। इस ट्रेन्च का सेक्शन इस पुरास्थल की पूरी कहानी कहता है। यह एक खुली किताब हैं। *इसका हर परत किताब के पन्नों की तरह है।* ***जो पढ़ सके पढ़ ले।*** *सीमित समय मे हमने अपनी साधारण क्षमतानुसार जो कुछ पढ़ा उसे प्रस्तुत करता हूँ।*

(ii) स्तरीकरण रिपोर्ट के अनुसार यहॉ कुल मिलाकर 18 परतों का जमाव प्रकाश में आया है। साथ में कुछ परतों से जुड़े हुए पिट (Pit) भी हैं। 18 परतों का यह जमाव प्राकृतिक मिट्टी (natural soil) पर स्थित है। ए0एस0आई0 के विद्वानों ने पूरे जमाव को पुरातात्विक जमाव (archaeological deposit) माना है। यह तथ्य रिपोर्ट के इस कथन से स्पष्ट "Excavation at the disputed site of Ayodhya has yielded a continuous cultural sequence contained in the total deposition of about 10.80 m." (ASI Report, Vol.I p.37) इस निष्कर्ष से हमारा मतभेद है। हम इस जमाव को मुख्यतः दो कोटि में विभाजित करते हैं:– पुरातात्विक (archaeological) एवं प्राकृतिक (natural)। सुविधा के लिए पुरातात्विक पुनः दो भागों में विभाजित किया जा सकता है– (a) बसावटी (habitational) तथा (b) गैर बसावटी (non-habitational)। यहॉ गैर बसावटी का तात्पर्य भरती–जमाव (filling deposit) से है।

(iii) रंग, गठन तथा संरचना (colour, texture and composition) के आधार पर 18 परतों में दो प्राकृतिक जमाव (natural deposit) की कोटि में आते हैं। G7 नामक ट्रेंच (जिसे सुविधा के लिए Index trench कहा जा सकता है) में इन परतों का प्रतिनिधित्व Layer No. 4 का उपरी हिस्सा तथा Layer No. 6 करते हैं। यहॉ इस बात का उल्लेख कर देना आवश्यक है कि रिपोर्ट मे Layer 4 की सही पहचान नहीं की गयी है। वस्तुतः इस परत में दो विभिन्न प्रकार के जमाव मिले हुए हैं। इसका उपरी भाग प्राकृतिक (natural) तथा निचला भाग पुरातात्विक

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(archaeological) जमाव है।

(iv) Layer 4 का उपरी भाग तथा Layer 6, दोनों मुख्यतः जल निर्मित (water borne) जमाव हैं। रंग, गठन तथा सरंचना के आधार पर वे सिल्ट (silt) कोटि के जमाव प्रतीत होते है। सिल्ट का निर्माण जल प्रक्रिया पर आश्रित है। Layer 6 का रंग हल्का धूसर गठन चिकना किन्तु सख्त तथा संरचना में बालू तथा कीचड़ (sand and mud) का समिश्रण प्रतीत होता है, इसमें यदा कदा सीप (shell) तथा सम्भवतःघोघा (snail) आदि के अवशेष भी दिखाई देते हैं। (उल्लेखनीय है कि riverine shell मिलने का उल्लेख रिपोर्ट के पृष्ठ संख्या 43 पर भी है। यह Period VIII के भरती जमाव (filling deposit) के सन्दर्भ में है। भरती जमाव में पूर्व कालीन मिट्टी का उपयोग हुआ है)। उल्लेखनीय है कि इस जमाव में बसावटी सामग्रियों का नितान्त अभाव है। यह साक्ष्य भी इस तथ्य का द्योतक है कि यह पुरातात्विक जमाव नहीं है।

(v) Layer 4 का उपरी भाग वाला जमाव, रंग, गठन एवं संरचना की दृष्टि से पुनः दो भागों में विभाजित प्रतीत होता है– उपरी तथा निचला भाग। निचला भाग रंग, गठन, एव संरचना में Layer 6 के लगभग समान है। किन्तु उपरी भाग में कुछ महत्वपूर्ण अन्तर दिखाई देता है। यह गहरे धूसर रंग का है। इसकी गठन अपेक्षाकृत ढीली (loose) है। इसका गहरे धूसर रंग का होना सम्भवतः इस तथ्य का द्योतक है कि इसके निर्माण में वनस्पति (vigtation) की विशेष भूमिका रही है। इस बंजर–सतह (sterile level) को प्राचीन हयूमस (ancient humus) नाम से सम्बोधित किया जा सकता है। किसी सतह पर इस प्रकार का जमाव उस सतह का लम्बे अर्से तक वीरान रहने के पश्चात ही होता है। उल्लेखनीय है कि इन दो परतों का जमाव इस पुरास्थल के उन सभी ट्रेंच में मिले हैं जिनमें इन स्तरों तक उत्खनन किया गया है।

(vi) उपलब्ध तथ्यों के आधार पर इसमें दो राय नहीं कि सिल्ट जमाव वाले दोनों परतों का निर्माण बाढ़ के फलस्वरुप हुआ। Layer 6 वाले बाढ़ के तत्काल पश्चात यहॉ आबादी का प्रमाण उपलब्ध है

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किन्तु Layer 4 वाले बाढ़ के पश्चात इस इस स्थल पर एक लम्बे अर्से तक आबादी नहीं होने का स्पष्ट प्रमाण मिलता है।

(vii) 18 परतों वाले इस जमाव में इन दो परतों को छोड़कर (Layer 4 का ऊपरी हिस्सा तथा Layer 6) शेष अन्य सभी परतें पुरातात्विक कोटि में आती हैं। प्राचीन हयूमस (ancient humus) जमाव के उपर स्थित सभी परतें तथा हयूमस के नीचे की परत संख्या 7 तथा 8 भरती–जमाव (filling deposit) कोटि के हैं। इसके नीचे की शेष सभी परतें (परत संख्या 9 से 18) नियमित आवासीय (regular habitation) जमाव की श्रेणी में आती हैं।

(viii) प्रासंगिक पुरास्थल को भरती जमाव (filling deposit) द्वारा ऊंचा करने का स्पष्ट प्रमाण मिला है। यह प्रमाण इस तथ्य में निहित है कि सम्बद्ध स्तरों से विभिन्न कालों की मिली जुली सामग्रियॉ प्राप्त हुई हैं। पुरातत्व में इस स्थिति को स्तर ऊॅचा करने के साक्ष्य के रुप मे माना जाता है। उपलब्ध साक्ष्यों के अनुसार इस स्थल को ऊॅचा करने की प्रकिया Layer 8 से ही प्रारम्भ हो जाती है। यह प्रकिया दो परतों को छोड़कर (Layer 6 तथा Layer 4 का उपरी भाग) Layer 1 तक चलती रहती है। रिपोर्ट में भी सतह को कई बार ऊॅचा करने की बात कही गई है। किन्तु उसके कारण पर कोई प्रकाश नहीं डाला गया है। इस पुरास्थल को बार बार ऊॅचा करने की आवश्यकता क्यों पड़ी? यह एक महत्वपूर्ण प्रश्न है।

(ix) मेरे अध्ययन के अनुसार इसका मुख्य कारण पुरास्थल को बाढ़ से सुरक्षा प्रदान करना प्रतीत होता है। प्राप्त साक्ष्यों से यह विदित होता है कि पुरास्थल प्रारम्भ से ही बाढ़ प्रवृत्त (flood prone) रहा है। इस सम्बन्ध में उल्लेखनीय है कि इस स्थल के पश्चिम में श्री B.B.Lal महोदय द्वारा की गई खुदाई में प्रारम्भिक ऐतिहासिक काल से "नदीकृत बालूं जमाव " (fluviatile sand bed) का अवशेष प्राप्त हुआ है (Indian Archaeology-A Review, 1976-77, p. 52)। स्थलाकृति सम्बन्धी साक्ष्य (topographical evidence) से भी इस समस्या पर प्रकाश पड़ता है। उल्लेखनीय है कि इस दृष्टि से प्रासंगिक क्षेत्र फ्लड प्लेन (flood plain) के

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अन्तर्गत आता है। रिपोर्ट के अनुसार "...the region around Ayodhya along the river comes under its flood plain ...." (ASI Report, Vol.I, p.1)। लाल महोदय की खुदाई में यहॉ से प्रारम्भिक ऐतहासिक काल में निर्मित रैम्पर्ट (Rampart) तथा **फ़ोर्टीफ़िकेशन वाल (fortification wall) का भी अवशेष मिला है।** यह साक्ष्य भी बाढ़ सुरक्षा की दृष्टि से अत्यन्त महत्वपूर्ण है। ये सभी साक्ष्य बाढ़ सुरक्षा (flood protection) की ओर स्पष्ट संकेत करते हैं। इन सबों में सर्वाधिक महत्वपूर्ण साक्ष्य तो यहॉ से जलोढ़ जमाव का प्रमाण प्राप्त होना है। यहॉ से दो बार भीषण बाढ़ आने का स्पष्ट प्रमाण मिलता है। उपलब्ध तथ्यों के आलोक में इस बात की **पूरी सम्भावना है कि बाढ़ प्रकोप से सुरक्षा प्रदान करने हेतु ही इस स्थल को बार–बार ऊँचा करने की आवश्यकता पड़ी।** इस घटनाक्रम में एक समय ऐसा भी आया कि बाढ़ के कारण यहॉ के लोगों को बाध्य होकर एक लम्बे समय के लिए यह स्थान ही त्याग देना पड़ा। यह तथ्य बाढ़ के पश्चात हयूमस जमाव के साक्ष्य से प्रमाणित होता है।

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(i) कालक्रम / प्रासंगिक विषय का यह दूसरा पहलू है। रिपोर्ट में 18 परतों के जमाव को निम्न नौ कालों में विभाजित किया गया है:– NBPW, Sunga, Kushana, Gupta, Post Gupta-Rajput, Early Medieval-Sultanate, Medieval, Mughal तथा Late and Post Mughal.

(ii) कालक्रम में सन्दभ्र में रिपोर्ट के अनुसार सभी कालों में सांस्कृतिक निरन्तरता (cultural continuity) है (ASI Report Vol.I, p.37)। पुरातत्व की दृष्टि से यह एक अत्यन्त ही महत्वपूर्ण निष्कर्ष है। **रिपोर्ट के इस निष्कर्ष से हम सहमत नहीं हैं।**

(iii) **हमारे अध्ययन के अनुसार प्रथम चार कालों के पश्चात यह पुरास्थल एक लम्बे समय के लिए वीरान हो गया।**

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कालों की निरन्तरता भंग हुई। इस सम्बन्ध में सांस्कृतिक अन्तराल का स्पष्ट प्रमाण उपलब्ध है। कालक्रम का चौथा काल गुप्त काल है। रिपोर्ट के अनुसार इस काल की तिथि 4th-6th Century AD निर्धारित की गई है। मेरे अध्ययन के अनुसार इस काल में दो बार बाढ़ आने का प्रमाण मिलता है। दूसरी बार के बाढ़ के पश्चात लोगों ने इस स्थान को एक लम्बे समय के लिए त्याग दिया। यह तथ्य इस साक्ष्य से प्रमाणित होता है कि इस बाढ़ जमाव के उपर हयूमस जमाव का प्रमाण उपस्थित है। उल्लेखनीय है कि ***हयूमस जमाव के बाद जिस संस्कृति के अवशेष मिलते हैं वे Islamic काल के हैं। हयूमस जमाव के उपर के परतों से ग्लेज़्ड वेयर (glazed ware), ग्लेज़्ड टाइल्स (glazed tiles), जानवरों की हड्डियां तथा चूना एवं सूरखी (lime and surkhi) से निर्मित फ़र्शों के अवशेष का मिलना इस तथ्य के अकाट्य प्रमाण हैं।*** *Day to Day Register से प्राप्त सूचनाओं के विश्लेषण से यह प्रमाणित होता है कि हयूमस के ऊपर के सभी परतों से ग्लेज़्ड वेयर तथा जानवरों की हड्डियों के अवशेष मिले हैं जिनका उल्लेख Appendix I व II में दिया जा रहा है। इसी प्रकार रिपोर्ट के Chaper VI (pp. 164-172) में उपलब्ध ग्लेज़्ड टाइल्स के टुकड़ों की सूची से प्राप्त सूचनाओं के विश्लेषण से यह प्रमाणित होता है कि हयूमस जमाव के उपर स्थित सभी प्रासंगिक परतों से ग्लेज़्ड टाइल्स के अवशेष मिले हैं जिसका उल्लेख Appendix III में दिया जा रहा है।*

(iv) यहां मुस्लिम संस्कृति से सम्बद्ध ग्लेज़्ड वेयर का अवशेष सल्तनत काल से मिलना प्रारम्भ हो जाता है। ***इस काल का प्रारम्भ लगभग तेरहवीं सदी के प्रारम्भ से माना गया है।*** *यहॉ चौथे काल (गुप्त काल) का अन्त छठी शताब्दी इसवी निर्धारित की गई है। इस काल के दूसरे बाढ़ जमाव के पश्चात ही हूयमस जमाव का साक्ष्य मिला है। इसके फ़ौरन ऊपर की परत से ग्लेज़्ड वेयर का साक्ष्य उपलब्ध है जिसकी तिथि लगभग तेरहवीं सदी है। ये तथ्य समुचित रुप से सांस्कृतिक अन्तराल का अकाट्य प्रमाण उपस्थित करते हैं। इन साक्ष्यों के आलोक में रिपोर्ट की यह*

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अवधारणा कि यहॉ के सभी कालों में सांस्कृतिक निरन्तरता थी सत्य प्रतीत नहीं होता। वस्तुतः **यहॉं के 18 परतों वाले जमाव को 9 की जगह 5 सांस्कृतिक कालों में ही विभक्त किया जाना चाहिए। गुप्त काल के पश्चात एक लम्बी अवधि का अन्तराल, इसके पश्चात इस्लामिक काल प्रारम्भ होता है।** इस पॉचवें सांस्कृतिक काल (Cultural Period) को कई ढॉचा–आधारित कालों (Structural Period) में विभाजित किया जा सकता है।

(v) ए0एस0आई0 द्वारा रिपोर्ट में प्रतिपादित **पॉंचवा, छठा एवं सातवॉं काल मनमानी (arbitrary) साक्ष्यों पर आधारित प्रतीत होता है।** इस सम्बन्ध में निम्न तथ्य प्रस्तुत हैं:–

Period V-

(a) पॉचवें काल को Post-Gupta-Rajput काल कहा गया है। रिपोर्ट के अनुसार G7 ट्रेंच में Layer 5 तथा Layer 6 इस काल का प्रतिनिधित्व करते हैं (ASI Report, Vol. I, Table after page 36; also page 40)

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(b) रिपोर्ट में इस काल की पहचान मुख्यतः Knife-edge bowl से की गई है। इसके आधार पर इसे सातवीं से दसवीं सदी के बीच रक्खा गया है। "The period is marked by the appearance of the knife-edge bowls and other types which belong to the period from seventh to tenth-century AD" (ASI Report, Vol I, p. 40)। उल्लेखनीय है कि Knife-edge bowl का उल्लेख Stratigraphy and Chronology के अध्याय में तो हुआ है, किन्तु Pottery के अध्याय में जहॉ इसका उल्लेख अपेक्षित था, कोई उल्लेख नहीं है। रिपोर्ट के figure 44 में अधिकांश bowls का रेखा चित्र प्रकाशित है किन्तु उनके वर्णन में किसी को भी Knife-edge bowl नहीं कहा गया है। ऐसे विशिष्ठ प्रमाण का न केवल रेखा चित्र, बल्कि छायाचित्र भी प्रकाशित होना चाहिए था। इसके बिना रेखाचित्र की प्रमाणिकता का मूल्यांकन सम्भव नहीं। उपलब्ध तथ्यों की विवेचना

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से ऐसा लगता है कि वस्तुतः ***इस तथा–कथित काल से इस प्रकार का bowl मिला ही नहीं।***

(c) *तथा कथित Post Gupta-Rajput काल से ऐसी सामग्री का नितान्त अभाव है जिससे इस काल की निर्णायक पहचान बनती हो,* ***जैसे सिक्का, सील, सीलिंग, स्कल्पचर आदि।*** *इसके विपरीत इस काल से गुप्त काल के पाटरी (pottery) मिलते हैं। इनमें गुप्तकालीन Lid-cum-bowl, knobbed lid, Inkpot type lid आदि उल्लेखनीय है। (ASI Report, Vol.I, Fig. 44).*

(d) *Layer 5 तथा 6 से प्राप्त सामग्रियों के आधार पर इस काल को Post Gupta-Rajput काल निर्धारित करना बिल्कुल मनगढ़न्त प्रतीत होता है। इस सम्बन्ध में उल्लेखनीय है कि Depositional History के आलोक में तो Layer 6 पुरातात्विक जमाव है ही नहीं। वस्तुतः तथा–कथित* ***पाँचवां काल गुप्त काल का ही अंग प्रतीत होता है।***

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Period VI-

(e) *रिपोर्ट में इस काल को Medieval Sultanate काल कहा गया है। इसकी तिथि 11th- 12th Century AD निर्धारित की गई है। उल्लेखनीय है कि रिपोर्ट में इस तिथि निर्धारण के आधार के सम्बन्ध में कोई साक्ष्य प्रस्तुत नहीं किया गया है। इस प्रश्न पर कि इस काल को* ***Medieval-Sultanate क्यों कहा गया, रिपोर्ट पूरी तरह मौन है।***

(f) *रिपोर्ट में G7 ट्रेंच की परतों 3, 3 A तथा 4 को इस काल का समकालिक जमाव कहा गया है। किन्तु Depositional History के अनुसार Layer 4 का ऊपरी भाग तो पुरातात्विक जमाव है ही नहीं, इसका निर्माण तो बाढ़ तथा हयूमस जमाव के फलस्वरुप हुआ। फिर इसके पश्चात यह पुरास्थल लम्बे समय के लिए वीरान हो गया। उल्लेखनीय है कि इसके ऊपर स्थित सभी परतों से विभिन्न प्रकार के ग्लेज़्ड वेयर (glazed ware) तथा ग्लेज़्ड टाइल्स (glazed tiles) के अवशेष मिले हैं (See Appendix I, III) ऐसी स्थिति में Layer 3, 3 A तथा 4 की तिथि 11th-12th Century*

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AD निर्धारण करना किसी भी प्रकार युक्ति संगत प्रतीत नहीं होता।

(g) उपरोक्त तथ्यों के आलोक में Post Gupta-Rajput काल की तरह इस काल का भी कोई अस्तित्व नहीं लगता।

Period VII-

(h) रिपोर्ट में इसे Medieval काल कहा गयाहै। इसकी तिथि 12th से 16th Century AD की शुरुआत के बीच निर्धारित की गई है (ASI Report Vol I, p. 41)। उल्लेखनीय है कि ***इस तिथि निर्धारण के आधार के सम्बन्ध में प्रासंगिक अध्याय (Stratigraphy and Chronology) बिल्कुल मौन है*** *जबकि तिथि सम्बन्धी चर्चा इसी अध्याय में अपेक्षित है।*

(i) रिपोर्ट के Structures नामक अध्याय में इस काल की तिथि निर्धारण के आधार पर कुछ तथ्य उपलब्ध हैं। रिपोर्ट के अनुसार इस काल में निर्मित दीवार नं0 16 (Wall No. 16) तथा वनस्पतीय मोटीफ़ (floral motif) से सुसज्जित एक अष्टभुजाकार शिलाखण्ड (Octagonal sand stone block) को मुख्य आधार के साक्ष्य के रुप में प्रस्तुत किया गया है (ASI Report, Vol I, pp. 52 and 56)

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(j) रिपोर्ट में इस ईट निर्मित दीवार (wall 16) की समता सारनाथ के धर्मचक्रजिन विहार में स्थित एक विशेष ईट की दीवार से स्थापित की गई है। इस विहार का निर्माण गहड़वाल शासक गोविन्द चन्द्र की रानी कुमार देवी ने बारहवीं सदी में कराया था।

(k) अयोध्या के अष्टभुजाकार शिलाखण्ड (Octagonal sand stone block) की तुलना सारनाथ विहार में स्थित वनस्पतीय मोटीफ़ (floral motif) से सुसज्जित एक विशेष शिलाखण्ड (stone block) से की गई है। इन दोनों में समानता स्थापित की गई है। इस समानता के आधार पर wall No. 16 को बारहवीं सदी का घोषित किया गया है। रिपोर्ट में इसी साक्ष्य के आधार पर सातवें काल की प्रारम्भिक तिथि बारहवीं सदी निर्धारित की गई है।''

"6. That I do not agree with stratigraphy and chronology as laid down in the ASI report. In this behalf the witness

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presents the following facts:-

A- There are two aspects of this subject. Both are important.

(i) The first one is stratigraphy and the other one is chronology. Out of the two, the first one holds more importance, because chronological determination depends mainly on stratification but its contrary is not true. There is an utter absence of facts in relation to stratification, in the chapter "Stratigraphy and Chronology" in the ASI report. The whole chapter is replete with details about chronology, that too, not on the basis of verified facts. It is pertinent to mention that stratification cannot be done in a real sense, only on the basis of number of layers coming to light through excavation and their nomenclature.

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(ii) For a meaningful stratification, it is very essential to make a proper description and explanation of physical features and contents of the concerned layers. In this process, an extensive description of colour, texture and composition of every layer as also their contents is absolutely necessary. The depositional history of an archaeological site is constructed on the basis of explanation of these very facts. It throws light on several abstruse facts, such as whether all the deposits on the said archaeological site are of archaeological nature or whether some of them are also natural deposits. If some of them are natural deposits then what is their type, such as, whether they are water borne, air

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borne etc.? The report suffers from utter absence of these facts. It contains no information about the colour, texture, composition etc. of any layer in the process of stratification. It has no discussion on the depositional history.

B- *(i) In course of my observation, I got an opportunity to study the sections which have come to light through excavation, from the view- point of depositional history.* ***As a student of archaeology I pay obeisance to Trench G-7. The section of this trench tells the whole story of this archaeological site. It is an open book. Every layer of its is like pages of a book which can be read by anybody who is capable of doing so****. I put forward whatsoever I have been able to gather in a limited time by virtue of my ordinary capacity.*

(ii) As per stratification report, a deposit of total 18 layers has come to light here. Besides, there are also pits connected with some layers. This deposit of 18 layers is on natural soil. The ASI scholars have taken the whole deposit as an archaeological deposit. This fact is brought forth by a statement contained in the report which reads as "Excavation at the disputed site of Ayodhya has yielded a continuous cultural sequence contained in the total deposition of about 10.80 m." (ASI Report, Vol.I p.37). I disagree with this finding. We classify this deposit mainly into two categories: archaeological and natural. For convenience, archaeological category can be further

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divided into two parts: (a) habitational and (b)non-habitational. Here non-habitational means "filling deposit".

(iii) On the basis of colour, texture and composition, two of the eighteen layers come under the category of natural deposit. At the Trench G-7 (which can be called index trench for convenience), these layers are represented by the upper portion of Layer no.4 and the Layer no.6. Here it is necessary to mention that Layer no.4 is not correctly identified in the report. Actually, two different types of deposits have been discovered at this layer. Its upper portion is a natural deposit and its lower portion is an archaeological deposit.

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(iv) The upper portion of Layer 4 and the Layer 6 are both mainly water borne deposits. On the basis of colour, texture and composition they appear to be deposits categorized as silt. Formation of silt depends on water process. The colour of Layer 6 is light grey; its texture is smooth but hard and its composition appears to be a mixture of sand and mud. Remains of shells and possibly of snails, etc. are also seen in it. (It is pertinent to mention that the discovery of riverine shell finds mention also on page no. 43 of the report. It relates to the filling deposit of Period VIII. The filling deposit contains soil of the early period). It is worth mentioning that there is an utter absence of habitational materials in this deposit. This evidence also suggests that it is not an

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archaeological deposit.

(v) The upper portion deposit of Layer 4, from the angle of colour, texture and composition, appears to be further divided into two parts- upper and lower parts. The lower part is almost similar to Layer 6 in respect of colour, texture and composition. It is of dark grey colour. Its texture is comparatively loose. Its being of dark grey colour perhaps suggests that vegetation has had a special role in its formation. This sterile level can be termed as ancient humus. This type of deposit is seen at any level only after that level having remained desolate for a long period. It is pertinent to mention that deposit of these two layers have been discovered at this archaeological site from all those trenches which have been excavated down to these layers.

(vi) On the basis of the facts available, it is beyond doubt that both the layers characterized as silt deposit came to be formed as a result of flood. Proof of habitation is available here after the flood-stemming deposit of Layer 6 but no clear proof of there being habitation for a long time is found at this place, after the flood-stemming deposit of Layer 4.

(vii) In this deposit having 18 layers, all layers, except for these two layers (the upper part of Layer 4 and the Layer 6), come under archaeological category. All the layers above the ancient humus and Layers 7 and 8 below the humus are categorized as filling deposits. All the remaining layers (layers 9 to 18)

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below it come under the category of regular habitation.

(viii) A clear proof is found of having elevated the archaeological site in question through filling deposits. Its proof consists in the fact that mixed materials of different periods have been discovered from the concerned layers. In archaeology, this position is taken to be evidence of elevating the level. As per the evidences available, the process of heightening this sites starts right from Layer 8. This process continues upto Layer 1 with the exception of two layers (Layer 6 and the upper part of the Layer 4). The report also speaks of the level having been elevated many times but it has not thrown light on its reasons. It is an important question why there was necessity of repeated heightening of this archaeological site.

(ix) As per my study, providing protection to the archaeological site against floods appears to be the main reason for it. From the evidences discovered it transpires that the archaeological site has been flood-prone since the beginning. In this behalf it is pertinent to mention that remains of fluviatile sand bed belonging to the Early Historic Period have been discovered at the excavation carried out by Sri B.B. Lal in the west of this site (Indian Archaeology- A Review, 1976-77, p. 52). Topographical evidence also throws light on this problem. It is pertinent to mention that the region in question, from this point of

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*view, comes under flood plain. As per the report, ". . . . . the reason around the Ayodhya along the river comes under its flood plain. . . . . ." (ASI Report, Vol.I, p. 1). At the excavation carried out by Sri Lal, remains of ramparts and f**ortification wall constructed in the Early Historic Period have also been found** from here. From the view point of protection against flood, this evidence is also very important. All these evidences clearly alludes to flood protection. Discovery of alluvial deposit from this place is the most important evidence out of these ones. A clear proof of fierce floods having occurred twice has been found from this place. The facts available give rise to **a full possibility that necessity was felt for repeated heightening of this place only with a view to provide protection against the fury of flood.** In course of this development, there was once a time when people had to abandon this place itself for a long period on account of flood. This fact is borne out by the evidence of humus deposit in the wake of flood.*

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C-

(i) Chronology- This is the second aspect of the subject in question. In the report, deposit of 18 layers has been divided into the following nine periods: NBPW, Sunga. Kushana, Gupta, Post Gupta-Rajput, Early Medieval-Sultanate, Medieval, Mughal and Late and Post Mughal.

(ii) In reference to chronology, the report says that there

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is cultural continuity in all the periods (ASI Report Vol.I, p.37). From archaeological point of view, it is a very important finding. ***We do not agree with this finding of the report.***

(iii) ***As per our study, after the first four periods this archaeological sites became desolate for a long time.*** *The continuity of periods came to be broken. In this behalf a clear proof of cultural intermission is available. The fourth period of chronology is the Gupta period. As per the report this period has been dated as* 4^{th}*-*6^{th} *century AD.* ***As per my study, proofs are found of floods having occurred twice in this period. After the second flood people abandoned this place for a long time.*** *This fact is evidenced by the fact that proof is found of there being humus deposit above this flood-stemming deposit. It is pertinent to mention that* ***the remains of whichever culture is found after the humus deposit, belongs to the Islamic period. Discovery of remains of glazed ware, glazed tiles, animal bones and the floors made of lime and surkhi from the layers above the humus deposit are unassailable proofs of this fact.*** *On analysis of the information collected from Day-to-Day Register, it is proved that from all the layers above the humus, remains of glazed ware and animal bones have been discovered details whereof are being given in Appendices I and II. In this very manner, the analysis of the information collected from the list of pieces of glazed tiles given*

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in Chapter VI (pp. 164-172) goes to prove that remains of glazed tiles have been discovered from all the concerned layers above the humus deposit, in which respect details are being given in Appendix III.

(iv) Here we begin to find glazed ware associated with the Muslim culture from the Sultanate period. ***The beginning of this period is attributed to the beginning of around 13th century.*** *Here the end of fourth period (the Gupta period) is attributed to the sixth century. Evidence of the humus deposit has been found only after the second flood-stemming deposit of this period. Evidence of there being glazed ware has been found from the layer immediately above it which is dated to around 13th century. These facts properly present unassailable proofs of cultural continuity. The conception of the report believing there to be cultural continuity here in all the periods does not appear to be true in light of these evidences.* ***Actually the 18-layer deposit of this place should be divided only into in five cultural periods instead of nine ones. After the Gupta period, the Islamic period begins after a long interval.*** *This fifth cultural period can be divided into many structural periods.*

(v) ***Fifth, sixth and seventh periods as envisaged in the ASI report appear to be based on arbitrary evidences.*** *In this behalf the following facts are presented:*

Period V

(a) The fifth period has been termed as Post Gupta-

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Rajput period. As per the report, this period is represented by Layer 5 and Layer 6 at Trench G-7 (ASI Report, Vol.I, Table after page 36; also page 40).

(b) *In the report, this period has been identified mainly with knife-edge bowls. On this basis this period has been placed between 7th to 10th century. "The period is marked by the appearance of the knife-edge bowls and other types which belong to the period from seventh to tenth century AD" (ASI Report, Vol. I, p. 40). It is pertinent to mention that knife-edge bowl certainly finds mention in the chapter titled Stratigraphy and Chronology but it finds no mention in a chapter on pottery where it was required to be mentioned. Figure 44 of the report carries diagrams of most of the bowls but in their description none of them has been called knife-edge bowl. Not only diagrams but also photographs of so special proofs ought to have been published. But for them, it is not possible to assess authenticity of diagrams. From the analysis of the facts available, it appears that this* ***type of bowls have actually not been discovered from this so-called period.***

(c) *Among the materials discovered from the so-called Post Gupta-Rajput period, there is an utter want of* ***such materials as coins, seals, ceiling, sculpture etc.*** *which may be helpful in identifying this period in a conclusive manner. On the contrary, potteries from this period to the Gupta Period are found. Out of*

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these, lid-cum-bowl, knobbed lid, inkpot type lid etc. are worth mentioning. (ASI Report, Vol.I, Fig. 44).

(d) On the basis of the materials discovered from layers 5 and 6, dating this period as Post Gupta Rajput Period appears to be utterly fabricated. In this behalf it is worth mentioning that Layer 6, in the light of depositional history, is certainly not an archaeological deposit. Actually, ***the so-called fifth period appears to be a part of the Gupta period itself.***

<u>Period VI</u>

(e) In the report, this period has been termed as Medieval Sultanate. It has been dated 11th-12th century AD. It is worth mentioning that no evidence has been presented in the report in connection with the basis of this dating. The report is completely silent over the question as to ***why this period has been termed as Medieval-Sultanate period.***

(f) In the report, layers 3, 3A and 4 of Trench G-7 have been termed as contemporary deposits of this period. But as per Depositional History, the upper portion of Layer 4 which is certainly not an archaeological deposit, was surely formed as a result of floods and humus deposit. After that this archaeological site got depopulated for a long time. It is worth mentioning that remains of several types of glazed ware and glazed tile has been discovered from all the layers above it (See Appendices I & III). In such a situation, it does not appear proper in any manner to date

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Layers 3, 3A and 4 as 11th-12th century AD.

(g) *In the light of aforesaid facts, like Post Gupta-Rajput period this period too does not appear to have any existence.*

Period VII

(h) *In the report, it has been termed as medieval period. It has been dated between 12th to the beginning of 16th century AD (ASI Report Vol. I, p. 41). It is pertinent to mention that* ***the concerned chapter (Stratigraphy and Chronology) is completely silent over the basis of this dating,*** *whereas dating-related discussion is required to be there in this very chapter.*

(i) *In a chapter titled Structures in the report, some facts are available about the basis of dating of this period. Constructed in this period Wall No.16 and an octagonal sand stone block decorated with floral motif have been cited in the report as evidence of the main basis of dating (ASI Report, Vol, pp. 52 and 56).*

(j) *The report has established similarity of this brick-built Wall 16 with a particular brick-wall standing in Dharmachakrajin Vihar of Sarnath. Kumar Devi, queen of Gahadwal ruler Govind Chandra, had got this monastery built in the 12th century.*

(k) *The octagonal sand stone block of Ayodhya has been compared with a Sarnath Vihar-situated particular stone block decorated with floral motif. Similarity between these two has been established. On the basis of the similarity, Wall No. 16 has been attributed to the 12th century. On this very evidence, the beginning*

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of the seventh period has been attributed to the 12th century, in the report." (E.T.C)

3832. The facts stated in affidavit, he (PW 24) admits to have based on Trench G-7, as is evident form page 287 and 293/294:

''मुख्य परीक्षा का जो शपथ पत्र प्रस्तुत किया है, वह प्रधान रुप से जी–7 ट्रेंच के अध्ययन पर आधारित है, क्योंकि ट्रेंच जी–7 में ही नेचुरल स्वायल तक जो स्तरीकरण के साक्ष्य उपलब्ध हुए हैं, वे किसी अन्य ट्रेंच में उपलब्ध नहीं हैं। ट्रेंच जी–7 को इस पुरास्थल पर हुए उत्खनन का इण्डेक्स ट्रेंच भी कहा जा सकता है। मेरी दृष्टि में ट्रेंच जी–7, इण्डेक्स ट्रेंच हो सकती है। इसके अतिरिक्त जिन अन्य ट्रेंचो में वर्जिन स्वायल तक उत्खनन हुआ है, वे ट्रेंचेज मेरी दृष्टि में उतने महत्वपूर्ण नहीं हैं।''(पेज 287)

''The affidavit of the examination-in-chief, is mainly based on study of Trench G-7 because the evidences of stratification found up to natural soil in Trench G-7, are not available in any other trench. The Trench G-7 can also be called the index trench of the excavation carried out at this archaeological site. In my view, the Trench G-7 can be the index trench. Besides it, the other trenches excavated up to virgin soil, are not that important in my view.''(E.T.C.)

''मैंने अपनी मुख्य परीक्षा के शपथ पत्र की धारा–6 (शपथ –पत्र के पेज–5 लगायत 17) में जो मत व्यक्त किया है, वह ट्रेंच जी–7 के अध्ययन पर आधारित है। यह कहना गलत है कि मैंने स्तरीकरण तथा काल निर्धारण के लिए ट्रेंच जी–7 के अतिरिक्त अन्य ट्रेंचो के अध्ययन की आवश्यकता नहीं समझी। मैंने अपने शपथ पत्र की धारा–6 में मैटीरियल, रियूज़ करने की बात कही है। ***जिस भी मैटीरियल के रियूज किये जाने को मैंने बताया है, वह मैटीरियल नान–इस्लामिक बिल्डिंग्स के मैटीरियल्स हैं तथा वे हिन्दू मंदिरों या बौद्ध विहार से संबंधित हैं।*** *'' (पेज 293–294)*

"*The opinion expressed by me in para-6(page 5 to 17*

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of the affidavit) of the affidavit of my examination-in-chief, is based on study of Trench G-7. It is wrong to say that for stratification and periodization, I did not consider it necessary to study other trenches besides Trench G-7. In para 6 of my affidavit, I have stated about reuse of material. ***Whatever material I have stated to be reused, is material of non-Islamic building and related to Hindu temples or Buddha Vihar."(E.T.C.)***

3833. **PW 24 D.Mandal** treated **trench G7** as the best trench, but **PW-30** has a different view:

''अयोध्या में विवादित स्थल पर उत्खनन की शुरूआत उत्तर दिशा में जे–3 से हुई थी।

प्रश्न– ट्रेंच जे–3 उत्खनन स्थल पर खोली गयी ट्रेंचों में से एक अति महत्वपूर्ण ट्रेंच मानी जाती है, इसकी जानकारी आपको है?

उत्तर– मेरी दृष्टि में उत्खनन के लिए जितने भी ट्रेंच लगाये जाते हैं, सभी महत्वपूर्ण होते हैं, क्योंकि पुरातत्व में साक्ष्य की उपस्थिति व अनुपस्थिति दोनों ही सामान्य तौर पर महत्वपूर्ण होती है।'' (पेज 53)

"The excavation at the disputed site in Ayodhya had commenced from J-3 in the north.

Question:- Do you have the information that trench J-3 is considered to be a very important trench out of the trenches dug out at the excavation site?

Answer:- In my opinion, all the trenches made for excavation are important because generally presence and absence of evidence are both important in archaeology."(E.T.C.)

3834. The witness, therefore, while not disputing the stratification/ chronology upto the period IV, i.e., Gupta period, has challenged V, VI and VII periods alleging it arbitrary. For period V, he has given two reasons, firstly that Knife-edge bowl

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though referred in the Chapter of stratigraphy and chronology but no reference is given in the Chapter of "Potteries". Figure 44 showing sketched diagram of bowl does not justify the inference leading to a knife-edge bowl. According to PW 24, it appears that no such bowl was actually found. Secondly, according to him, the conclusive identity proofs like coin, seal, sealing, sculpture for determining post Gupta-Rajput period were not found. Only potteries of Gupta period were found like, lid-cum-bowl, knobbed lid, inkpot type lid etc. Period VI has been assailed on the ground that no reason or evidence has been mentioned to treat 11th and 12th Century A.D. as medieval Sultanate period. Besides above, from layer 4 in Trench G-7 different types of glazed wares and glazed tiles were found in all the levels. Hence, on the basis of layers 3, 3A and 4, the 11th and 12th century A.D. period is not justified to be determined. VIIth period termed as medieval from 12th to 16th century is also said to be silent with regard to any contextual material etc. Some of the structural evidence like wall 16 has been taken but its similarity and the reasons thereof are not correct. Similarly, it has also said that period VIII termed as "Mughal" is also based on conjectures and surmises and, in fact, period IX ought to have been treated as 5th period by terming it as "Islamic" period. Here what we find is PW 16 sought to make his statement with respect to history also claiming himself to be an authority, but when confronted, he claimed himself an 'Archaeologist'

''मै पुरातत्वविद हूँ। (पेज 188)

"I am an Archaeologist." (ETC)

''मैं यहॉ पर आम व्यक्ति की हैसियत से गवाही न देकर पुरातत्व के विशेषज्ञ की हैसियत से गवाही दे रहा हूँ।'' (पेज 315)

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"I am giving testimony here as a specialist in archaeology, not as a layman." (E.T.C.)

''फील्ड आर्कियोलाजी के सम्बन्ध में मैं विशेषज्ञ हूँ। (पेज 136)

"I am an expert in field archaeology." (ETC)

3835. However, when his opinion on history was challenged in the cross examination, he claimed that being an Archaeologist, he is Historian also:

''प्रश्न– पहली बार जब आप इस न्यायालय के समक्ष गवाही देने उपस्थित हुए थे जब आप एक पुरातत्ववेत्ता की हैसियत से आये थे या एक इतिहासकार की हैसियत से आये थे?

*उत्तर– **मैं पुरातत्ववेत्ता होते हुए इतिहासकार भी हूँ** क्योंकि पुरातत्व एक ऐतिहासिक विज्ञान है इसलिए मैं जब कोर्ट के सामने पेश हुआ, इस विषय पर समग्रता से अपनी गवाही देने के लिए पेश हुआ था।''(पेज 352)*

"Question- Your first appearance in this court to give evidence was as a archaeologist or historian?

*Answer- **Besides being an Archaeologist, I** am also a historian because archaeology is a historical science and as such when I appeared before this court, I appeared to give my evidence on this topic in entirety." (E.T.C.)*

*''**हर वर्थव्हाइल आर्कियोलाजिस्ट (पुरातत्ववेत्ता) इतिहासकार भी होता है और इतिहास एक व्यापक विज्ञान है पुरातत्व जिसका अंग है,** मैं जब इतिहासकार के रूप में गवाही देने आया उसका यह तात्पर्य नहीं है कि मैं पुरातत्व के ज्ञान व विधि से वंचित होकर आया था।'' (पेज 353)*

*"**Every worthwhile archaeologist is also a historian. History is a detailed science with archaeology being its branch.** When I came to give evidence as a historian, it did not mean that I had come without the knowledge and method of archaeology." (E.T.C.)*

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3836. The PW 24 sought to discredit other like report of Prof. B.B. Lal by saying :

''प्रो0 बी0बी0 लाल आर्कियोलाजिस्ट हैं, इतिहासकार नहीं हैं।''

"Prof. B.B. Lal is an Archaeologist, not a historian."(ETC)

3837. On periodization or stratification and chronology, PW 24 said in cross examination:

*''शुंग काल सेकेण्ड सेंचुरी बी0सी0 से प्रारंभ होता है और फर्स्ट सेन्चुरी बी0सी0 पर खत्म होता है। **राजपूत काल कोई स्टैब्लिश्ड काल नहीं है।** इस काल का सामान्य रुप मे इतिहास में प्रयोग हुआ है, जिसकी तिथि लगभग नौंवी शताब्दी से ग्यारहवीं–बारहवीं शताब्दी के बीच निर्धारित की जा सकती है।*

गुप्त काल का अन्त छठी शताब्दी ए0डी0 निर्धारित किया गया है,''(पेज 154)

*"The Shunga period begins with the second century B.C. and ends with the first century B.C. **The Rajput period is not an established period.** This period has been generally used in history and can be dated between around ninth century and 11th-12th century.*

The end of the Gupta period has been attributed to 6th century AD." (E.T.C)

*''इस काल के बाद हर्ष काल का प्रारंभ होता है। हर्ष काल सातवीं शताब्दी में समाप्त हो जाता है। **हर्ष काल के बाद कोई स्टैब्लिश्ड काल का उल्लेख नहीं मिलता है,** किन्तु उसके बाद की अवधि में राजपूत शासकों ने हर्ष के बाद के विखण्डित क्षेत्रों में राज्य किया, इसके उपरान्त सल्तनत काल का प्रारम्भ होता है।*

सल्तनत काल का पहला शासक कुतुबुद्दीन ऐबक़ 1206 में हुआ था,'' (पेज 154)

*"The Harsha period begins after this period. The Harsha period concludes in the 7th century. **No established period is found after the Harsha period** but in the subsequent*

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period the Rajput rulers reigned in the post-Harsha disintegrated regions. After that begins the Sultanate period.

Qutb-ud-din Aibak took over as the first ruler of the Sultanate period in 1206 AD." (E.T.C)

*''मैं इस बात से सहमत हूँ कि 1200 ए0डी0 तक किसी एक वंश की हुकूमत नहीं रही, बल्कि विभिन्न राजवंशों ने राज्य किया। मैं इस बात से भी सहमत हूँ कि विभिन्न वंशों में मुख्यतः चार वंश चालुक्य, गूजर, चौहान, प्रतिहार के ही राज्य रहे। **मैं यह नहीं बता पाऊँगा कि इन चारों वंशों को ही राजपूत कहा जाता है**। मुझे इस बात की जानकारी नहीं है कि 600 ए0डी0 से 1200 ए0डी0 तक का काल भारत की साहित्यिक उपलब्धि के लिए बहुत महत्वपूर्ण है।'' (पेज 155)*

"I agree that period upto 1200 AD witnessed the reign of no single dynasty but of many royal dynasties. I also agree that out of many dynasties, mainly four dynasties- Chalukya, Gujar, Chauhan and Pratihar- had their reigns. ***I am not in a position to tell whether these four dynasties themselves are called Rajputas.*** *I do not know whether the period from 600 AD to 1200 AD is very important for literary achievement in India." (E.T.C)*

*''**600 ईस्वी से 1200 ईस्वी के बीच कोई विनाशकारी बाढ़ अयोध्या में आने का प्रमाण नहीं है,** परन्तु ऐसे प्रमाण हैं, जिनसे पता लगता है कि ऐसे विनाशकारी बाढ़ के आने को रोकने का प्रयास किया गया हो।'' (पेज 156)*

"There is no proof of Ayodhya having witnessed any disastrous flood between 600 AD to 1200 AD *but there are such proofs as go on to reveal that efforts have been made to prevent such devastating floods." (E.T.C)*

(This is contrary to what he said in C(iii) chronology)

''मेरे मतानुसार चूंकि उपरोक्त सारी सामग्रियाँ जिन स्तर से निकली दिखाई

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गई हैं उनसे मिली ही नहीं हैं, इसलिए इनसे ए0एस0आई0 द्वारा काल निकालना मुमकिन नहीं था। ***मेरे अनुभव व ज्ञान के अनुसार उपरोक्त सभी एन्टीक्विटीज़ जो पृष्ठ 27 पर दर्ज हैं, वो लेयर 7 से ही मिल सकती थीं।''*** *(पेज 170)*

"In my view, since all the aforesaid materials have not been discovered from the levels from where they are shown to have been discovered, it was not possible for the ASI to date them. ***As per my experience and knowledge, all the aforesaid antiquities, mentioned on page 27, could be found only from Layer 7."*** *(E.T.C)*

''ए0एस0आई0 की रिपोर्ट वैल्यूम 1 के पृष्ठ 27–ए पर दिये गये चार्ट में दर्शायी गयी ट्रेन्च जी–7 के लेयर नं0 3 व 4 का काल अरली मिडीवल सल्तनत सही दर्शाया गया है। *मैं इससे सहमत हूँ।'' (पेज 170)*

"Layers 3 and 4 of Trench G-7, shown in the chart given on page 27A of the ASI report, Vol. I, have been correctly shown to be of Early Medieval Sultanate period. *I agree with the same." (E.T.C)*

''जी–5 ट्रेन्च में लेयर 5 व 6 का काल भी अरली मिडिवल सल्तनत सही दिया गया है।'' *(पेज 170)*

"Layers 5 and 6 at Trench G-5 have also been correctly shown to be belonging to Early Medieval Sultanate period." *(E.T.C)*

''मेरे शपथ–पत्र के पैरा 6 पीरियड (v) स्माल बी (पृष्ठ 12) में ''नाइफ़ ऐज'' के संदर्भ में मेरा यह कथन है कि ऐसी पाटीरीज़ का ऐज, नाइफ़ ऐज हो सकता है और नहीं भी। मेरे मतानुसार नाइफ़ ऐज बाऊल का मतलब है कि बाऊल का किनारा सीधा हो। शार्प होना ज़रुरी नहीं है और उसमें कैरीनेशन होने का प्रश्न ही नहीं उठता। ***मैंने पृष्ठ 12 पर जिस नाईफ़ ऐज बाऊल का संदर्भ दिया है, उस बाऊल को मौक़े पर देखने का अवसर मुझे प्राप्त नहीं हुआ।''*** *(पेज 172–173)*

"In reference to "Knife-edge" mentioned in para 6, period

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(V) b (page 12) it is my statement that the edge of such potteries may or may not be knife-edge. In my opinion, knife-edge bowl means that the edge of bowl should be straight. Its being sharp is not necessary and there is no question of corrosion in it. ***I got no chance to have an on-the-spot look at that very knife-edge bowl which is referred to on page 12."*** *(E.T.C)*

''मैंने अपने शपथ पत्र के पृष्ठ–34 प्रस्तर 12सी पर यह बात कही है कि ए 0एस0आई0 की रिपोर्ट में स्तरीकरण के पारस्परिक सम्बन्धों को तोड़–मरोड़कर प्रस्तुत किया गया है। अगर उस स्तरीकरण और कालक्रम को बदल भी दिया जाए तो भी मेरे विचार मे इस रिपोर्ट में और भी त्रुटियॉ हैं।'' (पेज 178)

"On page 34, para 12C of my affidavit I have stated that co-relation of stratification has been distorted in the ASI report. Even if the said stratification as also chronology is changed, this report, in my opinion, still has discrepancies." (E.T.C)

''मैंने ए0एस0आई0 रिपोर्ट का अध्ययन स्ट्रेटीग्राफ़ी की दृष्टि से गहन अध्ययन किया है और स्ट्रेटीग्राफ़ी किसी भी उत्खनन का बैक बोन होता है,'' (पेज 186)

"I have made an in-depth study of the ASI report from stratigraphical point of view, and stratigraphy is the back bone of any excavation." (E.T.C)

''मैंने ए0एस0आई0 रिपोर्ट में स्ट्रेटीग्राफ़ी से सम्बन्धित सभी शब्दों और टर्मिनोलोजी का अध्ययन किया है।'' (पेज 186)

"I have studied all the words and terminology related to stratigraphy used in the ASI report." (E.T.C)

''प्र0–खुदाई स्थल के किसी एक भाग के बारे में आप बताइये कि इसका पारस्परिक संबंध स्तरीकरण से ग़लत हुआ है?

उ0– वाल नं0–18ए तथा वाल नं0–16 दोनों का पारस्परिक संबंध ए

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0एस0आई0 की रिपोर्ट में ग़लत रुप से पेश किया गया है।'' (पेज 200)

"Question- Tell about any portion of the excavation site where its co-relation has been wrongly established with stratification.

Answer- Co-relation between both the Wall No. 18A and Wall No. 16 has been wrongly presented in the ASI report."

(E.T.C)

''रिपोर्ट में मैंने यह पढ़ा है कि वाल नं0–18ए और 16 दोनों समकालिक हैं, किन्तु उपलब्ध प्रमाण के अनुसार दोनों दीवारें समकालिक नहीं हैं। दोनों दीवारों के बीच में थिक (मोटा) प्लास्टर उपलब्ध है। दोनों दीवारें परस्पर बाण्डेड अर्थात् जुड़ी हुई नहीं हैं। यदि दोनों दीवारें समकालिक होतीं, तो दोनों को परस्पर जुड़ा हुआ होना चाहिए था, परन्तु ऐसा नहीं है, बल्कि दोनेां के बीच में एक प्लास्टर है, जो इस बात को प्रमाणित करता है कि दोनों दीवारें समकालिक नहीं हैं।'' (पेज 200–201)

"I have read in the report that Wall No. 18A and Wall No. 16 are both contemporaneous; but as per the proof available, both the walls are of the same time. There is a thick plaster between both the walls. Both the walls are not bonded or connected with each other. If both the wall were contemporaneous, both of them ought to have been connected together but such is not the position; rather, there is a plaster in between, which proves that both the walls are not contemporaneous." (E.T.C)

''मेरा निष्कर्ष यह है कि उपरोक्त दोनों दीवारें समकालिक नहीं हैं और जिसका पर्याप्त पुरातात्विक प्रमाण उलपब्ध है।

वाल 18–ए पीरियड–7 के दूसरे स्ट्रक्चरल पीरियड की है।

प्रश्न– क्या यह सही है कि वाल–16 तथा वाल 18–ए का काल एक ही है?

उत्तर– ***उपरोक्त दोनों दीवारों का सॉंस्कृतिक काल एक ही है, किन्तु स्ट्रक्चरल पीरियड अलग–अलग है।***

इन दोनों दीवारेां के स्ट्रक्चरल पीरियड (समयावधि अर्थात् टेम्पोरल

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डयूरेशन) के अंतर को नहीं बताया जा सकता है। यह कहना सही है कि उपरोक्त दोनों दीवारों का काल एक ही हैं, परन्तु उसकी समयावधि अलग–अलग है, जिसे बताया नहीं जा सकता।'' (पेज 203)

"My finding is that both the aforesaid walls are not contemporaneous and archaeological proof thereof is sufficiently available.

Wall 18A belongs to the other structural period of Period-7

Question- Is it true that Wall 16 and Wall 18A are of one and the same period?

Answer- ***The cultural period of both the aforesaid walls is the same but their structural periods are different.***

It is not possible to tell the space of time between the structural period (temporal duration) of these two walls. It is true to say that both the walls are of the same period but their temporal duration is different which cannot be determined." (E.T.C)

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''मैंने अपने मुख्य परीक्षा के शपथ पत्र के पेज 6 पर B-II में स्तरीकरण रिपोर्ट के अनुसार कुल मिलाकर 18 पर्तों के जमाव के प्रकाश में आने का उल्लेख किया है। उन 18 पर्तों का जमाव ट्रेंच संख्या जी–7 में मिला था। ए0एस0आई0 ने 18 पर्तों का जो जमाव ट्रेंच संख्या जी–7 में बताया है, वह ग़लत है। ***मेरे अनुसार ट्रेंच संख्या जी–7 में 17 पर्तों का उल्लेख होना चाहिए। ए0एस0आई0 ने इस ट्रेंच में परत संख्या 3 व 3–ए को ग़लत दिखाया है।*** *इन पर्तों के निकल चुकने के बाद मैंने ट्रेंच संख्या जी–7 को देखा था, उस समय तक लगभग नौ पर्तों तक की खुदाई इस ट्रेंच में हुई थी। ट्रेंच संख्या जी–7 में पर्त संख्या 9 से नीचे वाली पर्तें सही हैं, ए0एस0आई0 की रिपोर्ट में इससे संबंधित तथ्य प्रकाशित होने पर उसको मैंने देखा था। मेरे व्यक्तिगत ज्ञान के आधार पर पर्त संख्या 9 के नीचे की पर्तें सहीं हैं। पर्त संख्या 9 के ऊपर की पर्तों की सही पहचान नहीं हुई। यदि इन पर्तों की सही पहचान होती तो इस पुरास्थल पर प्राप्त 18 पर्तों के जमाव को जो पुरात्विक जमाव कहा गया है, वैसा नहीं कहा जाता। इसके स्थान पर कुछ पुरातात्विक जमाव व*

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कुछ प्राकृतिक जमाव की बात भी कही जाती, जैसा कि नहीं कहा गया है। प्राकृतिक जमाव वह जमाव है, जिस जमाव में मानव निर्मित अवशेषों का पूर्ण अभाव हो, तथा गठन, संरचना, कन्टेन्ट्स पर वह जमाव प्रकृति निर्मित प्रमाणित होता है। मेरे अनुसार वहॉ पर प्राकृतिक जमाव के रुप में सिल्ट का जमाव था। सिल्ट के बाद वहॉ पर ऐसा जमाव था, जो मानव निर्मित था। जिसमें मानव निर्मित अवशेष प्राप्त हैं। सिल्ट का भाग नहीं होगा। इस सिल्ट का जमाव लगभग 8 से 10 इंच मोटा था। वहां पर दो सिल्ट का जमाव है, एक लेयर–6 व दूसरा लेयर–4 के ऊपरी हिस्से में सिल्ट जमाव था। ए0एस0आई0 ने अपनी रिपोर्ट में सिल्ट के जमाव का उल्लेख बिल्कुल ही नहीं किया है। ***ए0एस0आई0 ने सिल्ट जमाव को पुरातात्विक जमाव के रुप में प्रस्तुत किया है।***

प्रश्न– क्या सिल्ट के जमाव को ए0एस0आई0 को अलग लेयर के रुप में दिखाना चाहिए था?

उत्तर– जी हॉ।

ऐसा ए0एस0आई0 द्वारा नहीं किया गया है। ए0एस0आई0 द्वारा सिल्ट को अलग पर्त के रुप में दिखाते तब भी यह पर्त 18 पर्तों के अन्तर्गत आती तथा इस दिखाने से पर्तों की संख्या में कोई वृद्धि नहीं होती। ***ए 0एस0आई0 ने 18 पर्तों का जो जमाव बताया है वह सही है परन्तु उसका इन्टरप्रटेशन सही नहीं है।***'' *(पेज 204–205)*

"At page 6 of the affidavit of my examination-in-chief, I have mentioned about discovery of deposit of in all 18 layers in B-II as per the stratification report. The deposit of those 18 layers was found in Trench No. G-7. The deposit of 18 layers given by ASI in Trench G-7, is wrong. ***According to me 17 layers should have been mentioned in Trench G-7. In this trench, the ASI has wrongly shown Layer Nos. 3 & 3A.*** *I had seen Trench G-7 after discovery of these layers, by that time excavation in this trench had been carried out up to about nine layers. The layers below Layer 9 in Trench G-7 are proper. I had seen it after publication of facts related to it in the ASI Report.*

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On basis of my personal knowledge, the layers below the Layer No. 9 are proper. The layers above Layer No.9 have not been properly identified. Had these layers been properly identified, then the deposit of 18 layers found at this archaeological site would not have been termed as such. Some archaeological deposit and some natural deposit is also claimed, which has not been given. Natural deposit is that deposit which totally lacks man-made remains and on its constitution, construction and contents it is established to be nature made. According to me, silt deposit was present here as natural deposit. After the silt, there was such deposit over there which was man made. The one in which man-made remains are found, will not be part of silt. This silt deposit was about 8-10 inches thick. Silt deposit was found there at two places, one in Layer-6 and the other in upper part of Layer-4. In its report, ASI has not all mentioned about the silt deposit. ***The silt deposit has been presented by the ASI as archaeological deposit.***

Question: Should the ASI have shown the silt deposit as a separate layer ?

Answer: Yes.

It has not been done so by the ASI. Had the ASI shown this silt as a separate layer, then also this layer would have fallen under the 18 layers and there would have been no increase in the number of layers. ***The deposit of 18 layers given by ASI is correct, but its interpretation is not."*** *(E.T.C.)*

''मैंने इतिहास थोड़ा बहुत पढ़ा है।'' (पेज 211)

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"I have studied a bit of history."*(E.T.C.)*

''स्तरीकरण पुरातत्व विज्ञान का बैकबोन है और यदि उस बैकबोन का अध्ययन सही नहीं हो पाया, तो शेष अध्ययन निरर्थक एवं अर्थहीन हो जाता है और ए0एस0आई0 रिपोर्ट का स्ट्रेटीग्राफ़ी और क्रोनोलाजी का निष्कर्ष ग़लत है। इसी आधार पर हमने ए0एस0आई0 रिपोर्ट को ग़लत समझाा है।'' (पेज 212)

"Stratification is back bone of archaeology and if this back bone has not been studied properly, then the remaining study becomes useless and meaningless. The stratigraphy and conclusion of chronology in the ASI Report is wrong and on this basis I have considered the ASI Report to be wrong."(E.T.C.)

''पहले मैंने उसकी स्ट्रेटीग्राफ़ी जानने की चेष्टा की और यह पाया कि ***स्ट्रेटीग्राफ़ी की दृष्टि से जिस आमलक का ज़िक्र इस रिपोर्ट में है, वह उत्खनन से प्राप्त ही नहीं हुआ है।*** *अतः उसके सम्बन्ध में अधिक जानकारी प्राप्त करना व्यर्थ है। वह आमलक ए 0एस0आई0 की रिपोर्ट में वाल्यूम–1 की फ़ीगर –59 पर जहॉ तक मुझे स्मरण है, प्रकाशित है।'' (पेज 214)*

"I first attempted to find out its stratigraphy and found that ***the 'Amlak' (myrobalan) mentioned in this report from the angle of stratigraphy, had not been found in the excavation.*** *Hence, it was useless to gather more knowledge in its behalf. As far as I remember, this 'Amlak' is published at Figure 59 of ASI Report Vol. I."(E.T.C.)*

''आमलक की स्ट्रेटीग्राफ़ी नहीं होती है। आमलक जिस चीज़ पर बना होता है, उसकी स्ट्रेटीग्राफ़ी होती है। आमलक (आब्जेक्ट) के स्ट्रेटीफ़िकेशन का मैंने अध्ययन किया है और यह आमलक का पीस उत्खनन से प्राप्त न होकर सरफ़ेस से प्राप्त हुआ है।'' (पेज 215)

"Stratigraphy is not done of 'Amlak'. Stratigraphy is done of the object on which the 'Amlak' is built. I have studied the stratification of the 'Amlak' (object) and this piece of

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'Amlak' has been found at the surface and not from excavation."(E.T.C.)

''अध्ययन के बाद मैंने यह पाया कि यह आमलक उत्खनन से प्राप्त नहीं हुआ है, बल्कि सरफ़ेस के ऊपर डम्प से प्राप्त हुआ है और पुरातत्व की दृष्टि से वह पुरातात्विक सामग्री भले ही हो, किन्तु उसका उपयोग पुरातात्विक प्रमाण की दृष्टि से कभी नहीं किया जा सकता। वह डम्प पुरातात्विक उत्खनन से बाहर का था।''

''प्रश्न– क्या उपरोक्त डम्प खुदाई स्थल के बाहर से आया था?

उत्तर– इस डम्प के बाहर से आने की संभावना को नकारा (रुलआउट) नही जा सकता है।''

*''**मैंने किसी को बाहर से इस डम्प को लाते हुए नहीं देखा था। इस डम्प को बाहर से ले आना रुलआउठ नहीं किया जा सकता है,**'' (पेज 215)*

"After studies I have found that this 'Amlak' has not been found from excavation and instead has been found from dump over the surface. From archaeological point of view it may be an archaeological article but it can never be used from the point of archaeological evidence. This dump was besides the archaeological excavation.

Question: Had this dump come from outside the excavation site ?

Answer: The possibility of this dump coming from outside cannot be ruled out.

***I had not seen anybody bringing this dump from outside. The bringing of this dump from outside cannot be ruled out**."(E.T.C.)*

''मैं इस न्यायालय में सुन्नी सेन्ट्रल बोर्ड आफ वक़्फ की तरफ़ से गवाही दे रहा हूँ। मैंने डे टू डे रजिस्टर आज से लगभग 2–3 माह पूर्व देखा था। इसके पहले मैंने इस रजिस्टर को नहीं देखा था।'' (पेज 229)

"I am giving evidence in this Court on behalf of Sunni

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Central Board of Waqf. I had seen the day-to-day register about 2-3 months ago. I had not seen this register earlier."(E.T.C.)

''प्रश्न– ऐसे कौन से तथ्य थे जो ए0एस0आई0 ने अपनी रिपोर्ट में नहीं लिखे हैं?

*उत्तर– **पहला वहॉं के स्तरीकरण के संबंध में सिल्ट डिपाज़िट का कोई उल्लेख न करना दूसरा ऐनीमल बोन्स पर विस्तृत रिपोर्ट न देना तीसरा ग्लेज़्ड वेयर तथा ग्लेज़्ड टाइल्स के बारे में पर्याप्त जानकारी न देना। ये मुख्य तथ्य थे, जिनका उल्लेख ए0एस0आई0 की रिपोर्ट में नहीं है। इसके अलावा अन्य बहुत से ऐसे तथ्य हैं जिनका उल्लेख रिपोर्ट में नहीं है। जैसे सरकुलर श्राइन की सही तिथि निर्धारण न करना, कालक्रम का सही निर्धारण न करना इत्यादि। इसका उल्लेख मैंने अपने मुख्य परीक्षा के शपथ–पत्र में अवश्य किया होगा।''** (पेज 232)*

"Question: What are the facts, which have not been mentioned by ASI in its report ?

*Answer: **Firstly, the non-mention of silt deposit in context of the stratification over there. Secondly, the non-furnishing of a detailed report on animal bones. Thirdly, the non-furnishing of sufficient information about glazed ware and glazed tiles. These were the main facts, which have not been mentioned in ASI report. Besides these, there are many other facts which have not been mentioned in the report, such as the non-determination of correct date of circular shrine, the non-correct determination of chronology etc. I must have mentioned these in the affidavit of my examination-in-chief."**(E.T.C.)*

''मैं ट्रेन्च सं0. जी–7 में उतरा था और उस ट्रेन्च को देखा था, इस ट्रेन्च के

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लेयर सं0 6 का निरीक्षण किया था। जब यह ट्रेन्च बहुत गहरी खोद दी गई, तब मैंने इस ट्रेन्च में नीचे उतर कर नहीं देखा। जब मैं पहली बार उत्खनन स्थल पर गया था, तब इस ट्रेन्च जी–7 की पूरी खुदाई नहीं हुई थी। ***मैंने उपरोक्त प्रस्तर के दूसरी तथा तीसरी पंक्ति में यह लिखा है रंग, गठन तथा संरचना के आधार पर वे सिल्ट कोटि के जमाव प्रतीत होते हैं मेरे ''प्रतीत'' शब्द लिखने का तात्पर्य यह है कि वह सिल्ट कोटि का जमाव हो सकता है और नहीं भी हो सकता है।*** *स्वयं कहा किन्तु जहॉ तक रीवर सेक्शन का मुझे अनुभव है उसके आधार पर इसकी संभावना अधिकतम है कि वह सिल्ट डिपाज़िट ही है और इसका सही निष्कर्ष तब तक नहीं निकाला जा सकता जब तक कि उसका रसायनिक परीक्षण प्रयोगशाला में न किया गया हो। मैंने प्रयोगशाला में इसका रसायनिक परीक्षण नहीं किया था क्योंकि मैं इसका परीक्षण नहीं कर सकता था क्योंकि उसका नमूना उपलब्ध नहीं था। मैंने उसका नमूना नहीं मॉगा था।* ***मैंने इस प्रस्तर में पॉंचवीं पंक्ति में जिस ''प्रतीत'' शब्द का प्रयोग किया है उससे भी मेरा तात्पर्य वही है जो मैंने इस प्रस्तर के तीसरी पंक्ति में प्रयुक्त शब्द'' प्रतीत'' का बताया है।*** *'' (पेज 233–234)*

"I had got down inside Trench No. G-7 and had seen that trench, had inspected Layer No. 6 of this trench. After this trench had been dug very deep, I did not see it by getting inside this trench. When I first went to the excavation site, this Trench G-7 had not been excavated completely. ***In second and third line of the aforesaid paragraph I have stated that 'on basis of colour, constitution and construction, they appeared to be silt category deposits.' By the word 'appear' it means that it could be and could not be a deposit of silt category****. Stated on his own that 'however as per my experience of river section, the probability is maximum that it is silt deposit and its correct conclusion cannot be derived till its chemical analysis has been carried out in laboratory. I have not carried out its*

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chemical examination in laboratory because I could not carry out its examination as its sample was not available. I had not asked for its sample. ***By the word 'appear' used by me in fifth line of this paragraph as well, I imply the same what I have given for the word 'appear' used in third line of this paragraph****."(E.T.C.)*

*''मैंने अपने मुख्य परीक्षा के शपथ–पत्र की धारा–3 की दूसरी तथा तीसरी पंक्ति में यह लिखा है कि ''****वह युक्तिसंगत प्रतीत नहीं होता है'' इस शब्द समूह में प्रयुक्त शब्द ''प्रतीत'' का वही तात्पर्य है जो मैंने अभी अपने ऊपर बयान में बताया है, इसका तात्पर्य हो सकने तथा न हो सकने दोनों से है।''*** *(पेज –234)*

"In the second and third line of para-3 of the affidavit of my examination-in-chief, I have stated that ***'It does not appear reasonable'. The word 'appear' used in the said sentence, means the same as just stated above by me in my statement. It implies both 'possible' and 'not possible'****. "(E.T.C.)*

''विद्वान जिरहकर्ता अधिवक्ता ने साक्षी का ध्यान उनके मुख्य परीक्षा के शपथ–पत्र की धारा 6 (B)(iv) (शपथ पत्र का पृष्ठ 7 व 8) की ओर दिलाया जिसमें यह लिखा हुआ है कि लेयर 4 का ऊपरी भाग वाला जमाव ... रंग, गठन एवं संरचना की दृष्टि से ***पुनः दो भागों में होना प्रतीत होता है यहाँ पर ''प्रतीत होता है'', का तात्पर्य ''हो सकने तथा न हो सकने'' दोनों से है*** *किन्तु यहाँ पर मुझे यह कहना है कि वैज्ञानिक अनुसंधान में कभी भी किसी खोज के संबंध में यह नहीं कहा जा सकता है कि न हो सकने की स्थिति नहीं आ सकती है।'' (पेज 241)*

"The learned counsel for the cross examiner drew the attention of witness to para 6 (B)(iv)(page 7&8 of the affidavit) of the affidavit of his examination-in-chief wherein it has been stated that the upper deposit of Layer No. 4, ***again appears to be in two parts from the point of***

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colour, constitution and construction. Here 'appears' implies both 'possible and not possible', *but I have to state at this stage that in scientific research it can never be said regarding any discovery that the stage of not possible cannot arrive." (E.T.C.)*

''मेरे अनुसार गुप्तकाल तीसरी, चौथी शताब्दी ईसवी से छठी शताब्दी ईस्वी तक का काल है। छठी शताब्दी ईस्वी के बाद का काल पोस्ट गुप्ता पीरियड कहा जाता है। ***मध्य काल भारत के इतिहास के काल में 12वीं शताब्दी के अन्त से व 13वीं शताब्दी के शुरुआत से माना जाता है।*** *सल्तनत पीरियड की शुरुआत 1206 ईस्वी से मानी जाती है। जहॉ तक मुझे स्मरण है यह कुतुबुद्दीन ऐबक़ का समय था।''(पेज 242)*

"According to me the Gupta period extends from third, fourth century AD to 6th century AD. The period subsequent to 6th century AD, is called the post-Gupta period. ***The period of medieval Indian History is considered to be from last of 12th century to beginning of 13th century.*** *The beginning of sultanate period is considered to be from 1206 AD. As far as I remember, it was the period of Qutub-ud-din Aibak." (E.T.C.)*

''एक पुरातत्वविद् के रूप में जी0पी0आर0 की साईंटिफिक रिपोर्ट पर विश्वास करता हूं। .....पुरातात्विक दृष्टि से जी0पी0आर0 सर्वे के द्वारा जो एनामिली मिलती है उसकी पुष्टि पुरातात्विक उत्खनन एवं साक्ष्यों द्वारा होने पर उसे पुष्ट हुआ माना जायेगा।'' (पेज 266)

"As an archaeologist, I believe in the scientific report of GPR. . . . .The anomalies found in a GPR survey, from archaeological point of view, are treated confirmed upon confirmation by archaeological excavation and evidences." (E.T.C.)

''जी0पी0आर0 के जिन पिलरबेसेज़ तथा स्ट्रक्चर की उत्खनन के द्वारा पुष्टि

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की गई उसका विवरण इस रिपोर्ट में है किन्तु उससे मैं सहमत नहीं हूँ। ***विवादित स्थल पर उत्खनन के ग्रिड सिस्टम की विधि अपनाई गई थी। यह अन्तर्राष्ट्रीय स्तर पर मान्यता प्राप्त विधि है। उत्खनन में ए0एस0आई0 द्वारा थ्री डाइमेंशनल विधि से रिकार्डिंग की गई है।*** *ट्रेन्च वाइज़ तथा लेयरवाहज़ फ़ोटोग्राफ़ी की गई है। विवादित स्थल पर वर्टिकल तथा होरीज़ेन्टल दोनों विधियों से उत्खनन किया गया है।* ***आर्कियोलोजिकल उत्खनन की जो मान्यता प्राप्त विधि है, उसके अनुसार ही विवादित स्थल पर ए0एस0आई0 द्वारा उत्खनन किया गया है*** *किन्तु कुछ अन्य पहलुओं की अनदेखी गई है।'' (पेज 268)*

"The details of those pillar bases and structures of GPR, which have been verified by excavation, are found in this report but I do not agree with them. ***The grid system method of excavation was used at the disputed site. It is a method recognised at international level. In excavation, the ASI has carried out recoding by three dimensional method.*** *Photography has been carried out trench-wise and layer-wise. Excavation has been carried out at the disputed site by both vertical and horizontal methods.* ***The excavation at the disputed site has been carried out by ASI as per the recognised method of archaeological excavation,*** *but few other aspects have been overlooked." (E.T.C.)*

''उत्खनन में पीरीयडाईज़ेशन के दो तरीके हैं, पहला स्तरीकरण दूसरा प्राप्त अवशेष का स्तरीकरण से पारस्परिक संबंध।' मैं समझता हूँ कि यह दोनों विधियॉ पीरीयडाईजेशन का आधार भी हैं और विधि भी है। पुरातत्व में डायनेस्टी के आधार पर भी काल निर्घारण होता है यदि प्रासंगिक अवशेष प्राप्त हुए हों। ***यह कहना सही है कि पुरातत्व में पीरीयडाईज़ेशन के लिए तीन तरीक़े हैं पहला लेयर वाइज़, दूसरा डायनेस्टी वाइज़, तीसरा सेन्चुरी वाइज़।' यह कहना सही है कि सेन्चुरी वाइज पीरीयडाईजेशन पुरातत्व में***

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मान्यता प्राप्त वैज्ञानिक विधि है। मैं एक पुरातत्ववेत्ता के रूप में इस बात से सहमत हूं कि सेन्चुरावाइज पीरीयडाइजेशन इसका सबसे अच्छा तरीका है। *ए0 एस0 आई0 ने अपनी रिपोर्ट में पीरीयडाइजेशन के सबंध में एक चेप्टर रखा है। इस चैप्टर का मैंने अध्ययन किया है। ए0 एस0 आई0 रिपोर्ट में तीनों विधियों अर्थात् लेयर वाइज़, सेन्चुरी वाइज़ तथा डायनेस्टीवाइज़ पीरीयड, के आधार पर पीरीयडाईज़ेशन किया है।'' (पेज 269)*

"There are two methods of periodization in excavation. Firstly, stratification. Secondly, by co-relation of remains found with stratification. I understand that these two methods are not only bases but also methods of periodization. In Archeology, dating is done on the basis of dynasty as well, if relevant remains have been discovered. ***It is correct to say that there are three methods of periodization in archeology. First is layer-wise, second dynasty-wise, third century-wise. It is correct to say that century-wise periodization is a recognised and scientific method in archeology. As an Archaeologist, I agree that century-wise periodization is its best method.*** *The ASI has dealt with periodization in a chapter in its report. I have studied this chapter. In ASI Report, periodization has been done by all three methods i.e. layer-wise, century-wise and dynasty-wise period."(E.T.C.)*

''विद्वान जिरहकर्ता अधिवक्ता ने साक्षी का ध्यान ए0एस0आई0 रिपोर्ट वाल्यूम 1 के पृष्ठ 38 लग़ायत 44 पर दिये गये पीरियड सं0 1 लग़ायत 9 पर आकृष्ट किया तथा साक्षी से यह पूछा कि ए0एस0आई0 द्वारा दिये गये इन सभी पीरियडों में पीरीयडाइज़ेशन की उपरोक्त तीनों विधियों का प्रयोग किया गया है अथवा नहीं, साक्षी ने इसे देखने के बाद बताया कि हर पीरीयडों के संबंध में लेयर, काल एवं सेंचुरी का उल्लेख नहीं किया गया है। ***सेंचुरी का उल्लेख हर पीरियड के साथ किया गया है।''*** *(पेज 270)*

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"The learned counsel for the cross-examiner drew the attention of witness to period no. 1 to 9 given at page 38 to 44 of ASI Report Vol. 1 and asked the witness whether the aforesaid three methods of periodization had been used or not by the ASI in all these periods. After looking at it the witness stated that layer, period and century have not been mentioned in respect of each period. ***Century has been mentioned with each period****."(E.T.C.)*

''ए0एस0आई0 द्वारा अपनी रिपोर्ट में पीरियडाइज़ेशन के संबंध में सेंचुरी के अनुसार जो काल गणना की गयी है उससे मैं सहमत नहीं हूँ। इस संबंध में मैं यह कहना चाहूँगा कि लेयर, डायनेस्टी तथा सेंचुरी विधियों को पुरातत्व की दृष्टि से दो भागों में विभाजित किया जा सकता है। पहला रेलेटिव डेटिंग मैथड दूसरा एबसोलूट डेटिंग मैथड। ए0 एस0 आई0 द्वारा पीरियडाइज़ेशन के बारे में अपनी रिपोर्ट में जो कहा गया है वह सही नहीं है। सेंचुरी विधि द्वारा जो काल का निर्धारण किया गया है उन तिथियों का निर्धारण सोलर ईयर (सौर वर्ष) द्वारा जिन विधियों द्वारा तिथि निर्धारण की जाती है। इन विधियों द्वारा रिपोर्ट में सेंचुरीवाइज़ जो तिथि निर्धारित की गई है। वह उन विधियों पर आधारित नहीं है। इसका तात्पर्य यह है कि रिपोर्ट में सेंचुरी द्वारा जो काल गणना की गई है वह एब्सोल्यूट डेटिंग मैथड पर आधारित नहीं है। एब्सोल्यूट डेटिंग के अन्तर्गत कार्बन डेटिंग तथा अन्य विधियॉ आती हैं। ***कार्बन डेटिंग पीरियडाइज़ेशन का एक वैज्ञानिक तरीक़ा है। सामान्यतः कार्बन डेटिंग से जो तिथि आती है, उसको सही मानते हैं।*** *ए0एस0आई0 की रिपोर्ट में कार्बन डेटिंग के संबंध में एक अपेंडिक्स में दिया गया है जिसको मैंने देखा है।* ***ए0एस0आई0 ने अपने अपेंडिक्स में जिन कार्बन तिथियों का उल्लेख किया है उनमें लगभग अधिकांश तिथियों के संबंध में लेयर का उ****ल्लेख नहीं किया गया है। अतः उसकी विश्वसनीयता संदेहप्रद हो जाती है।'' (पेज 271–272)*

" I do not agree with the period determination done as per century by ASI in its report, in respect of periodization. In this behalf I would like to say that layer, dynasty and

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century methods can be divided in two parts from the point of archaeology. First, relative dating method, second, absolute dating method. The version of ASI in its report regarding periodization, is not correct. The dates of period determined by century method, have been determined by solar year, by which method dates are determined. The dates determined century-wise in the report by these methods, are not based on those methods. It implies that the period determination done in the report by centuries, is not based on absolute dating method. Carbon-dating and other methods fall under absolute dating. ***Carbon-dating is a scientific method of periodization. Usually the date determined by Carbon-dating is accepted as correct.*** *An appendix regarding Carbon-dating is contained in ASI Report, which has been seen by me.* ***Layers have not been mentioned in respect of most of the Carbon dates mentioned by ASI in its appendix. Hence, its credibility becomes doubtful****." (E.T.C.)*

''ए0एस0आई0 ने अपनी रिपोर्ट में एन0बी0पी0डब्लू0 का काल जो पीरियड 1 के रुप में छठी शताब्दी बी0सी0 से तीसरी शताब्दी बी0सी0 दिखाया है, उससे मैं सहमत हूँ।'' (पेज 272)

"I agree with the period of NBPW shown by ASI in its report as Period-I from 6th century BC to 3rd century BC."(E.T.C.)

''इसी प्रकार ए0एस0आई0 के रिपोर्ट वाल्यूम 1 के पृष्ठ 40 पर पीरियड 5 पोस्ट गुप्ता–राजपूत लेविल को 7वीं से 10वीं शताब्दी ए0डी0 बताया गया है, जिससे मैं सहमत नहीं हूँ। ***मेरे अनुसार यह अवधि 13वीं शताब्दी से 15वीं शताब्दी ए0डी0 होनी चाहिए।*** *इसी पृष्ठ पर पीरियड 6 मध्यकालीन–सल्तनत लेविल का काल 11वीं से 12वीं शताब्दी ए 0डी0 बताया गया है, जिससे मैं सहमत नहीं हूँ। मेरे अनुसार यह काल*

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13वीं शताब्दी से 15वीं शताब्दी ए0डी0 होना चाहिए। इसी रिपोर्ट के पृष्ठ 41 पर पीरियड 7 के रुप में मध्यकालीन लेविल का काल 12वीं से 16वीं शताब्दी ए0डी0 बताया गया है, इससे भी मैं सहमत नहीं हूँ। मेरे अनुसार यह काल 13वीं शताब्दी से 15वीं शताब्दी ए0डी0 के अन्तर्गत ही आवेगा। इसी रिपोर्ट के पृष्ठ 43 पर पीरियड viii (मुग़ल लेविल) का काल सेंचुरी के अनुसार निर्धारित नहीं किया गया है। मेरे अनुसार यह काल 16वीं शताब्दी ए0डी0 से माना जायेगा। इसी रिपोर्ट के पृष्ठ 44 पर पीरियड 9 जिसे लेट एन्ड पोस्ट मुग़ल लेविल कहा गया है, इसकी तिथि भी ए 0एस0आई0 द्वारा सेंचुरी में निर्धारित नहीं की गई है, मेरे अनुसार यह काल 16वीं शताब्दी से 17वीं शताब्दी ए0डी0 है। मेरे अनुसार पीरियड 8 तथा पीरियड 9 का लेट लेविल 16वीं से 17वीं शताब्दी ए0डी0 है। पोस्ट मुग़ल लेविल 17वीं शताब्दी से अब तक हो सकती है। इसी प्रकार मेरे अनुसार पीरियड 6 और पीरियड 9 का काल 13वीं शताब्दी से 15वीं शताब्दी ए0डी0 है। पीरियड 7 के संबंध में भी मैंने यही कहा है। इस प्रकार ***मैं ए 0एस0आई0 द्वारा किये गये काल निर्धारण जो पीरियड 5, 6 तथा 7 का किया गया है, के अलावा ए0एस0आई0 द्वारा किये गये अन्य काल निर्धारण से सहमत हूँ।*** *'' (पेज 273–274)*

"In this very manner, on page 40 of the ASI report, Vol. I, Period-5 Post Gupta-Rajput Level is stated to be belonging to 7th to 10th century AD, with which view I do not agree. ***In my opinion, this period ought to be from 13th century to 15th century****. On this very page, Period-6: Medieval-Sultanate Level has been ascribed to 11th to 12th century AD, with which view I do not agree. In my opinion, this period ought to be from 13th century to 15th century. On page 41 of this very report, the Medieval Level is stated to be Period-7 and to have spanned between 12th century and 16th century AD; with this view too I do not agree. In my opinion, this period would be covered under the period spanning between 13th century and 15th century. On page 43 of this very report, Period-8 (Mughal Level) is not dated*

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in terms of century. In my opinion, this period will be taken to have begun from 16th century. On page 44 of this very report, Period-9, termed as Late and Post Mughal Level, has also not been dated in terms of century by the ASI. In my opinion, this period is from 16th century to 17th century AD. The Post-Mughal Level may be from 17th century till date. In this very manner, the span of Period-6 and Period-9, in my opinion is from 13th century to 15th century AD. I have stated this very thing in reference to Period-7 as well. ***In this way, with the exception of dating done by ASI in respect of Periods 5, 6 and 7, I agree with the dating done by it in respect of other periods."*** *(E.T.C)*

''मैंने अपनी मुख्य परीक्षा का जो शपथ पत्र प्रस्तुत किया है, वह प्रधान रुप से जी–7 ट्रेंच के अध्ययन पर आधारित है, क्योंकि ट्रेंच जी–7 में ही नेचुरल स्वायल तक जो स्तरीकरण के साक्ष्य उपलब्ध हुए हैं, वे किसी अन्य ट्रेंच में उपलब्ध नहीं हैं। ट्रेंच जी–7 को इस पुरास्थल पर हुए उत्खनन का इण्डेक्स ट्रेंच भी कहा जा सकता है। मेरी दृष्टि में ट्रेंच जी–7, इण्डेक्स ट्रेंच हो सकती है। इसके अतिरिक्त जिन अन्य ट्रेंचों में वर्जिन स्वायल तक उत्खनन हुआ है, वे ट्रेंचेज़ मेरी दृष्टि में उतने महत्वपूर्ण नही हैं।''

(पेज 286–287)

"The affidavit I have filed at my Examination-in-Chief, depends mainly on the study of Trench G-7, because stratigraphical evidences which have been discovered upto the depth of natural soil in Trench G-7 itself, are not available in any other trench. Trench G-7 may also be termed as index trench of the excavation carried out on this archaeological site. Trench G-7, in my opinion, may be an index trench. Besides, other trenches wherever excavations have been carried out upto the depth of virgin soil, are, in my opinion, not so important." (E.T.C)

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''ए0एस0आई0 ने सीमित समय में मा0 उच्च न्यायालय के निर्देशानुसार ***होरीज़ेंटल तथा वर्टिकल दोनों विधियों से उत्खनन कार्य पूर्ण किया, जो एक प्रशंसनीय कार्य है, किन्तु जितनी कम अवधि में यह रिपोर्ट प्रकाशित की गई है, वह प्रशंसनीय नहीं है।*** *मेरे विचार से रिपोर्ट की प्रस्तुति के लिए ए0एस0आई0 को और समय दिया जाना चाहिए था। जिस स्तर का उत्खनन कार्य ए 0एस0आई0 द्वारा विवादित स्थल पर किया गया था, उसकी रिपोर्ट प्रस्तुत करने के लिए ए0एस0आई0 को कम से कम छः माह का समय और दिया जाना चाहिए था। कम समय में रिपोर्ट प्रस्तुत किये जाने के कारण इस रिपोर्ट में अनेक डिस्क्रिपैंसी हैं।'' (पेज 290–291)*

"Under the orders of Hon'ble High Court, ***the ASI by using both the horizontal and vertical methods completed excavation work in a limited time, which is an appreciable work; but a short span of time in which this report has been published is not appreciable.*** *In my opinion, the ASI ought to have been given more time for submission of report. Considering the level of excavation work which had been undertaken on the disputed site by the ASI, it should have been given at least six months' more time for submission of report. On account of submission of report in less time, this report suffers from many discrepancies." (E.T.C)*

''यह कहना सही है कि फ़ाइनल स्ट्रेटीग्राफ़ी तभी सम्भव है, जब उस ट्रेंच में अंतिम स्तर तक उत्खनन पूर्ण कर लिया जाये। डे–टु–डे रजिस्टर में फ़ाइनल स्ट्रेटीग्राफ़ी का लिखा जाना सम्भव नहीं होता है। प्रतिदिन के उत्खनन में जो सामग्रियां मिलती हैं, उसी का उल्लेख उसमें किया जाता है। प्रश्नगत उत्खनन के बारे में डे–टु–डे रजिस्टर में प्रतिदिन प्राप्त होने वाली वस्तुओं का उल्लेख किया गया है। मैंने डे–टु–डे रजिस्टर को अपनी मुख्य परीक्षा के शपथ पत्र में उत्खनन से संबंधित अपना मत व्यक्त करने के लिए एक आधार बनाया था, इसका कारण यह है कि इस दस्तावेज़ के माध्यम से हमें डे–टु–डे के उत्खनन से प्राप्त सामग्रियों का विवरण मिल

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सकता था और यह जानकारी ए0एस0आई0 रिपोर्ट द्वारा प्राप्त नहीं थी।''

(पेज 291–292)

"It is true to say that final stratigraphy is possible only when excavation is carried out upto the last level at the concerned trench. It is not possible to write about final stratigraphy in Day-to-Day register. Whatsoever materials are discovered at each day's excavation are mentioned therein. As far as the excavation in question is concerned, materials discovered therefrom on each day have been mentioned in the Day-to-Day register. I used the Day-to-Day register as a basis to express my opinion on the excavation, in the affidavit filed at Examination-in-Chief; its reason is that I could through this document get details about the materials discovered at Day-to-Day excavations and this information was not forthcoming from the ASI report." (E.T.C)

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''यह कहना सही है कि उत्खनन के दौरान अथवा उसके बाद जब मैंने विवादित स्थल का विज़िट किया था, तब ***मैंने ए0एस0आई0 द्वारा की गई स्ट्रेटीग्राफ़ी या उत्खनन के बारे में कोई आपत्ति नहीं उठाई थी।*** *'' (पेज 295)*

"It is true to say that when I, during or subsequent to the excavation, visited the disputed site, ***I raised no objection about the stratigraphy or excavation carried out by the ASI."*** *(E.T.C)*

3838. The statement extracted above shows self contradiction and lack of clarity on the part of PW-24.

3839. **PW 29, Jaya Menon,** is co-author of the objections filed on behalf of PW 1 (Suit-4) against ASI report. It is for this reason that she was examined first before re-examination of PW 16 and 24. The affidavit of PW 29 is dated 28.9.2005 and her

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cross examination was conducted from 29.9.2005 to 19.1.2006. PW 24 was examined second time when he was produced in respect to ASI report by filing his affidavit dated 5.12.2005 and the cross examination conducted from 5.12.2005 to 4.1.2006. So far as PW 16 is concerned, on third occasion his affidavit is dated 20.2.2006 and cross examination held from 20.3.2006 to 28.7.2006. It is for this reason probably that the periodization/ chronology vis-a-vis its co-relation with various finds and structures etc. found by ASI have been assailed in para 8 (from para 8.1 to 8.6) of the objections of plaintiff 1 (Suit-4). However, in her affidavit dated 28.9.2005, PW 29 has changed her stand and in para 4 and she says:

"4. That the ASI Report has problems with stratigraphy and chronology, which may be summarised as under:-

(A) That as many as 15 pieces of terracotta figurines of later periods were reported from earlier levels, an impossible situation if deposits were actually stratified. In fact, deposits from Gupta period onwards are not stratified and the material is all mixed up. This is a point that is not debated by the ASI and has been repeated several times through the Report.

(B) That there are clearly problems with the stratigraphy which is indicated by other inaccuracies. If one calculates the total depth of deposits in different periods from a single trench such as G7, it is clear that there are gaps. Specifically, in G7, there is 1 metre deposit for Period 1(NBP), 1.6 metre for

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Period II (Sunga), 1.5 metre for Period III (Kushan), 2 metre for Period IV (Gupta), 0.9 metre for Period V (Post Gupta), 0.75 metre for Period VI (Early Medieval), 0.6 metre for Period VII (Medieval) and 0.25 metre for Period VIII and Period IX has not been indicated (as derived from Chapter III). This totals up to 8.60 metres of cultural deposits. According to the ASI, the total cultural deposit is 10.80 metre, which means that almost 2.20 metre is not accounted for. Not only this, Appendix IV, at the end of the book, mentions total depth dug for Trench G7 as 13.45 metre. Even if the ASI points out that the lower layers in G7 belong to a pit and we accept their depth for natural as 10.80 metre, it still means that there is a massive pit of about 2.65 metre depth, which is a trifle difficult to imagine. There could have been a fill as there is in Trench J3, but not a pit of such dimensions.

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(C) *That the ASI also mentions a continuous cultural occupation of the site. However, if we examine Plate 5 of the Final Report, a layer with no cultural material (termed in archaeology as a sterile layer) can be clearly seen, for example, below layer 4. The ASI has marked out this layer but has not numbered it. Sterile layers indicate periods when there was no habitation or occupation. These layers are ascribed to the Early Medieval/Sultatnate period (Period VI) in the tentative periodization of the site.* ***There is then a possibility that there was no Early Medieval***

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occupation and there was a gap between the Gupta and the Medieval periods. *This had been noted as early as 1969-70 by a team of archaeologists from the Department of Ancient Indian History and Culture, of BHU, Varanasi, which had noted a desertion of the site between the Early Historic and Medieval periods. (By neglecting to indicate the sterile layers and their implications, the ASI is trying to project a continuous occupation of the site from the Early Historic to the Medieval periods. Neither the stratigraphy nor the artefacts, however, substantiate such a claim. There is a certain bias here, which again goes against the norms of archaeological objectivity,* ***to force a certain interpretation on the material, that from the 10th century AD onwards the area was occupied by Hindu religious structures.)***

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(D) *That in the same context, the layering of fill deposits in J3, J4, J5, J6, K6, K7, L7, L8, J7, J8 was done to show continuous occupation in stratified contexts. It was only when complaints were made that these fill deposits were acknowledged but* ***eventual registrations of artefacts from these deposits in the final Report were left uncorrected.***

(E) *That in archaeology, structures can be dated if there are special construction techniques or material, known specifically to have been used in a particular period, such as lime-surkhi from the end of the 12th century AD. Structures can also be dated on the basis*

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of associated artefactual material coming from stratified contexts in association with the structures. But ***when the material is all mixed up from the Gupta period onwards, it is impossible to neatly slot structural remains into periods of post-Gupta, Early Medieval or Medieval levels****.*

(F) That in this attempt to force a particular interpretation on the material that cannot be substantiated, there is bound to be confusion and discrepancies. Confusion is clearly indicated by the manner in which floors are numbered at various places in the text. ***The same floor is given different numbers, some floors appear and disappear,*** *their extent keeps changing and so forth.) The numbering of floors in association with so called "pillar bases", mentioned in the Table on pages 56-67 of the Final Report does not match with those in Fig. 8,9,10,11,12 and 13. On page 41, it is mentioned that the earliest floor extended in the eastern area up to the H series of trenches in sub-period VIIA. In sub-period VIIB, the next floor extended up to trenches J4-J5-J6. On page 42, it is indicated that in sub-period VIIC, the floor associated with the "pillar bases" is the most extensive on the mound. In Fig. 23A, however, Floor 4 (the earliest floor) is shown as extending all over the mound while Floor 3 and Floor 2 are more restricted, providing a completely contradictory picture.*

(G) That the tentative periodization and schematic cross-

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section of the mound that has been provided between page 37 and 38 of the Final Report ***does not provide a layer-wise description of all the trenches.*** *For example, no information on layers has been provided for important trenches like E8, F8, F9, G8, G9 and G1. Even for trenches that have been mentioned in the diagrams, we have no indication of the layers below Floor 4 in important trenches like F3 and F4/F5. (There should have been a concordance of the layers of trenches from the north and south of the site.)*

(H) That in some cases ***strata were marked in almost complete darkness within trenches such as G8.*** *A study of stratigraphy within a trench requires careful examination of the sections to discern differences in colour and texture of soil.* ***Obviously plenty of light is required for such a study.*** *Even though there were arrangements for artificial light, very often this was not used as in the case of Trench G8 and yet strata were marked and antiquities registered as from particular layers."*

3840. PW 29, this time has taken stand which substantially conforms to that of PW 24. In cross examination, she said :

"I agree with N.B.P.W., Mughal and late post Mughal periods but with the rest of the periods I do not agree. According to my information N.B.P.W. should be dated from 600 B.C. to 100 B.C. whereas Shunga period is second century B.C. which would overlap the N.B.P.W. N.B.P.W. denotes Northern Black Polished Ware. N.B.P.W.

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is well known pottery of Northern India. From my point of view ***archaeological periods should not be distinguished on the basis of dynasties*** *Kushan period is dated from Ist to 3rd century A.D." (Page 71)*

"I have mentioned in para 4-A of my affidavit that deposits from Gupta period onwards are not stratified. In this regard I have to say that all the materials of earlier and later periods, were mixed up. If the material is mixed up it does not give a correct picture of the stratification." (Page 74)

" I do not agree with the periodisation of the disputed site at Ayodhya as shown by ASI in Chart, at page No. 37-A of the ASI report, Volume-I" (Page 45)

"In para 3 A of my affidavit I have mentioned about terminology ad periodization. The defects in terminology and periodization show confusion in the report. ***Due to the defect of terminology and periodization, the report of ASI is also biased."*** *(Page 70)*

*"****Terminology and periodization play a significant role but they are not most important. The terminology and periodization can be changed. I would also have problems with archaeologically identifying periods according to dynasties.*** *I do not know about universal periodization." (Page 70)*

"Learned counsel drew the attention of witness towards A.S.I. Report Vol. 1, (Text) at page no. 37-A. The witness stated that in last column of page period has been mentioned but I am not in agreement with this periodization." (Page 71)

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"... I think that the stratigraphy shown in this plate, is correct. The layers are distinct in texture." (Page 111)

"Starting period of Muslim rule in India is from 1206 A.D. i.e. of Qutubuddin Aibak. I don't know whether this period is known as Illawari Turk. ***According to renowned historians, the period before 1206 A.D. is known as Early Medieval period.*** *Since I have not read the book by B.S. Smith, therefore I cannot say whether he refers to the period from Harsha till 1200 A.D. as Rajput Period. I have not heard about Anoop Sanskrit Library of Bikaner. I don't know whether the most authentic version of Prithviraj Raso written by Chandbardai is maintained in this library. ... I would say Rigveda can be dated from 1500 B.C. Alexander invaded India in 327-325 B.C. Mauryan dynasty was established in 321 B.C. The Mauryas were succeeded by Sunga dynasty. Sunga dynasty is dated from 2nd century B.C. to 1st century B.C.* ***Archaeologically, the periods cannot be categorized on the basis of dynasties.*** *" (Page 115-116)*

"I will not agree with the statement even in para 1 to 5 just because the period VI and VII have been changed in nomenclature. ***In my view A.S.I.'s period V, and period VI and period VII should be considered as Early Medieval.*** *" (Page 129)*

"Stratigraphy is a term used in Archaeology. Stratigraphy is the study of layers as they are formed over time. ... The Archaeology periods can be fixed on the basis of centuries. Centuries can be put into various periods for the purposes of study. Harappan period is dated from 2600 B.C. To 1900

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B.C. from 600 B.C. various Mahajanpad period was followed by the Nandas and the beginning of Mauryan period. During 600 B.C. to 300 B.C. the two dynasties ruled while the Mauryan dynasty continued beyond 300 B.C. also." (Page 144)

"It is correct to say that ***for the purpose of periodization, the method of century-wise study is better and preferable to that of dynasty-wise.*** *The period 800 AD to 1200 AD falls within the Early Medieval period, which started much earlier to 800 AD. ...* ***Early Medieval period lasted from 600 AD to 1200 AD.*** *I know the periods in terms of pre-Gupta, Gupta and post-Gupta periods. According to me, Gupta period begins from fourth century AD and continued up to sixth century AD and prior to that, was the pre-Gupta period up to the time immemorial. Pre-Gupta period would date back to 600 BC and* ***post-Gupta is from 600 BC to 1200BC****." (Page 150)*

*"****Medieval period would be post 1200 A.D.*** *According to archaeology periodisation is on the basis of stratigraphy.*

Ques- Will it not be correct to say that there are three well established norms of periodisationm that ism no. 1 layer, wise 2. century wise 3. Dynasty wise. ?

ANS- ***It is not correct to say that 'periodisation' in archaeology can be done on the basis of 'dynasties'.***

I do not agree that periodisation can be done century-wise. *Century-wise periodisation is covered by stratigraphy or layer wise study. The numbering of the layers is done from top to bottom. Where as periodisation is ascertained from bottom to top." (Page 182-183)*

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"A.S.I. has mentioned about periodisation in its report. It is correct to say that A.S.I. has adopted all the three methods of periodisation mentioned above in its report. It is wrong to suggest that A.S.I. has mentioned in its periodisation by layers, century and dynasties. ***According to me some periods were identified on the basis of century wise and one was identified on the basis of archaeological culture****. I think A.S.I. has identified nine periods in its report.* ***According to me century has been mentioned in all the above nine periods.*** *Dynasty wise report is not mentioned in all the above mentioned nine periods.* ***A.S.I. has given details of dynasties of four periods****. The dynasties mentioned by the A.S.I. are Shungas. Kushans, Guptas, Mughal. A.S.I. has not mentioned any dynasty other than the Mughal for the medieval period... I don't agree with the identification of the period 'post Gupta Rajput level.* ***According to me the post Gupta Rajput part of the period should be called as early medieval period which should extend upto 1200 A.D. According to me post' Gupta Rajput period will be period from 7th century to 1200 A.D.*** *... The term post 'Gupta Rajput period' is used in archaeology, not in history. I have not heard about the term Medieval-sultanate period in archaeology. I do not agree that the period of 12th century is called as medieval sultanate period in archaeology. Medieval period is considered from 1200 A.D. Till the colonial period that is 13th century till 18th century." (Page 183-185)*

"I have heard about periodization on the basis of dynasty. It is prevalent and used in Archaeology.

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Probably dynasty wise periodization commenced in the 1940's. It is correct to say that Medieval is a phase in history." (Page 186)

"I do not correlate medieval period with Islam because Islam reached the sum continent much earlier. Islam reached Sindh in 8th century AD. Islam would have reached probably in Kerala through traders in 8th or 9th century AD. I am of the opinion that in archaeology century wise periodization is possible particularly for the earlier periods. I think it will be more or less correct to say that ***century wise periodization is correct method of periodization in archaeology.*** *" (Page 187)*

*"****I have not done detail study of the periodization given in appendix 1 on the bases of carbonating.*** *As such I am unable to express my opinion about information given in appendix 1.* ***As regards sample no. 9, which from trench G7 (layer 20) is dated 1680 – 1320 BC. This layer according to ASI was a pit and so these early dates have little meaning.*** *" (Page 188)*

" Periodization was done on the bases of layers, centuries and dynasties. ... I will not agree with periodization. ...According to me in history the dynasty wise, century wise periodization for period is correct. In my opinion periodization in history and archaeology is different. In my opinion in archaeology the periods referred above as period 1 to IV is the Early Historic period. . . .I will not agree with the sun division on the basis of dynasty that has been provided by ASI." (Page 189-190)

"According to me the terms for identification for periods in

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history and archaeology are different but not altogether different. . . . It is more or less correct to say that periodization on the basis of centuries is correct." (Page 193)

3841. A few thing, which we may say immediately to show apparent false allegations are that para 4(B) of the complaint said that according to ASI, the total cultural deposit is 10.80 metre but Appendix IV, at the end of the book, mentions total depth dug for trench G7 as 13.45. The complainant probably has not seen the report properly which says that the natural soil was found at 10.80 metre but the ASI people dug the trench further to find out and ensure the presence of natural soil and this fact they have also mentioned in the report. Similarly, PW-29 on the one hand stated that she agree with N.B.P.W., Mughal and late post Mughal periods, but do not agree for rest of the period (Page 71) while PW-24 has expressed his agreement with all other periods except 5, 6 and 7. Similarly, on page 70, PW-29 says that terminology and periodization are not most important while PW-24 has expressed a different view on page 186 and says stratigraphy is the backbone of any excavation. The statement of PW-29 on page 186 is contradictory to what she has said on page 182-183.

3842. PW 30 (Dr. R.C.Thakran), though assailed ASI report on the ground of lack of integrity and manipulated nomenclature etc. but its main stress is not that of wrong interpretation but she says that ASI has interchangeably used periods VI and VII according to convenience so as to co-relate the Finds, structural or otherwise, with a period which may give it a desired result. The part of objection with respect to

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periodization of PW 30, we have already noted above in para 535 from page 598 to 602. In the cross examination, however, he has said :

''पुरातात्विक उत्खनन और उत्खनित सामग्री के समुचित विश्लेषण के लिए ट्रेंच की स्ट्रेटीग्राफी का निश्चित तौर पर बहुत महत्व है।

प्र0– स्तर– विन्यास अर्थात् विभिन्न स्तरों के निर्धारण (स्ट्रेटीफिकेशन आफ़ लेयर्स) का क्या आधार होता है?

उ0–पुरातत्व में किसी भी स्तर (लेयर) का निर्धारण करने के लिए उस स्तर विशेष में पायी जाने वाली सामग्री का स्वरूप व परत की बनावट म जिस तरह की मिट्टी सम्मिलित होती है, यह स्तर–निर्धारण करने में मुख्य आधार का काम करते हैं।

जब भी कभी पुरातत्व में खुदाई के दौरान लेयर की पहचान की जाती है, तब यह भी जानना आवश्यक होता है कि उस लेयर की मिट्टी की संरचना क्या है, उसका रंग क्या है, उसकी कठोरता कैसी है, उसमें मानव–निर्मित सामग्री है या नहीं, इन सभी बातों का विशेष ध्यान रखा जाता है। हालांकि, उपरोक्त आधार बहुत महत्वपूर्ण हैं, लेकिन इसके बावजूद भी स्वतः पर्तों (लेयरर्स) से यह स्पष्ट होता है कि प्राचीन काल के अवशेषों वाली यह लेयर्स भिन्न भिन्न हैं। इनकी पहचान करने के लिए पुरातत्ववेत्ता को ही पुरातत्व नियमों के अनुसार इन लेयर्स की अलग–अलग पहचान करनी जरूरी होती हे। लेयर्स की मोटाई अलग–अलग हो सकती है, मोटाई अलग होने के लिए विभिन्न कारक हो सकते हैं।'' (पेज 63–64)

"Question:- What is the basis of stratification of layers ?

Answer:- In stratification of any layer, the form of the material discovered in that particular layer and the type of soil inherent in the formation of its coats, work as main bases in archaeology.

In archaeology, whenever identification of a layer is carried out in course of digging, it is also necessary to know what the soil structure of that layer is, what its colour is, how hard it is and whether man made materials

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are in it or not. All these facts are specially taken into account. Despite the afore-said bases being very important, it is not clear from layers themselves that these layers comprised of remains of the ancient time are different. For their identification, it is necessary for an archaeologist to separately identify them in accordance with rules of archaeology. The width of layers may be different which may be due to several factors." (E.T.C.)

''ट्रेन्च के खोदे जाने पर स्ट्रेटीग्राफ़ी की लेयर्स की मार्किंगं (नम्बरिंग) ऊपर से नीचे की ओर की जाती है जबकि उत्खनन से प्राप्त विभिन्न सांस्कृतिक कालों की मार्किंग नीचे से ऊपर की तरफ़ की जाती है। अगर लेयर सं0 2 पर लेयर सं0 3 स्थापित है तो यह माना जायेगा कि ''लेयर 2 रेस्टिंग आन लेयर थी'। (पेज 66)

"On trenches being dug up, stratigraphical layers are marked from top to bottom; whereas several cultural periods discovered as a result of excavation are marked from bottom to top. If layer no. 3 is placed on layer no. 2, it will taken to mean 'layer-2 resting on layer-3." (E.T.C.)

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''शुंग के बाद कन्नव व कुषाण काल आते हैं और कुषाण काल के बाद मोटे तौर पर गुप्ता काल आता है। गुप्तकाल का अंत 600 ईस्वी में आकर खत्म हो जाता है। गुप्तकाल के बाद सामान्य तौर पर अर्ली मिडिवल पीरियड की इतिहास में शुरूआत मानी जाती है। ***अर्ली मिडिवल पीरियड 600 ए 0डी0 से शुरू होता है और दिल्ली सल्तनत के स्थापित होने तक यही काल चलता है। दिल्ली सल्तनत की स्थापना 1206 ईस्वी में हुई इसीलिए 600 ए0डी0 से लेकर 1206 ए0डी0 को अर्ली मिडिवल पीरियड के नाम से जाना जाता है।*** *600 ए0डी0 से 1200 ए0डी0 के बीच में दिल्ली पर अनेक वंशों के राज्य समय–समय पर रहे। मुख्य तौर पर गहड़वाल, चौहान, गूजर प्रतिहार, चालुक्य आदि के राज्य दिल्ली व दिल्ली के आस पास में रहे। फिर कहा कि चालुक्य का क्षेत्र दिल्ली के आस–पास नहीं था, वह उत्तरी महाराष्ट् में होता था। यह ठीक है कि उपरोक्त चारो वंशज अपने को राजपूत कहते थे।* ***यह ठीक***

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है कि कोई इतिहासकार यदि किसी विशेष क्षेत्र को अर्ली मिडिवल काल के राजपूत काल से संबोधित करना चाहे, तो कर सकता है, *परन्तु इतिहास में वृहद रूप में इस काल को अर्ली मिडिवल काल के नाम से ही जाना जाता है।'' (पेज 111–112)*

*"The Shunga period is followed by Kannav and Kushana periods and the Kushana period is, roughly speaking, followed by the Gupta period. T**he Gupta period comes to an end in 600 AD. Generally, the history of early medieval period is considered to have started after the Gupta period and this very period continues up to the emergence of Delhi Sultanate. The Delhi Sultanate came to be established in 1206 AD and hence the period spanning between 600 AD to 1206 AD is known as early medieval period.** Between 600 AD to 1200 AD Delhi was under the reign of several dynasties from time to time. Mainly, Gahadwals, Chauhans, Gujar-Pratihars, Chalukyas, etc. had their reigns in Delhi and its adjoining areas. (Further Stated) The territory of Chalukya was not in and around Delhi; it was in northern Maharashtra. It is true that those belonging to the afore-said four dynasties called themselves Rajputas. **It is true that if any historian wants to name a particular period as the Rajput period under early medieval period, he can do so** but this period, under the broader division in history, is known only as early medieval period." (E.T.C.)*

*''डायनेस्टिक पीरियड में शुंग, कुषाण, गुप्ता तथा पोस्ट गुप्ता पीरियड आता है। **पोस्ट गुप्ता पीरियड में ही राजपूत पीरियड को सम्मिलित कर लिया जाता है। इसके बाद का काल सल्तनत काल कहा जाता है।** सल्तनत काल के बाद मुगल काल आता है। मुगल काल के बाद उत्तर मुगल काल आता है। उत्तर मुगल काल के बाद आधुनिक*

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भारत काल, जिसे ब्रिटिश काल भी कहा जाता है, आता है।

मुगल डायनेस्टी सन् 1526 ई0 से लेकर 1707 ई0 तक मुख्य तौर पर मानी जाती हैं मुगलवंश का प्रारम्भ बाबर ने किया।'' (पेज 192)

''The dynastic periods include Shunga, Kushana, Gupta and post Gupta periods. ***The Rajput period is included in the post Gupta period itself. Its subsequent period is called Sultanate period.*** *This Sultanate period is followed by the Mughal period. The Mughal period is followed by later Mughal period. The later Mughal period is followed by modern Indian period, which is also called the British period.*

The Mughal dynasty is mainly dated from 1526 to 1707. Babur ushered in the Mughal dynasty.'' (E.T.C.)

''मिडिवल काल अपने में विस्तृत काल है जो सन् 600 ए0डी0 से शुरू होकर सन् 1707 तक चलता है और इस पूरे काल के अन्तर्गत कई उप काल हैं, जैसे ***सन् 600 से 1200 तक अर्ली मिडिवल कहलाता है*** *और सन् 1206 से 1526 तक सल्तनत काल कहा जाता है व सन् 1526 से 1707 तक मुगल काल कहलाता है।'' (पेज 113)*

''The medieval period in itself is a broad period which begins from 600 AD and continues up to 1707 and the whole of this period has many sub-periods, for example- the period ***between 600 to 1200 AD is called Early Medieval period****; the period between 1206 to 1526 is called Sultanate period and the period between 1526 to 1707 is called the Mughal period.'' (E.T.C.)*

''भारतीय पुरातत्व इतिहास में मुस्लिम पीरियड शब्द का प्रयोग नहीं हुआ है, लेकिन ब्रिटिश इतिहासकारों ने भारतीय इतिहास के मध्य काल को मुस्लिम काल साबित करने की कोशिश की है। . . . . . .जेम्स मिल ने इस काल को मुस्लिम काल का नाम दिया है। जेम्स मिल ने सल्तनत काल

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व मुगलकाल को मुस्लिम काल के अंदर रखा है *अर्थात् मुस्लिम काल के अंदर उपकाल के अन्तर्गत उसे माना है।'' (पेज 113–114)*

*''**The words 'Muslim period' are not used in Indian archaeology and history but British historians have tried to establish the Medieval period of Indian history as the Muslim period . . . . James Mill has named this period the Muslim period. James Mill has placed the Sultanate period and the Mughal period under the Muslim period,** that is to say, he has taken them to be sub-periods of the Muslim period." (E.T.C.)*

''11वीं शताब्दी में गहड़वाल शासकों का राज्य कन्नौज पर था।''(पेज 113)

"In the 11th century, Kannauj was under the reign of Gahadwal rulers." (E.T.C.)

*''भारतीय इतिहास में किसी पीरीयड को ''इस्लामिक पीरियड'' नहीं कहा जाता है। **मैंने अपनी मुख्य परीक्षा के शपथ पत्र में एक जगह पर ''इस्लामिक पीरियड'' शब्द का प्रयोग किया है,** मेरा इससे तात्पर्य यह है कि इस काल में ग्लेज्ड टाइल्स, ग्लेज्ड पॉटरी का मस्जिद में प्रयोग किया गया है। यह कहना सही नहीं है कि इतिहास में पीरियडाइजेशन के नामकरण का कोई महत्व नहीं है। मैंने अपने शपथ–पत्र में ''इस्लामिक पीरियड'' शब्द का प्रयोग इतिहास तथा पुरातत्व के सन्दर्भ में नहीं किया है, बल्कि कुछ खास तथ्य, जिनकी चर्चा ऊपर की गई है, के सम्बन्ध में किया है। मैंने इस शब्द का प्रयोग इस्लामिक प्रचलनों के लिए किया है। ... **मैंने अपना शपथ–पत्र एक पुरातत्ववेत्ता के रुप में प्रस्तुत किया है।**'' (पेज 228–229)*

*''No period of Indian history, is called 'Islamic period'. **I have used the term 'Islamic period' at one place in the affidavit of my examination-in-chief,** by which I mean that glazed tiles, glazed pottery were used in mosques in this period. It is not correct to say that nomenclature of periodisation has no importance in history. The term*

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*'Islamic period' has not been used by me in my affidavit with reference to history and archaeology, and instead has been used for certain particular facts, which have been discussed above. I have used this term for Islamic practices. ...**I have filed my affidavit as an archaeologist.**" (E.T.C)*

*''इतिहास में तथाकथित इस्लामिक शासकों के राज्य का काल सन् 1206 ई0 से शुरु होकर 18वीं शताब्दी के मध्य तक माना जाता है। यहॉ पर तथाकथित से मेरा तात्पर्य यह है कि **मध्यकाल के इस भाग को इस्लामिक पीरियड के नाम से भी समझते हैं। बहुत से इतिहासकारों ने इस पीरियड को इस्लामिक पीरियड कहा है।** मैं किसी ऐसे प्रसिद्ध इतिहासकार का नाम अथवा उनकी पुस्तक का नाम नहीं बता पाऊॅगा, जिन्होंने अथवा जिनकी पुस्तक में ''इस्लामिक पीरियड'' शब्द का प्रयोग किया हो। ... इतिहास में डायनेस्टी के आधार पर काल निर्धारित किये जाने को मैं ठीक नहीं मानता हूॅ, परन्तु इतिहासकारों ने डायनेस्टी के आधार पर काल–निर्धारण किया है।'' (पेज 229)*

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*"In history, the period of the alleged Islamic rulers is taken from 1206 AD to mid of 18th century. By 'alleged', I mean that **this portion of the medieval period is taken as 'Islamic period'. Many historians have termed this period as 'Islamic period'.** I will not be able to name any famous historian or his book, where the term 'Islamic period' has been used. ... I do not approve determination of periods in history, on basis of dynasty but historians have determined periods on basis of dynasties." (E.T.C)*

(Note: The statement on page 229 is contrary to what the witness has said on page 228)

''प्र0–क्या इतिहास में किसी विशेष समुदाय या कम्युनिटी अथवा किसी विशेष वर्ग या किसी विशेष धर्म के आधार पर कालक्रम का निर्धारण किया जाता है?

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उ0–बहुत से इतिहासकार इन आधारों पर इतिहास का विभाजन व नामकरण करते हैं, लेकिन इतिहास के वैज्ञानिक दृष्टिकोण से इसे उचित नहीं माना जाता है। (पेज 231)

"Question:- Is period determined in history on basis of any particular community, class or religion?

Answer:- Many historians divide and name history on these bases, but from scientific view of history, it cannot be considered proper." (ETC)

प्र0–आपके उपरोक्त उत्तर से क्या मै यह समझूँ कि आप द्वारा प्रयुक्त ''इस्लामिक पीरियड'' शब्द का प्रयोग उचित नहीं है?

उ0– यह कहना सही नहीं है, क्योंकि मैंने इस सन्दर्भ में इस काल के विकास–क्रम के विशेष प्रचलनों की तरफ इशारा करते हुए ऐसा लिखा है।'' (पेज 231)

Question:- Should I infer from your above reply that the use of term 'Islamic period' by you, is not proper?

Answer:- It is not correct to say so, because in this reference I have mentioned so by referring to the particular practices of development-chain of this period."(E.T.C)

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''उत्खनन में लेयर्स की नम्बरिंग ऊपर से नीचे की ओर होती है तथा पीरियड का फ़िक्सेशन नीचे से ऊपर की ओर होता है।'' (पेज 345)

"At excavation, layers are numbered from the top to the bottom and fixation of periods is done from the bottom to the top." (E.T.C.)

*''**ए0एस0आई0 ने जो पीरियडडाइज़ेशन लेयर्स के अनुसार किया है, वह सही है,** परन्तु नामकरण के हिसाब से सही नहीं है और न ही वंशावली के आधार पर किया गया नामकरण उचित है। पीरियडाइज़ेशन की डेटिंग की मुख्य तौर पर दो विधियॉ हैं–*

1. *सापेक्षिक विधि*
2. *वैज्ञानिक विधि*

रिलेटिव पीरियडाईजेशन एक तो स्ट्रेटीग्राफी के मुताबिक और दूसरी पहले की संस्कृति की सामग्री तुलनात्मक विश्लेषण के आधार पर।

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एब्सोल्यूट व साइंटिफिक विधियॉ एक ही हैं। इस विधि को क्रोनोमिट्रिक भी कहते हैं। कार्बन डेटिंग मेथड व थमोल्यूमिनिसेंस मेथेड, डेड्रोक्रोनोलॉजी डेटिंग मेथड आदि हैं। यह कहना हमेशा के लिए सही नहीं होगा कि एब्सोल्यूट डेटिंग या वैज्ञानिक विधि से किया गया पीरियडाईज़ेशन एकदम ठीक होगा। यह कहना भी सही नहीं है कि साइंटिफिक विधि का पीरियडाइज़ेशन प्रायः सही ही होगा। स्तरीकरण द्वारा किया गया पीरियडाइजेशन भी शत प्रतिशत निर्णायक नहीं होता। दोनों विधियों द्वारा किया गया पीरियडाईज़ेशन तथा दोनों विधियों द्वारा तुलनात्मक विश्लेषण करीब–करीब सही माना जा सकता है, परन्तु एब्सोल्यूटली कनक्लूजिब नहीं। यह कहना गलत है कि आर्कियोलाजी में साइंटिफिक विधि द्वारा किया गया पीरियडाईज़ेशन कनक्लूज़िव ही होगा। क्योंकि इन विधियों के द्व ारा जो तिथिकरण किया जाता है वह उत्खनन में उत्खनित किए गए सैम्पल का प्रयोगशाला में किए गए विश्लेषण पर आधारित हैं और सैम्पल लेते वक्त उचित सावधानियॉ बरतना, सैम्पल्स की सही पैंकिंग करना, सैम्पल्स की सही मार्किंग करना और सैम्पल्स का एकदम प्राकृतिक शक्तियों से प्रभावित होना आवश्यक है।" (पेज 351–352)

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"***The periodization which ASI has done on the basis of layers,*** *is correct, but the same, when based on nomenclature, is not correct, nor is it proper to name them (i.e. periods) on the basis of genealogies. There are mainly two methods of dating through periodization -*

1. Relative method

2. Scientific method

Relative periodization may be based on stratigraphy and on the comparative analysis of the materials of the earlier culture. Absolute and scientific methods are one and the same .This method is also called chronometric. There are methods known as carbon-dating method, thermo-luminescence method, dedo -chronology dating method, etc. It will not always be correct to say that periodization carried out through absolute dating or scientific method

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will be entirely correct. It is also not correct to say that scientific method of periodization will often be correct . The periodization carried out through stratification is also not cent percent conclusive . Periodization and comparative analysis through both the methods, may be considered to be almost correct . But they are not absolutely conclusive . It is wrong to say that in archaeology the periodization carried out through scientific method will certainly be conclusive , because the dating done through these methods is based on analysis done in laboratories ,of samples excavated in course of excavations . And while taking samples, proper care should be exercised, samples should be properly packed and they should be properly marked. And it is natural for samples to get absolutely influenced by natural forces." (E.T.C.)

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"ए0एस0आई0 ने स्ट्रेटीग्राफी के चैप्टर में कार्बन डेटिंग के आधार पर जिस डेंटिंग का उल्लेख किया है, उसे मैं सही नहीं मानता, क्योंकि ए0एस0आई0 के द्वारा जो पीरियडाइजेशन किया गया है, वह ही अनुचित है। ... ए 0एस0आई0 द्वारा सेन्चुरीज के आधार पर की गई काल गणना की विधि को मैं सही मानता हूँ।

प्रश्न– क्या आपको इस बात की जानकारी है कि ए0एस0आई0 ने अपनी रिपोर्ट में विभिन्न लेयर्स की कालगणना जो शताब्दी में किया है, उसमें कार्बन डेंटिंग के रिजल्ट को आधार बनाया है?

उत्तर– संभवतः यह सही है, परन्तु मेरा मत है कि केवल मात्र कार्बन डेंटिंग द्वारा प्राप्त की गई डेंटिंग के आधार पर काल विभाजन को सही नहीं माना जा सकता है।'' (पेज 354)

"I do not take to be correct the dating, done through carbon dating method, about which A.S.I. has mentioned in a chapter on stratigraphy, because the periodization itself carried out by ASI is improper. ... I take to be correct

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the method of century-based reckoning done by ASI.

Question:- Do you have the knowledge that the dating of several layers which ASI has in its report done in terms of centuries, is based on the result of Carbon-dating method applied to them ?

Answer:- It is perhaps correct but my opinion is that the division of time done on the basis only of Carbon-dating cannot be treated to be correct."(E.T.C.)

(Note: The statement of witness is contrary to what PW 24 has said as also this very witness has stated on page 351 and 352)

3843. PW 31 did not make any comment with respect to stratification but PW 32 has virtually towed the line as that of PW 24 and 29 in her affidavit. She has said in para 6 of her affidavit dated 27.3.2006 about stratigraphy as under:

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"That one of the most important concepts in archaeology is stratigraphy. "The law of superposition states that the book at the bottom of the stack was put there before, and is therefore older, than the one placed at the top. Sediments generally obey this principle as well as the archaeological materials they contain ... The essence of stratigraphic analysis is determining discrete, superimposed layers of features and then examining their contents." It was so stated by Clive Gamble in his book entitled as "Archaeology: The Basics", published by Routledge (London & New York) 2001. A true copy of the relevant extract of the aforesaid book is enclosed herewith as ***ANNEXURE No. 1****. An examination of the stratigraphy as indicated by the sections of various trenches at the site of*

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Ayodhya revealed the following three important features:

(i) *That* ***only the archaeological deposits of Periods I, II and III are stratified and hence found in a primary context,*** *that is in their original place of use or discard.*

(ii) *That* ***the deposits from Period IV till Period IX are not stratified and the material found is in a secondary context.*** *In order words the archaeological deposits that have been described of Periods IV to IX mostly comprise of fill deposits brought from elsewhere for the purpose of construction in the Medieval Period. Hence this is not their original place of use or discard. The deposits from the Gupta Period onwards are not stratified is substantiated by the fact that as may as 15 pieces of terracotta figurines of later periods were reported from earlier levels, an impossible situation if deposits were actually stratified.* ***The ASI was Stratifying the layers incorrectly was even pointed out through a complaint filed on 26.06.2003 regarding Trench G8****. In Trench G8, under the top floor are the brick courses of a wall foundation. Under these brick courses is a fill deposit. Neither the foundation nor the fill deposit can be ascribed a layer. It appears that this stratification was done on the basis of the calcrete and brick filling that lies to the east. However, this method of stratification is completely wrong. The calcrete and brick filling visible in trench G8 belongs to a single construction*

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phase and cannot be ascribed separate layers. Moreover, the area that was excavated on 25th June lies to the west of the clacrete and brick filling. Thus, if stratification of the filling is wrong, stratifying a structure in relation to it is also incorrect. The whole principle behind stratification is to identify chronologically distinct phases. Thus, a brick wall of six courses of brick can not be ascribed six different layers. Similarly, six rows of calcrete alternating with brick, sandwiched with thick mortar, cannot be ascribed six different layers, the reason in both cases being a single construction phase.

(iii) *That there is a* ***possibility that there was no Early Medieval occupation and there was a gap between the Gupta (Period IV) and the Medieval Periods.*** *If we examine Plate 5 of the Final Report, a layer with no cultural material (termed in archaeology as a sterile layer) can be clearly seen, for example, below layer 4. The ASI has marked out this layer but has not numbered it. Sterile layers indicate periods when there was no habitation or occupation. These layers are ascribed to the Early Medieval/ Sultanate Period (Period VI) in the tentative periodization of the site. A gap in occupation of the site between the Early Historic and Medieval Periods had been noted as early as 1969-70 by a team of archaeologists from the Department of Ancient Indian History and Culture, at BHU, Varanasi, and later in 1976-77 by Professor, B.B. Lal and his team from the A.S.I. The*

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ASI is trying to falsely project a continuous occupation of the site from the Early Historic to the Medieval Periods. Neither the stratigraphy nor the artefacts, however, substantiate such a claim. There is a certain bias here, which again goes against the norms of archaeological objectivity, to force a certain interpretation on the material, that from the 10th century AD onwards the area was occupied by Hindu religious structures.

In the same context, the layering of fill deposits in J3, J4, J5, J6, K6, K7, L7, L8, J7, J8 was done to show continuous occupation in stratified contexts. It was only when complaints were made that these fill deposits were acknowledged but eventual registrations of artefacts from these deposits in the final Report were left uncorrected."

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3844. In her cross examination, however, she (PW-32) says:

"There is no period known as early medieval Saltanate period. I have not heard any period which is called as 'Early Mughal period'. I came across the 'Early Medieval Rajput Period' in the ASI report filed in this case. Process of periodization is based on certain features found in polity, society and economy. Stratification is based on discerning layers in sections that have formed due to either geological or human activities."(Page 31)

"I mean to say that ASI people have flouted the principles and methods of stratification, such as the fill deposit has to be reported as a fill deposit and a pit has to be reported as a pit but in the excavation in question, the ASI was wrongly

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stratifying a pit and ***in the report they themselves have gone on record saying that pits in J-3 and also in K-7 and K-8 were wrongly identified as layers and they themselves admitted that pits were stratified and they have stated so in the report****." (Page 93)*

"Marking of different layer is done on the basis of soil colour, soil texture, compactness of the soil and cultural material." (Page 110)

"It is correct that several layers put together comprise one cultural period. Contemporary, layer means it is in relation to some other layers, e.g. Layer 14 in J-3 could be contemporary with layer 18 in trench G-7, both belonging to NBPW period. Similarity of number is not necessary because it may vary from trench to trench." (Page 111)

"Method of association in archaeology means associated cultural material in a layer. In a layer, so many different articles may be found, such as bangles, potteries, bones etc." (Page 112)

"I have learnt from the report of Prof. A.K. Narain that the entire Ayodhya is one site and stratification can be similar. In archaeology entire Ayodhya would be referred to as one site." (Page 130)

"'Stratigraphy' means a study of layers of different chronological periods indicating what comes earlier is at the bottom and what follows will be above it and so the sequences gets built up 'Early historic period' is a term used by historians to describe the period between sixth century B.C. and sixth century A.D. and 'medieval' is used by the historians for the period between 12th and 18th

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centuries. ***The period between sixth century A.D. to 12th century A.D. is called 'early medieval period'. The medieval period has been further sub-divided into two periods, namely 'Sultanate period' and 'Mughal period'.*** *There is no period like pre-Sultanate period." (Page 23)*

"This chronological order was created by James Mill who wrote the book 'History of India in 1830. 'Filling' means that for the purpose of construction activities, a ground has to be levelled and while doing so, some earth is brought from outside to fill up the uneven ground. "(Page 23)

"...the whole issue of periodization in history and archeology is contested and debates are there."(Page 36)

"Early medieval-6/7th century up to 12th Century A.D.

Medieval-Generally 12th to 18th Century A.D.

late medieval-Generally 18th century or late Mughal period." (Page 107)

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"As far as I know ***Century wise periodization is recognised under archaeology*** *because certain diagnostic material do establish chronology in terms of centuries.* ***Dynasty-wise*** *periodization is a subject of historians although* ***sometimes Archaeologists do follow it****. It is true that in excavation on the disputed site* ***the ASI has adopted all the three methods for the purpose of periodization****." (Page 125-126)*

"Volunteers that she does not agree with the periodization given by the ASI." (Page 126)

3845. PW 32 in general appreciated function of ASI:

"It is true that each trench was being supervised by an archaeologist. It is also correct to say that excavation was

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being conducted as per norms of grid system of excavation- which is one of the accepted system of excavation. It is correct to say that the excavation work was going on in presence of the parties and their nominees; and two judicial officers under the orders of the court were also supervising the excavation. ***So long I was there, the presence of the parties, their nominees and supervision of the judicial officers continued.*** *Generally, for antiquities, it was three dimensional recording but for other finds, just a depth was recorded. Photography and Video recording of trenches and also of antiquities were also being done." (Page 121)*

"It is true that at the site in dispute, excavations were made horizontally as well as vertically." (Page 123)

"It is correct to say that the ASI excavated up to the required depth." (Page 125)

"It is correct to say that for getting result in compliance of court orders excavation by horizontal and vertical methods were necessary which has been done by ASI. In this case only vertical excavation was not sufficient." (Page 147)

3846. From the statement of the six expert witnesses produced on behalf of plaintiff (Suit-4), we find that all of them are not unanimous in saying that the entire stratigraphy or periodization made by ASI is bad or incorrect or suffers with such material illegality or irregularity that the same deserves to be rejected, which would ultimately may result in rejection of the entire report itself. Their statements are also contradictory, vague, confused and based on more of conjectures.

3847. PW 16 on the one hand says that he has no objection

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to the categorization of period 1 to 5 (page 455), tried to dispute the ascertainment of period 6-7 (page 454), then on page 456 made some unclear statement by observing that period 7 should come after period six as Sultanate period. What appears to us is that in the ASI report the period 6 has been termed as "Medieval Sultanate" and period 7 as Sultanate but PW 16 wanted that period 6 should not be termed as "Sultanate" at all since it started in 13th century. He, however, suggested that in another manner period 6 ought to have started with 13th century if it is related with "Sultanate period".

3848. PW 24 on the contrary stated that after the first four periods there appears to be total dissolution for a long time and this has disturbed the continuity of the period. The 4th period (Gupta period) ended in 6th century and thereafter there is a gap of about 700 years since the further layer of natural deposition with the evidence of habitation appears to be related to 13th century hence total periodization instead of 9 ought to have been 5. He says that 5th, 6th and 7th period has been determined arbitrarily. The gap of 7th century to 12th century he has tried to justify on the ground of flood on account whereof the people abandoned the place for along time. However, on page 156 he himself admits that there is no evidence of any disastrous flood witnessed at Ayodhya between 600 AD to 1200 AD and further that there are evidence revealing that efforts were made to prevent such devastating floods. This shows that there had to be habitation otherwise who took steps for preservation of disastrous flood and why, if there was no habitation and the place stood abandoned. His statement on his own is ex facie contradictory, reflects on a total confusion to his part. Then he

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tried to justify his conclusion by stating on page 170 that all the finds were not discovered from the levels as claimed by ASI and that is why it could not have determined the period correctly. PW 16 has not disputed that the finds discovered by ASI were actually found by them. Then PW 29 says that except NBPW Mughal and late post Mughal period she disagree for the rest of the periods (page 71). She pointed out that the ASI had made some change in the nomenclature inasmuch as in the Chapter of stratigraphy, period six has been termed as Medieval Sultanate but in the subsequent chapter of result they have termed period 7 as medieval Sultanate and period 6 has been termed as early medieval period.

3849. PW 30 on his own evolved a different theory by suggesting that periodization made on the basis of carbon dating is not correct though the process of cabon dating has been appreciated by PW 16 and 24 both. PW 24 on page 170 has justified layer 5 and 6 as that belonging to early Medieval Sultanate period but then on page 271 disagrees with centurywise periodization made by ASI.

3850. Two more witnesses namely, Prof. Shereen F. Ratnagar, PW 27 and Dr. Sitaram Roy PW-28 were also examined by the plaintiffs (Suit-4). Both of them claimed to be Expert (Archaeologist). Both were examined before ASI proceedings. PW 27 basically sought to contradict Dr. B.B. Lal's observation about Ayodhya based on his excavation thereat made in 1976-77 and supported the book Exhibit 63 (Suit-4), ("Ayodhya: Archaeology after Demolition") written by Prof. D. Mandal criticising Dr. B.B. Lal's report with respect to Ayodhya.

3851. Exhibit 14 (Suit-5) (Register 20, pages 125-127)

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contains two pages number 52 and 53 of Indian Archeology 1976-77- A Review. At Sl. No. 75, it talks of excavation at Ayodhya, District Faizabad conducted by Dr. B.B. Lal and Sri K.V. Soundra Rajan. It reads as under:

"75. Excavation At Ayodhya, District Faizabad.- In continuation of last year's work which was taken up under the project called 'Archaeology of the Ramayana Sites', excavation as resumed under Professor B.B. Lal of the Indian Institute of Advanced Study' Simla and Sri K.V. Soundra Rajan of the Survey, assisted by Sarvashri B. Narasimhaiah, Rambabu, M. S. Mani, R.K. Sehgal, J, C. De and A.K. Mishra of the Survey and Surya Kant Srivastava and R.N. Kaw of the Institute. The work was concentrated on two important sectors in the ancient part of the city, namely Ram Janma Bhumi mound and the open area to the west of Hanuman Garhi, besides a few trenches at Sita-ki-Rasoi.

The excavation revealed a fairly compact and working sequence for the antiquity of the place from its first settlement over the natural soil. This began with the use of the well-known Northern Black Polished Ware, in all its shades. At the lowest levels, alongside the Northern Back Polished Ware, were also found a few sherds of grey ware, painted with fugitive bands in black pigment along the rim or obliquely on the exterior. This is taken, on a consideration of the position of this ware at Sarvasti, Piprahwa, Kausambi, etc., as the very late and degenerate phase of the well-known Painted Grey Ware found at Hastinapura, Mathura, Ahichchhatra, etc. On the basis of

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the date available from other sites like Mathura, Sravsati, Kausambi, etc., it would seem reasonable to ascribe the first occupation of the Janma Bhumi area to circa seventh century B.C."

3852. The statement of PW 27, may not be relevant for the purpose of testing ASI report. But even otherwise we find that her deposition and opinion does not inspire confidence and it is short of the "expert's opinion" which may be termed "relevant" under Section 45 of the Evidence Act. She admits of having never visited the disputed site till she appeared as witness in these cases. She had written "introduction" to Prof. Mandal's book (Exhibit 63). From her cross-examination it is evident that she had no experience of field excavation.

"It is correct that in India I have not done any digging and excavation on my own." (page 52)

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3853. She admits of writing things giving hypothetical sketches with respect to the disputed site:

"It is also correct that at pages 7, 8, 11, 12, 13 and 14 some sketches are given in my Introduction. Those sketches are purely by way of Introduction to the book as they are hypothetical. It is correct that from pages 16 to 69 is the book itself." (page 53)

3854. Merely on the basis of a photograph entire book and article etc. has been written. About her own work PW 27 says:

"It is substantially correct that I wrote my critique on the basis of the said sole photograph." (page 63)

3855. Her lack of knowledge about disputed site is evident from page 67:

"I am not absolutely certain of the area and extent of

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the disputed site at Ayodhya. I do not know in which part of Ayodhya the disputed site is located."

3856. Though she came to support the book written by Dr. Mandal criticising Dr. B.B.Lal's report but when specifically asked whether she agree with the report of Dr. B.B. Lal relating to Ayodhya on page 75 she says:

"I cannot say in terms of whether I agree or disagree with them."

3857. She (PW-27) also admitted that there is a possibility of some structure of the earlier period at the disputed site. On page 84 she said:

"It is correct to say that I do not rule out the possibility of any other structure of any other early period at the disputed site."

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3858. Similarly, PW 28, Dr. Sitaram Roy, a retired Director, Archaeology from the State of Bihar was also examined in 2002, i.e., before the excavation proceedings commenced. He tried to make a statement that according to his studies and as a student of Archaeology he can say that neither Ram Janam Bhumi temple nor any other kind of temple ever existed at any point of time, therefore, the question of construction of mosque after demolition of temple does not arise. He also tried to dispute stone inscription found in December, 1992 that the script therein is not of 12th century as is being claimed by other side. On archaeological evidence he can say that Lord Rama was not being worshipped at Ayodhya in 12th century and in 12th-13th century no temple of Lord Rama existed at Ayodhya. On the one hand he appeared as Expert (Archaeologist) and on the other hand he has tried to make

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various statements on History and other subjects.

*''**मैं एक इतिहासकार के रूप में** अथर्ववेद को इतिहास का प्रमाणिक ग्रन्थ नहीं मानता हूँ।'' (पेज 13)*

*''**As a historian,** I do not recognise Atharvaved as an authoritative book.'' (E.T.C.)*

*''**अयोध्या के जितने भी वर्तमान मंदिर हैं मंदिर के अवशेष हैं उनमें आज से तीन सौ वर्षों के पूर्व का एक भी उदाहरण नहीं मिलता है। फैजाबाद में करमदण्डा अभिलेख से मैं परिचित हूँ।** संभवतः यह गुप्त पीरियड का है इस समय याद नहीं है। **करमदण्डा अभिलेख में मंदिर का जिक है।'' (पेज 19)*

*''**The temples which are existing at present at Ayodhya are the remains of the temples, out of them no instance of any temple dating back to three hundred years from today is found. I am aware of the Karamdanda inscription of Faizabad.** Probably, it relates to Gupta period, presently, I do not remember. **There is reference of a temple in Karamdanda inscription**.'' (E.T.C.)*

*''**सातवीं शताब्दी के अफसढ़ के मंदिर की दीवार पर चूने से बनायी गयी राम, लक्ष्मण, सीता, हनुमान की आकृतियॉं थीं** जो अब नहीं हैं। **यह आकृतियॉं दसवीं, गयारहवी शताब्दी की नहीं, बल्कि सातवीं शताब्दी की थीं।***

***पुरातत्ववेत्ता इस मंदिर को सातवीं शताब्दी का मानते हैं** क्योंकि इसमें उस काल का अभिलेख मिला है जिसका नाम है राजा आदित्यसेन का अफसढ़ से प्राप्त अभिलेख।'' (पेज 20)*

*''**On the walls of temple of Afsarh of 7th century, there existed images of Ram, Lakshman, Sita, Hanuman made of lime,** which do not exist now. **These images were not of 10th-11th century but of 7th century.***

The archaeologists recognize this temple as of 7th

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century *because it contains the inscription of that period, named as inscription of King Adityasen recovered from Afsarh." (E.T.C.)*

''मैंने शिलालेख का पूर्ण फोटोग्राफ, स्टैम्पेज या उसका डिसाइफरमेंट नहीं देखा है। मैंने अपना लेख लिखते समय शिलालेख को या उसके पूरे फोटोग्राफ को देखने की जरूरत समझी थी, परन्तु मेरे पास जो साधन थे उसे कारगर न होने की दशा में मैं पूर्ण फोटोग्राफ देख नहीं पाया था।'' (पेज 24)

''I have not seen full photograph, stampage of the inscription or its decipherment. At the time of writing my article, I felt need to see the inscription or its full photograph, but for wants of means I could not see the full photograph. '' (E.T.C.)

3859. He tried to dispute the very factam of place of birth of Lord Rama in Ayodhya. This statement now goes against the stand of the plaintiffs (Suit-4) in view of the statement made under Order 10 Rule 4 in April 2009. This witness has no experience of field Archaeology as is evident from page 66. The credibility of the said witness, based on his archaeological conduct is tried to be dislodged by the defendants, in the following manner:

''यह कहना गलत है कि जब मेरी आर्कियोलाजिकल सर्वे आफ इंडिया में नौकरी हुई तो प्रो0 आर0एस0शर्मा उस सेलेक्शन बोर्ड में सदस्य थे। यह कहना बिल्कुल गलत है कि जब मैं बिहार सरकार में एक्सप्लोरेशन एंड एक्सक्वेशन में आफीसर के पद पर कार्यरत था तो कुछ मूर्तिया गायब हो गयी थीं। मैंने श्री धर वासुदेव सोहनी का नाम सुना है वह बिहार के लोकायुक्त थे। मेरे कार्यकाल में मूर्तिया गायब नहीं हुई थी। यह कहना बिल्कुल गलत है कि ''तथाकथित मूर्तियों के चोरी '' के बाद कोई सर्च पार्टी बनी थी और इस सम्बन्ध में मैं स्पष्ट करना चाहूंगा कि एंटीक्वीटी एण्ड आर्ट ट्रैजर्स एक्ट के तहत कोई भी प्राईवेट इंडिविजूअल अपने पास पुरा अवशेषों को निबन्धन कराकर रख सकता है। इसी के

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अर्न्तत डा0 आर0बी0सोहनी के पुत्र श्रीनिवास राव, आई0ए0एस0, के नाम से कुछ पुरा अवशेष निबन्धित कराने के लिए आवेदन पत्र देकर डा0 सोहनी, लोकायुक्त से सेवानिवृत्त होते ही उन पुरा अवशेषों के साथ पूना चले गये। वहीं पुराअवशेष डा0 सोहनी ने बिहार सरकार को अपने नाम में दीर्घा खोलने की शर्त पर सशर्त ऋण पर बिहार सरकार को सौंप दिया। यह बात गलत है कि मेरी पेंशन से 20 प्रतिशत की कटौती हो गयी। ***यह ठीक है कि मेरी पेंशन से बिहार सरकार ने 5 प्रतिशत कटौती की बात कही थी*** *पर न्यायालय के आदेश से वह आदेश निरस्त हो गया। आज मैं पूरी पेंशन पा रहा हूँ।* ***मेरी पेंशन की उपरोक्त कटौती का आदेश इस आधार पर हुआ था कि मैंने सोहनी साहब को ऐन्टीकुटी ले जाने से रोका नहीं।*** *'' (पेज 83)*

"It is wrong to say that when I got job in Archaeological Survey of India, Prof. R.S. Sharma was a member in that Selection Board. It is totally wrong to say that while I was posted as Exploration and Excavation officer in Bihar Government, some idols had been stolen away. I have heard the name of Sri Dhar Vasudev Sohani. He was Lokayukt in Bihar Government. The idols were not taken away during my period. It is wholly incorrect to say that any search party was constituted after the 'alleged theft of idols' and in this connection, I would like to make it clear that under the Antiquity and Art Treasures Act, any private individual can keep with him any archaeological remains after getting it registered. Under this very Act, Dr. R.B. Sohini soon after his superannuation from the post of Lokayukt and after submitting an application for registration of certain archaeological remains in the name of his son Sri Niwas Rao I.A.S., went to Pune with the aforesaid archaeological remains. Dr. Sohini handed over the said archaeological remains to the Bihar Government

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on the condition to allot a gallery in his name on conditional loan it is incorrect that the 20 % of my pension was deducted. ***It is correct that the Bihar Government had said for deduction of 5% from my pension*** *but by the order of the Court tht order was cancelled. Today I am drawing full pension.* ***The order for the aforesaid deduction from my pension was passed on the ground that I had not prevented Sohini Saheb from carrying away the antiquity****." (E.T.C.)*

3860. However for our purposes, we do not find the above facts relevant in any manner.

3861. PW-28 has admitted that Dr. R.S. Sharma has been his teacher and when he was selected for the post of Director Archaeology and Museum, Bihar by Public Service Commission Dr. R.S. Sharma was the Expert Member in the selection board. He also admitted his acquaintance with Dr. Sharma since 1953 when he was in Post-Graduation (page 83). His Article (Paper No. 199 C 2) was published in 1996 in a book where Prof. K.M. Shreemali of Delhi University was Editor.

3862. Supporting stratificaton/periodization made by ASI, Sri M.M.Pandey submitted that:

I. Archaeology provides scientific factual data for reconstructing ancient historical material culture, understanding Archaeology for the past is a multi disciplinary scientific subject and requires a team of workers for effective results. Excavation of ancient sites is one of the major works of Archaeologists. As it is a scientific discipline, it uses scientific methods in its working.

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II. All Archaeological excavations are revealing and also at the same time destructive; revealing in the sense they yield unknown data like structures, antiquities etc, destructive that as one digs layer after layer, the upper layer have to be removed to go deeper and deeper to know more.

III. The area proposed to be excavated is divided into squares rising grid system and all available latest recording by documentation system, i.e., photography, video-recording etc. is done before starting excavation at desired and appropriate stages so that discovery of all structural remains and important finds to maintain a proper record for all future purposes.

IV. In archaeological context, layers (strata) are occupational and deposits caused by human and natural activities are generally distinguishable by their colour and texture as one digs.

V. Layers (strata) are important as they establish the relation between the structures and antiquities that help in establishing chronology provided the layer remained undisturbed.

VI. The thickness of a layer (stratum) also indicates the time span of activities and occupation..

VII. In some places long walls may pass through several trenches but these are easily seen through the layers, the baulk and are retain.

VIII. Archeological excavations and its methods have been referred in various books. According to the views referred to by Mr. Brain M. Faigan in his book styled as "In the

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beginning an introduction Archeology" as well as according to the famous archeologist who is considered to be father of Archeology Sir Mortimer Wheeler in his book "Archeology from the earth" have settled certain norms of excavation. According to them archaeological excavation work is a scientific investigation which is be conducted on sound research methodology.

IX. Here laboratory work also includes the process of writing report.

X. Detailed records and accurate measurement are the foundations of a sound, scientific excavation. Documentation (recording) throughout the excavation includes site diary, antiquity register and daybook. This day book records all events which have meticulously maintained in this case also. Moreover the day-today register has been duly signed by their advocates and expert nominees present on the spot in presence of Judge Observers.

XI. The antiquity Register is maintained to contain a special number of each small find, numbered with its level, trench number, depth below surface and additional information relating to the layer in which the object was found. This procedure provides a permanent record of significant artifacts which must be described individually in the final report and whose preservation is important. Lists of 'bag of finds' found during excavation are also recorded in this register; each bag, especially of common artifacts like pottery, animal bones, and stone implements receives a serial number which is recorded in a list in the

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back of the small-finds register.

XII. Recording of Site Plan, structures and stratigraphic sections are equally important. Accurate plans provide a record of measurement and grid set up before excavation to provide a metrical framework for trenching. A system of redial coordinate measurements is used to record the position of horizontal features, with the radial lines forming an accurate network of reference points.

XIII. Three dimensional recording of major features and important artifacts is also a vital part of the excavation process. Many huts, pits or burial groups are important merely because of their association with other features or artifacts. Such information can be recovered only by 3-dimentional measurements, i.e. by recording the feature's horizontal and vertical coordinates with reference to the site grid.

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XIV. In Archeology period of construction and stratigraphy is most important. Stratigrahpy is itself a scientific basis of periodization. It is based on Geological law of superimposition. Position of layers and their relation with structures is the basis for the same. Layers (strata) have to be worked out on the basis of texture, behaviour, colour, etc. It has to be seen whether the deposit is normal or flood deposit, layer (stratum) is disturbed or undisturbed, relationship of layer with structures, its contemporary deposit etc. For determination of age of the layer carbon dating is considered to be most scientific method. Periodization is done on the basis of finds that includes pottery, epigraphic materials, artifacts etc.

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complied with C-14 dating.

XV. A perusal of chapter 3 of the report makes it clear that ASI has adopted all the three methods of periodization and has based its report on sound archeological norms. It is well settled that periodization is done mainly in either of the three ways: - (1) Century wise (timeframe periodization) (2) Dynasty wise periodization (3) Layer (stratum) wise (Stratigraphically). The dating are of two types i.e. absolute dating and relative dating. The carbon dating is considered to be absolute dating being periodization by scientific investigation. Relative dating is base on stratigraphical observation. There may be variation in nomenclature of the periodization amongst the scholars but there may be no point of controversy in century wise periodization. However the report mentions about all the three methods in its reports as is evident from the report at pages 38, 39, 40, 41, 43 & 44 (volume 1).

XVI. To begin with, i.e. historically the year 1192 A.D., i.e. 12th century, is the end of the Hindu rule in Delhi when Prithviraj Chauhan was defeated by Muhammad Ghori in the 2nd battle of Tarain and Ghori appointed Qutabuddin Aibak as his nominee to look after the territory of Delhi which he did although formally he proclaimed himself to be the ruler (Sultan) only in 1206, after the death of his master. Thus, for all practical purposes, in Delhi the Sultanate started during the closing years of the 12th century A.D.

XVII. Another world fame renowned scholar of Indian History professor A.L. Basham used the term

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"Medieval Hindu India for Chapter 6, pp. 51-59 in his book "Cultural History of India", Oxford, 1975".

XVIII. On the basis of well established datable artifacts, cermacised and C-14 dates, the ASI report has followed the cultural sequence of Ayodhya as under:-

NBPW= Northern Black Polished Ware

RW= Red Ware

BSW= Black Slipped Ware

GW= Grey Ware

Late & Post Period IX Glazed Ware + RW+BSW (p.109)

Mughal

Mughal (p.41) Period VIII Glazed Ware + RW+BSW (p.109)

Medieval Period VII (1200-1600 A.D.) " " (p.109)

Medieval (p.40) Period VI (1000-1200 A.D.)- RW+BSW+GW (p.104)

Sultanate

Post-Gupta(p.40) Period V (700-1000 A.D.)- RW+NBPW+GW (p.98)

Rajput

Level

Gupta Period IV (400-600 A.D.)–RW+BSW+NBPW

Earlier material of pd. III is in pd. IV (p.40)

Kushan(p.39) Period III (100-300 A.D.) – RW

-Triratna Sample (p.85)

-Spouted wide open mouth of Makar (p.85) & Plate 69/71

Sunga Period II (300-100 B.C.)-

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NBPW+RW+BSW+GW (p.39)

<u>NBPW Levels</u> Period I (600-300 B.C.)– NBPW+BSW+GW+RW (p.38)

It is pertinent to mention here that

The pottery sequence of pd. VII, VIII & IX are the same. (p.108)

XIX. A perusal of the report submitted by ASI shows that the excavations were conducted by the ASI in a most standardized settled norms of excavations, Recording and writing of the reports were strictly followed. The excavations were conducted in vertical and horizontal manners by way of grid system of layout for excavation. Three dimensional recording were done and principal of stratigraphy was strictly followed. The Archaeological excavation being a scientific investigation was conducted on spot in accordance with settled norms. The trench supervisor's note book, diary, daily register antiquity registers were maintained regularly in presence of the parties. Three dimensional records were done and principles of stratigraphy were strictly followed.

XX. The objection of the plaintiffs that in view of the evidence drawn from the despositional history of the site there was no habitation at this site after Gupta Period for a long time. It was reoccupied after a long desertion in 13th century A.D.

XXI. In this connection it may be submitted that the source of this 'evidence drawn' can only be a figment of malicious mind. The Report mentions on page 271 para one:

"Another noteworthy feature is that it was only duing

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and after Period IV (Gupta level) onwards upto Period IX (late and post Mughal level) that the regular habitational deposits disappear in the concerned levels".

XXII. In the same para it further mentions:

"The area below the disputed site thus, remained a place for public use for a long time till the Period VIII (Mughal level) when the disputed structure was built".

XXIII. From where and on what basis 'a long desertion' is established and how the site is shown as 'reoccupied in 13th century A.D.' is neither clear not justified.

XXIV. The objection of the plaintiffs that essential requirement in an excavation report is a chapter that describes, one after the other, the main strata or levels found in the excavation, their nature (soil texture, colour, etc.) and contents. But there is no such section, level alone a chapter, in the Ayodhya report.

XXV. Periodization has been done on the basis of finds of a particular layer or set of layers that is on the basis of contents of the layers.

XXVI. The Chapter III covers all the salient points required for defining and study of layers and their respective periods.

XXVII. It is again the 'ostrich attitude' of the objector who wishfully do not want to acknowledge the existence of all these features in the Chapter IIII "Stratigraphy and Chronology" from pp. 37-47 in the Report.

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XXVIII. The objection of the plaintiffs that descriptions given in the report are not always matched by the sections. The reverse is also true. The report does not states the period to which layer 6 of J3, layers 4-6 in ZE1-ZF1 And layers 3-6 in e7 belong.

XXIX. In this connection it may be submitted that on page 46 of Report in 5th line form top it is mentioned that the material marked those from layer 1 to 6 "belongs to a pit and the layers are superficial". So far as the period of the pit is concerned the data unearthed from the excavation is too scanty to determine, as the successive digging of pits for later construction in the same spot has obliterated the earliest pit line that could have dated the pit.

XXX. In any excavation report it is neither required nor possible to include each and every layer of every trench excavated while describing the stratigraphy of the site. However, in general walls 16 and 17 have been defined along with their associated layers to definite periods.

XXI. The objection of the plaintiffs that the numbering of the floors and other details are not according to the stratigraphy and the report is full of confusion.

XXXII. In this connection it may be submitted that confusion does not exist in the report rather it has been created out of lack of understanding of the subject and because facts are seen in isolation of one another and not in the right perspective. Archaeological evidences at any given site are found in different trenches and then they are put to gather to reach a meaningful conclusion. It is like

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completing a jigsaw puzzle. Therefore, any description of it should be seen and read in the same way.

XXXIII. There is no single trench which has produced all the floors and layers. Evidence of different trenches has been shown in the Schematic Cross Section.

XXXIV. The objection of the plaintiffs that the text fails to mention which particular layers in these (Tr. G2, G7, J5-J6 and E8-F8) and other trenches pertain to Period VII.

XXXV. In this connection is may be submitted that since the layers of this period are not regular depositional layers rather are the filling material brought from out side to level the area as a preparatory to lay the successive floors, these floors have been described to belong to this period. The layers of fill, which are sandwiched between these floors, naturally become contemporary layers and therefore, have been defined as belonging to this period. The excerpt from page 42 of the Report is incomplete and should be read with the remaining part of the same paragraph which reads as:

XXXVI. As some places due to differential coverage area of the floor itself while at some other places due to destruction or decadence one of these was found missing. During excavation in different trenches they were named according to their occurrence from one onwards. The relative levels can be seen in the cross-sections of the mound and in the schematic cross section of the mound".

XXXVII. The confusion disappears as it never existed rather is a concocted one. The division of five areas of eastern, northern, western, southern and raised platform

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are treated in Chapter II "Cuttings" which defines the limits of each area. Therefore, there is no need to "count" any trench in any area, rather it should be verified from the relevant chapter.

XXXVIII. In G2, a narrow strip (about 1 m wide) was excavated and in that small area with some top layer disturbances all the floors top floors (upto Fl.4) were found, since the dividing line for different periods is floors all the layers in between shall belong to the respective period, so the layer 3 and 4 also belong to the Period VII.

XXXIX. The objection of the plaintiffs that nowhere is there any section showing floors numbered "4" or "5" and no section shows a sequence of floors numbered "1" and "5".

XL. Prof. Dhaneswar Mandal, who was examined as PW 24 by the plaintiff as an archaeologist of pre-history, has been re-examined after submission of excavation report by the Archaeological Survey of India by the plaintiff Sunni Central Waqf Board to support the objections filed by them. It is pertinent to mention that Prof. Dhaneswar Mandal, who has written a book styled as "Archaeology after Demolition", had never visited the disputed site before writing the book. During excavation the disputed site was visited by him twice as stated by him in his examination in chief from 10.06.2003 to 15.06.2003 and from 27.09.2003 to 29.09.2003. The entire evidence given by Prof. Mandal makes it clear that the book was written by him on the basis of news published in newspapers, magazines, booklets, particularly paper 118/C. This fact has been admitted by

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him. Regarding excavations also he has very clearly stated that his observations are based on his own observations without any measurement or actual verification of the site. Prof. Mandal admits that he has no knowledge about the disputed site nor ever attempted to see the artifacts, inscriptions, etc., found at the time of leveling or excavation of the disputed site. Prof. Mandal in his statement has admitted that the process of excavation, i.e., grid system excavation was perfectly correct which is internationally accepted mode of excavation. He further admits the circular sign found during the excavation to be of Gupta period i.e. 4th-6th century AD which is undisputedly a non-Islamic construction of pre-Islamic era.

XLI. Dr R.C. Thakran was examined as PW 30 by SCWB in support of their objections against report of ASI, who, according to him, has not carried any excavation, rather during his masters degree course had attended some excavation at the sites of Mirzapur Karan ka Quila. The witness, in para 1 of his affidavit, has stated that he is involved in archaeological research since 1976 and had not excavated any site. The witness has given various details of the report in his examination in chief and annexed various documents but has failed to establish the same, rather the cross examination proved his statement to be false and baseless. The witness was in full agreement with the method of excavation, its marking, recording and listing. The witness stated that comparative study of archaeological finds was not possible on his part at the site and the witness could know about the alleged defects only

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after submission of the report. Regarding periodisation, the witness stated that periodisation from period 7th to 10th century A.D., as mentioned in page 40 period 5 in report of ASI is correct but the witness expressed his disagreement with the nomenclature only. According to the witness early medieval period started from 600 AD and continues up to 1200 AD. But at page 112 the witness admits that early medieval period may be termed as Rajput period. Further, contracting his own admission at page 113, the witness states that the medieval period starts from 600 AD and continues up to 1707 AD although further clarifies that period from 600 AD to 1200 AD is called early medieval period where as period from 1206 AD to 1526 AD is called Sultanate period and period from 1526 AD to 1707 AD is said to be Mughal period. Admitting existence of pillar bases at the disputed site, the witness states at page 116: ***"Maein us report mein likhi ish baat se sahmat hoon ki pillar bases patthar ke pedestal par tikey huwey thei....Maeine Ayodhya ki khudai ke dauran sabhi pillar bases ko dekha thaa. Usmein pedestal stones kahin par nahin haein, kewal Mata Sita ki Rasoi ki taraf kuchh pillar bases ke upar patthar paye gaye haein jo pedestal se bhinna haein." Regarding manufacturing of pillar bases the witnes stated: "Jabtak maein khudai sthal par raha aisa nahin hai ki ASI walon nein pillar base banaye hon, Baad mein agar unhone kuchh kiya ho to mujhe is baat ka gyan nahin hai.Yadi sabhi trenches mein lagatar videography ho rahi hon to pillar base banana sambhav nahin hai. "*** *Regarding use of Chuna*

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and Surkhi, the witness admitted the same being used in 7th-8th century and also in Gahadwal period. The witness supporting the third stand taken by SCWB regarding existence of old mosque/Idgah underneath the disputed structure stated at page 69: "Khudai ke dauran diwar ko dekhne se tatha ASI ke report dekhne se mujhe aisa laga ki Babri masjid ya uske poorva ke masjid/idgah banne mein jo material punah prayog mein laya gaya wah kahin aas paas se laakar istemal kiya gaya hai. The witness admitted existence of Kapot padi door jamb, lotus motif at the disputed site and has also stated that he has not seen any such thing in any mosque. The witness who is an atheist stated that: "Maein Ishwar ya devi devta mein astha nahin rakhta hoon." The witness admitted that he has no knowledge nor had ever studied about differences of masjid and idgah. At Page 187 the witnerss states: "Masjid wa idgah ke antar ke barey mein maine avashya suna hai, parantu iske barey maein maine adhyayan nahin kiya. Yah kahna sahi hai ki masjid wa idgah ke sambandh mein mainey sa-sapath apna bayaan mukhya pariksha ka prastut kiya hai ish vidha mein maein vishesh gyan nahin rakhta hoon.... Keval neemv ki diwar ko dekhkar uparokt donon antar bata pana mere liye sambhav nahin." The witness admitted existence of taakh or niches in temples. The witness at page 191 states: "Mandiron ki khudai ki reports mein animal bones paye jane ke barey mein maine padha hai." The witness admits importance of Kalash and floral motifs for temples and stated that it is used in temples only. The witness admits circular structure and wall belonging to

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Gupta period. A perusal of the cross examination of the witness at page 356 to 360 makes it clear that the witness has no idea of the walls and has not identified the same in spite of filing detailed affidavit and going through the same. The entire cross examination of the witness makes it clear that the witness has no idea of excavation and has tried to support the objection of SCWB merely on the basis of some bookish knowledge as well as under some extraordinary circumstance.

XLII. At page 251, the witness (PW 31) admitted that the ASI had adopted all the three methods of periodisation and the carbon dating was a scientific mode which was considered to be absolute dating method. But according to the witness the Sultanate period was confined to 10th and 11th centuries only. The only objection against periodisation, according to the witness, was as stated by him at page 252: "I do not have any objection regarding periodisation of ASI in which they did not mention early Sultanate period from 10th to 11th century. In my opinion one of the objections regarding periodisation is the mention of early medieval Sultanate period, The periodisation should not be made on the basis of dynasty-wise." Regarding periodisation, the witness stated that he was in full agreement with the periodisation done by ASI but he was not agreeable to the periodisation of period 6 which is shown as medieval Sultanate period.

XLIII. The witness (PW-32) has categorically stated about her presence on the spot during excavation although so many things have been stated in her affidavit filed by

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way of examination in chief. But the cross examination of the witness proves that, although the witness is not a field archaeologist, the excavations were conducted by A.S.I. as per settled norms. Describing fill deposits, the witness confirmed in her cross examination at page 24 that no stratification is possible in fill deposit.

3863. From the above, it is evident that the entire chronology/stratification of ASI has not been condemned/ objected/criticized by Experts of Plaintiffs (Suit-4) but basically it is confined to 5, 6 and 7 period. PW 16 on page 54 stated that the determination of period 6 and 7 is contrary to the facts on the basis of pre-conceived ideas and have been antedated. On page 455 it says that he has no objection to the determination of periods 1 to 5. PW 24 does not dispute periods 1 to 4 but then has made comments against the periods 5, 6 and 7, as determined by ASI but then on page 170 in cross examination stated that layer 5 and 6 have rightly been shown belonging to early medieval Saltnat period and then on page 271 says that he does not agree with the century-wise periodization made by ASI and tried to explain the same on page 273-274, and, concluded that except period 5, 6 and 7 he agrees with rest of the determination made by ASI. PW 29 on page 71 while agreeing with N.B.P.W. Mughal and late post Mughal expressed for her disagreement with the rest of the periods. PW 30 without raising any serious objection with respect to periodization has said that the periods 6 and 7 have been mentioned in report by ASI interchangeably creating confusion. PW 31 remained silent with respect to stratification but PW 32, who is co-author of the objection filed by the plaintiffs (Suit-4) against ASI report,

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claims that period 6 to 9 are not based on the deposits but the material found therein is a secondary context and therefore, the determination of the said period is not correct. These witnesses have given their different version in support of their opinion or understanding which are not in general harmony with each other and therefore, it cannot be said that all the witnesses have provided similar or common reasons against that part of stratification/chronology of the ASI which they have challenged. On the contrary, most of them admit that determination of stratigraphy/chronology can be done in one or more method which are well recognized and they are three (1) Dynasty wise, (2) Century wise and (3) Layer wise, and the ASI has followed all the three systems (PW 16 page 454, PW 24 page 269, PW 29 page 144, 150, 183, PW 30 page 351/352,)

3864. Sri Arun Kumar Sharma, OPW 18 has supported ASI report in its entirety. He retired in 1992 from the post of Superintending Archeologist from ASI. Having done M.Sc. in Physical Anthropology in 1958 from University of Sagar and Post Graduate Diploma in Archaeology in 1968 from Institute of Archaeology, Government of India, he served ASI Department for about 33 years and had the experience of exploration, excavation of archeological sites. Some of the excavation work he has undertaken has been detailed in para 5 and 6 of his affidavit. He has clearly averred that the three ways of periodization is well established in the field of Archaeology and the ASI has adopted all the three methods. Regarding 6 and 7 period determined by ASI, he has explained that suggestion by some of the witnesses that the medieval period in India must be co-related with Islam only is not correct and is not a universally

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accepted proposition. He has referred to the opinion of Ram Sharan Sharma, a Historian, recorded in his book **"Perspectives in Social and Economic History of Early India"** published in 1983 by Munshiram Manoharlal Publishers Pvt. Ltd., New Delhi, where on page 228 Chapter XVI the author says "

> *"An important problem in the general history of India is that of transition from the ancient to the mediaeval. Certain dates such as AD 647, 711, 750, 916, 997, and 1206 have been suggested as landmarks in political history. But since politics was the preoccupation of a small section of society in early times, it has to be shown whether any of the above-mentioned dates or whether any other date or point of time is equally significant in the history of land system, crafts and commerce, polity, society, language, art, religion, etc. There has taken place a lot of discussion whether Harsavardhana's death in AD 647 marks the end of one and the beginning of another era in Indian history. The statement of Vincent Smith that the death of Harsavardhana set in the process of decline in Indian history has been ably refuted by a number of scholars, and especially by H.C. Ray. But for those who wish to investigate patterns of social and economic life, the real point to look for is not the presages of decline and prosperity but the nature of change in the existing way of life. If the change is of a fundamental nature, it should be regarded as heralding the advent of a new period. If it is a minor change it would not necessitate any new characterization of the period. Even the question of decline and prosperity has to be examined in relation to the process*

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of change involved in it. We have to carefully consider how far the decline of the existing system of life shows symptoms of the rise of a new pattern of life. None of these points has been taken into account by V. Smith when he says that the death of Harsavardhana in AD 647 begins a period of decline nor by those who try to refute his theory.

On the grounds of dynastic and political history H.C. Ray suggests that AD 916 should be accepted as the line of demarcation between the two periods in the history of northern India. In his opinion: 'these may be called the ancient and the mediaeval periods; but it would be perhaps more reasonable to call them simply the Hindu period and the period of the Turks and Afghans.' A similar approach has been adopted by some other scholars. In the fifth volume of the History and Culture of the Indian People it is said at one place that ancient India came to an end in AD 997, and again, at another, that in Indian history the mediaeval factor was introduced in the thirteenth century. Both views are based on the assumption that the Muslim conquest ushered in mediaevalism in India. Does it mean that without the Muslim conquest there would have been no mediaevalism in India? Does it imply that the countries of Europe which escaped this conquest had no mediaeval period in their history? In Europe it is difficult to think of mediaevalism without feudalism, the origins and nature of which have to be examined in the case of India. In our opinion the beginnings of a feudal way of life can be sought in the age of the Guptas and Harsa, which marks a period of transition in the history."

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3865. He has also referred to the opinion of another learned Historian A.L.Basham's book **"A Cultural History of India"** (first published in 1975) Oxford University Press (Eighth Indian Impression in 1992) contained in Chapter VI, titled as "Medieval Hindu India". While giving details of various Hindu kings ruling different parts of the country, even after Muslim invasion, Dr.Basham has observed that it is not that the entire Indian Continent got influenced by Muslims from 7, 8 or 9th century but from time to time different parts were ruled by different Hindu kings of great vitality.

3866. We have copy of the entire book of **A.L. Basham, i.e., "A Cultural History of India"** (first published in 1975) and 10th impression 2006 by Oxford University Press, New Delhi (Book No. 112). Sri Basham in Chapter VI which runs from page 51 to 59 has noticed that the Gupta Empire disappeared by the middle of 6th century. In the second half of 6th century, a city on Upper Ganga, before its confluence with Jamuna, Kanyakubja (later known as Kanauj), rose to prominence as the capital of the Maukhari kings. The city of Sthanvisvara, now Thanesar, in the watershed between the Ganga and the Indus, became the capital of a rising family of rulers descended from a certain Pushyabhuti. Gujarat and Malwa were in the power of the Maitraka Dynasty, founded by the general of the Guptas. In the Deccan the Chalukya Dynasty was gaining in strength, while in Tamilnadu the Dynasty of the Pallawas was also enlarging its boundaries. This is the pattern of Indian politics until the Muslim invasion. It further says:

> *"The political history of India between the end of the Gupta Empire and the coming of the Muslims can be traced*

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in some detail from thousands of inscriptions which contain the genealogies and brief accounts of the reigns of kings, and in the panegyrics which form the preambles to records of land-grants, mostly to religious bodies-temples, monasteries, or groups of learned brahmans."

3867. In 7th century (606-47 AD) Harshavardhana gained control of Kanyakubja (Kannauj). After heirless demise, his empire also died with him. The subsequent period by Sri A.L. Basham is described as under:

"The succeeding period is very obscure and badly documented, but it marks the culmination of a process which had begun with the invasion of the Hunas in the last years of the Gupta Empire. The sixth and seventh centuries saw the rise of many new dynasties, small and great, in the northern part of the sub-continent. Few of these ruling families are to be found mentioned in sources from periods before the Guptas, and many of their genealogies begin with names which do not seem Sanskritic. These people appear to have been new-comers. Some of them may have been related to the Hunas. A new people, who began to make their presence felt towards the end of the sixth century, the Gurjaras, gave their name to the present Gujarat and founded several important ruling dynasties. Since place-names containing a similar element can be found as far to the north-west as Pakistan and Afghanistan, it is commonly suggested that the Gurjaras entered India in the wake of the Hunas. Their name has been linked with that of the ancient people of the south Russian steppes called Khazars, and with the Georgians (Gruz) of the

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Caucasus. Other obscure tribes of Central Asians may also have followed the Hunas, and wilder peoples from outlying areas may have profited from the unsettled conditions to gain political control of important regions. In any case, new ruling houses arose in the post-Gupta period and many of their names survive to the present day as those of the Rajput clans.

Towards the end of the eighth century three of the recently arisen dynasties contended for Kanyakubja, by now the acknowledged metropolis of northern India. These were the Palas of Bihar and Bengal, the Rashtrakutas of the Deccan, and the Gurjara-Pratiharas, who controlled parts of Malwa and Rajasthan. The great city was for a time occupied by the Palas, whose Buddhist king Dharmapala drove up the Ganga valley and exacted tribute from many kings of the area. The Rashtrakuta Govinda III, whose policy of raiding the north, continued by his successors, was to have many repercussions, drove Dharmapala out, but was forced to return to his base owing to trouble at home. The vacuum was filled, very early in the ninth century, by Nagabhata II of the Gurjara-Pratiharas.

For about a hundred years the Gurjara-Pratiharas of Kanyakubja restored a little of the glory of the earlier empires. Under their greatest kings, ***Mihira Bhoja*** *(c. 836-90) and* ***Mahendrapala*** *(c. 890-910),* ***they received tribute from rulers from Gujarat to the borders of Bengal, and Muslim travellers were much impressed by the peacefulness and prosperity of their quasi-feudal***

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empire. *But their old enemies, the fierce Rashtrakutas from the Deccan, were constantly worrying them, and in about 916 Kanyakubja was again temporarily occupied by Indra III of the Rashtrakutas, whose lightning raids provided a foretaste of the similar attacks of the Marathas 800 years later.*

Indra III soon returned to the south; but his effects were longer-lasting than those of previous Rashtrakuta raiders. Though the Pratiharas returned to their capital, they were humiliated and weakened, and their vassals ceased to respect them. Within a generation or two the greater vassals had thrown aside their allegiance, and were fighting with their former masters and among themselves. It was in these circumstances that Mahmud or Ghazni, in the early years of the eleventh century, carried out his seventeen raids on India; but ***though the Turkish raiders ransacked and destroyed palaces and temples, and returned to their headquarters in Afghanistan with immense caravans of riches and slaves, India resumed her traditional political ways as if nothing had happened.***

The Turks overwhelmed the Sahi kingdom, which had controlled a large area of the north-west, from Kabul to Lahore. The rulers of this realm had also been Turks, but Turks who had adopted Hindu traditions, and who offered no serious threat to their neighbours to the east. The Ghaznavids also conquered the Muslim kingdoms of Sind, occupied by the Arabs early in the eighth century, whose chiefs had long ceased to trouble the hindu kingdoms on

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their frontiers. ***Thus the hindu states of the Gangetic basin and Rajasthan now had on their borders a young aggressive kingdom with new methods of warfare and with a religious ideology which might be expected to encourage aggression.***

The most remarkable feature of the situation was that, as far as surviving records show, nobody whatever in hindu India recognised the menace of the Turks. The Ghaznavids made a few further raids, but these were far less impressive than those of Mahmud. The Turks were soon torn by internal strife and, though they continued to hold the Panjab, it must have seemed to the hindu politicians of the time that, like that Arabs before them, they would be contained indefinitely. Having no real historical tradition, the Indian memory, of earlier conquerors coming from the north-west-Greeks, Sakas, Kushanas, and Hunas-was so vague that it was quite ineffectual as a warning to the rulers of the time.

In the involved situation arising from Mahmud's raids, five larger kingdoms shared most of northern India between them, the Chahamanas (Chauhans) of Rajasthan, the Gahadavalas (Gahrwals) of Kanyakubja (Kanauj) and Varanasi (Banaras), the Chaulukyas or Solankis of Gujarat, the Paramaras (Parmars) of Malwa, and the Chandellas (Chandels) of Bundelkhand, to the south of the Ganga. These dynasties bore names which are among the best-known of the thirty-six Rajput clans. *Their kings had already acquired something of the traditional Rajput character-gallant, extremely sensitive to*

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points of honour, glorifying war, but war of a gentlemanly kind, intensely devoted to tradition, and quite incapable of serious co-operation one with another. The Palas, who governed Bihar and Bengal, had been quite untouched by Mahmud's invasions. Early in the twelfth century they were replaced by the Sena Dynasty, which reversed the Palas' traditional support of Buddhism and encouraged hindu orthodoxy. They seem to have played little or no part in the politics of the western part of India, where the five major kingdoms and numerous lesser tributary realms fought honourable among the themselves, basing their strategy and tactics on principles inherited from epics.

In 1173 Ghazni was captured by Ghiyas-ud-din, whose headquarters were Ghur in Afghanistan. From his new capital Ghiyas-ud-din turned his attention to India. *His brother, Muhammad bin Sam, occupied the Panjab and deposed the last ruler of the line of Mahmud. Then in 1191 Muammad bin Sam attacked Prithviraja, king of the Chahamanas, the hindu ruler on his eastern frontier. Prithviraja, fighting on his own ground with a larger army, defeated Muhammad at Tarain, and he retreated. In the following year, 1192, Muhammad came again with stronger forces, and on the same field of Tarain Prithviraja lost the day, and the Ganga valley was open to the invaders. Before the century was over Turkish control was established along the whole length of the sacred river.*

It is easy to suggest reasons why the Hindus were unable to resist the Turks, and many such suggestions have been put forward. In dealing with the question it must be

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remembered that the invasion of the Turks was only one of numerous attacks through the north-western passes which took place in historical times. The Aryans, by a process not fully known to us, gained control of the Panjab from the decadent Harappans. The Achaemenians of Iran occupied part at least of the Indus valley; Alexander's troops reached the Beas, but were compelled to retreat; in the second century B.C. the Greeks from Bactria occupied the Panjab; they were followed in the next century by the Sakas or Scythians; in the first century A.D. came the Kushanas, and in the fifth the Hunas. Mahmud's raids in the early eleventh century were precursors of the even stronger Turkish attacks of Muhammad bin Sam, which led to the protracted domination of most of India by Muslim rulers.

These were not by any means the last attacks from the north-west, however. Soon after the Turkish occupation, Mongol hordes swept into India and occupied much of the territory west of the Indus. In 1398 Timur, the great Mongol conqueror, sacked Delhi and raged through western India, causing tremendous carnage and destruction. In 1526 Babur the Mughal defeated the Afghan rulers of Delhi and occupied the country. In 1555 his son, Humayun, reconquered it from his base in Afghanistan. ***During the eighteenth century Persians and Afghans raided India in turn, both sacking Delhi before returning to their homelands****."*

3868. The above clearly shows that in the period of Mahmood Gaznavi raids and thereafter, the northern India was shared by five larger kingdoms namely, Chauhans (Rajasthan),

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Gahadavalas (Kannauj and Banaras), Chalukyas or Solanki (Gujarat), Parmaras (Malva) and Chandellas (Bundelkhand). The said dynasties have been titled by learned author as one of "the best known of 36 Rajput clans". The Palas, who governed Bihar and Bengal remained untouched by Mahmud Gazanavi's invasion but early in the 12th century they were replaced by Sena dynasty which reversed the Palas traditional support of Buddhism and encouraged Hindu orthodox religion. The Chauhans rule came to end with the defeat of Prithvi Raj Chauhan in 1192 AD by Mohammad Ghuri at Tarain leaving the Ganges valley open to invaders/foreigners. In 1206 AD Gaharwals (King Jai Chand) was also defeated by Ghuri.

3869. The details of Maukhary, Pushyabhuti, Pratihar, Gaharwal etc. rulers have also been given in **"Ayodhya Ka Itihas Evam Puratatva" (supra)** (Book No. 141), Chapter-7, pages 81 to 105 which is a minute and detailed study on the subject and except some observations made therein based on 1992 inscriptions found at Ayodhya which for the time being we can exclude, the rest of the contents of the said chapter as such have not been shown inaccurate or incorrect, hence may be referred hereunder:

''मौखरी, पुष्यभूति, परवर्ती गुप्त, प्रतिहार एवं गहड़वालों का युग

गुप्त साम्राज्य के पतन के बाद से अयोध्या का राजनीतिक महत्व उतना अधिक नहीं रह गया था। सत्ता का गुरुत्व केन्द्र अयोध्या से हटकर कन्नौज अथवा कान्यकुब्ज पहुँच गया। गुप्त साम्राज्य के पतन के काल में सामन्तों का महत्व उसी अनुपात में बढ़ता गया जिस अनुपात में अयोध्या के गुप्त सम्राटों की केन्द्रीय सत्ता में बिखराव आने लगा था। पांचवी शताब्दी के अंतिम चरण तक तो गुप्त सम्राट् किसी प्रकार साम्राज्य की एकता बनाए रख सके थे तथा छठी शताब्दी के प्रथम चरण में केन्द्रीय सत्ता के लिए

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होने वाले संघर्षों के कारण गुप्त साम्राज्य के अन्तर्गत अनेक अधीनस्थ राजवंश अस्तित्व में आ गए। ईसा की छठी–सातवीं शताब्दियों में जिन राजवंशों का उदय हुआ और उन्होंने उत्तर भारत की राजनीतिक गतिविधियों पर प्रभाव डाला उनमें तीन राजवंश मुख्य रूप से उल्लेखनीय हैं– (1) कन्नौज के मौखरी, (2) थानेश्वर के पुष्यभूति तथा (3) मालवा के परवर्ती गुप्त, जिन्होंने बाद में मगध पर शासन किया। इनके बाद प्रतिहारों एवं गहड़वालों का युग आता है ***जिसमें गहड़वालों ने अयोध्या में विशेष रुचि ली।***

कन्नौज के मौखरी

कन्नौज के मौखरियों में सबसे पहला राजा हरिवर्मा हुआ। *ईशानवर्मा के हरहा अभिलेख में मौखिरियों की वंशावली हरिवर्मा से प्रारम्भ होती है। उसके पूर्वज संभवतः बिहार से यहां आए होंगे, क्योंकि बिहार के गया जिले के बराबर और नागार्जुनी पहाड़ियों से मौखरी राजाओं के तीन अभिलेख प्राप्त हुए हैं। इन अभिलेखों में तीन राजाओं के नाम मिलते हैं–यज्ञवर्मा, शार्दूलवर्मा तथा अनन्तवर्मा। अनन्तवर्मा को कोई उपाधि नहीं दी गई है किन्तु उसके पिता शार्दूलवर्मा को सामन्त चूणामणि कहा गया है। शार्दूलवर्मा के पिता यज्ञवर्मा को भी नृप मात्र कहा गया है। इस प्रकार छठी शताब्दी के प्रारम्भ में ये सामन्त मौखरी नरेश गया के क्षेत्र में शासन कर रहे थे। इसमें कोई सन्देह नहीं है कि गया के ये तीनों मौखरी राजा गुप्त सम्राटों के अधीनस्थ सामन्त थे, किन्तु इनका कन्नौज के मौखिरियों से क्या सम्बन्ध था, इस विषय पर कुछ कहना संभव नहीं है। अधिक–से–अधिक यही संभावना की जा सकती है कि गुप्त सम्राटों के निर्देश पर बिहार के मौखिरियों के वंश में उत्पन्न हरिवर्मा को कान्यकुब्ज अथवा कन्नौज में सामन्त के रूप में नियुक्ति मिली हो। हरहा के अभिलेख में हरिवर्मा को मात्र राजा कहा गया है तथा उसे आदि नरेश माना गया है। लेकिन इस अभिलेख से यह स्पष्ट नहीं होता कि मौखरियों ने अपना शासन कहां से शुरू किया था अथवा उनकी राजधानी कहां पर थी। राधा गोविन्द बसाक का यह मत है कि प्रारम्भ में मौखरियों ने अयोध्या से शासन किया था तथा बाद में अवन्तिवर्मा के काल में उन्होंने अपनी राजधानी कन्नौज को बनाया। मौखरियों की राजधानी कन्नौज में थी, इसकी सूचना हमें हर्षचरित से प्राप्त होती है जिसमें यह कहा गया है कि मौखरी रानी राजयश्री, जो हर्षवर्धन की बहन थी, मालवराज के द्वारा कन्नौज में ही बन्दी*

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बना ली गई थी। इसके अतिरिक्त चीनी स्रोतों में भी इस बात के संकेत मिलते हैं कि कन्नौज मौखरियों की राजधानी थी और राज्यश्री को मुक्त कराने के बाद हर्ष से कन्नौज का शासन संभालने का आग्रह किया गया था। ***मौखरियों के अभिलेख जौनपुर (पूर्वी उत्तर प्रदेश) तथा हरहा (जिला बाराबंकी, पूर्वी उत्तर प्रदेश) से प्राप्त हुए हैं।*** *इसके अतिरिक्त बिहार में नालन्दा, से शर्ववर्मा की एक मिट्टी की मुहर तथा मध्य प्रदेश में असीरगढ़ से इसी राजा की एक तांबे की मुहर प्राप्त हुई है। गोरखपुर जिले के सोहनाग नामक स्थान से अवन्तिवर्मा की एक मुहर प्राप्त हुई है तथा इसी राजा की एक मिट्टी की मुहर नालन्दा से भी प्राप्त हुई है। कन्नौज से ही अवन्तिवर्मा की एक मिट्टी की मुहर प्राप्त हुई है। नालन्दा से ही मिट्टी की एक अन्य मुहर प्राप्त हुई है जिस पर अवन्तिवर्मा के पुत्र 'राजाधिराज श्री सु . .' नाम उल्लिखित है। खण्डित हो जाने के कारण राजा का पूरा नाम नहीं पढ़ा जा सका है। इसके अतिरिक्त* ***कई मौखरी राजाओं के सिक्के भी अहिच्छत्रा, अयोध्या और भिटौरा (अयोध्या के निकट, जिला फैजाबाद) से प्राप्त हुई हैं। इन प्रमाणों से यह स्पष्ट ज्ञात होता है कि गुप्त राजवंश के बाद अयोध्या तथा उसके बाद कोशल प्रदेश मौखरी शासनान्तर्गत आ गया था।***

मौखरियों ने अपनी राजधानी अयोध्या में क्यों नहीं बनाई होगी, इस संबंध में केवल अनुमान ही प्रस्तुत किए जा सकते हैं। पहली संभावना यह है कि गुप्त सम्राटों ने प्रारंभिक मौखरी सामन्तों को कन्नौज में स्थापित होने का निर्देश दिया हो और परम्परागत रूप में जब मौखरी अधिक शक्तिशाली हो गए और गुप्त साम्राज्य का अन्त हो गया तो भी उन्होंने लगभग उन्हीं कारणों से अपनी राजधानी अयोध्या में बनाने का विचार न किया हो जिनके कारण पुष्यमित्र शुंग ने मौर्य राजवंश का अन्त हो जाने के बाद अपनी राजधानी पाटलिपुत्र में नहीं बनाई।

हरिवर्मा के बाद उसका पुत्र आदित्यवर्मा मौखरी वंश का राजा हुआ। उसका विवाह हर्षगुप्ता से हुआ था। नाम साम्य के आधार पर यह माना जाता है कि हर्षगुप्ता परवर्ती गुप्त राजवंश के दूसरे शासक हर्षगुप्त की बहन थी। हर्षगुप्त का समय 505–515 ई0 के बीच माना जाता है। इस प्रकार आदित्यवर्मा का भी यही समय मानना चाहिए। आदित्यवर्मा का पुत्र ईश्वरवर्मा हुआ जिसकी पत्नी का नाम उपगुप्ता बताया गया है। बी0पी0

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सिन्हा ने यह मत व्यक्त किया है कि ***उपगुप्ता अयोध्या के गुप्त सम्राट विष्णुगुप्त की बहन रही होगी। यह विष्णुगुप्त राजवंश का अन्तिम शासक माना जाता है और इसका समय 543–550 ई0 तक बताया गया है।*** *लेकिन किरण कुमार थपलियाल का यह मानना है कि ईश्वरवर्मा की पत्नी उपगुप्ता देवी संभवतः परवर्ती गुप्त राजवंश की राजकुमारी थी।* ***ईश्वरवर्मा के जौनपुर अभिलेख से यह ज्ञात होता है कि उसने आन्ध्र के राजाओं को भी पराजित किया था तथा धारा से आने वाले किसी आक्रमण को विफल कर दिया था।*** *संभवतः धारा से आने वाला यह आक्रमण हूणराज मिहिरकुल के द्वारा किया गया आक्रमण था और ईश्वरवर्मा ने गुप्त सम्राट के सामन्त के रूप में इस युद्ध में भाग लिया हो तो कोई आश्चर्य नहीं। लेकिन ऐसा लगता है कि इस समय तक मौखरी गुप्त राजवंश द्वारा शासित प्रदेशों में सबसे शक्तिशाली सामन्त के रूप में स्थापित हो रहे थे।*

उत्तर भारत में मौखरियों की शक्ति का पूर्ण उदय श्री ईशानवर्मा के समय में होता है। *ईशानवर्मा के हड़हा पाषाण अभिलेख (श्लोक 13) में यह कहा गया है कि उसने आन्ध्रपति को जीतकर, शूलिकों की सेना को परास्त करके तथा गौड़ों का सम्बन्ध पृथ्वी से छुड़ाकर उन्हें समुदाश्रयी होने के लिए बाध्य करके, सिंहासन को अधिकृत किया था। इस प्रकार ऐसा लगता है कि ईशानवर्मा ने यह विजयें अपने युवराज काल में प्राप्त की थीं और इसी कारण उसके पिता के काल में लिखवाए गए जौनपुर अभिलेख में विन्ध्य और आन्ध्र के राजाओं को परास्त करने की जो बात कही गई है उसमें ईशानवर्मा का भी सहयोग था। जहां तक गौड़ों को परास्त करने की बात है उसके सम्बन्ध में विद्वानों की यह राय है कि मौखरियों ने यह अभियान अयोध्या के गुप्त सम्राटों की अधीनता में चलाया होगा। आदित्यसेन के अफसाढ़ अभिलेख में यह उल्लेख आया है कि जीवितगुप्त ने, वह भी गुप्तों का सामन्त रहा होगा, कदली वृक्षों की शाखाओं से आवृत्त समुद्र तटों पर रहने वाले शत्रुओं को परास्त किया था। सिन्हा ने तो यहां तक कहा है कि यह गुप्त शासक विष्णुगुप्त चन्द्रादित्य रहा होगा।*

ईशानवर्मा के बाद उसका पुत्र शर्ववर्मा शासक हुआ। लेकिन हड़हा अभिलेख से यह ज्ञात होता है कि ईशानवर्मा का एक और पुत्र सूर्यवर्मा हुआ। किन्तु सूर्यवर्मा ने शासन किया था अथवा नहीं, यह प्रश्न विवादास्पद

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है क्योंकि ईशानवर्मा के पुत्र शर्ववर्मा और उसके उत्तराधिकारियों ने सूर्यवर्मा का उल्लेख नहीं किया है। ***लेकिन, मध्य प्रदेश से प्राप्त महाशिवगुप्त बालार्जुन के मल्हार ताम्रपत्राभिलेख से यह ज्ञात होता है कि मौखरी राजवंश का सूर्यवर्मा मगध का राजा था।*** *इस प्रकार यह स्वीकार किया जा सकता है कि ईशानवर्मा ने अपने जीवनकाल में ही मगध को अपने अधीन कर लिया था और संभवतः ईशानवर्मा के बाद उसके पुत्र सूर्यवर्मा ने कुछ समय तक शासन किया। यद्यपि सिरपुर से प्राप्त एक अभिलेख में सूर्यवर्मा को केवल नृप कहा गया है लेकिन इससे इस तथ्य पर कोई अन्तर नहीं पड़ता कि यह सूर्यवर्मा मौखरी नरेश ईशानवर्मा का पुत्र था।*

मौखरी अभिलेखों में केवल हड़हा अभिलेख एकमात्र ऐसा लेख है जिस पर तिथि दी हुई है और वह विक्रम संवत् 611 है जो ईस्वी सन् 554 में पड़ता है। *यह अभिलेख यद्यपि ईशानवर्मा के पुत्र सूर्यवर्मा द्वारा लिखवाया गया था फिर भी उस समय मौखरी सिंहासन पर ईशानवर्मा ही आसीन था। ईशानवर्मा का उत्तराधिकारी उसका एक अन्य पुत्र शर्ववर्मा हुआ जिसको मुहरों पर 'परम माहेश्वर महाराजाधिराज' कहा गया है।* ***शर्ववर्मा का शासन मगध से लेकर मध्य प्रदेश में असीरगढ़ तथा बुन्देलखण्ड तक फैला था। पश्चिम में उसका शासन कांगड़ा तक विस्तृत था।*** *कुछ लोंगो ने यह विचार व्यक्त किया है कि चूंकि कन्नौज और कांगड़ा के बीच पुष्यभूति वंश का भी शासन पड़ता है इसलिए कांगडा में मौखरियों का शासन संभव नहीं है। किन्तु इस बात को मान लेना चाहिए कि संभवतः उस समय तक पुष्यभूति वंश अपनी सामन्त अवस्था में ही था जबकि मौखरी वंश के नरेश 'महाराजाधिराज', 'परमेश्वर' आदि उपाधियों से विभूषित किये जाते थे।* ***भोजदेव के बाराह ताम्रपत्राभिलेख में इसे 'परमेश्वर शर्ववर्मदेव' कहा गया है और यह बताया गया है कि 'परमेश्वर शर्ववर्मदेव' ने कालंजर मंडल के उदुम्बर विषय में कुछ भूमिदान किया था।*** *परवर्ती गुप्त शासक जीवितगुप्त द्वितीय के देववर्णार्क अभिलेख में 'परमेश्वर श्रीशर्ववर्मा' तथा 'परमेश्वर श्री अवन्तिवर्मा' तथा एक अन्य 'महाराजाधिराज परमेश्वर' का उल्लेख मिलता है।* ***इस प्रकार यह स्पष्ट है कि मौखरी वंश अपने समय में उत्तर भारत का सबसे शक्तिशाली राजवंश था और उनका***

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प्रभाव क्षेत्र भी लगभग पूरे उत्तर भारत में विस्तृत था।

इस काल–खण्ड के इतिहास को लिखने वाले विद्वानों ने परवर्ती गुप्त राजवंश और पुष्यभूति राजवंश को मौखरियों के समान ही महत्व दे रखा है। फ्लीट ने सबसे पहले आदित्यसेन के अफसाढ़ अभिलेख का संपादन किया था और उन्होंने इस अभिलेख में प्राप्त परवर्ती गुप्त राजवंश के शासकों को मौखरियों का प्रतिद्वंदी राजवंश बताया। उसके बाद जितने भी इतिहासकारों ने परवर्ती गुप्त राजवंश के विषय में लिया है उन सभी ने इस मत को महत्व दिया है। लेकिन, वास्तविकता यह है कि ***अयोध्या के गुप्त सम्राटों के राजवंश के पतन के बाद कन्नौज के मौखरी राजवंश ने लगभग वही स्थिति प्राप्त कर ली थी जो गुप्त सम्राटों की थी।*** *छठी शताब्दी के प्रारम्भ में परवर्ती गुप्त और पुष्यभूति राजवंशों की स्थिति छोटे–मोटे सामन्तों जैसी ही थी। अयोध्या के इतिहास के सम्बन्ध में विचार करते समय यह बात प्रमुख रूप से कही जा सकती है कि मौखरी राजवंश के गृहवर्मा के राज्यकाल तक कोशल उनके शासनान्तर्गत बना रहा। कुछ विद्वानों ने परवर्ती गुप्त शासकों को मगध से उद्भूत हुआ माना है जिससे यह धारणा बनती है कि संभवतः कोशल भी किसी समय परवर्ती गुप्तों के अन्तर्गत रहा होगा। किन्तु यहां यह बता देना आवश्यक है कि छठी शताब्दी ई0 में परवर्ती गुप्त राजवंश राजस्थान के मालव जनपद की स्थानीय और सामान्य शक्ति थी। आदित्यसेन का अफसाढ़ अभिलेख सातवीं शताब्दी में लिखवाया गया था जिस समय वह मगध का एक महत्वपूर्ण शासक बन गया था। उसने इस अभिलेख में अपने पूर्वजों का विवरण दिया है जिसमें अपने पूर्व के सात राजाओं का उल्लेख किया है। आदित्यसेन का अफसाढ़ लेख उन महत्वपूर्ण लेखों में है जिन्हें प्रारम्भ से ही गलत संदर्भ में समझा गया है। उल्लेखनीय है कि अभिलेख में आदित्यसेन अपने पूर्वजों को साधारण 'नृप' अथवा 'श्री' आदि नाम से ही अभिहित करता है जिससे उनके सामान्य स्थानीय शासक होने की बात मानी जानी चाहिए। कुछ स्थानों पर उसके पूर्वजों के मौखरी राजवंश के साथ प्रतिद्वंद्विता और प्रतिस्पर्धा की बात कही गई है। अफसाढ़ अभिलेख के आठवें श्लोक में यह कहा गया है कि आदित्यसेन के चौथे पूर्वज कुमारगुप्त ने राजाओं में चन्द्रमा के समान श्री ईशानवर्मा की सेना को मंदराचल पर्वत की भांति विमथित (मथ) कर दिया था। किन्तु इस युद्ध का क्या परिणाम हुआ यह नहीं बताया गया है। लेकिन अगले ही श्लोक में यह अवश्य*

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सूचित किया गया है कि 'शौर्यसत्यव्रतधारी' ने प्रयाग जाकर करीष (कन्डे या उपले) की अग्नि में प्रवेश करके आत्महत्या कर ली थी। यह किस कारण किया गया यह स्पष्ट नहीं बताया गया है। सिनहा ने यह सुझाव दिया है कि कुमारगुप्त ने ईशानवर्मा पर प्राप्त विजय की प्रसन्नता में देवताओं के प्रति कृतज्ञता ज्ञापन के रूप में आत्मदाह किया था। किन्तु इस प्रकार के विचार हास्यास्पद हैं क्योंकि किसी भी विजय के उपरांत विजयी राजा स्वयं का आत्मदाह नहीं करता। ऐसा लगता है कि कुमारगुप्त इस युद्ध में पराजित हो गया था जिसके कारण उसे आत्महत्या करनी पड़ी। इसके बाद के श्लोकों में कुमारगुप्त के पुत्र दामोदरगुप्त के विषय में कहा गया है कि वह मौखरियों के युद्ध में हूणों की गजसेना को विघटित करते हुए मूर्छित हो गया था (मारा गया था) तथा उसकी नींद स्वर्ग में जाकर सुरवधुओं के कर–स्पर्श से खुली। इस श्लोक का अर्थ फ्लीट ने इस प्रकार किया है 'युद्ध में (कुचलकर मार डालने के उद्देश्य से) हूणों की सेनाओं को उखाड़ फेंक देने वाले मौखरी के आगे बढ़ते हुए मदमत्त शक्तिशाली हाथियों के व्यूह का विघटन करके वह मूर्च्छित हो गया। (तथा पुनः स्वर्ग में) सुरवधुओं के बीच चयन करते हुए, तथा (अमुक अथवा अमुक) मेरी है यह कहते हुए उनके कर–कमलों के सुखद स्पर्श से चेतन हुआ।' फ्लीट द्वारा किए गए इस अनुवाद में उनका यह आग्रह झलकता है कि यह युद्ध भी मौखरियों और परवर्ती गुप्तों के बीच हुआ था। लेकिन वास्तव में ऐसा लगता है कि ईशानवर्मा से युद्ध में कुमारगुप्त के पराजित होने के बाद दामोदरगुप्त को मौखरियों की अधीनता स्वीकार करनी पड़ी थी और ईशानवर्मा अथवा उसके उत्तराधिकारी के साथ हूणों के युद्ध में दामोदरगुप्त एक सामन्त के रूप में लड़ते हुए मारा गया था। इसमें गजसेना का जो उल्लेख आया है वह हूणों की गजसेना का लगता है, और युद्ध हूणों और मौखरियों के बीच लड़ा गया था। इसका संकेत हमें जौनपुर के ईश्वरवर्मा के पाषाण लेख में मिलता है जिसमें 'धारामार्गविनिर्गताग्निकणिका' का उल्लेख आया है। यह संभवतः हूण आक्रमण का ही उल्लेख है।

मौखरी राजवंश का शासन इस क्षेत्र पर कम–से–कम अवन्तिवर्मा और उसके पुत्र गृहवर्मा के समय तक चला। इतिहासकारों का ऐसा अनुमान है कि हर्षवर्धन ने गृहवर्मा की हत्या के बाद कन्नौज का शासन स्वयं संभाल लिया था और इस प्रकार कन्नौज के मौखरियों का वंश समाप्त हो

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गया था। *ह्वेनसांग ने भी यह उल्लेख किया है कि शत्रुओं का दमन करने के बाद कन्नौज के मंत्रियों ने हर्ष से कन्नौज का शासन संभालने का अनुरोध किया था। इसके अतिरिक्त हर्ष की विजयों और कामरूम के शासक भास्करवर्मा के साथ हर्ष के दौत्य सम्बन्ध की बात को ध्यान में रखते हुए* ***यह स्वीकार करना पड़ेगा कि कुछ समय के लिए अयोध्या तथा कोशल क्षेत्र भी, हर्ष के साम्राज्य का अंग बन गया था।*** *यह भी संभव है कि हर्ष ने कन्नौज को केवल अपनी गतिविधियों का केन्द्र मात्र बनाया हो। लेकिन, मौखरी राजवंश का विनाश हो गया था यह स्वीकार नहीं किया जा सकता। नालन्दा से प्राप्त एक मुहर में अवन्तिवर्मा के पुत्र के नाम का उल्लेख हुआ है जिसके नाम का केवल प्रथम अक्षर 'सु' पढ़ा जा सका है। कुछ विद्वानों ने इस 'सु' को 'सुचन्द्रवर्मा' मानने का सुझाव दिया है। यहां यह उल्लेखनीय है कि इस मुहर में अवन्तिवर्मा के पुत्र गृहवर्मा का कोई उल्लेख नहीं है। बहुत संभव है कि गृहवर्मा के बाद अवन्तिवर्मा के दूसरे पुत्र 'सु' ने राज्य किया हो। आर्यमुजुश्रीमूलकल्प में 'गृह' के बाद 'सुव्र' के शासक होने की बात कही गई है। 'सु' के बाद मौखरी राजवंश का इतिहास पुनर्निर्मित करना कठिन कार्य है। कुछ विद्वानों ने पूर्णवर्मा को मौखरी राजा माना है तथा ह्वेनसांग भी उसे अशोकराज का अंतिम उत्तराधिकारी मानता है। पूर्णवर्मा या तो मगध का स्वतंत्र शासक था अथवा मौखरी वंश का कोई उत्तराधिकारी था।* ***630 ई0 में नालन्दा की यात्रा करने वाले ह्वेनसांग ने पूर्णवर्मा को पूर्वकाल का राजा बताया है।*** *कुछ विद्वानों ने यह भी सुझाव दिया है कि पूर्णवर्मा हर्ष द्वारा नियुक्त मगध का शासक था और उसकी मृत्यु के उपरांत ही माधवगुप्त हर्ष द्वारा मगध का शासक नियुक्त किया गया। इसी माधवगुप्त का पुत्र आदित्यसेन था जिसने अफसाढ़ का पाषाणखण्ड अभिलेख लिखवाया था।* ***मौखरी वंश आदित्यसेन के समय में भी नष्ट नहीं हुआ था, इस बात की सूचना हमें नेपाल के जयदेव द्वितीय के पशुपति अभिलेख से प्राप्त होती है। यह अभिलेख नेपाली संवत् 157 (773 ई0) में तिथ्यांकित है। इसमें यह कहा गया है कि मगध के शासक आदित्यसेन ने अपनी पुत्री का विवाह मौखरी नरेश भोगवर्मा से किया था और इस भोगवर्मा की पुत्री वत्सदेवी नेपाल के लिच्छवी नरेश जयदेव द्वितीय की माता तथा शिवदेव द्वितीय की पत्नी थी।***

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इस प्रकार यद्यपि हर्ष के पुष्यभूति वंश के विषय में सातवीं शताब्दी में हमें कोई जानकारी उपलब्ध नहीं है किन्तु मौखरी वंश सातवीं शताब्दी के अंतिम चरण में भी अस्तित्व में था, इसकी सूचना नेपाल के इस अभिलेख से ज्ञात होती है। सिन्हा ने यह सुझाव दिया है कि भोगवर्मा ने कन्नौज पर अधिकार कर लिया था तथा इसी कारण आदित्यसेन ने उससे अपनी पुत्री का विवाह कर दिया। उन्होंने यहां तक कहा है कि भोगवर्मा आदित्यसेन का सामन्त रहा होगा। किन्तु ये दोनों बातें काल्पनिक लगती हैं।

इसी सन्दर्भ में कन्नौज के यशोवर्मा का भी उल्लेख किया जा सकता है जिसका वर्णन वाक्पतिराज के प्राकृत काव्य गौड़वहौं में किया गया है। यशोवर्मा का एक पाषाण अभिलेख नालन्दा से प्राप्त हुआ है। यह अभिलेख वास्तव में यथोवर्मा के एक मंत्री, मालाद के द्वारा लिखवाया गया था जिसमें राजा के बारे में कुछ विशेष नहीं कहा गया है, सिवाय इसके कि वह उदार और सदाशय राजा था। तथा अनेक युद्धों का विजेता था। इसके अतिरिक्त यशोवर्मा नाम वाले कुछ सिक्के भी प्राप्त हुए हैं जो इसी राजा के बताए गए हैं। किन्तु इस सम्बन्ध में विद्वानों ने शंका व्यक्त की है, क्योंकि ये सिक्के कश्मीर और पंजाब से प्राप्त हुए हैं और इण्डो–सीथियन प्रकार के हैं जिनको दुर्लभक प्रतापादित्य द्वितीय (700ई0) तथा जयापीड़ विनयादित्य (772 ई0) के बीच रखा गया है। लेकिन इस काल में कश्मीर में इस नाम का कोई अन्य राजा न होने के कारण ये सिक्के कन्नौज के यशोवर्मा के माने जा सकते हैं।

यशोवर्मा को इस काव्य में चन्द्रवंश में उत्पन्न राजा बताया गया है तथा यह भी कहा गया है कि उसकी राजधानी कन्नौज में थी जिसके कारण विद्वानों ने यह स्वीकार किया कि यह यशोवर्मा मौखरी वंश का हो सकता है। लेकिन मौखरी वंश चन्द्रवंशीय नहीं था। *इसके अतिरिक्त वर्मन नाम भी केवल मौखरी राजवंश में प्रचलित रहा हो, यह बात भी नहीं है। अयोध्या के इतिहास की दृष्टि से यह बात उल्लेखनीय है कि यशोवर्मा ने हरिश्चन्द्र की नगरी (हरिअंद नअरिऐ) में* ***एक ही दिन में एक मंदिर का निर्माण करवाया था। यहां हरिश्चन्द्र नगरी से अयोध्या का तात्पर्य है।*** *संभवतः कन्नौज के यशोवर्मा ने अपनी दिग्विजय के दौरान यह कार्य किया था। वा****कपतिराज के इस ग्रंथ का समय 735 ई0 माना जाता है।***

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ईसा की सातवीं शताब्दी में अयोध्या के इतिहास के सम्बन्ध में कोई अन्य साहित्यिक अथवा अभिलेखिक साक्ष्य उपलब्ध नहीं है। छठी शताब्दी के अन्त में अथवा सातवीं शताब्दी के प्रारम्भिक वर्षों में, एक ऐसी घटना घट गई जिसके कारण मौखरियों के प्रशासन पर कुछ समय के लिए ग्रहण लग गया। मौखरी सम्राट गृहवर्मा का विवाह पुष्यभूति वंश के राजा प्रभाकरवर्धन की पुत्री राज्यश्री से हुआ था। मालवा के राजा देवगुप्त और गौड़ के राजा शशांक ने मौखरी वंश की राजधानी कन्नौज पर आक्रमण करके गृहवर्मा को मार दिया तथा उसकी रानी राज्यश्री को वहीं के कारागार में डाल दिया। बाण के हर्षचरित से यह जानकारी मिलती है कि इसकी सूचना मिलने पर थानेश्वर से राज्यवर्धन एक सेना लेकर मौखरी वंश के शत्रुओं से लड़ने के लिए निकला लेकिन वह स्वयं शत्रुओं के विश्वासघात के कारण मारा गया। इसकी सूचना मिलने पर हर्ष ने शत्रुओं को परास्त करने का निश्चय किया। इसी बीच में राज्यश्री कारागार से निकलकर विन्ध्य के जंगलों में चली गई थी। हर्ष से उसकी भेंट वहीं पर होती है। हर्षचरित की कहानी यहीं पर समाप्त हो जाती है। लेकिन चीनी यात्री ***ह्वेनसांग ने इसके आगे भी विवरण दिया है क्योंकि वह लगभग 636 से 640 ई0 के बीच हर्ष के साथ उसकी राजधानी कन्नौज में रहा था।*** *इसके साथ वह यह भी सूचना देता है कि कन्नौज के मंत्रियों ने यह निवेदन किया था कि वह कन्नौज का राज्यभार संभाल ले।* ***हर्ष के शासन का प्रारम्भ 606 ई0 में माना जाता है और इसके लगभग तीस वर्षों के बाद ह्वेनसांग ने उसके दरबार में पहुंचता है। इस प्रकार यह समय हर्ष के शासनकाल का सर्वाधिक महत्वपूर्ण और वैभव का युग था। ऐसी स्थिति में यदि ह्वेनसांग हर्ष की विजयों से तथा उसके प्रभाव से प्रभावित होकर उसे कन्नौज का शासक मानता है तो इसे अस्वाभाविक नहीं कहा जा सकता।*** *लेकिन हम यह भी नहीं मान सकते कि मौखरी वंश समाप्त हो गया था और उसके ध्वंशावशेष पर हर्ष ने अपना साम्राज्य निर्माण किया था। हर्ष के बाद पुष्यभूति वंश का क्या हुआ इसके विषय में कोई जानकारी नहीं मिलती। लेकिन विभिन्न स्रोतों से हम यह जानते हैं कि मौखरी राजवंश सातवीं और आठवीं शताब्दियों में भी जीवित रहा। इस आधार पर यह कहा जा सकता है कि सातवीं शताब्दी के पूर्वार्द्ध में हर्ष का उदय एक*

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आकस्मिक घटना थी और उसके बाद पुनः उत्तर भारत की राजनीति अपनी स्वाभाविक स्थिति में आ गई। ऐसा लगता है कि हर्ष ने मालवा के परवर्ती गुप्त राजवंश के माधवगुप्त को मगध में स्थापित किया था और इस प्रकार मौखरियों को मगध पर से अपना अधिकार छोड़ना पड़ा होगा। इसके बावजूद कोशल का क्षेत्र मौखरियों के ही शासनान्तर्गत रहा। इसे मानने में कोई कठिनाई नहीं होनी चाहिए।

हर्ष एवं परवर्ती गुप्तों का काल

सातवीं शताब्दी के पूर्वार्द्ध में कोसल क्षेत्र में भी हर्षवर्धन का शासन था ***इसकी पुष्टि फैजाबाद के निकट भिटौरा से प्राप्त एक निधि से होती है। इस निधि में 248 चांदी के सिक्के हर्षवर्धन के माने जाते हैं जिन पर ''श्रीशलदत्त'' (श्रीशीलादित्य) लेख उत्कीर्ण है। आर0 बर्न ने इन्हें हर्ष का सिक्का माना है। डॉ0 देवहूति भी इसे स्वीकार करती हैं।***

चीनी यात्री ह्वेनसांग भी इसी समय भारत आया था और उसने इन क्षेत्रों की विस्तृत यात्रा की थी तथा अपने विवरण एक पुस्तक के रूप में लिखे थे। ***पाश्चात्य विद्वानों ने तथा उनके अनुकरण पर अनेक भारतीय इतिहासकारों ने भी, ह्वेनसांग के विवरणों को सन्देहातीत ढंग से स्वीकार किया है।*** *लेकिन, ह्वेनसांग के सभी विवरण पूर्णरूप से विश्वसनीय नहीं है। सबसे बड़ी बात तो यह है कि उसने अपने विवरणों में इधर–उधर से सुनी–सुनाई बातों को अत्यधिक स्थान दिया है। जिसमें ऐतिहासिक तथ्यों के साथ–साथ आनुषांगिक कहानियां, विशेष रूप से बौद्ध धर्म से सम्बन्धित, अधिक महत्व के साथ उद्धृत की गई है। दूसरी बात यह है कि उसका दृष्टिकोण बौध धर्म के एक अनुयायी भक्त की भांति था जिसने प्रमुख रूप से केवल बौद्ध धर्म से सम्बन्धित स्थानों, स्मारकों तथा अवशेषों का विवरण दिया है। अन्य धर्मो से सम्बन्धित विवरण बहुत संक्षेप में और चलताऊ ढंग से दिए गए हैं।* ***तीसरी बात यह है कि उसके द्वारा दिये गए भौगोलिक विवरण बहुत अधिक विश्वसनीय नहीं हैं। तथा दूरियों के विवरण भी कभी–कभी अविश्वसनीय लगते है। ह्वेनसांग ने कोशल से सम्बन्धित दो स्थानों का विवरण अपने यात्रा वृतान्त में दिया है। पहला स्थान ओ–यु–तो का है जिसे, विवरण को संकलित करने वालों ने, अयोध्या माना है तथा***

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सभी इतिहासकारों ने इस विवरण को अयोध्या का ही विवरण स्वीकर किया है। *कन्नौज से नवदेवकुल (न–पो–ति–पो–कु–लो) की दूरी एक सौ ली बताते हुए वहां से दक्षिण–पूर्व की दिशा में छः सौ ली चलकर गंगा पार करने के बाद वह ओ–यु–तो पहुॅचता है। उसका जो यात्रा मार्ग है उसके अनुसार ओ–यु–तो से तीन सौ ली पूर्व जाने के बाद गंगा के उत्तर में वह हयमुख (औ–यि–मु–खि) पहुॅचता है और वहां से सात सौ ली गंगा के दक्षिण जाकर प्रयाग (पो–लो–ए–किया) पहुॅचता है। प्रयाग से पांच सौ ली चलकर वह कौशाम्बी पहुॅचता है तथा कौशाम्बी से सात सौ ली उत्तर चलकर वह कसपुर (शि–किया–शि–ओ–लो) पहुॅचता है और वहां से 170 अथवा 180 ली उत्तर दिशा में विशाख (पि–सो–किया) की स्थिति बताता है। इस* ***पि–सो–किया को कनिंघम द्वारा अयोध्या से समतुलित किया गया है क्योंकि अयोध्या का एक नाम विशाख भी था।***

अब ***ह्वेनसांग के अयोध्या (ओ–यु–तो) तथा विशाख (पि–सो–किया) की पहचान के सम्बन्ध में भ्रम उत्पन्न होना स्वाभाविक है क्योंकि अयोध्या (?) से वह विशाख पहुॅचने के लिए जिस टेढ़े–मेढ़े मार्ग को अपनाता है उसके अनुसार इन दोनों स्थानों को एक–दूसरे से काफी दूर होना चाहिए।*** *कनिंघम ने दन्तधावन कुण्ड अर्थात् बुद्ध की दातौन से उपजे वृक्ष की कथा के कारण पि–सो–किया को अयोध्या माना है जिसका विवरण हम पीछे दे आए हैं। अब यदि यह अयोध्या था तो ओ–यु–तो कौन–सा स्थान रहा होगा, यह विचारने की बात है।* ***लेकिन हमारे इतिहासकारों ने बिना इस विषय पर विचार किए ओ–यु–तो को अयोध्या स्वीकार कर लिया है तथा उसके विवरण को भी।***

ह्वेनसांग के अनुसार ओ–यु–तो *5,000 ली के क्षेत्र में विस्तृत था और इसकी राजधानी 20 ली क्षेत्र में फैली थी। यहां पर 100 संघाराम थे तथा 3,000 भिक्षु थे जिनमें हीनयान और महायान दोनों के ही भिक्षु सम्मिलित थे। ओ–यु–तो के क्षेत्र में 10 देवमंदिर थे। लेकिन उसमें रहने वाले विभिन्न पंथों को मानने वाले विद्वानों की संख्या बहुत कम थी। इसी अयोध्या के सम्बन्ध में ह्वेनसांग ने वसुबन्धु बोधिसत्व की कथा का विवरण दिया है।* ***अयोध्या का वर्णन करने वाले आधुनिक विद्वान् इसे ही अयोध्या मानते हैं। लेकिन कनिंघम ने भौगोलिक***

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कठिनाइयों को देखते हुए कानपुर से उत्तर–पश्चिम की ओर काकूपुर नामक एक कस्बे से इसकी पहचान की है। सबसे बड़ी बात तो यह है कि इस ओ–यु–तो को गंगा के किनारे स्थित बताया गया है। प्रश्न यह है कि कया इसकी पहचान अयोध्या से कर सकते है? *तथा ओ–यु–तो में जिन स्तूपों, संघारामों और विहारों का विवरण ह्वेनसांग ने दिया है क्या उन्हें अयोध्या पर आरोपित कर सकते हैं? यदि इसका उत्तर 'हॉ' में दिया जाए तो पि–सो–किया अर्थात् विशाखा के विषय में क्या कहा जाएगा जो भौगोलिक दृष्टि से ओ–यु–तो से काफी दूर है तथा जहां पर बुद्ध के दातौन से उत्पन्न वृक्ष का विवरण मिलता है। इन दोनों स्थानों के विवरण और पहचान में कठिनाई के कारण पूरा यात्रा विवरण ही सन्देह के घेरे में आ जाता है।*

प्रतिहार काल

आठवीं से दसवीं शताब्दियों के अयोध्या के इतिहास के विषय में कोई विशेष सूचना आभिलेखिक एवं साहित्यिक स्रोतों से नहीं मिल पाती। *किन्तु उत्तर भारत के राजनीतिक इतिहास में कन्नौज का महत्व बना रहा क्योंकि* ***गुर्जर–प्रतिहार राजाओं ने नवीं शताब्दी ई0 में कन्नौज से शासन किया था।*** *नागभट्ट द्वितीय जो पहले गोविन्द तृतीय से पराजित हो चुका था, कन्नौज पर अधिकार करने के बाद अपने को सम्राट् घोषित करता है तथा 'परम भट्टारक महाराजाधिराज परमेश्वर' की उपाधियां धारण करता है। उसी के वंश में नागपाल के बाद रामभद्र तथा उसका पुत्र मिहिरभोज शासक बनता है। प्रतिहार काल में कन्नौज के प्रतिहारों के संघर्ष दक्षिण मे राष्ट्कूटों के साथ तथा पूर्व में बंगाल के पालों के साथ निरन्तर चलते रहे। मिहिरभोज के बाद उसका पुत्र महेन्द्रपाल शासक हुआ जिसकी शासन तिथि 885–915 ई0 तक मानी जाती है। महेन्द्रपाल के बाद भोज द्वितीय, तत्पश्चात महीपाल और उसके बाद महेन्द्रपाल द्वितीय और देवपाल शासक बनते हैं। देवपाल की अंतिम ज्ञात तिथि 948 ई0 है और उसने संभवतः 950 ई0 तक शासन किया। देवपाल संभवतः अन्तिम महत्वपूर्ण राजा था क्योंकि गहड़वाल राजा चन्द्रदेव के चन्द्रावती अभिलेख से यह ज्ञात होता है कि उसके पितामह यशोविग्रह ने देवपाल के वंशजों के नष्ट हो जाने के बाद बलपूर्वक कान्यकुब्ज पर अधिकार कर लिया था। यह एक विचार करने की*

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बात है कि देवपाल, जो अपेक्षाकृत एक कमजोर शासक था और बहुत ही अल्प समय के लिए राजगद्दी पर बैठा, किस प्रकार गहड़वाल अभिलेखों में उद्धृत किया गया है। वास्तव में देवपाल के बाद प्रतिहार वंश नष्ट नहीं हुआ था तथा अभिलेखों से ज्ञात होता है कि उसके बाद विजयपाल और तत्पश्चात् उसका पुत्र राज्यपाल शासक हुआ। किन्तु इस अवधि में प्रतिहार वंश के राज्य क्षेत्र को हड़पने वाले कई राजवंश उठ खड़े हुए थे। ***राज्यपाल के शासनकाल में ही 1019 ई0 में कन्नौज पर महमूद गजनवी के इस आक्रमण हुआ था।*** *मुस्लिम आक्रमणों का विवरण हम अगले अध्याय में देगें। इसलिए यहां पर महमूद गजनवी के इस आक्रमण की विवेचना नहीं की जा रही है। उल्लेखनीय बात यह है कि इस आक्रमण से भी प्रतिहार वंश का समूल विनाश नहीं हुआ था क्योंकि* ***विक्रम संवत् 1184 (1027 ई0) के इलाहाबाद जिले में स्थित झूँसी से प्राप्त होने वाले एक अभिलेख में राज्यपाल के पुत्र त्रिलोचनपाल को 'परमभट्टारक महाराजाधिराज परमेश्वर' कहा गया है।*** *लेकिन त्रिलोचनपाल का कितना राजनीतिक महत्व था, यह नहीं कहा जा सकता। 1019 ई0 में महमूद के आक्रमण में त्रिलोचनपाल ने भी काफी वीरता दिखायी किन्तु वह पराजित हो गया। त्रिलोचनपाल के बाद यशःपाल नामक एक अन्य प्रतिहार शासक का नाम मिलता है जिसे 'महाराजाधिराज यशःपाल' कहा गया है लेकिन यह नहीं कहा जा सकता कि इस यशपाल का त्रिलोचनपाल से क्या संबंध था।* ***इस प्रकार कन्नौज के गुर्जन–प्रतिहारों का ईसा की ग्यारहवीं शताब्दी के पूर्वार्द्ध में पतन हो गया और उनका स्थान गहड़वालों ने ले लिया।***

प्रतिहार काल में जहां तक अयोध्या और कोशल के इतिहास का प्रश्न है, यह निश्चयपूर्वक नहीं कहा जा सकता कि यह क्षेत्र प्रतिहार राजाओं के सीधे प्रशासन के अन्तर्गत था अथवा उनके किसी सामन्त द्वारा प्रशासित हो रहा था। इसके अतिरिक्त यह भी निश्चय के साथ नहीं कहा जा सकता कि सम्पूर्ण कोशल प्रदेश एक ही सामन्त अथवा अधिकारी द्वारा प्रशासित होता था अथवा इस क्षेत्र में कई छोटे–मोटे सामन्त शासन कर रहे थे। भौगोलिक निकटता की दृष्टि से यह स्वीकार करने में संकोच नहीं होना चाहिए कि कोशल सीधे गुजर–प्रतिहार शासकों के अन्तर्गत था।

गहड़वाल काल

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अयोध्या के इतिहास की दृष्टि से गहड़वाल युग अत्यधिक महत्वपूर्ण है। यद्यपि इस समय भी अयोध्या के सम्बन्ध में अधिक आभिलेखिक अथवा साहित्यिक साक्ष्य उपलब्ध नहीं हैं फिर भी अनेक स्थलों पर ऐसे उल्लेख मिलते हैं जिनसे अयोध्या के इतिहास पर थोड़ा बहुत प्रकाश पड़ता है।

गहड़वाल शासक स्वयं को काशी और उत्तर कोसल आदि तीर्थों का पालन करने वाला कहते हैं और उनका यह कथन इस दृष्टि से और महत्वपूर्ण हो जाता है कि इस युग में पश्चिम से मुस्लिम आक्रमण बार–बार हो रहे थे। अभी हाल ही में 6 दिसम्बर 1992 को अयोध्या में राम–जन्मभूमि स्थल स्थित ढांचे को गिराते समय उसकी दीवालों के अन्दर चिने गए पत्थर के फलक पर उत्कीर्ण बीच पंक्तियों का एक गहड़वाल कालीन अभिलेख प्राप्त हुआ है। इसमें यह कहा गया है कि पश्चिम से आने वाली भीति (आक्रमणों) को प्रत्यावर्तित किया गया तथा अयोध्या में विष्णुहरि का एक विशाल मंदिर बनवाया गया। इस प्रकार अयोध्या गहड़वाल राजवंश के शासनकाल में उनके द्वारा ही आरक्षित रही।

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यशोविग्रह

गहड़वाल अभिलेखों के अनुसार, इस वंश के प्रथम पुरुष का नाम यशोविग्रह था जो चन्द्रदेव का पितामह था। उसके विषय में कहा गया है कि उसने पृथ्वी को जीतकर उसे अपनी दण्डप्रणयिनी बनाया। प्रायः यह माना जाता है कि ***यशोविग्रह ने ग्यारहवीं शताब्दी ई. के मध्य में शासन किया था।*** *किसी अन्य प्रमाण के अभाव में यही भी माना गया है कि* ***उसने लगभग 25 वर्ष शासन किया होगा।***

महीचन्द्र

यशोविग्रह का पुत्र महीचन्द्र का पिता था। इसका वर्णन भी गहड़वाल अभिलेखों में साधारण ढंग से एक विजयी राजा के रूप में किया गया है तथा यह कहा गया है कि उसका यश समुद्र के पार तक फैल चुका था। महाराजपुत्र गोविन्दचन्द्र के ताम्रपत्राभिलेख में उसे 'नृप' कहा गया है तथा यह बताया गया है कि उसने अनेक शत्रुओं पर विजय प्राप्त की थी। इस अभिलेख में उसे महीतल नाम दिया गया है। इस प्रकार इतिहासकारों का यह मानना है कि यशोविग्रह तथा महीचन्द्र दोनों ही सामन्त शासक थे और किसी बड़े राजा की अधीनता स्वीकारत करते थे। संभवतः इनका स्वामी कल्चुरि शासक लक्ष्मीकर्ण (1042–1070 ई0) था जिसका

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उत्तराधिकारी यशःकर्ण था। महीचन्द्र ने भी संभवतः ग्यारहवीं शताब्दी ई0 के तीसरे चरण में शासन किया होगा।

चन्द्रदेव

चन्द्रदेव गहड़वाल राजवंश का प्रथम प्रतापी राजा था। उसका पहला अभिलेख चन्द्रावती से मिला है और उस पर विक्रम संवत् 1148 (1090 ई.) की तिथि पड़ी हुई है। इस अभिलेख में उसे 'परम भट्टारक महाराजाधिराज परमेश्वर परमाहेश्वर निजभुजोपार्जित श्रीकान्यकुब्जाधिपत्य श्रीचन्द्रदेवविजयी' कहा गया है। इससे यह अनुमान लगाया जा सकता है कि 1090 ई0 के काफी पहले ही उसका शासन प्रारम्भ हो चुका था। प्रायः सभी गहड़वाल अभिलेखों में उसे काशी (वाराणसी), कुशिक (कन्यकुब्ज या कन्नौज), उत्तरकोशल (अयोध्या) तथा इन्द्रस्थानीयक आदि तीर्थों का पालन करने वाला कहा गया है। अधिकांश विद्वान् इन्द्रस्थानीयक को इन्द्रप्रस्थ अथवा दिल्ली ही मानते हैं। इस समय दिल्ली पर तोमरों का राज्य था और उसके बाद चाहमानों का शासन हुआ। तोमरों के किसी भी अभिलेख से इस बात की झलक नहीं मिलती कि दिल्ली पर गहड़वालों ने शासन स्थापित किया हो और तोमरों को अपदस्थ किया हो। फिर भी, चन्द्रावती अभिलेख में उल्लिखित इन्द्रस्थानीयक को यदि दिल्ली माना जाए तो यही स्वीकार करना पड़ेगा कि चन्द्रदेव तुर्कों के आक्रमण के विरुद्ध अभियान करते हुए दिल्ली तक पहुँचा होगा और उसकी रक्षा की होगी।

चन्द्रदेव ने किन परिस्थितियों में इस विस्तृत भू–भाग पर शासन प्रारम्भ किया, इसके विषय में कुछ संकेत महाराजपुत्र गोविन्दचन्द्र के बसाही ताम्रपत्राभिलेख से प्राप्त होता है जिसमें यह कहा गया है कि भोज की मृत्यु के पश्चात् तथा कर्ण की कीर्ति के अवशेष के नष्ट होने पर जब पृथ्वी कठिनाई में पड़ गई थी तो चन्द्रदेव ने उसकी रक्षा की। चन्द्रावती अभिलेख में यह भी कहा गया है कि उसने अपने उदार प्रताप से समस्त प्रजोपद्रवों को शान्त करके गाधिपुर आधिराज्य को अर्जित किया तथा शत्रुओं को विध्वस्त कर दिया।

वसाही दानपत्र लेख में उल्लिखित भोज की पहचान भोज परमार से की गई है जिसने 1000 से 1050 ई0 तक शासन किया था, तथा कर्ण की पहचान कल्चुरि शासक लक्ष्मीकर्ण से की गई है जिसने युद्ध में कई बार पराजित होने के बाद अपना सिंहासन 1073 ई0 के पूर्व अपने

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पुत्र यशःकर्ण के लिए छोड़ दिया था। *लक्ष्मीकर्ण की पराजयों के बाद अन्तर्वेदी में कोई शक्तिशाली प्रतिरोध न रह जाने के कारण तथा पश्चित से मुसलमानों के निरंतर होने वाले आक्रमणों के कारण प्रजाजनों में भय व्याप्त हो गया था। इसको शान्त करने का श्रेय चन्द्रदेव को प्राप्त हुआ।* ***मुसलमान इतिहासकारों के उल्लेखों से यह ज्ञात होता है कि समकालीन गजनी के सुल्तान इब्राहिम ने (1059–99 ई0 तक) भारत पर कई बार आक्रमण किए थे। हबीबुस्सियर नामक इतिहास लेखक का यह कहना है कि 'उसने हिन्दुस्तान पर कई बार आक्रमण किया और हर बार विजयी होकर गजनी लौटा।' ऐसे में समय में चन्द्रदेव ने तुरुष्क आक्रमणों से इन देवतीर्थों की सुरक्षा करने के लिए तथा प्रजा में व्याप्त उपद्रवों को शान्त करने के लिए शासन अपने हाथ में ले लिया।***

चन्द्रदेव के शासनकाल के चार अभिलेख उपलब्ध हैं जो विक्रमी संवत् 1048, 1050, 1054 में तिथ्यांकित हैं। चन्द्रदेव को वाराणसी से दिल्ली तक के क्षेत्र का स्वामी बनने के लिए कई युद्ध करने पड़े होंगे। गहड़वाल अभिलेखों में शत्रु को नष्ट करने वाला (क्रान्तद्विषन्मण्डलः) तथा उद्वत योद्धाओं के द्वारा फैलाए गए अन्धकार को नष्ट करने वाला (विध्वस्तोद्धतधीरयोधतिमिरः) कहा गया है। ***चन्द्रावती के विक्रम संवत् 1150 (1093 ई0) वाले लेख में उसे नरपति, गजपति, गिरिपति तथा त्रिशंकुपति को जीतने का श्रेय दिया गया है।*** *इनके विषय में निश्चयपूर्वक कुछ विशेष नहीं कहा जा सकता। संभवतः यह कल्चुरि राजाओं की उपाधियां थीं अथवा ये सामन्तों के कुछ विशेष वर्ग थे।*

चन्द्रदेव की सबसे महत्वपूर्ण उपलब्धि कान्यकुब्ज अथवा महोदय पर अधिकार करना रहा है। कन्नौज मौखरी काल से ही अन्तर्वेदी पर शासन करने वाले शक्तिशाली सम्राटों की राजधानी रही है। हर्ष और प्रतिहार सम्राट भी कन्नौज से शासन कर रहे थे। इसी कारण प्रायः सभी आधिकारिक गहड़वाल अभिलेखों में कान्यकुब्ज की विजय को दो बार संदर्भित किया जाता रहा है। ('श्रीमद्गाधिपुराधिराज्य समंदोर्विक्रमेण अर्जित' तथा 'निजभुजोपार्जित श्री कन्यकुब्जाधिपत्यं)। चन्द्रदेव के पौत्र गोविन्दचन्द्र द्वारा अपने पिता मदनपाल के शासनकाल में महाराजपुत्र के रूप में लिख्वाए गए बसाही अभिलेख में चन्द्रदेव के विषय में यह कहा

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गया है कि ***उसने कान्यकुब्ज को अपनी राजधानी बनाया*** *(कान्यकुब्जेद्राजा राजधानीमनिंदिताम)। प्रायः विद्वानों ने इस विषय पर विचार करने में अधिक समय व्यतीत किया है कि गहड़वालों की राजधानी कन्नौज में थी अथवा वाराणसी मे, और इस प्रकार की संभावनाएं व्यक्त की हैं कि पहले कन्नौज को राजधानी बनाया गया और बाद में उसे वाराणसी वापस ले आया गया क्योंकि विक्रम संवत 1101 के बसाही अभिलेख में चन्द्रदेव के द्वारा कान्यकुब्ज को राजधानी बनाने का उल्लेख आता है जबकि विक्रम संवत 1162 के कमौली अभिलेख में इसका कोई उल्लेख नहीं मिलता । यहां पर उल्लेखनीय है कि ये* ***दोनों ही अभिलेख चन्द्रदेव की मृत्योपरांत उसके पुत्र मदनपाल के शासनकाल में महाराजपुत्र गोविन्दचन्द्र द्वारा लिखवाए गए थे।*** *यह एक हास्यास्पद अनुमान मात्र है। वास्तव में गहड़वालों की मुख्य राजधानी वाराणसी ही रही होगी तथा कान्यकुब्ज उनकी द्वितीय राजधानी मानी जा सकती है और उसका कारण कान्यकुब्ज को परम्परागत राजधानी के रूप में प्राप्त प्रतिष्ठा को बताया जा सकता है। ऐसा लगता है कि कान्यकुब्ज में उस समय गाधिपुराधिपति गोपाल का वंशज सामन्त के रूप में शासन कर रहा था और समय–समय पर गहड़वाल नरेश कान्यकुब्ज में भी रहते रहे होंगे।*

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कुछ विद्वानों ने चन्द्रदेव की पहचान उस चॉदराय से करने की कोशिश की है जिसके विषय में मुस्लिम इतिहासकारों का यह कहना है कि वह गजनी के शासकों का हस्तिपाल था। *डी0 सी0 गांगुली ने इस बात का सर्वप्रथम उल्लेख किया है और यह कहने की कोशिश की है कि चन्द्रदेव मुस्लिम आक्रमणकारियों का हस्तिपाल था और उनका करद राजा था। यद्यपि यह सिद्धान्त संदेह से परे नहीं है तथा इसका खण्डन भी किया जा चुका है फिर भी,* ***हैन्स बेकर ने अभी हाल में ही इसकी पुनरूक्ति की है। ऐसा लगता है कि उन्होंने रोमा नियोगी द्वारा लिखित गहड़वाल राजवंश के इतिहास को देखा ही नहीं।***

गांगुली ने इस घटना को अपने तर्क का आधार बनाया है जिसके अनुसार गाधिपुराधिपति गोपाल के शासनकाल में एक बार पुनः मुसलमान सेना ने अन्तर्वेदी पर आक्रमण किया था। हबीबुस्सियर के अनुसार इस आक्रमण का नेतृत्व इब्राहिम ने स्वयं किया था। लेकिन सलमान के अनुसार

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उसका पुत्र महमूद इस सेना का नेतृत्व कर रहा था। जयपाल के वीरतापूर्वक प्रतिरोध के बावजूद पराजय के बाद चारो दिशाओं से राजा लोग अमीर के लिए उपहार लेकर आने लगे। उपहारों में इतने अधिक हाथी मिले कि सुल्तान को कान्यकुब्ज में एक हस्तिशाला स्थापित करनी पड़ी और चॉदराय नामक एक व्यक्ति को उसका हस्तिपाल नियुक्त किया गया। यहां पर इस चॉदराय की पहचान गहड़वाल नरेश चन्द्रदेव से की गई और गांगुली द्वारा यह सुझाव दिया गया कि

> *''भाग्य को चमकाने के लिए चन्द्रदेव ने मुसलमानों का साथ स्वीकार किया। प्रारम्भ में उसने महमूद के अधीन कन्नौज में हस्तिपाल के रूप में सेवा करना स्वीकार किया। लेकिन मुस्लिम सेना के प्रस्थान के तुरन्त बाद उसने बलपूर्वक कन्नौज पर अधिकार कर लिया और देश का शासक बन गया . . . . । चन्द्रदेव ने कन्नौज की राज्यसत्ता महमूद के समर्थन से इस शर्त पर प्राप्त की थी कि वह गजनी के सुल्तान को वार्षिक कर देगा। बारहवीं शताब्दी में मुसलमानों ने गहड़वाल प्रदेशों पर बार–बार आक्रमण किए। स्पष्टतः ये हमले चन्द्रदेव के वंशजो को सुल्तान को बराबर कर देने को बाध्य करने के लिए किए जाते थे।''*

रोमा नियोगी ने डा0सी0 गांगुली द्वारा चन्द्रदेव गहड़वाल की पहचान चॉदराय से किए जाने की आलोचना की है क्योंकि यह कई प्रकार से पूर्वअवधारणाओं पर आधारित है। सबसे पहली बात यह है कि हस्तिपाल चॉदराय के ऊपर किसी प्रकार के कर का निर्धारण किया गया था, इस बात की सूचना दीवान–ए–सलमान हबीबुस्सियर अथवा जमीउत्तवारीख में नहीं दी गई है। दूसरी बात यह है कि गहड़वाल अभिलेखों में संदर्भित 'तुरूष्क दण्ड' नामक कर की प्रकृति के विषय में कोई स्पष्ट जानकारी नहीं है लेकिन यहां यह मान लिया गया है कि गहड़वाल राजा अपनी प्रजा से 'तुरूष्क दण्ड' इसलिए वसूल करते थे कि गजनी के शासकों को कर दे सकें। तीसरी बात यह है कि गहड़वालों के राज्य क्षेत्र में तुर्को के निरंतर आक्रमण उनसे कर वसूलने के लिए होते थे इसका भी कोई मुस्लिम अथवा भारतीय प्रमाण नहीं मिलता। उस काल में मुस्लिम आक्रमण प्रायः सभी हिन्दू राजाओं पर होते थे और उन्हें केवल गहड़वालों पर हुए आक्रमण के संदर्भ

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में नहीं देखा जाना चाहिए। ***दीवान–ए–सलमान में मुसलमानों के गहड़वाल क्षेत्र पर होने वाले आक्रमण का विस्तार से उल्लेख किया गया है लेकिन उसमें यह कहीं नहीं कहा गया कि यह आक्रमण चॉंदराय के वंशजों से कर वसूलने के लिए किया गया था।*** *वास्तविकता तो यह है कि दीवान में चॉंदराय को कन्नौज की हस्तिशाला को हस्तिपाल नियुक्त करने के उल्लेख के बाद उसके जीवन के विषय में किसी प्रकार का कोई उल्लेख नहीं किया गया है और न यह कहा गया है कि उसने कन्नौज पर जबरदस्ती कब्जा कर लिया था अथवा कर वसूलने के लिए गजनी की सेनाएं चॉंदराय पर आक्रमण करती थीं। इन कारणों से चॉंदराय की पहचान चन्द्रदेव से नहीं की जा सकती।* ***यहां यह स्मरणीय है कि चन्द्रदेव के पिता और पितामह दोनों ही 'नृप' कहे गए हैं तथा प्रायः सभी विद्वान स्वीकार करते हैं कि वाराणसी तथा अयोध्या के क्षेत्र मे चन्द्रदेव के पिता और पितामह दोनों ही 'नृप' कहे गए हैं तथा प्रायः सभी विद्वान स्वीकार करते है कि वाराणसी तथा अयोध्या के क्षेत्र में चन्द्रदेव के पूर्वजों का पहले से राजनीतिक अस्तित्व रहा होगा।*** *इस प्रकार चन्द्रदेव की पहचान चॉंदराय से नहीं की जा सकती जिसने मुस्लिम आक्रमणकारियों से हस्तिपाल की नौकरी स्वीकार की थी। यह चॉंदराय कोई सामान्य व्यक्ति रहा होगा। दूसरी ओर चन्द्रदेव प्रारम्भ से ही मुस्लिम आक्रमणकारियों के आक्रमणों का उत्तर देने के लिए इतिहास में जाना जाता है।*

विक्रम संवत 1150 के आश्विन वदी 15 रविवार, तदनुसार 23 अक्टूबर 1093 की तिथि में अंकित चन्द्रदेव के चन्द्रावती ताम्रपत्राभिलेख में अयोध्या का कुछ उल्लेख मिलता है। चन्द्रदेव ने अयोध्या में विष्णुहरि के मंदिर में अनेक सोने के अलंकरण करवाए तथा काशी में आदिकेशव की प्रतिमा प्रतिष्ठापित कराई। *इसके अतिरिक्त उत्तर कोसल स्थित अयोध्या में उसने संकल्पपूर्वक (कृतनिश्चै) भूमिदान दिया। यह कार्य आश्विन मास की अमावस्या को किया गया था जो रविवार होने के साथ–साथ सूर्यग्रहण का भी अवसर था। उल्लेखनीय है कि इसके दूसरे दिन से शारदीय नवरात्र का प्रारम्भ होता है। इस अवसर पर चन्द्रदेव ने सरयू घर्घरा नदी के तट पर स्थित स्वर्गद्वारा नामक तीर्थ पर स्नान किया (सरयूघर्घराघमर्षणे*

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स्वर्ग्गद्वारनाम्नि तीर्थे स्नात्वा)। तदोपरान्त सूर्य की उपासना की (उष्णरोचिषमुपस्थाय), फिर उसने भगवान शिव की अर्चना की (ओषधीपतिशकलशेखरं समभ्यर्च्य), फिर तीन लोकों के स्वामी रक्षक वासुदेव की पूजा करके (भगवतस्त्रिभुवनत्रातुर्व्वासुदेवस्य पूजां विधाय) हवन करने के पश्चात् (प्रचुरपायसेन हविषा हविर्भुजं हुत्वा), उसने पितरों का पिण्डदान किया (पितृपिण्डयज्ञत्रिर्व्वर्त्य)। यहां यह उल्लेखनीय है कि चन्द्रदेव ने दान देने के पूर्व ऊपर उल्लिखित जो धार्मिक विधान किए वैसे ही धार्मिक विधि–विधन उसके वंशजों गोविन्दचन्द्र आदि के अभिलेखों में भी किए जाने का उल्लेख मिलता है। इस कारण यह समझना उचित नहीं होगा कि अयोध्या में दान देते समय चन्द्रदेव ने कोई विशेष प्रक्रिया अपनाई थी।''

चन्द्रदेव के उपरोक्त ताम्रपत्र से यह ज्ञात होता है कि कम–से–कम स्वर्गद्वार नाम का तीर्थ गहड़वाल युग में भी अस्तित्व में था। इससे यह भी ज्ञात होता है कि सरयू उस समय भी सरयू घर्घरा नाम से प्रचलित थी। *दिनेश चन्द्र सरकार का यह मत समर्थनीय नहीं है कि अयोध्या स्वर्गद्वार तीर्थ सरयू और घाघरा के संगम पर स्थित था। वास्तविकता यह है कि सरयू–घाघरा नाम उस नदी का है जिसके किनारे अयोध्या नगर बसा हुआ है। सरयू को सरयू–घर्घरा नाम क्यों मिला इसके विषय में हम पहले अध्याय में विचार कर चुके हैं।*

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इस अभिलेख से यह ज्ञात नहीं होता कि चन्द्रदेव (चन्द्रादित्यदेव) ने शिव और वासुदेव की पूजा किन मन्दिरों में जाकर की थी। ***लेकिन इस अभिलेख के आठवें श्लोक में यह उल्लेख किया गया है कि चन्द्रदेव ने मणियों से जड़े हुए सोने के आभूषण अयोध्या में विष्णुहरि के मंदिर में चढ़ाए तथा काशी में आदिकेशव की प्रतिमा को भी स्वर्णरत्नों के आभूषणें से विभूषित किया। इस प्रकार चन्द्रदेव के समय में अयोध्या में विष्णुहरि के मंदिर के अस्तित्व में होने का निश्चय होता है। बाद में गाविन्दचन्द्र के काल में उसके पुनर्निर्माण का उल्लेख 1992 में प्राप्त अयोध्या अभिलेख में मिलता है जिससे यह स्पष्ट होता है कि विष्णुहरि का मंदिर जन्मस्थान मन्दिर ही था।***

मदनपाल देव

चन्द्रदेव के पश्चात् उसका पुत्र मदनपाल सिंहासनरूढ़ हुआ। चन्द्रदेव के

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*शासनकाल का **अन्तिम अभिलेख 1156 विक्रम संवत् में तिथ्यांकित है** (1100 ई0) और मदनपाल के शासन काल का पहला अभिलेख 1161 संवत् (1103 ई0) में तिथ्यांकित है। इस कारण यह माना जाता है कि मदनपाल 1100 और 1103 ई0 के बीच में किसी समय शासनारूढ़ हुआ था। लेकिन सबसे उल्लेखनीय बात यह है कि 1103 ई0 में जारी किया गया बसाही का ताम्रपत्राभिलेख मदनपाल के पुत्र गोविन्दचन्द्र के द्वारा जारी किया गया था। उसी प्रकार संवत् 1154 (1097 ई0) में जारी किया गया बंगाल एशियाटिक सोसाइटी का ताम्रतत्राभिलेख मदनपाल के द्व ारा अपने पिता के जीवनकाल में लिखवाया गया था। इस अभिलेख में मदनपाल को समस्त राजकीय उपाधियों से उल्लिखित किया गया है (श्रीचन्द्रदेवपादानुध्यात परम भट्टारक महाराजाधिराजपरमेश्वर परममाहेश्वर श्रीमन्मदनपाल देव)। इससे यह सिद्ध होता है कि मदनपाल का राज्याभिषेक चन्द्रदेव के जीवनकाल में ही 1097 ई0 के पहले ही हो चुका था। यद्य पि यह दान चन्द्रदेव ने ही किया था किन्तु इसका प्रकाशन मदनपाल ने अपनी मुद्रा से करवाया था और निबन्धित करवाया था। ऐसा लगता है कि चन्द्रदेव काफी वृद्ध हो चुका था और इस कारण अपने जीवनकाल में ही उसने अपने पुत्र को राज्याभिषिक्त करवा दिया था। चन्द्रदेव इस अभिलेख के कम–से–कम दो वर्ष के बाद तक भी जीवित रहा। इसका प्रमाण उसके चन्द्रावती ताम्रपत्राभिलेख से प्राप्त होता है जो विक्रम संवत् 1156 (1100 ई0) में तिथ्यांकित है।*

मदनपालदेव के शासनकाल से कुल छः अभिलेख प्रकाश में आए हैं जिसमें बंगाल एशियाटिक सोसाइटी का ऊपर उल्लिखित ताम्रपत्राभिलेख, उसने अपने पिता के जीवनकाल में प्रचलित करवाया था। इसके अतिरिक्त उसका विक्रम संवत् 1164 में प्रकाशित बड़ेरा ताम्रपत्राभिलेख मात्र ऐसा अभिलेख है जो उसके द्वारा अकेले नाम पर जारी करवाया गया था। इसके अतिरिक्त तीन अन्य ताम्रपत्राभिलेख मदनपाल के शासनकाल में प्रचारित किए गए और ये तीनों ही राजपुत्र गोविन्दचन्द्र के द्वारा लिखवाए गए थे। बसाही के ताम्रपत्राभिलेख में उसे राजपुत्र तो कहा ही गया है साथी ही राजाओं का तिलक भी कहा गया है। इसके अतिरिक्त विक्रम संवत् 1066 में तिथ्यांकित राइन ताम्रपत्राभिलेख में भी उसे महाराजपुत्र कहा गया है। मदनपाल के काल का छठा दानपत्र विक्रम संवत 1164 का बताया जाता है जिसमें महारानी पृथ्वीश्रीका के दान का उल्लेख है। इसे 'टेरीएण्ड कम्पनी'

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का अभिलेख कहा गया है लेकिन अब यह उपलब्ध नहीं है। श्री बेंजाल ने जर्नल आफ़ रॉयल एशियाटिक सोसाइटी (1866) में इसका जिक्र करते हुए यह लिखा है कि इसकी भाषा विक्रम संवत् 1162 के कमौली दानपत्र से मिलती–जुलती है और संभवतः इसे भी गोविन्दचन्द्र ने प्रचलित करवाया होगा।

प्रारम्भ में केवल वे ही चार ताम्रपत्राभिलेख उपलब्ध थे जिनको महाराजपुत्र गोविन्दचन्द्र ने उत्कीर्ण करवाया था। इसके कारण विद्वानों में यह धारणा बलवती हुई कि संभवतः मदनपाल ने शासन ही नहीं किया था। और इस कारण यह अनुमान लगाया गया कि वह बीमार या अशक्त था। अतः शासन–सूत्र राजपुत्र गोविन्दचन्द्र को संभालना पड़ा तथा बसाही दानपत्र में उल्लिखित पुरोहित जागुक, महत्तक बाल्हन तथा प्रतिहार गौतम के समर्थन से दानपत्र निर्गत किए जाने लगे थे। और संभवतः शासन प्रबन्ध के लिए युवराज, रानी राल्हादेवी तथा पुरोहित प्रतिहार और महत्तक की एक समिति बनवाई गई थी। ***लेकिन बडेरा का ताम्रपत्राभिलेख 1926 में प्राप्त हुआ तथा 1941 में प्रकाशित हुआ जिससे यह निश्चित माने जाने लगा कि परमभट्टारक, परमेश्वर, परमामाहेश्वर श्रीमान् मदनपालदेव ने वास्तव में शासन किया था।*** *लेकिन आश्चर्य की बात यह है कि किसी का ध्यान बंगाल एशियाटिक सोसाठटी के उस ताम्रपत्राभिलेख की ओर नहीं गया जिसमें मदनपाल को उन समस्त राजकीय उपाधियों के साथ प्रस्तुत किया गया है जिसका उल्लेख हम पहले कर आए है। इस प्रकार यह निश्चयपूर्वक कहा जा सकता है कि मदनपाल ने भी काफी लम्बे समय तक शासन किया होगा और अपने पिता के जीवनकाल में ही उसका राज्याभिषेक करा दिया गया होगा। उल्लेखनीय है कि चन्द्रदेव के काफी लम्बे समय तक जीवित रहा होने के कारण उसका पुत्र मदनपाल प्रौढ़ावस्था में ही शासक बना होगा।*

गहड़वाल वंश में मदनपाल ही वह पहला राजा है जिसने चांदी और तांबे के सिक्के चलवाए थे। उसके सिक्के वृषभ और अश्वारोही प्रकार के हैं जो उस समय उत्तर भारत में प्रचलन में थे। *इनके पुरोभाग पर अश्वारोही का भद्दा चित्र है तथा उसके चारों ओर राजा का नाम 'मदनदेव' लिखा मिलता है। लेकिन किसी भी सिक्के पर पूरा नाम नहीं मिलता। कहीं मदन कहीं 'मद' और 'श्रीम'*

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*मिलता है। **पृष्ठभाग पर बैठे हुए वृषभ की रेखाकृति है** जिस पर 'माधव श्री सामन्त' (अथवा 'माधव' 'श्रीसाम' अथवा 'माध') मिलता है। मदनपाल के चांदी के सिक्के अत्यधिक विरल हैं जिनमें प्रायः भारी मिलावट होती है। थामस ने इस राजा के एक सिक्के को चॉदी और तांबे का बताया है तथा कनिंघम ने एक–दूसरे सिक्के को विलोन का बताया है। इनका भारत भारतीय मान के अनुसार 32 रत्ती का होता है। लेकिन वास्तव में 1025 ग्रा0 से लेकर 1.62 ग्रा0 के भार वाले सिक्के मिले हैं जबकि 32 रत्ती लगभग 2 ग्रा0 का होता है।*

कुछ विद्वानों ने यह अनुमान लगाया है कि मदनपाल के शासनकाल में तुरूष्क आक्रमणकारियों ने आक्रमण करके कन्नौज पर विजय प्राप्त कर ली थी और मदनपाल को बंदी बना लिया था। गोविन्दचन्द्र ने मुक्तिधन देकर मदनपाल को मुक्त कराया था। इस मत की प्रबल समर्थक रोमा नियोगी हैं जिनके तर्कों का संक्षिप्त विवरण इस प्रकार है।

रोमा नियोगी के अनुसार, बसाही दानपत्र में यह उल्लिखित है कि चन्द्रदेव ने कान्यकुब्ज को अपनी राजधानी बना लिया था (कन्याकुब्जे करोद्राजा राजधानीमनिंदिताम्)। उनका यह अनुमान है कि यह दानपत्र मदनपाल के शासनकाल में विक्रम संवत् 1161 में लिखवाया गया था, तथा विचित्र बात यह है कि कमौली दानपत्र में यह श्लोक नहीं मिलता यद्यपि अन्य सभी श्लोक वैसे ही मिलते हैं। वास्तव में कोई भी गहड़वाल लेख कान्यकुब्ज को राजधानी नहीं बताता। इस प्रकार उन्होंने यह अनुमान लगाया है कि 25 दिसम्बर 1104 ई0 (बसाही दानपत्र की तिथि) तथा 24 अक्टुबर 1105 ई0 (कमौली दानपत्र की तिथि) के बीच में किसी समय गहड़वालों को राजधानी कान्यकुब्ज को छोड़ना पड़ा होगा तथा गोविन्दचन्द्र को 1105 ई0 में नगर को पुनः प्राप्त करने के लिए युद्ध करना पड़ा। वे राहन दानपत्र में इसका कारण खोजती है जिसमें यह उल्लेख आता है कि असमान युद्ध के बार–बार होने के कारण हम्मीर को अपना वैर छोड़ना पड़ा (हम्मीरं न्यस्वैरं मुहुरसमरणक्रीड़या यो विधते)। उनके अनुसार, हम्मीर अथवा अमीर (मुस्लिम सेनापति) जो विक्रम संवत् 1166 के पूर्व गोविन्दचन्द्र द्वारा पराजित किया गया था, गजनी का सुल्तान मसूद इब्न इब्राहिम (तृतीय, 1099 से 1115 ई0) अथवा उसका कोई अधिकारी रहा होगा। तबकात–ए–नासरी के अनुसार, इस सुल्तान के शासनकाल में हाजिब तुधातगीन ने गंगा पार करके हिन्दुस्तान के उन क्षेत्रों तक जेहाद छेड़ा जहां

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सुल्तान महमूद के अतिरिक्त अन्य किसी की सेनाएं नहीं पहुॅची थीं। समकालीन कवि सलमान ने अपने दीवान में इस घटना का विवरण इस प्रकार दिया है:–

> *इस्लाम की सहायता से मसूद ने एक सेना खड़ी की। जेहाद के लिए उसने हिन्दुस्तान पर धावा बोला। हिन्द के शासक खुदा के मारे हुए मल्ही को बन्दी बनाया, कन्नौज हिन्द की राजधानी थी जिसे काफिर अपना ध्रुवतारा मानते थे। यह सुमनियों का काबा था और काफिरों का किबला था। सारे हिन्द की धनराशि यहां जमा होती थी जैसे कि सभी नदियां समुद्र में मिलती हैं। मल्ही के पास सेना, धन, हाथी, हथियार क्या कुछ नहीं था।*

रोमा नियोगी ने मल्ही अथवा मल्हीर को मदन का अपभ्रंश माना है। वे कुछ लोगों के इस सुझाव का विरोध करती हैं कि यह मल्ही विक्रम संवत् 1176 में जारी किए गए दानपत्र का मदन रहा होगा। उनके अनुसार, मल्ही को हिन्द का शासक कहा गया है तथा कान्यकुब्ज को हिन्द की राजधानी बताया गया है। इस कारण पराजित राजा स्वयं गहड़वाल शासक रहा होगा। www.vadaprativada.com *इस कारण पराजित राजा स्वयं गहड़वाल शासक रहा होगा। इस प्रकार वे यह परिणाम निकालती हैं कि विक्रम संवत् 1161–62 में गजनी के सुल्तान मसूद तृतीय की सेना का नूतृत्व करते हुए हाजिब तुघातगीन कान्यकुब्ज तक चढ़ आया और यदि कवि सलमान पर विश्वास किया जाए तो उसने गहड़वाल राजा मदनपाल को बन्दी बना लिया तथा प्रत्यर्पण राशि पाने के बाद छोड़ा।*

यहां पर रोमा नियोगी के उपरोक्त सिद्धान्त में कई कमियां हैं जो हमारा ध्यान आकृष्ट करती हैं। बसाही के दानपत्राभिलेख में चन्द्रदेव के विषय में जो यह कहा गया है कि उसने कान्यकुब्ज को अपनी राजधानी बनाया वह किसी दूसरे संदर्भ में स्वीकार नहीं किया जाना चाहिए। वास्तव में समस्त गहड़वाल लेखों में चन्द्रदेव का वर्णन करते समय यह उल्लेख मिलता है कि उसने अपने बाहुविक्रम से कान्यकुब्ज का राज्य प्राप्त किया। बसाही दानपत्र लेख में इसी बात का उल्लेख ठीक उसी स्थान पर यह कहकर किया गया है कि उसने कान्यकुब्ज को अपनी राजधानी बनाया। यह एक सामान्य उल्लेख विभिन्न प्रकार की शब्द–रचना में नए श्लोक के रूप में बसाही दानपत्र में आता है। इसके आधार पर अनुमान

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लगाना कि कमौली अभिलेख में राजधानी शब्द नहीं आता इसलिए कान्यकुब्ज राजधानी के रूप में गहड़वालों से छिन गया था, पंक्तियों के बीच में पढ़ने का प्रयास कहा जाएगा। वास्तव में कमौली दानपत्र लेख के बाद के किसी भी गहड़वाल अभिलेख में कान्यकुब्ज के राजधानी होने का उल्लेख नहीं आता, तो क्या इसका यह अर्थ निकाला जा सकता है कि बाद में फिर कभी कन्नौज गहड़वालों की राजधानी नहीं बन सका?

दूसरी बात मल्ही की पहचान मदनपाल से करने से सम्बन्धित है। किसी भी भाषा–शास्त्रीय दृष्टिकोण से मदन का अपभ्रंश मल्ही नहीं बनाया जा सकता। यदि मल्ही के समीप कोई नाम आता है तो वह चन्द्रदेव के पिता महीचन्द्र का नाम हो सकता है जिसका दूसरा रूप महीयल या महीतल आदि लेखों में प्राप्त होता है। ....

गोविन्दचन्द्र

यद्यपि गोविन्दचन्द्र ने अपने पिता के जीवनकाल में ही शासन–सूत्र संभाल लिया था तथा उसको भी एक युवराज के रूप में महत्वपूर्ण अधिकार प्राप्त थे लेकिन वह अपने पिता की भांति अपने पिता के जीवनकाल में राजपद पर अभिषिक्त नहीं हुआ था। उसका पितामह चन्द्रदेव लम्बी आयु तक जीवित रहा। इस कारण उसका पिता काफी प्रौढ़ावस्था में ही राजा बन पाया होगा और बहुत संभावना इस बात की कही जा सकती है कि वह भी अपने शासनकाल में यौवनोचित तेजस्विता खो चुका रहा हो जिसके कारण गोविन्दचन्द्र को कुछ अधिक ही अधिकार प्राप्त रहे हों। इसकी सूचना राजपुत्र के रूप में जारी किए गए गोविन्दचन्द्र के दानपत्रों से मिलती है। गोविन्दचन्द्र की माता का नाम राल्हादेवी था जिसका उल्लेख विक्रम संवत् 1179 के कमौली ताम्रपत्राभिलेख में मिलता है। मदनपाल की एक अन्य रानी पृथ्वीश्रीका के विषय में भी हमको विक्रम संवत् 1164 के बहुवरा दानपत्र से ज्ञात होता है कि जिसे 'टेरी एण्ड कम्पनी' का दानपत्र भी कहा जाता है। किन्तु यह मूल लेख अब उपलब्ध नहीं है। ***गोविन्दचन्द्र गहड़वाल राजवंश का सबसे महान् शासक था।*** *उसने लगभग आधी शताब्दी तक उत्तर भारत की राजनीति को प्रभावित किया। एक युवराज के रूप में अपने पिता के शासन–काल में ही उसने जो सफलताएं प्राप्त कीं उसके कारण उसे अभिलेखों में ''समस्तराजप्रक्रियोपेत'' कहा गया है। उसका औपचारिक राज्याभिषेक 1109 ई0 से 1114 ई0 के बीच में किसी समय हुआ होगा क्योंकि* ***युवराज के रूप में उसका अंतिम राहन***

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दानपत्र विक्रम संवत् 1166 (1109 ई0) में जारी किया गया था तथा महाराजाधिराज के रूप में पालि ताम्रपत्रालेख विक्रम संवत् 1171 (1114 ई0) में जारी किया गया था। *अतः उसका राज्यभिषेक तथा उसके पिता मदनपाल की मृत्यु इन्हीं दो तिथियों के मध्य रखी जा सकती है।* ***गोविन्दचन्द्र के द्वारा जारी किया गया अन्तिम गौली दानपत्र वि.स. 1211 (1154 ई0) का है जबकि उसके पुत्र विजयचन्द्र का पहला दानपत्र सि0सं0 1217 में (1160 ई0) में जारी किया गया था।*** *इस प्रकार युवराज के रूप में उसका प्रथम दानपत्र वि0स0 1161 (1104 ई0) में जारी किया गया था। इस प्रकार गोविन्दचन्द्र को उत्तर भारत की राजनीति में कार्य करने का लगभग 56 वर्ष का कार्यकाल प्राप्त हुआ।*

पुरातात्विक स्रोत

उसके शासनकाल के लगभग 45 अभिलेख प्राप्त हैं जो उसके युवराज काल में लिखवाए गए तीन अभिलेखों के अतिरिक्त हैं। इस कारण यह निश्चयपूर्वक कहा जा सकता है कि गोविन्दचन्द्र ने अपने राजवंश में सबसे अधिक दानपत्र लिखवाए। लेकिन इन दानपत्रों में एक उसकी रानी कुमारदेवी द्वारा पाषाण–खण्ड पर लिखवाई गई सारनाथ से प्राप्त प्रशस्ति भी शामिल है तथा तीन अभिलेख उसके राजकुमारों के द्वारा तथा एक किसी अन्य व्यक्ति द्वारा लिखवाया गया है। ....

साहित्यिक स्रोत

इन पुरातात्विक साक्ष्यों के अतिरिक्त ***गोविन्दचन्द्र के महासान्धिविग्रहिक लक्ष्मीधर द्वारा लिखित कत्य–कल्पतरू ग्रन्थ भी उपलब्ध है*** *जिसके विषय में लेखक का यह कथन है कि उसकी मंत्रणा ने राजा को यश प्राप्त करवाया (तत् सर्व खलु यस्य मंत्रमहिमाश्चर्य सह लक्ष्मीधरः) इसके अतिरिक्त लक्ष्मीधर यह भी कहता है कि उसने काशी के राजा के शत्रुओं से सफलतापूर्वक युद्ध किया था (नीताकाश्याधिपस्ययेन रिपुवस्ते ब्रह्मचर्यपरम्)। इस प्रकार गोविन्दचन्द्र का महासान्धिविग्रहिक लक्ष्मीधर केवल लेखक और एक विद्वान ही नहीं वरन् एक योद्धा तथा राजनीतिकुशल व्यक्ति भी था। अपनी पुस्तक के अन्त में* ***'व्यवहारकाण्ड' के अन्त में लक्ष्मीधर यह कहता है कि उसने कृत्यकल्पतरु की रचना गोविन्दचन्द्र के आदेश पर की थी*** *(महाराजधिराज गोविन्दचन्द्र देवादिष्टेन . . . श्री लक्ष्मीधर भट्टेनविरचितं . .*

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)। इस प्रकार यह ग्रंथ भी गोविन्दचन्द्र के शासनकाल के इतिहास का एक स्रोत है। एक अन्य ग्रन्थ नयचन्द्र द्वारा विरचित रम्भामंजरी नाटक है जिसमें गोविन्दचन्द्र के शासनकाल के कुछ उल्लेख मिलते हैं। यहां यह उल्लेखनीय है कि अभी हाल ही में अयोध्या से प्राप्त अभिलेख में नयचन्द्र नामक एक व्यक्ति को गोविन्दचन्द्र द्वारा साकेत मण्डल के अधिपति के रूप में नियुक्त किए जाने का उल्लेख मिलता है जो अल्हण का भतीजा बताया गया है। इस बात की सम्भावना की जा सकती है कि यह नयचन्द्र रम्भामंजरी नाटक का लेखक नयचन्द्र हो सकता है। इसके अतिरिक्त गोविन्दचन्द्र के शासनकाल के सम्बन्ध में कुछ उल्लेख अन्य समकालीन राजवंशों के अभिलेखों से भी प्राप्त होते हैं। मुस्लिम इतिहासकारों के कुछ उल्लेख भी प्रत्यक्ष अथवा अप्रत्यक्ष रूप से गोविन्दचन्द्र के शासनकाल पर प्रकाश डालते हैं। लेकिन अधिकांश मुस्लिम आक्रमणों में आक्रान्ताओं को मुँह की खानी पड़ी थी तथा मुस्लिम इतिहासकारों द्वारा मुस्लिम शासकों की पराजयों का उल्लेख न करने की प्रवृत्ति के कारण अनेक युद्धों का उन्होंने उल्लेख तक नहीं किया है जो गोविन्दचन्द्र और मुस्लिम आक्रान्ताओं के बीच लड़े गए थे।

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मुस्लिम आक्रमण

गोविन्दचन्द्र ने युवराज के रूप में जब से शासन कार्य प्रारम्भ किया तभी से उसने अपनी प्रशासनिक प्रतिभा और सामरिक कुशलता का प्रदर्शन प्रारम्भ कर दिया था। यद्यपि उसने आसपास के राज्यों पर अपनी धाक जमा ली थी तथा अनेक राजवंशों को पराजित करके उनके राज्यक्षेत्र अपने शासन के अन्तर्गत शामिल कर लिए थे, फिर भी, उसकी सामरिक प्रतिभा का प्रदर्शन पश्चिम से होने वाले मुस्लिम आक्रमणों के प्रत्यावर्तन में दिखाई पड़ता है। कुछ इतिहासकारों ने यह दिखाने का प्रयास किया है कि गजनी के यामिनी सुल्तानों की सेना ने कान्यकुब्ज पर आक्रमण करके अस्थायी रूप से उस नगर को अपने अधिकार में कर लिया था और संभवत : गोविन्दचन्द्र के पिता मदनपाल को बन्दी बना लिया था। किन्तु पीछे हम यह देख आए हैं कि इस प्रकार की कल्पना में कोई सच्चाई नहीं है तथा मुसलमानों द्वारा कान्यकुब्ज पर आक्रमण, अधिकार तथा मदनपाल के बन्दी बनाए जाने के पीछे कोई तथ्यात्मक प्रमाण नहीं उपलब्ध हैं। इस कारण रोमा नियोगी का यह कहना कि यामिनी सुल्तानों द्वारा कान्यकुब्ज की पराजय से गहड़वालों को एक धक्का लगा था, उचित नही होगा।

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गहड़वाल राजवंश के प्रथम शासक चन्द्रदेव के अभिलेखों में जो यह उल्लेख मिलता है कि उसने काशी, कान्यकुब्ज, अयोध्या तथा इन्द्रस्थानीयक आदि तीर्थों परिपालन (संरक्षण) किया था, यह दर्शाता है कि मुस्लिम आक्रमणकारियों के द्वारा इन तीर्थों की सुरक्षा को खतरा उत्पन्न हो गया था और ऐसे समय में चन्द्रदेव ने उत्तर भारत के बड़े भू–खण्ड पर आधिपत्य स्थापित करने का जो कार्य किया उसके पीछे इन तीर्थ क्षेत्रों की मुस्लिम आक्रान्ताओं से सुरक्षा ही मुख्य उद्देश्य था। *यह कार्य उसके पुत्र मदनपाल तथा पौत्र गोविन्दचन्द्र के शासनकाल में सफलतापूर्वक किया जाता रहा। अयोध्या से प्राप्त पाषाण फलक अभिलेख से यह ज्ञात होता है कि गोविन्दचन्द्र के समय में पश्चिम से आने वाले भीति को प्रत्यावर्तित किया गया था। इस अभिलेख में उल्लिखित यह 'पाश्चात्य भीति' निश्चय ही पश्चिम से आने वाली मुस्लिम आक्रमण के भय की ओर संकेत करती है।*

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पश्चिम से होने वाले मुस्लिम आक्रमणकारियों का केन्द्र बिन्दु गजनी था, जहां पर यामिनी सुल्तान शासन कर रहे थे। ***गोविन्दचन्द्र की शासनावधि में लगभग पॉंच सुल्तानों ने गजनी पर शासन किया।*** *यद्यपि ये सुल्तान आन्तरिक झगड़ों में व्यस्त रहे फिर भी, भारत भूमि पर लाहौर में केन्द्र स्थापित करके ये आन्तरिक भागों पर बार–बार आक्रमण करते रहे। इन आक्रमणों की प्रकृति मुख्य रूप से डाकुओं की भांति लूट–पाट के लिए आक्रमण करना और वापस चले जाने तक ही सीमित रही।* ***वे आक्रान्त क्षेत्रों पर कभी शासन स्थापित नहीं कर सके।*** *भारतीय राजवंश भी इसे खेल के रूप में लेते रहे। गोविन्दचन्द्र के यौवराज काल में लिखवाए गए 1109 ई0 के राहन दानपत्राभिलेख में यह स्पष्ट रूप से कहा गया है कि 'मुहूरसमरणक्रीड़ा' में हार जाने के कारण अमीर को वैर त्याग देना पड़ा। (हम्मीर शब्द अरबी शब्द अमीर का भारतीय रूप है)। लेकिन इस उल्लेख में रणक्रीड़ा शब्द ध्यान देने योग्य है जिसके आधार पर यह अनुमान लगाया जा सकता है कि भारतीय इसे युद्ध का खेल ही मानते थे क्योंकि मुस्लिम आक्रान्ता अचानक प्रकट होते और जनता को लूटते–पाटते तथा गुलाम बनाने के लिए बन्दी करते और राजा की सेना से सामना होने पर थोड़ा–बहुत युद्ध करके भाग खड़े होते। लेकिन*

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इस उल्लेख में दो शब्द सबसे महत्वपूर्ण हैं वे हैं – ***'मुहूर' और 'असम'।*** *मुहूर का अर्थ होता है बार–बार तथा असम का अर्थ होता है असमान शक्ति।* ***मुस्लिम आकान्ता लूट–पाट के इरादे से थोड़ी सी भी सेना एकत्र कर पाने के बाद इस प्रकार की लूटपाट के लिए निकल पड़ते थे और जमकर युद्धों में सामना नहीं करते थे। जहां कहीं पर उनका सफलता मिल जाती वहां उनके दरबारी इतिहासकार विजयघोष के साथ उनकी सफलता का उल्लेख करते तथा साथ ही वे इन तीन बातों का भी उल्लेख करना नहीं भूलते – 1. कितने हिन्दुओं को मारा और गुलाम बनाया, 2. कितने ऊँटों पर धन–दौलत लादकर वापस ले गए, तथा 3. कितने हिन्दू देव मंदिरों को ध्वस्त किया (तथा अवसर मिलने पर उनके ऊपर मस्जिदों का निर्माण कराया)।*** *इस अभिलेख में हम्मीर द्वारा शत्रुता छोड़ देने का जो संकेत किया गया है वह यही बताता है कि गहड़वाल सेना द्वारा पराजित होने के बाद कुछ वर्षो तक मुस्लिम आकान्ता इस ओर पुनः आने का साहस नही कर सके।*

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गोविन्दचन्द्र के समकालीन जो पॉच यामिनी शासक हुए उनके नाम और शासनकाल इस प्रकार है–1.मसूद (तृतीय) इब्न इब्राहीम (ल01099–1115ई0), 2. शीरजाद(1115–16ई0), 3. अर्सलान शाह (1116–18ई0), 4. बहराम शाह (1118–52ई0), और 5. खुसरब शाह (1152–60ई0)। ये सुल्तान गद्दी के लिए परस्पर युद्धरत रहते थे। इनमें सबसे अधिक विनाशकारी संघर्ष अर्सलान शाह और बहराम शाह के बीच में हुआ जिसमें खुरासान के सुल्तान संजर ने मौके का लाभ उठाकर बहराम का साथ दिया और अर्सलान को भागकर भारतीय क्षेत्र मे शरण लेनी पड़ी। बहराम सुल्तान संजर के संरक्षण में गजनी का सुल्तान बना। बाद में अर्सलान ने बहराम को पराजित कर दिया। किन्तु खुरासान के सुल्तान के द्वारा बहराम की सहायता किए जाने के बाद एक युद्ध में अर्सलान मारा गया। बहराम शाह ने 1118 से 1152 ई0 तक के अपने लम्बे शासनकाल में भारत पर कई आक्रमण किए ऐसा मुसलमान इतिहासकारों का कहना है। लेकिन रोमा नियोगी का यह कहना सर्वथा उचित है कि ***'इन सुल्तानो द्वारा भारत पर किए जाने वाले आक्रमणों का कोई भी विस्तृत विवरण मुस्लिम इतिहासकारों ने नहीं दिया है।'***

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जबकि गोविन्दचन्द्र के महासान्धिविग्रहिक ने कृत्यकल्पतरू की राजप्रशस्ति में गोविन्दचन्द्र के बारे में यह लिखा है कि उसने असमान युद्ध में हम्मीर वीर को मार डाला (असम–समर–सम्पल–लम्पट शौर्यभाजाम् –अवधिरवधि–युद्धे येन हम्मीर वीर)। लम्मीधर गोविन्दचन्द्र के महासान्धिविग्रहिक थे और इस कारण उन्होने गोविन्दचन्द्र के विषय में यह जो सूचना दी है कि उन्होंने असम युद्ध में अमीर का वध कर दिया था, गलत नही हो सकता। लेकिन इस युद्ध में मारे गए अमीर का क्या नाम था और यह युद्ध किस समय हुआ था इसका निश्चय करना बहुत कठिन है, क्योंकि ***मुस्लिम इतिहासकार अपनी पराजयों की कहानियों को प्रायः अनदेखी कर गए हैं।*** *राहन दानपत्र में भी, जैसा हम देख आए है, एक अमीर के द्वारा शत्रुता त्याग दिये जाने का उल्लेख है। ऐसा लगता है कि ये दोनों उल्लेख दो अलग–अलग समय में हुई घटनाओं से संबन्धित हैं। राहन दानपत्राभिलेख उस समय लिखवाया गया था जब गोविन्दचन्द्र एक युवराज अथवा महाराजपुत्र थे। लेकिन लक्ष्मीधर द्वारा किया गया उल्लेख गोविन्दचन्द्र के महाराजाधिराज बन जाने के बाद की घ टना कहा जा सकता है जिसमें आक्रमणकारी नेता मारा गया था। इस बात की संभावना तो नहीं लगती कि यह कोई यामिनी सुल्तान रहा होगा, लेकिन यह भारत में गजनी के सुल्तान का कोई प्रतिनिधि निश्चित रूप से रहा होगा। राहन दानपत्र और कृत्यकल्पतरू दोनों में ही एक बात समान रूप से देखने को मिलती है। एक में 'असम रण क्रीड़ा' और दूसरे में 'असम समर' का उल्लेख मिलता है और इन दोनों की शब्दो का एक ही अर्थ है कि इन युद्धों में दोनों सेनाओं के बल समान नहीं थे। ऐसा लगता है कि गोविन्दचन्द्र की विशाल सेना के सामने एक बार तो आक्रान्ता को भाग जाना पड़ा और दूसरी बार के युद्ध में वह मारा गया।*

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गोविन्दचन्द्र के सामन्त एवं समकालीन

कुमारदेवी के सारनाथ अभिलेख में यह उल्लेख है कि उसने वाराणसी की रक्षा के लिए कार्य किया। ***लक्ष्मीधर के कृत्यकल्पतरू में भी यह उल्लेख है कि वह शत्रुओं से काशी की रक्षा के लिए लड़ा।*** *ये दोनों ही उल्लेख यह संकेत करते है कि काशी पर भी तुरूष्क आक्रमणकारियों का धावा हुआ था जिनसे काशी की रक्षा के लिए गोविन्दचन्द्र को लड़ना पड़ा। रोमा नियोगी का यह विचार है की*

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गोविन्दचन्द्र के शासनकाल में गहड़वाल राज्य का पश्चिमी सीमान्त काफी सुरक्षित रहा होगा क्योंकि दिल्ली में तोमर उसके अधीन राज्य कर रहे थे। बदायूँ में राष्ट्रकुट थे तथा कान्यकुब्ज में गाधिपुराधिति गोपाल के वंशज राज्य कर रहे थे। संभवतः गहड़वाल शासक की यह सुविचारित नीति रही हो कि पश्चिमी सीमान्त को इन शासकों के अधीन छोड़ दिया जाए जिससे वे तुरूष्कों से पहले निपट लें। लेकिन, भारतीय सामन्तवाद के अनुसार एक बड़े राजा के अधीन अनेक छोटे–बडे सामन्त हुआ करते थे जो स्थानीय प्रशासन अपनी रूचि के अनुसार चलाते थे और उनके दैनन्दिन कार्यो में अधिराजा का कोई हस्तक्षेप नहीं होता था। ये सभी सामन्त अपनी–अपनी सेना के साथ अधिराज की सेना का निर्माण करते थे। आवश्यकता पड़ने पर एक साथ एक़ होते थे। इस कारण यह कहना उचित नहीं है कि पश्चिम में गोविन्दचन्द्र ने इन तीनों राजवंशों को जान– बूझकर इसलिए छोड़ दिया था कि वे तुरूष्क आक्रमणों का पहले सामना करेंगे। वास्तव में सम्पूर्ण गहड़वाल साम्राज्य क्षेत्र में सैकड़ो छोटे–मोटे राजवंश शासन करते रहे होंगे जिनमें से केवल कुछ के विषय में ही हमें अभिलेखों अथवा अन्य स्रोतों से सूचना मिल पाती है। इन सामन्तों के बावाजूद साम्राज्य की स्थायी सेना सीमान्तों पर नियुक्त रहती होगी। लेकिन इसके बावजूद तुरूष्क आक्रमणकारी किसी प्रकार काशी अथवा अयोध्या अथवा मथुरा तक आक्रमण करने में सफल हो जाते होंगे जिनको उल्लेख कभी–कभी भारतीय स्रोतों से हमें ज्ञात होता है।

गोविन्दचन्द्र का साम्राज्य पूर्व में पटना और मुंगेर तक विस्तृत था और इस दृष्टि से कभी–कभी उसका संघर्ष गौड़ के पाल राजाओं से भी हुआ था। ***पटना के निकट मोनेर नामक स्थान से प्राप्त वि0सं0 1183 (1124 ई0) लेख से यह ज्ञात होता है कि इस समय तक बिहार में कम–से–कम पटना का क्षेत्र उसके शासनान्तर्गत आ गया था। इसके अतिरिक्त उत्तर प्रदेश मे स्थित लार से प्राप्त वि0सं0 1202 (1146 ई0) के एक अभिलेख से यह ज्ञात होता है कि इस वर्ष उसने मुग्दगिरी (मुंगेर, बिहार) से इस लेख का प्रकाशन किया था।*** *यह उल्लेखनीय है कि गोविन्दचन्द्र के पिता मदनपाल के शासनकाल में यह क्षेत्र बंगाल के पाल राजा रामपाल के अधीन था। लेकिन किसी समय गोविन्दचन्द्र ने इस क्षेत्र पर अपना अधिकार कर लिया था। दक्षिण में उसने*

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त्रिपुरी के हैहय कल्चुरि राजा को हराकर उसका क्षेत्र अपने राज्य में मिला लिया था। कल्चुरि राजा यशःकर्ण को उसके पितामह चन्द्रदेव ने परास्त किया था। वि0सं0 1177 (1120 ई0) के बंगाल एशियाटिक सोसाइटी के दानपत्र से यह ज्ञात होता है कि गोविन्दचन्द्र ने कल्चुरि राजा यशःकर्ण के द्वारा अपने गुरू शिवाचार्य भट्टारक को दिए गए दान को वापस लेकर ठक्कुर वशिष्ठ नाम ब्राम्हण को दे दिया था। इस अभिलेख में पहली बार गोविन्दचन्द्र ने सुप्रसिद्ध कल्चुरि मौखरी, पुष्यभूति, परवर्ती गुप्त, प्रतिहार एवं गहड़वालों का युग उपाधि 'अश्वपति, गजपति, नरपति, राजत्रयाधिपति' को धारण कर लिया जिसका अर्थ यह माना जाता है कि उसने कल्चुरि राजवंश पर अपनी विजय को रेखांकित करने के लिए इस उपाधि को धारण किया था, जिसे उसके वंशज अन्त तक धारण करते रहे। इसके अतिरिक्त गोविन्दचन्द्र ने कल्चुरियों द्वारा प्रचलित लक्ष्मीप्रकार के सिक्कों को भी अपनाया जो उसकी कल्चुरियों पर विजय का एक प्रमाण माना जाता है।

गोविन्दचन्द्र ने दक्षिण दिशा में दशार्ण अथवा पूर्वी मालवा पर भी विजय प्राप्त की थी। इसका उल्लेख नयचन्द्र रचित रम्भामंजरी नाटक में हुआ है। इस नाटक के अनुसार जिस दिन गोविन्दचन्द्र ने दशार्ण पर विजय प्राप्त की उसी दिन उसके पौत्र जयचन्द्र का जन्म हुआ था और इसी कारण उसका नाम जयचन्द्र रखा गया। उस समय दशार्ण पर परमार वंश के शासक राज्य कर रहे थे तथा नरवर्मन और यशोवर्मन गोविन्दचन्द्र के समकालीन थे। लेकिन गोविन्दचन्द्र द्वारा मालवा विजय की पुष्टि किसी अन्य स्रोत से नही हो पाई है।

गोविन्दचन्द्र का चंदेल समकालीन मदनवर्मा (1129–93ई0) था और इसके शासनकाल में चन्देल शक्ति का विशेष विकास हुआ। मदनवर्मा के मऊ अभिलेख से ज्ञात होता है कि काशी के राजा सौहार्द्र के साथ अपना समय बिताते थे (कांल सौहार्द्रयवृत्या गगमयति सततं त्रास्तः काशिराजः)।

दक्षिण भारत से भी गोविन्दचन्द्र के राजनियक संबन्ध रहे होंगे इसके आभिलेखिक प्रमाण गंगैकोण्डचोलपुरम् से प्राप्त होते है। कुलोत्तुगं प्रथम (1070–1120ई0) के इकतालीसवे राज्यवर्ष में उत्कीर्ण लेख के नीचे गहड़वाल राजवंश की वंशावली यशोविग्रह से चन्द्रदेव तक गहड़वाल शैली की लिपि में उत्कीर्ण है। यद्यपि यह लेख अचानक रूक आता है फिर भी कुलोत्तुगं चोल के उक्त अभिलेख के आधार पर यह कहा जा सकता है कि

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इसे मदनपाल अथवा गोविन्दचन्द्र के शासनकाल में उत्कीर्ण किया गया होगा। दक्षिण भारत के बौद्ध भिक्षु श्रावस्ती (सहेत–महेत) में उपस्थित थे इसकी सूचना गोविन्दचन्द्र के वि0सं0 1176 के सहेत–महेत अभिलेख से प्राप्त होती है। इनमें एक भिक्षु चोल देश का था, दूसरा भिक्षु ओड्र देश (उड़ीसा) का था जिन्हें दान दिया गया था। इसके अतिरिक्त चालुक्य राजा सिद्धराज जयसिंह के एक राजदूत के काशी के राजा जयचन्द्र के दरबार में जाने का उल्लेख मेरूतुंग के प्रबन्ध चिन्तामणि में मिलता है। इसी प्रकार राजतरंगिणी से यह ज्ञात होता है कि गोविन्दचन्द्र के समकालीन कश्मीर के राजा जयसिंह से उसके अच्छे संबंध थे। रोमा नियोगी का यह कहना है कि 'यद्यपि गहड़वाल अभिलेखों में गोविन्दचन्द्र के समकालीन के समकालीन राजाओं के साथ राजनयिक संबंधो का कोई उल्लेख नहीं मिलता फिर भी समकालीन राजवंशो के अभिलेखों तथा अन्य साहित्यिक स्रोतों से प्रायः सभी महत्वपूर्ण पड़ोसी राजाओं के साथ मित्रता के सम्बन्धों के उल्लेख मिलते है। इस बात में कोई संदेह नही है कि उत्तर भारत में राजनीति के क्षेत्र में इस तीसरे गहड़वाल राजा को अत्यंत उच्च आदरणीय स्थान प्राप्त था।

गहड़वाल शासक गोविन्दचन्द्र को परम्परानुसार अनेक सामन्त भी प्राप्त हुए थे। इसके अतिरिक्त उसने कुछ और क्षेत्रों को जीतकर वहां के शासकों को अपना सामन्त बनने के लिए विवश किया। यद्यपि दिल्ली के तोमर गहड़वालों की अधीनता के विषय में अपने अभिलेखों में कोई संकेत नहीं देते फिर भी ऐसा लगता है कि वे गहड़वालों की छत्रछाया में लगभग स्वतंत्र रूप से शासन कर रहे थे। गोविन्दचन्द्र का समकालीन तोमर राजा संभवतः महीपाल देव था। इसके अतिरिक्त बदायूँ में शासन कर रहे राष्ट्रकूट राजवंश में गोविन्दचन्द्र के समकालीन शासक संभवतः के पुत्र और पौत्र रहें होंगे। रोमा नियोगी ने यह सम्भावना व्यक्त की है कि गाधिपुराधिपति गोपाल का राजवंश संभवतः बदायूँ के राष्ट्रकूट गोपाल के राजवंश से भिन्न रहा होगा। इस गाधिपुराधिपति गोपाल का वंशराज मदनपाल गोविन्दचन्द्र का समकालीन था जिसके मंत्री विद्याधर ने वि0सं0 1176 (1119 ई0) का सहेत–महेत दानपत्र जारी किया था।

विक्रम संवत 1191 (1134ई0) के कमौली दानपत्र से एक अन्य सामन्त श्रृंगर वंशीय वत्सराज का अभिलेख मिलता है। इस अभिलेख में चन्द्रदेव से लेकर गोविन्दचन्द्र तक गहड़वाल वंशावली दी गई है। इसके बाद श्रृंगर वंश के राजाओं की वंशावली भी दी हुई है। इसमें दानकर्ता

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वत्सराज को महाराजपुत्र कहा गया है तथा उसके पिता का नाम लोहणदेव बताया गया है। लोहणदेव के पिता का नाम अल्हण तथा उसके पिता का नाम श्रीकमलपाल बताया गया है। श्रीकमलपाल श्रृंगरोटा नामक स्थान से आए थे अतः इस वंश का नाम श्रृंगर वंश पड़ा।

इसके अतिरिक्त बारहवी शताब्दी के नागरी लिपि में लिखे गए कसया (कुशीनगर, उ0प्र0) से प्राप्त एक खण्डित अभिलेख से भी एक अन्य कल्चुरि राजवंश का उल्लेख मिलता है जो गहड़वालों के सामान्त रहे होंगे। इसमें अन्तिम राजाओं, शिवराज प्रथम (भूदा का पति), लक्ष्मणराज तृतीय तथा भीमत में से कोई भी गोविन्दचन्द्र का समकालीन सामन्त रहा होगा।

कुछ गहड़वाल अभिलेखों में 'सरवार' शब्द आया है जो सरयूपार का प्रकृत रूप कहा जा सकता है। लार से प्राप्त (पेज 98–100)मोनेर अभिलेख के अतिरिक्त गोविन्दचन्द्र ने वि0सं0 (1146 ई0) के मुग्दगिरि (मुंगेर) से एक अन्य अभिलेख जारी किया था। इस अभिलेख में सरयूपार गोविसालक के अन्तर्गत पानदल पतला में दुधेली ग्राम के दान का उल्लेख है। सरयूपार का उल्लेख गोविन्दचन्द्र के वि0सं0 1171 के पालि अभिलेख में भी हुआ है जिसमें पालि और उनवल ग्रामों के नाम आते है।

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एक अन्य अभिलेख से इसी क्षेत्र से एक अन्य राजा कीर्तिपाल देव के विषय में जानकारी मिलती है। लखनऊ संग्रहालय में संग्रहीत वि0सं0 1167 (1111ई0) के ताम्रपत्राभिलेख से ज्ञात होता है कि परमभट्टारक महाराजाधिराज परमेश्वर परमाहेश्वर श्री कीर्तिपालदेव ने एक दान दिया था जो परमभट्टारक महाराजाधिराज, परममेश्वर परमाहेश्वर श्री विक्रमपालदेव के पादानुध्यात थे तथा जिन्होने उत्तर समुद्र अथवा सिन्धु का स्वामित्व अपने बाहुबल से प्राप्त किया था। यह लेख विक्रम संवत 1167 के फाल्गुन मास के शुक्ल पक्ष द्वितीया, दिन शनिवार, को जारी किया गया था जो 11 फरवरी 1111 ई0 में पड़ता है। जिन ग्रामों का दान किया गया उनको दरद गण्डकी देश में स्थित बताया गया है। यद्यपि इस क्षेत्र की पहचान नही हो पाई फिर भी कीलहार्न का यह सुझाव है कि यह क्षेत्र बिहार में बहने वाली गण्डकी नदी की घाटी में रहा होगा। रोमा नियोगी का यह विचार है कि यह क्षेत्र गोरखपुर जिले के पूर्वोत्तर में पड़ना चाहिए जो इस समय देवरिया जिले का उत्तरी भाग है। रोमा नियोगी ने स्मिथ द्वारा कलकत्ता के इण्डियन म्यूजियम में वर्णित 'कीर्ति' लेख वाले कुछ सिक्कों को कीर्तिपालदेव का सिक्का माना है। उन्होने यह भी सुझाव दिया है कि दरद

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गण्डकी देश घाघरा और बड़ी गण्डक के बीच का क्षेत्र रहा होगा और तिथि की दृष्टि से कीर्तिपाल मदनपाल अथवा गोविन्दचन्द्र का समकालीन रहा होगा। इन्होने यह भी संभावना व्यक्त की है कि गोविन्दचन्द्र के पालि ताम्रपत्राभिलेख में जो 'नौराज्य गज' का उल्लेख मिलता है इससे यह अनुमान लगाया जा सकता है कि गोविन्दचन्द्र ने कीर्तिपाल के उत्तर समुद्र अथवा सौम्य सिन्धु राज्य को विक्रम संवत् 1167 (1111 ई0) तथा वि0सं0 1171 (1114 ई0) के बीच में युवराज अथवा राजा के रूप में जीत लिया था।

....यहां यह बात भी उल्लेखनीय है कि गोविन्दचन्द्र के वि0सं0 1182 के कमौली ताम्रपत्राभिलेख में भी एक अल्हण का नाम आता है जिसके पुत्र कीठण ने इस ताम्रपट्ट लेख की रचना की थी। इस ताम्रपत्र में अल्हण को 'श्रीवास्तव्य कुलोद्भूत कायस्थ' कहा गया है।

श्रीवास्तव्य–कुलोद्भूत–कायस्थोल्हण–सूनुना।

लिखितस्ताम्ब्र (म्र) पट्टोऽयं कीठणेन नृपाज्ञयेति ।।15।।

इस प्रकार अल्हण के दो पुत्रों का उल्लेख मिलता है और यह दोनो ही साहित्यकार थे। भतीजा नयचन्द्र जो साकेत मण्डल का अधिपति था और जिसने रम्भामन्जरी नाटक की रचना की थी। एक पुत्र कीठण या 'कृष्ण' था जिसे कृष्णचन्द्र भी इस आधार पर कहा जा सकता है कि उसके दो अन्य भाइयो के नाम के अन्त में चन्द्र शब्द आता है और कीठण को कृष्णचन्द्र का अपभ्रंश मान सकते हैं। इस कीठण को गोविन्दचन्द्र के शासन काल में प्रचारित कमौली दानपत्र की रचना का श्रेय प्राप्त है। अल्हण का दूसरा और छोटा (कनियान) पुत्र आयुषचन्द्र था जिसने अयोध्या की प्रशस्ति की रचना की थी और इस प्रशस्ति ये यह भी संकेत मिला है कि वह इस समय स्वयं अयोध्या का राजा था। ***अयोध्या में प्रचलित एक परम्परा यह भी स्वीकार करती है कि इस क्षेत्र पर श्रीवास्तव वंश ने राज्य किया था।***

. . रोमा नियोगी का यह मानना है कि गहड़वाल राज्य का अधिकांश भाग यथा, कान्यकुब्ज, बदायूँ, जौनपुर, चुनार, रोहतासगढ, वाराणसी तथा संभवतः अयोध्या भी मुस्लिम राजनीतिक प्रभाव क्षेत्र से बाहर थे।

गोविन्दचन्द्र के सिक्के बहुत बड़ी मात्रा में लगभग सम्पूर्ण उत्तर भारत से प्राप्त हुए हैं। उसके केवल सोने के

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सिक्कों की संख्या लगभग एक हजार बताई जाती है। *चॉदी और तॉबे के सिक्कों की संख्या अपेक्षाकृत कम है। उसके सिक्के बिहार और उत्तर प्रदेश से लेकर दिल्ली तक के क्षेत्र से मिले हैं। बहराइच जिले के नानपारा से 800 सोने के सिक्के मिले थे। इसके अतिरिक्त इलाहाबाद, बनारस, उन्नाव जिले में परमेदा, बिहार में चौसा और झबुआ तथा मुंगेर के पास सूरजगढ़, रॉची, नालन्दा और राजगिरि से भी मिले हैं। दिल्ली के पास से भी गोन्दिचन्द्र के सिक्के प्राप्त हुए हैं।* ***गोविन्दचन्द्र के सिक्के दो प्रकार के हैं, प्रथम प्रकार में लक्ष्मी की आकृति वाले सिक्के आते हैं और दूसरे प्रकार में अश्वारोही प्रकार के सिक्के आते है।*** *इन पर 'श्रीमदगोविन्दचन्द्र देवः' लेख तीन पंक्तियो में मिलते है। लेकिन अधिकांश सिक्कों में देव शब्द नहीं मिलता। गोविन्दचन्द्र के सोने के सिक्के 3.88 ग्रा0 के हैं। यद्यपि कुछ सिक्के 0.4 ग्राम के भी मिले है।*

गोविन्दचन्द्र के परिवार के विषय में भी हमको अभिलेखों अथवा अन्य स्रोतों से जानकारी मिलती है। गोविन्दचन्द्र की माता का नाम राल्हा देवी था। गोविन्दचन्द्र की चार रानियों के नामों के उल्लेख मिलते है। इनमें कुमारदेवी के द्वारा लिखवाई गई एक प्रशस्ति सारनाथ से प्राप्त हुई है। कुमारदेवी तिठि के चिक्कोर राजवंश के राजा देवरक्षित की पुत्री थी। देवरक्षित गौड़ के पाल राजा का सामन्त था। कुमारदेवी ने सारनाथ में बौद्ध भिक्षुओं को दान दिया था। गोविन्दचन्द्र के कमौली दानपत्र लेख से उसकी एक अन्य पट्ट महादेवी नयनकेलि का नाम मिलता है। इसके अतिरिक्त बागरमऊ दानपत्रों से एक अन्य पट्ट महादेवी गोसल्लदेवी का नाम मिलता है। एक चौथी रानी बसन्तदेवी के नाम का उल्लेख नेपाल के दरबार पुस्तकालय में संग्रहित अष्टसाहस्त्रिका प्रज्ञापारमिता नामक पाण्डुलिपि से ज्ञात होता है।

गोविन्दचन्द्र के दो पुत्रों के नाम भी हमें अभिलेखों से प्राप्त होते है। वि0सं0 1190 (1140 ई0) के उनबरी दानपत्राभिलेख में युवराज आस्फोटचन्द्र का उल्लेख मिलता है। इसके अतिरिक्त दो अन्य अभिलेखों में महाराजपुत्र राज्यपाल देव का भी उल्लेख मिलता है। लेकिन गोविन्दचन्द्र के पश्चात् उसका पुत्र विजयचन्द्र शासक हुआ। इस कारण यह कहा जा सकता है कि आस्फोटचन्द्र और राज्यपाल देव की मृत्यु गोविन्दचन्द्र के जीवनकाल में ही हो गई थी।

विजयचन्द्र

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प्रायः ऐसा समझा जाता है कि गोविन्दचन्द्र के बाद से ही गहड़वाल शक्ति का पतन प्रारम्भ हो जाता है। गोविन्दचन्द्र ने राजसत्ता का उपयोग काफी समय तक किया। ***उसके शासनकाल का अन्तिम अभिलेख वि0सं0 9299 (1154 ई0) का है।*** *ऐसा लगता है कि इसके शीघ्र बाद ही गोविन्दचन्द्र का देहान्त हो गया और उसका पुत्र विजयचन्द्र शासनारूढ़ हुआ। गहड़वाल राजवंश में यह परम्परा रही है कि अपने पिता के जीवनकाल में ही युवराज भी दानपत्र जारी करते थे। चन्द्रदेव के जीवनकाल में ही मदनपाल का राज्याभिषेक कर दिया गया था, इसका उल्लेख हम कर आए है। मदनपाल के शासनकाल में गोविन्द ने महाराज के पुत्र के रूप में दानपत्र जारी किए। इसी प्रकार गोविन्दचन्द्र के शासनकाल में उसके दो पुत्रों ने शासनपत्र जारी किए। युवराज आस्फोटचन्द्र ने भदैनी का दानपत्राभिलेख वि0सं0 1190 में जारी किया था। उसके बाद महाराजपुत्र राज्यपालदेव ने उनवल दानपत्राभिलेख वि0सं0 1201 में जारी किया था। ऐसा लगता है कि युवराज आस्फोटचन्द्रदेव का देहान्त वि0सं0 1190 के बाद किसी समय हो गया। सम्भवतः महाराजपुत्र राज्यपालदेव भी अपने पिता के जीवनकाल में ही दिवंगत हो गया था। गहड़वाल राजवंश में सम्भवतः केवल विजयचन्द्र ही एक मात्र ऐसा शासक है जिसको अपने पिता के जीवनकाल में दानपत्राभिलेख जारी करने का अवसर नही प्राप्त हो सका था।*

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विजयचन्द्र के शासनकाल के कुल छः दानपत्राभिलेख प्राप्त होते हैं। *उसका पहला दानपत्र वि0सं0 1216* ***(1161 ई0)*** *में जारी किया गया था। इसके अतिरिक्त उसने वि0सं0 1221* ***(1165 ई0)*** *तथा वि0सं0 1223* ***(1166 ई0)*** *में भी स्वतंत्र रूप से दानपत्र जारी किए थे। वि0सं0 1224 में विजयचन्द्र के शासनकाल में महाराजपुत्र जयचन्द्र ने हरिपुरा का दानपत्र जारी किया था। इसके बाद वि0सं0 1225 (1170 ई0) में 'यौवराज्याभिषिक्त महाराजपुत्र श्रीजयचन्द्रदेव' ने नागली दानपत्र जारी किया। इन पॉच दानपत्रों के अतिरिक्त विजयचन्द्र के शासनकाल में विक्रम संवत 1225 (1169 ई0) में जौनपुर से किसी 'भट्टारक भविभूषण' ने एक स्तम्भ अभिलेख दो पंक्तियों में लिखवाया था।*

डॉ0 रोमा नियोगी ने जिस समय गहड़वाल राजवंश का इतिहास नामक पुस्तक का प्रणयन किया था तब तक वि0सं0 1217 के कण्डिनी

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दानपत्र का प्रकाशन नही हो सका था अैर 1221 तथा 1223 के दानपत्र भी उस समय तक प्रकाश में नही आ सके थे जिसके कारण उन्होंने यह अनुमान लगाया था कि 1154 ई0 में गोविन्दचन्द्र के अन्तिम दानपत्र के पश्चात 1168 ई0 तक विजयचन्द्र के शासनकाल का कोई अन्य दानपत्र लेख नहीं मिलता। यह तेरह वर्षों का अन्तराल इस राजवंश के लिए असाधारण सा लगता है। जबकि इसके पहले तक अनेक दानपत्र जारी किए जा चुके थे। इसके लिए उन्होंने आन्तरिक कलह को जिम्मेदार माना था तथा यह भी बताया था कि शायद युवराज आस्फोटचन्द्र और महाराजपुत्र राज्यपाल देव के साथ उत्तराधिकार का संघर्ष हो सकता है। इसके अतिरिक्त एक दूसरी संभावना मुसलमानी आक्रमणों के कारण दिल्ली का हाथ से निकल जाना भी हो सकता है।

अभिलेखों में विजयचन्द्र को परम्परागत रूप से प्रशंसित किया गया है। इसके साथ ही यह भी कहा गया है कि संसार को दलित करने वाले हम्मीर के नारियों की ऑखों से निकलने वाली जलधारा से उसने पृथ्वीलोक के ताप को धो डाला था ''भुवन – दलन – हेला – हर्म्य – हमवीर – नारी – नयन –जलद–धौत–भूलोकतापः''। यहां पर उल्लिखित हम्मीर का तात्पर्य विजयचन्द्र के दो समकालीन यामिनी सुल्तानों से हो सकता है– 1. खुसरू शाह, जिसने 1150–60 ई0 के बीच शासन किया और 2. खुसरू मालिक, जिसने 1160–86 के बीच शासन किया था। इसमें पहले यामिनी सुल्तान की संभावना अधिक की जा सकती है क्योंकि उसका शासनकाल अफगानिस्तान के धुज़ कबीले के लोगों के आक्रमण के कारण विचलित रहा और उसे भागकर भारत में लाहौर में अपना केन्द्र बनाना पड़ा। अमीर और विजयचन्द्र के बीच यह संघर्ष 1161 ई0 के पूर्व हुआ होगा। क्योंकि उसके बाद के सभी अभिलेखों में विजयचन्द्र के लिए इसका उल्लेख मिलता है। यह भी संभव है कि विजयचन्द्र ने तुरूष्कों पर यह विजय अपने पिता के शासनकाल में प्राप्त की हो।

पृथ्वीराजरासों में चन्दवरदायी ने विजयचन्द्र द्वारा की गई कई विजयों का उल्लेख किया है जिसके विषय में इतिहासकारों को संदहे है। इसके अनुसार, विजयचन्द्र ने कटक (उड़ीसा) के सोमवंशी राजा मुकुन्ददेव को पराजित किया था तथा उसे इस बात के लिए बाध्य किया था कि वह अपनी पुत्री का विवाह उसके पुत्र जयचन्द्र से कर दे।

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जयचन्द्र की इसी पत्नी से संयोगिता अथवा संयुक्ता का जन्म हुआ था जिसके बाद में पृथ्वीराज चौहान से विवाह हुआ। *लेकिन इतिहासकारों का यह विश्वास है कि दक्षिण कोशल के सोमवंशी राजाओं को गंगो ने गोविन्दचन्द्र के शासनकाल के प्रारम्भ में ही परास्त करके उनका राज्य हड़प लिया था तथा मुकुन्ददेव नाम के किसी राजा का नाम उड़ीसा के इतिहास में नहीं मिलता। इसके उत्तर में यह कहा जा सकता है कि मुकुन्ददेव सोमवंशी राजाओं का कोई अल्पज्ञात उत्तराधिकारी रहा होगा क्योंकि यदि उसके अस्तित्व से ही इंकार कर दिया जाएगा तो पृथ्वीराज और संयोगिता की कथा का आधार ही समाप्त हो जाएगा जो पृथ्वीराजरासों का मुख्य विषय है। रासों में ही यह भी कहा गया है कि विजयचन्द्र ने दिल्ली के तोमर राजा अनंगपाल को हराया था। इसके अतिरिक्त* ***पट्टनपुर के भोलाभीम को भी उसने हराया था। इस भोलाभीम की पहचान अनहिलपाटक के चालुक्य नरेश भीमदेव द्वितीय से की जा सकती है*** *जिसके शासन का प्रारम्भ 1173 ई0 से होता है। इसके पूर्व उसके पिता चालुक्य कुमारपाल ने 1114 ई0 से 1173 ई0 तक शासन किया था। इस प्रकार इतिहासकारों का यह मानना है कि भीमदेव द्वितीय के शासनारूढ़ होने के तीन वर्ष पूर्व ही विजयचन्द्र का शासनकाल समाप्त हो गया था। लेकिन इस सम्बन्ध में यह कहा जा सकता है कि भीमदेव द्वितीय से विजयचन्द्र का संघर्ष उस समय हुआ हो सकता है जब भीमदेव युवराज था। उसका पिता चालुक्य कुमारपाल लगभग 59 वर्षो तक शासन करता रहा और बहुत संभव है कि उसके शासनकाल के अन्तिम दिनों में उसका पुत्र ही शासन कार्य देखता रहा हो।*

रोमा नियोगी ने यह भी संभावना व्यक्त की है कि बंगाल के सेन राजाओं ने भी गहड़वाल प्रदेश पर विजय प्राप्त की थी क्योंकि लक्ष्मणसेन के माधाई नगर अभिलेख से यह ज्ञात होता है कि जब वह कुमार था तभी उसने गौड़ पर अधिकार कर लिया, युद्ध में काशीराज को जीतकर (येन–आसौ–काशीराज समर–भुवविजिता) तथा कलिंग की नारियों के साथ क्रीड़ा की।

इसके अतिरिक्त विश्वरूपसेन तथा सूर्यसेन के अभिलेखों से यह ज्ञात होता है कि या तो लक्ष्मणसेन ने अथवा विश्वरूपसेन ने प्रयाग और काशीपुरी पर विजय प्राप्त करके विजय स्तम्भ खड़े किए थे (क्षेत्र

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विश्वेश्वरस्य.....त्रिवेण्या.....धनोच्चैरयज्ञ–यूपैः सह समर जय–स्तम्भ–मालान्य धायि)। लेकिन ऐसा लगता है कि ये उक्तियां परम्परागत प्रशंसात्मक बातें ही थीं क्योंकि विजयचन्द्र के शासनकाल में उसकी राजधानी वाराणसी तथा राज्य के हृदयस्थल में स्थित प्रयाग पर गौड़ सेनाएं विजय प्राप्त कर सकी हों, यह सभंव नहीं लगता। यह अवश्य कहा जा सकता है कि तीर्थयात्री के रूप में इन राजाओं ने वाराणसी और प्रयाग में यज्ञ करके यज्ञ–यूप खड़े किए हों।

रोमा नियोगी ने प्रबन्ध चिन्तामणि की एक घटना का उल्लेख किया है तथा उसको गहड़वाल क्षेत्र पर सेन और तुरूष्क आक्रमणों के साथ जोड़ा है। इस घटना के अनुसार चौलुक्य कुमारपाल के शासनकाल (1114–73 ई0) में वाराणसी के एक कवि विश्वेश्वर पट्टन गए तथा उन्होंने जैनाचार्य हेमचन्द्र द्वारा बुलाई गई एक साहित्यिक संगोष्ठी में भाग लिया। बाद में चौलुक्य राजा कुमार पाल ने उनसे अपने राज्य में ही ठहर जाने का अनुरोध किया। किन्तु विश्वेश्वर ने विनम्रतापूर्वक उत्तर देते हुए यह कहा कि उनका मन प्रभास तीर्थ जाने को व्याकुल है क्योंकि 'कर्ण केवल नाममात्र को कहानियों में शेष रह गए है। वाराणसी नगर में लोग नहीं रह गए हैं तथा हरि के क्षेत्र में हम्मीर के घोड़े प्रसन्नतापूर्वक हिनहिना रहे हैं।' यहां पर उपरोक्त उद्धरण में कहीं भी सेन राजा के आक्रमण का संकेत नहीं मिलता। चौलुक्य कुमारपाल का शासनकाल 1114 ई0 में प्रारम्भ हुआ था और यही वह वर्ष है जब गोविन्दचन्द्र ने गहड़वाल नरेश के रूप में अपना प्रथम अभिलेख जारी किया था। इस कारण विश्वेश्वर के द्वारा ऊपर दिया गया वर्णन गोविन्दचन्द्र के शासनकाल पर भी लागू किया जा सकता है। बनारस के साथ–साथ 'हरि के क्षेत्र' में हम्मीर के घोड़ों की हिनहिनाहट का अर्थ अयोध्या पर मुस्लिम आक्रमण से सम्बन्धित किया जा सकता है। हाल ही में अयोध्या से प्राप्त पाषाण फलक अभिलेख की चर्चा हम कर आए हैं तथा ऐसा लगता है कि कवि विश्वेश्वर का यह उल्लेख अयोध्या के उस अभिलेख में वर्णित घटना से सम्बन्धित है जो कि गोविन्दचन्द्र के शासनकाल में हुई होगी।

इसी संन्दर्भ में वि0सं0 1223 (5 सितम्बर 1166 ई0) को बिहार के शाहाबाद जिले के सुनहर ग्राम से प्राप्त एक जाली ताम्रपत्राभिलेख का उल्लेख किया जाना चाहिए। वास्तव में यह दानपत्र महाराजा विजयचन्द्र ने विधिपूर्वक दान करने के बाद लिखवाया था तथा इसका लेखक

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महाअक्षपटलिक ठक्कुर श्री श्रीपति हैं जिन्होंने गोविन्दचन्द्र के शासनकाल में कई अभिलेखों को लिखा था। इस अभिलेख के अनुसार, स्वर्णहल ग्राम के ब्राहम्णों को भूमि गई थी। यह स्वर्णहल अथवा सोनहल ग्राम वर्तमान में सुनहर ग्राम कहा जाता है। इसका महत्व इस दृष्टि से है कि प्रताप धवल के ताराचण्डी शिलालेख में इसको 'कुताम्र पत्र' कहा गया है जिसको गाधिनगर के राजा के एक दास (अधिकारी), जिसका नाम देउ था, जो ***स्वर्णहल के ब्राहम्णों ने घूस (उत्कोच) देकर लिखवा लिया था।*** *प्रताप धवल ने* ***16 अप्रैल 1169 ई0*** *को यह शासनपत्र जारी किया कि इस ग्राम के ब्राहम्णों को सुई की नोक बराबर भूमि भी न दी जाए तथा यह आदेश महानायक प्रताप धवल के वंश के पुत्र–पौत्रों को भी बता दिया जाए कि इन लम्पट ब्राहम्णों के उपर तनिक भी विश्वास नहीं किया जाना चाहिए। ताराचण्डी के इस शिलालेख से कई रोचक बातें प्रकाश में आती हैं। पहली बात तो यह है कि महानायक प्रताप धवल अपने को सामन्त कहता है। इसके अतिरिक्त स्वयं को जापिलाधिपति महानायक श्रीप्रतापधवल भी बताता है। इस प्रकार यह कहा जा सकता है कि प्रताप धवल विजयचन्द्र का एक सामन्त रहा होगा। लेकिन इसके बावजूद उसके प्रदेश में कान्यकुब्ज के राजा विजयचन्द्र ने एक ग्राम की कुछ भूमि दान में दी जिसके विषय में प्रताप धवल ने* ***यह आदेश जारी किया कि यह दानपत्र देउ नामक राजकर्मचारी को घूस देकर लिखवाया गया था और उन ब्राहम्णों को जिन्हें भूमि दान में मिली थी उससे बेदखल कर दिया गया।*** *यहां पर सामन्त और अधिराज के अधिकारों के संबंध में रोचक तथ्य प्राप्त होते हैं और यह ज्ञात होता है यदि अधर्मपूर्वक उत्कोच या घूस देकर कोई दान अधिराज से करवा लिया जाए तो अधीनस्थ सामन्त राजा उसको मानने से इन्कार भी कर सकता था। विजयचन्द्र का सुनहर दानपत्र लेख इसी श्रेणी में आता है।*

विजय चन्द्र का अन्तिम दानपत्र माघ सुदी 15, वि0 सं0 1225 मे जारी किया गया था तथा उसके पुत्र जयचन्द्र का प्रथम दानपत्र आषाढ़ सुदी 6, 1226 को जारी किया गया था। ***इस प्रकार यह अनुमान लगाया जा सकता है कि माघ 1225 के बाद तथा अषाढ़ 1226 के पूर्व किसी समय विजयचन्द्र का देहान्त हुआ।***

जयचन्द्र

जयचन्द्र का प्रथम दानपत्राभिलेख 21 जून 1170 ई0 को जारी किया गया

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था और उसके बाद ***उसने लगभग 24 वर्षों तक शासन किया। ऐसी मान्यता है कि मुइज्जुद्दीन मुहम्मद गोरी के साथ 1194 ई0 मे चन्दवर के युद्ध में वह मारा गया था।*** *इस बीच में उसके शासनकाल के लगभग 24 अभिलेख प्रकाश मे आए हैं। इनमें कुछ अभिलेख कुछ सामान्य नागरिकों द्वारा भी जारी किए गए हैं। अपने पितामह और पिता की भांति जयचन्द्र के समय में भी गहड़वाल राज्य अपनी शक्ति की चरम सीमा पर था। उसका समकालीन चन्देल राजा परमार्दि था तथा पश्चिम में चौहान राजा पृथ्वीराज भी उसका समकालीन था। चौहानों और चन्देलों में परस्पर कई युद्व हुए जिनमें जयचन्द्र की सहानुभूति चन्देलों के साथ रही। जयचन्द्र के शासनकाल में ही पृथ्वीराज और जयचन्द्र की पुत्री संयोगिता की घटना की जानकारी साहित्यिक स्रोतों से मिलती है। लेकिन इसके सम्बन्ध में कोई आभिलेखिक प्रमाण नही मिलता। जयचन्द्र के शासनकाल में भी उसका राज्य क्षेत्र प्रायः वही बना रहा जो उसके पिता के शसनकाल में था।*

भारतीय साहित्यिक स्रोत जयचन्द्र को अपने समय का सबसे बड़ा राजा सिद्ध करते हैं तथा मुस्लिम इतिहासकारों के कथन भी इसी बात की पुष्टि करते हैं कि 'वह भारत का सबसे बड़ा राजा था तथा सबसे बड़े क्षेत्र का स्वामी था।' उसके पास बहुत बड़ी सेना थी। ***जयचन्द्र गहड़वाल राजवंश में एकमात्र ऐसा राजा है जो भारतीय साहित्य में जाना जाता है।*** *उसके शासनकाल की कोई बड़ी महत्वपूर्ण घटना अभिलेखों से नही ज्ञात होती* ***लेकिन भारतीय साहित्य इस बात की सूचना देते हैं कि उसका मुसलमानों से कई बार संघर्ष हुआ था।***

विद्यापति के ग्रन्थ पुरूषपरीक्षा तथा नयचन्द्र के रम्भामज्जरी नाटक एवं पृथ्वीराजरासों से यह ज्ञात होता है कि मुइज्जुद्वीन (शिहाबुद्दीन) गोरी से जयचन्द्र के कई बार संघर्ष हुए तथा जयचन्द्र ने उसे परास्त करके भागने पर विवश कर दिया। दूसरी ओर सभी मुस्लिम इतिहासकार गयासुद्दीन के भाई मुईज्जुद्दीन मुहम्मद गोरी के साथ पृथ्वीराम के केवल दो युद्धों तथा जयचन्द्र के केवल एक युद्ध का उल्लेख करते है। *गयासुद्दीन मुहम्मद गोरी 1163 ई0 में गोर का सुल्तान हुआ और उसने अपने भाई शिहाबुद्दीन मुहम्मद गोरी को गजनी*

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का राज्यपाल नियुक्त किया जिसने भारत पर अनेक आक्रमण किए, लेकिन बार–बार परास्त होना पड़ा। मुहम्मद के प्रारम्भिक अभियान डेरा इस्माईल खान के पश्चिम में स्थित गोमल दर्रे से होते थे क्योंकि यह मार्ग छोटा और अधिक सुरक्षित था। परिणामस्वरूप मुल्तान और उछ उसके अधीन हो गए। बाद में सिन्ध भी धराशायी हुआ लेकिन जब उसने मरूभूमि पार करके गुजरात पर आक्रमण करने का प्रयास किया तो उसे मुँह की खानी पड़ी। ***1178 ई0 में मुहम्मद गोरी मरूभूमि पार करके आबू तक पहुँच गया था लेकिन इसमें उसकी सेना नष्ट हो गई और बची खुची–सेना को चालुक्य राजा मुलराज द्वितीय ने नष्ट कर दिया। मुहम्मद गोरी अपने थोड़े से सिपाहियों के साथ कठिनाईपूर्वक जान बचा सका। उसके बाद उसने दूसरा रास्ता अपनाया। उसने 1178 ई0 में पेशावर और 1185 में स्यालकोट ले लिया। अगले वर्ष लाहौर पर भी उसका कब्जा हो गया। इसके बाद वह चौहान राजा पृथ्वीराज तृतीय पर चढ़ दौड़ा तथा उससे कई बार पराजित हुआ। अंत में 1192 ई0 में तराईन के युद्ध में पृथ्वीराज पराजित हुआ और मारा गया। उसके एक सेनापति कुतुबुद्दीन ऐबक ने 1192 में हॉसी को जीत लिया तथा मेरठ और बरान (बुलन्दशहर) इन दो स्थानों से उसने पूर्व में अपने आक्रमणों का संचालन किया। फिर बाद में उसने चौहान राजा को दिल्ली से भगाकर 1193 में अपनी राजधानी बना लिया। छोटे–मोटे आक्रमणों में उसने कोल (अलीगढ़) तक अपना प्रभाव फैला लिया।***

चन्दवर का युद्ध

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उपरोक्त कारणों से यदि रासो, पुरूषपरीक्षा और रंभा–मंजरी नाटक आदि यह विवरण देते हैं कि गोरी के सुल्तान को कई बार पराजय का मुख देखना पड़ा तो इसमें सत्य का कुछ अंश अवश्य ही है। लेकिन मुसलमान इतिहासकार गहड़वाल सेना के साथ एक छोटी झड़प तथा चन्दवर के मैदान में एक बड़े युद्ध का विवरण मात्र देते हैं। हसन निजामी के ताजउलमाथीर के अनुसार दिल्ली, अजमेर और कोल को पराजित करने के बाद सुल्तान ने अपना ध्यान गहड़वालों की ओर लगाया। कुतुबुद्दीन के

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नेतृत्व में 50,000 की सेना के साथ उसने दीन (धर्म) के दुश्मनों की सेना का सामना किया और उसे हराया। ऐसा कहा जाता है कि यह झड़प गहड़वाल सेना के सीमान्त प्रदेश की सुरक्षा में लगी टुकड़ी के साथ हुई होगी न कि उसकी मुख्य सेना से। कामिलउत्तवारीख में भी इब्न अथीर ने कुतुबुद्दीन के इस चढ़ाई का उल्लेख किया है जिसमें उसने अनेक को मार डाला था तथा बन्दियों और लूट के साथ घर वापिस आ गया था। जब जयचन्द्र को इसकी सूचना दी गई तो उसने अपनी सेना को एकत्र करके मुसलमानों के क्षेत्र में प्रवेश किया। गहड़वालों और मुस्लिम सेना के बीच चन्दवर के मैदान में युद्ध हुआ। इसमें जयचन्द्र स्वंय हाथी पर चढ़कर युद्ध का संचालन कर रहा था। ***फिरिश्ता के अनुसार कुतुबुद्दीन द्वारा चलाए गए एक तीर से जयचन्द मारा गया। इसके बाद भयंकर मारकाट हुई और तीन सौ हाथी जिन्दा पकड़ लिए गए। अस्नी के किले को लूट लिया गया, जहां पर गहड़वाल राजाओं ने अपने सोने–चॉंदी तथा रत्नों के भण्डार जमा कर रखे थे। बनारस, जो हिन्द देश का केन्द्र माना जाता था, भी लूट लिया गया और वहॉं पर लगभग एक हजार मन्दिर गिरा दिए गए और उनकी नींव के उपर मस्जिदें उठा दी गई। मुस्लिम इतिहासकारों ने यह सूचना दी है कि हिन्द के राजा और सामन्त अमीर के प्रति अपनी अधीनता जताने के लिए आगे आए।*** *देश का प्रबन्ध एक विश्वस्त व्यक्ति को सौंपा गया जो लोगों को न्याय दे सके और मूर्तिपूजकों को दबा सके। लेकिन मुस्लिम इतिहासकारों ने इस व्यक्ति का नाम नहीं बताया है। बाद में कुतुबुद्दीन दिल्ली का राज्यपाल नियुक्त किया गया और दिल्ली में उसने अपनी राजधानी बना ली।*

गहड़वाल राजवंश के इतिहास को लिखने वाले प्रायः सभी इतिहासकरों का यह मत है कि चन्दवर के इस युद्ध के बाद गहड़वाल साम्राज्य ध्वस्त हो गया और मुस्लिम आक्रमणकारियों के मार्ग की सबसे बड़ी बाधा दूर हो गयी। लेकिन इस प्रकार के किसी अभिमत को सही नही माना जा सकता क्योकि ***चन्दवर के युद्ध के पांच–छः साल बाद भी जयचन्द्र का पुत्र हरिश्चन्द्र पूरी राजकीय उपाधियों के साथ शासन कर रहा था। जौनपुर के मछलीशहर तहसील में धिसवा परगना के कोटवा नामक ग्राम से एक ताम्रपत्राभिलेख***

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प्राप्त हुआ है जिस पर रविवार पौष सुदी 15 वि0 सं0 1253 (6 जनवरी 1197 ई0) की तिथि पड़ी हुई है। *इसके अनुसार 'परम भट्टारक महाराजाधिराज परमेश्वर, परममाहेश्वर अश्वपति गजपति नरपति राजत्रयाधिपति विविध विधा विचार वाचस्पति श्री हरिश्चन्द्र देव' द्वारा पमहयि ग्राम दान दिये जाने का उल्लेख है। इस पमहयि ग्राम की पहचान अभिलेख के प्राप्ति स्थल के समीप स्थित पोहा नामक ग्राम से की गई है। इस कारण यह स्वीकार करने में कठिनाई नही होनी चाहिये कि चन्दवर युद्ध के पांच –छः वर्ष बाद भी जयचन्द्र का पुत्र हरिश्चन्द्र अपने वंश की सम्पूर्ण राजकीय उपाधियों के साथ शासन कर रहा था।*

यहां पर उल्लेखनीय है कि ***चन्दवर के युद्ध के समय हरिश्चन्द्र की आयु लगभग 19 वर्ष रही होगी क्योंकि हरिश्चन्द्र का जन्म 1175 ई0 में हुआ था। जयचन्द्र के बड़ेसर दानपत्राभिलेख में, जो रविवार भाद्र बदी 8 वि0 सं0 1232 (10 अगस्त, 1175) में लिखवाया गया था, हरिश्चन्द्र के जातकर्म का उल्लेख है तथा जयचन्द्र के वि0 सं0 1232 के आश्विन सुदी 14, दिन सोमवार (29 सितम्बर, 1175) के चन्दवर अभिलेख में महाराज पुत्र हरिश्चन्द्र देव के जातोत्सव का उल्लेख है।*** *इस प्रकार मछलीशहर के दानपत्र को लिखवाने के समय हरिश्चन्द्र की आयु 22–23 वर्ष रही होगी। कुछ इतिहासकारो का यह विचार है कि इस युवक राजा ने मुस्लिम आक्रमणों को कैसे झेला होगा इस पर विचार करना कठिन काम है। उन्होंने यह सुझाया है कि सम्भवतः मुइज्जुद्दीन मुहम्मद गोरी की राजनीतिक दूरदर्शिता के कारण हरिश्चन्द्र को एक सामन्त राजा के रूप में शासन करने की अनुमति दे दी गई थी। आर0 एस0 त्रिपाठी का यह विचार है कि इस संघर्षपूर्ण काल में बालक राजा द्वारा अपनी स्वतन्त्रता की एक छोटी सीमा को भी बचाए रख पाना अविश्सनीय लगता है। लेकिन हरिश्चन्द्र के द्वारा सभी उपाधियों को धारण करते हुए मछलीशहर के दानपत्र को जारी करना यह प्रदर्शित करता है कि चन्दवर के युद्ध के तुरन्त बाद गहड़वाल साम्राज्य ध्वस्त नही हो गया था, यद्यपि उसकी प्रतिष्ठा को धक्का लगा था। गहड़वाल साम्राज्य के अनेक सामन्तों के लेख भी इस बात की पुष्टि करते है कि वे इस समय भी गहड़वाल आधिपत्य को ही स्वीकार करते थे न कि मुस्लिम आधिपत्य को । उदाहरण के लिए, राणक विजयकर्ण का एक अभिलेख मिर्जापुर जिले के*

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बेलखरा ग्राम से प्राप्त हुआ है जो वि0 सं0 1253 के वैशाख सुदी 11 (29 अप्रैल, 1197 ई0) को जारी किया गया था। इसमें राणक श्रीविजयकर्ण के राज में एक व्यक्ति द्वारा एक स्तम्भ की स्थापना का उल्लेख है। इसमें हरिश्चन्द्र का नाम नही है। फिर भी, 'कान्यकुब्ज विजयराज्य' का उल्लेख किया गया है (परमभट्टारक–इत्यादि राजावली). . . .अश्वपति–गजनति–नरपति–राजत्रियाधिपति–विविध–विधा विचार–वाचस्पति – श्रीमत्–कान्यकुब्ज विजयराज्य।

इसी प्रकार मध्य प्रदेश में नागोद जिले में उद्दल देवी द्वारा लिखवाया गया एक खण्डित अभिलेख प्राप्त हुआ है ***जिस पर 1237 ई0 की तिथि पड़ी हुई है।*** *इस अभिलेख को महासामन्त राज बरहदेव की पुत्री उद्ददेवी, जो कान्यकुब्ज में पैदा हुई थी तथा जो श्री महमन्ददेव की पट्टराज्ञी थी, ने लिखवाया था।* ***इसमें विन्ध्येश्वर शिव के मंदिर के निर्माण का उल्लेख है।*** *महमन्ददेव गहड़वाल राजवंश के श्री आडक्कमल्लम का सामन्त था (श्रीमद् गहड़वाल–कुल–विकसन–सहस्रांशु–श्री आ (डक्क) मल्ल–सामन्त–शरण– आगत–वज्र–पंजर–श्रीमन्– महमन्ददेव– पट्टराज्ञा– श्रीउद्दलदेव्य)। ऐसा लगता है कि गोविन्दचन्द्रदेव ने जिस समय विन्ध्य क्षेत्र में कल्चुरि राजा को हराया था उसी समय गहड़वाल वंश के किसी राजकुमार को वहां का शासक नियुक्त किया था जिसका वंशज आडक्कमल था । यद्यपि इस अभिलेख में कान्यकुब्ज के गहड़वाल राजवंश का उल्लेख नही है फिर भी यह उल्लेखनीय है कि उस क्षेत्र में मुस्लिम आक्रमणों का कोई प्रभाव हुआ नही लगता। इसके अतिरिक्त रोहतासगढ़ (बिहार) से विक्रम संवत् 1297 (1223 ई0) का एक अभिलेख खैरवाल राजवंश के प्रताप धवल द्वितीय का प्राप्त हुआ है जिसमें उसने यवनों को खेल–खेल में हराने का उल्लेख किया है। (जवन–दलन–मानसलैः)। धवल राजवंश भी गहड़वाल के अधीन था।*

अतः गहड़वाल राजवंश का साम्राज्य चन्दवर के युद्ध के बाद एकदम धराशायी हो गया, इतिहासकारों की यह अवधारणा सही नही लगती । मुल्जिम इतिहासकारो के विवरणों को देखने से यद्यपि यह जरूर सूचित होता है कि 1193 ई0 के चन्दवर के युद्ध में बनारस को जीत लिया गया था और उसके एक हजार मन्दिर धराशायी कर दिए गये थे। लेकिन ऐसा लगता है कि बनारस की यह लूट केवल अस्थायी ही सिद्ध हुई और गहड़वालों ने उस पर पुनः कब्जा कर लिया था। तबकात–ए–नासरी के

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अनुसार इल्तुतमिश की प्रारम्भिक विजयो में बनारस को भी शामिल किया गया है। इस प्रकार यदि यह मानें कि हरिश्चन्द्र ने 1193 के युद्ध के बाद पुनः अपनी राजधानी काशी पर कब्जा कर लिया था तो अनुचित नहीं होगा। मुस्लिम इतिहासकारों द्वारा सम्पूर्ण गहड़वाल साम्राज्य पर अधिकार कर लेने वाली बात कितनी खोखली है यह उनके उल्लेखों के विश्लेषण से भी सिद्ध किया जा सका है। 1193 के चन्दावर के युद्ध के बाद कन्नौज जीता नहीं जा सका था, केवल फिरिश्ता ही उस वर्ष के युद्ध के बाद यह कहते हुए कि सुल्तान ने बंगाल की सीमा तक–क्षेत्र को अपने अधिकार में कर लिया था, कन्नौज को विजित किए गए नगरों में शामिल किया गया है। लेकिन फिरिश्ता का विवरण बाद का होने के कारण विश्वसनीय नहीं माना जाता। तबकात–ए–नासरी भी यह उल्लेख नहीं करता कि मुस्लिम सेनाएं कन्नौज में पहुँची या नहीं। लेकिन वह यह अवश्य बताता है कि कान्यकुब्ज इल्तुतमिश के द्वारा विजय किया गया तथा इस अवसर पर नए सिक्के चलवाए गए। इसके अतिरिक्त ताजउलमाथीर तथा कामिलउत्तवारीख जैसे समकालीन इतिहासों में भी 1193 ई0 में मुस्लिम सेना द्वारा विजित नगरों में कन्नौज का उल्लेख नहीं मिलता। तबकात–ए–नासरी में कन्नौज के साथ–साथ बदायूँ और अयोध्या को भी इल्तुतमिश के द्वारा जीते जाने का उल्लेख मिलता है। इस प्रकार पश्चिमी उत्तर प्रदेश में बदायूँ, मध्य उत्तर प्रदेश में कन्नौज तथा पूर्वी उत्तर प्रदेश में काशी और अयोध्या में इल्तुतमिश द्वारा विजय किए जाने के उल्लेखों के कारण यह मानना पड़ेगा कि इल्तुतमिश के शासनकाल तक ये क्षेत्र गहड़वाल शासकों की सत्ता स्वीकार करते रहे। यद्यपि एक–आध सीनों पर कहीं–कहीं मुस्लिम सेनापतियों को जागीर दिए जाने के उल्लेख मिलते हैं। उदाहरण के लिए मुहम्मद इब्न बख्तियार को 1196 ई0 में गंगा कर्मनाशा के बीच में भगवान और भिउली की जागीरें दिए जाने का उल्लेख मिलता है। लेकिन इस प्रकार जागीरों को बनाए रख पाना बड़ा कठिन काम होता रहा होगा क्योंकि चारों ओर हिन्दू राजा और सामन्त शासन कर रहे थे जो मुस्लिम सत्ता को चुनौती देते रहते थे। धीरे–धीरे दिल्ली के सुल्तानों की सत्ता अन्तर्वेदी के आन्तरिक क्षेत्रों में भी स्वीकार की जाने लगी होगी लेकिन गहड़वाल राजवंश के अंतिम (?) शासक हरिश्चन्द्र ने कब तक शासन किया और उसके बाद इस राजवंश का क्या हुआ इसके विषय में किसी भी स्रोत से कोई जानकारी नहीं मिलती।'' (Pages 81-105)

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3870. The Sultanate and Mughal period is said to commence not in the entire part of India but initially at Sindh and thereafter gradually it increase to other parts. As such, therefore, it may not be said that with the advent of Sultanate period the territory of Oudh was ruled by Muslims. On this aspect also in **Ayodhya Ka Itihas Evem Puratatva (supra)** at Chapter-8, pages 109-113 some details have been given and the same may be referred as under:

''इस्लाम की स्थापना के बाद ही आठवीं शताब्दी के प्रारम्भ में अरबों ने भारतभूमि पर सबसे पहले सिन्ध पर आक्रमण किया लेकिन वहां उन्हें कोई बहुत बड़ी सफलता प्राप्त नहीं हो सकी थी। वहां पर केवल एकाध क्षेत्रों पर ही उनका राज्य कायम हो सका जहॉ वे लगभग अज्ञात रूप से तीन शताब्दियों तक अपना अस्तित्व बनाए रख सके। ***इस बीच में इस्लाम ने यूरोप से लेकर चीन तक के विशाल भू–भाग को जीत लिया था किन्तु भारत में सिन्धु के आगे वे अपना विस्तार नहीं कर सके थे।*** *सिन्धु नदी की घाटी में भी इस बीच में उनका अस्तित्व डॉवाडोल ही रहा। शक्तिशाली अब्बासी खलीफा जिस भारतभूमि को नहीं जीत सके उन्हें अफगानिस्तान में स्थापित होने वाले छोटे–मोटे तुरुष्क राजवंशों ने शताब्दियों तक बारम्बार किए जाने वाले प्रयासों के बाद प्राप्त किया। नवीं शताब्दी में अलममून के एक सेनापति ताहिर को खुरासान का प्रशासक नियुक्त किया गया तथा बगदाद के पूर्व का पूरा क्षेत्र उसके शासन में दे दिया गया। शीघ्र ही ताहिर और उसके वंशजों ने स्वतन्त्रता प्राप्त कर ली और भारत की सीमाओं तक अपना विस्तार किया। नवीं शताब्दी के चौथे चरण में अयूब इब्न नयत अलसफर के नेतृत्व में एक नए राजवंश का उदय हुआ जिसने ताहिर के वंशजों के स्थान पर अपने को स्थापित किया तथा काबुल, जाबुल और सिन्ध तक के प्रदेशों को जीता। दसवीं शताब्दी के अन्तिम दशक में शक्तिशाली सामानी साम्राज्य को दो तुरुष्क राजवंशों ने आपस में बांट लिया। सामानी साम्राज्य के दक्षिण का भाग यामीनी राजवंश के लोगों ने प्राप्त किया, जिन्हें आधुनिक इतिहास के लेखक गजनवी कहते हैं।*

सलतनत काल

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यामीनी राजवंश के लोग अपने को फारस के सम्राटों का वंशज बताते हैं। इसी वंश में सुबुक्तीगीन नामक व्यक्ति का जनम हुआ था जिसने गजनी में यामीनी राजवंश की नींव डाली थी। लेकिन प्रारम्भ में जब वह केवल बारह वर्ष का एक बालक था, पड़ोस के एक कबीले द्वारा बन्दी बना लिया गया। भाग्य के फेर से वह कई बार बेचे जाने के बाद खुरासान के सामानी शासक के एक अधिकारी अलप्तगीन के द्वारा खरीद लिया गया। 977 ई0 में सुबुक्तगीन ने अपने शसन की स्थापना की और शीघ्र ही उसने बस्त, दावर, कुसदार, तुखारिस्तान तथा घूर को अपने राज्य में मिला लिया। उसके बाद भारत में उसने शाही राजवंश के साथ युद्ध किया तथा उसके कुछ क्षेत्रों को अपने राज्य में मिलाया। ***सुबुक्तगीन की मृत्यु 997 ई0 में 58 वर्ष की आयु में बल्ख के सीमान्त पर हुई। उसके बाद उसका पुत्र महमूद गजनी के सिंहासन पर 998 ई0 में बैठा।*** *उस समय उसकी आयु मात्र 27 वर्ष की थी। 1000 ई0 में उसने भारत पर पहला आक्रमण किया। उसके बाद उसने प्रायः प्रत्येक वर्ष भारत पर आक्रमण किए। भारतीय इतिहास में वह महमूद गजनवी के नाम से प्रसिद्ध है। उसके आक्रमणों की प्रकृति मुख्य रूप से लूटने तथा पराजित राजाओं से धन वसूलने की थी।*

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मुस्लिम इतिहासकारों ने महमूद गजनवी के आक्रमणों के जो विवरण दिए हैं वे अतिरंजित मालूम होते हैं और उनमें केवल उसकी सफलताओं के विवरण ही मिलते हैं। इन विवरणों को किन्हीं अन्य स्रोतों से समर्थित नहीं किया जा सकता लेकिन प्रायः इन्हें सही मान लिया जाता है। आगे जो विवरण दिया जा रहा है वह पूरी तरह मुस्लिम इतिहासकारों के विवरणों के आधार पर ही है। गंगा–यमुना की घाटी में उसका आक्रमण 1018 ई0 में हुआ था। उसने 2 दिसम्बर, 1018 को यमुना नदी को पार किया तथा रास्ते में कुछ पहाड़ी किलों को जीतते हुए बरन, वर्तमान बुलन्दशहर, पहुँचा। उस समय वहां का राजा हरदत्त था जिसने महमूद का मुकाबला किया लेकिन परास्त हुआ। उसे सुल्तान को दस लाख दिरहम और तीस हाथी देकर संधि करनी पड़ी। उसके बाद महमूद ने महाबन में यादव राजा कुलचन्द्र को परास्त किया। ***तत्पश्चात् मथुरा उसके कोप का भाजन बना। मथुरा नगर इस समय पत्थर के प्राकार से घिरा हुआ था। जिसमें अनेक विशाल मन्दिर थे। इसमें सबसे बड़ा मन्दिर नगर के केन्द्र में था। संभवतः यह कृष्ण–जन्मभूमि का***

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मंन्दिर था। *इसकी विशालता से महमूद अत्यधिक प्रभावित हुआ। उसका अनुमान था कि यह मन्दिर कम–से–कम दस करोड़ लाल दीनारों से बनवाया गया होगा तथा अत्यधिक कुशल शिल्पियों ने भी इसको बनाने में कम–से–कम दो सौ वर्ष का समय लगाया होगा। इन मन्दिरों की अनेक मूर्तियों में पांच मूतियॉ शुद्ध सोने की बनाई गई थीं जिनकी ऑखों मे एक लाख दीनार के रत्न जड़े थे।* ***इन सभी मूर्तियों मे 68,300 मिष्कल भार का सोना था। चॉंदी की मूर्तियों की संख्या 200 थी। यह नगर दिल्ली के राजा के अधीन था लेकिन, बिना किसी संघर्ष के महमूद ने मथुरा पर अधिकार कर लिया तथा सोने और चॉंदी की सभी मूर्तियों को अधिकार में लेने के बाद उसने सभी मन्दिरों को जलाकर राख कर देने का आदेश कर दिया। इन मूर्तियों को जान–बूझकर टुकड़े–टुकड़े कर दिया गया। नगर में बीस दिनों तक लूटमार होती रही तथा अधिकांश भवन जलाकर राख कर दिए गए।***

मथुरा को लूटने के बाद महमूद गजनवी ने कन्नौज की ओर प्रयाण किया। यद्यपि मार्ग में उसे प्रतिरोध का सामना करना पड़ा, फिर भी वह ***कन्नौज पहुॅंच गया। यह नगर सात दुर्गों से युक्त था जिसमें दस हजार मन्दिर थे।*** *महमूद के आगमन की सूचना पाकर प्रतिहार वंश का राजा राज्यपाल गंगा के दूसरी ओर बारी नामक स्थान मे चला गया। इस प्रकार* ***कन्नौज को महमूद ने पूरी तरह लूटा। कन्नौज के अभियान में महमूद को दो करोड़ दिरहम, तिरपन हजार बन्दी तथा तीन सौ पचास हाथी हाथ लगे।***

महमूद कन्नौज से आगे नहीं बढ़ा और इस प्रकार अयोध्या उसके आक्रमण से बच गई। लेकिन महमूद के मुख्य आक्रमण के अतिरिक्त उसकी सेना के कुछ सेनापतियों के आक्रमणों को अयोध्या को अवश्य झेलना पड़ा होगा। महमूद ने 1025 ई0 के जनवरी महीने के मध्य में सोमनाथ पर आक्रमण किया और उसे लूटा। सोमनाथ के मन्दिर के शिवलिंग को उसने तोड़कर खण्डित कर दिया तथा दो करोड़ दिरहम का धन भी लूटा। मन्दिर को भी ध्वस्त कर दिया गया तथा शिवलिंग के टुकड़ों को गजनी ले जाया गया जहां पर उन टुकड़ों को जामी मस्जिद में द्वार की सीढ़ियों में लगा दिया गया। इस जामी मस्जिद का निर्माण 1019 ई0 में कन्नौज को लूटने

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के बाद कराया गया था। सोमनाथ के इस युद्ध में सैय्यद सालार मसूद भी शामिल था। उस समय उसकी आयु 12 वर्ष की थी। . . . . .

अब्दुर्रहमान चिश्ती के अनुसार मसूद महमूद गजनवी की बहन मौला का पुत्र था। इसके पिता का नाम सुल्तान सालार साहू था जो अपने समय का प्रसिद्ध ईरानी योद्धा था। सोमनाथ पर आक्रमण के समय मसूद भी महमूद गजनवी के साथ था और उस समय उसकी आयु केवल 12 वर्ष थी। सोमनाथ की लूट के पॉच वर्षों के बाद मसूद ने इस्लाम के नाम पर एक सेना एकत्र की और अपने पिता सालार शह की सेना के साथ हिन्दुस्तान को फतह करने के इरादे से सिन्धु नदी को पार किया। मसूद ने पहले मुल्तान के शाही राजा अनंगपाल को पराजित किया। इसके बाद उसने दिल्ली के राजा महिपाल के विरुद्ध मोर्चा लिया। दिल्ली के बाद मसूद ने मेरठ पर चढ़ाई की। मेरठ और कन्नौज के राजाओं ने उसके साथ युद्ध करना ठीक न समझकर मित्रता कर ली। . . अयोध्या के मियां रजब सालार सैफुद्दीन ने बहराइच, अमीर हसन अरब ने महूना तथा मलिक फजल ने बनारस जीत लिया। सुलतात्रुसलादीन और मीर बख्तियार दक्षिण की ओर कन्नूर तक गये। लेकिन वहां मीर बख्तियार हिन्दू सेना द्वारा मार डाला गया। सालार मसूद ने रजब मास की 14वीं तारीख अर्थात् रविवार 14 जून, 1033 ई0 के दिन बहराइच में बालार्क (बाल सूर्य) के मन्दिर पर आक्रमण कर दिया। मसूद का वध राजा सुहेल देव के द्वारा हुआ। इस युद्ध में बहुत से लोगों की जानें गई लेकिन 22 वर्षीय सालार मसूद की मृत्यु के बाद यह आक्रमण बिखर गया। ***चिश्ती ने सेनाओं की संख्या बहुत बढ़ा–चढ़ाकर लिखी है। उसके अनुसार, हिन्दू सेना में बीस लाख घुड़सवार और तीस लाख पैदल थे तथा दोनों ओर से लगभग पौन करोड़ सैनिक लड़े थे। लेकिन ये संख्याएं अत्यधिक अतिरंजित हैं। अब्दुर्रहमान चिश्ती ने मीरात–ए–मसूदी के अन्त में लिखा है कि –***

> *सालार मसूद की मृत्यु के बाद अजमेर में मुजफ्फर खान भी मारा गया। उसके उत्तराधिकारियों को हिन्दुओं ने मार भगाया।जो मूर्तियां तोड़ी गई थीं, वे पुनः स्थापित हो गई।*

फैजाबाद गजेटियर में भी इसका विवरण दिया गया है। स्मिथ ने अर्ली हिस्ट्री आव इण्डिया में लिखा है कि –

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> *वर्षा के बाद मसूद ने अपनी सेना को अजुधन (अयोध्या) के विरुद्ध संचालित किया। यद्यपि उन दिनों वह स्थान व उसके आस पास धनी आबादी थी फिर भी बिना संघर्ष के उसे जीत लिया गया। मसूद अजुधन के मौसम से काफी प्रसन्न था और चूंकि यहां पर शिकार अच्छे मिलते थे इसलिए वह अगली वर्षा तक यहां रुक गया और उसके बाद दिल्ली गया।*

सालार मसूद के आक्रमण का काफी प्रतिरोध हुआ और उसकी सेना के लोगों को जगह–जगह मार खानी पड़ी। लखनऊ फैजाबाद के पुराने मार्ग पर मसूद की तथाकथित कब्रों से इसकी सत्यता का ज्ञान होता है। महमूद की सेना का एक अन्य सेनानायक अहमद नियाल्तगीन भी था जिसे महमूद गजनवी ने पंजाब सूबे का अधिकारी बनाया था। ऐसा कहा जाता है कि उसने 1034 ई0 में बनारस को लूटा था। हन्स बेकर का कहना है कि या तो उसने अथवा उसकी सेना के किसी अन्य नायक ने इस अवसर पर अयोध्या पर आक्रमण किया हो सकता है। लेकिन हन्स बेकर के इस कथन को हम केवल उनकी शुभ कल्पना मात्र कह सकते हैं क्योंकि ***इसका कोई भी प्रमाण नहीं मिलता कि नियाल्तगीन की सेना के किसी सेनापति ने अयोध्या पर आक्रमण किया था।*** *इसके अतिरिक्त लगभग एक ही वर्ष पूर्व सालार मसूद अयोध्या के निकट बहराइच में मारा गया था। वैसे, अहमद नियाल्तगीन के इस आक्रमण को भी हम मुस्लिम इतिहासकारों की 'गप' ही मानते हैं क्योंकि तवारीख–ए–सुबुक्तगीन में बैहाकी ने जिस तरह से इस घटना का वर्णन किया है वह बड़ा संदिग्ध सा लगता है और ऐसा ऐलता है कि नियाल्तगीन की सेना लाहौर से निकलकर अचानक बनारस पहुॅच गई और दोपहर तक लूटपाट करके नमाज के समय तक वापस लौट गई। बैहाकी का विवरण इस प्रकार है–*

> *उसने (नियाल्तगीने) अपने योद्धाओं और सेना के साथ 1033 ई0 में लाहौर से निकलकर ठाकुरों से जबरदस्ती खूब रकम वसूली। बाद में वह गंगा पार करके उसके बाएं किनारे से नीचे की ओर चल पड़ा। यकायक वह बनारस नाम के शहर में, जो गंग नाम के राजा के राज्य में था, आ पहुॅचा। इसके पहले कोई भी मुस्लिम सेना वहां तक नहीं पहुॅची थी। नगर दो फरसंग मुरब्बे में था और उसमें काफी पानी था। सेना*

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> *वहां सवेरे से दोपहर की नमाज तक ठहरी क्योंकि ज्यादा ठहरने में खतरा था। बजाजों तथा गंधियों और जौहरियों की बाजारें लूट ली गई, लेकिन इससे कुछ अधिक करना नामुमकिन था। सेना के सिपाही भी इसलिए अधीर हो गए क्योंकि वे अपने साथ लूट का सोना, चॉदी, अतर और जवाहरात लेकर सही सलामती लौट जाना चाहते थे।*

इस प्रकार नियाल्तगीन द्वारा बनारस की लूट की घटना बिल्कुल विश्वसनीय नहीं लगती।

महमूद गजनवी के अन्तर्वेदी (दोआबा) में इन आक्रमणों के बाद यहां पर एक शक्तिशाली साम्राज्य की स्थापना हुई। गहडवाल वंश के चन्द्रदेव अथवा चन्द्रादित्य देव ने जिस साम्राज्य की नींव रखी उसने लगभग एक शताब्दी तक अन्तर्वेदी की सुरक्षा की। चन्द्रदेव और उसके उत्तराधिकारियों के अभिलेखों से यह ज्ञात होता है कि गहड़वाल वंश के सभी राजाओं के तुरुष्क आक्रमणकारियों का सामना करके उन्हें बार–बार प्रत्यावर्तित करना पड़ा। कुमारदेवी के सारनाथ अभिलेख से यह ज्ञात होता है कि दुष्ट तुरुष्क–बीर से वाराणसी की रक्षा के लिए भगवान विष्णु को गोविन्दचन्द्र के रूप में अवतार लेना पड़ा जिसे लिए शिव ने प्रार्थना की थी। गोविन्दचन्द्र के राहन ताम्रपत्र से यह ज्ञात होता है कि गोविन्दचन्द्र ने असम युद्ध में हम्मीर को शत्रुता त्यागने के लिए बाध्य कर दिया था। बदायूँ के लखनपाल के एक अभिलेख से भी यह ज्ञात होता है कि उसके पूर्वज मदनपाल ने हम्मीर के दवेनदी (गंगा) की घाटी में आक्रमण को असंभव बना दिया था। गोविन्दचन्द्र के पुत्र विजयचन्द्र को भी हम्मीर की गतिविधियों को सफलतापूर्वक रोकने का श्रेय दिया गया है। दिल्ली–शिवालिक स्तम्भ लेख में विशालदेव को म्लेच्छों का नाश करने का श्रेय दिया गया है। इस प्रकार अन्तर्वेदी में मुस्लिम आक्रमणकारी लगातार प्रयास करते रहे और यहां के राजवंशों ने उनका प्रतिरोध भी समय–समय पर किया। इसका उल्लेख न केवल मुस्लिम इतिहासकार करते हैं बल्कि भारतीय राजाओं के अभिलेखों से भी इनकी सूचना मिलती है। इसके अतिरिक्त अयोध्या से अभी हाल ही में प्राप्त किए गए पाषण फलक अभिलेख से भी यह ज्ञात होता है कि गोविन्द चन्द्र के शासनकाल में किसी प्रकार का आक्रमण अयोध्या में हुआ था। 1193 ई0 में चन्दवर के युद्ध में जयचन्द्र के पराजित हो जाने के बाद मुसलमान सेनाओं ने वाराणसी को नष्ट किया था इसकी तो सूचना मिलती

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है, किन्तु अयोध्या में भी उनका आक्रमण हुआ था इसकी कोई सूचना नहीं मिलती। कुछ इतिहासकार यह मानते हैं कि मुहम्मद गौरी के एक अधिकारी मखदूमशाह जुरान गोरी ने अयोध्या पर आक्रमण करके आदिनाथ के जैन मंदिर को तोड़ा था। लेकिन उसने अयोध्या के किसी अन्य हिन्दू मंदिर को भी नष्ट किया था इसकी निश्चित सूचना नहीं मिलती। गहड़वाल सम्राट के युद्ध में पराजित हो जाने के बाद मुस्लिम सेनाएं सारे गहड़वाल साम्राज्य पर अपना प्रशासन स्थापित कर सकी होंगी इस पर भी विश्वास करना कठिन है क्योंकि अनेक जगहों पर स्थानीय रूप से मुस्लिम सेनाओं का प्रतिरोध जारी रहा और कहीं कहीं पर बहुत शक्तिशाली प्रतिरोध किया गया, इसका उल्लेख हम पीछे कर आए हैं। 1226 ई. में इल्तुतमिश के पुत्र मलिक नासिरुद्दीन महमूद को अवध का प्रशासक नियुक्त किया गया और संभवतः उस समय हिन्दू प्रतिरोध को एक धक्का लगा। तबकात–ए–नासरी में यह उल्लेख किया गया है कि अयोध्या में बरतूह नामक एक व्यक्ति ने बीस हजार मुसलमानों को मौत के घाट उतार दिया था। लेकिन नसीरुद्दीन महमूद ने अवध के इन काफिरों को उखाड़ फेंका।

अवधवासी लाला सीताराम ने अपने अयोध्या का इतिहास में लिखा है कि चन्द्रवर के युद्ध में जयचन्द्र के पराजित होने के बाद शहाबुद्दीन गोरी ने 1194 में अवध पर आक्रमण किया और मखदूमंशाह जुरान गोरी अयोध्या में मारा गया और वहीं उसकी समाधि बनी। परन्तु बख्तियार खिलजी ने सबसे पहले अवध में राज्य प्रबन्ध किया और उसे सेना का एक केन्द्र बनाया। इसमें उसको इतनी सफलता मिली कि आसाम तक का क्षेत्र उसने अपने अधीन कर लिया। उसने अपनी शक्ति इतनी बढ़ा ली थी कि कुतुबुद्दीन की मृत्यु के बाद जब इल्तुतमिश गद्दी पर बैठा तो उसको दास समझकर उसकी आधीनता स्वीकार करने से इन्कार कर दिया। उसके पुत्र गियासुद्दीन ने बंगाल में स्वतन्त्र राज्य स्थापित कर लिया किन्तु कुछ ही दिनों में अयोध्या उसकी अधीनता से छिन गई और बहराइच और मानिकपुर के बीच का प्रदेश दिल्ली की अधीन कर दिया गया। इससे हिन्दुओं में बड़ी प्रतिक्रिया हुई और संघर्ष में बहुत से मुसलमान मारे गए। हिन्दुओं का दमन करने के लिए शाहजादा नसीरुद्दीन को दिल्ली से भेजा गया। 1236 और 1242 ई0 में क्रमशः नसीरुद्दीन महमूद और कमरुद्दीन केरान अवध के प्रशासक रहे।

1155 ई0 में सुल्तान नसीरुद्दीन की मां मलक–ए–जहॉ ने कुतलुग

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खान से विवाह कर लिया था। इस कारण कुतलुग खान को अवध का हाकिम बना दिया गया तथा 16 फरवरी 1255 को उसे अवध जाने का आदेश दिया गया। इस बीच में उलुघ खान दिल्ली दरबार में शक्तिशाली हो गया था तथा उसने बादशाह से यह हुक्म निकलवा दिया कि मलिक ताजुद्दीन माह पेशानी को बहराइच का हाकिम बनाया जाता है। इस पर कुतलुग खान ने मलिक ताजुद्दीन को बन्दी बना लिया लेकिन वह भाग निकला और बहराइच पहुंच गया। इधर दिल्ली दरबार ने पुनः कुतलुग खान को अवध से बहराइच स्थानान्तरित कर दिया लेकिन उसने इस आदेश को नहीं माना। बाद में 1256 ई0 में दिल्ली से सेना आने पर वह गायब हो गया। उसके स्थान पर अर्सलान खान संजर को अवध का हाकिम बनाया गया किन्तु 1259 ई0 में उसने भी विद्रोह कर दिया तथा निकाल दिया गया।

इसके बाद मलिक एतिगीन मुई–दराज (लम्बें बालों वाला), जिसे अमीन खान भी कहा जाता था, को अवध का हाकिम बनाया गया। बलबन ने लखनौती के तुघ्रील के विद्रोह को दबाने के लिए एक बड़ी सेना के साथ अमीन खान को भेजा, लेकिन वह हार गया। इस पर बलबन की आज्ञा से अमीन खान का सिर काटकर अवध (अयोध्या) के द्वार पर टांग दिया गया। इसके थोड़े ही दिन बाद फरहत खान को अवध का हाकिम नियुक्त किया गया। उसने शराब के नशे में एक नीच को मार डाला। उसकी विधवा ने बलबन से फरियाद की। बलबन ने फरहत खान को 500 कोड़े लगवाए और उसे उस विधवा को सौंप दिया।

सल्तनत काल में अवध को ही हिन्दुस्तान समझा जाता था। *बलबन दिल्ली से अवध के मार्ग को निष्कण्टक बनाने के लिए प्रयत्नशील था। वह दो बाद दिल्ली छोड़कर कम्पिल और पटियाली में पांच–छह महीने ठहरा जिसमें लुटेरों और डाकुओं से दिल्ली से अवध का मार्ग साफ हो जाए। इसके लिए कई प्रयास भी किए गए। बंगाल में तुघ्रील के विद्रोह का दमन करने के लिए जाते समय वह अवध में ठहरा था तथा वहां पर सेना में काम आने वाले विभिन्न प्रकार के व्यक्तियों, यथा–घ ुड़सवार, पैदल, पायक, धनुर्धर, कहार, कैवानी, तीरन्दाज, गुलाम, नौकर, व्यापारी, दुकानदार, आदि को दो लाख की संख्या में एकत्रित कराया। लखनौती विजय के बाद बलबन ने बुगरा खान को वहां पर नियुक्त किया। राजधानी लौटने पर उत्सव मनाया गया तथा तुघ्रील के समर्थकों को मौत*

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के घाट उतारने का आदेश दिया। यद्यपि काजी ने कुछ को बचा लिया ***किन्तु इतिहासकार बर्नी लिखता है कि तुघ्रील के समर्थकों में से एक अयोध्या के शेख फरीद के गंज–ए–शाकर के जमातखाना में आत्मिक शान्ति पाने की इच्छा रखता था।***

बलबन के बाद बुगरा खान का बेटा कैकुबाद दिल्ली का सुल्तान बना। उधर लखनौती में बुगरा खान स्वतंत्र हो गया था। बाप–बेटे दोनों की सेनाएं आमने–सामने थीं। एक घाघरा के इस किनारे पर डेरा डाले था तो दूसरा घाघरा के उस पार। काफी संदेशों के आदान–प्रदान के बाद पिता–पुत्र एक स्थान पर मिले तो कैकुबाद ने अपने पिता बुगरा खान के चरणों पर गिरकर उसे आंसुओं से भिगो दिया। बाद में दोनों अपने–अपने राज्यों में लौट गए।

फरहत खान के निकाले जाने के बाद खानजहॉ अवध का हकिम बनाया गया। उसी के काल में अमीर खुसरों दो वर्ष तक अयोध्या में रहा और यहां की बोली में फारसी–हिन्दी कोश खालिकबारी की रचना की।

जब खिलजी वंश की सल्तनत दिल्ली में कायम हुई तो इस वंश के संस्थापक जलालुद्दीन का भतीजा अलाउद्दीन अवध का शासक बनाया गया। *अलाउद्दीन इलाहाबाद के निकट कड़ा में रहता था जहां उसने धोखे से अपने चाचा का सिर कटवाकर धड़ को गंगा की रेती में फिंकवा दिया और खुद सुल्तान बन बैठा।*

चौदहवीं शताब्दी में खिलजी वंश के बाद तुगलक वंश अस्तित्व में आया। तारीख–ए–फिरोज शाही में लिखा है कि मुहम्मद बिन तुगलक ने गंगा के तट पर एक नगर बसाना चाहा था जिसका नाम उसने स्वर्गद्वारी रखा था। ***सुल्तान फिरोज तुगलक दो बार अयोध्या आया था। पहली बार 1324 ई0 में और दूसरी बार 1348 ई0 में। उसके समय में मलिक सिगनि और आयानुल मुल्क अयोध्या के शासक रहे।***

मुहम्मद तुगलक का पूर्व नाम जूना खान था और यह कहा जाता है कि उसी के नाम पर जौनपुर बसाया गया था। बाद में जौनपूर में शर्की वंश का राज्य हुआ और अयोध्या उनके शासन के अन्तर्गत आ गई।''

3871. We may mention that the description of Salar Masud about his alleged attack on Ayodhya is incorrect and has been

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admitted by Sri T.P. Verma in his cross-examination before this Court also. We have already discussed this aspect while considering the issues relating to period of construction of the building. Rest of the historical events particularly the rulers and their periods substantially could not be shows incorrect by the learned counsels.

3872. What actually appears from the above books is that the twilight zone when Hindu rulers came to be dominated by Muslim rulers has been considered by some of the historians as the commencement of the medieval period which some has termed as early medieval and some as Sultanate period. With the advent of Mughal Rulers the term has been called medieval and that has been treated to be the end of the Sultanate period. It is in this context we find ASI has taken a mid way and termed 6th period as Medieval Sultanate, 7th as Medieval and have divided the same centurywise, i.e., 11th and 12th century as Medieval Sultanate, 13th to 16th century to be more precise upto 1526 AD to be medieval and thereafter Mughal. In fact for more clarity this division has been made. None of the alleged expert witness has shown the said classification or periodization of ASI wholly unknown to historians or perverse or something which could not have been said or conceived by a person well conversant in such matters.

3873. It brings us to the concept of periodization of Indian history-particularly for Northern India as Ancient, Medieval and Modern. By and large, in the present day usage, the Ancient Period ends in the 7th century A.D., after the rule of Emperor Harsh. Then starts the Early Medieval Period. It lasts till the end of the 12th century. It is followed by the Medieval Period which

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starts in the 13th century. In fact, the 11th and 12th centuries form the 'transitional stage', the stage between the Ancient and Medieval i.e. early Medieval period. Earlier, in the history books written in the first part of the 20th century, there was no concept of "Early Medieval", the "Ancient" ended in the 11th century and "Medieval" started in the 12th century. Thus there is absolutely no need of making sarcastic remarks against the Archaeological Survey of India, as the historians themselves have not been unanimous on this issue during the last one hundred years. Earlier, even "Hindu", "Muslim" and "British" were the designations of the three-fold division of Indian history.

3874. Many scholars have pointed out inadequacy of use of the term "Medieval" in Indian history since this is imposing the European concept on Indian history, the characteristic features of say British Mediaevalism which was never present otherwise in India. It is more systematic and precious to use centuries, like 11th, 12th, 16th, 20th in the present context instead of Ancient, Medieval and Modern. For this kind of division there are several Radiocarbon Dates from the site, the list of which is given in the Report. Periodization won't be a cut off feature like on-off electric current by a switch. It is the flow and merger of previous culture and power structure of the immediately following period. Any specific data is only suggestive of some event of significance which throws light both on the past and the next.

3875. **Professor R.S. Sharma** mentioned in his book **"Perspective in Social and Economic History of Early India"** on page 228-229 that an important problem in the general

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history of India is that of transition from the ancient to medieval, and certain dates such as AD 647, 711, 750, 916, 997 and 1206 have been suggested as landmarks in political history. But since politics was the preoccupation of a small section of society in early times, it has to be shown whether any of the above mentioned dates or whether any other date or point of time is equally significant in the history of land system, crafts and commerce polity, society, language, art, religion, etc. There has taken place a lot of discussion whether Harsavardhana's death in AD 647 marks the end of one and the beginning of another era in Indian history. The statement of Vincent Smith that the death of Harsavardhana set in the process of decline of Indian history has been ably refuted by a number of scholars, and especially by H.C. Ray. But for those who wish to investigate patterns of social and economic life, the real point to look for is not the presages of decline and prosperity but the nature of change in the existing way of life. If the change is of a fundamental nature, it should be regarded as heralding the advent of new period. If it is a minor change it would not necessitate any new characterization of the period, even the question to the process of change involved in it. We have to carefully consider how far the decline of the existing system of life shows symptoms of the rise of a new pattern of life. None of these points have been taken into account either by V. Smith when he says that the death of Harsavardhana in AD 647 brings a period of decline or by those who try to refute his theory.

3876. On the grounds of dynastic and political history H.C. Ray suggests that AD 916 should be accepted as the line of demarcation between the two periods in the history of northern

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India. In his opinion: “these may be called the ancient and the medieval periods; but it would be perhaps more reasonable to call them simply the Hindu period and the period of the Turks and Afghans. A similar approach has been adopted by some other scholars. In the fifth volume of the **"History and culture of the Indian People",** it is said at one place that ancient India came to an end in AD 997, (the period subsequent whereto Mahmood Gazni invaded on the northern front) and again at another, that in Indian history the medieval factor was introduced in the thirteenth century. Both views are based on the assumption that the Muslim conquest ushered in mediaevalism in India. Does it mean that without the Muslim conquest there would have been no mediaevalism in India? Does it imply that the countries of Europe which escaped this conquest had no mediaeval period in their history? In Europe it is difficult to think of mediaevalism without feudalism, the origins and nature of which have to be examined in the case of India.”

3877. In "**The History and Culture of the Indian People**", Bhavan's Book University published by Bhartiya Vidya Bhavan Mumbai (first edition 1957), 5th Edition 2001, Vol. V, "The Struggle for Empire" in the foreword written by Dr. K.M. Munshi it is said that for over 2000 years, i.e., from before the days of King Janmejaya Parikshita, referred to in the Brahmanas, the culture of the dominant classes, developing in almost unbroken continuity, had brought large sections of the people within its fold. It was, however, disturbed on occasions, for instance by the raids of Alexandar; by the influx of the Bactrian Greeks, the Kushanas and the Sakas; by the invasion of the Hunas; by the Arab incursions in Sindh. But these inroads

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were only temporary episodes; the vitality of the culture and social organisation found it easy to absorb most of the alien elements which were left behind in the country after they were closed. It was based on the faith that Bharatvarsha, in its ideal aspect often referred to as Aryavarta, was the sacred land of Dharma, 'the high road to Heaven and to Salvation'; where 'men were nobler than the Gods themselves; where all knowledge, thought and worship were routed in the Vedas, revealed by the Gods themselves; where the Dharmasastras prescribes the fundamental canons of personal life and social relations; where Chaturvarnya, the divinely-ordained four-fold order of society, embraced all social groups; where, whatever the dialect of the people, Sanskrit, the language of the Gods, was the supreme medium of high expression. 'The Dharmasastras' and by that is meant not only the Smritis beginning with the Manu-smriti, but the Mahabharata and Ramayana have played a very big role in the life of the country. Manu-smriti as the Dharmasastra of divine origin, has had an all-pervading influence from the time historical memory could reach back to moulding the mind and the life of men, not only in India but in the India beyond the seas, in Burma, Siam, Annam, Combodia, Jawa and Bali. With the Mahabharata and the Ramayana, it has provided a background of continuity to the social and moral life; modified customary laws of tribes and communities in different stages of civilization; and built up the Collective Unconscious of our people that subconscious source of integrative vitality which keeps a people together, leads them to feel and react as one in the face of certain circumstances, and provides the urge to collective action of a recurring character. Century after century,

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the system, first formulated by the Manu-smriti, was accepted throughout the country, never by force of arms, less by royal fiats than the sanction implied in the belief that 'God gave it and the ancestors obeyed it'. It was found so acceptable because it had a revealing basis of reality: of a frank recognition of the temperamental inequalities of man; of the predominance of hereditary influences over environments; of the need for a synthetic framework for widely differing social groups in a vast country where culture have been staggered from not only region to region, but often from one group of villages to another. But then the year AD 1000 was fateful year for Bharatversha. The crucial age in Indian history began in AD 998 when the Turkish conqueror Mahmood captured Ghazni and thereafter invaded India for umpteen times. Generally it is believed that Mahmood invaded Indian territory for 17 times and his last visit was in AD 1027. He drove India on enormous wealth and destroyed much of its man power by repeated expeditions. This extortion of economic resources and man power told upon the future political destiny of India. Particularly the destruction of Shahi Kingdoms which barred the gates of India against foreign invaders dealt with a severe blow to its future independence. The inclusion of Punjab and Afganistan in the kingdom of Ghazni made Islamic conquest of India a comparatively easy process. The northern part of India, however, soon recovered. In Bihar area, i.e., Magadh, Tirabhukti and Mithila, sometimes around AD 1097 Nanyadev of Karnataka dynasty established his supremacy while Kannauj was taken by Gaharwala dynasty in the later part of the 11th century. After 1034 AD till 1068 AD we find no information about any military campaign by muslims

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against Hindustan. The cause might be the forceful dominant military power of Parmar Bhoj and Kalchuri Karn who led expeditions even into the heart of muslim territory of Punjab. Bhoj died about 1055 AD and Karn died about 1072 AD whereafter the military expeditions recommenced. Prince Mahmood, the Governor of Punjab plundered Kannauj and Kalanjar and invaded Ujjain between 1086 to 1090 AD. 42 inscriptions of Govindacharya's reign bearing dates extended from AD 1114 to 1154 proving that his kingdom extended atleast up to Banaras, Fatehpur and Kanpur districts on the south Kannauj, on the west Gonda and Gorakhpur, on the north Dinapur and Patna (Bihar) on the east. The last king in succession who live peacefully for about 2 decades was Jaichand but was defeated in the end of 12th century by Muizz-ud-din Muhammad Ghuri who came after conquering Delhi and Ajmer by defeating Prithviraj Chahmanas. Ghuri captured the fort of Asni in Fatehpur district where the treasure of the king of Banaras was deposited and then plundered Banaras city also. In 1197 it appears that Harishchandra son of Jai Chandra retained his power over Kannauj, Jaunpur and Mirzapur district resting his patron kingdom from the commands of muslims. He was, however, killed by Malik Nasiruddin Muhammad Shah the eldest son of Iltutmish in AD 1226 and the Kannauj was finally conquered by Iltutmish. It may be added at this stage that Muhammad Ghuri after his death was succeeded by Kutubuddin Aibak in 1206 AD who established the Turkish Sultanate in India at Lahore later transferred to Delhi. It is in this context that the Sultanate period is considered to have commenced in the first half of 13th century.

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3878. **N**othing is brought to our notice which may suggest anything otherwise in the historical background referred to above. We therefore find no reason whatsoever in the above background to hold periodization determined by ASI as mistaken.

3879. Moreover, we have no doubt in our mind that ASI, as a premier institution of this country, is responsible for the preservation, maintenance and discovery of ancient monuments and sites, as well as archaeological survey and excavation. They are experts of expert. No archaeologist in this country can undertake an archaeological expedition at a historical site of importance without permission or licence from ASI. The status enjoined to ASI which we have already referred, empowers it to control all these activities. The finds and researches as well as the determination and conclusion of any archaeologist or other expert in this field is not normally recognised unless it has been scrutinized by ASI and after approval it is also published in the regular journals of ASI. An individual at some point of time may be said to have acted with some kind of bias, legal or factual as the case may be, but to brandish the entire body or a large number of its officials who belong to different religions including Muslims also, that they have worked with preconceived notions is not only an irresponsible attitude to show some kind of pre-determined plan and scheme to atleast create a clout on a remarkable and excellent work ASI it has, otherwise performed. The result of a work, if it is not chewable to one or more, will not make the quality of work impure or suspicious. The self contradictory statement, inconsistant with other experts made against ASI of same party i.e. Muslim, extra

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interest, and also the fact that they are virtually hired experts reduces trustworthiness of these experts despite their otherwise competence. The allegations, need much more material to substantiate. In the matter of stratigraphy/ periodization made by ASI, in the absence of anything to show that what they have said is improbable, ex facie fake or incorrect or that no person having adequate knowledge in the subject may have formed such opinion, we have no reason to disbelieve or discard it and instead accept version of interested and partisan expert witnesses who at times have made contradictory statements as we have already noticed to some extent above. **We, therefore, find no force in the objection with respect to the stratification/periodization made by ASI.**

Pillar Bases

3880. The next and the biggest objection is with respect to the pillar bases. We thus proceed to consider the same. A serious allegations of framing of certain structures in particular, i.e. certain pillar bases have been levelled by submitting objections dated 21.05.2003 and 07.06.2003 which we have already discussed in detail. Normally, it would have been suffice to mention at this stage that had there been any truth, the same could not have gone unnoticed by such a large number of persons present at the site particularly when two members of Higher Judicial Services were also present there as 'Observers' having been appointed by this Court. We have already noticed that two expert archaeologist, i.e., PW 16 and 24 who have given very long statements before this Court thrice and twice respectively, both of them visited the site in June 2003 and Dr. Mandal also visited again in Sept. 2003. Both of them admitted

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that in June 2003 they had no idea or information that any structure was manipulated by the members of Archaeological Team of ASI. However considering the seriousness and also the fact that in the Court, the stand is slightly different, we would go in further detail of these allegations.

3881. The ASI in Chapter IV commencing from page 48 has considered various structures it found during the course of excavation. For the time being we leave other structures and proceed with the pillar bases in respect whereto the reference is on page 55 and onwards. It says:

> "*From the excavation it could be inferred that there were seventeen rows of pillar bases from north to south, each row having five pillar bases. Due to area restriction and natural barriers, the pillar bases in the central part occupied by the make-shift structure on the raised platform could not be located. Out of excavated fifty pillar bases only twelve were completely exposed, thirty five were partially exposed and three could be traced in sections only. A few pillar bases were noticed during earlier excavation after which a controversy took place about their association with different layers and their load bearing capacity. The present excavation has set aside the controversy by exposing the original the form of the bases having calcrete and stone blocks arranged and set in a proper manner over a brick foundation and their arrangements in rows including their association with the top floor of the structure existing prior to the disputed structure.*
>
> *The seventeen rows of pillar bases were constructed*

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along the north-south running brick wall (wall 16) on the west. The distance of the first pillar base in each row from the wall ranges from 3.60 to 3.86m. Seventeen rows of pillar bases could be categorised in three different groups on the basis of north-south distance which varies in different groups whereas east-west distance from centre to centre of each pillar base vary from 2.90 to 3.30m. Six rows of the pillar bases on north and south were at the equidistance which ranges from 3 to 3.30m. Central five rows consisting twenty five pillar bases show different equations-two rows on either sides of the central row were placed approximately at the distance of 5.25m. whereas the other two rows on either side of these three rows were at the distance of 4.20 - 42.5 m. From this it could be easily concluded that the central part of the pillared structure was important and special treatment was given to it in architectural planning.

In the southern area only one decorated sand stone was found over a pillar base while in the northern area many of the pillar bases were found topped by a plain sand stone block set over the brick bat foundation having calcrete blocks over them (Pl. 36). Top parts of stone encasings had a projection in the middle. In the northern area at a few places where the stone blocks were not found sand stone slabs were found over the calcrete blocks of the crick bat foundation of the pillar bases. The decorated octagonal sand stone block on pillar base32 having floral motif on four corners in trench F7 in the southern area is the unique example at the site (Pl. 39) which definitely

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belongs to the twelfth century A.D. as it is similar to those found in the Dharmachakrajina Vihara of Kumaradevi at Sarnath (Pl. 40) which belongs to the early twelfth century A.D. Seeing its cut or broken surface on one side its use as the base of a neighbouring pilaster (Pl. 41) attached with wall 16 in trench E6 cannot be ruled out."

3882. Thereafter the details of pillar bases have been tabulated showing a total number of 50 pillar bases in different trenches the relevant extract whereof is as under:

Pillar Base number given by ASI	*Trench No.*	*Pillar Base given by ASI*	*Trench no.*
1.	*ZH3-ZH2 baulk*	*2.*	*ZF2*
3.	*ZG2*	*4.*	*ZG2*
5.	*ZH2*	*6.*	*ZH2-ZJ2 baulk*
7.	*ZF1*	*8.*	*ZG1*
9.	*ZH1*	*10.*	*ZF1*
11.	*ZG1*	*12.*	*ZG1*
13.	*ZH1*	*14.*	*ZH1-H1 baulk*
15.	*F1*	*16.*	*F1-G1*
17.	*G1*	*18.*	*H1*
19.	*H1*	*20.*	*F2-G2 baulk*
21.	*G2*	*22.*	*F2*
23.	*F2-G2 baulk*	*24.*	*G2*
25.	*F3*	*26.*	*G5*
27.	*H5*	*28.*	*F6*
29.	*F6*	*30.*	*G6*
31.	*F6-F7 baulk*	*32.*	*F6-F7*
33.	*G6-G7 baulk*	*34.*	*E7-F7 baulk*
35.	*F7*	*36.*	*G7*
37.	*F8*	*38.*	*F8*
39.	*G8*	*40.*	*F8-F9 baulk*

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41.	*F8-F9 baulk*	*42.*	*G8-G9 baulk*
43.	*E9-F9 baulk*	*44.*	*F9*
45.	*G9*	*46.*	*G9-H9 baulk*
47.	*E10-F10 baulk*	*48.*	*F10*
49.	*G10-H10 baulk*	*50.*	*H10*

3883. The learned experts who have appeared before this Court rendering their opinion on behalf of muslim parties have sought to challenge this part of the report making serious allegations that most of the pillar bases have been created, actually they did not exist. This attack is led on front by PW 29, 32 and DW 6/1-2. These very Experts (Archaeologists) who have deposed their statements on behalf of muslim parties complaining about the manner in which the ASI have functioned in the above excavation have also said simultaneously something otherwise.

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3884. **PW 29, Jaya Menon** on pages 177-178 and 179-180 has said:

> *"**Excavation was conducted by a team of members of the A.S.I. It was supervised by two Judicial Officers throughout the excavation.** Besides these observers, parties, their counsels nominees and experts were also present during excavation. Day to day register was maintained during excavation on day to day basis by ASI but so far as site note book is concerned I don't know about it. **Day to day register was signed by parties or their nominees and Advocates regularly on day to day basis.** Antiquity register was not maintained by ASI on day to day basis. During my stay at the excavation site I did not sign on the daily register. Since it was not compulsory to sign this register therefore I did not sign this register, day to day*

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register mentioned the antiquities found in various trenches on daily basis . . . . .During my stay at Ayodhya I verified by inspection of day to day register, the antiquities recorded on day to day basis in the daily register but did not sign the register." (Page 177-178)

*"**During excavation photography of trenches along with artefacts was being regularly done.** There was three dimensional recording during excavation. Videography was regularly done but I do not know that videography of each and every trench was being dome or not. I have not seen the C.D. Of video recording prepared by the ASI. . . . . .I have seen the site note books prepared by the A.S.I. And submitted in the court. Site note books were prepared by the A.S.I. trenchwise on the basis of regular excavation at excavation site. It is correct that excavation conducted by the A.S.I. Was grid system of excavation. Vertical and horizontal excavation were some by A.S.I. At the site. . . . . .It is correct that for the compliance of the order of the court horizontal excavation was necessary on the spot. Vertical excavation by itself was not sufficient because both types of excavation were necessary. Both types of excavation had been conducted by the A.S.I. at the spot. A.S.I. has given it's report along with some plans and sections." (Page 179-180)*

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3885. Similarly **PW 30, Dr. R.C. Thakran** has said:

*"सामान्य तौर पर भारतीय पुरातत्व विभाग के उत्खनन की टीम के सदस्य जिनको उत्खनन के कार्य का सुपरविज़न का भार सौंपा गया था, **वे नोट्स तो लेते थे, परन्तु उस तरह के नोट्स नहीं लिये जाते थे, जिस तरह के नोट्स की ऐसी परिस्थितियों में आवश्यकता होती है।** नोट्स लेने से मेरा तात्पर्य खुदाई के दौरान जो*

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भी अवशेष प्राप्त होते हैं, चाहे वे कितने ही तुच्छ नज़र आते हों, सभी की उचित प्रकार से रिकार्डिंग होनी चाहिए और इस रिकार्डिंग का लेखा–जोखा ट्रेंच नोट बुक में होना ही चाहिए, ताकि जब भी कभी इसको कन्सल्ट करने की आवश्यकता पड़े, तो किया जा सके। ***मुझे इस बात की जानकारी है कि ए0एस0आई0 द्वारा एक डेली रजिस्टर मेन्टेन किया जाता था, जिसमें शाम के वक्त दिन–भर के उत्खनन के दौरान उत्खनन कर्ताओं के अनुसार जो उल्लेखनीय अवशेष होते थे, उनकी रिकार्डिंग की जाती थी।*** *मैंने ए0एस0आई0 द्वारा मौके पर ''साईट नोट बुक'' मेनटेन करते नहीं देखा था। यद्यपि आमतौर पर ''साइट नोट बुक'' उत्खनन के दौरान प्रयोग की जाती है।'' (पेज 54)*

''Generally, members of the excavation team of Indian Archaeology Department who were assigned the job of supervising the excavation work, ***used to take notes but such type of notes were not taken down as are required in such circumstances.*** *By the words 'taking notes' I mean that proper recording should be done of all the remains which are discovered in course of the excavation, howsoever trivial they seem to be, and accounts of this recording should only be maintained in the note book in regard to the trench so that it may be consulted whenever such need be there.* ***I have the information that ASI maintained a daily register recording in the evening all remains discovered in course of day-long excavation and which the excavators take to be worth recording.*** *I did not see ASI taking site notebooks, though such notebooks are generally used in course of excavation." (E.T.C.)*

''उत्खनन के दौरान जब मैं उत्खनन स्थल पर मौजूद रहा था, तब ***मैंने यह देखा था कि उत्खनन से प्राप्त जो पुरावशेष उत्खनित किए जाते थे, उनकी रिकार्डिंग तो होती थी,*** *परन्तु सभी प्रकार के पुरावशेषों की समुचित रिकार्डिंग नहीं होती थी।'' (पेज 75)*

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"In course of the excavation, when I was present at the excavation site, ***I saw that the antiquities obtained from the excavation were certainly recorded*** *but a proper recording of all sorts of antiquities was not done." (E.T.C.)*

"प्रश्न– अयोध्या में उत्खनन के दौरान जो पुरावशेष प्राप्त हुए थे, क्या उनकी इंडेक्सिंग (नम्बरिंग) की गई थी?

उत्तर– हॉ, मुझे इस बात की जानकारी है कि ***उत्खनन के दौरान जो पुरावशेष उपलब्ध होते थे और जिनको उत्खननकर्ता महत्वपूर्ण मानते थे, उन पुरावशेषों की उत्खनन के दौरान मार्किंग की जाती थी।***

प्रश्न– उपरोक्त पुरावशेष जिनकी मार्किंग होना आपने अभी बताया है, क्या यह मार्किंग विवादित स्थल पर स्थित मेक शिफ्ट स्ट्क्चर के पूरब स्थित एक बड़े चबूतरे पर होती थी?

उत्तर– हॉ, मुझे यह जानकारी है कि उक्त स्थल पर दिन भर की खुदाई के दौरान जो पुरावशेष (उत्खननकर्ताओं की दृष्टि से तथाकथित महत्वपूर्ण अवशेष) मिलते थे, उनकी मार्किंग और लिस्टिंग वहॉ न करके किसी अन्य जगह पर की जाती थी और उसके पश्चात् इस तरह से लिस्टिंग की गई पुरावशेषों की जानकारी उत्खननकार्य को प्रतिदिन समाप्त करने से पहले उपस्थित पर्यवेक्षकों या अन्य उपस्थित व्यक्तियों को दी जाती थी।" (पेज 76)

"Question:- Was the indexing done of the antiquities discovered from the Ayodhya excavation ?

Answer:- Yes, I have the information that ***the antiquities which were discovered in course of the excavation and which were considered to be important by the excavators, were marked in course of the excavation.***

Question:- You have just told about the marking of the afore-said antiquities. Was this marking done at a big chabutra located east of a make-shift structure at the disputed site ?

Answer:- Yes, I have the information that the marking and

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listing of the antiquities which were discovered as a result of the day long digging at the said place (and which were called important from excavators' point of view), used to be done at any place other than there. After that, information regarding the antiquities thus listed, used to be given to supervisors or the other present persons before the end of each day's excavation work." (E.T.C.)

"यह सही है कि ***अयोध्या की खुदाई में अदालत के आदेशों के अनुसार सभी पक्षकार एवं उनके नामिनी की उपस्थिति में ही कोई मजदूर या ए0एस0आई0 टीम का कोई सदस्य उत्खनन क्षेत्र में जा सकता था। खुदाई के समय अदालत द्वारा नियुक्त पर्यवेक्षक उपस्थित रहते थे।*** *. . . . . .मैंने एक समय में तीन, चार ट्रेंचेज से भी ज्यादा ट्रेंचेज में खुदाई होते देखा था। मैंने आठ –दस, बारह ट्रेंचेज मे एक साथ खुदाई होते देखा था।* ***खुदाई के समय मेरे साथ मुस्लिम पक्ष के एक, दो, तीन एक्सपर्ट — नामिनी रहते थे।"*** *(पेज 118)*

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"It is true that ***in the Ayodhya excavation, under the orders of the court, any labourer or any member of the ASI team could go to the excavation site only in the presence of all the parties or their nominees.*** *Court-appointed supervisors used to be present at the time of excavation. . . . . I had at a time seen the digging going on in even more than three to four trenches. I had seen the digging going together in 8-10 or 12 trenches.* ***At the time of excavation, I used to be accompanied with one or two or three experts or nominees from the Muslim side****." (E.T.C.)*

"खुदाई के समय पक्षकारों मे मो0 हाशिम तथा हाजी महबूब खुदाई स्थल पर रहते थे, इनके अतिरिक्त वहॉ के जो स्थानीय वकील रहते थे, उनके नाम मुझे याद नहीं हैं . . . . . ऐसा नहीं था कि दो वीडियो कैमरा,

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दो स्टिल फ़ोटोग्राफ़र तथा दो ड्राफ़्टमैन खुदाई वाले हर ट्रेंच पर रहते थे। खुदाई के वक्त शाम के समय डेली रजिस्टर में जितने आर्टिफैक्टस मिलते थे, उनका इन्द्राज इन आर्टिफैक्टस की प्राप्ति की ट्रेंच, उसकी गहराई तथा आर्टिफैट्स के विवरण के साथ किया जाता था। ***रजिस्टर मे इन्द्राज न्यायालय द्वारा नियुक्त दो पर्यवेक्षकों की उपस्थिति में होता था। रजिस्टर में इस इन्द्राज के बाद पर्यवेक्षकों तथा एक्सपर्ट के हस्ताक्षर होते थे। मैंने भी उक्त डेली रजिस्टर पर हस्ताक्षर किए थे।*** *" (पेज 119)*

"Among the parties Mohammad Hashim and Haji Mahmood used to be present on the excavation site at the time of excavation. Besides them, local counsels used to be there. I do not remember their names. . . . . It was not that two video cameras, two still photographers and two draftsmen used to be present at every trench of digging. All the artefacts discovered in course of the excavation, used to be entered in the daily register in the evening with the name and depth of trench from where these artefacts were discovered and with descriptions of artefacts. ***Entries in the register use to be done in presence of two court-appointed supervisors. After the recording of entries in the register, they used to be signed by supervisors and experts. I had also signed the said daily register****." (E.T.C.)*

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3886. On the question of "Pillar Bases" Para 5 (5.1 to 5.16) contains the allegations and alleged irregularities, as under:

5. THE MYTH OF SO CALLED "PILLAR BASES":-

5.1 *That the so called pillar bases are one or more calcrete stones resting upon brickbats, just heaped up, though A.S.I. claims that mud-mortar was also sometimes*

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used. In many of them the calcrete stones are not found at all. As one can see from the descriptive table on pages 56-67 of the Report not a single one of these supposed "pillar bases" has been found in association with any pillar or even a fragment of it; and it has not been claimed that there are any marks or indentations or hollows on any of the calcrete stones to show that any pillar had rested on them. The A.S.I. Report nowhere attempts to answer the questions (1) why brickbats and not bricks were used at the base, and (2) how mud-bounded brickbats could have possibly withstood the weight of roof-supporting pillars without themselves falling apart. It also offers not a single example of any medieval temple where pillars stood on such brick-bat bases.

5.2. *That the Report's claim of these so called "pillar bases" being in alignment and their being so shown in infancy drawings (Figures 23, 23A and 23B), is not borne out by the actual measurements and distances; and there is indeed much doubt whether the plan provided by A.S.I. is drawn accurately at all, since there are* ***enormous discrepancies between Fig. 3A*** *(the main plan) and the* ***Table in Chapter IV*** *on the one hand, and the Report's Appendix IV, on the other.*

5.3. *That even those "pillar bases" that lie in the first north-south "row" on the west, lie at different distances from thick western wall: the distances varying between 3.60 and 3.86 m. The east-west distance between any two features (center to center) can vary from 2.9 to 3.3 m (difference of 40 cm) (p. 55) whereas in the north-south*

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direction there is greater variation between each feature and its neighbor: 3-3.3 m in the north and in the south, and about 5.25 m in the central area. The use of the term "rows", therefore, is incorrect.

5.4. *That the entire manner, in which the A.S.I. has identified or created the so called " pillar-bases" is a matter of serious concern. Complaints were regularly made to the Observers appointed by the High Court that the A.S.I. was ignoring calcrete-topped brickbat heaps where these were not found in appropriate positions and selected only such brickbat heaps as were not too far-off from its imaginary grids, and there creating the so called "bases" by clearing the rest of the floor of brick-bats. In this respect reference may be made to the complaints dated 21.5.2003, 7.6.2003, 28.6.2003, 26.7.2003 and 2.8.2003 etc.*

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5.5. *That the most astonishing thing, that the A.S.I. so casually brushes aside, relates to the varying levels at which the so called "pillar-bases" stand. Even if we go by the A.S.I.'s own descriptive table (pages 56-67), as many as* ***seven*** *of these so called 50 "bases" are definitely* ***above Floor 2, and one is in level with it. At least six rest on floor 3, and one rests partly on Floor 3 and 4****. Since at least Floors 1 to 3 are even recognised by the A.S.I. to be floors of the Mosque, how can so many pillars be said to have been erected after the Mosque had been built, in order to sustain a so called earlier temple structure! Moreover, as many as nine so called "pillar bases"* ***are shown as cutting through Floor No. 3****. So, are we to presume that when the Mosque floor was laid out, the so called "pillar bases"*

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were not floored over? It is thus clear that the said structures are simply not "pillar bases" at all, but some kind of loosely-bonded brickbat deposits, which continued to be laid right from the time of Floor 4 to Floor 1.

5.6. *That the comparative stratigraphy of these 50 alleged bases also requires comment. The tabulation on p.p. 56 to 67 gives us the following data:-*

2 bases (nos. 16, 26) were cut through Floor 4.

25 of them (from the Z- trenches in the north to the G10 and H10 trenches in the south) rested on Floor 4.

6 of them on Floor 3 (nos. 19, 21, 23, 24, 30, 37).

1 (no. 28) actually is said to rest "at the junction of Floor 3 and 4".

2 of them cut through Floor 3 (nos. 12, 15).

7 of them project above Floor 2 (nos. 1, 2, 3, 5, 7, 8 and 14).

We thus see that these 50 features belong to different floors and therefore could not all have been functional at the same time. They lack coherence as architectural features. It is irresponsible, therefore, to repeatedly refer to "rows" of these features, as has been done in the report.

Some of these features appear to incorporate all sorts of material: pieces of brick, small stones and brick pieces, long stone slabs, and D-shaped large stones, etc. This also leads to the inference that all these structures could not belong to any one period.

5.7. *That even the table on pages 56-67 of the A.S.I.'s Report may not correctly represent the layers of the pillar*

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bases, since its information on floors does not match that of the Report's Appendix IV, which in several trenches does not attest to Floor No. 4 at all, which the said "pillar-bases", in many cases, are supposed to have been sealed by, or to have cut through or stand on!

5.8. *That most of these so called pillar bases of the northern side comprise of sqaure sandstone slabs, perhaps resting on calcrete blocks (only one has been excavated that reveals the calcrete block). The inner dimensions of these pillar bases range from 48.5x43, 50x50, 47x46, 48x56, 49.5x49 and 51x51 cm. These dimensions are completely different from those of the pillars that have actually been recovered. The dimensions of the latter range from 21x21 to 24x24 cm. Thus, the pillars that could be said to have stood on the said northern pillar bases would certainly not be the black stone pillars, used in the mosque, or any other pillars of the same or similar type.*

5.9. *That the A.S.I.'s assumption is that the floor, with which are associated these so called pillar bases in the north, is the same as Floor 2 in the south. However, it cannot be definitely said that the floors in E2, F2 or G2 can be easily correlated with E1, F1 or G1 or with ZF1 or ZG1.*

5.10. *That the A.S.I.'s own information on the said pillar bases is highly confusing and marked with discrepancies. For example, in the tabulation of so called pillar bases in Chapter IV, 50 'pillar bases' have been described and have been illustrated in Fig. 3A. The number and the location of these 'pillar bases', however, do not tally with information*

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given in Appendix IV as illustrated in the following Table:-

Discrepancies on numbers of 'pillar bases'

Trench	*Number of 'pillar bases in Appendix IV*	*Number of 'pillar bases' in Fig. 3A and Tabulation in Chapter IV*
E1	*Brick wall/pillar base?-1*	*-*
E2	*Brick wall/pillar base?-1*	*-*
ZF1	*3*	*2*
F1	*'pillar bases'-unspecified*	*1*
F2	*1*	*1*
F3	*1*	*1*
F4	*1*	*-*
F6	*2*	*2*
F7	*1*	*4*
F8	*2*	*4*
F9	*2*	*2*
F10	*3*	*2*
ZG2	*'pillar bases'-unspecified*	*1*
ZG1	*2*	*3*
G1	*2*	*2*
G2	*3*	*4*
G5	*1*	*1*
G6	*1*	*1*
G7	*2*	*2*
G8	*1*	*1*
G9	*3*	*3*
G10	*2*	*1*
ZH2	*2*	*2*

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ZH1	*2*	*1*
H1	*2*	*2*
H5	*2*	*1*
H10	*2*	*1*
J2	*1*	-
L1	*2*	-
L2	*2*	-
L3	*2*	-
L7	*2*	-

5.11. *That, two 'pillar bases' are mentioned in H5, H10, G10 and ZH1 whereas only one in these trenches have been illustrated and described in the text. 'Pillar bases' in the L series of trenches and J2 have not been indicated in the Tabulation as illustrated above.*

5.12. *That on p. 55, distances between 'pillar bases' have been given, that in the east-west direction, center-to Centre distance was 2.90-3.30 m. However, the distance between 'pillar bases' 37 and 38 is 3.80 m. Similarly, these are not always in alignment as is the case with 'pillar base' 30 in Trench G6. 'Pillar bases' 37 and 38 in Trench F8 are also not in alignment with each other.*

5.13. *That the dubious nature of the 'pillar bases' is illustrated by the figures attached with the complaints. The collection of calcrete and brickbats at a lower level than the above has been ignored by the A.S.I. even though it resembles their so called 'pillar bases'. At times, walls were cut to make 'pillar bases' as in Trench F6. The confusion between walls and 'pillar bases' is apparent in Trenches E1 and E2. The same is the case with 'pillar base' 27 in Trench*

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H5. This is nothing but the southern part of Wall 18B.

5.14. *That more serious problem has been created by giving Figs. 23A and 23B, showing the 'pillar bases' hypohetically. An incorrect impression is being created, by showing some 'pillar bases' where no structure was exposed at all and where no excavation was also done.*

5.15. *That there is an additional problem with the "pillar base" interpretation. Load carrying pillar bases require to rest on hard and resistant surfaces, on floor slabs or rammed floors of say 30 to 40 cm height, or else to be set into or enclosed in pits that are packed tight with filled material. The various sections in the report indicate that this is not the case (see, e.g., Figures 8,9,10 where the features appear to have only been set without packing into the ground, and interrupt the continuity of Floor 2, which is only a few centimeters thick, and lies over a stratum <u>not</u> said to be homogeneous earth filling, or of rammed earth. Thus the very use of the words "rows" and "bases" is incorrect and misleading. These features could in some cases represent a pile of unused bricks, broken or entire. In other cases, they may have been used to fill hollows or to raise the level of the mound. In yet other cases they could have been used to shore up a heavy wall or else to function as an apron for a building.*

5.16. *That the A.S.I. should have surely looked about for other explanations of these heaps of brickbats, before jumping to its so called "pillar base" theory. There was another clear and elegant explanation. When the surkhi-lime mortar bonded Floor No. 4 was being laid out over*

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the mound, sometime during the Sultanate period, its builders much have had to level the mound properly. The hollows and depressions then had to be filled by brickbats topped by calcrete stones (the latter often joined with lime mortar) to fill them and enable the floor to be laid. When in time Floor 4 went out of repair, its holes had similarly to be filled up in order to lay out Floor 3. And so again when Floor 3 decayed, similar deposits of brickbats had to be made to fill the holes in order to lay out Floor 2 (or, indeed, just to have a level surface). This explains why the so called "pillar bases" appear to "cut through" both Floors 3 an 4, at some places, while at others they "cut through" Floor 3 or Floor 4 only. They are mere deposits to fill up holes in the floors. Since such repairs were at times needed at various spots all over the floors, these brickbat deposits are widely dispersed. Had not the A.S.I. been so struck by the necessity of finding pillars and "pillar bases" to please its masters, which had to be in some alignment, it could have found scattered over the ground not just fifty but perhaps over a hundred or more such deposits of brickbats.

3887. As we have already noticed, these objections were prepared by PWs-29 and 32 as they themselves have admitted in the affidavit filed by them supporting their stand taken in the objections. There are some difference in their statement. **PW-29 (Jaya Menon)** in her affidavit in para 13 says as under:

A. That the ASI's own information on so called pillar bases is highly confusing and marked with discrepancies. For example, in the tabulation of so called pillar bases in Chapter IV of the Final Report, 50 so called 'pillar bases'

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have been described and have been illustrated in Fig. 3A. the number and the location of said 'pillar bases', however, do not tally with the information given in Appendix IV. The details have been provided in the Objections filed by the Sunni Central Board of Waqfs, UP dated October 8th 2003.

B. That Appendix IV in the Final Report mentions so called pillar bases in trenches L1, L2, L3 and L7 (page 17 of Appendix IV). Yet, Site Note Book No. 30 makes no mention of pillar bases in L1 (pages 76-85), L3 (pages 67-75) and L7 (pages 54-66). Nor are there any pillar bases mentioned in Site Note Book No. 24 for Trench L2, or Site Note Books No. 22 and 38 on the cutting of baulks between various trenches in the L series.

C. That a study of the Site Note Books brings out discrepancies from the information provided in the Final Report. site Note Books Nos. 37 and 21 for Trench G7 make no mention of recovering any pillar bases. however, the listing of so called pillar bases in the Final Report from pages 56-67 has records of so called pillar bases in Trench G7 (pillar base No. 26; pages 64-65) and in the G6/G7 baulk (pillar base No. 33; page 64). Appendix IV of the Final Report on page 10 mentions so called two disturbed pillar bases for Trench G7. It needs to be emphasized that the Site Note Books are the result of hte trench supervisor's observations and impressions. Interpretations may also form a part of Site Note Books. But, here, we find that trench supervisors make no mention of anything remotely like a pillar base but these suddenly appear in the Final Report.

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D. That the so called pillar bases are not in alignment with each other as should be expected in a pillared hall. At the same time, anything that has been found out of line with their imagined alignment has been discarded as evidence. A complaint was also filed which noted that structure was exposed in the eastern part of J2/J3 baulk after excavating a platform. Since it did not fall in line with the ASI's pillar base in Trench J1 it was not considered as base. But in physical appearance, made of calcrete and brickbats, this structure resembles many of the ASI's so called pillar bases. It is clear that this structure indicates nothing but the manner in which the platform was constructed. This shows the bias with which the ASI was working and their selective use of evidence.

E. That is is clear that at times, walls were cut to make so called 'pillar bases' as in Trench F6 and thus there is in Appendix IV, a confusion between walls and so called 'pillar bases' in Trenches E1 and E2. The same is the case with the so called 'pillar base' in Trench H5. This is nothing but the southern part of Wall 18B.

F. That a more serious problem is showing the so called 'pillar bases' hypothetically in Figs. 23A and 23B. An incorrect impression is being created, by showing some so called 'pillar bases' where they do not exist.

G. That the ASI's assumption that the floor, with which are associated these pillar bases in the north, is the same as Floor 2 in the south, is baseless as there has been no concordance of trenches in the north and south.

H. That according to the Report (page 54), Structure 4

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(the 'massive structure') "has survived through its nearly 50 metre long wall (wall 16) in the west and fifty exposed so called pillar bases to its east attached with Floor 2 or the floor of the last phase of Structure 4." However, several sections provided by the ASI (Figs. 6, 10, 16, Plates 21, 46) clearly show that the floor to which they were supposed to be attached sealed these so called 'pillar bases'. In Fig. 6, the 'pillar bases' has cut through Floor 3 (the floor associated with sub-period VIIB) and should have been attached to Floor 2. However, the section in Fig. 6 clearly shows Floor 2 intact over alleged 'pillar base' 31 which means the supposed sandstone block with orthostats and pillar could not have projected over Floor 2. This was the case also with so called 'pillar bases' in Trenches F2, G2 and G5.

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I. That these so called "pillar bases" are too flimsy to have supported any load-bearing pillars. Made largely of brickbats, these are completely lacking in uniformity that would be expected if these were in reality pillar bases. Diameters vary from 1.10 m to 1.90 m. Brickbats are not placed in courses as should be the case, but are random, in many cases in a tilted position. The height of brickbats varies from 5-55 cm within a single base. Brickbats do not lie only under the stone but also over the stone as in Trenches F7 and F10. Brickbats make the entire structure unstable and would get broken if a weight was placed over them. If these really were rounded bases, originally they would have been constructed of wedge-shaped bricks instead of which we find brickbats of jagged shape.

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J. That if these really were pillar bases, they should have had casings within which the pillar would have fitted. In contrast, we see real pillar bases at the Early Historic site of Sanghol. One notices that these are rectangular, made of large bricks neatly placed with a depression in the centre to set the pillar. These are all of uniform size, constructed uniformly and are accurately aligned, unlike in the case of Ayodhya. Three Photographs of these pillar bases of Sanghol were filed as Annexures Nos. 2, 3, and 4 alongwith the Additional objection of Sunni Waqf Board dated 3-2-2004.

K. That the northern area is the only area of the site where pillar bases have been found. These appear to have been part of a separate much later period structure. In an area of about 10 x 10 metre, these were embedded in Floor 1 and hence were contemporary with Floor 1. These pillar bases comprise of square sandstone slabs, of which only one has been excavated with a calcrete block. The inner dimensions of these pillar bases range from 48.5 x 43, 50 x 50, 47 x 46, 48 x 56, 49.5 x 49 and 51 x 51 cm. These dimensions are completely different from those of the black stone pillars that have actually been recovered with dimensions ranging from 21 x 21 to 24 x 24 cm. Thus, the pillars that would have stood on the said northern side pillar bases were certainly not the black stone pillars. These northern side pillar bases are the ones numbered 1-8, 13 and 14, by the ASI.

L. That barring pillar bases 1 to 8, 13 and 14, the ASI has created so called 'pillar bases' in the rest of the site.

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Their creation has been actually observed during excavation and complained about. The deponent has personally witnessed the creation of so called " pillar bases" in Trenches ZF1, F3, F6, G5 and F2/G2.

M. (i) That observations were made of the creation of so called pillar bases in Trench ZF1 from 29th April to 30th April 2003. Floor 1 was exposed at 40 cm bsl, Floor 2 at 57 cm bsl and Floor 3 at 80 cm bsl, all floors being lime-surkhi floors. Floor 1 was reached on April 29th 2003 and was cut through on 30th April 2003, exposing a complete brickbat layer. But during excavation, when a stone was observed as protruding out of the brickbats, the brickbats in the area near the stone were left in a squarish shape while the rest of the brickbats were removed and thrown away. On April 30th 2003 when Floor 2 was cut through, the same king of brickbat layer was exposed beneath it. This brickbat layer can be easily observed by studying the south-facing section in Trench ZF1. A complaint was lodged about the creation of this so called "pillar base".

(ii) That the creation of a so called pillar base was observed in Trench G5 from 24th - 30th of May 2003. Under the Babri Masjid floor various alignments of brickbats were excavated. By the 28th of May 2003, brickbats in the north-western area were concentrated on because there were traces of mortar on these. The mortar was probably remnants from Floor1. By the 30th of May 2003, brickbats were left in a somewhat circular shape because a few small stone chips with traces of mortar on them were found. This whole contraption was made into a so called pillar base by

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selective digging and partial removal of brickbats. It appears that any co-occurrence of stone, even in the form of chips, and brickbats was made into a so called pillar base, as long as it is 3.30 m to 3.50 m away from the next. Any stones along with brickbats found out of this alignment was not made into a pillar base. A complaint was lodged during excavation about the creation of this "pillar base" also.

(iii) That the same situation of creation of so called pillar bases can be seen in Trench F3. The relevant excavation s took place from July 8th to 12th July2003. In this trench, part of the wall of the northern dome of the Babri Masjid is still standing. A sandstone slab was recovered in the north-western corner of the trench at 2.30 m bsl. On excavation, brickbats were found lying all over the trench and Floor 2 was partially seen below the brickbats at 3.08 m below surface level (bsl). On the 9th of July 2003, brickbats were selectively removed, leaving those only around the sandstone slab. Further excavation down to Floor 3 at 3.35 m bsl revealed a similar layer of brickbats under it. Finally the so called pillar base was created by heaps of brickbats that had been left in place around a sandstone slab while removing all the other brickbats in the rest of the trench. A complaint was lodged during excavation about the creation of this "pillar base".

(iv) That the construction of a so called pillar base was observed in Trenches F2/G2 from the 23rd to the 26th of July 2003. The loose deposit under the Babri Masjid floor was removed leaving brickbats in the north-eastern part of the

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trench in a semi-circular shape. By the 24th of July, the entire area was cleared leaving brickbats in the eastern area and a small patch in the south-western part. What is important is that the eastern and western parts of the trench were excavated carefully with knife and brush unlike the rest of the trench that was excavated with a pick. This was because it was in the eastern and western portions that so called pillar bases had to be created, keeping their distance from those constructed in Trench G1. It must also be pointed out that in the clearing work, a collection brickbats and sandstone in the north-western part of the excavated area was removed because it did not fall in an expected alignment of so called pillar bases. This 'structure' had been objected to earlier in a complaint filed on 21st May 2003. By the 26th of July, brickbats in the south-western part were recovered along with sandstone chips. Digging under Floor 1 revealed brickbats in the entire area, but the south-eastern and south-western areas were excavated separately. It was very obvious that these were going to be made into so called pillar bases, even though brickbats had been found in the entire area. By 11.40 am, the area was cleared but further digging revealed the same king of deposit of brickbats, mud, and brick nodules. By afternoon, the so called "pillar base" in the south-eastern area was created by removing brickbats from its edges to give it a neat shape. Glazed were sherds were found at this level. The so called "pillar base" in the south-western part of the trench was cleared of brickbats of make it equal in size to its counterpart and a piece of

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broken floor sticking to it was removed. Very obviously, these so called pillar bases were created by selectively removing brickbats that lie under each floor. A complaint was lodged during excavation about the creation of this so called "pillar base".

N. That it was observed that, during excavation, brickbats were selectively removed so as to leave brickbat heaps around stone piece and blocks. (There were preconceived ideas about where so called "pillar bases" were to be carved out of brickbats. If no sandstone or calcrete blocks or slabs were noted, heaps of brickbats were left at intervals of 3.00-3.30 m.) A clear attempt was made to neaten the edges of so called "pillar bases" by removing brickbats to give rounded/squarish shapes. It appears that at the end of the excavation, when some so called 'pillar bases' were found obviously out of alignment, they were dismantled as in the case of the structure in the north-west of Trench G2.

O. That the sections of a trench provide us direct evidence of the brickbats layers that lay under individual floors. (It is also obvious that brickbats have been removed from the sections of many trenches: south-facing section of G8/G9 baulk, north, south, and east-facing sections of F1, north- and south facing sections of G1, north-facing section of H1, and east-facing section H1/H2 baulk, south- and west-facing sections of ZF1, east-facing section of G2 and east-facing section of F9.) In archaeology, whenever sections are made during excavation, protruding artefacts like antiquities or bricks, stone and brickbats are never

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scraped level with the section but are allowed to protrude. This provides a correct picture of the section and its cultural material. In the case of Ayodhya, the above-mentioned trenches show gaping holes from where brickbats have been removed.

P. That the so called "pillar bases" were only part of a floor construction technique. Each lime-surkhi floor was underlain with several layers of brickbats interspersed with stone blocks and slabs and other material as fillers. The intervening spaces were filled with brickbats, mud and brick nodules. Stones have also been used at the site as fillers (as seen from the Plates 4, 21, 30, 50 in the Final Report), levelling mechanisms and for raising walls and platforms and so forth.

Q. That it seems that originally the aim was to create the so called pillar bases all over the excavated area. 8 so called 'pillar bases' were carved out in the L series of trenches as can be seen by Appendix IV (page 17) of the Final Report. As pointed out, there is no mention of these in the individual Site Note Books of the L series of trenches. These were probably not included in the final tabulation or in Fig. 3B showing so called 'pillar bases' as they did not fit in which the ASI' plan of a so called temple with a large brick pavement in front. This brick pavement to the east was considered as the entrance of the massive structure and hence pillar bases would not have fitted into this plan further to the east."

3888. PW 32 (Dr. Supriya Verma) in her affidavit dated 27th March, 2006 has said:

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A. That the northern area is the only area of the site where pillar bases have been found. In an area of about 10 x 10 m, these were embedded in Floor 1 and hence were contemporary with Floor 1. These pillar bases comprise of square sandstone slabs, of which only one has been excavated with a calcrete block. The inner dimensions of these pillar bases range from 48.5 x 43, 50 x 50, 47 x 46, 48 x 56, 49.5 x 49 and 51 x 51 cm. These dimensions are completely different from those of the black stone pillars that have actually been recovered with dimensions ranging from 21 x 21 to 24 x 24 cm. There is a pillar lying in the gully to the north of the mound that may have fitted on top of these pillar bases. Thus, the pillars that would have stood on the northern side pillar bases were certainly not the black stone pillars. These northern pillar bases are the ones numbered 1-8, 13 and 14, by the ASI.

B. That barring pillar bases 1-8, 13 and 14, the ASI has created 'pillar bases' in the rest of the site. Their creation has been actually observed during excavation was even and complained about. The deponent has personally witnessed the creation of "pillar bases" in Trenches G2, G5 and F3. Observations were made on the creation of "pillar bases" in Trench G2 from May 16-20, 2003, in Trench G5 from May 27-30, 2003, and in Trench F3 from July 8-12, 2003 and complaints were filed on May 21, 2003, June 28, 2003 and July 26, 2003 respectively. These complaints/objections were prepared by the deponent and Dr. Jaya Menon and were filed under the signatures of Muslim parties and their counsels.

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C. That a close observation of the excavation and recording was done of Trench G2 from May 16 to May 20, 2003. It was found that brickbats randomly scattered over the entire excavated area were selectively removed so as to create a visual impression that the brickbats were confined to only a portion of the excavated area. An examination of the section will reveal the fact that brickbats lay in the layer below Floor 1. When Floor 2 was dug through, once again a whole layer of brickbats was exposed.

D.. That the so called "pillar bases" were only part of a floor construction technique. Each lime-surkhi floor was underlain with several layers of brickbats interspersed with stone block blocks and slabs and other material as fillers. The intervening spaces were filled with brickbats, mud and brick nodules. Stones have also been used at the site as fillers (as seen from the Plates 4, 21, 30, 50 in the Final Report), levelling mechanisms and for raising walls and platforms and so forth.

E. That during excavation, brickbats were selectively removed so as to leave brickbat heaps around stone pieces and blocks. If no sandstone or calcrete blocks or slabs were noted, heaps of brickbats were left at intervals of 3.00-3.30 m. It appears that at the end of the excavation, when some so called "pillar bases" were found obviously out of alignment, they were dismantled as in the case of the structure in the northwest part of Trench G2.

F. That the sections of a trench provide us direct evidence of the brickbat layers that lay under individual floors. It is also obvious that brickbats have been removed

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from the sections of many trenches: south-facing section of G8/G9 baulk, north-, south-, and east-facing sections of F1, north- and south-facing sections of G1, north-facing section of H1, and east-facing section of H1/H2 baulk, south- and west-facing sections of ZF1, east-facing section G2 and east-facing section of F9. (In archaeology, whenever sections are made during excavation, protruding artefacts like antiquities or bricks, stone and brickbats are never scraped level with the section but are allowed to protrude. This provides a correct picture of the section and its cultural material.) In the case of Ayodhya, the above-mentioned trenches show gaping holes from where brickbats have been removed.

G. That the ASI's own information on the so called "pillar bases" is highly confusing and marked with discrepancies. For example, in the tabulation of "pillar bases" in Chapter IV of the Final Report, 50 "pillar bases" have been described and have been illustrated in Fig. 3A. The number and the location of "pillar bases", however, do not tally with the information given in Appendix IV. The details have been provided in the Objections filed by the Sunni Central Board of Waqfs, UP on October 8th 2003.

H. That Appendix IV in the Final Report mentions so called "pillar bases" in trenches L1, L2, L3 and L7 (p. 17 of Appendix IV). Yet, Site Note Book No. 30 makes no mention of pillar bases in L1 (pp. 76-85), L3 (pp. 67-75) and L7 (pp. 54-66). Nor are there any "pillar bases" mentioned in Site Note Book No. 24 for Trench L2, or Site Note Books No. 22 and 38 on the cutting of baulks between various

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trenches in the L series.

I. That it seems that originally the aim was to create "pillar bases" all over the excavated area. Eight so called "pillar bases" were carved out in the L series of trenches as can be seen by Appendix IV. (p. 17) of the Final Report. As pointed out, there is no mention of these in the individual Site Note Books of the L series of trenches. These were probably not included in the final tabulation or in Fig. 3B showing "pillar bases" as they did not fit in with in the ASI's plan of a temple with a large brick pavement in front. This brick pavement to the east was considered as the entrance of the massive structure and hence so called "pillar bases" would not have fitted into this plan further to the east.

J. That a study of the Site Note Books brings out discrepancies from the information provided in the Final Report. Site Note Books Nos.37 and 21 for Trench G7 make no mention of recovering any so called "pillar bases". However, the listing of "pillar bases" in the Final Report from pp. 56-67 has records of "pillar bases" in Trench G7 (pillar base No. 36; pp. 64-65) and in the G6/G7 baulk ("pillar base" No.33; p. 64). Appendix IV of the Final Reprt on p. 10 mentions two disturbed "pillar bases" for Trench G7. It needs to be emphasized that the Site Note Books are the result of the trench supervisor's observations and impressions. Interpretations may also form a part of Site Note Books. But, here, we find that trench supervisors make no mention of anything remotely like a "pillar base" but these suddenly appear in the Final Report.

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K. That the so called "pillar bases" are not even in alignment with each other as should be expected in a pillared hall. At the same time, anything that has been found out of line with their imagined alignment has been discarded as evidence. A complaint filed on 24th July, 2003 noted that a structure was exposed in the eastern part of J2/J3 baulk after excavating a platform. Since it did not fall in line with the ASI's so called "pillar base" in Trench J1 it was not considered as a base. But in physical appearance, made of calcrete and brickbats, this structure resembles many of the ASI's so called "pillar base". It is clear that this structure indicates nothing but the manner in which the platform was constructed. This shows the bias with which the ASI was working and their selective use of evidence.

L. That it is clear that at times, walls were cut to made so called "pillar base" as in Trench F6 and thus there is in Appendix IV, a confusion between walls and "pillar bases" in Trenches E1 and E2. The same is the case with the "pillar base" in Trench H5. This is nothing but the southern part of Wall 18B.

M. That a more serious problem is that of showing the so called "pillar bases" hypothetically in Figs. 23A and 23B. An incorrect impression is being created, by showing some 'pillar bases' where they do not exist.

N. That the ASI's assumption that the floor with which are associated these so called "pillar bases" in the north is the same as Floor 2 in the south is baseless as there has been no concordance of trenches in the north and south.

O. That according to the Report (p. 54), Structure 4 (the

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'massive structure') "has survived through its nearly 50 m long wall (Wall 16) in the west and fifty exposed pillar bases to its east attached with Floor 2 or the floor of the last phase of Structure 4." However, several sections provided by the ASI (Figs. 6, 10, 16, Plates 21, 46) clearly show that the floor to which they were supposed to be attached sealed these "pillar bases". In Fig. 6, the "pillar base" has cut through Floor 3 (the floor associated with sub-period VIIB) and should have been attached to Floor 2. However, the section in Fig. 6 clearly shows Floor 2 intact over "pillar base" 31 which means the supposed sandstone block with orthostates and pillar could not have projected over Floor 2. This was the case also with "pillar bases" in Trenches F2, G2 and G5.

P. That these so called "pillar bases" are too flimsy to have supported any load-bearing pillars. Made largely of brickbats, these are completely lacking in uniformity that would be expected if these were in reality pillar bases. Diameters vary from 1.10 m to 1.90 m. Brickbats are not placed in courses as should be the case, but are randaom, in many cases in a tilted position. The height of brickbats varies from 5-55 cm within a single base. Brickbats do not lie only under the stone but also over the stone as in Trenches F7 and F10. Brickbats make the entire structure unstable and would get broken if a weight was placed over them. If these really were rounded bases, originally they would have been constructed of wedge-shaped bricks instead of which we find brickbats of jagged shape.

Q. That if these really were pillar bases, they should

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have had casings within which the pillar would have fitted. In contrast, we see real pillar bases at the Early Historic site of Sanghol. One notices that these are rectangular, made of large bricks neatly placed with a depression in the centre to set the pillar. These are all of uniform size, constructed uniformly and are accurately aligned, unlike in the case of Ayodhya. The deponent had visited the said site of Sanghol. District Ludhiana (Panjab) alongwith Dr. Jaya Menon and Dr. Suchi Dayal in 2004 and Dr. Jaya Menon and the deponent had taken the photographs of the said Sanghol site (3 of which have already been filed as ANNEXURES Nos. 2, 3 and 4 to the Additional objection dated 3-2-2004 filed by the Sunni Waqf Board against the A.S.I. Report.)

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3889. After very careful consideration of the above as also the arguments advanced before us including ASI report, it appears to us that the report of ASI was sought to be criticized by the plaintiffs (Suit-4) as if ASI was supposed to satisfy them about its finding and not the Court. Several fanciful objections have been made just to multiply and add the list of the objections.

3890. Under the heading "The Myth of so called pillar bases", paras 5.12, 5.16, in a general way, all the pillar bases are sought to be discredited though a number of pillar bases, we have already demonstrated, are admitted by the experts of the muslim parties. Complaints in respect to some of the pillar bases, which were made on 21st May, 2003 and 7th June, 2003 have already been discussed above and that itself is sufficient to discard the objections of the plaintiffs (Suit-4) on this aspect.

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However, we propose to throw some more light on the subject of pillar bases.

3891. In the cross examination, the Expert (Archaeologist) plaintiffs (Suit-4) have also said something about pillar bases. **PW-16 (Surajbhan)** said:

> *''**इन तथाकथित पिलर बेसेज़ पर मंदिरों के कोई चिन्ह अथवा सिम्बल नहीं हैं।**'' (पेज 149)*
>
> *''**There are no signs or symbols of temples on these so-called pillar bases.**'' (E.T.C.)*
>
> *''बनभोर वाले स्टोन के पिलर बेसज़ बाबरी मस्जिद के उत्तरी भाग में उत्खनित किये गये पिलरबेसेज से कुछ भिन्न थे। लेकिन जो ईंटों के पिलर बेसेज बताये गये हैं उन सबका वास्तव में पिलर बेस होना संदिग्ध है। उन पिलर बेसेज़ के साथ क्राससेक्शन नही दिया गया है, जिससे यह टेस्ट किया जा सके कि वह छोटा ढांचा वास्तव में पूर्णरूप से एक पिलर बेस ही सिमेट्रीकल कम्बैक बनाया गया था अथवा यह इररेगुलर है और क्राससेक्शन के बगैर यह जानना सम्भव नहीं है कि यह खुदाई में एक्सकेवेटर ने ग़लती से या जानबूझकर ऐसा रूप तो नहीं दे दिया है।''(पेज 150)*
>
> *'' Pillar bases of the Banbhor stone were slightly different from the pillar bases excavated in the northern part of the Babri mosque but it is doubtful that what have been reported to be brick-built pillar bases are all actual pillar bases. These pillar bases have not been provided with cross section enabling it to ascertain whether that small structure was actually built completely as a symmetrical come-back(?) of a pillar base or whether it is an irregular structure. Without the cross section, it is not possible to know that the excavator has not by mistake or deliberately given it such a shape in the excavation."(E.T.C.)*

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''मुख्य परीक्षा के शपथ–पत्र के प्रस्तर – 2 की दूसरी पंक्ति में ''सर्व दि लिमिटेड परपज़ आफ़ डिगिंग'' लिखा है, इससे मेरा तात्पर्य यह है कि ***जी0पी0आर0 सर्वे ने जो एनामलीज हिन्ट की थी, उनमें से कुछ पर उत्खनन में वाल्स, पिलर्स और फ्लोर्स तो मिले थे,*** *'' (पेज 153)*

''By the words 'serve the limited purpose of digging' which I have written in the second line, I mean to say that ***at some places in respect of which anomalies were hinted at in the G.P.R. survey, walls pillars and floors were discovered in the excavation"*** *(E.T.C.)*

''मुख्य परीक्षा के शपथ पत्र के पृष्ठ 6 लगायत 8 प्रस्तर 11 के पृष्ठ 7 पर दिये गये अंश ''दि सो काल्ड पिलर बेसेज हैव नो सिम्बालिक फीचरस आन देम'' से साक्षी का तात्पर्य क्या है? साक्षी ने बताया कि ***इससे मेरा तात्पर्य मंदिरों की तरह पिलर्स के वाहक स्टोन्स में कोई चित्रकारी, कोई डिज़ाईन, किसी यक्ष आदि की आकृतियां से है।***

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प्रश्न–किसी भवन के निर्माण करते समय क्या उसके आधारशिला (फाउन्डेशन स्टोन में) चित्रित पत्थर डाले जाते हैं?

उत्तर– रिपोर्ट के अनुसार यह तथाकथित पिलर बेसेज प्रायः फ़र्श के ऊपर मौजूद बताये गये हैं और नींव खोद कर रखे नहीं बताये गये हैं, न ही इनके साथ के कोई अन्य फ़र्श समकालीन दिखाये गये, इसलिए यही समझा जायेगा कि इन पिलर बेसेज़ के ऊपर वाला ढांचा यदि मंदिर था तो इनका फ़र्श वाल नं0 16 व 17 वाला फ़र्श ही था और इन पर भी कोई सिम्बल अथवा कोई डिज़ाईन उत्कीर्ण मिलनी चाहिए थी, वरना कथित विशाल मंदिर के भवन में यह कुरूपता को ही जोड़ेंगे।'' (पेज 226)

'' On being asked what the witness meant to say by the words 'the so called pillar basis have no symbolic features on them', which words find mention on point -7 of para-11 given on pages 6 to 8 of the affidavit in the Examination-in-Chief, the witness stated – ***By the said words I meant to denote any drawing, any design and***

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any figure like that of Yaksha engraved in the stones sustaining the weight of the pillars looking like those of temples.

Question:- Are engraved stones used as foundation stones while constructing any building ?

Answer:- As per the report these so called pillar bases were often said to be present on the floor and they have not been laid after digging up the base, nor was any other floor shown to be contemporaneous to them. Hence it will be taken to me only that if the structure above these pillar basis was a temple then the floor of wall no.16 or 17 was certainly their floor and there ought to have been an engraving in shape of symbol or design on them also, or else they will be giving an ugly shape to the building of the alleged large temple" (E.T.C.)

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*"**इस संरचना को देखने से ऐसा नहीं लग रहा है कि किसी फ़र्श को बनाकर उसके ऊपर कोई पिलर बेस बनाया गया हो** और न ही इस तथाकथित पिलर बेस के साथ यहाँ कोई ऊपर के पिलर के टुकड़े ही दिखाई दे रहे हैं, जो इसे प्रमाणित करते कि यह वास्तव में पिलर बेस था।" (पेज 229)*

*"**From the site of this structure, any pillar bases do not seem to have been erected after building a floor,** nor even pieces of any upward pillars are seen along with this so-called pillar-base, which fact would have been capable of demonstrating that it was really a pillar base." (E.T.C.)*

*"**इन पिलर बेसेज में से कुछ को मैंने विवादित स्थल पर देखा था। विवादित स्थल के उत्तर तरफ़ जो वास्तविक पिलर बेसेज दिखाई दे रहे थे, उनमें चूना–सुर्खी मार्टर के तौर पर इस्तेमाल हुई मालूम देती थी।"***

(पेज 230)

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"I saw some of these pillar bases at the disputed site. Lime and brick powder appeared to have been used as a mortar in the actual pillar bases seen on the north of the disputed site." *(E.T.C.)*

''उत्तर– चूंकि मैं अनेक तथाकथित पिलर बेसेज़ को सही नहीं मानता, इसलिए पिलर बेसेज़ का काल बताना तो सम्भव नहीं है। यदि कोई वास्तविक पिलर बेसेज मुझे चित्र में दिखाएं जाएं और उसके साथ फ़्लोर लेविल्स और उसके साथ क्रास सेक्शन निर्दिष्ट हो, तो यह बताना सम्भव होगा। फिर भी यदि तथाकथित पिलर बेसेज़ के काल की ही जानकारी लेनी है, तो मैं फ़्लोर तथा क्रास सेक्शन के साथ उसके सम्बन्धों की जांच करके बता दूँगा।

प्रश्न–बिना पिलर बेसेज़ के अध्ययन के ही आपने इनके संदर्भ में ''तथाकथित'' शब्द का प्रयोग किया है, इसके बारे में आप कया कहेंगे?

उत्तर– यह कहना सही नहीं होगा। क्योंकि तथाकथित पिलर बेसेज कई फ़र्शों के साथ दिखाए गए हैं, जैसा कि आइसोमेट्रिक व्यू वाले चित्र में भी साफ दीख पड़ रहा है, इसलिए इनके आधार पर बाबरी मस्जिद के पूर्व के भवन का आंकलन नहीं किया जा सकता और यही बजह है कि मैंने बाबरी मस्जिद की पश्चिमी दीवार के नीचे जो पश्चिमी दीवार देखी थी और उनके साथ फ़र्श जो मैंने देखे थे, उनके अतिरिक्त मुझे कोई और प्रमाणिक आधार नहीं दिखाई दिया, जो स्ट्रक्चरल फ़ेसेज अथवा कालों को निर्धारित करने में मदद कर सकता।'' (पेज 230–231)

"Answer:- Since I do not take many of the so-called pillar bases to be real ones, hence it is not possible for me to date such pillar bases. If any actual pillar base is shown in a picture and floor levels and cross section are also specified along with it, it will be possible for me to determine its antiquity. However, if the antiquity of the so called pillar bases is to be ascertain, I will tell about it after examining their floors and their relations to the cross section.

Question:- Even without having any study of these pillar bases, you have used the word 'so-called' in reference to

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them. What would you like to say in this regard?

Answer:- It will not be correct to say so, because the so called pillar bases have been shown with several floors, as are seen even in the picture having an isometric view. Hence, on the basis of this the building situated on the east of the Babri masjid cannot be assessed. This is the reason why I did not, except for the western wall and its accompanying floor, which I had seen below the western wall of the Babri masjid, see any other reliable basis, which could have been helpful in determining structural phases and their timings." (E.T.C.)

''ए0एस0आई0 रिपोर्ट वाल्यूम–2 के प्लेट संख्या– 46 देखने पर प्रश्न किए जाने पर बताया कि ***गोल आकार के पिलर जैसी आकृति का यह स्पष्ट चित्र है।*** *इसे पिलर बेस मैं इसलिए नहीं कह सकता, क्योंकि इसके साथ किसी पिलर का एसोसिएशन अथवा उसके टुकड़ों की एसोसिएशन नहीं दिखाई देता अर्थात् पिलर बेस हम उसे कहते हैं, जो किसी स्तम्भ का आधार हो।'' (पेज 231–232)*

"When plate no.46 of the ASI report volume-2 was shown to the witness, on being questioned he stated – ***This picture clearly shows a figure like cylinder-shaped pillar.*** *I cannot style it a pillar base because its association with any pillar or its pieces is not visible. I mean to say that what we term as a pillar base is a base supporting a pillar."(E.T.C.)*

3892. **PW-29 (Jaya Menon)** about pillar bases has said:

"A.S.I. has also mentioned about pillarbases in its report. The total number of pillarbases mentioned in the A.S.I. report is 50 in relation to particular phase of structure. . Some of the pillarbases have been reported by the A.S.I. in the sections also. I don't know the exact

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number of pillarbases mentioned in the sections." (Page 181)

"I think ***one pillar base was found in the section in the northern part of the disputed site****. . . . . That 8 pillar bases are projected over floor no 2. So far as floor no. 3 is concerned I can not make out the exact no. of so called pillar bases.* ***Approximately they are 6 in number.*** *It does not appear on the perusal of figure 23 that some of the so called pillar bases from 3 have penetrated down to floor 4." (Page 204-205)*

"The plate no. 46 and 47 in Vol. II of ASI reports have been shown to the witness who stated that they are not pillar bases. The plate no. 48 shows some structure but the same is not pillar base. ***I do not know what it is.*** *This is wrong to suggest that plate no. 48 shows a pillar base and this is also wrong to say that I am not making the correct statement . Plate no. 45 also does not show nay pillar bases. The pillar bases shown by ASI in plate nos. 42 and 43 are not pillar bases. These are the part of the floors. In reference to plate no. 43, the witness stated that the pillars base have been created by removing the brick bats around it and the photograph shows the alleged pillar base after removal of brick-bats. In Plates no. 46 and 47, the lower floor is visible. Besides decorative stones, decorative bricks were also recovered. Plates No. 95 and 96 are decorative bricks." (Page 230-231)*

"Pillar base means base of the pillar. . . . . Since I am not an engineer, therefore, I am unable to reply that if I am required to build a pillar base a foundation will be

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required or not. " (Page 248)

3893. **PW-30 (R.C.Thakran)** about pillar bases has said:

*"**जब तक मैं खुदाई स्थल पर रहा, ऐसा नहीं है कि ए 0एस0 आई0 वालों ने पिलर बेस बनाए हों,** बाद में अगर उन्होंने कुछ किया हो, तो मुझे इस बात का ज्ञान नहीं है। **यदि सभी ट्रेंचेज में लगातार वीडियोग्राफ़ी हो रही हो, तो पिलर बेस बनाना सम्भव नहीं है,...** " (पेज 118)*

*"**As long as I was present at the excavation site, it was not that the ASI men might have erected pillar bases.** I do not have any knowledge if they may have done so later on. **If all the trenches are being constantly video-graphed, it is not possible to erect pillar bases**. ." (E.T.C.)*

*"अयोध्या की खुदाई में तथाकथित सभी पिलर बेसेज पर स्टोन स्लैब नहीं हैं। जयादातर कथित पिलर बेस पर स्टोन नहीं हैं, जिन पर स्टोन मिल रहे हैं, वे कैल्शियम और कार्बोनेट से बने स्ओन्स मिले हैं, जो कमजोर होते हैं। ऐसे पत्थरों को कैल्कीट स्टोन कहते हैं। . . . प्लेट नं0 46 में पिलर बेस आधे फ़लोर पर है। इसे, जैसा देखने में लग रहा है, पेडस्टल स्टोन नहीं कहेंगे, लेकिन अगर इसकी खुदाई में पूरा बेस हो, तो पेडेस्टल स्टोन कहा जा सकता है, यानि अगर और खुदाई करने पर नीचे स्ओन्स की पूरी एक पर्त मिले तो उसे पेडेस्टल स्टोन कहेंगे। . . . . मैंने ए0एस0आई0 रिपोर्ट के विरूद्ध प्रस्तुत की गई आपत्तियों को पढ़ा है, . .मैं यह नहीं कह सकता कि मैंने सभी आपत्तियॉ पढ़ी हैं . . . . .मुझे यह भी नहीं मालूम कि कुल कितनी आपत्तियॉ रिपोर्ट के विरूद्ध फाईल की गई थीं। . . . . .मुझे नहीं मालूम है कि उपरोक्त दोनों आपत्तियों में इस बात की आपत्ति की गई थी कि पिलर बेसेज़ को जहॉ तक खोदा गया था, उस पिलर बेस को डिस्मेंटल न किया जाए।. . . . . **जब तक मैं खुदाई स्थल पर रहा मुझे याद नहीं है कि पिलर बेस के सम्बन्ध में ऐसी कोई आपत्ति दी गई या नहीं।**" (पेज 117)*

"As revealed from the Ayodhya excavation, stone slabs are not there at all the so called pillar-bases. Stones are not there at most of the so called pillar-bases. The

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*stones which have been discovered, are made of calcium and carbonate and they are very week. Such stones are called calcrete stones. . . . . In plate no. 46, the pillar base stretches up to half of the floor. Keeping in view what it looks like, we would not call it pedestal stone but if on being excavated it is found to have full base, it can be called pedestal stone. That is to say, we would call it pedestal stone if we discover a full layer of stones below on further excavation being carried out. . . . . I have gone through the objections raised against the ASI report. . . . .I also do not know how many objections were filed in all against the report. . . . . I do not know that in the afore-said two objections it was objected to the pillar bases not being dismantled up to the extent to which they were dug up. . . . . **I do not remember whether or not any such objection was filed in regard to the pillar bases as long as I was present on the excavation site.**" (E.T.C.)*

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3894. **PW 32** about pillar bases has said:

*"Except the pillar bases in the north all the pillar bases at different levels have been created, some of whom I saw personally with my own eyes and complaints were filed in the case of trenches G2, G5 and F3. **These complaints were filed by Dr. Jaya Menon and me.** These complaints were handed over to muslim parties and their counsels."(Page 79)*

"...except pillar bases in the north, as I have stated already, the remaining have been created by the ASI."(Page 80)

"I do not agree with the report of the ASI that there is

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any pillar base in trench G-8. By saying that ASI people created pillar bases, I mean that while excavating, they removed brick bats selectively from some portion leaving the other portion to give shape of a pillar base and it is because of this reason that the shape of the pillar bases as also the size and depth vary from pillar base to pillar base. I do not agree with the suggestion that the pillar is round in shape and the brick bats set in regular courses and having two stone slabs in the middle. However, it is true that two concrete slabs are there in the middle. I do not agree with the ASI report that it is a pillar base." (Page 114)

"Since I do not accept that any pillar bases were found during excavation except in the northern area, I do not agree with ASI report that pillar bases were found in the area of the 39 anomalies having been pointed by the GPR survey report. The pillar bases which are acceptable to me form part of Z series of trenches. The area of the Z series of trenches was surveyed by the GPR surrey team but I am not hundred percent sure as to whether they had covered that area or not." (Page 120)

"Prof. Mandal has referred to the findings of pillar bases of Prof. B.B. Lal and he has contradicted Prof. Lal's theory of pillar bases." (Page 131)

"The ASI has reported about the existence of 50 pillar bases at one place and perhaps 67 at other place but according to me, the number does not seem to be correct as there is no consistency." (Page 131-132)

"I clarify that no pillar base was exposed by ASI. Rather it were floor bases that were exposed and partially

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cleared and partially it was left exposed and then labelled as so called pillar bases." (Page 132)

"An archaeologist can create pillar bases even in the section by pulling out brick bats from the section while excavating and preparing the section." (Page 132)

*"**Such so called pillar bases appearing in the section were not created in my presence** but from the close study of the section, I could say that there were created pillar bases." (Page 132)*

"It is wrong to suggest that it is not possible to create a pillar base in a section of baulk; rather it is very easy to do so. Pillar base shown in the baulk of F2 G2 was created in my presence and I lodged complaint against ASI observations. It was created between 16 to 20 May, 2003. Besides me, Mohd. Abid was also present at the time of aforesaid pillar base being created. This pillar base and pillar base no. 21 were created during aforesaid period of five days. I complained against the ASI to the observer about both the aforesaid pillar bases. The complaint was lodged in writing. I completely disagree with the suggestion that I am making a wrong statement to the effect that the aforesaid pillar bases were created by ASI.

I do not know whether the GPR report has revealed anomalies exactly on the spot where subsequently ASI has shown the pillar bases. I do not know whether ASI has indicated 22 pillar bases exactly on such spot where anomalies were shown in GPR report. No doubts the ASI has sketched a chart in its report indicating the places of pillar bases allegedly found on the spots on the anomalies.

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Since I do not accept the very existence of pillar bases, I did not considered it necessary verify the genuineness of ASI report on the basis of GPR report." (Page 133-134)

"In the second line of para 14 of my affidavit I have used the words created 'pillar bases' because in my opinion and observation floor bases were cut and pillar base created. ***In my opinion barring pillar bases 1 to 8, 13 and 14, all other pillar bases were created by ASI.*** *According to me this creation of pillar bases was right from the beginning of the excavations till the end of it. When I was at the site in April 2003 no pillar bases had been excavated when I returned to the site around 10th May 2003 some pillar bases had already been excavated from 10th May onwards I begin observing and between may 16th and 20th I found that pillar base was created in trench G-2 and on may 21st a complain was filed in this regard. Except the complaint which are mentioned in para 14 of my affidavit some other complaints were also filed by Dr. Jaya Menon."(Page 155-156)*

"I do not agree with the suggestion that in plate 43 of the ASI report Vol. II pillar bases have been shown. In fact, the pillar bases asserted by the ASI are part of the floor base." (Page 165)

"As a matter of fact, they were crated before me. I did make complaint regarding creation of pillar bases by ASI. The complaints made by me were given to the Muslim parties, who passed it to the observers, present there."(Page 166)

3895. The ASI has discovered 50 pillar bases during

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excavation out of which twelve were completely exposed, thirty five partially and three were traced in section. The pillar bases traced in section were F2, G2 in baulk (pillar base no.20), F8 F9 in baulk (pillar base No.40) and trench No.F8 F9 in baulk (pillar base no.41). Confirming GPR survey report, twenty pillar bases have been excavated in trenches no.E2, E9, F8, F9, ZG1, G2, G5, G8, G9, ZH1 and H5. In all these trenches, one pillar base each was discovered. Besides, in Trench F-6, three pillar bases, Trench G-2, two pillar bases and Trench H-1, two pillar bases have been found. Foundation of these pillar bases are circular, square, oval or irregular in shape. Pillar base no.3 shows square sandstone block with orthostats provided on its four sides, contemporary with floor 2. Multiple courses of brick bats set in mud mortar incasing rectangular blocks of calcrete stone fixed with lime mortar were provided as foundation to the pillar bases. Figure 3A shows alignment of pillar base and details of respective distances. The important feature pointed out is that there were seventeen rows of pillar bases from North to South, each row having 5 pillar bases. There is no North-South row of the West of wall 16 and17, as is being read and suggested by the aforesaid experts of plaintiffs (Suit-4). Though we are not agreeable to the allegation that some of them, or many of the pillar bases are created but even if, for a moment, we assume as claimed by three witnesses i.e. PW-29 Jaya Menon, PW-32 Dr. Supriya Verma and DW-6/1-2 Mohd. Abid that they sought G-2 and F-6 trenches wherein pillar bases were created by one Trench Supervisor S.K. Sharma and one more person, that will not be sufficient to belie and also cannot explain several other pillar bases found by ASI whereagainst no such complaint is

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there.

3896. Archaeology provides scientific factual data for reconstructing ancient historical material culture, understanding, archaeology for the past is a multi disciplinary scientific subject and requires a team of workers for effective results. Excavation of ancient sites is one of the major works of Archaeologists. As it is a scientific discipline, it uses scientific methods in its working. All archaeological excavations are constructive and also at the same time destructive; revealing in the sense they yield unknown data like structures, antiquities etc., destructive that as one digs layer after layer, the upper layer have to be removed to go deeper and deeper to know more and may cause destruction of the site for any future excavation at that place.

3897. The term "Archaeology" came to be considered by Apex Court in **Joseph Pothen Vs. The State of Kerala AIR 1965 SC 1514** and in paras 13 and 14 it observed:

> *"13. The Constitution itself, as we have noticed earlier, maintains a clear distinction between ancient monuments and archaeological site or remains; the former is put in the State List and the latter, in the Concurrent List.*
>
> *14. The dictionary meaning of the two expressions also brings out the distinction between the two concepts. "**Monument**" is derived from monere, which means to remind, to warn. "Monument" means, among others,"a structure surviving from a former period" whereas **"archaeology" is the scientific study of the life and culture of ancient peoples**. Archaeological site or remains, therefore, is a site or remains which could be explored in order to study the life and culture of the ancient peoples.*

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The two expressions, therefore, bear different meanings. Though the demarcating line may be thin in a rare case, the distinction is clear."

3898. The Court also held that Ancient and Historical Monuments and Archaeological Sites and Remains (Declaration of National Importance) Act, 1951 apply to ancient and historical monuments referred to or specified in Part 1 of the Schedule thereto, which had been declared to be of national importance.

3899. In this case, ASI did not work on an unknown subject and site but was backed by a scientific investigation report of GPR Survey which is a well known scientific system used in such matters. The survey has pointed out a number of anomalies underneath. The actual excavation needed to confirm and verify those anomalies and their exact nature to avoid any doubt. Regarding Pillar Bases, a number of such anomolies were already pointed out by GPR Survey and ASI simply found the existence of pillar bases so as to confirm the anomalies pointed out by GPR Survey at those places. If we look carefully to GPR Survey, as also the pillar bases confirmed by actual excavation of ASI, a total number thereof we find comes to about twenty. They are:

Sl. No. of the report	Trench No. of the Report/ (GPR)/ Page No./ Report	Pillar Bases (with depth) P.B.	Page no. of the report	Confirmation of Pillar Bases with pillar base No.
25	E-2/P. 23	1. Rectangular Pillar Base (1.80 m.)	23	*
29	E-9/ P. 24	1. Pillar Base (0.60 m.)	29	43, 65
35	F-6/ P. 25	1. Pillar Base (0.70 m.) 2. Pillar Base (0.55 m.) 3. Pillar Bases (01.60	25	40, 41, 65

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		m.)		
36	F-8/ P. 25	1. Pillar Base (0.20 m.)	25	38, 65
37	F-9/ P. 26	1. Pillar Base (0.50 m.)	26	44, 66
38	ZG-1/ P. 26	1. Pillar Base (0.50 m.)	26	8, 55, 11, 58
39	G-2/P. 26	1. Pillar Base (2.20 m.) 2. Pillar Base (2.20 m.)	26	21, 60, 24, 61
42	G-5/P. 27	1. Pillar Base (2.50 m.)	27	26, 62
45	G-8/ P. 27	1. Pillar Base (0.90 m.)	27	28, 39, 63
46	G-9/ P. 28	1. Pillar Base (0.20 m.)	28	45, 66
47	ZH-1/ P. 28	1. Pillar Base (0.55 m.)	28	8, 58
48	H-1/ P. 28	1. Pillar Base (0.70 m.) 2. Pillar Base (1.50 m.)	28	18, 60, 19
52	H-5/ P. 29	1. Pillar Base (0.820 m.)	29	27, 62

3900. Interestingly, we find that in the two major complaints dated 21st May, 2003 and 7th June, 2003 submitted to the Observer when the excavation was going on, the allegations of creation of pillar base mainly were made in those very trenches where the GPR Survey has already detected anomalies in the form of pillar bases etc. The complainants were already to some extent aware of likelyhood of finding pillar bases in those trenches. Trenches No.F1, F6, F8, F9, G1, G2, G5, G8, G9, H1, ZG1 and ZH1 are in that very category. In other words, it can easily be appreciated that the mind of two experts instead of working for the assistance of the Court in finding a truth, tried to create a background alibi so that later on the same may be utilized to attack the very findings. However, this attempt has not gone well since some of these very pillar bases have been admitted by one or the other expert of plaintiffs (Suit-4) to be correct.

3901. Sri M.M.Pandey, learned Advocate appearing on behalf of defendant no.2/1 (Suit-4) while justifying ASI report in respect to the various pillar bases, submitted that centre to centre distance can not be measured correctly, except for those

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found completely topped by sandstone blocks and attached to floor. It is not possible to fix the point where the finished sand stone block would have been placed on top of the calcrete blocks. Two pillar bases that have been found in sections (Fig. 8 & 9) demonstrate vividly that the sandstone block was not necessarily placed in the centre of the calcrete block and brickbat foundation rather was shifted as per the requirement of alignment. Exposition of a structure that exists is done in an excavation. The question of creation of any structure including pillar base does not arise. Nothing was ignored during the excavation. Utmost care was taken to ensure that each and every find is documented and mentioned in the Report. No "calcrete topped brickbat heap" is either found or identified as pillar bases. Brickbats in the pillar bases are not heaped up rather they are carefully laid in well defined courses. It is to be remembered that pillar bases, except those found complete with sandstone blocks in the northern area whose existence and genuineness is admitted by Sunni Central Board of Waqf and its companion parties, are essentially the foundation part required to remain buried in ground. Once this fact is borne in mind then the picture may be clearly understood. When the floor of sub-Period VII B is "weathered enough to be replaced, debris of brick structures was leveled to attain the desired height. In this deposit foundations to support pillar or columns were sunk" to different levels. Floors 1, 1A, 1B and 1C belonged to the disputed structure (Period VIII & IX), Floors 2, 3 and 4 belonged to period VII and the brick-crush floor existed in the earlier Period VI. There appears to be some attempt on part of the plaintiff to twist the facts and mislead by creating some sort of confusion.

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The transition from "calcrete topped brickbat heaps" through "brickbat heaps" to "some kind of loosely-bonded brickbats deposits" is very clear. The plaintiff at least accepts some sort of bonding in brickbats which cannot be in case of "heaps" (random deposit). This at best may be termed as self contradicting argument.. Floor (F1.2) around most of the pillar bases is found broken with pillar base foundations in much disturbed condition.: (p.42, 2nd para). The evidence of broken floor as above most of the pillar base foundations, completely finished pillar bases and the evidence of finished pillar bases partly excavated and partly visible in section when combined together, point to the fact that all these 46 pillar bases belonged to the one and the same period and were constructed in association of wall 16 and F1.2. The pillars that have actually been recovered are from the debris of the disputed structure. Further, nowhere in the report it is said or hinted at that these stone pillars were standing over these pillar bases. It is nothing but wilful negation of the evident fact, nothing more can be said in this regard. Layers of pillar bases are clear from the perusal of the report. The objections of the plaintiff regarding creation of pillar bases, distances and alignments and its interpretation one without any substance. It is well established in archaeology that walls can not be cut and shaped like pillar bases. The walls alleged to have been cut and shaped like pillar bases are at the maximum 0.55 m wide, whereas the pillar bases show much bigger dimension which prima-facie falsifies the objection of the plaintiff. The plaintiffs challenging the identity of pillar bases alleged that unused brick broken or entire have been used to fill hollow to raise the level of ground or to function apron for

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a building. In this connection it may be mentioned that a perusal of report shows that most of the pillar bases are attached with the floor 2, 3 & 4. If "hollow" is a synonym for foundation pit, then certainly it is a good explanation. But 'fill' would be wrong expression, as the brickbats are laid in defined courses. Raising of ground is done uniformly and throughout and not as if "a pile of unused bricks" or "to fill hollows". It is surprising to note that the "heavy wall" disappears without leaving any trace except the "pile of unused bricks" to "shore up". As "apron" for which building? Apparently all the objections tendered above are emanating from technically ignorant persons and willful attempt to mislead the Court. All the interpretations were reached after exploring all the possible explanations. ASI conducted excavation at the behest and orders of this Court as Court Commissioner and submitted its scientific Report to the Court and did not engage in creation and that too in the presence of judicial officers.

3902. The pillar bases traced on spot make 64 squares in between 17 rows of 5 pillar bases each. The seventeen rows of pillar bases were constructed along the north-south running brick wall (wall No. 16). The distance of the first pillar base in each row from the wall is 3.60 to 3.86 m. Seventeen rows of pillar bases could be categorized in three different groups whereas east-west distance which varies in different groups whereas east-west distance from the centre to centre of each pillar base vary from 2.90 to 3.30 m. Six rows of the pillar bases on north and south were at the equidistance which ranges from 3 to 3.30 m. Central five rows consisting of twenty-five pillar bases show different equations- two rows on either side of the

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central row were placed approximately at the distance of 5.25 in whereas the other two rows on either side of these three rows were at the distance of 4.20-4.25 m. The pillar bases are in alignment. The ASI unit report in figure 23B has given an isometric view of the pillar bases and in figure 23A the isometric view of the excavated site with different floors and pillar bases.

3903. The foundation of the pillar bases are circular, square, oval, or irregular in shape and the foundation has been filled with brick bats covered with orthostat which prima facie establishes its load bearing nature. It is also clear from the report that all the fifty pillar bases, more or less are of similar pattern except the orthostate position. The factual position is that the pillar bases of northern side which are admitted by the plaintiffs and other objectors to be pillar bases are undisturbed and unexposed whereas the pillar bases of the southern side are damaged and exposed but in any way there is no basic difference between the two. The isometric view is a geometrical drawing to show a building in three dimensions. The plan is set up with lines at an equal angle (usually 30^0) to the horizontal, while verticals remain vertical and to scale. It gives a more realistic effect than an axonometric projection, but diagonals and curves are distorted. The existence of pillar bases was challenged by the objectors on the ground that the distance between the pillar bases, the spot position is not common as such the same may not be considered pillar bases. In this connection reference may be given of plan of Ukha Mandir temple converted in to a Masjid published at surveyor general office Calcutta in 1877 in which square pillars were found with

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different angles and distances. Similarly in temple of Vishala Devi pillar bases of different sizes with different distances were found which too have been lithographed at the Surveyor General office Calcutta in July 1877. Examples of plan of Shiva Temple at Bastar, Shiva Temple at Shighanpur, Shiva Temple at Chindgaon, Shiva Temple at Chitrakoot, Shiva Temple at Narayanpur are relating to 10th Century A.D. may be given. A perusal of photographs of the pillar bases, videography and the time of excavation also falsify the allegations of the objectors regarding creation of pillar bases.

3904. A perusal of the report particularly at page 54 shows that all the 50 exposed pillar bases are attached with floor 2 dateable to 1200 A. D. and most of them are resting over floor no. 4 which has the earliest floor. The carbon dating report referred at page 69 of the report also proves that in a trench ZH-1 the date reported between floor 2 & 3 is between 900-1300 A.D. which prima facie makes it clear that floor 2 was not made after 1300 A.D. and not before 900 A.D. while floor 3 was made before 900 A.D. It is also clear from the report that all the pillar bases exposed are attached with the floors existing prior to the floor of disputed structure. Pillar base is reported from the same trench, i.e. ZH-1 along with the floor which confirms the association of floor 2/3 and pillar bases along with C^{14} date between floor 2 & 3 (S. No. 47 of pillar base in page no. 28). The same pillar base of ZH-1 was predicted as an anomaly in the GRP Survey. Therefore, it is clear that floor 4 which supports the foundation of pillar bases was the most extensive floor belong to period VII A (page 42 of the report & fig. 23 & plate 35). The timing of period VII-A is the beginning of 12th

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century (page 41 of the report.).

3905. It is clear from the report that floor 4 which supports the foundation of pillar bases was a floor of a Temple. It cannot be the floor of Idgah or Kanati Mosque because pillars are always absent in Idgah so that maximum persons could be accommodated in minimum space for offering prayer.

3906. Association of pillar bases has been reported at page 56 to 68 and a perusal of the same shows that pillar bases no. 1, 2, 3, 5, 6, 7, 8 and 14 total 8 are projected over floor no. 2, pillar bases no. 15, 19, 21, 23, 24, 30 total 8 are projected over floor no. 3 which have penetrated downward by cutting floor no. 2 and pillar bases no. 10, 11, 13, 16, 17, 18, 22, 26, 27, 28, 29, 31, 32, 33, 34, 35, 36, 37, 38, 39, 42, 43, 44, 45, 46, 47, 48, 49, 50 total 29 pillar bases are projected over floor 4 which have penetrated downward by cutting floor no. 2 & 3. In addition to above pillar bases no. 20, 40, 41 are pillar bases in the section whereas pillar bases no. 4 and 25 are not associated with any floor due to damaged condition.

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3907. We find substance in the submission of Sri Pandey. We may also notice at this stage that though most of the pillar bases were excavated at earlier point of time but complaint thereof particularly about so called creation was made after much gap. To start with, the first complaint of 21st May, 2003 was confined only to one pillar base found in trench G-2 but a number of such pillar bases were included in the second complaint dated 7th June, 2003, when both the so called authors of the objections were not on the site. On the basis of record these details can be shown in the form of a chart as under:

Pillar	**Shape/Size**	**Site Note**	**Date of**	**Name of**

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Base/ Trench	in cm	Book No./ Page No.	Excavation/ Date of objection, if any	Supervisor
1/ZH3-ZH2 baulk	Square/63x61.5x9	41/43	22.4.03	S.K. Sharma
2/ZF2	-	7	15.05.03	G.L.Katade
3/ZG2	Rectangular/60x53.5x7	30/36	13/14.05.03	A.R.Siddiqui
4/ZG2	Square (?)	30	13/14.05.03	A.r.Siddiqui
5/ZH2	Square/61x60x11 including the thickness of missing western orthostat	41	19/22.04.03	S.K.Sharma
6/ZH2-ZJ2 Baulk	Square/58x56 including the thickness of missing northern orthostat	7	11.06.03	G.L.Katade
7/ZF1	Square/55x55x6.5	30	29.04.03, 3/13.05.03	A.R.Siddiqui
8/ZG1	Square/59x61.5x5	30/31-39	03/16.05.03/07.06.03	A.R.Siddiqui
9/ZH1	Probably square foundation/125x105x75	41/25-26	14/15 to 20.04.03/07.06.03	S.K.Sharma
10/ZF1	Irregular shaped foundation/150x100x4	30/24-29 depth 65 cm	29.04.03 13.05.03/07.06.03	A.R.Siddiqui Plaintiff occupied by barbed wire.

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	0			Only southern portion excavated
11/ZG1	Circular (?) foundation partially exposed/97 x94x26	30	03/04/16.05. 03	A.R.Siddiqui
12/ZG1	Circular (?) foundation badly damaged and partially exposed/N S 55 Ht 60	30/31-35	03/04/13.05. 03/07.06.03	A.R.Siddiqui
13/ZH1	Square/Als o available in section. Top 54.5x46.5 foundation EW 122 Ht. 69 (from top to bottom)	41/25-27	14.04.03 to 20.04.03/07. 06.03	S.K.Sharma
14/ZH1-H1	Square/63x 63x6.5	30	12.07.03	A.R.Siddiqui
15/F1	Rectangular (?) foundation square top/130x13 8	30/14-21 depth 98 cm	22.04.03 to 27.04.03/07. 06.03	A.R.Siddiqui
16/F1-G1	Irregular baulk/130x 120x55 foundation partially exposed	30	22/27/18/23. 04.03	A.R.Siddiqui

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17/G1	Square foundation partially exposed/140x125x45	30/5, 6, 7, 8	19/20.04.03 18.06.03/07.06.03	A.R.Siddiqui
18/H1	Square foundation partially exposed/150x130x56	41/3-9 11-14	12.04.03/07.06.03	S.K.Sharma
19/H1	Square foundation partially exposed/78x110x38	41/3-14	06/18.05.03/07.06.03	S.K.Sharma
20/F2 G2 Baulk	Partially exposed/NS 55 Ht.22	7-8, 32, 45	08.07.03 17.07.03 02.08.03 24.05.03 03.06.03 10.05.03 20.05.03	Zulfiquar Ali, G.L.Katade, C.B.Patil, S.K.Sharma
21/G2	Square (?) foundation partially exposed/EW 140 Ht. 28	32/49-54 27-85	10/20.05.03/07.06.03 21.05.03	S.K.Sharma Zulfiqar Ali
22/F2	Square foundation/122x115x25	7-8	08/17.07.03	
23/F2-G2 baulk	Square (?) foundation partially exposed/105x72x33	7, 8, 32, 45	-	
24/G2	Oval foundation partially exposed/15	32 20 45/22 49 37 30	17.07.03 02.08.03 10.05.03 20.05.03/	Zulfiqar Ali S.K.Sharma

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	0x125x32		07.06.03	
25/F3	Square (?) foundation partially exposed/65 x145x55	16	21.05.03 30.05.03 19.07.03	Sujeet Nayan
26/G5	Irregular foundation with square top partially exposed/12 0x165x90	13/1 22 23	24.05.03 21.05.03 10.06.03 / 07.06.03	Sujeet Nayan
27/H5	Square (?) foundation partially exposed/10 0x25x35	40	26/30.04.03	Bhuvan Vikrama
28/F6	Irregular foundation partially exposed/14 8x147x54	23	24.05.03 01.06.03	Zulfiqar Ali
29/F6	Rectangular foundation partially exposed/76 x170x51	19/3-4	29.04.03 to 06.05.03/07. 06.03	G.L.Katade
30/G6	Rectangular foundation partially exposed/83 x55x40	33	07/11.05.03	G.L.Katade
31/F6-F7 baulk	Elliptical foundation partially exposed/12 6x198x38	15, 19, 23	-	
32/F6-F7	Irregular	15-F-7 19-	19.04.03	G.L.Katade

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	foundation partially exposed/95 x155x40	F-6, 23	10.09.03 19.04.03 06.05.03 24.05.03 01.06.03	Zulfiqar Ali
33/G6-G7 baulk	Square (?) foundation /70x40x35	21	-	
34/E7-F7 baulk	Square or Rectangular foundation partially exposed/10 0x100x34	12	05.04.03 08.05.03 14.05.03	Zulfiqar Ali
35/F7	Rectangular (?) foundation partially exposed/17 0x160x38	15/ 1 to 31	19.04.03 to 13.05.03/07. 06.03	G.L.Katade
36/G7	Square (?) foundation partially exposed/80 x40x40	21	20.05.03 09.07.03 10.07.03 07.08.03	N.C.Prakash
37/F8	Circular foundation /170x170	44/ 2 to 45	15.04.03 to 23.05.03/07. 06.03	Sameer Dewan
38/F8	Circular (?) foundation partially exposed/70 0x145x37	44/13	15.04.03 to 23.05.03	Sameer Dewan
39/G8	Circular foundation / 42x130x30	30 10/86 to 90 10	24.06.03 to 27.06.03 09.05.03 10.05.03/07. 06.03	A.R.Siddiqui N.C. Prakash Sujeet Nayan
40/F8-F9 baulk	-/EW-120 Ht.33	44	-	

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41/F8-F9 baulk	-/EW-80 Ht. 35	18	10/19/17/30.04.03	N.C.Prakash Sujeet Nayan
42/G8-G9 baulk	Circular foundation/ 43x120x28	30, 10	24.06.03 27.07.03 09.05.03 10.05.03	A.R. Siddiqui Sujeet Nayan
43/E9-F9 baulk	Rectangular foundation / 55x130x20	22, 35	04.07.03 20.04.03 07.05.03	Sujeet Nayan
44/F9	Square foundation / 95x142x30	18/ 3-34	08.04.03 to 30.04.03/07.06.03	Sujeet Nayan
45/G9	Circular foundation /Dia- 118 Ht. 34	10/3-9 14-22	06.04.03 to 09.04.03 to 11.05.03 14.05.03/07.06.03	N.C.Prakash Sujeet Nayan
46/G9-H9 baulk	Square foundation partially exposed/110x80x45	10	06.04.03 09.04.03 11.05.03 14.05.03	N.C.Prakash Sujeet Nayan
47/E10-F10 baulk	Circular foundation partially exposed/140x55x48	9	18.05.03 22.05.03	Zulfiqar Ali
48/F10	Circular base and square top of the foundation/ 155x145x40 square 90 Ht. 12	9/37 to 45 38 45	18.05.03 to 22.05.03/07.06.03	Zulfiqar Ali
49/G10-H10 baulk	Square foundation/	-	-	

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	115x120x50			
50/H10	Circular foundation/ 115x90x48	-	-	

3908. This chart would reveal that most of the pillar bases were found during excavation in the months of April and May, 2003 which could have cleared to anyone having an idea on the subject as to what inference those excavations is likely to cause. It appear that in these circumstances under the Expert's advice the complaints were made as a ground, so as to utilize later. It cannot be doubted that as and when the pillar bases have been excavated on that very day mentioned in the site notebook.

3909. We have very carefully perused the site note book, day-to-day register as also more than twenty five video cassettes as well as the photographs but find nothing unusual which may create any suspicion in what the ASI has said in respect to pillar bases in his report except minor typographical mistakes, which is quite understandable in the manner they have worked and with the pace with which have accomplished such a gigantic job, that too under unusual circumstances where they were constantly watched by huge number of persons and officials of the Court.

3910. We may reproduce at this stage some part of the statement of PW-29, 30, 31 and 32 again which would show that in general, the finding of ASI about pillar bases, was not found incorrect:

3911. **PW-29 Dr. Jaya Menon-** She said:

> *"In my opinion 10 pillar bases were found in the northern side of the disputed site. All these 10 pillar bases*

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on the northern side were beyond the disputed structure. ..." (Page 204)

"...I think one pillar base was found in the section in the northern part of the disputed site. I remember that one pillar base was identified by the ASI in the baulk of the trenches F2 and G2 and two so-called pillar bases were identified by the ASI in the baulk of trench F8 and F9 but according to me these were not actually pillar bases. ..." (Page 204-205)

"...approximately they are 6 in number. It does not appear on the perusal of figure 23 that some of the so called pillar bases from floor 3 have penetrated down to floor 4. Approximately 25 so called pillar bases have been shown in figure 23a as associated with floor 4 and floor 4a. I do not remember whether floor 2 and 3 were carbon dated by ASI from 900 to 1300 AD or not. In my opinion floor I is the floor of Babri Masjid which is approximately dated to the 16th century. Floor 2, floor 3 and 4 were associated with the pre Babri Masjid structure. I don't have separate dates for floors 2, 3 and 4 but approximately these floors may be dated from the end of the 12th century to the 16th century AD. According to me walls and structures prior to 12th century were found in excavation but no floor prior to 12th century was found at the site. According to me the oldest wall found in excavation was of first to third century AD. And the oldest structure found would be structure 5 which may be of 6th century AD." (Page 205)

3912. **Dr R.C. Thakran (PW-30)** admitting the existence of pillar bases stated that:

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''मैं उस रिपोर्ट में लिखी इस बात से सहमत हूँ कि पिलर बेसेज पत्थर के पैडेस्टल्स पर टिके हुए थे। . . . मैंने अयोध्या की खुदाई के दौरान सभी पिलर बेसेज को देखा था। उसमें पैडेस्टल्स स्टोन कहीं पर नहीं हैं। केवल मात्र सीता की रसोई की तरफ कुछ पिलर बेसेज़ के ऊपर पत्थर पाये गये हैं। जो पेडेस्टल से भिन्न हैं। . . .जब तक मैं खुदाई स्थल पर रहा, ऐसा नहीं है कि ए0एस0आई0 वालों ने पिलर बेस बनाये हों, बाद में अगर उन्होंने कुछ किया हो, तो मुझे इस बात का ज्ञान नहीं है। यदि सभी ट्रेचेज में लगातार वीडियोंग्राफी हो रही हो, तो पिलर बेस बनाना सम्भव नहीं है।''(पेज 116/118)

'' . . .मस्जिद में जो पिलर बनाये जाते हैं, उनके लिए पिलर बेसेज की आवश्यकता होती है। उपरोक्त धारा 22 में इन पिलर बेसेज़ के सम्बन्ध में चर्चा की गयी है तथा पिलर बेसेज के ऊपर जो पिलर्स खड़े किये गये हैं, उनकी भी चर्चा है।'' (पेज 176)

"I agree with the fact mentioned in that report that the pillar bases rested on pedestals of stone ..... I had seen all the pillar bases in course of the Ayodhya excavation. Pedestal stones were nowhere in them. Only towards Sita Rasoi, above some pillar bases have been found stones, which are different from the pedestals.... As long as I stayed at the excavation site, it is not that the A.S.I men carved pillar bases; but if they did so later on, I do not have knowledge about that. If all the trenches are constantly being videographed, it is not possible to carved pillar bases." (Page 116/118)

"...For pillars to be carved in a mosque, there is requirement of pillar bases. The aforesaid para 22 discusses about these pillar bases and also about the pillars which have been erected above the pillar bases."(Page 176)

3913. **Dr Ashok Dutta (PW-31)** admitting the existence of

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pillar bases underneath of the disputed structure stated as under:

"...Plate no. 82 and 83 of ASI report vol. II were shown to the witness who stated that stones slabs are possibly of black basalt with some decorative motifs can be seen in these plates. Black basalt is a kind of rock, which is igneous rock. ..." (page 109)

"...Learned cross examiner drew the attention of the witness towards paper no. 200 C-1 after seeing photographs no. 122 and 123 the witness stated that it appears to me from the photographs that the stones used in stole pillars is possibly black basalt. It appears that the pillars which are seen in paper 122 and 123 are similar to that as shown in plate 82 and 83 of ASI report vol. 2. ..." (page 110)

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"...As an archaeologist at least I have that amount of knowledge to differentiate between mosque and temple. I don't have any idea whether this type of stone slabs having decorative motif were used in the mosque or not. In plate no. 83 there are flower designs on the stone slab lower part of this stone slab is not distinct and clear. After seeing plate no. 83 with the magnifying glass the witness stated that some objects are visible in this stone slab. They appear to be lower part of a figure. But whether it represents human being or any thing else is difficult to ascertain because the foot is shown in different way than the man. In the centre of this plate it gives an impression of a 'Ghat with flower'. I don't have any idea whether these type of decorative motifs are used in mosque. ..." (Page 110-111)

"...I know that the depiction of human and animal figures

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is prohibited in the Muslim architecture.

So far I remember there was no figure of human beings on the black basalt pillars. ...” (Page 140)

“...I believe the theory of ‘Super imposition’. I believe that according to the theory of ‘super imposition’ creation of the pillar bases in the trenches is impossible but in certain cases some super imposition is found. ...” (Page 266)

3914. **Dr Supriya Verma (PW-32)** stated as under:

“16. That the so called “pillar bases” were only part of a floor construction technique. Each lime-surkhi floor was underlain with several layers of brickbats interspersed with stone blocks and slabs and other material as fillers. ...” (Page 12)

“...It was for the first time in the year 1989 in an article published in a magazine, namely, ‘Manthan’ that the existence of pillar bases was mentioned by him (Prof. B.B. Lal). ...” (Page 127)

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3915. **Prof. Suraj Bhan (PW-16)** who visited the site for three days only, as mentioned by him at page-34, admitting the existence of pillar bases, stated as under:

“अयोध्या के इस स्थल पर बाबरी मस्जिद के ढांचे के तुरन्त नीचे वाले ढांचे के साथ वाले फर्श और पिलर बेस का एक साथ फोटो लिया जा सकता था बशर्ते कि इस दृष्टि से खुदाई की गयी होती। . . .” (पेज 227)

“At this site of Ayodhya, the floor appurtenant to the structure immediately below the structure of the Babri Mosque could have been photographed, provided excavation had been done from this angle...”(Page 227)

“विद्वान जिरहकर्ता अधिवक्ता ने साक्षी का ध्यान ए0एस0आई0 रिपोर्ट व्यूलूम 2 के प्लेट संख्या 42 पर आकृष्ट किया। साक्षी ने इसे देखकर प्रश्न किये जाने पर बताया कि इस प्लेट में दो ऐसे कन्स्ट्कशन हैं जो पिलर बेस

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के रूप में मान लिये गये हैं, परन्तु इनको प्रमाणित करने के लिए क्रास सेक्शन ठीक से नहीं दिख पा रहा है।'' (पेज 228)

"The learned cross-examining counsel drew the attention of the witness to Plate no. 42 of the A.S.I. report, volume 2. After looking at this the witness on being questioned replied that in this plate there are two such constructions as have been taken to be pillar bases but cross section, capable of establishing them, is not properly seen."(page 228).

''एक दीवार को शायद काट कर जिसे पिलर बेस कहा जा रहा है शायद उसे बनाया गया है।'' (पेज 229)

"What is being termed as pillar base, is perhaps carved out from a wall."(Page 229)

''पिलर बेस हम उसे कहते हैं जो किसी स्तम्भ का आधार हों। सर्वे की रिपोर्ट के मुताबिक प्रो0 बी0बी0लाल के उत्खनन में पाये गये कन्स्ट्रकशन को इसलिए पिलर बेस कहा गया है क्योंकि उनके अनुसार उन पर तथाकथित मन्दिर के स्तम्भ खड़े माने गये थे।'' (पेज 232)

"We term as pillar base what is the base of any pillar. As per the survey report, the constructions discovered at the excavation carried out by Prof. B.B.Lal have been termed as pillar bases because the pillars of the so called temple, in his opinion, rested on them."(Page 232).

''प्लेट संख्या 46 के बारे में साक्षी ने इसे देखकर पूछने पर बताया कि मैंने यहॉ यह कहने का प्रयास किया है कि तथाकथित पिलर बेसेज पर न तो कोई सिम्बोलिक आकृतियॉ हैं और न ही उनके साथ एक भी पत्थर का स्तम्भ अथवा उसके टुकड़े मिले।'' (पेज 234)

"On being queried about plate no.46, the witness, after looking at the same, stated that here he had tried to say that there are no symbolic shapes on the so –called pillar bases and not a single stone pillar or its fragments were

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discovered with them."(Page 234)

"मुझे इस समय यह याद नहीं है कि उपरोक्त फिगर 3ए में दर्शित 50 पिलर बेसेज में से कितने मेरे निरीक्षण के समय एक्सपोज हो चुके थे। स्वयं कहा, इनमें से कुछ स्ट्रेक्चर्स उत्तर में, कुछ पश्चिमी भाग में तथा कुछ दक्षिण में स्ट्रेक्चर्स पार्टली या पूरी तरह एक्सपोज हो चुके हैं, जिन्हें पिलर बसे कहा जा रहा है। ए0एस0आई0 द्वारा प्रदर्शित पिलर बेसेज में एलाइन्मेन्ट तो दिखाई देता है परन्तु फिर भी इनमें अन्तर तो है ही और रिपोर्ट में भी यही लिखा गया है।" (पेज 464)

"At present I do not remember how many of the 50 pillar bases shown in the aforesaid figure 3A had been exposed at the time of my observation. (Stated on his own) Out of these structures, some have been partly or completely exposed in the north, some in the western part and some in the south, which structures are being called pillar bases. Alignment is certainly seen in the pillar bases shown by A.S.I., but they definitely have differences, and this very fact is written in the report."(Page 464)

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"प्रायः यह कन्स्ट्क्शन फर्श बनाने के लिए भरी गयी मिट्टी के लेबल को मेन्टेन करने के लिए थी या किसी और परपज के लिए प्रमाण अभी नहीं है।

प्रश्न–इन पिलर बेसेज के सम्बन्ध में ए0एस0आई0 द्वारा प्रस्तुत टेंच नोटबुक, डायरी व डायरी रजिस्टर आदि का भी आपने पिलर बेस के सम्बन्ध में कोई जानकारी किया है अथवा नहीं?

उत्तर– मैं तो रिपोर्ट के अध्ययन से ही और साईट पर विजिट करके तथा अपने इन्टरएक्शन द्वारा ही अपना मत बनाया है। इन सुपरवाइजरो की डायरी या एन्टीक्यूटी रजिस्टर को मैंने नहीं देखा है। रिपोर्ट में भी उनका कोई विशेष उल्लेख नहीं है।" (पेज 470)

"As of now, there is nothing to show whether these constructions were often meant to maintain the level of soil for floor making or for any other purpose.

Question- Whether any inquiry in respect of these pillar

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bases, has been made by you or not of the Trench notebook, diary and diary register etc. submitted by ASI ?

Answer- I have formed my opinion on studying the report, visiting the site and by my interaction. I have not seen the diary of Supervisors or the Antiquity Register. There is no special reference of these in the report as well." (Page 470)

3916. Prof. Dhaneshwar Mandal (PW-24) who was again examined as expert witness after excavation by Sunni Central Waqf Board, appreciated the work of ASI and its methodology, but nowhere alleged anything against ASI or manufacture of pillar bases by them. Rather he admitted the existence of pillar bases and the reference of the same in the report. Prof. Mandal stated that:

''रिपोर्ट के अनुसार 50 तथा–कथित स्तम्भ आधारों (pillar bases) के नीव की पहचान की गयी है। उन्हें Floor 2 (या Structure 4 की अन्तिम अवस्था) से सम्बद्ध कहा गया है (ASI Report, Vol.I, p.54). इस कथन से यह स्पष्ट संकेत मिलता है कि उनका निर्माण Floor 2 के समय हुआ होगा। इस स्थिति में दोनों परस्पर समकालिक हुए। (पेज 118)

"According to the report, the foundations of 50 alleged pillar bases have been identified. They have been termed as attached to Floor 2 (or the last stage of Structure 4) (ASI Report, Vol.1,p.54). This statement clearly indicates that their construction would have taken place at time of Floor 2. In such situation both of them are mutually contemporary. " (page 118)

''पुरातत्व विज्ञान के अनुसार जिस सतह से यह खाई खोदी Pit जाती है वह उसके निर्माण काल का समकालिक माना जाता है। . . . . रिपोर्ट में लगभग 14 स्तम्भ आधारों का सेक्शन तथा प्लान प्रकाशित है।'' (पेज 118)

"According to the archaeology, the level from which this

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pit is excavated, is considered to be contemporary with its period of construction..... The section and plan of about 14 pillar bases have been published in the report." (page 118)

"...मैंने कल अपने बयान के बाद जी0पी0आर0 सर्वे रिपोर्ट तथा उसमें उल्लिखित जिन एनामिलीज़ की पुष्टी ए0एस0आई0 द्वारा की गई है उसके संदर्भ में रिपोर्ट का पुनः अवलोकन नहीं किया है, इसलिए मैं आज भी नहीं बता सकता हूँ कि जी0पी0आर0 रिपोर्ट में उल्लिखित जिन एनामिलीज़ की पुष्टि एएसआई ने उत्खनन द्वारा की है, वह रिपोर्ट में उल्लिखित हैं अथवा नहीं। ए0एस0आई0 में अपनी रिपोर्ट में पिलरबेस का आइसोमेटिक व्यू दिया है जिसको मैंने देखा है। एएसआई द्वारा दिए गए इस आइसोमेटिक व्यू में दर्शित पिलरबेसिस का सत्यापन मैंने विवादित स्थल से नहीं किया है। विवादित स्थल पर जो स्ट्रक्चर पाए गए हैं, उनका विवरण ए0एस0आई0 में अपने रिपोर्ट वाल्यूम 1 के फिगर 3 और 3ए में दिया है। विवादित स्थल पर पाए गए जिन स्ट्रकचरस् का उल्लेख फीगर 3 तथा 3ए में किया गया है, वह विवादित स्थल पर हैं, इससे मैं सहमत हूँ। ए0एस0आई0 ने अपनी रिपोर्ट में चार फ्लोर्स का उल्लेख किया है, जिससे मैं सहमत हूँ परन्तु जहाँ तक ए0एस0आई0 द्वारा दिखाए गए फ्लोर 4ए का प्रश्न है, उससे मैं सहमत नहीं हूँ क्योंकि इसका उल्लेख एएसआई की रिपोर्ट वाल्यूम 1 के पृष्ठ 37ए (टेन्टेटिव पीरियडाइज़ेशन ऑफ दि डिस्प्यूटिड साइट एट अयोध्या) में भी नहीं है। फ्लोर 1 डिस्प्यूटिड स्ट्रक्चर की फ्लोर है। फ्लोर 2, फ्लोर 1 से पूर्ववर्ती फ्लोर है जिसमें रिपोर्ट में सभी पिलरबेसेज़ व स्ट्रक्चर्स को दिखाया गय है। फ्लोर 3, फ्लोर 2 के पूर्व की है, ए 0एस0आई0 ने अपनी रिपोर्ट में फ्लोर 3 से अटैच्ड जो वॉल तथा पिलर बेसेज़ हैं उसको दिखाया है, परन्तु मैं उससे सहमत नहीं हूँ। वॉल के संबंध में मेरी असहमती नहीं है ..." (पेज 275)

".....After my yesterday's statement, I have not re-perused the report in context of the GPR survey report as well as the anomalies mentioned therein, which have been verified by ASI. As such even today I cannot tell whether the anomalies mentioned in the GPR report and verified by ASI

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through excavation, have been mentioned in the report or not. The ASI has given isometric view of the pillar bases in its report, which has been perused by me. The verification of the pillar bases appearing in this isometric view given by the ASI, has not been done by me from the disputed site. The details of the structures found at the disputed site have been given by the ASI in Figure 3 and 3A of Volume 1 of its report. I agree that the structures found at the disputed site and mentioned in Figure 3 and 3A, are at the disputed site. In its report, the ASI has mentioned about four floors, with which I agree, but so far as the Floor 4A shown by ASI is concerned, I do not agree with the same because it has not been mentioned even at Page 37A(tentative periodisation of the disputed site at Ayodhya) of Volume 1 of ASI report. The Floor 1 is the floor of the disputed structure. The Floor 2 is anterior to the Floor 1, in which all the pillar bases and structures of the report have been shown. The Floor 3 is anterior to the Floor2, in its report the ASI has shown those walls and pillar bases which are attached to Floor 3, but I do not agree with the same. I have no disagreement regarding the wall....."(Page 275)

"...विवादित स्थल पर हुए उत्खनन में कुल कितनी दिवारें मिलीं थीं, उनकी संख्या मैं नहीं बता सकता। कुल 50 पिलरबेसेज़ उत्खनन के दौरान मिले थे। कुल पिलरबेसेज़ सेक्शन से जुड़े हुए थे, उनकी संख्या लगभग 14 हैं।..." (पेज 276)

".....I cannot tell the total number of walls found in the excavation at the disputed site. A total of 50 pillar bases were found during the excavation. Few pillar bases were attached to the section, their number is around 14

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....."(Page 276)

"...उपरोक्त फिगर 3ए में उत्खनन के दौरान जो भी दीवारें आदि मिली हैं, उनको एएसआई द्वारा प्रदर्षित किया गया है। यह वॉल तथा स्ट्रक्चर अपने स्थान पर ही फिगर 3ए में प्रदर्षित हैं या नहीं, इसको बिना इन्वैस्टीगेट किए नहीं बताया जा सकता। मैंने इस बारे में आज तक कोई इन्वेस्टीगेषन नहीं किया है कि फिगर 3ए में जो दीवारें तथा स्ट्रक्चर दिखाए गए हैं, वे यथा स्थान इस फिगर में प्रदर्षित हैं अथवा नहीं।....चूंकि मैंने फिगर 3ए में स्ट्रक्चर तथा दीवारों के यथास्थान दिखाए जाने के बारे में कोई अध्ययन नहीं किया है इसलिए मैं इस बारें में नहीं बता पाऊॅगा।"श(पेज 276–277)

".....The walls etc. found during excavation, have been shown by ASI in the aforesaid Figure 3A. Whether this wall and structure have been shown at their respective place or not in the Figure 3A, cannot be told without being investigated. I have not carried out any investigation in this behalf till date as to whether the walls and structures shown in Figure 3A have been shown or not at their respective places in this figure..... Since I have not carried out any study regarding the depiction of structures and walls at their respective places in Figure 3A, as such I will not be able to reply in this behalf. "(Page 276-277).

3917. One of the objection with respect to the pillar bases is that nothing has been found intact with them saying that the pillars were affixed thereon. The submission, in our view, is thoroughly hollow and an attempt in vain. The other parties i.e. Hindus categorically claimed that the erstwhile structure was removed i.e. demolished so as to construct the disputed structure. If we assume other cause to be correct for a moment, in case of demolition of a construction, it is a kind of childish expectation to hope that some overt structure as it is would remain intact. There cannot be any presumption that the pillar

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bases was remained intact along ancillary material. Whatever has been found that has to be seen in the context and not what is not found. All the things have to be seen carefully and nothing independently and in isolation. The pillar bases were detected by B.B.Lal also in 1976-77 when he made excavation on the western and southern side of the disputed site along with a wall structure. The Archaeologist said that the matter needs further investigation. It is thus further investigation which has infact fortified and explained the earlier structure also. The pillar bases in general were found during excavation in regular phases for columns constructed in a proper pattern with equal distance pattern in regular style. The calcrete stones were topped by sandstone blocks over which pillars must have rested. Brickbats were used in their foundation in the same manner as brick aggregates were used in foundation of walls. The brickbats course of the foundation rested under the ground. The question of falling apart of the brickbat foundation could not have arisen. The calcrete blocks topped by the sandstone blocks is capable of supporting pillar bearings, the load of the roof. Even if there is some minor variation in the measurement of the pillar bases that would not invite the approach of total rejection of something which is otherwise apparent from the existence of the above pillar bases. There may be a reason for having variation in the measurement of the pillar bases that the actual centre of the pillar bases could not have been pointed out since the top sandstone blocks are missing from most of them. Figure 3A in any case has been confirmed to be correct by most of the Experts (Archaeologist) of plaintiffs (Suit-4).

3918. In general, therefore, we do not find any substance

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in the objections relating to pillar bases and the same is hereby rejected.

3919. The next objection is with regard to the Walls and Floors. This has been complained by the plaintiffs (Suit-4) under the title "Archaeological Evidence of Massive Structure" Para 4.1 to 4.14 in the objections dated 28.10.2003. It says:

> ***"4. ARCHAEOLOGICAL EVIDENCE OF "MASSIVE STRUCTURE":-***
>
> ***4.1*** *That the theory of a so called "massive structure" below "Babri Masjid" (P. 54), given by the A.S.I., is based mainly upon nearly 50m long wall (wall 16) in the west and the dumps of brick bats which it claims to be "pillar bases", to its east. According to the A.S.I. they found 17 rows of the so called pillar bases from North to South; each row having 5 pillar bases while actually they have referred to 50 only, out of which only 12 were said to be completely exposed, 35 were said to be partially exposed and 3 could be traced in section only. The A.S.I. also asserts that the central part of the pillared structure was important and special treatment was given to its architectural planning. The A.S.I. also claims that the so-called pillar bases found in these excavations have settled the controversy regarding association of these so-called pillar bases with different layers and load bearing capacity while the report fails to give any details about the actual regular layers and accurate depth of all these so called pillar bases. The remarks of the A.S.I about the central part of the pillared structure also seem to be without any evidence. On what basis the A.S.I. is saying that this part was important and*

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special treatment was given to it in architectural planning, is also not evident from the report.

4.2. *That the A.S.I. failed to take into account that any medieval temple in classical style would be expected to have a Central portion with thick internal walls to support a high superstructure like a Shikhara, while the Key Plan of Structures shows, in H1, two lengths of a narrow wall or two walls, each less than a metre long, with a gap of about 70 cm. Between them. No* ***further information*** *is given* ***to convince*** *us that there is an " exposed entrance" as stated on P. 69.*

4.3. *That the A.S.I. Report itself describes traces of inner walls having a width of 0.48 m to 0.55 m, attached with the earliest activities alongwith wall 16. These internal walls not only appear to be narrow and not more than two or three brick courses high, but also consisting of brickbats only. They are plastered over the sides and upper surface and* ***it is difficult to infer that they were load bearing walls****:*

4.4. *That regarding the said wall 16, an unexplained anomaly is that from the inner side its first phase of 10 courses is said to be plastered while on the exterior side plaster was provided in the second phase of its raising (four courses).*

4.5. *That no single example is offered by the A.S.I. of any temple of pre-Moghal times having such a lime–Surkhi floor, though one would think that this is an essential requirement when a purely Muslim structure is being appropriate as a Hindu one. Once this appropriation has*

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occurred (page 41), we are then asked to imagine a "Massive Structure Below the Distputed Structure", the massive structure being a temple. It is supposed to have stood upon 50 pillars, and by fanciful drawings (Figures 23, 23A and 23B), it has been " reconstructed". [Though one may still feel that if was hardly "massive" when one compares Figure 23 (showing Babri Masjid before demolition) and Figure 23B (showing the reconstructed temple with 50 imaginary pillars!)] Now, according to the A.S.I.'s Report, this massive structure with "bases" of 46 of its alleged 50 pillars now exposed, was built in Period VII, the Period of the Delhi Sultans, Sharqi rulers and Lodi Sultans (1206-1526): This attribution of the alleged Grand Temple, to the "Muslim" period is not by choice, but because of the presence of "Muslim" style materials and techniques all through. This, given the distorted view of medieval Indian history, must have been a bitter pill for the A.S.I.'s, mentors to swallow; and, therefore, there has been all the more reason for them to imagine a still earlier structure assignable to an earlier time. Of this structure, however, only four alleged "pillar bases", with "foundations" attached to Floor 4, have been found; and it is astonishing that this should be sufficient to ascribe them 10th -11th century and to assume that they all belong to one structure. That structure is proclaimed as "huge", extending nearly 50 metres that separate the "pillar-bases" at the extremes. Four "pillar bases" can hardly have held such a long roof, and if any one tried it on them it is not surprising that the result was "short-loved" (Report, p.

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269). All of this seems a regular part of the Mandir propagandist archaeology rather than a report from a body called the Archaeological Survey of India.

4.6. *That the four alleged pillar bases dated to 11th -12th centuries are said "to belong to this level with a brick crush floor". This amounts to a totally unsubstantiated claim that surkhi was used in the region in Gahadavala times (11th - 12th centuries). No examples are predictably offered. One would have thought that Sravasti (Dist. Bahraich), from which the A.S.I. team has produced a linga-centred Shavite "circular shrine" of the said period for comparison with the so-called "circular shrine" at the Babri Masjid site, would be able to produce a single example of either surkhi or lime mortar from the Gahadavala-period structures at Sravasti. But such has not at all been the case. One can see now why it had been necessary to call this period (Period V) "Medieval-Sultanate" (p. 40) though it is actually claimed to be pre-Sultanate, being dated 11th - 12th century. By clubbing together the Gahadavalas with the Sultanate, the surkhi is sought to be explained away; but if so, the "huge" structure too must come to a time after 1206, for Delhi Sultanate was only established in that year. And so, to go by A.S.I.'s reasoning, the earlier allegedly "huge" temple too must have been built when the Sultans ruled!*

4.7. *That the way the A.S.I. has distorted evidence to suit its temple theory is shown by its treatment of the mihrab (arched recess) and taq (niche) found in the western wall, which it turns into features of its imagined temple. The absurdity of this is self evident and particularly so when the*

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inner walls of the niche are also found plastered, and the A.S.I. is able to produce no example of similar recess and niche from any temple.

4.8. *That the structure denoted by wall 17 and a brick Crush floor in Period VI has not been allotted any number by the A.S.I. and the A.S.I.'s claims about the attribution of the walls and floors of " Periods VI and VII" to two successive temple structures can not be accepted. The A.S.I.'s report in this respect also is full of contradictions and other infirmities.*

4.9. *That the reason why would the western wall to be so massive (1.77 m) and the other walls so thin (0.48-0.55) is quite obvious. It should be noted that Wall 17 also was 1.86 m wide. Such wide western walls are a features of mosque construction and not of temples. Temple walls, in fact, are of uniform thickness. If, as the A.S.I. points out, the Babri Masjid used this Wall 16 as a foundation for its western wall, then this Wall 16 can only have been the foundation of the Babri Masjid itself. Moreover, no Hindu temple has a long continuously straight western wall-this is only a feature of the mosque in India. In the case of a temple, a plinth or raised platform would be required and the walls would be broken by offsets, providing a cruciform plan to the temple form. Moreover, the temple would have mandapas in front of the grabagriha (the sanctum santorum) and any at the side of the latter would be very small and insignificant in nature. According to Krishna Deva, "the main compartment of the temple are axially articulated." (See Temples of India by Krishna Dewa,*

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1995, Vol. I) In this case, as being suggested by the A.S.I., the central area now under the makeshift structure was the garbagriha and hence if so, the rest of the temple structure should have mainly projected towards the east, and not to such an extent to the north and south (as in Fig. 23A or 23B). The kind of structure as indicated in Fig. 23B indicates the pre-eminence of the western wall which can only be the case in a mosque.

4.10.*That the foundation of the Babri Masjid has some decorated stone blocks along with plain sandstone and calcrete blocks and bricks. This is natural in the construction of a foundation where any available motley material would be used, as the foundation would not be visible. It has been pointed out by the A.S.I. (pp. 68, 269-70) that material, from the structure associated with Wall 17, was reused to make Wall 16. However, if this had been the case, decorated blocks would have been used for the upper portions of walls rather than in the foundation. To corroborate their statement of the reuse of decorated blocks, the A.S.I. gives the examples of the Dharmachakrajina Vihara of Kumaradevi of the 12th century A.D. at Sarnath. However, as can be seen in Plates 27-28, decorated blocks were used not for the foundations but in the enclosure wall of a vihara. Moreover, this structure was a vihara and cannot in any way be compared with a Hindu temple.*

4.11. That it can also be pointed out here that Krishna Deva mentions (on P. 11) that a temple customarily has a vedibandha consisting of moulded courses. Even if the

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southern part of Wall 16 has not been excavated on its outer face to indicate the presence or absence of mouldings, we have the evidence of the outer face of Wall 16 in Trench ZE 1, to the north, where no mouldings are to be seen. This kind of a plain wall with nothing but niches on its inner face can only be a mosque/ Eidgah wall.

4.12. *That On p. 68 are described two niches in the inner side of Wall 16 at an interval of 4.60 m I trenches E6 and E7. These were 0.20 m deep and 1 m wide. A similar niche was found in Trench ZE2 in the northern area and these have been attributed to the first phase of construction of the so called 'massive structure' associated with Wall 16. Such niches along the inner face of a western wall, are again characteristic of mosque/ Eidgah construction. Moreover, the inner walls of the niche are also plalstelred (as in Plate 49) which indicates that the plaster was meant to be visible. A temple niche (and if found, would be on the outer wall) would not be plastered if it were to hold a sculpture or a relief. In the first phase of construction, the supposed massive structure was confined to the thin wall found in Trenches ZE1-ZE1 in the north and E6-H5/H6 in the south (p. 41). How then does one explain the location of niches outside the floor area of the said massive structure ? This is typical of a mosque, which has a long, wide north-south wall, with niches at intervals on its inner face and there may be a small covered area in the center. Which would have narrow demarcating walls.*

4.13. *That according to the A.S.I. (p. 42), the massive structure in sub-period B collapsed and its debris of brick*

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and stone was levelled to attain height. " In this deposit, foundations to support pillars or columns were sunk which were overlaid with a 4-5 cm thick floor, which had a grid of square sandstone bases for pillars projecting out, only a few still survive."

If, as implied, the structure of sub-period B had collapsed and another floor constructed with another set of pillar bases, then these are not phases of construction of a structure but three separate structures. What is perhaps a more plausible explanation is that in the beginning of the 13th century, some Muslim structure was built with a well-polished lime surkhi floor. There was a low enclosure wall (0.40-0.50 m wide) demarcating the area from E6 to ZE! And extending east to the H series of trenches. Within this enclosure was probably a small central covered area of which the northern wall with a niche can be seen the Trench F2. This wall was narrower (0.35-40 m) thick. Probably this was wall structure only as can be seen by the narrow walls with no deep foundation. When this collapsed, the entire area was filled in with brickbats, stone slabs, calcrete blocks, brick nodules and mud to raise the level in order to construct the next lime-surkhi floor. This floor probably now functioned as an Eidgah or so as no structural activity has been observed in association. When this floor was degraded, another floor was raised, both floors being of poor quality.

4.14. *That wall recesses or niches are observed in the mosque/ Eidgah structure in a highter stratum also (P. 53) but the report fails to discuss about the same.*

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3920. **PW-29 (Jaya Menon)** however in para 11 and 12 of affidavit on this aspect has said:

A. That the Period VI structure according to the ASI consisted of a 50 metre long wall and a brick crush floor, and had 4 (so called) pillar bases associated with it. However, nowhere are any specific (so called) pillar bases associated with the brick crush layer.

B. That the brick crush layer was not a floor but a levelling mechanism to level the area for the building of subsequent structures. This is because the brick crush layer can be seen to be of varying thickness in different trenches.

C. That Structure 4 to the ASI essentially seems to consist of a massive western wall and (so called) pillar bases and has been considered to have been a (so called) temple. The important point is why should the western wall have been so massive (1.77 metre) and the other walls so thin (0.48-0.55 metre)? Such wide western walls are a feature of mosque construction and not of temple construction. Temple walls, in fact, are of uniform thickness.

D. That the western wall of the Babri Masjid had a slight tilt towards the east which is a feature of the western wall of the mosques in India because of the direction of Mecca. If, as the ASI points out, the Babri Masjid used Wall 16 as a foundation for its western wall, then this Wall 16 could only have been the foundation of the Babri Masjid itself as it shows the same tilt. It should be noted that Wall 17, supposedly associated with the Period VI structure, also had this tilt and was 1.86 metre wide. Also, if Wall 16

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and 17 were temple walls, why should they have had the same tilt towards the east?

E. That no Hindu temple has a log continuously straight western wall-this is only a feature of the mosque in India. In the case of temple, a plinth or raised platform would be required and the walls would be broken by offsets, providing a cruciform plan to the temple form. Moreover, the temple would have a linear alignment with mandapas in front of the garbagriha (the sanctum sanctorum) and any at the side of the latte would be very small and insignificant in nature. In this case, as being pointed out by the ASI, the central area now under the makeshift structure was the alleged garbgriha and hence if so, the rest of the temple structure should have mainly projected towards the east, and not to such an extent to the north south. The king of structure as indicated in Fig. 23B of the Final Report indicates the pre-eminence of the western wall which can only be the case in a Eidgah mosque.

F. That the foundation of the Babri Masjid has decorated stone blocks along with plain sandstone and calcrete blocks and bricks. This is natural in the construction of a foundation where any available motley material would be used, as the foundation would not be visible. It has been pointed out by the ASI (pages 68, 269-270) that material, from the structure associated with Wall 17, was reused to make Wall 16. However, if this had been the case, decorated blocks would have been used for the upper portions of alleged temple walls rather than in the foundation.

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G. That temple walls customarily have mouldings on the outer face. The outer face of Wall 16 in Trench ZE1, to the north, is available to view where no mouldings are to be seen this kind of a plain wall with nothing but niches on its inner face can only be an Eidgah or mosque wall. On page 68 of the Final Report are described two niches in the inner side of Wall 16 at an interval of 4.60 metre in trenches E6 and E7. These were 0.20 metre deep and 1 metre wide. A similar niche was found in Trench ZE2 in the northern area and these have been attributed to the first phase of construction of 'massive structure' associated with Wall 16. (Such niches, along the inner face of a western wall, are again characteristic of Eidgah or mosque construction.) Moreover, the inner walls of the niche are also plastered (as in Plate 49) which indicates that plaster was meant to be visible.

H. That two Mughal coins were found in Trench K5 in layer 3 "below (sic) the brick pavement" and from layer 3 in Trench L7. According to the ASI, the brick pavement extended east from Trenches J4, J5 and J6 upto the junction of the K and L series of trenches. The pavement has been accorded great ritual significance by the ASI and has been dated to Period VII, i.e. Medieval/Medieval-Sultanate (end of 12th century to beginning of 16th century AD/ before AD 1526). (Final Report pages 41-42). However, if the brick pavement is pre-Mughal, it is impossible for later period (Mughal) coins to be found in a stratified context under it. Thus, clearly, the brick pavement cannot be of pre-Mughal date.

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I. That the ASI's sections in Figures 5 and 19 of the Final Report make no mention of "the massive structure" (their so called temple) and only to "the disputed structure" (the Babri Masjid), which means the hypothesis of a temple was added at a later stage of the writing of the Report."

3921. Sri D.Mandal PW-24 has mainly confined his objection with regard to stratification. Sri Suraj Bhan -PW16 has made a general statement against the conclusion of ASI that underneath the disputed building there was a temple structure. PW 30 R.C.Thakran and 31 have not said anything about various walls excavated by ASI.

3922. The excavation of 28 walls by ASI virtually has been admitted by the experts of plaintiffs (Suit-4) i.e. PW-16 at pages 153, 199, PW 29 at Pages 146, 147, 158, 159, 163, 164 and 181. PW-32 Dr. Supriya Varma very categorically on page 137 has said:

"from walls 16 to 28 except wall 18D are the walls underneath the disputed structure."

3923. **PW-30 Dr. R.C.Thakran** specifically at page 190 page 46/190 said:

''मैं यह मानता हूँ कि जहां–जहां जी0पी0आर0 तकनीक के द्वारा एनामलीज की तरफ इशारा है, वहां – वहां कुछ ठोस सब्सटान्स या वस्तु प्राप्त हुई हैं।'' (पेज 190)

"I hold that wherever anomalies have been alluded to through the G.P.R. technique, some solid substances or objects have been discovered." (E.T.C.)

3924. The ASI has discussed the walls and Floors as under:

"Excavations in trenches D6, E6, F6, D7, E7 and F7

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brought to light the remains of foundation wall and floors of the southern square chamber (Pl. 21, Fig. 4) of the disputes structure (structure 3) which internally measured 6.14 m in north-south and 6.10 m in east-west direction with its western wall (wall 5) measuring 3.0 m wide having five courses of calcrete blocks with occasional use of sand stone blocks as veneers filled in the core with brick-bats. There is a recess of 0.75 m depth and 2.10 m in length in the wall 5 in the inner side. Two decorated sand store blocks from an earlier structure, one having the damaged figure of a possible foliated ***makara-pra āla*** *were found reused in the foundation of wall 5 on its outer face (Pls. 22-23). The wall 5 of the structure 3 was found resting directly (Pl. 24, Fig. 5) over an earlier plastered brick wall (wall 16) having a foundation of five to six courses of calcrete and sand stone blocks. Some of them reused from yet another earlier structure as they are decorated ones with foliage (Pls. 25-26) and other decorations. Similar nature of wide brick walls with plain and decorated stone members of earlier structures reused in their foundations (Pls. 27-28) have been noticed at the Dharmachakrajina Vihara of Kumāradevī, queen of Gahadwal ruler Govindachandra of the twelfth century A.D. at Sarnath exposed after excavation conducted in 1907 and 1908. The wall 16 has externally as well as internally plastered surface (Pl. 29) below the level of the twin floors of structure 3.*

The southern foundation wall (wall 6) of structure 3 directly rests over two pillar bases of earlier period (PB 34

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and PB 35) below its middle and south-eastern corner (Pl. 30). It has three courses of calcrete blocks and a width of 1.55 m with 0.15 m off-set and the length in east-west direction of 10.70 m out of which 4.0 m in south-west is disturbed and damaged. It takes a turn from south-eastern corner towards north forming wall 7 of the front side (eastern side) of the southern chamber of the structure 3. The wall 7 of structure 3 in front of its southern chamber rests over three pillar bases of the earlier period (PB 29, PB 32 and PB 35) which were attached through floor 2 of it to the wall 16 (Fig. 6). The width of wall 7 is 1.54 m and there was an entrance to the southern chamber in the middle of the wall having a gap of 2.65 m. There was a northern wall or wall 8 of the southern chamber of structure 3 measuring no less than 8.53 m in length and whose width could not be determined due to debris on the raised platform. Through wall 8 there was an entrance to the central chamber of the structure 3.

Due to close proximity of the Ram Lala on the raised platform, the central chamber could not be exposed fully, but only a small cutting of 3 x 2 m in between trenches F4 and F5 was made to collect more evidence and to verify the anomalies mentioned in the GPR Survey report and the floor of the central chamber was found besides earlier floors. In an area of 2.50 x 2.50 m in F3 also the same floors were encountered with parts of the inner faces of the southern wall (wall 10) and eastern wall (wall 11) of the northern chamber of the structure 3 (Pl. 31). Ten extant courses of calcrete blocks of wall 10 and eight courses of

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wall 11 were noticed with three such courses in the foundation.

Parts of the western, eastern and northern walls (walls 5, 11 and 12 consecutively) of the northern chamber of structure 3 were found in trenches E2, F2 and G2. Wall 5 at the north western corner seems to be 2.40 m in width made of reused bricks and brick-bats having two courses of calcrete and sand stone blocks in its foundation. This part is raised over the earlier brick wall (wall 16). Three courses of calcrete blocks were found in the foundation of the eastern wall (wall 11) of the northern chamber with its extended lime floor over it in the courtyard and floors 1 and 1A in the inner side with decorative coloured cemented surface painted with black and buff coloured arched rectangles pointing towards west, a feature of the mosque (Pl. 32). The width of wall 11 is 1.60 m and its two courses of calcrete blocks plastered from inside were found in trench F2. While laying the foundation of the wall, the pillar base 23 was cut as noticed in the baulk between F2 and G2.

The northern wall (wall 12) of the structure 3 has four courses of calcrete blocks in its foundation with one course of bricks above the last courses of foundation blocks. The wall over the foundation was plastered with 4 cm thick lime plaster. Width of the wall is 1.70 m and there is a recess in the middle of the wall, 0.70 m deep and 2.50 m in length. The total length of wall 12 is 8.38 m (Fig. 7) which in trench F2 rests just over the pillars base 22.

As mentioned earlier, remains of an outer wall was

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found in the section facing north in between trenches E10 and E11. Exact nature of the wall could not be studied, but it seems to be the wall enclosing the outer pathway which led to the back of the structure 3. In the western side the damaged wall (wall 14) was traced partly in trenches D6, D7 and D8 attached with a lime floor pathway. On the northern side similar wall (wall 15) running in east-west direction as noticed in the section facing south in the baulk between ZF1 and ZF2. The C14 date from the contemporary deposit of the foundation of the disputed structure is 450±110 BP (1500 ± 110 A.D.) which is quite consistant as determined from the charcoal sample from trench G6.

The Massive Structure Below the Disputed Structure

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As stated earlier the disputed structure or structure 3 was found directly resting over an earlier construction, structure 4 (Pls. 33-34) which has survived through its nearly 50 m long wall (wall 16) in the west and 50 exposed pillar bases to its east attached with floor 2 or the floor of the last phase of structure 4 (Pl. 35).

A square sandstone block placed at the top and the orthostats provided on its four sides, contemporary with the floor 2 was the prima facie nature of the pillar base which primarily served as base for the pillar erected over it. Their foundations were circular or square or irregular in shapes made of brick-bat courses laid in mud mortar, most of them resting over floor 4, top of which was provided with sand-stone or calcrete blocks in lime mortar, these blocks were also encased with brick-bats and somewhere sandstone

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chips were used to get the desired height and level." ***(Page 51-54)***

"The wall 16 having its existing length around 50 m, with its unexposed middle part, is 1.77 m wide. Its ten lower brick courses are original and belongs to the first phase of its construction, but the upper six courses as seen in trenches E6, E7 and E8 are added at a later date- four courses during the second phase of construction and top two courses when its southern length outside the disputed structure was utilized in later constructions by reducing the width of the wall for the new structure along with the structure 3. It is also noticed that the first phase of wall 16 has been plastered in the inner side with lime plaster while on the outer side the plaster was provided in the second phase of its raising. There are a few square cavities at intervals on both the faces of the wall in the second phase which might have been used for providing reinforcement to the wall. At an interval of 4.60 m in the inner side of the wall 16 in its first phase of construction two recessed niches were found 0.20 m deep and 1.0 m wide along the face of the wall and 0.78 m wide at its deeper side with 0.02 m thick lime plaster in trenches E6 and E7. The niche in E6 was exposed while the niche in E7 was found attached with the E7-E8 baulk. A similar niche was found in ZE2 in the northern area with same dimensions (Pl. 49). All of these three niches were closed during the second phase of construction when the floor level was raised and wall was raised above the ten original courses. A band of decorative bricks was perhaps provided in the first phase of

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construction or in the preceding wall (wall 17) of which scattered decorated bricks with floral pattern were found reused in the wall 16. Walls 16 and 17 were found running on almost the same alignment in north-south orientation in trenches ZE1 and ZF1 (Fig. 14). Measurements of bricks of bricks of wall 16 comprise 22x14x5, 24x16x5.5, 26x17x5.5, 29x19x6 and 28x14x5 cm. Due to restrictions in an area of about 15x15 m comprising trenches D3 to F3, D4 to F4 and D5 to F5 forming the central part of raised platform, the precise arrangement of the central part of the construction below the level of the disputed structure and also the elevation of the super structure of the former construction cannot be ascertained. A layout plan of trenches showing index of various sections can be seen at a glance in Fig. 15.

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The wall 17 which is a brick wall was found to be 1.86 m wide having the maximum of four courses in the northern area (Pl. 50) and six courses in southern area. It was found to be of the same length as that of wall 16, through having a slight deviation in its orientation in the cardinal direction. Thus, it runs in the lower level than that of wall 16, almost parallel to it in the northern area and comes out below the wall 16 in the southern area as noticed in trench D7 where in the northern part it is projected 0.74 m below wall 16 and in the southern part it is projected 1.07 m below wall 16 having provided decorated stone blocks on its top and also refixed in its veneer (Pl. 51), probably at the time of the construction of wall 16 to serve as its foundation. A thick floor of brick

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crush (Pl. 52) spread over a large area in northern and southern areas with varying thickness was found associated with wall 17. The floor was cut for foundation trench of wall 16 with which were associated three lime floors raising the ground levels in three different phases described earlier in chapter III. Amongst the three lime floors associated with this wall 16, the lowest was found in a limited area within the inner walls 18A, 18B and 18C. The upper two floors (Pls. 53-54, Fig 16) were found spread in the area along wall 16 and show signs of repair patch works (Pl. 41). Thus the evidence of three phases of the structure 4 suggests its long span of existence. The available C14 dates from the deposit between floors 2 and 3 in the trench ZH1 is 1040±70B.P (910±70 A.D.) having the calibrated age range of A.D. 900-1030. The early date may be because of the filling for leveling the ground after digging the earth from the previous deposit in the vicinity. A pavement no less than 29.25 x 6 m of large square bricks in the eastern area as described in chapter III is associated with the period.

Attached with the earliest activities along with wall 16 are traces of inner walls having a width of 0.48 m to 0.55 m having one exposed entrance to the east found in trench H1. The inner walls are attached with the wall 16 in the northern as well as southern areas. In northern area the inner wall (Pl. 55) or wall 18A runs to a length of about 15.0 m in east-west direction and takes a turn to south in trench ZH1 (Fig.8). It was traced upto a length of 6.0 m (wall 18B) after which due to the existence of the

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barricaded gangway it was not possible to dig further. The two parallel running walls 18C and 18D were traced in trenches E6-F6, G6 and in E7 respectively. Traces of a retaining brick wall (wall 19) with eroded outer face were noticed in trenches ZE2, ZD2, C1 and C2.

Just below the levels attached with wall 16 and possibly associated with wall 17 are remains of brick structures located in parts of trenches ZH1 (P1. 56), G2, F3, G5, J5 (Pl. 57) and F8 in the forms of walls, platforms and brick foundations (structures 6 to 11 respectively). A structure of calcrete blocks with calcrete block flooring was found in trench G5 (structure 9). The exact nature and plan of these structures could not be studied due to existence of structures and floors of later phase resting above their levels. Some skeletons lid in north-south orientation with their faces turned towards west, which are apparently in Muslim graves excavated through the top floor and sealed by layer 1 were found in northern (Pl. 58) and southern areas." ***(Page 67 - 70)***

"The wall 19A rests over a still earlier wall (wall 20) which is 0.62 m wide having damaged with which seems to be attached a brick floor to its north. The end of another wall (wall 21) attached with the section facing south in trench F8 was found whose length was traced upto 1.39 m where it goes in the section facing west. The minimum distance of this wall from the structure 5 at the corners of the walls is 0.51 m. Still another wall (wall 22) of six courses of bricks running to a length of 5.43 m in east-west direction and its western part going below the foundation

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of wall 16 (Pl. 62 was exposed along the section facing north with a passage, 0.55 m wide, between it and wall 19A (Pl. 63) seems to be an earlier wall than the structure 5. Parts of two more brick walls (walls 23 and 24) attached with sections facing east and west respectively in trench G7 belong to the same level. Although their width could not be confirmed as they were attached with the sections, the wall 23 was found to be a brick wall of six courses having broken length of 1.60 m. The wall 24 was noticed having only two extant courses, the corner of which was found attached with section facing west which is 0.75 m projected from the section.

Layer 5A has contemporary deposit of structure 5 below which lie walls 19A and 20 respectively datable to post-Gupta and Gupta periods. The layer below their working level is layer 7 from which the charcoal sample from trench E8 has been dated to 1810± 80 B.P.(or 140 ±80 B.C.) on C14 determination of which the calibrated age range is A.D. 90-340.

Two more walls noticed in J6 belong to the Gupta periods. The wall 25 (Figs. 19-20) runs in east-west direction having only four extant courses of brick-bats, the dimensions of which could not be seen as it was attached with the section. Same is the case of another earlier wall, wall 26 which also runs in east-west direction and which is made of 17 courses of broken bricks. 52 cm below the course of wall 26 was noticed wall 27 (Pl. 64) which seems to be a wall of the Kushan period having 22 courses of bricks of the size 38 to 41 to 43x25 to 27x5 to 7 cm running

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in north-south direction. The length of the wall in the trench is 3.90 m though it runs further on either sides. Attached with this wall was a floor like level having huge calcrete blocks (Fig. 21) which at one place had three such blocks resting one over the other. This construction also seems to be a large one and not an ordinary house complex. Working levels of Kushan period were noticed in the trench J3 (Pls. 65-66).

Structural activity of Sunga period is represented by a calcrete stone wall (wall 28) in the trench J3. It was not found in the two excavated trenches in the respective levels (Fig. 22) during NBPW period but can be inferred from the presence of brick-bats from both the Sunga and NBPW periods and reed impressions (Pl.68) from NBPW levels on burnt clay, the latter suggesting constructions of hut like structure of wattle and daub. Pictorial views of upper levels of excavated trenches showing conjectural representation of the disputed structure and deposit below it. Figs. 23-24 give a fair idea of the succession of structural activity at the site." (Page 71-72)

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3925. Let us examine the manner of recovery of the walls and the inference which may be drawn.

3926. During excavations, in all 28 walls were traced as shown in Fig. 3A out of which wall no. 1 to 15 are either cotemporary to the disputed structure or belong to disputed structure. Walls no. 16 to 28 are earlier to the disputed structure and were found underneath the disputed structure. The details of the walls found in excavation and their relative position, with reference to the report, are as under:-

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Wall No 1 & 2	=	of Modern time (p.48 of the report)
Wall No 3 & 4	=	of 1856 (p.49 of the report)
Wall No 5	=	(3 m. wide & 6.10 m. in east-west direction is the foundation wall of the southern chamber of mosque towards west side and its north-south direction as foundation of southern chamber is seen in p.21) (p.51 & 52 of the report). Two decorated sand stone block from an earlier structure one having the damaged figure of the possible foliated maker-pranala were found resued in the foundation of Wall 5 on its outer face (pls. 22-23, page 52 of the report)
Wall No 6	=	It is a north-south direction wall which was a foundation wall of southern chamber or str. 3 (p.52 of the report)
Wall No 7	=	It is the extension of wall 6 in the eastern side, therefore it is also a foundation wall of the southern chamber of the mosque towards east (p.52 of the report)
Wall No 8	=	It is the northern wall of the southern chamber of the mosque.
Wall No 9	=	(8 m, in east-west direction) is the southern enclosure wall of the disputed structure (after 1526 A.D.) (p. 49 of the report)
Wall No 10	=	Southern wall of the northern chamber of the mosque (p.53 of the report)

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Wall No 11	=	Eastern wall of the northern chamber of the mosque (p. 53 of the report)
Wall No 12	=	Northern wall of the northern chamber of the mosque (p.53 of the report)
Wall No 13	=	(is also like wall no. 9) i.e. wall of 1526 or after 1526 (p.49 of the report)
Wall No 14	=	South-north direction wall, present west of southern chamber (fir. 3-A) p.54 of the report.
Wall No 15	=	As wall no. 14 are present in west, like that wall no. 15 is present on northern chamber running east-west direction contemporary to mosque (1500±110 A.D.) (p.54 of the report)
Wall No 16	=	Wall no. 5 is the wall of the mosque which is directly resting over 50m. long wall no. 16 running in north-south direction (p. 52 of the report)and further projects towards north and south beyond the excavated area.
Wall No 16	=	(1) Wall no. 16 is attached with floor no. 2 (page 52 of the report) belong to period VII-A i.e. end of the 12th century A.D. (page 52 & 54 of the report) and 50 pillar bases to the east of wall no. 16 is attached with floor 2 (page 54 of the report)

Wall no. 16, Floor No. 2 and 50 pillar bases were contemporary and belong to period VII-A i.e. end of the 12th

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Century A.D.

Wall No. 16 has 16 course of brick constructions relating to three phases (page 67 of the report)

(1) Its 10 lower brick courses are original and belong to its first phase of construction (page no. 67 & plate 52 of the report)

(2) But the upper 6 courses are of second phase of construction, out of which 4 courses are of 2nd phase and top 2 courses are of letter construction (page 67 of the report)

(3) The lower phase i.e. 6 courses of wall no. 16 has been plastered in the inner side only i.e. towards east by lime while upper 4 courses of wall no. 16 has been plastered by both inner & outer side i.e. both in the east & in the west (page 67 of the report)

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(4) At interval of 4.60 meter in the inner side of wall no. 16 two inches were found in the lower phase of its construction towards east (page 68 of the report)

Wall No 17 = Wall no. 17 is of the same length as that of wall no. 16 (50 m) in north-south direction below wall no. 16 though having a slight deviation in its orientation in north-east direction (p. 68 of the report). When wall 17 was not in use, it served as a foundation of wall 16 (page 64 of the report)

(1) It is a 1.86 meter wide wall (plate 50)

(2) It function as a foundation wall for wall no. 16 having decorated stone blocks on its top and also re-

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fixed in its veneer (surface covering) (page 51 & page 68 of the report)

(3) Since wall no. 17 in the foundation of wall no. 16 (period VII-A) therefore it belong to period VI (1100-1200 A.D.)

Wall No 18-A = In northern position, this wall is in north-south direction, attached with the same floor of wall no. 16 (p. 69 of the report)

Wall No 18-B = In northern portion this wall is 15 m. long in east-west direction and perpendicular to wall No. 16 like wall No. 18-A (pl.55) (p. 69 of the report)

Wall No 18-C = In southern portion this wall is in east-west direction and attached with westerly wall No. 16 like wall No. 18A & B this wall also runs perpendicular to wall No. 16.

Wall No 18-D = This wall is parallel to wall No. 18-C is southern portion (p. 69 of the report)

Wall No 19-A = In east west direction outside circular shrine.

Wall No 19-B = In south-north direction outside circular shrine.

Wall No 19-B = is sealed by layer 5A, which is contemporary layer of structure 5 or circular shrine (p. 70 of the report)

Wall No 20 = Wall No. 19-A rests over wall no. 20 in east-west direction (Gupta period p. 72

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of the report) therefore, wall no. 20 is earlier than wall no. 19-A (p.71) A brick floor in north is attached with wall No. 20

Wall No 21 = 1.39 meters east-west direction wall towards north side of the circular shrine.

Wall No 22 = 5.43 meters long wall running east west direction south to circular shrine, and entered below the foundation of wall no. 16 in west (p. 71 of the report) This shows that wall no. 22 is earlier than wall no. 16.

Wall No 23 = Running south –north having broken length of 1.60 m (p. 72 of the report)

Wall No 24 = Present in sections, therefore, direction is not traceable (p. 72 of the report)

Wall No 25 = Run east-west direction of Gupta Period (p.72 of the report) in east of disputed structure (J-6)

Wall No 26 = It is an earlier wall to wall no. 25, in east-west direction in east of the disputed structure (J-6)

Wall No 27 = 52 cm below the course of wall No. 26, a wall No. 27 is present running north-south direction of Kushan Period. (page 72 of the report) Huge calcrete block is attached. with wall no. 27 of Kushan Period (p. 72 of the report)

Wall No 28 = Calcrete stone wall in J-3 of Sunga

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Period (east of disputed structure).

3927. As the main wall of the disputed structure i.e. wall No. 5 was filled with brick bats, it implies that it was constructed with reused material. These brick bats *prima facie* establish that they must be of the previous structure. Structurally the date of the designing of pillar bases has also been confirmed with example of Sarnath in which decorated octagonal stone blocks were found in Trench F-7 belonging to 12th century A.D. (page 56 & pl. 39 & 40 of the report). Plate 45 shows disputed structure resting over pillar base No. 29. Wall No. 6 (foundation wall of southern chamber of mosque) was directly resting over two pillar bases no. 34 & 35 (Pl. 30). Wall No. 7 (foundation of southern chambers of mosque towards east) is resting over 3 pillar bases (No. 29, 32 & 35) (P. 52) read with Fig. 6. Wall No. 12 (Northern wall of Northern Chamber of the Mosque) rests just over the pillar base No. 22 (P. 53).

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3928. The statements of Experts (Archaeologist) of plaintiffs (Suit-4) in respect to walls and floors have already been referred in brief saying that there is no substantial objection except that the opinion ought to be this or that, but that is also with the caution that it can be dealt with in this way or that both and not in a certain way. In other words on this aspect witnesses are shaky and uncertain. We, therefore find no substantial reason to doubt the report of ASI in this respect.

3929. The next serious objection is about "Circular Shrine" which has been detailed in para 6 (6.1 to 6.10) as under:

> ***6. THE ALLEGED "CIRCULAR SHRINE":-***
>
> ***6.1.*** *That the sub-heading given to the discovery of a structure of burnt bricks as "The Circular Shrine" at page 70 is indicative of the mindset with which the A.S.I. team*

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did the excavation work. The A.S.I. team should have just said "The circular structure" because there is no evidence to make this structure a shrine. Just by comparing it with certain temple structures and not with circular walls and buildings of Muslim construction one can not come to the conclusion that the circular structure was a Hindu shrine. No object of Hindu worship was found on this layer. The story of "pranala" is also a sheer figment of imagination and a conjecture without any evidentiary basis. The comparison at page 71 is irrelevant and also unrealistic. The layer on which this circular structure was discovered did not throw up any material to justify the naming of this circular structure as a shrine. The surviving wall, even in A.S.I.'s own drawing, makes only a quarter of circle and such shapes are fairly popular in walls of Muslim construction. And then there are Muslim built domed circular building also.

6.2. *That the scale of the Plan (as given in Figure 17 of the Report), would have an internal diameter of just 160 cms. or barely 5 ½ feet. Such a small "shrine" can hardly be worth writing home about. But it is, in fact, much smaller. The plan in Fig. 17 shows not a circle (as one would have if the wall shown in Plates 59 and 60 are continued) but an ellipse, which it has to be in order to enclose the entire masonry floor. No "elliptic (Hindu) shrine" is, however produced by A.S.I. for comparison: the few that are show are all circular. As Plate 59 makes clear the drawing in Fig. 17 ignores a course of bricks which juts out to suggest a true circle, much shorter than the elliptic*

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one: this would reduce the internal diameter to even less than 130 cms. or just 4.3 feet ! Finally, as admitted by the A.S.I. itself, nothing has been found in the structure in the way of image or sacred piece that can justify it being called a "shrine".

6.3. *That "the southern part of the said structure was found resting over a 0.75 m wide brick wall (Wall 19A) of 9 courses belonging to earlier period which runs in east-west direction and joins the end of the north-south oriented brick wall (Wall 19B) having 7 extant courses of bricks and a width of 0.55 m, making the south-western corner of the earlier structure."*

"The Wall 19A rests over a still earlier wall (Wall 20) which is 0.62 m wide".

Another wall (Wall 21) is about 0.51 m away from Structure 5 and northeast of it.

Wall 19A and Wall 20 are considered to belong to the Post Gupta (Period V) and Gupta (Period IV) periods respectively. It appears from their description and from Plate 59 that the 'circular shrine' was built over existing walls without removing the walls. These earlier walls were of the preceding period as well as the same period. These earlier walls could not have been used as the foundation for the structure as they are of completely different dimensions and shape.

6.4. *That the size of Structure of 5 has an outer diameter of 1.6 m and measures 0.6 m in the inner area. The entrance is 0.5 m wide and length of the 'passage', from the entrance to the inner area, is 0.4 m. Comparisons are being*

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made with circular brick temples at Sravasti, Kurari, Masaon, Tinduli and Chandrehe (p. 71, Fig. 18). The outer diameter of these structures range from 6.1 m (Masaon), 5.8 (Chandrehe and Chirenath), 5.5 m (Tinduli), 4.9 m (Kurari I) and 3.6 m (Kurari II) (See Fig.18). The inner area of Kurari II, the nearest in size to the Ayodhya structure is 1.4 m, Kurari I is about 1.8 m and Chirenath is 2 m. The entrance measurements are 0.9 m for Kurari II and 0.7 m for Kurari I. The length of passage is 0.6 m for Kurari II and 1.5 m for Kurari I.

6.5. *That all the circular shrines have a mandapa except for the Kurari temples. Kurari I is also on a plinth with steps on the east. The closest in size to Structure 5, Kurari II, is more than double the former structure. The inner area of Structure 5 is too small to even allow anyone to enter it. Where is the possibility, then, of performing any kind of abhisekha?*

Out of all the temples illustrated in Fig. 18, four have the entrance from the west, one from the north and one from the east. Thus, it seems that the comparison between Structure 5 and these shrines is being stretched too far. Structure 5 has been dated to the 10th century AD. However, as will be evident from the Report, the layers associated with this structure have mixed material, preventing any chronological determination of the structure.

6.6. *That if, as pointed out by the A.S.I., subsequent structural activity (in Period VI) damaged the circular shrine, it is surprising that a later so called temple would*

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destroy an earlier Hindu religious structure. Moreover, a later temple could easily have incorporated an earlier temple into its plan and maintained the sanctity of the earlier structure. Instead, what is being suggested is that the central part of the later temple is much further away to the north, about 20 m away. Thus, it seems highly unlikely that this structure was a Hindu religious shrine.

6.7. *That Structure 5 could well have been a stupa, belonging to perhaps the 6th or 7th century AD. Figure 24 giving a bird's eye view of the structure, shows a slight difference in diameter between the first few lower courses of bricks and the courses above them. This difference recalls the two parts of the stupa, the medhi (or the drum) and the anda (or the higher rounded portion of the stupa). The 'opening' towards the east could well have been a niche for a Buddha figure. One of the reasons for consisting this structure as a stupa is that it is too small to enter, which one would not have to do in the case of a Buddist stupa. These religious structures symbolizing the Buddha are meant to be walked around and not entered.*

6.8. *That According to the Table placed after Page 37 (A.S.I. Report) this period V is represented by layers 6 and 5. Layer 6 is a flood deposit and layer 5 belongs to Gupta period. So the formulation of Period V assigned to Post Gupta – Rajput times is arbitrary. Thus whatever structures are said to have belonged to Period V, in fact, they belong to Period IV (Gupta Period).*

6.9. *That the Text says that layer 5 A is a contemporary layer of the shrine (structure 5) "below which lie walls 19A*

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and 20.....The layer below their working level is layer 7....."(page 72 of A.S.I. Report). There is existence of only one layer between layers 5A and 7, the layer 6 (A.S.I. Section, F8, Fig 16). Layer 7 has been dated to 140-80 BC on 14c determination. The calibrated date reads AD 90 – 340 (Page 72 A.S.I. Report). The range of calibrated date is extremely wide. However, on its maximum range it reads about 4th C. A.D. While layer 7 is dated to 4th century A.D. and layer 5A is being said to be contemporary to the Shrine which has been dated to 10th century A.D. The shrine on stylistic grounds has been dated to 10th century A.D. (Page 71, A.S.I. Report). The concerned two layers (i.e. 5A and 7) is intervened by only one layer. That is layer 6. Could this lone layer represent a temporal duration of about six centuries? It is ridiculous and fantastic. It is simply not possible. Thus the dating of the shrine to about 10th Century A.D. is arbitrary. The structure 5, whatever it may by either a simple structure or a Buddha circular Stupa, in view of the radiocorban data seems to have belonged to slightly later than circa 4th Century A.D. That is Gupta Period.

***6.10**. That there is yet another important feature of the so called Shrine that needs comment. It is about it's suggested water channel. Stylistically, its northward orientation has been marked to have some special significance.*

The channel does not have a uniform width throughout. It does not have even a gradually decreasing width from south to north. It becomes suddenly very narrow at nearing its end. Thus it appears that it was not made for

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the purpose it has been suggested. It seems to have taken the existing form by the removal of mortar during excavation as was filled therein.

It did not function for draining water from south to north is evident by the fact that there is no evidence of slope towards the direction in question. It has been measured by the levelling instrument at three different points of the channel. It was found that there is no slope on its surface.

Further, had the so-called channel been in use for draining water for a longtime, then there should have been the remains of water residuals in the channel. Such evidence could be expected on the northern side of the circular wall corresponding along to the area of water discharge. But there is no such evidence either in the channel or on the surface of the wall in question.

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3930. ASI has recorded its finding on 'Circular Shrine' from page 70 to 71 as under:

"A partly damaged east facing brick shrine, structure 5 (Pls. 59-60, Fig. 17, 24 and 24A) was noticed after removal of baulk between trenches E8 and F8. It is a circular structure with a rectangular projection in the east, the latter having been already visible before the removal of the baulk. The northern part of the circular part has retained its lower eight courses above the foundation of brick-bats while the southern half is damaged by constructional activity of the subsequent phase whose brick-bats have damaged the structure upto its working level. The structure was squarish from the inner side and a 0.04 m wide and

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0.53 m long chute or outlet was noticed on plan made through the northern wall upto the end where in the lower course a 5.0 cm thick brick cut in 'V' shape was fixed which was found broken and which projects 3.5 cm outside the circular outer face as a pranala to drain out the water, obviously after the abhisheka of the deity, which is not present in the shrine now. The entrance of the structure is from east in the form of a rectangular projection having a twelve course of bricks interlocked with the circular structure and having a 70x27x17 cm calcrete block fixed in it as the threshold. Two sizes of bricks were used in the construction of the shrine measuring 28x21x5.5 cm and 22x18x5 cm. The rectangular projection of entrance is 1.32m in length and 32.5 cm projected towards east. The southern part of the structure was found resting over a 0.75 m wide brick wall (wall 19A) of nine courses belonging to earlier period which runs in east-west direction and joins the end of the north-south oriented brick wall (wall 19B) having 7 extant courses of bricks and a width of 0.55 m, making the south-western corner of the earlier structure. The north-south length of wall 19B was exposed upto a length of 2.72 m when it joins section facing south in the trench E8. It is sealed by layer 5A which is contemporary layer of the structure 5.

The brick shrine is similar (fig. 18) on plan to the Chirenath brick temple at Sravasti exposed recently by the Archaeological Survey of India though which is larger (approximately 5 m in diameter including its projections). Its central part is 2.20 m square where a Siva Linga is

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placed in the centre (Pl. 61). It has also affinity with circular Siva temples near Rewa in Madhya Pradesh at Chandrehe and Masaon belonging to C. 950 A.D. and a Vishnu temple and another without deity at Kurari in Fatehpur district of Uttar Pradesh and Surya temple at Tinduli in Fatehpur district. V.V.Mirashi thought that temples having circular garbha-griha where a speciality of the Chedi country and were built for the first time by the Acharyas of the Mattamayura clan as in the case of Chandrehe temple which was built by Prasanta siva as per the Chandrehe stone inscription of 972 A.D. Thus on stylistic grounds, the present circular shrine can be dated to c. tenth century A.D. when the Kalachuris moved in this area and settled across river Sarayu. They possibly brought the tradition of stone circular temples transformed into brick in Ganga-Yamuna valley." (Page 70-71)

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3931. 'Circular Shrine' more virtually its existence that was found by ASI has been admitted by most of the Experts (Archaeologist) of Muslim parties though a reluctant attempt has been made for diverting the identity by suggesting that it may be a "Buddhist Shrine" or a tomb of erstwhile Islamic religious structure. PW-30 has categorically admitted it on page 15 and has said that his statement in para 14 of the affidavit was not after looking to the shrine at the spot but on the basis of its photo only.

3932. Circular shrine has been admitted by the experts of plaintiffs (Suit-4). **PW-30 Dr. R.C.Thakran** on page 150 and 129 as said:

"मुझे ए0एस0आई0 की रिपोर्ट वाल्यूम – 1 के पृष्ठ – 70ए पर

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फ़ीगर – 17 के नीचे वाले चित्र में दाहिनी ओर एक पतली सी नाली दिखाई पड़ रही है। यह कहना सही है कि इस फ़ीगर – 17 के अनुसार यह नाली उत्तर की ओर जा रही है। यह भी कहना सही है कि उत्तर की ओर जाती हुई ऐसी नाली बौद्ध स्तूप मे नहीं होती है। . . . . . यह कहना सही है कि ए0एस0आई0 की रिपोट्र वाल्यूम–2 के प्लेट संख्या–60 मे बाई ओर एक तीर का निशान बना हुआ है। इस प्लेट में एक पतली सी नाली नज़र आ रही है।'' (पेज 150)

"A slender drain is visible to me on the north side in the picture below figure 17 on page 70-A of the ASI report volume-1. It is correct to say that as per this figure 70, this drain is going northwards. It is also correct to say that the Buddhist stupas do not have such north- bound drains. .. . . It is true to say that there is an arrow mark on the left side in plate no.60 of the ASI report, volume-2. A narrow drain is seen in this plate." (E.T.C.)

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''सर्कुलर श्राइन, जिसका उल्लेख मैंने अपनी बयान हल्फी के प्रस्तर –14 में किया है, उसको मैंने व्यक्तिगत रूप से देखा नहीं है, बल्कि फ़ोटो देखकर मैंने यह बयान दिया है।'' (पेज 129)

"I have not personally seen the circular shrine of which I have made mention in para 14 of my sworn statement; but I have given this statement after seeing the photograph." (E.T.C.)

3933. **PW 32-Dr. Supriya Verma** on page 147-148 (page 14) said:

"...it is correct to say that plate no. 60 is insitu photograph of circular shrine. ***It is true that Budha stupa is always solid. The structure shows a Pranal*** *but Experts who visited site and measured the angle of slope with the help of sprit Level had found that the slope which was necessary for the water to pass out was not there. It is*

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correct that I was not present when this structure was exposed nor I have visited this spot there after but I can express my opinion on the basis of information given by expert as well as the information in the final report and site notebooks. Prof. D. Mandal, Prof. Ratnagar and Prof. Suraj Bhan have given this information."(Page 147-148)

3934. **PW 29 (Dr. Jaya Menon)** on "circular shrine" said:

"Since circular shrine" was not found in my presence, I have not seen its stratigraphical association. In my view "circular shrine" was probably a Buddhist Stupa. ***There appears a hollow space within the excavated "circular shrine"****. Stupa is not always solid. It is generally made of bricks or stone and mud brick bats. . . . . .****It is a non-Islamic structure. . . . It is probably of Gupta or late Gupta period.****" (Page 202-203)*

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"In my opinion, the finding of ASI report regarding circular shrine as recorded at page 73 is not based on any result of carbon-dating. In my mind, the ASI report on the point is not clear at page 72 of the report. I do not agree with the ASI report that it was a circular shrine mentioned from pages 70 to 73 with figures 24 and 24-A. In my opinion, the alleged circular shrine structure dates back to around 6th century AD. . . . . It is correct to say that the alleged circular shrine shown in plates 59 and 60 belongs to Sixth century AD, although ASI's report says that it belongs to post-Gupta period." (Page 225-226)

3935. During excavation at the disputed site between trenches E-8 & F-8 a circular structure of burnt bricks facing east was recovered, commonly termed as "circular shrine",

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detailed at page 70 to 72 of report, volume 1, and shown in figure 17, 24, 24A, and plates 59, 60 & 62 (volume 2) of the report. The bricks used here are of two sizes: 28x21x5.5 cm and 22x18x5 cm. The bonding material was mud mortar. On its eastern side, there is a rectangular opening, 1.32 m in length and 32.5 cm in width, which was the entrance of the structure. A calcrete block, measuring 70x27x17 cm, has also been found here, fixed, obviously, as the door-sill.

3936. An extremely important feature of this structure is the provision of a gargoyle (Pranala) made in its northern wall. The ASI Report records that it is 0.04 m wide and 0.53 cm long, projecting 35 cm from the northern wall of the structure. It is 'V' shaped so that water may drop a little away from the wall. In this connection it may be mentioned that in books of history, in Sanskrit Literature, reference of circular shrine and Pranala finds place. A famous book styled as "**Aaprajit Prichchha**" by Bhuwan Dev in its book in chapter 207 at serial no. 23 mentions about it.

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3937. The elevation, as shown in the drawing (Fig. 17 of the ASI Report) suggests that this structure was built on a raised platform, viz. adhisthana. The gargoyle, or the drain, was provided on the northern side. The structure may be dated to 9th-10th century A.D. (The ASI carried out C-14 determination from this level and the calibrated date ranges between 900 A.D. and 1030 A.D.)

3938. This was an independent miniature shrine. The architectural features suggest that, that it was a Shiva shrine.

3939. It is unthinkable that inspite of these clear features of Shiva shrine, the objectors are identifying the same as a

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Muslim tomb.

3940. Secondly, it is too small a structure for a tomb, from inside it is only 4.4 ft. square. Neither could it accommodate a grave in its interior, nor a Qiblah-Mihrab on its western wall ; Qiblah was an integral and essential part of tomb-structure during the Sultanate period (1192-1526 A.D.) as is illustrated by numerous examples all over northern India.

3941. Thirdly, there is no trace of an arch required for constructing dome over the tomb. There are no hook-shafts to bear and no structural trace to suggest any lateral thrust of the mihrab. It may be noted that the sub-structure of the mihrab is built massively on the edges of the four corners, to counter the lateral thrust. One wonders, if it was a tomb without any arch or dome, and without even a grave?

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3942. Thus, on the one hand the dimension of this structure are too small for a tomb and on the other the gargoyle was never in tombs while it was an integral feature of the sanctum of Shiva temples to drain out water poured on the Sivlinga.

3943. Shrine is a holy place where worship is performed. It is a structure where holiness is enshrined. Denial for the sake of denial should not be allowed. "No evidence to make this structure a shrine" and "a sheer figment of imagination and a conjecture without any evidentiary basis", such comments grossly lack technical acumen and clearly show the dearth of logical thinking. These themselves are mere arguments lacking "evidentiary basis". By these and many like arguments show the 'ostrich attitude' of the plaintiff.

3944. A structure is identified by its shape and/or by the

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use it was put to or by the function it was supposed to perform. This circular structure was found with a well defined 'Pranala' (water chute to drain out ablution liquids).The pranala could well have been denoted as drain but the area from where it was issuing was only 40 x 60 m (including the squarish hollow chamber for fixing the object of worship and the small entrance of the east) which could not be used for bath room or for kitchen, a few alternatives where water is required to be drained out, thus, the only valid explanation was it being a 'pranala' of a shrine, small only a subsidiary one and not the main shrine holding central/main deity.

3945. Circular Shrine is found resting over wall 19A and others, this single fact, does not make the 'Circular Shrine' Contemporary to the said walls, as the working level for the 'Circular Shrine' is much higher, and only foundations of Circular Shrine rest over the existing walls, which have been incorporated as foundation of Circular Shrine, these walls definitely are not made for providing foundation to the circular Shrine. Apparently, when the Circular Shrine was built the wall 19A and others were all buried under the ground and foundation of the circular shrine just reached upto that level.

3946. Circular shrine is compared with other pre-existing and published circular shrines of proven dates found at different places, primarily to compare the style and not size. These circular shrines are not the exact replicas of one another. All the shrines reproduced in comparison are independent shrines while the structure 5 shrine is of subsidiary nature. Layers producing mixed material are dated on the basis of the latest material found in their milieu. Therefore, the period, of Circular Shrine (Str. 5)

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is stratigraphically placed in the correct period much earlier to early medieval period.

3947. The Circular Shrine which was stated to be "not a circle but an ellipse" (para 6.2 of the objection) has also been alleged to be a "Stupa"; a circular Buddhist stupa in which on the east was a niche to support image of Buddha. Logic given in support is that "it is too small to enter". There are several miniature shrines which are even smaller in dimension and under worship. In such miniature shrine, often called subsidiary shrines, devotee is not supposed to enter but offers his/her worship from out side.

3948. The famous writer of classical Sanskrit literature Varahmihir in his book "Brihat Samhita" has described 20 types of temple in which besides kunjara and Guhraja types which are apsidal nature, circular temple such as samduga, padma, Vrish, Ghata and Vritta have been mentioned. Padma is shaped like a lotus but other three types samduga, Vrish and Vritta are clearly Circular Shrines.

3949. A circular brick temple has been noticed recently at Sikhara Kohanda in Siddharthnagar district, about 6 miles from Domariyaganj, where eight brick structures- four circular and four square have been noticed and have been roughly dated to approximately eleventh century A.D. Another prominent circular brick temple has been excavated at Chirenath in Sravasti whose sikhara is missing but on plan the temple upto its jangha portion is circular from exterior having a circumference of 14.70 m. with three niches in all the three cardinal directions and entrance in the west. The garbhagriha is roughly square, measuring 2.10 x 2.10 m. with a 1.70 m high Sivalinga of red

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sandstone in the middle (IAR 1997-98 p. 193-95 p. 136).

3950. "The temple's interior is square (side 6 ft. 8 in.) and the exterior is circular –stellate having 16 bhadra-facets and 16 karna-projections. Of the bhadras four are sham and four are real, each separated from the other by an acute-angled projection produced by turning the square. The doorway which, originally was preceded by a praggriva, faces north, while the three bhadras face the remaining cardinal directions.

3951. The hypaethral and circular temples of yoginis are well known in north and Central India. They have been mentioned by Krishna Deva as at Dudhai in Jhansi district, Mitaoli in Morena district. Bheraghat in Jabalpur district, Ranipur Jharial in Bolangir district and Surada near Kalahandi and Hirapur near Bhubaneswar in Orissa. They range from 16.72 m to 39.52 m in outer diameter, with 65 to 81 peripheral chapels and a principal shrine, normally in the centre of the courtyard. Inscribed yogini images from Central India suggest more such temples and one such shrine has been excavated and identified as Golakimatha in Jabalpur district (Krishna Deva 1999). The proliferation of circular temples with their identification with the types mentioned in classical treatises require further investigative studies of their origin and developmental process.

3952. In the overall view we find no reason to doubt the findings of ASI on this aspect also and the objections otherwise are accordingly rejected.

3953. Then comes two items i.e. "**The Divine Couple and Other Architectural Members"** referred to in para 7 (7.1 to 7.8) and "Figurines" (Para 9.1 to 9.3) which are as under:

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7. THE "DIVINE COUPLE" AND OTHER ARCHITETURAL MEMBERS:-

7.1. *That the stone "mutilated sculpture of a divine couple" (p 272) is described on p. 130. (Reg. No. 1184) and Plate 235. The lower portion alone is present, below the waist. The piece is so damaged that it is almost undecipherable. What aspects of this incomprehensible piece make it a "divine" couple, we are not told. Thus the report shows clear bias in the use of the adjective "divine" and also "couple".*

7.2. *That further, and more important, the recorded findspot (p. 130) of this piece is Trenches K3-K4 (in the east) and the recorded layer is "Debris". Clearly, this piece of sculpture does not come from a stratified context, leave alone the strata of Period VII.*

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7.3*. That so too, a black, schist pillar with a square base and octagonal shaft and intricate carving comes from surface debris above the topmost floor (Floor I) in Trench F3 (p. 140), which is also of no relevance.*

7.4. *That regarding the octagonal stone that was said to have been carved in twefth-century style, it may be noted that according to the text (on p. 56), it was found in Trench F-7, on pillar base 32 but as per table (on P. 63) that was "resting on Floor 2", in Trench F-6-F-7, while its foundation was resting on floor 4. It may be noticed that in the Section Facing South Sest-East (E-F), no floor marked "Floor 4" is indicated.*

7.5*. That the theory of the so-called temple rests on some other reported architectural fragments also. Out of about*

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380 pieces have been tabulated, 205 are featureless with only marks of dressing or in some cases are completely undressed stones. To give examples, No. 122 (Reg. No. 882) kept in Manas Bhawan is a rectangular piece with pecking marks and partially polished (p. 129), No. 131 (Reg. No. 953) is a "rectangular slab with one of its sides nicely polished" (p. 129), No. 3 (Reg. No. AYD-1/74) kept in the tin shed at the excavated site is "a rectangular partly dressed sand stone slab with an open groove meant for dowel" (p. 131). The majority of these came from the dump or fill and were in many cases part of the Masjid walls. There were numerous others (particularly of calcrete) that were removed from the dump from trenches, during excavation, that were thrown away and are not tabulated. Out of 383 architectural fragments, only 40 came from stratified contexts. Out of this 40 too, none were specified to a temple, even the 8 that have been separately mentioned: pillar, doorjamb, octagonal shaft of pillar, amalaka, divine couple, slab with srivatsa motif, lotus medallion and a re-chiselled slab with lozenge design, are of no significance. The srivatsa design is associated with Jainism and the lotus design could as well be Buddhist or even Muslim. The lozenge design could well belong to a Muslim structure. It is also interesting that the floral design on the architectural fragment in Plate 90 matches the lower portion of the Arabic inscription in Plate 92. The latter depicts a floral design and the design, as sell as the method of carving, in the two pieces are very similar. It is also mischievous to label a sculpture showing the waist portions

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of two human figures as representing a divine couple. Moreover, all the above noted 8 pieces came from the debris. The octagonal shafts has, in fact, not even been tabulated. Many of the architectural fragments are, as admitted, of different materials (pink sandstone, buff sandstone, spotted red sandstone, calcrete, and so forth), and it is well known that temples do not use stones of diverse colours and types for decoration.

***7.6**. That report admits that there are few architectural members (plates 92 to 94) which can clearly be associated with Islamic architecture and on stylistic grounds which might belong to 16th century A.D. onwards. (page 122). On the same page in earlier sentences the report described certain architectural members. The photographs of these architectural members appear on plates 79, 80, 81, 84, 85, 86, 87, 89, 90. The report says that stylistically these architectural members in general and pillars in particular may be placed in a time bracket of 10-12 century AD. In Indo-Muslim architecture elements of early Indian architecture which were consistent with Islamic traditions were freely used. Foliage, floral and geometric designs as found in early Indian architecture were copied and used in the Indo-Muslim architecture and this is the important feature which distinguished Indo-Muslim architecture from that of Arbian Land and Persia. The elements and designs in plates 79, 80, 81, 84, 85, 86, 87, 89 and 90 are found in many Muslim religious and other buildings. Lotus medallian as in pl. 70 are found as apex-stone in domes.*

On what basis the style and design contained in plate

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no. 93, 94 is attributed to 16 century, is also not mentioned.

*The architectural members shown in plate no. 79, 80, 81, 84, 85, 86, 87, 89, and 90 do not contain any carving of a Hindu deity. Such elements and designs have been used in Indo-Muslim architecture and hence these architectural members may have been parts of a Muslim structure. On what basis the A.S.I. remarks that these "emphatically" speak about their association with temple architecture", is not known. What is the basis for placing these architectural members in time bracket of 10-12 century A.D. is also not given in the report. Plate No. 81 is not amalaka but a part of petal design. It has to be noted that the so-called amalaka (pl. 81) is a surface collection found in debris above floor -1 (Page 141 S*r. No. *125)*

7.7. *That the octagonal stone block having so-called floral motif has been dated to 12th century A.D. on its alleged similarity with that one found in the Dharmachakrajina Vihar or Kumardavi at Sarnath (Plates 39 and 40). Even a cursory inspection clearly reveals that there is not the least similarity between the two. The Sarnath Specimen is rectangular on plan while the Ayodhya one is Octagonal. Again the Sarnath specimen has depiction of floral motif but the Ayodhya specimen has a different motif. Further, apart from the stylistic dissimilarity there is dissimilarity in their architectural technique as well. On the Sarnath Specimen the depiction of motif is in slightly low relief while on the Ayodhya one it is in very bold relief.*

There is of course one very distinct similarity

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between the two. Both belong to the category of reused material. The Sarnath Vihar in question has been built mainly by reused earlier materials such as broken bricks, stone architectural members, both plain as well as decorated etc. The stone pilaster as cited for comparison with octagonal stone block is also a reused specimen. It, thus, cannot be contemporary to the builder of the builder of the Vihar in question. There is no question on the date of Kumardevi. It is early 12th century A.D. But there is of course a big question over the date of the pilaster cited for comparison. It is certainly of some earlier date it could be even of Gupta period.

So it is obvious that of the listed architectural members (stored in Manas Bhawan as well as in the Tin Shed at the excavation site, mostly collected from the surface or debris above floor 1) majority of them are fragmentry and plain in nature. It is also obvious that they cannot be dated on stylistic ground.

***7.8**. That in view of the evidence drawn from the depositional history of the site there was no habitation at this site after Gupta period for a long time. It was reoccupied after a long desertion in 13th century A.D. Under this situation, many of the remains of architectural members having so called association with temples, as alleged, could have belonged to Gupta period. Some of these said to have belonged to 10th - 12th century A.D., could have been brought here to be used as building material from some neighbouring sites. This is the situation also of the decorated / moulded bricks. Needless*

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to mention that moulded bricks were quite prevalent in Gupta Period.

Figurines

9.1. *That during the excavation, the A.S.I. found 62 human 131 animal figurines. These discoveries are irrelevant to the question under inquiry. A large number of them belong to ancient period. The A.S.I. unnecessarily took pains to give details of terracotta figurines and to include their 33 plates (Pls. No. 104 to 136) knowing well that these figurines, most of which belong to ancient periods, were not at all relevant to the question contained in the Hon'ble Court's order. The chart below gives an idea of this exercise in futility. It is possible that the A.S.I. gave detailed description of human figurines and their photographs to lead credence to its theory of an alleged temple-like structure beneath Babri Masjid.*

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Plate No.	***Period of the Figurine***	***Page of Vol. 1***
104	*Late level (period not specified)*	*177*
105	*2nd Cent. A.D.*	*179*
106	*1st Cent. A.D.*	*179*
107	*2nd Cent. A.D.*	*177*
108	*2nd Cent. A.D.*	*183*
109	*3rd Cent. A.D.*	*181*
111	*3rd Cent. BC*	*177*
112	*Gupta level*	*180*
113	*Gupta level*	*182*
114	*6th Cent. A.D.*	*182*
115	*1st Cent. A.D.*	*184*
116	*4th Cent. A.D.*	*184*

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123	*3rd Cent. BC*	*185*
124	*Pre-Mauryan*	*184*
125	*3rd Cent. BC*	*185*
126	*3rd Cent. B.C.*	*176*

That there are a large number discrepancies also in the description of these Terracotta finds, which also create doubts upon the bonafides of the A.S.I. Team giving such incorrect descriptions. It is true that when archaeological deposits are disturbed, it is not surprising to find earlier material in later levels. This happens when construction or leveling activities require the bringing in of soil from peripheral areas or the clearing and mixing of older deposits. On the other hand, the reverse is impossible, that is we cannot, in an earlier stratified context, find material of later periods. However, the latter appears to be the case at Ayodhya in the context of terracotta figurines as seen in the tabulation provided on pp. 174-203. We find in numerous cases figurines of later periods in far earlier levels, as is evident from the following Table:-

Table of Discrepancies in stratigraphy in relation to terracotta figurines

Artefact details	*Discrepancies*
S. No. 50 R. No. 1027. Part of human figurine. Mughal level. G5, layer 2, below Floor 2	*Layer 2 below Floor 2 belongs to Medieval period. It is impossible for a Medieval period layer to have material from Mughal period which is later*
S. No. 52 R. No. 393. Animal figurine. Late Medieval period. E8, layer 5	*Layer 5 in E8 is Post Gupta (7th - 10th centuries AD). It is impossible for late medieval (Mughal) period material to be found in an earlier period.*

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S. No. 67 R. No. 549. Animal figurine. Early Medieval. F9, layer 5	*F9 layer 5 is Post Gupta. It is impossible for Early Medieval period material to be found in post Gupta period which is earlier*
S. No. 69 R. No. 594. Animal figurine. Medieval. E8, layer 5	*E8 layer 5 is Post Gupta. It is impossible for Medieval period material to be found in post Gupta period which is earlier*
S. No. 71 R. No. 607. Animal figurine. Mughal. E8, layer 6	*E8 layer 6 is Post Gupta. It is impossible for Mughal period material to be found in post Gupta period which is earlier*
S. No. 73 R. No. 628. Animal figurine. Mughal. E8, layer 6	*E8 layer 6 is Post Gupta. It is impossible for Mughal period material to be found in post Gupta period which is earlier*
S. No. 76 R. No. 689. Animal figurine. Early Medieval. F8, layer 5	*F8 layer 5 is Post Gupta-Rajput. It is impossible for Early Medieval period material to be found in post Gupta period which is earlier*
S. No. 84 R. No. 739. Animal figurine. Post-Gupta. E8, layer 8A	*E8 layer 8A is Gupta level. It is impossible for post-Gupta period material to be found in post Gupta period which is earlier*
S. No. 85 R. No. 762. Animal figurine. Post-Gupta. E8, layer 9	*E8 layer 9 is Gupta/Kushan level. It is impossible for Post-Gupta period material to be found in Gupta/Kushan period which is earlier*
S. No. 86 R. No. 767. Animal figurine. Post-Gupta. F8, layer 7	*F8 layer 7 is Gupta level. It is impossible for post-Gupta period material to be found in Gupta period which is earlier*
S. No. 90 R. No. 793. Animal figurine. Medieval. H4/H5, layer 4	*H4/H5 layer 4 is Early Medieval. It is impossible for Medieval period material to be found in Early Medieval period which is earlier*

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S. No. 114 R. No. 1087. Animal figurine. Gupta. G7, layer 10	*G7 layer 10 is Kushan. It is impossible for Gupta period material to be found in Kushan period which is earlier*
S. No. 115 R. No. 1088. Animal figurine. Gupta. G7, layer 10	*G7 layer 10 is Kushan. It is impossible for Gupta period material to be found in Kushan period which is earlier*
S. No. 119 R. No. 1152. Animal figurine. Kushan. G7, layer 13	*G7 layer 13 is Sunga. It is impossible for Kushan period material to be found in Sunga period which is earlier*
S. No. 122 R. No. 1177. Bird figurine. Early Medieval. G8, layer 5	*G8 layer 5 is Post-Gupta-Rajput. It is impossible for Early Medieval period material to be found in post Gupta period which is earlier*

9.3. That it may also be pointed out that on p. 93 the Report mentions that shapes like sprinkler appear in Period IV (Gupta period). However, on p. 80, sprinklers are mentioned from Period II (Sunga level) that evolved into their diagnostic forms in the subsequent Period III or Kushan period. So also on p. 41, it is stated that layers 5, 6 and 7 in Trench G2 belong to the Medieval Sultanate level. In the schematic cross-section and tentative periodization, layer 2 and 3 belong to t he Medieval level. Hence, what is then layer 4?

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3954. The rest of the two items i.e. "Archeaological members and Figurines" are mentioned in Chapter VI and chapter VII, description thereof is as under:

"Consequent upon laying of a lay out for archaeological excavation of disputed site at Ayodhya, various architectural fragments consisting of pillars, pilasters, broken door jambs, lintels, brackets and etc. were

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retrieved as disjecta membra, ranging from surface of the mound to a considerable depth of various trenches. In this regard, the Fig. 58 shows spatial distribution of fragments of architectural members.

These architectural members have been wrought on calcrete, black schist and sand stone. The last one does betray different colours like those of dull brown, pinkish as well as deep red with buff spots.

Majority of these architectural members are fragmentary and plain in nature except for a few intact members like pillars, brackets and neatly dressed masonry slabs, etc. As such it becomes very difficult to identify the functional utility of all these members.

A noteworthy aspect of some of these architectural members is the presence of mortises/open grooves of varying dimensions on the body of slabs which serve the purpose of providing dowels/clamps as binding factor. In many a cases iron dowels have been found in situ. Besides, there are also symptomatic features to the effect of reusing the earlier architectural members with decorative motifs or mouldings by re-chiseling the slab (Pls. 79-80, Fig. 59). A few intact architectural members like Amlaka (pl. 81, Fig. 59) pillar with Ghata-pallava base with dwarf beings as weight-bearers and Kirtimukhas (Pls. 82-83, Fig. 59) to mention a few, have also been recovered. Besides, there are a number of architectural members which have been decorated with deeply carved foliage motifs. This pattern is a distinct one resembling like that of "stencil" work (Pls. 86-87). It may be pointed out that the various architectural

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members with similar decorative designs have been found used in the foundation of one of the major brick structures (wall 16)) exposed in these excavations.

The aforesaid pillars and other decorative architectural members of this site like fragment of broken jamb with semi circular pilaster (Pl. 85) fragment of an octagonal shaft of Pillar (Pl. 84), a square slab with Srivatsa motif (Pl. 88) fragment of lotus medallion motif (Pls. 89-90) emphatically speak about their association with the temple architecture. Stylistically, these architectural members in general and pillars in particular may be placed in a time bracket of tenth-twelfth Century A.D. It is also pertinent to note that there are a few architectural members (Pls. 92-94), which can clearly be associated with the Islamic architecture on stylistic ground, which might belong to sixteenth century A.D. onwards.

In addition to the architectural fragments, a highly mutilated sculpture of divine couple seated in alinganamudra has also been recovered. The extant remain depicts the waist, thigh and foot (Pl. 235). ***(Page 121-122)***

3955. Thereafter a complete chart is also given which is not necessary to mention here. The "terracotta figurines" are in Chapter VII page 174 which says:

"During the excavation 62 human and 131 animal figurines were found. In the consonance with the prevailing practice in the Gangetic valley, these figurines are the products of both handmade as well as moulding techniques. These terracottas are assignable from the pre-Mauryan to the previous century. They are both religious as well as

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secular, the former being represented as cult objects viz. mother -goddess. As a majority of them is fragmentary, save for a few, they could not be dated precisely on the stylistic grounds. The effigies of the mother-goddess exhibit archaic features and conspicuous girdle, whereas the Sunga, Kushan and Gupta specimen are varied and show stylistic affinity to their stone counterparts. But this cannot be applied to 'Archaic' figurines for want of their stone parallels. From the post-Gupta period onwards they are made of coarse clay with considerable admixture of husk. They were often slipped/washed with admixture of mica as the main gritty material to avoid cracking. The excavated clay figurines are described below mentioning their levels from which they were recovered. The appearance of the terracotta figurines of earlier periods in late levels was mainly due to large scale constructional activities like raising of massive walls; floor level especially during and post-Kushan period."

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3956. With respect to figurines **Statement of PW 29 (Jaya Menon) said:**

"It is correct to say that the figurines of elephant, tortoise and crocodiles – all made of terracotta, were recovered during the excavation. . . . . I know that the crocodile is the seat/vehicle of Hindu holy river Ganga. I agree that tortoise is the vehicle of holy river Yamuna. With reference to the plate 129 of the ASI report, Vol. II, I can say that the snake is significantly attached with the name of "Lord Shiv" (Page 42)

"In reference to page no. 112 of the above report, the

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witness stated that this terracotta figurine is just a human head." (Page 74)

"Terracotta figurines are figures of animals and human-beings made of fired clay. . . . . Terracotta figurines have been found possibly as far back as 5000 B.C. . . . .It is correct to say that such terracotta figurines were also in vogue in the 11th and 12th centuries. It is correct to say that such terracotta figurines also depicted Hindus Gods and Goddesses but not always." (Page 165)

3957. PW-32, Dr. Supriya Verma for some of the such figurines said:

"It is true that ASI in the course of excavation found 62 human figurines and 131 animal figurines but I am not sure about the number and also its identification." (Page 161)

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"It is correct that in plate 105 of the ASI report Vol II, bust of a female with ornament decoration is shown."(Page 173)

"...female bust shown in plate 105 of Vol. II of the ASI report could be a lady, who may be either Buddhist or of any important lady of high stature. There was no practice in Budhhism or Jainism of worshipping terracotta female figurine shown in plate 105 of Vol. II of the ASI report. However, there is depiction of 'Yakshi' in stone of early historical period. It has function of protector. It was sign of protection of humans. It is wrong to say that use of 'Yaksh' or 'Yakshi' is only limited to Hindu Dharmashashtra. In fact, it is also associated with Buddhist religion. I am not aware that apart from Buddha

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religion, whether 'Yasksh' or 'Yakshi' was used or not."(Page-174)

"It cannot say whether the word 'Yaksh' or 'Yakshi' is referred or mentioned in any religious book of Buddhism."(Page 174)

"It is correct that this human figurine shown in plate 108 is holding a perforated disc." (Page 176)

3958. The identification and appreciation of the excavated material like human or animal figurines etc. is a matter of experts. None of these eight experts (Archaeologist of Muslim parties) claimed to be the experts in this kind of branch in Archaeology. Even otherwise their stand in respect to these finds is varying. One witness says that these finds were not at all recovered from the layers they are claimed while others says otherwise. We have seen photographs of many of such artifacts and finds and in generality there is no such inherent lacuna or perversity in the observations of ASI or other identification which may warrant any otherwise comment from this Court or may vitiate their report. It is not in dispute that no Islamic religious artefacts have been found during excavation while the artifacts relating to Hindu religious nature were in abundance. For some of the items, it is claimed that it can also be used by non-Hindu people but that would not be sufficient to doubt the opinion of ASI. Plate No.50 (Kapotpalli), Plates No.51 and 62 (floral motifs shown in walls 16 and 17), (Sravats) Plate No.88, Cobra hood (Nag Devta) Plate No.129 and various other Gods and Goddesses in human shape (Plate Nos. 104, 105, 106, 107, 108, 109, 110, 111, 112, 114, 115, 116, 118, 119, 120, 121, 122, 123, 125, 126) to our mind were quite clear and admits no

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doubt. Three witnesses namely Sri Arun Kumar (OPW-18), Dr. R. Nagaswami (OPW 17) and Sri Rakesh Dutt Trivedi (OPW-19) were produced who supported the findings and report of ASI. They are retired officers, holding senior position in ASI. Their statements are sufficiently lengthy and extremely detailed. Since they have supported ASI report, we have not mentioned their statements in detail for the reason that we intended to test the objections raised against ASI report in the light of what the witnesses of plaintiff (Suit 4) have deposed and only when we would have some doubt, we would refer to and compare the statement that of OPW 17 to 19. In totality we find no substance in the objection with respect to the figurines etc. and the same are accordingly rejected.

3959. For the nature of artefacts, the witnesses of plaintiffs (Suit-4) said:

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(A) PW-29, Dr. Jaya Menon

"The motif of Ghat (pot) is visible on this pillar. It is true that Ghat is also known to be as "Kalash". Normally, this kind of 'Ghat' on the pillar is not found in mosque." (Page 41)

"It is correct to say that the figurines of elephant, tortoise and crocodile – all made of terracotta, were recovered during the excavation. Such figurines were found in more than one trench. I know that the crocodile is the seat/vehicle of Hindu holy river Ganga. I agree that tortoise is the vehicle of holy river Yamuna." (Page 42)

"This Makar Pranal is non-Islamic feature…" (Page 194)

(B) PW 31, Dr. Ashok Dutta

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"As I have mentioned that the Muslim people do not believe in the idol worship, hence there is no question of associating terracotta figurine with the Muslim culture. So far I know and my knowledge goes, the question of terracotta figurine to be associated with Muslim culture does not arise". (Page 175)

"It is true that such animal figurines are not allowed to be kept in the mosque." (Page 176)

"Makar Pranal is one of the part of the Hindu temple architecture. I am not very sure whether Makar Pranal has any association with mosque or not. I have not seen any mosque having any Makar Pranal in it." (Page 203)

"Generally the material which are used for filling of a floor are not sorted out in the filling material any artifacts of outside may be found if the material is taken from outside." (Page 289)

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(C) PW-32, Dr Supriya Verma

"I have heard the word 'Kalash'. Kalash is not found in mosque…" (Page 35)

"Wall No. 16, according to me, was used as a wall prior to the construction of the disputed structure. In this way, Wall 16 was wall of some other construction which was existing prior to the constriction of the disputed structure." (Page 140)

*"However, it is true that **Wall No. 17 was constructed earlier to Wall No. 16**." (Page 143)*

*"I know crocodile. It is also very important for the temples. It is called '**Makar Mukh'**. I have not seen Makar Mukh in any mosque…" (Page 143)*

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3960. One of the objections, which has been raised very seriously is the non examination of bones. Though ASI has referred in the report, about the bones recovered during excavation but it does not appear that any examination thereof was made. It is contended by the learned counsel for the plaintiffs that in absence of any scientific examination of the bones, entire report of ASI gets tainted. The objection under this heading is in para 11 (11.1 to 11.2) which are:

> ***11. GROSS OMISSION: EVIDENCE OF ANIMAL BONES:-***
>
> ***11.1*** *One decisive piece of evidence, which entirely negates the possibility of a temple, is that of animal bones. Bone fragments with cut marks are a sure sign of animals being eaten at the site, and, therefore, rule out the possibility of a temple existing at the site at the relevant time. As no record of bones was being maintained by the A.S.I. Team, the plaintiffs and moved application and thereupon directions were given by the Hon'ble High Court to the A.S.I. to record "the number and size of bones and glazed wares" (Order dated 10.4.2003). The Report in its "Summary of Results" admits that "animal bones have been recovered from various levels of different periods" (Report, p. 270). Any serious archaeological report would have tabulated the bones, by periods, levels and trenches, and identified the species of the animals. There should, indeed, have been a chapter devoted to animal bones/ remains. But despite the statement in its "summary", there is no word about the animal bones in the main text of the Report. This astonishing omission is patently due to the*

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A.S.I.'s prejudiced mindset with which the excavations were carried out and fear of the fatal implications held out by the animal bone evidence for its preconceived temple theory. A partial table is being provided of animal bones as found in the various trenches at different levels as noted by the nominess of the plaintiffs (which may also by verified from the Day-to-Day register) and it is shown how these are found at all levels all over the site. The A.S.I. perhaps knows that sacrificial animals' bones (if we are dealing here with a temple where animals were sacrificed, which, incidentally, has not been claimed for any Rama temple) cannot be represented by bone fragments with cut-marks strewn all over, but need to be found at particular spots, practically whole and entire, which is not here at all the case in even a single instance.

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***11.2**. That the statements of Pages 45, 55, and 271 etc. of the report, suggesting that probably this site was not a habitational site and had stratified coutural material only from the first seven periods or that it was only during and after Period IV (Gupta level) onwards upto Periods IX (Late and Post Mughal level) that the regular habitational deposits disappear and the area below the disputed structure remained a place for public use for a long time till the Period VIII (Mughal level) stand belied and negatived by the animal bone evidence and perhaps that is why the Animal bones were totally ignored.*

Given below is a Table of animal bones found in various trenches at various levels, from records maintained by nominess during the excavation and more detailed and

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accurate Table may be prepared and filled by the A.S.I. with the help of day to day register.

Table showing Examples of finds of animal bones:-

Trench, Layer and Depth	*Affiliated Period*
E8, 8: 280-85	*Gupta*
E7, 7: 245-60	*Gupta*
G7, 7: 228-45	*Gupta*
E9, 4: 96-124	*Early Medieval*
F9, pit, s/b 5:195	*Early Medieval/Post Gupta*
E8, 5:230-68	*Post Gupta*
G7, 7:248-83	*Gupta*
E8, 6:168-86	*Post Gupta*
F6, 2, below Floor 2: 48-77	*Medieval*
G7, 8: 285-90	*Gupta*
E8, 6: 186-215	*Post Gupta*
F6, 2: 77-123	*Medieval*
G8, 6: 135 (changed to layer 5)	*Post Gupta*
G8, 5: 185	*Post Gupta*
G8, 5: 230	*Post Gupta*
F4/F5, dump s/b 5:182-220	*Post Gupta*
G7, 20: 1140-1170	*NBP*
G7, 21: 1167-1207	*NBP*
G4/G5, pit s/b Floor 2: 93-113	*Medieval*
J5/K5, 2: 45-80	*Fill*
J6/K6, 2: 45-80	*Fill*
ZE1, 2:180	*Medieval*
G7, pit s/b 21: 1207-1240	*NBP*
G4/G5, filling: 113-140	*-*
G2, 1, below Floor 1: 22-35	*Mughal*

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J3/K3, 1:73	*Fill*
G2, 1: 30-45	*Mughal*
J3/K3, 2: 30-70	*Fill*
E1/ZE1, 3: 90	*Medieval*
G8, 6:135	*Post Gupta*
G8, 5:230	*Post Gupta*
E1/E2, 2:30-40	*Medieval*
K5, 3:92-103	*Mughal*
K3, 2:30-25	*Late and Post Moghal*
F4/F5, 2:26-46	*Medieval*
F4/F5, 4, pit s/b 4:140-166	*Early Medieval/Medieval*
F3, below Floor 4:364	*Early Medieval/Medieval*
G7, 18, 19:1050-1115	*NBP*
G1/ZG1, 3:100-165	*Medieval*
G7, 20:1115-1140	*NBP*
E6, 2:53-70	*Medieval*
G9, below Floor:15-20	*Medieval*

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[All measurments given above are in meters and centimeters based on the information given by the A.S.I. at the site]

11.3.That from the above table it is clear that animal bones have been found in NBP, Gupta, post Gupta, Early Medieval, Medieval and Mughal levels, in other words, practically from all levels. It should also be clear bones were also found from the central supposedly significant area, as in Trenches F3 and F4/F5. In the case of F3, bones are coming from Early Medieval levels and in F4/F5 from Early Medieval and Medieval levels. If, as according to A.S.I., post-Gupta levels onwards are not residential in

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nature but attest to levels with temples, and these levels are supposedly stratified, it is to be wondered at as to why animal bones were found even from the central part of the alleged temple.If, as the A.S.I. says, soil from earlier levels was used for construction, then it is surprising that for the construction of a temple, no sorting or sieving was done, as bones and other such materials are regarded as highly polluting.

3961. ASI has referred to the bones on page 270 and said as under:

"Animal bones have been recovered from various levels of different periods, but skeletal remains noticed in the trenches in northern and southern areas belong to the period IX as the grave pits have been found cut into the deposition coeval with the late disputed structures and are sealed by the top deposit."

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3962. **PW-16 Surajbhan** on the question of bones stated:

''खुदाई स्थल से जो हड्डियां मिली थी, उनको मैंने नहीं देखा, यद्यपि पाटरी यार्ड में हड्डियों के कुछ टुकड़े रखे हुए थे।'' (पेज 388)

"I did not see the bones discovered from the excavation site, though few pieces of bones had been kept in the Pottery Yard." (E.T.C.)

''प्रश्न– आपने जिन बोन्स का उल्लेख किया है, वे किन–किन जानवरों के बारे में किया है?

उत्तर– यह मेरे अध्ययन का विषय नहीं है, परन्तु ए0एस0आई0 की रिपोर्ट में ही यह कहा गया है कि हड्डियां उत्खनन स्थल से पाई गई।'' (पेज 388)

"Question- The bones mentioned by you, relate to which animals?

Answer- It is not the subject matter of my studies, but in

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the ASI report it has been mentioned that bones had been found at the excavation site." (E.T,C.)

*''प्रश्न– **खुादाई स्थल से प्राप्त हड्िडयों का आपने अध्ययन नहीं किया है?***

*उत्तर– **जी हां**।'' (पेज 390)*

*"Question- **You have not studied the bones discovered from the excavation site**?*

*Answer- **Yes**." (E.T.C.)*

''प्रश्न– मेरा यह कहना है कि उत्खनन स्थल से जो हड्िडयां मिलीं थी, उसमें अधिकतर हड्िडयां जंगली जानकवरों की थीं अथवा ऐसे जानवरों की थीं, जिनको मनुष्यों द्वारा खाया नहीं जाता है, जैसे कुत्ता, गधा, सुअर, मेटक, अजगर आदि। इस बारे में आपको क्या कहना है?

उत्तर– उत्खननकताओं का ऐसा मत नहीं है।

*उत्खननकर्ताओं ने इस बारे में अपनी कोई विशेष रिपोर्ट नहीं दी है, जिसमें यह सत्यापित हो, जिसके बारे में विद्वान जिरहकर्ता अधिवक्ता द्वारा पूछा गया है। मैं हड्िडयों के बारे में जो बयान दे रहा हूँ, वह ए0एस0आई0 की रिपोर्ट में उल्लिखित है। **कुछ मंदिरों में जानवरों की बलियां पहले भी दी जाती थीं और आज भी दी जाती हैं। भैंसों, बकरों, मुर्गे आदि की बलि दी जाती है।***

कबीरपंथी तथा रैदासी मंदिरों के निर्माण –शैली के बारे में मेरा कोई विशेष अध्ययन नहीं है, ...मैंने इस बारे में कोई विशेष अध्ययन नहीं किया है।'' (पेज 392–393)

"Question- According to me, most of the bones found at the excavation site were of wild animals or such animals, which are not eaten by human beings such as dog, donkey, pig, frog, python etc. What you have to say in this behalf?

Answer- The excavators do not think so.

The excavators have not given any particular report in this behalf so as to prove the question as put up by the learned counsel for the cross-examiner. The statement being given by me about the bones, is mentioned in ASI's

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*report. A**nimals were sacrificed in few temples even in past and today as well. Buffalo bull, he goat, cock etc. were sacrificed**.*

I have not made any special study about the followers of Kabir and Raidasi temple. . . . . I have not made any special study in this behalf." (E.T.C.)

3963. PW-29 (Jaya Menon) on the question of bones, stated:

*"I may not be an expert but it is possible to identify different species except in the case of sheep and goat by seeing the bone. My statement in paragraph-9 of the affidavit regarding bones found in Trench No. F/3, F/4, F/5 is on the basis of daily register which was prepared at the site by the ASI Team. . . . .in the swearing para this paragraph is shown as based on 'my knowledge'. It is true that the daily register does not mention species of animals. . . . . .I am not an expert nor I have studied the bones found during the excavation at the disputed site. . . . . .Species of bone can be identified even if it is too old by visual examination. Palaeobotany is a subject dealing with ancient plants and I am not an expert of that. . . . . .I do not agree with the suggestion that the bones recovered during excavation at the site in question were kept or were brought by scavengers because such large quantity of bones could not have been brought by scavengers. By large quantity I mean that **during excavation every day bags full of bones were recovered from the site in question**. I do not remember the exact number of bones recovered during excavation. Size of those bags were different."*

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(Page 37-38)

"The witness replied that she had not complained to any about the excavated soil being thrown away without any sorting nor I had complained about the bones of human skeleton being mostly thrown." (Page 42)

"According to me ***one of the significant aspects neglected by ASI in the disputed site is the study of animal*** *bones. Animal bones are part of the evidence and should have been studied in the case of present excavation. If there was a temple at disputed site then the area of the construction of the temple should have been cleaned of animal bones." (Page 67)*

"Question:- If bone is found under constructed area of temple then whether that construction can be considered as temple in that case also?

Answer:- I have no idea about this fact." (Page 68)

"In para 8A of my affidavit I have said that bones from a human skeleton too were mostly thrown away. These bones were recovered from trench ZHI. The human skeleton was mostly intact. Trench ZHI lies towards North to the makeshift structure. Bones can be dated. Chemical change in the bones is possible only if the bones have been buried for a long period of time." (Page 74)

"Bones of humans and animals and plant remains are also important for the study of the past." (Page 77)

"By stating in paragraph 8A that the collection of artefacts was not made in scientific manner, I mean that the bones of human skeleton recovered in a particular trench were not collected but were thrown away. I was although

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present at the time of excavation but I did not raise any objection to the throwing of the bones. The excavators did not collect the bones. During excavation at the site the excavator collected bones found in northern and southern trenches but the bones found in the trench ZH-1 were not collected, rather they were thrown away. So far as I know, no one made any objection to this conduct of the excavators in throwing away the bones found in trench ZH-1." (Page 229)

3964. **PW 30 (Dr.R.C.Thakran)** on the question of bones, said:

''मुझे इस बात का ज्ञान है कि बहुत सारे उत्खनन कार्यों में हड्डियों के मिलने पर उनकी रिकार्डिंग की जाती रही है। उदाहरण स्वरूप सराय नाहर राय (उत्तर प्रदेश), दमदमा (उत्तर प्रदेश), महादहा (उत्तर प्रदेश) आदि हैं। उपरोक्त सभी जगहें जौनपुर, प्रतापगढ़ और इलाहाबाद में हैं। मैंने उपरोक्त जगहों के उत्खनन कार्यो से सम्बन्धित रिपोर्टो को अवश्य पढ़ा है। सम्बन्धित रिपोर्ट छापी गई थीं। ये सभी रिपोर्ट इलाहाबाद विश्वविद्यालय के प्राचीन भारतीय इतिहास के सांस्कृतिक एवं पुरातत्व विभाग के द्वारा प्रकाशित हुई थीं, उनके नाम मुझे याद नहीं हैं। . . अभी हाल ही में एक पुस्तक भी प्रकाशित हुई है, जिसमें उपरोक्त तीनों स्थानों से सम्बन्धित रिपोर्ट का ज़िक्र है। मुझे उस पुस्तक, उसके लेखक एवं प्रकाशक का नाम याद नहीं है।'' (पेज 138)

''I have the knowledge that discoveries of bones in so many excavations have continued to be recorded; for instance – Sarai Nahar Rai (Uttar Pradesh), Damdama (Uttar Pradesh), Mahadaha (Uttat Pradesh), etc.. All the afore-said places are in Jaunpur, Pratapgarh and Allahabad. I have certainly gone through the reports concerning excavations at the afore-said places. Concerned reports were published. All these reports were

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published by the Cultural and Archaeological wing of the Ancient Indian History Department of University of Allahabad. I do not remember the names of the magazines in which the afore-said reports were published. . . . A book has also been recently published which speaks of the reports relating to the afore-said three places. I do not remember the name of the book, its writer and publisher."(E.T.C.)

"खुदाई के दौरान जब मैं वहॉ था, वहां पर जो हड्डियॉ मिल रही थीं, उन पर कट–मार्क्स् थे और हड्डियॉ अनेक प्रकार की थीं (पतली, मोटी, सख्त, नर्म आदि) जिनको देखकर यह कहा जा सकता है कि यह हड्डियां उक्त जानवरों की हैं।" (पेज 143)

"The bones which were being discovered when I was there in course of the excavation, had cut marks and they were of several types (thin, thick, hard, soft, etc.) seeing which it can be said as to which animals these bones belong to." (E.T.C.)

"मुझे इसके सम्बन्ध में जानकारी नहीं है कि बहुत से मंदिरों के उत्खनन में एनीमल बोन्स पाये गये अथवा नहीं। मंदिरों की खुदाई की रिपोट्स में एनीमल बोन्स पाये जाने के बारे में पढ़ा है। ऐसे मंदिरों के संबंध में किसी ईदगाह या मस्जिद का कोई विवाद नहीं था। ऐसे मदिरों के उत्खनन में, जहां पर एनीमल बोन्स पाई गई, मैंने जानने का प्रयत्न नहीं किया कि उक्त स्थान पर एनीमल बोन्स क्यों थी। ऐसा कहना उचित नहीं होगा कि मैंने वादीगण के हित में गलतबयानी किया है।" (पेज 191)

"I do not know whether or not animal bones were discovered in the excavation of several temples. I have in excavation reports of the temples read about animal bones having been found. In regard to such temples, there was no dispute as to there being any Eidgah or mosque. In the excavation of those temples where animal bones were

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found, I did not try to know there were animal bones at the said places. It will not be proper to say that I have given wrong statement in favour of the plaintiffs." (E.T.C.)

"मेरे शपथ पत्र के पृष्ठ 3 प्रस्तर 5 की 11वीं लाइन में जो "व्हिच इन वल्क सीम्स टू बी शीप एन्ड गोट" लिखा है, ***वह मेरी अपनी राय है और इसका पुरातात्विक आधार भी है।*** *इस संबंध में किसी ने मुझे न राय दी थी न सूचना दी थी।* ***यह मेरा अपना निष्कर्ष है।*** *स्वयं कहा कि मैं इस तरह के पुरातात्विक अवशेषों को डील करता रहा हूँ मैंने सुअर की हड्डियों के विषय में डील नहीं किया है क्योंकि पुराइतिहास में प्रथम बार भेंड़ व बकरी, इन दो पशुओं का ही मनुष्यों द्वारा पालन शुरू किया जाना पाया गया और अपनी आवश्यकताओं की पूर्ति के लिए इन दोनों जानवरों का बड़े पैमाने पर प्रयोग होता रहा है जिसका प्रमाण विभिन्न स्थलों की खुदाइयों के दौरान मिलता रहा है।" (पेज 154)*

"The words 'which in bulk seems to be sheep and goat' written in the 11th line of para-5 on page-3 of my Affidavit, ***represent my opinion and also have archaeological basis****. In this behalf, none had given me any advice or information.* ***It is my own finding****. (Himself stated) I have been dealing with this type of archaeological remains. I have not dealt with pig bones, because the primitive history for the first time saw the rearing only of two animals, sheep and goat, by men and these two animals have continued to be in use on a large scale for fulfilment of the latter's needs. It has been in evidence during excavations at several sites." (E.T.C.)*

3965. PW 32 (Dr. Supriya Verma) on the question of bone, said:

"The bones which were referred to by me in para 11 of the affidavit were seen by me. Only by looking to the bones, I cannot identify as to which animal species the

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bone belongs because I am not a Zoo-Archaeologist. The above bones could be of any animal including dog." (Page 43)

"Merely by looking at a skeleton, one cannot say that whether the skeleton was of Hindu or of Muslim person."(Page 45)

"Bones that have been found in N.B.P.W. Gupta and post Gupta periods have been mentioned on the basis of ASI report because it says that bones have been found at all level. Bones have no relation with civilization. Bones are not associated with any particular community. Bones tell us about food habits of societies. Bones tell us about food habit of human society."(Page 50)

"When archaeologists come across animal bones which can be of domestic as well as of wild animals the inference that is made relate to the food habit of that society or one can get an idea about the fauna that might have existed at that time around that site. When archaeologists excavate and find archaeological material which can include pottery and bones inference and interpretation are made by archaeologists on the basis of the context in which these finds are exposed." (Page 50-51)

"While studying bones to ascertain the contest is important and the second step is to have the bones identified by Zoo-archaeologist." (Page 51)

"The archaeological sites that have been found in India reveal that from Palaeolithic time on wards animals have been consumed. Finding of bones has to be related to the context and the quantification of bones has also to be

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kept in mind."(Page 51-52)

"One bone can come by chance but hundreds of bones don't come by chance." (Page 52)

"Animals bones are part of archaeological evidence and have to be understood in the context in which they are being found."(Page 53)

"Q. Whether bones are found in the mosque or kept in it?

A. I have seen some ruined Mosques and I have visited once in my life Jama-Masjid in Delhi and I can not know whether bones can be found in mosque or not."(Page 53)

"Identification of bones is the subject of Zoo Archaeologist I am not a Zoo Archaeologist. I can say that bones were found during excavations but I can not identify the species to which they belong. Since I have not examined the bone I am not in a position to say whether they have cut marks or not." (Page 154)

"It is not correct to say that bones recovered during excavation at disputed site were only form dumped material; rather they were found in all levels including fill deposits." (Page 163)

"It do not agree that bones found in excavation are not a decisive piece of evidence." (Page 163)

"I completely disagree with the suggestion that animal bones are not a decisive are not a decisive piece of evidence." (Page 163)

3966. Sri M.M.Pandey arguing on this aspect submitted:

"Study of bones is important only on prehistoric sites

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where not much information is available regarding the food habit, faunal profile of the region or area and seasonality of settlement. But in this case most of the bones have come from secondary deposits and belong to the period for which most of the information regarding species and food habit of populace is known through texts and other sources. Hence no study was felt necessary.

Even if the cut marks prove that animal was eaten and it may also report the species of animal eaten, the knowledge would have proved of no use in this context as the bones do not belong to primary context and were brought from some other place where meat-eaters were settled.

Meat eating also is not restricted to any religion or creed. Presence of animal bones in any quantity does not prove habitation on the site. As has been said that the context of the find is important and the case of bones is no different from any other find from these levels (Period IV to Period IX). There has been regular raising of ground by laying of earth removed from some other place (which could have been a habitation area).

No other habitational material has been found in situ in excavation, e.g., no houses, no hearths, no baths, no latrine, not even definite house-hold pottery the so-called table ware, to make it a regular habitation site.

The objection of the plaintiffs that bones are coming from all periods and levels. Post Gupta levels onwards are not residential in nature but attest to levels with temples and these levels are supposedly stratified. Why the bones

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were found even from the central part of the alleged temple. If stratum VII contained a structure so radically different, from mosque in VIII above, why were these finds not kept separate? Hukka and chillum can we expect such finds in a temple?

3967. In any archaeological excavation, finds of animal bones are as important as other antiquities as bones tell about nature of fauna, environment and possibly food habits of a section of the society at that given period of time from where the bones have been recovered. But this all can be achieved provided the bones have been recovered from the regular layers. In this case as they have been recovered from a pit, dump or filling, they lose significance and importance.

3968. In the excavation at the disputed site, the entire collection of animal bones was recovered from the fills of different periods. Evidently, these fills were brought from the neighbouring areas to level the ground from time to time. It is but natural that fills which were brought from habitational deposits contained animal bones, hence their examination will throw light only about the area of their origin. They have no bearing on the nature of the layers of the excavated site.

3969. Moreover, it is a well known fact that in certain Hindu temples animal sacrifices are made and flesh is eaten as Prasad while bones are deposited below the floor at the site itself. Even Dr. Supriya Verma, the learned witness (P.W. 32) in her submission, stated on Page 50 “Bones have no relation with civilization. Bones are not associated with any particular community. Bones tell us about the food habits of the society…”. Another witness Dr Jaya Menon (P.W. 29) admitted

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that "It is true that in certain kind of temples animals are sacrificed" (Page 37). She clearly admitted that bones can be found at temple sites also.

> *"Mandiron ki khudai ki reports mein animal bones paaye jaane ke baare mein padhaa hai. Aisey Mandiron ke sambandh mein kisi Idgah ya Masjid ka koi vivaad nahin tha" – R.C. Thakran (P.W. 30) Page 191*

3970. One thing more we intend to notice in respect to the bones. It is not the case of the plaintiffs (Suit-4) or other witnesses that bones in such abundance could have been found in Islamic religious place i.e. Mosque, Idgah etc. The Islamic scriptures clearly show place of worship cannot be used for residence purpose or for eating, sleeping etc. It is prohibited. If that be so, the existence of bones could have been of some importance, had there been found some other material to suggest that it could have been a residential place if there would have been a dispute about the nature of habitation. One thing from all the evidence is clear that whatsoever the justification or submission has come, the attempt is on the part of Expert witnesses of plaintiffs (Suit-4) to show that under the disputed structure, there could be an Islamic religious place i.e. Mosque, Idgah. It shows that they are also aware that the underneath structure was not a non religious one. In this view of the matter also we find no substance against the complaint of the inference drawn by ASI and not paying much attention to the alleged bones which according to them were found from deposits and pits hence they are of no consequence, particularly in view of the other material suffice for them to draw a correct inference.

3971. Then come next serious objection about the "Glazed

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Wares and Glazed Tiles", the level at which they were found, and their interpretation. Para 10 (10.1 to 10.5) of the objections says:

> ***10. GLAZED WARES AND GLAZED TILES:-***
>
> ***10.1.*** *That the glazed ware, often called "Muslim" glazed ware, constitutes an equally definite piece of evidence, which militates against the presence or construction of a temple, since such galzed ware was n to at all used in temples. The ware is all pervasive till much below the level of "Floor No. 4", which floor is falsely ascribed in the Report to the "huge" structure of a temple allegedly built in the 11th - 12th centuries. The Report tells us that the glazed ware sherds only "make their appearance" "in the last phase of the period VII" (p. 270). Here we directly encounter the play with the names of periods. On page 270, Period VII is called "Medieval Sultanate", dated to 12th - 16th century A.D. But on p. 40 " Medieval-Sultanate" is the name used for Period VI, dated to 10th and 11th centuries. In Chapter V (Pottery), there is no statement made to the effect that the galzed ware appears in "the last phase of Period VII" as is asserted in the Summary. Rather, it is three definitely stated " the pottery of Medieval-Sultanate, Mughal and Late-and-Post Mughal period (Periods VII to IX)...indicates that there is not much difference in pottery wares and shapes" and that "the distinctive pottery of the periods is glazed ware: (p. 108). The placing of the appearance of Glazed ware in the "last phase" of Period VII is thus a last-minute invention in the Report, to keep its "massive" temple, allegedly built in*

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Period VII, clear of Glazed-Ware by a sleight of hand, because otherwise it would militate against a temple being built in that period. All this gross manipulation has been because the items of galzed pottery have not been attributed to their trench and stratum even in the select list of 21 items of glazed ware (out of hundreds of items actually obtained) on pages 109-111. Seeing the importance of glazed ware as a factor for elementary dating (pre or post-Muslim habitation at the site), and in view also of the Hon'ble High Court's order dated 10.4.2003 about the need for recording of glazed ware, a tabulation of all recorded galzed-ware sherds according to trench and stratum was essential. That this has been entirely disregarded shows that, owing to the glazed-ware evidence being totally incompatible with any alleged temple construction activity in Period VI, the A.S.I. has resorted to the most unprofessional act of ignoring and manipulating the archaeological finds.

10.2. *That Going by the Pottery Section of the Report (p. 108), not by its "Summary", the presence of Glazed Ware throughout Period VII (Medieval, 12th -16th centuries) rules out what is asserted on page 41, that a "column-based structure"__ (on the alleged pillar bases)___ was built in this period. How could Muslims have been using glazed ware inside a temple? (To say that glazed ware was found at Multan and Tulamba before the 13th century, is hardly germaine to the issue, since, obviously these were towns under Arab rule with Muslim settlements since 714 AD onwards, and so the use of glazed ware over there can be*

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expected.) The whole point is that glazed ware is an indicator of Muslim habitation, and is not found in medieval Hindu temples.

***10.3**. That the question whether particular sorts of glazed ware made by Muslim potters, could have been used in any medieval Hindu temple was dealt with by S.K. Mirmira, in Indian Pottery (Chanda: Gramodyaya Sangh, 1973) who states (pp. 5-7):-*

> *"India was invaded and ruled by the Moslem dynasties since 1000 AD for a few centuries and along with them they had brought certain arts and crafts. Decorative pottery was one of them. In the 12th century AD Muslim rulers had encouraged many potters from their homelands to come and settle in India. These potters especially from Persia, knew how to superimpose bluish green glaze on red clay wares.....As a result of this, the potters near Delhi have become famous for their bluish decorations.....An enthusiastic Maharaja of Rajasthan near Jodhpur brought some potters from Arab countries.....*
>
> *It is presumed that the reason for not adopting the glazing technique of Muslim craftsmen is religious; the orthodox Hindu potters did not relish the idea of learning the new technique from those who eat beef. In Khurja near Delhi there are still a few Muslim potters, descendants of the Persian settlers, who still use this technique of glazing."*

Concerning porcelain wares the author writes,

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"Indians because of religious prejudices did not like these, as they thought that bones were used in the clay for whitening the wares. Even in this day, in rural parts people call whitewares as 'farangi' .....Therefore, nobody even tried to adopt these techniques."

***10.4**. The story of Glazed Tiles is very similar. These too are in index of Muslim habitation. Yet 2 Glazed Tiles are found in layers of Period VI which means that the layers are wrongly assigned and must be dated to Period VII (Sultanate period). There could be no remains of any "huge temple" in these layers then.*

***10.5**. That On p. 163, it is mentioned that glazed tiles "mainly come from debris and dump of the disputed structure. However, some of the glazed tile pieces have also been recovered from the depth which is lower than the disputed structure but from the levels of Period VIII and IX only." These are completely false statements and show the level of inaccuracy in the Report. First of all, the glazed tiles do not come from the debris and dump of the disputed structure. The debris and dump was removed from Trenches E2, F2, G2, G5, F6, E6, D6, F3 and F4/F5 out of the excavated trenches. Glazed tiles that have been found from these trenches come from levels below the Babri Masjid floor and not from the debris of dump lying above it. Some of the debris that had rolled down the western slope, was recovered from the B and C series of trenches. Glazed tiles from this debris add up to a total of 14. Second, of the 155 pieces of glazed tiles in the tables provided by the A.S.I., 96 come form pits or fill in various*

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trenches. Of the remaining 45, 29 come from period VIII but 14 are from Medieval levels (Periods VII) and 2 from the Early Medieval level (Period VI). This has been gleaned from the table provided by the A.S.I. on pp. 164-72. Thus, the A.S.I.'s own information falsifies their claim that the glazed title pieces mainly come from Period VIII and IX.

3972. **PW 16 (Surajbhan)** on the question of Glazed Ware said:

''मुस्लिम ग्लेज्ड वेयर का प्रादुर्भाव पहली बार उस इलाकें में हुआ जहॉ उन्होंने राज्य स्थापित किया, जैसे सिन्ध और मुल्तान के क्षेत्र, किन्तु आधुनिक भारत में इस मृदभाण्ड कला का प्रयोग सल्तनत काल में प्रसारित हुआ। यह सल्तनत पीरियड 1206 ए0डी0से 1526 ए0डी0 के बीच माना जाता है।'' (पेज 214)

'' The Muslim glazed ware for the first time emerged in those areas where they established their reign such as Sindh and Multan regions. But in modern India the art of casting pots spread in the Sultanate period. This Sultanate period is taken to be spanning between 1206AD and 1526 AD.'' (E.T.C.)

''इस मुस्लिम ग्लेज्ड वेयर में नए प्रकार के चित्रण होते थे, जिनमें फ़लोरल डिजाइन, जियोमेट्रिक डिजाइंस तथा सूर्य जैसे डिज़ाइन और अरेबिक आदि लिपि के डिज़ाइन भी होते थे। इस प्रकार के ग्लेज्ड वेयर में पशु – पक्षियों तथा जानवरों के डिज़ाइन प्रायः नहीं होते थे।'' (पेज 215)

''This Muslim glazed ware had new type of designs, which included floral designs, geometric designs, sun-like designs and designs of Arabic script etc.. This type of glazed ware often did not have designs of animals and birds.'' (E.T.C.)

''यह कहना गलत है कि ग्लेज्ड वेयर का उपयोग भारतवर्ष में

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हड़प्पन काल से शुरू हो गया था। ***कुषाण काल में कुछ ग्लेज्ड वेयर इमारतों में मिले हैं जो हरे और नीले रंग के थे या नहीं यह मुझे याद नहीं है।*** *हरे व नीले ग्लेज्ड वेयर मुस्लम काल के पूर्व सीमित मात्रा में हो सकते हैं परन्तु सलतनत और मुगल काल का ग्लेज्ड वेयर का टाइप भी अलग है और इनका स्टाइल भी अलग है। स्टाइल, टाइप का प्रमुख अंग है परन्तु इसके अन्तर्गत बर्तनों के आकार (शेप्स), उनकी बनावट, मिट्टी आदि भी देखी जाती है। मीडिवल काल के ग्लेज्ड वेयर में जैसी मिट्टी का इस्तेमाल हुआ है तथा उस पर जिन विविध रंगों और ग्लेज का इस्तेमाल हुआ है वह स्पष्ट रूप से इन दोनों कालों के ग्लेज्ड वेयर को अलग कर देता है और इसमें कन्फूजन की बात ही नहीं।'' (पेज 359–360)*

"It is wrong to say that the use of glazed ware started in India from the Harappan period. ***Few glazed ware have been found in buildings of Kushana period, but I do not remember whether they were green and blue in colour.*** *Green and blue glazed ware can be in limited quantity in pre-Muslim period. However, the type and style of the glazed ware of Sultanate and Mughal period are different. The style is main part of type, but the shape, make, earth etc. are also considered in it. The type of earth used in the glazed ware of medieval period and the different colours & glaze used on it, certainly distinguishes the glazed ware of both these periods and there is no confusion in it." (E.T.C.)*

''ग्लेज्ड वेयर की ओरिजिन मुझे लगता है कि शायद चायना से हुआ है। विद्वानों का कहना है कि चीन में लगभग 1500 ई0 पूर्व ही ग्लेज्ड वेयर का निर्माण होने लगा था।'' (पेज 360)

"I feel that the glazed ware probably originated from China. The scholars claim that the production of glazed ware started in China prior to 1500 AD." (E.T.C.)

''इसका तात्पर्य यह है कि इस्लाम मत के ओरिजिन के पूर्व से ही ग्लेज्ड वेयर तकनीक शुरू हो गया था। *. . .वास्तव*

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में इसे मुस्लिम ग्लेज्ड वेयर इसलिए कहा गया है क्योंकि मध्यकाल में यह तकनीक इस्लामिक देशों में व्यापक तौर पर प्रचलित हो गयी, इसका फेलाव उधर से ही भारत जैसे देशो की तरफ भी हुआ।'' (पेज 361)

*''**It implies that the glazed ware technique was in place prior to origin of Islam faith**. . .Actually it has been called Muslim glazed ware only in view of the fact that in the medieval period this technique was widely prevalent in the Islamic countries and it expanded from there towards countries like India.'' (E.T.C.)*

''महत्वपूर्ण यह है कि उत्तर भारत में ग्लेज्ड वेयर मुस्लिम शासकों के आने के साथ अर्थात् सलतनत काल में व्यापक तौर पर आया। यहॉ यह ग्लेज्ड वेयर एक काल विशेष को निर्धारित करता है।'' (पेज 361)

'' The important fact is that the glazed ware widely entered northern India along with the advent of Muslim rulers or from the Sultanate period. The glazed ware here determines a particular period.'' (E.T.C.)

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*''मैंने चीनी यात्री ह्वेनसांग का नाम सुना है। **मुझे यह जानकारी नहीं है कि ह्वेनसांग ने अपनी यात्रा वृतांत में उत्तर भारत में भवनों की छत व मंदिरों की छत में टाईल्स लगे होने की बात कही है या नहीं** मैंने कुषाण काल में कोई ग्लेज्ड वेयर ऐसा नहीं पढ़ा जो हिन्दू मंदिरों में मिला हो।'' (पेज 362)*

*''I have heard about Chinese traveller Hiun-Tsiang. **I have no knowledge whether in his memoirs, Hiun-Tsiang has mentioned about use of tiles in the roofs of buildings & temples in north India, or not.** I have not read about any glazed ware of the Kushana period, which has been found in Hindu temples.''(E.T.C.)*

3973. **PW-29 (Jaya Menon)** on this aspect said:

''I do not agree with ASI report that glazed tiles were used for the first time from Kushan period in India. I do not

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agree with the opinion f the ASI recited in para 2 at page 163 which reads as follows:

*"**Although, use of glazed tiles in India can be traced back to the early centuries of Christian era when the Kushans introduced them,** the tiles, under study at present, most probably belong to the original construction of the disputed structure." (Page 225)*

3974. PW 30 (Dr. R.C.Thakran) on this aspect said:

"मेरे शपथ पत्र के प्रस्तर 6 में मुस्लिम ग्लेज्ड वेयर कहा गया है। इसे इसलिए कहा गया है कि चूंकि यह ग्लेज्ड वेयर मुस्लिमों के साथ ही भारतवर्ष में आया था। ऐसा कहना सही नहीं है कि मृद्भाण्ड बनाने की कला भारतवर्ष से ही शुरू हुई थी, अर्थात् यह भारतवर्ष की ही कला है। भारतवर्ष में बर्तन बनाने की कला जो शुरू हुई, वह प्राचीनतम नहीं है इससे पहले दूसरे देशों में भी बर्तन बनाने की शुरूआत हो चुकी थी। हमारे पास ऐसी कोई जानकारी नहीं है कि जिसके आधार पर यह कहा जा सके कि भारत में बर्तन बनाने की कला का प्रारम्भ अरब देश से पहले हो चुका था।" (पेज 124)

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"Para 6 of my Affidavit speaks of the Muslim glazed ware. It is so termed because this glazed ware came to India only along with Muslims. It is not true to say that the art of making pottery originated only from India, that is to say, it is an art only of India. The art of making utensils which began in India, is not oldest. Before it the art of making utensils had begun in other countries. I do not have any knowledge enabling me to say that the art of making utensils had begun in India before Arabian countries."(E.T.C.)

Glazed tiles

"मैंने अपने शपथ–पत्र के प्रस्तर 8 की दूसरी लाईन में ग्लेज्ड टाईल्स के बारे में कहा है। यह खास तरह की टाईल्स हैं। और एक विशेष

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तकनीक से बनायी जाती हैं। इस तकनीक का भारत में प्रचलन मुसलमानों के आने के साथ ही हुआ है। टाईल्स, खपड़ा नहीं होता था, बल्कि पक्की मिट्टी की बनायी जाती हैं और उसे किसी खास तकनीक से ग्लेज्ड किया जाता है और अगर टाईल्स को सिर्फ पकाया जाये और ग्लेज्ड न किया जाये तो उसे टेरीकोटा टाईल्स ही कहा जायेगा।'' (पेज 126)

"I have referred to glazed tiles in the second line of para-8 to my Affidavit. These are tiles of a particular type and are made with a particular technique. The prevalence of this technique in India began with the advent of the Muslims. Tiles were not 'Khapda' (earthen tiles); rather, they are made of baked earth and are glazed with a particular technique. If the tiles are only baked but not glazed they will only be called terracotta tiles." (E.T.C.)

3975. **PW- 32 (Dr. Supriya Verma)** said:

*"**I agree that the glazed wares have been found in Kushan period** but the glazed ware of Kushan period are different from the glazed ware associated with later period. It differs both in terms of chemical and physical composition and appearance." (Page 164)*

"I cannot say as to whether glazed tiles are used in Hindu building in Gwalior Fort. I am also not aware that in Gwalior Fort, Hindu deities are depicted in such glazed titles. I am not aware whether pre-Islamic Persina people were using glazed tiles and glazed wares or not." (Page 164)

"Q. There is no contemporary sources to throw light on the production technique of glazed tiles and glazed wares?

A. I am not expert of Arabic and Persian and therefore, I have not examined the sources and therefore, I

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am not in a position to say as to whether any description of production technique is there or not." (Page 164)

3976. Sri Pandey on the contrary in his written argument submitted:

> The objection of the plaintiffs that the glazed pottery often called "Muslim" glazed ware militates against the presence or construction of a temple. A tabulation of recorded glazed ware sherds according to trench and stratum was essential.... which has been entirely disregarded. How could Muslims have been using glazed ware inside a temple.
>
> The tradition of glazing of pottery dates back to Harappan culture (2500 – 1500 B.C.) and since then it was known. During Kushan period it was a very popular ware. Gradually the tradition of glazing was lost from India but soon its imports were coming from Persia, Iran and China, where this ware has found favour. This ware is known as Indo-Sassanian Glazed ware, as it was in vogue during the Sassanian rule and later the muslims adopted it (**K. K. Mohamad; "Glaze Ware in India"** published in Puratattva No. 15 p. 105-110).
>
> Pottery of any kind is neither Hindu nor Buddhist nor even muslim except some ritual pots which are used in rituals of particular religion. To demarcate pottery ware on religious lines speaks volumes about the oriented mindset only.
>
> A tabulation of glazed ware is maintained in the day-to-day basis according to trench and stratum in the day-to-day register.

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Glazed ware has been found mainly from the secondary deposits and not from primary context. The record of the glazed ware in the Day-to-Day register mentions their primary occurrence and tentative layer and depth. The layer identification on day-to-day basis is never final and is liable to change as the identification of pits and disturbances could not be finalized on the very day, but the records could not be changed.

Secondly, a ware has no religion and it transgresses the religious boundary.

The objection of the plaintiffs that Glazed tile are also similarly an index of Muslim habitation. 29 tiles come from Period VIII and 14 from Period VII. One decisive piece of evidence, which entirely negates the possibility of a temple, is that of bones. The statement that the site was not a habitation site from the Period IV onwards upto Period IX stands belied and negated by the animal bone evidence.

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In this connection it may be submitted that at Shah-ji-Dheri, the Buddhist structure used even glazed tiles. Huein T'sang had seen many places in north India where coloured tiles were used in the roof.

It appears that the Objector has not cared to read the table from pages 164 to 172 in the context of Chapter III "Stratigraphy and Chronology" specially from pages 45 to 47, wherein the disturbances in stratigraphy has been elaborately dealt with. Not a single tile is from confirmed primary context.

3977. For our purposes we do not find that this aspect can

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have any material impact on the question which was required to be reported by ASI and it has returned the same in the form of its report. One thing is very clear that the disputed structure was not raised on a vacant or unoccupied or a virgin land but the land in question was in frequent use for several centuries continuously having structures relating to different periods. As we have already discussed, attempt on the part of the Expert (Archaeologist) witnesses of plaintiffs (Suit-4) who described the underneath structure as a Idgah or Kanati mosque makes it very clear that the structure underneath is non religious one but it was a place connected with religious purposes. This is suffice to draw inference that there was a structure over land in question where disputed structure was constructed and that structure related to religious purposes and not non-religious purposes. Then only thing which was to be seen, whether it could be a temple or not. By the process of elimination since it was never a case of Muslim parties that there existed any Islamic religious structure at the place in dispute before construction of the disputed structure or that there existed a religious structure other than Hindus, it leads to an inference as suggested by ASI and mere titbits and minor infirmities in it, even it exist, in our view, are of no consequence, if any.

3978. Then there are some objections with respect to "Pottery", "Inscriptions" and under the general heading of "Other Contradictions and Discrepancies" as under:

> ***12. POTTERY***
>
> ***12.1*** *That in Chapter V on Pottery, it is highly significant that the pottery of Periods VII, VIII and IX is all described together (see pp. 108-120). If stratum VII contained a*

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structure so radically different from the mosque in VIII above, why were their finds not kept seperate ?

12.2. *That moreover, it is stated (p. 108) that the pottery of Periods VII, VIII and IX is combined together because "there is not much difference" in either wares or shapes. Thus the pottery of an insinuated "temple" structure is said to be of the same types as that of a mosque! Incidentally, chillium and hukka pieces are also recorded in this combined batch of pottery (p. 115). Can we expect such finds in a temple?*

13. INSCRIPTIONS :-

13.1. *That the short report on Inscriptions(on pages 204-06), one of which is in Nagari, and two are in Arabic, show how casual and preconceived in its notions was the A.S.I. The first is not to be dated with any certitude to the 11th century: its time range could be 7th -12th centuries; and it could be a Pala record of a Buddhist provenance--- a piece of evidence negativing the presence of a Hindu temple. On purely palaeographic grounds, the Arabic inscriptions can be dated to the 13th century with as much reason as to the 16th century.*

13.2. *That the so- called "Nagari" inscription has only five letters whose right- ward sloping limes in their lower portion proclaim their affinity to the Siddhamatrika script, 7th -12th centuries, out of which the Devanagari script has originated. Five letter are not sufficient to declare the letters as belonging to the 11th century(where the A.S.I. places construction of the "huge" temple. (See for the Sidhamatrika script and characters __ Richard Salomon,*

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Indian Epigraphy, New Delhi, 1998,pp.32, 39-41). Thus the time -range of the inscription should be 7th -12th centuries. The decipherment is also hasty. The reading of the character next to la is ja(With a as in "jar"), not simple Ja with 'a' as 'u' in "judge" . Further the A.S.I. should have asked itself about the suffix pala, which suggests a possible reference to one of the Pala rulers of Bengal and Bihar(8th -11th centuries)who also held eastern U.P. (as shown by an inscription at Sarnath),and used the Siddhamatrika Script. Their well-known patronage of Buddhism seems to be sole reason why the A.S.I. has avoided any further enquiry into the name -Pala found in this inscription.

13.3. *That the bias of the A.S.I. is again manifest in how the two Arabic inscriptions found in the debris of the Mosque, are dealt with in the Report, (pages 205-6), with Plates 91 and 92. The A.S.I. epigraphist dates them both to the early sixteenth century, alleged on the basis of the naksh characters employed. He gives no reason why the writing cannot be dated earlier, or placed within a larger range, say 13th - 18th century. In this respect reference may be given to the inscriptions on fronts of the Qutub Minar and the tomb of Iltutamish, both belonging to the first half of the 13th century(given in Tatsuro yanamoto, et al., Delhi:Architectural Remains of the Delhi Sultanate Period,Tokyo, 1967,Plates 2b,6b). It will be seen that the naskh is of the same style. Clearly, the A.S.I. epigraphist has not even considered the possibility of an earlier date, because he know he was expected to hold that all mosque materials must be dated to 1528, so that there be no*

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thought that anything could belong to an earlier mosque/Eidgah on the site.

13.4. *That the floral design of the stone slab in which the word "Allah" has been carved(Plate 92) should show to everyone how absurd it is to take a floral motif as a sure sign of a temple!*

14. Other Contradictions and Discrepancies *:-*

14.1. *That there appears to be considerable confusion on the point as to when structural activity first began at the site. For example, on p.37 it is mentioned that, "the site had seen successive structural activities which began from the middle of the Kushan level(Period III)." On p.38 in the section on the Period II (Sunga level) it is mentioned that, "it is this period that the site witnessed first structural activity in stone and brick, as noticed in J3."*

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14.2. *That the descriptive term used for certain periods changes from one chapter to another. For example, in Chapter III (Stratigraphy and Chronology), Period VI is described as the Medieval-Sultanate level. In the same chapter, the tentative periodization and schematic cross-section of the mound describes the period as Early Medieval-Sulanate. However, in Chapter V(Pottery) and Chapter X(Summary of Results) this same period is described as Early Medieval. In Chapter X, this period also described as Early Medieval -Rajput. Period VII in Chapter III is described as Medieval but in Chapter V and Chapter X, it is described as Medieval Sultanate.*

14.3. *That on p.44,it is stated that, "no deposit contemporary to Mughal period exist on the mound*

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presently." The next page (45) it points out that the last two periods (Mughal and Late Post Mughal) are only represented by structural activities. Further, on p.271,the Report points out that, "there is an increase in contemporary archaeological material including pottery in the Mughal period.

14.4. *That on page 41, it is mentioned that the earliest floor extended in the eastern area up to the H series of trenches in sub-period VIIA. In sub -period VIIB, the next floor extended up to trenches J4-J5-J6. On p.42, it is indicated that in sub-period VIIC, the floor associated with the "pillar bases" is the most extensive on the mound. In Fig.23A, however, Floor 4(the said earliest floor) is shown as extending all over the mound while Floor 3 and 2 are more restricted providing a complete contradictory picture.*

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14.5. *That In Chapter III, on p.42, Period VII is described thus:"Total deposit of this period is approximately 50 to 60 cm thick which includes layers 1 and 2 in almost all the trenches except those in the eastern area where the deposit was disturbed by the construction in the later periods and in the northern area where the floor of the Period VIIC remained exposed and under use till late." However, according to the tentative periodization and schematic cross-section in the southern area layer 1 is shown to be clearly belonging to the Mughal period. So does layer 1 in the southern area belong to Period VII or VIII?*

14.6*. That on p. 44, while discussing Period IX (Late and Post Mughal level), it is mentioned that first a partition wall was added and later an enclosure wall was built for*

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the complex. However, it is well known that the Babri Masjid was built with an enclusure wall and around the mid-19th century, the area of the Babri Masjid was partitioned with a wall.

14.7. *That on the same page (p.44) and on pp. 70 and 270 it is mentioned that there were burials in the late and post Mughal period (Period IX) in the north and south that have cut the top floors and were sealed by layer 1. According to the A.S.I.'s own admission,on p.42, layer 1 in the southern area is supposed to be of the medieval period while in the schematic cross-section and tentative periodization, layer 1 is of the Mughal period. Therefore, if these burials are sealed by layer 1, then either they belong to the medieval period (Period VII-12th to 16th centuries) or to the Mughal period (period VIII). It may be pointed out that it is in the former period that the alleged temple supposedly stood here.*

14.8. *That the tabulation of the "pillar bases" from pp. 56-67 mentions the floors on which they rest and in some cases to which they are contemporary. However, the floor numbers do not tally with the information provided in Appendix IV at the end of the text. For example, "pillar base" 22 on pp. 60-61 is indicated as resting on Floor 4 but on p.6 of the appendix, there is no Floor 4 in Trench F2. This discrepancy has been found in 21 cases out of 50.*

14.9. *That the tabulation of stone architectural fragments, in Chapter VI, also includes non-architectural members like S.No. 3(saddle), S.No. 20(bowl), S.No.48(pestle), S.No.51(pestle), S.No.76 (diya), S.No.78(pestle), S.No.81*

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(elephant), S.No.90(muller) and S.No. 145(dish). These, if of stone, should have been described in Chapter IX, on miscellaneous objects."

3979. The report of the Archaeological Survey of India, which is a report of an expert in excavation, contains all the details including details of stratigraphy, artifacts, periodisation as well as details of structures and walls. The pillar bases mentioned in the report establish beyond all doubt the existence of a huge structure. In addition to above, existence of circular shrine, stone slabs in walls with Hindu motifs and more particularly sign of Makar Pranal in wall No. 5 (wall of disputed structure), divine couple and other temple materials, etc., conclusively proves the existence of a hindu religious structure beneath the disputed structure. It is generally admitted by the witnesses that the excavation was conducted as per settled norms of archaeology in presence of parties, experts and observers and three dimensional recording, photography, videography of each and every trench, structure, artifacts, were done by the ASI during excavation in presence of all concerned. Day-to-day register, supervisor's diary and antiquity register were being regularly maintained.

3980. There are some more objection which we find not much of worth for the reason that the experts of Muslim parties ultimately, realizing that structure existed underneath the disputed building, hence they made out a new case in their statement. However, a new stand which is not the case of the plaintiff, not pleaded is not permissible.

3981. In **Ram Sarup Gupta Vs. Bishun Narain Inter College & others AIR 1987 SC 1242**, it was held:

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"It is well settled that in the absence of pleading, evidence, if any, produced by the parties cannot be considered. It is also equally settled that no party should be permitted to travel beyond its pleading and that all necessary and material facts should be pleaded by the party in support of the case set up by it. The object and purpose of pleading is to enable the adversary party to know the case it has to meet. In order to have a fair trial it is imperative that the party should state the essential material facts so that other party may not be taken by surprise. The pleadings however should receive a liberal construction, no pedantic approach should be adopted to defeat justice on hair splitting technicalities. Sometimes, pleadings are expressed in words which may not expressly make out a case in accordance with strict interpretation of law, in such a case it is the duty of the Court to ascertain the substance of the pleadings to determine the question. It is not desirable to place undue emphasis on form, ***instead the substance of the pleadings should be considered. Whenever the question about lack of pleading is raised the enquiry should not be so much about the form of the pleadings, instead; the court must find out whether in substance the parties knew the case and the issues upon which they went to trial.*** *Once it is found that in spite of deficiency in the pleadings parties knew the case and they proceeded to trial on those issues by producing evidence, in that event it would not be open to a party to raise the question of absence of pleadings in appeal."*

3982. **PW-16 (Surajbhan)** formed his opinion in advance

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before the receipt of the ASI report and sought to explain that underneath the disputed building there appears to be an Islamic structure existing like Idgah and Kanati mosque. His statement on page 446, 521 and 527 is as under:

''यह सही है कि कुछ इश्यूज़ पर मैंने अपने विचार ए0एस0आई0 की रिपोर्ट के न्यायालय में प्रस्तुत होने के पहले अपनी जानकारी के आधार पर अपने निष्कर्ष निकाले और विचार व्यक्त किये।'' (पेज 446)

"It is true that my conclusions and views on certain issues are based on my knowledge existing prior to the submission of ASI's report in court." (E.T.C.)

''ए0एस0आई0 की इस मामले में रिपोर्ट आने के पश्चात् मैंने तथा प्रो0 इरफ़ान हबीब ने यह बात आने पर कि विवादित स्थल पर मन्दिर के अवशेष मिले हैं, यह वक्तव्य दिया था कि विवादित स्थल पर नीचे पुरानी मस्जिद या ईदगाह के अवशेष मिले हैं न कि मन्दिर के। अगर यह प्रोपोगैण्डा न होता कि विवादित स्थल पर मन्दिर के अवशेष मिले हैं, तो मुझे व प्रो0 इरफ़ान हबीब को उपरोक्त वक्तव्य देने की आवश्यकता नहीं थी।'' (पेज 521)

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"Consequent to submission of ASI's report in the matter and the claim that remains of temple were found at the disputed site, I and Prof. Irfan Habib had given this statement that remains of old mosque or Eidgah had been found beneath the disputed site and not of any temple. If this propaganda that remains of temple were found at the disputed site, had not taken place, there would have been no occasion for me and Prof. Irfan Habib to give the above statement." (E.T.C.)

''मेरा विचार है कि विवादित भवन के नीचे दो स्ट्क्चर्स वाल नं0 16 व वाल नं0 17 से संबंधित भवन सल्तनत काल के थें जो किसी इस्लामिक स्ट्क्चर्स रहे होंगे, जैसे ईदगाह या क़नाती मसिजद आदि–आदि।.. . . .यह दोनों दीवारें किसी हिन्दू भवन की मालूम नहीं होती थीं, बल्कि सल्तनत

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पीरियड के किसी मुस्लिम भवन की रही होंगी।'' (पेज 527)

"In my view the buildings related to wall nos. 16 & 17, the two structure beneath the disputed structure, were of the Sultanate period and must have been some Islamic structures such as Eidgah or Kanati mosque etc.. . . . . Both these walls do not appear to be of some Hindu building and instead must have been of some Muslim building of the Sultanate period." (E.T.C.)

3983. Similarly, **PW-29 (Jaya Menon)** on page 157 said:

"It was Dr. Supriya Varma and myself, who, for the first time, said that there was an Idgah under the disputed structure. I did not know that the plaintiffs of OOS no. 4 of 1989 had not claimed any Idgah under the disputed structure." (Page 157)

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3984. **PW-30 (Dr. R.C.Thakaran)** on page 169 said:

"विवादित स्थल पर मई सन् 2003 में खुदाई के दौरान मुझे यह ज्ञात हुआ कि विवादित स्थल के नीचे मस्जिद/ईदगाह थी। खुदाई के दौरान दीवार को देखने से तथा ए0एस0आई0 की रिपोर्ट देखने से मुझे ऐसा लगा कि बाबरी मस्जिद या उसके पूर्व की मस्जिद/ईदगाह बनाने में जो मैटीरियल पुनः प्रयोग में लाया गया है, वह कहीं आस–पास से लाकर इस्तेमाल किया गया है।'' (पेज 169)

"In 2003, in course of excavation at the disputed site, I came to know that there was a mosque/Eidgah beneath the disputed site. Seeing the wall in course of the excavation and going through the ASI report, it seemed to me that the materials reused in the construction of the Babri masjid or its prior mosque/Eidgah, had been brought from somewhere nearby and then used." (E.T.C.)

3985. It is true that all these experts were representing, in fact, a particular party, they were all, in one or the other manner

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connected with each other. The statement of PW-32 (Dr. Supriya Varma) is:

> *"I have done my Ph. D. under Prof. Shereen Ratnagar." (Page 72)*
>
> *"All these chapters on archaeology were written by me and Dr. Jaya Menon." (Page 73)*
>
> *"Both Dr. Jaya Menon and myself are archaeologist by specialization. Dr. Jaya Menon and I are equally competent." (Page 74)*
>
> *(**Note**: Shereen Ratnagar is PW-27)*

3986. Normally, it does not happen but we are surprised to see in the zeal of helping their clients or the parties in whose favour they were appearing, these witnesses went ahead than what was not even the case of the party concerned and wrote totally a new story. Evidence in support of a fact which has never been pleaded and was not the case of the party concerned is impermissible in law. Suffice it to mention at this stage that even this stand of these experts make it clear that the disputed structure stood over a piece of land which had a structure earlier and that was of religious nature. Minor mistakes and irregularities in ASI report, if any, do not shake the basic finding that the disputed structure claimed was not raised on a virgin land or unoccupied land but there existed a structure and using some part thereof either in the form of foundation or using the material thereof, the disputed structure was created. Whether lime mortar or lime plaster from a particular period or not, whether glazed ware were Islamic or available in Hindustan earlier are all subsidiary questions particularly when this much at least came to be admitted by the experts of the objectionists

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parties i.e. the plaintiffs (Suit-4) that there existed a structure, walls etc. used as foundation walls in construction of the building in dispute and underneath at least four floors at different levels were found with lots of several other structures.

3987. In these circumstances, now it would be appropriate to refer to the finding of ASI in Chapter 10 under the heading **"Summary of Results":**

> *"Excavation at the disputed site of Rama Janmabhumi - Babri Masjid was carried out by the Archaeological Survey of India from 12 March 2003 to 7 August 2003. During this period, as per the directions of the Hon'ble High Court, Lucknow, 82 trenches were excavated to verify the anomalies mentioned in the report of the Ground Penetrating Radar Survey which was conducted at the site prior to taking up the excavations. A total number of 82 trenches along with some of their baulks were checked for anomalies and anomaly alignments. The anomalies were confirmed in the trenches in the form of pillar bases, structures, floors and foundation though no such remains were noticed in some of them at the stipulated depths and spots. Besides the 82 trenches, a few more making a total of 90 finally were also excavated keeping in view the objective fixed by the Hon'ble High Court to confirm the structures.*
>
> *The results of the excavation are summarized as here under:*
>
> *The northern Black Polished Ware (NBPW) using people were the first to occupy the disputed site at Ayodhya. During the first millennium B.C. although no*

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structural activities were encountered in the limited area probed, the material culture is represented by terracotta figurines of female deities showing archaic features, beads of terracotta and glass, wheels and fragments of votive tanks etc. The ceramic industry has the collection of NBPW, the main diagnostic trait of the period besides the grey, black slipped and red wares. A round signet with legend in Asokan Brahmi is another important find of this level. On the basis of material equipment and 14 C dates, this period may be assigned to circa 1000 B.C. to 300 B.C.

The Sunga horizon (second-first century B.C.) comes next in the order of the cultural occupation at the site. The typical terracotta mother goddess, human and animal figurines, beads, hairpin, engraver etc. represent the cultural matrix of this level. The pottery collection includes black slipped, red and grey wares etc. The stone and brick structure found from this level mark the beginning of the structural activity at the site.

The Kushan period (first to third century A.D.) followed the Sunga occupation. Terracotta human and animal figurines, fragments of votive tanks, beads, antimony rod, hair pin, bangle fragments and ceramic industry comprising red ware represent the typical Kushan occupation at the site. Another important feature of this period is the creation of large sized structures as witnesses by the massive structure running into twenty-two courses.

The advent of Guptas (fourth to sixth century A.D.) did not bring any qualitative change in building activity although the period is known for its Classical artistic

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elements. However, this aspect is represented by the typical terracotta figurines and a copper coin with the legend Sri Chandra (Gupta) and illustrative potsherds.

During the Post-Gupta-Rajput period (seventh to tenth century A.D.), too the site has witnessed structural activity mainly constructed of burnt bricks. However, among the exposed structures, there stands a circular brick shrine which speaks of its functional utility for the first time. To recapitulate quickly, exteriorly on plan, it is circular whereas internally squarish with an entrance from the east. Though the structure is damaged, the northern wall still retains a provision for pranala, i.e., waterchute which is a distinct feature of contemporary temples already known from the Ganga-Yamuna plain.

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Subsequently, during the early medieval period (eleventh - twelfth century A.D.) a huge structure, nearly 50 m in north-south orientation was constructed which seems to have been short lived, as only four of the fifty pillar bases exposed during the excavation belong to this level with a brick crush floor. On the remains of the above structure was constructed a massive structure with at least three structural phases and three successive floors attached with it. The architectural members of the earlier short lived massive structure with stencil cut foliage pattern. And other decorative motifs were reused in the construction of the monumental structure having a huge pillared hall (or two halls) which is different from residential structures, providing sufficient evidence of a construction of public usage which remained under existence for a long time

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during the period VII (Medieval-Sultanate level - twelfth to sixteenth century A.D.) It was over the top of this construction during the early sixteenth century, the disputed structure was constructed directly resting over it. There is sufficient proof of existence of a massive and monumental structure having a minimum dimension of 50x30 m in north-south and east-west directions respectively just below the disputed structure. In course of present excavations nearly 50 pillar bases with brick bat foundation, below calcrete blocks topped by sandstone blocks were found. The pillar bases exposed during the present excavation in northern and southern areas also give an idea of the length of the massive wall of the earlier construction with which they are associated and which might have been originally around 60 m (of which the 50 m length is available at present). The centre of the central chamber of the disputed structure falls just over the central point of the length of the massive wall of the preceding period which could not be excavated due to presence of Ram Lala at the spot in the make-shift structure. This area is roughly 15x15 m on the raised platform. Towards east of this central point a circular depression with projection on the west, cut into the large sized brick pavement, signify the place where some important object was placed. Terracotta lamps from the various trenches and found in a group in the levels of Periods VII in trench G2 are associated with the structural phase.

In the last phase of the period VII glazed ware sherds make their appearance and continue in the succeeding

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levels of the next periods where they are accompanied by glazed tiles which were probably used in the original construction of the disputed structure. Similarly is the case of celadon and porcelain sherds recovered in a very less quantity they come from the secondary context. Animal bones have been recovered from various levels of different periods, but skeletal remains noticed in the trenches in northern and southern areas belong to the Period IX as the grave pits have been found cut into the deposition coeval with the late disputed structures and are sealed by the top deposit.

It is worthwhile to observe that the various structures exposed right from the Sunga to Gupta period do not speak either about their nature or functional utility as no evidence has come to approbate them. Another noteworthy feature is that it was only during and after Period IV (Gupta level) onwards upto Period IX (late and post Mughal level) that the regular habitational deposits disappear in the concerned levels and the structural phases are associated with either structural debris or filling material taken out from the adjoining area to the level the ground for construction purpose. As a result of which much of the earlier material in the form of pottery, terracottas and other objects of preceding periods, particularly of Period I (NBPW level) and Period III (Kushan level) are found in the deposits of later periods mixed along with their contemporary material. The area below the disputed site thus, remained a place for public use for a long time till the Period VIII (Mughal level) when the disputed

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structure was built which was confined to a limited area and population settled around it as evidenced by the increase in contemporary archaeological material including pottery. The same is further attested by the conspicuous absence of habitational structures such as house-complexes, soakage pits, soakage jars, ring wells, drains, wells, hearths, kilns or furnaces etc. from Period IV (Gupta level) onwards and in particular from Period VI (Early Medieval-Rajput level) and Period VII (Medieval-Sultanate level).

The site has also proved to be significant for taking back its antiquarian remains for the first time to the middle of the thirteenth century B.C. (1250±130 B.C.) on the analogy of the C14 dates. The lowest deposit above the natural soil represents the NBPW period and therefore the earliest remains may belong to the thirteenth century B.C. which is confirmed by two more consistent C14 dates from the NBPW level (Period I), viz. (910±100 B.C.) These dates are from trench G7. Four more dates from the upper deposit though showing presence of NPBW and associated pottery are determined by Radio-Carbon dating as 780±80 B.C., 530±70 B.C. And 320±80 B.C.. In the light of the above dates in association with the Northern Black Polished Ware (NBPW) which is generally accepted to be between circa 600 B.C. to 300 B.C. it can be pushed back to circa 1000 B.C. and even if a solitary date, three centuries earlier is not associated with NBPW, the human activity at the site dates back to circa thirteenth century B.C. on the basis of the scientific dating method providing

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the only archaeological evidence of such an early date of the occupation of the site.

The Hon'ble High Court, in order to get sufficient archaeological evidence on the issue involved "whether there was any temple/structure which was demolished and mosque was constructed on the disputed site "as stated on page 1 and further on p.5 of their order dated 5 march 2003, had given directions to the Archaeological Survey of India to excavate at the disputed site where the GPR Survey has suggested evidence of anomalies which could be structure, pillars, foundation walls, slab flooring etc. which could be confirmed by excavation. Now, viewing in totality and taking into account the archaeological evidence of a massive structure just below the disputed structure and evidence of continuity in structural phases from the tenth century onwards upto the construction of the disputed structure alongwith the yield of stone and decorated bricks as well as mutilated sculpture of divine couple and carved architectural members including foliage patterns, amalaka, kapotapali doorjamb with semi-circular pilaster, broken octagonal shaft of black schist pillar, lotus motif, circular shrine having pranala (waterchute) in the north, fifty pillar bases in association of the huge structure, are indicative of remains which are distinctive features found associated with the temples of north India."

3988. It is contented that the ASI report does not answer the question framed by this Court, inasmuch as, neither it clearly says whether there was any demolition of the earlier structure if existed and whether that structure was a temple or not.

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3989. In our view, the conclusion drawn by the ASI in the project accomplished within an extra-ordinary brief period and with such an excellence precision and perfection deserve commendation and appreciation instead of condemnation. It normally happens when an expert body tender an opinion, the party, who finds such opinion adverse to its interest, feels otherwise and try to rid of such opinion by taking recourse to all such measures as permissible but in the present case we hoped a better response particularly when the expert body involved is a pioneer and premier archaeological body of this country having International repute. We are satisfied that the report of ASI not only deserve to be accepted but it really helps this Court in forming its opinion on an important issue in this regard. All the objections against ASI, therefore, are rejected.

3990. ASI, in our view, has rightly refrained from recording a categorical finding whether there was any demolition or not for the reason when a building is constructed over another and that too hundreds of years back, it may sometimes be difficult to ascertain as to in what circumstances building was raised and whether the earlier building collapsed on its own or due to natural forces or for the reason attributable to some persons interested for its damage. Sufficient indication has been given by ASI that the building in dispute did not have its own foundation but it was raised on the existing walls. If a building would not have been existing before construction of the subsequent building, the builder might not have been able to use foundation of the erstwhile building without knowing its strength and capacity of bearing the load of new structure. The floor of the disputed building was just over the floor of earlier

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building. The existence of several pillar bases all show another earlier existence of a sufficiently bigger structure, if not bigger than the disputed structure then not lessor than that also.

3991. Learned counsel for the plaintiffs (Suit-5) vehemently contended that the disputed structure (hereinafter referred to as "DS") was raised after demolishing a Hindu temple at the site in dispute, which was believed to be a birthplace of Lord Rama in the light of the various evidence collectively taken into consideration as under:

I. *The existence of Hindu Temple at the site of DS is indicated in Historical Sketch of Faizabad, 1870, by P. Carnegy Commissioner/Settlement Officer Oudh (paper no 3 of Ramlala's Documents, Ext. OOS 5: 49) which mentions 3 important Hindu* ***Shrines*** *'at the time of Mohammedan conquest', namely Janmasthan, Swargadwar & Treta-ka-Thakur and that at Janmasthan Emperor Babar built the Mosque (page 21). Mention of Janmasthan to be a Shrine indicates pre-existence of a Hindu Temple at the site of DS. Oudh Gazetteer of 1877 (Ext. OOS 5: 7), Millet's Report of 1888 (Ext. OOS 5: 8), Archaeological Survey of NWP and Oudh of 1889 (OOS 5: Paper 107C1/31-32), Fuhrer's account of 1891 (Ext. OOS 5: 9) and Imperial Gazetteer of 1901 (Ext. OOS 5:10), all mention pre-existence of a Hindu Temple at the site of DA.*

II. *Further recovery of the large Stone-Slab, 115 cm X 55 cm (vide Report dated 3.2.2002 Ext. OOS 5-2, of OTW 10) containing a 20 line Inscription of a Vishnu-Hari Temple. Recovery of the Stone-Slab was proved by OPW 8 Ashok Chatterji. Contents of this Inscription were proved*

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by OPW 10 Dr. K.V.Ramesh, Director Epigraphy of Govt. of India/Joint Director Archaeological Survey of India. The Inscription describes construction of Vishnu-Hari Temple by Anay Chand a Governor of King Govind Chand of Gahadwal Dynasty and Dr. K.V.Ramesh proved that the period of the inscription must be around 12th Century AD. Govind Chand was the ruler of Gahadwal dynasty from 1110 to 1156 (vide Dr. Bishan Bahadur DW 13/1-3). The recovery of this stone slab is reminiscent of recovery of another stone slab from the ruins of a mosque erected by Aurangzeb known as Treta-ka-Thakur Masjid at the site of Treta-ka-Thakur Mandir in Ayodhya; the inscription on that stone slab is dated Samvat 1241 (=1184 AD) of the times of ***King Jai Chand of Kannauj*** *and records praises of Jai Chand for erecting a Vaishnav Temple (See paper nos 6 and 7 – of 1889 & 1891 - of Ramlala's documents Ext. OOS 5: 8 & 9). The significance is that the stone slab affixed to Treta-ka-Thakur Mandir was used in the structure of Masjid erected in place of the Mandir. It is quite probable that Stone-Slab recovered from DS belonged to Hari-Vishnu Temple that stood at the site of DS hence was made use of in constructing DS; after all the builder would have needed big stones – and this Stone-Slab, 115 cm X 55 cm could easily be one. Further, admittedly 14 Kasauti Pillars bearing carved figures of Hindu gods & goddesses, standing/supporting portions of Babri Masjid structure were seen by Faizabad Civil Court Commissioner, Shiv Shanker Lal, on inspection in April 1950.*

III. *The findings of ASI Report must be appreciated in the*

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light of a most important factual & legal angle of the Parties' Case. This litigation commenced in 1950. From the very beginning, it has been the case of Hindu Parties that at the spot of Babri Masjid, there had existed a Temple and that the Masjid was erected at the site of the Temple after demolishing it, while it has been the case of Muslim Parties that the site was a barren vacant piece of land which came to be vested in Babar as Emperor/Sovereign who had conquered the Delhi throne. ASI excavation revealed pre-existence of 'massive structure' underneath DS. The Muslim Parties did not amend their Pleadings to take any alternative plea to meet the discovery of the massive structure beneath DS; legally, they cannot be heard to say that there had existed some Muslim religious structure at the site in whose place Babri Masjid was erected.

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IV. *Without prejudice to detailed submissions on ASI Report elsewhere, suffice it to mention here that the* ***Western Wall (W5) of DS stands directly over Western Wall (W16) of the Temple without any layer of earth or other strata between the two walls which should have existed at the top if there was no structure on spot when construction of Babri Masjid commenced.*** *W5 standing directly over W16, proves that Babri Masjid was erected over and with full knowledge of pre-existence of a structure. ASI found 50 pillar bases of pillars which could support a roof (some of them inside the baulk between trenches), a Subsidiary Shrine of Lord Shiva (in the Southern portion of the disputed area), a number of walls attached to Temple's old Wall (W16), several walls running*

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East-West as well as North-South showing 'Massive Structure' below DS, mutilated Uma-Maheshwara Divine Couple stone sculpture (a typical feature of Iconoclastic behaviour) and a number of 'finds' which would typically belong to a Hindu Temple.

V. *It was argued on behalf of Sunni Board that Wall 16 could be a Kanati Mosque or Eid-gah or some other Muslim religious structure. This contention is not acceptable for want of Pleading (indeed against their Pleading); it also fails structurally and does not explain several other walls found attached to Wall 16. The existence of a 'Mandir Janmasthan Ram Chandra at Birthpalce of Ram since ancient times with Idols of Ram Chandra ji & others installed therein' is admitted in para 27 of joint WS dt. 2.12.1950 of 5 Muslim Defendants (D1 to D5) in OOS 1 of 1989 (filed by Gopal Singh Visharad). The said Defendants had vaguely pleaded that that Temple 'existed in Ayodhya' – the exact spot was not specified. Plaintiff Gopal Singh Visharad explained in para 27 of his Replication that that Temple was situated within boundaries described by him which sets its location to be close towards North of East-West Rasta which runs abutting on the North side of disputed area. This situation is admitted by Sunni Board in* ***para 32 of their written statement dated 24.2'89 to Visharad's suit (see para 5 above)****. The significance of this set of pleadings is that as early as 1950, Muslims had* ***admitted*** *existence of a (i)Temple of Ram Chandra (ii) at birthplace of Ram (iii) since ancient times. It cannot be argued that the 'admission'*

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by the 5 Muslim Defendants must be accepted or rejected 'as a whole', because the pleading is designedly half-truth and it is open to Court to 'separate the grain from the chaff'. The existence of such a temple does not find mention in the earliest independent account of the locality by Tieffenthaler in 1786 although other tell-tale details were recorded as indicated in para 17 above; it would have found mention if it was reputed as a Janmasthan temple. The important aspect of these Pleadings must be appreciated. Besides the above admissions in para 27 of joint WS of the 5 Muslim Defendants, an oral pleading was made by their Lawyer under Order X CPC that Babar erected Babri Masjid on entirely barren/open land over or under which there never existed any structure of any sort. Two of these Defendants are also Co-Plaintiffs in Sunni Board's Plaint filed 10 years later; consequently the admissions made by the Muslim Defendants in OOS 1 of 1989 (written or oral) ***are legally binding upon Sunni Board*** *in OOS 4 of 1989, and they cannot take a case of Kanati Masjid, Eid-gah or other Muslim religious structure underneath DS.*

VI *Certain nomenclatures which have figured from time to time could call for elucidation. 'Masjid Janmasthan', prima-facie indicates a Masjid which exists at Janmasthan, otherwise it could have been named as 'Masjid Ramkot'. 'Chabutra Janmasthan', which Tieffenthaler mentioned to be indicative of place of birth of Ram and his 3 brothers cannot signify exactly the spot where the 4 brothers could have been born. Dashrath had 3 queens each of whom had*

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her own palace. Carnegy's account (1870) mentions that Ramkot, the Fort had 8 royal mansions where dwelt Dashrath and his wives. Obviously, the Chabutra alone could not be the place where Dashrath, his 3 wives could live and give birth to 4 children. That is why Mahant Raghubar Das mentioned in his plaint (1885) that in Ayodhya there was Bhumi Janmasthan containing Chabutra Janmasthan, that he was Mahant of Bhumi Janmasthan and was in possession of Chabutra Janmasthan with a small Temple on it. 'Bhumi Janmasthan' could be the entire Palace situated at Ramkot including the site of DS while for reasons of caution and wisdom, 'Chabutra Janmasthan' could be called as birthplace of Ram. In any case, ***the entire area within the parameter of Parikrama was treated by the devotees as hallowed by divinity,*** *hence worshipped as Bhumi Janmasthan, viz., the disputed area. Indeed, both the Courts in Mahant Raghubar Das' case were persuaded to reject the prayer for erecting a Temple on Chabutra Janmasthan because a Temple could not be allowed to exist in immediate vicinity of Masjid otherwise it could lead to perpetual bloodshed. That is why Hindu devotees/Mahant etc content themselves with calling the Chabutra as Janmasthan while continuing to extend their possession in the Campus and perform worship also inside DS.*

VII *The Archeological Survey of India on the basis of excavation conducted under the orders of the court within the stipulated period in presence of the parties and judge observers submitted its report in accordance with the*

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settled norms confirming existence of Hindu religious structures underneath of the disputed structures and existence of divine couple in addition to various finds relating to temple including broken pieces of divine couple. It also found structural activities during post Gupta Rajput period from 7th to 10th Century A.D. as well as construction of massive structure and walls during 10th to 12th Century. Some of the walls were seen extending beyond the area excavated by ASI. In addition to existence of 50 pillar bases out of which 4 associated with the earlier structure belonging to Period IV of 11th and 12th Century A. D. were also reported. The Archeological Survey of India expressed its views that on the basis of excavation conducted on spot and finds of excavation proves existence of massive structure with 3 structural phases and 3 successive floors attached to them is proved. The pillar bases with brick bat foundation below calcrete block also establish the existence of load bearing pillar at the disputed site. It is pertinent to mention here that according to basic principle of civil engineering, the load is distributed on brackets put over the top of the pillar. The disputed structure had no foundation of its own which was constructed on and pre existing structure/ wall i.e. wall no. 16 (12th Century A. D.) which too rests over wall No. 17 (11th to 12th Century A. D.). During excavation by the Archeological Survey of India no feature of habitational activity was found right from Gupta period to early Rajput period. The periodization was done on the basis of archaeological principles which was also confirmed by scientific

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investigation like carbon dating of various sites. The kind of excavation is indicative of remains of North Indian Temples.

VIII *The contention of plaintiffs that use of lime motors was started by Muslim Emperors is baseless. It is well established that Choona Surkhi (lime mortars were used by the builder of the disputed structure right from 600 B. C. The excavations at Kausambi Mathura, Karwan (Gujarat) Bhitri (Ghajipur) Nalanda Taxila Ganwaria etc. proves that Choona and Surkhi with lime plaster where commonly used. R.S. Sharma in his book "Perspectives in Social and Economic History of Early India" has expressed similar opinion. Prof. Sharma in his book referring about use of Choona Surkhi at page 181 mentions as under:-*

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IX *"No background study of trends in the economic history of Mathura can be complete without some idea of the technological factors operating in this Period. There is little doubt that unbanism reached its climax in northern and western India in this period. Several factors contributed to it. One such factor was the change in building methods. At Mathura and Ganwaria in Basti district in north-eastern Uttar Pradesh the flooring was made of brick concrete mixed with lime. This indicates the use of Surkhi which contributed to the stability of structures. Further, baked, tiles for roofing appear in the period at several places in both the Satavahana and Kusana zones including Mathura. These innovations added to the solidity and longevity of urban structures in the early centuries of the Christian era."*

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X. *Dr. H.C. Bhardwaj – Ex-Professor of History of Technology of B.H.U., in his article titled "Town planning, building and building materials" also expressed similar view and while referring to mortars and plaster expressed his opinion that the earliest use of lime and gypsum comes from Indus civilization.*

XI*. Lime mortars have been used at Kausambi from 600 B.C. to A.D. 100. But it may be emphasized that by and large only mud mortar and plaster were used. The results of the chemical analysis (Table 2 and 3) show that the content of sand in the mortar was slightly higher than that in plasters. The average ratio of sand : lime* $Ca(OH)_2$ *is about 1:1, whereas in the case of mortars the average is 2:1. For mortars, probably 2 parts of sand were mixed with one part of slaked lime.*

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XII*. Lime Plaster from Karwan (Dt. Vadodara, Gujrat) from pre-Gupta levels : From the analysis (Table 4) it is clear that two types of plaster was used. Samples 1 to 4 represent the upper coat of the plaster and 5 to 8 represent lower rough plaster. The former has higher content of lime as compared to the latter. Fine layer was laid and burnished to make it smooth and elegant.*

XIII *Lime plaster from Bhitari (Dt. Gazipur, U.P.) (Gupta Period) : shows low grade lime plaster (Table 5) was used at the brick temple of Gupta period. It has sand and lime ratio of 6:1. The red colour of the plaster/mortar is due to the use of ferruginous kankar for preparation of lime.*

XIV. *Lime plaster from excavations at Nalanda (*7^{th}*-*10^{th}

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century A.D.) (Table 6) shows 3 parts of lime (calcium carbonate) and 2 parts of sand. Some of the monasteries are thickly plastered. Jars with dried up mortar and a cell used as a cistern in monastery No. 11 are indicative of the preparation of concrete.

***XV**. Lime plaster from Lingaraj temple at Bhubhaneshwar (Orissa-10th century A.D.) (Table 7) shows that lime : silica ratio was 3:1.*

***XVI** At Arikamedu lime mortar is reported from historical period. Use of lime is also attested from Hullas Khera (Dt. Lucknow) from Kusan-Gupta levels and from Banagrah (Dt. Dinajpur) where use of time and Surkhi is known from Gupta and Pala Levels. At Purana Quila lime plastered gutter connected with house drains is reported from levels datable to 8th – 9th century A.D.*

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***XVII**. In addition to above excavations at Arikmedu in Pandicherry proves use of like model from early historical period of 1st Century A.D. Use of lime is also proved from excavations at Hulaskhera District Lucknow from Kushan Gupta levels.*

***XVIII**. It is thus fully established that lime mortar, lime plaster, Surkhi choona were in use in India continuously much before the arrival of Muslims in India. It is well established that lime and surkhi was used prior to 1st century B.C. and was in continuous use as such the objection of Sunni Central Waqf Board and others Muslim parties to the effect that lime surkhi made appearance from Islamic period is without any basis and mearly an objection for the shake of objection only.*

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XIX. *Moreover, on the contrary, there is not a single evidence to prove it otherwise. The objectors have used phrases 'Muslim construction' several times. What is a 'muslim construction'? Islamic architecture or Indo-Islamic architecture are better generic terms. Then the objector says "muslim built domed circular buildings" as an alternative explanation, but it gets self-negated by their own arguments in the next para of their objections.*

XX. *The report of ASI was challenged by the plaintiffs on the grounds that of the other architectural fragments, majority of these come from the dump or fill and were in many cases part of the Babari Masjid (Disputed Structure) walls; only 40 came from stratified contexts. None of which were specific to a temple and are of no significance. It is also stated that the Srivatsa is of Jainism, and Lotus design could be Buddhist but not of Islamic architecture. In this connection it may be mentioned that in early period of Islamic invasion and rule in India several mosques and other religious constructions were raised, in very short period, by the rulers, ruling elites directly or by their orders after destroying existing Hindu temples and other structures. The dressed construction material which recovered from the destruction of temples was freely utilized by the Muslim builders. In such a situation the architecture that resulted by using Indian motifs and decorations in mosques or tombs was termed Indo-Islamic, which evidently not by the choice of the ruler rather perforce of the existing situation. It was more a case of architectural conversion of Hindu temples into Islamic*

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mosques and tombs. The purpose of the construction after destruction was simple-to establish the suzerainty of Islam and terror among the native Indians. This fact was at times boldly advertised too. At Quwwat-ul-Islam mosque near Qutab Minar in Delhi where the inscription very clearly proclaim so Ardhai-din-ka-Jhopara is another example.

***XXI**. So far as Srivatsa is concerned, primarily it is a Vaishnava symbol, representing Laksmi, Consort of Vishnu. Lotus is also, primarily Vaishnava symbol.(Reference may be made by the Dictionary of Iconography)*

***XXII**.The objection of the plaintiffs that the octagonal stone block having so-called floral motif has been compared with the used in Dharmachakrajina Vihar at Sarnath. There is not the least similarity between the two. Sarnath is rectangular while Ayodhya one is octagonal on plan. The Sarnath specimen depict motif in slightly low relief while on Ayodhya one it is ni very bold relief.*

***XXIII**. There is similarity of decoration and purpose and functional use of the pillar or bases, they are not the exact replicas. The depth of the carved motif is no criteria for dissimilarity. It is after all hand made and that too by possibly different men. The suggested similarity is only for the aforesaid points and in them there is sufficient similarity and enough basis to arrive at a tentative date for the two.*

***XXIV**. The objection of the plaintiffs that **Nagari inscription** is not to be dated with any certitude to the 11th century; its time range could be 7th-12th centuries. The Arabic inscription can be dated to 13th century with as*

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much reason as to the 16th century. The decipherment is hasty; it is Siddhmatrika script and should be dated to 7th-12th century. A.S.I. should have itself about the Pala suffix which suggests a possible reference to one of the Pala rulers of Bengal and Bihar.

***XXV**. In this connection it may be submitted that the date of 11th century has been reached after comparing the letters and is well researched and not arbitrary as the off-hand conclusion of the Objector. It is an unfounded possibility raised against a well-researched academic conclusion. Baseless arguments.*

***XXVI**. The Pala suffix to names was not used only by the rulers of Bengal and Bihar. Rajput rulers also used this suffix. Dating of the inscriptions is fine. There is no necessity to draw inferences about some ruler mentioned from the five letter extant broken inscription which not even shows all letters of equal size which should have been there had it been some royal inscription.*

***XXVII**. The objection of the plaintiff regarding successive structural activities is baseless. It may be submitted that there is some difference in the "first" and "successive" structural activities. The structural activity noticed in the early part of the Sunga level does not have any evidence continued in the succeeding phase of the Sunga level itself. It is definitely the first activity witnessed and exposed by the excavation.*

***XXVIII**. Where as in the Kushan level the structures that are build continue in the succeeding phases and periods without any appreciable break. Learned counsels*

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are expected to appreciate the difference between the two statements.

XXIX. *In the Tentative Periodization and Schematic Cross Section the trenches included do not belong to southern area nor there is any reference to the southern trenches. The Schematic Cross Section is west to east. It is gross misrepresentation of the facts to mislead the Court. The conclusion regarding the gradual building of partition wall and the enclosure wall is based on hard archaeological facts.*

XXX. *Most of the burial were found in the northern side out side the enclosure wall and were sealed by layer one, while on the south side the pit line of the one burial excavated was open to surface which also lies outside the enclosed area.*

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XXXI. *The objection of the plaintiff that ASI has distorted evidence to suit its temple theory is shown by its treatment of mihrab (arched recess) and taq (niche) found in the western wall, which it turns into features of its imagined temple. The objection of the plaintiff is nearly for the shake of the objection to criticize the report only. During excavation recessed niches where found which have been detailed on page 68 of the report. The report described as under:-*

XXXII. *"At an interval of 4.60 m in the inner side of the wall 16 in its first phase of construction two recessed niches were found 0.20 m deep and 1.0 m wide along the face of the wall and 0.78 m wide at its deeper side with 0.02 m thick lime plaster in trenches E6 and E7. The niche*

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in E6 was exposed while the niche in E7 was found attached with the E7-E8 baulk. A similar niche was found in ZE2 in the northern area with same dimensions (Pl. 49). All of these three niches were closed during the second phase of construction when the floor level was raised and wall was raised above the ten original courses."

XXXIII. *It is merely the physical description of the three "recessed niches" devoid of any suggestions or relationship, even tentative. Even the "Summary of Results" does not speak about the alleged distortions; there is no turning of these 'recessed niches' into 'features of (its) imagined temple'. However it may be noticed that temples do have niches both inside and outside its walls where subsidiary idols or images are placed.*

XXXIV. *So far plaintiff objection regarding mihrabs or Taq are concerned it must be noted that ASI did not used any of these expression rather simply mentioned " recessed niches". Plaintiffs have……. that expression to mean mihrab or taq. No such evidence was found during excavation as could have indicated that these three niches in wall No. 16 had any are indeed all these nitches where closed during the operation of raising the floor level above to original brick courses have scraped attention of ASI when the closer of operation was notice.*

XXXV. *No "Taq" has been found during the excavation. Professor R. Nath, Retired Professor & Head of the Department of History and Indian Culture, University of Rajasthan, Jaipur, referring to the niche found in excavation at Ayodhya expressed his opinion*

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which was published in History Today (An archeological general) part 4 of 2003. According to him the lower part of a recessed niche has been discovered in the recent excavations at Ayodhya (The ASI report 2002-2003 , submitted to the High Court Allahabad, Plate -49: "A Niche in the north-south oriented brick walls" TR-ZE2) (Plate-1 herewith). It is built of brick masonry which was plastered over. Its plan is rectangular with a single recess (offset) making a Karnika (corner) in it. Its floor is also of brick and it is there courses (of brick masonry) higher than the floor-level of the room on which it opens, and of which it is a part.

XXXVI. *According to objections wall No. 16 belongs to a pre Mughal open Kanti Mosque or Idgah. Fundamentally this claim must be thrown out of consideration because none of the Plaintiffs or objectors even pleaded that disputed structure was even erected over a pre-existing Kanti Mosque or Idgah. They did not even argued their pleading after ASI examination. A Kanti (so called) because it has a kanat i.e. a curtain. Mosque or Idgah has no nitches. It is a straight plain wall.. In India, such an open "curtain" mosque which does not have a "Liwan" (prayer-hall) or any other paraphernalia attached to it, and is just a wall, has 5 or 7 or 11 arches, as a rule and a single arch cannot make-up a "Qanati" mosque. Technically, it is an arcade and such arcade- walls were build in Idgahs and graveyards for facilitating "Fatiha" prayer, during the whole medieval period (1192-1803 A.D.). A single arch, even if it was there, cannot be branded*

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a "Qanati" mosque or "Idgah" and his claim shows that he is not, at all, conversant with the subject.

***XXXVII**. Equally important is the fact. Secondly, that a "qiblah-mihrab" (an arch in the centre of the western wall of a tomb or mosque, denoting the direction of the Ka'bah) is an arch, roofed by a half-cup shaped vault, both of which have tremendous lateral thrust. Hence, stone nook-shafts are invariably used on the corners of such a mihrab, as are there in the mosques of Jaunpur and Delhi (of the Sultanate period, 1192-1526 A.D.), for example, without any exception. But lithic nook-shafts are not there on the corners of this niche. It is architecturally inconceivable to build an arch, roofed by a vault, in a brick masonry without stone nook-shafts, and if stone nook-shafts are not there to take the load, and counter the lateral thrust of the arch and vault, there cannot be a mihrab. Structurally therefore, there was no arch or vault, and it was just a single, rectangular niche – which is what the ASI Report says.*

***XXXVIII**. It has also to be noticed, thirdly, that the floor-level of this niche is three courses higher than the floor-level of the room on which it opens. This is possible only when it was made as a niche or "alaya" for placing an image, or for a similar other purpose. The mihrab and the Liwan (sanctuary or prayer-hall of a mosque) are always and without any exception, built on the same floor-level, and there is not a single example where a mihrab is built on a higher level as a niche for keeping things. Hence this cannot be identified as a mihrab in any case.*

***XXXIX**. A perusal of the objection filed by the SCBW*

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makes it clear that the objection has been filed on baseless and concocted facts and no material evidence has been produced by the opposite parties in support thereof. The SCBW in support of its objection has examined as much as seven witnesses out of which six witnesses namely Prof. Suraj Bhan (PW-16), Prof. Dhaneshwar Mandal (PW-24), Dr Jaya Menon (PW-29), Dr R.C. Thakran (PW-30), Dr Ashok Dutta (PW-31), Dr Supriya Verma (PW-32) are said to be experts of excavation. But a scrutiny of the cross examination of these witnesses makes it clear that except Prof. Suraj Bhan none of them has any experience of field archaeology. Prof. Suraj Bhan, who has conducted some excavations as mentioned by him in his affidavit, made it clear during cross examination that the reports of the alleged excavation have not been published so far.

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***XL**. The plaintiffs of O.O.S. No. 5 of 1989 have examined Dr. R. Nagaswamy, a renowned archaeologist and expert of temple architecture who is a retired director of ASI and had appeared as an expert archaeologist for and on behalf of Government of India in a case pending before London courts. The highest court of London recognised him as an expert archaeologist and based its judgment on his evidence. Dr. R. Nagaswamy has supported the report of ASI and proved the same to be correct and trustworthy.*

***XLI**. In addition to him Dr R.D. Trivedi who was also director in ASI and is an expert of temple architecture of North India has also been examined by the plaintiffs of O.O.S. No. 5 of 89 who on the basis of discoveries made during excavation by ASI has proved the existence of a*

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Nagar style Hindu temple then prevalent in Northern India. EW. Shri A.K. Sharma has also been examined by the plaintiffs of O.O.S. No. 5 of 89 who is undisputedly a field archaeologist and has carried on various excavations and is still carrying on excavation work and the reports of his excavation have been published in various journals.

***XLII**.Dr Rakesh Tiwari, director, U.P. State Archaeology, has been examined by the plaintiffs in support of their case. It may be mentioned here that at the time of leveling near the disputed site in June 1992, plenty of artifacts relating to Hindu temple were found near the disputed site. Dr Rakesh Tiwari in his official capacity as director has prepared a list of 263 artifacts relating to Hindu temple and has proved before the court that the artifacts found at the time of leveling prove existence of a big Hindu religious structure at the site. A perusal of the list prepared and filed in the court proves the same to be temple artifact. In addition to the above, inscriptions written in Nagari script, images of Ganesh, Lakshmi, Sadanand and Vrishabh, etc., further prove existence of Hindu temple on spot.*

***XLIII**. It is pertinent to mention that the leveling work was conducted under the control and supervision of Govt. of U.P. under strict security through Government agency and the listing of artifacts found on spot and their preservation was done by the State archaeological department. The artifacts so found on the spot were tendered as evidence and are still in the custody of courts. During excavation also plenty of artifacts relating to temple structure were found as reported by ASI in its report*

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duly confirmed by all the witnesses including the ones examined by the SCBW.

***XLIV**. The Report of the Archaeological Survey of India also makes it clear that there existed temple like structure underneath the disputed structure as well as evidences of demolition of pre-existing Hindu temple are at the disputed site. It will not be out of place to mention here that before demolition of disputed shrine the artifacts recovered at the time of leveling by the Government agency also establish existence of a huge temple/religious structure in the periphery of the disputed area. The existence of temple before the construction of the disputed structure is established during excavation particularly wall No. 16 and 17 which are undisputedly prior to the construction of the disputed structure. The shape, size, length and continuity of the wall on western side in south north orientation coupled with pillar bases intervening floor 2 and 3 and also of the pillar bases of the northern side are admitted by the plaintiff.*

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3992. Sri Pandey summarized his argument on this aspect submitting that the following facts established pre-existence of Hindu temple before construction of the disputed structure at the site in dispute.

I. The disputed structure had no foundation of its own (Refer Wall No.5, 16 and 17). Admittedly the wall No.5 was raised on wall No. 16 which is much prior to the disputed structure, i.e., relating to old temple structure. It is also apparent and established that wall No. 16 which is resting on wall No. 17 belong to pre-existing structure and are

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about. ..... wide whereas wall No.5 is about ..... wide, much lesser than the wall No. 16 and 17.Wall No.5 is not in continuation of wall No. 16 and is lying over the wall No. 16. Wall no. 16 and 17 are much longer than wall No.5. The existence of wall No. 16 is much more than 50 metres because the ending point of the wall was not discovered during excavation.

II. The in-situ existence of Makar Pranal in wall No. 5 proves that the temple materials were re-used for construction of disputed structure. It is noteworthy that existence of Makar Pranal has all along been admitted by the plaintiff and their witnesses.

III. Scientific analysis of the plasters used in the wall of preexisting structure, observations and examination of wall No. 1-15 proves that ***materials used in wall No. 16, 17 onwards are much superior to the walls of the disputed structure, i.e. 1-15*** *wherein brick bats, and re-used material have been used.*

IV. The construction of wall Nos. 1-15, i.e., its structure and texture, material used, etc., proves that the walls of the disputed structure were constructed hurriedly by re-using material of the earlier structure even without any foundation as is evident from the use of brickbats and broken bricks used in the wall which prima facie establishes demolition of pre-existing temple.

V. Existence of pillar bases on all the floor without pillar found during excavation including pillar bases found in the section of the trench further proves that the disputed structure was constructed after demolishing the temple

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including pillars and after general levelling of the disputed structure was constructed.

VI. The existence of pillar bases in the northern side admitted by the Plaintiff as pillar bases beyond the disputed site with foundation further proves existence of huge pre-existing religious structure extending to much more area in northern side. It is pertinent to mention that bases of the pillars were not removed whereas pillar bases found in the southern and eastern side of the makeshift structure shows existence of similar foundation of pillar bases with removal of bases.

VII. Pillar bases have been found below the floor level of the structure. The pillar bases No. 29, 32, 34, 35 further prove demolition of the pre-existing temple structure as is evident from perusal of the report at page No. 52 and plates 30 and 45 of the Archaeological Survey of India Report Vol. II. Figure 3 B of ASI Report Vol. I shows nine pillar bases have been exposed below the wall and floor of the disputed structure numbered as pillar base Nos. 22, 23, 25, 28, 29, 31, 32, 34 and 35. The existence of these pillar bases below the disputed structure particularly in courtyard establishes existence of temple before construction of the disputed structure.

VIII. 20 line inscription recovered from the wall of the disputed structure at the time of its demolition also proves existence of temple in 12th century AD, i.e., prior to construction of the disputed structure.

IX. Recovery of 20 line inscription on 06.12.1992 from the debris of the disputed structure proves that the same

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was reused in the construction of the disputed structure.

X. Circular shrine which dates back to 4th-6th century admitted by the plaintiff proves existence of huge temple like structure on spot much before the construction of the disputed structure.

XI. The 11th century inscription found from the debris of trench No. J-3 at a depth of 5.75 metres below the floor level of the disputed structure indicates existence of temple below the disputed structure as reported by ASI in its report Vol. 1 at page 204, 205 and Fig. 22 as well as Pl. 137 of the report Vol. II. It is noteworthy to mention that such decorated inscriptions are always found in temple/Hindu religious structures and are never found in the residential buildings. A perusal of the behaviour of debris as shown in Fig. 22 marked as layer No.5 and 6 of trench No. J-3 also indicates that the same was created due to demolition of the temple. The lower level of the layer as shown in Fig. 22 establishes that the boulders obviously came from the demolished temple in accordance with a theory of gravitation.

XII. Archaeological finds like Kopot Palli, Amalak decorated bricks, decorated stone slabs in wall No.5 and 17, Srivatsha, earthern lamp below the floor of the disputed structure, Garuda Dhwaj (the pit made for erecting the Garuda Dhwaj in front of the Garbhagriha - a salient feature of northern Indian temples) shown in Pl. No. 59, 60, 63 and pit of Garuda Dhwaj in front of sanctum sanctorum

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further confirms the pre-existence of temple on the disputed site.

XIII. A perusal of artifacts found during excavation as shown in Plate nos. 5, 22, 23, 24, 25, 26, 29, 30, 36, 50, 51, 52, 53, 54, 55, 62, 64, 65, 66, 67, 81, 82, 83, 87, 88, 89, 90, 93, 95 prima facie establishes pre-existing temple/temple-like structure.

XIV. Under any circumstances above referred artifacts may neither form part of Islamic structure nor could be used in non-religious structure. Existence of divine couple as shown in plate No. 235 and the circular shrine undisputedly proves existence of temple on spot.

XV. At the site in question (Rama Janma Bhumi/Baburi Masjid) right from the virgin soil, beginning with the circular Shiva Shrine up to the working floor of the disputed structure only religious structural remains associated with antiquities of religious nature have been found. The continuous nature of 10.80 meter thick deposit accounts for nine cultural periods beginning from N.B.P. level of 6th Century B.C. to 15th Century A.D. and clearly indicate that the site was never abandoned and was never used for habitational purpose. At the site four working floors have been exposed. From Floor # 3, there is a radio carbon date 910 ± 70 A.D. (calibrated 900 – 1030 A.D.). This well-scientifically dated floor is below the Floor # 2 with which 50 pillar bases are associated. Over Floor # 2 is Floor # 1, i.e., the floor of the mosque. Floor # 2 with which 50 pillars bases of Mandapa are associated is evidently the floor of the temple which was demolished.

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Typical habitational deposits such as soakage pits, ring wells, drainage system, etc., of Indo-Gangetic plain were never found (A. Ghosh – Encyclopaedia of Archaeology, Pages 134-135). When one temple fell into disuse either due to natural calamity or natural decay, immediately new religious structure was raised.

***XVI**. The act of continuous raising of structures only of religious nature at the site clearly indicates that the people had memory of a happening of very important nature in the distant past at the site. At the site there is no stratigraphical gap or any hiatus.*

***XVII.** While demolishing the standing temple in 1528 A.D., Mir Baqi was well-aware of the sacred and religious importance of the site and he thought it proper to raise only a religious structure, i.e., a mosque, right over the demolished temple and did not leave it for people to occupy for habitational purpose.*

***XVIII**. The evidence of existence of a temple in 1528 A.D. is clear from the plan of the structural remains which show Garbha Grih (where presently Ram Lala is located), Ardha-Mandapa and wide Mandapa along with Pushkarini on the North-East corner, very wide walls and even damaged structural parts of earlier temples and religious members of the last temple used in the walls of the mosque. This use of members of religious nature in their construction could be done only by persons of other faith.*

3993. Sri Pandey also sought to summarize his arguments on the question of demolition as under:

I. The Mosque was built right over the walls of the

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demolished earlier structure, i.e., temple after levelling them. No independent foundations were laid for the mosque.

II. In a hurry to raise the mosque, self-same material, i.e., bricks and stones of the demolished structure were used which is evident from the fragmentary nature of bricks. No full bricks have been found in the walls of the mosque. Secondly, the size and texture of the bricks (wherever length and width are available separately) tally with the size of bricks used in the demolished temple. Normally, structures of different periods have bricks of different sizes and texture. In Wall No. 15 of the mosque, many members of the temple like Makar Pranal, etc., have been used.

III. As right over the working floor of the demolished temple, the floor of the mosque has been laid, it shows continuous action of demolition and construction. There was no marked evidence of time gap, i.e., both the works were done by the same agency.

IV. In some rudimentary pillars of floor 2, signs of demolition are visible. In spite of cleaning the demolished structural remains, broken pieces of bricks, stones and other structural members were found scattered.

3994. Another attempt was made by the learned experts of plaintiffs (Suit-4) by suggesting that historically they do not find any evidence that the muslim Rulers were indulged in destroying temples of idolaters and therefore a presumption that an existing temple was demolished for construction of the disputed structure should not be formed. Though it would not

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have been necessary for us to tell positively that there existed a massive temple structure which was demolished by someone and thereafter the disputed structure was raised for the reason that for our purposes it was sufficient that the disputed structure has been raised on an erstwhile building of a religious nature which was non-Islamic but the kind of statement, which has been given by so many experts appearing on behalf of the plaintiffs (Suit-4) to justify their stand that temples in past were never demolished by the then muslim Rulers or invaders from Persia etc. is so blatant lie that we are reluctant to ignore it without referring to some well known historical record on these aspects particularly some of which have been written by the Muslim writers themselves.

3995. Sri Jilani referred to the statement of the Expert witnesses where they have said that the Mughal Emperors before Aurangzeb were not against the idolaters or idol worship and there does not exist any historical record to suggest that they demolished any Hindu temple and constructed mosque or other Islamic religious structure. Even for the Muslim Rulers or invaders before Mughals as also Aurangzeb and subsequent once it is suggested that the act of a few such demolition of temple attributed to Mahmood Gazani or Khilji's or Auraugzeb etc., was not on account of any hatred on their part against idol worshippers or for spread of religion of Islam but more on account of economic reasons since these places i.e. Hindu temples etc. had lot of wealth and for looting the said wealth those attacks were made. He also referred to certain documents constituting historical record etc. to show that neither Babar entered into such activities nor others.

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3996. Exhibit 48 (Suit-5) (Register 20, page 129) contains a photocopy from "Memoirs Zehir-Ed-Din Muhammed Baber; Emperor of Hindustan" written by himself in the Chaghatai Turki and translated partly by John Leyden and partly by William Erskine with Notes and a Geographical and Historical Introduction published in 1807 at London. It has frontispiece and pages number 378, 379, 380 and 381 of the said book. On pages 381 of the book (paper no. 107C1/68) it deals with the description when Baber reached near Ayodhya:

> *"We were still a march or two from Oudh, when a messenger arrived from Chin Timur Sultan, with intelligence that the enemy were encamped on the other side of the Siru, and that he would require to be reinforced. I dispatched to his assistance a thousand of the best men from the centre, under the command of Kazak. On Saturday, the 7th of Rajeb, I encamped two or three Kos above Oudh, at the junction of the Gogra and Siru. Till that day, Sheikh Bayezid had kept his station, not far from Oudh, on the other side of the Siru. He had sent a letter to Sultan, for the purpose of overreaching him. Sultan having discovered his insincerity, about noon-day prayers sent a person to call Karacheh to his assistance, and begun to make preparations for passing the river. When Karacheh had joined Sultan, they passed the river without delay. There were about fifty horse, with three or four elephants, on the other side, who, being unable to stand their ground, took to flight. Our people brought down some of them, and cut off their heads, which they sent me. Bikhub Sultan, Terdi Beg, Kuch Beg, Baba Chihreh, and Baki Shaghawal,*

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passed the river after Sultan. Those who had passed over first, continued till evening prayers in pursuit of Sheikh Bayezid, who threw himself into a jungle, and escaped. Chiu Timur Sultan having halted at night by a pool, mounted again about midnight, and renewed his pursuit of the enemy. After marching forty kos, he came to a place where their families and baggage had been, but they were already in full light. The light force now divided itself into different bodies, Baki Shaghawel with one division,following close upon the enemy, overtook their baggage and families, and brought in a few of the Afghans as prisoners.

I halted some days in this station, for the purpose of settling the affairs of Oudh and the neighboring country, and for making the necessary arrangement. Seven or eight kos above Oudh, on the banks of the river Siru, is the well-known tract called the Hunting-ground. I sent Mir Muhammad Jalehban to examine the fords of the rivers Gagra and Siru, which he did. On Thursday, the 12th, I mounted, to set off on a hunting party."

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3997. Exhibit 15 (Suit-5) (Register 20, pages 139-143) contains photocopies of frontispiece and pages no. 332 and 333 of "Memoirs Zehir-Ed-Din Muhammed Baber; Emperor of Hindustan" translated by John Leyden and William Erskine (Annotated and Revised by Sir Lucas King) published in 1921 in two Volumes by Oxford University Press. It also contains the verbatim description as we have referred to from Exhibit 48 (Suit-5) at paper no. 107C1/68.

3998. Exhibit 62 (Suit-4) (Register 12, page 367 to 405) is a

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copy of an article/ letter/ report said to be submitted by Sri R.S. Sharma, M. Athar Ali, D.N. Jha, Suraj Bhan under the title "Ramjanambhumi-Baburi Masjid A Historians Report to the Nation" along with the covering letter dated 13.5.1991 addressed to Sri Subodh Kant Sahay, Minister of State for Home, Government of India, New Delhi. A perusal of the letter and report shows that it contains signatures of only three persons, i.e., Sri R.S. Sharma, M. Athar Ali and Suraj Bhan. Sri D.N. Jha has not signed the said report.

3999. **Exhibit A-10 (Suit-4) (Register 16, pages 65-78)** is photocopy of Appendix-A list of sacred places in and about Ayodhya from the Book "A Historical Sketch of Tahsil Fyzabad, Zillah Fyzabad" by P.Carenegy.

4000. Exhibit 90 (Suit-4) (Register 16, pages 156-162) contains the photocopy of the title page and pages no. 51 to 53 and 62 to 65 of the book "**The Disputed Mosque-A Historical Inquiry**" by Sushil Srivastava published in 1991 by Vistaar Publications, New Delhi. The author of this book himself has appeared as witness, i.e. PW 15 and the book itself has been produced before the Court.

4001. Exhibit 92 (Suit-4) (Register 16, pages 168-181) contains the title page, preface, index and pages no. 12 to 34 of the book "Mughal Empire In India" by Prof. S.R. Sharma, Eleventh Edition published by Laksmi Narain Agarwal Educational Publishers, Agra. The author on page 15 of the book has given reason of Babar's invasion to India as under:

> *"The great advantage of Hindustan, "Babar was aware, "besides its vast extent of territory, is the amount of gold, coined and uncoined, which may be found there." To Hindustan, therefore, he turned his wistful attention when,*

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after the conquest of Kabul, he left the need for supplies"

4002. Exhibit 15 (Suit-5) (Register 20, pages 139-143) contains photocopies of frontispiece and pages no. 332 and 333 of "Memoirs Zehir-Ed-Din Muhammed Baber; Emperor of Hindustan" translated by John Leyden and William Erskine (Annotated and Revised by Sir Lucas King) published in 1921 in two Volumes by Oxford University Press. It also contains the verbatim description as we have referred to from Exhibit 48 (Suit-5) at paper no. 107C1/68.

4003. Sri Jain and other counsels on the contrary refuted the above arguments vehemently and referred to other documents as are:

4004. **Exhibit J-6 (Register 13, page 47-51)** is the photocopy of History of Oudh (Amir Ali Shaheed or Marke-e Hanuman Garhi) by Sheikh Mohammad Azmat Ali Kakori written by Sheikh Mohammad Azmat Ali Kakori published by Markez Adab Urdu Shahganj, Lucknow.

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4005. Exhibit J-10 (Suit 4) (Register 13, page 53-55 and 125) is photocopy of the page no.71 of Fasanah-E Ibrat by Mirza Rajab Ali published by Marke Adab Urdu, Shahganj, Lucknow.

4006. Exhibit J-31(Register 13, page 57) is a copy of page No.324 Holy Quran-majeed by Maulana Saeed Farman Ali published by Matbua-e Nizami Press, Victoria Street, Lucknow.

4007. Exhibit 87 (Suit-4) (Register 16, pages 1-6) contains the title page, index and contents of pages 207, 218 and 221 of "History of India As Told By Its Own Historians" Vol. 6 by H.M. Elliot and John Dowson. It is part of the Chapter LI titled as "Tarikh-I-Firishta of Muhammad Kasim Hindu Shah, Firishta". As we know the above book contains the English translation of various manuscripts written in Persian, Arabic,

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Urdu etc. as collected by Sir H.M. Elliot while he was in India. "**Tarikh-I-Firishta**" is work of **Mohammad Kasim Hindu Shah** who is said to be born in 1550 or 1570. Initially, he was in patronage of Murtaza Nizam Shah at Ahmadnagar wherefrom he proceeded to Bijapur sometimes in 1589 A.D. which was in the reign of Ibrahim Adil Shah. Later on, the King presented to him a copy of Rauzatu-s Safa, remarking that no competent person had hitherto written a general history of Muhammadans in India, except Nizamuddin Bakhshi though his work was too brief and imperfect, especially as concerned the Dakhin (south). The Firishta wrote history but it is quite imperfect about Indian history previous to Muhammadan invasion. He died probably in 1660. His book contains 12 chapters the details whereof have been given on page 209 of Vol. VI of the said book (The entire set of "The History of India as Told By Its Own Historians" is available to the Court and, therefore, instead of confining ourselves to the pages filed by the plaintiffs (Suit-4), we have gone through the book and have taken the contents therefrom. The translation of the book has been done by General Briggs. It is said by Elliot and Dowson on page 216/217 that General Briggs procured a copy of Firishta in Persian which contains several valuable annotations and corrections. This copy was carefully collated with several others. Chapter I commences with "Mahmud of Ghazni" and his attack on Anundpal, Raja of Lahore at AH 399 (A.D. 1008). At page 221, it deals with Firoz Shah Tughlik. The above pages have been placed on record to show that the Muslims came to India as long back as with the start of A.D. 1000 and odd and it is not Babar, who for the first time laid the foundation of the Muslim Emperor in the then

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Hindostan. The learned counsel for the other side, however, drew out attention to page 227 last five lines:

> *"Some historians state, that Sultan Feroze Shah Barbek on this occasion broke the idols of Nagrakote, and mixing the fragments with pieces of cow's flesh, filled bags with them, and caused them to be tied round the necks of Brahmins, who were then paraded through the camp."*

4008. Exhibit 88 (Suit-4) (Register 16, pages 7-12) are photocopies of the title page, index and pages no. 218, 239, 339 and 434 of the "The History of India As Told by Its Own Historians", Vol. 4 by H.M. Elliot and John Dowson. Page 218 and 239 are the extract of Chapter XXVIII, Tuzak-I-Babari or Wakiat-I-Babari, the Autobiography of Babar. In the Book, this Chapter runs from page 218 to 287. Page 239 shows that in the last but successful invasion, Babar proceeded to India on 17th November, 1525 (AH 932). Page 339 (Paper No. 244C1/5 is part of Chapter XXXII "Tarikh-I-Sher Shahi or Tuhfat-I-Akbar Shahi of Abbas Khan, Sarwani". This work is probably composed after AH 987 (AD 1579). It appears that the author was connected by marriage with the family of Sher Shah. We find no assistance from the said document for the purpose of this matter except that for some time, Sher Shar (Sher Khan) defeated the Mughals to take over the right of kingdon of Bengal and Bihar.

4009. Page 434 (Paper No. 244C1/6) is extract of Chapter XXXIII "**Tarikh-I-Daudi of 'Abdulla**" who has commenced his work with the reign of Bahlol Lodi alleging that he was the first King of the Afghan dynasty and brought down to reign of Muhammad Adali Sur and Daud Shah alleging them as last

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Rulers of that reign. Learned counsel for the other side drew our attention to pages 466 and 467 narrating the reign of Sultan Sikandar Ghazi (Sikandar Lodi):

> *"He founded masjids throughout all his dominions, and appointed a preacher, a reader, and a sweeper to each; to all of whom he gave regular stipends." (Page 446)*
>
> *"He allotted lands to the infidels who submitted to the followers of Islam in their respective countries; and whoever rebelled or was contumacious, was considered guilty of treason, and was either slain or banished.*
>
> *He was so zealous a Musulaman that he utterly destroyed divers places of worship of the infidels, and left not a vestige remaining of them. He entirely ruined the shrines of Mathura, the mine of heathenism, and turned their principal Hindu places of worship into caravanserais and colleges. Their stone images were given to the butchers to serve them as meat-weights, and all the Hindus in Mathura were strictly prohibited from shaving their heads and beards, and performing their ablutions. He thus put an end to all the idolatrous rites of the infidels there; and no hindu, if he wished to have his head or beard shaved, could get a barber to do it. Every city thus conformed as he desired to the customs of Islam." (Page 447)*

4010. **Exhibit 89 (Suit-4) (Register 16, pages 13-20)** are the photocopy of title page, index and pages no. 284, 285, 389, 476 and 477 of the "History of India As Told by Its Own Historians" Vol. 3 by H.M. Elliot and John Dowson. Pages 284 and 285 are the extract of Chapter XVI "Tarikh-I-Firoz Shahi of Shama-i-Siraj, "Asif". This work is devoted exclusively to the

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reign of Firoz Shah. The author claims to be attached to the Court of Firoz Shah and accompanied him on his hunting expeditions. The two pages show the reign of Firoz Shah at Delhi.

4011. Page 389 is extract of Chapter XVIII "Malfuzat-I Timuri or Tuzak-I- Timuri' The Autobiography of Timur". The original work was written in Chaghatai Turki language, translated into Persian by Abu Talib Husaini, and dedicated to Emperor Shah Jahan, who began to reign in A.D. 1628. Timur came to India sometime in the end of 14th century. It is not necessary to deal into his invasion in detail since it is also a story of invasion with the object of loot and destruction of idolaters which is evident from the following extract:

> *"About this time there arose in my heart the desire to lead an expedition against the infidels, and to become a ghazi; for it had reached my ears that the slayer of infidels is a ghazi, and if he is slain he becomes a martyr. It was on this account that I formed this resolution, but I was undetermined in my mind whether I should direct my expedition against the infidels of China or against the infidels and polytheists of India. In this matter I sought an omen from the Kuran, and the verse I opened upon was this, "O Prophet, make war upon infidels and unbelievers, and treat them with severity."*
>
> *My great officers told my that the inhabitants of Hindustan were infidels and unbelievers. In obedience to the order of Almighty God I determined on an expedition against them, and I issued orders to the amirs of mature years, and the leaders in war, to come before me, and when*

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they had come together I questioned the assembly as to whether I should invade Hindustan or China, and said to them, "By the order of God and the Prophet it is incumbent upon me to make war upon these infidels and polytheists." throwing themselves upon their knees they all wished me good fortune. I demanded of the warrior chieftains whether I should direct my expedition against the infidels of Hindustan or China. At first they repeated fables and wise sayings, and then said, in the country of Hindustan there are four defences, and if any one invading this extensive country breaks down there four defences, he becomes the conqueror of Hindustan.

The first defence consist of five large rivers, which flow from the mountains of Kashmir, and these rivers unite in their course, and passing through the country of Sind, flow into the Arabian Sea, land it is not possible to cross them without boats and bridges. The second defence consists of woods and forests and trees, which, interweaving stem with stem and branch with branch, render it very difficult to penetrate into that country. The third defence is the soldiery, and land holders, and prices, and Rajas of that country, who inhabit fastnesses in those forests, and live there like wild beasts. The fourth defence consists of the elephants, for the rulers of that country in the day of battle equipping elephants in mail, put them in the van of their army, and place great confidence in them, and they have trained them to such a pitch that, lifting with their trunks a horse with his rider, and whirling him in the air, they will dash him on the ground.

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Some of the nobles said in reply that Sultan Mahmud Subuktigin conquered the country of Hindustan with 30,000 horse, and established his own servants as rulers of that region, and carried off many thousand loads of gold and silver and jewels from that country, besides subjecting it to a regular tribute, and is our amir inferior to Sultan Mahmud P No; thanks to Almighty God, to-day a 100,000 valiant Tatar horsemen wait at the stirrup of our amir; if he determines upon this expedition Almighty God will give him victory, and he will become a ghazi and mujahid before God, and we shall be attendants on an amir who is a ghazi, and the army will be contented and the treasury rich and well filled, and with the gold of Hindustan our amir will become a conqueror of the world and famous among the kings of earth.

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At this time the prince Shah Rukh said: "India is an extensive country; whatever Slultan conquers it becomes supreme over the four quarters of the globe; if, under the conduct of our amir, we conquer India, we shall become rulers over the seven climes." He then said: "I have seen in the history of Persia that, in the time of the Persian Sutans, the King of India was called Darai, with all honour and glory. On account of his dignity he bore no other name; and the Emperor of Rome was called Caesar, and the Sultan of Persia was called Kisra, and the Sultan of the Tatars, Khakan, and the Emperor of Chine, Faghfiur; but the King of Iran and Turan bore the title of Shahinshah, and the orders of the Shahinshah were always paramount over the princes and Rajas of Hindustan, and praise be to

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God that we are at this time Shahinshah of Iran and Turan, and it would be a pity that we should not be supreme over the country of Hindustan." I was excessively pleased with these words of Prince Shah Rukh. Then the Prince Muhammad Sultan said: " The whole country of India is full of gold and jewels, and in it there are seventeen mines of gold and silver, diamond and ruby and emerald and tin and iron and steel and copper and quicksilver, etc., and of the plants which grow there are those fit for making wearing apparel, and aromatic plants, and the sugar cane, and it is a country which is always green and verdant, and the whole aspect of this country is pleasant and delightful. Now, since the inhabitants are chiefly polytheists and infidels and idolaters and worshipers of the sun, by the order of God and his prophet, it is right for us to conquer them.

My wazirs informed me that the whole amount of the revenue of India is six arbs; now each arb is a 100 krors, and each kror is a 100 lacs, and each lac is a 100,00 miskals of silver. Some of the nobles said, "By the favour of Almighty God we may conquer India, but if we establish ourselves permanently therein, our race will degenerate and our children will become like the natives of those regions, and in a few generations their strength and valour will diminish." the amirs of regiments (kushunat) were disturbed at these words, but I said to them, "My object in the invasion of Hindustan is to lead an expedition against the infidels that, according to the law of Muhammad (upon whom and his family be the blessing and peace of God), we

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may convert the true faith the people of that country, and purify the land itself from the filth of infidelity and polytheism; and that we may overthrow their temples and idols and become ghazis and mujahids before God." They gave an unwilling consent, but I placed no reliance upon them. At this time the wise men of Islam came before me, and a conversation began about the propriety of a war against infidels and polytheists; they gave it as their opinion that it is the duty of the Sultan of Islam, and all the people who profess that "there is no god but Allah, and Muhammad is the prophet of Allah," for the sake of preserving their religion and strengthening their law, to exert their utmost endeavour for the suppression of the enemies of their faith. And it is the duty of every Muslim and true believer to use his utmost exertions in obedience to his ruler. When the edifying words of the wise men reached the ears of the nobles, all their hearts were set upon a holy war in Hindustan, and throwing themselves on their knees, they repeated the Chapter of Victory.

When I girded up my loins for the expedition, I wrote to Hazrat Shaikh Zainu-d din to the effect that I had determined on a religious expedition to Hindustan. He wrote in the margin of my letter: "Be it known to Abu-l Ghazi Timur (whom may God assist) that great prosperity in this world and the next will result to you from this undertaking, and you will go and return in safety." he also sent me a large sword which I made my sceptre.

In the meanwhile there came a petition from the Prince Pir Muhammad Jahangir, from the confines to

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Kabulistan, the government of which country, from the boundaries of Kunduz and Bakalan and Kabul and Ghazni and Kandahar, was vested in him. When I looked at this petition it was thus written: "Since, according to your order, I arrived in this country, I have acted towards all the people conformably to the exalted order and wisdom-increasing counsels of the great king. When I had satisfied my mind with the conquest and settlement of this kingdom, I turned my thoughts towards the acquisition of some of the provinces of Hindustan. I enquired concerning the condition of that country, and received the following account: that the city of Dehli is the capital of the sovereigns of India, and after the death of Sultan Firoz Shah, two brother among his nobility, of whom one was named Mallu and the other Sarang, becoming very powerful, established their independence, giving the nominal sovereignty to one of the sons of Sultan Firoz Shah, by name, Sultan Mahmud, they kept the real power in their own hands, and virtually governed the empire. Mallu, the elder brother, lives at Dehli, about the person of Sultan Mahmud, and Sarang is established in the city of Multan, for the protection of that country. When I became acquainted with these matters, acting according to the practice of the great king, I wrote a letter and sent it to him (Sarang) by an ambassador, purporting that since the fame of the victories and conquests, and of the extensive empire of the great king is spread all over the world, it is certain that it must have reached him also. The great king has appointed me to the government of those provinces which

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lie on the borders of Hindustan, and has ordered that 'If the rulers of Hindustan come before me with tribute I will not interfere with their lives, property, or kingdoms; but if they are negligent in proffering obedience and submission, I will put forth my strength for the conquest of the kingdoms of India. At all events, if they set any value upon their lives, property, and reputation, they will pay me a yearly tribute, and if not, they shall hear of my arrival with my powerful armies. Farewell.' When the ambassador reached the presence of Sarang at Multan, he was treated with great respect and consideration; but in reply to his letter, Sarang said, 'It is difficult to take an empire like a bride to your bosom without trouble and difficulty and the clashing of swords. The desire of your prince is to take this kingdom with its rich revenue. Well, let him wrest it from us by force of arms if he be able. I have numerous armies and formidable elephants, and am quite prepared for war.' with these words he dismissed the ambassador. But when this unsatisfactory answer was brought back to me. I issued immediate orders for the armies to assemble from all quarters, together with such of the nobles as were in my province, such as Amir Saikal Kandahari, and other amirs, and soldiers."

4012. The amount of wealth his army looted at Delhi is mentioned on page 446:

"The other booty was immense in rubies, diamonds, garnets, pearls, and other gems; jewels of gold and silver; ashrafis, tankas of gold and silver of the celebrated Alai coinage; vessels of gold and silver; and brocades and silks

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of great value. Gold and silver ornaments of the Hindu women were obtained in such quantities as to exceed all account. Excepting the quarter of the saiyids, the ulama, and the other Musulmans, the whole city was sacked."

4013. On page 448, the number of the people killed by him mentions:

"I had triumphed over my adversaries, I had put to death some lacs of infidels and idolaters, and I had stained my proselyting sword with the blood of the enemies of the faith."

At page 476 and 477 is the narration of his return journey through Kashmir.

4014. Exhibit 64 (Suit-4) (Register 16, pages 80-91) contains photocopy of title page, preface and pages 1 to 9 of "Ek Drishtikon Ramjanambhoomi, Babari Masjid Vivad" by Ram Saran Srivastava, Retired District Magistrate, Faizabad. We find no matter of substance in the aforesaid document.

4015. **Exhibit 65 (Suit-4) (Register 16, pages 93-96)** contains title page and pages 27, 28 and 29 of "Ek Drishtikon Ramjanambhoomi, Babari Masjid Vivad" by Ram Saran Srivastava, Retired District Magistrate, Faizabad. It says as under:

''ऐसा प्रतीत होता है कि बाद में हिन्दुओं के प्रबल विरोध एवं अपनी सहिष्णुता की नीति के कारण बादशाह अकबर ने भवन के आगे चबूतरा बनाने की आज्ञा दे दी थी जिस पर हिन्दुओं द्वारा मूर्तियॉ स्थापित की गई और यहॉ नियमित पूजा होती रही। उसी स्थान से उत्तर की तरफ हिन्दुओं का लगा हुआ दूसरा पूजा स्थान था जिसे सीता रसोइया कहा जाता था और बाद में सीता पार्क कहा जाने लगा। मुस्लिम शासकों ने इसी के पास कौशल्या रसोई को भी नष्ट करने का साहस नहीं किया किन्तु हिन्दुओं के मन में क्षोभ और क्षति की भावना बनी रही और कहा जाता है कि राम

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चबूतरा या जन्म भूमि के मसले को लेकर प्रायः हिंसक संघर्ष होते रहे, विशेष कर अवध के नवाब के समय, जिनमें बहुत से लोग मारे गये थे। 1859 ई0 में वाजिदअली शाह के समय में राम चबूतरा व सीता रसोई के नष्ट होने के प्रयास होते रहे यद्यपि कोई सफलता नहीं मिली। परन्तु औरंगजेब के समय में अकबर के समय बने चबूतरे को गिरा दिया गया साथ ही अयोध्या के अन्य मन्दिर भी नष्ट किये गये। फिर भी प्राचीन मन्दिर होने के कारण सैकड़ों वर्षों से हिन्दू वहॉ पूजा करते रहे। श्री मिर्जा सेन जो 1855 के जेहाद के प्रत्यक्षदर्शी थे जिसमें अयोध्या के वैरागियों से हनुमानगढ़ी छीन ली गई थी अपनी पुस्तक ''हदीक ईसुहद'' में स्पष्ट तौर से लिखा है।

''मुसलमानों ने फैजाबाद और अवध से नास्तिकता की गंदगी का सफाया कर दिया क्योंकि यह राम के पिता की राजधानी थी और पूजा का एक बड़ा केन्द्र था। जहॉ पर राम जन्म का एक बड़ा मन्दिर बना था वहीं एक बड़ी मस्जिद बनाई गई''। 1855 ई0 के संघर्ष के दूसरे प्रत्यक्षदर्शी शेख अजमत अली, ककोरवी नवी, (811–13) ने लिखा है कि 923 में सैयद मियॉ आशिकान के संरक्षण में बाबरी मस्जिद जन्म स्थान मन्दिर (बुतखाने जन्म स्थान में) बनाई गई। उसकी पुस्तक मरगकाई खुरावी : तारीखे अवध : की एक प्रति लखनऊ की टैगोर लाईब्रेरी में है और इसका प्रकाशन 1987 में हुआ था। डा0 ककोरवी ने अपनी पुस्तक मिर्जा अली वेग शुरूर (1787–1867) की पुस्तक फसाना –ई–इब्रात के उद्धरण को जोड़ा है। जिसमें बताया गया है कि बाबर के शासन काल में सीता के रसोई के पास एक बड़ी मस्जिद बनाई गई। अयोध्या पर अंग्रेजों के कब्जे के पहले एक योरोपीय यात्री टीफेनथेलर ने जो 1767 में अयोध्या आया था लिखा था कि मस्जिद के बाड़े में हिन्दू लोग नियमित रूप से पूजा अर्चना करते थे और यह भी उल्लेख किया था कि जन्मभूमि मन्दिर को तोड़कर प्रस्तुत मस्जिद बनाई गई थी। इसके पहले भी विलियम फ्रेन्च : 1608 जिसकी पुस्तक की प्रति बनारस हिन्दू विश्वविद्यालय के पुस्तकालय में मौजूद है में उल्लेख किया गया है कि जन्म स्थान व राम कोट क्षेत्र के अन्य मन्दिरों को बाबरी मस्जिद बनाने के लिये तोड़ा गया था। इस लिये यह कहना कि यह झगड़ा अंग्रेजों ने अपनी ''फूट डालो और राज्य करो'' के नीति के तहत जबरदस्ती खड़ा किया था महज ऑखों में पट्टी बॉध लेने के समान है। मौलाना अब्दुल हई जैसे विद्वान धर्मोपदेशक से यह आशा नहीं की जा

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सकती थी कि उन्होंने अंग्रेजों से प्रेरणा लेकर लिखा होगा। उन्होंने स्पष्ट लिखा है कि बाबर ने रामचन्द्र के जन्म स्थान पर बाबरी मस्जिद बनवाई थी। इसके अतिरिक्त मार्टिन : 1838 ईस्टर्न इंडिया सर्जन, जनरल एडवर्ड वेलफेयर इनसाईक्लोपीडिया आफ इंडिया 1858, अवध गजेटियर 1877 और अलेक्जेन्डर कनिंघम 1862 के साक्ष्यों पर संदेह व्यक्त करने का कोई कारण नहीं है कि बाबरी मस्जिद जिसे मध्ययुगीन मुसलमानी दस्तावेजों में मस्जिद –ई–जन्मस्थान कहा गया है राम जन्म भूमि स्थान के मन्दिर को तोड़कर बनाई गई थी। अंग्रेज शासकों के लिये हिन्दू मुसलमानों में फूट डालने के लिये एक विवाद का झूठा मूठा हौवा खड़ा करने का कोई कारण नहीं था क्योंकि इस मसले पर दोनों समुदायों में विवाद व आपसी संघर्ष मुगल शासन में ही प्रारम्भ हो चुका था और तब से वह चल रहा था। जैसा कि इतिहास बताता है कि औरंगजेब की पुत्री भी इस तथ्य से अवगत थी कि मन्दिर को तोड़कर उसके ऊपर मस्जिद बनाई।''

4016. From **Exhibit 19 (Suit-4) (Register 10, Page 21),** we find that the Babar though defeated Ibrahim Lodhi in the battle of Panipat in 1526 AD, but he himself noticed several local Amirs having declared themselves independent even before his defeat of Ibrahim Lodi:

"When I first arrived in Agra, there was a strong mutual dislike and hostility between my people and the men of the place.

The peasantry and soldiers of the country avoided and fled from my men. Afterwards, everywhere, except only in Delhi and Agra, the inhabitants fortified different posts, while the governors of towns put their fortifications in a posture of defence, and refused to submit or obey." the nature of the situation he was confronted with, after his victory at Panipat, is best described in his own words:

(a) 'Kasim Sambhali was in Sambhal;

(b) 'Nizam Khan in Bayana;

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(c) 'the Raja Hasan Khan Mewati himself in Mewat: that infidel was the prime mover and agitator in all these confusions and insurrections;

(d) 'Kanauj, with the whole country beyond the Ganges, was entirely in the possession of refractory Afghans, such as, Nasir Khan Lohani, Ma'ruf Farmuli, and a number of other Amirs who had been in a state of open rebellion for two years before the death of Ibrahim.

'At the period I defeated that prince, they had overrun, and were in possession of Kanauj and the country in that quarter, and had advanced and encamped two or three marches on this side of Kanauj. They elected Bihar Khan (or, Bhadur Khan), the son of Darya Khan, as their King, and gave him the name of Sultan Mahmud. When I came to Agra we could not find grain or provendor, either for ourselves or for our horses. The villagers, out of hostility for us, had taken to rebellion, thieving, and robbery. The roads became impassable.

'I had not time, after the division of treasure, to send proper persons to occupy and protect the different parganas and stations.'

To make matters worse, the heat was abnormal that year, and many of Babur's men dropped down dead. Not a few of his Begs and best men began to lose heart, objected to remaining in Hindustan, and even began to make preparations for retreat. .... The final subjugation of the Afghans had to be deferred in the face of a more

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formidable foe."

4017. However, Sri Hari Shankar Jain placed before the following passage from page 22 of the book:

> *"But Babur himself looked upon this only as holy war against the infidel, with whom had joined some Muslim apostates. This is indicated by his assumption of the title of Ghazi after the victory: 'After this victory. I used the epithet of Ghazi, in the Imperial titles.' this was necessary to arouse his dispirited and home-sick followers. Babur was a master of the art of persuasion, with a keen eye for the dramatic."*

4018. The Afgan Rabels were sought to be taken by Babar in February, March 1528, but after persuing them upto Avadh, he returned to Agra by 13th March 1528 as is evident from page 25 of the book as follows:

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> *"Afghan Rebels. On February 2, 1528. Babur set out to punish the Afghan rebels who had advanced from Bihar into Doab, stormed Shamsabad, and driven the Imperial garrison out of Kanauj. At Babur's approach, the enemy crossed the river Ganges and mustered on its left bank to dispute, Babur's passage. The Emperor reached the great river, on February 27, built a bridge across its broad stream, by March 13, put the insurgents to headlong fight, and hotly pursued them as far as Oudh. After this Babur returned to Agra for the rainy season."*

4019. Sri Jain placed before us the following extract from page 32 and 33:

> *"Babur was, with all his virtues, a Musalman Emperor. When he had killed the Pagans (as he called the*

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Hindus) he piled up a pyramid of their skulls, at least for the delectation of his orthodox followers. He considers the war against the Rajputs as jihad or 'holy war' and assumed the title of Ghazi, after his victory at Khanua. He spoke of the self-immolation of the Rajputs at Chanderi as 'going to hell'. When he remitted the tamgha after his penitence and vow to renounce wine, it was only Musalmans who were exempted from it, and not the Hindus. After the fall of Chanderi, as Ferishta tells us, he "did not fail to rebuild and repair the mosques in Chanderi, Sarangpur, Rantambhor and Raisen, which had been partly destroyed and otherwise injured by being converted into cattle-sheds, by Medini Rai's orders." Babur himself stated on his conquest of Chanderi, that he converted 'the mansion of hostility' into 'a mansion of faith.' All these facts make it difficult to accept the too liberal policy outlined in the Bhopal MS. ascribed to Babur.

But to say this is not to allege the contrary. Babur was beyond question a man of deep faith in God; but his belief in Islam must have sat comparatively light on his mind. He had abjured his orthodoxy and became a Shia to win the support of the Shah of Persia to his cause. At the same time, he had refused to persecute his quandom orthodox co-religionists at the command of his newly accepted suzerain. There is no evidence of his ever having destroyed a Hindu temple or otherwise persecuted the Hindus on account of their religion. On the other hand, there is at least one reference to his equal recognition of the Hindu and Turki Amirs who had enlisted in his service."

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4020. Exhibit 102 (Suit-4) (Register 16, pages 183-196) contains photocopy of the title page, preface, index and pages no. 259 to 281 of the "History of India As Told By Its Own Historians" Vol. 2 by H.M. Elliot and John Dowson. Page 259 onwards is Chapter VIII of the book providing English translation of **Minhaju-S 'Siraj's Tabakat-I Nasiri'** from the earliest time upto 658 AH (AD 1529). Page 269-270 deals with the Mahmud Ghazni's invasion of Somnath and also conversion of a thousand of idol temples into mosque. It says that the idol of Somnath was broken into four parts, one part he deposited in the Jami' Masjid of Ghazni, one he placed at the entrance of the royal palace, third he sent to Mecca and fourth to Medina.

4021. **Exhibit 24 (Suit-5) (Register 22, page 415-511)** is a photocopy of the book **"Sri Ram Janambhumi (Sachitra, Pramanik Itihas"** written by Dr. Radheyshyam Shukla published in 1986 by Bal Krishna Goswami, Ayodhya. The author of the book has given his qualification as M.A., Ph.D. from Oudh Vishwavidyalaya, Faizabad. He is journalist and has worked in some daily newspaper in 1970-85 as co-editor, editor and free lance writer. It has been heavily relied by Sri R.L.Verma, Counsel for plaintiffs (Suit-3), Sri Ravi Shankar Prasad, Senior Advocate, counsel for plaintiffs (Suit-5) and Sri P.N.Mishra, Advocate appearing for defendant no.20 (Suit-4). From internal page 1 to 33 i.e. paper no.107C1/154/5-37, sought to be relied by Sri Verma, we place hereat some extract thereof to have an idea as to what the author has said to consider its acceptability and reliability:

''सम्पूर्ण मानव जाति के लिये आदर्श के प्रेरणास्रोत मर्यादा पुरुषोत्तम भगवान राम का जन्म कहां हुआ था इसकी जानकारी का प्राचीनतम

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साहित्यिक स्रोत महर्षि बाल्मीकि का रामायण है। महर्षि बाल्मीकि के अनुसार भगवान श्रीराम का प्रादुर्भाव (जन्म) जिस लोकविश्रुत अयोध्या नगरी में हुआ था वह कोशल जनपद की राजधानी थी तथा सरयू नदी के दक्षिण तट पर बसी हुई थी। वर्तमान उपलब्ध रामायण जिस समय रची गयी उस समय भगवान राम की कथा तो लोक में प्रसिद्ध थी किन्तु अयोध्या की कोई पहचान शेष नहीं रह गयी थी। इसका स्पष्ट कारण भी था। लोक विश्वास तो यह मानता है कि श्रीराम अब से करीब 9 लाख वर्ष पूर्व त्रेता युग में पृथ्वी पर क्रीड़ा किये थे लेकिन यदि इक्ष्वाकुवंशीय पौराणिक वंशावली के आधार पर गणना करें तो भी भगवान राम अबसे करीब चार हजार वर्ष पूर्व (ई.पू. लगभग 2350 से 1950 के बीच) हुए थे। अबकि वर्तमान रामायण का रचनाकाल विद्वान ई.पू. 300 से ई. 200 के बीच मानते हैं। लोक विश्वास भी मानता है कि अयोध्या कई बार बसी कई बार उजड़ी। ऐसे में अगर दो हजार वर्ष बाद उसकी भौगोलिक पहचान खो जाय तो कोई आश्चर्य नहीं।

भगवान बुद्ध के समय (ई.पू. छठी शताब्दी) में सरयू के दक्षिण तट पर बसा यह नगर 'साकेत' के नाम से प्रसिद्ध था। उस समय अयोध्या नाम को कोई नगर था ही नहीं। लेकिन इस क्षेत्र के राजवंश तब भी अपने को ऐक्ष्वाकु (इक्ष्वाकुवंशी) कहते थे। साकेत ही अयोध्या है, इसकी पहचान कब किसने की इसका कोई पता नहीं चलता किन्तु इतना निश्चित है कि महाकवि कालिदास के समय साकेत और अयोध्या एक ही नगर का नाम था। रघुवंश नामक अपने महाकाव्य में उन्होंने साकेत और अयोध्या का पर्यायवाची के रूप में इस्तेमाल किया है। अब से करीब डेढ़ हजार वर्ष पूर्व (पांचवी शताब्दी ई. का मध्य) के कालिदास जैसे विद्वान की पहचान को आज चुनौती देने का प्रश्न ही नहीं उठता। इस तरह साकेत के रूप में अयोध्या की पहचान हो जाने के बाद भी श्रीराम जन्मभूमि की पहचान की समस्या का समाधान नहीं हुआ क्योंकि साकेत के भी उजड़ने–बसने की श्रृंखला जारी रही। बुद्धकालीन भारत के छः श्रेष्ठतम महानगरों में से एक साकेत भी काल प्रवाह के आगे टिक नहीं सका। जब कोशल जनपद मगध साम्राज्य का अंग हो गया तो इसका महत्व घटने लगा। नन्दवंश (ई. पू. चौथी शताब्दी) के समय इसका महत्व एक सैनिक छावनी भर का रह गया। शुंग वंश तथा कुषाणकाल में भी एक धार्मिक नगर के रूप में इसकी प्रसिद्धि थी लेकिन उसके बाद की एक दो शताब्दियों में तो यह सम्भवतः और महत्वहीन हो गया।

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विक्रमादित्य द्वारा अयोध्या की खोज

अयोध्या की लोक परम्परा में यह विश्वास सदियों से चला आ रहा है कि सम्राट विक्रमादित्य ने उजड़ी अयोध्या की पुनः खोज की, भगवान राम की जन्मभूमि तथा अन्य तीर्थ स्थलों का पता लगाया तथा वहां पर मन्दिर बनवाया। ये विक्रमादित्य कौन थे यह पता नहीं है। इतिहास का जिज्ञासु केवल विक्रमादित्य नाम सुनकर सन्तुष्ट नहीं हो पाता क्योंकि इतिहास में एक दर्शन से भी अधिक विक्रमादित्य हो चुके हैं। इनमें प्राचीनतम ज्ञात विक्रमादित्य पहली शताब्दी ई.पू. के हैं तथा नवीनतम बारहवीं शताब्दी के। अयोध्या के लोगों में प्रचलित विश्वास को सर्वप्रथम 'मार्टिन' नामक अंग्रेज विद्वान ने ऐतिहासिक विवरणों में शामिल किया। उसने लिखा है कि ''अयोध्या के लोग मानते हैं कि वृहदबल की मृत्यु के बाद उनकी नगरी (अयोध्या) उजड़ गयी और उज्जैन के विक्रमादित्य के समय तक उजड़ी पड़ी रही। उज्जैनी के विक्रमादित्य ने सर्वप्रथम इसकी खोज की और यहां 'रामगढ़' नामक किला बनवाया। उन्होंने खण्डहरों को ढकने वाले जंगल को साफ कराया तथा भगवान राम, उनकी भार्या सीता, उनके अनुज लक्ष्मण तथा उनके सेनापति महावीर के असाधारण कार्यो के स्मृति स्थलों पर 360 मन्दिरों का निर्माण कराया।'' 'मार्टिन' ने जो कुछ सुना उसे लिख दिया। प्रसिद्ध पुराविद तथा इतिहासकार 'जनरल कनिघम' तथा पी0 कारनेगी ने भी इसी कथा को दुहराया है। किसी ने इस कहानी को ज्ञात इतिहास की कसौटी पर परखने का काम नहीं किया।'' (पेज 421–423)

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''प्रथम श्रीराम मन्दिर का निर्माण

ऊपर उल्लेख आ चुका है कि विक्रमादित्य स्कन्दगुप्त ने शारंगिन (धनुषधारी) विष्णु का मन्दिर बनवाया था। मेरा विश्वास है कि यही श्रीराम जन्मभूमि पर बना प्रथम मन्दिर था। इस मन्दिर का स्वरूप कैसा था इसकी आज केवल कल्पना भर की जा सकती है। परम्परा से ज्ञात है कि काले पत्थर के उत्कीर्ण चौरासी खम्भों पर मन्दिर का मध्य मण्डप खड़ा था। काले पत्थर के इन उत्कीर्ण स्तम्भों में से 16 अभी भी अयोध्या में उपलब्ध हैं। इन स्तम्भों के काल के बारे में विद्वानों में मतभेद है। कुछ विद्वान इसे दसवीं–ग्यारहवीं शताब्दी का मानते हैं तो कुछ विक्रमादित्य कालीन। इनके काल निर्धारण का कोई पुष्ट आधार नहीं है। परम्परा पर विश्वास करें तो इनका काल भी विक्रमादित्य (स्कन्दगुप्त) का काल ही मानना पड़ेगा। जो

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विद्वान यह नहीं मानते उनका तर्क यह है कि गुप्तकाल में मन्दिर निर्माणकला अभी अपने शैशव काल में थी। गुप्तकालीन जिन मंदिरों के अवशेष आज प्राप्त हैं उनमें से किसी को भव्य नहीं कहा जा सकता। और इस तरह उत्कीर्ण प्रस्तर स्तम्भों वाला तो कोई भी तत्कालीन मंदिर ज्ञात नहीं है। लेकिन यह स्मरण रखना चाहिए कि इस राम मंदिर का निर्माणकर्ता गुप्त सम्राट था जो बल पराक्रम में अपनी तुलना राम से करता था। उसने निश्चय ही अपने समय का श्रेष्ठतम मंदिर वनवाया होगा। यह ध्यान देने योग्य है कि ऐसे काले पत्थर के उत्कीर्ण स्तम्भ केवल श्रीराम की जन्मभूमि पर ही उपलब्ध हैं पूरे देश में अन्यत्र कहीं नहीं। श्रीराम जन्मभूमि के दक्षिण पार्श्व तथा पृष्ठ भाग में कराये गये पुरातात्विक उत्खनन की जो रिपोर्ट प्रकाशित हुई है उससे पता चलता है कि ग्यारहवीं शताब्दी के आस पास यहां नयी बस्तियां बसीं इसलिये संभवतः श्रीराम जन्मभूमि का वह मन्दिर–जिसमें काले पत्थर के ये स्तम्भ लगे सन् 1000 या उसके कुछ बाद में बना। इन विद्वानों का यह भी तर्क है कि ग्यारहवीं शताब्दी के हिन्दू तीर्थों का विवरण देने वाले लक्ष्मीधर न तो अयोध्या का उल्लेख करते हैं न श्रीराम जन्मभूमि का। लेकिन लक्ष्मीधर अयोध्या को लोकनाथ का निवास बताते हैं। लोकनाथ भगवान विष्णु के विभवों में से एक हैं। सम्भव है यह लोकनाथ जगतपति श्रीराम के लिए ही आया हो। लक्ष्मीधर के विवरणों से यही अनुमान लगाया जा सकता है कि उनके समय तक अयोध्या की तीर्थ रूप में प्रसिद्धि न रही हो किन्तु इसका यह अर्थ नहीं कि यहां श्रीराममंदिर था ही नहीं। ह्वेनत्सांग ने अपने यात्रा विवरण में यहां दस देव मंदिरों की चर्चा की है। वह सातवीं शताब्दी के पूर्वार्ध में यहां आया था इससे इतना तो प्रमाणित हो ही जाता है कि यहां हर्ष के समय से पहले भी अनेक देव मंदिर थे, लक्ष्मीधर की तीर्थ–सूची में न आने मात्र से इससे इन्कार नहीं किया जा सकता।

जन्मभूमि के निकट हुए पुरातात्विक उत्खननों से निर्माण के कम से कम तीन स्तरों का पता चलता है। इससे जाहिर है कि श्रीराम जन्मभूमि का कम से कम तीन बार निर्माण हुआ। पहला निर्माण यदि स्कन्दगुप्त ने कराया तो सम्भव है चार–पांच सौ वर्षों में वह निर्माण जीर्ण हो गया हो जिसका मध्य काल (दशवीं–ग्यारहवीं–शताब्दी) में पुननिर्माण कराया गया। तीसरी बार मुगल सम्राट बाबर के शासनकाल में उसके सबूदार मीरबाकी ने मंदिर को ध्वस्त करके मस्जिद बनवाया जो काल–क्रम में स्वतः मंदिर में

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बदल गयी। ग्यारहवीं शताब्दी में श्रीराम जन्मभूमि मंदिर का जीर्णोद्धार किसने कराया इसकी भी स्पष्ट जानकारी नहीं है किन्तु हम जानते है कि उस समय अंतिम गहड़वाल नरेश जयचन्द्र का शासनकाल था जिसने अयोध्यामें कई मंदिरों का निर्माण कराया। बहुत सम्भव है श्रीराम मंदिर का जीर्णोद्धार उसी ने कराया हो। लाला सीताराम ने अपने अयोध्या के इतिहास में उल्लेख किया है कि जयचन्द्र ने श्रीराम जन्मभूमि पर विक्रमादित्य का प्रस्तर अभिलेख हटवाकर अपना पत्थर लगवाया था। यह पत्थर जीर्णोद्धार के उपरान्त ही लगाया गया होगा।'' (पेज 429–431)

''विदेशी आतताइयों के हमले ई. सन् 1000 के लगभग महमूद गजनवी के नेतृत्व में काफी तेज हो गये थे। महमूद ने स्वयं अनेक हमले करके कन्नौज तक को लूटपाट कर तहस–नहस कर दिया था। मसूद के नेतृत्व में तुर्क हमलावरों ने बाराबंकी तक पहुंचकर अपना पैर जमा लिया था लेकिन अयोध्या पर मुसलमानों का पहला प्रभावी हमला मुहम्मद गोरी के समय (लगभग ई. 1194) हुआ। गोरी का एक सिपहसालार मखदूशाह जूरान गोरी ने सम्भवतः पहला हमला किया और यहां स्थित प्रथम जैन तीर्थंकर आदिनाथ के मन्दिर को ध्वस्त कर डाला। किन्तु श्रीराम जन्मभूमि का मन्दिर जाने कैसे उसके हाथ से बचा रहा। उसके बाद भी अयोध्या लगातार मुस्लिम शासकों के नियंत्रण में रही लेकिन श्रीराम जन्मभूमि को किसी ने कोई क्षति पहुंचाने का उपक्रम नहीं किया। मुगलों के आगमन के पूर्व तक श्रीराम जन्मभूमि का मन्दिर शान से अपना माथा ऊँचा किये खड़ा रहा।

मुगल विजेता जहीर–उद्–दीन मुहम्मद बाबर हिजरी संवत 934 (ई. 1527) में अयोध्या आया। बाबर ने अपनी डायरी (बाबरनामा) में स्वयं लिखा है कि वह पहलीबार 29 मार्च 1527 को अयोध्या (अउद) पहुंचा। अयोध्या (अउद) सूबे के मामलों को निपटाने के लिये वह कुछ दिन यहां रुका। बाबरनामा में इसका कोई उल्लेख नहीं है कि उसने अयोध्या में कोई मंदिर तोड़वाकर मस्जिद बनवाया। यह उल्लेख हो सकता है कि इसलिए भी न प्राप्त हो कि 2 अप्रैल 1527 के बाद के डायरी के पन्ने ही गायब हैं। डायरी फिर 18 सितम्बर 1528 से शुरू होती है इसी बीच में श्रीराम जन्मभूमि का मन्दिर गिरवाकर वहां पर मस्जिद बनवा दी गयी। यह पता नहीं चलता कि बाबर मस्जिद निर्माण के दौरान अयोध्या में था अथवा दिल्ली वापस लौट गया था। बाबरनामा के अनुवादक ब्रेवेरिज़ ने शाही पुस्तकालय से प्राप्त एक

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फटे पन्ने का अनुवाद दिया है। यह पन्ना शायद बाबरनामे का एक हिस्सा है जो अयोध्या से सम्बद्ध लगता है और 934 हिजरी के लुप्त अभिलेख की कुछ सूचनाएं समेटे है। शाही पुस्तकालय से प्राप्त यह हिस्सा सम्भवतः मूल लेख का फारसी अनुवाद है। इस अंश में लिखा है– ''इस स्थल पर जहां बगीचे, बहता पानी, सुन्दर भवन, वृक्ष विशेषकर रसाल वृक्ष तथा रंगीन पक्षियों का बाहुल्य है, कुछ आनन्दपूर्व बिताने के बाद गाजीपुर की ओर बढ़ने का आदेश दिया।'' इससे जाहिर होता है कि बाबर न केवल अयोध्या आया बल्कि यहां कुछ दिन निवास भी किया।

इस समय श्रीराम जन्मभूमि पर बाबर या उसके सूबेदार मीरबाकी द्वारा जो मस्जिद खड़ी की गयी उसके भीतर तथा बाहर दो पद्य वद्ध अभिलेख अंकित हैं। फारसी लिपि में अंकित इस अभिलेख से इसके निर्माण के इतिहास पर कुछ प्रकाश पड़ता है। भीतर का अभिलेख इस प्रकार है।

ब फरमूदाये शाह बाबर की अदिलस
बना ईस्त ता कारव–ए–गरदू मुलाकी।।1।।
बना कर्दे ई महबतें कुदसियां
अमीरे सआदत निशां मीरबांकी ।।2।।
बुवद खैर बांकी चुशाले बनाइस
इयां शुद की गुफ़्तम–बुवद खैर बाकी।।3।।

इसका हिन्दी अनुवाद इस प्रकार होगा–

''बाबर शाह की आज्ञा से, जिसके न्याय की ध्वजा आकाश तक पहुंचती हुई है, नेक दिल मीरबाकी ने फरिस्तों के उतरने के लिए, यह स्थान बनाया है। उसकी कृपा सदा बनी रहे। कि बुवद खैर बाकी।

'बुवद खैर बाकी' इस वाक्य से इस मस्जिद के निर्माण की तिथि 935 हिजरी (1528 ई.) भी निकल आती है।''

मस्जिद के बाहर वाले (प्रवेश द्वार के ऊपर) अभिलेख की केवल 6 पंक्तियॉ किसी तरह पढ़ी जा सकती हैं बाकी अब अपठनीय हो गयी हैं। हिन्दी लिपि में इस अभिलेख का पाठ इस प्रकार है–

ब नामे औकि दानाहस्त अकबर
कि खालिक जुमला आलम लामकानी
दुरूदे मुस्तफा बादज सतायश
कि सरदर अम्बेयाये दोजहानी

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फसाना दर जहां बाबर कलंदर

कि शुद दर दौर गेती कामरानी

इस अभिलेख में क्रमशः ईश्वर (खुदा), हजरत मुहम्मद तथा बाबर की प्रशंसा की गयी है। पहले शेर में कहा गया है – सम्पूर्ण जगत का सृष्टिकर्ता (ईश्वर) स्वयं निवास रहित है। दूसरे शेर में हजरत मुहम्मद को दोनों जहान तथा पैगम्बरों का सरदार कहा गया है। तीसरे शेर में बाबर को कलंदर कहकर उसकी प्रशंसा की गयी है किन्तु अगली दो पंक्तियां (जो अपठनीय हैं) के बिना उसका साफ अर्थ नहीं निकलता।

बाबर के समय तक अयोध्या की प्रतिष्ठा बहुत बढ़ गयी थी भगवान राम की जन्मभूमि भारतीय यात्रियों के आकर्षण का मुख्य केन्द्र बन चुका था सम्भवतः स्थानीय मुसलमानों के भड़काने से ही बाबर ने इस मंदिर को तोड़वा कर मस्जिद बनवाने की आज्ञा दी होगी क्योंकि हिन्दू तीर्थ यात्री के केन्द्र के रूप में इसका विकास मुसलमान पीरो–फकीरों की आंख में चुभने लगा था। स्थानीय परम्परा स्वीकार करती है कि पीर फजल अब्बास मूसा आसिकान ने बाबर को इसके लिए भड़काया कि वह मंदिर को तोड़वा कर वहां मस्जिद बनवाये। इस फजल अब्बास मूसा आसिकान की कब्र अभी भी श्रीराम जन्मभूमि के पश्चिम–दक्षिण करीब आधे किलोमीटर की दूरी पर है। इस कब्र में पूर्व मंदिर के वैसे ही दो स्तम्भ लगे हैं जैसे कि चौदह स्तम्भ मस्जिद में लगे हैं।

उपर्युक्त अभिलेख तथा पीर की कहानी से इतना स्पष्ट हो गया है कि पीर फजल अब्बास मूसा आसिकान के भड़काने में आकर बादशाह बाबर ने अपने सूबेदार मीरबाकी को श्रीराम जन्मभूमि मन्दिर गिराकर वहां मस्जिद बनवाने का आदेश दिया जिसने आदेश का पालन किया और मंदिर को ध्वस्त करके मस्जिद का निर्माण कराया। बाबरनामें जिस अवधि (2 अप्रैल 1527 से 18 सितम्बर 1528) के पन्ने गायब हैं उसी अवधि में कभी मन्दिर को गिराकर मस्जिद बनवाने का काम सम्पन्न हुआ होगा। बाबर ने निश्चय ही सारी कहानी को अपनी डायरी में लिखा होगा किन्तु बाद में उसके वंश के ही किसी व्यक्ति ने उस हिस्से को निकाल दिया होगा क्योंकि बाबर का वह विवरण भारत में मुगल सल्तनत के लिए हानिकर सिद्ध हो सकता था।

फकीर की कारस्तानी– *ऐतिहासिक दस्तावेजों में तो जन्म भूमि की तात्कालिक स्थिति तथा पीरों–फकीरों की भूमिका का कोई उल्लेख नहीं मिलता किन्तु स्थानीय श्रुति परम्परा में सारी कहानी बहुत कुछ सुरक्षित है।*

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बाबर जिस समय अयोध्या आया था उस समय जन्मभूमि पर महात्मा श्यामानन्द जी रहते थे। मन्दिर की देख–रेख उन्हीं के जिम्मे थी। समाज में उच्चकोटि के सिद्ध सन्त के रूप में उनकी ख्याति थी। ये सच्चे साधु थे तथा ऊँच–नीच की भावना से मुक्त थे। उनके शिष्यों में अनेक मुसलमान भी थे। बताया जाता है कि फजल अब्बास उनके सान्निध्य में आकर रहने लगा। उसी समय एक और फकीर जलालशाह भी वहीं आ गया। श्रीराम जन्मभूमि की प्रतिष्ठा को देखकर इन दोनों फकीरों ने सोचा अगर यह स्थल उनके कब्जे मे आ जाय तथा यहां मन्दिर के बजाय मस्जिद खड़ी हो जाय तो भारत में इस्लाम की धाक तो जम ही जायेगी उसके विस्तार का भी मजबूत आधार मिल जायेगा। इन फकीरों के सामने निश्चय ही बहराइच का उदाहरण रहा होगा जहां बालार्ककुण्ड नामक भारतीय तीर्थ को पटवा कर उस पर सैय्यद सालार मसूद का मकबरा बनवा दिया गया लेकिन फिर भी लाखों हिन्दू कुण्ड की जगह उस मकबरे को पूजने लगे। इन फकीरों को विश्वास था कि यदि यहां मस्जिद बन जाय तो मुसलमानों के अलावे बहुसंख्यक हिन्दू भी उनकी शरण में आने लगेंगे। दैवयोग से ऐसे अवसर पर बाबर अयोध्या आ गया। फिर क्या था इन फकीरों ने अन्य स्थानीय मुसलमानों को मिलाकर बाबर को बाध्य करके अपनी मनचाही करवा ली। ऐसी भी जनश्रुति है कि सिद्ध स्थली जानकर फकीर भी जन्मभूमि पर बैठना चाहते थे। मूसा आसिकान भी नित्य जन्मभूमि मन्दिर में जाकर बैठा करता था। एक दिन किसी ने उसे मंदिर से उठाकर बाहर कर दिया जिससे उसने शपथ लिया कि वह इस मन्दिर का ध्वस्त करवाकर छोड़ेगा। जो भी सत्य हो वह अपने संकल्प को पूरा करने में सफल रहा जिसका प्रमाण उसकी कब्र में लेगा ध्वस्त मन्दिर का स्तम्भ है। अयोध्या में प्रचलित सारी किंवदन्तियां मन्दिर तोड़वाने का मुख्यदोषी धर्मांध मुस्लिम फकीरों को ही मानती है। मुसलमान भी यही मानते हैं कि फकीरों के कुचक्र में पड़कर बाबर ने यह पाप किया। 'तारीख पारीना मदीनतुल औलिया' नामक उर्दू के ग्रंथ में भी फकीरों और मीरबाकी को इस कार्य का जिम्मेदार ठहराया गया है। इस फकीर ने बाबर को कैसे प्रभावित किया इसकी भी एक कहानी है जो परिशिष्ट में दी गयी है।

जन्मभूमि का प्रथम रक्ताभिषेक

पुजारियों का रक्तदान– फकीरों का षड़यन्त्र अत्यन्त गोपनीय था किन्तु श्यामानन्द जी को अपने शिष्यों की कारस्तानी की भनक लग गयी थी। अब

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उन्हें पता चला कि मुस्लिम सेना मंदिर को कभी भी ध्वस्त कर सकती है क्योंकि बादशाह का ऐसा आदेश मिल गया है तो उन्होंने मंदिर की बड़ी प्रतिमा को सरयू में डाल दिया और छोटी प्रतिमा को लेकर उत्तराखण्ड की ओर निकल गये। लेकिन मन्दिर के अन्य पुजारियों तथा भक्तों ने प्राण रहते मंदिर की रक्षा करने का संकल्प लिया। जब शाही कुमक मन्दि के द्वार पर पहुंची तो पुजारियों ने रास्ता रोक लिया। धर्मान्ध आक्रामकों ने तुरन्त उनका शिर काट लिया। श्रीराम जन्मभूमि की चौखट पहलीबार शहीदों के रक्त में डूब गयी। मूर्ति भंजकों की उन्मादी भीड़ अन्दर घुस गयी लेकिन वहां उन्हें कोई प्रतिमा नहीं मिली। बाहर निकल कर तोपों की मार से उन्होंने मन्दिर को जमीन पर सुला दिया। मंदिर को गिराने की खबर आग की तरह आस–पास के इलाकों में फैल गयी। प्रशासन ने पूरी चुस्ती बरती कि उत्तेजित हिन्दू अयोध्या न पहुंचने पायें लेकिन फिर भी बड़ी संख्या में लोग यहां धर्म की वेदी पर अपनी प्राणाहुति देने के लिए पहुंचे। परम्परा के अनुसार मन्दिर को ध्वस्त करने के विरोध में एक लाख छिहत्तर हजार हिन्दू मारे गये। यह संख्या अतिशयोक्तिपूर्ण हो सकती है किन्तु ऐसा नहीं है कि मीरबाकी ने निर्विरोध अपना कार्य सम्पन्न कर लिया हो। भारी खून खराबे के बाद ही वह शाही आदेश को पूरा कराने में सफल हो सकता होगा। किसी लेखक का यह कथन सही है कि जलालशाह ने हिन्दुओं के खून का गारा बनाकर उस पर लखैरी ईंटों की नींव मस्जिद बनवाने के लिए दी। यह सहज अनुमान का विषय है कि हिन्दू समुदाय ने यों ही मंदिर की जगह मस्जिद नहीं बन जाने दिया होगा लेकिन तत्कालीन संघर्षों की कहानी जानने का कोई ऐसा आधार नहीं है जिससे प्रामाणिक ब्यौरा दिया जा सके।

महताब सिंह का बलिदान– *परम्परा के ज्ञात कहानियों के अनुसार जिस समय मीरबाकी मन्दिर को ध्वस्त करने चला उसी समय भींटी रियासत के राजा महताब सिंह (फैजाबाद जिले के अन्तर्गत अयोध्या से 40 किमी0 पूर्व–दक्षिण) बद्रीनाथ धाम की तीर्थयात्रा के क्रम में अयोध्या पहुंचे। जब उन्हें इस घृणित प्रयास की सूचना मिली तो उन्होंने तीर्थ यात्रा का अभियान छोड़ा और श्रीराम जन्मभूमि की रक्षा के अभियान में जुट गये। उन्होंने अपने आदमियों से कहा कि बद्रीधाम नहीं अब स्वर्गधाम के यात्रा की तैयारी करनी है। उन्होंने जितना जल्दी हो सका अपने आदमियों को बटोरा और जन्मभूमि की रक्षा के लिए टूट पड़े लेकिन शाही सेना सतर्क*

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थी। बताया जाता है कि राजा महताब सिंह ने सत्तरह दिनों तक घोर संग्राम किया। इस धर्मयज्ञ में उन्होंने पूरी सेना समेत अपनी आहुति दे दी। वे जानते थे कि शाही सेना का मुकावला आसान नहीं है लेकिन शरीर में प्राण रहते उन्होंने मंदिर को एक खरोंच नहीं लगने दी।'' (पेज 432–438)

''मुक्ति के लिए हुए खूनी संघर्ष
(1528से 1947 ई. तक)

राजा महताब सिंह श्रीराम जन्मभूमि मंदिर की रक्षा तो नहीं कर सके लेकिन उनके बलिदान से उठी आग से तमाम भारतीय वीरों का खून उबल उठा। सीमित शक्ति, छोटी ताकत होने के बावजूद ये वीर लगातार शाही सेना से टकराते रहे और मर्यादा पुरुषोत्तम के आदर्शो की वेदी पर अपनी प्राणाहुति देते रहे। महताब सिंह के बाद बाबर के मात्र दो वर्षो के सीमित शासनकाल में श्रीराम जन्मभूमि की मुक्ति के लिए तीन बड़े संघर्ष हुए। और उसके बाद तो अकबर के समय तक लगातार तब तक संघर्ष होते ही रहे जब तक कि भारतीयों को मस्जिद प्रांगण में पूजा करने का अधिकार नहीं मिल गया। अकबर की शांतिप्रिय धार्मिक नीति के कारण तनाव कम हुए जिसके परिणाम स्वरूप जहांगीर तथा शाहजहां के समय शांति रहीं। किन्तु कट्टरपंथी औरंगजेब के शाहंशाह बनते ही स्थिति बदल गयी। उसने उस चबूतरे को ही खुदवा डाला जहां हिन्दू पूजा पाठ करते थे। अंतिम खूनी संघर्ष अंग्रेजों के शासन काल में 1934 में हुआ। बाबर के समय से लेकर स्वतन्त्रता प्राप्ति के समय तक हुए प्रमुख संघर्षो का विवरण नीचे दिया जा रहा है।

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मुगलकाल

देवीदीन पाण्डेय का प्रहार– *अभी मस्जिद बन नहीं पाई थी कि पं0 देवीदीन पाण्डेय ने आस–पास के क्षत्रियों को ललकारा और जन्मभूमि पर टूट पड़े। पण्डित देवीदीन पाण्डेय अयोध्या से 1 किमी0 पूर्व स्थित ग्राम सनेथू के निवासी बताये जाते हैं। वे पुरोहित थे। उन्होंने आस–पास के रियासतों के क्षत्रिय वीरों को संगठित किया और शाही सेना पर एका–एक हमला कर दिया। पण्डित देवीदीन शास्त्र के ही नहीं शस्त्र के भी पण्डित थे। उनके आकस्मिक प्रहार से एक बार तो मीरबाकी घबड़ा गया। लेकिन फिर जमकर युद्ध हुआ। पांच दिन तक युद्ध के बाद छठे दिन मीरबाकी के अंगरक्षक द्वारा फेंकी गयी एक ईंट पण्डित जी के सिर में लगी उन्होंने शिर को पगड़ी से कस कर बांधा और दूने उत्साह से तलवार चलाने लगे।*

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उन्होंने एक ही वार में ईंट चलाने वाले अंगरक्षक का शिर धड़ से अलग कर दिया और घोड़े को एड़ लगाकर सीधे मीरबाकी के हौदे पर हमला किया जो हाथी पर सवार था। मीरबाकी वार बचाकर हौदे में छिप गया और उसमें से उसने देवीदीन पर बन्दूक से गोली चला दी। इस गोली के आघात से जन्मभूमि की धरती पर बलिदान होने का उनका संकल्प पूरा हुआ। उनके शव का अंतिम संस्कार बिल्वहरिघाट (अयोध्या से अकबरपुर मार्ग पर पूरा बाजार के निकट) पर हुआ। श्रीराम जन्मभूमि के प्रथम रक्तरंजित इतिहास के लेखक पंण्डित रामगोपाल पाण्डेय 'शारद' के अनुसार पण्डित देवीदीन का यह हमला 3 जून 1528 को हुआ था और उनका बलिदान 9 जून 1528 को दिन के दो बजे हुआ। इनके वंशज उपर्युक्त सनेथू ग्राम के ईश्वरी पाण्डेय के पुरवा में अब भी मौजूद हैं।

राणा रणविजय सिंह का हमला– *पण्डित देवीदीन की मृत्यु के मात्र दो सप्ताह बाद हंसवर (यह रियासत भी फैजाबाद के पूर्वांचल में स्थित है) के राजा रणविजय सिंह ने भारी सेना लेकर जन्मभूमि पर अधिकार के लिए हमला किया। दस दिन की मुठभेड़ में इस राजा ने भी अपने सभी सैनिकों के साथ इस पवित्र धरती को अपने रक्त से सींचकर स्वर्ग के लिए प्रस्थान किया।*

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स्त्रियां भी पीछे नहीं रहीं *– संकट की घड़ी में राजपूतानें की क्षत्राणियां आत्महत्या का रास्ता (जौहर) अपनाती रही हैं लेकिन अयोध्या की क्षत्राणियों ने अपने पति की आहुति का बदला लेने के लिए स्वयं लोहा अपने हाथ में उठाया और लकड़ी की आग में नहीं रण की आग में कूदकर जौहर किया।*

उपर्युक्त हंसवर नरेश रणविजय सिंह की स्वर्गयात्रा के बाद उनकी पत्नी रानी जयराज कुमारी ने अपने पति के संकल्प को पूरा करने का बीड़ा उठाया। इस वीरबाला ने तीन हजार स्त्रियों को संगठित करके नारी–सेना बनायी और शाही सेना के साथ छापा–मार युद्ध शुरू किया। जयराज कुमारी का हमला लगातार हुमायूँ के समय तक जारी रहा। बताया जाता है कि हुमायूँ के समय में इस रानी ने एक बार तो शाही सेना को खदेड़कर जन्मभूमि पर कब्जा कर लिया किन्तु थोड़े ही समय में नई शाही कुमक आ गयी और उसके साथ लड़ते हुई इस वीरांगना ने भी अपने रक्त को अपने पति की रक्तधारा में मिलाकर अपना संकल्प पूरा किया।

इस युद्ध में रानी के गुरु सन्यासी स्वामी महेश्वरानन्द जी भी

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शामिल रहे। अपनी शिष्या के साथ लड़ते हुए उन्होंने भी शाही सेना को भारी क्षति पहुंचाकर वीरगति प्राप्त की।

साधुओं का पहला हमला– *महेश्वरानन्द की मृत्यु से इस अंचल के साधु सन्यासियों में भी जोश भर उठा। महेश्वरानन्द के बाद स्वामी बलरामाचारी ने युद्ध को आगे बढ़ाया उन्होंने न केवल साधु सन्यासियों को एकत्र किया बल्कि गांव–गांव घूमकर हिन्दुओं की एक जबरदस्त सेना तैयार की। इन्होंने कई हमले किये। परम्परा के अनुसार इन्होंने करीब बीस बार हमला किया। कई बार वे जन्मभूमि पर अधिकार करने में सफल रहे किन्तु उनकी सफलता स्थाई नहीं हो पाती थी। नयी शाही कुमुक के आ जाने पर उन्हें भागना पड़ता। फिर भी बलरामाचारी ने अयोध्या क्षेत्र के पूरे अॅचल में ऐसी चेतना लगा दी थी कि श्रीराम जन्मभूमि के लिये प्राणोत्सर्ग करने के लिये उत्सुक वीरों की टोली ने मुगल शासन को तंग कर दिया।*

मस्जिद के आंगन में मन्दिर– *यह स्वामी बलरामाचारी के शौर्य्य का परिणाम था कि तत्कालीन मुगल बादशाह अकबर को मस्जिद के प्रांगण में मन्दिर स्वीकार करना पड़ा। बताया जाता है कि स्वामी बलरामाचारी ने ही लड़ भिड़कर अकबर से मस्जिद के प्रांगण में एक चबूतरा बनवाने का अधिकार ले लिया जिस पर खस की टट्टियों का तीन फिट ऊॅचा एक मंन्दिर बनवाया गया। बलरामाचारी को यह अधिकार दिलाने में अकबर की धार्मिक उदारता के साथ–साथ उसके दो दरबारी रत्नों राजा टोडरमल तथा वीरबल के सहयोग ने भी काम किया। उसी स्थल पर अब भी छोटा सा मन्दिर है जिसमें पूजा पाठ होता है।*

पूजा भी अजान भी– *अकबर के समय से हिन्दू और मुसलमान दोनों इस भवन में समान रूप से आने–जाने लगे। मुसलमान प्रायः शुक्रवार (जुमा) को भीतर आकर नमाज अदा करते थें हिन्दू बाहरी चबूतरे पर नित्य पूजा–पाठ दर्शन करते थे और अपने उत्सव आदि मनाते थे। इस समय यह मस्जिद बाबरी मस्जिद के अलावे जामा मस्जिद या मस्जिद जन्मस्थान भी कहलाती थी।*

शांति तथा सद्भाव का काल– *1528 में मन्दिर की जगह मस्जिद के निर्माण से नफरत की जो दीवाल खड़ी हुई थी अकबर के समय (1556–1605 के मध्य) वह बहुत कुछ ढह गयी और शाहजहॉ के समय तक (1627–1658 ई.) सद्भाव और शांति का वातावरण बना रहा। करीब 69–70 वर्ष की इस अवधि में जन्मभूमि के लिए किसी संघर्ष का पता नहीं चलता।*

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हिन्दू श्रद्धा से इस भूमि पर आते थे और पूजा–पाठ करते थे। मुसलमान प्रति जुमे को नमाज पढ़ने आते थे लेकिन हिन्दुओं के मन्दिर की ओर से जूता पहनकर नहीं जाते थे। यद्यपि मुस्लिम फकीरों को यह बात खटकती थी लेकिन शासन का रूख भिन्न देखकर वे भी कोई कदम उठाने की हिम्मत नहीं रखते थे। किन्तु जब शाहजहां के बाद औरंगजेब मुगल सिंहासन पर बैठा तो घर्मान्ध फकीरों ने फिर अपनी चाल चलनी शुरू कर दी। जिन फकीरों ने नेकदिल बाबर को मन्दिर तोड़ने तक के लिए मजबूर कर दिया उनके लिए औरंगजेब को धर्मान्धता के रंग पर लाने में कितनी देर थी।

औरंगजेब का काल : फिर संघर्ष छिड़ा

भारतीय (हिन्दू) स्वभावतः सहिष्णु होते हैं। वे छोटे से चबूतरे को लेकर सन्तुष्ट थे। वे मस्जिद में भी अपने राम को विराजमान मानते थे। मुस्लिम नमाज से भी उन्हें कोई चिढ़ नहीं थी। लेकिन इस्लामी कट्टरपंथयों को मस्जिद के प्रांगण में घंटा, घरियालियों, शंख तथा कीर्तन की गूँज तनिक नहीं सुहाती थी। जब औरंगजेब जैसा कट्टर इस्लामी शासक मुगलिया तख्त पर आसीन हुआ तो इन कट्टरपंथियों ने दिल्ली दरबार में पहुंचकर बादशाह से फरियाद की। बताया जाता है कि औरंगजेब ने आदेश भेजा कि हिन्दू मस्जिद में कोई धार्मिक उत्सव न करें। उसने अपने सिपहसालार जांबाज खां को सेना के साथ अयोध्या भेजा। लेकिन यहां भी बैरागी व हिन्दू रियासतों के क्षत्रिय सतर्क थे। उस समय समर्थ गुरु रामदास के शिष्य बाबा वैष्णव दास अयोध्या के अहिल्याघाट स्थान पर स्थित परशुरामठ में आसन जमाये थे। उनके साथ हजारों चिमटाधारी साधुओं का जत्था था। बाबा वैष्णव दास के साथ गुप्तारगढ़ी के सशस्त्र साधुओं का एक दल भी तैयार खड़ा था। ''शारद'' जी के इतिहास के अनुसार हिन्दू रजबाड़ों तथा बाबा वैष्णवदास के चिमटाधारी साधुओं ने उर्वसी कुण्ड के पास जांबाज खां की सेना का मुकाबला किया और उसे मार भगाया।

बताया जाता है कि इस पराजय के कारण औरंगजेब ने जांबाज खां को हटा दिया और उसकी जगह सैय्यद हसन अली को नियुक्त किया। सैय्यद हसन अली एक बहुत बड़ी सेना लेकर तोपखानों के साथ अयोध्या के लिए रवाना हुआ। वैष्णव दास को जब इसकी खबर मिली तो उन्होंने सिख गुरू गाविन्द सिंह को पत्र लिखकर अयोध्या बुलवाया। गोबिन्द सिंह फौरन यहां पहुंचे। सैय्यद हसन के मुकाबले के लिए हिन्दू सेना के तीन

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भाग कर दिये गये और शाही सेना का मुकाबला तीन स्थानों–रुदौली (फैजाबाद–बाराबंकी सीमा पर), सआदतगंज (फैजाबाद नगर का पश्चिमी नाका) तथा जालपा (अयोध्या की वर्तमान दूध डेयरी के पास) पर करने का निश्चय किया। सआदतगंज में सिखों का दस्ता खेतों के पास छिप गया। (बताया जाता है इसके पास छोटा सा एक तोपखाना भी था) क्षत्रियों का दस्ता रुदौली में जा डटा। वैष्णव दास का चिमटाधारी गिरोह जालपा के पास सरपतों की झुरमुट में जम गया। शाही सेना पर पहला प्रहार रुदौली में हुआ। तब तक मुगल सैनिक संभलते क्षत्रिय मारकाट कर भाग निकले। शाही सेना जब सआदतगंज पहुंची तो सिखों ने धावा बोल दिया। पीछे से क्षत्रियों ने भी हमला कर दिया। इस दुहरे हमले में शाही सेना तहस–नहस हो गयी और सैय्यद हसन अली खां भी मारा गया। गुरू गोविन्द सिंह अयोध्या में थोड़े दिन ब्रह्मघाट पर ठहरे थे जहां कभी गुरु नानक देव भी पधारे थे।

श्रीराम जन्मभूमि पर हिन्दुओं का सबसे बड़ा उत्सव राम–जन्म का हुआ करता था। उस समय लाखों साधु तथा गृहस्थों की उपस्थिति में स्थानीय कट्टरपंथी मुसलमान कुछ नहीं कर पाते थे लेकिन वे बादशाह के कान अवश्य भरते रहते थे। अंततः 1664 में औरंगजेब स्वयं एक बड़ी सेना के साथ अयोध्या आया और जन्मभूमि पर हमला बोल दिया। इस हमले में हिन्दुओं के पैर नहीं टिक सके। तत्कालीन पुजारी प्रतिमा लेकर भाग खड़े हुए। औरंगजेब की सेना ने चबूतरे पर खड़े फूस के मंदिर को नोच डाला और चबूतरे को खोदकर गड्ढा कर दिया। यह विनाशलीला आठ दिनों तक चलती रही। औरंगजेब ने अयोध्या के दो और विष्णु मंदिरों को गिरवाकर वहां मस्जिदें कायम कर दी। जन्मभूमि पर झोपड़ी रखकर पूजा करने का भी अधिकार हिन्दुओं को नहीं रह गया।

बताया जाता है कि बाबा वैष्णवदास जी के साथ दस हजार चिमटाधारी साधु रहा करते थे। औरंगजेबी शासनकाल में वे लगातार शाही सेना की नाक मे दम किये रहे लेकिन अंत में इनका क्या हुआ पता नहीं चलता।

नवाबी राज

औरंगजेब के बाद दिल्ली सल्तनत कमजोर होती चली गयी। अवध के सूबे में भी स्थानीय रियासतें स्वतन्त्र हो गयी थी। दिल्ली के बादशाह मुहम्मदशाह ने अपने रिस्तेदार सआदत खां मुहम्मद अमीन बुरहानुलमुल्क

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को (सितम्बर 1722) अवध का सूबेदार बनाकर भेजा। उसने सूबेदारी बचाने के लिए अवध पर हमला किया। अमेठी (सुल्तानपुर जिले की एक रियासत) के राजा गुरूदत्त सिंह ने नवाब का मुकाबला किया। इस युद्ध में सूबेदार विजयी रहा हिन्दू संगठन छिन्न–भिन्न हो गया।

हिन्दुओं को पूजा अर्चना का फिर अधिकार मिला

अमेठी के राजा गुरुदत्त सिंह तथा पिपरा के राजा राजकुमार सिंह ने सआदतअली खां के समय में भी रीराम जन्मभूमि पर अधिकार के लिए संघर्ष जारी रखा। बैरागी साधु भी बीच–बीच में हमला कर दिया करते थे। इससे आजिज आकर उसने श्रीराम जन्मभूमि पर हिन्दुओं को पहले की तरह पूजा पाठ का अधिकार दे दिया। इसका उल्लेख गजेटियरों में आया है। कर्नलहण्ट ने लिखा है कि हिन्दुओं के हमले से ऊबकर नवाब ने मस्जिद में हिन्दुओं को भी पूजा–पाठ करने की इजाजत दे दी तब जाकर कुछ झगड़ा शान्त हुआ।

सआदतअलीखां के बाद उसका दामाद अबुलमंसूरअलीखां 'सफदरजंग' अवध का सूबेदार (1739 ई.) बना। उसके समय में अयोध्या में शान्ति बनी रही। सफदरजंग के बाद उसका बेटा सुजाउद्दौला अवध का नवाब हुआ (6 अक्तूबर 1754)। सफदरजंग के मन्त्री नवल राय तथा सुजाउद्दौला के मन्त्री बालकृष्ण दोनों धार्मिक प्रकृति के थे। उनके काल में किसी तरह का साम्प्रदायिक वैमनस्य नहीं खड़ा हुआ। सुजाउद्दौला ने अयोध्या से पश्चिम हटकर एक नये नगर की नींव डाली जिसका नाम फैजाबाद रखा गया। (इस समय फैजाबाद जनपद का मुख्यालय है)। इससे पहली बार प्रशासनिक मुख्यालय अयोध्या से खिसककर फैजाबाद गया। सुजाउद्दौला के बाद उसके बेटे आसफुद्दौला ने (1775 ई.) में अपनी राजधानी फैजाबाद से हटाकर वहां से 120 किमी. पश्चिम लखनऊ में बनाया। आसफुद्दौला को भी टिकैत राय जैसे योग्य मंन्त्री का सहयोग मिला। टिकैत राय ने हिन्दू–मुस्लिम सद्भाव की स्थापना में अभूत–पूर्व योगदान किया। टिकैत राय के प्रयत्नों से ही वर्तमान हनुमानगढ़ी बनी थी। नवाब ने उसके लिए पूरा सहयोग किया था। इसी काल में जन्मभूमि पर मस्जिद प्रांगण में वह चबूतरा फिर बना जिसे औरंगजेब ने खुदवा दिया था। नवाबों के काल में साम्प्रदायिक सद्भाव पूरी तरह बना रहा किन्तु नवाब नसीरुद्दीन हैदर के शासनकाल (1827–37 ई.) में श्रीराम जन्मभूमि को पुनः पूर्व रूप देने की कोशिश हुई। मकरही के तालुकेदार के नेतृत्व में हिन्दुओं

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की भीड़ ने तीन बार जन्मभूमि पर हमला बोला। अन्तिम बार वे मस्जिद पर कब्जा करने में सफल भी हो गये किन्तु मात्र तीन दिनों बाद शाही सेना ने फिर उनसे मस्जिद छीन ली।

वाजिदअलीशाह के समय हिन्दू–मुस्लिम संघर्ष

नवाब वाजिदअलीशाह के शासनकाल में (सन् 1855ई.) गुलाम हुसेन नामक एक सुन्नी फकीर ने दंगा करा दिया। विडम्बना यह कि ये गुलाम हुसैन साहब हनुमानगढ़ी पर पलते थे। ये हनुमान जी के सामने तुरही बजाया करते थे। किसी बात को लेकर उसका महान्त से विवाद हो गया इस पर उसने सुन्नी मुसलमानों को यह कहकर भड़काना शुरू कर दिया कि हनुमानगढ़ी के भीतर औरंगजेब ने जो मस्जिद बनवाई थी उसे वैरागियों ने गिरा दिया है। मुसलमान उसके बहकावे में आ गये और संगठित होकर हनुमानगढ़ी पर हमला बोल दिया लेकिन हनुमानगढ़ी के साधु भी संगठित थे। उनकी मार के आगे मुसलमान भाग चले। साधुओं ने उनका पीछा किया वे सब जाकर जन्मभूमि मस्जिद में छिप गये। साधुओं ने मस्जिद का फाटक तोड़ डाला। दोनों ओर से जम् के संघर्ष हुआ। इस संघर्ष में 11 साधु तथा 75 मुसलमान मारे गये।

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अयोध्या के तत्कालीन कोतवाल मिरजा मुनीमबेग ने झगड़ा निपटाने की बहुत कोशिश की लेकिन नाकामयाब रहे। संघर्ष के बाद नायब कोतवाल नासिर हुसैन ने सभी शवों को एक ही जगह दफन कर दिया।

वाजिदअली की निष्पक्षता– *अयोध्या में हुई इस मारपीट की फरियाद मुसलमानों की ओर से नवाब वाजिदअलीशाह के सामने की गयी उनसे कहा गया कि हिन्दुओं ने मस्जिद का दरवाजा ढहा दिया है इसलिये उन्हें मस्जिद में आने से रोक दिया जाय तथा उनके चबूतरे को हटवा दिया जाय। यह बाबरी मस्जिद है उसमें मूर्तिपूजा नहीं होनी चाहिये। बादशाह ने अपने दरबारियों से सलाह मशविरे के बाद मुसलमानों की दरखास्त पर एक शेर लिख दिया–*

हम इश्क के बन्दे हैं मजहब से नहीं वाकिब।
गर काबा हुआ तो क्या बुतखाना हुआ तो क्या।।

(हम तो प्रेम के पुजारी है, मजहब क्या है हम नहीं जानते, चाहे मन्दिर हो चाहे मस्जिद, मेरे लिए दोनों में कोई फर्क नहीं है)।

जेहाद की घोषणा– *उसके इस ऐतिहासिक फैसले की चतुर्दिक मुक्त कंठ से प्रशंसाा हुई। किन्तु कट्टरपंथी मुसलमान इस फैसले से और*

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नाराज हुए। अमेठी के मीर–मौलवी अमीरअली नामक मुसलमान ने क्रोध में भर कर स्वयं धर्मयुद्ध (जेहाद) करने का निश्चय किया। उसने धर्मरक्षा के नाम पर मुसलमानों का एक विशाल दल सजाया तथा श्रीराम जन्मभूमि पर हिन्दुओं का चबूतरा और फूस का मन्दिर ध्वस्त करने के लिए कूच किया। नवाब की ओर से मुसलमानों को रोका गया लेकिन वे नहीं माने। नवाब ने देखा कि मुसलमान नहीं मान रहे है तो अमीरअली को रोकने के लिए उसने भी अपनी एक सैनिक टुकड़ी भेज दी। इधर हिन्दू राजाओं ने भी जेहाद का मुकाबला करने की तैयारी की। रुदौली या रौनाही के पास अमीरअली की फौज के साथ नवाब की फौज का मुकाबला हुआ। हिन्दू सेना भी पहुंच गयी थी। इस युद्ध में अमीरअली मारा गया। हिन्दुओं की ओर से भीटी के राजकुमार जयदत्त सिंह भी इस अभियान में शामिल हुए। इस घटना का विवरण ''मदीनतुल–औलिया' नामक ग्रन्थ में भी आया है। इसके अनुसार ''मौलवी अमीर अली जुमा की नमाज पढ़कर 170 आदमियों को लेकर जेहाद के लिए रवाना हुए। सन् 1271 से 1272 हिजरी तक वायदा मोकिद हुआ। जेहाद का नाम सुनकर सैकड़ों मुसलमान शरीक जिहादीन (जेहाद में शामिल) हुए। तकरीबन दो हजार की जमेयत होगी जो रौनाही के पास जंग करते हुए शहीद हुए।''

'गुमगस्ते हालात अयोध्या' ने भी इस घटना का विवरण दिया है। इसमें अमीरअली को कसवा अमेठी (लखनऊ) का निवासी बताया गया है। नवाब ने उसे अपने अहलकार मिर्जा मुनीम बेग इत्यादि द्वारा फसाद करने से रोकना चाहा किन्तु वह नहीं माना। आखिरीबार 1855 में उसने जबर्दस्त तैयारी की जिसमें संडीला, रामपुर तथा दरियाबाद (बाराबंकी) के मुसलमान तालुकेदारों और मौलवियों ने हाथ बंटाया। यह देखकर अंग्रेजी रेजीडेंसी के मुख्याधिकारियें ने लखनऊ के नवाब से सम्पर्क किया कि अमीरअली और उसके साथी आतंककारियों को रोका जाय। नवाब ने शाही फरमान जारी करके उन्हें रोका, परन्तु जब वह नहीं माने तो अंत में शाही सेना और अंग्रेजों की सेना भेजी गयी। राजा शेरबहादुर सिंह ताल्लुकेदार कर्मियर गोण्डा की भी एक सेना गयी। राजा शेरबहादुर सिंह की सेना ने अमीरअली के साथियों का सफाया किया।

ब्रिटिश शासनकाल

1857 के प्रथम स्वतंत्रता संग्राम के बाद अवध क्षेत्र ब्रिटिश शासन क्षेत्र में आ गया। यद्यपि इस काल में जन्मभूमि पर कोई विवाद नहीं था,

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मुसलमान हर शुक्रवार को अपनी नमाज अदा करते थे तथा हिन्दू चबूतरे पर बने अपने फूस के मन्दिर में पूजा–पाठ, लेकिन दोनों भीतर–भीतर इस कोशिश में लगे रहते थे कि दूसरे का वहां से बिल्कुल सफाया कर दें, इसलिए छिटपुट संघर्ष होते रहते थे। ई. 1857 का वर्ष ऐसा रहा जब कि हिन्दू और मुसलमान कंधे से कंधा मिलाकर अंग्रेजों के विरुद्ध युद्ध में लगे थे। साम्प्रदायिक द्वेष की खाइयां पट रही थीं। ऐसे में यह स्वाभाविक था कि मुसलमानों की ओर से जन्मभूमि का मस्जिद समेत पूरा क्षेत्र हिन्दुओं को सौंप दिये जाने का प्रस्ताव आता। मुस्लिम नेता अमीरअली ने अयोध्या–फैजाबाद के सभी मुसलमानों को एकत्र करके उन्हें समझाया कि वे हमारे सम्राट बहादुरशाह जफर को अपना सम्राट मानकर जिस तरह युद्ध कर रहे हैं उससे हमें भी आगे बढ़कर ऐसा कुछ करना चाहिए जिससे दोस्ती और मजबूत हो। इसके लिए जरूरी है कि श्रीरामचन्द्र जी की जन्मस्थली हिन्दुओं को सौंप दी जाय। वातावरण सौहाद्र्य का था सभी मुसलमानों ने एक स्वर से समर्थन किया। लेकिन जब अंग्रेजों का यह पता चला तो वे घबड़ा गये। वे नहीं चाहते थे कि हिन्दू और मुसलमान दोस्त बन जाय। इस समय अयोध्या में अंग्रेजों के विरुद्ध संघर्ष करने वालों में बाबा रामचरणदास प्रमुख थे। रामजन्मभूमि के हस्तान्तरण की मनोभूमि तैयार करने में उनकी भी महत्वपूर्ण भूमिका बतायी जाती है। अंग्रेजों ने षडयन्त्र पूर्वक अमीरअली तथा बाबा रामचरणदास को बागी घोषित कर दिया तथा 18 मार्च 1858 को कुबेर टीला पर एक इमली के पेड़ में अमीर अली तथा बाबा रामचरणदास दोनों को फांसी दे दी गयी। स्थानीय जनता बहुत दिनों तक इस इमली के पेड़ की पूजा करती रही। अंग्रेजों ने जब यह श्रद्धा देखी तो उसने इस इमली के पेड़ को भी कटवा दिया।

रानी विक्टोरिया का हस्तक्षेप– *जन्मभूमि और बाबरी मस्जिद के विवाद की जानकारी जब ब्रिटिश महारानी विक्टोरिया को हुई तो उसने इस मस्जिद का एक नक्शा अपने पास मंगाया और उसके आंगन के बीच एक रेखा खींच दी और आदेश दिया कि आंगन के बीच में इस रेखा पर एक दीवाल खींच दी जाय मुसलमान अन्दर नमाज पढ़ें, हिन्दू बाहर के चबूतरे पर अपना पूजा पाठ करें। ब्रिटिश अधिकारियों ने आदेश का पालन किया और मस्जिद के आंगन में करीब आठ फिट ऊॅची एक दीवाल खड़ी कर दी गयी जिसमें बीच–बीच में लोहे की जालियां लगा दी गयी तथा लोहे के ही दो दरवाजे लगाये गये। यह दीवाल आज भी इसी तरह बरकरार है।*

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अंग्रेजी राज में पहला दंगा– *अंग्रेजी राज में श्रीरामजन्मभूमि को लेकर दो बाद दंगा हुआ पहला 1912 में दूसरा 1934 में। 1912 के दंगे में सैकड़ों हिन्दू और मुसलमानों की जान गयी। इस दंगे के पीछे कारण मुसलमानों द्वारा गाय की कुरबानी बतायी जाती है। दंगा बकरीद के अवसर पर भड़का था। बकरीद के त्यौहार पर आमतौर से मुसलमान कुरबानी देते हैं इस अवसर पर मस्जिद श्रीरामजन्मभूमि में नमाज के लिए मुसलमानों को शासन से विशेष अनुमति लेनी पड़ती थी जो प्रायः मिल जाती थी। बताया जाता है कि इस दंगे के दौरान निर्मोही अखाड़े के तत्कालीन महान्त नरोत्तमदास जी दिल्ली गये और वायसराय को अयोध्या ले आये। उन्होंने पूरी स्थिति का अध्ययन करने के बाद अयोध्या की पंचकोशी परिक्रमा के भीतर पशु हत्या विशेषकर गोहत्या पर पूरी तरह पाबन्दी लगा दी।*

अंग्रेजी राज में दूसरा दंगा– *अंग्रेजों के शासनकाल में दूसरा दंगा 1934 में हुआ। यह भी कुरबानी को लेकर हुआ। यह दंगा सबसे अधिक भयंकर था। इस दंगे में प्रत्यक्षदर्शी अभी बहुत से लोग अयोध्या में जीवित हैं। कुछ ऐसे भी लोग हैं जिनकी इस दंगे में सक्रिय भूमिका थी। प्रत्यक्ष दर्शियों के अनुसार 24 मार्च 1934 दिन मंगलवार को दोपहर बाद दंगा भड़का। उस दिन पता चला अयोध्या कें दक्षिणी अंचल में स्थित गांव शाहजहांपुर में कुरबानी हुई है। सूचना मिलते ही हनुमानगढ़ी के कुछ साधु वहां पहुंचे। गांव के मुसलमानों ने उनका मुकाबला किया। यह खबर आग की तरह अयोध्या में फैल गयी। आगजनी और मारकाट का बाजार गर्म हो गया। सुतहटी (रामकोट के दक्षिण एक मुहल्ला) पर बाबा रामसरनदास नामक एक पहलवान साधु ने एक फकीर की हत्या कर दी। बताया जाता है ये फकीर नवाबूशाह थे जिनकी मजार अभी भी बनी हैं दंगे में दोनों पक्षों को क्षति पहुंची। वैरागियों तथा गृहस्थों का एक दल जन्मभूमि बाबरी मस्जिद पर चढ़ आया और उसके गुम्बदों को खोद कर गिरा दिया। हमले में मन्दिर के भीतर तीन मुसलमान मारे गये। इस परिस्थिति में मुस्लिम समुदाय की शिकायत पर फैजाबाद से राजकीय सेना की एक टुकड़ी अयोध्या भेजी गयी। पूरे नगर में कफ़र्यू लागू कर दिया गया। सैकड़ों लोग गिरफ़्तार किये गये। गिरफ़्तार किये गये लोगों में विरक्त साधु अधिक थे। फैजाबाद के निवासी राजा मोहन मनूचा ने इन सबकी जमानत ली। मुकदमा चलने पर सबके सब निरपराध छूट गये। गिरफ़्तार किये गये लोगों में प्रमुख थे– महान्त रघुवर प्रसाद (बड़ा स्थान) बाबा सियाराम दास*

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(राजगोपाल) महान्त रामकिशोर दास (जन्मस्थान) महान्त रामटहल दास, बाबा मंगलदास पहलवान, बाबा शत्रुघ्न दास, बाबा यमुना दास (सभी हनुमानगढ़ी) तथा तपस्वी जी की छावनी के अधिकारी।

अंग्रेज कमिश्नर जे0पी0नेकल्सन ने अयोध्या पर इस दंगे के कारण दन्डात्मक कर (प्यूनिटिव टैक्स) लगाया। जिससे पचासी हजार रूपये की आय हुई। इस रुपये से मस्जिद की मरम्मत की गयी तथा उसके गुम्बदों का पुनर्मिाण कराया गया। मस्जिद के भीतर एक पत्थर पर अंकित अभिलेख में इस मरम्मत का जिक्र है, जिसे तहव्वर खां ठेकेदार ने कराया था। अभिलेख इस प्रकार है– ''27 मार्च 1934 मुताबिक 11 जिउलहज्ज सन् 1352 हिजरी बरोजे बलवा हिन्दू बलवाई मस्जिद शहीद करके असली कुतबा उठा ले गये। जिसको तहव्वर खां ठेकेदार ने निहायत खूबी के साथ तामीर कराया।'' (पेज 439–451)

4022. Most of the contents of the said book are unauthenticated. The credentials of the author are not known. On page 436 and 437, there are footnotes no.1 respectively on each and the same reads as under:

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''1. बाबर यद्यपि मुसलमान आक्रामक था लेकिन वह महमूद गजनवी या मुहम्मद गोरी की तरह आततताई नहीं था। वह धर्मभीरु था लेकिन धर्मान्ध नहीं। वह भारत में अपना साम्राज्य स्थापित करने आया था जेहाद करने नहीं। अपनी साम्राज्य स्थापना की लालच में वह सभी सन्तों–सिद्धों–फकीरों की दुआएं प्राप्त करने की कोशिश करता था। उसकी इस कमजोरी का लाभ ही फकीर फजल अब्बास मूसा आसिकान तथा जलालशाह ने उठाया। अन्यथा वह हिन्दू धर्म या उनके पूजागृहों के प्रति द्वेष रखने वाला नहीं था। इसका सबसे बड़ा प्रमाण यह है कि अयोध्या में दन्तधावन कुण्ड स्थान के आचार्य श्री स्वामी शत्रुघ्न जी को बाबर ने पांच सौ बीघा लमीन की काफी दी थी। यह स्थान अभी भी है और इनके पास उस प्राचीन दान के दस्तावेज भी हैं। बताया जाता है कि श्री शत्रुघ्न सिद्धयोगी थे और बाबर जब यहॉ आया था तो वह उनके दर्शनार्थ भी गया था। इस भूमि की प्राप्ति के बाद ही दन्तधावनकुण्ड मठ की स्थापना हुई। आज भी यहां स्थित अयोध्या का यह प्राचीनतम वैष्णव मठ है जिसके महान्त इस समय स्वामी नारायणाचार्य जी हैं

सिद्धों का दर्शन करके उनका आशीर्वाद प्राप्त करने के उद्देश्य से

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ही वह फजल अब्बास के पास भी गया था तो उसने अपनी सिद्धाई की धाक जमाकर उसे श्रीराम जन्मभूमि मन्दिर तोड़ने के कुचक्र में फांस दिया।''(पेज 436)

''1. ''मार्डन रिव्यू'' नामक अंग्रेजी की पत्रिका के 6 जुलाई 1924 के अंक में जाने माने लेखक स्वामी सत्यदेव परिब्राजक का एक लेख छपा था जिसमें उन्होंने एक शाही फरमान की प्रति को उद्धृत किया था। उनके अनुसार शाही मुहर युक्त यह फरमान उन्हें पुराने कागजातों की छानबीन के दौरान मुगल कालीन शाही कागजातों के साथ मिला था। यह फरमान बादशाह बाबर की ओर से जारी किया गया था जो श्रीराम जन्मभूमि के सम्बन्ध में था। यह फरमान अब कहीं है या नहीं इसकी कोई जानकारी नहीं है। किन्तु आजकल की प्रकाशित पुस्तकों में छपा उसका प्रारूप इस प्रकार है ''शाहंशाहे हिन्द मालिकूल जहां बादशाह बाबर के हुक्म से हजरत जलालशाह के मर्जी के मुताबिक अयोध्या में राम की जन्मभूमि को मिसमार करके उसकी जगह उसी के मसाले से मस्जिद तामीर करने की इजाजत दे दी गयी है बजरिये इस हुक्मनामें के तुमको बतौर इत्तिला के आगाह किया जाता है कि हिन्दुस्तान के किसी भी गैर सूबे से कोई हिन्दू अयोध्या न जाने पावे जिस सख्स पर यह सुबहा हो कि वह जाना चाहता है, उसे फौरन गिरफ्तार करके दाखिल कारागार कर दिया जाय। हुक्म की सख्ती से तामीर हो फर्ज समझकर।'' (पेज 437)

4023. The correctness of the facts stated in the two footnotes could not be supported or authenticated by any of the learned counsels and in respect to the footnote on page 437, in fact no counsel on behalf of Hindu parties claimed that any such Farman ever existed. The author of the book has not been shown to be a known historian or expert on the subject. The preface of the book i.e. paper no.107C1/154-3 (Register 22, page 419) shows that the book was written in hurry meaning thereby the author had no occasion to make any in-depth research on the subject. There is no mention that the author had earlier or at any point of time ever made research on the subject. He has also mentioned in preface:

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''फिर भी यत्र–तत्र किंवदन्तियों तथा परमपराओं का सहारा लेना पड़ा है।''

This is self speaking. In our view, no credence can be laid to the above document and this book loses trustworthiness for lack of supporting reference and material.

4024. Reliance has been placed on "**Sri Ram Janambhumi Ka Rakt Ranjit Itihas**" written by **Late Pt. Sri Ramgopal Pandey "Sharad"**, published by Pt. Dwarika Prasad Shivgovind, Ayodhya (1987). Photocopy of the frontispiece and pages 14, 15, 31, 33, 34, 95 and 96 of the said book have been filed as Exhibit 128 (Suit-4), Register Vol. 19, pages 33-40. The relevant part from pages 20 to 34 referred to by Sri R.L. Verma, Advocate says:

''इस सम्बन्ध में मार्डन रिव्यू में राम की अयोध्या शीर्षक एक लेख उक्त पत्र के ता0 6 जुलाई सन् 1924 के अंक में प्रकाशित हुआ था। इस लेख के लेखक थे श्रीस्वामी सत्यदेव परिब्राजक। स्वामी श्रीसत्यदेव परिब्राजक एक ख्याति प्राप्त व्यक्ति हैं। उनसे हिन्दी संसार पूर्णतया परिचित है। श्रीस्वामीजी ने कई बार विदेशों में भ्रमण कर भारतीय संस्कृति के अमर सन्देश का महामन्त्र अंग्रेज इतिहासज्ञों के बीच में भी फूका था। आपकी लिखी पुस्तकें ''मेरी कैलाश यात्रा'' ''संगठन का बिगुल'' हिन्दी संसार में पर्याप्त ख्याति प्राप्त कर चुकी हैं। आपको दिल्ली में किसी पुराने कागजातों की छानबीन में प्राचीन मुगल कालीन सरकारी कागजातों के साथ फारसी लिपि में लीथो प्रेस द्वारा प्रकाशित शाही मुहर संयुक्त बाबर का एक शाही फरमान प्राप्त हुआ था। जो अयोध्या में स्थित श्रीराम जन्मभूमि के समय उसे गिराकर मसजिद बनाने के सम्बन्ध में शाही अधिकारियों के पास जारी किया गया था। आपने अंग्रेजी में उसे मार्डन रिव्यू में 6 जुलाई सन् 1924 ई0 में अपने उस धारावाही रूप से प्रकाशित होने वाले लेख के साथ छपवाया था जिसे वे उस समय ''श्रीराम की अयोध्या'' शीर्षक देकर निकाल रहे थे। हम उस फरमान का अविकल हिन्दी अनुवाद नीचे दे रहे हैं।

श्रीरामजन्मभूमि

श्रीरामजन्मभूमि को गिराकर उसके स्थान पर बाबरी मसजिद निर्माण करने के लिए आज्ञा प्रदान करने के लिए बाबर को बाध्य करने वाला

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प्रसिद्ध तास्सुवी मुसलमान फकीर कजल अब्बास मूसा आशिकान कलन्दर साहब जिसने अयोध्या को मुसलिम तीर्थ खुर्द मक्का का स्वरूप देना चाहा था।

शाहंशाहे हिन्द कालिकुल जहां बादशाह बाबर के हुक्म से।

हजरत जलाल शाह के हुक्म के बमूजिब अयोध्या में राम की जन्मभूमि को मिसमार करके उसकी जगह उसी के मसाले से मसजिद तामीर करने की इजाजत दे दी गई है। बजरिये इस हुक्मनामे के तुमको बतौर इत्तिला के आगाह किया जाता है कि हिन्दुस्तान के किसी भी गैर सूबे से कोई हिन्दू अयोध्या न जाने पावे जिस शख्स पर यह सुबहा हो कि यह जाना चाहता है फौरन गिरफ्तार करके दाखिले जिन्दाकर दिया जाय। हुक्म की सख्ती से तामील हो फर्ज समझ कर।

(शाही मुहर)

इससे यह पता लगता है कि उस समय की सरकार भी यह समझती थी कि राम को जन्मभूमि को तोड़ कर उस जगह मसजिद खड़ी कर देना आसान काम नहीं है। इसका प्रभाव सारे हिन्दुस्तान पर पड़ेगा। सोई हुई हिन्दू जाति एक बार अँगड़ाई लेकर खड़ी हो जायगी। फिर तो उससे टकराकर दिल्ली का सिंहासन चूर चूर हो जाएगा और सारी राजसत्ता धूल में मिल जायगी।

इस फरमान के निकलने का क्या परिणाम हुआ। भारत के हिन्दू जन्मभूमि के उद्धार के लिए कुछ कर सके या नहीं, इसका हमारे पास कोई प्रमाण नहीं है। किन्तु कनिंघम की लखनऊ गजेटियर में प्रकाशित रिपोर्ट यह बतलाती है कि युद्ध करते हुए एक लाख चौहत्तर हजार हिन्दू जब मारे जा चुके, उनकी लाशों का ढेर लग गया तब बाबर के वजीर मीर बांकी खॉ ने तोप के द्वारा जन्मभूमि का मन्दिर गिराया। यह रिपोर्ट कनिंघम ने किस आधार पर दी है इसका भी हमारे पास कोई प्रमाण नहीं है। लेकिन उसकी यह रिपोर्ट कम से कम हिन्दुओं के मारे जाने की है। इसी से पाठक यह जान सकते हैं कि समस्त भारतीय जनता इस अन्याय से क्रुद्ध थी और अपनी समस्त शक्तियों से जन्मभूमि की रक्षा करने के लिये कृत संकल्प थी। हैमिल्टन तो बाराबंकी गजेटियर में यहां तक लिखता है कि जलालशाह ने हिन्दुओं के खून का गारा बनाबर उसपर लाहौरी ईंटों की नींव मसजिद बनवाने के लिये दी थी।

बाबर अपने बाबरनामें में लिखता है–

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हजरत कजल अब्बास मूसा आशिकान कलन्दर साहब की इजाजत से जन्मभूमि मन्दिर को मिसमार करके मैंने उसी के मसाले से उसी जगह यह मसजिद तामीर की।

बाबरनामा पृष्ठ 173

मसजिद के बन जाने पर भी हिन्दू शान्त नहीं बैठे, वे येन केन प्रकार से रामजन्मभूमि को पुनः प्राप्त करने के लिये कृत संकल्प रहे। हुमायूँ के समय में अयोध्या के पास स्थित सराय सिरसिण्डा, और राजेपुर नामक ग्राम के सूर्यवंशीय क्षत्रियों में एक बार पुनः जोश आया और दस हजार की संख्या में एकत्रित होकर उन्होंने पुनः जन्मभूमि पर धावा बोल दिया। स्थानापन्न सारी शाही छावनियॉ काट डाली, तम्बू फूंक दिए और मसजिद का अगला द्वार तोड़ फोड़ कर बरबाद कर दिया किन्तु तीसरे ही दिन शाही कुमक आ गई और सब क्षत्री युद्ध करते हुए मारे गये उनके गांवों में आग लगा दी गई किन्तु उनके वंशज इस पर भी शान्त नहीं हुये। अकबर के राज्य काल में उन्होंने फिर संगठित रूप से जन्मभूमि पर हमला किया। शाही सेना सावधान थी। बड़ी भयंकर मारकाट हुई। जब यह समाचार दिल्ली पहुॅचा तो राजा बीरबल और टोडर मल ने अकबर को बहुत समझाया। हिन्दुओं ने अपनी भयंकर मार से शाही सेना के पांव उखाड़ कर एक चबूतरा मसजिद के सामने बना लिया था, अकबर ने उसी पर भगवान के स्थापित करने की आज्ञा दे दी। दीवाने अकबरी में लिखा है–

जन्मभूमि को वापस लेने के लिए हिन्दुओं ने 20 हमले किये। अपनी हिन्दू रियाया की दिल शिकमी न हो इसलिये शाहंशाहे हिन्द शाह जलालुद्दीन अकबर ने राजा बीरबल और टोडरमल की राय से उनको बाबरी मसजिद के सामने चबूतरा बनाबर उस पर एक छोटा सा राम मन्दिर तामीर कर लेने की इजाजत बख्श दी, और यह हुक्म दिया कि कोई भी शख्स उनके पूजा–पाठ में किसी तरह की रोक टोक न करे।

(दीवाने अकबरी से)

इस नीति से कुछ दिनों के लिये यह झगड़ा शान्त हो गया। उस चबूतरे पर स्थित भगवान की मूर्ति का पूजन पाठ बहुत दिनों तक अबाधगति से चलता रहा। अकबर की कठोर आज्ञा के कारण मुसलमान उनके घड़ी घंटा आदि बजाने और पूजन पाठ में कोई विक्षेप नहीं करते थे। यही क्रम शाहजहॉ के समय तक रहा। जहांगीर और शाहजहॉ ने भी इस सम्बन्ध में हिन्दुओं का कोई विरोध नहीं किया। सन् 1640 में जब दिल्ली

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के सिंहासन पर हिन्दू धर्म द्वेषी औरंगजेब बैठा तब जन्मभूमि के इतिहास के पृष्ठ में एक क्रान्तिकारी नया अध्याय आरम्भ हुआ।

औरंगजेब का आक्रमण

राजसिंहासन पर बैठते ही सबसे पहले औरंगजेब का ध्यान अयोध्या की ओर गया। प्रायः देखा गया है कि जैसा राजा होता है वैसे ही उसके कर्मचारी एवं अधिकारी वर्ग हो जाते हैं। जहां अकबर के समय में हिन्दू जाति के प्रति सहानुभूति रखने वालों की अधिकता थी वहां औरंगजेब के समय में हिन्दू धर्म द्वेषियों का प्राबल्य हो गया, सिंहासन पर बैठते ही मुल्लाओं ने औरंगजेब के कान भरने शुरू किये उसका ध्यान राम जन्मभूमि की ओर दिलाया औरंगजेब ने अपने सिपहसालार जाबांज खॉ की अध्यक्षता में एक जबरदस्त सेना भेज दी। वह सेना अयोध्या आ पहुॅची। पुजारियों को पहले ही यह मालूम हो गया था अतः उन्होंने पुनः भगवान की मूर्ति एवं पूजा का सामान छिपा दिया तथा रातो रात देहातों में घूम घूम कर मन्दिर पर आक्रमण होने की सूचना हिन्दुओं को दे दी और रात ही रात हिन्दुओं का एक जबरदस्त दल मन्दिर की रक्षार्थ श्रीराम जन्मभूमि पर आ डटा, उन दिनों अयोध्या में अहिल्याघाट पर परशुराम मठ में स्थित वैष्णवदास नाम के एक महात्मा निवास करते थे दक्षिण प्रान्त के समर्थ गुरु श्रीरामदास जी महाराज के शिष्य थे और उन्हीं की आज्ञानुसार सम्पूर्ण उत्तरीय भारत में हिन्दू संस्कृति के प्रचार एवं विधर्मियों से देश का उद्धार करने के लिये घूम रहे थे। इनके साथ दस हजार चीमटाधारी साधुओं का एक जबरदस्त गिरोह था। उस गिरोह के साधु प्रचार, योग साधना, जासूसी, युद्ध विद्या आदि सभी कार्यो में निपुण थे, जन्मभूमि पर औरंगजेबी आक्रमण का समाचार जब इन साधुओं को मिला तो यह साधुओं की जबरदस्त सेना हिन्दुओं के दल से मिल गई और इस जबरदस्त दल ने उर्बसी कुण्ड पर मुगल सेना का डटकर सामना किया। सात दिन तक लगातार घोर संग्राम होने पर साधुओं के चीमटों की मार से शाही सेना के धुर्रे उड़ गये और वह मैदान छोड़कर भाग खड़ी हुई।

मुगल सेना को पराजित कर भगा देने के पश्चात् यह साधुओं का दल भाऊ के जंगलो में छिप गया। हिन्दुओं का गिरोह भी जहां तहां अन्तर्ध्यान हो गया और चबूतरे पर स्थित मन्दिर की रक्षा हो गई। इस पराजय का समाचार जब औरंगजेब के पास पहुंचा तो वह अत्यन्त क्रुद्ध हुआ और जॉबाज खॉ को पदच्युत करके उसके स्थान पर सैय्यद हसन

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अली को सिपहसालार बनाकर पचास हजार सेना देकर जन्मभूमि को तहस नहस कर डालने के लिये भेजा।

मगर साधुओं का दल भी असावधान नहीं था। इस गिरोह के कुछ आदमियों को पत्र देकर वैष्णवदास ने गुरु गोविन्द सिंह के पास भेजा। गुरु गोविन्द सिंह अपने अधीनस्थ सिक्खों की एक जबरदस्त सेना लेकर उन दिनों आगरे की ओर मुगल सेना की हेंकडी भुला रहे थे। वे वैष्णवदास के साथ आकर मिल गये और ब्रह्मकुण्ड पर अपना अड्डा जमाया। वैष्णवदास के जासूस कदम 2 पर मुगल सेना की टोह ले रहे थे। जब उन्हें पता चला कि हसनअली की अध्यक्षता में पचास हजार मुगल सेना ऑधी की तरह अयोध्या की ओर बढ़ती चली आ रही और उसके साथ एक तोपखाना भी है तो सिक्ख और साधुओं की सेना ने अपने तीन दल कर दिये। एक दल सिक्खों का एक छोटे से तोपखाने के साथ फैजाबाद के वर्तमान शहादतगंज के पास खेतों में छिप गया। दूसरा दल गृहस्थ क्षत्रियों का था जिसने रुदौली में डटकर शाही सेना का सामना किया। और वैष्णवदास का चीमटाधारी गिरोह जालपा पर सरपत के जंगलो में छिपकर मुगल सेना की प्रतिक्षा करने लगा।

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शाही सेना का पहला मुकाबला रुदौली में क्षत्रियों से हुआ जिसमुं साधारण लड़ाई के बाद पूर्व निश्चित कार्यक्रम के अनुसार वे हट गये और आकर सिक्खों के दल से चुपचाप मिल गये। मुगल सेना ने समझा हिन्दू पराजित होकर भाग गये, अतएव वह निश्चिन्त होकर आगे बढ़ी। जैसे ही वह शहादतगंज के पास पहुॅची वैसे ही सिक्खों का दल भूखे बाघ की तरह उन पर टूट पड़ा। पीछे से हिन्दुओं के दल ने भी धावा बोल दिया। सिक्खों ने आगे बढ़कर सबसे पहिले शाही तोपखाने पर ही अधिकार कर लिया। इस दोहरी मार से मुगल सेना घबरा उठी और साहस छोड़कर भाग निकली। सरदार हसनअली भी इस युद्ध में मारे गये। इस पराजय का औरंगजेब पर ऐसा असर पड़ा कि लगातार 4 वर्ष तक उसने जन्मभूमि पर आक्रमण करने का नाम तक नहीं लिया।

चार वर्ष तक लगातार आक्रमण न होने के कारण हिन्दू असावधान थे। इससे लाभ उठाकर सन् 1664 में औरंगजेब ने पुनः श्रीजन्मभूमि पर आक्रमण कर दिया। यह समाचार पाकर हिन्दुओं ने मुकाबला किया किन्तु शाही सेना के सामने उसकी एक न चली पुजारियों के प्रयत्न से मन्दिरस्थ भगवान की प्रतिमा छिपा दी गई। इस अचानक आक्रमण में दस हजार

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हिन्दुओं का बध हुआ। मारे गये हिन्दुओं की लाशें मन्दिर के पूर्वीय द्वार पर स्थित नवकोण का एक कन्दर्प कूप नामक कुवॉ था उसमें भर दी गई और चारों ओर से चहारदिवारी उठाकर उसे घेर दिया गया। आज भी वह कन्दर्प कूप ''गंज शहीदा'' के नाम से मन्दिर के पूर्व द्वार पर स्थित है जिसे मुसलमान अपनी सम्पत्ति बतलाते हैं।

आठ दिन तक रात दिन घोर संग्राम

शाही सेना ने जन्मभूमि का चबूतरा खोद डाला। बहुत दिनों तक वह चबूतरा गढ़े के रूप में वहां पर स्थित था। हिन्दू जनता श्रीराम नौमी के दिन भक्ति भाव से उसी गढ़े में जल अक्षत पुष्प चढ़ा दिया करती थी। जब लखनऊ की नवाबी का उदय हुआ और लखनऊ की नवाबी की मसनद पर नवाब सहादतअली खॉ तख्तनशीन हुआ तो एक बार फिर हिन्दुओं ने जन्मभूमि पर आक्रमण किया किन्तु इस बार भी दुर्भाग्य से उन्हें सफलता नहीं मिली।

नवाब नासिरुद्दीन हैदर के समय में फिर हिन्दुओं का जबरदस्त आक्रमण हुआ। इस बार हिन्दू संगठित थे। अबकी बार डटकर नवाबी सेना का सामना हुआ। आठवें दिन हिन्दुओं की शक्ति क्षीण होने लगी। जन्मभूमि के मैदान में हिन्दू और मुसलमानों की लाशों का ढेर लगा हुआ था। शाही सेना के सैनिक अधिक संख्या में मृतक हुए थे। इस भयानक संग्राम में भीटी हसवर, मकरही, खजुरहट, दियरा, अमेठी के राजा गुरुदत्त सिंह आदि भी सम्मिलित थे। शाही सेना इन्हें पछाड़ती हुई हनुमानगढ़ी तक ले आई। हनुमानगढ़ी तक आने पर साधुओं की चीमटाधारी जमात हिन्दुओं से आ मिली। इस जमात में खाकी साधुओं के साथ बड़े बड़े महन्त भी थे। अबकी बार डटकर घोर संग्राम हुआ। इस युद्ध में शाही सेना के चिथड़े उड़ गये और उसे रगेदती हुई हिन्दू सेना ने जाकर जन्मभूमि पर अधिकार कर लिया।

किन्तु यह अधिकार अधिक दिनों तक नहीं रहा। जबरदस्त शाही सेना ने आकर फिर इनके हाथ से जन्मभूमि छीन ली।

नवाब वाजिदअली शाह के समय में पुनः हिन्दुओं ने जन्मभूमि के उद्धारार्थ आक्रमण किया। अबकी बार के आक्रमण में अवध के दो चार राजाओं को छोड़कर सभी हिन्दू राजा सम्मिलित थे। फैजाबाद गजेटियर में कनिंघम लिखता है कि इस बार शाही सेना एक ओर खड़ी तमाशा देखने लगी। हिन्दू और मुसलमानों को यह छूट दे दी गई कि वे लड़कर आपस

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में निपट लें। यह संग्राम ऐसा भयानक था कि वर्णन करना शक्ति के बाहर है। दो दिन के रात दिन तक होने वाले भयंकर युद्ध में बुरी तरह मुसलमान पराजित हुए। क्रुद्ध हिन्दुओं की भीड़ उनके मकान फूँकने और कबरें तोड़ फोड कर बरबाद करने एवं मसजिदों को मिसमार करने लगी। यहाँ तक कि मुर्गियों तक को जिन्दा नहीं छोड़ा। केवल उन्होंने स्त्रियों और बच्चों को कोई हानि नहीं पहुँचाई। सारी अयोध्या में प्रलय मच गया, मुसलमान अयोध्या छोड़कर अपनी जान लेकर भाग निकले। इतिहास लेखक कनिंघम लिखता है कि यह अयोध्या का सबसे बड़ा हिन्दू मुसलिम बलवा था। मुसलमानों की इस प्रकार की दुर्दशा देखकर शाही सेना ने जिसमें अधिकतर अंग्रेज थे। स्थिति को काबू में किया। सारे शहर में करफ़्यू आर्डर की घोषणा कर दी गई। उस समय अयोध्या के महाराज मानसिंह ने नबाब वाजिदअलीशाह से कह सुनकर चबूतरा फिर से हिन्दुओं को बनवा लेने की आज्ञा दिलवाई और चबूतरे पर तीन फीट ऊँची खस की टट्टियों का एक छोटा सा मन्दिर बना जिसमें पुनः भगवान की स्थापना की गई।

अंग्रेजी, राज्य में जन्मभूमि पर हमला।

अंग्रेजी राज्य में दो बार जन्मभूमि पर आक्रमण हिन्दुओं द्वारा हुए। पहला आक्रमण सन् 1912 में और दूसरा आक्रमण सन् 1934 में हुआ। पहले आक्रमण में तो बाबरी मसजिद को हानि नहीं पहुंची किन्तु दूसरे आक्रमण में बाबरी मसजिद तोड़ फोड़ कर बरबाद कर दी गई किन्तु फैजाबाद के डिप्टी कमिश्नर जे0 पी0 निकल्सन ने मसजिद पुनः बनवा दी।

बाबरी मसजिद में एक जगह लिखा है–

27 मार्च सन् 1934 मुताबिक 11 जीउल हिज्जा सन् 1352 हिजरी बरोजे बलबा हिन्दू बलबाई मसजिद शहीद करके असली कुतवए उठा ले गये जिसको तहव्वर खाँ ठेकेदार ने निहायत खूबी के साथ तामीर किया।

(बाबरी मसजिद से)

मुसलमानों द्वारा श्रीरामजन्मभूमि के उद्धार का प्रयत्न

सन् 18 सौ सत्तावन के विप्लव में जब बहादुर शाह को सम्राट घोषित कर विद्रोह का नारा बुलन्द किया गया तो अयोध्या के हिन्दू, राजा देबीबख्श सिंह गोंडा नरेश तथा बागी रामचरणदास की अध्यक्षता में संगठित हो गए। उस समय बागी मुसलमानों के नेता अमीरअली ने अयोध्या और फैजाबाद के समस्त मुसलमानों को इक्ट्ठा करके कहा कि बिरादराने वतन बेगमों के जवरातों को बचाने में हमारे हिन्दू भाइयों ने जिस कदर

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अंग्रेजो से लड़कर बहादुरी दिखाई है इसे हम भूल नहीं सकते? सम्राट बहादुर शाह ज़फर को अपना बादशाह मानकर हमारे हिन्दू भाई अपना खून बहा रहे हैं, इसलिये फर्जे इलाही हमें मजबूर करता है कि हिन्दुओं के खुदा श्रीराम चन्द्र जी की पैदाइशी जगह पर जो बाबरी बनी है वह हम इन्हे बखुशी सुपुर्द कर दें क्योंकि हिन्दू मुसलिम नाइत्तफाकी की सबसे बड़ी जड़ यही है ऐसा करके हम इनके दिल पर फतह पा जायेंगे।

कहना नहीं होगा कि अमीरअली के इस प्रस्ताव का सारे मुसलमानों ने एक स्वर से समर्थन किया। किन्तु अंग्रेजों को यह बात मंजूर नहीं थी। वे चाहते थे कि मसजिद बनी रहे जिससे हिन्दू और मुसलमानों के दिल आपस में मिलने न पाएँ, क्योंकि बाबरी मसजिद के हिन्दुओं को मुसलमानों द्वारा वापस किए जाने की खबर फेल चुकी थी। अंग्रेजो में जो घबराहट इससे फैली इसका प्रमाण हम सुल्तानपुर गजेटियर में प्रकाशित पृष्ठ 36 पर कर्नल मार्टिन की रिपोर्ट को उद्धृत करके देते हैं।

अयोध्या की बाबरी मसजिद को मुसलमानों के द्वारा हिन्दुओं का वापस दिए जाने की खबर सुनकर हम लोगों में घबराहट फेल गई। और विश्वास हो गया कि हिन्दुस्तान से अब अंग्रेज खतम हो जायेंगे। लेकिन अच्छा हुआ कि गदर का पास पलट गया और अमीरअली तथा बलवाई बाबा रामचरनदास को फॉसी पर लटका दिया गया जिनके बाद फैजाबाद के बलवाइयों की कमर टूट गई और तमाम फैजाबाद जिले पर हमारा रोब गालिब हो गया। क्योंकि गोंडा का राजा देबीबख्श सिंह पहले ही फरार हो चुका था। इस काम में राजा मानसिंह मेहदौना वाले ने हमारी बड़ी मदद की।

कहना नहीं होगा कि अमीर अली का यह सत्प्रयत्न अंग्रेजों की कूटनीति के कारण विफल हो गया और 18 मार्च सन् 1858 को कुबेरटीला पर स्थित इमली के पेड़ पर बाबा रामचरणदास और अमीरअली दोनों को फॉसी पर लटका दिया गया। बहुत दिनों तक जनता इस इमली के पेड़ पर उन दोनो देश भक्तो को फॉसी दे दी गई थी। फूल अच्छत चढ़ाती रही। जब अंग्रेजों ने जनता की इतनी जबरदस्त श्रद्धा उन देश–भक्तों के प्रति देखी तो उनके अन्तिम स्मारक उस इमली के वृक्ष को भी कटवा डाला। इस प्रकार मुसलमानों द्वारा श्रीजन्मभूमि उद्धार किया गया प्रयत्न अंग्रेजों की कूटनीति से व्यर्थ हो गया।

जन्मभूमि के उद्धार के लिए बाबर के शासन से लेकर आज तब

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छिहत्तर बलवे हुए जिनकी सुची क्रमबद्ध नीचे दी जा रही है।

1. बाबर के समय में – 4

2. हुमायूँ के समय में–10

3. अकबर के समय में –20

4. औरंगजेब के समय में 30

5. नबाब शहादतअली के समय में – 5

6. नासिररुद्दीन हैदर के समय में – 3

7. वाजिदअली के समय में– 2

8. अंग्रेजों के समय में–2

कुल योग– 76

सबसे अन्तिम भयानक युद्ध जिसमें शाही सेना खड़ी तमाशा देखती थी और हिन्दू मुसलमान आपस में लड़कर फैसला कर रहे थे वह सन् 1856 में हुआ था, जिसमें सबसे बढ़ कर हानि मुसलमानों की हुई थी।''

4025. We do not find any reference for the supporting material of the said book. On page 33, however, reference has been made to Cunningham's report but the facts which are alleged to have been written by Cunningham do not find mention in the work of Cunningham which we have already referred in some detail. The alleged *Farman* of Babar, which is mentioned by the author in support of his work that Babar issued order for desecration of the birth place of Lord Rama, has not been shown to exist anywhere. Despite our query, the learned counsel could not place his hand even to suggest about the very existence of any such *Farman.* Again the quote from page 173 of Babarnama is also perverse as no such fact is mentioned anywhere in the Babarnama written by various writers and the learned counsel Sri Verma could not support the said work.

4026. Ex facie, we are clearly of the view that whatever have been written in his work mostly is imaginary and the

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creation of the author himself instead of having any factual authenticity. We, therefore, find it difficult to believe on the said narration in the absence of any supporting and corroborating material particularly when it is not shown by Sri R.L. Verma that author of the said booklet was a historian or in any case an expert in the subject having special skill and resources to collect such historical facts.

4027. Exhibit 114 (Suit-5) (Register 23, Page 535-577) is a copy of article/paper by Dr.S.P.Gupta, Director, Allahabad Museum being Presidential address in XXIII Annual Conference of the India Archaeological Society held on 22nd December, 1989 at Guntur (State of Andhra Pradesh). The subject of the paper is **"Ram Janmabhumi Controversy : Passion Apart What History And Archaeology Have To Say On This Issue".** The paper only shows the personal opinion of the author. The aforesaid author has appeared as witness O.P.W. 3 on behalf of plaintiffs (Suit-5). We find no reason to take into account the aforesaid opinion when he himself has appeared before us and has deposed as an expert witness (Archeologist).

4028. **Exhibit 115 (Suit-5) (Register 23, Page 579-587)** is another article by Dr. S.P.Gupta, Former Director, Allahabad Museum, Allahabad on the subject **"Ram Janambhoomi-Babri Masjid Revisited".** This document also does not require any further comments and we do not find any reason to consider it since it is at the best an opinion of an expert and when the expert himself has deposed his statement, it is better to consider that statement instead of his ex parte opinion.

4029. **Exhibit 132 (Suit-5) (Register 23, Page 593-603)** is a photocopy of the frontispiece, Foreword and two photographs

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at page 601 and 603 of "Catalogue of Historical Documents in Kapad Dwara, Jaipur" by G.N.Bahura and C.Singh. Item 179 paper no.107 C1/195 has been relied on by Sri P.N.Mishra and Sri H.S.Jain. It reads:

> *"Map of Ayodhya, painted on white cotton fabric: early 18th Century: size: 213x178 cm.*
>
> *The map was acquied through a Swami of Ayodhya at a price of Rs.5/-. This kind of maps were made for pilgrims and were presented to kings and nobles by saints. Important religious places are depicted prominently, for example:- Chakratirth. Devi of Ayodhya, Bharatkund, gufa of Bharatji, palaces of Dashrath, Kalpavriksha, Janaki kund, seat of Swami Raghodas, Sumeru Parvat, jaunpur town 40 kos from Ayodhya, Vibhishan pol, Chauki of Angad, Chauki of Sugriva, Patshahi qila, Lakshman kund, Saptasagar where Sri Ram left for his heavenly abode, Gorakhpur 40 kos from Ayodhya, river Tilottama, Mahavidya-kund where Sri Ram took lessons, Janmasthan (birth-place) of Sri Ram, Agni-kund where Sita entered into fire, Vairagpur, Hanuman-kund, Apsara-kund, Ramdwara, Ramghat and the river Sarayu."*

4030. Exhibit 51 (Suit-5) (Register Vol. 28, page 217-225) is a copy of a Article written by Sri Ajay Mitra Shastri under the title "Ayodhya and God Rama" said to have been published sometime after December 1992. The author was Head of Ancient Indian History and Archeology Department, Nagpur University, Nagpur, Maharashtra, who has expressed his opinion that the building in dispute was constructed by Babar in 1528 as is evident from the inscriptions fixed on the said building built

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after demolition of a Hindu Temple and in support of this opinion, he has relied on (a) the Chandravati plates of the Gahadavala King Chandradeva, dated Vikram Samvat 1150 (AD 1092-93); (b) the research work of Hans Bakker; (c) inscription of Jayachachandradeve, dated AD 1184 said to have been seen by him when he claimed to have visited Ayodhya in 1992; (d) the stone inscription said to have been found at the time of demolition of the disputed building on 6th December 1992.

4031. **Exhibit 129 (Suit-5) (Register Vol. 28, page 227-281; 289-325)** claimed to be an Article read by Sri S.P. Gupta in a Conference at Ayodhya in October, 1992. The author himself has appeared in witness box and, therefore, we would consider his evidence along with his oral deposition.

4032. Exhibit 131 (Suit-5) (Register Vol. 28, page 283-285) is a copy of a map of the disputed site at Ayodhya which was part of the Article of Sri S.P. Gupta, i.e., Exhibit 129 (Suit-5) and shall accordingly be dealt with along with his oral deposition.

4033. **Exhibit 130 (Suit-5) (Register Vol. 28, page 327-353; 369-387)** is a copy of another Article of Sri S.P. Gupta expressing his opinion about the disputed site and the building which we may discuss along with his oral deposition.

4034. **Exhibit 128 (Suit-5) (Register Vol. 28, page 355-367)** claimed to be copy of the resolution of archaeologists, historians, epigraphists and scholars of allied disciplines participated in seminars held between 10th to 13th October, 1992 at Ayodhya.

4035. Though expert witnesses produced on behalf of plaintiffs (Suit-4), have sought to claim that history does not say

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demolition of religious structure by Rulers of one religion and nothing is there to show discrimination between the followers of different religions, we find that the said averments are mere in the nature of a deliberate attempt to misguide the people and the Court about historical information which already is present in black and white in various historical literature. Even some of the corresponding writers have admitted and mentioned these things. The first source, we find more reliable than other is, the translation of the work of a number of Muslim writers given in the book **"History of India As told by its own Historians"** by **H.M. Elliot and John Dowson** published in eight volumes.

4036. Henry Miers Elliot was born in 1808 at Westminster in England. Due to consolidation of British power in India, the East India Company felt extreme deficiency of civil servants and, therefore, sought reinforcement from England by resorting to an emergence summary kind of recruitment and it is pursuant thereto Mr. Elliot was nominated as a candidate by Campbell Marjoribanks and was appointed directly in civil services to be sent to India. He sought to specialize in oriental languages and during the Training Examination, secured honorary classes. Initially, he was appointed an Assistant to the Magistrate and Collector of Bareilly and thereafter he worked in the capacity of Assistant to the Political Agent and Commissioner at Delhi, Assistant to the Collector and Magistrate of Mooradabad, Secretary to the Sudder Board of Revenue for the North West Provinces. In 1847 he became Secretary to the Government of India in the Foreign Department. He died in an early age of 45 while seeking to restore his broken health in the soothing climate of Cape of Good Hope.

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4037. In 1846, Mr. Elliot got printed first volume of his "Supplement to the Glossary of Indian Terms" and in 1849 published the first volume of his "Bibliographical Index to the Historians of Mohammedan India". It appears that Mr. Elliot had collected a large number of manuscripts mostly from Muslim writers containing history of Indian territory of the periods since when the Islamic followers got attracted to India hearing stories of its huge wealth on account whereof one of the Muslim writer termed it **"Meadows of Gold"**. All the work was either in Persian or Arabic. Elliot got translated it either himself or through others. After his death the material which he had collected was taken by his widow to England and thereafter Prof. John Dowson of Staff College, Sandhurst got it edited, and also, wherever necessary, made corrections in translation etc. The said work has been published in eight volumes under the title **"The History of India As told by its own Historians"**. The above book basically therefore contains the English translation of a large number of manuscripts which are the work of several Muslim and other authors. The antiquity of the work relates back to the period of Mahmud Ghaznavi. Besides, in the form of Appendix, the authors have analysed the Indian history of more than a thousand years which was relevant in connection with Muslims with Indian sub-continent.

4038. In Appendix A, Page 403 and onwards, (Vol. 2) of the book "History of India", the author has referred to what has been said by Abu Rihan al Biruni in his work *"Tarikhu-I—Hind"* written in Arabic stating that Kabul was earlier governed by Hindu Kings. It says :

"Kabul was formerly governed by princess of Turk lineage.

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It is said that they were originally from Tibet. The first of them was named Barhtigin, and the Kingdom continued with his children for sixty generations. The last of them was a Katorman, and his minister was Kala, a Brahman. This minister was favoured by fortune, and he found in the earth treasures which augmented his power. Fortune at the same time turned her back upon his master. The Katorman's thoughts and actions were evil, so that many complaints reached the minister, who loaded him with chains, and imprisoned him for his correction. In the end the minister yielded to the temptation of becoming sole master, and he had wealth sufficient to remove all obstacles. So he established himself on the throne. After him reigned the Brahman(s) Samand, then Kamlua, then Bhim, then Jaipal, then Anandpal, then Nardajanpal, who was killed in A.H. 412. His son, Bhimpal, succeeded him, after the lapse of five years, and under him the sovereignty of Hind became extinct, and no descendent remained to light a fire on the hearth. These princes, notwithstanding the extent their dominions, were endowed with excellent qualities, faithful to their engagements, and gracious towards their inferiors. The letter which Anandpal wrote to Amir Mahmud, at the time enmity existed between them, is much to be admired. 'I have heard that the Turks have invaded your dominions, and have spread over Khurasan; if you desire it, I will join you with 5,000 cavalry, 10,000 infantry, and 100 elephants, but if you prefer it, I will send my son with twice the number. In making this proposal, I do not wish to ingratiate myself with you. Though I have vanquished you, I do not

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desire that any one else but myself should obtain the ascendancy. This prince was a determined enemy of the Musulmans from the time that his son, Nardajanpal, was taken prisoner; but this son was, on the contrary, well-disposed towards them."

4039. The author, however, made minor corrections in the above extract which was initially translated and published by M. Reinaud and instead of word 'Katorman', in translation this line is, “The last of them was a name, which represents the name of a tribe, or prince of that tribe, as well as the name of the country in which that tribe resided. He also observed that Turkish dynasty at Kabul which is said to have lasted for sixty generations should mean that it must have continued in the same family or tribe and they appear to have reigned upto AD 850. Further, history and genealogy of the rulers of Kabul and nearby areas has been considered thereafter which we do not find of much relevance to discuss in detail. However, in order to see the extent of reliability and the so called historical narrations in the books of different languages written by innumerable writers, we find useful to refer some discussion made in Vol.-2, Appendix Note C which relates to the history of Ghaznivides and reads as under :

“The contents of this volume relate more especially to the history of the Ghaznivides. It therefore seems expedient to take a general review of the authors who have particularly treated of that dynasty.

First in order come 'Utbi, who has already been sufficiently noticed. It may be remarked generally that he is deficient in dates, and, though the chief and earliest

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authority on all which relates to the early invasions of India, be evidently had no personal knowledge of that country, a circumstance which of course greatly detracts from his value. He is fuller in the reign of Subuktigin and the transactions in Turkistan than any of his successors.

Thirty years later come Abu-l Fazl Baihaki, of whose voluminous and important work only a portion has come down to us.

After an interval of more than two centuries follows the Nizamu-t Tawarikh, composed in 674 H., about a century after the extinction of the dynasty. The short notice which this work devotes to the Ghaznivides has been translated as an extract from that work, but it is of little authority, and confuses dates irremediably towards the close of the dynasty, in which the transactions were carried on too far eastward to be within the foreign ken of the author. Indeed he confesses that he knows nothing of their successors, the Ghorians, beyond the names of three of their kings.

The next, but after a period of two hundred years from 'Utbi is the Tabakat-i Nasiri, the chief value of which is that it quotes the lost volumes of Abu-l Fazl Baihaki. It is for this reason, however, greatly to be regretted, especially as he is one of the earliest Muhammadan authors who wrote in india, that his notice of Mahmud's reign is so very curt; for it is that in which we most feel the want of Baihaki's familiar gossiping narrative. It is true he is quoted in the Jami'u-l Hikayat, Tarikh-i Guzida, Rauzatu-s Safa, and Firishta; yet it may be doubted if any except the

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author of the first ever saw his Tarikh-i Nasiri, which is mentioned by name in the Tabakat. In some of the other Ghaznivides reigns, this work differs from others, as will be seen from the passages which are extracted in the article TABAKAT-I NASIRI in this volume.

The great copyist and extractor, Rashidu-d din, follows after the lapse of about twenty years. In this Jami u-t Tawarikh, he follows 'Utbi implicitly, as far as the Yamini extends, taking not only this facts, but giving a literal translation of that work, even to the images and similes. So little does he attempt to improve upon the Yamini, that he even leaves out the important expedition to Somant, which was undertaken after the close of that work. This resource fails him altogether in the later reigns, which are consequently very unsatisfactorily disposed of in the Jami u-t Tawarikh.

About twenty years later follows the Tarikh-i Guzida of Hamdu-lla Muatauff – although he mentions the Makamat of Abu Nasr Miskati, and the Mujalladat of Abu-l Fazl Baihaki, he does not appear to have read them: at least he gives no information derived from them, and altogether his account of Mahmud's reign is very meagre. He mentions the names of the towns taken by him, omitting , however, all notice of Somnat, and without stating the dates of their capture. He is so often quoted by Mirkhond, Khondamir, and Firishta, that he has had more credit than he deserves in this portion of his universal history.

After a long interval of about a century, we have

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Mirkhond, who in his Rauzatu-s Safa has given us the first detailed account of the history of the Ghaznivides. It is founded in the early portion upon the Yamini, but in later reigns rests upon some other authorities which are not quoted. Those which are mentioned, as the Nasiri and Guzida, are too meagre to have furnished the fuller information found in the Rauzatu-s Safa. This portion has been translated by F. Wilken into latin, and published with the original text at Berlin in 1832, under the title of Historia Gasnevidarun. He has added in footnotes passages from Firishta and Haidar Razi, where the details are more complete than in the Rauzatu-s Safa. Haidar Razi, however, is no original authority. I have found all the passages, except two, quoted by Wilken to be word for word the same as the Tarikh-i Alfi, even where other authorities are quoted, as Ibn Asir, Ibn Kasir, and Hafiz Abru. The chief omission to be noted in Mirkhond's account is that of the expeditions to India intervening between those of Kanauj and Somnat, and the attack upon the Jats of Jud after Mahmud's return from Somnat.

Mirkhond is followed by his nephew Khondamir in the Khulasatu-l Akhbar and the Habibu-s Siyar. The former has been translated by Price with additions from Firishta, and from the latter a translation will be found in a later volume of this work. He follows the Rauzatra-s Safa closely, and has no new authorities, omitting some passages, but dealing more copiously with the biographies of contemporary poets and ministers. Altogether, Mirkhond's narrative is preferable, and in this, as well as

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in many other portions of his history Khondamir might have saved himself the trouble of attempting to rival his uncle.

The next authority of any value is the Tarikh-i Alfi. Like as in other portions of that work, it is, in the history of the Ghaznivides, also somewhat deficient in connexion, and troublesome, from adopting a new era; but, altogether, it is copious and correct. 'Utbi and Mirkhond are the chief authorities of the Tarikh-i Alfi, but something is added from the less known histories, which have already been mentioned as being quoted at second hand by Haidar Razi. It is to be regretted that Abu-l Fazl Baihaki is not amongst them. Here also we have no detailed account of the Indian expeditions between those of Kanauj and Somnat, and that to Thanesar is not mentioned.

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Nizamu-d din Ahmad, in his Tabakat-i Akbari, gives a succinct account of the history of the Ghaznivides, and is particular in mentioning his dates. He notices very curiously the events in Turkistan, Sistan, and 'Irak, confining his attention principally to what related to India. In his work we, for the first time, find mention of several expeditions to India, which are passed over by his predecessors; and it is, therefore, to be regretted that he does not signify on what authority he relates them. The only probable source, among those mentioned as his general authorities, is the Zainu-l Akhbar. Nizamu-d din is followed closely by Firishta.

'Abdu-l Kadir, in his Tarikh-i Badauni, follows Nizamu-d din implicitly; but, in order to show the

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variations, he occasionally quotes the Nizamu-t Tawarikh, and the Lubbu-t Tawarikh. He adds also, some verses of poets who were contemporary with Ghaznivides.

The Muntakhabu-t Tawarikh of Kahki Shirazi is very brief, and scarcely deserves notice. It is chiefly follows the Habibu-l Siyar.

We next come to the history of Firishta, which gives the most complete and detailed account which we have of the Ghaznivides. Dr. Bird complaints of the author's ignorance of the geography of Upper India; but he has exhibited no more than his predecessors, and in one or two instances attempts corrections. His chief resource is the Tabakat-i Akhbari, but he has also used the Tarikh-i Yamini, the Tarikh-i Guzida, the Rauzatu-s Safa, and the Habibu-s Siyar. Some of the other works which he quotes there is reason to believe he never saw. The translation by Briggs is generally correct and faithful in this portion, and there are no omissions in it of any great consequence.

The Khulasatu-t Tawarikh discusses this history in a peculiar fashion of its own. It omits all notice of transactions on the frontiers of Persia and Turkistan, and confines itself solely to India, insomuch that it leaves out whole reigns in which the sovereign had no connection with India: and, in consequence, preposterously confines the whole number of reigns to seven only. There is no other novelty in this chapter, except that it substitutes two new readings of places, which if they are derived from the history of Mahmud by 'Unsuri, which is quoted in the preface, may be considered authentic.

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These are all the authorities which is seems necessary to notice, as all the subsequent ones follow in the wake of Firishta. Abu-l Fida, Ibn Shuhna, Ibn Asir, Ibn Kasir, Nikbi, and Lari, have had all that is valuable in them extracted by the diligence of European authors, who have translated, abridged, or commented on the reigns of the Ghaznivides. The Turkish histories of the period, such as the Nakhbatu-t Tawarikh, and the work of Munajjim Bashi, we may fairly presume to have been exhausted by the industry of Hammer-Purgstall amongst the fourteen different histories which he quotes as authorities upon Mahud's reign – so that the only hope now left us for ascertaining any new fact with respect to the history of the Ghaznivides is in the recovery of the missing volumes of Memoirs, which we know to have been written by contemporary writers, and to have been in existence less than two centuries ago – such as those of Abu-l Fazl Baihaki, Abu Nasr Mishkani, and Mulla Muhammad Ghaznawi. The Makamat of Abu Nazr Mishkati (Mishkani) is mentioned by Firishta (Briggs I. 32 and 97), and the same author is referred to in Wilken (Gasnevidarum, p. 189). Firishta quotes from him the anecdote about Masud, which has been given from the Tabakat-i Nasiri (Supra, p. 271), and which is there also attributed to Abu Nasr Mishkan. The Tarikh-i Mulla Muhammad Ghaznawi is mentioned by 'Abdu-r Rahman, who wrote the Mir-atu-l Asrar and Mir-at-i Masudi, in Jahangir's time. The author was contemporary with Sultan Mahmud, of whom his work is said to give an ample account."

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4040. Regarding the expeditions of Mahmud Ghaznavi in India with which the real Muslim history of invasions commenced as is widely known, we find that the European authors noticed the same in the 17th Century and probably the first publication came from D' Herbelot, a French author under the title **"Bibiotheque Orientale, Art. "Mahmood."** Paris, published in 1697. Modern history writers tell us about seventeen expeditions of Mahmud Ghaznavi to India but in *"Tabakat-i-Akbari"* written by Nizamu-d-din Ahmad, the period of expedition mentioned twelve which has been reiterated by some subsequent writers. This discrepancy has been noticed by "Dowson" in Appendix, Note B, on page 434-435 (Vol.-2) as under :

> *"It has been usual to consider the number of Mahmud's expeditious to India to be twelve. The first authority for this number is Nizamu-d din Ahmad in the Tabakat-i Akbari; and as Dow has also numbered them as twelve, the most English authors following him as the standard, have entertained the same persuasion. But it is curious to observe that, while Nazamu-d din mentions that there were altogether twelve, in recording them seriatim, he enumerates no less that sixteen; and Dow, while he marginally notes twelve, records no less than fifteen different ivasions. Even Elphinston though he notes twelve, records more. The Khulasatu-t Tawarikh gives twelve, and confines itself to that number, or in reality only to eleven, as by some mistake an expedition to Kashmir and Kalinjar are placed in one year, and the tenth expedition is omitted. The Akhbar-i Muhabbat follows it in both errors."*

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4041. Dowson, thereafter, proceeded to consider expeditions period-wise individually and has shown total seventeen expeditions which took place in 1026 AD (AH 417). The author has not hesitated in giving the details of the battles fought by Ghazani and his determination to destroy Hindu religious places as well as the idols. The first expedition started in 1000 A.D. (AH 390) when Mahmud Ghaznavi captured many forts, provinces in the northern territory of India and established his Governors thereat. Various Volumes of **"History of India"** by Elliot and Dowson (supra) give details of various subsequent Muslim rulers and about their act of demolition of Hindu temples which included similar orders having been issued even during the reign of Jahangir, Shahjahan and Aurangzeb etc.

4042. Sri Hari Shankar Jain sought to place before us **"The History and Culture of the Indian People; The Delhi Sultanate"** publish by Bharatiya Vidya Bhavan (1st published in 1960, 4th Edition 1990) forwarded and edited by K.M.Munshi, R.C.Majumdar, A.D.Pusalker and A.K.Majumdar. On page 617 in the Chapter titled as "Hindu Muslim Relations" Status of the Hindus has been discussed. The learned authors referred to a passage from an article written by Sir Jadunath Sarkar, historian as under:

> *"The poison lay in the very core of Islamic theocracy. Under it there can be only one faith, one people, and one all overriding authority. The State is a religious trust administered solely by His people (the Faithful) acting in obedience to the Commander of the Faithful, who was in theory, and very often in practice too, the supreme General of the Army of militant Islam (Janud). There could be no*

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place for non-believers. Even Jews and Christians could not be full citizens of it, though they somewhat approached the Muslims by reason of their being "People of the Book" or believers in the Bible, which the Prophet of Islam accepted as revealed.

"As for the Hindus and Zoroastrians, they had no place in such a political system. If their existence was tolerated, it was only to use them as hewers of wood and drawers of water, as tax-payers, "Khiraj-quzar", for the benefit of the dominant sect of the Faithful. They were called Zimmis or people under a contract of protection by the Muslim State on condition of certain service to be rendered by them and certain political and civil disabilities to be borne by them to prevent them from growing strong. The very term Zimmi is an insulting title. It connotes political inferiority and helplessness like the status of a minor proprietor perpetually under a guardian; such protected people could not claim equality with the citizens of the Muslim theocracy.

"Thus by the basic conception of the Muslim State all non-Muslims are its enemies, and it is the interest of the State to curb their growth in number and power. The ideal aim was to exterminate them totally, as Hindus, Zoroastrians and Christian nationals have been liquidated (sometimes totally, sometimes leaving a negligible remnant behind) in Afghanistan, Persia and the Near East.

"The Quran (IX.29) calls upon the Muslims 'to fight those who do not profess the true faith, till they pay jizya with the hand in humality (ham sagkhirun)'. This was a

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poll-tax payable by Hindus (and also Christians) for permission to live in their ancestral homes under a Muslim sovereign.

"In addition to the obligation to pay this poll-tax, the Hindu was subjected to many disabilities by the very constitution of the Muslim theocracy. He must distinguish himself from the Muslims by wearing a humble dress, and sometimes adding a label of a certain colour to his coat. He must not ride on horse-back or carry arms;though wearing the sword was a necessary part of the dress of every gentleman of that age. He must show a generally respectful attitude towards Muslims. The Hindu was also under certain legal disabilities in giving testimony in law-courts, protection under the criminal law, and in marriage. Finally, in the exercise of his religion he must avoid any publicity that may rouse the wrath of the followers of the Prophet.

"Under the Canon Law, as followed in Islamic countries, a man who converts a Muslim to some other faith is liable to death at the hands of any private Muslim, and so also is the apostate from Islam."

4043. Thereafter the authors further said:

"Sir Jadunath's exposition of the Islamic theory, and in particular his view of the nature of the jizya, has been opposed by some. But his views are fully borne out by the following passage in the Zakhirct-ul-Muluk by Shaikh Hamadani:

"The is another mandate relating to those subjects who are unbelievers and protected people (zimmis). For their

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governance, the observance of those conditions which the Caliph 'Umar laid in his agreement for establishing the status of the fire-worshippers and the People of the Book (Jews and Christians) and which gave them safety is obligatory on rulers and governors. Rulers should impose these conditions on the zimmis of their dominions and make their lives and their property dependent on heir fulfilment. The twenty conditions are as follows:

1. In a country under the authority of a Muslim ruler, they are to build no new homes for images or idol temples.

2. They are not to rebuild any old buildings which have been destroyed.

3. Muslim travellers are not to be prevented from staying in idol temples.

4. No Muslim who stays in their houses will commit a sin if he is a guest for three days, if he should have occasion for the delay.

5. Infidels may not act as spies or give aid and comfort to them.

6. If any of their people show any inclination towards Islam.

7. Muslim are to be respected.

8. If the zimmis are gathered together in a meeting and Muslims appear, they are to be allowed at the meeting.

9. They are not to dress like Muslims.

10. They are not to give each other Muslim names.

11. They are not to ride on horses with saddle and bridle.

12. They are not to possess swords and arrows.

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13. They are not to wear signet rings and seals on their fingers.

14. They are not to sell and drink intoxicating liquor openly.

15. They must not abandon the clothing which they have had as a sign of their state of ignorance so that they may be distinguished from Muslims.

16. They are not to propagate the customs and usages of polytheists among Muslims.

17. They are not to build their homes in the neighbourhood of those of Muslims.

18. They are not to bring their dead near the graveyards of Muslims.

19. They are not to mourn their dead with loud voices.

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20. They are not to buy Muslim slaves.

At the end of the treaty it is written that if zimmis infringe any of these conditions, they shall not enjoy security and it shall be lawful for Muslims to take their lives and possessions as though they were the lives and possessions of unbelievers in a state of war with the faithful.

It is unnecessary for our present purpose to enter into any further discussion about the correctness of Sir Jadunath's interpretation of the Muslim scripture, but there is no doubt that he correctly represents the view accepted, both in theory and practice, by the Muslim rulers and theologians in India during the period under review. And this is really more relevant to the present issue."

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4044. Sri Jain also referred to the following narration contained in pages 620 as under:

"Reference has already been made above to the position of the Hindus in Muslim State according to Islamic theory as explained by the 'wise men', and particularly Qazi Mughis-ud-din of Bayana, to Ala-ud-din Khalji, and the earnestness with which the Sultan carried it into practice.

Muhammad bin Tughlaq is generally, and perhaps rightly, regarded as a man of liberal views. The Chinese Emperor asked for his permission to build a temple at Samhal, a place of pilgrimage in the Himalayan hills frequented by the Chinese, which the Muslim army "had seized, destroyed and sacked". But the Sultan, who accepted the rich presents sent by the Chinese Emperor, wrote to him a reply to this effect: "Islam does not allow the furthering of such an aim and the permission to build a temple in a Muslim country can be accorded only to those who pay the jizya."

It has been already stated above, that Firuz Tughlaq, who also looked upon India as a Muslim country, held more bigoted views, for he would not permit the erection of new temples even by those who paid the jizya. He, however, realized this tax with utmost rigour even from the Brahmans who were up to that time exempted from it.

The true nature of the jizya is further revealed by the opposition of the orthodox Muslims to the idea that the Hindus should be allowed to perform their religious ceremonies simply by the payment of the jizya. The historian Ziya-ud-din Barani, a contemporary of the two

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Tughlaq emperors, mentioned above, wrote in righteous indignation.

". . . . Should the kings consider the payment of a few tankas by way of jizya as sufficient justification for their allowing all possible freedom to the infidels to observe and demonstrate all orders and details of infidelity, to read the misleading literature of their faith and to propagate their teachings, how could the true religion get the upper hand over other religions and how could the emblems of Islam be held high. . . . ."

It would thus appear that an orthodox section of the Muslims chafed at the Hanafite doctrine which was officially accepted by the Muslim rulers in India. As Qazi Mughis-ud-din pointed out to 'Ala-ud-din Khalji, 'it was Hanifa alone who assented to the imposition of the juzuya on the Hindus. Doctors of other schools allow no other alternative but 'Death or Islam'. As has been stated above, Sultan Mahmud followed this policy, and evidently Barani and men of his ilk yearned for its restoration in the fourteenth century. Barani gave vent to this feeling in the following passage in his Fatawa-i-Jahandari. "If Mahmud . . . . had gone to India once more, he would have brought uder his sword all the Brahmans of Hind who, in that vast land, are the cause of the continuance of the laws of infidelity and of the strength of idolators, he would have cut off the heads of two hundred or three hundred thousand Hindu chiefs. He would not have returned his "Hindu-slaughtering" sword to its scabbard until the whole of Hind had accepted Islam. For Mahmud was a Shafi'ite, and

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according to Imam Shafi'i the decree for Hindus is "either death or Islam"-that is to say, they should either be put to death or embrace Islam. It is not lawful to accept jizya from Hindus as they have neither a prophet nor a revealed book." The same book shows how Barani chafed at the idea that the "desire for the overthrow of infidels and the abasing of idolators and polytheists does not fill the hearts of the Muslim kings", who "permit the banners of infidelity to be openly displayed in their sapital and in the cities of Muslims, idols to be openly worshipped ." "How", asks the Indignant historian, "will the true faith prevail if rulers allow the infidels to keep their temples, adorn their idols, and to make merry during their festivals with beating of drums and dhols, singing and dancing?"

If a learned historian and a distinguished Muslim felt no scruple in openly expressing such views in writing, in the fourteenth century A.D., i.e. six hundred years after the Muslims first settled in India, one can well understand why the gulf between the Hindus and the Muslims could never be bridged.

A perusal of the history of Afif, another great historian of the period, conveys the same lesson. He puts in the mouth of the wazir of Firuz Tughlaq a long speech in which he frankly says that a State should have only two ends in view, namely (1) prosperity of the kingdom and protection of the people, etc.; and (2) destruction of the infidels and expansion of the kingdom."

4045. He also refers to page 627 of the book, the 'Travellor's Account' of 'Ibn Batutah', who came to India about

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the middle of the 14th century A.D. during the reign of Muhammad bin Tughlaq has been dealt with and refers to the following:

> *"Ibn Batutah confirms the general statement, made above, particularly about forcible conversion, mass-enslavement, and the inferior status of the Hindus as zimmis. Thus he remarks that "other nations embraced Islam only when the Arabs used their swords against them."*

4046. The Muslims and non Muslims peoples were also treated differently. One of such illustration has also been noticed by J.S. Grewal, Director, Indian Institute of Advanced Study, Shimla in his book **"The New Cambridge History of India** II.3 The Sikhs of the Punjab" and in Chapter 2 thereof, which is under the heading "Foundation of The Sikh Panth", it says :

> *"The rulers are unjust; they discriminate against their non-Muslim subjects by extorting jizya and pilgrimage tax. The ruling class is oppressing the cultivators and the common people. The rajas prey like lions and the muqaddams eat like dogs; they fall upon the raiyat day and night. Notwithstanding the association of non-Muslims with the administration at subordinate levels, contemporary rule is occasionally equated with 'Muslim" rule."*

4047. The historical events as they took place are fait accompli. In our view today whether we appreciate or condemn, like or dislike, the practice, policy, individual acts or omissions on the part of a Ruler, who invaded India or his successor who ruled India in the past, we cannot forget that whatever they have done is a matter of history and will always remain so. After this length of period, we are not able to understand as to how

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this Court is competent either to comment upon the genuity or ingenuity, justification or injustification, correctness or incorrectness, cruelty or liberality etc. on their part. One side while condemning the acts of any of such invader and/or Ruler may find obstruction as a track of rocks difficult to break. Similar attempt on the part of other side either to justify such acts or to otherwise glorify the same would be of no help. If something is wrong ex facie it was always so but the concept of wrongness is a relative one. Something which may be wrong at one point of time for some individual may not be so at another point of time or for other set of individuals. It depends on a variety of factors, which we find difficult to place in a strait jacket formula or to codify. It is a historical fact that before independence of India in 1947, most of the geographical area of this Country had to face a large number of invasions either from a north west side or from Europe from different directions. Mainly these warring incursions were with the motive of syphoning off the huge wealth this Country had. Some times those invaders decided to make it a source of regular earning and left their Governors/ Representatives/ Commanders in their conquered territory to rule. The religious background those invaders had, came along with them but all the individuals did not come from their native place. The situation was exploited by creating such circumstances so that the native people of the conquered territories of this Country would have no option but to convert their religion so as to avail favour of Rulers. These are some of the historical illustrations which this Country had experienced in last more than a millennium. In our view, this by itself would not be a relevant factor to decide or adjudicate an

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issue in the present day territory governed by a written and codified law including a written Constitution. All the persons irrespective of their religion, faith, customs, etc. who were residing in the territory of India set out in our Constitution at the time of its promulgation became citizens of this Country besides those who have born or otherwise have acquired citizenship as per the procedure laid down in the Constitution and the statute concerned. They are governed by the statutes as are in force in this Country. A Court of law is also bound to decide a matter in accordance thereof. Neither the Rulers several hundred years back were governed by these statutes we are confronted or governed nor they can be under the authority of judicial review of a Court of a judicial system which came into existence later on and is governed by a different system in-vogue subsequently.

4048. For our purpose it is not at all necessary to go into this larger question and the manner in which it has been raised since certain facts are the matters of history and all those who have some idea of history are well aware. Whether an act of past should be seen in a different context colour or texture may be a subject matter of debate and discussion amongst the intellectual of this country whose approach is also tainted with their own mind set and this is really unfortunate part that we are still looking for only unbiased independent and objective historians who may give us a correct and clear picture of historical evidence but whatever we had to do suffice it to conclude that the incidence of temple demolition are not only confined to past but is going in continuously. The religion which is supposed to connect all individuals with the brotherly feeling has become a tool of hatred and enmity. For the purpose of the present case we

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can stop on this aspect by simply observing that the justification sought to be canvassed by some of the expert witnesses of Muslim parties is that in the history the people who attacked the Indian continent from its northern borders of Panjab etc. in the last more that thousand years and odd have acted according to their understanding and policies as the case may be but they are totally irrelevant in the present day time where this county is governed by a written constitution which clearly declares against discrimination merely on the ground of religion.

4049. Some of the learned counsel for the parties sought to rely on the Constitution Bench decision in **Dr. M. Ismail Faruqui (supra)** by reading certain passages in a manner as if the Apex Court has expressed its opinion on certain aspects which are contentious issues before this Court in the suits pending before us and said that the said observations are binding on this Court and, therefore, those aspects cannot be looked into.

4050. Sri Iyer, Senior Advocate sought to read the aforesaid judgement where the contents of the White Paper issued by the Central Government quoted to suggest that these are the findings of the Government are of India having taken note by the Apex Court and, therefore, should be treated to be concluded. It is suggested that the issues, if any, in those matters should be deemed to be concluded by the judgement of the Apex Court.

4051. We, however, find no force in the submission. The Constitution Bench considered the validity of Ayodhya Act, 1993 whereby certain land at Ayodhya including the land which was subject matter in these suits sought to be acquired by the Government of India. Further, the Apex Court was considering

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the special reference made by the President of India on 7th January, 1993 under Article 143 of the Constitution seeking opinion of the Apex Court on the following question:

> "Whether a Hindu temple or any Hindu religious structure existing prior to the construction of Ram Janma Bhumi-Babari Masjid (including the premises of the inner and outer courtyard of said structure) in the area on which the structure stood."

4052. In the context of the above matters the Apex Court refers in detail the contents of the White Paper published by the Government of India in February, 1993. In the context of the question as to whether certain provisions of the Act, 1993 are valid or not, the Court considered several aspects and repelled the argument that the Act is discriminatory containing provisions more favourable to Hindus by observing that certain rights of Hindus also stand adversely affected.

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4053. It is in this context that certain facts placed on record are mentioned therein but it cannot be said that those facts stood adjudicated by the Apex Court for the reason that those facts neither were in issue before the Court nor actually have been adjudicated. The only question which has specifically been considered and decided that was necessary in the light of challenge thrown to the power of acquisition of land over which a mosque existing. It appears that pro-mosque parties raised a contention that a mosque cannot be acquired because of special status in Mohammedan Law irrespective of its significance to practice of the religion of Islam. This argument in the context of acquisition of land was considered from para 68 (AIR) and onwards in the judgement. The Court has held that the right to

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worship of Muslims in a mosque and Hindus in a temple was recognised only as a civil right in British India. Relying on the Full Bench decision of Lahore High Court in **Mosque Known as Masjid Shahid Ganj Vs. Shiromani Gurdwara Prabandhak Committee, Amritsar, AIR 1938 Lahore 369** where it was held that a mosque if adversely possessed by non muslims it will loose its sacred character as mosque, the Apex Court held that, "*the view that once a consecrated mosque, it remains always a place of worship as a mosque was not the Mahomedan Law of India as approved by Indian Courts."* The Lahore High Court also held that, *"a mosque in India was an immovable property and the right of worship at a particular place is lost when the right to property on which it stands is lost by adverse possession."* Both these views were approved by the Privy Council and the Apex Court followed the said view. Besides, independently also the Court took the view that the sovereign power of the State empowers it to acquire property. It is a right inherent in every sovereign to take an appropriate private property belonging to individual citizens for public use. This right is described as eminent domain in American Law and is like the power of taxation of offering of political necessity and is supposed to be based upon an implied reservation by the Government that private property acquired by its citizens under its protection may be taken or its use can be controlled for public benefit irrespective of the wishes of the owner. The Court also considered the right of worship whether a fundamental right enshrined under Article 25 or 26 of the Constitution and observed, *"while offer of prayer or worship is a religious practice, its offering at every location where such prayers can be*

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offered would not be an essential or integral part of such religious practice unless the place has a particular significance for that religion so as to form an essential or integral part thereof. Places of worship of any religion having particular significance for that religion, to make it an essential or integral part of the religion, stand on a different footing and have to be treated differently and more reverentially". Ultimately the law has been laid down by the Constitution Bench by majority that under the Mohammedan Law applicable in India title to a mosque can be lost by adverse possession. If that is the position in law, there can be no reason to hold that a mosque as a unique or special status, higher than that of the places of worship of other religions in secular India to make it immune from acquisition by exercise of the sovereign or prerogative power of the State. A mosque is not an essential part of the practice of religion of Islam and namaz (prayer) by Muslims can be offered anywhere even in open. The Court also held that unless the right to worship at a particular place is itself an integral part of that right, i.e., the place is of a particular significance, its alienability cannot be doubted. The Apex Court having answered the various questions on the validity of the Act 1993 declined to answer the reference and returned the same as such as it is. The suits having been revived due to striking down of Section 4(3) of the Act, this Court trying the original suits has to decide the entire matter on merits unless it can be shown that a particular issue which is engaging attention of this Court in trial of the original suit has already been raised, argued and decided by the Apex Court. The learned counsels for the parties have not been able to show any such finding in respect to the matters which are involved in

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various issues before this Court and, therefore, we are not in agreement with the counsels for the parties as argued otherwise.

4054. The mere fact that some facts have been noticed by the Government of India in White Paper and those facts have simply been noticed by the Apex Court while referring to the facts mentioned in the White Paper, it cannot be said that those facts can be construed as if they have been accepted by the Apex Court to be correct and stand adjudicated. The law of precedence is well known. The authority of the superior Court laying down a law is binding on the Courts below provided a matter has been decided by the Court. An issue can be considered to be decided by a superior Court when it was raised, argued and decided and only then it is a binding precedent for the other courts.

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4055. The ultimate inference, which can reasonably be drawn by this Court from the entire discussion and material noticed above, is:

(i) The disputed structure was not raised on a virgin, vacant, unoccupied, open land.

(ii) There existed a structure, if not much bigger then at least comparable or bigger than the disputed structure, at the site in dispute.

(iii) The builder of the disputed structure knew the details of the erstwhile structure, its strength, capacity, the size of the walls etc. and therefore did not hesitate in using the walls etc. without any further improvement.

(iv) The erstwhile structure was religious in nature and that too non-Islamic one.

(v) The material like stone, pillars, bricks etc. of the erstwhile

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structure was used in raising the disputed structure.

(vi) The artefacts recovered during excavation are mostly such as are non-Islamic i.e pertaining to Hindu religious places, even if we accept that some of the items are such which may be used in other religions also. Simultaneously no artefacts etc., which can be used only in Islamic religious place, has been found.

4056. The claim of Hindus that the disputed structure was constructed after demolishing a Hindu temple is pre-litem and not post-litem hence credible, reliable and trustworthy. Till late, no person of any other religion except the Hindus have been continuously staking their claim over the site in dispute on the ground that this is the place of birth of Lord Rama and there was a temple. In normal course, there could not have been any reason for such persistent attachment to the site had there been no basis or substance for the same particularly when this kind of persistence is continuing for the last hundreds of years. The various non-Indian writers, who have mentioned these facts, clearly stating that a Hindu temple was demolished for constructing mosque in question, may have some motive if it would have been a case of only post nineteenth century when the British Government virtually came in power and sought to evolve the theory of "Divide and Rule" but even prior thereto, these facts have been noticed and recognized. Tieffenthaler was a missionary having no motive in making such remark when he visited Oudh area between 1766 to 1771 and such work was published in 1786.

4057. This belief is existing for the last more than 200 years from the date the property was attached and therefore,

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having been corroborative by the above it can safely be said that the erstwhile structure was a Hindu temple and it was demolished whereafter the disputed structure was raised.

4058. One more aspect remains to be seen. Issue No.1(b) (Suit-4) further requires that if the first part is answered in affirmative, then what shall be its effect. We have already held that whatever happened was in an era when this Court and/or the codified statute or the Constitution of India at that time was not applicable. The intent of the sovereign was supreme at that time. We can only see the *de facto* position as has resulted after the aforesaid event but we find no authority to consider this event *de jure*. The *de facto* position is that after demolition, a building was constructed in the shape of a mosque. It is also *de facto* position that despite construction of such building in the shape of the mosque, it was used and continued to be visited by Hindus for offering worship, Puja and Darshan since according to their belief, they treated it to be the birth place of Lord Rama in respect whereto there was no alternative and according to their belief, the piety and reverence, the place is permanent and not liable to be disturbed in any manner by any such act.

4059. Accordingly, **we answer both the issues i.e. Issue No.1(b) (Suit-4) and Issue No. 14 (Suit-5) in affirmative**.

(B) Existence of other Hindu religious places making the disputed building landlocked by religious places of Hindus:

4060. In this category, falls **Issue No. 19 (b) (Suit-4),** which reads as under:

> *"Whether the building was land-locked and cannot be reached except by passing through places of Hindu worship? If so, its effect?"*

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4061. This issue has been framed considering pleadings of the defendants that no Muslim person could have entered the building in dispute for the reason that it is landlocked by the Temples and other Hindu religious places of worship. In para 28 (B) of the written statement of defendant no. 13, Mahant Dharam Das, it has been said that no one could enter the three domed structure except after passing through the places of Hindu worship, i.e., Ram Chabutara; Charan and Sita Rasoi. It is said that according to the tenets of Islam, a Mosque should never be landlocked by a Hindu place of worship and there can be no co-sharing in title or possession with Allah, particularly, in the case of a Mosque. His possession must be exclusive. To the similar effect is the pleading in para 31 of the written statement of defendant no. 13.

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4062. We have referred to the site maps while discussing issues relating to limitation. One of the oldest map, which is available, is that of 1885 prepared by Sri Gopal Sahai Amin, a Commission appointed by the Civil Court in Suit-1885. So far as the disputed site is concerned, he had clearly noticed existence of three structures in the outer courtyard, i.e., Ram Chabutara on the south east side, a *Chhappar* on the north east side and Sita Rasoi on the north west side. Another map was prepared and submitted in the Court of Civil Judge, Faizabad on 25th May, 1950 by Sri Shiv Shankar Lal, Pleader, who was also appointed as Commissioner in Suit-1 for preparing the site map. Here also he has mentioned three structures in the outer courtyard as were noted in the earlier map at the same places. Besides the above, in the vicinity of the disputed site, other existing places which are shown in the map are: on the eastern

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side, Mandir Sri Vijay Raghav Sakshi Gopal, Shankar Chabutara; on the south east side Sita Koop, Tulsi Chaura, Sumitra Bhawan; on the southern side Lomash Chaura and on the northern side, it shows Narad Chabutara. The aforesaid map was not disputed in that suit by the defendant no. 2, who contested that matter as Mutwalli of the alleged wakf of the disputed building and in the present case, by both the parties except of nomenclature.

4063. This situation is virtually admitted by the parties also including the plaintiffs (Suit-4) as is evident from the deposition of their witnesses, though in the pleading, initially, they tried to deny existence of Sita Rasoi etc. in the premises of outer courtyard of property in dispute. This is evident from the following:

(i) PW 1, Mohd. Hashim:

''पहले जब पूरब के फाटक से अन्दर जाते थे तो दक्षिण की तरफ एक ***चबूतरा*** *था। उस पर कभी–कभी पुजारी लोग बैठते थे। यह चबुतरा रास्ते से दस कदम हटकर था। उस पर एक* ***छप्पर*** *था। मस्जिद के उत्तर दरवाजे के पास एक चूल्हा बना हुआ था, उसको* ***सीता रसोई*** *कहते थे। उस रास्ते से आने में रसोई के कारण कोई रूकावट नहीं थी। सीता रसोई के सामने एक चारदीवारी थी और ज्यादा भीड़ हो जाने पर उत्तर वाले दरवाजे से जाते थे। इसके बाद मस्जिद के अन्दर एक और दीवार थी, उसके सदर दरवाजा पर ताला लगा हुआ था।''(पेज 3–4)*

"There was a ***Chabutra*** *on the south, when we would go inside through the eastern gate earlier. Priests would sometimes sit on the said Chabutra. This Chabutra was ten paces away from the pathway. There was a* ***shed*** *on it. Near the northern gate of the mosque was built a hearth, which was called* ***Sita Rasoi****. In coming inside from that pathway, there was no hurdle on account of their being Rasoi. There*

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was a four-walled enclosure in front of Sita Rasoi, and we would enter from the northern gate, whenever there was much crowd. After that, inside the mosque lay another wall, main gate of which was locked." (E.T.C)

*''उस **चबूतरे** पर लकड़ी का स्ट्रक्चर था जिस पर फूस छाया हुआ था। यह लकड़ी का तम्बू नुमा ढांचा अक्सर हर मन्दिर में मूर्तियों को रखने के लिए बनाया जाता है।'' (पेज 25)*

*"On that **Chabutra** there lay a wooden structure which was covered with thatched. This wooden tent like structure is often raised in every temple for keeping idols." (E.T.C)*

*''पहले जब पूरब के फाटक से अन्दर जाते थे तो दक्षिण की तरफ एक **चबूतरा** था। उस पर कभी–कभी पुजारी लोग बैठते थे। जो पहले मैंने कहा था, पुजारी चबूतरे पर बैठते थे, वह गलत है, वहाँ पर कुछ लोग बैठते थे और यह बात सही है। यह आम आदमी हिन्दू थे पर पुजारी या साधु नहीं थे, ये लोग अयोध्या के नहीं थे। ... सन् 1949 में **सीता रसोई** फर्श के बराबर थी। सीता रसोई पर चूल्हा चौकी, बेलना चूने गारे का बना था वर्ष 1949 में। उस पर चार जोड़ी पैर के चिन्ह् नहीं थे। यह **चूल्हा बेलना** जो बना था वह सतह के बराबर था सिर्फ दिखाई देता था। शुरू में हम लोग भी उसको करीब से देखते थे, उस समय कोई तनाव नहीं था। उसको आम लोग सीता रसोई कहते थे। ...**सीता रसोई का दर्शन करने जाते थे।**''(पेज 27)*

*"Whenever we would go inside through the eastern gate earlier, there was a **Chabutra** on south. Priests would sometime sit on it. My earlier statement to the effect that the priests would sit on Chabutra, is incorrect; some people would sit there and this fact is correct. These common men were Hindus but they were not priests or saints; these people did not belong to Ayodhya. . . . . In 1949, **Sita Rasoi** was on the level with the floor. In 1949, 'Chulha' (hearth), 'Chowki' and 'Belna' (rolling pin) was made with lime-*

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mortar. Four pairs of foot prints were not there on it. This ***'Chulha-Belna'****, which was made, was on the level with the ground; it was just visible. In the beginning we would see it from a close range; no tension prevailed at that time. Common people called it Sita Rasoi. . . . .* ***would go to have darshan of Sita Rasoi****." (E.T.C)*

''पूर्वी फाटक के अन्दर आने पर बाहरी दीवाल के अन्दर उत्तर तरफ एक लम्बा सा छप्पर था, वह ***भण्डार*** *था या नहीं यह नहीं बता सकता। यह लम्बा सा छप्पर नीम के पेड़ के नीचे था। लोग उस* ***छप्पर*** *में रहते थे पर मुझे नहीं मालूम कौन लोग रहते थे। इस छप्पर के नीचे हिन्दू लोग रहते थे, मुसलमान लोग नहीं रहते थे।'' (पेज 31)*

"On entrance through the eastern gate, towards the north inside the outer wall there was a long shed; I cannot tell whether it was ***'Bhandar'*** *(store room) are not. This longish shed was under a neem tree. People used to live in that* ***shed*** *but I do not know who they were. Under this shed, the Hindus resided; the Muslims did not reside." (E.T.C)*

''उत्तर की तरफ सीता रसोई को छोड़कर खुला सहन है और फिर बाहरी दीवाल है। ...विवादित जायदाद के दक्षिण तरफ ***सुमित्रा भवन मन्दिर था,*** *उसे भी गिरवा दिया।'' (पेज 32)*

"On the north, except Sita Rasoi, there is an open courtyard and after that lies an outer wall. . . . . To the south of the disputed property ***was Sumitra Bhawan temple****, which too was demolished." (E.T.C)*

''यह ***सीता रसोई जो मैंने पहले कहा है, वह हमारे होश से पहले से चला आ रहा है।*** *सीता रसोई में चूल्हा, तसला व बेलना को सीता रसोई के नाम से मशहूर होने की बात मुझे अपने होश से है। सीता रसोई की राम–सीता की जो सीता है, उसी नाम से जोड़ा जाता है।'' (पेज 48)*

"This ***Sita Rasoi, about which I have stated earlier, has***

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continued to exist since before the time I gained understanding. *Since when I gained understanding, I have knowledge about 'Chulha' (hearth) 'Tasla' and 'Belna' (rolling pin) getting famous by the name of Sita Rasoi. Sita Rasoi is associated with the name of that very Sita, who forms Ram-Sita couple." (E.T.C)*

''1885 में जो मुकदमा महंत रघुवरदास और असगर अली के बीच में चला था, उसमें भी सीता कूप का जिक्र आया था या नहीं मुझे मालूम नहीं है। सीता कूप कोई सरकारी रिकार्ड में नहीं है, उस वक्त कुआँ था, रिकार्ड में कुआँ है। मुझे आज तक इस चीज का इल्म नहीं हुआ कि ये कुआँ सीता कूप के नाम से मशहूर है। इस कुएं के सामने मैंने कभी कोई इसके नाम का पत्थर नहीं देखा।'' (पेज 58)

"I do not know whether or not Sita- koop has also found mention in a case in which Mahant Raghubar Das and Asgar Ali were involved in 1885. Sita-koop does not find mention in any Government record ; there was a well at that time, there is well in record. I have not till date had knowledge as to whether this well is famous as Sita-koop. I never saw any stone named after it, in front of this well."

(E.T.C)

''जिस ***चबूतरे*** *का जिक्र मैंने अपने पहले बयान में किया है* ***वह चबूतरा भी ए. बी. सी. डी. के अन्दर शामिल है।*** *जिस चबूतरे का और सीता रसोई कहे गए निशानात का जिक्र मैंने अपने पहले बयान में किया है वह जगह भी इस ए. बी. सी. डी. का एक हिस्सा है। इन नक्शे को देखकर मैं नहीं बता सकता कि वह सीता रसोई वाला हिस्सा कौन सा है। मैंने नहीं देखा कि वह सीता रसोई हिस्सा इस प्लाट ए. बी. सी. डी. के कौन तरफ है। मैं इस बात का जबाव नहीं दे सकता कि वह उत्तर पश्चिम के कोने के तरफ है या नहीं। जो सीता रसोई का बयान मैंने पहले दिया है वह इस नक्शे में नहीं दिखाई गई है। मैं उस जगह की बावत कि वह किस विशेष प्वाईंट पर है इस नक्शे के हिसाब से नहीं बता सकता।'' (पेज 114)*

"The ***Chabutra*** *I have mentioned about in my earlier*

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statement, ***is also included in the space marked as ABCD.*** *The Chabutra and emblems like Sita Rasoi- I have mentioned about in my earlier statement-is also a part of ABCD marked place. Looking at this map I cannot say which is the Sita Rasoi portion. I did not see on which side of the ABCD marked plot Sita Rasoi is located. I cannot respond to a query as to whether it is towards the corner of north-west or not. The Sita Rasoi about which I have deposed earlier, is not shown in this map. On the basis of this map, I cannot locate at which particular point it is located." (E.T.C)*

*"**1934 से 1949 के बीच में विवादित जायदाद में कोई तब्दीली नहीं हुई।** मुझे मालूम नहीं कि सीता रसोई और चबूतरा जिस हालत में 1934 में था, उसी हालत में 1949 में कुर्की होने तक रहा। 1934 से 1949 के बीच में उस सीता रसोई में जिसका जिक्र मेरे बयान के पहले हिस्से में आया है, कोई तब्दीली नहीं हुई। लेकिन एक बार फिर कह दूं कि वह रसोई जमीन की सतह के साथ मिली हुई थी, जिसकी तरफ हमने कोई ध्यान नहीं दिया। (एक्जामिनेशन इन चीफ)। यह ठीक है कि 1934 और 1949 के बीच में उस चबूतरे में भी कोई तब्दीली नहीं की गई, जिसका जिक्र मेरे एक्जामिनेशन इन चीफ में आया है।" (पेज 117)*

"No changes were effected in the disputed property between 1934 and 1949. *I cannot tell whether Sita Rasoi and Chabutra continued to be in the same position as it existed in 1934, till attachment in 1949. No change was effected in that Sita Rasoi I have mentioned in the first part of my statement. But I would like to repeat once more that the said Rasoi abutted on the ground surface, towards which I did not pay any attention. (Examination-in-chief). It is true that between 1934 and 1949 no alternation was effected in that Chabutra as well, which has found mention*

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in my examination-in-chief." (E.T.C)

*''यह प***परिक्रमा इस जायदाद के चारों तरफ है।** *यह बहुत पुरानी परिक्रमा है और हिन्दू लोग हमारे होश से इस परिक्रमा को करते आ रहे हैं।* ***इसी परिक्रमा में हम भी हैं, वह हमारी भी परिक्रमा करते हैं।''*** *(पेज 141)*

"This ***'Parikrama' (circumambulation) is on all the four sides of this property.*** *This is a very old circumambulation, and the Hindus have been performing this circumambulation since when I gained understanding.* ***We are also within this very circumambulation area; they perform circumambulation around us also."*** *(E.T.C)*

(ii) PW 2, Haji Mahboob Ahamad:

''इस लान में दक्षिण की तरफ ऊँचा चबुतरा नहीं था, एक चबुतरा टाइप स्थान जरूर था ..... मैं नहीं कह सकता कि उस छप्पर में बैठने वाले हिन्दू होते थे या मुसलमान।'' *(पेज 52)*

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"On the south in this lawn, there was no elevated Chabutra; there was certainly a place looking like a Chabutra. . . . . I cannot say whether those sitting in that shed were Hindus or Muslims." *(E.T.C)*

''ब्लैक एण्ड व्हाइट एलबम 29–30 फोटो मैंने देख ली है इसमें दिखाई गई छप्पर और चबुतरा इस तरह से नहीं थे, हालांकि छप्पर पहले भी था लेकिन उसकी सूरत दूसरी थी।'' (पेज 53)

"I have seen the photographs 29-30 of the black and white album; the shed and chabutra shown in them were not like this. The shed, however, existed since before but it had a different shape. " (E.T.C)

''सहन के अन्दर सीता रसोई का चूल्हा बेलना नहीं था बल्कि यह चीजें सहन के बाहर लान में थी।'' (पेज 54)

" Chulha (hearth) and belna (rolling pin) of Sita rasoi were

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not inside the court yard but these things were in the outer lawn. " (E.T.C)

(iii) PW 3, Farookh Ahamad:

*''...इस सहन के दक्षिण में एक छोटा–सा **चबूतरा** था और उस पर एक छप्पर था। यह चबूतरा एक और डेढ़ हाथ के बीच की ऊँचाई तक था।... इस चबूतरे के दक्षिण हिस्से से मस्जिद की दक्षिण दीवार 40–50 फुट के फासले पर होगी। ... उत्तरी जंगले वाली दीवार से निकलते ही पश्चिमी तरफ **कुछ निशानात चकला, बेलन और चूल्हे के बने हुए थे।**''(पेज 20)*

*" To the south of this court yard, there was a small **Chaubutra**, and on that lay a shed. This Chabutra was at the height of one to one-a-half hand-span. . . . .The southern wall of the mosque would be 40-50 feet away from the southern portion of this Chabutra. . . . .Immediately after exiting from the northern grill wall, **some marks such as those of 'Chakla', 'Belna' and 'Chulha' were made** on the western side." (E.T.C)*

''हमारी होश में यह छप्पर बीसों बार बदला गया होगा। साल छह माह में बदला जाता था।''(पेज 21)

"In my knowledge, this shed must have been changed twenty times. It used to be changed at the interval of a year or sixth months." (E.T.C)

*''सदर दरवाज़े से अन्दर दाखिल होने पर दक्खिन की तरफ जो चबूतरा था उस पर सभी लोग जिनमें पुजारी भी शामिल होते थे, बैठा करते थे।... **मेले के वक्त भी हर मज़हब के लोग चबूतरा देखने आते थे।** ..... वह छप्पर और चबूतरा मैं अपने होश से देखता आ रहा था।'' (पेज 29–30)*

*" On the entrance through the main gate, towards the south there was a Chabutra on which all the people, including priests as well, would sit. **Even on the occasions of fair***

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people of all religions would come and have glimpse of Chabutra. *. . . . I continued to see this shed and Chabutra since when I gained understanding." (E.T.C)*

''जो चकला बेलन और चूल्हा के निशानात बने थे, वह हमने 1949 से पहले भी देखे थे। .... आज से 60–70 साल पहले चकला–बेलन देखा था और छप्पर भी देखा था।'' (पेज 95)

"The existing marks of 'Chakla', 'Belan' and stove (chulha), had been seen over there by me even before 1949. . . . About 60-70 years ago, I had seen the chakla-belan, as also the thatched roof."(E.T.C)

(iv) PW 4, Mohd. Yasin:

''...जंगले वाली दिवार के उत्तर की तरफ बाहरी सहन में कोई चूल्हे का निशान तो नहीं था लेकिन चकला और बेलन ज़रूर बने हुए थे। इस चकले बेलना को और ऊपर बताये गये दोनों छप्परों को मैं अपनी होश में 1949 तक देखता रहा था।'' (पेज 19)

". . . to the south of grill wall, in the outer courtyard there were certainly no marks of any 'Chulha' (hearth) but 'Chakla' and 'Belna' were certainly raised. In my knowledge I continued to see till 1949 this 'Chakla' and 'Belna' and the two thatched roofings stated above." (E.T.C)

(v) PW 5, Abdul Raheman:

''इस जायदाद में जब सदर दरवाजे से अन्दर दाखिल होते थे तो एक तरफ के बाहरी सहन में छोटी सी छपरिया थी और दूसरी तरफ चूल्हा और बेलना रखा था।'' (पेज 63)

"On entrance in this structure through the main gate, in the outer courtyard there was small shed on one side and 'Chulha' and 'Belna' were placed on the other side."

(E.T.C)

(vi) PW 6, Mohammad Yunus Siddiki:

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''चबूतरा छप्पर से पूरा ढका था। छप्पर के अंदर किसी को कुछ करते हुए नहीं देखा। जब रात को मैं वहां जाता था तो अक्सर लोग छप्पर में सोते हुए दिखाई देते थे।'' (पेज 11)

"Chabutra was completely thatched. I did not see anybody doing any thing inside the said. Whenever I would go to the shed there during nights, I would often see people sleep there." (E.T.C)

*''यह इमारत चारों तरफ दिवारों से घिरी हुई थी। **मैं ऐसा नहीं समझता कि जिस भवन में चूल्हा, चाकिया, बेलना हो या जिन्हें हिन्दू पूजते हो वह मस्जिद नहीं हो सकती।**''(पेज 27)*

*"This building was enclosed with walls all around. **I do not have the understanding that the building in which there are 'Chulha', 'Chakiya' and 'Belna' or which is worshipped by Hindus, cannot be a mosque."** (E.T.C)*

(vii) PW 7, Hasmatulla Ansari:

*''बाहर सहन में दक्षिण की तरफ हमने एक **चबूतरा देखा था।** उस पर एक छप्पर भी देखा था। ए**क छप्पर उत्तर में भी था** और एक दक्षिण में भी था। यह छप्पर अलग से रखा हुआ था, जो उत्तर की तरफ था, बाउण्ड्री वाल के साथ नहीं लगता था। उत्तर वाला छप्पर 6X8 फिट का था, बड़ा नहीं था। जो छप्पर दक्षिण की तरफ था, वह तकरीबन 20X15 फुट का था। चबूतरा उससे बड़ा था। वह चबूतरा 21 फिट लम्बा रहा होगा और 17 फीट चौड़ा होगा। आउटर यानी बाहरी सहन में कोई वृक्ष नहीं था। यह बाहरी सहन उत्तर की तरफ से चलकर पश्चिम की तरफ मुड़ गया था। लेकिन ऐसी हालत दक्षिण की तरफ नहीं थी। उत्तर वाला सहन का वह हिस्सा जो पश्चिम की तरफ मुड़ गया था, आखिरी दीवार तक जाता था और तकरीबन 90 फुट लम्बा था। इस हिस्से की चौड़ाई तकरीबन 20 फुट होगी। इस सहन की फर्श भी पक्की थी।'' (पेज 28)*

*"We had **seen a Chabutra** on the south in the outer courtyard. I had also seen a thatched roofing on the said Chabutra. 6**here was a shed on the north** and as also on the south. This shed was separately laid which was on the*

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north and it did not adjoin the boundary wall. The northern shed was 6 X 8 feet; it was not a big one. The shed which lay on the south was nearly 20 X 15 feet. The Chabutra was bigger than the shed. The Chabutra would have been 20 feet long and 17 feet wide. There was not tree in the outer courtyard. This outer courtyard extended from the northern side and turned towards the west. But such position was not on the south. The portion of the northern courtyard which had turning towards the west, extended upto the last wall and was nearly 90 feet long. The width of this portion must be nearly 20 feet. The floor of this courtyard was metaled." (E.T.C)

''इस सहन में ***एक चूल्हा बना हुआ था*** *और* ***एक बेलन बना हुआ था।*** *(फिर कहा) वहाँ पर चूल्हा नहीं था, बल्कि चकला था, जिस पर रोटियाँ सेंकी जाती हैं। वह चकला और बेलन सीमेंट के बने हुए मालूम देते थे। हमें तो ऐसा नहीं लगता था कि वह संगमरमर के बने हुए हों। चकला ज्यादा से ज्यादा एक फुट के दायरे में रहा होगा। बेलना एक–डेढ़ फुट का उसी के साथ का था। यह चकला और बेलन सहन से चार या छ : इंच की एक ऊँचाई पर छोटा सा फर्श बनाकर उस पर स्थापित किए हुए थे। मुझे याद नहीं कि यह ऊँचे उठाया गया चबूतरानुमा फर्श पत्थर का था, संगमरमर का था या ईंटों का था। यह चबूतरानुमा चीज तीन या चार फुट लम्बी और इतनी ही चौड़ी थी। यह छोटा सा चबूतरा पश्चिमी दीवार से तकरीबन 25 फुट के फासले पर था। ... उत्तरी गेट में अगर सड़क से दाखिल होकर उस इमारत में जाया जाए तो यह छोटा चबूतरा बाईं तरफ पड़ता था। बाईं तरफ पूरब दिशा बनती है। उस दरवाजे से अन्दर दाखिल होते वक्त इस चबूतरे को पार नहीं किया जाता था, थोड़ी सी इसकी बगल से निकला जाता था। इस 4X4 के छोटे चबूतरे की दक्षिणी तरफ दीवार थी, जो जंगलेदार थी। उसमें एक दरवाजा भी था, जो बन्द रहता था। उस जंगले वाला दीवार की लम्बाई तकरीबन 30 फुट थी। यह पूरब पश्चिम थी। वह जंगले वाली दीवार पश्चिम सिरे में मस्जिद की दीवार से जा मिलती थी। जहाँ पर यह जंगले वाली दीवार का आखिरी कोना पश्चिम*

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की तरफ था, वहाँ से इमारत की पश्चिमी दीवार का फासला तकरीबन 30 फुट था। उसमें उत्तर की तरफ कोई दरवाजा नहीं था। उत्तरी जंगले वाली दीवार में ही दरवाजा था, वह उसके बीचोबीच था। वह दरवाजा जंगले में ही था और लोहे का था। सलाखों का दरवाजा था। यह दरवाजा 6 फुट ऊँचा होगा और चार फुट चौड़ा होगा। भीतरी सहन के पूरबी तरफ भी जंगले वाली दीवार थी।'' (पेज 29.–30)

*"In this courtyard, **a 'Chulha' (hearth) was build** and **so was a 'Belan' (rolling pin)**. (Further stated) there was no 'Chulha' there; there was a 'Chakla' on which breads are baked. The said 'Chakla' and 'Balan' appeared to be made of cement. It does appears to us that they were built of marble. The said 'Chakla ' would have been a circumference of one feet at most. A 1½ feet 'Belna' was beside it. The said 'Chakla' and 'Belan' was placed on the small floor erected at the height of 4 or 6 inches. I do not remember whether the said elevated Chabutra-like floor was made of stone or of marbles or of bricks. This Chabutra shaped thing was 3 or 4 feet long and it was that much wide. This small Chabutra was at the distance of nearly 25 feet from the western wall. . . . .On entering that building from the road through the main gate, there lay a small Chabutra on the left side. The left side forms the eastern direction. At the time of entering through that gate, one would not cross this Chabutra; one would go slightly by its site. On the southern side of this 4 X 4 feet small Chabutra, there was a wall having grills. It had a wall as well which continued to be closed. That grilled wall was nearly 30 feet in length. It extended from east to west the grilled wall at the western end joined the wall of the mosque, where the last corner of the grilled wall towards*

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the west and from there the western wall of the building was at the distance of nearly 30 feet. It has no door on the northern side. Only in the northern grill wall, there was a door which was in its middle. This door was in the grill itself and was made of iron. The door was of iron bars. This door would be 6 feet high and 4 feet wide. There was a grill wall also to the east of the inner courtyard." (E.T.C)

(viii) PW 8, Abdul Aziz:

''इस इमारत के अंदरूनी हालात बाबत छप्पर, चबूतरे, दिवारे या फर्श जो मैंने बतलाए है वह मेरे वहां पहली मर्तबा जाने से और आखिरी बार नमाज अदा करने तक बदस्तूर उसी तरह से कायम रहे थे उनमें कोई रद्दोबदल नहीं हुयी थी।'' (पेज 38)

*"The inte**so was a 'Belan' (rolling pin)**rnal position of this buildin**so was a 'Belan' (rolling pin)**g, in reference to shed, Chabutra, walls and flooring which I have stated about, continued to be the same from my first visit to that place till the time I last offered namaz; there was no alternation therein." (E.T.C)*

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(ix) PW 9, Saiyyad Akhalak:

''इस सहन के दक्षिण की तरफ एक चबूतरे की शक्ल वाली तामीर थी। इस चबूतरे की ऊँचाई तीन सवा तीन फुट के आसपास थी। यह पुख्ता चबूतरा था। ... इस चबूतरे पर एक छोटा सा छप्पर था।'' (पेज 22)

"There was a Chabutra-shaped construction to the south of this courtyard. The height of this Chabutra was nearly 3-3¾ feet. It was a firm Chabutra. . . . . There was a small shed on this Chabutra." (E.T.C)

''यह छप्पर लकड़ी के खम्भों पर टिका हुआ था। मेरी जानकारी में इस चबूतरे के ऊपर या छप्पर के नीचे लकड़ी की टेन्टनुमा तामीर नहीं थी। ... इस चबूतरे के ऊपर और नीचे के बीच में दो–तीन खिड़कीनुमा चीजें बनी हुई थीं। ... खिड़कियों की लम्बाई–चौड़ाई ऐसी थी कि उसमें एक आदमी

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झुक कर आ–जा सकता था। खिड़कियों के अन्दर उस चबुतरे के बीच में कुछ जगह तो बहरहाल जरूर थी। उसके अन्दर मूर्ति रखी हुई थी, जो बाहर से दिखाई देती थी, अब उसकी गहराई को जितना चाहो मान लीजिए। जो आदमी उसमें झुककर जाता था, जाहिर है कि वह उसके अन्दर बैठ भी सकता था। चबूतरे के ऊपर जो छप्पर था उसमें मुझे मालूम नहीं क्या काम होता था। मैंने वहाँ कभी किसी को बैठते–उठते नहीं देखा।'' (पेज 23)

"This shed rested on the wooden pillars. In my knowledge, there was not any wooden tent like construction above this Chabutra or below the shed. . . . . In between the top and the bottom of this Chabutra, there were 2-3 window shaped things.. . . . . The length and width of the windows was such as to allow one to enter and exit in a bending position. Inside the windows, there was, however, certainly some space in the middle of that Chabutra. Inside that was placed idol which was visible from outside. As far as its depth is concerned, you may now take it to be so much as you like. From the fact that a person can go therein by stooping himself, it is clear that he can even sit inside it. As far as the shed above the Chabutra is concerned, I do not know what was done therein. I never saw anybody sitting and standing up there." (E.T.C)

*''मैने इन दरवाजों पर कभी कोई ताला लगा हुआ नहीं देखा। ...**एक थोड़ी सी जगह पर चूल्हा, चकला और बेलना बने हुए नजर आते थे।** .... चूल्हा, चकला और बेलना पत्थर के बने हुए थे। इस चीजों का जिक्र काफी अर्सा से सुनते थे और मैं अपनी होश से इन्हें वहाँ देखता भी आया था। इस उठान के उत्तर की तरफ एक गेट था।'' (पेज 25).*

*"I never saw any locks put on these doors. . . . .**'Chulha' (hearth), 'Chakla' and 'Belna' (rolling pin) were seen built on a small place.** . . . .Chulha' (hearth), 'Chakla' and*

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'Belna' (rolling pin) were carved of stone. I would hear about these things for a considerable times and since the time I gained understanding, I continued to see them over there. There was a gate to the north of this 'Uthan' (raised place)." (E.T.C)

''इस सहन पर, जो बाहर की तरफ था या जो ऊपर बतलाया गया चूल्हा, चकले वाला सहन है, उस पर और पहले बयानकर्ता चबूतरे वाले सहन पर कभी नमाज नहीं पढ़ी गई। मेन गेट से अन्दर दाखिल होने पर उत्तर वाला सहन खुला पड़ा रहता था, उसका कोई इस्तेमाल नहीं होता था।''

(पेज 27).

"Namaz was never offered in this courtyard, which was towards the exterior side or which is the above-stated courtyard having 'Chulha' and 'Chakla' and in the Chabutra courtyard about which deposition has been made earlier. On coming inside through the main gate, the northern courtyard continued to be open and was not put to any use." (E.T.C)

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(x) PW 14, Jalil Ahmad:

''रसोई जहां बनी थी उसमें चूल्हा, बेलना और चौका था। *कोई पैर के चिन्ह नहीं बने थे। मैं नहीं बता सकता कि चूल्हा चकला या चौका बेलना किस मसाले से बने हुए थे। यह सभी चीजें फर्श की सतह पर बनी हुई थी कोई चबूतरा नहीं था। यह चूल्हा चकला और बेलना फर्श के साथ लगा हुआ था अर्थात् फर्श से ही चिपका था। ...इसी छोटे वाले दरवाजे के उत्तर थोड़ा सा हट कर यह चूल्हा बेलना चौका चकला बना हुआ था। मुझे नहीं मालूम कि इस चूल्हे चकले बेलन को किसने बनवाया।'' (पेज 19).*

"There were Chulha' (hearth), 'Belna' (rolling pin) and 'Chauka' at the place where Rasoi was built. No foot prints were built. I cannot tell of which material 'Chulha', 'Chakla'/'Chauka' or 'Belna' were built. All these things

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were built on the ground surface; there was no Chabutra. The said Chulha', 'Chakla' and 'Belna' formed part of the floor, that is to say, they were stuck to the floor itself. . . . . To the south of and slightly away from this very small door, the said Chulha', 'Belna' and 'Chauka-Chakla' were wrought. I do not know who built the said Chulha', 'Chakla' and 'Belna'." (E.T.C)

''यह चूल्हा–चकला और बेलन वही है, जिसके बारे मे मैं ऊपर बता चूका हूँ। तस्वीर नं0–71 को देखकर गवाह ने कहा कि इसमें चूल्हा–चकला एक चबूतरे पर दिखाये गये है।'' (पेज 23).

"These 'Chulha', 'Chakla' and 'Belan' are those very things about which I have stated above. Looking at the Photograph No. 71 the witness stated- it shows 'Chulha-Chakla' on a Chabutra." (E.T.C)

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''यह भी सही है कि चूल्हा चक्की बेलन के चित्र जहां बने हो वहां नमाज नही पढ़ी जायेगी।'' (पेज 38).

"It is also correct that namaz will not be offered at a place having pictures of 'Chulha', 'Chakki', 'Belan'." (E.T.C)

(xi) DW1/2 - Sri Krishna Chandra Singh:

''हनुमतद्वार से अन्दर जाने पर बाएं यानी दक्षिण तरफ राम चबूतरा था जिस पर राम दरबार के विग्रह तथा श्री रामलला की मूर्ति विराजमान थी। उसके दक्षिण पश्चिम कोने पर नीम व पीपल का पेड़ एक ही में लगा हुआ था, जहाँ अर्ध गोलाकार चबूतरा था, चबूतरे पर शिव, पार्वती, गणेश, कार्तिकेय, शिवजी का अर्घानन्दी की मूर्तियाँ विराजमान थी।'' (पेज 3).

"On going inside through Hanumatdwar, on the left, that is on the southern side there was Ramchabutra, on which 'Vigrah' (different forms) of Ram Darbar as also the idol of Ramlala was seated. On its southern-western corner, there were Neem and Peepal trees stuck together, where lay a semi circular Chabutra, on which the idols of Shiv, Parvati,

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Ganesh, Kartikey and Shiv Ji's vehicle Nandi were seated." (E.T.C)

(xii) DW1/3, Sri Sahdev Prasad Dube:

''श्रीराम जन्मभूमि स्थित मन्दिर में प्रवेश के लिए पूरब दिशा में हनुमत द्वार 6 दिसम्बर, 1992 के पूर्व था, द्वार के दोनों ओर कसौटी के खम्भे लगे थे, जो गिनती में दो थे, इन पर देवी–देवताओं की मूर्तियाँ उभरी थी। उत्तर की ओर सीता रसोई व इसके पूरब में जन्मभूमि मन्दिर का भण्डारगृह व राम चबूतरा था, सीता रसोई व इसके पूरब में जन्मभूमि मन्दिर का भण्डारगृह व राम चबूतरा था, सीता रसोई के उत्तरी दिशा में सिंहद्वार था, दक्षिण व पश्चिम दिशा में परती जमीन थी जिससे भक्तगण मन्दिर परिसर अर्थात् राम जन्मभूमि स्थित मन्दिर की परिक्रमा करते थे।'' (पेज 5).

"For entrance in Sri Ram Janmabhumi-situated temple, in the eastern direction was Hanumatdwar prior to 6th December, 1992. On both sides of the gate were fixed Kasauti pillars, two in number, with the images of gods-goddess engraved on them. On the north lay Sita Rasoi and on its east were 'Bhandar Grih' (store room) of Janmbhumi temple and Ramchabutra. To the north of Sita Rasoi was Singhdwar; on its south and west there was uncultivated land, from which point of place devotees performed circumambulation of the temple precincts or Ramjanmbhumi-situated temple." (E.T.C)

(xiii) DW 2/1-2, Sri Ram Sharan Shrivastava:

''विवादित ढांचे में लगे काले पत्थर के खम्भों, पर कलश, आम के पल्लव, कमल, देवी–देवताओं एवं मानव आकृतियाँ स्पष्ट थीं तथ उसी परिसर में सीता रसोई, चरणचिन्ह, चौका बेलन, चूल्हा, राम चबूतरा था। उक्त स्थल हिन्दुओं के पूज्य स्थली के रूप में था एवं विवादित स्थल सदैव से भगवान राम के जन्म स्थल के रूप में पूज्य था।'' (पेज 5).

"'Kalash', mango leaves, lotus flowers, images of god-goddess and human beings were clearly seen engraved on

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the black stone pillars embedded in the disputed structure, and Sita Rasoi, foot prints, 'Chauka', 'Belan', 'Chulha' and Ramchabutra were there in that very premises. The said place was as a revered place for the Hindus and the disputed site was always revered as the birthplace of Lord Rama." (E.T.C)

''भवन की स्थिति से मेरा तात्पर्य पूरे भवन से है, जिसमें पूरब की ओर राम चबूतरा, जहाँ पूजा हो रही थी, उत्तर की तरफ सीता रसाई और विवादित भवन को भी लोग रामजन्मभूमि मानते थे, से है।'' (पेज 167).

"By the location of the building I mean the entire building, including Ramchabutra on the east providing space for worship, Sita Rasoi on the north and the disputed structure regarded by people as Ramjanmbhumi." (E.T.C)

4064. PW 6 on page 20, further said about the other temples around the building in dispute:

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''मुतदाविया जायदाद के इर्दगिर्द हिन्दुओं के मन्दिर हैं। इस जायदाद से हनुमानगढ़ी तक रास्ते में हिन्दुओं के बड़े–बड़े मंन्दिर हैं, जैसे–कनक भवन और रामजन्मस्थान, हनुमानगढ़ी। मोहल्ला रामकोट में राम जन्मभूमि मन्दिर भी है। अयोध्या में श्रीरामचन्द्र जी के मन्दिर भी हैं, हनुमान जी के भी मन्दिर हैं और जैनियों के भी मन्दिर हैं।'' (पेज 20)

"Around the property in suit, there are temples of Hindus. On the way from this property to Hanumangarhi, there situate a number of big temples of Hindus e.g. Kanak Bhawan, Ramjanamsthan and Hanumangarhi. In Mohalla Ramkot, Ramjanambhumi temple also situates. In Ayodhya, there are also the temples of Sri Ram Chandra Ji Hanumanji and Jains." (E.T.C.)

4065. In the above context, PW 16 said as under:

''पूर्वी दरवाजे से भीतर घुसने पर पूरबी अहाते में दक्षिण की तरफ चबूतरा था, जिसे राम जन्मभूमि कहते हैं। इसी अहाते की उत्तर की तरफ

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भण्डारगृह कोठार हो सकता था।'' (पेज 57)

"Entering through the eastern door, there was a chabutara (platform) towards eastern side of the compound, which is called Ram Janambhumi. Towards north of this compound there might have been store room." (E.T.C.)

''सीता रसोई जहॉ पर स्थित था, उसी के पास उत्तरी दरवाजा था। यह ठीक है कि मुख्य इमारत जिसे मैं मस्जिद कहता हूँ, के अन्दर जाने के लिए उपरोक्त हिन्दू धार्मिक स्थानों के पास से होकर जाना पड़ता था।''

(पेज 58)

"Near the place where Sita Rasoi situated, there was the north door. It is correct that for reaching the main building, which I term as 'mosque', one had to pass through the aforesaid religious places." (E.T.C.)

4066. This position as emerges from the above could not have been controverted in any manner. Therefore, the first part of the issue in question we are inclined to answer in affirmance. So far as the second part is concerned, i.e., its effect, we find that the pleadings in this respect are that if the mosque is surrounded or landlocked by the places of worship of other religions (in the present case Hindu), then it cannot be a Mosque according to the tenets of Islam. However, no such command in any of the Islamic text could have been traced or placed before us to support the submission. It is true that normally the places of worship are constructed where the population of the worshippers is quite reasonable and for their convenience, the persons responsible for construction normally choose a place where obstruction is minimal, but that is one aspect of the matter and can not be equated to a proposition that such a construction would not be an Islamic religious structure, if it is surrounded or landlocked by the religious places of other

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religions.

4067. The issue further is sought to be argued on the ground that under Islamic text, at one place there cannot be two places of worship as the property vested in God cannot have a share holder. It is, thus, submitted that this is a command against a Mosque under the Islamic text and, therefore, the building in dispute could not be a Mosque. We have already held that in this case, it is a peculiar situation where in the same premises, Hindus and Muslims both were worshipping according to their beliefs, customs and tenets and this is going on for the last several decades before the first suit was filed in the Court of Civil Judge. When a religious practice is continuing in a particular manner for such a long time, in our view, it ought not be questioned or should be discussed or adjudicated by the Court. No one can be allowed to say such practice was not correct and the generations to generations were acting illegally or contrary in following tenets of their religion. The manner of worship of one religion ought not be allowed to be questioned after almost a century by the people of other religion. It is impertinent and improper. In view thereof, **we answer the Issue No. 19 (b) (Suit-4) in affirmance to the extent that the building was landlocked and could not be reached except by passing through the places of Hindu worship. However, this by itself was of no consequences.**

(C) Whether the Hindus had been continuously worshipping at the place in dispute:

4068. Issue No. 13, 14 (Suit-4) and 24 (Suit-5) come in this category.

4069. **Issue No. 13 and 14 (Suit-4)** read as under:

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Issue No. 13 :-

Whether the Hindus in general and defendants in particular had the right to worship the Charans and 'Sita Rasoi' and other idols and other objects of worship, if any, existing in or upon the property in suit?

Issue No. 14 :-

Have the Hindus been worshipping the place in dispute as Sri Ram Janam Bhumi or Janam Asthan and have been visiting it as a sacred place of pilgrimage as of right since times immemorial? If so, its effect?

4070. While considering issue No.3 (Suit-4) pertaining to limitation, we have already held that in the outer courtyard there were certain religious structures of Hindus which they were worshipping since long i.e. before 1885. The plaintiffs (Suit-4) having lost their right to interfere in such right of Hindus which has continued for such a long time, therefore, in respect to those religious structures, the answer would be affirmative. So far as the inner courtyard is concerned, there the idols were kept for the first time on 22/23rd December, 1949. But that itself makes no difference for the reason that the place of birth of lord Rama, we have already held to be a Swayambhu deity and worship of this place is continuing for the past several centuries. As we have already discussed while considering issues relating to site as birthplace and the existence of temple as also the issues pertaining to possession therefore, Hindus in general had been entering the premises within the inner courtyard, as a matter of right for the last several centuries, hence cannot be denied this right after such a long time. **We therefore, answer issues 13 and 14 (Suit 4) in affirmative.**

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4071. **Issue No. 24 (Suit-5)** is;

"Whether worship has been done of the alleged plaintiff Deity on the premises in suit since time immemorial as alleged in para 25 of the plaint?"

4072. Here also we remind that for the purpose of Suit-5, the property in dispute comprises of inner and outer courtyard, both. There are two plaintiff Deities. Plaintiff 1 is the idol. We have already held that the idol of Ramlala or Lord Rama kept earlier on Ram Chabutara in the outer courtyard and was being worshipped by Hindus since long time, i.e. almost a century, was shifted and placed under the central dome of the disputed structure in the inner courtyard in December, 1949.

4073. So far as the plaintiff 2 is concerned, we have discussed above that it was also being worshipped since long as noticed by Joseph Tieffenthaler in the middle of the 18th century and thereafter in several gazetteers etc.. Worship of both the plaintiffs was going on for such a long time which satisfy the term "time immemorial". **Issue No.24 (Suit-5) therefore is also answered in affirmative.**

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(D) The presence of idol in the disputed building:

4074. Issue No.2 (Suit-1) comes in this category.

4075. **Issue 2 (Suit -1) is:**

"Are there any idols of Bhagwan Ram Chandra Ji and are His Charan Paduka situated in the site in suit?"

4076. Before answering it, we may remind ourselves that the suit is confined to the premises within the inner courtyard as also clarified by the plaintiff Gopal Singh Visharad in his statement made under Order X, Rule 2 C.P.C. on 07.03.1962 which reads as under:

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"Plaintiff Gopal Singh Visharad and Sri Param Hans Ram Chandra plffs of both the suits no.2/50 and 25 of 1950 accompanied by their counsel state that they do not want any relief with regard to constructions or structures indicated in the map of the Commissioner Sheo Shanker Lal dated 25.5.50. by the terms 'Sita Rasoi' 'Bhandar' and 'Ram Chabootra' . They say that the reliefs are asked for only with regard to property enclosed in the said map by letters A. B. C. D. L. K. J. P. O. H. N. G. A.

4077. In the discussion already made above, this has come on record that "*Charan Paduka"* is part of the structure which is also called as "*Sita Rasoi*" or "*Chhati Pujan Sthal*" which existed in the outer courtyard. It is evident from the site plan submitted by Sri Shiv Shankar Lal on 25th May, 1950, which we have already appended as Appendix 2 to this judgment. This is also admitted by plaintiff. Therefore, it cannot be said that "*Charan Paduka"* situated in the site in dispute since the suit is confined only to the premises within the inner courtyard.

4078. So far as the idols of "Bhagwan Ram Chandra Ji" is concerned, we have already held while considering Issues No.3(a) (Suit-5) and Issue No.12 (Suit-4) that the same were placed under the central dome of the disputed structure, within the inner courtyard, in the night of 22/23rd December, 1949 but prior thereto the same existed in the outer courtyard and it is therefrom, the same was shifted. Suit-1 was filed on 16th January, 1950 on which date idol of Ram Chandra Ji, as a matter of fact, existed in the inner courtyard under the central dome of the disputed structure. **Issue No.2 (Suit-1) is therefore, answered accordingly**.

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(E) Issues relating to place of birth of Lord Rama, believed as such by Hindus by tradition etc.

4079. Here we are concerned with issues no. 11 (Suit-4), 1 (Suit-1) and 22 (Suit-5) which reads as under:

Issue No. 11 :-

Is the property in suit the site of Janam Bhumi of Sri Ram Chandraji?

Issue No. 1 :-

Is the property in suit the site of Janam Bhumi of Sri Ram Chandra Ji?

Issue No. 22 :-

Whether the premises in question or any part thereof is by tradition, belief and faith the birth place of Lord Rama as alleged in paragraphs 19 and 20 of the plaint? If so, its effect?

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4080. The real and substantial issue in all these cases going to the root of the matter is that the plaintiffs (Suit-4) and Muslim defendants in rest of the suits unequivocally and unanimously submit that there is no evidence to show that lord Rama was born at the disputed site. They submit that Hindus belief that Ayodhya is the place of birth of lord Rama and therefore is very holy and religious place even if not disputed in these cases, but that by itself would not mean that the disputed place can be identified as the only place where lord Rama is said to have been born. Neither in any Hindu religious scriptures nor in any other history book or record it is mentioned that the disputed site was actually the place of birth of lord Rama. He may have born at Ayodhya but to narrow it down and concentrate on the disputed site is wholly conjectured and

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imaginary. It is without any foundation or substance.

4081. It is said that though the statements under Order X, Rule 2 C.P.C. have been given by the learned counsels for the various Muslim parties that they do not dispute about the faith of Hindus regarding birth of lord Rama at Ayodhya and that the present Ayodhya is the same as believed by the Hindus yet the Court cannot ignore the opinion of voluminous record of historian and other experts in the field saying that the Ramayana, which is considered to be the basic document to reflect life of lord Rama and makes it an incarnation of lord Vishnu, is a myth and therefore it is termed as an epic.

4082. That being so, the story of lord Rama, with the passage of time has generated in such a vast Hindu faith as if a matter of historicity yet on judicial side when this Court will take note of it, it cannot hold otherwise and therefore it is unjust to raise an unfounded claim and contend that lord Rama was born at the disputed site. They submit that the vedic literature and the Hindu scripture relied by various counsels for Hindu parties broadly do not construe reliable source of history and therefore in the absence of any reliable material, merely on the basis of something which is mentioned in some gazetteers published in 19th century and onwards during the British regime, that too wholly unsubstantiated, and, perhaps was written to create a rift between Hindu and Muslim in furtherance of policy of the Britishers to rule India following divide rule, it cannot be said that building in dispute was constructed at a place where lord Rama had born and therefore the question of desecration of Hindu religious place does not arise.

4083. It is in this context, the common submissions in

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brief advanced by the learned counsels for the Muslims side are that there exists no evidence to show that any temple or religious structure existed at the disputed site which is said to have been demolished for construction of the disputed structure; there is no evidence to show that Lord Rama actually took birth at the disputed site though his birth in Ayodhya itself is not disputed; the disputed structure was constructed in 1528 by Meer Baqi, a Commander of Emperor Babar and throughout since then it has been considered, treated and practised as Mosque wherein Muslims have offered their religious prayers regularly till at least December 1949 when the District administration restrained them by attaching the property in dispute and placing it under the receivership.

4084. Sri Jilani submitted that it is for this reason that the stand of Hindus also differ on certain aspect though not in respect to the issue pertaining to birth place.

4085. The Sunni Central Waqf Board was impleaded as defendant in Suit-1 in 1989 whereafter it filed its written statement and Sri Jilani referred to paras 10, 11, 12 and 13 thereof. He then referred the claim and written statements in other three suits and submitted that in general there are three parties: (1) Muslim Group, (2) Orthodox Hindus and (3) Nirmohi Akhara. The case of the Nirmohi Akhara is that there was never a mosque but it was throughout a temple of Lord Sri Rama and Ram Janam Bhumi was in possession of Nirmohi Akhara who was performing Pooja, Arti etc. through its Pujaris, from time immemorial. The case of orthodox Hindus is that it was a place of birth of Lord Sri Rama where a mosque was constructed by Babar through his aide Mir Baqi but the said

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building was never used as mosque. At least from 1934 the building was never used as mosque. In respect to the placement of idols, Sri Jilani pointed out that there are two versions: first, about the alleged manifestation of Ram Lala in the night of 22/23.12.1949 and second is the transfer of idols from Ram Chabutara to the dome shaped building of the disputed premises.

4086. Mr. Jilani, in brief, advanced his submission by placing oral and documentary evidence as under:

1. The building in question was constructed in 1528 AD by Mir Baqi at Ayodhya and has always been treated a mosque

2. The muslims were offering Namaj in the said building since very beginning and at least from 1855 onwards. There is evidence that the building in dispute was in possession of Muslims, managed by a Mutawalli and Namaj was offered regularly therein.

3. There is no evidence whatsoever that the disputed building was constructed after demolition of any temple of Lord Ram or any other deity worshipped by Hindus.

4. In fact there is no evidence at all that there existed a Hindu temple on or before 1528 when Mir Baqi made construction of the disputed building.

5. The claim of Nirmohi Akhara that it was throughout in possession of the disputed building and Pooja Archana of Lord Rama was going since long is incorrect, the oral evidence is not creditworthy and self contradictory. There is no credible documentary evidence either.

6. On the contrary the documents of the state authorities of

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different time, oral evidence of individuals etc. show that the building in question was a mosque, throughout known as Babri Mosque, and Namaj was offered therein throughout.

4087. Adopting the entire arguments of Sri Z. Jilani, Sri Siddiqui further stated that though he does not dispute that Lord Rama took birth at Ayodhya, however, there is no evidence that Lord Rama took birth at the disputed site. There is neither any evidence to this effect nor there existed any Temple of Lord Rama at the aforesaid place in 1528 when the construction in dispute was raised by Meer Baqi, a Commander of Emperor Babar. He drew our attention to the topography of the land in dispute and nearby area referring to the two maps of 1885, a site plan prepared by Court Commissioner Sri Gopal Sahai, Amin, and, the map and pleadings in Suit No. 95 of 1941, and Commissioner Sri Shiv Shanker Lal's report. He pointed out that the report of Sri Shiv Shanker Lal mentions two houj (हौज) showing source and availability of water for Vajoo and also a place used as urinal at the disputed site. He also referred to the exhibits A20, A21 and A22 (Suit-1) and exhibit A13 (Suit-4). According to him, the aforesaid maps show admission of the parties that the disputed construction was a mosque.

4088. On the contrary, the stand of all the counsels appearing for Hindu parties whether plaintiff or defendant in all the suit is common. They collectively submit that there is enough material to show that since time immemorial the disputed place being a part of fort of lord Rama or King Dashratha was held, treated, practised and worshiped as the place of birth of lord Rama as an incarnation in human form of

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lord Vishnu.

4089. Taking lead in support of the issues relating to site of birthplace and worship by Hindus, Sri R.L. Verma said that the place in dispute is the same where Lord Rama was born several thousands or lacs of years ago. It is a very pious, holy and religious place for Hindu, has been worshipped by them since time immemorial and a fine temple of Lord Rama existed which was demolished by Mir Baqi to construct a mosque. He sought to place before us as source of history, Vedas, Puranas, Ramayana and other religious and historical literature and books and also the statements of several witnesses.

4090. On behalf of the defendant no. 20 (Suit-4), Sri P.N. Misra and Km. Ranjana Agnihotri, advocates, made their submissions at length placing certain extracts from "**Rigveda Samhita",** "**Taittiriya Sanhita",** "**Yajurveda Samhita",** "**Atherva-Veda ka Subodh Bhasya",** "**Atharva-Veda Samhita",** "**Skanda-Purana",** "**Shri Narsinghpuranam**", "**Sri Ramacaritamanasa",** "**History of Dharmashastra**" by P.V. Kane. It is contended that Ayodya, Lord Rama and their relationship is duly recognised since ancient time which shows that the Lord Rama was born at the place in dispute and there cannot be any reasonable doubt in this regard which is in the memory, faith and belief of Hindu people since several centuries handed down to them from generations to generations.

4091. Expanding the above submission of Sri Verma, Sri Ravi Shankar Prasad, Sri P.R. Ganapati Ayyiar, Senior Advocates, etc. all the learned counsels placed before us in detail various Hindu scriptures, Indian Books, Gazetteers and other documents to show that throughout Hindus have believed

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and worshipped the place in dispute as a place where lord Rama was born. They submit that the matter of birth of lord Rama being several thousand and lakhs of year old, it is imprudent to expect any direct evidence on the subject. In the matter of faith and religion, the Court will have to form an opinion and adjudicate the matter on the basis of preponderance particularly if it found the evidence of continuous faith of the entire community to several hundred and thousand of years i.e. beyond the memory of mankind and if it is found that there has been a continuity in such a faith with respect to such a place, no further adjudication by asking for direct evidence would be necessary and the Court will have to uphold such faith which has continued for time immemorial. Some of the details of the argument of the learned counsels in this regard and the material they placed, we have already referred to.

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4092. Sri M.M. Pandey in respect to the Issues No. 14, 22 and 24 (Suit-5) has made submissions as under:

(A) Hindus hold Lord Ram to be incarnation of Lord Vishnu, claim that Ram was born at the place where disputed structure (in short 'DS') was erected and that before its construction, there stood a Hindu Temple; this temple was demolished and in its place DS was constructed. The birthplace has been held by Hindus as a highly sacred place and constitutes to be Swayambhu Deity, worshipped as such since time immemorial.

(B) In the nature of things, the place of birth cannot be proved by 'direct' evidence; indeed no living being is capable of proving the birthplace of any of his parents, 4 degrees or more remote in the line of ascent. The fact,

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therefore, has to be judged in accordance with the meaning of word 'proved' u/s 3 of Indian Evidence Act. The significant expression is: 'the Court either believes it to exist or considers its existence so probable that a prudent man ought …….. to act upon the supposition that it exists'. So 'belief' and 'supposition' are perfectly legal and acceptable states which may lead to 'proof'. Herein lies the legal relevancy of 'Faith' of the concerned people, to wit the Hindus, which is the essential foundation of most of the Spiritual Doctrines. Birthplaces of God's men have always been treated sacred in all religions. Paper no. 3 of Ramlala's documents is Historical Sketch of Faizabad in 1870 (Ext. OOS 5: 49) by P. Carnegy, Commissioner/Settlement Officer of Oudh; in page 5, it is mentioned that 'Ayodhya is to Hindus what Mecca is to Mohammedans and Jerusalem to Jews'. In the History of Dharmashastra – Governmental Oriental Series – Vol III at page 177, P.V.Kane records from Visnu-dharmottara that Ayodhya 'was endowed with hundreds of parks; it celebrated festivals and held gatherings of people……it always resounded with music of lutes, flutes…….it resounded with the recitation of the Veda……there was not a man who was wretched, dirty or emaciated; it stretched for three yojanas on the Banks of the Saryu and was ten yojanas in the middle.' Apart from lot of documentary evidence, including admissions by some Muslims, OPW1 Paramhans Ramchandra Das deposed (Page 7) that birth of Lord Ram in Ayodhya is mentioned in Balmiki Ramayan, its boundaries are mentioned in

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Ayodhya-Mahatma Chapter of Skandha-Puran, that Birthplace & Garbha-griha is the site of Disputed Structure (DS) where Bhagwan Ramlala is seated presently (P 8, 54) and in Atharva-veda mention of Ayodhya of Ashtachakra-Naodwar is made in a mantra and the names of Deities (Deota) of the 8-Chakras is mentioned in a Shloka of Rudrayamal which states the Deity of the first-Chakra to be Ram Janmabhumi (P.103). OPW2 Deoki Nandan Agarwal (at P. 39), OPW4 Harihar Prasad Tewari (P. 2 & 3), OPW6 Hausala Prasad Tripathi (P.5, 12,13 & 77), OPW 7 Ram Surat Tewari (P. 4, & 6), have deposed about the DS being Birthplace of Shriram as incarnation of Bhagwan Vishnu and faith, worship darshan, Parikrama and pilgrimage thereof by Hindus since ancient times. OPW 12 Kaushal Kishore Mishra deposed that Ramchandra ji was born in Mohalla Ramkot in Ayodhya within DS in the garbh-griha central dome of the 3-domed 'temple', and that Ramkot was the palace of Dashrath ji which contained the garbh-griha (P.42 & 43). OPW 16, Jagatguru Ram Bhadracharya, a great scholar of literature relating to Lord Ram has elaborately deposed about the DS to be the birthplace of Bhagwan Shriram as mentioned later in these arguments; significant documentary evidence will also be placed later. SB's witness PW 12, Ram Shankar Upadhyaya, stated (at page 49) that when he went to DS, he did not carry flowers, wreath (mala) or Prasad, but he had received Prasad from the mandir from the pujari.

(C) In OOS 1 of '89 (of Ram Gopal Visharad), para 27

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of WS dt. 21.2.1950 by Muslim Defdts. 1 to 5 (including Mohd. Faiq & Zahoor Ahmad, who are co-plaintiffs in Sunni Board's OOS 4 of '89), states that in 'Ayodhya a Temple named Mandir Janmasthan Shri Ram Chandra ji, established long ago, has been in existence at the birthplace of Ram Chandra ji and Idols of Shri Ram Chandra ji and others are Virajman therein'. In OOS 3 of '89 (of Nirmohi Akhara), Defdt. No. 6 (Haji Pheku), Defdt. No. 7 (Mohd Faiq) and Defdt. No. 8 (Achchan Mian alias Ahmad Hussain) pleaded similarly in para 28 of their joint WS, filed through Sri Mohd Ayub, Advocate, on 28.3.1960 that in Ayodhya a temple named as 'Mandir Janmasthan Shri Ram Chandra ji, established long ago, has been in existence at the birthplace of Ram Chandra ji, and Idols of Shri Ram Chandra ji & others are Virajman therein'. This pleading is the same as was taken by Mohd Faiq etc in para 27 of their WS dt 21.2.1950 as indicated above and was confirmed by their lawyer, Sri Mohd Ayub, on 17.5.1963 under Order X R. 1 CPC which establishes that (i) there is birthplace of Shri Ram Chandra in Ayodhya and (ii) a Temple existed at the birthplace. In OOS 4 of '89 (of Sunni Board), Plaintiff No. 4 Mohd Faiq is also Defdt in Visharad's suit and is Defdt No. 7 in Nirmohi Akhara's suit; he **verified** Sunni Board's Plaint which was also signed and filed by said Mohd Ayub, Advocate, on 28.8.1963. These statements made by Mohd Faiq and Advocate Mohd Ayub, and Defdt. Zahoor Ahmad in Visharad's suit (and co-palintiff in Sunni Boards' suit) are binding and conclusive against Sunni Board and

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Muslim Defdts in Visharad Suit and in Nirmohi Akhara's suit: Sec. 17 & 18 Evidence Act. 1960 SC 100, Narayan Bhagwat Rao Gosavi Vs. Gopal Vinayak Gosavi , 1967 SC 341, Basant Singh Vs. Janki Singh, and 1945 Mad 361, Obanna Vs. Gangaiah, hold that persons jointly interested in a suit are bound by the admission made by any one of them. 1947 All 110, Beni Madho Vs Major A.U.John and 1997 All 122 (at 133) Talat Fatima Hasan Nawab Syed Murtuza Ali lay down that an admission made by a Party's Pleader is binding. The Sunni Board stated in para 32 of their WS dt. 24.2.1989 in reply to Visharad's suit (i.e. 17 or 18 years after their own Plaint) that 'there already exists Ram Janmasthan Mandir in the northern side of the property in question at a short distance (60-70 steps, vide their PW 12 Ram Shankar Upadhyay at P.50 & PW4 at P. 55) from the pathway passing from the side of the Babri Masjid'. [This confirms Shri Ram Chandra ji's Temple at the birthplace by Mohd Faiq, Zahoor Ahmad and Mohd Ayub in 1950, 1960 and again in 1963]. Thus, existence of Shri Ram Chandra's birthplace in today's Ayodhya and of Temple at birthplace stands admitted; the only fact which requires further proof is whether site of DS is at the birthplace and temple had existed there in the past which was destroyed and replaced by DS. It is significant that concerned Muslims did not put up a case/plea at the earliest available opportunity that Ram Janmasthan Temple at Ram's birthplace existed separately at a distance of 60-70 steps from DS. That opportunity existed in Mahant Raghubar Das suit of 1885

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when Mohd. Asghar, Mutawalli of DS, filed a written statement and signed the site plan prepared by Pleader-Commissioner appointed by Court, but did not plead, nor pointed out to Pleader-Commisioner, that Ram Janmaasthan Mandir mentioned above already stood at a separate spot. It shall appear later in these arguments that the Janmasthan Mandir aforesaid seems to have been an effort by Hindu community/devotees to establish a birthplace temple in the name of Lord Ram, as close as possible to the demolished Temple replaced by DS, in the circumstances prevailing through centuries of Mughal invasion, repression and use of force since 1528. It will be seen that in 1786 Tieffenthaler found the platform (later called Ram Chabutra) inside the disputed area campus, the DS and the periphery of DS (parikrama) being worshipped by Hindu devotees. It will also appear that in 1853 Hindus forcibly occupied DS, that in 1855, the British administrators separated the DS from the rest of the campus by erecting a partition wall through the platform of DS so that Muslims could offer namaz inside DS whereas Hindus could remain in possession of the rest of the campus, that through the vicissitudes of Mandir-Masjid conflicts, effort by Mahant Raghubar Das of Nirmohi Akhara in 1885 to erect a temple on Ram Chabutra failed because a self-impleaded Muslim Defdt (Mutawalli of DS) opposed erection of Temple thereat and Courts found co-existence of Masjid and Mandir within the disputed area to be fraught with danger of bloody riots and so on.

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(D) Authority of ancient times about the birth of Ram in Ayodhya is contained in Balmiki Ramayan (Paper OOS 5: 261C/1,2) which contains inherent evidence of its period contemporary to Ram. Balmiki Ramayan, written by Maharishi Balmiki, seems to satisfy the definition of word "History" given at page 459 of 'The New Lexicon Webster's Dictionary of the English Language' 1987 Edn, published by Lexicon Publications Inc. New York. 'History' is defined as a record of past events usually with an interpretation of their cause and an assessment of their importance; a narrative of real or fictitious events connected with a particular person, country, object. Balmiki Ramayan, fulfils this criterion; it is a description of Ram and specific events of his life. Being a contemporary version, Narad (the Rishi) places Ram as just a man to poet Balmiki who asked him to identify a person who possessed all the virtues of Man. Balmiki closely watched and followed the deeds of Ram and wrote about the birth of Ram in verses 8th, 9th and 10th of 18th Sarg and describes Ram as the Lord of Universe. The fact of Ram's Manifestation is borne out in Chapter X verse 31 of Shrimad Bhagwad Gita (Ext. OOS 3: 20) where Lord Shri Krishna has mentioned that among 'warriors I am Ram'.

(E) Closest in point of time immediately preceding Babar's invasion, is evidence of the darshan of the Idol/Temple of Ram by Guru Nanak Dev on his pilgrimage to Ayodhya. It is proved by the testimony of Rajendra Singh DW 2/1-1 that Guru Nanak started on

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pilgrimage in 1507 and had darshan of Ram Janmabhumi Mandir between 1510 & 1511. In his affidavit in examination-in-chief, Annexure 3 and 4, he has deposed respectively about contents of 'Adi Sakhian' (1701) and 'Puratan Janma Sakhi Shri Guru Nanak Dev Jiki' (1734), which record that during his pilgrimage Guru Nanak Dev went to Ayodhya, among other places, and had darshan; he mentioned about the record in 'Pothi Janma Sakhi Gyan Ratnawali' (1730) – Annexure 5 - that Guru Nanak Dev on reaching Ayodhya said to his disciple Mardana: 'Mardania this is Shri Ram Chandra ji's city, hence let us proceed to have darshan, and he got down at the bank of the river'. The witness deposed about the record of actual darshan of Ram (i.e. Idol of Ram) by Guru Nanak Dev in Guru Nanak Vansh Prakash (1829) – Annexure 7 - by Baba Sukhbasi Ram Bedi, who was a descendant in 8th degree of Laxmi Chand (one of the sons of Guru Nanak Dev), that 'accompanied by Mardana, Sadguru proceeded and arrived in Ayodhya, drank the water of river Saryu and had darshan of Ram closely'. Finally, the witness deposed about Bhai Baleywali-ki-janma-sakhi (1883) Annexure 6, where Guru Nanak pointed to Bhai Baley ji, his disciple, on visiting Ayodhya that it was Shri Ram Chandra ji's city where He Manifested and performed life's tasks. SB filed 'Janma Sakhi Bhai Bale Wali', Paper No. 208C1/1 to 3 Ext. OOS4: 68 which records Guru Nanak Dev's visit to Ayodhya and advising both Mardana and Baley, but there is no mention of Guru Nanak Dev's darshan of Shriram or Ram Temple. The document does not appear to be reliable

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because paper Nos 208C1/1&2 are title covers of which 1 bears no year and 2 bears year of publication to be 2000 AD; on the contary, Ann 6 filed by the witness is of the year 1883.

(F) Besides extensive cross-examination, SB confronted the witness with pages 5 to 8 and 33 to 36 of W.H.McLeod's 'Sikhs & Skihism' (1999), paper 210C1/1 to 210C1/10 Ext. OOS 5: 69, which mentions some other Janma-Sakhis but not any of the ones named by the witness. This is irrelevant because the book does not mention that there were no other Janma-Sakhis. On the contrary, page 5 mentions that his 'sources for the life of Guru Nanak ….. are generally unreliable …….but it is possible to set out……..a brief outline of his life'. Thus McLeod's account is neither reliable nor substantial. He admitted the contents of Adi Granth, complied by Guru Arjan Dev to be authentic (pages 5 & 7), which contained very little material regarding events of Guru Nanak's life, hence "we resort to our only other available sources, the traditional biographies called Janma-Sakhis". He further mentioned that Janma-Sakhis are hagiographic (=saintly/holy) accounts of life of Guru Nanak each consisting of series of separate incidents or chapters (page 8). At the same time he mentioned that there being 'nothing better', Janma-Sakhis have to be used although they are 'thoroughly inadequate sources' (page 33). It will be appreciated that 'inadequate' is not 'untruthful', and there would be no reason to record accounts untruthfully in 1701, 1730, 1734, 1829 and 1833 about matters which

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are treated to be 'saintly/holy'. Further, there is no inconsistency inter se these Janma-Sakhis spread over a century and a half recorded by sources that are natural & trustworthy.

(G) It is admitted by McLeod that starting from Sultanpur in Punjab, Guru Nanak travelled in all directions, East/West/North/South (page 34). He even went on pilgrimage to Mecca (page 35); so the probability is that in India itself he would have gone on pilgrimage to Ayodhya which, admittedly, is a Holy Place of pilgrimage since ancient times. Page 228C1/3, filed by SB, is extract of British Encyclopaedia mentioning that in his voyage to East, Nanak went 'as far as Assam'; so why not Ayodhya too. Moreover, McLeod's account of contents of Janma-Sakhis (in pages filed by SB) is extremely sketchy. In less than 2 pages (34-35), he disposed of the accounts recorded by Bhai Gurdas and in less than 1 page (36) he disposed of the accounts contained in Puratan Janma-Sakhis.

(H) A very significant narration by McLeod may be noticed. While referring to Adi Granth or Guru Granth Sahib (page 7), he has mentioned about 'famous references to Babar, the so-called Babar vani …….do indicate that Guru Nanak witnessed something of Babar's depredations ……..at the sack of Saidpur', and that 'in the case of Babar vani, we may confidently assume that <u>he witnessed something of the devastation caused by Babar's Army</u>'. This is what witness Rajendra Singh DW2/1-1, deposed on the basis of contents of Guru Granth Sahib describing Babar as 'Satan Incarnate' and his army 'Storm

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of Sin'. The veracity of the witness, therefore, cannot be doubted.

(I) SB relied upon some Sikh religious literature to establish that Ram could be no Manifestation of God. On the contrary, Paper No. 212C1/1 to C1/4 Ext. OOS 4: 86 extract of Adi Guru Granth Sahib, filed in cross-examination of Rajendra Singh DW2-1/1 has paper No. 212C1/3 where Guru Nanak Dev acknowledged 'Self-Manifestation' of God. J.S.Grewal's "The New Cambridge History of India", Paper No. 214C1/1 to C5, filed during deposition of the witness, mentions Grewal's view of Guru Nanak's 'rejection of Hindu deities and scriptures' and 'repudiation of traditional modes of worship and religious practices' (p. 214C1/3). This is not a correct appreciation of Guru Nanak's views. Earlier, at the same page, Guru Nanak is mentioned to have maintained that 'none of the Hindu deities could be equated with the Supreme Being. In fact, everything known to myth, legend and history was the creation of Guru Nanak's God. The human incarnations of Hindu Deities, like Krishna, could add nothing to God's greatness'. The Author has mixed up his understanding of the teachings of Guru Nanak with their true content. Having impressed upon the absolute supremacy of the Supreme Being, Guru Nanak remarked that human incarnation of Hindu deities like Krishna "could add nothing to God's greatness", so they could not be equated with Supreme Being and were creation of God. A correct understanding of these teachings is that human incarnations do take place like Krishna but they cannot be

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equated with God Himself; indeed they Manifest with all the limitations of a human being. What is mentioned by Grewal as 'rejection' is in fact sublimation of the concept of incarnation into Godhead. Similarly SB relied upon the remark of Guru Nanak that 'there was no merit in the worship of images' (p C1/3); this remark misses the recognised rule of Hindu worship that the Hindu does not worship the 'material in the image' but the Spirit of God behind the Image (See Para 36 below). Guru Nanak's criticism of 'practices of those who worship Krishna and Rama', concerns practices , not the essence of the Faith of Hindus in God and Incarnations. Grewal fell into same error over the teachings of Guru Nanak at page 214C1/4; his inference that with 'rejection' of idea of 'incarnation' it is 'impossible to treat Rama and Krishna as deities' concern only the practices of worship of Ram & Krishna without affecting their Divinity; the fact of happenings of Self Manifestation are already established by extract of Guru Granth Sahib contained in page 212C1/3 referred to above. Grewal committed the same error while mentioning about Quran at page 214C1/4. It is interesting that page 228C1/5, extract of British Encyclopaedia filed by SB dealing with views (of Sikhism), mentions that Sikhism forbids representation of God in pictures and worship of idols, but admits that Adi Granth itself has become an object of intense ceremonial reverence and as such is known as Granth Sahib (the Granth personified) so that it is "roused" in the morning and in the evening it is "put to rest for the night". This is very similar to the

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manner in which the worship of a Hindu Deity is performed by the Pujari and has been judicially recognised. This also reflects the spiritual commitment of the Devotees/followers of a Faith which transforms an object of reverence into a Deity even if the followers commitment does not strictly conform to the teachings of the Founder.

(J) Chronologically, the next account filed in the case is in Ain-e-Akbari (paper 107C1/….) Ext. OOS 5: 76 written by Abul Fazal, a courtier of Akbar, in 1598. The extract on record is the one printed in 1881 by Nawal Kishore Press, Lucknow. The text at page 78 records that Avadh, one the bigger towns of Hindustan, is counted as an ancient place of worship. It was stated to be the place of residence of Raja Ramchandar who, as indicated above, "combined in his own person both spiritual supremacy and kingly office".

(K) In modern times, Mahatma Gandhi, Father of the Nation, treated Ram as God. In "MAHATMA", Gandhi's biography written by D.G.Tendulkar, at page 93 of Volume VIII, mention is made of Gandhi holding that God was known by many names and He had many attributes and that 'Ram and Rahim, Krishna & Karim' were all names of one God. Again, page 137 mentions Gandhi saying that Man calls God by many names – Ram, Khuda etc; and page 162 mentions Gandhi saying that God is known to Hinduism as Ram. His famous bhajan in daily evening prayers, r6upit ra6v rajaram, pitt pavn sIta ram, is too well-known. Paper No. 110C1/96 (filed by Sunni

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Board) contains, at page 183, an account by Abul Fazl (Akbar's Courtier) in 1598 that Ramchandra 'who in Treta age combined in his own person both the spiritual supremacy and kingly office'; clearly perceived Ram to possess 'spiritual supremacy' which could place him in the category of God's incarnation. Paper No. 4 of list d. 5.11.1989 filed by Madan Mohan Gupta of Deft. Akhil Bharatiya Sri Ram Janma Bhumi Punardudhar Samiti is extract of translation of Ain-e-Akbari by Col. H.S.Jarret in 1891 recorded a foot-note that Ram Chandra was '7th Avatar and as incarnate Rama is the hero of famous epic that bears his name'.

(L) OPW 16, Ram Bhadracharya, who has stood searching cross-examination on his authority on Lord Ram has consistently deposed about the birthplace of Ram with reference to Ramtapniyopnishad and Ayodhya Mahatma in Skandh Puran (Vaishnav Khand). Jagadguru Ram Bhadracharya, OPW 16, also deposed about the place of Ram's birth in Ayodhya in paras 25 and 27 of his affidavit citing the authority of Chapter X of Skand-Puran (Vaishnav Khand) and of Yajurved. In para 23 of his affidavit, he asserted that the expression 'sarvalok namskrutam' in Sarg 18 (verse 10) signifies the disputed area in these suits as the birthplace of Ram. In para 24 of his affidavit read with pages 39 and 40 of cross-examination, he cites the authority of Ramtapniyopnishad and Atharva-ved to establish the birthplace of Ram to be in Ayodhya. Refuting the suggestion that Ayodhya Mahatm of Skand-Puran is a later interpolation, he

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asserted at page 53 that the spot which has been mentioned in Skand-Puran as Janmabhumi is the very spot which is the disputed site in this case. At page 54, he described the boundaries of Janmabhumi as mentioned in Skand-Puran; most of these boundaries tally with the present location of Disputed Area in Plans I & II of Shiv Shanker Lal. Add to these, paper no 17 of Documents filed on behalf of Bhagwan Shri Ramlala in OOS 5/89, the witness spoke about the situation of temple of Vighaneswar Bhagwan and said that Janmasthan is at North-East angle of Vighaneshwar, is towards North of Vashistha Kund and towards West of Lomash Kund; he reaffirmed those very situations on further cross-examination by different angles. All these situations are corroborated by couplet nos. 16, 18 and 19 of "Skand-Puran Mahatm" extract in paper no 17 (of Ramlala's documents referred to above. Jagadguru Ram Bhadracharya made a very emphatic and important statement in para 62 of cross-examination: "विवादित स्थल के उत्तर सड़क पार किसी जन्मस्थान नामक मन्दिर के बाबत मैंने किसी शास्त्र या अन्य पुस्तक में नहीं पढ़ा। मैं नहीं बता सकता कि ऐसे किसी मन्दिर को गूदड़मल मन्दिर के नाम से जाना जाता है।" This cross-examination was done by Z. Jilani for Sunni Board and the reply totally excludes the theory of Janmasthan Temple towards North of DA across the Pakka Road (pleaded by pro-Masjid Parties) as Ram's birthplace or antiquity of that temple.

(M) Babarnama (as translated by A.S.Beveridge) Ext. OOS 5: 16, which is first hand account his

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exploits/adventures by Babar himself (1528), does not contain any account of Ram, Mandir or Masjid. On Babar's capturing Delhi Sultanate after defeating Ibrahim Lodi on 21.4.1526, some local Governors of Lodi rebelled against Babar to establish their own rule. Babarnama mentions at page 544 that his son, Humayun, having been entrusted with subduing the rebels, took Jaunpur, Ghazipur, Kharid (Jaunpur), and placed Sheikh Bayazid Furmuli into the charge of Aude(=Oudh). Page 589 mentions that on 26.12.1527, troops were sent against Bayazid, signifying that Bayazid also rebelled in the meantime. On 21.3.1528, Babar visited Lucknow, and crossed Gomti and on 28.3.1528 Babar and his army dismounted at some distance 'above the junction of rivers Gaghra & Sird' (pages 601-602). His men, including Mir Baqi Shaghawal, chased Bayazid who ultimately escaped. Having stayed at the camping place, Babar left for hunting on 2.4.1528 (page 602). Admittedly, no account of the period after 2.4.1528 till 18.9.1528 is found in Babarnama. It is futile to guess about the missing contents; the significant fact is that a possible 'instant, first hand account' about the events relating to DS is not available in Babarnama; Babar did not even retrospect about this important event even later in Babarnama.

(N) The next record of disputed spot is available in William Finche's account of Ayodhya (paper no. 107C1/95-96, Ext. OOS 5:19) during his travels in 1608 to 1611, which finds mention also in SB paper 110C1/96 at page 183. It records: "Here also the ruins of Ranichand's

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castle and houses (the footnote mentions that Ranichand is a typographical error for Ramchand) which the Indians acknowledge for the great God, saying he took flesh upon him to see the tamasha of the world". This supports the popular perception of incarnation of Ram and existence of Castle of Ram in Ayodhya. The locality of Castle of Ram is known as Ramkot. Kot means fort (See Para 19). The DS and the surroundings are situated on this Ramkot; Contour Map [Fig.1 of ASI Report after GPR Survey under High Court Orders dt.13.12.2002 read with report (page 13)] shows the height of the mound-top on which DS stood to be 108.48 M above sea-level while the surrounding area sloped 'sharply' down to 103 M within a short distance and further sloped down 'gradually' to 101 M moving farther away from the top. The ASI has reported that 'the contour map itself suggests that the deposits at the site are no less than 8.0 M'; they further mentioned that the site 'contains the cultural deposits and debris accumulated for centuries'. This configuration of the locality fits in with structural pre-existence of 'Ramchand's Castle and houses' as recorded by William Finche. In natural course of things, persons are born in their 'houses' which, in the case of Royal families could well be the 'Castle'; hence this high raised site could be the birthplace of Ram.

(O) The next material available, in point of time, is a Jesuit Missionary Le Pere Joseph Tieffenthaler's "Historical and Geographical Description of India" published in 1786 paper No. 107C1/96 to 104. Those were

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the times when rivalry was hot between the French and the British over establishing their supremacy/empire in India. The account of Tieffenthaler was presented by the publisher Jean Burnoulli in French to the French King (paper No. 107C1/97). Translation of pages 252 to 255 (paper nos. 107C1/98 to 103) into English language by Government of India, under orders of the High Court, are part of the record and the following portions are of much significance:

(i) At page 252 - Avad , called as Adjudea (obviously, 'Ayodhya') is very ancient; it mentions founding of Bangla or Pesabad (obvioulsly, 'Faizabad') as 'as a new city where the Governor established his residence – a great number of inhabitants of Oude settled there'.

(ii) At page 253 – From 'Sorgadoori" (=Swargadwar Temple), Ram took away all inhabitants of the City to Heaven; the City was brought back to its earlier status by Bikarmajit (=Vikramditya), the famous king of Ujjain (The translator has mentioned Bikarmajit as the famous king of Oude erroneously; the text mentions the locality to be 'Oudjen' i.e Ujjain). Aurangzeb got the Temple demolished and replaced it with a Mosque and 2 obelisks (Minarets?).

-A place specially famous, called Sitha Rassoi, i.e., 'table of Sita wife of Ram', adjoining to the City in the South situated on a mud-hill ('mud-hill' is the area of Ram Chand's houses and Castle mentioned by William Finche).

-Aurangzeb got a fortress called Ramkot [this name

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has continued throughout in modern records] demolished and got constructed at the same place a Muslim Temple with 3 domes. Some believe it was constructed by Babar. [This is the DS]. 14 black stone pillars there, skilfully made, existed at the site of the fortress; 12 of the pillars support the interior arcades of the Mosque. [The translator has not translated the height of these pillars –mentioned as 5 'empans'- which, according to Court Commissioner of 1950, was 6 feet each].

-A square box raised 5 'inches' above the ground with borders made of lime, with a length of more than 5 'inches' and 'height' of about 4 'inches' can be seen there. [We find the unit of measurement in 'inches' and mention of 'height' by the Translator to be incorrect. Firstly, having earlier mentioned the height of the square box to be 5 inches –which is correct- there could be no occasion of mentioning height again to be 'about 4 inches'. Secondly, the English translation of the French units of measurement and of one dimension mentioned in the French text is not correct. The French text mentions the height of the box to be 5 pouces which is correctly translated as 5 inches; but the dimension of length in French text is 5 aunes and dimension of width in French text is mentioned in continuation of dimension of length as 'large rout au plus de 4' which means wide more than 4 aunes (per context). A French aunes = 1.20 M. French Dictionary, Le

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Petit Larouse Grand Format (1996 Edition) mentions at page 105 that aunes is equivalent to 1.20 M; page 812 mentions pouce to be equivalent to 27.07mm = English 'inch'. The correct dimensions of the box-structure, thus, was 6 M (1.20x5) in length, more than 4.8 M (1.20x4) in width and 5 inches in height; this establishes the dimensions of the structure to be 19.68 feet x 15.744 feet x 5 inches. [In the Gazetteer of 1854 written by Edward Thornton, paper No. 1 of Bhagwan Shri Ramlala in OOS 5 of 1989, mention is made of 'a quadrangular coffer of stone protruding 5" or 6" above ground pointed out as a cradle of Ram as 7th Avatar of Vishnu and is abundantly honoured by pilgrimages and devotion of Hindus'. This is the very platform mentioned by Tieffenthaler]. Shiva Shanker Lal, Pleader-Commissioner has mentioned (1950) the dimensions of Ram Chabutra to be 21 feet x 17 feet x 4 feet. Tieffenthaler's record of length and breadth of the box-structure is substantially similar to that of Court-Commissioner; increase in the height of the structure from 5 inches to 4 feet during 150 years after Tieffenthaler's visit is consistent with the complaint of Muslim parties in 1885 Suit of Mahant Raghubar Das that the latter had been raising various types of structures in the disputed area including construction of the Chabutra; incidentally, the structural changes would establish effective acts of possession of Hindu devotees/pujaris over very

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significant durations in the disputed area.

(iii) At page 254- The Hindus call the square box as Bedi, i.e.the Cradle. The reason for this is that once upon a time, there was a house in this place where Beschan (Lord Vishnu) was born in the form of Ram besides his 3 brothers. Subsequently, Aurangzeb, or according to another belief Babar, got this place destroyed in order to deny them (Hindus) the opportunity of practising their superstitions. [It is to be appreciated that the word 'superstition' is mentioned by a Jesuit-christian who treat Hindu Faith to be 'superstitious', but so far as the Hindus are concerned, it is Faith which transcends reason, and that is the practice which Tieffenthaler found to be prevailing at that time.]. However there still exists some superstitious cult in some place. For example, in the place where the native house of Ram existed, they go around 3 times and prostrate on the floor. [This is the ritual of Parikrama commonly associated with worship at Hindu Temples. ''नालन्दा विषाल शब्दकोष'' Samvat 2007 at page 794, gives the meaning of Pa rikrama as the 'path around all sides of a Temple or Pilgrimage-place for circumbulation'. One is amused at the Parikrama made by Babar 3 times around the sick-bed of his son Humayun while praying to Allah to restore Humayun to health and in lieu thereof to take his life; it is said that Allah accepted the prayer of Babar so that while Humayun started recovering, Babar's health started declining ending in his death. Such is the spiritual power of Parikrama!]. The two spots are surrounded by low

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crenellated wall. (The two spots, signify the 3-domed DS and the Platform; the low crenellated wall is the surrounding boundary of both and signifies the premises as a whole. The expression, "in the place where native house of Ram existed they go around 3 times and prostrate on the floor" interpreted with the immediately following sentence 'the two spots are ……..' shows that Parikrama was being done of both DS and the platform, hence the entire premises were being worshipped. It is also remarkable that Teiffenthaler described the premises to be a Muslim Temple; this means that even the Muslim structure was being treated like a Temple. Equally remarkable is his mention of 12 pillars supporting 'interior arcades of the Mosque. Appreciating the use of distinct expressions, 'Muslim Temple' and 'Mosque', it means that while the DS was a Mosque, the entire premises, including DS was treated also as a Temple.)

At another place, not far from the Bedi, are found buried 'grains of black rice turned into small stones' hidden under the earth since the time of Ram [This is 'fossilised' rice, called Akshat in the rituals of worship; fossilisation of substances 'represents a past geological age that has been preserved in the Earth's Crust' (page 73 of Volume 4 of Britannica Ready Reference Encyclopaedia) which proves the antiquity of the locality. It also supports the ASI finding, mentioned above, that the site 'contains the cultural deposits and debris accumulated for centuries', and also establishes

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continuity of the locality during the fossilisation period of 'ages', may be from that of Ram. As mentioned in para 1 (above), all Muslim Parties in these Suits have admitted now that present time Ayodhya is at the same place as indicated in Balmiki Ramayan.]

In the month of 'Tschet' (= Chaitra month of Hindu Calendar) big gathering of people gather here to celebrate the Birthday of Ram so famous in entire India.

(P) Tieffenthaler's account has a special importance in this case. While most of the material on record establishes that Ram was born in Ayodhya the particular place of birth in Ayodhya, namely the site of DS, is fixed by Tiefenthaler's account earliest in point of time. He mentioned the platform 19.68 feet x 15.77 feet x 5 inches, **situated within the disputed area** (the Campus of the Babri Masjid) to represent the place where Ram and his 3 brothers were reputed to have been born. 'Muslim temple' with 3 domes is Babri Masjid at Ramkot, the fortress; the platform is within the precincts of Babri Masjid and in the month of Chaitra people gather here 'to celebrate the birthday of Ram so famous in entire India'.)

(Q) The next document of accounts is "A Historical sketch of Tahsil Fyzabad, Zilla Fyzabad" including "Ajudhia & Fyzabad" by P. Carnegy of 1870 (see para 4 above, Ext. OOS 5: 49), i.e within 84 years of Tieffenthaler's account and 13 years after British Queen's Proclamation of 1858. The British power stood fully consolidated while French & Portuguese had been marginalised and the British rulers proceeded to establish

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effective governance. P. Carnegy was appointed not only as Commissioner but also as Settlement Officer to conduct survey and prepare records of the territories of Ayodhya & Fyzabad. The contents of this document, therefore, assume great importance regarding the contemporary facts and events. At page (i), he mentions that a writer of History of Ayodhya 'must master all that has been written of the 3 distinct ages…..'; at no 3, he mentions Ajudhya Mahatam, with its Epitome in Appendix B 'taken from the PURANS'. Ajudhya Mahatam is in Skanda Puran (See Para 14). At page (ii) of the Epitome, it is recorded that at the 'heart of the city lies the great Ramkot, the fort of Ram …… on its western side is the Janma Bhum or Janam Asthan, the birthplace of the hero'. Page (iii) records 'Just beside the birthplace of Rama is the "Kitchen" of Janki-ji.' At page 6 (of the main narrative) Carnegy records that 'with the fall of the last of Rama's line, Ajudhia became a wilderness', that to Vikramajit 'the restoration of the neglected and forest-concealed Ajudhia is universally attributed …… the different spots rendered sacred by association with the worldly acts of deified Rama, were identified, and Vikramajit is said to have indicated the different shrines to which pilgrims from afar still in thousands half-yearly flock'. At page 7, he records about Ramkot: 'The most remarkable of those was of course Ramkot, the stronghold of Ramchandar……. This fort covered a large extent of ground …….. within the fort were 8 royal mansions where dwelt the Patriarch Dashrath and his wives, and Rama his deified son …….' Serial

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No. 6 of these mansions records 'Janam Asthan (Rama's birthplace)'. Page 20-21 mentions 'The Janamasthan and other temples'. It is recorded: ' It is locally affirmed at the Mahomedan conquest there were three important Hindu shrines…….the 'Janmasthan' the 'Swargadwar Mandir' also known as Ram Darbar and the 'Treta-ke-Thakur'. On the first of these the Emperor Babar built the mosque which still bears his name, A.D.1528. On the second Aurangzeb did the same, A.D. 1658-1707; on the third that sovereign, or his predecessor, built a mosque according to the well-known Mahomedan principle of enforcing their religion on all those whom he conquered. The Janmasthan marks the place where Ramchandra was born'. At page 21, it is mentioned that in 1855 a great rupture took place between the Hindus and Mahomedans, the former occupied the Hanuman Garhi in force, while the Mahomedans took possession of the Janmasthan. The Mahomedans actually charged up the steps of Hanuman Garhi, but were driven back with considerable loss. The Hindus then followed up this success, and at the third attempt, took the Janmasthan at the gate of which 75 Mahomedans are buried in the Martyrs' grave (Ganj-shahid). Several of the King's regiments were looking on all the time, but their orders were not to interfere. It is said that up to that time, the Hindus and Mahomedans alike used to worship in the mosque-temple. [This reminds of Tieffenthaler's description of the disputed structure as Muslim-Temple. See para 17(ii)(2) and 17 (iii) of these Arguments]. Carnegy goes on to add that since the British

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rule, a railing has been put up to prevent disputes, within which in the mosque the Mahomedans pray, while outside the fence the Hindus have raised a platform on which they make their offerings. At page 27, Carnegy, giving a brief list of 'buildings' existing at that time, mentions at No. (5) Babar's mosque with stone inscriptions in 'Ajudhia', date 1528, and stone columns of infinitely greater antiquity, i.e., of much older period than DS; hence DS could be from the earlier temple demolished. There is no reason to hold any of these accounts to be erroneous.

(R) Annexed to page 27 of Carnegy's Record is Appendix ‘A’ setting out "List of Sacred Places in and about Ajudhia". Drawn in Tabular form, Col. No. 2 is for 'Name of sacred place', Col. No. 3 is for 'Name of founder or restorer', Col. No. 4 is for 'Number of years since it was founded or restored', Col. No 5 is for 'Number of generations since founded or restored', Col no. 7 is for 'How obtained', Col. No. 9 is for 'Sect and special object of veneration', Col. No. 11 mentions page no. 'for particulars' of the item and Col No. 12 is for 'Remarks'. The Appendix lists 209 'sacred places'. All of them are Hindu sites; Appendix C is the 'List of old Mahomedan places of Note…..' While 'Janam Asthan' is mentioned at serial no. 1 of Appendix A with particulars at page 20, 'Mosque of Emperor Babar' is mentioned at serial no. 3 of Appendix C with particulars at page 21.

(S) Janam Asthan at serial no. 1 of Appendix A, carries the name of 'Ramdas ji' as 'founder or renovator', 'founded or restored' since 166 years of 7 generations, 'obtained' as

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'given by Mir Masumali Mafidar' related to 'Gudar, Ramchandar' by 'sect & special object of veneration'. Referring to 'particulars' at page 20 (per Col. No. 11), larger picture emerges. While according to Appendix A, the Janam Asthan could have existed only since 1704 A.D., established by 'grant' from a Mafidar, the particulars at page 20-21 lay down that on Janmasthan 'Emperor Babar built the mosque which still bears his name, A.D. 1528', marks the place where Ram Chandr was born, had 'a fine temple at Janmasthan' and 'many of its columns are still in existence, having been used by the Mahomedans in the construction of the Babri Mosque', the columns are 'black stone called by natives Kasoti (literally touchstone) and carved with different devices'. Obviously, the 'Mosque' could not be described as Janmasthan because as the structure stood, it was a Mosque, not a temple; the site on which the Mosque stood could be the Janma Bhumi of Ram, but could not be visible in the structure. At the same time, the only visible structure bearing the nomenclature of Janmasthan was the one mentioned at Serial No. 1 of Appendix A. Further, Appendix B 'Ayodhya Mahatma', at page (ii) mentions "Janam Bhumi or Janam Asthan, the birthplace of Ram". On a consideration of all this record, in totality, the reasonable conclusion is that, on the findings of survey by P.Carnegy, while a visible standing structure associated with Ram's birth was the Temple since 1704 mentioned at serial no. 1 of Appendix A, the Janma Bhumi was the invisible site on which the Babri Mosque stood since 1528. At the same time, the details of 'Mosque

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of the Emperor Babar' (serial no. 3 of Appendix C) as at page 21, clearly mentions that the mosque which Emperor Babar built in 1528 AD was built on the Janmasthan. The probability is that Janmasthan structure mentioned at serial no. 1 of Appendix A was the result of politico-religious compulsion faced from the devotees of Ram, so that a temple of Ram's birthplace was managed to have been erected with the leave/license of the Muafidar because Hindus were prevented throughout from erecting a Ram Janam Bhumi Temple anywhere within the precincts of Babri Masjid campus, so much so that when, in 1885 Mahant Raghubar Das sued for permission to erect a Temple on the Ram Chabutra, it was objected to by contesting Muslims and refused by the concerned authorities, including the Court, at Ayodhya. This probability is strengthened by the 'Remark' recorded by Carnegy in Col no. 12 of Appendix A as follows: "Great astonishment has been expressed at the recent vitality of Hindu religion at Ajudhia, and it was to test the extent of this chiefly that with no small amount of labour, this statement has been prepared. As the information it contains may be permanently useful, I have considered it well to give it a place here". This 'recent vitality of Hindu religion' is reflected in the 'great rupture' of 1855 mentioned above. It was facilitated by the collapse of tyrannical rule of Mughal Aurangzeb, followed by slightly humane rule of the local Governors (Subedars), styled as Nawabs, who may have realised the injustices caused to Hindu devotees so much so that, according to Carnegy,

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when the 1855 episode occurred, "Several of the King's regiments were looking on all the time, but their orders were not to interfere." Following the growing influence of British East India Co since Lord Wellesley's 1801 treaty, establishment of British Resident of Oudh, coupled with ill-governance of Oudh, the Company accomplished annexation of Oudh, formally proclaimed by Outram on 13th February 1856; Wajid Ali Shah, the last ruler of Oudh, was deported to Calcutta where he died (See page 762-63 of Majumdar, Raychaudhari & Kalikinkar Dutta's "Advanced History of India", supra). Carnegy has mentioned about annexation of Oudh in 1856 at page 13. Nawab Wajid Ali Shah had a great liking for Hindu culture, Art, Dance & Music, and could well have directed his regiments not to intervene' in the 1855-rupture.

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(T) The next important Document reflecting upon 'recent vitality of Hindu religion' mentioned by P. Carnegy, is Barabanki Gazetteer by H.R.Nevill (1902), paper no. 9 of Bhagwan Sri Ramlala's documents (Ext. OOS 5: 52), mentions at page 168-169 that shortly before annexation of Oudh by British an event happened in 1853, and records: "The cause of occurrence was one of the numerous dispute that sprung up from time to time between Hindu Priests and Musalmans of Oudh with regard to the ground on which formerly stood the Janma Asthan Temple which was destroyed by Babar and replaced by mosque. The ground being particularly sacred to Hindus was at once seized by Bairagis and others". This shows that Hindu-Bariagis took possession of DS in 1853

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as site of Ram's birthplace. The document adds that Moulvi Ameer Ali, resident of Amethi (then in Lucknow), at once proceeded to declare Jihad in the city. The King sent orders to Faizabad to inquire into the matter, but nothing was done. Ameer Ali then collected a large and well-armed force of Mahomedans; but the King summoned Ameer Ali and proclaimed that no violent action should be taken, and that the Mosque should be restored. When Ameer Ali collected more men, the King on receiving the news thereof, summoned Sir James Outram, the Resident, and left it to him to put a stop to Ameer Ali's movement in any way he could. As already mentioned, according to Carnegy, the 'rupture' took place in 1855. Page 174 of Faizabad Gazetteer of 1905, filed per list dt. 5.11.1989 by Defdt. Madan Mohan Gupta (Ext. OOS 5: 11) mentions that although Muslims re-occupied the place in 1855, the Hindus made a counter-attack and stormed the Janmasthan. So, the Bairagis and other Hindus captured DS/DA in 1853 and re-captured it in 1855 from Muslims after a fight in which several Muslims were killed and 75 were buried around the Masjid. Ext. A-26, the Judgment of Sub-Judge in Mahant Raghubar Das suit mentions Hindu-Muslim riots of 1855 after which the British constructed a wall separating the areas of possession of Hindus & Muslims over DS referred to by Carnegy. These documents confirm the DS to be the site of Ram Janmabhumi on which stood Janma Asthan Temple. Admittedly, the British authorities erected a partition wall on the platform of DS towards East of DS in

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1855 and provided that the portion on the West of the partition wall would remain in possession of Muslims whereas that on the East thereof, including the platform mentioned by Tieffenthaler, would remain in possession of Hindus.

(U) In 1858 (i.e.3 years after the events of 1853-55) a Sikh Fakir Khalsa, Nihang Singh, took possession of DS itself, installed Nishan Shri Bhagwan in the Central Dome of DS and performed Puja-Havan. Ext. 19 of OOS 1 of 1989, is a report (application) of SO Sheetal Dubey of local PS lodged on 28th November, 1858 that a Nihang Singh (Sikh) Fakir Khalsa r/o Punjab installed NISHAN SHRI BHAGWAN (NISHAN is pillar with a flag at the top as symbol of a Temple's Deity) with 25 Sikhs helping to protect and install the NISHAN, and Hawan and Puja was performed in the name of Guru Govind Singh inside **"Masjid Janmasthan**". That is the beginning of Masjid's nomenclature describing its situation at Janmasthan, the birthplace. Two days later (on 30.11.1858), Mohd Salim Muazzin (the person who makes Azan to call Muslims for prayer in Masjid) filed an application (Ext. OOS 1: 20) in connection with Ext. 19, stating that the Nihang Singh of Punjab and Sikhs and Bairagis of **Janmasthan** are bent upon committing rioting and in the middle of Babri Masjid near arch (Mehrab) and pulpit (Mimbar) made a mud chabutra 4 angul high, dug a pit , lighted fire and perform Puja and Hom, and also planted NISHAN 1 ¼ yards tall and installed Idol; word 'Ram-Ram' has been written by charcoal at various places in the Masjid. This

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confirms that in 1858, DS was claimed by Sikhs-Hindu Bairagis and described by the jurisdictional local Police Officer too as Birthplace of Ram (the police describing it as **Masjid Janmasthan**). Exts 21, 22, & 23 of OOS 1 of 1989 demonstrate the same situation.

(V) Of these, Ext. OOS 1: 23 is the application dt. 9.4.1860 of one Mohd. Isa with reference to SO's report regarding "installation of Nishan by Sant Tek Singh Fakir Khalsa in **Masjid Janmasthan**". This is **an admission** and confirmation by a concerned Mohammedan in 1860 that DS was **Masjid at Janmasthan**. In the Order dt. 3.1.1870 Ext. A19 (of OOS 1 of 1989) the Settlement Officer ordered payment of Annual Endowment Grant for support of **Janmasthan Mosque** to Mohd. Asghar (the Mutawalli of DS) and Mohd. Afzal Ali. Following it, Mohd Asghar and Mohd Afzal filed a Suit through Plaint dt. 22.8.1871, Ext. 26 and described Babri Masjid 'to be **situated in Janmasthan Avadh**' and claimed to be owner of 21 Imli trees situated at **darwaza of Babri Masjid which is situated in Janmasthan**. The claim was upheld by the same day's order Ext. 25. Ext 15, Dy. Commissioner's Report dt 14.5.1877 read with Ext. 16, Commissioner's Order dt. 18.12.1877 in an Appeal filed by Mohd Asghar show that in November **1873 an Idol was placed on 'platform of Janmasthan'**, that in May 1877, the Dy. Commissioner got a door opened in the Northern wall of the Campus and recorded that 'the new door was opened **not** in the Mosque but in the wall of **Janmasthan**. Mohd. Asghar's Appeal was dismissed by the Commissioner's

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above Order (dt. 18.12.1877). In Ext. 18, an application dt. 2.11.1883 by Mohd Asghar filed in the Court of Asstt. Commissioner, Faizabad, Mohd Asghar admitted the rights of Mahant Raghubar Das on **Chabutra Janmasthan**. These documents constitute important confirmation by the Police, the Dy. Commissioner and the Commissioner, and **important admissions** by Muslim-claimants regarding DS (Mohd Asghar, Mohd Afzal and Mohd Isa) that Babri Masjid stood at Janmasthan and came to be called as **Masjid Janmasthan,** i.e. Mosque at the birthplace (of Ram). It was never mentioned by any of the Muslim-claimants that there stood any 'Mandir Janmasthan' towards North of DS beyond the East-West rasta situated on the North of DS (a case now taken by Sunni Board/Muslim parties in these Suits), although P. Carnegy had mentioned in 1870 about Janmasthan since 166 years and construction of Masjid by Babar in 1528 on Janmasthan where formerly a temple had existed (See Para 21).

(X) Other significant documents are:

(i) Paper No. 1 of Ramlala's documents (OOS 5:5) are pages 739-740 of Edward Thornton's Gazetteer of 1854 mentions 'extensive ruins of Fort of Ram, King of Oudh, highly celebrated' and 'quadrangular coffer of stone protruding 5 or 6 inches above ground pointed out as Cradle of Ram as 7th Avatar of Vishnu, and is abundantly honoured by pilgrimages and devotion of Hindus'. This is what Tieffenthaler had recorded seen in 1786.

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(ii) Paper no. 4 of Ramlala's documents (OOS 5:7) is Volume 1 of Oudh Gazetteer of 1877; at page 7 it mentions that on Janmasthan, Babar built a Mosque.

(iii) Paper no. 5 of Ramlala's documents (OOS 5:8) contains paragraphs 666 to 669 of A.F.Millet's Report of Settlement of Land Revenue, Faizabad, in 1880, describing Janmasthan and other temples of Ayodhya and mentions erection of mosque by Babar on Janmasthan.

(iv) Paper no. 6 of Ramlala's documents (Paper 107C1/31-32) contains page 67 of Chapter X of Report of Archaeological Survey of NW Provinces and Oudh 1889 which mentions that Babar's Masjid at Ayodhya was built in AH 930 or AD 1528 by 'Mir Khan on the very spot where the old temple of Janmasthan of Ram Chandra was standing.

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(vi) Paper no. 7 of Ramlala's documents (OOS 5: 9) contains page 297 of ASI publication of 1891 by A. Fuhrer of Monumental Antiquities and Inscriptions in NWP & OUDH stating that in the very heart of city (Ayodhya) is "Janmasthan or birthplace of Ram" and Mir Khan built a Masjid during the reign of Babar on **Janmasthan**.

(vii) Paper no. 8 of Ramlala's documents (OOS 5: 10) contains page 389 of Imperial Gazetteer of India Volume II of 1901 mentioning that at one corner of the present town of Ayodhya a vast mound known as Ramkot or the Fort of Ram is the holy spot where Ram was born, that most of the enclosure is occupied by a

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mosque built by Babar from the remains of an old temple and an outer portion of a small platform and shrine marked the birthplace.

(Y) After the installation of an Idol in November 1873 on the platform of Janmasthan (vide Exts. 15 and 16 supra), an important Suit was filed by Mahant Raghubar Das Vs. Secretary of State, RS 61/280 of 1885 for permission to erect a temple on the platform (mentioned by Tieffenthaler in 1786 which came to be known as Ram Chabutra situated in the South-Eastern corner of the premises of disputed Babri Masjid). Ext. A22 is plaint dt. 19.1.1885; Para 1 mentions that BHUMI JANMASTHAN is situated in the city of Ayodhya of which Mahant Raghubar Das is Mahant, Para 2 mentions CHABUTRA JANMASTHAN with a small temple placed on it, and Para 3 mentions that Mahant Raghubar Das is in possession thereof. Thus Raghubar Das claimed that Chabutra Janmasthan (containing a small Temple) is situated in Bhumi Janmasthan and that the Chabutra Janmasthan had been in his possession. In the Written Statement, Ext. A23, Mohd Asghar/Mohd Javed as Mutawalli of Babri Masjid stated that the Masjid was constructed by Babar, that the Chabutra was constructed in 1857 which Muslims had complained of and applied for demolition and orders were passed for its demolition (but it continued to exist), Plaintiff and other Hindus used to have ingress/egress into the campus of the Masjid and had been assembling/dispersing, coming/going and making offerings (नज़र नियाज़ चढ़ाते हैं) as they do at other religious

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places like Imambaras/Masjids for their spiritual benefit. The concept of offerings for spiritual benefit is relevant acknowledgment of Deity-nature of DA. An important circumstance is that Mohd Asghar etc. never pleaded that Janmabhumi was situated elsewhere, viz. further North of East-West Rasta which runs towards North of DS (as pleaded in the current litigation), the record of P. Carnegy in 1870 about 'Janmasthan in the name of Ramdas' and another Janmasthan with Babri Masjid thereon was already public (See Paras 20 and 21 supra). Their statement that the Chabutra was constructed in 1857 is absolutely false because Tieffenthaler's account of 1786 records its existence. Another important feature contained in Court-Commissioner's Site Plan, Ext. A25, which bears signatures of Mohd. Asghar, is that all around the Babri Masjid there existed **Parikrama** (circumambulation path) which is a typical feature of all Hindu Temples; Shiv Shanker Lal Court Commissioner in these very Suits found the Parikrama all around the DS. It shows that throughout hundreds of years, Hindus worshipped the entire DA as Ram Janmabhumi.

(Z) The trial Court dismissed the Suit of Mahant Raghubar Das on the ground that grant of permission to construct a Temple within the campus of Masjid would be laying foundation for quarrel and riots (vide Judgment Ext. A26). Mahant Raghubar Das filed an Appeal to the District Judge. The District Judge made a local inspection of the locality and in his judgment, Ext. A27, delivered on the very following day (18.3.1886) he recorded that "it

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was most unfortunate that the Masjid should have been built on land specially held sacred by Hindus". He further recorded that the 'platform or Chabutra of masonry' occupied by Hindus 'is said to indicate Birthplace of Ram Chandra'. He dismissed the Appeal on the ground that since the event occurred 356 years earlier, it was too late to remedy the grievance, and that in fact or law there was 'no injuria' as District Magistrate's Order in his administrative capacity to maintain law and order in exercise of sovereign power could not give a right to the Plaintiff to challenge the same; hence status quo ought to be maintained. The observation that Ram Chabutra was 'said to indicate' birthplace of Ram, reflects Mahant Raghubar Das's anxiety & effort to assert Ram's birthplace to sustain continuity of Worship of birthplace of Ram since time immemorial despite 3-4 centuries Mughal/Muslim violence and use of force on a place of Hindu worship as Islamic Jehad mentioned by Babar himself in Babarnama. District Judge's finding that there was no injuria, establishes that no civil rights of Parties were decided, hence res judicata could not be applied.

(AA) Encyclopaedia Britannica (ED V) Volume 1, 15th Edition (1980), page 693 deals with Oudh and mentions that out of a few surviving monuments of antiquity, there is Rama's Birthplace marked by a Mosque erected by Mughal Emperor Babar in 1528 on the site of an earlier temple.

(AB) Considered in totality, the above material overwhelmingly establishes that the disputed area is the

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birthplace of Ram and the DS stood at that birthplace. It is admitted that the area was seized by Babar's army under Mir Baqi, his General. In the normal course of human behaviour having regard to the Islamic concept of Kafir, Jehad etc to which Babar was deeply devoted (vide his own writings in Babarnama), the Hindu devotees of Ram could never have opportunity to maintain their own place of worship after demolition of Hindu Temple and erection of Babri Masjid at its site by use of force and physical might. Cruelty of Babar's hordes during raid in Ayodhya against Sheikh Bayazid is revealed by Babar himself in his Babarnama which records that on Saturday 7th Rajab (=28.3.1528) Bayazid and his force, stationed to the other side of River Saryu, "being unable to stand their ground took to flight and our people brought down some of them and cut off their heads which they sent to me". It would have been impossible for Hindu devotees at that time to preserve/maintain any vestige of the Temple. Nevertheless, when Tieffenthaler wrote the History & Geography of Ayodhya in 1786, he found a platform about 19 feet x 15 feet x 5 inches inside the campus of DS and Hindu devotees used to worship at the platform and also throughout DS [see para 17(iii) above]. The record does not show when this Chabutra (platform) was erected. Humayun succeeded Babar on his death in 1530, but in 1539 he was defeated at Chaunsa near Buxar and finally on 17.5.1540 was defeated by Sher Khan and his Afghan followers at the battle of Ganges/Bilgram (whereupon Sher Khan assumed the royal title of 'Sher Shah' with

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territories extending from Kannauj to hills of Assam and from Himalyas to Jharkhand & Bay of Bengal) and Humayun just managed to escape and had to lead the life of a wanderer for 15 years and the Moghul sovereignty of Hindustan passed to the Afghans (vide page 431 of "An Advanced History of India" by R.C.Majumdar, H.C.Raychandani & Kali Kinkar Dutta, 4th Macmillan Edn 1978). At page 433, the Historians write that in the spirit of an enlightened despot, Sher Shah "attempted to find an empire broadly based upon the peoples' will". That could have afforded an opportunity to Hindus to get into possession in portions of campus of DS. This opportunity, perhaps, could not be broadened to take possession of DS itself in total exclusion of Muslims from the Mosque. It is likely that, in the prevailing situation, the Hindus content themselves with possession over Chabutra while continuing their efforts to extend rights and possession over different portions of the Campus of DS. Indeed, in application dt. 2.11.1883, Etx. 18, Mohd Asghar admitted possession of Mahant Raghubar Das not only on the Chabutra Janmasthan but also on **Sita Rassoi** abutting towards North of DS which is mentioned by Tieffenthaler too [see para 17(ii)(i) above]. Existence of Sita Rassoi, venerated by Hindus as sacred, immediately abutting DS and the Chabutra show that Hindus were constantly trying to extend their physical possession in the campus of Babri Masjid with passage of time. Indeed Register of Muafi dated 29.6.1880, Ext. 2 of SB Suit, wherein grant of Sahanwa land in lieu of cash maintenance amount for

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Babri Masjid was recorded, clearly records that this is the Masjid in Ayodhya for possession of which Hindis and Muslims fight and are rival claimants. Humayun recovered the Indian territories with the aid of Shah of Persia and reoccupied Delhi in July 1555 (vide page 438 of history book supra). He died on 24.1.1556 and was succeeded by his 13 year old son Akbar (vide page 438). There is nothing to show that Humayun or Akbar undertook any military exercise in Ayodhya. Indeed, Akbar was liberal in his religious views and promulgated Din-e-Ilahi, compounded from various elements taken partly from Quran, Scriptures of Brahmins and Gospel of Christ; a firm believer in the policy of universal toleration, Akbar made no attempt to force his religion on others but appealed to the inner feelings of men (vide page 452). Akbar abolished Pilgrim Tax in the 8th year and Jizia in the 9th year of his rule (vide page 455). He had great veneration for Guru Ramdas and granted land to him containing a pool where the famous Amritsar Golden Temple stands (vide page 492). Perhaps affairs moved in the same direction during the rule of Jahangir and Shahjehan. Shahjehan fell ill in September 1657. Terrible war of succession broke out amongst his sons and finally, Aurangzeb captured the throne of Hindustan, seized Agra Fort on 8.6.1658, proceeded to Delhi and crowned himself as Emperor on 21.7.1658, while all efforts by Shahjehan for amicable settlement failed. Aurangzeb confined Shahjehan in Agra Fort where he died on 22.1.1666 at the age of 74 (vide page 477). A champion of Sunni

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orthodoxy, Aurangzeb tried to enforce strictly the Quranic law under which every pious Muslim was to exert himself in the path of God, i.e. to carry on Jihad against non-Muslim lands. He re-imposed Jizia tax in 1679 on non-believers (pages 489 & 490). Tieffenthaler wrote that Aurangzeb got demolished the Temples of Swargadwar and Treta-ka-Thakur and got Mosques built at their site, but there is no indication that he caused any violence at Sita Rassoi. Aurangzeb died on 3.1.1707 at Ahmadnagar disheartened, anguished and unhappy; he wrote to his son Azam: "I came alone & am going alone. I have not done well to the Country & the people, and of the future, there is no hope" (vide page 500-501). Only 60 years later Tieffenthaler found the platform and discovered that Hindus had been worshipping not only at the platform but also at the DS. So, it is quite likely that Hindu devotees possession and worship in the campus of DS had been going on even from the times of defeat of Humayun.

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4093. Though the range and scope of argument has gone beyond what actually needs to be considered necessarily in relation to the three issues as noticed above but we shall concentrate only on such matters and aspects which are related with these issues and not beyond that. In fact in respect to other arguments covering other matters we have already considered and recorded our findings while deciding other issues.

4094. The investigation of the material on these issues really travels in an uncertain extent of period of the past which we can, for convenient purposes say history though some of the expert historian witnesses in their statements have tried to

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dispute these issues compelled to peep into history leaving no option with us, as already said the length of history ranges from several thousand to several lakhs of years (B.C.).

4095. We shall first find out what are the recognised sources to know history and in particular that of Indian sub-continent.

4096. In "**The History and Culture of Indian People – The Vedic Age**" Vol.-I published by Bharatiya Vidya Bhavan, Mumbai- Sri R.C.Majumdar, A.D.Pusalker and A.K.Majumdar, 6th Edition 1996, Chapter II discusses in brief the sources of Indian History. The learned authors, for the above purpose, have divided the period of Indian History in three : (1) from the most ancient times to the end of the twelfth century A.D.; (2) from thirteenth to eighteenth century; and (3) the subsequent period.

4097. Three sources are mainly mentioned in regard to ancient times:

A. Literary Sources

B. Archaeology

C. Foreign Account

4098. In the category of "Literary Sources", the learned authors have referred to Vedic Literature, local chronicles, Biographies, Poetical Epics like Ramayana, Mahabhartha, Gaudavaho and Vikramanka-deva charita etc. In the category of "Archaeology", the learned authors have taken into account the archaeological excavations, Inscriptions, Numismatics (Coins), Monuments etc. The "Foreign Account" consists of the information provided by the foreign writers visiting the continent. It consists of the Greek writers Herodotus; Ctesias; Megasthenes (who accompanied Alexander to India and lived

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for some time in the court of Chandragupta Maurya as an ambassador of Seleucus); anonymous author of "**Periplus of the Erythraean Sea**" who made a voyage to the Indian coast about A.D. 80, was a Greek and settled in Egypt, and left a record of its ports, harbours, and merchandise; Ptolemy; Arab sailor and merchants like Sulaiman, Al Mas'udi, Al-Beruni, Chinese travellers i.e. Fa-hien (about fifth century A.D.), Hiuen Tsang, and I-tsing (seventh century A.D.).

4099. In the Mediaeval period, the most reliable sources are contemporary political and other chronicles regarding political events of the country like Tabaqat-i-Nasiri (by Minhaj-ud-din, thirteenth century A.D.); Ta'rikh-i-Firuz Shahi (by Ziya-ud-din Barani and Shams-i-Siraj 'Afif'); Gulshan-i-Ibrahimi (by Muhammad Qasim Firishta); Ain-i-Akbari and Akbar-nama (by Abu'l-Fazl); Tabaqat-i-Akbari (by Nizam-ud-din Ahmad) and Muntakhab-ut-Tawarikh (by Abd-ul-Qadir Budauni). Besides, there is autobiographies of Mughal emperors Babur, Jahangir, Shahjahan, Aurangjeb etc. and the English historians work like "The History of India" as told by its own Historians – compiled by Elliot and Dowson. There are some Foreign Account also during this period that is of Marco Polo, who visited India and other parts of Asia towards the close of the thirteenth century; Ibn Batuta, an African Muhammadan, who spent several years in the court of Muhammad Tughlaq and returned to his native country in A.D. 1349; Nicolo de'Conti, the Venetian, visited in fifteenth century, a number of European travellers like Tieffenthaler, Willium Finch, Minouchi etc..

4100. The third period i.e. subsequent to eighteenth century is called as "Modern Period" and during this period, the

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written record of various transactions etc. of the Rulers are available in various forms including Gazette and Gazetteers, History Accounts, official records kept in record offices etc.

4101. Several witnesses produced by the parties have also made certain statements about what constitute sources of history, and, in brief, some of such statements are noted below.

4102. **P.W. 29, Jaya Menon** while being cross examined by Sri R.L. Verma, at page 48, explained difference between "history" and "archaeology" and also said about the sources for knowing "Ancient Indian History" :

> *"From my point of view Archaeology is a different subject from history but both of them have the same aim of understanding the human past. I would say that Archaeology was introduced later on as a subject it was not present from the very beginning of the knowledge of the history.*
>
> *The sources of knowing Ancient Indian History are texts, inscriptions, coins and archaeological evidence. Vedic Literature is significant for knowing the Vedic period."*

4103. However, she did not accept "*Puranas"* as a source for knowing Vedic period and says at page 49 :

> *"Besides Vedas there is no other source to know about the Vedic period. So far as Puranas are concerned they are not a source for knowing Vedic period. I have heard the name of Smritis. I know about Manu Smriti but I have not read it. Manu Smriti is one of the texts which tells about society. For knowing the later Vedic period, Brahmanas, Aranyaks and Upnishads have significance. I*

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have very little knowledge about Vedangas. I have heard about six parts of Vedangas but I do not know much about them. Upnishad is the end of Vedas. Volunteered, it is also a text in which early philosophical ideas are present. Upnishads were written by various people at various times who were Rishis and Brahmins."

4104. PW 29 gave some information about "Smrities" and "Puranas" at pages 48 to 52 :

"There are 18 Puranas known to Ancient Indian Culture. The name of Puranas are Vayu Puran, Matsya Puran and many others..."

"I have heard about Mahabharat which is written by Vedvyas but I have not read it. I have also heard about Valmiki Ramayan but I have not read it. During study of my M.A. Classes, I have heard about Mahabharat and Valmiki Ramayan. I do not know whether Mahabharat and Valimiki Ramayan are referred to as part of Puranas. Lord Rama is hero of the book which is called Valimiki Ramayan. I disagree that Valimiki Ramayanwas written in the lifetime of Lord Rama. Volunteered, Ram is a mythological figure so he could not have lived in the time of Valmiki. I came to know about it on the basis that both these stories of Ramayan and Mahabharat were written at different points over a long period. Mahabharat is considered older than Ramayan. Roughly the earliest part of Mahabharat could date to one thousand B.C. But it was written down by about fourth century A.D. and the Ramayan from about fifth Century B.C. Till about fourth century A.D."

"Vedas came into written form probably in Fourth

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Century A.D."

"I disagree that customs, traditions and legends are sources for understanding the past."

"The period of Rig Ved is called early Vedic period. According to me chronologically there is difference between Rig Ved and other Vedas."

"Period of Rig Ved in history is called early Vedic period. After prevedic era, Vedic period starts. I do not think that Smritis are connected with Vedas. Manusmriti has different information than Vedas. I do not agree that the Smrities in any way help to understand Vedas. There is no terminology which may be said to be 'Pauranic era'. The Puranas are basically dated to fourth century A.D."

"Puranas are supposed to be written in Gupta period i.e. between four to six century A.D."

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4105. **PW 28 Dr. Sita Ram Roy**, expert (Archaeology) having further specialisation in "Epigraphy" and "Numismatics" in his examination in chief, at page 6 has expressed his views that Atharvaved was written between 10th- 8th century B.C.

4106. On pages 8, 9, 10, 13, 14, 16, 17, 30, 31, 32 and 33, he (PW 28) said, about sources of ancient history, as under :

''यह ठीक है प्राचीन इतिहास को जानने के लिए पुरातत्व एक अच्छा स्त्रोत है। इसके अतिरिक्त साहित्यिक स्त्रोत है, परम्परा भी स्त्रोत हैं।'' (पेजः 8)

"It is true that archaeology is a good source to know ancient history. Besides this, there is a literary source;customs are also a source."(E.T.C.)

''यह ठीक है कि जिस काल का लिखित इतिहास उपलब्ध नहीं है, उस काल का इतिहास जानने के लिए एक ही स्त्रोत पुरातत्व है। इसी तरह हड़प्पा काल के कल्चर को जानने का स्त्रोत पुरातत्व ही है। अशोक

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काल के पहले काल को जानने के लिए हमारे पास साहित्य और पुरातात्विक दोनों स्त्रोत उपलब्ध हैं। अशोक काल के पहले के इन्सक्रिप्शन उपलब्ध नहीं है। केवल हड़प्पा कालीन लिपि उपलब्ध है जो पढ़ी नहीं गई है। धम्मपद देवनागरी लिपि में उपलब्ध है। पर सबसे पहले पहल वह सिलोनिक लिपि में लिखा गया है। अशोक काल के पहले के इतिहास को जानने के लिए बौद्ध साहित्य और कुछ वैदिक साहित्यक उपलब्ध हैं। वैदिक साहित्य से तात्पर्य है संहिता ब्राहम्ण, अरण्यक, उपनिषद। धर्मशास्त्र वैदिक साहित्य में नहीं आता है। ट्रैवलर्स एकाउण्ट को भी मैं इतिहास का स्त्रोत मानता हूँ। यह ठीक है कि एपीग्राफी और पेलियोग्राफी इतिहास जानने का एक स्त्रोत है। .....न्यूमिसमैटक्सि भी इतिहास को जानने का स्त्रोत है, इसी को मुद्रा शास्त्र भी कहते हैं।'' (पेजः 9)

"It is true that archaeology is the only source to know the history of a period not having written history. In this very manner, archaeology alone is a source to know the 'Harappan culture'. To know about the pre Ashokan period. Both the literary and archaeological sources are available with us. Inscriptions anterior to the Ashokan period are not available. Only the Harappan script is available which has not been deciphered. 'Dhammpad' is available in devanagari script. But first of all it is written in Cylonic script. The Bauddha literature and some of the Vedic literature is available to know the history of pre-Ashokan period. The Vedic literature means 'Samhita Brahman'and 'Aranyak'. Scriptures are not comprised in the Vedic literature. I take traveller's account as well to be a source of history. It is true that epigraphy and palaeography are a source to know history. Numismatics is also of history and this very subject is also called 'Science of Coins'. "(E.T.C.)

''साहित्यिक स्त्रोतों में लिखित स्त्रोत ही रखे जाते हैं। मौखिक बातें परम्पराओं के अन्तर्गत आते हैं।

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वेद और उपनिषद, जिस काल में लिपिबद्ध हुए उस काल से वह ऐतिहासिक स्त्रोत माने जाते हैं। अब तक के उपलब्ध सूचनाओं से कोई भी लिखित वेद 10वीं सेंचुरी ए0डी0 के पहले के नहीं मिलते। इसके पहले श्रुति और स्मृति के माध्यम से वे बरकरार रखे जाते थे। 10वीं सेंचुरी ए0डी0 के पहले के इतिहासकार उसे अपना ऐतिहासिक स्त्रोत मानते थे, पर उसकी कोई विशेष संज्ञा नहीं थी।'' (पेजः 10)

"Only the written sources are comprised in literary sources. Oral things are included in customs.

The Vedas and Upnishads are taken to be historical sources since the time they were scripted. As per information available so far, no Veda preceding the 10th century AD is found in written form. Before the said time they were retained by way of 'Shrutis' and 'Smritis'. Historians of pre-10th century period take them to be their historical sources but they had no particular name."(E.T.C.)

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''पुराण की जानकारी मुझे है। यह ठीक है कुल 18 पुराण हैं। पुराणों की रचना काल 400 ए0डी0 से लेकर 19वीं शताब्दी तक है। मुझे वेद की जानकारी है और मैंने उसे पढ़ा भी है। वेद चार हैं पहला ऋगवेद है और क्रमशः सामवेद, यजर्वेद और अथर्ववेद हैं। अथर्ववेद का मैंने अध्ययन किया है। अथर्ववेद में जनरल बातें हैं अर्थात जगह, स्थल अर्थात मानव का सामाजिक स्तर क्या था, आदि का उल्लेख है। अथर्ववेद में अयोध्या का वर्णन एक मिथक नगर के रुप में है।

मैं एक इतिहासकार के रुप में अथर्ववेद को इतिहास का प्रामाणिक ग्रन्थ नहीं मानता हूँ।'' (पेजः 13)

"I have knowledge of Puranas. It is true that there are 18 Puranas in all. The composition of Puranas spans from 400 AD to 19th century. I have knowledge of the Vedas and I have also gone through them. Vedas are four in number. The first one is Rigveda and other ones are

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Samveda, Yajurveda and Atharvaveda. I have studied Atharvaveda. Atharvaveda deals with general things, that is to say, it mentions about places, that is about social status etc. of human beings. Ayodhya finds mention as a mythical town in Atharvaveda.

As a historian I take Atharvaveda to be an authentic book on history."(E.T.C.)

''अथर्ववेद में अंकित तत्कालीन सामाजिक तथ्य ही ऐतिहासिक स्त्रोत माने जाते हैं। मैं इसे धर्मशास्त्र एवं वैदिक दृष्टि से प्रामाणिक ग्रन्थ नहीं मानता हूँ।

वेदों में सबसे पुराना ऋगवेद है। इसका रचनाकाल विद्वानों के अनुसार 1500 बी0सी0 से अधिक नहीं माना गया है। ..... ऋगवेद के बाद सामवेद आता है। इसका रचनाकाल 1200 बी0सी0 माना जाता है । इसमें गायन तथा धार्मिक रीतियों से सम्बन्धित वर्णन है।'' (पेजः 14)

"Only the then existing social facts mentioned in Atharvaveda are taken to be historical sources. I do not take it to be an authentic book from scriptural and Vedic points of view.

Rigveda is the oldest of the Vedas. As per scholars, its compostion is attributed not later than 1500 BC. . . . . Samveda follows Rigveda. Its composition is attributed to 1200 BC. It has description about singing and religious manners. "(E.T.C.)

''यजुर्वेद का रचनाकाल ग्यारह सौ से दस सौ बी0सी0 के बीच कहा जाता है। ..... यह ठीक है ऐसा सनातन धर्मावलम्बी का विश्वास है कि वेद ईश्वरीयकृत हैं। ऋगवेंद में सरयू नदी और सरयू नदी के जल का वर्णन है।'' (पेजः 16)

"The composition of Yajurveda stated to be between 1100 BC to 1000 BC. . . . . It is true that the adherents of Sanatan Dharma (eternal Hinduism) believe that the Vedas

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are God made. Rigveda describes about the river Saryu and about its water."(E.T.C.)

''अट्ठारह पुराण हैं, जैसे– विष्णु पुराण, भगवतपुराण, स्कन्धपुराण, ब्रहमाण्ड पुराण, विष्णु धर्मोत्तर पुराण, ब्रह्मवैवर्त पुराण आदि हैं। ..... मेरे अनुसार तथा अन्य पौराणिक विद्वानों के मतानुसार पुराणों की रचना गुप्तकाल अर्थात ईसा की चौथी शताब्दी से लेकर सोलहवीं–सत्रहवीं शताब्दी तक पुराणोंकी रचना होती रही।'' (पेजः 17)

"There are 18 Puranas such as Vishnu Purana, Bhagwat Purana, Skanda Purana, Brahmand Purana, Vishnu Dharmottar Purana, Brahma Vaivarta Purana etc. . . . . In my opinion and as per that of other Puranic scholars, the composition of Puranas continued from the Gupta period, that is, the fourth century AD to the 16th - 17th century."(E.T.C.)

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''प्राचीन भारतीय इतिहास जानने के लिए पुरातत्व और प्राचीन ग्रन्थ का अध्ययन आवश्यक है। प्राचीन इतिहास जानने के लिए साहित्य एक श्रोत है, पर वह प्रथम श्रोत नहीं है। प्राचीन इतिहास को जानने के लिए मूलतः पुरातत्व ही एक आधार है। भारत का प्राचीन इतिहास जानने के लिए भी पुरातत्व मूल श्रोत है। साहित्य में प्राचीन ग्रन्थ, विदेशी यात्रियों के यात्रा वर्णन तथा विदेश से आये हुए राजदूतों का भारत के सम्बन्ध में जो वर्णन है, वह भी साहित्य में आता है। धार्मिक ग्रन्थ भी साहित्य में आते हैं। वैदिक साहित्य में कोई अलग से धार्मिक ग्रन्थ नहीं है, बल्कि सभी में कुछ–कुछ धार्मिक बातों की चर्चा है।'' (पेजः 30)

"The study of archaeology and ancient treatises is necessary to know ancient Indian history. For the knowledge of ancient history, literature is a source but not the first one. For the knowledge of ancient history, archaeologu alone is basically a basis. Archaeology is a primary source also for the knowledge of ancient history of India. Literature compprises ancient treatises, travelling

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accounts of foriegn travellers as also the description about India of emissaries who came from abroad. Religious books are also comprised in literature. In the Vedic literature, there is no separate religious book, but all have discussion about religious things to some extent."(E.T.C.)

''भाष्य भी प्राचीन ग्रन्थ के अन्तर्गत आते हैं और वह भी इतिहास का श्रोत माना जायेगा। प्रथाएँ भी वैदिक इतिहास जानने का श्रोत हो सकती हैं, यदि वह प्रथा वेद में लिखी हुई हो। .....पुरातात्विक स्रोत का मुख्य आधार उत्खनन से प्राप्त वस्तुएँ हैं।'' (पेजः 31)

"Bhashya (commentaries) also fall under ancient treatises and they will also taken to be a source of history. Customs may also be sources of the knowledge of the Vedic History, if that custom is mentioned in the Vedas. . . . . .The main basis of archaeological source is the things discovered from excavation."(E.T.C.)

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''वेद की जानकारी हासिल करने के लिए वेदांगों की जानकारी होना आवश्यक नहीं है। वेदांग का अर्थ उसमें लिखे कल्प, शिक्षा, व्याकरण, विलुप्त छंद से है।'' (पेजः 32)

"To acquire the knowledge of Vedas, it is not necessary to have knowledge of Vedangs. Vedang means 'Kalpas', 'Shiksha', 'Vyakaran' and 'Vilupt Chhandas'."(E.T.C.)

''यह सही है कि वाल्मीकि रामायण में वेदों का उल्लेख है।'' (पेजः 33)

"It is true that the Valmiki Ramayan mentions of the Vedas."(E.T.C.)

4107. What constitutes Vedic literature is the next aspect. In the context of India, the Vedic literature comprises of two i.e. one related with Hindus and to be more precise Sanatan Dharma i.e. Vedas, Brahmanas, Aranyakas, Upnishads, Puranas, Vedanta,

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Vedangas etc. and another is the religious literature of Jainizm, Buddhism etc. This literature since beginning alleged to be not available in written form for the reason that Vedic knowledge in India was considered to be so precious that it ought not to be placed on a perishable writing material like Berchbar and Palm leaves. The transmission of sacred knowledge of Vedas appears to have been primarily by words of mouth usually from father to son, generation after generation. The four Vedas consist of about 20358 verses running in approximately 2000 printed pages and surprisingly have survived in such a unique system having been passed down by birth to special families within the Brahmin communities.

4108. The other category of the derivative literature can be kept broadly in the category of Smrti (memorized) and Shruti (what is heard). There are certain other literature termed as Sutras and then several work of explanatory and subsidiary scripture.

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4109. In brief, we may first consider as to what construe the above "vedic literature".

4110. **<u>Vedas :</u>** The Sanskrit word 'Vedas' means literary “knowledge” or “wisdom”. According to Hindu traditions 'Vedas' existed in their eternal and perfect form from the beginning of time. They are primary scriptures of Hinduism revered as apaurusheya, "not of human origin", and are honoured by epithets usually reserved for the Gods as eternal, imperishable, infallible and indestructible. Primarily there are four Vedas, (1) Rig-veda, (2) Yajur-veda, (4) Sama-veda and (4) Atharva-veda.

4111. “**Hindu World-An Encyclopaedic Survey of**

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Hinduism" by **Benjamin Walker**, first published in 1968 by George Allen & Unwin Ltd., London and the first Indian Edition was published in 1983 by Munshiram Manoharlal Publishers Pvt. Ltd. *(hereinafter referred to as the "Hindu World")* (Book No. 12) Vol. II at page 556, gives information about Vedas; and on page 557 says:

> *"According to Hindu tradition, the Vedas existed in their eternal and perfect form from the beginning of time. At the end of each kalpa or aeon, Isvara (God) uttered the original Veda as he remembered it. Since God himself shared with all other beings in the universal disintegration concomitant with the descending kalpas, he remembered less and less. At the beginning of the dvapara-yuga (the age preceding our own) the Veda consisted of I00,000 verses and had four divisions. By the beginning of the kali-yuga (our present age) these had become confused. Much was lost and much perverted. From this disordered mass the sage Vyasa salvaged as much as he could, arranged the material in its present form under four headings, and passed them on to his four principal disciples: the Rig-veda to Paila; the Yajur-veda to Vaisampayana; the Sama-veda to Jaimini; the Atharva-veda to Sumantu (or Angires)."*

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4112. Rig-veda has been explained in **Hindu World (supra)** Vol. II at page 294 as under:

> ***Rig-veda:,*** *the most important of the four vedas, and regarded as the Veda, since the Yajur and Sama Vedas are merely different arrangements of the Rig-vedic hymns for ritual purposes, while the Atharva-veda was composed some time between 1500 BC and 900 BC and had a fixed*

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text from about 300 BC. Some scholars date the Rig-veda earlier; Max Muller put the date at 1200 BC, Keith at 1400, Pargiter at 1500, Weber at 2000 BC. H. Jacobi after examining the Indian calendrical system and the position of certain stars and constellations as described in the old texts, placed its composition at 4000 BC. B.G. Tilak, also on astronomical evidence, placed it at 5000 BC.

There are points of similarity between the hymns of the Rig-veda and those of the Avesta, and some of the Rig-vedic legends show a resemblance to the great Yashts of the Avesta. The latter, it is to be remembered, were composed before the Rig-veda. Some authorities claim that Book VI of this Veda was composed before the Aryan tribes entered India. But generally the language of the Rig-vedic hymns shows a good deal of borrowing from the Prakrit languages. It is difficult to distinguish the Indo-European from the purely Indian portions, and the Hindus themselves have long lost the tradition of its true origins. Substantial parts of it were composed by sudras, outcastes and even women.

The Rig-veda is a collection of miscellaneous fragments of old legends, chants and hymns, some of them of great beauty, put together comparatively late. Twenty-one recensions of the Rig-veda, representing the rituals of different schools and even different families, are known to tradition. The Charana-vyuha (Exposition of Schools), a supplementary work of the sutra period mentions five sakhas or branches of the Rig-veda, representing the five chief schools based on the different recensions. These were (I) the Sakala, the only recension that has been preserved,

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(2) Vashkala (or Bashkala), which incorporated some additional hymns, named after a non-Aryan teacher, (3) Asvalayana, which recognized as canonical the group of eleven Valakhilya hymns, (4) Sankhayana, which also recognized the Valakhilya, but not all the eleven hymns, and (5) Mandukeys; the recension recognized by this school is not known. Fragments of some of these recensions (e.g. the Vashkala) have been inserted into the present mandalas, but all the remainder are lost or forgotten. The canon of the rig-veda was probably not closed till about 500 BC, and the present text fixed about 300 BC. The special hierophants of Rig-vedic ritual are known as the hotri.

The Rig-veda is divided into ten books called mandala 'circles', or into eight parts called ashtaka, 'octaves' (or khanda 'trunks' i.e. divisions). These books are subdivided into adhyaya or chapters, and eighty-five anuvaka, 'sections', containing a total of 1028 sukta or hymns (actually 1017 original hymns plus the II apocryphal Valakhilya hymns, mentioned below, of the eighth mandala), 2006 vargas or classes, 10417 rich or verses, 153,826 pada or words, and into many thousands of akshara or 'imperishable' syllables.

The Rig-veda thus consists of ten books or mandalas composed of hymns and psalms of praise to the gods, among them Agni, Indra, Surya, Dyaus, Aditi, Varuna, Ushas, the Asvina, Prithivi, the Maruts, Rudra, Yama and Soma. There are also a number of magical hymns and poems dealing with social customs, ethical questions, riddles, MANTRAs, myths and legends. In the opinion of

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Prof. B. K. Ghosh, it contains a mass of dry, stereotyped hymnology, but 'of natural outpourings of the heart there is not much to be found in the Rig-veda' (VII, p.226). The priestly prayers are not so much for spiritual enlightenment as for victory, power, wealth, food, wine and women, and according to Bhandarkar, 'are saturated with selfish sordid aims'.

Mandala I is an 'eclectic ceremonial liturgy, and a veritable prayer book of the ancient priests'. Traditionally ascribed to eighteen rishis, although sometimes the same hymns occur under different authors, and distinct fragments are put together as a single piece. Most of the hymns are simple invocations to fire, water, the sky, etc. This first book includes one unusually long hymn known as the asyavamiya, which poses the earliest metaphysical and mystical questions of the Indian mind, anticipating the Upanishads. 'Who saw that First when it was born? What is the Formless that upholds the form? From the earth are breath and blood; wherefrom the Soul?

Mandalas II and VII, the 'Family Books', are credited to rishis of various important families such as Bhrigu, Visvamitra, Gritsamada, Angiras, Vasishtha, Atri, Vamadeva, Bharadvaja. Book VI contains the poetry of the period before the tribes entered the Indian subcontinent.

Mandala VIII, a book of miscellaneous and supplementary hymns, mostly by members of the Kanva family. Following verse 48 of this mandala, eleven hymns of an apocryphal character were later interpolated. These khila (apocrypha) are called the Valakhilya, after the

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children of the rishi Kratu.

Mandala IX, a unique book inasmuch as it is almost exclusively devoted to a single deity, Soma. Its arrangement is also peculiar, as the first 60 hymns are set up in the order of diminishing length; the remainder, however, show no signs of order.

Mandala X, differs from the other nine in subject and language. Linguistically this tenth book belongs to a later period than the rest, and in many respects forms a transition to the other Vedas. Many of the hymns are highly philosophical, some sacerdotal and legendary, others divinatory or designed for magical purposes, including charms for averting miscarriage, curing consumption, securing the destruction of a rival, and so on. About a dozzen hymns contain dialogues foreshadowing the dramatic and epic poetry of later times. There are prayers to the greater and lesser gods, to cows, rivers, dice and rain. The Purusha Sukta, which makes an allusion to the distinctions of caste, is found in this mandala, and so also is the famous hymn of creation, commencing with the words, 'In the beginning there was neither nought nor aught'. Also included in this Book is the hymn on the burning of a corpse which starts, 'Let the eye repair to the sun, the breath to the wind. Go thou to heaven or to earth according to thy merit'.

An interesting feature of the Rig-veda is what is known as the samvada (conversation) hymns, about twenty in number, scattered through the various books. They have no specific ritualistic application and were either treated

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as ballads, or as ceremonial dramas. Many autho0rities trace the origin of the Indian drama to the samvada hymns.

Another set of hymns, the so-called danastuti (gift-praising), are panegyrics commemorating the generosity of kings and other wealthy patrons towards the priests employed by them and describing the amount and nature of the gifts. Of late date, the danastuti hymns possess some literary merit, and are important since they furnish historical data about the families and genealogies of the composers, their patrons, and the Vedic tribes. In these hymns are to be traced the beginnings of the future epic narratives in praise of princes and heroes of battle.

For the above descriptions, learned author had referred to the books "Some Aspects of Ancient Indian Culture", Madras, 1940 by Bhandarkar, D.R., "The Hymns of the Rig-veda", 1889-92 by Griffith, R.T.H., " The Religion of the Rig-veda, Oxford", 1923, by Griswold, H.D., "Sacred Literature", Landon, 1905 by Hurst, G.I., "The Rigveda", Boston, 1886 by Kaegi, A., "Hymns of the Rig-veda", Landon 1922, by Macdonell, A.A. (Tr.), "The Vedic Age", London, 1951 by Majumdar, R.C. (Ed.), "The Rigveda Hymns", Oxford, 1891-7, by Muller, F.Max, and Oldenberg, H. (Tr.), "Samhita of the Rigveda", 1833, by Stevenson, J. (Tr.), "Researches into the Antiquity of the Vedas", 1893, by Tilak, B.G. Orion, "The Arctic Home of the Vedas", Bombay, 1903 by Tilak, B.G. and "The Rigveda", 1859 by Wilson, H.H. (Tr.)

4113. **"The Sacred Scriptures of India"**, Swami Chidatman Jee Maharaj, first published in 2009 by Anmol

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Publications Pvt. Ltd., New Delhi says that "**Rigveda"** consists of 1,017 or 1,028 hymns. This contains a total of about 10,600 stanzas, which give an average of ten stanzas to each hymn. The shortest hymn has only one stanza, while the longest has fifty-eight. It says that the knowledge of Richas or Suktas itself is the literal meaning of Rigveda. 'Rit' means an incantation that contains praises and Veda means knowledge. Rigveda is the oldest veda. It comprises of 10 Mandals, 102 Suktas and contains 10,555 mantras.

4114. **Yajurveda** has been dealt with in **Hindu World (supra)** Vol. II at page 613 as under:

> ***Yajur-veda*** *(?700-?300 BC), the second Veda, compiled mainly from Rig-vedic hymns, but showing considerable deviation from the original Rig-vedic text. It also has prose passages of a later date. The Yajur-veda, like the Sama-veda samhita (collection), introduces a geographical milieu different from that of the Rig-veda. It is not so much the Indus and its tributaries any more, but the areas of the Satlej, Jamna and Ganges rivers. Along with this we find new development of religious and social life, an age when the Epic tribes contended for supremacy in the Indo-Gangetic plain, and the castes were already clearly divided. The Yajur-veda represents a transition between the spontaneous, free-worshipping period of the Rig-veda and the later brahmanical period when ritualism had become firmly established.*
>
> *The Yajur-veda is a priestly handbook, arranged in liturgical form for the performance of sacrifices (yaja), as its name implies. It embodies the sacrificial formulas in*

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their entirety, prescribes rules for the construction of altars, for the new and full-moon sacrifices, the rajasuya, the asvamedha, and the soma sacrifices. Strict observance of the ceremonial in every detail was insisted upon, and deviations led to the formation of new schools, there being over one hundred Yajur-vedic schools at the time of Patanjali (200 BC). Much of the sakha literature grew up out of variants of the Yajur-vedic texts.

In the Yajur-veda the sacrifice becomes so important that even the gods are compelled to do the will of the brahimns. Religion becomes a mechanical ritual in which crowds of priests conduct vast and complicated ceremonies whose effects are believed to be felt in the farthermost heavens. Its under-lying principles were so ridden with superstition and belief in the power of the priests to do and undo the cosmic order itself that critics have likened their formulas to the ravings of mental delirium. The priest especially associated with the Yajur-vedic ceremonial was the adhvaryu.

The Yajur-veda now consists of two samhitas, which once existed in one hundred and one recensions. Both the samhitas contain almost the same subject matter but differently arranged. The Taittiriya Samhita, commonly called the Black Yajur-veda for its obscurity of meaning, was known in the third century BC, and is the older of the two. It has been described as an 'undigested jumble of different pieces', and as having 'a motley character'. In this samhita the distinction between the Mantra and the Brahmana portions is not as clear as in the other Vedas.

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The Vajasaneyi Samhita, or the White Yajur-veda, was communicated to the sage Yajasaneti Samhita by the sun-god in his equine form. It has a much more methodical arrangement and brings order and light, as opposed to the confusion and darkness of the Black Yajur-veda.

For the above descriptions, learned author had referred to the book "The Texts of the White Yajur-veda", 1899 by Griffiths, R.T.H.

4115. To "**Yajurveda"**, in **Sacred Scriptures of India (supra)**, on page 207 it says that Yajurveda inspires humans to walk on the path of Karma and that is why it is also referred to as Karma-Veda. The essence of the Yajurveda lies in those mantras (incantations) that inspire people to initiate action. It further says that there are many branches of Yajurveda but two branches, namely, Krishna and Shukla Yajurveda have gained relatively more prominence, i.e., Krishna Yajurveda and Shukla Yajurveda. Besides it, it says that Yajurveda was later on named as "**Taitareya Samhita**".

4116. **Samveda** is discussed in **Hindu World (supra)** Vol. II at page 343 as under:

Sama-veda *(c. 700-300 BC) (saman, 'melody'), the third Veda. Its samhita or principal part is wholly metrical, consisting of 1549 verses, of which only 75 are not traceable to the Rig-veda. The stanzas are arranged in two books or collections of verses.*

The Sama-veda embodies the knowledge of melodies and chants. The samhita of this Veda served as a textbook for the priests who officiated at the Soma sacrifices. It indicates the 'tunes' to which the sacred hymns are to be

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sung, by showing the prolongation, the repetition and interpolation of syllables required in the singing. The Sama-veda also contains a detailed account of the soma rites. The hierophants associated with the Sama-veda are known as the udgatri.

Many of the invocations in the Sama-veda are addressed to Soma, some to Agni and some to Indra. The mantra part of the Sama-veda is poor in literary quality and historical interest, but the Brahmanas belonging to it are important. Of the once numerous samhitas of the Sama-veda (the Puranas speak of a thousand) only one has reached us, in three recensions, namely: the Kauthama, current in Gujarat, the Ranayaniya which survives in Maharashtra, and the Jaiminiya in the Karnatic.

For the above descriptions, learned author had referred to the books "The Samaveda", Banaras, 1896 by Griffith, R.T.H.(Ed.) and "The Samaveda", 1843 by Stevenson, J.

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4117. "**Samveda"** has been discussed in Vol. 2 of **Sacred Scriptures of India (supra)** on page 1 and onwards and it says that the compilation of Richas (Shlokas) is known as Sama. Sama is dependent on the Richas. The beauty of speech lied in the Richas. The beauty of Richas lie in the sama and the beauty of the same lies in the style of pronunciation and singing. The knowledge of sama, therefore, is Samaveda. This refers to Geeta-10/22 where Sri Krishna has stated the importance of Samaveda in the following manner :

Vedamana Samavedo Asmi meaning "I am samaveda myself amongst the Vedas."

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4118. There are two parts of the Samaveda (1) Purvarchik (2) Uttararchik. In between both of them is 'Mahanamnayarchik which comprises of 10 incantations. There are four parts of Purvarchika Aagneya, Aendra, Paavmaan and Aasanya.

4119. **Atharvaveda** is considered in **Hindu World** (supra) Vol. I at page 94 as under:

> ***Atharva-Veda,*** *the fourth Veda, of whose origin there has been much contentious speculation. It is also referred to as the Brahma-veda because it served as the manual of the chief sacrificial priests, the brahmins. A great deal is said in the Atharva-veda hymns about the brahmins and the honours due to them. One-sixth of the work is not metrical, and about one-six of the hymns are also found among the hymns of the Rig-veda, mostly in the first, eight and tenth books. The rest of the subject matter is peculiar to the Atharva-veda, This Veda was once current in nine different redactions, of which only two, the Pippalada and Sunaka recensions are extant, the former in a single unpublished 'Tubingen manuscript' discovered by Roth.*
>
> *The Atharva-veda embodies the magical formulary of ancient India, and much of it is devoted to spells, incantations, chants and charms. In general the charms and spells are divided into two classes; they are either bheshajani, which are of medicinal, healing and peaceful nature, dealing with cures and herbs for treating fever, leprosy, jaundice, dropsy and other diseases; this class includes prayers for successful childbirth, love spells, charms for fecundity, for the recovery of virility, hymns for*

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the birth of sons, and a quaint chant to put the household to sleep while the lover steals into the girl's home at night. Or else they belong to the abhichara class, which are of a bewitching and malevolent nature; these include spells for producing diseases and bringing ill-luck to enemies. Among them is a spell that a woman may use against her rival to make her remain a spinster; another spell is meant to destroy a man's virility, and so forth. There are hymns to serpents and demons, and incantations replete with witchcraft, sorcery and black magic.

One of the reputed authors of the Atharva-veda was the rishi Atharvan, of Maga of Persian ancestry. But certain parts, especially the verses dealing with the rites of sorcerers and wizards were attributed to the rishi Angiras, of pre-Aryan, probably Dravidian stock. The hymns were said to have been collected by Sumantu, a rishi of great antiquity who bequeathed the material to Vyasa for arranging.

The Atharva-veda is the most interesting of the sruti, for it has preserved to a great extent a solid core of pre-Aryan and non-Aryan tradition. It is unique among the texts of Vedic period and 'an important source of information regarding popular religious belief, not so far modified by priestly religion.' It reveals in fact a vast substratum of indigenous doctrine that is not only non-Vedic but at times contra-Vedic.

Scholars trace Mesopotamian influences in the Atharva-veda, among them Dr. Bhandarkar, who discerns in it the magical lore of the Asuras. Others see evidence of

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Vratya and Maga Doctrines. The Vishnu Purana and the Bhavishya Purana speak of the Angiras as one of the four Vedas of the Magas. The foreign words occurring in the Atharva-veda, which Tilak traced to Chaldea, may have been only strange to Sanskrit, and may well have formed part of the regular vocabulary of the Maga priests.

For centuries the Vedid Aryans held all practitioners of astrology in disrepute and regarded them as 'unclean', and excluded them from the sraddha rites. They also ostracized from their social environment those who followed the profession of physician. Both these sciences, be it noted, were associated with the Magas, and are prominent in the Atharva-veda. Some authorities claim that this Veda represents the oldest stratum of Indian liturgy and belief, and embodies the creeds of the pre-Aryans. It thus constitutes a record of non-Aryan aboriginal or popular religion before the arrival of the Aryans on the scene.

For long the Atharva-veda was not included among the other three Vedas. Although the Vedas are now said to be four in number this was not the originally recognized number of the compilations. Max Muller held the view that the original division of the Vedas was a threefold one. The oldest records refer to only three Vedas, namely, the Rig, Sama and Yajur. Manu speaks of these as the trayi (triad) milked out from the fire, air, and sun, and the Atharva-veda was not even acknowledged in his time. There is no reference to it in the Chhandogya Upanishad; the Brahmana texts mention only three Vedas; the Jatakas know of only three.

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This would seem to indicate not that the Atharva-veda was non-existent at the time the other Vedas were composed, but that it did not for several centuries form part of the sacred scriptures of the Aryans. Of its canonical status today it has been said that 'influential scholars of South India still deny the genuineness of the Atharva-veda'.

For the above descriptions, learned author had referred to books "Some Aspects of Ancient Indian Culture", Madras, 1940 by Bhandarkar D.R., "The Atharvaveda", Strassburg, 1899 by Bloomfield M., "The Hymns of the Atharvaveda", Oxford, 1897 by Bloomfield M., "The Hymns of the Atharvaveds", Banaras, 1895-96 by Griffith R.T.H. (Tr. & Ed.), "The Atharvavedic Civilisation", Nagpur, 1959 by Karambelkar V.W. and "Atharvaveda", Cambridge, Mass., 1905 by Whitney W.D. & Lanman C.R. (Tr.).

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4120. The fourth Veda **"Atharvaveda"** has been discussed in Vol. 2 of **Sacred Scriptures of India (supra)** on page 25 and onwards. The meaning of the word Atharveda (Atharva) is devoid of movement or concentration. The word Tharva means fickleness or movement and accordingly the word "Atharva" means that which is unwavering, concentrated or unchanging. That is why it is said :

Tharva Gati Karma Na Tharva Eti Atharva

4121. The philosophy of Yoga speaks that:

Yogash Chitta Vritti Nirodhah, which means controlling the different impulses of the mind and senses in Yoga. The Gita re-iterates that when the mind is free from impulses and flaws, the mind becomes stable and the

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person becomes neutral when the impulses of the mind and the other senses are in control, then only the mind is freed from instability and purterbances. **The word "Atharva" therefore refers to neutrality of personality. The Atharvaveda speaks more about Yoga, the human physiology, different ailments, social structure, spirituality, appreciation of natural beauty, national religion, etc.** This knowledge is practical and is worth bringing in use.

4122. The Atharvaveda is a fusion of prose and poetry together. A number of facts related to Ayurveda are seen here, that is why Ayurveda is considered to be the Upaveda (Sub-Veda) of this Veda.

4123. The idea of spiritual and symbolic interpretation of Vedas is articulated in "Brahmana" and "Upnishad". The term "**Upanisads**" has also been explained on page 312 of **Dictionary of Hinduism (supra)** and the relevant extract is as under:

> *"**Upanisad(s)** From upa, 'supplementary', 'additional', and ni-sad 'to sit down near a teacher', from whom a pupil received esoteric knowledge. But grammarians differ about the meaning of the word, some defining it as 'tattvajnana', the knowledge of reality; others as 'rahasya', secret doctrine. The Upanisads themselves indicate that the knowledge contained in them was esoteric and therefore to be imparted only in secret. But most of the two hundred or more so-called Upanisads contain neither esoteric doctrine nor teaching imparted in secret. Of all these texts, whether individual or part of a collection, only thirteen--or fourteen, according to some authorities-- actually contain*

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esoteric teaching. The remainder are late compositions which mainly represent the views of Vaisnavas, Saivas and Saktas. Winternitz divides them into six classes, which deal with the following subjects respectively: 1. Vedanta doctrine; 2. Yoga; 3. the ascetic life (sannyasa); 4. Visnu; 5. Siva; 6. other cults.

The dating of the thirteen (or fourteen) classical Upanisads is conjectural, but internal evidence suggests that they were composed between 700 and 300 B.C., some of them revealing changes of style and views, and of repeated revision. Their composition may be assigned to three periods. Six belong to the earliest; six to the middle, regarded as pre-Buddhist and pre-Panini; the last two to a time shortly after the establishment of the Buddhist Order. The first group consists of the Aitareya, Kausitaki, Taittiriya, Brhad-Ar., Chan, and Kena; the second, Kathaka, Svetasvatara, Maha-Narayana, Isa, Mundaka, and Prasna; the third, Maitrayaniya and Mandukya. Those of the first group resemble Brahmanas in language and style, a simple, slightly clumsy prose, but by no means lacking in beauty. Some of the second group are mainly composed in verse, and unlike those of the first group, reflect Samkhya and Yoga views, though their inclusion may be the result of late recensions. Those of the third group are definitely post-Vedic, both in language and views.

The fourteen Upanisads, as well as other 'forest compilations' called Aranyakas, were subsequently attached to particular Brahmanas, which in turn were

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attached to a particular Veda. Thus the Brhad-Ar. Up., itself probably a collection of earlier compositions, was attached to the Satapatha Brahmana, which was attached to the White Yajurveda.

That the Aranyakas and Upanisads originated as a reaction against the stereotyped views of professional sacerdotalists can hardly be doubted. This is indicated by ksatriyas being numbered among the composers or the Upanisads, and also by the choice of forest retreats for the discussion and teaching of esoteric doctrines. Once begun, the speculative mood became general and resulted in the formation of other groups opposed to brahminic fundamentalism, such as the Carvakas, Jainas and Buddhists. Even some priestly schools appear to have been influenced and to have contributed to the final recension of the earliest Upanisads, which may account for some of their inconsistencies. The Upanisads have thus been criticized adversely for some of their views and the use of the false analogies. The explanation lies perhaps in the fact that they are not a single co-ordinated collection but separate compositions, the work of minds not always equally well-equipped for the task.

Nonetheless, the fact remains that the Upanisads generally present an objective view of the universe and a rational approach to the problem of reality far in advance even of the flashes of intuitive knowledge that illumine occasional passages of the Vedas and Brahmanas. Thus the expression 'as if' or 'as it were' (iva) in the Brhad-Ar. Up. (II.4, 14), accords well with the modern scientific view that,

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despite the manifold appearances of the phenomenal world, the entire universe, both known and as yet unknown, essentially one.

'The practice of taking what is actually not an Upanisad as an Upanisad appears to have been in existence from the time of Panini' (Bhattacharyya, Agamasastra of Gaudapada, P. xxxvi)."

4124. The term "**Brahmana**" is explained on page 166 of **Hindu World (supra)** as under: -

Brahmana. *Broadly speaking the post Rig-vedic philosophy shows two trends, discernible in the Brahmanas and in the Upanishads. Though belonging to the Vedas they are considered apart from the Vedas, as they express notions that have a character and quality of their own and render them convenient for separate consideration.*

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The Brahmanas are theological manuals composed by and for brahmins, and have been referred to as 'the Hindu Talmud'. They were composed later than the mantras, dating from about 600 BC, and are mainly textbooks of ritual and prayer for the priests, serving as commentaries on the Vedic hymns, describing in detail the sacrificial ceremonial, and giving many curious explanations both linguistic and legendary of the origin and meaning of the rituals. They seem to codify the ritualism of the aboriginal rather than the Aryan priesthood, since it is inconceivable that their fantastic ceremonies were ever put widely into execution, least of all by the robust, unsophisticated Aryans of the Vedic age, Written throughout in prose, they represent the oldest prose

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in any Indo-European language, although they do not have great literary merit.

The Brahmanas stress the importance of prayer, sacrifice, ritual, liturgy, formalism, textualism, and emphasize the observance of caste and the asramas. Sacrificial rites are regarded as all powerful, controlling the processes of nature and even the gods. This led to an elaborate formulary and to the domination by the brahmin priesthood who conducted vast and elaborate rites and attached cosmic significance to the smallest minutiae. Says the Satpatha Brahmana, 'Verily there are two kinds of gods; the gods themselves who are assuredly gods, and the priests who have studied Vedic lore'

Professor B.K. Ghosh refers to the Brahmanas as 'an arid desert of puerile speculations on religious ceremonies marking the lowest ebb of Vedic culture' (IV, p. 225), while Max Muller with unkind emphasis declared that one could not read ten pages of the Brahmans without revulsion, and that for pedantry and absurdity they could hardly be matched anywhere. 'These words', said the great German scholar, 'deserve to be studied as the physician studies the twaddle of idiots and the ravings of madmen.'

Each of the Vedic samhitas has its Brahmanas, which reflect as it were the character of the samhita with which they are associated. The Brahmanas also often give the name to the related Upanishad. The Rig'vedic Brahmanas include; the Aitareya Brahmana (c. 600 BC) perhaps the oldest of them all. Its author was Mahidasa the son of a sudra mother. It deals principally with the great some

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sacrifies and the different ceremonies of royal inauguration. The Kausitaki, also called the Sankhayana or the Asvalayana Brahmana, contains much material common to the Aitareya and treats of various sacrifices.

The Brahmanas of the Yajur-veda include; the Taittirriya Bharmana of the Black Yajur-veda the origin of which is linked with the name of the sage Yajnavalkya. The satapatha Brahmana (Hundred-paths Brahmana), belonging to the Vajasneyi samhita of the White Yajur-veda, is an important source of information for sacrifical ceremonies, theology and philosophy. Next to the Rig-veda it is the most important work in Vedic literature, and is ascribed to Yajnavalkya. It is found in two recensions, namely, the Madhyamdina and the Kanva.

The Bhahmanas of the Sama-veda are eight in number. Included among them are; the Prauda Brahmana, consisting of twenty-five sections, hence also called the Pancha-vimsa. It contains the famous vratya-stoma ritual by which non-Aryan converts were admitted into the Aryan fold. Shad-vimsa (Twenty sixth) Brahmana, so called because it was added to the twenty-five sections of the Prauda. The Sama-vidhana Brahmana, the third Brahmana of the Sama-veda, devoted entirely to magic. It gives the chants to be used for various spells. Tandya (or Tandaka), the most important Brahmana of the Sama-veda, sometimes confused with the Prauda. It is concerned with sacrifices in general, and with particular rites like the Sattras, vratya-stomes, and others. The Adbhuta Brahmana, a manual treating of omens and auguries, marvels and miracles. It is

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sometimes regarded as part of the Shad-vimsa and is often classed with it. The Chhandogya Brahmana, famous for the Upanishad names after it.

The Atharva-veda has only one Brahmana, namely, the Gopatha, a very late work composed largely of material gathered from previous sources, including the Satapatha and the Aitareya.

For the above descriptions, learned author had referred to the books "Satapatha Brahmana", Oxford, 1882-1900 by Eggeling J (Tr.), "The Rig-vedic Brahmanas" Cambridge, Mass., 1920 by Keith A.B. (Tr.), "The Brahmanas of the Vedas", Madras, 1901 by Mac Donald K.S., "The Vedic Age", London, 1951 by Majumdar R.C. and "Chips from a German Workshop", London, 1867 by Muller F. Max.

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4125. **Smrti:** Its dictionary meaning is 'remembered', 'recalled'. In Hindu religion this term has been applied to the whole corpus of sacred lore remembered and handed down by traditions. It is thus distinguished from the truths of the Veda which were heard (sruti) by the ancient risis but the term denotes secondary works i.e. the one written in the subsequent generation based on memory. They are considered to be supplement to Vedas. They are on the subjects of Smrti, Smarta, Sutra; Dharmasastras of Law books; "Itihasas" or legendary poems and the Kavyas, Puranas and Niti-sastras.

4126. **Smrti-Sutra:** Any Sutra work based on Smrti is called Smrti Sutra but principally such Sutras are concerned with family and domestic rites.

4127. **Dharmasastras:** It is a general name of Law book

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or Code of Laws and widely known are the course of Manu, Yajnavalkya, Apastamba, Gautama, Vasistha and Baudhayana.

4128. **Itihasa: Dictionary of Hinduism (supra)** says about Itihasa on page 121 as under:

> *"**Itihasa** (-iti-ha-asa, 'so indeed it was') A class of 'literature' of a popular character, associated with another class called 'purana' (not to be confused with the post-Vedic Puranas). Both itihasas and proto-puranas were current in the early Vedic period, but were apparently not of sufficient importance to be generally included in the RV., though it appears to allude to some of them, and even to include a complete story, i.e., the gambler's lament (RV., X.34). The earliest references to itihasa and proto-purana occur in the AV. (XV. 6,4,et seq.) and to itihasa alone in the Brhad-Ar. Up. (II.4, 10, etc.). The Chan. Up. (III. 4, 1, 2, etc.) declares that itihasas and proto-puranas constitute a fifth Veda, while the Sankhayana Srauta sutra (XVI.2.21, 27) regards them as two distinct Vedas, as does the SBr. (XIII.4.3, 12-13). The Tait. Br. (II.9) also regards them as two classes of literature."*

4129. **Puranas:** Puranas means ancient. They are part of Smriti (non Vedic Scriptures). **Benjamin Walker in Hindu World (supra)** has dated Puranas composition was between 6th Century A.D. to 16th Century A.D. It is said that Puranas are Veda of the common folk. There are said to be 18 great Puranas i.e., Mahapuranas on which six relates to Lord Vishnu, six are devoted to Lord Shiva and six to Lord Brahma. These Mahapuranas have been narrated in brief in **Hindu World (supra)** (page 255-257, Vol. -II) and it would be appropriate to

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reproduce the as under:

"THE SIX VISHNU PURANAS, sattvic in quality:

(I) Vishnu Purana, consisting of 7,000 stanzas and bearing all the 'lakshana' of the true Purana. Legend has it that it was first communicated by Brahma to Ribhu, who revealed it to the sage Pulastya and Pulastya passed it on to the sage Parasara, who in turn made it known to his disciple Maitreya, and the text takes the form of a dialogue between Parasara and Maitreya. Its basic teaching is that Vishnu is the creator, sustainer and controller of the world; it is in him that the world exists as a harmonious system, and in truth Vishnu is the world. This Purana is the most perfect and best known of all the works of this class. It gives much valuable information about the Maurya dynasty.

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(2) Narada Purana (or Naradiya Purana), of 3,000 stanzas, in which the sage Narada describes the essential duties of man. Another related work, known as the Brihan, 'Great' Naradiya, consists of 3,500 verses. These Puranas belong to the period after the Muhammadan conquest, and do not bear the marks of a genuine Purana.

(3) Bhagvata Purana (or Srimad Bhagvatam), the most celebrated of the Puranas, is a voluminous work of 18,000 stanzas in length, divided into twelve skandha or books. The most popular part is the tenth book, which narrates the life story of Bhagavata or Krishna, especially of his boyhood. The Bhagvata Purana is written in the form of a dialogue between a sage and a king. The latter is doomed to die within a week for having unwittingly killed a holy man, and to ensure his salvation he spends the week

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listening to the Bhagavata Purana. It lays great stress on the doctrine of bhakti or faith, and makes the love of the gopis (milkmaids with whom Krishna sported), symbolic of spiritual devotion. The name of his favourite gopi, Radha, does not appear in this Purana. Some authorities believe it was written in South India, and it was once held to be the work of the grammarian Vopadeva (c. AD 1250) friend of Hemadri who flourished at the court of the raja of Devagiri. A few authorities place it as early as AD 900. The favourite tenth book of this Purana has been translated into all the Indian languages.

(4) Garuda Purana, of which there are several versions, although it is doubtful if a genuine original version is in existence. It is named after Garuda the vulture vehicle of Vishnu, but there is nothing in its contents to justify the name. It deals with the rites held over the dying, the death moment, the funeral ceremonies, the ritual building up of a new body for the preta or deceased, the judgment, the various after-death states till rebirth. It also deals with sun-worship and astrology and is probably Indo-Zoroastrian in origin.

(5) Padma Purana, an extensive work, divided into six books, which tells of the time when the world was a golden lotus (padma), and goes on to describe the Creation, and the spheres of earth, heaven and the underworld. To this a supplementary book on Devotion has been added. The whole work dates no earlier than about AD 1100.

(6) Varaha Purana, has about 10,000 stanzas, and is not older than AD 1000. It was revealed by Vishnu to Varaha

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(the Boar).

THE SIX SIVA PURANAS, tamasic in quality:

(1) Matsya Purana, bears some of the marks of the genuine Purana. A heterogeneous mixture, borrowing much from the Vishnu and Padma Puranas, and from the Mahabharata. It was related to Manu by Vishnu in the form of a fish (matsya). It contains some information about the Andhra dynasty.

(2) Kurma Purana, dated about AD 900. Vishnu as a tortoise (kurma) explains the purpose of life. It glorifies the worship of Siva and Durga.

(3) Linga Purana, dated about AD 700. In this work Siva explains the meaning of virtue, wealth, pleasure and liberation, and the spiritual significance of the linga (phallus). It is largely ritualistic.

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(4) Vayu Purana, the oldest of the Puranas dated about AD 500. It is devoted to Siva and his many attributes, and contains material about the sacredness of Gaya. A variation of the Vayu, known as the Siva Purana, gives information about the reign of Chandragupta I.

(5) Purana (c. AD 550), related by Skanda, god of war. The longest of the Puranas it is said to consist of over 80,000 stanzas, although it does not exist in composite form, but only in fragments. Such, for example, is the Kasi Khanda, describing Banaras and the Saivite temples there, and the Utkala Khanda, giving an account of Orissa.

(6) Agni Purana (c. tenth century AD), also called the Agneya Purana, was originally communicated by Agni, god of fire, to the rishi Vasishtha. It is an encyclopaedic

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compilation containing, besides some original material, many extracts from other works, relating to ritual worship, cosmology, dynastic chronology, the art of war, and a section on law taken from Yajnavalkya, a chapter on medicine taken from Susruta, and selections from Pingala and Panini on grammar, rhetoric and prosody.

THE SIX BRAMHA PURANAS, rajasic in quality:

(1) Brahma Purana (c. AD 1300), also called the Adi Purana or first Purana, since it generally stands first in all the lists of Puranas. It is also known as the Saura Purana because it is devoted to Surya and sun-god. It was revealed by Brahma to the sage Marichi. Apart from sections devoted to the cosmologies, ritual worship, descriptions of the temples of Orissa and so on, it promulgates the worship of Krishna as Jagannatha (partly taken from the Vishnu Purana). The last part, known as the Brahmottara Purana is of a later date, and celebrates the sanctity of Balaja river.

(2) Brahmanda Purana, expounds the magnificence of egg (anda) of Brahma, and describes the future aeons. Like the Skanda Purana this does not exist as a composite work, but only in parts and fragments. The popular Adhyatma Ramayana is one such part of this Purana. The authorship of the Adhyatma Ramayana is ascribed to Vyasa, and in it Rama is described as a saviour god and a deliverer rather than a mortal hero.

(3) Brahma-Vaivasvata Purana (or Brahma-Vaivarta), related by Manu Savarna, son of Vivasvat, to the rishi Narada. It is of comparatively late date, and enjoins the

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worship of Krishna and Radha, making this couple husband and wife so that their love is not adulterous but conjugal.

(4) Markandeya Purana (c. AD 900), quite different in tone from all the other Puranas. It is related by the sage Markandeya and is heard by certain fabulous birds who are versed in the Vedas. These birds repeat it to the sage Jaimini. It has little to do with sect, ceremonial, or worship of Brahma as such, but is a succession of legends, secular in tone, recommending no particular doctrine, and consisting mainly of original compositions, superior to the Puranas in general. An episode of this Purana the Durga Mahatmya (variously called Devi Mahatmya, Chandipatha, Chandi Saptasati) is older in date (c. AD 700) than the rest. It is a poem of seven hundred verses in thirteen chapters, devoted to the glorification Sakti as mother-goddess, who descends to earth from time to time to rid the world of demons and monsters. This section is recited at many Hindu religious functions.

(5) Bhavishya Purana, the title, meaning 'future' Purana, seems to have been arbitrarily bestowed. It is mainly a handbook of rites and ceremonies, for the greater part very unpuranic in character and content.

(6) Vamana Purana (c. AD 1500), contains an account of a dwarf (Vamana) incarnation of Vishnu. It divides its homage between Siva and Vishnu."

4130. Besides above, there are certain lesser Puranas called Up-Puranas some of which are listed in **Hindu World (supra)** Vol. II page 257 as under:

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"The eighteen lesser Puranas, called the Upa-Puranas are variously listed, but usually drawn from the following:(1) Aditya, (2) Ascharya, (3) Ausanasa (from Usanas), (4) Bhaskara (or Surya), (5) Devi, (6) Devi-Bhagavata, a Saiva Purana, sometimes listed with the great Puranas, (7) Durvasasa, (8) Kalika (c. AD 1350), a Sakta text, the source of much Tantrik material (see human sacrifice), (9) kalki, (10) Kapila, (11) Mahesvara, (12) Manava, (13) Marichi, (14) Nandikesvara, (15) Narada or Vrihan, (16) Narasimha, (17) Parasara, (18) Samba, (19) Sanathkumara, (20) Sivadharma, (21) Surya or Bhaskara, (22) Suta-samhita, a devotional Purana, Like the Bhagavata, but devoted to Siva, (23) Usanas or Ausanasa, (24) Varuna, (25) Vaya, (26) Vrihan (see Narada), (27) Yuga."

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4131. It is said that Vedangas are the limbs of Vedas and treated as auxiliary to and in some sense as part of Veda. In **Dictionary of Hinduism (supra)** on page 329 it says about Vedangas as under:

"Vedanga(s) *Lit. 'limbs' (angas) of the Veda, comprising six treatises 'regarded as auxiliary to, and even in some sense, as part of the Veda'. Their original purpose was to ensure that each part of the sacrificial ceremonies was correctly performed.*

The process of ritual development must have been gradual, so that the formulation of the Vedangas may be assigned to a period between that of the later Brahmanas and the early Sutras, the latter being the style used for the Vedangas. The Vedangas deal specifically with the

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following six subjects; Siksa, correct pronunciation; Chandas, metre; Nirukta, etymology; Vyakarana, grammar; Jyotisa, astronomy; and Kalpa, ceremonial, i.e., the general rules governing sacrificial ceremonies."

4132. **Siksa** has been explained on page 277 of **Dictionary of Hinduism (supra)** which is as under:

*"**Siksa** One of the six vedangas or sets of rules governing the performance of the sacrifice. Siksa was a sophisticated system of phonetics which included the correct value of each letter, its accent and quantity, and the proper method of articulation, so as to ensure correct pronunciation (pratisakhya) especially in the recital of sacred passages of the Vedas."*

4133. **Chandas** has been explained on page 61 and 62 of **Dictionary of Hinduism (supra)** and reads as under:

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*"**Chandas** 'Metre.' The name of one of the six Vedangas, which lays down rules intended to ensure the correct performance of sacrificial procedure, and especially of the use of the appropriate metre in the chants. In Indian prosody chandas denotes a succession of poetical feet (padas) arranged in regular order, according to certain types recognised as standards, in verses of a particular length. A metre may consist of long or short syllables, ranging from a minimum of four to a maximum of twelve.*

Next to language, metre is significant in determining the age of the Vedic hymns, their metres indicating the gap that exists between them and those of classical Sanskrit poetry, the latter retaining little trace of the numerous metres of the Veda. On the other hand, classical Sanskrit

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poetry has metres having no prototype in the Veda.

In the oldest Indian metre only the number of syllables is fixed, their quantity or measure being only partially determined, the last syllable of each line being a syllaba anceps, i.e., either a short or long syllable regardless of the metre of the syllables preceding it. Vedic verses are generally composed of lines of eight, eleven or twelve syllables, but only the last four (or five) have a fixed rhythm. Originally the most popular metre was the gayatri, after which the gayatri mantra (RV., III. 62, 10) is named, which is repeated by every devout Hindu at his morning and evening devotions. Its regular form consists of three lines each of eight syllables. Contemporary with it was the anustubh (from which derived the sloka), consisting of four lines, also of eight syllables each, subsequently the most popular metre for Epic poetry.

The eleven-syllabled line has a caesura or pause after the fourth or fifth syllable. The tristubh metre consists of four such lines. The twelve-syllabled line is called jagati, and except for its additional syllable follows the same pattern as the tristubh. Another metre, the dvipada-viraj, only occasionally used, consists of four or eight five-syllabled lines. A distinctive feature of Vedic verse is that two or more metres may occur in a single hymn, as in RV., VII. 54, where the metre of the first verse is gayatri, that of verses 2-4 uparistabrhati, and that of verses 5-8 anustubh.

Metre has always been regarded by Hindus as of the utmost importance. This is indicated 'by the excessive cultivation and elaboration bestowed upon their whole

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metrical system', some of the most sacred metres vere personified. Nonetheless, it was not until the second century B.C. that a treatise (Vedanga) dealing with both Prakrit and Sanskrit metres appeared, or at least it is the earliest to have survived. This Vedanga called the Chandah-sastra, is ascribed to Pingala (or Pingalanaga).

Though metre is an important aid in repeating passages from the Veda it is not the only one. In his introduction to the first hymn of the RV. Sayana states that not only should anyone repeating a Vedic hymn know the name of the rsi to whom it was revealed, and the name of the god to whom it was addressed, but also be aware both of the proper accents to be used and of the correct interpretation of the mantras. Anyone not knowing these things and attempting to repeat a portion of the Veda is called a mantra-thorn (mantra-kantaka) whose ignorance will assuredly cancel or obstruct the efficacy of its recital.

Injuries can be caused by a particular use of the metres (Kaus, Br., X15). Also certain metres are connected with the attainment of power, splendour, etc. (XVII.2). Even the gods used the metres to reach the heavenly world and thus by the metres the sacrificer too is enabled to reach heaven (Ait. Br., 1.9)."

4134. **Nirukta** has been explained on page 210, **Dictionary of Hinduism (supra)** as under:

*"**Nirukta** 'Explanation or etymological interpretation of a word.' The name of several works, especially of a Commentary on the Nighantu by Yaska. The Nighantu is a list of Vedic words handed down by tradition, which with*

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the Nirukta is the oldest surviving Indian treatise on etymology, philology and semantics.

Subsequently, the Nirukta led to the systematic development of etymology and was included among the list of vidyas or sciences."

4135. **Kalpa** has been explained on page 139, **Dictionary of Hinduism (supra)** and says as under:

*"**Kalpa I.** 'A fabulous period of time, a day of Brahma, or 1,000 yugas, a period of four thousand, three hundred and twenty millions of years of mortals, measuring the duration of the world.'*

Another Pauranic system divides a kalpa into fourteen periods called manvantaras, each containing seventy-one mahayugas and totalling 994 (14x71) mahayugas. The remaining six, required to make up the number of 1,000 mahayugas, are distributed amongst the manvantaras as follows: one krtayuga, 0.4 of a mahayuga, precedes the first manvantara as a dawn or introductory period. This manvantara and each of the remaining thirteen are followed by another krtayuga or twilight period. Thus the one 'dawn' and fourteen 'twilights' =15x0.4=6 mahayugas, which with the 994 referred to above total 1,000 mahayugas or one kalpa. But some Puranas refer to a 'night of Brahma' and others to a 'night and day of Brahma', to denote immense periods of time. Thus a hundred 'days and nights of Brahma' are considered to constitute the entire span of his existence. This is the longest period in the Hindu time-scale, and is called a para, half of which, a paradha, had elapsed when the

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present kalpa began. But in theory kalpas succeed one another ad infinitum."

4136. **Jyotisa** has been explained on page 130 and 131, **Dictionary of Hinduism (supra)** as under:

*"**Jyotisa** One of six Vedangas. In a general sense it denotes the science of astronomy, but in sacrificial ritual it refers to the Vedic calendar by which the most auspicious day for the performance of a particular sacrifice is fixed. Subsequently such calendrial decisions became a feature of astrology, so that no important undertakings such as marriage, building a house, etc., were made without reference to calendrial omens.*

Though there is no Vedic text on the subject, there is ample evidence in the Vedas of a knowledge of the stars. The RV. lists a number of them and divides the year of 360 days (savana) into twelve months. The 'moon of later birth' (Rv., 1.25, 8) is probably an allusion to an intercalary thirteenth or supplementary month of the luni-solar year, but other passages lack any precise astronomical knowledge. A notable effort to remedy this deficiency is apparent in particular passages of the Aranyakas and Upanisads, which attempt to interpret the world objectively, and to establish the relations of similarity, identity and interdependence, for which the word 'iva' (as if, or as it were) is used. Although these attempts were an advance on earlier cosmological views, they were mainly speculative. It was not until the appearance of the Jyotisavedanga (Treatise on astronomy), compiled between 300 and 200 B.C., that the subject made use of the

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mathematics gradually being evolved. Though failing to produce a sophisticated stellar theory, the Jyotisavedanga provided a basis for the subsequent five astronomical treatises called Siddhantas, of which the only surviving one is the Suryua Siddhanta (Explanation or Solution of the Sun). But its scope was limited by attempts to reconcile the temporal aspect of recurring cosmic cycles with the mythical unit of time called 'a day of Brahma', equivalent to a calendar year. The latter was divided into 10,800 'moments', the number of metrical divisions in the RV., each of which consists of forty syllables, the whole totalling 432,000 syllables.

At the end of the Great Cosmic Cycle, all the stars, having completed revolutions over a period of 4,320,000 years, were thought to return to their original positions. To support the authenticity of this grand total, it was subjected to the following analysis. This begins with the number 108, i.e., the product of the four phases of the moon and twenty-seven naksatras (luner asterisms); the second, the product of the sixteen theoretical parts of the lunar disc, and twenty-seven lunar phases, totalling 432; and finally the product of the lunar years, which is 12,000 divine years, equivalent to 360 calendar years, each of 360 days, making a grand total of 4,320,000. The assumption that these figures solved all astronomical problems led to greater attention being devoted to astrology. But some amends were made later when the Surya Siddhanta was re-written and established as the basic handbook of Indian astronomy. About this time (A.D. 499) the astronomer Aryabhata

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produced his great work the Aryabhatiya which mentions the rotation of the earth and develops the theory of epicycles. The end of the sixth century marks the birth of the astronomer Al-Biruni, considered to be the most accomplished of Indian astronomers despite his refusal to accept Aryabhata's theory of the rotation of the earth.

Before the introduction of the signs of the zodiac, solar months were called by the names corresponding to luner months, and subsequently by the zodiacal sign in which the sun appeared. Owing to differences in the length of lunar months and days and variations in the precession of the equinoxes it became necessary to make adjustments to reconcile them with the months and signs of the zodiac. This reconciliation was achieved in the Siddhanta period when the week of seven days was introduced, each named after a planet. The months followed the Greek zodiacal order but with Indian designations. This arrangement involved changing the three Vedic seasons to six, each consisting of two months viz:

Vasanta (Spring)	*caitra (March-April)*
	vaisakha (April-May)
Grisma (Hot season)	*jyaistha (May-June)*
	asadha (June-July)
Versa (Rainy season)	*sravana (July-August)*
	bhadrapada(August-September)
Sarad (Autumn)	*asvina (September-October)*
	karttika (October-November)
Hemanta (Winter)	*margasirsa(November-December)*

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pausa (December-January)

Sisira (Frosty season) *magha (January-February)*

phalguna (February-March)

Astrology has always been closely associated with astronomy in India as is indicated in the works of astronomers referred to above. in addition Varahamihira (sixth cent. A.D.), author of several astronomical treatises, who also wrote on astrology and divination, the most important being the Brhat-samhita (Great Compendium), which describes the motions and conjunctions of celestial bodies and their divinatory significance. He also wrote two books on purely horoscopic astrology, in which he introduced many Greek astrological terms, including hora, the hour of birth.

The subsequent Moslem invasions and contacts with Arab science influenced Indian astronomy in the medieval period, Bhaskara (twelfth century) being one of its most noted exponents."

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4137. Then comes **Vedanta**, i.e., the end of the Veda, i.e., the complete knowledge of Veda. It is explained on page 329 to 330, **Dictionary of Hinduism (supra)** as under:

***"Vedanta** 'End of Veda'. i.e., the complete knowledge of the Veda. It is not an appendage to any particular portion of the Veda as were the Brahmanas, but a re-interpretation of its basic truths in the light of aupanisadic revelation. The Vedanta is thus associated with the Uttara-Mimamsa 'upper or later examination', regarded as one of the six Hindu darsanas which represented the 'views' of particular religious groups, and is distinguished from the Purva-*

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Mimamsa, the conservative and fundamentalist appraisal of the original parts of the Veda. The Vedanta views, unlike those of the other darsanas, were not initiated by a particular teacher, but were derived from the teaching of the Upanisads. As these presented both a doctrine of pure monism (advaita) and that of a modified dualism (dvaita), the expositions differ. It was not until Badarayana produced his Brahma-sutras (between A.D. 200 and 450) that particular Vedanta views were systematically presented. Despite the lack of indisputable evidence, it is probable that the aupanisadic notion of the atman was current in the sixth century B.C., as is suggested by the Buddhist anatta (Skt. anatman) non-atman doctrine, which by the second century A.D. had become the sunyavada of the Mahayana Buddhists."

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4138. The term "**Aranyakas**" has also been explained on page 17, **Dictionary of Hinduism (supra)** and the relevant extract is as under:

*"**Aranyaka(s)** 'Forest texts.' these are essentially sacred esoteric writings which form the core of the Upanisads. They were considered to be 'of a secret uncanny character, and spelt danger to the uninitiated', being intended only for those brahmanas and ksatriyas who had renounced the world and retired to forest solitudes."*

4139. **Contemporary Literature of other religion namely, Buddhist, Jain etc.:** Some literature of Buddhist and Jain religious scholars of the contemporary period referring to historical events is also available giving information about social, political and other aspects and they are also treated to be

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a relevant source.

4140. **Biographies:** It is another literary source of history. Certain writer's took the life of their royal patrons as theme of their literary works. Though this kind of work may not be recorded as a genuine history, yet they contain valuable historical information of contemporary era. Their object was glorification of king rather than to give a true picture of his life and times, and mostly they were conceived by their authors not as historical texts but primarily as medium for showing their literary skill and ingenuity. Among this category are:

> *"Banabhatta, that great master of Sanskrit prose, wrote the Harsha-charita (life of the emperor Harsha), and two poets, Vakpati and Bilhana, described the exploits of Yasovarman and Vikramaditya (of the later Chalukya dynasty) in two epics, the Gaudavaho and the Vikramanka-deva charita. We have also a curious poetical work, the Rama-charita, in which the author uses throughout verses of double entendre, which, taken one way, describe the story of the Ramayana, and taken the other way, recount the story of king Ramapala of Bengal.*
>
> *Among other biographical works may be mentioned the Kumarapala-charita of Jayasimha, Kumarapala-charita or Dvyasraya-kavya of Hemachandra, Hammira-kavya of Nayachandra, Navasahasanka-charita of Padmagupta, Bhojaprabandha by Ballala, Prithviraja-charita of Chand Bardai and Prithviraja-vijaya (fragmentary) by an anonymous writer."*
>
> *(Vedic Age-Vol 1-Majumdar 1996, Page 49)*

4141. **Local Chronicles:** These are not available from very

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ancient time but it appears from the history books that there were certain local chronicle in different parts of India like Rajatarangini etc.

4142. **Rajatarangini**: It is a history of Kashmir written throughout in verse by Kalhana sometimes in 1149-50 AD.

4143. There were certain chronicles of Gujarat like, Ras-Mala, Kritikaumudi of Somesvara, Sukrita-samkirtana of Arisimha, Prabandha-Chintamani by Merutunga, Prabandha-kosa by Rajasekhara, Hammira-mada-mardana and Vastupala-Tejahpala-prasasti of Jayasimha, Sukritakirti-kallolini of Udayaprabha, Vasantavilasa of Balachandra, etc. It is said that some chronicles were published in respect to Sindh and Nepal also.

4144. **Archaeology:** The expert witness (Archaeology), Dr. Jaya Menon, PW 29 has also stated about "archaeology", its meaning, scope etc. At page 29 of the statement in cross-examination by the learned counsel for defendant no.20 (Suit-4) giving the meaning of "archaeology" she stated:

> *"Archaeology is a discipline in order to understand the past through excavation and seeks to understand the material that is uncovered during excavation. It is correct that the term, "Archaeology" is derived from Greek and "archaeos" means old. Logos means study. To me, Archaeology means much more than a systematic study of antiquities only. The difference between History and Archaeology is that the History is a study of past on the basis of written evidence, whereas the Archaeology signifies a study of material evidence. It is not correct to say that in India, History is the mother of Archaeology. In fact, the two subjects are entirely*

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different disciplines based on different sources. In India, the history of Archaeology dates back to two million years. I studied this fact in a book titled as, " The Rise of Civilisation in India and Pakistan", authored by Allchin and Allchin. The said book was published in the year 1983. It was published by the Publishers, "Select Book Service Syndicate". The basic aim of Archaeology is to understand the human past. It is true that the Archaeology is a subject to understand the changes and development of nature and humanity."

4145. Further at page 61, P.W.29 states:

"The Archaeological history of human beings can be divided into palaeolithic, mesolithic, neolithic, chalcolithic and Iron Age."

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4146. **Inscriptions:**The engraved information on stones, metal has been found to be a source of the highest value for the reconstruction of the political history of the ancient India. They are free from the process of tampering to which books and other documents written on perishable material are liable. The historians appeared before us unanimously agreed that the inscriptions as historical evidence take precedence over the mass of Literature, as age of most of the texts is uncertain and they all must have undergone considerable modifications in the course of being preserved in copies through hundreds of years.

4147. **Numismatics:** The study of coins is called numismatics.

4148. **Monuments**: The remains of buildings, statues, decoratives, fragments, potteries and other objects of miscellaneous character is also relevant in tracing the history

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and evolution.

4149. This brief discussion was only to give some idea about the sources of history, ancient India's Vedic and religious literature etc. However, there is a lot of controversy on the historicity of the above vedic literature in one or the other way. This we shall discuss a little after.

4150. Whether Lord Rama was born and was a personality in history, as a matter of fact cannot be investigated in a Court of Law for more than one reason. According to the faith and belief of Hindu people, the period when Lord Rama was there, ranges from several thousand of years to lacs and crores of years. One thing which has been accepted and admitted almost universally and before us also that it is the faith of Hindu people that Lord Rama was incarnation of Lord Vishnu and was born at Ayodhya. Regarding the identity of Ayodhya though it is said to be a city of much antiquity with the birth of Lord Rama but is mainly connected and known with Lord Rama.

4151. The witnesses on behalf of the Hindu parties and in particular OPW 16, Jagadguru Ramanandacharya Swami Ram Bhadracharya; DW 3/18, Sri Acharya Mahant Bansidhar Das alias Uriya Baba; DW 3/13, Mahant Ram Subhag Shashtri; DW 3/20, Mahant Raja Ramchandracharya; DW 3/14, Jagad Guru Ramanandacharya Swami Haryacharya; DW 2/1-3, Mahant Ram Vilas Das Vedanti; DW 20/2, Swami Avimukteshwaranand Saraswati and few others propagating in detail about Hindu faith on worship of Lord Rama said that he was born thousands and lacs of years ago and, therefore, to ask for a positive evidence as contemplated in an enactment by the British Parliament laying down the procedure of evidence which has continued by virtue

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of Article 372 of Constitution would be not only a futile attempt but is against all the canons of the principles of law which would have been applicable in such matters. It is suggested that nobody can dare to ask such questions for the such pious and reverent beliefs in other religions like Jesus Christ, Prophet Mohammad Saheb etc. then where is the question of asking such an evidence in the matter of a religious faith and belief, which is not a few hundred years old but travels in the history of several thousands years. They tried to explain the system of timings of four yugas as contemplated in Vedic texts and which has been mentioned in detail in Shanti Parva (231.21-22) (Mahabharat) as under:

> *"The rishis, measuring time, have given particular names to particular portions [of time]. Five and ten winks of the eye made what is called a Kastha. Thirty Kasthas made what is called a Kala. Thirty Kalas, with the tenth part of a Kala, made a Muhurta. Thirty Muhurtas made one day and night. Thirty days and nights form a month, and twelve months form a year. Persons well-read in mathematical science say that a year is made up of two solar motions, meaning the northern and southern. The sun makes the day and night for men. The night is for the sleep of all living creatures, and the day is for work. A month of human beings is equal to a day and night of the departed manes [ancestors who have gone on to the subtle worlds]. That division consists in this: the light half of the month is their day which is for work; and the dark fortnight is their night for sleep. A year (of men) is equal to a day and night to the gods [devas or celestials]. This division consists in*

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this: the half year for which the sun travels from the vernal to the autumnal equinox is the day of the gods, and the half year for which the sun moves from the latter to the former is their night. [Thus, an earth year is but a day for the devas.] Calculating by the days and nights of human beings about which I have told you, I shall speak of the day and night of Brahma and his years also. I shall, in their order, tell you the number of years, that are for different purposes calculated differently, in the Krita, the Treta, the Dvapara, and the Kali Yugas. Four thousand celestial years is the duration of the first or Krita age. The morning of that cycle consists of four hundred years and its evening is of four hundred years. [Note: This says celestial years, or years of the demigods on the higher planets. Such years are much longer than those of planet earth. So 4000 celestial years, with the morning or Sandhya of 400 celestial years and the evening or Sandhyansa, or intermediate period, of another 400 years, equals 4800 celestial years or 1,728,000 human years.]

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"Regarding the other cycles, the duration of each gradually decreases by a quarter in respect of both the principal period with the minor portion and the conjoining portion itself. These periods always keep up the never-ending and eternal worlds. They who know Brahma, O child, regard this as Immutable Brahma." (Mb, Shanti Parva, Chap.231, Text 21-22)

This means that as each age appears, from the Krita, Treta, Dvapara to Kali, each Yuga decreases by a quarter of the previous Yuga, in addition to the conjoining Sandhya

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and Sandhyansa periods with each Yuga. In this way, it is roughly calculated that a whole cycle of the four yugas, namely Krita, Treta, Dvapara and Kali-yuga together, total about 12,000 celestial years in length.

The Mahabharata (Santi Parva,231.29-32) continues: "The learned say that these 12,000 celestial years form what is called a cycle. A thousand such cycles form a single day of Brahma. The same is the duration of Brahma's night. With the beginning of Brahma's day the universal entities come into being. During the period of universal dissolution the Creator sleeps in Yoga-meditation. When the period of sleep expires, He awakes. What is Brahma's day covers a thousand such cycles. His night also covers a thousand similar cycles. They who know that are said to know the day and the night. On the expiry of His night, Brahma, waking up, modifies the indestructible intelligence by causing it to be overlaid with ignorance. He then causes Consciousness to spring up, whence it originates Mind which is at one with the Manifest."

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4152. There is some confusion on account of a little difference in Puranas. One calculate the time as contemplated in Vedic texts in terms of the years in accordance with present system and this is why the time results in lots of inaccuracy. In Vedic literature, the time is described in celestial years, or years of the devas, not according to the time we experience and calculate on earth:

"In calculating the duration of the different yugas, there are a few differences between the Puranas. The

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Brahmanada Purana (1.2.29.31-34) specifically states that Krita or Santya-yuga is 1,440,000 human years in length, Treta-yuga is 1,080,000 years, Dvapra-yuga is 720,000 years, and Kali-yuga is 360,000 years in length. The Linga Purana (4.24-35) also agrees with this except for Treta-yuga, which it says is 1,800,000 years in length.

However, when explaining the various measurements of time, the Vishnu Purana (Book One, Chapter Three) and the Srimad-Bhagavatam (3.11.19), along with the Bhagavad-gita (8.17) and the Vayu Purana (Chapter 57) and others, such as the Mahabharata as quoted above, the measurements of the durations of the Yugas, stands explained.

In the explanations of the measurements of time found therein, one cycle of the four yugas together is 12,000 years of the demigods, called divine years. Each of these years is composed of 360 days, and each of their days is equal to one human year. So Krita-yuga is 4000 divine years in length, Treta-yuga is 3000 divine years in length, Dvapara-yuga is 2000 divine years in length, and Kali-yuga is 1000 divine years long, with the addition of the conjoining portions of the Sandhya and Sandhyansa.

In this way, each yuga is preceded by a period called a Sandhya, which is as many hundred years in length as there are thousands of years in that particular yuga. Each yuga is also followed by a period of time kinwn as a Sandhyansa, which is also as many hundreds of years in length as there are thousands of years in the yuga. In between these periods of time is the actual yuga. Therefore,

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we have:

Krita-yuga = 4000 divine years, Sandhya = 400 divine years, Sandhyansa = 400 divine years. Total = 4800 divine years X 360 days = 1,728,000 human years.

***Treta-yuga** = 3000 divine years, Sandhya = 300 divine years, Sandhyansa = 300 divine years. Total = 3600 divine years X 360 days = **1,296,000 human years**.*

Dvapara-yuga = 2000 divine years, Sandhya = 200 divine years, Sandhyansa = 200 divine years. Total = 2400 divine years X 360 days = 864,000 human years.

Kali-yuga = 1000 divine years, Sandhya = 100 divine years, Sandhyansa = 100 divine years. Total = 1200 divine years X 360 days = 432,000 human years.

This equals 4,320,000 human years in one cycle of the four yugas together, and 1000 cycles of these yugas equals 12,000 divine years and 4,320,000,000 human years in a day of Brahma.

It is also explained that Kali-yuga began with the disappearance of Lord Krishna from the planet. This has been calculated to be 3102 B.C.. Since Kali-yuga is described as being 432,000 earth years in length, with 5,000 years and more already passed, then the age of Kali-yuga has approximately 426,000 more years to go."

4153. Taking note of this kind of calculation, our attention is drawn to **Exhibit 36 (Suit-5) (Register 32 Page 7 to 113)** which is an extract photocopy of the book **"Itihas Darpan"** Vol. III December 1996 published by Bhartiya Itihas Sankalan Yojna Samiti, Delhi, which contains its frontispiece and pages 1 to 74. Its first chapter is "**The Age and Size of Universe as per Hindu**

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Calculations". Apparently, the concept of time and period appears to be exaggerated and may not be relevant for the dispute but in substance it has some connection with the issues in hands and will reflect on what the Court is required to do while considering such issues without appreciating the antiquity, magnanimity and the lack of appropriate knowledge on this aspect on the part of the people in presenti to explain the real concept, may be on account of loss of ancient record in original etc. or the material having disappeared with time. Some part of the calculation of learned author would be a matter of interest and may also reflect what these religious personalities have said is not something which can be brushed aside easily. It says:

> *"Professor Arthur Holmes in this masterly work The Age of the Earth opines "Long before it became a scientific aspiration to estimate the age of the earth, many elaborate systems of the world chronology had been devised by the sages of antiquity. The most remarkable of these occult timescales is that of the ancient Hindus, whose astonishing concept of the earth's duration has been traced back to Manusmriti, a sacred book. According to this compilation of law and wisdom, the whole past and future of the world is but a day in the eternal life of Brahma – a day of four thousand three hundred and twenty million years, throughout which finite beings are created out of Infinite. The day of Brahma is divided into fourteen great cycles, each lasting 30,34,43000 years, together with when Brahma's night begins the finite is destined once more to merge into infinite. At present the world is in the seventh of these cycles and according to the Hindu calender recorded*

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in the Vishnu Purana it is now (A.D. 1947) 107,29,49048 years since the earth came into existence. By a curious coincidence this characteristically precise assessment is of the same order as the two thousand million years which has recently been the most favoured estimate for the age of the expanding universe."

Since the introduction of the theory of Relativity by Prof. Elbert Einstein, the concepts regarding the universe have been revolutionised. According to Einstein the space, time and matter all are relative. There is nothing which could be called Absolute. Time and space could not be separated. The astronomer looking through his telescope is looking both outward in space and backward in time, for the light reaching the earth from the states is not of today but of million of years back. We are looking at them in their form when the light left them so many millions of years back and it is quite possible that some of these stars might have ceased their existence at present. Therefore, Einstein described the Universe as a space time continuum having four dimensions-three of space and one of time. Einstein had shown that the properties of space-time continuum are disturbed wherever there is matter and motion. A star, a comet or a galaxy, says Licoln Barnett, a noted physicist distorts the geometry of the space-time through which it moves, just as a fish swimming in the water agitates the surrounding waters. Space becomes bent or curved in the region of the matter hence the paths of the planet are the results of moving through space distorted by the Sun.

As we have already seen, the space-time continuum is

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bent and distorted by the material bodies in it. If the space is curved in the region surrounding the heavenly bodies it is obvious that all matter in the universe must produce the similar effect- an overall curvature of the whole space-time continuum. The universe, must be regarded as a close system finite but unbounded and not infinite as has been supposed. On the face of it, it is beyond one's imagination to visualise a finite universe but there is nothing so mysterious about it. The surface of the earth, for example, is finite, that is having a limited or measurable area but at the same, time unbounded, i.e. one could walk around it for ever without ever reaching the end.

Einstein theorised that the universe is of such size and shape that a beam of light travelling at 1,86,000 miles per second would return to its source after about 200 billion years. (One billion is equal to one million million and the figure comes to 200,000,000,000,000). As the figure is nothing but the circumference of the universe using the formula pi 'D(Diameter)= Circumference, we can calculate the diameter of the universe.

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$$Pi=22/7: \frac{Diameter = 200,000,000,000,000x7}{22}$$

$$=\frac{100,000,000,000,000x7}{11}$$

= about 63,636,363,636,364

Light years

(One light year is the distance travelled by light in one earthly year at the rate of 1,86,000 miles per second and is equal to 5.38 million million miles)

Keeping aside for a while the Einsteinian views about the universe, let us see what the ancient Hindus

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concieved about the universe.

In the Hindu puranas the universe was considered a gigantic egg hence the name "Brahmanda'. God who is the lord of Universe is described as 'Akhilanda Koti Brahmanda Nayaka' meaning, 'The Lord of the biggest egg having innumerable cosmic spheres.' The age of the universe or the life-span of the universe is given in terms of the life span of Brahma. In Hindu chronology there are two time-scales; one the earthly scale and the other the divine scale (Deva Mana). The details of the scales are given below.

The simplest chronological unit is known as 'Prana'

6 Pranas =1 Vighatika

60 Vighatikas =1 Ghatika

60 Ghatikas = 1 Ahoratra (Day & Night together)

15 Ahoratras (Days) = 1 Paksha (Fortnight)

2 Pakshas (For nights) = I Masa (Month)

12 Masas (Months) =1 Samvatsara (Year)

=1 Divine Day

30 earthly years = 1 Divine Day (Divya Maha)

360 earthly years = 1 Divine year (Divya Vastara)

4800 Divine years or 17,28,000 earthly years = 1 Krita Yuga (including twilight period)

3600 Divine years or 12,96,000 earthly years = 1 Treta Yuga (including twilight period)

2400 Divine years or 8,64,000 earthly years = 1 Dwapara Yuga (including twilight period)

1200 Divine years or 4,32,000 earthly years = 1 Kali Yuga (including twilight period)

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12000 Divine years or 43,20,000 years (Sum total of 4 Yugas) = 1 Maha Yuga or Divya Yuga (Great epeoh)

1000 Divya Yugas or 432,00,00000 years = 1 Udaya Kalpa (Day of Brahma)

Another

1000 Divya Yugas or 432,00,00,000 earthly years – 1 Kshaya Kalpa (Night of Brahma)

2000 Divine years or 864,00,00,000 earthly years – 1 (Full day of Brahma Brahma dina)

30 such days of Brahma – 1 month of Brahma (Brahma Masa)

12 such months of Brahma – 1 year of Brahma

100 such years of Brahma = 1 Life Span of Brahma

By the end of this period the entire Universe, every galaxy, nebula, star – each and every thing perishes. This period of Universal dissolution lasts for another such life span of Brahma (100 Brahma Vatsaras) and on completion of the same new creation of everything commences again. This phenomenon is cyclic and has neither beginning nor end.

Applying this vast time scale let us calculate the age of Brahma in terms of earthly years.

1 day of Brahma = 864,00,00,000 years

1 year of Brahma = 864,00,00,000 X 360 years

1 Life Span on Brahma = 864,00,00,000 X 360 X 100 years

= 311,040,000,000,000 years (15 digits)

The modern astrophysicists place the age of the present universe as anything between 10 and 20 billion years. Let us see what it seems to

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1 Million is equal to 10,000,00

1 Billion equals to 1 Million X Million

= 10,000,00 X 10,000,00

= 100,000,00,00,000

10 Billion = 10 X 100,000,00,00,000

= 1,000,000,00,00,000 (14 digits)

20 Billion = 2,000,000,00,00,000 (14 digits)

Now let us calculate the present age of the Universe as per the Hindu scriptures. At present Brahma has completed his fifty Divine years of life and is in his fifty first Divine year.

1 Divine year = 8,640,000,000 X 360 earthly years

50 Divine years = 50 X 8,640,000,000 X 360 years

= 155,520,000,000,000 (15 digits)

A comparison of both the above figures clearly shows that while the modern astrophysicists, figures are very conservative the Hindu calculations are most accurate.

During the current fifty first year 1,972,949,096 (By 1995) years were over. Hence the total age of the universe at present comes to 155,520,000,000,000 plus 1,972,949,096 i.e. 155,521,972,949,096 years.

A comparison of both the above figure shows that while the figures of the modern astrophysicists are very conservative, the figures arrived at by the Hindu calculations are most accurate. The reason is that while the former are conjectural the latter are based on scientific facts.

It was already mentioned that as per Einsteinian view since the Universe is such that a beam of light

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travelling at a speed of 1,86,000 miles per second would return to its source after 200 billion years – Light rays are supposed to travel in straight lines. In such a case how it would be possible for the light rays to undergo several bends and come back to its original source? Even a third grade star like the Sun could deflect light rays passing nearby. Einstein perdicted this and also practically showed it during a solar eclipse. Thus he proved that light also is having mass based on which his popular formula e = mv was conceived. There are billions and billions of stars which are very very massive than the Sun in the universe. Many such stars devour the light coming to them becoming black hole while others deflect that light rays passing nearby. Thus the light rays undergo several deflections and finally come to the original source. As per this Einstenian concept it was calculated that the Universe is having a circumfrence of 200 Billion light years and the diameter of 63,636,363,636,364 light years. Thus Einstein believed that the universe is finite having these dimension.

200 billion = 1,000,000 X 100,00,00 X200

= 200,000,000,000,000 (15 digits)

It is curious to note that the life span of Brahma also is having such a staggering figure.

Life span of Brahma = 311,040,000,000,000 years

(15 digits)

Could it be just a coincidence? Does it indicate the size of the Universe? If so it is the most accurate calculation."

4154. This document further appears to have been filed to

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show the manner in which the stone inscription of 1992 was deciphered, but now, in our view, it is wholly irrelevant since K.V. Ramesh OPW 10 has submitted his own translation and transliteration in English which all the parties have admitted that it is the most authentic one and his competence and expertise on the subject admits no doubt.

4155. F.E. Pargiter tried to find out historicity in the matter by tracing out the genealogy. In his "**Ancient Indian Historical Tradition**" he collected list of rulers and dynasties based on traditional Sanskrit sources. He could successfully find the chronology tracing back about three thousands of years but find some gaps missing links etc., hence rejected it by observing that it is entirely a myth. It is normally difficult to a common man to trace out his own genealogy by five or ten stages back, and, here a person who had no knowledge of local faith, belief etc., from here and there tried to find out chronological list of hundreds of predecessors, going in thousands of years, and yet when found some alleged manuscripts or some descriptions in certain books creating some confusion, easily accepted the easier mode of wriggling out of it by terming it a myth. Probably the reason might be that they were working under a concept of Christian methodology at that time that the world itself was created 4004 BCE. He also might be under the conventional wisdom of Max Muller's theory of Aryan invasion in Indian sub-continent who presumed that Indian civilization began only when the Aryans allegedly invaded from the side of Indus in about 1500 BCE. It is probably for this reason that he was not able to go beyond that. Something is really disturbing with these kind of disputes. Doubts normally are not raised or tried to be avoided in the

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matters of other religions. The dispute of Al Aqsa in Jerusalem where the Farmosque is and treated to be the third most pious place by muslims since they believe that Prophet Muhammad descended thereat after visiting heaven, nobody even doubts their faith but one can always ask a question that Jerusalem is not mentioned in Quran at all while Mecca and Madina words have been used innumerably then what is the evidence for such belief but then one must understand and appreciate that in the matter of faith and religion such things cannot be asked. A religion itself means if some people believe something and worship as a matter of right, since the time immemorial, the others must not raise any doubt. Simple logic is that failing to find evidence to something does not necessarily result in that the thing does not exist.

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4156. The issues which have been framed and up for consideration by us are causing a bit complication inasmuch as issue 11 (Suit-4) says, "is the property in suit the site of Janambhumi of Sri Ram Chandraji". It does not talk of whether this question has to be considered in the context of tradition, faith and belief of Hindus, or, that like an ordinary property dispute, we are really required to answer where Lord Rama was born actually. If this be so, the issue requires us to perform an impossible task. On the one hand, qua the property in dispute when question arises whether it was actually constructed by Babar, and whether he actually dedicated or not, the submission is that the matter travels in history and, therefore, direct evidence for an event occurred such a long time back may not be possible, hence the issues must be decided in the light of the traditions etc. and other circumstantial things. But here, where

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the period of Lord Rama ranges in several thousands and lacs of years, can it be said that the question where he actually born, be decided by a Court of Law by collecting positive evidence on this aspect and any party will be able to do it.

4157. The issues pertaining to history cannot be decided like this and to us it appears that by necessity we have to treat the issues 11 (Suit-4), 1 (Suit-1) and 22 (Suit5) as if we are required to answer the common question whether the property in suit is the site of birth of Sri Ramchandra Ji according to tradition, belief and faith of Hindus in general, otherwise this kind of dispute will create inroads to a very serious and dangerous arena which we cannot allow.

4158. Let us now proceed to find out as to how Ayodhya and Lord Rama inter se are considered by the parties before us and what has been said in brief by their witnesses.

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4159. Regarding the identity and importance of Ayodhya, the statements of some of the witnesses of plaintiffs (Suit-4) are as under:

(a) P.W. 6 Mohammad Unus Siddiqi

''यह ठीक है कि हिन्दू लोगों में इस बात की आस्था है कि अयोध्या भगवान राम के नाम से जुड़ी हुई है।''(पेज 20)

"It is true that it is a matter of faith for Hindus that Ayodhya is linked with the name of Lord Rama."(E.T.C.)

(b) PW 8, Abdul Ajij

''यह ठीक है कि अयोध्या हिन्दुओं की एक तीर्थस्थली है। बहुत दूर–दूर से हिन्दू लोग वहॉ आते हैं।'' (पेज 33)

"It is true that Ayodhya is a pilgrimage of Hindus. Hindus come here from far off places." (E.T.C)

(c) PW 10 Mohammad Idris

''अयोध्या एक मजहबी शहर है, वह हिन्दुओं का भी मजहबी शहर है और

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मुसलमानों का भी मजहबी शहर है। . . . . .यह ठीक है कि अयोध्या में मन्दिरों की भरमार है।'' (पेज 33–34)

"Ayodhya is a religious town. It is a religious town for Hindus and so is it for Muslims. . . . . It is true that Ayodhya has plenty of temples."(E.T.C)

(d) PW 21 Dr. M. Hashim Kidwai

''यह सही है कि राम चन्द्र जी का जन्म अयोध्या में हुआ था। यह सही है कि हिन्दू लोग अयोध्या में भगवान राम के जन्म स्थान पर दर्शन करने सदियों से जाते है।'' (पेज –77)

"It is true that the birth of Ram Chandra Ji took place in Ayodhhya. It is true that from centuries, Hindu community have been visiting the birthplace of Lord Rama for Darshan." (E.T.C.)

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''यह ठीक है कि अयोध्या हिन्दुओं की एक महत्वपूर्ण तीर्थस्थली है यह भी ठीक है कि अयोध्या में भगवान श्री राम का जन्म हुआ था। सभी हिन्दू इस बात को नही कहते कि भगवान राम का जन्म उसी भूमि पर हुआ था जहां बाबरी मस्जिद बनी है। यह ठीक है कि कुछ हिन्दू की ऐसी मान्यता है कि यह भगवान श्री राम की जन्म स्थली है।'' (पेज –83)

"It is true that Ayodhya is a significant pilgrimage of Hindus. It is also correct that birth of Lord Rama took place in Ayodhya. All Hindus do not say that the birth of Lord Rama took place on that very land where Babari Mosque is constructed. It is correct that some Hindus believe that it is the birthplace of Lord Sri Rama." (E.T.C.)

(e) PW 25 S.M. Naqvi

''जो तीर्थयात्री अयोध्या में दर्शन के लिए आते हैं वह और सब स्थानों के अलावा बाबरी मस्जिद के पास जो सीता रसोई कहा जाता है और राम चबूतरा कहा जाता है वहां तक आते हैं और श्रद्धा जरूर पेश

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करते होंगे और श्रद्धानुसार फूल और बताशे चढ़ाते हैं।'' (पेज 51)

"Such pilgrims, who come to Ayodhya for 'Darshan' (offering of prayer by Hindus in temple), apart from other places, also visit the place called 'Sita Rasoi' & 'Ramchabutara' near Babri masjid and must be offering their devotion and offer flowers and sweets as per their devotion." (E.T.C.)

4160. So far as the witnesses of Hindu parties are concerned, they all have said unequivocally that according to their faith and belief Lord Rama was born at Ayodhya and the disputed site is the place where Lord of Lord manifested. The relevant part thereof we may refer a bit later.

4161. We are aware that the antiquity, history etc. of a place or personality would not solely depend upon the oral statements of some persons who could not have any personal knowledge of the matter. This appears virtually admitted on the part of the muslim parties also and it is probably for this reason, under Order X Rule 2 CPC, statement was made by all the learned counsels appearing for Muslim parties, about the faith and belief of Hindus that Lord Rama was born at Ayodhya or that it is this very Ayodhya in respect whereto the above faith exists, they have no reason to dispute it, and their dispute is confined only to the site in question as to whether the place of birth of Lord Rama can be zeroed down thereto or not, legally and otherwise.

4162. The counsel for the parties virtually were unanimous that these aspects can be seen better in the light of the historical and other texts which may reflect upon it and give some idea on the subject. Having considered the issue in detail we find that

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the work of Historians and experts as they claim, and the recorded material, which we have in the form of books, can broadly be categorised in two.

(1) The books written before or till 1600 AD (hereinafter referred to as "pre-1600 AD"; and,

(2) The books written after 1600 AD (hereinafter referred to as "post-1600 AD").

4163. The reason for making the above distinction though to some extent is apparent, but we propose to give its detail. At this stage, it would be suffice to mention and remind us that the books falling in the first category, i.e. pre-1600 AD mostly consist of Hindu, Jain, Baudha and Muslim literature written by the persons of these communities, in limited way some chronicles, and also include the published material of certain travellers from other countries like China etc. In the later category, i.e. post-1600 AD the published material consist of the history books mostly written by Europeans as well as English translation of pre 1600 AD literature, which was originally written in languages like Sanskrit, Turkish, Persian etc. as also the travellers account of persons mostly European, visiting Indian sub-continent.

4164. It is no doubt true that pre-1600 AD literature is a bit scattered, lack at several places, clarity and specificity, and leaves at times one to guess or assume something while the post-1600 AD material is more specific and concrete but tainted and tampered or written without understanding the true context and facts. It has to be relied and handled cautiously since it is more based on informations received by the authors other than first hand information. When something is written on the basis

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of information received, the source from which the information has been received, the extent of clarity with which the information is conveyed the credibility of the informant as well as information, whether the information has been given impartially or with a biased mind, capacity and extent of understanding of the person receiving information, his capability of putting the same on paper, the extent of accuracy and several other similar factors would have to be considered otherwise the ultimate inference may result in drastic consequences.

4165. The Indian history in post 1600 AD has primarily been written by Europeans claiming that the same is based on an in-depth study of old manuscripts of Indian Literature as also the information they have collected from the available Indian Historians and local people. Though the printed material pre 1600 AD is also available but we cannot term it as primary source of evidence since the material is published later on and we have no manner of comparing the same with the primary source. The original manuscript is not available and in many of cases cannot be available at all.

4166. Normally one ought to proceed chronologically but since post 1600 authors have claimed their work to be very authentic and reliable, we intend to proceed in a reverse manner, i.e., first to consider and refer some of the historical and other books written in post 1600 AD and thereafter revert back to pre 1600 AD.

4167. The historical literature in post 1600 AD mostly has its credit to the people who came in India as merchants from England and turned the entire chapter of history in this part of

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Asian Continent. Prior to it, one noticeable event is the visit of Vasco-da-Gama on 20th May 1428 alongwith four ships and 118 sailors. It is said that the route was guided to him by an Indian sailor. He returned to Lisbon with a cargo, the value of which it is said, was 60 fold the cost of his voyage to India. This opened the eyes of Europeans in the entire continent and thereafter attempts from different countries like England, France etc. were made to enter into trade with India. On 24th September, 1599 a group of merchants formed an association for entering into free trade in East Indies. Queen Elizabeth granted a Charter on 31st December, 1599 to Governor and Company of Merchants of London to trade freely in the East. Though it was not necessary to seek for a charter but the Company had two reasons for the same. One, to assure a reasonable prospect of success in the adventure the Company asked for a trade monopoly and special privileges which by the constitutional practice of the time could be conferred only by the Crown; and secondly; to make association sufficiently powerful to negotiate and deal with Indian potentates, to count on state aid, to drive off European competitors and to enforce discipline among its own servants.

4168. It is said that to begin with the East India Company had only 101 shareholders and could collect a sum 30133 pounds, 6 shillings and 8 pence only. Later on it was increased and reached up to 68373 pounds and number of shareholders increased to 217. The shareholders included besides merchants and traders, grossers, leather sellers, dyers, tailors and goldsmiths. The East India Company was tempted to enter into trade with Indian continent after being impressed with its economic prosperity. Some of the comments made by

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Europeans supports it. Shakespeare called India as the "climax of the greatest opportunities in the world". The German philosopher Hegel in his book **"The Philosophy of History"** Newark 1956 Edition, page 142 described it as the "land of desire". The Vasco-da-gama himself called India as "Golden India" and Adam Smith said that "India was one of the wealthiest ancient country."

4169. The wealth drained out by the East India Company is an eye opener. James Mill in **"History of British India" Vol.-I** at page 22-23 has said that English East India Company in a short span made huge profits. In seven out of eight expeditions during 1603 AD to 1613 AD it made profits in general more than 200 times on the capital of the voyage. In 1600, in the First Charter granted by Queen Elizabeth, the company was described as "Governor and Company of Merchants of London trading into east Indies". It granted exclusive right of trading into and from the East Indies, in the countries and Ports of Asia and Africa, and into and from all the Islands, Ports, Harbours, cities, creeks, towns and places of Asia and Africa, America or any of them, beyond the cape of Bona Esperenza to the straits of Magellan for a period of 15 years. This grant was conditional on the trade proving profitable to the realm. This Charter was renewed by James First in 1609 AD and made "perpetual subject to determination after three years notice on proof of injury to the nation". Before 1612 AD, the members attributed on each occasion towards expenses of the each voyage reaping the whole profits of his subscription. In 1612 AD Joint Stock System was introduced and in the next four years, i.e., 1613 to 1616 AD the Company made a total profit of 87.5%. Maurice

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Doble in "Studies in the Development of Capitalism (London, 1946)" at page 192 has mentioned that in 1617 AD the Company made a total profit of pounds 10 lacs on a capital of pounds 2 lacs. In 17th century AD the Company averaged a rate of profit of about 100%. The fortune it conferred to British youngsters was such that they become overnight affluent and rich. Thomas Pitt (1643-1726 AD), the grandfather of William Pitt became a multimillionaire in India and used to be called "Diamond Pitt" while Elihu Yale (1648-1721 AD) became one of the richest man in England. It is for this reason that no occasion of determination of Company did arose and instead the powers were enhanced from time to time vide Charters of 1661, 1669, 1677, 1683, 1686, 1726, 1753 and 1758 AD. We do not propose to give British history of India but in order to understand the mindset, the purpose, the objective, the motive, the degree of fairness in appreciation or understanding of the things etc. by the European authors in post 1600 AD probably each and every factor has to be examined since it has a cumulative effect which reflects in the mind and opinion of a person while making an observation in respect to life style of the natives including religious, cultural and other aspects of a country like India. Some of the broad features of the Charters referred above may be reminded at this stage in brief.

4170. Charter of 1661 AD empowered the Company to appoint Governors and other officers for the Government of Fortress, the dispatch ammunitions and wire material for defence of their factories, to erect poles and to appoint commanders and other officers with power to make peace and war with non-Christian nations. For better administration of

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justice the Governor and Council of each factory were authorised to judge all persons living under them, in all causes whether civil or criminal. Charter of 1669 AD granted to the Company, the Port and Island of Bombay investing it at the same time with powers of their civil and military government. The Company was authorised to coin money at Bombay by Charter of 1677 AD. Charter of 1683 AD granted full powers to Company to raise military forces, to exercise martial law in case of foreign invasion or domestic insurrection and to make peace and war with "heathen" nations. A Court of Judicature consisting of "one person learned in civil law" and two Assistants was established to adjudge mercantile and maritine cases. Charter of 1686 AD empowered it to raise naval forces, to appoint Admirals and other sea officers and to coin money in their Forts. One year thereafter, by virtue of power conferred by Crown, a Municipality was established at Madras.

4171. The progress and development of the Company caused some legal battle in England as others were also vying for entering in trade with East Indies. A question was raised in 1683-85 AD in East India Company Vs. Sandys, whether the Crown had the prerogative to grant a trade monopoly without the authority of parliament. The issue was decided in favour of the Company. Again in 1691 AD the issue was raised before the Privy Council but decided in favour of the Company. However, the Company when detained a private ship "Red Bridge" in the Thames alleging that it was bound for countries within the Charter limits of the Company, the legality of detention was questioned and brought to the notice of Parliament whereupon in 1694 AD a resolution was passed that all subjects of England

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had equal rights to trade with the East Indies unless prohibited by Act of Parliament. Consequently, by Act of 1698 AD trade monopoly was secured to the Company in return for loans made to the State from time to time. In 1708 AD the controversy of trade monopoly came to an end due to amalgamation of various companies under the name of "the United Company of Merchants of England Trading with the East Indies" and this name continued up to 1831 AD. The Company had expanded its activities to much wider fields and for effective management and operation thereof by Charter of 1726 AD Municipal and Judicial Institutions at Bombay, Madras and Calcutta were reorganised; Mayor's Courts were established by the Crown by Letters Patent and the Governor and Council of each Presidency were conferred powers of legislation in respect of inhabitants of towns and factories under their control. Charter of 1753 AD empowered for setting up of Courts on request for trial of petty cases. Suits and causes in which both the parties were Indians or non-European were excluded from the jurisdiction of the Mayor's Courts and directed to be determined amongst the parties themselves. Act of 1754 made provision for military forces of the Company corresponding to the provisions in the English Mutiny Acts. It also made offences committed by the Company's Presidents and Councils cognizable and punishable in England.

4172. Then came the moment which marked the process of English domination in India. The British Company won battle of Plassey in 1757 AD. This victory laid foundation of British supremacy in Bengal, Bihar and Orissa and paved way for the conquest in Northern India. Consequently by Charter of 1758

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AD the Company was empowered to cede, restore, or dispose of fortresses, districts or territories acquired by conquest from Indian princes or Governments. Almost all the historians are in unionism in observing that this was the situation created in India by sudden collapse of Mughal empire. Within half a century of the death of Emperor Aurangzeb, the Mughal empire fell to pieces. Sikhs shattered it in Punjab, Marathas rose to supremacy in Peninsula, Rajput States declared their independence, the Governors in Oudh, Bengal and Deccan threw off their allegiance and Afghan soldier of fortune seized Rohilkhand. Two Maratha warriors, Holker and Sindhia partitioned Malwa founding new dynasties. In this state of confusion and anarchy, two strong European powers though rival, i.e., French and English East India Company established their foothold. The French East India Company which was also initially a mere trading concern, possessed the districts of Pondichary and Carical as well as a number of factories and forts at Surat, Mahi and Chandar Nagar. However, its influence in Deccan was watered down and shattered by the victories of Clive in 1752 AD. The battle of Plassey in 1757 AD made English Company virtually master of Bengal, Bihar and Orrisa.

4173. In 1760 AD Clive obtained the grant of Northern Sirkars for the Madras Government and in 1765 AD, to be more precise on 17th August, 1765, Emperor Shah Alam conferred on the Company “Deewani” or the right of collecting revenue and administering civil justice in Bengal, Bihar and Orrisa in return for any early payment of 26 lacs of rupees. Victory in Plassey battle made the company sovereign de facto in relation to Bihar, Bengal and Orissa and grant of Diwani made them sovereign de

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jure. This progress of the Company sought to be shared by the Crown in England and the Parliament passed in 1767 AD five Acts with reference to Indian affairs.

4174. To begin with, the Company was required to deposit into English Government's Exchequer an annuity of pound 4 lacs as a tribute to the State in consideration of their retaining the territorial acquisition and their revenue. In "Company India, A Comprehensive History of India (1757-1858)", J. Kumar at page 65 has observed that Company took advantage of its becoming de facto de jure sovereign after battle of Palasy and its servants collected a huge sum inasmuch as within less than a decade of the battle of Palasy two million pounds sterling from Bengal reached into pockets of the Company's servants by way of presents and other means. This resulted in Regulating Act, 1773 and Pitt's India Act, 1784.

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4175. The ways in which the Company servants manage their affairs, Sir William Meredith said "*merchants sovereigns are always dangerous for their rule of selling is to take as much as they please, and the rule by which they bye is to pay as little as they please*". Regulating Act, 1773 appointed a Governor General and four Councils for the Government of Presidency of Fort William in Bengal. The Governor General and Council were given the power of superintending and controlling the Governments and the Presidencies of Madras, Bombay and Bencoolen (in Sumatra) which were required to pay due obedience in matters relating to peace and war and negotiations of treaties with Indian princes or powers. The Governor General and Council were also authorised to make and issue, Rules, Ordinances and Regulations for the good order and civil

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government of the Company's settlement and Fort William and other factories and places subordinate, as were deemed just and reasonable. These rules and regulations, however, were not to have the force of law until registered in the Supreme Court with its assent and approbation. It is said that the object of this proviso was to secure the conformity of Indian laws with the fundamental laws of England. The rules and regulations, however, could further be disallowed by the King in Council. The Government of two minor Presidency were required to send to the Bengal Government copies of all of their regulations and orders but the Governor General and Council were not empowered to legislate for the territories of Madras and Bombay. The Crown was empowered to establish by Charter and letters patent, a Supreme Court of Judicature at Fort William consisting of a Chief Justice and three other judges, who were barristers of at least five years standing and were appointed by the Crown.

4176. We need not detail as to how the things functioned under this Act but the history books show that the sharp controversy between the Governor General and Council and the Supreme Court made the Governor General powerless before his own Council, the Council was powerless before the Supreme Court and the Supreme Court was immune from all responsibility for the peace and welfare of the country. Lord North on 9th April, 1781 observed in the House of Commons that it was desirable that the Governor of Bengal might in future be something more than a mere primus interpares. He further observed, "*for his part he was an enemy to absolute power, but if the genius, the habits and religious prejudices of India were*

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inconsistent with a free Government, the necessity would justify Parliament with a degree of absolute power, to be exercised by him with moderation and distinction."

4177. This resulted in Bengal Judicature Act 1781 providing that the Supreme Court had no jurisdiction in matters concerning revenue or any act done in the collection thereof according to the usages of the country, or the regulations of Governor General and Council and that judicial officers of the Company's Courts were not liable in the Supreme Court for acts done in judicial capacity. The Governor General and Council were recognised as having appellate jurisdiction from the judgements of the Company's Courts. The Governor General and Council were empowered to make regulations for the Company's Courts which would not require registration in the Supreme Court. It provided that Rules and forms for the execution of process in Supreme Court were to be accommodated to the religion and usages of the people of India. The Supreme Court's jurisdiction as regards Indian was limited to the town of Calcutta. It further laid down that questions of inheritance and succession to land, rents and goods, and all matters of contract and dealing between party and party, were to be determined in the case of Muhammadans by the laws and usages of Muhammadans and in the case of Hindus by the laws and usages of Hindus.

4178. Though not directly but here was the time when simultaneously some other got indulged themselves to understand the culture & history of this part of the sub-continent. The first hurdle was language. The literature was in Sanskrit. Thus process of its translation commenced. The

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"**History of Sanskrit Literature**" (1859) shows that major part of the translation work started in the later part of 18th century. Earlier, in 1651 AD "Abraham Roger" translated Sanskrit poet "Bhartrihari" into Dutch. Thereafter Voltaire in his essay "*Essai sur les Moeurs et l'Esprit des Nations*" shows his enthusiasm greeting the lore of the "Ezour Vedam", a work brought from India and introduced to his notice in the middle of the last century. It is said that this work was later proved to be a forgery made in the 17th century by a Jesuit Missionary. Thereafter one Dugald Stewart, Philosopher wrote an essay endeavouring to prove that not only the Sanskrit literature but also the Sanskrit language was a forgery made by the crafty Brahmans on the model of Greek after Alexander's conquest. Warren Hastings, the then Governor General, East India Company viewed in the advantage of ruling Hindus as far as possible according to their own laws and customs and caused a number of Brahmans to prepare a digest, based on the best ancient Indian legal authorities. An English version of this Sanskrit compilation, made through the medium of a Persian translation, was published in 1776.

4179. The first European said to have acquired knowledge of actual Sanskrit writing is said to be "Charles Wilkins" at Benares who got published in 1785 a translation of "**Bhagwad-gita", or "The Song of the Adorable One**" and two years later a version of the well known collections of Fables entitled "**Hitopadeca"** or **"Friendly Advice**".

4180. Thereafter the subsequent historians give real credit to "Sir William Jones" who in his brief stay of 11 years in India first aroused keen interest in the study of Indian Antiquity by

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founding “Asiatic Society of Bengal” in 1784, having acquired knowledge of Sanskrit, published translation of “**Shakuntala**” in 1789 which was appreciated by several other judges like Herder and Goethe and thereafter he translated “**Code of Manu**”.

4181. The first British Historian, who is said to have adventured on the Indian History is **James Mill**, author of **“History of British India”**. In “**Autobiography J.S. Mill**” London, reprinted in 1958, it is said that Mill was born in 1773 at a village in Scotland. His father (also called James) was a petty shoe maker and his mother Isabel Fentan was a farmer's daughter. He got higher education in the University of Edinburgh at the expenses of a fund established for educating young men of the Scottish Presbyterian Church. However, he had forsaken the Church and for a few years was a private tutor in various prominent families in Scotland. Thereafter, he came to England where he adopted journalism for his livelihood and wrote a number of articles in journals and periodicals like, Edinburgh Review, West Minister Review, London Review, Annual Review, etc. He also drafted some articles in Volume V of Encyclopaedia Britannica. In 1808, he came in contact with Jeremy Bentham. In 1819, he got a job and was appointed as Assistant Examiner of Correspondence at India House and served the East India Company till his demise in 1836. Thus, James Mill had never been in India, knew no Indian language and lacked personal acquaintance with Indians. His writing, however, in respect to India consisted of a number of articles, reviews, voluminous correspondences and despatches to the various authorities of the East India Company during 1819 to 1836, and a book. Some of his articles, namely, “Affairs on

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India" (1810), "Wilk's History of Mysore" (1811), "East India Monopoly" (1812), "Malcolm on India" (1812) were published in Edinburgh Review during 1810-12. His famous work on India is "**History of British India**". It is said that he started work on this book in 1806 and in 1817 three volumes were first published. Again it was published in 1820. It was published in six volumes in 1826. During 1840-48, it was published in nine volumes with notes and contents of H.H. Wilson and in 1858 and 1872, it was reprinted in ten volumes.

4182. James Mill set out to display the history, character, religion, literature, arts and laws of India besides explaining the influence of the Indian climate. He aimed to look at the accumulated information of India within a wider theoretical frame work. The work begins with a preface in which Mill makes virtues of having never visited India and of knowing none of its native languages. To him these are guarantees of his objectivity and he says:

> *"A duly qualified man can obtain more knowledge of India in one year in his closet in England than he could obtain during the course of longest life by the use of his eyes and years in India."*

4183. Mill treated his work a monumental one and came on in his preface to say that his work is a critical, or judging history encompassing singularly harsh judgements of Hindu customs and denouncements of a backward category notable for superstition ignorance and the mistreatment of human.

4184. In the fifth edition of "**History of British India**" edited by H.H. Wilson, in the preface the editor mentioned something about the knowledge gained by James Mill for

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writing the said book and has commented on the same as under :

> *"He acknowledges that his opportunities of consulting alleged authorities were sometimes transient and precarious, i.e., something unpublished documents of which he had need were not accessible to him; and that in the later portion of his work which may be regarded as almost temporary history, he was in want of much personal information which he believed to accept and might have rendered his narrative richer and perhaps more accurate in matters of detail."*

4185. The same editor has further commented about the lack of knowledge of the Country and unacquaintance by James Mill. He has observed *"Besides the defects occasioned by incomplete material, the History of British India presumes inaccuracies both of facts and opinion; which have arisen from the author's imperfect knowledge of the Country and unacquaintance with any of the language spoken in it. He has taken great pains to prove that these defects are of no consideration and that he had never been in India and is possessing but a slight and elementary acquaintance with any of the languages of the east are to be regarded rather as qualification than disqualification for the task which he had undertaken. His arguments are ingenious; they will carry conviction but to few. It is true that residence in a Country command of its dilates converseries, with its literature are but humble elements in the formation of the historical character but they are elements and cannot be disregarded without injury to the inconsistencies of incompleteness of the whole. It is also true that there are many circumstances in the position of the servants of*

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the East India Company which are unprofitious to the development and cultivation of the talent and knowledge requisite to constitute a historian of India; but, although these circumstances may counter balance in the individual themselves; observatory benefits derivable from personal observation though do not therefor invalidate the reality of those benefits or render local sketch altogether valueless and may be reservation that no one person of the many who have been engaged in official duty in India or how have earned distinction as oriental scholar has yet brought to the attempt to write a history of India, the same degree of fitness as Mr. Mill; yet it cannot but be felt had Mr. Mill passed but a short time in the Country or been but moderately versed in any ....."

4186. He further wrote, *"Acquaintance with the language and literature of India would have resolved Mr. Mill from some other mistaken conclusions. He states it as his conviction that even when he wrote, a sufficient stalk of information had been collected in the languages of Europe to enable and enquirer to ascertain every important point in the history of India. As far as this assertion may be considered applicable to the European part of Indian history. It is inconsistent with the defense history he had himself indicated. It is still more incorrect when applied to the history of the Hindus and Mohammedans of Hindustan. .....In the journals of several Asiatic Societies and the publications of various Hindu scholar's information almost entirely new and of exceed interest has been obtained within the last few years relating to the religion, philosophy and ancient history of Hindus whilst their later forbit ion ..... has been ..... illustrated by the history of Maratha's and Annals of Rajasthan, until, however,*

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some of of the Puranas and the chief portion of the Vedas shall have been translated. It is safe to speculate on the point of scope and character of the primitive institutions of the Hindus and of more recent period, it is still essential to extend investigation in those chronicles of the native States which are known to have existence. ....."

4187. He further observed about prejudices of the author, *"Exceptions even more comprehensive may be taken to his opinion. In many incidents, the intensity of his prejudices has dimmed the clarity and has blunted the acquittance of his intelligence."*

4188. Then comes "Henry Thomas Colebrooke" who got published several texts, translation and essay of Sanskrit literature. Alexander Hamilton, an Englishmen, who it is said had acquired knowledge of Sanskrit in India happened to be passing through France on his way home in 1802 AD.

4189. The one longest work running in about 50 volumes we got is known as **Max Muller "Sacred Books of East"**. He is better known for his extraordinary work in publication of the series of books under the title "*Sacred Books of the East*" running in 50 volumes. He was born on 6th December, 1823 in Dessau (Germany). His full name is **Friedrich Max Muller**. His father **Wilhelm Muller**, was a romantic poet and his mother **Adelheide Muller** was the eldest daughter of a Chief Minister of Anhalt-Dessau. He entered Leipzig University in 1841 where he left his early interest in music and poetry in favour of philosophy. He received Ph.D. in 1843 for a dessertation on *Spinoz's Ethics*. He also displayed an aptitude for languages, learning the Classical languages Greek and Latin, as well as

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Arabic, Persian and Sanskrit. In 1844, he went to Berlin to study with **Friedrich Schelling**. He began to translate the Upanishads for Schelling, and continued to research Sanskrit under Franz Bopp (the gentleman is considered to be a first systemic scholar of the Indo-European languages). Schelling led Muller to relate the history of language to the history of religion. At this time, Muller published his first book, a German translation of the Hitopadesa, a collection of Indian fables.

4190. In 1845, he moved to Paris to study Sanskrit under Eugene Burnouf. It is said that it is Burnouf who encouraged him to translate the complete Reg Veda, using manuscript available in England.

4191. In 1846, Muller moved to England so as to study Sanskrit texts in the collection of the East India Company. For supporting himself, Muller wrote a novel German Love claimed to be popular in those days. His connections with the East India Company and with Sanskritists based at Oxford University led to a career in Britain, where he became the leading intellectual commentator on the culture of India which Britain controlled as part of its Empire at that time. It is said that this led to complex exchanges between Indian and British intellectual culture, especially through Muller's links with the Brahmo Samaj. Muller became a member of Christ Church, Oxford in 1851, when he gave his first series of lectures on comparative philology. He gained appointments as Taylorian Professor of Modern European Languages in 1854 and as Professor of Comparative Philology at Oxford. Subsequently in 1860, he was defeated in the competition for the tenured Chair of Sanskrit but later on became Oxford's first Professor of Comparative

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Theology (1868 – 1875), at All Souls College.

4192. Muller attempted to formulate a philosophy of religion that addressed the crisis of faith engendered by the historical and critical study of religion by German scholars on the one hand, and by the Darwinian revolution on the other. Muller was wary of Darwin's work on human evolution, and attacked his view of the development of human faculties. His work was taken up by cultural commentators such as his friend John Ruskin, who saw it as a productive response to the crisis of the age (compare Matthew Arnold's “Dover Beach”). He analyzed mythologies as rationalizations of natural phenomena, primitive beginnings that we might denominate “protoscience” within a cultural evolution; Muller's "anti-Darwinian" concepts of the evolution of human cultures are among his least lasting achievements.

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4193. Muller shared many of the ideas associated with Romanticism, which coloured his account of ancient religions, in particular his emphasis on the formative influence on early religion of emotional communion with natural forces.

4194. Muller's Sanskrit studies came at a time when scholars had started to see language development in relation to cultural development. The recent discovery of the Indo-European (IE) language group had started to lead to much speculation about the relationship between Greco-Roman cultures and those of more ancient peoples. In particular the Vedic culture of India was thought to have been the ancestor of European Classical cultures, and scholars sought to compare the genetically related European and Asian languages in order to reconstruct the earliest form of the root-language. The Vedic

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language, Sanskrit, was thought to be the oldest of the IE languages. Muller therefore devoted himself to the study of this language, becoming one of the major Sanskrit scholars of his day. Muller believed that the earliest documents of Vedic culture should be studied in order to provide the key to the development of pagan European religions, and of religious belief in general. To this end, Muller sought to understand the most ancient of Vedic scriptures, the Rig-Veda.

4195. Muller was greatly impressed by Ramakrishna Paramhansa, his contemporary and proponent of Vedantic philosophy, and authored several essays and books on him.

4196. A 1907 study of Muller's inaugural Hibbert Lecture of 1878 was made by one of his contemporaries, D. Menant. It argued that a crucial role was played by Muller and social reformer Behramji Malabari in initiating debate on child marriage and widow remarriage questions in India.

4197. For Muller, the study of the language had to relate to the study of the culture in which it had been used. He came to the view that the development of languages should be tied to that of belief-systems. At that time the Vedic scriptures were little-known in the West, though there was increasing interest in the philosophy of the Upanishads. Muller believed that the sophisticated Upanishadic philosophy could be linked to the primitive henotheism of early Vedic Brahmanism from which it evolved. He had to travel to London in order to look at documents held in the collection of the British East India Company. While there he persuaded the company to allow him to undertake a critical edition of the Rig-Veda, a task he pursued doggedly over many years (1849 - 1874), and which resulted in

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the critical edition for which he is most remembered.

4198. For Muller, the culture of the Vedic peoples represented a form of nature worship, an idea clearly influenced by Romanticism. He saw the gods of the Rig-Veda as active forces of nature, only partly personified as imagined supernatural persons. From this claim Muller derived his theory that mythology is 'a disease of language'. By this he meant that myth transforms concepts into beings and stories. In Muller's view 'gods' began as words constructed in order to express abstract ideas, but were transformed into imagined personalities. Thus the Indo-European father-god appears under various names: Zeus, Jupiter, Dyaus Pita. For Muller all these names can be traced to the word 'Dyaus', which he understands to imply 'shining' or 'radiance'. This leads to the terms 'deva', 'deus', 'theos' as generic terms for a god, and to the names 'Zeus' and 'Jupiter' (derived from deus-pater). In this way a metaphor becomes personified and ossified. This aspect of Muller's thinking closely resembled the later ideas of Nietzsche.

4199. Nevertheless Muller's work contributed to the developing interest in Aryan culture which set Indo-European ('Aryan') traditions in opposition to Semitic religions. He was deeply saddened by the fact that these later came to be expressed in racist terms. This was far from Muller's own intention. For Muller the discovery of common Indian and European ancestry was a powerful argument against racism, arguing that "an ethnologist who speaks of Aryan race, Aryan blood, Aryan eyes and hair, is as great a sinner as a linguist who speaks of a dolichocephalic dictionary or a brachycephalic grammar" and that "the blackest Hindus represent an earlier

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stage of Aryan speech and thought than the fairest Scandinavians".

4200. In 1881, he published a translation of the first edition of Kant's Critique of Pure Reason. He agreed with Schopenhauer that this edition was the most direct and honest expression of Kant's thought. His translation corrected several errors that were committed by previous translators. In his Translator's Preface, Muller wrote, *"The bridge of thoughts and sighs that spans the whole history of the Aryan world has its first arch in the Veda, its last in Kant's Critique.…While in the Veda we may study the childhood, we may study in Kant's Critique of Pure Reason the perfect manhood of the Aryan mind.…The materials are now accessible, and the English-speaking race, the race of the future, will have in Kant's Critique another Aryan heirloom, as precious as the Veda — a work that may be criticised, but can never be ignored."*

4201. Muller's comparative religion was criticized as subversive of the Christian faith. According to Monsignor Munro, the Roman Catholic bishop of St Andrew's Cathedral in Glasgow, his 1888 Gifford Lectures on the "Science of Religion" represented nothing less than "a crusade against divine revelation, against Jesus Christ and Christianity". Similar accusations had already led to Muller's exclusion from the Boden chair in Sanskrit in favour of the conservative Monier Monier-Williams. By the 1880s Muller was being courted by Charles Godfrey Leland, Helena Balvatsky and other writers who were seeking to assert the merits of "Pagan" religious traditions over Christianity. The designer Mary Fraser Tytler stated that Muller's book *Chips from a German Workshop* (a

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collection of his essays) was her "Bible", which helped her to create a multi-cultural sacred imagery.

4202. Muller distanced himself from these developments, and remained within the Lutheran faith in which he had been brought up. He several times expressed the view that a "reformation" within Hinduism needed to occur comparable to the Christian Reformation. In his view, "if there is one thing which a comparative study of religions places in the clearest light, it is the inevitable decay to which every religion is exposed... Whenever we can trace back a religion to its first beginnings, we find it free from many blemishes that affected it in its later states". He used his links with the Brahmo Samaj in order to encourage such a reformation on the lines pioneered by Ram Mohan Roy.

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4203. He was also influenced by the work *Thought and Reality*, of the Russian philosopher African Spir.

4204. Munro had argued conversely that Muller's theories "uprooted our idea of God, for it repudiated the idea of a personal God." He made "divine revelation simply impossible, because it [his theory] reduced God to mere nature, and did away with the body and soul as we know them." Muller remained profoundly influenced by the Kantian Transcendentalist model of spirituality, and was opposed to Darwinian ideas of human development, arguing that "language forms an impassable barrier between man and beast."

(Muller, F. Max. *Three Lectures on the Science of Language, etc., with a Supplement, My Predecessors*. 3rd ed. Chicago, 1899, p. 5)

4205. We have taken all these details of Max Muller from

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the following :

1. Lourens P. van den Bosch, Friedrich Max Muller: A Life Devoted to the Humanities, 2002. Recent biography sets him in the context of Victorian intellectual culture.

1.Jon R. Stone (ed.), *The Essential Max Muller: On Language, Mythology, and Religion,* New York: Palgrave, 2002, ISBN 9780312293093. Collection of 19 essays; also includes an intellectual biography.

2.Nirad C. Chaudhuri, *Scholar Extraordinary, The Life of Professor the Right Honourable Friedrich Max Muller, P.C.* (1974)

4206. The work of Muller published in 18 volumes is as under:-

1.A History of Ancient Sanskrit Literature So Far As It Illustrates the Primitive Religion of the Brahmans (1859), 1859

2.Lectures on the Science of Language (1864, 2 vols.), Fifth Edition, Revised 1866

3.Chips from a German Workshop (1867-75, 5vols.)

4.Introduction to the Science of Religion (1873)

5.Lectures on the Origin and Growth of Religion as Illustrated by the Religions of India (1878)

6.India, What can it Teach Us? (1883)

7.Biographical Essays (1884)

8.The German Classics from the Fourth to the Nineteenth Century (1886,2Vols)

9. The Science of Thought (1887,2Vols)

10.Studies in Buddhism (1888)

11.Six Systems of Hindu Philosophy (1899)

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*12.*Gifford Lectures of 1888–92 (Collected Works, vols. 1-4)

i Natural Religion (1889), Vol. I, Vol. 2

ii Physical Religion (1891),

iii Anthropological Religion (1892),

iv Theosophy, or Psychological Religion (1893),

13. Auld Lang Syne (1898,2 Vols), a memoir

14.My Autobiography: A Fragment (1901)

15.The Life and Letters of the Right Honourable Friedrich Max Muller (1902, 2 vols.) Vol I, Vol II

4207. In a letter to his wife, he said:

The translation of the Veda will hereafter tell to a great extent on the fate of India and on the growth of millions of souls in that country. It is the root of their religion, and to show them what the root is, I feel sure, is the only way of uprooting all that has sprung from it during the last 3000 years.

(Müller, Georgina, The Life and Letters of Right Honorable Friedrich Max Müller, 2 vols. London: Longman, 1902)

4208. His wife, Georgina Adelaide (died 1916) had his papers and correspondence carefully bound; they are at the Bodleian Library, Oxford. The Goethe Institutes in India are named Max Muller Bhavan in his honour.

4209. Some of the other well known authorities made available to us are Translations in English of Hindu Religious Scriptures written in Sanskrit, by **Maurice Bloomfield, Arthur Anthony, Macdonell, F. Rosen, Rudolf Roth, F. E. Pargiter etc.** In respect to some of them, a brief biography, we may mention hereat, which would help us in appreciating the contents while considering their views on the matter and the

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extent of fairness and justness.

4210. **Maurice Bloomfield** born on 23rd February, 1855 in Bielitz (Polish:Bielsko), in what was at that time Austrian Silesia (today it is in Poland). Went to the United States in 1867 and graduated from Furman University, Greenville, South Carolina in 1877. Thereafter he studied Sanskrit at Yale, under W.D. Whitney. He stayed at Berlin and Leipzig for about two years and in 1881 returned as Associate Professor at Johns Hopkins University and was promoted soon as Professor of Sanskrit and comparative philology. In 1896 Princeton University bestowed the LL.D. degree upon him. He was considered as a Sanskrit Scholar and was an American Philologist. He translated for Max Muller's Sacred Books of the East, the "**Hymns of the Atharva-Veda (1897)**"; contributed to the section "**Atharva-Veda and gopatha Brahmana (1899)**". He was first to edit "**Kauika-Sutra (1890)**" and in 1907 published in the Harvard Oriental Series, "**A Vedic Concordance**". In 1905 he published Cerberus, the Dog of Hades, a study in comparative mythology. "**The Religion of the Veda" appeared in 1908**; "**Life and Stories of the Jaina Savior Parasvanatha**" and "**Rig Veda Repetitions**" in 1916. He died on 12th June, 1928.

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4211. Macdonell, Arthur Anthony in his book "**History of Sanskrit Literature (1900)**" has said:

> *"Hostalities breaking out afresh just then, a decree of Napoleon, directed against all Englishmen in the country, kept Hamilton a prisoner in Paris. During his long involuntary stay in that city he taught Sanskrit to some French scholars, and especially to the German romantic*

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poet Friedrich Schlegel. One of the results of these studies was the publication by Schlegel of his work "On the Language and Wisdom of the Indians (1808)". This book produced nothing less than a revolution in the science of language by the introduction on the cooperative and the historical method. It led to the foundation of the science of cooperative philology by Franz Bopp in his treatise on the conjugational system of Sanskrit in comparison with that of Greek, Latin, Persian and German (1816). Schlegel's work, moreover, aroused so much zeal for the study of Sanskrit in Germany, that the vast progress made since his day in this branch of learning has been mainly due to the labours of his countrymen."

4212. **Macdonall** has appreciated the importance of Ancient Indian Literature in the following words:

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"The importance of ancient Indian literature as a whole largely consists in its originality. Naturally isolated by its gigantic mountain barrier in the north, the Indian peninsula has ever since the Aryan invasion formed a world apart, over which a unique form of Aryan civilization rapidly spread, and has ever since prevailed. When the Greeks, towards the end of the 4th century BC, invaded the North-West, the Indians had already fully worked out a national cultural and their own, unaffected by foreign influences. And, inspite of successive waves of invasion and conquest by Persian, Greeks, Scythians, Muhammadans, the national development of the life and literature of Indo-Aryan race remained practically unchecked and unmodified from without down to the era of British

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occupation. No other branch of the Indo-European stock as experienced an isolated evolution like this. No other country except China can trace back its language and literature, its religious beliefs and rites, its customs and social customs, through an uninterrupted development of more than three thousand years.

A few examples will serve to illustrate this remarkable continuity in Indian civilization. Sanskrit is still spoken as the tongue of the learned by thousands of Brahmans, as it was centuries before our era. Nor has it ceased to be used for literary purposes, for many books and journals written in ancient language are still produced. The copying of Sanskrit Manuscripts is still continued in hundred of libraries in India, uninterrupted even by the introduction of printing during present century. The Vedas are still learnt by heart as they were long before the invasion of Alexander, and could even now be restored from the lips of religious teachers if every manuscript or printed copy of them were destroyed. ... The God Vishnu, adored more than 3000 years ago, has countless votaries in India at the present day."

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4213. Arthur A. Macdonall was a professor of Sanskrit and fellow of Balliol at Corpus Christi College, Oxford.

4214. The F. Rosen, a German Scholar got published his work on Rig-veda which actually was brought out in 1838, shortly after his premature death. But in 1846 Rudolf Roth who is called the "Founder of Vedic Philology" published "On the Literature and the History of the Veda" in 1846.

4215. "**Ancient Indian Historical Tradition**" by F.E.

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Pargiter was first published in 1922. Pargiter was a member of Indian Civil Service and retired from the office of Judge, High Court Calcutta. He sought to examine Puranik and Epic tradition as well as of the Rig-veda and Vedic literature to find out the Ancient Indian History. In his preface dated March, 1922 at Oxford he said that the current view about Ancient India is held by the scholars based upon an examination of Veda and Vedic literature but to the neglect of Puranic and Epic tradition. According to him the view of the scholars at that time was that Ancient Indian History has been fashioned out of compositions which are purely religious and priestly, which notoriously do not deal with history, and which totally lack the historical sense. Justifying his approach Pargiter said that it began with the study of the Epics and Puranas for Geographical information about Ancient India 30 years ago, during the translation of Markandaya Purana in order to elucidate its Geographical chapters. Geography included political divisions and lead to an examination of Ancient Kingdoms and so on to their dynastic genealogies and traditions-subjects that were generally regarded as of little or no historical value, and were practically included. He considered the views expressed in Journal of the Royal Asiatic Society, Journal of Asiatic Society of Bengal and Journal of America Oriental Society. He tried to find out the order of Rishis from the tradition by finding out the Chronological research from the publication “Rig-veda Repetitions” by Professor Maurice Bloomfield. He started with the preconceived notion that the evidence of language shows that Aryans entered into very early and established themselves ultimately throughout North India and in the North West of the Deccan (South).

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4216. We may clarify that neither we have any intention to make adverse comments against anyone nor we would like to condemn outright what these gentleman have done. We appreciate and acclaim their work irrespective of the reason, motive or objective. We cannot lose sight of the fact that their initiative in making the vedic texts known to public at large by translating it in English ultimately has got before us the various facets of such a rich literature which otherwise might have not known. It is their diligence which has moved the world and has generated inquest to go for further study and research in this literature. For our purposes we only intend to say that while considering the religious old dispute between the two communities in respect whereto the members of third community, may be in the capacity of their official position or otherwise, have written something which has been relied or disputed by one or the other side in one or the other way, we have to exercise due care and caution in reading and understanding their contents. The facts as stated or noticed by these authorities if taken on their face value may result if not in a mistake, then a blunder.

4217. Though learned counsels appearing for Hindu parties have commenced their submissions placing before us the Hindu Scriptures starting from Rigveda, the first book said to have been handed over by lord Brahma to Manu and thereafter several vedic and other literature but with respect to the material, which directly reflects upon the issue identifying the disputed site with the place of birth of lord Rama, we find a clear mention of these facts in the certain traverller'a account written after 1600 A.D. as well as the gazetteers published in

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18th and 19th Century onwards. The travellers account mainly relied in this regard are that Willium Finch, who visited Ayodhya between 1607 to 1611, Father Joseph Tieffenthaler between 1740 to 1760 and Minouchi which we have already reproduced while discussing the issues relating to date of construction.

4218. The History of Ayodhya as contained in various gazetteers has been placed before us in detail. Some of the part thereof we have referred to while discussing the issues relating to date of construction of the disputed building. However, regarding the issue as to the birthplace of Lord Rama at the disputed site, we may place on record the part of the gazetteers placed before us to buttress the submissions by the learned counsels for the Hindu parties. The first gazetteer is that of **Walter Hamilton**, first published in1828 (reproduced in 1993 published by Low Price Publications, Delhi under the title "**East India Gazetter**" containing particular descriptions of the Empires, Kingdoms, Principalities, provinces, cities, towns, districts, fortresses, harbours, rivers, lakes and, C. of Hindostan and the adjacent Countries, India beyond the Ganges and the eastern Archipelago. Before us is the second edition in two volumes bound in one. On page 348 under the heading 'Oude' (Ayodhya), it gives the following details :

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"Oude.

(Ayodhya.)

This is one of the smallest provinces of Hindostan Proper, and is situated principally between the twenty-sixth and twenty-eighth degrees of north latitude. To the north it is bounded by various petty districts tributary to Nepaul,

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from which it is separated by a range of hills and forests; to the south by Allahabad; on the east it has Bahar, and on the west Delhi and Agra. In length it may be estimated at 250 miles, by 100 the average breadth. The whole surface of this province is level, and extremely well watered by large rivers or copious streams which intersect the country, flowing all nearly in a south-east direction. When properly cultivated the land is extremely productive, yielding crops of wheat, barley, rice, and other grains; sugar-cane, indigo, poppies for opium, and all the richest articles raised in India. The air and climate are suited to the spontaneous generation of nitre, from the brine of which an impure culinary salt is procured by evaporation. Lapis lazuli is also a mineral production of Oude. The modern subdivisions are the same as the ancient, detailed by Abul Fazal in A.D. 1582. Of these Lucknow, Fyzabad, Khyrabad, Baraitche, with a section of Maniepoor, compose the king of Oude's reserved dominions, while the district of Goruepoor belongs to his British allies. The principal rivers are the Ganges which bound it to the west; the Goggra, and the Goomty; the chief towns are Lucknow, Fyzabad, Oude, Khyrabad, Baraitche, and Tanda.

The Hindoo inhabitants of Oude, Banares, and the Doab of the Agra province, are a very superior race, both in their bodily strength and mental faculties, to those of Bengal and the districts south of Calcutta, although the latter have fully as much acuteness, and more cunning. The Rajpoots or military class here generally exceed Europeans in stature have robust frames, and are possessed of many

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valuable qualities in a military point of view. From the long predominance of the Mahomedans a considerable proportion of the inhabitants profess that religion, and from both persuasions a great number of the Company's best sepoys are procured. Their martial habits were kept on the alert, for until the supervision of Oude was assumed by the British government the whole region was in a state of political anarchy. Every individual travelled with the prospect of having to defend himself against robbers, or of exercising that vocation himself, for both of which events he was provided. The peasantry sowed and reaped with their swords and spears, ready for defence or plunder, as the occasion offered; and the rents were collected by an irregular banditti, under the denomination of an army, which devastated the country it pretended to protect.

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Oude is much celebrated in Hindoo history as the kingdom of Dasaratha, the father of the great Rama, who extended his empire to the island of Ceylon, which he also subdued. *At an early period after the first invasion it was subdued by the Mahomedans, and remained, with different vicissitudes, attached to the throne of Delhi, until the dissolution of the Mogul empire after the death of Aurangzabe. The first ancestor upon record of the reigning family was Saadat Khan, a native of Rishapoor, in Khorasan, who was appointed soubahdar of Oude during the reign of Mohemed Shah. He was succeeded by his nephew Safdar Jung, who died in A.D. 1756, when the throne was acceded by his son Shuja ud Dowlah, who reigned until 1775. On his decease his son, Asoph ud*

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Dowlah, became his successor, and reigned until 1797, when the dignity was for a short time usurped by a spurious son named Vizier Ali, whose illegitimacy being discovered, he was dethroned by Lord Teignmouth, and the government confided to Baadet Ali, the late nabob's brother, who was proclaimed visier of Hindostan and nabob of Oude the 21st January 1798.

In A.D. 1790 the dominions of Oude occupied all the flat country lying on both sides of Ganges *(with the exception of Rampoor) between that river and the northern mountains; as also the principal portion of the fertile tract between the Ganges and Jamna named the Doab, to within forty miles of Delhi. Ever since the pacification between Lord Clive and Shuja ud Dowlah, in 1765, this territory had been protected from external enemies, its internal peace preserved, and its dominions extended by the assistance of a British subsidiary force, the expense of which was defrayed by the nabobs of Oude. Subsequent to the breaking out of the French revolution the exigence of the times compelled a large augmentation of this standing army, and the disbursements increased proportionally; but owing to the mismanagement of the nabob's financial concerns an uncertainty attended its regular payment, although his revenues, under a proper administration, were not only equal to all the necessary expenditure, but capable, as the result verified, of realizing an enormous surplus. By a fatality attending the British influence in Hindostan, it was frequently obliged, in consequence of remote treaties, to maintain on the throne weak and*

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profligate princes, who without that support would, in the natural progression of events, have been supplanted by some more able competitors. Their dominions in the mean time suffered by their vices, and their subjects were abandoned to the capacity of the unprincipled associates of their low pleasures, who by their cruelty and extortion depopulated the country, and drove the inhabitants to a state of desperation. These observations more especially applied to the Oude territories during the long reign of Asoph ud Dowlah, and as an opportunity now occurred, the members of the Bengal presidency deemed it a duty imposed on them to endeavor to procure for the natives a better system of government, and at the same time remove the uncertainty which attended the payment of the subsidiary force.

In 1807 an extraordinary intrigue was discovered, in which Saadet Ali's second brother, commonly called Mirza Jungly, was implicated, which terminated in his removal from Lucknow to Patna. In 1808 the celebrated eunuch Almas Ali Khan died, on which event his wealth, which was considerable, was claimed both by the Bhow Begum (the nabob's mother) and by the nabob. The first grounded her pretensions on the circumstances of Almas Ali having been her servant; while the latter asserted that all the property having been acquired in the service of the Oude sovereignty, and from the resources of the country, the reigning prince was the legitimate heir of a person who could have no natural ones, and in this view of the subject he was supported by the supreme Government. Besides

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this, many other petty and vexatious disputes arose between the two begums and the nabob, who always evinced a strong disinclination to employ British troops in suppressing the disturbances that occasionally broke out in the jaghires of the Bhow Begum, the younger Begum, and other persons under the direct protection of the British government; indeed he seemed to have no desire that they should be suppressed by any means. According to the construction of subsisting treaties, it did not appear that any other measures on the part of that government were admissible beyond those of remonstrance, and the resident was directed to endeavour to convince his excellency of the impolicy, as well as injustice, of countenancing disturbances within the lands of his jaghiredars and the danger to which the general tranquility of his country would be exposed, not to mention the injury his own reputation would sustain by tolerating insurrection within the limits of his own dominions.

Such, exclusive of some petty insurrections of reminders, were the principal causes of internal irritation. With his powerful allies of Bengal, various collusion of interest and authority took place, for the British functionaries on his frontier, after several years' experience, found that all their applications to the nabob for the apprehension of offenders who had sought refuge within his territories, almost invariably failed of success. Although on these occasions this potentate issued strict orders to his officers, they were either mere matters of form, or so considered by the persons to whom they were

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addressed. Of these two conclusions the latter seemed the most probable, as it would have greatly derogated from his excellency's character to have supposed him indifferent to the bringing of public offenders to justice, or that the orders issued by him on such occasions were not intended to be authoritative. Yet, when the feeble and inefficient system of all native administration is considered, it might reasonably be doubted whether he in reality possessed a degree of control over his officers sufficient to enforce their obedience, especially as the granting of an asylum within jurisdictions of offenders constituted a regular source of their profits.

On some occasions the nabob evinced a favourable disposition, by permitting British troops to act within his territories for the express purpose of apprehending delinquents; but at other times he proved restive, and withheld his consent without assigning any reason. The inconveniences resulting from this line of conduct, and the obstruction it occasioned to the due administration of justice within the British districts contiguous to those of Oude, were such, that one of the first stipulations entered into with his successor, authorized the British magistrates to pursue and seize public offenders within the reserved dominions of Oude. The interior management of Saadet Ali's territories was also extremely defective, and he was repeatedly urged by the Bengal government to adopt a line of conduct more creditable to himself, and more consistent with the obligations of existing treaties; but in vain, for although at one time he had given his consent to a reform,

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he afterwords retracted it; and as no hopes of success could be entertained from any further endeavours, short of compulsion, the further prosecution of the original arrangement was desisted from, and all attempts at a modification were put an end to by his unexpected death.

In 1801 a treaty was concluded, by the conditions of which certain districts yielding a gross annual revenue of 1,35,23,274 rupees, were ceded to the British government*, in commutation of subsidy and of every other claim whatever. It was further stipulated, that until the formation of a commercial treaty, mutually beneficial, the navigation of the Ganges and of all the other boundary rivers of the two states should remain free and uninterrupted. When these arrangements were concluded, Saadet Ali assumed the uncontrolled management of his reserved territories, and being a man of abilities greatly superiors to the generality of native princes, and habitually disposed to business, he retained the conducting of the affairs of government under his own immediate direction until his death.*

This event happened on the 11th July 1814, when he was suddenly taken ill, and expired before medical assistance could be procured, supposed from apoplexy, or the bursting of a blood-vessel. On this emergency every necessary precaution was taken by the resident, and the occasion of the nabob Ghazi ud Deen Hyder took place without the smallest interruption or disturbance. He confirmed all the subsisting treaties; acceded with apparent alacrity to the adjustment of many questions long

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pending with the British government; and, agreeably to the course followed on the accession of his father, ***Saadet Ali, assumed the title of vizier, without any reference to the Mogul at Delhi. In 1814 and 1815 he lent the British government two crores of rupees at six per cent****., exhibiting the novel spectacle of a native prince a creditor of the British government to an amount exceeding to millions sterling, and regularly receiving the interest thereon. At a subsequent period the transfer of the terriana, or low country, acquired from the Nepaulese, was made the means of redeeming one of the crores borrowed.*

For almost half a century the British government had been endeavouring to prevail on the sovereigns of Oude to establish an improved system of administration, especially in revenue matters, within their hereditary dominions, but uniformly without success. The accession of Ghazi ud Deen held out another opportunity, and at the recommendation of the British government tehsildars (native collectors), with a commission of ten per cent., were appointed, with a view of making a triennial settlement to ascertain the resources of the nabob's dominions, and fix the principles on which a future and permanent settlement should be made. Nazims (native judicial officers) were also appointed for the distribution of justice. With these measures, however, the nabob being very soon dissatisfied, he superseded them, and promulgated regulations of his own, the result of which threatened an extraordinary defalcation of the instalments for the approaching year, and a recurrence to the system of farming as established in the time of his father. Since that

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distant period (1814) to the present day (1827) nothing has occurred to shew that any improved revenue and judicial system has been seriously contemplated, far less established. Recently, indeed, his majesty has admitted the expediency of abolishing the farming system, and has expressed his willingness to introduce gradually the plan of collecting the revenue through officers immediately responsible to government for the amount of their actual collections, but no overt act towards the carrying of this scheme into execution has as yet taken place.

Under an Indian prince the department of acbar (intelligence) is a system of esplouage, which pervaded every district of this country, as well as the court and capital, during the life-time of Saadet Ali, and furnished daily grounds for the imprisonment of some subject or servant with a view to confiscation and forfeiture. The expense of it is nearly equal to an efficient police, and the channels of corruption and oppression which it opens, by encouraging false accusations, are destructive to the morals of the people and of the safety of their property, as well as of the true interests of the sovereign. On the accession of Ghazi ud Deen the acbar establishment was abolished, but the system is so congenial to the habits and principles of native chiefs, and to the personal character of the reigning king, that he soon revived it. At the earnest solicitation of the British government, soon after the commencement of his reign, he appointed ostensib's ministers for the transaction of public business; but in process of time, after much wavering and inconsistency, the

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arrangement terminated, first in their suspension, and afterwords in their dismissal. The inherent fickleness of the nabob's disposition, his ready and implicit belief in the scandalous reports of his news-writers, and of the intriguing persons around him, destroy the confidence and subvert the authority of his ministers, and preclude the beneficial exercise of any one of their functions, so that if one set retire or be dismissed, a similar state of affairs within a short period of time will be produced with respect to their successors.

On the 9th of October 1810 Ghazi ud Deen, the reigning nabob, renounced all titular subservience to the throne of Delhi, assuming the title of king instead of vizier of Oude, and issuing at the same time a new currency, impressed with his own name and legend, but of the same weight and standard as before. This change was cheerfully acquiesced in by the British government, whose interest it was to detach the rich and populous province of Oude from all subordination to the Mogul empire, or sympathy with the Mussulman cause generally. On this occasion the ex-nabob assumed many pompous titles, such as "king of the age," and "king conqueror of infidels," hitherto peculiar to the house of Timour, and not at all creditable to his majesty's common sense, or complimentary to his infidel allies. While the Marquis of Hastings was Governor-general he used to address that nobleman and the British government figuratively as his uncle, and the reply was addressed to the nabob as nephew; but so much familiarity appearing inconsistent with his augmentation of dignity, he

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requested the form might be abrogated, which was done accordingly, and he is now addressed as Ghazi ud Deen Hyder Shah (Padshahi Oude, king of Oude). In 1827 he lent the British government a crore of rupees.

The reserved territories of Oude occupy an area of about 21,000 square miles, and contain a population of at least three millions ; ***but the sovereignty is too dependent on the British government to be regarded as one of the political states of Hindostan****. On account of a defective system the revenue derived from such an extent of fertile country is very inferior to what it might be made to produce under a more enlightened system of taxation; but the income of the Oude sovereigns is to be estimated rather negatively than positively, rather from the absence of taxation than the magnitude of the receipts; for being relieved by their alliance with the British government from all external alarms, and having no funds or national debt, their expenses are merely fiscal and personal; and without diminishing the splendour of his court or the comfort of his style of living. Ghazi ud Deen might, with the alightest attention, annually lay aside (as was supposed to have been done by his father, Saadet Ali) half a million sterling--(Public MS. Documents, Marquis of Hastings, Major Baillie, Guthrie, Rennell, & c.)*

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4219. The above discription from the face of it relates to Oudh as 'Province' as it stood at that time. The township of 'Oudh' has been narrated later on at page 353 onwards under the heading "Oude" and states:

"OUDE.--The ancient capital of the province of

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Oude, situated on the south side of the Goggra, seventy nine miles east from Lucknow; lat, 26^0 48′ N., lon. 82^0 4′ E. By Abul Fazel in 1582 it is described as follows. "Oude is one of the largest cities of Hindostan. In ancient times this city is said to have measured 148 coss in length and thirty-six coss in breadth. Upon sifting the earth which is round this city small grains of gold are sometimes found in it. This town is esteemed one of the most sacred places of antiquity."

Pilgrims resort to this vicinity, where the remains of the ancient city of Oude, and ***capital of the great Rama, are still to be seen****; but whatever may have been its former magnificence it* ***now exhibits nothing but a shapeless mass of ruins****. The modern town extends a considerable way along the banks of the Goggra, adjoining Fyzabad, and is tolerably well peopled; but inland it is a mass of rubbish and jungle,* ***among which are the reputed site of temples dedicated to Rama, Seeta, his wife, Lakshman, his general, and Hanimaun (a large monkey), his prime minister****. The religious mendicants who perform the pilgrimage to Oude are chiefly of the Ramata sect, who walk round the temples and idols, bathe in the holy pools, and perform the customary ceremonies."*

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4220. Dr. Buchanan was appointed to make a survey of the area within the reign of East India Company in early 19th century by an order of Lord Wellesley. Between 1807 to 1814 Dr. Buchanan surveyed the area which mainly consisted of Bengal, Bihar and Eastern part of the present U.P. including Ayodhya and sent his documents to the Head Office of the Company in

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London in 1816 but could not complete his report. Subsequently, it was studied by Robert Montgomery Martin, an official of the Company at London and he got published "**Eastern India**" in 1838 (supra) wherein the details of Oudh were mentioned in Vol. II, pages no. 331 to 337. The relevant extract of this book we have already quoted above in para 1600 of this judgment while discussing the issues relating to the person and period-who and when constructed the disputed building.

4221. Edward Thornton's Gazetteer titled as **"A Gazetteer of the Territories under the Government of the East-India Company and of the native States on the Continent of India"** (in short "Thornton's Gazetteer, 1858"), first published in 1858 and reproduced in 1993 by Low Price Publications, Delhi (Book No. 10). Descriptions of "Oudh" given by Sri Thornton on page 739 (Ex.5 Suit 5) was placed before us to show that it mentions about a Temple at Janamsthan, demolished for constructing mosque on the site.

4222. From preface of the book it does appear that the General Courts of the East India Company authorised 'Edward Thornton', Esq. to compile and publish an authentic Gazetteer of India. The said author had already prepared a "**Gazetteer of India**" in 1854 in four volumes. Thereafter under the authority of the Court of Directors of East India Company compiled a single volume of "**Gazetteer of the Territories under the East India Company and of the native States on the continent of India**". The book does not give any information about Edward Thornton, namely, about his qualifications, position he held at that time etc. The book which has been placed before the Court mentioned that it was first published in 1858 and reprinted in

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1893.

4223. On page 735 it contains the details of the province "OUDE" wherefrom it appears that the province Oude covered a number of divisions and sub-divisions covering, Aldemau, Pertabgurh, Pachhamrat, Bainswara, Salon, Ahladganj, Gonda, Bahraich, Sarkar Khairabad, Sandi, Rasulabad and Lucknow. The details of divisions and sub-divisions contained on page 737 are as under:

> *"The kingdom contains the following divisions and subdivisions:--I.* ***Chakla Sultanpore****, containing pergunnahs: 1. Sultanpore, 2. Jagdispore, 3. Chanda, 4. Isauli, 5. Tappa Asl, 6. Bilahri. II.* ***Chakla Aldemau****, containing pergunnahs: 1. Aldemau, 2. Akbarpore, 3. Dostpore, 4. Berhar, 5. Tanda. III.* ***Chakla Pertabgurh****, containing pergunnahs: 1. Pertabgurh, 2. Amethi, 3. Dalipore Palti. IV.* ***Chakla Pachhamrat****, containing pergunnahs: 1. Manglasi, 2. Rat Haveli or Faizabad, 3. Rampore. V.* ***Chakla Bainswara****, containing pergunnahs: 1. Ranjitpurua, 2. Harha, 3. Ateha, 4. Mauhranwa, 5. Kumranwa, 6. Daundiakhera, 7. Hasnganj, 8. Majranw, 9. Haidargarh, 10. Rae Bareli, 11. Dalamau, 12. Sarendi, 13. Bardar. VI.* ***Chakla Salon****, containing pergunnahs: 1. Salon Khas, 2. Parsadipore, 3. Jayis, 4. Ateha. VII.* ***Chakla Ahladganj****, containing pergunnahs: 1. Ahladganj, 2. Bihar, 3. Manikpur, 4. Rampore. VIII.* ***Chakla Gonda Bahraich****, containing pergunnahs: 1. Bahraich, 2. Gonda Khas, 3. Muhammadabad, 4. Bari, 5. Atraula. IX.* ***Chakla Sarkar Khairabad****, containing pergunnahs: 1. Khairabad, 2. Nimkharmisrik, 3. Khirilahrpur, 4. Bangar, 5. Muhemdi, 6.*

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Biligram, 7. Fattehpur Biswa, 8. Sandila, 9. Malihabad, 10. Kakori, 11. Bijnaur, 12. Kasmandi, 13. Kalanwa. X. ***Chakla Sandi****, containing pergunnahs: 1. Sandi, 2. Pali, 3. Saromnagar, 4. Shahabad. XI.* ***Chakla Rasulabad****, containing pergunnahs: 1. Safipur, 2. Rasulabad or Miyanganj, 3. Asiman, 4. Unnaw or Onaw, 5. Muhan. XII.* ***Chakla Lucknow****, containing pergunnahs: 1. Rudauli Daryabad, 2. Goshaenganj, 3. Dewe-Jahangirabad, 4. Kursi, 5. Sidhaur."*

4224. Thereafter again on page 739 (Ex.5 Suit-5) under the same title, namely, "OUDE" it has given the details of the town which we understand and also not disputed by the parties as to that referred to Ayodhya. The entire description of Oude town (Ayodhya) in the aforesaid Gazetteer 1858 by Thornton is as under:

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"OUDE.--A town in the kingdom of the same name. It is situate on the right bank of the river Ghogra, which Buchanan considers here to be "fully larger than the Ganges at Chunar," and which is navigable downwards to its mouth, upwards to Mundiya Ghaut, in the district of Bareilly. It extends about a mile in a south-east direction, from the adjoining recent city of Fyzabad; the breadth of the town is something less from north-east to south-west, or from the river landwards. The greater part of the site is on gently-swelling eminences; but to the north-west, or towards Fyzabad, is low. Most of the houses are of mud, and thatched, though a few are tiled. Here, in a large building a mile from the river, is an extensive establishment, called Hanumangurh, or Fort of Hanuman,

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in honour of the fabled monkey-god the auxiliary of Rama. It has an annual revenue of 50,000 rupees, settled on it by Shuja-ud-daulah, formerly Nawaub Vizier. It is managed by a Malik or abbot, the spiritual superior; and the revenues are dispensed to about 500 bairagis or religious ascetics, and other Hindoo mendicants of various descriptions; no Mussulman being allowed within the walls. Other establishments of similar character are Sugrimkilla, Ram-Parshad-Ka-Kana, and Bidiya-Kund; maintaining respectively 100, 250 and 200 bairagis. ***Close to the town on the east, and on the right bank of the Ghogra, are extensive ruins, said to be those of the fort of Rama, king of Oude, hero of the Ramayana, and otherwise highly celebrated in the mythological and romantic legends of India.*** *Buchanan observes, "that the heaps of bricks, although much seems to have been carried away by the river, extend a great way; that is, more than a mile in length, and more than half a mile in width; and that,* ***although vast quantities of meterials have been removed to build the Mahomedan Ayodha or Fyzabad, yet the ruins in many parts retain a very considerable elevation; nor is there any reason to doubt that the structure to which they belonged has been very great, when we consider that it has been ruined for above 2,000 years." The ruins still bear the name of Ramgurh, or "Fort or Rama;"*** *the most remarkable spot in which is that from which, according to the legend, Rama took his flight to heaven, carrying with him the people of his city; in consequence of which it remained desolate until repeopled*

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by Vikramaditya, king of Oojein, half a century before the Christian era, and by him embellished with 360 temples. Not the smallest traces of these temples, however, now remain; ***and according to native tradition, they were demolished by Aurungzebe, who built a mosque on part of the site. The falsehood of the tradition is, however, proved by an inscription on the wall of the mosque, attributing the work to the conqueror Baber, from whome Aurungzabe was fifth in descent. The mosque is embellished with fourteen columns of only five or six feet in height, but of very elaborate and tasteful workmanship, said to have been taken from the ruins of the Hindoo fanes, to which they had been given by the monkey-general Hanuman,*** *who had brought them from Lanka or Ceylon. Altogether, however, the remains of antiquity in the vicinity of this renowned capital must give a very low idea of the state of arts and civilization of the Hindoos at a remote period.* ***A quadrangular coffer of stone, whitewashed, five ells long, four broad, and protruding five or six inches above ground, is pointed out as the cradle in which Rama was born, as the seventh avatar of Vishnu; and is accordingly abundantly honoured by the pilgrimages and devotions of the Hindoos****.* ***Ayodha or Oude is considered by the best authorities to be the most ancient city in Hindostan;*** *and Prinsep mentions that some of its coins in the cabinet of the Asiatic Society of Bengal are of such extreme antiquity that the characters in which their legends are graven are totally unknown. According to Elphinstone, "from thence the*

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princes of all other Indian countries are sprung." Buchanan conjectures that it was founded by Brahmins, whom he considers as an immigrant race, more advanced in civilization than the indigenous Indians. "These personages came from western Asia, introducing with them the Sanskrit language, generally admitted to be radically the same with the Persian dialect; while the languages spoken among all the rude tribes that inhabit the fastnesses of India, and which are, probably, remains of its ancient tongue, have no sort of analogy to the languages of the West." ***This author supposes the city to have been founded by Vaiwaswata, one of this race, about 1,366 years before the Christian era. He considers that its renowned rule Rama perished A.C. 775, involved in the destruction of his city by the hostile confederacy of his sons; that being rebuilt, it suffered a similar fate under the reign of Vridhabala, A.C. 512;*** *and having lain from centuries desolate, was rebuilt A.C. 57, by Vikramaditya, the celebrated king of Oojein.* ***Tod, however, and Wilford, fond of large numbers, place the foundation of Ayodha in an era more than 2,000 years B.C.*** *The former writer states, without comment, a tradition that Lucknow, distant eighty miles from the present city of Oude, was formerly one of its suburbs.* ***The great decline of Oude is of comparatively recent date, as it is described in the Ayeen Akbery as one of the largest cities of Hindostan;*** *and it is farther stated, "In ancient times this city is said to have measured 148 cose [perhaps 200 miles] in length, and thirtysix cose in breadth.* ***It is esteemed one of the most***

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sacred places of antiquity." *With the havili or municipal district attached, the city is assessed in the Ayeen Akbery at 50,209 rupees, a sum so moderate as to throw discredit on the previous statement of its being one of the greatest cities of India.* ***The present population, according to Butter, is 8,000, including 500 Mussulmans.*** *Distant E. from Lucknow 75 miles, N. from Allahabad 95. Lat 26* 47', long. 82* 11'." (emphasis added)*

4225. **"Archaeological Survey Of India Four Reports Made During the Years 1862-63-64-65"** by Alexander Cunningham, Director General of the Archaeological Survey of India, first edition published in 1871, reprinted in 2000; (Book No. 43) (hereinafter referred to as "Cunningham's Report, 1871") dealt with Ayodhya from page 317 to 327. **Ex. 6, Suit-5** (Register Vol. 20 Page 25-34) is a photocopy of the map i.e. Plate XLIX taken from Archaeological Survey of India Four Report 1862-63-64-65 Vol. 1 by Alexander Cunningham. It is sought to be pointed out that in the aforesaid map the disputed place in Ayodhya has been shown as Janam Sthan and there is no mention of any mosque existing when the said report was prepared. We find that in the aforesaid map Sarayu, Lakshmana Ghat, Janam Asthan, Hanuman Garhi, Mani-Parbat and tombs of Seth and Job are shown. From Pages 27-34 of Register Vol.20 are the photocopies of the pages No.320 to 327 of Vol.I of Alexander Cunningham's report i.e. Paper No.107C1/13-16A i.e. Ex.6, Suit-5. It also gives some description of the birth place temple of Rama, and other details. However, he mistook the city of "Visakha" described by "Hwen Thsang" or "Sha-chi" referred to by "Fa Hian" same as the Saket or Ayodhya. This

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identification has not been found correct in the subsequent reports.

4226. Cunningham, before embarking upon the aforesaid work, it appears, submitted a memorandum proposing investigation of the archaeological remains of upper India and it's comments in respect to the work done till then regarding ancient history was mostly unreliable having been prepared cursorily or without any proper investigation. It would be useful to refer to his own comments contained on page III and IV of the Preface as under :

> *"During the one hundred years of British dominion in India, the Government has done little or nothing towards the preservation of its ancient monuments, which, in the almost total absence of any written history, form the only reliable sources of information as to the early condition of the country. Some of these monuments have already endured for ages, and are likely to last for ages still to come; but there are many others which are daily suffering from the effects of time, and which must soon disappear altogether, unless preserved by the accurate drawings and faithful descriptions of the archaeologist,*
>
> *" All that has hitherto been done towards the illustration of ancient Indian history has been due to the unaided efforts of private individuals. These researches consequently have always been desultory and unconnected and frequently incomplete, owing partly to the short stay which individual officers usually make at any particular place, and partly to the limited leisure which could be devoted to such pursuits.*

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" Hitherto the Government has been chiefly occupied with the extension and consolidation of empire, but the establishment of the Trigonometrical Survey shews that it has not been unmindful of the claims of science. It would redound equally to the honor of the British Government to institute a careful and systematic investigation of all the existing monuments of ancient India."

4227. He also gave a guiding factor, which he would follow stating that the footsteps of Chinese pilgrim Hwen Thsang would be the basis of his investigation as is evident from the following :

" In describing the ancient geography of India, the elder Pliny, for the sake of clearness, follows the footsteps of Alexander the Great. For a similar reason, in the present proposed investigation, I would follow the footsteps of the Chinese pilgrim Hwen Thsang, who, in the seventh century of our era, traversed India from west to east and back again for the purpose of visiting all the famous sites of Buddhist history and tradition. In the account of his travels, although the Buddhist remains are described in most detail with all their attendant legends and traditions, yet the numbers and appearance of the Brahmanical temples are also noted, and the travels of the Chinese pilgrim thus hold the same place in the history of India, which those of Pausanias hold in the history of Greece."

4228. It is this memorandum of Cunningham, which was forwarded for appointment by the Governor General of India in Council on 22nd January 1862.

4229. From the Chapter "Introduction" of Cunningham's

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report, 1871, it would appear as to what was the earlier historical literature available to the English historians which was considered and available to Cunningham and other persons who had written Indian history and in particular the ancient. Just in brief, we propose to refer hereat the material, which was considered by Cunningham in his report so as to give an idea about its authenticity, correctness etc. and the depth of his study. Cunningham has admitted the commencement of work with the foundation of Asiatic Society of Bengal in 1784 by **Sir William Jones** having its first member Warren Hastings and Charles Wilkins who claimed themselves to be the first Englishman having acquired knowledge of Sanskrit and cut with his own hands the first Devanagari and Bengali types.

4230. As already noted Jones translated Sanskrit literature, namely, Sakuntala" and the institutes of Manu. His first work was to establish a systematic and uniform system of orthography for the transcription of Oriental languages, which, with a very few modifications, has since been generally adopted. It was followed by several essays- On Musical Modes- on the origin of the game of chess, which he traced to India and -On the Lunar Year of the Hindus and their Chronology. In his last paper he made the identification of Chandra-Gupta with Sandrakottos. He also suggested that Palibothra or Pataliputra, the capital of Sandrakottos, must be Patna and the Son River, which joins Ganges only a few miles above Patna, was also known as "Hiranyabahu" or the "golden-armed," which once re-called the Erranoboas of Arrian.

4231. William Jones died in 1794 resulting in disruption of the work he started. However, it was taken over by the **Henry**

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Colebrooke, who completed "**Digest of Hindu Law**", which was left unfinished by Jones. In the meantime, **Charles Wilkins** had translated several inscriptions in the first and second volumes of Asiatic Researches, but after the death of Jones, communication with him stopped. Some work by writing a paper on "**Hindu astronomy cycle of Jupiter**" was performed by **Samuel Davis**.

4232. An Engineer Officer, **Francis Wilford** said to be a Sanskrit scholar, commenced his work "**Essay on the comparative Geography of India**" but could not finish it due to his death though his said unfinished work was published in 1851.

4233. **Henry Colebrooke** referred above had a good knowledge of Sanskrit language. Besides translations of **Visala Deva's inscriptions on the Delhi pillar** and a few others he wrote "**Essay on the Vedas**," giving for the first time a full and accurate account of the sacred volumes of the Hindus to Europeans. He also wrote Essay on the Sanskrit and Prakrit languages; on the Philosophy of the Hindus; on the Indian and Arabian divisions of the Zodiac; on the notions of Hindu astronomers concerning the Precession; and on the Algebra of Brahma Gupta and Bhaskara. He left India in 1815 but continued with his studies and essays till his death, i.e., 10th of March 1837.

4234. The survey conducted by Dr. Buchanan (subsequently took the name of Hamilton) between 1807 to 1814, as already said, was ultimately published and edited by Sir Montgomery Martin in 1838.

4235. Around 1815 Horace Hayman Wilson became

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Secretary of the Asiatic Society. He translated “**Megha-duta**” of Kalidasa. In 1819, he got published “**Sanskrit Dictionary**” and in 1827 “**Hindu Theatre**”. Besides, he also translated stories from Sanskrit and of some episodes from Mahabharata. In 1825 he published an essay on the Hindu history of Kashmir but returned to England in 1833 where he continued with his Oriental studies. His two principal works are an account of the coins and antiquities of Afghanistan, contained in “Ariana Antiqua” and his translation of “Rig-Veda”.

4236. From 1833 to 1837 translation of some important inscriptions was provided by "Dr. Mill" considered to be "Sanskrit Scholar". Then comes "James Prinsep", said to be responsible for partial decipherment of the Arian Pali legends of the Bactrian Greek coins as well as decipherment of the Indian Pali legends of the coins of Surashtra, decipherment and translation of the edicts of Asoka on the pillars at Delhi and Allahabad. He was also in the process of decipherment of some other inscriptions etc. but fell ill hence returned to England and died on 22.07.1840. The work of Prinsep paved way and caused a great momentum to Indian Archaeology which was continued by "James Fergusson", "Markham Kittoe", "Mr. Edward Thomas", and by "Cunningham" in Northern India; "Sir Walter Elliot" in Southern India; and "Colonel Meadows Taylor", "Dr. Stevenson" and "Dr. Bhau Daji" in Western India.

4237. Cunningham noticed that from 1784 i.e. from the foundation of Asiatic Society by Sri William Jones till 1834 the Archaeological researches in India had been primarily literary besides a few notable exceptions. It had been confined to translations of books and inscriptions, with brief notes of the

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some of the principal building at Delhi and Agra and other well known places. Exceptions are the essays by "Hones", "Wilford", "Colebrooke" and "Wilson" on the religion, the geography and the astronomy of the Hindus. He said that "*True history was then but little known, and the lying gabble of Brahmans, which connected every place with the wanderings of Rama or the exile of the five Pandus, was accepted as the real voice of genuine tradition.*" It is claimed that the Masson's researches in Kabul Valley, Ventura's Court's explorations in Punjab, Cunningham's excavation of stupa at Sarnath, Banaras and of the ruins around gave some idea about the unknown Indian history. However, the facts available were found to be bare and unconnected, mere fossil fragments of the great skeleton of lost Indian history, though the entire skeleton yet was not available, but, the researchers thought to have got a complete or a fair knowledge of the general outline and of the various forms which it had assumed at different period. In this regard, the first archaeological publication was made by "James Fergusson", i.e., "Rock-cut temples of India, 1845". However, in respect to determination of period of the work, Fergusson was not very certain and of the view that inscriptions will not certainly by themselves answer the purpose. Cunningham, however, diferred with him on this aspect and said that *"inscriptions are beyond all doubt, the most certain and the most trustworthy authority for determining the dates of Indian monuments, whether buildings or caves."*

4238. Cunningham demonstrated the error in calculation of the period by referring to caves of Kanhari in Salset. Fergusson determined the period in the 4th or 5th century, but

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based on decipherment of the inscriptions found thereat and particularly in one of the inscription the date of 30 of the Sakaditya-kala, or AD 108 was mentioned and thus Cunningham treated it of the first and second century of the Christian era showing difference of about 4 centuries between his and Fergusson's determination of period.

4239. Another illustration Cunningham has given at page XXI of the Chapter "Introduction" of the book "Report, 1871" which reads as under:

> *"The Karle caves Mr. Fergusson is inclined to assign to the first, or even the second century before Christ. One of the caves is certainly older than the Christian era, as it possesses an inscription of the great Satrap King Nahapana. But there are two others of King Pudumayi, the sons of Vasithi, whom I place in the beginning of the second century of the Christian era, but whom Mr. Fergusson assigns to the middle of the fourth century, although in his chronology he admits that Ananda, also a son of Vasithi, and therefore most probably a brother of Pudumayi, and the founder of one of the gateways of the Great Sanchi Tope, lived towards the end of the first century."*

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4240. Fergusson published some more books namely, "**Picturesque Illustrations of Ancient Architecture in India**", "**Handbook of Architecture (1855)**", "**History of Architecture**", "**Illustrated History of Indian Architecture**" and lastly "**Tree and Serpent Worship**".

4241. "Markham Kittoe" was an Officer in the Army of East India Company, appointed as Secretary Committee for a short period in 1838 and 1839 and then given charge of one of

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the division of the High Road from Calcutta to Bombay, leading through Chutia Nagpur till 1846 and then was appointed as "Archaeological Enquirer" to Government, went back to England in 1853. He wrote "Illustration of Indian Architecture in 1838". He prepared the design of Sanskrit College at Banaras which was approved and the building was constructed in his supervision. However, Cunningham expressed doubt about his scholarship and judgement as an investigator and gave the following illustration:

> *"I may cite his continued doubts as to the identity of Asoka and Piyadasi, and his serious suggestion that the Barabar Cave inscription of Dasaratha, which Prinsep had truly assigned to the historical Dasaratha of Magadha, one of the immediate successors of Asoka, might probably be referred to the half fabulous Dasaratha of Ayodhya, the father of Rama."*

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4242. **Kittoe**, however, described himself in one of his letter dated 19.05.1852 sent to Cunningham as under:

> *"Let me not lead you to suppose that I claim knowledge. I am woefully deficient. I am a self-educated man, and no Classic or Sanskrit scholar; I merely claim a searching eye and mind, and a retentive memory of figure and fact, and place or position. Hence my great success in finding inscriptions where many have searched in vain!--Cuttack and Gya to wit."*

4243. "**Edward Thomas**" wrote several essays covering the period BC-246 to AD-1554. The list of some of which is as under under:

> *"1. 1848--Journal of Royal Asiatic Society, Vol. IX.,--*

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Coins of the Hindu Kings of Kabul.

2. 1848--Ditto ditto, Vol. IX.,--Coins of the Kings of Ghazni.

3. 1850--Ditto Ditto, Vol. XII., Coins of the Sah Kings of Saurashtra.

4. 1855--Journal, Bengal Asiatic Society, Vol. XXIV.,--On the Epoch of the Gupta Dynasty.

5. 1855--Ditto ditto, Vol. XXIV.,--On the Coins of the Gupta Dynasty.

6. 1855--Ditto ditto, Vol. XXIV.,--On ancient Indian Numerals.

7. 1858--Prinsep's Indian Antiquities, 2 Vols., thick 8vo; with numerous plates of coins, and many able independent notices, bringing the state of knowledge in each branch up to the date of publication.

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8. 1860--Journal, Royal Asiatic Society, Vol. XVII.,--Supplementary Notice of the Coins of the Kings of Ghazni.

9. 1864--Journal, Bengal Asiatic Society, Vol. XXXIV.,--On ancient Indian Weights (continued in the same journal for 1835).

10. 1865--Ditto ditto, Vol. XXXV.,--On the identity of Xandrames and Krananda.

11. 1866--Ditto ditto, Vol. XXXVI.,--The Initial Coinage of Bengal.

12. 1871--Chronicles of the Pathan Kings of Delhi."

4244. In South, **Colonel Machenzie** collected 8,076 inscriptions mainly in the Tamilian provinces to the south of Krishna River while Sir Walter Elliot collected 595 inscriptions mainly in ancient Karnataka, amongst the upper branches of the

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Krishna. Sir Elliot's first contribution was his Historical Sketch founded solely on the inscriptions of the principal dynasties which had rule over the countries between the Narbada and the Krishna for nearly 8 centuries. Of these Chalukya family was the oldest and the strongest and its line has been traced back to the early part of the 4th century by the discovery of other inscriptions. Sir Walter also illustrated the history of Chalukyas and other southern dynasties by their coins. He was the first to arrange the coins systematically. All the coins bearing the type of an elephant were assigned to the Gajapati dynasty, which was asserted to have reigned over Orissa; all those with a horse to the Aswapati dynasty; those with the figure of a man to the Narapati dynasty; and those with an umbrella to the Chhatrapati dynasty. These were believed to have been the titles of four tributary princes who held the four chief provinces of Southern India under the rule of one supreme sovereign of Delhi.

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4245. In respect to Western India some work was done by Colonel Meadows Taylor and Reverend J. Stevenson but heir findings and observations have not been found to be much accurate by Cunningham. The work in Western India was continued by Dr. Bhau Daji, a local scholar who wrote essay on Poet Kalidasa and translated inscriptions in the Ajanta caves and that of Rudra Dama and Skanda Gupta at Junagarh and wrote "Inroads of the Scythians into India".

4246. All these works show that the antiquity of the country in one or the other manner continued to be revealed by process of excavation etc. but what could not be find out by the time or thereafter would not mean that it does not or did not exist.

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4247. However, the part of the report of Cunningham referred to by Sri P.N.Mishra and R.L.Verma, Advocates is as under:

"XVII. SAKETA, OR AJUDHYA.

Much difficulty has been felt regarding the position of Fa-Hian's" great kingdom of Sha-chi, and of Hwen Thsang's Visakha, *with its enormous number of heretics," or Brahmanists;* ***but I hope to show*** *in the most satisfactory manner* ***that these two places are identical, and that they are also the same as the Saketa and Ajudhya of the Hindus****. The difficulty has arisen chiefly from an erroneous bearing recorded by Fa Hian, who places Shewei, or Sravasti, to the south of Sha-chi, while Hwen Thsang locates it to the north-east, and partly from his erroneous distance of 7+3+10=20 yojans, instead of 30, from the well-known city of Sankisa. The bearing is shown to be erroneous by the route of a Hindu pilgrim from the banks of the Godavery to Sewet, or Sravaati, as recorded in the Ceylonese Buddhist works. This pilgrim, after passing through Mahissati and Ujani, or Maheshmati and Ujain, reaches Kosambi, and from thence passes through Saketa to Sewet, that is, along the very route followed by Hwen Thsang. We have, therefore, two authorities in favour of Sewet being to the north of Saket. With regard to the distance, I refer again to the Buddhist books of Ceylon, in which it is record that from Sakespura (or Sangkasyapura, now Sankisa) to Sewet was a journey of 30 yojans. Now, Fa Hian makes the distance from Sankisa to Kanoj 7 yojans, thence to the forest of Holi, on*

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the Ganges, 3 yojans, and thence to Shachi 10 yojans, or altogether only 20 yojans, or 10 less than the Ceylonese books. That Fa Hian's statement is erroneous is quite clear from the fact that his distance would place Shachi in the neighbourhood of Lucknow; whereas the other distance would place it close to Ajudhya, or Faizabad, or in the very position indicated by Hwen Thsang's itinerary. Here, again, we have two authorities in favour of the longer distance. I have no hesitation, therefore, in declaring that Fa Hian's recorded bearing of She-wei from Sha-chi is wrong, and that "north" should be read instead of " south."

I have now to show that Fa Hian's Sha-chi is the same as Hwen Thsang's Visakha, and that both are identical with Saketa or Ajudhya. With respect to Sha-chi, Fa Hian relates that, on " leaving the town by the southern gate, you find to the east of the road the place where Buddha bit off a piece of his tooth brush, and planted it in the ground, where it grew to the height of seven feet, and never increased or diminished in size." Now this is precisely the same legend that is related of Visakha by Hwen Thsang, who says that " to the south of the capital, and to the left of the road (that is, to the east as stated by Fa Hian), there was, amongst other holy objects, an extraordinary tree 6 or 7 feet high, which always remained the same, neither growing nor decreasing. This is the celebrated tooth-brush tree of Buddha, to which I shall have occasion to refer presently. Here I need only notice the very precise agreement in the two descriptions of this famous tree, as to its origin, its height, and its position. The

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perfect correspondence of these details appears to me to leave no doubt of the identity of Fa Hian's Shachi with the Visakha of Hwen Thsang.

With respect to the identification of Visakha with the Saketa of the Hindus, I rest my proofs chiefly on the following points : — 1st, that Visakha, the most celebrated of all females in Buddhist history, was a resident of Saketa before her marriage with Purnna Varddhana, son of Mrigara, the rich merchant of Sravasti; and 2nd, that Buddha is recorded by Hwen Thsang to have spent six years at Visakha, while by the Pali annals of Turnour he is stated to have lived 16 years at Saketa.

The story of the noble maiden Visakha is related at great length in the Ceylonese books. According to Hardy, she erected a Purvvarama at Sravasti, whioh is also mentioned by Hwen Thsang. Now there was also a Purvvarama at Saketa, and it can hardly be doubted that this monastery was likewise built by her. She was the daughter of Dhananja, a rich merchant, who had emigrated from Rajagriha to Saketa. Now, amongst the oldest inscribed coins which have been discovered only at Ajudhya, we find some bearing the names of Dhana Deva and Visakha-Datta. I mention this because it seems to me to show the probability that the family of Dhananja and Visakha was of great eminence Saketa or Ayodhya; and I infer from the recurrence of their names, as well as from the great celebrity of the lady, that the city may possibly have been called Visakha after her name.

The other proof which I derive from the years of

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Buddha's residence is direct and convincing. According to the Ceylonese annals, Buddha was 35 years of age when he attained Buddhahood; he then led a houseless life for 20 years, preaching in various places in Northern India, all of which are detailed; and of the remaining 25 years of his life he spent 9 in the Jetavana monastery at Sravasti, and 16 in the Pubharamo monastery at Saketapura. Now, in the Burmese annals, these numbers are given as 19 years and 6 years, and in the last figure we have the exact number recorded by Hwen Thsang. Nothing can be more complete than this proof. There were only two places at which Buddha resided for any length of time, namely, Sravaati, at which he lived either 9 or 19 years, and Saketa, at which he lived either 6 or 16 years; and as according to Hwen Thsang he lived for 6 years at Visakha, which is described as being at some distance to the south of Sravasti, ***it follows of necessity that Visakha and Saketa were one and the same place.***

The identity of Saketa and Ayodhya has, I believe, always been admitted; *but I am not aware that any proof has yet been offered to establish the fact. Csoma-de-koroa, in speaking of the place, merely says "Saketana or Ayo-dhya," and* ***H. H. Wilson, in his Sanskrit Dictionary, calls Saketa "the city Ayodhya."*** *But the question would appear to be set at rest by several passages of the Ramayana and and Raghuvansa, in which Saketnagara is distinctly called the capital of Raja Dasaratha and his sons. But the following verse of the Ramayana, which was pointed out to me by a Brahman of Lucknow, will be sufficient to establish*

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the identity. Aswajita, father of Kaikeyi, offers to give his daughter to Dasaratha, Rajah of Saketanagara: -

Saketam nagaram Raja namna Dasaratho bali,

Tasmai deya maya Kanya Kaikeyi nama to jana.

The ancient city of Ayodhya or Saketa is described in the Ramayana as situated on the bank of the Sarayu or Sarju River. It is said to have been 12 yojans, or nearly 100 miles in circumference, for which we should probably read 12 kos, or 24 miles—an extent which the old city, with all its gardens, might once possibly have covered. The (distance from the Guptar Ghat on the west, to the Ram Ghat on the east, is just 6 miles in a direct line; and if we suppose that the city with its suburbs and gardens formerly occupied the whole intervening space to a depth of two miles, its circuit would have agreed exactly with the smaller measurement of 12 kos. ***At the present day the people point to Ram Ghat and Guptar Ghat as the eastern and western boundaries of the old city, and the southern boundary they extend to Bharat-Kund near Bhadarsa, a distance of 6 kos.*** *But as these limits include all the places of pilgrimage, it would seem that the people consider them to have been formerly inside the city, which was certainly not the case. In the Ain Akbari, the old city is said to have measured 148 kos in length by 36 koa in breadth, or in other words it covered the whole of the Province of Oudh to the south of the Ghaghra River. The origin of the larger number is obvious. The 12 yojans of the Ramayana, which are equal to 48 kos, being considered too small for the great city of Rama, the Brahmans simply*

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added 100 kos to make the size tally with their own extravagant notions. ***The present city of Ajudhya, which is confined to the north-east corner of the old site, is just two miles in length by about three-quarters of a mile in breadth; but not one-half of this extent is occupied by buildings, and the whole place wears a look of decay. There are no high mounds of ruins,*** *covered with broken statues and sculptured pillars, such as mark the sites of other ancient cities, but only a low irregular mass of rubbish heaps,* ***from which all the bricks have been excavated for the houses of the neighboring city of Faizabad. This Muhammadan city,*** *which is two miles and-a-half in length, by one mile in breadth,* ***is built chiefly of materials extracted from the ruins of Ajudhya.*** *The two cities together occupy an area of nearly six square miles, or just about one-half of the probable size of the ancient Capital of Rama. In Faizabad the only building of any consequence is the stuccoed brick tomb of the old Bhao Begam, whose story was dragged before the public during the famous trial of Warren Hastings.* ***Faizabad was the capital of the first Nawabs of Oudh, but it was deserted by Asaf-ud-daolah in A. D. 1775.***

According to the Ramayana, the city of Ayodhya was founded by Manu, the progenitor of all mankind. *In the times of Dasaratha, the father of Rama, it was fortified with towers and gates, and surrounded by a deep ditch. No traces of these works now remain, nor is it likely, indeed, that any portion of the old city should still exist, as* ***the Ayodhya of Rama is said to have been destroyed after the***

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death of Vrihadbala in the great war about B. C. 1426, after which it lay deserted until the time of Vikramaditya. *According to popular tradition this Vikramaditya was the famous Sakari Prince of Ujain, but as the Hindus of the present day attribute the acts of all Vikramas to this one only, their opinion on the subject is utterly worthless. We learn, however, from Hwen Thsang that a powerful Prince of this name was reigning in the neighbouring city of Sravasti, just one hundred years after Kanishka, or close to 78 A. D., which was the initial year of the Sake era of Salivahana. As this Vikramaditya is represented as hostile to the Buddhists, he must have been a zealous Brahmanist, and* ***to him therefore I would ascribe the re-building of Ayodhya and the restoration of all the holy places referring to the history of Rama, Tradition says that when Vikramaditya came to Ayodhya he found it utterly desolate and overgrown with jangal, but he was able to discover all the famous spots of Rama's history by measurements made from Lakshman Ghat on the Sarju,*** *according to the statements of ancient records. He is said to have erected 360 temples, on as many different spots, sacred to Rama, and Sita his wife, to his brothers Lakashmana, Bharata, and Satrughna, and to the monkey god Hanumana. The number of 360 is also connected with Salivahana, as his clansman the Bais Rajputs assert that he bad 360 wives.*

There are several very holy Brahmanical temples about Ajudhya, but they are all of modem date*, and without any architectural pretensions whatever.* ***But there***

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can be no doubt that most of them occupy the sites of more ancient temples that were destroyed by the Musulmans. Thus Ramkot, or Hanuman Garki, on the east side of the city, is a small walled fort surrounding a modem temple on the top of an ancient mound. The name Ramkot is certainly old, as it is connected with the traditions of the Mani Parbat*, which will be hereafter mentioned;* ***but the temple of Hanuman is not older than the time of Aurangzib.*** *Ram Ghat, at the north-east corner of the city, is said to be the spot where Rama bathed, and Sargdwari or Swargadwari the " Gate of Paradise." On the north-west is believed to be the place where his body was burned. Within a few years ago there was still standing a very holy Banyan tree called Asok Bat or the " Griefless Banyan," a name which was probably connected with that of Swargadwari, in the belief that people who died or were burned at this spot were at once relieved from the necessity of future births. Close by is the Lakshman Ghat, where his brother Lakshman bathed, and* ***about one-quarter of a mile distant, in the very heart of the city, stands the Janam Asthan, or " Birth-place temple" of Rama.*** *Almost due west, and upwards of five miles distant, is the Guptar Ghat, with its group of modem white-washed temples. This is the place where Lakshman is said to have disappeared, and hence its name of Guptar from Gupta, which means "hidden or concealed." Some say that it -was Rama who disappeared at this place, but this is at variance with the story of his cremation at Swargadvari.*

The only remains at Ajudhya that appear to be of any

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antiquity, are three earthen mounds to the south of the city, and about a quarter of a mile distant. These are called ***Mani Parbat, Kuber, Parbat, and Sugrib-Parbat.*** *The first, which is nearest to the city, is an artificial mound, 65 feet in height, covered with broken bricks and blocks of kankar. The old bricks are eleven inches square and three inches thick. At 46 feet above the ground on the west side, there are the remains of a curved wall faced with kankar blocks. The mass at this point is about 40 feet thick, and this was probably somewhat less than the size of the building which once crowned this lofty mound. According to the Brahmans the Mani-Parbat is one of the hills which the monkeys made use of when assisting Rama. It was accidentally dropped here by Sugriva, the monkey-king of Kishkindhya. But the common people, who know nothing of this story, say that the mound was formed by the labourers shaking their baskets on this spot every evening on their return home from the building of Ramkot. It is therefore best known by the name of Jhowa-Jhar or Ora Jhar, both of which mean " basket-shakings." A similar story is told of the large mounds near Banaras, Nimsar, and other places.*

Five hundred feet due south from the large mound stands the second mound called Kuber-Parbat, *which is only 28 feet in height. The surface is an irregular heap of brick rubbish, with numerous holes made by the people in digging for bricks, which are of large size, 11 inches by 7 ¼ by 2. It is crowned by two old tamarind trees, and is covered with jangal. Close by on the south-west there is a small tank,* ***called Ganes-Kund by the Hindus, and***

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Husen Kund or Imam Talao by the Musulmans, because their Tazias are annually deposited in it. *Still nearer on the south-east there is a large oblong mound called* ***Sugrib-Parbat****, which is not more than 8 or 10 feet above the ground level. It is divided into two distinct portions; that to the north being upwards of 300 feet square at top, and the other to the south upwards of 200 feet. In the center of the larger enclosure there is a ruined mound containing bricks 8 ½ inches square, and in the center of the smaller mound there is a well.*

Between the Mani and Kuber mounds there is a small Muhammadan enclosure, 64 feet long from east to west and 47 feet broad, containing two brick tombs, which are attributed to Sis Paighambar and Ayub Paighambar, or the "prophets Seth and Job." *The first is 17 feet long and the other 12 feet. These tombs are mentioned by Abul Fazl, who says—"Near this city are two sepulchral monuments, one seven and the other six cubits in length. The vulgar pretend that they are the tombs of Seth and Job, and they relate wonderful stories of them."* ***This account shows that since the time of Akbar, the tomb of Seth must have increased in length from 7 cubits, or 10 ½ feet, to 17 feet through the frequent repairs of pious Musulmans.***

The mounds are surrounded by Musulmans tombs, and as it is the Muhammadan practice to bury the dead along the sides of the high roads close to their cities, I infer that the road which now runs close to the westward of the mounds, is one of the ancient high ways of the district. This

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is confirmed by the existence of an old masonry bridge of three arches over the Tildhi nala, to the north-west of the Mani-Parbat, as well as by the direction of the road itself, which leads from the south-end of the city straight to the Bharat-kund, and onwards to Sultanpur or Kusapura, and Allahabad or Prayaga. I notice this road thus minutely, because the identifications which I am about to propose are based partly on its position and direction, as well as on the general agreement of the existing remains with the holy places described by the Chinese pilgrims.

According to Fa Hian the place where Buddha planted the holy trees was to the east of the road, on issuing from the town by the southern gate. Hwen Thsang's account agrees with this exactly in placing the "extraordinary tree" to the south of the capital and to the left of the route. This tree was the celebrated " tooth brush," or twig used in cleaning the teeth, which having been cast away by Buddha, took root and grew to between 6 and 7 feet in height. Now, it will be observed that the ruined mounds that still exist, as well as the tombs of Seth and Job, are to the south of the city and to the east or left of the road. The position, therefore, is unmistakably the same as that described by the Chinese pilgrims, and as the actual state of the ruins agrees well with the details given by Hwen Tbsang, I think that there can be no reasonable doubt of their identity.

Hwen Thsang describes the city of Visakha *as being 16 li, or 2 2/3 miles in circuit. In his time, therefore, the capital of Kama was not more than half of its present*

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size, although it probably contained a greater population, as not above one-third, or even perhaps less, of the present town is inhabited. The old city then possessed no less than twenty monasteries with three thousand monks and ***about fifty Brahmanical temples, with a very large Brahmanical population. From this account we learn that so early as the seventh century more than three hundred of the original temples of Vikramaditya had already disappeared, and we may therefore reasonably infer that the city had been gradually declining for some time previously.*** *The Buddhist monuments, however, would appear to have been in good order, and the monks were just as numerous as in the eminently Buddhist city of Banaras.*

The first monument described by Hwen Thsang is a great monastery without name, but as it was the only notable monastery, it was most probably either the Kalakarama of Saketa, or the Purvvarama, both of which are mentioned in the Ceylonese Mahawanso. The monks were of the school of the Samattiyas, and their monastery was famous for having produced three of the most eminent Buddhist controversialists. ***This monastery I would identify with the Sugrib Parbat which I have already described as being about 500 feet long by 300 feet broad. The great size and rectangular form of this ruin are sufficient to show that it must have been a monastery,*** *but this is placed beyond all doubt by the existence of an interior well and by the remains of cloistered rooms forming the four sides of the enclosure. Its position to the south of the city, and to the east or left of the road, has*

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already been specially noticed as agreeing with the recorded position of the monastery.

Beside the monastery there was a Stupa of Asoka, 200 feet in height, *built on the spot where Buddha preached the law during his six years' residence at Saketa.* ***This monument I would identify with the Mani-Parbat,*** *which is still 65 feet in height, and which with its masonry facing must once have been at least as high again, and with the usual lofty pinnacle of metal may easily have reached a height of 200 feet.* ***Hwen Thsang ascribes the erection of this monument to Asoka****, and I see no reason to question the accuracy of his statement,* ***as the mixed structure of half earth and half masonry must undoubtedly be very ancient. The earliest Stupas, or topes, were simple earthen mounds or barrows, similar to those that still exist in England.*** *There are many of these barrows still standing at Lauriya-Navandgarh to the north of Bettiya, but this is the only place where I have yet seen them.* ***They are undoubtedly the most ancient monuments of the Indian population, and I firmly believe that even the very latest of them cannot be assigned to a lower date than the fifth century before Christ. I base this belief on the known fact that all the monuments of Asoka's age, whether described by Hwen Thsang, or actually opened by myself near Bhilsa, are either of stone or brick.*** *The earthen- barrows are therefore of an earlier age; but such as are Buddhist cannot possibly be earlier than the beginning of the fifth century before Christ. In the case of the Mani-Parbat at Ajudhya I infer that the earthen barrow,*

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or lower portion, may belong to the earlier ages of Buddhism, and that the masonry or upper portion was added by Asoka. At the foot of the mound I picked up a broken brick with the letter sh, of the oldest form, stamped upon it; but as this is almost certainly of later date than Asoka, it most probably did not belong to the Mani-Parbat building.

Hwen Thsang next describes the sites of the tooth-brush tree and of the monument where the four previous Buddhas used to sit and to take exercise, as being close to the great Stupa. These places I would identify with the court-yard containing the tombs of Seth and Job, which touches the south side of the Mani-Parbat. ***The two tombs I take to be the remains of the seats of the four previous Buddhas,*** *and the paved court-yard to be the scene of their daily walks, although I was unable to trace their foot-marks, which were seen by the Chinese pilgrim.*

The last monument described by Hwen Thsang is a Stupa containing the hair and nails of Buddha. This was surrounded by a number of smaller monuments which seemed to touch one another, and by several tanks which reflected the sacred buildings in their limpid waters. ***The Stupa I would identify with the Kuber-Parbat,*** *which touches the south side of the enclosure round the tombs of Seth and Job, and is close to the west side of the ruined monastery.* ***One of the tanks described by the pilgrim may be the Ganes- Kund,*** *which has already been noticed;* ***but all the smaller monuments have disappeared long ago, as they afforded cheap and ready materials for the***

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construction of the numerous Muhammadan tombs, as well as of the neighboring bridge and mosque. *If I am right in my identification of this mound as the remains of the Stupa containing the hair and nails of Buddha, I think that an excavation in the centre of the mound might, perhaps, verify the accuracy of my conclusions.*

The people are unanimous in their assertion that the old city to the north of these mounds was called Bareta. ***Ayodhya or Ajudhya, they say, was the capital of Rama****, but the later city was called Bareta. As this name has no similarity either to Saketa or Visakha, I can only set it down as another appellation of the old town, for* ***which we have no authority but tradition****. I was disappointed when at Ajudhya in not hearing even the most distant allusion to the legend of the tooth-brush tree of Buddha, but the tradition still exists, as I heard of it quite unexpectedly at two different places immediately afterwards, first at Halila, distant 15 miles, and next at Gonda, 29 miles to the north of Ajudhya."*

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4248. We also find from the aforesaid report of Cunningham that he also discussed **A-yu-to or Ayodhya of Hwen Thsang** and according to his view, it was not the Ayodhya of Lord Rama. The discussion is on page 293 to 296 and reads as under :

"XI. A-YU-TO, OR AYODHYA.

From Kanoj the two Chinese pilgrims followed different routes, Fa Hian having proceeded direct to Ska-chi (the modem Ajudhya, near Fyzabad on the Ghaghra), while Hwen Thsang followed the course of the Ganges to

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Prayag, or Allahabad. The first stage of both pilgrims would, however, appear to be the same. Fa Hian states that he crossed the Ganges and proceeded 3 yojans, or 21 miles, to the forest of Holi, where there were several Stupas erected on spots where Buddba had "passed, or walked, or sat." Hwen Thsang records that he marched 100 li, nearly 17 miles, to the town of Nava-deva-kula, which was on the eastern bank of the Ganges, and that at 5 li, or nearly 1 mile, to the south-east of the town there was a Stupa of Asoka, which was still 100 feet in height, besides some other monuments dedicated to the four previous Buddhas. I think it probable that the two places are the same, and that the site was somewhere near Nobatganj, just above the junction of the Isan River and opposite Nanamow Ghat. But as there are no existing remains anywhere in that neighborhood, the place has been most likely swept away by the river. This is rendered almost certain by an examination of the Ganges below the junction of the Isan. Formerly the river continued its course almost due south from Nanamow for many miles, but some centuries ago it changed its course first to the south-east for 4 or 5 miles, and then to the south-west for about the same distance, where it rejoined its old bed, leaving an island, some 6 miles in length by 4 in breadth, between the two channels. As Hwen Thsang's account places Nava-deva-kula on the very site of this island, I conclude that the town as well as the Buddhist monuments must all hare been swept away by the change in the river's course.

On leaving Nava'deoa-kula, Hwen Thsang proceeded

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600 li, or l00 miles, to the south-east, and re-crossing the Ganges he reached the capital city of A-yu-to, which was 20 li, or upwards of 3 miles, in circuit. Both M. Julien and M. St. Martin have identified this place with Ayodhya, the once celebrated capital of Rama. But though I agree with them as to the probable identification of the name as that of the country, I differ with them altogether in looking for the capital along the line of the Ghaghra River, which is due cast from Kanoj, whereas Hwen Thsang states that his route was to the south-east. It is, of course, quite possible that the pilgrim may occasionally use the generic name of Ganges as the appellation of any large river, such, for instance, as the Ghaghra; but in the present case, where the recorded bearing of south-east agrees with the course of the Ganges, I think it is almost certain that the Ganges itself was the river intended by the pilgrim. But by adopting the line of the Ganges we encounter a difficulty of a different kind in the great excess of the distance between two such well known places as Kanoj and Prayag. According to Hwen Thsang's route, he first made 100 li to Nava-deva-kula, then 600 li to Ayutko, then 300 li by water to Hayamukha, and lastly 700 li to Prayaga. All these distances added together make a total of 1,700 li, or 283 miles, which is just 100 miles, or 600 li, in excess of the true distance. But as a part of the journey, viz., 300 li, or 50 miles, was performed by water, the actual excess may, perhaps, not be more than 85 or 90 miles; although it is doubtful whether the distance of 300 li may not have been the road measurement and not the river distance. It is

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sufficient for our purpose to know that Hwen Thsang's recorded measurement is somewhere about 100 miles in excess of the truth. The only explanation of this error that suggests itself to me is, that there may have been an accidental alteration of one set of figures, such as 600 li for 60 li, or 700 li for 70 li. Supposing that the former was the case, the distance would be shortened by 540 li, or 90 miles, and if the latter, by 630 li, or 105 miles. This mode of correction brings the pilgrim's account into fair accordance with the actual distance of 180 miles between Kanoj and Prayag.

By adopting the first supposition, Hwen Thsang's distance from Nava-deva-kula to the capital of Ayutho will be only 60 li, or 10 miles, to the south-east, which would bring him to the site of an ancient city named Kakupur, just 1 mile to the north of Seorajpoor, and 20 miles to the north-west of Cawnpoor. If we adopt the latter correction, the pilgrim's distance to Ayutho of 600 li, or 100 miles, will remain unchanged, and this would bring him via Manikpur, which is also an ancient place. By the first supposition the subsequent route would have been from Kakupur to Daundiakhera by boat, a distance of exactly 50 miles, or 300 li, and from thence to Prayag, a distance of more than 100 miles, which agrees with the 700 li, or 116 miles, of the pilgrim. By the second supposition the subsequent route would have been from Khara to Papamow by water, about 50 miles, and thence to Prayag, about 8 miles of land, which agrees with the 70 li of the proposed correction. In favour of this last supposition is the fact that the bearing

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from Khara to Papamow of east by south is more in accordance with Hwen Thsang's recorded east direction than the south-east bearing of Daundiakhera from Kakupur. I confess, however, that I am more inclined to adopt the former correction, which places the chief city of Ayutho at Kakupur, and the town of Hayamukka at Daundiakhera, as we know that the last was the capital of the Bais Rajputs for a considerable period. I am partly inclined to this opinion by a suspicion that the name of Kakupur may be connected with that Bagud, or Vagud, of the Tibetan books. According to this authority a Sakya, named Shampaka, on being banished from Kapila retired to Bagud, carrying with him some of Buddha's hairs and nail-parings, over which he built a chaitya. He was made King of Bagud, and the monument was named after himself (? Shyampaka Stupa). No clue is given as to the position of Bagud; but as I know of no other name that resembles it, I am induced to think that it is probably the same place as the Ayutho of Hwen Thsang, which was also possessed of a Stupa containing some hairs and nail-parings of Buddha. Kakupur is well-known to the people of Kanoj, who affirm that it was once a largo city with a Raja of its own. The existing remains of Kakupur consist of numerous foundations formed of largo bricks, and more particularly of a connected set of walls of some large building which the people call " the palace." I have not yet visited this place, winch lay out of my line of route, but I hope to have an opportunity of examining it hereafter."

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Martin published another work in two volumes, i.e., "**The History of the Indian Empire**" first published in 1858 (1983 by Mayur Publications Delhi). In his Introduction part the author gave a very brief history of India and then the experience, Britishers had vis a vis Hindu and Muslims, and strategy to be adopted to consolidate their gains. This itself is revealing and an eye opener.

"INTRODUCTION.

The Anglo-Indian Empire! What do these words represent in the minds of the people of Britain?

They speak of dominion over a far-distant sunny land, rich in barbaric gold, precious stones, and architectural beauty, occupying upwards of a million square miles of the most varied, fertile, and interesting portion of this globe, and inhabited by more than one hundred million of the human race.

The early history of this wonderful country lies hid in deep obscurity. Not the obscurity that naturally attends insignificance, but, far otherwise, caused by the dense veil which Time drew around Ancient India, in thickening folds, during centuries of deterioration; leaving the ruins of magnificent cities, and widely-scattered records graven in mysterious characters on almost imperishable materials, to attest the existence of civilised races-regarding whom even tradition is silent-at a date long prior to the Christian era.

Whence India was peopled, is quite unknown; but thirty different languages, and an equal diversity of appearance and character, dress, manners, and customs, seem to indicate long-continued immigration from various

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quarters.

The Alexandrine era (B.C. 330) throws light on little beyond the Macedonian invasion of the north-western frontier; the Arab incursions (A.D. 709) afford only a few glimpses of the borders of the Indus; and the thirteen expeditions of Mahmood the Ghuznivede (A.D. 1000 to 1025), give little beyond a vague and general idea of the wealth of the country and the dense population of the Western Coast, whose idolatry Mahmood was empowered to scourge with the strong arm of an Iconoclast; though he himself was but an instrument in the hands of Providence; and in battering down guardian fortresses and destroying temples and shrines dedicated to false gods, had evidently no higher motive than that of pillaging the dedicated treasures, and carrying away the worshippers into slavery.

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From this period we can faintly trace the progress of Mohammedan conquest in India, to the establishment of the dynasty known as the Slave Kings of Delhi (A.D. 1208.) Its founder, Kootb-oo-deen, originally a Turki slave, established the centre of Moslem dominion in the grand old Hindoo capital, chiefly by reason of the disunion which had arisen among the leading Rajpoot princes upon the failure of a direct heir, and the consequent jealousies and disputes regarding the succession.

Then the page of history becomes more and more legible until it records the invasion of Timur or Tamerlance (A.D. 1398), the terrible details of the siege of Delhi, and the general massacre in which it terminated; and all the horrors enacted before "the apostle of desolation" took his

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departure, carrying off men and women of all ranks and ages into slavery, and leaving the devoted city without a government, and almost without inhabitants.

The succeeding Indian annals, though confused, are tolerably full to the commencement of that important epoch which comprises the reigns of the Great Moguls. This brings us within the pale of modern history: we can note the growth and decay of Mogul dominion, and trace, at least in measure, the operating causes of its extension and decline. Viewed as a mere series of biographies, the lives of the Great Moguls attract by incidents, which the pen of fiction, fettered by attention to probability, would hardly venture to trace. The members of this dynasty had a decidedly literary turn, and several of them have left records not only of the public events in which they played a leading part, but also of the domestic scenes in which they figured as sons, husbands, or fathers.

The value of these memoirs in elucidating or corroborating the histories of the period, is, of course, very great, and their authenticity rests on solid grounds, apart from the strong internal evidence they afford of having been actually written by the persons whose names they bear.

Nothing can be more characteristic than the intense self-adulation with which Timur, or Tamerlane, narrates his perfidious and sanguinary career, except perhaps the peculiar power of observation and analysis brought to bear on new scenes which mark the autobiography of his descendant Baber, who, following in his footsteps, invaded

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India from Cabool, and, after a fierce struggle on the plains of Paniput (A.D. 1526), gained easy possession of Delhi and Agra, and succeeded in laying the foundation of an extensive empire.

Humayun (A.D. 1530), Akber (A.D. 1556), Jehangeer (A.D. 1605), Shah Jehan (A.D. 1638), all encountered vicissitudes of the most singular and varied character; and the Mogul history increases in interest until it culminates in the long reign of Aurangzebe (A.D. 1658), the ablest and most powerful, but the most ambitious and bigoted of his race. During his sway the predatory hordes of Maharashtra were formed by the Hindoo adventurer, Sevajee, into a powerful state; the hated and despised Mahrattas grew strong upon the spoil of independent kingdoms demolished by the haughty emperor; and finally, his troops, worn by incessant toil, became mutinous for want of pay and provisions, and suffered their aged leader to be hunted even to the death by foes he had been accustomed to treat as utterly contemptible. The decay of the empire, which commenced several years before the death of Aurungzebe (A.D. 1707), then became rapid; usurping viceroys, rebelling against their government and warring with the rulers of neighbouring states or provinces, aggravated the internal disorganisation. Nor were external foes wanting to complete the work of destruction: adventurers of all creeds and complexions fought fiercely over the ruins; while, distancing meaner competitors, Nadir Shah (A.D. 1739) and Ahmed Shah (A.D. 1759), the robber kings of Persia and Affghanistan,

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swooped down like vultures to secure their share of the carcass; and the chief cities of India, especially Delhi, repeatedly witnessed the most sanguinary enormities, and continued to do so until, one by one, they became gradually included in the widening circle of British supremacy.

And why dwell thus on the past at such a crisis as this, when the magic circle of our power has been rudely broken- when Delhi, filled to overflowing with all the munitions of war, has been treacherously snatched from our unsuspecting hands- and when the Crescent, raised again in deadly strife against the Cross, has been reared aloft as if in testimony that the Moslems who came into India proclaiming war to the death against idolatry, have quite abandoned their claim to a Divine mission, and are affecting to make common cause with the Hindoos, whose creed and practice they formerly declaimed against with so much horror and disgust? ***Now Mohammedans and Hindoos unite in committing crimes of a character so deep and deadly, so foul and loathsome, that we find no parallel for them; not in the relentless, inventive vengeance of the Red Indians; not even in that crisis of civilised infidelity, that fierce paroxysm of the French Revolution, still shudderingly called the "Reign of Terror."*** *The Red Republicans made public avowal of atheism; and awful was the depravity into which they sank, world-wide the shame they incurred: but recantation soon followed.* ***These treacherous Sepoys, who have so suddenly risen in a body, violating every oath of fidelity, every tie of feeling and association-they, too, have their***

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watchword: it is not "there is no God;" it is "Death to the Christians!"

As in France, no religions persecution, but rather a state of conventional apathy, leavened by the poison of Voltaire, Diderot, Condorcet, and their clique, preceded the atheistical and sanguinary outburst; even so has it been with India. Efforts for the extension of Christianity have been wholly exceptional; the rule has been tolerance, amounting to indifference, in all religious matters. Few who have been in the habit of reading Indian periodicals, much less of mixing in Indian society, will deny that, however manifest the desire for the diffusion of the Gospel might be in individuals, the government had remained markedly neutral.

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The Mussulmans, let it be repeated, subjugated and governed India in the character of anti-idolaters. They tolerate—and barely tolerated—the heathenism around them, to which their aversion was, for the most part, quite undisguised; and they were always eager for individual conversions. Their open assertion of the superiority of their faith was viewed as natural by the Hindoos; nor does any angry feeling appear to have been excited, save in exceptional cases of actual persecution. Aurungzebe certainly alienated a large portion of his subjects by reviving a long-abandoned capitation-tax on infidels; and whether he did this from a desire to refill the treasury emptied by incessant warfare, or from sheer bigotry, the result was the same. Many causes (among which may be named, not as the avowed ones, but certainly not as the

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least powerful—sloth and sensuality, fostered by an enervating climate) have concurred in rendering the Indian followers of Mohammed comparatively regardless of that integral portion of their creed which enjoins its extension by all and every means. ***But no earnest believer in the Koran can be tolerant of idolatry; and therefore, when we hear of Moslem and Hindoo linked together in a most unprovoked crusade against Christians, it is manifest that the pretext is altogether false, and that the Mussulman, who is taught by the book he deems inspired never to name our Blessed Lord without reverence, or idols without abhorrence, cannot now be actuated by any religious motive, however perverted or fanatical, in violating the first principles of his faith and by affected sympathy*** *with the professors of a creed heretofore declared utterly polluted and debasing, using them as dupes and tools in carrying out an incendiary plot, the planned details of which only Devil-worshippers, possessed by unclean spirits, could have been supposed capable of conceiving and executing. The conspiracy, beyond a doubt, has originated in the desire of the Mohammedans to recover their lost supremacy in India. Its immediate and secondary causes are involved in temporary obscurity; but the primum mobile must be sought for in the pages of history. It is true the flame has spread like wildfire: but the important question for those who are capable of grappling with the complicated bearings of this all-engrossing subject, is not—what hand applied the match? but how came such vast masses of combustibles to*

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be so widely spread, so ready for ignition?

To understand this in any satisfactory degree, the inquirer must be content to begin at the beginning, by carefully weighing the fragmentary records we possess of the history and character of the Hindoos as a distinct people, nothing the causes which led to their gradual subjugation by the Moslems; next, those which paved the way for the introduction of European Power; and, lastly, the establishment and operation of British supremacy throughout India.

The indifference which the British nation and its rulers have so long evinced to the study of Asiatic history, has been most unfortunate. Wrapped in fancied security, we have been too ignorant to be anxious, too indolent to be watchful; and the few who have felt it an imperative duty to speak words of warning by bringing the experience of the past to bear upon the signs of the present, have found themselves set down as alarmists on this point at least, whatever their general character for ability and sound judgment. Yet the fact is certain, that almost every leading authority from the date of our earliest assumption of territorial power, has dwelt forcibly on the necessity for unsleeping vigilance in the administration of Indian affairs. This conviction has been the invariable result of extensive acquaintance with the natives, and it is abundantly corroborated by the recorded antecedents of both Hindoos and Mohammedans.

The history of India, whether in early times or during the Mohammedan epoch, is—as the brief outline sketched

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in preceding pages was designed to indicate—no less interesting as a narrative than important in its bearing on the leading events of the present epoch, which, in fact, cannot, without it, be rendered intelligible. The struggles of European Powers for Asiatic ascendancy, form leading features in the annals of each of these states. Portugal was first in the field, and long and fierce was the combat she waged to maintain exclusive possession of the rich monopoly of Oriental commerce. The Dutch (then known as the Netherlanders) enjoyed a share of the profits in the capacity of carriers between the Portuguese factories and the northern nations of Europe; but when, in 1579, they formed themselves into a separate government in defiance of the power of Philip of Spain, that monarch, who then governed with an iron sceptre the united kingdoms of Spain and Portugal, forbade the employment of the Dutch as intermediaries - a prohibition which led to their trafficking on their own account, forming various trading settlements in the East in the commencement of the seventeenth century, and supplanting their former employers.

The first attempts of England were made, at the same period, by a company of London merchants, warmly encouraged by the Queen, who signed a charter on their behalf on the last day of the sixteenth century. During the following century the English continued to be simply traders, with no cravings for political or territorial aggrandisement - absorbed in the business of buying and selling, and anxious only for the safety of their fleet, which rapidly became more formidable and extensive in

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proportion to the rich freight it was destined to bear through seas infested with pirates, and frequently preoccupied by hostile European squadrons.

The eighteenth century opened upon an entirely new phase of Indian annals. The decay of Mogul power, which had, as has been stated, commenced before the death of Aurungzebe in 1707, was greatly accelerated by that event, and by the war of succession which followed, as a natural consequence, the death of a mogul emperor. The will of the deceased ruler decreed the division of his dominions among his sons; and had they consented to this arrangement, and cordially united in carrying it out, their allotted portions might possibly have been consolidated into distinct kingdoms. But brotherly love rarely flourished under the shadow of a despotic throne; and the House of Timur formed no exception to this rule, having evinced a remarkable tendency to fratricide throughout the entire period of its Indian career. The younger sons of Aurangzebe went to war with their elder brother, each on his own account, and died the death they had provoked, leaving the survivor, Bahadur Shah, to rule as best he might the scattered territories styled the Empire. Anything more devoid of organisation - of any approach to unity - than the so-called Empire, cannot well be conceived. When Auraungzebe snatched the sceptre from the hands of his father, Shah Jenhan, and condemned him to life-long captivity, the dominions he usurped were comparatively well governed, and might, under the sway of a ruler of such unquestionable ability, such indomitable perseverance,

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have been consolidated into a comparatively homogeneous mass. But the unhallowed ambition at whose shrine he had sacrificed the liberty of his father and the lives of his brothers, still hurried him on, rendering him reckless of the internal decay which was manifestly at work in the very heart of his kingdom, while he was lavishing his resources in spreading desolation and ruin, famine and the sword, through every independent kingdom within his reach - extending his own only in name, throwing down governments and ancient land-marks, yet erecting none in their stead; becoming terrible as a destroyer, when he might have been great as a statesman and a consolidator.

A right view of the character of Aurungzebe, and a patient investigation of his career, is absolutely necessary to the obtainment of a clear insight into the state of India at the period when the English East India Company began to exchange their position of traders on sufferance for that of territorial lords. The first steps of this strange transformation can hardly be said to have been voluntary. The English merchants were still essentially traders. An examination of the East India House records (and no attempt had ever been made to garble or hide them away from friend or foe), will prove to the most prejudiced observer, that, as a body, they persistently opposed the acquisition of dominion. Nothing short of complete indifference can account for the excessive ignorance of Indian politics manifested in their official correspondence. It may, indeed, be urged that English factors in a foreign land, in addition to their characteristic reserve, are

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naturally much engrossed by the duties and cares of their calling, and, apart from prejudice, may well be excused for a degree of preoccupation which prevents them from making any very vigorous effort to penetrate the barriers of language and creed, manners and customs, which separate them from the people with whom they come to traffic. A time arrived, however, when the English could no longer be blind to the alarming political and social state of India. Every year, much more every decade, the disorganisation increased. Certain native Hindoo states, such as Mysoor, Travancore, the little mountainous principality of Coorg, and a few others, had been exempted, by their position or their insignificance, from Moslem usurpation. With these exceptions, strife and anarchy spread over the length and breadth of India. It was no organised struggle of race or creed; for Mussulman fought against Mussulman, Hindoo against Hindoo, and each against the other; Affghan warred with Mogul, Mogul with Rajpoot; Mahratta with all. The hand of every man was raised against his neighbour: the peasant went armed to the plough - the shepherd stood ready to defend his flock with his life; the energy and determination of local authorities kept up some degree of order in their immediate districts; but, in general, the absence of a government strong enough to protect its innocent subjects from internal vice or external vice or external aggression, was manifested in the fearful audacity with which the Pindarry, Dacoity, and Thug, the trained marauder, thief, and assassin, pursued their murderous avocations, in the blaze of noon as in the darkness of

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midnight.

The Hindoos fell back upon the ancient village system, which the usurping Mohammedans had vainly striven to destroy; and the internal organisation of these little municipalities, each possessing its own Potail or Mayor, enabled them to parry, or at least rally from, attacks from without.

The English laboured for the effectual fortification of the various factories gradually established in different parts of India, and included, according to their situation, in the three presidencies of Calcutta, Madras, and Bombay. Armed neutrality, however, would have been barely practicable, even so far as the numerous warring native powers were concerned. The conduct of their European rivals rendered such a position quite untenable. The French East India Company had, so far as trade was concerned, proved a decided failure: its employes were very inferior to the English as factors; but as political agents, they possessed diplomatic instincts peculiar to themselves.

Dumas, Dupleix, and the gifted La Bourdonnais, saw clearly the opportunity afforded for the territorial establishment of their nation, and they eagerly took part in the quarrels around them, making offensive and defensive alliances with the neighbouring states, interfering in cases of disputed succession, and taking, with bold and unfaltering steps, the apparent road to political power. None of the English functionaries approached their rivals in ability; but they could not be blind to the increasing danger of their situation; and the example set by the

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French, of drilling native troops and organising them as far as possible in accordance with European notions, was followed throughout the British settlements. Then came the inevitable struggle between the two powers whose unsleeping rivalry had so often evidenced itself in strife and bloodshed at the very ends of the earth. At first they met in indirect hostility as the auxiliaries of native princes; but the first indications of European war were eagerly seized on as a cause for direct opposition, and a fierce struggle ensued, which eventually left the English complete masters of the field. While the Carnatic, in which Madras is situated, was the scene of this context, the English in Bengal were subjected to the most oppressive exactions by the usurping Mohammedan governor, Surajah Dowlah, whose seizure and pillage of Calcutta in June, 1756, was marked by the horrible massacre of the "Black Hole"--a deed which, up to that period, even Mohammedan annals can hardly equal in atrocity; but to which, after the lapse of a hundred years, many terrible parallels have been furnished.

The tidings spread like wildfire through the British settlements, and the conviction became deep and general, that it would be madness to trust to the faith or humanity of such men as the depraved Surjah Dowlah and his Moslem compeers. The Mogul empire had become an empty name so far as the distant provinces were concerned, and there was absolutely no native state either strong enough to protect the English settlements, or just enough to be trusted. Never was the indomitable resolve of Britons in a

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foreign land more sternly tested, or more triumphantly evinced, than when their fortunes seemed at the lowest ebb —when the French and the Mohammedans, in different quarters, menaced their overthrow and extinction. "To drive these dogs into the sea!" was then, as now, the fervent aspiration of every Moslem regarding every European. But they wished to squeeze the orange before they threw away the rind. They were themselves divided, and had plans of individual aggrandizement to carry out against each other, and generally over the Hindoos; and they well knew the value of European co-operation and instruction in the art of war.

The recapture of Calcutta was speedily effected by a force of 900 European troops and 1,500 Sepoys, commanded by a ci-devant writer, who had turned soldier, and risen to distinction in the Carnatic war.

Robert Clive—for it was he—looked round and saw the opportunity offered for exchanging the precarious footing then occupied by his countrymen for one of far greater importance and security. The Hindoos were daily becoming more impatient of the Mohammendan yoke, and the haughty Mussulmans were themselves divided regarding their ruler, whose reckless profligacy and violent temper had given many of them provocation of a description which excites, in an Oriental, feelings of the fiercest and most enduring revenge. The English watched the course of affairs with deep anxiety, and soon ascertained that, in violation of a treaty entered into after the reconquest of Calcutta, Surajah Dowlah was plotting

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with the French for their destruction. Unquestionably, this procedure justified them in adopting hostile measures against their treacherous foe; though it does not even palliate some of the minor details, in which the crooked policy of Clive appears in painful contract to his bravery as a soldier and his skill as a general. The result was the battle of Plassy (A.D. 1757), rapidly followed by the permanent establishment of British dominion in Bengal.

After this, the tide of success flowed on fast and full. If the reader will patiently peruse the pages of this history, he will see that our power has increased with marvellously little effort on our own part. As, when a stone is flung into a river, the first small circle expands and multiplies beyond calculation—so, in India, have we gone on extending our limits, as from the action of some inevitable necessity; less from our own will, than because we could not stand still without hazarding the position already gained. True, there have been most distressing instances of injustice and aggression; but these are the few and comparatively unimportant exceptions. So far as the general obtainment of political ascendancy in India is concerned, we may quote the apt comparison used by an old Rajpoot prince to Colonel Tod, in 1804, as conveying a perfectly correct idea of our process of appropriation. Alluding to a sort of melon which bursts asunder when fully matured, Zalim Singh said, "You stepped in at a lucky time; the p'foot was ripe, and you had only to take it bit by bit."

The manner in which we have acquired power in India, is one thing; the use we have made of its, is another

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and more complicated question. For my own part, I have long watched the Anglo-Indian government with feelings of deep anxiety, and have laboured to the utmost of my ability to awaken the British nation to a sense of the responsible and critical situation they had been led to occupy. It is now close upon twenty years since I was permitted, by the East India Company, to edit the official records of a survey made by Dr. Buchanan in Eastern India; and the impression on my mind was so forcible, that I could not refrain from prefacing the selections with a declaration that the handwriting was on the wall, and nothing but a complete and radical alternation of our system of government, could avert the punishment justly merited by our misuse of the great charge committed to us.

The primary reason of this misuse I believe to be the false and wicked assertion, that "we won India by the sword, and must keep it by the sword." There is another aphorism, much older and of much higher authority, which we should do well to think on--"They that take the sword shall perish by the sword." We did not conquer India by violence: we came as peaceful traders and spent long years in that capacity; and during that time we succeeded in impressing on the minds of the natives as lively conviction of our energy, ability, and integrity. When the crisis came-as come it did, without our knowledge and greatly to our discomfiture—counting-houses were turned into barracks, bales of piece-goods helped to make barricades, clerks and writers were metamorphosed into military leaders, and, while themselves but learners, drilled the natives round

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them into a state of discipline before unknown.

Thus was formed the nucleus of that army on which we have leaned as if that, land that alone, had been the means of our obtaining dominion in India. For the perfect organization of that mighty force, which lately numbered 300,000 men, we laboured with unwearied patience; and to this grand object we sacrificed every other. So long as the Sepoys were duly cared for, the condition of the mass of the people was a matter of comparative indifference. It was not the Great Ruler of the Universe, whose inscrutable decrees had placed this vast tract of heathendom in the hands of a people who professed to serve Him and Him only; rejecting every tradition of men; relying only on her mediation of His Son; resting for guidance only on His written word; asking only the interpretation His Holy Spirit;- not so! The Anglo Indian Dominion had nothing whatever to do with any such religious speculations. We were not bound to set before the people the example of the faith which we affect to believe the very leaven of the earth. Until the last few years we did not view it even as a case of stewardship. We were not even called upon to exert our energy for developing the physical resources of the country, and ameliorating the condition of the mass of the people. And why? Because free Britons, in the middle of the nineteenth century, have seen fit to assume the position of military despots, drowning the conviction that India was God-given trust, in the vague notion of its being "an empire of opinion;" and then sinking, by an easy transition, from rationalism into the more popular notion of sheer force--"

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an empire of the sword," held by the might of our own strong arm.

Scepticism and cowardice lie at the root of our present disasters: deliberately have we chosen the fear of man, which blinds and enervates, rather than the fear of God, which enlightens and strengthens. With infatuated credulity we have nursed in our bosom the serpent that has stung us to the quick. Tolerance is, indeed, an essentially Christian quality; but who shall dare assume that praise for the Christianity which was made in the persons of high Protestant (?) officials, to bow its head before licentious profligacy of the Mussulmans, and the heathen abominations and disgusting impurities of the modern Brahminical priesthood, land to witness, in silence, the spiritual enslavement and physical degradation of the mass?

We though, perhaps, both Mussulmans and Brahmins too enervated by their respective orgies to be dangerous as enemies. This but proves our utter ignorance of the oriental character, especially as developed in the Mohammedans. Let the reader glance over the history of their founder (and I have striven to sketch it in a subsequent page, in faithfulness and not with the pain of a caricaturist), he will see in the False Prophet the type of sensuality, bigotry, ambition, grounded and rooted in the fiercest fanaticism; and that type has been perpetually reproduced, and will continue to be so until Mohammedanism shall be swept from the face of the earth.

How soon that may be, none can prophesy; but the

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general rising now taking place among the Mussulmans in Africa and Syria, as well as in India, are pointed at by many observers as preceding and indicating the death-throes of this once powerful, but already deeply sunken race.

For us, if we would hope to conquer, it must be by turning to the Lord of Hosts, as a nation, in deep repentance and humility: then only may we justly look for present help and anticipate for the future that gift in which we have been so lamentably deficient-- "a right judgment in all things." Thus favoured, we shall not shrink from the responsibilities of an evangelized nation; but shall understand, that there is no surer way of obtaining respect in the eyes of the quick-written Hindoos, than by a consistent adherence to our religious professions; the means commend themselves to every unprejudiced person really versed in India affairs; and, assuredly, none other will be blessed of God. We cannot hope to pass off indifference for tolerance; the Mohammendans see through the flimsy disguise and bid the heathen throw off the ignominious yoke of Kafirs (infidels) Christianity they reverence and dread to see us manifest any tokens of it. Well they may; for nothing else will conquer our head in the day of battle. That day has come. May we now have grace to control the fearful passions provoked by the most horrible outrages; and may the memory of our own shortcomings towards God, enable us, if He gives the victory, to use it mercifully. Let us not forget, that the innocent blood spilt in the last few weeks, cannot blot out

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the memory of the debt which England owes to India. The Parliament of Britain now must dictate the course to be followed in a matter of vital importance to the nation whose opinions it represents. The portion of the British public impressed with sound and practical religious views, is, happily, larger and more influential than would appear to superficial observers. The fact is indicated in the increase of missionary enterprise, the extension of education, and, indirectly, in the progress of public improvements, and the initiation of reformatory measures. The faulty judicial system the partial and vexatious land-tenure, the defective monetary circulation of India, have come under discussion; and if, as God in mercy grant, Britain is permitted to retain the brightest jewel in her crown-- the most valuable of her transmarine possessions —it is fervently to be desired that we may apply ourselves diligently to remedy all deficiencies, to repair, as far as possible, past neglects, and provide against future emergencies.*

The details of the present terrible episode will be given fully in subsequent pages; day by day that close seems approaching, with the record of which the Author hopes to be enabled to terminate this Work.

**The pecuniary debt is wholly on the side of England. The cost, alike of civil and military government, including the payment of the royal troops, has been entirely defrayed from the Indian revenues: so, if we succeed, must be expenses of the present insurrection. The money remittances to England from the three Presidencies average*

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five million sterling for the last sixty years. There is scarcely a county in the United Kingdom but has had the value of its landed property enhanced by the investment of fortunes, the fruit of civil or military services or of commercial succeeds in Hindoostan. Again, how many British statesman and commanders have had their genius elicited and educated in India. A noble field has been annually opened for the youth of Britain, and an expansive tone given to society by the constant discussion of great subjects.

The merchant and the manufacturer can best estimate the importance of a large, increasing, and lucrative market, free from high or hostile tariffs; and the advantage of an almost unlimited command of commodities, the regular obtainment of which is essential to the steady employment of their operations. Lastly—nor must it be forgotten, that Indian Imports and Exports, to the amount of thirty million sterling, now furnish profitable employment to the best class mercantile shipping."

"Oude, or Ayodhya, was famous in ancient Hindoo lore as the kingdom of Dasarath, the father of Rama, the hero of the famous epic the Ramayana. With the details of its fall as a Hindoo kingdom, and its history as a province of the Mogul empire, we are almost entirely unacquainted; but we know that it has retained its institutions to the present day, and that, in all respects, the Hindu element largely predominates throughout Oude." (Vol. II, page 59)

"In the meantime, the disorganisation of Oude was clearly on the increase, and one of its marked features was a rising

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spirit of Moslem fanaticism. It happened that a Mohammedan fast fell on the same day as a Hindoo feast; and Ameer Ali, a moolvee, or priest, of high repute, took advantage of the circumstance to incite his co-religionists to a fierce onslaught on the Hindoos. Troops were ordered out to quell the disturbances; but Ameer Ali seized and confined two of the officers, assembled 3,000 men, and declared his intention of destroying a certain Hindoo temple, and erecting a mosque in its stead. At length the British subsidiary force was employed by the king against the moolvee. An affray ensued, in which a body of Patans fought with the recklessness of fanaticism, and were cut down, standing shoulder to shoulder round their guns, by a party of Hindoo zemindars and their retainers. In all, 200 Hindoos and 300 Patans perished. This occurred in November, 1855. About the same time the Oude government became aware that some great change was in agitation. They asked the reason for the assembling of so large a force at Cawnpoor; and were, it is alleged, solemnly assured that it was intended to keep in check the Nepaulese, descent towards the district of Nanparah." (Vol II, page 77)

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4250. Then comes the real detailed study conducted by a local official P. Carnegy who was posted as Officiating Commissioner and Settlement Officer, Faizabad.

4251. Sri Ravi Shankar Prasad, Sr. Advocate and other learned Advocates for Hindu parties placed strong reliance on the findings of **P. Carnegy's Historical Sketch (supra)** contained on page 5 to 7, 20 and 21 (Paper No.107C1/18, 19,

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20, 22, 23) and Appendix-A & B to the Book. P. Carnegy was officiating Commissioner and Settlement Officer, Faizabad. Sri Jilani, learned counsel for the plaintiff (Suit-4), however, assailed the said findings contending that Carnegy has prepared his report in 1870. There was no occasion for him to have personal knowledge of the ancient facts stated in the said report. He has not referred to any material which was relied upon by him in recording his findings and, therefore, whatever historical facts he has written are without any basis and cannot be taken as a gospel truth or treated as a fact proved. Moreover even in Carnegy's report, the list of important Hindu religious places in Ayodhya did not mention anything about Janambhumi temple.

4252. In the introductory part, Sri P. Carnegy has divided the facts relating to Ayodhya in 3 distinct ages and according to him the same were as under:

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> *"First, there is the mythic period of Rama and Vikramaditta, and bearing upon this, we have (1). The Ramayan of Valmiki, modernized by Tulshi Das in the days of Shahjehan, and treated in our own days historically by Wheeler, geographically by Cust, and poetically by Monier Williams and Griffiths. (2) The Raghuvansa of Kalidasa, and ornament of the Court of Vikramaditta, to the glory of whose line the work was composed nearly 2,000 years ago, and of which I am not aware that there is any complete English edition; and (3) the Ajudhia Mahatam (for an epitome see Appendix B) a far less known and more recent work, complied beyond doubt by Pandits subsequent to the restoration of Brahminism, the scope of which is to dilate on the special virtues of the different shrines in and around*

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Ajudhia."

Second, the historic age, an acquaintance with which would necessitate the study of the writings of, (1) the Chinese travellers of the fourth and sixth centuries, with the light thrown upon them in these days by Elphinstone, Cowell and Cunningham; and (2) the Mahomedan geographers and historians, to the study of whose works Sir H. Elliot devoted a life.

Third, the modern age', or Oudh under its Nawabs and Kings, which would entail familiarity with a host of recent writers from Macaulay downwards."

4253. In 1870, Ayodhya was part of Pargana Haveli-Oudh and in respect to its creation, Sri P. Carnegy has given certain facts as under :

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"Pargana Haveli-Oudh takes its name from Oudh, the capital, and Haveli the name generally used to indicate the principal station of the chief revenue authorities of the Moghals. The pargana is bounded on the north and east by the River Gogra, on the south by the River Marha and Parganas Pachhamrath and Amsin, and on the west by Pargana Mangalsi.

In former days the revenue collections of the pargana, used to be made at the "Kala Mubarak" or blessed fort, which was situated at Lachhmanghat where now stands the recently built temple of Jugla Saran. In the days of Mansur Ali Khan, (A.D. 1739-54), they used to be made at "Rath Haveli," and in the time of the Bahu Begum, at or near the Dilkusha, both of which latter places are in the city of Fyzabad.

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The pargana differs from all others in the district, inasmuch as there never were any of the usual Tappa sub-divisions. It contained in the King's time 329 townships. These were reduced under Summary Settlement to 242 in number; and they have now been further cut down to 181 demarcated villages, under the redistributions of the revised settlement."

4254. According to his investigation, the residents of the area mainly belong to following categories termed by him as "chief landed proprietors":

1. the Vasisht Brahmins
2. the Surajbans Chhatris
3. the Garagbans Chhatris
4. the Bais Chhatris
5. The Upadhia Brahmins
6. The Syads of Bhadarsa
7. The Kurmis of Maujadbanspur

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4255. It would be useful to refer his observations in respect to Vasisht Brahmins as under :

"The Vasisht Brahmins.-The members of this family assert descent from Vasisht Muni, the spiritual adviser of the immortal Ram Chandar, from whom that portion of the town which is still known as Vasisht Tola, takes its name, and whose sacred memory is still kept fresh by the annual visits of his votaries to the Vasisht Kund or reservoir, in the same quarter.

After the vicissitudes of the Budhist and Atheist periods when the Vedic faith was for the time, it is believed, locally suppressed, Ajudhia was again traditionally

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restored and brahminically re-peopled, through the exertions of Vikramajit of Ujain; and Kashiram and other members of the present Vasisht tribe, who now inhabit the ancient haunts of the family, aver that their ancestors were then re-called by the sovereign in question, from Kashmere, and received from him large assignments of revenue-free land. It is the further averment of these persons that they retained their possessions during the supremacy of the non-Brahminic Bhars, but it is almost needless to say that no proofs are extant either of their advent from Kashmere, or their steadfastness of faith under the Bhars. In the Ain-i-akbari, the oldest reliable historical record, Vasisht Brahmins are stated to be the prevailing caste of zamindars in this pargana.

The proprietary status of this family waned before the modern Surajbans clan the annals of which will follow, and it members are now reduced to the possession of exproprietary petty holdings (Sir) and dues (Sayer), in the Ranupali Anjna Narainpur and Luchhmidaspur estates, which comprise 32 villages in all, in which also they chiefly reside."

4256. Ayodhya, its area, topography etc. he has dealt with on page 5 of the Book reads as under :

"Ajudhia.- Ajudhia, which is to the Hindu what Macca is to the Mahomedan, Jerusalem to the Jews, has in the traditions of the orthodox, a highly mythical origin being founded for additional security not on the earth for that is transitory, but on the chariot wheel of the Great Creator himself which will endure for ever.

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In appearance Ajudhia has been fancifully likened to a fish, having Guptar as its head, the old town for its body, and the eastern parganas for its tail.

Derivation.- The name Ajudhia is explained by well-known local Pandits to be derived from the Sanskrit words, Ajud, unvanquished, also Aj, a name of Barmha, the unconquerable city of the Creator. But Ajudhia is also called Oudh, which in Sanskrit means a promise, in allusion it is said, to the promise made by Ram Chandra when he went in exile, to return at the end of 14 years. These are the local derivations; I am not prepared to say to what extent they may be accepted as correct. Doctor Wilson of Bombay thinks the word is taken from yudh to fight, the city of the fighting Chhatris.

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Area.-The ancient city of Ajudhia is said to have covered an area of 12 jogan or 48 kos, and to have been the capital of Utar-Kausala or Kosala, (the Northern Treasure) the country of the Surajbans race of Kings, of whom Ram Chundar was 57th in descent from Raja Manu, and of which line Raja Sumintra was the 113th and last. They are said to have reigned through the Suth, Tireta, and Dwapar Jugs, and 2,000 years of the Kul or present Jug or Era."

4257. The history and alleged restoration and other events of Ayodhya, he has dealt with from page 6 to 13 as under :

"*With the fall of the last of Rama's line, Ajudhia became a wilderness, and the royal race became dispersed even as the Jews. From different members of this dispersed people, the Rajas of Jaipur, Joudhpur, Udeypur, Jambu,*

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&c., of modern times, on the authority of "Tirhut Kuth-ha," claim to descent. Even in the days of its desertion Ajudhia is said still to have remained a comparative Paradise, for the jungle by which it was over-run, was the sweet-smelling keordh, a plant which to this day flourishes with unusual luxuriance in the neighborhood.

Ban-Oudha.-In less ancient times when waste began to yield to cultivation, it took the name of Ban-Oudha or the Jangle of Oudh. With this period the name of Vikramajit is traditionally and intimately associated, when Budhism again began to give place to Brahminism.

The restoration by Vikramajit.- To him the restoration of the neglected and forest-concealed Ajudhia is universally attributed. His main clue in tracing the ancient city was of course the holy river Sarju, and his next was the shrine still known as Nageshar-Nath, which is dedicated to Mahadeo, and which presumably escaped the devastations of the Budhist and Atheist periods. With these clues, and aided by descriptions which he found recorded in ancient manuscripts, the different spots rendered sacred by association with the worldly acts of the deified Rama, were identified, and Vikramajit is said to have indicated the different shrines to which pilgrims from afar still in thousands half-yearly flock.

***Ramkot**- The most remarkable of those was of course Ramkot the strong-hold of Ramchandar. This fort covered a large extent of ground and according to ancient manuscripts, it was surrounded by 20 bastions, each of which was commanded by one of Rama's famous generals,*

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after whom they took the names by which they are still known. Within the fort were eight royal mansions where dwelt the Patriarch Dasrath, his wives, and Rama his deified son, of whom it has been plaintively sung-

"Lord of all virtues, by no stain defiled,
The king's chief glory was his eldest child,
For he was gallant, beautiful, and strong,
Void of all envy, and the thought of wrong.
With gentle grace to man and child he spoke,
Nor could the churl his harsh reply provoke,
He paid due honor to the good and sage,
Renowned for virtue and revered for age.
And when at eve his warlike task war o'er,
He sat and listened to their peaceful lore,
Just, pure and prudent, full of tender ruth,
The foe of falsehood and the friend of truth;
Kind, slow to anger, prompt at miseries call,
He loved the people, and was loved of all,
Proud of the duties of his warrior race,
His soul was worthy of his princely place.
Resolved to win, by many a glorious deed,
Throned with the gods in heaven, a priceless meed
What though Brihaspati might hardly vie,
With him in eloquence and quick reply,
None heard the music of his sweet lips flow
In idle wrangling or for empty show.
He shunned no toils that student's life befit,
But learned the Vedas and all holy writ;
And even eclipsed his father's archer fame,

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So swift his arrow and so sure his aim.

To this praise for virtue his ancient father apparently had no pretension; for we are told that besides the three wives above marginally indicated, who caused him so much anxiety, there were 360 others of whom history says little. A prodigality of connubial happiness which in modern days found its parallel also in Oudh, in the Kesar Bagh Harem of Wajid Ali Shah.

***Samundra Pal Dynasty**.- According to tradition Raja Vikramaditta ruled over Ajudhia for 80 years, and at the end of that time he was outwitted by the Jogi Samundra Pal, who having by magic made away with the spirit of the Raja, himself entered into the abandoned body, and he and his dynasty succeeding to the kingdom they ruled over it for 17 generations or 643 years, which gives an unusual number of years for each reign.*

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***The Siribastam Dynasty**.- This Dynasty is supposed to have been succeeded by the trans-Gogra Siribastam family of which Tilokchand was a prominent member, a family which was of the Budhist-Jain persuasion and to which are attributed certain old Deoharas of places of Jain worship which are still to be found in Ajudhia, but which are of modern restoration.*

It was probably against the Siribastam dynasty that Syad Salar made his ill-starred advance into Oudh when in the earlier Mahomedan invasions, he and his army left their bones to bleach in the wilds of Baraich (see chronicles of Oonao Page 83-5).

But the hold of the trans-Gogra rulers of Ajudhia was

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soon after this lost, and the place passed under the sway of the Rajas of Kanouj. Their power however, according to hazy tradition seems for a time to have been successfully disputed by the Magadh dynasty, whose temporary rule is still acknowledged. . . . .

***The Kanouj dynasty**.-Subsequently to this the Mahamedans made another partial advance into Hindostan in alliance with Kanouj whose Raja it again restored to sovereignty; but in these parts this sovereignty was altogether repudiated, and minor local rulers sprang up throughout the land, and a period of territorial confusion then prevailed which was only finally terminated by the Mahamedan conquest. A copper grant of Jai Chand the last of the Karouj Rahtors, dated 1187, A.D. or 6 years before his death, was found near Fyzabad when Colonel Caulfield was Resident of Lucknow. See A.S. Jour. Vol. X. Part I 1861.*

Sir H. Elliot mentions that on the occasion of Bikramajit's visit to Ajudhia he erected temples at 360 places rendered sacred by association with Rama. Of these shrines but 42 are known to the present generation, and as there are but few things that are really old to be seen in Ajudhia, most of these must be of comparatively recent restoration. A list of these shrines is given as Appendix A as well as of numerous Thakur-dwaras &c. which have been, or are daily being built by different nobles of Hindostan to the glorification of Ramchandar, his generals and other members of his royal race, to the glorification of Ramchandar, his generals and other members of his royal

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race. There are also six Mandirs of the Jain faith to which allusion has already been made.

The cradle alike of Hindus, Budhists and Jains.-It is not easy to over-estimate the historical importance of the place which at various times and in different ages has been known by the names of Kosala, Ajudhia and Oudh; because it may be said to have given a religion to a large portion of the human race, being the cradle alike of the Hindus, the Budhists, and the Jains.

In the earliest ages, the Hindus were divided into the two great lines of solar and lunar Chhatris, from whom all other Chhatris are, by courtesy, descended; and of the former line Kosala was at once the Kingdom and Capital. Of this territory Ikshawaku was the first solar King. When he lived is chronologically unknown, but Hindu Mythology takes him back to within a few removes of Brahma, the Creator. Thirty sixth in descent from Ikshawaku was Rama, the typical Chhatri subjugator of the South, and the glory of Ajudhia; the contemporary perhaps of Solomon, who was followed by some sixty more of his line before it became obliterated.

Of Budhism too, Kosala has without doubt, a strong claim to be considered the mother. Kapila and Kasinagara both in Gorakhpur and both of that country (Kosala) are the Alpha and Omega of Sakya Muni, the founder of that faith. It was at Kapila that he was born; it was at Ajudhia that he preached, perhaps composed those doctrines which have conferred upon him a world-wide fame; and it was at Kasinagara that he finally reached that much desiderated

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stage of annihilation by sanctification, which is known to his followers as Nirvana B.C. 550.

Again it is in Ajudhia that we still see pointed out the birth-place of the founder as well as of four other of the chief-hierarchs of the Jain faith. Here it was that Rikabdeo of Ikshawaku's royal race matured the schism, somewhat of a compromise between Brahminism and Budhism, with which his name will ever be associated.

In Ajudhia then, we have the mother of the Hindus, as typified by Rama, the conqueror of the South; of the Budhists, as being the scene of the first great protest against caste by the originator of a creed whose disciples are still counted by millions; and of the Jains, as being the birth-place of the originator of doctrines which are still revered by several of our most influential mercantile families.

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There are two traditions of the Jains that are at least curious. The one has just been mentioned that the founder of the Jain creed was of the Ajudhia solar race: the other, and it is maintained by the Khattria also, that only such Chhatris as are descended from Jains are pure. There is here a good deal of room for speculation. Abu was the fountain head of the Jain faith; there the founder of that faith lived and died, and on that mount there is still a temple to is revered memory nearly 1000 years old. It was at Abu too, it will be remembered, that a convocation of the gods recreated the Agnicula quartet of Chhatris, to put down the Budhists and atheists who had overrun the country. May not this mythical recreation point to the

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revival of Brahminism in even the very stronghold of the Jain faith? It is with this agnicula recreation on mount Abu that many of the oldest of our Chhatri clans seek to connect their origin. Such a recreation is of course absurd, but it is not absurd to suppose that Abu, peopled with the descendants of Ikshawaku, a solar prince of Oudh, may have been the scene of a Brahminical revival which spread far and wide, reaching in time the Chauhans of Mainpuri, and through one of them, Bariar Singh, the founder of at least 4 of our present chief families, extending itself into eastern Oudh also, where the darkness of the Magadh period was yet represented by the disbelieving caste neglecting Bhars.

***The Sarju**.- The origin of the river Sarju is highly fanciful. On an occasion of mirth tears of joy flowed from the eyes of Narain, the Supreme Being, which were reverently saved from falling to the ground by Brahma, the Creator, who caught them in his watercan (Kamandal) and carefully deposited them in the Mansarwar lake. When the city of Ajudhia had been fairly established the people longed for the sight of flowing water, and they made known their wishes to the far famed Local Divine Vasisht Muni (the ancestor of the Vasisht tribe of Brahmins). The latter entered into the spirit of their wishes and by severe penance and sacrifices to Brahma, the tear-preserved waters of Mansarwar were made to flow past the city of bliss. For these reasons the Sarju is still sometimes fancifully called the Vasisht-ki-kunnya, or the Vasisht nymph, and also Vasisht Gunga.*

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The Ajudhia Mahatum.-*No account of Ajudihia would be complete which did not throw some light on the Ramayan and the Ajudhia Mahatum. Of the former of these works, I need not speak, for through the writings of Wheeler, Cust, Monier Williams &c. most readers are familiar therewith. I will therefore confine my remarks to the Ajudhia Mahatum, which is comparatively unknown.*

This work was prepared to the glorification of Ajudhia according to some, by Ikshawaku of the Solar race, while others with more probability aver that it is a transcript from the Askundh and Padam Purans, and is not the production of any Raja. Be that as it may it is well that the essence of the work should be made available to the public, and in this view Mr. Woodburn c.s. has been good enough to make a connected abstract for me, from a literal translation which I had made some years ago. This abstract is given as Appendix B.

Limits of Oudh.- *It is not always easy to comprehend what is meant by the Oudh or Ajudhia of ancient times, for that territory has been subjected to many changes. So far as these are known to me, I give them below-*

The Oudh of Rama.- Such intelligent natives as Maharaja Man Singh have informed me that at this period Oudh was divided into five portions, thus :- (1) Kosala or Utar Kosala, which included the present Trans-Gogra districts of Gorakhpur, Busti, Gondah and Baraich, (2) Pachhamrath, which included the country between the rivers Gogra and Gomti, extending westwards from Ajudhis

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to Nimkhar in Sitapur. (3) Purabrath, or the territory between the same rivers, extending eastwards towards Jaunpur, the limit not being traceable. (4) Arbar being the country around Pertabgurh, lying between the rivers Gomti and Son, probably the same that it still known as Aror or Arwar : and (5) Silliana, which included some portion of the Nepal hills running along the then Oudh frontier.

The Oudh of Akbar.- Mention is made of the title of Subadar of Oudh as early as A.D. 1280, and it was one of the 15 Subas or Governorships into which Akbar subdivided the empire in 1590 A.D. The Mahamadan attempt to change the name from Oudh to Akhtarnagar, never seems to have succeeded fully.

The boundaries of the old Suba differed materially from those of the present day, and a large part of what is now the eastern portion of the Province, including Tanda, Aldemau, Manikpur, &c. was not in those days included in Suba Oudh, but in Allahabad. According to the Ain-i-Akbari the Suba then extended from and inclusive of Sirkar Gorakhpur, to Kanouj, and from the Himalayas to Suba Allahabad, 135 kos by 115 kos.

***Suba Oudh contained five Sirkars**, viz. (1) Oudh; (2) Lucknow; (3) Baraich; (4) Khyrabad; and (5) Gorakhpur. The details of these are given below, but they are only approximately correct, and in regard to some places my information is incomplete.*

***The Oudh of Shuja-ud-Dowlah**.-At this period Gorakhpur and Azimgarh were of the Province, and with the co-operation and aid of the English, Kurra, Allahabad*

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and Rohelkhund wee added to it, Ghazipur and Benares were made over to the English during this reign.

***The Oudh of Sadut Ali**.- In this reign the province was reduced by the transfer to the British by treaty, of Rohelkhund, Allahabad, Farrakabad, Mainpuri, Etawa, Gorakhpur, Azimgarh, Cawnpur and Fattehpur, and in Ghazi-ud-din Haidar's reign which followed, the Nepal Terai, given back by Lord Canning after the Mutiny, was added by us to the Kingdom. So, with the exception of some changes of Parganas for mutual convenience, on the Allahabad, Gorakhhpur and Rohelkhund frontiers, the Province remained till we acquired it in 1856.*

The town of Ajudhia comprised the lands of four entire mauzas, (Barehta, which has been washed away, Faridipur, Bagh Kesari Singh and Rowza Shah Juran) and portions of three others; (Ranupali, Miraapur and Derabibi;) besides Kasbah Kirki. It contains the 26 mohallahs marginally named.

1. Bazar Sherganj 2. Kythanna 3. Gariwan Tollah 4. Bhararia Tollah 5. Babhan Kuliah 6. Bazdari Tollah 7. ***Vashist Kund*** *8. Tenrhi Bazar 9.* ***Syudwara*** *10. Shekhana 11. Mirapur 12. Kundurpura 13. Shah Madar 14. Kaziana 15. Begampura 16. Buxaria Tollah 17. Durbar Dwara 18. Panji Tollah 19. Dorahe Kuan 20. Dhana Mandi 21. Alamganj 22. Kattra 23. Moghalpura 24.* ***Surgadwar*** *25. Hateh Surat Singh 26. Urdu Bazar"*

4258. About the Janamsthan and other temples/Babar's mosque and the dispute amongst the two communities, P. Karnegy has written on pages 20 and 21 as under :

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The Janamsthan marks the place where Ram Chandra was born. *The Sargadwar is the gate through which he passed into Paradise, possibly the spot where his body was burned. The Tareta-Ke-Thakur was famous as the place where Rama performed a great sacrifies, and which he commemorated by setting up there images of himself and Sita.*

If Ajudhia was then little other than a wild, ***it must at least have possessed a fine temple in the Janamsthan; for many of its columns are still in existence and in good preservation, having been used by the Musalmans in the construction of the Babari Mosque***. *These are of strong close-grained dark slate-colored or black stone, called by the natives Kasoti (literally touch-stone,) and carved with different devices. To my thinking these strongly resemble Budhist pillars that I have seen at Benares and elsewhere. They are from seven to eight feet long, square at the base, centre and capital, and round or octagonal intermediately.*

Hindu and Musalman differences.-The Janamsthan is within a few hundred paces of the Hanuman Garhi. In 1855 when a great rupture took place between the Hindus and Mahomedans, the former occupied the Hanuman Garhi in force, ***while the Musalmans took possession of the Janamsthan***. *The Mahomedans on that occasion actually charged up the steps of the Hanuman Garhi, but were driven back with considerable loss.* ***The Hindus then followed up this success, and at the third attempt, took the Janamasthan****, at the gate of which 75 Mahomedans are buried in the "Martyrs' grave" (Ganj-Shahid.) Several*

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of the King's Regiments wee looking on all the time, but their orders wee not to interfere. ***It is said that up to that time the Hindus and Mahomedans alike used to worship in the mosque-temple. Since British rule a railing has been put up to prevent disputes, within which in the mosque the Mahomedans pray, while outside the fence the Hindus have raised a platform on which they make their offerings****.*

The two other old mosque to which allusion has been made (known by the common people by the name Nourang Shah, by whom they mean Aurangzeb,) are now mere picturesque ruins.

4259. About other temples or religious places of Jains and Buddhists, he has also given certain facts which we are omitting at this stage. He has referred to the inscriptions found on the building in dispute on page 27 under Section VI.-Concluding Remarks Para (IV) under the heading "Buildings" which reads as under :

"(IV.) Buildings.- Of these we have; (1) the enshrined tomb of Syad Masud Behani, in the village of Behawan, Pargana Birhar, a reputed follower pf Suad Salar, A.D. 1030; (2), the tomb at Ajudhia, of Makhdum Shah Juran-Ghori, a lieutenant it is alleged, of Shahab-ud-din Ghori, the conqueror of Dehli and Kanauj, A.D. 1192-4; (3), the tomb at Ajudhia of the Sharki period, perhaps of Khawaja Jahan, the founder of the Jaunpur dynasty himself, who died A.D. 1399; (4), the enshrined tomb of Makhdum Ashraf at Kachhocha, the author of the Lataif-i-Ashrafi, and the contemporary of Ibrahim Shah of the Sharki

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dynasty, A.D. 1401-40; (5), ***Babar's mosque with stone inscriptions in Ajudhia, date A.D. 1528, and stone columns of infinitely greater antiquity****; (6) the stone-faced fort of Salemgarh on the Gumti, a stronghold of Salem Shah, A.D. 1545-53; (7), the fort and bridge with stone inscriptions, at Akbarpur, a resting place of the Emperor Akbar, A.D. 1556-86; (8), the mosque of Alamgir (Aurangzeb) at Ajudhia, A.D. 1658-1707; (9), and lastly, the more modern buildings of Fyzabad, such as the Dilkusha, the forst, &c., mostly of Shuja-ud-dowlah's time, A.D. 1753-75"*

4260. The report is said to have been signed in October 1870 by Sri P. Carnegy at Faizabad. Appendix-A (Ex. A-10, Suit-4) of the Book **P. Carnegy's Historical Sketch** gives the list of sacred places in and about Ayodhya and the same has been placed before us elaborately by both the side.

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4261. Besides, there is a site map of Fyzabad Municipality which is also part of the book and has been sited by the parties showing the position as it was in 1870. It is appended as **Appendix 6**.

4262. They also placed before us **Appendix-B** (Paper No.258 C1/1) which is under the heading of report on "Ajudhia Mahatum" and reads as under :

"APPENDIX-B.

EPITOME OF THE "AJUDHIA MAHATAM," WHICH AGAIN IS TAKEN FROM THE PURANS

The holy city of Ajudhia, of saving virtues and ancient renown, was built they say by Brahma, and given to his eldest son for an earthly dwelling-place. The earth

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being but transitory, Brahma laid the foundation in his own discus, the Sudarsan Chakra, which still gives its shape to the city. On this was reared a stately capital for the son of God, and it was presented to him complete, fitted, declare the chronicles, with shrines, places, roads, markets, gardens, and fruit trees, glittering with jewels, and resounding with the melody of birds. Its men and women were holy, as befitted the subjects of a Divine King, and their righteousness was rewarded by incalculable wealth in elephants and oxen, horses and chariota. Its boundaries were fixed by the Sarju, and the Tons, and from Lachman Kund a jojan to the east and to the west.

In this city was supposed to reside a sanctifying virtues of extraordinary efficacy. When a man merely projected a pilgrimage to it, he purchased the salvation of his ancestors. Every step he took on his way had the efficacy of an aswa-medha jug. To him, who gave a pilgrim the road expenses of the journey, was assigned a passport to heaven with all his sons and grandsons. To him, who provided a weary pilgrim with conveyance, was promised a passage to the divine abodes in the chariots of the Gods. He, who fed a hungry pilgrim, reaped the benefit of many oblations at Gya and ablutions at Prag, and earned for his forefathers an eternity of happiness. He who anointed a pilgrim's feed with on, would obtain his desires in both worlds. ***The mere sight of Ajudhia absolved from all trivial sin****. To journey to it measuring the way with the outstretched body was penance, which atoned for the most heinous crime. The water of the Sarju washed away sin;*

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obeisance to it removed all worldly trouble. He who lived in Ajudhia, redeemed his soul from the pains of transmigration; a residence of a night rehabilitated a man. Who had been degraded in his caste. Seven holy placed in India made up the body of Vishnu, and the boastful priest aver that Ajudhia was the head.

Similarly sacred was the origin of the Sarju. In the beginning of creation a lotus sprang from the naval of Narayana, which gave birth to Brahma. Then Brahma worshipped Narayana, and when he had worshipped fro a thousand years, Vishnu, gratified by such devotion, blessed him, with tears of affection in his eyes. The adoring Brahma caught the dropping tears in the hollow of his palm, and stored them in a wooden vessel, which he kept next his heart. Ages after, Manu, the first of the solar race, was king in Ajudhia. His son Iksawaku was so studious in his devotions, that the great Brahma, pleased, told him to ask a boon. Ikshwaku asked for a holy river, and Brahma gave him the treasured tears of Narayana, which thenceforward flowed as the Sarju. The bank of his river, nominally for a distance of 318 yards, bears the name of Swargdwar, the gate of Heaven. ***The Purans affirm it to be the holiest spot on earth****. He who dies there passes straight to heaven, receiving the pardon of the sins of a thousands births. Even Mahomedans, even animals, birds and insects, obtain there in death salvation in an eternal life with the Gods.*

In the gate of heaven are seven "Hars" or representations of Vishnu, Gupt Har, Chandra Har, Chakra

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Har, Vishnu Har, Dharma Har, Belma Har and Pun Har.

Chandra Har was fixed by Vishnu in honour of the moon, who had at that spot ended her pilgrimage and offered her prayers. Ho gets himself shaved there, fasts, bathes, and then visits Chandra Har, has his capital sins washed away and is secured of heaven. The season of greatest efficacy is the full moon of Jeth.

The only other important Har is the Dharma Har, but between the two Hars is Nageshwar, the origin of which was this:-Kush, the son of Ramchandr was bathing in the river, Kamudti, the sister of Sakun, a serpent that inhabited the Sarju, became enamoured of the handsome Kush, and stole his bracelet for a love-token. The bracelet was one on which Kush set great value, and when he discovered his loss on reaching the shore, in his rage he fitted to his bow an arrow of fire wherewith to dry up the waters of the offending Sarju. The Sarju fell at his feet for mercy, and denounced the real culprit. Then Kush muttered an incantation over the arrow, and discharged it against the serpent. The serpent with his sister immediately appeared and restored the ornament, praying for forgiveness. The serpent was a worshipper of Mahadeo, and the not-forgetful God appeared at this moment to shield his servant. He promised Kush he would grant any boon he asked if the serpent were forgiven, and it was accordingly ordained at the wish of the patriotic Kush, that the presence of Mahadeo should henceforth reside on the spot, and that whoever should bathe at Swargdwar and worship at Nageshwar, should be satisfied in every wish, and enjoy

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the fruits of an efficacious pilgrimage.

Dharma Har to the Sough-east of Nageshwar takes its name from the God of Virtue and Justice. Dharma composed here a hymn of such transcendent grandeur that Mahadeo decreed that the place should stand consecrated in their joint names, and that whoever should after bathing in the Sarju, read there this hymn, would be blessed with riches and the esteem of his fellows. The holy day at Dharma Har is the 11th of the lunar half of the month Asarh.

Opposite Dharm Har on the river is Janki Ghat, where they bathe on the 3rd of the lunar half of Sawan, and immediately below this is the Ram-Ghat, where the Swargdwar ends; all south of this is called Ajudhia Pith.

Behind Ram Ghat is Ram Sabha,where Ram Chandr is believed to sit enthroned, surrounded by his brothers, Sought of it is the Dhawan Kund, in which he who bathes on the 9th of the lunar half of Chait, is freed from all pride. On one occasion Kundani, a saint, had bathed in this pool and was engaged in prayer, when the wind suddenly blew his deer-skin mat into the water. To the astonishment of every one the deer-skin at once assumed the form of a glorious deity, seated on a magnificent throne, and to Ram Chandr the deity gave this history. He was at first a Vaisya, obdurate in his pride of riches and perversely disobedient to the Veds. But one day he unintentionally did a good action. He sprinkled water on a Tulshi shrub. For this he was made a deer, and his skin was given to a pilgrim bound for Ajudhia, and now the skin on touching the water of the

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sacred pond had changed into this heavenly body. The glorified shape prayed for admittance to heaven, and straightway passed in a chariot into the regions pf Ram Chandr, "whence there is no returning." It is in this pond, that Raghunathji, as the pandits say, "performs with the tooth brush."

In the heart of the city lies the great Ram Kot, the fort of Ram, with its gates guarded by the immortal monkeys who accompanied him on his return from Ceylon. On its western side is the Janam Bhum or Janam Asthan, the birth place of the hero. To visit this on the Ram-Nomi, that sacred ninth which falls in Chait, delivers the pilgrim from all the pains of the transmigration of souls. The virtue of this act is as if the pilgrim had given 1,000 cows, or performed a thousand times the sacrifices of the Raj Suiji or Agin-hotra, "but the fool, who eats on that day shall go to hell, where all the vicious are thrown into boiling oil" They say there was once a band of five thieves, who had been banished from their native country for highway robbery, adultery, murder of cows and other heinous crime. These five men spent their days alternately in robbing pilgrims and in riotous living. A party of pilgrims from Delhi passed through the forest in which was the den of these robbers, and the robbers joined them in the guise of travellers from a far country. But as they neared Ajudhia the guardian-angels of the holy city, who are stationed to prevent the entrances of the deliberately wicked, took visible shape and began to beat the robbers with their clubs. A sage who lived near by, Asit Muni, hearing their

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cries, interfered in their behalf. They were released at his intercession, and in gratitude they obeyed their preserver's command to complete the pilgrimage to Ajudhia, and secure salvation by performing the prescribed ritual. As they entered the city Ajudhia appeared as a beautiful goddess, clad in white robes, and attended by her maidens. The men trembled with fear. On a sudden their sins arose before them, shrouded in the blue garbs of mourning, of horrible countenances, red-haired, blear-eyed , mis-shapen, their iron ornaments clanking like chains. Then the goddess beat the sins, and they fled out of the city and took refuge under a pipal tree, and the thieves went on rejoicing and bathed at Swargdwar, and kept the fast of Nomi, and worshiped at the birthplace of Rama, and they were purified from sin, and Yama called Chitra Gupta and recorder, and their sins were blotted out from the book of the Judge of the dead. Meanwhile the messengers of Yama traversing the earth fell in with the sins of the robbers, standing crying under the pipal tree. On these the messengers took compassion, and prayed of Yama that the sins might be re-united to the robbers. But Yama said that the advantages of bathing at Ajudhia were irrevocable, and retired to mediate on the banks of the Sarju. Ajudhia was pleased with the wisdom of Yama, and the place of his meditation she named Jama Asthal, and appointed a holy day in his honour on the 2nd of Katik, and the sins were destroyed under the pipal tree.

Just beside the birth-place of Rama is the "Kitchen" of Janki-ji. It is the shape like the ordinary

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Indian "Chulha," and is supposed to be always filled with food. The sight of it satisfied every want; a daily visit keeps the house supplied with food. Close to this is the house of Kaikayi, where Bharat-ji was born. On the other side is that of Somitra, where Lachhman and Satrohan were born. South-east of this is the Sita Kup, the waters of which are said to give intelligence to the drinker.

Below Hanwant Kund is Sobarna Khar, called Sona-Khar by the people, from a shower of gold which happened in this wise. There was once a very learned sage named Vishwa Mitra, to whose door came one day another sage called Durbasa. Durbasa said, "I am very hungry, give me some food." Biswa Mitra immediately brought him a hot porringer of rice and milk, on which Durbasa asked him courteously to hold it till be came back from bathing. Having said this Durbasa went home, and Vishwa Mitra without feeling any passion, stood firm like a pole, with the vessel in his hand, for a thousand years. At the end of this period Durbasa returned, found him very happy, ate the rice and milk, was highly satisfied, and went home praising him greatly. ("he who hears this story, shall be freed from all his sins, and get salvation. There is not doubt of this") One Kanto Muni had been in Vishwa Mitra's service all this time, and Vishwa Mitra taught him fourteen sciences. Kanto wished his master to ask a fee, but this the sage twice refused to do, till at last, though patient with more than the patience of Job, he lost his temper and demanded fourteen crores of rupees. Kanto despaired of obtaining

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this monstrous sum, but he went to Maharaj Ragho, King of Ajudhia, the greatest man in the world. Now Maharaj Ragho, after conquering all this foes and amassing a huge treasure, had at the instance of his wise men, performed the sacrifice of Vishn-jit, as part of which he distributed all his wealth among the poor. So complete was his generosity, that he had reduced himself to the use of dishes of clay. So when Kanto asked him for fourteen crores, the Raja was at a loss. He thought to himself, that the tributary Rajas had already been eased of all their goods, and that further demands from them would be unavailing, but he told Kanto to wait a day. In despair he at last appealed to Kober, the treasurer of the Gods. Kober knew the Raja's righteousness, and answered the prayer by showering gold for the space of nearly four hours. From this the Muni took what he required, and went on his way rejoicing.

South of this are the two pools of Nagriva and Bibhikan. Also the Jaga Vedi, where Ram Chandr performed sacrifices, and the Agna Kund or fire-pool. In the last the sacred day for bathing is the 1st of the dark half of Aghan, and an observance of this festival secures riches in this world and immortality in the next. Here the Tiloi and Sarju meet, and the spot of confluence is sacred and of sanctifying power. Beside it is Asok Batka the garden of Raghnath Ji, in the middle of which is Sita Kund, a pond constructed by Sita with her own hands. A bathing festival takes place there on the 4th of the dark half of Aghan. West of these are Biddia Kund and Bidia Debi, which may be visited on each ashtami of any mouth.

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South of this is the Khajoha or Khanjur Kund, the bathing in which on Sunday cures all deceases, but especially the itch. Beside it is the Maniparbat or Mountain of Jewels, a hillock prepared by Ram Chandr for the amusement of Janki.

Beyond these is a string of ponds, which however have no peculiar virtues attached to them, Ganesh Kund, Dasrath Kund, Kosilya Kund, Somita Kund, Kakayi Kund, Dubar Kund and Mahabar Kund. The two last are named of the two brothers, whose offerings of flowers had been of a sweet smelling savour to Siva. Then come Jogni Kund, so named from the Jogis, who live there, and Urvashi Kund, whose water gives beauty. Urvashi was a lovely woman, whom Indra sent to disturb the devotions of a peculiarly ascetic sage of the Himalayas. The sage would not be temped, and on his curse she became ugly. Then he relented, and by his direction she bathed in this tank, became beautiful as ever, gave her name to the place, and ascended to heaven. There is a festival here on the 3rd of the lunar half of Bhadon. Next to it is the Birhaspati Kund, in which those who bathe avoid the evils, shadowed forth in their horoscopes. They bathe there on the 5th of the lunar half of Bhadon. Ruk Mani Kund gives children to the barren and riches to the poor that bathe in it on the 9th of the dark of Katik. Another place which has virtue for the childless is the neighboring pond of Chhirodak or Chhir Sagar. Here Dasrathji performed a sacrifice, in answer to which the God appeared with a golden vessel, containing a meal of rice and milk. This Dasrath divided into three

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parts, and distributed to his wives, Kosilya, Kakayi, and Somitra. Of these were born Ram, Bharat, and Lachhman and Satrohan. Then the place was called Chhirodak from the sacred preparation, the colour of which its waters still retain. The bathing there is on the 11th of the Lunar half of Kuar.

To the west again near Birhaspati Kund is Dhamjaksh or Dhanaicha (place of treasure). The King of Ajudhia, Hari Chandr, had placed there a vast treasure under the care of Yaksh. The only reward for this fidelity that the Yaksh asked was that his body might no longer give forth foul odours under the curse of Kober, whose rosewater he had pilfered. Hence it is the bestower of beauty, wisdom, and above all of perfume. Its holy day is on the 4th of the dark half of every month.

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Close to the river is the shrine of Vishn Hari, sacred to the memory of Vishn Sharma, a famour recluse, and pools of Chakr Tirth, Basisht Kund, Sagar Kund and Brahim Kund. Beyond these are the Rin-Mochan which liberates from all manner of debt or obligation, and Pap-Mochan which cleanses from all sort of sin. Then comes the Lachchman Kund, the holy spot opened by Shesh ji for the descent of Lachhman when summoned from earth by death. Those who bathe and worship there go to heaven. To bathe there on the 5th of lunar half of Sawan frees from the fear of serpents. One who bathes there throughout the month of Baisakh will live for millions of ages in the regions of the Gods.

South of Bidya Kund is Vetarni, from bathing in

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which one escapes the Judgement of yama. Beside it is Suraj Kund or Goshark, the water of which heals wounds and purifies from leprosy. It is especially efficacious on Sunday, appropriately enough, and on certain other fixed occasions. It takes its name from Gosh, a king of the Solar race, who rested there in hunting one day, and whose wounded hand was cured whenever he put it in to draw water. The sun was pleased with his grateful praise and gave his name to the tank. West of it are Rut Kund, the giver of beauty, and Kam Kund, the giver of happiness, Mantreshwa Kund, Sitala Devi, where prayers are offered on Mondays for-delivery from small pox, Bandi Devi, where on Tuesdays those in prison are prayed for; and Chhutki Devi, in which one attains all his desires by snapping his fingers on the 14th day of any month.

To the west of these are Gupta Hari, where Vishnu in secret did his devotions, and Chakra Hari, where hari dropped his discus. North of Gupt-Hari is Gopirtar, a spot of peculiar holiness, as that in which Ram Chandr left earth for paradise. The chronicles say that Ram Chandr having found his duties on earth accomplished, prepared to depart to his celestial home. He performed the usual ceremonies, took a farewell of his ministers, and then passed out of the city, like the moon rising from the sea. As he went out, Lachhmi and Saraswati issued from his arms, commissioned to spread wealth and wisdom amongst the mortals of this world. With him went in a body his loving subjects, clothed in clean garments, with pure hearts sorrowing. The Gods saw and were moved. They came

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gently through the air in their chariots and as they descended, flowers fell in peaceful showers on the vast procession. Then said Brahma the supreme Divinity, "Leave the visible body, and join us, four brothers." And Ram Chandr passed into heaven in the company of the Gods, and the people returned to their homes, "and the place is holy to this day," and he who bathes and worships there, becomes sinless and glorious, whatever his previous life. The name of the place is Gopirtar, that which carries across a river, for one is transported there from the shores of earth to those of heaven. Pilgrimages are made there on the 15th of Katik and Kuar.

In the neighborhood of Suraj Kund, are several holy ponds of no special note, Durga Kund, narsram, Narayana-gram, Tripurari Mahadeo, Bilwa Hari, a shrine for refuge from poverty, debt, and misfortune; Valmik Tirth named after a sage, whose pale and motionless body became enveloped in an ant-hill; the house of Singhi Rikh, the husband of Ramchandr's sister; Panhari, Bharat Kund, Nandi Gram, the residence of Bharat; Kalka Kund, Jata Kund, where Ramchandr and his companions were shaved on their return from their conquests Ajit Vishnu, Satrohan Kund, Gyakup, Pishach Mochan, which has a charm against ghosts; Manus or Puni-Nibas.

And these are the chief of the holy places of Ajudhia of which there is a fresh one to visit, they say, for every day of the solar years."

4263. **"Gazetteer of Oudh"** by **Mr. W.C. Benett, C.S., Assistant Commissioner (1877) (Book No. 11).** Any other detail

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of the said Gentleman is not contained in the book. Copy of pages No.6 and 7 of the aforesaid Gazetteer have been filed as Papers No.107C1/25-26 i.e. **Ex.7, Suit-5 (Register Vol.20 Page 51-53)**. He has mentioned about Ajodhya from page 2 to 14 of the book. It appears that the details of the Ajodhya mentioned in the said Gazetteer has been written by P. Carnegy, Esq., Commissioner and the relevant extract thereof is as under:

"AJODHYA--(Ajodhya)--Pargana HAWELI OUDH--Tahsil FYZABAD--District FYZABAD.--A town in the district of Fyzabad, and adjoining the city of that name, is to the Hindu what Mecca is to the Muhammadans, Jerusalem to the Jews; it has in the traditions of the orthodox a highly mythical origin, being founded for additional security, not on the transitory earth, but on the chariot wheel of the Great Creator himself. It lies 26 47' north latitude and 82* 15' east longitude, on the banks of the Gogra. The name Ajodhya is explained by well-known local pandits to be derived from the Sanskrit words--ajud, unvanquished; also Aj, a name of Brahma,--'The unconquerable city of the creator.' But Ajodhya is also called Oudh, which in Sanskrit means a promise; in allusion, it is said, to the promise made by Ram Chandar when he went in exile, to return at the end of fourteen years. These are the local derivations; I am not prepared to what extent they may be accepted as correct. Dr. Wilson of Bombay thinks the word is taken from yudh, to fight, 'The city of the fighting Chhattris.'*

Area.--The ancient city of Ajodhya is said to have covered an area of 12 jojan or 48 kos, and to have been the

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capital of Uttar-Kausala or Kosala (the northern treasure), the country of the Surajbans race of kings, of whom ***Ram Chandar was fifty-seventh in descent from Raja Manu****, and of which line Raja Sumintra was the one hundred and thirteenth and last. They are said to have reigned through the Satya, Treta, and Dwapar yugs, and two thousand years of the Kali or present yug or era.*

With the fall of the last of Rama's line, Ajodhya became a wilderness, and the royal races became dispersed. From different members of this scattered people, the rajas of Jaipur, Udaipur, Jamber, &c., of modern times, on the authority of the "Tirhut Katha," claimed to descend. Even in the days of its desertion, ***Ajodhya is said still to have remained a comparative paradise; for the jungle by which it was overrun was the sweet-smelling Keora, a plant which to this day flourishes with unusual luxuriance in the neighbourhood****.*

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Then came the Buddhist supremacy under Asoka and his successor; a Brahmanical revival then supervened. With this period the name of Bikramajit is traditionally and intimately associated, when Buddhism again began to give place to Brahmanism.

To Bikramajit the restoration of the neglected and forest-concealed Ajodhya is universally attributed. *His main clue in tracing the ancient city was, of course, the holy river Sarju, and his next was the shrine, still known as Nageshwar-nath, which is dedicated to Mahadeo, and which presumably escaped the devastations of the Buddhist and Atheist periods. With these elues and* ***aided by***

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descriptions which he found recorded in ancient manuscripts, the different spots rendered sacred by association with the worldly acts of the deified Rama were identified*, and Bikramajit is said to have indicated the different shrines to which pilgrims from afar still in thousands half-yearly flock." (emphasis added)*

4264. About Janamsthan/Babar's Mosque, Benett has mentioned the facts virtually consistent to what has been observed by P. Karnegy and paragraphs 6 and 7 thereof we have already reproduced while discussing the issues relating to date of construction of the disputed building. However, since this is also relevant for these very issues, at the pain of repetition, we reproduce the same also as under:

*"The Janamasthan and other temples.--**It is locally affirmed that at the Muhammadan conquest there were three important Hindu shrines**, with but few devotees attached, **at Ajodhya**, which was then little other than a wilderness. **These were** the **"Janamasthan,"** the "Swargaddwar mandir" also known as "Ram Darbar," "Treta-ke-Thakur."*

On the first of these the Emperor Babar built the mosque, which still bears his name, A.D. 1528*. On the second, Aurangzeb did the same, A.D. 1658 to 1707; and on the third, that sovereign or his predecessors built a mosque, according to the well-known Muhammadan principle of enforcing their religion on all those whom they conquered.*

The Janamasthan marks the place where Ram Chandar was born. *The Swargaddwar is the gate through*

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which he passed into paradise, possibly the spot where his body was burned. The Treta-Ke-Thakur was famous as the place where Rama performed a great sacrifice, and which he commemorated by setting up there images of himself and Sita.

***Babar's mosque.**--According to Leyden's Memoirs of Babar, that Emperor encamped at the junction of the Serwa and Gogra rivers two or three kos east from Ajodhya, on the 28th March 1528, and there he halted seven or eight days, settling the surrounding country. A well-known hunting ground is spoken of in that work, seven or eight kos above Oudh, on the banks of the Sarju. It is remarkable that in **all the copies of Babar's life now known, the pages that relate to his doings at Ajodhya are wanting. In two places in the Babari Mosque, the year in which it was built, 935 H., corresponding with 1528 A.D., is carved in stone, along with inscriptions dedicated to the glory of that Emperor**.*

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*If Ajodhya was then little other than a wilderness, **it must at least have possessed a fine temple in the Janamasthan; for many of its columns are still in existence and in good preservation, having been used by the Musalmans in the construction of the Babari Mosque**. These are of strong, close-grained, dark-colored or black stone, called by the natives kasauti (literally touch-stone slate,) and carved with different devices. To my thinking these more strongly resemble Buddhist pillars than those I have seen at Benares and elsewhere. They are from seven to eight feet long, square at the base, centre and*

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capital, and round or octagonal intermediately." (emphasis added)

4265. In respect to Hindu and Muslims relationship in Ayodhya on page 7 of the book it says as under:

"Hindu and Musalman.--The Janamasthan is within a few hundred paces of the Hanoman Garhi. In 1855, when a great rupture took place between the Hindus and Muhammadans, the former occupied the Hanoman Garhi in force, ***while the Musalmans took possession of the Janamasthan****. The Muhammadans on that occasion actually charged up the steps of the Hanoman Garhi, but were driven back with considerable loss.* ***The Hindus then followed up this success, and at the third attempt took the Janamasthan, at the gate of which seventy-five Muhammadans are buried in the "martyrs' grave" (Ganj-i-Shahidan.) Eleven Hindus were killed.*** *Several of the king's regiments were looking on all the time, but their orders were not to interfere.* ***It is said that up to that time the Hindus and Muhammadans alike used to worship in the mosque-temple****. Since British rule a railing has been put up to prevent disputes,* ***within which, in the mosque, the Muhammadans pray; while outside the fence the Hindus have raised a platform on which they make their offerings****. A second attempt was made shortly afterwards by Molvi Amir Ali of Amethi; the object was to seize the alleged site of an old mosque on the Hanoman Garhi.*

The two other old mosques to which allusion has been made (known by the common people by the name of

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Naurang Shah, by whom they mean Aurangzeb) are now mere picturesque ruins. ***Nothing has been done by the Hindus to restore the old mandir of Ram Darbar****. The Treta-Ke-Thakur was reproduced near the old ruin by the Raja of Kalu, whose estate is said to be in the Panjab, more than two centuries ago; and it was improved upon afterwards by Aholya Bai, Marathin, who also built the adjoining ghat, A.D. 1784. She was the widow of Jaswant Rae, Holkar of Indor, from which family Rs. 231 are still annually received at this shrine." (emphasis added)*

4266. Then comes A.F. Millitt's **"Report on Settlement of Land Revenue of the Faizabad" (supra)** published in 1880, Several pages, namely, 104, 106, 110 and 230 were placed before us but when confronted that the facts about Ayodhya Janamsthan/Babar's Mosque etc. contained in Millet's report (supra) are virtually verbatim reproduction from **P. Carnegy' Historical Sketch**, none could dispute the same. Copies of the frontispiece as well as page No.218, 231, 235 and 236 have been filed as Paper No.107C1/27-30A i.e. **Ex.8, Suit-5 (Register Vol.20 Pages 55-62)**.

4267. However, some relevant part of the report, we feel appropriate to refer hereat. Chapter I, Section 1, Part 2 shows that the district Fyzabad was constituted in the form in 1880 as it was in 1869. About the river, Chapter I, Section 1, para 8 says as under:

"8. The Gogra is " the great river of Oudh", It flows south-east, and has a fall of 67 feet between Ajudhya and where it leaves the province, the surface of the water being at those places respectively 302 and 235 feet above the

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level of the sea. Brahmanic lore relates how it had a sacred origin in the holy tears of Brahma. More prosaic accounts say that it takes its rise in the upper ranges of the Himalyas. Further west it is known by other names, but it commences to be called the Gogra (or Ghagra) at Bahramghat, and continues to bear that name throughout this portion of its course, though it is not uncommonly spoken of by the people as the Sarju- a name which it appears to have borne in the seventh century, and which is also applied to it in the Ramayana."

4268. About the Hindu population the details are given in Chapter I, Section 4, para 76 at page 30 and it says that "*the Bairagi and Goshain require notice as holding a prominent place in the population of Ajudhya, though they do not together amount to 1 per cent. of that of the district."*

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4269. In respect to tenures he has given certain strange facts in para 185, Section VI, Chapter 1 at page 66 which reads as under:

"185. The origin of property in this district, as traditionally stated, was therefore in essentials and , as a rule, by usurpation. The lands of conquered country were parcelled out among the conquerors. Lands, formerly in the occupation of the conquered, were usurped; lands formerly in the possession of no one, were eventually occupied; and the title in either case was often confirmed by a formal grant. On the part of the ruling power to its conquering subjects. The families of the original owners, thus acquiring by usurpation or occupation with or without the imperial sanction, have in the process of centuries been

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mainly displaced by others. They have been bought out, or they have been transferred their possessions by gift, or they have been driven out by force, or they have been displaced by an imperial confiscation; or they have died out and their property has lapsed to the State, which again may have conferred a fresh title. And in this manner have sprung up the various tenures which it is my duty to describe."

4270. About the general history and aborigines he has given his comments in Chapter II, Section I, and paras 270 and 271 (Part 1) and 274, 275, 276, 277, 279, 280, 281, 282 and 283 (Part-2) he has said as under:

"*270. Once upon a time the Bhars held sway. This is the starting- point in the annals of the aborigines of nearly every Chattri clan, and hence apparently has arisen the assumption that the Bhars were the aborigines of the district. They seem, however, to belong to a much more recent places in its history (para 308)."*

"271. The Pandits of Ajudhya, again divide the human race into fourteen original sections, of which eight are said to have been indigenous to Hindustan, and six to have inhabited countries beyond its limits. As this arrangement professes to be based partly on the Shastras, it may be expected that it coincides pretty closely with what it is to be found in Manu. The two lists run as folloes:-

Pandit	*Manu*
Punderik, Hirat	*Pundrakas,*
Khas, Kamboh.	*Odras, Draviras,*
Udar, Darwar.	*Kamhojas,*
Yavanas,	

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Haihai, Chin	*Sakas, Paradas,*
Shak, Pahlav, Parad, Darad.	*Pahlavas, Chinas,*
Taljangh, Barbar	*Kiratas, Deradas,*
	and Chasas.

"274. It was, it is supposed, about the time that Abraham, leaving Ur of the Chaldees, went to sojoun in the land which was in after generations to be the inheritance of the Jewish races, that another movement took place in Upper India, the result of which was to establish in Oudh the people were to rule it for many centuries. And in whom even now the ownership of the land of the province is generally vested. Nor, it may be noticed as a curious coincidence, was there only this apparent identity of dates in the two movements, for Ikhasvaku, or Iehwak, the Aryan, the founder of the Hindu kingdom of Oudh, was namesake or very nearly so, of Ishbak, one of the children of the Jewish patriarch.

"275. The Hindus were one of the numerous branches of the now widespread Aryan race, by whom the aborigines, whoever they were, were in this part of India reduced to complete subjection. On this point complete unanimity of opinion exists, but in what relation the conquerors and the conquered stood to each other ethnologically is still a vextia questio."

"276. Elphinstone suggests that the Hindus were, perhaps; a local tribe like the Dorians in Greece; or even nothing more than a portion of one of the native states : a religious sect, for instance, which had outstripped their fellow citizens in knowledge and appropriated all the

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advantages of the society to themselves. There is no reason whatever, he says, for thinking that the Hindus ever inhabited any country but their own; and if he admits the possibility of their having done so, it is only before the earliest trace of their records or traditions. Nor is the theory of community of origin for the Hindus and autochthones altogether foreign to Hindu mythology. Beni or Vena. Son of Ang, ruler of Ajudhya, one of many unfortunates of the same kind, is said to have fallen a victim to the anger of the Brahmans. He died childless, but his corpse, after the fashion of the ashes of the phoenix, gave birth to two sons, Nishada or Nekhad, sprung from his thigh, and Prithu from his right hand. Nekhad became the ancestor of the aborigines, and Prithu of the Solar race."

"277. A more recent author, on the other hand, in strong contrast with the above, writes " that our earliest glimpses of the "human family disclose two tribes of widely different origin! Struggling for the mastery. In the primitive time, which lies even on the hrizon of inductive history, a " tall, fair-complexioned race passed the Himalayas. They came of a conquering stock. They brought with them a store of legends and devotionals strains." And again, " the philologer can only assert that a branch of a noble stock won for themselves a home among numerous but inferior tribes, and that before the dawn of history the children of the soil had been reduced to villeinage or driven back into the forest."

"279. Manu particularizes three portions of Aryavatta, viz. Brahmavartta, Brahmarshi, and Madhyadesa, and

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invests them with degrees of sancitty inversely proportioned to their distance from the Saraswati : and Elphinstone assumes that this classification involves the history of the extension of the Aryan occupation. On this hypothesis, as " that country which lies between Himavat and Vindhya, to the east of Vinasana, and to the west of Pryagn, is selebrated by the title of Madhyandesa, or the Central Region," it follows that it was not until their third great onward movement that the Aryans reached Eastern Oudh."

"280. In what character they first appeared cannot be stated with certainty. The usual opinion is that there came at once a colony or army numbering in its ranks all the social elements contained in the community of which it was an offshoot; but it has also been suggested that the main body was preceded by the analogue of the Jesuit and settler, and that proselytizing Brahmans, urged by zeal for the propagation of the Vaidik faith, were the first wave of a flood tide of immigration, followed closely by a second composed of those who were actuated by still peaceful but less unselfish motives- the auri sacra fames, and this view is not without support. In the tradition, it is based on, it is said that it was in compliance with the solicitations. Of oppressed Brahmans that the Solar race first approached Ajudhya; and in the Mahabharata we find that it was with Brahmans (and no other caste is mentioned as being with them) that the Pandavas sojourned during their visits to Varanavata and Ekachara. In the latter of those placs, too, and Asura, not a Kshattriya, king was reigning ; and

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Wheeler confidently broaches the theory that, at that period, there were no Aryan principalities so far east even as the former."

"281. In whatever character they first came it seems that it was with Ikhashvaku as their leader they established themselves as a dominant race at Ajudhya,and that Ikhasyaku was the first of the long line Solar kings who had their capital at that place."

"282. Respecting the extent of Ikhasvaku's dominion it is permissible to hazard a conjecture. His capital lay on the extreme east of the Middle Land, and was apparently, therefore, a border city; his western frontier touched Brahmarshi, in which Kanauj was included, whence we may infer that, in that direction, he reigned as far as the left bank of the Ganges; and as pryag was in the Middle Land, that river may also have formed his southern boundary. From this is follows that from the period of its earliest establishment, the Aryan kingdom of Ajudhya included the whole of the territory now known as Fyzabad."

"283. In Oudh. In common with other portions of he Middle land, it was that,in after days,the Brahmanic system was to reach its full development, an end, perhaps, in no slight measure furthered by the efforts of an hierarchy at Ajudhya. " In the Middle Land," says Dr. Hunter, " the simple faith of the singers was first adorned with stately rites and then extinguished beneath them. It beheld the race progress from a loose confederacy of patriarchal communities into several well knit nations, each secured by a strong central force, but disfigured by distinctions of

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caste destined in the end to be the ruin of the Sanskrit people. The compilers of the land law recorded in the Book of Manu, if not actual residents of the Middle Land, were so closely identified with it as to look upon it as the focus of their race;" and says the same author, " the civilization which is popularly supposed to have been the civilization of ancient India, which is represented by the Brahmanas and Book of Manu, was in its integrity confined to the northern country termed by Manu the " Middle Land." Following, then, the boundaries assigned by Manu to the Middle Land, and bearing in mind the vigorous growth to which Brahmanism there attained , I am led to the conclusion that,almost coincident with the present eastern boundary of Oudh, with Pryag and Ajudhya, under whatever names,as border cities, there long existed and ethnic frontier as sharply defined as that which Dr. Hunter so graphically describes as having subsequently formed the utmost limit of Aryan encroachment in Bengal. In one respect indifference between the two contiguous but antagonistic races in the former case than in the later; for, in proportion, it may be assumed , to the degree of development of Brahmanism, was the bitterness of hatred it bestowed on its opponents; and, so far as the formation of the national character is to be sought in historical events, to the " fierce shock of jarring contrasts"which the Aryans of the eastern border of the Middle Land had to sustain, may perhaps be in part attributed that warlike disposition by which their descendant still continue to be characterised."

4271. About Lord Rama he has dealt in para 286 at page

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100 Chapter-II, Section-I, Part 2) as under:

> *"286. Following the same scale of chronology as adopted for Ikhahvaku, Rama,who held " the two fold office of king and prophet,"must be placed a bout the time of Solomon, and it is universally agreed that in him we have a character who deserves a place in history; who actually once existed in the flesh,which (says his worshippers) was incarnation of the deity; who was beyond a doubt the most powerful sovereign of the age in which he lived ;who first led an Aryan army into Southern India and Ceylon, and more important than all these together, from the point of view of local history, raised Ajudhya to that pitch of splendour for which it has ever since been famous. His kingdom, mightier even than Ikhshvaku's or Sravastav's, stretched north and south from the Himalayas to the Ganges, and east and west from the Gandak to Nimkhar."*

4272. He has dealt with Vikramaditya also from paras 291 to 297 (Chapter-II, Section-I, Part 3) and has recorded his conclusion in para 297 at page 105 as under:

> "297. *Vikramaditya was an usurper; at least I have never heard it asserted that he was the rightful owner of Ajudhya. As a preliminary, then, to his restoration of that city, it was indispensable for him to acquire possession of it; and it cannot be supposed that the Buddhist princes tamely acquiesced in his appropriation of it, and yielded without a blow. The picture that presents itself to the mind's eye is that of Ajudhya and its vicinity the theatre of religious war; and I think we may discern therein the*

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beginning, in Eastern India, of those sanguinary and devastating wars which attended the revival of Brahmanism and its struggles with the creed of Buddha."

4273. His further details about Ayodhya are mainly based on the reports of P. Carnegy and General Cunningham and, therefore, need not be repeated but about the Mohomedan conquest of Ayodhya he has given details from paras 310 to 339 (Chapter-II, Section-I, Part-4). Some relevant paras, i.e., 310, 311, 312, 313, 314, 315. 316, 317, 318, 322, 323, 324, 331, 337 and 339 are as under:

*"310. From the time of Mahmud of Ghazni dates t*he *commencement of the Mahomedan period- the period, that is, of Mahomedand demination. But this is not the full extent of the social changes which the Ghaznavid and his successors brought about. I have attributed the beginning of the work of Kshattriya colonization to Vikramaditya, but this is far from saying he effected its completion. It progressed by very slow degrees until the Hindu kingdoms of the west of India were thrown into confusion by the attacks of the Musulman invaders; and it then received a stimulus under the influence of which it continued to go on steadily for the next five centuries. "Almost all Rajput colonies in oudh," says Mr. C. A. Elliott, "will be found to belong to one of two great classes; and to owe their present position to the Mahomedan conquest, either indirectly, having been induced to leave their homes and to seek for liberty elsewhere by the loss of their ancestral independence, or else directly, having settled where we now find them as subjects, servants or grantees of the Delhi*

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Court"..... "The former class dates between 1200 A. D. and 1450 A.D. The latter from 1450 A. D. to 1700 A.D. From Babar to Alamgir". In point of date, at least, all the Kshattriyas of this district belong to the former of these two classes. Their history will be separately given in the second section of this chapter."

"311. The earliest Mahmedan invasion of this part of Oudh is locally believed to have occurred as far back as the time of Mahmud of Ghazni, under the leadership of Salar Masud Ghazi, Popularly known as Sayyid Salar the nephew of that prince: and, notwithstanding the silence on the subject of the early historians whose works are still extant, such was not improbably the case. The Mirat-ul-Asrar and the Mirat-i-Masudi, which give detailed accounts of the expedition, though admittedly modern composition profess, it must be remembered, to follow a now lost work of and author who was contemporary with the events and persons be described. Some weight must be attached also to the fact that the most prominent place in the pedigrees of numerous Mahomedan Families in various parts of Eastern Oudh, and in the Allahabad district also, is assigned to those who are said to have come to this country in the time of Sultan Mahmud; many of the Oudh families asserting that their ancestors actually accompanied Salar Masud."

"312. Mahmud himself, moreover, is said to have twice (A.H 410 and A.H. 413) penetrated as far east as Benares, having on the first of these occasions "made a few converts to the faith." A similar limit is also said to have been

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reached a few years afterwards by Ahmad Nailtigin, a natural son, it is supposed, of Mahmud, who, crossing the river Ganges, at what point is not stated,marched down the left bank until he arrived "unexpectedly" at Benares."

"313. From these two instances it is apparent that either in or close upon the time of Mahmud, the Mahomedan arms had been carried further east than Oudh; and in after days, the main road from Delhi to Bengal, crossing the Ganges at some ford not far west of the present city of Farukhabad, ran through Jaunpur and Benares. It is likely enough, therefore, that this was the route followed by Mahmud, if not by his son also, in which case they must have traversed a portion of this province. Under these circumstances, it is quite within the bounds of possibility that Mahmud's nephew, Salar Masud, also led and expedition in the same direction; if not absolutely the first to do so, he was probably the first to make any conquests there."

"314. Salar Masud, having incurred the bitter enmity of Mahmud's Wazir, whom Mahmud at the time deemed it prudent to conciliate, was told by his uncle that he must submit to a temporary absence from the court of Ghazni. He accordingly requested and obtained permission to make and expedition into Hindustan, promising that he would wrest from the pagans the kingdoms then in heir possession and cause the khutba to read threin in the Sultans name, Having collected and army of 1, 100,000 men, he set out on his journey, and, after various exploits, reached Kanauj and pitched his tents for a while on the banks of the river

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Ganges from this he marched to Satrikh, and , fixing his head-quarters there, sent out armies on every side to conquer the surrounding country: Salar Saif-ud-din and Miyan Rajab were despatched against Bahraich, other against Mahona, others against Gopamau, and others against Benares and its neighbourhood."

"315. One day ambassadors arrived at Satrikh bearing this message from the Rais of Manikpur and Karrah:- " This kingdom has belonged to us and to our fathers from time immemorial. No. Musulman has ever dwelt here. Our Annals relate that the Emperor Zu-I-Karnain made and expedition against this country and reached Kannauj; and returned without having crossed the Ganges. Sultan Mahmud also with your father, came as far as Ajmir, Guzerat, and Kanauj, but spared our country ..... You had better take the prudent course of retiring."

"316. Now it chanced that, about this time, Salar Sahu, Father of Salar Masu, arrived at Satrikh; and letters having been intercepted which showed that the princes whose threatening embassy has just been mentioned were endeavouring to effect and alliance with those of Bahraich against their common foe, he set out without delay against them; and dividing his army into two bodies, sent one against Karrah and the other against Manikpur. Both of those places were reduced and Salar Sahu returned in triumph to Satrikh, leaving Malik Abd-ullah in the neighbourhood of Karaah, and Mir Kutab Haidar at Manikpur.

"317. During this period it probably was that the first

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mahomedan armies reached this district, but no Mahomedan colonies were planted in it."

"318. Ajudhya, in spite of the expeditions sent from Satrikh against Benares and other places to he east, appears, for some unexplained reason, to have escaped the fate of its neighbours. It seems more plausible to look for the conqueror of Ajudhya among the lieutenants, perhaps relations also, of a later prince, Shahab-ud-din, better known as Muhammad Ghori. Shashab-ud-din, after defeating Jaya Chandra of Kanauj, with that keen attention to reaping substantial results from his victory which he usually displayed set off to plunder the treasury of his late enemy at Asni; he thus arrived on the right bank of Ganges, at a spot where that river now forms the boundary of Oudh, and after his departure thence marched on to attack Benares. The route he then pursued is not related, but it is at least incontrovertible that he had to cross over to the Oudh side of the river before he reached his destination. Now, the story about the town of Sultanpur is that its captor was a Ghori. Ajudhya contains " a tomb of Makhdum Shah. Juran Ghori, a lieutenants, it is alleged to Shahab-ud-din Ghori and coins belongings to the Ghori dynasty have been found near both of those places. Jaunpur also, with Benares, fell " finally under the sceptre of the Musalman when Shahab-ud-din defeated Jaya Chandra nor, though on the return of the Sultan to Ghazni, his lieutenants, Kutb-ud-din fixed his courts for sometime at Asni are any further hostilities asserted to have then taken place. Kutb-ud-din, was principally employed in receiving

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the homage of the rais and chief whose power had been already broken. It seems to follow,then that the overthrow of all such fortified posts in South-Eastern Oudh as declined to admit that their own subjection was involved in that of Kanauj (of which, as has been seen, they were dependencies) is to be attributed to the period of Shahab-ud-din's progress from Asni to Benares, or that of his homeward march."

"322. The following is a list of several persons who up to that time appear to to have been Governors of Oudh, though it does not pretend to contain the names of all who held the office:-

1 Malik Shah Makhdum Juran Ghori About A.D. 1192

2 Malik Hisan-ud-din Ughlabak About A.D.1194

3 Muhammad Bakhtiyar Khilji About A.D.1202

4 Kaimaz Rumi, sent from Oudh towards Lakhnauti by Kutb-ud-din. before About A.D.1210

5 Nasir-ud-din, elder son of Shamsh-u-din About A.D.1226

6 Nasir-ud-din, son of Mahud, having collected an army in Hindustan, marched from Oudh to Lakhnauti 1227

7 Nasir-ud-din Tabashi Muizzi. About 1236

8 Kamr-ud-din about 1242

9 Qazi Jalal-ud-din 1243

10 Malik Taj-ud-din Siwistani (subordinate to Katlagi Khan) 1255

11 Katlag Khan 1256

(In connection with this period occurs mention of the

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"Chief of Oudh" among the Chiefs of Hind")

12	*Arslan Khan Sanjar meditates revolt in Oudh*	*1259*
13	*Amir Khan Abtagin*	*1279*
14	*A nameless Khan of Oudh, perhaps the same as the next*	*1286*
15	*Khan-i-Jahan*	*1286*
16	*Malik Ali*	*1293*
17	*Ala-ud-din*	*1293*
18	*Malik Ala-ul-Mulk*	*1296*
19	*Malik Tigin*	*1321*
20	*Ain-ul-Mulk.*	*1340*

"323. The Oudh here alluded to, it must at the same time be remarked, was very much smaller in extent than either the kingdom of Ram Chandra had been in early ages, or than the Subah to which it subsequently gave a name; for contemporary with the Qazi Jalal-ud-din above named, Nasir-ud-din Mahmud, afterwards emperor, held the northern portion of the provinces, which constituted the separate district of Bahraich, and in the opposite direction where Oudh marches with Manikpur, their mutual boundary line most likely cut across the south western corner of the Sultanpur district excluding a large tract from Oudh, and placing it in Manikpur, while Akbarpur and all the territory to the east of it probably lay in the government of Jaunpur (or Zafrabad)."

"324. Up to shortly before the establishment of the Sharqi kingdom, the jurisdiction of the governor of Jaunpur had been limited to 'Jaunpur and Zafrabad,' with such provinces to the eastward as were held neither by petty

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chiefs nor the lords of Lakhnauti; but, when in A.D. 1394, Mahmud Toghlak deputed his Wazir Khwaja Jehan to that important charge, he invested him with the newly created title of Malik-us-shirq, and at the same time extended his authority over the lover Doab and the provinces on the left bank of the Ganges When, therefore,later on in the same year, Khwaja Jehan, throwing off his allegiance to Delhi, assumed the emblems of royalty, Ajudya, and indeed the whole of Oudh, was in included in his kingdom."

"331. Akbar, as is well known, divided his empire into subabs or provinces, sarkars or divisions, and mahals or pargana. The name of Oudh, now came to bear a triple meaning; in the widest sense it was a subah, in its narrowest a mahal" The subah of Oudh", says Abul Fazl's translator, "in situated in the second climate. The length from Sarkar Gorakhpur to Kanauj includes 135 kos, and the breadth from the northern mountains of Seddehpur to the Subah of Allahabad comprises 115 kos. To the east it has Bahar; on the north lie mountains; Manikpur bounds it on the south and Kanauj on the west." With respect to its internal constitution, it consisted of five sarkars, Oudh, Lucknow, Khairabad, Bahraich, and Gorakhpur, which collectively comprised 134 mahals.

"337. Here, for the third time in its history, Ajudhya; found a political and religious landmark, of the west the emblem was the crescent of th east the cross. The masses of the people, indeed, in both directions were of the same persuasion: Brahmanism with them still reigned supreme. The distinction lay between the governing races, not the

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governed on the west lay the kingdom of the Mahomedan and Asiatic, the vasal of the emperor of Delhi; on the east lay the possessions of the christian and European, subject to the Presidency of Bengal.

"339. Subjoined is a list of the Nazims of Sultanpur from the date of the institution of the office until the annexation of the province:-

1. Mirza Satar Beg	*1793 to 1793*
2. Sita Pershad	*1793 to 1800*
3. Raja Niwaz Shah	*1801 to 1802*
4. Mirza Jani	*1803 to 1805*
5. Raja Jugal Kishor	*1806 to 1805*
6. Raja Niwaz Shah	*1806 to 1807*
7. Fazl Ali Khan	*1808 to 1810*
8. Mir Khuda Baksh	*1811 to 1811*
9. Mir Ghulam Husen	*1812 to 1812*
10. Ikram Mubammad Khan	*1812 to 1814*
11. Mir Ghulam Husen	*1815 to 1817*
12. Taj-ud-din Husen Khan	*1818 to 1823*
13. Raju Darshan singh	*1824 to 1827*
14. Mehndi Khan	*1828 to 1827*
15. Mirza Abu-ulla Beg	*1835 to 1835*
16. Kuth-ud-din Husen Khan	*1836 to 1836*
17. Raja Darshan Singh	*1837 to 1838*
18. Mirza Saffshikan Khan	*1838 to 1839*
19. Atah-ulluh Beg	*1840 to 1840*
20. Sheik Husen Bakhas	*1841 to 1841*
21. Wajid Ali Khan	*1842 to 1842*
22. Taj-ud-din Husen Khan	*1843 to 1843*

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23. Raja Incha Singh 1843 to 1845

24. Kutb-ud-din Husen Khan 1845 to 1845

25. Raja Man Singh 1845 to1847

26. Wajid Ali Khan 1848 to 1849

27. Agha Ali Khan 1850 to 1856"

4274. Further regarding Ayodhya he has given details of city etc. from paras 611 to 628 (Chapter-II, Section-II). About the place of special interest i.e., Hanumangarhi mention is made in para 653 (Chapter-II, Section-II). About various Akharas including Nirmohi Akhara details are given in paras 656 to 665 (Chapter-II, Section-II). About the Janamasthan and other temples and Hindu shrines details are given in paras 666 to 669. We, however, find that these are virtually verbatim reproduction of P. Carnegy's report and, therefore, do not propose to mention the same in extensio. In para 618 (Chapter-II, Section-II) it gives the details of Ram Kot area, i.e., its extension etc. and, therefore, it may be reproduced as under:

"618. Ramkot- The most remarkable of those was of course Ramkot, the strong hold of Ramchandar. This fort covered a large extent of ground, and, according to ancient manuscripts, it was surrounded by 20 bastion, each of which was commanded by one of Rama's famous general, after whom they took the names by which they are still known. Within the fort were eight royal mansions where dwelt the patriarch Das rath, his wives and Ram his deified son.....

1. Hanuman Garhi	*11. Kuteswar.*
2. Sagreon	*12. Labidh Bawan*
3. Ungad	*13. Mayand*

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4. Dibadh	*14. Rakbach*
5. Na!	*15. Surumbha*
6. Nil	*16. Bibhi Khan*
7.Sukhen	*17. Pindark*
8. Kuber	*18. Mat Gajyindr.*
9. Gwachh	*19. Jamwant*
10.Dadh Biktr	*20. Kesri.*

1. Rattan Singas in (thrown room)

2. Kosilla Mandr (the palace of Kosilla, Raja Disrath's Ist

3. Sumantra Mandir (ditto ditto 2nd wife)

4. Keki Bhawan (ditto ditto 3rd wife)

5. Subha Mandir (the court house)

6. Janam Asthan (Rama's birth place)

7. Nowratan (assembly room of the queens)

8.*Kunak Bhawan (the golden palace of Ramchandra*)

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4275. Para 623, 627 and 669 are also important to note here which say:-

***"623. Again it is in Ajudya** that we still see pointed out the **birthplace of the founder** as well as of four others of the chief hierarchs of the Jain faith. Here it was that Rikabdeo of Ikshawaku's royal race matured the schism some what of a compromise between Brahminism and Buddhism, with which his name will ever be associated."*

*"627. **The Ajudhya Mahatum**.-No account of Ajudhya would be complete which did not throw some light on the Ramayan and the Ajudhya Mahatum. Of the former of these works I need not speak, for through the writings of Wheeler, Cust, Monier Williams, &c, most readers are familiar therewith. I will therefore confine my remarks to*

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the Ajudhya Mahatum, which is comparatively unknown. This work was prepared to the glorification of Ajudhya, according to some by Ikshawaku of the solar race, while others with more probability aver that it is a transcript from the Askundh and Padam Purans, and is not the production of any Raja."

"669. Hindu and Musalman difference.-The Janmasthan is within a few hundred paces of the Hanuman Garhi. In 1855, when a great rupture took place between the Hindu and Mahomedans, the former occupied the Hanuman Garhi in force, while the Musalmans took possession of the Janmasthan. The Mahomedans on that occasion actually charged up the steps of the Hanuman Garhi, but were driven back with considerable loss. The Hindus then followed up this success, and at the third attempt took the Janamsthan, at the gate of which 75 Mahomedans are buried in the "Martyrs" grave" (Ganj-shahid). Several of the king's regim ents were looking on all the time, but their orders were not to interfere. ***It is said that up to that time the Hindus and Mahomedans alike used to worship in the mosque temple. Since British rule a railing has been put up to prevent disputes, within which in the mosque the Mahomedans pray, while outside the fence the Hindues have, raised a platform on which they make their offerings****."*

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4276. **"Barabanki: A gazetteer being Volume XLVIII of the District Gazetteer of the United Provinces of Agra and Oudh"** compiled and edited by H.R. Nevill, I.C.S., printed by F. Luker, Supdt., Government Press, United Provinces, Allahabad

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in 1904. Copy of pages No.168-169 have been filed as Paper No.107C1/40-41; Ex No.52, Suit-5. The author has given reference and details of the Hindu Muslim clash in regard to "Janam Asthan Temple" which is said to have occurred in 1853 at page 168, 169, 170 which read as under:

> *"Shortly before annexation an incident occurred in this district, which may well be recorded as illustrative of the state of anarchy that then prevailed; unless the utter weakness of the Government be borne in mind, such occurrences would appear impossible. A brief reference to the affair is to be found in the article on Rudauli in the old Oudh Gazetteer, but a full account appeared in the "Pioneer" of the 20th of June, 1902 signed Thomas Catania, and entitled "An Episode in Oudh History." This I was enabled to verify through the kindness of Mr. H.J. Bose, I.C.S., who sent me a second narrative of the affair furnished by Raj Mahadeo Bali of Rampur in pargana Daryabad. It would appear that the event happened in the year 1853. The cause of the occurrence was one of the numerous disputes that have sprung up from time to time between the Hindu priests and Musalmans of Ajodhya with regard to the ground on which formerly stood the Janamasthan temple, which was destroyed by Babar and replaced by a mosque. Other mosques had been built there by Aurangzeb and others, and some of them had fallen into decay. The ground, being peculiarly scared to the Hindus, was at once seized by the Bairagies and others, thus affording a fertile source of friction. According to the "Pioneer" account, one of the Mahants had been expelled*

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by his brethren, and in revenge proceeded to Lucknow, became a Musalman, and spread the news that the Hindus had destroyed the mosque. At all events, the prime mover in the business was one Maulvi Amir Ali, a resident of Amethi in Lucknow and a well-known faqir. This man at once proceeded to proclaim a jihad in the city and was secretly assisted by the king. The latter sent orders to Fyzabad to enquire into the matter, but nothing was done. Thereupon the Maulvi returned to Amethi and collected a large and well-armed force of Muhammadans. Hearing of this, the king deputed Bashir-ud-daula to Amethi and summoned the Maulvi to Lucknow. Knowing the danger of allowing any religious disturbance to come to a head, the king openly proclaimed that no violent action should be taken, but that the mosque in question should be restored. Amir Ali was far from satisfied with this and returned to Amethi. Finding that no action was being taken, he marched with his force to Bansa, a village about three miles to the north of Safdarganj in this district, where is the tomb of the saint, Abd-ul-Razzaq. Here he collected more men, and on receiving the news of his proceedings the king summoned Sir James Outram, the Resident, and left it to him to put a stop to the movement in any way he could.

Consequently an order was sent express to the Nawab of Fyzabad, who despatched a large force to Bansa. Amir Ali, however, remained obdurate, and would only consent to withdraw on the condition that the mosque should be restored. The Governor's Council suggested that the King alone could move in the matter, and so the Nawab

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was only too glad to have an excuse for doing nothing. The Maulvi on the other hand, after waiting for a month and finding that nothing was done, marched to Daryabad, where he remained for twenty days. The Nawab thereupon replied by sending four Muftis to preach obedience to the Maulvi's forces; and this action resulted in the reduction of Amir Ali's contingent by one-half. The remainder, however, stood by their leader, and persisted in their intention of marching to Ajodhya and destroying the Hanuman Garhi. Accordingly Colonel Barlow, who commanded the First Regiment of Oudh Irregular Infantry, was ordered to arrest his progress. He was assisted by Rai Abhairam Bali of Rampur, and came up with the Maulvi's force at Shujaganj, a large market on the old high road, and a hamlet of Phugauli, close of Hayatnagar. The insurgent force is said to have numbered 2,000 men, while the King's troops consisted of one regiment and two guns. On coming up with the rebels, Colonel Barlow gave the order to file, and when the Musalman gunner begun, out of sympathy with the Maulvi, to use grape instead of round shot, the Colonel killed him on the spot and worked the gun himself. The encounter was a desperate one, and a fierce hand-to-hand struggle was maintained for three hours. The day was decided by a flanking movement on the part of Colonel Barlow, and the rebels were then surrounded by Sher Bahadur Singh of Kamiar, Thakur Singh and the sepoys of Rai Abhairam Bali, who were waiting for their opportunity. The insurgents then broke and fled, but not before a large number of them had been slain, their estimated loss varying

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from 120 to 700, while the First infantry was almost destroyed. Amir Ali was killed while in the act of prayer, and his head was sent to the king at Lucknow. For some years after annexation his memory was preserved in a fair held in his honour at Rahimganj in Rudauli; but this has now dwindled to extinction."

4277. In **"Fyzabad A Gazetteer being Vol. XLIII of the District Gazetteers of the United Provinces of Agra and Oudh"** by H.R. Nevill published in 1905 (Book No. 4), the history of Ayodhya is also mentioned. Photocopy of the pages no. 171 to 179 alongwith its frontispiece has been filed as Exhibit T5 (Suit-4) (Paper No. 43A1/2-11), **Register 18, pages 5-23**. In Chapter V it is said :

*"To the Hindu the holy city of Ajodhya is especially dear from its connection with Rama and Sita, the types of perfect men and women. The great epic, called after its hero the Ramayana, has gained immensely in popularity by the production of a revision in the vernacular, and Talsi Das' poem is read and known all over Northern India. According to the Ramayana, Dasarath, of the Surajbans or Solar race, was king of Kosala in the third age of Treta Yug of the Hindu cosmogony. He had four sons, of whom Rama was the eldest. Sita was daughter of Raja Janak of Mithila, and Rama won his bride by breaking the bow which no one else could even bend. Owing to the jealousy of queen Kaikeyi, Dasaratha was induced to send Rama with Sita and his brother Lakshman into exile. Sita was enticed away by Ravana, king of Ceylon, but was recovered after much fighting with the help of Hanuman and his monkeys. **It is***

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not yet possible to say whether any of this story is really historical, and not even an approximate date can be assigned to it. That a kingdom of Kosala, with its capital at Ajodhya, existed some time before the birth of Christ, is, however, certain*. Ajodhya was also an important city in Jain literature, and Adinatha or Vrishabha, Ajitanatha, Abhainandanatha, Sumatinatha and Anantanatha, the first, second, fourth, fifth and 14th Tirthankaras are said to have been born there." (emphasis added)*

4278. The access of Muslims in Oudh has been dealt with from Page 149 to 153, which is said to commence with the invasion of Saiyid Salar Masaud and reads as under :

"The first Musalman invasion of Oudh was, ***according to the popular tradition, that of Saiyid Salar Masaud****. The Mirat-i-Masaudi states that the youthful invador went from Multan to Ajodhya, where, after taking the city without a struggle, he remained hunting for some time and then set out for Dehli in 1030 AD. The route taken is remarkable and the story must be confused in some manner.* ***There is no mention of his passing through Ajodhya on his march from Satrikh to Mahraich, where he met his death; but popular legend steps in to fill the gap. All along the old Lucknow road are numerous tomba which the Muhammadans declare to be of the followers of Saiyid Salar****. Near Raunahi is an ancient mosque and the tombs of two martyrs, Aulia and Makan Shahid, ascribed to this period. The men of Raunachi will not pass this way after nightfall; for the road is thronged with troops of headless horsemen, the silent host of Saiyid*

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Salary, presumably on their way back from the disastrous field of Bahraich. If the expedition passed through the district, as seems hardly probable, it at al events left no mark. It is said that an expedition came to Oudh in the reign of Sultan Ibrahim in 1080. If so, the tradition apparently refers to Hajib Taghatigin, who crossed the Ganges and advanced further into Hindustan than any army since the time of Mahmud. ***In 1194 Muizz-ud-din*** *Muhammad bin Sam, commonly known as* ***Shahab-ud-din Ghori, is said to have conquered Oudh after taking Kannauj****, and it is supposed that* ***either he himself or one of his lieutenants occupied Ajodhya****. It was during this reign that* ***Shah Juran Ghori lived at the capital, where his tomb is still shown****.*

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It is not quite clear when Ajodhya, or Oudh as it is called by the historians, became the headquarters of a Musalman province in the kingdom of Dehli. The country was apparently subdued in the reign of Qutb-ud-din Aibak. One of his lieutenants was ***Malik Hisam-ud-din Ughlabak****, who was appointed to command in Koil in 1198, and* ***was afterwards transferred to the newly acquired province of Oudh****. He was joined there by Muhammad Bakhtiyar Khilji, who was sent from Budaun, and with his aid extended the Musalman dominions into Bihar and Bengal.* ***These were united to Oudh****, the capital of the new province being Lakhnauti in Bengal, and were placed under the rule of the Khilji nobles. These soon set up for themselves an independent state,* ***but Oudh remained under the sway of Dehli, for we hear that***

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Qutb-ud-din sent his officer, one Kaimaz Rumi, from Ajodhya to Bengal to receive the submission of the refractory chiefs, against whom he had to take the field. Soon after*, however, Ali Mardan founded the Bengal kingdom under the name of Ala-ud-din, and* ***Oudh became a separate province. It was under the sway of Shams-ud-din Altamsh, who made his eldest son, Nasir-ud-din Mahmud, governor in 1228****. The latter died in 1229, after having made a great name in the province. He crushed the Bhars, who had risen in rebellion and had put* ***to death, it is said, 120,000 Musalmans. He was apparently succeeded by his brother, Malik Ghias-ud-din Muhammad, who raised a rebellion in Oudh againt his elder brother, Rukh-ud-din, the successor of Altamsh****. During the reign of Rizia, however, the governor was Nasir-ud-din Tabashi Muizzi, who brought his forces to Delhi to aid his sovereign against her rebellious nobles.* ***In 1242 the province was in the charge of Qamar-ud-din Kairan, one of the patrons of Minhaj-us-Suraj, the author of the Tabakut-i-Nasiri****. The duration of his rule is unknown, but* ***in 1255 Oudh was given to the king's mother, Malika-i-Jahan, and her husband, Katlagh Khan, and on this appointment Taj-ud-din Siwistani was transferred to Bahraich****. Katlagh Khan was disliked by the king and was soon ordered to Bahraich; he refused to obey, and on the arrival of the royal army under Balban retreated to Kalinjar.* ***The government at Ajodhya then passed to Arslan Khan, who in 1259 meditated revolt, but his designs were again frustrated by Balban, who***

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***procured his pardon**. He was, however, removed to Karra, and **his successor was Malik Amir Khan Altagin, who held Oudh for twenty years, as in 1279 he was sent against the rebel Tughril of Lakhnauti. He was defeated, and for his failure was hanged over the tage of Ajodhya. Balban then marched to Oudh in person and collected there an immense army and a fleet of boats on the Ghagra for the expedition to Bengal.** Balban died in 1286 and left his son. Bughra Khan, in possession of Bengal, while Dehli was held by the latter's son, Kaiqubad. It was **at Ajodhya that the famous meeting occurred between father and son, which led to a reconciliation and a partition of the country between the two rulers. After this, Oudh was given to Khan Jahan, who remained there for two years. In 1289, when Jalal-ud-din ascended the throne, Malik Ali, a dependant of Balban, was governor of Oudh, and not unnaturally espoused the cause of Chhaju**, Balban's nephew, who assumed the royal title in Karra. The Khiljis, however, prevailed and Ali was captured, but released by the clemency of Jalal-ud-din. **Oudh was given shortly afterwards to Ala-ud-din, who requited his uncle's kindness by murdering him at Karra. When established at Dehli he gave Oudh with Karra to Malik Ala-ul-Mulk, the uncle of the historian, Zia-ud-din Barni. This man did not hold office for long, it would seem, as soon afterwards he was kotwal of Dehli**.*

*For some years nothing is heard of Oudh or Ajodhya, but **the province was considered of much importance by***

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the sovereigns of the Tughlaq dynasty. In 1321 Malik Tigin was ruler of Oudh, and was murdered by the Hindus, after having joined in the revolt against Ghias-ud-din Tughlaq*. He was succeeded by Ain-ul-Mulk, who ruled the province wisely for many years together with Zafarabad to the east. About 1343 he was transferred to Daultabad, and thereupon raised a revolt against Muhammad Tughlaq. He was defeated near Bangarmau in Unao, and was taken prisoner, but was forgiven and restored.* ***Firoz Shah, the next sovereign, is said to have visited Oudh in the course of his expeditions to Bengal****; his itinerary in the first of these is doubtful, but* ***he certainly stayed here during the second, and it was on this occasion that he founded Jaunpur. It is not known who was governor of Oudh at this time, for Ain-ul-Mulk was transferred to the Panjab and his successor in Oudh is not mentioned****. It was during this prosperious reign that the tomb of Qazi Saiyid Taj was built at Lorpur near Akbarpur, in 782H., a description of which will be found in the article on that village.*

In 1376 the province of Oudh was placed in the charge of Malik Hisam-ul-Mulk and Hisam-ud-din Nawa*; but not long afterwards, during the confusion that ensued upon the death of Firoz, the Afghan nobles endeavoured to establish independent principalities.* ***About 1394 Khawaja-i-Jahan, the Wazir, took possession of OUdh and all the country between Bihar and Kannauj and assumed the royal state in Jaunpur. Here he strengthened himself during the civil wars at DEhli, and***

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in this way he established a separate kingdom which endured for many years. OUdh declined in importance, being quite overshadowed by Jaunpur, and few references are made either to the province or to its capital. The Jaunpur kingdom was overthrown by Bahlol Ldi, who gave Oudh to the celebrated Kala Pahar Farmuli. *This man held the province till his death in the reign of Ibrahim Lodi, and* ***left his estate to his daughter, Fateh Malika, who was married to one Sheikh Mustafa, during whose lifetime the province passed under the away of the Afghan, Sher Sha. Kala Pahar held Oudh under the sovereign of Dehli, but was subjected to the governor of Jaunpur while that place was held by Barbak****. The latter was constantly in trouble with his rebellious subjects, and on one occasion Sultan Sikandar Lodi came to Jaunpur to assist his brother, and* ***then spent a month hunting in the vicinity of Ajodhya****." (emphasis added)*

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4279. In respect to Mughals, the details commenced from Page 153, but we propose to refer only the following extract :

"After the defeat of Ibrahim at Panipat, the Afghatn nobles assembled at Jaunpur and thither Babar send Kamran with Amir Quli Beg in pursuit. The Afghans retired before him to Patna, and ***thus Oudh fell into the hands of the Mughal Invaders****. It was not for long, however, as in 1527 Hindal fled from his post at Jaunpur before the Afghan Sultan Muhammad. Another force was sent eastwards and Jaunpur again was occupied and given in charge to Mirza Juned. The country was retained by Babar*

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and Humayun till the defeat of the latter by Sher Shah and his Afghans. ***In 1528 Babar built the mosque at Ajodhya on the traditional spot where Rama was born****. Sher Shah and his successor, Islam Shah, held all Hindostan,* ***including Oudh****, but during the confusion and civil war that followed Islam Shah's death the province was apparently under the control of Muhammad Adil Shah, while Sikandar was ruler of the west and Ibrahim was contending ineffectually with both. There are, however, no references to Oudh during this period." (emphasis added)*

4280. Further it has referred to continuous dispute in respect to alleged desecration of the place and on page 174, it says :

"This desecration of the most sacred spot in the city caused great bitterness between Hindus and Musalmans. ***On many occasions the feeling led to bllodshed, and in 1855 an open fight occurred, the Musalmans occupying the Janamasthan in force*** *and thence making a desperate assault on the Hanuman Garhi. They charged up the steps of the temple, but were driven back with considerable loss. The HIndus then made a counter-attack and stormed the Janamasthan, at the gate of which seventy-five Musalmans were buried, the spot being known as the Ganj Shahidan or the martyrs; resting place. Several of the king's regiments were present, but their orders were not to interfere. Shortly afterwards Maulvi Amir Ali of Amethi in Lucknow organized a regular expedition with the object of destroying the Hanuman Garhi; but he and his forces were stopped in the Bara Banki district.* ***It is said that up to this time both***

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Hindus and Musalmans used to worship in the same building; but since the mutiny an outer enclosure has been put up in front of the mosque and the Hindus, who are forbidden access to the inner yard, make their offerings on a platform which they have raised in the outer one*."*

4281. Some discussion has also been made in respect to continuous religious confliction between Muslims and Hindus and on page 175, the Gazetteers says:

"Near the Mani Parbat are two tombs which are venerated as those of the patriarchs Seth and Tob. They are mentioned in the Ain-i-Akbari as being of six and seven yards in length respectively. They are again spoken of in the Araish-i-Mahfil. To those Colonel Wilford adds that of Noah, which is still shown near the police-station. The story goes that they fell here fighting the Hindues and thus acquired the rank of martyrs; possibly there is some truth in the story, as it may be that certain Musalmans bearing these names ***were killed in one of the frequent religious conflicts some four centuries ago, the date which Colonel Wilford assigns to the erections.*** *Other shrines held sacred by Musalmans include that of* ***Shah Juran Ghori, who is said to have come with Shahab-ud-din and destroyed the Jain temple of Adinath in the Murao Tola near the Swargaddwar, giving his name to the mound on which his tome stands****; the shrine of Naurahni Khurd Makks, one of the earliest Musalman immigrants and a renowned saind, said to have been named Mir Ahmad and to have derived his cognomen from Naurahni whence he*

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came, and from the muhalla of Ajodhya in which his tomb stands; that of Khwaja Hathi, a follower of Babar, whose enshrined tomb on the Kabir Tila, one of the chief bastions of Ramkot, is still revered; and that of Makhdum Shaikh Bhikha, a western devotee, who flourished some 200 years ago and was buried to the east of the city. The shrines of Shah Saman Fariad-ras and of Shah Chup are other relies of Muhammadan antiquity, of which all traditions are lost. The only remaining institutions of Musalman origin are the Hayat Bakhsh and the Farhat Bakhsh, formerly royal gardens which have now passed into Hindu hands. The former was assigned to Pandit Uma Datt by the British Government, and the latter is partly owned by the Raja of Jaipur and partly by the Digambari faqirs to who, it was made over in part compensation for the Guptar Park in cantonments.

***The Hindus temples are all intimately connected with the history of Ajodhya**. Most of them are of comparatively recent origin, as **it would appear that almost all the ancient shrines were destroyed by Aurangzeb and other Musalman zealots.** The sacred places of Ajodhya are exceedingly numerous. The spot according to HIndu mythology represents the forehead of Vishnu and is the seat of learning and the chief of the seven tiraths. **It is undoubtedly the most important centre of Vishnu worship in Oudh**, if not in the whole of Upper India, and claims precedence over Muttra and Hardwar. It is only natural, therefore, that the sacred places connected with Vishnu in his various incarnations and especially that*

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of Ram Chandra, the best known of all, should be many in number and should extend beyond the immediate precincts of the city, even as far as Bhadarsa and Bilharghat. In 1902 a local committee was formed with the object of commemorating the coronation of His Imperial Majesty King Edward VII, and a sum of over Rs. 1,000 was collected and expended on the erection of stone pillars ***marking the sacred spots in Ajodhya and its neighbourhood****. This work has been carried out and no fewer than 145 such stones have been erected; their ostensible purpose being to preserve the memory of the various holy spots and to serve as a guide to pilgrims and others interested in the place. A complete enumeration would be useless without some descriptive and historical account of each, and only the mere important need be here mentioned.*

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The chief place of worship in Ajodhya ***is the ancient citadel of Ramkot which stood on elevated ground in the western portion of the city. The old remparts have long disappeared, but the mound remains, and on it stand a number of large temples****. Foremost among these is the Hanuman Garhi, a massive structure in the shape of a four-sided fort with circular bastions at each angle. Above this on the hill to the* ***west stood the Janamasthan or birthplace of Rama****, and close by are the Kanak Bhawan, a very fine building erected by the Rani of Tikamgarh or Orchha;* ***the Sita Rasoi or Sita's kitchen; the Bara Asthan, the head-quarters of a fraternity called the Bara Akhara****; the Ratan Singhasan marking the place where*

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Rama was installed after his return from exile; the RAng Mahal, Anand Bhawan, Kaushalia Bhawan or Janam Bhumi, and the temple of Amar Das, as well as many smaller temples and shrines." (emphasis added)

4282. "**Imperial Gazetteer of India--Provincial Series--United Provinces of Agra and Oudh"-Vol. II (1908)** (Book No. 16) was published by Superintendent of Government Printing Calcutta in 1908 and on page 388-389 (Ex.10 Suit-5; Paper No.107C1/37-39) thereof in respect of "Ajodhya Town", it reads as under:

*"**Ajodhya Town** (in Sanskrit Ayodhya; now known as Ajudhia).--Town in Fyzabad District, United Provinces, situated in 26* 48' N. and 82* 12' E., on the right bank of the Gogra, and on a branch of the Oudh and Rohilkhand Railway. **Population (1901) 21,584**. The interest of Ajodhya centres in its ancient history. The old city has almost entirely disappeared, and only its outlines are marked by an extensive tract of elevated ground. But according to tradition **Ajodhya was in remote antiquity one of the largest and most magnificent of Indian cities**. It is said to have covered an area of 12 yojans or 80 to 100 miles in circumference, though the limits according to modern tradition extend only about 6 miles from Guptar Ghat on the west to Ram Ghat on the east. Ajodhya was the capital of the kingdom of Kosala and contained the court of the great king **Dasaratha, fifty-sixth monarch of the Solar line in descent from Raja Manu**. The opening chapters of the Ramayana recount the magnificence of the city, the glories of the monarch, and the virtues, wealth,*

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and loyalty of his people. Dasaratha was the father of Rama Chandra, the hero of the epic, whose cult has experienced a great revival in modern times. With the fall of the last of the Solar line, Raja Sumintra, the one hundred and thirteenth monarch, Ajodhya became a wilderness and the royal family dispersed. From different members of this scattered stock the Rajas of Udaipur, Jaipur, &c., claim descent. Tradition relates that Ajodhya was restored by king Vikramaditya of Ujjain, whose identity is a matter of dispute. Ajodhya was of small importance in Muddhist times, when Saketa became the chief city of Kosala. It is still uncertain where Saketa was situated, and it has been suggested that it occupied part of the ancient city of Ajodhya. Numismatic evidence points to the rule of a line of independent Rajas, in or near Ajodhya, about the commencement of the Christian era. The identifications of Ajodhya with the capitals of Sha-chi, 'O-yu-t'o, or Pi-so-kia, visited by the Chinese pilgrims, are all doubtful.

Under the ***rule of the early Muhammadan kings of Delhi, Ajodhya or Awadh was the seat of a governor whose authority extended over a varying tract of country****. When Akbar had firmly established his power in Northern India, the city became the capital of a Subah or province. In the eighteenth century it was for a time the nominal head-quarters of the early Nawabs of Oudh.* ***In 1765, however, Shuja-ud-daula made his residence at Fyzabad, a few miles away, and Ajodhya lost all importance, except as a religious centre****.*

The present town stretches inland from a high bluff

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overlooking the Gogra. ***At one corner of a vast mound known as Ramkot, or the fort of Rama, is the holy spot where the hero was born. Most of the enclosure is occupied by a mosque built by Babar from the remains of an old temple, and in the outer portion a small platform and shrine mark the birthplace.*** *Close by is a larger temple in which is shown the cooking-place of Sita, the faithful wife of Rama. A lofty temple stands on the bank of the Gogra at the place where Lakshmana bathed; and Hanuman, king of the monkeys, is worshipped in a large temple in the town, approached by an immense flight of steps, which bears the name Hanuman Garhi. Other noticeable temples built during the eighteenth and nineteenth centuries are the Kanakbhawan, a fine building erected by a Rani of Tikamgarh, the Nageshwarnath temple, Darshan Singh's temple, and a small marble temple built by the present Maharaja, Ajodhya also contains a number of Jain temples, five of which were built in the eighteenth century to mark the birthplaces of the five heirarchs who are said to have been born at Ajodhya.* ***Besides the mosque of Babar, two ruined mosques, built by Aurangzeb, stand on the sites of celebrated Hindu shrines--the Swargadwara, where Rama's body was cremated, and the Treta-ka-Thakur, where he sacrificed.*** *An inscription of Jai Chand, the last king of Kanauj, has been found in the latter. Three graves are reverenced by Musalmans as the tombs of Noah, Seth, and Job, and the two last are mentioned under those names in the Ain-i-Akbari. A large mound close by, called the Maniparbat, is*

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said to have been dropped by Hanuman when carrying a portion of the Himalayas, while another tradition asserts that it was formed by the coolies who built Ramkot shaking their baskets as they left work; it possibly covers a ruined stupa.

Modern buildings include the spacious residence of the Maharaja of Ajodhya (see AJODHYA ESTATE) and two dispensaries. For administrative purposes Ajodhya forms part of three great fairs take place annually in March-April, July-August, and ***October-November, which are sometimes attended by 400,000 persons. At special fairs the attendance has been estimated at as many as a million.*** *There is one public school, while ten Sanskrit schools contain 350 students." (emphasis added)*

4283. H.R. Nevill published another Gazetteer i.e. **"Fyzabad-A Gazetteer being Volume XLIII of the District Gazetteers of the United Provinces of Agra & Oudh"** in 1928 (Paper No.107C1/49-53; Register 20, Pages No.99-107). It says:

"Ajodhya is pre-eminently a city of temples, and apart from these there are but few points of interest in the place. Not all of these places of worship are connected with the Hindu religion. There are six Jain shrines which have been already mentioned in Chapter III in connection with Jainism in this district; and there are also the Musalman mosques and tombs. ***It is locally affirmed that at the time of the Musalman conquest there were three important Hindu shrines at Ajodhya and little else****. These were the Janamasthan temple, the Swargaddwar and the Treta-ka-Thakur, and each was successively made the object of*

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attention of different Musalman rulers. ***The Janamasthan was in Ramkot and marked the birthplace of Rama****. In 1528 A.D. Babar came to Ajodhya and halted here for a week.* ***He destroyed the ancient temple and on its site built a mosque, still known as Babar's mosque. The materials of the old structure were largely employed, and many of the columns are in good preservation; they are of close-grained black stone****, called by the natives kasauti, and carved with various devices. Their length is from seven to eight feet, and the shape square at the base, centre and capital, the rest being round or octagonal. The mosque has two inscriptions, one on the outside and the other on the pulpit; both are in Persian and bear the date 935 Hijri. Of the authenticity of the inscriptions there can be no doubt, but no record of the visit to Ajodhya is to be found in the Musalman historians. It must have occurred about the time of his expedition to Bihar.*

This desecration of the most sacred spot in the city caused great bitterness between Hindus and Musalmans. On many occasions the feeling led to bloodshed, and in 1855 an open fight occurred, the Musalmans occupying the Janamasthan in force and thence making a desperate assault on the Hanuman Garhi*. They charged up the steps of the temple, but were driven back with considerable loss. The Hindus then made a counter-attack and stormed the Janamasthan, at the gate of which seventy-five Musalmans were buried, the spot being known as the Ganj Shahidan or the martyrs' resting-place. Several of the king's regiments were present, but their orders were not to*

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interfere. Shortly afterwards Maulvi Amir Ali of Amethi in Lucknow organized a regular expedition with the object of destroying the Hanuman Garhi; but he and his forces were stopped in the Bara Banki district. ***It is said that up to this time both Hindus and Musalmans used to worship in the same building; but since the mutiny an outer enclosure has been put up in front of the mosque and the Hindus, who are forbidden access to the inner yard, make their offerings on a platform which they have raised in the outer one****.*

The other mosques were built by Aurangzeb and are now in ruins. That on the Swargaddwar replaced an ancient temple which has never been restored. The Treta-ka-Thakur marked the place where Rama performed a great sacrifice and set up images of himself and Sita. This was reproduced by the Raja of Kulu in the Punjab more than two centuries ago it was improved by Ahalya Bai, the widow of Jaswant Rai Holkar of Indore in 1784, and the same person built the adjoining ghat. As the temple could not commemorate her name, she built another called after herself and gave an annual assignment of Rs.231 to it, the sum being still paid by the ruler of Indore. The ancient images were said to have been recovered from the river where they had been thrown by Aurangzeb, and were placed in the new Treta-ka-Mandir. This temple is always closed during the day and is only opened at night on the 11th of the dark and light halves of each month, and for two or three nights on the occasion of the Ramnaumi and Katki fairs. The temple is endowed with two or three villages in

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Basti, purchased from the offerings made at the shrine.

Near the Mani Parbat are two tombs which are venerated as those of the patriarchs Seth and Tob. They are mentioned in the Ain-i-Akbari as being of six and seven yards in length respectively. They are again spoken of in the Araish-i-Mahfil. To these Colonel Wilford adds that of Noah, which is still shown near the police-station. The story goes that they fell here fighting the Hindus and thus acquired the rank of martyrs; possibly there is some truth in the story, as it may be that certain Musalmans bearing these names were killed in one of the frequent religions conflicts some four centuries ago, the date which Colonel Wilford assigns to the erections. Other shrines held sacred by Musalmans include that of Shah Juran Ghori, who is said to have come with Sahab-ud-din and destroyed the Jain temple of Adinath in the Murao tola near the Swargaddwar, giving his name to the mound on which his tomb stands; the shrine of Naurahni Khurd Makka, one of the earliest Musalman immigrants and a renowed saint, said to have been named Mir Ahmad and to have derived his cognomen from Naurahni whence he came, and from the muhalla of Ajodhya in which his tomb stands; that of Khwaja Hathi, a follower of Babar, whose enshrined tomb on the Kabir Tila, one of the chief bastions of Ramkot, is still revered; and that of Makhdum Shaikh Bhikha, a western devotee, who flourished some 200 years ago and was buried to the east of the city. The shrines of Shah Saman Faraidras and of Shah Chup are other relies of Muhammadan antiquity, of which all traditions are lost.

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The only remaining institutions of Musalman origin are the Hayat Bakhsh and the Farhat Bakhsh, formerly royal gardens which have now passed into Hindu hands. The former was assigned to Pandit Uma Datt by the British Government, and the latter is partly owned by the Raja of Jaipur and partly by the Digambari faqirs to whom it was made over in part compensation for the Guptar Park in cantonments.

The Hindu temples are all intimately connected with the history of Ajodhya."

4284. Exhibit 10 (Suit-5) (Register 29 Pages 87-89) is photocopy of frontispiece and pages 388 and 389 of **"Imperial Gazetteer of India Provincial Series United Provinces of Agra and Oudh"**, Vol. II published in 1934. Pages 388, 389 concerning Faizabad Division read as under:

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"Ajodhya Town (in Sanskrit Ayodhya; now known as Ajudhia).-Town in Fyzabad District, United Provinces, situated in 26°48' N. and 82°12' E, on the right bank of the Gogra, and on a branch of the Oudh and Rohilkhand Railway. Population (1901), 21,584. The interest of Ajodhya centres in its ancient history. The old city has almost entirely disappeared, and only its outlines are marked by an extensive tract of elevated ground. But according to tradition Ajodhya was in remote antiquity one of the largest and most magnificent of Indian cities. It is said to have covered an area of 12 yojanas or 80 to 100 miles in circumference, though the limits according to modern tradition extend only about 6 miles from Guptar Ghat on the west to Ram Ghat on the east. Ajodhya was the

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capital of the kingdom of Kosala and contained the court of the great King Dasaratha, fifty-sixth monarch of the Solar line in descent from Raja Manu. The opening chapters of the Ramayana recount the magnificence of the city, the glories of the monarch, and the virtues wealth and loyalty of the people. Dasaratha was the father of Rama Chandra, the hero of the epic, whose cult has experienced a great revival in modern times. With the fall of the last of the Solar line, Raja Sumintra, the one hundred and thirteenth monarch, Ajodhya became a wilderness and the royal family dispersed. From different members of this scattered stock the Rajas of Udaipur, Jaipur, & c., claim descent. Tradition relates that Ajodhya was restored by king Vikramaditya of Ujjain, whose identity is a mater of dispute. Ajodhya was of small importance in Buddhist times, when Saketa became the chief city of Kosala. It is still uncertain where Saketa was situated, and it has been suggested that it occupied part of the ancient city of Ajodhya. Numismatic evidence points to the rule of a line of independent Rajas, in or near Ajodhya, about the commencement of the Christian era. The identifications of Ajodhya with the capitals of Sha-chi 'O-yu-t'o, or Pi-so-kia, visited by Chinese pilgrims, are all doubtful.

Under the rule of the early Muhammadan kings of Delhi, Ajodhya or Awadh was the seat of a governor whose authority extended over a varying tract of country. When Akbar had firmly established his power in Northern India, the city became the capital of a Subah or province. In the eighteenth century it was for a time the nominal head-

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quarters of the early Nawabs of Oudh. In 1765, however, Shuja-ud-daula made his residence at Fyzabad, a few miles away, and Ajodhya lost all importance, except as a religious centre.

The present town stretches inland from a high bluff over-looking the Gogra. At one corner of a vast mound known as Ramkot, or the fort of Rama, is the holy spot where the hero was born. Most of the enclosure is occupied by a mosque built by Babar from the remains of an old temple, and in the outer portion a small platform and shrine mark the birthplace. Closed by is a larger temple in which is shown the cooking-place of Sita, the faithful wife of Rama. A lofty temple stands on the bank of the Gogra at the place where Lakshmana bathed, and Hanuman, king of the monkeys, is worshipped in a large temple in the town, approached by an immense flight of steps, which bears the name Hanuman Garhi. Other noticeable temples built during the eighteenth and nineteenth centuries are the Kanakbhawan, a five building erected by a Rani of Tikamgarh, the Nageshwarnath temple, Darshan Singh's temple, and a small marble temple built by the present Maharaja. Ajodhya also contains a number of Jain temples, five of which were built in the eighteenth century to mark the birthplaces of the five hierarchs who are said to have been born at Ajodhya. Besides the mosque of Babar, two ruined mosqus, built by Aurangzeb, stand on the sites of celebrated Hindu shrines the Swargadwara, where Rama's body was cremated, and the Treta-ka-Thakur, where he sacrificed. An inscription of Jai Chand, the last

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king of Kanauj, has been found in the latter. Three graves are reverenced by Musalmans as the tombs of Noah, Seth, and Job, and the two last are mentioned under those names in the Ain-i-Akbari. A large mound close by called the Maniparbat, is said to have been dropped by Hanuman when carrying a portion of the Himalayas, while another tradition asserts that is was formed by the coolies who built Ramkot shaking their basket as they left work; it possibly covers a ruined stupa.

Modern buildings include the spacious residence of the Maharaja of Ajodhya (see Ajodhya Estate) and two dispensaries. For administrative purposes Ajodhya forms part of the Fyzabad municipality. There is little or no no trade; but three great fairs take place annually in March-April, July-August, and October-November, which are sometimes attended by 400,000 persons. At special fairs the attendance has been estimated at as many as a million. There is one public school, while ten Sanskrit schools contain 350 students.

Akbarpur Town.-Heat-quarters of the tahsil of the same name in Fyzabad District, United Provinces, situated in 26°...N, and 82° 32' E, on the Oudh and Rohilkhand Railway..."

4285. After independence under the authority of Government of Uttar Pradesh (Revenue Department) District Gazetteers of Uttar Pradesh in the revised form were published and the "**Uttar Pradesh District Gazetteers-Faizabad"** by Smt. Esha Basanti Joshi (Book No. 17) was published in 1960 printed at the Indian Press (Private) Ltd., Allahabad. Copy of the

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frontispiece and pages No. 34, 36, 46, 47, 352 and 354 have been filed as paper No.107C1/54-61 i.e. **Ex.13, Suit-5 (Register 20; pages 109-123**). Defendant no. 20 (Suit-4) has also filed photocopy of the frontispiece, preface and pages no. 47, 50, 63, 64, 351, 352 and 450 as **Exhibit T2 (Suit-4)** (Paper No. 43A-1/12-21), (**Register 18 pages 25-43**). Regarding disputed construction, on pages 351, 352 and 353 it says as under:

> *"Ayodhya (which means invincible) is a place of great antiquity. According to Hindu mythology it represents the forehead of Vishnu and is the chief of the seven cities (saptpuri) of pilgrimage in India. As Carnegy puts it, "Ajudhia, which is to the Hindu what Mecca is to the Mohammedan, Jerusalem to the Jews, has in the traditions of the orthodox, a highly mythical origin, being founded for additional security not on earth for that is transitory but on the chariot wheel of the Great Creator himself which will endure for ever." It is intimately connected with the mass of legend relating to Rama and the Suryavanshi (Solar) race and was certainly the capital of several reigning dynasties.* ***It is one of the most important centres of Vaishnava worship****. Buddhist tradition mentions Saket as the place where Buddha spent 16 summers and some scholars consider Ayodhya and Saket to be identical. In the fifth century A.D. it came under the sway of the Imperial Guptas and became a flourishing trade centre. Probably the Chinese pilgrims Fa-hien and Hiuen Tsang visited this place.* ***Nothing of antiquity has survived as many acts of vandalism were perpetrated by the different invaders****. For a long period from the seventh century A.D. onwards*

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the place appears to have been almost deserted. In early mediaeval times it rose again in importance under the Muslim rules who made it the seat of government of a large province. That it was still regarded as a holy spot by the Hindus is clear from the fact that ***it was desecrated by Babur*** *and Aurangzeb and that the presence of a Muslim governor and his court contrived to keep the Hindu shrines continually in the back-ground. Ayodhya was also a mint town under some of the Mughal kings. It is not clear when it first began to assume its present proportions; the change presumably occurred about the middle of the 18th century when the capital of the Muslim rulers was removed from Ayodhya to the new city of Faizabad and the Qila Mubarak or fort of Saadat Khan (near Lachhman Ghat in Ayodhya) was abandoned for his country residence at the Bangla.* ***With the departure of the court, the Hindus were left to themselves and numerous temples and monasteries sprang into existence****. Nawal Rai, the deputy of Nawab Safdar Jung, built a fine house in Ayodhya which still stands on the river front. Probably this rise in importance was due to the growing popularity of the Ramcharitmanasa of Tulsidas and the progress of this place became even more rapid after the annexation of Avadh by the British. Before the middle of the nineteenth century Ayodhya was regarded as a stronghold of Hinduism although the great family of Sakaldvipi Brahmanas, whose representative bore the title of 'Maharaja of Ayodhya', had but little to do with the place and even the fine place of the Maharaja in the east of the city and its adjoining temple are not very old.*

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Ayodhya is pre-eminently a town of temples but not all the places of worship are connected with the Hindu religion. There are some Jain shrines and several Muslim mosques and tombs. It is said that at the time of the Muslim conquest there were three important Hindu shrines here and little else, ***the Janmasthan temple****, the Swargadwar and the Treta-ke-Thakur.* ***The Janmasthan was in Ramkot and marked the birthplace of Rama. It seems that in 1528 A.D. Babur visited Ayodhya and under his orders this ancient temple was destroyed and on the site was built what came to be known as Babur's mosque****. The material of the old temple was largely employed in building the mosque and a few of the original columns are still in good preservations; they are of cloe grained black stone (kasauti) bearing various Hindu bas-reliefs (see Plate I), the outer beam of the main structure being of sandal wood. The height of the columns is seven to eight feet, the shape of the base, the middle section and the capital is square, the rest being round or octagonal.* ***There are two inscriptions in Persian, one on the outside and the other on the pulpit bearing the date 935 Hijri****.* ***Subsequently Aurangzeb also desecrated the shrines of Ayodhya*** *which led to prolonged bitterness between the Hindus and Muslims. The latter occupied the Janmasthan by force and also made an assault on Hanuman Garhi. Attacks and counter-attacks continued, culminating in the bloodshed of 1855 under the leadership of Maulvi Amir Ali. As a result,* ***in 1858 an outer enclosure was put up in front of the mosque and the***

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> ***Hindus, who were forbidden access to the inner yard, had to perform their puja on a platform outside****. Since 1949 the position has changed and the Hindus have succeeded in installing the images of Rama and Sita in the mosque owing to which the spot has become the object of much litigation. Now the inner yard is protected by an armed guard and only a few Hindu pujaris (priests) are allowed access to the inner sanctum." (emphasis added)*

4286. Now we turn to some Hindu texts which refers to Ayodhya as well as Lord Rama which have been relied heavily by all the learned counsels appearing for Hindu parties.

4287. It was suggested that the origin of Aryan in Indian Sub-continent itself is not traceable to several thousand of years to co-relate them with Lord Rama and a search of his place of birth at the disputed site does not travel to such length of time as being argued. For this purpose an attempt was made to show the meaning of the word "Hindu" in the book Hinduism by Sir Monier Williams. Let us consider this.

4288. Mr. **Monier Williams** was born in Bombay on 12th November 1819. His father, Colonel Monier Williams was surveyor-general in the Bombay presidency. He matriculated at Oxford from Balliol College in 1837 but left University in 1839 since nominated for the East India Company's civil services. While undergoing his training course at Haileybury, he got the information of death of his brother in India. He relinquished his nomination and returned to Oxford. He entered University College to study Sanskrit in 1841-44. He gained Boden Scholarship in 1843. After obtaining his degree, he became Professor of Sanskrit, Persian and Hindustani languages.

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Married in 1848 on the suggestion of Professor H.H. Wilson in 1851 he started working on a scientifically arranged Sanskrit-English dictionary. In 1860, he was elected Boden Professor of Sanskrit at Oxford after a contest with Professor Max Muller. In the Wikipedia, the free encyclopedia the bio data of Monier Williams has been given wherein it is mentioned after his appointment to the professorship, Williams declared that the conversion of India to Christian religion should be one of the aims of the orientalist scholarship. In his book "Hinduism" he predicted the demise of the Hindu religion and called for Christian evangelism to ward off the spread of Islam. His first version of Sanskrit-English dictionary was published in 1872. He founded Indian Institute at Oxford in 1883 which also provided training ground for Indian Civil Services. He visited India in 1883 itself to solicit the moral and financial support of the native princes and other leading men.

4289. The controversy which we are shouldering upon to adjudicate largely involved historical, religious, philosophical, social and sociological aspects. The development in growth of Hindu religion runs concurrent as per beliefs of some about four thousand years and for others ranging from eight to ten thousands years to more than a crore years. This itself makes the complexity of the problem patent. To appreciate the historical developments, it would be of some interest if we have the idea and broad features of Hindu religion in this part of Asian continent which we now call India or Hindustan or Bharat. The first and foremost aspect of the matter would be whether Hindu religion by itself is only a religion or it talks of a particular set of people known by some common features of social and

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behavioural pattern including the religious one or denoted by geographical sense or otherwise. Though there is a lot of diversion of opinion and presently a serious thought is otherwise under current amongst the scholars. Upto now the general accepted version by scholars has been that the word “Hindu” had its genesis in the river Sindhu, otherwise known as “Indus” flowing from Punjab. Sir Moniar Williams in his Book “**Hinduism**” has said:

> *“That part of the great Aryan race, which immigrated from Central Asia, through the mountain passes into India, settled first in the districts near the river Sindhu (now called the Indus). The Persians pronounced this word Hindu and named their Aryan brethren Hindus. The Greeks, who probably gained their first ideas of India from the Persians, dropped the hard aspirate, and called the Hindus "Indoi".*

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4290. “**The Encyclopaedia of Religion and Ethics”**, Vol. VI, has described "Hinduism" as the title applied to that form of religion which prevails among the vast majority of the present population of the Indian Empire.

4291. As observed by Dr. Radhakrishnan; *"The Hindu civilization is so called, since its original founders or earliest followers occupied the territory drained by the Sindhu (the Indus) river system corresponding to the North-West Frontier Province and the Punjab. This is recorded in the Rig Veda, the oldest of the Vedas, the Hindu scriptures which give their name to this period of Indian history. The people on the Indian side of the Sindhu were called Hindu by the Persian and the later western invaders".*

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4292. What Hindu religion is we have already said while dealing with Issue No. 17 (Suit-3). As we have seen, if not impossibly, it is very difficult to define this term or even to adequately describe it. Hindu religion does not claim any one prophet, it does not worship a single God, it does not subscribe to one dogma, does not believe in one philosophical concept, does not follow any one set of religion, rites or performance. Broadly speaking, it does not appear to satisfy the traditional features of any religion or creed as is known in other religions which narrow down its area of spread and influence. Broadly, it is described as a way of life and nothing more. The people lacking in depth knowledge of concept of Hinduism surprise as to what this name seems to without any content. Is it a museum of beliefs, a medley of rites, or a mere map, a geographical expression? Dr. Radhakrishnan posed these questions which disturbed foreigners when they think of Hinduism and then explained that the term "Hindu" had originally a territorial and not a credal significance. It implied residence in a well-defined geographical area. A boriginal tribes, savage and half-civilized people, the cultured Dravidians and the Vedic Aryans were all Hindus as they were the sons of the same mother. The Hindu thinkers reckoned with the striking fact that the men and women dwelling in India belonged to different communities, worshipped different gods, and practiced different rites. That is how Hinduism has steadily absorbed the customs and ideas of peoples with whom it has come into contact and has thus been able to maintain its supremacy and its youth. Hindu religion is a reflection of the composite characters of the Hindus, who are not one people but many. It is based on the idea of universal

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receptivity. It has always aimed to accommodate itself to circumstances, and has carried on the process of adaptation through more than three thousand years. It has first borne with and then, so to speak, swallowed, digested, and assimilated something from all creeds. Monier Williams observed that it must be borne in mind that Hinduism is far more than a mere form of theism resting on Brahmanism. It presents for our investigation a complex congeries of creeds and doctrines which in its gradual accumulation may be compared to the gathering together of the mighty volume of the Ganges, swollen by a continual influx of tributary rivers and rivulets, spreading itself over an ever-increasing area of country and finally resolving itself into an intricate Delta of tortuous streams and jungly marshes.

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4293. Normally, any recognised religion or religious creed subscribes to a body of set philosophic concepts and theological beliefs but it does not apply as such to Hindu religion. Philosophy in ancient India was not an auxiliary to any other science or art, like other countries but always held a prominent position in independence. The Mundaka Upanisad speaks of Brahma-vidya or the science of the eternal as the basis of all sciences, 'sarva-vidya-pratishtha'. Philosophy is the lamp of all the sciences, the means of performing all the works, and the support of all the duties according to Kautilya. Dr. Radhakrishnan said that in all the fleeting centuries of history, in all the vicissitudes through which India has passed, a certain marked identity is visible. It has held fast to certain psychological traits which constitute its special heritage, and they will be the characteristic marks of the Indian people so long

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as they are privileged to have a separate existence. The development of Hindu religion has always been inspired by an endless quest of the mind for truth based on the consciousness that truth has many facets. Truth is one, but wise men describe it differently. The Indian mind has, consistently through the ages, been exercised over the problem of the nature of godhead and problem that faces the spirit at the end of life, and the interrelation between the individual and the universal soul. If we can abstract from the variety of opinion and observe the general spirit of Indian thought, we shall find that it has a disposition to interpret life and nature in the way of monistic idealism, though this tendency is so plastic, living and manifold that it takes many forms and expresses itself in even mutually hostile teachings, says Dr. Radhakrishnan. The monistic idealism which can be said to be the general distinguishing feature of Hindu Philosophy has been expressed in four different forms : (1) Non-dualism or Advitism; (2) Pure monism; (3) Modified monism; and (4) Implicit monism. These different forms of monistic idealism purport to derive support from the same ancient literature that we called vedas, Upanishads, Puranas etc. Shankaracharya, Ramanujam, Vallabhacharya and Madhvacharya all based their philosophic concepts on what they regarded to be the synthesis between the Upanishads, the Brahmasutras and the Bhagavad Gita. Philosophic concepts and principles evolved by different Hindu thinkers and philosophers varied in many ways and even appeared to conflict with each other in some particulars, they all had reverence for the past and accepted the Vedas as the sole foundation of the Hindu philosophy. It appears that since its beginning, it was realized by

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Hindu religion that truth by truth was many-sided and different views contained different aspects of truth which no one could fully express. This knowledge inevitably bred a spirit of tolerance and willingness to understand and appreciate the opponents point of view. That is how the several views set forth in India in regard to the vital philosophic concepts are considered to be the branches of the self-same tree. The short cuts and blind alleys are somehow reconciled with the main road of advance to the truth. As soon as we appreciate this broad sweep of the Hindu philosophic concepts, it can be realised that under Hindu philosophy, there is no scope for ex-communicating any notion or principle as heretical and rejecting it as such. Max Muller had observed, the longer I have studied the various systems, the more have I become impressed with the truth of the view taken by Vijnanabhiksu and others that there is behind the variety of the six systems a common fund of what may be called national or popular philosophy, a large manasa (lake) of philosophical thought and language far away in the distant North and in the distant past, from which each thinker was allowed to draw for his own purposes. The development of Hindu religion and philosophy shows that from time to time saints and religious reformers attempted to remove from the Hindu thought and practices elements of corruption and superstition and that led to the formation of different sects despite his common and divergent respective views of such saints and religious reformers; underneath there is a kind of subtle indescribable unity which keeps them within the sweep of the broad and progressive Hindu religion. Whether it is Buddhism of Gautam Buddha or Jainism of Mahavir, Lingayat

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founded by Basava, Varakari cult initiated by Dnyaneshwar and Tukaram, Sikhism inspired by Guru Nanak Arya Samaj founded by Dayananda and Bhakti cult commenced with Chaitanya has found the teachings of Ramakrishna and Vivekananda etc. All of them revolted against the dominance of rituals and the power of the priestly class with which it came to be associated; and all of them proclaimed their teachings not in Sanskrit which was the monopoly of the priestly class, but in the languages spoken by the ordinary mass of people in their respective regions. Beneath the diversity of philosophic thoughts, concepts and ideas expressed by Hindu philosophers who started different philosophic schools, their lie certain broad concepts which can be treated as basic, though all accept Veda as the highest authority in religious and philosophic matters. It implies necessarily that all the systems claim to have drawn their principles from a common reservoir of thought, i.e., the Veda. Then all of them accept the view of the great world rhythm. Vast periods of creation, maintenance and dissolution follow each other in endless succession. The systems of Hindu philosophy believe in rebirth and pre-existence. We do not find that all the Hindu worship the same temples or the same God. There are certain sections of the Hindu community which do not believe in the worship of God. In the Hindu Pantheon, numbers of idols are worshipped by the Hindus. It presents the spectacle of a very large number of gods who are worshipped by different sections of the Hindus, but many a times idols in a temple or a temple as such may not be necessarily to profess the beliefs of Hinduism. We have discussed these aspects in some detail while considering the issues relating to juridical personality of deities

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of plaintiffs 1 and 2 (Suit-5).

4294. We are of the view that the historicity of Lord Rama cannot be restricted by any preconceived notion since, if any such attempt is made not only in respect to Lord Rama but in other matters also, that may result in havoc and will amount to playing with the sentiments and belief of millions of people which are bestowed upon them from generations to generation and time immemorial.

4295. "**Rigveda Samhita" Vol. II** (Mandalas 2, 3, 4, 5) verse 3365 translated by H.H. Wilson and "Bhasya of Sayanacarya"

3365. श्रावयेदस्य कर्णा वाजयध्यै जुश्टामनु प्र दिषं मन्दयध्यै।
उद्वावृषाणों राधसे तुविष्मान्करत्र इन्द्रः सुतीर्थाभयं च।।

"Let (his worshipper) cause his ears to listen so as to invigorate him (by praise), and to give him pleasure in every acceptable place; and being well moistened with the Soma juice, may the vigorous Indra render the holy places (conducive) to our wealth, and free from danger."

4296. **Rigveda Samhita" Vol. II** (Mandalas 9, 10) of H.H. Wilson (supra), verse 9110:

9110. अधायि धीतिरसयृग्रमंशास्तीर्ये न दस्ममुप यन्त्यूमाः।
अभ्यानष्म सुवितस्य शूषं नवेदसो अमृतानामभूम।।3।।

"3. The sacrifice has been prepared: the invigorating portions (of the oblation) approach the beautiful (god) of ***excellent birth****, as (the waters)* ***at a holy spot*** *(approach the gods): may we obtain the happiness of heaven: may we have a real knowledge of the immortals.*

Waters at a holy spot—*Sayana, as at a tirtha (sacred ford) the portions of water sprinkled in the act of tarpana (libation) go to the assembly of the gods. The use of the*

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term is worthy of notice, as indicating a considerable advance in legendary mythology.

May we have a real knowledge, etc.--*(Sayana explains navedasah as na na vettara vettara eva, i.e., svarupato jnatara eva, "knowing personally", but it is difficult to see how "not-knowers," which is Sayana's derivation, and also that of Panini, vi. 3. 75, to whom he refers, can come to mean "knowers." In his comment on i. 34. 1. Sayana explains it as no paretam vetti, "he does not know falsely")"*

4297. The work of the Black Yajus Schools entitled "**Taittiriya Sanhita"**, Part 2, Kandas IV-VII, translated by Arthur Berriedale Keith, first published in 1914 and the second issue in 1967 by Motilal Banarsidass, Delhi, says:

"vi. 1. 1. He makes a hall with beams pointing east. The gods and men divided the quarters, the gods (obtained) the eastern, the Pitrs the southern, men the western, the Rudras the northern. In that he makes a hall with beams pointing east, the sacrificer approaches the world of the gods. He covers it over, for the world of the gods is hidden from the world of men."

4298. Adhyay-9, verse 381 "**Yajurveda Samhita"**, translated by R.T.H. Griffith, third edition 2002 (first edition 1997). It says:

''381. वाजस्य नु प्रसव आबभूवेमा च विश्वा भुवनानि सर्वतः।
सनेमि राजा परियाति विद्वान प्रजां पुष्टि वर्धयमानो अस्मे स्वाहा।। 25 ।।

"Surely the furtherance of strength pervaded all these existing worlds in all directions. From olden time the King moves round, well knowing, strengthening all the

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people and our welfare."

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4299. "**Atherva-Veda ka Subodh Bhasya"**, Tritiya Bhag (Kanda 7-10), translated by Dr. Sripad Damodar Satvalekar published in 1985, at 2. 31, 32 says:

अष्टा चक्रा नवद्वारा देवानां अयोध्या। तस्यों हिण्ययः कोशः स्वर्गो ज्योतिषाऽऽवृतः।।31।।

तस्मिन् हिरण्मये कोशेन्त्वरि त्रिप्रतिष्ठिते। तस्मिन् यद् यक्षमात्मन्वत् तद्वै ब्रह्मविदोविदुः।।32।।

(अष्टा चक्रा, नव–द्वारा, अयोध्या देवानां पूः।) जिसमें आठ चक्र हैं, और नौ द्वार है, ऐसी यह अयोध्या देवों की नगरी है। (तस्यां हिरण्यः कोशः ज्योतिषाः आवृतः स्वर्गः।।) उसमें तेजस्वी कोश है, जो तेज से परिपूर्ण स्वर्ग है। ।।31।।

"Ayodhya is such abode of Gods, which has eight 'Chakras' (wheels) and nine portals. It has a 'Tejaswi Kosh' (golden vessel), which amounts to heaven full of luminosity." (E.T.C.)

(त्रिः अरे, भिः प्रतिष्ठते, तस्मिन् तस्मिन् हिरण्यये कोशं, यत आत्मन्वत् यक्षं तद् वै ब्रह्मः विदूः विदुः) तीन ओर से युक्त, तीन केन्द्रों में स्थित, उसी तेजस्वी कोश में जो आत्मवान यक्ष है उसको निष्चय से ब्रह्मा जी मानते हैं। ।।32।।

"The self knowing Yaksha (demi God), who exists in that Tejaswi Kosh surrounded on three sides with three focal points, is definitely believed so by Brahma Ji." (E.T.C.)

4300. "**Atharva-Veda Samhita"**, Books VIII to XIX, translated by William Dwigth Whitney (Revised and edited by Charles Rockwell Lanman) first published in Cambridge in 1905 and re-printed in 2001 by Motilal Banarsidass, at X. 31 and 32 says:

"31. Eight-wheeled, nine-doored, is the impregnable stronghold of the gods; in that is a golden vessel, heaven-

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going (svarga), covered with light.

32. In that golden vessel, three-spoked, having three supports—what sou-possessing monster (yaksa) there is in it, that verily the knowers of the brahman know."

4301. "**Skanda-Purana"**, translated and annotated by Dr. G.V. Tagare, Part-VII, first published in Delhi in 1995 by Motilal Banarasidas at page 142 verses 25, 26-28, 29, 30-31. It says:

"25. Orh, obeisance to that holy lord Vyass of unmeasured splendour, with whose favour I know this glory of Ayodhya.

26-28. May all sages with their disciples hear with attention. I shall recount the splendid glory of the city of Ayodhya. It was heard by Skanda from Narada. Then it was narrated to Agastya. Formerly it was recounted to Krsna Dvaipayana by Agastya.

O ascetics, it was obtained from Krsna Dvaipayana by me. With great respect I shall recount it to you all who are desirous of hearing.

29. I bow down to the immutable Rama, the Supreme Brahman whose eyes resemble lotus, who is as dark-blue as a flower of flax (in complexion) and who killed Ravana.

30. Great and holy is the city of Ayodhya which is inaccessible to perpetrators of evil deeds. Who would not like to visit Ayodhya wherein Lord Hari himself resided?

31. This divine and extremely splendid city is on the banks of the river Saray. It is on a par with Amaravati (the capital of Indra) and is resorted to by many ascetics."

4302. Page 216 to 219 Chapter-IX verse 54-58, Chapter X

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verses, 1-2, 3-6, 7, 8-12, 13-16a, 16b-17, 18-19, 20, 21, 22, 23-25, 28, 32, 33, 35 and 36 of **Skanda-Purana (supra)** says as under:

> *"54-58. Gold and cooked rice should be given in accordance with the injunctions to Brahmanas. This must be performed with great faith by piously disposed men. To the west of it is the excellent Jatakunda where Rama and others dropped and removed their matted hairs. Thus Jatakunda is well-known as the most excellent of all excellent Tirthas. By taking the holy bath here and by making charitable gifts, one attains all desires. In the previous (?eastern) Kundas Bharata should be worshipped along with Sri. In the Jatakunda Rama and Laksmana should be worshipped along with Sita. The annual festival shall be on the fourteenth day in the dark half of Caitra.*
>
> *Thus in accordance with the great injunctions one shall worship Rama and Sita (first), then in Bharatakunda one shall worship Laksmana. The couple should take the holy plunge in the Amrtakunda duly. Thereby the devotee dwells in the world of Visnu as an embodiment of meritorious deeds."*
>
> *"1-2. The devotee should worship Ajita (Visnu) by abstaining from food or taking in only milk. Siddhi (spiritual achievement) comes within his hands (power).*
>
> *The great festival should be celebrated with vocal and instrumental music. An intelligent devotee who does like this and performs the rites in this manner, shall attain all desires."*
>
> *"3-6. To the north of this is the auspicious Tirtha of*

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Vira, the great elephant in rut. O sage regularly performing holy rites.

After taking the holy bath, the devotee should stay there in front of it determinedly. He attains the complete Siddhi on realising which he does not bemoan or regret.

Vira (Hero, the elephant deity here) is the defender of Ayodhya and bestower of all desired objects. The annual festival shall be celebrated on the Pancami (fifth) day during Navaratris (Festival on nine days in Asvina). The deity should be worshipped carefully by means of scents, incense, flowers etc. and food offerings in accordance with the injunctions. The deity shall be the bestower of all desired objects. Whatever he may desire, he shall attain."

"7. The south of this is the demoness names Surasa. O Brahmana, she is a perpetual devotee of Visnu. She is a bestower of Siddhis."

"8-12. By devoutly worshipping her one shall realise all desires. She was brought from her abode in Lanka by Rama of Magnificent activities. She was installed in Ayodhya for the sake of its defence. People must observe vows and restraints, worship her duly and visit her with great respect. The festival for the sake of realising all desired objects, bestows auspiciousness. It should be celebrated with great effort by means of vocal and instrumental music.

The annual festival shall be celebrated on Tritiya (third day) during the Navaratris. It is conducive to the attainment of happiness and progeny. It bestows great objects. It shall be made pleasant by means of songs,

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musical instruments and dances. If everything is done thus, one shall be well-protected always. There is no doubt about this."

"13-16a. In the western direction to this is installed a very great warrior of excellent heroism called Pindaraka. He is to be worshipped with great effort by means of scents, flowers, raw ricegrains etc. As a result of this worship Siddhis shall be within the reach of men. The worship of that deity should be performed by men in accordance with the injunction of worship. The devotee shall take his holy bath in the waters of Sarayu and then worship Pindaraka who deludes sinners and bestows good intellect on men of good deeds always.

The (annual) festival should be celebrated during Navaratris with great luxury."

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"16b-17. To the west of it, the devotee should worship Vighnesvara by seeking whom not even the least obstacle remains (in the affairs) of men. Hence Vighnesvara, the bestower of all desired benefits, should be worshipped."

"18-19. To the north-east of that spot is the place of the birth of Rama. This holy spot of the birth is, it is said, the means of achieving salvation etc. It is said that the place of birth is situated to the east of Vighnesvara, to the north of Vasistha and to the west of Laumasa."

"20. Only by visiting it a man can get rid of staying (frequently) in a womb (i.e. rebirth). There is no necessity for making charitable gifts, performing a penance or sacrifices or undertaking pilgrimages to holy spots."

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"21. On the Navami day the man should observe the holy vow. By the power of the holy bath and charitable gifts, he is liberated from the bondage of births."

"22. By visiting the place of birth one attains that benefit which is obtained by one who gives thousands of tawny-coloured cows everyday."

"23-25. By seeing the place of birth one attains the merit of ascetics performing penance in hermitage, of thousands of Rajasuya sacrifices and Agnihotra sacrifices performed every year. By seeing a man observing the holy rite particularly in the place of birth he obtains the merit of the holy men endowed with devotion to mother and father as well as preceptors."

"28. By (visiting) the city of the Son of Dasarath (i.e. Rama) in Kali Yuga, it is said, one gets that merit which is obtained by persons who perform Gayasraddha and then visit Purusottama (Jagannathapuri)."

"32. By visiting the city of Dasarath's Son in Kaliyuga (even) for half a moment one obtains the merit of taking a holy plunge in Ganga for sixty thousand years."

"33. If living beings contemplate on Rama for a moment or half a moment, it becomes the destroyer of ignorance which is the cause of the worldly existence."

"35. Sarayu is Brahman itself in the form of water. It always bestows salvation. There is no question of experiencing the effects of Karma here. The man assumes the form of Rama."

"36. Beasts, birds, and animals and all those living beings of inferior species, become liberated and they go to

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heaven in accordance with the words of Srirama."

4303. "**Shri Narsinghpuranam**", Samvat 2056, published by Geeta Press Gorakhpur, Chapter 62 verse 4, 5 and 6 says:

अर्चनं सम्प्रवक्ष्यामि विष्णोमिततेजसः।
यत्कृत्वा मुनयः वर्से परं निर्वाणमाप्नुयुः।। 4।।
अग्नौ क्रियावतां देवो मनीषिणाम्।
प्रतिमास्वल्पबुद्धीनां योगिनां हृदये हरिः।।5।।
अतोऽग्नौ हृदये सूर्यो स्थण्डिले प्रतिमासु च।
एतेषु च हरेः सम्यगर्चनं मुनिभिः स्मृतम।।।6।।

श्रीमार्कण्डेय जी ने कहा– अच्छा, मै। अमिततेजस्वी भगवान् विष्णु के पूजन की विधि बता रहा हूँ, जिसके अनुसार पूजन करके सभी मुनिगण परम निर्वाण (मोक्ष) पद को प्राप्त हुए हैं। अग्नि में हवन करने वाले के लिये भगवान् वास अग्नि में है। ज्ञानियों और योगियों के लिये अपने –अपने हृदय में ही भगवान की स्थिति है तथा जो थोड़ी बुद्धिवाले हैं, उनके लिये प्रतिमा में भगवान का निवास है। ***इसलिये अग्नि, सूर्य, हृदय, स्थण्डिल (वेदी) और प्रतिमा–इन सभी आधारों में भगवान का विधिपूर्वक पूजन मुनियों द्वारा बताया गया है। भगवान सर्वमय है, अतः स्थण्डिल और प्रतिमाओं में भी भगवत्पूजन उत्तम है।।"*** (Hindi Translation)

"Sri Markandey Ji said- Well, I am telling the method of worshipping extremely luminous Lord Vishnu by virtue of which all the sages have attained 'Param Nirvan' (liberation). For those offering 'Hawan' in fire, 'Bhagwan' (God) is present in fire. For the wise and the Yogis, God exists only in their respective hearts, and for those having a little intellect, God exists in statues. That's why, the sages have prescribed for due worship of God in fire, the Sun, heart, altar and idol. The God is omnipresent. So the worship of God is good in altars and idols as well." (E.T.C.)

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4304. "**Sri Ramacaritamanasa"** published by Geeta Press Gorakhpur, first edition 1968, 11th edition 1999-"Balkanda" Chaupai 1-4, Doha 34, page 33 and "Uttara-Kanda" Chaupai 1-4, page 679 says:

''चौ0– एहि बिधि सब संसय करि दूरी। सिर धरि गुर पद पंकज धूरी।।
पुनि सबही बिनवउँ कर चोरी। करत कथा जेहि लाग न खोरी।।1।।
सादर सिवहि नाइ अब माथा। बरनउँ बिसद राम गुन गाथा।।
संबत सोरह से एकतीसा। करउँ कथा हरि पद धरि गाथा।।2।।
नौमी भौम बार मधुमासा। अवधपुरी यह चरित प्रकासा।।
जेहि दिन राम जनम श्रुति गावहिं। तीरथ सकल तहाँ चलि आवहिं।।3।।
असुर नाग खग नर मुनि देवा। आई करहिं रघुनायक सेवा।।
***जन्म महोत्सव रचहिं सुजाना।** करहि राम कल कीरति गाना।।4।।*

"Putting away all doubts in this way and placing on my head the dust from the lotus feet of my preceptor. I supplicate all with joined palms once more, so that no blame may attach to the telling of the story. Reverently bowing my head to Lord Siva, I now proceed to recount the fair virtues of Sri Rama. Placing my head on the feet of Sri Hari ***I commence this story in the Samvat year 1631 (1574 A.D.). On Tuesday, the ninth of the lunar month of Caitra, this story shed its lustre at Ayodhya. On this day of Sri Rama's birth the presiding spirits of all holy places flock*** *there-so declare the vedas—and demons, Nagas, birds, human beings, sages and gods come and pay their homage to the Lord of Raghus.* ***Wise men celebrate the great birthday festival and sing the sweet glory of Sri Rama****"*

दो0– मज्जहिं सज्जन बृंद बहु पावन सरजू नीर।
जपहिं राम धरि ध्यान उर सुंदर स्याम सरीर।।34।।

"Numerous groups of pious men take dip in the holy

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water of the Sarayu river and, visualizing in their heart the beautiful swarthy form of Sri Rama, mutter His name. (34)"

चौ0 इहाँ भानुकुल कमल दिवाकर। कपिन्ह देखावत नगर मनोहर।।
सुनु कपीस अंगद लंकेसा। पावन पुरी रूचिर यह देसा।। 1।।
जद्यपि सब बैकुंठ बखाना। वेद पुराने विदित जगु जाना।।
अवधपुरी सम प्रिय नहिं सोऊ। यह प्रसंग जानइ कोउ कोऊ।।2।।
जन्म भूमि मम पुरी सुहावनि। उत्तर दिसि बह सरजू पावनि।।
जा मज्जन ते बिनहिं प्रयासा। मम समीप नर पावहिं बासा।।3।।
अति प्रिय मोहि इहाँ के बासी। मम धामदा पुरी सुख रासी।।
हरषे सब कपि सुनि प्रभु बानी। धन्य अवध जो राम बखानी।।4।।

"At the other end Sri Rama, who brought delight to the solar race as the sun to the lotus, was busy showing the charming city to the monkeys. "Listen, Sugriva (lord of the monkeys), Angada and Vibhisana (Lord of Lanka), holy is this city and beautiful this land. Although all have extolled Vaikuntha (My divine Abode), which is familiar to the Vedas and the Puranas and known throughout the world, it is not so dear to Me as the city of Ayodhya: only some rare soul knows this secret. This beautiful city is My birthplace; to the north of it flows the holy Sarayu, by bathing in which men secure a home near Me without any difficulty. The dwellers here are very dear to me; the city is not only full of bliss itself but bestows a residence in My divine Abode. "the monkeys were all delighted to hear these words of the Lord and said, Blessed indeed is Ayodhay, that has evoked praise from Sri Rama Himself!"

4305. "**History of Dharmashastra**", translated by **Pandurang Vaman Kane**, Part-IV Third Edition 1991 published by Bhandarkar Oriental Research Institute Poona, Chapter XI

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"Tirthayatra" says:

> *"All religions have laid great emphasis on the sacredness of certain localities and have either enjoined or recommended with great insistence pilgrimages to them.* ***Among the five incumbent practical religious duties of a Moslem, pilgrimage at least once in his life to Mecca and Medina, the birth place and burial place of the prophet Mohammad, is one.*** *The four places of pilgrimage for Buddhists have been the place of the birth of Buddha (Lumbini or Rummindei), the place where he attained perfect enlightenment (Bodh Gaya), the place where he set in motion the wheel of dharma by delivering his first sermon (at Sarnath near Benares) and the place where he passed away into the state of nirvana (Kusinara). Vide Mahaparinibbanasutta (S.B.E. Vol. XI, p. 90). For Christians Jerusalem has been the holiest place and no religious community except the Christians undertook in historic times several great military pilgrimages. The crusades were launched to free the Holy Land of Christians from the domination of Moslems. In spite of what Gibbon says somewhat cynically about those who joined the crusades, it must be admitted that there were thousands among the crusaders who risked their lives and fortunes in the pursuit of an ideal." (page 552)*
>
> *". . . .* ***Benares and Ramesvara were held sacred by all Hindus,*** *whether they hailed from the north of India or from the peninsula." (page 553)*
>
> *"The word* ***tirtha occurs frequently in the Rgveda and other Vedic samhitas****. In several passages of the Rgveda*

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tirtha appears to mean a road or a way (e.g. In Rg. I, 169, 6 'tirthe naryah paumsyani tasthuh', Rg. I. 173. 11 'tirthe naccha tatrsanam-oko', Rg. IV. 29. 3 'karan-na Indrah sutirthabhayam ca'). In some places tirtha may be taken to mean a ford in a river, as in Rg. VII. 47. 11 'sutirtham-arvato yathanu no nesatha sugam &c.', Rg. I. 46. 8 'aritram vam divas-prthu tirthe sindhunam rathah'. In Rg. X. 31. 3 'tirthe na dasmamupa yantyumah', tirtha probably means 'a holy place'." (page 554)

". . . . .so some localities on the earth are held to be very holy. ***Tirthas are held to be holy (on three grounds, viz.) on account of some wonderful natural characteristic of the locality*** *or on* ***account of the peculiar strikingness (or grandeur) of some watery place or on account of the fact that some (holy) sages resorted to them (for bathing, austerities &c.)****. Tirtha, therefore,* ***means a locality or spot or expanse of water which gives rise to the accumulation of righteousness (merit) owning to its own peculiar nature*** *without any adventitious circumstance (such as the presence of Salagrama near it)." (pages 554-555)*

"In the Rigveda waters, rivers in general and certain named rivers are referred to with great reverence as holy and are deified. In Rg. VII. 49 the refrain of all four verses is 'may the divine waters protect me' (ta apo devir-iha mamavantu). In Rg. VII. 49. 1 waters are spoken of as purifying (punanah). Rg. VII 47, X. 9, X. 30 are hymns addressed to waters as divinities. They are said to purify a man not only physically but are also invoked to rid a man of all sins and lapses from the right path." (page 555)

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". . . . therefore visiting holy places is superior to sacrifices." (page 562)

4306. The above book in Chapter XIV "Gaya" says:

"Four of the most important and holy tirthas have been dealt with at some length so far. It is not possible in the space allotted to the section on tirthas to pursue the same procedure as regards other famous tirthas. It is proposed to devote a few pages to each of half a dozen or more tirthas and then to give a somewhat comprehensive list of tirthas with a few reference in the case of each. But before proceeding further reference must be made to certain popular groupings of tirthas. There is a ***group of seven cities that are deemed to be very holy*** *and the bestows of moksa. They are* ***Ayodhya****, Mathura, Maya (i.e. Haridvara), Kasi, Kanchi, Avantika (i.e. Ujjayini), Dvaraka. In some works it is Kanti and not Kanci that is mentioned. Badarinatha, Jagannatha Puri, Ramsevara and Dvaraka—these four are styled Dhama. There are said to be twelve Jyotirlingas of Siva, according to the Sivapurana viz. Somanatha in Saurastra, Mallikarjuna on Srisaila hill (in Karnul District and about 50 miles from the Krishna station on the G.I.P. Railway), Mahakala (in Ujjayini), Paramesvara in Omkara-Ksetra (an island in the Narmada), Kedara in the Himalayas, Bhimasankara (north-west of Poona at the source of the Bhima river) in Dakini, Visvesvara in Banares, Tryambakesvara on the banks of the Gautami, i.e. Godavari (near Nasik), Vaidyanatha in Citabhumi, Nagesa in Darukavana, Ramesvara in Setubandha and Ghasnesa in Sivalaya (i.e.*

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the modern shrine at the village of Elura, 7 miles from Devagiri or Daulatabad). The Sivapurana (Kotirudra—samhita) chap. 1 names the twelve Jyotirlingas and chapters 14-33 narrate the legends connected with the twelve lingas. The Skandapurana I (Kedarakhanda) chap. 7 verses 30-35 enumerate several lingas including most of the twelve Jyotirlingas. The Barhaspatyasutra (edited by Dr. F.W. Thomas) mentions eight great tirthas each of Visnu, Siva and Sakti, that yield all siddhis." (pages 677-678)

"1535. अयोध्या मथुरा माया काशी कांची अवन्तिका। एतः पुण्यतमाः प्रोक्तः पुरीणमुत्तमोत्तमाः।। ब्राह्माण्ड IV40 91 काशी कान्ती च मायाख्या त्वयोध्या द्वारवत्यपि। मथुरावन्तिका चैता सत्प पुर्योत्र मोक्षदाः ।। स्कन्द, काषीखण्ड, 6, 68 , काञ्च्यवन्ती द्वारावती काष्ययोध्या च पश्रसी। मायापुरी च मथुरा पुर्यः सत्प विमुक्तिदाः। काषीखण्ड 23, 7 : अयोध्या . . . वन्तिका । पुरी द्वारवती श्रैया सप्तैता मोक्षदायिकाः।। गरुणपुराण (प्रेतखण्ड)38. 5–6 In the स्कन्द, नागरखण्ड 47.4 कान्ती occurs as capital of Rudrasena and in Brahmanda III 13 94&97 Kantipuri is described as possessing a place for Vyasa's contemplation a Kumaradhara and puskarii. If the reading कान्ती is to be accepted there name of Khatmsndu and capital of Napal' while A.G. identifies it with Kotval 20 miles north of Gwalior.(page 678 Footnote)

4307. The above book at page 736 under the heading "List of tirthas" says:

"Ayodhya--(in Fyzabad District in U.P.) on the Ghagra. One of the seven holy cities (vide p. 678n above). It is also a place of pilgrimage of Jains, as some of their saints were born there. Atharva-veda X. 2. 31 and Tai, A.

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27. 2 (astacakra navadvara devanam pur-Ayodhya) tasyam hiranyayah kosah svargo loko Jyotisavrtah II), V. 60. 24-25 and 70. 2 (capital of king Rtuparna and of Rama), Br. IV. 40. 91. Ag. 109. 24 (Ayodya papanasan). According to Ram, I. 5. 5-7 the country of Kosala had Sarayu flowing through it; Ayodhya, 12 yojanas long and three broad, was kosala capital founded by Manu. Kosala was one of the 16 mahajanapadas of India in ancient times (vide Anguttara Nikaya, vol. IV. p. 252). Later on, Kosala was divided into two, viz. Uttara Kosala and Daksina Kosala divided by the Sarju or Ghagra river. The Raghuvamsa holds Ayodhya to be capital of Uttarakosala (VI. 71 and IX. 1). Vide also Va. 88. 20 ff. For a long line of kings of Ayodhya from Iksvaku and P. VI. 208. 46-47 (for Daksina Kosala and Uttara Kosala). Saketa is generally identified with Ayodhya. Vide T.P. p. 496 (gives its boundaries from SK) and under Saketa. Dr. B.C. Law contributes a well documented and learned paper on 'Ayodhya' to J. of the Ganganath Jha R. Society, vol. I, pp. 423-443."

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4308. Sri Mishra submits that Ayodhya and its relation with Lord Rama as his place of birth is well recognised and mentioned in ancient Hindu Literature. The existence of "Vedi" at the disputed place is mentioned by Father Joseph Tieffenthaler in his work, translated in French titled as **"Description Historique Et Geographique Del'inde" first published in 1787 by Jean Bernoulli**.

4309. He points out that **"Sanskrit Hindi Kosh"** written by Waman Shivram Apte, first published in 1966 (reprinted in 1993) at page 1139 shows that "Vedi" in Sanskrit is known as

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"*sthandilam"* and he also placed reliance on **"Sanskrit English Dictionary"** by Sir Monier Williams (first published in 1899) (reprinted in 1997) (by Motilal Banarasidass) which defines "*sthandila"* as "an open unoccupied piece of ground, bare ground, an open field, a piece of open ground (levelled, squared, and prepared for a sacrifice)".

4310. Referring to **"Narsingh-Puranam"** published by Geeta Press, Gorakhpur 1999 (Samvat 2056), Adhyaya 62 at page 263 he submits that "*sthandil"* and "idols" are also worshipped as God by Hindus. He placed the Verse No. 6 which reads in Sanskrit as under:

> *"अतोअग्रो हृदये सूर्ये स्थण्डिले प्रतिमासु च।*
> *एतेषु च हरेः सम्यगर्चनं मुनिभिः स्मृतम्।।*
> *इसलिए अग्नि, सूर्य, हृदय, स्थण्डिल (वेदी) और प्रतिभा–इन सभी आधारों में भगवान् का विधिपूर्वक पूजन मुनियों द्वारा बताया गया है। भगवान सर्वमय हैं, अतः स्थण्डिल और प्रतिमाओं में भी भगवत्वपूजन उत्तम है।"*
>
> *"The saints have ordained for due worship of God in all these bases-fire, the Sun, heart, altar and idol. God is omnipresent; so, it is also a good thing to worship God as represented in altars and idols." (E.T.C.)*

4311. Before proceeding further let us have some other history books relied on by learned counsel of the parties.

4312. Sri R.L. Verma, in order to show that Lord Rama was born at the site in dispute placed before us firstly the **Kalhana's Rajatarangini-A Chronicle of the Kings of Kasmir** (Book No. 63) translated with an introduction, commentary and appendices by M.A. Stein. The book was first published in 1900 AD in London and reprinted in Delhi in 1961. We had before us the reprint of 1989 cited from the aforesaid book para 125, 3rd

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book, page 83 which reads as under:

"125. At that period there lived at Ujjayini as the sole sovereign of the world the glorious Vikramaditya who (also) bore the second name of Harsa."

4313. From the note given in respect to para 125 at the bottom he said that Vikramaditya referred to therein was the same within whose period Kalidasa lived and composed his legendary works. He said that the Vikramaditya referred to in Kalhana's Chronicle was the same king who reconstructed Ayodhya and got 360 temples constructed thereat. However, despite our deepest thought and study of the above work we fail to understand as to how reference to the above book gives any clue about the birthplace of Lord Rama or whether there existed temple at the disputed site before construction of the disputed structure in 1528 AD. Despite repeated query, Sri Verma could not throw any light on the question and simply said that his attempt is to clarify the fact that the Vikramaditya referred to in Kalhana's Rajatarangini, 3rd Book, para 125 was the same Vikramaditya who was mentioned by Hiuen-tsiang as successor of Siladitya who ruled about 580 AD in Malwa. Meaning thereby king Vikramaditya ruled at Ujjayini in the first half of the 6th Century and Kalidasa was his contemporary.

4314. Next he cited English translation of the **Raghuvamsa of Kalidasa** by **M.R. Kale**-reprinted in Delhi in 1972, 1991 and 1997 by Motilal Banarasi Dass Publishers Pvt. Ltd. Delhi (Book No. 48). He placed Chapter 'Introduction' at page 19 which contains story of King Dasratha and Lord Rama and reads as under:

"CANTO IX. After his father, Dasaratha rules over

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Ayodhya as nobly as his predecessors. His greatness was such that even Indra himself on occasions asked his assistance in his own wars. Once, having enjoyed all the pleasures of the spring season with its attendant festivities, he plans a long hunting trip. He spends several days in that engrossing and delightful sport. One morning he starts after a deer, alone and without followers. In his pursuit he comes to the river Tamasa, where he hears the noise of a pot being filled with water. He mistakes it for the trumpet of a wild elephant, and discharges an arrow in that direction, aiming at the sound only, as he could not see the mark. As a matter of fact a young ascetic-boy was filling his jar there; and the arrow hit him fatally. His parents, who were blind, were at hand. The King, who was horrified at what he had unwillingly done, related to them what had happened. As the boy died, his sorrow-stricken father cursed the King as the author of his bereavement, with the words: "You, too, like me, shall die, in your old age, grieving for your son." The king had no son then; so he received the curse as a sort of qualified blessing, since it meant that at any rate a son was bound to be born to him before he died. The aged couple burned themselves on the funeral pyre of their son, and Dasaratha returned to his city, full of grief not unmixed with a little anticipatory joy at the prospect of a son.

CANTO X. Some ten thousand years pass, but still Dasaratha remains without the expected son. At last, holy sages proceed to perform on his behalf a special kind of sacrifice intended to bring about the birth of a son. Now at

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about this time it so happens that the gods, who were continually harassed and persecuted by the dreaded and powerful demon Ravana, carry their tale of grievances to their lord Vishnu, who tells them how, by virtue of a boon given by Brahma, Ravana was immune from death at the hands of all except human beings, whom he despised and hence had left out of the boon. Vishnu, therefore, promises that he would be born as a man, as a son of King Dasaratha of Ayodhya, and that at his hands Ravana would meet death.-Now, out of the fire of that sacrifice which was being performed for Dasaratha, there arises a being who gives consecrated food (charu) to the King, who gives it to his three wives. Into this food Vishnu had entered spiritually, and thus Dasaratha's wives, who conceive afterwards, all bear sons who are partial incarnations (avataras) of Vishnu. Rama was the eldest of them, born of Kausalya. Of Kaikeyi was born Bharata, and of Sumitra were born the twins, Lakshmana and Satrughna.

CANTO XII. King Dasaratha, who had grown old ad was nearing his end, declares his intention to set Rama on the throne, when Kaikeyi contrives, by means of two boons which her husband had promised her, to have Rama exiled for fourteen years and to have her son Bharata installed King. Rama quite willingly undertakes to go to the forest, and the old King, grieving at being separated from his beloved son, dies heart-broken, thus fulfilling the old man's curse-(Canto IX). Bharata declines to accept the sovereignty earned by intrigue, and after vainly trying to persuade Rama to come back, himself remains a sort of

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exile at Nandigrama, and from that place he rules the kingdom as Rama's representative. In his journey to the forest Rama is accompanied by Sita and Lakshmana. He there kills Viradha, Dushana, Khara, and other demons, the news of whose death is carried to Ravana in Lanka by his sister Surpanakha, whom Lakshmana had disfigured. Ravana comes and carries off Sita in Rama's absence. Rama makes friends with Sugriva, the monkey-Chief, and through his retainer Maruti discovers the whereabouts of Sita. Building a bridge over the sea, Rama with Sugriva's army crosses into Lanka, and is engaged in a series of battles with the hosts of Ravana, whose death he finally accomplishes. Rama recovers Sita, gives Ravana's kingdom to his brother Vibhishana, and starts back for Ayodhya in the well-known aerial car, Pushpaka, along with Sugriva and Vibhishana and their armies.

CANTO XIII. The journey of Rama from Lanka to Ayodhya by air is here described. Rama points out to sita the various objects and places of interest on the way, including, in order, Janasthana, the mountain Malyavat, the lake Pampa, the Godavari, Panchavati, the dwelling-places of the sages Agastya Satakarni and Sarabhanga, the mountain Chitrakuta, the stream Mandakini, the rivers Ganga and Yamuna, and lastly the Sarayu. After they had seen the Sarayu they observe Bharata advancing with an army to welcome the home-coming king. Rama gets down from the Pushpaka, and the meeting of the brothers is touchingly described. Then Rama again gets into the car and arrives at last in a garden outside Ayodhya, his capital.

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CANTO XIV. There in the garden Rama and Lakshmana see their mothers who greet them with joy. Rama is then formally crowned King of Ayodhya with due pomp and ceremony. He then gives the armies of Sugriva and Vibhishana leave to depart, and restores Pushpaka to its original rightful owner, Kubera. In course of time Sita shows signs of pregnancy. She expresses a desire again to visit the once-familiar regions along the banks of the Gangas. While Rama promises her that, a scandal reaches his ear about his unquestioning acceptance of Sita after her residence in a stranger's house for a long time. A strong sense of duty towards his subjects both as the dispenser of law and justice ad the up-holder of social order compels him to abandon Sita as a concession to this scandal, although he knew her to be pure and innocent. He, therefore, orders Lakshmana to take Sita away and leave her on the banks of the Ganges near the hermitage of Valmiki who, he thinks, would find her and take due care of her. Lakshmana very reluctantly performs this task; and when Sita knows why she is abandoned, she cries loud and long, though she would not blame Rama so much as she blamed herself. Valmiki takes her to his hermitage where afterwards in due time she gives birth to twins. Rama continues to discharge his kingly duties as usual, but without marrying again."

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4315. Our very sincere reading of the above passages leads us nowhere to find any support or help for adjudication of the issues as quoted above with regard to the site of birth of Lord Rama. He also placed before us page 130 Sl. 31 of Canto V of

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the above book to show that the name of Ayodhya is mentioned in **Kalidasa's Raghuvamsa**. But even that does not help us to march even a single step either in support or otherwise on the aforesaid issues. When we made query from the learned counsel he simply says that the Kalidasa, whose existence relate back to the 6th Century (first half of 6th Century), has referred to Ayodhya, King Dasarath and Lord Rama which he wanted to show to the Court.

4316. With due respect to the learned counsel, we find that the learned counsel for the Muslim parties have already made their statement under Order X Rule 2 C.P.C. on 22.04.2009 that neither they dispute that Lord Rama existed nor that he was born in Ayodhya nor that the present Ayodhya is the same as is believed to be the birthplace of Lord Rama for the purpose of present case. We do not find any reason as to why the aforesaid literary work of legendary Sanskrit Poet of 6th Century has been relied by Sri Verma though it throws no light on the issues which are up for adjudication. We may also refer here that in the Sanskrit verse of Raghuvamsa the word "Ayodhya" as such has not been used but it is the word "Saket" as is evident from the following:

> "*जनस्य* ***साकेत****निवासिनस्तौ द्वावप्यभूतामभिनन्धसत्त्वौ ।*
> *गुरुप्रदेयाधिकनिःस्पृहोअर्थी नृपोअर्थिकामादधिकप्रदश्च ।।*"

4317. Since the great scholar has dealt with the story of Solar Kings i.e., the Kings of the Race of Raghu which rule with their capital at Ayodhya, the word "Saket" has been read as Ayodhya in the aforesaid work and translation of Sri Kalidasa. We also noticed from the very introduction part of the author where he has discussed the matter to ascertain the date of

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Kalidasa and he himself is found that it is a vexed question which is yet to be finally settled. According to the author Sri M.R. Kale the period of Kalidasa swing between 1st Century B.C. to 7th Century B.C. but has expressed his views in favour of the existence of Kalidasa in the first half of the first century B.C. for which besides other he has given the following reasons:

> *"Now, Kalidasa was an original poet borrowing his subjects from Valmiki and other ancient authors; Asvaghosha was more a philosopher than a poet, and may, with greater probability, be supposed to have borrowed his ideas from Kalidasa, The date of Asvaghosha is given as 78 A.D.; and if we suppose him to have borrowed from Kalidasa, the latter will have to be placed earlier than 78 A.D. And in this view Dr. Peterson also concurs when he says 'Kalidasa stands near the beginning of the Christian era, if, indeed, he does not overtop it."*

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4318. For the purpose of the dispute in the case in hand, however, it is not necessary for us to go into all these aspects for the reason that whether Kalidasa existed in the first century B.C. or in 7th Century B.C. It would make no difference since it has not been disputed by the other side that the existence of Lord Rama as per belief of Hindus is much more older. The reference of Lord Rama in **Kalidasa's Raghuvamsa (supra)** has also not been disputed by the other side. However, since the said literary work gives no indication to adjudicate the issue regarding the exact place of birth of Lord Rama in Ayodhya city as also about the existence of a Hindu temple and in particular temple of Lord Rama in 16th Century at the disputed site, we find reference to the said book and reliance thereon is futile and misconceived.

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4319. The next reference book is (Book No. 22) "**SI-YU-KI**", **Buddhist Records of the Western World** (hereinafter referred to as "Si-Yu-Ki"), translated from Chinese of Hiuen Tsiang (A.D. 629) by Samuel Beal in two volumes (bound in one), first published in 1884 and reprinted in 1995 published by Low Price Publications (A Division of D.K. Publishers Distributors (P) Ltd., Delhi. Sri Verma placed before us **Book 10** page 206 under the title "Kong-U-To" (Konyodha) which reads as under:

"KONG-U-T'O (KONYODHA?)

This kingdom is about 1000 li in circuit; the capital is 20 li round. It borders on a bay (angle of the sea). The ranges of mountains are high and precipitous. The ground is low and moist. It is regularly cultivated and productive. The temperature is hot, the disposition of the people brave and impulsive. The men are tall of stature and black complexioned and dirty. They have some degree of politeness and are tolerably honest. With respect to their written characters, they are the same as those of Mid-India, but their language and mode of pronunciation are quite different. They greatly respect the teaching of heretics and do not believe in the law of Buddha. There are some hundred Deva temples, and there are perhaps 10,000 unbelievers of different sects.

Within the limits of this country there are several tens of small towns which border on the mountains and are built contiguous to the sea. The cities themselves are strong and high; the soldiers are brave and daring; they rule by force the neighbouring provinces, so that no one can resist them. This country, bordering on the sea, abounds in may rare

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and valuable articles. They use cowrie shells and pearls in commercial transactions. The great greenish-blue elephant comes from this country. They harness it to their conveyances and make very long journeys.

From this going south-west, we enter a vast desert, jungle, and forests, the trees of which mounts to heaven and hide the sun. Going 1400 or 1500 li, we come to the country of Kie-ling-kia (Kalinga)."

4320. He submitted that in 629 AD when the Hiuen Tsiang visited India, he has noticed in his Travellers Account existence of 100 of Deva Temples thereat. However, from the very narration of the passages relied by him it appears to us that it did not refer to Ayodhya but to a city bordering on the sea near Kalinga. Meaning thereby a place somewhere in the State of Orissa in presenti. From the foot note in the aforesaid book this appears to be a view expressed by Cunningham according to him this place must be Ganjam. The said foot note being of some use is reproduced as under:

"Cunningham supposes this place to be Ganjam. The origin of the name Ganjam is not known. When Hiuen Tsiang returned to Magadha he found that Harshavardhana had just returned from a successful expedition against the king of Ganjam. Cunningham thinks that Ganjam was then annexed to the province of Orissa (Robert Sewell, Lists, Vol. i, p.2). Mr. Fergusson remarks that "Khordhagar in the neighbourhood of Bhuvaneswar is just 170 miles south-west from Midnapur, and it is impossible to mistake the Chilka Lake as the great bay and the two seas of the text. Perhaps Hiuen Tsiang stopped here

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to visit the caves in the Khandagiri and Udayagiri hills."

4321. When confronted with the said foot note as also relied on passages mentioning that the country is bordering on the sea and contiguous to the sea meaning thereby it cannot be referable to Ayodhya since there is no sea up to such a distance of Ayodhya he could not dispute the same.

4322. However, we find that in above translation "**Si-Yu-Ki (supra)**, Book-V page 225 deals with 'O-YU-T'O (Ayodhya) but in the entire report there is no mention about Lord Rama or his place of birth. The only two lines with respect to the temples of other religion are as under:

"There are ten Deva temples; heretics of different schools are found in them, but few in number."

4323. The rest of the report is only in respect to Buddha legend and the religious places of Buddhist. It, however, cannot be disputed that according to the said report there used to be a large number of Buddhist religious places at Ayodhya, when Hiuen Tsiang visited. He appears to be not a general traveller or historian but from the introductory chapter of the above book where the detail of Hiuen Tsiang is given, we find that Hiuen Tsiang was born in the year 603 AD at Ch'in Liu in the province of Ho-nan in China. One of his brother was a Monk belonging to the Shing-tu temple and Hiuen Tsiang was ordained in the community of Monk at the age of 13 years. After having fully ordained as Bhikshu or priest, he began to travel through the provinces in search of the best instructor, he could get and so came at length to Chang'an. Here he was strained up by the recollection of Fa-hian and Chi-yen and resolved to go to western region to question the sages on points that troubled his

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mind. His travelogue, therefore, contains mostly the details of Buddhist religion i.e. religious places of importance etc. and throw virtually no light on the other local conditions etc. particularly in reference to Ayodhya though in respect to some other places there are some details about the people, their social and political conditions etc. We need not go further in these aspects of the matter since the issue before us is limited i.e. about the disputed site at Ayodhya and we are not expected to travel in the history, geography etc. of other places of different period since neither it is germane to the issues nor we should travel beyond what is necessary for the proper adjudication of the case.

4324. Sri Verma also placed reliance on page 85, Book-III of Hiuen Tsiang "**Life of Hiuen-Tsiang" by Shaman Hwui Li**, first published in 1911 at London, reprinted in 2001 by Low Price Publications, Delhi (Book No. 20). He placed reliance and read the following passages from pages 85 to 90 which reads as under:

> *"From Ayodhya to Hiranyaparvata.*
>
> *From this, going 600 li or so to the south-east and crossing the Ganges,* ***on the south of the river we come to the kingdom of 'O-yu-to (Ayodhya). There are near about one hundred temples with several thousand priests****, who study both the Small and the Great Vehicle.*
>
> *In the capital city is an old Sangharama. Here the Bodhisattva Vasubandhu composed his treatises on the Great and Little Vehicle, and preached for the good of the community.*
>
> *North-west of the city four or five li, and by the side of the river Gages, is a great Sangharama, in which is a*

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Stupa about 200 feet high. This was built by Asoka raja on the spot where Buddha in old days delivered the Law for three months.

By the side of this Stupa is a spot where the four Buddhas of the past age walked for exercise.

To the south-west of the city five or six li, is an old Sangharama; this is the place where Asangha Bodhisattva explained the Law. The Bodhisattva, during the night, ascended to the Tusita heaven, and received from Maitreya Bodhisattva the Yoga-sastra, the Alamkara-Mahayana-sastra, and the Madhyanta-vibhangha-sastra. The next day he descended from the heaven, and declared the Law for the sake of the community.

Asangha, who is also called Wu-cho, was a man of Gandhara. He was born in the middle of the thousand years following the Nirvana of Buddha, and became a disciple in the school of the Mahisasakas. Afterwards he joined the school of the Great Vehicle. His brother, Vasubandhu, became a disciple in the school of the Sarvastivadins, but afterwards joined the Great Vehicle. Both these brothers were, in point of endowments, vessels full of wisdom and holiness. Asangha possessed vast ability in composition, and wrote many sastras, in explanation of, and comment on, the Great Vehicle. He was the principal composer of sastras in India. For example, he wrote the Mahayana-samparigraha-sastra, the Prakaranaryavacha-sastra-karika, the Abhidharma sastra, the Vidyamatra-sastra, the Kosha-sastra, and others.

The Master of the Law left the kingdom of Ayodhya,

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having paid reverence to the sacred traces, and following the course of the river Ganges, proceeded eastward, being on board a vessel with about eighty other fellow-passengers. He wished to reach the kingdom of 'O-ye-mu-khi (Hayamukha). After going about a hundred li, both banks of the river were shrouded by the thick foliage of an Asoka forest, and amid these trees on either bank were concealed some ten pirate boats. Then these boats, propelled by oars, all at once burst forth into the midstream. Some of those in the ship, terrified at the sight, cast themselves into the river, whilst the pirates, taking the ship in tow, brought it to the bank. They then ordered the men to take off their clothes, and searched them in quest of jewels and precious stones.

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Now these pirates pay worship to Durga, a spirit of heaven, and every year during the autumn, they look out for a man of good form and comely features, whom they kill, and offer his flesh and blood in sacrifice to their divinity, to procure good fortune. Seeing that the Master of the Law was suitable for their purpose, both in respect of his distinguished bearing and his bodily strength and appearance, they exchanged joyful glances, and said, "We were letting the season for sacrificing to our god pass by, because we could not find a suitable person for it, but now this Sraman is of noble form and pleasing features—let us kill him as a sacrifice, and we shall gain certain good fortune."

The Master of Law replied, "If this poor and defiled body of mine is indeed suitable for the purpose of the

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sacrifice you propose, I, in truth, dare not grudge (the offering), but as my intention in coming from a distance was to pay reverence to the image of Bodhi and the Gridhrakuta Mountain, and to inquire as to the character of the Sacred Books and the Law (or, the Law of the Sacred Books), and as this purpose has not yet been accomplished, if you, my noble benefactors (danapatis) kill this body of mine, I fear it will bring you misfortune (instead of good fortune).”

Moreover, his fellow-passengers all, with one voice, asked them to spare him, and some even prayed to be allowed to die in his stead; but the pirates would not consent.

Then the captain of the gang dispatched some men with water to arrange the ground, and to erect in the midst of the flowering grove an altar besmeared with mud. He then commanded two of the company to take their drawn knives ad to bind the Master of the Law upon the altar. And now, when they were about to use their knives for the purpose of sacrificing him, the master of the Law showed no sign of fear in his face, insomuch that all the pirates were moved to astonishment.

When he saw there was no escape, however, he spoke to the pirates and begged them to allow him a little time and not to crowd round him painfully—but “let me”, he said, “with a joyous mind, take my departure.”

Then the Master of the Law, with an individual mind bent on the courts of Tusita heaven, thought on the Bodhisattva Maitreya, and earnestly prayed to be born in

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that place, that he might pay reverence and his religious offerings (to the Bodhisattva), and receive from him the Yogachariya-bhumi-sastra, and listen to the sound of the excellent Law. Then having perfected himself throughout in wisdom, "let me return (he prayed) and be born here below, that I may instruct and convert these men, and cause them to practise themselves in doing good and to give up their evil deeds, and thus by diffusing, far and wide, the benefits of religion, to give rest to all the world."

Then the Mater of Law, paying worship to the Buddhas of the ten regions, collected his mind into perfect composure, and sitting still, fixed his thoughts on Maitreya without any interruption. Thus he seemed in his innermost thoughts as if he rose up above Mount Sumeru and successively ascending one, two, three heavens, he gazed upon the courts of Tusita, the place of Maitreya, with its excellently precious adornments (galleries) and the multitude of devas surrounding him on every side. At this time his body and soul were ravished with joy, he knew nothing of the altar on which he was, he had no recollection of the robbers. And now, whilst hims fellow passengers gave way to cries and tears, suddenly a black tempest (typhoon) arose from the four quarters of heaven, smiting down the trees; clouds of sand flew on every side, and the lashing waves of the river tossed the boats to and fro. The robbers and their company, greatly terrified, asked the companions of the Master, "Whence comes this Sraman?--what is his name and title? and so on. They, answering, said: "He comes from the country of China--he

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is the renowned person who is in search of the Law; if you, my masters, kill him, your guilt will be immeasurable; look now and see the winds and waves--these are but indications of the anger of the spirits of heaven: haste then to repent!"

The pirates then, filled with fear, urged each other to repentance and confession of their fault; then with bowed heads they made profound obeisance (or, they embraced the religion of Buddha). And now one of the robbers accidentally touching the Master of the Law with his hand (or, touching the hand of the Master of the Law), he opened his eyes and said to the robber, "Has the hour come?" The robber answered: "We dare not hurt the Master! we pray you accept our repentance!" the Master then accepted their reverence and confession of faults, and then preached to them about the future punishment in Avichi of those who gave themselves up to murder, robbery, and impious sacrifices, and other evil deeds. "How would you then risk the woes of the long-during asankheya of ages for the sake of this body of yours, which is but in point of time as the lightning flash of the dew of the morning?"

The robbers then bowed their heads and confessed their faults, saying: "We indeed, individually, were perverted by a foolish tone of mind, and led to do what we ought not to do, and to sacrifice (pay religious rites) to what we ought not to sacrifice. If we had not met with the Master--whose religious merit has moved even the mysterious powers of heaven--how should we ever have been led to repentance? And now we ask to give up from the present day these evil ways of ours, and we pray the

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Master to be witness to our sincerity!"

On this they each encouraged one another to deeds of amendment, and collecting their various instruments of robbery together, they cast them into the river, and whatever clothes or private property they had taken, they restored these to their rightful owners, and then they took on themselves the five obligations of a laybeliever.

Then the winds and the floods subsided, and the pirates were all overcome with joy, and bowed their heads in adoration. His fellow voyagers, moreover, were filled with surprise and admiration more than ever, whilst those present and absent who heard of the event would not help exclaiming with wonder at the occurrence: "If it were not for the power of his high resolve in seeking for the Law, this could not have come to pass!"

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From this, going east about 300 li, after crossing the Ganges to the north side, we come to 'O-ye-muh-khi (Hayamukha).

From this, going south-east 700 li or so, after crossing to the sought side of the Ganges, on the north of the River Jumna, we come to the country of Prayaga."

4325. However, having gone through the entire passages and the aforesaid work, we find that in no way it helps us in deciding the issues up for consideration namely as to whether Lord Rama was born at the disputed site and whether there existed any temple at the time when the mosque was constructed i.e. in 1528 AD at the disputed site. The entire passage from the book read by Sri Verma nowhere mentions at all either about birthplace of Lord Rama or his temple in Ayodhya. In fact it

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could not discern any reason as to why Sri Verma placed before us and read for days together the above books without showing as to how they are helpful and gives us some material to find out the solution and answer to the issues which are up for consideration.

4326. Existence of temple at the site in dispute, its destruction and construction of mosque has also been mentioned in the book published by Archaeological Survey of India "**The Monumental Antiquities And Inscriptions In The North-Western Provinces And Oudh"** by A. Fuhrer (supra) (Book No.94) (See **Ex.9 Suit-5 Register 20 Pages 67-73**). The matter pertaining to Ayodhya has been dealt with from paged 295 to 300 of the aforesaid book. We find it appropriate to reproduce the contents thereof as under:

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"1. AJUDHYA, famous place of pilgrimage, in pargana Haveli Audh of tahsil Faizabad, on the right bank of the river Ghaghra, lat. 26°-47' N., long. 82°-15' E., two miles east of head-quarters, is the ancient city of Ayodhya, described in the Ramayana as situated on the bank of the Sarayu, or Sarju river. It is said to have been 12 yojanas, or nearly 100 miles in circumference, for which we should probably read 12 kos, or 24 miles,-an extent which the old city with all its gardens might once possibly have covered. The distance from the Guptar Ghat on the west to the Ram Ghat on the east is just six miles in a direct line; and if we suppose that the city with its suburbs and gardens formerly occupied the whole intervening space to a depth of two miles, its circuit would have agreed exactly with the smaller measurement of 12 kos. At the present day the

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people point to Ram Ghat and Guptar Ghat as the eastern and western boundaries of the old city, and the southern boundary they extend to Bharatkund near Bhadarsa, a distance of six kos. But as these limits include all places of pilgrimage, it would seem that the people consider them to have been formerly inside the city, which was certainly not the case. In the Ain-i-Akbari the old city is said to have measured 148 kos in length by 36 kos in breadth, or in other words, it covered the whole province of Audh to the south of the Ghaghra river. The origin of the larger number is obvious. The 12 yojanas of the Ramayana, which are equal to 48 kos, being considered too small for the great city of Ramachandra, the Brahmanas simply added 100 kos to make the size tally with their own extravagant notions. The present city of Ayodhya, which is confined to the north-east corner of the old site, is just two miles in length by about three-quarters of a mile in breadth; but not one-half of this extent is occupied by buildings, and the whole place wears a look of decay. There are no high mounds of ruins covered with broken statues and sculptured pillars, such as mark the sites of other ancient cities, but only a low irregular mass of rubbish heaps, from which all the bricks have been excavated for the houses of the neighbouring town of Faizabad. This Musalman city, which is two miles and a half in length by one mile in breadth, is built chiefly of materials extracted from the ruins of Ayodhya. The two cities together occupy an area of nearly six square miles, or just about one-half of the probable size of the ancient capital of Rama.

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According to the Ramayana, the city of Ayodhya was founded by Manu, the progenitor of all mankind. In the time of Dasaratha, the father of Rama, it was fortified with towers and gates, and surrounded by a deep ditch. No traces of these works now remain, nor is it likely, indeed, that any portion of the old city should exist, as the Ayodhya of Rama is said to have been destroyed after the death of Brihadbala, after which it lay deserted until the time of Vikramaditya of Ujjayini, who, according to tradition, came in search of the holy city, erected a fort called Ramgarh, cut down the jangal by which the ruins were covered, and erected 360 temples on the spots sanctified by the extraordinary actions of Rama. The Vikramaditya of this story, General Cunningham takes to be Chandragupta II, of the Imperial Gupta dynasty, A.D. 395-415, whose rule certainly extended to Ujjayini, as his inscriptions have been found at Sanchi and Udayagiri Bhilsa.

There are several very holy Brahmanical and Jaina temples about Ayodhya, but they are all of modern date and without any architectural pretensions whatever; but there can be no doubt that most of them occupy the sites of more ancient temples that were destroyed by the Musalmans. Thus Ramkot, or Hanuman Garhi, on the east side of the city, is a small walled fort surrounding a modern temple on the top of an ancient mound. This fort is said to have formerly covered a large extent of ground, and, according to tradition, it was surrounded by 20 bastions, each of which was commanded by one of Rama's famous generals after whom they took the names by which they are still

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known. Within the fort were eight royal mansions, where dwelt Dasaratha, his wives, and Rama, his deified son. The name Ramkot is certainly old, but the temple of Hanuman is not older than the time of Aurangzib. Ram Ghat, at the north-east corner of the city, is said to be the spot where Rama bathed, and Svargadvaram, also called Ram Darbar, on the north-west, is believed to be the place where his body was burned. Treta-ke-Thakur is famous as the place where Rama performed a great sacrifice, and which he commemorated by setting up there images of himself and Sita. Close by is the Lakshmana Ghat, where his brother Lakshmana bathed, and about one quarter of a mile distant, in the very heart of the city, stands the Janmasthanam, or "birth-place temple," of Rama. Almost due west, and upwards of five miles distant is the Guptar Ghat, with its group of modern white-washed temples. This is the place where Lakshmana is said to have disappeared, and hence its name of Guptar, from gupta, "hidden or concealed." Some say that it was Rama who disappeared at this place, but this is at variance with the story of his cremation at Svargadvaram.

There are five Digambara temples at Ayodhya which were built in Samvat 1781, in the time of Shuja-ad-daulah, to mark the birth-places of five Tirthamkaras, viz., Adinatha, Ajitanatha, Abhinandanatha, Sumatinatha, and Anantajit, who are said to have been born at Ayodhya. The temple of Adinatha is situated near the Svargadvaram on a mound, known as Shah-Juran-ka-tila, on which there are many Musalman tombs and a masjid. According to the

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local Musalman tradition, Makhdum Shah Juran Ghori, who came to Audh with Shahab-ad-din Ghori, destroyed the ancient temple of Adinatha and erected on its ruins the Musalman edifices which gave to the mound the name by which it is still known. Besides these five temples of the Digambaras there is a sixth temple of the Svetambaras, dedicated to Ajitanatha, which was built in Samvat 1881.

***It is locally affirmed that at the Musalman conquest there were three important Hindu temples at Ayodhya; these were the Janamasthanam, the Svargadvaram, and the Treta-ke-Thakur. On the first of these Mir Khan built a masjid, in A.H. 930, during the reign of Babar, which still bears his name. This old temple must have been a very fine one, for many of its columns have been utilized by the Musalmans in the construction of Babar's Masjid. These are of strong, close-grained, dark-coloured, or black stone, called by the natives kasauti, "touch-stone slate**,*" and carved with different devices; they are from seven to eight feet long, square at the base, centre and capital, and round or octagonal intermediately. On the second and third Aurangzib built masjids, which are now mere picturesque ruins. A fragmentary inscription of Jayachchhandra of Kanauj, dated Samvat 1241, and recording the erection of a temple of Vishnu, was rescued from the ruins of Aurangzib's Masjid, known as Treta-ke-Thakur, and is now in the Faizabad Museum.*

The only remains at Ayodhya that appear to be of any antiquity are three earthen mounds to the south of the city,

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and about a quarter of a mile distant. These are called Maniparbat, Kuberparbat, and Sugribparbat. The first, which is nearest to the city, and whose ancient name is said to have been Chhattarban, is an artificial mound, 65 feet in height, covered with broken bricks and blocks of kankar. The old bricks are eleven inches square and three inches thick. At 46 feet above the ground on the west side there are the remains of a curved wall faced with kankar blocks. The mass at this point is about 40 feet thick, and this was probably somewhat less than the size of the building which once crowned this lofty mound. According to the Brahmanas the Maniparbat is one of the hills which the monkeys made use of when assisting Rama, it was accidentally dropped here by Sugriva, the monkey-king of Kishkindhya. But the common people, who know nothing of this story, say that the mound was formed by the labourers shaking their baskets on this spot every evening on their return home from the building of Ramkot. It is therefore best known by the name of Jhawwajhar, or Orajhar, both of which mean "basket-shakings." A similar story is told of the large mounds near Banaras, Nimkhar, Sahet-Mahet, and other places. An inscription of Raja Nandivardhana of Magadha is said to have been discovered buried in this mound during the reign of Nasir-ad-din Haidar of Lakhnau; but the inscription has never been published and the original plate cannot now be traced.

Five hundred feet due south from this large mound stands the second mound, called Kuberparbat, which is only 28 feet in height. The surface is an irregular heap of

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brick rubbish, with numerous large holes made by the people in digging for bricks. It is crowned by two old tamarind trees and is covered with jangal. Close by on the south-west there is a small tank, called Ganesakund by the Hindus and Husain Kund or Imam Talao by the Musalmans. Still nearer, on the south-east, is a large oblong mound, called Sugribparbat, which is not more than 10 feet above the ground level. It is divided into two distinct positions, that to the north being upwards of 300 feet square at top, and the other to the south upwards of 200 feet. In the centre of the larger enclosure there is a ruined mound containing bricks eight and-a-half inches square, and in the centre of the smaller mound there are the remains of a baoli, which is said to be the Ganapatikunda of the Puranas.

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Between the Maniparbat and Kuberparbat there is a small Musalman enclosure, 64 feet long from east to west and 47 feet broad, containing two brick dargahs, which are attributed to Sis Paighambar and Ayub Paighambar, or the "prophets Seth and Job"; the first is 17 feet long and the other 12 feet. These tombs are mentioned in the Ain-i-Akbari and in the Ardish-i-Mahfil. About a mile off, near the police station, there is the dargah of Nuh, or Noah.

The mounds are surrounded by Musalman tombs, and as it is the Musalman practice to bury the dead along the sides of the high roads close to their cities, General Cunningham infers that the road which now runs close to the westward of the mounds is one of the ancient highways of the district. This is confirmed by the existence of an old

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masonry bridge of three arches over the Tilahi Nala, to the north-west of the Maniparbat, as well as by the direction of the road itself, which leads from the south end of the city straight to Bharatkund, and onwards to Sultanpur or Kusapura, and Allahabad, or Prayaga.

There can be no reasonable doubt that Hiuen Tsiang's Pi-so-kia, or Visakha, with its enormous number of heretics, or Brahmanas, is the same as the Ayodhya of the Hindus. He describes the city of Visakha as being 16 li or two and 2/3 miles in circuit. In his time, therefore, the capital of Rama was not more than half of tis present size, although it probably contained a greater population, as not above on-third, or even perhaps less, of the present town is inhabited. The old city then possessed no less than 20 samgharamas and 3,000 priests, and about 50 Brahmanical temples. From this account we learn that so early as the seventh century more than 300 of the original temples of Vikramaditya had already disappeared, and we may therefore reasonably infer that the city had been gradually declining for some time previously. The Buddhist monuments, however, would appear to have been in good order, and the monks were just as numerous as in the eminently Buddhist city of Banaras.

The first monument described by Hiuen Tsiang is a large samgharama without name. This monastery General Cunningham identifies with the Sugribparbat, being about 500 feet long by 300 feet broad. The great size and rectangular form of this ruin are sufficient to show that it must have been a monastery, but this is placed beyond all

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doubt by the existence of an interior well and by the remains of cloistered rooms forming the four sides of the enclosure. Its position to the south of the city, and to the east of the road, agrees with the recorded position of the monastery.

Beside the monastery there was a stupa of Asoka, 200 feet in height, built on the spot where Buddha preached the law during six years. This monument General Cunningham identifies with the Maniparbat, which is still 65 feet high, and which with its masonry facing must once have been at least as high again, and with the usual lofty pinnacle of metal may easily have reached a height of 200 feet. He infers that the earthen or lower part of the mound may belong to the earlier ages of Buddhism, and that the masonry or upper part was added by Asoka.

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Hiuen Tsiang next describes the sites of the toothbrush tree and of the monument where the four previous Buddhas used to sit and take exercise, as being close to the great stupa. These places General Cunningham identifies with the courtyard containing the dargahs of Sis and Ayub, which touches the south side of the Maniparbat. The two tombs he takes to be the remains of the seats of the four previous Buddhas, and the paved courtyard to be the scene of their daily walks, although he was unable to trace their footmarks which were seen by the Chinese pilgrim.

The last monument described by Hiuen Tsiang is a stupa containing the hair and nails of Buddha. This was surrounded by a number of smaller monuments which followed one another in succession, and by several tanks

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which reflected the sacred buildings in their limpid waters. The stupa General Cunningham identifies with the Kuberparbat, which touches the south side of the enclosure round the dargahs of Sis and Ayub, and is close to the west side of the ruined monastery. One of the tanks described by the pilgrim may be the Ganesakund; but all the smaller monuments have disappeared long ago, as they afforded cheap and ready materials for the construction of the numerous Musalman tombs, as well as for the neighbouring bridge and masjid.

The people are unanimous in their assertion that the old city to the north of these mounds was called Bareta; Ayodhya, they say, was the capital of Rama, but the latter city was called Bareta. As this name has no similarity to Visakha, we can only set it down as another appellation of the old town, for which we have no authority but tradition."

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4327. "**Dilli Saltanat (711-1526 A.D.)**" by Dr. Ashirvadi Lal Srivastava (Book No. 151), first published in 1952 and the new revised edition published by Shivlal Agarwal and Company, Agra is the next book relied by Sri Verma. He placed before us page-314 to 316 of the book under the heading "Architecture **(स्थापत्य)"** which reads as under :

"**स्थापत्य;**

"सुल्तानों को स्थापत्य से बहुत प्रेम था। जिस समय तुर्कों ने हमारे देश को विजय किया उस समय तक मध्य एशिया की विभिन्न जातियॉ स्थापत्य की एक विशिष्ट शैली विकसित कर चुकी थीं। वह शैली वहॉ की स्थानीय शैलियों तथा ट्रान्स–ऑक्सियाना, ईरान, अफगानिस्तान, मैसोपोटामिया, मिस्र, उत्तरी अफ्रीका, दक्षिणी–पश्चिमी यूरोप के देशों तथा मुस्लिम अरेबिया की शैलियों के सम्मिश्रण से बनी थीं । इस प्रकार 13वीं

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शताब्दी के अन्तिम दशक में तुर्की विजेजा स्थापत्य की जो शैली भारत में लाये वह न तो पूर्णरूप से इस्लामी थी और न अरबी। इस स्थापत्य की मुख्य विशेषताएँ थीं– 1. गुम्बज, 2. ऊँची मीनारें, 3, मेहराब, तथा 4, भूमिगृह (तहखाना)।

जब तुर्क हमारे देश में आये तो यहाँ उन्हें स्थापत्य की एक अत्यधिक विकसित शैली मिली, किन्तु विजेता होने के नाते इस देश में इमारतों के निर्माण में अपने विचारों तथा कला रूपों को प्रचलित करना उनके लिए स्वाभाविक ही था। किन्तु वे ऐसी इमारतें बनाने में सफल नहीं हुए जो उनकी मध्य एशियाई इमारतों का प्रारूप होतीं। उनकी इमारतों पर देशी कला–परम्पराओं का गम्भीर प्रभाव पड़ा, इसलिए स्थापत्य की जिस नई शैली का जन्म हुआ वह न तो पूर्णतया विदेशी थी और न शुद्ध देशी। कुछ ऐसे तत्व कार्य कर रहे थे जिनके कारण स्थापत्य की भारतीय तथा विदेशी शैलियों का समन्वय सम्भव हो सका। सर्वप्रथम, विदेशी शासकों को भारतीय शिल्पियों और संगतराशों से काम लेना पडा। भवन निर्माण के सम्बन्ध में उनके अपने स्पष्ट विचार तथा तरीके थे, इसलिए उन्होंने बिना जाने मुस्लिम इमारतों में भी सजावट तथा शैली–सम्बन्धी ब्यौरे की उन अनेक चीजों का समावेश कर दिया जिनका इस देश में शताब्दियों से प्रचार था। दूसरे, ***प्रारम्भिक तुर्क–विजेताओं ने लगभग बिना अपवाद के अपनी मस्जिदों, महलों और यहाँ तक कि कब्रों का भी निर्माण उन हिन्दू तथा जैन मन्दिरों की सामग्री से किया जिन्हें उन्होंने निर्दयतापूर्वक नष्ट कर दिया था।*** तीसरे, हिन्दू तथा मुस्लिम शैलियों में स्पष्ट अन्तर होते हुए भी कुछ ब्यौरे की चीजों में उनकी इमारतें एक–सी दिखाई देती हैं, ***इसलिए कभी–कभी दिल्ली सुल्तानों ने हिन्दू तथा जैन मन्दिरों की चौरस छतों को तोडकर उनके स्थान में गुम्बज तथा मीनारें बनाकर उन्हें मस्जिदों का रूप दे दिया।*** सर जॉन मार्शल के मतानुसार हिन्दू मन्दिरों तथा मुस्लिम मस्जिदों में एक समानता यह थी कि दोनों में एक खुला हुआ ऑगन होता था जिसके चारों ओर कमरे तथा स्तम्भों की पंक्तियॉ खडी होती थीं। ***इस योजना में बने हुए मन्दिर सरलता से मस्जिदों में परिवर्तित किये जा सकते थे इसलिए विजेता लोगों ने अपना उददेश्य पूरा करने के लिए सर्वप्रथम उन्हीं में रूपान्तर किया होगा।*** इसके अतिरिक्त

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सजावट एक अन्य मूल विशेषता थी जो हिन्दू तथा इस्लामी शैलियों को मिलाने के लिए उभयनिष्ठ कडी का काम करती थी। सजावट दोनों ही शैलियों का प्राण थी और उनका अस्तित्व ही उन पर निर्भर था।

स्थापत्य के क्षेत्र में कुतुबद्दीन ऐबक की सर्वप्रथम कृति दिल्ली की कुवत–उल–इस्लाम नाम की मस्जिद थी जिसका निर्माण 1195 ई0 में प्रारम्भ और 1199 ई0 में समाप्त हुआ था। वह एक हिन्दू मन्दिर के चबूतरे पर तथा अनेक हिन्दू मन्दिरों की सामग्री से बनी थी। इस मस्जिद के अधिकतर स्तम्भ, उनके शिखर तथा मध्य भाग मूलतः हिन्दू मन्दिरों के अंग रह चुके थे और मुस्लिम मस्जिद की आवश्यकताओं के अनुसार शीघ्रता से उनमें हेर–फेर कर लिया गया था। स्तम्भों, उनके शिखरों तथा मध्य भागों पर जो चित्र आदि उत्कीर्ण थे, उन्हें मिटा दिया गया था अथवा लौट–पलटकर छिपा दिया गया था। इस इमारत में इस्लामी शैली की केवल एक ही विशेषता है – सामने एक पत्थर की जाली है जिस पर मुस्लिम ढंग की डिजायनें तथा सजावट है और कुरान की आयतें खुदी हुई हैं। ***अजमेर में ढाई दिन का झोंपडा नामक तुर्की इमारत भी एक मस्जिद ही है।*** इसका निर्माण भी कुतुबुद्दीन ऐबक ने ही करवाया था। ***यह इमारत वास्तव में एक संस्कृत विद्यालय था जिसे सम्राट विग्रहराज ने बनवाया था। इसके उपरी भागों को तोड–फोडकर गुम्बज तथा मेहराबें बना दी गई थी। स्तम्भों पर और यहाँ तक कि भीतर कब्रों पर भी अगणित मानव–चित्र हैं जिनके चेहरे तथा हाथ–पैर मिटे हुए हैं।*** कुतुबमीनार तुर्की स्थापत्य का तीसरा महत्वपूर्ण आदर्श है। इसकी योजना ऐबक ने 1199 ई0 से कुछ पहले तैयार की थी और इल्तुतमिश ने उसे पूरा किया था। मूलतः यह मीनार मुअज्जिन के लिए बनायी गई थी जो इस पर चढकर मुसलमानों को नमाज के लिए एकत्र करने की अजॉ दिया करता था। किन्तु आगे चलकर यह विजयस्तम्भ के रुप में विख्यात हुई। इस इमारत की योजना तथा रुप मूलतः इस्लामी है। इल्तुतमिश ने कुतुबमीनार को पूर्ण करने के अतिरिक्त कुछ नयी इमारतों का भी निर्माण कराया, उनमें सबसे अधिक महत्वपूर्ण उसके ज्येष्ठ पुत्र का मकबरा है जो सुल्तानगढी के नाम से विख्यात है। भारत में तुर्कों द्वारा निर्मित यह पहला मकबरा था, इसलिए कुतुबमीनार के विपरीत स्थापत्य सम्बन्धी ब्यौरे की बातों तथा सजावट की

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दृष्टि से यह इमारत हिन्दू–शैली के अधिक निकट है। अन्य किसी मकबरे में हिन्दू–शैली का इतना प्रभाव नहीं दीख पडता। इल्तुतमिश के समय से सुल्तानों की इमारतों में इस्लामी तत्वों का अधिक समावेश होने लगा। उसने कुवत–उल–इस्लाम मस्जिद को परिवर्द्धित किया और उसमें एक पत्थर की जाली बनवा दी। उसने 'ढाई दिन का झोपडा' में भी कुछ परिवर्द्धन किया। बलवन ने अपने लिए लालमहल नामक एक भवन का निर्माण कराया। दिल्ली में स्थित उसका मकबरा शुद्ध इस्लामी शैली का है। मकबरे के द्वार की मेहराब भारत की तुर्की मेहराबों में सर्वोत्तम है। खलजी सुल्तान अलाउद्दीन महान निर्माता था। उसने अनेक इमारतें बनवायीं जिनमें दो अधिक उल्लेखनीय हैं– निजामुद्दीन औलिया के मकबरे के पास जमैयतखाना मस्जिद तथा कुतुबमीनार के पास अलाई दरवाजा नाम की प्रसिद्ध मस्जिद। इन दोनों में इस्लामी स्थापत्य–विचारों का प्राधान्य है। तुगलक–युग की इमारतें इतनी शानदार नहीं हैं जितनी कि गुलाम तथा खलजी–युग की। वे सरल, शुष्क तथा कर्कश है। इस परिवर्तन के दो कारण प्रतीत होते हैं। तुगलक सुल्तानों के पास धन का अभाव था, इसलिए ये इमारतों पर भारी रकमें नहीं व्यय कर सकते थे। इसके अतिरिक्त अपने धार्मिक विचारों तथा रुचि में वे बडे कट्टर थे। उनकी इमारतों की दीवारें उतार–चढाव की तथा मोटी हैं और देखने में काली–सी लगती हैं। तुगलकशाह का मकबरा, तुगलकाबाद का नगर तथा कोटला फीरोजशाह तुगलक स्थापत्य के महत्वपूर्ण आदर्श हैं। सैय़यद तथा लोदी सुल्तानों ने खलजी इमारतों के ओज तथा लालित्य को पुनर्जीवित करने का प्रयत्न किया किन्तु इसमें उन्हें आंशिक सफलता मिली। एक दक्ष कलामर्मज्ञ का मत है कि वे तुगलक–युग के निस्तेज करने वाले प्रभाव से अपने को मुक्त न कर सके। पठान इमारतों में सिकन्दर लोदी के वजीर द्व ारा निर्मित मोठ की मस्जिद सर्वश्रेष्ठ है। आलोचकों के मतानुसार लोदी स्थापत्य का यह सर्वोत्तम आदर्श है ।''

4328. A perusal of the aforesaid shows that it is an opinion formed by the author in respect to the Mughal architecture. He has not referred to any basic material which he consulted and relied to form the said opinion. At the end of the Chapter, he has only given reference to certain books under the heading

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"BOOKS FOR FURTHER READING" and the reference of the following books has been given :

(I) Habibullah : *The Foundations of Muslim Rule in India.*

(ii) Ashraf, Kunwar Mohd. : *Life and Condition of the People of Hindustan (1200-1550)*

(iii) Tara Chand : *Influence of Islam on Indian Culture.*

(iv) Grierson, Sir George : *Modern Vernacular Literature of Hindustan.*

(v) Faruqhhar : *Outline of the Religious Literature of India.*

(vi) Havell : *Indian Architecture.*

(vii) Haig, Woolseley : *Cambridge History of India, Vol. III.*

4329. We have looked into these books also but find no help for issues in question.

4330. The personal credentials of Dr. Srivastava mentioned in the earlier part shows that he was M.A., Ph.D. and D.Lit. from Lucknow and Agra and had written the said book for the benefit of undergraduate students. It appears that he had earlier written a book in English under the title "Saltanat of Delhi" and the present one is the Hindi versions of the said book. In the absence of any reference material, we are not in position to verify the correctness of what the author has said but even otherwise the only thing which he has said in the above passage is that the Delhi Saltanat rulers destroyed Hindu and Jain Temples and used the material for construction of Mosque, pave sages and even graves. In some cases by minor variation or alternation the Hindu or Jain Temples were converted in Mosque. It is a general statement but does not show that it has anything in connection with the disputed site or disputed

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construction. In the entire book, we could not find any reference to Ayodhya and in particular the disputed site, i.e. Ramjanam Bhumi /Babari Masjid. In fact, this book deals with the period upto 1526 and, therefore, mentions only about the defeat of Ibrahim Lodi by Babar in 1526 and does not say anything for the period subsequent thereto. We, therefore, are not able to derive any assistance from the above work of Dr. Srivastava for adjudication of the issues engaging attention of this Court in these cases.

4331. Next is the (Book No. 76) "**History of Kanauj to the Moslem Conquest**" by Rama Shankar Tripathi. Its first edition came in 1964 and the book available to the Court is a reprint Delhi 1989 by Motilal Banarsidass, Delhi. Sri Verma in particular has placed before us certain passages from page 248, 253 and 305. Page 253 shows that there was a great literary person Rajasekhara in the Court of King Mahendrapala who has written several literary productions including "Bala-Ramayana" relating to the story of Rama from Sita's Svayamvara to the death of Ravana, and the return to Ayodhya after Sita's fire-ordeal. He pointed that King Mahendrapala reigned upto about 885 A.D. and the story written by one of his literary courtiers shows that worship of Lord Rama as incarnation of Vishnu was well recognised even at that time. However, nothing of these facts helps us to travel our journey towards solution of the seriously disputed above referred two issues for the simple reason that the antiquity or genuineness or correctness of Lord Rama or his birth at Ayodhya has not been disputed by the learned counsels for the Muslim parties and in this regard, they have gone to the extent of even making a statement under Order

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X Rule 2 C.P.C. Therefore, the factum of recognition of Lord Rama's story in 9th century is now wholly irrelevant. Sri Verma also placed before us the following passage from page 324 of the book :

> *"As to the north, the phrase "borders of China" may be presumed to denote that the kingdom extended upto the foot of the Himalayas; while in the east it must have comprised the Gaya region, where an inscription presumably belonging to Jayachandra's reign records that a hermit named Srimitra served as spiritual guide to the king of Benares (Kasisa), who was attended by a hundred Chieftains (nripa-sata-krita-sevah). It is also definitely known from inscription that Allahabad, Benares, and the surrounding tracts were included within Jayachandra's kingdom. The Gahadavala connection with Benares was more intimate, and perhaps because of the habitual residence of the kings there, or owing to its religious importance advantageous situation "in the centre of the country of Hind," it became a sort of second capital almost from the beginning of their rule. Indeed, the Moslem historians significantly style Jayacandra "Rai of Benares,"[1]...."*
>
> *[1] Ibid., pp. 222, 223, 300, etc. Firishta calls Jayachandra "the prince of Kanauj and Benares (Briggs, I. p. 178)."*

4332. The aforesaid reference has been shown probably in view of the fact that an inscription said to have been obtained from the time of demolition of the disputed structures on 6.12.1992 which according to the Hindu parties, shows that Gahadavala rulers constructed a Vishnu Hari Temple at the

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disputed site. The aforesaid passage shows that the Gahadavala ruler Jayachandra having its capital at Kanauj had within its reign Allahabad and Benaras also. The book gives the detail of Gahadavala rulers from page 292 and onwards of which Chandradev was one. At this stage, whether Gahadavalas in 11, 12 or in 13 centuries ruled at Kanauj and exercised their authorities upto Allahabad and Benaras which included Ayodhya also need not be examined further for the reason that for our purpose the aforesaid facts as such do not meet our requirement necessary for adjudication of the dispute. Though it appears that Gahadavala were very religious people and they declared themselves as Paramamahesvara, i.e. devout worshippers of God Siva but they constructed large number of temples including that of Vishnu Temple. In this regard some details we find on page 351 to 355 under the heading "Religion" as under :

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> *"The Gahadavala kings, like the Pratiharas whose religion has already been started, did not confine their devotions to one member only of the great Hindu pantheon. Thus, while they officially describe themselves as Paramamahesvara, i.e., devout worshippers of the god Siva, their records also invoke in the beginning the blessing of Sri (Lakshmi), the goddess of prosperity, and Damodara (Ganesa), and on the seals attached to the copper-plates there are representations of the flying Garuda and conch-shell (Pancajanya conch?), which may indicate their predilections towards Vaisnavism. Indeed, one of the Kamauli inscriptions even asserts that Jayachandra was initiated, with the consent of his father, as a devotee of the god Krisna on the 10th tithi of the bright half of the month*

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of Asadha of the Vikrama year 1224, corresponding to Sunday, the 16th of June, 1168 A.D.- the day of his installation to the dignity of Yuvaraja. But so marked was the royal eclecticism that according to a Bodhgaya inscription in later life Jayachandra, out of reverence for a Budhist monk named Srimitra, himself became his disciple with a pleasing heart and an indescribable hankering. Moreover, we are uniformly told in their documents that the Gahadavala monarchs made grants after having worshipped the sun (surya), after having praised him (Siva), after having performed adoration to Vasudeva, and after having sacrificed to the fire an oblation of abundant milk, rice and sugar, and after having offered oblations to the manes.

Turning now to the matter of popular religion, the outstanding features during both the Pratihara and Gahadavala periods were the worship of idols and the variety of gods. Temples were built in large numbers, being known as "devagrihas" or "caityas". With their lofty spires, rich ornamental designs, and graceful sculptures, the construction of these elaborate structures must have entailed great engineering skill and workmanship. Sometimes, it is interesting to note, they were even hewn out of a single piece of rock. But unfortunately almost all these noble monuments of the liberality and religious zeal of the princes and peasants alike have disappeared owing to the ravages of time, or were razed to the ground by the iconoclastic fury of the victorious Moslems. For instance, the Taj-ul-Maasir and Firishta's account testify that in

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Benares alone Sihabuddin Ghori destroyed more than one thousand temples, and raised mosques on their foundations.

***Among the gods, Visnu was the most highly venerated**. The Siyadoni inscription gives several names for him such as Visnubhattaraka, Narayanabhattaraka, Vamanasvamideva (also mentioned in the Ahar inscription), Cakrasvamideva, Tribhuvanasvamideva, and Murari. In the Gwalior inscription of Bhoja, he is called Narakadvisa, and in the Buckala record the term Paramesvara occurs for his image. The Pehoa inscription, however, simply describes him as the god riding on garuda (Visnu garudasana). The Gahadavala copper plates often allude to the God Vasudeva and the temple of Adikesava at the confluence of the Varuna and Ganges. We may also add here that the Ahar epigraph (No. VII) refers in general terms to all the ten incarnations of Visnu, but in other documents there is specific mentions of only three manifestations of the deity, viz., Krisna or Hrisikesa, Varaha, and Vamana.*

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The inscriptions further mention such gods as :

1.Surya, also called Tarunadityadeva, Indraraja-dityadeva or Indradityadeva, or Gangaditya. Another form of the sun was Lolarka, whose festival is even now annually celebrated in Benares during the rainy season. In the Siyadoni inscription occurs the term Bhaillasvamideva, which according to a Bhilsa record was a designation of the sun.

2.Siva (Jhusi inscription), also called Umamahesvara (Siyadoni inscription) or simply Mahesvara

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(Gahadavala plates), Trilocana, Lacchukesvara Mahadeva, so named after Mathanadeva's mother (Rajor inscription), Yogasvamin, Pasupati, and Sambhu (Haddala grant).

3.Vinayaka or Damodara (Gahadavala plates).

4.Kumara (Kartikeya) with his host of Matrikas i.e., female companions who performed wonderful deeds.

5.Mahakala (Partabgarh inscription) or Kalapriya (Cambay plates) in Ujjain.

Among other names and temples of gods we come across Nityapramuditadeva, Aghoresvara, Indramadhava, Laudesvara, Panocomkara, Krittivasas etc.

The inscriptions refer to names of goddesses also, such as Bhagavati or Durga (Partabgarh inscription) or Vatayaksnidevi; Sri Amba Lohidevi (Siyadoni inscription); Kanakadevi or Kancanadevi, Gandhadevi, Sarvamangaladevi (Ahar inscription); Sri or Lakshmi (Gahadavala inscriptions); Vasudhara etc."

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4333. Sri Rajendra Singh, DW 1/1 deposed his statement to show that Guru Nanak visited Ayodhya and also had the benefit of Darshan of Lord Rama at the disputed site, i.e., birthplace. To discredit the said statement, a lot of literature relating to Guru Nanak's visit to Ayodhya has been placed before us.

4334. **Ex. 68 (Suit-4)** (Paper No. 208C1/1-4 is an extract of a book **"Bhai Bale Wali-Sri Guru Nanak Dev Ji ki Janam Sakhi"** 7th Edn. 1999 published by Bhai Chatar Singh Jeevan Singh, Amritsar. Pages 361 and 263 have been filed. It shows

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that Guru Nanak Dev Ji visited Ayodhya and told to the people who accompanied him that Ayodhya is the city of King Ram Chandra, who incarnated as Ram in Treta Yug. When enquired that Ram Chandra had taken the entire city of Ayodhya with him then how it has appeared, Guru Nanak Dev Ji said, Maryadapurushottam Sri Ram Chandra Ji had not taken the houses and constructions with him but only the religious men and women folk had gone with him in his supreme world and if the people pray for the God and remain in shelter of Guru Govind they can also achieve the same. Therefrom he proceeded to Prayagraj (Allahabad). Sri Jilani, in reference to the above, said that there is no mention of any place of birth of Lord Rama what to say of place in dispute.

4335. **Ex.69 (Suit-4)** (Paper No. 210C1/1-10) is an extract of the book titled as **"Sikhs and Sikhism"** written by W.H. Mcleod first published in 1999 paper book 2004 by Oxford University Press. Pages 5 to 8 and 33 to 36 have been placed before us. It discussed with the biography of Guru Nanak. From page 5 and 6, it discern that the author did not find according to him any reliable data other than what is said in various Janam Sakhis written or published by different people/institutions to throw light on the life sketch of Guru Nanak. The Adi Granth contains the work of Guru Nanak but did not give much assistance to know about the biography of Guru Nanak. It says that Guru Nanak was born in 1469 at village Talvandi and died in 1539 during which period he travelled a large number of places including those of religious importance for Muslims and Hindus both. About the working of Guru Nanak, at the instance of third Guru, Amar Das, a collection was prepared which was

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ultimately utilized by Sri Guru Arjan while compiling the Adi Granth, i.e., Guru Granth Sahib. The teachings of Guru Nanak are discussed throughout his works but therefrom it is not possible to find out anything about his own biography though it is possible to reconstruct a coherent theology. The basis of his theology is a belief in a personal God, the omnipotent Creator of the universe, a Being beyond time and human comprehending yet seeking by His grace the salvation of man and for this purpose revealing Himself in His own creation. To the offer of salvation man is called to respond by a life of meditation on the divine self-revelation and of conformity to it. If man responds he progressively grows into the likeness of God and ultimately into an ineffable union with the Timeless one. If he refuses he follows the path of spiritual death and remains firmly bound to the wheel of transmigration.

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4336. Chapter 2 starts at page 33 with the heading "The Sources". The author has discussed that the obvious place to seek information concerning the life of Guru Nanak is the Adi Granth, or Guru Granth Sahib compiled by Guru Arjan in 1603-04. It contains numerous works by Guru Nanak which can safely be accepted as authentic but it provides little information concerning the actual events of his life. It contains more than nine hundred of his compositions and yet the biographical details therein are negligible. There is no explicit reference at all to any incident in his life, no *sabad* or *Slok*. The author says that the Chapter Babar-vani though positivity suggests that Guru Nanak witnesses something of Babar depredations, but nothing more than that. He, ultimately, says that in the absence of receiving any information regarding the biography of Guru

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Nanak in Adi Granth, the only source which can be relied on for the same purpose remains the Janam Sakhis. He points out that several sets of Janam Sakhis are prevalent, i.e., Puratan, Miharban etc. and, therefore, a cautious and careful approach is needed to find out the actual reliable informations contained therein instead several legends mentioned therein lacking anything to corroborate and to prove their authenticity.

4337. Chapter 3 starting from Page 34 with the heading "The Life of Guru Nanak According to the Janam-Sakhis" gives some description of the journeys undertaken by Guru Nanak. It says that Guru Nanak ascended Mount Sumeru and thereat held discourse with Gorakhnath and other eighty-three Siddhs who questioned him about the condition of the world below. Guru Nanak informed them about the darkness, sin and corruption. Ultimately, Guru emerged victorious from the debate. Then there is reference of his visit to Mecca and it gives the following information :

> *"Next he proceeded to Mecca and there went to sleep with his feet pointing towards the mihrab. Observing this evident blasphemy a Muslim named Jivan kicked him and dragged his feet away from the direction of the miharab. When he did this, however, the whole of Mecca miraculously moved in the same direction as his feet. A discourse followed in which Guru Nanak emphasized that Ram and Rahim, Hindu and Muslim names for God, designate one and the same God.*
>
> *Having left his sandals in Mecca as a relic, the Guru proceeded on to Medina, and from there to Baghdad where, with Mardana the Bard, he camped outside the city. From*

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there he uttered the call to prayer whereupon the city at once became silent. A pir named Dastgir went out to investigate the newcomer's credentials and entered into a debate with him. In response to Dastgir's request for enlightenment the Guru took the pir's son, ascended with him into the air, and in the twinkling of an eye revealed to him the multitude of heavens and underworlds. The two then descended into the regions below the earth and from there brought a bowl of karah prasad, the sacramental food of the Sikhs."

4338. Thereafter the reference of his visit to Kartarpur. Multan etc. is given. In our view, though the above extract of the document gives some idea about Guru Nanak's visits, but we find no reason as to how the above extract either way helps the plaintiffs (Suit-4) for adjudication of the questions in dispute.

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4339. **Ex. 86 (Suit-4)** (Paper No. 212C1/1-4 is an extract of the book **"Sri Guru Granth Sahib"** with Hindi translation by Dr. Manmohan Sahgal, 6th Edn. 2001 published by Bhuvan Vani Trust. Pages 33 and 34 of the said book have been filed. The verses contained on page 33 and 34 are as under :

"1 ओं सतिनाम करता पुरखु निरभउ निरवैरु अकाल मूरति अजूनी सैभं गुर प्रसादि।।

ओंकार एक है, सत्य उसका नाम है। वह सृष्टि का रचयिता पुरुष है। वह भय से रहित है, उसे किसी से वैर नही; (भय और वैर द्वैत की उत्पत्ति हैं), वह कालातीत (अर्थात् भूत भविष्य, वर्तमान से परे) है, इसलिए नित्य है। वह अयोनी है अर्थात् जन्म–मरण के चक्र से मुक्त है, वह स्वयंभू है (स्वयं प्रकट होनेवाला है), उसकी लब्धि मात्र सतिगुरु की कृपा से ही सम्भव है।"

"सोचै सोचि न होवई जे सोची लखवार।

चुपै चुप न होवई जे लाइ रहा लिवतार।

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भुखिया भुख न उतरी जे बंना पुरीआ भार।
सहस सिआणपा लख होहि त इक न चलै नालि।
किव सचिआरा होईऐ किव कूड़ै तुटै पालि।
हुकमि रजाई चलणा नानक लिखिआ नालि।।1।।

वह प्रभु (वाहिगुरु) ही एम मात्र सतयस्वरूप है। जब कुछ नहीं था, तो भी उसकी सत्ता थी, चारों युगों (सतियुग, त्रैतायुग, द्वापरयुग, कलियुग) से भी पूर्व वह सत्य–स्वरूप परमात्मा विद्यमान था, आज भी (वर्तमान में) वही है और भविष्य में भी उसी की सत्ता स्थिर रहेगी। शुचिकरण (सोचै) द्व ारा कोई पवित्र नहीं हो सकता अर्थात् शौचादि से यथार्थ ज्ञान की उपलब्धि नहीं होती, चाहे कोई लाखों बार भौतिक सफाई करता रहे। ज्ञान–लब्धि मन की निर्मलता से सम्भव है, भौतिक निर्मलता (शौच) से सत्य की प्राप्ति नहीं। वाणी की चुप्पी से मन के संकल्प, विकल्प शांत नहीं होते, चाहे कोई चित्त–वृत्तियों को कितना भी संयमित करने का प्रयास करे, उसका मन भटकता ही रहता है। (भूखा रहने अर्थात् व्रत–उपवास करने से तृष्णा रूपी भूख का दमन नहीं होता।) सृष्टि की पुरियों (बैकुण्ठपुरी, इन्द्रपुरी आदि) के यदि सब वैभव भी प्राप्त कर लिए जायॅ तो भी तृष्णा का कहीं अन्त नहीं। यदि मनुष्य के पास असंख्य बौद्धिक तर्क और विश्लेषण मौजूद हों, परमात्मा की राह पर एक भी सहयोगी नहीं होता– तब (ऐसे में) सांसारिक मनुष्य कैसे सत्य–पथ गमन कर सकता है? झूठ से निस्तार कैसे संभव है? माया का आवरण क्योंकर विदीर्ण होगा? (इसके उत्तर में) गुरुनानक जी कहते हैं कि जीव को परमात्मा के हुकुम (राजी–बर–रजा) मे रहना चाहिए, सत्य की सत्या की अनुभूति का यही एक मात्र मार्ग है–जो अनन्त काल से जीव की उत्पत्ति से लेकर आज तक चला आ रहा है।।1।।''

4340. From perusal of the above, it seems that the real teachings of Guru Nanak is about the self created supreme being who has no shape etc. but is beyond all the worldly and other activities. His existence even prior to the commencement of the four Yugas is believed by Hindus. However, so far as the questions in dispute before us are concerned, the reference of the above verses by the plaintiffs (Suit-4) we find of no use since they do not help in adjudication of the matter either way. It

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is no doubt true that Guru Nanak professed for the existence of a supreme being, who has no shape behind creation or destruction etc. but that by itself does not throw any light with respect to the issues up for consideration in these cases.

4341. **Exhibit 70 (Suit-4)** (Paper No. 229C1; 230C1/1-10) contains pages No. IV, V, XXII, XXIII, LXX to LXXIII, LXXXVI, LXXXVII, 261, 322, 382 and 383 of the book titled as "**The Sikh Religion-Its Gurus Sacred Writings and Authors**" by **Max Arthur Macauliffe** in six volumes, first published in 1909 and reprinted in 1996, 1998 by Low Price Publications, Delhi. The extract before the Court is volume-I of the above book. The pages contains the preface, introduction and some part of hymns of Guru Nanak. We, however, find that the said writing is neither a fair nor impartial study of the matter. In the preface Page No. XXII (Paper No. 230C1/4), learned author has observed:

> *"It is admitted that a knowledge of the religions of the people of India is a desideratum for the British Officials who administer its affairs and indirectly for the people who are governed by them so that mutual sympathy may be produced. It seems, at any rate, politic to place before the Sikh soldiery their Guru's prophecies in favour of the English and the texts of their sacred writings which foster their loyalty."*

4342. The tenor of the book also fortifies the same and we proposed to refer some extract as under:

> *"When Taimur had spread anarchy and devastation over Northern India, a dynasty of Saiyids, or descendants of the Prophet Muhammad, aspired to rule in*

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Dihli in the name of Mughal conqueror. To Dihli there was hardly any territory attached, and Ala-ul-din, the last of the Saiyid rulers, in contemptuous disregard for the small and troublesome dominion meted out to him by destiny, retired to the distant city of Badaun to end his days in religious and political tranquility. He left Dihli and the fortunes of empire of Bahlol Khan Lodi, a man whose ancestors had been enriched by commerce, and whose grandfather had been Governor of Multan under the favour monarch Firoz Shah Tughlak.

Bhahol Khan Lodi reigned from A.D. 1450 to A.D. 1488, and it was consequently near the middle of his reign that Guru Nanak, the founder of the Sikh religion, was born. After the accession of Bahlol Khan Lodi, Daulat Khan, a relative of his, obtained power in the Panjab, and governed under the paramount authority of his kinsman. He lived in state at Sultanpur till defeated and deprived of his possessions by the Emperor Babar. The Panjab appears to have been already parcelled out to Musalman chiefs who were retainers of the sovereigns of Dihli. One of these chiefs, called Rai Bhoi, a Musalman Rajput of the Bhatti tribe, had been Zamindar or proprietor of Talwandi. After his death his heritage descended to his son Rai Bular, who governed the town at the birth and during the youth of Nanak.

Talwandi is said to have been originally built by a Hindu king called Raja Vairat. It was sacked and destroyed by fire and crowbar, like most Hindu towns and cities, during the Musalman invasions. Rai Bular restored it and

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built a fort on the summit of the tumulus, in which he lived the secure and happy ruler of a small village, some limited acres of cultivated land, and boundless wilderness.

Although the age was one of religious intolerance and persecution, Rai Bular appears to have been the very reverse of a bigot. His father and he were converted Hindus, doubtless added to the ranks of Islam by a hasty circumcision and an enforced utterance of some Arabic sentences which they did not perfectly comprehend.

. . . . . Kartik, there being a considerable difference between these forms of chronology. The partisons of the lunar Kartik, however, prevailed, the lunar month being the earlier form of calculation, and consequently the most acceptable to all persons whose religion is based on any form of Hinduism. Generally the confusion of solar and lunar chronology is the cause of much perplexity and qualms of conscience to the pious." (pages lxx, lxxi and lxxxvi)

"The late Bhai Gurumukh Singh, who first gave the author these details, afterwards put himself at the head of a deputation to move the Government of the Panjab to declare the fictitious anniversary of Guru Nanak's birth a public holiday. That Government accordingly added a second Sikh holiday to the already long list of Christina, Hindu, and Muhammadan holidays sanctioned in its calendar. The other special Sikh holiday is the Hola Mahalla, the day on which the tenth Guru held a mimic battle for the instruction of his troops." (page lxxxvi)

4343. However, apart from the other aspects of the matter,

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author has referred to the preachings of Guru Nanak and also about his biography. He has referred to a Janamsakhi written by Sewa Das. He claims to possess the manuscript of the said book written in 1588 AD, i.e., 16 years before compilation of Granth Sahib by Guru Arjan Singh which took place in 1604 AD. After some discussion he found that the said Janamsakhi was most authentic and he made the same basis for giving details of the life of Guru Nanak but supplementing it whereever necessary by culling out from the later life of Guru. It is pointed out that Guru Nanak teaches against idol worship and did not accept Lord Rama as incarnation of God. Reference is made to the following hymns of Guru Nank contained at page 382 (Paper No. 230C1/10):

"If Ram had been God he would not have lost his queen Sita, and he would himself have healed his half-brother Lachhman instead of calling on Hanuman to do so:--

Ram Chandar mourned in his soul for Sita and Lachhman.

He remembered Hanuman, and he came to meet him.

The misguided demon Rawan did not know it was not Ram but God who did this.

Nanak, God is independent: Ram could not erase his destiny."

4344. The hymns teachings against idol worship are at page 323 (paper No. 230C1/9) as under:

"Guru Nanak orders man to repeat God's name and engage not in idol worship:--

If the heart be made the scraper, the Name the

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sandal,

And good acts be mixed with it as kungu, that shall be the real worship of God in the heart.

Worship God by meditating on his name, for without the name there is no worship.

If any one were to wash his heart as the surface of the idol is washed,

His impurity should be removed, his soul should become pure and he should depart to deliverance.

Even beasts have their merits; for the oil-cake they eat they give milk, but the Brahmans make no return for the offerings made them.

Without the Name accursed is man's life and the acts he performeth.

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God is near, think Him not distant; He ever careth for and remembereth us.

Eat what He giveth, said Nanak verily.

The Guru's God is superior to the demigods of the Hindus:--

Brahma sprang from the lotus of Vishnu's navel, and having attuned his throat began to recite the Veds;

Yet he could not see God's limits, and remained in the darkness of transmigration.

Why should I forget the Beloved who is the support of my soul."

4345. Preaching contained in "**Shri Guru Granth Sahib (Chauthi Sainchi)**" translated by **Dr. Manmohan Sehgal** 4th Edition 1995 published by Bhuwan Badi Trust, Lucknow, **Exhibit 71 (Suit-4)** (Paper No. 231C1 and 232C1/1-57),

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contains pages no. 101 to 103 and 152 of the said book. The following part has been referred:

''।।भैरउ महला 5।। वरत न रहउ न मह रमदाना।
तिसु सेवी जो रखै निदाना।।1।। एकु गुसाई अलहु मेरा।
हिंदू तुरक दुहां नेबेरा।।1।। रहाउ।। हज काबै जाउ न
तीरथ पुजा। एको सेवी अवरु न दूजा।।2।। पूजा करउ न
निवाज गुजारउ। एक निरंकार ले रिदै नमसकारउ।।3।।
ना हम हिंदू न मुसलमान। अलह राम के पिंड परान।।4।।
कहु कबीर इहु कीआ बखाना। गुर पीर मिलि खुदि खसमु
पछाना।।5।।3।।

मैं व्रत–उपवास का अनुष्ठान नहीं करता, रमजान के महीने में रोज़े भी नहीं रखता। मैं तो केवल ओट देनेवाले परमात्मा का नाम सिंमरन करता हूँ।।1।। केवल परमात्मा ही मेरा एकमात्र स्वामी है, मैंने हिन्दू–मुसलमान दोनों से दामन छुडा लिया है।।1।। रहाउ।। मै हज्ज के लिए काबा अथवा पूजन के लिए तीर्थों पर नहीं जाता। उसी एक की सेवा में रत हूँ, अन्य कोई नहीं स्वीकारता।।2।। मैं न तो पूजा (दिखावे की) करता हूँ, न नमाज पढ़ता हूँ, केवल निरंकार परमात्मा को ही हृदय में नमन करता हूँ।।3।। न मैं हिन्दू हूँ, न मुसलमान, हमारे (यहाँ सबकी ओर से कहा जा रहा है) तो देह–प्राण सब अल्लाह, या राम के हैं।।4।। कबीरजी कहते हैं कि इसकी क्या व्याख्या करें, हमने तो गुरु से मिलकर स्वामी प्रभु को पहचान लिया है (आप भी पहचान लें) ।।5।।3।।''

''मैला ब्रहमा मैला इंदु। रवि मैला मैला है चंदु।।1।।
मैला मलता इहु संसारु। इकु हरि निरमलु जा का अंतु न
पारु।।1।। रहाउ।। मैले ब्रहमंडाइ के ईस। मैले निसिबासुर
दिन तीस।।2।। मैला मोती मैला हीरु। मैला पउनु
पावकु अरु नीरु।।3।। मैले सिव संकरा महेस। मैले सिंध
साधिक अरु भेख।।4।। मैले जोगी जंगम जटा सहेति।
मैली काइआ हंस समेति।।5।। कहि कबीर ते जन परवान।
निरमल ते जो रामहि जान।।6।। 3।।

संसार में (प्रभु के अतिरिक्त) सब मलिन है। ब्रह्मा मलिन है, इन्द्र मलिन है, सूर्य और चन्द्र मलिन हैं।।1।। यह समूचा संसार मैला है, केवल एक परमात्मा ही निर्मल है, जिसका कोई अन्त या पार

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नहीं।।1।।रहाउ।। ब्रह्माण्ड़ों के शासक मलिन हैं, रात, दिन और महीने के तीसों दिन मैले हैं।।2।। मोती में मलिनता है, हीरा भी मैला है, पावन, अग्नि और जल, सभी मलिन हैं।।3।। शिव शंकर महादेव भी मलिन हैं, सिद्ध, साधक और भेसी साधु, सब मैले हैं।।4।। योगी, जंगम और जटाधारी साधु मलिन हैं। शरीर और आत्मा दोनों में मैल है।।5।। कबीर जी कहते हैं कि केवल वे ही सेवक प्रभु के दरबार में स्वीकृत हैं, जो राम का परिचय पाकर निर्मल हो जाते हैं।।6।।3।।

मनु करि मका किबला करि देही। बोलनहारु परम
गुरु एही।।1।। कहु रे मुलां बांग निबाज। एक मसीति
दसै दरवाज।।1।। रहाउ।। मिसिमिलि तामसु भैरमु कदूरी।
आखि ले पंचै होई सबूरी।।2।। हिंदू तुरक का साहिबु एक।
कह करे मुलां कह करे सेख।।3।। कहि कबीर हउ भइआ।
दिवाना। मुसि भुसि मनूआ सहजि समाना।।4।।4।।

मन को मक्का बनाओ और शरीर को काबा समझो। उसमें आत्मा को ही बड़ा पीर मानो।।1।। ऐ मुल्ला, इस दस द्वार के शरीर रुपी मस्जिद में ही बांग दो और नमाज़ पढ़ो।।1।।रहाउ।। मन की तामसिकता, गन्दगी तथा भ्रमों को 'बिस्मिल्लाह' कहकर ज़िबह कर दो (मार दो)। कामादि पॉचों विकारों को खाकर सन्तुष्ट और धैर्यवान् बन जाओ।।2।। हिन्दू और मुसलमान, दोनों का परमात्मा एक ही है, इसमें मुल्ला या शेख क्या कर सकते हैं। ।3।। कबीरजी कहते हैं कि मैं तो प्यारे प्रभु का आशिक हूँ। मेरा मन मारा जाकर (जिबह होकर) सहज में ही समा गया है।।4।।4।।''

4346. **Exhibit 72, Suit-4** (paper no. 233C1 and 234C1/1-7) also is an extract from the book **"The Sikh Religion"** by Max Arthus Macauliffe, Vol. I (supra), i.e., Exhibit 70. The part of the verses relates to the period when Guru Nanak had travel to eastern part of India and then some part of Punjab is contained in Chapter VI and VII. The relevant extract thereof is as under:

"The Guru returned from Kamrup by the great river Brahmaputra, and then made a coasting voyage to Puri on the Bay of Bengal, where Vishnu of Krishan under the name of Jagannath, lord of the world, is specially

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worshipped. When the lamps were lit in the evening the Guru was invited by the high priest to stand up and join in the god's worship, which was of a gorgeous and imposing character. In that rich temple offerings to the god were made on salvers studded with pearls. On the salvers were place flowers and censers. A fan was employed to excite the flames of the incense, while the lamps around threw light over the temple. But the use of these articles showed artificial worship, while the expanse of the firmament, the sun and the moon, the procession of the stars, the natural incense of the sandal, the winds and forests, were the fitting accessories of Nanak's purer worship of the God of creation. The Guru therefore, instead of accepting the high priest's invitation to adore the idol, raised his eyes to heaven, and gave utterance to the following hymn:--

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The sun and moon, O Lord, are thy lamps; the firmament, Thy salver; the orbs of the stars, the pearls enchased in it.

The perfume of the sandal is Thine incense; the wind is Thy fan; all the forests are Thy flowers, O Lord of light.

What worship is this, O Thou Destroyer of birth? Unbeaten strains of ecstasy are the trumpets of Thy worship.

Thou hast a thousand eyes and yet not one eye; Thou hast a thousand forms and yet not one form;

Thou hast a thousand pure feet and yet not one foot; Thou hast a thousand organs of smell and yet not one organ—I am fascinated by this play of Thine.

The light which is in everything is Thine, O Lord of

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light.

From its brilliancy everything is brilliant;

By the Guru's teaching the light becometh manifest.

What pleaseth Thee is the real arati.

O God, my mind is fascinated with Thy lotus feet as the bumble-bee with the flower: night and day I thirst for them.

Give the water of Thy grace to the sarang Nanak, so that he may dwell in Thy name.

While at Jagannath, Guru Nanak met a Brahman who kept his eyes and nose closed so as to receive no pleasure from these organs. He averred that in that state he with his mental eyes saw the secrets of the world. Nanak hid his lota and the Brahman could not find it, so Nanak by the following hymn in the Dhanasari measure twitted him on his want of omniscience:--

This is not the age, there is no longer acquaintance with Jog; this is not the way of truth.

The holy places in the world have fallen; the world is thus ruined.

In this Kal age God's name is the best thing.

Thou closest thine eyes and holdest thy nose to deceive the world.

Thou holdest they nose with they thumb and first two fingers, and sayest that thou seest the three worlds.

But thou seest not what is behind thee, this is a wonderful thing."

4347. Chapter VII shows that Guru Nanak after coming back from Eastern India visited shrine of Shaikh Farid a Muslim

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saint at Ajodhan (now called Pak Pattan in the southern part of Punjab Province) and there also he expressed similar sentiments though in respect to muslim religious shrine.

4348. **Exhibit 73, Suit-4** (Paper No. 235C1 and 236C1/1-5) is the extract of pages no. 20 to 27 from "**The Evolution of the Sikh Community**" by **W.H. Mc Leod** published by Oxford University press (some other pages of this book are already exhibited as **Exhibit 69, Suit-4**). With reference to the travel of Guru Nanak a mention on page 23 of the said book was made. It says:

> *"Itineraries are now devised and incidents which already had a particular location are set in appropriate places in the travel narrative. Other incidents which previously had no specific location are now given one. At first the Guru's travels are relatively modest in extent, but as the years pass from the eighteenth into the nineteenth century we find him reaching Peking in the East and Europe in the West. One relatively recent contribution relates a meeting with the Pope in Rome, an opportunity which Guru Nanak utilizes to denounce the sale of indulgences."*

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4349. **Exhibit 74, Suit-4** (Paper No. 237C1 and 238C1/1-5) contains pages no. 221 to 224 of the book titled as "**The Sikh World-An Encyclopaedic Survey of Sikh Religion and Culture"** by **Ramesh Chandra Dogra Urmila Dogra** 2003 Edition published by UBS Publishers' Distributors Pvt. Ltd., New Delhi. It also contains the comments of the author with respect to the various Janamsakhis of Guru Nanak and the extent of authenticity thereof.

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4350. **Exhibit 75** contains photocopies of the title page, preface and pages no. 17, 39, 84 to 87 and 299 to 303 of "**A History of the Sikhs**" by **Khushwant Singh,** Vol. I, 1469-1839, first published in 1963 and 9th impression 2002 by Oxford University Press.

4351. Suffice it to mention at this stage about the aforesaid evidences that neither the authenticity of any of the Janamsakhi is involved in these matters nor otherwise we have to consider in any manner about the teachings etc. of Guru Nanak. The reference of Guru Nanak has been made by learned counsels appearing for Hindu parties mainly to show that he also visited Ayodhya and after taking bath at Saryu had visited Janamsthan also and this fact is mentioned in the books of Sikh religion while Sri Jilani has tried to show that there is no such reference in any of the books relating to Sikhism. We may mention that though at some places it is found that Guru Nanak while travelling to various places also came to Ayodhya but there is nothing to show that he at any point of time actually visited the disputed place and the learned counsel for the defendants in Suit-4 and plaintiffs in other suits could not show anything to persuade us to take a different view. In this way we find no relevance of the above documents in these cases.

4352. Before embarking upon the question as to whether the site in dispute is that where Lord Rama was born, we have to first consider the question about the historicity of the matter. The issue which relates to the faith of Hindus about the birth of Lord Rama at Ayodhya etc. in so far as relates to the faith, the learned counsels have already made their statements under Order 10 Rule 2 C.P.C. not disputing the same and that being so,

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no further enquiry on that aspect need be gone. This by itself does not end the matter for the reason that the issue with respect to the birth of Lord Rama at the disputed place has not been framed merely on the basis of faith of Hindus but is a direct issue. The arguments of the learned counsel for the Muslim parties are that so far as the faith is concerned, the things may be said to be beyond the pail of judicial review but where a positive issue arises as to whether a particular thing happened or not, that is a pure question of fact and can be investigated provided the historicity of the matter is proved. It is suggested that the Ramayana has been held to be a great epic and therefore, being a mythical story, the question of actual birth of lord Rama is beyond any comprehension and hence the question of place of birth also becomes redundant.

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4353. Sri P.R. Ganpati Ayyier faced with the situation in fact sought to argue that issue No.11 (Suit 4) needs recast, inasmuch as, it ought to be whether the property in suit as per the faith of Hindus is the site of Janam Bhumi of Sri Ram Chandra Ji and he submits that issue however framed ignoring the words 'faith of Hindus' has made the said issue faulty for the reason that something which occurred or said to have occurred thousands of years cannot be asked to prove.

4354. It is said that Ayodhya is an ancient city. Goswami Tulsidas in his renowned work Sri Ramcharit Manas besides others has also referred to the celebration of Janam Mahotsav of Lord Rama at Ayodhya and the belief of Hindus about the Supreme Being therein to fulfil the wishes of the worshippers or even a person who visits Ayodhya for once and refers to the following verses from the Chapter of "Uttarkand" (Exhibit T4,

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Suit-4), Register Vol. 18, pages 59-71, Paper No. 43A1/29-35:

''तब तब अवधपुरी मैं जाऊँ। बालचरित बिलोकि हरसाऊँ।।

जन्म महोत्सव देखउँ जाई। बरष पॉच तहँ रहउँ लोभाई।।

तब–तब मै अयोध्यापुरी जाता हूँ और उनकी बाललीला देखकर हर्षित होता हूं। वहॉ जाकर मैं राम का जन्म–महोत्सव देखता हूँ और लुभाकर पांच वर्ष तक वही रहता हूं।

निज प्रभु जन्म अवध सुनि जायउँ। निर्भर प्रेम हरषी उठि धायउँ।।

देखउँ जन्म महोत्सव जाई। जेही विधि प्रथम कहा मैं गाई।।

जब मैने अपने स्वामी का अवधपुरी में जन्म होना सुन पाया, तब प्रेम से भरकर, मै हर्षपूर्वक उठ दौड़ा। जाकर मैने जन्म–महोत्सव देखा, जिस प्रकार से कि मैं पहले वर्णन कर चुका हूँ।''

4355. In support of the submissions that the disputed site is birthplace of Lord Rama since time immemorial, the idol of Lord Rama is worshipped thereat since long time and also to contradict the suggestion of the learned counsel for the Sunni Central Wakfs Board and other Muslims parties that Ramjanamsthan Mandir was different, i.e., towards the north of the disputed site across the road etc., Sri M.M. Pandey, counsel for the plaintiff (Suit-5) placed reliance on the following part of the depositions of witnesses:

PW-1, Mohd. Hashim

''यह बात मैंने सुनी है कि अयोध्या में ज्यादातर जो मन्दिर हैं वे राम–जानकी या सीताराम के मन्दिर हैं। जिस मोहल्ला में विवादित स्थल है मोहल्ला रामकोट उस मोहल्ले में अधिकतर बहुत प्राचीन मन्दिर है। उसमें कनक भवन मन्दिर भी है।'' (पेज 38)

"I have heard that most of the temples in Ayodhya are the temples of Ram-Janaki or Sitaram. The locality in which the disputed site is situated, that is, the Ramkot locality mostly have very old temples. Kanak Bhawan temple is one of them." (ETC)

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''विवादित स्थल के अलावा राम जन्मस्थान के मन्दिर के अलावा जो मशहूर मन्दिर हैं उनके नाम ही मैं जानता हूँ, जो बाबरी मस्जिद के इर्द–गिर्द है। बाबरी मस्जिद के इर्द–गिर्द जन्मस्थान मन्दिर के अलावा मैं और किसी मन्दिर का नाम नहीं बता सकता। यह भी नहीं बता सकता कि बाबरी मस्जिद के इर्द–गिर्द कितने मन्दिर हैं। 22/23 दिसम्बर, 1949 को जिस स्थान की कुर्की हुई, हिन्दू लोग उसे राम जन्मभूमि कहते थे और मुसलमान बाबरी मस्जिद कहते हैं। गोपाल सिंह विशारद के दावे में भी हिन्दू लोग इसे राम जन्मभूमि मन्दिर और मुसलमान लोग बाबरी मस्जिद कहते हैं।' (पेज 40)

"Besides the disputed site/Ramjanmsthan temple, I know only the names of famous temples situated in the vicinity of the Babri mosque. Except for the Janmsthan temple in the vicinity of the Babri mosque, I cannot tell the name of any other temple. I cannot even tell how many temples are there in the vicinity of the Babri mosque. The Hindus called the place attached on 22nd - 23rd December, 1949, Ram Janam Bhumi and the Muslims call it Babri mosque. In the claim of Gopal Singh Visharad too Hindus call it Ramjanmbhumi temple and Muslims call it Babri mosque." (ETC)

''जैसे मक्का मुसलमानों के लिए अहमियत रखता है उसी तरह अयोध्या भगवान राम को लेकर हिन्दुओं के लिए महत्व रखता है।' (पेज 44)

"As Mecca holds importance for Muslims, similarly Ayodhya holds importance for Hindus because of Lord Rama." (ETC)

''जो जगह ए. बी. सी. डी. में दिखाई गई है यह वह है जिसे हम मस्जिद कहते हैं और हिन्दू जन्मस्थान कहते हैं। जो जगह चबूतरा की सूरत में हिन्दू लोगों के कब्जे में है।' (पेज 113)

"The place which is marked as A. B. C. D. is the place which we call mosque and Hindus call Janmsthan, which is

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in possession of Hindus in the shape of Chabutara." (E.T.C.)

''यह ठीक है कि अयोध्या हिन्दुओं का एक तीर्थस्थल है। यह गलत है कि 22 दिसम्बर, 1949 से राम जन्मभूमि पर हिन्दू लोग देश–विदेश से आकर पूजा–अर्चना करते रहे हैं। (अजखुद कहा) सिर्फ एक पुजारी पूजा करता रहा है। यह ठीक है कि 22 दिसम्बर, 1949 से इस भूमि पर जो मुकदमा में मुतदाविया है, हिन्दू लोग देश–विदेश से दर्शन करने के लिए आते हैं। मुझे मालूम नहीं कि इस परिसर में तब ही से हिन्दू धर्म के लोगों के धार्मिक आयोजन गाह–बगाहे होते रहते हैं' (पेज 120)

"It is true that Ayodhya is a place of pilgrimage for Hindus. It is incorrect that since 22nd December 1949 Hindus have continued to come from within the country and abroad to perform Pooja-Archana at Ramjanmbhumi. (Stated on his own) Just one priest has been performing Pooja. It is true that from 22nd December, 1949, Hindus come from within the country and from abroad to have darshan on this land, which is disputed in litigation. I do not know that religious functions of Hindus are held off and on in this premises since then."(E.T.C.)

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PW-2, Haji Mahboob Ahmad

''सरियावाली दिवार दक्खिन की तरफ की मस्जिद के दीवाल से मिली हुई थी। हम इसे मस्जिद कहते हैं दूसरा फरीक मन्दिर कहता है।' (पेज 54)

"The iron-rod wall adjoined the southern wall of the mosque. We call it mosque and others call it temple." (E.T.C.)

PW-4, Mohd. Yaseen

''.सावन झूले का मेला होता है, कार्तिक और चैत के महीने में भी हिन्दुओं के मेले होते हैं। पंचकोसी और चौदहकोसी परिक्रमाएं भी होती हैं। इनमें हिन्दू यात्री लोग आते हैं। अयोध्या भर जाती है, लेकिन मैं यह नहीं कह सकता कि वह लोग हज़ारों में होते हैं या लाखों में। वे हिन्दू लोग अपने

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ख्याल के मुताबिक इस जगह के दर्शन भगवान राम के जन्म स्थान के तौर पर करते होंगे।'' (पेज 70)

"The Savan Jhula fair is held; fairs of Hindus are held in the months of Kartika and Chaitra as well. Panchkosi and Chaudahkosi circumambulations are also performed. Hindu travelers come to attend them. Ayodhya gets thronged but I cannot say whether they are thousands or lakhs in number. In my view, the Hindus must have had the darshan of this place as birthplace of Lord Rama " (E.T.C.)

''...मैं अयोध्या में रहता हूँ, इसलिए कुछ हिन्दुओं से और पंडितों से भी मेरी मेल–मुलाकात होती रहती है। ब्याह–शादी में दावत–तवाज़ा भी होता रहता है। उनका यह अकीदा है कि यह श्री राम का जन्म स्थान है। (अजखुद कहा कि उनका अकीदा उनके साथ है) हिन्दू लोग इस जगह को पाक और पवित्र समझकर इसकी पूजा करते हैं।'' (पेज 71)

"I reside at Ayodhya; so, I meet some Hindus and Pandits (scholarly persons) too. Feasts-dinners are also organized at weddings. It is their belief that it is the birthplace of Lord Rama. (Stated on his own that there belief is their own.) Hindus worship this place taking it to be holy and sacred." (E.T.C)

''.बाबरी मस्जिद जिसे दूसरा फरीक मंदिर कहता है, मेरे मकान से एक–डेढ़ किलोमीटर दूर थी। इस बीच में आबादी भी है, कुछ खुला मैदान भी है और बाग भी है। बीच में हॉस्पीटल भी पड़ता था, बाज़ार कोई नहीं था।'' (पेज 76)

"The Babri mosque, which other people call temple, is 1½ kilometer away from my house. In between there is human inhabitation; there is some open space and there is also a garden. In between lay a hospital too; there was no market." (E.T.C)

PW-5, Abdul Rahman

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''यह ठीक है कि श्रीराम भी धर्म के रास्ते पर ही चले थे। हम उनको खुदा नहीं मानते, वह देवता है और हमारे पैगम्बर का दर्जा रखते हैं।'' (पेज 35)

''It is true that Sri Rama also followed only the path of religion. We do not regard him as God; he is a deity and has the same status as that of our Prophet. '' (E.T.C)

PW-6, Mohd. Yunus Siddiqui

''मुतदाविया जायदाद के इर्दगिर्द हिन्दुओं के मंदिर है। इस जायदाद से हनुमान गढ़ी तक रास्ते में हिन्दुओं के बड़े–बड़े मंदिर है जैसे कनक भवन, और रामजन्म स्थान, हनुमान गढ़ी। मोहल्ला रामकोट में राम जन्मभूमि मंदिर भी है।'' (पेज 20)

''There are Hindu temples in the vicinity of the disputed property. On the way from this property to Hanumangarhi there are large Hindu temples such as Kanak Bhawan, Ram Janam Sthan and Hanumangarhi. Ram Janam Bhumi temple is also situated in Ramkot locality." (ETC)

PW-7, Hasmat Ulla Ansari

''अयोध्या में बेतादाद मन्दिर हैं। मैं मोहल्ला रामकोट का कोई मशहूर मन्दिर नहीं बता सकता, अपने मोहल्ले का बता सकता हूँ। रामकोट मोहल्ला कोई नया नाम होगा, मैं उसे नहीं जानता। हनुमानगढ़ी मैं कभी गया नहीं, लेकिन उधर की सड़क से जरूर गुजरा हूँ। मैं नहीं बता पाऊँगा कि हनुमानगढ़ी कौन से मोहल्ले में है।'' (पेज 21)

''There are countless temples at Ayodhya. I cannot name any famous temple of Ramkot locality; I can name my locality. Ramkot locality must be a new name, which I do not know. I have never been to Hanumangarhi but I have certainly passed through the road running in that direction. I am not in a position to tell in which locality Hanumangarhi is situated.''(E.T.C.)

''अयोध्या में मणि पर्वत का नाम मैंने सुना है। वह विवादित जायदाद के पूरब में है। मैं वहाँ पर गया हुआ हूँ। लेकिन मैं उस पर्वत के ऊपर नहीं

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चढ़ा। यह ठीक है कि उसके ऊपर मन्दिर है।'' (पेज 22)

"I have heard the name of Mani Parvat at Ayodhya. It stands east of the disputed structure. I have gone there but I did not climb that mountain. It is true that there is a temple above it. (ETC)

''यह ठीक है कि सावन के महीने में मणि पर्वत पर श्रीराम के झूले पड़ते हैं।'' (पेज 22)

"It is true that Mani Parvat witnesses swings named after Sri Ram in the month of Savan" (E.T.C)

''अयोध्या में कुण्ड बहुत हैं। लेकिन मैं यह नहीं बता पाऊँगा कि ज्यादातर कुण्ड हिन्दू देवताओं के नाम पर हो। मैंने दातून कुण्ड का नाम सुना है, लेकिन देखा कभी नहीं।'' (पेज 23)

"There are many pits in Ayodhya but I am not in position to tell whether most of them are named after Hindu deities. I have heard the name of Datun Kund but have never seen it." (E.T.C)

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''मैंने अयोध्या के सिलसिले में श्रीराम का नाम सुना है, राजा दशरथ का नाम सुना है, वहाँ पर उनका राजभवन भी है।'' (पेज 23)

"I have heard the name of Sri Rama in connection with Ayodhya; I have heard the name of king Dashrath; his royal palace is also located there." (E.T.C)

''गोकुल भवन से थोड़ा सा कोना लेता हुआ उसी भवन में वशिष्ठ कुण्ड है। हनुमानगढ़ी और कनक भवन का अयोध्या में होना मैंने सुना है।'' (पेज 69)

"Taking a slight curve from Gokul Bhawan, Vashishtha Kund is located in that very building. I have heard of Hanumangarhi and Kanak Bhawan being located in Ayodhya." (E.T.C)

PW-8, Abdul Ajij

''यह ठीक है कि सावन के महीने में मणि पर्वत पर भगवान राम का झूलन मेला होता है।'' (पेज 23)

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"It is true that Jhulan fair of Lord Ram is organized at Mani Parvat in the month of Savan." (E.T.C)

"अयोध्या में हिन्दुओं के काफी मंदिर है। मैंने देखे है उनकी बनावट और रूप–रेखा से मैं वाकिफ हूँ। यह ठीक है कि अयोध्या हिन्दुओं की एक तीर्थस्थली है। बहुत दूर–दूर से हिन्दू लोग वहां आते है। अयोध्या के उत्तर में सरयू नदी हैं।" (पेज 32–33)

"There are a fairly good number of Hindu temples in Ayodhya. I have seen them; I am acquainted with their build and shape. It is true that Ayodhya is a place of pilgrimage for Hindus. Hindus come there from very far-off places. The Saryu river flows in the north of Ayodhya." (E.T.C)

"मुझे इस बात का ख्याल नहीं कि सदर फाटक से अन्दर दाखिल होने पर बीच में खड़े होकर अगर देखा जाए तो वह दक्षिण वाला चबूतरा कितने फासले पर होगा। इस चबूतरे के दक्षिण और पश्चिम में क्या है मैं नहीं बता सकता क्योंकि मैं उधर कभी नहीं गया। मैं इस चबूतरे की लम्बाई भी नहीं बता सकता इस चबूतरे की जमीन के फर्श से ऊँचाई ज्यादा नहीं थी सिर्फ एक या डेढ़ फुट रही होगी।" (पेज 35)

"I do not remember at what distance would be the southern Chabutara if seen while standing in the middle on entering through the Sadar gate. I cannot tell what is there in the south and west of this Chabutara because I have never been to that side. I also cannot tell the length of this Chabutara. This Chabutara was not at much height from the surface of the ground; it would have been only 1 or 1½ feet." (E.T.C)

"हमने सुना है कि अयोध्या में चैत्र के महीने में राम नवमी का मेला होता है वहां कभी नहीं गये इसलिए नहीं कह सकते कि उसमें लाखों लोग शरीक होते हो। सावन में झूले का मेला भी होता है मालूम नहीं कि उसमें लाखों हिन्दू तीर्थ यात्री शामिल होते हो क्योंकि मैंने उस मेले में कभी शिरकत नहीं की। इन मेलों के वक्त हमने फैजाबाद में कभी भीड़ नहीं देखी

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बहरहाल सड़क पर लोग चलते रहते है।'' (पेज 71)

"I have heard that Ramnavami fair is organized at Ayodhya in month of the Chaitra. I have never gone there; so, I cannot say whether lakhs of people take part in it. Jhula Mela (fair mark by swings) is also organized in Savan. I do not know whether lakhs of Hindu pilgrims take part in it because I never attended it. On the occasion of these fairs, I never saw crowd in Faizabad. However, people are seen moving on the road." (E.T.C)

''इस मुकदमें में तनाजा मंदिर मस्जिद का है। हिन्दू लोग इसे श्रीराम जन्मभूमि मंदिर मानकर पूजा अर्चना करते हैं।'' (पेज 72)

"Dispute in this case is over temple or mosque. Hindus worship it taking it to be Shri Ramjanmbhumi temple. (E.T.C)"

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PW-9, Saiyed Ekhalaq

''ट्रान्सपोर्ट का व्यापार मैंने 1970–71 के आसपास शुरू किया था।'' (पेज 3)

"I started transport business in or around 1970-71." (E.T.C)

''यह ठीक है कि अयोध्या हिन्दुओं का तीर्थस्थल करके मशहूर है। अयोध्या में हजारों मन्दिर तो जरूर हैं।'' (पेज 3)

"It is true that Ayodhya is famous as a pilgrimage site for Hindus. There are certainly thousands of temples in Ayodhya." (E.T.C)

''इस मन्दिर और मस्जिद यानि राम जन्मभूमि बाबरी मस्जिद के जितने भी मुकदमें चल रहे हैं, हो सकता है उन सब में मेरे हलफनामे लगे हों। यह ठीक है कि ताला खुलने के बाद इस मुकदमे की पैरवी में मैं हाईकोर्ट भी आता रहा हूँ।'' (पेज 16)

"My affidavits may have been filed in all pending cases relating to this temple or mosque, i.e. Ramjanmbhumi-

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Babri mosque. It is true that since the time of the unlocking incident I have been coming to High Court too in order to pursue this case." (E.T.C)

"हिन्दू हजरात का यह यकीदा है कि भगवान श्रीराम ईश्वर के अवतार थे और वे अयोध्या में प्रकट हुए लेकिन यह उनका यकीदा है मेरा नहीं। मैं सुनता हूँ कि हिन्दू हजरात यह यकीदा रखते हैं कि अयोध्या उनका जन्मस्थान है। अयोध्या में श्रीराम जन्मभूमि को वो उनका जन्मस्थान मानते हैं।" (पेज 42)

"It is the belief of Hindu community that Lord Shri Rama was an incarnation of God and he appeared in Ayodhya. However, it is their belief, not mine. I hear that Hindus believe that Ayodhya is his birthplace. They regard Shri Ramjanmbhumi in Ayodhya as his birthplace." (E.T.C)

"मुझे ज्यादा इल्म नहीं है, हो सकता है कि साकार की पूजा करने वाले हिन्दू लोग फूल–पत्ती, वृक्ष और पशु–पक्षी की पूजा करते हों। हो सकता है वे नदियों, झरनों की भी पूजा करते हों। समुद्र की भी पूजा करते हों, सूर्य, चन्द्रमा, नक्षत्र, वायु, जल, अग्नि, पाषाण इन सब चीजों की पूजा करते हों।" (पेज 53)

"I do not have much idea about whether-it may be that-Hindus worshiping the embodied form of God worshiped flowers, leaves, trees, animals and birds. May be that they worship rivers and lakes; seas; and all these things like the sun, the moon, air, water, fire and stone." (E.T.C)

"यह ठीक है कि मुतदाविया बाबरी मस्जिद के अगल–बगल हिन्दुओं के मन्दिर हैं। इनमें से कुछ मन्दिरों को तो मैं जानता हूँ, जो मेरी होश के पहले से चले आ रहे हैं।" (पेज 99)

"It is true that there are Hindu temples in vicinity of the disputed Babri mosque. I do know some of these temples, which have been in existence since before the time of my attaining understanding." (E.T.C)

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''अगर अगल–बगल से मुराद सटे हुए होने से हो तो जरूर वहाँ पर मुसलमानों की आबादी नहीं है।'' (पेज 100)

"If vicinity is taken to mean the adjoining area, there is certainly no Muslim inhabitation there." (E.T.C)

''यह ठीक है कि इस सड़क के यानी रास्ते के दोनों तरफ हिन्दुओं के पुराने मन्दिर हैं जो कि लखनऊ, गोरखपुर रोड तक हैं। इस बीच में सड़क से मिली हुई मुसलमानों की आबादी नहीं है।'' (पेज 100)

"It is true that there are old temples of Hindus on both sides of this road, i.e. route, which stretches upto Lucknow-Gorakhpur road. There is no Muslim inhabitation along the road in between." (E.T.C)

PW-10, Mohd. Idris

''मैं विवादित जायदाद पर कभी भी नहीं गया। मैंने ऐसा किसी तारीख में नहीं पढ़ा कि अयोध्या हिन्दुओं का तीर्थ स्थान माना जाता हो या वहाँ भगवान् राम के जन्म होने की कोई धारणा हो। अयोध्या एक मज़हबी शहर है, वह हिन्दुओं का भी मज़हबी शहर है और मुसलमानों का भी मज़हबी शहर है। अयोध्या एक नदी के किनारे बसा हुआ है। चाहे उसका नाम सरयू कहिए चाहे घाघरा। यह ठीक है कि अयोध्या में मंदिरों की भरमार है।'' (पेज 33).

"I never went to the disputed site. In any I did not read in any history that Ayodhya is regarded as a place of pilgrimage of Hindus or that there is any perception as to birth of Lord Rama there. Ayodhya is a religious town. It is a religious town for Hindus and so is it for Muslims. Ayodhya is established on the bank of river. It may be called either Saryu or Ghaghra. It is true that Ayodhya is flooded with temples."(E.T.C)

PW-11, Mohd. Burhanuddin

''मैंने किसी देवी देवता के नाम नहीं सुने। उनकी पूरी तफसील के साथ नहीं सुने, राम का नाम सुना है।'' (पेज 19)

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"I did not hear the name of any male or female diety. I did not hear of them with full details; I have heard the name of Rama." (E.T.C)

".जहॉ तक मुझे याद है बाबर यहॉ 932 हिजरी में यहॉ आया था और शायद उसका 937 हिजरी में इंतकाल हुआ था। जहॉ तक मैंने पढ़ा है बाबर का अयोध्या आना साबित नहीं होता।" (पेज 65)

"As far as remember, Babar came here in 932 hijri and died perhaps in 937 hijri. As far as I have read, Babar's arrival at Ayodhya is not proved. " (E.T.C)

"तुज़केबाबरी में अयोध्या में कहे गये जन्मस्थान का जिक्र पढ़ा है।" (पेज 65)

"I have gone through the mention of Janmsthan stated to be in Ayodhya, in Tuzuk-e-Babri." (E.T.C)

PW-12, Ram Shankar Upadhyay

"जन्मभूमि मम पुरी सुहावनि, उत्तर दिशि तु हि सरजू पावनि" यह चौपाई तुलसीदास ने भगवान राम के मुख से कहलवाई है, यानि कि स्वयं भगवान ने अपनी जन्मभूमि अयोध्या पुरी को अपने सबसे प्रिय कहा है।" (पेज 5)

"Tulsidas has got this quatrain-Janmbhumi Mam Puri Suhawani, Uttar Dishi Tu Hi Sarju Pawani- spoken from the mouth of Lord Rama, that is to say, God himself has stated Ayodhyapuri to be most favorite one. " (E.T.C)

"तुलसीदास जी ने रामचरित मानस को रचना सम्वत 1631 में की थी। तुलसीदास जी की मानस और वाल्मीकी की रामायण, दोनों का मुख्य विषय भगवान राम का ही है। भगवान राम को हम भगवान विष्णु का साक्षात अवतार मानते है।" (पेज 6)

"Tulsidas Ji composed the Ramcharit Manas in Samvat 1631. The main subject of both Tulsidas's Manas and Valmiki's Ramayana is Lord Ram himself. We regard Lord Rama as a manifest incarnation of Lord Vishnu." (E.T.C)

"खुद कहा कि अयोध्या भगवान की नगरी है, उसे कोई नहीं जीत सकता

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रामचरित मानस या वाल्मीकी रामायण के अलावा मैंने अयोध्या का प्राचीन इतिहास नहीं पढ़ा।'' (पेज 7)

''(Stated on his own) Ayodhya is a town of God. Nobody can conquer it. I did not read ancient history of Ayodhya except the Ramcharit Manas or the Valmiki Ramayana.'' (E.T.C)

''मैं कनक भवन अयोध्या एक–आध बार गया हूँ। वहाँ मैंने दर्शन तो किये हैं, पर वह किस देवता का मन्दिर है, इतना ध्यान नहीं।'' (पेज 11)

''I have been to Kanak Bhawan at Ayodhya once or so. I have certainly had darshan there but I do not remember which deity that is the temple of.'' (E.T.C)

''अगर किसी मन्दिर में बाल स्वरूप हो तो भगवान राम लला की प्रतिमा होगी। ऐसा कोई प्रतिबन्ध नहीं है कि जहाँ बाल स्वरूप राम लला की मूर्ति स्थापित हो वहाँ पर सीता जी की मूर्ति रखी नहीं जा सकती हैं।''(पेज 11)

''If the child form of a deity exists in a temple, the idol would be that of Lord Ram Lala. There is no such restriction that where the idol of Ram Lala in child form is installed, the idol of Sita Ji cannot be placed there.'' (E.T.C)

''भगवान राम लला की मूर्ति चाहे पाषाण की हो चाहे अष्टधातू की हो, स्थापित होने के बाद वह अंचल ही कहलायेगी। वह मूर्ति सालिंग राम भगवान कहलाती हैं। सालिग राम भगवान की मूर्ति न तो स्थापित होती है और न ही उसका विसर्जन होता है, न ही उसका प्राण–प्रतिष्ठा होती है, वह स्वयंभू हैं।'' (पेज 11)

''The idol of Lord Ram Lala, whether of stone or Ashtdhatu, after being installed will only be called immovable. That idol is called Lord Salig Ram. The idol of Lord Salig Ram is neither installed nor immersed nor vivified; it is self-created.'' (E.T.C)

''विवादित स्थल के उत्तर की तरफ एक राम जन्म स्थान नामक जगह है।

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वह एक मन्दिर की शक्ल में है। मैं उसके भीतर कभी नहीं गया। विवादित स्थल और उस स्थान के बीच में तकरीबन 60–70 कदम का फासला होगा।'' (पेज 51)

"To the north of the disputed site there is a place called Ramjanmsthan. That is in the shape of a temple. I never entered it. The distance between the disputed site and that place would be nearly 60-70 paces." (E.T.C)

PW-13, Suresh Chandra Mishra

''मैं साइंटिफिक टैम्परामेंट का आदमी हूँ, मैं किसी मूर्ति की पूजा नहीं करता।

प्रश्न– आप आस्तिक हैं या नास्तिक ?

उत्तर– मैं इन दोनों धाराओं को नहीं मानता।

मैं वेदों को इतिहास के श्रोत के रूप में ही मानता हूँ। वरना उसमें कोई आस्था जैसी चीज नहीं है।'' (पेज 3)

"I am a man of scientific temperament; I do not worship any idol.

Question:- Are you a theist or atheist?

Answer:- I do not believe in any of these two thoughts.

I consider Vedas only to be the source of history. Except that I do not have any thing like faith in them." (E.T.C)

''रघुवंश में राम के बारे में जिक्र है। मैंने आदि कवि वाल्मीक का राम (नाम) भी सुना है। रामायण उनकी प्रसिद्ध रचना है। ऐसा नहीं है कि वाल्मीकि ने रामायण अपने शिष्यों को सुनाई हो और उन्होंने उसे जबानी याद करके बाद में लिखा हो।'' (पेज 14)

"There is mention of Rama in Raghuvansh. I have heard of the earliest poet Valmiki by the name of Ram as well. It is not that Valmiki recited the Ramayana to his disciples, who committed it to their memory and later put it in writing." (E.T.C)

''अनुश्रुति और पर्वती ग्रन्थों के हिसाब से वाल्मीकि ने इस पुस्तक की रचना तमसा नदी पर शुरू की थी। तमसा नदी को कुछ लोग तोमस से समीकृत

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करते हैं। यह अयोध्या से कुछ फासले पर दक्षिण में है। वाल्मीकि जी का समय निश्चित नहीं है लेकिन उनकी रामायण से लगता है कि जिस वक्त उसकी रचना की गई तब अयोध्या में मनुष्यों की आबादी थी।'' (पेज 14)

"As per Anushruties and Parvati treatises, Valmiki has started composing this book at the river Tamsa. Some people associate the river Tamsa with Tomas. It is in the south at some distance from Ayodhya. The period of Valmiki is not definite but it appears from his Ramayana that there was human inhabitation in Ayodhya at the time it was composed." (E.T.C)

''मैंने रामायण को पढ़ा है। इस पुस्तक में कहीं–कहीं उस समय के लोगों की वेशभूषा, रहन–सहन, सामाजिक व्यवहार व तीज–त्योहारों का जिक्र भी आता है। रामायण में मुख्य चरित्र राम का है जो अयोध्या काण्ड से ऐतिहासिक रूप से शुरू होता है और उत्तर काण्ड तक चलता है।'' (पेज 14)

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"I have read the Ramayana. This book also mentions at certain places about the dress, way of living, social behaviour and festivals of people of that time. The main character of Ramayana is that of Rama which,historically, begins from Ayodhya Kand (Ayodhya canto) and extends up to Uttar Kand (Uttar canto)." (E.T.C)

''जिस बस्ती, नगर, गांव में किसी का जन्म होता है वह उसकी जन्मभूमि बोली जाती है, वह उसका जन्मस्थान होता है।'' (पेज 17)

"A hamlet, town or village in which one is born is called his birthplace; that is his birthplace." (E.T.C)

''वाल्मीकि रामायण में श्रीराम के मुख से उनके जन्मस्थान का जिक्र कराया गया है, जो जन्मभूमि के नाम से है, लेकिन यह बाद में की गई बढ़ोत्तरी हो सकता है। मेरी तीज–त्योहारों में आस्था है, उनमें मेरी भागीदारी भी है और उनको मैं मनाता भी हूँ। जब मैं अयोध्या गया तो मैंने इसे एक इतिहासकार के रूप में देखा।'' (पेज 17)

"The Valmiki Ramayana sees the mention of Janmsthan

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(birthplace) coming from the mouth of Sri Rama, which Janmsthan is known as Janmbhumi but it may be a subsequent addition. I have faith in festivals; I also take part in them I also believe in them. When I visited Ayodhya, I saw it as a hostorian." (E.T.C)

"मेरे माता–पिताजी अयोध्या मन्दिर में दर्शन के लिए गए थे (फिर कहा) वे राम मन्दिर के दर्शन के लिए भी गए थे। यह ठीक है कि अपनी श्रद्धा के अनुसार उन्होंने वहाँ पर मिष्ठान्न और पुष्प चढ़ाए और दर्शन भी किया। मुझे विवादित स्थल के जानने के बारे में जिज्ञासा उस वक्त भी थी। मेरी जिज्ञासा शुरू से ही रही है। लगभग 1960 से ही मुझे इसको जानने की जिज्ञासा पैदा हो गई थी। मैंने उस समय श्रीराम की कथा पढ़ी थी।" (पेज 17–18)

"My parents had gone to have darshan at the Ayodhya temple. (Further stated) They had gone to also have darshan of the Rama temple. It is true that they had as per their faith offered sweets and flowers and had got darshan thereat. Even at that time I had curiosity to know about the disputed site. I have been curious right since the beginning. Curiosity to know about it developed in me since around 1960 itself. I had read the story of Shri Rama at that time." (E.T.C)

"मैंने पी. कार्नेगी द्वारा लिखा इतिहास पढ़ा है। मुझे इस किताब के लिखने की तारीख याद नहीं। वे फैजाबाद डिवीजन के कमिश्नर थे। मुझे मालूम नहीं कि इस किताब का इंद्राज अयोध्या के प्रथम बंदोबस्त में किया गया था या नहीं। यह ठीक है कि इस पुस्तक का पूरा नाम ए हिस्टारिकल स्केच ऑफ तहसील फैजाबाद, जिला फैजाबाद इन्क्लूडिंग परगना हवेली अवध एण्ड पश्चिम राड विद ओल्ड कैपिटल अयोध्या एण्ड फैजाबाद बाई पी. कार्नेगी है। उस पुस्तक में उन मन्दिर–मस्जिद और गुरूद्वारों का इंद्राज किया गया है जो उस समय तक मौजूद थे।" (पेज 22)

"I have read history written by P. Carnegie. I do not remember the date on which this book was written. He was

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the Commissioner of the Faizabad division. I do not remember whether this book was recorded in the First Settlement of Ayodhya or not. It is true that the full name of this book is: 'A Historical Sketch of Tahsil Faizabad including Pargana Haveli Awadh and Pashchim Rod with Old Capital Ayodhya, Faizabad by P. Carnegie. This book records temples, mosques and Gurudwaras which were present by that time." (E.T.C)

"मुझे मूर्तियों तक जाने के लिए रोका गया था इसलिए मैं अपने माता–पिता के साथ अन्दर नहीं गया।" (पेज 33)

"I had been forbidden to go up to the idols, that is why, I could not go inside along with my parents." (E.T.C)

"महापुराणों में स्कन्ध पुराण भी एक पुराण है। स्कन्ध पुराण एक बड़ी पुस्तक है जो कई भागों में है। स्कन्ध पुराण में अयोध्या महात्म्य एक खण्ड का भाग है। प्राचीन भारतीय इतिहास में तीर्थों और उपतीर्थों का जिक्र आया है।" (पेज 35)

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"Out of the Maha-puranas, Skandha-purana is also a Purana. Skandha-purana is a voluminous book which has many parts. In Skandha-purana, Ayodhya Mahatmya is a portion of one of its parts. 'Teerthas'(sites of pilgrimage) and 'Up-Teerthas' (minor sites of pilgrimage) have found mention in ancient Indian history." (E.T.C)

"हिन्दू लोग उस गुप्तारघाट को भी तीर्थ मानते हैं जहाँ कथाओं के अनुसार श्रीराम गुप्त हुए बताए जाते हैं। ग्रन्थों के आधार पर यह तथ्य आता है कि श्रीराम का जन्म अयोध्या में हुआ।" (पेज 38)

"Hindus regard the Guptarghat, too, as a place of pilgrimage where, as per stories, Sri Rama is stated to have disappeared. From the treatises it is believed that Shri Rama was born at Ayodhya." (E.T.C)

"मैं पाली भाषा भी जानता हूँ लेकिन मलियाली नहीं जानता।" (पेज 41)

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"I also know Pali language but don't know Malyali." (ETC)

''स्कन्ध पुराण मैंने संस्कृत भाषा में पढ़ा है। सूट नं0–5 का पेपेर नं0–107सी–1/75 मैंने देख लिया है।'' (पेज 41)

'' I have read the Skandha-purana in Sanskrit. I have gone through paper no. 107C-1/75 of the suit no.5." (ETC)

''सरयू नदी के जल में स्नान करके पापियों में मोह उत्पन्न करने वाले तथा बुद्धिमान बनाने वाले पिण्डारक की पूजा करनी चाहिए। इस (पूज्य) देवता की यात्रा नवरात्रि के दिनों में करनी चाहिए। उसकी दिशा के पश्चिम दिशा में विघ्नेश की निश्चित ही पूजा करनी चाहिए।'' (पेज 41)

''After taking a dip in the river Saryu one should worship Pindarak, who arouses the sense of attachment in sinners and makes one wise. One should make a trip to this (venerated) deity during the days of Navratri. One should certainly worship Vighnesh located in its western direction.'' (E.T.C)

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''पिण्डारक शब्द का अर्थ है पूज्यनीय देवता। जिसका उल्लेख अयोध्या महात्म्य में आया है।'' (पेज 42)

''The word Pindarak means 'revered deity', who has found mention in Ayodhya Mahatmya.'' (E.T.C)

''जिस विघ्नेश के दर्शन करने से लोगों को रंचमात्र भय नहीं होता। इस कारण से सभी प्रकार की इच्छाओं को फल देने वाले विघ्नेश्वर की पूजा करनी चाहिए। उस स्थान के उत्तर पूर्व दिशा में राम जन्म स्थान पड़ता है। इस जन्मस्थान को मोक्ष इत्यादि के फल को देने वाला कहा गया है। विघ्नेश्वर के पूर्व भाग में तथा वशिष्ठ के उत्तर विघ्नेश्वर के पूर्व भाग में जन्मस्थान है। जिसको देखने से मनुष्य को गर्भ में (रहने) से, बिना दान दिए, तपस्या किए, बिना तीर्थ गए, बिना किसी यज्ञ (होम) किए विजयी हो जाता है। (या मुक्त हो जाता है)।'' (पेज 42)

''One should worship Vighneshwar, after having whose darshan people do not have even an iota of fear and who by means of this fructifies all types of desires. Ramjanmsthan lies in north-west of that place. This place

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is called the provider of liberation etc. In the eastern part of Vighneshwar located in the north of Vashishtha lies Janmsthan, by having sight of which one conquers the stage of being in womb (or one is liberated) without making any gifts, without practising austerities, without going on pilgrimage and without making any sacrifices." (E.T.C)

"मैं इस निष्कर्ष पर पहुँचा हूँ कि अयोध्या एक धार्मिक नगरी भी है। इन पुस्तकों और पुराणों में कहीं ऐसा आया भी है और कहीं–कहीं नहीं भी आया कि भगवान विष्णु ने राम के रूप में अयोध्या में अवतार लिया। यह ठीक है कि कुछ लोग मानते हैं और सदियों से श्रीराम की पूजा भगवान के रूप में करते आए हैं लेकिन ऐसे लोग वैष्णव सम्प्रदाय या रामभक्त हैं। यह भी ठीक है कि ये लोग अयोध्या में तीर्थ यात्रा के लिए विभिन्न स्थानों पर जाते हैं।" (पेज 176)

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"I have come to a conclusion that Ayodhya is a religious town as well. In these books and the Puranas, it is somewhere mentioned and somewhere not mentioned that Lord Vishnu incarnated himself as Rama in Ayodhya. It is true that some people believe in him and have been worshiping Sri Rama as God for centuries but such people are followers of the Vaishnavite sect or Rama-worshipers. It is also true that these people visit different places in Ayodhya as part of their pilgrimage." (E.T.C)

"तमाम मान्यताओं में से यह एक मान्यता हो सकती है कुछ लोगों की कि अयोध्या में भगवान राम ने जन्म लिया था इसलिए यह तीर्थस्थान है।

प्रश्न– जो लोग भगवान श्रीराम की आराधना करते हैं वे लोग अयोध्या को उनकी जन्मस्थली मानते हैं ?

उत्तर– यह ठीक है।" (पेज 177)

"Of many beliefs it may be a belief of some people that Lord Rama took birth at Ayodhya and as such it is a place

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of pilgrimage.

Question:- Do Rama-worshiping people consider Ayodhya to be his bithplace?

Answer:- It is true." (E.T.C)

"मैंने राम जन्मभूमि के बारे में जो निर्णय लिया है उसका आधार मेरा स्कन्द पुराण का अध्ययन मुख्य रूप से और तीर्थ सम्बन्धी तमाम लिटरेचर जो 17वीं शताब्दी तक चलता है और मेरे सर्वेक्षण के आधार पर है। मैंने जो पुस्तक में मेजरमैंट दिए हैं उनको चेक करने की कोशिश की है। मैंने मौके पर नपाई नहीं की। लेकिन आँखों से देखकर उसकी सच्चाई का आंकलन किया है।" (पेज 215)

"My inference in regard to Ram Janam Bhumi, is based mainly on my study of Skanda Purana and is also based on plenty of pilgrimage-related literature which extends up to the 17th century and on my survey. I have tried to check the measurements given in the book. I did not try to take measurements on the site. But I have tried to verify its veracity by observing them with the eyes." (ETC)

"1966 या उसके आसपास जब मैं पहली बार अपने माता–पिता के साथ विवादित भवन में आया और वहाँ उन्होंने स्थापित मूर्ति की पूजा की तो अब मुझे याद नहीं कि वह मूर्ति किस देवी या देवता की थी या उन्होंने अपने कौन से इष्टदेव की पूजा की थी। उस वक्त की मुझे बहुत ही हल्की–फुल्की याद है इसलिए मैं नहीं कह सकता कि उन्होंने मुख्य द्वार से अन्दर जाकर किसी एक स्थान या चीज की पूजा की हो जिसे सीता रसोई या चूल्हा कहा जाता हो या चूल्हे की शक्ल की कोई चीज कही जाती हो। मुझे ध्यान नहीं कि वहाँ पर चरणचिन्ह भी हों, जिनकी मेरे माता–पिता ने पूजा की हो। जो मुझे यह सुझाव दिया जा रहा है कि मेरे माता–पिता ने वहाँ पर चरणचिन्हों की या सीता रसोई में चूल्हे की पूजा की थी, यह बात मुझे याद नहीं है इसलिए इसे गलत भी नहीं कह सकता। मेरे माता–पिता उस स्थान की पूजा करने के लिए गए थे, वहाँ पर किसी मूर्ति की पूजा करने नहीं गए थे।" (पेज 238)

"In or around 1966, I first went to the disputed structure

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along with my parents, and if they had worshiped the idol installed there I now do not remember which male or female deity was represented by that idol or which favored deity was worshiped by them. I have faint memory of that time, as such I can not tell whether they had gone inside and worshipped some place or thing called 'Sita Rasoi' or Chulha (hearth) or something shaped like hearth. I do not remember whether foot prints were there which my parents worshiped. I am being led to believe my parent worship foot prints or the hearth in Sita Rasoi there. I do not remember anything, that's why I cannot term them incorrect. My parents had gone to worship that place; they had not gone to worship any idol there." (ETC)

"सवाल : आपके माता–पिता जब उस स्थान पर पूजा के लिए गए तो चाहे वहाँ पर किसी भी देवी–देवता की मूर्ति स्थापित रही हो लेकिन वे इस धारणा से गए थे कि वहाँ पर श्रीराम हैं और उनकी पूजा यानी भगवान श्रीराम की पूजा करनी है ?

उत्तर : वे अयोध्या के तमाम तीर्थस्थलों के साथ इस स्थान को भी देखने गए थे और जाहिर है कि उनकी इसमें आस्था थी। मेरे माता–पिता वहाँ पर पूजा के लिए गए थे।" (पेज 240)

"Question: Do you think that when your parents went to that place of worship having idol of any male or female deity installed there, they had the impression that Sri Rama existed there and they had to offer worship to him, i.e. Lord Sri Rama?

Answer: They had gone to see this place besides many places of pilgrimage at Ayodhya, and it is apparent that they had faith in them. My parents had gone there to offer prayer." (E.T.C.)

"जो लोग अयोध्या में इस तरह से आते हैं, वे मन्दिरों में भी दर्शनों के लिए

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जाते हैं और विवादित स्थल के दर्शन करने भी जाते हैं। मैंने इन दोनों अवसरों पर जब वहाँ गया था, अयोध्या में विवादित स्थल पर ही ज्यादा भीड़ देखी थी। नदी के तट पर भी भीड़ थी। नदी से मेरा अभिप्राय सरयू तट से है। यह ठीक है कि जो लोग अयोध्या में जाते हैं, वे सरयू में स्नान करते हैं, मन्दिरों के दर्शन करते हैं और विवादित स्थल का भी दर्शन करते हैं। वे विवादित स्थल पर भी जाते हैं और अन्य ऐतिहासिक स्थानों पर भी जाते हैं।

– 1. रामनवमी का मेला, 2. बरसात के टाइम झूला, 3. अँगारक चतुर्थी, 4. कार्तिक के मास में सरयू स्नान, 5. रामविवाह मेला, 6. नागपंचमी आदि–आदि कहे जा सकते हैं।'' (पेज 277)

''People who come to Ayodhya in this manner, come here to have Darshan at temples as well and they also go for Darshan of the disputed site. On both of the occasions when I visited there, I had seen a sizable crowd only at the disputed site in Ayodhya. There was a crowd on the bank of the river too. By the river I mean the bank of Saryu. It is true that people who visit Ayodhya, take a dip in Saryu, have Darshan of temples and also have Darshan of the disputed site. They visit the disputed site and also go to other historical places.

They may be called: (1) Ramnavami Fair, (2) Rainy-time Swing (3) Angarak Chaturthi (4) Saryu bath in the month of Kartik (5) Ram Vivah Fair (6) Nagpanchami etc.''

''सामान्य त्योहारों पर चार–पांच हजार लोग इकट्ठा हो जाते हैं जबकि मुख्य त्योहारों पर 20–25 हजार लोग वहाँ इकट्ठा हो जाते हैं। मैं इस बात को अतिश्योक्ति मानता हूँ कि रामनवमी, सावन झूला आदि पर्वों पर वहाँ लाखों की संख्या में लोग एकत्रित होते हों।'' (पेज 278)

''4-5 thousand people assemble there on occasions of ordinary festivals, whereas 20-25 thousand people converge there on occasions of main festivals. I consider it

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to be an exaggeration that lacs of people assemble there on the occasions of Ramnavami, Savan Joola, etc.

''लोकल इन्क्वायरीज के सिलसिले में मैं विवादित स्थल पर गया। मैं ऋणमोचन घाट गया, वशिष्ठ कुण्ड बताए जाने वाले स्ट्रक्चर पर गया। लक्ष्मण घाट, पापमोचन घाट, चक्रटोला जगहों पर गया था।'' (पेज 278)

'' I had gone to the disputed site in connection with local inquiries. I went to Rinmochan Ghat and also visited the structure said to be Vashistha Kund. I visited the places called Lakshman Ghat, Papmochan Ghat, Chakratola etc.

PW-15, Sushil Srivastava

''विवादित स्थल हनुमानगढ़ी मन्दिर से पश्चिम तरफ स्थित है। हनुमानगढ़ी कनक भवन व विवादित स्थल का लेबिल एक नहीं था। इसमें सबसे ऊँचा स्थान विवादित स्थल था फिर हनुमानगढ़ी और उसके बाद कनक भवन। विवादित स्थल व हनुमानगढ़ी एक पठार पर है अर्थात टीले पर हैं। विवादित स्थल में मैं पूरब वाले दरवाजे से भीतर गया था।'' (पेज 11)

''The disputed site is situated towards western side of Hanuman Garhi. The level of Hanuman Garhi, Kanak Bhawan and disputed site was not same. The highest place amongst these was disputed site, then Hanuman Garhi and thereafter, Kanak Bhawan.The disputed site and Hanumangarhi are situate on a plateau, that is,a mound. I entered the disputed site through the eastern door." (ETC)

''उस रिपोर्ट में पी. कार्नेगी ने लिखा है कि मस्जिद बाबर ने बनवाई थी, यह मस्जिद 1528–29 में बनवाई थी। यह भी लिखा है कि यह मस्जिद जहाँ बनवाई गई है वहाँ पर पहले राम जन्म का मन्दिर रहा होगा। यह पी. कार्नेगी का नोट 1867 में प्रकाशित हुआ था। इसके अलावा वहाँ मैंने और कोई रिकार्ड नहीं देखा।'' (पेज 14)

"In that report, P. Carnegie has written that the mosque was got constructed by Babar in 1528-29. It is also written that at the place, where this mosque has been got

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constructed, there might have been Ram Janam temple earlier. This note of P. Carnegie was published in 1867. Except this, I have not seen any other record there."

"परन्तु 1850 के बाद यह बात ब्रिटिश रिकार्ड से साफ हुई कि पहले यहाँ मन्दिर था और उसे तोड़कर मस्जिद बनाई गई। ऐसा कोई आधार मुझे नहीं मिला जिस पर मैं यह कह सकूं कि ब्रिटिश लोगों ने 1850 के बाद जो लिखा है कि यहाँ मन्दिर तोड़कर मस्जिद बनाई गई हो, वह गलत हो। 1858 के बाद ब्रिटिश रूल भारत में लागू हुआ था अर्थात डायरेक्ट लागू हुआ था।" (पेज 16)

"But after 1850, it became clear from the British record that earlier here was a temple destroying which mosque was constructed. I have not found any basis enabling me to say that post-1850 version of Britishers that mosque was constructed here after demolishing the temple, is wrong. In India, the British rule came into force, that is, it was directly brought into force after 1858" (ETC)

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"जन्मस्थान का मेरे हिसाब से मतलब उस स्थान से है, जहाँ पर माँ ने बच्चे को जन्म दिया हो। अयोध्या महात्म्य में राम के जन्म की टोपोग्राफी का जिक्र है।" (पेज 54)

" By the word ' Janam sthan I mean a place where mother has given birth to a child. Topography of Rama's birth finds mention in Ayodhya Mahatmya." (ETC)

"हेंस बेकर ने अपनी पुस्तक में यह लिखा है कि विवादित मस्जिद को बाबर ने बनवाया था, इसके पूर्व शायद मन्दिर रहा हो।" (पेज 70)

"Hans Baker has written in his book that the disputed mosque was built by Babar, and prior thereto, it might have been a temple." (ETC)

"प्रश्न – क्या आप यह बताएंगे कि मार्टिन का इस विषय पर क्या निष्कर्ष था ?

उत्तर– माउंट मोमरी मार्टिन यह लिखते हैं कि उनको यह बताया गया कि जिस स्थान पर विवादित ढांचा है वहाँ पर किसी समय पर विक्रमादित्य द्व

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ारा निर्मित एक राम मन्दिर था।'' (पेज 96)

"Question: Would you tell what was the finding of Martin on this subject?

Answer: Mount Gomeri Martin writes that he was told that there had once been a Rama temple built by Vikramaditya at the place where the disputed structure stands.

''इस वाद की विषयवस्तु यानी विवादित ढांचा को हिन्दू लोग भगवान राम का जन्मस्थल मानते हैं तथा मुसलमान बाबरी मस्जिद मानते हैं। विवादित ढांचे का निर्माण आधुनिक काल में नहीं हुआ है बल्कि मध्यकाल में हुआ है।'' (पेज 109)

"Hindus consider the subject-matter of this suit, that is, the disputed structure to be birth place of Lord Rama. The disputed structure has not been constructed in the modern period ; rather, it was constructed in the medieval period." (ETC)

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''अटाला मस्जिद के बारे में स्थानीय लोगों द्वारा यह कहा जाता है कि पुराने मन्दिर को नष्ट करके मस्जिद बनाई गई।'' (पेज 110)

"Regarding Atala Mosque, it is said by the locals that the mosque was built after destroying the old temple." (ETC)

''अयोध्या महात्म्य में राम के जन्म के बारे में लिखा गया है। अयोध्या महात्म्य में अयोध्या में जो राम के जन्म का स्थल दिया गया है, उससे मैं सहमत हूँ। इस पुस्तक में लोमश ऋषि का आश्रम दिया गया है। यानी उसका वर्णन है। उसमें विघ्नेश्वर स्थान का भी वर्णन किया गया है। अयोध्या महात्म्य में वशिष्ठ मुनि के आश्रम का भी वर्णन किया गया है।'' (पेज 124)

" It is written about birth of Rama in Ayodhya Mahatmya. I agree with what is mentioned in Ayodhya Mahatmya about the birth place of Rama. The hermitage of sage Lomash has found mention in this book, that is, it is described therein. It also describes Vighneshwar sthan. The

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hermitage of seer Vashishtha has also found description in Ayodhya Mahatmya". (ETC)

"अयोध्या महात्म्य में लोमश ऋषि के आश्रम एवं वशिष्ठ मुनि विघ्नेश्वर के आश्रम के रिफ्रेन्स से राम जन्मभूमि के स्थान को लोकेट किया गया है। अयोध्या महात्म्य के अनुसार राम जन्मस्थान लोमश ऋषि आश्रम के पश्चिम, विघ्नेश्वर मन्दिर के पूरब और वशिष्ठ मुनि के आश्रम से उत्तर स्थित बताया गया है। मुझे विघ्नेश्वर मन्दिर नहीं उसका एक खम्भा मिला, जिस पर 'विघ्नेश्वर' लिखा था। मुझे लोमश ऋषि का आश्रम नहीं दिशा। वशिष्ठ मुनि का आश्रम भी नहीं दिखा, लेकिन उसके बारे में लोगों ने बताया।" (पेज 125)

" From references about the hermitages of sage Lomash and seer Vashishtha in Ayodhya Mahatmya, the birthplace of Rama has been located. As per Ayohya Mahatmya, Ram Janam Sthan is situated west of Lomash Rishi Ashram, east of the Vighneshwar temple and north of Vashishtha Muni Ashram. I did not come across the Vigheneshwar temple; rather, I saw a pillar with the word " Vighneshwar" engraved thereon. I did not come across the hermitage of sage Lomash. I also did not see the hermitage of seer Vashishtha, but people told me about him". (ETC)

"मैंने वाल्मीकि की रामायण का नाम सुना है। वाल्मीकि रामायण में अयोध्या नगरी का और उसमें रामचन्द्र के जन्म का विवरण है। मैंने पूरी तरह से रामचरितमानस पूरी तरह से नहीं पढ़ा। रामचरितमानस में भी अयोध्या नगरी व राम जन्म के विवरण हैं।" (पेज 127)

" I have heard of the Valmiki Ramayan. The Valmiki Ramayan has description of Ayodhya Nagri as also of the birth of Ramchandra there at. I did not go through the whole of the Ramcharitra Manas. The Ramcharitra Manas has also description of Ayodhya Nagri and the birth of Rama". (ETC)

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''अयोध्या महात्म्य में यह भी लिखा गया है कि अयोध्या में भगवान राम का जन्म हुआ और जन्मस्थान के मन्दिर पर हर तीर्थ यात्री को जाना चाहिए और यह भी लिखा है कि उस स्थान पर जाने से उस व्यक्ति को मुक्ति मिल जाएगी।'' (पेज 146)

"It is also written in Ayodhya Mahatmya that in Ayodhya, Lord Rama was born and every pilgrim should visit the temple at the birthplace; it is also written that by visiting that place, a person will atain Mukti (liberation)." (ETC)

''अयोध्या महात्म्य में यह माना गया है कि जिस स्थान पर भगवान का जन्म माना गया था, उस स्थान पर एक मन्दिर है।'' (पेज 147)

" It is reckoned in Ayodhya Mahamtya that there is a temple at the place to which the birth of Bhagwan was attributed".(ETC)

''1800 ई0 से पहले यह वृतान्त मिलता है कि रामकोट में हिन्दू लोग इकट्ठा होकर राम के अभिनन्दन में आकर राम की पूजा करते थे।'' (पेज 171)

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"Prior to 1800 AD, we come across such an instance that Hindu community after assembling in Ramkot in honour of Rama , used to worship him." (ETC)

''यह सही है कि विवादित स्थल रामकोट के इलाके के अन्दर आता है और आता था।'' (पेज 172)

"It is true that the disputed site comes and came within the area of Ramkot." (ETC)

''करीब–करीब 5वीं सदी तक राम की जन्मभूमि अयोध्या थी। पांचवीं सदी के बाद यह बात समाप्त हो गई और फिर 11वीं व 12वीं शताब्दी में यह बात फिर से रिवाईव हो गई।'' (पेज 217)

" Ayodhya was considered to be the birthplace of Rama upto circa 5th century A.D.. This conception came to an end after the 5th century and it got revived in the 11th and 12th centuries".(ETC)

''यह कहना सही है कि भारत में हिन्दुओं की धारणा अर्थात सभी लोगों की

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धारण यह बनी रही कि अयोध्या राम की जन्मभूमि है और यह धारणा बराबर चलती रही है शुरू से आज तक।'' (पेज 217)

"It is correct to say that in India it continued to be the conviction of Hindus, that is , of all the people that Ayodhya is the birthplace of Rama, and this conception has been in prevalence all along, that is, from the beginning until now ." (ETC)

''यह ठीक है कि मैं जितने लोगों से मिला अयोध्या में उनमें से कुछ लोगों का ऐसा विचार था कि श्रीराम की जन्मस्थली विवादित ढांचा में हुई हो। मैं जब विवादित स्थल पर गया था उस समय लोगों को पूजा करते देखा था पर मैं यह नहीं कह सकता कि वह किस आस्था से पूजा करते थे।'' (पेज 312)

"It is true that some of those whom I met in Ayodhya had the opinion the birthplace of Sri Rama might have been at the disputed structure. When I visited the disputed site, I saw people offering worship but I can not see with what faith they offered worship."(ETC)

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''यह सही है कि मैंने जितने अंग्रेजी साहित्यों को पढ़ा उसमें राम की जन्मस्थली को ही राम जन्मभूमि दिखलाया गया।'' (पेज 313)

"It is true that Rama's birthplace itself was shown to be Ram Janam Bhumi in all that English literature I went through".(ETC)

PW-16, Prof. Suraj Bhan

''स्कन्ध पुराण में मैंने अयोध्या महात्म्य को पढ़ा है। अर्थात स्कन्ध पुराण में अयोध्या महात्म्य एक भाग है।'' (पेज 8–9)

"In Skandha Purana, I have read about the importance of Ayodhya. That is to say Ayohdya Mahatmya is a part of Skand Puran." (ETC)

''परन्तु मन्दिर के लिए अर्थात हर मन्दिर के लिए गर्भगृह का होना आवश्यक है। मन्दिर के लिए गर्भगृह का होना आवश्यक है, जहाँ देवता

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विराजमान हो, बाकी चीजों का होना आवश्यक नहीं है। मन्दिर बनाने का कोई एक स्वरूप नहीं दिया गया है।'' (पेज 9)

'' But it is necessary for a temple, that is, every temple to have sanctum sanctorum. It is necessary for a temple to have a sanctum sanctorum. Where a deity is seated, rest of the things need not be there. No particular shape has been given for the construction of a temple.'' (ETC

''जब मैं अयोध्या गया तब विवादित स्थल को निर्धारित करने के लिए हम लोगों ने लोमष आश्रम को आधार बनाया था, यह आधार हम लोगों ने अयोध्या महात्म्य के आधार पर बनाया था। यह मुझे याद नहीं है मेरी पहली यात्रा में मेरी टीम के सभी साथी साथ थे या नहीं।'' (पेज 44)

"When I visited Ayodhya, we made the Lomash Ashram(hermitage) a basis for determination of the disputed site. We had chosen this basis on the premise of Ayodhya Mahatmya.I do not remember whether all my colleagues comprising my team were with me or not in course of my first journey." (ETC)

''मुझे याद नहीं कि जब मैं विघ्नेश्वर मन्दिर पहुँचा तो उस स्थान पर यह लिखा हो कि यह विघ्नेश्वर मन्दिर हो, लेकिन लोग वहाँ बता रहे थे कि यह विघ्नेश्वर मन्दिर है और मिश्र जी भी यह जानते थे कि यह विघ नेश्वर मन्दिर है। ऐसा नहीं कि मैंने मिश्र जी के कहने पर यह मान लिया कि यह विघ्नेश्वर मन्दिर है बल्कि लोगों ने भी ऐसा ही बताया और तब मैंने उसे मान लिया।'' (पेज 47)

'' I do not remember whether on reaching the Vighneshwar temple, the words 'Vighneshwar temple' were found to be written there at. But people were telling that it was Vigheshwar temple and Mishraji also knew that it was Vighneshwar temple. It is not that I took it to be Vighneshwar temple on being so told by Mishraji; rather, people also told me such thing and only then I took it to be

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such (a temple).“ (ETC)

''लौमष एक ऋषि थे और उनका आश्रम अयोध्या में है और जिसको लौमष आश्रम या तीर्थ कहते हैं।'' (पेज 50)

“Lomash was a sage with his hermitage in Ayodhya which is called Lomash Ashram(hermitage) or Teertha." (ETC)

''यह सही है कि आस्था की अंग्रेजी फेथ (Faith) होगी। आस्था दर्शन की बात है और परम्परा उसे लोगों में ले जाती है। यह सही है कि परम्परा की अंग्रेजी ट्रेडीशन है। यह सही है कि बहुत सी जगहों पर मूर्ति नहीं होती है पर लोग उस स्थान की पूजा करते हैं।'' (पेज 106)

It is true that English word for 'Astha' would be 'faith'. Faith is is a philosophical term and 'parampara' (tradition) passes it on to people. It is true that 'parampara' is rendered as tradition in English. It is true that people offer worship even at those places where idols do not exist." (ETC)

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''मेरे विवादित स्थल के अन्वेषण के समय उक्त संस्था के चेयरमैन प्रो0 इरफान हबीब थे। यह सही है कि इसी संस्था के माध्यम से हमें विवादित स्थल का अन्वेषण करने के लिए ग्रांट मिली थी।'' (पेज 167)

“ At the time of my exploration at the disputed site, Prof. Irfan Habib was chairman of the said institution. It is true that we had received grant for exploration of the disputed site through this very institution”.(ETC)

PW-18, Suvira Jaiswal

''मैं जब से होश संभाला, अपने माता–पिता को आर्य समाजी ही पाया था। फिर कहा कि शायद मेरे माता–पिता जी 1904 में आर्य समाजी ही बने थे। मैं शुरू से अर्थात् पैदाइश से ही आर्य समाजी अपने को मानती रही थी। यह सही है कि आर्य समाजी लोग ईश्वर को कोई मूर्ति पूजा नहीं मानते, पर ईश्वर का अस्तित्व मानते हैं।'' (पेज 3)

“ When I came of age, I found my parents to be Arya Samajist.(Further stated) my parents became Arya

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Samajist perhaps in 1904 A.D. I continued to consider myself to be an Arya Samajist right since the beginning, that is, my birth. It is true that Arya Samajists do not have any faith in idolatry but believe in the existence of God." (ETC)

"मेरे हिसाब से विष्णु का पहला मंदिर विदिशा वाला मंदिर ही था अर्थात ऐसा ही साक्ष्य अभी तक जो मिला है।" (पेज 7)

"Vidisha- situated temple itself was, in my opinion, the first temple of Vishnu, that is to say, the evidence available to date suggest so." (ETC)

"मैंने मूल शिला लेख नहीं पढ़ा था, बल्कि जो किताब में छपा था, उसे पढ़ा है। लेख में कोई तस्वीर नहीं बनी है, बल्कि यह लिखा है कि गरुड़ध्वज स्थापित किया।" (पेज 8)

" I had not read the original inscription; rather, I have gone through what was published in the book. No picture is carved in the inscription; rather it is written that 'Garudh Dhwaj' was established". (ETC)

"यह सही है कि वाल्मीकी रामायण की रामकथा का जिक्र दशरथ जातक में मिलता हैं मैंने इसे पढ़ा है। दशरथ के पुत्र राम वही राम है जो वाल्मीकी रामायण में मिलते हैं और दशरथ जातक कथाओं में।" (पेज 11)

"It is true that the story of Rama of Valmiki Ramayana finds mention in Dashratha Jataka which I have read. Rama, son of Dashratha, is the same Rama that finds mention in Valmiki Ramayana and in the fables of Dashratha Jataka." (ETC)

"स्कन्ध पुराण में अयोध्या महात्म्य का एक पूरा अध्याय है।" (पेज 20)

"There is one full chapter of Ayodhya Mahatmay in Skand Puran". (ETC)

"यह ठीक है कि हिन्दू धर्म में यदि किसी जगह पर आस्था है तो उस जगह भी पूजा पाठ हो सकती है। यह जरूरी नहीं है कि वहां पर मंदिर

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बना हो।'' (पेज 27)

"It is true that Puja- Path (worship-prayer) can be offered in Hindu religion at a place if people have faith in such a place. It is not necessary that a temple is built there. " (ETC)

''मैंने ऐसा लेख पढ़ा है कि अबुल फजल ने यह लिखा है कि रामनवमी मनायी जाती थी। यह राम के अर्थात रामनवमी के दिन मनाई जाती थी।'' (पेज 28)

"I have gone through a write- up that Abul Fazal has written that Ram Navmi was celebrated. It was celebrated on the day of Rama, that is, RamNavmi."(ETC)

''मूलवाद सं0 5/89 में दाखिल पेपर सं0 118–सी–1/60 की ओर दिलाया एवं पैरा 3 एवं फुटनोट 7 को पढ़कर सुनाया एवं गवाह ने स्वयं भी पढ़ा और कहा कि मैं यह मानती हूँ कि श्रीराम को दूसरी शताब्दी में नारायण का अवतार माना जाता था।'' (पेज 77)

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"The attention of the witness was drawn to paper no. 118-C-1/60 filed in original suit no. 5/89 and its para 3 and footnote 7 was read over to her. The witness herself went through the said paper and stated -I consider that Sri Rama was considered to be an incarnation of Narayan in the 2nd century A.D." (ETC)

''इस मरहले पर गवाह का ध्यान मूलवाद सं0–5/89 में दाखिल पेपर सं0–107सी–1/75 की ओर दिलाया, गवाह ने पृष्ठ 73 को पढ़कर उत्तर दिया कि श्लोक नं0–13, 14, 15 में सरयू नदी में स्नान करना और स्नान के बाद जो फल मिलता है, उसका वर्णन किया गया है। श्लोक नं0–16 में विघ्नेश्वर की स्थिति बताई गई है। श्लोक नं0–17 में विघ्नेश्वर के दर्शन का महत्व है और उससे क्या फल प्राप्ति होती है। श्लोक नं0–18 में विघ्नेश्वर से राम जन्मभूमि की स्थिति बताई गई है। श्लोक नं0–19 में विघ्नेश्वर, वशिष्ठ एवं लोमश से किस तरह जन्मस्थान स्थित है, यह बताया गया है; श्लोक नं0–20 में दर्शन का क्या फल होता है, यह दे दिया गया है। श्लोक नं0–21 में नौमी के दिन स्नान के बाद दर्शन का क्या फल होता है, यह दिया गया है। श्लोक नं0–22, 23, 24 और 25 में स्नान, पूजा करने और आश्रम में रहने से क्या फल प्राप्त होता

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है, यह दर्शाया गया है।'' (पेज 80)

"In this behalf, the attention of the witness was drawn to paper no. 107C-1/75 filed in original suit no. 5/89.Reading its page 73 the witness replied- Versus 13, 14 and 15 have description of taking a dip in the river Saru and of the results emanating from such dip. The location of Vighneshwar is mentioned in verse 16. Verse no. 17 speaks about the importance having Darshan of Vighneshwar and also about the results derived from such Darshan. Verse no. 18 has pointed out the location of Ram Janam Bhumi from Vighneshwar. Verse no. 19 has described about the location of Ram Janam Sthan from the places known as Vighneshwar , Vashishtha and Lomash Verse no. 20 speaks about the results derived from Darshan. Verse no. 21 describe what results are obtained from having Darshan after taking a dip on the 9th day. Verses 22, 23 , 24 and 25 describe about what results are obtained from taking a dip, offering prayer and dwelling in a hermitage."(ETC)

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''यह मुझे मालूम है कि अयोध्या में राम की पूजा परम्परागत रूप से होती चली आ रही है। यह ठीक है कि चैत्र की शुक्ल पक्ष नवमी के दिन श्रीराम के अनुयायी उनके जन्मदिन के रूप में उसे मनाते चले आ रहे है। अयोध्या के तीर्थ स्थलों में मैंने गोप्रतार अथात् गुप्तार का नाम सुना है। वर्तमान में उस जगह को श्रीराम का गुप्त होने का स्थान मानते हुए वहां पर नहाना, पूजा आदि करते चले आ रहे है। अर्थात् राम के अनुयायी।'' (पेज 86)

"I know that the worship of Rama has been continuing by way of tradition in Ayodhya. It is true that the followers of Shri Rama have been observing the ninth day of Shukla Paksha of Chaitra month as his birthday. Among the sites of pilgrimage at Ayodhya, I have heard the name of Gopratar or Guptar. Currently believing that Shri Rama

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vanished at this place, they have been taking bath, offering worship etc. That is to say, they are followers of Rama." (E.T.C)

''यह ठीक है कि परम्परागत रूप से वैष्णव धर्म के मानने वाले रामनवमी के दिन अयोध्या में सरयू स्नान और श्रीराम के दर्शन हेतु जाते हैं।'' (पेज 93)

"It is true that by way of tradition the followers of Vaishnavism go to take a dip in Saryu and to have darshan of Shri Rama at Ayodhya on the occasion of Ram Navami." (E.T.C)

''यह सही है कि इस मुकदमे में एक वर्ग के लोग इसे अपने आराध्य देव की जन्मभूमि मानते है। यह विवादित स्थल अयोध्या में स्थित है।'' (पेज 104)

"It is true that people belonging to one side in this case consider it to be the birthplace of their adored deity. This disputed place is situated at Ayodhya." (E.T.C)

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''विद्वान जिरहकर्ता अधिवक्ता ने गवाह का ध्यान मूलवाद सं0–5/89 में दाखिल पेपर सं0–261सी/1 की पृष्ठ सं0–192 की ओर दिलाया। गवाह ने पढ़कर कहा कि श्लोक नं0–3 व 4 में विष्णु के आयतन का वर्णन है, विष्णुहरि मन्दिर का वर्णन नहीं है। आयतन का मतलब मन्दिर से होता है।'' (पेज 106)

''Attention of the witness was drawn to page no. 192 of Paper No. 261C/1, reading which the witness said that in Verses no. 3 and 4 there is mention of 'Ayatan' of Vishnu and not of Vishnu Hari Mandir, Ayatan connotes temple." (ETC)

''वाल्मीकि रामायण में श्रीराम की जन्म तिथि, और उनकी जन्मभूमि का उल्लेख आया है। इस वाल्मीकि रामायण में इस बात का जिक्र है कि इच्छवाकु वंश में राजा के घर में श्रीराम का जन्म हुआ और उनका बाल्यकाल अयोध्या में बीता।'' (पेज 106)

"The date of Shri Rama's birth as well as his place of birth

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has found mention in the Valmiki Ramayana. It is mentioned in the Valmiki Ramayana that Shri Rama was born in royal family belonging to the Ikshwaku dynasty, and he passed his childhood at Ayodhya." (E.T.C)

''रघुवंश महाकाव्य में राजा अदिति, भगवान राम व उनके वंशज एवं जन्म आदि का विवरण दिया है। यह ठीक है कि उस काव्य में श्रीराम के जन्म के समय प्रसूतिगृह और उनके जन्म के पूर्व देवताओं द्वारा दुंदुभी बजाने का विवरण है।'' (पेज 108–109)

"Details about king Aditi and Lord Rama as also about their descendents, birth etc., have been given in an epic called Raghuvansh. It is true that this epic has details about the maternity home as it existed at the time of Shri Rama's birth and also about trumpets having been sounded by gods before his birth." (E.T.C)

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''यह ठीक है कि रामचरितमानस में अयोध्या के उत्तर सटी हुयी सरयू नदी का होना, राम का जन्म, उनकी जन्मभूमि, अयोध्या में उनका कार्यकाल आदि का वर्णन है।'' (पेज 113)

"It is true that the Ramcharit Manas depicts the existence of the river Saryu north of and adjacent to Ayodhya, the birth of Rama, his place of birth, his tenure etc. in Ayodhya." (E.T.C)

''यह कहना सही है कि वाल्मीकी रामायण अयोध्या काण्ड के अंदर श्रीराम के जन्म होने का विवरण है। यह कहना भी सही है कि उक्त रामायण में अयोध्या में आबादी का होना राजा का होना, राज्य की सीमाओं का होना एवं जनता का होना उल्लिखित है।'' (पेज 126)

"It is true to say that details about the birth of Shri Rama are contained in the Ayodhya canto of the Valmiki Ramayana. It is also true to say that the said Ramayana also mentions about there being human inhabitation, king, state borders and public in Ayodhya" (E.T.C)

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''मैंने 80 के दशक में मैंने राम जन्मभूमि को जानने के लिए शोध कार्य किया। अर्थात् सन् 80 से 90 के बीच मे। यह कहना सही है कि 1990 के बाद से आज तक रामजन्मभूमि स्थल के विषय पर मैंने कोई खोज या शोध कार्य नहीं किया।'' (पेज 128)

"I did research work to know Rama's birthplace in 80's, i.e., between 80 and 90. It is true to say from 1990 to date I did not perform any search or research work on the site of Rama's birthplace." (ETC)

''रामकोट नाम का स्थान अयोध्या में है ऐसी मान्यता भी है उसी रामकोट मोहल्ले में श्रीराम का जन्म हुआ था और उस स्थान को पूजनीय मानते हैं और पूजा करते है।'' (पेज 132)

"A place called Ramkot is in Ayodhya. It is also a belief that Shri Rama was born in that very Ramkot locality and (they) consider that place to be venerable and worship it." (E.T.C)

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''यह ठीक है गुप्तकाल के प्रारम्भ में ही अयोध्या नगरी प्रतिष्ठित हो चुकी थी अर्थात् जानी जाती थी। यह कहना सही है कि गुप्तकाल की अयोध्या वही है जो अयोध्या आज जिला फैजाबाद में है। यह भी ठीक है कि विवादित ढांचा भी उसी अयोध्या में स्थित था।'' (पेज 145)

"It is true that right at the outset of the Gupta period Ayodhya Nagari had got established, that is, it was known as such. It is true to say that the Ayodhya of the Gupta period is the same as it exists today at Ayodhya in the Faizabad district. It is also true that the disputed structure was also situated at that very Ayodhya." (E.T.C)

PW-19, Maulana Atiq Ahmed

''जिन किताबों का हवाला दिया है, उनमें कुछ का नाम मुझे याद है। मसलन तुज्क बाबरी, आईने अकबरी और फैजाबाद के मुखतलिफ गजेटियर्स एवं डॉ0 राजेन्द्र प्रसाद की किताब इण्डिया डिवाइडेड आदि–आदि जिन गजेटियर्स का हवाला उन किताबों में दिया गया है और ऐब्सट्रेक्स दिए गए हैं उनमें से बाज में यह बात होना मुझे याद आता

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है कि लोगों में मशहूर यह है कि वहाँ पर राम जी की पैदाइश हुई थी।'' (पेज 73)

"I remember the names of some of the books which have been quoted, for example- Tuzuk-e-Babri, Ain-e-Akbari, many gazetteers of Faizabad, Dr. Rajendra Prasad's book 'India Divided', etc. I remember that it is known to public that it is mentioned in some of the gazetteers-which have been quoted in those books and extracts of which have been given- that Ram Ji was born over there." (E.T.C)

''यह बात याद है कि आइने अकबरी में इसका जिक्र है कि अयोध्या हिन्दुओं की तीर्थगाह है जहाँ वह स्नान करने आते हैं। पर वहाँ वह मन्दिरों में पूजा अर्चना करने आते हैं या नहीं यह याद नहीं है। इतना याद है कि उसमें यह जिक्र है कि हिन्दू वहाँ नहाने आते हैं और वे क्या करते हैं, यह याद नहीं है।'' (पेज 76)

"I remember that it is mentioned in Ain-e-Akbari that Ayodhya is a place of pilgrimage for Hindus where they come to have take dip. I do not remember whether or not they come over there to offer prayer-worship at the tmeples. I remember to extent that it is therein mentioned that Hindus come to that place for taking a dip; I do not remember what else they do there." (E.T.C)

''मुझे यह जानकारी पहले भी थी और आज भी है कि अयोध्या में हिन्दुओं के बहुत से मन्दिर हैं।'' (पेज 77)

"I knew it earlier and I know it even today that there are many temples of Hindus in Ayodhya" (E.T.C)

PW-20, Prof. Shirin Musavi

''आइने अकबरी अबुल फज्ल ने 1586 से लिखना शुरु किया और 1598 में फार्मली क्लोज किया। अबुल फज्ल अकबर के एक मशहूर मिनिस्टर थे और उनके आफिसियल हिस्टोरियन थे।'' (पेज 7)

"Abul Fazal began to write Ain-e-Akbari from 1586 and he

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formally completed in 1598. Abul Fazal was a famous minister of Akbar and he was his official historian." (E.T.C)

''इस पुस्तक में भी अबुल फज्ल ने अयोध्या का दो जगह उल्लेख किया है। उस उल्लेख में उन्होंने ऐसा कहा है कि अयोध्या श्रीराम जी का, जो हिन्दुओं के अवतार थे, ऐसा माना जाता है कि वह उनका निवास स्थान था। उस किताब में भी अयोध्या में राम मन्दिर तोड़कर मस्जिद बनाने का कोई उल्लेख नहीं है। विलियम फिन्च एक मशहूर ट्रेवलर थे जो भारत वर्ष में 1608 से 1611 तक रहे थे। उनकी इस यात्रा के एकाउंट्स कई जगह छपे हैं। वह ब्रिटेन के रहने वाले थे। अपने उस एकाउंट में उन्होंने अयोध्या का उल्लेख किया है। उन्होंने ऐसा लिखा है कि अयोध्या में श्री राम चन्द्र जी का पैलेस एवं फोर्ट था।'' (पेज 7)

"In this book too, Abul Fazal has mentioned about Ayodhya at two places. In course of that mentioning he has stated that Ayodhya is believed to be the dwelling place of Shri Ram Ji, who was an incarnation for Hindus. In that book also, there is no mention about the construction of a mosque after demolishing the Rama temple in Ayodhya. William Finch was a famous traveller who stayed in India from 1608 to 1611. Accounts of this travel of his are published at several places. He hailed from Britain. He has in his account mentioned of Ayodhya. He has written that Shri Ramchandra Ji's palace and fort stood in Ayodhya." (E.T.C)

''बुकानेन 1810 में अयोध्या गये थे, उसका उल्लेख उन्होंने अपने एकाउंट में किया है। उन्होंने अपने इस एकाउंट में ऐसा लिखा है कि यह कहा जाता है कि औरंगजेब ने रामकोट में मन्दिर तोड़कर मस्जिद बनाई। पर उन्होंने यह कहा है कि इस मस्जिद पर जो इंसक्रिप्शन है, वह बाबर के समय का है।'' (पेज 8)

"Buchanan had gone to Ayodhya in 1810; he has

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mentioned about it in his account. He has in his account written that it is said that Aurangzeb had got a mosque build by breaking down a temple at Ramkot. But he had said that the inscription of this mosque is of the time of Babar." (E.T.C)

''में इस पर भी कुछ नहीं कह सकती कि भगवान श्रीराम अयोध्या में अवतरित हुए या नहीं। में इस पर भी कुछ नहीं कह सकती कि भगवान श्रीराम, अयोध्या में जन्म लिये या नहीं। में इस बारे में भी कुछ नहीं कह सकती कि भगवान राम ने यदि अयोध्या में जन्म लिया होगा, तो कोई भोगोलिक स्थल उस पर रहा होगा या नहीं। यह कहना गलत है कि में पूर्वाग्रह से ग्रसित होकर शुरु से आखिर तक गलत बयानी कर रही हूँ। यह भी गलत है कि पूरा सच कहने के बजय में सच को पूरी तरह से छिपा रही हूँ। यह भी कहना गलत है कि मार्कसिस्ट स्कूल आफ थाट्स के इतिहासकारों के ग्रुप की एक सदस्य हूँ।'' (पेज 100)

"I can say nothing even on the point as to whether Lord Shri Rama incarnated himself at Ayodhya or not. I can say nothing even on the point as to whether Lord Shri Rama took birth at Ayodhya or not. I can say nothing about whether or not there would have been a geographical place if Lord Rama had taken birth at Ayodhya. It is incorrect to say that I have been giving a wrong testimony out of prejudice from beginning to end. It is also incorrect that instead of speaking the whole truth, I am concealing the truth completely. It is also incorrect to say that I am a member of a group of historians associated with the Marxist School of Thoughts." (E.T.C)

''स्वयं कहा कि मैने मेनली अयोध्या काण्ड व उत्तराकाण्ड पढ़ा है। उत्तराकाण्ड में यह लिखा है कि है राम तुम 27 बार यहां जन्मे और मैं हर जन्म के समय था। इसी तरह की बाते लिखी हैं। उसमें यह लिखा है कि राम तुम अयोध्या में 27 बार जन्मे। रामचन्द्र जी के पिता का नाम राजा

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दशरथ था। यह बात मैने उसी में अर्थात राम–चरित मानस में ही पढ़ी थी, पर किस काण्ड में पढ़ी, यह मुझे याद नहीं।'' (पेज 101)

''(Stated on his own) I have mainly read Ayodhya-kand and Uttara-kand. It is written in Uttara-kand: 'O Rama, you were born at Ayodhya 27 times and I was present on every occasion of your birth'. Such type of things are written. It is therein written: 'O Rama, you were born at Ayodhya 27 times'. The name of Ram Chandra Ji's father was King Dashrath. I read this thing in that very book, that is, in the Ram Charit Manas itself, but I do not remember the canto in which I read it.'' (E.T.C)

''यह मै जानती हूँ कि हिन्दू धर्मावलिम्बयों का मानना है कि श्रीराम का जन्म अयोध्या में ही हुआ। मुझे यह नहीं मालूम कि सभी हिन्दू ऐसा मनते है या नहीं कि अयोध्या में श्रीराम का जन्म हुआ था या नहीं पर हिन्दुओं के एक वर्ग का मत है कि श्रीराम का जन्म अयोध्या में विवादित स्थल पर ही हुआ था।'' (पेज 124)

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''I know that the followers of Hinduism believe that Sri Rama was born at Ayodhya itself. I do not know whether or not all the Hindus believe Sri Rama to have taken birth at Ayodhya. But a section of Hindus believe that Sri Rama was born on the disputed site itself in Ayodhya.'' (E.T.C)

''जन्मभूमि का मतलब किसी व्यक्ति विशेष के जन्मस्थान से होता है। यह ठीक है जैसा कि मै ऊपर बता चुकी हूं कि रामचरित मानस में सरजू नदी का उल्लेख है।'' (पेज 125)

''Janmbhumi (land of birth) means 'Janmsthan' (birthplace) of a particular person. It is true that the river Saryu finds mention in the Ram Charit Manas, as I have stated above.'' (E.T.C)

''स्कंध पुराण का नाम सुना है। स्कंध पुराण के एक भाग का अनुवाद मैने पढ़ा है इसमें श्रीराम के जन्म स्थान का विवरण लिखा है और कुछ दिशाए

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भी दी हुई है स्वयं कहा कि विद्वानों का कहना है कि वे वेग है इस सबंध में हमारा कोई व्यक्तिगत मत नहीं है।'' (पेज 126)

''I have heard the name of Skanda Purana. I have read translation of a portion of Skanda Purana which has description of Sri Rama's birthplace as also specification of some directions. (Stated on his own) They are vague; I do not have any personal opinion in this respect.'' (E.T.C)

''मैने स्कंध पुराण के इस पोर्शन को रिलेवेन्ट समझा इसलिए इसका अनुवाद पढ़ा। यहा ठीक है कि स्कन्ध पुराण में अयोध्या में श्रीराम के जन्म स्थान का वर्णन है पर उसी खण्ड में जन्म स्थान के सर्राऊडिंग टैम्पल का अनुवाद जो मैने पढ़ा था, उसमें नहीं था।'' (पेज 126)

"I took this portion of Skanda Purana to be relevant, that's why I studied its translation. It is true that Skanda Purana describes Sri Rama's birthplace at Ayodhya but the existence in that very part of any temple surrounding his birthplace did not find mention in the translation which I had gone through."(ETC)

''मन्दिर आदि का लोकेशन दिया हुआ है पर इसके बारे में निश्चित होना सम्भव नहीं है। मुझे ऐसा याद नहीं कि उस खण्ड में जन्म स्थान का उल्लेख है या नहीं। मेरे अनुसार सर्वप्रथम विवादित ढांचे का निर्माण 1528 में हुआ होगा। यह विवादित स्ट्रक्चर जिस भूमि पर बना था किसी सोर्स में नहीं मिलता।'' (पेज 126)

''The location of the temple etc. is given but it is not possible to be sure about it. I do not remember whether or not Janmsthan finds mention in that part. In my opinion, the disputed structure would have first been constructed in 1528. Information as to the land on which this disputed structure was built is not available in any source.''(E.T.C)

''मस्जिद जिस ऐरिया में है उसे रामकोट के नाम से जाना जाता है। फिंच का पूरा नाम विलियम फिंच था यह ठीक है ये एक इंगलिश यात्री थे जो

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1608 से 1611 में अयोध्या में आये थे। यह भी ठीक है फिंच साहब ने अपने एकाउन्ट में अयोध्या में राम का किला, महल, व खण्डहर होने का जिक्र किया है और साथ–साथ अयोध्या को हिन्दुओं का तीर्थ स्थल बताया है फिर कहा कि विलियम फिंच ने कहा कि यह लीजेन्ड था कि यहां राम का किला था। उन्होंने यह भी कहा कि ऐसा माना जाता हजै कि श्रीराम ने यहां अवतार लिया है।'' (पेज 127)

"The area in which the mosque is situated, is known as Rmakot. The full name of Finch was William Finch. It is true that he was an English traveller who came to Ayodhya between 1608 and 1611. It is also true that Finch has in his account mentioned about the existence of Rama's fort, palace and remains in Ayodhya; besides, he has termed Ayodhya as a place of pilgrimage for Hindus. (Further stated) William Finch stated that there was a legend that Rama's fort stood here. He has also stated that Sri Rama is believed to have incarnated himself here." (E.T.C)

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''अयोध्या में राम जन्म स्थान होने का लीजेन्ड 17वी शताब्दी से मिलता है उससे पहले मध्यकालीन इतिहास में राम जन्म स्थान का कोई लीजेन्ड उपलब्ध नहीं है। जहां तक मुझे मालूम है अयोध्या के राम से ऐसोसियेटेड विचार धारा 16वीं सदी तथा उसके बाद मिलती है उससे पहले के फारसी और इंगलिश के जो सोर्सेज मैने पढ़े है उनमे अयोध्या में श्रीराम से ऐसोसियेटेड किसी विचार धारा का जिक्र नहीं है। फारसी और इंगलिश के अलावा और कोई श्रोत उपलब्ध है या नहीं इसका मुझे ज्ञान नहीं है।'' (पेज 136)

"A legend about the existence of Ram Janmsthan (Rama's birthplace) in Ayodhya is available from the 17th century. Prior to that, in course of the medieval history, we do not come across any legend about Ram Janmsthan. As far as I know, a line of thought associated with Rama of Ayodhya is found in the 16th century and its subsequent period. The

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Persian and English sources belonging to earlier period and which I have read, do not make mention of any line of thought associated with Sri Rama of Ayodhya. I do not have the knowledge as to availability or otherwise of any sources other than Persian and English ones." (E.T.C)

"विवादित स्थल पर विवादित ढांचे के पहले कोई भवन था या नहीं इसकी साक्ष्य आर्कियोलोजिकल एक्सप्लोरेशन से ही मिल सकती है। ....यह ठीक है कि सिक्ख साहित्य में यह एक टेडीशन है कि गुरुनानक अयोध्या गये थे श्रीराम जन्म स्थान का दर्शन किया और सरजू में स्नान किया। (पेज 137–138)

"Evidence about the existence or otherwise of any building at the disputed site prior to the disputed structure, can be obtained only through archaeological exploration. . . . . It is true that there goes a tradition in the Sikh literature that Guru Nanak visited Ayodhya, had darshan of Sri Ram Janmsthan and took a dip in Saryu."(E.T.C)

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"यह ठीक है कि जिस स्थान के साथ कोट शब्द लगा होता है उससे साधारणतया यह निष्कर्ष निकाला जाता है कि वहाँ पर किला रहा होगा।(पेज 144)

"It is true that if the word Kot is used with the name of a place, it is ordinarily inferred that there would have been a fort over there." (E.T.C)

"अयोध्या में रामकोट स्थान के बारे में मैने पढ़ा है। स्कन्ध पुराण में रामकोट की भोगोलिक स्थित का वर्णन है परन्तु, वह अस्पष्ट है। यह ठीक है कि अयोध्या में किसी एक जगह को 16वी सदी के अन्त से रामकोट के नाम से जाना जाता है। स्कन्ध पुराण का रचना काल नवी सेन्चुरी को एट्रीब्यूट किया जाता है अर्थात बताया जाता है।" (पेज 144)

"I have read about a place called Ramkot in Ayodhya. The geographical location of Ramkot finds description in Skanda Purana. But it is not clear. It is true that a certain

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place in Ayodhya is known by the name of Ramkot from the end of 16th century. Skanda Purana is attributed to, that is, stated to be belonging to the 9th century."(E.T.C)

"यह कहना भी गलत है कि उसी वजह से मैंने ऐसे स्त्रोतों को छोड़ दिया हो कि जिसमें विवादित स्थल पर राम जन्म स्थान या स्थित मंदिर का प्रमाण मिलता हो।" (पेज 145)

"It is also incorrect to say that for this very reason I have omitted to mention those hymns from which proofs may be found of Ram Janmsthan at the disputed site or of temple situated there."(E.T.C)

"सबाहुद्दीन साहब ने जो पुस्तक अयोध्या में बाबरी मस्जिद के मुतालिक लिखी वह विवादित स्थल व ढांचे से ही संबंधित थी।" (पेज 23)

"A book which Sahab-ud-Din Sahib had written in connection with the Babri mosque in Ayodhya, was only about the disputed site and structure." (E.T.C)

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"यह कहना सही है कि उक्त किताब में लेखक ने इस बात का तजकिरा किया है कि हिन्दू लोग विवादित स्थल को राम जन्मभूमि बताते हैं और मानते हैं तथा मुसलमान उसे मस्जिद।" (पेज 23)

"It is correct to say that the writer has in the said book mentioned that Hindus term and regard the disputed site as Rama's Janmbhumi and Muslims take it to be a mosque." (E.T.C)

"यह कहना सही है कि मैंने कुछ किताबों में इस बात का तजकिरा पढ़ा है कि अयोध्या में रामचन्द्र जी का जन्म स्थान है। यह कहना सही है कि श्री रामचन्द्र जी हिन्दुओं के अराध्य देवता है जिन्हें हिन्दू लोग भगवान मानते हैं और पूजा करते हैं। उपरोक्त संदर्भित किताब 'अयोध्या में इस्लामी आसार' में मैंने पढ़ा है कि शहर अयोध्या के बीचों बीच श्रीराम जन्म स्थान मंदिर है। जो रामचन्द्र जी के जन्म स्थान से मशहूर है।" (पेज 24)

"It is correct to say that I have read in some books that Ram Chandra Ji's birthplace is located in Ayodhya. It is

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correct to say that Sri Ram Chandra Ji is a adored deity of Hindus whom they regard as Bhagwan (Supreme Being) and worship Him as such. In the above-referred book 'Ayodhya Mein Islami Aasar', I have read that Sri Ram Janmsthan temple stands right in the centre of Ayodhya town which is famous as the birthplace of Ram Chandra Ji." (E.T.C)

"यह कहना सही है कि किसी भी धर्म की इबादतगाह को यदि गिरा दिया जाये तो वह उसी धर्म की इबादतगाह रहेगी यह कहना सही है कि यदि मंदिर को तोड़कर मस्जिद बना दी जाये तो उसकी हैसियत नहीं बदलेगी और वह मंदिर ही रहेगा और यदि मस्जिद को तोड़कर मंदिर बना दिया जाये तो वह मस्जिद ही रहेगी। यदि यह साबित हो जाये कि विवादित स्थल पर मंदिर था जिसे जबरन तोड़कर मस्जिद बनायी गयी तो वह मंदिर ही माना जायेगा।" (पेज 25)

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"It is true to say that if a place of worship for any religion is demolished, that will remain as such for that religion. It is correct to say that if a mosque is constructed by demolishing a temple, its status will not change and it will remain as a temple, nothing else; and if a temple is constructed by demolishing a mosque, it will continue to be a mosque, nothing else. If it is proved that at the disputed site, there was a temple forcibly demolishing which a mosque was constructed then it will be considered to be a temple, nothing else." (E.T.C)

"मैंने अली मियाँ साहब का नाम सुना है, मेरी उनके वालिद साहब से वाकाफियत है।" (पेज 25)

"I have heard the name of Ali Miyan Sahib; I have acquaintance with his father." (E.T.C)

"उनकी लिखी पुस्तक 'हिन्दुस्तान इस्लामी अहद में' है। यह कहना सही है कि वह किताब जो अली मिया साहब के वालिद हकीम सै0अब्दुल हई

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हरौनी, ने लिखी थी। यह कहना सही है कि उस किताब में बाबरी मस्जिद का जिक्र आया है।'' (पेज 25–26)

"'Hindustan Islami Ahad Mein' is a book written by him. It is true to say that the Babri mosque has found mention in the book written by Haquim Syed Abdul Haee Harauni son of Ali Miyan Sahib." (E.T.C)

''यह कहना सही है कि उपरोक्त किताब में लेखक ने ऐसा लिखा है कि लोग यह कहते हैं कि बाबरी मस्जिद अयोध्या में बाबर ने जहां बनवायी थी उसे हिन्दू रामचन्द्र जी का जन्म स्थल कहते हैं।'' (पेज 26)

"It is true to say that the writer has in the aforesaid book written that Hindus call the place, where Babur had constructed Babri mosque in Ayodhya, 'Ram Chandra Ji's Janmsthal'." (E.T.C)

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''यह सही है किसी जगह विशेष की मस्जिद के लिए कोई अहिमियत नहीं है। मैं इस बात से सहमत नहीं हूँ कि चूंकि श्रीरामचन्द्र का जन्म अयोध्या में हुआ था और हिन्दू उन्हें भगवान मानते हैं इसलिए वह भूमि पूजनीय है।'' (पेज 43)

"It is true that a particular place does not have any importance for a mosque. I do not agree with the view that since Sri Ram Chandra was born at Ayodhya and Hindus regard him as Bhagwan (Supreme Being), that land is venerable." (E.T.C)

''यह सही है कि हिन्दू लोग अयोध्या में भगवान राम के जन्मस्थान पर दर्शन करने सदियों से जाते हैं। मैंने यह सुना है कि रामनवमी के दिन अयोध्या में बहुत बड़ा मेला लगता है। यह सही है कि हिन्दू लोग भगवान राम को विष्णु का अवतार मानते हैं।'' (पेज 77)

"It is true that for centuries Hindus have been coming to Ayodhya to have darshan of Lord Rama's Janmsthan (birthplace). I have heard that a very big fair is held at

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Ayodhya on the occasion of Ram Navami. It is true that Hindus regard Lord Rama as an incarnation of Vishnu." (E.T.C)

"मुकदमें में एक पक्ष राम जन्मभूमि कहता है और दूसरा बाबरी मस्जिद कहता है।" (पेज 80)

"One party to the litigation call it Ramjanmbhumi and the other one call it the Babri mosque." (E.T.C)

"मैं जब गया था उस जमाने में मुझे कोई आबादी विवादित स्थल के चारों ओर नजर नहीं आई थी। विवादित स्थल के चारों ओर मेरे ख्याल से डेढ़ दो फर्लांग तक कोई आबादी नहीं थी।" (पेज 81)

"No human inhabitation was seen by me around the disputed structure at the time when I went there. I think that there was no human inhabitation as far as one-a-half or two furlongs around the disputed site." (E.T.C)

PW-23, Mohd. Qasim Ansari

"यह कहना सही है कि जो तीर्थ यात्री परिक्रमा करते हैं वे हनुमानगढ़ी, कनक भवन और रामजन्मभूमि का दर्शन भी करते हैं।" (पेज 34)

"It is correct to say that the pilgrims, who perform circumambulation, also have darshan of Kanak Bhawan and Ramjanmbhumi."(E.T.C)

"मैं चौदह कोसी परिक्रमा के बारे में भी जानता हूँ। इस चौदह कोसी परिक्रमा मार्ग में अयोध्या और फैजाबाद आते है यह कहना भी सही है कि चौदह कोसी परिक्रमा भी होती है यह साल में एक बार होती है। यह परिक्रमा भी कार्तिक के माह में होती है। यह कहना भी सही है कि इस परिक्रमा में भी लाखों की संख्या में तीर्थ यात्री और भक्तगण शिरकत करते हैं।" (पेज 34)

"I also know about the 'Chaudahkosi' (fourteen kose, one Kose being equal to 2 miles) circumambulation. Ayodhya and Faizabad fall in this 'Chaudahkosi' circumambulation path. It is also correct to say that 'Chaudahkosi'

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circumambulation is also performed. It is performed once in a year. This circumambulation is also performed in the month of Kartika. It is also correct to say that pilgrims and devotees participate in this circumambulation in numbers going in lakhs."(E.T.C)

"यह ठीक है कि हिन्दू लोग जिसे मै बाबरी मस्जिद कहता हूं उसे जन्मभूमि कहते हैं। यह ठीक है कि जो लाखों की भीड़ रहती है उसमें चारों जगह दर्शन करने का उल्लास रहता है।" (पेज 37)

"It is true that what I term as Babri mosque, is called Janmbhumi by Hindus. It is true that the gathering going in lakhs, is all full of fervour to have darshan."(E.T.C)

"दोराही कुंआ से जन्मभूमि, जिसे हम बाबरी मस्जिद कहते है वह लगभग 20–25 फिट ऊंचे स्थान पर है।" (पेज 37)

"The Janmbhumi, which is called Babri mosque by me, is at a height of about 20-25 feet above the 'Dorahi Kuan'."(E.T.C)

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"यह कहना ठीक है कि उपरोक्त तीनों मेले मैं अपनी याददाश्त से देखता चला आ रहा हूं। यह कहना सही है कि यह तीनों मेले में लाखों की संख्या में श्रद्धालु आते हैं कुछ रेल से आते हैं, कुछ बस से आते हैं और कुछ अपनी गाड़ी से आते हैं पहले कुछ लोग बैलगाड़ी और घोड़ों से भी आते थे। यह कहना गलत है कि जब लोग बैलगाड़ी से आते थे तो दोराही कुआं के आसपास पूरे रामकोट में बैलगाड़ी ही बैलगाड़ी रहती थी। बल्कि बैलगाड़ियां मेरे घर के पास ही रोक दी जाती थीं। यह भी कहना ठीक है कि अयोध्या में 10–20 हजार आदमी रोज़ आते हैं।" (पेज 39)

"It is correct to say that I have been seeing these three fairs since my memory. It is true that lakhs of devotees visit on occasion of these three fairs, some come by train, some by bus and some by their private vehicles. Earlier some people used to come by bullock-carts and horses as well. It is wrong to say that when people used to come by bullock-

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carts, then there were bullock-carts all around in Ramkot near the Dorahi Kuan, and instead the bullock-carts were stopped near my house. It is correct to say that 10-20 thousand people come to Ayodhya everyday."(E.T.C)

''वशिष्ट कुण्ड के उत्तर ब्रहमकुण्ड गुरूद्वारा है। झगड़े वाली जमीन के पूरब मानस भवन है जिसके पूरब 4–5 मंदिर है जिसमें लोमस मंदिर और राम गुलेला मंदिर आदि हैं। यह सड़क जो विवादित भवन के उत्तर से जाती है वह पूरब की ओर जाकर राजमार्ग में मिल जाती है। यह ठीक है कि राजमार्ग से झगड़े वाली जमीन के दोनो तरफ हिन्दुओं के मंदिर हैं। इसी सड़क पर अयोध्या का प्रसिद्ध मंदिर हनुमानगढ़ी भी है। यह भी ठीक है कि झगड़े वाली जमीन से पूरब राजमार्ग तक हिन्दुओं की आबादी है और उनके तमाम मंदिर हैं। झगड़े वाली जमीन के उत्तर एक किमी0 की दूरी पर सरयू नदी है। यह भी ठीक है कि झगड़े वाली जमीन के उत्तर भी कई मंदिर है। उसी ओर कनक भवन मंदिर और कई तमाम प्रसिद्ध मंदिर हैं जिनका नाम मुझे नहीं मालूम है। लक्षमण टीला का नाम सुना है यह भी झगड़े वाली जमीन के उत्तर दिशा में नदी के किनारे है। यह ठीक है कि हमारे याददाश्त से अयोध्या में हिन्दुओं की मुसलमानों से ज्यादा आबादी है। . . . . . .यह ठीक है कि अयोध्या को हिन्दुओं का एक तीर्थ स्थल माना जाता है।''(पेज 41)

"The Brahmkunda Gurudwara is in north of Vashishtha Kunda. The Manas Bhawan lies in east of the disputed site, in east of which are 4-5 temples including Lomash temple, Ram Gulela temple etc. This road in north of the disputed structure, merges eastwards with the national highway. It is true that Hindu temples lie on both sides of the road between the national highway and the disputed site. The famous Hanumangarhi temple of Ayodhya also lies on this road. It is also true that Hindu populace exists in east of the disputed site upto the national highway and their various temples also lie over there. The Saryu river is one kilometer in north of the disputed site. It is also true that

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there are many temples in north of disputed site. The Kanak Bhawan temple and many other famous temples, whose names are not known to me, lie on that side. (I) have heard about Laxman Tila. It is also along the river bank in north of the disputed site. It is true that as per my memory, the Hindus are in majority over the Muslims in Ayodhya.. . . . . . . It is true that Ayodhya is considered a pilgrimage of the Hindus."(E.T.C)

''तीर्थ स्थान पहले भी था पर पहले कम लोग आते थे, अब ज्यादा लोग आते हैं। यह ठीक है कि हिन्दू लोग भगवान राम को अपना देवता मानते हैं। यह कहना सही है कि हिन्दुओं का ऐसा विश्वास है कि भगवान राम अयोध्या में पैदा हुए थे। यह भी कहना ठीक है कि अयोध्या में भगवान राम से संबंधित कई कुण्ड और स्थान हैं।'' (पेज 42)

"Earlier also it was a pilgrimage but fewer people used to come. Now more people come. It is true that Hindus consider Lord Rama to be their God. It is correct to say that it is the belief of Hindus that Lord Rama was born in Ayodhya. It is also correct to say that there are many Kundas and places related to Lord Rama in Ayodhya."(E.T.C)

''जब से मैंने होश संभाला तब से अयोध्या की आबादी में गृहस्थ और विरक्त (वैरागी) को बराबर–बराबर देख रहा हूँ। यह कहना सही होगा कि गृहस्थ आबादी में हिन्दुओं की संख्या लगभग 90 फीसदी के आसपास है।'' (पेज 45)

"Since I have attained maturity, I have seen the householders and recluses to be in equal number in the populace of Ayodhya. It would be correct to say that Hindus would be around 90 percent of the householder's population."(E.T.C)

''विभीषण कुण्ड है। ...मैं जानता हूँ कि भगवान राम हिन्दुओं के अराध्य

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देवता हैं।'' (पेज 64)

"There is Vibhishan Kunda. . . . . I know that Lord Rama is revered God of Hindus."(E.T.C)

PW-28, Sita Ram Roy

''मैने बाल्मीकि रामायण पढ़ी है। इसमे अयोध्या का जिक्र है, जिसकी चर्चा मैनें अपने उपर के बयान में किया। बाल्मीकि रामायण में लिखा है कि सरयूनदी से अयोध्या डेढ योजन दूर है पर दिशा नही कहा गया है। यह ठीक है बाल्मीकि रामायण में भगवान श्रीराम का मंदिर है। उनके द्वारा अयोध्या के मंदिर में पूजा अर्चना शयन आदि का वर्णन है। बाल्मीकि रामायण के बालकाण्ड में भगवान राम के जन्म, विश्वामित्र के साथ ताड़का राक्षसी का बध वहाँ से उनका विश्वामित्र के साथ धनुष यज्ञ में जनकपुर जाना और धनुष यज्ञ में सम्मिलित होना और परशुराम के साथ भेटं आदि का वर्णन है। यह ठीक है कि बाल्मीकि रामयण के बालकाण्ड में भगवान राम का अयोध्या में जन्म हुआ और उनके बालरुप का वर्णन है।'' (पेज 11–12)

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"I have read Valmiki Ramayana. It mentions about Ayodhya, which has been discussed by me herein-above in my statement. It is mentioned in Valmiki Ramayana that Ayodhya was 1½ 'yojan' away from river Saryu, but the direction has not been given. It is correct that in the Valmiki Ramayana there is temple of Lord Sri Rama. (It) contains descriptions of prayer, worship, sleeping, etc. by Him in temple of Ayodhya. In the Valmiki Ramayana, the Baalkand contains descriptions of the birth of Lord Rama, the killing of demoness Tarka along-with Vishwamitra, thereafter His visit to Janakpur along-with Vishwamitra in the 'Dhanush Yagya' and participation in the 'Dhanush Yagya', and meeting with Parashuram, etc. It is correct that the Baalkanda of the Valmiki Ramayana contains descriptions of the birth of Lord Rama in Ayodhya as well

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as His child-form."(E.T.C)

''यह ठीक है उसमे ऐसा भी वर्णन है कि भगवान राम का जन्म अयोध्या में हुआ तो देवताओं ने दुदम्भि बजाकर उनका स्वागत किया। यह भी ठीक है कि इसमे लव और कुश के जन्म का उल्लेख है।'' (पेज 13)

"It is true that it is also so mentioned in it that when Lord Rama was born in Ayodhya, the 'Devtas' (Gods) had welcomed Him by blowing trumpets. It is also correct that it mentions about the birth of Luv and Kush."(E.T.C)

''मैनें स्कन्ध पुराण पढ़ा है। इसमें अयोध्या महात्म्य चेप्टर मैने पढ़ा है। अयोध्या महात्म्य में रामजन्मभूमि की स्थिति का वर्णन नहीं है। मेरी दृष्टि में ऐसा कहना सही नहीं होगा कि अयोध्या महात्मय में रामजन्मभूमि की चौहद्दी एवं उसकी स्थिति दी हुई है। . . . . . .उक्त श्लोक को पढ़कर गवाह ने कहा कि मैनें इसका भावार्थ समझ लिया है इसमें जन्मभूमि की चौहद्दी स्पष्ट नही है फिर कहा कि चौहद्दी नही दी गयी है। गवाह से विद्वान अधिवक्ता ने श्लोक के 18, 19वी लाईन दुबारा पढ़वाई जिसे पढ़कर गवाह ने कहा कि इस श्लोक से उपरोक्त चौहद्दी स्पष्ट नही होती है। इन श्लोकों में जन्मभूमि की चौहद्दी स्पष्ट नहीं है। इसमें इसकी चारों दिशाओं का उल्लेख नही है जो चौहद्दी के लिए होना जरुरी है। यह ठीक है कि उपरोक्त श्लोक में पिण्डारक, विघ्नेश्वर, वाशिष्ठ और लोमश का उल्लेख है। विद्वान जिरहकर्ता अधिवक्ता से 18वीं श्लोक की पहली पंक्ति सुनकर गवाह ने पढ़कर जबाब दिया कि इस स्थान से ईशान कोण की ओर जन्मभूमि के लिए जाना पड़ता है इसी श्लोक की दूसरी पंक्ति का अर्थ यह है कि मोक्ष की प्राप्ति के लिए जन्मस्थान जाया जाता है। प्रवर्तते शब्द का अर्थ यह होगा जो जाता है। विघ्नेश्वरः पूवर्भागे का अर्थ है कि विघ्नेश्वर के पूर्व भाग में। वशिष्ठातः उत्तरे का मतलब है और वशिष्ठ के उत्तर में, लोमाशात पश्चिमे भागे का मतलब है कि लोमश के पश्चिम भाग में, जन्मस्थानम् ततः का अर्थ है वहाँ से जन्मस्थान, मैनें जो अर्थ उपर बताया है इससे जन्मस्थान जाने का सकेंत होता है न कि उसकी चौहद्दी स्पष्ट होती है।'' (पेज 17–18)

"I have read Skand Puran. I have read Ayodhya Mahatmya chapter in it. The chapter Ayodhya Mahatmya does not

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describe the location of Ramjanmbhumi. In my view, it would not be correct to say that in Ayodhya Mahatmya, the boundary of Ramjanmbhumi and its status are mentioned. . . . . . After reading the above verse, the witness stated that I have understood its meaning. The boundary of Janmbhumi is not clear in it. Then stated that boundary has not been given. The learned counsel asked the witness to read again the 18th and 19th lines of the verse, and after reading them, the witness stated: 'the aforesaid boundary is not clear from this verse'. The boundary of Ramjanmbhumi is not evident in these verses. The four directions which are necessary for a boundary are not mentioned therein. It is correct that in the aforesaid verse, Pindarak, Vighneshwar, Vashishta and Lomesh are mentioned. On hearing the first line of 18th verse from the learned counsel conducting cross-examination and after reading the same, the witness replied that one has to go to the north-east direction from this place for visiting Janmbhumi (place of birth). The meaning of the second line of the same stanza is that one has to visit the 'place of birth' for salvation. The term 'parvartate' means one who goes. The term 'Vighneshwarah Poorvabhage' means in the eastern part of Vighneshwar. The term Vashishthatah Uttare means 'in the north of Vashishtha'; the term Lomashat Paschime bhage means 'in the western part of Lomash'; Janmsthanam Tatah means 'the place of birth from there'. The meaning which I have stated above indicates the path of the birth-place and not its boundary. ''(E.T.C)

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''मैं अयोध्या अपने परिवार वालों के साथ जाने के कारण से जाता था। आखिरी बार अयोध्या में 60–62 की उम्र में गया था। मैंने यह जानने की कोशिश नहीं की, कि मेरे परिवार वाले अयोध्या किस भावना से जाते थे। मैं अयोध्या बीसों बार गया। मैं वहाँ ठहरता नहीं था। वहाँ मैंने मंदिर में अन्दर जाकर कभी दर्शन नहीं किए। गाड़ी में बाहर बैठे–बैठे देख लेता था।'' (पेज 38)

"I used to go to Ayodhya on account of accompanying my family members. I last visited Ayodhya at the age of 60-62 years. I did not attempt to know as to with which feeling did my family members used to go to Ayodhya. I have been to Ayodhya more than 20 times. I did not stay there. I never had darshan over there by going inside the temple. I used to see from outside by sitting in the vehicle."(E.T.C)

''चूँकि मैंने राम के जन्म को ऐतिहासिक ही नहीं माना इसलिए मैंने यह पता लगाने की कोशिश नहीं की, कि राम का जन्म कहाँ हुआ था।'' (पेज 61)

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"Since I did not consider the birth of Rama to be historical, as such I did not make attempt to learn as to where was Rama born."(E.T.C)

''मुझे इसकी जानकारी है कि विवादित ढांचे के विध्वंस के पूर्व राम लला की मूर्ति रखी गयी थी, पर मुझे इसकी जानकारी नहीं है कि वहां कीर्तन होता था। मुझे यह मालूम था कि किस ई0 सन् में भगवान राम लला की मूर्ति विवादित ढांचे में रखी गयी थी, पर इस समय याद नहीं है, ऐसा कहना गलत है कि मेरी दृष्टि में यह बात महत्व हीन थी।'' (पेज 103)

"I have knowledge of the fact that prior to demolition of disputed structure, the idols of Ramlala had been installed, but I do not have knowledge of the fact as to where was 'kirtan' performed. I knew the year in which the idol of Ramlala had been installed in the disputed structure, but do not recollect it at present. It is wrong to say that in my

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opinion, this fact had no importance."(E.T.C)

''तत्काल मुझे ऐसी किसी अयोध्या की जानकारी नहीं है जिसके उत्तर में सरयू नदी बहती हो।'' (पेज 111)

"At present I do not know about any such Ayodhya, to the north of which flows the river Saryu."(E.T.C)

''राम के बारे में कुप्रचार करने के लिए नब्बे के दशक के बाद यह किताबे योजनाबद्ध तरीके से लिखी गयी।'' (पेज 127)

"These books were written in the decade of nineties in a planned manner in order to do wrong publicity about Rama."(E.T.C)

OPW-1, Mahant Ram Chandra Das Digambar

''रामायण में यह उल्लिखित है कि भगवान राम का जन्म अयोध्या में हुआ। अयोध्या का वर्णन हमारे वेदों में है, उपनिषदों में तथा संहिताओं में एवं अष्टादश उप पुराणों में, स्मृतियों में है और भारत के संस्कृत जगत में जो मान्य साहित्य उपलब्ध है, उस भगवान का जन्म स्थान अयोध्या माना गया है।'' (पेज 7)

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"It is mentioned in the Ramayana that Lord Rama was born in Ayodhya. The descriptions of Ayodhya are there in our Vedas, Upnishadas, Samhitas, Smritis of Ashtadash Up-puranas and the recognised literature available in Sanskrit in India. The birth place of the Lord has been taken as Ayodhya in (them)."(E.T.C)

''यह वही अयोध्या है जो वर्तमान स्थल है। इस स्थल पर भगवान राम का जन्म हुआ, इसके सम्बन्ध में चौहद्दी का उल्लेख करते हुए उपरोक्त सभी हिन्दू धर्मग्रन्थों में स्पष्ट रूप से उल्लेख है। कागज सं0 107ग/75 मेरे समक्ष है, स्कन्ध पुराण के अन्तर्गत अयोध्या महात्म्य प्रकरण में इस सम्बन्ध में स्पष्ट उल्लेख है। भगवान राम का जन्म स्थल एवं गर्भगृह विवादित स्थल ही है, जहाँ पर रामलला जी इस समय विराजमान हैं।'' (पेज 8)

"It is the same Ayodhya, which is the present site. Lord Rama was born at this place. While giving the boundary in its behalf, there is clear reference in all the above

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mentioned Hindu treatises. The paper no. 107C/75 is before me, it contains clear mention in this behalf in the Ayodhya Mahatmya under the Skanda-purana. The birthplace of Lord Rama and the sanctum sanctorum are the disputed site, where Ramlala is present at present."(E.T.C)

''वाल्मीकि रामायण के पात्रों के नाम पर अयोध्या में स्थित विभिन्न स्थल तथा अयोध्या में स्थित विभिन्न स्थलों के सम्बन्ध में उपर्युक्त वर्णन के आधार पर मेरा यह कहना है कि विवादित स्थल रामजन्मभूमि है।'' (पेज 54)

"On the basis of the aforesaid description on several Ayodhya situated places named after the characters of Valmiki Ramayan and in regard to the several places located in Ayodhya, I say that the disputed site is Ramjanmhbhumi."(E.T.C)

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''यह स्थान राम चबूतरे के उत्तर था। शिखर के नीचे दो मूर्तियाँ तथा सालिग्राम की एक बटिया थी जिसे पुजारी बाहर आंगन में लेकर आ गए थे। दोनों मूर्तियाँ रामलला की ही थी, क्रमशः बड़ी तथा छोटी मूर्तियाँ थी। मूर्तियों में जो शिखर के नीचे थे, सीता जी की मूर्ति नहीं थी, हनुमान जी की मूर्ति वहाँ पर थी या नहीं, मुझे याद नहीं। जिस स्थान से अर्थात् शिखर के नीचे से पुजारी मूर्तियों को हटाकर लाया था, समतलीकरण के बाद उन मूर्तियों को वहीं पर रख दिया गया।'' (पेज 82)

"This place was to the north of the Ramchabutra. Beneath the dome, were two idols and one 'Batiya' of Saligram, which has been brought out in the courtyard by the priest. Both the idols were of Ramlala, which were big and small idols respectively. Out of the idols present beneath the dome, there was no idol of Sita Ji, I do not remember whether the idol of Hanuman Ji was there or not. After levelling, those idols were placed at that very place from

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which the priest had removed and brought them i.e. from beneath the dome."(E.T.C)

''पुजारी सत्येन्द्र दास ने तथा अन्य लोगों ने मुझसे यह बताया कि विवादित भवन के गिरने के बाद मूर्ति उसी स्थान पर रखी गई जहाँ पर पहले स्थित थी। जिस दिन निर्माण ध्वस्त हुआ उसी दिन 8 बजे रात को मैंने आकर उस स्थान को देखा जहाँ पर मूर्ति रखी गई थी।'' (पेज 98)

"Priest Satyendra Das and others had told me that after collapse of the disputed structure, the idols had been placed at the same place where they existed earlier. At 8 PM of the day on which the structure was demolished, I had come and seen the place where the idols had been installed."(E.T.C)

''उपरोक्त कमिश्नर द्वारा लिए गए फोटोग्राफ सं0–10 कागज सं0–154/13 साक्षी को दिखलाया गया, यह वही स्थल है जहाँ पर पहले मूर्ति थी तथा बाद में उसी स्थान पर दुबारा मूर्ति रखी गई। यह मूर्ति चबूतरे पर रखी हुई दिखाई गई है। चबूतरा निर्मित कर दिया गया था। वह स्थान जहाँ पर इस समय मूर्ति रखी हुई है वही स्थान गर्भगृह 1934 उसके पूर्व 1949 में तथा अब भी है।

प्रश्न : 1934 में मध्य शिखर के नीचे आप जिस स्थान को जन्मभूमि समझते थे, उसकी लम्बाई, चौड़ाई क्या थी ?

उत्तर : विवादित भवन के नीचे का सम्पूर्ण स्थान मध्य शिखर के नीचे तथा उसके अगल–बगल क्षेत्र को राम जन्मभूमि के रूप में मैं समझता हूँ।

प्रश्न : क्या उस भूमि की कोई लम्बाई–चौड़ाई 100 x 100 फिट रही होगी या इससे अधिक ?

उत्तर : मैं यह निश्चित नहीं कह सकता कि उस स्थान की लम्बाई–चौड़ाई क्या थी परन्तु परिक्रमा मार्ग को लेकर सम्पूर्ण भूमि को मैं जन्मभूमि का हिस्सा मानकर उसकी परिक्रमा करता था।

– जन्मभूमि उसी स्थान को समझता हूँ, जहाँ पर राम का जन्म हुआ था। यह जन्म राजा दशरथ के महल में प्रसव गृह में हुआ था। गर्भगृह तथा प्रसवगृह जन्म की दृष्टि से एक ही हैं, मेरा तात्पर्य भगवान

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राम के जन्म लेने के स्थान से है।'' (पेज 99)

"The photograph no.10, paper no. 154/13, taken by the aforesaid Commissioner was shown to the witness. It is the same place where idols existed earlier and later on idols were again installed over there. These idols appear to have been placed above platform. The platform had been built. The place where idols are installed at present, was the sanctum sanctorum in 1934 (or) earlier, in 1949 and even today.

Question: What was the dimension of the place beneath the Central dome in 1934, which you considered to be Janmbhumi?

Answer: I consider the entire place beneath the central dome as well as the adjoining places, to be Ramjanmbhumi.

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Question: Would the length-breadth of any part of that land, have been 100x100 feet or more?

Answer: I cannot tell definitely the dimension of that place, but I used to perform circumambulation of the entire land including the circumambulation path, by treating it to be part of Janmbhumi.

-(I) consider Janmbhumi to be the same place, where Rama was born. This birth took place in the labour room of king Dashrath's palace. Sanctum sanctorum and labour room, are the same from the point of view of birth. I mean the place of birth of Lord Rama. "(E.T.C)

''प्रश्न :– विवादित भवन में गर्भगृह उसी स्थल पर होने के सम्बन्ध में जहाँ पर आप बताते हैं, आपका विश्वास किस पुस्तक व प्रमाण पर आधारित है ?

उत्तर :– वेदों में जन्मभूमि का वर्णन है। अथर्ववेद के मंत्र :–

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अष्टाचक्र नवद्द्वारा सादेवत नाम पुः अयोध्या तस्यामहिरण्मयः कोषः लिखा है, जिसका शब्दार्थ है–आठ वक्रों पर यह अयोध्या नगरी बसी हुई है और आगे आठों वक्रों के आठ देवताओं का वर्णन रुद्रयामल तक में आता है। उससे सम्बंधित श्लोक निम्न है :–

जन्मभूमिं हनुमन्तं नागेशं सरयूशिवाम्
लक्ष्मणं वेणु तीर्थम बन्दे हाटक मन्दिरम् ।।

इस श्लोक में प्रथम च्रक के देवता राम जन्म भूमि का होना उल्लिखित है।'' (पेज 103)

"Question:- On which book and evidence is your belief based regarding the existence of 'Garbh-grih' (sanctum sanctorum) in the disputed structure at the same place where you claim so?

Answer:- The Janmbhumi is described in the Vedas. The meaning of Atharvaveda's hymn reading as 'Ashtachakra Navadwara Shadevnam Puh Ayodhya Tasyamahiranyamayah Koshah' is that 'the city of Ayodhya exists over eight 'Chakras' (wheels)', and the description of the eight Gods of the eight 'Chakras' (wheels) is found in Rudrayam. The concerned verse is as under:

'Janmbhumim Hanumantam Nagesham Saryushivam
Laxmanam Venu Tirthavbande Hatak Mandiram'.

This verse gives the Ramjanmbhumi to be the God of the first 'Chakra' (wheel)."(E.T.C)

OPW-3, Dr. S.P. Gupta

''1946 में अयोध्या आया तो श्रीराम जन्मभूमि . . . . . आदि का दर्शन करने जाया करता था।'' (पेज 2)

"(When I) came to Ayodhya in 1946, I used to go to have darshan of Sri Ramjanmbhumi. . . . . etc."(E.T.C)

''23 दिसम्बर, 1949 के कई महीने पहले से राम जन्मभूमि मन्दिर के सामने मैदान में दिन में अखण्ड पाठ . . . . . कीर्तन के समय काफी भीड़ इकट्ठा

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होती थी।'' (पेज 10)

"For many months before 23rd December, 1949, 'Akhand Paath' during day time in the ground opposite Ramjnmbhumi temple. . . . . Much gathering used to take place at time of 'Kirtan'."(E.T.C)

''विवादित भवन के अन्दर पुजारी जाते थे। सन् 1995 में एक–दो पुजारी वहाँ पर झाड़ू वगैरह लगाने के लिए जाते थे।'' (पेज 15)

"The priests used to go inside the disputed structure. In the year 1995, a couple of priests used to go there for brooming etc."(E.T.C)

OPW-4, Sri Harihar Prasad Tewari

''अयोध्या हिन्दुओं की एक प्राचीन पवित्रतम तीर्थ स्थली है जहाँ परमब्रह्म परमेश्वर भगवान विष्णु ने राजा दशरथ के पुत्र श्रीराम के रूप में अवतार लिया था। हिन्दू मतावलम्बियों में अनादिकाल से यह आस्था एवं विश्वास रहा है कि भगवान विष्णु ने श्रीराम के रूप में अयोध्या में अवतार लिया था। यह स्थान पूज्य है, इसी आस्था एवं विश्वास के आधार पर लोग श्रीराम जन्मभूमि का दर्शन और परिक्रमा करने आते थे। मेरे परिवार के लोग, मेरे बाबा, अयोध्या में जब मैं 1934 से 1938 तक शिक्षा ग्रहण के दौरान रहा तो वहाँ के बड़े बुजुर्ग साधु–सन्त भी बताते थे कि भगवान विष्णु ने भगवान श्रीराम के रूप में यहीं जन्म लिया था, और यही श्रीराम जन्मभूमि है।'' (पेज 2)

"Ayodhya is an ancient, most sacred pilgrimage of Hindus, where the 'Param Brahm' Lord Vishnu incarnated as King Dashrath's son Sri Rama. It has been the faith and belief of followers of Hinduism from time immemorial that Lord Vishnu had incarnated in Ayodhya as Sri Rama. This place is worship-able, it is on basis of this faith and belief that people used to come over to have darshan of Sri Ramjanmbhumi and to perform circumambulation. From 1934 to 1938 when I stayed in Ayodhya to receive

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education, my family members, my grandfather, the elderly people over there as well as the saints-sages used to tell that Lord Vishnu had incarnated at this very place in form of Lord Sri Rama and this was Sri Ramjanmbhumi."(E.T.C)

''इसी आस्था और विश्वास के आधार पर मैं श्रीराम जन्मभूमि पर दर्शन करने जाता रहा और पढ़ाई समाप्त करने के बाद भी जब कभी अयोध्या आता था तब भी दर्शन करने जाता था, इधर लगभग 8–9 साल से सुग्रीव किला, रामकोट, अयोध्या में अधिकांश समय रहता हूँ और राम जन्मभूमि का दर्शन करने जाता रहता हूँ।'' (पेज 3)

"It is on basis of this faith and belief that I kept going to Sri Ramjanmbhumi to have darshan and after completing my studies, whenever I went to Ayodhya, I used to go to have darshan. In last 8-9 years, I mostly stay at Sugriv-Qila, Ramkot, Ayodhya and keep going to Ramjanmbhumi to have darshan."(E.T.C)

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OPW-6, Hausila Prasad Tripathi

''12–13 वर्ष की आयु में 1935 में दिसम्बर में पहली बार अपने चाचा के साथ अयोध्या आया था। मेरे चाचा श्रीराम जन्मभूमि से लगभग आधा किलोमीटर दूर रहते थे। उनके साथ मैं राम जन्मभूमि मन्दिर व अन्य मन्दिरों का दर्शन किया।'' (पेज 3)

"I had first come to Ayodhya along-with my uncle at the age of 12-13 years, in December, 1935. My uncle used to live about ½ kilometre away from Sri Ramjanmbhumi. I had the darshan of Ramjanmbhumi temple and other temples, along-with him."(E.T.C)

''अयोध्या में 4 मेले हैं, उनके नाम हैं– कार्तिक पूर्णिमा, परिक्रमा, चैत्र रामनवमी, सावन झूला व राम विवाह।'' (पेज 4)

"In Ayodhya, there are four fairs. Their names are–Kartika Purnima Parikrama, Chaitra Ramnavmi, Sawan Jhoola and Ram Vivah."(E.T.C)

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''मेरा भी दृढ़ विश्वास और आस्था है कि भगवान श्रीराम का जन्म अयोध्या में उसी स्थान पर हुआ है, जहाँ हजारों हिन्दू तीर्थयात्री दर्शनार्थी आकर दर्शन, पूजा व परिक्रमा करते हैं। इसी आस्था एवं विश्वास के आधार पर मैं भी 1935 से प्रतिवर्ष साल में 3–4 बार अयोध्या गया और वहाँ सरयू स्नान के बाद कनक भवन, हनुमानगढ़ी व श्रीराम जन्मभूमि का दर्शन व श्रीराम जन्मभूमि की परिक्रमा किया। ...राम जन्मभूमि परिसर पर जब मैं पहली बार गया, तो मुझे पूरा परिसर मन्दिर जैसा लगा। सन् 1935 से 1945 के बीच जब–जब मैं राम जन्मभूमि मन्दिर में गया वहाँ पर सभी धार्मिक स्थल जैसे राम चबूतरा, छठी पूजन स्थल, सीता रसोई, मुख्य गर्भगृह में भगवान का दर्शन किया। राम चबूतरा और शिव दरबार और सीता रसोई में प्रसाद लेता था और प्रसाद चढ़ाता भी था और गर्भगृह वाले भगवान का दर्शन सींखचे के बाहर से करता था और सींखचे के पास ही प्रसाद रख देता था।'' (पेज 5)

"It is my firm faith and belief that Lord Sri Rama was born in Ayodhya at that very place, where thousands of Hindu pilgrims, devotees come to have darshan, worship and perform circumambulation. On basis of this very faith and belief, I also went to Ayodhya 3-4 times a year from 1935 and after having a dip in Saryu, had the darshan of Kanak Bhawan, Hanumangarhi and Sri Ramjanmbhumi and performed circumambulation of Sri Ramjanmbhumi. . . . . When I first visited the Ramjanmbhumi premises, the entire premises appeared to me just like a temple. In between the years 1935 to 1945, whenever I went to Ramjanmbhumi temple, I had darshan of deity at all religious places such as Ramchabutra, Chhatthi worship place, Sita Rasoi, main sanctum sanctorum. (I) used to take 'prasad' at Ramchabutra, Shiv Darbar and Sita Rasoi, and also used to make offerings and used to have darshan of the deity in the sanctum

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sacntorum through the grills from outside and used to keep the offerings near the grill."(E.T.C)

''1935–45 के बीच भीड़ में लाइन लगवा कर साधु–बैरागी दर्शन कराते थे। ये साधु उसी परिसर में रहते थे।'' (पेज 10)

"In between 1935-45, the saints-recluses used to organise queues for darshan. These saints lived in that very campus."(E.T.C)

''मैंने अपने शपथ पत्र में पेज सं0–8 में जो यह कहा है कि साधुओं तथा वैरागियों के डर के कारण कोई भी मुसलमान इस परिसर के आसपास आने की हिम्मत नहीं जुटा पाता था, वह इस कारण था कि मुसलमान लोग साधुओं से डरते थे।'' (पेज 12)

"My statement appearing in page 8 of my affidavit as 'due to fear of saints and recluses, no Muslim was able to gather the courage to come near this premises', was in view of the fact that the Muslims were scared of the saints."(E.T.C)

''सन् 1949 वाली घटना के लगभग एक माह बाद मैं राम जन्मभूमि मन्दिर गया था। 1949 की घटना के बाद जब मैं विवादित परिसर में गया तो वहाँ पुलिस तो थी, परन्तु सींखचे के पार से गर्भगृह के अन्दर मैंने दर्शन किया। सींखचे के पहले रामचबूतरा, सीता रसोई, शिव दरबार, षष्ठी पूजा स्थल आदि पर उसी प्रकार से पूजा आदि होती थी, जैसे पहले होती थी, बल्कि अन्तर यह था कि पुलिस वहाँ लगी थी। मेन गेट पर भी पुलिस रहती थी एवं ग्रिल से भी पुलिस दिखाई देती थी। गर्भगृह के पहले रामचबूतरा, भंडारगृह, सीता रसोई, शिव दरबार, षष्टी पूजा स्थल पर वैसे ही साधु–वैरागी रहते थे, जैसे पहले रहते थे और दर्शनार्थी वैसे ही दर्शन करते थे, प्रसाद चढ़ाते थे और पूजा आदि करते थे, जैसे पहले करते थे। बताशा एवं फूल मुख्य गेट के सामने दुकानें रहती थीं, वहाँ से लिया जाता था। मुझे नहीं मालूम कि सीता कूप का जल पिलाने के लिए कोई साधु–वैरागी गेट पर रहता था या नहीं।'' (पेज 13)

"I had gone to the Ramjanmbhumi temple, about a month after the incident of the year 1949. When I went to the disputed premises after the incident of the year 1949, the

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police was present but I had the darshan of sanctum sanctorum from outside the grill. The worship at Ramchabutra, Sita Rasoi, Shiv Darbar, Chhatthi worship place, etc. outside the grill, used to take place as in past, and the only difference was that police had been deployed over there. The police was present at the main gate as well and was visible from the grill also. The saints-recluses lived at Ramchabutara, store-room, Sita Rasoi, Shiv Darbar, Chhathi worship place, outside the sanctum sanctorum, as in past and the devotees also had darshan, offered offerings, performed worship etc. in the same manner, as in past. The shops of 'Batasha' and flowers existed opposite the main gate and they were purchased from there. I do not know whether there was any saint-recluse at the gate for giving the water of Sita Koop, or not."(E.T.C)

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"1922 में मैं पैदा हुआ था। मेरे पिता का देहान्त 1969 में हुआ। 1935 से 1969 के बीच लगभग 100 बार अयोध्या गया।" (पेज 19)

"I was born in 1922. My father died in 1969. (I) went to Ayodhya on about 100 occasions between 1935 to 1969."(E.T.C)

"मैंने 14 कोसी परिक्रमा 3–4 बार और एक बार पंचकोसी परिक्रमा की है। परिक्रमा हमेशा रात में की है। इस कारण दिखाई नहीं देता था। रास्ते में कोई मस्जिद पड़ी है या नहीं, या कहाँ–कहाँ क्या–क्या पड़ता था।" (पेज 35)

"I have performed 14 kosi (kose, 1 kose equal to 2 miles) circumambulation 3-4 times and 'Panchkosi' (of five kose) circumambulation once. (I) have always performed circumambulation during night, due to which it could not be seen (whether) there was any mosque in the path or not,

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or as to what fell in between."(E.T.C)

"1935 से 2002 तक ..... मैं राम जन्मभूमि और कनक भवन जा रहा हूँ। वहाँ मैंने 1 या 2 पुजारी देखे थे।" (पेज 41)

"From 1935 to 2002. . . . . I have been going to Ramjanmbhumi and Kanak Bhawan. There, I had seen 1 or 2 priests."(E.T.C)

"जिस गर्भगृह के बारे में मैंने अपने पहले बयान में बताया है उस गर्भगृह के बारे में सन् 1949 के पहले से जानता था, उसे मेरे चाचा ने बताया था। मैं अपने चाचा के साथ विवादित स्थल पर सन् 1935 के अन्त में दिसम्बर के महीने में गया था, तभी मेरे चाचा ने उपरोक्त बात बताई थी। सन् 1949 के बाद जो मूर्तियाँ मैंने गर्भगृह में देखी थी, वह मूर्तियाँ 1935 में नहीं थी। सन् 1935 में केवल ताक वाली मूर्ति व एक फोटो थी, जो स्थिति विवादित स्थल पर गर्भगृह में सन् 1935 में मैंने देखी थी, वही स्थिति सन् 1949 तक कायम थी। मैं नहीं बता सकता कि हर मन्दिर में गर्भगृह का होना आवश्यक है या नहीं।" (पेज 77)

"I knew the sanctum sanctorum, about which I have stated earlier, from before the year 1949. it was told to me by my uncle. I had been to the disputed structure along-with my uncle in last of December, 1995, when my uncle had told me the aforesaid facts. The idols which I saw in the sanctum sanctorum after 1949, did not lie there in 1935. In 1935, there was just one niche-placed idol and one photograph. The position which I had seen in the sanctum sanctorum on the disputed site in 1935, continued to exist up to 1949. I cannot tell whether or not it is necessary for each temple to have a sanctum sanctorum. "(E.T.C)

OPW-7, Ram Surat Tiwari

"अयोध्या वर्ष में 4–5 बार जाता रहा, कनक भवन, हनुमानगढ़ी, श्रीराम जन्मभूमि आदि का दर्शन करता था।" (पेज 2)

"I kept visiting Ayodhya, 4-5 times in a year. (I) used to

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have darshan of Kanak Bhawan, Hanumangarhi, Sri Ramjanmbhumi, etc."(E.T.C)

''आदिकाल से हिन्दुओं में यह आस्था, विश्वास एवं लोकमान्यता प्रचलित है कि इस भवन के बीच वाले शिखर के नीचे ही भगवान विष्णु ने राजा दशरथ के पुत्र श्रीराम के रूप में अवतार लिया था इसीलिए इसे भगवान राम का गर्भगृह कहा जाता है। राम चबूतरा का दर्शन करने के बाद सींखचों वाली दीवार के दरवाजे से तीन शिखर वाले भवन में स्थित श्रीराम जन्मभूमि गर्भगृह का दर्शन तीर्थयात्री–दर्शनार्थी किया करते थे तथा फूल–माला, द्रव्य–प्रसाद आदि वहीं से गर्भगृह की ओर डाल दिया करते थे।'' (पेज 4)

"From ancient times, this faith, belief and public opinion is prevalent amongst the Hindus that Lord Vishnu had incarnated beneath the mid dome of this structure as Lord Rama, son of King Dashrath. Due to this, it is called the sanctum sanctorum of Lord Rama. After having darshan of Ramchabutara, the pilgrims-devotees used to have darshan of Sri Ramjanmbhumi sanctum sanctorum situated in the three domed structure, from the gate in the grill wall, and used to make offerings of flowers-garlands, money-sweets, etc. at the sanctum sanctorum from there."(E.T.C)

''बड़े बुजुर्ग लोगों ने भी बताया था कि आस्था, विश्वास एवं प्रचलित लोक मान्यता के अनुसार सभी वैष्णव रामभक्त हिन्दू जनता बीच वाले शिखर के नीचे की भूमि को भगवान श्रीराम की जन्मभूमि होने के कारण अत्यन्त पवित्र, पूज्य और दर्शनीय मानती है। इसी कारण मेरे भाई साहब उस स्थल को भगवान राम की जन्मभूमि मानते थे।'' (पेज 4)

"The elderly persons had also told that according to faith, belief and prevalent public opinion, the Vaishnavite Rama devotee Hindu public considers the land beneath the mid dome to be very sacred, worshippable and reverable on account of being the birthplace of Lord Sri Rama. Due to

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this, my brother used to consider that place to be the birthplace of Lord Rama."(E.T.C)

''सींखचे वाली दीवाल के अन्दर तीन शिखर वाले भवन में बीच वाले शिखर के प्रवेश द्वार में और उसके अन्दर बारह कसौटी के खम्भे लगे हुए थे, उन खम्भों में घट, पल्लव, फूल–पत्तियाँ, हिन्दू देवी–देवताओं की मूर्तियाँ उत्कीर्ण थी, उनमें से किसी मूर्ति का चेहरा, किसी का हाथ, किसी का पैर खुरचे हुए थे।'' (पेज 6)

"12 touchstone pillars were fixed at and inside the entrance gate of the mid dome inside the grill wall of the three domed structure. The idols of Hindu Gods-Goddesses, 'Ghat', 'Pallav', flowers-leaves were engraved over those pillars. Out of them, the face or hand or leg of some idol had been scratched."(E.T.C)

''1942 से 1992 के दरम्यान मैंने विवादित परिसर के चारों तरफ परिक्रमा कम से कम 100–50 बार जरूर की होगी।'' (पेज 51)

"In between 1942 to 1992, I must have circumambulated the disputed premises at least 100-150 times."(E.T.C)

''सन् 1949 के मूर्ति रखे जाने के दो–तीन महीने पहले से परिसर के बाहर और रामचबूतरे के सामने कीर्तन और रामायण का पाठ हुआ करता था। वह कीर्तन अक्टूबर से 24 घंटे चलता रहता था।'' (पेज 101)

"For 2-3 months before the installation of idols in the year 1949, 'Kirtan' and 'Ramayana' oration used to take place outside the premises and in front of the Ramchabutara. This 'Kirtan' was performed 24 hours from October onwards."(E.T.C)

''कीर्तन के समय विवादित परिसर में 50–60 लोग रहते थे, परिसर के बाहर बहुत भीड़ रहती थी।'' (पेज 102)

"At time of 'Kirtan', there used to be about 50-60 persons in the disputed premises. There used to be large gathering outside the premises."(E.T.C)

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''कुछ लोग झाड़ियाँ साफ करते थे, जो भवन के पूरब और उत्तर तरफ थी। इनकी सफाई का काम अक्टूबर तक चलता था।'' (पेज 102)

"Few people used to clean the hedges, which were in east and north of the structure. Their cleansing continued till October."(E.T.C)

''मैंने इन झाड़ियों को सन् 1942 से देखा था।'' (पेज 102)

"I had seen these hedges from the year 1942."(E.T.C)

''विवादित परिसर के बाहर शामियाना झाड़ियाँ कटने के बाद लगा था।'' (पेज 104)

"The tent outside the disputed premises, was fixed after the cutting of hedges."(E.T.C)

OPW-9, Dr. Thakur Prasad Verma

''नया जन्म स्थान मन्दिर 200–250 साल पुराना। पुराना जन्मस्थान दूसरों के कब्जे में इसलिए नये जन्मस्थान के साथ सीता रसोई भी बनाई गई–दूसरों के कब्जे का मतलब मुस्लिम शासक।'' (पेज 138)

"The new Janmsthan temple (is) about 200-250 years old. The old Janmsthan in possession of others, as such Sita Rasoi was also built along with new Janmsthan – by possession of others is meant the Muslim rulers."(E.T.C)

''1885 का वाद पत्र – जिला जज चामियार – निर्णय – 'यह दुर्भाग्यपूर्ण है कि हिन्दुओं द्वारा विशेष रूप से पवित्र माने जाने वाले स्थल को तोड़कर उस पर इमारत खड़ी कर दी गई लेकिन 300 वर्ष बीतने पर भी इस पर निश्चित निर्णय नहीं दिया जा सका' इस प्रकार चामियार ने उस विवादित भवन को जन्मभूमि का एक अंश माना है।'' (पेज 151)

"Plaint of 1885 – District Judge Chamiar – Judgment – 'It is unfortunate that structure was raised by demolishing the place, particularly considered sacred by Hindus, but despite lapse of 300 years no definite decision has been possible on the same'. Accordingly Chamiar has considered the disputed structure to be part of Janmbhumi."(E.T.C)

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"203C-1/1&2 देखकर पहली बार ज्ञात हुआ कि जिस स्थान पर B.M. थी वहाँ पहले विष्णु हरि का मन्दिर था जिसे गिराकर 1528 में मस्जिद बनी।" (पेज 209)

"After looking at (paper no.) 203C-1/1&2, it transpired for the first time that at the place where B.M. stood, there was Vishnu Hari temple in past, after demolishing which the mosque was built in 1528."(E.T.C)

'107C-1/14 (P322) 11th 12th line जन्मस्थान का जो वर्णन है यह विवादित स्थल पर स्थित भवन से सम्बंधित है।" (पेज 320)

"The Janmsthan mentioned in 11th 12th line (of paper no.) 107C-1/14(P322), is related to the building situated at the disputed premises."(E.T.C)

"विवादित स्थल सरयू के किनारे प्राचीनकाल (2000–1000 हजार साल पहले) में था।" (पेज 322)

"The disputed site was along the banks of Saryu in the ancient period (2000-1000 years ago)."(E.T.C)

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"गहड़वाल राजवंश के संस्थापक चन्द्रदेव अपने को अयोध्या आदि तीर्थ स्थानों के संरक्षक मानते थे।" (पेज 325)

"Chandradeo, the founder of Gahadwal Dynasty regarded himself patron of Ayodhya and other places of pilgrimage (Teerthsthan)."(E.T.C)

OPW-12, Kaushal Kishore Mishra

"श्रीराम जन्मभूमि अयोध्या में जब से मैं अपने बाबा और पिताजी के साथ जाना प्रारम्भ किया तब से वहाँ हिन्दुओं को ही पूरे परिसर में काबिज, दाखिल व पूजा पाठ करते साधु–बैरागियों को परिसर में रहते हुए देखा।" (पेज 5)

"Since I started going to Sri Ramjanmbhumi Ayodhya along-with my grandfather and father, I have seen the Hindus to be in possession over the entire premises, carry out prayer-worship, and the saints-recluses living in the

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premises."(E.T.C)

''राम जन्मभूमि मन्दिर में जब पहली बार दर्शन करने गया था, उस समय मेरे साथ मेरे पिताजी भी थे। सींखचों वाली दीवार के दोनों दरवाजे खुले रहते थे। उसी दरवाजे से दर्शन करने जाता था। वहीं पर रामलला का विग्रह था।'' (पेज 15)

"When I first went to Ramjanmbhumi temple to have darshan, at that time my father was also with me. Both the gates of the grill wall used to remain open. The 'Vigrah' of Ramlala existed over there."(E.T.C)

''सालिग्राम की प्राण प्रतिष्ठा नहीं होती है। वह स्वयंभू भगवान हैं।'' (पेज 22)

"Deification of Saligram is not carried out. He is self-originating God."(E.T.C)

''सालिग्राम के शंख, चक्र आदि चिन्हों के आधार पर देवताओं का आकार निश्चित मानकर ध्यान किया जाता है।'' (पेज 22)

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"Meditation is carried out after assuming the form of Gods on basis of conch, wheel, etc. symbols of Saligram."(E.T.C)

''मैं जन्म से ही अयोध्या में रहता हूँ।'' (पेज 30)

"I live in Ayodhya since birth."(E.T.C)

''श्री रामचन्द्र जी का जन्म अयोध्या में रामकोट मोहल्ले में वर्तमान जन्मभूमि परिसर में हुआ था। जहाँ पर गर्भगृह में आज रामलला जी विराजमान हैं, वहीं पर उनका जन्म हुआ था। तीन गुम्बद वाला मन्दिर, जो रामकोट में स्थित था, उसके मध्य भाग में श्रीरामलला जी का गर्भगृह था।'' (पेज 42)

"Lord Ram Chandra was born in Ramkot locality of Ayodhya, the present Janmbhumi premises. Lord Ramlala was born at the same place where He is present today in the sanctum sanctorum. The sanctum sanctorum of Ramlala was in the mid part of the three domed temple, which was situated in Ramkot."(E.T.C)

''जो गर्भगृह है, वहीं पर रामचन्द्र जी का जन्म हुआ था। पूरा रामकोट दशरथ जी का महल था, जिसमें गर्भगृह भी शामिल है। रामचन्द्र जी का

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जन्म दशरथ जी के महल में ही हुआ था। वर्तमान समय में जिसे रामकोट मोहल्ला कहा जाता है, वही दशरथ जी के महल का अन्तर्गृह था। शिव संहिता, भव्य उत्तरखण्ड के प्रथम अध्याय से चतुर्थ अध्याय तक श्रीराम जी के राज्याभिषेक के समय जो अयोध्या और रामकोट की स्थिति थी, उसका वर्णन आया है।'' (पेज 43)

"Lord Ram Chandra was born at what is the sanctum sanctorum. The entire Ramkot was the palace of Dashrath, which also included the sanctum sanctorum. Lord Ram Chandra was born in the palace of Dashrath. At present what is called the Ramkot locality, was the inner part of the palace of Dashrath. The situation of Ayodhya and Ramkot, at time of enthronement of Lord Rama, is found in Chapter 1 to 4 of Bhavya Uttrakhand, Shiv Samhita."(E.T.C)

''जैसे आजकल गणराज्य हैं, हर प्रान्त का शासन अलग–अलग है, और केन्द्रीय शासन एक जगह है, उसी प्रकार दशरथ जी की केन्द्रीय शासन की राजधानी अयोध्या थी। राम जी का जन्म राजा दशरथ के राजमहल के प्रसूति गृह में हुआ था।'' (पेज 46)

"As is the case in present days republic where every province has its independent rule with a separate central rule, similarly Ayodhya was the capital of the central rule of King Dashrath. Lord Rama was born in the labor room of the palace of King Dashrath."(E.T.C)

''मेरी यह भी आस्था है कि हर बार रामचन्द्र जी का जन्म उसी स्थान पर हुआ होगा, जहाँ पर बाबरी मस्जिद थी। शास्त्रों में ऐसा आया है कि जब रामचन्द्र जी का पहली बार जन्म हुआ था, उस समय राजा दशरथ का महल पत्थर, मणि, मोती, मुक्ता से बना था। शास्त्रों में इस बात का भी वर्णन है कि हर कल्प में रामचन्द्र जी का जन्म जिस अयोध्या में हुआ था, वह, वही अयोध्या थी, जो वर्तमान में है।'' (पेज 51)

"It is my faith that every-time Lord Ram Chandra would have been born at that very place where Babri mosque stood. It has so been mentioned in the Shashtras that when

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Lord Ram Chandra was born for the first time, the palace of King Dashrath was made up of stones, gems, pearls at that time. It is also mentioned in the Shashtras that the Ayodhya in which Lord Ram Chandra was born in every 'Kalpa', was the same Ayodhya which exists today."(E.T.C)

"विवादित भवन की भूमि का महत्व और कलेण्डर पर लगे चित्र पर मानसिक ध्यान द्वारा आराधना, भोग, पूजा–पाठ, आरती आदि किया जाता था।" (पेज 96)

"The prayer, worship, offerings, 'Aarti', etc. were performed by concentrating on the importance of the land of the disputed structure as well as the picture contained in the calendar."(E.T.C)

"अयोध्या में कोई भी भवन मूल रूप से उस समय का नहीं है, जो भगवान राम के काल में निर्मित थे।" (पेज 98)

"In Ayodhya, there is no building in its original form, as built in the period of Lord Rama. "(E.T.C)

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"प्रश्न : क्या आप इस मुकदमे के वादी के इस कथन से जो वाद की धारा 23 में लिखित है कि विवादित स्थल पर महाराजा विक्रमादित्य द्व ारा एक मन्दिर बनाया गया था, जिसे तोड़कर बाबर ने मस्जिद बनाई थी, सहमत हैं ?

उत्तर : वादी के कथन के पहले भाग से मैं सहमत हूँ अर्थात् विक्रमादित्य ने विवादित स्थल पर एक मन्दिर बनवाया था, पर जहाँ तक दूसरे भाग का प्रश्न है, मैंने ऐसा सुना है कि वहाँ पर मन्दिर तोड़ने का कई बार प्रयास किया गया और तोड़कर उसे मस्जिद बनाई भी गई, परन्तु उसका मस्जिद के रूप में कभी इस्तेमाल नहीं हुआ।" (पेज 100)

"Question: Do you agree with the contention of the plaintiff of the suit contained in para 23 of the plaint as – a temple was built at the disputed site by King Vikramaditya, after demolishing which Babur had built a mosque?

Answer: I agree with the first part of the plaintiff's

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contention i.e. King Vikramaditya had built a temple at the disputed site but so far as the second part of the question is concerned, I have so heard that attempts were made on various occasions to demolish the temple over there and a mosque was also built by demolishing (the temple), but it was never used as a mosque."(E.T.C)

"जिस समय विक्रमादित्य ने अयोध्या बसाया था, उस समय अयोध्या बिल्कुल खाली थी और खण्डहर हो गई थी, सिर्फ नागेश्वर नाथ जी का ज्योतिर्लिंग सरयू जी के किनारे स्थित था। ऐसा मैंने सुना है कि विक्रमादित्य जी ने भगवान शंकर जी की आराधना की और भगवान शंकर ने उनको दर्शन दिया और एक गऊ की बछिया दिया और बताया कि इसके स्तन से अपने आप जिस स्थान पर दूध गिरने लगेगा, उसी स्थान पर राम जी के जन्म का गर्भगृह और मन्दिर बनवाना, फिर वह बछिया घुमाई गई और उसका दूध उसी स्थान पर गिरा जहाँ आज गर्भगृह स्थित है।" (पेज 117)

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"At the time when Vikramaditya had settled Ayodhya, Ayodhya was lying vacant completely and had turned into ruins. Only the 'Jyotirlinga' of Nageshwar Nath existed along the banks of Saryu. I have so heard that Vikramaditya prayed to Lord Shankara, who appeared before him and gave him a calf and told that (you) build the sanctum sanctorum of Lord Rama and the temple at that very place where this calf starts milking on its own. Then the calf was taken around and she started milking at that very place where sanctum sanctorum is situated today."(E.T.C)

OPW-16, Jagadguru Ramanandacharya Swami Rambhadracharya

"मेरे अध्ययन और जानकारी के अनुसार अयोध्या स्थित विवादित स्थल जी श्रीराम जन्मभूमि है जो हिन्दू धर्मानुयायियों द्वारा भगवान श्रीराम के जन्मभूमि

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के रूप में अनन्त काल से आस्था, परम्परा एवं विश्वास के अनुसार मान्यता प्राप्त है तथा उस स्थल की पूजा अनवरत होती चली आ रही है।'' (पेज 5)

"According to my studies and knowledge, the Ayodhya situated disputed site is Sri Ramjanmbhumi, which has been recognised as the birthplace of Lord Rama by followers of Hinduism from time immemorial on basis of faith, tradition and belief and the said place has been continuously worshipped. "(E.T.C)

''हिन्दू धर्मशास्त्रों में स्थान विशेष की विशेष महत्ता है जो स्वयंभू देव के रूप में स्वयं प्राण प्रतिष्ठित एवं पूज्य हैं। इस प्रकार के स्थान अनन्तकाल से जनमानस में आस्था, परम्परा एवं पूजा के कारण सर्वोत्कृष्ट पूज्य स्थल हैं। इस प्रकार के देवत्व प्राप्त स्थलों पर शिवैत या सर्वराहकार या महंत की कोई आवश्यकता नहीं होती है।'' (पेज 5)

"In Hindu treatises, a place particular has a special importance, which is self deified and worshipable as self-originating God. From time immemorial such places are the top-most worship place of the general public due to faith, tradition and worship. There is no requirement of any Shebait or Sarvarahkar or Mahant at such deified places."(E.T.C)

''मुझे इस बात की जानकारी है और इस पर चर्चा भी हुई थी कि बन्द ताले के अन्दर के स्थल की पूजा अनवरत होती चली आ रही है।'' (पेज 19)

"I have knowledge of the fact and there was also a discussion on this that worship has been continuing uninterruptedly at the place under the locks."(E.T.C)

''हमें इस बात की जानकारी है कि ताले के अन्दर का स्थल स्वयंभू भगवान रामलला हैं। फिर कहा कि स्थल तो पूज्य है ही, इसके अतिरिक्त रामलला की मूर्ति ताले के अन्दर विराजमान थी।'' (पेज 20)

"I have knowledge of this fact that the place under the lock

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is self-originating Lord Ramlala. Further stated that the place is worshipable and besides this, the idol of Lord Ramlala was also present under the locks."(E.T.C)

''अथर्ववेद में राम का जन्म का विशेष स्थान पर होना लिखा हुआ है। इस विशेष स्थान का अथर्ववेद के किस अध्याय में जिक्र है, मुझे याद नहीं है, पर मैं पुस्तक देखकर बता सकता हूँ। पर मुझे वह मंत्र याद है जो निम्न प्रकार है–

'अष्टाचक्रा नवद्वारा देवानां पूरयोध्या,

तस्यां हिरण्यमयः कोशः स्वर्गो ज्योतिषावृतः।

गवाह ने किताब दिखवाकर प पढ़वाकर मंत्र संख्या बताई, जो दशम् काण्ड द्वितीय अनुवाद मंत्र संख्या 31 है।'' (पेज 39)

"In the Atharvaveda, Lord Rama is mentioned to have been born at a place particular. I do not remember as to in which chapter of the Atharvaveda is this place particular mentioned, but I can tell after going through the book. However, I remember that hymn, which reads as under:

'Ashtachakra Navadwara Devnam Puryodhya,

Tasyam Hiranyamayah Koshah Swargo Jyotishavritah'.

The witness gave the number of the hymn by getting the book shown and read, which is hymn no.31 of the 'Dasham Kand–II translation'."(E.T.C)

''इस मंत्र में 'हिरण्यमयः कोशः स्वर्गः' इन तीन शब्दों से भगवान राम के जन्मस्थल का स्पष्ट संकेत होता है और चूंकि अथर्ववेद अपौरुषेय है इसलिए इसमें इतना ही संकेत मिलता है। कहने का तात्पर्य यह है कि उस अयोध्या में एक हिरण्यमयः अर्थात स्वर्ण का मण्डपाकार भवन है, जहाँ प्रकाश से सम्पन्न साकेत लोक से आकर परमब्रह्म श्रीराम जन्म लिए थे। उपरोक्त शब्दों के आधार पर ही मैंने व्याकरण शास्त्र के अनुसार यह निष्कर्ष निकाला है कि विवादित स्थल पर ही भगवान राम का जन्मस्थान है।'' (पेज 40)

"The three words 'Hiranyamayah Koshah Swargah' in this

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hymn, clearly point towards the birthplace of Lord Rama and since Atharvaveda is 'Apaurusheya' (not authored by any Purusha or human mind i.e. they have no human origin), as such only this much indication is found in it. The implication of this is that in said Ayodhya there is a 'Hiranmayah' i.e. a golden domed shaped building where the Supreme Being Lord Rama was born from the radiant 'Saketlok'. It is on the basis of the above words that I have drawn the conclusion according to grammar that the birthplace of Lord Rama is at the disputed site."(E.T.C)

''मैंने विवादित भवन में 1949 के पहले समय में पूजा–अर्चना की बात सुनी है। ऐसा मैंने अपने पितामह से सुना है।'' (पेज 63)

"I have heard about offering of prayer-worship at the disputed structure prior to 1949. I have heard so from my grandfather."(E.T.C)

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''आस्था शास्त्रों पर भी आधारित हो सकती है और परम्पराओं पर भी आधारित हो सकती है। पूजा अर्चना की बात सन् 1528 से लेकर 1949 तक परम्पराओं के आधार पर हम सुनते चले आ रहे हैं और यह परम्परा लगातार सुनी हुई बातों पर आधारित है। उपरोक्त परम्परा मैंने अपने जीवनकाल में अपने पूर्वजों से सुनी और यह मेरे विश्वास की बात है कि यह बात मेरे पूर्वजों को उनके पूर्वजों ने बताई होगी। स्वयं कहा कि ''अविच्छिन्न जनश्रुति'' का नाम ही परम्परा है।'' (पेज 63)

"Faith can be based on Shastras as well and also on traditions. I have been hearing about offering of prayer-worship from the year 1528 to 1949, on basis of traditions and this tradition is based on facts heard continuously. I heard this tradition in my life time from my ancestors and it is a matter of my belief that these facts were told my ancestors by their ancestors. Stated on his own that 'uninterrupted hearsay' is what is called tradition."(E.T.C)

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DW-1/1, Rajendra Singh

''सायंकाल को भी आरती व भोग के समय सपरिवार अन्य मन्दिरों के साथ–साथ जन्मभूमि मन्दिर में भी पूजा व दर्शन करते थे व बिना किसी रोकटोक के गर्भगृह तक जाकर पूजा व दर्शन करते थे। वर्ष 1950 के मकर संक्रान्ति से कुछ पहले मेरे पिता स्वर्गीय श्री गोपाल सिंह विशारद अस्वस्थ हो होने के कारण मन्दिरों में दर्शन व पूजा करने नहीं पहुँच पाए। स्वस्थ होने पर मकर संक्रन्ति को जब वे पूजा व दर्शन करने हेतु जन्मभूमि पर गए, तो राज्य सरकार के कर्मचारियों ने उन्हें भीतर जहाँ श्री रामचन्द्र आदि की मूर्ति विराजमान थी, जाने से रोक दिया।'' (पेज 4)

"In evening also at time of 'Aarti' and 'Bhog', (I) along with family used to offer prayers and have darshan in the Janmbhumi temple as well besides other temples and used to offer prayer and have darshan up to the sanctum sanctorum without any obstruction. On account of his ill health for sometime before the Makar Sankranti of the year 1950, my father Late Sri Gopal Singh Visharad could not go to temples to have darshan and offer prayers. On recovery, when he went to the Janmbhumi to offer prayer and have darshan on the occasion of Makar Sankranti, the employees of State Government restrained him from going inside, where the idols of Lord Ramlala etc. were present."(E.T.C)

''वादपत्र के अन्त में जो चौहद्दी दर्शाई गई है उस चौहद्दी के अन्दर भगवान श्रीरामचन्द्र आदि की मूर्तियाँ भवन के मध्य शिखर के नीचे गर्भगृह में विराजमान रही हैं, जिनकी पूजा व दर्शन सदैव से मूलवादी तथा वादी एवं करोड़ों हिन्दू जनता व रामभक्तों द्वारा निर्बाध रूप से सहस्रों वर्षों से होती चली आ रही है।'' (पेज 5)

"The idols of Lord Ram Chandra and others have existed in the sanctum sanctorum beneath the mid dome of the structure, whose boundary has been shown at the foot of

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the plaint, and its prayer-darshan has always been performed uninterruptedly by the original plaintiff, the plaintiff, crores of Hindu public and devotees of Lord Rama for thousands of years."(E.T.C)

''समस्त हिन्दू जनता और रामभक्त तथा मूलवादी व वादी स्वयं इसे श्री रामचन्द्र जी की जन्मभूमि मानते चले आ रहे हैं। जन्मभूमि परिसर का वन्दन और नमन करने के उपरान्त समस्त परिसर की परिक्रमा करके अपने को धन्य मानते हैं। मूलवादी तथा वादी ने भी लगातार जन्मभूमि पर आकर जन्मभूमि का नमन व वन्दन किया है तथा लगातार वर्षों तक भगवान श्री रामचन्द्र आदि की विराजमान मूर्तियों का दर्शन करने के उपरान्त स्वयं वादी ने भी जन्मभूमि परिसर की परिक्रमा असंख्य बार की है।'' (पेज 6)

"The entire Hindu public, the devotees of Lord Rama, the original plaintiff and the plaintiff himself have been considering it to be the birthplace of Lord Rama. One considers himself to be blessed by offering reverence at the Janmbhumi premises and thereafter performing circumambulation of the entire premises. The original plaintiff as also the plaintiff have continuously offered reverence at the Janmbhumi and after continuously having darshan for years of the idols of Lord Sri Ram Chandra and others existing over there, the plaintiff has himself performed circumambulation of Janmbhumi premises on innumerable occasions."(E.T.C)

''मैंने अपने शपथपत्र के पैरा 13 में यह लिखाया है कि सदैव से मूलवादी एवं करोड़ों हिन्दू जनता व रामभक्तों द्वारा निर्बाध गति से सहस्रों वर्षों से पूजा–दर्शन होते चले आ रहे हैं, यह बातें मेरी सुनी हुई हैं। सहस्रों वर्षों से पूजा–दर्शन वाली बात मुझे मेरे बाबा एवं पिताजी ने बताई थी।'' (पेज 20)

"In para 13 of my affidavit, I have got it mentioned that the original plaintiff, crores of Hindu public and devotees of

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Lord Rama have always uninterruptedly carried out prayer-darshan for thousands of years. These facts have been heard by me. The fact of prayer-darshan for thousands of years, were told to me by my grandfather and father."(E.T.C)

''विवादित भवन पर पुलिस का पहरा लगने के लगभग एक साल बाद मैं पहली बार फिर गया था। जब तक मैं अयोध्या में रहा, अर्थात् सन् 1959 तक मैं विवादित परिसर पर लगभग महीने में एक बार जरूर जाता था। सन् 1950 से सन् 1959 के बीच में जब मैं विवादित स्थल पर जाता था तो सींखचे वाली दीवार के दरवाजे के अन्दर कुछ दिखाई नहीं देता था। पर कुछ रखा हुआ मालूम होता था, जिसे मैं रामलला मानकर दर्शन कर लेता था।'' (पेज 23)

"I first went to the disputed structure after about one year since the deployment of police. As long as I remained in Ayodhya i.e. till the year 1959, I definitely went to the disputed premises at least once a month. Between the years 1950 to 1959, whenever I went to the disputed site, the visibility of the inner portion was poor from the gate in the grill wall but something did appear, of which I used to have darshan as Lord Ramlala "(E.T.C)

DW-1/2, Krishna Chandra Singh

''परम्परागत आस्था एवं विश्वास के कारण हिन्दू श्रद्धालु रामभक्त तथा मेरे परिवार के लोग और मैं भी उस स्थल को जहाँ भगवान श्रीराम का जन्म अनादिकाल से माना जाता रहा है, उसे स्वयंभू देव मानकर दर्शन–पूजा, साष्टांग प्रणाम करते हैं तथा पूरे परिसर की परिक्रमा अयोध्या में रहने वाले तथा देश–विदेश से अयोध्या आने वाले दर्शनार्थी–तीर्थयात्री करते हैं।'' (पेज 5)

"Out of customary faith and belief and by considering it to be a self-originating God, the Hindu devotees of Lord Rama, my family members and myself have been offering

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reverence, having darshan over there, which has been considered as the birthplace of Lord Rama since ancient times, and the circumambulation of the entire premises is performed by the residents of Ayodhya as well as the pilgrims-devotees coming over to Ayodhya from country-abroad."(E.T.C)

''प्र0 : 22 दिसम्बर सन् 1949 तक विवादित परिसर में आप किस स्थान पर रखी हुई मूर्तियों का दर्शन एवं पूजा करते थे ?

उ0 : 22 दिसम्बर सन् 1949 में जब तक भगवान का प्रादुर्भाव वहाँ नहीं हुआ था, उसके पहले मैं बीच वाले गुम्बद के नीचे साक्षात् प्रभु को उपस्थित मानकर मैं साष्टांग दण्डवत एवं पूजा करता रहा हूँ।'' (पेज 31)

"Question: Till 22nd December, 1949, at which place did you offer prayers and had darshan of the idols in the disputed structure?

Answer: Prior to 22nd December, 1949, by which time the deity had not appeared over there, I used to offer my reverence and prayer by taking the God to be Himself present beneath the mid-dome."(E.T.C)

''उ0 गुम्बद वाला भवन बाबर के समय से पहले मन्दिर के रूप में ही था। मीरबाकी ने उसको तोड़ने का प्रयास किया और मस्जिद के रूप में परिवर्तित करने का प्रयास किया, लेकिन सफल नहीं हुआ और आज तक हिन्दू उसे रामजन्मभूमि मानते चले आए हैं।'' (पेज 40)

"Answer: Prior to the period of Babur, the domed structure was in form of a temple. Mir Baqi had attempted to demolish and convert it into a mosque, but had not been successful in the same and till date the Hindus have been considering it to be Ramjanmbhumi."(E.T.C)

''मीरबाकी के समय से लेकर और उसके पहले से भी लेकर 6 दिसम्बर 1992 तक सारे भारत की हिन्दू जनता उसे रामजन्मभूमि मन्दिर मानकर

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चली आई है और सदा हिन्दू लोग वहाँ जाकर पूजा, अर्चना, प्रणाम और परिक्रमा करते रहे हैं और जब–जब मुसलमानों ने उस पर कब्जा करने का प्रयास किया तब–तब देश के हिन्दुओं ने उसका विरोध किया और अपना कब्जा करते रहे और संघर्ष बराबर चलता रहा।'' (पेज 40)

"From the period of Mir Baqi as well as the period before, upto 6th December, 1992, the Hindu public of India has been treating it to be Ramjanmbhumi temple and Hindus have always offered prayer, worship and circumambulation over there and whenever Muslims have attempted to grab the same, the Hindus of the country have resisted it and maintained their possession and the conflict continued regularly."(E.T.C)

''प्रश्न : आपने अपने शपथपत्र के पैरा 16 में जिस परम्परागत आस्था और विश्वास का उल्लेख किया है, वह कितनी पुरानी और किस समय से चली आ रही है ?

उत्तर : यह परम्परा रामावतार के बाद से ही चली आ रही है।'' (पेज 59)

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"Question: The 'customary faith and belief' mentioned by you in para 16 of your affidavit, is how old and since when it is in practice?

Answer: This custom is in practice after the 'Ramavatar' (incarnation of Lord Rama)."(E.T.C)

''प्र0 : सिर्फ बाहर से देखने पर विवादित भवन आपको रिहायशी मकान, मन्दिर, मस्जिद, तिजारती भवन या कम्युनिटी हाल क्या लगती थी ?

उ0 : सिर्फ बाहर से देखने से ही जैसा कि चारों ओर वाराह भगवान की खण्डित प्रतिमा है और दो शेर, गुरुड़, जो भगवान विष्णु के वाहन हैं, की प्रतिमा लगी है और पूर्वी दरवाजा जो हनुमतद्वार के नाम से जाना जाता है, उसके पास ही एक पत्थर पर गड़ा हुआ पत्थर है, जिस पर लिखा हुआ है, रामजन्मभूमि नित्य–यात्रा। इन सबके देखने से भी यह सिद्ध होता है और प्रतीत होता है कि यह हमेशा प्राचीन राम जन्मभूमि मन्दिर रहा

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है। मेरे विचार से बाहर जो पत्थर लगा हुआ मैंने बताया है, वह भी बहुत प्राचीन है और मन्दिर के समय का ही है।'' (पेज 63)

"Question: What does the disputed structure appear to you from outside–a residential house, temple, mosque, business place or community hall?

Answer: Merely looking from outside, there is broken idol of God Varah, the statue of two lions, Garuna, which is the carrier of Lord Vishnu and there is eastern gate which is known as Hanumatdwar and near to it is a stone with 'Ramjanmbhumi Nitya Yatra' inscribed over it. By looking at all these, it is established and transpires that it has always been an ancient Ramjanmbhumi temple. In my opinion, the stone told by me to have been fixed outside, is also very old and is of the period, similar to the temple."(E.T.C)

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DW-1/3, Dr. Sahdev Prasad Dubey

''पौराणिक ग्रन्थों व लाखों वर्षों की आस्था के अनुसार अयोध्या के रामकोट मोहल्ले में जन्मभूमि व जन्मस्थान अवस्थित है। यों तो समस्त अयोध्या क्षेत्र ही मर्यादा पुरुषोत्तम श्रीराम की जन्मस्थली के रूप में देवतुल्य, पूज्य है किन्तु जिस स्थान को शास्त्रों ने श्रीराम की जन्मस्थली माना है उसकी महिमा का बखान धार्मिक, साहित्यिक व ऐतिहासिक पुस्तकों में किया गया है। इनके अतिरिक्त जनमानस की आस्था व विश्वास के आधार पर रामकोट स्थित जन्मभूमि मन्दिर, जिसे विवादित कर दिया गया है वही मर्यादा पुरुषोत्तम श्रीरामचन्द्र जी की जन्मभूमि मानी जाती है, जिसे चिन्हित कर भव्य मन्दिर का निर्माण आदिकाल में हुआ था, जब से निरन्तर उस स्थान तथा वहाँ विराजमान एवं स्थापित भगवान श्रीराम की मूर्ति का दर्शन–पूजन एवं जन्मस्थान की परिक्रमा होती चली आ रही है।'' (पेज 2)

"As per the ancient treatises and faith of lakhs of years, the Janmbhumi and Janmsthan are situated in Ramkot locality of Ayodhya. Although the entire Ayodhya region is

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reverable as the birthplace of Maryada Purushottam Lord Sri Rama, still the praise of importance of the place, which has been considered as the birthplace of Lord Sri Rama in the Shashtras, is found in religious, literary and historical books. Apart from this, on basis of the faith and belief of the general public, the Ramkot situated Janmbhumi temple, which has been given in dispute, has been considered as the Janmbhumi of Marayada Purushottam Lord Sri Ram Chandra, which was identified in the ancient times and a grand temple had been built. Since then, the darshan-prayer of that place and of the idol of Lord Shri Ram, present and installed over there, as well as the circumambulation of the Janamsthan has been continuing continuously."(E.T.C)

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"पौराणिक तथा समस्त सनातन धर्मावलम्बी जनमानस की आस्था एवं विश्वास के अनुसार इस स्थान पर जन्मभूमि के प्रतीक स्वरूप मन्दिर की स्थापना असंख्य वर्षों पूर्व हुई थी तथा कालान्तर में महान पराक्रमी राजा विक्रमादित्य का शासनकाल जो कालगणना के अनुसार वर्तमान समय से 2060 वर्ष पूर्व माना जाता है और इसी कालगणना को विक्रम संवत् के नाम से जाना जाता है। उन्होंने उक्त स्थान पर भव्य मन्दिर का निर्माण किया।" (पेज 3)

"As per the faith and belief of the ancient and entire 'Sanatandharmi' religious minded public, a temple was built at this place innumerable years ago as symbol of Janmbhumi and in later period the great brave king Vikramaditya, whose reign is considered to be 2060 year ago as per period calculation and this very period calculation is known as Vikram Samvat, built a grand temple at the above place."(E.T.C)

"अयोध्या स्थित रामकोट मोहल्ले में श्रीराम जन्मभूमि मन्दिर एक ऊँचे टीले

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में अवस्थित है, जिसके नीचे धरातल तक प्राचीन मन्दिरों के अवशेष विद्य मान हैं, जिनका निर्माण काल कई शताब्दियों के अन्तराल पर हुआ है। क्योंकि मन्दिरों का पुनरोद्धार एवं पुनर्निर्माण आवश्यकतानुसार किया जाता रहा है। 6 दिसम्बर, 1992 को मन्दिर का जो भवन गिर गया है, उसके नीचे बारहवीं शताब्दी के मन्दिर के अवशेष विद्यमान हैं, जिसका निर्माण गहड़वाल वंशीय राजा ने ग्यारहवीं शताब्दी के आसपास किया था।'' (पेज 5)

"The Shri Ramjanmbhumi temple is situated over a high mound in Ramkot locality of Ayodhya, beneath which the remains of ancient temples exist upto the ground level, whose periods of construction are separated by many centuries because the renovation and reconstruction of the temples used to take place as per necessity. The remains of twelfth century temple built by Gahadwal dynasty king around the eleventh century, are present beneath the structure of the temple, which fell down on 6th December, 1992."(E.T.C)

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''अयोध्या तीर्थस्थली अन्य सभी तीर्थस्थलों में प्रमुख रूप से मानी जाती है क्योंकि यहाँ ही मर्यादा पुरुषोत्तम भगवान श्रीराम ने मानव रूप में अवतार लेकर समस्त मानव जाति के लिए कल्याणकारी काम किए हैं। भगवान श्रीराम और अयोध्या में स्थित उनकी जन्मस्थली जिसे राम जन्मभूमि मन्दिर व परिसर के रूप में कोटि–कोटि भारतीय व रामभक्त श्रद्धा, विश्वास व आस्था का पूंज मानकर पूजा करता चला आ रहा है।'' (पेज 7)

"The pilgrimage Ayodhya is considered prime out of all other pilgrimage because it is here where Maryada Purushottam Lord Shri Rama had incarnated in human form and carried out welfare acts for the entire human race. Lord Shri Rama and His Ayodhya situated birthplace has been worshipped by crores of Indians and devotees of Lord Rama as Ramjanmbhumi temple and its premises, by

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taking it to be a matter of their devotion, belief and source of faith."(E.T.C)

''मैंने अपने दिनांक 7.08.2003 के बयान पेज 47 के अन्तिम 2 पंक्तियों में जो यह कहा है कि जिस स्थान पर राम का जन्म हुआ, उसे हम जन्मभूमि के नाम से संदर्भित करते हैं। सही कहा है। जन्मस्थान उस सम्पूर्ण परिसर को कहते हैं, जो जन्मभूमि के चारों तरफ चारदीवारी से घिरा हुआ होता है, अर्थात राम जी का जिस महल में जन्म हुआ, वह तो जन्मभूमि कहलाएगी और उस महल के आसपास का उससे सम्बंधित और घिरा हुआ स्थान जन्मस्थान कहलाएगा।'' (पेज 72)

"My statement given yesterday on 07.08.2003 in last two lines of page-47 as 'the place where Lord Rama was born, is referred as Janmbhumi by us', is correct. The entire premises is referred as Janmsthan, which is bounded by the boundary on all sides of the Janmbhumi i.e. the palace in which Lord Rama was born would be called Janmbhumi and the area adjoining, related and covered by that palace would be called Janmsthan."(E.T.C)

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''उत्तर : रामचरितमानस में एक जगह पर स्पष्ट लिखा हुआ है कि ''जन्मभूमि मम पुरी सुहावनि, उत्तर दिसि सरयू बहि पावनि'' इसमें ''पुरी'' शब्द का प्रयोग अयोध्या के लिए हुआ है, और 'जन्मभूमि' शब्द का प्रयोग उस स्थली के लिए है, जो उस पुरी में स्थित है।'' (पेज 95)

"Answer:- It is clearly mentioned at a place in Ramcharit Manas that 'Janmbhumi Mam Puri Suhawani, Uttar Disi Saryu Bahi Pawani'. In it, the word 'Puri' has been used for Ayodhya and 'Janmbhumi' for that place which is situated in 'Puri'."(E.T.C)

''मेरे विचार से विवादित परिसर मे रामलला की केवल एक मूर्ति स्थापित थी और वह मूर्ति रामलला के प्रकट होने के पहले भी थी। जब इस मन्दिर को मस्जिद बनाने का बाबर के सिपहसालार ने आक्रमण किया और इसको ध्वस्त किया और मूर्ति को भी गायब कर दिया या क्या हुआ, इसका मुझे ज्ञान नहीं है। बाबर के आक्रमण के समय श्री रामलला की जो मूर्ति

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वहाँ थी, वह गायब हुई, उस समय से जब तक भगवान स्वयं मूर्ति के रूप में प्रगट नहीं हुए तब तक उस खाली स्थान का ही लोग दर्शन करते थे।'' (पेज 99)

"In my opinion, only one idol of Lord Ramlala was installed at the disputed premises and that idol of a period earlier than the appearance of Lord Ramlala. I have no knowledge as to what happened when the commander of Babar carried out invasion to convert this temple into mosque and even demolished it and also removed the idol. The idol of Lord Shri Ramlala, which existed at time of the invasion by Babar and which had been removed, did not re-appear till the appearance of the deity Himself and till that time people used to have darshan of the vacant place."(E.T.C)

DW-2/1-2, Ram Saran Srivastava

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''उपरोक्त गजेटियर के अध्ययन से स्पष्ट होता है कि विवादित स्थल हिन्दुओं के आराध्य भगवान श्रीराम की जन्मस्थली है जहां हिन्दुओं द्वारा सदैव से अपने आराध्य भगवान श्रीराम की जन्मभूमि के रूप में पूजा की जाती रही है तथा इसी स्थल पर श्रीराम जन्मभूमि मंदिर पूर्व काल में भी स्थित था जिसे 1528ईं में ध्वस्त करके विवादित ढांचा बाबर के आदेश पर मीरबाकी द्वारा बनाया गया।'' (पेज 4)

"By study of the aforesaid gazetteer, it transpires that the disputed site is the birthplace of Lord Sri Rama, revered by Hindus, where Hindus have always paid their reverence as the birthplace of their revered Lord Sri Rama and the Sri Ramjanmbhumi temple existed at this very place in past, which was demolished in 1528 AD and the disputed structure was built by Mir Baqi under the command of Babur."(E.T.C)

''मेरी पुस्तक का निष्कर्ष यह है कि मैं विवादित स्थल को श्रीराम की जन्म

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स्थली मानता हूं। मैं अपने अनुभव के आधार पर इतना जानता हूं कि राम जन्मभूमि पर जो मूर्ति थी, उसकी पूजा अर्चना, भोग, सम्मइया आदि वहां के साधु लोग करते थे। रिसीवर की नियुक्त के बाद रिसीवर लोग तथा उनके नियुक्त कर्मचारी लोग यह कार्य करते थे।'' (पेज 23)

"The conclusion of my book is that I consider the disputed site to be the birthplace of Lord Sri Rama. On the basis of my experience, I know only this much that the prayer, worship, 'Bhog', 'Sammaiya', etc. of the idols at the Ramjanmbhumi, were carried by the saints present over there. After the appointment of Receiver, the said work was carried out by the Receiver and persons appointed by him."(E.T.C)

''मेरा जन्म 1918 का है। 1933 में मैं अयोध्या आया।'' (पेज 25)

"I was born in the year 1918. I came to Ayodhya in the year 1933."(E.T.C)

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''मेरे फैजाबाद में जिलाधिकारी नियुक्त होने के पहले विवादित स्थल पर नमाज पढ़ने के लिए कोई नहीं जाता था। जब मैं फैजाबाद में जिलाधिकारी के रुप में नियुक्त हुआ तब मैंने विवादित स्थल की पूरी जानकारी प्राप्त की। मुझे यह जानकारी प्राप्त हुई कि मुसलमान भाई लोग विवादित स्थल को बाबरी मस्जिद कह रहे थे तथा हिन्दू लोग इसे रामजन्मभूमि कह रहे थे। स्वयं कहा कि इसी कारण हम लोग प्रशासनिक दृष्टि से उस स्थल को विवादित स्थल कहते थे। मैंने विवादित स्थल को कई बार देखा था। विवादित स्थल की सही लम्बाई–चौड़ाई, मैं इस समय नहीं बता सकता हूँ।'' (पेज 26–27)

"Prior to my posting as District Magistrate of Faizabad, none used to go to the disputed site for offering namaz. When I was posted as District Magistrate of Faizabad, I gathered complete information about the disputed site. I came to know that the Muslims used to term it to be Babri mosque and the Hindus were terming it Ramjanmbhumi.

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Stated on his own that it was due to this administrative reason that we used to call that place, the disputed site. I had seen the disputed site on number of times. At the moment, I cannot give the exact dimensions of the disputed site."(E.T.C)

"जो प्रशासनिक अधिकारी विवादित स्थल पर जाते थे, पूजा व दर्शन भी करते थे। मैं भी दर्शन करता था। उस समय मैं इस तथ्य की सूचना रखता था कि इस स्थल से संबंधित मुकदमें चल रहे हैं।" (पेज 31)

"The administrative officers, who used to go to the disputed site, used to offer prayer and have darshan over there. I also used to have darshan. At that time, I did have the information that cases were pending in respect of this site."(E.T.C)

"जो जानकारी मैंने हासिल की और जैसा कि लोग कहते थे, वह स्थान, जिस पर बाबरी मस्जिद खड़ी थी, रामजन्मभूमि था। मेरे अनुभव और मेरी राय के मुताबिक लोग ऐसा सही कहते थे कि यह स्थान, रामजन्मभूमि थी।" (पेज 42)

"According to the information gathered by me and as told by people, the place where Babri mosque stood was Ramjanmbhumi. As per my experience and opinion, people used to rightly say that this place was Ramjanmbhumi."(E.T.C)

"जन्मस्थान मन्दिर रामजन्मस्थान के रूप में जाना जाता है। स्वयं कहा कि राम जन्मभूमि विवादित स्थल था। इसे गुदड़तल मन्दिर नहीं कहा जाता है।" (पेज 48)

"The Janmsthan temple is known as Ramjanmsthan. Stated on his own that Ramjanmbhumi was the disputed site. It was not called Gudadtal temple. "(E.T.C)

"ताला लगने से पहले लोग दीवार के पास खड़े होकर दर्शन करते थे। मैं वहाँ अन्दर जाकर झाड़ू–बहारू करता था, पूजा पाठ करता था।" (पेज 49)

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"People used to have darshan from near the wall, before the locks were put. I used to broom the inside portion, (and) perform prayer-worship over there."(E.T.C)

"विवादित स्थल को मैंने भगवान श्रीराम का जन्म स्थान, धार्मिक मान्यताओं एवं उपलब्ध अभिलेखों के आधार पर कहा है। फैजाबाद में जिलाधीश की तैनाती के पूर्व एवं प्रारम्भ से ही मेरी यह मान्यता थी कि विवादित स्थान श्रीराम का जन्म स्थान है। यानी बचपन से जब से मैंने होश संभाला, तब से मेरी उपरोक्त धार्मिक मान्यता चली आ रही है। मैंने जिन अभिलेखों का सन्दर्भ अपने शपथ पत्र की धारा–20 और 21 में किया है, उनमें गजेटियर एवं रेवेन्यू रिकाड्र्स थे। उक्त अभिलेखों में पुलिस रिपोट्र्स व इंटेलीजेन्स रिपोट्र्स जो समय–समय पर दाखिल हुई, भी सम्मिलित हैं।" (पेज 54)

"I have stated the disputed site to be the birthplace of Lord Shri Rama, on basis of religious belief and available records. Prior to (my) posting as District Magistrate in Faizabad and since beginning, it was my belief that the disputed site was the birthplace of Lord Shri Rama i.e. since childhood, when I attained maturity, the aforesaid religious belief of mine has been continuing. The records referred to by me in para-20 and 21 of my affidavit, include gazetteer and revenue records. The aforesaid records also includes police reports and intelligence reports filed from time to time."(E.T.C)

"गुरूद्वारा ब्रह्मकुण्ड का उल्लेख करते हुए मैंने गुरूनानक देव के यहाँ पधारने का उल्लेख किया है, इस प्रकार की मान्यता अयोध्या में थी। इस सम्बन्ध में मैंने कहीं पर पढ़ा नहीं है। मैं अपने अध्ययन के आधार पर तथा लोगों के बताने के आधार पर यह जानता हूँ कि गुरूनानक देव अयोध्या आए थे।" (पेज 80)

"While mentioning Gurudwara Brahmkund, I have mentioned about arrival of Guru Nanak Dev over here.

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Such a belief existed in Ayodhya. I have not read in this behalf anywhere. On basis of my studies and as told by people, I know that Guru Nanak Dev had come to Ayodhya."(E.T.C)

''कागज संख्या 312सी–1/6 में कारनेगी ने अयोध्या को 'अजुधिया' (Ajudhia) से सम्बोधित किया है। इसमें परगना हवेली अवध के अन्तर्गत अयोध्या को स्थित होना लिखा है। 'डिराइवेशन' शीर्षक के अन्तर्गत जो बाते लिखी हुई हैं, उनमें मैं सहमत हूँ। इसके बाद के शीर्षक 'एरिया' के अन्तर्गत जो बातें लिखी हुई हैं, उन बातों से मैं सहमत हूँ।'' (पेज 90)

"In paper no. 312C-1/6, Carnegie has referred Ayodhya as 'Ajudhiya'. In it, Ayodhya is given to be situated under Pargana Haveli Awadh. I agree with the facts mentioned under the heading 'derivation'. I agree with the facts mentioned after it under the heading 'area'."(E.T.C)

''कागज संख्या 312सी–1/11 में 'हिन्दू एण्ड मुसलमान डिफ़रेंसेंज' शीर्षक के अन्तर्गत लिखी हुई बात मेरी जानकारी के अनुसार सही है। इस शीर्षक के अन्तर्गत लिखी हुई बातों में चौथी लाइन में जन्मस्थान का उल्लेख आया है, जो विवादित स्थल के सन्दर्भ में है।'' (पेज 92)

"According to my knowledge, the facts mentioned under the heading 'Hindu and Musalman differences' in paper no. 312C-1/11, are correct. Janmsthan is mentioned the fourth line of the facts mentioned under this heading, which is in context of the disputed site."(E.T.C)

''कागज सं0 312 सी–1/23 के पृष्ठ 389 की दूसरी, तीसरी एवं चौथी पंक्तियों में रामकोट मोहल्ले के एक स्थान पर रामचन्द्र जी के जन्म लेने का उल्लेख है, परन्तु उस स्थान को विशिष्ट रूप से इसमें नहीं बताया गया है। इसी पृष्ठ की पांचवी तथा छठी लाईन में लिखी यह बात सही नहीं है कि बाहरी भाग में एक छोटे से चबूतरे पर रामचन्द्र जी का जन्मस्थान है।'' (पेज 95)

"In the second, third and fourth lines at page 389 of paper

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no. 312C-1/23, there is reference about the birth of Lord Ramchandra at a place in Ramkot locality, however, that place has not been particularly defined in it. The fact mentioned in fifth and sixth line of this page that the birthplace of Lord Ramchandra is at a small platform in the outer part, is not correct."(E.T.C)

''मेरे विचार से यह उल्लेख सड़क के उत्तर वाले मंदिर के संबंध में नहीं है। इसी स्थान पर जो सीता रसोई मंदिर था। उसका ही इसमें वर्णन है।'' (पेज 95)

"In my opinion, this reference is not in context of the temple in north of the road. It is the Sita Rasoi temple, which existed at this place, which has been mentioned in it."(E.T.C)

''जी हाँ। उस स्थान को 'लार्जर टेम्पिल' कहा जा सकता था।'' (पेज 96)

"Yes. That place could have been called 'larger temple'."(E.T.C)

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''ट्रिफेन थ्रेलर की पुस्तक के उद्धरण, जो अन्य मूल वाद सं0 5/89 में फ्रेन्च भाषा में कागज संख्या 107सी–1/96 लगायत 107 सी–1/104 के रुप में दाखिल हैं, को देखकर साक्षी ने कहा कि फ्रेन्च भाषा को मुझे ज्ञान नहीं हैं।'' (पेज 132)

"After looking at the extract of the book of Tiffen Thalor, which has been filed in French as paper no. 107C-1/96 to 107C-1/104 in O.O.S no. 5/89, the witness stated that I do not have knowledge of French language."(E.T.C)

''इसी उद्धरण का अंग्रेजी अनुवाद 107सी–1/105 लगायत 107 सी–1/107 के रुप में दाखिल किया गया है तथा इन तीनों पृष्ठों को एक ही पेज कागज सं0 107सी–1/108 के रुप में दाखिल किया गया है।'' (पेज 132)

"The English translation of this very extract has been filed as paper no. 107C-1/105 to 107C-1/107 and all these three

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pages have been filed in single page being paper no. 107C-1/108."(E.T.C)

''कागज संख्या 107सी–1/106 के अंतिम प्रस्तर तथा कागज संख्या 107सी–1/107 के द्वितीय प्रस्तर में लिखा हुआ है। दोनों स्थानों पर क्रमश : रामकोट तथा घर के गिराये जाने का उल्लेख किया गया है। मकान को भगवान विष्णु का जन्मस्थान होने के कारण इसे मंदिर ही माना जायेगा। दोनों स्थानों पर औरंगजेब द्वारा गिराये जाने की बात लिखी गई है तथा कुछ लोगों के द्वारा बाबर द्वारा इसे गिराये जाने की बात कही गई है।'' (पेज 132)

"(It) is mentioned in last paragraph of paper no. 107C-1/106 and second paragraph of paper no. 107C-1/107. At the two places, Ramkot and demolition of house respectively have been mentioned. The house would be considered a temple on account of being the birthplace of Lord Vishnu. Demolition by Aurangzeb is mentioned at both the places and few people have stated it to have been demolished by Babar."(E.T.C)

''थाने के त्यौहार रजिस्टर में विवादित भवन के बारे में विवरण दिये गये हैं। प्रत्येक वर्ष के दशहरा, दीवाली, परिक्रमाएँ तथा विभिन्न धर्मो के अन्य त्यौहारों का विवरण इसमें रहता हैं।'' (पेज 161)

"The festival register of the police station contains details of the disputed structure. The details of various festivals of each year such as Dussehra, Deepawali, circumambulations and other festivals of other religions, are found in it."(E.T.C)

''अयोध्या में जो भी परिक्रमाएं, मेला विवादित भवन से संबंधित रहती हैं, इन सबका उल्लेख त्यौहार रजिस्टर में रहता हैं।'' (पेज 161)

"The details of the circumambulations, fair in Ayodhya related to the disputed structure, are found in this festival register."(E.T.C)

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4356. A few documents were also referred to which, we also deal at this stage.

4357. Sushri Ranjana Agnihotri, Advocate, to fortify her submission that disputed place is the place where Lord Rama was born and later on formed part of the fort of Lord Rama; referred to a structure called "Varah Image" in the south east side of the outer wall of the disputed property. Paper No. 200C1/201C1 was claimed to be the photo of Varah Image. She referred to **"Anand Ramayana (Navon Khand Sampurna)** edited by Pandit Sri Ramji Sharma published by Sri Durga Pustak Bhandar (Pvt.) Ltd., Bombay and at page 477 thereof, it says as under:

> *''उस समय विभीषण की सारी सम्पत्ति में से रामजी को कपिल* ***वाराह की मूर्ति अच्छी लगी, जिसकी पूजा रावण स्वयं करता था।*** *विभीषण ने रामजी को वह मूर्ति दे दी। उस मूर्ति के विषय में ऐसा सुना जाता है कि कपिल भगवान् ने अपनी मनः शक्ति से उस मूर्ति की रचना की। बहुत दिनों तक कपिल मुनि ने स्वयं उसकी पूजा की थी। उसके बाद वह इन्द्र के हाथ लग गयी। जब रावण ने इन्द्र से संग्राम करके उन्हें पराजित किया, तब रावण उस मूर्ति को इन्द्र से छीन लाया और बहुत समय तक उसका पूजन करता रहा।* ***आज उसे ही विभीषण ने रामजी को अर्पण कर दिया। राम ने बड़े प्रेम से उसे अपने पुष्पक विमान पर रक्खा।''***

4358. **Exhibit 116 (Suit-5) (Register 20, page 161)** contains verses 13 to 25 from "Ayodhya Mahatmya" Skandapurana : Vaishnavakhanda edited by Sri Krishnadas Kshem Raj Shresthi (1910) and reads as under:

> *''एतत्पश्चिमदिग्भागे वर्तते परमो मुने।*
> *पिंडारक् इति ख्यातो वीरः परमपैरुषः।।*
> *पूजनीयः प्रयत्नेन गंधपुष्पाक्षतादिभिः।।13।।*
> *यस्य पूजावशान् नृणां सिद्धयः करसंश्रिताः।*
> *तस्य पूजाविधानेन कर्तव्यं पूजनं नरैः।।14।।*

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सरयूसलिले स्नात्वा पिंडारकं च पूजयेत्।
पापिनां मोहकर्तारं मतिदं कृतिनां सदा।।15।।
तस्य यात्रा विधातव्या सुपूण्या नवरात्रिषु।
तत्पश्चिमदिशाभागे विघ्नेश किल पूजयेत्।।16।।
यस्य दर्शनतो नृणां विघ्नलेशो न विद्यते।
तस्माद् विघ्नेश्वरः पूज्यः सर्वकाम फलप्रदः।।17।।
तस्मात्स्थानतं ऐशने रामजन्म प्रवर्तते।
जन्मस्थातंमिदं प्रोक्तं मोक्षादिफलसाधनम्।।18।।
विघ्नेश्वरात्पूर्वभागे वासिष्ठादुत्तरे तथा।
लौमशात्पश्चिमे भागे जन्मस्थानं ततः।।19।।
यदृष्ट्वा च मनुष्यस्य गर्भवासजयो भवेत्।
विना दानेन तपसा विना तीर्थैर्विना मखैः।।20।।
नवमी दिवसे प्राप्ते व्रतधारी ही मानवः।
स्नानदानप्रभावेण मुच्यते जन्मवनधनात्।।21।।
कपिलागोसहस्राणि यो ददाति दिनेदिने।
तत्फलं समवाप्नोति जन्मभूमेः प्रदर्शनात्।।22।।
आश्रमे वसतां पुंसां तापसानां च युत्लस्।
राजसूयसहस्राणि प्रतिवर्षाग्निहोत्रतः।।23।।
नियमस्थं नरं दृष्ट्वा जन्मस्थाने विशेषतः।
मातापित्रोर्गुरूणां च भक्तिमुद्वहतां सताम्।।24।।
तत्फलं समवाप्नोति जन्मभूमेः प्रदर्शनात्।।25।।''

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Hindi Translation (as provided by DW 2/1-3, Mahant Ram Vilas Das Vedanti):

''एतत्=राम जन्मभूमि के पश्चिम दिशा में पिण्डारक इस नाम से ख्यातो=प्रसिद्ध परम पुरूष बीर परम मुनि का स्थान वर्तते=हैं। उस पूज्यनीय स्थान का गन्ध पुष्प अक्षत आदि से प्रयत्नपूर्वक पूजन करना चाहिए। (13)

''जिसके पूजन के कारण मनुष्यों के हाथ में सिद्धि प्राप्त हो जाती है। इसलिए उसकी पूजा मनुष्यों को विधि पूर्वक करना चाहिए। (14)

''सरयू जल में स्नान करके पिण्डारक की पूजा करनी चाहिए। मतिमंद मोह से ग्रसित पापियों को सदा करना चाहिए। (15)

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''उसकी यात्रा नवरात्रि के पुष्य नक्षत्र में करनी चाहिए। तत्=राम जन्मभूमि के पश्चिम दिशा के भाग में विध्न को दूर करने वाले श्रीगणेश जी का पूजन करना चाहिए। (16)

''जिसके दर्शन से मनुष्यों का विघ्न=कष्ट, दुःख थोड़ा भी नहीं रहता इसलिए विध्नेश्वर सम्पूर्ण कामनाओं के फल को प्रदान करने वाले पूज्याय :=पूज्यनीय हैं। (17)

''उस स्थान के ईशान कोण पर राम जन्मभूमि है (जहॉ पर इस समय राम लला) विराजमान हैं। इदम्=इसी राम जन्मभूमि को जन्म स्थान=राम जन्मभूमि स्थान के नाम से प्रामृमं–जाना जाता है अथवा उक्त प्रकार से व्यक्त किया गया है जो मूच्क्षादि फल को देने वाला है। (18)

''विध्नेश्वरात्=विध्न को दूर करने वाले गणेश जी के पूर्व भाग में तथा वशिष्ठकुण्ड के उत्तर भाग में, लोमश के पश्चिम भाग में जन्म स्थानं=जन्मभूमि का स्मृतम्=स्मरण करना चाहिए। (19)

''जिस राम जन्मभूमि पर विराजमान श्रीराम लला का दर्शन करने के बाद मनुष्य को पुनर्जन्म से मुक्ति मिल जाती है। बिना दान, बिना तपस्या और बिना यज्ञ के ही केवल राम जन्मभूमि के दर्शन मात्र से ही मुक्ति प्राप्त हो जाती है अर्थात् फिर से गर्भ में जन्म नहीं लेना पड़ता। (20)

''जो मनुष्य नवमी तिथि को व्रत धारण करता है और सरयू में स्नान और अयोध्या में दान करता है उसके प्रभाव से जन्मबन्धन से मुक्ति मिल जाती है। (21)

''एक हजार कपिला गाय जो प्रतिदिन दान करता है उस दान का जो फल मनुष्य को मिलता है वही फल श्रीराम जन्मभूमि के दर्शन करने से प्राप्त होता है। (22)

''आश्रम में निवास करने वाले मनुष्यों को और तपस्वियों को जो फल प्राप्त होता है, एक हजार राजसूय यज्ञ करने वालों को और प्रति वर्ष अग्निहोत्र में हवन करने वालों को वो फल प्राप्त होता हैं। (23)

''नियम में स्थित रहकर जो मनुष्य विशेष रूप से जन्मस्थाने=श्रीराम जन्मभूमि पर स्थित राम जी के दर्शन से प्राप्त होता है। माता–पिता गुरूओं और सज्जनों की भक्तिपूर्वक सेवा करने से जो फल प्राप्त होता है वहीं फल रामजन्मभूमि के दर्शन से प्राप्त होता है। (24)

''वही फल श्रीराम जन्मभूमि का एवं श्रीरामजन्मभूमि मे विराजमान भगवान

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रामलला के दर्शन से प्राप्त होता है। (25)

English Translation (By the Court)

"On the west of Ram Janam Bhumi lies a place of Pindara, a famous and great sage and great human being. We should worship this adorable place with scent, flowers, rice-grains, etc. (13)

Due to that worship human beings can attain Siddhi(accomplishment). Hence, human beings should duly worship it. (14)

After taking a dip in the water of Saryu one should worship Pindarak. The sinners suffering from weak understanding and from attachment should always do the said worship. (15)

Journey to it should be done in the Pushpa Nakshatra of Navratri. In the west part of Ram Janam Bhumi, we should worship Ganesha Ji, remover of obstacles. (16)

As a result of whose darshan human beings do not have any obstacle and pain, even a little sorrow such Vighneshwar is worthy of worship as provider of results of all desires. (17)

On the north-east of that place lies Ram Janam Bhumi (where at present Ram Lala is presiding). The same Ram Janam Bhumi is known as Ram Janam Bhumi Sthan or expressed in the said manner and it is a provider of liberation, etc. (18)

We should remember Janam Bhumi as located in the east part of 'Ganesha Ji' , remover of obstacles, and in the north part of Vashishtha Kunda and in the west part of Lomash. (19)

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After having darshan of Sri Ram Lala presiding at that very Ram Janam Bhumi one is liberated from rebirth. Even without making any gift, without practising austerities and without making sacrifices, one attains liberation only with darshan of Ram Janam Bhumi, that is to say, one does not have to take birth from mother's womb again. (20)

One who keeps fast on the ninth day, has a dip in Saryu and offers gifts in Ayodhya, gets liberated from the bondage of birth. (21)

The darshan of Sri Ram Janam Bhumi provides the same results that a man may have by gifting one thousand Kapila cows everyday. (22)

The result that hermits and ascetics residing in Ashrams have, is the same that people have on performing one thousand Rajsuya Yajnas have and on offering 'havans' in fire-pits. (23)

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From the darshan of Ram Janam Bhumi one may get the same results as one may get from having darshan of Ram Ji particularly at Sri Ram Janam Bhumi or from rendering dedicated service to parents, teachers and gentle persons. (24)

One may get the same results from darshan of Lord Ram Lala presiding at Sri Ram Janam Bhumi. (25)"

4359. Exhibit J-3 (Suit-4) (Register Vol.13, page 13) is a photocopy of page 39 Part-I of Maharshi Valmiki Praneet Shrimad Balmikiya Ramayan authored by Maharshi Valmiki published by Gita Press, Gorakhpur, U.P.. It shows Pancham Sarg Shlok 1 to 11. Shlok 6, 9 and 10 was pressed before us which reads as under:

"अयोध्या नाम नगरी तत्रासील्लोकविश्रुता।
मनुना मानवेन्द्रेण या पुरी निर्मिता स्वयम्।।6।।

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उसी जनपद में अयोध्या नामकी एक नगरी है, जो समस्त लोकों में विख्यात् है। उस पुरी को स्वयं महाराज मनु ने बनवाया और बसाया था।।6।।

''तां तु राजा दशरथो महाराष्ट्रविवर्धनः।
पुरीमावासयामास दिवि देवपतिर्यथा।।9।।

जैसे स्वर्ग में देवराज इन्द्र ने अमरावतीपुरी बसायी थी, उसी प्रकार धर्म और न्याय के बल से अपने महान राष्ट्र की वृद्धि करने वाले राजा दशरथ ने अयोध्यापुरी को पहले की अपेक्षा विशेष रुप से बसाया था।।9।।

''कपाटतोरणवर्ती सुविभक्तान्तरापणाम्।
सर्वयन्त्रायुधवतीमुपितां सर्वशिल्पिभिः।।10।।

वह पुरी बड़े–बड़े फाटकों और किवाड़ों से सुशोभित थी। उसके भीतर पृथक–पृथक बाजारें थीं। वहां सब प्रकार के यन्त्र और अस्त्र–शस्त्र संचित थे। उस पुरी में सभी कलाओं के शिल्पी निवास करते थे।।10।।

We have another publication of Valmiki Ramayan, Critical Edition by G.H.Bhatt published by Oriental Institute Baroda, Maharaja Sayajirao University of Baroda in 1960. Vol.-1 at page 43 and 44 contends the same Shlokas which are shown in Ex. J-3. It is not in dispute that Valmiki Ramayana is the first document, which gives entire details of Lord Rama known to us. A perusal of the critical edition of Valmiki Ramayana shows that they collected manuscripts requesting across the country for publishing a most authentic version of Valmiki Ramayan and in their endeavor they got the oldest Manuscripts of 1020 AD said to be in Nepali version. It is said in the introduction part that there is an entry in the Manuscripts that it was copied by Sri Gopati, S/o Pt. Shri Shri Tara on the 4th day of the dark half of the month of Aashad in Samvat year 1076 (AD 1020). Besides they also received Manuscripts in different languages i.e. Newari, Maithli, Bengali, Devnagari, Telgu and Malyalam. The oldest version in Maithli is of 1360 AD, Bengali 1688 AD, Devnagari 1455 AD, Malyalam 1512 AD.

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4360. Exhibit 77 (Suit-4) (Register Vol. 16, pages 27-29) contains photocopy of the title page and page no. 49 of "Janam Sakhi Das Guru Arthat Suraj Prakash" Gyani Gyan Singh Ji first edition 1995 fifth edition 2002. There it talks of visit of Guru Nanak to Ayodhya and says:

''अयोध्या नगरी

इसी प्रकार ही पहाड़ी क्षेत्रों में से चलते हुए गुरु जी श्रीराम चन्द्र जी के जन्म स्थान अयोध्या नगरी आ गये। बहुत से लोग और पंडित गुरु जी के करीब एकत्र हो गये। गुरु जी ने एक पंडित से पूछा कि हमने सुना था कि अयोध्या नगरी को श्री राम चन्द्र जी अपने साथ ही बैकुण्ठ को ले गये थे, फिर यह तो यहीं की यहीं है? पंडितों ने कहा, वह केवल अयोध्या नगरी के जीवों को ही साथ लेकर गये थे, महल आदि और सब कुछ यहाँ ही रहा था। गुरु जी ने कहा उन लोगों ने श्री राम चन्द्र जी के दर्शन किये थे जिस के लिए वह उनके साथ ही बैकुण्ठ को चले गये थे। परन्तु तुम लोग जब तक गुरु उपदेश के द्वारा भक्ति धारण नहीं करोगे तब तक तुम बैकुण्ठ नहीं जा सकते। उन्होंने कहा गुरु तो कई प्रकार के हैं, हम किस गुरु को धारण करें? गुरु जी ने कहा– जिसके अपने मन में पूर्ण ज्ञान हो, मोह माया से निर्लेप हो, वह आप भी मुक्त हो जाता है और दुसरे भी जो उसके साथ चलते हैं वह अन्त समय बैकुण्ठ को जाते हैं। गुरु जी के यह वचन सुन कर पंडितों ने कहा महाराज ! हमें आप ही उपदेश दो। तब आप जी ने उनको सत्यनाम का उपदेश देकर सौभाग्यशाली बनाया।''

4361. Two more exhibits, i.e., **Exhibit J-5 (Suit-4) (Register Vol.13, page 39-45)** is a photocopy of pages no.682, 683, 678, 679 and Appendix-U page lxxvi, lxxvii, lxxviii, lxxix of A.S. Beveridge's Babarnama and **Exhibit J-4 (Register Vol.13, page 101-105)** is a photocopy of the pages No.173, 174 of Fyzabad Gazetteer. Vol. XLIII of the District Gazetteers of the United Provinces of Agra and Oudh by H.R Nevill, 1905. We have already dealt with these documents and, therefore, no occasion to refer further.

4362. Reference is also made to Exhibit 118 and 119 (Suit-

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5), which are, **Exhibit 119 (Suit-5) (Register 23, page 669)** contains some date mentioned on a paper by Pt. Indushekhar Pandey. It has been filed to show that the placement of idol under the central dome inside the disputed structure in the inner Courtyard. The appropriate time was calculated by the experts and that was the most suitable time. **Exhibit 118 (Suit-5) (Register 23, Page 671)** is also to the same effect and this has been written by one Pt. Harisharan Dwivedi of Allahabad. Both these documents, however, were not proved and even otherwise are not relevant for the issue.

4363. One more book, i.e., "**Ain-i-Akbari**" is also cited. One of the earliest work wherein Ayodhya has been referred is the work of Abul-Fazl Allami. It is a Persian treatise titled as A-in-i Akbari (the Institutes of Akbar) (Akbar-Nama). He was a Minister of the Mughal Emperor Akbar and has given the geography, physical and historical descriptions of the Emperor accompanied by statistical table. It described in detail the sixteen Subhas of the Government of which the Mughal Emperor was then composed with minute exactitude. Initially, in 1783 Francis Gladwin published unabridged English version of the said work encouraged by the Governor General Warren Hastings but it was found to be highly defective. Later on an English translation was published in 1873 by H. Blochmann. The original book is said to be in five volumes and with respect to its contents etc. in the preface stated on 23rd September, 1873, Blochmann said :

> *"The A-in-i Akbari is the third volume of the Akbar-nama, by Shaykh Abu'l Fazal, and is by far the greatest work in the whole series of Muhammadan histories of*

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India. The first volume of the this gigantic work contains the history of Timur's family as far as it is of interest for the Indian reader, and the reigns of Babar, the Sur Kings, and Humayun whilst the second volume is devoted to the details history of nearly forty-six years of the reign of the Great Emperor. The concluding volume, the A-in-i-Akbari, contains that information regarding Akbar's reign, which, though not strictly historical, is yet essential to a correct understanding of the times, and embodies, therefore, those facts for which, in modern times, we would turn to Administration Reports, Statistical compilations, or Gazetteers. It contains the a-in (i.e. mode of governing) of Akbar, and is, in fact, the Administration Report and Statistical Return of his government as it was about A.D. 1590. The contents, therefore, of the A-in are naturally varied and detailed. The first of its five books treats of Akbar's household and court, and of the emperor himself, the soul of every department, who looks upon the performance of his duties as an act of divine worship, and who enters into the details of government in order to create a harmonious whole. Vouchsafed as king with a peculiar light from on high, his person is prominently p8ut forward as the guide of the people in all matters temporal and spiritual; in whose character and temper the governed find that rest and peace which no constitution can give, and in whom, as the author of a new and advanced creed, the dust of intoleration is for ever allayed.

The second book treats of the servants of the throne, the military and civil services, and the attendants at court

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whose literary genius or musical skill receives a lustre from the encouragement of the emperor, and who in their turn reflect a brilliant light on the government.

The third book is entirely devoted to regulations for the judicial and executive departments, the establishment of a new and more practical era, the survey of the land, the tribal divisions, and the rent-roll of the great Finance minister whose name has become proverbial in India.

The fourth book treats of the social condition and literary activity, especially in philosophy and law, of the Hindus, who form the bulk of the population, and in whose political advancement the emperor saw the guarantee of the stability of his realm. There are also a few chapters on the foreign invaders of India, on distinguished travellers, and on Muhammadan saints and the sects to which they respectively belong.

The fifth book contains the moral sentences and epigrammatical sayings, observations, and rules of wisdom of the emperor, which Abu 'l-Fazl has gathered as the disciple gathers the sayings of the master."

4364. Blochmann's translation was published second time in 1927 which was edited by Lieut. Colonel D.C. Phillott and he has given an explanation in his preface written in 1927 as under :

"Some explanation is needed of the present edition. Blochmann's original translation has for some time been out of print. The Asiatic Society of Bengal has asked me undertake the preparation of a reprint, and I lightly accepted the task, not realizing the amount of labour

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involved. Blochmann's translation and notes form a work of infinite detail and thorough scholarship; and though it has seldom been necessary to correct, it has often been necessary to investigate. This present edition is, however, in the main a mere reprint. This of itself is no small testimony to Blochmann's thoroughness. The transliteration, however, has been brought into line with a more modern system, and a few additional notes [in a square brackets] have been added; those with a suffixed B. are Blochmann's own MS. Notes from a printed copy in my possession; I have not incorporated all of them, as many I was unable to decipher. Notes to which a P. is suffixed are my own."

4365. It appears that after the death of H. Blochmann on 30th July 1878 it was found by Asiatic Society of Bengal which had published the translation of A-in-i Akbari that the work was only to the extent of the First Volume and, therefore, it entrusted the unfinished work to Lieut. Colonel H.S. Jarrett who finished the printing of translation of the second Volume in 1891. This work of Jerrutt was revised by Sri Jadunath Sarkar in 1949 and its latest re-print of 2001 distributed by D.K. Publishers Distributors P. Ltd., New Delhi has been placed on record before us. The Subah of Audh is on page 181 and onwards and the relevant part thereof referred by the parties is as under :

"It is situated in the second climate. ***Its length from the Sarkar of Gorakhpur to Kanauj is 135 kos. Its breadth from the northern mountains to Sidhpur on the frontier of the Subah of Allahabad is 115 kos****. To the east is Bihar; to the north, the mountains; to the south, Manikpur, and to the west Kanauj. Its climate is good. Summer and*

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winter are nearly temperate. Its principal streams are the Saru (Sarju), the Ghaghar (Gogra) the Sai and the Godi (Gumti). In the first mentioned, divers aquatic animals and forms of strange appearance show themselves. Agriculture is in a flourishing state, especially rice of the kinds called Sukhdas, Madhkar, and Jhanwan, which for whiteness, delicacy, fragrance and wholesomeness are scarcely to be matched. They sow their rice three months earlier than in other parts of Hindustan. When the drought begins, the Sai and the Gogra rise high in flood and before the beginning of the rains, the land is inundated, and as the waters rise, the stalks of rice shoot up and proportionately lengthen : the crop, however, is destroyed if the floods are in full force before the rice is in ear. Flowers, fruits and game are abundant. Wile buffaloes are numerous. When the plains are inundated the animals take to the high ground where the people find sport in hunting them. Some of the animals remain all day in the water and only at night approach the dry ground and breathe in freedom. ***Awadh (Ajodhya) is one of the largest cities of India****. In is situated in longitude 118^0, 6', and latitude 27^0, 22. It ancient times its populous site covered an extent of 148 kos in length and 36 in breadth, and it* ***is esteemed one of the holiest places of antiquity. Around the environs of the city, they sift the earth and gold is obtained. It was the residence of Ramachandra who in the Treta age combined in his own person both the spiritual supremacy and the kingly office****.*

At the distance of one kos from the city*, the Gogra,*

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after its junction with the Sai, [Saraju] ***flows below the fort****. Near the city stand two considerable tombs of six and seven yards in length respectively. The vulgar believe them to be the resting places of Seth and the prophet job, and extraordinary tales are related of them. Some say that at Ratanpur is the tomb of Kabir, the assertor of the unity of God. The portals of spiritual discernment were partly opened to him and he discarded the effete doctrines of his own time. Numerous verses in the Hindi language are still extant of him containing important theological truths. Bahraich is a large town on the banks of the river Sarju. Its environs are delightful with numerous gardens. Salar Masud and Rajab Salar are both buried here. The common people of the Muhammadan faith greatly reverence this spot and pilgrims visit it from distant parts, forming themselves in bands and bearing glided banners. The first mentioned was connected by blood with Mahmud Ghaznavi, and sold his life bravely in battle and left an imperishable name. The second was the father of Sultan Firoz king of Delhi and won renown by the recitude of his life."*

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4366. We find that it only refers to the antiquity of Ayodhya and about Lord Rama but no further information can be derived which may throw any light on the issues in question.

Sri Jain also refers to the following.

4367. Exhibit 76 (Suit-4) (Register Vol. 16, pages 21-26) is the photocopy of the title page and pages no. 406 to 411 of the book "Sri Guru Granth Sahib (Pahli Sainchi)" translated by Dr. Manmohan Sahgal. The following part thereof shows that the

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Guru Nanak had taught even Muslims as to who can be a true follower of Islam and it says:

''।। सलोकु म01।। मिहर मसीति सिदकु मुसला हकु हलालु कुराणु। सरम सुंनति सीलु रोजा होहु मुसलमाणु। करणी काबा सचु पीरु कलमा करम निवाज। तसबी सा तिसु भावसी नानक रखै लाज।।1।।

।। सलोकु महला 1।। वास्तविक रूप में मुसलमान बनने के लिए गुरुजी ने अपनी धारणा इस प्रकार प्रकट की है कि जीवों पर दया, मस्जिद व खुदा पर विश्वास मुसल्ला, अपने हक या अपनी कमाई का खाना हलाल और सच बोलना ही कुर्आन का पढ़ना है। जब कुकर्मों से संकोच करना सुन्नत, संयम धारण करना रोजा होगा, तब मुसलमान सच्चा मुसलमान होगा। शुद्ध कर्म करना काबा, सत्यरूप खुदा को जानना पीर की उपासना है, कृपापूर्वक किसी गरीब का संरक्षण कलमा और नमाज है। नानक कहते हैं, शान्तिरूपी माला वही है, जो उसे भाए। अर्थात् वही माला बनाए जो परमात्मा को भाए, (ईश्वर की रजा में रहे)। हे काजी, जब ऐसे गुणों से युक्त होगा, तब तेरी लाज परमेश्वर रखेगा।।1।।''

''।। सलोकु म0 1।। मुसलमाणु कहावणु मुसकलु जा होइ ता मुसलमाणु कहावै। अवलि अउलि दीनु करि मिठा मसकलमाना मालु मुसावै। होइ मुसलिमु दीन मुहाणै मरण जीवण का मरमु चुकावै। रब की रजाई मंने सिर उपरि करता मंने आपु गवावै। तउ नानक सरब जीआ मिहरंमति होइ त मुसलमानु कहावै।।1।।

।। सलोकु महला 1।। हे काजी, मुसलमान कहलाना कठिन है। यदि कोई मुसलमान के गुणों से युक्त है तभी मुसलमान कहा जा सकता है। सर्वप्रथम, औलिए अर्थात् सन्तजनों के धर्म को मीठा करके माने। तदन्तर जिन सन्तजनों ने मान दूर किया है, उन्हें अपना माल लुटावे। मल्लाह–रूपी जो सन्तजन हैं, उनके धर्म में स्थित हो तथा जन्म–मरण या जीवन–मृत्यु के भ्रम को दूर करे। सिर के ऊपर रब की रजा माने अर्थात् ईश्वरेच्छा को सर्वोपरि मानकर प्रसन्न रहे तथा अहंत्व को गवॉकर कर्ता–पुरुष को माने। नानक कहते हैं, समस्त जीवों पर कृपा करें और ऐसे गुणों से संयुक्त हो तो मुसलमान कहलाए।।1।।''

4368. Exhibit 78 (Suit-4) (Register Vol. 16, pages 30-40) contains photocopy of the title page and pages no. 37, 38, 431, 432, 473, 474, 906 to 908 of "Sri Guru Granth Sahib (Tisari

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Sainchi)" translated by Dr. Manmohan Sahgal. Sri Hari Shankar Jain placed before us the following part from page 37 to 38 thereof:

''।। तिलंग महला 1।। जैसी मैं आवै खसम की वाणी तैसड़ा करी गिआनु वे लालो। पाप की जंञ लै काबलहु धाइआ जोरी मंगै दानु वे लालो। सरमु धरमु दुई छपि खलोए कूडु फिरै परधानु वे लालो। काजीआ बामणा की गल थकी अगदु पड़ै सैतानु वे लालो। मुसलमानीआ पड़हि कतेबा कसट महि करहि खुदाई वे लालो। जाति सनाती होरि हिदवाणीआ एहि भी लेखै लाइ वे लालो। खून के सोहिले गावीअहि नानक रतु का कुंगू पाई वे लालो।। 1।। साहिब के गुण नानकु गावै मास पुरी विचि आखु मसीला। जिनि उपाई रंगि रचाई बैठा देखै दखि इकेला सचा सो साहिबु सचु तपावसु सचड़ा निआउ करेगु मसोला। काइआ कपडु टुकु टुकु होसी हिन्दुस्तानु समालसी बोला। आवनि अठतरै जानि सतानवै होरु भी उठसी मरद का चेला। सच की बाणी नानकु आखै सचु सुणाइसी सच की बेला।।2।।3।। 5।।

हे भाई लालो ! मुझे प्रभु–पति की ओर से जैसा आभास हुआ है, उसी के अनुसार मैं तुझे अवगत कराता हूँ। काबुल से बाबर की फौज मानो पाप–अत्याचार की बारात है, जिसे एकत्रित करके वह आ चढ़ा है और बलपूर्वक हिन्दुस्तान की बागडोर रूपी कन्यादान की मांग कर रहा है। सैयदपुर से लाज और धर्म विलुप्त हो गए हैं, झूठ ही सर्वत्र महत्वपूर्ण बना फिरता है। (ऐसा लगता है कि) शैतान विवाह सम्बन्ध करा रहा है और ब्राह्मणों तथा काजियों की मर्यादा समाप्त हो चुकी है, मुसलमान औरतें भी इस विपत्ति में कुर्आन पढ़ रही है और खुदा से प्रार्थना कर रही हैं। ऊँची जाति तथा नीची जाति वाली एवं अन्य दूसरी सब स्त्रियों पर अत्याचार हो रहे हैं। नानक का कथन है कि सब ओर विलाप का संगीत हो रहा है और लहू का केसर छिड़का जा रहा है।।1।। (सब कुछ प्रभु की रजा अनुसार होता है, इसलिए) लाशों से भरे इस शहर में बैठकर भी नानक उस मालिक–प्रभु के गुण ही गाता है। (हे लालो!) तू भी प्रभु के अटल नियम को उच्चरित कर कि जिस मालिक–प्रभु ने सृष्टि उत्पादित की है, उसी ने इसे माया–मोह में प्रवृत्त किया है और वह आप निर्लिप्त रहकर सब घ टनाओं को देख रहा है। वह मालिक–प्रभु अटल नियमों वाला है, उसका न्याय अटल है, वह भविष्य में भी अटल नियम और अटल न्याय का व्यवहार

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करेगा। अब (सैयदपुर में) मनुष्य का शरीर रूपी वस्त्र टुकड़े–टुकड़े हो रहा है। यह एक ऐसी भयानक दुर्घटना है, जिसे हिन्दुस्तान कभी नहीं भुला सकेगा। आज मुगल लोग सम्बत् अठहत्तर में आए हैं, ये सम्बत् सत्तानबें मे चले जाएँगे, कोई दूसरा शूरवीर इनके विरूद्ध उठा खड़ा होगा। नानक तो सत्यस्वरूप प्रभु की गुणस्तुति करता है, आजीवन यह गुणस्तुति करता रहेगा, क्योंकि यह मनुष्य–जन्म की अवधि गुणस्तुति के लिए ही मिली है।।2।।3।।5।।''

4369. He contended that the above narration show the atrocities of Babar when he invaded India. We, however, pointed out to him that it mentions the treatment of both Hindus and Muslims of India in the hands of Babar in equally adverse conditions, meaning thereby Babar killed the people without caring as to whether he was Muslim or Hindu.

4370. Exhibit 79 (Suit-4) (Register Vol. 16, pages 41-58) contains title page and pages no. 8 to 17, 226 to 229 and 400 to 401 of "Sri Guru Granth Sahib (Dusari Sainchi)" translated by Dr. Manmohan Sahgal. Sri Jain, learned Counsel, placed before us the following Hindi translation from page 226 of the book:

''(उनका) धन और यौवन, जिनका उन सुन्दरियों को बहुत अभिमान था, आज दोनों ही उनके बैरी बने हुए है। (बाबर ने) क्रूर सिपाहियों को हुक्म दे दिया है, वे उनकी प्रतिष्ठा गवॉकर उन्हें ले जा रहे हैं। (जीवों के कुछ वश नहीं) यदि परमात्मा को उपयुक्त लगे तो जीवों को आदर–सम्मान देता है, यदि उसकी रजा होवे तो सजा देता है।।4।। यदि पहले ही (अपने–अपने कर्तव्य को) याद करते रहें, तो ऐसी सजा क्यों मिले? (यहॉ के) हाकिमों ने ऐश–आराम के चाव में अपना कर्तव्य भुला दिया था। (अब, जब) बाबर की आवाज आई है, तो कोई पठान शहजादा भी रोटी नहीं खा सकता।।5।। (जालिमों के पंजे में आकर) मुसलमानी स्त्रियों के नमाज के वक्त छिन गए हैं, हिन्दू स्त्रियों की पूजा का समय जा रहा है। (जो पहले बड़ी ही औपचारिक विधि के साथ पूजा करती थी, अब) वे न स्नान करके टीके लगा सकती हैं, न ही उनके चौके पवित्र रह गए हैं। (जिन्होंने धन–यौवन के नशे में) कभी राम को स्मरण नहीं किया था, अब उन्हें खुदा,

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खुदा कहना भी नहीं मिलता।।6।। (बाबर की कैद से) बचकर जो विरले मनुष्य अपने–अपने घर आते हैं, वे परस्पर मिलकर कुशल–क्षेम पूछते हैं। उनकी किस्मत में यह विपत्ति पूर्व–लिखित थी, वे एक दूसरे के पास बैठकर अपने–अपने दुख रोते हैं। (पर) हे नानक! मनुष्य बेचारे क्या करने योग्य हैं? वहीं कुछ होता है, जो उसे भला लगता है।।7।।''

4371. Here also we find that the act of Babar was equally adverse to both Muslims and Hindus of the then Hindostan.

4372. To our mind instead of puzzling ourselves in so much literature etc., certain aspects which emerge from whatever we have mentioned above may be summarised which probably may give some idea as to how the questions are to be answered. The antiquity of Ayodhya is not disputed. It is also not disputed that Ayodhya is known as the principal place of religion and mainly concerned with Vaishnavites, i.e., the followers of Lord Rama. Lord Rama was born at Ayodhya and ruled thereat. The religious texts like Valmiki Ramayan and Ramcharitmanas of Goswami Tulsidas and others like Skandpuran etc. mention that Lord Rama was born at Ayodhya and it is his place of birth but do not identify any particular place in Ayodhya which can be said to be his place of birth. On the one hand we do not get any idea about the exact place or site but simultaneously we can reasonably assume that once it is not disputed that Lord Rama was born at Ayodhya there must be a place which could be narrowed down at the site of his place of birth. It is true that a search of a place of birth after long time even today may not be very easy if one tried to find out in this regard just three or four generations back. Therefore, for making such kind of inquiry in a matter of such an antiquity is almost impossible. But when a dispute in such a manner is raised then we go by the well accepted principle in law of evidence

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particularly as applicable in civil cases, i.e., preponderance of probability.

4373. The Evidence Act defined (proved) vide Section 3 as under:

> *"A fact is said to be proved when, after considering the matters before it the Court either believes to exist or considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition with it existence."*

4374. The only thing the Court should not do is to base its conclusion on mere conjectures and surmises. Here we have not to consider the historicity of Ayodhya or Lord Rama but only to find out whether the place in dispute according to the belief, faith and traditions of Hindus is the site where Lord Rama was born. Even if we have to draw an inference whether this is a place where Lord Rama is born we need not record a finding like mathematical calculation but it has to be decided on the preponderance of probability. As we have already said that if Lord Rama was born at Ayodhya then there must be a place which can be identified for such purpose. It is no where suggested by plaintiffs (Suit-4) for the muslim parties that except the property in dispute there was any other place in Ayodhya which is believed by the Hindu people as place of birth of Lord Rama. What they submit is that there was another temple on the north side of the property in dispute which is called Janamsthan temple and, therefore, that can be the place of birth. But the antiquity of that temple goes back to only about 200-300 years, i.e., not beyond 18th or 19th century. The possibility of that area gets ruled out for more than several

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reasons.

4375. The first document which is available to us is that of William Finch Travellers Account who visited Ayodhya sometimes between 1608-1611 and there he has referred to a place known as fort of Ramchandra where he is born. It does not talk of any Janamsthan temple at this stage but talk of a fort in a ruined condition. He also mentioned that the people use to visit it for worship. Therefore, at that time also there was only one place which the Hindus people know to be a place of birth of Lord Rama or in any case a place which is related to Lord Rama. It has referred as Fort which obviously must have been quite bigger when it is said that it was on a mount and was the highest area in Ayodhya.

4376. The next document available to us was published in 1786, i.e., of Joseph Tieffenthaler who was an Australian Christian Priest and came to India sometime in 1740. He visited Awadh area between the 1766-1771. He was a highly educated Orientalist knowing several languages including Sanskrit and Persian. It is he who has given some detail about the place in dispute as also mentioned in detail the place in dispute including the disputed building and also says very clearly that the people believe that Lord Rama was born here where exist its house which was demolished and thereafter the building was constructed. The size of the house whether he called Hindu temple as a house is not known but for our purposes it is sufficient that in the bigger area of the fort of Lord Rama there was a part on which the disputed building was constructed and in this disputed building the people at that time also believed that it included the place of birth of Lord Rama and used to visit

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and worship despite knowing that a new building has been raised which is a mosque. The territory was reigned by muslim rulers and despite taking risk the Hindu people if were entering a mosque for worship believing it to be the place of birth of Lord Rama, this faith, their determination and their attitude must have some basis and cannot be taken lightly.

4377. Plaintiffs (Suit-4)'s one of the witnesses Suvira Jaiswal, an expert, (Historian) claims to have made special study on Lord Rama and has represented to have special knowledge in this regard. With respect to her religious followings, she said:

''मैं आस्तिक सिर्फ इस रूप में हूँ कि विश्वास मानवता में है। मैं किसी बाहरी शक्ति या चमत्कार में विश्वास या आस्था नहीं रखती हूँ।'' (पेज–3)

"I am theist only in a sense that I believe in humanity. I have no belief or faith in any external power or miracle."

(E.T.C.)

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''मैं शुरू से अर्थात पैदाइश से ही आर्य समाजी अपने को मानती रही थी। यह सही है कि आर्य समाजी लोग ईश्वर को कोई मूर्ति पूजा नहीं मानते, पर ईश्वर का अस्तित्व मानते हैं।'' (पेज–3)

" I have been considering myself to be an Arya Samaji right since the beginning, that is, my birth. It is true that Arya Samajists do no t have any faith in idolatry but believe in the existence of God." (E.T.C.)

''मैं, पूजा–पाठ, भजन आदि नहीं करती हूँ।'' (पेज–4)

" I do not perform worship, incantation etc." (E.T.C.)

''मैं मार्क्सवादी विचारधारा से प्रभावित रही हूँ .... मार्क्सवादी विचारधारा की हूँ इसलिए मैं धर्म में विश्वास नहीं करती।'' (पेज 161)

"I have been influenced by Marxism ... Since I am follower of Marxist theory, I have no faith in religion."

(E.T.C.)

4378. She did her Ph.D. under the guidance of Dr. Ram

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Sharan Sharma from Patna University. In respect to Lord Rama, his historicity, period when his worship started according to her research and information, she has said as under:

''राम का अवतार त्रेता युग में माना जाता है। अर्थात विष्णु का राम अवतार त्रेता युग में माना जाता है। विष्णु का राम अवतार, उनके दस अवतारो का सातवॉ नम्बर का है। राम को पूजा करने वालों को मध्यकाल में रामायत् के नाम से जाना गया है। और उसकी रामानन्दीय भी कहते हैं। स्वामी रामानन्द, रामायत या रामानन्दी सम्प्रदाय के प्रवर्तक माने जाते हैं।''(पेज 9)

'' Rama is taken to have incarnated in Treta Yuga, that is to say, Vishnu is taken to have incarnated as Rama in Treta Yuga. Incarnation of Vishnu as Rama is the seventh incarnation out of the ten ones. Worshippers of Rama are known as Ramayat in the Medieval Period and they are also called Ramanandiya. Swami Ramanand is considered to be the progenitor of Ramayat or Ramanandiya school."

(E.T.C.)

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''दशरथ जातक में मूल कथा काफी प्राचीन है। यह सही है कि बाल्मीकी रामायण में रामकथा का जिक्र दशरथ जातक में मिलता है मैंने इसे पढ़ा है। दशरथ के पुत्र राम वही है राम है जो बाल्मीकी रामायण में मिलते मिलते हैं और दशरथ जातक कथाओं में।'' (पेज 11)

''The basic story in Dashratha Jataka is fairly old. It is true that the story of Rama of Valmiki Ramayana finds mention in Dashratha Jataka which I have read. Rama, son of Dashratha, is the same Rama that finds mention in Valmiki Ramayana and in the fables of Dashratha Jataka.'' (E.T.C.)

''यह सही नही है कि बाल्मीकी रामायण बुद्धकाल से पहले की थी। दशरथ जातक भी बुद्धकाल से पहले का नहीं है परन्तु रामकथा मौखिक रूप से पहले से प्रचलित थी ऐसा अनुमान है।'' (पेज 11)

"It is not true that the Valmiki Ramayana preceded the Buddha Period. Dashratha Jataka, too, does not precede

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the Buddha Period but the story of Rama, as I guess, was verbally in vogue." (E.T.C.)

''अयोध्या का वर्णन प्राचीन ग्रन्थों में आया है। अयोध्या का उल्लेख बाल्मीकि की रामायण एवं पुराण और महाभारत के रामोपाख्यान इत्यादि में आता है। साहित्यक पुस्तकों में रघुवंश और उत्तर रामचरित में अयोध्या का उल्लेख है। ये पुस्तकें गुप्त काल या उसके बाद की हैं। यह ठीक है कि वायु पुराण एवं विष्णु पुराण गुप्तकाल के इतिहास को जानने के लिए कुछ सामग्री उपलब्ध कराते हैं। कालीदास जी को गुप्तकाल का माना जाता है और मैं भी इस विचार से सहमत हूँ कि वह गुप्तकाल में थे।''

(पेज 17–18)

"The description of Ayodhya is found in ancient books. Ayodhya also finds mention in Valmiki Ramayana, Purana and in Ramopakhyan etc of Mahabharata. In literary books like Raghuvansh and Uttar Ram Charit, there is mention of Ayodhya. These books are either of Gupta period or subsequent thereto. It is correct that Vayu Purana and Vishnu Purana procure some material to know the history of Gupta Period. Kalidas is considered to be in Gupta Period and I agree with this view that he was in Gupta Period." (E.T.C.)

''यह सही है कि मृच्छकटिक में उस जमाने की वेशभूषा का वर्णन मिलता है। यह ठीक है कि उसमें वर्णित वेशभूषा बाल्मीकि रामायण में बताए गए वेशभूषा से मेल खाते हैं। शूद्रक के मृच्छकटिक से कई शताब्दी पूर्व वात्स्यायन का कामसूत्र लिखा गया है। इसमें भारतवर्ष की भौगोलिक स्थिति एवं वेशभूषा का वर्णन है।'' (पेज 18)

"It is true that in Mrichhakatik description of dress and attire of that age is found. It is correct that the dress and attire mentioned therein match with that mentioned in Valmiki Ramayan. Kamsutra by Vatsyayan had been written centuries ago Mrichhakatik was written by Shudrak. In it

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there is mention of topography as well as dress and attire of India." (E.T.C.)

''यह सत्य है कि मैंने अपनी पुस्तक में यह लिखा है कि ईसवी सन् की प्रारम्भिक शताब्दियों में राम को विष्णु के अवतार के रूप में मान्यता मिली । प्रारम्भिक शताब्दी से मेरा मतलब पहली व दूसरी शताब्दी ए0डी0से है।''

(पेज 59)

''It is correct that in my book I have written that in early centuries of A.D., Rama was recognized as incarnation of Vishnu. By early century I mean first and second century A.D.'' (E.T.C.)

''यह कहना ठीक है कि राम को पहली दूसरी शताब्दी ए0डी0 में विष्णू के अवतार की मान्यता मिली पर इसके पहले राम कथा के नायक के रूप में राम मौजूद थे।'' (पेज 59)

''It is correct to say that in I and II A.D. Rama was recognized as incarnation of Vishnu but prior to that existence of Rama was there as a hero of Rama's Story." (E.T.C.)

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''बौद्ध धर्म के पहले राम, कथा के रूप में मौजूद थे।'' (पेज 60)

"Prior to Budha religion, Rama was existent in the form of a story" (E.T.C.)

''यह ठीक है कि इस कथा के अनुसार महात्मा बुद्ध ने अपने को राम का अवतार माना था।

दशरथ जातक को मैंने इतिहास के श्रोत के रूप में प्रमाणिक माना है। राम की कथाओं को भी मैंने इतिहासिक श्रोत के रूप में प्रमाणिक माना है। दशरथ जातक एवं राम कथायें मेरी प्राइमरी सोर्स हैं।'' (पेज 60–61)

''It is correct that as per this story, Lord Buddha declared himself incarnation of Rama.

I considered Dasrath Jatak authentic as a source of history. I recognized the Rama's stories also to be authentic as a source of history. Dasrath Jatak and Rama's

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stories are my primary sources." (E.T.C.)

''होली क्राईस्ट को ईश्वर का पुत्र कहा गया है। प्राफेट मोहम्मद को ईश्वर का पैगम्बर कहा गया है। राम को ईश्वर का अवतार कहा गया है। मैं इन तीनों को सही नहीं मानती हूं।'' (पेज 63)

"Holy Christ has been regarded as the Son of GOD. Prophet has been regarded as prophet of GOD. Ram has been said to be incarnation of GOD. I do not believe all the three to be true" (E.T.C.)

''मैं यह मानती हूं कि श्री राम को दूसरी शताब्दी में नारायण का अवतार माना जाता था।'' (पेज 77)

"I accept that in second century, Sri Ram was regarded as incarnation of Narayan." (E.T.C.)

''मेरे अनुसार राम कथा का आरभ्भ चौथी शताब्दी ईसा पूर्व से हुआ था।''

(पेज 77)

"In my view, initiation of Rama's story was from 4th century B.C." (E.T.C.)

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''आज तक पुरातात्विक खोज के द्वारा किसी विष्णु हरी का मंदिर नहीं मिला। पर अयोध्या महात्म्य में विष्णु हरि के मंदिर का वर्णन है। अयोध्या महात्म स्कन्द पुराण का एक अंश है।'' (पेज 78–79)

"Till date, by any archaeological survey, no any temple of Hari Vishnu could be discovered but in Ayodhya Mahatmya, there is description of the temple of Vishnu Hari. Ayodhya Mahatmya is a part of Skand Puran."

(E.T.C.)

''तथाकथित से मेरा अभिप्राय यह है कि शिलालेख तो है पर वह वहां विष्णु हरि मंदिर से पाया गया या नहीं यह संदेहास्पद है। मेरे अनुसार शिलालेख अयोध्या में पाया गया है पर विष्णु हरि मंदिर में पाया गया या नहीं यह संदेहास्पद है।'' (पेज 79)

"By 'alleged', I mean that inscription does exist there but that was discovered from Vishnu Hari Mandir or not, it is

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doubtful. According to me, the inscription stone has been found in Ayodhya, but whether it was found in Vishnu Hari Mandir or not, it is doubtful." (E.T.C.)

''मैं राम को एक व्यक्ति मानती हूँ।'' (पेज 84)

"I consider Rama to be simply a person." (E.T.C.)

''दशरथ जातक का अध्ययन करते समय मैंने यह पाया कि राम दशरथ के पुत्र थे।'' (पेज 85)

"While studying Dashrath Jatak, I found that Ram was the son of Dashrath." (E.T.C.)

''यह भी सही है कि वर्तमान अयोध्या वही पुरानी अयोध्या है। यह मुझे मालूम है कि अयोध्या में राम की पूजा परम्परागत रूप से होती चली आ रही है।'' (पेज 86)

''It is also true that the present Ayodhya is the same old Ayodhya. I know that worship of Rama in Ayodhya has been continuing traditionally.'' (E.T.C.)

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''मेरी खोज के अनुसार अयोध्या में कई स्थान ऐसे हैं जो श्री राम के जन्म स्थान होने का दावा करते हैं। मैं यह नहीं बता सकती कि उन स्थानों का जहां राम जन्म स्थान का दावा किया जाता है, कौन–कोन से हैं, या कहां–कहां हैं।'' (पेज 86)

''As per my research, there are such several places in Ayodhya, which claim to be the birthplace of Sri Rama. I cannot point out specifically as to the places which are claimed to be the birthplace of Rama." (E.T.C.)

''मै राम को एक कथा का पात्र मानती हूं इसलिए मै उनको इतिहास की कैटीगरी में नहीं रख सकती हूं। मैं उनको एक इतिहासिक व्यक्ति मानती हूं।'' (पेज 96)

''I regard Rama as a character of a story, therefore, I cannot put him in the category of history. I reckon him as a historical person." (E.T.C.)

''यह कहना भी ठीक है कि जैन धर्म के स्रोतों से यह पता लगता है कि साकेत व अयोध्या एक ही हैं। यह मुझे मालूम है कि 24 वें तीर्थांकर

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महावीर अयोध्या गये थे।'' (पेज 96)

"It is also true that it is found from the sources of Jain religion that Saket and Ayodhya are the same. I know that 24th Tirthankar Mahavir went to Ayodhya." (E.T.C.)

''यह कहना भी सही है कि भगवान राम को कई स्थानों पर कोशल नरेश के नाम से उद्धृत किया गया है। यह कहना सही है कि अयोध्या में राम के जन्म से संबंधित स्थलों को कुण्डो के नाम संदर्भित किया जाता है।''

(पेज 97)

"It is also true to say that at many places, Lord Rama has been referred as Koshal Naresh (King of Koshal). It is true to say that the places related to birth of Rama in Ayodhya are referred with the name of Kunds." (E.T.C.)

''मैं उपरोक्त शताब्दियों से चली आ रही परम्परा को इतिहास के विश्लेषण का विषय मानती हूँ और उसे इतिहास की श्रेणी में रखती हूँ।

मेरे विचार से राम कथा का प्राचीनतम उल्लेख दशरथ जातक में हुआ है।'' (पेज 98–99)

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"I consider the traditions continuing from centuries as the subject of analysis of history and place the same in the category of history.

In my view, the ancient mention of Rama's story has been made in Dashrath Jatak." (E.T.C.)

''यह हो सकता है कि गौड़बहो नामक ग्रन्थ में विष्णु हरि मंदिर का अयोध्या में होना वर्णित किया गया है।'' (पेज 102)

"It may be that in the book Gaurbaho, there is mention of temple of Vishnu Hari Mandir being situated in Ayodhya."

(E.T.C.)

''स्कन्ध पुराण के वैष्णव खण्ड के आखिर में अयोध्या महात्म में रामजन्म स्थान का वर्णन आया है इसलिए ऐसा लगता है कि यह पृच्छिप्त अंश है। यह सही है कि वैष्णव खण्ड स्कन्ध पुराण के मध्य में है।'' (पेज 106)

"At the end of Vaishnav Part of Skand Puran, description

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of birthplace of Rama in Ayodhya has come in Ayodhya Mahatmya at the end, it so appears because it is maimed portion. It is true that Vaishnav Part is in the middle of Skand Puran." (E.T.C.)

''बाल्मीकि रामायण में श्रीराम की जन्म तिथि उनकी जन्म भूमि का उल्लेख आया है। इस बाल्मीकि रामायण में इस बात का जिक्र है कि इच्छवाकु वंश में राजा के घर में श्रीराम का जनम हुआ और उनका बाल्यकाल अयोध्या में बीता। बामिज बाल्मीकि रामायण का काल ईसा पूर्व तीसरी शताब्दी से दूसरी शताब्दी माना जाता है बाल्मीकि रामायण में एक अयोध्या काण्ड भी हैं इसमें उल्लिखित अयोध्या काण्ड दूसरी शताब्दी ईसा पूर्व माना जाता है। ...पर इसमें राम के जन्म व जन्मभूमि का उल्लेख अवश्य है।'' (पेज 106–107)

''It is correct that in Valimiki Ramayan there is reference of date and place of birth of Rama. In this Valmiki Ramayan, there is reference of the fact that in Ikshwaku Dynasty Rama was born in the royal family and his childhood passed in Ayodhya. Period of Balimiki Ramayan is regarded as 300 BC-200 BC. There is a Ayodhya Kand too in Valimiki Ramayan. The Ayodhya Kand in it, is regarded pertaining to second century B.C. ... But in it, the reference about Rama's birth and birthplace does find place." (E.T.C.)

''नरसिंह पुराण में अयोध्या एवं विष्णु मंदिर का वर्णन है।'' (पेज 109)

''In Narsingh Puran, there is description of Ayodhya and Vishnu Mandir." (E.T.C.)

''विष्णु पुराण, विष्णु धर्मोत्तर पुराण का मुझे ज्ञान है। यह ठीक है कि इसमें भी अयोध्या में विष्णु के मदिर का वर्णन दिया है।'' (पेज 109)

''I have knowledge of Vishnu Puran, Vishnu Dharmmotar Puran. It is true that in this also, description is given about

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temple of Vishnu in Ayodhya." (E.T.C.)

''मैं मनुस्मृति को पहली या दूसरी शताब्दी की रचना मानती हूँ। मैं इसको इतिहास का एक प्रमाणिक स्रोत मानती हूँ। यह सही है कि पुराण महाभारत, रामायण इतिहास के प्रामाणित स्रोत हैं। रामायण से मेरा तात्पर्य बाल्मीकि रामायण से है।

वेदों को मैं इतिहास के लिए प्रमाणिक मानती हूँ। यह भी इतिहास के एक स्रोत हैं। वेदों की रचना काल 1500 ई0पूर्व से लेकर 800 ई0पू0 माना जाता है।'' (पेज 114–115)

"I consider the Manusmriti as the creation of first or second century. I reckon it as an authentic source of history. It is correct that Puran, Mahabharat and Ramayan are the authentic sources of history. By Ramayan, I mean the Balimiki Ramayan.

I regard Vedas authentic for history. These are also a source of history. Period of creation of Vedas are deemed from 1500 BC-800 BC." (E.T.C.)

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''किसी विशेष स्थान को निर्मित करके पूजा करने की प्रथा पॉचवी छठी शताब्दी ई.पू. में रही होगी परन्तु ऐसा निश्चित प्रमाण नहीं मिलता है परन्तु यह भी संभव हो कि हड़प्पा सभ्यता में रही हो।'' (पेज 132)

"Custom of worshipping a particular place after creation thereof, might have been in 5th-6th century B.C. but no specific evidence thereof is found, but it might be possible that it would have been prevailing in Hadappan Civilisation." (E.T.C.)

''यह ठीक है कि श्रीराम को भगवान के अवतार के रूप में पूजने का प्रमाण मिलता है। श्रीराम को श्री विष्णु का अवतार 200 ए0डी0 से माना जाने लगा था। श्री राम को अवतार रूप में पूजा करने का प्रथम प्रमाण गुप्त युग में मिलता है।'' (पेज 143)

"This is correct that evidence pertaining to worship of Rama as incarnation of Vishnu is found. Sri Rama was

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used to be regarded as incarnation of Vishnu since 200 AD. The first evidence in respect of Sri Rama being worshipped as incarnation, is found in Gupta Period." (E.T.C.)

''यह ठीक है गुप्त काल में आने तक भगवान् राम विष्णु के अवतार के रूप में पूजे जाने लगे थे।'' (पेज 144)

"It is true that by the commencement of Gupta Period, Bhagwan Ram was being worshipped as incarnation of Vishnu." (E.T.C.)

''यह बात सही है कि अरली सेन्चुरी आफ क्रिश्चन ऐरा में श्री राम विष्णु के अवतार के रूप में प्रतिष्ठित हो चुके थे।'' (पेज 144)

"This fact is correct that in early century of Christian Era, Sri Rama was established as incarnation of Vishnu."

(E.T.C.)

''यह बात अंशतः सही है कि हिन्दू धर्म में ज्ञान अर्थात् विवेक को महत्व दिया गया है।'' (पेज 159)

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"It is partly true that in Hindu religion, knowledge or discretion has been given importance." (E.T.C.)

''यह बात सही है कि हिन्दू धर्म ही एक ऐसा धर्म है जो धर्माचरण में विवेक का प्रयोग करने की छूट देता है।' (पेज 159)

"It is true that Hindu religion is such a religion which provides for liberty to exercise discretion in its execution."

(E.T.C.)

''आर्यो के देव विभिन्न थे। यह ठीक है कि उन विभिन्न आर्यो के देवताओं में संकर्षण राम परशु राम, कृष्ण एवं श्री राम– सम्मिलित हैं। यह सही है कि इनको पूजा परम्परागत रूप से बहुत दिनों से चली आ रही है। और आज तक इनकी पूजा अबाध रूप से होती चली आ रही है।'' (पेज 163)

"Aryans' Gods were different. It is correct that amongst those Gods of Aryans, Samkarshan Ram, Parashu Ram, Krishna and Sri Ram are included. It is correct that their worship has been continuing traditionally since long. Till

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today their worship has unceasingly been continuing."

(E.T.C.)

4379. Apparently, there are some contradictions, but broadly she has not been confident in denying the historicity of Lord Rama and also admits that his worship started much before the Christian era. It is not said that the worship of Lord Rama at Ayodhya or the custom of Darshan of birthplace of Lord Rama started after the construction of the disputed structure or after 1528 as suggested and argued by learned counsels for Muslim parties. In the excavation by ASI, artefacts of religious nature of Gupta period and even earlier thereto have been found.

4380. Having considered the entire evidence as also the recorded material including Hindu religious texts, historical books, gazetteers etc. one thing is clear that Ayodhya though is held to be a place of much antiquity but its real fame, piety and sacredness relate to the name of Lord Rama and none else. He is considered to be a manifestation (Avtar) of Lord of Lords Vishnu according to the Hindu faith, customs and belief. Is the concept of Avtar is something a fairy tale or is a kind of deep spiritual theory and practice, needs to be pondered over.

4381. It is no doubt true that the sentiments, emotions, faith, belief, confidence etc., whatever term we use, but millions of people of this country believe that Lords of Lord manifested in living form in the materialistic world i.e. earth, time and again. In this vast country, those different forms in different ways and means, but substantially with the tradition, common factor of belief, are worshipped. Commonly they are known as 'Avtaar', which means a form of God when He descended into

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this materialistic world. Many a places, they are referred to as incarnations of God. There is some dispute even about the fine distinction between 'Avtaar' and 'incarnation'. One said that incarnation is not correct, for it means when someone or something reincarnates or takes another materialistic body of flesh and blood. Quite often it is in this context and with this understanding that people at large use the word incarnation. It is said by the learned Dharmacharyas that God does not take a material form. His form is always spiritual, transcendental to the norms and laws of material nature. He descend from the spiritual data as He is or in a form to do a specific activity/mission or carry out a particular purpose. The Supreme Being has many names considering his form and activities that he displays in his cosmic creation. In this country we have different religions and among them also a multi-fold system of faith, sects etc., but all have a common object of attaining salvation with the Almighty i.e. Lord of Lords or whatever name one may call it. All the major religions are having some sects which are the result of some differences in the system of worship but the common objective of all is indisputably same. The major religions in this country are Hindu, Muslims and Christians. Some say that Hindu by itself is not a form of religion but a way of life, living etc. On this aspect we have also said something above but at this stage we may clarify that the term Hindu may intend to use as it is known in common parlance in contra distinction to the terms used for other religions i.e. Muslims and Christians. Hindu religion is the oldest one. Whether it is 3000 year old or 5000 year old or more than a few lacs year old may not be of much consequence for us.

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Today, Christianity is more than 2000 and Islam 1430 years old. We should not be understood saying that before Islam as propounded by Prophet Muhammad or Christianity as per the teaching of the Jesus Christ, there was no religion whatsoever, but this is what normally or commonly understood. The religious scriptures and literatures of the religions therefore, though in abundance conform to the point of view, requirement and necessities of the corresponding period. Because of its own certain antiquity amongst Hindu scriptures, we find sometimes, mention of such things which become difficult to digest on our conceivable notion and logic and the limitation of our understanding which we have in the light of the information available to us currently.

4382. May be on account of non availability of the reliable feed back some of the aspects of Hindu scriptures are termed by others as Myth, legend, epic etc., doubting its historicity, ignoring the fact that the common people are so deep embedded in blood that it is beyond imagination for them to even think of a situation where those faith and belief can be termed as a mere fiction and not a matter of historicity. For example, the two of the world's biggest works known as 'Ramayana' and 'Mahabharatha' of Hindu scriptures, other people started to call it 'Epic' and that we have followed since the days of British India and now also. Initially the European writers in their own understanding find it unthinkable even the existence of such an antique society and culture and that too so perfect and so well defined, sophisticated, but complicated in different facets. With the passage of time the thoughts and approach have undergone a sea of change and now we find quite a sectionable intelligentsia

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who is changing its views and that is not merely on some kind of altered hypothesis etc., but due to the cemented, reliable information, they have collected in the mean time. In brief, it can be said that merely because one is not able to trace his history of succession it will not mean that he would not have a chain of succession. One's inability in finding something cannot result in a conclusion that actually nothing existed. There has to be much more. The mathematical, astronomical calculation of the learned people in ancient India have been found to be reasonably correct though they are presumed to lack so called advanced technology for arriving at such conclusions. It is easy to discard something at the threshold but difficult to find reason and logic behind its existence. Difficulty cannot be a reason to opt for an easier method instead of the cumbersome one. If Indian culture and society could have survived for such a long time even though other ancient cultures, whether Egyptian, Greek or Roman have lost behind the time, then one has to find out the reason for its sustenance. It cannot be brushed aside loosely. This is a kind of approach, thoughts, faith and belief of one part of the litigants before us and their contemporary opponent wants existence of positive material irrespective of the time and antiquity the matter relates to. The reason being that the issue has been brought in a Court of law which is presently governed by the system we have inherited from a totally different culture i.e. British legacy where they have told us to decide the dispute only on getting evidence and not otherwise. The issues relating to faith and belief and that too, which had continued from generations to generations, from hundreds and thousands years neither depend on the so called existence of

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evidence nor one can shake such custom which they have received by tradition for want of evidence. It is not totally a different concept and notion, independent in its own ways. In the erstwhile territory of India, before entry of the far east people or from other parts of world it appears that natives had their own traditions, system, faith and belief, and the society had different kinds of religious concept. The subsequent scholars tried to bifurcate this religious system of ancient India into that of Aryan and Dravidian but what we find is that barring a few differences in the matter of system of worship etc., the core belief and faith remained same. The entire society remained connected with a common thread of religious faith. This difference, more or less, was political. It is in this system, where we find the people in ancient India believed in the Avtaars of God which found mention in Vedic texts. All these Avtaars in one or the other way, we find, had a specific objective and ultimately helped to save the world, human being and other creatures and also to guide the living being in lives, and some are to attract the people back to the spiritual domain.

4383. On the one hand when modern day's science believe in the system of universe controlled by various principle of energy, then Indian Society was glued with a common platform by the learned sages and others telling that the Supreme Lord maintains all the planets and universe. It is He who assume roles and incarnation to perform pastimes to reclaim those in the mode of goodness. They were led to believe that throughout the many millions of Universe in which the Supreme Being appears, the objective is to apprise Society and bring it to senses, in particular, one who are in the higher grades of consciousness,

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receptive to understand their spiritual relation with him. He also sends his pure representatives and instruction to guide people. The object is common i.e. to bind the living beings back towards the spiritual world. It is also said that source of various Avtaars within this cosmic creation is the Lord of the Universe i.e. Garbhodakashayi Vishnu (see Srimad Bhagwatam 1.3.5). The form of the Lord, that descends to the material world to create, is called Avtaar.

4384. We are not going into that various Avtars of Lord Vishnu according to the Hindu tradition and in details thereof. Since Ayodhya is known by the name of Lord Rama and, therefore, one can presume that the religious structures must have connection with Lord Rama in one or the other way. The stone inscription found in 1992, as we have already discussed, at least show this much that a temple of Vishnu Hari was constructed by the erstwhile Gahadwal King in 11th or 12th century, i.e., much before the visit of Babar near Ayodhya. In no other record, reference of Vishnu Hari Mandir at Ayodhya has been pointed out, meaning thereby, before the history of Hinduism started in writing in a proper way, that temple must have disappeared for one or the other reason. At Ayodhya, the people used to visit for Darshan of Lord Rama's places is also evident from the record of Sikh religion showing that Guru Nanak Dev Ji came to Ayodhya in 1510 or 1511, told his companion that it is the birthplace of Lord Rama and then went for Darshan. Even for a moment we are not drawing any inference that the Sikhs religious texts anywhere identify the place of birth of Lord Rama but this is sufficient to point out that even before the entry of Babar in the then Hindustan,

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Ayodhya was already a well established Hindu Tirtha for the followers and believers of Lord Rama. The custom of worship of Lord Rama has already begun long back.

4385. Then we find the record of William Finch, who mentioned about a fort, which is said to be Rama's fort in ruined condition, but the people were visiting at a particular place and worshipping thereat. The nature of worship and that specific place Finch could not point out, may be he might not have been allowed to go there being a non Hindu person or whatever other reason, at least this much is evident that in an area which was covered and known as fort of Lord Rama, there was a place which was used to be visited by the people for worship believing it the place of birth of Lord Rama.

4386. Then comes, the next record of Joseph Tieffenthaler. By the time he visited Ayodhya, the building in dispute had come into existence. Tieffenthaler very categorically said that locally he was told that the building in dispute was constructed by demolishing a Temple, which existed at a place believed to be the birthplace of Lord Rama. Here by custom, tradition and practice, we narrowed down to the area whereat the place of birth of Lord Rama was believed to be or existed to be discovered by the people several hundred years ago and they used to visit and worship it. It may be a discovery by faith and belief or discovery by chance or a kind of discovery which we may term as symbolic discovery, but this faith and custom we trace back to almost five hundred years from today, which had continued as such atleast since then.

4387. No one is supposed to point out place of birth of Lord Rama like finding out a correct residential address in the

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present time but one has to adjudge the matter in the given set of facts and circumstances in a reasonable and plausible manner, which is not almost impossible.

4388. If history as written about construction of the disputed structure by Mir Baki in 1528 AD can depend solely on two inscriptions, which nobody knew whether installed by Mir Baki himself or came into being as a result of any subsequent manipulation, we fail to understand why something written almost two and half century ago by a person who was well conversant in the local languages at that time, whose motive in writing those facts is not doubted, ought not be believed. Further it may be considered in the light that some facts were written by different people after about 40 or 50 years from the visit of Tieffenthaler having no knowledge of his work. They also repeated except the distinction that this time they refer to an inscription also relying whereon the local belief was discarded by them, i.e., **Martin's Eastern India (supra)**.

4389. Had there been no reason, we fail to understand why Hindus would have continued to persuade their faith at the site in dispute particularly when there was muslim rule and they could have least expected any support therefrom.

4390. In the middle of 19th century, i.e., as we have already observed, between the 1853 to 1855 there appears to be a major confrontation between Hindu and Muslims at Ayodhya resulting in hundreds of deaths. Some says that 75 muslims were slained while others say that the actual figure was about 200 Hindus and 75 Muslims. Be that as it may, that is not very relevant for the point in issue. We are concerned as to what impelled the two communities to fight so frightfully that resulted in such a large

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number of casualties, if the disputed place was an ordinary place of worship of muslims having no other history or antiquity attached with it. The conduct, the attitude, the insistence on the part of Hindus, continuously, atleast as is evident from the record, i.e., from the time of Tieffenthaler and onwards, show that it was for something really serious on account whereof Hindus were not able to give up their claim. Probably for this reason, despite all odds, they continued to pursue their claim at the place in dispute.

4391. Sri Zilani sought to argue that had there been such a mass casualty, at Ayodhya it would have been noticed by R.C. Majumdar, a well known, historian in his work. **Exhibit D3, Register 38, Suit-5, page 295** is a photocopy of the extract of the book **"The History and Culture of the Indian People-British Paramountcy and Indian Revaissance"** Part II (Vol. 10) edited by R.C. Majumdar, published by Bhartiya Vidya Bhawan, Bombay. It contains its frontispiece, pages VII, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334. The above document has been filed on behalf of the plaintiffs (Suit-4) to show what has been written by the learned historians on Hindu Muslim relations during British Rule and that they have referred to certain communal riots but it did not include alleged riot of Ayodhya in 1855. Hence it is contended that no such riot actually took place.

4392. It is no doubt true that in the said chapter there is no reference of the riots of Ayodhya in 1853 or 1855 but having gone through it carefully, we do not find any claim of the author that the details contained therein are exhaustive. The chapter mainly deals with the British policy of divide and rule and how

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the members of two communities behaved at that time but nothing more than that. Some part thereof may be reproduced herein:

> *"The contribution of the British rule to the cleavage between the Hindus and Muslims should be considered in its proper perspective. It must be frankly admitted that the roots of the cleavage lay deep in the soil, and it was already manifest even early in the nineteenth century. The British did not create it, but merely exploited the patent fact to serve their own interests. Reference has been made above to the growing difference between the elites of the two communities, even before a fillip was given to it either by the Aligarh Movement or the definite policy of Divide and Rule adopted by the British Government. The relations among the masses, though normally cordial, occasionally took a very ugly turn in the shape of communal riots, showing that the volcanic mountains, calm on the surface, had not altogether lost their eruptive tendency and power. Early in the nineteenth century there was such a violent outbreak in Varanasi (Banaras). In October, 1809, the Hindu mob of the city stormed the great mosque of Aurangzeb. Though well-authenticated details are lacking, it is reported that about fifty mosques were destroyed, the city was given up to pillage and slaughter, and a large number of Muslims were put to death. In 1820 the Muslims assaulted a Durga Puja procession in Calcutta.*
>
> *Communal riots and tensions during the great outbreak of 1857 have been noted above. Hindu-Muslim riots with heavy casualties occurred at Bareilly and other*

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localities in U.P. During 1871-2. Two such riots took place in Bombay.

An article in a magazine, edited by a Parsi youth, gave an account of the Prophet of Arabia which lacked "that sentiment of respect and tolerance which is due to a sister community." The lithographed portrait of the Prophet, which was given with the article, also gave umbrage, and "an undiscovered villain added fuel to the fire by posting a copy of the picture, with ribald and obscene remarks underneath, on the main entrance of the principal mosque." Large crowds of Muhammandans assembled in the mosques of the town with the Qur'an in one hand and a knife in the other. At a meeting held on October 7, 1851, they proclaimed a Jihad (holy war) against the Parsis. They overwhelmed the small police force on duty and marched triumphantly to the Parsi quarters of the Bombay town. The Parsis were "belaboured mercilessly by the rioters". "For weeks together, that part of Bombay was a scene of pillage and destruction, and the Parsis had to put up with shocking atrocities such as defilement of corpses". "Only after the editor had been compelled to tender a written apology a truce was declared". "In connection with this disturbance the Parsi community looked in vain to the police for protection. If not altogether hostile, they were indifferent. Dadabhai Naoroji, who witnessed the tragedy, hastened the publication of the 'Rast Goftar' and wrote strong articles against the Government for indifference and failure of duty. He also rebuked the cowardly Parsi leaders for having tamely

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submitted to such outrages."

Another riot took place in 1874 of which there is an eye-witness' account by the great Indian leader Pherozeshah Mehta. In a book written by a Parsi vaccinator there was a reference to the Prophet which was regarded as objectionable by the Muslims. The publication was accordingly suppressed by the Government and the author was made to apologize for any affront he might have inadvertently offered. Nevertheless, there was "a brutal and unwarranted attack on Parsis by a mob of Mohamedans", on 13 February, 1874. They "invaded Parsi places of worship, tore up the prayer-books, extinguished the sacred fires and subjected the fire-temples to various indignities. Parsis were attacked in the streets and in their houses and free fights took place all over the city. Thanks to the weakness and supineness of the police and the Government, hooliganism had full play and considerable loss of life and damage to property were caused". The riot continued for several days till the military was called out.

Pherozeshah Mehta, like Dadabhai Naoroji, none of whom one would accuse of having any special animosity against the Muslims or the British Government, has laid emphasis on the callousness of the police and the indifference of the Government. "The attitude of the Commissioner of Police was particularly hostile and objectionable. The Governor told a Parsi deputation that waited on him that the conduct of the community had been injudicious and unconciliatory and advised it to make its peace with the Muhammadans and to learn the lesson of

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defending itself without dependence on the authorities."

Communal disturbances grew in volume and frequency, particularly between the years 1835 and 1893. Serious communal riots broke out at Lahore and Karnal (1885), Delhi (1886) where military had to be requisitioned, Hoshiarpur, Ludhiana, Ambala, Dera Ghazi Khan (1889), and Palakod in the Salem District of Madras (1891). The year 1893 was one of the worst and there were grave outbreaks over a large area in Azamgarh District (U.P.), Bombay town (lasted for 6 days) and interior, and Isa Khel (Mianwalli District, Punjab). Muharram and Dusserah processions, and cow-killing at Baqr'id were the causes, and murders, demolition of mosques and temples, and looting of shops, the chief characteristics of these riots. Detailed accounts of a few riots are given in the Appendix. It is not perhaps unreasonable to assume that this increased tension between the masses of the two communities was the direct consequence of the growing cleavage between their leaders.

Thus towards the end of the period under review the Hindus and Muslims represented almost two opposite camps in politics, and the ground was prepared for this, throughout the nineteenth century, by the frankly communal outlook of the Muslims, both in their general political evolution as well as in the Wahabi and Aligarh movements. The Muslim political ideas were generally inspired by the consideration of purely Muslim interests. But in forming a proper estimate of the Muslim politics in the nineteenth century it would be unfair to look at it only from the

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standpoint of modern nationalist outlook, and several important factors, which are generally overlooked, should be taken into consideration.

In the first place, it should be remembered that neither the Wahabi nor the Aligarh Movement represented the Muslim community as a whole. Large elements stood outside both, and even in the heyday of Aligrah Movement, the masses were mostly indifferent, and a number of distinguished Muslims co-operated in political matters with the Hindus.

Secondly, if the Muslims were communal and lacking in an all-India outlook, the Hindus were partly responsible for this. The Hindu intelligentsia cherished a definitely anti-Muslim bias from the very beginning of the nineteenth century, as has been noted above, though some of them, like Peary-chand Mitra, realized the need of a united front and publicly expressed this view. It is not without significance that the formation of a Muhammadan Association in 1856 (or 1855) was welcomed by the British Indian Association. The Hindus regarded it as quite natural, and evidently looked upon the Muslims as a separate political unit. Far more significant is the justification offered by the authorities of the Hindu Mela for forming a National Society. To the objection that a Society with membership confined to Hindus could hardly be called national, the National paper answered as follows on December 4, 1872: "We don not understand why our correspondent takes exception to the Hindus who certainly form a nation by themselves, and as such a society

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established by them can very properly be called a National Society."

No wonder that soon after the foundation of the Hindu Mela and National Society, the National Muhammadan Association was founded in Calcutta. It would be obvious from the above that while genuinely all-India national outlook was not altogether absent, there was a general feeling among large sections of both Hindus and Muhammandans that they formed two separate political units or nations.

Thirdly, it is to be considered very carefully why the Hindus gradually outgrew this narrow separatist tendency and imbibed a truly national spirit, while the Muslims failed to do so during the period under review. The Hindus had a start of at least half a century over the Muslims in their political evolution, and this margin of time should be normally allowed for similar development. But there were special difficulties in the adoption of a national outlook by the Muslims. They were in a hopeless minority as compared with the Hindus, and in any democratic form of government, they were sure to occupy only a position of secondary importance. As noted above, this view was publicly expressed at the time of the legislation for local self-government. This apprehension of the Hindus obtaining superior authority would naturally increase with every advance of self-government on democratic lines. The same fear worked upon the minds of the Muslims even in comparatively minor matters like recruitment to higher posts by open competitive examination, which was strongly

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advocated by the Hindus. Nobody could deny that it was the best mode of recruitment that could be conceive, but the Muslims opposed it on the ground that these were sure to be filled up mostly by the Hindus, not only because they were more numerous, but also because they were more advanced in education.

This feeling was brought to a head at the evidence given before the Public Service Commission in 1886. In his evidence Dadabhai Naoroji urged the necessity of holding simultaneous examinations in England and India. This was, however, strongly opposed by the Muslims "who feared that an examination held in India would lead to a preponderance of Hindus in the Civil Service to the detriment of the interests of their own community."

With the greatest chagrin Dadabhai learnt, after he returned to London, that his friend Dazi Shahabuddin had also joined in the opposition. On July 15, 1887, he wrote to Dazi in anguish:

"How your action has paralysed not only our own efforts, but the hands of our English friends and how keenly I feel this, more so because you have based your action on selfish interests, that because the Muhammadans are backward, therefore, you would not allow the Hindus and all India to go forward.....In the House of Commons I think Mr. Bright has stoutly urged the necessity of an examination in India to put us on an equality with English candidates. To-day when he would and could have urged the same thing with ten times the force, he feels himself staggered, and owing to your opposition he feels puzzled

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and cannot help us. What a blight you have thrown upon our future and how you have retarded our progress for a long time to come. This discussion will hurt us in a variety of ways. I do not know whether I can hope that before the Commission's work has ended, you will still undo the mischief in some way."

But the sentiment against which Dadabhai thundered was not confined to a few individuals; it was shared by the Muslims in general all over India. The Central Muhammadan Association, Madras, sent a memorial requesting the Government that the recommendations of the Public Service Commission for the abolition of the Statutory Civil Service and for the introduction of a system of competitive examination should not be accepted, for in that case the Hindus would get the full advantage and the "result would be disastrous to the Muslim Community."

There can be no gainsaying the fact that the Muslim apprehensions were well-founded, that in all human probability every advance in democracy in India would increase the dominance of the Hindus, and an open competitive examination would give preponderance to the Hindus over Muslims in all higher posts under the Government. There is, however, nothing to show that this patent fact was recognized by the Hindus who were too much imbued with nationalistic ideas to take a realistic view of things.

Dadabhai, however, touched the crux of the whole problem when he observed that the attitude of the Muslims was "based on selfish interests, that because the

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Muhammadans are backward, therefore, they would not allow the Hindus and all India to go forward". In all human probability there would never be a time, at least within measurable distance, when the Muslims would be equally advanced with the Hindus in point of education. If, therefore, the Muslims persisted in their present attitude, nobody could foresee a period, even in distant future, when they would readily join the Hindus in political fight for democracy or nationalism. The Hindu political leaders hoped that a consideration of this dismal prospect would induce the Muslims to give up communal for national interest in the hope that ultimately even the communal interest would be better served by following this course. But it is easy to explain why the Muslims as a body could not or would not follow this advice.

As always happens, a community, as a whole, is guided by the considerations of immediate interest involved rather than those of a remote ideal of which very few have any clear conception. Particularly, as in this case, the idea of an Indian nationality was generally lacking both among Hindus and Muslims. The Muslims could not forget that they were masters of the Hindus not long ago. To be subject to the British was bad enough, but subjection to Hindu domination would be far worse. This mentality may be regarded as ignoble from the higher standpoint of Indian nationality, but it is difficult to say that it is unnatural.

It would have been an act of great sacrifice on the part of the Muslims to join the Hindus in their political demands. But what were the inducements to such a

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sacrifice? In social and religious matters a deep gulf separated the two. Historical traditions and memories created a wide barrier between them. The name of Shivaji was an inspiration to the Hindus who held Aurangzeb in open contempt. The reverse was the case with the Muslims. The Rajput heroes like Rana Pratap were the idols of the Hindus and enemies of the Muslims. The Third Battle of Panipat was the occasion of national mourning for the Hindus but of a great deliverance for the Muslims. Such instances can be easily multiplied.

It may be argued with a great deal of plausibility, that in spite of all this a fusion of Hindus and Muslims into one nation was not an impossible ideal. Even if this be admitted, it must not be forgotten that what was at best merely a possible ideal should not have been mistaken for an actual fact, either already accomplished, or nearing completion. But the most eminent Hindu political leaders committed this fatal mistake. They took for granted what was at best a remote contingency, not to be achieved without great difficulty. They never understood, nor even cared to understand, the real feelings and impulses of the Muslim community. They never appreciated the motives which guided their policy and actions. The result was that they could not realize the patent fact that the Hindus and Muslims were, as yet, two different political units. In their new-born zeal for democracy and nationalism the Hindus forgot that large section of the people, for very good reasons, refused to accept these ideals. They, therefore, could not conceive any possible opposition to them from

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any quarter, far less brook it when it occurred. In the voluminous political literature of the period one looks in vain for a just assessment of the Muslim point of view on the part of the Hindus. The Hindu leaders made the great mistake of taking Badrudding Tyabji and a few men of his views as the only real representatives of the Muslims. They failed to read the sign of the times and had no patience to listen sympathetically to the grievances of the Muslims, which might not excuse, but could at least satisfactorily explain, their attitude towards the Hindus.

The indifference or apathy of the Muslim masses to all political questions probably contributed largely to the mistaken notion of the Hindus about the Muslim attitude. Confronted by the opposition of educated Muslims, they consoled themselves with the idea that the Muslim masses were not with the latter, and the opposition was after all confined to the educated few. In arguing thus they committed the same mistake as the British rulers did when they ignored the demands of Indian politicians because they represented, in their eyes, a "microscopic minority". But as a prominent Hindu pointed out in reply, "the educated community represented the brain and conscience of the country, and were the legitimate spokesmen of the illiterate masses, the natural custodians of their interests'.

The Hindus, however, forgot that what they urged on behalf of the country at large applied equally well to a distinct and strong minority community. They should have foreseen that ultimately the Muslim masses were bound to fall in line with the views of their leaders."

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4393. He also referred to the work of Rahul Sankritayan. **Exhibit D22, Register 38, Suit-5, pages 325-349,** a photocopy of the extract from the book "Meri Jiwan Yatra-1" by Rahul Sankrityayan (First Paperback Edition:1996) published by Radhakrishna Prakashan Pvt. Ltd., New Delhi containing preface as also pages no. 163-170. It shows that in the earlier 20th century Rahul Sankrityayan had visited Ayodhya. It is contended that the learned author has not said anything about the disputed site which shows that it was not treated to be a place of importance by Hindu people at that time also. Having carefully gone through the above document, we do not find that it intended to give details of various places at Ayodhya. The purpose and objective was totally different, hence reliance is totally misconceived.

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4394. One of the most crucial document which corroborates records is the letter dated 30th November, 1858 [**Exhibit 20 (Suit-1) (Register 5 Page 65)]** of Mohd. Asgar, who said that in the inner courtyard, Hindus had been worshipping for several hundred years. We find no reason even to ignore this document. The statements of several witnesses, we have already referred above, also fortify this fact.

4395. The place of birth of Lord Rama is not to be searched elsewhere in Ayodhya but it has to be in the disputed site or near about as is evident from pleadings of the Muslim parties, which show that they also do not dispute the existence of place of birth of Lord Rama along with the temple, though an attempt is made that such temple is not the disputed one but one existing on the north side at about 200 meters. In para 27 (Suit-1), the defendants 1 to 5 have said:

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''अयोध्या में एक मन्दिर मौसूमा बमन्दिर जन्मस्थान **श्री रामचन्द्र की जनम भूमि पर** मुद्दत मदीद से कायम व मौजूद है।''

*"A temple **at the birthplace of Lord Rama** (known as 'Mandir Janamsthan) has had been in existence from ancient times " (E.T.C.)*

The defendants no. 1 and 2 are co-plaintiffs in Suit-4 also.

4396. In Suit-3 also, the defendants no. 6, 7 and 8 have made several pleadings in Para 28 of their written statement:

''अयोध्या में एक मन्दिर मौसूमा बमन्दिर जन्मस्थान **श्री रामचन्द्र की जनम भूमि पर** मुद्दत मदीद से कायम व मौजूद है।''

*"A temple **at the birthplace of Lord Rama** (known as 'Mandir Janamsthan) has had been in existence from ancient times " (E.T.C.)*

Here also the defendant no. 7, Mohd. Faiq is a co-plaintiff in Suit-4.

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4397. The existence of birthplace as well as the temple thereon, therefore, was pleaded as long back as in 1950, i.e., at the first opportune. Thereafter, in the subsequent pleadings etc. this has been tried to explain. What is suggested is the temple which is referred to is the one on the northern side of the disputed structure across the road. We are not concerned with the existence of that temple but what we intend to point out is that the existence of birthplace in this very area is an admission by the plaintiffs. The persons, jointly interested in a suit, are bound by the admission made by any one of them. The Janamstham temple along with the place in dispute has also been noticed by Tieffenthaler and he has called it as "Sita Rasoi', but the fact is where he has referred to an earlier temple, which was demolished so as to construct disputed building, he has not referred to that temple (Sita Rasoi), but the present site which is

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in dispute. It could not be explained by the learned counsels for the plaintiffs (Suit-4) as to how there exists a 'Vedi' in the premises of the disputed structure known as a mosque and that 'Vedi' in the place in dispute continued to be worshipped by Hindus by lying prostrate on the ground and going for three Parikramas.

4398. It is not improbable that the people at that time took all possible efforts to continue with the worship of the place which they believed to be the birthplace of Lord Rama and for that purpose, whatever attempt they could make, the same were taken. We can easily understand the difficulty since they were under Muslim rule and the system, culture, traditions during such time were totally different.

4399. When the things became a bit easier, the Hindus succeeded in staking their claim partially inasmuch the British Government allowed the partition of the building in dispute with the instructions that the Hindus shall worship in the outer courtyard. Whether this was a resolution of a dispute between the two communities or not is a different aspect, but at least it had recognized the right and belief of Hindus about the place of birth of Lord Rama at the site in dispute.

4400. As we have further discussed, the Hindus did not desist from entering inner courtyard and continued not only to enter therein but to worship the place as well as the images on the black *kasauti* pillars. What was the structure of the erstwhile temple before the construction of the disputed structure is not known but it appears that due to affixation of black *kasauti* pillars mainly at the entry point of central dome after the construction of the new structure, the Hindu people continued to

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worship thereat believing the same as the central point of the birthplace of Lord Rama. Since, we do not find any detail as to how it was being worshipped earlier, but from the subsequent conduct, practice and traditions, in the absence of anything contrary, one can reasonably believe that the in the past also it must be the same.

4401. From the subsequent Gazetteers and other records, we find that while referring to Rama's fort at the mount, the disputed structure was mentioned as a part of such land. The entire fort if as per the belief of people was that of Lord Rama, obviously it was the most sacred and pious place and therein also by traditions and practice, if the Hindu people worshipped a particular place believing it to be the place of birth of Lord Rama, in the absence of any location elsewhere, or existence of another place of birth at Ayodhya, we find no reason not to accept and uphold the said belief.

4402. Suvira Jaiswal (PW 18), during cross examination, though tried to mislead by observing that according to her research, she found several places claiming birth place of Lord Rama at Ayodhya, but when asked as to which are those places, she could not reply and said that she don't know.

4403. Sri Jilani contended that the Gazetteers and other record of Europeans, wherever they have said that an existing temple was demolished to construct the mosque in question, did not refer any basis for such observation and, therefore, he submits that the same is unreliable. In normal course, his submission may not have been brushed aside easily, but in a case like this, where we are concerned with respect to a dispute going deep in history, the situation is slightly different. We can

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look into the matter from this another angle also as to why all of them have mentioned only this fact if it had no basis at all. Had the facts been otherwise, when they discard the local belief of the people that demolition was made by Aurangzeb and sought to support the stand that the demolition was by Babar, based on an inscription fixed thereat, if there would have been anything otherwise, in the same manner, they could have disbelieved Hindus' version about demolition of a temple.

4404. It is true that several confrontations amongst Hindus and Muslims in respect to the property in dispute are not on record of the history books, but there are some indications.

4405. In H.R. Nevill's **Barabanki Gazetteer** at pages 168-169 **(Exhibit 52, Suit 5)**, it says, *"The cause of the occurrence was one of the* ***numerous disputes that have sprung up from time to time between the Hindu priests and the Musalmans of Ajodhya with regard to the ground on which formerly stood the Janamasthan temple, …"***.

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4406. The words "disputes that have sprung up from time to time" clearly refer to some other and earlier disputes also though the details thereof are not on record.

4407. Once we find that by way of faith and traditions, Hindus have been worshipping the place of birth of Lord Rama at the site in dispute, we have no reason but to hold in a matter relating to such a kind of historical event that for all practical purposes, this is the place of birth of Lord Rama.

4408. The matter does not end here. Can it be said that it is the entire premises at the site in dispute which can be said to be the place of birth of Lord Rama or within this premises there is a smaller area which is actually believed by Hindus to be the

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place of birth. There could have been two fold inquiry into this matter. Whether Hindus by custom, tradition, faith and belief, handed down from generations to generation, treat the entire area covered by the disputed structure as well as its outer boundary wall constituting the place of birth of Lord Rama or Hindus actually believed a smaller space within this very premises to be, precisely, the place of birth of Lord Rama. Area of the premises in dispute is near about 130 feet in length and 80 feet in width, i.e., roughly about 10400 sq. feet (.2387 acre). This measurement is not exactly but near about. Suppose within this area there is another place of 10x10 or 20x20 or as the case may be, which had been identified by Hindus, believing to be the place of birth of Lord Rama, then the entire disputed area cannot be said to constitute the place of birth of Lord Rama for the purpose of the issues in question.

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4409. The reason being that the Hindu parties have virtually interchangeably used two terms which have different meaning, i.e., Birthplace temple and the birthplace. On the one hand they contend that the disputed area is such where existed temple of Lord Rama, constructed since it was the birthplace and, therefore, it is of special significance for Hindus, inalienable and cannot be departed. On the other hand, they plead that within the area in dispute, there is a small area, which had been identified by Hindus as the birthplace of Lord Rama since time immemorial and, therefore, the peculiarity and speciality vis a vis place is attached with that area only and rest of the part is of an erstwhile temple whereon a mosque was constructed but then the label of special significance for the entire area shall extinguish.

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4410. In other words, the precise issue, in terms of the "birthplace", as we could understand, is in the following terms:

I. According to faith and belief of Hindus, a particular smallest area in Ayodhya which they treat as the sanctum sanctorum i.e 'Garbh Grah' that is where Lord Rama was born.

II. A temple constructed in the area which included sanctum sanctorum and the place covered by that temple which is termed as 'Janam Bhumi temple' or 'Ram Janam Bhumi temple.

III. There is a complete unanimity amongst all Hindu parties as also deposed by their witnesses that under the central dome lie the sanctum sanctorum, i.e. 'Garbh-Grah' since lord Rama was born thereat and it was part of a bigger holy structure, i.e., a temple, which was constructed and known as "Janam Bhumi temple" or "Ram Janam Bhumi temple" which included the rest of the area occupied by the disputed structure.

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4411. The witnesses, produced by Hindu parties to depose about the custom, tradition, faith and belief in respect to the place of birth i.e. sanctum sanctorum i.e. Garbh-Grih, where Lord Rama was born, making a distinction between the said place as well as the place occupied by the temple which obviously must have been constructed later on, are as under:

(i) DW 1/1 Rajendra Singh

''विवादित स्थल ही श्रीरामजन्म भूमि व जन्म स्थान है . . .उसमें से जन्मभूमि से मेरा तात्पर्य उस जगह से है जहॉ जन्म होता है और जो गर्भगृह है और जन्म स्थान से तात्पर्य पूरे भवन से है जिसमें जन्म होता है।'' (पेज 44)

"It is the disputed place which is the Shri Ram Janam

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Bhumi and Janam Sthan. . . .By Janam Bhumi I mean that place where a birth takes place and which is the sanctum sanctorum (center place) and by "Janamsthan" I mean the entire building wherein the birth takes place." (E.T.C.)

''यह सैकड़ो वर्ष मैंने गर्भगृह के दर्शन के संबंध में लिखा है मूर्तियों की पूजा के लिए नहीं। मूर्तियों की पूजा सन् 1950 से वहॉ पर शुरू हुई और सन् 1524 से पहले भी वहॉ पर मूर्तियों की पूजा होती रही।''

(पेज 47)

"This hundreds of years, I have written with respect to Darshan of Garbh Grih (Sanctum Sanctorum) and not in relation to worship of deities. Worship of deities started there since 1950 A.D. and prior to 1524 A.D.also worship of the deities continued there." (E.T.C.)

(ii) DW 1 /2 Krishna Chandra Singh

''जिसके मध्य वाले शिखर के नीचे की भूमि ही वह भूमि है जो परम्परागत आस्था एवं विश्वास के अनुसार भगवान श्रीरामचन्द्र जी की जनमभूमि मानी जाती है (पेज–4)

''Only the place below the middle dome, is the place which is, as per traditional faith and belief, considered to be the birthplace of Sri Ram Chandra Ji.''(E.T.C.)

''भगवान रामलला वहॉ पर सन् 1949 में विराजमान हुए। जब मैं वहॉ पहले गया था तो गुम्बद के नीचे वाले स्थान पर रामलला नहीं थे। परन्तु मेरे पहली बार वहॉ जाने और सन् 1949 के दरम्यान मैं 6–7 बार वहॉ गया था। . . .मैं पहली बार विवादित स्थल पर गया था तो ***गुम्बद के नीचे वाले स्थल को जन्मभूमि मानकर श्रद्धालु प्रणाम कर लेते थे।*** *''*

(पेज 12–13)

"Lord Rama was throned there in 1949 AD. For the first time when I visited there, Ramlala (Lord Rama) was not there at the place below the dome. But between my first

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visit and till 1949 AD, I went there six-seven times. . . When I visited the disputed site for the first time, ***the devotees used to salute the place under the dome regarding it as Janambhumi (birthplace)****." (E.T.C.)*

''सन् 1949 की घटना के बाद भी रामचबूतरे पर मैंने पूजा आदि होते हुए देखी है, परन्तु रामलला की मूर्ति वहां नहीं देखी और पता चला था कि वह मूर्ति अन्दर थी। और रामचबूतरे पर सीता राम आदि की मूर्तियां थी।'' (पेज 20)

"I had seen performance of worship on Ram Chabutara even after the incident of 1949 but never saw any idol of Ramlala and I came to know that the idol was inside. And there was idols of Sita, Ram etc. over Ram Chabutara." (E.T.C.)

''हिन्दू उसे मस्जिद नहीं मानते थे और हिन्दू लोग उसे जन्म स्थान मानकर परिक्रमा और प्रणाम करते थे।'' (पेज 25)

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''Hindus did not recognize it as a mosque and treating the same as Janam Sthan, Hindus used to take round (circumambulation/Parikrama) and salute the same." (E.T.C.)

*''मैंने अपने मुख्य परीक्षा के शपथ–पत्र की धारा 14 में जो यह लिखा है कि ''***जिसकी मध्य वाले शिखर के नीचे .....जन्मभूमि मानी जाती है'', वह सही लिखा है***।'' (पेज 68)*

"The words "below the central dome ….is regarded as birthplace" *which I have written in para 14 of the affidavit of my examination in chief,* ***is written correctly."****(E.T.C.)*

(iii) DW 2/1-1 Rajendra Singh

''इन ग्रन्थों से प्राप्त जानकारी से यह पूर्णतः प्रमाणित होता है कि विवादित भूमि भगवान श्री रामचन्द्र जी की जन्मस्थली है – (पेज–3)

''From the knowledge obtained from these treatises,

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it is absolutely proved that the disputed building is the birthplace of Sri Ram Chandra Ji."(E.T.C.)

(iv) DW 2/1-3 Mahant Ram Vilas Das Vedanti

"यह कि विवादित स्थल देश विदेश के असंख्य हिन्दुओं द्वारा भगवान श्रीरामचन्द्र जी की जन्म भूमि के रूप में प्रथागत, परम्परागत आस्था एवं विश्वास से अनादि काल से पूजित होता चला आ रहा है। हिन्दू सनातनधर्मी विवादित स्थल को अपने आराध्य भगवान श्रीरामचन्द्र जी की जन्मस्थली व जन्मभूमि मन्दिर के रूपं में पूजते हैं।" (पेज 3)

"That the disputed site has continuously been worshipped as the birthplace of Lord Sri Ram Chandra by innumerable Hindus of country-abroad with customary faith and belief from time immemorial. Orthodox Hindus worship the disputed site as the birthplace of their revered Lord Sri Ram Chandra and as Janam Bhumi temple."(E.T.C.)

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मुख्य परिसर में स्थित ढांचा तीन गुम्बद वाला था जिसमें मध्य वाले गुम्बद के नीचे की भूमि पर भगवान श्रीराम का जन्म हुआ था, *ऐसा परम्परा आस्था एवं विश्वास हिन्दू जनमानस का है तथा वेदों धर्मशास्त्रों पुराणों आदि के अनुसार भी यह सिद्ध है। इसी आस्था एवं विश्वास के आधार पर परम्परागत ढंग से देश विदेश के असंख्य हिन्दू रामभक्त व जनसामान्य द्वारा विवादित स्थल को भगवान श्रीराम की जन्मस्थली व जन्मभूमि मन्दिर मानते हुए पूजन दर्शन करता चला आ रहा है तथा शपथकर्ता भी उसे उसी रूप में अतिपवित्र एवं भगवान राम की पूज्य जन्मस्थली मानता है।" (पेज 4)*

"The structure situated within the main premises, was of three domes, beneath the mid dome of which was Lord Rama born*. Such is the customary faith and belief of the Hindu public and the same is supported by Vedas, treatises, Puranas, etc. as well. It is on basis of this faith and belief that innumerable Hindu devotees of Lord Rama*

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and the general public of country – abroad have been offering prayers and having Darshan of the disputed site as the birthplace of Lord Sri Rama and as Janam Bhumi temple, and the deponent also considers it to be the same very sacred, reverable birthplace of Lord Rama." (E.T.C.)

''यह कि ***मध्य वाले गुम्बद के नीचे*** *स्थित स्थल पर ही सनातनधर्मी हिन्दू मतावलम्बियों की प्राचीन परम्परा एवं प्रथा तथा उनकी आस्था एवं विश्वास के अनुसार महाराज दशरथ के पुत्र भगवान* ***श्रीराम का जन्म हुआ था, इसीलिए यह स्थल अतिपवित्र एवं पूज्य है*** *एवं इसी आस्था एवं विश्वास के आधार पर अनादिकाल से करोड़ो सनातनधर्मी हिन्दू अयोध्या आकर श्रीराम जन्मभूमि स्थल का दर्शन पूजन एवं परिक्रमा करते चले आ रहे हैं।''(पेज 4–5)*

"That as per the ancient custom and practice and the faith and belief of orthodox followers of Hinduism, ***the birth of King Dashrath's son Lord Sri Rama took place*** *at the place* ***beneath the mid dome***. ***Due to this it is very sacred and reverable*** *and it is out of this faith and belief that from time immemorial crores of orthodox Hindus have been coming over to Ayodhya to have darshan and perform circumambulation of the Sri Ram Janam Bhumi site."(E.T.C.)*

(v) DW 3/1 Mahant Bhaskar Das

''भगवान राम लला के ***जन्मभूमि होने के कारण भीतरी भाग पूज्य है।''*** *(पेज 27)*

"On account of being the Janmbhumi of Lord Ram Lala, the inner part is reverable."*(E.T.C.)*

(vi) DW 3/2 Shri Raja Ram Pandey

''यह सही है कि हिन्दू समाज के सभी लोग अधिकार–स्वरूप राम जन्मभूमि मन्दिर दर्शन व पूजा आदि के लिए जाते थे। दर्शन के लिए किसी की अनुमति की आवश्यकता नहीं थी।'' (पेज 21)

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"It is correct that all people of the Hindu community used to come over as a matter of right to have darshan and offer prayers etc. at the Ram Janam Bhumi temple. No permission was required to have darshan."(E.T.C.)

*''**तीन शिखर वाला जो भवन था, उसके बीच वाले शिखर में भगवान विराजमान थे और वही गर्भगृह कहलाता था और हिन्दू लोग गर्भगृह को रामजन्मभूमि मानते हैं।**''*

(पेज 22)

***"Lord (Rama) was present beneath the mid dome of the three domed structure, and the same was called the sanctum sanctorum and the Hindus consider the sanctum sanctorum to be the Ram Janam Bhumi."**(E.T.C.)*

''अयोध्या में विवादित भवन वाली सीता रसोई एवं जन्मस्थान मन्दिर वाली सीता रसोई के अतिरिक्त अन्य किसी स्थान को सीता रसोई नाम से नहीं जाना जाता है।'' (पेज 113)

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"Apart from the Sita Rasoi of the disputed structure and the Sita Rasoi of the Janam Sthan temple, there is no other place in Ayodhya known as Sita Rasoi."(E.T.C.)

*''मेरी आस्था के अनुसार विवादित भवन के बीच वाले गुम्बद का स्थान कौशल्या महल में गर्भगृह था, **गर्भगृह को ही प्रसूति गृह कहते हैं।**'' (पेज 113)*

*"According to my faith, the place beneath the mid dome of disputed structure was the sanctum sanctorum of the Kaushalya palace, the **sanctum sanctorum is also called the labour room**."(E.T.C.)*

(vii) DW 3/3 Satya Narayan Tripathi

*''यह सही है कि हिन्दुओं की आस्था श्रद्धा विश्वास हमेशा से सदा यही रही है कि **जिस स्थान पर वर्तमान में रामलला जी विराजमान हैं उसी स्थान पर दशरथ जी के पुत्र के रूप में***

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उनका जन्म हुआ था। *हिन्दू लोग उन्हें भगवान विष्णु का अवतार मानते थे और आज भी मानते हैं।''(पेज 14)*

"It is correct that it has always been the faith, belief and devotion of Hindus that ***the place where Ram Lala is present today, He was born as son of King Dashrath at the same place.*** *Hindus considered and even today consider, Him to be an incarnation of Lord Vishnu."(E.T.C.)*

*''***तीन गुम्बद वाले विवादित भवन के बीच के गुम्बद के नीचे भगवान राम का जन्म हुआ था***, ऐसा हिन्दू लोग मानते हैं। हिन्दुओं की यह मान्यता है कि राम जन्मभूमि का दर्शन करने से मोक्ष मिलता है।'' (पेज 13)*

"Lord Rama was born at the place below the central dome of the three domed disputed building*; such is the belief of Hindus. Hindus believe that by having a glimpse of birthplace of lord Rama, salvation is attained." (E.T.C.)*

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(viii) DW 3/4 Mahant Shiv Saran Das

*''***मैं भीतर वाले गर्भगृह में भगवान रामलला के दर्शन करता रहा हूँ।***'' (पेज 2)*

"I have been taking glimpse (Darshan) of Lord Ramlala inside the sanctum sanctorum*." (E.T.C.)*

(ix) DW 3/5 Raghunath Prasad Pandey

''मेरी आस्था के अनुसार जो विवादित भवन है, उसी को हम कौशिल्या भवन मानते हैं। (पेज–93)

''As per my faith we consider the disputed building itself to be Kaushalya Bhawan.''(E.T.C.)

(x) DW 3/6 Sitaram Yadav

''विवादित भवन सौरी गृह (प्रसूतिगृह) रहा होगा। स्वयं कहा कि विवादित भवन के बीच वाले भाग को अब भी हम सौरीगृह (प्रसूतिगृह) मानते हैं। बीच वाले गुम्बद के भाग को हम विशेष तौर पर प्रसूतिगृह मानते

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हैं अग़ल–बग़ल वाला भाग भी उस कमरे का हिस्सा रहा होगा''। (पेज–57)

''The disputed building must have been 'Sauri Grih (maternity home). (Stated on his own) we still consider the middle part of the disputed building to be 'Sauri Grih'. We consider particularly the middle dome part to be maternity home. The adjoining part must also have been part of that room.''(E.T.C.)

(xi) DW 3/7 Mahant Ramji Das

''यह कि भगवान राम महाविष्णु के अवतार हैं और भगवान राम इसी विवादित परिसर में गर्भ गृह में प्रकट हुए हैं इसीलिए यह रामजन्मभूमि कहलाता है।'' (पेज 8)

"That Lord Rama is an incarnation of Maha Vishnu and Lord Rama had descended in the sanctum sanctorum of this very disputed premises, as such it is called Ram Janam Bhumi."(E.T.C.)

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*''हिन्दुओं की परम्परा आस्था एवं विश्वास चला आ रहा है कि तीन गुम्बद वाले विवादित भवन के **बीच वाले गुम्बद के नीचे वाले भाग में रामचन्द्र जी का जन्म हुआ था** और यही आस्था व विश्वास मेरा भी है। श्रीराम जन्मभूमि स्थल रामचन्द्र जी के जन्म के समय से पूज्य है और बराबर पूजित होती चली आ रही है। मैं विवादित परिसर के पूर्वी मुख्य द्वार से होकर अंदर दर्शन करने जाता था। जन्मभूमि का दर्शन करने के उपरान्त जब बाहर निकलते थे तो दक्षिण की ओर से घूम कर परिक्रमा करते थे।'' (पेज 23)*

*"The custom, faith and belief of Hindus has been continuing that the **birth of Ram Chandra Ji took place beneath the mid dome** of the three domed disputed structure and I also share the same faith and belief. The Sri Ram Janam Bhumi site is reverable from the time of birth of Ram Chandra Ji and has been continuously worshipped. I used to go inside through the eastern main gate of the*

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disputed premises to have darshan. On coming out after having darshan of the Janam Bhumi, used to perform circumambulation by going southwards."(E.T.C.)

''भगवान राम का जन्म स्थान, यदि वहॉ मूर्तिया न भी हों, तो भी पूज्य हैं। जन्मस्थान के दर्शन मात्र से ही माक्ष की प्राप्ति हो जाती है।'' (पेज 26)

"The birthplace of Lord Rama is reverable, even if there are no idols over there. Salvation is achieved by mere darshan of the birthplace."(E.T.C.)

''इस सूची संख्या–3 के कागज संख्या–9/20 के पेज–18 पर जन्म स्थान का विवरण है और रामजन्मभूमि भी उसी में वर्णित है। इस पृष्ठ पर जन्मस्थान का निश्चित स्थान एवं सीमायें नहीं लिखी हैं। (पेज–50)

''Details of Janamsthan find mention on page 18 of paper no. 9/20 of this list no. 3, and Ramjanambhumi is also mentioned therein. Definite location and boundaries of Janamsthan are not mentioned on this page.''(E.T.C.)

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जन्मस्थान, जिसे गूदड़तड़ बाबा ने बनवाया था, रामचन्द्र जी का ही जन्मस्थान माना जाता है। (पेज–72)

''Janamsthan, which Gudadtad Baba had raised, is considered to be the birthplace of Ram Chandra Ji Himself.''(E.T.C.)

''विवादित भवन में भगवान श्री राम करोड़ों वर्ष पहले प्रगट हुए थे।'' *(पेज–77)*

''Lord Sri Rama had appeared in the disputed building crores of years back.''*(E.T.C.)*

(xii) DW 3/8 Pt. Shyam Sunder Mishra

''मैं शुरू से विवादित भवन को राम जन्म भूमि मंन्दिर के रूप में मानता रहा हूॅ। और उसी रूप में मैं वहॉ पूजा दर्शन करता रहा हूॅ। ***बीच वाले गुम्बद के नीचे की भूमि राम जन्म भूमि मानी जाती है।''*** *(पेज 10)*

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"From beginning I have been treating the disputed structure to be the Ram Janam Bhumi temple and have been offering prayer-worship over there in the same form. ***The land beneath the mid dome, is considered to be Ram Janam Bhumi."*** *(E.T.C.)*

''जब से भगवान राम राजा दशरथ के पुत्र के रूप में कौशल्या माता के गर्भ से पैदा हुए तब से उस स्थल को राम जन्म भूमि कहा जाता है और तभी से वह स्थल पूज्य है। हिन्दुओं की आस्था विश्वास एवं परम्परा के अनुसार ***तीन गुम्बद वाले विवादित भवन के बीच के स्थान पर भगवान राम पैदा हुए।*** *इसलिए वह स्थल स्वयं में पूज्य है और अयोध्या स्वयंभू क्षेत्र है। राम लला जी का वहॉ प्रादुर्भाव हुआ है, उस पृथ्वी को स्वयंभू क्षेत्र माना जाता है।'' (पेज 22)*

"Since Lord Rama was born from the room of Kaushalya Mata as the son of King Dashrath, the said place is called 'Ram Janam Bhumi', and since then it is a sacred place. As per the faith, belief and tradition of Hindus, ***Lord Rama was born at the central part of the three domed disputed structure.*** *As such this place is reverable on its own and Ayodhya is a self originating place. Ram Lala had descended over there, that portion of the land is considered to be self originating." (E.T.C.)*

(xiii) DW 3/9 Ram Asray Yadav

''हिन्दू धर्म के मानने वाले यह विश्वास करते हैं कि विवादित स्थल पर रामचन्द्र जी का जन्म हुआ था।'' (पेज 11)

"The believers of Hindu religion are sure that the birth of Ram Chandra Ji took place at the disputed site."(E.T.C.)

(xiv) DW 3/11 Bhanu Pratap Singh

''रामचन्द्र जी का जन्म कौशिल्या जी के महल में नहीं हुआ था। यह जन्म जन्मस्थान पर हुआ था। (पेज–68)

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"Ramchandra Ji was not born in the palace of Kaushlya Ji. This birth took place at the Janmsthan."(E.T.C.)

(xv) DW 3/12 Ram Akshaywar Pandey

''रामजन्मभूमि स्थान के संबंध में लोगों का श्रद्धा–विश्वास तथा आस्था है कि भगवान राम उसी स्थान पर प्रकट हुए थे।'' (पेज 13)

"As regards the site of Ram Janam Bhumi, it is the faith, belief and devotion of people that Lord Ram had appeared at that very place." (E.T.C.)

''मैंने अपने बाबा से यह सुना था कि जन्मस्थान जन्मभूमि पर भगवान राम का जन्म हुआ था। इसके पहले भी लोग कहते थे कि भगवान राम का जन्म वहॉ हुआ था।'' (पेज 16)

"I had heard it from my grandfather that lord Rama was born at the Janam Sthan Janam Bhumi. Earlier also, people used to say that lord Rama was born over there."(E.T.C.)

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''भगवान राम का जन्म तीन गुम्बद वाले भवन के बीच वाले गुम्बद के नीचे वाले स्थान पर हुआ था।'' (पेज 44)

"The birth of Lord Rama took place beneath the mid dome of the three domed structure." (E.T.C.)

(xvi) DW 3/13 Mahant Ram Subhag Das Shastri

''जब से मैं अयोध्या आया तब से मैं नियमित राम जन्म भूमि दर्शन करने जाता था और ***गर्भ गृह में विराजमान राम लला का बराबर दर्शन करता रहा।*** *'' (पेज 6)*

"Since I came to Ayodhya, I have been regularly going to Ram Janam Bhumi to have Darshan and ***all along had Darshan of Ram Lala present in the sanctum sanctorum****." (E.T.C.)*

''विवादित गर्भ–गृह या पूरे परिसर में कभी मुसलमानों द्वारा नमाज नहीं पढ़ा गया।'' (पेज 9)

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"Namaz was never offered by Muslims in the disputed sanctum sactorum or the entire premises." (E.T.C.)

''वाल्मीकी रामायण में रामजन्मभूमि मन्दिर का उल्लेख नहीं मिलता। वाल्मीकी रामयण में उस विशेष स्थान का नाम नहीं लिखा है, जहॉ रामचन्द्र जी का जन्म हुआ था। रामचरित मानस में भी इस स्थान को विशिष्ट रूप से नहीं बताया गया है, जहॉ पर रामचन्द्र जी का जन्म हुआ था, परन्तु उसमें रामकोट का उल्लेख आया है। उस निश्चित स्थान, जहॉ पर रामचन्द्र जी का जन्म हुआ हो, इसका उल्लेख नहीं है। रामकोट कितनी लम्बाई तथा चौड़ाई में स्थित है, इसका कोई उल्लेख नहीं हैं।'' (पेज 105)

"Reference of Ramjanmbhumi temple is not found in Valmiki Ramayana. The particular place where Ramchandra Ji was born, is not name in the Valmiki Ramayana. In the Ramcharit Manas as well, this place has not been particularly defined where Ramchandra Ji was born, but it does refer about Ramkot. There is no reference of the particular place, where Ramchandra Ji was born. There is no mention of the length and breadth in which Ramkot is situated." (E.T.C.)

(xvii) DW 3/14 Jagadguru Ramanandachrya Swami Haryacharya

''मेरी मान्यता के अनुसार 1 करोड़ 81 लाख 60 हजार 103 वर्ष पूर्व रामावतार हुआ था।'' (पेज 79)

"As per my belief, the incarnation of Lord Rama had taken place 1 crore 81 lakhs 60 thousand 103 years ago."(E.T.C.)

''मैंने यह बताया है कि पहले मानव, मनु थे। पहले मानव का समय मैंने आज से 6 हजार कल्प पूर्व का बताया है। एक हजार चतुर्युग के पूरे होने पर एक कल्प होता है। एक कल्प चार अरब 32 करोड़ वर्षों का होता है। मेरे अनुसार छः कल्प व्यतीत हो चुके हैं तथा सातवां कल्प चल रहा है। इस प्रकार लगभग 25 अरब 92 करोड़ वर्ष व्यतीत हो चुके हैं।'' (पेज 79)

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"I have told that Manu was the first human. I have given the period of first human to be 6 thousand 'Kalpa' ago from today. One 'Kalpa' is completed after one thousand 'Chaturyuga'. One 'Kalpa' is of four arab 32 crore years. According to me, 6 'Kalpas' have lapsed and the 7th 'Kalpa' is going on. As such around 25 arab 92 crore years have lapsed." (E.T.C.)

''विवादित स्थल के उत्तर–सड़क तथा उसके बाद जन्मस्थान मन्दिर है। वह जन्मस्थान मन्दिर 300–400 वर्ष पुराना हो सकता है। जन्मस्थान मंदिर के अंदर मैं गया हूँ।'' (पेज 105)

"To the north of the disputed site is a road and after it is the Janam Sthan temple. This Janam Sthan temple can be 300-400 years old. I have been inside the Janam Sthan temple." (E.T.C.)

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*''**अयोध्या में केवल जन्मभूमि पर गर्भगृह है।** . . . अयोध्या में जिस गर्भगृह का मैंने उल्लेख किया है, उसे मैं रामचन्द्र की जन्मभूमि मानता हूँ।''(पेज 107)*

***"In Ayodhya, the sanctum sanctorum exists only at the Janam Bhumi.** . . . The sanctum sanctorum in Ayodhya, mentioned by me, is considered by me to be the birthplace of Ram Chandra Ji." (E.T.C.)*

''वाल्मीकी रामायण में अयोध्या को भगवान राम द्वारा अपनी जन्मभूमि कहा जाना उल्लिखित है। भगवान राम ने पूरी अयोध्या को अपनी जन्मभूमि बताया है, इसमें किसी स्थान विशेष को इंगित नहीं किया गया है।'' (पेज 144)

"In Valmiki Ramayana, reference is contained about Lord Rama calling Ayodhya, His Janam Bhumi. Lord Rama has termed the entire Ayodhya to be His birthplace, no particular place has been pin pointed in it." (E.T.C.)

(xviii) DW 3/15 Narendra Bahadur Singh

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*''वह **गर्भगृह बीच वाले गुम्बद के नीचे था।**'' (पेज 35)*

***"That sanctum sanctorum was beneath the mid dome."**(E.T.C.)*

''अयोध्या में विवादित भवन के अलावा किसी और मन्दिर का नाम जन्मस्थान मन्दिर नहीं था।'' (पेज 93)

"Besides the disputed structure, there was no other temple in Ayodhya known as Janam Sthan temple." (E.T.C.)

(xix)DW 3/16 Shiv Bhikh Singh

***''बीच वाले शिखर के नीचे गर्भगृह था।''** (पेज 2)*

***"Garbh Grih (sanctum sanctorum=place of birth) existed below the central dome**." (E.T.C.)*

''विवादित स्थल जहॉ पर रामलला विराजमान हैं, उसको जनमभूमि इसलिए कहा जाता है, क्योंकि वहीं पर रामचन्द्रजी का जन्म हुआ था। इसलिए यह स्थान बहुत पवित्र माना जाता है। हिन्दुओं का ऐसा विश्वास है कि इस स्थान के दर्शन मात्र से ही मोक्ष की प्राप्ति होती है।'' (पेज 10)

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"The disputed site where Ramlala is installed, is called Janam Bhumi because it is this place where Ram Chandra Ji was born. Therefore this place is considered very pious."

''इसके अलावा गर्भगृह होने से भी मैं यह मानता हूँ कि यहॉ पर रामचन्द्रजी का जन्म हुआ था।'' (पेज 24)

"Except this, on account of it being the Garbhgrih, I believe that Ram Chandra Ji was born here." (E.T.C.)

(xx) DW 3/17 Mata Badal Tiwari

*''पिता जी ने मुझे यह बताया था कि यह रामजन्मभूमि का मन्दिर है। हिन्दुओं की यह आस्था है तथा यह विश्वास है कि **रामचन्द्र जी का जन्म तीन गुम्बद वाले भवन के बीच वाले गुम्बद के नीचे हुआ था। इसीलिए इसको श्रीरामजन्मभूमि कहा जाता है।**''*

(पेज 10)

"My father told me that this was the temple of Ram Janam Bhumi. This is the faith and belief of Hindus that

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the birth of Ram Chandra Ji took place beneath the mid dome of the three domed structure. Due to this, it is called 'Sri Ram Janam Bhumi'. *(E.T.C.)*

''रामजन्मभूमि कहने का तात्पर्य मेरा यह है कि उस स्थान पर रामचन्द्रजी का जन्म हुआ था। रामचन्द्र जी का जन्म सौ–दो सौ साल पूर्व, हजार–दो हजार वर्ष पूर्व अथवा लाख–दो लाख वर्ष पूर्व हुआ था, इसके बारे में मैं नहीं बता सकता हूँ। रामजन्मभूमि पर रामचन्द्र जी का जन्म होते मैंने स्वयं नहीं देखा, मैंने सुना है। यह कहना गलत है कि विवादित स्थल भगवान राम की जन्मभूमि नहीं है।'' (पेज 53)

"By 'Ram Janam Bhumi', I mean the place where Ram Chandra Ji was born. I cannot tell whether Ram Chandra Ji was born hundred-two hundred years ago, or thousand-two thousand or lakh-two lakh years ago. I did not myself see the birth of Ram Chandra Ji at Ram Janam Bhumi, I have heard so. It is wrong to say that the disputed site is not the birthplace of Lord Rama." (E.T.C.)

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(xxi) DW 3/18 Acharya Mahant Banshidhar Das

''विवादित स्थल श्री राम जन्म भूमि मन्दिर है'' (पेज 2)

"The disputed site is Sri Ram Janam Bhumi temple."(E.T.C.)

''हिन्दुओं की यह आस्था तथा विश्वास है कि ***तीन गुम्बद वाले विवादित भवन के बीच वाले गुम्बद के नीचे भगवान राम का जन्म हुआ था।*** *यह आस्था तथा विश्वास पीढ़ी दर पीढ़ी चला आ रहा है। लोगों की यह भी आस्था व विश्वास है कि इस रामजन्मभूमि का दर्शन करने से मोक्ष की प्राप्ति होती है।'' (पेज 14)*

"It is the faith and belief of Hindus that ***Lord Rama was born beneath the mid dome of the three domed disputed structure****. This faith and belief has been continuing generation after generation. It is also the faith and belief of people that by having Darshan of this Ram*

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Janam Bhumi, one attains salvation." (E.T.C.)

(xxii) DW 3/20 Rajaram Chandracharya

''विवादित भवन के ***तीनों गुम्बद के नीचे का भाग गर्भगृह था।''***

(पेज–72)

"The portion beneath all the three domes of the *disputed structure,* ***was the sanctum sanctorum****." (E.T.C.)*

''किसी भी वेद में रामचन्द्र जी के अयोध्या में जन्मस्थान के स्थान का उल्लेख मेरे ख्याल से नहीं है।'' (पेज–73)

"In my opinion, the site of birth place of Ramchandra Ji in Ayodhya is not mentioned in any Veda." (E.T.C.)

(xxiii) DW 13/1-1 Mahant Dharmdas

''विवादित भवन के ***बीच वाले गुम्बद के नीचे के स्थान पर प्रसूतिगृह था*** *जो कौशिल्या जी के भवन का भाग था तीन गुम्बद वाले भवन के उत्तर तथा दक्षिणी गुम्बद के नीचे राजा दशरथ के किसी और रानी का प्रसूतिगृह नहीं था। तीनों गुम्बद वाला भवन कौशलया भवन का ही भाग था।'' (पेज–199)*

*"**Beneath the middle dome of the disputed building lay 'Prasuti Grih'** (maternity home), which was a part of Kaushalya Ji's mansion. There was no 'Prasuti Grih' of any other queen of King Dashrath in the north of the three domed building and below the southern dome. The three domed building was part of Kaushalya Bhawan itself."(E.T.C.)*

(xxiv) DW 13/1-3 Dr. Bishan Bahadur

''यह कि मेरे अध्ययन एवम् जानकारी के अनुसार अयोध्या में स्थित विवादित भूमि को हिन्दुओं द्वारा अनादि काल से अपने अराध्य भगवान श्रीराम की जन्मभूमि के रूप में प्रथागत एवं परम्परागत रूप से पूर्ण आस्था एवं विश्वास के साथ दर्शन–पूजा किया जाता रहा है।'' (पेज 5)

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"That as per my studies and knowledge, the Hindus have been worshipping the Ayodhya situated disputed site from time immemorial as the birthplace of their revered Lord Sri Rama with full faith and devotion."(E.T.C.)

''मेरी आस्था अयोध्या के प्रति है। स्वयं कहा कि भगवान राम का जन्म स्थान होने तथा हिन्दू होने के कारण मेरी आस्था अयोध्या में है।''

(पेज 9)

"I have faith in Ayodhya. Stated on his own that I have faith in Ayodhya on account of (it) being the birthplace of Lord Rama and being a Hindu."(E.T.C.)

''यह सही है कि इस पूरे विवरण में विलियम फ़िच ने किसी स्थान विशेष को इंगित नहीं किया है, जहॉ पर रामचन्द्र जी का जन्म हुआ होना बताया गया हो तथा जिसके सम्बन्ध में लोगों की यह आस्था हो कि वह रामचन्द्र जी का जन्म स्थान हो, लेकिन उसने अयोध्या को बहुत लम्बी परम्परा से सम्बद्ध होना बताया है।'' (पेज 72)

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"It is true that in this entire description, William Finch has not pointed towards any particular place where Ram Chandra Ji has been given to have taken birth and about which people had the faith that it was the birthplace of Ram Chandra Ji, but he has mentioned about association of a very old custom with Ayodhya."(E.T.C.)

''अयोध्या एक तीर्थ स्थान है, राम जन्म स्थली है और विवादित स्थल जन्म स्थान है और इसको मैं परम्परा के आधार पर मानता हूॅ।''

(पेज 145)

"Ayodhya is a pilgrimage, is Ram Janam Sthali and the disputed site is the Janam Sthan and I believe this on basis of custom." (E.T.C.)

''रामचन्द्र के निश्चित जन्म स्थान को मेरे द्वारा चिन्हित किया जाना इस समय स्मृति द्वारा संभव नहीं है।'' (पेज 145)

"At present, it is not possible for me to point out the

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exact birthplace of Ram Chandra Ji, on basis of memory."(E.T.C.)

''अयोध्या एक तीर्थ स्थान है, राम की जन्मस्थली है और विवादित स्थल जन्मस्थान है और इसको मैं परम्परा के आधार पर मानता हूँ।''

(पेज 145)

''Ayodhya is a site of pilgrimage; it is birthplace of Rama and the disputed site is Janamsthan and I take it to be so on the basis of tradition.''(E.T.C.)

''मैंने अपने शपथ पत्र के प्रस्तर 14 में अपने अध्ययन के आधार पर यह उल्लेख किया है कि अयोध्या में स्थित विवादित भूमि को हिन्दुओं द्वारा अनादिकाल से अपने आराध्य भगवान श्रीराम की जन्मभूमि के रूप में प्रथागत तथा परम्परागत रूप से विश्वास के साथ दर्शन किया जाता है और अपने अध्ययन के आधार पर ही मैंने ''अपनी जानकारी'' शब्द का प्रयोग इस प्रस्तर में किया है। . . मेरे अध्ययन के अनुसार अयोध्या में जन्मभूमि को तीर्थ के रूप में माना जाता है। इस प्रथा में कभी बदलाव नहीं आया।''(पेज 189)

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"On basis of my studies, I have mentioned in para 14 of my affidavit that from time immemorial the Hindus have been having Darshan of the Ayodhya situated disputed site as Janmbhumi of their revered Lord Sri Rama with full customary faith and belief, and it is on the basis of my studies that I have used the words 'apni jaankari' in this paragraph.....According to my studies, the Janmbhumi in Ayodhya is treated as pilgrimage. This practice never underwent any change." (E.T.C.)

''अपने शपथ पत्र के प्रस्तर 14 में मैंने जिस स्थल से श्रीराम की जन्मभूमि का संदर्भ दिया है, वह विवादित स्थान ही है, जो आज भी पवित्र और पुनीत माना जाता है। जन्मभूमि से मेरा आशय उसी स्थल से है जो विवादित भूमि है, न कि सड़क के पार उत्तर में स्थित रामजन्मस्थान मंदिर सीता रसोई से है। . . .मेरी जानकारी के अनुसार विवादित ढांचें में बने तीन डोम के नीचे ही श्रीराम का जन्म हुआ था, उसी को राम जन्म भूमि

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मानते हैं। . . . ***मैं तीन डोम वाले भवन के नीचे की भूमि को रामजन्मभूमि, मान्यता, आस्था और परम्परा के आधार पर मानता हूँ।***

मेरे अनुसार रामजन्मभूमि और सोमनाथ मन्दिर में रामजन्मभूमि का महत्व ज्यादा है क्योंकि राम को विष्णु का अवतार माना गया है और यह महत्व अनादिकाल से चला आ रहा है।'' (पेज 189–190)

"The site referred as the Janmbhumi of Lord Sri Rama in para 14 of my affidavit, is the disputed site which is even today considered pious and scared. By Janmbhumi, I imply the place which is the disputed site and not the Ramjanmsthan temple, Sita Rasoi situated in north across the road..... As per my knowledge, the birth of Lord Sri Rama had occurred beneath the three domes of the disputed structure, the same is considered to be Ramjanmbhumi..... ***It is on the basis of faith, belief and custom that I consider the land beneath the three domed structure, to be Ramjanmbhumi****.*

According to me, out of Ramjanmbhumi and Somnath temple, the importance of Ramjanmbhumi is more because Lord Rama is considered to be an incarnation of Lord Vishnu and this importance has continued from time immemorial." (E.T.C.)

''मैं तीन डोम वाले भवन के नीचे की भूमि को रामजन्मभूमि, मान्यता, आस्था और परम्परा के आधार पर मानता हूँ।'' (पेज–190)

''I consider the underlying part of the three domed building to be Ramjanambhumi, on the basis of belief, faith and tradition.''(E.T.C.)

(xxv) DW 17/1 Ramesh Chandra Tripathi

''जिस स्थल पर आस्था, मान्यताओं एवं परम्पराओं के अनुसार भगवान श्रीराम ने जन्म लिया वह हिन्दू धर्मावलम्बियों द्वारा भगवान राम की

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जन्म भूमि के रूप में पूजित चली आ रही है। वह क्षेत्र जहॉ भगवान श्रीराम ने जन्म लिया वह आज भी नगरपालिका में मोहल्ला रामकोट के नाम से तथा राजस्व अभिलेखों में ग्राम–कोटरामचन्द्र के नाम से चला आ रहा है।''(पेज 3)

"The place where Lord Sri Rama was born as per faith, belief and customs, has continued to be worshipped by followers of Hinduism as the birthplace of Lord Rama. The region where Lord Sri Rama was born, is still entered in Municipality in the name of Ramkot locality and in the revenue records as Village-Kot Ramchandra." (E.T.C.)

''राम चन्द्र जी का जन्म मेरे अनुसार आज से लगभग नौ लाख वर्ष पूर्व हुआ था। नौ लाख वर्ष पूर्व के कोई चिन्ह आज विद्यमान नहीं हैं। आज से नौ लाख वर्ष पूर्व राजा दशरथ तथा उनकी रानियों के महल कहां पर स्थित थे यह नहीं बताया जा सकता है। परन्तु जैसा विश्वास चला आ रहा है यह महल वहीं पर स्थित थे जहां पर आज बने हैं।'' (पेज 74)

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''According to me, the birth of Ramchandra Ji took place about nine lakhs years ago. No symbol dating back to nine lakh years exists today. It cannot be stated where the palaces of King Dashrath and his queens were located nine lakh years back. However, as per the continuing belief, these temples existed at the same place where they exist today.''(E.T.C.)

''विवादित भूमि के रामजन्मभूमि मन्दिर होने के बारे में, जो मैंने अपने शपथ–पत्र तथा इसके बारे में अपने बयान में बताया है, उसको मैंने अपने पिता जी से सुनने व परम्परा से प्राप्त ज्ञान व अपने द्वारा प्राप्त जानकारी के आधार पर कहा है। परम्परा के बारे में मैंने सुनकर ही जाना है।'' (पेज 90)

"The averments made by me in my affidavit about the disputed land being Ram Janam Bhumi temple and the statement given by me in this regard, are on basis of

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learning from my father, gaining knowledge from customs and knowledge acquired by me. I have come to know about customs only by hearing." (E.T.C.)

''वाल्मीकि रामायण तथा रामचरित मानस में रामजन्मभूमि मंदिर का उल्लेख, जितना मैंने पढ़ा है, उसमें मुझे प्राप्त नहीं है।'' (पेज–91)

"I have not come across the mention of Ramjanambhumi temple in the Valmiki Ramayan and the Ram Charit Manas as much I have gone through them."(E.T.C.)

''परम्परा से विवादित स्थल पर ही भगवान का जन्म स्थान माना जा रहा है।

परम्परा से जो चला आ रहा है उसी स्थल को जन्म स्थान मानते हैं।'' (पेज 92)

"By custom, the disputed site has been considered as the birthplace of Lord (Rama).

Whatever has been continuing by custom, the same site has been considered as the Janam Sthan."(E.T.C.)

''वह भगवान का जन्म स्थल है तथा स्थल ही पूज्य है, यदि वहॉ पर मूर्ति नहीं रहती, तब भी वह पूज्य है।'' (पेज 96)

"It is the birthplace of Lord(Rama) and this place itself is reverable. Even if there were no idols over there, then also it is reverable." (E.T.C.)

(xxvi) DW 20/1 Shashi Kant Rungta

''परम्पराओं के अनुसार विवादित भवन को रामजन्म स्थान के रूप में पूजा जाता रहा है।'' (पेज 17)

"As per custom, the disputed structure has been worshipped as Ram Janam Sthan (birthplace of Lord Rama)." (E.T.C.)

''मेरी आस्था के अनुसार विवादित भवन के ***बीच वाले गुम्बद के नीचे का स्थान ''जन्म स्थान'' है।*** *मेरे अनुसार यह आस्था करोड़ों*

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वर्षों से चली आ रही है। मेरे अनुसार बीच वाले गुम्बद के नीचे का स्थान ''रामजन्म स्थान'' है यह आस्था है कि करोड़ों वर्षों से यह स्थान रामजन्मस्थान के रूप में चला आ रहा है। इसका मतलब यही हुआ कि करोड़ों वर्ष पूर्व रामचन्द्र जी का जन्म इस स्थान पर हुआ था।'' (पेज 19)

"As per my faith, the place ***beneath the mid dome of the disputed structure is the "Janam Sthan"****. According to me, this faith has been continuing for crores of years. According to me, the place beneath the mid dome, is the Ram Janam Sthan. It is the faith that this place has continued as Ram Janam Sthan for crores of years. It means that Ram Chandra Ji was born at this place crores of years ago." (E.T.C.)*

''कौशल्या जी ने रामचन्द्र जी को जन्म दिया था। इस प्रस्तर की तीसरी पंक्ति में ''उसी स्थान'' नामक शब्दों का प्रयोग किया गया है, इससे ***मेरा तात्पर्य तीन गुम्बद वाले विवादित भवन के बीच वाले गुम्बद के नीचे वाले स्थान से है।*** *यह स्थान राजा दशरथ के समय में कौशल्या जी के महल का भाग था।'' (पेज 35)*

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"Kaushalya Ji had given birth to Ram Chandra Ji. The words 'Usi Sthan' have been used in third line of this paragraph, by it ***I mean the place beneath the mid dome of the three domed disputed structure****. In the period of King Dashrath, this place was part of the palace of Kaushalya Ji." (E.T.C.)*

''रामजन्म भूमि पूजनीय है, जिस प्रकार मुसलमान भाईयों के लिए मक्का–मदीना और ईसाई भाइयों के लिए यूरोशलम, इसी प्रकार हिन्दुओं के लिए रामजन्मभूमि है। ईसाईयों के लिए यूरोशलम का महत्व इसलिए है क्योंकि वहॉ पर जीसेस का जन्म हुआ था। मक्का तथा मदीना मेरी जानकारी के अनुसार एक ही स्थान है।'' (पेज 52)

"Ram Janam Bhumi is reverable, just as 'Mecca-Medina' is for Muslims and 'Jerusalem' is for Christians,

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'Ram Janam Bhumi' is for Hindus. Jerusalem has importance for Christians because Jesus was born there. As per my knowledge, Mecca and Medina are the same place." (E.T.C.)

(xxvii) DW 20/2 Swami Avimukteshwaranand Saraswati

''राजा दशरथ के जमाने में जो कौशिल्या भवन या कौशिल्या महल था वह अयोध्या में किस स्थान पर था, इसकी जानकारी मुझे नहीं है क्योंकि इस सम्बन्ध में मेरा कोई अध्ययन नहीं है। परन्तु रामचन्द्र जी का जन्म कौशिल्या भवन में ही हुआ था।'' (पेज–96)

''मेरी आस्था व विश्वास के अनुसार ***रामचन्द्रजी का जन्म तीन गुंबदों (शिखर) वाले भवन के बीच वाले गुंबद के नीचे हुआ था।*** *'' (पेज–97)*

वाल्मीकि रामायण तथा श्रीरामचरित मानस एवं श्रीमद् भागवत् का उल्लेख अपने शपथ–पत्र के धारा 11 में किया है श्रीमद् भागवत् में रामचन्द्र जी की वंशावली और चरित्र तथा अयोध्या में जन्म लेने का उल्लेख है, परन्तु स्थान विशेष का उल्लेख नहीं है, जहॉ पर रामचन्द्र जी का जन्म हुआ हो।'' (पेज 132)

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"I have no knowledge as to where was the Kaushalya Bhawan or Kaushalya Palace situated in Ayodhaya during the times of King Dasrath, because I have not undertaken any studies in this behalf. However, Ramchandra Ji was born in Kaushalya Bhawan.

As per my faith and belief, ***the birth of Ramchandra Ji took place beneath the mid dome of the three domed structure.***

(I) have mentioned about Valmiki Ramayan, Sri Ramcharit Manas and Srimad Bhagwat in para 11 of my affidavit. Srimad Bhagwat contains the reference of Ramchandra Ji's family tree, character and birth in Ayodhaya but no particular place has been mentioned

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where Ramchandra Ji had taken birth." (E.T.C.)

(xxviii) DW 20/3 Brahmchari Ramraksha Nand

''यह कि ***तीन शिखर वाले भवन के मध्य वाले शिखर के नीचे वाले भाग में गर्भगृह है जहॉ भगवान राम का अवतार हुआ था*** *जिसमें भगवान श्रीराम लला का विग्रह सदैव से विराजमान रहा है।'' (पेज 4)*

"That ***there is sanctum sanctorum in the part beneath the mid dome of three domed structure****, where Lord Rama had incarnated and the Vigrah of Lord Sri Ram Lala had always remained present." (E.T.C.)*

(xxix) OPW1 Mahant Paramhans Ram Chandra Das

''विवादित भवन के नीचे का सम्पूर्ण स्थान मध्य शिखर के नीचे तथा उसके अगल बगल के क्षेत्र को जन्मभूमि के रूप में समझता हूॅ।'' (पेज 99)

"I consider the entire place below the disputed building as also the area below and adjacent to the middle dome, to be Janmbhumi."(E.T.C.)

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''मैं यह निश्चित नहीं कर सकता कि उस स्थान की लम्बाई चौड़ाई क्या थी परन्तु परिक्रमा मार्ग को लेकर सम्पूर्ण भूमि को मैं जन्मभूमि का हिस्सा मानकर उसकी परिक्रमा करता था।'' (पेज–99)

"I cannot definitely say what was the length and width of that place, but I used to perform circumambulation, taking the entire place, including the path of circumambulation, to be part of Janmbhumi."(E.T.C.)

''चबूतरा जहॉ पर मूर्ति पहले स्थापित थी उसके जनमभूमि का अंग मानता था।'' (पेज–100)

"I considered the Chabutra, where an idol was installed earlier, to be a part of Janmbhumi. "(E.T.C.)

''विवादित भवन को मैं गर्भगृह मानता हूॅ।'' (पेज 102)

"I consider the disputed building to be 'Garbhgrih'

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(sanctum sanctorum).''(E.T.C.)

(xxx) OPW 9 Dr. T.P. Verma

''अयोध्या महात्म्य संभवतः 400 वर्ष पुराना लिखा हुआ होगा। अयोध्या महात्म्य में स्कंद पुराण की लिखी हुई हस्तलिपियॉ जो प्राप्त हुई हैं वह 400 वर्ष से ज्यादा पुरानी नहीं लगती है।'' (पेज 112)

''Ayodhya Mahatmya would perhaps have been written 400 years back. The Skanda Purana manuscripts on Ayodhya Mahatmya – as has been discovered – do not appear to be more than 400 years old.''(E.T.C.)

''परम्परायें एक पीढ़ी से दूसरी पीढ़ी तक मौखिक रूप से ही संक्रकित (कन्वे) होती है और यह परम्परा सैकड़ों पीढ़ियों से मौखिक रूप से चली आ रही हैं और ईस्ट इंडिया कम्पनी के समय में गजेटियर लेखकों तथा अन्य यूरोपीय विद्वानों से मौखिक रूप से ही सुनकर आधुनिक पुस्तकों में इसका विवरण दिया है।'' (पेज–150)

''Traditions orally pass on from one generation to another, and they have been continuing orally for hundreds of generations, and their details have been given in modern books only on the basis of what was heard from the gazetteer writers and other European scholars during the time of East India Company.''(E.T.C.)

''मैं इस परम्परा वाली बात से सहमत नहीं हूॅ कि राम चबूतरे पर ही रामचन्द्र जी का जन्म स्थान था, वास्तव में ***भगवान राम का जन्म पहले बताये गये गर्भगृह स्थल पर ही हुआ था और राम चबूतरे को एक समझौते के रूप में राम जन्म स्थल के रूप में स्वीकार किया गया होगा।*** *. . . . मुझे यह नहीं मालूम है कि कभी ऐसी कोई परम्परा रही है कि राम चबूतरे पर ही रामचन्द्र जी का जन्म हुआ था।'' (पेज–151)*

''I do not agree that there was a tradition that the birthplace of Ram Chandra Ji's was on Ram Chabutra itself. Actually, ***the birth of Lord Rama had taken place at the aforesaid Garbh Grih itself and Ram Chabutra must***

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have been accepted as Rama's birthplace by way of an agreement. *I do not know whether there had ever been a tradition that the birth of Ram Chandra Ji had taken place on Ram Chabutra itself."(E.T.C.)*

"मैं यह पहले भी स्पष्ट कर चुका हूँ कि राम चबूतरा एक समझौते के रूप में स्थापित और उसमें पूजा कराने वाले पुजारियों आदि का स्वार्थ इसमें निहित था और इसी कारण उन्होंने सम्भवतः यह आस्था उत्पन्न करने की कोशिश की होगी कि यह राम चबूतरा ही भगवान राम का जन्म स्थल है और यह आस्था व परम्परा राम चबूतरा बनने के बाद में पैदा की गयी होगी, जो सन् 1885 में भी प्रचलित थी।" (पेज–153)

"Priests, etc. performing pooja had vested interest in it, and due to this very reason they may have tried to arouse a faith that this Ram Chabutra itself is the birthplace of Lord Rama, and this faith and tradition must have been generated after the construction of Ram Chabutra and it was prevalent in 1885 as well."(E.T.C.)

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"परन्तु मुग़लिया शासन काल से सम्बन्धित किसी भी इतिहास की पुस्तक में इस राम चबूतरे अथवा उसके अकबर के ज़माने में बनने का उल्लेख हमें नहीं मिलता है।" (पेज– 154)

"We do not come across the mention of this Ram Chabutra and that of it being built in the times of Akbar, in any history book regarding the Mughal rule."(E.T.C.)

*"**विवादित भवन के बीच वाले गुम्बद के नीचे के स्थान को परम्परागत राम जन्म स्थली माना जाता था और यह परम्परा कभी बदली नहीं थी** बल्कि एक समझौते के तहत राम चबूतरे को राम जन्म स्थली मानकर लोग पूजा–अर्चना करने लगे थे और इस तरह मेरे अनुसार बीच वाले गुम्बद के नीचे राम जन्म स्थली होने की परम्परा बरकरार रही।"*

(पेज 211–212)

*"**The underlying place of the middle dome of the disputed building was believed to be Ram Janamsthali***

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(Rama's birthplace) by way of tradition, and this tradition never underwent any change. *Rather, under an agreement people began to perform prayer and worship, taking Ram Chabutra to be Rama's birthplace, and in this way, the tradition of Rama's birthplace beneath the middle dome continued to be in vogue."(E.T.C.)*

"राम चबूतरे के अलावा और कोई जगह विवादित परिसर में ऐसी नहीं थी जिसको इस गजेटियर में कही गयी बात से संदर्भित किया जा सके। उस समय अर्थात गजेटियर लिखते समय इस चबूतरे के ऊपर रखा कोई पालना रहा होगा और चबूतरा न रहा हो। इस गजेटियर में चबूतरे का उल्लेख नहीं है बल्कि पालने का उल्लेख है इसलिए हो सकता है कि उस चबूतरे के स्थान पर पालना रखा रहा हो। . . . . . इस गजेटियर को लिखते समय उस चबूतरे को देखा था, तो उसकी ऊँचाई 5 से 6 इंच बताई गयी थी, पर जब मैंने सन् 1992 में उस चबूतरे को देखा था, तो उसकी ऊँचाई जमीन से 4–5 फिट थी।" (पेज–277)

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"Except for Ram Chabutra there was no other place in the disputed premises which may be associated with the things stated in this gazetteer. At that time, that is, while writing the Gazetteer, any cradle must have been kept above this chabutra and there may not have been chabutra. There is no mention of chabutra in this gazetteer; rather there is mention of cradle therein. So, cradle may have been kept in place of that chabutra.. . . . . At the time of writing this gazetteer, when I had seen this chabutra, its height was stated to be 5-6 inches; but when I saw that chabutra in 1992, its height was 4-5 feet from the surface."(E.T.C.)

"ऐसा लिखा है कि उस समय के लोगों का ऐसा विश्वास था कि उसी पालने में श्री राम चन्द्र जी का जन्म हुआ था। यह लोक धारणा सन् 1850 के समय में लोगों में प्रचलित थी। यह पालना सम्भवतः वहीं रखा

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हुआ हो, जहॉ सन् 1992 तक राम चबूतरा था। . . . . . मैं इस विषय पर कुछ नहीं कह सकता कि यह लोक श्रुति अर्थात पालने में श्री राम चन्द्र जी के जन्म की कब समाप्त हुई मेरा ऐसा विश्वास है कि अब यह लोक धारणा अर्थात पालने वाली बात अब प्रचलित नहीं है। फिर कहा कि मुझे इस विषय पर संदेह है कि यह आज भी धारणा प्रचलित है या नहीं।''

(पेज 278)

"It was belief of people of that time that Sri Ramchandra Ji was born in that very cradle. This public perception was prevalent among people in 1850. This cradle may have been put at the place where there was Ramchabutra upto 1992. . . . . I cannot say anything about when this public hearsay, that is, the one about the birth of Sri Ram Chandra Ji in cradle ceased to be prevalent. It is my belief that this public perception, that is, the one about the cradle is now not in prevalence. (Further stated) I have doubt as to whether this perception is still prevalent or not."(E.T.C.)

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(xxxi) OPW 11 – Dr. S.C. Mittal

''इस संदर्भ में मेरा कथन है कि, जिस स्थान पर राम का जन्म हुआ था, उस स्थान पर एक मंदिर था, जिसे तोड़कर बाबर द्वारा एक मस्जिद का निर्माण हुआ।'' (पेज–138)

"In this behalf, it is my statement that at the place where Rama was born, there lay a temple by demolishing which a mosque was constructed by Babur."(E.T.C.)

''रामचन्द्र जी के जन्म की बात, प्राचीन इतिहास के पहले की बात है। मैंने इस संबंध में कहीं खुद नहीं पढ़ा कि रामचन्द्र जी का जन्म कब हुआ और कहॉ हुआ।'' (पेज 138)

"The factum of Ram Chandra Ji's birth precedes the times of ancient history. I have not myself read about when and where Ram Chandra Ji was born."(E.T.C.)

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''मेरे शपथ–पत्र की धारा 8 में वर्णित पुस्तकों में और विशेषकर हेंस बेकर की पुस्तक में, तथ्यों के आधार पर मैंने यह पढ़ा, कि राम जनम अयोध्या में हुआ और उक्त पुस्तक में उस स्थान को भी दिया गया है, जहॉ राम का जन्म माना जाता है। वह स्थल वह स्थान माना जाता है, जहॉ बाबर द्वारा मस्जिद का निर्माण हुआ था।'' (पेज 138)

''I have, in the books as mentioned in para 8 of my affidavit and particularly in Hans Bakker's book, read that Rama's birth had taken place in Ayodhya and the said book also specifies the place where is Rama is considered to have taken birth. This place is considered to be the place where mosque was erected by Babur.''(E.T.C.)

''रामचन्द्र जी का जन्म स्थान जानने के लिए मैंने अयोध्या का प्राचीन इतिहास पढ़ना आवश्यक नहीं समझा।'' (पेज 138)

''I did not consider it to be necessary to read ancient history of Ayodhya, with a view to know about the birthplace of Ram Chandra Ji.''(E.T.C.)

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''विवादित भवन में किसी स्थान पर रामचन्द्र जी का जन्मस्थान रहा होगा, यह बात मैं इस आधार कह रहा हूॅ क्योंकि पुस्तकों में विवादित स्थान पर एक मंदिर होने का वर्णन है जिसे परम्परा से अनेक लोग यह मानते रहे हैं कि यहॉ पर राम का जन्म हुआ था।'' (पेज 149)

''I am stating about where the birthplace of Ram Chandra would have been in the disputed building, on this basis; because books speak of there being a temple, about which people by way of tradition have been holding that Rama was born here.''(E.T.C.)

''अयोध्या महात्म्य ऐतिहासिक दृष्टि से महत्वपूर्ण पुस्तक नहीं मानी जाती है इसका वर्णन रीति–रिवाजों, अयोध्या के प्रमुख धार्मिक स्थलों, त्योहारों आदि से संबंधित लगता है, क्योंकि इस पुस्तक के पूरे एक भाग में धार्मिक बातों का ही उल्लेख है।'' (पेज 164)

''Ayodhya Mahatmya is not taken to be an important book from historical point of view. Its description appears

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to be about customs and traditions and about important religious sites, festivals, etc. of Ayodhya, because full one part of this book mentions only of religious things."(E.T.C.)

"हैंस बेकर साहब ने 'अयोध्या महात्म्य' का प्रयोग अपनी इस पुस्तक में धार्मिक दृष्टि से किया है और ऐतिहासिक दृष्टि से उसका प्रयोग करना मेरे विचार से सही नहीं है।" (पेज 164)

"Hans Bakker has in his book used 'Ayodhya Mahatmya' from religious point of view, and it is, in my opinion, not correct to use it from historical view-point."(E.T.C.)

(xxxii) OPW 12 - Sri Kaushal Kishore Mishra

"श्रीरामजन्मभूमि परिसर अयोध्या स्थित ***तीन शिखर वाले भवन के मध्य वाले शिखर के नीचे महराज दशरथ के पुत्र के रूप में श्रीरामलला जी ने त्रेता युग में जन्म लिया था।"*** *(पेज 41)*

*"**Sri Ramlala Ji had taken birth in Treta Era as son of King Dashrath, below the middle dome of the three domed building situated** in Sri Ram Janambhumi premises at Ayodhya."(E.T.C.)*

"विवादित परिसर के अन्दर राम चबूतरा कब से बना चला आ रहा है, इस विषय में मुझे कोई जानकारी नहीं है पर विवादित भवन के बनने से पहले यह राम चबूतरा वहॉ था।" (पेज 116)

"I do not know since when Ram Chabutra has been in existence inside the disputed premises, but this Ram Chabutra was there prior to the construction of the disputed building."(E.T.C.)

"हमारा और हमारे साथ रहने वाले साधू–संतों का यह पूर्ण विश्वास है कि भगवान राम का जन्म तथा अवतरण विवादित परिसर के भीतर चबूतरे पर ही हुआ था।" (पेज 117)

"It is full belief of ours as well as of saints and sages residing with us that Lord Rama had taken birth and

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descended on chabutra itself inside the disputed premises."(E.T.C.)

(xxxiii) OPW 13 - Narad Sharan

"अयोध्या भगवान राम की जन्म भूमि है, और विवादित ढॉचा के बीच वाले स्थान को हम उनका जन्म स्थान मानते हैं।" (पेज 33)

"Ayodhya is Lord Rama's birthplace, and we consider the middle place of the disputed structure to be His birthsite." (E.T.C.)

"भगवान राम का जन्म विवादित भवन में हुआ था, यह बात मैं परम्परागत रीति रिवाज पर सुनी हुई बात के आधार पर कर रहा हूँ।"

(पेज 34)

"On the basis of hearsay based on conventions and traditions, I am saying that Lord Rama was born in the disputed building."(E.T.C.)

(xxxiv) OPW 16 Sri Jagadguru Ramnandacharya Swami Rambhadracharya

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"यजुर्वेद में जैसा कि मैंने अपने शपथ–पत्र पैरा–27 में लिखा है, भगवान राम का जन्म अयोध्या में होने की बात लिखी है, किसी स्थान विशेष का ज़िक्र नहीं है।" (पेज 39)

"As I have written in para 27 of my affidavit, the factum of Lord Rama's birth in Ayodhya finds mention in Yajurveda; there is no mention of any particular place therein."(E.T.C.)

"उस अयोध्या में एक हिरण्मयः अर्थात् स्वर्ण का मण्डपाकार भवन है, जहां प्रकाश से सम्पन्न साकेत लोक से आकर परमब्रह्म श्री राम जन्म लिए थे। उपरोक्त शब्दों के आधार पर ही मैंने व्याकरण शास्त्र के अनुसार यह निष्कर्ष निकाला है कि विवादित स्थल पर ही भगवान राम का जन्म स्थान है।" (पेज 40)

"There is a canopy-shaped building of gold in that Ayodhya where the Supreme Being Sri Ram Chandra,

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illumined with light, had come from Saket Lok and had taken birth. Only on the basis of the aforesaid words, I have as per grammar inferred that the disputed place itself is the birthplace of Lord Rama."(E.T.C.)

4412. A bare reading of all the above statements makes it very clear and categorical that the belief of Hindus by tradition was that birthplace of Lord Rama lie within the premises in dispute and was confined to the area under the central dome of three domed structure, i.e., the disputed structure in the inner courtyard.

4413. In arriving to this conclusion we do not find any difficulty since the pleadings in general and particular also do not detract us. When the Hindu parties have referred to the entire disputed site as a place of birth, this Court can always find out and record a finding for, instead of the entire area, a smaller area within the same premises. The pleadings are not to be read in a pedantic manner but the Court has to find out substance therein as to whether the parties knew their case or not. The evidence adduced by the parties and what the witnesses have said on behalf of Hindu parties fortify the case set up by the defendants.

4414. In **Jamshedji Cursetjee Tarachand Vs. Soonabai, ILR (1909) 33 Bom. 122** the Bombay High Court said:

"if this is the belief of the community.....a secular judge is bound to accept that belief - it is not for him to sit in judgment on that belief."

4415. We are also of the view that once such belief gets concentrated to a particular point, and in totality of the facts, we also find no reason otherwise, it partakes the nature of an

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essential part of religion particularly when it relates to a matter which is of peculiar significance to a religion. It, therefore, stands on a different footing. Such an essential part of religion is constitutionally protected under Article 25.

4416. In **N. Adithayan Vs. Travancore Devaswom Board, 2002 (8) SCC 106** on page 123 the Court observed:

> *"as to what really constitutes an essential part of religion or religious practice has to be decided by the Courts with reference to the doctrine of a particular religion or practices regarded as parts of religion."*

4417. In **Commissioner of Police and others Vs. Acharya Jagadishwarananda Avadhuta and another, 2004 (12) SCC 770** the Court said:

> *"9. The protection guaranteed under Articles 25 and 26 of the Constitution is not confined to matters of doctrine or belief but extends to acts done in pursuance of religion and, therefore, contains a guarantee for rituals, observances, ceremonies and modes of worship which are essential or integral part of religion. What constitutes an integral or essential part of religion has to be determined with reference to its doctrines, practices, tenets, historical background etc. of the given religion. (See generally the Constitution bench decisions in Commr., H.R.E. Vs. Sri Lakshmindra Swamiar of Sri Srirur Mutt, AIR 1954 SC 282, Sardar Syedna Taher Saifuddin Saheb V. State of Bombay, AIR 1962 SC 853, and Seshammal Vs. State of Tamilnadu (1972) 2 SCC 11, regarding those aspects that are to be looked into so as to determine whether a part or practice is essential or not). What is meant by **"an***

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essential *part or practices of a religion" is now the matter for elucidation. Essential part of a religion* ***means the core beliefs upon which a religion is founded.*** *Essential practice means those practices that are fundamental to follow a religious belief. It is upon the cornerstone of essential parts or practices the superstructure of religion is built. Without which, a religion will be no religion. Test to determine whether a part or practice is essential to the religion is - to find out whether the nature of religion will be changed without that part or practice. If the taking away of that part or practice could result in a fundamental change in the character of that religion or in its belief, then such part could be treated as an essential or integral part. There cannot be additions or subtractions to such part. Because it is the very essence of that religion and alterations will change its fundamental character. It is such permanent essential parts is what is protected by the Constitution. No body can say that essential part or practice of one's religion has changed from a particular date or by an event. Such alterable parts or practices are definitely not the 'core' of religion where the belief is based and religion is founded upon. It could only be treated as mere embellishments to the non-essential (sic essential) part or practices."*

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4418. In view of the above discussion of the matter, we are satisfied and hold that the place of birth as believed and worshipped by Hindus is the area covered under the central dome of three domed structure, i.e., the disputed structure, in the inner courtyard of the premises in dispute. W**e answer all the**

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three issues , i.e., issues no. 11(Suit-4), 1 (Suit-1) and 22 (Suit-5) accordingly.

(F) Others:

4419. In this category fall issues no. 27 (Suit-4) and 1 (Suit-3).

4420. **Issue No.27 (Suit-4)** reads as under:

> *"Whether the courtyard contained Ram Chabutara, Bhandar and Sita Rasoi? If so, whether they were also demolished on 06.12.1992 along with the main temple?"*

4421. While discussing the issues relating to limitation and possession, as also issue no.24 (Suit-5), it is already held that at the premises in the outer courtyard, there existed *Ram Chabutara*, *Bhandar* and *Sita Raoi*, which stand confirmed from the two maps also i.e. of 1885 and 1950 (Appendix Nos. 3 and 2). The parties also admit during the course of argument that all these three structures were demolished on 06.12.1992 when the disputed structure was demolished. **Issue 27 (Suit-4) is accordingly answered in affirmative.**

4422. **Issue No.1 (Suit-3)** read as under:

> *"Is there a temple of Janam Bhumi with idols installed therein as alleged in para 3 of the plaint?"*

4423. Before answering it, once again we reiterate that this suit pertains only to the premises within inner courtyard including the disputed structure. We have already held that the disputed structure was constructed as a 'mosque' and always treated and called 'mosque' by Hindus and Muslims both, alike, for the last almost one and half century before the date of attachment. DW 20/5 Jayanti Prasad Srivastava on page 31 of his statement, has clearly said:

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"The disputed structure was a three domed structure. It was known as Babri Masjid. It was a mosque."

4424. However, we have also held that despite the structure constructed as a 'mosque', and, termed and called by the people at large as 'mosque', the Hindus continuously entered

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and worshipped the place since according to their belief, it was the place of birth of Lord Rama and therefore, could not have been desecrated so as to extinguish in any manner. The idols were kept in the inner courtyard under the central dome on 22/23 December, 1949. The plaintiffs, however, claim in para 3 of the plaint as under:

> *"3. That the said Asthan of Janma Bhumi is of ancient antiquity and has been existing since before the living memory of man and lies within the boundaries shown by letters A.B.C.D. in the sketch map appended hereto within which stands the temple building of Janma Bhumi marked by letters E.F.G.K. P N M L E and the building denoted by letters E F G H I J K L E is the main temple of Janma Bhumi wherein is installed the idol of Lord Ram Chandra with Lakshmanji, Hanumanji and Saligramji."*

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4425. Therefore, the manner in which the plaintiff has depicted the premises in dispute and claimed it to be a temple is not correct in view of our findings recorded above. The premises in dispute cannot be treated to be a temple in the manner it is being pleaded and claimed by the plaintiffs (Suit-3). Though there are other aspects of the matter which we have already discussed, subject to those findings, as pointed out above also, in our view, **issue No.1(Suit-3) has to be answered in negative. It is decided accordingly**.

4426. (L) Identity of the property: In this category fall issues no. 1(B)(a) (Suit-4) and 5 (Suit-5).

4427. Issue No.1(B)(a) (Suit-4):

> *"Whether the building existed at Nazul plot no.583 of the Khasra of the year 1931 of Mohalla Kot Ram Chandra known as Ram Kot, City Ayodhya (Nazul Estate) Ayodhya?*

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If so its effect thereon?"

4428. It is not disputed by the parties before this Court that the Nazul plot, in which the building in dispute existed, was recorded as Nazul, plot no. 583, Khasra of 1931 of Mohalla Kot Ram Chandra known as Ramkot, City Ayodhya (Nazul Estate Ayodhya). In the revenue records, plot number is different. The Nazul number of the plot in which the building in dispute situate is not disputed. It is also admitted by all the parties that the plot in which disputed building existed was recorded Nazul in the First Settlement 1861 and had continued so even when the suit in question was filed.

4429. "Nazul land" means land owned by the Government. It is the own pleading of Sunni Board in para 24(B) of the written statement filed in Suit-5.

4430. In the Legal Glossary 1992, fifth edition, published by the Legal Department of the Government of India at page 589, the meaning of the word "Nazul" has been given as "Rajbhoomi i.e. Government land". It is an Arabic word and it refers to a land annexed to Crown. During the British Regime, immoveable property of individuals, Zamindars, Nawabs and Rajas when confiscated for one or the other reason, it was termed as "Nazul property". The reason being that neither it was acquired nor purchased after making payment. In the old record, we are told when they used to be written in Urdu, this kind of land was shown as "Jaidad Munzabta".

4431. For dealing with such property under the authority of the Lt. Governor of North Western provinces, two orders were issued in October, 1846 and October, 1848 wherein after the words "Nazul property" its english meaning was given as "Escheats to the Government". Sadar Board of Revenue on 20th

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May, 1845 issued a circular order in reference to Nazul land and in para 2 thereof it mentioned "*The Government is the proprietor of those land and no valid title to them can be derived but from the Government.*" The Nazul land was also termed as confiscated estate. Under circular dated 13th July, 1859, issued by the Government of North Western Provinces, every Commissioner was obliged to keep a final confiscation statement of each district and lay it before the Government for orders. The kingdom of Oudh was annexed by East India Company in 1856. It declared the entire land as vested in the Government and thereafter settled the land to various individuals Zamindars, Nawabs etc.

4432. At Lucknow revolt against the British Company broke up in May, 1857 which is known as the first war of independence which very quickly angled a substantial part of north western provinces. After failure of the above revolution, the then Governor General Lord Canning on 15th May, 1858 issued a proclamation confiscating propriety rights in the soil with the exception of five or six persons who had given support and assistance to British Officers. This land was resettled first for a period of three years and then permanent propriety rights were given to certain Talukdars and Zamindars by grant of 'Sanad' under Crown Grants Act. In the meantime we all know that under the Government of India Act, 1858 the entire Indian territory under the control of East India Company was placed under Crown w.e.f. First November, 1858. A kind of first settlement in summary we had undergone in Oudh in 1861 wherein it appears that the land in dispute was shown as Nazul and since then in the records, the nature of land is continuously being mentioned as Nazul.

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4433. In respect to Revenue records as well as Nazul, DW 2/1-2, Sri Ram Sharan Srivastava who happened to be Collector, Faizabad between July 1987 till 1990 and claimed to have seen the record, made the following statement:

''मेरे अधीन राजस्व अभिलेखागार में तीन रेवेन्यू सेटिलमेट्स सन् 1861, 1893–94, व 1936–37 के अभिलेख उपलब्ध थे, जिनका मैंने अध्ययन किया था। इन अभिलेखों में खसरा, खतौनी, खेवट शामिल थे और तीनों सेटिलमंट्स की रिपोर्ट इनके अलावा अलग से उपलब्ध थीं। उपरोक्त159 280 19 तीन सेटिलमेंट्स व रिपोर्ट के अतिरिक्त सन् 1931 में हुए नजूल भूमि के सर्वे से संबंधित रिपोर्ट भी सम्मिलित थीं। उसी 1931 के सर्वे के आधार पर तैयार किये गये खसरा, खतौनी व खेवट भी उपलब्ध थे। इन तीनों बन्दोबस्ती और नजूल के सर्वे के अभिलेखों में विवादित स्थान को जन्मस्थान लिखा हुआ है और कहीं–कहीं रामजन्मभूमि भी लिखा हुआ है। इन उल्लेखों के आधार पर ही मैंने यह निष्कर्ष निकाला कि विवादित स्थल भगवान श्री राम का जन्मस्थान है। उपरोक्त संदर्भित तीनों सेटिलमंट और 1931 के सभी अभिलेखों को मैंने मूल रूप में अपने जिलाधिकारी कार्यालय में मंगवाकर देखा था, अभिलेखागार में जाकर नहीं। सेटिलमेंट की तीनों रिपोर्ट अंग्रेजी भाषा में थीं और प्रत्येक रिपोर्ट 50 पेज तक की थी। ये सभी रिपोर्ट्स टाइपशुदा थीं। तीनों रिपोट्र्स में सर्वेकर्ता या लेखक का नाम लिखा हुआ था, परन्तु मुझे उनमें से किसी का नाम याद नहीं है। पहले एवं दूसरे सेटिलमेंट के तीनों अभिलेख यानी खसरा, खतौनी और खेवट उर्दू में थे। परन्तु जहां तक मुझे याद है, तीसरे सेटिलमेंट के अभिलेख हिन्दी में थे।'' (पेज 54–55)

''The records of three revenue settlements of year 1861,1893-94 &1936-37 were available in the revenue record room under me. These records included khasra, khatauni, khewat and the reports of the three settlements were available separately besides them. The survey report of 1931 in respect of nazul land, was also included besides the three settlements and reports. The khasra, khatauni & khewat prepared on basis of survey of 1931, were also

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available. In the records of all the three settlements and the nazul survey, the disputed site has been mentioned as Janmsthan and at places Ramjanmbhumi has also been mentioned. On basis of the said mentions, I drew the conclusion that the disputed site was the birth place of Lord Rama. I had summoned and perused the original record of the above-referred three settlements & 1931 survey, in my District Magistrate office and did not peruse them in the record room. The three reports of settlements were in English language and each report ran into fifty pages. All these reports were in typed form. All the three reports bore the name of the surveyor or the scribe, but I do not remember any of those names. The three records of the first and second settlement viz. khasra, khatauni and khewat were in Urdu. However, to the best of my memory, the records of the third settlement were in Hindi." (E.T.C.)

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''सभी अभिलेखों की हिन्दी प्रतियां भी मौजूद थीं। वह हिन्दी प्रतियां पहले से रिकार्ड पर उपलब्ध थी, मैंने नहीं बनवाई थीं। ये हिन्दी प्रतियां भी राजस्व अभिलेखागार से ही मेरे पास आई थीं। 1931 के नजूल सर्वे के अभिलेख भी उर्दू में थे, जिनकी प्रतियां राजस्व अभिलेखागार से मूल अभिलेखों के साथ आई थीं।'' (पेज 55)

"The Hindi copies of all the records were available. The Hindi copies were already available in the records, and I had not got them prepared. These Hindi copies had also come to me from the revenue record room. The records of nazul survey of 1931, were in Urdu, whose copies had come along with original records from the revenue record room." (E.T.C.)

''तीनों संटिलमेंट और चौथे, नजूल सर्वे के अभिलेख में कोट रामचन्द्र का ही नाम लिख हुआ था।'' (पेज 55–56)

"Only Kote Ramchandra was mentioned in the

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records of three settlements and the fourth , nazul survey."(E.T.C.)

"आखरी सेटिलमेंट के नम्बरान 159, 160 व 160 ए थे, जो हमें याद नहीं हैं। उन सभी नम्बरान में जन्मस्थान लिखा हुआ था। हर सेटिलमेंट में प्लाट की संख्या बदल जाती थी, जिन प्लाट के नम्बरान मैंने 159 व 160 बताये हैं, वे आखिरी बन्दोबस्त के नम्बरान थे। नजूल के सर्वे में उससे संबंधित नम्बरान 583, 586 थे, जो मुझे याद है।" (पेज 56)

"The numbers of the last settlement were 159, 160 and 160A, which I do not remember. Janamsthan was written against all these numbers. The plot number changes in every settlement. The plot numbers 159 and 160 given by me, were the numbers of the last settlement. The numbers concerned to it in the Nazul survey were 583, 586, which are within my memory." (E.T.C.)

"नजूल सर्वे से संबंधित अभिलेखों में विवादित स्थल से संबंधित नम्बरों में मस्जिद शाह बाबर या मस्जिद जन्मस्थान नहीं लिखा था, बल्कि सिर्फ़ जन्मस्थान लिखा था। विवादित स्थल से संबंधित नजूल नम्बरों में कब्रिस्तान नहीं लिखा था।" (पेज 56)

"In the records related to the nazul survey, neither 'Masjid Shah Babar' nor 'Masjid Janmsthan' was written in the numbers related to the disputed site and instead only Janmsthan was mentioned. Graveyard was not mentioned in the concerned nazul numbers of the disputed site."(E.T.C.)

"पहले व दूसरे बन्दोंबस्त के अभिलेखों में किसी नम्बर में मस्जिद, शाही मस्जिद या जन्मस्थान मसिजद नहीं लिखा था। तीसरे बन्दोबस्त के खसरा, खतौनी व खेवट में किसी–किसी रिकार्ड में इन्टरपोलेशन थे, जिसमें विवादित स्थल के कुछ नम्बरान में जन्मस्थान मस्जिद या कहीं जामा मस्जिद इण्टरपोलेशन के द्वारा लिखे गये थे। इसकी रिपोट्र मैंने भेजी थी। इस संबंध में मैंने रिपोर्ट 1989 में बोर्ड आफ़ रेवेन्यू को भेजी थी। मेरी रिपोर्ट पर जॉच हुई थी। कोई अधिकारी रेवेन्यू बोर्ड से आये थे। जॉचकर्ता,

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बोर्ड आफ रेवेन्यू के सचिव के नीचे के अधिकारी थे, मेम्बर नहीं। जिन रिकार्डस में इण्टरपोलेशन किये गये थे और जिनकी रिपोर्ट मैंने भेजी थी, उन्हें कभी ठीक नहीं किया गया क्योंकि मौजूदा मामला अदालत में पेंडिंग था।'' (पेज 56–57)

''In no number of the records of first and second settlement, there was any mention of mosque, royal mosque or Janmsthan mosque. In certain records of khasra, khatauni & khewat of the third settlement, there were interpolations and Janmsthan Masjid or Jama Masjid were interpolated in certain numbers of the disputed site. I had sent its report. I had sent the report in this behalf to the Board of Revenue in 1989. An enquiry was held on my report. Some officer of Board of Revenue had come. The investigator was an officer subordinate to the Secretary, Board of Revenue and was not a member. The records in which interpolation had been made and whose report I had submitted, were never corrected because the matter was pending in Court." (E.T.C.)

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4434. We may have another aspect. In para 24(B) of the written statement in Suit-5, Muslim parties (U.P.Sunni Central Board of Waqf) have said:

"The land in question undoubtedly belonged to the State when the mosque in question was constructed on behalf of the State and as such it cannot be said that it could not be decided for the purposes of the mosque."

4435. The claim of the muslim parties is that the entire territory which came in the control of Babar after defeating Ibrahim Lodhi and others became his land since king was the owner of the land and no system of private ownership was recognized and therefore, he was at liberty to direct for any kind of construction on such land and the land could not have been

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treated to be owned by any private individual or anyone else.

4436. Let us consider this aspect also in the context of the theory of 'Nazul'. Such kind of land cannot be a Nazul land. If the entire territory during Mughal regime would be that of a king, as soon as the territory annexation or otherwise changed its hand with the East India Company, they would have entered into the shoes of the Mughal king and got the same rights, obligations, privileges etc. on the land. The status of the land would not have changed in such a manner. Such a land could not be confiscated since it was already the land of the king but when a proclamation was issued for confiscating the land, meaning thereby the East India Company or the British Government did not follow the same principle. In our view, in such a matter, even the doctrine of "escheat" or "bona vacantia" may not be applicable

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4437. On the question as to who could have been owner of the land in 1528 AD when alleged disputed building was constructed by Babar through his Commander Mir Baqi, the concept sought to be canvassed is that the law, whether Islam or Hindu Shastras, do not recognise any personal right of ownership upon immoveable property. The entire property within the suzerainty of the king belong to him, who had right to tax its subject in the form of tax or otherwise by realising share in the agricultural or other income in the immoveable property. The percentage of share may differ and that may not be relevant for our purpose.

4438. The second aspect of the matter is that since ancient time the right of ownership proceeded with possession and is recognized by the well known principle "possession follows title". The individual right of ownership therefore was well

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recognized in the various personal laws and the only right the king had to acquire the land in known valid means, namely by purchase or gift etc. The obligation upon the king is to protect the subject and his property from enemies and for that purpose he used to raise revenue from the subject in the form of tax and/or share from the income of the property etc. It is said that the King, by virtue of its authority, was not the sole owner of the entire immoveable property within his suzerainty but though the immoveable property was subject to his suzerainty, the individual right of the owner on the property continued to be recognized. Besides, the fact that the land could have been acquired by the king by valid means like purchase, gift etc., meaning thereby other modes of acquisition of immoveable property by King existed otherwise no private owner of the land in question would have been there within his suzerainty.

4439. The learned counsel for the parties on this aspect referred to the doctrine of Escheat/bona vacantia. We find that the right of the King to take property by escheat or as bona vacantia was recognized by common law of England. Escheat property was the lord's right of re-entry on real property held by a tenant dying intestate without lawful heirs. It was an incident, of feudal tenure and based on the want of a tenant to perform the feudal services. On the tenant dying intestate without leaving any lawful heirs, his estate came to an end and the lord was in by his own right and not by way of succession or inheritance from the tenant to re-enter the real property as owner. In most of the cases the land escheated to the Crown as the lord paramount, in view of the gradual elimination of intermediate or mesne lords since 1290 AD. The Crown takes as bona vacantia goods in which no one else can claim property. In **Dyke Vs. Walford 5**

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Moore PC 434 = 496-13 ER 557 (580) it was said "it is the right of the Crown to bona vacantia to property which has no other owner." The right of the Crown to take as bona vacantia extends to personal property of every kind. Giving a notice at this stage that the escheat of real property of an intestate dying without heirs was abolished in 1925 and the Crown cannot take its property as bona vacantia. The principle of acquisition of property by escheat i.e right of the Government to take on property by escheat or bona vacantia for want of a rightful owner was enforced in the Indian territory during the period of East India Company by virtue of statute 16 and 17 Victoriae, C. 95, Section 27.

4440. We may recollect having gone through the history that several estates were taken over by British Company by applying the doctrine of lapse like Jhansi which was another kind of the above two principles. The above provisions had continued by virtue of Section 54 of Government of India Act, 1858, Section 20(3)(iii) of Government of India Act, 1915 and Section 174 of the Government of India Act, 1935. After the enactment of the Constitution of independent India, Article 296 now provides :

> *"Subject as hereinafter provided, any property in the territory of India which, if this Constitution had not come into operation, would have accrued to His Majesty or, as the case may be, to the Ruler of an Indian State by escheat or lapse, or as bona vacantia for want of a rightful owner, shall if it is property situate in a State, vest in such State, and shall, in any other case, vest in the Union."*

4441. The Apex Court in **Pierce Leslie and Co. Ltd. (supra)** has considered the above principles in the context of

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sovereign India as it stands under its constitution after independence and has observed that "in this country the Government takes by escheat immoveable as well as moveable property for want of an heir or successor. In this country escheat is not based on artificial rules of common law and is not an incident of feudal tenure. It is an incident of sovereignty and rests on the principle of ultimate ownership by the State of all property within its jurisdiction."

4442. The Apex Court placed reliance on **Collector of Masulipatam Vs. C. Vencata Narainapah 8 MIA 500, 525; Ranee Sonet Kowar Vs. Mirza Himmut Bahadoor (2) LR 3 IA 92, 101, Bombay Dyeing & Manufacturing Co. Vs. State of Bombay (1958) SCR 1122, 1146, Legal Remembrancer Vs. Corporation of Calcutta (1967) 2 SCR 170, 204**.

4443. The Judicial Committee in **Cook Vs. Sprigg 1899 AC 572** discussing what is an act of state, observed :

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> *"The taking possession by Her Majesty, whether by cession or by any other means by which sovereignty can be acquired, was an act of State."*

4444. This decision has been followed in **Raja Rajinder Chand Vs. Mst. Sukhi and others AIR 1957 S.C. 286**.

4445. In **Vajesingji Joravarsingji Vs. Secretary of State AIR 1924 PC 216**, Lord Dunedin said :

> *"When a territory is acquired by a sovereign State for the first time, that is an act of State. It matters not how the acquisition has been brought about. It may be by conquest, it may be by cession following on treaty, it may be by occupation of territory hitherto unoccupied by a recognised ruler. In all cases the result is the same. Any inhabitant of the territory can make good in the municipal*

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Courts established by the new sovereign only such rights as that sovereign has, through his officers, recognised. Such rights as he had under the rule of predecessors avail him nothing."

4446. In **Dalmia Dadri Cement Co. Ltd. Vs. Commissioner of Income-tax AIR 1958 SC 816**, the Court said :

"The expression 'act of State' is, it is scarcely necessary to say, not limited to hostile action between rulers resulting in the occupation of territories. It includes all acquisitions of territory by a sovereign State for the first time, whether it be by conquest or cession."

4447. In **Promod Chandra Deb Vs. State of Orissa AIR 1962 SC 1288**, the Court said, *" 'Act of State' is the taking over of sovereign powers by a State in respect of territory which was not till then a part of its territory, either by conquest, treaty or cession, or otherwise."*

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4448. To the same effect was the view taken by the Constitution Bench in **Amarsarjit Singh Vs. State of Punjab AIR 1962 SC 1305** in para 12 as under :

"It is settled law that conquest is not the only mode by which one State can acquire sovereignty over the territories belonging to another State, and that the same result can be achieved in any other mode which has the effect of establishing its sovereignty."

4449. In **Thakur Amar Singhji Vs. State of Rajasthan AIR 1955 SC 504**, in para 40, the Court said :

"The status of a person must be either that of a sovereign or a subject. There is no tertium quid. The law does not recognise an intermediate status of a person being

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partly a sovereign and partly a subject and when once it is admitted that the Bhomicharas had acknowledged the sovereignty of Jodhpur their status can only be that of a subject. A subject might occupy an exalted position and enjoy special privileges, but he is none the less a subject ..."

4450. In **State of Rajasthan and Others Vs. Sajjanlal Panjawat and Others AIR 1975 SC 706** it was held that the Rules of the erstwhile Indian States exercised sovereign powers, legislative, executive and judicial. Their firmans were laws which could not be challenged prior to the Constitution. The Court relied on its earlier two decisions in **Director of Endowments, Govt. of Hyderabad Vs. Akram Ali AIR 1956 SC 60, and Sarwarlal Vs. State of Hyderabad AIR 1960 SC 862.**

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4451. In **Promod Chandra Deb Vs. State of Orissa A.I.R. 1962 S.C. 1288 "**act of the State" was explained in the following words:

"an "act of State" may be the taking over of sovereign powers either by conquest or by treaty or by cession or otherwise. It may have happened on a particular date by a public declaration or proclamation, or it may have been the result of a historical process spread over many years, and sovereign powers including the right to legislate in that territory and to administer it may be acquired without the territory itself merging in the new State."

4452. This decision has been followed later on in **Biswambhar Singh & Anr. Vs. The State of Orissa & Ors. 1964(1) Supreme Court Journal 364**.

4453. Sri Jilani, learned counsel for the applicant,

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however, submitted that the State has already given up and is not contesting the matter though it is a party in the suit. In the circumstances, whosoever may have in the possession in the Nazul record of the Government, it would not result in treating the land in dispute owned by the Government or belonging to the Government. Hence the matter has to be decided between the parties other than the Government, who has given up its case and has made a statement that it is not contesting the matter.

4454. Sri S.P.Srivastava, learned Additional Chief Standing Counsel has made a statement to this effect before us that as per his instructions, the State Government is not contesting the suit.

4455. In view thereof and fortified by the law laid down in **State of Bihar and others Vs. Sri Radha Krishna Singh (supra)** despite the fact that building is shown to be continued as Nazul plot no.583 of Khasra of the year 1931 of Mohalla Kot Ram Chandra, we find that it will not make any impact upon the claim of the various parties of the two communities since the State of U.P. is not claiming any right over the property in dispute and has specifically taken a stand of no contest. **The issue 1(B)(a) (Suit-4) is answered accordingly.**

4456. **Issue No.5 (Suit-5)** is as under:

> *"Is the property in question properly identified and described in the plaint?"*

4457. This issue pertains to the identification of the property in dispute as described in the plaint. Counsel for defendants No.4 and 5 submitted that the suit as framed shows the property in respect whereto relief was sought as mentioned in the annexures no.1, 2 and 3 to the plaint and do not specify the boundaries of the property in respect whereto Suit-5 was

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filed. However, so far as the disputed site and structure is concerned, there is no dispute between the parties in respect thereto either about its identification or description. After the decision of the Apex Court in **Dr. M. Ismail Farooqui's case (supra)** holding acquisition of property by the Central Government under Act, 1993, except the site in dispute, valid, the only area which is now required to deal with by us in all these cases is that which comprises of the outer and inner courtyard including disputed structure.

4458. In the peculiar facts and circumstances of the case since the property in dispute against which now the Court is required to consider whether the plaintiffs are entitled for relief or not is well identified and known to all the parties, there is no ambiguity. **Issue No.5 is answered in affirmative i.e. in favour of the plaintiffs.**

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4459. <u>(M) Issues relating to Specific Relief Act:</u>

4460. Issues no. 8 (Suit-1) and 18 (Suit-5) falls in this category which read as under:

> *<u>Issue No. 8 :-</u>"Is the suit barred by proviso to Section 42 Specific Relief Act?"*
>
> *<u>Issue No. 18:-</u>"Whether the suit is barred by section 34 of the Specific Relief Act as alleged in paragraph 42 of the additional written statement of defendant no.3 and also as alleged in paragraph 47 of the written statement of defendant no.4 and paragraph 62 of the written statement of defendant no. 5?"*

4461. In Suit-1 issue 8 has been framed in view of the pleadings of defendants no. 1 to 5 (i.e. para 17 of the written statement) as well as para 17 of the written statement of defendant no. 10 which read as under:

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Written statement of defendants no. 1 to 5

''दफा 17. यह कि मुद्दई का कब्जा या कोई हक बाकी नहीं रहा और न है। इस वजह से दावा इस्तकरारिया हसब दफा 42 कानुन दादरसी खास नाकाबिल फजीराई अदालत है।''

"Para 17. That right or possession of the plaintiffs remained no more and, therefore, this suit for declaration under Section 42 of the Specific Relief Act is not maintainable. (E.T.C.)

Written statement of defendant no. 10

"17. That as the plaintiff has never remained in possession or occupation of the building in suit, he has no right, title or claim over the said property and as such the suit is even barred by the provisions of Section 42 of the Specific Relief Act."

4462. In Suit-5 para 42 of the additional written statement of defendant no. 3, para 47 of the written statement of defendant no. 4 and para 62 of the written statement of defendant no. 5 read as under:

"42. That site plan annexure II attached to the abovenoted plaint does not bear any plot no's (settlement or Nazul) nor it is bounded as to give any definite identity of property. Temple Shri Vijay Ragho ji Sakshi Gopal has never been subject matter of the any of the suit O.O.S. 4/89 or O.O.S. 3/89 pending before this Hon'ble Court. Sumitra Bhawan is another temple shown in the site plan. Which is temple of Sheshaawatar Laxmanji Maharaj and that is why it is famous name of his mother Sumitra as Sumitra Bhawan. It has been in possession and management of Mahant Raj Mangal Das one of the panch of Nirmohi Akhara. The Nazul plot no 588 measuring 1-6-13-15 Kachwanceis of Mohalla Ram Kot is recorded with Deity Laxamanji

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Maharaj through Ram Das Nirmohi who is Guru of Raj Mangal Das. Mah Ram Das of Sumitra Bhwan is recorded in settlement plot no. 168 to 174 as qubiz. Similarly Lomash Chaura Mandir, Sita Koop Mandir, Kuti shown in said map has distinct Deity of Bhagwan Ram Lalaji by the other panches of Nirmohi Akhara namely and respectively Mahant Dwarika Das, Mahant Naval Kishore Das and Ram Gopal Das who are all panches of Nirmohi Akhara. Sankat Mochan temple have been omitted in the said map whereas it did exist on the date of this suit. It has its deity Sankat Mochan Hanomanji and Thakur Ram Janki represented by Sarbarakar Ram Dayal saran Chela of Ram Lakhan saran. Late Ram Lakhan Saran and also belong to the spiritual family of Nirmohi Akhara as he was Naga chela of Goliki Ram Lakhan Das, one of the old panch of Nirmohi Akhara. Other Samadhis in the name of famous sages have been owned and claimed by answering defendant no. 3 as Samadhies of old Sadhus of Nirmohi Akhara. Panches and Sadhus of Akhara are living in the surrounding since before the human memory. The outer Sahan carried a little temple of Bhagwan Ram Lalaji along with other place which are regularly worshipped according to the customs prevailing amongst Rama Nandi Vairagies. The outer part with this temple of Ram Lallaji and other deities have ever been in management and charge of Nirmohi Akhara as sheibiat till this outer portion with Bhandar was attached U/s 145 Cr. P.C. On 16.2.82 and a receiver is appointed there vide order of Civil Judge Faizabad in Reg. Suit 239/82 Sri Ram Rama Nandi Nirmohi Akhara Versus K.K. Ram Varma etc. due to lootpat

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committed by Dharam Das. Mr. Deoki Nandan Agarwal has named himself to be witness of Dharam Das. Therefore suit for all these properties by plaintiff 3 is not maintainable for want of possession and is barred by provision of sec. 34 of specific Relief Act.

47. That the suit is barred by the provisions of Section 34 of the Specific Relief Act also.

62. That the plaint is liable to be rejected for want of a real and subsisting cause of action and not seeking relief of possession u/s 34 Specific Relief Act and as per plaint averment there is on surviving cause of action in favour of the plaintiffs."

4463. **Issue 8 (Suit-1)** relates to Section 42 of the Specific Relief Act, 1963 *(hereinafter referred to as "Act, 1963").* It would be useful first to have a glance over the said provision:

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42. Injunction to perform negative agreement.-- Notwith-standing anything contained in clause (e) of Section 41, where a contract comprises an affirmative agreement to do a certain act, coupled with a negative agreement, express or implied, not to do a certain act, the circumstances that the court is unable to compel specific performance of the affirmative agreement shall not preclude it from granting an injunction to perform the negative agreement:

Provided that the plaintiff has not failed to perform the contract so far as it is binding on him.

4464. Before enactment of Act, 1963 the field was governed by the Specific Relief Act, 1877 (in short Act, 1877). The corresponding provision in the earlier enactments was Section 47 pari meteria with the present Section 42. Section 41(e) of Act, 1963 recognizes a general rule that an injunction

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ought not be granted to prevent breach of contract, the performance of which would not be specifically enforced. For example a contract of personal service is not specifically enforceable. Therefore, no injunction should be granted to restrain its breach and this is what is recognised and specifically provided in Section 41(e) of Act, 1963.

4465. To this general rule enunciated in Section 41(e), the legislature has recognised an exception and has embodied it in Section 42. Where a contract contains both, a negative and an affirmative stipulation, the Court will interfere by injunction to restrain breach of the negative portion of the contract without referring to the question whether or not the whole contract is capable of specifically enforced. It is said that this provision is in recognition of the view expressed in **Lumley Vs. Wagner, (1865) 1 Eq. 411.** It appears that before the decision in **Lumley Vs. Wagner (supra)** the British Courts were of the view when it may not enforce the positive part of contract, it ought not to restrain by injunction any breach of the negative part. This view was overruled in **Lumley Vs. Wagner (supra)** and Lord St. Leonards observed:

> *"Wherever this Court has no proper jurisdiction to enforce specific performance it operates to bind men's conscience as far as they can be bound to a true and literal performance of their agreement and it will not suffer them to depart from their contracts at their pleasure leaving the party with whom they have contracted to the mere chance of any damages which a jury may give."*

4466. During the course of the argument learned counsel for the defendant-muslim parties have not addressed us as to how Suit-1 deserves to be defeated by virtue of Section 42. The

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claim of the plaintiff is neither based on any contract nor agreement but it is a personal right of his own, enforcement whereof he has sought by seeking a declaration that he has a right to worship at the place in dispute, i.e., a place for which Suit-1 is confined, i.e., the inner courtyard and secondly that the objects of his worship exist thereat be not disturbed and he should not be obstructed in observance of his personal right of worship. It would have been a different thing if the argument would have been that the obstruction, if any, by the official defendants is in performance of their official duties and enforcement of a statutory order passed by the Magistrate under Section 145 Cr.P.C., hence an injunction restraining them from creating a so called obstruction which is nothing but the compliance of the statutory order cannot be granted, which could have been considered in its context but here the specific objection is with reference to Section 42 of the Specific Relief Act which in our view is ex facie not attracted in this case. **Issue 8 (Suit-1) is accordingly answered in negative. It is held that the suit is not barred by proviso to Section 42 of Act, 1963.**

4467. **Issue 18 (Suit-5)** relates to Section 34 of Act, 1963 and here also it would be prudent to have a glance over the relevant provision:

> ***"34. Discretion of court as to declaration of status or right . -*** *Any person entitled to any legal character, or to any right as to any property, may institute a suit against any person denying, or interested to deny, his title to such character or right, and the court may in its discretion make therein a declaration that he is so entitled, and the plaintiff need not in such suit ask for any further relief:*
>
> *Provided that no court shall make any such declaration*

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where the plaintiff, being able to seek further relief than a mere declaration of title, omits to do so.

Explanation.-A trustee of property is a "person interested to deny" a title adverse to the title of some one who is not in existence, and for whom, if in existence, he would be a trustee.

4468. The basic submission of defendants no. 3, 4 and 5 (Suit-5) in persuading this Court to hold the suit not maintainable by virtue of Section 34 of Act 1963 is that the plaintiffs being out of possession of the property for which the suit in question has been filed, cannot seek a mere declaration and injunction unless a relief for possession is also claimed in absence whereof the suit is barred by Section 34 of the Act. This we have already dealt with in detail at various stages earlier also but since it is a substantial objection raised by the defendants and persuaded at length by Sri R.L. Verma, Advocate for Nirmohi Akhara we shall deal here in detail.

4469. Suit-5 has been filed by two plaintiffs, i.e., the idol and the place, i.e., Sri Ramjanambhumi Asthan as deity with the status of juridical personality through next friend for the protection of themselves and the property vests in them. On the date when the suit was filed, both the deities were at the site in dispute despite of the premises under attachment and the management in the hands of a Receiver. We have already held that the plaintiffs no. 1 and 2 are juridical persons. Both are at the site in dispute. It is nobody's case that the deity is not existing or present at the disputed site though by its very nature the management and care has to be taken by a natural person and since the date of attachment it is in the hands of a Receiver. The possession of Receiver is, therefore, qua deity and is like

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that of a shebait or a manager. Since the deities are already there residing and existing, for their purpose it is sufficient to seek a declaration about their status as well as that of property and nothing more is required except where if they have any apprehension of obstruction etc., in the enjoyment of their status or property, they can always seek an injunction for prevention of such obstruction.

4470. Where an action is brought to obtain a declaration of a person's right vis a vis a property, in such a case bar provided under Section 34 of Act 1963 would not be attracted. In **Limba Bin Krishna and others Vs. Rama Bin Pimplu and anothers, 1889(13) ILR (Bom) 548** while considering the question of applicability of Section 42 of the Specific Relief Act 1877 in a case where the plaintiffs sought a declaration regarding his right to perform worship of an idol, it was held that such a suit is maintainable and not barred by Section 42 of Act 1963. A Division Bench of Bombay High Court relied on a Calcutta High Court in **Mitta Kunth Audhicarry Vs. Neerunjun Audhicarry, 14 Beng. L.R. 166,** Couch C.J., described the right of a plaintiff to perform worship of an idol as 'property' subject to partition, the joint owners being entitled to perform the worship. It also relied on **Pranshankar Vs. Prannath Mahanand, 1 Bom H. C. Rep. 12** wherein it was held that an action would lie to obtain a binding declaration of a person's right to perform the duties of a Pujari and to receive the proceeds of the Mandir.

4471. In **Surayya and another Vs. Annapurnamma, 1919(42) ILR (Mad.) 699** the Court held that a suit for declaring a will allegedly executed by a family member forged is maintainable and not barred by Section 42 of Act 1877.

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4472. In a different context, but involving a similar situation, a suit by deity seeking a declaration for the property and injunction restraining the defendants from interfering in the user of the property was held maintainable at the instance of deity. In **Monindra Mohan Banerjee and others Vs. The Shamnagar Jute Factory Co. Ltd. and another, 1938-39 (43) CWN 1056** a Division Bench of Calcutta High Court considered a suit filed by the worshippers seeking following reliefs:

> *"(1) That the land in dispute may be declared to be the Debsthan of the Shiva Linga deities and a public place of worship of the Hindu public and that the public had acquired an absolute and indefeasible right to the use of the same as a Debsthan by long and uninterrupted user from time immemorial and to build the temples of the deities and for a declaration that the Shamnagar Jute Factory has not right and title thereto or any right to interfere with the building of the temple on the disputed land;*
>
> *(b) for declaration that the action of the Defendant Municipality in refusing sanction for the construction of the temple of the deities was illegal and ultra vires;*
>
> *(c) for declaration that the action of the Defendant in prosecuting the Plaintiffs under sec. 501 of the Bengal Municipal Act was illegal;*
>
> *(d) for an injunction restraining the Defendant Municipality from proceeding with the prosecution;*
>
> *(e) for an injunction upon the Defendants from interfering with the public right of worship and entry on the land;*
>
> *(f) for costs of the suit and*

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(g) for any other relief which they might be entitled under law."

4473. The Court recorded its finding with respect to the maintainability of suit on pages 1058-1059 and said:

"On hearing the learned Advocates on both sides, it appears to me that the plaint was undoubtedly defective but at the same time the defects were not of such a character as would justify a dismissal of the entire suit. From the plaint as it is framed it is quite obvious that the suit was not instituted by or on behalf of the deities. It would have been quite in order if the deities themselves had brought the suit through the Plaintiffs as their representatives. They might have prayed for a declaration of their title to the property in suit and for an injunction restraining the Defendants from interfering with their possession and user of the same. As the plaint stands, however, the Plaintiffs who claim to represent the Hindu public of Garulia, come in not as shebaits or as representatives of the idols but as worshippers and some amount of confusion has been introduced in the plaint by mixing up the rights of the deities and those of the worshipping public. From paragraph 9 of the plaint as well as from prayer (a) it will appear that the Plaintiffs want in the first place that the land in suit might be declared to be a Debsthan of the idols and in the second place they want it to be declared that it is a public place of worship and that the Hindu public has, by prescription, acquired an indefeasible right to use the same and to build temples upon it. The right to build temples is therefore claimed by the Plaintiffs as members of the public as a part of their rights as worshippers. It is not claimed by

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or on behalf of the deities as a necessary adjunct of the proprietary right which the deities might have had in the land in suit. I cannot accept the proposition of law put forward by Mr. Mukherji that as the deities are said to be public deities the Hindu public of the locality constitute shebaits de jure. In case of a public deity the public undoubtedly have a right of worship but from that it does not necessarily follow that they are the shebaits of the deity in the sense that they are the only people to manage the temporal affairs of the deity and look after its worship. As a matter of fact no such case was attempted to be made in the plaint, which proceeds on the footing that it is a public place of worship and the rights of user which the public have got, carry with them the right to build temples upon the land. Accepting therefore the position that the Plaintiffs have instituted the suit in the capacity of persons interested in the worship of these deities and not as shebaits or as representatives of the idols, I think it was quite competent for them to sue for a declaration that the property in suit belonged to the idols. This is clear from the decision of the Judicial Committee in the case of Abdur Rahim Vs. Mahomed Barkat Ali, L.R. 55 I.A. 96. The deity is not a necessary party to such a suit though it may be desirable to make it a party so that the decision might be made conclusive and binding for all times to come. Similarly the Plaintiffs are entitled to have a declaration in this suit that the land in suit is a public place of worship and that they have a right to use it as such. The deity would also not be a necessary party to a suit for a declaration of this character."

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4474. Applicability of Section 34 can be seen from another angle. The deity being an artificial personality, the right of possession as per the Hindu law text vests in the natural person who is responsible of taking care, i.e., Sewa, Prarthana etc. which is normally called Shebait or manager. It is in this context that it has been held that right to sue or being sued vests in the Shebait. This phrase we have already considered and explained above. It means that since an artificial person does not have a capacity to possess or to act like a natural person, it acts through a natural person and hence right to possession, management and also to bring an action, i.e., corporeal activities vest in such natural person but that does not mean that the deity shall always depend upon such person. Where the rights of deities are otherwise affected, a worshipper can also bring an action for the benefit of the deity and its property but in such a case such next friend shall not be entitled to claim possession. The position may have a different colour where the deity is in the nature of a Swayambhu deity and there is no defined or ascertained natural person who is employed to take its care. The deity is open for worship to public at large but no individual is assigned the job of maintenance of the deity. In such case it is for the Court to appoint a person to take care but when the deity filed suit for protection of itself or its property, on which it is continuing to present/reside or existing, no relief of possession is necessary, a suit for mere declaration can be filed.

4475. In **Anjuman Islamia Vs. Najim Ali and others (supra)** a Division Bench of the Madhya Pradesh High Court in para 8 of the judgment said:

> *"8. It has been contended by the defendants/respondents that the suit as framed for a declaration simpliciter was not*

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maintainable under the proviso to Section 34 of the Specific Relief Act, 1963, for the defendants are in possession of the property in suit. In our view the defendants as well as the Court below misconceived the provisions of Section 34 of the S. R. Act. Section 34 of the S. R. Act provides that any person entitled to any loyal character or to any right as to any property, may institute a suit against any person denying, or interested to deny, his title to such character or right and the Court may in its discretion make such a declaration. There is a proviso attached to Section 34 which contemplates that no Court shall make any such declaration where the plaintiff, being able to seek further relief than a mere declaration of title omits to do so. It is under this proviso that the defendants contended that the suit for mere declaration was not tenable without seeking further relief of possession. In our opinion the present suit does not fall under Section 34 of the Act for the reason that the present suit was not instituted by the Anjuman for a declaration of its own right or title to property in suit, or its right to a legal character. But it was a suit, on the other hand, to challenge the defendants assertion for right to property and their legal character in respect thereof. But assuming the suit falls under the provisions of Section 34 of the Act yet it would he tenable for declaration simpliciter and the plaintiff will have locus standi to bring the suit because the plaintiff was not Mutwalli or trustee of the alleged wakf and it did not claim to possess the property in its own behalf. Therefore, the plaintiff was not legally entitled to possession. The plaintiff therefore could not have asked for any further relief for possession. In such a

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position it was not necessary at all for the plaintiff to claim any consequential relief and in our opinion there can be no doubt that in the circumstances of this case the plaintiff had a right to ask for a declaratory relief only that the suit property was wakf and not the private property of the defendants. In this view of the matter we are supported by the decisions in Ram Rup v. Sarn Dayal, AIR 1936 Lah. 283 decided by Coldstream, J.-- and Abdul Rahim v. Faqir Mohd, Shah, AIR 1946 Nag. 401."

4476. Section 42 of the Specific Relief Act 1877 has been explained by the Apex Court in **Vemareddi Ramaraghava Reddy and others Vs. Konduru Seshu Reddy (supra)** and in para 11 it says:

"11. In our opinion, S. 42 of the Specific Relief Act is not exhaustive of the cases in which a declaratory decree may be made and the courts have power to grant such a decree independently of the requirements of the section. It follows, therefore, in the present case that the suit of the plaintiff for a declaration that the compromise decree is not binding on the deity is maintainable as falling outside the purview of S. 42 of the Specific Relief Act."

4477. In the context of a suit filed for the benefit of deity by the next friend, the Court held that a mere declaratory suit is proper. In paras 10 and 12 of the judgment the Court held:

"10. The legal position is also well-established that the worshipper of a Hindu temple is entitled, in certain circumstances, to bring a suit for declaration that the alienation of the temple properties by the de jure Shebait is invalid and not binding upon the temple. If a Shebait has improperly alienated trust property a suit can be brought

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by any person interested for a declaration that such alienation is not binding upon the deity but no decree for recovery of possession can be made in such a suit unless the plaintiff in the suit has the present right to the possession. Worshippers of temples are in the position of cestuui que trustent or beneficiaries in a spiritual sense (See Vidhyapurna Thirthaswami v. Vidhyanidhi Thirthaswami, 1904 ILR 27 Mad. 435 at page 451). ***Since the worshippers do not exercise the deity's power of suing to protect its own interests, they are not entitled to recover possession of the property improperly alienated by the Shebait, but they can be granted a declaratory decree that the alienation is not binding on the deity*** *(See for example, Kalyana Venkataramana Ayyangar v. Kasturiranga Ayyangar, ILR 40 Mad 212:AIR 1917 Mad 112 (FB) and Chidambaranatha Thambiran v. Nallasiva Mudaliar, ILR 41 Mad 124:AIR 1918 Mad 464). It has also been decided by the Judicial Committee in Abdur Rahim v. Mahomed Barkat Ali, 55 Ind. App. 96: AIR 1928 PC 16 that a suit for a declaration that property belongs to a wakf can be maintained by Mahomedans interested in the wakf without the sanction of the Advocate-General, and a declaration can be given in such a suit that the plaintiff is not bound by the compromise decree relating to wakf properties."*

"12. The next question presented for determination in this case is whether the compromise decree is invalid for the reason that the Commissioner did not represent the deity. The High Court has taken the view that the Commissioner could not represent the deity because S. 20

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of the Hindu Religious & Charitable Endowments Act provided only that the administration of all the endowments shall be under the superintendence and control of the Commissioner. Mr. Babula Reddy took us through all the provisions of the Act but he was not able to satisfy us that the Commissioner had authority to represent the deity in the judicial proceedings. It is true that under S. 20 of the Act the Commissioner is vested with the power of superintendence and control over the temple but that does not mean that he has authority to represent the deity in proceedings before the District Judge under S. 85 of the Act. As a matter of law the only person who can represent the deity or who can bring a suit on behalf of the deity is the Shebait, and although a deity is a juridical person capable of holding property, it is only in an ideal sense that property is so held. The possession and management of the property with the right to sue in respect thereof are, in the normal course, vested in the Shebait, but where, however, the Shebait is negligent or where the Shebait himself is the guilty party against whom the deity needs relief it is open to the worshippers or other persons interested in the religious endowment to file suits for the protection of the trust properties. It is open, in such a case to the deity to file a suit through some person as next friend for recovery of possession of the property improperly alienated or for other relief. Such a next friend may be a person who is a worshipper of the deity or as a prospective Shebait is legally interested in the endowment. In a case where the Shebait has denied the right of the deity to the dedicated properties, it is obviously desirable that the deity should

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file the suit through a disinterested next friend, nominated by the court. The principle is clearly stated in Pramath Nath v. Pradymma Kumar, ILR 52 Cal. 809. That was a suit between contending Shebaits about the location of the deity, and the Judicial Committee held that the will of the idol on that question must be respect, and inasmuch as the idol was not represented otherwise than by Shebaits, it ought to appear through a disinterested next friend appointed by the Court. In the present case no such action was taken by the District Court in O.P. no. 3 of 1950 and as there was no representation of the deity in that judicial proceeding it is manifest that the compromise decree cannot be binding upon the deity. It was also contended by Mr. P. Rama Reddy on behalf of respondent no. 1 that the compromise decree was beyond the scope of the proceedings in O.P. no. 3 of 1950 and was, therefore, invalid. In our opinion, this argument is well-founded and must prevail. The proceeding was brought under s. 84(2) of the old Act (Act II of 1927) for setting aside the order of the Board dated October 5, 1949 declaring the temple of Sri Kodandaramaswami as a temple defined in S. 6, clause 17 of the Act and for a declaration that the temple was a private temple. After the passing of the new Act, namely Madras Act 19 of 1951, there was an amendment of the original petition and the amended petition included a prayer for a further declaration that the properties in dispute are the personal properties of the petitioner's family and not the properties of the temple. Such a declaration was outside the purview of S. 84(2) of Madras Act II of 1927 and could not have been granted. We are,

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therefore, of the opinion that the contention of respondent no. 1 is correct and that he is entitled to a declaratory decree that the compromise decree in O.P. no. 3 of 1950 was not valid and was not binding upon Sri Kodandaramaswami temple."

4478. No authority is cited by learned counsels to persuade us to take a different view. The suit in question cannot be held barred by Section 34 of Act 1963. **The issue 18 (Suit-5) is accordingly answered in negative, i.e., against the defendants no. 3, 4 and 5.**

4479. (N) Others, if any:

4480. The discussions and the evidences, which we have already considered were in respect of the above issues on the question of juridical person, next friend, limitation, possession/adverse possession and relating to characteristics of Mosque and Wakf, etc. still there are some other issues which are mostly covered by the findings already recorded above and, hence, the same may also be dealt with hereat.

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4481. **Issue No. 2 (Suit-3**):

"Does the property in suit belong to the plaintiff no.1?"

4482. As is evident, the property in suit for the purpose of Suit-3 is the premises within the inner courtyard. The plaintiff, though claimed to be the owner thereof and its counsel has also made a statement to this effect under Order X Rule 2 C.P.C., but not even a single document has been placed on record to show the title. Faced with this situation, the plaintiff sought to claim acquisition of title by way of adverse possession against the Muslim parties. This claim we have already negatived above. **We answer this issue in negative, i.e., against the plaintiff.**

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4483. **Issue No. 4 (Suit-3)** reads as under**:**

"Are plaintiffs entitled to get management and charge of the said temple?"

4484. The plaintiff claim handing over of charge of the property in suit and the disputed structure to it instead of the Receiver. The basis of the claim is that the property in suit was all through a temple even before 1528 and has always been managed, possessed and owned by the plaintiff. It has however miserably failed to prove this fact. This aspect we have already discussed in detail while considering the issues relating to limitation and possession/adverse possession etc. We have also held that the idols were kept under the central dome inside the inner courtyard in the night of 22nd/23rd December, 1949. The plaintiffs having disputed this incident being a factitious and fabricated story, the question of treating them as Shebait in respect of the idols placed under the central dome on 22nd/23rd December, 1949 does not arise since according to their own pleadings, they have not admitted any where of taking care of the deity in the inner courtyard under the central dome of the disputed structure. **Issue No. 4 (Suit-3)**, **therefore, is answered in negative, i.e., against the plaintiffs.**

4485. **Issue No. 14 (Suit-3):**

"Is the suit not maintainable as framed?"

4486. This issue has arisen for the reason that the property in dispute was attached and handed over to the Receiver pursuant to a statutory order passed by the Magistrate under Section 145 Cr.P.C. on 29.12.1949. If the plaintiff (Suit-3) had any grievance, it could have filed objection before the Magistrate inasmuch order of attachment was a preliminary order and was subject to the final order under Section 145(2)

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Cr.P.C., but no such objection appears to have been filed by the plaintiff (Suit-3) before the Magistrate. The plaintiffs did not seek any declaration about its title or status and without determining the same, the Civil Judge could not have directed handing over charge from the Receiver to the plaintiff. It is for this reason, in our view, **Suit-3 is not maintainable. The issue is answered accordingly.**

4487. **Issue No. 19 (a) (Suit-4):**

"*Whether even after construction of the building in suit Deities of Bhagwan Sri Ram Virajman and the Asthan, Sri Ram Janam Bhumi continued to exist on the property in suit as alleged on behalf of defendant no.13 and the said places continued to be visited by devotees for purposes of worship? If so, whether the property in dispute continued to vest in the said Deities?*"

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4488. In view of our findings recorded in respect to Issue No. 1 (Suit-5), holding that the place can be a 'deity' and also in view of our finding recorded in respect to the issues relating to possession/adverse possession that the Hindus, believing the place in dispute as birthplace of Lord Rama, had been continuously vising it for the purpose of worship, it is evident that the status of place as deity had continued. We have already held that a deity is not damaged or comes to end due to destruction in any manner, since the spirit of Supreme Being continues to exist and it will not disappear, particularly when the deity is *Swayambhu,* i.e. self created. The property in dispute, therefore, has a dual character. Firstly, being birthplace of Lord Rama, as per the beliefs of Hindus, it is a *Swyambhu* deity and would continue so long as the place continues, but then, being an immovable property, it also has its nature as property. The

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question of owning the property is different than the status. On this aspect, we have to examine the relevant area. The area of fort of Lord Rama is said to be quite bigger. It is claimed to have several mansions (eight mansions), besides other kinds of structures. In various evidences, which we have already discussed, it is mentioned that the disputed structure was constructed on some part of the area covered by the Fort of Lord Rama. The suit was filed by the plaintiffs (Suit-5) in 1989 claiming a much larger area. During the course of arguments, we inquired from the learned counsel for plaintiffs (Suit-5), Sri M.M. Pandey, as to what is his concept of place of birth. Whether he considered the area constituting deity equal to a small room or to a small house or a bigger house or the entire locality, city, province or country, as the case may be. Despite our repeated query, learned counsel could not tell us as to what is his the concept of place of birth for the purpose of this case. Various religious literature, which have been placed before us, show that Ayodhya is believed to be the place of birth of Lord Rama. It did not specify any particular area or a particular place in Ayodhya. We have held that a place can be a deity and a *Swyambhu* deity. It is quite possible that the entire city may be held to be very pious and sacred on account of some occurrence of divinity or religious spirituality. It may happen that a small place may attain such a status. For example, the tree under which Gautam Buddha attained divine knowledge is considered to be extremely sacred and pious place by Buddhist. When Lord Rama was born in Ayodhya and must have played and walked throughout thereat, the then entire territory of city of Ayodhya, from the point of view of all Hindu people, must acquire the status of reverence and piety, but then can it be said that such

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bigger place cannot absorb and accommodate persons having different faith or religion or those worship differently. No doubt true, if such absorption or accommodation has the result of extinguishing the very place of reverence, meaning thereby the very object of faith and belief may vanish, such absorption may not be allowed, but otherwise, in a country like ours, where unity in diversity is its characteristic, the existence of people or other faith, existence of their place of religion at a place, in wider sense as it is known, cannot be ruled out and by necessity they will have to exist, live and survive together. There are several cities in India which are considered to be the place of reverence of highest degree like Kashi, Haridwar, Prayag, Ayodhya, Mathura etc. Can it be said in the independent India governed by a written Constitution the existence of or permissibility to establish or to create place of worship of people of different religion will depend upon undefined, unknown and unclassified kind of faith or belief of another section particularly when it is a case of a majority people in respect of a place. Nobody has ever bothered, the people of different religions in these very places of reverence have been residing thereat since time immemorial and have very well established temples of their faith. In all the places which are known to be major Tirtha places of Hindus, religious places of other religion are well established and there is complete comity and understanding between all the people. They all mutually respect the places of worship of different religions. At Ayodhya also a large number of Mosques are in existence, which have also came in evidence inasmuch some of the witnesses have estimated the number of Mosques in Ayodhya from 50 to 80. Even in the building in dispute, though the structure was raised

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as a Mosque known and called a Mosque, yet Hindus continued to visit it and worship thereat on account of their cemented faith and belief which could not be withered due to construction of such building. Simultaneously, Muslims also visited the premises, as we have already noticed, may be occasionally but the fact remains that they visited the premises and offered Namaz. This system and arrangement without any dispute had continued for almost hundred years as evident which we could get and notice above. There do not appear to be any grievance raised by any Hindu that the Muslims cannot visit the premises in dispute, i.e. inner courtyard and offer worship though against the visit of Hindus in the same premises several complaints were made from 1858 and onwards by Muslims, which are part of record.

4489. It has been pleaded and some religious texts have also been placed before us to show that in a place of worship Parikrama is an integral part and, therefore, in every temple around the deity a passage is always made to enable the worshippers to have a Parikrama of deity. In the building in dispute passage for Parikrama was available. It was, therefore, suggested that this Parikrama passage itself suggested that the building in dispute was not a mosque but the temple. Simultaneously it is also admitted that there are four kinds of Parikrama which the people normally observe at Ayodhya. One is the Parikrama in a particular place of worship for example in the disputed building where the Hindu people believe that Lord Rama was born. The other three kinds of Parikrama are known as **"Panchkosi Parikrama"**, **"Chaudahkosi Parikrama"** and "**Chaurasikosi Parikrama**". We may extract statements of some of the witnesses just to illustrate these three later kinds of

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Parikrama.

(a) DW3/3, Sri Satya Narayan Tripathi

''विवादित परिसर के बाहर चारों ओर परिक्रमा मार्ग था जिस पर लोग परिक्रमा करते थे। मैंने भी वहॉ परिक्रमा किया है।'' (पेज 14)

"There was circumambulation path around all the sides of the disputed premises, around which people used to perform the circumambulation. I have also performed circumambulation over there."(E.T.C.)

(b) D.W. 3/4 Mahant Shiv Sharan Das

''मैंने वहॉ पंचकोसी और चौदहकोसी परिक्रमा भी की है। पंचकोसी परिक्रमा क्षेत्र के अन्तरगत श्री अयोध्या जी और सरयू के ही किनारे–किनारे चलते–चलते राम गुलेला और बहुत से स्थान, जो सन्तो ने वहॉ बना रखे है और भगवान को वहॉ रखकर पूजा करते हैं, आते हैं। चौदहकोसी परिक्रमा के अन्तरगत गुप्तारघाट आता है इसके अतिरिक्त चौदहकोसी परिक्रमा के अन्तरगत रामघाट और बहुत सी ऐसी जगहें हैं जिनके नाम मैं नहीं जानता हूँ, परन्तु हैं वे अवध क्षेत्र में ही। फैजाबाद शहर का काफी भाग चौदहकोसी परिक्रमा क्षेत्र के अन्तरगत आता है। इन दोनों परिक्रमाओं अर्थात चौदहकोसी परिक्रमा और पंचकोसी परिक्रमा का विशेष महत्व अक्षय नवमी को होता है।'' (पेज 24–25)

"I have also performed 'Panchkosi' and 'Chaudahkosi' circumambulation over there. The 'Panchkosi' circumambulation region includes Sri Ayodhya Ji, Ram Gulela and many other places along the banks of Saryu, which have been set up over there by saints and who perform worship of deity installed over there. The Guptar ghat falls under the 'Chaudahkosi' circumambulation. Besides this, under the 'Chaudahkosi' circumambulation are the Ram ghat and many other places, whose names I do not know but they are in the Awadh area. A major part of Faizabad district falls under the 'Chaudahkosi' circumambulation area. Both these circumambulations i.e.

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the 'Chaudahkosi' circumambulation and the 'Panchkosi' circumambulation, have special importance on Akshay Navmi."(E.T.C.)

''परिक्रमा के समय हजारों लाखों लोग पूरे देशभर से व विदेशों से भी आते हैं। ये लोग रामलला जी के दर्शन करने व परिक्रमा करने आते हैं। सबसे पहले ये लोग सरयू जी में स्नान करते हैं, फिर रामजन्म भूमि के दर्शन करते हैं, उसके बाद परिक्रमा करते हैं। परिक्रमा के समय पूरी अयोध्या, उसके आस–पास के गॉव व फैजाबाद भी राम मय हो जाता है।''

(पेज 26)

"Thousands-lakhs of people from the entire country and abroad as well, come over on the occasion of circumambulation. These people come over to have Darshan and perform circumambulation of Ramlala Ji. First of all these people bathe in the Saryu and then have Darshan of Ramjanmbhumi, thereafter perform circumambulation. At time of the circumambulation, the entire Ayodhya, its adjoining villages and Faizabad also are gripped in the fervor of Lord Rama. "(E.T.C.)

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(c) D.W. 3/13 Mahant Ram Subhag Das Shastri

''अयोध्या में चार प्रकार की परिक्रमा होती है उसमें पहली परिक्रमा मंदिर की होती है, जो मन्दिर के अन्दर–अन्दर होती है, दूसरी परिक्रमा पंचकोसी परिक्रमा होती है, तीसरी परिक्रमा चौदहकोसी परिक्रमा होती है, चौथी परिक्रमा 84 कोस की होती है, जो 24 दिन में पूर्ण होती है।''

(पेज 14)

"Four kinds of circumambulations are performed in Ayodhya. Out of them, the first circumambulation is of the temple, which is performed in the inside of the temple. The second circumambulation is the 'Panchkosi' circumambulation, the third is the 'Chaudahkosi' circumambulation. The fourth circumambulation is of 84 'Kose', which is completed in 24 days."(E.T.C.)

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(d) D.W 3/14 Jagadguru Ramanandacharya Swami Haryacharya

''मैंने 14 कोसी तथा पंचकोसी परिक्रमाएं भी की हैं। रामजन्मभूमि की परिक्रमा मैंने कई बार किया है। चौदहकोसी परिक्रमा के अन्तरगत जनकौरा, गौशाला मन्दिर, गुरूकुल, कई ग्राम आते हैं। शीतल अमराई भी आती है। मैंने 84 कोसी परिक्रमा अयोध्या की किया है। इसमें कई क्षेत्र आते हैं। गोण्डा जनपद स्थित जमदग्नि आश्रम इस परिक्रमा के दौरान पड़ता है।'' (पेज 22–23)

"I have also performed the 14 'kosi' and 'Panchkosi' circumambulations. I have performed circumambulation of Ramjanambhumi on many occasion. Jankaura, Gaushala temple, Gurukul and many villages fall under the 'Chaudahkosi' circumambulation. I have performed 84 'Kosi' circumambulation of Ayodhya. Many areas fall under it. Jamdagni Ashram situated in Gonda district falls during this circumambulation." (E.T.C.)

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''महाराजा दशरथ के राजमहल का क्षेत्रफल जैसा कि बाल्मीकी रामायण में उल्लिखित है, अयोध्या के पॉच–कोस के अन्तर्गत स्थित है। स्वयं कहा कि यह पॉच कोस पंचकोसी परिक्रमा के अन्तरगत है, दशरथ के राजमहल की ही परिक्रमा होती है। जहॉ से पंचकोसी परिक्रमा शुरू होती है, वहॉ से महराजा दशरथ का राजमहल शुरू होता था तथा जहॉ पर पंचकोसी परिक्रमा समाप्त होती है वहॉ पर समाप्त होता था। इस समय पंचकोसी परिक्रमा कई स्थानों से शुरू होती है कोई ऋणमोचन घाट से, कोई झुमकी घाट से, कोई राजघाट से, कोई नयाघाट से शुरू करता है। परिक्रमा के पीछे जो लोग बसे हुए हैं, वे लोग परिक्रमा तपसीजी की छावनी के पास से ही शुरू करते हैं। जिन घाटों से परिक्रमा शुरू की जाती है, उन्हीं घाटों पर परिक्रमा समाप्त भी होती है तथा लोग परिक्रमा समाप्त करने के बाद सरयू में स्नान करते हैं। वह सभी घाट जहॉ से परिक्रमा शुरू करने के बारे में बताया है, वह सभी सरयू के किनारे स्थित हैं। सरयू अयोध्या के उत्तर तरफ स्थित है इस परिक्रमा में दक्षिण तरफ इस समय के शीतलअमराई से लेकर लोग घूमते हैं। यह शीतल अमराई नामक स्थान अयोध्या में है। यह शीतल अमराई का स्थान विवादित स्थल से दो–ढाई

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किलोमीटर की दूरी पर होगा।'' (पेज 64)

"The area of the palace of King Dashrath, as mentioned in Valmiki Ramayana, extends over five-six 'kose' in Ayodhya. Stated on his own that this five 'kose' falls under the 'Panchkosi' circumambulation, the circumambulation is performed of the palace of King Dashrath. The palace of King Dashrath begins from the same place, from where the 'Panchkosi' circumambulation starts, and it ends where the 'Panchkosi' circumambulation concludes. At present, 'Panchkosi' circumambulation starts from many places, some from Rinmochan ghat, some from Jhumki ghat, some from Rajghat and some from Nayaghat. The people residing in back of the circumambulation (path), start the circumambulation from near the 'Tapsiji ki Chavani'. The circumambulation concludes at the same ghat from where it starts and after concluding the circumambulation, people bathe in the Saryu. All these ghats, from where the circumambulation is stated to start, are situated along the banks of Saryu. Saryu is situated in north of Ayodhya. At present, people pass through Shitalamrai in south. This place called Shital Amrai is in Ayodhya. This place Shital Amrai, would be about 2-2½ kilometers away from the disputed site. "(E.T.C.)

''इस समय जो 84 कोसी परिक्रमा की जाती है, वह वर्तमान समय के अयोध्या को ही परिमापित करती है। यह परिक्रमा उत्तर तरफ जमदग्नि कुण्ड से जो गोण्डा जनपद में है शुरू होती है, जहॉ पर राजा दशरथ की गौशाला थी।'' (पेज 66)

"The 84 'Kosi' circumambulation performed these days, measures the Ayodhya of today. This circumambulation begins in north from the Jamadgini Kund, which is in Gonda district, where the cattle shed of

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King Dashrath existed."(E.T.C.)

(e) D.W.3/17 Sri Mata Badal Tiwari

''दर्शन करने के बाद परिक्रमा की जाती थी मैं चौदह कोसी परिक्रमा के बाद पंचकोसी परिक्रमा करता था। पंचकोसी परिक्रमा एकादशी की तिथि को होती है। चौदहकोसी परिक्रमा करने में लगभग पूरा दिन लग जाता है। चौदहकोसी परिक्रमा करने में पूरी अयोध्या पड़ जाती है। परिक्रमा के अन्तरगत हनुमानगढ़ी मंदिर भी आ जाता है। कनक भवन तथा सुमित्रा भवन भी परिक्रमा के अंदर आ जाता है। मणिराम छावनी भी इसके अन्दर आ जाती है।'' (पेज 6)

"The circumambulation was performed after having Darshan. I used to perform the 'Panchkosi' (of five kose, one kose being equal to two miles) circumambulation after the 'Chaudahkosi' (of fourteen kose) circumambulation. The 'Panchkosi' circumambulation is performed on 'Ekadashi' (eleventh day of lunar month). It took almost full day in completing the 'Chaudahkosi' circumambulation. The entire Ayodhya is covered in performing the 'Chaudahkosi' circumambulation. The Hanumangarhi temple also falls within the circumambulation. The Kanak Bhawan and Sumitra Bhawaan are also covered in the circumambulation. The Maniram Chavani also falls within it."(E.T.C.)

''रामजन्मभूमि परिसर में मैं चबूतरे की ही परिक्रमा करता था यह चबूतरा राम चबूतरा था।'' (पेज 12)

"In the Ramjanmbhumi premises, I used to perform circumambulation of only the Chabutra. This Chabutra was the Ram Chabutra."(E.T.C.)

4490. If we believe what has been submitted by learned counsel for the Hindu parties to be correct that Parikrama is an integral part of worship of the deity and if this Parikrama passage is available in a place it should be treated in a temple,

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very interesting result may arrive in respect to these three kinds of large Parikrama. The area covered by Panchkosi Parikrama includes several localities of Ayodhya wherein number of muslim residences as well as their religious places are also covered. Similarly, Chaudahkosi Parikrama not only covered Ayodhya but some part of Faizabad also and there also similar result would arrive. Chaurasikosi Parikrama obviously goes much much beyond that. Can it be said that all the persons residing and the religious places of other religions constitute part and parcel of such a wider concept of temple. This is neither the intention nor can be accepted. When a person believe in respect to a place that it has divine power, Supreme Being exist thereat which may bless happiness, salvation etc. to the worshipper that does mean that this place of worship has to be identified in narrowest possible area. For example at Gangotri if one goes it is the particular temple or just above it the Gomukh which is considered sacred and not the entire area where the people also reside and do other daily activities. In the case of place in dispute also, unless we ascertain the exact place in respect whereof the belief of such a large Hindu people is continuing by tradition and custom from generations to generation, it cannot allow us to be guided with such kind of arguments which goes much beyond the belief but in the realm of the procedure of worship which is absolutely different. The core belief in the matter of religion which is essential is something different than what is incidental or ancillary. It is the former which is protected by Article 25 of the Constitution.

4491. In view of the above, to suggest that the entire property in dispute shall vest in the deity without there being any specificity regarding the area would neither be just nor

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rational. Many of the witnesses appearing on behalf of the plaintiff (Suit-5) as well as plaintiff (Suit-3) and other Hindu parties have averred that according to their faith, the place where the idols are kept, i.e., the area under the central dome of the disputed structure in inner courtyard is the place of birth of Lord Rama. If that be so, it may not be said that the entire property in the inner courtyard would vest in the deity. On this aspect we have already dealt with in detail while considering the issues relating to the place of birth of Lord Rama, i.e., the issues no. 11 (Suit-4), 1 (Suit-1) and 22 (Suit-5).

4492. So far as the property in the outer courtyard is concerned, we have already said that there existed several Hindu structures and the Hindu people used to visit thereat regularly without there being any intervention or interruption by the Muslim people at least for the last more than 90 years till the date of attachment, i.e., since 1856-57. The Hindu religious structures like Sita Rasoi, Ram Chabutara etc. are claimed to be managed by Nirmohi Akhara, plaintiff (Suit-3). Though they have also stated that this is the place of birth of Lord Rama but those temples in outer courtyard, are being managed by them since the last several decades.

4493. The place of birth as we have already held, therefore, would continue to vest in the deity and in view of the fact that deity is indestructible and imperishable, even the construction of the building in dispute would make no impact on its sacredness and otherwise. So far as the religious structure within the outer courtyard are concerned, they cannot be said to be vested in the deity, (plaintiffs 1 and 2) for the reason that they are the temples claim to be possessed and managed by Nirmohi Akhara defendant no. 3, and its status having claimed as

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Shebait. This status of Nirmohi Akhara qua the religious structures of Hindus existing in the outer courtyard have not been controverted by anyone. Even OPW 1, the witness who deposed on behalf of plaintiff (Suit-5) has also supported this case of Nirmohi Akhara.

4494. So far as the continuous visit of devotees is concerned, we have already discussed this issue and held that despite construction of disputed structure, Hindus continued to visit and worship the place which they believe to be the place of birth of Lord Rama. Simultaneously, in the same premises, muslims also offered their worship as we have already discussed in detail above.

4495. We, therefore, hold that so far as the premises which constitute the place of birth of Lord Rama, continue to vest in the deities, but so far as the Hindu religious structures existing in the outer courtyard are concerned, the same cannot be said to be the property of the plaintiffs (Suit-5), i.e., the deity of Bhagwan Sri Ram Virajman and Sthan Sri Ram Janambhumi as claimed by the defendant no. 13. **Issue No. 19 (a) (Suit-4) is answered accordingly.**

4496. **Issue No. 4 (Suit-5):**

> *"Whether the idol in question had been in existence under the "Shikhar" prior to 6.12.92 from time immemorial as alleged in paragraph 44 of the additional written statement of defendant no.3?"*

4497. We have already held while deciding Issues No 12 (Suit-4) and 3 (a) (Suit-5) that the idols under the central dome in the inner courtyard were placed in the night of 22nd/23rd, December, 1949 and since then are continuing as such in view of interim injunction granted by the Civil Court on 16.1.1950

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and the subsequent stay orders of this Court as well as the Apex Court. In view thereof, no doubt that prior to 6th December, 1992, the idols were there but it cannot be said that the same remained there from time immemorial. Besides, this issue is in the context of para 44 of additional written statement of defendant no. 3 which reads as under:

> *"That attachment made in the 1949 is only in respect of main building of Garbh Grahya Carrying three "Shikar (शिखर) where in the deity of Bhagwan Sri Ram Chanraji is installed by Nirmohi Akhara from time beyond the human memory and are since then in management and possession of it till the said property attached. Therefore, plaintiff 3 can not claim any right to represent him."*

4498. The pleading, however, do not talk of 6th December, 1992. On the contrary, it says when the attachment was made in 1949, at that time idols were installed in the main building much before and beyond the human memory, which we have already negatived. Hence, **Issue No. 4 (Suit-5) is answered in negative**, as the idols in question did remain under the *Sikhar* prior to 6th December, 1992, but not from time immemorial and, instead, were kept thereat in the night of 22nd/23rd December, 1949.

4499. **Issue No.15 (Suit-5):**

> *"Whether the disputed structure claimed to be Babri Masjid was always used by the Muslims only regularly for offering Namaz ever since its alleged construction in 1528 A.D. to 22nd December 1949 as alleged by the defendants 4 and 5?*

4500. This issue has been framed assuming that the disputed structure was constructed in 1528 AD by Babar or his agent. This aspect we have already discussed in detail while considering issues no. 6 (Suit-1), 5 (Suit-3) and 1(a) (Suit-4).

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We have already answered that the concerned parties have miserably failed to prove that it was so constructed in 1528 AD by Babar or any of his agent. That being so, the question of offering Namaj in the disputed structure since 1528 AD does not arise at all. With respect to the question as to whether Namaj was ever offered in the building in dispute we find that this aspect has also been discussed and answered in issues no. 15 (Suit-4), 1-B(c) (Suit-4) and 2 (Suit-4) wherein it has been held that the evidence which we have on record shows that atleast from 1860 and onwards Namaj has been offered in the building in dispute in the inner courtyard and the last Namaj was offered on 16th December, 1949. **Accordingly issue 15 (Suit-5) is answered.** We observe that though it is not proved that Namaj was offered in the building in dispute since 1528 AD, simultaneously it is also not proved that any Namaj was offered in the building in dispute after 16th December, 1949. However, we hold that between 1860 and up to 16th December, 1949 if not regularly, occasionally, intermittently Friday prayers, i.e., Jumma Namaj was offered in the disputed structure which was commonly known as Babri Masjid.

4501. **Issue No.20(b)(Suit-4):**

"Whether there was a Mutwalli of the alleged Waqf and whether the alleged Mutwalli not having joined in the suit, the suit is not maintainable so far as it relates to relief for possession?"

4502. It has been stated by several witnesses deposing on behalf of plaintiffs (Suit-4) that one Javvad Hussain was Mutwalli of the building in dispute in 1949 when the property in dispute was attached. Certain documents filed as **Exhibit A 55 (Suit-1) (Register 8, page 503); Exhibit A 57 (Suit-1) (Register**

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8, page 507); and, Exhibit A 59 (Suit-1) (Register 8, page 511) as well as the report of Waqf Inspector dated 10th December, 1949 and 23rd December, 1949 also show that Javvad Hussain represented himself as Mutwalli of the building and the Inspector of Waqf requested Sunni Board to treat him and continue as Mutawalli of the waqf.

4503. Nothing to contradict the above has been placed on record. We need not to doubt the above stand of the plaintiffs (Suit-4) on this aspect but it is really surprising, had he been Mutawalli of the building in dispute, responsible for its proper management etc. yet at no point of time he took any step for protection of the building in dispute or to contest the cases in the Court in respect to said property. Not only this, but also the so called Imam, named Abdul Gaffar, as also one Ismail, Moazzim are also missing and they have also failed to take any step. Not even a complaint was filed by anyone of them, if anything wrong was done in the night of 22/23rd December, 1949 preventing them from discharging their duties as also preventing Muslims from offering Namaz in the building in dispute. It appears to us that Javvad Hussain was not a properly appointed Mutwalli of the building in dispute but he simply enjoyed the grant of village Bahoranpur and Sholapur and used to call him as "Nambardar" thereof. In order to justify the amount of revenue he used to realize from the said grant, on papers, he had shown the income and expenditures also but as a matter of fact, did not take care of the building in dispute.

4504. Be that as it may, in the absence of any other claimant and also in the absence of any procedure with respect to appointment of Mutwalli, person who ought to have managed the building in dispute, may be on account of the grant of the

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two villages, can be treated to be a *de facto* mutwalli. The Management being responsibility of a Mutwalli, the possession of the waqf can also be claimed by him since a worshiper is not entitled for the possession of a waqf property though he may be allowed to file a suit for protection of the property of waqf but possession of such waqf cannot be granted to such worshiper.

4505. In the result we answer **Issue No.20(b) (Suit-4)** holding that at the time of attachment of the building or when the suit in question was filed, Javvad Hussain was Mutawalli but in his absence or any other Mutawalli succeeding him, relief of possession cannot be allowed to the plaintiffs (Suit-4) who have come before this Court in the capacity of worshipers and not the person who can claim possession of waqf i.e. a Mutawalli.

4506. **Issue No. 7 (Suit-5):**

> *"Whether the defendant no.3 alone is entitled to represent plaintiffs 1 and 2, and is the suit not competent on that account as alleged in paragraph 49 of the additional written statement of defendant no.3?"*

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4507. Basically the objection relates to non service of notice under Section 80 CPC to the State Government. No such objection has been raised by the State Government or its authorities though they are impleaded as defendants no. 7, 8 and 9 to the Suit. Even a written statement has not been filed on behalf of the State Government or its officers. We have already held while considering issue no.10 (Suit-3), that objection regarding notice under Section 80 CPC cannot be taken by a private defendant, if no such objection has been raised and pressed by the State authorities. In view of our discussion and findings recorded in respect to issue no. 10 (Suit-3), we hold that the objection under para 49 of the additional written

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statement of defendant no. 3 is of no consequence.

4508. Coming to the first part of the issue that the defendant no. 3 alone is entitled to represent plaintiffs 1 and 2 in the absence of any material to show that the defendant no. 3 was in possession of the property within the inner courtyard and looking after and managing the affairs as Shebait, no such right can be claimed by the defendant no. 3. On this aspect the case of defendant no. 3, i.e., Nirmohi Akhara has already been considered by us while discussing the issues relating to adverse possession. **For the reasons thereof and as discussed, issue 7 (Suit-5) in its entirety is answered in negative**.

4509. `**Issues No. 10** and **11 (Suit-5):**

"Whether the disputed structure could be treated to be a mosque on the allegations contained in paragraph 24 of the plaint?"

"Whether on the averments made in paragraph 25 of the plaint, no valid waqf was created in respect of the structure in dispute to constitute it as a mosque?"

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4510. These issues are founded on the averments contained in paras 24 and 25 of the plaint which read as under:

"24. That such a structure raised by the force of arms on land belonging to the Plaintiff Deities, after destroying the ancient Temple situate thereat, with its materials including the Kasauti pillars with figures of Hindu gods carved thereon, could not be a mosque and did not become one in spite of the attempts to treat it as a mosque during the British rule after the annexation of Avadh. Some salient points with regard thereto are noted below.

(A) According to the Koran, Allah spoke to the Prophet thus-

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"And fight for the religion of GOD against those who fight against you; but transgress not by attacking them first, for GOD loveth not the trangressers. And kill them wherever ye find them; and turn them out of that whereof they have dispossessed you; for temptation to idolatory is more grievous than slaughter. Yet fight not against them in the holy temple, until they attack you therein;.....

(B) According to all the Muslim authorities and precedents and the decided cases also, ALLAH never accepts a dedication of property which does not belong to the Waqif that is, the person who purports to dedicate property to ALLAH for purposes recognised as pious or charitable, as waqf under the Muslim law. By his acts of trespass and violence for raising a mosque on the site of the Temple after destroying it by force, Mir Baqi committed a highly un-Islamic act. His attempt to convert the Temple into a mosque did not, therefore, create a valid dedication of property to ALLAH, whether in fact or in law, and it never became a mosque.

(C) That inspite of all that Mir Baqi tried to do with the Temple, the land always continued to vest in the Plaintiff Deities, and they never surrendered their possession over it. Their possession continued in fact and in law. The ASTHAN never went out of the possession of the Deity and HIS worshippers. They continued to worship HIM through such symbols as the CHARAN and SITA RASOI, and the idol of BHAGWAN SRI RAMA LALA VIRAJMAN on the Chabutra, called the Rama Chabutra, within the enclosed courtyard of the building directly in front of the arched opening of its Southern dome. No one could enter the

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building except after passing through these places of Hindu worship. According to the Muslim religion and law there can be no Idol worship within the courtyard of a mosque, and the passage to a mosque must be free and unobstructed and open at all times to the 'Faithful'. It can never be through a Hindu place of worship. There can be no co-sharing of title or possession with ALLAH in the case of a mosque. His possession must be exclusive.

(D) A mosque must be built in a place of peace and quiet, but near to a place where there is a sizeable Muslim population, according to the tenets of Islam, and as insisted upon by it, a mosque cannot be built in a place which is surrounded on all sides by Temples, where the sound of music or conch shells or Ghanta Ghariyals must always disturb the peace and quiet of the place.

(E) A mosque must have a minaret for calling the Azan. According to Baillie. "When an assembly of worshippers pray in a masjid with permission, that is delivery. But it is a condition that the prayers be with izan. Or the regular call, and be public not private, for though there should be an assembly yet if it is without izan. And the prayers are private instead of public, the place is no masjid. Accouding to the two disciples." (Pt. I. BK.IX, ch. VII Sec. I,p. 605) Indeed, there has been no mosque without a minaret after the first half century from the Flight. (See-P.R. Ganapathi Iyer's Law relating to Hindu and Mahomedan Endowments, 2nd Edition, 1918. Chap. XVII, P. 388.)

(F) According to the claim laid by the Muslims in their suit No. 12 of 1961, the building is surrounded on all sides by grave-yard known as 'Ganj Shahidan'. There is a

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mention in the Fyzabad Gazetteer also, quoted hereinabove, of the burial of 75 Muslims at the gate of the Janmasthan, and the place being known as Ganj Shahidan. After the battle of 1855. Although there are no graves anywhere near the building at Sri Rama Janma Bhumi, or in its precincts, or the area appurtenant thereto, for the last more than 50 years, if the building was surrounded by a grave-yard during the British times soon after the annexation of Avadh by them, the building could not be a mosque, and could not be used as a mosque, for the offering of prayers, except the funeral prayers on the death of a person buried therein, is prohibited in a grave-yard according to the Muslim authorities.

(G) As already stated, there is no arrangement for storage of water for Vazoo and there are the Kasauti pillars with the figures of Hindu Gods and Godesses inscribed thereon in the building.

25. That the worship of the Plaintiff Deities has continued since ever throughout the ages at Sri Rama Janma Bhumi. The place belongs to the Deities. No valid waqf was ever created or could have been created of the place or any part of it, in view of the title and possession of the Plaintiff Deities thereon. ALLAH, as conceived by the Muslims, never got any title or possession over the premises or any part of them. Nor has there ever been any person, living or juridical, who might have put forward any claim to ownership of the property or any part of it. Occasional acts of trespass or attempts to get into possession by the muslims were successfully resisted and repulsed by the Hindus from time to time, and there was no

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blemish or dent in the continuity of title and possession of the Plaintiff Deities. No title could or did vest in ALLAH over any part of Sri Rama Janma Bhumi by adverse possession or in any other manner. Neither ALLAH nor any person on his behalf had any possession over any part of the premises at any time what-soever, not to speak of any adverse possession."

4511. We have discussed similar issues in the category of those relating to characteristics of mosque, dedication, valid waqf etc. In the light of the findings recorded therein **we answer issues 10** and **11 (Suit-5) in affirmative.**

4512. **Issue No. 19 (Suit-5):**

"Whether the suit is bad for non-joinder of necessary parties, as pleaded in paragraph 43 of the additional written statement of defendant no.3?"

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4513. This issue emanates from the pleading of para 43 of the additional written statement of defendant no. 3 which reads as under:

"Para 43: That outer portion consisting of Bhagwan Ram Lala on Sri Ram Chabutara alongwith other deities, Chathi Pujan Sthan and Bhandar with eastern outer wall carrying engraved image of Varah Bhagwan with southern and northern wall and also western portion of all carries the present municipal no. 10/12/29 old 506, 507 and older 647 of Ram Kot ward of Ayodhya City had been a continuous referred in main litigation since 1885 till Reg. Suit no. 239/82 of the Court of Civil Judge Faizabad and in every case Nirmohi Akhara was held always in possession and management of this temple so the Bhagwan Ram Lalaji installed by Nirmohi Akhara on this Ram Chabutara is a

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distinct legal entity owned by def. no. 3. That suit is bad for want of impleadment of necessary party as mentioned above."

4514. What defendant no. 3 claims is that Bhagwan Ram Lala installed on Ram Chabutara in the outer courtyard, though was in possession and management of Nirmohi Akhara, but being a distinct legal entity, ought to have been impleaded separately and in the absence thereof the suit is bad for want of necessary party.

4515. The submission is thoroughly misconceived. Once Nirmohi Akhara admits that the deity at Ram Chabutara is managed by Nirmohi Akhara which is a Math, a legal entity, it stands in the position of Shebait to the said deity and in such a case it has well been held that right to sue or be sued vests in Shebait **[See, Bishwanath Vs. Sri Thakur Radha Ballabhji (supra)** and **Jagadindra Nath Vs. Hemanta Kumari (supra)].**

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4516. We, therefore, find no substance in the above submission. **Issue 19 (Suit-5) is answered in negative.**

4517. Issue No. 25 (Suit-5):

"Whether the judgment and decree dated 30th March 1946 passed in Suit No. 29 of 1945 is not binding upon the plaintiffs as alleged by the plaintiffs?"

4518. Suit No. 29 of 1945 was an inter se dispute between the Shia Central Waqf Board and Sunni Central Waqf Board in respect to the property in dispute. Both were claiming it to be a waqf which ought to have been placed within their control. In respect to the suit and the judgment dated 30.03.1946 we have already considered the matter in detail while discussing issue no. 6 (Suit-3).

4519. Admittedly, the plaintiffs of suit in question were

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not party in the said suit. The judgment, therefore, cannot be said to be binding upon the plaintiffs. No authority on this question has been placed before us which is binding upon us to take a different view. **Issue 25 (Suit-5) is accordingly answered** holding that the judgment and decree dated 30.03.1946 in Suit No. 29 of 1945 is not binding upon the plaintiffs (Suit-5).

4520. Issue No. 19(c)(Suit-4):

"Whether any portion of the property in suit was used as a place of worship by the Hindus immediately prior to the construction of the building in question? If the finding is in the affirmative, whether no mosque could come into existence in view of the Islamic tenets at the place in dispute?"

4521. We have already held that there existed a religious place of Non-Islamic character before the construction of the disputed structure. From the travel account of William Finch it is also evident that Hindus were worshipping in the Fort of Lord Rama, as he called it, when he visited Ayodhya between 1608 to 1611 AD. It is not the case of the Muslim parties that in that Fort of Lord Rama, besides the place in dispute, there was any other place known as place of birth of Lord Rama which the people used to worship at that time or thereafter also. The disputed structure, as we have already noticed, came into being after the visit of the William Finch but before the visit of father Joseph Tieffenthaler. He (Tieffenthaler) has also mentioned about the worship at the premises in dispute by Hindus during his visit, and, from the description he has given, we are satisfied that the said worship must have been near the structure itself. The cumulative effect of these facts as also the discussion we have already made in respect of various issues above, leaves no doubt

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in our mind that even before the construction of the building in dispute, the place which the Hindus believed the place of birth of Lord Rama, used to be worship. We have also held that according to faith, belief and tradition amongst Hindus it is the area covered under the central dome of the disputed structure which they believe to be the place of birth of Lord Rama and worship thereat continuously. Therefore, in the absence of anything otherwise, it can safely be said that only this was the part of the property in dispute which was used as a place of worship by Hindus immediately prior to the construction of the building in question. To this extent the first part of the issue under consideration is answered in affirmative.

4522. So far as the second part is concerned, we do not find that it has any relevance being as a hypothetical question whether a mosque could have come into existence in view of the Islamic tenets at the place of dispute, where Hindus were worshiping earlier, for the reason that, as a matter of fact, a building was constructed as a mosque, centuries back, under the Sovereign's command. After its construction, the locals and the other called and treated it, 'a mosque', it was used later, may be intermittently, as we have already held, for offering namaz by Muslims also. It is a different thing that in the same premises Hindus also continued to visit and worship according to their faith and belief but that would not erode in any manner the factual establishment of a structure as a mosque. Whether a person who made this construction or allowed it at that time, acted in accordance with Islamic tenets or not, cannot be allowed to be reviewed on judicial side in a court of law which is a creation of much subsequent period. The subsequent statutes cannot be applied to a sovereign function as sole Monarch, at a

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time when his command was supreme and unchallengeable. In our view it is not open to any party to raise such a dispute, which in effect require a judicial review of something which has been done by a king at a time when there was no codified law. We have no doubt in our mind that our jurisdiction to peep into such an objection cannot be stressed to such an extent. Sri Jain sought to refer Article 13 of the constitution and some other provisions but we find all those reference wholly misconceived and in our view the argument is simply noticed to be rejected.

4523. **Issue No. 19 (c), Suit-4** is decided accordingly.

4524. **Issues No.3(b), (c) and (d) (Suit-5)** read as under:

> *"(b) Whether the same idol was reinstalled at the same place on a Chabutara under the canopy?*
>
> *(c) Whether the idols were placed at the disputed site on or after 6.12.1992 in violation of the courts order dated 14.8.1989 and 15.11.91?*
>
> *(d) If the aforesaid issue is answered in the affirmative, whether the idols so placed still acquire the status of a deity."*

4525. After the demolition of the disputed structure, the defendants no. 4 and 5 (Suit-5) filed an additional written statement dated 22nd August, 1995 and in para 3 and 13 thereof pleaded as under:

> *"3. That the contents of para 35 J of the Amended Plaint are denied as stated and in reply thereto it is submitted that the demolition of the Babri Masjid appeared to be a pre-planned, deliberate and intentional act on the part of the miscreants and criminals who had assembled at the site on the call of the Vishwa Hindi Parishad, Bajrang Dal and Shiv Sena etc. All the acts of the said so-called Kar Sewaks*

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were totally illegal, unjustified and in violation of the orders of this Hon'ble Court as well as of the Hon'ble Supreme Court and amounted to blatant exercise of the Rule of Jungle and the so called construction of make-shift temple and placing of idols in the same on 7.12.92 was all totally illegal and contemptuous and the said idols could not be described as deity under Hindu Law also."

"13. That the Plaintiffs have no cause of action and specially so when the idols placed in the Mosque surreptitiously in the night of 22nd -23rd December, 1949 have been removed on 6-12-1992. The claim, if any, regarding the said idols stood extinguished on the removal of the said idols."

4526. The submission of Sri Jilani and Sri Siddiqui is that once the Deity is removed from the place where it was consecrated or where it was being worshipped, it ceased to have the status of a deity on removal unless reconsecrated. Therefore, it is contended that plaintiff no.1 ceased to be a 'juristic personality' after its removal on 6th December, 1992, rendering suit not maintainable and liable to be dismissed. Reliance is placed on the authority of **"History of Dharmashatra"** by P.V. Kane Chapter XXVI, page 904 which reads as under:

"Punah-pratistha :-(Re-consecration of images in temples). The Brahmapurana quoted by the Devapratisthatattva and the Nirnayasindhu says 'when an image is broken into two or is reduced to particles, is burnt, is removed from its pedestal, is insulted, has ceased to be worshipped, is touched by beasts like donkeys or falls on impure ground or is worshipped with mantras of other deities or is rendered impure by the touch of outcasts and the like-in these ten

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contingencies, god ceases to indwell therein.' When an image is polluted by (contact with) the blood of a brahmana or by the touch of a corpse or the touch of a patita it should be re-consecrated. If an image is broken in parts or reduced to particles it should be removed according to sastric rules and another should be installed in its place. When an image is broken or stolen a fast should be observed. If images of metal such as of copper are touched by thieves or candalas, they should be purified in the same way in which polluted vessels of those metals are purified and then they should be re-consecrated. If an image properly consecrated has had no worship performed without pre-meditation (i.e. owing to forgetfulness or neglect) for one night or a month or two months or the image is touched by a sudra or a woman in her monthly illness, then the image should have water adhivasa (placing in water) performed on it, and it should be bathed with water from a jar, then with pancagavya, then it should be bathed with pure water from jars to the accompaniment of the hymn to Purusa (Rg. X. 90) repeated 8000 times, 800 times or 28 times, worship should be offered with sandal-wood paste and flowers, naivedya (food) of rice cooked with jaggery should be offered. This is the way in which the re-consecration is effected."

4527. The matter of reconsecration as and when is required and what is a procedure, how it is to be observed, we have already discussed in detail while dealing with the issues relating to deities, their rights etc. i.e. issues No.12 and 21 (Suit-4), issues no.1, 2, 3(a), 6 and 21 (Suit-5). The defendant no.3/1 on page 225, 232 of his statement has admitted removal of deity,

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as existed under the central dome of the disputed structure upto 6th December, 1992 for a short while and says that the same were restored after a few hours at the same place. To the same effect is the statement of OPW 1-Mahant Paramhans Ram Chandra Das. Nothing has come on record contradicting the said statements of the two witness. Therefore, a very transition and temporary kind of removal is not disputed. The circumstances in which this removal took place is also known to all. A huge mob, in a most abominable manner, caused demolition of the disputed structure against all norms and principles of a civilized society. It is, however, not the case of the defendants that the plaintiffs have any role in this matter. Now, the question is whether such removal, whatsoever were the circumstances, is permissible and secondly; its effect in the light of the answer of the former.

4528. Fortunately, the issue is no more *res integra*. In **Hari Raghunath Vs. Antaji Bhikaji (supra)** the Bombay High Court considered this question and held:

> *"It is not disputed that the existing building is in a ruinous condition and that it may be that for the purpose of effecting the necessary repairs the image may have to be temporarily removed. Still the question is whether the defendant as manager is entitled to remove the image with a view to its installation in another building which is near the existing building. Taking the most liberal view of the powers of the manager, I do not think that as the manager of a public temple he can do what he claims the power to do, viz., to remove the image from its present position and to instal it in the new building. The image is consecrated in its present position for a number of years and there is the existing temple. To remove the image from that temple and*

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to instal it in another building would be practically putting a new temple in place of the existing temple. Whatever may be the occasions on which the installation of a new image as a substitute for the old may be allowable according to the Hindu law, it is not shown on behalf of the defendant that the ruinous condition of the existing building is a ground for practically removing the image from its present place to a new place permanently. We are not concerned in this suit with the question of the temporary removal which may be necessary when the existing building is repaired."

4529. This decision in **Hari Raghunath (supra)** has been quoted and approved by a three Judge Bench of the Apex Court in **Narayan Bhagwantrao Gosavi Balajiwale Vs. Gopal Vinayak Gosavi (supra)** in para 36 and it says:

"The case is an authority for the proposition that the idol cannot be removed permanently to another place, because that would be tantamount to establishing a new temple. However, if the public agreed to a temporary removal, it could be done for a valid reason."

4530. Therefore in a given situation a temporary removal is permissible and that shall not cause any impact upon the authority and status of the deity.

4531. Now coming to the two orders referred to in issue no.3(c) of the Court, we find that this Court on 14th August, 1989 passed the following order on an application filed by the State of U.P. under Section 94 read with Order XXXIX, Rule 1 and 2 C.P.C. which reads:

"This is an application filed by the State of U.P. under Section 94 read with Order 39 Rules 1 and 2 of the Code of Civil Procedure for the grant of injunction:-

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(i) Restraining the plaintiffs and defendants from disturbing the status quo and organising any activity which may bring about confrontation between Hindus and Muslims and

(ii) Ensuring that orders passed by the Court are strictly enforced and are not breached.

We have heard Sri S.S.Bhatnagar, learned Advocate General in support of this application. We also heard Sri V.K.S.Chaudhary and Sri Deoki Nandan Agarwal, who submitted in their arguments that the threats expressed by the learned Advocate-General in his application and in his arguments were groundless as no such situation as stated in the affidavit filed in support of the application is in existence or is going to arise as the parties represented by them consisted of law abiding citizens and no breach of peace or any order of the court was intended by them. Sri Abdul Mannan, Counsel appearing for the other side, virtually supported by the application for injunction and narrated the dire consequences if the law is taken to hands by the parties.

In this connection, our attention was drawn to the following order dated 3.2.1986 passed by a learned single Judge of this Court in Civil Misc. Writ No.746 of 1986:-

> *"Until further orders of the Court, the nature of the property in question as existing today shall not be changed."*

It was also brought to our notice that another learned single Judge of this Court has passed an order for appointment of receiver for the property in question in F.A.F.O. No.17 of 1977 on 23rd July, 1987.

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In view of the order for appointment of receiver and the order dated 3.2.1986 which has become final, we are not inclined to accept that any of the parties will take law to hands and do anything which may culminate in law breaking. However, since in the writ petition, in which the order dated 3.2.1986 was passed, only some of the parties to the present suits were arrayed, we consider it necessary in the interest of justice that a similar order is adopted in each of the injunction applications in the present suits, as a result whereof until further orders of the Court, the parties to suits No.1 of 1989 (Reg. Suit No.2 of 1950), 2 of 1989 (Reg. Suit No.25 of 1950), 3 of 1989 (Reg. Suit No.26 of 1959), 4 of 1989 (Reg. Suit No.12 of 1961) and 5 of 1989 (Reg. Suit No.236 of 1989) shall maintain status quo and shall not change the nature of the property in question.

Sri V.K.S.Chaudhary strenuously contended that in view of the order appointing receiver, there was absolutely no justification for apprehending that the parties are likely to take the law to their hands, but by way of abundant caution, we have made the above order."

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4532. A perusal of this order shows that the parties to the suit were directed to maintain status quo, and, that they shall not change the nature of the property in question. There is no pleading by the defendants (Suit-5) that in demolition of the disputed structure etc., the plaintiffs are responsible or guilty of violation of this Court's order dated 14.08.1989.

4533. So far as order dated 15.11.1991 is concerned, Sri Jilani informed that no such order was passed by this Court but it appears that the Apex Court on some application had passed an order but the same has not been placed before us during the

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course of argument. Therefore, we are not able to consider and appreciate the same.

4534. In view thereof we answer **issues no.3(b) and (d) (Suit-5) in affirmative and issue no.3(c) (Suit-5) in negative**.

4535. **Issue No.8 (Suit-5)** reads as under:

> *"Is the defendant Nirmohi Akhara the "Shebait" of Bhagwan Sri Ram installed in the disputed structure?"*

4536. This issue has to be considered in the light of the pleadings of defendant Nirmohi Akhara. Its case is that since time immemorial the disputed structure was a temple. There was no demolition. No construction of mosque. The idol under the disputed structure also continued since time immemorial. This case of the Nirmohi Akhara has not been found correct. They have failed to prove it. We have already held so. It is not their case that the idols were kept under the central dome of the disputed structure in the night of 22/23 December, 1949 by any member or Mahants or Pujaris of Nirmohi Akhara and after such placing they continued to take care of the idols and it is the Nirmohi Akhara which is responsible for all this. In fact Nirmohi Akhara having taken a totally different stand, denied occurrence of any such incident.

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4537. In these peculiar facts and circumstances and the stand of Nirmohi Akhara, we have no option but to hold that so far as the idols of Bhagwan Sri Ram installed in the disputed structure i.e. within the inner courtyard is concerned, the defendant Nirmohi Akhara cannot said to be Shebait thereof.

4538. **Issue No.8 (Suit-5) is accordingly answered against Nirmohi Akhara defendant No.3 (Suit-5)**.

4539. **Issue No.20(a) (Suit-4)**

> *"Whether the Waqf in question cannot be a Sunni Waqf as*

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the building was not allegedly constructed by a Sunni Mohammedan but was allegedly constructed by Meer Baqi who was allegedly a Shia Muslim and the alleged Mutawallis were allegedly Shia Mohammedans? If so, its effect?"

4540. This issue has been framed in view of the plea taken by the defendants no.13, 20 and a few others that the building in dispute having been constructed by Mir Baqi, who was a Shia Muslim, the waqf cannot be a Sunni Waqf and therefore, plaintiff no.1 (Suit-4) has no authority to file the suit. We have already answered this question while considering the issue relating to wakf that if a mosque is constructed, under law of Shariat no distinction is made like Sunni mosque or Shia mosque. Every person, who is a worshipper of Islam, as a matter of right, is entitled to enter the mosque and offer Namaz. This aspect has been considered in three Full Bench decisions of this Court in **Jangu & Others Vs. Ahmad Ullah (supra), Queen Empress Vs. Ramzan (supra)** as well as in **Ata-Ullah & another Vs. Azim-Ullah (supra).** The above judgments have been discussed in detail in paras 3254 and 3256 of this judgment. It is only pursuant to the U.P. Act, 1936 or U.P. Act, 1960, for the effective management and superintendence of waqfs in the State of U.P., two Boards were created and for that purpose only, the waqfs were required to be identified whether a Sunni waqf or Shia Waqf.

4541. Be that as it may, before us, firstly, neither any evidence has been placed to show that Mir Baqi in fact existed during the regime of Babar, and, then nothing is there to prove about his religion, what it was. Some observations here and there by some writers and that too on a sheer guess work would

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not be sufficient for this Court to investigate into this factual position which relates back to an alleged event of almost 500 years back. Moreover, we have already held that the building in question has not been proved to have been constructed in 1528 AD by Mir Baqi. Therefore the question, whether it was a Sunni waqf or Shia waqf becomes redundant. Moreover, the rights of Hindus in no manner would be affected whether the building in dispute, if mosque, constitute a 'Sunni Waqf' or 'Shia Waqf' since the consequence, if any, would flow in the same way and would be equal in both the cases.

4542. Our considered opinion is that nature of the waqf whether Sunni or Shia would not cause any impact upon the issues raised by the defendants Hindu parties in these cases. Therefore, for the purpose of suits in question, issue 20(a) (Suit-4) is wholly irrelevant and need not to be answered. **It is ordered accordingly**.

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4543. **Issue 25, 26 (Suit-4)** are as under:

> "*Whether demolition of the disputed structure as claimed by the plaintiff, it can still be called a mosque and if not whether the claim of the plaintiffs is liable to be dismissed as no longer maintainable?"*
>
> *"Whether Muslims can use the open site as mosque to offer prayer when structure which stood thereon has been demolished?"*

4544. Both these issues are interconnected and can be decided together. The submission of the defendants-Hindu parties is that the plaintiffs are the beneficiaries in the sense that they are only the worshippers and in that capacity had filed the suit in question. This right of the plaintiffs (Suit-4) would continue only so long as the disputed structure was there and

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after its demolition since there cannot be a mosque in existence, the plaintiffs lose right of worship for all times to come and therefore, the suit in question is liable to be dismissed as no longer maintainable.

4545. On the contrary, the plaintiffs (Suit-4) have pleaded that once there is a waqf by construction of a mosque, it is not confined only to the building but to land also and therefore, even if the building is subsequently damaged, collapsed or demolished, it would not affect the rights of the Muslims to offer prayer (Namaz) at the site in dispute. Even if it is a open site, its status of mosque (waqf) will continue.

4546. While considering the issues relating to the mosque, we have already observed that a waqf can be created only when the wakif is the owner of the land and once he creates a waqf, the property in its entirety vests in the almighty and the wakif ceases to have any relation with the property thereafter. In the case in hand, we have already held that the building in dispute was constructed as mosque and it was so treated, believed and practiced by all concerned, which included the Hindus also. Moreover, in the absence of any claim as to title, the plaintiffs (Suit-4), have approached this Court on the basis of their interest in the property in dispute derived from possession in the sense of a right to offer Namaz at the disputed site. Such right, in our view, cannot be defeated merely by removing the construction, since the plaintiffs if had a right to possess the land in question, they can continue to maintain their suit irrespective of whether building in dispute has been demolished.

4547. In our view, issues no.25 and 26 (Suit-4) are answered in the manner that as a result of the demolition of disputed structure, Suit-4 of the plaintiffs muslim parties cannot

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be said to be not maintainable. No further aspect needs to be answered. **Issues no.25 and 26 (Suit-4) are answered accordingly.**

4548. **Issue No.3 and 4 (Suit-1)** read as under:

Issue No.3

"Has the plaintiff any right to worship the 'Charan Paduka' and the idols situated in the site in suit."

Issue No.4

"Has the plaintiff the right to have Darshan of the place in suit?"

4549. As we have already noticed, Charan Paduka i.e. Sita Rasoi is in the outer courtyard, there is no occasion to make any declaration in this regard. This is not within the scope of Suit-1. So far as the idol and right of Darshan of the place are concerned, we have already held that place in suit, in so far as it constitute the place of birth of lord Rama can be visited for Darshan and worship by all the Hindus as a matter of right, who believed and aspire for the same. However, it cannot be said that while visiting a place for worship, the defendant State or others who are responsible for management of the place of worship cannot impose restrictions provided they are reasonable and necessary for the benefit and facility of the worshippers as also for the safety, security, cleanliness etc. of the deity.

4550. Therefore, subject to such reasonable restriction, as may be necessary in the given facts and circumstances, we hold that the plaintiff has a right to worship the place in suit to the extent it has been held by this Court constituting the birthplace of lord Rama, and if an idol is also placed in such a place, the same can also be worshipped accordingly. **Both these issues are answered accordingly**.

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4551. Issues relating to reliefs:

4552. Issue No. 16, Suit-4:

"To what relief, if any, are the plaintiffs or any of them, entitled?"

4553. In view of our finding on Issue No. 3 since the suit is barred by limitation, the question of entitlement of any relief to the plaintiff does not arise as the suit itself is liable to be dismissed.

4554. **Issue No. 17, Suit-1:**

"*To what reliefs, if any, is the plaintiff entitled?"*

4555. Since the site in dispute includes part of the land which is believed to be the place of birth of Lord Rama and has been held to be a deity and place of worship of Hindus, the plaintiff's right to worship cannot be doubted. To this extent the plaintiff is entitled for a declaration, which is ordered accordingly. However, it is made clear that such right of the plaintiff is always subject to restrictions which may be found necessary by the competent authority on account of security, safety and maintenance of the place of worship. Since the place of worship is a "Swayambhu deity", whether an idol is kept there or not, would make no difference and it is the matter to be seen by those who are responsible for management of such place, and according to the majority of the worshippers as to how they intend to keep and maintain the place of worship without disturbing its nature as deity. No individual worshipper can insist that such place of worship be maintained in a particular manner. Therefore, except the declaration as above, the plaintiff (Suit-1) is not entitled to any other relief.

4556. **Issue No. 13, Suit-3:**

"*To what relief, if any, is the plaintiff entitled?"*

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4557. In view of our findings in respect of issues no. 2, 3, 4, 9 and 14 the plaintiff, Suit-3, is not entitled to any relief.

4558. **Issue no. 30, Suit-5**:

"To what relief, if any, are plaintiffs or any of them entitled?"

4559. Plaintiffs have sought a declaration that the entire premises described vide Annexures- 1, 2 and 3 belonged to the plaintiffs deities and also a permanent injunction against the defendants prohibiting them from interfering with or raising any objection to or placing any restriction on the construction of the new temple at Sri Ram Janambhumi Ayodhya. We have already held that the area under the central dome of the disputed construction is believed and worshipped by the Hindu people as the place of birth of Lord Rama and they were worshiping thereat since time immemorial.This part of the land constitutes deity, "Sri Ram Janamsthan", and a place of special significance for Hindus. Therefore it has to be treated in a manner where the very right of worship of Hindus of place of birth of Lord Rama is not extinguished or otherwise interfered with. We have simultaneously held that so far as other land within the inner courtyard of the disputed structure is concerned, this open land had been continuously used by members of both the communities for their respective prayers and worship for decades and centuries.

4560. Though the prayer in the suit is worded in the different manner but for complete justice and to avoid multiplicity of litigation as also the adjudication which may settle centuries old dispute finally, we are of the view that we can mould the wordings of the reliefs and can pass an order in respect to respective parties in this case which as such may not

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be covered by the form of relief but is within the scope of the case. In this regard we can rely on the provision under Order VII Rule 7 CPC.

4561. We may also refer to earlier decision of this Court in **Pandohi Ahir Vs. Faruq Khan and another AIR 1954 All. 191** "A" and "B" were co-sharers. "A" sold a land to "C". "B" filed a suit claiming possession of the land stating that he was entitled for exclusive possession of the property as the said land was already in his possession to the exclusion of "A". A Single Judge of this Court held that "A" and "B", being co-sharers, "B" had no right to claim exclusive possession of the plot to the exclusion of "A" and similarly "A" had no right to transfer specific plot to "C" but can transfer his share in plot to "C" and, thereafter "A" and "C" will hold the plot in question as co-sharers. It also observed that if the prayer clause in a plaint is not properly worded, the Court should give due consideration to the decree which should be passed. This part of the observation is referable to Order VII Rule 7 C.P.C. Judgment is relied on to overcome the difficulty in the suits with respect to the relief sought therein. In our view, Order VII Rule 7 can be resorted to by the Court when something can be found within the scope of the relief sought by the plaintiff or where a higher relief is claimed but the Court found that the plaintiff is entitled for a lesser relief but the scope of Order VII Rule 7 cannot be extended by widening the scope of the relief which has actually not been called for or to permit plaintiff to wriggle out of the statutory obstruction like limitation etc. on account of a relief claimed by him which is barred or prohibited or cannot be granted for one or the other reason. The Court will not provide a safe passage to a party by reading the words of the reliefs sought

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by it in a manner which may help it in overcoming the difficulty it otherwise is facing or is bound to face on account of the mandatory provisions of the statute of limitation etc. The scope of Order VII Rule 7 is not to use it as a leverage to help a party to the extent that the other party stands discriminated in an otherwise matter where other party is entitled to get the issue decided in its favour whether it is in respect to limitation, res judicata or similar other statutory provisions. It is the plaintiff who has to be careful enough to find out as to what grievance he actually has, what the real cause of action is and what relief one must claim from the Court. The Court will not provide a comfortable question in the form of rewording of all these things to the extent it may change what has actually been changed by the plaintiff in its entirety.

4562. In order to mould relief under Order VII Rule 7, reliance is placed on a Division Bench decision in **Sardar Ali Raza khan Vs. Sardar Nawazish Ali Khan AIR (30) 1943 Oudh 243**, it was held therein that where more is claimed, the plaintiff may get what is found due to him even though less that what he has claimed. Where more is claimed any smaller amount may be given if found due to the plaintiff. This proposition cannot be doubted but then we may refer to the further observation of the Court that relief not founded on the pleadings should not be granted. It is not proper for a Court to displace the case made by a party in his pleading and to give effect to an entirely new case which that party has not made out in his pleading and which he has expressly disclaimed. But where the substantial matters which constitute the title of all the parties are touched, though obscurely, in the issues, and they have been fully put in evidence and have formed the main

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subject of discussion in the Court, the Court may grant a relief though it may not be founded on the pleadings. Therefore, the mould of relief will depend upon the case and recourse to Order VII Rule 7 can be had only to the extent it does not make violence with the pleadings and reliefs in the suit.

4563. Considering the scope of Order VII Rule 7 C.P.C. in **Smt. Neelawwa Vs. Smt. Shivawwa AIR 1989 Kar. 45**, a Division Bench observed:

> *"The normal rule that relief not founded on the pleadings should not be granted is not without an exception. Where substantial matters constituting the title of all the parities are touched in the issues and have been fully put in evidence the case does not fall within the aforesaid rule. The Court has to look into the substance of the claim in determining the nature of the relief to be granted. Of course, the Court while moulding the relief must take care to see that relief it grants is not inconsistent with the plaintiff's claim, and is based on the same cause of action on which the relief claimed in the suit, that it occasions no prejudice or causes embarrassment to the other side; that it is not larger than the one claimed in the suit, even if the plaintiff is really entitled to it, unless he amends the plaint; that it had not been barred by time on the date of presentation of the plaint."*
>
> *"No doubt the plaintiff has sought for exclusive title and he has not been able to prove his exclusive title; but has been able to prove, that he is entitled to a half share in the suit properties. When a party claims exclusive title to the suit property and is liable to establish that he is entitled to half of the suit property, it will not be unusual for the*

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Court to pass a decree for partition and possession of his half share. In fact such a relief flows from the relief prayed for in the plaint that he is the exclusive owner of the entire property. When a larger relief is claimed and what is established, is not the entire relief claimed in the suit but a part of it, as whole includes a part, larger relief includes smaller relief, and it also arises out of the same cause of action. ... Therefore, even if a separate suit has to be filed for partition, the defendant does not have any sustainable defence. Therefore no prejudice will be caused to the defendant/ respondent if a preliminary decree for partition and separate possession is passed in this suit itself."

4564. Relief of declaration and injunction is discretionary but it is the duty of the Court to administer justice between the parties and not to convert itself into instrument of injustice or an engine of oppression. In **Executive Committee of Vaish Degree College, Shamli and others Vs. Lakshmi Narain (supra)** the Court said:

"27. . . . . the relief of declaration and injunction under the provisions of the Specific Relief Act is purely discretionary and the plaintiff cannot claim it as of right. The relief has to be granted by the court according to sound legal principles and ex debito justitiae. The court has to administer justice between the parties and cannot convert itself into an instrument of injustice or an engine of oppression. In these circumstances, while exercising its discretionary powers the court must keep in mind the well settled principles of justice and fairplay and should exercise the discretion only if the ends of justice require it, for justice is not an object which can be administered in

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vacuum."

4565. In **American Express Bank Ltd. Calcutta Steep Co. (supra)** the Court said:

> *"22. Undoubtedly declaration of the rights or status is one of discretion of the court under Section 34 of the Specific Relief Act, 1963. Equally the grant or refusal of the relief of declaration and injunction under the provision of that Act is discretionary. The plaintiff cannot claim the relief as of right. It has to be granted according to sound principles of law and ex debito justicia. The court cannot convert itself into an instrument of injustice or vehicle of oppression. While exercising its discretionary power, the court must keep in its mind the well settled principles of justice and fair play and the discretion would be exercised keeping in view the ends of justice since justice is the hall mark and it cannot be administered in vacuum. Grant of declaration and injunction relating to commercial transactions tend to aid dishonesty and perfidy. Conversely refusal to grant relief generally encourages candour in business behaviour, facilitates free Row of capital, prompt compliance of covenants, sustained growth of commerce and above all inculcates respect for the efficacy of judicial adjudication. Before granting or refusing to grant of relief of declaration or injunction or both the court must weigh pros and cons in each case, consider the facts and circumstances in their proper perspective and exercise discretion with circumspection to further the ends of justice."*

4566. In the light of the above and considering overall findings of this Court on various issues, following directions and/or declaration, are given which in our view would meet the

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ends of justice:

(i)It is declared that the area covered by the central dome of the three domed structure, i.e., the disputed structure being the deity of Bhagwan Ram Janamsthan and place of birth of Lord Rama as per faith and belief of the Hindus, belong to plaintiffs (Suit-5) and shall not be obstructed or interfered in any manner by the defendants. This area is shown by letters AA BB CC DD in **Appendix 7** to this judgment.

(ii) The area within the inner courtyard denoted by letters B C D L K J H G in Appendix 7 (excluding (i) above) belong to members of both the communities, i.e., Hindus (here plaintiffs, Suit-5) and Muslims since it was being used by both since decades and centuries. It is, however, made clear that for the purpose of share of plaintiffs, Suit-5 under this direction the area which is covered by (i) above shall also be included.

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(iii) The area covered by the structures, namely, Ram Chabutra, (EE FF GG HH in Appendix 7) Sita Rasoi (MM NN OO PP in Appendix 7) and Bhandar (II JJ KK LL in Appendix 7) in the outer courtyard is declared in the share of Nirmohi Akhara (defendant no. 3) and they shall be entitled to possession thereof in the absence of any person with better title.

(iv) The open area within the outer courtyard (A G H J K L E F in Appendix 7) (except that covered by (iii) above) shall be shared by Nirmohi Akhara (defendant no. 3) and plaintiffs (Suit-5) since it has been generally used by the Hindu people for worship at both places.

(iv-a) It is however made clear that the share of muslim parties shall not be less than one third (1/3) of the total area of the premises and if necessary it may be given some area of outer courtyard. It is also made clear that while making partition by metes and bounds, if some minor adjustments are to be made

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with respect to the share of different parties, the affected party may be compensated by allotting the requisite land from the area which is under acquisition of the Government of India.

(v)The land which is available with the Government of India acquired under Ayodhya Act 1993 for providing it to the parties who are successful in the suit for better enjoyment of the property shall be made available to the above concerned parties in such manner so that all the three parties may utilise the area to which they are entitled to, by having separate entry for egress and ingress of the people without disturbing each others rights. For this purpose the concerned parties may approach the Government of India who shall act in accordance with the above directions and also as contained in the judgement of Apex Court in **Dr. Ismail Farooqi (Supra)**.

(vi)A decree, partly preliminary and partly final, to the effect as said above (i to v) is passed. Suit-5 is decreed in part to the above extent. The parties are at liberty to file their suggestions for actual partition of the property in dispute in the manner as directed above by metes and bounds by submitting an application to this effect to the Officer on Special Duty, Ayodhya Bench at Lucknow or the Registrar, Lucknow Bench, Lucknow, as the case may be.

(vii)For a period of three months or unless directed otherwise, whichever is earlier, the parties shall maintain status quo as on today in respect of property in dispute.

4567. Before parting with this matter, we find it necessary to place on record our appreciation to learned counsels, Sri Ravi Shankar Prasad, Sri P.R. Ganpathi Ayer, Sri K.N. Bhat, Senior Advocates; Sri Zafaryab Jilani, Sri M.A. Siddiqui, Sri S.I. Ahamad, Sri C.M. Shukla, Sri S.P. Srivastava, Sri M.M. Pandey,

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Sri R.L. Verma, Sri Tarunjeet Verma, Sri Hari Shankar Jain, Sri Rakesh Pandey, Sri R.K. Srivastava, Sri P.N. Mishra, Amitabh Shukla, Sushri Ranjana Agnihotri, Sri Ajay Kumar Pandey, Sri D.P. Gupta, K.G. Mishra, Sri Fazle Alam, Sri Ved Prakash and Sri Ramakant Srivastava, Advocates who assisted us with ability and it is because of their hard labour in placing voluminous record including religious, historical and other kinds of texts etc., before the Court in a systematic manner that we have been able to decide one of the most delicate, complicated and cumbersome matter involving almost the entire population of the country. The cordial atmosphere, peaceful and amicable behaviour which they have shown in the Court also deserve our commendation.

4568. This was a gigantic and herculean task. The record of the case was so voluminous that without having a few very competent and expert hands we could not have accomplished our task. We place on record commendation to the able and effective assistance provided by Sri Hari Shankar Dube, O.S.D. Ayodhya Bench, Sri Chintamani Ram, Bench Secretary, and Sri Yusuf Hussain, Court's Staff, S/Sri Akhilesh Kumar Nayak, P.S., Awadhesh Kumar, Puneet Srivastava, Kushal Agarwal, Yogendra Kumar Singh, Arvind Kumar Gupta and Alkesh who are the Court's personal staff and worked almost day-night enabling us to complete this matter.

4569. Since the judgment has become extremely bulky and it may be difficult to find different factual and legal aspects, therefore, for convenience we have prepared three indexes, (i) General Index, (ii) Citation; and, (iii) Reference Books which are appended with this judgment as **Appendix Nos. 9, 8 and 10**.

4570. The number of issues are 120 (including sub-issues).

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We, therefore, summarize our findings on different issues, suitwise, as under:

Suit-4

1. Issue 1 (Suit-4) is answered in favour of plaintiffs.

2. Issue 1(a) (Suit-4) is answered in negative. The plaintiffs have failed to prove that the building in dispute was built by Babar or by Mir Baqi.

3. Issues 1(b), 6, 13, 14 and 27 (Suit-4) are answered in affirmative.

4. Issue 1-B(a) (Suit-4) is answered in affirmative and it is held that the fact that the land in dispute entered in the records of the authorities as Nazul plot would not make things different.

5. Issue 1-B(b) (Suit-4) is not answered being irrelevant.

6. Issue 1-B(c) (Suit-4)-It is held that building in question was not exclusively used by the members of muslim community. After 1856-57 outer courtyard was exclusively used by Hindu and inner courtyard had been visited for the purpose of worship by the members of both the communities.

7. Issue 2 (Suit-4) is answered in negative, i.e., against the plaintiffs.

8. Issue 3 (Suit-4) is answered in negative, i.e., against the plaintiffs. It is held that Suit-4 is barred by limitation.

9. Issue 4 (Suit-4)-At least since 1856-57, i.e., after the erection of partition wall the premises in outer courtyard has not been shown to be used/possessed by muslim parties but so far as the inner courtyard is concerned it has been used by both the parties.

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10. Issue 5(a) (Suit-4) is answered against the plaintiffs.

11. Issue 5(b) (Suit-4) is answered in favour of defendants and Hindu parties in general.

12. Issues 5(c), 7(c), 8, 12, 22 (Suit-4), are answered in negative.

13. Issue 5(d) (Suit-4) not pressed by the defendants, hence not answered.

14. Issue 5(e) (Suit-4) is decided in favour of plaintiffs subject to that issue 6 (Suit-3) is also decided in favour of defendants (Suit-3).

15. Issue 5(f) (Suit-4) is answered in negative, i.e., in favour of plaintiffs and against the defendants.

16. Issue 7(a) (Suit-4) is answered in negative. It is held that there is nothing to show that Mahant Raghubar Das filed Suit-1885 on behalf of Janamsthan and whole body of persons interested in Janamsthan.

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17. Issue 7(b) (Suit-4) answered in affirmative, i.e., in favour of plaintiffs (Suit-4).

18. Issue 7(d) (Suit-4) is answered in negative to the extent that there is no admission by Mahant Raghubar Das plaintiff of Suit-1885 about the title of Muslims to the property in dispute or any portion thereof. Consequently, the question of considering its effect does not arise.

19. Issues 10 and 15 (Suit4) are answered in negative, i.e., against the plaintiffs and muslims in general.

20. Issue 11 (Suit-4)-It is held that the place of birth as believed and worshipped by Hindus is the area covered under the central dome of the three domed structure, i.e., the disputed structure in the inner courtyard in the premises in dispute.

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21. Issue 16 (Suit-4)-No relief since the suit is liable to be dismissed being barred by limitation.

22. Issue 17 (Suit-4) answered in negative holding that no valid notification under Section 5(3) of U.P. Act No. 13 of 1936 was issued.

23. Issue 18 (Suit-4)-it is held that the decision of the Apex Court in **Gulam Abbas Vs. State of U.P. and others, AIR 1981 SC 2199** does not affect findings on issue 17 (Suit-4) and on the contrary the same stands supported and strengthened by the said judgment.

24. Issue 19(a) (Suit-4)-It is held that the premises which is believed to be the place of birth of Lord Rama continue to vest in the deity but the Hindu religious structures in the outer courtyard cannot be said to be the property of plaintiffs (Suit-5).

25. Issue 19(b) (Suit-4) is answered in affirmative to the extent that the building was land locked and could not be reached except of passing through the passage of Hindu worship. However, this by itself was of no consequence.

26. Issue 19(c) (Suit-4)-It is held that Hindus were worshipping at the place in dispute before construction of the disputed structure but that would not make any difference to the status of the building in dispute which came to be constructed at the command of the sole monarch having supreme power which cannot be adjudicated by a Court of Law, constituted or formed much after, and according to the law which was not applicable at that time.

27. Issue 19(d) and 19(e) (Suit-4) are answered in favour of the plaintiffs.

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28. Issue 19(f) (Suit-4)-In so far as the first part is concerned, is answered in affirmative. The second part is left unanswered being redundant. In the ultimate result the issue is answered in favour of plaintiffs (Suit-4).

29. Issue 20(a) being irrelevant not answered.

30. Issue 20(b) (Suit-4)-It is held that at the time of attachment of the building there was a Mutawalli, i.e., one Sri Javvad Hussain and in the absence of Mutawalli relief of possession cannot be allowed to plaintiffs who are before the Court in the capacity of worshippers.

31. Issue 21 (Suit-4) decided in negative, i.e., in favour of the plaintiffs. The suit is not bad for non-joinder of deities.

32. Issues 23 and 24 (Suit-4): It is held that neither the Waqf Board is an instrumentality of State nor there is any bar in filing a suit by the Board against the State. It is also not a 'State' under Article 12 of the Constitution and can very well represent the interest of one community without infringing any provision of the Constitution.

33. Issues 25 and 26 (Suit-4)-Held that as a result of demolition of the disputed structure it cannot be said that the suit has rendered not maintainable. Nothing further needs to be answered.

34. Issue 28 (Suit-4)-It is held that plaintiffs have failed to prove their possession over the disputed premises, i.e., outer and inner courtyard including the disputed building ever.

Suit-1

1. Issue 1 (Suit-1)-It is held that the place of birth, as believed and worshipped by Hindus, is the area covered

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under the central dome of the three domed structure, i.e., the disputed structure in the inner courtyard in the premises of dispute.

2. Issue 2 (Suit-1)- It is held that the idols were kept under the central dome of the disputed structure within inner courtyard in the night of 22nd/23rd December, 1949 and prior thereto the same existed in the outer courtyard. Therefore, on 16.01.1950 when Suit-1 was filed the said idol existed in the inner courtyard under the central dome of the disputed structure, i.e., prior to the filing of the suit. So far as the Charan Paduka is concerned, the said premises existed in the outer courtyard. Since Suit-1 is confined only to the inner courtyard, question of existence of Charan Paduka on the site in suit does not arise.

3. Issues 3 and 4 (Suit-1)-It is held that plaintiffs have right to worship. The place in suit to the extent it has been held by this Court to be the birthplace of Lord Rama and if an idol is also placed in such a place the same can also be worshipped, but this is subject to reasonable restrictions like security, safety, maintenance etc.

4. Issues 5(a), 5(c), 5(d), 9(c) and 11(a) (Suit-1) are answered in negative.

5. Issue 5(b) (Suit-1)-Held, the Suit 1885 was decided against Mahant Raghubar Das and he was not granted any relief by the respective courts, and, no more.

6. Issue 6 (Suit-1) is answered in negative. The defendants have failed to prove that the property in dispute was constructed by Shahanshah/Emperor Babar in 1528 AD.

7. Issue 7 (Suit-1) is decided in negative, i.e., against

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the defendants muslim parties.

8. Issue 8 (Suit-1) is answered in negative. Suit is not barred by proviso to Section 42 of Specific Relief Act, 1963.

9. Issue 9 (Suit-1) is decided in favour of plaintiffs (Suit-1).

10. Issue 9(a) (Suit-1) is answered in favour of plaintiffs (Suit-1).

11. Issue 9(b) (Suit-1) is answered against the plaintiffs.

12. Issue 10 (Suit-1) is answered in negative, i.e., in favour of plaintiffs of Suit-1.

13. Issue 11(b) (Suit-1) is answered in affirmative.

14. Issue 12, 13, 15, 16 and 21 (Suit-1) are answered in negative, i.e., in favour of the plaintiffs (Suit-1).

15. Issue 14 (Suit-1) has become redundant after dismissal of Suit No. 25 of 1950 as withdrawn.

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16. Issue 17 (suit-1)-The plaintiffs are declared to have right of worship at the site in dispute including the part of the land which is held by this Court to be the place of birth of Lord Rama according to the faith and belief of Hindus but this right is subject to such restrictions as may be necessary by authorities concerned in regard to law and order, i.e., safety, security and also for the maintenance of place of worship etc. The plaintiffs are not entitled to any other relief.

Suit-3

1. Issue 1 and 16 (Suit-3) are answered in negative.

2. Issue 2, 3, 4 and 9 (Suit-3) are answered in negative, i.e., against the plaintiffs.

3. Issue 5 (Suit-3) is answered in negative. The

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defendants have failed to prove that the property in dispute was constructed by Shahanshah/Emperor Babar in 1528 AD.

4. Issue 6 (Suit-3) is not proved hence answered in negative.

5. Issue 7(a) and 7(b) (Suit-3) are answered in negative, i.e., in favour of plaintiffs and against the defendants in Suit-3.

6. Issue 8 (Suit-3) is decided in negative.

7. Issue 10 (Suit-3) is decided in favour of plaintiff. It is also held that a private defendant cannot raise objection of maintainability of suit for want of notice under Section 80 CPC.

8. Issue 11 and 12 (Suit-3) are decided in negative, i.e., in favour of plaintiffs.

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9. Issue 13 (Suit-3)-The plaintiff is not entitled to any relief in view of the findings in respect of issues 2, 3, 4, 14 and 19.

10. Issue 14 (Suit-3) is answered in affirmative. It is held that the suit as framed is not maintainable.

11. Issue 15 (Suit-3) is answered in affirmative, i.e., in favour of plaintiffs (Suit-3).

12. Issue 17 (Suit-3) is decided in favour of plaintiffs. Nirmohi Akhara is held a Panchayati Math of Ramanandi Sect of Bairagi, is a religious denomination following its religious faith and pursuit according to its own customs. However, its continuance at Ayodhya is found sometime after 1734 AD and not earlier thereto.

Suit-5

1. Issue 1 (Suit-5) is answered in affirmative. Plaintiffs

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1 and 2 both are juridical persons.

2. Issue 2 (Suit-5) is not answered as it is not necessary for the dispute in the case.

3. Issue 3(a) (Suit-5) is answered in affirmative. The idols were installed under the central dome of the disputed building in the early hours of 23rd December, 1949.

4. Issue 3(b), 3(d), 5, 10, 11, 14 and 24 (Suit-5) are answered in affirmative.

5. Issues 3(c), 7, 19, 23 and 28 (Suit-5) are answered in negative.

6. Issue 4 (Suit-5) is answered in negative. The idol in question kept under the Shikhar existed there prior to 6th December, 1992 but not from time immemorial and instead kept thereat in the night of 22nd/23rd December, 1949.

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7. Issue 6 (Suit-5) is decided in negative, i.e., in favour of plaintiffs (Suit-5).

8. Issue 8 (Suit-5) is answered against the defendant no. 3, Nirmohi Akhara.

9. Issue 9 (Suit-5) is answered against the plaintiffs.

10. Issue 13 (Suit-5) is answered in negative, i.e., in favour of plaintiffs. It is held that suit is not barred by limitation.

11. Issue 15 (Suit-5)-It is held that the muslims at least from 1860 and onwards have visited the inner courtyard in the premises in dispute and have offered Namaj thereat. The last Namaj was offered on 16th December, 1949.

12. Issue 16 (Suit-5)-Neither the title of plaintiffs 1 and 2 ever extinguished nor the question of reacquisition thereof ever arose.

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13. Issue 18 (Suit-5) is answered in negative, i.e., against the defendants no. 3, 4 and 5.

14. Issue 20 (Suit-5) is not answered being unnecessary for the dispute in the case in hand.

15. Issue 21 (Suit-5) is answered in negative, i.e., against the defendants no. 4 and 5.

16. Issue 22 (Suit-5)-It is held that the place of birth as believed and worshipped by Hindus is the area covered under the central dome of the three domed structure, i.e., the disputed structure in the inner courtyard in the premises of dispute.

17. Issue 25 (Suit-5) is answered in affirmative. It is held that the judgment dated 30.03.1946 in Suit No. 29 of 1949 is not binding upon the plaintiffs (suit-5).

18. Issues 26 and 27 (Suit-5) are answered in negative, i.e., in favour of plaintiffs (Suit-5).

19. Issue 29 (Suit-5) is answered in negative, i.e., in favour of plaintiffs.

20. Issue 30 (Suit-5)-The suit is partly decreed in the manner the directions are issued in para 4566.

4571. In the result, Suit-1 is partly decreed. Suits 3 and 4 are dismissed. Suit-5 is decreed partly. In the peculiar facts and circumstances of the case the parties shall bear their own costs.

Dated: 30.09.2010

AKN/AK/PS/KA

(As corrected vide Court's order dated 10.12.2010)

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APPENDIX-1

JANAM ASTHÁN.
(TARIKH - A - AYODHAYA, PUBLISHED IN 1902)

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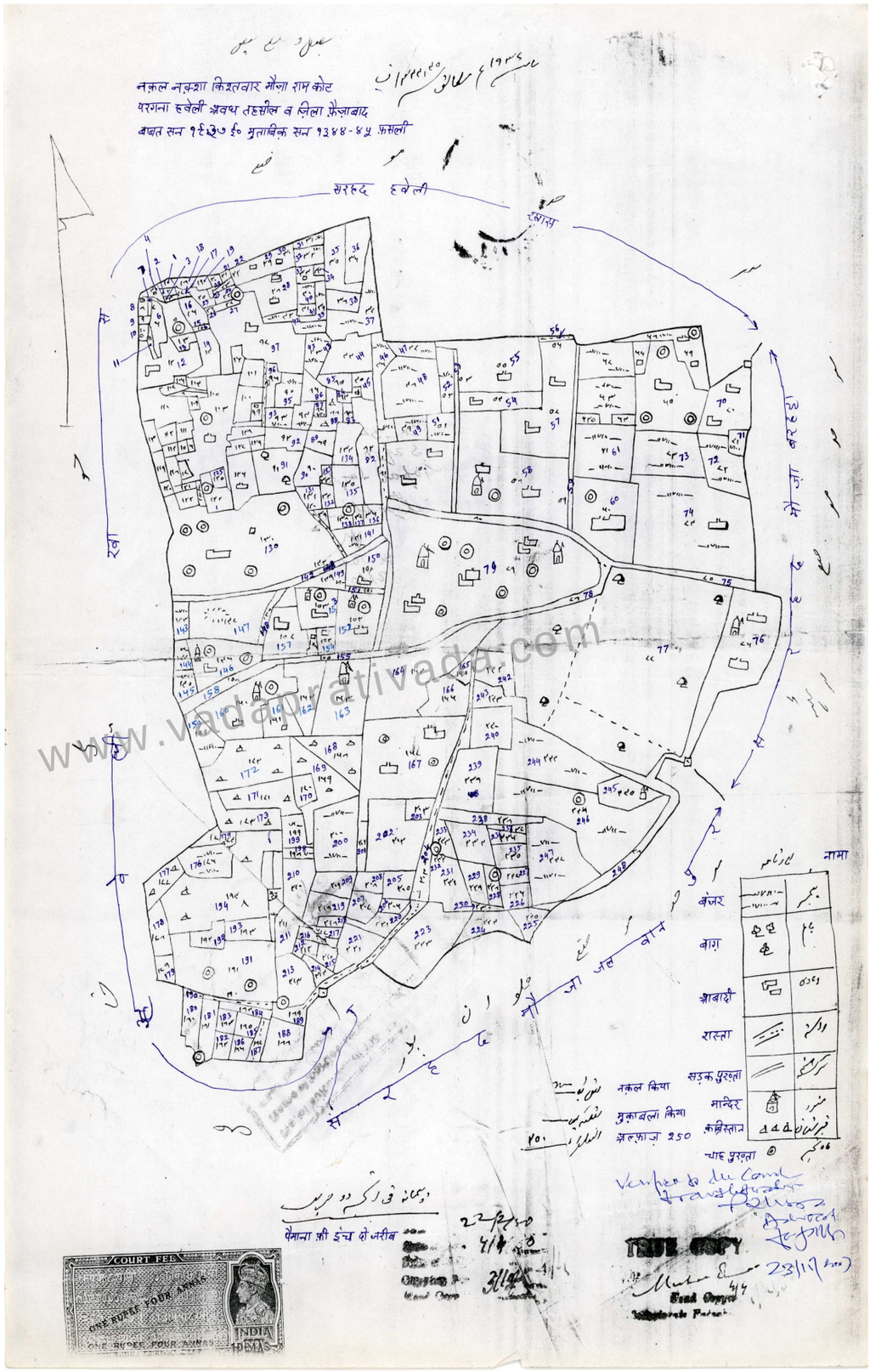
APPENDIX-1A



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APPENDIX-1B

(A fair copy of Appendix 1A, site plan map with Hindi Translation)

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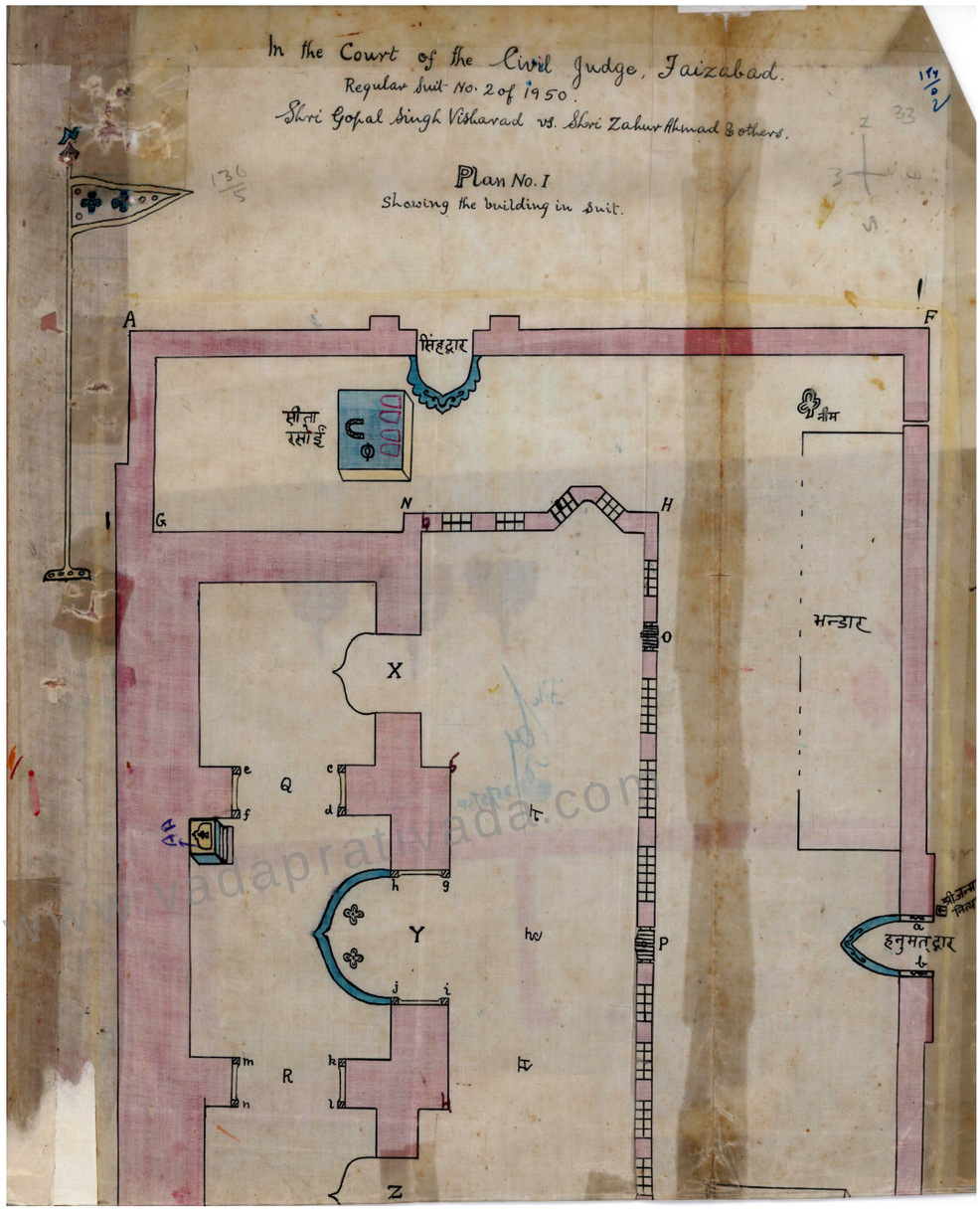
APPENDIX-2



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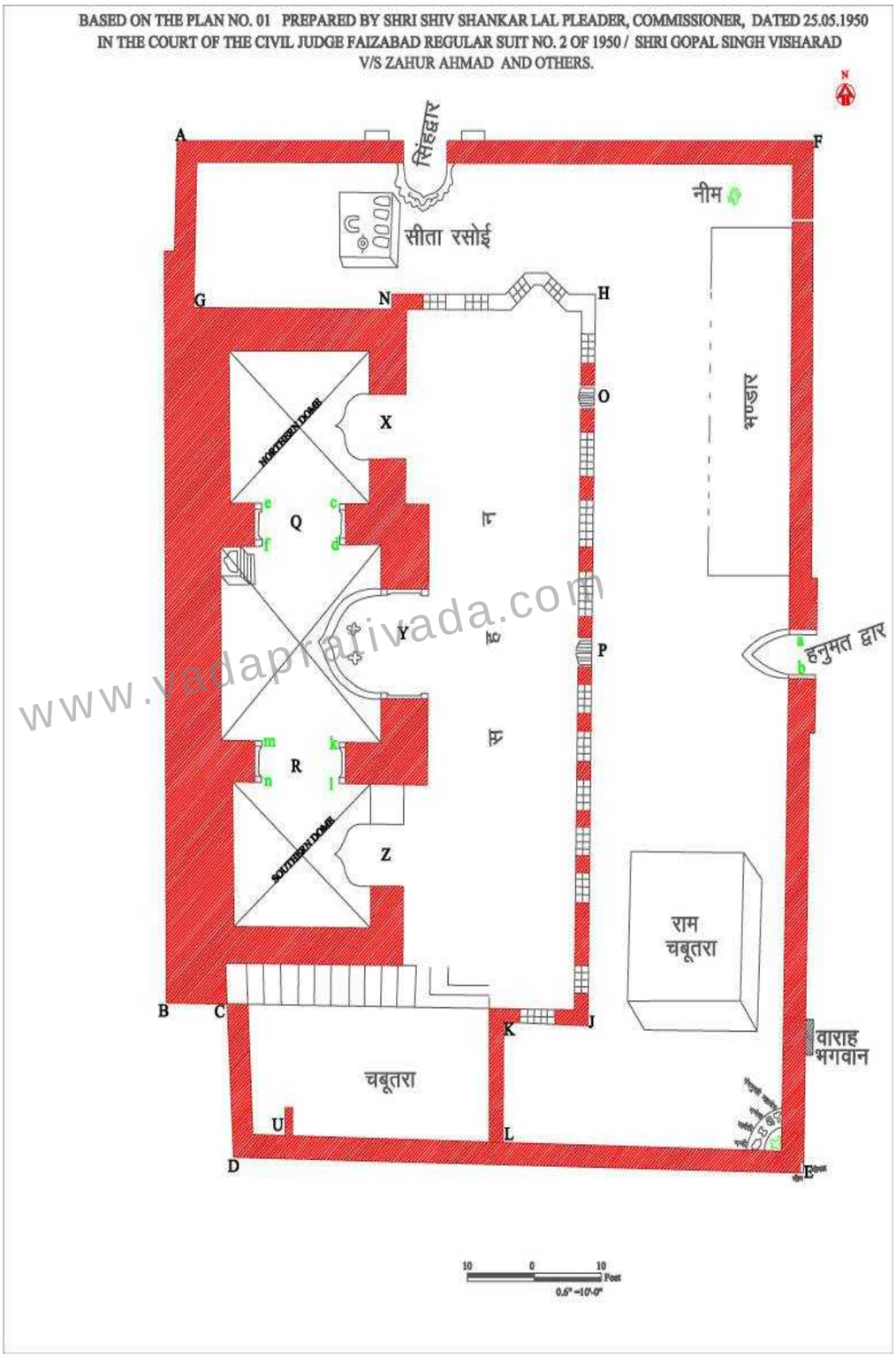
APPENDIX-2A

(A FAIR COPY OF APPENDIX-2)



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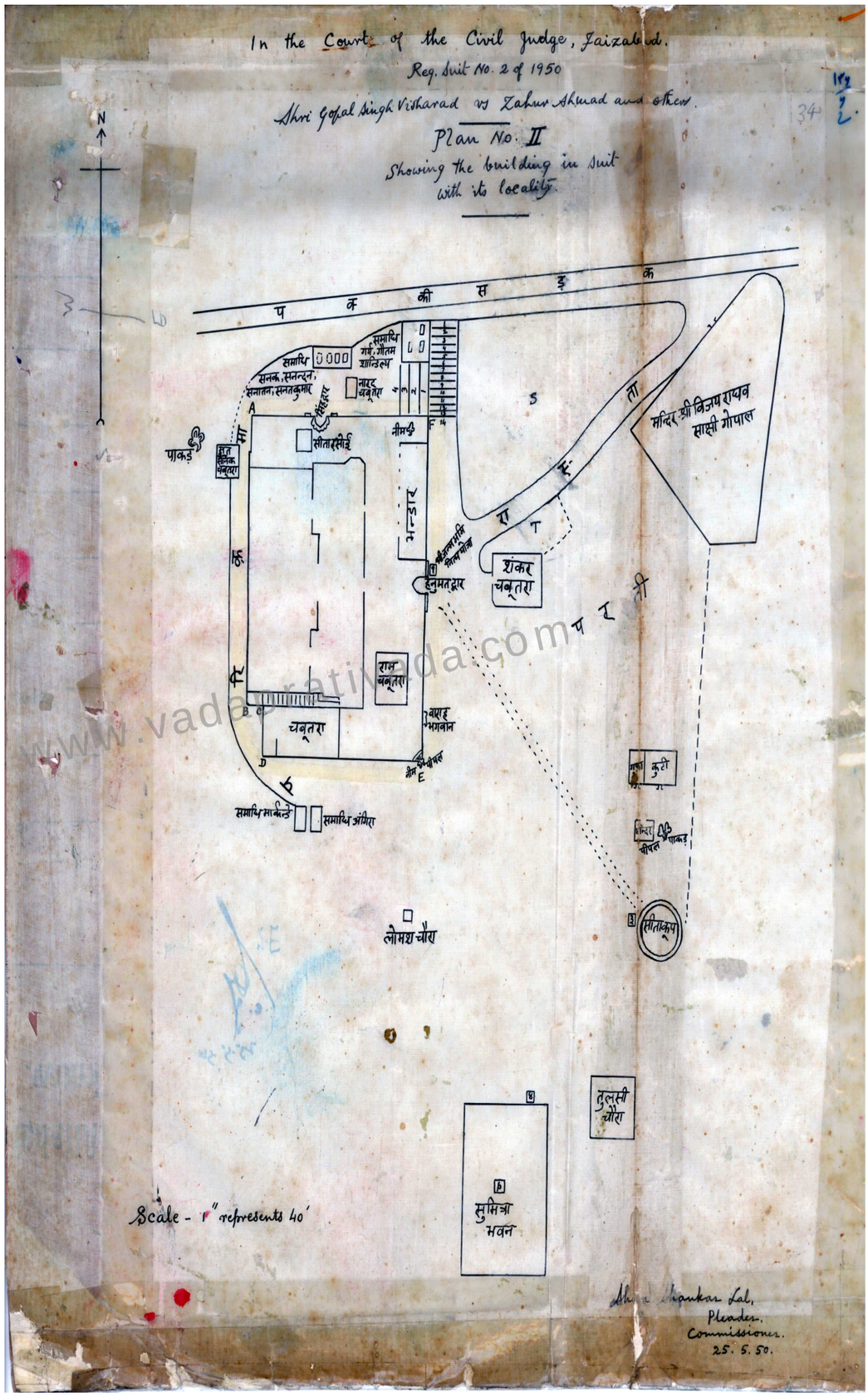
APPENDIX-2B



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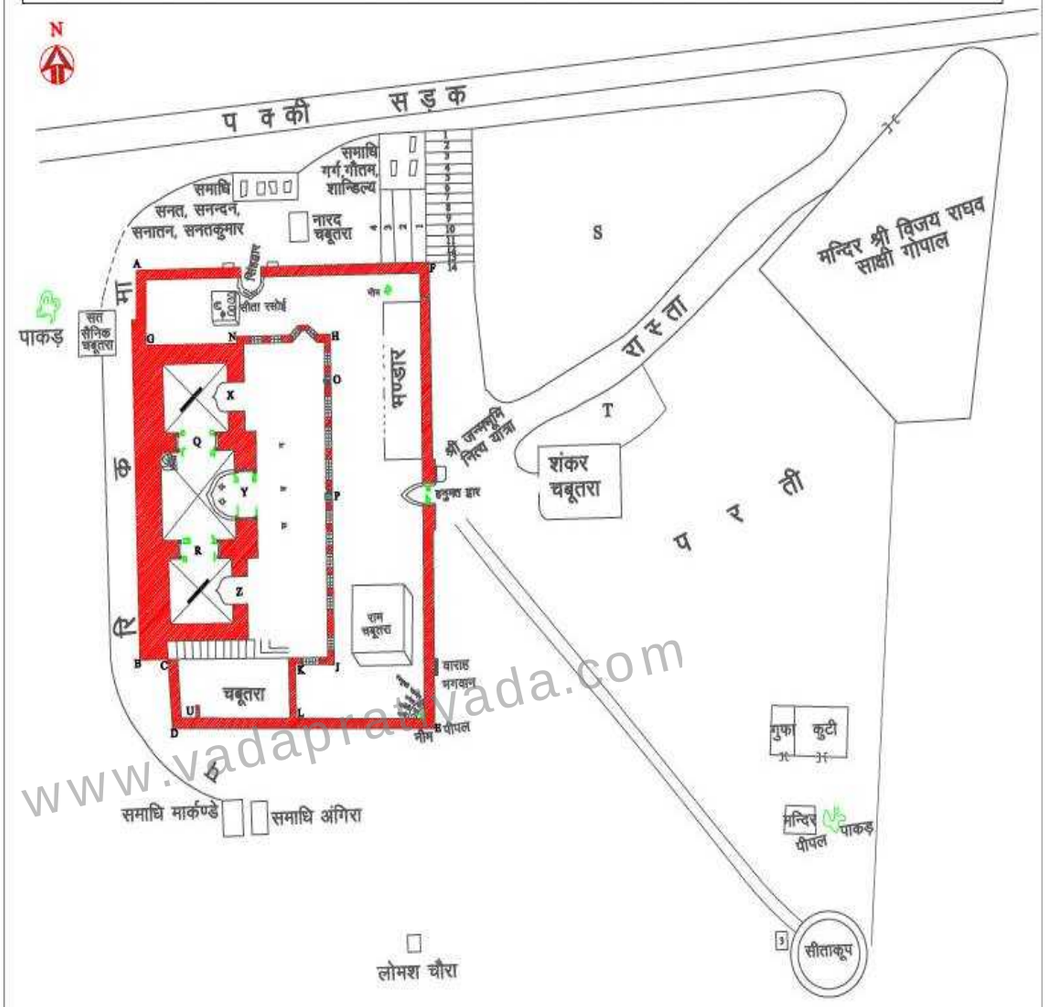
APPENDIX-2C

SHOWING THE BUILDNG IN THE SUIT WITH ITS LOCALITY

BASED ON THE PLAN NO. 01 & PLAN NO. 02, PREPARED BY SHRI SHIV SHANKAR LAL PLEADER, COMMISSIONER, DATED 25.05.1950 IN THE COURT OF THE CIVIL JUDGE FAIZABAD REGULAR SUIT NO. 2 OF 1950 / SHRI GOPAL SINGH VISHARAD V/S ZAHUR AHMAD AND OTHERS.



A,B,C,D,E,F - Building in suit No. 2 of 1950.
G,H,J,K,L,D,C,B - Inner Building.
N,H,J,K, - Walls enclosing Pucca court-
- Yard in front of inner (main)-
- building.
O&P - Iron Bar Gates.
U - Pucca platform having a urinal.
X,Y,Z - Arched Gates.
Q&R - Arches.
S &T - Huts and Dhunis of Sadhus.
a,b,c,d,e,f,g,
h,i,j,k,l,m,n - Kasauti pillars.

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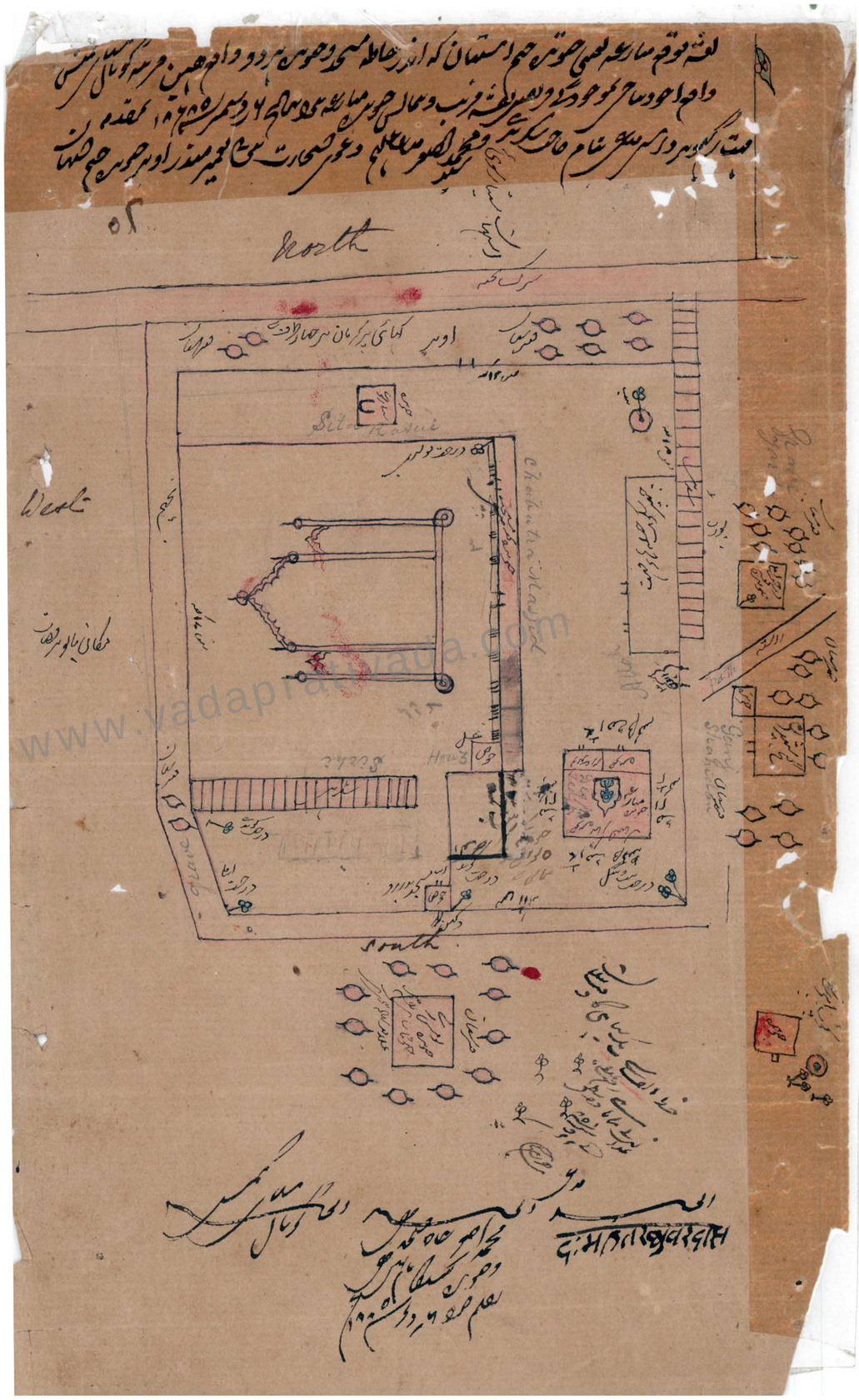
APPENDIX-3



61/280/1885 (EX. A-25 in OOS 1/89)

APPENDIX-3A

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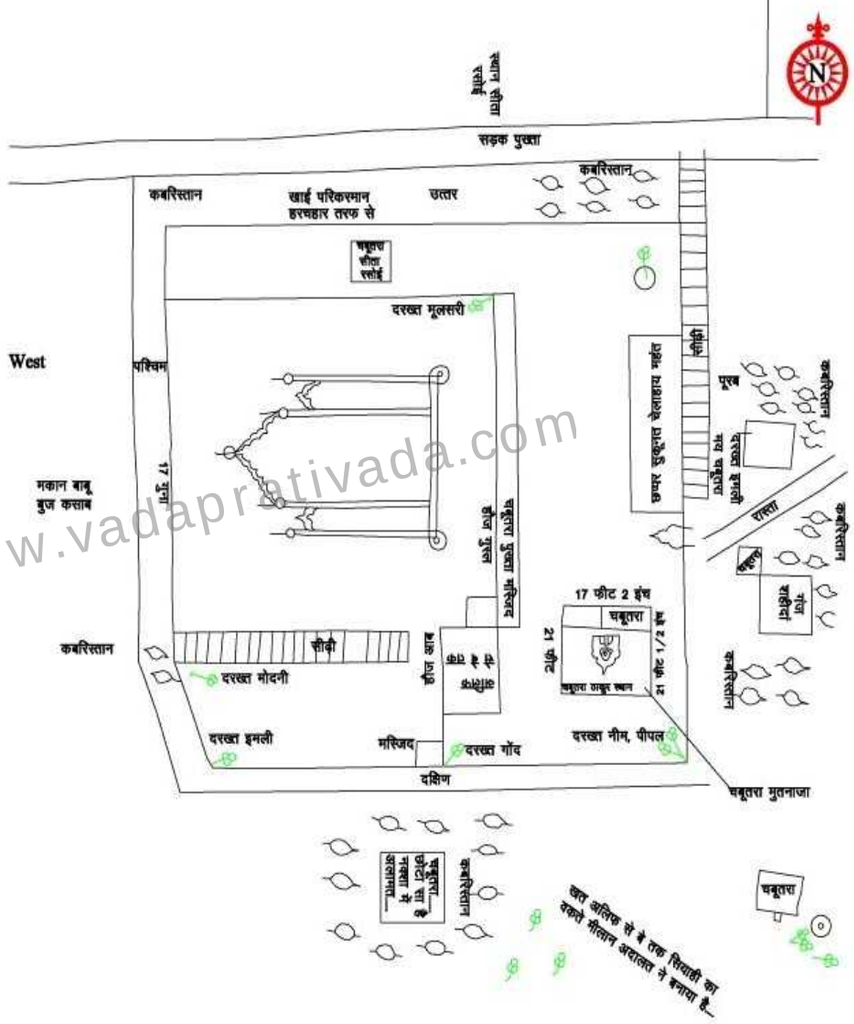
(A Fair of Appendix-3, Site Plan Map with Hindi Translation)

एक्जीविट–ए 25, ओ0ओ0एस0 1/89

नक्शा मौका मुतनाजा यानी चबूतरा जनम स्थान कि अन्दर हाता मस्जिद व चबूतरा हर दो वाके हैं मुरत्तिबा गोपाल सहाय मुंशी वाके अयोध्या जी बमौजूदगी फरीकैन नक्शा मुरूतब व पैमाइशी चबूतरा मुतनांजा हुआ बतारीख 06 दिसम्बर 1885 ई0 बमुकदमा महंत रघुबर दास मुद्दई बनाम साहब सेकरेट्री व सय्यद मोहम्मद असगर मुद्दआअलैहिम दावा इमारत बनवाने तामीर मन्दिर ऊपर चबूतरा जनम स्थान



अलअब्द गोपाल सहाय कमिशनर

अलअब्द मोहम्मद असगर चाह मास्जद है व चबूतरा किसी का नाम नहीं है बक़लम खुद 6 दिसम्बर 1885 ई0

दःमहंतरघुवरदास

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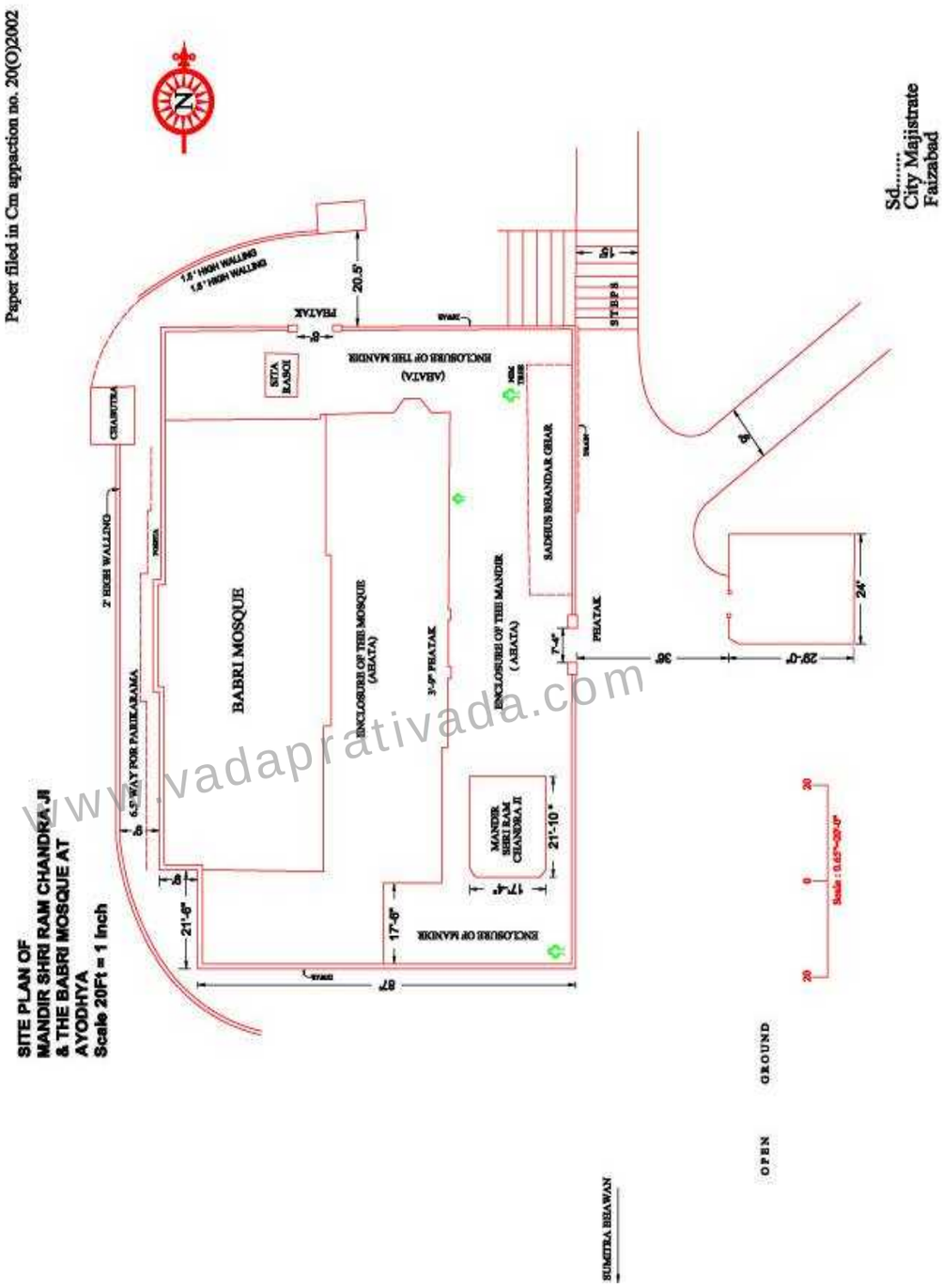
APPENDIX-4



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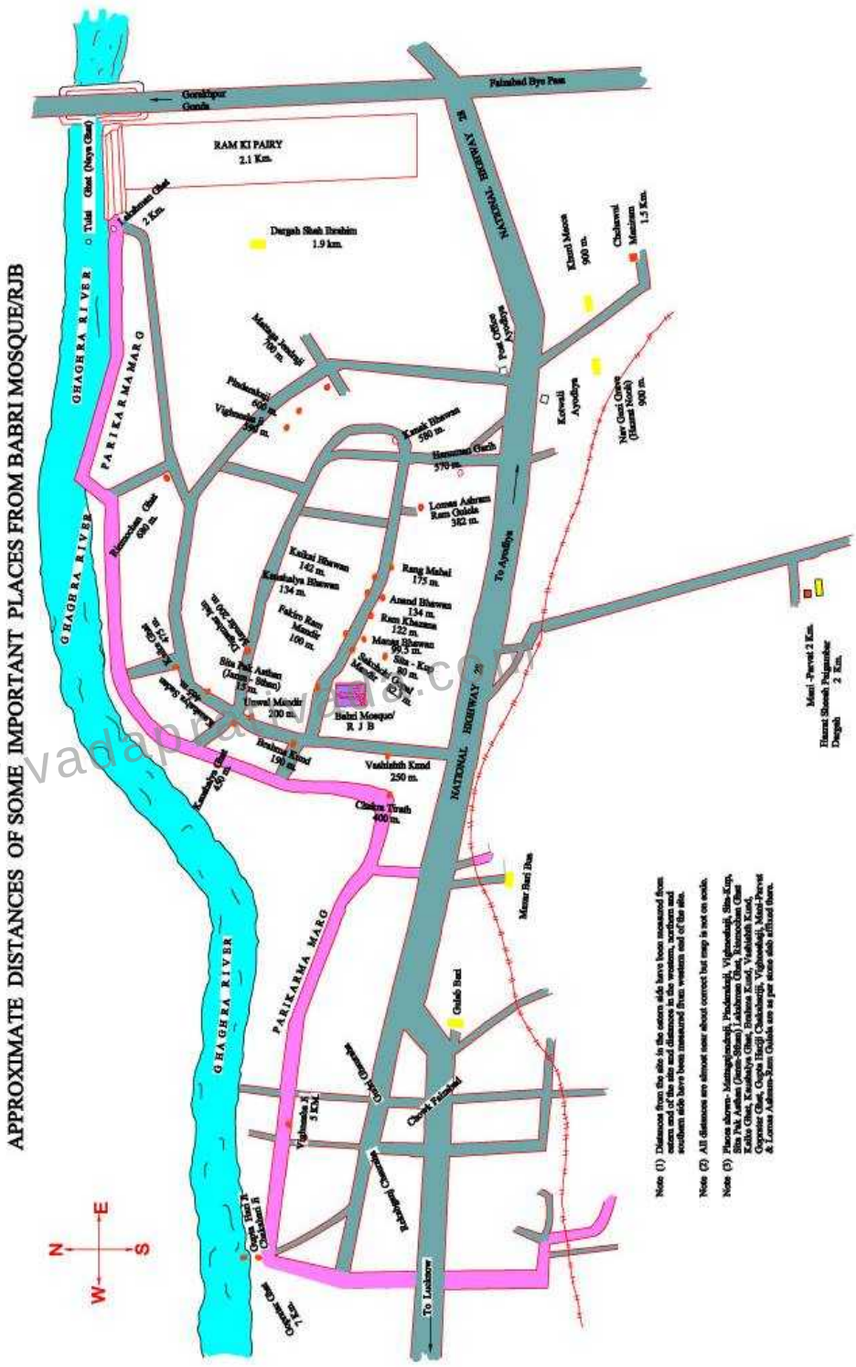
APPENDIX-4A



Note (1) Distances from the ghi in the eastern side have been measured from eastern end of the ghi and distances in the western, northern and southern side have been measured from western end of the ghi.

Note (2) All distances are almost more about correct but map is not on scale.

Note (3) Places shown - Mahanirvani), Hadamandir, Vighneshwar, Sita Kup, Sita Rasoi, Asthan (Janm Sthan), Hanuman Garhi, Kanak Bhawan, Kaika Ghat, Kaushalya Ghat, Brahma Kund, Vashishth Kund, Gopretar Ghat, Gupta Hari ji Chakraharji, Vighneshji, Mani Parvat & Laxman Ashram Gulela are as per stone slab affixed there.

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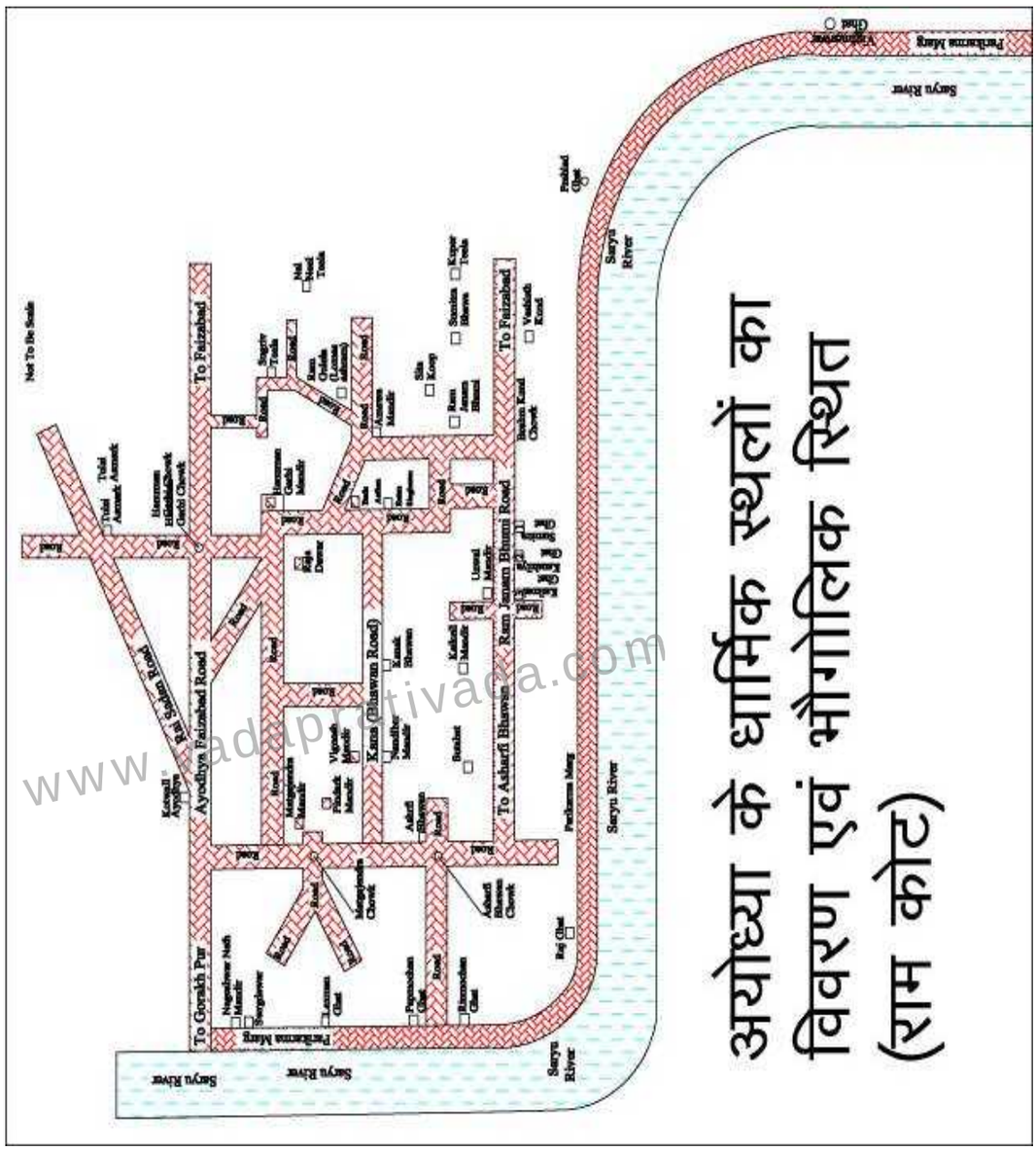
APPENDIX-4B



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APPENDIX-5A

200C1/48

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APPENDIX-5B

200C1/50

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APPENDIX-5C

200C1/51

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APPENDIX-5D

200C1/52

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APPENDIX-5E

200C1/54

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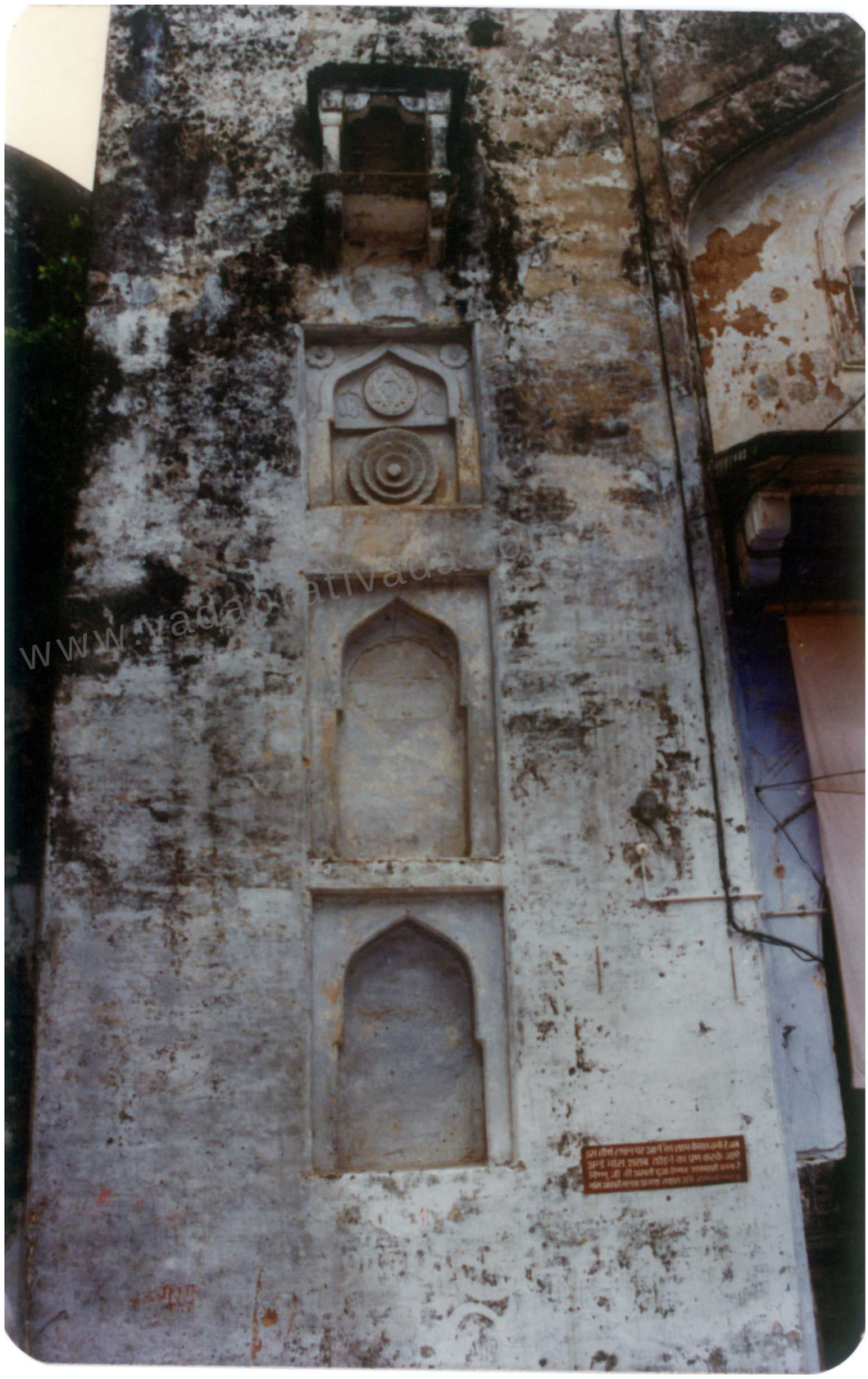
APPENDIX-5F

200C1/87



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APPENDIX-5G

200C1/104

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APPENDIX-5H

200C1/105

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APPENDIX-5 I

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APPENDIX-5 J

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APPENDIX-5L

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200C1/187

APPENDIX-5T

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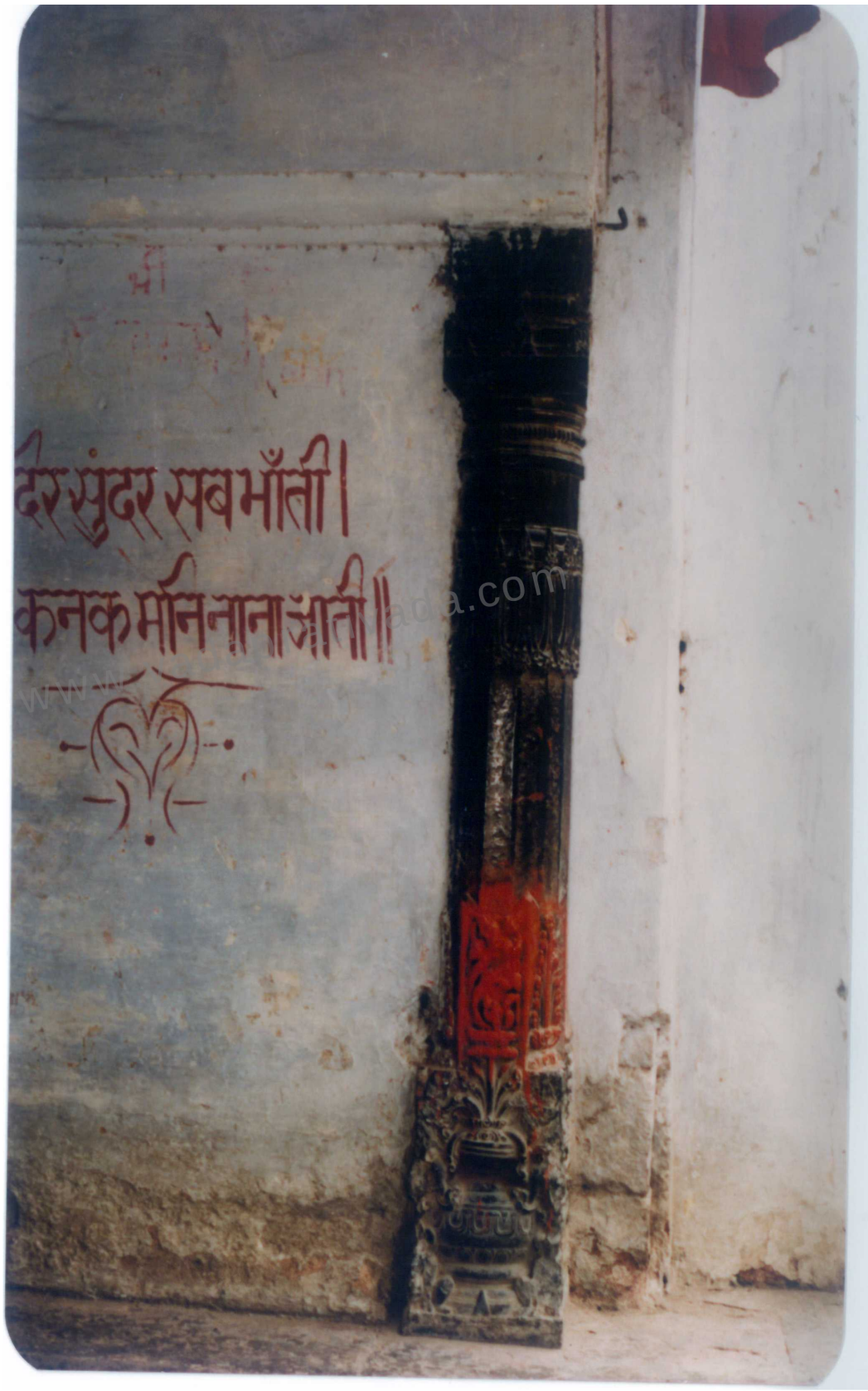
200C1/195



APPENDIX-5U

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200C1/199

APPENDIX-5V

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200C1/200

APPENDIX-5W

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201C1/55

APPENDIX-5X

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APPENDIX-5Y

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201C1/88

APPENDIX-5AA

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201C1/91

APPENDIX-5 BB

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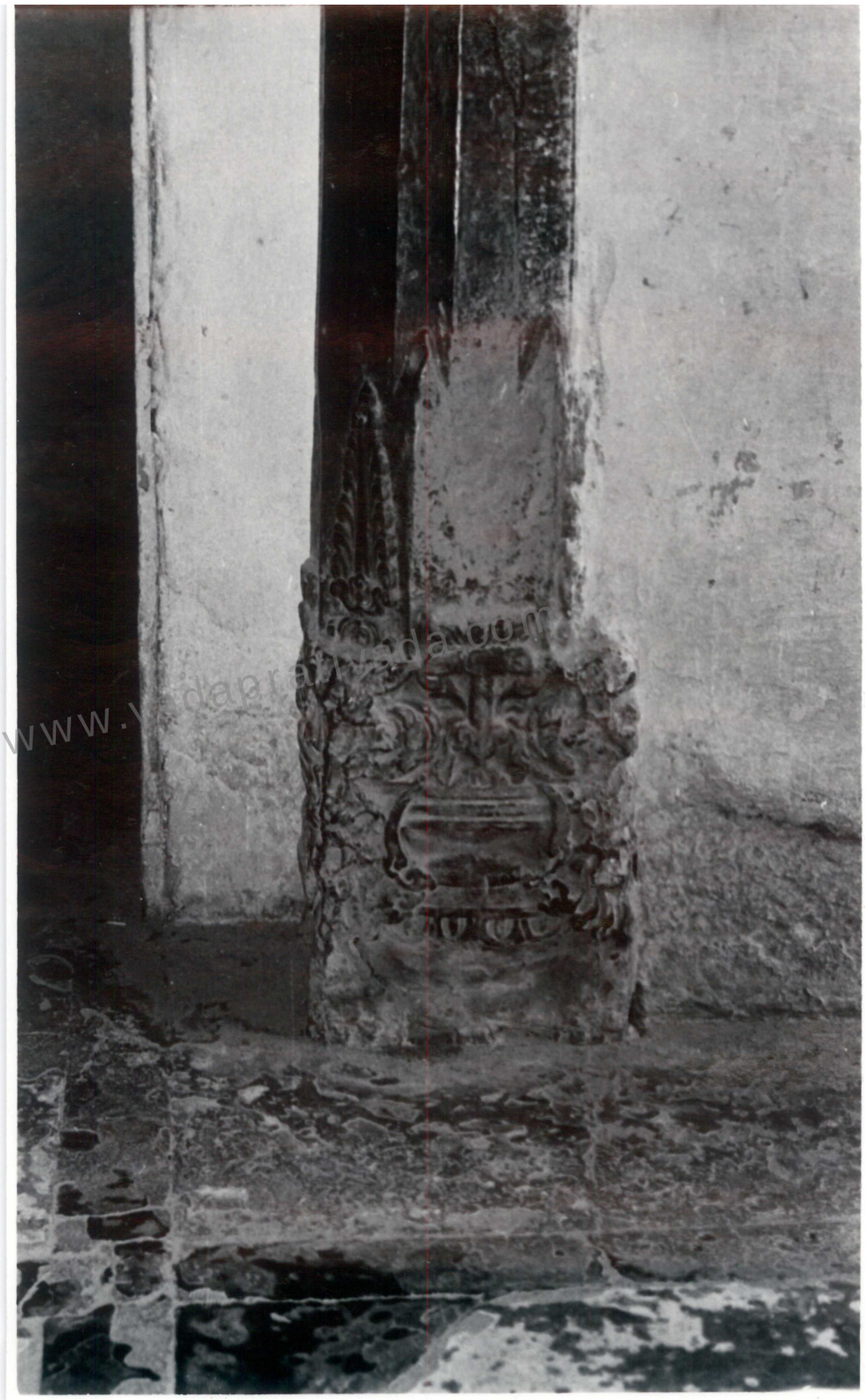
201C1/103



APPENDIX-5CC

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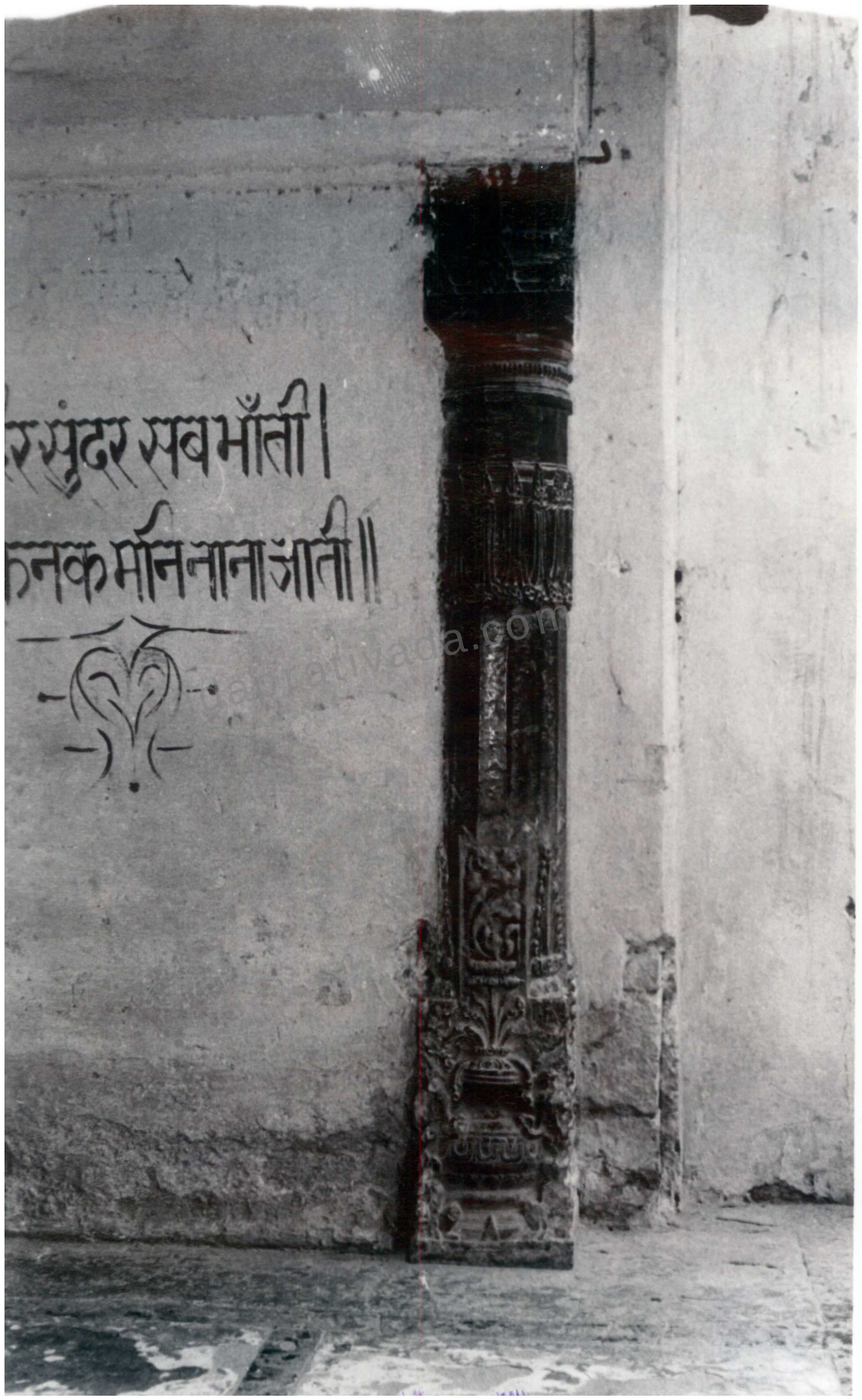

APPENDIX-5DD

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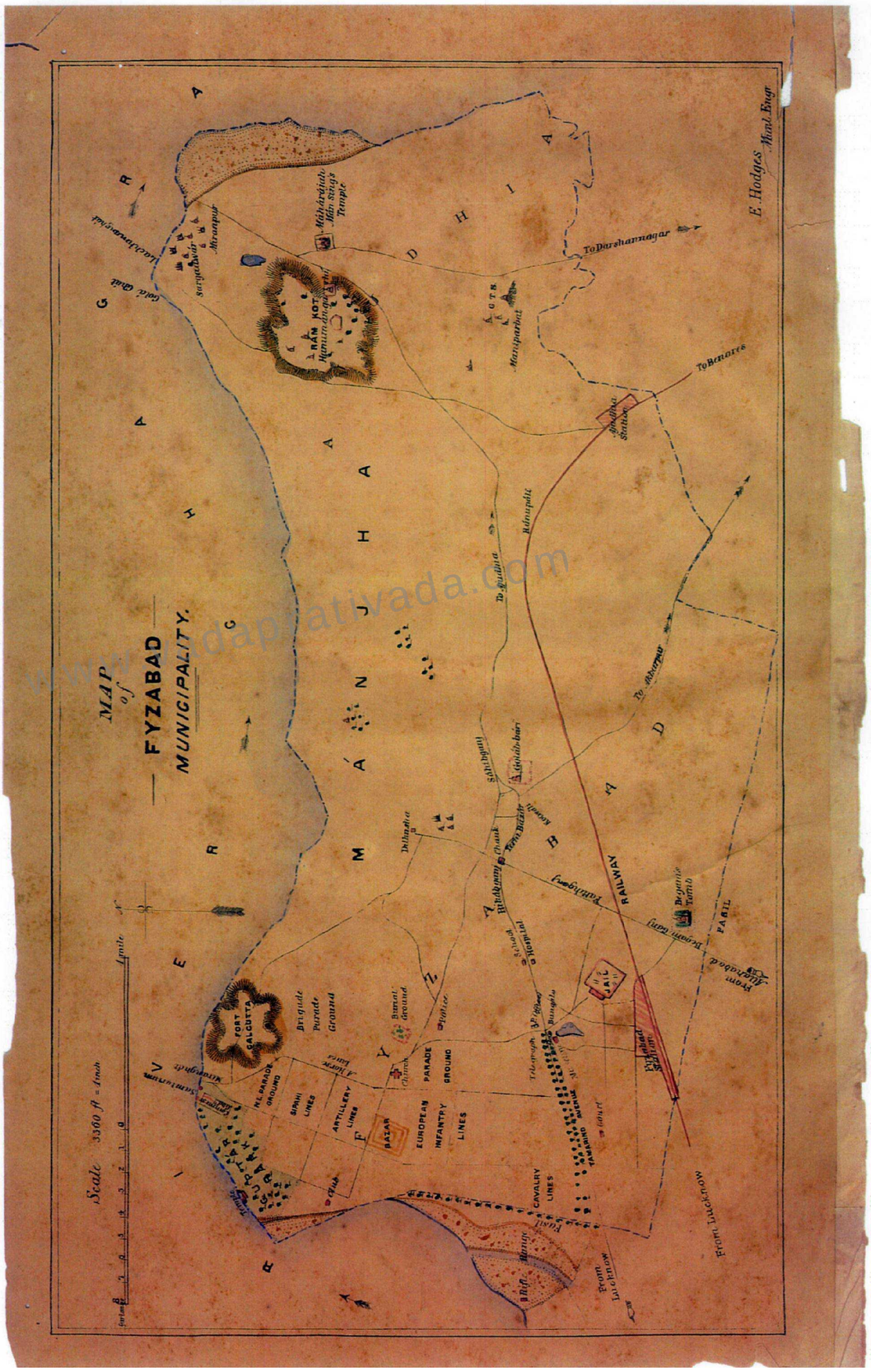
APPENDIX-6

A HISTORICAL SKETCH OF TAHSIL FYZABAD, ZILLAH FYZABAD
By P. CARNEGY (PUBLISHED IN 1887)



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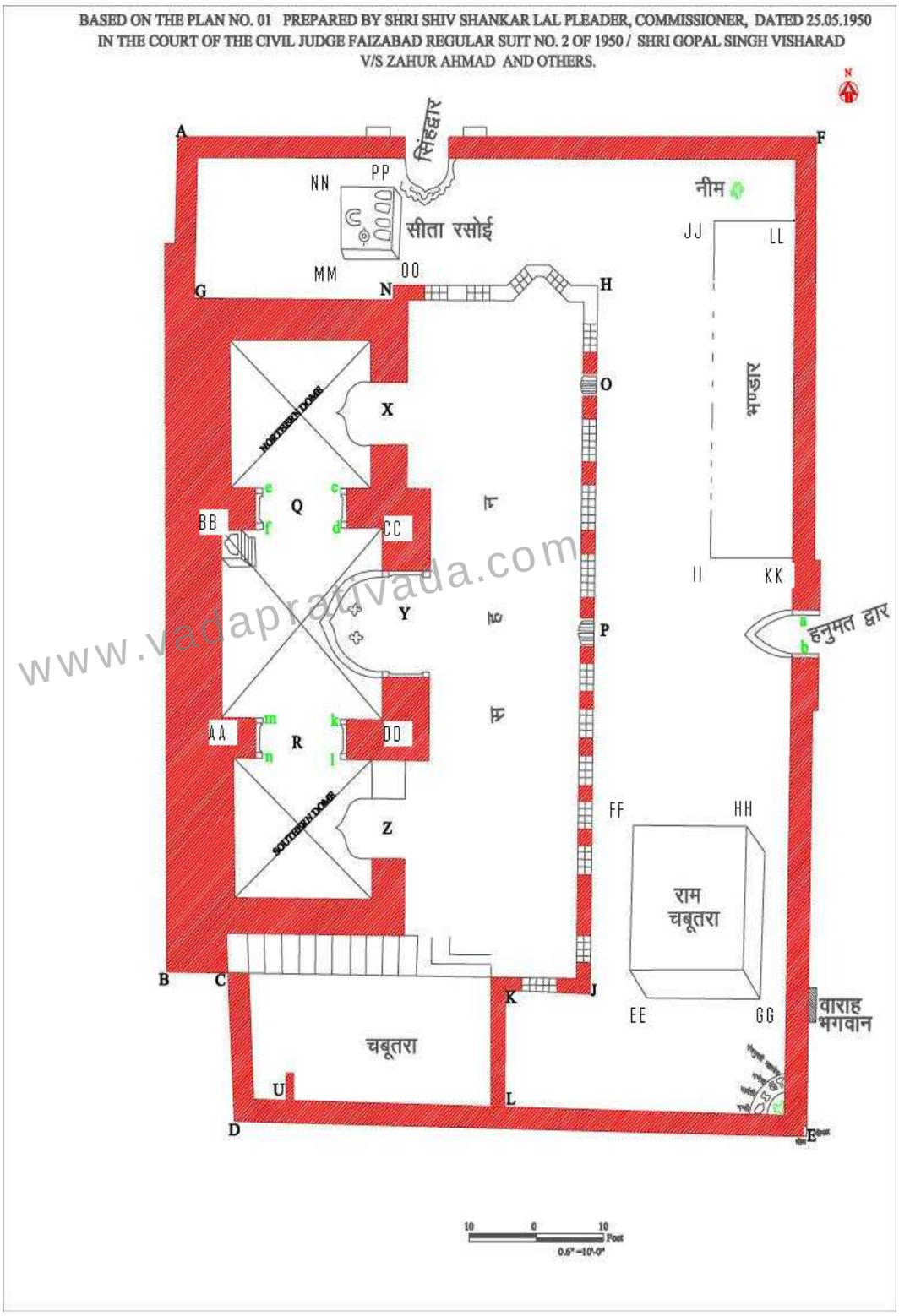
APPENDIX-7

Copy of site plan (Appendix 2) with marking by the Court



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APPENDIX-8

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5.	**O.O.S. No. 1 of 1989**	16.1.1950	**7-18**	**16-25**
6.	Reliefs (Suit-1)		8	17-18
7.	Plaint (Suit-1)		9-11	18-20
8.	W.S. of defendants no. 1 to 5 (Suit-1)	21.2.1950	12-13	20-23
9.	Replication to W.S. of defendants no. 1 to 5 (Suit-1)	5.12.1952	14-15	23-24
10.	W.S. of defendant no. 6 (Suit-1)	25.4.1950	16	24-25
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12.	W.S. of defendant no. 10 (Suit-1)	24.2.1989	18	25
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19.	Replication to W.S. of defendant	8.11.1991	27-28	35-39

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28.	II Addl. W.S. of defendants no. 3 & 4 (Suit-4)	28/29.11.1963	45	59
29.	III Addl. W.S. of defendant no. 3 (Suit-4)	21.8.1995	46-47	59-61
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