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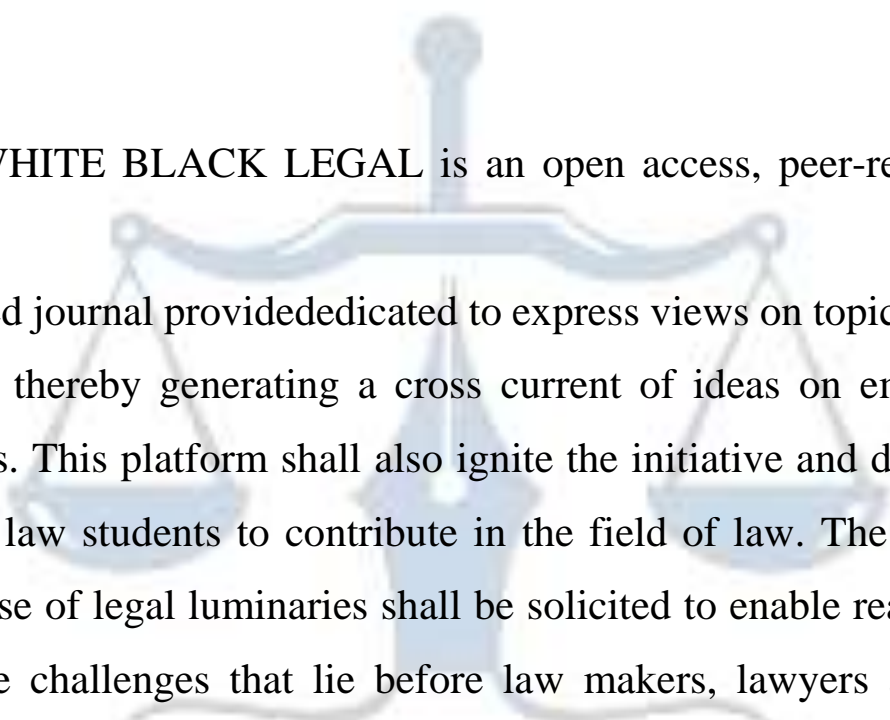


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ABOUT US



WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

ROLE OF JUDICIARY AS ARJUN BETWEEN MANDIR AND MASJID

AUTHORED BY – MONIKA KOTHIYAL & VAIBHAV NEGI

कथं भीष्ममहं संख्ये द्रोण च मधुसूदन ।

इषुभिः प्रतियोत्स्यामि पूजार्हावरिसूदन ॥¹

On the battlefield of kurukshetra, Arjun said to Krishna, 'do not doubt my courage, I am prepared to fight but how can I shoot arrows in the battle on men like Bheeshma and Dronacharya who are worthy of my worship'

Just like Arjun, Judiciary was in similar situation where it is prepared to adjudicate on any matter which comes before it but when it comes to Ram janambhoomi or Babri Masjid Case (hereafter land Dispute case), it was difficult to decide in favour of either party as the answer as to, how to hurt the faith of either religion when both are respectable and worthy of worship. Ayodhya Dispute was one of the controversial topic of discussion leading to political, historical and religious debate in India. Focus of the debate was whether the land on which Babri masjid was built was the land belonging to Ram janambhoomi or not and whether mosque was built after demolishing the temple? The initial intention of debate was to prompt parties to contemplate a difficult situation and to come up with a solution.

Babur and Rama both were the kings of south Asia during different periods. Lord Rama was one of the influential and powerful ruler of south Asia who ruled about 1.2 million years ago and Emperor Babur reigned in south Asia from 1494 -1500. Going back to the history of Ayodhya dispute, the case revolves around a plot of land on which Babri mosque was built in 1528. According to Muslims, Mosque was constructed before 18th Century. Muslims claimed that the entire premises was a mosque known by the name of Babri Mosque and it was built in 16th Century by Mir Baqi on the request of Babur but as per the Hindu worshippers and Hindu mythology, the disputed land on which mosque is built was the land where Hindu god Ram was born and Mir Baqi demolished the Ram Temple and then built mosque on the same land.² Since 1855, rival claims have been noticed in records of different government officers when

¹ Chapter-2, verse 4 of shrimad Bhagwadgita

² The Political Abuse of History: Babri Masjid-Rama Janamabhumi Dispute

riots took place between Hindus and Muslims and finally in 1885, the dispute was judicially noticed. The matter reached to honorable Supreme Court and was adjudicated the title of disputed land in the favour of Ram Mandir.

Encapsulation of facts till date

- **Birth of Sri Ram:** There are many stories of the birth of Sri Ram. As per the texts of epic Ramayana, Valmiki record the date of birth of Sri Ram in chaitra Shuddha Navami (9th) on Punarvasu Nakshatra and five planets were exalted then; sun in Mesha up to 10 degrees; mars in Capricorn at 28 degrees; jupiter in cancer at 5 degrees; Venus in Pisesat at 27 degrees and Saturn in libra at 20 degrees.³ An astronomical dating done by historian Dr. P.V. Vartak calculated the position of planets as specified by Valmiki and then stated that December 4,7323 BCE is the date of birth of Sri Ram when the 4 planets exalted. Ramayana occurred over 9300 years ago.

There have been many attempts to disentangle the history of growth of epic Ramayana. The composition of Rama's epic story 'the Ramayana' in its current form is usually dated between 7th and 4th century BCE⁴.

As per Hindu texts, Sri Ram was born in treta yuga or Dvapar yuga and they were estimated to exist before 5000 BCE.

According to Brockington (a professor of Sanskrit at Oxford), the original text of Ramayana was likely composed and transmitted orally in more ancient times and modern scholars have suggested various centuries in 1st millennium BCE.

- **Faith of people in existence of Sri Ram-**

Ramayana is the evidentiary proof of existence of Sri Ram and one of the largest epic in the world consisting nearly 24000 verses (the Shloka/Anustup), divided into seven Khandas (parts) and about 500 sargas (chapters). Ramayana portrays the character of Sri Ram like the ideal son; ideal brother; ideal husband and the ideal king. The existence of the birth of Sri Ram is too well known to the people that the information relating to existence of Sri Ram passes from generation to generation as one who have never read Ramayana is also

³ bala Kanda 18, Shloka 8

⁴ swami Parmeshwarnand, Encyclopaedic Dictionary of puranas- Volume 1 2001 p 44

well known about the story of Shri Ram. There are festivals like Dipawali, Dussehra and Ram Navami which are celebrated enthusiastically by people across the India since time immemorial which depicts the faith of people in the existence of Sri Ram.

Existence of Babri Mosque – Prima facie, there is a mosque in a disputed land since 18th century and there had been attempts by people (worshipping Ram) to torn down the mosque. The mosque was in peaceful possession of Muslim Wakf board for 2 centuries. It was constructed in 1528 by Mir Baqi on the orders of Mughal Emperor Babur.⁵ It has also been admitted that the Muslims were enjoying the possession of inner courtyard of the disputed land and outer courtyard was in the possession of Hindus but Muslims claim that the entire area is used for their worship and is an essential part of their religion and that they are entitled to it by virtue of adverse possession for two centuries. However, Hindu worshippers claim that the mosque was constructed after demolishing the Ram temple which was a place of worship of Hindus since time immemorial. The Ramcharitamanas of Tulsidas (1574) and Ain-i-Akbari of Abu'l-Fazl ibn Mubarak (AD 1598) made no mention of the mosque either.⁶

➤ **Attempts to construct temple on the disputed land**

There were many attempts to construct a temple in the disputed area. In 1853, there was a group named Nirmohi Akhara who claims to be the owner of the disputed area occupied the site. Hindu-Muslim clashes arose resulting violence in the disputed area and for the maintenance of public law and order, the administration stepped in and handled the situation by refusing to build a temple and divided the mosque in two courtyards by a boundary wall, the inner used by Muslims and the outer for Hindus to worship.⁷

Title suit on Disputed site

Legal dispute arose on 15 January 1885 when the chief priest of Ram janamsthan 'Mahant Raghubar Das' filed a civil suit in the Faizabad court (now Ayodhya) seeking for the permission to construct a Ram Temple on Chabutra, the plea was dismissed on the grounds that granting permission to construct temple would amount to construct a foundation for riot

⁵ Flint, Colin (2004). The Geography of War and Peace: From Death Camps to Diplomats. Oxford University Press. ISBN 9780195347517.

⁶ Jain, Rama and Ayodhya 2013, pp 165-166

⁷ Roma Chatterji (2014). Wording the World: Veena Das and Scenes of Inheritance. Fordham University Press. p. 275. ISBN 9780823261857.

between the two communities.⁸ It was also observed that the call of exigency for the requirement of justice was not to grant the relief which had been claimed.⁹

On December 1949, association of Akhil Bhartiya Ramayana Mahasabha composed a constant 9 days recitation of Ramcharita manas outside the Babri Masjid, then on 23rd December, the next day of the completion of Ramcharitmanas, it was reported that 50-60 people forcefully entered into mosque and placed idols of Sri Ram and Sita. Co-ordinators declared by speakers/amplifiers that idols of Sita and Ram showed up supernaturally inside the mosque. A large mass of Ram worshippers and Hindu enthusiasts went to mosque for darshan of Ram and Sita. On the other side, for the protection of public peace and security, the government proclaimed the mosque in a question zone and bolted its entry ways.¹⁰

Suit for possession and title of the disputed place was instituted within one month of this incident, first petition was filed by Gopal Singh Vishrad in 1950 as a common suit on behalf of Hindus for the performance of worship to Sri Ram Chandra. Second suit was filed by Param Hansa Ramchandra Das for continuation of Puja and keeping idols of Sri Ram and Sita in the mosque but as the suit was similar to the first suit, it was dismissed as withdrawn. In 1959, third suit was filed by Nirmohi Akhara, a religious institution through its Mahant, claiming the title and possession of disputed area. Fourth suit was filed by Sunni Central Board of Wakf U.P. for declaration of possession and title of the disputed area and finally fifth suit was filed by Sri Ram Birajman and Sri Deoki Nandan Agarwal (senior Advocate and Retired Judge) claiming the entire premises of Disputed land for Sri Ram Janambhoomi.

➤ **Acquisition of disputed area by State of Uttar Pradesh-**

On October 1991, a notification of Land Acquisition Act was passed by state of U.P. under which the disputed land was acquired by state of U.P. with some adjoining area for 'development of tourism and providing amenities to Pilgrims in ayodhya'. The notification was challenged by six writ petitions stating that the purpose of acquisition is to demolish mosque with a malafied intention.¹¹ The writ petition was allowed by the Allahabad high court and the notification was quashed.

⁸ Gist of Allahabad Ayodhya case

⁹ ibid

¹⁰ ibid

¹¹ ibid

➤ **Riot erupted to demolish Babri masjid**

On December 6 1992, BJP and VHP organized a rally consisting of 150000 kar sevaks at the disputed site. The speech of L.K. Advani, Uma Bharti and Murli Manohar Joshi with respect to Ram Janambhoomi actuated the mob to demolish the Babri masjid.¹² Soon after the speech, the mob raced towards Babri masjid with improvised tools to demolish Babri masjid and the hindu-muslim violence were at its peak, the kar sevaks were backed by Bhartiya Janta Party, Vishva Hindu Parishad and Shiv Sena. Over 1.5 lakhs people were involved in the violence and around 2000 people were killed in the riot. The screams all around were “mandir yahin banaenge” (we will build the temple on this very spot). One of the dreadful and shameful event of mankind by Hindus. Consequently, riots broke out in other major cities including Delhi, Mumbai, Bhopal and Hyderabad.¹³

➤ **Acquisition of disputed area by Central Government**

For resolving the Hindu- Muslim clashes, central government took the matter into its domain and acquired a large area of land including the disputed premises through ‘**Acquisition of Certain Areas at Ayodhya Act, 1993**’.

Simultaneously, reference was also made by the President of India to the Supreme Court under Article 143 of the Constitution of India. Reference was to the following effect:

“Whether a Hindu temple or any Hindu religious structure existed prior to the construction of the Ram Janam Bhoomi and Babari Masjid (including the premises of the inner and outer courtyards on such structure) in the area on which the structure stands or not” ? Supreme Court decided the matter through judgment reported in **Dr. M.Ismail Farooqi V. Union of India**¹⁴. Supreme Court refused to answer the reference and struck down Section 4(3) of the Acquisition Act, 1993.¹⁵

➤ **Report of Archeological Survey of India (ASI)¹⁶**

Archeological Survey of India submitted its report in 2003 which suggested that “some

¹² Tully, Mark (5 December 2002). "Tearing down the Babri Masjid". BBC News.

¹³ Nelson, Dean (29 September 2010). "India braced for violence ahead of Muslim v Hindu Ayodhya verdict". The Telegraph. London.

¹⁴ 1994 (6) SCC 360

¹⁵ Ram Janm Bhumi Babri Masjid judgment

¹⁶ “evidence of temple found:ASI” The Tribune 25 August 2003

evidences of anomalies which could be structure, pillars, foundation walls, slab flooring e.t.c. and a massive structure just below it and evidence of continuity in structural phases from the tenth century onwards upto the construction of the disputed structure alongwith the yield of stone and decorated bricks as well as mutilated sculpture of divine couple and carved architectural members including foliage patterns, amalaka, kapotapali doorjamb with semi-circular pilaster, broken octagonal shaft of black schist pillar, lotus motif, circular shrine having pranala (waterchute) in the north, fifty pillar bases in association of the huge structure are indicative of remains which are distinctive features found associated with the temples of north India.”¹⁷Therefore, it is clear that some structure or huge hindu complex was demolished to construct a mosque but ASI is uncertain that such stone slabs or pillers were the ruins of Ram temple. There is no significant evidence that there was Ram temple at disputed site.

➤ **Allahabad HC decision**

The dispute which was pending in Allahabad High Court since long period was pronounced on 30 September 2010. The 3 judge bench ruled that the 2.77 acres of disputed area is to be divided into 3 parts, with 1/3 part to the Ram Lalla or Infant Lord Rama represented by the Hindu Maha Sabha for the construction of the Ram temple, 1/3 to the Islamic Sunni Waqf Board and the remaining 1/3 to a Hindu religious denomination Nirmohi Akhara. Through this verdict, court protected the interest of the religious sentiments of both sects and the maintenance of public law and order.

While deciding the verdict, the bench was not unanimous that the Babri mosque was built after demolition of Ram temple, but as per the evidence of Archeological Survey of India, bench agreed that some structure was demolished for the construction of mosque which was dedicated to Hindu religious denomination.¹⁸

Supreme Court stepped in to resolve decades old dispute

After a century old tug of war between both communities on the title of disputed land the Supreme court stepped in between the two communities to resolve the issue and to determine the title of the disputed land. In Allahabad high court verdict, the disputed land was equally divided between three parties but parties were not satisfied by the decision of the honorable

¹⁷ supreme court judgment on Ayodhya ends several speculations:ASI team chief

¹⁸ Ram Janm Bhumi Babri Masjid: Gist of Judgments Archived 28 September 2011 at the Wayback Machine

Court as the parties claimed the title of whole disputed area and not the part of it, so, the decision was challenged in Supreme Court. The five judge constitutional bench on 17 October 2019 concluded hearing of politically sensitive case and reserved the decision for November. Interpreting the concept of Right to religion, to practice, professes and to propagate religious beliefs in the constitution, such right is not an absolute right, it is subject to certain restrictions which protect the public order and peace in society. Therefore, the court can adjudicate the matter by interpreting Articles of constitution relating to maintenance of peace and then strike a careful balance between political and secular interest of the society. The Supreme Court as the Arjun of this era is capable enough to adjudicate the title in favour of any one party after hearing both the parties but the question is how to hurt the faith of lakhs of people, although the suit is a title suit but while going through the history of events, it does not seem to be just title suit, it is related to the faith of lakhs of people. It was a highly sensitive issue as the court is acquainted with the past events of Babri Masjid riot which were extended to Delhi, Mumbai, Hyderabad and Bhopal and even in Bangladesh, keeping in mind the Court adjudicated the dispute.

FINAL DISPOSAL OF THE TITLE SUIT

After scrutiny of all the evidences produced and witnesses examined, and the reports submitted by the Archeological Survey of India (ASI), the honorable Supreme court decided the title suit in favour of the Ram Mandir and held that all the official gazettes published by the Government authorities repeat the same statement that Babri Mosque was constructed at the Janmasthan of Lord Ram.

On the other hand, the apex court granted 5 acres of land across the river to the Sunni Wakf Board for the construction of the Babri Mosque. . Now, the responsibility was on the people of India to maturely welcome the decision of Supreme Court and every citizen irrespective of their religion must cooperate with the verdict in order to maintain public law and order. No religion preaches its people to destruct or hurt the faith of other religions, therefore, Mandir or Masjid should not be the base of preaching and professing religious institutions. How the Prophet and Ram lived their life in order to maintain peace and harmony which is the ultimate goal of every religion that should be kept in mind.

Supreme Court had to decide the suit in favour of either party as it was a title suit and the

circumstances were such that the Supreme Court was put in a similar situation as Arjun in the war of Mahabharat.

But the judgement pronounced by the Supreme Court is in true sense a landmark judgement because even if the title was decided in favour of the Ram Mandir, learned Court satisfied the religious feelings and emotions of the muslims by granting 5 acres of land for the construction of the Babri Mosque.

The apex court upheld the principle of 'Secularism' enshrined in the Constitution of India and once again proved that Judiciary is an independent organ of the Government. The people of India both Hindus and Muslims also deserve appreciation and respect for accepting the judgement and maintaining the law and order situation in the country as not even a single incident of riots or protest occurred after the pronouncement of the judgement.

