

“It has been made clear by learned counsel for the appellants that the plaintiffs do not now claim any relief extending beyond the actual site of the mosque building. The first question to be asked with reference to this immovable property is the question : In whom was the title at the date when the sovereignty of this part of India passed to the British in 1849? It may have been open to the British on the ground of conquest or otherwise to annul rights of private property at the time of annexation as indeed they did in Oudh after 1857. But nothing of the sort was done so far as regards the property now in dispute. There is nothing in the Punjab Laws Act or in any other Act authorising the British Indian Courts to uproot titles acquired prior to the annexation by applying to them a law which did not then obtain as the law of the land. There is every presumption in favour of the proposition that a change of sovereignty would not affect private rights to property : cf. (1905) 2 KB 391.3 3. West, Band Gold-mining Co. v. The King, (1905) 2 KB 391=74 LJ KB 753=93 LT 207=21 TLR 562.

Who then immediately prior to the British annexation was the local sovereign of Lahore? What law was applicable in that State to the present case ? Who was recognized by the local sovereign or other authority as owner of the property now in dispute? These matters do not appear to their Lordships to have received sufficient attention in the present case.

The plaintiffs would seem to have ignored them. It is idle to call upon the Courts to apply Mahomedan law to events taking place between 1762 and 1849 without first establishing that this law was at that time the law of the land recognized and enforced as such. If it be assumed, for example, that the property in dispute was by general law or by special decree or by revenue-free (muafi) grant vested in the Sikh gurdwara according to the law prevailing under the Sikh rulers, the case made by the plaintiffs becomes irrelevant. It is not necessary to say whether it has been shown that Ranjit Singh took great interest in the gurdwara and continued endowments made to it by the Bhanji Sardars as was held by Hilton J. (20th January 1930) presiding over the Sikh Gurdwaras Tribunal. Nor is it necessary that it should now be decided whether the Sikh mahants held this property for the Sikh Gurdwara under a muafi grant from the Sikh rulers. It was for the plaintiffs to establish the true position as at the date of annexation. Since the Sikh mahants had held possession for a very long time under the Sikh State there is a heavy burden on the plaintiffs to displace the presumption that the mahants' possession was in accordance with the law of the time and place. There is an obvious lack of reality in any statement of the legal position which would arise assuming that from 1760 down to 1935 the ownership of this property was governed by the Mahomedan law as modified by the Limitation Act,

1908.."

J. In **AIR 1922 Privy Council 123 "Vidya Varuthi v. Baluswami"** the Privy Council held that; from the year 1774, the Legislature, British and Indian, has affirmed, time after time, the absolute enjoyment by the Hindus and Muslims of their laws and customs so far as they are not in conflict with the Statutory laws. It would be a serious inroad into their rights if the rules of the Hindu and Muslim laws were to be construed with the light of legal conceptions borrowed from abroad. Relevant extracts of the said judgment reads as follows:

“From the year 1774, the Legislature, British and Indian, has affirmed time after time the absolute enjoyment of their laws and customs, so far as they are not in conflict with the statutory laws, by Hindus and Mahommedans. It would, in their Lordships' opinion, be a serious inroad into their rights, if the rules of the Hindu and Mahommedan laws were to be construed with the light of legal conceptions borrowed from abroad, unless perhaps where they are absolutely, so to speak, in pari materia. The vice of this method of construction by analogy is well illustrated in the case of Vidyapurna Tirthaswami v. Vidyavidhi Tirtha Swami (3) where a Mohant's position was attempted to be explained by comparing it with that of a bishop and of a beneficed clergyman in England under the ecclesiastical law. It was criticised, and rightly, in their Lordships' opinion, in the subsequent case, which arose also in the Madras

High Court, of Kailasam Pillai v. Nataraja Thambiran (4) To this judgment their Lordships will have to refer further later on.”

K. The Oudh Laws Act, XVIII of 1876 made the Muslim Law and Hindu Law applicable to the persons of respective faiths. Section 3 of the said Act reads as follows:

“3. The law to be administered by the Courts of Oudh shall be as follows:-

(a) the laws for the time being in force regulating the assessment and collection of land revenue;

(b) in questions regarding succession, special property of females, betrothal, marriage, divorce, dower, adoption, guardianship, minority, bastardly, family-relations, wills, legacies, gifts, partitions, or any religious usage or institution, the rule of decision shall be—

(1) any custom applicable to the parties concerned which is not contrary to justice, equity or good conscience, and has not been, by this or any other enactment, altered or abolished, and has not been declared to be void by any competent authority;

(2) any Muhammadan law in cases where the parties are Muhammadans, and the Hindu Law in cases where the parties are Hindus, except in so far as such law has been, by this or any other enactment, altered or abolished, or has been modified by any such custom as is above referred to;

(c) the rules contained in this Act;

(d) the rules published in the local official Gazette as provided by section 40, or made under any other Act for the time being in force in Oudh;

(e) The Regulations and Acts specified in the second schedule hereto annexed, subject to the provisions of Section 4 and to the modifications mentioned in the third column of the same schedule;

(f) subject to the modifications hereinafter mentioned, all enactments for the time being in force and expressly, or by necessary implication, applying to British India or Oudh, or some part of Oudh;

(g) in cases not provided for by the former part of this section, or by any other law for the time being in force, the Courts shall act according to justice, equity and good conscience.

L. In Moore's Indian Appeals (1863-1864) 9 MIA 387, The Advocate- General of Bengal on behalf of Her Majesty Vs. Ranee Surnomoye Dossee; the Privy Council held that the law applicable to the Hindus prior to acquisition of the rights of sovereignty by the English crown unless altered by express enactment by the Crown those laws remained unchanged and applicable to them. Relevant extract from page 426-427 & 429 of the said judgment reads as follows:

“But, if the English laws were not applicable to Hindoos on the first settlement of the country, how could the subsequent acquisition of the rights of sovereignty by the English Crown make any alteration? It might enable the Crown by express

*enactment to alter the laws of the country, but until so altered the laws remained unchanged. The question, therefore, and the sole question in this case is, whether by express enactment the English law of *felo de se*, including the forfeiture attached to it, had been extended in the year 1844 to Hindoos destroying themselves in Calcutta.*

We were referred by Mr. Melvill in his very able argument, to

the Charter of Charles II. In 1661, as the first, and indeed the only one which in express terms introduces English law into the East Indies. It gave authority to the Company to appoint Governors of the several places where they had or should have Factories, and it authorized such Governors and their Council to judge all persons belonging to the said Company, or that should live under them, in all causes, whether Civil or Criminal, according to the laws of the Kingdom of Engl and, and to execute judgment accordingly. The English Crown, however, at this time clearly had no jurisdiction over native subjects of the Mogul, and the Charter was admitted by Mr. Melvill (as we understood him) to apply only to the European servants of the Company; at all events it could have no application to the question now under consideration. The English law, Civil and Criminal, has been usually considered to have been made applicable to Natives, within the limits of Calcutta, in the year 1726, by the Charter, 13th Geo.

I. Neither that nor the subsequent Charters expressly declare that the English law shall be so applied, but it seems to have been held to be the necessary consequence of the provisions contained in them. But none of these Charters contained any forms applicable to the punishment, by forfeiture or otherwise, of the crime of self-murder, and with respect to other offences to which the Charters did extend, the application of the criminal law of England to Natives not Christians, to Mahomedans and Hindoos, has been treated as subject to qualifications without which the execution of the law would have been attended with intolerable injustice and cruelty.

...

We think, therefore, the law under consideration inapplicable to Hindoos, and if it had been introduced by the Charters in question with respect to Europeans, we should think that Hindoos would have been excepted from its operation. But that it was not so introduced appears to us to be shown by the admirable judgment of Sir Barnes Peacock in this case; and if it were not so introduced, then as regards Natives, it never had any existence.”

**M. In Moore’s Indian Appeals (1836-1837) 1 MIA 175
The Mayor of the City of Lyons Vs. the Hon’ble The
East India Company and His Majesty’s Attorney
General, the Privy Council held that a foreign settlement
obtained in an inhabited country, if is allowed, then the**

law of the country continues until the Crown, or the Legislature change it. Relevant extract from page 270-272 of the said judgment reads as follows:

“It is agreed, on all hands, that a Foreign Settlement, obtained in an inhabited Country, by conquest, or by cession from another Power, stands in a different relation to the present question, from a settlement made by colonizing, that is, peopling an uninhabited Country.

*In the later case, it is said, that the subjects of the Crown carry with them the laws of England, there being, of course, no lex loci. **In the former case, it is allowed, that the law of the Country continues until the Crown, or the Legislature, change it.** This distinction, to this extent, is taken in all the Books; it is one of the six propositions, stated in *Campbell v. Hall*, as quite clear; and no matter of controversy in the case. And it had been laid, in *Calvin’s case*; in *Dutton v. Howell*; (*Shower, Parl. Ca.*24) in *Blankard v. Galdy* (*Salk* 411), by Lord Holt, delivering the judgment of the Court; and nowhere more distinctly, and accurately, than in the decision of this Court (*Anon.—2P.Will* 75). **Two limitations of this proposition are added, to which it may be material that we should attend. One of these refers to conquests, or cessions.** In *Calvin’s case*, an exception is made of infidel countries; for which, it is said, in *Dutton v. Howell*, that, though Lord Coke gives no authority, yet it must be admitted, as being*

consonant to reason. But this is treated, in terms, as an “absurdity”, by the Court, in Campbell v. Hall ; the other limitation refers to new plantations. Mr. Justice Blackstone (1 Bl. Com. 106) says, that only so much of the English law is carried into them, by the settler, as is applicable to their situation, and to the condition of an infant Colony. And Sir William Grant, in The Attorney- General v. Stewart (2 Mer 161) applies the same expression, even to the case of conquered or ceded territories, into which the English law of property has been generally introduced. Upon this ground, he held that the Statute of Mortmain does not extend to the Colonies governed by the English law, unless it has been expressly introduced there; because it had its origin in a policy peculiarly adapted to circumstances of the mother Country.”

N. Yajnavalkya-Smriti (I/343) lays down that in the acquired country the King should deliver justice according to custom, usage and law of the said conquered country. The said verse of the Yajnavalkya Smriti as well as Mitatakashara commentary thereon with its Hindi translation are reproduced as follows:-

“यस्मिन्देशे य आचारो व्यवहारः कुलस्थितिः ।

तथैव परिपास्योऽसौ यदा वशमुपागतः ॥343 ॥

किंच, अदा परदेशो वशमुपागतस्तदा न स्वदेशाचारादिनकरः काचः किं तु अस्मिन्देशे च आचारः कुलस्थितिव्यवहारो चः तदैव प्राप्स्यतीतिवैदासौ परिपालनीयो यदि आद्यविददो न अदति । यदा यक्षमुपागतः इन्द्रदेव यदोपगमनाप्रागनियम इति दर्शितम् । यथोक्तम् (मनुः 7/195) – उपगरिमासीत् राष्ट्रं चास्योपपीडयेत् । तदयेवास्य सततं अदस्राकोदकेपनम् ॥

इति ।।343।।

भाषा— अपने वश में आ जावे तो जिस देश में जो आचार, व्यवहार और कुल की मर्यादा हो उसका उसी रूप में वह पालन करें ।।343।।

3304. The learned counsel further submits that 1526 AD when Babar became Ruler of Delhi, Agra and Oudh defeating Sultan Ibrahim Lodi in the battle of Panipat, these territories already comprised of 'Dur-ul-Islam' . When in the year 1526 A.D. King Babur acquired sovereignty over Delhi, Agra and Oudh defeating Sultan Ibrahim Lodi in the battle of Panipat those territories did not change their nature of being were constituent of '**Dar-ul-Islam** for the reason that outgoing Sultan was a Muslim and during his reign Law of Shar was Law of the Land. Therefore by defeating Sultan Ibrahim Lodi Emperor Babur acquired only those right of Sovereignty that a Islamic Ruler had under Shar and; as Shar does not extinguish title of land owner on the basis of change of sovereignty or religion of the subjects he didn't become owner of the land owned by his Hindu subjects and their endowments. As a Hindu Endowment Ramajanamsthan Temple was already existing, Emperor Babur did not acquire ownership of that place as such alleged creation of Wakf for erection of Masjid thereon rendered the said alleged Wakf null and void.

3305. Illustrated author and great jurist Syed Ameer Ali in his book the 'Spirit of Islam' (at p.215) describes the relationship between the citizens of three types of Nations Dar-ul-Islam i.e. an Islamic State, Dar-ul-Harb i.e. a State Ruled by belligerent non-Islamic Ruler, and Darul-Aman. i.e. a State Ruled by non-Islamic Ruler with which an Islamic State is at peace. Relevant extract of the said book reads as follows:

“The spirit of aggression never breathed itself into that

code which formally incorporated the Law of Nations with the religion; and the followers of Mohammed, in the plentitude of their power, were always ready to say to their enemies, 'Cease all hostility to us, and be our allies, and we shall be faithful to you; or pay tribute and we will secure and protect you in all your rights; or adopt our religion, and you shall enjoy every privilege we ourselves posses.'"

3306. Syed Ameer Ali in his book '**Commentaries on Mahomedan Law**' also describes Dar-ul-Harb. Relevant extract from the foot note 1 of the said book reads as follows:

"The Moslem jurists, like the jurists of Christendom, until very recent times, divided the world into two portions, one the Dar ul-Harb, and the other the Dar ul-Islam, the country of peace. Juridically, all Mussulman nations were at peace with each other. As a matter of fact, no Mussulman Sovereign could declare war against another without first pronouncing him to be a heretic and beyond the pale of Islam. The non-Moslem subjects of Moslem States are called Zimmis. The non-Moslem subjects of non-Moslem Sovereigns at peace with Islamic States are called Mustamins."

3307. Fighting between two Muslim Rulers is not fighting between Dar-ul-Islam and Dar-ul-Herb but it is fighting between two armies of Islam for Superiority for the benefit of Islam and subject people. This is very much apparent from the extract quoted in the preceding paragraph from Syed Amir Ali's book as also, from the answer given by Sultan Sikandar Lodi to the Kalandar (i.e. a person who had no worldly desires). When said

Darvesh conveyed the Sultan that he would attain victory in ongoing battle, the Sultan told him that when two Islamic armies are fighting decision should not be given in one's favour but only good wishes should be given stating that who will be beneficial for Islam and subject people will attain victory.

3308. The arguments extended contending that Muslims are not free to lead the life of their choice and they are bound by the law of Shar. Muslims should not transgress law as enunciated in Shar otherwise they will lose their status of being Muslim. According to Shar Plunderer & looters are not Muslims. Islamic Ruler and Muslims are subject to Divine Law of Shar according to which duty of an Islamic Ruler is to guard the lives, honour and property of his subjects, maintain peace, check the evildoer, and prevent injuries and; duty of Muslims is to disobey oppressive and sinful order of a Tyrant Ruler and refrain himself from such sinful acts. Muslims should not approve bad deed of the Amirs i.e. the rulers. Making a just statement before tyrannical ruler is a greatest type of Jihad. A person who acts as God against the unlawful, is kind to his neighbour and loves the people as he loves himself is Muslim, otherwise not.

3309. The **Sacred Compilation Hadith Sahih Muslim (Vol.-III) 1854 & 1854R1** reveal that the Holy Prophet has commanded that Muslims should not approve bad deed of the Amirs i.e. the rulers. Said Hadith reads as follows:

"[1854]. It has been narrated on the authority of Umm Salama that the Messenger of Allah (may peace be upon him) said: In the near future there will be Amirs and you will like their good deeds and dislike their bad deeds. One

who sees their bad deeds (and tries to prevent their repetition by his hand or through his speech), is absolved from blame, but one who hates their bad deeds (in the heat of his heart, being unable to prevent their recurrence by his hand or his tongue), is (also) safe (as far as God's wrath is concerned). But one who approves their bad deeds and imitates them is spiritually ruined. People asked (the Holy Prophet): Shouldn't we fight against them? He replied: No, as long as they say their prayers.

[1854R1] It has been narrated (through a different chain of transmitters) on the authority of Umm Salama (wife of the Holy Prophet) that he said: The Amirs will be appointed over you, and you will find them doing good as well as bad deeds. One who hates their bad deeds is absolved from blame. One who disapproves their bad deeds is (also) safe (as far as Divine wrath is concerned). But one who approves their bad deeds and imitates them (is doomed). People asked: Messenger of Allah, shouldn't we fight against them? He replied: No, as long as they say their prayers. (Hating and disapproving refers to liking and disliking from the heart)."

3310. The Sacred Compilation Hadith Sahih Muslim (Vol.-III) 1855R1 reveals that the Holy Prophet has commanded the Muslims to **condemn such act of their Rulers which is an act of disobedience to God** i.e. the Holy ordinances of the Allah and his Holy Messenger. Said Hadith reads as follows:

"[1855R1] It has been narrated on the authority of Abf b.Malik Al-Ashja'i who said that he heard the Messenger of Allah (may peace be upon him) saying: The best of your

*rulers are those whom you love and who love you, upon whom you invoke God's blessings and who invoke His blessings upon you. And the worst of your rulers are those whom you hate and who hate you, who curse you and whom you curse. (Those present) said: Shouldn't we overthrow them at this? He said: No, as long as they establish prayer among you. No, as long as they establish prayer among you. Mind you! **One who has a governor appointed over him and he finds that the governor indulges in an act of disobedience to God, he should condemn the governor's act, in disobedience to God but should not withdraw himself from his obedience.**"*

3311. The Sacred Compilation **Hadith Sahih Bukhari 3.628** reveal that the Holy Prophet has strictly commanded to avoid oppression. Said Hadiths read as follows:

"Narrated Ibn `Abbas: The Prophet sent Mu`adh to Yemen and said, "Be afraid, from the curse of the oppressed as there is no screen between his invocation and Allah."

3312. The Sacred Compilation **Jami' At-Tirmidhi (Vol.-5) Hadith 2683** reveals that the Holy Prophet has directed the Muslims to refrain from any kind of major and minor sins. Said Hadith and comment thereto read as follows:

"2683. Ibn Ashwa narrated from Yazid bin Salamah Al-Ju'fi, he said: 'Yazid bin Salamah said: 'O Messenger of Allah! I heard so many narrations from you that I am afraid the last of them will cause me to forget the first of them. So narrate a statement to me that will encompass them.' So he said: "Have Taqwa of Allah with what you learn." (Da'if)

Comments:

The extract and a full outcome of the whole religion is Taqwa, for this objective the Prophets, Messengers and the Books were sent; and Taqwa is to refrain from any kind of major and minor sins, it big and small.”

3313. The Sacred Compilation **Jami‘ At-Tirmidhi (Vol.-5) Hadith 2687** reveals that the Holy Prophet has commanded the Muslims to accept everything that is good and perfect setting aside the worldly benefits, objectives and lusts. Said Hadith and comments thereto read as follows:

“2687. Abu Hurairah narrated that the Messenger of Allah said: “The wise statement is the lost property of the believer, so wherever he finds it, then he is more worthy of it. **(Da‘if)**

Comments:

In the creation and nature of human, the passion of obedience and submission is planted, which is the origin and source of every good and righteousness, but because of worldly benefits, objectives and lusts it becomes neglectful of good and righteousness, whereas the demand of its nature and habit is to accept everything that is good and perfect.”

3314. The Sacred Compilation **Jami‘ At-Tirmidhi (Vol.-5) Hadith 2826** reveals that if there is anyone to whom the Holy Prophet has made a promise it must be complied by the Rulers. Said Hadith read as follows:

“2826. Isma‘ll bin Abi Khalid narrated that Abu Juhaiifah said: “I saw the Messenger of Allah (he was) white and turning grey. Al Hasan bin ‘Ali resembles him most. He had

promised thirteen young she-camels for us, so we went to get them. When we arrived he had died without giving us anything. So, when Abu Bakr (became the Khalifah) he said 'If there is anyone to whom the Messenger of Allah made a promise, then let him come forth.' I stood to inform him about it, and he ordered that they be given to us."
(Sahih)

3315. The Muwatta' Imam Malik 959 reveals that the Muslims should neither break vows nor kill disbelievers breaking promise of protection given to him. Said Muwatta no. 959 read as follows:

"[959] It reached Malik that 'Umar b. 'Abd al-Aziz wrote to one of his administrators: We have learnt that whenever the Messenger of Allah (may peace be upon him) sent out force, he used to command them: Fight taking the name of the Lord. You are fighting in the cause of the Lord with people who have disbelieved and rejected the Lord ; do not commit theft, do not break vows ; do not cut ears and noses, do not kill women and children. Communicate this to your armies. If God wills ! Peace be on you."

3316. By defeating Sultan Ibrahim Lodi in the battle of Panipat Emperor Babur acquired only those rights which the said Monarch had. As defeated Monarch was not Owner of the Sri Ramajanamsthan Temple at Ayodhya, according to Shar Emperor Babur did not acquire title of the said Temple. According to the Divine Law of Shar a Muslim can erect Masjid only on such land of which he is lawful owner and he can create Wakf only of his own lawful property. Unless the first prayer was offered with permission of the lawful owner even

dedication of Masjid and Wakf by user can not be claimed. Shar does not permit conversion of a Temple into a Mosque and says that even if a mansion was given by a Jimmi to Muslims for their using it as Masjid, after death of such Jimmi his said mansion goes back to his heirs. Suffice to say that according to Shar the Wakif must be owner of the property at the time of its dedication otherwise Wakf is invalid. As Emperor Babur was not owner of the Suit-land, alleged creation of Wakf for Masjid and Graveyard was ab initio void and the Plaintiffs are not entitled for the reliefs as prayed for in the instant Suit.

3317. In the book '**Ibn Battuta Ki Bharat Yatra**' Ibn Battuta writes that he was given fund and permission by Sultan Muhamad bin Tughlaq for purchasing 20 villages for the purpose of increasing income of the endowment of Mausoleum of Sultan Kutubuddin. From said fact it becomes crystal clear that the Sultan was not owner of the land of the subject people and he had to purchase land for accretion of said wakf property. In other words private proprietorship of land was in existence during the Sultanate period. Relevant extract from page 158 of the the book '**Ibn Battuta Ki Bharat Yatra**' (translated by **Madan Gopal** published by National Book Trust of India **first published in 1933** reprinted in 1997) reads as follows:

“15. मकबरे का प्रबंध

“इसके पश्चात मैं सम्राट कुतुबउद्दीन के समाधि-स्थान के प्रबंध में दत्तचित्त हो गया। यहां पर सम्राट ने इराक के सम्राट गाजां शाह के गुंबद से भी बीस हाथ अधिक ऊँचा (अर्थात् सौ हाथ का) गुंबद निर्माण करने की आज्ञा दी; और इस देवोत्तर संपत्ति की आय बढ़ाने के लिए बीस गांव और मोल लेने की आज्ञा दी। उसमें दलाली के दशमांश का लाभ कराने के विचार से इन गांवों के मोल लेने का कार्य भी मेरे ही सुपुर्द कर दिया गया था।”

3318. From the Farman of Emperor Shah Jahan of 1633-34 AD, it becomes clear that the right of private proprietorship was in existence during the Mughal period and for the purpose of creation of wakf of Taj Mahal the Emperor had to acquire land of Raja Jai Singh by giving him other land in lieu of the acquired land. The extract of the Farman taken from page 53 and 54 the book "**Mughal Documents AD.1628-59**", Volume-II compiled and **translated by S.A.I. Tirmizi** and published by Manohar Publishers, Delhi, 1995 Edn., reads as follows:

"56. Farman of Shah Jahan addressed to Raja Jai Singh informs the Raja that in lieu of the plot of land acquired for the construction of the mausoleum of Mumtaz Mahal the following four havelis have been granted to him (Jai Singh):

- 1. Haveli of Raja Bhagwan Das.*
- 2. Haveli of Madhav Singh.*
- 3. Haveli of Rupsi Bairagi.*
- 4. Haveli of Chand Singh, son of Suraj Singh.*

The zimn on the reverse bears the risala of Afzal Khan and waqia of Makramat Khan. (MIM.IV,p.165; DLFMN,p.55,CHDKD.pp.176-177)."

3319. In the Farman of Emperor Shah Jahan dated 3rd August, 1648 contained a Nishan of Prince Dara Shukoh, the then Viceroy of Gujrat, it has been held that conversion of temple of Sati Das into mosque by erstwhile Viceroy of Gujrat prince Aurangzeb was in violation of Islamic Law and as it was constructed over the property of another person it could not be considered a mosque according to the inviolable Islamic Law. On the basis of said finding of Law of Shar the Emperor

directed authorities to hand over the said building to Sati Das for his using the same as his temple. The extract of the Farman taken from page 89 of the book "**Mughal Documents AD.1628-59**" **Volume-II (supra)**, reads as follows:

"199. Nishan of Prince Dara Shukoh addressed to the subadar, hukkam, and mutasaddis of suba gujarat, particularly Ghairat Khan, informs that a farman in connection with the temple of Sati Das Jawahari had been formerly issued to Umdatul Mulk Shaista Khan to the effect taht Prince Aurangzeb having constructed several mihrabs in the said temple had given it the name of a masjid and thereafter Mulla Abdul Hakim had represented to the Emperor that this building, by reason of its being the property of another person, could not be considered a mosque according to the inviolable Islamic law. The imperial orders were, therefore, issued stating that this building belonged to Sati and that because of its being mihrabi, no obstruction should be caused to the above mentioned person (Sati Das) and that the mihrabs should be removed and the said building be restored to him (Sati Das). Now the royal orders are issued to the effect that the mihrab which the Prince above referred to had constructed there, may be retained and a wall be built close to the mihrab between the temple and miharab to serve as a screen. It is now ordered that since the Emperor had granted the said temple to Sati Das, he should be left in possession of it as usual and he may worship there according to his creed in any way he likes and no one should cause any obstruction or hindrance to him in this

regard. Some faqirs who have settled there be ejected and Sati Das be relieved of their obstruction and molestation. It has been represented to the Emperor that some of the Bohras have removed and carried away the masata (materials) of the said deohara (temple). If this be a fact the said material should be recovered from them and restored to (Sati Das) but if the said material has been used up, their price be recovered from them and paid to Sati Das. It bears the tughra of Shah Jahan in addition to the tughra and seal of Prince Dara Shukoh. there is a note on the top on the right hand side which begins with the word 'Huwa' and directs the hukkam to act in conformity with the nishan i ali. (JUB, IX, pp. 39-41).

13 Rajab 22 Julus/1058 A.H./3 August 1648 A.D.

3320. In his book '**Digest of Moohummudan Law**' (first part) Neil B. E. Baillie writes that wakif or appropriator must be owner of the subject of the wakf at the time of making it and if a person usurp a piece of land, create wakf and then purchase it from the owner, it would not be a wakf. And if Zimmee gives his mansion for using it as a masjid for Mussulmans, after his death it would become the inheritance of his heirs. Relevant portions of the said book from page 557, 558, 561 & 562 read as follows:

“THE legal meaning of wukf , or appropriation, according to Aboo Huneefa, is the detention of a specific thing in the ownership of the wakif or appropriator, and the devoting or appropriating of its profits or usufruct in charity on the poor, or other good objects.”

“According to the two deciples, wukf is the detention of a

thing in the implied ownership of Almighty God, in such a manner that its profits may revert to or be applied for the benefit of mankind, and the appropriation is obligatory, so that the thing appropriated can neither be sold, nor given nor inherited.”

“But if a zimme should give his mansion as a masjid, or place of worship, for Mussulmans, and construct it as they are accustomed to do, and permit them to pray in it, and they should pray in it, and he should then die, it would become the inheritance of his heirs, according to all opinions.”

“It is also a condition that the thing appropriated be the appropriator’s property at the time of the appropriation; so that, if one were to usurp a piece of land, appropriate, and then purchase it from the owner, and pay the price, or compound with him for other property, which is actually delivered up, it would not be a wukf.”

“And if a donee of land should make an appropriation of it before taking possession, and should then take possession, the wukf would not be valid.”

“If the appropriation were made before taking possession, it would not be lawful.”

3321. Great jurist **Syed Ameer Ali** in his book **‘Commentaries on Mahomedan Law’** extracting the authority writes that the wakif must be lawful owner of the property at the time of creation of wakf. Otherwise a wakf is invalid. Relevant extract from page 225 of the said book reads as follows:

“The subject-matter of the dedication must be the lawful

property of the wakif at the time the wakf is made, that is, he must be in a position to exercise dominion over it. Consequently, if a wakf is made by a person of some property which he has un-lawfully acquired, it would be invalid, although he may subsequently purchase it from the lawful owner. So also, when a man makes a wakf, for certain good purposes, of land belonging to another, and then becomes the proprietor of it, the (sic She) wakf is not lawful.”

3322. In his book ‘**Principles of Mahomeddan Law**’ D.F. Mullah writes that wakif must be owner at the time of dedication. Relevant extract from page 149 of the said book reads as follows:

“146C. Subject of wakf must belong to wakif.— The property dedicated by way of wakf must belong to the wakif (dedicator) at the time of dedication (s).”

3323. In **AIR 1975 SC 2299 (Indira Nehru Gandhi v. Rajnarain)** the Hon’ble Supreme Court speaking through the Hon’ble Justice M. H. Bag, J. (as His Lordship then was) explaining the law of sovereignty in paragraph 526 to 571, in paragraph 527, 532-534 and 571 held that the Muslim Rulers as well as the Hindu Rulers were subject to their respective divine sacred law and the law was king of the kings. Relying on said judgment it is submitted that conversion of Sri Ramajanamasthan Temple into an alleged mosque either by the Emperor Babar or Aurangzeb in violation of the Law of Shar makes their such act null and ab initio and such building does not comes within the definition of a mosque. Paragraph nos. 527, 532-534 and 571 of the aforesaid judgment read as follows:

“527. I must preface my observations here about the concepts of "sovereignty" and exercise of "sovereign power" between which I make a distinction, with two kinds of explanation. The first kind involves an exposition of a functional or sociological point of view. I believe that every social political, economic, or legal concept or doctrine must answer the needs of the people of a country at a particular time. I see the development of concepts, doctrines, and institutions as responses to the changing needs of society in every country. They have a function to fulfil in relation to national needs. The second type of explanation may be called historical or meant merely to indicate and illustrate notions or concepts put forward by thinkers at various times in various countries so as to appropriately relate them to what we may find today under our Constitution. We have to appreciate the chronology or stages of their development if we are to avoid trying to fit into our Constitution something which has no real relevance to it or bearing upon its contents or which conflicts with these. It must not, if I may so put it, be constitutionally "indigestible" by a constitution such as ours. Of course, it is not a secret that we have taken some of the basic concepts of our Constitution from British and American Constitutions in their most developed stages. That too must put us on our guard against attempts to foist upon our Constitution something simply because it happens to be either a British or American concept of some particular period which could not possibly be found in it today. Therefore, both types of explanation appear to

be necessary to an exposition of what may or may not be found in our Constitution.

532. After the break-up of the Roman Empire, there were attempts in medieval Europe, both by the Church and the Kings, to develop spiritual and temporal means for checking wrong and oppression. Quests for the superior or a sovereign power and its theoretical justifications by both ecclesiastical and lay thinkers were parts of an attempt to meet this need. The claims of those who, as vicars of God on earth, sought to meddle with mundane and temporal affairs and acquire even political power and influence were, after a struggle for power, which took different forms in different countries, finally defeated by European Kings with the aid of their subjects. Indeed these Kings tried to snatch, and, not without success, to wear spiritual crowns which the roles of "defenders of the faith" carried with them so as to surround themselves with auras of divinity.

533. The theory of a legally sovereign unquestionable authority of the King, based on physical might and victory in battle, appears to have been developed in ancient India as well, by Kautaliya, although the concept of a Dharma, based on the authority of the assemblies of those who were learned in the dharmashastras also competed for control over exercise of royal secular power. High philosophy and religion, however, often seem to have influenced and affected the actual exercise of sovereign power and such slight Lawmaking as the King may have attempted. **The ideal King in ancient India, was**

conceived of primarily as a Judge deciding cases or giving orders to meet specific situations in accordance with the Dharma Shastras. It also appears that the actual exercise of the power to administer justice was often delegated by the King to his judges in ancient India. Indeed, according to some, the theory of separation of powers appears to have been carried so far (See: K. P. Jayaswal in "Manu and Yajnavalkya" - A basic History of Hindu Law - 1930 Edn. p. 82) that the King could only execute the legal sentence passed by the Judge.

534. We know that Semitic prophets, as messengers of God, also became rulers wielding both spiritual and political temporal power and authority although to Jesus Christ, who never sought temporal power, is ascribed the saying: "render unto Caesar the things that are Caesar's and to God things that are God's". According to the theory embodied in this saying, spiritual and temporal powers and authorities had to operate in different orbits of power altogether. Another theory, however, was that the messenger of God had been given the sovereign will of God Almighty which governed all matters and this could not be departed from by any human authority or ruler. In the practical administration of justice, we are informed, Muslim caliphs acknowledged and upheld the jurisdiction of their Kazis to give judgment against them personally. There is an account of how the Caliph Omar, being a defendant in a claim brought by a Jew for some money borrowed by him for purposes of State, appeared in person in the Court of his own Kazi to answer the claim. The

Kazi rose from his seat out of respect for the Caliph who was so displeased with this unbecoming conduct that he dismissed him from office. (See: Sir A. Rahim's "Muhammadan Jurisprudence", (1958) p. 21).

571. I find that the doctrine of the supremacy or sovereignty of the Constitution was adopted by a Bench of seven learned Judges of this Court in Special Reference No, 1 of 1964, (1965) 1 SCR 413 = (AIR 1965 SC 745) where Gajendragadkar, C. J., speaking for six learned Judges of this Court said (at p .446) (of SCR) = (at pp. 762-763 of AIR) :

"In a democratic country governed by a written Constitution, it is the Constitution which is supreme and sovereign. It is no doubt true that the Constitution itself can be amended by the Parliament, but that is possible because Art. 368 of the Constitution itself makes a provision in that behalf, and the amendment of the Constitution can be validly made only by following the procedure prescribed by the said article. That shows that even when the Parliament purports to amend the Constitution, it has to comply with the relevant mandate of the Constitution' itself. Legislators, Ministers, and Judges all take oath of allegiance to the Constitution, for it is by the relevant provisions of the Constitution that they derive their authority and jurisdiction and it is to the provisions of the Constitution that they owe allegiance. Therefore, there can be no doubt that the sovereignty which can be claimed by the Parliament in England, cannot be claimed by any Legislature in India in the literal absolute sense."

3324. In AIR 1994 SC 2663 (**N. Nagendra Rao & Co. v. State of Andhra Pradesh**) the Hon'ble Apex Court has held when the law provides for compensation against confiscation, he must be compensated and confiscation cannot affect the right of owner to claim return of the goods. Relying on said judgment it is submitted that when the Law of Shar says that no one can acquire ownership of the property of others by virtue of adverse possession but it can be only by purchase, alleged erection of alleged mosque over a Sacred shrine of the Hindus by virtue of forceful occupation makes such building only ordinary private building and not the Mosque. Relevant paragraph 8 of the said judgment reads as follows:

"8. This sub-section ensures that a person who has been prosecuted or whose goods have been confiscated does not suffer if the ultimate order either in appeal or in any proceeding is in his favour. It is very wide in its import as it statutorily obliges the Government to return the goods seized or to pay the value of the goods if for any reason it cannot discharge its obligation to return it. The circumstances in which the goods are to be returned are;

- (a) an order under S. 6A is modified or annulled by the State Government;*
- (b) where the goods were confiscated in consequence of prosecution of the person and he is acquitted;*
- (c) and in all these cases where it is not possible for any reason to return the essential commodity seized. This provision cuts across the argument of the State that where even part is confiscated the person whose goods are seized is not liable to be compensated for the remaining. The*

section is clear that if only part of the goods are confiscated then the remaining has to be returned. The very first part of the sub-section indicates that where the order of confiscation, is modified in appeal meaning thereby if confiscation is confined to part only the Government is bound to release or return the remaining or pay the value thereof. But what is more significant of this sub-section which widens its reach is the expression, 'and in either case it is not possible for any reason to return the essential commodity seized' then, the State shall be liable to pay the market price of the value with interest. The expression, 'for any reason' should be understood in broader and larger sense as it appears from the context in which it has been used. The inability to return, giving rise to the statutory obligation of deeming it as sale to the Government may arise for variety of reasons and extends to any failure on the part of the Government. For instance, the goods might have been sold in pursuance of interim arrangement under S. 6A(2). Or it might have been lost or stolen from the place of storage. The goods might have deteriorated or rusted in quality or quantity. The liability to return the goods seized does not stand discharged by offering them in whatever condition it was. Confiscation of part of the goods thus could not affect the right of owner to claim return of the remaining goods. Nor the owner is bound to accept the goods in whatever condition they are. The claim of the respondent, therefore, that the appellant was bound to accept the goods in whatever condition they were is liable to be rejected."

3325. In AIR 1971 SC 1594 (**Union of India. v. Sudhangshu Mazumdar**) the Hon'ble Apex Court has quoted an extract from the **United States v. Juan Prechman, (1831-34) L.Ed. 604** with approval wherein it has been stated that the modern usage of nations would be outraged if private properties are confiscated or private rights annulled. Relevant paragraph 7 of the said judgment reads as follows:

"7. Dr. Singhvi says that the first premise on which the High Court has proceeded is that as a result of cession it would be competent for the Government of Pakistan to deal with the disputed territory as an absolute owner in complete disregard of the existing rights of the respondents. In other words it has been assumed that the Government of Pakistan will not recognise ownership or other similar rights of the respondents in the lands and properties which belong to them. This Dr. Singhvi claims, is contrary to the rule enunciated by Chief Justice Marshall in The United States v. Juan Perchman, (1831-34) 8 L. ed 604 in the following words:

"The modern usage of nations, which has become law, would be violated: that sense of justice and of right which is acknowledged and felt by the whole civilised world would be outraged, if private property should be generally confiscated and private rights annulled. The people change their allegiance; their relation to their ancient sovereign is dissolved; but their relations to each other and their rights of property, remain undisturbed."

The rule set forth in the Perchman case, (1831-34) 8 L. ed 604 has been followed in over forty American cases and

has been accepted as the rule of International law in English,

*French, German and Italian law**

** Extracts from the Law of Nations (2nd Edn. 1953), p. 237, Cf. F. B. Sayre, "Change of Sovereignty and Private Ownership of Land," 12 XII A. J. L L (1918), 475, 481, 495- 497"*

3326. In **1999 (4) SCC 663 (R.E.M.S. Abdul Hameed v. Govindaraju)** the Hon'ble Apex Court has held that under the Ancient Hindu Law there were two beneficial interests in land: (1) that of the sovereign or his representative, and (2) that of the cultivator or Ryot holding the land. The Ryot's right arose from occupation of the land, thus the grant of an Inam do not and could not have touched the cultivator's right in the land, except in rare cases where the grantor also hold the cultivator's interest at the time of the grant. Relying on Said judgment it is submitted that in our country since inception subjects were proprietor of their private properties and the Kings were only entitled for land revenue, Sri Mishra argued that Sri Ramajanamasthan was all along and is being owned by the Deity Sri Ramalala as such the right of private property of the Deity cannot be extinguished. Relevant paragraph 4 of the said judgment reads as follows:

"4. The central question in issue is the interpretation of clause (b) Explanation I to Section 2(11) of Act 26 of 1963. Learned counsel for the aforesaid respective appellants, Mr Tripurari Ray and Mr A.T.M. Sampath, Senior Counsel submit on the facts of this case that the disputed land cannot be construed to be "part-village inam estate" to fall

within Act 26 of 1963 but is a minor inam to fall under Act 30 of 1963. Before taking up this issue of “part-village inam estate”, it is necessary to look back to the history of inam lands, how it emerged, was recognised, canalised and dealt with through various enactments till it reached the legislative umbrella of both Acts 26 and 30 of 1963. The law relating to the landholdings, agrarian reform, in the Presidency town of Madras, with reference to the landlords and ryots started from the previous century and it is interesting to note a few of the essential features of this agrarian development. The origin of inam tenure is traced back to its grant made by Hindu rulers for the support of temples and charitable institutions, for the maintenance of holy and learned men rendering public service, etc. This practice was followed by the Mohammedan rulers and by British administrators until about a century ago. According to the ancient Hindu law, there were two beneficial interests in land, namely, (1) that of the sovereign or his representative, and (2) that of the cultivator holding the land. The sovereign’s right to collect a share of the produce of the cultivated land was known by the name “melvaram”, the share of the ryot or cultivator was known by the name “kudivaram”. The ryot’s right arose from occupation of the land. Thus, the grant of an inam did not touch, and could not have touched, the cultivator’s right in the land, namely, the kudivaram, except in rare cases where the grantor was also holding the cultivator’s interest at the time of the grant.”

3327. In AIR 1962 SC 342 (**Sunka Villi Suranna. v. Goli**

Sathiraju) the Hon'ble Apex Court held, where there was no evidence to show that the occupation of the lands by the Ryot commenced under the Zamindar and there was no evidence as to the terms at which the Ryots or his predecessors were inducted in land, commencement of the tenancy and the terms thereof were lost in antiquity but the Ryot's rights and his descendants were proved to have continued in possession of the land uninterruptedly till the enactment of the Madras States Land Act, 1908. In the light of the presumption that the Zamindar was, unless the contrary was proved, the owner of the melvaram and Ryot the owner of the kudivaram, the inference was irresistible that the Ryot was the holder of the occupancy rights in the land and thus rights developed upon his successors and the occupancy right in the land were not acquired by virtue of the provisions of Madras States Land Act, 1908. Relying thereon it is argued that prior to declaring the land as nazul land by the Governor- General in 1859, the Hindus were worshipping in the suit property as such the occupancy rights remained in the hands of the Hindus. Relevant paragraph 17 of the said judgment reads as follows:

“17. To summarise, there is no evidence to show that occupation of the lands by Thammiah commenced under the zamindar and there is no evidence as to the terms on which Thammiah or his predecessors were inducted on the lands: the commencement of the tenancy and the terms thereof are lost in antiquity, but Thammiah and his descendants are proved to have continued in possession of land uninterruptedly till the enactment of the Madras Estates Land Act, 1908. In the light of the presumption that

the zamindar is unless the contrary is proved, the owner of the melvaram and the ryot the owner of the kudivaram the inference is irresistible that Thammiah was the holder of the occupancy rights in the lands and that these rights devolved upon his successors and that the occupancy rights in the lands were not acquired by virtue of the provisions of Madras Act VI of 1908.”

3328. In **(2001) 4 SCC 713 (Syndicate Bank. v. Prabha D. Naik)** the Hon’ble Apex Court has held that the Muslim jurisprudence neither recognised prescription nor limitation. Relying on the said judgment it is submitted that as Hindu Endowment was existing prior to acquisition of Kingship by the Emperor Babur and said ownership of the Deity existed till the day of confiscation of the rights of the proprietors in land in the year 1859 by the British government which right of the Deity again revived when the State of Uttar Pradesh gave up its said right by filing written statement in the instant Suit, as such the said sacred shrine of the Hindus is not liable to be declared as a mosque. Relevant paragraph 6 of the said judgment reads as follows:

*“6. Incidentally, it may be noted that though **the old Hindu law recognised both prescription and limitation but Muslim jurisprudence recognised neither of them.** The new Law of Limitation in terms of the Limitation Act of 1963 however, does not make any racial or class distinction since both Hindu and Muslim laws are amenable to the Law of Limitation as is presently existing in the statute-book (see in this context B.B. Mitra’s Limitation Act ; 20th Edn.).”*

3329. In AIR 1968 SC 683 (V. D. Dhanwatey. v. Commissioner of Income Tax, M. P., Nagpur & Bhandara) the Hon'ble Supreme Court held that while interpreting an ancient text, the Courts must give them a liberal construction to further the interest of the society by wisely interpreting the original texts in such a way as to bring them in harmony with the prevailing conditions. Relying on said judgment it is submitted that the Sthandil i.e. Sri Ramjanmasthan which has been recognized by the scriptures a means of conferring merit upon the devotees and granting salvation to them be recognized as Juridical entity and not mere property in crude sense to do justice in the greater interest of the citizens of India in general and the Hindu and Muslim community in particular to pave the way of permanent peace. Relevant paragraph 31 of the said judgment reads as follows:

“31. Law is a social mechanism to be used for the advancement of the society. It should not be allowed to be a dead weight on the society. While interpreting ancient texts, the courts must give them a liberal construction to further the interests of the society. Our great commentators in the past bridged the gulf between law as enunciated in the Hindu law texts and the advancing society by wisely interpreting the original texts in such a way as to bring them in harmony with the prevailing conditions. To an extent, that function has now to be discharged by our superior courts. That task is undoubtedly a delicate one. In discharging that function our courts have shown a great deal of circumspection. Under modern conditions legislative modification of laws is bound to be confined to

major changes. Gradual and orderly development of law can only be accomplished by judicial interpretation. The Supreme Court's role in that regard is recognised by Article 141 of our Constitution.”

3330. In AIR 2008 SCW 1224=2008(3) SCC 481 (**Dist. Basic Education Officer & Anr. v. Dhananjai Kumar Shukla & Anr.**) the Hon'ble Supreme Court has held that the rules of pleadings do not apply to question of law and new plea on question of law can be raised before the Supreme Court even it was not raised before the High Court. Relying on said judgment it is submitted that the questions of law which have been raised during the argument are sustainable in the eye of law and needed to be decided for doing complete justice between the parties who are representing two major community of India. Relevant paragraph 14 (13 in SCC) of the said judgment reads as follows:

“14. Rules of pleading contained in the Code of Civil Procedure do not cover questions of law. If a fact stands admitted the same in terms of Section 56 of the Indian Evidence Act need not be proved. Only because such a question was not allegedly raised before the High Court, this Court could not shut its eyes to the legal position. Yet again only because an illegality has been committed, this Court would not allow its perpetration. Respondent's father was on leave for a temporary period. He thereby did not cease to be the Manager of the school. It is apparent that he went on leave only for defeating the statutory provisions. Such an act amounts to fraud on the administration.”

3331. The vexed question is the religious status of the

building in dispute. It is no doubt true that it has been argued very ably by placing lot of material on the subject. In our view it is not a mere simple controversy, whether the building in dispute is a mosque satisfying the Islamic tenets or not, but much more than that. As already held, the parties could not prove that the building in dispute was constructed in 1528 AD by Babar or any of his agent. Some of these issues would immediately stand covered by those findings. For example issue 6 (Suit-3) would have required a further investigation only if it was built by Babar and not otherwise. However, we would proceed ahead assuming, only for the purpose of these issues, if the building was constructed by Babar in 1528 AD, then how the concerned issues hereat would stand, and/or, to what extent the parties concerned are able to prove in one or the other way, their case.

3332. **Issue 6 (Suit-3)** is confined to the act of Emperor Babar i.e. whether the alleged mosque was dedicated by him for worship of muslims in general and made a public waqf property. This issue has been framed on the basis of the pleadings of muslim parties (defendants) in Suit-3. The result of failure to prove the issue would stand in a loss to the defendants muslim parties and therefore, burden to prove it lie upon the defendants muslim parties.

3333. There is no recorded history or/ for the period of 1528 to 1855 A.D., stating in black and white, that this building was constructed by Babar and then dedicated to muslims as a public waqf. In fact the reference of the building in dispute for the first time, we find, in the traveller's account of Tieffenthaler i.e. **DESCRIPTION : HISTORIQUE ET GEOGRAPHIQUE : D E L' I N D E** under the title "TOME

1. NOUVELLE EDITION. Contenant la Geographic de l'Ind-Uftan, avec. 39,. Planches" (Supra). But what he mentions is that the place where there existed house of Vishnu, worshipped by Hindus, the disputed structure was raised, which as per local belief, constructed by Aurangzebe but some says Babar. This observation maintain a state of suspense. But then he kept on saying that Hindus used to worship by Parikrama and lying prostrate on the land.

3334. In 1828, the gazetteer of Walter Hamilton i.e. **"East India Gazetteer"** (Supra) also do not throw any light on it. The Robert Montegomary Martin, got published the Survey Report of Dr. Buchanan in 1838 under the title **'Eastern India'** (Supra). He mentions that though locally it is believed that the building was constructed by Aurangzebe after demolishing a temple at the site in dispute but the stone inscriptions fixed on the disputed structure mention names of Babar and Mir Baqi. It was thus not Aurangzebe but Babar. The contents of the inscriptions referred by Martin are not known and these aspects as also the text of inscriptions, as quoted subsequently, we have discussed in great detail above while considering issues relating to period of construction etc. of the disputed structure hence, not to be repeated. Suffice it to mention that whatever text of these stone inscriptions is treated to be correct even that do not clearly say that the building was constructed by Babar hence the question of his dedication for worship by muslims in general and making it a public waqf property would not arise.

3335. Existence of a mosque or construction of a mosque by somebody is another thing but the issue we are supposed to answer is quite specific, whether this dedication is by Emperor

Babar or not. No doubt after 4 or 5 centuries one cannot expect an eyewitness to prove such an issue but then other circumstances or secondary evidence could have been produced to prove it. A presumption in respect to dedication in such a matter which involves a period of several centuries could have been raised if identity of the person, who constructed the building is not in dispute and the only question is whether there is a valid or de facto dedication or not. The doctrine of user etc. could have been resorted to in such a case. But where the dispute of identity of alleged waqif itself is involved, such doctrine would be of no help.

3336. During the oral arguments, Sri Z. Jilani, learned counsel appearing on behalf of Sunni Board, whose arguments have been adopted by other learned counsels appearing for muslim parties, also tried to highlight that Babar never entered Ayodhya and did not command Mir Baqi for construction of any mosque. In fact we find that in the entire plaint there is not even a whisper that Babar dedicated alleged mosque for worship by muslims in general and made a public waqf property. On the contrary, para 1 says that it was built by Mir Baqi under the command of Emperor Babar for use of muslims in general as a place of worship. It does not say at all that at any stage there was dedication of building in question as a public waqf or a waqf property for the benefit of muslims in general. One of the essential condition of creating a waqf is "dedication". In absence of other evidence, if, public prayer is once said there, with the permission of the owner, it can be treated to have been dedicated. Even if we assume that emperor Babar was owner, no material has been placed which may suggest or give even a faint

indication that with his permission any public prayer was made in the building in dispute. In fact we do find no material to suggest that any public prayer was offered by Muslims, at least till 1860.

3337. We can go even to this extent that a dedication may be inferred from user as waqf property but when the issue is whether a particular person made dedication or not, the question of long user to our mind would not be relevant but it is the factum of dedication of the person concerned which has to be seen.

3338. In **Commissioner of Waqfs and another Vs. Mohammad Moshin (Supra)**, it was held that none other than owner of the property can make a waqf. In that case guardian of a minor sought to create a waqf but that was not approved by the Division Bench of Calcutta High Court holding that idea of agency is foreign to Mohammedan Law and a waqf would not be created unless the creator himself is not owner of the property.

3339. It is not the case of the Sunni Board and other muslim parties that the property in dispute owned by Mir Baqi and he made dedication. The issue before us, up for consideration is whether the dedication was made by Emperor Babar or not. There is no suggestion during the course of argument that the issue has not been properly framed or needs any alteration. Two judgements, however, in this regard are sought to be relied by Sunni Board and other muslim parties. One is that of Suit-1885 and another is the judgment dated 30 March, 1946 in Suit No. 29 of 1945 (Exhibit A-42, Suit-1, Register 8, Page 431). It is contended that the question about the

building in dispute that it is a mosque and constructed by Babar, hence, a Sunni mosque, stands concluded and these judgments since relates to the declaration of status of building in dispute itself, are judgements in rem, hence, final and binding. Therefore, the issue in question ought to be decided in the light of declaration made thereunder.

3340. The three judgements of trial court, and appellate courts in Suit-1885, we have discussed at length at various stages above. In brief, just to recapitulate, a suit was filed by Mahant Raghbar Das seeking permission to make construction of temple at a chabutra measuring 17x21 feet in the eastern-southern part of the disputed building in the outer courtyard which was in his possession as he claimed for a long time. One Mohd. Asghar got impleaded himself as defendant no. 2, as Mutwalli of the building in dispute. He did not deny possession of Raghbar Das on the aforesaid chabutra but suggested that it was unauthorised and illegal since no permission was obtained from waqif or his successors. The trial court decided the suit and observed from the pleadings as also the Gazetteer placed before it by the parties, that on the west side there was a mosque said to be constructed during the reign of Babar and in its vicinity, permission to make a new construction, that too, of a temple, may create a law and order situation. Hence, in public interest, it decline to grant any relief to the plaintiff therein. This ultimate decision of the trial court was confirmed by the District Judge as well as the Judicial Commissioner in appeal. There was no issue as to whether the building was a mosque and if so who constructed it, and whether there was any dedication by such person etc.

3341. The second suit of 1945 is an inter se dispute between two muslim bodies, i.e. Shia Waqf Board and Sunni Waqf Board of State of U.P. contesting about the building in dispute whether it was a Sunni waqf or Shia waqf. The nature of the building as waqf, its construction by emperor Babar through its commander Mir Baqi in 1528 A.D. and dedication to muslim in general as public waqf were the facts admitted by both the parties, hence, there was no occasion for the trial court to look into those aspects of the matter. The trial court mentioned the facts pleaded by the parties on this aspect without there being any contest thereon, since the contest was confined only to the category it belonged to i.e. Shia or Sunni. Therefore, the aforesaid judgement cannot be said to be a judgement deciding the issue which is up for consideration before us. The judgements whether in rem or personam would make no difference.

3342. Moreover, admissibility of judgements as evidence has to be considered in the light of the provisions of Evidence Act. A document may be classified for this purpose in three heads, (1) documents which are per se inadmissible; (2) recitals in judgements not inter parties; and (3) documents or judgements post litem motam. If a judgement is not admissible, not falling within the ambit of Sections 40-42, it must fulfil the conditions of Sections 43 otherwise it cannot be relevant under Section 13 of the Evidence Act. The words 'other provisions of this Act' used in Section 43 would not extend to Section 13, because the Section 13 does not deal with judgements at all. The judgements in personam do not fulfil the conditions mentioned in Section 41 of the Evidence Act, hence, inadmissible. The

judgements not inter parties are inadmissible in evidence barring exceptional cases. It would be useful to refer in this regard the Apex Court's decision in **State of Bihar and others Vs. Sri Radha Krishna Singh (supra)** paras, 123, 126, 127, 128, 129, 131, 133 and 134 as under:

"123. It is now settled law that judgments not inter parties are inadmissible in evidence barring exceptional cases which we shall point out hereafter. In Johan Cockrane v. Hurrosoondurri Debia and Ors.(1854-57) 6 Moo Ind App 494, Lord Justice Bruce while dealing with the question of admissibility of a judgment observed as follows:

"With regard to the judgment of the Supreme Court, it is plain, that considering the parties to the suit in which that judgment was given, it is not evidence in the present case.... We must recollect, however, not only that that suit had a different object from the present, independently of the difference of parties, but that the evidence here is beyond, and is different from, that which was before the Supreme Court upon the occasion of delivering that judgment."

"126. In the case of Gujju Lall v. Fatteh Lall, (1881) ILR 6 Cal 171 a Full Bench exhaustively considered the ambit and scope of Ss 40 to 43 of the Evidence Act and observed thus:

"On the other hand, when in a law prepared for such a purpose, and under such circumstances, we find a group of several sections prefaced by the title "Judgments of Courts of Justice when relevant," that seems to be a good reason for thinking that, as far as

the Act goes, the relevancy of any particular judgment is to be allowed or disallowed with reference to those sections.

... ..

I have had the opportunity of reading the judgment which the Chief Justice proposes to deliver, as well the observations of my brother Pontifex, in both of which I generally concur; and for the reasons there stated, and those which I have shortly given, I consider the evidence inadmissible."

And Garth, C. J. made the following observations:

". . . it is difficult to conceive why, under Section 42, judgments though not between the same parties should be declared admissible so long as they related to matters of a public nature, if those very same judgment had already been made admissible under Section 13, whether they related to matters of a public nature or not.

... ..

I am, therefore, of the opinion that the former judgment was not admissible in the present suit."

(Emphasis ours)"

*"127. In Gadadhar Chowdhury and Ors. v. Sarat Chandra Chakravarty and Ors.(1940)44 Cal WN 935: (AIR 1941 Cal 193) it was held that **findings in judgments not inter parties are not admissible in evidence.**"*

"128. This, in our opinion, is the correct legal position regarding the admissibility of judgments not inter parties."

"129. . . . so far as regards the truth of the matter decided a judgment is not admissible evidence against one who is a stranger to the suit has long been accepted as a general rule in English law.

"The judgment is not inter parties, nor is it a judgment in rem, nor does it relate to a matter of a public nature. The existence of the judgment is not a fact in issue; and if the existence of the judgment is relevant under some of the provisions of the Evidence Act it is difficult to see what inference can be drawn from its use under these sections"

"Serious consequences might ensue as regards titles to land in India if it were recognised that a judgment against a third party altered the burden of proof as between rival claimants, and much 'indirect laying' might be expected to follow therefrom"(Emphasis supplied)"

"131. We entirely agree with the observations made by the Privy Council which flow from a correct interpretation of Sections 40 and 43 of the Evidence Act."

"133. . . . judgment which is not inter parties is inadmissible in evidence except for the limited purpose of proving as to who the parties were and what was the decree passed and the properties which were the subject matter of the suit. In these circumstances, therefore, it is not open to the plaintiffs-respondents to derive any support from some of the judgments which they have filed in order to support their title and relationship in which neither the plaintiffs nor the defendants were parties. Indeed, if the judgments are used for the limited purpose mentioned

above, they do not take us anywhere so as to prove the plaintiff's case."

"134. . . .Declarations by deceased persons of competent knowledge, made ante litem motam, are receivable to prove ancient rights of a public or general nature. The admission of declarations as to those rights is allowed partly on the ground of necessity, since without such evidence ancient rights could rarely be established; and partly on the ground that the public nature of the rights minimises the risks of mis-statement."

3343. In respect to the delcarations made post litem the Apex Court in the above case made observations in para 135 and 136 as under:

"135. It is equally well settled that declarations or statements made post litem motam would not be admissible because in cases or proceedings taken or declarations made ante litem motam, the element of bias and concoction is eliminated. Before, however, the statements of the nature mentioned above can be admissible as being ante litem motam they must be not only before the actual existence of any controversy but they should be made even before the commencement of legal proceedings....."

"To obviate bias, the declarations must have been made ante litem motam, which means not merely before the commencement of legal proceedings, but before even the existence of any actual controversy, concerning the subject matter of the declarations."

"136 The reason for this rule seems to be that after a dispute has begun or a legal proceeding is about to

commence, the possibility of bias, concoction or putting up false pleas cannot be ruled out. This rule of English law has now been crystallised as one of the essential principles of the Evidence Act on the question of admissibility of judgments or documents. . . . In fact, Section 32(5) of the Evidence Act itself fully incorporates the doctrine of post litem motam the relevant portion of which may be extracted thus:

"32. Cases in which statement of relevant fact by person who is dead or cannot be found, etc., is relevant

(5) ...the person making the statement had special means of knowledge, and when the statement was made before the question in dispute was raised."

3344. Here we may also refer to para 143 of the above judgments where the Apex Court summarized ratio of the various authorities on the above aspects of the matter and said:

"143. Thus, summarising the ratio of the authorities mentioned above, the position that emerges and the principles that are deducible from the aforesaid decisions are as follows:

(1) A judgment in rem e. g., judgments or orders passed in admiralty, probate proceedings, etc., would always be admissible irrespective of whether they are inter parties or not,

(2) judgments in personam not inter parties are not at all admissible in evidence except for the three purposes mentioned above.

(3) On a parity of aforesaid reasoning, the recitals in a

judgment like findings given in appreciation of evidence made or arguments or genealogies referred to in the judgment would be wholly inadmissible in a case where neither the plaintiff nor the defendant were parties.

(4) The probative value of documents which, however ancient they may be, do not disclose sources of their information or have not achieved sufficient notoriety is precious little.

(5) Statements, declarations or depositions, etc., would not be admissible if they are post litem motam."

3345. In the absence of any evidence direct, circumstantial or otherwise and also due to inapplication of any principle with respect to presumption etc., we are constrained to hold that **issue 6 (Suit-3) is not proved at all hence answered in negative.**

3346. Now we proceed to **Issues No. 1 (Suit-4) and 9 (Suit-5)** together.

3347. Both issues require an answer whether the building in question was a mosque or a mosque known as Babari Masjid. The most important thing is that this Court is not supposed to consider whether it is a mosque according to the tenets of law of Shariyat or could be a mosque under the Islamic Law but the only thing which we are asked to reply whether the building in question was a mosque as claimed by the plaintiffs (Suit-4) and obviously by defendants in Suit-5, and whether it is known as Babari mosque. But then we will also have to consider whether beyond Shariat, a mosque has any identity and recognition.

3348. The facts in this regard which are on record leave no doubt that the building in dispute was termed and called as "mosque" as long back as in 18th century, i.e., in the traveller's

account of Tieffenthaler. i.e.. **DESCRIPTION : HISTORIQUE ET GEOGRAPHIQUE : D E L' I N D E** under the title "**TOME 1. NOUVELLE EDITION. Contenant la Geographic de l'Ind-Uftan, avec. 39,. Planches**" (Supra).

"Emperor Aurengzebe got the fortress called Ramcot demolished and got a Muslim temple, with triple domes, constructed at the same place. Others says that it was constructed by 'Babar'. Fourteen black stone pillars of 5 span high, which had existed at the site of the fortress, are seen there."

3349. Robert Martin's Eastern India (supra) Vol. II published in 1838 on page 335 mentions:

*"The bigot by whom the temples were destroyed, is said to have erected mosques on the situations of the most remarkable temples; but the **mosque at Ayodhya**, which is by far the most entire, and which has every appearance of being the most modern, is ascertained by an inscription on its walls (of which a copy is given) to have been built by Babur, five generations before Aurungzebe."*

3350. Edward Thornton's Gazetteer, 1858 (supra) says on page 739/740:

*"According to native tradition, they were demolished by Aurungzebe, **who built a mosque on part of the site**. The falsehood of the tradition is, however, proved by an inscription on the **wall of the mosque**, attributing the work to the conqueror Baber, from whom Aurungzabe was fifth in descent. The **mosque** is embellished" (emphasis added)*

3351. In P. Carnegy's Historical Sketch (supra) on page

20/21 he says:

*“If Ajodhya was then little other than a wilderness, it must at least have possessed a fine temple in the Janamasthan; for many of its columns are still in existence and in good preservation, having been used by the Musalmans in the **construction of the Babari Mosque**. These are of strong, close-grained, dark-colored or black stone, called by the natives kasauti”* (emphasis added)

3352. In **Gazetteer of the Province of Oudh by W.C. Benett (1877) (supra)** he has said:

“It is locally affirmed that at the Muhammadan conquest there were three important Hindu shrines These were the “Janamasthan”

*On the first of these the Emperor Babar **built the mosque**, which still bears his name, A.D. 1528. . . .”*

3353. **A.F. Millet's Report on Settlement of Land Revenue of the Faizabad (supra) (1880)** in para 669 he says:

*“It is said that up to that time the Hindus and Mahomedans alike used to worship in the **mosque-temple**. Since British rule a railing has been put up to prevent disputes, within which in the **mosque** the Mahomedans pray, while outside the fence the Hindus have raised a platform on which they make their offerings.”*

3354. **Fyzabad A Gazetteer by H.R. Nevill (1905) (supra)** page 153 says:

*“In 1528 Babar built the **mosque at Ayodhya** on the traditional spot where Lord Rama was borne.”*

3355. **Imperial Gazetteer of India (1908) (supra)** says:

“At one corner of a vast mound known as Ramkot, or

*the fort of Rama, is the holy spot where the hero was born. Most of the enclosure is **occupied by a mosque** built by Babar from the remains of an old temple, and in the outer portion a small platform and shrine mark the birthplace.... Besides the **mosque of Babar**. . . .” (emphasis added)*

3356. Nevill's Gazetteer of Fyzabad (1928) (supra) says:
*“He destroyed the ancient temple and on its site built a mosque, still known as **Babar's mosque**. . . .”*

3357. "Imperial Gazetteer of India, Provincial Series, United Provinces of Agra and Oudh", Vol. II, published in 1934 is another document containing similar averments. **Exhibit 10 (Suit-5) (Register 29 Page 87-89)** is photocopy of frontispiece and page 388 and 389 concerning Fyzabad Division. The relevant extract thereof, for our purposes, is as under:

*“At one corner of a vast mound known as Ramkot, or the fort of Rama, is the holy spot where the hero was born. Most of the enclosure is occupied by a **mosque** built by Babar from the remains of an old temple, and in the outer portion a small platform and shrine mark the birthplace.... Besides the **mosque**. . . .”*

3358. The last Gazetteer placed before us, i.e., **Uttar Pradesh District Gazetteer, Fyzabad (1960) (supra)** it says:

*“It seems that in 1528 AD Babar visited Ayodhya and under his order this ancient temple was destroyed and on the site was built what came to be known as **Babar's mosque**.”*

3359. Besides, there are certain documents on record, of the period of 1858 to 1885, where also the disputed structure has

been termed as “mosque”. In the plaint of Suit-1885 the plaintiff, Mahant Raghubar Das described the disputed structure as mosque on the west side of the Chabutara, of which dispute was raised in 1885. The documents exhibits of 1858 to 1885 we have already referred while discussing issues pertaining to limitation/possession/adverse possession mentioned it a mosque.

3360. It seems that so far as the identity of the place is concerned, three things, remained unchallenged upto 1950, or, to be more precise, up to 22nd December, 1949, i.e., (a) the disputed structure was always termed and known as a "mosque", "Babari mosque" or "Masjid Janamsthan"; (b) it was always believed and nobody ever disputed that the said building was constructed after demolishing a temple, and (c) that the disputed site, as per belief of Hindus, is the birthplace of Lord Rama and was a part of a big Fort called Fort of Lord Rama and later on as "Ramkot".

3361. Whether the disputed structure was consistent with the tenets of Islam and, therefore, qualify to be a mosque, validly constructed, according to the mandates of Holy Quran, Hedaya and other Islamic religious scriptures, was never sought to be bothered by the muslims who treated it as a mosque. Though it appears that it could be used with certain constraints and restrain and not in a free and independent manner as ought to be. Simultaneously Hindus also treated it a mosque, treated it a blot on the religious self respect but the fact remains that it was always termed and called a "mosque", "Babari mosque" or "Masjid Janamsthan". No documentary evidence has been shown to us which could have contradicted the above inference.

3362. An attempt was made that in a title suit reference to

Gazetteers and the facts contained therein ought not to be considered. The statements contained in the official Gazettes/gazetteers, and, sometimes the statement of facts mentioned in official gazettes or Gazetteers are entitled to consideration though not to be treated conclusive in respect of the matters requiring judicial adjudication.

3363. In **Vimla Bai Vs. Hiralal Gupta & others (1990) 2 SCC 22**, it was held:

"5. The Statement of fact contained in the official Gazette made in the course of the discharge of the official duties on private affairs or on historical facts in some cases is best evidence of facts stated therein and is entitled to due consideration but should not be treated as conclusive in respect of matters requiring judicial adjudication. In an appropriate case where there is some evidence on record to prove the fact in issue but it is not sufficient to record a finding thereon, the statement of facts concerning management of private temples or historical facts of status of private persons etc. found in the Official Gazette may be relied upon without further proof thereof as corroborative evidence. Therefore, though the statement of facts contained in Indore State Gazette regarding historical facts of Dhangars' social status and habitation of them may be relevant fact and in an appropriate case the Court may presume to be genuine without any further proof of its contents but it is not conclusive."

3364. In view of Section 35 read with Section 81 a gazette is admissible being an official record in respect to the facts pertaining to public affairs and the Court may presume the

contents thereof genuine but when it reflects on historical material the Court may not treat it conclusive evidence but would consider corroborating material.

3365. In **Bala Shankar Maha Shankar Bhattjee & others Vs. Charity Commissioner AIR 1995 SC 167**, the Court held that Gazette of Bombay Presidency, Vol. III published in 1879 is admissible under Section 35 read with Section 81 of the Act. It was observed in para 22:

*"The Gazette is admissible being official record evidencing public affairs and the **Court may presume their contents as genuine.** The statement contained therein can be taken into account to discover the historical material contained therein and the facts stated therein is evidence under S. 45 and the Court may in conjunction with other evidence and circumstances take into consideration in adjudging the dispute in question, though may not be treated as conclusive evidence."*

3366. It is said that the Gazettes published by Government, is admissible under Section 35 read with Section 81 of the Act but this may not apply to Gazetteers. Notably there is a distinction between Gazetteer and Gazette. A Gazette is an official document having statutory backing. Prior to its repeal in 20th century, the requirement of publication of rules and regulations etc. in Gazette was governed by Section 1, Official Gazette Act, 1863 (Act XXXI of 1863) which reads as under:

"I. When in any Regulation or Act now in operation, or in any Rule having the force of law, it is directed that any order, notification or other matter shall be published in the Official Gazette of any Presidency or place, such order,

notification or other matter shall be deemed to be duly published in accordance with the requirements of the law, if it be published either in the Gazette in which it would have appeared but for the passing of this Act, or in the Gazette of India under the direction of the Governor-General of India in Council."

3367. The Evidence Act, Section 81 talks only of a Gazette and not the Gazetteer. It is no doubt true that the Gazettes are published under the authority of the Government and, therefore, may be considered to be a public document admissible in evidence, but no more than that. In any case, the purpose for which reliance is placed on **Bala Shankar Maha Shankar Bhattjee (supra)** for pursuing this Court to take historical facts stated in Gazetteers to be conclusive evidence cannot be accepted. The Gazetteers are admissible but have to be seen alongwith other corroborative material.

3368. A gazetteer is not a gazette. It cannot be placed at par with a gazette, reference whereof is contained in Section 81 of the Evidence Act. The facts contained in a gazetteer, however, can be taken into account not conclusive one but in the matter of history they are relevant facts. Some of the authorities on this aspect we have already referred to while dealing the issues relating to period of construction. It constitute a corroborative evidence. Therefore what is stated in old Gazetteer is relevant.

3369. It is contended that the building in dispute was treated a mosque, the people worshipped therein, offered Namaj for a long time, and, therefore, on account of its user, it is a mosque, i.e., a duly dedicated waqf. Reliance is placed on **Miru & others Vs. Ramgopal AIR 1935 All. 891**, where the Court

held:

*"Where there is a mosque or a temple, which has been in existence for a long time and the terms of the original grant of the land cannot now be ascertained, **there would be a fair presumption that the sites on which mosques or temples stand are dedicated property.** There can be no legal impediment to such a dedication, as the owner of the land can make a grant of the site even to persons of a different community and creed and allow them then to dedicate that site by building a place of worship on it. Where therefore the Court finds that a mosque or a temple has stood for a long time and worship has been performed in it by the public, it is open to the Court to infer that the building does not stand there merely by the leave and license of the owner of the site, but that the land itself is a dedicated property and the site is a consecrated land, and is no longer the private property of the original owner."*

3370. In my view the judgment as such has no application to the case in hand. The issue under consideration is whether it is a mosque as claimed by plaintiffs and whether the disputed structure is a mosque, known as Babari Masjid. The Hindu parties have challenged both. Whether it is a mosque in accordance with the tenets of Islamic law or constructed in accordance thereto or even if a mosque or whether it can be so only if constructed according to the tenets of Islam and not otherwise, both aspects have to be examined. Several authorities we have discussed above were cited to show the ingredient of waqf, how a valid waqf is created and is operated. Similarly when a mosque will become a public waqf. But when a building

can be treated a mosque, if a building is not constructed in accordance with the tenets of Islam, will it not be called a mosque at all, though as such has been considered for a long time, its effect, are some of the questions on which virtually no useful assistance is provided.

3371. What a 'mosque' is? What does it mean? Let us first have some idea on it. The meaning of “mosque” in different dictionaries is as under:

3372. In “**The New Lexicon Webster's Dictionary of the English Language**” (1987), published by Lexicon Publications, Inc. at page 652:

"mosque (mosk). A Moslem place of worship"

3373. In “**Oxford Advanced Learner's Encyclopedic Dictionary**” published by Oxford University Press, first published in 1989, at page 582:

"mosque-building in which Muslims worship"

3374. In “**Chambers Dictionary**”, page 934:

"mosque-A muslim place of worship."

3375. In **P Ramanatha Aiyar's “The Law Lexicon”** The Encyclopaedic Law Dictionary with Legal Mxims, Latin Terms, Words and Phrases, Second Edition 1997, published by Wadhwa and Company Law Publishers, at page 1259:

"Mosque. A Muhammadan church."

3376. Therefore, it is clear that a mosque is necessarily something integrally connected with Islam and hence outside its tenets the term mosque shall have no significance and it would only be a plain building.

3377. Lots of arguments have been raised that unless one was not owner of the land, could not have built any mosque. The

arguments of plaintiffs is that Babar being the conquerer of the territory, became owner of the entire land, and therefore, it was open for him to build a mosque at any place conquered by him. The other side contended that mere conquer or annexation of the territory would not make an Emperor or the king or the Sovereign, owner of the land of individual's residence or of the subject. For this purpose, besides various authorities, the historical facts that many a Mughal kings, as and when found necessary, had purchased land for religious purposes, sought to be relied.

3378. On the question of "sovereignty", various authorities cited, some of which are as follow:

3379. In **Vajesingji Joravarsingji Vs. Secy. of State for India in Council, AIR 1924 PC 216** Lord Dunedin said:

*"When a territory is acquired by a sovereign state for the first time that is an act of State. It matters not how the acquisition has been brought about. It may be by conquest, it may be by cession following on treaty, it may be by occupation of territory hitherto unoccupied by a recognised ruler. In all cases the result is the same. Any inhabitant of the territory can only make good in the municipal courts established by the new sovereign **such rights as that sovereign has through his officers, recognised. Such rights as he had under the rule of predecessors avail him nothing.** Nay more, even if in a treaty of cession it is stipulated that certain inhabitants should enjoy certain rights, that does not give a title to those inhabitants to enforce these stipulations in the municipal courts. The right to enforce remains only with the high contracting*

parties." (page 217)

3380. The aforesaid observations were approved by a Constitution Bench in **State of Gujarat Vs. Vora Fiddali Badruddin Mithibarwala, AIR 1964 SC 1043** and the concept of act of State was summarised as under:

"To begin with, this Court has interpreted the integration of *Indian States with the Dominion of India as an Act of State and has applied the law relating to an Act of State as laid down by the Privy Council in a long series of cases beginning with Secretary of State in Council for India v. Kamachee Boye Saheba, (1859) 12 Moore PC 22 and ending with Secretary of State v. Sardar Rustam Khan and other, (1941) 68 IA 109. The cases on this point need not be cited. Reference may be made to M/s Dalmia Dadri Cement Co. Ltd. v. Commissioner of Income-tax, AIR 1958 SC 816, The State of Saurashtra v. Menon Haji Ismaili Haji, AIR 1959 SC 1383, Jaganath Agarwala v. State of Orissa, AIR 1961 SC 1361 and State of Saurashtra v. Jamadar Mohamed Abdulla and others, AIR 1965 SC 445. In these cases of this Court, it has been laid down that the essence of an Act of State is an arbitrary exercise of sovereign power on principles which are paramount to the Municipal Law, against an alien and the exercise of the power is neither intended nor purports to be legally founded. A defence that the injury is by an Act of State does not seek justification for the Act by reference to any law, but questions the jurisdiction of the court to decide upon the legality or justice of the action. **The Act of State comes to an end only when the new sovereign recognises either***

expressly or impliedly the rights of the aliens. It does not come to an end by any action of subordinate officers who have no authority to bind the new sovereign. Till recognition, either express or implied, is granted by the new sovereign, the Act of State continues."

3381. The Court in **Vora Fiddali Badruddin Mithibarwala (supra)** further said:

"The decision also holds that merely because the issue of recognition of the new rights was pending with the Government, it cannot be postulated that the act of State had come to an end. The act of State could only come to an end if the Government recognises the rights which were granted by the erstwhile Ruler."

3382. In **Draupadi Devi and others Vs. Union of India and others, 2004(11) SCC 425** the Court said in para 43:

"43. The rule that cession of territory by one State to another is an act of State and the subjects of the former State may enforce only those rights which the new sovereign recognises has been accepted by this Court. (See in this connection: M/s Dalmia Dadri Cement Co. Ltd. V. The Commissioner of Income-tax, AIR 1958 SC 816; Jagannath Agarwala v. State of Orissa, AIE 1961 SC 1361; Promod Chandra Deb and others v. The State of Orissa and others, AIR 1962 SC 1288 and State of Saurashtra v. Jamadar Mohamad Abdulla and others, AIR 1962 SC 445)."

3383. The rights available to the erstwhile Ruler and his subjects, on the change of the crown, were considered in **Draupadi Devi (supra)** and the Court said in para 64:

“In our view, all the rights available to the erstwhile Ruler and his subjects are of no avail till there is recognition of such rights.”

3384. In para 11 of the judgement in **State of Punjab Vs. Brigadier Sukhjit Singh, 1993(3) SCC 459** the Court said:

“11. Now it is beyond doubt that the Ruler of an Indian State was in the position of a sovereign and his command was the law. His farman had the strength and potency of a law made by an elected legislature and his acts, administrative or executive, were sovereign in character.”

3385. However in **Draupadi Devi (supra)** the Apex Court held that the above proposition runs contrary to a seven judges Constitution Bench decision in **Vora Fiddali Badruddin Mithibarwala (supra)** and, therefore, does not lay down correct law.

3386. In **Govindrao & others Vs. State of Madhya Pradesh & others AIR 1982 SC 1201**, the concept of Ruler and sovereignty was considered and it was held:

"8. The expression "Ruling Chief" has not been defined in the Act and must therefore be understood as in common parlance. The meaning of the word "Ruler" as given in Shorter Oxford English Dictionary, 3rd edn., vol. 2, p. 1867 is : "one who, or that which, exercises rule, especially of supreme or sovereign kind". Normally the expression "Ruling Chief" connotes "a person who is endowed with the content of sovereignty and also has the attributes of a sovereign". According to Blacks' Legal Dictionary, 5th edn., p. 1252 the legal conception of

"sovereignty" is stated thus :

"The supreme, absolute, and uncontrollable power by which any independent state is governed; supreme political authority, paramount control of the Constitution and frame of government and its administration; the self-sufficient source of political power from which all specific political powers are derived; the international independence of a state, combined with the right and power of regulating its internal affairs without foreign dictation; also a political society, or state, which is sovereign and independent.

9. "Sovereignty" means "supremacy in respect of power, dominion or rank; supreme dominion authority or rule". "Sovereignty" is the right to govern. The term "sovereignty" as applied to States implies "supreme, absolute, uncontrollable power by which any State is governed, and which resides within itself, whether residing in a single individual or a number of individuals, or in the whole body of the people." Thus, sovereignty, according to its normal legal connotation, is the supreme power which governs the body politic, or society which constitutes the State, and this power is independent of the particular form of government, whether monarchical, autocratic or democratic.

10. According to Laski in "A Grammar of Politics", 1957 Reprint Chap. II, p. 50

"The legal aspect of sovereignty is best examined by a statement of the form given to it by

John Austin. In every legal analysis of the State, he argued, it is first of all necessary to discover in the given society that definite superior to which habitual obedience is rendered by the mass of men. That superior must not itself obey any higher authority. When we discover the authority which gives commands habitually obeyed, itself not receiving them, we have the sovereign power in the State. In an independent political community that sovereign is determinate and absolute. Its will is illimitable because, if it could not be constrained to act, it would cease to be supreme, since it would then be subject to the constraining power. Its will is indivisible because, if power over certain functions or persons is absolutely and irrevocably entrusted to a given body, the sovereign then ceases to enjoy universal supremacy and therefore ceases by definition to be sovereign."

11. It is not necessary to enter into the concept of sovereignty, one of the most controversial ideas in political science and international law, which is closely related to the difficult concepts of State and Government, of independence and democracy, except to touch upon the juristic character of the Indian State to discern the necessary attributes of sovereignty. The Indian States were neither independent nor sovereign but subject to the paramountcy of the British Crown. Sir William Lee Warner, the acknowledged authority on Indian States, in his work "The Native States of India, 1910" characterizes them as

"semi-sovereign". There is no question that there was a paramount power in the British Crown, but perhaps it is better understood and not explained. The indivisibility of the sovereignty on which Austin insists, did not belong to the Indian system of sovereign States.

12. The degree of sovereignty exercised by the different rulers varied greatly as the areas under their dominion. The greater princes administered the internal affairs of their States with almost complete independence, having revenues and armies of their own, and the power of life and death over their subjects. At the other end of the scale were petty chiefs with a jurisdiction hardly higher than that of an ordinary magistrate and between these extremes lay much gradation. The authority of each ruler was determined by treaties or engagements with the British Government or by practice that had grown up in the course of their relations with British India. The paramount power was with the British Crown and it had never parted with any of its prerogatives. As Sir Henry Maine said:

"There may be found in India every shade and variety of sovereignty, but there is only one independent sovereign, the British Government.... The mode or degree in which sovereignty is distributed between the British Government and any Native State is always a question of fact which has to be separately decided in each case, and to which no general rules apply."

3387. The concept of sovereignty, transfer of power, effect thereof as we know and understand in modern law in the light of the recent authorities whether actually as such was followed 500

years ago is difficult to answer. We have different texts of the past in respect to Hindu as well as Muslim law as to how a king/conqueror should behave and what ought to be the policy vis a vis the subject of conquered area, but these are all ideal situations. When someone from outside the territory attack and conquer and there is a change of authority/sovereignty. If the ideal situation is followed by him or observed, it is really appreciable but the conqueror is not always bound to follow those policies. The conquered territories subject have no authority, option or courage either in fact or in law or otherwise to raise voice against the conqueror. He is the sole paramount authority, can take and execute his decisions in the manner he like. After hundred of years it would not be safe for this Court to assume as to what ought or actually was done or followed by conqueror, in order to make an adjudication of dispute involving two different communities with different religious texts and practices. Whether Babar or Aurangzebe or anybody else was an ideal king observed laws of Shariyat etc. strictly, in an ideal manner, may be a matter of investigation and debate between historians, but neither such acts can be within the purview of judicial scrutiny of this Court nor we can decide the factual dispute on the presumption that he must have acted in a particular manner since the Shariyat laws say so. We have illustrations enough of ancient past as well as recent past showing that in such kind of wars or battles, the real casualty were/are the ideal policies contemplated and expected to be observed by warring groups or countries or sovereignties. If the Babar or Aurangzebe or anybody else decided to do something even if it was not consistent with the principles of law of

Shariyat, the same could not have been challenged at that time by the subject and today we are sure to lack any authority or jurisdiction to declare such an act of the then Ruler illegal or bad since their command was Supreme and beyond the pale of any scrutiny now and by this Court. Therefore, in our view, the question as to whether the building in dispute is a mosque, treated to be a mosque, believed to be a mosque and practiced as a mosque has to be decided not in terms of the tenets of Shariyat whether observed there or not but how the people believed, treated and behaved in the past long time.

3388. Sri Jain contended that Babar was an invader and not a king or Emperor. Sunni Board claimed Babar to be the owner of the site in his capacity as ‘Emperor’; **but he never became Emperor.** Historians R.C. Majumdar, H.C. Raychaudhuri and Kalikinkar Datta in “**An Advanced History of India**”, Fourth Edition 1978, published by Macmillan India Ltd., set out the facts at Pages 419 to 424. They mention, at Page 420:

“But the Mughal conquest of Hindustan was not an accomplished fact as a result of Babar’s victory over Ibrahim. It did not give him the virtual sovereignty over the country because there were other strong powers like the Afghan military chiefs and Rajputs under Rana Sanga who also then aspired for political supremacy and were thus sure to oppose him...The number of Afghan military chiefs (were a great obstacle) and each one of them exercised almost undisputed power within his dominion or Jagirs.” At Page 423 they mention that Babar ‘could effect nothing more than conquests which alone do not suffice to

*stabilise an empire unless the work of administrative consolidation goes hand in hand with or immediately follows them'. They cite historian Erskine that "there was little uniformity in the political situation of the different parts of this vast empire. **Hardly any law could be regarded as universal but that of the unrestrained power of the prince.** Each kingdom, each province, each district and (we may almost say) every village, was governed in ordinary matters by its peculiar customs...There were no regular Courts of Law spread over the kingdom for the administration of justice." They mention that "after his conquest Babar had hardly any time to enact new laws or to reorganise the administration, which continued to retain its medieval feudal nature with all its defects.". It is significant that although Babar declared himself to be Ghazi (victor in holy war – Pages 573-4 of Beveridge's Babarnama) he did not declare himself to be an Emperor, nor he got coronation as an Emperor. Indeed in the Inscription installed inside the DS by Mir Baqi, Babar is described only as King Babar (Shah Babar) not as Emperor Babar (Shah en Shah Babar). In this state of affairs, Babar could never become an Emperor."*

3389. We do not agree. The position of Babar, in our view, was that of independent sovereign, Sole Monarch, having paramount power. It was Supreme, uncontrollable and absolute, not answerable to anyone. Whether invader or anything else, the fact remains that he had been the supreme authority in the territory which he conquered. Nobody could have questioned him.

3390. Sri M.M. Pandey sought to argue that Historian **Romila Thapar** writes in '**A History of India**' Vol.I (Pelican Books 1990, 13th Impression 2001), at Page 279 that the Temple had long been the centre of Hindu social life in the village, place where Hindus congregated; it 'was the Bank, the Landowner, the administrative centre for the village and place of major entertainment in the form of festivals'. Mentioning Katyayana (4th-5th Century AD – vide Mulla at page 14) on judicial process, Romila Thapar writes at page 154 that Judgments were based either on legal texts or social usage or edict of the King which could not contradict the legal text or Usage; at page 160, she writes Social Law based on man-made Tradition had already become the sacred law. That is why Temples were immune from influence of the King. Thus the temple existed at that time remain immune from Babar's authority.

3391. Page 28 of B.K. Mukherjea's authority mentions Yajnavalkya: 'Customary Law as well as Usages established by Kings should be carefully upheld, if not inconsistent with the revealed law'. Vijnaneswara commented upon this text as follows: Duties arising under any Custom, such as preservation of pastures for cow and of water and management of Temples (Devagriha) and the like should also be carefully observed without infringing the duties prescribed by Shrutis and Smritis. The same view finds expression in Shukra-Niti where the duty of protecting endowments has been spoken of as one of the primary duties of the King. Thus the duty of Kings to protect endowments rested on the basis of immemorial customs which were as sacred as written texts".

3392. In Appendix I (Summary of **Pran Nath Saraswati's "Hindu Law of Endowments"**) at page 507, mention is made that "On conquest the Temples should be respected".

3393. At page 81 of "**Yajnavalkyasmriti**", translated by Manmatha Nath Dutt, published by Parimal Publications Delhi (1st Edn 2005), verse no.343 reads as follows: 'When a foreign kingdom is brought under subjection, he should observe the conduct, law and family practices obtaining in the same kingdom'.

3394. In **D.F. Mulla's 'Principles of Hindu Law'**, Chapter II on Sources of Hindu Law, Text No. 3 mentions: "Whatever Customs, Practices and Family Usages prevail in a Country shall be preserved intact when it comes under subjection by (conquest)– Yajnavalkya I, 343".

3395. These citations relate to Hindu Dharmshastra. All these arguments could have some weight if it is shown that Babar or any of his successor was under an obligation to follow or observe Hindu religious texts. These principles are alright, when a dispute is between those who were obliged to follow those texts. Babar was not bound by those principles. If the subject continued to follow these principles, Babar or any Mughal Ruler was not obliged to act according to those principles, at least no authority to persuade us otherwise is shown.

3396. It is also tried to be submitted that in the revenue records of 1937 there is no marking in respect to the land in dispute as Kabristan or mosque and thus the disputed structure was never recognised as mosque.

3397. **Exhibit 32 (Suit-1) (Register 5 page 123-125)** is

said to be a copy of the map (kistwar) of Mauza Rampur for 1344-45 Fasli (1937 AD). Learned counsels for the parties submit that in the plot in dispute in the aforesaid map there is no marking of any Kabristan or mosque, therefore, it cannot be said that there was any mosque known and treated to be as such in the revenue record as late as in 1937 AD.

3398. The disputed structure, after its construction, came to be known as a 'mosque' as is evident from the earliest documents available to us i.e. Tieffenthaler Travel Account published in 1786 etc. He, however, does not mention anything about worship on the place in dispute by Muslims and on the contrary did not fail to mention that Hindus in fact used to visit thereat and offer worship by lying prostrate on the ground and having three *Parikramas*. He also noticed presence of *Vedi*, which Hindus used to worship in the premises of the disputed site. It continued to be so recognized as also the worship by Hindus till the riots of 1855 took place. Though Sri Jilani and other learned counsels appearing for various Muslim parties vehemently disputed occurrence of any such riot but from the detailed narration, at different places, we find occurrence of riot and also creation of a partition wall in the premises, existence whereof is not disputed by Sri Jilani. We are satisfied about the occurrence of such riot and its consequence as are mentioned in various Gazetteers and also admitted by number of witnesses including those of plaintiffs (Suit-4). In this regard we have dealt with the matter while discussing the issues relating to 'place of birth'.

3399. For the present purpose, we may refer to facts given in a recent book. **Exhibit 25 (Suit-5) (Register 22, Page 513-**

531) is a photocopy containing frontispiece and pages no.227-234 of the book "**A Clash of Culture, Audh, The British and the Mughals**" by Michael H.Fisher (published in 1987 by Manohar Publications, New Delhi). It narrates the riots of 1855 and says:

"The Fyzabad temple/mosque, a powerful but unalterably ambiguous and disputed religious symbol, provided the catalyst for a conflict of cultures. Each group living in Awadh held fast to its own values and world-views and sought to impose that on the other. Since this particular conflict was insolvable, no group achieved a result satisfactory to itself.

The building in question had been subject to dispute even before the arrival of Sa'adat Khan, the founder of the ruling dynasty in Awadh. Even today Hindus throughout Awadh assert that the building marks the site of the birth of Rama, the incarnation of great God Vishnu, whose identity remains so central to culture of the province. As such, its sanctity predates the Muslim presence in India. Muslims interviewed at the site counter that the Mughal Emperor Babur (1526-1530) had constructed a mosque there and thus consecrated the ground for Islam, thereby superceding any previous significance. Ambiguous in appearance, this building remains the object of a heated controversy which continues unresolved today. In fact, it generates intransigent and violent passion on both sides whenever it is raised.

The incident which sparked the final crisis for the Awadh dynasty prior to annexation began in February

1855, when a party of Sunnis under one Shah Ghulam Husayn tried to oust a group of Hindus who had taken possession of the disputed building. Religious conviction on both sides seems to have been the sole cause to this particular confrontation, only the most recent of a long history of Hindu-Muslim clashes on the spot. Despite the ardor of their attack, the Sunnis were repulsed by the defending Hindus.

Following this unsuccessful initial assault, the Sunni party renewed their efforts a few months later. They assembled a force of from four to six hundred Muslims, men described by British observers as Faqirs, at a mosque near the controversial spot. While the Muslims involved to this point were apparently individuals (sufis and faqirs) with little military training, the Hindu party escalated the conflict by gathering, besides a large number of bayragis (Hindu wandering ascetics), the support of several of the Hindu landholders of the area, including the family of Raja Bukhtawar Singh (discussed earlier in this chapter). British eyewitnesses- drawn to the site by rumors of the impending clash-estimated the total number of bayragis, Hindu landholders with their retainers, and miscellaneous supporters at some eight thousand. While the officers of the Awadh army and district administration looked on uninvolved, a battle ensued between the two sides. The Muslims later asserted guaranteed by the British. The Hindu party denied any truce. Heavily outnumbered, the Muslims seem to have left the bulk of the seventy to eighty dead found on the field following the fight.

So far, the conflict gives evidence only of the local tensions between the Muslim and Hindu communities, focussed on this powerful but ambiguous, religious symbol. The Hindu landholders sought to assert their authority in what they perceived to be an assault on the community they led. For many of these Hindu landholders who revered Ram as the model for their own kingship, the building marking the site of his birth was particularly powerful. For Muslims seriously dedicated to the tenets of their faith, the perceived desecration of a mosque by polytheists would have equal force. Further the magnitude of the casualty list in the encounter inflamed both communities and drew a number of hitherto uninvolved parties into the conflict.

Both the Awadh court and the district administration had strong interests in settling the conflict according to their own values. The ruler and his court apparently tended to support the Muslim side but, being Shi'i, felt little solidarity with the largely Sunni party of Shah Ghulam Husayn. The ruler instead worked to defuse the threat to order in the region. Further, the level of passion on both sides, however, demanded some response on his part. This conflict, indeed, became a test of his ability to rule Awadh effectively.

The district administration in the area was headed by a Shi'ite, Agha 'Ali Khan; most of the municipal administration of Fyzabad was also Shi'i. Like the Awadh ruler, they felt little identification with either Sunni faqirs or Hindu bayragis. They did, however, see the largely Hindu landholders as their rivals for local authority. They

urged the Awadh court that "unless the Government interferes and gives orders for rebuilding the musjid (mosque) the Hindoos will become inflated and elated with their success and will proceed to other and greater extremities. . . ." The prestige of the administration was, in thier perception, threatened by the Hindu coalition's initial successes. In this way, the ongoing struggle for local control between the Shi'i dominated district administration and the Hindu landholders found voice in this conflict.

The Muslim religious establishments in Awadh, both Sunni and Shi'i, also entered the conflict. The leaders of the attacking Muslim party requested these authorities to issue fatwas, decreeing the official Muslim interpretation of the issues. The questions were carefully worded to make it an issue of the defense of Islam against polytheists and each of the fatwas decided against the Hindu party. The Mujtahid, recognized by the Awadh dynasty as the highest Shi'i interpreter of holy law, declared that the "wickedness" and "enormities" of infidels should be punished by the Muslim ruler. This was clearly unacceptable to the Hindus involved.

In order to achieve a negotiated solution, the Awadh ruler summoned the most prominent leader of the Muslim camp. Malawi Amir 'Ali, to his court. He further appointed a tripartite investigative commission, consisting of the district official. Agha 'Ali Khan, the leading Hindu landholder, Raja man Singh (nephew and heir of Raja Bukhtawar Singh), and the British officer in charge of Company troops in the area, the Oudh Frontier Force. This

commission determined that no mosque had ever existed on the site, basing their judgement on the argument that no mosque would have been built so close to a Hindu temple. Neither the Sunnis encamped near the site nor the Muslim religious establishment accepted this judgement. The Mujtahid preached against Agha 'Ali Khan and his uncle, the local Tahsildar, asserting that they had taken bribes to decide in favor of the Hindus. Malawi Amir 'Ali gathered support while in Lucknow, notably from the Sunni scholars of Farangi Mahall, and then gathered his supporters for another march against the controversial building.

This effort to defuse the controversy having evidently failed, the Awadh ruler tried once again to find an acceptable solution. Wajid 'Ali Shah tried to set aside the commission's decision and refer the matter to the Mujtahid. The Resident vetoed this plan. The ruler then suggested, as a compromise, that a mosque be built along an outer wall of the disputed building. The Hindu party seized upon the commission's decision and refused their compromise. The Muslim party seized upon the ruler's proposal as a commitment from his to build a mosque on the site. Both sides thus sought direct confrontation as the only solution.

So far, then, we can see how fundamentally opposing cultural values, focussed on this temple/mosque, have exposed the cleavages in the society of Awadh. The local Hindus and Muslims and the religious establishments disputed the cultural identity of a particularly symbolic building. The Hindu landholders and Shi'i district officials also perceived it as a test of local control between

themselves. The Awadh ruler tried vainly to avoid any confrontation that would demonstrate a weakness on his part, while at the same time clearly retaining his court-centered view of the issue as peripheral to its main concerns.

To further legitimize his march against the Hindus as a holy war. Malawi Amir 'Ali declared a jihad and increased the scope of his appeal. Both propertied and landless Muslims entered his camp. The Begum of Bhopal state in central India was reported to have sent an elephant and sufficient funds for three hundred men. Nevertheless, few if any Shi'ites seem to have joined the march.

The Hindus at the disputed site and in proximity to the marcher's camp looked to the Awadh ruler for protection and to Hindu landholders for aid and support. The Hanuman Garhi, a Hindu fortress named for Rama's militant monkey lieutenant, which had been built on the occasion of an earlier conflict overlooking Rama's putative birthplace, was further strengthened. Financial and other aid was reported to have been received not only from numerous Hindu landholders in Awadh but from the Maharajas of Gwalior and Jodhpur states in western India as well. Thus, both sides drew upon prominent figures who shared their cultural values, both within Awadh and from elsewhere in India.

In addition to these forces aligned against each other, the Company also sought to use the confrontation for its own advantage. From the onset of the conflict, the Company favored the Hindu side, dismissing the faqirs as

"fanatics" with little justification for their claims. When the commission-on which the Company had the deciding vote-ruled against the Muslims, the Resident exerted his influence on Wajid 'Ali Shah to force the ruler to subdue the faqirs. Further, the Resident suggested to the Governor General that this incident be manipulated to justify the Company's annexation of Awadh. He argued he ". . . should retire from Lucknow to the Company's territories, and withdraw the brigade of British troops and formally declare the existing treaty at an end. . . ." The Resident felt certain that, suddenly deprived of his guiding presence and the major effective military force in the province at this crucial time, the Awadh administration would collapse and the province would beg for annexation.

The Governor General, while strongly favoring annexation and agreeing that the removal of Company support would precipitate a collapse of the Awadh administration, feared that the ensuing communal violence might spread to Company territory. Further, since the Court of Directors of the Company was currently considering his annexation proposal, he decided it would be impolitic to force their hand by this provocation. He therefore instructed the Resident to remain in Lucknow to continue to pressure the Padshah to destroy the faqirs, and to prevent the involvement of Company troops.

As the other parties prepared for the next round in the conflict, Wajid 'Ali Shah drew upon his position at the center of Awadh in order to control the situation. He summoned Malawi Amir 'Ali back to court and backed up

his request with a royal warrant. He submitted his own carefully worded questions to the Mujtahid and various Sunni scholars leading them to issue fatwas stating that a jihad was not applicable in this case and that all people should obey the orders of their legitimate sovereign. Further, he sent Muslim leaders to preach to the marchers and dissuade them from violating his imperial decrees. Finally bolstered by the support of the Muslim religious establishment, he issued a proclamation proscribing all those pretending to jihad and ordering the confiscation of all property and the destruction of all houses belonging to Malawi Amir Ali's followers.

To enforce his position. Wajid 'Ali Shah called upon the Awadh army. He moved units into position to intercept the marchers should they move toward Fyzabad, from their main camp more than a hundred miles away. To reenforce the bonds between the largely Shi'i army and himself, he called officers of several of the units facing the marchers into his darbar-the first one held in a number of years-and awarded them Khil'ats.

In addition to the army, Wajid 'Ali Shah called upon landholders to demonstrate their loyalty to his reign. The Company predicted that the Muslim landholders would turn against him and support the jihad. Some landholders simply repulsed Malawi Amir 'Ali's inducements to join him. Others, notably the Shi'i Raja of Mahmudabad, sent forces to support their ruler. This landholder sent a deputy with five hundred men and four cannons to co-operate with the army; another landholder, apparently also Shi'i, offered

the services of a like number of soldiers to his Padshah. None of the landholders seem to have acted against the orders of Wajid 'Ali Shah by giving support to the marchers.

The Padshah's authority having deprived the marchers of any outside support, Malawi Amir 'Ali appealed to the ruler. He "sent in his pugree (turban) to the King in token of submission and proferring his readiness to come in on a promise being given that the Mosque should hereafter be built. . . .(the King refused to give any such promise." Thus rebuffed, the Malawi led his men in the direction of Fyzabad and into the cannon of the Awadh army. The Awadh troops stood firm and nearly all the marchers were killed. British observers estimating their dead at between three and four hundred. The Awadh army suffered casualties of thirty-three per cent. Testimony to the resolution shown by both sides. Despite this decisive action, the controversy of the Fyzabad temple/mosque has never been finally settled.

This incident dramatically reveals the conflicting cultural identities present in Awadh. The Padshah, his administration and army, the local landholders, Hindu and Muslim, the people of the province, and the East India Company all perceived the issue from their own diverse perspectives. Despite the dire predictions of the Resident and the destabilizing motives of the Company, Wajid 'Ali Shah and his administration weathered the crisis and demonstrated their continued authority. Even the marchers recognized his sovereignty; their opposition to him sprang

from their higher commitment to Islamic truth as they perceived it. Thus, the two cultural worlds of the imperial court and the hinterland of Awadh continued to hold together, albeit tenuously and with friction, under Wajid 'Ali Shah." (Page 515-529)

3400. From the footnote it appears that the author has heavily relied and referred the contents of "**Hadiqa-i Shuhda**" by **Mirza** Jan published in 1855 itself, in respect where to he has made following comments at footnote 71 on page 228 of the book:

"Mirza Jan. Hadiqa-i Shuhda (no title page).pp. 10-12.15. This appears to have been an example of one of the "most inflammatory pamphlets on the Mussulman side. . . .being circulated throughout the country, notwithstanding the seizure of them wherever they can be found. . . ."decried by the Governor General. Private Letter of the Governor General, Coonoor, 6 October 1855, quoted in Baird. p. 357. Officiating Resident to Secretary to Government of India Foreign Department, 4 August 1855 FPC, 28 December 1855, No. 339."

3401. Suffice it to mention at this stage that a partition wall came into existence sometimes in 1856-57 as a result whereof the disputed structure was circumscribed by the said wall and the premises inside the partition wall, which we have termed as "inner courtyard". The area between the partition wall and the boundary wall we have termed as "outer courtyard" and that was allowed to be used by Hindus. Whether this arrangement was pursuant to any written agreement or any notification issued by the British authorities is not known. The

only thing available is the partition wall and the local people's saying that it was done by the Britishers to calm down the two communities in respect to the property in dispute. The documents are on record commencing from 28th November, 1858 showing that this arrangement also, as a matter of fact, could not pacify the situation so far as Hindus are concerned, may be for the reason that according to their belief, it was place of birth of Lord Rama and therefore, they could not have acquiesced to a situation of not worshipping the place which they believed to be the birth place of Lord Rama. Evidently they felt unsatisfied by simply offering their worship at the religious structures existing in the outer courtyard. This interference and entry of Hindus in the inner courtyard is evident from the documents **Exhibit 19 (Suit 1) (Register 5 Page 61-63)** dated 28th November, 1858, **Exhibit 20 (Suit-1) (Register 5 Page 65-68B)** dated 30th November, 1858, **Exhibit 31 (Suit-1) (Register 5 page 117-121)** dated 05.11.1860, **Exhibit 54 (Suit 4) (Register 12 Page 359)** dated 12th March, 1861, **Exhibit A-13 (Suit-1) (Register 6, page 173-177)** dated 25.9.1866.

3402. Taking the advantage of the above partition, it also appears that two persons who were father and son i.e. Mir Rajjab Ali and Mohd. Asgar set up a claim of grant which was also accepted by the British Government and initially a cash grant of Rupee Three Hundred and two, three annas six pie was allowed and thereafter they were allowed the same revenue grant from village Bahoranpur and Sholapur but even that did not deter or prevent the Hindu people from entering the premises in dispute and offering their worship. The only evidence which may suggest that the Muslims also worshipped

in the premises in dispute and/or in the inner courtyard are:

(i) Application dated 5th November, 1860 filed before the Deputy Commissioner Fyzabad (Exhibit 31 (Suit-1) Register 5 page 117-121) by Mir Rajjab Ali complaining about the disturbance created during the course of Adhan (Azan).

(ii) P. Carnagy Historical Sketch where he has mentioned that earlier to the partition created by the Britishers, both the communities used to worship in the premises in dispute but in view of the riots of 1855, the premises was divided permitting Muslims to offer worship in the inner courtyard and Hindus in the outer courtyard and reiteration of this fact is found in subsequent Gazettes. A similar factual position has been reiterated in subsequent **Gazetteer of Oudh by Mr. W.C. Benett, C.S., Assistant Commissioner (1877), Report on the settlement of the Land Revenue of the Fyzabad District**, by **A.F. Millett, C.S., Officiating Settlement Officer**, published by North Western Provinces and Oudh Government press, Allahabad in **1880, Fyzabad-a Gazetteer being Vol. XLIII of the District Gazetteers of the United Provinces of Agra and Oudh** by **H.R. Nevill** published in 1905 etc., the contents whereof we have already quoted above at different places.

3403. Thereafter, till 1934, we do not get any evidence oral or written suggesting worship by Muslims in the premises in dispute whether inner courtyard or outer courtyard. But the counsel for the Muslim parties endeavored to persuade this Court to assume such worship considering the fact that the revenue earned by Mohd. Asgar and his successors was being spent regularly and detailed accounts were presented before the authorities concerned who also sometimes verified the same by

visiting the disputed site. About 14 witnesses of fact i.e. PWs 1 to 9, 14, 21, 22, 23 and 25 have been produced to show that before 1949, Muslims were offering Namaz in the disputed building. Those evidence we have already discussed in detail about their trustworthiness. From the facts, one thing is very clear that the building was constructed, whosoever have built it, so as to give it a shape as a mosque. It was also known to the local people that the constructed structure was a mosque. Whether Muslims immediately thereafter could use it for offering worship or not has not been proved either way but we are satisfied that despite structure and knowing it a mosque, Hindus entered the same and offered their worship treating it a birthplace of lord Rama. May be subsequent, and there is some evidence [**P Carnegie's Historical Sketch (supra)**] that at times, Muslims were also visiting the premises in dispute to offer Namaz and after the partition wall was raised in 1856-57, worship confined to inner courtyard. Whether it could be offered regularly is a fact which could not have been proved but this much is clear that Namaz had been offered inside the building after 1857 and we have also recorded a finding that before its attachment, the last Namaz was offered in the inner courtyard on 16th December, 1949. The question whether the building in dispute could be a mosque as per the tenets of Shariyat loses its significance, in our view, for the reason that those who believe in a particular religion, if, under a belief, have worshipped, treating the place of a particular nature, and that belief is not of individual or only of their own, but even others (Hindus) have the same view, it would be outside the purview of judicial review to analyse and then say whether the structure constructed

on such place was in accordance with the tenets of that religion or not.

3404. Lots of arguments have been advanced as to what could have been the concept of ownership in 16th Century or earlier or thereafter and what ought to have been the manner in which a mosque could have been constructed otherwise it may not be treated as mosque. The building in dispute was constructed at a time when neither the British codified law was applicable nor the Indian Constitution was there. It was a rule of solitary authority i.e. king whose words constitute the law. His command or mandate was supreme and none could have challenged it. At least nothing has been brought before us that such supreme power could have been over powered by anyone else. If he intentionally do something ignoring a particular system, no comments could have been made. But if he proceeds otherwise or with some deviation even then no comments, in our view, can be made after so many centuries by us. Whether Babar or Aurangzeb or anybody else, they were supreme authority. Whether their action was consistent with the tenets of Islam or not, in our view, is unchallengeable after so many centuries particularly when those supreme authorities were not subordinate to any system of justice. Even otherwise, we cannot examine as to whether they rightly or wrongly constructed a place terming it as mosque particularly when atleast the local people believe from the representation, whatever, it is, that construction which has been made, is that of a mosque.

3405. Something which took place more than 200 and odd years, we are clearly of the view, cannot be a subject matter of judicial scrutiny of this Court which is the creation of statute

that came into force in a system which itself was born after more than hundred and odd years when the building in dispute might have been constructed. All the Expert religious witnesses have admitted that if a mosque is constructed, the picture or images of living being like human images or animal images shall not be allowed to remain thereat. The creator of the building in dispute thought otherwise, yet the followers of Islam did not hesitate in using the premises for the purpose of Namaz. Whether the belief of such persons, who visited this premises for such worship, is superior or inferior, whether such offering of Namaz was regular or frequent or occasional and intermittent would be of no consequence. Suffice, if there had been Namaz by the Muslim. The offering of worship by Hindus knowing the building in dispute that it is a mosque is something else but on that basis the manner in which the building in dispute has been known for the last more than 250 years and odd cannot be changed. What ought to have been the ideal system of suzerainty or the system or policy of a king ought to have been according to Shariyat or Hindu Dharm Shastra etc. are all the issues which travel in the realm of pious wishes on the subject, but that cannot be a criteria to adjudicate the supreme authority of the erstwhile kings who were not subordinate to anyone except of the higher sovereign authority, if any.

3406. One of the document filed by the plaintiff Hindu parties, i.e., plaintiff (Suit-1) may be referred hereat which is about 140 years old. **Exhibit 33 (Suit-1) (Register 5 page 127-129)** is a copy of the order dated 26.08.1868 passed by Major J. Reed, Commissioner Faizabad against the order dated 25.06.1868 passed by Officiating Deputy Commissioner,

Faizabad in the case of Niyamat Ali and Mohd. Shah Vs. Gangadhar Shastri. The order is self speaking, dismissing the appeal, reads as under:

*“26.08.68. Since writing the foregoing Bande Ali Niamat Ali Ashraf Khan have appeared and their statements show that their grievance is that Ganga Dhar has encroached on the **North-West corner of this Masjid building**. Now there are three maps with regard to the preparation of the last of which at all events special care was enjoined and these show that at this corner Ganga Dhar's house actually touched the wall of the masjid. The Mohammads urged that there was a second wall or post beyond the wall of the building but though a “post” is marked on another part of the map it is not noted here on the contrary the map shows clearly as already stated **that the house of Ganga Dhar touches the wall of the masjid and that nothing intervenes**. Mr. Marray's personal examination shows that thereafter the measurements may be incorrect which is not creditable to the surveyer the maps are correct in this particular. And such being the case it is manifest that as held by Mr. Marrey no encroach could have taken place **unless the wall of the masjid itself had been dug into**. It is not alleged that this has been done. **The Commissioner Simsons order of 27th Feb 1864 was that the Hindus should not encroach on the boundaries of the Mosque and Chabutra**. No such encroachment has proved there is no reason to interfere. Appeal dismissed.”*

3407. This also shows that Hindu parties whenever contested a case, have throughout called it a mosque and there

has not been any change to this stand atleast till 1950. It is also true that initially in 18th century Tieffenthaller may not have termed it as "Babari mosque" but later on in 19th century, in the second half, the people started calling it Babari Masjid or Babar's mosque or Babari mosque.

3408. The building in dispute, thus for the last more than 2 and half centuries and atleast about 200 years before the present dispute arose in 1950, has always been termed, called and known as a “mosque”.

3409. In the absence of any material to show otherwise we are inclined to answer both the issues in positive. **Issue no. 1 (Suit-4) is answered in favour of plaintiffs and issue no. 9 (Suit-5) is answered against the plaintiffs (Suit-5).**

3410. **Issues no. 1(B)(b), 19(d) and 19(e)** can be taken together.

3411. As we have already discussed while dealing issue no. 6 (Suit-3) no material has been placed before us by the plaintiffs (Suit-4) and/or other Muslim parties to show that the property in dispute was ever dedicated by the wakif at any point of time in his life time. In fact, who the real Waqif is, not known. Even the successors at any point of time allowed/dedicated it, has not been shown. It is contended that the matter relates to an event of several centuries back, hence any direct or primary evidence showing dedication may not be possible. Relying on certain judicial precedents which we have already referred, it is contended if a building was constructed as a mosque, has been used by muslim people for offering a public Namaj, it is sufficient evidence to assume that there is a valid dedication of the building to Almighty God. Initially reliance

was placed in entirety to the stone inscriptions and the contents thereof to show that the spirit thereof makes it inevitable to hold that the building in dispute was a "mosque" dedicated to "Almighty God" and to be used by muslim public for religious purposes. We have discussed the texts of the alleged inscriptions in detail above and it has been demonstrated that those inscriptions are wholly unreliable, appears to have been placed later on, and in the language of Historian and Archaeologists, such inscriptions which were placed later on the building, normally termed as fictitious one. Therefore, the inscriptions cannot help the plaintiffs on this aspect. They placed reliance on **P. Carnegie's Historical Sketch (supra)** where he has observed that till the British rule the building in dispute was being used by both the communities for religious purposes but in order to avoid dispute, on the start of British rule, a dividing wall was constructed permitting muslims to use building in dispute in the inner courtyard and the outer courtyard was allowed to be used by the Hindus. It is said that this also leads to the conclusion that the building in dispute was dedicated or stood dedicated to Almighty God.

3412. In our view the submission is not correct. **Issue no. 1(B)(b) (Suit-4)** is whether the building stood dedicated to Almighty God as alleged by the plaintiffs. The plaintiff's have not alleged the dedication of the building in dispute to Almighty God in the manner it is sought to be argued. As we have already discussed and held the earliest evidence of user of the building in dispute we find is by Hindus mentioned in the traveller's account of Tieffenthaller published in 1786. He visited Awadh area sometimes between 1766-1771 AD. We did not find any

user by the muslims of the disputed premises, atleast there is no mention of this fact. The first document which refers to the user of the building in dispute by the muslims is post 1857. Various authorities which refers to the principle of dedication by the user in the case of old matters are such where the user or non user of the alleged Islamic structure by non-Islamic people was not involved. Here is a case having a unique feature. The building in dispute though sought to be constructed as mosque, given the shape of mosque, but it was used by Hindu public continuously for offering worship therein. Within the premises itself there exist a number of Hindu religious structure, worshipped as mentioned in in the traveller's account of Tieffenthaler. i.e..

DESCRIPTION : HISTORIQUE ET GEOGRAPHIQUE : D E L' I N D E under the title "TOME 1. NOUVELLE EDITION. Contenant la Geographic de l'Ind-Uftan, avec. 39,. Planches" (Supra). Evidence of user by muslim is much later. Can it be said that in such a case, as and when the muslims started user of the building in dispute for Namaj, it shall be presumed that there is a dedication of the building or the dedication to Almighty God particularly when at that time also, besides, earlier and later worship by non-muslims in the same building continued unabated and uninterrupted. The plaintiffs (Suit-4) have not claimed dedication of the building in dispute to Almighty God in such circumstances and with these facts. Their claim is totally different in the plaint which has not been supported by cogent evidence.

3413. An incidental facet is whether Hindus could have allowed the building to be used by muslims if they were already using it for worship. The question is not whether it was

allowable or not but it is a *fait accompli*: typical, peculiar but then it is. We may consider its effect and consequences and not whether it was allowable or could not have been allowed. We, however, may not fail to refer a Verse 23, Chapter 9 from Srimadbhagwadgita where Lord Krishna says:

“येऽप्यन्यदेवता भक्ता यजन्ते श्रद्धयान्विताः ।

तेऽपि मामेव कौन्तेय यजन्त्यविधिपूर्वकम् ॥

हे अर्जुन! यद्यपि श्रद्धासे युक्त जो सकाम भक्त दूसरे देवताओं को पूजते हैं, वे भी मुझको ही पूजते हैं; किन्तु उनका वह पूजन अविधिपूर्वक अर्थात् अज्ञानपूर्वक है। 23 ॥”

"Arjuna, even those devotees who, endowed with faith, worship or profess other Gods, with some interested motive, in fact they too worship Me alone, though not in accordance with rules, i.e., without proper knowledge."

3414. If one talk of existence of customs, traditions, practice etc., its recognition and protection under Article 25 of the Constitution, in our view, so far as inner courtyard is concerned, it applies to both the sides. If the Hindus are worshipping not only in the outer courtyard but in the inner courtyard of the premises in dispute from time immemorial and several centuries which has continued even after construction of the disputed structure, it is also there that the prayer by muslims atleast in the inner courtyard have also taken place, even if not in such regular and persistent manner as that of Hindus but in intermittent and disturbed manner for sufficiently long time of about 80 years and odd when the first suit was filed. The fact remains that it had continued, and, as we have already observed, the last prayer appears to have been observed on 16th December, 1949. It, therefore, constitutes customs and practice to both the sides. For Hindus, for several centuries but for Muslims almost

100 years or more.

3415. What constitutes a custom has been considered time and again. Valid, ancient and unbroken practice obtaining from generation to generation in ascents is a custom and in the absence of any contrary statutory law can be treated to be a valid rule/law. In **Shakuntalabai and another Vs. L.V. Kulkarni and another, 1989 (2) SCC 526** the Apex Court observed that in order to constitute valid custom under law it must be of immemorial existence, reasonable certain and continuous. The Court observed:

“Every custom must have to be in existence preceding memory of man and if the proof was carried back as far as living memory would go, it should be presumed that the right claimed had existed from time of legal memory. This was reiterated in Mohammed Ibrahim v. Shaik Ibrahim, AIR 1922 P.C. 59. In Ramalakshmi Ammal v. Sivanantha Perumal Sethurayar, 14 M.I.A. 81 570, it was held that it was the essence of special usages modifying the ordinary law, (in that case of succession) that they should be ancient and invariable; it is further essential that they should be established to be so, by clear and unambiguous evidence and that it is only by means of such findings that the Courts can be assured of their existence and that they possess the conditions of antiquity and continuity and certainty on which alone their legal title to recognition depends. Custom must be proved and the burden of proof is on the person who asserts it.” (para 19)

3416. The Apex Court also quoted the following verse of Ancient Hindu Law in para 18 of the judgement:

“18. Ancient Hindu law also said:

Tasmindeshe ya acarah paramaryakramagatah;

Varnanam santaralanam sa sadachara uchyate.

Practice that obtains from generation to generation among the pure and mixed classes is called sadachara.”

3417. Besides, repair and maintenance of the building in dispute between 1860 to 1949 also appears to have been made by the muslims except of a riot case. Therefore, for them also irrespective of the fact whether a religious structure strictly in accordance with Islamic tenets came into existence or not, the fact remains that shouldering with their Hindu brethren, in the inner courtyard of the disputed site, for sufficiently long time, muslims also offered Namaj. This would fall within the term “custom”, benefit whereof is being claimed by Hindus also and in our view shall extend to Muslims also.

3418. Looking from this context, though it cannot be said that the building in dispute has never been used by the muslims but then that would not attract the doctrine of dedication by user to be applied to this particular case. All the authorities which we have referred and discussed as cited by the parties, also do not consider a case where the same building and the same premises was being used by the muslims and Hindus alike for offering worships according to their religious tenets pursuant to their religious faith and belief though largely by Hindus and to a lesser extent by Muslims.

3419. Islamic tenets clearly bar two religions at the same place. Meaning thereby the Islamic tenets prohibit non Islamic worship at a place meant for worship by muslim people. But that is not so under Hindu Dharmshastras. Atleast nothing has

been shown to us. Something which is prohibited by Islam, said contrary thereto, an Islamic religious structure cannot be said to vests in Almighty God. Various religious expert witnesses produced by the plaintiffs (Suit-4) also admit this position that anything which is contrary to Islamic tenets cannot be accepted by Almighty God. Though religious experts we need not to refer for determining the principle of concerned religion but here they are the witnesses of the plaintiffs and, therefore, their statement atleast would bind the plaintiffs as it would amount to admission made by the plaintiffs.

3420. There is no law that as soon as the building is constructed it stands dedicated to Almighty God but the settler can always claim that it is not for particular purpose etc.

3421. In **Garib Das and others Vs. Munshi Adbul Hamid and others, AIR 1970 SC 1035** the Court said:

“8. . . . the law seems to be clear that a wakf inter vivos is completed by a mere declaration of endowment by the owner. According to Mulla's Principles of Mahomedan Law, 16th Edition, page 178, Article 186, this view had been adopted by the High Courts of Calcutta, Rangoon, Patna, Lahore, Madras, Bomday, Oudh Chief Court and recently by the Allahabad High Court and the Nagpur High Court. Further, the founder of a wakf may constitute himself the first mutawalli and when the founder and the mutawalli are the same person, no transfer of physical possession is necessary. Nor it is necessary that the property should be transferred from the name of the donor as owner into his name as mutawalli. An apparent transaction must be presumed to be real and the onus of proving the contrary is

on the person alleging that the wakf was not intended to be acted upon.”

*“9. It is also settled law that **the settlor and those claiming under him are not precluded from showing that no wakf had been created and that the deed was not intended to operate as a wakf but was illusory and fictitious. This is a question of intention evidenced by facts and circumstances showing that it was not to be acted upon. For the purpose of such enquiry subsequent conduct, if it is merely a continuation of conduct at the time of execution, is irrelevant.**”*

3422. In **Jamal Uddin and another Vs. Mosque at Mashakganj and others, AIR 1973 Allahabad 328** the court in para 27 said:

“27. The trial Court has however fallen in a legal error in holding by relying on the Full Bench decision of this Court in Mohd. Yasin Vs. Rahmat Ilahi, 1947 All LJ 85=(AIR 1947 All 201) (FB), that in this case it was not necessary for the wakif to deliver possession to the mutawalli at the time of making the alleged oral wakf. That decision applied only to the wakf made by a Hanafi Muslim. In the present case Nasir Husain was admittedly a Shia. In the case of wakf made by a Shia Muslim delivery of possession is necessary as laid down in Sec. 186 of the Mulla's Mahomedan Law, Sixteenth Edition at page 180. The Privy Council also held in Ali Zamin Vs. Akbar Ali Khan, 167 Ind Cas 884 = (AIR 1937 PC 127) that under Shia Law actual delivery of possession by or by direction of the wakif is a condition precedent to the wakf having

validity and effect.

*Again, in Abadi Begum Vs. Bibi Kania Zainab, 99 Ind Cas 669=(AIR 1927 PC 2) the Privy Council held that for the creation of a valid wakf under Muhammadan Law, at any rate **among the shias**, it is **necessary that there must be delivery of possession of the thing dedicated.** If the wakif constitutes himself as the first Mutawalli he must change the nature of his possession. In a case like the present one, where there is no document executed by the wakif at the time of making of the alleged wakf it is necessary that cogent evidence should be produced that he had delivered possession to the Mutawalli. An obvious method of doing so is to get the property in dispute recorded in the name of the wakf in the records maintained by the municipal board. It is an admitted fact that in the present case the land in dispute was not got recorded in the name of the mosque in the records maintained by the Municipal Board.”*

3423. The concept of Wakf has been considered at length in **Syed Mohd. Salie Labbai Vs. Mohd. Hanifa AIR 1976 SC 1569**, wherein the Court held:

“once the founder dedicates the site for the purpose of building a mosque and prayers are offered in the mosque the site and the mosque become wakf properties and the ownership of the founder is completely extinguished. Under the Mahomedan Law no Muslim can be denied the right to offer prayers in a mosque to whatever section or creed he may belong. ... Once the founder dedicates a particular property for the purpose of a public mosque, the

Mahomedan Law does not permit any one from stopping the Mahomedan public from offering prayers and reciting Koran etc. The word "wakf" means detention or appropriation. According to the well recognized Hanafi School of Mahomedan Law when a Mahomedan dedicates his property for objects of charity or to God, he completely parts with the corpus which vests in God and never returns to the founder. Mahomedan Law contemplates two kinds of Wakfs-a wakf which is private in nature where although the ultimate object is public charity or God, but the property vests in a set of beneficiaries chosen by the founder who appoints a Mutawalli to manage the wakf property. We are, however, not concerned with private wakfs which are normally known as wakf-alal-aulad. We are concerned with public wakf i.e. dedication made for the purpose of public charity e.g. an Imam-Bada, a mosque, a Serai and the like. So far as the dedication to a mosque is concerned, it is governed by special rules and special equity in the light of which a particular dedication has to be determined. A mosque is obviously a place where the Muslims offer their prayers. It is well-known that there are certain formalities which have to be observed by the Muslims before they observe the prayers. These formalities are-

- (i) Wazoo i.e. washing of hands and feet in a manner prescribed by Shariat:*
- (ii) the recitation of "Azaah" and "Ikamat" which is usually done by the Pesh Imam or the Muayzin;*
- (iii) there must be a person who possesses virtuous qualities and a knowledge of Koran and other*

religious rites who should lead the prayers.

This is necessary in case of prayers offered in congregation. ...the moment a person is allowed to offer his prayers in a mosque, the mosque becomes dedicated to the public. All that is necessary is that there should be a declaration of the intention to dedicate either expressly or impliedly and a divestment of his interest in the property by the owner followed by delivery of possession.

It would thus appear that in order to create a valid dedication of a public nature, the following conditions must be satisfied:

(1) that the founder must declare his intention to dedicate a property for the purpose of a mosque. No particular form of declaration is necessary. The declaration can be presumed from the conduct of the founder either express or implied;

(2) that the founder must divest himself completely from the ownership of the property, the divestment can be inferred from the fact that he had delivered possession to the Mutawalli or an Imam of the mosque. Even if there is no actual delivery of possession the mere fact that members of the Mahomedan public are permitted to offer prayers with azan and ikamat, the wakf is complete and irrevocable; and

(3) that the founder must make some sort of a separate entrance to the mosque which may be used by the public to enter the mosque.

As regards the adjuncts the law is that where a mosque is

built or dedicated for the public if any additions or alterations, either structural or otherwise, are made which are incidental to the offering of prayers or for other religious purposes, those constructions would be deemed to be accretions to the mosque and the entire thing will form one single unit so as to be Attention:

part of the mosque.”

3424. In **Nawab Zain Yar Jung and others Vs. Director of Endowments and another AIR 1963 SC 985**, a Constitution Bench of the Apex Court found that there is a dispute between a trust; public, religious or charitable and a waqf under the law of Islam. The Court quoted with approval the following from the decision of the Privy Council in **Vidya Varuthi Thirtha (Supra)**:

"it is to be remembered that a "trust" in the sense in which the expression is used in English law, is unknown to the Hindu system, pure and simple. Hindu piety found expression in gifts to ideals and images consecrated and installed in temples, to religious institutions of every kind, and for all purposes considered meritorious in the Hindu social and religious system; to Brahmins, Goswamis, Sanyasis, etc..... When the gift is directly to an idol or a temple, the seisin to complete the gift is necessarily effected by human agency. Called by whatever name, he is only the manager or custodian of the idol or the institution.....In no case is the property conveyed to or vested in him, nor is he a trustee in the English sense of the term, although in view of the obligations and duties resting on him, he is answerable as a trustee in the general sense for mal-

administration."

"the Mohammadan laws owes its origin to a rule laid down by the Prophet of Islam; and means "the tying up of property in the ownership of God the Almighty and the devotion of the profits for the benefit of human beings." As a result of the creation of a wakf, the right of wakif is extinguished and the ownership is transferred to the Almighty. The manager of the wakf is the mutawalli, the governor, superintendent, or curator. But in that capacity, he has no right in the property belonging to wakf; the property is not vested in him and he is not a trustee in the legal sense."

3425. As we have seen in **Syed Mohd. Salie Labbai Vs. Mohd. Hanifa (supra)** the Apex Court said that dedication to a mosque is governed by special rules.

3426. Besides, the dedication by founder as contemplated by Apex Court and noticed in **Syed Mohd. Salie Labbai Vs. Mohd. Hanifa (supra)** could not have been proved by the plaintiffs at all. We may also refer to **Nawab Zain Yar Jung (supra)** where it is observed that Mohammedan Law owes its origin to a rule laid down by Prophet of Islam, meaning thereby outsiders, the question of creation of waqf or mosque etc. would not arise. The building may remain a building, a structure, but would form a religious structure only when it is made in accordance with the religious tenets.

3427. In **Ballabh Das & another Vs. Nur Mohammad & another AIR 1936 PC 83**, regarding the entry with respect to nature of disputed premises contained in Khasra of 1868, the Court observed that where khasra itself is the instrument which

confers or embodies the right and there is no other document which create title, the khasra and the map are not merely historical materials, but are instruments of title or otherwise direct foundation of rights.

3428. The above discussion would be relevant where in a property dispute such issues are of utmost importance and its religious nature is in doubt amongst the members of the same community. But where the religious structure of a particular nature is treated, believed and practised as that of a religious nature and worship is also offered since a very long time, the question whether there is a dedication of the building to almighty or not, in our view, would be wholly irrelevant. According to the own beliefs, Hindu worship the building in dispute in the inner courtyard treating that there exist Supreme Being since the Lord of Lords manifested thereat in the human form and it is his birthplace, while Muslims on the contrary, treating it a Mosque have been visiting there and offering Namaz from time to time. Then whether the Muslims' belief was in accordance with the tenets of Shariyat or not, in our view, cannot be questioned by Hindus since it is again a question of faith and belief and once it is continuing for a long time from generations to generations, then after long time such a dispute cannot be raised. We have pointed out and reiterate hereat also that upto 1950, it was never doubted that the building in dispute was a Mosque and was constructed as an attempt to desecrate one of the most pious, sacred and revered place of specific and peculiar nature, i.e., the birthplace of Lord Rama which could not be at any other place and that the Muslims also believing that the same being a Mosque, had been offering Namaz thereat

from time to time. Even a third party, i.e., the Britishers never doubted on the nature of the building and all the documents unequivocally have used the word 'Mosque' for the building in dispute at least upto 1950 when the said suit was filed. In these facts and state of affairs, to answer a question at this fag end whether there was a dedication to almighty or not, in our view, is a wholly irrelevant question and, therefore, it need not to be answered.

3429. Considering the peculiar special facts of this case as also the law discussed above and the facts and evidence we leave **Issue No. 1(B) (b) (Suit-4) unanswered** being irrelevant.

3430. **Issues no. 19(d) and 19(e) (Suit-4)** relates to the validity of the building in question as mosque on the basis of the attending characteristics, for example existence of minarats or graveyards surrounding the building on three sides. Though it is true that recitation of Azan has been held to be a necessary formality for a public prayer in a mosque dedicated to waqf, it is not shown to us by learned counsels for the defendants placing any religious Islamic texts, if the minarats are not constructed, the building would not be a mosque under the law of Shariyat. An attempt was made to place before us certain documents wherein the characteristics of mosque in general are mentioned but those documents having not been proved and marked as exhibit, we are then unable to look into those documents. The only document which throw some light on the construction of mosque is **Exhibit 68 (Suit-5) (Register 31 Page 163-177)** which is a photocopy of frontispiece and pages no. 1 to 5 Chapter I "Introduction" and two photographs from the book **"Indian Architecture (Islamic Period)" by Percy Brown**

published by D.B. Taraporevala Sons & Co. Private Ltd. The relevant extract thereof reads as under:

"Unlike the architecture of the Hindus, which, as may be seen was confined almost entirely to temples, Mohammedan architecture in India is represented by many different types of building, which however may be referred to the two conventional divisions of (a) Religious and (b) Secular. Those of a religious nature consist of two kinds only-- the mosque and the tomb. On the other hand the secular buildings are of a miscellaneous order, as among them may be include those intended for public and civic purposes, such as houses, pavilions, town-gates, wells, gardens, etc., besides the large imperial schemes of palace-forts and even entire cities.

Taking the religious structures first, the mosque, or Masjid, literally "the place of prostration" as already shown, is not only the all-important building of the Faith, but it is also the key-note of the style. Derived originally from the somewhat humble dwelling of the founder of the creed at Medina in Arabia, traces of the shape of this domestic habitation are still to be detected in the developed mosque-scheme, as it is basically an open courtyard surrounded by a pillared verandah, in a work an elaboration and enlargement of an Arab's house. With the early followers of the religion everything was done according to suna or practice, tradition being regarded as sacred, sometimes carrying more force than the guiding light of reason. The original intention was to provide no specific structure for devotional purposes, as prayer could

be performed in the open air with nothing between the devotee and his God. But those concerned had not calculated on the natural craving of mankind for an enclosed building in which worship could be conducted in an appropriate environment, away from the distractions of everyday life, and it was not long before a house of prayer came into being. This began with a rectangular open space or sahn, the four sides being enclosed by pillared cloisters or liwans, with a fountain or tank in the centre for ablutions, a ceremony described as “the half of faith and the key of prayer.” To meet the demand for some focal point in the scheme, the cloisters on the Mecca side (in India on the west) of the courtyard were expanded and elaborated into a pillared hall or sanctuary, with a wall at the back containing a recess or alcove called a mihrab indicating the qibla or direction for prayer. On the right side of the mihrab stands the mimbar or pulpit, while a portion of the sanctuary is screened off into a compartment for women. An elevated platform from which the muezzin summons the faithful to prayer is also a necessity, and usually takes the form of a high tower or minaret. (Plate I.) In almost every city and large town, there is one mosque known as the Jamma Masjid (Al-Masjidu'l Jami, lit, “the Collecting Mosque”). This designation is given to the principal or congregational mosque in which the Faithful assemble for the Friday (Jum'ah) prayer.

Above are the main elements comprising the mosque structure, and it was soon found that to combine these traditional requirements into a well-balanced whole was

not to be readily accomplished. Porticos similar entrance hall could be added to the exterior, but the treatment of the interior with its outstanding essential of a large open space, remained a problem. Obviously the sanctuary where was enshrined the mihrab, or symbol of "direction" of the Faith was the most significant portion, and this was eventually developed into the principal architectural feature, with the courtyard and its cloisters leading up to it. To produce the necessary structural effect of a house of prayer two important elements were imposed on to the exterior of the sanctuary, on the one hand a screen was thrown across its front to form a facade, and on the other, above the central space or nave corresponding to the "high place" of the Christian church, a dome was raised. It was in the task of co-ordinating these two dominating features, the facade and the dome, so as to form a unified architectural composition, that difficulties were encountered, and in fact were never entirely overcome by the Indian builders. For nearly every phase of mosque architecture in India illustrates in the front elevation a conflict between these two essential constituents of the conception, and the efforts made to bring about an agreement. As a rule, the view of the central dome over the nave is obstructed by the parapet crowning the facade which rises up in front, although this combination is sometimes not unpleasing as seen from the side or back of the building. The cause of this lack of coherence in the elevational aspect of the Indian mosque has been attributed to the immature design of the earliest examples, such as the

Qutb at Delhi, and the Arhai-din-jhompra at Ajmir, the defects of which, owing to the force of tradition, were repeated, although in a lesser degree, in many of the subsequent buildings. In the mosques of Gujrat and of the south-west the design of the Ajmir frontage undoubtedly shows its influence, but the inconsistency here referred to appears to have an older origin, as it is inherent in the eastern type of mosque, beginning as early as in that raised by the Arabs at Samarra near Baghdad in the first half of the ninth century.

The other class or building of a religious order, the tomb, introduced into the country an entirely new kind of structure, as hitherto it had been custom of the people of India to raise no sepulchre to mark the resting place of the dead, their ashes being carried away on the broad bosom of the sacred rivers. Even with the Mohammedans the tomb-structure in the initial stages of the creed evolved slowly owing to all such memorials being prohibited. It is of no little psychological significance that a movement which began with restrictions against all forms of monumental art should eventually produce some of the most superb examples. Only the pyramids of the Pharaohs, and a few other funerary monuments, such as that raised in memory of King Mausoleus at Halicarnassus in Asia Minor, have excelled in size and architectural splendour the Islamic tombs of India. Many of these noble piles consist of an imposing composition of vaulted halls and towering domes, and enclosed within a spacious garden, all on a grand scale, yet enshrining in the centre a mere

handful of dust, laid in a plain mound of earth to be seen in the mortuary chamber below. (Plate LII). In the course of time, the tomb-building, especially in northern India, introduced itself into the landscape, much of the finest Indo-Islamic architecture being expressed in these structures. The tomb (Qabristan), usually consists of a single compartment or tomb-chamber, known as 'huzrah or estanah' in the centre of which is the cenotaph or zarih, the whole structure being roofed over by a dome. In the ground underneath this building, resembling a crypt, is the mortuary chamber called the 'maqbarah or takhana' with the grave or qabr in the middle. In the western wall of the tomb-chamber there is generally a mihrab, but some of the larger mausoleums also include a mosque as a separate building, the whole being contained within one enclosure, called a rauza, after the garden (ar-rauza) at Medinah in which is enshrined the Prophet's Tomb. Occasionally important tombs are designated dargahs, a word of Persian extraction signifying a court or palace.

In contrast to the religious architecture those buildings of a secular character, as already indicated comprise a large series of a kind so varied that no definite classification is possible, and they will therefore be dealt with either individually or in groups according to their position or purpose.

During the rule of the Mohammedans, architecture in India passed through three different and more or less successive experience. The first of these prevailed for only a limited period, but it was one of desecration and

destruction inspired by the first white head of fanatical zeal. "It was the custom," relates a contemporary chronicler, "after the conquest of every fort and stronghold to ground its foundations and pillars to powder under the feet of fierce and gigantic elephants." In a like manner a large number of fortified towns were demolished, while temples and similar structures were included in the spoliation. This purely destructive phase was followed by a second one, in which the buildings were not ruthlessly shattered, but were purposely dismantled and the parts removed, to supply ready-made material for the mosques and tombs of the conquerors. The historian quoted above mentions that much of the demolition was effected by elephant power, these animals being employed to push the beams and pillars out of position, gather them up, and carry them to their new situation, much as they now stack timber, or haul teak wood logs for commercial purposes. It was during this phase that the temple buildings suffered most, as whenever any fresh territory was annexed, and the founding of a capital city contemplated, these structures became the quarries from which supplies of cut stone were extracted. This accounts for considerable areas in Upper India being almost entirely denuded of any records of Hindu architecture, notably around such early Islamic centres as Delhi and Ajmir. The spoils of these temples, however, had to be supplemented in places by a certain amount of new and original masonry, as may be seen in mosques of the early type, so that the materials were obtained from two sources and, as tersely described by the

chronicler- "the stones were dug out from the hills, and the temples of the infidels were demolished to furnish a supply." Finally, there was the third phase, when the Moslems having become firmly established in various parts of the country, found themselves in a position to plan and create building compositions constructed of masonry, not re-conditioned, but each stone prepared specially for its purpose. It was in these latter circumstances that Islamic architecture in India arrived and its true character and achieved its greatest splendour.

For the purpose of study, the architecture thus produced may be resolved into three main divisions, (1) the Delhi or Imperial, (2) the Provincial, and (3) the Mughul. The first of these divisions has hitherto generally been known as "Pathan," but not all those dynasties under which this type of architecture prevailed, can be so designated. Two of them were of Turkish extraction, one was Khalji, and one was of Arab descent. The architecture evolved under these dynasties was that associated mainly with their rule at Delhi, the capital city and centre of the imperial power. For, just as Rome had "classic" art of the capital city, differing greatly from that of the provinces, so the seat of the administration in Moslem India had its own form of architectural expression, which, although subject to variations and developments, never really lost its distinctive and imperial character. Beginning at the close of the twelfth century, on the establishment of Islamic rule at Delhi, this imperial style continued for nearly four centuries, when, in the middle of the sixteenth century it

was succeeded by that of the Mughuls. The second of these styles, the Provincial, refers to those modes of building practised in some of the more self-contained portions of the country, usually after their governors had thrown off the allegiance to Delhi, when they proceeded to develop a form of architecture in accordance with their own individual ideals. What may be termed the "pivotal year" of this movement was A.D. 1400, when the central power at Delhi had been broken by the invasion of Timur (Tamerlane), and its original prestige declined from that date. It will be understood that these provincial manifestations of the building art in most instances prevailed for a period partly contemporary with that maintained by the central power at Delhi, and partly with that of the Mughuls, until the later brought the whole of India under their rule. The third style, the Mughul, was the latest and ripest form of Indo-Islamic architecture, which, emerging after the middle of the sixteenth century continued to flourish until the eighteenth century, by which time the empire founded by the descendents of the Timurids, the "Great Mughuls," had begun to approach its end." (pages 3-5)

3431. Similarly though public prayer for religious purposes at graveyard is not permitted but it is not shown to us that a building would not be construed as a mosque if it is surrounded on three sides by graveyards.

3432. For the purpose of public namaz, Adhan (Ajan) is necessary but we have not been shown that a mosque, if constructed without having a 'Minar', that would not be a mosque and against the tenets of Shariyat. Similarly, namaz

before graves is not permitted except for limited purpose but it is not shown to us that a mosque cannot be constructed or if constructed, may subsequently lose its status of a mosque if in a vicinity thereof there exist graveyard or the same are made later on.

3433. We, therefore, are of the view that the defendants have failed to prove issues 19(d) and 19(e) and therefore, both the issues i.e. **Issues No.19(d) and 19(e) (Suit-4) are answered in favour of the plaintiffs.**

3434. **Issue No.19(f)** is in two parts. Firstly; whether the pillars inside and outside the building in question contain images of Hindu Gods and Goddesses? If the finding is in affirmative, then it has to be seen whether on that account the building in question cannot have the character of Mosque under the tenets of Islam?

3435. There are three sets of albums which contain photographs taken by the State Archaeological Department pursuant to order dated 10.01.1990 passed by this Court. Dr. Rakesh Tiwari, OPW-14 was Director of State Archaeological Department who deposed statement as OPW 14 and verified all these photographs. One album which the learned counsel for the parties have termed as "Album of Coloured Photographs" contain 204 photographs and has been marked as Paper No.200C1/1-204. The second one contains 111 photographs which are black & white and the parties counsels have commonly call it "The Album of Black & White Photographs" and it is Paper No.201C1/1-111. The relevant photographs of these pillars in the coloured album are Paper No.200C1/48, 200C1/50, 200C1/51, 200C1/52, 200C1/54, 200C1/87,

200C1/104, 200C1/105, 200C1/109, 200C1/114, 200C1/115, 200C1/141, 200C1/146, 200C1/147, 200C1/166, 200C1/167, 200C1/181, 200C1/186, 200C1/187, 200C1/195, 200C1/199 and 200C1/200. Similarly, in the album of Black & White, photographs, the relevant one of concerning pillars are 201C1/55, 201C1/57, 201C1/76, 201C1/88, 201C1/91, 201C1/103, 201C1/104 and 201C1/106. All these photos are being appended collectively as **Appendix 5 (A) to 5 (DD)** to this judgment.

3436. We ourselves have perused all these photographs and apparently it appears from some of them that there were some images which have been tried to be erased or damaged so that it may not be identifiable or may stand removed. To the portion, where such images appears to be an attempt by external forces to desecrate the same is quite evident. We are not expert in this branch of archaeology but something which is otherwise apparent, we have mentioned. A lot of witnesses including those experts of various parties were also confronted with the same and their statement would also be of corroborative nature and therefore would be relevant. The photographs of the black kasauti pillars were seen and in respect to images therein, if any, PW 3, the plaintiff's own witness, said:

(A) PW-3 (Farooq Ahmad)

“फोटो नं. 57 में मूर्तियां बनी हुयी हैं जो उस वक्त नहीं थी। ये फोटो भी जायदाद मुतदाविया का है लेकिन हो सकता है बदल दिया हो। क्योंकि उस वक्त खंभे पर मूर्तियां नहीं थी। फोटो नं० – 58 में भी एक मूर्ति ऊपर के हिस्से में नजर आती है। फाटक में काला खंभा लगा हुआ था उसमें कोई मूर्ति नहीं हो सकती है कि बाद में बदल दिया गया हो। . . . फोटो देखकर कह रहा हूँ कि खंभे बदल दिए गए होंगे। इन खंभों पर मूर्तियां बनी हुयी हैं उनको देखकर मैं बता रहा हूँ। कि ये खंभे बदले गए

हैं।” (पेज 38)

“*Idols are visible in **photograph no. 57**, which were not present at that time. This photograph is also of the disputed property but it is possible that it may have been changed because at that time there were no idols over the pillars. An idol is visible in the upper part of **photograph no. 58** as well. There was a black pillar at the gate, which did not have any idol and it is possible that it may have been changed subsequently. It is only after looking at the photograph that I am stating that the pillars may have been changed. These pillars have idols on there top and it is only after looking at them that I am stating that these pillars have been changed.*” (E.T.C)

“*फोटो नं. 62 में जंगले के पास खंभा नुमा बना है जिसमें मूर्तियां बनी हुयी है। यह खंभा विवादित जायदाद के उत्तरी फाटक का है फोटो नं.-64 में भी सफेद रंग का नजर आता है और मूर्ति भी नजर आती है। . . . फोटो नं.-65 सदर दरवाजे का है। लेकिन इसके खंभे पर मूर्तियां बनी हुयी हैं जो तब्दीली का नतीजा है। फोटो नं.-66 भी पूर्वी तरफ का है लेकिन इस पर मूर्तियां बनी हैं जो तब्दीली का नतीजा है।” (पेज 39)*

“*In **photograph no. 62** there is a pillar like structure near the grill, **which has idols**. This pillar is at the northern gate of the disputed property. It is visible in white color in **photograph no. 64** as well, and the idols are also visible. . . . The **photograph no. 65** is of the main gate. However, its pillar contained idols, which are result of change. The **photograph no. 66** is also of the eastern side but it has idols, which are result of change.*” (E.T.C)

“*फोटो नं.-72 काले रंग का खंभा जरूर है लेकिन उसके ऊपर व नीचे मूर्तियां बनी हुयी है। यही हालात फोटो*

नं०-71 के दोनों खंभों की है। वही हालत नं.-73 में दिखाए गए खंभे की है। इसमें भी मूर्तियां बनी हैं। फोटो नं.-74 की भी वही हालत है जिसके खंभे पर मूर्तियां बनी हैं। ये पूरा खंभा चारों तरफ से दिखाया गया है जो वहां पर चिपका हुआ था।” (पेज 40)

“The photograph no. 72 does contain black pillars but it has idols in upper and lower part. Similar is the position of the two pillars of photograph no. 71. Same is with the pillar shown in photograph on. 73. It also contains idols. The photograph no. 74 is also similar, which has idols over pillars. This pillar has been shown completely from all sides, which had been fixed over there.” (E.T.C)

“फोटो नं.-101 भी वहीं का है लेकिन इसमें बहुत तब्दीलियां की गयी हैं। मूर्तियां भी बनी हैं और कलश भी खड़े मालूम होते हैं।” (पेज 42)

“The photograph no. 101 is also of that place, but many changes have been made therein. The idols are also existing and the pitchers (Kalash) are also existing.” (E.T.C)

“ये ठीक है कि इस एलबम में लगाए गए तमाम फोटो हमारे वकील साहब की मौजूदगी में खींचे गए थे। ये तमाम फोटोज विवादित जमीन और जायदाद के हैं।” (पेज 61)

“It is true that all the photographs contained in this album, had been taken in the presence of my counsel. All these photographs are of the disputed land and property.” (E.T.C)

“जो पत्थर खंभों की सूरत में लगे थे उन पर कोई शैतानों या भूतो की शक्ल नहीं थी वह बाद में फर्जी बनाई गयी थी।” (पेज 100)

The stones existing in form of pillar, did not have figures of ghost or demons over them, and the same was

put subsequently in a fake manner.” (E.T.C)

3437. The witnesses of Hindu parties have also made detailed statements wherein at time, there is some contradiction, but, in general, in some of the pillars certain images have been identified:

(A) In regard to coloured photographs **no. 47 to 50** and **51 to 54** and black -white photograph nos. **26 and 27** in respect to **pillars no. 1 and 2:**

(i) DW 3/5- Raghunath Prasad Pandey

“चित्र संख्या-47 व 48 में दिख रहे खम्भे में घट के ऊपर हनुमान जी की मूर्ति के दर्शन हो रहे हैं।” (पेज 14)

"Idol of Hanuman Ji is seen above ghat (water- pot) in the pillar in a photograph nos. 47 and 48." (ETC)

“चित्र संख्या 47 में हनुमान जी की मूर्ति के नीचे नरसिंह भगवान का मुख नज़र आ रहा है और हनुमान जी की मूर्ति के नीचे एक और मूर्ति नज़र आ रही है।” (पेज 157)

"In photograph No. 47 the face of Lord Narshima is seen beneath the idol of Hanuman Ji and another idol is seen beneath the idol of Hanuman Ji." (ETC)

“चित्र संख्या 52, 54 और 105 को देखकर गवाह ने कहाए “इन चित्रों में जहां कलश बना है वहाँ घुटना मोड़े हुए किसी व्यक्ति की आकृति नज़र आ रही है।” (पेज 14)

Seeing the photographs no. 52, 54 and 105 the witness stated, "In these pictures, where the Kalash is inscribed, the idol of a person with bent knees is seen there." (ETC)

“चित्र संख्या 54 में दिख रहे खम्भे को देखकर गवाह ने कहा कि “इसमें जहाँ सिन्दूर लगा है, वहाँ हनुमान जी की मूर्ति नज़र आ रही है, और हनुमान जी की मूर्ति के दाहिनी तरफ मोर जैसी आकृति नज़र आ रही है।” (पेज 159)

Seeing the pillar visible in the photograph no. 54 the

witness stated "At the place where vermilion is applied therein, the idol of Hanuman Ji is seen and peacock-like figure is seen to the right of the idol of Hanuman Ji."(ETC)

(ii) DW 1/2- Krishna Chandra Singh

चित्र संख्या 26, 27

"उपरोक्त चित्रों में दिख रहे खंभों में मुझे जय-विजय की मूर्ति नहीं दिख रही है।" (पेज 45);

Photograph Nos. 26 and 27

"The idol of Jai-Vijai is not visible to me in the pillars appearing in the aforesaid photographs." (ETC)

चित्र संख्या 47 लगायत 54

"खंभों में मुझे जय-विजय की मूर्तियां नजर नहीं आ रही हैं, क्योंकि मेरी नजर कमजोर है . . . " (पेज 45)

Photograph Nos. 47 to 54

" The idols of Jai-Vijai are not visible to me in the pillars, because my eye- sight is weak.(ETC)

(B) In regard to Coloured **photographs no. 104 to 109** and Black and White **photographs No. 55 and 57** of Pillar No 3:

(i) DW 3/5- Raghunath Prasad Pandey

"चित्र संख्या 104 में दिख रहे खम्भे में ऐसी आकृति बनी हुई दिख रही है, जैसे कोई आदमी घुटना मोड़कर बैठा है और यही स्थिति चित्र संख्या-106 में भी है। (पेज 14); चित्र संख्या-104 में दिख रहे खम्भे में हनुमान जी की, गणेश जी की, देवी जी की मूर्ति तथा एक मोर जैसी आकृति दिख रही है। (पेज 147); चित्र संख्या -105 में जहाँ सिन्दूर लगा है, वहाँ हनुमान जी की मूर्ति है और उसके नीचे कमलदल के पास गणेश जी की और देवी जी की मूर्ति नजर आ रही है। " (पेज 147)

"In the pillar appearing in the **photograph no.104**, such a figure is seen engraved as gives the impression that a person is sitting with his knees bent, and this very position

*is seen in the **photograph no. 106** as well. (page 14); The idol of Hanuman Ji, Ganesh Ji and Devi Ji as also a peacock-like figure is seen in the pillar visible in the **photograph no. 104.** (page 147); The idol of Hanuman Ji is at the point where vermilion is applied in the **photograph no. 105,** and the idol of Ganesh Ji and Devi Ji is seen near 'Kamal-Dal' (bunch of lotus flowers) beneath the said idol of Hanuman Ji." (ETC)*

(ii) DW 17/1 -Ramesh Chandra Tripathi

“चित्र संख्या 104 में मूर्ति के शरीर का कोई भाग नहीं नज़र आ रहा है। (पृष्ठ 86); चित्र संख्या 105 में शंकर की मूर्ति है . . .”(पृष्ठ 85)

"No part of the body of the idol is visible in Photograph No. 104. (page 86); Idol of Shankar is in Photograph No. 105." (ETC)

(iii) DW 3/5- Raghunath Prasad Pandey

“चित्र संख्या 108 में जहाँ सिन्दूर लगा हुआ है, वहाँ पर हनुमान जी की मूर्ति नज़र आ रही है और उसके बगल में मोर जैसी आकृति नज़र आ रही है और हनुमान जी के नीचे वाले भाग में गणेश जी एवं देवी जी की मूर्ति नज़र आ रही है।” (पेज 147)

*"At the point where vermilion is applied in the **photograph no. 108,** the idol of Hanuman Ji is visible and next to it is seen a peacock-like figure and in the lower part of Hanuman Ji is seen the idol of Ganesh Ji and Hanuman Ji."(ETC)*

(iv) DW 13/1-1 - Mahant Dharmdas

“चित्र संख्या 109 में हनुमान जी की आकृति तथा कलश के ऊपर शंकर जी की आकृति नज़र आ रही है। चित्र संख्या 109 में मानव आकृति नज़र आ रही है। यह आकृति रामचन्द्र जी की है।” (पृष्ठ 156)

*"In the **photograph no. 109,** idol of Hanuman Ji is seen, and Shankar Ji is therein visible above 'Kalash'.A human*

figure is visible in the Photograph No 109. This figure is of Ramchandra Ji." (ETC)

(C) In regard to Coloured Photographs 110 to 115 and Black – White Photographs 58 and 60 of Pillar Nos. 4:

(i) DW 3/5- Raghunath Prasad Pandey

“इन मूर्तियों में देवी-देवताओं के उदर से लेकर सिर तक नजर आ रहा है, परन्तु चेहरा स्पष्ट नहीं हो रहा है।” (पेज 151)

"In these idols, gods-goddesses are seen from stomach to head but their faces are not clear." (ETC)

(ii) DW 3/15 Narendra Bahadur Singh

“इसी एलबम के चित्र सं० 109 लगायत 127 में भी नजर आ रहे खंभों में किसी देवी देवता के चित्र नहीं नजर आ रहे हैं।” (पृष्ठ 43)

"Figures of gods- goddesses are not visible in the pillars also appearing in the photographs 109-127 of this very album." (ETC)

(iii) DW 3/5- Raghunath Prasad Pandey

“इस खम्भे में जहाँ सिन्दूर लगा है, वहाँ पर हनुमान जी का आधा शरीर नजर आ रहा है। हनुमान जी की मूर्ति के नीचे जहाँ कमल-दल है, वहाँ गणेश जी की मूर्ति नजर आ रही है। उनका मुख और पेट दिख रहा है। हनुमानजी की मूर्ति के वगल जो देवता की मूर्ति है, उसके बगल मोर की आकृति नजर आ रही है। इस चित्र सं०-113 में जहाँ कमल-दल है, उसके बाईं तरफ किसी देवी या देवता की मूर्ति नजर आ रही है, परन्तु यह स्पष्ट नहीं हो रहा है कि यह मूर्ति किसकी है। चित्र संख्या 114 में दिख रहे खम्भों में जहाँ सिन्दूर लगा है वहाँ हनुमान जी की मूर्ति नजर आ रही है” (पेज 152-153)

"Half of Hanuman Ji's body is visible where vermilion is applied in this pillar. Where there is 'Kamal-Dal' beneath the idol of Hanuman Ji, that of Ganesh Ji is visible. His face and stomach is visible. Next to idol of a god which is beside that of Hanuman Ji, a peacock figure is seen. Left

to the point where 'Kamal-Dal' is seen in this photograph (no.113), the idol of any god or goddess is seen but it is not getting clear as to whom this idol represents. The idol of Hanuman Ji is seen at the point where vermilion is applied in the pillar seen in the photograph no.114....."(ETC)

(iv) DW 17/1 Ramesh Chandra Tripathi

"चित्र संख्या 113 में मूर्ति नहीं नजर आ रही है।"(पृष्ठ 86)

"No idol is visible in the Photograph No. 113." (ETC)

(v) DW 3/15- Narendra Bahadur Singh

"इसी एलबम के चित्र सं० 109 लगायत 127 में भी नजर आ रहे खंभों में किसी देवी देवता के चित्र नहीं नजर आ रहे हैं।"(पृष्ठ 43)

"Figures of gods and goddesses are not visible in the pillars also seen in the photograph 109 to 127 of this very album."(ETC)

(D) In regard to coloured Photographs 116 to 121 and black-white Photographs 61 and 63 of Pillar No 5:

(i) DW 3/5- Raghunath Prasad Pandey

"चित्र संख्या 116 में दिख रहे खम्भे में जहां सिन्दूर लगा है, वहां हनुमान जी का पूरा शरीर नजर आ रहा है" (पेज 154)

"The whole body of Hanuman Ji is seen where vermilion is applied in the pillar seen in the photograph no. 116...." (ETC)

(ii) DW 3/11- Bhanu Pratap Singh

"चित्र सं० 116 में दिखायी दे रहे खम्भे में ऊपर की तरफ मूर्ति नजर नहीं आ रही है।"(पृष्ठ 51)

"No idol is visible upwards in the pillar seen in the photograph no. 116." (ETC)

(iii) DW 3/5- Raghunath Prasad Pandey

"चित्र संख्या 118 में सिंह जैसी आकृति नजर आ रही है उस सिंह से मेरा तात्पर्य नरसिंह भगवान से है।" (पेज 154-155); "चित्र

संख्या 119 में वही मूर्ति व आकृति उसी स्थान पर नज़र आ रही है, जिस स्थान पर चित्र सं० 118 में दिख रहे खम्भे में।" (पेज 155)

"A lion-like figure is visible in the photograph no. 118.....By that lion I mean Lord Narsingh. (page 154-155); The same idol and figure is seen at the same point in the pillar in the photograph no.118 as in the photograph no. 119." (ETC)

(iv) DW 17/1 Ramesh Chandra Tripathi

“इसमें एक जगह गरुड़जी का चित्र दिखाई पड़ रहा है . . . ।” (पृष्ठ 50)

"The figure of Garun Ji is visible at a place in it....." (ETC)

(v) DW 13/1-1 Mahant Dharmdas

“चित्र संख्या –118 तथा 119 में नज़र आ रहे खम्भों में कोई चित्र नज़र नहीं आ रहा है।” (पृष्ठ 157)

"No figure is visible in the pillars seen in the photographs no. 118 and 119." (ETC)

(vi) DW 13/1-1 Mahant Dharmdas

“चित्र संख्या 121 में हनुमानजी की मूर्ति नज़र आ रही है। यह मूर्ति उस स्थान पर है, जिस स्थान पर सिंदूर पुता है। जहाँ पर सिंदूर पुता हुआ है वहाँ एक जगह हनुमान जी की मूर्ति नज़र नहीं आ रही है। इन दोनों स्थानों के बीच में एक पट्टी पर रामचन्द्रजी की मूर्ति धनुष लिए हुए नज़र आ रही है।” (पृष्ठ 158)

"The idol of Hanuman Ji is visible in the photograph no. 121. This idol is at the place which is painted with vermilion. At the place where vermilion is applied, the idol of Hanuman Ji is not visible at one point. The idol of bow-wielding Ramchandra Ji is visible on the strip at the midpoint between these two places." (ETC)

(vii) DW 20/1 Shashikant Rungta

“चित्र संख्या 120 तथा 121 में गणेश जी की मूर्ति नज़र आ रही है।” (पृष्ठ 33)

"The idol of Ganesh Ji is seen in the photographs 120 and 121." (ETC)

(viii) DW 3/15 Narendra Bahadur Singh

“इसी एलबम के चित्र सं० 109 लगायत 127 में भी नजर आ रहे खंभों में किसी देवी देवता के चित्र नहीं नजर आ रहे हैं।” (पृष्ठ 43)

"Figures of any god-goddess are not visible in the pillars seen even in the photographs 109-127 of this very album." (ETC)

(E) In regard to coloured Photographs 136 to 143 and black-white Photographs 71 and 73 of Pillar No 7:

(i) DW 3/5- Raghunath Prasad Pandey

“इस चित्र संख्या—141 में हनुमान जी की खड़ी हुई पूरी मूर्ति नजर आ रही है। चित्र संख्या 142 एवं 143 में दिख रहे खंभों में जहाँ सिन्दूर लगा है, उस भाग में हनुमान जी की मूर्ति नजर आ रही है . . .” (पेज 160)

"In this photograph (no.141), the idol of Hanuman Ji in standing position is wholly seen. . . . The idol of Hanuman Ji is seen in that part in which vermilion is applied in the pillars seen in the photographs 142 and 143. . . ." (ETC)

(ii) DW 17/1- Ramesh Chandra Tripathi

“चित्र सं० 141, 142 तथा 143 में गणेश जी की मूर्तियां हैं।” (पृष्ठ 87-88)

"The idols of Ganesh Ji are seen in photographs 141, 142 and 143." (ETC)

(F) In regard to coloured Photographs 142 to 147 and black-white Photographs 74 and 76 of Pillar No 8:

(i) DW 3/5- Raghunath Prasad Pandey

“चित्र संख्या—146 एवं 147 में दिख रहे खंभों में जहाँ सिन्दूर लगा है, वहाँ हनुमान जी की मूर्ति नजर आ रही है” (पेज 160)

"The idol of Hanuman Ji is seen where vermilion is applied

in the pillars seen in the photographs 146 and 147....."(ETC)

(ii) DW 17/1- Ramesh Chandra Tripathi

“चित्र सं० 146 तथा 147 में गणेश जी की स्पष्ट मूर्तियां नज़र आ रही हैं।” (पृष्ठ 88)

"The idols of Ganesh Ji are clearly seen in the photographs 146 and 147."(ETC)

(iii) DW 13/1-1 Mahant Dharmdas

“चित्र संख्या 146 तथा 147 में गणेश जी की मूर्ति नज़र आ रही है।” (पृष्ठ 160)

"The idol of Ganesh Ji is seen in the photographs 146 and 147." (ETC)

(G) In regard to coloured Photographs 162 to 167 and black-white Photographs 89 and 91 of Pillar No 10:

(i) DW 3/5- Raghunath Prasad Pandey

“हनुमान जी की मूर्ति के दाहिनी तरफ मोर जैसी आकृति बैठी हुई अवस्था में नज़र आ रही है . . .” (पेज 160)

"To the right of the idol of Hanuman Ji is seen a peacock-like figure in the sitting position....."(ETC)

(ii) DW 20/1 Shashikant Rungta

“चित्र संख्या 166 तथा 167 में गणेश जी की सूड़ नज़र आ रही है . . .” (पृष्ठ 34)

"Ganesh Ji's trunk is visible in the photographs 166 and 167...." (ETC)

(H) In regard to coloured Photographs 176 to 181 and black-white Photographs 95 and 97 of Pillar No 11 and in regard to coloured Photographs 182 to 187 and black-white Photographs 98 and 100 of Pillar No 12 :

(i) DW 3/5- Raghunath Prasad Pandey

“चित्र सं० 176, 177 एवं 180 में दिख रहे खम्भों में मुझे हनुमान जी

की मूर्ति के अतिरिक्त मोर की आकृति नजर आ रही है . . .(पेज161-162)
"Besides the idol of Hanuman Ji , a peacock figure is seen in the pillars represented in the photographs 176, 177 and 180. . . .(ETC)

(ii) DW 13/1-1 Mahant Dharmdas

"चित्र संख्या 180 में मूर्ति नजर आ रही है, जो दुर्गा जी की है।" (पृष्ठ 161)

"In the photograph no. 180 is seen an idol, which is of Durga Ji.(ETC)

(iii) DW 3/5- Raghunath Prasad Pandey

"चित्र संख्या 181 . . . 183, . . . में दिख रहे खंभों में हनुमान जी की मूर्ति के अतिरिक्त मोर की आकृति नजर आ रही है " (पेज 162)

"Besides the idol of Hanuman Ji, a figure of peacock is visible in the pillars seen in the photograph 181,.....,183....."(ETC)

(iv) DW 12/1- Ramesh Chandra Tripathi

"चित्र सं० 181, 183 में गणेश जी की मूर्ति है।" (पृष्ठ 88)

"The idol of Ganesh Ji is there in the photograph nos. 181 and 183." (ETC)

(v) DW 3/5- Raghunath Prasad Pandey

"चित्र संख्या . . . 186 में दिख रहे खंभों में हनुमान जी की मूर्ति के अतिरिक्त मोर की आकृति नजर आ रही है " (पेज 162)

"Besides the idol of Hanuman Ji, a peacock figure is visible in the pillars seen in the photograph no....186..."(ETC)

(I) In regard to coloured Photographs 188 to 194 and black-white Photographs 102 and 103 of Pillar No 13 and in regard to coloured Photographs 195 to 200 and black-white Photographs 104 and 106 of Pillar No 14:

(i) DW 3/5- Raghunath Prasad Pandey

“चित्र संख्या 187 लगायत 190 में दिख रहे खम्भों में हनुमान जी की मूर्ति के अतिरिक्त मुझे मोर की आकृति नज़र आ रही है . . (पेज 162)

"Besides the idol of Hanuman Ji, a peacock figure is visible in the pillars seen in the photographs 187 to 190."(ETC)

(ii) DW 17/1- Ramesh Chandra Tripathi

“चित्र सं० 188, 189, 190 गणेश जी की मूर्तियां हैं, ये मूर्तियां नृत्य मुद्रा में हैं।” (पृष्ठ 88)

"The idols of Ganesh Ji are seen in the photographs 188, 189 and 190. These idols are in dancing posture." (page 88) (ETC)

(iii) DW 3/5- Raghunath Prasad Pandey

“चित्र संख्या 178, 179, 184, 191, 192, 197 एवं 198 में दिख रहे खम्भों में मुझे कोई मूर्ति नज़र नहीं आ रही है . . ”(पेज 161)

"No idol is visible to me in the pillars seen in the photographs 178, 179, 184 , 191, 192, 197 and 198 ."(ETC)

(iv) DW 13/1-1- Mahant Dharmdas

“चित्र संख्या 191 तथा 192 में शेषनाग की मूर्तियां नज़र आ रही हैं।” (पृष्ठ 163)

"The idols of Sheshnag are visible in the photographs 191 and 192." (ETC)

(v) DW 13/1-1- Mahant Dharmdas

“चित्र 195 व 196 में गणेश जी नज़र नहीं आ रहे हैं।”(पृष्ठ 165)

"Ganesh Ji is not seen in the photographs 195 and 196."(ETC)

(vi) DW 3/5- Raghunath Prasad Pandey

“चित्र सं० 199 एवं 200 में भी दिख रहे खम्भों में भी मुझे हनुमान जी की मूर्ति के अतिरिक्त मोर की आकृति नज़र आ रही है।” (पेज 162)

"Besides the idol of Hanuman Ji, a peacock figure is also visible in the pillars seen even in the photographs 199 and

200."(ETC)

(vii) DW 17/1- Ramesh Chandra Tripathi

“चित्र 199 तथा 200 में भी गणेश जी की नृत्य मुद्रा में मूर्तियां नज़र आ रही हैं।” (पृष्ठ 88)

"The idols of Ganesh Ji in dancing posture are seen in the photographs 199 and 200 as well." (ETC)

(J) In reference to contradictory statements of the witnesses in context of coloured **Photographs (47 to 50) and (51 to 54)** respectively of the so called **Kasauti pillars (1 and 2)** fixed in the first gate and black-white **Photographs 26 and 27** respectively of the said two pillars:

(i) DW 3/1 - Mahant Bhaskar Das

(चित्र संख्या 47 एवं 48) में जितनी दूर सिन्दूर लगा नजर आ रहा है उसी के अन्दर हनुमानजी की मूर्ति है।” (पेज 258); (चित्र संख्या 50 एवं 54) देख कर गवाह ने कहा कि इनमें जहाँ जहाँ सिन्दूर लगा दिख रहा है वहाँ-वहाँ मूर्ति थी।” (पेज 259)

"The idol of Hanuman Ji is within the space as far as vermilion is seen applied (in the photographs 47 and 48). (page 258); Looking at (the photographs 50 and 54) the witness stated that idol was at the places where vermilion is seen applied in the said photographs."(page 259) (ETC)

(ii) DW 3/5 Raghunath Prasad Pandey

“हनुमान जी की मूर्ति के नीचे नरसिंह भगवान का मुख नजर आ रहा है और हनुमान जी की मूर्ति के नीचे एक और मूर्ति नज़र आ रही है। नरसिंह भगवान की मुख बाये हुए मूर्ति नजर आ रही है। (पेज 157); चित्र सं० 49 में दिख रहे खंभे में ऊपर के भाग में नरसिंह भगवान के मुख की आकृति नज़र आ रही है।” (पेज 158)

"Below the idol of Hanuman Ji, the face of Lord Narsingh is visible and another idol is visible below the idol of

*Hanuman Ji. The idol of Lord Narsingh with the face towards the left, is seen.(page 157); The figure Lord Narsingh's face is seen in the upper part in the pillar appearing in the **photograph no. 49.** (page 158)." (ETC)*

(iii) DW 13/1-1 Mahant Dharmdas

“इन चित्रों में चित्र संख्या 50, 51, 52 तथा 54 में मूर्ति नज़र आ रही है। ये मूर्तियां हनुमान जी तथा गरुड़ जी की हैं। (पेज 154); चित्र संख्या— 108 में एक तरफ हनुमान जी की मूर्ति नज़र आ रही है, एक तरफ शंकर जी की मूर्ति जैसी नज़र आ रही है।” (पेज 155).

*"Idols are seen in the **photographs 50, 51, 52 and 54,** out of these photographs. These idols represent Hanuman Ji and Garun Ji. (page 54); In the **photograph no. 108,** the idol of Hanuman Ji is seen on one side and an idol looking like that of Shankar Ji is seen on the other side." (page 155) (ETC)*

(iv) DW 17/1 Ramesh Chandra Tripathi

“खम्भों में जहाँ पर लाल रंग लगा है, उसके नीचे मुझे मूर्ति नज़र आ रही है। चित्र सं० 48 में हनुमान जी की मूर्ति नज़र आ रही है। यह मूर्ति वहीं पर है, जहाँ पर रंग लगा हुआ है। चित्र 51 में यह मूर्ति हनुमान जी की हो सकती है। यह मूर्ति गणेश जी की भी हो सकती है। (पेज 84); मूर्ति रंग के अन्दर मुझे नजर आ रही है। इसमें या तो गणेशजी की मूर्ति या हनुमानजी की मूर्ति है। चित्र सं० 47 लगायत 54 में नज़र आ रहे खम्भे गर्भगृह के हैं। (पेज 85); चित्र संख्या 26 में खम्भे पर रगड़ा हुआ स्थान नज़र आ रहा है, परन्तु वहाँ किसकी मूर्ति थी या वहाँ पर क्या बना था, यह मुझे याद नहीं है। (पेज 82)

*"Below the place where red colour is applied in the pillars, idol is visible to me. The idol of Hanuman Ji is seen in the **photograph no. 48.** This idol is at the same point where colour is applied. The idol in the **Photograph No. 51** may be of Hanuman Ji or of Ganesh Ji. (page 84); The*

*idol is visible to me within the space of colour. Idol either of Ganesh Ji or of Hanuman Ji is therein. The pillars appearing in the **photographs 47 to 54** are of Garbh-Grih (sanctum sanctorum). (page 85); An abraded point of place is seen on the pillar appearing on the **photograph 26**. (I) do not remember whose idol was there or what was there." (page 82) (ETC)*

(v) DW 20/1 Shashikant Rungta

“चित्र संख्या 47 तथा 48 में हनुमत द्वार में लगे खम्भे नज़र आ रहे हैं। इन खम्भों में किसकी मूर्ति है, यह स्पष्ट नहीं है। मूर्ति उस स्थान पर है, जहाँ पर लाल रंग लगा हुआ है। यह मूर्ति कलश के ऊपर है। चित्र संख्या-49 में विवादित भवन में लगे हुए खम्भों के चित्र हैं। इन चित्रों में देवताओं के चित्र अंकित हैं, परन्तु ये पहचान में नहीं आ रहे हैं। चित्र संख्या-50 में पैर तथा हाथ नज़र आ रहा है, परन्तु चेहरा नज़र नहीं आ रहा है। इन चित्रों में चित्र संख्या 54 में ऊपर की तरफ जहाँ लाल रंग पुता हुआ है, एक चेहरा नज़र आ रहा है, परन्तु यह किसका चेहरा है, यह मुझे समझ में नहीं आ रहा है।” (पेज 31)

*"The pillars embedded in Hanumat Dwar are seen in the **photographs 47 and 48**. It is not clear whose idols are engraved in these pillars. The idol is at the point of place where red colour is applied. This idol is above Kalash. The **photograph no. 49** represent the pillars embedded in the disputed building. Images of Gods are represented in these photographs but they are beyond recognition. Legs and hands are seen in the **photograph no. 50** but face is beyond sight. Out of these pictures, at the point of place where red colour is applied towards the upper portion in the **photograph no. 54**, a face is visible but it is beyond my perception as to whose face it is." (ETC)*

3438. In respect of identification of images in the

photographs, we also notice that there are several contradictions in the statement of different witnesses about the identity of image(s) or whether it is clear or not, which is quite normal and probable since most of the witnesses are not experts in the field of iconography and, therefore, one cannot say whether they notice the same image or not. There may be some difference in identification of different people. However, the contradictions, as pointed out by Sri Jilani, may be referred to as under:

(A) In reference to contradictions in the statements of the various witnesses in context of coloured **photograph nos. 104 to 109** and the black-white **photographs 55 to 57** of the alleged touchstone pillar no.3 fixed at the gate in part 'A' of the central portion of the main structure and the coloured **photograph no. 110 to 115** and black and white **photograph no. 58 to 60 of pillar no. 4:**

(i) DW 1/2-Krishna Chandra Singh

(श्वेत एलबम कागज संख्या 201 सी.1 चित्र संख्या 55 लगायत 66, व चित्र सं० 25 लगायत 27). खम्भों में मुझे जय विजय की मूर्ति नहीं दिख रही है—(पेज 45); चित्र संख्या 58, 59 व 60 में दिख रहे खम्भों में कोई मूर्ति नजर आ रही है— (पेज 47); चित्र संख्या 57 में किसी मूर्ति का आकार दिख रहा है, इस मूर्ति का आकार इस चित्र में खम्भे के मध्य में दिख रहा है, परन्तु यह स्पष्ट नहीं है कि यह ताण्डव मुद्रा में है . . .(पेज 47); (चित्र संख्या 104 लगायत 127). नजर कमजोर होने के कारण मुझे स्पष्ट नहीं हो रहा है कि उक्त चित्रों में देवी देवताओं की मूर्तियां ताण्डव मुद्रा में व पद्मासन मुद्रा में हैं या नहीं।" (पेज 48)

"The idol of Jai Vijai is not visible to me in the pillars. (appearing in the photographs 55 to 66 and 25 to 27 of black-white album being paper no. 201C1). (page 45); Some idol is appearing in the pillars appearing in the photographs 58, 59 and 60. (page 47); The figure of an

idol is appearing in photograph no. 57 but it is not clear whether it is in 'Tandav Mudra' or 'Padmasan Mudra). The shape of this idol is seen in the midst of the pillar appearing in this photograph but it is not clear that it is in 'Tandav Posture'. (page 47); (photograph nos. 104 to 127). due to weak eye-sight it is not clear to me whether or not the idols of gods-goddesses are in 'Tandav Mudra' or 'Padmasan Mudra'." (page 48)(ETC)

(ii) DW 3/5- Raghunath Prasad Pandey

“चित्र सं० 104 में दिख रहे खम्भों में ऐसी आकृति बनी हुई दिख रही है, जैसे कोई आदमी घुटना मोड़कर बैठा है और यही स्थिति चित्र संख्या 106 में है—पृष्ठ 14 चित्र संख्या 108 में जहाँ पर सिन्दूर लगा हुआ है, वहाँ पर हनुमान जी की मूर्ति नज़र आ रही है. और हनुमान जी के नीचे वाले भाग में गणेश जी एवं देवी जी की मूर्ति नज़र आ रही है।” (पृष्ठ 147); इसमें देवी जी का जो चेहरा है, वह दुर्गाजी जैसा मालूम पड़ रहा है— (पेज 151); चित्र सं० 112 में दिख रहे खम्भे में ऊपर देवताओं की मूर्तियां हैं, परन्तु मैं यह नहीं बता पाऊंगा कि किन-किन देवताओं की मूर्तियां हैं।” (पेज 151); इस चित्र सं० 112 में मुझे हनुमान जी, गणेश जी अथवा मोर की आकृति नज़र नहीं आ रही है।. . . . इस खम्भे में जहां सिन्दूर लगा है, वहां पर हनुमान जी का आधा शरीर नज़र आ रहा है। (पेज 152); जहां कमल-दल है, वहां गणेश जी की मूर्ति नज़र आ रही है। (पेज 153); इस चित्र सं० -114 में दिख रहे खम्भे में मुझे लक्ष्मी जी की मूर्ति नज़र नहीं आ रही है, परन्तु गणेश जी की मूर्ति नज़र आ रही है। (पेज 153); चित्र सं० 109 लगायत 114 को देखकर गवाह ने कहा कि इन चित्रों में मुझे लक्ष्मीजी, रामचन्द्र जी अथवा लक्ष्मण जी की मूर्ति नज़र नहीं आ रही है।(पेज 153); चित्र सं० 55 लगायत 66 में दिख रहे खम्भों में से किसी में मुझे रामचन्द्र जी, श्री कृष्ण जी देवकन्या, रामदरबार, गणेश जी या लक्ष्मी जी की कोई मूर्ति नज़र नहीं आ रही है।” (पेज 164)

"The figure in the pillar appearing in photograph no.104 and 105, is like a person sitting with folded knees, and this

very position is in the **photograph no. 106.** (page 14); The idol of Hanuman Ji is visible at the place where vermilion is applied in the **photograph no. 108.** and in the lower part of the idol of Hanuman Ji is visible the idol of Ganesh Ji and Devi Ji. (page 147) The face of the goddess appearing herein, looks like that of Durga Ji. (page 151); There are idols of gods towards the upper portion in the pillar appearing in the **photograph no. 112,** but I would not be able to tell which gods are represented by the said idols. . . .Half of the body of Hanuman Ji is visible at the point of place where vermilion is applied in this pillar. (page 152); The idol of Ganesh Ji is visible where there is 'Kamal Dal' (lotus chain). (page 153); The idol of Laxmi Ji is not visible to me in the pillar appearing in this **photograph no. 114** but that of Ganesh Ji is visible therein. (page 153); Looking at the **photograph 108 to 109** the witness stated - The idol of Lakshmi Ji, Ramchandra Ji or Laxman Ji is not visible to me in these photographs. (page 153); The idol of Ramchandra Ji, Sri Krishna Ji, Dev Kanya, Ram Darbar, Ganesh Ji or Lakshman Ji is not visible in any of the pillars appearing in the **photographs 55 to 66."** (page 164)(ETC)

(iii) DW 3/7- Mahant Ramji Das

“चित्र सं० 113 व 114 को देखकर गवाह ने कहा कि इन चित्रों में दिख रहे खंभों पर भी मूर्तियां नजर आ रही हैं, परन्तु स्पष्ट नहीं हो रही हैं कि ये किसकी मूर्तियाँ हैं।” (पेज 170).

"Looking at the **photographs 113 and 114** the witness stated - Idols are visible on the pillars appearing in these photographs but it is not clear as to whose idols they

are."(ETC)

(iv) DW 3/11- Bhanu Pratap Singh

“चित्र सं० 113, 114 में जो खम्भे दिखायी दे रहे हैं, उनमें शिव की मूर्ति नज़र आ रही है। (पेज 50); चित्र सं० 113 एवं 114 में शिवजी की एक मूर्ति मात्र स्पष्ट दिखायी दे रही है। (पेज 50); यह मूर्तियां चित्र सं० 112 में ऊपर की तरफ दिखायी दे रहा है।” (पेज 50)

"The idol of Shiv Ji is visible in the pillars that appear in the photographs 113 and 114. (page 50); Just one idol of Shiv Ji is clearly seen in the photographs 113 and 114. (page 50); These idols appear towards the upper portion in the photograph no. 112." (page50) (ETC)

(v) DW 3/15- Narendra Bahadur Singh

“चित्र संख्या 136 लगायत 147 में नज़र आ रहे खंभों में किसी देवी या देवता के चित्र नज़र नहीं आ रहे हैं। चित्र संख्या 157 लगायत 167 में नज़र आ रहे खंभों में भी किसी देवी-देवता का चित्र नज़र नहीं आ रहा है। चित्र संख्या 176 लगायत 200 में नज़र आ रहे खंभों में भी किसी देवी या देवता का चित्र नज़र नहीं आ रहा है।” (पेज 43)

"No picture of God-Goddess is visible in the pillars appearing in the photographs 136 to 147. No picture of god goddess is visible in the pillars also appearing in the photographs 157 to 167. Picture of any god or goddess is not visible also in the pillars appearing in the photographs 176 to 200."(ETC)

(vi) DW 17/1- Ramesh Chandra Tripathi

“चित्र 104 में कलश के ऊपर वाले भाग में उस स्थान पर जहाँ लाल रंग लगा है, कोई मूर्ति नज़र आ रही हैं— (पेज 85); चित्र 105 में शंकरजी की मूर्ति है (पेज 85); यह मूर्ति हनुमानजी की है। (पेज 86); चित्र संख्या 115 में नज़र आ रहे खम्भे में लाल रंग लगा नज़र आ रहा है, वहाँ पर मूर्ति नज़र आ रही है। (पेज 86); परन्तु मूर्ति किसकी है, यह मैं नहीं बता पाऊँगा परन्तु मूर्ति में पँर-हाथ नज़र आ रहा है। (पेज 86) चित्र

सं० 105 में शंकर जी की मूर्ति है, यह मूर्ति उस स्थान पर है, जहां रंग लगा है। चित्र सं० 106 तथा 107 में कोई मूर्ति नहीं है। चित्र सं० 108 में कलश के ऊपर जिस स्थान पर रंग लगा है तथा जहाँ पर रंग नहीं लगा है, यह मूर्तियां अगल-बगल हैं, परन्तु यह मूर्तियां किनकी हैं, यह मैं नहीं बता सकता। (पेज 85)

"Some idol is visible at a point in the upper portion of the 'Kalash' in the photograph no. 104, at which point red colour is applied.(page 85); The photograph no. 105 shows the idol of Shankar Ji. (page 85); This idol is of Hanuman Ji.(page 86); An idol is seen at a point of place where red colour is applied in the pillar seen in the photograph no. 115.(page 86); But I would not be in a position to say whose idol is this but hands and legs are seen in the idol. (page 86); The idol of Shankar is shown in the photograph no. 105. This idol appears at a point where colour is applied. No idol is seen in the photograph 106 and 107. These idols are side by side at the places - where colour is applied and where colour is not applied - above Kalash in the photograph no. 108. (page 85)
"(ETC)

(vii) DW 20/1- Shashikant Rungta

"चित्र संख्या-104 लगायत 115 को दिखाए जाने पर साक्षी ने बताया कि इन चित्रों में नज़र आ रहे खम्भों में केवल चित्र संख्या 113 में गणेश जी की मूर्ति नज़र आ रही है।" (पृष्ठ 33)

"On the photographs 104 to 115 being shown the witness stated that out of the pillars seen in these photographs, idol of Ganesh Ji is visible only in the pillars shown in the photograph no. 113. "(ETC)

(viii) DW 13/1-1 Mahant Dharmdas

"चित्र 108 में एक तरफ हनुमानजी की मूर्ति, एक तरफ शंकर जी की

मूर्ति नज़र आ रही है। **चित्र संख्या 105** में भी हनुमान जी की मूर्ति नज़र आ रही है। इसमें हनुमान जी की भी मूर्ति नज़र आ रही है। राम दरबार हनुमान जी की मूर्ति के ऊपर है। (पेज 155); **चित्र संख्या 109** में हनुमान जी की आकृति तथा कलश के ऊपर शंकर जी की आकृति नज़र आ रही है। **चित्र संख्या 109** में मानव आकृति नज़र आ रही है। यह आकृति रामचन्द्र जी की है। (पेज 156); **चित्र संख्या 115** में खम्भे में जहाँ पर सिन्दूर लगा हुआ है, वहाँ पर हनुमान जी की मूर्ति नज़र आ रही है। (पेज 157)

*"In the **photograph 108**, the idol of Hanuman Ji is visible on one side and that of Shankar Ji on the other. . . . The idol of Hanuman Ji is seen in the **photograph 105** as well. . . . An idol of Hanuman Ji is also seen in it. The idol of Ram darbar is above the idol of Hanuman Ji. (page 155); In the **photograph 109** the figure of Hanuman Ji is seen, that of Shankar Ji is seen above 'Kalash'. A human figure is visible in the **photograph no. 109**. This figure is of Ram Chandra Ji. (page 156); The idol of Hanuman Ji is seen at a point of place where vermilion is applied in the pillar appearing in the **photograph no. 115**. (page 157)"(ETC)*

(ix) OPW 3/5- Dr. T. P. Verma

*"चित्र संख्या 104, 105, 109, 110, 114, 115 पर जिन स्थानों पर सिन्दूर या लाल रंग पुता हुआ है, वहाँ पर मूर्तियां हो सकती हैं, लेकिन चित्रों में यह स्पष्ट नहीं दिख रही हैं कि इनमें किस देवी-देवता अथवा यक्ष-यक्षिणी अथवा जय विजय का चित्र है। उपरोक्त में से बाकी चित्रों में दिख रहे खंभों में जहाँ रंग नहीं लगा है, वहाँ यक्ष यक्षिणी या जय-विजय का चित्र नहीं दिख रहा है। (पेज 130-131); मैं इन खम्भों के श्वेत-श्याम चित्रों में किसी देवी देवता यक्ष-यक्षिणी या जय-विजय को नहीं पहचान पा रहा हूँ **चित्र संख्या 55** में घट कलश के ऊपर की अस्पष्ट आकृति है जो किसी देवी देवता या यक्ष-यक्षिणी का चित्र हो सकता है। (पेज 145)*

*"Idols may be present at the places where vermilion or red colour has been used in **photographs no.104, 105, 109,***

*110, 114 and 115 but it is not clearly visible in the photographs as to which god-goddess or Yaksha-Yakshini or Jay-Vijay are represented therein. The picture of Yaksha-Yakshini or Jay-Vijay is not visible at the place where colour has not been used in the pillars appearing in the rest of the photographs out of the aforesaid photographs. (page 130-131); I am not able to recognise any god-goddess, Yaksha-Yakshini or Jay-Vijay in the black-white photographs of these pillars. There is a hazy figure above the 'Ghat Kalash' in **photograph no.55**, which can be of some god-goddess or Yaksha-Yakshini. (page 145)"(ETC)*

(B) In reference to contradictory statements of the various witnesses in context of coloured **photograph nos. (116 to 121)** and the black-white **photograph nos. (61-63) of the pillar (no. 5)** fixed in eastern wall in southern back of inside of the central portion (A) of the main structure and the coloured **photograph no. 122 to 127** and black and white **photograph no. 64 to 66 of pillar no. 6:**

(i) DW 3/5 Raghunath Prasad Pandey

"चित्र सं० 116 में दिख रहे खंभे में जहां सिंदूर लगा है, वहां हनुमान जी का पूरा शरीर नज़र आ रहा है और हनुमान जी की मूर्ति के नीचे दाहिनी तरफ़ किसी देवता जैसी आकृति नज़र आ रही है।" (पेज 154)

*"Full body of Hanuman Ji is visible in **Photograph No. 116** where vermilion has been applied over the pillar appearing in it and to the right and below the idol of Hanuman Ji, some figure like a God is visible." (ETC)*

"इस चित्र में दिख रहे खंभे में मुझे गणेश जी की मूर्ति स्पष्ट नहीं दिख रही है, इसलिए मैं यह नहीं कह सकता कि इसमें गणेश जी की मूर्ति है या नहीं। चित्र सं० 118 में सिंह जैसी आकृति नज़र आ रही है, बीच

के हिस्से में दाहिनी तरफ़ और बीच के हिस्से में बाई तरफ़ किसी देवी या देवता की मूर्ति नज़र आ रही है, परन्तु मैं यह नहीं बता पाऊंगा कि किन देवी या देवता की यह मूर्ति है।" (पेज 154)

*"The idol of Ganesh Ji is not clearly visible to me, in the pillar appearing in this photograph. As such I cannot tell whether it has the idol of Ganesh Ji or not." A lion like figure is visible in **Photograph No. 118**. The idol of some God or Goddess is visible towards left in the centre and towards right in the centre. However, I will not be able to tell as to of which God or Goddess is this idol."(ETC)*

“ऊपर जो मैंने सिंह के बारे में बताया है, उस सिंह से मेरा तात्पर्य नरसिंह भगवान से है।” (पेज 155)

"By the lion described above by me, I implied Lord Narsimha." (ETC)

“चित्र सं० 115 लगायत 120 में दिख रहे खंभों में मुझे सरस्वती जी या श्री कृष्ण जी की मूर्ति नज़र नहीं आ रही है।” (पेज 155)

*"The idol of Saraswati Ji or Sri Krishna Ji, is not visible to me in the pillars appearing in **Photograph Nos. 115 to 120**." (ETC)*

“चित्र सं० 121 लगायत 127 दिखाये गये, जिन्हे देखकर गवाह ने कहा कि चित्र सं० 121 में हनुमान जी की एक मूर्ति तो स्पष्ट हो रही है, जिसमें उनका पूरा शरीर नज़र आ रहा है।” (पेज 155)

*"(The witness) was shown **Photograph Nos. 121 to 127**, after looking which the witness stated that one idol of Hanuman Ji is clear in **Photograph No. 121**, in which His complete body is visible." (ETC)*

“हनुमान जी की मूर्ति के नीचे गणेश जी की मूर्ति नज़र आ रही है, जिनकी सूंड जैसी आकृति नज़र आ रही है, इसीलिए हम इसे गणेश जी की मूर्ति बता रहे हैं और मोर की आकृति के नीचे भी एक मूर्ति है, परन्तु स्पष्ट नहीं हो रही कि यह देवी की है या देवता की। फिर कहा कि इस मूर्ति में हाथ दिख रहा है, इसलिए मैं यह कह सकता हूँ कि यह दुर्गा जी की मूर्ति हो

सकती है, इसमें चेहरा स्पष्ट नहीं है, परन्तु बाकी शरीर स्पष्ट है।" (पेज 156)

"The idol of Ganesh Ji is visible below the idol of Hanuman Ji, in which a trunk like figure is visible, due to which I am terming it to be an idol of Ganesh Ji, and there is an idol below the figure of peacock as well but it is not clear whether it is of God or Goddess. Then stated that hand is visible in this idol as such I can say that it can be an idol of Durga Ji. The face is not clear in it but the remaining body is clear." (ETC)

“चित्र सं० 124 में दिख रहे खंभे में नरसिंह भगवान का मुख नज़र आ रहा है और नीचे की भी आकृति नज़र आ रही है।” (पेज 156)

*"The face of Lord Narsimha is visible in the pillar appearing in **Photograph No. 124** and the figure of the lower part is also visible." (ETC)*

“चित्र संख्या 121 लगायत 127 में मुझे किसी यक्ष, देव कन्या अथवा सरस्वती जी की मूर्ति या आकृति नज़र नहीं आ रही है।” (पेज 157)

*"No idol or figure of any Yaksha, nymph or Saraswati Ji is visible to me in **Photograph Nos. 121 to 127.**" (ETC)*

“चित्र सं० 61 में मुझे कमलदल के ऊपर मोर की नाचती हुई अवस्था की आकृति नज़र आ रही है और कोई मूर्ति नज़र नहीं आ रही है। चित्र सं० 62 में दिख रहे खंभे में मुझे कोई मूर्ति नज़र नहीं आ रही है। चित्र सं० 63 एवं 64 में दिख रहे खम्भों में मुझे नाचते हुए मोर की आकृति नज़र आ रही है और किसी देवी-देवता की मूर्ति नज़र नहीं आ रही है। चित्र सं० 65 में दिख रहे खंभे में मुझे कोई मूर्ति नज़र नहीं आ रही है। चित्र सं० 66 में दिख रहे खंभे में बीच में नाचते हुए मोर की आकृति नज़र आ रही है। चित्र सं० 66 में दिख रहे खंभे में और कोई मूर्ति मुझे नज़र नहीं आ रही है।” (पेज 163)

*"In **Photograph No. 61**, the figure of a dancing peacock is visible to me above the lotus chain and no idol is visible. No idol is visible to me in the pillar appearing in*

Photograph No. 62. *The figure of dancing peacock is visible to me in the pillars appearing in Photograph Nos. 63 and 64 and no idol of any God-Goddess is visible. No idol is visible to me in the pillar appearing in Photograph No. 65. The figure of dancing peacock is visible in mid of the pillar appearing in Photograph No. 66. No other idol is visible to me in the pillar appearing in Photograph No. 66.* (ETC)

“चित्र सं० 55 लगायत 66 में दिख रहे खंभों में से किसी में मुझे रामचन्द्र जी, श्री कृष्ण जी देवकन्या, रामदरबार, गणेश जी या लक्ष्मी जी की कोई मूर्ति नज़र आ रही है। (पेज 164)

"The idol of Ramchandra Ji, Sri Krishna Ji, Nymph, Ram Darbar, Ganesh Ji or Lakhsmi Ji is visible to me in the pillars appearing in Photograph Nos. 55 to 66." (ETC)

(ii) DW 3/11- Bhanu Pratap Singh

“चित्र सं० 117 में जहाँ पर लाल रंग लगा हुआ नज़र आ रहा है वहाँ पर कोई मूर्ति नज़र नहीं आ रही है। चित्र सं० 118 व 119 में जो खम्भे दिखायी दे रहे हैं उसमें मूर्ति दिखायी दे रही है परन्तु यह स्पष्ट नहीं है।” (पेज 50)

"No idol is visible at the place where red colour appears to have been applied over Photograph No. 117. Idol is visible in the pillars appearing in Photograph Nos. 118 and 119, but it is not clear." (ETC)

“चित्र सं० 118 तथा 119 में जो मूर्तियां नज़र आ रही हैं वह देवी तथा देवताओं की मूर्तियाँ हैं। चित्र सं० 118 तथा 119 में जो मूर्तियां नज़र आ रही हैं उनकी गणना करके मैं नहीं बता सकता कि इनकी संख्या कितनी हैं।” (पेज 51)

"The idols appearing in Photograph Nos. 118 and 119, are the idols of Gods and Goddess. I will not be able to count and tell the number of idols appearing in Photograph Nos. 118 and 119." (ETC)

“चित्र सं० 122 में लाल रंग में जहाँ पर लाल रंग लगा हुआ है वहाँ पर हनुमान जी की मूर्ति दिखायी दे रही है परन्तु अन्य किसी की मूर्ति स्पष्ट नहीं हो रही है। चित्र सं० 122 में लाल रंग वाले स्थान पर हनुमान जी की मूर्ति दिखायी दे रही है परन्तु अन्य किसी की मूर्ति स्पष्ट नहीं है।”
(पेज 52)

*"The idol of Hanuman Ji is visible at the place where red colour has been applied in **Photograph No. 122** but the idol of no other is clear. The idol of Hanuman Ji is visible at the red coloured place in **Photograph No. 122** but the idol of no other is clear."* (ETC)

(iii) DW 3/15- Narendra Bahadur Singh

“चित्र सं० 104 लगायात 108 में नजर आ रहे खंभों में किसी देवी-देवता के चित्र नजर नहीं आ रहे हैं। इसी एलबम में चित्र सं० 109 लगायात 127 में भी नजर आ रहे खंभों में किसी देवी या देवता के चित्र नजर नहीं आ रहे हैं।” (पेज 43)

*"The pictures of no God-Goddess is visible in the pillars appearing in **Photograph Nos. 104 to 108**. The pictures of no God or Goddess is visible in the pillars appearing in **Photograph Nos. 109 to 127** of this album."* (ETC)

(iv) DW 3/19- Ram Milan Singh

“चित्र सं० 116 में रामचबूतरे पर बनी हुई गुफा में जहाँ पर कौशिल्या जी की मूर्ति थी, वहाँ का चित्र है।” (पेज 51).

*"The **Photograph No. 116** contains of the pictures of the place where the idol of Kaushalya Ji existed in the cave at the Ramchabutara."* (ETC)

(v) DW 20/1- Shashikant Rungta

“चित्र 120 व 121 में गणेशजी की मूर्ति नजर आ रही है।” (पृष्ठ 33)

*"The idol of Ganesh Ji is visible in **Photographs 120 and 121**."*(ETC)

(vi) DW 17/1- Ramesh Chandra Tripathi

“चित्र सं० 118 में कसौटी का पत्थर अर्थात् खम्भा नज़र आ रहा है चित्र में खम्भे का ऊपरी भाग नज़र आ रहा है। इसमें एक जगह गरुड़ जी का चित्र दिखाई पड़ रहा है।” (पेज 50)

*"A touchstone or pillar is visible in **Photograph No. 118**. The upper part of the pillar is visible in the photograph. The picture of Garun Ji is visible in it at one place."* (ETC)

“चित्र सं० 123 में जहाँ पर लाल रंग लगा है तथा खम्भे में एक सफेद पट्टी नज़र आ रही है, उसमें मूर्ति का सर तथा हाथ-पैर नज़र आ रहा है, यह मूर्ति किसकी है समझ में नहीं आ रहा है।” (पेज 87)

*"The head and hand-leg of an idol is visible in **Photograph No. 123** at the place where red colour has been applied and a white strip is appearing in the pillar."* (ETC)

“चित्र सं० 141, 142 तथा 143 में गणेश जी की मूर्तियां हैं फिर कहा कि चित्र सं० 141 में गणेश जी की मूर्ति नहीं है बल्कि शंकर जी की नृत्य मुद्रा का चित्र है।” (पेज 87-88)

*"There are idols of Ganesh Ji in **Photograph Nos. 141, 142 and 143**. Then stated that it is not the idol of Ganesh Ji in **Photograph No. 141** and instead it is the dancing posture of Shankar Ji."* (ETC)

(vii) DW 1/2- Krishna Chandra Singh

“(चित्र संख्या 104 लगायत 127) नज़र कमजोर होने के कारण मुझे स्पष्ट नहीं हो रहा है कि उक्त चित्रों में देवी देवताओं की मूर्तियां ताण्डव मुद्रा में व पद्मासन मुद्रा में हैं या नहीं।” (पेज 48)

"(Photograph Nos. 104 to 127) in view of weak eye sight, it is not clear to me whether in the aforesaid photographs, the idols of God-Goddess are in 'Tandav Mudra' or 'Padmasan Mudra', or not." (ETC)

(viii) DW 13/1-1- Mahant Dharmdas

“चित्र सं० 119 में गरुड़ जैसा सबसे ऊपरी भाग में नज़र आ रहा है। इसके अतिरिक्त छोटी-छोटी मूर्तियां खुदी हुई हैं। चित्र सं० 121 में हनुमान जी की मूर्ति नज़र आ रही है। . . . इन दोनों स्थानों के बीच

में एक पट्टी पर रामचन्द्रजी की मूर्ति धनुष लिए हुए नजर आ रही है।
(पेज 158)

*"A Garun like figure is visible at the top most part of **Photograph No. 119**. Besides it, small idols have been engraved. The idol of Hanuman Ji is visible in **photograph 121**. In between these two places, the idol of Ramchandra Ji with a bow is visible over a strip." (ETC)*

"चित्र सं० 127 पर आकृष्ट किया, साक्षी ने इस चित्र को देखकर बताया कि इसमें सिन्दूर पुता हुआ नजर आ रहा है परन्तु किसकी मूर्ति इस खम्भे में नजर आ रही है यह स्पष्ट नहीं है।" (पेज 159)

*"(Attention of witness) was drawn to **Photograph No. 127**, after looking which the witness stated that in it vermilion appears to have been applied but it is not clear as to whose idol is visible in this pillar." (ETC)*

(C) In reference to contradictory statements of the various witnesses in context of coloured **photograph nos. (136 to 141)** and the black-white **photograph nos. (71-73)** of the **pillar (no. 7)** fixed in western wall in southern back of inside of the gate of the central portion A of the main structure and the coloured **photograph no. (142-147)** and black and white **photograph no. (74-76)** of **pillar (no. 8)**:

(i) DW 3/5- Raghunath Prasad Pandey

"चित्र संख्या 136 में दिख रहे खम्भे में बीच में सिन्दूर लगे भाग में मुझे हनुमान जी की मूर्ति नजर आ रही है और कोई मूर्ति नजर नहीं आ रही है। चित्र संख्या 137 में मुझे दो खम्भे नजर आ रहे हैं। पहले दाहिनी तरफ वाले खम्भे में मुझे कोई मूर्ति नजर नहीं आ रही है और दूसरे बायी तरफ वाले खम्भे में सिन्दूर लगे भाग में हनुमान जी की मूर्ति नजर आ रही है और कोई मूर्ति मुझे इस खम्भे में नजर नहीं आ रही है।" (पेज 159)

*"The idol of Hanuman Ji is visible to me in the vermilion applied part in mid of the pillar appearing in **Photograph***

*No. 136, and no other idol is visible. Two pillars are visible to me in **Photograph No. 137**. No idol is visible to me in the first pillar in right and the idol of Hanuman Ji is visible to me in the vermilion applied part of the second pillar in left and no other idol is visible to me in this pillar." (ETC)*

“इस चित्र संख्या 141 में हनुमान जी की खड़ी हुई पूरी मूर्ति नज़र आ रही है। इस खम्भे में और कोई मूर्तियां नज़र नहीं आ रही हैं। चित्र संख्या 142 एवं 143 में दिख रहे खम्भों में जहाँ सिन्दूर लगा है, उस भाग में हनुमान जी की मूर्ति नज़र आ रही है, बाकी पूरे खम्भे में मुझे कोई मूर्ति नज़र नहीं आ रही है। इसी प्रकार चित्र संख्या 144 एवं 145 में मुझे कोई मूर्ति नज़र नहीं आ रही है। चित्र संख्या 146 एवं 147 में दिख रहे खम्भों में जहाँ सिन्दूर लगा है, वहाँ हनुमान जी की मूर्ति नज़र आ रही है और हनुमान जी की मूर्ति के दाहिनी तरफ मोर जैसी आकृति बैठी हुई अवस्था में नज़र आ रही है।” (पेज 160)

*"The complete idol of Hanuman Ji in standing pose is visible to me in this **Photograph No. 141**. No other idols are visible to me in this pillar. The idol of Hanuman Ji is visible in the part where vermilion has been applied over the pillars appearing the **Photograph Nos. 142 and 143**. No other idol is visible to me in the remaining pillar. Similarly no idol is visible to me in **Photograph Nos. 144 and 145**. The idol of Hanuman Ji is visible at the place where vermilion has been applied over the pillars appearing in **Photograph Nos. 146 and 147**, and to right of the idol of Hanuman Ji, a peacock like figure is visible in sitting posture." (ETC)*

“चित्र सं० 74 में दिख रहे खम्भे में कमल-दल के ऊपर गणेश जी जैसी मूर्ति नज़र आ रही है। चित्र 76 में गणेश जी की मूर्ति और उनके बगल में मोर की नाचती हुई आकृति नज़र आ रही और अन्य कोई मूर्ति इस खम्भे पर मुझे नज़र नहीं आ रही है।” (पेज 164)

*"A Ganesh Ji like idol is visible above the lotus chain in the pillar appearing in **Photograph No. 74**. . . . The idol of Ganesh Ji and the figure of dancing peacock adjacent to Him, is visible in **Photograph 76**, and no other idol is visible to me in this pillar." (ETC)*

"चित्र सं० 71 लगायत 76 में मुझे रामदरबार की कोई मूर्ति नजर नहीं आ रही है।" (पेज 164)

*"No idol of Ram Darbar is visible to me in **Photograph Nos. 71 to 76**."(ETC)*

(ii) DW 3/15- Narendra Bahadur Singh

"चित्र संख्या 136 लगायत 147 में नजर आ रहे खम्भों में कोई मूर्ति नहीं नजर आ रही है— (पेज 44)

*"No idol is visible in the pillars appearing in the **Photograph Nos. 136 to 147**."(ETC)*

(iii) DW 1/2 Krishna Chandra Singh

चित्र संख्या 71 व 72 में कोई मूर्ति बनी है या नहीं, यह स्पष्ट नहीं दिख रहा है।" (पेज 47)

*"It is not clearly visible whether some idol is there or not in **Photograph Nos. 71 and 72**." (ETC)*

"चित्र संख्या 74 में खम्भे में कोई मूर्ति नहीं दिख रही है। चित्र संख्या 76 में पद्मासन मुद्रा में कोई मूर्ति दिख रही है, फिर कहा कि खड़ी हुई दिख रही है, यह मध्य भाग में दिख रही है। चित्र सं० 75 में मुझे कोई मूर्ति नहीं दिख रही है।" (पेज 48); चित्र संख्या 140 लगायत 147 तक के चित्रों में खम्भों में जो लाल रंग लगा हुआ दिख रहा है, उसे देखकर लगता है कि उस पर उभरी हुई मूर्ति अथवा निशानों को खुरच दिया गया है। चित्र संख्या 136 लगायत 139 में मुझे खम्भों पर कोई मूर्तियां नजर नहीं आ रही हैं। इसी प्रकार चित्र संख्या 144 एवं 145 में मुझे खम्भों पर कोई मूर्तियां नजर नहीं आ रही है। चित्र संख्या—146 में नीचे की तरफ बैठी हुई मूर्ति की छाया सी दिख रही है। चित्र संख्या—146 एवं 147 में खुरचा हुआ सा लग रहा है।" (पेज 49)

*"No idol is visible in the pillar appearing in **Photograph***

No. 74. Some idol in 'Padmasan Mudra' is visible in Photograph No. 76. Then stated that it is visible in standing posture, it is visible in the mid part. No idol is visible to me in the Photograph No. 75. (page 48); On looking at the red colour applied over the pillars appearing in Photograph Nos. 140 to 147, it appears that the idol or marks engraved over them have been scratched. No idols are visible to me over the pillars appearing in Photograph Nos. 136 to 139. Similarly no idols are visible to me over the pillar appearing in Photograph Nos. 144 and 145. In Photograph No. 146, something like shadow of an idol in sitting posture is visible to me in the lower part. Something like a scratch appears in Photograph Nos. 146 and 147."
(ETC)

(iv) DW 13/1-1- Mahant Dharmdas

"चित्र संख्या 146 तथा 147 में गणेश जी की मूर्ति नज़र आ रही है। यह मूर्ति उस स्थान पर नज़र आ रही है जिस स्थान पर सिंदूर लगा हुआ है। (पेज 160); स्थान – स्थान पर पर अनेक प्रकार की फूल पत्ती तथा भैरव जी की मूर्ति नज़र आ रही है। (पेज 160); चित्र सं० 127 पर आकृष्ट किया साक्षी ने इस चित्र को देखकर बताया कि इसमें सिन्दूर पुता हुआ नजर आ रहा है परन्तु किसकी मूर्ति इस खम्भे में नज़र आ रही है यह स्पष्ट नहीं है।" (पेज 159)

"The idol of Ganesh Ji is visible in Photograph Nos. 146 and 147. This idol is visible at the place where vermilion has been applied. (page 160); Different kinds of flower-leaves and the idol of Bhairav Ji are visible at different places.(page 160); (The attention of witness) was drawn towards Photograph No. 127, after looking which the witness stated that vermilion appears to be have been applied, but it is not clear as to whose idol is visible over

the pillar appearing in this photograph." (ETC)

(v) DW 17/1- Ramesh Chandra Tripathi

“चित्र सं० 141, 142 तथा 143 में गणेश जी की मूर्तियां हैं फिर कहा कि चित्र सं० 141 में गणेश जी की मूर्ति नहीं है बल्कि शंकर जी की नृत्य मुद्रा का चित्र है। (पेज 87-88); चित्र सं० 141 में गणेश जी की मूर्ति नहीं है बल्कि शंकर जी की नृत्य मुद्रा का चित्र है। चित्र सं० 146 तथा 147 में गणेश जी की स्पष्ट मूर्तियां नजर आ रही हैं। शेष चित्रों में इन तीनों में से किसी की मूर्तियां नहीं है। . . . हनुमान जी की या और किसी की मूर्ति नहीं है।” (पेज 88)

"There are idols of Ganesh Ji in Photograph Nos. 141, 142 and 143. Then stated that it is not the idol of Ganesh Ji in Photograph No. 141 and instead it is the dancing posture of Shankar Ji. (page 87-88); It is not the idol of Ganesh Ji in Photograph No. 141 and instead it is the dancing posture of Shankar Ji. The idols of Ganesh Ji are clearly visible in Photograph Nos. 146 and 147. The idols of none of them, are there in the remaining photographs. . . . There are no idols of Hanuman Ji or anybody else."(ETC)

(vi) OPW 9- Dr. T. P. Verma

“चित्र संख्या 141, 146 व 147 पर रंग पुते हुए भाग में कुछ मूर्तियों हैं जो देवी देवताओं की हो सकती हैं लेकिन मैं पहचान नहीं सकता, बाकी चित्रों में मुझे कोई मूर्ति नहीं दिखाई दे रहा है। इन सभी चित्रों में जहाँ लाल रंग नहीं है वहाँ किसी भी देवी देवता, यक्ष-यक्षिणी या जय-विजय का चित्र नहीं देख पा रहा हूँ।” (पेज 131)

"There are few idols in the coloured portion of Photograph Nos. 141, 146 and 147, which may be of Gods-Goddess but I cannot recognise them. No idol is visible to me in the remaining photographs. In all these photographs where red colour is not present, I am not able to see the pictures of

any God-Goddess, Yaksha- Yakshini or Jai-Vijai." (ETC)

“मैं इन चित्रों में दिख रहे खम्भों में भी किसी देवी-देवता, यक्ष-यक्षिणी या जय विजय की मूर्ति को नहीं पहचान पा रहा हूँ।” (पेज 145)

"I am not able to recognize the idol of any God-Goddess, Yaksha- Yakshini or Jai-Vijai over the pillars appearing in these photographs." (ETC)

(D) In reference to contradictory statements of witnesses produced in context of coloured **Photograph Nos. (157 to 161)** and the black-white **Photograph Nos. (86-88)** of the **Pillar (no. 9)** fixed in western wall in northern back of the main gate of the central portion A of the main structure and the coloured **Photograph No. (162-167)** and black and white **Photograph No. (89-91)** of **Pillar (No. 10)**:

(i) DW 3/5 Raghunath Prasad Pandey

“गवाह को इसी रंगीन एलबम के चित्र संख्या 157 लगायत 167 दिखाए गए, जिन्हें देखकर गवाह ने कहा कि चित्र संख्या-157, 160, 161, 162, 163, 166, 167 में दिख रहे खम्भों में जहाँ सिन्दूर लगा है वहाँ हनुमान जी की खड़ी हुई अवस्था में मूर्ति नज़र आ रही है।” (पेज 160)

*"The witness was shown **Photograph Nos. 157 to 167** of this coloured album, after looking which the witness stated that the idol of Hanuman Ji in standing posture is visible in **Photograph Nos. 157, 160, 161, 162, 163, 166, 167** at places where vermilion has been applied over the pillars." (ETC)*

“चित्र सं० 157, 160, 161, 162, 163 में दिख रहे खम्भों में मुझे हनुमान जी की मूर्ति के अलावा अन्य कोई मूर्ति नज़र नहीं आ रही है। इसी एलबम के चित्र संख्या 166 में हनुमान जी की मूर्ति के दाहिनी तरफ़ मोर जैसी आकृति बैठी हुई नाचने की मुद्रा में नज़र आ रही है और इसी प्रकार चित्र संख्या 167 में दिख रहे खम्भे में भी हनुमान जी की मूर्ति के

दाहिनी तरफ़ मोर की आकृति बैठी हुई अवस्था में नाचने की मुद्रा में नज़र आ रही हैं। चित्र सं० 166 एवं 167 में दिख रहे खंभे में कोई अन्य मूर्ति नजर नहीं आ रही है। चित्र सं० 158 व 159 में दिख रहे खंभों में मुझे कोई मूर्ति नजर नहीं आ रही है। चित्र सं० 164 एवं 165 में दिख रहे खंभों में भी मुझे कोई मूर्ति नजर नहीं आ रही है। इन चित्र सं० 157 लगायत 167 में दिख रहे खंभों में से किसी खंभे में मुझे विष्णुजी, देवकन्या या यक्ष की कोई मूर्ति नजर नहीं आ रही है।" (पेज 161)

"No other idol other than that of Hanuman Ji is visible to me over the pillars appearing in Photograph Nos. 157, 160, 161, 162, 163. In Photograph No. 166 of this album, a sitting peacock like figure in dancing posture is visible towards right of the idol of Hanuman Ji and similarly in the pillar appearing in Photograph No. 167, the figure of sitting peacock in dancing posture is visible towards right of the idol of Hanuman Ji. No other idol is visible over the pillars appearing in Photograph Nos. 166 and 167. No idol is visible to me over the pillars appearing in Photograph Nos. 158 and 159. No idols are visible to me over the pillars appearing in Photograph Nos. 164 and 165 as well. No idol of Vishnu Ji, Nymph or Yaksha is visible to me over any of the pillars appearing in Photograph Nos. 157 to 167." (ETC)

"चित्र संख्या 157 लगायत 167 में दिख रहे खंभों में से किसी खंभे में मुझे विष्णुजी, देव-कन्या या यक्ष की कोई मूर्ति नजर नहीं आ रही है।" (पेज 161)

"No idol of Vishnu Ji, Nymph or Yaksha is visible to me over any of the pillars appearing in Photograph Nos. 157 to 167." (ETC)

"चित्र संख्या 86 लगायत 91 में दिख रहे खंभों में मुझे ब्रह्मा जी या श्री कृष्ण जी की कोई मूर्ति नजर नहीं आ रही है।" (पेज 166)

*"No idol of Brahma Ji or Sri Krishna Ji is visible to me over the pillars appearing in **Photograph Nos. 86 to 91.**" (ETC)*

“चित्र सं० 86 में दिख रहे खंभे में कमल दल के दाहिनी तरफ कोई मूर्ति नजर आ रही है, परन्तु यह स्पष्ट नहीं है कि यह मूर्ति किसकी है।” (पेज 164)

"Some idol is visible towards right of the lotus chain over the pillar appearing in Photograph No. 86, but it is not clear as to of whom." (ETC)

“मूर्ति का सिर झुका हुआ नजर आ रहा है और मूर्ति का हाथ बैठी हुई अवस्था में नजर आ रहा है, परन्तु चेहरा नजर नहीं आ रहा है। इस एक मूर्ति के अतिरिक्त अन्य कोई मूर्ति इस चित्र में दिख रहे खंभे में नजर नहीं आ रही है। चित्र सं० 88 में दिख रहे खंभे में कमल-दल के ऊपर कोई देव-मूर्ति नजर आ रही है, जो सिर झुकाये हैं और हाथ को उठाये हैं और बैठी हुई मुद्रा की यह मूर्ति है।” (पेज 165)

*"The head of the idol appears to be bowed down and the hand of the idol is visible in resting position, but the face is not visible. Apart from this idol, no other idol is visible over the pillars appearing in this photograph. . . .Some idol is visible above the lotus chain over the pillar appearing in **Photograph No. 88**, which has its head down and hands up and this idol is in sitting posture." (ETC)*

“परन्तु मैं यह नहीं बता पाऊंगा कि यह किसकी मूर्ति है। इस मूर्ति में पूरा शरीर नजर आ रहा है, लेकिन चेहरा नजर नहीं आ रहा है।” (पेज 166)

"However, I will not be able to tell as to of whom is this idol. The complete body is visible in this idol but the face is not visible." (ETC)

“चित्र सं० 91 में दिख रहे खंभे में कमल दल के ऊपर दाहिनी तरफ मोर की नाचती हुई आकृति नजर आ रही है और उनके बीच में यानी बगल में गणेश जी जैसी मूर्ति नजर आ रही है, अन्य कोई मूर्ति इस खंभे में स्पष्ट नहीं आ रही है।” (पेज 166)

*"The figure of dancing peacock is visible towards right and above the lotus chain over the pillar appearing in **Photograph No. 91** and in between them i.e. near it, an idol resembling Ganesh Ji is visible. No other idol is clearly visible in this pillar." (ETC)*

(ii) DW 3/11 Bhanu Pratap Singh

"चित्र सं० 87 लगायत 90 में कोई मूर्ति स्पष्ट नजर नहीं आ रही है। चित्र सं० 91 में कोई मूर्ति स्पष्ट नजर नहीं आ रही है। (पेज 60); चित्र सं० 157 में जहाँ लाल रंग लगा हुआ है वहाँ हनुमान जी की मूर्ति नजर आ रही है परन्तु चित्र 158, 159 में कोई मूर्ति नजर नहीं आ रही है ये मूर्ति छोटी हैं तथा स्पष्ट नहीं हैं। चित्र सं० 157 में खम्भे में हनुमान जी की मूर्ति के अलावा अन्य किसी की मूर्ति नजर नहीं आ रही है। चित्र सं० 160, 161 व 162 में हनुमानजी की मूर्ति नजर आ रही है अन्य कोई मूर्ति स्पष्ट न होने से नजर नहीं आ रही है। चित्र सं० 163, 164, 165, 166, 167 एक ही खम्भे के चित्र हैं। चित्र सं० 163 166 तथा 167 में हनुमानजी की मूर्ति नजर आ रही है परन्तु चित्र सं० 164 तथा 165 में मूर्तियां छोटी होने के कारण स्पष्ट नहीं हैं। चित्र सं० 163, 166, 167 में हनुमान जी के अतिरिक्त अन्य मूर्तियां छोटी होने के कारण नजर नहीं आ रही हैं। (पेज 54)

*"No idol is clearly visible in the **Photographs 87 to 90**.....No idol is clearly visible in the **Photograph No. 91**. (page 60); The idol of Hanuman Ji is visible where red colour is applied in the photograph no. 157 but no idol is seen in the **Photographs 158 and 159**. These idols are small and are not clear. Except the idol of Hanuman Ji, no other idol is visible in the pillar appearing in the **Photograph 157**. The idol of Hanuman Ji is visible in the **Photographs 160, 161 and 162** and no other idol, on account of not being clear, is seen. The **Photographs 163, 164, 165, 166 and 167** are the pictures of the same pillar.*

The idol of Hanuman Ji is visible in the Photographs 163, 166 and 167 but the idols appearing in the Photographs 164 and 165 are not clear because of being small. Except the idol of Hanuman Ji, other idols being small are not visible in the Photographs 163, 166 and 167. (page 54)"(ETC)

(iii) DW 1/12 Krishna Chandra Singh

“चित्र सं० 86 में मुझे खम्भों पर कोई मूर्ति बनी हुई नहीं नजर आ रही है। (पेज 48) ; चित्र संख्या 157 लगायत 167 में मुझे कोई मूर्ति बनी हुई नजर नहीं आ रही है। (पेज 49)

"No idol is visible to me carved on the pillar appearing in the Photograph 86. (page 48) ; I do not see any idol in the Photographs 157 to 167. (page 49)"

(iv) DW 3/15 Narendra Bahadur Singh

“चित्र संख्या 157 लगायत 167 में नजर आ रहे खम्भों में भी किसी देवी-देवता का चित्र नजर नहीं आ रहा है। (पेज 44)

"The idol of any god-goddess is not visible in the pillars appearing in the Photographs 157 to 167.(page 44)"(ETC)

(v) DW 20/1 Shashikant Rungta

“चित्र संख्या 166 व 167 में गणेश जी की सूड़ नजर आ रही है, यह उसी स्थान पर नजर आ रही है जहाँ पर लाल रंग लगा हुआ है। . . .इन चित्रों में मैं किसी मूर्ति को पहचान नहीं पा रहा हूँ ।

"Ganesh Ji's trunk is visible in the Photograph 166 and 167. It is seen at that very place where red colour is applied.....I am not able to recognise any idol in these photographs.."(ETC)

(vi) DW 13/1-1 Mahant Dharmdas

“चित्र 166-167 में कोई मूर्ति स्पष्ट नहीं नजर आ रही है।” (पृष्ठ 161)

"No idol is clearly visible in Photograph 166-167." (ETC)

(vii) OPW 9- Dr. T. P. Verma

“चित्र संख्या 160 से 163, 166 व 167 में रंग लगे भाग पर कुछ मूर्तियों की आकृति दिखाई पड़ रही हैं, लेकिन उनको पहचानने में असमर्थ हूँ, अन्य खम्भों में जहाँ रंग नहीं लगा है मुझे वहाँ पर कोई मूर्ति या चित्र या आकृति नहीं दिखाई पड़ रही है— (पेज 131) ;चित्र संख्या 87 लगायत 91 दिखाए गए जिन्हें देखकर गवाह ने कहा कि मुझे इन चित्रों में से केवल चित्र संख्या 89 एवं 91 में कुछ आकृतियाँ दिखाई पड़ रही हैं, लेकिन उन्हें पहचानने में असमर्थ हूँ कि ये किसी देवी-देवता, यक्ष-यक्षिणी या जय-विजय के चित्र हैं, बाकी चित्रों में मुझे किसी देवी देवता, यक्ष-यक्षिणी या जय विजय की मूर्तियाँ नहीं दिखाई पड़ रही हैं। (पेज 145-146)

"The figures of a few idols are visible at the coloured portions of Photograph Nos. 160 to 163, 166 and 167, but (I) am unable to recognise them. I cannot see any idol or picture or figure at the points of places in other pillars where colour is no applied.(page 131); The Photographs 87 to 91 were shown to the witness following which he stated- some figures are visible to me only in the Photograph nos. 89 and 91, out of these photographs, but I am unable to recognise and tell of which gods-goddesses, Yaksha - Yakshini or Jai-Vijai they are the pictures. The idols of any god-goddess or Yaksha-Yakshini or Jai-Vijai are not visible to me in the remaining photographs.(page 145-146) "(ETC)

(E) In reference to contradictory statements of witnesses in context of the coloured album's **Photograph Nos. (176-181)** and the black-white **Photograph Nos. (95-97)** of the **Pillar (No. 11)** fixed in eastern wall in northern back of the main gate of the central portion A of the main structure and the coloured **Photograph No. (182-187)** and black and white **Photograph No. (99-100)** of **Pillar (No. 12)**:

(i) DW 3/5- Raghunath Prasad Pandey

“मुझे हनुमान जी की मूर्ति के अतिरिक्त मोर की आकृति नज़र आ रही है, अन्य कोई मूर्ति नज़र नहीं आ रही है। इसी प्रकार चित्र सं०-181, 182, 183, 185 एवं 186 में दिख रहे खंभों में हनुमान जी की मूर्ति के अतिरिक्त मोर की आकृति नज़र आ रही है, अन्य कोई मूर्ति इन चित्रों में दिख रहे खंभों में मुझे नज़र नहीं आ रही है। चित्र सं० 187 लगायत 190 में दिख रहे खंभों में हनुमान जी की मूर्ति के अतिरिक्त मझे मोर की आकृति नज़र आ रही है, अन्य कोई मूर्ति इन खंभों में मुझे नज़र नहीं आ रही है। चित्र सं० 176 लगायत 200 में मुझे गणेश जी, लक्ष्मी जी एवं दुर्गाजी की कोई मूर्ति नज़र नहीं आ रही है। (पेज 162); चित्र सं० 95 में दिख रहे खंभे में कमल दल के बीच में नाचते हुए मोर की आकृति नज़र आ रही है। चित्र सं० 96 में दिख रहे खंभे में मुझे कोई मूर्ति इस खंभे में मुझे नज़र नहीं आ रही है। चित्र सं० 97 में दिख रहे खंभे में मूर्ति तो कमल दल के ऊपर नज़र आ रही है। चित्र सं० 98 में दिख रहे खंभे में कमल दल के बाईं तरफ मोर की नाचती हुई आकृति नज़र आ रही है, कोई मूर्ति नज़र नहीं आ रही है। (पेज 166); चित्र सं० 99 में दिख रहे खंभे में मुझे कोई मूर्ति या आकृति नज़र नहीं आ रही है। चित्र सं० 100 में दिख रहे खंभे में कमल दल के ऊपर बाईं तरफ नाचते हुए मोर की आकृति नज़र आ रही है। (पेज 167); चित्र सं० 95 लगायत 106 में दिख रहे खंभों में से किसी खंभे में मुझे हनुमान जी, श्री कृष्ण या किसी देवकन्या की कोई मूर्ति नज़र नहीं आ रही है। (पेज 168)

"Besides the idol of Hanuman Ji, a peacock figure is visible to me but no other idol is visible in these pillars. Similarly, in the pillars seen in the Photographs Nos. 181, 182, 183, 185 and 186, a peacock figure, besides idol of Hanuman Ji, is seen, no other idol is visible to me in the pillars appearing in these photographs. In the pillars seen in the Photographs 187 to 190, a peacock, besides the idol of Hanuman Ji, is visible to me, no other idol is visible to me in these pillars. The idols of Ganesh Ji, Lakshmi Ji and Durga Ji are not visible in the Photographs 176 to

*200. (page 162); A figure of peacock in dancing posture is visible in the midst of Kamal Dal seen in the pillar appearing in the **Photograph No. 95**. No idol is visible to me in the pillar appearing in the **Photograph No. 96**. A peacock figure in dancing posture is seen to the left of Kamal Dal seen in the pillar appearing in the **Photograph No. 98**, but no idol is seen thereat. (page 166). No idol or figure is visible to me in the pillar seen in the **Photograph No. 99**. A peacock figure in dancing posture is visible towards the left, above Kamal Dal seen in the pillar appearing in the **Photograph No. 100**. (page 167). No idol of Hanuman Ji, Sri Krishna or any Dev Kanya is visible in any of the pillars appearing in the **Photographs 95 to 106**. (page 168)." (ETC)*

(ii) DW 3/11- Bhanu Pratap Singh

"चित्र सं० 176 177 तथा 180 में हनुमानजी की मूर्ति नज़र आ रही है इसके अलावा अन्य कोई मूर्ति छोटी होने के कारण दिखायी नहीं दे रही है। हनुमानजी की मूर्ति उस स्थान पर है जहाँ पर लाल रंग लगा हुआ है। चित्र सं० 181 लगायत 186 एक ही खम्भे के चित्र हैं। यह खम्भा उत्तरी दर में लगा हुआ था। इन खम्भों में इन चित्रों में 181 व 186 में हनुमान जी की मूर्ति नजर आरही है यह मूर्ति लाल रंग वाले स्थान पर नजर आ रही है हनुमान जी के अतिरिक्त किसी अन्य की मूर्ति छोटी-छोटी होने के कारण नजर नहीं आ रही है। (पेज 55); चित्र सं० 91 में कोई मूर्ति स्पष्ट नजर नहीं आ रही है। चारों चित्र एक ही खंभे के जान पड़ते हैं। उन चारों चित्रों में कोई मूर्ति स्पष्ट नहीं नजर आ रही है। इसी एलबम के चित्र सं० 99 लगायत 102 में नजर आ रहे खंभे एक ही हैं। (पेज 60-61)

*"The idol of Hanuman Ji is visible in the **Photograph Nos. 176, 177 and 180**. Besides this one no other idol is visible on account of being small. Idol of Hanuman Ji is at a point*

*of place where red colour is used. The **Photographs 181 to 186** are of the same pillars. This pillar was fixed in the northern gate. Idol of Hanuman Ji is visible in these **Photographs (Nos. 181 and 186)** representing these pillars. This idol is seen at the red coloured point of place. Except the idol of Hanuman Ji, no other idol on account of being small is visible. (page 55). No idol is clearly visible in the **Photograph No. 91**. All the four pictures appear to be of the same pillar. No idol is clearly seen in those four pictures. The pillars seen in the **Photographs 99 to 102** of this very album are the same. (page 60-61)
"(ETC)*

(iii) DW 3/15- Narendra Bahadur Singh

"चित्र संख्या -176 लगायत 200 में नजर आ रहे खंभों में भी किसी देवी या देवता का चित्र नजर नहीं आ रहा है।"(पेज 44)

*"No idol of god-goddess is visible also in the pillars appearing in the **Photographs 176 to 200**."(ETC)*

(iv) DW 1/12- Krishna Chandra Singh

"चित्र संख्या 176 से 185 में किसी देवी देवता की मूर्ति पद्मासन या ताण्डव मुद्रा में नहीं दिखाई दे रही है— (पेज 49)

*"Idol of any god-goddess in 'Padmasan' or Tandava' posture is not seen in the **Photographs 176 to 185**." (ETC)*

(v) DW 20/1- Shashikant Rungta

"चित्र सं० 176 लगायत 200 की तरफ विद्वान जिरहकर्ता अधिवक्ता ने ध्यान आकृष्ट कराया, जिन्हे देखकर साक्षी ने बताया कि इन चित्रों में मैं किसी मूर्ति को पहचान नहीं पा रहा हूँ। (पेज 34)

*"The learned cross-examining counsel drew the attention of the witness to the **Photographs 176 to 200**, looking at which he stated – I am not being able to recognise any idol seen in these photographs."(ETC)*

(vi) DW 17/1- Ramesh Chandra Tripathi

“181, 183 में गणेश जी की मूर्ति है, बाकी किसी भी चित्र में शंकरजी, हनुमानजी या गणेशजी की मूर्ति है या नहीं यह मैं नहीं पहचान पा रहा हूँ। चित्र सं० 95 में खम्भे में दाहिनी तरफ़ कोई चित्र है, परन्तु यह किसका चित्र है, यह मैं नहीं बता पाऊँगा। (पेज 83)

"There is an idol of Ganesh Ji in (the Photographs) 181 and 183. I am not able to recognise whether the idol of Shankar Ji, Hanuman Ji or Ganesh Ji is seen or not in any of the remaining photographs. There is some picture towards the right in the pillar appearing in the Photograph No. 95 but I would not be in a position to tell as to whose picture it is."(ETC)

(vii) DW 13/1- 1- Mahant Dharmdas

“चित्र संख्या 180 में मूर्ति नजर आ रही है, जो दुर्गाजी की है। (पेज 161); चित्र सं० 184 लगायत 186 में कोई मूर्ति नजर नहीं आ रही है। (पेज 162)

"In Photograph No.180 an idol is seen which is of Durga Ji. (page 161); No idol is seen in the Photograph 184 to 186.(page 162)"(ETC)

(viii) OPW 1- Mahant Ramchandra Das

“इन खम्भों के श्वेत श्याम (चि० 97 से 100) में जौ की बाली या पुष्प, गेहूँ की बाली, गमला व एक मूर्ति होना बताया है (पृष्ठ 146-147)।

"Barley spike or flower, wheat spike, flower pot and one idol are stated to be in black-white(Photographs 97 to 100) of these pillars."(ETC)

(ix) OPW 9- Dr. T. P. Verma

“चित्र संख्या 176, 177, 180, 181, 183 पर रंग लगे भागों में देवी देवताओं की आकृतियाँ दिखाई पड़ रही हैं किन्तु मैं उन्हें पहचान नहीं पा रहा हूँ, शेष में तथा उपरोक्त खम्भों में लाल रंग लगे भाग के अलावा अन्य भागों में किसी देवी-देवता, यक्ष-यक्षिणी अथवा जय-विजय का चित्र मुझे

नहीं दिखाई पड़ रहा है— (पेज 131); **चित्र संख्या 97, 101 और 103** में कुछ अस्पष्ट सी मूर्तियां दिखाई पड़ रही हैं, लेकिन मैं इन्हें भी पहचानने में असमर्थ हूँ कि ये किसी देवी-देवता, यक्ष-यक्षिणी या जय – विजय की मूर्ति है, बाकी चित्रों में मुझे किसी देवी देवता, यक्ष-यक्षिणी या जय-विजय की मूर्तियां नहीं दिखाई पड़ रही हैं। (पेज 146)

*"The figures of gods-goddesses are visible in the coloured portions of the **Photographs 176, 177, 180, 181 and 183** but I am not being able to recognise them. I cannot see the picture of any god-goddess, Yaksha-Yakshini, or Jay-Vijay in the remaining (photographs) and in the parts other than the red coloured portion in the aforesaid pillars. (page 131); Somewhat hazy images are seen in the **Photographs 97, 101 and 103** but I am unable to recognise them as well and to tell whether they are idols of any god-goddess, Yaksha-Yakshini. Idols of any god-goddesses or Yaksha-Yakshini or Jay-Vijay are visible to me in the remaining photographs."(ETC)*

(F) In reference to contradictions found in the statements made by the witnesses in context of coloured **Photographs (188-194)** - of the coloured album - representing the Pillar No. 13 of the main gate in the middle part 'A' of the main building and the **Photographs 101-103** - of the black-white album - representing this very pillar and the **Photographs 195-200** - of the coloured album - representing the **Pillar No. 14** and the **Photographs 104-106** - of black-white album - representing this very pillar:

(i) DW 3/5 Raghunath Prasad Pandey

“चित्र सं० 176, 177, 180, 181, 183, 185, 186, 187, 188, 189, 190, 193, 194, 195, 196, 199 एवं 200 में दिख रहे खम्भों

में जहां सिंदूर (लाल रंग) लगा है वहां में हनुमान जी और मोर की आकृति के अतिरिक्त किसी की मूर्ति नजर नहीं आ रही है— (पृष्ठ 161); **चित्र सं० 176 लगायत 200** में मुझे गणेश जी लक्ष्मी जी एवं दुर्गा जी की कोई मूर्ति नजर नहीं आ रही है। **चित्र सं० 187 लगायत 190** में दिख रहे खंभों में हनुमान जी की मूर्ति के अतिरिक्त मुझे मोर की आकृति नजर आ रही है, अन्य कोई मूर्ति इन खंभों में मुझे नजर नहीं आ रही है। **चित्र सं० 193 लगायत 196** में भी दिख रहे खंभों में मुझे हनुमान जी की मूर्ति के अलावा मोर की आकृति नजर आ रही है, अन्य कोई मूर्ति मुझे इन खंभों में नजर नहीं आ रही है। **चित्र संख्या 199 एवं 200** में भी दिख रहे खंभों में भी मुझे हनुमान जी की मूर्ति के अतिरिक्त मोर की आकृति नजर आ रही है। **चित्र सं० 176 लगायत 200** में मुझे गणेश जी, लक्ष्मी जी एवं दुर्गा जी की कोई मूर्ति नजर नहीं आ रही है। (पेज 162); **चित्र सं० 95 लगायत 106** में दिख रहे खंभों में से किसी खंभे में मुझे हनुमान जी, श्री कृष्ण या किसी देवकन्या की कोई मूर्ति नजर नहीं आ रही है। **चित्र सं० 106** में मुझे कोई देवता जैसी मूर्ति नजर आ रही है, परन्तु मैं स्पष्ट नहीं बता पाऊंगा कि यह मूर्ति किसकी है। (पेज 168)

*"In the pillars appearing in the **Photographs 176, 177, 180, 181, 183, 185, 186, 187, 188, 189, 190, 193, 194, 195, 196, 199 and 200**, no idol is seen except the image of Hanuman Ji and peacock at the point or place where vermilion is applied. (page 161); No idol of Ganesh Ji, Lakshmi Ji and Durga Ji is not seen in the **Photographs 176 to 200** Besides the idol of Hanuman Ji a peacock figure is visible to me in the pillars appearing in the **Photographs 187 to 190**; no other idol is visible to me in these pillars. In the pillars appearing in the **Photographs 193 to 196** as well, a peacock figure besides the idol of Hanuman Ji is visible to me; No other idol is visible to me in these pillars. In the pillars appearing in the **Photographs 199 and 200** as well, the peacock figure*

besides Hanuman Ji idol is visible to me. Any idol of Ganesh Ji, Lakshmi Ji and Durga Ji is not visible to me in the Photographs 176 to 200. (page 162); Any idol of Hanuman Ji, Sri Krishna or any Dev Kanya is not seen in any pillar, out of the pillars appearing in the Photographs 95 to 106. An idol looking like that of some god is visible in the Photograph no. 106 but I am not in position to clearly say whose idol it is." (page 168) (ETC)

(ii) DW 3/11- Bhanu Pratap Singh

"चित्र सं० 188, 189 तथा 190 में हनुमानजी की मूर्ति उस स्थान पर नज़र नहीं आ रही है, जहां पर लाल रंग लगा हुआ है। (पेज 55); चित्र सं० 193, 194, 195 तथा 196 में हनुमानजी की मूर्ति लाल रंग वाले स्थान पर दिखायी दे रही है। चित्र सं० 199 व 200 में जिस स्थान पर लाल रंग लगा हुआ है, उस स्थान हनुमान जी की मूर्ति नज़र आ रही है और कोई मूर्ति छोटी होने के कारण नज़र नहीं आ रही है। (पेज 56); चारों चित्रों में कोई मूर्ति स्पष्ट नज़र नहीं आ रही है। (पेज 61); चित्र सं० 103 तथा 104 में नज़र आ रहे खम्भे, एक ही खम्भे के चित्र है। इसी प्रकार चित्र सं० 105 तथा 106 में नज़र आ रहे खम्भे के चित्र एक ही खम्भे के चित्र है। चित्र सं० 103 लगायत 106 में नज़र आ रहे खम्भों में मात्र चित्र सं० 103 में मूर्तियां नज़र आ रही हैं, परन्तु वे स्पष्ट नहीं है। चित्र सं० 104 105 तथा 106 में कोई मूर्ति नजर नहीं आ रही है। मुझे साक्ष्य के दौरान रंगीन तथा श्याम श्वेत एलबम के जितने भी चित्र दिखाये गये, उनमें से किसी भी चित्र में मुझे ब्रह्मा तथा विष्णु की कोई भी मूर्ति, जो स्पष्ट हो, दिखाई नहीं पड़ी। इन चित्रों में श्रीकृष्ण जी या लक्ष्मी जी की कोई भी मूर्ति किसी भी चित्र में मुझे स्पष्ट दिखाई नहीं दी। (पेज 63)

"In the Photographs 188, 189, and 190, the idol of Hanuman Ji is not visible at a place where red colour is applied. (page 55); Idol of Hanuman Ji is seen at the red coloured point of place in the Photographs 193, 194, 195 and 196. The idol of Hanuman Ji is seen at red colour

point of place in the Photographs 199 and 200; no other idol, on account of being small, is seen. (page 56); No idol is seen in the four photographs. (page 61); The pillars appearing in the Photographs 103 and 104 are the pictures of the same pillar. Similarly, pictures of the pillar seen in the Photographs 105 and 106 are the pictures of the same pillar. Out of the pillars appearing in the Photographs 103 to 106, idols are visible only in the Photograph no.103, but they are not clear. No idol is visible in the Photographs 104, 105 and 106. In none of the photographs of black-white album that were shown to me in course of adducing evidence, I saw any idol of Brahma and Vishnu, which may be clear enough. I did not clearly see any idol of Sri Krishna Ji or Lakshmi Ji in any of these photographs. (page 63)" (ETC)

(iii) DW 3/15-Narendra Bahadur Singh

"चित्र संख्या-176 लगायत 200 में नज़र आ रहे खंभों में भी किसी देवी या देवता का चित्र नज़र नहीं आ रहा है। (पेज 44)

"Image of any god or goddess is also not visible in the pillars appearing in the Photographs 176 to 200."(ETC)

(iv) DW1/12 Krishna Chandra Singh

"चित्र संख्या-188 लगायत 200 में मुझे कोई मूर्ति पद्मासन अथवा ताण्डव मुद्रा में नहीं दिख रही है।" (पेज 49)

"No image in 'Padmasan' or 'Tandav' posture is visible to me in the Photographs 188 to 200." (page 49)

(v) DW 17/1 Ramesh Chandra Tripathi

"चित्र सं० 102 में खम्भे के बीच वाले भाग में सफेद भाग में कोई मूर्ति है, परन्तु यह किसकी मूर्ति है, मैं नहीं बता पाऊँगा। (पेज 83); चित्र सं० 104 में खम्भे के बीच में जो सफेद भाग नज़र आ रहा है, उसमें किसी का चित्र है, परन्तु यह किसका चित्र है, यह मैं नहीं बता पाऊँगा। चित्र सं०

105 में खम्भे के बीच में चित्र जैसा कुछ नज़र आ रहा है, परन्तु यह किसका चित्र है, मैं नहीं बता पाऊंगा। चित्र सं० 106 में कोई चित्र नज़र आ रहा है, परन्तु यह किसका चित्र है, मैं नहीं बता पाऊंगा। (पेज 84)

*"In the white part of the middle portion of the pillar appearing in the **Photograph No. 102**, there is some idol but I am not in a position to tell whose picture it is.(page 83); In the midst of the pillar appearing in the **Photograph No. 105**, something, appearing as a figure, is visible but I am not in a position to tell whose figure it is. In the **Photograph No. 106**, some figure is seen but I am not in position to tell whose figure it is.(page 84)" (ETC)*

(vi) DW 13/1 Mahant Dharmdas

“इन खम्भों के चित्र संख्या 191–192 में शेषनाग की मूर्तियां नज़र आ रही हैं। चित्र 187 से 190 में उस स्थान पर जहां पर सिन्दूर पुता हुआ है, हनुमान जी की मूर्ति नज़र आ रही है। . . . चित्र संख्या 193 लगायत 196 में उस स्थान पर जहाँ पर सिन्दूर पुता है, हनुमान जी की मूर्ति नज़र आ रही है। . . . चित्र 197 तथा 198 में कोई मूर्ति नज़र नहीं आ रही है। चित्र संख्या 199 व 200 में गणेश जी की मूर्ति नज़र आ रही है। चित्र संख्या 195 व 196 में जहां पर सिन्दूर पुता हुआ है, वह खम्भे का निचला भाग है। चित्र संख्या 195 तथा 196 में हनुमान जी की मूर्ति नज़र आ रही है। (पेज 165); चित्र संख्या 195, 196, 199 तथा 200 एक ही खम्भे के एक ही स्थान के चित्र हैं, जो सही है। एक ही स्थान का चित्र अलग-अलग पोर्शन से लिया गया है। (पेज 166); चित्र संख्या 106 में कसौटी का खम्भा नज़र आ रहा है, जिस पर घड़ा बना हुआ है। घड़े के ऊपर ढक्कन जैसी चीज़ नज़र आ रही है, जिसके ऊपर फूल पत्ती बनी हुई है। इसके ऊपर हनुमान जी की मूर्ति बनी हुई है। (पेज 93)

*"Idols of Sheshnag are visible in the **Photographs 191-192** of these pillars. Idol of Hanuman Ji is visible at the point of place where vermilion is applied in the **Photographs 187 to 190**. . . . Idol of Hanuman Ji is visible at the point of*

place where vermilion is applied in the Photographs 193 to 196. No idol is visible in the Photographs 197 and 198. The idol of Ganesha Ji is visible in the Photographs 199 and 200. The point or place where vermilion is applied, is the lower part of the pillar. Hanuman Ji's idol is visible in the Photographs 195 and 196.(page 165); The Photographs 195, 196, 199 and 200 are the pictures of the same pillar - of the same place, which is a correct fact. Photographs of the same place have been taken from different portions. (page 166); The Photograph No. 106 shows a Kasauti pillar on which Ghara(water pot) is carved. Above Gharaa lid-like thing is visible on which flower-leaves are carved. Hanuman Ji's idol is carved on it." (page 93) (ETC)

(vii) DW 20/1 -Shashikant Rungta

"इन चित्रों में मैं किसी मूर्ति को पहचान नहीं पा रहा हूँ।" (पृष्ठ -34); चित्र संख्या 104 में हनुमान जी की मूर्ति नज़र आ रही है। (पृष्ठ 31)

"I am not in a position to recognise any idol represented in these photographs (page 34). Hanuman Ji's idol is visible in the Photograph No. 104. (page 31)"(ETC)

(viii) OPW 9 -Dr. T.P. Verma

"चित्र संख्या 188 व 193 से 195, 189 और 200 पर रंग लगे भागों में देवी देवताओं की आकृतियाँ दिखाई पड़ रही हैं किन्तु मैं उन्हें पहचान नहीं पा रहा हूँ शेष में तथा उपरोक्त खंभों में लाल रंग लगे भाग के अलावा अन्य भागों में किसी देवी - देवता यक्ष - यक्षिणी अथवा जय विजय का चित्र मुझे नहीं दिखाई पड़ रहे हैं। (पेज 131); इन श्वेत-श्याम चित्रों में चित्र संख्या 97, 101 और 103 में ही कुछ अस्पष्ट सी मूर्तियाँ दिखाई पड़ रही हैं, लेकिन मैं इन्हे भी पहचानने में असमर्थ हूँ कि ये किसी देवी-देवता, यक्ष-यक्षिणी या जय-विजय की मूर्ति है, बाकी चित्रों में मुझे किसी देवी देवता, यक्ष-यक्षिणी या जय-विजय की मूर्तियाँ नहीं दिखाई

पड़ रही हैं। (पेज 146)

*"Images of god and goddesses are seen in the coloured portions of the **Photographs 188, 193-195,189 and 200** but I am not in a position to recognize them. Image of any god -goddesses, Yaksh -Yakshini or Jay -Vijay is not visible to me in the rest of the pillars and in any part other than red coloured ones in the aforesaid pillars.(page 131); Out of these black -white, somewhat hazy images are seen only in the **Photographs 97,101 and 103** but I am unable to recognize them too and to tell as to which god-goddess, Yaksha-Yakshini or Jay-Vijay they represent. Idols of any god -goddess or Yaksha -Yakshini or Jay -Vijay are not visible to me in the rest of the photographs."*(ETC)

3439. PW24 Prof. D. Mandal at page 60-61 of his cross examination while confirming the existence of images on black stone pillars said that since he is not an expert of Art and Architecture or Iconography, therefore, he is not able to identify as to whose image that was. He stated as under:

“चूँकि मेरे अनुसंधान का मुद्दा यह नहीं था कि ये पत्थर मस्जिद के अंग हो सकते हैं इसलिए इस कारण मैंने यह अनुसंधान नहीं किया। और इसी कारण से मैंने यह भी अनुसंधान नहीं किया कि ये मन्दिर के हो सकते हैं। यह ठीक है कि ये सभी पत्थर जो पेपर संख्या – 118सी0-1/41 व 45 पर दिखाए गए हैं, ये पूर्ण पत्थर नहीं हैं बल्कि उनका एक खण्ड हैं। मैं इस बात से सहमत हूँ कि इन दोनों पेपर्स में दिखाए गए पत्थर प्रत्यक्षतः किसी भवन में प्रयोग किए गए पत्थर के अंश हैं। यह ठीक है कि पेपर संख्या-118सी0-1/44 और 46 में दिखाए हुए पत्थरों पर मानव आकृतियां बनी हुयी हैं। चूँकि आर्ट और आर्किटेक्चर का विद्यार्थी नहीं हूँ इसलिए यह नहीं बता पाऊँगा कि ये हिन्दू देवी देवताओं की मूर्तियां हैं या नहीं। स्वयं कहा कि यह आइकनोग्राफी का विषय

है जो कि बहुत ही स्पेशलाइज्ड है।” (पेज 60–61)

“Since it was not the issue of my research to see whether these stones can be a part of the Mosque, I did not make any research on them, and for this very reason I did not make any research to see whether they may be of the temple. It is true that all these stones, as shown on paper no. 118C-1/41&45, are not full stones; instead, they are stone parts. I agree that the stones shown in these two papers are apparently pieces of stones used in any building. It is true that human figures are engraved on the stones shown in paper nos. 118C-1/44&46. Since I am not a scholar of art and architecture, I am not in position to tell whether they are idols of Hindu divinities or not. (Himself stated) It is a subject of iconography, which is a very specialized branch of knowledge.” (E.T.C.)

3440. With regard to the study of symbols found on a deity discovered **PW 16 Prof Suraj Bhan** has stated at page 410 as under:

“आर्कियोलॉजी में मूर्तियों के पाये जाने के आधार पर इन चिन्हों का अध्ययन किया जाता है। परन्तु इन पर विशेष रिसर्च करने वाले विद्वानों ने इनके धार्मिक ग्रन्थों का अध्ययन भी किया है।” (पेज 409–410)

“In archaeology these symbols are studied on basis of discovery of deities. However, the scholars carrying out special research on them, have also studied their religious treatises.” (E.T.C.)

“मूर्तियों की बनावट व उसके लक्षण तथा चिन्ह आदि की आइकनोग्राफिस्ट ही स्टडी करते हैं।” (पेज 410)

“The style of deities, their marks and symbols etc. are studied by Iconographer.” (E.T.C.)

3441. **PW 15 Sushil Kumar Srivastava** admitted in his

cross examination regarding the images found at the disputed site that they were Non-Islamic. At page 21 he stated as under:

“यह बात भी मैंने अपनी पुस्तक में लिखी है कि यह सब चित्र जो विवादित स्थल पर थे, वह गैर स्लामिक थे।” (पेज 21)

"This fact which I have written in my book that these images which were on disputed site, all were Non-Islamic"
(E.T.C.)

3442. PW 18 Suvira Jaiswal at pages 40-41 has said as under:

“गवाह का ध्यान पी.डब्लू.76 श्री सूरजभान के बयान की ओर पृष्ठ संख्या-69 के चित्र संख्या-55 में दिए गए वर्णन की ओर दिलाया जिसमें उन्होंने यह कहा है कि उक्त खंभे की आयु नवीं सदी से लेकर 11वीं 12 वी सदी के बीच की होगी। ऐसा उन्होंने कहा है तो मैं उनके मत को मानूंगी। यदि उन्होंने कहा है कि खंभे पर घटपल्लव बना है और ऊपर एक व्यक्ति का चित्र बना है तो सही होगा।” (पेज 40-41)

“Attention of the witness was drawn towards page 69 of the statement of PW 76 Surajbhan, containing description pertaining to photograph no. 55, wherein he has stated that the age of the aforesaid pillar would have been between 9th century to 11-12th century. If he has said so, I will agree with him. If he has said that on the pillar: pitcher-leaf (Ghatpallav) and thereupon a picture of a man, were drawn, it might be true. ” (E.T.C.)

3443. In view of the above, we have no hesitation in observing that the pillars fixed inside and outside the building in dispute contain some human images and at some places there appears to be some images of Hindu Gods and Goddesses.

3444. Now, the question is, what would be its impact on the building in question regarding its character as mosque under

the tenets of Islam.

3445. So far as the tenets of Islam are concerned, it is very clear that the human or animal images which is at a place where namaz is to be offered cannot be allowed. The sole purpose of a mosque in Islam is to offer public namaz and nothing else. Though we are strengthened on this aspect from the Shariyat text, the relevant part whereof we have already quoted, but we may point out that almost all the five witnesses of plaintiffs (Suit-4) whom they claimed to be the Experts in Islamic religious matters have unhesitatingly said that nobody will allow any image of human being or animal in a mosque. Therefore, under the tenets of Islam, if a place has a permanent structure, which contains human or animal images, it would not be a fit place for offering namaz since namaz if any offered at such a place, shall stand waste (the witnesses say that "मकरुह हो जाएगी").

3446. The above position in law, however, whether would make any impact on the factual situation in this matter is the most important aspect to be seen. As we have already discussed above, despite existence of all these pillars in the building in dispute, the Muslim people not only believed and treated the building in dispute to be a Mosque but as and when visited and offered public Namaz thereat. This has continued at least for more than 80 years till the time when order of attachment was passed on 29th December 1949. Once the people, who are believer of a particular practice and worship, according to its tenets have believed in the status of a particular thing in a particular manner, is it open to a third party to contend after a long time that the thing was not in accordance with the tenets of religion and whatever worship etc. they have offered is of no

use. This situation, it appears, has not come across in other cases, particularly a situation where two communities are using the same premises for their religious prayers. In these facts and circumstances, peculiar and particular to this case, we are of the view that the second part of this question becomes redundant and, hence, need not be answered.

3447. We, therefore, hold that despite existence of certain images on some of the pillars, inside and outside the building in question of Hindu Gods and Goddesses, the character of the building in dispute as a matter of fact would remain unaffected. **Issue 19(f) (Suit-4) is answered accordingly, i.e., in favour of the plaintiffs (Suit-4).**

3448. Now remains **Issue No. 1-B (c) (Suit-4)**. We have already held that the building in dispute, i.e., disputed structure in the inner courtyard had been continuously used by Hindus for worship pursuant to their belief that the site in dispute is the birthplace of Lord Rama and in this regard, we find recorded evidence at least from the second half of 18th century but regarding the user of the aforesaid premises by Muslims, no evidence has been placed to show anything till at least 1860. After considering the evidence and whatever material the learned counsel for the parties could place before us, we have recorded a finding that both the parties used the disputed structure and the premises within the inner courtyard despite the partition wall raised by the Britishers sometimes in 1856-57. The discussion and finding, which we have already recorded while discussing the issues relating to limitation and possession/adverse possession, in view thereof, we find no hesitation in holding that the members of both the communities i.e. Hindu and Muslim had been visiting the building in dispute

in the inner courtyard. Regarding the visit of Hindus, the evidence which we have, commences from the second half of 18th century i.e. from the Tieffnthaller travels account and so far as the muslims are concerned, such evidence is available since 1860, the issue is answered accordingly. Since both the parties have been using the building in dispute in accordance with their system of worship, belief and faith, both continuing for last more than eighty years before filing of the first suit i.e. Suit-1 and therefore, it can be said that the premises within the inner courtyard and the building in dispute were not restricted for user of any one community. The issue in question is answered accordingly.

(J) ISSUES RELATING TO SITE AS BIRTHPLACE, EXISTENCE OF TEMPLE, WORSHIP ON THE DISPUTED SITE AS BIRTHPLACE OF LORD RAMA SINCE TIME IMMEMORIAL; DEMOLITION OF SOME STRUCTURE; IN PARTICULAR A HINDU TEMPLE :

3449. Issues No.1 and 2 (Suit-1); 1 (Suit-3); 1 (b), 11, 13, 14, 19(b), and 27 (Suit 4); 14, 15, 22 and 24 (Suit 5) are under the above category.

3450. Issues No.1 and 2 (suit-1) reads as under :

Issue No.1 “*Is the property in suit the site of Janam Bhumi of Sri Ram Chandra Ji?*”

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

3451. The defendants no.1 to 5 (Suit-1) have pleaded that property in suit is not the site of Janam Bhumi of Sri Ram Chandra Ji but is a mosque constructed by Babar in 1528 A.D. known as “Babri Mosque”. Paras 2, 22 and 27 of their written statement, read as under:

“दफा 2. कुल मजमून दफा हाजा से इन्कार है जिस जायदाद का दावा किया जाता है वह जनम भूमि नहीं है बल्कि शहन्साह हिन्द बाबर शाह की तामीर करदा मस्जिद है।”

“*Para 2. That the contents of paragraph under reply are denied. The property regarding which the suit has been filed, is not Janmbhumi and instead is a mosque built by Babar, emperor of India.*” (E.T.C.)

“दफा 22. यह कि मुद्दालेह मुजीब को इल्म नहीं है जायदाद मुतदाविया यानी मसजिद बाबरी के अंदर कोई मूर्ति है। ता0 16.12.1949 ई0 तक उसमें नमाज हुई। उस वक्त तक उसमें कोई मूर्ति न थी। लेकिन अगर कोई मूर्ति मसजिद के अंदर किसी शख्स ने चोरी व बदनीयती से बाद ता0 मजकूर रख दिया है तो उससे मसजिद की सरीही बेहुरमती वद नापाकी मुतसव्वर है और फेल मजकूर कानूनन मुजरिमाना है। और अगर मुद्दई या कोई दूसरा शख्स मसजिद मजकूर से मूर्ति पूजने या दर्शन करने की गरज से मसजिद के अंदर दाखिल होना चाहता है तो वह जुर्म का मुतीकेब है। चुनान्चे ऐसी हालत में अदालत दीवानी दादरसी मतलूबा देने से कासिर है। बहरहाल उससे मुद्दईया किसी गैर मुसलिम को मसजिद मजकूर से कोई हक नहीं पैदा हो सकता।”

“*Para 22. That it is not in knowledge of the answering defendant that there is any idol inside the disputed property i.e. Babri Masjid. Namaz was offered over there till 16.12.1949 AD and till that time there was no idol over there. However, if any person has secretly and malafidely placed any idol inside the mosque after the said date, then, it is blatant dishonor and disrespect of the mosque and the aforesaid attempt is legally an offence (मुजरिमाना) and if the plaintiff or any other person desires to enter the said mosque with the intention of offering prayer to any idol, then he is guilty (मुतीकेब) of an offence. Hence, in the given circumstances, the civil court is incompetent to grant the*

relief prayed for. However, the plaintiff or any non-muslim cannot get any right from the same.” (E.T.C.)

“**दफा 27** . यह कि अयोध्या में एक मंदिर मौसूमा बमन्दिर जन्मस्थान श्री रामचन्द्र की जनम भूमि पर मुद्दत मदीद से कायम व मौजूद है। और उस मन्दिर में रामचन्द्र जी वगैरह की मूर्तियां विराजमान हैं। दावा हाजा निसबत मसजिदबाबरी बइजहार स्थान जनम भूमि मुद्दई व उसके दीगर फिरका परस्त व मुफसिदा परदाज साथियों की जिद्दत व इख्तराह का नतीजा है।”

“*Para 27: That a temple called Janmsthan temple exists and stands at the birthplace of Sri Ram Chandra in Ayodhya since long and idols of Ram Chandra Ji etc. are seated in that temple. The instant claim regarding the Babri mosque being located at Janamsthan/Janambhumi is an outcome of fabrication and concoction on the part of the plaintiffs and other fundamentalists and riot-mongers.*”
(E.T.C.)

3452. Paras 9 and 27 of the replication filed by the plaintiff (suit 1) says:

“**धारा 9.** जो चौहद्दी वादी ने अपने वाद पत्र में जन्मभूमि स्थान की दी है उस में वाद पत्र प्रस्तुत करने के पूर्व से श्री रामचन्द्र जी की मूर्ति का प्रादुर्भाव हुआ था और उसका रूप तथा नाम वादी मन्दिर ही मानकर देखता है जो वास्तव में है। और फौजदारी के न्यायालय ने भी उस को (राम जन्म भूमि) मन्दिर के ही रूप में पाकर भगवान श्री रामचन्द्र जी के पूजा पाठ तथा भोग रागादिक के प्रबन्धार्थ बाबू प्रियादत्त राम चेरमैन स्यूनिस्पलबोर्ड फैजाबाद को सिपुर्ददार नियत करके यह आदेश दिया कि पूजा पाठ इत्यादि पूर्ववत् चलता रहे। फलतः मुसलमान लोग उस के भीतर नहीं प्रवेश कर पाते। सन् 1934 ई० से मस्जिद के रूप में यह कभी भी व्यवहार में नहीं आया। बाबर का वक्फ करना भी सर्वथा असत्य है। तमाम मुसलमानों को इबादत करने का अधिकार भी स्वीकार नहीं है।”

“*Para-9. Even before the presentation of the plaint, the idol of Sri Ramchandra had appeared at the birthplace*

(Janambhumi), the boundary of which has been given by the plaintiff in the plaint, and the plaintiff has been treating it as a temple in form & name, which in-fact it is. After finding it to be (Ram Janam Bhumi) temple, the Criminal Court while appointing Babu Priya Dutt Ram, Chairman Municipal Board, Faizabad as Supurdar for management of worship, offering etc. of Lord Sri Ramchandra, had ordered that the worship etc. shall be continued as before. Consequently, the Muslims cannot go inside the same. It was never used as a mosque from the year 1934 AD. The execution of Waqf by Babur is also wholly incorrect. Right of prayer to all the Muslims, is also not admitted."

“धारा 27.. मन्दिर जन्म स्थान जिस के सम्बन्ध में प्रतिवादियों ने इस धारा में कथन किया है। वह सर्वथा दूसरा मन्दिर है जिसकी चौहद्दी निम्न प्रकार है:

उत्तर = हाता व परती व मन्दिर बकवजे कल्लू महापात्र।

दक्षिण = सड़क पुख्ता।

पूर्व = सड़क व सेहन व कुआं।

पच्छिम = हाता व परती।

श्री अयोध्या जी में लगभग सभी मन्दिरों में श्री रामचन्द्र जी की मूर्ति स्थापित है; जिन से झगड़े वाले स्थान से कोई सम्बन्ध नहीं है। निर्वाचन की चर्चा इस धारा में व्यर्थ तथा तथ्यहीन है। और सर्वथा अप्रासंगिक है।”

“Para 27. The Janamsthan temple mentioned by the defendants in this paragraph is another temple whose boundary is as under:

North: Campus, vacant land and temple in possession of Kallu Mahapatra

South : Pitch Road

East : Road, courtyard and well

West : Campus and vacant land

The idol of Sri Ramchandra is installed in almost all the temples at Ayodhya, which have no concern with the disputed site. The discussion of election in this paragraph is futile and baseless and is wholly irrelevant.” (E.T.C.)

3453. Defendant No. 6 (Suit-1), denies para 2 of the plaint, and, as additional plea, in para 12 of the written statement states :

12. That the property in suit is known as Babri mosque, and it has, for a long period has been in use as a mosque for the purpose of worship by the Muslims. It has not been in use as a temple of Shri Ram Chandraji.

3454. Defendants No. 8, 9 and 10 (Suit-1) also deny para 2 of the plaint. However, in para 12 of the written statement of defendant No.9, the stand is identical to para 12 of the written statement of defendant No. 6.

3455. Defendant No.10 (Suit-1), while denying that the property in suit is the Janam Bhumi of Sri Ram Chandraji, in para 2 of written statement averred as under:

"2. That the contents of para 2 of the Plaint are absolutely incorrect and hence denied as stated. The building referred to in the para under reply is not the Janam Bhoomi of Sri Ram Chandraji and no idols of Sri Ram Chandraji were ever installed in the said building and as such there arises no question of any right or claim of the plaintiff to perform Pooja and Darshan over there. The fact is that the property in suit is a mosque known as Babri Masjid Kindly see additional pleas also."

3456. Issues No.1 (Suit 3) read as under:-

Issue No.1 *“Is there temple of Janam Bhumi with*

idols installed therein as alleged in para 3 of the plaint ?”

3457. The averments in plaint (Suit-3) with respect to the nature of the property in suit are in paras 2 and 3, as under:

“2. That Janma Asthan now commonly known as Janma Bhumi, the birth place of Lord Ram Chandra, situate in Ayodhya belongs and has always belonged to the plaintiff no. 1 ...”

“3. That the said Asthan of Janma Bhumi is of ancient antiquity and has been existing since before the living memory of man and lies within the boundaries shown by letters A.B.C.D. in the sketch map appended hereto within which stands the temple building of Janma Bhumi marked by letters E.F.G.K.P.N.M.L.E. and the building denoted by letters E F G H I J K L E is the main temple of Janma Bhumi wherein is installed the idol of Lord Ram Chandra with Lakshmanji, Hanumanji and Saligramji.”

3458. The defendants No.6 to 8 (Suit-3) in their written statement dated 28th March, 1960 while denying para 2 and 3 of the plaint, have averred in paras 16, 29 and 32 as under:

“धारा 16.. यह कि वाद तामीर मसजिद मजकूर षहनषाह बाबर रहमुतल्ला अलैह ने मसजिद मजकूर की हिफाजत मरम्मत व दीगर अखराजात के लिए मु० 60 रूपया सालाना का अतिया अपने खजाने शाह से मुकरर किया। जो दौरान कयाम सलतनत मुगलिया मसजिद मजकूर को बराबर मिलता रहा। वाद जमाने जबाल सलतनत मुगलिया नौजाबीन अवध ने भी इस अतीये को कायम रखा। और अपने जमाने हुकुमत में रकम अतिये मजकूर को इजाफा करके मु० 302 रूपये 3 आना 6 पाई सालाना कर दिया। जो रकम बाद रखते सलतनत अवध ब्रिटिष गवर्नमेन्ट ने भी जारी रखा। और उस जमाने में बन्दोबस्त अव्वल में गवर्नमेंट बर्तानिया ने मुतबलियान को बजाए नकद अतिया मजकूर के मुआबिजियात सोलापुरी व घूरनपुर व बहोरनपुर मुतसीर अयोध्या बतौर माफी बिना बरमसारित

मसजिद बाबरी अता किया।”

“Para 16. That Emperor Babur Rahmatulla Allaih had given annual grant of Rs.60 from his treasury for protection and maintenance of the said mosque, impugned in the suit, and also for other expenses, which continued to be given to the said mosque during the tenure of the Mughal Rule. During the Mughal Rule, the Oudh regime also continued this grant, and hiked the aforesaid amount of grant to 302 rupees, 3 aanas, 6 pais per annum, which amount the British Government also continued to give at a later stage. And during that period in course of settlement, the British Government gave Ayodhya situated Sholapuri, Ghooranpur and Bahoranpur instead of grant in cash.”
(E.T.C.)

“धारा 29.. यह कि अर्जी दावा में निहायत मुवहम तरीके से जायदाद मुतदाबिया जाहिर की गई है और नक्शा नजरी भी बिलकुल गलत है और जितनी चीजे नक्शा नजरी में दिखलाई गई है वह बिलकुल गलत और फर्जी है। मसजिद के पूरब व दखिन व उत्तर कबरिस्तान है जिसमें पोख्ता खाम कबरे मौजूद हैं और न वहाँ शंकर चबूतरा है न सीता कोप है न लोमस चौरा है न हनुमान द्वार और बारा भगवान व समाध मारकन्डे बगैरह है नक्शा नजरी में जिस कदर चीजें दी हुई है वह बिलकुल गलत व फर्जी है और मनमाने है और बदनियती से जाहिर की गई है। अलावा इसके यह नहीं पता चलता कि ए0बी0सी0डी0 का नंबर खसरा या नंबर आबादी क्या है और उसकी लंबाई चौड़ाई और मुकाम बकू क्या है।”

“Para 29. That the property is shown as disputed in the claim application in an extremely doubtful manner and the site map is also entirely incorrect and all the things shown in the site map are absolutely incorrect and forged. Located to the east, south and north of the mosque is a graveyard with un-metalled graves, and there is neither

Shankar Chabutra nor Sitakooop nor Lomas Chaura nor Hanuman Dwar nor Bara Bhagwan nor Samadh Markandey etc. there. Things have been given in the site map in an absolutely incorrect, forged and arbitrary manner, showing bad faith. Besides, it fails to divulge khasra number or abadi number of the plot marked as A, B, C, D and its length and width and also its present location. ”(E.T.C.)

“धारा 32. यह कि बाबरी मसजिद मुसल्लमा तौर से मसजिद है और गवर्नमेन्ट और साबिका और मौजूदा उसको मसजिद मानते चली आई है। ऐसी हालत में दावा मुद्दैयान नारबा और ना मुनासिब है और अकलियत करना नामुनासिब और बेजा जुल्म है।”

“Para 32. That the Babri Mosque is widely acknowledged as a mosque, and previous & present governments have been taking it to be a mosque. In such a circumstance, the plaintiff's claim is improper & untenable and to allow it is improper and unjust.”(E.T.C.)

3459. In replication, the plaintiffs (Suit-3) in para 28 and 32 said as under:

"28. The contents of para 28 of the written statement are totally wrong and are scandalous. The only temple built on the sacred place of the birth of Lord Ram Chandra is the Janma Bhumi temple in suit. There is no temple known as temple Janma Asthan as suggested by the defendants built on the place of birth of Lord Ram Chandra. The temple of Janma Asthan which is situate to the north of the temple of Janma Bhumi in suit is a separate temple which is not at all connected with the place of birth of Lord Ram Chandra. The defendants seem to exploit the name of the said temple

to create a confusion regarding the real place of birth of Lord Ram Chandra. They should point out clearly by correct location as to which is the Janma Asthan temple mentioned in this para of their written statement. The idols of "Ram Chandra ji and others" are installed in all the Hindu temples all the world over. The emphasis of communal bias alleged in the written statement is misplaced. The plaintiffs having been aggrieved by the invasion through the illegal proceedings under section 145 Cr.P.C. upon their fundamental rights of managing their own temple have taken recourse to the court of law in defence of their own legal right. It is the said defendants who supported and instigated by their own fanatic friends are advancing a false and a preposterous claim to the temple of Janma Bhumi by blaspheming it with the name of Babari Masjid. The plaintiffs claim has no relation with any election and to characterise the plaintiff's claim as an attempt to jeopardize the success of a secular state in India is simply scandalous. It is in fact the defendants and their supporters who by denying the plaintiffs' rights and by putting up a false and a fanatic claim to the sacred place of the birth of Lord Ram Chandra are out to blackmail the noble efforts of the Indian people to the attainment of a secular state."

"32. The contents of para 32 of the written statements are denied. If the former Government ever acknowledged the temple of Janma Bhumi in suit as Mosque it was simply preposterous and collusive."

3460. Defendant No.9, in additional written statement

dated 24th August, 1995, in paras 3 and 4 pleaded:

“3. That the contents of para 4-G XI are also quite vague and ambiguous and hence are denied as stated. In this respect it is submitted that on 6th December, 1992 the so-called Ram Chabutra was demolished alongwith the Babri Masjid by the miscreants collected at the instance of Vishwa Hindu Parishad etc.

4. That in reply to para 4-G XII of the amended Plaint it is submitted that on 6th December, 1992 the building of the Mosque was demolished and the same could not be called or alleged to be the Main Temple.”

3461. Defendant No.10 has supported plaintiff (Suit-3) to the extent that the property in dispute is not a “Mosque” known as “Babari Masjid” made by “Emperor Babar” but is “Janam Bhumi” or “Janam Sthan of Lord Ram Chandra Ji” and has said in paras 2, 3 and 5 as under:

“2. That the contents of para 2 of the plaint are denied. However, it is submitted that the JANMA ASTHAN is a holy place of worship and belongs to the deity of Bhagwan SHRI RAM LALLA VIRAJMAN there. It never belonged to and could not have belonged to the plaintiff no.1. It is denied that the plaintiff no. 1 ever managed it.

3. That the contents of para 3 of the plaint, as written, are denied. The holy JANMA ASTHAN or JANMA BHUMI is actually a very very old temple, whereas the plaintiff AKHADA on the other hand is an institution and owes its existence for no longer than 200 years. The correctness of the sketch map and the boundaries of the temple with reference to the map are not disputed. The main presiding

deity of the temple is BHAGWAN SHRI RAM. Although there are several other idols of other deities, termed as RAM DARBAR and are worshipped, besides, there are other symbols, such as, 'CHARAN', 'SITA RASOI' etc. through whom the deity of BHAGWAN SHRI RAM therein is worshipped at SHRI RAM JANMA BHUMI, in addition to the ASTHAN of SRI RAM JANMA BHUMI, which by itself is a deity and worshipped as such.

5. That the contents of the para 5 of the plaint are not admitted in the form they have been pleaded. Although it is made to appear that in the first war of independence in the year 1857 A.D., the British, to divide the Hindus and Muslims, mala fide acted by dividing the said ASTHAN by creating an inner enclosure and describing the boundary within the inner enclosure as a mosque but no Muslim who was a true Muslim, would appear to have frequented it for offering his prayer as the same is prohibited by the SHARIYAT. Moreover even ALAMGIR (Emperor AURANGZEB) issued a mandate, known as FATWA-E-ALAMGIRI which clearly prohibits the offering of prayer by Muslim at such places. More so the Kasauti pillars and the carvings of Gods and Goddesses thereon will clearly show that this place could not be used by a true Muslim for offering his prayers thereon. It will also be seen that the place wrongly alleged as mosque virtually stood land-locked by Hindu Temple, wherein there was the worship of the deity going on. Entry to this inner enclosure was also obstructed.

The British tried to set up the descendants of MIR

BAQI, a Shia Muslim, as the MUTVALLI, but he denied the TAULAAT and never looked after the dispute place in any capacity, what to say of looking after as a MUTVALLI thereof.”

3462. Issues No. 1 (b), 11, 13, 14, 19(b), 19(c) and 27 (suit 4) read as under:

Issue No.1 (b) *“Whether the building had been constructed on the site of an alleged Hindu temple after demolishing the same as alleged by defendant no.13? If so, its effect?”*

Issue No.11 *“Is the property in suit the site of Janam Bhumi of Sri Ram Chandraji?”*

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

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

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

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

tenets at the place in dispute?”

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

3463. The plaintiffs (Suit-4) with reference to the above issues, in paras 3, 4 and 21-B says :

“3. That for the upkeep and maintenance of the mosque and other connected expenses, a cash grant used to be paid from the Royal Treasury which was continued by the Emperors of Delhi and by Nawab Saadat Ali Khan, the Nawab Wazir of Oudh.”

“4. That after the annexation of Oudh, the British Government also continued the cash Nankar till 1864, in which year instead of cash Nankar grant of revenue free land in village Sholapur and Bahoranpur, in the vicinity of Ajodhiya, was made by the British Government.”

“21-B . That under the Muslim Law mosque is a place where prayers are offered publicly as a matter of right and the same neither requires any structure and nor any particular mode of structure is provided for the same. Even the open space where prayers are offered may be a mosque and as such even after the demolition of the mosque building by the miscreants, the land over which the building stood is still a mosque and Muslims are entitled to offer prayers thereon.”

3464. Defendants no.3 and 4 (Suit-4), in written statement dated 22/24 August, 1962 have pleaded, in paras 8, 11, 27 & 28, as under:

“8. The allegations contained in para 8 of the plaint are denied. The answering defendants deny the existence of the alleged Babri Mosque and allegation of its being damaged and of its being rebuilt and re-constructed at any body's cost or through any Thekedar is altogether fictitious. Even if any communal riot be proved to have occurred in Ajodhya in 1934, no mosque whatsoever was damaged in Ajodhya in 1934.”

“11. That the contents of para 11 of the plaint are totally false and concocted. The alleged mosque never existed nor does it exist even now andThe building which the plaintiffs have been wrongly referring as Babri Masque is and has always been the Temple of Janam Bhumi with idols of Hindu Gods installed therein. The plaint allegation regarding placing of idols inside any mosque is a pure falsehood.”

“27. That the temple in question known as Janam Bhumi, the birth place of Lord Rama Chandra situate in Ayodhya belongs and has always belonged to the defendant no. 3 who through its reigning Mahant and Sarbarahkar has ever since been managing it and receiving offerings made there at in form of money, sweats, flowers and fruits and other articles and things.”

“28. That the said Asthan of Janam Bhumi is of ancient antiquity and has been existing since before the living memory of man and lies with in the boundaries shown in sketch map appended hereto as Annexure 'A' within which stands the temple building of Janam Bhumi shown therein with the main temple of Janam Bhumi wherein is installed

the idols of Lord Ram Chandra with Lakshmanji, Hanumanji and Shaligramji.”

3465. The additional written statement dated 28/29 November, 1963 of defendants No.3 and 4 (Suit-4), in para 38, state as under :

“38. The building in question was always a temple as shown in the written statement of the answering defendants ...”

3466. The additional written statement dated 12th September, 1995 filed by defendant No.10 (Suit-4) in paras 1, 2, 6, 8, 9 said as under:

“1. That the contents of para 21A of the amended plaint are not admitted. No Masjid or Babri Masjid ever existed at the land in question, and as such no Masjid was demolished on 6.12.1992. It is further false to allege that idols were placed only in the night of 22nd/23rd December, 1949, but the fact is that idols were in existence at the place in question from the time immemorial. It may be mentioned here that Babar was an invader and he had no legal authority to construct any Masjid at the sacred place of Hindus i.e. the birthplace of Lord Shri Ram. Mughal invader Babar through his commander Mir Baqi tried to demolish the old glorious temple of Lord Shri Ram at the place in question, but he could not succeed in his mission. After the riot in 1934, the three domes of the temple were damaged. It is submitted that before the said date, the outlook of the building was of pure Hindu temple, but while carrying out repair works, the Britishers tried to give it the shape of mosque and three domes were constructed

over Kasauti pillars which were of temple. ... The worship of Lord Shri Ram Lala Virajman is going on since the time immemorial. It is further submitted that with a view to renovate the old temple and to construct a new one, Kar Sewa was performed and the said action cannot be said to be in violation of any order passed by any Court. There was no order in force against Hindus in respect of the temple property/structure. It is submitted that the people of the State had voted for Bhartiya Janata Party in the election as it was committed to fulfil the aspirations of the people to construct a glorious Shri Ram Temple at the place in question. It is true that the Bhartiya Janata Party Government did not resort to firing and barbarian action which was adopted earlier by the Government headed by Sri Mulayam Singh Yadav on 30.10.1990 and 2.11.1990. It is further submitted that the Government cannot suppress the will of the people and it has to honour and fulfil aspirations of the people in the democratic set up. The Bhartiya Janata Party has neither abetted for demolition of the structure, nor did anything in violation of law. The devotees of Lord Shri Ram who present in lacs decided to demolish the old structure. In fact no offence was committed and no law was violated in demolishing the structure of Hindu temple with an intent to construct a big temple. At this place, it may be mentioned here that the Hindus have never been fanatic; they allowed every religion to flourish in Bharatvarsh. There is no evidence in history to show that the Hindus ever demolished any mosque or place of worship of any other religion. The

history speaks otherwise. Every Mughal invader and ruler from Mohammad-bin-Qasim to Aurangzeb and even thereafter demolished, destroyed and looted the temples of Hindus. The plaintiffs never has/have any concern with the land in question and also they are not entitled for restoration of the building or its possession.”

“2. That the contents of para 21-B of the amended plaint are not admitted. The Muslim law cannot be made applicable in Bharatvarsh. Muslim law is also subject to the provisions of Constitution; it is the Constitution which is supreme and not any personal law, much less Muslim law. Muslims cannot use any open piece of land in question for offering prayers and they also cannot encroach upon the land of religious places of Hindus. Under Shastrik law applicable to Hindus, the property once vested in the deity continues to remain of the deity. It is specifically submitted that the entire property in question belongs to Shri Ram Lala Virajman who is in the existence from the time immemorial and is being worshipped by His devotees at the place in question without any interruption till date. According to the own averments of the plaintiffs, the place in dispute has got no significance for them as they can offer prayers at any place, even in open.

It would be appropriate and in consonance with the principles of ‘secularism’ that the Muslims do not offer prayers within the vicinity of the birthplace of Lord Shri Ram Lala Virajman, which is sacred for Hindus and offer their prayers beyond the area of Panchkoshi Parikrama. That will create brotherhood and peace everywhere. The

para under reply itself shows that the alleged mosque was unnecessary and meaning less for Muslims too. It is further submitted that over the land in question, no mosque ever existed and the Muslims are not entitled to encroach upon the land in question or offer prayers at that place.”

“6. That it is an undisputed fact that Lord Ram, Lord Krishna and Lord Shiv are cultural heritage of India which has been recognized by Constituent Assembly. In the original constitution, on which the members signed, the pictures of our recognized cultural heritage may be found which include the scene from Ramayana (conquest over Lanka and recovery of Sita by Lord Ram). Thus the citizens of this country are entitled to pay homage to their Lord at His birthplace and it being sacred place for Hindus cannot belong to Muslims or any other community or religious group. Therefore, the claim of Muslims over the land in question is unconstitutional and is also against Islamic laws and in the circumstances, the plaintiffs cannot claim themselves to be Muslims entitled to file the suit.”

“8. That the entire area including the place in question belongs to deity Lord Shri Ram Lala Virajman and His devotees and worshippers are entitled to offer prayers, Pooja, Arti, Bhog etc. and to pay homage to their Great Lord. They have also right to construct a glorious temple.”

“9. That it is remarkable to mention here that under the debris of demolished temple structure, a lot of signs and materials concerning temple have been found. The answering defendant believes that under the orders of this Hon’ble Court, they would be in safe custody. It may be

mentioned here that a very big Chabutara beneath the present structure exists which also reveals that there existed a glorious and big temple of Lord Shri Ram. There is no evidence, signs or material at all to show that there was any mosque.”

3467. Sri Dharam Das, defendant No.13/1 (Suit-4) in his written statement dated 24th December, 1989, (as amended vide Court's order dated 21st August, 1995), has said in paras 1, 2, 3, 4, 11-A, 25, 27 and 28 as under:

“1. That the contents of paragraph 1 of the plaint are denied. It is submitted that Babar was not a fanatic but a devout Muslim who did not believe in destroying Hindu temples, it was Mir Baqi, who was a Shia and commanded Babar’s hordes, who demolished the ancient Hindu temple of the time of Maharaja Vikramaditya at Sri Rama Janma Bhumi, and tried to raise a mosque-like structure in its place with its materials. Babar was not an Emperor. He was marauder. What was constructed was not a ‘mosque’ nor was it constructed for the use of the Muslims in general. It was not known as ‘Babari Masjid’, but was described as ‘Masjid Janmasthan’ in British times. Objective evidence of the demolition of the ancient temple and attempted construction of the ‘Mosque’ at Sri Rama Janma Bhumi existed in the form of the 14 Kasauti pillars, the Sandal wood beam, and other structural features of the building, which are more fully detailed in the additional pleas. Mir Baqi did so on account of the superstitious influence of the so called Faqir named Fazal Abbas Qalandar who had demanded the destruction of the

ancient temple at Sri Rama Janma Bhumi and the construction of a mosque at that place for him to offer prayers, although the doing so is opposed to the tenets of Islam as disclosed by the Quran and the Fatwas issued by Muslim theologians.”

“2. That the contents of paragraph 2 of the plaint are denied. The sketch map annexed to the plaint is wholly wrong, vague and out of all proportion and does not made any sense. There is no grave-yard anywhere at Sri Rama Janma Bhumi, nor was there any such grave-yard as alleged at any time within 12 years of the institution of the suit. There was nothing, neither a mosque nor a grave-yard, which vested or might have vested in ‘Almighty’ of the Muslims, namely ‘ALLAH’. According to the Islamic faith, as explained in the Fatawa-e-Alamgiri: Volume VI, page 214: “It is not permissible to build mosque on unlawfully acquired land. There may be many forms of unlawful acquisition. For instance if some people forcibly take somebody's house (or land) and build a mosque, or even Jama Masjid on it, then Namaz in such a mosque will be against Shariat.” The allegation about the loss of many lives in the battle that is said to have ensued between Babar’s hordes led by Mir Baqi and the Ruler of Ayodhya must be related to the demolition of the ancient Hindu temple at Sri Rama Janma Bhumi, Ayodhya, by Mir Baqi; and in that context it is not denied: but it is denied that any of the graves of the Muslims who lost their lives in that battle more than 450 years age were situated on, or anywhere near Sri Rama Janm Bhumi. It submitted that a

Mosque and a grave-yard go ill together according to the tenets of Islam, for the offering of prayers except the funeral prayers on the death of a person buried there in is prohibited in a grave-yard. The Khasra numbers of the alleged 'Mosque' and the alleged 'grave-yard' are all imaginary and fictitious, and are not identifiable at site. Their correctness is denied."

"3. That the contents of paragraph 3 of the plaint are denied. There was no 'Mosque' and there could be no question of any grant for its upkeep or maintenance, or any such purpose. There is no evidence of any expenditure from the alleged grant on the upkeep or maintenance of the building alleged to be the 'Babri Masjid'.

"4. That the contents of paragraph 4 of the plaint are denied. The alleged grant, if any, in cash or by way of revenue free land described as 'Nankar', must have been for personal services rendered or promised to be rendered by the grantee to the British in enslaving India by suppressing the First War of Independence of 1857, miscalled the Sepoy Mutiny by them."

"11-A. That the contents of paragraph 11(a) of the plaint are denied. It is incorrect that the structure raised at Sri Rama Janma Bhumi, during the time of Babar after demolition of the Ancient Hindu Temple which existed there, was built by Babar, or that he was an Emperor, or that it was or could be a 'mosque'. . . The act of demolition of the ancient Hindu Temple and entering upon Sri Rama Janma Bhumi was a wrongful act of trespass, which did not, according to the tenets of Islam, commend itself to

Allah, for HE does not accept the waqf of any property or thing taken by force or by an illegal act. A waqf cannot, according to Muslim law be made of a thing or property not belonging to the Waqif, as owner. The attempt to raise a mosque-like structure did not succeed; and no 'mosque', deemed to be Waqf according to Muslim Law, ever came into existence. . . . The act of installation of the Deity of BHAGWAN SRI RAMA under the central dome of the building at Sri Rama Janma Bhumi, in the form of the Idol of BHAGWAN SRI RAMA LALA, on Paush Shukla 3 of the Vikram Samvat 2006, by His worshippers, led by, among others, the answering defendants GURU, Baba Abhiram Das, was not a mischievous act, but a perfectly lawful exercise of their right by the Hindus to worship the Deity. The act of the Hindus on Pausha Shukla 3, of Vikram Samvat 2006, was in furtherance and re-assertion of the pre-existing property rights of the Deity and their own right of worship. And BHAGWAN SRI RAMA did MANIFEST HIMSELF that day at Sri Rama Janma Bhumi. Even the Muslim Havaladar, who kept guard at the Police Outpost, Abdul Barkat by name, experienced the Manifestation, by His Grace. The day is since then celebrated as the Prakatya Diwas, every year, at Ayodhya. At any rate, it is submitted, in the alternative. . . ."

"25. It is a fact of history that there was an Ancient Temple of Maharaja Vikramditya's time at Sri Rama Janma Bhumi, and that was demolished by Mir Baqi. The dominant motive of Iconoclasts was the prejudice born of ignorance that Hindu temples were places of Idolatry,

which was condemned by the Qoran. But as stated more fully, hereinbelow, those who are acquainted with the true knowledge of Qoran also know that a mosque cannot be built in the place of a Hindu temple after forcibly demolishing it, for ALLAH DOES NOT accept Namaz offered at a place taken by force, or in a 'mosque' built on land obtained by Gasba or forcibly without title. It seems, therefore, that the three-domed structure raised at Sri Rama Janma Bhumi after demolishing the Ancient Hindu Temple, was not intended to be used as a 'mosque', and it was never used as 'mosque'. It was an act of putting down Idolatry. The alleged killing of Muslims in the battle that ensued with the Hindus, and who are alleged to have been buried at the place, only shows unmistakably that the demolition of the Temple led to a fierce struggle by the Hindus. The alleged existence of a grave-yard all round it, also shows that the Muslims could not have gone to offer Namaz in the building, which was abandoned and never used as a 'mosque' by the Muslims."

27. *That it is indisputable that there was an ancient Temple of Maharaja Vikramaditya's time at Sri Rama Janma Bhumi, Ayodhya, and that it was partly demolished and an attempt was made, by Mir Baqi, commander of Babar's hordes, to construct a 'mosque' in its place. He was a Shia, and although demolition of a temple for constructing a 'mosque' is prohibited by Islam, he attempted to do so under the superstitious influence of the so called Faqir, named, Fazal Abbas Qalander. He did not, however, succeed, for, as the story goes, whatever was*

constructed during the day fell down during the night, and it was only after making certain material concessions in favour of the Hindus for the continued preservation of the place as a place of Hindu worship, that the construction of the three-domed structure was some-how completed, and the construction of the minarets and certain other essential features of a public 'mosque' was not undertaken.

28. *That the following facts would show that the three-domes structure so raised by Mir Baqi was not a 'mosque' at all, namely---*

(A) ALLAH does not accept a dedication of property for purposes recognised as pious and charitable, that is, as waqf under the Muslim Law, from a person who is not its rightfull owner, for instance, ALLAH would not accept the dedication of stolen property from a thief. By his act of trespass supported by violence, for erecting a 'mosque' on the site of the ancient Hindu Temple at ASTHAN SRI RAMA BHUMI, after demolishing it by the force of arms, Mir Baqi violated all the true tenets of Islam. It was highly un-Islamic action. ALLAH never forgave him for that, so much so that every time an attempt was made to convert the place into a 'mosque', by misguided iconoclasts like him, they were killed without mercy in the battles that ensued, for violating HIS injunctions, for ALLAH had spoken thus to the Prophet in the Qoran---

'And fight for the religion of GOD against those who fight against you; but transgress not by attacking them first, for GOD loveth not the transgressors. And kill them wherever ye find them; and termed them out of that whereof they

have dispossessed you; for temptation to idolatory is more grievous than slaughter; yet fight not against them in the holy temple, unless they attack you therein.”

Indeed, the whole history of the rise and fall of the Mughal Empire in India will stand testimony to it. Babar, who did not believe in iconoclasm founded the rule of Mughals in India. Akbar his grandson, by tolerance and secularism expanded it on all sides and converted the Mughal Rule into an Empire. Aurangzeb, the iconoclast fanatic, destroyed the Empire which was at the pinnacle of its glory when he deposed and imprisoned his own father Shahjahan and grabbed the crown.”

(B) In spite of all that Mir Baqi tried to do with the Temple, the space always continued to best in possession with the Deities of BHAGWAN SRI RAMA VIRAJMAN and the ASTHAN SRI RAMA JANMA BHUMI. THEIR worshippers continued to worship THEM through such symbols as the CHARAN and the SITA RASOI, and the idol of BHAGWAN SRI RAMA LALA VIRAJMAN on the Chabutra, called the Rama Chabutra.

3468. Defendant No.18 (Suit-4) in written statement dated 19th July, 1969 , in paras 26 and 27 has averred as under:

“26. That the temple in question is known as Janam bhumi. The birth place of Lord Ramchandar situate in Ajodhya had always belonged to the defendant No.3 who through its resigning Mahanth and Sarbnarankar has ever since been managing it and receiving offering made there as in a form of money, sweets, flowers and fruits and other articles and things.”

“27. That the answering defendant is a Vaishnav sadhoo of this holy city of Ajodhya and belonged to Nirmohi Akhara and is a perfect Bhagat of Lord Rama whose Idol is installed in the said temple of Janambhumi which is ancient and antiquity and has been existing since before the sitting memory of man.”

3469. The defendant No.20 (Suit-4)'s written statement dated 5th November, 1989, in paras 7, 27, 32, 37 to 42, 46, 49 and 50, states:

“7. That the contents of paragraph 6-A, 6-B, 6-C, 6-E, 6-F of the plaint are denied. The building in dispute is a temple and not a mosque.”

“27. That lord Rama, an incarnation of God, was born many many thousand years ago in Ayodhya and is birth place is known as Ram Janam Bhumi or Ram Janma Sthan. This birth place is worshipped for the last many thousand years by the Hindu public who believe in divine presence at Ram Janma Bhumi in Ayodhya and have a devout faith that by offering worship at that place they are the recipients of the bounties and blessings of God, and this by itself constitutes the feature of a temple in Hindu religion. However, a holy temple stood at this place in ancient times. At a later stage Maharaja Vikramaditya reconstructed and resusiticated Ran Janma Bhumi temple and for Hindus it is a spiritual base of Hindu religion.”

“32. That in a very ancient book known as Ayodhya Mahatmya (A Guide for Travellers), the original of which is in Sanskrit but its translation by Ram Narain has been published in the journal of the Asiatic Society of Bengal,

Vol. 54, Part I, Chapter-I-C-4-1875 Calcutta 1875 states that all the four sons of emperor Dashrath were born in the palaces of their respective mothers. At one place it is described that Sita Rasoi is in Kaushalya Bhavan, the Janmasthal. The researchers have concluded that this ancient book appears to have come into existence during the tenure of Emperor Akbar. ...”

“37. That there was no mosque even till 1855 is established from the following narration in Faizabad Gazetteer 1960 at p. 63, where it is stated as under:-

“In 1855 a serious conflict between Vairagis and the Muslims at the site of Hanumangarhi in Ayodhya, both claiming it to be a place of worship connected with their respective religions. King Wajid Ali Shah is said to have appointed a Committee to investigate this matter which held a public meeting in Gulab Bari. It appears that among those assembled no one testified the existence of the mosque. Therefore, the Committee unanimously decided the issue in favour of the Vairagis. When the report of the Committee reached Lucknow, it caused a sensation among the Muslims. A Council of action was formed of which Maulvi Amir Ali of Amethi (District Lucknow) was elected leader. He was staying at Suhali and succeeded in attracting a large number of followers. On learning this the Vairagis started arrangements for the defence of the place. Wajid Ali Shah then ordered a regiment to guard it. At last on November 7, 1855 Maulvi Amir Ali started for Rudauli with his followers. On refusing to retrace his steps when ordered to do so by Captain Barlow, a fight ensued in

which he and most of his followers were killed.”

The Gazetteer for the above has in the Footnote appended referred to Kawal-ud-din Haider: Qaisar-ut-Tawarikh or Tarikh-i-Avadh Part II pp. 110 & 128 Mirza Zan: Radiqa-i-Shuhda (Lucknow 1772 A.H./1855 AD)”

“38. That in Faizabad Gazetteer of 1905 at page 174 it is said “The desecration of the most sacred spot in the city caused great bitterness between the Hindus and Musalmans. On many occasions the feelings led to bloodshed and in 1855 an open fight occurred, the Musalmans occupying the Janmasthan in force and thence making a desperate assault on the Hanumangarhi. They charged up the steps of the temple but were driven back with considerable loss. The Hindus then made a counter attack and stormed the Janmasthan, at the gate of which seventy five Mussalmans were buried, the spot being known as the Ganj Shahidan or the martyr’s resting place. Several of the king’s Regiment were present but their orders were not to interfere Shortly afterwards Maulvi Amir Ali of Amethi in Lucknow organized a regular expedition with the object of destroying the Hanumangarhi; but he and his forces were stopped in Barabanki district. It is said that upto this time both Hindus and Musalmans used to worship in the same building but since the mutiny the outer closure has been put up in front of the mosque and the Hindus who are forbidden their access to the inner yard make their offerings on a platform which they have raised in the outer one.”

“39. That in Aine Akbari also no mention of the existence of Baburi Masjid is to be found.”

“40. That in Faizabad Gazetteer of 1960 at pages 351 and 352 it is said that “With the departure of the Court, the Hindus were left to themselves and numerous temples and monestries sprang into existence. Naval Rai, the Deputy of Nawab Safdar Jung built a fine house in Ayodhya which still stands on the river front. Probably this rise in importance was due to the creating popularity of the Ramcharitra Manas of Tulsidas and the progress of this place became even more rapid after the annexation of the Avadh by the British. Before the middle of the nineteenth century Ayodhya was regarded as a strong hold of Hinduism.....”

“41. That the following facts also establish that the mosque in dispute has not been built by Babur at all in 1528 nor in a mosque at all:-

The material of the old temple was largely employed in building the mosque and a few if the original columns are still in good preservation. They are of closed grained black stone (Kasauti) bearing various Hindi Bas-reliefs. The outer beam of the main structure being of sandal wood, the height of the columns is 7 to 8 ft., the shape of the base, the middle section and the capital is square, the rest being round or octagonal.”

“(7) A mosque must be built in a place of peace and quiet and near a place where there is a sizeable and large number of Muslim population. According to the Tenets of Islam, a mosque cannot be built at place which is

surrounded on all sides by temples where the sound of music, of Conch shells or Ghanta Ghariyalis must always disturb the peace and quiet of the place.”

“42. That the mere displacement in part of the ancient Hindu temple of Ram Janma Bhumi Sthan will not take away the religious sanctity of the temple and the site inasmuch as the Hindu religion believes the presence of the divine spirit at the Ram Janma Bhumi Sthan, worship whereat is conducive to the spiritual well being of the person as the place relates to the birth place of lord Ram and to constitute temple it is not merely the presence of idols as such which is required. The acts of vandalism perpetrated either by Babur or by any other person after him would not take away the religious sanctity of the place or destroy the religious belief of the Hindus attached to that place, nor the place as such could be deemed to be out of possession of the Hindus as such. As Carnegie puts it “Ayodhya which is to the Hindus as Macca is to the Muhammadans, Jerusalem to the Jews.” has in the traditions of the Orthodox, a highly mythical origin, being founded for additional security not on earth for that is transitory but on the chariot wheel of the Great Creator Himself which will endure for ever.” It is intimately connected with the mass of legend relating to Ram and Suryabanshi (solar) race and was certainly the capital of several reigning dynasties.” It is a place of great antiquity. According to Hindu mythology, it represents the forehead of Vishnu and is the chief of the seven cities (Saptapuri) of pilgrimage in India (See 1960 Faizabad Gazetteer at page

35). *The worship at the place has continued since ever throughout the ages. The Hindus were never out of actual and legal possession. Their rights always remained and still exists on the land in dispute.*”

“46. *That the same Gazetteer Faizabad 1960 records a very important fact by Sri William Finch when it mentions as follows at page 50:-*

“William Finch, the English merchant who travelled through the Mughal Empire (1608-1611) says that Avadh is “a city of ancient note and seat of a Potan King, now much ruined; the castle built four hundred years ago. Here are also the ruins of (Rani Chand (s)³ Castle and housed which the Indians acknowledge for the great God saying that he took a flesh upon him to see Tamasha of the world. In these ruins remain certain Brahmans who record the names of all such Indians as work themselves in the river running thereby. Which custome, they say, hath continued four lackes of years (which is three hundred ninety four hundred thousand and five hundred years before the world’s creation). At the bottom against the word ‘3’ which is indicated in the citation against the word ‘Rani Chand’ it is explained as follows:-

“Rani Chandra, the Hero of Ramayan. The reference is to the mound known as Ramkot or fort of Ram.”

Thus it shows that after Babur during the time of Akbar, Ram Janma Bhumi Sthan was being worshipped by the Hindus which was noticed by the English traveler as well. It may be mentioned here that Audh was equivalent to Ayodhya.”

“49. That Babur is alleged not to have made any endowment or waqf, nor he could. The emperor does not ipso facto become the owner of the whole earth of which he may be ruler. There is no such concept that the ruler becomes the true owner of all the land in his Kingdom ipso facto. The site in dispute admittedly belongs to Hindus for the last thousand years. The ruler might have superior right to levy taxes etc. but could not be deemed to be the actual owner. In these circumstances, the claim of the plaintiffs that Babur by annexation, which is emphatically denied, as there was no annexation as such, became the owner and made a Waqf when there was no battle between Babur and Raja of Ayodhya and no question of annexation of the territories arose. The general religious notions of the Hindu community prior as well as subsequent to Babur has always been that the temple and the Janma Bhumi Sthan, i.e. Ram Janma Bhumi, the birth place of the Creator and lord Ram, are and have always been for the religious benefit of the Hindus, for the benefit of the truth and good as against evils and vices, the worship for which the place was used and stood dedicated was at no relevant time displaced, nor taken away and hence neither the plaintiffs nor the Muslims acquired any rights, title or interest in the disputed property. In fact Babur had no rights to give religious place of Ram Janma Bhumi of Hindus in perpetuity to Muslims or create any rights in favour of Muslims in perpetuity over the religious place of Hindus, which is against all cannons of justice, morality and good conscience. Further a place already dedicated cannot be

rededicated.”

“50. That the birthplace of Ram is only located at one particular spot in Ayodhya. It cannot be shifted to any other place in the world. It is in the same position for Hindus as Macca for Muslims. As Macca cannot be shifted so Ram Janma Bhumi cannot be shifted. On the basis of national policy of assigning the weight of a particular place for a particular religion or a particular community, the belief and religious feelings of Hindus in this regard be given supreme importance as a mosque can be built in any other part.”

3470. The additional written statement dated 17th October, 1995 of defendant No.20 (Suit-4) in paras 4, 5 and 7 is as under:

“4. That the disputed land is known as Ran Janma Bhoomi, which is very sacred for the Hindus from time immemorial. There was a temple of Hindu deity ‘Ram’ on the aforesaid land. When Babar invaded India he partly destroyed the said temple. It is alleged that he had constructed a mosque. In fact the upper structure was constructed and remaining temple was left as it is. In this construction the malba of the temple was used. The pillars of the temple were also used in the construction. On the pillars, the figures of Hindu deity & holy signs were evidence that Hindu Temple was not completely destroyed. Thus the temple structure existed and it is wrong to claim that a new mosque was constructed by Babar and handed over to Muslim community. The Muslims were not offering prayer in the disputed structure as there were engraved figures of Hindu deity on the 14 pillars of the disputed

structure. It is also wrong to say that the Muslims offer Namaz for last more than 46 years the Muslims never offered Namazs. The land or place does not become mosque. Thus the claim of the plaintiff through amendment that the 1.58" disputed land 'Ram Janam Bhom' will become Babari Masjid as the Muslims had offered Namaz in the structure is wrong and incorrect. It is further stated that the nature of Ram Janam Bhomi will never be changed and it shall always remain as Ram Janam Bhomi even if Muslims have ever offered Namaz in it and it will not become mosque under the eye of law. It is further stated that open land is the land of the temple and it can not be a mosque."

"5. That by destruction of the structure, the pillars were also destroyed which were evidence of Hindu Temple. It is not the destruction of Babri Mosque but a Hindu temple. The answering defendant No. 20 is entitled to claim the land in dispute for constructing a temple of Bhagwan Ram on the disputed land."

"7. That the building which was alleged as mosque is demolished and now the land is of the temple of Ram Janam Bhomi, which was demolished is claimed by the plaintiff through the amendment. The plaintiff has no right to claim the land of the temple which is the property of Hindus."

3471. Issues No. 14, 15, 22 and 24 (Suit-5) are as under:

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

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

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

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

3472. The plaint (Suit-5) in paras 2, 19, 23 and 24 with respect to above issues said as under:

“2. That the place Sri Rama Janma Bhumi is too well known at Ayodhya to need any description for purposes of identification of the subject matter of dispute in this plaint. However, for greater precision, two site plans of the building premises and of the adjacent area known as Sri Rama Janma Bhumi, prepared by Sri Shiv Shankar Lal pleader, in the discharge of his duty as a commissioner appointed by the court of Civil Judge, Faizabad, in Suit no. 2 of 1950 : Sri Gopal Singh Visharad Verses Sri Zahur Ahmad and others : along with his Report dated 25.5.1950, are being annexed to this plaint and made part of it as Annexures I, II and III, respectively.”

“19. That it is manifestly established by public records of unimpeachable authority that the premises in dispute is the place where Maryada Purushottam Sri Ram Chandra Ji

Maharaj was born as the son of Maharaja Dashrath of the solar Dynasty, which according to the tradition and the faith of the devotees of Bhagwan Sri Rama is the place where HE manifested HIMSELF in human form as an incarnation of Bhagwan Vishnu. The place has since ever been called Sri Rama Janm Bhumi by all and sundry through the ages."

"23. That the books of history and public records of unimpeachable authenticity, established indisputably that there was an ancient Temple of Maharaja Vikramaditya's time at Sri Rama Janma Bhumi, Ayodhya. That Temple was destroyed partly and an attempt was made to raise a mosque thereat, by the force of arms, by Mir Baqi, a commander of Baber's hordes. The material used was almost all of it taken from the Temple including its pillars which were wrought out of Kasauti or touch-stone, with figures of Hindu gods and goddesses carved on them. There was great resistance by the Hindus and many battles were fought from time to time by them prevent the completion of the mosque. To this day it has no minarets, and no place for storage of water for Vazoo Many lives were lost in these battles. The last such battle occurred in 1855. Sri Rama Janma Bhumi, including the buildings raised during Babar's time by Mir Baqi, was in the possession and control of Hindus at that time. According to the 1928 Edition of the Fyzabad Gazetteer published by the Government Press, U.P. (at page 179)--- " Ayodhya is pre —eminently a city of temples.....It is locally affirmed that at the time of the Musalman conquest there were three

important Hindu shrines at Ayodhya and little else. These were the Janmshtan temple, the Swargddwar and the Tretaka-Thakur, and each was successively made the object of attention of different Musalman rulers. The Janmasthan was in Ramkot and marked the birthplace of Rama. In 1528 Babar came to Ayodhya and halted here for a week. He destroyed the ancient temple and on its site built a mosque, still known as Babar's mosque. The material of the old structure were largely employed, and many of the columns are in good preservation, they are of close-grained black stone, called by the natives kasauti, and carved with various devices. Their length is from seven to eight feet, and the shape square at the base, centre and capital, the rest being round or octagonal. The mosque has two inscriptions, one on the outside and the other on the polpit, both are in Persian and bear the date 935 Hijri

. . . and again according to the same Gazetteer (at Page 180) :- "This desecration of the most sacred spot in the city caused great bitterness led to bloodshed, and in 1855 an open fight occurred, the Musalman occupying the Janmasthan in force and then making a desperate assault on the Hanuman Garhi. They charged up the the steps of the temple, but were driven back with considerable loss. The Hindus then made counter-attack and stormed the Janmasthan, at the gate of which seventy-five Musalmans were buried, the spot being known as the Ganj Shahidan or the martyr's resting place. Several of the King's regiments were present, but their orders were not to interfere. Shortly afterwards Maulvi Amir Ali of Amethi in Lucknow

organised a regular expedition with the object of destroying the Hanuman Grahi, but he and his forces were stopped in the Bara Banki district. (Gazetteer of Barabanki, P. 168) It is said that upto this time both Hindus and Musalmans used to worship in the same building; but since the mutiny an outer enclosure had been put up in front of the mosque and the Hindus, who are forbidden access to the inner yard, make their offerings on a platform which they have raised in the outer one.”

24. That such a structure raised by the force of arms on land belongings to the Plaintiffs Deities, after destroying the ancient Temple situate thereat, with its materials including the Kasauti pillars with figures of Hindu gods carved thereon, could not be mosque and did not become one in spite of the attempts to treat it as a mosque during the British rule after the annexation of Avadh. Some salient points with regard thereto are noted below.

(A) According to the Koran, ALLAH spoke to the Prophet thus--

“ And fight for the religion of GOD against those who fight against you; but transgress not by attacking them first, for GOD loveth not the transgressors. And kill them wherever ye find them; and turn them out of that whereof they have dispossessed you; for temptation to idolatry is more grievous than slaughter, yet fight not against them in the holy temple, until they attack you therein;”

(B) According to all the Muslim authority and precedents and the decided cases also. ALLAH never accepts a dedication of property which does not belong to the Waqf

that is, the person who purports to dedicate property to ALLAH for purposes recognised as pious or charitable, as waqf under the Muslim law. By his acts of trespass and violence for raising a mosque on the site of the Temple after destroying it by force, Mir Baqi committed a highly un-Islamic act. His attempts to convert the Temple into a mosque did not, therefore, create a valid dedication of property to ALLAH, whether in fact or in law, and it never became a mosque.

(C) That in spite of all that Mir Baqi tried to do with the Temple, the land always continued to vest in the Plaintiff Deities, and they never surrendered their possession over it. Their possession continued in fact and in law. The Asthan never went out of the possession of the Deity and HIS worshippers. They continued to worship HIM through such symbols as the CHARAN and Sita Rasoi, and the idol of BHAGWAN SRI RAMA LALA VIRAJMAN on the Chabutra, called the Rama Chabutra, within the enclosed courtyard of the building directly in front of the arched opening of its Southern dome. No one could enter the building except after passing through these places if Hindus worship. According to the Muslim religion and law there can be no Idol worship within the courtyard of a mosque and the passage to a mosque must be free and unobstructed and open at all times to the 'Faithful'. It can never be through a Hindu place of worship. There can be no co-sharing of title or possession with ALLAH in the case of a mosque. His possession must be exclusive.

(G) As already stated, there is no arrangements for storage

of water for Vazoo and there are the Kasauti pillars with the figures of Hindu Gods and Godesses inscribed thereon in the building.

3473. The defendant No.3 (Suit-5) disputed various other aspects, but so far as the claim of the plaintiff that the place in dispute is birth place of Lord Ram Chandra Ji, has not disputed the same and in para 5 of his written statement has said as under:

“5. That the contents of para-2 of the plaint are denied. The birth place of Rama is not in dispute. The whole world knows that his birth place is in Ayodhya. Where the Temple Ram Janma Bhumi stands. It is the temple known as Ram Janma Bhoomi Temple situate in mohalla Ram Kot Ayodhya which is in dispute in the various suit transferred to this Court, which by Muslims is said to be a mosque and which is claimed by the answering defendants as being the Temple of Bagwan Shri Ram under his charge and management, and where of the Nirmohi Akhara is the Shebait of Bhagwan Shri Ram. Annexure I, II and III are denied as incorrect. The plaintiffs should submit a fresh correct and complete plan. Many important places of the temple have not been shown in the said Annexures. They pertain to another suit and have no evident value in the present suit.”

3474. Defendant No.4, (Suit-5) U.P. Sunni Central Board of Waqfs, Lucknow, denied the aforesaid paragraphs of the plaint and in paras 13, 14, 19, 23, 24, 33, 35 and 46 of the written statement has said as under:

13. That the contents of para 13 of the plaint are also

incorrect and hence denied as stated and in reply thereto it is submitted that the defendant no. 20 had no right or title or locus standi to move the said application for the opening of the gate of the mosque for closer Darshan (and the defendant no. 20 mosque not at all a party to any of the aforesaid suits, he had no locus standi to file the Appeal before the District Judge, Faizabad and the order dated 1.2.1986 passed by the District Judge, Faizabad, was patently and manifestly illegal and without jurisdiction) and two writ petition are pending in the Hon'ble High Court against the afore-said order dated 1.2.1986.

It is further submitted that the building in dispute is not the Janam Bhoomi of Sri Ram Chandraji and no idols of Sri Ram Chandraji were ever installed in the said building and as such there arises no question of any right or claim of the defendant no. 20 or of anyone else to perform pooja and Darshan over there. The fact is that the property in suit is an old mosque known as Babri Masjid and the same was constructed during the regime of Emperor Babar.

14. That the contents of para 14 of the plaint are also incorrect and hence denied as stated and in reply thereto it is submitted that the buildings in dispute is not a temple and as such there arises no question of any Pooja and Darshan being allowed to be performed over there. (It is reiterated that the plaintiffs nos. 1 and 2 are not the deities recognised by Hindu Law and as such they have no legal entity)

It is further submitted that since the building in

question is a mosque there arises no question of any new temple being constructed over the site of the said Babri Mashid (and the plaintiffs or anyone else have no right or locus standi to claim the removal of the old structure of the said mosque.)

It is also relevant to mention here that neither any idols were kept in the said mosque prior to the incident of the night of 22nd - 23rd December, 1949, when the idols were surreptitiously or stealthily kept in the mosque by some mischievous elements and nor the said mosque was ever used for performing Pooja and Darshan etc. prior to 23.12.49. As the plaintiffs nos. 1 and 2 cannot at all be treated as deities, there is no question of unhappiness of the so-called deities and their alleged devotees. It is, however, admitted that there has been unnecessary and unusual delay in the disposal of the suits referred to above and on account of the attachment of the mosque for the last about 39 years the condition of the building has also deteriorated. The Receiver appointed by the Court is not taking proper interest in the maintenance of the building and in spite of the orders of the Court, no repairs of the building has been undertaken for the last several years. The answering defendant is, however, not aware of the alleged mis-appropriation of the money by the staff appointed by the Receiver The answering defendant is further advised to state that the alleged desire of removing the structure of the mosque and of constructing a temple on the site of the said mosque is wholly uncalled for and unwarranted and mischievous and an such attempt will be

fraught with very dangerous consequences (and instigation of such unholy design and illegal activity also amounts to offence apart fro being contemptuous) and in gross violation of the restraint order passed by the Hon'ble High Court in Writ Petition No. 746 of 1986 : Mohd. Hashim Verses State of U.P. And others.

19. That the contents of para 19 of the Plaint are absolutely false and incorrect and hence denied as stated. Neither there is any public record, much less any record of unimpeachable authority showing that the premises in dispute is the place of birth of Sri Ram Chandraji and nor there is any historical or judicial record to testify the averments of the para under reply. As a matter of fact the religious books as well as the writing of Hindu scholars themselves make it very doubtful as to whether the personality of Sri Ram Chandraji is a historical personality. Similarly there are several versions about the place of birth of Sri Ram Chandraji and it is not at all settled, even amongst the Hindu scholars, as to where and in what period such a religious leader known as Sri Ram Chandraji was born. The booklets being circulated at Ayodhya by the Vishwa Hindu Parishad and other Hindu Organizations and other books of Hindu mythology describe the period of Sri Ram Chandraji as that of Treata Yug meaning thereby that he was born more than 9 lakh years ago. According to Hindu mythology, there have been three Maha Prayleys during this period due to which the entire earth had submerged into water and as such according to Hindu mythology itself no specific place can

be said to be the birth place of Sri Ram Chandraji. It is also pertinent to mention here that greatest authority of Hindu mythology on Sri Ramchandraji known in the recent history is that of Goswami Tulsidasji. He had written the book on Sri Ramchandraji known as Sri Ram Charitra Manas during the regime of Mughal Emperor Akbar who was the grandson of Mughal Emperor Babar and it is said that Sri Goswami Tulsidasji had composed the said Ram Charitra Manas at a place known as Datun Kund situated at a distance of about one kilometer from Ayodhya in district Faizabad and as such had there been any birth place of Sri Ramchandraji in Ayodhya, Goswami Tulsidasji must have specifically mentioned about the same in his Ram Charitra Manas and as a great devotee of Sri Ramchandraji Goswami Tulsidasji cannot be expected to have skipped over or concealed or kept quiet over such an important fact regarding the life history of Sri Ramchandraji and had there been any iota of truth in the story of Sri Ram Janam Bhoomi temple being there at Ayodhya at the site of the Babri Masjid during the regime of Emperor Babar or prior thereto and had there been any incident of demolition of any such temple and construction of Babri Masjid over the same, Goswami Tulsidasji must have taken up this matter in the Court (Darbar) of Emperor Akbar and Emperor Akbar must have undone the alleged wrong and specially so when the Court of Akbar was full of Advisors, councillors and ministers from Hindu community and his own Queen was also Jodha Bai. It is also relevant to mention here that even the location of

present Ayodhya does not tally with the location of Ayodhya as given in the Balmiki Ramayan and this also creates doubt about there being any place of birth of Sri Ramchandraji in the present Ayodhya situated in district Faizabad. Ayodhya mentioned in the Balmiki Ramayan is said to be situated at a distance of about 1-1/2 Yojana (equivalent to about 14-1/2 miles) from river Saryu flowing East to West which is presently running quite adjacent to the present Ayodhya from West to East.

It is also absolutely incorrect to say that there is any historical or other evidence to the effect that Sri Ramchandraji had manifested himself in human form at the place where the idols are presently kept in the mosque in question.

It is also absolutely incorrect to say that the place known as Babri Masjid has ever been called as Sri Ram Janam Bhoomi prior to December, 1949.

23. That the contents of para 23 of the Complaint are also incorrect and hence denied as stated and in reply thereto it is submitted that there has never been any temple of Maharaja Vikramaditya 's time at the site of the Babri Masjid and no authentic books of history and no public record of any unimpeachable authenticity can be cited in this respect. It is also incorrect to say that the mosque in question was raised at the site of any temple or after destroying any temple by force and arms. It is also not correct to say that the material used in the construction of the said mosque was almost all of it taken from any temple, and it is also incorrect to say that the pillars of the said

mosque were wrought out of Kasauti or touchstone with figures of Hindu Gods and Goddesses carved on them. The fact is that such pillars are available at some other places also. It is also absolutely false and baseless to suggest that any resistance was put by the Hindus or any battle was fought from time to time for prevent the construction of the mosque. Regarding the shape of the structure of the mosque it is submitted that there is no requirement of any mosque and existence of minarets or domes is not at all required for any mosque and so also there is no necessity of any place for storage of water for VAZOO for any mosque although in the close vicinity of Babri Mashid a well is very much there for taking out water for the purposes of Vazoo. There are several other mosque in India and even in Faizabad and Lucknow, which do not have minarets and even domes and one such mosque is situated within the premises of Dargah Hazrat Jahangir Samdani in Kashaucha Shareef District Faizabad in which there are no domes or minarets and one such mosque exists in the districts of Lucknow in which there are five five domes but no minarets. It is also incorrect to say that any life was lost in any battle fought in respect of Babri Masjid and no battle in respect thereto has taken place till 1885.

It is also incorrect to say that the building of Babri Masjid raised during Babar's time had ever remained in the possession and control of Hindus. The citation of Faizabad gazetteer given in the para under reply is based on hearsay information and the same cannot be said to be in anyway a reliable piece of evidence.

It is also relevant to mention here that bitterness had been created between Hindus and Muslims in respect of the mosque situated inside Hanuman Garhi and it was on the report of the demolition of that mosque that some Muslims has tried to take up arms under the command of Maulavi Ameer Ali, but they could not succeed on account of the army of the Nawab as well as British army posted for facing their challenge. The expectation of Maulvi Ameer Ali had, therefore, no concern or connection with the Babri Masjid and the observations to the contrary in the gazetteer of Faizabad and Barabanki are, therefore, totally incorrect and no reliance can be placed upon the same. It is also incorrect to say that at any point of time Hindus and Muslims both used to worship in the same building known as Babri Masjid. Had there been any such practice of worshipping by both the communities inside the Babri Masjid, mention of the same should have been made in the Plaint of he Original Suit No. 61/280 of 1885: Mahant Rahunath Das Verses Secretary of State & another, decided on 14.12.85 by the Sub Judge, Faizabad.

24. That the contents of para 24 of the Plaint are also incorrect and hence denied as stated. At no point of time there ever existed any temple at the site of the Babri Masjid and it is absolutely incorrect to say that the said mosque was constructed, after destroying any ancient temple, with the material of the alleged temple. The mosque in question has always been used as a mosque since its construction during the regime of Emperor Babar.

The contents of the sub-paras (A) to (G) of the para

under reply are also incorrect and the same are also denied as stated:

*(B) That the contents of para 24(B) of the Complaint are also incorrect and hence denied as stated. The land in question undoubtedly belonged to the State when the mosque in question was constructed on behalf of the State and as such it cannot be said that it could not be dedicated for the purposes of the mosque. Emperor Babar was a Sunni Muslim and the **vacant land on which the Babari Masjid** was built lay in his territory and **did not belong to anyone** and it could very well be used by his officers for the purposes of the mosque and specially so when the Emperor Babar himself consented and gave approval for the construction of the said mosque. It is absolutely incorrect to say that the site in question was the site of any temple and any temple was destroyed by Meer Baqi. Had nay such incident of demolition of any temple taken place, the same must have been reported in any authentic book of Mughal history but no such incident finds mention in any authentic book of history and as such it is mosque in question was constructed was constructed at the site of any temple.*

(C) That the contents of para 24(C) of the Complaint are also absolutely false and in correct and hence denied as stated. No temple had ever existed at the site of the said mosque and there is no question of vesting of the size in any alleged deity. Similarly no Asthan and deity could be said to have ever existed over there and as such there arises no question of the possession of any deity or Asthan on the sire in question. The alleged Ram Chabutra has also not

remained in existence since the time of Babar but rather the same is the creation of around 1857 period.

It is also incorrect to say that the entry of the mosque could not be possible except after passing through any place of Hindu worship. The concept of the mosque has also been wrongly and incorrectly described in the para under reply.

(D) That the contents of para 24(D) of the Complaint are also incorrect and hence denied as stated. There is no such requirement for the construction of any mosque – that the same should be built in a place of peace and quiet and near to a place where there is a sizeable Muslim population. It is also incorrect to say that the mosque cannot be built in a place which is surrounded by temples, where the sound of music and Konch shell, Ghante Gharyal disturbs the peace and quiet of the place.

33. That the contents of para 33 of the Complaint are also incorrect and hence denied as stated. Neither there is any Presiding Deity of Plaintiff No.1 and nor here are other deities over the premises in question and I is also incorrect to say that the so-called Charan (footsteps) and Sita Rasoe etc. constitute one integral complex and have a single identity. It is also incorrect to say that the claim of the Muslims is confined to the building and the areas enclosed within inner boundary wall. The area being claimed by the Muslims is mentioned very specifically in the Complaint of Regular Suit No. 12 of 1961 and the description of the same can in no way be said to be vague and undefined. It is also incorrect to say that there are no

graves in the vicinity of the said mosque for the last fifty years. It is not at all admitted that the defendant no. 3 is the present mutvalli of the Babri Masjid since before 1948. At present the said mosque has got a Managing Committee appointed by the answering defendant. It is also incorrect to say that only a mutvalli of the mosque can sue for its possession. The Board is a statutory Board having been created by the U.P. Muslim Waqf Act, 1936 and now continuing under the U.P. Muslim Waqf Act, 1960. The Waqf Act of 1960 was also passed to provide for better governance and administration and supervision of the waqfs in Uttar Pradesh, and under section 19 of the said waqf Act, 1960 the Board has got the power of general supervision of all the waqfs and it is the duty of the Board to do all things reasonable or necessary to ensure that the waqfs under its superintendence are properly maintained, controlled and administered and under section 19(2)(4), the Board has also been conferred with the power to institute and defend suit and proceedings in any Court of Law relating to all waqfs. (It is, therefore, absolutely incorrect to say that the Board or other Muslims associated with the management and administration of the mosque in question cannot file the suit or possession registered as Regular Suit. No. 12 of 1985.

35. That the contents of para 35 of the Plaint are quite vague and ambiguous and also incorrect and hence denied as stated. There can be no dispute to the averments that all human beings including the Muslims and Hindus are the creation of once and the same God and the plaintiffs of

Regular Suit No. 12 of 1961 as well as other Muslims also believe in the policy of living in amity and goodwill with members of all communities and religious denomination. That does not mean that the gesture of goodwill and amity should be shown to such persons who are bent upon demolishing the mosque. It is also incorrect to say that the site in question has got anything to do with the place of birth of Sri Ramchandraji and as such the same has got no significance of alleged Asthan Sri Ramchandra Janam Bhoomi. The entire propaganda and publicity being carried out by the Vishwa Hindu Parishad and Ram Janam Bhoomi Yagya Samiti and their associates and allied bodies in this respect is nothing but sheer concoction and this is being done with the vested interests and political ambitions and as such it is not at all difficult for the plaintiffs of Regular Suit No. 12 of 1961 to abandon their claim over the mosque in question and to construct a magnificent and grand temple of Sri Ramchandraji at any other free site which may not be the property of any other person or community. It is also incorrect to say that under the tenets of Muslims law the mosque can be shifted under certain circumstances.

46. That even the reports of the Archaeological experts have been to the effect that there appear to be no symptoms of human habitation in the present Ayodhya of more than 700 B.C. And also there appear to be no symptoms of any Fort or Palace or Old temple being there at the site of the Babri Masjid.”

3475. Defendant No.5 (Suit-5) has also disputed the entire

claim of plaintiff (Suit 5), vide written statement dated 14/21 August, 1989, and in paras 2, 15, 23, 24, 34, 40, 47, 50, 51, 52, 53, 55, 67 and 69 has said :

“2. That the contents of para 2 of the complaints are denied. The area and the places indicated in Annexure Nos. 1, 2 and 3 of the complaint are neither Ram Janam Bhoomi nor Ram Janam Asthan. However, it is evident that there exists a mosque known as Babri Masjid, the existence of this mosque is established by record, Historic, Judicial and Revenue. The filing of the suit No.2 of 1950 are not denied. However, the suit is wholly misconceived. The plaintiff of suit. no. 2 of 1950 had no legal right and the suit is misconceived.

15. That the contents of para 15 of the complaint are denied. There is no question of construction of any temple over the site in question. Answering defendant and his co-religionist have a right to resist any such attempt. There is no question of any management of the so called temple. The premises is a mosque and Muslims have a right to offer namaz in it and U.P. Sunni Central Board of Waqf has a right to supervise and manage it. Neither Jagadguru has any right or locus in the matter and nor he can execute any deed legally in respect of the premises in question. The answering defendant is not aware of the religious sect of the so called vairagies of Ayodhya.

23. That the contents of para 23 of the complaint are denied the narration of history in the complaint is false and baseless no authentic book of history has been referred in the complaint. The premises has always been a mosque since its

construction in sixteenth century, it has always been used by the Muslim for offering namaz and for no other purpose. Remark in the gazette is no authentic record of history. It is only a generalised observation, the Gazette also does not make any reference of any authentic history or record. The pillars are not of Kasauti. However, it is not relevant as the fact remains that it is a mosque and has always been used as a mosque and it is wholly incorrect that anybody else other than Muslims worshipped in the building which is called Babri Masjid. The narration of history by the plaintiff is baseless and false. There is no evidence of the demolition of any temple for the construction of this mosque.

24. That the contents of para 24 of the plaint are vehemently denied, the quotation from Holy Quran has been incorrectly quoted and the same is out of context. There is no evidence of demolition of any temple. The contents of sub-paras are also denied, on the bases of judicial records and other evidence, it is clear that the premises in question has always been a mosque in which Muslim had been offering regular namaz upto 22nd December, 1949. No specific shape or specific design has been prescribed for the mosque in Islam. The shapes and architectural design of the mosque vary in different parts of the world and even in India. The Ganj-e-Shahidaan also belong to Muslims and vests in God Almighty. The plaintiff has misrepresented about the contents of suit No. 12 of 1961. The claim in the contents are clear in the plaint of suit No. 12 of 1961, there is also a pucca well outside the

mosque for 'Vazoo'.

34. That the contents of para 34 of the plaint are vehemently denied. The premises has always been a mosque and it has been used as such and no one remove the structure.

40. That according to the inscription in the mosque, the said Babri Masjid was constructed by Mir Baqui, one of the commanders of the Babar in 1528 and since then it has been in use as mosque and the Muslims always regularly offered namaz in it till the attachment.

47. That Babri Masjid (building in question) has always been a mosque and used as such, and only Muslims have right to offer Namaz in it and U.P. Sunni Central Board of Waqf has a right of supervision and control.

*50. That **Lord Rama** in whose name the controversy in question has been created, according to authoritative texts of the historians and other scholar of Hindu Religion is mere an epic and imaginary figure and was never in experience. In India there have been authoritative pronouncements by the various historians and also by the seminars and symposium that Lord Rama never existed. It is mere an epic, besides above no period and place could be fixed till this date. After long research Holy Barahmins have come to conclusion that it is all mere an epic and legend.*

51. That as per Balmiki's Ramayan which is supposed to be the only authoritative source of Lord Rama, the city of Ayodhya where the property in question situates is not the place described in that book. The averment that at the

site of of Babri Masjid there was some temple which was demolished at the behest of Babar is absolutely incorrect and false. Shri Tulsidas who by his book Ram Charit Manas has elevated the status of Lord Rama from Mariyada Prushottam to Bhagwan has not written about the demolition of any such temple in his book which was written after construction of Babri Masjid, at the Datoon Kund in Ayodhya itself which situates at a short distance from the Babri Masjid. Before Tulsi's Ram Charit Manas, there were temples of other gods and goddess and as such the contention regarding demolition of Ram Mandir is absolutely baseless and has been designed-ly thatched up to creates communal disharmony and hatred between the two communities.

52. That the recent scientist investigation a, c-14 test which is radio carbon dating method has revealed the stones used in the building in question are less than 500 years in age and this falsifies the claim that the temple was demolished and by the same material the mosque was built, however, it is clarified that all such averments made in the plaint are absolutely of no consequence in Courts of Law.

53. That property in question is continuously recorded as graveyard and mosque in the revenue records from prior to first settlement and the said entry coming unchallenged and there being three Settlement also now the entries in revenue records are final and can not be questioned.

55. That initially there was provided a cash grant from the period of King Emperor and after British Rule in lieu of

the said cash grant Zamindari of Villag Shanavan, Bhoranpur and Sholipur was given for the Babri Masjid and the masjid in question was inter alia maintained by the income of said Zamindari property and the salary of Imam and Moazin etc. was paid and other expenses were also made.

*67. That there has been no concern of Lord Rama, Janki or of any person having faith in them with the land in question over which exists the Babri Masjid and adjoining area of grave yard. **Admittedly the Mosque being in existence since 1528** and the deads having been burried the same could not be subject matter of any other type of Puja in Practice and ASTHA if any if the same could survive from 1528 onwards till this date without any access to the place in no circumstances that Astha could not give a right for demolition of the Mosque and the place where the deads or burried could not be purified to be used for any other purposes.*

69. That just the mosque was built and the deads were burried the site became waqf property vested in Almighty God and it will remain so vested eternally and the property once vested in the God can not be a mosque to the depth of the earth and even above the same and can not be removed or shifted to any other place at all. No person on the earth can accord a permission for its removal or shifting.”

3476. Defendants No.11 and 17 (Suit-5) in written statement dated 14th August, 1989 have supported the plaintiff's suit.

3477. The defendant No.23 (Suit-5) vide written statement

dated 18th September, 1989 has contested the entire suit and in paras 51 and 57 has said:

“51. यह कि बाबरी मस्जिद वक्फ सम्पत्ति है और सुन्नी व वक्फ बोर्ड उत्तर प्रदेश लखनऊ में बतौर वक्फ दर्ज है और इस सिलसिले में अदालत सिविल जज फैजाबाद में मुकदमा चल कर फैसला हो चुका है और उस रजिस्ट्रेशन से हर शख्स पाबन्द है।”

“51. *That the Babri Mosque is a waqf property and it is recorded as waqf with the Sunni & Waqf Board, Uttar Pradesh at Lucknow, and judgement in this regard had come after proceedings at Civil Judgeship, Faizabad and everybody is bound by that registration.*”

(E.T.C.)

“57. यह कि श्री राम चन्द्र जी की जो भी शखसियततहाँ उनके नाम का जन्म स्थान मन्दिर अयोध्या में विवादित स्थल के उत्तर और सड़क के उत्तर पहले से काएम चला आ रहा है और उस के महन्त व पुजारी सब लोग हैं। वादी नं० 3 का उससे कोई ताअल्लुक नहीं है।”

“57. *That the locus of Sri Ram Chandra's identity, whatsoever; Ayodhya situated Janmsthan Mandir named after him, has already been existing to the north of the disputed site and also of the road, and all the people are its Mahantas and priests. Plaintiff no. 3 has no relation to it.*”(E.T.C.)

3478. Defendant No.24 (Suit-5) while contesting the suit, in para 2, 11, 12, 14, 15, 16, 26 and 31 has said :

“2. *That as regards the contents of para 2 thereof the answering defendant has **no knowledge of Sri Rama Janam Bhoomi, by which is meant the exact spot of birth of Lord Rama.** The site plans referred are alleged to be the part of court record, which can be verified by the Court, and are not admitted to be correct. Today, there are*

atleast **three spots in Ayodhya** claimed as the exact spots where Lord Rama was born, viz.:

(a) The Spot being presently claimed by the plaintiff is being made known as Ram Janam Bhoomi only since 22.12.1949.

(b) The Ram Chabutra, in the court-yard outside the Babri Masjid structure, is being known as Ram Janam Bhoomi only since time immemorial.

The **last 2 mentioned spots** have not been abandoned by the believing devotees in Ayodhya.

11. The claim in paragraph 19 of the suit paint that “ the premises in dispute is the palce where Maryada Purushottam Sri Ram Chandraji Maharaj was born” is denied and contested. This defendant submits that only since 22 December, 1949, about 40 years ago, such a belief has come into existence. If nay documentary or recorded evidence is produced by the plaintiff no.3 establishing beyond doubt that the present belief existed before 22.12.1949 also, this defendant will surrender all his opposition.

12. In this connection, this defendant further submits that when the Babri Masjid was being constructed in 1528 A.D. no such belief existed in Ayodhya, or elsewhere that the place where the mosque was being built was Ram Janam Bhoomi. Goswami Sant Tulsidas, The great biographer of Lord Ram was alive then, and wrote his epic biography “Ram Charit Manas” about the year 1558 A.D., but did not complaint that Babri Masjid was built on Ram Janam Asthan. The book Ram Charit Manas is a pulic document.

In an earlier period, Valmiki wrote perhaps the first Ramayana. He also did not identify the presently contentious spot as Ram Janam Asthan.

In none of the several Ramayans in several languages, the said contentious spot has been mentioned as the place of birth of Lord Ram.

14. Religious sentiments of Plaintiff No. 3 contained in para 22 of the Suit Plaint are respected but the following passage it is strongly contested :

“The place is deity. It as existed in this immovable form through the ages, and has ever been a juridical person. Thus Asthan Sri Rama Janam Bhumi is an indestructible and immovable Deity who has continued to exist throughout the ages.”

*Fact of the whole matter is that **idea of Rama Janmsthan was first floated by British East India Company's agents in 1855 in order to destabilise the regime of this Defendant's forebear, the King of he realm Wajid Ali Shah.** At that time a spot outside the structure of the Babri Masjid, in a corner of the court-yard was claimed as Ram Janam Asthan. But the King settled the dispute by partitioning out the Plot 17 ft. x 12 ft. naming it as Ram Chabutra and by giving it to the Hindus to do “paaths” of Ramayana, peace was then restored.*

Again, for the first time on 22.12.1949 the Ram Janam Asthan claim was shifted from Ram Chabutra to right inside the mosque just beneath the main large dome of the Babri Masjid.

Earlier than 1855, the undisputed Ram Janm Asthan

was the old Janam Asthan Sita Rasoi Mandir across the street on a mound facing the Babri Masjid.

All the above mentioned three Ram Janam Asthans are now believed to be Lord Rama's probable places of birth, viz. (i) inside the Babri Masjid beneath the main dome since 1949, (ii) at Ram Chabutra in the court-yard of the Babri Masjid since 1855, (iii) at the old Ram Janam Asthan Mandir where Sita Rasoi is also situated, and whose present Mahant is Harihar Das, aged over 100 years.

15. That the statements made in the first two sentences of paragraph no. 23 of the Plaint are the most important, and all Muslims of India are willing to make that as the issue and settle the dispute one way or other at this. Paragraph No. 23 opens thus :

“That the books of history and public records of unimpeachable authenticity establish indisputably that there was an ancient temple of Maharaja Vikramaditya's time of Sri Rama Janam Bhumi Ayodhya. That Temple was destroyed partly and an attempt was made to raise a mosque thereat by the force of arms, by Mir Baqia commander of Babar's hordes.”

The plaintiff No. 3 – Sri Deoko Nandan Agarwal, in a booklet named “Sri Rama Janam Bhumi” published by “Sri Ram Janam Mukti Yagna Samiti”, 58 Rajendra Nagar, Lucknow, has written at page 2 as follows :-

“That there was an ancient Temple of Maharaja Vikramaditya's time at Sri Rama Janam Bhumi is a fact of history, which is indisputable, although there is some

controversy as to which of the Vikramaditya resurrected the place and built the magnificent Temple.”

In paragraph no. 23 of the Suit Plaintiff there is a reference to 1928 Edition of the Fyzabad Gazetteer published by the then British Government in Uttar Pradesh, wherein at page 179 there are stories of Moghul Emperor Babar coming to Ayodhya, halting there for a week, destroying the ancient temple at Janamsthan, and building the Babri mosque on its site the materials of the old destroyed Mandir. But it is the known fact of the history that Emperor Babar never came to Ayodhya. And that the Babri mosque was built by Mir Baqi and not by Babar has been admitted in the Suit Plaintiff itself. Further-more, Babar in his Babar-nama, while recording his daily diary, has made no mention of visiting Ayodhya, destroying Mandir or building Mosque there, although in other pages of Babarnama many things adverse are also mentioned.

But the Fyzabad Gazetteer of 1877, this Defendant submits, does not contain any mention of destruction of any Mandir and building of Babri or any Masjid on the Mandir land. Of the two Gazetteers, the one contemporary and more near to the date concerned will have to be relied on.

District Gazetteer of the British Government, as is well known, were no works of history. They only reflected the policy of the alien Government to divide the cast population of India by creating conflicts such as the present one, and to perpetuate the minority rule of the foreign imperialist power. This defendant submits that all the aforesaid and other conflicting facts need to be

investigated by this Hon'ble Court or by a Commission of Experts of history and archaeology to arrive at the truth.

However, after all said and done, it is most respectfully submitted that if only this claim is proved that a Mandir was demolished and Babri Masjid was built on the Mandir land, this defendant and all other Muslims will gladly demolish and shift the mosque, and return the land for building thereon.

But if this is not a fact, the Babri Masjid must in all fairness be returned to Muslims.

In this connection, the following quotation of Swami Swaroopananda Saraswati, the Shaneracharya of Dwarka Peeth, and published in the national news-paper on 14th May, 1987, is being re-produced below from Qaomi Awaj – Urdu Daily of Lucknow :

CONDITION FOR RETURN OF BABRI MASJID TO MUSLIMS:

Pune (Maharashtra) 13 May -

Jagadguru Shanakra-charya Swaroopananda Saraswati has proposed that to resolve the Ram Janam Bhumi Babri Masjid table an Authority should be constituted.

Addressing a gathering of the All India Virodhman Asthan Kwasi Jain Shraman Sangh here yesterday he said that if it is proved that Moghul Emperor Babar got the mosque constructed after demolishing Mandir, then surely the Hindus should get the Mandir. But if it is found that Hindu Administrators made the Mandir after destroying the mosque, then the place will have to be made over to

Muslims.”

In this connection, the celebrates Muslim historian and scholar Maulana Syed Sababuddin Abdur Rahman (since expired) in his welknown treatise “BABRI MASJID” wrote at page 5 at the very beginning of his preface thus : (translation from Urdu)

“On behalf of Muslims I also have right to say that if it is proved that Babri Masjid has been built after demolishin Ram Janam Bhoomi Mandir on its place, then such a mosque if built on such an usrped land deserves to be destroyed. No theologean or Aalim can give Fatwa to hold Namaz in it.”

In the monumental theological work Fatwa-e-Alamgiri, Volume 6 Page 214, the following is the ruling : (translation).

“It is not permissible to built mosque on unlawfully acquired land. There may be many forms of unlawful acquisition. For instance, if some people forcibly take somebody's house (or land) and build a mosque or even Jama Masjid on it, then Namaz in such a mosque will be against Shariat.”

Other assertions made in paragraph 23 of the Plaint, not specifically dealt with above, are contested and denied. 16. Parts of the contents of paragraph 24 of the Suit Plaint have been answered in para 15 above. This defendant submits that Plaintiff No. 3 is not competent to interpret Koran, Islamic Shariat, and Islamic custom and practices which he has tried to do in sub-paragraphs A, B, C, D, E, F and G of paragraph 24. The interpretations given are

strongly contested. The contentions in the Suit Plaintiff in this regard are wholly irrelevant with the points at issue.

This defendant states :

(A) That Emperor Babar or Mir Baqi did not destroy or demolish any Mandir.

(B) Emperor Babar or his commander Mir Baqi did not construct the mosque on the land of on the ruins of any Mandir. Mir Baqi built the Babri Masjid on vacant land.

(C) Sanctity of Babri Mosque was not affected by the creation of Ram Chabutra on the courtyard, or by the mosque being surrounded by Mandirs.

(D) There is no tenet of Islam against existence of a mosque in a noisy place, or in a non-Muslim locality.

(E) Minaret is no essential part of a mosque/

(F) Non-existence of a water reservoir in it does not make a mosque as no mosque.

Finally speaking, if it is not a mosque how it is claimed that mosque was built after destroying the Mandir.

26. That as regards the contents of paragraph 34 and 35 of the Suit Plaintiff, the answering defendant being a representative of the Shia Muslims of India is deadly against any form of sacrilegious actions. He is of the firm view that no place of worship of any religion should be constructed on the ruins of the destroyed one. The answering defendant firmly believes that the Babri Masjid was certainly not built after destroying the Vikramaditya Mandir or any temple. Yet, at the same time if it is unequivocally proved in this Hon'ble Court in the light of historical archaeological and expert scientific evidence

that the Babri masjid was really built after demolishing any Mandir land, only then this defendant will withdraw his opposition.

As a further concession to the Plaintiff No. 3 and to the Hindu community of India whose religious sentiments the said Plaintiff and his party are trying to wrongly arouse since last 3 years, this Defendant is prepared to withdraw his opposition also if it is unequivocally proved, in this Hon'ble Court that the belief, of Ram Janam Asthan being at the presently claimed spot inside the Babri Masjid, existed from before the Babri Masjid was built . And that the Babri Masjid was knowingly built n Ram Janam Asthan spot.

31. Once it is admitted that a mosque was built hundreds of years ago and was used as such it became Waqf by user, irrespective of the fact whether or not legal formalities for creating a Waqf were observed.”

3479. Defendant No.25 (Suit-5) in the written statement dated 16/18 September, 1989, in paras 2, 15, 23, 26, 33 and 34 has said :

“2. That the contents of para 2 of the plaint are denied. The area and the places indicated in Annexure No. 1, 2 & 3 of the plaint are neither Ram Janam Bhoomi nor Ram Janam Asthan. However, it is evident that there exists a Mosque known as Babri Masjid, the existence of this mosque is established by record, Historic, Judicial and Revenue. The filing of the Suit no. 2 of 1950 are not denied.

15. That the contents of para 15 of the plaint are denied. There is no question of construction of any temple over the

site in question. Answering defendant and his co-religionists have a right to resist any such attempts. The premises is a mosque and Muslims have a right to offer namaz in it. Neither Jagadguru has any right or locus in the matter and nor he can execute any deed legally in respect of the premises in question. The answering defendant is not aware of the religious sect of the so called vairagies of Ayodhya.

23. That the contents of para 23 of the plaint are denied. The narration of history in the plaint is false and baseless. No authentic book of history has been referred in the plaint. The premises has always been a mosque since its construction in sixteenth century, it has always been used by the Muslims for offering namaz and for no other purpose. Remark in the gazette is not an authentic record of history. It is only generalised observation, the Gazette also does not make any reference of nay authentic history or record. The pillars are not Kasauti. However, it is not relevant as the fact remains that it is a mosque, and has always been used as mosque and it is wholly incorrect that anybody else other than Muslims worshipped in the building which is called Babri Mashid. The narration of history by the plaintiff is baseless and false. There is no evidence of the demolition of any temple for construction of this mosque.

26. That the contents of para 26 of the plaint are vehemently denied. The building known as Babri Masjid has always been in use as a mosque and the Muslims have offered namaz in it since its construction till 22nd

December, 1949. Some of those who offered namaz in it are still available. Some part of the mosque was damaged in the communal riot of 1934 and the same was repaired soon thereafter. The threat contained in the para under reply is most unwarranted. There is no dispute between Shias and Sunnis over the mosque in question. Mosque is vested in almighty and every Muslim (Shia and Sunni) have the right to offer Namaz in any Masjid. The averment in the para under reply are wholly incorrect and false.

33. That the contents of para 33 of the plaint are denied. It may be pointed out that the entire complex belongs to Waqf Babri Masjid, the existence of which cannot be denied.

34. That the contents of para 34 of the plaint are vehemently denied. The premises has always been a mosque and it has been used as such and no one can remove the structure.”

3480. Voluminous documentary and oral evidence has been adduced, besides referring a plethora of books on the subject of history, religion, culture, archaeology, architecture, gazetteer etc. to prove rival submissions. The learned counsels for the parties however have not specified and identified evidence separately with reference to the above issues. In general they have advanced their submissions referring to the evidence (documentary and oral, as well as the concerned books) the details whereof shall be mentioned later on.

3481. Sri Zafaryab Jilani, Mohd. Siddiqui and Syed Anwar Ahmad have appeared and argued for plaintiffs (Suit 4), Sunni Waqf Board and other Muslim defendants in other suits while Sri Ravi Shankar Prasad, Sri P.R. Ganpathy Iyer and K.N.Bhatt

(Sr. Advocates), Sri P.N. Mishra, R.L.Verma, Madan Mohan Pandey, Rakesh Pandey, Hari Shankar Jain, Ranjana Agnihotri, A.K.Pandey, Ved Prakash, Tarun Verma and D.P.Gupta Advocates have advanced their submissions for various Hindu Parties.

3482. Sri Zafaryab Jilani, Advocate, counsel for the plaintiffs (Suit-4), contended that the published material, which may throw light on the above issues, may be categorized in five:

- (i) Books of History;
- (ii) Books containing Travellers account;
- (iii) Gazetteers (published in pre-independence and post-independence era);
- (iv) The religious books ; &
- (v) Archaeology, Iconography, Architecture and others.

3483. In the first category, the books of history, he referred to the following:

- (i) “Babar-Nama” by John Leyden and Erskin (Ex. 48, Suit-5 -Paper No. 107C-1/64-68)
- (ii) “Babur-Nama (Memoirs of Babur)” by A.S. Beveridge (Ex. 16, Suit-5 -Paper No. 107C1/71-74)
- (iii) “Memoirs of Babur” by Lt. Col.F.G. Talbot (Ex. 82, Suit-4 -Paper No. 218 C1/ 1- 20)
- (iv) “Mughal Kaleen Bharat-'Babar'1526-1530 A.D.” by Syed Athar Abbas Rizvi (Ex. 85, Suit-4-Paper No. 224 C1/1–62)
- (v) “Ain-e-Akbari” by Abul Fazal Allami translated in English by Col. H.S. Jarret in 1884 A.D., corrected and further annotated by Sri Jadunath Sarkar first published in 1927 A.D. (Ex. D1, Suit-5-Paper No. 320C1/1-6-; Paper

No. 321 C1/3)

(vi) "Ayodhya ka Itihas" by Awadhwasī Lala Sitaram published in 1932 A.D. (Ex-50, Suit-5 -Paper No. 107C1/122-129)

(vii) "Sri Ram Janam Bhumi Aitihāsik Avam Puratativik Sakshya" by T.P. Verma and S.P.Gupta (Ex. 3, Suit-5-Paper No. 289C1/1)

(viii) "Itihas Me Ramjanambhumi" by Rajendra Singh (published in March, 1991) (Ex. B4, Suit-4-Paper No. 206C1)

(ix) "Ramjanambhumi Ka Rakt Ranjit Itihas" by Pt. Radhey Shyam

(x) "Babur Nama" by Yugjeet Naval Puri published in 1974 (Hindi translation of "Memoirs of Babar" written in english by F.G.Talbot)

(xi) "Ayodhya" by Han's Baker published in 1986.

(xii) "Shri Ramjanambhumi Pramanik Itihas" by Radhey Shyam Shukla (Ex. 24, Suit-5-Paper No. 107C1/154)

(xiii) "Fasana-i-Ibrat" by Rajab Ali Beg Surur

(xiv) "Amir Ali Shaheed Aur Marka-I-Hanuman Garhi" by Shah Mohd. Azmat Ali Alvi Kakorvi

(xv) "Zia-I-Akhtar: by Hazi Mohd. Hasan (1878)

(xvi) "Sri Ramjanambhumi Ka Rakt Ranjit Itihas" by Sri Ram Raksha Tripathi "Nirbheek" (Paper No. 110C1/52-54)

(xvii) "Sri Ramjanambhumi Ka Rakt Ranjit Itihas" by Ram Gopal Pandey "Sharad" (Paper No. 44 C1/1-8)

(xviii) "Society and Culture in Northern India in the 12th Century" by B.N.S. Yadav (Paper No. 300 C1/2)

- (xix) “The History of India As told by its own Historian” Elliot & Dowson (Ex. 87, Suit-4 -Paper No. 242 C1/1-5; Ex. 89, Suit-4 -Paper No. 246C1/1-7)
- (xx) Sharki Architecture (Paper No. 301C1/1)
- (xxi) “Mughal Empire in India” by Prof. S.R. Sharma (first published in 1934)
- (xxii) “Destruction and Conservation of Cultural Property” (2001) (Paper No. 308C1/1-9)
- (xxiii) “The Religious Policy of Mughals” (Paper No. 284 C1/1)
- (xxiv) “Historians Report to the Indian Nation” by R.S. Sharma, M. Athar Ali, Suraj Bhan and D.N. Jha (Paper No. 288C1/1; Paper No. 190C2/1-20; Ex. 62, Suit-4-Paper No. 190C2/1-20)
- (xxv) “India Distorted - A Study of British Historians on India” Vol. III by S. C. Mittal (Ex. E5, Suit-5-Paper No. 323 C1/1-25)
- (xxvi) “The Early History of India” by Vincent A. Smith (Ex. E6, Suit-5-Paper No. 324C1/1-28)
- (xxvii) “Journey through the Kingdom of Oudh in 1849-1850” (Published in 1858) (Paper No. 311 C1/1-10)
- (xxviii) “A Clash of Cultures; Oudh, the British and the Mughals” by Michel H. Fisher (Ex. 25, Suit-5-Paper No. 107 C1/155-164)
- (xxix) “British Paramountcy and Indian Renaissance” - Part II by Dr. R.C. Majoomdar and others (Ex. D3, Suit-5 -Paper No. 313C1/1-14)
- (xxx) “Encyclopedia Britannica” 1976 Edition (Paper No. 107C1/120)

(xxxii) “Hindu World-Encyclopedic Survey of Hinduism” by Benjamin Walker (Ex. 4, Suit-5 -Paper No. 310C1/7/1-)

(xxxiii) “Babri Masjid Kee Wajyabee Ke Liye” by Mohd. Hashim Ansari (Ex. 37, Suit-5-Paper No. 255C1/2/1-20)

(xxxiv) “Ram Janam Bhumi Ya Babri Masjid-Satya Kya Hai” published by Maktaba Islami Fyzabad (Ex. 41, Suit-5-Paper No. 255C1/12)

(xxxv) “Ramayana” by Sri Raj Gopala Charya (Paper No. 110C1/60-67)

3484. In the category of “Travellers account” he cited “Early Travels in India” edited by “William Foster” (Paper No. 107C1/95-Ex. 19, Suit-5) (The chapter relating to India's travel in 17th Century in 1611 AD by William Finch).

3485. In the category of “Gazetteers”, Sri Jilani refers to the following :

(i) “The History, Antiquities, Topography and Statistics of Eastern India” by Robert Montgomery Martin (Vol-II) (first published in 1838 AD) (Ex. 20, Suit-5-Paper No. 107 C1/109-110)

(ii) “A Gazetteer of Territories under the Government of East- India Company and of the native States on the Continent of India” (Thornton's Gazetteer “1858 A.D.”) Pages No.739 and 740 of the aforesaid Gazetteer have been filed by plaintiffs (Suit-5) as Papers No.107C1/10-11 i.e. Exhibit No.5 (Suit -5) (Register Volume 20 Page 21-23).

(iii) “Archaeological Survey of India- Four Reports made during the years 1862-63-64-65” by Alexander

Cunningham, Director General of the Archaeological Survey of India (First Published in 1871) (Paper No. 107C1/12-16A i.e. Ex. 6, Suit 5; Paper No. 258C1/1)

(iv) “A Historical Sketch of Tahsil Fyzabad, Zillah Fyzabad” by P.Carenegy (Paper No.107C1-23 i.e. Ex. 49, Suit-5).

(v) Gazetteers of Provinces of Audh by W.C.Benett (Published in 1877 A.D.) (Ex. 7, Suit-5-Paper No. 107C1/25-26)

(vi) “Report on the Settlement of Land Revenue of the Faizabad District” by A.F. Millett (1880 A.D.) (Ex. 8, Suit-5-Paper No. 107C1/27-30A)

(vii) “The Monumental Antiquities and Inscriptions in the north western provinces and Oudh” by A. Fuhror (Archaeological Survey of North Western Provinces of Oudh) (Published in 1891 A.D.)(Ex. 9, Suit-5-Paper No. 107C1/33)

(viii) “Imperial Gazetteer of India (Provisional Series) (United Provinces of Agra and Oudh)” -Vol-II (published in 1908 A.D.) (Ex. 10, Suit-5-Paper No. 107C1/37-39)

(ix) “Fyzabad Gazetteer being Vol.-XLIII of the District Gazetteers of the United Provinces of Agra and Oudh” by H.R. Nevill (published in 1905 A.D.) (Ex. 11, Suit-5-Paper No. 107C1/42-48)

(x) “Gazetteers of Faizabad” by H.R. Navill (published in 1928 A.D.) (Ex. 12, Suit-5-Paper No. 107C1/49-53)

(xi) “Uttar Pradesh District Gazetteers -Faizabad” by Smt. Esha Basanti Joshi (Published in 1960 A.D.)

3486. In the category of “books of religion” he referred

to :-

- (i) Balmiki "Ramayana" (Ex. J2/1, Suit-4-Paper No. 261C1/1; Ex. J2/2, Suit-4-Paper No. 261C1/2-)
- (ii) "Ramcharit Manas" by Goswami Tulsidas (Ex. 42, Suit-5-Paper No. 258C1). Photocopy of the frontispiece and pages no. 921, 927, 940, 941, 946 and 947 from Goswami Tulsidas Krit "Sri Ramcharit Manas" by Pt. Triloki Nath Chaturvedi published by Manas Pratisthan, New Delhi has been filed as Exhibit T4 (Suit-4), register Vol. 18, pages 59-71.
- (iii) "Sikh and Sikhism" by W.H. McLeod (Ex. 69, Suit-4-Paper No. 210 C1/1-10)
- (iv) "Guru Nanak" (1469-1539) (Paper No. 208C1/3)
- (v) "Geetawali" by Goswami Tulsi Das (Ex-A9, Suit-4-Paper No. 46C1/1)

3487. In the category of books relating to Archeology and others, Sri Jilani refers to the following:

- (i) "Stone Inscriptions" (1992 Discovery) (Paper No. 306 C1/2)
- (ii) Copper Plate Inscription (Ex. D28, Suit-5-Paper No. 198C2/100; Ex. D29, Suit-5-Paper No. 198C2/107; Ex. D30, Suit-5-Paper No. 198C2/118, Paper No. 198C2/125; and, Ex. 105, Suit-4-Paper No. 196B-C2/27)

3488. Sri Jilani submitted that there is no historical event mentioned in any of the books of history etc. that Lord Ram was born at the site in dispute; that there existed a temple at the site in dispute; that it was demolished and thereafter the disputed structure was raised on the disputed site; that it continued to be in the possession of Hindus and the Mohamdamns were ousted;

that it was not a mosque but a temple; that the Muslims never offered any prayer thereat; or, that there were consistent and frequent battles and wars or other dispute amongst Hindus and Muslims with respect to possession or otherwise over the disputed site etc.. He submitted that in some of the Gazetteers of 19th and 20th Century, the story of existence of a huge temple at the site in dispute, its demolition at the direction of Babur by his Commander Mir Baqi and construction of a Mosque has been mentioned but that is only hypothetical and refers to no reliable and then existing supporting material to fortify the same. He also took pains in showing different versions in different Gazetteers published from time to time and said that the same are not reliable. In respect to the “stone inscription” alleged to be discovered in December, 1992 (Paper No.306 C-1/2), he submits that in the light of its translation made by Sri K.V. Ramesh, O.P.W. 10, whose expertise on the subject is admitted by the witnesses of both sides, only this much is evident that there existed a Vishnu Hari Temple in 12th Century AD at Ayodhya, constructed by Gadhwal Rulers, and the said stone inscription itself is of 1100-1200 AD, but he submits that from the said inscription it cannot be inferred by any means that it was the site in dispute where the said temple existed or that the Lord Ram was born thereat.

3489. Coming to the documentary evidence, he placed before us the following exhibits in order to show that the Muslims had continued in possession over the site in dispute and disputed structure at least from 1855 to 1885 and then from 1934 to 1949. Further that in the absence of any otherwise material, there is no reason to doubt the claim of the Muslims

that the property in dispute was in continuous possession of Muslims i.e. after the date of its construction till the night of 22/23 December, 1949, when the idols were kept inside the courtyard and Muslim's entry was restricted firstly under the order of the Executive Magistrate and thereafter by the Courts.

3490. At this stage we propose to mention only the exhibits number of the documents cited by Sri Jilani and shall deal with the same, in detail, later on. The documents he referred to are Exhibits No. A21, A19, 70, A14, A15, A16, A17, 18, A20, A8, 1306, A72, A68, A7, A4, A5, A33, A60, A66, A65, A42, A55, A56, A63, A64, A57, A58, 59, 19, 20, 21, A70, 22, A69, A13, 29, 26, A20, 24, 18, A22, A23, A24, A25, A26, A27, 15, 16, 30, 34, 27, 28, A2, A6, A49, A43, A51, 44, A45, A50, A48, A53, A46, A47, A52 (**Suit 1**), 8, 9, 10 (**Suit-3**), 105, 87, 102, 88, 92, 62, 90, 1, A10, A11, A12, 83, 52, 19, 20, 50, 49, 53, 54, 55, 13, A15, 16, 17, 7, 6, 8, 4, 9, 23, 51, 25, 42, 43, 44, 45, 46, 47, 48, A4, A5, A6 (**Suit-4**) and D28, D29, D30, D5, D36, 49, 132, 91, D36, E5, E6, 25, D3, 21, 4, E4, 37, 38, 39, 40, 41, D35, D34, 005-5-27, 1, 17, 26 (**Suit 5**).

3491. Sri Jilani, thereafter, placed before us the oral deposition of various witnesses and read certain passages to show that the statement given by the witnesses produced by the defendants are not reliable or acceptable and what has been said by the witnesses of plaintiffs (Suit 4) is correct and deserves to be accepted.

3492. Broadly, he categorized the witnesses produced on behalf of the Muslim parties as under:-

- i. Those, who gave statements to prove that prayer (Namaz) continued to be offered in the disputed

building till December, 1949. These are PWs 1-9, 12, 14, 21, 23 and 25.

- ii. The Muslim religious experts deposing about the characteristics of a Mosque to prove that the disputed building was a “Mosque” and was always treated to be a Mosque by all. These are PWs-10, 11, 19, 22 and 26.
- iii. With respect to survey of the site in dispute PW-17 was produced.
- iv. Expert Historians i.e. PWs.13, 15, 16, 18, 20, 24, 27, 28
- v. Expert Archaeologists etc. who assailed the ASI report, i.e., PWs 16, 24, 29, 30, 31, 32.

3493. Sri Jilani placed before us ASI report in extention and sought to argue that it contains numerous operational irregularities and shortcomings, misinterpretation of the artefacts found at the site during the course of excavation, and also shows bias of the members of ASI team, therefore, the conclusion drawn is incorrect and unreliable.

3494. He (Sri Jilani) lastly contended that though neither for the purpose of this case he has disputed the faith of Hindus in Lord Ram nor that of Ayodhya as it stands today but still he calls upon this Court to examine that the Indian Vedic Literature and in particular the epic “Ramayana” has been held to be a “myth” containing mythological belief, and therefore to suggest a particular place at Ayodhya as “birth place of Lord Ram” is neither intelligible nor tenable. The vedic literature lacks historicity in view of several historians and cannot be relied on to decide the question about the “place of birth of Lord Ram”.

The entire city of Ayodhya as per the belief of Hindus, though an extremely pious and sacred place, but in the absence of any positive material, a particular place can not be ascertained as a birth place of Lord Ram. It is not justified on the part of defendants-Hindus to assert their right of worship at a place whereat about 500 years ago a mosque was constructed which had remained in peaceful possession of Muslims throughout.

3495. The submissions advanced by Sri Jilani have been adopted by other learned counsels namely Sri Mushtaq Ahmad Siddiqui and Syed Anwar Ahmad, appearing for other Muslims parties.

3496. Sri R.L. Verma, Advocate arguing on behalf of defendant no. 3 on the one hand asserted and submits that the site in dispute is the place of extraordinary importance to Hindus since Lord Ram, incarnation of Lord Vishnu, was born in Treta Yug hereat; there was a temple existed at the disputed site which throughout was in possession of Nirmohi Akhara through its Pujaris, Mahant and Sarvarahkar till they were dispossessed under the order dated 29.12.1949 of City Magistrate passed under Section 145 Cr.P.C. appointing a Receiver. He referred to the oral deposition of the witnesses produced on behalf of Nirmohi Akhara to show that prior to 22/23rd December 1949 they were always and throughout performing Puja etc. on the disputed site and it all through remain in their possession. He disputed the very factum of any battle at Ayodhya in 1528 causing any interference in the possession of the alleged temple and construction of mosque by Baber himself or through his agent or any other dispute subsequently also. In the alternative he submits that the disputed

site being the birthplace of Lord Ram had a temple constructed thereat, the outer courtyard had a Chabutara (17x21 ft.) on the south eastern side of the disputed building; and Sita Rasoi at the north west side of the said building, as also the place of Bhandara on the eastern side of the disputed site and all were always in possession of Nirmohi Akhara where it performed Puja etc. through its Pujaris and this state of affairs has never been disturbed by the plaintiffs (Suit-4) or any other muslim party at least since 1855-60 AD till December, 1949 and therefore, entitled for restoration of possession of the said property. He also referred to certain documents and in particular the documents pertaining to suit filed by Mahant Raghubar Das in 1885 AD.

3497. A large number of books including Gazetteers, Travellers Account of William Finch, Niccolao Manucci, William Irvin, the books written on Babar, Architecture etc. were placed by Sri Mishra before us. He also refers to the muslim religious literature in this regard including Holy Quran; Sahih Bukhari's Hadith; Sahih Muslim; Tirmidhi; Books of Mohammedan Law by Amir Ali, Mulla, Faizi, Baille to show that neither the mosque could have been constructed in the given circumstances at the disputed site nor it is so permissible nor was in accordance with muslim law, therefore, the suggestion that the disputed building was a formerly constructed 'mosque' is absolutely incorrect and contrary to law including Shariyat law. He further submits, referring to various gazetteers and documents on record including Exhibit 17 (Suit-1), Exhibit 18 (Suit-1), Exhibit 20 (Suit-1) and Exhibit 30 (Suit-1) that throughout Hindus have remained in continuous possession and

doing worship at the place in dispute, there was never a mosque, it was never used as mosque, it was always used as temple by Hindus, possession of muslim, if any, ceased in 1934; and no Namaz ever was offered after 16.12.1949; and, in the circumstances, it cannot be said that the disputed place is not “birthplace of Lord Rama”. The building in dispute could not have been said to be a mosque. The books and materials which he referred to, we shall discuss later.

3498. Sri Ravi Shankar Prasad, Senior Advocate and Sri Madan Mohan Pandey, Advocate for defendant No.2/1 in Suit-4, firstly sought to concentrate submission on issue 14 (Suit-4) and 22 (Suit-5).

3499. According to Sri Ravi Shankar Prasad, Senior Advocate, issue-14 (Suit-4), 22 and 24 (Suit-5) are the issues to establish that the disputed site since ancient and time immemorial has been held and believed to be the place of birth of Lord Rama according to the faith and belief of Hindus, which they worship by tradition, constantly, and this right of Hindus cannot be disturbed at all.

3500. With respect to power of King, he referred to “**Yagnovalkyasmriti**” translated by Manmath Nath Dutt Verse 343 and “**Mulla's Hindu Law**” 14th Edn. 1974 Page 84. It is argued that the criminal law immediately comes under the new religious King but civil law continued to be dealt with according to local laws without being changed by the change of Ruler of another religion. It is for this reason that Hindu law was allowed to continue and prosper by Muslims and this practice continued during British regime also. He pointed out that even Britishers only regulated the management of Temple and never

dared to replace or alter the deity. Regarding continuance of Hindu law, he also referred to **S. Darshan Lal Vs. Dr. R.E.S. Dalliwall & another AIR 1952 All. 825 (para 16); Advocate General of Bombay Vs. Yusuf Ali Ebrahim & others 84 Indian Cases (1921) (Bom.) 759 (para 95-106); Jamshedji Cursetjee Tarachand Vs. Soonabai & others 1 Indian Cases (1907) 834 (Bom.) (para 72, 166-171)**. In support of the submission that the disputed place has been the birthplace of Lord Ram as per the beliefs, traditions and customs ancient, he refers to **“Valmiki Ramayan”** (translated by Chaturvedi Dwarka Prasad Sharma); **“Bhartiya Sanskriti Ke Char Adhyay”** by Ramdhari Singh Dinkar, First Edn. 1956, reprinted 2009 by Lok Bharti Prakashan; **“Skanda-Purana”** English translation by Dr. G.V. Tagore and, in particular, refers to Section VIII Chapter 10, i.e., Ajodhya Mahata. He says that Purans are 2000 to 3000 years old and Janamsthan itself is a deity. Custom and practice of Hindu religion are to be honoured and fortified his submission by relying on **Rais Ahmad Vs. State of U.P. & others (1999) 6 SCC 391 (para 10)**. He refers to **“The Bhagvad Gita”** Chapters 6 to 18 by Sri Paramhansa Yoganand and **“Bhagvad Gita As It is”** by A.C. Bhaktivedanta Swami Prabhupad and submits that all these books are admissible in evidence by virtue of Section 57 (13) of the Evidence Act. Thereafter, he refers to travellers' accounts of Tieffenthaler and William Finch, Gazetteer of 1858 by Edward Thornton, P. Karnegy's Settlement Report of 1870 and **“The New Encyclopaedia Britannica”**, Vol. 9, 15th Edn. Page 916 and Vol. 1 page 751. About legal status of Gazetteers, he submits About the legal status of Gazetteers, he submits that the

same can be relied in evidence and refers to **Vimla Bai Vs. Hiralal Gupta & others (1990) 2 SCC 22** (para 4 and 5); **Bala Shankar Maha Shanker Bhattjee & others Vs. Charity Commissioner, Gujarat State 1995 suppl. (1) SCC 485** (para 22) and **Mahant Shri Srinivas Ramanuj Das Vs. Surjanarayan Das & another AIR 1967 SC 256** (para 26). About the faith of Hindus, he also cited the book written by Ranchor Prime titled as “**Hinduism And Ecology Seeds of Truth**” (page 36 and 49). It is argued that there is no other Ayodhya. Janamsthan at Ayodhya was always treated as sacred and except the place in dispute, no other place in Ayodhya from ancient time has been treated as birthplace of Lord Ram. It has been worshipped from generation to generation and, therefore, forms core of belief of Hindus that Lord Ram was borne at the aforesaid site at Ayodhya. He submits that the right of Hindus to worship at such a place is a fundamental right under Article 25 and 26 of the Constitution. The relief sought by plaintiffs (Suit-4) that the disputed building be declared as Mosque, if granted, shall extinguish the right of worship of Hindus and such a prayer cannot be allowed. In this regard, he placed reliance on **Most Rev. P.M.A. Metropolitan & others Vs. Moran Mar Marthoma & another 1995 Supp. (4) SCC 286** (para 43); **Ratilal Panachand Gandhi & others Vs. State of Bombay & others AIR 1954 SC 388** (para 10); **The Commissioner, Hindu Religious Endowments, Madras, Vs. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt AIR 1954 SC 282** (para 17); **Sardar Sarup Singh Vs. State of Punjab AIR 1959 SC 860** (para 7); **Sardar Syedna Taher Saifuddin Saheb Vs. State of Bombay AIR 1962 SC 853** (para 40 and 56); **Bijoe Emmanuel**

& others Vs. State of Kerala & others (1986) 3 SCC 615.

3501. Sri Prasad argued that belief of Hindus that Lord Ram as incarnation of Vishnu having born at Ayodhya forms an integral part of Hindu religion which cannot be denied to be practised, observed and performed by them and refers to **Commissioner of Police & others Vs. Acharya Jagadishwarananda Avadhuta & another (2004) 12 SCC 770** (para 9) and **Sri Adi Visheshwara of Kashi Vishwanath Temple, Varanasi (supra)**. In order to show what constitutes public order under Article 25 of the Constitution, he also placed reliance on **Dalbir Singh & others Vs. State of Punjab AIR 1962 SC 1106** (para 8).

3502. Next he submits that applying the doctrine of Eminent Domain, the place in dispute, having special significance for Hindus, cannot be touched at all either by any particular person or even by State and the provisions of even acquisition would not apply to it though with respect to the alleged mosque, it has been already held and observed by the Apex Court that the disputed building could not be shown to be of any special significance to Muslims. He refers to **Dr. M. Ismail Faruqui & others Vs. Union of India & others (1994) 6 SCC 360** (para 65, 72, 75 and 96); **Acharya Maharajshri Narendra Prasadji Anandprasadji Maharaj & others Vs. State of Gujarat & others (1975) 1 SCC 11**. The relief sought by the plaintiff (Suit-4) is barred by Section 34 Specific Reliefs Act, 1963 and reliance is placed on **Executive Committee of Vaish Degree College, Shamli & others Vs. Lakshmi Narain & others (1976) 2 SCC 58** (para 20 and 27); **American Express Bank Ltd. Vs. Calcutta Steel Co. & others (1993) 2 SCC 199**

(para 22).

3503. Lastly he submits that the disputed building in any case could not be a Mosque since its alleged construction, if any, was against the Muslim law or Shariyat. In this regard, he refers to the **“Mulla Principles of Mahomedan Law”**, 19th Edn., **“Outlines of Muhammadan Law”** by Asaf A.A. Fyzee, Second Edition 1955, **“Principles and Precedents of Moohummudan Law”** by W.H. Macnaghten (first published 1825); **“The Law Relating to Gifts, Trusts and Testamentary Dispositions among the Mahommedans”** (Tagore Law Lectures-1884) by Syed Ameer Ali; **“A Digest of Moohummudan Law”** by Neil B.E. Baillie; **“The Hedaya”** by Charles Hamilton (edited 1871); **“The History of Islam”** by Akbar Shah Najeebabadi (1922, reprinted in 2000 Vol. One, page 147 to 148) and **“The Holy Quraan”** translated by M.A. Haleem Eliasi.

3504. Sri P.R. Ganpathi Iyar, Senior Advocate assisted by Sri Rakesh Pandey appeared on behalf of defendant No.13/1, in addition to what has been argued by Sri Prasad, submitted that the place in dispute has since long been worshipped as place of birth of Lord Ram in tradition uninterruptedly and even if any Muslim ruler has made some construction over it, the worship by Hindus has continued which leads to the conclusion that it is the place which is believed to be the place of birth of Lord Ram. He submits that issue No.11 (Suit-4) and 1 (Suit-1) in the manner they have been framed, needs slight modification and the issues which should be considered by this Court is, whether the property in suit is believed to be the site of Janam Bhumi of Shri Ram Chandra Ji by Hindus. He submits that Hindu scripture also contains the details of time, manner of its

calculation etc. and it relates the time of birth of Lord Ram several thousands and lakhs of years back. Hence it is beyond the scope of judicial scrutiny at this stage to find out as to when and where Lord Ram took birth since no evidence direct or indirect in this regard by lapse of time would be expected. He submits that in religious matters, where things proceed on belief, if such types of issues are raised in respect to other religions also, they shall be felt offended. Hence the same test and sanctity must be extended and applied to the belief of Hindus also. For thousands of years Lord Ram is being worshipped as incarnation of God by Hindus. If it can be shown that for a particular place the Hindu's belief is that it is the site of birth place of Lord Ram and such faith and belief can be shown to have existed for the time immemorial, the Courts must give respect to such belief and must take it correct without entering into correctness of such a belief since that would violate Article 25 of the Constitution of India. He also cited certain authorities in this respect, which have also been referred to by Sri Prasad. We propose to deal with all such authorities at the appropriate stage.

3505. Sri Madan Mohan Pandey, Advocate adopted arguments advanced on behalf of Hindu parties with respect to belief about the place in dispute as birth place of Lord Ram and the same stand has been taken by other counsels namely Sri Hari Shankar Jain, Sri Rakesh Pandey etc.

3506. Though we have referred to, in total, 13 issues relating to Site as Birthplace etc. but having heard learned counsels for the parties and after perusing the various documents and other material, we find it convenient to deal with

the said issues after further sub-categorization or re-categorisation as under and thereafter to take up these issues accordingly. The sub-categorisation/recategorisation of only these issues for our consideration and analysis is as under:

(A) Whether a temple existed prior to the disputed building which was demolished and thereafter the disputed building was constructed i.e. **Issues No.1(b) (Suit-4) and 14 (Suit-5).**

(B) The existence of other Hindu religious places making the disputed building landlocked by religious places of Hindus and in this category is **Issue No.19(b) (Suit-4).**

(C) Whether the Hindus had been continuously worshipping at the place in dispute. **Issues No. 13, 14 (Suit 4) and 24 (Suit 5)** come in this category.

(D) The presence of idol in the disputed building i.e. **Issues No.2 (Suit-1) and 5 (Suit-3).**

(E) **Issues No.1 (Suit-1), 11 (Suit 4) and 22 (Suit-5)** relates to the site of birthplace of Shri Ram, believed as such by Hindus by tradition etc.

(F) Others.

3507. These issues relate to the religious faith in respect to the place of birth of Lord Rama; determination of the exact place of birth; investigation into history of more than hundreds and thousands centuries; whether there existed a temple/religious structure of Hindus which was demolished to construct the disputed structure over the land in dispute; whether the disputed building was actually constructed. as a mosque by

Babar or under his dictates by Meer Baqi; and who was/is carrying on religious practices like prayer etc. at the said place for the last more than 500 years etc.

3508. The very nature of these questions make it writ large that decision either side is bound to affect the religious sentiments of one or the other community. From the record, we have also seen that the dispute between two communities over the land in question is continuing atleast for more than one and a half century. At times efforts were made to resolve the dispute amicably by pursuing the two communities to arrive at a compromise, honourable and acceptable, to both sides. In the past, sometimes the efforts seemed to be successful but could not resolve permanently since the dispute revived time and again. Some of the questions, we doubt whether would come within the scope of judicial review in a Court of law. On other issues, we have more serious doubt about the availability of relevant material or evidence on the basis whereof a Court of law can record a finding of fact either way. Some individual observations by some persons at some point of time, the traditions and practices followed for a long time, continuous or interrupted, views of the people in the concerned locality, references made by the investigators/historians/visitors in one or the other way etc. whether constitute sufficient evidence for deciding such issues of far reaching consequences conclusively is really a task extremely difficult. The issues are complicated with a wide canvass and also sensitive involving highly versatile sentiments and religious pathos of two major communities of present India. We, therefore, with care, proceed to scrutinize rival claims to find out the truth objectively, dispassionately and

without being influenced by any other factor except the truth and justice. We shall endeavour to arrive at a just conclusion so that the dispute amongst two communities may get settled permanently for all times to come.

3509. The parties before us not only have placed religious literature, historical books, gazetteers published in pre and post independence period, certain other literary books containing references to the matter in dispute, but have also examined a large number of witnesses including Expert Historians, Archaeologists, Epigraphists etc. This Court also tried to find out truth by permitting excavation through ASI which has also submitted its report giving its opinion. However some of the parties have filed their objections against the report of ASI which is also required to be considered.

3510. The issues relates to history and historical events. The chronology of the occurrence thereof has to be found out, if any. Broadly, it appears that oral evidence would be of little help. The historical events have to be seen in the light of the history, other relevant books and corroborative material of relevant period, if any. The history and other books cited and referred also contain divergent views. One or the other party, during the course of argument, to some extent, has commented adversely in respect to one or the other books while trying to persuade this Court to accept the view they are propagating . These books in our opinion cannot be acted upon merely on their face value.

3511. The alleged history, placed before us, has to be considered in the light of the credentials of the author, his knowledge, understanding, level of investigation, discussion on