

IN THE HON'BLE HIGH COURT OF JUDICATURE AT
ALLAHABAD,
LUCKNOW BENCH, LUCKNOW.

O.O.S. N 04 OF 1989

THE SUNNI CENTRAL BOARD
OF WAQFS AND OTHERS ----- PLAINTIFFS

VERSUS.

GOPAL SINGH VISHARAD
AND OTHERS ----- DEFENDANTS

STATEMENT OF P.W. 26
SYED KALBE JAWWAD

Before Commissioner, Shri Narendra Prasad, Additional
District Judge/Special Duty Officer, High Court, Lucknow

Appointed vide orderd passed on 21-03-2002 by Special
Full Bench of Hon'ble High Court Allahabad, Lucknow
Divisional Bench, Lucknow, in other original suit No. 4/89
(Original suit No. 12/61)

Sunni Central Board of Waqfs,
UP and others Plaintiffs

Versus

Gopal Singh Visharad
and others Defendants

Syed Kalbe Jawwad. aged about 38 years .Son of Late
Maulana Syed Kalbe Abid. Resident – Jauhari Mohallah,
Lucknow, solemnly affairm on oath as under.

My father had been the Immam-e-Juma of Shia's in Lucknow. He had also been the Vice-President of Muslim Personal law Board and the Head of Theology Department in Aligarh Muslim University and Dean in Theology Faculty. My grand father Maulana Kalbe Hussain Sahab too had been the great theologist and religious thinker. My forefather Maulana Kalbe Sadiq alias Aaka Hasan Sahab had been the founder of All India Shia Conference and also the founder of Shia College and Shia Orphanage and the founder of several organizations. The Friday Namaj of Shia's in Lucknow is performed in Asifi Masjid. I too participate in the Friday's Namaj in Asifi Masjid when I remain in Lucknow.

Verified the statement after hearing

Sd/-

Syed Kalbe Jawwad

02.04.2002

Typed by the stenographer in the open court as dictated by me. In continuation for further examination on 03.04.2002.
Witness be present

Sd/-

Narendra Prasad

Commissioner

02.04.2002

Dated 03.04.20002

Before : Commissioner Shri Narendra Prasad, Additional District Judge/Special Duty Officer, High Court, Lucknow.

(In continuation of 02.04.2002 Examination in Chief of P.W. 26, Syed Kalbe Jawwad, begins)

Asifi Masjid was built by Nawab Asif-u-daulla Sahib, and the name Asifi Masjid is after him. There is one more Masjid of Shia Community in Lucknow, which is known as Jumma Masjid. It is in Thakur Ganj. It is of Royal time. The management of Asifi Masjid is in the hands of Hussainabad Trust. My father was the Immam-e-Jumma of this Asafi Masjid.

My forefather Maulana Aaka Hasan Sahab too was a religious thinker (Mujtahid). My early education took place in Lucknow. I got my last degree of Darul Afazil from the Sultan Madaris established in Royal time in Lucknow. Before Sadrul Afazil, I got the Sandul Afazil degree from the same Madrasa. I got my Sadrul Afazil degree in about 1982. After getting education from there I joined Aligarh Muslim University and did my B.A. and M.A. from there. I did my M.A. in Persian and took admission in Ph. D. and passed M.Phil. At that time i.e. in 1986 due to the death of my father, I came back and could not complete my Ph.D. In connection with Theological education, I went to Iran in the end of 1987. I took my admission in Hauza-E-Ilmia in the religious city Kum. I was there up to 2001. I am permanently living in Lucknow for about one year. While I was studying in Kum at that time during Muharrum for 3 months and during Ramzan for 2 monts, I used to come to Lucknow. There are about 400 madrasas in Hauza-E-Ilmia and about 30,000 students are studying in it. The great Ulemas (Scholars) of that place are running it. At present

Kum city is the biggest religious city of Shia community in the world. At present there are 7-8 great Ulemas (Scholars) in Kum who are followed by Shia Muslims of Hindustan. Besides Iran the three great religious scholars of Najaf Ashraf city of Iraq are also followed by Shia Muslims of Hindustan. There is no other country in the world whose religious scholars are followed by Shia Muslims of Hindustan. In Pakistan during last 20 years, there had been no such religious scholar who is followed by the Shia Muslims of Hindustan. If any *alim* of Pakistan issues any *Fatwa*, the Muslims of Hindustan will not accept it; because there is not so great *alim* there. The Shia school is often known as *Fikah Zafaria*; otherwise it is really a *Fikah Islami*. That *Fikah Zafaria* relates to our 6th Imam Hazrat Imam Zafar Sadiq (A.S.).

So far the religious status of Masjid is concerned, there is no basic difference between Shia and Sunni community in my view. There is clear announcement about the religious status and ownership of a Masjid in Quran Sharif "*Innal Maszida Lillah*" which means Masjid is only for Allah. There is no reference of any particular type of building in Quran Sharif or Hadees' Sharif. The Immams did not derive any details about the shape of Masjid from it, except do not give much elegance to Masjids and do not decorate them excessively. According to Shariat it is not necessary that a Masjid must have a minar or mosque and it is not denied too. After the emergence of Mohammad Sahab in Islam the first Masjid which was a little before Madeena is famous by the name Kuba. When he reached Madeena the 'Masjeeda-e-Nabvi' was constructed. I had read in history that when these Masjids were constructed the both were without domes or minars. The pillars were made by digging the trunk of date tree in the earth and the roofs were made from date leaves. There is no mention in

the history about the separate arrangement of water for namaj on both the Masjids. I had seen many Masjids where there is a well near the Masjid. It is in our religion that one must remain clean for namaj. It has no condition that a person may come by washing his hands from home or he may wash then in the Masjid. If there is any graveyard near about the Masjid, the piousness of the Masjid is not changed and it remains a Masjid. A Masjid will always remain a Masjid even if persons belonging to other community may start offering prayers in it or place idols in it. Even after demolishing the building of a Masjid the land that is there is also a Masjid. It is said in our religion that beneath the earth and above in the space the area will be treated as a part of Masjid. If in a part of any Masjid the pictures of other religions are placed even then the piousness of the Masjid remains unchanged. About the religious status of a Masjid, there is a separate chapter in the religious books known as 'Ehkame Masjid'. To my knowledge none of the Shia Muslims or any person of that community had said nor I had information that the Shia Muslims had bandoned their right over Babri Masjid or they want to leave their right. I had heard about Babri Masjid but could not get achance to go there. I am not acquainted with any person with the name Maulana Syed Mohammad Naki Sahab a Shia alim in Pakistan. I do not remember whether any Shia alim of this name had been there 14-15 years ago. I am acquainted with the name of Choudhary Sibte Mohd. Naqbi Sahab. He was one of the good friends of my father. He is a good scholar and is a teacher in Sultanul Madaris. I know Prince Anjum Kadar. His status was not that of Shia's religious scholar but, he was a social reformer. He was not among the Shia's guides because Ulemas alone are the guides in our community. The Shias only obey the guidance given by Ulemas in U.P. or Hindustan.

I know that the suit to which I am a witness is connected with Babri Masjid. The information, which I had gathered from newspapers and books, is that the Babri Masjid was of the time of Babar and it was built by Meer Baki under the orders of Babar. So far I have the information that namaj had been performed in it till 1949.

(Cross-examination on behalf of Nirmohi Akhara, Defendant No. 3 by Shri Ramjeet Lal Verma begins

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Question: Whether the reason of emergence of Shia and Sunni communities had been political? (The learned Advocate of the plaintiff Shri Zafaryab Jalani raised objection that the question is totally irrelevant, political and malafide. Efforts are being made to hurt the feelings of entire Muslim community; therefore it should not be permitted).

Answer: I do not want to reply it, as it has no relevance with the suit.

Question: When did Shia and Sunni communities separated from each other?

Answer: The word Shia means a follower and a follower of anybody can be called a Shia. The followers of Hazrat Ali Saheb were called shiane ali and in his status was Hazrat Mavia whose followers were call Shiane Mavia and the followers of Hazarat Usman were called Shiane Usman.

Question: The Shia and Sunni communities came into existence after the death of Hazarat Mohd. Sahab, over the dispute of his heritage regarding Khalifa.

(On this question, the learned Advocate of Plaintiffs, Shri Zafaryab Jilani raised objection that the question is fully irrelevant and not concerned with the suit and is being raised to hurt the sentiments of those who follow Islam).

(In reply to the objection the learned advocate Shri Ranjit Lal verma cross examining said that it is fully relevant as during Cross-examination the witness said about Shias and it is necessary to know the information about the origin of Shia community and it is within the limit of Cross-examination.)

(The learned Advocate of Plaintiff Shri Zafaryab Jalani again said that it is totally wrong to say that there is any case pending before the court regarding dispute over the origin of Shia community or the so called differences between the Shia and Sunni communities and the witness has come to give evidence on the religious status of a Masjid and the concept of Masjid to Shia community. He is not giving any evidence over the history of Shia and Sunni religion, as such the question was asked by the learned advocate cross examining only to hurt the feelings of Muslims and will be called an objectionable blame over the Islamic religion therefore, he should not be permitted to ask such a question from the witness and nor the witness can be compelled to answer such question.)

Answer: There are such sects in every religion. Among Christians there are Catholic and Protestant and many more sects, even though they all are Christians. Sikhs too have many sects but they are Sikhs. Similarly Hindus have many sects but they all are called Hindus. As in Bihar and U.P. cow is worshiped but in Bengal and Madras the

flesh of cow is eaten, whereas they both are Hindus.

The difference between Shia and Sunni is that after Rasool we accept 12 Immams whereas Sunnis after Hazarat Rasool Accept 4 Khalifas. There is slight difference in the method of performing namaj between the both. Except this there is no difference in the construction of Masjid or in the methods of offering prayers. There is no such basic difference. In Hindustan, Islam came in the very beginning. So far as I recollect, during the time of Hazarat Ali Sahab, who was the first Immam of Shias and the 4th Khalifa of Sunnis. Muslims in large number came to Sindh. I do not know about the Jamiatul Hidayah Research Centre, Jaipur. All over Hindustan there are about 100 madrasas of Shia community. So far I have the knowledge, I do not know the number of Sunni Muslim madrasas in Hindustan. I had never participated in the procession of old Boys Association on Aligarh University. I had not got information from any book pulished by any Muslim organization or Government about the number of madrasas in India. I had not seen in any newspaper that there are 1 lac 30 thousand madrasas in India. In Kum city of Iran, there are 400 madrasas. This I came to know from newspaper and from the people. Similarly from the statement of a principal or a responsible person published in the newspaper I came to know that the number of students in those madrasas are about 30 thousands. The education regarding Islam is imparted in the madrasas of Iran and India. *Dini Taleem* means religious education. This education is given only for good deeds and for happy life so that one should be good for self and also do good for society.

It is the convention that the Immams of Shias and the Immams of Sunnis are separate. My father became the Imam-e-Jumma of Shias from 1963 after the death of his father. My father in Lucknow had done the duties of Imams in all the Shia Masjids. I do not know the number of Shia Masjids in Lucknow. My father was appointed in Asifi Masjid by the Imam Hussainabad Trust. He after receiving invitations from the Mutvallis or managers (Muntazim) of other Masjids, used to go there in his particular capacity. Then said my forefather during his life time made my father as Imam in the capacity of Deputy and wrote in his will that he will perform the duties of Imam after his death. That is why with the consent of Hussainabad Trust my father became Imam.

In Lucknow most of the Masjids of Shias and Sunnis are separate. I had no idea that my father was ever called to perform the duties of Imam in those Masjids. I cannot tell exactly which of the Masjid in Lucknow is oldest one where my father used to visit for performing the duties of Imam. I did not collect this information even from my father. There may be a Masjid older than Asifi Masjid in Lucknow, where my father would have performed the duties of Immam. I had no full knowledge of the fact that the Shia Masjids where my father had performed the duties of Immam are registered with the Shia Waqfs Board or not. Here none of the Immams receive salary from Waqfs Board. I do not know properly, but there might have been the Masjid of Nawabs older than Asifi Masjid. So far I know the capital of Saadat Ali the forefather of Nawab Asif-u-daula was Faizabad. I do not know whether Nawab Suza-u-daula established Faizabad city or not. In Lucknow once I performed namaj in Teele Wali Masjid of sunnis. The first *namaje janaja* of my father was performed in Asifi Masjid and his second was in Teela Wali Masjid. Faz-ul-Rehman

Sabab performed the duties of Immam in it and I too had participated in that namaj. To my knowledge Faz-ul-Rahman was the Immam of Teele Wali Masjid at that time and he is still there. Teele Wali Masjid is of the time of Aurangzeb and it is older than Asifi Masjid. I am not confident but the Teele wali Masjid may have been registered with the Sunni Waqfs Board. In Aligarh University the Theological Department for Sunni community and the Theological Department for Shia community are two different Departments but the faculty is one. The difference between Sunni and Shia theology cannot be described in one line, book will have to be gone through to describe it. The fundamental base of both is one, because what the base Sunnis had we too have the same base. My father had been the founder De[puty Chairman of Personal Law Board. When it was constituted, that I do not know. Both the people from Shia and Sunni communities were in the Personnal law Board. Whatever the proposals Personal Law Board proposed both the communities had accepted it. So far I recollect my father was the Dean of Theological Faculty perhaps in 1980. both Shia and Sunni Departments were under this faculty. As far as I remember my father was born in 1924. I had heard a number of speeches of my father in which he told about the Babri Masjid (disputed structure). I had not thought it proper to ask my father separately about Babri Masjid because everything had been covered in his speech. The disputed increased when the lock was opened. *Mujtahad* means one who can issue *Fatwa*. Most of the questions are related to *Fatwas* but the great scholars, who are called *Marja* in our community, write *Fatwa* in the books also and one who follows them, that is, his followers come to know what *Fatwa* has been given. My grandfather wrote a book entitled 'Hidayetul Awam'. It contains *Fatwas*, and it is available with us. I had heard from my father about the *Fatwas* issued by my

grandfather separately. I had heard from my father that he often used to issue *Fatwas*, but what was asked and what were given in those *Fatwas*, that I had not asked. The earlier name of All India Shia Conference was Anjumane Sadsoodoor Imamia and it was established in 1907. The Personal Law Board came in existence in Nineteen-seventies. When did Anjumane Sadsoodoor Immamia change as All India Shia Conference that I do not know. Sunnis alone were the members of Anjumane Sadsoor Immamia. Its foudor was my forefather Maulana Aka Sahab. Shia College means, it has been established by Shia people. There is an Assiciation after the name of Sunni people. I do not remember when Shia Orphanage was established. Out of the organizations established by my forefather only All India Shia Conference, Shia College and Shia Orphahage are now in existence and the rest are not in existence. I am a member of Board of Trustees of Shia College. I am one of the patrons of the committee appointed by Shia Waqf Board for Shia Orphanage. As after the death of my father I had gone to Iran, and even if any post had been offered in theses associations because of that I could not become the office bearer. What ever I had said about offer it is in general and not in connection with these three organizations.

I do not know about the management of Teele wali Masjid. During my grandfather's time in his absence my father used to go to Asifi Masjid for performing the Friday Namaj. So far I knew in Lucknow all the Shia Waqfs of the Hussainabad Trust had been included in Shia Waqfs Board in written and it has not been physically included so far. Husainabd Trust was established during the time of Emperors. I do not know except Lucknow where the assets of Hussainabad Trust are lying. The Immambaras, Masjids and the properties of emperors were waqfed with the Hussainabad Allied Trust. By emperors, here we mean the:

Nawabs of Avadh, who were earlier under the Mughal rules and later themselves turned emperor. There were Nawabs in Lucknow during Mughal regime and Nawab means Deputy. I do not know when this practice started. This practice remained in vogue till Bahadur Shah Zafar's time, this I do not know. I do not know exactly when the Nawab of Avadh announced himself as Emperor.

Sultanul Madaris is at the Medical College crossing. It is known as Shahi madaris. I do not know whether it is from the time of Nawabs or it is from the time when Nawabs declared themselves as Emperors. I got basic knowledge of Urdu, Arabic and Persian from that Madrasa. At that time my father taught me many things. I studied Hindi and English too. The first degree I got from Madrasa is known as Sandul Afazil and the last degree is called Sadrul Afazil. I had studied Quran Sharif by the time I got my last degree. I had read the books of Hadees and commentary, also Usoole Kafee, which is the most important book of Shia people. I had gone through it in the same madrasa. It has been written by Mohammad Yakub Qullaini Sahab and it is about 1100-1200 year old. Except these books I had not read any other books at that time. This book of Janab Yakub Qullaini is the collection of Hadees. I had completed my B.A. from Aligarh University with English, Sociology and Urdu and M.A. in Persian. At that time I had studied Islamic Law and Hadees. By that time I had acquired knowledge about the famous Masjids in Hindustan. I had heard the name of Bhopal's Tazul Masjid, Jama Masjid in Delhi, and Masjid in Agra built by Noor Jahan, as I heard about the Babri Masjid etc. of that time. Apart from these Masjids the Atala Masjid in Jaunpur and Upperkot Masjid in Aligarh are very famous Masjids. The name of the Masjids I had referred above, I had seen all of them except Babri Masjid. I did not think necessary to read about them. The

mention of Babri Masjid cannot be in the Hadees because it is 1300-1400 years old whereas Babri Masjid is 400 years old. I had not read about Masjids in my course books. I had seen the Tazul Masjid in Bhopal. I have gone there in my student life. The old Masjid was demolished and the new was under the construction at that time. Minars were also being constructed. I had neither seen any photograph of the demolished Masjid nor any booklet thereon. I had read namaj in this Masjid in Bhopal. I think it was the biggest Masjid in the world and it had the arrangements of water and all other things. The Jama Masjid of Delhi had a mosque and also the minars. The Upperkot Masjid has a mosque but not the minars. Delhi's Jama Masjid was built by Shahjahan. The Masjid in Agra built by Noorjahan contains mosque and minars but it is very big Masjid. I had passed near the Atala Masjid in Jaunpur but I do not know whether it has domes or minars or not. I do not know who build the Masjid Atala. The Upperkot Masjid in Aligarh is very old. I had seen the Masjid from near but not entered into it. I will not be in a position to tell, who built this Masjid. Till I did my M.A., I could not find from the books and also from the people, which is the oldest Masjid in Hindustan. If I had read that I had forgotten. I had never tried to know even till today which was the first Masjid built in Hindustan.

My subject in Kum Madrasa in Iran was Islamic Theology. There the basic books, which are necessary for theology, are taught and thereafter *Darsekharij* is given by Head Ulema. We participated as students. None of my book or lecture was published there. I remained there for about 13 years from 1987 to 2001. There in Iran I had not published any article. But when I came back my lectures were organized. One book of my lectures had been published. (Volunteer : said that the cassettes of my

lectures are available in almost all Urdu-speaking countries.) In the first Muharrum which fell immediately after the death of my father. My lecture 'Das Din' was organized first time in Immambada Gufranamaab and my first lecture from that had been broadcast every year from the All India Radio. These lectures were on Islamic topics. The collection of my lectures was printed in 2002. I do not know whether the printed book of my lectures had a reference of Babri Masjid or not. I in my lectures, which had been preserved in the form of cassettes, had referred Babri Masjid several times. My cassettes had been released in Lucknow by 'Diamond Cassettes Centre', Victoria Street and the second, Gomati Agency, Aminabad and in Bombay Haidari Centre had released my cassettes. So far I remember Diamond Centre had first released my cassettes, but I do not remember correctly. My cassettes were released in 1987 when I delivered my first lecture. Bombay agency asked for the cassettes from here and they dubbed it. Every lecture had a separate cassette. I will not be in a position to tell you which of the cassette has a reference of Babri Masjid, because the cassettes are of 14-15 years ago. This year on which day, I do not remember, I in my lecture had said that the politicians are mususing Babri Masjid and Mandir and they do not want that the issue should be solved, because by doing so, their shops will shut sown and they will not get political gain. Therefore, this issue should be entrusted to purely religious people or otherwise wait for court's Verdict. I had also said that people are bent upon to kill oneself or kill others over the name of religion but they are not prepared to follow the religion and in the real sense if one follows religion, the question to kill oneself and kill others, as I had in my mind, will not arise. I had not mentioned all this in my lectures, how and who built the Babri Masjid and it was also not necessary because the audience before whom I was

delivering the lectures knew about it. I was aware that the audience all knew about it. I was permanently settled in Kum city of Iran, besides I frequently visited Mashad Mukaddas, on my religious visit where our 8th Imam had his fast. There are Masjids in Kum but I will not be able to tell their numbers. There is a famous Masjid in Kum known as 'Masjide Aajam'. It is a very big Masjid. It is not after the name of any great emperor. In the whole Iran after the name of emperor, I have no knowledge, if there is any Masjid, but there is one Masjid after the name of Princess. The name of the Masjid is Masjid Gauhar Shad and it is in Mashad. Islam entered Iran in the 1st Century Hizri. The world consists of 57 Islamic countries. Leaving Hindustan in 56 Islamic countries only Pakistan had a Masjid for the first time after the name of emperor and that is Jahangiri Masjid in Lahore. Second Masjid in Islamabad is Faisal Masjid. As far as I read and recollect the Jahangiri Masjid built by Jahangir is in Lahore. So far I remember in 1987 I had gone to Iran but at that time of Moharrum I came back. I do not know after how many months I came back from Iran in 1987. It is sure that every year for Moharrum and Ramzan I used to come here. In a year about 7 months I used to stay in Iran and 5 months here in the country. The 7-8 Ulemas who had their followers in India are Ayetulla Khomanie; he is the supreme leader there, Ayetulla Wahid Khurasani, Ayetulla Nasir Makarim Shiraji, Ayetulla Bahjat, Ayetulla Fazil Lankrani, and Sayeed Syed Mohammad Shiraji, who had now passed away, Mirza Javad Tabreje. All these Ulemas are connected with Hoja-E-Ilmiya. The followers of these Ulemas are all over the world. The greatest religious center of Sunni community had been in Egypt, but now we think it is in Madina Madeena is a University. It is very big university for Theology of Sunni Hazrat. I do not know about any well-known Ulema there. The difference between the concept of discourse of Sunni

Hazrat and the concept of discourse of Shia Hazrat, is that Sunnis had 4 *Mujtahad* (thinkers), who are now no more in the world. Their names are : Immame Malik, Immame Abu Haneefa, Immam Ahmad Ibte Hambal, Immam Shafai respectively. The doors of such thinkers had been closed thereafter. The Thinkers of Shias are still continuing. Every Muslim had the right to follow the thoughts of any one.

Question: Whether Sunni community has been divided into four groups – Hanfi, Malike, Shafai and Hambli?

Answer: It will not be said as groups. It is called the followers. The names of seven thinkers, which I had told today they had their follower but it will not be said separate group.

Abu Hanifa was the founder of Hanfi. The Hanfi School of Fikah is based on teachings of Immame Abu Hanifa and his companion Immam Mohammad preached it. In India Hanfi Hazrat are in majority but I do not know whether same thoughts apply here or not. In India Maliki are a few. They are seen in Mecca and Madeena. Their identification is that they read namaj by open hands. Similarly Shafi are very few. Their identification is that they in namaj read *Qunoot* like Shia people. They are found in Egypt etc. The followers of Ahmad Bin Hambal are in majority in Saudi Arab. I do not know if they are only there but they are in majority. Two of the great scholars of Sunni Hazrat are in Deoband. One of them is Maulana Margub-ur-Rahman and the other is Maulana Kasimi Sahab and the Rabe Nadbee Sahab of Nadbe .

Verified the statement after hearing

Sd/-

Syed Kalbe Jawwad

03.04.2002

Typed by the stenographer in the open court as dictated by me In continuation for further cross-examination on 04.04.2002 . Be present.

Sd/-

Narendra Prasad

Commissioner

03.04.2002

Dated 04.04.2002

Before :Commissioner, Shri Naredra Prasad, Additional District Judge/Special Duty Officer, Hon'ble High Court, Lucknow Bench,Lucknow

(In continuation of 03.04.2002, cross-examination of P.W. 26, Syed Kalbe Jawwad, begins on oath)

Beside the aforesaid three Ulemas, whose names I have mentioned, some other Ulemas are also there whose *Fatwas* are followed by the Muslims such as two names of Barelavi shool which are famous. One of them is Maulana Abdul Irfan Sahab Firangi Mahali and the other is Maulana Idris Bastavi Sahab. Muslim have great respect for Maulana Burhanuddin Sahab and Maulana Khalid Sahab etc. are of Nadwe. I has read in the newspaper that Maulana Burhanuddin Sahab came to the court as a witness in this case. He is an expert on Islamic religion (Fikha). I had heard about his eminence but I had not read his article relating to Fikah. I do not know exactly whether he belongs to Sambhal or not but he is related to Nadwe. I had studied very little about the history of Iran. Samarkand is not in Iran, once it was the part of Afghanistan and now it is in

Russia. I had heard the name of Shah Safavi of Iran. The Shia religion spread during his time in Iran. I had heard that Babar told to Shah Abbas that he will accept the Shia religion, but how far it is true, I do not know. It is true that Babar won the battle of Samarkand with the help of Shah Iran. Thereafter Babar came to India and fought with the rulers here. The Nawab of Avadh did not spread Shia religion, but it was spread by Ulemas. The Nawabs of Avadh were connected with Shia religion. There is one very old Masjid at the chowk of Faizabad, but I do not know who build it. I do not know whether it was built by the Nawabs of Avadh or not. There is dispute about Meerbaki, some people treat him of Shia religion but I had read in newspaper that Prof. Shireen Musabi, Historian, in his statement had revealed that according to the research, Meerbaki was not connected with Shia religion. An American Magazine 'News Week' has published the percentage of Shia Muslims in the world with their place of livings. It was written in that article that 55% of the total population in Iraq belongs to Shia community. *Fatwa* is not issued by a country, but it is issued by Alims (Religious Scholars). To my knowledge there is no such Shia Alim in Pakistan, whose *Fatwa* is accepted by all the Shias. Out of the some Shia Alims in Pakistan, one of them is Maulana Sazid Jaffar Sahab. Maulana Talib Johari Sahab and Maulana Ibte, Hassan Sahab are also there. I do not know any Alim whose name is Maulana Syed Mohammad Naki Sahab. Isfhani is written before the name of Meerbaki, which shows that he is from Iran.

I had read Quaran Sharif. It is a divine book. Qurane Majeed itself tells that first time Quran sharif appeared in the mind of Rasool, because the *ayat* of Quran is '*Najala behi ruahul Amonno Ala Kalbik*' and the second *ayat* of Quran is '*Inna Anzalanaho fi Laltil Kadar*'. It can be

imagined from it that the Quran Sharif befallen at one time. But in Quran Majeed word 'tanjeel' has been used, which means at one time the Quran Sharif was given to Rasool and then equal to occasion angel named Zibrails came there and told him the order of Allah to write certain Ayat or sura and so it has the meaning that it appeared gradually. There are 114 Sure in Quran Sharif and it is famous that it contains 6666 Ayats. But some Ulmas say the number of Ayats is 6236. The Makki Ayats of Quran Sharif are related to religious faith and the Islamic law has been given in detail in Madnee Ayats. I had never counted the numbers of Ayats to the extent that the numbers of ayats related to Islamic law are more or less. The other source to know about the Muslim law is Sunnat. The matters not covered in it are solved through convention and wisdom. There are different types of Kayas. The Shia religious scholars accept three of them. Whatever Hazrat Mohd. Sahab had said and what had been *hamal* and if the Muslims had done any work before him and he had not stopped him to do so, that will be called Sunnat. The Islam religion had been in existence since the days of Hazrat Adam Sahab from first Nabi to last Nabi and idols were never worshipped in it. Those persons were idol worshipers due to whom Mohammad Sahab moved from Mecca to Madeena. They were not Muslims. They had been called 'Mushrik' in Quran Sharif. There is difference of opinion amongst Ulemas over the literal meaning of word Quran. Some are of the view that this has not been taken from other word by the Allah named it Quran, but some people say it has been derived from the word Karan (Quran). It means reading and Quran is included in it. It means anything, which has meaning to put things adjoining and nearby. But to my mind it is correct that the Allah gave the name Quran to Quran. The Quran Sharif is based on the principle of mercy, justice, charity and equality.

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When Masjid Nabvi was build, by that time several ayats of Quran had appeared. At that time neither any details were given about the construction of a Masjid nor any details came afterward. The construction of Nabvi Masjid at that time was according the instruction of Rasool Sahab. I cannot tell when mosque and minars (towers) started to be constructed in Masjids, because it is a subject of archaeology. I had not heard that at the time of Hazrat Mohammad Sahab or during his lifetime any Masjid with mosque and minars was built. Sunnat has too not mentioned about the construction of a Masjid. Izma means Ulema to arrive at a unanimous decision. If the opinions of Ulemas are different then Izma cannot be there. I had not come across any such Izma where mention about construction of a Masjid is described, whether there should be a dome and minars in a Masjid or not. Kayas means to measure or weigh and *mikiyas* is from it, which means measuring and weighing.

Question: Have come to know till today on the basis of your education or studying the theological books or being in Iran for 13 years or on the basis of your speeches, when did the practice of making domes or minars in the Masjid came in existence?

Answer: It has been no where mentioned in the religious books what should be the shape of a mosque, so I did not try to find it out when did minars and domes began to be build in the Masjids.

Question: You had been listening the speeches or lectures of scholars (Ulemas) in Iran for 13 years,

whether they ever referred when minar and domes started to be built in Masjids?

Answer: In the speeches of Ulemas, which I heard there, they never mentioned about the time when minar and domes started to be built in Masjids.

The intention to build minar with the Masjid is that whenever a stranger come to a city he could identify from distance and if he want to read namaj, he could easily reach to Masjid. Hazrat Sahab for the first time gave permission to Hazrat Bilal Sahab to do *Ajan* in Masjide Nawabi. The order of Hazrat Saheb was about Ajan. It has been mentioned in the Quran Sharif to call for Ajan. But what will be the form of calling for Ajan, had been specified by Rasool. I think there might be a high place in Masjid and after ascending on it Hazrat Bilal Sahab would have called for Ajan. But I do not remember it presently. One reason of a minar in Masjid might be that ajan from there, could be heard by the people at distance. But is not necessary for all the minars because it may not have staircase and without it how can one ascend on the minar. It is not necessary that a masjid should its face exactly towards Kaba. If we build a Masjid keeping in view Lucknow, as far as possible we will keep its face towards West. In most of the Masjids, I had seen two minars. If there is any vacant land in the west-east or in any direction, that will not be a part of Masjid. Only upper side and lower side i.e. up to top and floor of a building will be called Masjid. If a person builds Masjid on the land of some one then the acceptance of owner of the land is necessary. In my religion Mohammad Sahab has said the land, which has been occupied first and if no one is the owner of that land and if it is free from dispute, then that land will be of the person who had occupied it first. There

are other conditions also which is not possible to describe in detail. Abu Haneefa had two disciples, Abu Yusuf and Imam Mohammad, as much as I remember. Imam Mohammad had played much role in it. Abu Mohammad and Imam Mohammad both are one and people of Hanfi school of thought obey the instructions of these two Alims.

When Hazrat Sahab marched from Mecca to Madeena the fundamental of his preaching Islam was non-violence. He was against violence.

Question: Whether Hindi translation of Sura 6 Ayat 38 of Quran Sharif is as:

"That in the name of Allah, you fight with those who fight with you? But do not encroach upon. The Allah does not love encroachers. On the earth there is no such a movable thing, even the bird, which flies by its own feathers, it too is a creature like you"?

Answer: The ayat that had been referred in the question its Arabic text is not in my memory at present, but there are many such ayats in Qurane Majeed in which it has been said fight with them who fights with you and fight on the way of Allah and do not use force in the fight, because Allah does not like those persons who use force, its example had been given in Ayat No. 190 of Sure Badra, in which it has been said in Quran that 'Qutelu fi sabeelillahilalarjna yakatelunkum wala tatudu innallaha laa yuhebull Mohtdeen.' It is nowhere mentioned in Quran Sharif to occupy others land forcibly.

Question: Whether Babar first invaded Hindustan or Hindustan attacked on Samarkand?

Answer: So far I am aware, Babar visited Hindustan and here he fought with Ibrahim Lodhi. Babar won the battle and Ibrahim Lodhi was defeated.

Question: Did Babar fought the battle of Khandwa with Rana Sanga, in which he declared himself Ghazi and he cut the head of Rajputs and made heaps thereof after collecting them?

Answer: It is a matter of history; I do not know. The literal meaning of Shariat is Ghat, where we drink water. Shariat teaches a lesson to live a life on Islamic basis. The duties of a Muslim are given in Shariat. It also directs a Muslim what not to do i.e. which work is denied. The word 'Makrooh' means one who can work, but not of one's taste. In my opinion to build a Masjid on the land of other, without his consent is denied and also illegal. The teachings of Shariat are told to the people in Fikah. Fikah means to know and understand the teachings of Shariat.

Question: Is it not a fact that the path of Shariat had been shown by Allah and his prophets and the building of thoughts is the result of human endeavours?

Answer: To find out religious orders of Shariat is called Fikah. Therefore there is no controversy between Fikah and Shariat.

The ideals of Fikah and Shariat are one and the same. *Baju* is necessary for namaj. There are detailed discussions on it. There is one problem if the *Baju* had been done for Sunniet namaj then *Wazib* cannot read the namaj but if the *Baju* had been done for *Wazib* namaj, the

Sunniet can read the namaj and if only done in the name of Allah, then *Wazib* and Sunniet both can read it. If *Baju* of person had not broken then after a namaj he can read the second namaj from the same *Baju* but before second namaj, to do *Baju* again is work which has no virtue but also not a sin and it had its virtues, but it is not necessary. There is bit difference in doing *Baju* between both Shia and Sunni communities. Qurane Majeed had an Ayat about *Baju* because of different interpretation of the Ayat, it had taken different shape. When Shias do *Baju* they take water from elbow towards upper side of fingers but the Sunnis take water from fingers towards elbow. The Shias only massa their feet but the Sunnis wash their feet. *Baju* is done only with water. If water is not available for *Baju* at a certain place, or the water may cause harm to someone them *Teyamumm* permits to do it through soil. *Baju* had a definite procedure. If somebody has taken proper bath then *Baju* is not required for him. If the things that break *Baju* happen and the water is available, then one should always remain clean.

Question: Can a person not remain *Baju* all the time or can he?

Answer: To remain *Baju* means if *Baju* breaks and the water is promptly available then do the *Baju* again. There are many reasons due to which *Baju* breaks viz. Urine, Latrine or the discharge of gas etc.

The graveyard can be near the Masjid. To build Masjid on the grave in a graveyard has been called despicable in our community. The space available from graves in the graveyard, building Masjid thereon is proper. If the graveyard has been waqfed them it will be waqfed. If any graveyard, has been used as a graveyard from the very

beginning, then it will remain as a graveyard. All the waqfs are dedicated to Allah, but, but there is a provision in waqf, which is called '*Alal Aulad*' according to which a person do waqf something for the benefit of his children. The literary meaning of a Masjid is a place where prayers are performed. For it the construction of a Masjid is not required. If there is a pure and clean place, namaj can be performed at that place. The Masjid at a place will always remain a Masjid, even if the namaj had not been performed there for 60-70 years. To my mind 'kanati' Masjid is called a temporary Masjid. If at a place the grave of a Muslim had been built and it is not thought proper in Muslims to remove it, if a Masjid had no entry and exit way and the temple of other religion is situated adjoining to it, it will not affect the status of a Masjid and namaj cannot be performed there due to the lack of way to reach there.

Question: Can any Muslim go to such a premises, compound or the doors in front of which religious signs of Gods of any other religious community bearing signs like Footprints, Hearth, Chowka, Belan etc., and perform namaj by climbing over them?

Answer: First of all it will have to be seen whether Masjid was there earlier or the signs were earlier and for that suit has been filed in the court.

Question: Is it proper to perform namaj at a place where on the walls, pillars or doors there had been the signs of human figure, still pictures of animals, birds etc. from earlier days?

Answer: According to Shia community where a man is reading namaj and if a picture of an animal is in front of him, reading namaj is hateful. Namaj can be performed but it is better to paste a paper

on it. If in the mass namaj the Immam is Sunni, the Shia can read namaj in it. Shias will read namaj according to his method. Such a namaj is proper and our Ulemas had permitted it. This issue will be available in the chapter entitled 'Ehkame Namaj-e-Jamat' in 'Teejihal Masail' by Ulemas.

It is wrong to say that if a Sunni Immam is performing the namaj the Shia cannot read namaj according to their method. For a Masjid it is not necessary that a person may belong to a particular community. A person of a special community is not necessary for maintaining a Masjid near about him. The duty of a person is to meet the requirements of the Masjid viz. Cleaning, to remove the animal if it comes in the Masjid and open and close the Masjid on time. If a pitcher is required to be filled with water, he can do so. If the length and breadth of a Masjid is 40X60 ft. the number of persons that can perform namaj in it can be calcuted on the basis that a person requires 2 sq. ft. space to stand up. Between two lines, the distance should be at least 1- ½ yards so that he can do *sajda* comfortably. The place for Baju is not necessarily required within the Masjid. I do not know the person responsible to maintain the graveyards is called *Takiada* or not. If the grave is pacca the shape of the grave should be *Kibla rukh*. Some of the pacca graves are flat also, on which the *Taq* etc. is made and name etc. are engraved thereon and if one wants to burn candle or lamp there, he can do so. On certain graves the stones are fixed on which the name of the deceased had been written. In the graveyard Shia read *Fatiha*. Amongst Sunnis of Bareillie the *Fatiha*, in their community is read in graveyard. People other than the family members of the deceaseds can also read the *Fatiha*. Where the devotee goes for *ziarat*, that place is often

known as Dargah. The Samadhi of a Sadhu Fakir can also be said Dargah, but since it is the word of Urdu language, therefore it has been used only for those Sufi Muslims or seers who had passed away. I had read that near the Babri Masjid (disputed site) there are numbering the name exactly. Shah word was used with many names, which is used for Sufis in our community. This I had read in Sabahuddin Abdul Rahman Sahab's book named 'Babri Masjid'. Besides it the other articles which I had read, they too contain the similar facts. I had not got any information about the religious place of Hindus on the sites adjoining to Masjid. So far I had read it is disputed that Ayodhya is a religious city of Hindu or not. This much I know that Ayodhya is situated on the bank of river Saryu. As far as I had read the temples in Ayodhya are not very old, but were built very late.

Question: Whether during Mughal dynasty the Mughal rulers made their Alim Maluyis to write history of that time?

Answer: This I had read but this is not only specific with the Mughal rules, generally in the court of a ruler, there had been a post which was called 'Bakae Nigar' and his job was to write down the events of the time of that ruler. I had heard the name of a book 'Babar Nama'. Who wrote it and when, I had no information about it. I had never read 'Babar Nama' as such I do not know what had been written in it. I had heard about Aurangzeb. I had heard, Aurangzeb built a Masjid in Ayodhya but how far it is correct, I cannot say. I even do not know that the said Masjid is in existence in Ayodhya or not. I had never visited Ayodhya. I had heard that 'Ayane

Akbari', had been written by Abul Fazal but I had not read it.

Question: Whether there is any mention of the disputed structure in the articles published by British Officers under the orders of British Authorities during British rule or in the official Gazette. Have you any knowledge of it?

Answer: I had personally not seen the Gazettes but I had seen some of its extracts in articles and read in the book entitled 'Babri Masjid'. I had reached to a conclusion therefrom that the English had a policy of divide and rule while acting thereupon they wrote about the existence of Ramzanmabhum and on the other hand instigated Muslims that the claim of Hindus was wrong and you move on in this regard.

Question: Whether the details of Sultanpur Gazette in this regard had been that the Muslim leaders of Amethi, Amir Ali and Sadhu Ramcharan Das of Nirmohi Akhara had settled the matter relating to dispute but the English ruler hanged both of them and kept alive the matter of dispute?

Answer: I do not know full details about it but as per policy of the English ruler it was possible.

The divide and rule policy of the British remained in existence till their rule. 'Kalander' are those people who had left the wordly affairs and only think about Allah. I do not know the meaning of 'Nirmohi' so I cannot say whether it falls in the category for himself or not.

Question: Whether the aim of all the Muslim invaders who came to Hindustan, which was called the golden bird, was to loot it after attack, have you any information about it?

Answer: There is a saying in Persian "Ramje Mamkte khwesh khushrawana Danand". It means that a King can only understand the secret of a King, what had been his intention in implementing it, that we cannot tell today after hundreds of years.

It is true that I consider myself a true Hindustani and in that capacity and on the basis of my knowledge I can say that Mohammad Ghazni attacked Som Nath Temple, but what was the reason behind it, that I cannot tell. But I can tell the Islamic order in this connection and that is to demolish and loot the religious place of a religion is not proper. I had no detailed information whether Mohammad Ghanzi demolished or looted the Som Nath Temple nor I had heard that Aurangzeb ordered to demolish a temple, which is perhaps in Banaras, but there were reasons after it and that reasons have been given in Jadu Nath Sarkar's book on Aurangzeb. I had personally not read this book, but those who read it told me about it. I only know this much that Jadu Nath Sarkar was a historian. I had heard the name of Jadu Nath Sarkar's book entitled 'Fall of Mughal Empire'. I am not aware whether this book is in four volumes. I had heard too many times in history the name of Jadu Nath Sarkar. The Mughal Empire had fallen after Aurangzeb. Nowhere in Islam had been written that, Hindu being idol worshipers are Kafir and they should be eliminated. If any Muslim says such things it is against the Islam. Whether it is Islam or Hindu religion or the Fakir of Islam or Sant of Hindu, all people accept that God is one, whether one may accept it or not.

Question: Whether Sir Syed Khan in Hindustan Launched a Bahabi movement against the Islamic extremists, which was based on the good acts or religions?

Answer: Sir Syed Ahmad Khan did not launch any movement known as Bahabi movement. His movement was to remove ignorance amongst Muslims so that they may get modern education.

My statement about Babri Masjid (disputed structure) is based on what I heard and what I read. There had been agitations in Ayodhya on this issue but I do not know the date and year thereof. I had read about it. The agitation took place in Ayodhya during British regime. I had read that both Hindus and Muslims were killed in those agitations. This fact I neither know nor I had read that the British ruler charged Agitation Tax from every family of Hindus. I had no knowledge that Muslims in Ayodhya during the period lived terrified. During British rule the population of Muslims in Ayodhya might be large, because at that time there were 25-30 Masjids. It shows that Muslims lived there in a large number. This fact I had read. I had not read the name of those 25-30 Masjids except disputed Masjid. I had read the name of Hanuman Garhi wali Masjid. Hanuman Garhi had a famous big temple. I am not aware of it. I know this much that the story of Hanumanji is connected with Ram Chandraji. I had heard and read that namaj was being performed in Babri Masjid till 1949. I had read it in the aforesaid book Babri Masjid and other books. To my mind the aforesaid book Babri Masjid that I had referred was published 15-20 years ago. If both the parties come to an agreement in this suit, then nothing likes that. I had never been associated with politics.

(Cross-examination on behalf of Defendant No. 3, Nirmohi Akhara, by Shri Ranjit Lal Verma, Advocate, concluded)

(On behalf of Dharmdas, Defendant No. 13, Cross-examination by Shri Ved Prakash, Advocate begins)

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I had seen the picture of Babri Masjid when I told about it in my speech. I had seen the picture of Babri Masjid as it is seen from outside. I had heard about the inside of Babri Masjid from the people who went there and are known to me.

Verified the statement after hearing

Sd/-

Syed Kalbe Jawwad

04.04.2002

Typed by the stenographer in the open court as dictated by me. In continuation for further examination on 05.04.2002. Witness be present.

Sd/-

Narendra Prasad

Commissioner

04.04.2002

Dated :05.04.2002

Before : Commissioner Shri Narendra Prasad, Additional Judge/Officer on Special Duty, Hon'ble High Court, Lucknow Bench, Lucknow

(In continuation of 04.04.2002, cross-examination of P.W. 26 Syed Kalbe Jawwad, begins on oath.)

The people of my time who had seen the Babri Masjid, I cannot tell their names, though I know their names, but I do not want to tell without their consent. I had been informed about the inside premise of Babri Masjid, before I gave my speech on Babri Masjid. I came to know about this nearly 8-10 years ago. They told me that the arch (mehrab) in the Masjid where from the Immam reads namaj, that type of mehrab was there. The 'musalle' built in certain Masjids for standing for Namaj, that type of musalle were built there. Similarly for giving *Khutba* by Immam the *member*, that too was there, I only remember these three things at present. Except these three things I do not recollect what more they had told me about other things within the Masjid. Muslims were not permitted to enter the disputed Babri Masjid; therefore, I though having the wish to go there could not go. The people who told me about the inside premise of Masjid, I had asked them when did you visit inside the Masjid. At present I do not remember full details about it. The people who revealed to me above things they would be between the age group of about 30-40 years. When they told me this thing at that time, I was aware that some Hindu people call that place Janmbhumi. Out of those some people I had read the statements of Ashok Singhal and Mahant Paramhans etc. About Mahant Paramhans, I had heard that the idols placed there in 1949, were placed by him. I had read this in some articles also. The names which had been published in the newspapers,

from that I came to know perhaps he is the Mahant of Digambar Akhara, but since it is a Hindi name, I cannot say exactly. I had not heard that Mahant Paramhans is the Chief Head of Ramanandi Sect (Sampradaya) in Hindustan. I do not know what had been his status in Ramanandi Sect. His position there had been the same what I am having in Shia Sect. Here in the biggest Masjid, which is Asifi Masjid, Shia's largest namaj is performed in it. I am holding the position of Immam here. What is my position among Shia people, only they call tell it.

Question: Whether it is correct to say when holy Quran befall upon Mohammad Sahab and then Mohammad Sahab told those Ayats and those were noted down?

Answer: It is correct that the Ayats of Quran, which are *tilawat* by Rasool, after his orders the ayats were written.

Quran Sharif cannot be divided on the basis of subject. It has either "Suras" or "Pares". The word meaning of Sura is to draw a wall, which we can say chapter. Suras were decided at the time of Rasool but for the convenience of reading Suras were further divided in 30 pares afterwards. Thirty Pares had further been divided, one is Hoku and secondly every pare had been divided into four parts which called Ruba which is from beginning up to one fourth and there after it is called Nisf. And then next part is called Suls and thereafter is the last part of the Pare. There is no specific chapter in Quran Sharif about Islamic law but the entire Quran Sharif itself is a book of Islamic law. 1400 years back from today Prophet Mohammad announced of his being Nabi. I do not know exactly at present that after the announcement of being Nabi by the Prophet Mohammad, where did the first ayat

appeared from. But first five ayats of Sure Iqra had appeared. I can say it this way that 13 years ago of Hizrat on the 27th day of Rajab month, Rasool declared of his being Nabi and therefore, I think these ayats appeared thereafter. Rasool had no written literature before that date. Among the books that had appeared before Rasool Saheb one book is Zaboor which had fallen on Zanabe Dawwod Paigamber, the name of second book is 'Tauret' which had appeared to Zanabe Moosa Paigamber. The third book is 'Enjeel' which had appeared to Zanabe Isha Paigamber. Besides these, references of some *Sahifs* are also available, which appeared to Zanabe Nooh Paigaber, Zanabe Ibrahim Paigamber, but these *Sahifs* were of the time of Rasool. But those references are not available but this much only is available in the history books that the books named 'Tauret' and 'Enjeel' were with some Christian scholars. It has itself been mentioned in Quran Sharif that the above named books appeared on behalf of Allah.

Question: Did Mohammad Sahab and the people of Islamic community obey what had been described in the above-mentioned books or not?

Answer: According to our Islamic responsibilities the books mentioned above had bestowed upon by Allah, but they are now obsolete and only Quran-e-Sharif is *meyar* for us.

Question: Since the above books had become obsolete, that is why the follower of Islam religion do not observe the things mentioned therein?

Answer: Many changes had been done in the original books according to our responsibilities and when the Quran Sharif has been bestowed upon, we only obey the Quran Sharif. Those books are not *hujjat* for us.

Out of the above books people following Tauret and Enjeel are still in the world. Those who follow Enjeel are of Christian Sect. We call Christ a Prophet. We also call Hazrat Moosa a Prophet. The followers of Hazrat Moosa are called Jews. I do not know about any follower of Hazrat Dawood Sahab. The followers of Hazrat Ibrahim were there up to the time Paigamber Sahab declared himself Nabi. The ancestors of Rasool were the followers of Din-e-Ibrahim. The books which I had referred to above, there is difference between the education of their followers and that of Islamic education.

Question: Hadees is related to that part of life of Mohammad Sahab, which he himself had done and showed, do you agree with it?

Answer: This is an incomplete definition. I had already clarified the meaning of Hadees and Sunnat. It is that statement, which after Quran Sharif came through the speech of Rasool or he acted upon, or many Muslims acted thereon in front of him and they did not reject it. It is correct that in Quran Sharif there is description of both Rahman and Rahim, which means that he is very kind and generous. Besides this, Allah has also been called *Rabbul almin*, which means the maintainer of the universe. Allah has also been called *Mallike Yaomiddan*, which has the meaning that *roje jaja ka malik hai* the day of final justice. Allah has also been called Aleem and Khabeer, which means omniscient and had the information of everything. In Quran Sharif word *samia* had been used for Allah, which means one who hears everything.

Question: Whether it has come in Quran Sharif that "you all hold onto the rope of Allah strongly and do not create differences amongst each other and remember that Allah obliged you when you were enemy of one another and then Allah created love in your heart and with his blessings you are now brothers?"

Answer: Such types of feelings are in the Quran Sharif. There may be some variations in Hindi translation.

Verified the statement after hearing

Sd/-

Syed Kalbe Jawwad

05.04.2002

Typed by the stenographer in the open court as dictated by me In continuation of this for further cross-examination . For fixing date be present before the Hon'ble Full Bench on 08.04.2002.

Sd/-

Narendra Prasad

Commissioner

05.04.2002

15.04.2002

Before: Commissioner Shri Narendra Prasad, Additional Judge/Officer on Special Duty, Hon'ble High Court, Lucknow Bench, Lucknow

(In continuation of 05.04.2002, on behalf of Dharmadas, Defendant No. 13, Shri Hari Dayal Mishra, Holder of Power of Attorney, passed vide Hon'ble Full Bench Order dated 09.04.2002 on miscellaneous application letter No. 150/2002, Cross-examination of P.W. 26, Syed Kalbe Jawwad, begins on oath

I had not seen any Hindu taking beef. But my friend who had visited Bengal, Madras and Kerala, had told particularly about Kerala that there are beef shops and some of the them belong to Hindu brothers, when they asked them that it is beef and you are selling it and your Hindu brothers are purchasing it, they replied that Hindus take beef there. The leader of Bengal Mamta Banerjee, who belongs to Hindu religion, I had read her statement and she too had supported the beef eating. It is correct to say that I had never been a student of History. I do not know about the revenue record and the position of disputed site mentioned therein. It is correct that Allah is Rahaman and Rahim i.e. he is kind and generous. There may be variation in translation.

Question: Whether meat is prohibited in Islam except emergency?

Answer: It is not the thing. In emergency; the human flesh is also permitted to be taken.

Question: Whether sacrifice means to scarify oneself and not to kill the poor animals?

Answer : Sacrifice means one who is up above you, scarify yourself on him or for him.

I am of the opinion that the issue needs to be resolved by mutual understandings and politicians should not interfere into it. The people of Ayodhya should play key role in it.

(Cross-examination of Defendant No. 13, Shri Hari Dayal Mishra, Power of Attorney Holder, concluded)

(cross examination by Shri Madan Mohan Pandey Advocate on behalf of defendant No.2 begins)

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I had not read the history of Masjids in Hindustan. I had red a little about some Masjids viz. Asifi Masjid in Lucknow or Tajul Masjid in Bhopal and Babri Masjid in Ayodhya. A Masjid was built during time of Aurangzeb in Lucknow, this I had read. Apart from it in Lucknow one Alam Giri Masjid, which is known as Teela wali Masjid was also built during the time of Aurangzeb, this I had read. The Masjid in Agra, which is famous as Noorjahan Masjid, was also built during the period of Mughal ruler. The Jama Masjid in Delhi too was built during Mughal period. I do not know much about Atala Masjid in Jaunpur. I do not know exactly at what place Aurangzeb built the Masjid in Ayodhya, perhaps in Hanuman Garhi. I had read about the Masjids built during the time of Aurangzeb, but I do not know its details. In this connection I had read a book named 'Babri Masjid' written by Sabahuddin Abdur Rahman Sahab, but do not remember at present. I had read about Babri Masjid in the same book. In addition to it I had read Babri Masjid in other journals. I had information about Babri Masjid for at least 20 years. While in Iran I had been getting information about Babri Masjid and within that

period whenever I came to India I got information about the Babri Masjid. The main reason to collect information about Babri Masjid was that it had been the burning issue for Muslims. I know about Babri Masjid dispute for about last 20 years. So far I guess the Masjid built up by Aurangzeb is at some distance and not adjoining to Babri Masjid. I do not know the distance. I cannot say whether the distance is of one mile or 10-20 miles, then said it may not be 10-20 miles. So far I know the Babri Masjid was built by Meer Baki, the Governor of Babar in 1528. Babar himself was a Sunni but there is controversy about Meer Baki. It is heard that he was Shia, but the well-known historian Sheereen Musvi had refuted it. As the statement of Sheereen Musvi was published in the newspaper, then I came to know that he is a historian. I had not read the statement of other historians that Sheereen Musvi, who appeared before the court and tendered their evidences and I had never come across to their statement, therefore, I cannot tell what they had said about Meer Baki. In the book Babri Masjid, Meer Baki has been shown Shia or Sunni; this is not in my mind. Babri Masjid is situated in a city, which is presently called Ayodhya. It was said that earlier it was a deserted place, but was inhabited later.

I am not a historian, I therefore cannot say, when Ayodhya was deserted and when it was inhabited. The books on Ayodhya, which I read, one of them is, "Dr. Ambedkar's Redeals in Hinduism". It has been written in it that the present Banaras was the actual Ayodhya of that time.

(On this question the learned Advocate of Plaintiffs raised an objection that the question is irrelevant and it has no justification with cross-examination)

(On this point the learned advocate Shri Madan Mohan Pandey cross examining said that it has connection with disputed site, so it is relevant.)

The Babri Masjid is in present day Ayodhya. At present there are number of temples of Hindus in Ayodhya. I do not know the full history since when these temples of Hindus in Ayodhya. I know that at present Ayodhya is one of the greatest pilgrimage of Hindus and most of the population in Ayodhya is that of Hindus. To my knowledge Ayodhya had 25-30 Masjids. I had not tried to know about other Masjids except the disputed Masjid. As I had not visited that place, I therefore cannot tell whether temples or Masjids are there around the disputed site. I do not know about the length and breadth of disputed site. But had information that it was an *average* Masjid. Before 1528 the disputed site was a vacant land on which this Masjid was built. I had got this information from the same book. I had not got any information from that book that inside the disputed Masjid any other religion had been offering their pooja.

Question: Do you know or after reading the said book, you had come to know that at the disputed premises there were *Sita Rasoi, Charan Chinha, Choolha, Chakla-Belan* etc., which were related to Hindu Gods and Goddesses?

Answer: So far I recollect it has been mentioned in that book that some of the articles related to Hindu religion long after the construction of Babri Masjid were built nearby.

I had also read in that book that *Ram Chabootra* too was built after the construction of Masjid. I do not know

what was the *Ram Chabootra*. I cannot say whether Hindu idols were place on that *Chabootra* or not. So far I recollect according to that book *Ram Chabootra*, *Sita ki Rasoi* or other things were the constructions of after 1850. it has been mentioned in the book that Muslims lodged suits against that constructions. What happened to that suit, I do not know. I had not seen any Masjid where the pictures of Hindu Gods and Goddesses had been made inside the Masjid on its walls and pillars. I had not come across with any reference in that book that on the pillars of any Masjid the pictures of Hindu Gods or Goddesses or live animals are depicted.

Question: Have you seen any Masjid where idols of Hindu God and Goddesses, Foot prints of their deity, Choolha, Belan etc. are in the premises of Masjid?

Answer: I had not seen such a Masjid. I had not seen any Masjid where the idols of Gods and Goddesses have been placed in the Chabootra. I am afraid, I had hardly seen such a Masjid where on the outer wall, the pictures of Fish or Lion had been made. But the symbol of Avadh ruler was fish. Here, in Lucknow I had seen the picture of fish on the main gate of some Masjids. At present I do not recollect the name of these Masjids. The book I had read has no reference of it that on the main gate of disputed Babri Masjid the pictures of fish, lion or any other picture were made or not. After the demolition of disputed Masjid what was found from the debris, I do not know. The picture of disputed Masjid I had seen had no minar. I do not know which community is residing near about the disputed Masjid. I cannot say exactly, whether graveyard

is there around or not. But on one side there is graveyard. I do not remember the direction of that graveyard from Masjid. It is learnt that disputed site is in Ramkot Mohalla. I had no information about Kot Ramchander. I do not know about the ownership of the land where the disputed Masjid was built. According to Islam the concurrence of the owner on whose land the Masjid is being built is necessary, only then Masjid can be constructed. I do not know whether in the book which I had read there were any details about the Babri Masjid to the effect that the land on which the Babri Masjid had been constructed, it was the consent of its owner or not.

Question: Do you agree with this contention of Islamic Ulemas, that in case it has been proved that after demolishing the Hindu Temple the disputed structure was built, then that Masjid will be illegal?

Answer: This issue is clear in Islam that without the consent of an owner Masjid cannot be built on his land. If the temple has been forcefully demolished and Masjid has been built then the Masjid is illegal.

(Volunteer: said today that there are many places in Europe, where with the consent of Christians the Masjids had been built up by demolishing the churches.)

The most holy Masjid of Muslims is that, which is around Kaba, and is called Masjid-ul-Haram. It is wrong to say that other Masjids can be shifted with the consent of Muslims from one place and built at another place. The

Masjid once built cannot be removed in any case. In my knowledge there is no Masjid, which has been built by shifting from one place. In our religion to construct Masjid in graveyard is not prohibited. A Masjid at the cremation ground of Hindu could only be built if its owner had given permission to build a Masjid thereon.

Question: According to Shariat, can a Masjid be built on a road?

Answer: If the Government permits Masjid at such a place can be built.

If a Masjid is already there and some road or canal has to pass through that place, in such a case road cannot be constructed by removing the Masjid and canal cannot pass through it. There is nothing in Shariat which says that namaj cannot be performed on public road, but where by reading the namaj the movement of the public is obstructed, reading namaj at such a place will be descipicable. I had not read the book named the Jurisprudence of Hidaya Ahlle Sunnat. I had not seen any *fatwa* of any *alim* in which it has been mentioned that if a Masjid is at such a place, which obstructs the movement of people that Masjid should be removed. I know Amir Ali a historian. I am not sure perhaps, he belonged to Allahabad. The book of Amir Ali Sahab on Islam History is very famous. Its name is History of Sayarasins i.e. Arab History. I do not know whether he has written any book on Islami Shariat. I think he passed away before I was born, that is why I could not meet him. I can read and write Persian. The said Amir Ali Sahab was a Justice. I do not know what he had written on Islamic Shariat. Shia and Sunni Waqfs Board are separate in U.P. The assets of Shia community registered with Shia Board is controlled by Shia Waqfs Board. The Masjids of Shias, Imambaras and

other religious places, registered with the Shia Waqfs Board, are operated by Shia Waqfs Board. Similarly, the Masjid and other religious places of Sunni community registered with the Sunni Waqfs, are operated by Sunni Waqfs Board. The land of Masjid for public is required to be waqfed. Then said, but there is one difference in it. One Waqfs is that it is available in writing that this had been waqfed and secondly as a waqf it is being used from public. That too will be treated as waqfed. The law existing in the country, accordingly to it waqf property must be registered with Waqfs Board, but it is not so in Shariat. The disputed structure will be treated as a public Masjid. To my knowledge the property on which the disputed structure was built was a Waqf property. I had no knowledge, who had made waqf of this land.

Question: Have you any information about the land on which the disputed structure had been built, was waqfed by Shias or Sunnis?

Answer: I only know this much that in 1945 the court ordered that it is a Sunni Masjid and it should be registered with Sunni Waqf Board. What was the position before that, it is not in my knowledge. When it was registered with Waqfs that I do not know. It is not in my knowledge that being registered with Sunni Waqf the Shias had withdrawn their claim. I do not know whether people of Shia community had presented their claim over the disputed property or not. The suit, I am giving statement was lodged by Sunni Central Waqfs Board. I had no knowledge about the claim preferred by Shia people in which they had demanded that the disputed Masjid is of Shias.

Question: The Shias do not prefer their claim because they are aware that in Ayodhya, the disputed structure was built by Meer Baki after demolishing the Ramzanmbhumi?

Answer: It will be said for every Sunni Masjid because Shias are not preferring their claim so it had been built by demolishing the temples. Secondly if you want to know the wishes of all the Shias then referendum is necessary for it.

Question: What is the main difference between Shias and Sunnis?

Answer: There is no difference between Shais and Sunnis.

There is no difference in the method of building Masjids by Shais or Sunnis. It is wrong to say that Shias build their Masjids by taking donations whereas it is not with Sunnis. Jalaqu in written is also not necessary among Shias and talaq can be granted by verbal saying but it can be in the presence of two Munsifs as its witnesses. According to our religion three Talaqs should be in three different sittings. The Ahle Haddis in Sunnis accept the three sittings and the rest accept the three Talaqs in one sitting. To my mind all the Islamic festivals are common in both Shias and Sunnis and both celebrate them.

Question: Shais celebrate Moharram and during Moharram they do not perform ceremonies, marriage and other auspicious deeds?

Answer: The Shia community in Hindustan and Pakistan generally do not hold ceremonies like marriage etc. for two months and eight days.

Many Sunnis too accepts this, but not all. There is no basic difference in performing the namaj by Shias and Sunnis. Shias and Malki belonging to Sunni community read namaj with open hands, whereas Sunnis read namaj with folded hands. At the end of namaj there is some difference in the way of offering *Salams*. The way in which Sunnis offer Salam, some Shia Ulema have given permission to do that and in Iran and Iraq we find the Shias indicating through neck which is same like the *Salam* of Sunnis.

Question: In India, while ending namaj Sunni offer their Salam by turning his face, whereas Shias offer their Salams by lifting the hands straight upwards?

Answer: In Shias during namaj hands are not lifted upwards but after *Salam* three *Taqbir* are read, in it hands are taken up to ears, and Sunni people *Salam* after turning their face.

During the month of Ramzan Shias do not read namaj named *Taravi* and in *Jamat* and in our community to read *Furada* is optional. Sunnis in *jamat* perform *Taravi* namaj. Both the communities had certain difference over the date of birth of Rasool Sahab. Certain Sunni Ulema are of different opinion ; similarly some Shia Ulema had also different opinions. The majority of Shia Ulema date Paigamber Sahab birthday as 17th Rabi ul-aubal. But we had a great Alim known Mohd.Yakub Kulaini, whose name had been referred earlier. He in his book "Usoole Kafe" had written the date of birth of Rasool as 12th Rabi Ul-Aubal, but the birth and death of Rasool has been taken from 1st Rabi ul-aubal to 12th Rabi ul-aubal. As per the religion of Shias and Sunnis there is no basic difference in their food and drinks, but a slight difference at some places.

Question: Shais do not think it proper to perform namaj in the Masjid where massacre is being done and dispute is going on?

Answer: No such directives are for Shias that reading namaj is prohibited at the place of massacre, because the Masjid in which Hazrat Ali Sahab was killed at that place his son Immam Hasan Sahab used to read namaj.

I had seen *member*, in all the Shia Masjids, it may be small.

Question: According to you in Shia Masjids is *member* necessary?

Answer: As per our religious books there is no such directive that *member* is necessary in a Masjid.

Question: Is *member* necessary for Sunni Masjids?

Answer: Sunni Ulemas can tell. Because it is a matter of jurisprudence, therefore, I cannot tell you.

I had read Quran Sharif. In Quran Sharif the followers of Islam religion had nowhere been directed to fight against those who worship idols. It has not been directed to fight without reason against any religion.

Question: It has been directed in Quran Sharif that whosoever is committing cruelty upon you and fighting with you, you are permitted to fight against him.

Question: Has it been permitted in Quran Sharif that till the existence of idol worship and its worshiper is not

vanished, the followers of Islam should continue their fight against them?

(On this question the learned Advocate of plaintiff Shri Jilani raised the objection that this question is not proper in this suit, because a controversy is being raised between the followers of one religion and the followers of another religion which has no relevance with this suit or any of its point or facts and nor the evidence of witnesses had been taken in this regard. The question is totally indecent and is being made to annoy the persons of a religion.)

(The learned advocate Shri Madan Mohan Pandey cross examining said that the question is related to construction of a Majsid by demolishing the temple, so it is relevant and it is in reference to Quran Sharif).

Question: Whether two types of Masjids had been referred Quran Sharif, if so what are they?

Answer: There is a detail of one Masjid in Quran Sharif which was constructed under conspiracy by the enemies of Islam. It has been mentioned in Quran Sharif that it was constructed to harm the Islam and conspiracy had been hatched in it against Islam. In Islam that Masjid, had been remembered by the name Masjid-e-Zirar and Rasool ordered to demolish that Masjid and that Masjid had been appreciated whose foundation is over the fear of God. The Masjid, which I had referred above, had been built in the outskirt of Madeena.

Question: According to Quran Sharif a Masjid that had been built over the unauthorized land, there is no restriction in demolishing the same?

Answer: According to the Law of Islam a Masjid cannot be constructed on an unauthorized land and namaj cannot be read therein.

I had not seen such a directive where demolition of a Masjid had been said correct in Islam. It is the duty of every Muslim to obey Quran Sharif and Hadees. I had read the book 'Babri Masjid' about the disputed site and none else. Only I had read in newspapers and articles. I had no special study on the subject, because large number of books had not been written on this subject. I originally belong to Lucknow. I had talks about my friendship with Hindus. Some Hindus treat Ayodhya as the birthplace of God Rama. It is also correct that some Hindus treat the disputed site as the birthplace of Ram (Ramzanmabhumi) and worship it.

(On behalf of Defendant No. 2 Mahant Paramhans Ramchander Das, the Cross-examination of Shri Madan Mohan Pandey, Advocate with witness Maulana Kalbe Jawwad, P.W. 26, concluded.)

(On behalf of Hindu Mahashabha, Defendant No. 10 and Shri Ramesh Cahandra Tripathi, Defendant No. 17, Cross-examination by Shri Hari Shankar Jaine, Advocate begins).

XXX XXX XXX XXX

Islam is a Deen. Deen means law or constitution or Aain (Mirror). These all had the same meaning. In Urdu constitution means Aain.

Question: What Islam is called, Dharam, Majhab or a religion?

Answer: Word Deen had been used in Quran-e-Majeed for Islam, which means law, and the sects within Islam are called Majhab. This word has been used for it.

Question: Can Islam be placed under Majhab or religion or not?

Answer: In English word religion is often used for Islam. The Islamic viewpoint is that the Islam had been the Deen from the very beginning. I had a proof in Quran-e-Majeed that Islam is the first religion from the very beginning.

Question: In which ayat or Suras of Quran Sharif this had been mentioned?

Answer: One Sura, which I can remember is Alle Imran and ayat no. is 85. The ayat given in it according to it. Allah had announced that who so ever adopts other Deen except Deen-e-Islam, he will not accept him and therefore, in the eyes of Allah it appears that Islam is only Deen and it had been from the very beginning. This fact has been referred in many other ayats beside this ayat. According to the followers of Islam the Quran Sharif is the last book sent by Allah. After this book Allah sent no other book on earth. As is available from descriptions, the first book was appeared to Janab Nooh Paigamber. According to our terms such book is called holy book (Sahifa). This book has no value at present. The books that appeared from God before Quran Sharif are Injeel, Taurate and Jabur. But according to our *yakide*, the form in which these are available is not genuine. After the appearance of Quran Sharif the people who had faith in Islam, showed their belief only in Quran-e-Majeed. The earlier date of printing of

Quran Sharif was exactly not known, but so far I know, it was first printed in Germany. When Quran Sharif began to appear for the first time, Janab Mohammad Sahab used to give order, which began to be written. The Quran began to be written during that period. It was 13 years earlier than Hijrat, when Mohd. Sahab left Mecca. The Hizri year started from that time. There was no separate sect of people who were the followers of Islam. After Paigamber Mohd. Sahab, his supporters and relatives began to fight each other, such a description is available.

Question: Did they killed one another in these fights?

(On this question the learned Advocate of Plaintiffs Shri Zafaryab Jalani raised objection that during the history of Islam, the different fights that had been fought in 1400 years had no relevance with this suit and no such question arises out of this suit. As there is no justification to ask such questions and this question is only being asked to hurt feelings of a particular religion. The Advocate Shri Jalani also said that the witness cannot be compelled to reply this question.)

Answer: Every religion had such things and to refer them will increase bitterness and nothing else. It is therefore, better not to discuss it. I had already stated that in Islam the sects were created on the basis of interpretation.

Question: Two sects are the result of fighting and killings between the relatives of Mohammad Sahab and one sect was called Shia and the other Sunni. Is it correct?

Answer: The sects were not created due to fighting about but due to the differences of ideas and as a result of two sects Shia and Sunni came in existence.

Question: Who was the first man to propound Shia sect?

Answer: This cannot be exactly pin-pointed, that so and so was the first man. I had already said that after Rasool those who accepted 12 Immams are known as Shia Isna Ashari and those who accept 4 Khalifas after Rasool are presently called Sunnis.

Question: Does Shia sect means those who had their own interpretation of the teachings of Mohammad Sahab which the other followers of Islam do not accept, that is the Shia sect and the rest is Sunni sect?

(On this question too the learned Advocate of the Plaintiffs raised objection that the question is totally irrelevant and is to hurt the religious feelings, so it should not be permitted to ask.)

Answer: The question is not clear, as such; I am unable to answer it.

Question: The Islam consists two sects Shia and Sunni and Sunni sect was very big and the people who did not agree with the thought of Sunni sect were called Shia.

(The learned Advocate, on this too repeated the above objection).

Answer: It is a historical fact that Sunnis were large in number and Shias were less in number. Those who accept 12 Immams were called Shias and rest who accepted 4 Khalifas were Sunnis.

Question: What is the basic difference between the thoughts of Shias and Sunnis?

Answer: This can be replied like this. The religious belief of Shias is that the Immam, after Rasool would have been fixed by Allah. It means he could have selected him. The Sunnis are of the opinion that Rasool left it on the Muslims to

select their own Immam. So there is difference in interpretation, which lead difference in opinion.

Question: Had difference in opinion between Shias and Sunnis goes as far as the last 1300-1400 years?

Answer: I had replied it several times. Such differences, we find in every religion. But it makes no difference in their religious faith and they are called of one religion.

Question: My question is not related with the fights whether it took place or not in other religions but my question is whether the fights and protests between Shias and Sunnis are going on for the last 1300-1400 years?

Answer: The above difference in opinion between Shais and Sunnis is still continuing for the last 1300-1400 years.

Verified the statement after reading

Sd/-

Syed Kalbe Jawwad

15.04.2002

Typed by the stenographer in the open court as dictated by me. In continuation for further examination on 16.04.2002.

Witness be present.

Sd/-

Narendra Prasad

Commissioner

15.04.2002

16.04.2002

Before: Commissioner Shri Narendra Prasad, Additional Judge/Officer on Special Duty, Hon'ble High Court, Lucknow Bench, Lucknow

(In continuation of 15.04.2002, the cross-examination of P.W. 26, Syed Kalbe Jawwad, begins on oath.)

Question: Is there difference in performing namaj by Shias and Sunnis?

Answer: There is slight difference in performing namaj by Shias and Sunnis, which I had already mentioned.

Question: What is the difference?

Answer: The Shias perform their namaj by open hands and the majority of Sunni community perform their namaj by folded hands, whereas the people belonging to Maliki community perform their namaj by open hands. Similarly the Shias read *Kanoot* in their namaj and in Sunni sect, only people of Shafai community read *Kanoot*.

Question: In both the Masjids of Shias and Sunnis, are there Immams and Peshe Immams?

Answer: To read the namaj if a religious person is fixed for a Masjid then he will be called Immam of that Masjid and the same is called in Urdu as Peshe-Immam.

Question: Is it a fact that in Shia Masjids and in Sunnis Masjids, their Immams can be only from their respective sects?

Answer: In the Masjid built by Shias, the Immam is generally from Shia community and in Masjid built by Sunnis the Immam is generally from Sunni community.

Question: Can people belonging to Shia sect read namaj under Sunni Immam?

Answer: I had replied earlier that Shia sect can read namaj under Sunni Immam. The Sunni Ulemas had also permitted this.

There is a Masjid in my locality belonging to Shia community where the Peshe Immam is Sunni. This Masjid is very old, more than 100 years old. Except Lucknow none other mosjid is in my mind which had been built by Shias and might have Sunni Immam and vice versa. But in the Masjid of Aligarh University there are two Peshe Immams, one is Shia and the other Sunni. The main aim of both the sects of Shia and Sunni is to protect Islam and if any harm is caused to Islam, both the sects Shia and Sunni are one. If Islam is affected both will fight together against it. I call Babri Masjid as a Babri Masjid after reading and hearing about it. I had only read the statements of politicians in the newspapers and had not read any book, which had not said about the existence of Babri Masjid. I consider myself a student of Theology and not its teacher. I had not done any research work on the disputed structure to know whether it was Babri Masjid or not. It depends upon circumstances whether a follower of Islam can tell a lie or not. If you had to save life of a person, speaking lie for is permitted.

Question: If to defend a religion, speaking lie is necessary can the followers of Islam defend their religion by speaking a lie?

Answer: To support the truth one has not to take the help of a lie. To defend Islam telling a lie will not at all be required.

It is wrong to say that people of Islam cannot give witness on hearsay basis. Because it was heard from Rasool that he was Rasool and we all witness that and had faith on him.

Question: If some of the followers of Islam start calling a particular site or structure, which is not a Masjid and non-Muslim do not consider it a Masjid, then in whom, will you believe?

Answer: If we know or believe that this is not a masjid then it does not make any difference to talk about it.

Question : What are the ways mentioned in Quran by which one can enquire about the knowledge and believe?

Answer: There is an uniform method mentioned in Quran-e-majid, If you want to aquire the knowledge of a particular thing and there is no other way then one can get the knowledge through the witness. This is mentioned in clause no. 282. I have no knowledge if the same had been said somewhere else.

Question: If some of the followers of Islam call a particular site or structure as Masjid and non followers of Islam do not believe it to be a masjid, then whom you will believe?

Answer: If there is any dispute in Islam and it is not being resolved through talks, then the court should be

approached in this regard and wait for its verdict.

Question: My question is, to accept the claim of any one party out of the two claimant parties, what steps you would take to establish your faith and trust?

Answer: Islam has faced a number of issues when controversy rose between Muslims and non-Muslims and that controversy had always been resolved through the court judgement and it cannot be based on personal knowledge. The witnesses are examined. If Kazi had any personal knowledge he cannot decide on the basis of his personal knowledge but will decide on the basis of witnesses.

Question: What had you done to establish your knowledge and belief to say the alleged Babri Masjid is a Masjid?

Answer: First thing is that the books and articles I had referred, I acquired knowledge and belief through them that it is Babri Masjid. Secondly, some of my friends had gone there before the demolition of Babri Masjid and they said that it was Babri Masjid. Thirdly, the politicians are regularly giving statements that they had washed away this stigma, which was in the form of Babri Masjid. It means they themselves had accepted that there was a Masjid.

Question: I am to say, as you had already stated above that you had not adopted any method to fix according to Quran Sharif that it was a Masjid or not?

Answer: I had already deposed that some of my trusted friends had gone there before the demolition of Babri Masjid and they had told me that it was a Masjid. I do not know exactly but they told me one or two years before the demolition of Babri Masjid.

Question: Is Iran a Shia Islamic country? (On this the learned Advocate of Plaintiffs Shri Abdul Mannon raised objection that this question is not related with this suit,

Answer: Iran is an Islamic country where the Shias are in majority.

Question: Had you been in Iran from 1987 to 1992?

Answer: I remained in Iran from 1987 to 1992. In between I had come to India and went back. I had been staying in Hindustan for about 4-5 months in a year. If any action is being taken to harm the Islam then it is the duty of every Muslim to defend it.

Question: Is it correct that majority of *Fatwas* had been issued from Iran during the last fifty years?

Answer: It has been replied earlier that a place that had been the center of Shias for last one thousand years, that had been Nazaf Iran and Kum which had remained always the places of religious importance, and so most of the *Fatwas* had been issued from these two places.

When we were in Kum and the news of fall of Babri Masjid reached there, all the Ulemas in Kum and Iran

protested against it and ordered to observe Black Day at that time.

Question: Is it a fact that you have come to give your witness here on the basis of Iranian influence upon you about Babri Masjid?

Answer: I had come on the basis of my knowledge and belief that the building, which had been demolished, was the building of Babri Masjid.

Question: My contention is that you are giving false witness under Iranian influence. ?

Answer: It is totally wrong to say so.

Question: In the interest of Islam you are giving false witness about Masjid?

Answer: It is wrong to say that I am giving false witness, but giving true witness.

(Cross-examination on behalf of Hindu Mahashabha, Defendant No.10 and Shri Ramesh Chandra Tripathi, Defendant No. 17 , by Shri Hari Shankar, Advocate, concluded.)

(Cross-examination on behalf of Shri Umesh Chandra Pandey, Defendant No. 22 by Shri Veereshwar Dwivedi, begins)

XXX XXX XXX XXX

I had also studied English. I can read, write and speak English. I had also read Arabic. I had read Qurane Majeed. Qurane Majeed is in Arabic. I had read it in original and its translation in Persian and Urdu. I had only read a bit of English and Hindi translations, not full.

In Shia Hazrat the word '*Taqleed*' means if some one is not himself expert to understand the orders of Islam and cannot derive it from the original sources, then he will have to follow an expert, who is called '*mujtahid*'. The *mujtahid* is he who after deriving the orders of Shariat from the main source can issue Fatwa. Ejma means the unanimity of all the Ulemas on a religious issue. By the term "Fikhahi" I mean religious issues. I think all the Ulemas have the majority that the disputed structure was a Masjid. Today unanimity at one time and one place is not possible.

Question: Should it be treated that all the Ulemas did not sit together at one place and did not issue Ejma regarding Babri Masjid or Ejma had not been issued by them?

Answer: I had already told you that in the present time it is not possible for all the Ulemas to sit together and issue Ejma thereafter. These days the only way to understand Ejma is if any issue comes in lime light and the Ulemas do not oppose it.

According to me at present Ayodhya is one of the biggest pilgrimages of Hindus. Perhaps it is for the last 7-8 hundred years. Then said for the last 4-5 hundred years. I am not a historian and as such I cannot tell you exactly.

Question: Should I take that since you are not a historian therefore you cannot say correctly the age and period of anything and any place?

Answer: I had no depth knowledge of history. I had read a little and as such I cannot tell every period of history in detail. The disputed structure was built in 1528. as it has been widely discussed, therefore, I remember it. The article I had read

and the books which I had mentioned earlier, from that I came to the conclusion that this issue (Ramzanmabhoomi) was raised after 1850. I had also heard the discussins that some people today say that it had been Ramzanmabhoomi. According to that some people, their claim is that Ram Chandra was born here.

Question: By some people you think what would be their number?

Answer: By some people my reference is towards some politicians and religious leaders. I cannot estimate the full number of these some people. By these days, I mean to say that it is not an old issue. To my information in 1850 the Britishers gave air to this issue and to my knowledge this issue was not at all there before 1850. I had no information about the religious importance of Ayodhya.

Question: You also not know the Hindus give importance to Ayodya because according to them Ram Chandraji was born here?

Answer: I had already said that some Hindus claim that the birthplace of Ram Chandra is present Ayodya.

I know that Prophet Mohammad was born in Mecca. I also know that he died in Madeena and there is no controversy amongst Muslims on this issue. The home where Prophet Mohammad died the controversy is over the point. When the Prophet went for this heavenly abode, he also went to Masjeede Aksa. I had no exact knowledge whether his footprints are still there or not. If such

footprints are there, they might not have been worshiped, because Muslims do not worship like this. If such footprints are there, they will be treated as holy. I had read somewhere that some Hindu people had a claim that near Babri Masjid at some place the footprints are in existence. I do not know exactly the distance of these footprints from Babri Masjid. I had not read that there had been any footprints present inside the Babri Masjid premises means boundary.

Question: Did you ever read that Hindu people tell and show the footprints made in the premises of Babri Masjid and those are of Shri Ram Chandra?

Answer: So far I had read and I remember some footprints are being shown over the years outside the premises of Babri Masjid and it is claimed that these are of Ram Chandra.

I had read the book written by Janab Amir Ali on Islamic History much before. I do not know whether he had written something about Waqfs or not. Even otherwise I had not read any of the books of Amir Ali Sahab on Waqfs. I had read a bit about Babar. I had read that under Babar's orders his Governor Meer Baki built the Babri Masjid. Meer Baki had any title in the army of Babar that I do not know. This much I know that after Meer Baki Isfhani was written, which shows that he was from Isfhan, which is in Iran.

Question: Can a victorious king build a Masjid on the land he conquered?

Answer: It has already been replied that without the consent of owner a Masjid cannot be built at anyplace.

I do not know who was the owner of the land before the construction of Babri Masjid. I do not know whether there is any detail about the permission sought from the owner or not. *Ajajil* is not related to angels but he was called *Iblees* and it is related to *jinns*. *Ajajil* is not known as the leader of angels but due to his prayers he had got the key position, but when he refused to obey an order of Allah, he declared him *Mardood*.

Question: And the same *Ajajil* after refusing to obey the orders of Allah was known as *Iblees*.?

(On this question the learned Advocate of Plaintiffs Shri Abdul Mannan raised objection has no relevance with this issue.)

Answer: He was related to *jinns* (devils) and he refused to obey the orders of Allah and he declared him *Mardood*. The order of Allah was to bow before Janabe Adam.

Question: Can that place be a Masjid where the angels come down?

Answer: There is no fixed place where the angels come down. They can come down inside the Masjid or outside the Masjid.

Question: My question was that at the place where the angels come down can a Masjid be built at that place?

Answer: Yes Sir, it can be built.

I had not seen any detailed reference in Quran Sharif, Hadees and Shara that the place where the angels come down a Masjid can be built or not. I had already said that

the place where the angels come down is not fixed, they can come down at any holy place.

Question: Can a human being know the place where the angels come down and if so, is there any instance in the History of Islam?

Answer: The angels are not visible to common man but from the Hadees of Masoomeen it can be imagined where the angels come down and can descend. I do not put Meer Baki in the category of innocent (Masoom). I do not know whether any Masoom had told Meer Baki that the place where the Babri Masjid had been built was the place where angels come down.

Question: Whether I am correct in saying that the two sects of Islam, Shias and Sunni had great controversy from the very beginning?

Answer: It has been replied number of times. No need to repeat it again.

Question: Whether blood war continued between both the Sects?

Answer: It had already been replied.

Question: Will it be wrong to say that it is not been replied so far?

Answer: I think it has already been replied and it has no use to repeat it again and again.

Question: Is it the fact that because of this you do not think it proper to reply my question?

Answer: I had answered this question in brief and to answer it in details I think it will not have any positive effect in this case.

Question: Whether Shias and Sunnis had the unity from the very beginning?

Answer: It has also been replied earlier. So far as the basic issues are concerned there is unity but there are differences on certain issues, which I had said are due to interpretation.

Question: Whether it is correct or not that after the death of Hazrat Mohammad Sahab the three subsequent Khalifas are accepted by Sunnis as Khalifas, whereas Shias do not accept them. Is it correct or wrong?

Answer: So far I remember, this has been replied twice, as such it is of no use to reply it again and again.

Question: After the death of Hazoor Sahab, whom did Shia accept their first Immam? (On this question the learned Advocate of Plaintiffs raised objection that this question is not related to any point of the suit nor it has any reference in the context. This question is related to individual religious faith and the witness cannot be compelled to reply it.)

Answer: According to our Shia faith after the death of Hazoor (S.A.B.) the first Immam was Hazrat Ali A.S. Graveyard i.e. public graveyard or general graveyard is called Waqf Alal Estemal (by user). The orphanage Home is for public and that can be and cannot be waqfed. The Masjid is if in public use for many days then it will be called waqf Alal Estemal (by user). It is correct that at

present to look after the Shia Waqfs in U.P., Shia Waqf Board is there. Similarly to look after the Sunni Waqf, there is Sunni Waqf Board. These both the Boards are separate in U.P.

Question: Whether in both these Boards, there is any unity to look after and manage the Waqfs of their own individual Boards?

Answer: Both the Boards had separate entity. To look after the Shia waqfs, Shia Waqf Board is there and Sunni Waqfs Board is to look after the waqfs of Sunnis. (Volunteer: that this division has been made for convenience, otherwise there is only one Waqf Board in other States.)

There is very slight difference in the laws relating to the Heritage of Shias and Sunnis.

Question: What do you mean by very?

Answer: 'Very slight' (Bahut Thoda). It is a phrase in Urdu, which means very less.

Question: Is it correct that there is no similarity in reading the namaj by both the Sects?

(On this point the learned Advocate of Plaintiffs raised objection that the question had been repeated many times)

Answer: It had been replied twice, but the basic things need to two sects would have been created. As such to ask about the controversy or not between both the sects, is meaningless and purposeless. Shias write Haji for themselves. I myself am a Haji. I am not Hafiz. About the birth and death of Mohd. Sahab, there are

differences among the Shia Ulemas and also among the Sunni Ulemas.

Question: Whether there had been continuous difference between the Shia Sect and Sunni Sect in U.P. over the death, which had come to end two years back, after some people played a role of mediator in the matter?

(On this question the learned Advocate of Plaintiffs raised objection that the question is not related with this disputed or any point of the suit and this is being asked to create non-confidence between both the Sects.)

Answer: In brief the fact is as the issue of Babri Masjid and Ramzanmabhum had been made much political and politicians are raising it, similarly the question of death of Mohd. Sahab was also much raised by the politicians. But since this issue is not related to present suit, therefore I think it is not good to say anything more in this regard.

I had no knowledge about the detail of the suit as who lodged it. But I had read it that in 1945 the Court in its verdict had said, that the Masjid was built by Sunni Hazrats. I do not know the details of that suit. I do not know the plaintiffs of that suit. When I had no knowledge of the plaintiffs of that suit, I cannot tell between whom the dispute was either Hindus and Muslims or Shias and Sunnis. I was not born in 1945. My father did not tell me about his suit, but I had read somewhere about it. I do not remember at present, where did I read about it. The Advocate of Plaintiffs of the present suit had not said to me anything about the 1945 suit.

Question: Whether *Fikha Zafaria* which is also called *Fikha Islami* is neither applicable to Sunnis nor the Sunnis are bound to it?

Answer: There are five *Fikhas* in Islam. Every Muslim has freedom to choose any one of his choice, and that *Fikha* will be applicable to him.

Question: According to you whether *Fikha Zafaria* applies to Sunni Hazrats and they are liable to be bound by it?

Answer: The Al-Azhar University of Egypt, which is a prestigious University of the entire Muslim world and follow the Fatwas issued by the Ulemas of that University, 50-60 years ago a Fatwa was issued that out of these five *Fikhas*, *Fikha Zafaria* is one of them, Muslims can adopt any one *Fikha* of his choice and that will be the right thing. *Maslak* and *Majhab* had almost the same meaning. *Maslak* means the path, which is to be followed and *Majhab* too had the same meaning. Shia *Maslak* and Shia *Majhab* had the same meaning. *Fikha Zafaria* is the *Fikha* of Shia *Maslak*. To my knowledge in Hindustan Sunnis follow the *Fikha Zafaria*.

Question: Should it be taken that *Fikha Zafaria* is for both Shia *Maslak* and Sunni *Maslak*?

Answer: It has been replied that in the Fatwa issued from Al-Azhar according to it, out of the five *Fikhas* the Muslims can choose any one of their choice.

Question: Will it be right or wrong to say that the Fikha of *Shia Maslak* is generally known by the name of *Fikha Zafaria*?

Answer: The Fikha, which is followed by *Shia Isna-ashri* is called Fikha Zafaria.

Question: Whether the religious leader in Shias is called Immam?

Answer: The 12 Immams are called Immam-e-Masoom. The word Immam alone is not used.

Imam Zafar Sadiq (A.S.) was our 6th Immam and he was our Immam-e-Masoom. It is wrong to say that Sunnis did not call Immam to their religious leader, Imman but they say Khalifa to him and the correct fact is they use both Khalifa and Immam for him.

Question: Do you know the name of Immam of Sunnis?

Answer: I do not know.

Question: Does Sunnis accept any one as their Immam these days?

(On this point the learned Advocate of Plaintiffs Zafaryab Jilani raised objection that such types of questions are totally irrelevant to this suit and it is being asked only to waste the time of the Court and the witness is being harassed by asking such typed of unwanted questions.)

Answer: The term Immam has been used in the very wide term. If Immam means Khalifa of Rasool then I am not aware whether anybody is called such at present or not.

Question: Do you know the name of any Immam of Sunnis?

Answer: I had already said that Immam has been used in the wide sense. The Khalifa of Rasool is also called Immam, similarly if any one acquires greater knowledge in religious field, he is also called Immam, as Immam Bukhari who is the Expert in Hadees, Immam or Immam-e-Fakhruddin Razi, who is called the Immam of

Tafaseer, similarly the personalities who carried 4 Fikhas, they too are called Immam by Muslims.

Immam-e-Kaba is also called, Immam by Sunnis. Immam-e-Kaba is the religious priest of Muslims. Many Muslims treat him as their religious priest.

Question: I am to say that Immam-e-Kaba is the only religious priest. Sunnis had no religious leader (Dini leader), is it correct or wrong?

Answer: In my opinion there is not much difference in the meaning of religious leader (Dini leader) or religious priest. The equivalent of Arabic word is not available in English. Hazrat Immam-e-Kaba is a great *alim* and teaches the students of Theology and the namaj held there is one of the biggest namaj in the world. He also performs the duty of Immam.

Question: That is why you call Immam-e-Kaba as the Immam of Sunnis?

Answer: Many of the Sunnis treat him as their religious guide. Its example is when some time back he came to Lucknow, he was asked a question, whether women can participate in namaj Jumma or not? Then he issued a Fatwa that they can participate in it and it was accepted by all the Sunnis here in Hindustan.

Question: Who was the first Khalifa in Shias and what was his good name?

(On this question the learned Advocate of Plaintiffs Shri Zafaryab Jilani raised this objection that he question irrelevant and out of context and is being asked to hurt the religious feelings.)

Answer: According to Shia religion, after Hajoer (S.B.A.), Khalifa Hazrat Ali took over, who is also called Immam. It is not fully correct that only Sunni

people call their Dini leader (Religious Leader) as Khalifa and only Shia people call their Dini leader as Immam.

Question: Is it correct or wrong to say that Shias and Sunnis both do not call their religious leaders by one name?

Answer: It has already been replied that Sunnis call their religious leaders who came after Rasool as Khalifa and Immam both. Similarly they accept 12 Immams. He is Immam and also the Khalifa of Rasool.

Verified the statement after reading

Sd/-

Syed Kalbe Jawwad

16.04.2002

Typed by the stenographer in the open court as dictated by me . In continuation,for further cross-examination on 17.04.2002 .Witness be present.

Sd/-

Narendra Prasad

Commissioner

16.04.2002

Dated 17.04.2002

Before: Commissioner, Shri Narendra Prasad, Additional District Judge/Special Duty Officer, Hon'ble High Court, Lucknow Bench, Lucknow

(In continuation of 16.04.2002 cross-examination of P.W. 26, Syed Kalbe Jawwad, begins on oath.)

The five-time namaj, which we offer is called '*wazib*'. Similarly *Namaj-e-Janaja* is *wazib*. It is necessary to read. The *Sunnat Namaj* is that which had the virtue in reading but it is not necessary to read it. The *nafile* read with *wazib* namaj is called Sunnat Namaj. We try to come nearer. Namaj was started in Persian. It is called *Salat* in Arabic.

Question: Whether there is difference in reading the namaj between Shias and Sunnis?

Answer: It has been answered two times.

Question: Whether there is difference between Shias and Sunnis at the time of Iftar during Ramzan month?

Answer: In Quran-e-Majeed, there is an ayat about Iftar, where it has been stated to end the fast (Roja) before night falls. There is difference in the definition of night, i.e. the night falls immediately after the sunset or after that light which remains for 8 minutes after sunset. That is the point of difference. Some Shia Ulemas say that night falls immediately after the sunset but the majority of Shia Ulemas are of the view that it falls 8 minutes after the sunset and the majority of Sunni Ulemas are of the view that night falls immediately after the sunset and that is the time of Iftar Roja.

There is no basic difference in laying the dead body in the graveyard. There is a little difference in the Shias and also a little difference in the Sunnis. These minor differences between Shias and Sunnis often become the cause of controversy between the two.

Question: Whether it is a fact that due to the above controversy the differences between, Shias and Sunnis particularly in Avadh region has taken violent shape and that is still existing.

Answer: It has been replied earlier. As the Britishers had their hand in creating differences between Hindus and Muslims, similarly because in Avadh Shias were the rulers and the Britishers snatched it from them forcefully, therefore, they tried to create differences between Shias and Sunnis.

Question: Whether it should be considered that where there had been British rule both the Shias and Sunnis were living amicably?

Answer: Wherever we had heard the news of dispute between Shias and Sunnis, those are less in number and the interference in it had been more of politicians than religions. It is wrong to say that my statement about the controversy between the Shias and Sunnis is not true in full. But the fact is that my entire statement is true.

I know the Islam expanded up to Spain. I am not aware, nor I had read that in Spain the Masjids were made after demolishing the Churches (on this question the learned Advocates of Plaintiffs Shri Zafaryab Jilani and Shir

Abdul Mannan raised objection that Spain has no concern with this case, therefore there is no justification in it.)

Question: Do you know that as an activity or spread Islam in Spain, their religious temples i.e. Churches were demolished and at number of places Masjids were also demolished.

(On this question the learned Advocate of Plaintiffs Shri Zafaryab Jilani repeated his above-mentioned objection.)

Answer: There is no need to go into such details because history is full of such incident. Those who worship Vishnu they demolished the temples of Shiva and vice-versa. Followers of Hindu religion demolished the temples of Jains and Budhs. If we go in its details it will increase hatred only. So it is not proper to go into its details.

Question: Do you consider the demolition of temples as part of expansion of peace?

Answer: I had already said that nowhere I had read the Muslims after demolishing the temples of Hindus constructed Masjids thereon anywhere.

Question: You had said about the demolition of temples by one sections of Hindus of another section, did you read in details about it anywhere?

Answer: I had read a gist in some articles and not in detail. But my submission is that it will be better not to go deep in such matters.

Question: Whether the things which you think are not beneficial, you do not want to include those in the statement?

Answer: There are many such facts, if we tell about them it will create hate and disturbances. It is better not to talk about them.

Question: It means you want to give that much statement, which is beneficial to you, and you want to avoid details for restricting hatredness, even if that may be necessary for the suit?

Answer: I think the true statement relating to this suit will finish hate and disturbances.

Question: Do you know that in this suit a point of dispute is that Hindus say there was a temple of God Rama at the disputed site and by demolishing it, a structure known as Masjid had been constructed?

Answer: It is a point of dispute in the suit.

Question: Do you want to reply only this much on this point so as to eradicate the hatredness?

Answer: I had already said that if the truth relating to this suit comes to light the hatredness will end and dispute will be resolved.

The details of history of Spain is not in my mind at present. It is not correct to say that I am not recollecting it because it spreads hatred, but it is not in my mind at this time, because whatever we read all that does not remain in memory. To my mind, wherever Islam expanded it spread peacefully and not forcefully. Those who follow Islam are

called Muslims. Those who do not follow Islam are called non-Muslims.

Question: Whether the non-followers of Islam are called *Kafirs*?

Answer: The logic behind *Kafir* is very wide, and it means one who refuses. A man who does not follow any of the established facts of Islam will be called *Kafir*.

Question: Whether a polytheist (Mushrik), comes under the definition of *Kafir* or not?

Answer: The definition of Mushrik is, those who accepted Allah and were also polytheist, were Mushrik. Mushrik may be a *Kafir* or may not be.

There are examples in Arab, people accepted Allah and were also polytheist and also accepted Rasool, but were not ready to leave their old track, so we will call them Mushrik. There was no such community, but were individuals, whose names are not in my mind at present. It is wrong to say that I am giving wrong statement. It is also wrong to say that the idol worshippers due to fear used to say that they had accepted Islam religion and while going to read namaj, took the idol in their hands, due to which it was ordered to read the namaj with open hands. I had not read this anywhere.

Question: Is it a fact that violence in Islam is from the very beginning?

Answer: Violence has no place in Islam. It was neither in the beginning nor afterwards. It is wrong to say that on the instance of Amir Hamza, Hazoor Paigamber Sahab marched from Mecca to

Madeena, but he had done so under the orders of Allah.

Question: Is it correct or incorrect that Hazoor Sahab fought seven battles to come back to Kaba Sharif?

Answer: Many battles were fought during the time of Hazoor but all those were defensive.

Question: Should I take it that all the battles fought by Hazoor Sahib were not to reach Kaba Sharif but for his self-defence?

Answer: All the battles in the time of Hazoor Sahab, were fought by Hazoor Sahab in defence.

Question: Is it a fact or not that Hazoor used to talk about the existence of one God while the people of opposite thinking were encouraging idol worship and thereby wanted to enhance their income?

Answer: When Hazoor Sahab declared that Allah is one, and non-other is Allah the Mushrik people of that time became enemy of those people who accepted atrocities against them and conspired to kill Rasool. Rasool preached for peace but cruelty was committed against him.

Question: Due to his such defensive fights did Hazoor went to Madeena from Meeca?

Answer: There were no fights before Hazrat. Severe atrocities were being committed to Muslims in Mecca. People in Madeena invited Rasool to come over there and with the permission of Allah; Rasool went to Madeena from Mecca.

Question: Did Hazoor Mohammad Sahab in his defensive fight go again to Mecca from Madeena?

(On this the learned Advocate of Plaintiffs, Shri Zafaryab Jilani raised objection that the question is totally irrelevant and baseless and has no concern with the suit and by asking such question efforts are being made to give birth to a wrong concept against a particular community. Such matter can be called scandals, so question of this typed should not be permitted to ask.)

Answer: As the Muslims in Mecca were turned out from their homes and the people in Mecca were banned to perform their pilgrim and were continuously fighting, so Rasool along with his friends went to Mecca to make them understand but instead of hearing him those peoples started fighting against him and they were defeated.

Question: If any victorious person take away the property of defeated persons, make them slaves and keep the women of that place in his bed rooms (Haram), will you take it as an act based on compassion, justice, charity and equality?

(On this question the learned Advocate of Plaintiffs Shri Zafaryab Jilani repeated his above objection.)

Answer: Its reply in brief cannot be given. All the Islamic orders will have to be undergone to reply it but in brief we can say that during the time of Rasool no such incidence has come to light that those who were defeated were made slaves and their land was occupied.

Question: To kill an armless defeated person, do you consider it compassion, justice, charity and equality?

(On this question the learned Advocate of Palintiffs Shri Zafaryab Jilani raised objection that the question is irrelevant and out of context and it is not related with the suit.)

Answer: If such an incident has happened, why and under what circumstances it happened, it is necessary to go deep into it.

Question: Breaking statues of Budha in Afghanistan, do you consider it a hateful act according to Quran-e-Majeed or such an act is according to the rules of Quran Sharif?

(On this the learned Advocate of Palintiffs Shri Zafaryab Jilani repeated his above objection.)

Answer: What happened in Afghanistan does not seem to have any relevance with this suit and therefore, I do not consider it necessary to reply this question.

Question: To break a statue at any place, do you consider it according to the rules of Quran Sharif or against it?

Answer: The statue made in the place of worship, I do not think it proper to break those statues. It has been ordered in Quran-e-Majeed that, do not talk ill about the Gods of others. From it we reach to a

conclusion that it is not proper to sabotage their temples.

There is one Sura in Quran-e-Sharif known as 'Al-Anfal'. The word meaning of *Al-Anfal* is 'things from loot' (*male ganeema*). It also means of a man had excessive savings than his requirements that is also called *male geneema*.

Question: In a struggle the victorious person decides that a defeated person had how much things in excess than his requirements? (On this question the learned Advocate of Plaintiffs Shri Abdul Mannan raised objection that this question has no relevance with the suit and the Advocate cross-examining the witness is asking questions to distort the Islamic history.)

Answer: There are details in it but it has no relevance with the present suit, as such I do not think proper to reply it.

Question: Had you come in the court after studying deeply the claims of Defendants and Plaintiffs and on that basis saying, which question is necessary and which is not?

Answer: It is the duty of Advocate to know the details of claims of plaintiffs. I had only been asked to give witness regarding the stand on Babri Masjid. The Advocate of Plaintiffs has not told me anything as what to say and what not.

Question: You had neither come after reading the claims of Plaintiffs in this suit and nor the Plaintiffs had

told you what statement you have to give, even then you find yourself in such a position to decide which question is necessary for the suit and which not?

Answer: I had been only told that I have to give witness on the stand of Shias on Babri Masjid, as such to answer the relevant questions on it will be proper.

Question: Then should it be treated that whatever the Plaintiffs had told you, taking it as the dead line; you want to reply on that basis?

Answer: I had already said that I had been told that I had to tell only the Shia stand. I had not come to tell the whole history. I have not been told, what I have to say and what not. I have repeated it time and again.

Question: Had you given statement about the principles on which Quran-e-Sharif is based?

Answer: I had told some of its principles.

Question: Had you replied or not that the Quran-e-Sharif is based on the principle of compassion, justice, charity and equality?

Answer: Yes I had given the statement, which is recorded on page 22 of my statement.

At present I do not remember about the details of *male ganeema* in *Sure Anfall*. I had no information about

such fights after the battle of *Badra* between the Muslims over the distrubution of *male ganeema*.

Question: Whether it is correct or incorrect to say that after the same battle of *Badra*, controversies arose between the Muslims and after placing the case of those fighting Muslims before Hazoor Sahab, he held his decision as to how the *male ganeema* should be distributed?

(On this point the learned Advocate of the plaintiffs raised objection that this question has no relevance with this controversy and it is totally irrelevant.)

Answer: I had no knowledge of such things that after battle of *Badra*, there had been any fight among the Muslims over the distrubution of *male ganeema*.

Question: Whether this had been written in the same *Surtul Anafall*, which means, I am with you, you keep the Muslims established, I will fill the hearts of *Kafirs* with fear very soon and you kill them through neck and kill them part by part.

(On this point the learned Advocates of Plaintiffs Shri Zafaryab Jilani and Shri Abdul Mannan raised objection that the book from where these questions are being asked has not been submitted as such so first of all the said book may be brought on record and then questions be asked on its contents. This question as such is fully irrelevant and is being asked to create objectionable opinion about a particular religion with malafide intention.)

Answer: I cannot understand only from Hindi translation till its Arabic text is not before me.

Question: Whether anything had been written in Quran-e-Majeed about the methods to read namaj?

Answer: Only hints about namaj are given in Quran-e-Majeed, and its details had been explained by Rasool Sahab himself.

There is one Sura in Quran Sharif, '*Sura Maryada*'. I do not know whether any reference is there in '*Sura Maryada*' or not, what to do before the namaj, but there is reference about '*waju*' which is compulsory to do before namaj. It has been written in it that before namaj do *waju* and if you had to take bath, take it and in case of compulsion do *Tayamum*. *waju* is done before reading namaj. To read namaj in groups in Masjid had great virtues and to read it with group had great value. As the virtue of group is higher, the people therefore, read namaj after assembling in groups.

Question: As such those who construct Masjid had to make arrangements for water for *waju* in Masjid or near about?

Answer: This point has been replied earlier to this. Arrangement of water for '*waju*' had generally been there inside and outside the Masjid, but it may be or may not be.

Question: Whether inside the Masjid or near it the arrangement for water is not necessary, is it not so?

Answer: I had said it is not necessary. It means there can be or cannot be.

Question: Had you any knowledge of a Masjid in Hindustan, which had been built by the Governor under the order of his ruler, and the arrangement for '*waju*' has not been made in it?

Answer: I had not seen all the Masjid built by rulers or built under their orders. I therefore, have no complete knowledge about it.

The Masjids built by rulers, which I had seen one of them is Asifi Masjid in Lucknow, where I recite namaj. In that Masjid arrangement of water for *waju* inside the Masjid is not available. Similarly the Jama Masjid in Thakur Ganj, which is the biggest Masjid, had no arrangement of water for *Baju* inside the boundary of the Masjid. The boundary of Masjid means the place where the shoes and chappals are removed to enter the Masjid. The limit of the Masjid starts from there. It depends upon the Masjid, whether its outer wall is included in Masjid or not. I had no knowledge in this regard whether arrangement of water within the boundary of Babri Masjid was available or not. I also had no information whether there had been any well or pond near the Babri Masjid.

I had not tried to read the architecture of Masjids at different periods in Hindustan.

Question: Do you know any Masjid of a ruler of Mughal period, which had no minars (towers)?

Answer: This had already been replied earlier.

So far I had read in history there is no detail about the minars and mosques in Masjid-e-Nawabi. I had not read when minars and mosques were built in Masjid-e-Nawabi. It has been accepted by the Islam, that do not give much decoration to Masjids, but keep them simple.

Question: Not to decorate and keep them in the simple form whether it is your intention is that there should not be domes and minars in the Masjids?

Answer: I do not mean this.

I had no knowledge whether Babar or his Governor Mir Baki had any paucity of funds.

I know the ruler or his Governor had generally no paucity of funds except in peculiar circumstances.

Question: If it is said that Babar's Governor Mir Baki had in order to show his strength had demolished the structure of disputed site and erected another structure at that site, do you agree with it or not?

Answer: Masjid is not built to show the power, but it is built to bow one's head before the almighty.

I only know this much that Babar had never visited Ayodhya. As such the question of attack and his victory does not arise. It is an established fact that the Masjid was built by Mir Baki and not by Babar.

Question: Whether it is correct that Mir Baki in flattery of his emperor gave that Masjid the name of Babar?

Answer: What was his intention that only Allah knows well. But I think he built this Masjid with good intention.

It will be wrong to say that according to Shara the disputed structure was not a Masjid, but according to my knowledge and belief it was a Babri Masjid and still it is.

Question: Do you consider knowledge and belief as one thing or separate things?

Answer: It is said that there is some difference between knowledge and belief. Knowledge means to know and belief means to accept after knowing a thing. What I had said above Babri Masjid that I had said on the basis of both knowledge and belief. Because I know and accept that it is Babri Masjid.

The Babri Masjid is a Babri Masjid. I got this knowledge after reading about it and also listening to the statements of some trusted witnesses. I got this knowledge by reading the book of Sabahuddin Abdul Rehman entitled 'Babri Masjid' and from some articles and some of my trusted friends who went there told me on return from there, which I had already described earlier. Sabahuddin Sahab was a scholar. I do not know the field of his specialization. I do not know what was his job. The articles, which I read I remember one of it. The newspaper SAHAFAT, is published from Lucknow. A scholar Hussain Amin Sahab's article was published in it two-three years ago, that I had read. Hussain Amin Sahab is an eminent writer of Urdu. I had read some articles of Hindu Theologists published on this subject, but not read any book separately. At present, I do not recollect the name of writer Hindu Theologist. I know the meaning of motivated. It means influenced by a movement. *Tahreeq* means movement. It is wrong to say that influenced by a movement of Muslims and to benefit them I had given wrong statement.

(On behalf of Shri Umesh Chandra Pandey, Defendant No. 22, the Cross-examination of Shri Veereshwar Dwivedi, concluded)

(Shri Rajendra Singh, son of Late Shri Gopal Singh Visharad, Defendant vide O.O. Suit No. 1/89, Shri Puttu Lal Mishra Advocate adopted the Cross-examination of Witness Maulana Kalbe Jawwad Sahab and other Defendants.)

Further cross-examination had been deferred.

Verified the statement after reading

Sd/-

Syed Kalbe Jawwad

17.04.2002

Typed by the stenographer in the open court as dictated by me .

Sd/-

Narendra Prasad

Commissioner

17.04.2002

17.05.2002

Before: Commissioner, Shri Narendra Prasad, Additional District Judge/Special Duty Officer, Hon'ble High Court, Lucknow Bench, Lucknow

(Appointed as Commissioner vide orders passed on 21.03.2002/03.05.2002 by Special Full Bench of Hon'ble High Court Allahabad, Lucknow Divisional Bench, Lucknow in other original suit No. 4/89 (Original Suit No. 12/61),: Sunni Central Board of Waqfs U.P. etc. *Versus* Gopal Singh Visharad etc.)

P.W. 26, Maulana Syed Kalbe Jawwad, made the statement on oath, on behalf of Plaintiffs, other original suit No. 5/89 – Cross-examination by Shir Ved Prakash, Advocate begins:

XXX XXX XXX XXX

Muslim is he who accepts the Allah, Holy Quran and Paigambar Mohammad Sahab. If a person out of the above three things does not accept one or two things, he would not be a Muslim. The Holy Quran does not permit one to encroach upon a land forcibly and build a Masjid thereon. If a person makes efforts to build a Masjid on a place, which he had occupied forcefully, he will be called a sinner. A sinner is that who acts against the Holy Quran and against the orders of Rasool Sahab. A sinner will be a Muslim until and unless he had openly denied any of the established facts of Islam.

Question: If a Muslim by force occupies the place of worship of other religion and tries to make a Masjid thereon, should I take it that such an act

of that person will be called an open violation of the teachings of Quran Sharif?

Answer: By open refusal I mean to say, if there is any explicit order of Quran Sharif and for it he says that I do not accept it, he will be called ungratefull. But a sinner is he who accepts the things but acts against it. For example taking liquor is prohibited in Quran Sharif and if someone says he does not agree to it and even then take liquor, he will be called *Kafir*.

On the other hand if he accepts it and even then neglects it, he will be called a sinner. If a person feels sorry after committing the sin, Allah Talla excuses him and he will be called a true Muslim. But I cannot say how he felt sorry; it should be from the core of heart. If a person does not feel sorry from the core of his heart, he is Muslim but a sinner Muslim. According to Paigamber Mohammad Sahab, Masjid is a holy place and is a common place for all rich and poor. Hazrat Mohammad Sahab had advised that the place where the Masjid is built must be sacred and clean. Hazrat Mohammad Sahab also advised not to give much elegance and decoration to Masjids. It can be said that his advice was such , so that the attention of those who perform prayer is not diverted. It is in the history that before Hazoor Sahab 360 statues were in existence in Kaba. Till he remained in Mecca, these statues remained persistent and the people there were divided in many tribes. The tribal used to fight each other. The reason of fight was different at times. It has not come to my knowledge that their fight was on the issue of worship of statues.

Question: Was it not that the tribes were divided on the basis that they used to worship different statues?

(On this question the learned Advocate of Plaintiffs, Shri Abdul Mannan, Advocate raised objection that the question is to defame the Islam and it has no relation with this suit and it is totally irrelevant.)

(In reply to it the leaned Advocate cross-examining the witness said that it is totally wrong to say that the question has been asked to defame Islam. As Islam does not accept idol worship, therefore, the question is necessary.)

Answer: This question is related to Ancient Arabic History and I had already said that I had not been a student of History.

Question: My above question is related to the origin and development of Islam. Do you agree with this question?

Answer: The question is not clear. There are number of basis of the development of Islam. There is no doubt in it that Islam is against idol worship.

Question: Will any Muslim while rebuilding a Masjid, place idols or pictures of Hindu Gods and Goddesses in it or carve out or engrave the pictures on the stones inside it or on its pillars?

Answer: It should not be. Islam does not permit it. If anybody does so, he will be called a sinner.

On the doors of Masjid the picture or carving of pigs should not be there. Inside the premises of Masjid nobody will engrave the pictures of *charan*, *chulha*, *hodsas*, *belan*. It has no relation with Masjid. We had seen the pictures at some places on the outer door of the Masjid, but it does not make any difference. If someone rebuilds the Masjid, he should not make the picture of any animal or person inside it and if it is already there, he should hide it or disfigure it. If a person rebuilds a Masjid engraving or carving picture of any animal or making an animal outside, it is prohibited; it means it is good, if he does not do so.

Question: If a Muslim in India rebuilds a Masjid, will he permit any Hindu to carve out the picture of Hindu Gods and Goddesses, inside or outside the Masjid?

Answer: He will not. I do not know whether any Muslim permitted any Hindu to carve out such things etc. in a Masjid.

Question: In the Masjids rebuilt by Muslims in Hindustan till today, had any Muslim been permitted to carve out the pictures of animals or Hindu Gods and Goddesses, *Charan*, *Chulha*, *Hodsas*, *Belan* etc, whom the Hindus worship, inside or outside the Masjid?

(On this question the learned Advocate of Plaintiffs Shri Zafaryab Jilani raised objection that it is irrelevant and also a compound question, which is out of suit.)

(The learned advocate cross examining in reply to this objection said that my question is within the suit, it is relevant and is absolutely necessary for the decision of the suit)

Answer: I have no information about all the Masjids in Hindustan, but I can quote a principle, that it should not be there.

To my knowledge there is no such Masjid where a Muslim had permitted any other Muslim to carve out the picture of Hindu God and Goddesses etc. therein.

I am the Immam-e-Juma of Shias in Lucknow and a student of Islamic philosophy. In relation to the religion my each single word had its importance or not, this can be told by those who follow it. Islam had a principle that if there is dispute on any point, listen the views of both the parties carefully and then decide. I was anxious to see the photographs of disputed site but came to know that photography is prohibited there. No photograph of any place had been available to me nor I had seen in any newspaper and journal depicting the inside picture of the disputed Masjid. I had not asked Jilani Sahab, whether any photograph of inner part of the Masjid is available or not. But my friends who had been inside the Masjid, I was sure from their talks that it was a Masjid. It is better to see yourself and decide and if it is not possible and some trusted people give their witness, then it should be accepted. Those trusted people who had revealed the inside story of the Masjid to me are still alive.

Question: Whether without personally viewing the articles inside the Masjid, on the basis of talks of trusted friends, without impartial investigations or consideration, you are giving witness with malafide intention?

Answer: I am giving witness with full knowledge and belief and it is not with malafide intention.

(On this point the Learned Advocate cross-examining the witness drew attention of the witness to picture No. 50 of coloured album compiled by U.P. Archaeological Organisation. Seeing it the witness said), I am not seeing any round pitcher in this picture.

(On this point the learned Advocate cross examining the witness drew attention of the witness to picture No. 76 of black and white album compiled by U.P. Archaeological Organisation, viewing it the witness said), the leaves that are seen in it, there is no harm of their being in Masjid. The picture is not clear, therefore it cannot be said what is in the picture, whether it is a trunk of an elephant or not.

I do not know when and in which year first Masjid was built in India.

Question: In relation to India, whether there had been any reference in the Islamic history about the construction of Masjid or not?

Answer: This question is not clear, so I am unable to reply it.

In India, wherever the Muslims reside they build Masjids there, but when the first Masjid was built its details is not in my mind. I had knowledge about the construction of some Masjids in India. There are number of old Masjids about whom I had read. The Jama Masjid of Delhi is amongst the Royal Masjids. I do not know exactly when it was built. I know, it was built by Shahjahan.

I had heard about the Constitution of India. I had not read the Constitution of India. But had read its references at some places. I do not know about the conflict between the Constitution of India and Quran Sharif. But the Constitution has permitted us to act according to our personal law. I do not know whether something about Uniform Civil Code has been said in it or not.

What to say about the Shias in Pakistan, I do not treat any one as enemy. The Shias of Hindustan and Pakistan are alike.

Question: If none of the *alims* had issued *Fatwa* on any point, except that of Pakistan, what will you say about it?

Answer: It is the question of followers. Whosoever is the follower of that *alim*, he will obey his *Fatwa* and who is not his follower, it is not necessary for him to obey it.

Shias have many religious experts (Mujtahid). They had their own followers. There is no difference over the basic principles of Islam among the individual *alims* and their followers. In India, we have no *alim* of the status of *alim* in Iran and Iraq.

Question: Mohammad Sahab himself made the Masjid-e-Kaba and Masjid-e-Nawabi. In these Masjids the trunk of the date tree was dug in the earth and made pillars thereof and the roof was made of date branches. By doing so, had Mohammad Sahab not shown the path of building Masjids?

Answer: The first Masjid, which was built, was by the name of Kuba. The pillars in it were of the trunk

of date trees and the roof was also made from the branches of same tree. But there was some difference in Masjid-e-Nawabi. Here the walls were of stone and the roof was made of date wood. It shows that whatever material is available a Masjid can be made from it. It cannot be said, that whatever design Mohammad Sahab had made its true copy is necessary for the Masjids.

Question: With the expansion of Islam in different countries, had the people living there started building Masjids in their own design?

Answer: The shapes of Masjids are different in many countries. In Iran too, many Masjids are without mosques or minars and even then these buildings are used as Masjids.

Many Masjids in Iran have mosques and minars. The Masjids constructed in Iran and those constructed in India having mosques and minars, both have no basic difference, only a little difference is in their shapes. With the passage of time, we find some difference in the shapes of Masjids. The domes and minars of the Masjids constructed later are much beautiful than the Masjids constructed earlier. Muslims came in Hindustan before 11-12 Century. They had assumed power during 11-12 Century.

Question: When the Muslims assumed power in India at first in 11-12 Century, whether the ruler of that time started building Masjids.

Answer: The rulers had also built Masjids and it had also been before them. The increase in the development or beautification of Masjids had been found much in 16th Century. I do not know

the architectural history of Masjids, as such I cannot say that development in building Masjids had been during 11-12 Century. I do not know about the Masjids built by ruler in 11-12 Century are having Arches, Minars, Membars, Eastern side Main Gate for entrance, Middle Tank for water, courtyard etc. or not.

Question: It is clear from the books and history that the rulers who built Masjids in Hindustan at the time of their construction there was no dispute. The above mentioned all the things were made therein. Is it correct to say?

Answer: When I had not seen the Masjid, I am not in a position to tell something about it. But this much we knew that the disputed site, which had been encroached upon forcibly, a Masjid cannot be constructed thereon.

(Plaintiffs, other original suit No. 5/89 on their behalf the Cross-examination of Shri Ved Prakash, Advocate concluded.)

(All the parties concluded the Cross-examination of witness P.W. 26, Maulana Kalbe Jawwad. Witness is discharge.)

Verified the statement after reading .

Sd/-

Syed Kalbe Jawwad

17.05.2002

Typed by the stenographer in the open court as dictated by me.

Sd/-

Narendra Prasad

Commissioner

17.05.2002