



## **BACKGROUND GUIDE**

**COMMITTEE: THE SUPREME COURT OF INDIA**



**AGENDA: THE RAM JANMABHOOMI- BABRI MASJID  
DISPUTE**

## LETTER FROM THE EXECUTIVE BOARD

Hon'ble delegates,

It is our utmost pleasure to welcome you to the IMS MUN 2019! We both are honored and excited to direct the committee titled THE SUPREME COURT OF INDIA, and look forward to meeting you all.

We promise you a very enriching debate and to the newcomers, we are really excited to be a part of your experience. What we expect from the delegates is not experience, or how articulate they are. Rather, we want to see how he/she can respect differences of opinion and work around these, while extending their own stance so that it encompasses more of the others without compromising their own stand, thereby reaching acceptable, and practical solutions by keeping in mind the portfolio which they would be representing.

However, it has to be noted that the background guide only contains basic information which may form the basis for the speech and your research. We hope and expect that you put in substantial efforts to research and get all of the important facets of the agenda and just not only rely on the background guide. Let's make the Committee's direction and debate positive and productive.

All the best!

Happy researching!

Regards,

Isha Kapoor- Co-Moderator

Jai Saini- Co- Moderator

**For any queries, feel free to contact us at:**

**ishakapoor1997@gmail.com sainijai43@gmail.com**

## **INTRODUCTION**

The legal history of the dispute is linked to the claims that a general of the Mughal emperor Babur demolished a temple, located at the spot where Lord Ram is believed to have been born, to construct the Babri Masjid. It is claimed that there erupted armed clashes between Hindus and Muslims over the Babri Masjid in 1855. However, historian KM Panikkar in a chapter (A Historical Overview) in the book *Anatomy of a Confrontation: Ayodhya and the Rise of Communal Politics in India*, points out that the 1855 clash was over the Hanumangarhi temple. A few years after the revolt of 1857, the Mahant of Hanumangarhi built a chabutra or raised platform near the Babri Masjid. A complaint regarding the appropriation was made to the magistrate by the then muezzin of the Babri Masjid. In 1883, mahant Raghubar Das started to build a temple over the chabutra, but the District Magistrate, because of the objections of Muslims, stopped it.

It led to Raghubar Das filing a suit in 1885 in the court of Sub Judge, Faizabad, claiming that as the owner of the chabutra he should be allowed to build a temple there. Sub Judge Pandit Hari Kishan asserted that the "place (chabutra) where the Hindus worship is in their possession and their ownership cannot be questioned and around it there is the wall of the mosque and the word Allah is inscribed on it." But he denied permission to Das to build a temple. His reasoning was, "If a temple is constructed on the chabutra at such a place then there will be sound of bells of the temple and shankh (conch shells) when both Hindus and Muslims pass from the same way, and if permission is given to Hindus for constructing temple then one day or the other criminal cases will be started and thousands of people will be killed."

Das went in appeal to District Judge who upheld the verdict of the sub judge in March 1886, but cancelled his observation that the ownership of the chabutra vested in Das and Hindus. He said, "The chabutra is said to indicate the birthplace of Ram Chandra." The mahant then went in appeal to the Court of Judicial Commissioner, Oudh, not only to build a temple over the chabutra, but to

also get the ruling that he wasn't the owner of the chabutra, cancelled. His efforts, however went in vain.<sup>1</sup>

## **A CHECKERED HISTORY OF THE DISPUTED SITE**

**A white paper published by the Central Government was quoted by the hon'ble Supreme Court in Ismail Faruqui's<sup>2</sup> judgment in the following terms,**

**"5. The 'Overview' at the commencement of the White Paper in Chapter I states thus:**

**"1.1 Ayodhya situated in the north of India is a township in District Faizabad of Uttar Pradesh. It has long been a place of holy pilgrimage because of its mention in the epic Ramayana as the place of birth of Sri Ram. The structure commonly known as Ram Janma Bhoomi Babri Masjid was erected as a mosque by one Mir Baqi in Ayodhya in 1528 AD. It is claimed by some sections that it was built at the site believed to be the birthspot of Sri Ram where a temple had stood earlier. This resulted in a longstanding dispute.**

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**6. The movement to construct a Ram Temple at the site of the disputed structure gathered momentum in recent years which became a matter of great controversy and a source of tension. This led to several parleys the details of which are not very material for the present purpose. These parleys involving the Vishwa Hindu Parishad (VHP) and the All India Babri Masjid Action Committee (AIBMAC), however, failed to resolve the dispute. A new dimension was added to the campaign for construction of the temple with the formation of the Government in Uttar Pradesh in June 1991 by the Bhartiya Janata Party (BJP) which declared its commitment to the construction of the temple and took certain steps like the acquisition of land adjoining the disputed structure while leaving out the disputed structure itself from the acquisition. The focus of the temple construction movement from October 1991 was to start construction of the temple by way of *kar sewa* on the land acquired by the Government of Uttar Pradesh while leaving the disputed structure**

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<sup>1</sup> From 1855 to 2010: A legal history of how the Babri Masjid in Ayodhya was turned into a temple for Lord Ram, available at, <https://www.firstpost.com/india/from-1855-to-2010-a-legal-history-of-how-contentious-babri-masjidin-ayodhya-was-turned-into-a-temple-for-ram-4246593.html>

<sup>2</sup> Dr. M. Ismail Faruqui and Ors. Vs. Union of India and Ors., (1994) 6 SCC 360

intact. This attempt did not succeed and there was litigation in the Allahabad High Court as well as in this Court. There was a call for resumption of *kar sewa* from 6/12/1992 and the announcement made by the organisers was for a symbolic *kar sewa* without violation of the court orders including those made in the proceedings pending in this Court. In spite of initial reports from Ayodhya on 6/12/1992 indicating an air of normalcy, around midday a crowd addressed by leaders of BJP, VHP, etc., climbed the Ram Janma Bhumi Babri Masjid (RJMBM) structure and started damaging the domes. Within a short time, the entire structure was demolished and razed to the ground. Indeed, it was an act of “national shame”. What was demolished was not merely an ancient structure; but the faith of the minorities in the sense of justice and fair play of majority. It shook their faith in the rule of law and constitutional processes. A five hundred year old structure which was defenceless and whose safety was a sacred trust in the hands of the State Government was demolished.”

In the year 1853, incident of communal violence was recorded during the reign of Nawab Wajid Ali Shah of Awadh. People's who represented the Hindu community stated that Mosques was built after the demolition of Hindu temple. The possession of site led to the community clashes. Hence, British built a fence in 1859 that separates the places of worships which means the inner court to be used by Muslims and the outer court by Hindus. In the year 1885, Faizabad District Court rejected the plea of Mahant Raghubir Das for the building a canopy on Ram Chabootra.

A major historical event has been recorded in this respect in the year 1949 when Idol of Lord Ram was placed inside the temple by Hindu activist and they spread the message that idols had 'miraculously' appeared inside the mosque. Muslims activist protested and both parties filed civil suits.

### **DETAILS OF THE SUITS INSTITUTED IN RESPECT OF THE DISPUTED LAND**

**1950:** Two suits were filed by some Hindus; in one of these suits in January 1950, the trial court passed interim orders whereby the idols remained at the place where they were installed in December 1949 and their puja by the Hindus continued. The interim order was confirmed by the High Court in April 1955. On 1/2/1986, the District Judge ordered the opening of the lock placed

on a grill leading to the sanctum sanctorum<sup>3</sup> of the shrine in the disputed structure and permitted puja by the Hindu devotees.

**1959:** A suit was filed by the Nirmohi Akhara claiming title to the disputed structure.

**1981:** Another suit was filed claiming title to the disputed structure by the Sunni Central Wakf Board.

**1989:** Deoki Nandan Agarwal, as the next friend of the Deity filed a title suit in respect of the disputed structure.

**The aforementioned suits were transferred to the Allahabad High Court and were ordered to be heard together in the same year.**

**14/8/1989:** The High Court ordered the maintenance of status quo<sup>4</sup> in respect of the disputed structure

**It is to be inferred from these sequences of events that the interim orders in these civil suits restrained the parties from removing the idols or interfering with their worship. And thus, the White Paper referred to herein stated that “In effect, therefore, from December 1949 till 6/12/1992 the structure had not been used as a mosque.”**

**06. 12.1992:** The President of India issued a proclamation under Article 356 of the Constitution of India assuming to himself all the functions of the Government of Uttar Pradesh, dissolving the U.P. Vidhan Sabha. The Central Government decided to acquire all areas in dispute in the suits pending in the Allahabad High Court. It was also decided to acquire suitable adjacent area, which would be made available to two Trusts for construction of a Ram Temple and a Mosque respectively. The Government of India has also decided to request the President to seek the opinion

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<sup>3</sup> This phrase refers to a very private or highly secret place or area of activity.

<sup>4</sup> This phrase refers to the existing state of affairs.

of the Supreme Court on the question whether there was a Hindu temple existing on the site where the disputed structure stood.

**07. 01.1993:** An ordinance<sup>5</sup> was issued titled “Acquisition of Certain Area at Ayodhya Ordinance” for acquisition of 67.703 acres of land in the Ram Janam Bhumi Babri Masjid complex. The Ordinance No. 8 of 1993 had been replaced by the **Acquisition of Certain Area at Ayodhya Act, 1993**.

A reference to the Supreme Court under Article 143 of the Constitution was also made on the same day.

Thereafter, a Writ Petition challenging the validity of the 1993 Act was filed in the Supreme Court of India and along with this, several petitions pending in the Allahabad High Court were heard together by the Supreme Court.

**24.10.1994:** The Constitution Bench had upheld the validity of the Act except that of Section 4(3) of the Act, 1993 which was struck down.

The Constitution bench made an important observation to the effect that a mosque is not an essential part of the practice of the religion of Islam and namaz (prayer) by Muslims can be offered anywhere, even in open. While offer of prayer or worship is a religious practice, its offering at every location where such prayers can be offered would not be an essential or integral part of such religious practice unless the place has a particular significance for that religion so as to form an essential or integral part thereof. Places of worship of any religion having particular significance for that religion, to make it an essential or integral part of the religion, stand on a different footing and have to be treated differently and more reverentially.<sup>6</sup>

**For your kind perusal, Section 4(3) of the 1993 Act has been reproduced hereinafter,**

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<sup>5</sup> Ordinance is an authoritative order. The power to issue Ordinance flows from Articles 123 and 213 of the Constitution of India and vests in the Executive i.e. the President of the Union and the Governors. It is issued when either of the two Houses of the Parliament is not in session and there is an urgent need to promulgate a law.

<sup>6</sup> Dr. M. Ismail Faruqui and Ors. Vs. Union of India and Ors., (1994) 6 SCC 360

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

The above Section 4(3) meant that from the coming into force of the 1993 Act, all the pending suits in relation to the disputed property would die down. This indirectly aimed at infringing the power of judicial review vested in the Courts. Thus, after this sub-section was struck down, all the pending suits revived.

Another Writ Petition<sup>7</sup> was filed in response to which the court ordered for the maintenance of status quo with respect to the land acquired by the Central Government by virtue of the 1993 Act.

### **LIBERHAN COMMISSION REPORT (2009)**

The Commission was constituted by the then Prime Minister of India, Sh. V.P. Singh with its inquiry spanned for more than 17 years and the key finding highlighting that the demolition of the Babri Masjid was planned, systematic, and was the intended outcome of a climate of communal intolerance deliberately created by the Sangh Parivar and its sister affiliates, including the Bharatiya Janata Party.

Justice Liberhan, who took 16 years and six months to compile the meticulously assembled report — comprising 16 chapters including conclusions and recommendations, besides maps, an afterword and a list of witnesses — is unsparing of the BJP’s central leadership, calling the triumvirate of Mr. Vajpayee, Mr. Advani and Mr. Joshi pseudo-moderates who constantly “protested their innocence and denounced the events of December 6.”

The report and its recommendations became so controversial that in the Rajya Sabha debate on December 10, 2009, Sh. Manohar Joshi called for an inquiry to be made on Liberhan. On the same day in the same house, Sh. Kapil Sibal stated in very clear terms that “The demolition act was done from 12.15 p.m. to 4.00 p.m. At 3.00 p.m., the communal riots erupted, but the District Magistrate

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<sup>7</sup> Mohd. Aslam alias Bhure Vs. Union of India and Others (2003) 4 SCC 1.



came to the spot at 6.00 p.m. It was a complete failure of the entire State machinery. The demolition was not a sudden action. The CRPF men who had assembled at the Sita Rasoi, were not ordered to take action.”

**The next big turn of events for the parties to the suit came after the 2010 verdict delivered by the Allahabad High Court.**

### **THE ALLAHABAD HIGH COURT VERDICT**

The judgment was delivered by a Bench of 3 Judge, Justice S.U Khan, Justice Sudhir Agarwal and Justice D.V . Sharma. By a 2-1 majority verdict, plaintiffs representing Lord Rama, the Nirmohi Akhara and the Waqf Board were declared joint title-holders of the property. The Bench asserted that the portion under the central dome of the demolished three-dome structure where the idol of Rama Lalla had been kept in a makeshift temple was the birthplace of Lord Rama “as per faith and belief of the Hindus.” It cited faith as the basis to declare the site the janmasthan of Lord Rama, but ordered a three-way partition on the basis of historical use of the site by Muslims and Hindus. Justice Sharma, however, dissented from the above view while disagreeing from this 3 way division of land.

**Thereafter, against the decision rendered in Ismail Faruqui, an appeal<sup>8</sup> was filed in the hon’ble Supreme Court for reconsidering the 1994 judgment.** The Court has noticed the following deduced from the judgments rendered till the year 2018,

- (i) Places of religious worship like mosques, churches, temples, etc. can be acquired under the State's sovereign power of acquisition, which does not violate Articles 25 or 26 of the Constitution.
- (ii) The right to practice, profess and propagate religion guaranteed under Article 25 does not extend to the right of worship at any and every place of worship so that any hindrance to worship at a particular place per se may infringe the religious freedom guaranteed under Articles 25 and 26 of the Constitution.

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<sup>8</sup> M. SIDDIQ (D) THR. LRS. V. MAHANT SURESH DAS AND OTHERS ETC.

(iii) The protection under Articles 25 and 26 of the Constitution is to religious practice which forms an essential or integral part of the religion.

(iv) A practice may be a religious practice but not an essential and integral part of practice of that religion.

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

**27/09/2018:** The Supreme Court made it clear that questionable observations made in **Ismail Faruqui's case** were made in context of land acquisition. The Court was of the considered opinion that no case has been made out to refer the Constitution Bench judgment of this Court in **Ismail Faruqui case** for reconsideration.

### **THE LATEST POSITION- CONCLUDING REMARKS**

The 2010 verdict of the Allahabad High Court has been challenged before the Hon'ble Supreme Court by the aggrieved parties and is being heard day to day by a Constitution Bench comprising of Hon'ble Mr. Ranjan Gogoi, C.J.I., S.A. Bobde, J., D.Y. Chandrachud, J., Ashok Bhushan, J. and S. Abdul Nazeer, J.

The issues of faith, power and politics are intermingled with the present one. It is a matter of belief that the present day Ayodhya was known as Saketa before the fifth century, then the Ayodhya of Valmiki's Ramayana was fictional. If that is so, the identification of Rama Janmabhumi in Ayodhya today becomes a matter of faith, not of historical evidence. This is one of the diverse views prevailing in this regard and like this, there are hundreds which require deep deliberations and attempts to reach the truth.

The following precedents may be referred for better understanding of the matter in hand<sup>9</sup>:

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<sup>9</sup> The list of judgments is not exhaustive but only suggestive.

1. The Commissioner, Hindu Religious Endowments, Madras Vs. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt, 1954 SCR 1005
2. Ratilal Panachand Gandhi and Others Vs. State of Bombay and Others, AIR 1954 SC 388
3. Sri Venkataramana Devaru and Others Vs. State of Mysore and Others, AIR 1958 SC 255
4. Sri Jagannath Ramanuj Das and Another Vs. State of Orissa and Another, AIR 1954 SC 400
5. Mohd. Hanif Quareshi and Others Vs. State of Bihar, AIR 1958 SC 731.
6. Sardar Syedna Taher Saifuddin Saheb Vs. State of Bombay, AIR 1962 SC 853
7. Tikayat Shri Govindlalji Maharaj etc. Vs. State of Rajasthan and Others, AIR 1963 SC 1638

NOTE: THIS BACKGROUND GUIDE IS NOT MEANT TO BE AN EXHAUSTIVE DOCUMENT FOR THE PURPOSE OF RESEARCH ON THE SAID AGENDA. THIS PRESCRIBES OUTLINES OF THE REMEDIES AVAILABLE AND IS INTENDED TOWARDS PROVIDING A GENERAL IDEA OF THE ISSUES. PLEASE RESEARCH FURTHER FROM ONLY CERTIFIED SOURCES.