

**ISSUES NO.1 & 1(a)**

- 1. Whether the building in question described as mosque in the sketch map attached to the plaint (hereinafter referred to as the building) was a mosque as claimed by the plaintiff ? If the answer is in the affirmative?**
- 1a. When was it built and by whom-whether by Babar as alleged by the plaintiffs or by Meer Baqi as alleged by defendant no.13 ?**

**FINDINGS**

These issues are interconnected and can conveniently be disposed of at one place.

Plaintiffs claim that the building in question was a mosque and has been described in the plaint. It was built by Babur more than 433 years ago after his conquest of India. In alternative it is urged assuming though not admitting that one time there existed a Hindu temple as alleged by the defendants then on the site of which temple Babur built the mosque, the mosque since long in continuous possession of Muslims and they perfected their rights by adverse possession. It is further the case of the plaintiffs that the building stood dedicated to Almighty. It is also the case of the plaintiffs that the building had been used by members of Muslim community for offering prayers from times immemorial and Muslims were in possession of the property in suit from 1528 AD continuously, openly and to the knowledge of the defendants and Hindus in general. On the contrary, on behalf of defendant no.13 it is urged that the property in suit was constructed by Mir Baqi. It was not used by members of Muslims for prayers. It remained in

possession of Hindus and building was not dedicated to Almighty. It is also the case of Hindus that Muslims were not in exclusive possession of the property in suit which has already been demolished on 06.12.1992.

It has further been pleaded from the side of Hindus that it was Mir Baqi, who was Shia Muslim, who demolished the ancient Hindu temple of Sri Ram Janam Bhumi and raised a mosque like structure in its place with its materials. The masjid was known as Masjid Janmasthan in British times. 14 Kasauti pillars and other material reveal the structural features of the building. Mir Baqi was influenced by the so called Faquir named Fazal Abbas Qalandar, who had instructed the destruction of the ancient temple at Ram Janma Bhumi and construction of a mosque at that place for him to offer prayers, although the doing so is opposed to tenets of Islam.

Plaintiffs further claim that since it was a mosque and was constructed by Babur, accordingly they are entitled to retain the same.

On behalf of plaintiffs, oral as well as documentary evidence has been adduced.

First of all, I will take up documentary evidence. The plaintiffs have filed the documentary evidence in different categories.

**Regarding nature of the building** : In order to establish

that Babur had camped near Ayodhya and he had not given any order for demolition of any temple and even on his return from the East, when he had called Mir Baqi at a place near Ayodhya, there is no mention that he had given instructions for demolition of any temple or construction of any mosque at the site of any temple. While there is specific mention of the desecration of the nude parts of the idols of Urwa in Babarnama.

Plaintiffs have relied over (Ext.82)- Extract of Memoirs of Babur by F.G.Talbot, (Ext.85)- Extract of Mughalkalin Bharat-Babur by S.Athar Abbas Rizvi, (Ext. 91),(Ext. OOS 5-48)-Extract of Memoirs of Babar by John Leyden (Vol. 20, P.129 – 137),(Ext. OOS 5-15)-Extract of Memoirs of Babar by John Leyden & John Erskine (1921) (Vol. 20, P.139, (Ext. OOS 5-16)-Extract of Baburnama by A.S.Beveridge Vol. 20, P.145 – 159. Plaintiffs have further relied over Epigraphia Indica (Arabic and Persian Supplement) (1965) by Dr. Z.A.Desai to establish that there were inscriptions on the Mosque. Sri Z. Jilani, Advocate further relied over Extract of Aine Akbari (Vol.III) (Vol. 42, P. 83-93) ,Extract of Aine Akbari (Vol.II) (Vol. 42, P. 97-137) and Ext.104 of OOS 4/89 and Extract of the report of William Finch from the Book-Early Travels in India by William Foster. These extracts go to show that even in these books written between 1584 and 1608 there is no mention either of the alleged belief of Hindus about the place of birth of Lord Rama being there in the Babri Mosque or about the alleged belief of demolition of any Ram Janam Bhoomi Temple

by Babar or Mir Baqi. Aine Akbari is a public and historic document. It does not mention of several other places of Hindu worship but there is no mention of the so called Ram Janam Bhumi Temple or place of birth of Lord Rama. In this context it further transpires that the plaintiffs at para-2 of the plaint have mentioned that Babur visited Ayodhya and there was battle between Babar and then Muslim Ruler of Ayodhya and several persons were killed during the battle and they were buried in the ancient graveyard which has already been acquired by the Government of India. Thus the plaintiffs through these papers want to establish that Babur never visited Ayodhya.

Plaintiffs have further relied over Vol. 3 of Mr. P.N.Mishra, Senior Advocate, P.203 – 205 Moghal India by Niccalass Manucli to show that between the period of 1653-1708 there was no such alleged belief that the building in dispute was the place of birth of Lord Rama or the same was constructed after the demolition of any Hindu temple. The aforesaid plea was reaffirmed in the Extract of Tieffenthaler published in 1786. It further shows that even upto that time there was no such alleged belief that the place of birth of Lord Rama was inside the Babri Mosque but rather Bedi i.e. “the cradle” referring to the place of Ram Chabutra was said to be the place of birth of Lord Rama. Plaintiffs have relied over Ext.D-28, Extract of Epigraphia Indica, Vol.4, Copper plates of the grant of Govind Chandra etc. (Vol. 30, P. 119-131), Extract of Epigraphia Indica, Vol. 14, to show that there was no temple

known as Ram Janam Bhumi Temple referring to the place of birth of Lord Rama on the site in dispute.

The plaintiffs have further referred the Extract of Sanskrit Inscriptions of Delhi Sultanate by Pushpa Prasad (Vol. 30, P. 167-173), 198C-2/128-130 Extract of the Journal of Bihar and Orissa Research Society (1927)-The Sunga Inscription of Ayodhya(Vol. 30, P. 177, 175, 176). These documents show that it was not mentioned in history that some inscriptions placed in one building were later on shifted or installed in some other building also and that similar carvings on pillars etc. were found at other places also. Extract of the Catalogue of Historical Documents in Kapad Dwar Collection, Jaipur, Ext.105 shows that there is no sketch or photograph of any Janam Sthan or Janam Bhumi Temple in Ayodhya. The plaintiffs have further relied over extract of “An Advanced History of India” by R.C. Majumdar & Ray Chaudhary etc. (Vol. 38, P. 175-191), Extract of the Book “Society and Culture in North India in the Twelfth Century” by B.N.S.Yadav, (Ext.87) Extract of “The History of India as Told by its own Historians”, Vol.VI, by Elliot and Dowson (Vol. 16, P. 2-6), (Ext.89) Extract of “The History of India as Told by its own Historians”, Vol.III, by Elliot and Dowson (Vol. 16,P.14-20),(Ext 102) Extract of “The History of India as Told by its own Historians”, Vol.II, by Elliot & Dowson(Extract of Tabaqate Nasre (Vol. 16, P. 184-197)(Exts OOS5-D-5 & D-6) Extract of “The History of India as Told by its own Historians”, Vol.II, by Elliot &

Dowson (Extracts of Mirate Masoodi) (Vol. 38, P. 353-371), (Ext 88) Extract of “The History of India as Told by Its Own Historians”, Vol. IV, by Elliot & Dowson (Extracts of Tuzuke Babri and Tarikhe Dawoodi) (Vol. 16, P. 7-12) Extract of Moghul Empire in India by Prof.S.R.Sharma (1934) (Vol. 16, P. 169-181) 301C-1/1-3 Extract of “The Sharqi Architecture of Jaunpur” by A.Fuhrer (Vol.37, P. 135-139) Extract of “Encyclopaedia of Indian Archaeology” Edited by A.Ghosh (Vol. 37, P. 113) (Ext D-36) Extract of the Book “Destruction and Conservation of Cultural Property” Edited and Published by Routledge, London in 2001 (Article of Prof.Ram Saran Sharma on Ayodhya) Vol. 38, P.211-229, (EXT 90) Extract of the Book “The Disputed Mosque-A Historical Inquiry” by Sushil Srivastava (1991) (Vol. 16, P. 158-163), Extract of the Book “The Secular Emperor Babar” by Surendra Kaur & Tapan Sanyal(1987) (Vol. 25, P. 49-121) Extract of “The Temples of India” published by the Govt. of India (1964) (Vol. 37, P.143 – 159), Extract of “India Distorted” by S.C.Mittal (Vol. 26, P.3 – 51), (Ext E-6) Extract of “The Early History of India” by V. Smith (Vol. 26, P.57 – 111) (Ext E-4) Extract of “Hindu World”, Vol.II by Benjamin Walker (Vol. 42, P.33 – 59), (Ext 67) Extract of “A Journey through the Kingdom of Oudh”, Vol.I(1849-50) by Maj.Gen.W.H.Sleeman (Vol. 38, P.257 - 273) 311-C-1/10-19 (Ext 68) Extract of “A Journey through the Kingdom of Oudh”, Vol.II(1849-50) by Maj. Gen.W.H.Sleeman (Vol. 38, P.275 – 293).

Plaintiffs on the basis of these documents claim that till 19<sup>th</sup> Century there was no such belief that Babri Masjid was constructed after demolition of any Hindu Temple and there was no mention of any such Ram Janam Bhumi temple. These books do not indicate this fact. It further strengthens that Babri Masjid was constructed independently without demolishing any temple. Ext.D-3, Extract of “British Paramountsey and Indian Renaissance, Part II”, Vol.10 by R.C.Majumdar (Vol. 38, P.297 – 323) details of several communal riots of 19<sup>th</sup> Century and 20<sup>th</sup> of Century (pre independence era) but did not mention any so called communal riot of 1855 which is said to have taken place at Ayodhya.

(Ext.63/D-26)Book on “Ayodhya Archaeology After Demolition” by D.Mandal (Vol. 30, P. 7-95) 199C-2/1 Extract of the “Indian Archaeology “ go so show that there was no evidence to prove about the alleged plea regarding the place of birth of Lord Ram therein Babri Mosque.

Plaintiffs have also placed reliance on extract of “Ramayana” by C.Rajgopalacharya, Extract of “Ram,Ramayana and Babar” by P.S.Sridhar Murti (1988) (Vol. 25, P. 171-209)Valmiki Ramayan I, Valmiki Ramayan II, Sri Ram Charit Manas, Gitawali, to show that the site of Babri Masjid is not the alleged place of birth of Lord Rama and there is no mention in the above books even about the so called demolition of any alleged Ram Janam Bhumi Temple and construction of Babri Masjid in place thereof. Ext OOS5-23) “Ayodhya” by Hains Baker refers

that after the demolition of Ram Temple, Babri Masjid was constructed This book was written by a foreign author who was influenced by the belief of local people prevalent in Ayodhya. He has also referred the Gazetteers written after 1865. (Ext OOS 5-D-24) श्री राम जन्म भूमि का रक्त रंजित इतिहास by Sri Ram Raksha Tripathi (1985) (Vol. 25, P. 123-127), (Ext OOS 5-D- 38) श्री राम जन्म भूमि का रक्त रंजित इतिहास by Sri Ram Gopal Pandey “Sharad” (1997) (Vol. 25, P. 129-133) and 107 C-1/154 (Vol. 22, P.415- 511) Ext OOS 5-24: Shri Ram Janambhoomi by Dr. Radhey Shyam Shukla –

Such type of books have no authenticity and even the same do not fully support the case of the Hindu parties because these Authors also had acknowledged the offering of prayers in the building in dispute at different intervals and that by itself shows that the nature of the building has been acknowledged to be the Mosque even by these Authors who can in no way be treated as Historians. Such publications also can not be treated as Books of History.

Some books of this very kind written by some Muslims had also been filed by the Hindu side but they also are nothing more than a fiction, much less any kind of History. The Authors of these Books also were not at all Historians and these books are also based on no sources of History and as such no value can be attached to the assertions made in any of these books mentioned below:-

Vol. 21, P. 201-229 (Ext. OOS 5-18) Extract of the Book

entitled as “Amir Ali Shaheed Aur Markae Hanuman Gahri” by Sheikh Mohd. Azmat Ali Alvi Kakorvi edited by Dr. Zaki Kakorvi (published in 1987). Vol. 21, P. 245-253 (107 C-1/90)  
 Extract of “Gum Gushtae Halat-e- Ayodhya” by Moulvi Abdul Gaffar (1979) (Not proved) Vol. 21, P. 255-269 (107 C-1/92)  
 Extract of “Tareekh-e-Awadh” by Najmul Ghani Khan Rampuri (Not proved).

Plaintiffs have further relied over extract of Gazetteers and other books to establish that there is no mention of Ram Janam Bhumi temple or place of birth of Lord Ram being inside the mosque.

**Gazetteer of Walter Hamilton** (1815 / 1828) page 12, 16, 17 (Book Page 352 / 353) - No mention of Ram Janam Bhumi Temple or place of birth of Lord Rama. **Vol. 21, P. 321-322** (107C-1/109-110) (Ext. OOS 5-5) by **Montgomery Martin** (1838) **No mention of Ram Janam Bhumi Temple or place of birth of Lord Rama being inside the Mosque** – Tradition prevalent at that time was about the destruction of temple and erection of Mosque by Aurangzeb but Martrin refers to the fallacy of this tradition on the basis of the existence of 2 inscriptions on its walls showing the same built by Babur, 5 generations before Aurangzeb. It was also observed by Martin that Pillars in the Babur’s Mosque were taken from a Hindu building and probably these Pillars were taken from the ruins of the palace. **Vol. 20, P. 21-23** (107C-1/10-110) (Ext. OOS 5-5) by **Edward Thorntone** (1858). In this Gazetteer also

there is no mention of any such tradition or belief that any portion inside the Babri Masjid might have been considered as the place of birth of Lord Rama. Referring to Buchanan, the Author (Thorntone) says that out of 360 Temples said to have been constructed by Vikramaditya, no traces were available of any of them and according to native tradition the demolition was made by Aurangzeb who built a Mosque on a part of the site. In this respect Thorntone says that 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 Aurungzeb was fifth in descent. The mosque is embellished with fourteen columns of only five or six feet in height, but of very elaborate and tasteful workmanship, said to have been taken from the ruins of the Hindoo fanes, to which they had been given by the monkey-general Hanuman, who had brought them from Lanka or Ceylon. Altogether, however, the remains of antiquity in the vicinity of this renowned capital must give a very low idea of the state of arts and civilization of the Hindoo at a remote period. A quadrangular coffer of stone, whitewashed, five ells long, four broad and protruding five or six inches above ground, is pointed out as the cradle in which Rama was born, as the seventh Avatar of Vishnu; and is accordingly abundantly honoured by the pilgrimages and devotions of Hindus..."**Vol. 20, P. 25-34**, 107C-1/12-16(Ext. OOS 5-6) Four Reports by Alexandar Cunningham – 1862-65(1871 Edn.). In this respect also the places associated with Lord Rama

were specifically mentioned including Guptur Ghat, Swarg Dwari and Ram Kot etc. and about the birth place Temple it was specifically mentioned on page 322 (page 29 of Vol. 20) that “in the very heart of the city stands Janam Sthan or “birth place Temple” of Rama” It is thus evident that in 1862-1865 the tradition and belief / faith was in respect of the Janam Sthan Temple situated in the Northern site of Babri Masjid to be the birth place of Lord Rama. **Vol. 20, P. 35-49** (107C-1/17-24-Ext. OOS 5-49) by Carnegie (1870). It was with this Gazetteer that the theory of demolition of Janam Sthan Temple and construction of Babri Masjid at the site thereof was introduced for the first time but that too was based on no source of History and rather was based only on local belief. The Author himself says under the heading “The Janam Sthan and other Temples” on page 20 of the Book (page 45 of the Vol.) that “it is locally affirmed that at the Mohamdan conquest Emperor Babar built the Mosque by demolishing Janamsthan Temple”. In the same sequence it is also mentioned on page 21 of the Book:-

“In two places in the Babri mosque the year in which it was built 935 H., Corresponding with 1528 A.D, is carved in stone, with inscriptions dedicated to the glory of that Empror.” Carnegie further says about the pillars that “To my thinking these strongly resemble Budhist pillars that I have seen at Benares and elsewhere.”

Thus the so called belief / tradition about the Janam Sthan

Temple being demolished and Babri Masjid being constructed on its site starts from this Gazetteer of 1870. These very assertions are repeated in the Reports of Millet, Fuhrer and Nevill etc. being referred as under:-

- (i)- Vol. 20, P. 51-53 (107C-1/25-26) Ext. OOS 5-7 - Gazetteer of the Province of Oudh
- (ii)- Vol. 20, P. 55-62 (107C-1/27-30) Ext. OOS 5-8 - by Millet (1880)
- (iii)- Vol. 20, P. 63-65 (107C-1/33-36) Ext. OOS 5-9 - by A. Fuhrer (1891)
- (iv)- Vol. 20, P. 85-91 (107C-1/42-48) Ext. OOS 5-11- by H.R.Nevill (1905)
- (v)- Vol. 20, P. 75-79 (107C-1/37-39=312C-1/22-23) Ext. OOS 5-10 Imperial Gazetteer(1908)
- (vi)- Vol. 20, P. 99-107 (107C-1/49-53) Ext. OOS 5-12 – by H.R.Nevill (1928)
- (vii)- Vol. 20, P. 109-123 (107C-1/54-61) Ext. OOS 5-13 - by E.B.Joshi 1960)
- 06- Vol. 21, P. 349-367 (107C-1/122) Ext.OOS 5-22 &50 -

### **Ayodhya**

**Ka Itihas by Awadhwasī Lala Sitaram (1932). In this Book there is specific mention of the building in dispute being treated as a Mosque and even the inscriptions of the Mosque have been quoted.** The Author says on page 152 of the Book (P. 359 of the Volume) that “ बाक़ी बेग ने मन्दिर की ही सामग्री से मसजिद बनवाई थी। मसजिद के भीतर बारह और बाहर फाटक पर दो काले, कसौटी के पत्थर के स्तम्भ लगे हुए हैं। ...मसजिद के भीतर एवं फाटक पर दो लेख खुदे हुए हैं उनसे मसजिद के सम्बन्ध रखने वाली बात मालूम होती है।” Ext. OOS 5-3 (289 C-1/1) “Ayodhya ka Itihas Evam Puratatva” by S.P. Gupta and T.P. Verma is a book written solely for the purposes of this case by 2 persons deeply interested and involved in this case, in order to support the claim of Hindus.

The falsity of different averments made in the book is evident even from the statements of both the authors Viz. S.P. Gupta and T.P. Varma, recorded in this case where they have admitted even about incorrectness of some contents of the book. Even the inscription of Gahadwala period has been misquoted about Vishnu Hari Temple and the “Ajodhan” has been read as “Ayodhya”. Reference about the so called attack of Salar Masood at Ayodhya being incorrect and wrong was also admitted by Dr. T.P. Verma. As such no reliance can be placed upon the contents of this book and specially so when both the co-authors of this book have appeared as OPW-3 and 9 in this case.

**Documents filed for showing title of Muslims to the property in suit:-**

**01** – Ext. A 3 (Vol. 6 Page 33) - original sanad granted by the Chief Commissioner of Awadh in favour of Rajjab Ali and Mohd. Asghar, the certified copy of which is filed as Exit. 1 in O.O.S. No. 4 of 1989 (Vol. 10 P. 27)-showing the cash Nankargrant of Rs. 302-3-6 for maintenance of the grant so long as the object for which the grant has been made is kept intact.

**02** – Ext. A 10 (Vol. 6 Page 153-155) - certified copy of the Extract of Register Tahqiqat Mafi bearing orders dated 13-3-1860 and 29-6-1860 etc. referring to Babar Shah Badshah Dehli in column No. 6 and providing for continuance of the grant.

**03** – Ext. A 11 (Vol. 6 Page 163-165) – certified copy of the Extract of Register Mafiat bearing Government Order dated 29-6-

1860 specifically mentioning that the holder (who was an office bearer of Masjid) possessed a duly attested copy of a decree showing that Rs. 302-3-6 were granted by Nawab Asifuddaula and also providing that **the grant may be continued so long as the Masjid is kept up** and the Mohamdans conduct themselves properly. The said document gives the name of grantor as **Babar Shah Emperor of Delhi** and the name of grantee was given as "Maulvi of Masjid Babri." Another copy of this Register has been filed as Ext. 2 in O.O.S. No. 4. of 1989 (Vol. 10 P. 31) in column 9 of which it is specifically mentioned that **this grant is said to have been made for the expenses of Masjid Babri situated in Ayodhya.**

**04** – Ext. A 12 (Vol. 6 P. 167-169) copy of Register No. 6 (Jeem) regarding Mafi and bearing inspection note dated 9-7-1892 stating about inspection of the Mosque by the officer concerned.

**05** - Ext. 3 (Vol. 10 P. 33) copy of Register No. (Jeem)-register Mafi of Mauza Bahoranpur Pargana Haveli Awadh, Tahsil and District Faizabad mentioning in Column 16 about the **inspection of the Mosque which was found not in good order and also mentioning that Mohd. Asghar had been given to understand to carry out the repairs as soon as possible.** This inspection note was dated 27-9-1902. In column 17 of the said document it was also mentioned that the site was inspected by the officers concerned on different occasions. – Ext. A-21 (Vol. 7 P. 233-235) - copy of Khasra of Mauza Ramkot regarding 1277 Fasli, part of

Misil Haqqiyat Bandobast Sabiq decided on 22-8-1871 by Hakim (हाकिम) Bandobast showing plot No. 163 of the first settlement measuring 5 Bigha 4 Biswa as **Abadi Masjid**. A copy of this very document has been filed as Exhibit 9 in O.O.S. No. 4. of 1989 (Vol. 10 P. 45) – Ext. A 14 (Vol. 7, P. 181) - copy of letter of Secretary, Chief Commissioner of Awadh to the Commissioner Faizabad Division dated 25-8-1863 mentioning that the Governor General has sanctioned Chief Commissioner proposal for the commutation of the cash **payment of Rs. 302-3-6 granted for the support of the Janam Asthan Mosque** to the grant of rent free land near Ayodhya (Vol. 7 P. 181)

Ext. A-15 (Vol. 7, P. 183) - copy of letter of the Financial Commissioner Oudh dated 5/6 September, **regarding Janam Sthan Mosque in Ayodhya** approving selection of land made by the officiating Deputy Commissioner of Faizabad.

Ext. A-16 (Vol. 7, P. 185-191) - copy of ordersheet of the court of Mr. B. Carnegy, Deputy Commissioner, Faizabad dated 31-8-63 **regarding grant of Mafi Nazool land (with income of Rs. 302-3-6) to Masjid Janam Sthan.**

Ext. 7 (Vol. 10, P. 41)-copy of ordersheet of the Deputy Commissioner, Faizabad dated 13-9-1865 regarding the approval of **land selcted for Masjid Janam Sthan.**

Exhibit A-17 (Vol. 7, P. 193-197) - copy of ordersheet of the court of Mr. B. Carnegy, Deputy Commissioner, Faizabad dated 13-9-1865 regarding approval of the **grant of land for Masjid**

**Janam Sthan** and for delivery possession of the same.

Ext. A-18 (Vol. 7, P. 199– 205)-copy of sanad from Extra Assistant Commissioner dated 30 October, 1865 with endorsement dated 5-12-1865 regarding **allotment of land for khateeb Masjid Janam Sthan.**

Ext. A-6 (Vol. 10 P. 39) copy of ordersheet of the Deputy Commissioner, Faizabad dated 13-9-1867 regarding the **land granted for Masjid Janam Sthan.**

Ext. A-19 (Vol. 7 P. 207-213) copy of order / decree of the Settlement Officer dated 3-2-1870 regarding the settlement of land of Sholapur and Bahoranpur in lieu of cash grant of Rs. 302-3-6 paid annually from the Imperial Revenue for the support of Janam Sthan Mosque in Ayodhya.

Ext. A-20 (Vol. 7, P. 231) - copy of order, regarding the settlement, dated 22-8-1871 pertaining to the land of graveyard and Imli trees situated in front of the Babri Mosque and Janam Sthan holding that the trees belong to Mohd. Asghar etc. (plaintiffs) and further holding that graveyard land could not belong to any one. Ext. 8 (Vol. 10 P. 43) is the copy of the judgment and order dated 22-8-1871 of the same case.

Ext. 4 (Vol. 10 P. 35) is the certified copy of the map of the First Settlement showing symbol of Mosque in plot No. 163 of the first settlement.

Ext. 10 (Vol. 10 P. 47) is the copy of Khasra Abadi of Mauza kot Ram Chand showing entry of Masjid Pukhta against plot No. 163.

Ext. 49 (Vol. 11 P. 271-281 and 283-329) is the copy of Tarmeemi Khasra of 1931 showing **entry of Nazul plot No. 583 as “Masjid Waqf Ahde Shahi.”** Another copy of the same Khasra has been filed as Ext 52 (Vol. 12 P. 351) which was filed as paper No. 65-A2 / 2, 3. Entry of the name of Mahant Raghunath Das as per order dated 26-2-1941 is only in respect of Chabutra Janam Sthan. This Khasra of Nazool has been relied upon as Soochi 18 to the affidavit of DW 3/20 and it has been referred in his statement also at Page 11 (para 52) and on pages 16, 36 and 50. Another Khasra extract of plot No. 588 of this very year (Nazool) has been filed by Defendant No. 3 as Ext. A-11 (Vol. 14, P. 69) showing Sumitra Bhawan. Ext. 50 (Vol. 11 P. 331) copy of kishwar map of 1931.

**Documents showing the possession of Muslims regarding the Mosque:**

**01** – Ext. 19 (Vol. 5, Page 61-63) complaint of Sheetal Dubey, Station Officer dated 28-11-1858 about installation of Nishan by Nihang Faqir in Masjid Janam Asthan.

**02** – Ext. 20 (Vol. 5, P. 65-68B) - Application of Mohd. Khateeb, Moazzin of Babri Masjid dated 30-11-1858 against Mahant Nihang for installing Nishan in Masjid Janam Asthan.

**03** - Ext. OOS 5-17 (Vol. 20, P. 187-197) - Petition of Mohd. Asghar, Mutawalli, dated 30-11-1858 regarding Nishan by Nihang Faqir.

**04** - Ext. 21 (Vol. 5 P. 69-72A) - Report of Sheetal Dubey,

Station Officer dated 1-12-1858 against Nihang Sikh for installing Nishan.

(All these documents have been filed by Plaintiff of OOS

No. 1 of 1989 although they refer to Babri Masjid)

**05** – Ext. A-70 (Vol. 8 P. 573-575) - order dated 5-12-1858 about arrest of Faqir.

**06** – Ext. 22 (Vol. 5 P. 73-75) - Report of Sheetal Dubey( Fkkusnkj dated 6-12-1858 (filed by Plaintiff of OOS No. 1 of 1989)

**07** – Ext. A-69 (Vol. 8 P. 569-571) - order dated 15-12-1858 about removal of flag (Jhanda) from the mosque.

**08** – Ext. 54 (Vol. 12 P. 359-361) - Application of Mohd. Asghar etc. dated 12-3-1861 for removal of Chabutra as Kutiya.

**09** – Ext. 55 (Vol. 12 P. 363-365) Report of Subedar dated 16-3-1861 about removal of Kothri.

**10** - Ext A-13 (Vol. 6 P. 173-177) Application of Syed Mohd. Afzal, Mutawalli dated 25-9-1866, for removal of Kothri, against Ambika Singh and others.

**11** – Ext. A-20 (Vol. 7 P. 231) copy of order dated 22-8-1871 passed in the case of Mohd. Asghar Vs. State.

**12** – Ext. 30 (Vol. 5 P. 107-116-A,B,C) Memo of Appeal No. 56 filed by Mohd. Asghar against order dated 3-4-1877 regarding opening of northern side gate (now being called by Hindus as Singh Dwar).

**13** – Ext. 15 (Vol. 5 P. 43-45) Report of Deputy Commissioner in the aforesaid Appeal No. 56.

**14** – Ext. 16 (Vol. 5 P. 45) Order of Commissioner dated 13-12-1877 passed in the aforesaid Appeal No. 56.

**15** – Ext. 24 (Vol. 5 P. 83-85) Plaint of the case No. 1374 / 943 dated 22-10-82 / 6-11-82 (Mohd. Asghar Vs. Raghubar Das)

**16** – Ext. 18 (Vol. 5 P. 55-57) Application of Mohd. Asghar Vs. Raghubar Das dated 2-11-1883 about ‘safedi’ of walls etc.

**Documents relating to suit of 1885.**

**01.** Ext. 13 (Vol. 10, Page 61-63) Plaint of Suit No. 61 / 280 of 1885 filed by Mahant Raghubar Das (also filed as Ext. A-22) (Vol. 7, P.237-239, 241-243 and as Ext. OOS 5-26) (Vol. 23, P.659-663)

**02.** Ext. 14 (Vol. 10, P. 65-74) Written statement of Mohd. Asghar filed in the above case.

**03.** Ext.15 (Vol. 10, P. 75-77) Copy of Report of Commission dated 6-12-1885 with map (Also filed as Ext. A-24 and A-25 in OOS 1/89-Volume 7, P. 271-281)

**04.** Ext.16 (Vol. 10 P. 79-85) Copy of Judgement of Pt. Shri Kishan dated 24-12-1885 (Also filed as Ext. A-26 in OOS 1/89-Vol. 7, P. 283-301)

**05.** Exhibit 17 (Vol. 10 P. 57-91) Copy of Judgement of D.J. Faizabad dated 18/26-3-1886 (Also filed as Ext. A-27 in OOS 1/89-Volume 7, P. 319-323)

**06.** Exhibit 18 (Vol. 10, P. 93-95) Copy of Decree of D.J. Faizabad dated 18/26-3-1886. (Also filed as Ext. A-28 in OOS 1/89-Vol. 7, P. 325-329)

**07.** Order of Judicial Commissioner passed in Second Appeal

(summoned by the Court).

**Documents relating to the repair of the Mosque:**

**01** - Exhibit 23 (Vol. 10, Page 135-136) Copy of application moved by Mohd. Zaki and others for compensation of the losses caused in the riot held on 27-3-1934.

**02** - Exhibit A-49 (Vol. 8, P. 477) Copy of order of Mr. Milner white dated 12-5-1934 for cleaning of Babri Masjid from 14-5-1934 and for use of the same for religious services.

**03** - Exhibit A-43 (Vol. 8, P. 459) Copy of D.C.'s order (Mr. Nicholson) dated 6-10-1934 for approval of payment of compensation.

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**06** - Exhibit A-44 (Vol. 8 P. 461-465) Copy of Estimate of Tahawwar Khan dated 15-4-1935 regarding Babri Masjid.

**07** - Exhibit A-50 (Vol. 8, P. 479-481) Application of Tahawwar Khan (Thekedar) dated 16-4-1935 explaining delay for submission of bill.

**08** - Exhibit A-48 (Vol. 8, P. 473-476) Copy of Inspection Note dated 21-11-1935 by Mr. Zorawar Sharma, Assistant Engineer PWD, regarding Bills of repair of Babri Masjid.

**09** - Exhibit A-53 (Vol. 8, P. 493-495) Application of Tahawwar Khan Thekedar dated 27-1-36 regarding Bills of repair of Babri Masjid and houses.

**10** - Exhibit A-46 (Vol. 8, P. 469) Copy of report of Bill clerk dated 27-1-36 regarding the repair of the Mosque.

**11** - Exhibit A-47 (Vol. 8, P. 471) Copy of order of Mr. A.D.Dixon dated 29-1-36 regarding payment of Rs. 6825/12/- for repair of Babri Mosque.

**12** - Exhibit A-52 (Vol. 8, P. 489-491) Application of Tahawwar Khan Thekedar dated 30-4-1936 regarding less payment of his bills for repair of houses and Mosque.

**Documents showing admission of the Mahant of Nirmohi Akhara about the existence of Babri Masjid and recognition of the same as the Mosque:-**

**01** - Exhibit A-4 (Vol. 14 Page 15) Copy of order dated 4-6-1942 deciding the R.S. No. 95 of 1941 (Mahant Ram Charan Das Vs. Raghunath Das) in terms of compromise.

**02** - Exhibit A-5 (Vol. 14 P. 17-29) Copy of Decree of R.S. No. 95 of 1941 dated 6-7-1942 with the compromise terms **admitting Mosque in Item No. 2 (P. 37/38)**

**03** - Exhibit A-6 (Vol. 14 P. 31-44) Copy of report of Pleader – Commissioner dated 18-4-1942 filed in Rs. 95 of 1941 (See P. 37/38- Item No. 2)

**Documents showing the alleged acknowledgement of Babri Masjid and its user by Muslims available on the record**

**of the case u/s 145 Cr.P.C.:-**

**01** - (Vol. 2 Page251-252) Original FIR dated 23-12-1949 lodged by Ramdeo Dubey at 7 p.m. (also filed as Ext. 51 in O.O.S. No. 4 / 89 – See Vol. 12 P. 337-338).

**02** - (Vol. 1 P. 29) Attachment order dated 29-12-1949.

**03** - (Vol. 1, P.45) Application of local Muslims dated 6-1-1950 for friday Prayers.

**04** - (Vol. 2 P. 211) Written Statement of Salar Mohd. and Mohd Hashim dated 2-7-1950.

**05** - (Vol. 2 P. 215-219) Written Statement of Anisurrahman asserting possession of Muslims since 1528.

**Documents showing the alleged Control and management of Babri Masjid by Muslims.**

**01** - Ext. OOS 5-27 (Vol. 23, Page 665) Sanction letter dated 6-12-1912 for suit u/s 92 CPC issued by Legal Remembrancer, U.P.

**02** - Ext. A-8 (Vol. 6, P. 75-149) Copy of Accounts of the income and expenditure of Waqf from 1306 F. regarding Babri Masjid etc.

**03** - Ext. A-72 (Vol. 7, P. 337-355) Accounts submitted by S. Mohd. Zaki before Hakim Tahsil dated 9-7-1925 regarding Babri Masjid etc.

**04** - Ext. A-31 (Vol. 7, P. 357-377) Accounts submitted by Mohd. Zaki on 31-3-1926 before Tahsildar regarding Babri Masjid etc.

**05** - Ext. A-32 (Vol. 7, P. 379-399) Accounts submitted by Mohd. Zaki on 23-8-1927 before Tahsildar regarding Babri Masjid etc.

**06** - Ext. OOS 5-28 (Vol. 23, P. 667) Letter of E.L. Norton, Legal

Remembrancer dated 18-12-1929 for sanction to file suit u/s 92 CPC. regarding Babri Masjid etc.

**07** - Ext. A-19 (Vol. 10, P. 97-98) Certified copy of letter of E.L. Norton dated 18-12-1929 for permission to file suit u/s 92 regarding Babri Masjid etc.

**08** - Ext. A-7 (Vol. 6, P. 63-69) Agreement executed by Syed Mohd. Zaki dated 25-7-1936 in favour of Moulvi Abdul Ghafoor, Imam of Babri Masjid, regarding payment of salary of Imam. (Also filed as Ext. 24 in OOS 4 /89 – Vol. 10, P. 139)

**09** - Ext. A-61 (Vol. 8, P. 515-517) Application of Abdul Ghaffar, Pesh Imam of Babri Masjid, dated 20-8-1938 for payment of arrears of his salary.

**10** - Ext. A-4 (Vol. 6, P. 35-43) Report of Distt Waqf Commissioner, Faizabad dated 16-9-1938 submitted to Chief Commissioner of Waqf.

(copy filed as Ext. 21, in OOS 4 / 89 – Vol. 10, P. 117 - 123)

**11** - Ext. A-5 (Vol. 6, P. 45-48) Order of Distt Waqf Commissioner, Faizabad dated 8-2-1941 regarding Babri Masjid (copy filed as Ext. 22 in OOS 4 / 89 – Vol. 10, P. 127 - 131)

**12** - Ext. A-33 (Vol. 7, P. 401-407) Copy of Accounts dated 25-9-1941 filed by Kalbe Husain before Tahsildar.

**13** - Ext. A-60 (Vol. 8, P. 514-513) Certified Copy of Application for registration of waqf bearing endorsement dated 27-9-1943 filed before the Sunni Waqf Board.

**14.** Ext. A-66 (Vol. 8 P. 539-545) Application / reply of Syed

Kalbe Hussain to Secretary, Sunni Waqf Board. dated 20-11-1943 regarding management of mosque.

**15** - Ext. A-55 (Vol. 8, P. 503-504) Copy of statement of Income and Expenditure of Waqf Babri Masjid for 1947-48 (Account from 1-10-1947) (Also filed as Ext. A-35 – Vol. 7, P. 413-414)

**16** - Ext. A-54 (Vol. 8 P. 501-502) Copy of Report of Auditor for 1947-48 dated 27-7-1948 (Also filed as Ext. A-36 – Vol. 7, P. 415-416)

**17** - Ext. A-62 (Vol. 8, P. 519-521) Copy of letter of Secretary SWB dated 25-11-1948 to Sri Jawwad Hussain regarding Tauliat.

**18** - Ext. A-63 (Vol. 8, P. 523-527) Copy of Report of Mohd. Ibrahim, Waqf Inspector dated 10-12-1949.

**19** - Ext. A-64 (Vol. 8, P. 529-535) Copy of Report of Mohd. Ibrahim, Waqf Inspector WB dated 23-12-1949.

**20** - Ext. A-57 (Vol. 8, P. 507-508) Copy of the Statement of Income and Expenditure of 1948 – 49 filed before the SWB.

**21** - Ext. A-56 (Vol. 8, P. 505-506) Copy of the Report of Auditor of the Board dated 23-02-1950 for 1948 - 49.

**22** - Ext. A-59 (Vol. 8, P. 511-512) Copy of the Statement of Income and Expenditure for 1949-50 by Jawwad Husain filed before the SWB

**23** - Ext. A-58 (Vol. 8, P. 509-510) Copy of the Report of Auditor of the Board dated 23-12-1950 for 1949 - 50.

**24** - Ext. OOS 5-103 (Vol. 23, P. 703-708) Copy of Complaint of R.S. No. 29 of 1945 dated 4-7-1945 filed by Shia Waqf Board

against Sunni Waqf Board (filed by plaintiff of OOS 5 / 89)

**25** - Ext. A-42 (Vol. 8, P. 431-452) Copy of Judgement of R.S. No. 29 of 1945 dated 30-3-1946 between Shia Waqf Board and Sunni Waqf Board (also filed as Ext.-20-Vol. 10, P. 101-115)

Some more documents have been filed by the parties which may also be of significance and reference may be made to some of these documents in order to elucidate some points of controversy involved in the case. Such documents may be summarized as under:-

**A** – Documents showing different photographs of Mosques and some other Muslims religious places having foundation of Pillars as given in the Book entitled as Indian Architecture (Islamic Period) by Percy Brown (Ext. OOS 5-35). Plate No. XVI, XVII, XVIII, XX, XXI, XXIV, CXII, CXV, CXVIII AND CXXI of the said book may be of relevance in this respect.

**B** – ‘Historian’s Report to the Nation’ is also an important document which has been filed by both the parties Viz. plaintiffs of this suit as well as Plaintiffs of OOS No. 5 / 89 which is marked as Ext. 62 (Volume 12, P. 367-405) in this suit and Ext. OOS 5-45 (Vol. 32, P.231-245) in OOS 5/89. This report not only supports Muslims claim but also belies the case of Hindu side.

**C** – Similarly some documents have been filed to show the manner in which Pillars are generally found in Hindu Temples. These documents prove the contention of the Muslims that the place in dispute had no such structure which might have rested on Pillars.

Some pillar bases are also visible in the documents marked as paper No. 333 C-1/1 - to 335 C-1/20 (Vol. 40 P. 159 - 319) (Ext. D-17, D-18 and D-19) and Ext. D-9, 10 and 11 (Vol. 39, P.17-45). Different other features and places of putting idols in Temples are also evident from these photographs which support the contention of the Muslims that the walls 16 and 17 found during the Excavation could not be said to be the wall of any Temple but rather the same could be the wall of the Idgah.

**D.** Reliance has been placed by the plaintiffs on some books of History which were referred during the arguments in rebuttal advanced from the side of plaintiffs. These Books included:-

- (i) 'Travels in the Mogul Empire,' AD 1656-1668, Translated by Archibald Constable, revised by V.A. Smith, Oxford, 1916 , (p.5)
- (ii) W. Foster (ed.),. 'The English Factories in India,' 1668-69, Oxford, 1927 (p.184)
- (iii) Jerome Xavier, 'Letters from the Mughal Court,' 1593-1617, translated by H. Hosten, Journal of Asiatic Society of Bengal, NS, XXIII (1927) (pp. 121-22, 105)
- (iv) Nicolao Manucci, Storia do Mogor, 1656-1712, transl. W. Irvine, 4 vols (Vol. II, P. 46)
- (v) James Mill, The History of British India (London, 1817), ed. H.H. Wilson, 6 vols., London, 1840, I, (pp. 137-140)

From these accounts it is clear that, as Bernier puts it, the King was the owner of all soil, except for the houses and lands that

were allowed to be sold and purchased. Thus it follows that all vacant land automatically belonged to the sovereign – a doctrine that continued under the British government.

**FOLLOWING WITNESSES HAVE BEEN PRODUCED**  
**BY THE PLAINTIFF/MUSLIM SIDE:-**

The witnesses produced by the Muslim side may be divided in the following categories:-

**A- Witnesses of fact deposing about the Mosque being used for the prayers by Muslims upto 22-12-1949:-**

<p><b>Annexure-V</b> <b>Page 240-281</b></p>
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- (i) PW-1 (Mohd. Hashim), resident of Ayodhya, aged about 75 years
- (ii) PW-2 (Haji Mahboob Ahmad) resident of Ayodhya, aged about 58 years (also examined as DW 6/1-1 regarding Excavation details)
- (iii) PW-3 (Farooq Ahmad), resident of Ayodhya, aged about 90 years
- (iv) PW-4 (Mohd. Yaseen) resident of Ayodhya, aged about 66 years
- (v) PW-5 (Abdul Rahman), resident of Maghlasi, Faizabad, aged about 71 years.
- (vi) PW-6 (Mohd. Yunus Siddiqi, Advocate), resident of Faizabad, aged about 63 years
- (vii) PW-7 (Hashmatullah Ansari), resident of Ayodhya, aged about

65 years

(viii) PW-8 (Abdul Azeez), resident of Shahjahanpur, Faizabad, aged about 70 years

(ix) PW-9 (Syed Akhlaq Ahmad), resident of Ayodhya, aged about 60 years.

(x) PW-14 (Jaleel Ahmad), resident of Faizabad city, aged about 78 years

(xi) PW-21 (Dr. Mohd. Hashim Qidwai), (Ex. Member of Parliament, Rajya Sabha) resident of Aligarh, aged about 80 years – offered prayers from December 1939 to May 1941 while residing with his father who was then posted as Dy. Collector in Faizabad.

(xii) PW-23 (Mohd. Qasim Ansari), resident of Ayodhya, aged about 74 years

(xiii) PW-25 (Sibte Mohd. Naqvi), resident of Akbarpur, then Distt. Faizabad, aged about 76 years

**B- Witnesses having special knowledge in Sharia deposing about the Rules / Principles of Shariat regarding the Mosque:-**

(i) PW-10 (Maulana Mohd. Idrees), teaching at Jamai Ashrafia, Mubarakpur, Azamgarh.

(ii) PW-11 (Maulana Mohd. Burhanuddin), teaching at Nadwa, Lucknow

(iii) PW-19 (Maulana Ateeq Ahmad), teaching at Nadwa, Lucknow

(iv) PW-22 (Maulana Mohd. Khalid Nadwi), teaching at Nadwa,

Lucknow.

(v) PW-26 (Maulana Syed Kalbe Jawwad), Shia cleric of  
Lucknow.

(vi) PW-25 – Chawdhry Sibte Mohd. Naqvi - Shia cleric of  
Faizabad / Lucknow

**C- Witnesses having Special knowledge of History /**

**Archeology:-**

<p><b>Annexure-III</b> <b>Pages 164-350</b></p>
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(i) PW - 13 Dr. Suresh Chandra Misra (Historian)

(ii) PW - 15 Dr. Sushil Srivastava (Historian)

(iii) PW - 16 Prof. Suraj Bhan (Archaeologist)

(iv) PW - 18 Prof. Suvira Jaiswal (Historian)

(v) PW - 20 Prof. Shirin Moosvi (Historian)

(vi) PW - 24 Prof. D. Mandal (Archaeologist)

(vii) PW - 27 Prof. Shereen F. Ratnagar (Archaeologist)

(viii) PW - 28 Dr. Sita Ram Rai (Archaeologist)

(ix) DW - 6/1 - 2 Mohd. Abid (Archaeologist)

(x) PW - 29 Dr. Jaya Menon (Archaeologist)

(xi) PW - 30 Prof. R. C. Thakran (Archaeologist)

(xii) PW – 31 Dr. Ashok Dutta (Archaeologist)

(xiii) PW - 32 Dr. Supriya Verma (Archaeologist)

PW 16 (Prof. Suraj Bhan), PW 24 – Prof. D.Mandal PW -  
29 (Dr. Jaya Menon), PW – 30 (Dr. R. C. Thakran), PW-31 (Dr.  
Ashok Dutta), PW-32 (Dr. Supriya Verma) and DW - 6/1 - 2

(Mohd. Abid) have deposed about the deficiencies of the ASI report.

E- PW-17 Zafar Ali Siddiqi, Advocate Sultanpur had visited the site along with the survey staff of the Board of Revenue and he has deposed about the existence of Mosque in plot No. 583 of the Nazul Khasra of 1931.

**WITNESSES PRODUCED BY THE HINDU PARTIES:-**

**The witnesses produced by the Hindu Parties may also be divided in following categories:-**

<p><b>Annexure-V</b> <b>Pages 240-281</b></p>
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**A- Witnesses of fact deposing alleged worship in the Building in dispute prior to 23<sup>rd</sup> December 1949:-**

- (i)- OPW-1- Sri Param Hans Ramcharndra Das
- (ii)- OPW-4 – Sri Harihar Prasad Tiwari
- (iii)- OPW-5 – Sri Ramnath Misra @ Banarsi Panda
- (iv)- OPW-6 – Sri Hausla Prasad Tripathi
- (v)- OPW-7 – Sri Ram Surat Tiwari
- (vi)- OPW-12 – Sri Kaushal Kishore Mishra
- (vii)- OPW-13 – Sri Narad Saran
- (viii)- DW1/2 – Sri Krishna Chandra Singh
- (ix)- DW1/3 – Sri Sahdeo Prasad Dubey
- (x)- DW17/1 – Ramesh Chandra Tripathi
- (xi)- DW20/3 – Brahmachari Ramrakshanand
- (xii)- DW3/1 – Sri Mahant Bhaskar Das (Plaintiff)

- (xiii)- DW3/2 – Sri Rajaram Padey
- (ixv)-DW3/3 – Sri Satya Narain Triphati
- (xv)-DW3/4 – Sri Mahant Shiv Saran Das
- (xvi)- DW3/5 – Sri Raghunath Prasad Pandey
- (xvii)- DW3/7 – Sri Mahant Ramjidas Shastri
- (xviii)-DW3/8 –Sri Pandit Shyam Sunder Mishra @ Barkaoo  
Maharaj
- (ixx)- DW3/9 – Sri Ram Asrey Yadav
- (xx)- DW3/10 - Sri Pateshwari Dutt Pandey
- (xxi)- DW3/11 – Sri Bhanu Pratap Singh
- (xxii)- DW3/12 – Sri Ram Achchaibar Pandey
- (xxiii)- DW3/13 – Sri Mahant Ram Subhagdas Shastri
- (xxiv)- DW3/14 – Sri Ramanandacharya Swami Haryacharya
- (xxv)- DW/3/15 – Sri Narendra Bhadur Singh
- (xxvi)- DW3/16 – Sri Shiv Bheek Singh
- (xxvii)- DW3/17 – Sri Mata Badal Tiwari
- (xxviii)- DW3/18 – Sri Mahant Banshidhar Das @ Uriya Baba
- (xxix)- DW3/19 – Sri Ram Milan Singh
- (xxx)- DW3/20 – Sri Mahant Rajaramchandracharya

**B- Witnesses claiming special knowledge about Hindu religion  
and deposing about the place of Birth of Lord Rama on the  
basis of books of Hindu religion:-**

- (i) – OPW-16 – Sri Jagadguru Ramananda Charya Swami Ram  
Bhadracharya
- (ii) – DW 2/1-3 – Sri Mahant Dr. Ram Vilas DasVedanti

(iii) – DW 3/14 - Sri Ramanandacharya Swami Haryacharya

(iv) – DW20/2 – Swami Awimukteshwara Nand Saraswati

**C- Witnesses claiming special knowledge of**

**History/Archaeology:-**

(i)- OPW-9- Dr.Thakur Prasad Varma (Plaintiff) (Historian)

(ii)- OPW-10- Dr. K.V. Ramesh (Epigraphist)

(iii)- OPW-11- Dr. Satish Chandra Mittal (Historian)

(iv)- OPW-15- Sri M.N. Katti (Epigraphist)

(v)- DW13/1-3 – Dr. Bishun Bahadur (Historian)

(vi)- DW2/1-1 - Sri Rajendra Singh (Sardar Ji) (Author of the  
Book)

(vii)- DW2/1-2 – Sri Ram Saran Srivastava (Author of the Book)

(viii)- OPW- 3 – Dr. S.P. Gupta (Archaeologist)

(ix)- OPW-17 – Dr. R. Nagaswamy (Retired Director of  
Archaeology, Tamil Nadu) Archaeologist)

(x)- OPW- 18 – Arun Kumar Sharma ( Retired Supdtt.  
Archaeologist, ASI) (Archaeologist)

(xi)- OPW- 19 – R.D. Trivedi (Retired Director of ASI / Head of  
Temple Survey Project) (Archaeologist)

(xii)- DW- 20 / 5 – Sri Jayanti Prasad Srivastava (Archaeologist)  
(Retired Superintendant Archaeologist ASI)

**D-** OPW-2 – Sri Deoki Nandan Agarawal (Plaintif) whose cross  
examination remained incomplete.

Plaintiffs have filed following documents to show that  
disputed structure was Muslim property Ex. A-3 in the original

sanad granted by the Chief Commissioner of Awadh in favour of Rajjab Ali and Mohd.Asghar, the certified copy of which is filed as Exit. 1 in O.O.S. No.4 of 1989 showing the cash Nankar grant of Rs. 302-3-6 for maintenance of the grant so long as the object for which the grant has been made is kept intact.

**Documents relating to suit of 1885 filed by the plaintiff;**

- 01.** Ext. 13 (Vol. 10, Page 61-63) Plaint of Suit No. 61 / 280 of 1885 filed by Mahant Raghubar Das (also filed as Ext. A-22) (Vol. 7, P.237-239, 241-243 and as Ext. OOS 5-26) (Vol. 23, P.659-663)
- 02.** Ext. 14 (Vol. 10, P. 65-74) Written statement of Mohd. Asghar filed in the above case.
- 03.** Ext.15 (Vol. 10, P. 75-77) Copy of Report of Commission dated 6-12-1885 with map (Also filed as Ext. A-24 and A-25 in OOS 1/89-Volume 7, P. 271-281)
- 04.** Ext.16 (Vol. 10 P. 79-85) Copy of Judgement of Pt. Shri Kishan dated 24-12-1885 (Also filed as Ext. A-26 in OOS 1/89-Vol. 7, P. 283-301)
- 05.** Exhibit 17 (Vol. 10 P. 57-91) Copy of Judgement of D.J. Faizabad dated 18/26-3-1886 (Also filed as Ext. A-27 in OOS 1/89-Volume 7, P. 319-323)
- 06.** Exhibit 18 (Vol. 10, P. 93-95) Copy of Decree of D.J. Faizabad dated 18/26-3-1886. (Also filed as Ext. A-28 in OOS 1/89-Vol. 7, P. 325-329)
- 07.** Order of Judicial Commissioner passed in Second Appeal (summoned by the Court).

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**01** - Exhibit 23 (Vol. 10, Page 135-136) Copy of application moved by Mohd. Zaki and others for compensation of the losses caused in the riot held on 27-3-1934.

**02** - Exhibit A-49 (Vol. 8, P. 477) Copy of order of Mr. Milner white dated 12-5-1934 for **cleaning of Babri Masjid from 14-5-1934 and for use of the same for religious services.**

**03** - Exhibit A-43 (Vol. 8, P. 459) Copy of D.C.'s order (Mr. Nicholson) dated 6-10-1934 for approval of payment of compensation.

**04** - Exhibit A-51 (Vol. 8, P. 483-487) Application of Tahawwar Khan (Thekedar) dated 25-2-1935 for payment of his **bill regarding repair of Mosque.**

**05** - Exhibit A-45 (Vol. 8 P. 467) Copy of order of D.C. dated 26-2-1935 for payment of Rs. 7000/- on the application of Tahawwar Khan.

**06** - Exhibit A-44 (Vol. 8 P. 461-465) Copy of **Estimate of Tahawwar Khan dated 15-4-1935 regarding Babri Masjid.**

**07** - Exhibit A-50 (Vol. 8, P. 479-481) Application of Tahawwar Khan (Thekedar) dated 16-4-1935 explaining delay for submission of bill.

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**09** - Exhibit A-53 (Vol. 8, P. 493-495) Application of Tahawwar

Khan Thekedar dated 27-1-36 regarding **Bills of repair of Babri Masjid** and houses.

**10** - Exhibit A-46 (Vol. 8, P. 469) Copy of report of Bill clerk dated 27-1-36 **regarding the repair of the Mosque.**

**11** - Exhibit A-47 (Vol. 8, P. 471) Copy of order of Mr. A.D.Dixon dated 29-1-36 regarding **payment of Rs. 6825/12/- for repair of Babri Mosque.**

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**Documents filed by the plaintiffs about the existence of Babri Masjid and recognition of the same as the Mosque which is a disputed structure;**

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**02** - Exhibit A-5 (Vol. 14 P. 17-29) Copy of Decree of R.S. No. 95 of 1941 dated 6-7-1942 with the compromise terms **admitting Mosque in Item No. 2 (P. 37/38)**

**03** - Exhibit A-6 (Vol. 14 P. 31-44) Copy of report of Pleader – Commissioner dated 18-4-1942 filed in Rs. 95 of 1941 (See P. 37/38- Item No. 2)

**Documents filed by the plaintiffs about user by Muslims available on the record of the case u/s 145 Cr.P.C.:-**

**01** - (Vol. 2 Page251-252) Original FIR dated 23-12-1949 lodged

by Ramdeo Dubey at 7 p.m. (also filed as Ext. 51 in O.O.S. No. 4 / 89 – See Vol. 12 P. 337-338).

**02** - (Vol. 1 P. 29) Attachment order dated 29-12-1949.

**03** - (Vol. 1, P.45) Application of local Muslims dated 6-1-1950 for Friday Prayers.

**04** - (Vol. 2 P. 211) Written Statement of Salar Mohd. and Mohd Hashim dated 2-7-1950.

**05** - (Vol. 2 P. 215-219) Written Statement of Anisurrahman asserting possession of Muslims since 1528.

**Documents filed by the plaintiffs showing the Control and management of disputed structure;**

**01** - Ext. OOS 5-27 (Vol. 23, Page 665) Sanction letter dated 6-12-1912 for suit u/s 92 CPC issued by Legal Remembrancer, U.P.

**02** - Ext. A-8 (Vol. 6, P. 75-149) Copy of Accounts of the income and expenditure of Waqf from 1306 F. **regarding Babri Masjid etc.**

**03** - Ext. A-72 (Vol. 7, P. 337-355) Accounts submitted by S. Mohd. Zaki before Hakim Tahsil dated 9-7-1925 **regarding Babri Masjid etc.**

**04** - Ext. A-31 (Vol. 7, P. 357-377) Accounts submitted by Mohd. Zaki on 31-3-1926 before Tahsildar **regarding Babri Masjid etc.**

**05** - Ext. A-32 (Vol. 7, P. 379-399) Accounts submitted by Mohd. Zaki on 23-8-1927 before Tahsildar **regarding Babri Masjid etc.**

**06** - Ext. OOS 5-28 (Vol. 23, P. 667) Letter of E.L. Norton, Legal Remembrancer dated 18-12-1929 for sanction to file suit u/s 92

CPC. regarding Babri Masjid etc.

**07** - Ext. A-19 (Vol. 10, P. 97-98) Certified copy of letter of E.L. Norton dated 18-12-1929 for permission to file suit u/s 92 regarding Babri Masjid etc.

**08** - Ext. A-7 (Vol. 6, P. 63-69) Agreement executed by Syed Mohd. Zaki dated 25-7-1936 in favour of Moulvi Abdul Ghafoor, Imam of Babri Masjid, regarding payment of salary of Imam. (Also filed as Ext. 24 in OOS 4 /89 – Vol. 10, P. 139)

**09** - Ext. A-61 (Vol. 8, P. 515-517) Application of Abdul Ghaffar, Pesh Imam of Babri Masjid, dated 20-8-1938 for payment of arrears of his salary.

**10** - Ext. A-4 (Vol. 6, P. 35-43) Report of Distt Waqf Commissioner, Faizabad dated 16-9-1938 submitted to Chief Commissioner of Waqf.

(copy filed as Ext. 21, in OOS 4 / 89 – Vol. 10, P. 117 - 123)

**11** - Ext. A-5 (Vol. 6, P. 45-48) Order of Distt Waqf Commissioner, Faizabad dated 8-2-1941 regarding Babri Masjid (copy filed as Ext. 22 in OOS 4 / 89 – Vol. 10, P. 127 - 131)

**12** - Ext. A-33 (Vol. 7, P. 401-407) Copy of Accounts dated 25-9-1941 filed by Kalbe Husain before Tahsildar.

**13** - Ext. A-60 (Vol. 8, P. 514-513) Certified Copy of Application for registration of waqf bearing endorsement dated 27-9-1943 filed before the Sunni Waqf Board.

**14.** Ext. A-66 (Vol. 8 P. 539-545) Application / reply of Syed Kalbe Hussain to Secretary, Sunni Waqf Board. dated 20-11-1943

regarding management of mosque.

**15** - Ext. A-55 (Vol. 8, P. 503-504) Copy of statement of Income and Expenditure of Waqf Babri Masjid for 1947-48 (Account from 1-10-1947) (Also filed as Ext. A-35 – Vol. 7, P. 413-414)

**16** - Ext. A-54 (Vol. 8 P. 501-502) Copy of Report of Auditor for 1947-48 dated 27-7-1948 (Also filed as Ext. A-36 – Vol. 7, P. 415-416)

**17** - Ext. A-62 (Vol. 8, P. 519-521) Copy of letter of Secretary SWB dated 25-11-1948 to Sri Jawwad Hussain regarding Tauliat.

**18** - Ext. A-63 (Vol. 8, P. 523-527) Copy of Report of Mohd. Ibrahim, Waqf Inspector dated 10-12-1949.

**19** - Ext. A-64 (Vol. 8, P. 529-535) Copy of Report of Mohd. Ibrahim, Waqf Inspector WB dated 23-12-1949.

**20** - Ext. A-57 (Vol. 8, P. 507-508) Copy of the Statement of Income and Expenditure of 1948 – 49 filed before the SWB.

**21** - Ext. A-56 (Vol. 8, P. 505-506) Copy of the Report of Auditor of the Board dated 23-02-1950 for 1948 - 49.

**22** - Ext. A-59 (Vol. 8, P. 511-512) Copy of the Statement of Income and Expenditure for 1949-50 by Jawwad Husain filed before the SWB

**23** - Ext. A-58 (Vol. 8, P. 509-510) Copy of the Report of Auditor of the Board dated 23-12-1950 for 1949 - 50.

**24** - Ext. OOS 5-103 (Vol. 23, P. 703-708) Copy of Complaint of R.S. No. 29 of 1945 dated 4-7-1945 filed by Shia Waqf Board against Sunni Waqf Board (filed by plaintiff of OOS 5 / 89)

25 - Ext. A-42 (Vol. 8, P. 431-452) Copy of Judgement of R.S. No. 29 of 1945 dated 30-3-1946 between Shia Waqf Board and Sunni Waqf Board (also filed as Ext.-20-Vol. 10, P. 101-115).

Shri P.N. Mishra, Advocate on behalf of the defendants urged that on the basis of historical books Memoirs of Mughal Kings, Princess, their Commander, Gazetteers & Travellers' account leave no room for doubt that Babri Mosque never existed. On the contrary, they prove existence of Ram Janmsthan temple. To support his contention, he has invited the attention of this Court on various books and authorities, which are as under :-

**AUTHENTIC HISTORICAL BOOKS, MEMOIRS OF MUGHAL KINGS, PRINCESS, THEIR COMMANDER, GAZETTEERS & TRAVELLERS' ACCOUNT DID NOT PROOVE OF ERECTION OF ALLEGED BABARI MOSQUE BUT PROVE EXISTENCE OF SRI RAMJANMSTHAN & TEMPLE THEREON:**

1. From the Babur-Nama, Humayun-Nama, Tuzuk-I-Jahangiri, Tarikh-I Badauni also known as Muntakhap-ut-Tawarikh, Tarikh-I Feristha, A-In-I Akbari, Tabkat-I Akbari, Waqiyat-I Mushtaqi, Tarikh-I Daudi, Tarikh-I Shahi, Tarikh-I Salatin-I Afaghana, India in the 17<sup>th</sup> Century (Memoirs of Francois Martin), History of Indian and Eastern Architectures, Mughal Documents etc.; one comes to know the fact that the Emperor Babur did not build any Mosque in Ayodhya as there is no mentioning of any such Mosque till the reign of

his great great grandson Emperor Shah Jahan. In 1770 when a Jesuit Priest Father Tieffenthaler visited he found Hindus worshipping inside Sri Ramjanamsthan temple. He has written that according to tradition Sri Ramjanamsthan temple described as Babri Mosque in the plaint of the instant suit was converted into a mosque by Emperor Aurangzeb. But apart from scriptures Yuan Chwang's travel account, A-In-I Akbari, Travel account of William Finch, Storia Do Mogor, Del' Inde of Father Josheph Tieffenthaler, The East India Gazetteer, 1828, The Gazetteer of the Territories under the Government of East India Company and of the native States on the continent of India, 1858, the Gazetteer of the Province of Oudh, 1877-78, The Gazetteer of Faizabad, 1960 as well as from the several applications made from time to time by the alleged Mutwallis, Muezzins, Khattibs etc. the Hindus are found worshipping at the said Sri Ramjanamsthan temple upto date.

2. The Chinese Traveler *Yuan Chwang* who travelled India in the reign of Emperor Harshavardhan during the period of 629 A.D.to 645 A.D. has recorded existence of Ten prominent Deva Temple of the Hindus in Ayodhya which shows that the prominent Temples described in *Sri Skandapuram* including the Sri Ramjanamsthan Temple were still in existence during the Ayodhya visit of Yuan Chwang. Relevant extract from page 355 of the book *On*

*Yuan Chwang's Travels in India (A.D.629 – 645* translated by Thomas Watters reads as follows:

“The Ayudha country, the Records proceeds to tell us, was above 5,000 *li* in circuit, and the capital was above twenty *li* in circuit. The country yielded good crops, was luxuriant in fruit and flower, and had a genial climate. The people had agreeable ways, were fond of good works, and devoted to practical learning. There were above 100 Buddhist monasteries, and more than 8000 Brethren who were students of both ‘vehicles’. There were ten *Deva-Temples* and the non-Buddhists were few in number.”

(*On Yuan Chwang's Travels in India (A.D.629 – 645* translated by Thomas Watters p.355).

3. In his memoirs Babur-Nama Babar did not record any entry to show that there was fighting between him and the then ruler of Ayodhya or to show under his order any mosque was erected in Ayodhya as such the plaint case that there was fighting between Babur and the then ruler of Ayodhya wherein several soldiers of Babur were killed and for corpse of those soldiers said Emperor made grave-yards and for other Muslims made a mosque has no foundation at all. In his memoirs Babur has mentioned name of the places and nature of constructions carried on at such places but he has not mentioned Ayodhya and Babri mosque. In 935 A.H. itself Babur remembered that construction works were going on in Dhulpur and Agra but did not mention construction of Baburi Mosque at Ayodhya. He has recorded his orders given for constructing wells, building, mosque, ponds etc.

very minutely and he has referred construction of one place several times in his Memoirs as such there is no possibility of his missing any construction at Agra. Relevant extracts from pages 520, 606-607, 615-616 and 642 from the Babar-Nama translated by Annette Susannah Beveridge reprint of 2006 published by the Low Price Publications, Delhi read as follows:

“680 men worked daily on my buildings in Agra and of Agra stone-cutters only; while 1491 stone-cutters worked daily on my buildings in Agra, Sikri. Biana, Dulpur, Gualiar and Kuil. In the same way there are numberless artisans and workmen of every sort in Hindustan.” (ibid p. 520)

Babur-Nama’s entry dated 21<sup>st</sup> September 1528 (935 A.H.) records his order to erect a mosque in Dhulpur, said entry reads as follows:

“(c. Work in Dulpur (Dhulpur).)  
That place is at the end of a beaked hill, its beak being of solid red building-stone (imar-at-task). I had ordered the (beak of the) hill cut down (dressed down?) to the ground-level and that if there remained a suffering height, a house was to be cut out in it, if not, it was to be levelled and a tank (hauz) cut out in its top. As it was not found high enough for a house, Ustad Shah Muhammad the stone-cutter was ordered to level it and cut out an octagonal, roofed tank. North of this tank the ground is thick with trees, mangoes, jaman (Eugenia jambolana), all sorts of trees; amongst them I had ordered a well made to be by to; it was almost ready; its water goes to the afore-named tank. To the north of this tank Sl. Sikandar’s dam is flung across (the valley); on it houses have been built, and above it the waters of the Rains gather into a great lake. On the east of this lake is a garden; I ordered a seat and four-pillared platform (talar) to be cut out in the solid rock on that same side, and a mosque built on the western one.” (ibid p.606-607)

Babur-Nama’s entry dated 14<sup>th</sup> October, 1928

records inspection of the work at Sikari as follows:

“At the top of the dawn, we bestirred ourselves from that place, and in the first that place, and in the first watch dismounted at the garden now in making at Sikri. The garde-wall and well-buildings were not getting on to my satisfaction; the overseers therefore were threatened and punished.”

(ibid p. 615-616)

Babur-nama's entry dated 1<sup>st</sup> February, 1929 records the appointment of the supervisors for the work which was being carried on at Agra and Dhulpur as follows:

“(Feb. 1<sup>st</sup> ) On Tuesday, after writing letters to be taken by those going to Kabul, the buildings in hand at Agra and Dulpur were recalled to mind, and entrusted to the charge of Mulla Qasim, Ustad Shah Muhammad the stone-cutter, Mirak, Mir Ghias, Mir Sang-tarash (stone-cutter)and Shah Baba the spadesman. Their leave was then given them.”

(ibid p. 642)

4. Princes Gul-Badan Begam, the daughter of the Emperor Babur in her book Humayun-Nama has mentioned several constructions at different places wherein Ayodhya and Baburi Mosque did not find place. From which facts it becomes clear that no construction of Baburi Mosque was done by the Emperor Babur in Ayodhya was made by Relevant extract from her said book read as follows:

“He commanded buildings to be put up in Agra on the other side of the river, and a stone palace to be built for himself between the haram and the garden. He also had one built in the audience court, with a reservoir in the middle and four chambers in the four towers. On the river's bank he had a chaukandi built.

He ordered a tank made in Dholpur, ten by ten, out of a single mass of rock, and used to say, ‘when it is finished, I will fit it with wine.’ But as he had given up wine before the fight with Rana Sanga, he filled it with lemonade.”(ibid p.98)

“When we had been in Agra three months, the Emperor went to Dholpur. Her Highness Maham Begam and this lowly person also went. A tank had been made there, ten (gaz) by ten, out of one piece (of rock). From Dholpur his Majesty went on to Sikri. He ordered a great platform made in the middle of the tank, and when it was ready, he used to go and sit on it, or to row about. This platform still exists.”

(ibid p.

102)

From Gulbadan-Begam’s account related to the event which took place just after death of Emperor Babur it appears that Mir Baqi was not Governor of Oudh but some one else. Relevant extract from her book read as follows:

“As Gul-chihra Begam was in Oude, and her husband, Tukhta-bugha Sultan, went to the mercy of God, her attendants wrote to his Majesty from Oude and said: ‘Tukhta-bugha Sultan is dead. What is the order about the begam?’ His Majesty said to Mir Zaycha: ‘Go and bring the begam to Agra. We also are going there’.” (ibid p.115)

5. In his book “History of Indian and Eastern Architecture” 1<sup>st</sup> published 1910 reprinted by Low Price Publication, Delhi in 2006 in its Chapter X ‘Mughal Architecture’ James Fergusson writes that no buildings erected by Babur or his son Humayan are existent. The writer also writes that the Babur in his memoirs had written that he had employed 680 persons on his palaces and 1491 stone cutters at Agra, Sikri, Biana, Dholpur, Gwalior and Koil for construction work. From this recording it becomes clear that if Babur would have employed workers to erect lofty firmament building in Ayodhya somewhere in four corners of his memoirs sooner or later certainly he would have mentioned. Relevant

extract from the page 285 of “History of Indian and Eastern Architecture” read as follows:

“There is, again, a little difficulty and confusion in our having no examples of the style as practised by Babar and Humayun. The well-known tomb of the latter king was certainly built by his son Akbar; Babar was buried near Kabul, and no building known to be his has yet been identified in India. Yet that he did build is certain. In his own ‘Memoirs’ he tells us. “In agra alone, and of the stone-cutters belonging to that place only, I everyday employed on my palaces 680 persons; and Agra, Sikri, Biana, Dholpur, Gwalior and Koil, there were every day employed on my works 1,491 stone-cutters.” In the following pages he describes some of these works, and especially a Baol of great magnificence he excavated in the fort of Agra. This was in the year 1526, and he lived to carry on these works for five years longer. During the ten years that his son retained the empire, we learn from Ferishta and other sources that he adorned his capital with many splendid edifices: one, a palace containing seven pavilions or audience halls – one dedicated to each of the planets, in which he gave audience on the day of the week dedicated to the planet of the day. There are traditions of mosque he is said to have built on the banks of the Jamna, opposite where the Taj now stands; and his name is so frequently mentioned in connection with buildings both at Agra and Delhi that there can be little doubt that he was a builder to as great an extent as the troubled character of his region would admit of. But his buildings have perished, so that practically the history of Mughal architecture commences with the buildings of an Afghan dynasty who occupied the throne of India for sixteen years during the last part of Humayun’s lifetime.”

(ibid p. 285)

6. Within 26<sup>th</sup> years of the death of Emperor Zahiruddin Muhammad Babar in the year 1556 his grandson Emperor Jalaluddin Muhammad succeeded his empire. During the

reign of Akbar, the Great, *A-in-I Akbari*, the Gazetteer of his Kingdom was compiled by Emperor's close confident and an erudite scholar Abul Fazl Allami. In the said Gazetteer Abul Fazl gives very minute and microscopic account of Ajodhya he records that Ajodhya is esteemed ones of the holiest places of antiquity and was the residence of Ramchandra in the *Treta* age. He further records that near the city there were two tombs of six and seven yards in length alleged to be of Seth and the Prophet Job. He also records the presence of the tomb of Kabir at Ratanpur as well as graves of the Salar Masud and Rajab Salar located in Bahraich; but he did not mention existence of Babri Mosque or any other Mosque in Ayodhya from which it is crystal clear that during the reign of Akbar, the Great there was existence of Sri Ramjanmsthan but there was no existence of Baburi Mosque otherwise a person from whose notice even the graves have not been escaped would have certainly described said Babari Mosque more so a Mosque built by the grandfather of his patron. Relevant extract from page 182 of the Volume-II of the said book reads as follows:

*Awadh (Ajodhya)* is one of the largest cities in India. It is situated in longitude 118<sup>0</sup> 6' and latitude 27<sup>0</sup>22'. In ancient times, its populations side covered an extent of 148 *kos* in length and 36 in breadth and it is esteemed ones of the holiest places of antiquity. Around environs of the city, they sift the earth and gold is obtained. It was the residence of Ramchandra who in the *Treta* age combined in his own person both the spiritual supremacy and the

kingly office.

At the distance of one kos from the city, the Gogra, after its junction with the Sai, [Saraju] flows below the fort. Near the city stand two considerable tombs of six and seven yards in length respectively. The vulgar believe them to be the resting-places of Seth and the prophet Job, and extraordinary tales are related of them. Some say that at Ratanpur is the tomb of Kabir, the assertor of the unity of God. The portals of spiritual discernment were partly opened to him and he discarded the effete doctorines of his own time. Numerous verses in the Hindi language are still extant of him containing important theological truths. Bahraich is a large town on the banks of the river Sarju. Its environs are delightful with numerous gardens. Salar Masud and Rajab Salar are both buried here.”

(*A-in-I Akbari* Vol-II p.182)

7. *A-in-I Akbari* describing Ten-incarnations of the Lord of Universe Sri Vishnu, records that Sri Rama was born in the city of Ayodhya on 9<sup>th</sup> day of bright half of Chaitra. Relevant extract from page 316-17 of Vol. III of the said book reads as follows:

“He was accordingly born during the *Treta* Yuga on the ninth of the light half of the month of *Chaitra* (March-April) in the city of Ayodhya. That *Kausalya* one of the wife of Raja *Dasaratha*. At the first dawn of intelligence, he acquired much learning and withdrawing from all worldly pursuits, set out journeying through wilds and gave a fresh beauty to his life by visiting holy shrines. He became lord of the earth and slew *Ravana*. He ruled for eleven thousand years and introduced just laws of administration.

(*A-in-I Akbari* Vol-III p.316-317)

8. *A-in-I Akbari* in its Chapter -IX enumerating sacred places of pilgrimage of the Hindus records that in Ajodhya on the birth day of the Lord of Universe Sri Rama a great religious

festival was held in those days. Relevant extract from page 334 of Vol. III of the said book reads as follows:

“Ajodhya, commonly called ‘Awadh’ this distance of forty *kos* to the east, and twenty to the north is regarded as sacred ground. On the ninth of the light half of the month of *Chaitra* a great religious festival is held”.

(*A-in-I Akbari* Vol-III p.334)

9. From the book *Tarikh-I Badauni* written by Abdul Kadir Badauni another court Historian of the Emperor Akbar it appears that said Emperor had very high regard for Sri Ram Chandra and at the instance of the Emperor, Abdul Kadir Badauni had translated *Ramayana*. Relevant extracts from his said book as contained in “*History of India As Told By Its Own Historians*” Vol.III translated by Sir H.M.Elliot and reprinted in 2008 by Low Price Publications, Delhi reads as follows:

“Translation of the *Ramayana*.

[Text, Vol. ii. P. 336] [In this year the King commanded me to make a translation of the *Ramayana*, a composition superior to the *Mahabharat*. It contains 25,000 shloks, and each shlok is a verse of sixty-five letters. The hero of its story is Ram whom the Hindus worship as a god in human form.]

[Text, Vol.ii, p.366.] [In the month of *Jumads- I awwal* A.H. 999, ] completed the translation of the *ramayan*, having occupied four years in the work. When I presented the book, it was greatly praised.]

(*ibid* p.539)

10. In his book “*History Of The Rise Of The Mahomedan Power In India till the year A.D. 1612*” Mahomed Kasim Ferishta enumerates the mosques which were rebuilt and

repair by the Emperor Babur where in there is no mention of Babari Mosque from which fact it is clear that no Mosque in the name of Baburi was built by Babur. He also writes that Babur was Learned in the Doctrines of the sect of Huneef. Relevant extracts from the Vol.II of the said book translated by John Briggs and published by Low Price Publication, Delhi reads as follows:

“The empty fort thus fell into the hands of the Mgouls, and Babur did not fail to rebuild and repair those mosques in Chundery, Sarungpoor, Runtunbhore and Raisein, which had been partly destroyed and otherwise injured by being converted into cattlesheds, by Medny Ray’s order. He also restored those countries to their legitimate sovereign. Sooltan Ahmud, the son of Sooltan Mahomed, and grandson of Sooltan Nasir-ood-Deen Khiljy, King of Malwa.” (ibid p.38)

“He was learned in the doctrines of the sect of Huneef, and never omitted his daily prayers.” (ibid p.41)

11. Abdul Kadir Badauni in his book has written that the Emperor Akbar had become very much sympathetic to Hindus. He had adopted sun worship and other mode of worship of the Hindus. He had handed over several Mosques to Hindus and had allowed Hindu converts to return back to their own religion. From the facts as stated by said critic historian of the Emperor’s Court, it can be inferred that if any Mosque would have been erected over Sri Ramajanamsthan it would have been handed over to the Hindus and such transfer of Mosque would not have escaped

notice of Badauni. The relevant extracts from the Badauni's said book reproduced in A-In-I Akbari Vol.I translated by H.Blochmann and reprinted in 1989 by the Low Price Publication, Delhi read as follows:

“Moreover, Sumanis and Brahmins managed to get frequent private interviews with His Majesty. As they surpass other learned men in their treatises on morals, and on physical and religious sciences, and reach a high degree in their knowledge of the future, in spiritual power and human perfection, they brought proofs based on reason and testimony, for the truth of their own and the fallacies of other religions, and inculcated their doctrines so firmly and so skilfully represented things as quite self-evident which require consideration, that no man, by expressing his doubts, could now raise a doubt in His Majesty, even if mountains were to crumble to dust, or the heavens were to tear as under.”

(*Ibid.* p.188-189)

“The emperor also learned from some Hindus, formulae to reduce the influence of the sun to his subjection, and commenced to read them mornings and evenings as a religious exercise. He also believed that it was wrong to kill cows, which the Hindus worship; he looked upon cow-dung as pure, interdicted the use of beef, and killed beautiful men instead of cows. The doctors confirmed the emperor in his opinion, and told him it was written in their books that beef was productive of all sorts of diseases and was very indigestible.”

(*Ibid.* p.193)

“In this year the *Tamgha* (inland tolls) and the *Jazya* (tax on infidels), which brought in several krorrs of dams, were abolished, and edicts to this effect were sent over the whole empire.”

(*Ibid.* p.198)

“Beef was interdicted, and to touch beef was considered defiling. The reason of this was that, from his youth, His Majesty had been in company with Hindu libertines, and had thus learnt to look upon a cow - which in their opinions is one of the

reasons why the world still exists - as some thing holy. Besides, the Emperor was subject to influence of the numerous Hindu princesses of the harem, who had gained so great an ascendancy over him as to make him forswear beef, garlic, onions, and the wearing of a beard, which thing His Majesty still avoids. He had also introduced, though modified by his peculiar views, Hindu customs and heresies into the court assemblies, and introduces them still, in order to please and win the Hindus and their castes, he abstained from everything which they think repugnant to their nature, and looked upon shaving the beard as the highest sign of friendship and affection for him. Hence this custom has become very general.”

(*Ibid.* p.202)

“The ringing of bells as in use with the Christians, and the showing of the figure of the cross, and .....and other childish playthings of theirs, were daily in practice.”

(*Ibid.* p.203)

“In these days (991) new orders were given. The killing of animals on certain days was forbidden, as on Sundays, because this day is sacred to the Sun; during the first eighteen days of the month of Farwardin; the whole month of Aban (the month in which His Majesty was born); and on several other days, to please the Hindus.”

(*Ibid.* p.209)

“He used to wear the Hindu mark on his forehead, and ordered the hand to play at midnight and at break of day. **Mosques and prayer-rooms were changed into store rooms, or given to Hindu chaukidars.** For the word *jama at* (public prayer) His Majesty used the term *jima* (copulation), and for *hayya ala*, he said *yalala talala*.

“The cemetery within the town was ordered to be sequestered.”

(*Ibid.* p.210)

“These formulas were to take the place of our *salam* and the answer to the *salam*. The beginning of counting Hindu months should be the 28<sup>th</sup> day, and not the 16<sup>th</sup> because the latter was the invention and innovation of Bikramajit. The Hindu feasts, likewise, were to take place in accordance with this

rule. But the order was not obeyed, though farmans to that effect, as early as 990, had been sent to Gujrat and Bengal.”

*(Ibid. p.215)*

“Cases between Hindus should be decided by learned Brahmins, and not by Musalman Qazis.”

*(Ibid. p.215)*

“Hindus who when young, had from pressure become Musalmans, were allowed to go back to the faith of the fathers. No man should be interfered with on account of his religion, and every one should be allowed to change his religion, if he liked. If a Hindu woman fall in love with a Muhammadan, and change her religion, she should be taken from him by force, and be given back to her family. People should not be molested if they wished to build churches and prayer rooms, or idol temples, or fire temples.”

*(Ibid. p.217)*

<p><b>Annexure-IV</b>  <b>Page-13</b>  <b>William Finch</b></p>
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12. **William Finch**, who travelled India in the reign of Emperor Nuruddin Mohammad Jahangir from 1608 A.D. to 1611 A.D., saw the Hindus visiting the Birth Place of the Lord of Universe Sri Ram Chandra in Ramkot where Brahmins used to note down names of the visitors to that sacred place. Be it mentioned herein that in each and every prominent sacred places of the Hindus since time immemorial a class of Brahmins known as Panda has been helping the Devotees to perform customary rites as also noting down names of the Devotees. As such presence of Brahmin Pandas at Sri Ramjanmsthan during the visit of William Finch is conclusive proof that the Emperor Babar had not

erected any Mosque over the said sacred site and Hindus were performing their traditional customary rites as laid down in Sri Skanda Puran. Relevant extract from page 176 of the book Early Travels in India 1583 – 1619 by William Foster reads as follows:

“To Oudh [Ajodhya] from thence are 50c; a citie of ancient note, and seate of a Polan king, now much ruined; castle built foure hundred yeeres agoe. Heere are also the ruines of Ranichand [S] castle and houses, which the Indians acknowled[g]e for the great God, saying that he tooke flesh upon him to see the Tamasha of the World. In these ruines remayne certaine Bramenes, who record the names of all such Indians as wash themselves in the river running thereby, which custome, they say hath continued foure lackes of yeeres (which is three hundred ninetie foure thousand five hundred yeeres before the world’s creation). Some two miles on the further side of the river is a cave of his with a narrow entrance but so spacious and full of turnings within that a man may well lose himselfe there, if he take not better heed; where it is thought his ashes were buried. Hither resort many from all parts of India, which carry from hence in remembrance, certaine grains of rice as blacke as gun-powder which they say have beene reserved ever since. Out of the ruines of this castle is yet much gold tryed. Here is great trade and such abundance of Indian asse-horne that they make here of bucklers and divers sorts of drinking cups. There are of these hornes, all the Indian affirme, some rare of great price, no jewell comparable, some esteeming them the right unicorns horne”.

(Early Travels in India 1583 – 1619 by William Foster p.176).

<p><b>Annexure-IV</b>  <b>Description of India by</b>  <b>J. Tieffenthaler</b>  <b>Pages 129-162</b></p>
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13. In his book Description Historique Et Geographique De l’Inde, Joseph Tieffenthaler who visited Sri Ramjanmsthan in

the year 1770 A.D. during the reign of Emperor Shah Alam II (1759-1806 A.D.) evidenced the performance of customary rites by the Hindus in the central & left Halls of the Sri Ramjanmsthan Temple, Ajodhya in India. Tieffenthaler says that there was a *Vedi* i.e. *Sthandil* inside the said Temple which was being worshipped by the Devotees by prostrating and circumambulating it thrice, but he did not mention offering of prayer therein by the Muslims; from the said facts made available by an eye witness it becomes crystal clear that in the 1770 the Hindus were in use and occupation of the Sri Ramjanmsthan as their sacred shrine which has been described as Babari Mosque by the plaintiffs in their pleadings and it was not being used as a Mosque by the Muslims. The said book is written in Latin language, an English translation of his narrative of Ajodhya finds place in the book *Modern Traveler, a Popular Description, Geographical, Historical and Topographical of the Various Country of the Globe – India Vol-III* published by James Duncan in the year 1828. Relevant extracts containing translation of Tieffenthaler's account from pages 312, 313, 314, 316 and 317 read as follows:

“Its appearance, in 1770, is thus described by *Tieffen theler*: “*Avad, called Adjudea by the Learned Hindoos is a city of the highest antiquity. Its houses are, for the most part, only on mud, covered with straw or with tiles; many, however, are of brick. The principal street, running from S. to N., is about a league (mille) in length; and the*

breadth of the city is somewhat less. Its western part, as well as the northern, is situated on a hill; the north-eastern quarter rests upon *eminences*; but towards *Bangla*, it is level. This town has now but a scanty population, since the foundation of *Bangla* or *Fesabad*; a new town where the Governor has established his residence, and to which a great number of inhabitants of *Oude* have removed. On the southern bank of *Deva* (or *Goggrah*), are found various buildings erected by the *Gentoos* in memory of Ram, extending from east to west. The more remarkable place is that which is called *Sorgodoari*, that is to say, the heavenly temple; because they say, that Ram carried away from thence to heaven all the inhabitants of the city. The deserted town was re-peopled and restored to its former condition by *Bikaramajit*, the famous King of *Oojain*. There was a temple here on the high bank of the river; but *Aurangzebe*, ever attentive to the propagation of the faith of Mohammed, and holding the heathen in abhorrence, caused it to be demolished, and replaced it with a mosque with minarets, in order to abolish the very memory of the Hindoo superstition. Another mosque has been built by the Moors, to the east of this. Near the *Sargodoari* in an edifice erected by *Nabalroy* a former Hindoo governor. But a place more particularly famous is that which is called *Sitha Rassoee*, the table of *Sitha* (Seeta), wife of Ram; situated on an eminence to the south of the city. The emperor *Aurangzebe* demolished the fortress called *Ramcote*, and erected on the site, a *Mohammedan* temple with a triple dome. According to others, it was erected by *Baber*. There are to be seen fourteen columns of black stone, five spans in height, which occupied the site of the fortress. Twelve of these columns now support the interior arcades of the mosque: the two other form part of the tomb of a certain Moor. They tell us, that these columns, or rather these remains of skilfully wrought columns, were brought from Isle of *Lanca* or *Selendip* (*Ceylon*) by *Hanuman*, king the of monkeys. On the left is seen a square chest, raised, five inches from the ground covered with lime, about 5 *ells* in length by not more than four in breadth. The Hindoos call it *Bedi*, the cradle; and the reason is, that there formerly stood here the house in which *Beshan* (*Vishnoo*) was born in the form of Ram and were also, they say, his three

brothers were born. Afterwards, Aurangzebe, or, according to others, Baber, caused the place to be destroyed, in order to deprive the heathen of the opportunity of practicing there their superstitions. Nevertheless, they still pay a superstitious reverence to both these places; namely, to that on which the *natal* dwelling of Ram stood, by going three times round it, prostrate on the earth. The two places are surrounded with a low wall adorned with battlements. Not far from this is a place where they dig up grains of black rice changed into little stones, which are affirmed to have been hidden underground ever since the time of Ram. On the 24<sup>th</sup> of the month *Tshet (Choitru)*, a large concourse of people celebrate here the birth-day of Ram, so famous throughout India. This vast city is only a mile distant from *Bangla (Fyzabad)* towards the E.N.E.”

(Ibid. 312-314)

“...Between three and four miles from *Fyzabad*, on the Southern bank of the *Goggrah*, there is a remarkable place planted with bushy trees, of which *Tieffenthaler* gives the following account:

“It is seated upon a hill somewhat steep, and fortified with little doors of earth at the four corners (of the enclosure). In the middle it is seen a subterranean hole, covered with a dome of moderate dimensions. Closed by is a lofty and very old tamarind-tree. A *piazza* runs round it. It is said that Ram, after having vanquished the giant Ravan, and returned from Lanka descended into this pit, and there disappeared: hence, they have given to this place the name of *Gouptar (or Gouptargath)*. You have here, then, a descent into hell, as you had at *Oude and* ascension to heaven”. “As the scene of many of the leading events in the great epic poem of the *Ramayuna*, *Oude* might be expected to abound with sports of traditional sanctity

(Ibid.p.316-317)

14. The East India Gazetteer of Hindustan of Walter Hamilton, 2<sup>nd</sup> Edition first published in 1828 A.D., records that the remains of the ancient city of Oude (Ayodhya), the Capital of Great Rama was still in existence wherein reputed sites of temples dedicated to Sri Rama, Sri Seeta, Lakshman and

Hanuman are located and; and the pilgrims who perform the pilgrimage to Ayodhya they walk round the temples and idols, bathe in holy pools, and perform the customary ceremonies. Relying on said Gazetteer it is submitted that even in or before 1828 A.D. the Hindus were performing customary ceremonies at the birth place of the Lord of Universe Sri Rama ; and during said point of time there was no existence of alleged Babari Mosque as no such Mosque has been described in the four corners of the said Gazetteer. Relevant extract from page 353 of the said Gazetteer reads as follows:

“*Oude*: the ancient capital of the province of *Oude*, situated on the South side of the *Goggra*, seventy nine miles east from *Lucknow*: lat. 26°48’ N., lon. 82°4’ E By Abul Fazal in 1582 it is described as follows. “ *Oude* is one of the largest cities of Hindostao. In ancient times this city is said to have measured 148 coss in length and thirty-six coss in breadth. Upon sifting the earth which is round this city small grains of gold are sometimes found in it. This town is esteemed one of the most sacred places of antiquity.” Pilgrimages resort to this vicinity, where the remains of the ancient city of *Oude*, the capital of the great Rama, are still to be seen; but whatever may have been its former magnificence it now exhibits nothing but a shapeless mass of ruins. The modern town extends a considerable way along the banks of the *Goggra*, adjoining *Fyzabad*, and is tolerable well peopled but inland is a mass of rubbish and jungle among which are the reputed sites of temples dedicated to *Rama*, *Seeta*, his wife, *Lakshman*, his general, and *Hunimaun* (a large monkey), his prime minister. The religious mendicants, who perform the pilgrimage to *Oude* are chiefly of the *Ramata sect*, who walk round the temples and idols, bathe in the holy pools, and performed the customary ceremonies”

(East India Gazetteer p.353)

15. Above referred East India Gazetteer of Hindustan of Walter Hamilton, 2<sup>nd</sup> Edition first published in 1828 A.D. in its preface declares that it contains accurate information the details whereof were collected by the persons best qualified from length of service residence on this spot, and established reputation to form a correct judgment of their authenticity. Relying on said declaration it is respectfully submitted that in or before 1828 A.D. there was existence of Sri Ramjanmsthan and temples in Ram-Kot, Ayodhya and the Hindus were worshipping therein and there was no existence of alleged Babari Mosque. Relevant extract from page xiv-xv of the said Gazetteer reads as follows:

“To each description of any consequence, the authorities upon which it is founded are carefully sub-joined in succession according to their relative means, the author being particularly desirous to the credit where it is justly due, as well as to establish the high Character of the sources from whence his originally information has been drawn But no person is to be considered wholly responsible for any article, the materials being so intimately blended with each other, and the result of the author’s own experience during a ten years’ residence in India, that it would be impossible to define the limits of the respective properties. In various cases the narrative is given as closely as the necessity of condensing many thousand pages into a small compass would permit; in others it has been necessary to compare contradictory and conflicting testimonies, and to select that which appeared to rest on the most solid foundation. Conciseness has been particularly aimed at, and the endeavour to effect it has added greatly to the labour; for it is easy to write a description of a country when the materials are scanty, not so when the mass has been

accumulating for half a century. In the official correspondence of the different presidencies the surveys and reports of one functionary are sometimes incorporated with those of another, so that occasionally the statement of one public officer cannot be discriminated from those of another; but notwithstanding these difficulties it will be clearly perceptible that the details of this work were generally collected under circumstances singularly favourable for the acquisition of accurate information, and by persons the best qualified from length of service residence on this spot, and established reputation to form a correct judgment of their authenticity.”

(East India Gazetteer of Hindustan p.xiv-xv)

<p><b>Annexure-IV</b>  <b>Gazetteer by Edward Thorton</b>  <b>Pages 38-42</b></p>
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16. The Gazetteer of the Territories under the Government of East India Company and of the Native States on the continents of India by **Edward Thornton**, first published in 1858 records that on the right bank of the *Ghogra*, are extensive ruins, about 2000 years old said to be those of the forts of Rama, king of *Oude*, hero of the *Ramayana*, and otherwise highly celebrated in the mythological and romantic legends of India; the ruins still bear the name of *Ramgurh*, “or of fort of Rama”; according to native tradition temples thereon were demolished by Aurangzebe, who built a mosque on part of the site, but an inscription on the wall of the mosque, falsify the tradition as it attributes work to the conqueror Baber, from whom Aurangzebe was 5<sup>th</sup> in descent. The mosque is embellished with 14 columns of only 5 or 6 feet in height, but of very elaborate and tasteful workmanship, A *quadrangular* coffer of stone, whitewashed five *ells* long, 4 broad, and protruding 5 or 6 inches above ground, is pointed out as the cradle in which Rama was born

as the 7<sup>th</sup> *Avatar* of *Vishnoo*; and is accordingly abundantly honoured by the pilgrimages and devotions of the Hindoos. From the aforesaid recording of the said Gazetteer it becomes crystal clear that Temple of Sri Ramjanmasthan was remodeled like mosque either by Babar or by Aurangzebe by utilizing the building materials of the said Temple and in spite of that the Hindus were worshipping on the Vedi established therein. It is submitted that the compilers has recorded two sources to ascertain the person who was responsible for damaging the Temple and converting the same into a mosque. Gazetteer says that according to tradition it was Aurangzebe but according to an inscription it was Babar. The compiler recording both sources gave weightage to the information of the alleged inscription. As in earlier part of this argument it has already been established that the alleged inscriptions were neither ever fixed on said alleged Babari Mosque nor were in existence in any point of time the opinion of the compiler formed thereon crumbles down and only source of traditional information remains as reliable. Relevant extract from pages 739-740 of the said Gazetteer reads as follows:

“Oude- A town in the kingdom of the same name. It is situate on the right bank of the river *Ghogra*, which *Buchanan* considers here to be “fully larger than the Ganges at *Chunar*,” and which is navigable downwards to its mouth, upwards to *Mundiya Ghant*, in the district of *Bareilly*. It extends about a mile in a South-East direction, from the adjoining recent city of *Fyzabad*; the breadth of the town is something less from North-East to South-West, or from the river *Landwards*. The greater part of the site is on gently swelling eminences; but to the north-west, or towards *Fyzabad*, islo. Most of the houses are of mud, and thatched, though a few are tilted. Here, in a large building a mile from the river, is an extensive establishment, called *Hanumangurb*, or Fort of Hanuman, in honour of the fabled monkey-god the auxillary of Rama. It has an annual revenue of 50,000 rupees, settled on

it by Shuja-ud-daulah, formerly Nawaub Vizier. It is managed by a malik or abbot, the spiritual superior; and the revenues are dispensed to about 500 bairagis or religious ascetics, and other Hindoo mendicants of various descriptions; no Mussulman being allowed within the world's other establishments of similar character are Sugrimkilla, Ram-Prashad-ka-Kana, and Bidiya-kuod; maintaining respectively 100, 250, 200 bairagis. Close to the town on the East, and on the right bank of the *Ghogra*, are extensive ruins, said to be those of the forts of Rama, king of *Oude*, hero of the *Ramayana*, and otherwise highly celebrated in the mythological and romantic legends of India. *Buchanan* observes, "that the heaps of bricks, although much seems to have been carried away by the river, extend a great way; that is, more than a mile in length, and more than half a mile in width; and that, although vast quantities of materials have been removed to build the *Mahomedan Ayodha* or *Fyzabad*, yet, the ruins in many parts retain a very considerable elevation; nor is there any reason to doubt that the structure to which they belonged has been very great, when we consider that it has been ruined for about 2000 years." The ruins still bear the name of *Ramgurh*, "or of fort of Rama"; the most remarkable spot in which is that from which, according to legend, Rama took his flight to heaven, carrying with him the people of his city; in consequence of which it remained desolate until re-peopled by *Vikramaditya*, the king of *Oujein*, half a century before the Christian era, and by him embellished with 360 temples. Not the smallest traces of these temples, however, now remain; and according to native tradition they were demolished by Aurangzebe, 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 work to the conqueror Baber, from whom Aurangzebe was 5<sup>th</sup> in descent. The mosque is embellished with 14 columns of only 5 or 6 feet in height, but of very elaborate and tasteful workmanship, said to have been taken from the ruins of the Hindoo fanes, to which they had been given by the monkey general Hanuman, who had brought them from *Lanka* or Ceylon. Altogether, however, the remains of antiquity in the vicinity of the renowned capital must give a very low idea of the state of arts and civilization of the Hindoos at a

remote period. A *quadrangular* coffer of stone, whitewashed five *ells* long, 4 broad, and protruding 5 or 6 inches above ground, is pointed out as the cradle in which Rama was born as the 7<sup>th</sup> *Avatar* of *Vishnoo*; and is accordingly abundantly honoured by the pilgrimages and devotions of the Hindoos ...”

(The Gazetteer of the Territories under the Government of East India Company p.739-740).

17. Gazetteer of the Province of Oudh first published in 1877-78

in its Chapter-III of the introduction records that The Birth-place of Sri Ram, the Lord of Universe is the most highly venerated of the sacred places to which Hind- pilgrims crowd. Relevant extract from page XXXI reads as follows:

“Long before the dawn of the authentic history, *Oudh* stands out in the full blaze of legend and poetry. Ajodhya its eponymous city was the capital of that happy kingdom in which all that the Hindu race reveres or desires was realized as it can never be realized again, and the seat of the glorious dynasty which began with the sun and culminated after 60 generations of blameless rulers in the incarnate deity and perfect man, Rama. Whether criticism will finally enroll the hero among the highest creations of pure imagination or accord him a semi-historical personality and a doubtful date, it is barren to speculate; history is more nearly concerned with the influence which the story of his life still has on the moral and religious beliefs of a great people, and the enthusiasm which makes his birth-place the most highly venerated of the sacred places to which its pilgrims crowd.”

(Gazetteer of the Province of Oudh p.xxxi)

18. The said Gazetteer of the Province of Oudh of 1877-78 records that Ajodhya is to the Hindus what Mecca is to the Mohammadans and Jerusalem to the Jews. The Gazetteer further says that as it is unconquerable city of the creator i.e.

*Brahma* it is called Ajodhya and as Sri Ram had promised to return after completion of the period of exile this city is also known as Oudh. From the said recording of the Gazetteer it is crystal clear that since the *Tretayug* Sri *Ramjanmsthan* is most sacred place of the Hindus and performing their customary rights thereon is integral part of Hinduism. Relevant extract from page 2 of the said Gazetteer reads as follows:

“*Ajodiya – (Ajodhya) – Pargana Haweli Oudh – Tahsil Fyzabad – District- Fyzabad* : A town in the district of *Fyzabad*, and adjoining the city of that name is to the Hindu what *Mecca* is to the Mohammadans, *Jerusalem* to the Jews; it has in the traditions of the orthodox, a highly mythical origin, being founded for additional security, not on the transitory earth, but on the chariot wheel of the Great Creator himself. It lies 26°47’ N latitude and 82°15’ E longitude, on the banks of the Gogra. The name *Ajodhya* is explained by well known local pundits to be derived from the sanskrit words ‘ajud’, ‘unvanquished’; also ‘Aj’ a name of Brahma – ‘The unconquerable city of the creator’. But Ajodhya is also called *Oudh* which in Sanskrit means a promise; in elusion, it is said, to the promise made by Ram Chandar when he went in exile, to return at the end of 14 years.”

(Gazetteer of the Province of Oudh 1877-78 p.2)

19. The said Gazetteer of the Province of Oudh 1877-78 records that within *Ramkot* the stronghold of Lord of Universe Sri Ram Chandra, there were 8 Royal Mansions where dwelt Sri Ram, an incarnation, his father Sri Dasrath and Sri Dasarath’s wives. The relevant extracts from page 3 of the said Gazetteer reads as follows:

“*Ramkot*: The most remarkable of those was, of

course, *Ramkot*, the stronghold of Ram Chandar. This fort covered a large extent of ground, and, according to ancient manuscripts, it was surrounded by 20 *Bastions*, each of which was commanded by one of Ram's famous general after whom they took the names by which they are still known. Within the fort were 8 Royal mansion where dwelt the Patriarch *Dasrath*, his wives, and Ram, his defied son".

(Gazetteer of the Province of Oudh 1877-78 p.3)

20. The said Gazetteer of the Province of Oudh of 1877-78 records that prior to advent of Babar there were three important Hindu shrines namely the '*Janmasthan*' the '*Swargaddwar Munder*' also known as '*Ram Darbar*', and '*Treta-ke-Thakur*' and; without disclosing source of information it says that on the *Janamsthan* the in 1528 A.D. emperor Baber built the mosque while on other two sacred shrines Aurangzeb did so. From the said recording of the Gazetteer it is crystal clear that over the sacred shrine Sri Ramjanmsthan any one of the Mughal Emperor had erected a Mosque in flagrant violation of the Law of *Shar* which mandatorily forbids from usurping others' land as such any building erected over the land of the Hindu Deity i.e. The Lord of Universe Sri Ram from the building materials of the Temple of the said Deity does not come within the definition of Mosque. The relevant extract from page 6 of the said Gazetteer reads as follows:

"The *Janmasthan* and other temples – it is locally affirmed that at the *Muhammadan* conquest there were three important Hindu shrines, with but few devotees attached, at Ajodhya, which was then little

other than wilderness. These were the '*Janmasthan*' the '*Swargaddwar Munder*' also known as '*Ram Darbar*', and '*Treta-ke-Thakur*'.

On the first of these the emperor Baber build the mosque, which still bears his name, A.D.1528 on the second, Aurangzeb did the same A.D.1658 – 1707; and on the third the sovereign or his predecessors build a mosque, according to well-known *Muhmmaden* principle of enforcing their religion on all those whom they conquer.

The *Janamsthan* marks the place where *Ram Chander* was born. The *swargaddwar* is the gate through which he passed into Paradise, possibly, the spot where his body was burnt. The *Treta-ke-Thakur* was famous as the place where Rama performed a great sacrifice, and which he commemorated by setting up their images of himself and *Sita*.”

(Gazetteer of the Province of Oudh 1877-78 p. 6)

21. The said Gazetteer of the Province of Oudh 1877-78 records that in 1855 A.D. in course of great rapture between the Hindus and the Muslims, loosing possession of Sri Ramjanmsthan for few days ultimately the Hindus re-occupied their said sacred shrine suffering 11 casualties and inflicting 75 casualties on Muslim-side. The Gazetteer further records that up to that time the Hindus and Muslims alike use to worship in the mosque-temple. Since British rule a railing had been put up to prevent the disputes within which, in the mosque, the Muslims used to pray; while outside the fence the Hindus had raised a platform on which they used to make their offerings. From the said recordings of the Gazetteer it becomes crystal clear that at least till 1855 A.D. the Hindus were worshipping in the same structure which has been described as Babari Mosque in the

plaint of the instant suit and, a platform now known as *Ramchabutara* was erected by some Hindus after commencement of British Rule i.e. in 1856 A.D. as such the *Sthandil* i.e. *Vedi* (cradle) which was being worshipped by the Hindus in 1770 A.D. and seen by Joseph Tieffenthaler was other than the platform which was subsequently built in 1556 A.D. Be it mentioned herein that from the several applications of the self-proclaimed Mutawallis, Muezzins, Khattibs under or through whom the plaintiffs are claiming had seen it is crystal clear that since time immemorial Hindus are worshipping in the central Sanctum Sanctorum of the Temple Structure which has been described as Babari Mosque in the plaint of the instant suit, which makes it clear that the Hindus did not care for illegal and arbitrary prohibition imposed upon them by the British Rulers in 1856 A.D. or thereafter as alleged at all. Relevant extract from page 7 of the said Gazetteer reads as follows:

“Hindu and Musalman – The *Janmasthan* is within a few hundred *paces* of the *Hanomangarhi* in 1855, when a great rapture took place between the Hindus and the Muhammadans, the former occupied the *Hanomangarhi* in force, while the Musalmans took possession of the *Janmasthan*. The Mohammadans on that occasion actually charged up the steps of the *Hanomangarhi*, but were driven back with considerable loss. The Hindus then followed up this success, and at the third attempt took the *Janmasthan* at the gate of which seventy-five *Muhammadan* were buried in the ‘*martyr’s grave*’ (*ganj-i-shahidan*). Eleven Hindus were killed. Several of the King’s regiment were looking on all the time but their order were not to interfere. It is

said that up to that time the Hindus and Mohammadans alike use to worship in the mosque-temple. Since British rule a railing has been put up to prevent the disputes within which, in the mosque, the Mohammadans pray; while outside the fence the Hindus have raised a platform on which they make their offerings. A second attempt was made shortly afterwards by *Molvi Amir Ali of Amethi*; the object was to seize the alleged site of an old mosque on the *Hanoman Garhi*".

(Gazetteer of the Province of Oudh 1877-78 p.7)

22. The said Gazetteer of the Province of Oudh of 1877-78 records that in the great fair of the *Ram Navami* i.e. Janm-mahotsva of Sri five lakh people used to participate. Said Gazetteer further records that about 150 years ago National feeling of the Hindus aroused by the tyranny of Aurangzeb or by success of Marathas or by the compilation of Ramayana in Hindi i.e. Sri Ramacharitmanas of Sri Goswami Tulsidas Ajodhya became again esteemed as a holy place; it grew favour each year, and then in all India, perhaps except the *Jagannath* festival and that at *Hardwar*, there was none to equal the *Ram Naumi* celebration at Ajodhya. It is needless to say that according to holy scripture of the Hindus Sri Skand-puran since the days of Sage Narad who was contemporary of Lord of Universe Sri Ram, it became integral part of Hinduism to celebrate Janm-mahotsav of the Lord of Universe Sri Ram and perform customary rituals at Sri Ramjanmsthan in Ayodhya. Be it mentioned herein that neither there was nor there is such a

place other than Sri Ramjanmsthan, Ramkot, Ayodhya which had/has capacity to attract and accommodate such a huge assemblage of the Devotees at least 150 years back from the 1877-8 A.D. the year of the publication of the instant Gazetteer i.e. 1727-28 A.D. it is further submitted that from the said facts as recorded in this Gazetteer it becomes crystal clear that after the death of Aurangzeb Sri Ramjanmsthan has become centre of Hinduism. Relevant extracts from pages 14, 451 and 452 of the said Gazetteer reads as follows:

“There are 96 Hindu temples, of which 63 are in honour of *Vishnu* and 33 of *Mahadeo*; there are 36 mosques. There is also a vernacular school. There is little trade at Ajodhya. The great fair of the *Ramnauami*, on which 5,00,000 people assemble, is held here; it is described in the district of *Fyzabad*”.

(Gazetteer of the Province of Oudh of 1877-78. p. 14)

“Religious sect of Fyzabad- Religion in this district is of more than ordinary interest. Ajodhya, as is related in the account of that town, is the great centre of the hero worship which has selected the ancient king *Ram Chandar* as the object of its adoration. At the *Ram Naumi* festival 5,00,000 people assemble in honour of that potent monarch and innumerable shrines have been erected to *Ram Chandar*, his brother *Bharat*, his wife *Sita* and his ally in the great *dekkan war Hanoman*, the Monkey. This saint worship at the same time does not seem to interfere with the more spiritual theoloh which concerns itself with the wholly unearthly beings, - Vishnu, Mahadeo and Bhawani or Debi”.

(Gazetteer of the Province of Oudh of 1877-78p.451)

“...it may, however, be remarked here that the Hindu revival at Ajodhya is one of the most remarkable things in modern times. In Buddhist

times, the place had no peculiar sanctity, although there were doubtless temples and shrines. Long afterwards, during many centuries, *Gya*, *Benares*, *Puri* and *Muttra* kept their reputation, while Ajodhya became a wilderness and famous hunting-ground. About a hundred and fifty years ago there was a revival; where a national feeling was aroused by the tyranny of Aurangzeb or by the success of the *Marahtas*, or by the translation into popular language of the Ramayana, somehow or other Ajodhya became again esteemed as a holy place; it grew favour each year, and now in all India, perhaps except the *Jagannath* festival and that at *Hardwar*; there is none to equal the *Ram Naumi* celebration at Ajodhya.”

(Gazetteer of the Province of Oudh of 1877-78 p.452)

23. There are 20 terms and conditions of the Jizya out of which condition no.3 is that the Jimmis shall not prevent Muslim Travellers from staying in Idol Temples and, condition no.4 is that the Muslims shall have right to stay in the house of Jimmis as a guest for 3 days. As under the Islamic Rulers the Hindus was Jimmis in Oudh Province till its annexation to British Rule i.e. 1856 A.D. during this period they were bound to follow the terms and conditions of Jizya as modified by Great Imam Abu Haneef. From the readings of the said Gazetteer of 1877 – 1878 it appears that invoking the condition no.3 of the Jizya the Muslim travellers used to stay in Sri Ramjanmsthan compound and during their such temporary stay it might be that those travellers used to offer prayer in the rooms of the *Dharamshala* of the said Temple compound which was misconstrued by the compiler of the said Gazetteer. Even now-a-days the Muslims during their

travels used to offer prayer in trains as also at the place of their temporary abode. As offering prayer in a building which has images is prohibited in Islam it can be said with certainty that no Muslim was offering prayer in Sri Ramjanmsthan Temple which has been described as Babari Mosque in the plaint of the instant suit. In nut-shell it can be inferred that only Hindus were performing religious rites and worship in the Idol Temple of the Lord of Universe Sri Ram. In the book “The Delhi Sultanate” 4<sup>th</sup> Edn. edited by renowned Historian Sri R.C.Majumdar and published in 1990 by Bharatiya Vidya Bhavan, Bombay on page 619 an extract from the book “Zakhirat-ul-Muluk” written by Shaikh Hamadani containing 20 terms and conditions of Jizya has been reproduced. Relevant extract from the said book reads as follows:

“There is another mandate relating to those subjects who are unbelievers and protected people (zimmi). For their governance, the observance of those conditions which the Caliph ‘Umar laid in his agreement for establishing the status of the fire-worshippers and the people of the Book (Jews and Christians) and which gave them safety is obligatory on rulers and governors. Rulers should impose these conditions on the zimmi of their dominions and make their lives and their property dependent on their fulfillment. The twenty conditions are as follows:

1. In a country under the authority of a Muslim ruler, they are to build no new homes for images or idol temples.
2. They are not to rebuild any old buildings which have been destroyed.
3. Muslim travelers are not to be prevented from staying in idol temples.
4. No Muslim who stays in their houses will commit a sin if he

is a guest for three days, if he should have occasion for the delay.

5. Infidels may not act as spies or give aid and comfort to them.
6. If any of their people show any inclination towards Islam, they are not to be prevented from doing so.
7. Muslims are to be respected.
8. If the zimmi are gathered together in a meeting and Muslims appear, they are to be allowed at the meeting.
9. They are not to dress like Muslims.
10. They are not to give each other Muslim names.
11. They are not to ride on horses with saddle and bridle.
12. They are not to possess swords and arrows.
13. They are not to wear signet rings and seals on their fingers.
14. They are not to sell and drink intoxicating liquor openly.
15. They must not abandon the clothing which they have had as a sign of their state of ignorance so that they may be distinguished from Muslims.
16. They are not to propagate the customs and usages of polytheists among Muslims.
17. They are not to build their homes in the neighbourhood of those of Muslims.
18. They are not to bring their dead near the graveyards of Muslims.
19. They are not to mourn their dead with loud voices.
20. They are not to buy Muslim slaves.”

24. Staying of Muslims in the Temple or House of Jimmi was not only in theory but in practice also. During his retreat from Tibet campaign Bakhtiar Khilji took refuge in an Idol Temple in Kamrup which has been described in the book “Riyazu-s-Salatin” A History of Bengal on its pages 66 -67. During his travel Ibn Battuta stayed in a House of a Jimmi lady in Kaynuk, which fact has been recorded on page 138 of the book “Ibn Battuta” translated and selected by H.A.R. Gibb First Published in 1929 and, reprinted in 2007 by Low Price Publication, Delhi. Relevant extracts from the aforesaid two books read as follows:

“Muhammad Bakhtiar engulfed in the sea of confusion and perplexity, despaired of every resource. After much striving, he got news that in the neighbourhood there was a very large Temple, and that Idols of Gold and Silver were placed there in great pomp. It is said that there was an Idol in the temple which weighed a thousand maunds. In short, Muhammad Bakhtiar with his force took refuge in this temple, and was busy improvising means for crossing the river. The Rajah of Kamrup had ordered all his troops and subjects of that Country to commit depredations.”

(Riyazu-S-Salatin. P.67)

“Kaynuk is a small town in the territories of Sultan Orkhan Bek, inhabited by infidel [Christan] Greeks under Muslim protection. There is only one household of Muslims in the place, and that belongs to the governors of the Greeks, so we put up at the house of an old infidel woman. This was in the season of snow and rain. She treated us well, and we spent that night in her house. Now this town has no trees or vineyards; the only thing cultivated there is saffron, and the old woman brought us a great quantity of it, thinking that we were merchants and would buy it from her.”

*(Ibn Battuta translated by H.A.R. Gibb reprint 2007 p.13)*

<p><b>Annexure-IV</b>  <b>A-In-I Akbari</b>  <b>Page 12</b></p>
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25. It is noteworthy that in A-In-I Akbari Vol.II at page 182 it has been recorded that at that time in Ayodhya there were only two tombs of Seth and the Prophet Job of six and seven yards in length respectively. But from the Gazetteer of the Province of Oudh it is known that in the mean time another tomb Noah was also added and a story was concocted that the tomb of Nuh was built by Alexander the Great i.e. in 4<sup>th</sup> B.C., as this tomb of Nuh did not find place in A-In-I Akbari's account. In fact the tomb of Noah or Nuh is in the

town Najaf in Iraq. In the light of aforesaid facts it becomes crystal clear that this tomb was brought into existence in deceitful manner in later days and to glorify it a fiction was created that it was existing in 4<sup>th</sup> B.C. It is respectfully submitted that the Babari Mosque has also been brought into fiction in later days i.e. after infliction of damages to Sri Ramjanmsthan Temple by the Emperor Aurangzeb and to glorify this subsequently name of the Emperor Babar was tagged with said disputed structure, which structure in fact was a Hindu temple and remained as such even after its defilement by the Emperor Aurangzeb. Relevant extract from page 11 and 12 of the Gazetteer of the Province of Oudh 1877-78 reads as follows:

“The Tombs of the Patriarchs. – Adjoining the Maniparbat are two tombs, of which General Cunningham writes that “they are attributed to Sis paighambar and Ayub paighambar, or the Prophets Seth and Job. The first is seventeen feet long and the other twelve feet. These tombs are mentioned by Abul Fazl, who says: ‘Near this are two sopulcjarai monuments, one seven and the other six cubits in length. The vulgar pretend that they are the tombs of Seth and Job, and they relate wonderful stories of them.’ This account shows that since the time of Akbar the tomb of Seth must have increased in length, from seven cubits, or ten and a half feet, to seventeen feet, through the frequent repairs of pious Musalmans.” These tombs are also mentioned at a later date, in the Araish-i-Mahfil. To these tombs Colonel Wilford adds that of Noad, which is still pointed out near the police station. The Colonel’s account is as follows: “Close to Ajodhya or Oudh, on the banks of the Gogra, they show the tomb of Noah, and these of Ayub, and Shis or Shish, (Job and Seth). According to the account of the venerable Darvesh

who watches over the tomb of Nuh, it was built by Alexander the Great, or Sikandar Rumi. I sent lately (A.D. 1799) a learned Hindu to make enquiries about this holy place: from the Musalmans he could get no further light; but the Brahmans informed him that where Nuh's tomb stands now, there was formerly a place of worship dedicated to Gapesha; and close to it are the remains of a baoli, or walled well, which is called in the Puranas Ganapat Kund. The tombs of Job and Seth are near to each other, and about one bow-shot and a half from Nuh's tomb; between them are two small hillocks, called Soma-giri, or the mountains of the moon: according to them these tombs are not above four hundred years old; and owe their origin to three men, called Nuh, Ayub, and Shis, who fell there fighting against the Hindus. These were, of course, considered as shahids, or martyrs; but the priests who officiate there, in order to increase the veneration of the superstitious and unthinking croud, gave out that these tombs were really those of Noah, Job, and Seth, of old. The tomb of Nuh is not mentioned in the Ain-i-akbari, only those of Job and Seth."

On these quotations I have only to add that the distance between the tombs is greater than stated, being nearly a mile as the crow flies; while it is not the tomb of Nuh, but those of the other two men mentioned, that are close to the Gancsha Kund."

(Gazetteer of the Province of Oudh 1877-78 p.11 – 12)

26. Ibn Battuta in his account of travels tells us that he visited

the graves of Ali, Adam and Noah in the town Najaf in Iraq.

This fact makes it clear that the so called tomb of Nuh in

Ayodhya is not that of the original Nuh whose tomb is in

Najaf, but to give antiquity and authenticity to their fiction

the interested person tagged name of Alexander the Great as

builder of the said tomb in Ayodhya though it is Historical

truth that the Alexander had never been in Ayodhya. In

similar manner interested persons tagged name of the

Emperor Babar with Sri Ramjanmasthan Temple once upon a time which was defiled, damaged and tried to be converted into Mosque in the 8<sup>th</sup> decades of the 17<sup>th</sup> Century by the Emperor Aurangzeb ultimately which resulted into failure. The relevant extract of the Ibn Battuta Travels in Asia and Africa 1325-1354 (published by Low Price Publications, Delhi, 2007 Reprint of the 1<sup>st</sup> Edn. 1929) from page 81 and 82 reads as follows:

“We went on from there and alighted in the town of Mash-had ‘Alf at Najaf. It is a fine town, situated in a wide rocky plain- one of the finest, most populous, and most substantially built cities in ‘Iraq’. It has beautiful clean bazaars. We entered by the [outer] Bab al-Hadra, and found ourselves first in the market of the greengrocers, cooks and butchers, then in the fruit market, then the tailors’ bazaar and the *Qaysariya*, then the perfumers’ bazaar, after which we came to the [inner] Bab al-Hadra, where there is the tomb, which they say is the tomb of Alf. One goes through the Bab al-Hadra into a vast hospice, by which one gains access to the gateway of the shrine, where there are chamberlains, keepers of registers and eunuchs. As a visitor to the tomb approaches, one or all of them rise to meet him according to his rank, and they halt with him at the threshold. They then ask permission for him to enter saying “By your leave, O Commander of the Faithful, this feeble creature asks permission to enter the sublime resting-place,” and command him to kiss the threshold, which is of silver, as also are the lintels. After this he enters the shrine, the floor of which is covered with carpets of silk and other materials. Inside it are candelabra of gold and silver, large and small. In the centre is a square platform about a man’s height, covered with wood completely hidden under artistically carved plaques of gold fastened with silver nails. On this are three tombs, which they declare are the graves of Adam, Noah, and Alf. Between the tombs are dishes of silver and gold, containing rose-water, musk, and other perfumes; the visitor dips his hand in these and anoints his face with the perfume for a blessing.”

*(Ibn Battuta translated by H.A.R. Gibb reprint 2007 p.81-82)*

**Annexure-IV**  
**A.F. Millett, Officiating**  
**Settlement Officer**  
**Pages84-89**

27. The report of the Settlement of the Land Revenue Officer of the Faizabad District by **A.F. Millett**, the Officiating Settlement Officer; published in 1880 records the similar facts as contained on page 7 of the Gazetteer of the Province of Oudh 1877-78 wherein the facts that in 1855 A.D. there was intense fighting between the Hindus and Muslims and the Hindus after being dispossessed regained possession of Sri Ramjanmsthan without loosing time by killing seventy five Muslims and loosing their eleven men. This report further records that prior to commencement of British Rule in Oudh i.e. 1856 A.D. the Hindus and the Muslims both used to pray in the Mosque – Temple and after the British Rule a railing was put up to prevent Hindus from entering into the disputed structure to avoid the dispute. It is needless to repeat and reiterate that in spite of such preventive measures of the British Rule the Hindus continue with their worship in the Sri Ramjanmsthan Temple which has been described as Babari Masjid in the plaint of the instant suit. Relevant extract from pages 235-36 reads as follows:

“**668.** If Ajudhya was then little other than wild, it

must at least have possessed a fine temple in the *Janamsthan*; for many of its columns are still in existence and in good preservation, having been used by the *Musalman*s in the construction of the *Babri* mosque. These are of strong close-grained dark slate-colored or black stone called by the natives '*kasoti*' (literally touch-stone) and carved with different devices. To my thinking, these strongly resemble Buddhist pillars that I have seen at *Benares* and elsewhere. They are from seven to eight feet long, square at the base, centre, and capital, and round or octagonal intermediary.

**669.** *Hindu and Musalman difference* – The *Janmsthan* is within a few hundred paces of the *Hanuman Garhi*. In 1855, when a great rupture took place between the Hindu and Mahomedans the former occupied the *Hanuman Garhi* in force, while the Musalmans took possession of the *Janmasthan*. The Mohamedans on that occasions actually charged up the steps of the *Hanuman Garhi*, but were driven back with considerable loss. The Hindus then followed up this success, and at the third attempt took the *Janmsthan*, at the gate of which 75 *Mahomedans* are buried in the '*Martyrs grave*' (*Ganj-Shahid*). Several of the King's regiment were looking on all the time, but their orders were not to interfere. 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."

(*The report of the Settlement of the Land Revenue Officer of the Faizabad District* by A.F. Millett, Edn.1880. p.235-236).

<p><b>Annexure-IV</b>  <b>Faizabad Gazetteer</b>  <b>by E.B. Joshi</b>  <b>Pages 110-116</b></p>
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28. 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 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 Maulavi 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-Shuda (Lucknow 1772 A.H. / 1855-56 A.D.)

(Faizabad Gazetteer of 1960.p.63 as reproduced in para 40 of the W.S. of the defendant no.20)

29. That in Faizabad Gazetteer of 1960 at pages 351 and 352 says that in the middle of 19<sup>th</sup> Century Ayodhya was regarded as a strong hold of Hinduism. From the said fact as recorded in the Gazetteer it is very much apparent that at the time of annexation of Oudh Province to the British Rule in the middle of 19<sup>th</sup> Century Hindus were strong enough to retain control at least over one of the most holiest place of worship of the Hindus i.e. Sri Ramjanmsthan at Ayodhya

and they did so as it is very much apparent from the several applications made on an from 1858 to the date of inception of instant litigations by the alleged Mutawallis, Muezzins, Khattibs etc. Relevant extract of the aforesaid Gazetteer as quoted in paragraph 40 of the written statement of the this defendant no.20 reads as follows:

“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 th 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 stronghold at Hinduism....”

(Faizabad Gazetteer of 1960.p.351-352 as reproduced in para 40 of the W.S. of the defendant no.20)

30.The Gazetteer of India Volume II (3<sup>rd</sup> Edn. 1990 published by the Director of Publication Division Ministry of Information and Broadcasting Government of India ) records the fact that even the Rulers like Firuz Shah Tughluq and Aurangzeb found it impossible to stop religious practices of the Hindus. Relevant extract from page 362 of the said Gazetteer reads as follows:

“ Firuz Shah Tughluq confessed his helplessness in preventing Hindus from openly blowing their conches, beating drums and going daily to the river Yamuna by the side of his palace, to worship their idols. Even Aurangzeb found it impossible to rule absolutely according to Islamic law and had to

concede to certain extra-Islamic practices of his predecessors. In fields relating to religion, the Hindus were allowed full freedom to have their cases tried by their own communal courts. Even in matters of property and several other non-religious affairs if both the parties were Hindus, the case was referred to the judgement of pundits or Hindu lawyers. The land-revenue system under Muslim rulers and the ceremonies and procedure at the Mughal court bear the unmistakable evidence of Indian traditions. These deviations from Muslim law, however, did not affect the fundamental Islamic character of the state.”

(The Gazetteer of India Volume II  
p.362)

31. Niccolao Manucci who was contemporary of the Mughal Emperor Aurangzeb came in India in 1656 and served as artillery commander in the army of Prince Dara Sukoh and on 8<sup>th</sup> June 1658 participated in the decisive battle of Samugarh, near Agra fought between The Armies of Prince Dara Sukoh and Prince Aurangzeb. After defeat of Dara Sukoh he joined Army of Emperor Aurangzeb. In December 1662 he made an expedition eastwards and travelled through Patna, Rajmahal, Dhakkah, Sunderbans, Hoogly and then returned to Agra by way of Qasimbazar. At Agra he adopted medicine as a profession. Here he met with Raja jai Singh of Amber and joined as a Captain of artillery to his son Prince Kirat Singh and accompanied Raja Jai Singh during his campaign against Chhatrapati Maharajadhiraj Shivaji in between March 1664 to July 1665. After the death of Raja Jai Singh in or about 1678 he came in service of Prince

Shah Alam I, who later on succeeded emperor Aurangzeb, as his physician and ultimately left Mughal dominion in 1686. He died in India in 1717 (Source Storia Do Mogor Volume 1 Introduction Page lvi-lxvii ). In his book “Storia do Mogor” or Mogul India 1653 – 1708 Vol-III at page 244 under the caption of ‘Hindu Holy Places’ Niccolao Manucci records the facts that several temples including the four famous temples of the Hindus at Ayodhya, Kashi (Varanasi), Mathura and Hardwar were demolished by the Emperor Aurangzeb but shortly thereafter Hindus thronged to their those sacred sites and started worshipping as they were doing in past. From the said eye witness account leaves no doubt that Sri Ramjanmsthan Temple at Ayodhya was demolished by Aurangzeb and not by the Emperor Babur. As the Temple of Ayodhya has been enumerated along with three other famous temples which means it was Sri Ramjanmsthan as no other Temple can be equalised and compared with Sri Vishveshwar’s Temple at Varanasi, Sri Krishna Janmsthan Temple at Mathura and the famous Temple at Hardwar. Relevant extracts from the said book of Niccolao Nanucci read as follows :

“In this realm of India, although King Aurangzeb destroyed numerous temples there does not thereby fail to be many left at different places, both in his empire and in the territories subject to the tributary princes. All of them are thronged with worshipers; even those that are destroyed are still venerated by the Hindus and visited for the offering of alms. The

Hindus assert that in the world there are seven principal places where it is possible to obtain what one has imagined and desired – that is to say, in cases where a person wishes to become Emperor or King, wealthy, powerful or to attain other positions of the same order. Now they ordinarily hold that on dying a person's soul is transferred according to the deeds he has done; if he has done good, his soul will pass into some one of consideration or of wealth, and should the deceased have done evil, his soul will be sent in to some animal – elephant, camel, buffalo, cow, tiger, wolf, a bird, a snake, a fish et cetera ...”

*(Storia do Mogor or Mogul India 1653 – 1708 Vol-III p.244)*

“...bands of interested persons make these lengthy pilgrimages, enduring a thousand hardships on the way, only at the end to drown of their own choice, without considering where they are about to take up their abode.

The chief temples destroyed by King Aurangzeb within his kingdom were the following:

1. Maisa (?) Mayapur,
2. Matura (Mathura),
3. Caxis (Kashi),
4. Hajudia (Ajudhya)

and an infinite number of others; but, not to tire the reader, I do not append their names.”

(Ibid p.245)

**Annexure-IV**  
**Gazetteer by F. Martin**  
**Pages 34 to 37**

32. In the book ‘India in the 17<sup>th</sup> Century (Social, Economic and Political) Memoirs of Francois Martin 1670-1694 (translated by Lotika Varadarajan and Published by Manohar Publishers 1984 Edn.), Francois Martin writes that the Emperor Aurangzeb caused demolition of the temples in the cities and villages of Gujrat whereafter people erected temples within their homes and saved them from demolition by giving presence to the

Governors. He further records that when Emperor Aurangzeb's army on his command tried to demolish a temple in Karnataka the Hindus fought and repulsed the Imperial Army and one of his Hindu noble revolted against him and left his service. From the facts recorded by Francois Martin who was Governor of French East India Company it becomes crystal clear that the Emperor Aurangzeb was leaving no stone unturned in inflicting humiliation, oppression and excesses on Hindus in course whereof he was causing demolition of the Idol Temples but the same was by hook or by crook being opposed by the Hindus and they were not giving up to their religious places and rites. This fact corroborate the fact as recorded by the Niccolao Manaucci to the effect that the said Emperor caused demolition of Hindu temples but immediately thereafter Hindus thronged at their sacred sites of the temples and started their usual worship on those sites. Relevant extracts from page 914 of vol.-II part-1, p.1249 & 1256 vol.-II, part-II read as follows:

“When it had come to the knowledge of the Emperor that many rich Gujarati banias had built temples within their homes to perform their devotions, in his religious fervour, he ordered that the Governors of the province should carry out an inspection. All the temples in the cities and villages had been destroyed. Now these inner sanctums were also to be laid low and the least sign of the practice of the Hindu religion was to be wiped out. The numbers of this community, particularly at Hyderabad and Cambay where they were to be found in large numbers, were greatly alarmed at these instructions. It was said that the banias managed to circumvent the Mughal orders by giving presents to the Governors who thereupon

took their inspection tours very lightly.”  
(ibid p.914)

“ Following the Emperor’s orders with regard to the destruction of temples, the Moors brought one down in the Carnatic. This incited the Hindus to revolt in an attempt to prevent this action. The two communities clashed openly and both sides sustained loss of life. As a result, the Moors were forced to postpone their demolition activities to a later date.”  
(ibid p. 1249)

“Yachappa Nayak, the Hindu noble to whom I have referred earlier in my narrative, on seeing that the Mughal army after repeated orders from the Emperor, was bent on the destruction of the Hindu temples, left Mughal service and entered the territory of Gingee with his men. From there, he wrote to all the Hindu Princes, urging them to unite against the enemy of their community and religion.”

(ibid p.1256)

33. In the aforesaid book Francois Martin also records that in spite of injunctions of the Mughal Emperor the Hindus did not stop from performing their traditional religious ceremonies and continue to perform it in violation of prohibitory orders. This recording also corroborates the facts as recorded by Niccolao Manucci to the effect that in spite of the demolition of the temples the Hindus did not abandon their sacred places and soon thereafter started performing their customary religious rituals on those sites. From the recording of the Gazetteers of 1877-78 and the Settlement Report of Faizabad it becomes crystal clear that according to those official records also Hindus were worshipping in Sri Ramjanmasthan Temple described as Babri Mosque in the

plaint of the instant suit at least prior to annexation of Oudh to British Rule in 1856. Relevant extracts from page 877-878 & 916 of vol.-II Part.-I read as follows:

“The Hindus in Surat practice a certain rite during the month of August. I am not sure whether it is at the time of the full moon or new moon that they perform it. They go for boat rides on the river and throw large number of coconuts into the water, while all the ships and boats moored on the river are gaily bedecked with flags and buntings. This is an age-old practice based on the superstition that if this is done the ships which they have at sea will have successful voyages. Although many Hindu superstitions have been tolerated by the Moors, the Emperor had given explicit instructions that these festivals should be banned. The Governor forbade this practice but his orders were not always carried out. Some of the banias and members of the other castes did not show any signs of having departed from their normal customs and practices.”  
(ibid p. 877-878)

“The annual ceremony of throwing coconuts into the river was celebrated on 25 August. I have spoken about this earlier. Despite the Mughal injunction against the practice of this ancient rite by Hindus, it continues unabated. Even among Muslims, those possessing ships on the high seas sometimes join in. It marks the opening of the sailing season.”

(ibid p.916)

34. Ibn Battuta in his account of travels tells us that in Bud-Pattan city though there was not a single Muslim inhabitant it had a mosque which was being looked after and maintained by the Brahmins with due respect; though he did not describe it as noble gesture of Hindus but says that it was due to panic of some evil consequences fell down on Hindus but his said conjecture and surmise is based on his believed that as the Christians and Jews had not honoured sacred placed of the

Muslims how Idolaters do it. If we go through the instances as recorded in the book 'Spirit of Islam' by Syed Ameer Ali it appears that excesses were committed by the Jews and Christians against the Muslims. But in fact as India was a religiously tolerant Country and Hindus always used to honour Religions and religious places of the others it can be inferred that the Hindus were maintaining said Mosque on account of their respect to religious place of Muslims. This spirit of the Hindus makes it clear that the Hindus neither can defile nor claim over the religious places of others and as Sri Ramjanmsthan described as Babari Mosque in the plaint is being possessed, claimed and asserted as their most holiest sacred place then indeed it is birth place of Lord of Universe Sri Ram. The relevant extract of the Ibn Battuta Ki Bharat Yatra (published by National Book Trust of India Reprint 1997 of the 1<sup>st</sup> Edn. 1933) from page 203 reads as follows:

इसके अनंतर हम बुद-पत्तन नामक एक बड़े नगर में पहुंचे जो एक बड़ी नदी के तट पर बसा हुआ है। नगर में एक भी मुसलमान न होने के कारण जहाज के मुसलमान यात्री समुद्र-तट पर बनी हुई एक मस्जिद में आकर ठहरते हैं। यह बंदर अत्यंत ही रमणीक है, यहाँ का जल भी अत्यंत मीठा है। अधिक मात्रा में उत्पन्न होने के कारण सुपारियां यहाँ से चीन तथा (उत्तर) भारत को भेजी जाती हैं।

नगर-निवासी बहुधा ब्राह्मण ही हैं। हिंदू जनता इन लोगों को बड़े आदर की दृष्टि से देखती है। परंतु मुसलमानों के प्रति इसका घोर द्वेष होने के कारण एक भी मुसलमान यहाँ निवास नहीं करता। मस्जिद विध्वस्त न करने का यह कारण बतलाया जाता है कि एक ब्राह्मण ने कभी इसकी छत तोड़कर कड़ियां निकाल अपने गृह में लगा दी थीं। उसके घर में आग लगने पर कुटुंब-संपत्ति सहित यह वहीं जलकर राख हो गया। इस घटना के पश्चात समस्त जनता मस्जिद को आदर-भाव से देखने लगी और इसके बाद किसी ने उसका अपमान नहीं किया। यात्रियों के पानी पीने के लिए मस्जिद के बाहर एक जलकुंड तथा पक्षियों का प्रवेश रोकने के लिए द्वारों में जालियां भी नगर-निवासियों ने बनवा दीं।

(Ibid p.203)

34. Be it mentioned herein that the Sacred Compilation Jami‘ At-Tirmidhi (Vol.-2) Hadith 1063 enumerates five types of martyrs as such from the name of a place Ganj Shahidan it cannot be inferred that it was a place of the graves of the soldiers who lost their lives in a battle in between Emperor Babur and the then ruler of Ajodhya. Contrary to this it can be inferred that the inhabitant of that place in totality died with plague that is why people used to call it *Ganj Shahidan*. According to dictionary ‘Urdu Hindi Sabdakosh’ (published by Uttar Pradesh Hindi Sansthan) *Ganj* means *Nagar* as such Ganj Shahidan means city of martyrs. Said Hadith reads as follows:

“**1063.** Abu Hurairah narrated that the Messenger of Allah said: “The martyrs are five: Those who die of the plague, stomach illness, drowning, being crushed and the martyr in the cause of Allah.”  
**(Sahih)**

(Jami‘ At-Tirmidhi Vol.-2 Hadith 1063)

Shri P.N. Mishra, Advocate thereafter has further referred that there was no war in Ayodhya nor the emperor Babur built graveyard or mosque at Ram Janmsthan described as Babri Mosque and the allegations in the plaint are false. His submissions on the basis of certain books are as under:-

**THERE WAS NO WAR IN 935 AH (1528 AD) IN AYODHYA NOR THE EMPEREOR BABUR BUILT GRAVEYARDS OR MOSQUE AT RAMJANAMSTHAN DESCRIBED AS BABARI MOSQUE IN THE PLAINT OF**

**THE INSTANT SUIT:**

1. The plaintiffs' case as made out in the paragraph 1 and 2 of the plaint is that in 935 A.H. there was a battle in between the Emperor Babur and the then Ruler of the Ayodhya in Ayodhya. After attaining victory Babur made graveyards for his soldiers who had lost their lives in the said battle and erected a Mosque for the Muslims of Ayodhya. Be it mentioned herein that according to English Calendar said 935 AH commenced on 15<sup>th</sup> September, 1528 and ended on 5<sup>th</sup> September, 1529 and for this whole year's account is available in Babur-Nama save and except 3 days' account of 15<sup>th</sup> September 1528 to 17<sup>th</sup> September 1528. On 18<sup>th</sup> September, 1528 Babur was in his court at Agra. On 20<sup>th</sup> September, he left for Gwalior, said facts prove it beyond doubt that during said three days Emperor Babur was nowhere in the vicinity of Ayodhya but far away at Agra. Prior to defeat of Sultan Ibrahim Lodi in 1526 Mustafa Farmuli was his Governor of Oudh and just after the Sultan's defeat Shaikh Bayazid Farmuli was appointed Governor of Oudh by the victorious King Babur. He remained in the Good-book of the Emperor at least till December, 1527. In fact Babur himself was ruler of Oudh and his appointee Shaikh Bayazid was Governor thereof. Even when Shaikh Bayazid became hostile from January 1528 onwards neither Babur nor Shaikh Bayazid entered in

the city of Ayodhya nor there was any fighting in Ayodhya between them either in 935 AH or in any other year during the life time of emperor Babur as such losing lives by Emperor Babur's soldiers in action in Ayodhya city and creation of Graveyards for those fall in action as well as erection of Mosque is false, frivolous, and concocted- one. The Plaintiffs have failed to plead and prove name of any independant ruler of Ayodhya as well as fighting between any such independant King and the Emperor Babur as such the instant Suit is liable to be dismissed with exemplary cost.

<p><b>Annexure-IV</b>  <b>Babur Nama by A.S.</b>  <b>Beveridge</b>  <b>Pages 1-7</b></p>
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2. Babur –Nama (Translated by Anette Susannah Beveridge and Reprinted in 2007 by Low Price Publications, Delhi first published in 1921) tells us that after defeating the Sultan Ibrahim Lodi in the battle of Panipat on 8<sup>th</sup> of Rajab 932 AH corresponding to 20<sup>th</sup> day of April 1526 Babur became King of Delhi, Agra and Oudh (Babur-Nama p.472-74). Mustafa Farmuli was Sultan Ibrahim Lodi's Governor of Oudh and died before Sultan's defeat. His younger brother was Shaikh Bayazid (Farmuli). After Sultan Ibrahim Lodi's defeat, Shaikh Bayazid together with Firuz Khan and Mahmud Khan went to serve Babur.

Babur writes that “I shewed them greater kindness and favour than was their claim.” He gave Shaikh Bayazid 1 krur, 48 laks and 50,000 tankas from Aud, Firuz Khan 1 krur, 46 laks and 5,000 tankas from Jaunpur and Mahmud Khan 90 laks and 35,000 tankas from Ghazipur (*ibid* p. 527). Shaikh Bayazid, Firuz Khan, Mahmud Khan and Qazi Jia who were highly favoured commanders to them Eastern Paraganas were given (*ibid* p. 530). In January 1527 Humayun placed Shaikh Bayazid in Oudh (*Ibid* p.544).

3. In December 1527 Babur got wild news about Shaikh Bayazid (Babur-Nama P. 585). On the eve of Chanderi expedition Babur received a bad news on 28th January, 1528 that “the troops appointed for the East (i.e. against Bayazid) had fought without consideration, been beaten, abandoned Laknau, and gone to Qanuj” (*Ibid* p. 594). After conquering Chanderi Babur again got news on 22nd February, 1528 that his troops had abandoned Qanuj (Kannauj) and gone to Rapri; whereas the enemy’s army under Biban, Bayazid and Maruf had taken over Shamsabad. Babur himself moved towards Kannauj. On hearing his march, Bayazid, Biban and Maruf crossed Ganga and seated themselves in its eastern bank opposite Kannauj for preventing Babur’s passage (*Ibid* 598). But Babur and his Army , after having built bridge over the

river Ganga, crossed the river on 15th March, 1528. But due to one day's delay in crossing the river Ganga, the enemy escaped. Babur ordered Chin-timur Sultan to chase Trio. Babur also placed Baqui Tashkinti under Chin-timur Sultan's command. But the pursuers did not do well. On 16th March Babur dismounted at Bangarmawn (*Ibid* 599-601).

4. On March 21, 1528 Babur visited Laknau and crossed Gomati, while he was one or two march away from Oudh on request of Chin –timur Babur sent a reinforcement of 1000 braves (Babur-Nama p.601). On 28th March, 1528 in course of his pursuit of rebel Shaikh Bayazid Babur dismounted 2 or 3 kurhos (i.e. 6 or 8 miles) from Oudh above the junction of Gagar (Goghgra) and Sirda. [John Leyden, and William Erskine created confusion by identifying Sirda with Sarju; whereas Annette Susannah Beveridge rightly identified it with Kali-Sarda on the Chouka affluent of the Gogra and not Sarju river.] At that time Bayazid was far away on otherside of the Sirda opposite to Oudh. Babur's army and generals who had crossed over first pursued Shaikh Bayazid till the evening prayer but he flung into jungle and escaped. Chin-timur Sultan chased Afghans dismounted late on the bank of standing-water, rode on at midnight after the rebel, went as much as 40 kurhos (80 miles) where Bayazid's family and

relations had been, they however had fled. He sent gallopers off in all directions from that place.. Baqi *Shaghawal* and few brave drove the enemy, overtook family and brought in some Afghan prisoners. He stayed on that ground few days in order to settle the affairs of Audh. During his said stay Babur heard from the people that the land lying along Sirda 7 or 8 kurohs (14-16 miles), above Audh, was a hunting-ground. Mir Muhammad the raftsman was sent out and returned after looking at the crossing over the Gagar-water (Gogra) and the Sirda-water (Chauka). Babur, fond of hunting, rode out to hunt on 2nd April, 1528 (*ibid* p.602)

5. There is no recording of Diary in Babur-Nama from 3rd April to 17 September, 1528. Ayodhya was under the Muslim rule for about last 300 years and under Babur's domain since 20<sup>th</sup> April 1526. As Bayzid was neither stationed in Ayodhya City nor his garrison, citadel or Army was there; question of a battle in Ayodhya for freeing Ayodhya from his control also didn't arise at all.
6. In 934 AH last entry in Babur-Nama is of Jumada II, 12<sup>th</sup> 934 corresponding to 2<sup>nd</sup> April 1528 A.D. while in 935 first entry therein is of Muharram 3<sup>rd</sup> 935 corresponding to 18<sup>th</sup> September 1528. As 935 AH commenced on 15<sup>th</sup> September 1528 for this year only 3 day's entries are missing. What Babur did during this interregnum can be

fairly built up. A. S. Beveridge points out that “much can be gleaned of Babur’s occupations during the 5 months of the lacuna from his chronicle of 934 and 935 A.H. which makes several references to occurrences of last year,” If such references are put together it appears that Babur carried on his military operations against Afghans in the east and south Bihar as well. During this period five and half months he stayed at Jaunpur, Chausa and Buxar in defeating and driving away the Afghans and compelling them to take shelter in eastern Bihar and Bengal and after settling the affairs of the eastern region Babur returned to Agra (source: Ibid. 603-04) .

Shri P.N. Mishra, Advocate has further argued that there was no person like Mir Baqi or Abdul Baqi associated with emperor Babur, accordingly the alleged Babri Mosque was not constructed at Sri Ramjanamsthan by the Minister/Governor of the emperor. His submissions are as under:-

**THERE WAS NO PERSON NAMED MIR KHAN OR MIR BAQI OR ABDUL BAQI OR ABDUL BAQI ISPHAHANI ASSOCIATED WITH EMPEROR BABUR AS SUCH BUILDING OF ALLEGED BABARI MOSQUE AT SRI RAMJANAMSTHAN BY SUCH FICTITIOUS COMMANDER / MINISTER / GOVERNOR OF THE EMPEROR IN 923 A.H. (1516-17 A.D.), IN 930 A.H. (1523-24A.D.) AND IN 935 A.H. (1528-29 A.D.) CANNOT AND**

**DOES NOT ARISE AT ALL:**

1. It is alleged that in 935 AH (corresponding to 15<sup>th</sup> September 1528 to 5<sup>th</sup> September 1529) one Mir Baqi named Counsellor & Minister of Emperor Babur built a Masjid in Ayodhya at the site of Sri Ramajanamasthan by demolishing the Temple of Sri Ramchandraji and utilizing its materials. In fact, nowhere in Babur-Nama a person by name of Mir Baqi has been mentioned. In the Indian context the name Baqi suffixed by Saghawal, Ming-Bashi has figured at 9 places in Beveridge's Translated Babur-Nama.

2. In 932 A.H. *Baqi Shaghawal* figures at pages 463, 546 of the Babur-Nama relevant extracts wherefrom read as follows:

“At the end of our first stage, I bestowed Dibalpur on Baqi *Shaghwal*<sup>2</sup> and sent him to help *Balkh*; sent also gifts, taken in the success of Milwat, for (my) younger children and various train in Kabul.”

2. Chief scribe (f. 13 n. to ‘Abdu’l-wahhab). Shaw’s vocabulary explains the word as meaning also a “high official of Central asian sovereigns, who is supreme over all *qazis* and *mullas*”.

(Babur-Nama Page 463)

“I uplifted his head with favour and kindness, distinguishing him amongst his fellows and equals. When Baqi *shaghwal* went [to Balkh] I promised him a *ser* of gold for the head of each of the ill-conditioned old couple; one *ser* of gold was now given to Mir Hamah for Baba Shaikh’s head, over and above the favours referred to above.”

(Babur-Nama p.546)

3. In the year 934 A.H. Beg *Baqi mingbashi*, Baqi of Tashkint

and Baqi Shaghawal figures at pages 590, 601 and 602 of the Babur-Nama relevant extracts wherefrom read as follows:

“(Jan. 12th) On Sunday the 19th of the month Chin-timur SI. was put at the head of 6 or 7000 men and sent ahead against Chandiri. With him went the begs *Baqi mingbashi* (head of a thousand), Quj Beg’s (brother) Tardi Beg, ‘Ashiq the taster, Mulla Apaqa, Muhsin Duldai and, of the Hindustani begs, Shaikh Guran.”

(Babur Nama P. 590)

(Sunday March 15th Jumada II. 23rd) On this day the carts were taken over, and at this same dawn the army was ordered to cross. At beat of drum news came from our scouts that the enemy had fled. Chin-timur SI. was ordered to lead his army in pursuit and the following leaders also were made —ursuers who should move with the Sultan and not go beyond is word : Muhammad ‘All Jang-jang, Husamu’d-din ‘All (son) of Khalifa, Muhibb-i-’ali (son) of Khalifa, Kuki (son) of Baba ) Qashqa, Dost-i-muhammad (son) of Baba Qashqa, *Baqi of Tashkint*, and Red Wali. I crossed at the Sunnat Prayer, the camels were ordered to be taken over at a passage seen lower down. That Sunday we dismounted on the bank of standing-water within a kuroh of Bangarmawu. Those appointed to pursue the Afghans were not doing it well; they had dismounted in Bangarmawu and were scurrying off at the lid-day Prayer of this same Sunday.)

(Babur-Nama p.601)

“(March 28th) On Saturday the 7th of Rajab we 2 or 3 kurohs from Aud above the junction of the Gagar (Gogra) and Sard[a]. Till today Shaikh Bayazid will have been on the other side of the Sird[a] opposite Aud, sending letters to the Sultan and discussing with him, but the Sultan getting to know his deceitfulness, sent word to Qaracha at the Mid-day Prayer and made ready to cross the river. On Qaracha’s joining him, they crossed at once to where were some 50 horsemen with 3 or 4 elephants. These men could make no stand ; they fled ; a few having been dismounted, the heads cut off were sent in. Following the Sultan there crossed over Bi-khub (var. Ni-khub) SI. and Tardi Beg (the

brother) of Quj Beg, and Baba Chuhra (the Brave), and Baqi Shaghawal. Those who had crossed first and gone on, pursued Shaikh Bayazid till the Evening Prayer, but he flung himself into the jungle and escaped. Chin-timur dismounted late on the bank of standing-water, rode on at midnight after the rebel, went as much as 40 kurohs (80 m.), and came to where Shaikh Bayazid's family and relations (nisba?) had been ; they however must have fled. He sent gallopers off in all directions from that place; Baqi Shaghawal and a few braves drove the enemy like sheep before them, overtook the family and brought in some Afghan prisoners.”

(Babur-Nama p. 602)

4. In the year 935 A.H. Baqi, Baqi Tashkindi, Baqi Beg figures at pages 679,684 and 685 of the Babur-Nama relevant extracts wherefrom read as follows:

“(May 27th) On Friday (19th) I rode out to visit Sikandarpur and Kharid. Today came matters written by ‘Abdu’l-lah (kitabdar) and Baqi about the taking of Luknur.

(Babur-Nama p.679)

“(May 28th) On Saturday (20th) Kuki was sent ahead, with a troop, to join Baqi.”

(Babur-Nama p.679)

“(June 13th) After crossing, we waited one day (Monday 7th) for all the army-folk to get across. Today Baqi Tashkindi came in with the army of Aud (Ajodhya) and waited on me.”

(Babur-Nama p.684)

“(June 17th) Next day (Friday 11th) at the Other Prayer, one of Baqi Beg's retainers came in. Baqi had beaten scouts of Biban and Bayazid, killed one of their good men, Mubarak Khan Salwdni, and some others, sent in several heads, and one man alive.”

(Babur-Nama p.685)

(June 20th) On Monday (14th) Jalal Tashkidi came from the begs and sultans of the advance. Shaikh Bayazid and Biban, on hearing of their expedition,

had fled to the pargana of Mahuba. As the Rains had set in and as after 5 or 6 months of active service, horses and cattle in the army were worn out, the sultans and begs of the expedition were ordered to remain where they were till they received fresh supplies from Agra and those parts. At the Other Prayer of the same day, leave was given to Baqi and the army of Aud (Ajodhya).

(Babur-Nama p. 685)

From the above mentioned extracts of the Babur-Nama it becomes crystal clear that *Baqi* has been mentioned by Babur as *Baqi Tashkindi* ( i.e. Baqi, the inhabitant of Tashkent presently in Uzbekistan), *Baqi Shaghawal* (i.e. Baqi, the head Kazis and Mullas), *Baqi Ming-Bashi* (i.e Baqi, the commander of 1000 troops), *Baqi Beg* (i.e. Baqi, the Junior commander) and Baqi but nowhere in his Memoir Emperor Babur has mentioned him as *Mir Baqi*. From the Book Babar written by Stanley Lane-poole it is known that the Amir or Mir, Khan & Mirza titles were meant for the royal descents. Since nowhere in four corners of Babur-Nama epithet Mir has been used for Baqi it can be inferred with certainty that he was not a royal descent. From the aforesaid extracts it is also very much apparent that the 'Begn' were junior Army Commanders and 'Sultans' were Senior Army Commanders, that is why in a campaign against Sheikh Bayazid being a Beg, Baqi Saghawal was put under the command of Chin-timur Sultan. Holding a meeting of Sultans and begs by Emperor Babur leaves no doubt that these two were designations of the Senior and Junior commanders respectively. Till 1929 Baqi was only Beg i.e. a junior commander of 1000 troops. Thus it is clear that commander of

Audh's Army was *Baqi Tashkindi* who was *Mingbashi* the head of Qazis & Mullas in February 1526 AD, a Beg (Junior Commander) and Shaghawal (Commander of 1000 troops) in 1528-29 AD and nor Mir Baqi which figures in the latter forged Inscriptions supplied to A.S. Beveridge for her publication in 1921 as also to Z.A. Desai for his publication in A.S.I's Report 1964-65 because in the former Inscriptions supplied to A. Fuhrer for his publication in A.S.I.'s Report in 1889 the builder of the alleged Masjid was named as *Mir Khan*.

Shri P.N. Misra has further argued that Islam guarantees religious freedom and tolerance and does not permit to usurp sacred places of other religion. The principal submissions made on his behalf before this Court are as under:-

**ISLAM GUARANTEES RELIGIOUS FREEDOM & TOLERATION AND DOES NOT PERMIT TO USURP SACRED RELIGIOUS PLACE OF OTHERS:**

1. The Holy Quran and the Holy Prophet has commanded that no one should be compelled to change religion, idolaters should be allowed to worship in their own way, the Holy Prophets have appeared in every community and they should not be compared but respected and a Muslim can maintain good relation with his *Pagan* (i.e. worshipper of multi -deities) relative.
2. The Holy Quran (Noble Quran, Surah-2 Al-Baqarah, Ayat

256 at p.58) commands that there is no compulsion in religion. English translation of the said *Ayat* reads as follows:

“**256.** There is no compulsion in religion. Verily, the Right Path has become distinct from the wrong path. Whoever disbelieves in *Taghut* and believes in Allah, then he has grasped the most trustworthy handhold that will never break. And Allah is All-Hearer, All-Knower.

(Noble Quran, Surah-2 Al-Baqarah, Ayat 256)

3. The Holy Quran (Noble Quran, Surah-107 Al-Ma‘un, Ayat 1-6 at p.852-853) permits people of other religion to carry out their religious practices according to their own religion.

English translation of the said *Ayat* reads as follows:

“**1.** Say: (O Muhammad .. .. . (*Arabic text*) .. .. to these Mushrikun and Kafirun): “O Al-Kafirun (disbelievers in Allah, in His Oneness, in His Angles, in His Books, in His Messengers, in the Day of Resurrection, and in *Al-Qadar*.)!  
**2.** I worship not that which you worship.  
**3.** Nor will you worship that which I worship.  
**4.** And I shall not worship that you are worshipping.  
**5.** Nor will you worship that which I worship.  
**6.** To you be your religion, and to me my religion (Islamic Monotheism).”

(Noble Quran, Surah-107 Al-Ma‘un, Ayat 1-6 at p.852-853)

4. The Holy Quran (Noble Quran, Surah-10 Yunus, Ayat 47 at p.277) recognizes birth of Messengers of the Almighty in every community or nation. English translation of the said *Ayat* reads as follows:

“**47.** And for every *Ummah* (a community or a nation) there is a Messenger, when their Messenger comes, the matter will be judged between them with justice,

and they will not be wronged.”

(Noble Quran, Surah-10 Yunus, Ayat 47 at p.277)

5. Sacred Compilation Hadith Sahih Bukhari 3.595 p.610-611 reveals that the Holy Prophet commanded not to give a Prophet superiority over another. Relevant portion of the said Hadith reads as follows:

“The Prophet said, “Do not give a prophet superiority over another, for on the Day of Resurrection all the people will fall unconscious and I will be the first to emerge from the earth, and will see Moses standing and holding one of the legs of the Throne. I will not know whether Moses has fallen unconscious or the first unconsciousness was sufficient for him.”

(Hadith Sahih Bukhari 3.595 at p.611 )

6. The Sacred Compilation Hadith Sahih Bukhari 4.407 reveals that Holy Prophet allowed a Muslim to keep good relation with his mother who was *pagan* i.e. idolater. The said Hadith reads as follows:

4.407:

Narrated Asma 'bint Abi Bakr: During the period of the peace treaty of Quraish with Allah's Apostle, my mother, accompanied by her father, came to visit me, and she was a pagan. I consulted Allah's Apostle, "O Allah's Apostle! My mother has come to me and she desires to receive a reward from me, shall I keep good relation with her?" He said, "Yes, keep good relation with her."

Sri P.N. Mishra has further submitted that in 1526 A.D. after defeating Sultan Ibrahim Lodhi, Babur became ruler of Delhi, Agra and Oudh and in view of the Principle of Darul Islam, he only acquired sovereignty rights. Thus it was not possible for him

to change the nature of the land belonging to Hindus and the alleged creation of waqf is null and void. His submissions are as under:-

**IN 1526 A.D. WHEN BABUR BECAME RULER OF DELHI, AGRA & OUDH DEFEATING SULTAN IBRAHIM LODI IN THE BATTLE OF PANIPAT THESE TERRITORIES WERE COMPRISED IN DAR-UL-ISLAM:**

1. When in the year 1526 King Babur acquired sovereignty over Delhi, Agra and Oudh defeating Sultan Ibrahim Lodi In the battle of Panipat those territories 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.
2. 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, Dar-ul-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:

“An examination, however, of the principles upon which the relations of Moslem states with non-Moslem countries were based, shows a far greater degree of liberality than has been evinced by Christian writers on international law. It is only in recent times, and under stress of circumstances that non-Christian states have been admitted into the “comity of nations”. The Moslem jurists, on the other hand, differentiate between the condition of belligerency and that of peace. The expression, Dar-ul-Harb thus includes countries with which the Moslems are at war; whilst the States with which they are at peace are the Dar-ul-Aman. The harbi, the inhabitants of the Dar-ul-harb, is an alien, pure and simple. He has no right to enter Islamic States without express permission. But once he receives the aman or guarantee of safety from even the poorest Moslem, he is perfectly secure from molestation for the space of one year. On the expiration of that period, he is bound to depart. The inhabitant of the *Dar-ul-aman* is a *mustamin*. The *aman* may be for ever or for a limited duration, but so long as it lasts, the *mustamin’s* treatment is regulated in strict accordance with the terms of the treaty with his country. The *mustamins* were governed by their own laws, were exempt from taxation and enjoyed other privileges.

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 plenitude 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 possess.”

( Spirit of Islam by Syed Ameer Ali at p.215)

3. Syed Ameer Ali in his book ‘Commentaries on Mahommedan 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*.

(Mohammedan Law by Syed Ameer Ali, 5<sup>th</sup> Edn. Reprint 2009, published by Hind Publishing House, Allahabad, p.301)

4. Fighting between two Muslim Rulers is not fighting between Dar-ul-Islam and Dar-ul-Herb but it is fighting between to 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. Relevant extract from the book *Tabkati- Akbari* published in the Book *Uttar Taimoorkalin Bharat* at page 227 reads as follows:

सुल्तान का कलन्दर को उत्तर .

कहा जाता है कि एक दिन जब वह अपने भाई बारबक शाह से युद्ध कर रहा था तो युद्ध के समय एक कलन्दर<sup>1</sup> दृष्टिगत हुआ और उसका हाथ पकड़ कर उसने कहा "तेरी विजय है।" सुल्तान ने घृणा से अपना हाथ खींच लिया। दरवेश ने कहा कि, "मैं सुखद समाचार कहता हूँ और तुझे विजय की सूचना दे रहा हूँ। किन्तु तू अपना हाथ किस कारण खींच रहा है?" उसने उत्तर दिया, "जब दो मुसलमान सेनाओं में युद्ध हो रहा हो तो एक के विषय में निर्णय न देना चाहिये अपितु वह कहना चाहिये कि जिससे इस्लाम का भला हो और जिससे प्रजा की उन्नति हो, उसे विजय हो और ईश्वर से यही शुभ कामना करनी चाहिए।"

Shri P.N. Misra, Advocate has argued that Muslims are bound to observe the law of *Shar* and transgression of divine law of *Shar* by an Islamic Ruler or Muslims is impermissible in Darul Islam. His submissions are as under:-

**TRANSGRESSION OF DIVINE LAW OF *SHAR* BY AN ISLAMIC RULER AS WELL AS MUSLIMS IS IMPERMISSIBILITY IN DAR-UL-ISLAM:**

1. 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 evil-doer, 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.

2. The Sacred Compilation Jami‘ At-Tirmidhi (Vol.-III) Hadith 1601 reveals that plundering and looting the property of others is an open violation of Islamic Law. Said Hadith reads as follows:

**“1601.** Anas narrated that the Messenger of Allah said: “Whoever plunders then he is not of us.”  
(*Sahih*)

...

**Comments:**

Plundering and looting the property of others is an open violation of Islamic Law and against the basic concept of brotherhood in Islam, therefore, according to the words used in this narration “He is not from us.”

3. The Sacred Compilation Hadith Sahih Bukhari 8.763 reveals that the Holy Prophet said that at the time of commission of prohibited acts such as theft, robbery, drinking etc. a Muslim becomes non-Muslims. Said Hadith reads as follows:

8.763:

Narrated Abu Huraira: Allah's Apostle said, "When an adulterer commits illegal sexual intercourse, then he is not a believer at the time he is doing it; and when somebody drinks an alcoholic drink, then he is not believer at the time of drinking, and when a thief steals, he is not a believer at the time when he is stealing; and when a robber robs and the people look at him, then he is not a believer at the time of doing it." Abu Huraira in another narration, narrated the same from the Prophet with the exclusion of robbery.

4. The great Jurist & illustrated writer Syed Ameer Ali in his book 'Spirit of Islam' (at p.288-89) records duties of sovereigns of Islamic Nation towards their subjects as follows:

“The importance which Islam attaches to the duties of the sovereigns towards their subjects, and the manner in which it promotes the freedom and equality of the people and protects them against the oppression of their rulers, is shown in a remarkable work on the reciprocal rights of sovereigns and subjects by Safi-ud-din Mohammed bin Ali bin Taba Taba, commonly known as Ibn ut-Tiktaka. The book was composed in 701 A.H. (1301-2) and is dedicated to fakhur ud-ain Isa bin Ibrahim, Ameer of Mosul.

The first part deals with the duties of sovereigns to their subjects and the rules for the administration of public affairs and political economy. The author describes the qualities essential for a sovereign—wisdom, justice, knowledge of the wants and wishes of his people, and the fear of God; and adds emphatically that this latter quality is the root of all good, and the key to all blessings, “for when the king is conscious of the presence of God, His servants will enjoy the blessings of peace and security.” The sovereign must also possess the quality of mercy, and “this is the greatest of all good qualities”. He must have an ever-present desire to benefit his subjects, and consult with them on their wants, for the Prophet consulted always with his companions, and God hath said “Council with them on every affair”. In the administration of public affairs, it is the sovereign’s duty to superintend the public income, guard the lives and property of his subjects, maintain peace, check the evil-doer, prevent injuries. He must always keep his word, and then, adds the author significantly, “the duty of the subject is obedience, but no subject is bound to obey a tyrant.” Ibn rushd (the great Averroes) says, “the tyrant is he who governs for himself, and not for his people.”

(Spirit of Islam by Syed Ameer Ali at p.288-89)

5. The Sacred Compilation Hadith Sahih Muslim (Vol.-I) 142 & 142R1 reveal that the Holy Prophet commanded that ruler must be honest in his dealing with those over whom he rules otherwise the ruler is cheater. Commentator explains that the Hadiths says that it is duty of the ruler to see that the life and honour of the subject people are protected and to ensure just social, political and economic system. Said Hadith as well as comments thereon read as follows:

[142] Hasan<sup>(1)</sup> reported: 'Ubaidullah b. Ziyād paid a visit to Ma'qil b. Yasīr Muzanī<sup>(2)</sup> in his illness which caused his death. Ma'qil said: I am going to narrate to you a hadīth which I have heard from the Messenger of Allah (SAW) and which I would not have transmitted if I knew that I would survive. Verily I have heard the Messenger of Allah (SAW) saying: There is no one amongst the bondsmen who was entrusted with the affairs of his subjects and he died in such a state that he was dishonest in his dealing with those over whom he ruled that the Paradise is not forbidden for him<sup>(3)</sup>.

[142R1] Hasan reported: 'Ubaidullah b. Ziyād went to see Ma'qil b. Yasīr and he was in agony. He ('Ubaidullah) inquired (about his health) to which he (Ma'qil) replied: I am narrating to you a hadīth which I avoided narrating to you (before). Verily the Messenger of Allah (SAW) said: Allah does not entrust to his bondsman the responsibility of managing the affairs of his subjects and he dies as a cheater (ruler) but Paradise is forbidden but Allah for such a (ruler). He (Ibn Ziyād) said: Why did you not narrate it to me before this day? He replied: I (in fact) did not narrate it to you as it was not (fit) for me to narrate that to you<sup>(4)</sup>.

(3) Islam exhorts its followers to create a kingdom of heaven in their hearts but this kingdom of heart must be externalised in a just social, political and economic system. The ruler and the state have thus important responsibilities to shoulder. It is the bounden duty of the ruler to see that he acquits himself creditable of the responsibilities saddled on him. He should see that the life and honour of the people are protected. He should also see that no one falls victim to the high-handedness of another

6. The Sacred Compilation Hadith Sahih Muslim (Vol.-III) 1827-1829 reveal that Holy Prophet said that the ruler is a shepherd over the people and shall be questioned about his subjects as to how he conducted their affairs and if he is hard upon them, the Almighty will be hard upon him. Said Hadiths read as follows:

[1827] It has been narrated on the authority of 'Abdullah b. 'Umar that the Messenger of Allah (may peace be upon him) said: Behold! the Dispensers of Justice will be seated on the pulpits of light beside God, on the right side of the Merciful, Exalted and Glorious<sup>(1)</sup>. Either side of the Being is the right side both being equally meritorious<sup>(2)</sup>. (The Dispensers of Justice are) those who do justice in their rules, in matters relating to their families and in all that they undertake to do.

[1828] It has been reported on the authority of 'Abdel-Rahmān b. Shumāsa who said: I came to 'A'isha to inquire something from her. She said: From which people art thou? I said: I am from the people of Egypt. She said: What was the behaviour of your governor towards you in this war of

yours?<sup>(1)</sup> I said: We did not experience anything bad from him. If the camel of a man from us died, he would bestow on him a camel. If any one of us lost his slave, he would give him a slave. If anybody was in need of the basic necessities of life, he would provide them with provisions. She said: Behold! the treatment that was meted out to my brother, Muhammad b. Abū Bakr, does not prevent me from telling you what I heard from the Messenger of Allah (may peace be upon him). He said in this house of mine: O God, who (happens to) acquire some kind of control over the affairs of my people and is hard upon them - be Thou hard upon him, and who (happens to) acquire some kind of control over the affairs of my people and is kind to them - be Thou kind to him.

[1828R1] This hadīth has been narrated on the authority of 'Abdel-Rahmān b. Shumāsa with another chain of transmitters.

[1829] It has been narrated on the authority of Ibn 'Umar that the Holy Prophet (may peace be upon him) said: Beware, every one of you is a shepherd and every one is answerable with regard to his flock. The Caliph is a shepherd over the people and shall be questioned about his subjects (as to how he conducted their affairs). A man is a guardian over the members of his family and shall be questioned about them (as to how he looked after their physical and moral well-being). A woman is a guardian over the household of her husband and his children and shall be questioned about them (as to how she managed the household and brought up the children). A slave is a guardian over the property of his master and shall be questioned about it (as to how he safeguarded his trust). Beware, every one of you is a guardian and every one of you shall be questioned with regard to his trust<sup>(2)</sup>.

## 7. The Sacred Compilation Hadith Sahih Muslim (Vol.-III)

1839, 1840R1 reveal that Holy Prophet commanded the Muslims not to do a sin and if he is ordered to do a sinful act by the commander, a Muslim should neither listen to him nor should he obey his orders. The said Hadiths read as follows:

[1839] It has been narrated on the authority of Ibn 'Umar that the Holy Prophet (may peace be upon him) said: It is obligatory on a Muslim that he should listen (to the ruler appointed over him) and obey him whether he likes it or not, except that he is ordered to do a sin. If he is ordered to do a sinful act, a Muslim should neither listen to him nor should he obey his orders.

**[1840R1] It has been narrated on the authority of 'Alī who said: The Messenger of Allah (may peace be upon him) sent an expedition and**

appointed over the Mujāhids a man from the Ansār. (While making the appointment), he ordered that his word should be listened to and obeyed. They made him angry in a matter. He said: Collect for me dry wood. They collected it for him. Then he said: Kindle a fire. They kindled (the fire). Then he said: Didn't the Messenger of Allah (may peace be upon him) order you to listen to me and obey (my orders)? They said: Yes. He said: Enter the fire. The narrator says: (At this), they began to look at one another and said: We fled from the fire to (find refuge with) the Messenger of Allah (may peace be upon him) (and now you order us to enter it). They stood quiet until his anger cooled down and the fire went out. When they returned, they related the incident to the Messenger of Allah (may peace be upon him). He said: If they had entered it, they would not have come out. Obedience (to the commander) is obligatory only in what is good.

#### 8. 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).**

#### 9. 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 'Auf b. Mālik Al-Ash-ja'ī 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<sup>(1)</sup>.

10. The Sacred Compilation Jami' At-Tirmidhi (Vol.-4) Hadith

2174 reveals that the Holy Prophet said that making a just statement before tyrannical ruler is a greatest type of *Jihad*.

Said Hadith reads as follows:

“**2174.** Abu Sa'eed Al-Khudri narrated that the Prophet said: ‘Indeed, among the greatest types of *Jihad* is a just statement before a tyrannical ruler.’”  
(*Hasan*)

From the said Hadith it is crystal clear that greatest *Jihad* would be to curse action of a tyrant ruler converting a temple into mosque in flagrant violation of Divine commands of *Shar*.

11. The Sacred Compilation Hadith Sahih Bukhari 3.627-629

reveal that the Holy Prophet has strictly commanded to avoid oppression. Said Hadiths read as follows:

3.627:

Narrated Ibn `Umar: The Prophet said, "Oppression will be a darkness on the Day of Resurrection."

3.628:

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."

3.629:

Narrated Abu Huraira: Allah's Apostle said, "Whoever has oppressed another person concerning his reputation or anything else, he should beg him to forgive him before the Day of Resurrection when there will be no money (to compensate for wrong deeds), but if he has good deeds, those good deeds will be taken from him according to his oppression which he has done, and if he has no good deeds, the sins of the oppressed person will be loaded on him."

12. The Sacred Compilation Jami‘ At-Tirmidhi (Vol.-4) Hadith

2030 reveals that the Holy Prophet has cursed oppression. Said

Hadith reads as follows;

“**2030.** Ibn ‘Umar narrated that the Prophet said: ‘Oppression shall be darkness on the Day of Judgment.’” (*Sahih*)

**Comments:**

Tyranny and oppression in this world shall be required by darkness and doom on the Day of Judgment to which the Quran refers when Allah rhetorically poses the question: “Who rescues you from the darkness of the land and the sea?”

13. The Sacred Compilation Jami‘ At-Tirmidhi (Vol.-4) Hadith

2324 reveals that the Holy Prophet has said that this world is a prison for Muslims and as the prisoner is not free to lead the life of his choice and is bound by the law of the prison and the whims of its officers in the similar manner Muslims are also not free to lead life of their choice and they are bound by the law of Shar. Said Hadith as well as the

comment thereto read as follows:

“**2324.** Abu Hurairah narrated that the Messenger of Allah said: “The world is a prison for the believer and Paradise for the disbeliever. (*Sahih*)”

**Comments:**

The main characteristic of a prison is that the prisoner in it is not free to lead a life of his choice, but is bound by the laws of the prison and the whims of its officers. He is neither free in eating and drinking, nor in sleeping and awakening, nor in moving about nor in meeting with the people at will. In short, he has no freedom of any kind in a prison house, and has willy-nilly to obey the orders of others. The second thing is that no prisoner loves his prison like home, but is always on the lookout to somehow get rid of it. Paradise, on the other hand, is a place where the inhabitants will have no such restrictions. Each person will live a life of his choice, and every desire of his will be fulfilled and he will never feel the desire to get out of it.”

14.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.”

15.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.”

16.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 Juhaifah 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*)

17.The Muwatta’ Imam Malik 959 and 960 reveal that the Muslims should neither break vows nor kill disbelievers breaking promise of protection given to him. Said Muwatta nos. 959 & 960 read as follows:

(959) It reached Mālik that ‘Umar b. ‘Abd al-‘Azīz 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.

(960) A man of Kūfah reported that ‘Umar b. al-Khattāb wrote to a commander of the army: I have received information that some of you call an unbeliever when he mounts a hillock and gives up fighting, and ask him not to fear and then, getting the opportunity, kill him. I swear by Him Who is the Master of my life, if I should learn anyone doing so, I shall behead him.

#### 18. The Sacred Compilation Jami‘ At-Tirmidhi (Vol.-4) Hadith

2305 reveals that the Holy Prophet has said that a person who acts as guard against the unlawful, is kind to his neighbour and loves the people as he loves himself is Muslim, otherwise not. The said Hadith reads as follows:

“**2305.** Al-Hasan narrated from Abu Hurairah that the Messenger of Allah said: “Who will take these statements from me, so that he may act upon them, or teach one who will act upon them?” So Abu Hurairah said: “I shall O Messenger of Allah! So he took my hand and enumerated five (things), he said: “Be on guard against the unlawful and you shall be the most worshipping among the people, be satisfied with what Allah has allotted for you and you shall be the richest of the people, be kind to your neighbor and you shall be a believer, love for the people what you love for yourself and you shall be a Muslim. And do not laugh too much, for indeed increased laughter kills the heart.” (*Da‘if*)

As such a person who laid down foundation of his building on hatred was not a Muslim and the structure alleged to be erected by him was not a mosque.

19. The Sacred Compilation Jami‘ At-Tirmidhi (Vol.-4) Hadith

1987 reveals that the Holy Prophet has commanded the Muslims to follow an evil deed with a good one to wipe it out and treat the people with good behavior . Said Hadith reads as follows:

“1987. Abu Dharr said: “the Messenger of Allah said to me: ‘Have *Taqwa* of Allah wherever you are, and follow an evil deed with a good one to wipe it out, and treat the people with good behavior.” *(Hasan)*

It is further contended that freedom of religion and religious practices to Hindus under Islamic rule was granted to Hindus. His submissions are in many fold and they are as under:-

**FREEDOM OF RELIGION & RELIGIOUS PRACTICES TO HINDUS UNDER ISLAMIC RULE & MUSLIM LAW WAS GRANTED TO THE HINDUS:**

1. Law of *Shar* as interpreted by Great Imam Abu Haneef recognized right of freedom of religion & religious practices of the Hindus of India under Islamic Rulers. Sultan Sikandar Lodi was dissuaded by the Greatest *Alim* of that age Miyan Abdullah Ajodhani from demolishing a Hindu Temple & putting ban on religious practices of the Hindus. Even Emperor Auragzeb who later on caused demolition of several Temples of the Hindus throughout his Empire in his *Farman* dated 1659 has admitted that *Shariyat* does not permit to demolish old Temples and impose restriction on performance of customary and other religious rituals of the

Hindus. Ibn Battuta tells that Muhammad bin Tughlaq had granted permission to rebuild demolished Idol Temples to the King of China. During the reign of Caliphs, the people of other faith i.e. Zimmis were allowed to carry out processions, observe festivals, beat drums, erect places of worship & maintain images therein.

2. In *Waqiyat-i –Mutaqi* written by Rizkullah Mutaqi (b.1491-92 & d. 1581 A.D.), *Tabkats I Akbari* by Khwaja Nizamuddin Ahmad (completed in 1592-93 A.D.) and *Tarikh-i-Shahi* (completed in the beginning of Emperor Jahangir's reign) it has been narrated that once upon a time when Sultan Sikandar Lodi (r. 1488-1517 A.D.) was the Crown prince and known as Nizam Khan, he sought opinion of the *Alims* for the purpose of demolishing an ancient temple of the Hindus at *Thaneshwar* and putting ban on Hindus from taking holy dip in the Sacred pond at *Thaneshwar*. *Alims* unanimously made a request to him for putting that question to Greatest *Alim* of the age *Miyan Abdullah Ajodhani* who was available at that place. On being asked the Great *Alim Abdullah Ajodhani* replied that *Shar* does not permit destruction of ancient temple and prohibition of customary rites of the Hindus. From said answer Sikandar Lodi became very much annoyed and drew his sword inter alia stating that 'first I will kill you and thereafter attack Thaneshwar'. Then said *Alim* fearlessly

answered that 'everyone has to die on one day and when anyone goes near a tyrant then he does it knowing fully well that his death is certain. I am not worried about my life but I say that if you had nothing to do with *Shar* then there was no need to put this question to me but since you asked me that question of *Shar* I replied it in accordance with *Shar*'

. Relevant extracts of Hindi Translation of the aforesaid books as published in the book *Uttar Taimoorkalin Bharat Bhag. 1* (History of the Part-Taimoor Sultans of Delhi , Part.

I) pages 104,228 and 322 read as follows:

#### कुरुक्षेत्र पर आक्रमण की योजना

बाल्यावस्था में ऐसा हुआ कि एक बार उसने कुरुक्षेत्र पर आक्रमण करना निश्चय किया। इस विषय पर आलिमों का मत ज्ञात करने के लिए उसने उन्हें एकत्र किया। उस युग के सबसे बड़े आलिम (१६) मियां अब्दुल्लाह अजोधनी भी उपस्थित थे। सभी ने उनकी ओर संकेत किया कि, "इनकी उपस्थिति में हम कुछ भी नहीं कह सकते।" मियां निजाम ने मियां अब्दुल्लाह से इस विषय में पूछा। उन्होंने पूछा, "वहां क्या होता है?" मियां निजाम ने कहा कि, "उस स्थान पर प्रत्येक प्रदेश से काफ़िर एकत्र होकर स्नान करते हैं।" मियां अब्दुल्लाह ने पूछा कि, "यह प्रथा कब से चल रही है?" शाहजादे ने कहा कि, "यह बड़ी प्राचीन प्रथा है।" मियां अब्दुल्लाह ने पूछा कि, "आपके पूर्व मुसलमान बादशाहों ने इस सम्बन्ध में क्या किया?" शाहजादे ने कहा कि, "इसके पूर्व किसी बादशाह ने कुछ भी नहीं किया।" मुल्ला ने कहा कि, "इसका उत्तरदायित्व उन लोगों पर है। प्राचीन मंदिर को नष्ट करना उचित नहीं।" मियां निजाम ने रुष्ट होकर कटार निकाल ली और कहा कि, "सर्व प्रथम मैं तुम्हारी हत्या करूंगा तबुपरान्त वहां आक्रमण करूंगा।" उन्होंने कहा कि, "सभी के लिए मरना अनिवार्य है। बिना ईश्वर के आदेश के कोई भी नहीं मरता। जब कोई भी व्यक्ति किसी अत्याचारी के पास जाता है तो अपने लिए मृत्यु निश्चय करके जाता है। जो कुछ होना है वह होगा किन्तु आपने मुझसे शरा की समस्या के विषय में प्रश्न किया तो मैंने उसका उत्तर दिया। यदि आपको शरा की चिन्ता नहीं है तो पूछने की कोई आव-

शकता नहीं।" सुल्तान ने अपने क्रोध को रोक़ा और कहा कि, "यदि अनुमति प्रदान कर देते तो कई हजार काफ़िरों को नरक पहुँचा देता और अधिकांश मुसलमान उससे लाभान्वित होते।" मियां अब्दुल्लाह ने कहा कि, "मुझे जो कुछ कहना था मैंने कह दिया, अब आप जानें।" वह दरबार से उठ खड़ा हुआ। अन्य आलिम लोग उसके साथ चल दिये। मलिकुल उल्मा अपने स्थान पर खड़े रहे। मियां निज़ाम ने किसी अन्य ओर ध्यान न दिया और कहा, "मियां अब्दुल्लाह आप कभी-कभी मुझसे भेंट करते रहें।" यह कह कर उन्हें विदा कर दिया। बाल्यावस्था में उसकी यह दशा थी।

#### थानेश्वर के स्नान के विरोध का प्रयत्न

उसने अपनी बाल्यावस्था में जब कि वह शाहजादा था यह सुना कि थानेश्वर में एक कुण्ड है, जहाँ हिन्दू एकत्र होकर स्नान करते हैं। उसने आलिमों से पूछा कि "इसके विषय में शरा का क्या आदेश है?" उन्होंने उत्तर दिया कि "प्राचीन मंदिरों को नष्ट करने की अनुमति नहीं है। जब कि उस कुण्ड में प्राचीन काल से स्नान करने की प्रथा चली आ रही है, उसमें स्नान का निषेध आपके लिए उचित नहीं।" शाहजादे ने कटार निकाल ली और उस आलिम की हत्या का संकल्प करते हुए कहा कि, "तू काफ़िरों का पक्षपाती है।" उस बुजुर्ग ने उत्तर दिया कि, "जो कुछ शरा में लिखा है उसे मैं कहता हूँ और सत्य बात कहने में कोई भय नहीं।" शाहजादा संतुष्ट हो गया।

#### धर्मान्धता

एक दिन उसने आदेश दिया कि "थानेश्वर जाकर कुकक्षेत्र (कुक्षेत्र) को मिट्टी से पाट दिया जाय और वह भूमि वहाँ के धर्मनिष्ठ व्यक्तियों को बजहे मजाश में नाप कर दे दी जाय।" उस काल का मलिकुल उल्मा उस स्थान पर उपस्थित था। उसने शाहजादे से पूछा, "वहाँ क्या है?" उसने उत्तर दिया कि, "एक हीज़ है जहाँ १०००, २००० कोस से हिन्दू लोग स्नान हेतु आते हैं।" उसने पूछा, "कब से यह कार्य प्रारम्भ हुआ?" शाहजादे ने कहा, "वर्षों से यह बिदयत चल रही है।" मलिकुल उल्मा ने पुनः पूछा, "आप के पूर्व के बादशाह इस विषय में क्या करते थे?" उसने उत्तर दिया, "कुछ नहीं।" मलिकुल उल्मा ने कहा, "यह तुम्हारा उत्तरदायित्व नहीं कारण कि तुम्हारे पूर्व मुसलमान बादशाहों ने इस विषय में कुछ नहीं किया?" शाहजादा इस बात से बड़ा गरम हुआ। उसने कहा, "इस काल (३१) के आलिम बड़े विचित्र प्रकार के हैं।" संक्षेप में, युवावस्था में वह इस्लाम का इतना बड़ा पक्षपाती था।

3. In his *Farman/Manshur* of Emperor Aurangzeb of 15<sup>th</sup> March, 1659 AD. has said that in accordance with the Sharia the ancient temples, are not to be destroyed as such there should be no interference in offering prayers in temples of the Hindus. In spite of the fact that subsequently this ruler himself caused demolition of the Ram Janamsthan temple at Ajodhya and other famous temples of the Hindus including those of Varanasi and Mathura, in his Farman dated 1659 he has accepted that sharia neither permit to interfere with the worship of the Hindus nor allows to destroy their temples. The extract of the *Farman* taken from page 142 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:

426. *Manshur* of Aurangzeb addressed to Abul Hasan<sup>1</sup> states that it has been brought to the notice of the royal court that the Brahmins of Banaras are being removed from their ancient offices and that Hindus of Banaras and its neighbourhood are harassed. In accordance with the *sharia* the ancient temples, are not to be destroyed and new ones are not to be built and since our innate kindness of disposition and natural benevolence, the whole of our untiring energy and our upright intentions are engaged in promoting the public welfare and bettering the condition of all classes, high and low, it is ordered that no person should interfere with or disturb the Brahmins and other Hindus so that they may, as before, remain in their ancient occupation and engage themselves with peace of mind in offering prayers for the continuance of our God-gifted empire so that it may last for ever (JPHS, V(1), pp. 247-48).

20 Jumada II/1069 A.H./15 March, 1659 A.D.

4. Ibn Battuta who held the office of the Kazi of Delhi as also functioned as Mutawalli of the Mausoleum of Sultan Kutubuddin during the reign of Sultan Mahommed Bin Tughlaq has noted down that Sultan Mahommed Bin Tughlaq had granted permission to the King of China to rebuild the idol temples that were demolished by his army in Himalayan region subject to payment of Jizya. Relevant extract from page 214 of his book 'IBN BATTUTA Travels in Asia and Africa 1325 -1354' translated and selected by H.A.R. Gibb first published in 1929 reprinted in 2007 by Low Price Publications, Delhi ) reads as follows:

**THE king of China had sent valuable gifts to the sultan, including a hundred slaves of both sexes, five hundred pieces of velvet and silk cloth, musk, jewelled garments and weapons, with a request that the sultan would permit him to rebuild the idol-temple which is near the mountains called Qarajil [Himalaya]. It is in a place known as Samhal, to which the Chinese go on pilgrimage; the Muslim army in India had captured it, laid it in ruins and sacked it.<sup>1</sup> The sultan, on receiving this gift, wrote to the king saying that the request could not be granted by Islamic law, as permission to build a temple in the territories of the Muslims was granted only to those who paid a poll-tax; to which he added "If thou wilt pay the *jizya* we shall empower thee to build it. And peace be on those who follow the True Guidance."**

5. Great Jurist syed Amir Ali in his book 'The Spirit of Islam' (at p.272) substantiate that the Islam itself has ever maintained the most complete tolerance in respect of religion and if any excesses was done, it was by the passions of the ruler. Using religious element as a pretext. Relevant extract of the said book reads as follows:

“If we separate the political necessity which has often spoken and acted in the name of religion, no faith is more tolerant than Islam to the followers of other creeds. “Reasons of State” have led a sovereign here and there to display a certain degree of intolerance, or to insist upon a certain uniformity of faith; but the system itself has ever maintained the most complete tolerance. Christians and Jews, as a rule, have never been molested in the exercise of their religion, or constrained to change their faith. If they are required to pay a special tax, it is in lieu of military service, and it is but right that those who enjoy the protection of the State should contribute in some shape to the public burdens. Towards the idolaters there was greater strictness in theory, but in practice the law was equally liberal. If at any time they were treated with harshness, the cause is to be found in the passions of the ruler or the population. The religious element was used only as a pretext.”

( Spirit of Islam by Syed Ameer Ali at p.272)

6. The 'Spirit of Islam' (at p.273) records the facts that the Holy Prophet gave guarantee of freedom of religion to the Christians of Najram and the neighboring territories, inter alia, stating that there would be no interference with the practice of their faith, monks would not be removed from their Monastery and no image would be destroyed. Relevant extract from the said book reads as follows:

“Has any conquering race or Faith given to its subject nationalities a better guarantee than is to be found in the following words of the prophet?

“To [the Christians of] Najran and the neighbouring territories, the security of God and the pledge of His Prophet are extended for their lives, their religion, and the property- to the present as well as the absent and other besides; there shall be no interference with [the practice of] their faith or their observances; nor any change in their rights or privileges; no bishop shall be removed from his bishopric, nor any monk from his monastery, nor any priest from his priesthood, and they shall continue to enjoy everything great and small as heretofore; no image or cross shall be destroyed; they shall not oppress or be oppressed; they shall not practice the rights of blood-vengeance as in the Days of ignorance, no tithes shall be levied from them nor shall they be required to furnish provisions for the troops.”

(Spirit of Islam by Syed Ameer Ali at p.273)

7. The ‘Spirit of Islam’ (at p.273-74) records the facts that during the reign of Caliphs, the people of other faith i.e. Zimmis were allowed to carry out processions, observe festivals, beat drums, erect places of worship. Relevant extract of the said book reads as follows:

“After the subjugation of Hira, and as soon as the people had taken the oath of allegiance, Khalid bin-Walid issued a proclamation by which he guaranteed the lives, liberty and property of the Christians, and declared that “they shall not be prevented from bearing their nakas and taking out their crosses on occasions of festivals.” “And this declaration” says Imam Abu-Yusuf was approved of and sanctioned by the Caliph and his council.

The non-Moslem subjects were not precluded from building new churches or temples. Only in places exclusively inhabited by Moslems a rule of this kind existed in theory. “No new Church or temple”, said Abdullah bin Abbas, “can be erected in a town solely inhabited by Moslems; but in other places where there are already Zimmis inhabiting from before, we must abide by our contract with them”.

...  
 “The best testimony to the toleration of the early Moslem government is furnished by the Christians themselves. In the reign of Osman (the third Caliph), the Christians patriarch of Merv addressed the bishop of Fars, named Simeon, in the following terms: “The Arabs who have been given by God the kingdom (of the earth) do not attack the Christian faith, on the contrary they help us in our religion; they respect our God and our Saints, and bestow gifts on our churches and monasteries.”

(Spirit of Islam by Syed Ameer Ali at p.273-74)

It is further submitted that according to the Holy Prophet in one land there cannot be two Qiblahs or Idgah & mosque, as such Sri Ramjanmasthan Temple and a mosque cannot co-exists in disputed site. His submissions are as under:-

**ACCORDING TO THE HOLY PROPHET IN ONE LAND THERE CANNOT BE TWO QIBLAHS OR IDGAH & MOSQUE AS SUCH SRI RAMJANMASTHAN TEMPLE AND A MOSQUE CAN NOT CO-EXIST IN DISPUTED SITE:**

1. The Holy Prophet has commanded that there must not be two sacred buildings of worship of two different religions in one land, in other words there cannot be a Masjid and an Idol Temple in one land. In view of the fact that in his said command the Holy Prophet has said that as Jizyah cannot be imposed upon Muslim, two *Qiblahs* cannot be in one land, coexistence of two *Qiblas* one of Hindus and other of Muslims in one land is mandatorily forbidden according to *Shar*. The Holy Prophet also says that neither prayer can be

offered by forming rows between two columns nor funeral prayer can be offered in a mosque. An *Idgah* is a place where funeral prayers or the prayers of the two Ids are usually offered, as such same site cannot be a Masjid and *Idgah*. The Holy Quran says that foundation of a Masjid from very first day must be laid on piety not on hypocrisy and it must be always maintained by the Muslims. The Holy Prophet says that a *Masjid* must not be used as a home and place of gossiping. Imam Aboo Yoosuf and Imam Moohummud the disciples of the Great Imam Abu Haneef say that if at least two times prayer is not offered followed by Adhan/Ajan then the place is not a Public Mosque. It is admitted position that in the same land Temples were/are present prior to alleged erection of Mosque and even after the alleged erection of Mosque it retained columns of Hindu Temple. According to some of the plaintiffs admission lastly prayer was offered on 16<sup>th</sup> December 1949 while it was occupied in the night of 22/23<sup>rd</sup> December 1949 in abandoned condition. All these things as well as presence of *Chulha* as found during the ASI's excavation indicates that said building was being used as home of Deities and Sevayats & Pujaris; as it never acquired the status of a *Masjid* according to Muslim Law and belief no declaration as prayed for can be granted.

2. The Sacred Compilation Jami' At-Tirmidhi (Vol.-2) Hadith

633 reveals that in one land there must not be two Religious buildings of two different religions. Said Hadith reads as follows:

“**633.** Ibn Abbas narrated that the Messenger of Allah said: “Two *Quiblahs* in one land are of no benefit, and there is no *Jizyah* upon the Muslims. “(*Da‘if*)

3. Divine Holy Quran Surah 9 At-Taubah Ayat 18 commands that Mosques can be maintained only by Muslims not by persons of other faith. Said Holy *Ayat* reads as follows:

**256. There is no compulsion in religion. Verily, the Right Path has become distinct from the wrong path. Whoever disbelieves in *Tâghût*<sup>11</sup> and believes in Allâh, then he has grasped the most trustworthy handhold that will never break. And Allâh is All-Hearer, All-Knower.**

4. Neil B.E. Baillie in his Book ‘A Digest of Mahomedan Law’ Part-First (Second Edition 1875) at its page 616 records that Imam Aboo Yoosuf and Imam Moohummud the disciples of the Great Imam Abu Haneef say that if at least two times prayer is not offered followed by Adhan/Ajan then the place is not a Public Mosque. Relevant extract from the above referred pages reads as follows:

**When an assembly of worshippers pray in a *musjid* with permission, that is delivery. But it is a condition that the prayers be with *izan*, or the regular call, two times or more, and be public, not private. For though there should be an assembly, yet if it is without *izan*, and the prayers are private instead of public, the place is no *musjid* according to the two disciples. But if one person were appointed to officiate both as *mooezzin* and *imam*, and he should make the call, and then stand up and pray alone, the place would become a *musjid* by general agreement.**

5. Divine Holy Quran Surah 9 At-Taubah Ayat 107-110

commands that foundation of a Mosque must be laid from the first day on piety not hypocrisy otherwise a mosque built by hypocrite is destined to crumble down. The said Holy *Ayat* reads as follows:

**107. And as for those who put up a mosque by way of harm and disbelief and to disunite the believers and as an outpost for those who warred against Allâh and His Messenger (ﷺ) aforetime, they will indeed swear that their intention is nothing but good. Allâh bears witness that they are certainly liars.**

**108. Never stand you therein. Verily, the mosque whose foundation was laid from the first day on piety is more worthy that you stand therein (to pray). In it are men who love to clean and to purify themselves. And Allâh loves those who make themselves clean and pure [i.e. who clean their private parts with dust (which has the properties of soap) and water from urine and stools, after answering the call of nature].**

**109. Is it then he who laid the foundation of his building on piety to Allâh and His Good Pleasure better, or he who laid the foundation of his building on the brink of an undetermined precipice ready to crumble down, so that it crumbled to pieces with him into the Fire of Hell. And Allâh guides not the**

**people who are the *Zâlimûn* (cruel, violent, proud, polytheist and wrong-doer).**

Be it mentioned herein that this Holy *Ayat* came down in respect of Masjid-i-Jarar built in Madina by the hyporites with ulterior motive. Ultimately this Masjid was burnt and destroyed on command of the Holy Prophet.

6. The Sacred Compilation Hadith Sahih Bukhari 4.403 reveals that the Holy Prophet has termed such a person hypocrite who breaks promise, did not honour covenant, tells lie and behave in a very imprudent and misleading manner. The

said Hadith reads as follows:

“4.403:

Narrated `Abdullah bin `Amr: Allah's Apostle said, "Whoever has (the following) four characteristics will be a pure hypocrite: "If he speaks, he tells a lie; if he gives a promise, he breaks it, if he makes a covenant he proves treacherous; and if he quarrels, he behaves in a very imprudent evil insulting manner (unjust). And whoever has one of these characteristics, has one characteristic of a hypocrite, unless he gives it us."

7. The Sacred Compilation Jami‘ At-Tirmidhi (Vol.-5) Hadith 2684 reveals that two things will not be together in a hypocrite that is to say good manners and *fiqh* in the religion. Said Hadiths and comments thereto read as follows:

“**2684.** Abu Hurairah narrated that the Messenger of Allah said: “Two things will not be together in a hypocrite: Good manners, and *Fiqh* in the religion.”  
**(Da‘if)**

8. The Sacred Compilation Jami‘ At-Tirmidhi (Vol.1) Hadith 321 reveals that Masjid cannot be used as a home nor a place for gossiping. Relevant portion of said Hadith reads as follows:

“**321.** ...

Ibn Abbas said, “It is not to be used as a home nor a place for talking about this or that.”

In view of the fact that during the ASI’s excavation at suit premises a *chulha* (an oven) has been found. It leaves no doubt that said structure was being used as home of Hindu deity and *chulha* was being used for preparing food for the

deity as such said structure cannot be inferred to be a Masjid.

9. The Sacred Compilation Jami‘ At-Tirmidhi (Vol.1) Hadith 229 reveals that the Holy Prophet had commanded the Muslims not to pray between two columns. Said Hadith reads as follows:

“**229.** Abdul-Hamid bin Mahmud said: “We prayed behind one of the *Amirs*, the people compelled us such that we prayed between two columns. When we had prayed, *Anas bin Malik* said: ‘We would be prevented from this during the time of Allah’s Messenger.’” (*Sahih*)

As in the disputed structure there were admittedly several columns and in course of forming rows for offering prayer those columns were unavoidable the said structure was not fit for offering prayer.

10. The Sacred Compilation Hadith Sahih Muslim (Vol.-II) 973 as interpreted by Imam Abu Hanifa on the basis of a Hadith recorded in Abu Dawud reveal that funeral prayer in the Mosque was prohibited.

[973] 'Abbād b. 'Abdullah b. Zubair reported that 'Ā'isha ordered that the bier of Sa'd b. Abū Waqqās be brought into the mosque, so she can pray for him. The people disapproved this (act) of hers. She said: How soon the people have forgotten that the Messenger of Allah (SAW) had offered the funeral prayer of Suhail b. Al-Baidā' but in a mosque<sup>(1)</sup>.

- (1) There is a difference of opinion among the jurists whether a funeral prayer can be offered in a mosque or not. It is on the basis of this hadīth that Imām Shāfiʿī of the view that it can be offered in a mosque. Imām Abū Hanifa and Imām Mālik on the basis of a hadīth recorded in Abū Dāwūd (viz. The Messenger of Allah said: He who offers funeral prayer in the mosque has nothing for him) disapprove saying the funeral prayer in the mosque. The scholars of Hadīth.

11. In Idgahs/Musallas funeral prayers can be offered. In his book Mahommedan Law, Syed Ameer Ali, describes Mosques and Idghas or Musalla as follows:

“The word masjid is derived from sijda, devotion, and means a place of devotion or a place where prayers are offered to the Almighty.

A very fair description of an ordinary mosque is given by Herklot in his *Qanoon-i-Islam*. *Musallas* are prayer-grounds, and the word is derived from the word *salat* or prayers. In India, they are generally called *Idgahs* or *namaz-gahs*, and consist of a plot of ground set apart for the performance of the daily prayers or the Id prayers.”

Mahommedan Law by Syed Ameer Ali, 5<sup>th</sup> Edn.  
Reprint 2009, published by Hind Publishing  
House, Allahabad, p.418 & 419)

“Every ground set apart for prayers is not necessarily a *musallah* and subject to the rules governing a mosque. A *musalla* is a place where funeral prayers or the prayers of the two Ids are usually offered. In such cases only the place where the congregation gather and the worship is performed that is governed by the rules governing a mosque.

(*Ibid.* p.420)

Sri P.N. Mishra, Advocate has further argued that Hindus were recognized as Zimmis by the Great Iman Abu Haneef as such Emperor Babar being follower of said Imam's school had no right to erect mosque over Hindu Shrine. His submissions are as under:-

**IDOLATOR HINDUS WERE RECOGNIZED AS**

**ZIMMIS BY THE GREAT IMAM ABU HANEEF AS SUCH  
EMPEROR BABAR BEING FOLLOWER OF SAID IMAM'S  
SCHOOL HAD NO RIGHT TO ERECT MOSQUE OVER  
HINDU SHRINE:**

1. Hindus were recognized as Jimmis by in 712 AD by the Great Imam Abu Haneef by virtue of authorities conferred upon the Doctors of Islam by Hadiths for the purpose of showing the people right path on the basis of correct interpretation of Law of *Shar*.
2. Mahomed Kasim Feristha in his book *Tarikhe Feristha* records that in reply to a question of Sultan Allaoodeen Khiljy, Kaji Mugdis answered him that the Hindus were granted status of Jimmi by the Great Imam Abu Huneef. Relevant extract from page 198 of the English Translation of the said book [“History of the rise of the Mahomedan Power in India till the year AD 1612” translated by John Briggs first published in 1829 reprinted in 2006 by Low Price Publications, Delhi] reads as follows:

is it lawful to exact obedience and tribute?”—Answer. “It is lawful to exact obedience and tribute from all infidels, and they can only be considered as obedient who pay the poll-tax and tribute without demur, even should it be obtained by force; for, according to the law of the Prophet, it is written, regarding infidels, ‘Tax them to the extent that they can pay, or utterly destroy them.’ The learned of the faith have also enjoined the followers of Islam, ‘To slay them, or to convert them to the faith;’ a maxim conveyed in the words of the Prophet himself. The Imam Huneef, however, subsequently considers that the poll-tax, or as heavy a tribute imposed upon them as they can bear, may be substituted for death, and he has accordingly forbidden that their blood should be heedlessly spilt. So that it is commanded that the Juzeea (poll-tax) and Khiraj (tribute) should be exacted to the uttermost far-thing from them, in order that the punishment may approximate as nearly as possible to death.

3. In 712 AD Imam Abu Hanifah recognized the Hindus of Sind and Multan as Jimmis it has been recorded on page 538 in the book 'The Mughal Empire' edited by renowned historian R. C. Majumdar (3<sup>rd</sup> Edn. 1990 published by Bharatiya Vidya Bhavan, Bombay). The relevant extract from the said book reads as follows:

**in 712 A.D. Muhammad bin Qāsim, the conqueror of Sind, accorded the Hindus of Sind and Multan the status of *zimmīs* which was the special privilege of Christians and Jews, the famous Muslim Jurist, Abu Hanifah, recognised this enactment as legal.**

4. The Sacred Compilation Jami' At-Tirmidhi (Vol.-5) Hadith 2681, 2682 & 2685 reveal that a learned jurist is greater than a thousand worshipers. Commentator explains that as a learned jurist does not only correct himself and is safe from the illusion of the Saitan, but also he protects others against the plots, conspiracies and errors of the devil and he guides them correctly by teaching the issues of religion he is superior than a dedicated worshiper who does not have firm knowledge, the benefit of his worship is restricted to his own self, and also it is easy for the Satan to misguide him. From the said Hadith it can be inferred that superiority to the learned jurist has been given only for the purpose to tell the people what is right or wrong according to religion. Said Hadiths read as follows:

“**2681.** Ibn Abbas narrated that the Messenger of Allah said: “The *Faqih* is harder on *Ash-Shaitan* than a thousand worshippers.” (*Da‘if*)

**Comments:**

A dedicated worshipper who does not have firm knowledge, the benefit of his worship is restricted to his own self, and also it is easy for the Satan to misguide him; while a learned jurist does not only correct himself and is safe for the illusion of the Satan, but also he protects others against the plots, conspiracy and errors of the devil and he guides them correctly by teaching the issues of religion.

**2682.** Qais bin Kathir said: “A man from Al-Madhinah came to Abu Ad-Darda when he was in Dimashq. So he said: “What brings you O my nephew ? He replied: ‘A *Hadith* has reached me which you have narrated from the Messenger of Allah’. He said: ‘You did not come for some need?’ He said: ‘No’. He said: ‘Did you come for trade?’ He said: ‘No, I did not come except seeking this *Hadith*’. So he said: ‘Indeed, I heard the Messenger of Allah saying: ‘Whoever takes a path upon which he seeks knowledge, then Allah makes a path to Paradise easy for him. And indeed the angels lower their wings in approval of the one seeking knowledge. Indeed forgiveness is sought for the knowledgeable one by whomever is in the heavens and whomever is in the earth, even the fish in the waters. And superiority of the scholar over the worshipper is like the superiority of the moon over the rest of the celestial bodies. Indeed the scholars are the heirs of the Prophets, and the Prophets do not leave behind Dinar or Dirham. The only legacy of the scholars is knowledge, so whoever takes from it, then he has indeed taken the most able share. (*Da‘if*)

**2685.** Abu Umamah Al-Bahili narrated: “Two men were mentioned before the Messenger of Allah. One of them a worshipper, and the other a scholar. So, the Messenger of Allah said: ‘The superiority of the scholar over the worshipper is like my superiority over the least of you.’ Then the Messenger of Allah said: ‘Indeed Allah, His angels, the inhabitants of the heavens and the earths – even the ant in his hole, even the fish – say *Sulat* upon the one who teaches the people to do good.’” (*Hasan*)

It is further submitted by Shri P.N. Misra that it was mandatory upon the Army of Islam to protect the shrine and life of Hindus since they were regularly making payment of Jazia, which was a tax for protection and freedom of religion for Hindus. Accordingly Babur or Mir Baqi and no authority under the Islam to convert the temple into a mosque or to erect a mosque over the Hindu shrine. His submissions are as under:-

**FREEDOM OF RELIGION SUBJECT TO PAYMENT OF JEZiyAH, AS HINDUS WERE PAYING SAID PROTECTION TAX IT WAS DUTY OF THE ISLAMIC RULER AND ARMY OF ISLAM TO PROTECT SHRINE AND LIFE OF THE HINDUS:**

1. The Divine Law of *Shar* contained in Holy Quran and Hadiths guarantees freedom of religion and religious practices to the Jimmis/Dhimmiz (protectees) who pay jizya (a tax taken from the non-Muslims who are in the protection of the Muslim government). There were 20 conditions of Jeziyah one of which permits Muslim traveler to stay in Jimmis' temple while other permits them to stay in Jimmis' home for three days. These terms and condition were in practice which is very much apparent from the disclosure of Ibn Battuta that he stayed in the house of an old lady who was a Jimmy as in the city there was only one House of the Governor. Riyazu-S- Salatin, A History of Bengal on its page 67 has recorded the fact that Bakhtiyar Khilaji stayed

in a temple within the territory of Kamrup Kingdom during his retreat from Tibbat campaign without harming the Temple.

2. Sacred Compilation Hadith Sahih Bukhari 4.386 p.836-837 reveals that the Holy Prophet's command was for the Muslim army to fight against the persons of other faith till they worship Allah alone or agree to pay jizya. Relevant portion of the said Hadith reads as follows:

“Our Prophet, the Messenger of our Lord, has ordered us to fight you till you worship Allah Alone or give Jizya (i.e. tribute); and our Prophet has informed us that our Lord says:-- “Whoever amongst us is killed (i.e. martyred), shall go to Paradise to lead such a luxurious life as he has never seen, and whoever amongst us remain alive, shall become your master.”

(Hadith Sahih Bukhari 4.386 at p.837)

3. The Sacred Compilation Hadith Sahih Bukhari 4.404 p.843-844 reveals that asylum to non-Muslims living in Muslim territory was granted by Allah and His Holy Apostle. Relevant extract of the said Hadith reads as follows:

“... Narrated said: Abu Huraira once said (to the people), “What will your state be when you can get no Dinar or Dirhan (i.e. taxes from the Dhimmis) ?” on that someone asked him, “What makes you know that this state will take place, O Abu-Huraira ?” He said, “By Him in Whose Hands Abu Huraira's life is, I know it through the statement of the true and truly inspired one (i.e. the Prophet). “The people asked, “What does the Statement say ?” He replied, “Allah and His Apostle's asylum granted to Dhimmis, i.e. non-Muslims living in a Muslim territory will be outraged, and so Allah will make the hearts of those Dhimmis so daring that they will refuse to pay the Jizya they will be supposed to pay.”

(Hadith Sahih Bukhari 4.404 at p.844)

4. Sacred Compilation Hadith Sahih Muslim (Vol. III) Hadith 1731R1 p.180-181 reveals that when Holy Prophet appointed anyone as commander of an army he specially commanded them to invite the enemies who are polytheists to three course of action and if they respond anyone of these the commander must accept it and keep from doing them any harm. Out of three options one was to demand Jizya from the people who refused to accept Islam and if they agree to pay no harm should be done to them. The said Hadith reads as follows:

**[1731R1] It has been reported from Sulaimān b. Buraid through his father that when the Messenger of Allah (may peace be upon him) appointed anyone as leader of an army or detachment<sup>(2)</sup> he would especially exhort him**

**to fear Allah and to be good to the Muslims who were with him. He would say: Fight in the name of Allah and in the way of Allah. Fight against those who disbelieve in Allah. Make a holy war; do not embezzle the spoils; do not break your pledge; and do not mutilate (the dead) bodies; do not kill the children. When you meet your enemies who are polytheists, invite them to three courses of action. If they respond to any one of these, you also accept it and keep from doing them any harm. Invite them to (accept) Islam; if they respond to you, accept it from them and desist from fighting against them. Then invite them to migrate from their lands to the land of Muhājirs<sup>(1)</sup> and inform them that, if they do so, they shall have all the privileges and obligations of the Muhājirs. If they refuse to migrate, tell them that they will have the status of Bedouin Muslims and will be subjected to the Commands of Allah like other Muslims, but they will not get any share from the spoils of war or fai<sup>(2)</sup> except when they actually fight with the Muslims (against the disbelievers). If they refuse to accept Islam, demand from them the Jizya<sup>(3)</sup>. If they agree to pay, accept it from them and hold off your hands. If they refuse to pay the tax, seek Allah's help and fight them. When you lay siege to a fort and the besieged appeal to you for protection in the name of Allah and His Prophet, do not accord to them the guarantee of Allah and His Prophet, but accord to them your own guarantee and the guarantee of your companions for it is a lesser sin that the security given by you or your companions be disregarded than that the security granted in the name of Allah and His Prophet be violated. When you besiege a fort and the besieged want you to let them out in accordance with Allah's Command, do not let them come out in accordance with His Command, but do so at your (own) command, for you do not know whether or not you will be able to carry out Allah's behest with regard to them.**

5. Sacred Compilation Hadith Sahih Muslim (Vol. III) Hadith 1732 and 1733 p.182 reveal that when Holy Prophet deputed

anyone of his Companions on a mission he always directed him to show leniency and not to create aversion towards religion. The said Hadiths read as follows:

**[1732] It is narrated on the authority of Abū Mūsā that when the Messenger of Allah (may peace be upon him) deputed any of his Companions on a mission, he would say: Give tidings (to the people); do not create (in their minds) aversion (towards religion); show them leniency and do not be hard upon them.**

**[1733] It has also been narrated by Sa'īd b. Abū Burda through his father through his grandfather that the Prophet of Allah (may peace be upon him) sent him and Mu'āth (on a mission) to the Yemen, and said (by way of advising them): Show leniency (to the people); don't be hard upon them; give them glad tidings (of Divine favours in this world and the Hereafter); and do not create aversion. Work in collaboration and don't be divided.**

6. Sacred Compilation Hadith Sahih Bukhari 2.559 p.381, 4.387 p.837, and 5.351 p.1103-1104 reveal that Holy Prophet allowed the King of Aila as well as Bahrain who were non-Muslims to remain and rule over their respective countries subject to payment of Jizya. Relevant extract from the Hadith 2.559 and 5.351 as well as full text of Hadith 4.387 read as follows:

“A strong wind blew at night and a man stood up and he was blown away to a mountain called Taiy. The King of Aila sent a white mule and a sheet for wearing to the Prophet as a present, and wrote to the Prophet that his people would stay in their place (and will pay Jizya taxation).”

(Hadith Sahih Bukhari 2.559 at p.381)

“Narrated Abu Humaid As-Saidi: We accompanied the Prophet in the Ghazwa of Tabuk and the king of Aila presented a white mule and a cloak as a gift to the Prophet. And the Prophet wrote to him a peace treaty allowing him to keep authority over his country.”

(Hadith Sahih Bukhari 4.387 at p.837)

“...Allah's Apostle sent Abu 'Ubaida bin Al-Jarrah to

Baharain to bring the Jizya taxation from its people, for Allah's Apostle had made a peace treaty with the people of Baharain and appointed Al-'Ala' bin Al-Hadrami as their ruler. So, Abu 'Ubaida arrived with the money from Baharain...."

(Hadith Sahih Bukhari 5.351 at p.1104)

7. Sacred Compilation of *Jami' At-Tirmidhi* (Vol. 3) *Hadith* 1587 and 1588 p.355 reveal that Holy Prophet took *Jizya* from the Zoroastrians of Hazar & Bahrain, Caliph Umar and Caliph Uthman took it in Persia from Persians. The said Hadiths read as follows:

" 1587. Bajalah narrated that 'Umar would not take the Jizyah from the Zoroastrians until 'Abdur-Rahman bin 'Awf informed him that the Prophet took the Jizyah from the Zoroastrians or Hajar. (Sahih) There is no more dialogue in the Hadith than this. And this Hadith is Hasan Sahih.

1588. Malik narrated the Az-Zuhri that Sa'ib bin Yazid said: "The messenger of Allah took the Jizyah from the Zoroastrians of Bahmain, and 'Umar took it in Persia, and 'Uthman took it from the Persians."

*Jami' At-Tirmidhi* (Vol. 3) *Hadith* 1587 and 1588 at p.355

8. Sacred Compilation Hadith Sahih Bukhari 2.475, 4.287, 4.388 and 5.50 reveal the recommendation of Caliph Umar to his successor to abide by the rules and regulations concerning the Jimmis/Dhimmis (protectees). Relevant portion of the said Hadiths read as follows:

"... I recommend him to abide by the rules and regulations concerning the Dhimmis (protectees) of Allah and His Apostle, to fulfill their contracts completely and fight for them and not to tax (overburden) them beyond their capabilities."

(Hadith Sahih Bukhari 2.475 at p.355)

"... Narrated 'Amr bin Maimun: Umar (after he was

stabbed), instructed (his would-be-successor) saying, "I urge him (i.e. the new Caliph) to take care of those non-Muslims who are under the protection of Allah and His Apostle in that he should observe the convention agreed upon with them, and fight on their behalf (to secure their safety) and he should not over-tax them beyond their capability."

(Hadith Sahih Bukhari 4.287 at p.798)

"... Narrated Juwairiya bin Qudama at-tamimi: We said to 'Umar bin Al-Khattab, O Chief of the believers! Advise us." He said, "I advise you to fulfill Allah's Convention (made with the Dhimmis) as it is the convention of your prophet and the source of the livelihood of our dependents (i.e. the taxes from the Dhimmis.)".

(Hadith Sahih Bukhari 4.388 at p.837)

"... I also recommend him concerning Allah's and His Apostle's protectees (i.e. Dhimmis) to fulfill their contracts and to fight for them and not to overburden them with what is beyond their ability."

(Hadith Sahih Bukhari 5.50 at p.1004)

9. The Sacred Compilation Hadith Sahih Bukhari 4.657 reveals that the Holy Prophet said that incarnation of Jesus would abolish Jizyah from non-Muslims. The said hadith reads as follows:

4.657:

Narrated Abu Huraira: Allah's Apostle said, "By Him in Whose Hands my soul is, surely (Jesus,) the son of Mary will soon descend amongst you and will judge mankind justly (as a Just Ruler); he will break the Cross and kill the pigs and there will be no Jizya (i.e. taxation taken from non Muslims). Money will be in abundance so that nobody will accept it, and a single prostration to Allah (in prayer) will be better than the whole world and whatever is in it." Abu Huraira added "If you wish, you can recite (this verse of the Holy Book): —'And there is none Of the people of the Scriptures (Jews and Christians) But must believe

in him (i.e Jesus as an Apostle of Allah and a human being) Before his death. And on the Day of Judgment He will be a witness Against them."

10.The Sacred Compilation Hadith Sahih Bukhari 8.809 and 8.825 reveal that the Holy Prophet administered justice to a Jew according to his scripture *Torah*. The said Hadith reads as follows:

8.809:

Narrated Ibn `Umar: A Jew and a Jewess were brought to Allah's Apostle on a charge of committing an illegal sexual intercourse. The Prophet asked them. "What is the legal punishment (for this sin) in your Book (Torah)?" They replied,"Our priests have innovated the punishment of blackening the faces with charcoal and Tajbiya." `Abdullah bin Salam said, "O Allah's Apostle, tell them to bring the Torah." The Torah was brought, and then one of the Jews put his hand over the Divine Verse of the Rajam (stoning to death) and started reading what preceded and what followed it. On that, Ibn Salam said to the Jew, "Lift up your hand." Behold! The Divine Verse of the Rajam was under his hand. So Allah's Apostle ordered that the two (sinners) be stoned to death, and so they were stoned. Ibn `Umar added: So both of them were stoned at the Balat and I saw the Jew sheltering the Jewess.

fbx8.825:

Narrated `Abdullah bin `Umar: The jews came to Allah's Apostle and mentioned to him that a man and a lady among them had committed illegal sexual intercourse. Allah's Apostle said to them, "What do you find in the Torah regarding the Rajam?" They replied, "We only disgrace and flog them with stripes." `Abdullah bin Salam said to them, 'You have told a lie the penalty of Rajam is in the Torah.' They brought the Torah and opened it. One of them put his hand over the verse of the Rajam and read what was before and after it. `Abdullah bin Salam said to him, "Lift up your hand." Where he lifted it there appeared the verse of the Rajam. So they said, "O Muhammad! He has said the truth, the verse of the Rajam is in it

(Torah)." Then Allah's Apostle ordered that the two persons (guilty of illegal sexual intercourse) be stoned to death, and so they were stoned, and I saw the man bending over the woman so as to protect her from the stones.

Again it is submitted that since Babur was not the owner of Hindu Shrine of Shri Ramjanamsthan, he or his subordinates had no right to erect mosque and any building erected contrary to religious mandate of Islam cannot acquire the character of Mosque, as such the disputed structure was all along a Hindu temple and a sacred shrine. His submissions are as under:-

**WAKIF MUST BE OWNER OF THE PROPERTY FOR CREATING VALID WAQF AS EMPEROR BABUR WAS NOT OWNER OF THE HINDU SHRINE SRI RAMAJANMASTHAN HE OR HIS COMMANDERS HAD NO RIGHT TO ERRECT MOSQUE AND ANY BUILDING ERECTED CONTRARY TO RELIGIOUS MANDATE OF THE ISLAM CANNOT BE CONSTRUED A MOSQUE AS SUCH THE DISPUTED STRUCTURE WAS ALL ALONG A HINDU TEMPLE & SACRED SHRINE:**

1. By defeating Sultan Ibrahim Lodi in the battle of *Panipat* Emperor Babur acquired only those rights that 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.

2. The Sacred Compilation Hadith Sahih Bukhari 3.92 as well as Sacred Compilation Hadith Sahih Muslim (Vol.-I) 524 reveal that the first Mosque in Madina was built by the Holy Prophet on the land which was gifted to the Holy Prophet by its owners, wherefrom it becomes crystal clear that a Mosque can be built by the *Wakif* only on the land acquired/procured lawfully. Said Hadiths read as follows:

3.92:

Narrated Anas:

The Prophet came to Medina and ordered a mosque to be built and said, "O Bani Najjar! Suggest to me the price (of your land)." They said, "We do not want its price except from Allah" (i.e. they wished for a reward from Allah for giving up their land

freely). So, the Prophet ordered the graves of the pagans to be dug out and the land to be leveled, and the date–palm trees to be cut down. The cut date–palms were fixed in the direction of the Qibla of the mosque.

✓ [524] Anas b. Mālik reported: The Messenger of Allah (may peace be upon him) came to Medina and stayed in the upper part of Medina for fourteen nights with a tribe called Banī Amr b Auf. He then sent for the chiefs of Banī Al- Najjār, and they came with swords around their necks. He (the narrator) said: I perceive as if I am seeing the Messenger of Allah (may peace be upon him) on his ride with Abū Bakr behind him and the chiefs of Banū Al- Najjār around him till he alighted in the courtyard of Abū Ayyūb. He (the narrator) said: The Messenger of Allah (may peace be upon him) said prayer when the time came for prayer, and he prayed in the fold of goats and sheep. He then ordered mosques to be built and sent for the chiefs of Banū Al- Najjār, and they came (to him). He (the Holy Prophet) said to them: O Banū Al- Najjār, sell me your lands. They said: No, by Allah, we would not demand their price, but (reward) from the Lord. Anas said: There (in these lands) were trees and graves of the polytheists, and ruins. The Messenger of Allah (may peace be upon him) ordered that the trees should be cut, and the graves should be dug out, and the ruins should be levelled. The trees (were thus) placed in rows towards the Qibla and the stones were set on both sides of the door, and (while building the mosque) they (the Companions) sang rajaz verses along with the Messenger of Allah (may peace be upon him):

O Allah: there is no good but the good of the next world,  
So help the Ansār and the Muhājirin (emigrants).

3. An illustrated author and great jurist Syed Ameer Ali in his book ‘Spirit of Islam’ at page 54 narrates that though the owners of the land whereon first Mosque was built by the Holy Prophet in Madina had offered it as a free gift but as they were orphans the Holy Prophet paid them its value.

The relevant extract of the ‘Spirit of Islam’ reads as follows:

**A mosque was soon built, in the erection of which Mohammed assisted with his own hands; and houses for the accommodation of the exiles rose apace. Two brothers, who owned the land on which it was proposed to build the mosque, had offered it as a free gift; but as they were orphans, the Prophet paid them its value.**

4. The Sacred Compilation Hadith Sahih Bukhari 3.895 reveals that the Ist wakf in the history of Islam was created by Caliph Umar of the land owned by him in Khaibar after obtaining permission of the Holy Prophet, wherefrom it

becomes crystal clear that wakif must be owner of the land.

Said Hadith reads as follows:

3.895:

Narrated Ibn `Umar: `Umar bin Khattab got some land in Khaibar and he went to the Prophet to consult him about it saying, "O Allah's Apostle I got some land in Khaibar better than which I have never had, what do you suggest that I do with it?" The Prophet said, "If you like you can give the land as endowment and give its fruits in charity." So `Umar gave it in charity as an endowment on the condition that would not be sold nor given to anybody as a present and not to be inherited, but its yield would be given in charity to the poor people, to the Kith and kin, for freeing slaves, for Allah's Cause, to the travelers and guests; and that there would be no harm if the guardian of the endowment ate from it according to his need with good intention, and fed others without storing it for the future."

5. 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 में सम्राट कुतुबउद्दीन के समाधि-स्थान के प्रबंध में दत्तचित्त हो गया। यहाँ पर सम्राट ने इराक के सम्राट गार्जा 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 गाँव और मोल लेने की आज्ञा दी। उसमें दलाली के दशमांश का लाभ कराने के विचार से इन गाँवों के मोल लेने का कार्य भी मेरे ही सुपुर्द कर दिया गया था।

6. 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 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 *zimm* 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).

6 Ilahi/1633-34 A.D.

7. In the *Farman* of Emperor Shah Jahan dated 3<sup>rd</sup> August, 1648 contained in *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 compiled and translated by S.A.I. Tirmizi and published by Manohar Publishers, Delhi, 1995 Edn. , reads as follows:

**It is now ordered that since the Emperor has 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 *masala* (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.

8. 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 Zimnee 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.”

(*Digest of Moohummudan Law, by Neil B.E. Baillie*  
*,Second Edn., 1875 published by Smith Elder & Co.,*  
*London p.557)*

“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.”

(*Ibid. p.558*)

“But if a *zimmee* should give his mansion as a *musjid*, 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.”

(*Ibid. p.561*)

“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*.”

(*Ibid. p.562*)

“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.”

(*Ibid. p.562*)

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

(*Ibid. p.562*)

9. Great jurist Syed Ameer Ali in his book ‘Commentaries on Mahommedan 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.”

(Mahommedan Law by Syed Ameer Ali, 5<sup>th</sup> Edn. Reprint 2009, published by Hind Publishing House, Allahabad, p.225)

10. 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*).”

(Principles of Mahomedan Law by D.F. Mullah, 11<sup>th</sup> Edn., 1938, published by Eastern Law House Publication p.149)

11. In the United Provinces Muslim Waqfs Act, 1936 (Act No.XIII of 1936) in Section 3(1) the wakf has been defined and in the Statement of Objects and Reasons of the said Act

it has been stated that the Muslim Law is full and explicit on the powers, duties and liabilities of Mutawallis in relation to their office. As such the said Act was not aimed to legislate in the matter of personal law. Relevant extract from the Statement of Objects and Reasons as well as Section 3(1) of the said Act are reproduced as follows:

“STATEMENT OF OBJECTS AND REASONS.—...

This I must make clear that this Bill is not intended to deprive the mutawallis of any authority lawfully vested in them nor it aims at defining all the powers, duties and liabilities of the mutawallis in relation to their office. The Muslim Law is full and explicit on these points and it is neither necessary nor desirable to legislate in matters of personal law.”

3. In this Act, unless there is anything repugnant in the subject or context—

- (1) “Waqf” means the permanent dedication or grant of any property for any purposes recognized by the Musalman law or usage as religious, pious or charitable and, where no deed of waqf is traceable, includes waqf by user, and a waqif means any person who makes such dedication or grant.”

**12.**The Uttar Pradesh Muslim Wakfs Act, 1960 (U.P. Act No.

XVI of 1960) in Section 3(11) defines the wakf as follows:

“3.(11). “Waqf” means the permanent dedication or grant of any property for any purposes recognized by the Muslim law or usage as religious, pious or charitable and includes *wakf al-al aulad* [to the extent to which the property is dedicated or granted for any such purpose as aforesaid] and *wakf* by user; and ‘*wakf*’ means the person who makes such dedication or grant.”

It is further submitted that emperor Babur was also subject to law of Shar and his action of erection of alleged mosque, if any

done in transgression of said law is void. Shri P.N. Misra, Advocate has relied over following case laws, which are as under:-

**THE HINDU AND THE MUSLIM KINGS WERE SUBJECT TO LAW OF THEIR RESPECTIVE DHARMA & RELIGION AS SUCH THE EMPEROR BABAR WAS ALSO SUBJECT TO LAW OF SHAR AND HIS ALLEGED ACTION OF ERECTION OF ALLEGED MOSQUE IF ANY DONE IN TRANSGRESSION OF SAID LAW IS VOID:**

1. 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-into mill and void 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 law-making 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 messages 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 Qazis 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."

2. 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 effect 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 position 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 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.

3. 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 civilized 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”

4. 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 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."

5. In AIR 1962 SC 342 (*Sunka Villi Suranna. v. Goli Sathiraju*)

the Hon'ble Apex Court has held that where there was no evidence to show that the occupation of the lands by the Ryot commence 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 interference 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. It appears that prior to declaring the land as *nazul* land by the Governor-General in 1959 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 summarize, 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.”

6. 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 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 1959 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 it is most respectfully Submitted. 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.).”

7. 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 it is with due respect submitted. 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.”

8. In AIR 2008 SCW 1224 (*Dist. Basic Education Officer & Anr. v. Dhananjay Kumar Sukla & 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 humbly submitted that the questions of law which has 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 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.”

Lastly, Mr. Misra has submitted that according to the Farman of Shah Jahan there cannot be a valid mosque over a land of a temple and the owner of the temple is entitled for the

restoration of the possession with liberty to worship.

**FARMAN OF THE EMPEROR SHAHJAHAN HELD THAT THE BUILDING OVER THE LAND OF A TEMPLE IS NOT A MOSQUE AND OWNER OF THE TEMPLE IS ENTITLED FOR RESTORATION OF POSSESSION WITH LIBERTY TO WORSHIP THEREIN ACCORDING TO HIS OWN RELIGION HAS FORCE OF LAW:**

1. In AIR 1963 SC 1638 (*Tilkayat Shri Govindalalji Maharat etc. v. State of Rajasthan & Ors.*) the Bench comprised of Hon'ble Five-Judge of the Hon'ble Supreme Court has held that the *Farman* issued by an absolute ruler like the *Maharana* of Udaipur in 1934 is a law by which the affairs of the Nathdwara temple and succession to the office of the Tilkayat were governed after its issuance. Relying on said judgment it is submitted that the Farman of the Emperor Shahjahan wherein it has been held that a building constructed over the land of the temple of other person can not be a mosque is admissible as ratio of Law of Shar so far it doesn't contradict the law of Shar, and it is further submitted that any addition, alteration or modification made by any Rulers arbitrarily in violation of the law for the time being in force cannot convert Sri Ramajanmasthan Temple into an alleged mosque. Relevant paragraphs 32 and 33 of the aforesaid judgment reads as follows:

“32. In appreciating the effect of this Firman, it is first

necessary to decide whether the firman is a law or not. It is matter of common knowledge that at the relevant time the Maharana of Udaipur was an absolute monarch in whom vested all the legislative, judicial and executive powers of the State. In the case of an absolute Ruler like the Maharana of Udaipur it is difficult to make any distinction between an executive order issued by him or a legislative command issued by him. Any order issued by such a Ruler has the force of law and did govern the rights of the parties affected thereby. This position is covered by decisions of this court and it has not been disputed before us, vide *Madhaorao Phalke v. State of Madhya Bharat*, 1961-1 SCR 957 : (AIR 1961 SC 298). *Ameer-un-Nissa Begum v, Mahboob Begum*, AIR 1955 SC 352 and *Director of Endowments, Government of Hyderabad v. Alkram Alim (S)* AIR .1956 SC 60.

33. It is true that in dealing with the effect of this Firman, the learned Attorney-General sought to raise before us a novel point that under Hindu law even an absolute monarch was not competent to make a law affecting religious endowments and their administration. He suggested that he was in position to rely upon the opinions of scholars which tended to show that a Hindu monarch was competent only to administer the law as prescribed by Smritis and the oath which he was expected to take at the time of his coronation enjoined him to obey the Smritis and to see that their injunctions were obeyed by his subject. We did not allow the learned Attorney-General to develop this point because we hold that this novel point cannot be accepted in view of the well-recognised principles of jurisprudence. An absolute monarch was the fountain-head of all legislative, executive and judicial powers and it is of the very essence of sovereignty which vested in him that he could supervise and control the administration of public charity. In our opinion there is no doubt whatever that this universal principle in regard to the scope of the powers inherently vesting in sovereignty applies as much to Hindu monarchs as to any other absolute monarch. Therefore, it must be held that the Firman issued by the Maharana of Udaipur in 1934 is a law by which the affairs of the office Nathdwara Temple and succession to the office of the Tilkayat were governed after its issue.”

*Madhya Bharat & Anr.*) a Bench comprised of Hon'ble five-Judges the Hon'ble Apex Court has held that the orders issued by absolute Monarch ruler of Guwalior State at force of law and would amount to existing law. Relevant paragraphs 11, 12, 14 and 18 of the said judgment reads as follows:

“11. In dealing with the question as to whether the orders issued by such as absolute monarch amount to a law or regulation having the force of law, or whether they constitute merely administrative orders, it is important to bear in mind that the distinction between executive orders and legislative commands is likely to be merely academic where the Ruler is the source of all power. There was no constitutional limitation upon the authority of the Ruler to act in any capacity he liked; he would be the supreme legislature, the supreme judiciary and the supreme head of the executive, and all his orders, however issued, would have the force of law and would govern and regulate the affairs of the State including the rights of its citizens. In *Ameer-un-Nissa Begum v. Mahboob Begum*, AIR 1955 SC 352, this Court had to deal with the effect of a Firman issued by the Nizam, and it observed that so long as the particular Firman issued by the Nizam, held the field that alone would govern and regulate the rights of the parties concerned though it would be annulled or modified by a later Firman at any time that the Nizam willed. What was held about the Firman about all the Nizam would be equally true about all effective orders issued by the Ruler of Gwalior (Vide also : *Director of Endowments, Government of Hyderabad v. Akram Ali*, (S) AIR 1956 SC 60).

12. It is also clear that an order issued by an absolute monarch in an Indian State which had the force of law would amount to an existing law under Art. 372 of the Constitution. Article 372 provides for the continuance in force of the existing laws which were in force in the territories of India immediately before the commencement of the Constitution, and Art., 366(10) defines an existing law, inter alia, as meaning any law, ordinance, order, rule or regulation passed or made before the commencement of the Constitution by any person having a power to make such law, ordinance order, rule or regulation. In *Edward Mills Co., Ltd.*,

Beawar v. State of Ajmer, (S) AIR 1955 SC 25, this Court has held that "there is not any material difference between the expressions 'existing law', and the 'law in force'. The definition of an existing law in Art. 366 (10) as well as the definition of an Indian law contained in Sec. 3(29) of the General Clauses Act make this position clear". Therefore, even if it is held that the Kalambandis in question did not amount to a *quanun* or law technically so called, they would nevertheless be orders or regulations which had the force of law in the State of Gwalior at the material time, and would be saved under Art. 372. The question which then arises is whether these Kalambandis were regulations having the force of law at the material time.

18. It is not disputed that if the Kalambandis on which the appellant's right is based are rules or regulations having the force of law the impugned executive order issued by respondent 1 would be invalid. The right guaranteed to the appellant by an existing law cannot be extinguished by the issue of an executive order. In fact on this point there has never been a dispute between the parties in the present proceedings. That is why the only point of controversy between the parties was whether the Kalambandis in question amount to an existing law or not. Since we have answered this question in favour of the appellant we must allow the appeal set aside the order passed by the High Court and direct that a proper writ or order should be issued in favour of the appellant as prayed for by him. The appellant would be entitled to his costs throughout."

3. In AIR 1955 SUPREME COURT 352 "Ameer-un-Nissa Begum v. Mahboob Begum" the Hon'ble Supreme Court held that the firmans were expressions of the sovereign will of the Ruler and they were binding in the same way as any other law; nay, they would override all other laws which were in conflict with them. So long as a particular firman held the field, that alone would govern or regulate the rights of the parties concerned, though it could be annulled or modified by a later

Firman at any time. Relevant paragraph 15 of the said judgment reads as follows:

“15. The determination of all these questions depends primarily upon the meaning and effect to be given to the various 'Firmans' of the Nizam which we have set out already. It cannot be disputed that prior to the integration of Hyderabad State with the Indian Union and the coming into force of the Indian Constitution, the Nizam of Hyderabad enjoyed uncontrolled sovereign powers. He was the supreme legislature, the supreme judiciary and the supreme head of the executive, and there were no constitutional limitations upon his authority to act in any of these capacities. The 'Firmans' were expressions of the sovereign will of the Nizam and they were binding in the same way as any other law; - nay, they would override all other laws which were in conflict with them. So long as a particular 'Firman' held the field, that alone would govern or regulate the rights of the parties concerned, though it could be annulled or modified by a later 'Firman' at any time that the Nizam willed.”

Shri P.N. Mishra, Advocate has further argued that alleged inscriptions found on the disputed structure are false, fabricated, forged on the so-called Babri Mosque, which is virtually a Ramjanamsthan Temple under the law. His submissions are as under:-

**ALLEGED INSCRIPTIONS ARE FALSE, FABRICATED, FORGED, FICTITIOUS AND WERE NEVER FIXED ON SRI RAMJANAMSTHAN TEMPLE DESCRIBED IN PLAINT AS BABURI MOSQUE:**

1. The Inscriptions alleged to be found and /or fixed on *Sri Ramajanmasthan Temple* called as *Baburi Mosque* by the Plaintiffs were never fixed on it rather they had no

existence. In fact transcript alleged to be of the Inscription fixed on said Structure are false, frivolous, forged, fabricated, and manufactured. When Jesuit Priest Father Josef Tieffenthaler, a world-fame Geographer, Historian and Linguistic who has written books in Sanskrit, Latin, Arabic, Persian etc. in the year 1770 personally visited he did not found any Inscription fixed on said Structure but saw the Hindus entering in the Central Hall of the said Temple and worshipping the Vedi located therein by prostrating and circumambulating it thrice. Mr. F.E.A. Chamier, the then District Judge Faizabad who took Judicial notice of and visited the *Sri Ramjananmsthan/alleged Baburi Masjid* on 18<sup>th</sup> March 1886 also did not find any Inscription fixed thereon save and except a superscription 'Allah' on the entrance of the said Structure. From the aforesaid facts it becomes crystal clear that none of the alleged Inscriptions were in existence at least till 18<sup>th</sup> March, 1886.

2. In fact none of the persons that is to say Mr. A. Fuhrer who published three Inscriptions being Inscription Nos. XL, XLI and XLII in 1989; Mrs. A. S. Beveridge who published two Inscriptions being Inscription Nos. 'a' and 'b' in 1921; and Mr. Z.A. Desai who published three Inscriptions being Inscription Nos. XVII (a), XVII (b) and XVII (c) in 1964-65 had personally visited the 'Sri Ramjanmsthan called as Baburi Mosque by the Plaintiffs' as such question of seeing

those Inscriptions fixed on said Sri Ramajanmasthan cannot and does not arise at all. A. S. Beveridge tells that the transcripts of the Inscriptions published by her were supplied to her husband from whom she got the same. Mr. Z.A. Desai points out that correct transcript of the Inscriptions were not supplied to Mr. A. Fuherer and Mr. Desai had got correct version of the destroyed Inscriptions from the estampage obtained from Sayyid Badru'l-Hasan of Fyzabad as well as from the Inscriptions rebuilt by the contractor Tehwoor Khan some times after 27<sup>th</sup> March, 1934.

3. It reflect from the Transcripts of the alleged inscriptions supplied to A. Fuhere's that 'a firmanant-like lofty strong building was erected by an auspicious noble Mir Khan under the command of Babur in the year 930 A.H. i.e. 1523 A.D. and foundation of the said building was laid down by the King of China and Turkey in presence of Babur;' while the Transcripts of the alleged inscriptions supplied to S.A. Beveridge reveal that 'under the command of Emperior Babur, good-hearted Mir Baqi built that alighting place of angels in 935 A.H. i.e. 1528-29.' Mr. Z.A. Desai's one Inscription says that 'by the order of King Babur that descending place of the Angels was built by the fortunate noble Mir Baqi'; while his other Inscription tells that 'a lofty building and lasting house (*of God*) was founded by Mir

(and ) Khan (Baqi).’ The words placed within brackets are Dr. Desai’s own insertions and it is needless to say that those words do not find place even in the text of the inscription procured by Mr. Z.A.Desai.

4. The Ld. Civil Judge Faizabad, Mr. A. Akhtar Ahasan who made an inspection of the Disputed Structure on 26<sup>th</sup> March 1946 and procured transcriptions of two Inscriptions fixed on it, in His Judgment dated 30.02.1946 records that ‘1<sup>st</sup> Inscription says ‘by the order of Shah Babar, Amir Mir Baqi built the resting place of angels in 923 A.H.’ i.e. 1516-17 A.D. ; while 2<sup>nd</sup> inscription says that ‘Mir Baqi of Isphahan in 935 A.H.’ i.e. 1528-29 A.D.’ The texts of the alleged restored Inscriptions found by said Ld. Civil Judge are at variance with that of those estampage procured by Mr. Z.A. Desai. It is noteworthy that in this Inscription Mir Baqi Isfahani has been mentioned as founder of the said Structure while in Babur-Nama, the Emperor Babur has not mentioned any Mir Baqi Esfahani in any context but he has mentioned one Baqi Taskendi. Be it mentioned herein that the Taskend is a City of Uzbekistan while Esfahan is a province of Iran as such Baqi Esfahani and Baqi Taskendi cannot be regarded as one person and , Baqi Esfahani being an stranger and unknown to the Emperor Babur can be termed with certainty a fictitious person by whom a real Structure cannot be brought into existence.

5. Father Josef Tieffenthaler, a Jesuit Missionary and noted geographer on Hindustan visited Ayodhya in 1770 did not find any Inscriptions even that superscription “Allah” mentioned by the Ld. District Judge in 1886. From Josef Tiffenthaler’s description it appears that at that time also Hindus were worshipping inside the Ramjanmsthan Temple alleged to be converted into mosque either by Aurangzeb or by Babar. As he was not only a Missionary but an excellent Historian, Geographer and great linguistic having mastery over several languages including Arabic, Persian and Sanskrit, there was no possibility of overlooking the alleged Inscriptions by him as it would have enabled him to tell the people with certainty the name of the Tyrant Emperor who attempted to convert Sri Ramajanmasthan Temple into Mosque. English translation of a portion of his book “Descriptio Indiae” being description of Oude including the Sri Ramajanmasthan has been published on pages 312 to 317 in the “ Modern Traveller, a Popular Description, Geographical, Historical, and Topographical of the Various Countries of the Globe- India. Vol. III” ; London Edn.1828 published by James Duncan and has been digitalised by Google. Relevant extracts thereof read as follows:

‘Its appearance, in 1770, is thus described by Tieffen Thaler: “Avad with Ajudea by the learned Hindoos, is a city of the highest Antiquity.”

.....

(Ibid.312

)

“The most remarkable place is that which is called *Sorgodoari*, that is to say, the heavenly temple; because they say, that Ram carried away from thence to heaven all the inhabitants of the city. The deserted town was re-peopled and restored to its former condition by Bikaramajit, the famous King of Oojein. There was a temple here on the high bank of the river; but Aurangzebe, ever attentive to the propagation of faith of Mohammed, and holding the heathen in abhorrence, caused it to be demolished, and replaced it with a mosque with minarets, in order to abolish the very memory of Hindoo superstition. Another mosque has been built by the Moors, to the East of this near the *Sorgodoari* in an edifice erected by *Nabalroy*, a former Hindoo governor. But a place more particularly famous is that which is called *Sitha Rassoce*, a table of *Sitha* (Seeta), wife of Ram; situated on an eminence to the south of the city. The emperor Aurangzebe demolished the fortress called Ramcote, and erected on the site of Mohammedan temple with a triple dome. According to others, it was erected by Baber. There are to be seen fourteen columns of black stone, five spans in height, which occupied the site of the fortress. Twelve of these columns now support the interior arcades of the mosque: the two other form part of the tomb of a certain Moor. They tell us that these columns, are rather these remains of skillfully wrought columns, were brought from the Isle of Lanca or Selendip (Ceylon) by Hanuman, King of the Monkeys. On the left is seen a square chest, raised five inches from the ground covered with lime about 5 ells in length by not more than four in breadth. The Hindoos call it *Bedi*. The cradle; and the reason is, that there formerly stood here the house in which Beshan (Vishnoo) was born in the form of Ram, and were also, they say, is three brothers were born. Afterwards, Aurangzebe or, according to others, Baber caused the place to be destroyed, in order to deprive the heathen of the opportunity of practising there their superstitions. Nevertheless, they still pay superstitious reverence to both these places; namely, to that on which the *Natal* dwelling Ram stood, by going three times around it, prostrate on the earth. The two places are surrounded with a low wall adorned with battlements. Not far from this is a place where they

dig up grains of black rice changed into little stones, which are affirmed to have been hidden under ground ever since the time of Rama. On the 24<sup>th</sup> of the month of *Tshet* (Choitru), a large concourse of people celebrate here the birth-day of Ram, so famous throughout India.” .....  
 (Ibid. 313-314)

<p><b>Annexure -IV Josef Tiefeenthaler Page 129-162</b></p>
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6. Josef Tieffenthaler was born at Bozen in the Tyrol, on 27<sup>th</sup> August, 1710 and died at Lucknow on 5 July, 1785. He entered the Society of Jesus 9 October, 1729, and went in 1740 to the East Indian mission where he occupied various positions, chiefly in the empire of the Great Moghul. After the suppression of the Society he remained in India, and on his death was buried in the mission cemetery at Agra, where his tombstone still stands. He was a fine scholar with an unusual talent for languages; besides his native tongue he understood Latin, Italian, Spanish, French, Hindustani, Arabic, Persian, and Sanskrit. He was the first European who wrote an exact description of Hindustan. A brief list of his works is the best proof of his extraordinary power of work and his varied scholarship. In geography, he wrote a “*Descriptio Indiae*”, that is a circumstantial description of the twenty two provinces of India, of its cities, fortresses, and the most important smaller towns, together with an exact statement of geographical positions, calculated by means of a simple quadrant. He wrote a large book on the

courses of the Ganga. In history, he wrote many books. He wrote on the origin of the Hindus and their religion in Latin, expeditions of Nadir Shah to India in German, the Deeds of the Mughal Emperor Shah Alam in Persian, Incursions of the Afghans and the Conquest of Delhi in French. He wrote a book on contemporary history 1757-64. In linguistics he prepared a Sanskrit-Parsee Lexicon, treatises in Latin on the language of the Parsees, on the proper pronunciation of Latin, etc.. In the area of religion, he wrote ‘Brahmanism’ and works on Indian polytheism, Indian asceticism, the religion of Parsee Islam and relations of these religions to one another. In the field of the natural sciences he wrote on astronomical observations on the sunspots and zodiacal light, studies on the Hindu astronomy, astrology and cosmology. In addition, he wrote on the descriptions and observations of the flora and fauna of India. Thus he was an intellectual giant and a linguistic wizard and not mere a traveller or a merchant who made casual remarks. His published works along with biographical notes can be lucidly gleaned from Catholic Encyclopedia (1913) and ‘Christianity in India’ through Wikisource and Wikipedia’s website respectively. His writings and contributions also find place in the books -HUONDER, Deutsche Jesuitenmissionäre des 17. und 18. Jahrh. (Freiberg, 1899), 179; NOTI. Jos. Tieffentaller, S. J., A Forgotten Geographer

of India (Bombay, 1906); HOSTEN, Jesuit Missionaries in Northern India (Calcutta, 1907).

7. The District Judge of Faizabad who visited Sri Ramjanmasthan/alleged Baburi Masjid on 18<sup>th</sup> March 1886 did not find any of the Inscriptions published by A. Fuhrer in 1989 and by A. S. Beveridge in 1921. Said Ld. Judge in his Judgment has recorded that the entrance to the enclosure was under a gateway which bore the superscription "*Allah*" immediately on the left as the platform or Chabootra of masonry occupied by the Hindus. His said finding is recorded in Judgment and Order dated 18<sup>th</sup> March 1889 passed in Civil Appeal No.27 of 1886 Mahanta Raghubardass, Mahant Janam Asthan City Oudh VS. Secretary of State of India, Court of Council and Mohd. Asghar by the said Judicial Officer Mr. F.E.A. Chamier, District Judge Faizabad which constitute pages 87 to 91 of the volume 10 of the Documents of O.O.S. No. 4 of 1989 being Volume I of the plaintiffs' documents. Relevant portion from page 89 of the said Volume being an extract of the said judgment reads as follows:

"I visited the land in dispute yesterday, in the presence of all parties.

I found that the Masjid built by the Emperor Babar stands on the border of the town Ajudhia-that is to say to the west and south it is clean of inhabitations. It is most unfortunate that a Masjid should have been built on land specially held sacred by the Hindus, but as the event occurred 356 years ago it is too late now to remedy the grievance all that can

be done is to maintain the parties in status quo. In such a case as the present one any (Sic) would cause more harm and damage (Sic) of order than benefit. The entrance to the enclosure is under a gateway which bears the superscription "*Allah*" immediately on the left as the platform or Chabootra of masonry occupied by the Hindus. On this is a small superstructure of wood in the form of a tent. This "Chabootra" is said to indicate the birthplace of Ram Chan deer. In front of the gateway in the entry to masonry Platform of the Musjid. A wall pierced (*illegible*) and therewith railings divides the platform of the Musjid from the enclosure in which stands the "Chabootra".

Be it mentioned herein that said judgment is Judgment per Incuriam as it has been passed in ignoratum of law. Prior to annexation of Oudh to British Rule the Law of Shar was law in force which law neither had rule of Limitation nor did recognise adverse possession. Apart from this Hindu law in respect of Debutter property also did not recognise adverse possession. This principle of Law had already been laid down by the Indian Courts of Record as well as Privy Council, London as such said judgment passed in ignoratum of those judicial pronouncement has no force of law. Moreover in the said Suit the Disputed Structure was not subject matter of that suit nor was declaration of title in respect thereof prayed for.

8. In the aforesaid judgment recording of the Ld. Judge the entrance had the superscription "*Allah*" leaves no doubt that he had inspected the disputed premises and Structure very minutely and it is needless to say that if there would have been alleged Inscriptions that would not have gone

unnoticed by him. Be it mentioned herein that according to Hindus' sacred book "Allopanisad" "Allah" is one of the several names of the almighty. Be it mentioned herein that the "Allopanishad" has been reproduced by the founder of Arya Samaj Maharshi Dayanand Saraswati in his book "Satyarthaprakash" 2<sup>nd</sup> revised edition published in Vikram Samvat 1939 i.e. 1882 A.D.. According to him it was written during the reign of Emperor Akbar. The text of "Allopanishad" as published on pages 556-67 of 'Satyarthaprakash' in "Dayanand-Granthmala published by Srimati Paropakarini Sabha, Ajmer 1983 Edn. reads as follows:

**अथाल्लोपनिषदं व्याख्यास्यासः ।**

**अस्माल्लां इल्ले मित्रावरुणा दिव्यानि भक्ते ।**

**इल्लल्ले वरुणो राजा पुनर्द्बुः ।**

**हया मित्रो इल्लां इल्लल्ले इल्लां वरुणो मित्रस्तेजस्कामः ॥ १ ॥**

होतारमिन्द्रो होतारमिन्द्र महासुरिन्द्राः ।  
 अल्लो ज्येष्ठं श्रेष्ठं परमं पूर्णं ब्राह्मणं अल्लाम् ॥ २ ॥  
 अल्लोरसूलमहामदरकबरस्य अल्लो अल्लाम् ॥ ३ ॥  
 आदल्लाबूकमेककम् । अल्लाबूक निखातकम् ॥ ४ ॥  
 अल्लो यज्ञेन हुतहुत्वा । अल्ला सूर्यचन्द्रसर्वनक्षत्राः ॥ ५ ॥  
 अल्ला ऋषीणां सर्वविद्यां इन्द्राय पूर्वं माया परममन्तरिक्षाः ॥ ६ ॥  
 अल्लः पृथिव्या अन्तरिक्षं विश्वरूपम् ॥ ७ ॥  
 इल्ला कबर इल्ला कबर इल्ला इल्ललेति इल्लल्लाः ॥ ८ ॥  
 ओम् अल्लाइल्लल्ला अनादिस्वरूपाय अथर्वणादयामा हुं ह्रीं जनान-  
 पद्मूनसिद्धान् जलचरान् अदृष्टं कुरु कुरु फट् ॥ ९ ॥  
 असुरसंहारिणी हुं ह्रीं अल्लोरसूलमहामदरकबरस्य अल्लो अल्लाम्  
 इल्ललेति इल्लल्लाः ॥ १० ॥

इत्यल्लोपनिषत् समाप्ता ॥

9. A. Fuhrer was the first archaeologist who read and translated and got published three inscriptions alleged to be fixed on Babari Masjid which was alleged to be built under command of Emperor Babur at the site of Sri Ramjanmasthan. A. Fuhrer's book "The Sharqi Architecture of Jaunpur, with notes on Zafarabade, Sahet-Mahet and other Places in the North-Western Provinces and Oudh" containing those three Inscriptions was first published by the Archeological Survey of India in 1989.

A. Fuhere's translations and introductory notes thereto read as follows:

"Babar's- Masjid at Ayodhya was built in A.H. 930, or A. D. 1523, by Mir Khan, on the very spot where the old temple Janamasthanam of Ramchandra was standing . The following inscriptions are of interest.

Inscription No.XL written in Arabic character over the mihrab of the masjid it gives twice the Kalimah:-

“ There is no God but’ Allah, Muhammad is His Prophet”

Inscription no.XLI is written in Persian poetry, the meter being Ramal, in six lines on the member, right-hand side of the masjid.

“1.By order of *Babar*, the king of the world,  
2. This firmament-like, lofty,  
3. Strong building was erected.  
4. By the auspicious noble *Mir Khan*.  
5. May ever remain such a foundation,  
6. And such a king of the world.”

Inscription No.XLII is written in Persian poetry ,the metre being Ramal, in ten lines, above the entrance door of the masjid. A few characters of the second and whole third lines are completely defaced.

“1. In the name of God, the merciful, the clement.  
2. In the name of him who...; may God perpetually keep him in the world.  
3. ....  
.....  
4. Such a sovereign who is famous in the world, and in person of delight for the world.  
5. In his presence one of the grandees who is another king of Turkey and China.  
6. Laid this religious foundation in the auspicious Hijra 930.  
7. O God ! May always remain the crown, throne and life with the king.  
8. May Babar always pour the flowers of happiness; may remain successful.  
9. His counselor and minister who is the founder of this fort masjid.  
10. This poetry, giving the date and eulogy, was written by the lazy writer and poor servant Fath-allah- Ghorī, composer.”

The old temple of Ramachandra at Janamasthan must have been a very fine one, for many of its columns have been used by the Musalmans in the construction of Babar's masjid. These are of strong, close-grained, dark- coloured or black stone, called by the natives *Kasauti*, "touch-stone slate," and carved with different devices. They are from seven to eight feet long, square at the base, centre and capital, and round or octagonal intermediately.

( The Sharqi Architecture of Jaunpur by A.Fuherer Ph.D. P 67-68)

<p><b>Annexure-IV</b>  <b>Babur Nama by</b>  <b>A.S. Beveridge</b></p>
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10. Annette Susannah Beveridge was the second british scholar who in 1921 published texts of two Inscriptions purported to be of alleged Babri Mosque which were supplied by the Deputy-Commissioner of Fyzabad alongwith English Translation and Transliteration thereof done by a Muslim. Said Inscriptions are Appendix "U" of Babur-Nama (Memoires of Babur) translated by her. In her said book A.S. Beveridge before giving Text and Translation of the alleged two Inscriptions writes as follows:

“ Thanks to the kind response made by the Deputy-Commissioner of Fyzabad to my husband's enquiry about two inscriptions mentioned by several Gazetteers as still existing on 'Babur's Mosque' in Oudh, I am able to quote copies of both.”

After giving text and transliteration of an Inscription he gives Translation with her exaggerating value thereof as follows:

“The translation and explanation of the above, manifestly made by a Musalman and as such having special value, are as follows:-”

“The inscription inside the Mosque is as follows:-”

After giving its Text and Transliteration she translates the alleged First Inscription as follows:

“1. By the command of the Emperor Babur whose justice is an edifice reaching up to very height of the heavens,  
2. The good-hearted Mir Baqi built this alighting-place of angels;  
3. Bavad khair baqi ! (May this goodness last for ever!)  
The year of building it was made clear likewise when I said Buvad khair baqi (=935).”

“The inscription outside the Mosque is as follows:-”

After giving its Text and Transliteration she translates the alleged Second Inscription as follows:

“The explanation of the above is as follows:-”  
“In the first couplet the poet praises God, in the second Muhammad, in the third Babur - there is a peculiar literary beauty in the use of the word *la-makani* in the 1<sup>st</sup> couplet. The author hints that the mosque is meant to be the abode of God, although he has no fixed abiding-place. - In the first hemistich of the 3<sup>rd</sup> couplet the poet gives Babur the appellation of qalandar, which means a perfect devotee, indifferent to all worldly pleasures. In the second hemistich he gives as the reason for his being so, that Babur became and was known all the world over as a qalandar, because having become Emperor of India and having thus reach the summit of worldly success, he had nothing to wish for on this earth.  
The inscription is incomplete and the above is the plain interpretation which can be given to

the couplets that are to hand. Attempts may be made to read further meaning into them but the language would not warrant it.”

(Babur-Nama Appendices U Page Ixxvii

-lxxix)

**11.**The Texts and Translations of the alleged inscriptions supplied to and published by S.A. Beveridge in 1921 are quite different from that the Texts and Translations of the alleged three inscriptions supplied to and translated by A. Fuhrer and published in 1889 by the Archaeological survey of India. Her statement that those Inscriptions were ‘ still existing on ‘Babur’s Mosque” is not trust worthy as it appears from her own admission that those inscriptions were supplied to her husband by the Deputy-Commissioner of Fyzabad and he had no occasion to see and examine the existence of the real Inscriptions.

**12.**In Waqf Commissioner’s report dated Feb. 8 1941, it has been recorded that the Emperor Babur built the alleged Babri Mosque and appointed one Abdul Baqi its Mutawalli. No Papers related to grants in respect of alleged mosque were available. In this report one Abdul Baqi has been stated to be Mutwalli of the Janam Asthan Mosque at Ajudhya built by Emperor Babur. If inscriptions would have been there then he would have mentioned the same and in that event he would have mentioned the name of either Mir

Khan or Mir (and) Khan Baqi or Mir Baqi instead of Abdul Baqi. A copy of the said report is on pages 44 to 48 of the Vol.6 of the documents filed in the instant Suit by the plaintiffs: Relevant extract from the said report reads as follows:

“It appears that in 935 A.H. Emperor Babar built this mosque and appointed Syed Abdul Baqi as the mutwalli and khatib of the Mosque (vide clause 2 statement filed by Syed Mohammad Zaqi to whom a notice was issued under the the wakf Act.) An annual grant of Rs. 60/- was allowed by the Emperor for maintenance of the mosque and the family of the first mutwalli Abdul Baqi. This grant was continued till of the fall of the Moghal Kingdom at Delhi and the ascendancy of the Nawabs of Oudh.

According to CI. 3 of the written statement of Mohammad Zaki Nawab Sa’adat Ali Khan, King of Oudh increased the annual grant to Rs. 302/3/6. No original papers about this grant by the king of Oudh are available.”

(Ibid p.45)

**13.Ld.** Civil Judge Faizabad, Mr. A. Akhtar Ahasan caused Judicial Inspection of the Disputed Structure on 26<sup>th</sup> March 1946 in R. Suit No. 29 of 1945 Shia Central Board of Waqf U. P. Vs. Sunni Central Board of Waqf U.P. Said ‘Inspection Note’ of the Ld. Judge as well as Persian Text of Two Inscriptions alleged to be found on Disputed Structure are on pages 355 to 360 of the Volume 12 of the Documents i.e. Volume III of the Plaintiffs’ documents filed in O.5. No. 4 of 1989.1<sup>st</sup> Inscription is on page 356 while 2<sup>nd</sup> Inscription is on page 357. Notes are on pages 355 & 357.

Inspection Notes read as follows:

“Inspection Notes

26-3-46

Present:-. Mesud. Musanna & Khoja M. Yaqub, counsel for parties ( besides others).

Inspected the mosque in suit and found the following inscriptions on a stone tablet near the pulpit.-

.....(PersianText)

.....

According to both parties this-Kotba was replaced a new in place of the original tablet which was demolished during the communal riots in 1934. There is another tablet at the central arch of the mosque facing the court-yard & it contains the following couplets:-

.....(PersianText)

.....

Note:- The above inscription was read by Sheikh Karamatullah (D. W. 5) who climbed up the arch by means of a ladder & he read verses and written in Arabic character.

Sd. A. Akhtar Ahasan

26.3.46.

14.In his judgment and Order dated 30-02-1946 passed in R.

Suit No. 29 of 1945 Shia Central Board of Waqf U. P. Vs.

Sunni Central Board of Waqf U.P., the Ld. Civil Judge

Faizabad, has incorporated translation of the inscription

N0. 1 in its entirety and, gist of the inscription N0.2.

(Relevant portion of the said judgment containing

translation of the inscription No.1 and gist of the inscription

N0.2 extracted from page 113 of the Documents' Volume

10 being volume I of the Documents of the plaintiffs in

O.O.S. No. 4 of 1989 reads as follows:

‘Lastly there are the two Inscription in the mosque which have been reproduced in my inspection notes. These are also referred to in the Gazettes and according to the date in the inscription on the pulpit

it was built in 923 Hijri, while according to other it was in 935 H. corresponding with 1528 A.D. These inscriptions were the sheet-anchor of the plff's case but I am of the opinion that they are inconclusive. The 1<sup>st</sup> inscription contains three couplets in Persian and when translated runs as follows:

“By the order of Shah Babar, whose justice went up to the skies (i.e. was well known), Amir (Noble) Mir Baqi, of lofty grandeur, built this resting place of angels in 923 Hijri.”

The 2<sup>nd</sup> inscription is more elaborate and contains usual high flown language on eulogy of Babar & describe Mir Baqi of Isphahan as his adviser and the builder of the mosque. This inscription no doubt supports the plff's case, because it does not say that it was by the order of Babar shah & it only refers to the reign of Babar but the 1<sup>st</sup> couplet in the 1<sup>st</sup> inscription near the pulpit, clearly supports the theory that Babar had ordered the building of the as stated in the Gazettes and the settlement report.’

**15.** From the above mentioned Notes and Judgment of the Ld.

Civil Judge Faizabad it becomes crystal clear that the Inscriptions were destroyed in communal riot in 1934 and were subsequently restored by the contractor Tehwoor khan. Alleged two inscriptions records two different dates of erection of the building. In one it is given 923 Hijri corresponding to 1516-17 A.D. while in other Inscription it has been given 935 A.D. corresponding to 1528-29 A.D. In this Inscription Mir Baqi of Isphahan has been described as Babur's adviser and the builder of the mosque. As Esfahan and Taskend are part of two different Nations i.e. Iran and Uzbekistan respectively these two Baqi are to be construed two different persons. While in A. Fuhere's Inscription

structure in question has been mentioned as lofty firmament building ; in the contractor Tehwoor khan's restored Inscription it has been purposely mentioned as resting place of angels.

16. In 1964-65 Dr. Z.A. Desai, Superintendent, Persian and Arabic Inscription Nagpur published Texts and Translations of three Inscriptions alleged to be fixed on Babari Mosque. Dr. Desai gives reason for his said publication of the Texts and Translations of the said Inscriptions as follows:

“ The mosque contains a number of inscriptions. On the eastern façade is a *chhajja*, below which appears a Quaranic text and above, an inscription in Persian verse. On the central *mihrab* are carved religious texts such as *Kalima* (first Creed), etc. On the southern face of the pulpit was previously fixed a stone slab bearing a Persian inscription in verse. There was also another inscription in Persian verse built up into the right hand sidewall of the pulpit. Of these, the last mentioned two epigraphs have disappeared. They were reportedly destroyed in the communal vandalism in 1934 A.D., but luckily, I managed to secure an inked rubbing of one of them from Sayyid Badru'l-Hasan of Fyzabad. The present inscription, restored by the Muslim community, is not only in inlaid *Nasta'liq* characters, but is also slightly different from the original, owing perhaps to the incompetence of the restorers in deciphering it properly.<sup>1</sup>

The readings and translations of the historical epigraphs mentioned above, except in the case of one, were published by Fuhrer and Mrs. Beveridge, but their readings are so incomplete and different from the text that their inclusion in this article is not only desirable but imperative.

The epigraph studied below was built up into the southern side of the pulpit of the mosque, but is now lost, as stated above It is edited here from the estampage obtained from Sayyid Badru'l-Hasan of Fyzabad<sup>4</sup>. Its three-line text consists of six verses in Persian, inscribed in ordinary *Naskh* characters

within floral borders.”

*(Epigraphia Indica Arabic  
& Persian Supplement  
1964 and 1965 p. 58-59)*

Dr. Desai's footnotes 1 & 4 reads as follows:

“<sup>1</sup>Below the restored epigraph is inscribed in four lines the following Urdu record concerning the fate of the original inscription-

original inscription :-

۲۷ مارچ سنہ ۱۹۳۴ ع مطابق ۱۱ ذی الحجہ سنہ ۱۳۵۲ ہ بروز بلوہ ہندو بلوائی مسجد  
شہید کر کے اجلی کتبہ اٹھا لے گئے جسکو تہور خان ٹہیکہ دار نے نہایت خوبی کے ساتھ  
تعمیر کیا ۔

Free English translation of the above Urdu record reads as follows:-

“On 27th March, 1934 the Hindus - after having made the masjid shahid took away the original inscription which was dexterously rebuilt by the contractor Tehwoor khan.”

“<sup>4</sup> It may be argued that since the epigraph is not quoted in Fuhrer's SAJ, the slab had already disappeared before he wrote. But that is not the case, since the tablet was found therein 1906-07 A.D. by Maulavi M Shua'ib of the office of the Archaeological Surveyor Northern Circle, Agra (Annual Progress Report of the Office of the Archaeological Surveyor, Northern Circle Agra, for 1906-07; Appendix. D)”

(Ibid.p.59)

In fact Dr. Desai's this statement purported to prove his hollow claim is also wrong as no such Appendix as mentioned is available. For the sake of argument only if for a moment it is assumed that in 1906-07 Maulavi M Shua'ib had appended such Inscription even then it does not prove that it was in existence in 1889 when Fuhrer published Inscriptions otherwise it would have been necessarily transmitted to A. Fuherer.

Dr. Z.A. Desai's Translation of the first inscription being Plate XVII (a) reads as follows:-

- “1. By the order of king Babur whose justice is an edifice, meeting the place of the sky (i.e. as high as the sky),
  2. This descending place of the angels was built by the fortunate noble Mir Baqi.
  3. It will remain an everlasting bounty, and (hence) the date of its erection became manifest from my words: *It will remain an everlasting bounty.*”
- (Ibid.p.59)

Dr. Desai deciphering the numerical value and hidden meanings of the chronogram of the First Inscription writes as follows:

“The numerical value of the chronogrammatic contained in the second hemistich of the last line adds up to give the year A.H. 935 (1528-29 A.D.) There is also a play in the word Baqi in the above phrase: Baqi means everlasting and it is also the name of the noble-man-builder is both the meanings are equally applicable here. The phrase can be translated also as: It is a bounty of Baqi.”

(Ibid.p.59-60)

Dr. Z.A. Desai's before publishing Text and Translation of the second inscription being Plate XVII (b) informs about its non-existence as follows:-

“The second inscription on the mosque also in Persian verse, consisted of three couplets arranged in six lines. The epigraphic tablet, which was built up into the right-hand side wall of the pulpit, does not exist now and therefore, the text of the inscription is quoted from Fuhrer's work.”

(Ibid.p.60)

Dr. Z.A. Desai's Translation of the second inscription being Plate XVII (b) reads as follows:-

- “1. In accordance with the wishes of the ruler of the world, Babur,
2. A lofty building like the palace of the spheres,
3. (that is to say) this lasting house (*of God*), was founded
4. By the fortunate noble Mir (*and*) Khan (*Baqi*).
5. May ever remain such a founder of its edifice,
6. (and) such a king of the world and age!”

(Ibid.p.60)

Dr. Z.A. Desai's before publishing Text and Translation of the third inscription being Plate XVII (c) says that Fuhrer must have been mis- informed about the same which means in fact A. Fuherer had not seen the third inscription himself but had relied on other's wrong information. His said statements read as follows:-

“ The third record of Babur in the Ajodhya masque, comprising a fragment of eight Persian verses of mediocre quality and a colophon appears over the central entrance to the prayer- chamber above the chhajja. The four line text is executed in fairly good *Naksh* characters in relief amidst floral borders, on a slab measuring about 2m.by 55 cm. The text is fairly well preserved, and Fuhrer must have been misinformed to affirm that ‘a few characters of the second and the whole third lines are completely defaced.’ ”

(Ibid.p.60)

Dr. Z.A. Desai's Translation of the third inscription being Plate XVII (c) reads as follows:-

- “1. In the name of Allah, the Beneficent, the Merciful. And in Him is trust.
2. In the name of One who is Wise, Great (and) Creator of all the universe (and) is spaceless. After His praise, blessings be upon the Chosen one (i.e. the Prophet), who is the head of prophets and best in the world. The *qalandar*-like (i.e. truthful) Babur has become celebrated (lit. a story) in the world, since (in his time) the world has achieved prosperity.

3. (He is) such (an emperor) as has embraced (i.e. conquered) all the seven climes of the world in the manner of the sky. In his court, there was a magnificent noble, named Mir Baqi the second Asaf, Councilor of his government and administrator of his kingdom, who is the founder of this mosque and fort-wall.

4. O God, may he live for ever in this world, with fortune and life and crown and throne! The Time of the building is this auspicious date, of which the indication is nine hundred (and) thirty five (A.H. 935=1528-29 A.D.).

Completed was this praise of God, of Prophet and king. May Allah illumine his proof! Written by the weak writer and humble creature, Fathu'llah Muhammad Ghorî."

(Ibid.p.60-61)

17. Dr. Z.A. Desai informs that Fuhrer's reading does not appear to be free from mistakes. But he does not specify the mistakes committed by Fuhrer in his reading of the texts and translations thereof. From the scrutiny of Dr Desai's translation it appears that Dr. Desai in 4<sup>th</sup> line has added "and" between 'Mir' and 'Khan' and "Baqi" after 'Khan'. So he has converted 'Mir Khan' into 'Mir Khan Baqi'. And in the 3<sup>rd</sup> line he has added "of God" after 'this lasting house' to make it a mosque. He has neither given any rational explanation for his said conversion of 'Mir Khan' into 'Mir Baqi' nor He has exhibited as to how the Fuhrer's translation is different from the original text.

18. Dr. Z.A. Desai In his detailed discussion on all inscriptions of Babur's regime writes an introduction that a rough draft of an article of his predecessor Maulivi M. Asuraf Hussain

who retired in 1953 was found amongst sundry papers in his office with a note that it might be published after revision by his successor. Consequently, he claims, that he has published these inscriptions with translation after extensive revision and editing, but nowhere has he mentioned that which portions of the reading of these inscriptions are his own revision and editing and on what ground these revisions have been made. About inscriptions at Ayodhya he writes that there are three inscriptions in the Babari Mosque out of which the two were completely destroyed by the Hindu rioters in 1934 A.D. However, he managed to secure an ink-stampage of one of them from Sayyid Badru'l - Hasan of Fyzabad. He writes that the present inscription restored by the Muslims Community "is also slightly different from the original owing perhaps to the incompetence of restorers in deciphering it properly." When Dr. Desai himself admits that the restored inscription is slightly different from the original, then his claim that the restored inscription fixed on Baburi mosque in or after 1934 is the dextrously rebuilt of the original one alleged to be fixed on since the days of Babur becomes meaningless and un-trustworthy. . In fact, none of the Inscriptions was fixed on the Disputed Structure which has all along been sacred place of the Hindus known as Sri Ramajanmasthan Temple.

**19.**Dr. Desai informs that he has based his translation on the

inscription of Fuhrer, although he says that Fuhrer must have been misinformed to affirm that; “few corrections of the second and the whole third line completely defaced”. Even if it is supposed that some words in the 2nd line and the whole third line are defaced, there is not much impact in the meaning of the text of the inscription. But here we do find that Dr. Desai has extensively changed the meaning of the translated passage. It is quite different from what Fuhrer had translated. Fuhrer had written that it is in ten lines, above the entrance door of the Masjid. He has made its translation in ten separate lines. Dr. Desai has considerably changed the meaning of the text without pinpointing how Fuhrer’s translation was wrong. Since beginning and the end of the text are the same and the inscription is said to be the same and there is no major variance in Fuhrer’s English translation from the Persian text, Dr. Desai’s translation appears to be arbitrary. He has changed the date of the inscription 930 H. (1523 A.D.) to 935A.H. without assigning any reason. In Dr. Desai’s translation the name of Mir Baqi the second Asfaq appears where as in the original Persian text Mir Baqi’s name does not appear at all. Then Babar is called a *Qalandar* in this inscription which is not found in Fuhrer’s translation. After 4th line Dr. Desai does not follow the line system and at the end he mentions Fathu’llah Muhammad Ghorī as the humble writer of this inscription.

His name figures in the Fuhrer's translation too. He goes on expanding how Babar was called *Qalandar* but he does not explain how the changes have taken place in the inscription which was not in the text read by Fuhrer.

**20.** In the above mentioned Inscriptions the Emperor's name Zahiru'd-Din Muhammad Babur Badshah Ghazi which has been recorded almost in all other available Inscription of his period, is missing from which it appears that the forgers of later days were not familiar with the correct name of the said Emperor.

In the Inscription, dated A.H. 933 i.e. 1526-27 A.D. found on the wall of a well from Fatehpur Sikri being Plate No. XV(a) in its 1<sup>st</sup> line his name has been recorded as follows:

“Zahiru'd-Din Muhammad Babur Badshah Ghazi”  
(Epigraphia Indica Arabic  
& Persian Supplement  
1964 and 1965 at page-51)

In the Inscription of A.H. 934 i.e. 1527-28 A.D. found on a mosque from Panipat being Plate No. XVI(b) in its 1<sup>st</sup> line his name has been recorded as follows:

“Zahiru'd-Din Muhammad Babur Badshah Ghazi”

(Ibid.p. 55)

In the Inscription dated A.H. 934 i.e. 1527-28 A.D. found on a mosque from Rohatak being Plate No. XVI(a) in its 2<sup>nd</sup> line his name has been recorded as follows:

“Zahiru'd-Din Muhammad Babur Badshah Ghazi”

(Ibid.p. 56-7)

In the Inscription dated A.H. 934 i.e. 1528 A.D. found on a mosque from Rohtak being Plate No. XVII(a) in its 1<sup>st</sup> line his name has been recorded as follows:

“His Majesty Babur Badshah Ghazi”

(Ibid.p. 57)

In the Inscription of A.H. 935 i.e. 1528-29 A.D. found on a

mosque from Palam(Delhi) being Plate No. XVIII(a) in its 1<sup>st</sup> and 2<sup>nd</sup> lines his name has been recorded as follows:

“Zahiru’ d-Din Muhammad Babur Badshah Ghazi”

(Ibid.p. 62)

In the Inscription of A.H. 935 i.e. 1528-29 A.D. found on a mosque from Pilakhna being Plate No. XVIII(c) in its 3<sup>rd</sup> line his name has been recorded as follows:

“Zahiru’ d-Din Muhammad Babur Ghazi”

(Ibid.p. 64)

In the Inscription dated A.H. 936 i.e. 1529 A.D. found on a mosque from Maham being Plate No. XIX(a) in its 1<sup>st</sup> and 2<sup>nd</sup> lines his name has been recorded as follows:

“Zahiru’ d-Din Muhammad Badshah Ghazi”

(Ibid.p. 65)

**21.**It is not uncommon for ruffians to fix old Inscriptions on newly built and / or converted mosques. ‘Epigraphia Indica Arabic & Persian Supplement 1964 and 1965’ at its pages 55 and 56 records that two Inscriptions dated 1934 fixed on two mosques at Rohtak did not belong to those mosques but have been fixed thereon. relevant extracts from said book read as follows:

“Among the historical buildings, two mosques, viz., Masjid-i-Khurd in the Fort<sup>2</sup> and Rajputon-ki-Masjid, a new mosque in the city area, bear inscriptions of the time of Babar. The one on the Masjid-i-Khurd consists of three lines inscribed on a tablet measuring 53 by 23cm. Which is fixed over the central archway outside<sup>3</sup>. The slab is badly damaged and considerable portion of the text has peeled off. It is, therefore, not possible to decipher it completely, but this much is certain that it refers to the construction of a mosque in the reign of ahiru’ d-Din Muhammad Babur by one Qadi Hammad. If the Tughluq inscription occurring on the outer archway is *in situ*, this epigraph may not belong to this mosque.”

(Ibid.p.56)

“The other epigraph of Babur in Rohtak is from the Rajputon-ki-Masjid. Fixed over its central arch, the tablet, measuring 1.1 m. By 21 cm., does not belong to the mosque, but it was rather intended as the tombstone of Masnad-i-‘Ali Firuz Khan. It is inscribed with two lines of Persian which are slightly affected by the weathering of the stone. The text records A.H. 934 (1528 A.D.) as the date of the construction of the tomb of Masnad-i-Ali Firuz Khan, son of Masnad-i-Ali Ahmed Khan and grandson of Masnad-i-Ali Jamal Khan and refers itself to the reign of Babur. The style of writing is ordinary Naskh. I have read it as follows:-

#### TRANSLATION

- (1) Completed was in the reign of His Majesty Babur Badshah Ghazi, may Allah perpetuate his kingdom and sovereignty, this noble edifice, (viz.) the tomb of His Excellency Masnad-i-Ali<sup>3</sup> Firuz Khan, son of Masnad-i-Ali Ahmad Khan, son of Masnad-i-Ali Jamal Khan, the deceased, all of them, on the 10<sup>th</sup> of the month of Rabi’l-Akhar, year (A.H.) four and thirty and nine hundred (10<sup>th</sup> Rabi’II A.H. 934 = 3<sup>rd</sup> January 1528 A.D.).

(Ibid. P. 57)

22. In Epigraphia Indica Arabic & Persian Supplement 1964 and 1965’ at its pages 19 and 20 S.A. Rahim reports that at Fathabad near Chanderi in Guna district of Madhya Pradesh, stands the partially ruined palace known as Kushk-Mahal and Inscription fixed thereon are not dated back to its construction but have been affixed thereon from time to time either by the visitors or by the Governors thereof. Relevant extracts from his said report read as follows:

“ It would not be, however, wholly correct to say that the Kushk-Mahal does not bear any inscription. There are about a score of places on the walls enclosing the stair-cases, referred to above, which bear short inscriptions. The rubbings of some of these were found in the bundles of old estampages which were transferred to our office, from the

Office of the Government Epigraphist for India, Ootacamund, South India, who in his turn seems to have received them quite some time back from the Archaeological Department of the erstwhile Gwalior state. I prepared fresh rubbings of these records when I toured some places in Madhya Pradesh, including Chanderi, in November 1962. Of these, some are mere repetitions of the same text and as such have been excluded from this purview. The remaining four inscriptions are edited here for the first time.

These inscriptions raise an important question, as to whether they are contemporary with the building or not. They do not appear to be so, because they are not inscribed on tablets set up on the walls, nor are they found incised on prominent places on the monument. A building of such magnificence would have had, if at all it was so planned, an inscription of proportionate prominence. This does not rule out the possibility, however, of the existence of an epigraph on the monument, for it is possible that it had one and may have disappeared since. Moreover, the texts of the inscriptions under study are also vague on this point, for they do not make any explicit reference to the palace-building or its construction. In view of these facts, it appears more likely that these records are either visitors' etchings or some sort of mementos which the governors, the palace-guards or some other officials might have desired to leave on the stone.

Fortunately, one of these four records is dated, and since the same penmanship is employed in the other three records, they can also be safely taken as having been inscribed at about the same time or at short intervals. Their language is Persian and style of writing cursive *Naskh*. The wear and tear of time has affected the stone, resulting into partial obliteration of some of the letters, particularly in the first inscription.

The contents of these four epigraphs classify them into two groups: one, of the first inscription, and the other of the remaining three. The first refers itself to the governorship (amal) of Khan-i-A'zam Sharaf Khan Sultani and the superintendence (*shahnagi*) of one person whose name is not very legible; it seems to be Raja, (son of) Shams, (son of) Fath. The name of the writer which is also not clear, appears

to be Shiv Sing(?) Gulhar. This inscription is dated 1489-90.

The three records of the other group refer, between themselves, to the governorship of Malik Mallu Sultani and superintendence of Sarkhail Shariqi Mulki and quote Gulhar Jit(?) Dev, as the scribe. They are undated and hence, it is difficult to state positively if they are earlier than the above dated inscription or not.”

(Ibid. P.19-20)

**In view of the submissions of Shri P.N. Mishra, it transpires that even after the conquest, the Ramjanamsthan Temple could not be demolished, even if demolished, the erection of Babri Mosque is illegal and against the tenets of Islam. Accordingly, the disputed site cannot be deemed to be a mosque. He has further submitted that there is no reliable evidence that it was constructed by Babur or Mir Baqi. Accordingly Ramjanamsthan Temple even under the Islamic law shall retain its existence, which is not vanished by any illegal action of Aurangzeb, Babur or any ruler. No valid waqf can also be created. It is further submitted that since there was no Islamic Mosque, accordingly question of offering prayers does not arise and even if the prayer was offered, it is immaterial.**

Thus in view of the arguments of Shri P.N. Mishra, the building cannot be deemed to almighty. It cannot be used for offering prayers. It has no status of a mosque and the old status of RamJanamsthan Temple cannot be vanished by the rulers. It is unwarranted under the Mohammedan law as Hindus were paying

Jazia.

Sri Hari Shanker Jain, Advocate, appearing on behalf of Hindu Maha Sabha, defendant no.10 has made following submissions:-

- 1- It is a unique case in which a court of law is required to decide a historical issue relating to about 500 years back for which there can be no direct evidence and parties have to depend on historical books, Gazetteer and other old testaments within the meaning of Section 57(13) Part 1<sup>st</sup> of the Indian Evidence Act.
- 2- It is a case in which the Hon'ble Court has not only to decide the Lis between the two parties but also the issue as to whether the action of an invader and the attack made upon the motherland by the Army of Islam led by Babur, King of Fargana, a Islamic country, in 1526-1530 act done by him trampling the cultural heritage of India by partly destroying the temple at Shree Ram Janma Bhoomi and constructing a structure at the same very place, to show the might of Islam, can continue after the enforcement of the Constitution on 26<sup>th</sup> January, 1950 by virtue of Article 13(1) of the Constitution of India and as such
- 3- Whether every action done, order passed, civil or judicial in pre- independent era encroaching upon the Right to Religion guaranteed by Article 25 and 26 of the Constitution of India has become non- est, inoperative and void ?
- 4- The crux of the matter in all the suits is that as to whether

the structure at the place in question was constructed at the site of a sacred place worshipped by Hindus as Ram Janam Asthan over which a temple existed?

- 5- It is a historical belief that Lord Vishnu took incarnation as Lord Rama in Treta Yuga i.e more than 8 lac years ago in the palace of Raja Dashrath at Ayodhya and who ruled for more than eleven thousand years. Lord Rama is being worshipped as Bhagwan by believers of Sanatan Dharma commonly known as Hindus from Kashmir to Kanyakumari and Atak to Cuttak and they pay homage to the Janam Bhoomi place at Ayodhya where a big palace of Lord Dashratha once existed. A temple at the said place was also constructed and from time to time on account of deterioration of the building structure by weather and natural decay, by Hindu rulers and lastly renovated by Raja Chandra Dev of Gaharwar Dynasty between 1114 to 1154.
- 6- It is relevant to mention that King Vikramaditya in the year 1090 came to Ayodhya and performed rituals and puja at Ram Janama Bhoomi in the temple existing there on (Hans Bakker Vol . . . page. . . . )
- 7- In Valmiki Ramayana and all the Shastras and Puranas, last being the Skanda Purana (Khanda 10, Ayodhya Mahatma, written before 13<sup>th</sup> century )
- 8- The birth place of Lord Ram at Ayodhya, is being worshipped and rituals are performed there continuously since time immemorial.

- 9- There is mention in the Sikh Literature that Shree Guru Nanakdev Ji came to Ayodhya in 1505 bathed at River Saryu and had darshan in the temple at Shree Ram Janam Bhoomi.
- 10- All the above facts historically prove of facts establish that the belief of Hindus relating to Shree Ram Janam Bhoomi, at the place in question is continuing from ages much before Babur came to India and the place in question has been a place of religious importance and antiquity for the Hindus and devotees of Lord Shri Ram continuously and such religious belief, performance of rituals Pooja and Arti of the Asthan and the idol of Ram in the Temple has become part and parcel of Hindu religious faith.
- 11- The archeological evidence is important in the matter. In this regard Shre Hari Vishnu Shila Lekh found at the spot after demolition of the structure on 6<sup>th</sup> December 1992 establishes that there existed Shree Hari Vishnu Temple at the place in question constructed in 12<sup>th</sup> century by Raja Chandra Dev of Gaharwar Dynasty. The fact that Raja Chandra Dev ruled Ayodhya from 1104-1155 is also proved by the book entitled, 'the Early History of India' by Vincent A. Smith filed and relied upon by the plaintiffs (paper no. 324- C 1 Volume 26 at Page. 91)
- 12- A translation of the inscription of Vishnu Hari Temple has been placed on record ( Paper no. 307- C 1 volume 29 Page 29-41) and paper no. 254 C 1 to 254 Volume 32 page 74 to 113.
- 13- The Hon'ble Court directed Archeological Survey of India to excavate and to submit a report by virtue of powers vested under

Order 26 Rule 10 A of CPC. Report has been submitted by ASI and Hon'ble Court has not directed to call for another report, and as such said Report has become the part of record as scientific evidence for placing reliance thereon.

14- The report of ASI clearly established that the disputed structure was raised on the existing wall of temple and no new foundation had been raised. A large material showing the existence of temple has been found and that there existed a big structure. In this regard, the conclusion derived by the ASI is referred to.

15- There is another clinching evidence to establish that the structure in question (partly) was raised destroying a Hindu Temple largely employing the materials of the demolished structure. It is evident from 14 black Kasauti Pillars pictures which are available in the album of white and Black photographs submitted by Director, UP State Archeology in two albums who was directed to take photographs and get videography of the existing structure.

16- Those albums contain the pictures of Kasauti Pillars where Hindu God and Goddess were engraved and those pillars cannot be found in any Mosque. Apart from these pillars the Varah Devta is clearly seen in the outer wall of the structure. In the southern side Singh Dwar is visible. These photos have been pointed out to the Hon'ble Court during course of arguments and in video film displayed before the Hon'ble Court on 27<sup>th</sup> July 2010.

17- In different Gazetteers the facts have been mentioned by

Authors on the basis of the clinching evidence and story of damage / demolition of a Temple at the site of Janamsthan and construction of the disputed structure as narrated by the public on the basis of information derived by them from their ancestors and that the said place i.e. the Asthan is believed sacred by Hindus who have been worshipping the temple and place from ages. (Paper No. 132 – C1 to 62 Vol. 29 Page 43-167)

- 18- It is remarkable to mention that plaintiffs have relied upon the facts mentioned in EPIGRAPHIA INDICA published under the authority of Archeological Survey of India in 1965 edited by Superintendent Dr. Z. A. Desai, wherein it has been clearly mentioned that a mosque was constructed at the birth place of in question, during the reign of Babur and that alleged inscription at the structure was misplaced during 1934 riots and its copy was obtain from Maullavi M. Ashraf Hussain while the one again placed in the structure is a different inscription. (Paper no. 198 C 2 to 123 volume 30 page 107 to 117.

<p><b>Annexure-IV</b>  <b>William Finch</b>  <b>Page-13</b></p>
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- 19- It is relevant to point out that from the travelers account of William Finch and Trifen Thaler, the description of Ayodhya relating to Pooja at the birthplace written by Abul Fazl in Ain-I-Akbari Volume 2 and 3. The Gazateer of 1854 and subsequent gazateers as well as the report A. Fuhrer 1891, marked as ex- j – 24 volume 35 at page 341 to 351. There is a clear mention that there existed Rama temple at the place in question. From the Gazateers

report as well as from the Judgment of Civil Judge in Suit no. 61/280 of 1885 it is clear that Hindus were performing Pujas in the inner courtyard and after riot in 1855 a railing was put, and Muslims were allowed to perform Namaz as well. But there is no evidence that the Hindus did not continue to worship the idols inside the inner courtyard. The Muslims tried to enter upon the inner courtyard in the year 1934 and riot took place in which the Domes were damaged and were rebuilt by the Britishers giving outlook of a Mosque. There is no evidence that after riots, the structure was handed over to Muslims by the Government. The Hindus continued in possession and pooja was being performed in the inner courtyard and also on chabutara. The pilgrims and devotees continued to worship and perform ritual of all the sacred places at the Asthan.

- 20- It is remarkable to mention that the building in question cannot be termed as mosque in any way. On the pillars, images of Hindu God and Goddess are visible, at the entrance small 'aala' for worship of the deity was there, in the northern side Singh Dwar was there and the outer was the image of Varah is very much visible. Apart from all these evidences, one more remarkable thing is that there is parikrama marg round the structure which is found in a Temple. After Darshan of the 'Idol', the 'Charans' and Sita Rasoi', devotees were taking parikrama of the Temple continuously much before the rule of Babur. The Panchkosi and Chaudah Kosi parikrama of the Asthan are being performed from ages. On Ram Naumi day, the birth place of Lord Ram devotees in lacs were collecting to perform Pooja and other rituals much

before from Babur invaded and continued till date.

- 21- It is noteworthy that in all the Government and Revenue Record Janamsathan or Temple have been mentioned. Even the Muslims in their applications have referred the place as Janamasthan. In 1858, Mohd. Asgar, the alleged Mutwalli had confirmed that Hindus collect and perform puja there from ages.
- 22- It is remarkable that all the Muslim historian, writers, intellectuals etc have continuously maintained that Babur constructed a Mosque after demolishing the birthplace temple at the site in question. For the first time, Mohd. Ayub Advocate, in his statement under Order 10 CPC asserted that Mosque was constructed under the orders of Babur at a barren land.
- 23- It is noteworthy that Mohd. Ayub Advocate could not give said statement on the basis of his knowledge as he had not seen the events of 1528 and he has not disclosed his source of knowledge.
- 24- In Suit No. 29 of 1945, UP Shia Wakf Board Vs. U.P. Sunni Wakf Board which is being relied upon by the plaintiffs, there is a finding that the Mosque in question was constructed after demolishing a Temple at the Birthplace of Lord Ram. The Muslims have also not filed any appeal against the said finding. Therefore, there is estoppels against the Muslims on the issue and they cannot assert that the alleged Mosque in question after demolishing the Temple at the Ram Janam Asthan was constructed on a barren land.

- 25- From a reading of Babur Nama, it is crystal clear that he hated Hindus and Idol worshippers and he took a vow to break their Idols in pieces.
- 26- Therefore, a clear mens rea is established and Babur's hatred came true when under his order temple at the place in question was destroyed partly to humiliate the Idol Worshippers and show the victory of Army of Islam over Pagans( Kafirs).
- 27- It is relevant to point out that Muslim Plaintiffs have asserted that from the time of Babur till British Rule they were being paid Nankar grant. In this regard it is to point out that there was no proof that any grant was ever given by any ruler before 1860 in the name of alleged Baburi Mosque. It is for the first time that Britishers allured the Muslim by financial grant of Rupees 302 and 6 annas on the condition that they will be loyal to the Britishers and give military service whenever required. The grant was given for a Mosque existed at Mauja Sehenava and not for any Mosque at Mauja Kot Ramchandar. Mauja Sehenava is 5 kilometers away from Mauja Kot Ramchandar.
- There is no proof that any Wakf was ever created or the Mosque was on a Wakf property. No Wakf can be created over the site of a Hindu temple or Hindu place or at the Asthan of Hindu worship. It is immaterial as to whether Muslim law permits such a construction of a Mosque and the defendant Hindu Maha Sabha does not rely on Muslim law at all. In regard to Hindu places of worship, Muslim law cannot be applied and Hindu Law will apply

and prevail, which lays down that once deity's property, if always a deity's property and even King cannot take it. Even if under Muslim law the construction in question could be recognized as mosque, the defendant does not place reliance on that analogy to take benefit of foreign law which would be shameful and derogatory.

He has further submitted that on the basis of archaeological evidence and remains which were found after the demolition of the old structure suggests that after demolition of the temple the mosque was constructed by the debris of the old temple.

1. The most clinching evidence is epigraphical, i.e., documents inscribed on stone. It is the inscription of that very king in whose reign the Hindu temple at Rama Janmabhumi was built, King Govinda Chandra. It is, therefore, contemporary documentary evidence which is incontrovertible hence it should be fully relied upon in establishing the historical fact of the existence of a pre-Babari Masjid Hindu temple at Rama Janmabhumi.

2. It is a 20-line lekha (inscription or document) engraved on a rectangular phalaka (slab or tablet) of buff sandstone (Shila) . It measures about 5 fts. In length and 2.25 fts. In width. The language of the inscription is Sanskrit. The text is largely composed in beautiful verses;

only some portions are in prose. The script is Nagari written in the 11<sup>th</sup>-12<sup>th</sup> century A.D. style. This is fully established by palaeography or “the science of old writings”.

3. That inscription, in the absence of proper professional estampages, which the court must immediately arrange from the Archaeological Survey of India, has understandably as yet not been fully deciphered by palaeographers and epigraphists. Nevertheless, substantial portions have been deciphered from the available estampages, photographs, colour slides and a video-film prepared by Dr. S.P. Gupta jointly with Dr. Sudha Malaiyya on 13<sup>th</sup> Dec. 1992, which prove beyond an iota of doubt that here at Rama Janmabhumi there did exist from at least the early 12<sup>th</sup> century A.D. a Hindu temple. The inscription and its deciphered portions are given in Appendix –I. Here we are quoting only the relevant portions to bring home the single point that as early as the first half of the 12<sup>th</sup> century A.D. a magnificent and imposing Hindu temple, dedicated to Lord Vishnu-Hari, was constructed here during the reign of the most powerful ruler of this region, King Chandra Deva of the Gahadval Dynasty ruling from Kannauj, an ancient city of the R. Ganga, from where even the king Harsha had ruled in the 7<sup>th</sup> century A.D.

4. The inscription has not been read fully due to the non-availability of good impressions, but what has so far been deciphered is more than enough to conclude the erection of a Vaishnava shrine there during this period. The record was evidently put up on a wall of the shrine to mark its completion and installation of the divine image. Line 15 of this inscription tells us that a beautiful temple of Vishnu-Hari built with heaps of stone (silasamphatigrahas) and beautified with a golden spire (hiranyakalasa-sri-sundaram) unparalleled by any other temple erected by earlier kings (puruvair-apy-akritam kritam nripatibhir) was constructed. This wonderful temple (atyadbhutam) was built in the temple-city (vibudhalayani) of Ayodhya and Saketa were closely connected, Saketa being the district wherein Ayodhya was located. The two names are used as synonymous in classical Sanskrit literature, and it is likely that they represent the twin cities of Ayodhya and Faizabad. Towards the end it also refers to God Vishnu as destroying king Bali (in Vamana incarnation) and the ten headed (Dasanana, i.e. Ravana) and alludes to the serious fear from the west (**paschatyabhiti**). It also contains the expression Janmabhumi. It was composed by the poet Ayushyachandra, son of Alhana. Perhaps he was also a ruling chief and as royal poet he was said to have excelled even Sahasanka and

Sudraka and is credited with the excavation of tanks, wells as well as stepped wells. We come across a reference to king Govindachandra, who appears to be identical with the homonymous Gahadavala king, as well as to strong ruling chief named Sallakshana twice. This Sallakshana cannot be definitely identified as the whole inscription has not yet been deciphered. He could have been a Gahadavala feudatory or the well-known Chandella king of that name who ruled towards the close of the eleventh and the beginning of the twelfth century A.D. while certain points in connection with the interpretation of the inscription are yet to be settled, and can only be settled when good impressions are made available, the fact is finally established that at the disputed site there existed an eleventh-twelfth century Vaishnava temple before the erection of the 'Babari masque.'

5. In this prashasti (citation) the king says that he came to Ayodhya, which is located in the Saket Mandala (District), and built a sundara mandiram (most beautiful temple) of shila (stone). It was possibly done in place of an old temple which had by then become weathered. He topped the Shikhara (spire) of the temple with kalasha (pinnacle) made of hiranya (Gold). He dedicated the

temple to Lord Vishnu-Hari who was none else but the one who had humbled the pride of **Bali-raj** (the trivikram form of Vishnu) and also dushta Dashanana (wicked Ravana). This he did when the foreigners (the Muslims) were avalanching from the West (Paschatya) and creating fear (bhiti) but he had successfully thwarted it with the valour of his own arm (Bahudalanama).

6. The date of the reigning king Govinda Chandra of the Gahadval dynasty of Kannauj is bracketed between 1114 A.D. and 1154 A.D.

7. It is most significant to note that the king not only built the temple but also completed it because the kalasha or pinnacle is established on the top of the Shikhara or spire only when the temple is finally ready in all respects and the kumbhabhisheka performed. Then only the deity in the garbhagriha (sanctum sanctorum) gets consecrated and is ready to receive daily offering and worship. In this case the main deity was Lord Vishnu –Hari. Evidently, the inscribed tablet was fixed in the walls of the temple of Vishnu- Hari at the time of the consecration of the deity and the inaugural worship held to commemorate the event.

8. No, greater proof is required to establish the fact that here at Rama Janmabhumi a magnificent Vaishnava temple was in fact built sometime between 1114 AD. And

1154 A.D., i.e. during the first half of the 12<sup>th</sup> century A.D. and dedicated to Lord Vishnu-Hari who had humbled the pride of many, including Ravana. (Incidentally, Rama and Rama alone had humbled the pride of Ravana; hence in a sense it was not only a Vishnu temple but also Rama temple, as Rama was one of the various incarnations of Vishnu.) The event of erecting the temple had taken place around 400 years prior to the building of the 'Babari Masjid': the temple was built in early 12<sup>th</sup> century while the 'mosque' was built in early 16<sup>th</sup> century. For the historians the evidence of the inscription is full, final and incontrovertible.

9. It may also be noted that even earlier to it there existed a temple at this very site which had become dilapidated due to the ravages of time which had weathered the stones of the temple. This is borne out from the details of the inscription as well as the actual art and architectural remains discovered on 6<sup>th</sup> Dec. 199: Hence, the building of the 12<sup>th</sup> Century Hindu temple was not a one-time act but an act in an on-going process. (Reference: Rama Janmabhumi, Ayodhya: New Archaeological Discoveries, Historians Forum, New Delhi, 1992).

10. Fortunately, this contemporary documentary evidence, in the form of Hari-Vishnu temple inscription,

engraved on a stone tablet, is further supported by two more inscriptions engraved on a stone pillar found within the debris of the Babari Masjid on the 6<sup>th</sup> Dec. 12992 . One of these stone inscriptions (Shila-lekha), the upper one, is in eight lines, while the other, the lower one, is in two lines. Though the inscriptions are so very fragmentary that no coherent account could so far be made out from their reading. Still two things are absolutely clear: one , that the inscriptions relate to Hindu Gods and Hindu Kings ( there is a genealogical reference) and second, that palaeographically the script is to be placed in 12 th century A.D., may be in the mid to lat 12 th Century A.D. Thus, these inscriptions are around 50 years later in date than the Vishnu-Hari temple inscription.

11. It, therefore, follows, that the activities connected with the structures did not cease by the middle of the 12<sup>th</sup> century A.D, these were continuing beyond it.

12. This otherwise most clinching evidence of epigraphical records is also fully supported by the actual remains of the temples, rightly claimed to have been built here by the kings during the 12<sup>th</sup> century A.D. and also earlier to it, possibly 10<sup>th</sup> and 11<sup>th</sup> centuries A.D., and may be even earlier to this ‘earlier’ date for which also

there is some solid evidence in the form of objects of art and ions of the Kushana Period, 1<sup>st</sup> -3<sup>rd</sup> century A.D.

**THE ARCHITECTURAL REMAINS OF THE PRE-BABARI HINDU TEMPLES; ART AND ARCHITECTUAL EVIDENCE**

1. There are several pieces of architectural members of the pre-1528-29 A.D. Hindu temples which once stood at Rama Janmabhumi. We may start with the internal evidence of the structure of the so-called Babari Masjid which stood at the site from 1528-29 A.D. till the afternoon of the 6<sup>th</sup> Dec. 1992. The evidence is in the form of a number of beautifully carved monolithic pillars of black colour with bluish hue. These were at the ends of the piers of the domes and also on the entrance of the 'masjid'. On all counts, these are non-Islamic because they show images of Hindu gods and goddesses. Thus, these pillars must have formed part of a temple of the pre-Babari Masjid period. The relevant details are as follows: (i) Within the then disputed structure of the so-called Babari Masjid there were as many as 14 pillars of black stone popularly called 'kasauti' but geologically speaking, schistose of the slate variety, a sedimentary rock, the nearest deposits of which are located in hilly tracts of Garhwal- Kumaonregion of Uttar Pradesh. All of

them were used as architectural members in the body fabric of the 'Babari Mosque'. (ii)

One of the black stone pillars, fixed on the northern side of the main entrance, carved under the central dome, was found inscribed with the letter "Si", written prominently in typical Nagari script which is stylistically datable to 11-12<sup>th</sup> century A.D., same as the script of the Vishnu-Hari temple inscription mentioned in Section-I.

(iii) There are two similar pillars found fixed upside down in a grave-yard located nearly a furlong away from Janmabhumi. The grave near which these are still found existing is alleged to be of the Muslim saint, Musa Ashikan who is supposed to be patron of Mir Baqi.

There are a couple of similar other black stone pillars, still standing in the cantonment area at Faizabad, some 8 to 10 Km. away from Ayodhya.

(iv) Each pillar, which nearly 11 to 12 inches square at the base, but eight faceted in the centre and four faceted below it, is shown emerging out of a sacred water-pitcher, called **purna-kumbha** or **purna-ghata**, or simply **kalasha**. It is exclusively a Hindu sacred motif since it relates to the Vedic concept of Water Cosmology. (Reference: "'Ashokan' Pillar: A Reassessment of the

Evidence” pt.IV Symbolism, Burlington Magazine 1976, by John Irwin).

(v) Each purna-ghata is shown carried on the shoulders of four yakshas, sitting on knees and pressing the hands on the ground in the front. Each one is located at one of the four corners of the square base of the pillar, representing one cardinal direction. According to Sadhanamala, an old Sanskrit text on Hindu Iconography, each human settlement had at least one yaksha, as the guardian deity; he had a consort also, called yakshi, Reference: yaksha by Ananda K. Coomaraswami) (vi) The pillars are further embellished with male (Ganas), female (deva-kanyas), floral ( kamala), faunal (hamsa) and geometric motifs ( diamond), typical of the Hindu iconography, repeatedly found in all Hindu temples. (Reference: Art of India and Indonesia Ananda Kentish Coomaraswami).

### **PILLAR-BASES; The Remains In The Excavated Trenches**

2. From 1975 through 1980 professor B.B. Lal, a former Director General, Archaeological Survey of India, excavated at fourteen different places in ayodhya on behalf of the Archaeological Survey of India. In one of his trenches, laid immediately on the south of the

boundary wall of the then disputed structure, he found six of the several pillar-bases arranged in two parallel rows. These were built of burnt-bricks mixed with blocks of stone. It was logically surmised by the excavators that these may have been those very 'bases' on which some of the block stone pillars of the original temple stood while **in situ**.

3. After a close examination of the plans and sections of this site, it may further be noted, even three other eminent archaeologists—Prof. K.V. Raman, Head of the Ancient History and Archaeology Department, Madras University, Dr. Y.D. Sharma and Dr. K.M. Srivastava—formerly Directors, Archaeological Survey of India, have come to the same conclusion. They have observed that the foundation-trenches of the pillars, the layers found against the pillar-bases, the various lime-floors, the debris, and the floor sealing the pillar-bases as well as the material found in the debris overlying the sealing-floor establish beyond any doubt that the pillar-bases were raised in the 11<sup>th</sup>-12<sup>th</sup> century A.D. Incidentally, as noted earlier, one of the pillars on the main entrance of the disputed structure also bears an inscription in Nagari characters of the 11<sup>th</sup> -12 century A.D. Thus, the pillar-bases belonged to the period 11<sup>th</sup>-12<sup>th</sup> century A.D. further, the dating of the destruction of the temple, early

16<sup>th</sup> century, is based upon two unquestionable pieces of evidence: (i) the material found in the deposit lying buried in a pit immediately below the sealing floor and in the debris lying immediately above the sealing floor. There are a number of glazed ware pieces in both the deposits.

#### **DOOR-JAMB OF BLACK STONE**

4. There is a door-jamb or dvara – shakha of black stone kept in the court-yard of a comparatively new building called now ‘janmasthan. The door-jamb may have been fixed at the entrance of the garbha-griha of the original Hindu temple. It shows two parallel mouldings, one of which is purely decorative as it consists of meandering creepers. The second mouldings is very significant because it is divided into several rectangular panels, set one above the other, each depicting a Hindu deity. The lower –most depicts the image of Dvarapala, or door-keeper, standing in tribhanga poses under a arched canopy. The devarapala is wearing a karanda mukuta on the head and a vanamala in the neck. In Hindu iconography, when both of them occur together on the body of a deity, the deity is necessarily to be Vaishnavite in origin. The entrance of the canopy is like a trefoiled

arch with three semi-circular mouldings based on the principle of oversailing courses, named “corbelled arch”. This ornamental arch rests on two pillars, emerging out of purna-ghatas and beautifully decorated with a number of mouldings on the top. The panel above the devarapala shows a female deity standing in an arched gateway. Her posture is also in tribhanga. The panel above this also shows a female deity standing in tribhanga pose. The next panel shows the mother goddess standing in the frontal pose under a canopy. The 4<sup>th</sup> panel depicts a gana or a young dwarfish male dancing under a canopy. The top-most shows the beautiful image of salabhanjika, holding a branch of the blossoming tree. It may be mentioned in this context that the dvarapala is holding a shula, or a spear, in his left hand. It establishes the fact that he is a guardian deity, holding a weapon to protect the main deity of the garbha-griha from all evil-doers. The right hand, on the other hand, is held in vyakhyana mudra, i.e. in a pose which is adopted by a deity when he delivers a sermon to the visitors. It should be borne in mind that the deity is standing on a full blown lotus, as was customary with all the deities during this period. It is, therefore, absolutely clear that the temple to which the dvara-shakha originally belonged was dedicated to Vishnu or an incarnation of Vishnu, most probably Rama, both are

essentially one and the same.

**MORE ARCHAEOLOGICAL DISCOVERIES OF ART  
AND ARCHITECTURAL OBJECTS FROM A 12<sup>TH</sup>  
CENTUR A.D. HINDU TEMPLE—JUNE 1992**

5. We are now on almost sure grounds that the 12<sup>th</sup> century Hari-Vishnu temple constructed here during the reign of King Govinda Chandra was destroyed, according to the tradition recorded in various Indian and foreign accounts, in the early 16<sup>th</sup> century, in all probability by Babur's men. The parts of this temple which could be gainfully re-used in the structure of the 'Baburi Masque' were in fact re-used, such as the black stone pillars in the piers, some carved blocks of stone in the walls and at least one long piece of stone with lotus carvings in the vitana, i.e., as a lintel. However, the parts which could not be used, because of their unmanageable shapes, such as the crescent shaped amalakas with corrugated periphery, or otherwise, were cast-away and dumped in a pit nearby. These details of the discovery and some of the anitiquarian remains may be recounted as under.

6. ON THE 18<sup>TH</sup> OF JUNE 1992, when the ground near the Rama Janmabhumi was being leveled, a most startling archaeological discovery was made at Ayodhya. At a depth of about 12 feet from the ground level near the Ramajanma Bhumi temple, towards the south and beyond

the fencing, a big hoard of beautifully carved buff sandstone pieces was located in a large pit dug down below the old top level. The location of the pit is shown in Appendix II & III.

7. A careful study by a group of eight eminent archaeologists and historians found that all these objects are architectural members of a Hindu temple- complex of the 12<sup>th</sup> century A.D.

8. The group comprised Dr. Y.D Sharma, former Deputy Director General, Archaeological Survey of India, Dr. K.M. Srivastava, former Director, Archaeological Survey of India, Dr. S.P Gupta, former Director, Allahabad Museum, PROF. K.P. Nautiyal, Vice-Chancellor, Avadh University and former Head of the Ancient History and Archeology Department, Garhwal University, Prof. B.R. Grover, former Director, Indian Council of Historical Research, Shri Devenra Swarup Agrawal and Dr. Sardindu Mukherji of the Delhi University and Dr. (Mrs.) Sudha Malaiya of Bhopal.

9. The temple: The experts, who visited the site on behalf of the academic organization, "The Historians' Forum", on the 2<sup>nd</sup> and 3<sup>rd</sup> of July 1992, are unanimously of the view that the temple, to which these fragments

belong, is of the developed Nagara style of ancient temple architecture which was current in northern India during the later part of the early medieval period, i.e. the period after 900 A.D. and before 1200 A.D. The temples of this style are characterized by a distinctly imposing shikhara, which is a tall and tapering spire over the garbha-griha, or sanctum sanctorum, which houses the main deity.

10. The Shikhara Amalaka: The developed Shikhara is like a mountain with several tiers of subsidiary Shikharas, rising one above the other and projecting partially from the main Shikhara. The Shikharas are crowned with a very distinctive circular piece of stone, called amalaka, which is shaped like a cogged wheel, with bead-like mouldings along the periphery. It is so very typical of the temples of northern India that no one in the world who knows even a little about the Hindu temples can cast any doubt about its position in the temple structure. There are two examples of half-amalakas, in the present hoard of objects, evidently used on the top of the subsidiary Shikharas, called Shikhara of karmas, i.e. fringed spires.

11. The Shikhara Jala : The second most significant find is the curvilinear part of the jala mouldings present on the Shikharas. It is beautifully decorated with scrolls. It also

belongs exclusively to the north Indian temples of the period after 900 A.D. since the technique of its carving involves the method of scooping out the areas around the floral elements so that the art-motifs are formed with surface absolutely plain. It is called 'Stencil' technique.

12. The Capital: The third most noteworthy sculptured piece of stone in this collection is a rectangular capital of a pillar with beautiful mouldings in the form of highly stylized lotus petals arranged as narrow parallel strips carved in low relief around the capital.

13. The Cornice: The fourth example of stone sculptures belongs to the most characteristic members of the Nagara style of temples – it is called Chhadya, and in Hindi Chhajja, sun-shade, where the straight wall over the high plinth meets the base of the Shikhara. It is carved and shaped like rectangular Mangalore tiles to serve not only as a sun-shade but also allow the rain water to run off quickly and protect the structure. It is a corner-stone of the cornice.

14. Floral freize: There is one frieze of continuous leaf-molding which decorates one of the top lines of the high plinth of the temple.

15. Door-jamb: There is one example of a door-jamb or

dvara-shakha of the main entrance of the temple. It is decorated with a meandering floral design, carved in ‘Stencil’ style.

16. Images of Vishnu’s Incarnations: There is also a fragment of a steel embellished with the most significant sculptures of a number of Vaishnavite gods, viz. a Chakrapurusha, i.e. a youthful male figure standing gracefully at an angle (tribhanga) and holding vertically in the palm of the right hand the characteristic wheel or chakra of Vishnu.

17. Another image is that of Parashurama, sitting cross-legged and holding a battle-axe in the left hand. Below him is the image of Balarama, the elder brother of Krishna, with a canopy of serpent-hoods and having a wine-cup in his hand. Still below him is the image of mother Goddess (matri-devi), the bestower of all good luck.

18. Shiva-Parvati: Besides the above, there are several other images. One is of Shiva –Parvati, also called Uma-Maheshvara. It was found from a shallow mound called Nala, located some 200 metres away from the site of the above hoard of art and architectural pieces. Though Shiva’s head is now lost, his hand holding a trishula, trident, is fully intact. Similarly, although Parvati’s face is not extant, her hand from behind Shiva’s neck is found resting on his right shoulder in

an embracing position. Stylistically, it is also datable to the 11<sup>th</sup> century.

19. Terracotta Figurines: Art objects of burnt clay belonging to the earlier periods, such as the Kushana ( 1st-3rd century) have also found. These images to various Hindu gods and goddesses.

### **SOME ANTIQUITIES DISCOVERED ON 6<sup>TH</sup> Dec. 1992**

20. It is gathered, that more than 250 objects, many of them belonging to ancient temples, were collected by the Kar Sevaks from the debris of Rama Janmabhumi-Babari Masjid Complex on the 6<sup>th</sup> Dec. 1992 and bodily shifted to a place called Rama Katha Kunj, hardly 200 mts. from the complex. The Rama Katha Kunj has a small semi-permanent building with about half-a-dozen rooms constructed by the VHP for their own use. Some of these rooms were just the store-rooms, practically closed quarters with very poor light and ventilation. These objects of stone and metal were locked by the U.P. Govt. in a couple of these ‘store rooms’, sometime in the third or fourth week of December 1992, where they are still lying threatened in terms of their physical condition—we apprehend that unless these are immediately shifted to the properly ventilated and lighted galleries of a public museum, where constant vigil is generally kept on the preservation and

Conservation of the Exhibits, these invaluable objects of our national heritage may get damaged sooner than we can imagine. It is proposed that these objects are shifted, housed and displayed along with forty and odd number of objects collected in June 1992 and presented at the Ram katha Museum, Ayodhya, functioning under the direct control of the dept. of Culture, Govt. of Uttar Pradesh. But this is besides the point, even though in a sense very vital for the nation.

### **Inscriptions**

- (1) A stone-tablet Vishnu-Hari Temple Inscription of 20 line text composed in Sanskrit language and written in Nagari Script of 11qth -12<sup>th</sup> century style. It is securely dated in the first half of the 12<sup>th</sup> century A.D.
- (2) An eight line fragmentary inscription on a stone pillar, composed in Sanskrit language and written in Nagari script of 11<sup>th</sup> -12<sup>th</sup> century A.D. It is datable to mid-to late 12<sup>th</sup> century A.D.
- (3) A two –line fragmentary Sanskrit inscription engraved on a stone pillar in Nagari Script. It is datable to mid-12<sup>th</sup> century A.D.

### **Images**

- (4) A standing image of Vishnu wearing a long vanamala. Highly weathered. Engraved on dvara-shakha or door-jamb. Datable to 10<sup>th</sup> century A.D.
- (5) A head of Shiva Bhairava with tall jata-juta hair-do. Covering the head, wide open eyes and two protruding teeth. Datable to the early 12<sup>th</sup> century A.D.
- (6) A severely damaged image of standing deity in tribhanga pose, possibly Ganesha with a rishi (?), seen from the back, under a narrative panel raised and supported by the yaksha. Datable to early 12<sup>th</sup> century.
- (7) A long frieze of garland-bearer couples (vidyadharas). Datable to early 12<sup>th</sup> Century.
- (8) A fragmentary frieze of vidyadharas. Datable to early 12<sup>th</sup> Century.

### **Architectural Pieces**

- (9) Another dvara-shakha (door-Jamb) with four parallel vertical friezes showing floral motifs. Datable to 10<sup>th</sup> century Vishnu image.
- (10) A top-stone of the Jala decoration of the Shikhara. Showing floral designs. Cut in stencil

technique. Datable to 12<sup>th</sup> century.

- (11) A large fragment of the ceiling, bluish dark stone, showing meandering creepers with two human figures, arranged in concentric rectangles. Datable to 12<sup>th</sup> century.
- (12) A section of frieze showing flowers and leaves interconnected roundels, with upper and lower borders of closely placed beads, the bottom has running us. The deeply cut crevices are found: indifferently filled with chunam. It is a most telling and convincing evidence of the fact that the stones like this were fixed in the walls of the 'mosque' with sculptured face turned inside the core of the wall. Datable to 12<sup>th</sup> century.
- (13) Some half –a-dozen pillars of buff sandstone with curved brackets. Datable to 12<sup>th</sup> century.
- (14) Three amalaka, each on these had topped the karma Shikhara or corner spires of the temple. Datable to 11<sup>th</sup>-12<sup>th</sup> century.

### **Persian Inscription**

- (15) There is a large fragment of the Persian inscription which was once fixed on the top of the main entrance of the central domed chamber. Datable to early 16<sup>th</sup> century.
- (16) Central piece of the ceiling of the dome

decorated with fully opened flower and iron chain.

Datable to 16<sup>th</sup> century.

- (17) Avitana stone or lintel, once found fixed on the main entrance of the ‘mosque’. It bears lotus motifs of Hindu sacred symbols. Datable to 11<sup>th</sup>-12<sup>th</sup> century.

**PIECES OF ARCHAEOLOGICAL EVIDENCE IN FAVOUR OF HINDU TEMPLE EXISTING AT RAMA JANMA-BHUMI PRIOR TO THE CONSTRUCTION ‘BABARI MASJID’**

Like various other sources of history, archeology may also play a very important role in decision-making process aimed at solving the question whether: a Hindu Temple, or else, a Hindu religious structure, - existed at the place called ‘ Rama Janmabhumi- Babari Masjid complex’ prior to the building of the so-called Babari Masjid. Archeology has to offer at least 43 pieces of evidence to prove that yes, there did exist at Rama Janmabhumi a magnificent Hindu temple since at least the 12<sup>th</sup> century A.D., i.e. around 400 years prior to the construction of the so-called Babari Masjid in the 16<sup>th</sup> century A.D.

**THE INSCRIPTIONS**

- 1) The Vishnu-Hari Temple stone inscription composed. In Sanskrit and written in 11-12<sup>th</sup> century

Nagari script. It clearly mentions the construction of a Hindu temple at Ayodhya during the reign of Govind Chandra Deva (1114-1154 A.D) of the Gahadval dynasty.

2) Two fragmentary inscriptions on a pillar— Sanskrit Language and also 11<sup>th</sup>-12<sup>th</sup> century A.D. script.

3) Letter 'Si', of the Nagari script of 11<sup>th</sup>-12<sup>th</sup> century engraved on a black stone pillar.

4) There were 14 black stone pillars fixed in the body-structure of the so-called 'Babari Masjid', each bearing images of Hindu gods and goddesses besides various sacred faunal, floral and geometric motifs which are absolutely non-Islamic. There are two more similar black stone pillars, fixed upside.

5) The Kamlaa flower on the pillars as well the lintel stone and the chhadya stones.

6) The Kalpadruma or meandering creeper on the door –jamb and on lata moulding of the shikhara of the temple.

7) The Malas of flowers and gems on the pillars

8) The Karanda mukta on the head of the dvarapala.

9) The vanamala on the body of the dvarapala.

10) The Yajnopavita on the body of Chakrapursha.

- 11) The Chakra of Vishnu in the hands of the Chakrapursha.
- 12) The Parashurama image.
- 13) The Vishnu image on a door-jamb.
- 14) The image of Siva-B hairava.
- 15) The Hansa on lotus depicted on a pillar fixed in the disputed structure.
- 16) The vidyadharas or flying gandhara couples in frizes.
- 17) The Pipal leaf in a temple frieze.
- 18) Standing Ganesha with attendants.

**THE ARCHITECTURAL FRAMGMENTS OF VAISHNA: VA TEMPLE OF 11<sup>TH</sup> CENTURY NAGARA STYLE.**

- 19) The karma Amalakas.
- 20) The Jala stones.\_
- 21) The Chhabya stones.\_
- 22) The Lata Stones.\_
- 23) The Dvara –shakhe with three decorated parallel mouldings.
- 24) The ceiling stone decorated with meandering creepers.
- 25) The running frieze with flowers arranged in round less.
- 26) The buff sandstone Stambhas of a Hindu temple.
- 27) The Bhitti mouldings of a Hindu temple.

**THE PLINTH STONES**

- 28) The Adhithana stone of a Hindu temple on which ran below the eastern boundary wall of the so-called ‘Babari

Mosque’.

Sri Jain submitted that the evidence on revenue record belies the version of the plaintiffs that the mosque was not constructed after demolition of the temple. Thus, according to Sri Jain even from revenue record and other materials, it can be presumed that certain interpolations were made in the record and the place was known as Janma Sthan for the reasons that Lord Rama took birth and the temple was erected but the same was demolished and Babri Mosque was erected over it. In this regard his submissions are as under:

**Evidence from the Revenue Record; Record of Right :**

1. The first Report of Settlement of the Land Revenue of Fyzabad District by K. F. Mitchell (vide paragraphs 618-19, 666-669, while tracing the past history of Janmasthan/’Baburi Masjid’ in Kot Ram Chander/Ayodhya, confirms the fact that Babar came to Ayodhya in 1528 AD and halted here for a week during which he destroyed the Janmasthan Temple and on its site built a mosque using largely the materials of the old structure. This must have occurred about the time of Babur’s expedition to Bihar. The author of the Settlement Report further adds that according to Scyder’s Memoirs of Babar, the emperor encamped about 5 or 6 miles from Ayodhya and stayed for a week, setting the surrounding county, though it was remarkable that his

doings at Ayodhya were wanting in his Memoirs (Babar-nama).

2. As the settlement Report as a book of reference is admissible under the law, i.e., under the Evidence Act, its validity is unreliable. In the Regular Suit No.29 of 1945 over the Waqf issue between the Shia Central Board of Waqf, U.P. Versus Sunni Central Board of Waqf, U.P., in his judgment dated 30.03.1946, Akhtar Ahsan Naqvi, Civil Judge, Faizabad maintained that the Gazetteer of the District or the Settlement Report as books of reference were admissible under Section 57 of the Evidence Act.
  
3. The revenue records relating to village Ramkot, Haveli Awadh, District Faizabad, are extremely significant and clarify the factual proprietary position of Janmastahan Vs. Baburi Masjid. As per land revenue procedure, they offer details of the numbered plots ( Khasras) of entire village Ramkot in respect of nature of land rights, their topographical position, the nature of the soil along with the area of each plot with compete further details, whether inhabited with abadi (population) or a graveyard or arable land growing particular crops along with fruit bearing trees, if any, and paying land rent or treated as Muafi ( exempted from rent payment), the wells, tanks, gardens, paths (roads),

Shiwalas (temples) graveyards and mosques, etc. In fact, the records comprise various categories of revenue documents, i.e., survey, bandobust (settlement), kishtwar khasra, khasra abadi, misl hadbast, khewats, Khasra Khataunis and mps, etc., right from 1861 AD. Till 1991092 A.D. All these records are available at the District record Office (Mahafaz Khana/ Tehsil Office/Nazul Office, Faizabad.

4. The plots of land traditionally associated with Janmastahan complex is shown mostly as settled with abadi (population) and constructions thereupon.
5. The first Regular Settlement Report (1861 ) of Kot Ram Chandra, appended by two maps, is the most comprehensive document relating to the Janmastahan is covered under khasra No. 163 with 9 sub-plots ( goshas, from alf to sin ,i.e., ‘a’ to ‘I’) with total area of 5 bighas and 4 biswas. However, under column No.16 of kaifiyat, it is stated that in the area of Janmastahan there is one pacca well, trees whose number is recorded in khasra abadi and some graveyard (gabaristan).
6. For each of the 9 sub-plots, the area has been recorded. Of the total 5 bighas, 4 biswas area of Janmastahan (vide khasra No.163 ) complex, 4 bighas, 13 biswas are owned by the Nazul Department (Sarkar Bahadur Nazul) as superior

malik and Hindus Mahants as subordinate proprietors (malikan-i-matahi), whereas 11 biswas owned by Hindu mahand are put under the Mahal of Azhar Hussain, etc. ( the lambardars). Unlike the detailed description of the sub-plots of the other khasra Nos., the 1861 settlement does not show any specific sub-plot/sub-plots which were under mahal azhar Hussain and muafi (exempted from payment of the revenue) have been put only at the top in the relevant columns along with Sarkar Nazul, which is misleading and apparently an interpolation effected at a later stage. However, the position is partly clarified by Khatauni No.1(attested by Mohammad Akbar, darogha nazul dated 25th September, 1878) which under the heading of column 2(name of thok patti) puts khasra no. 163 M in muafi (taraf haqiqat muafi), the habitated (abadi) area of 11 biswas under the jurisdiction of Azhar Hussain, etc. , the superior owner (malik or haqdar vide Column4) . Here too, the specific No./Nos. of the sub-plots of khasra no.163 are not mentioned. However, later on, the position is absolutely clarified in the 1301 F/1893 AD settlement when the same sub-plot is shown under khasra No. 163/3 in the mahal jurisdiction ( thok Patti ) and superior ownership of Nazar Hussain and Tahir Hussain (the descendants of Azhar Hussain as (Maliks) along with Mehta Balram Das as subordinate owner (malik matahit). All the same, the 1301

F/1893 AD settlement does not put this sub-plot (No.163/3 ) under the category of muafi and merely shows it being a non- nazul land under the mahal of Nazar Hussain, etc. Most significantly, the map of 1893 settlement shows Khasra No.163/3 to the east and outside the boundary wall of the Ram Janmabhoomi/ 'baburi Masjid' covered by khasra plots nos. 163/1 & 163/2. as such, clearly, the sub-plot no.163M recorded in the khatauni No.1 dated 1878 AD as muafi in mahal Azhar Hussain has nothing to do with the land associated with Ram Janmbhoomi/Chabutra/'Baburi masjid', which are separately shown under Nazul and subordinate ownership of the Hindu Mahants.

7. To the north of the present Ram Janmabhoomi-erstwhile 'Baburi Masjid' and the walled compound (ahata), lay the inhabited (abadi) area covered by a structure still known as Janmasthan. In fact, all through the centuries, right till the late 19<sup>th</sup> century, the latter structure comprised only a couple of sub-plots of Janmasthan and formed a part and parcel of the entire Janmasthan complex and the road dividing the two structures, i.e., Ram Janmabhoomi / erstwhile "Baburi Mosque" and the present day misnumbered Janmasthan was constructed in the late 19<sup>th</sup> century during the British rule. This is well established by the revenue records. A careful study and comparison of the

1861 settlement map of the mauza (village) Ram Chandar with the 1893 settlement map of the said village fully bears out this fact whereas in the 1861 settlement map, the sub-plots of the northern portion of the Janmasthan complex (denoted by the present day so-called Janmasthan ) are contiguous to the southern plots comprising the Ram Janmabhoomi/erstwhile 'Mosque' structure alongwith the walled boundary, in the 1893 settlement map, the former northern portion of Janmasthan (vide khasra no. 163/5, also named abadi Sita Rasoi) is distinctly separated from the latter portion of Ram Janmabhoomi/ erstwhile 'mosque' structure, etc., (vide khasra nos. 163/1 and 163/2) by a regular road (khasra no.163/X) which runs from the border of the Ayodhya city and Hanuman Garhi temple in the east of the village towards the Janmasthan and after dividing the latter complex proceeds towards the Jalanpur village in the west. As this has become a permanent topographical feature, this is equally reflected in the 1936-37 settlement map, operative till date, wherein the road comprising (khasra no.158) divides the Ram Janmbhoomi /erstwhile 'Baburi Masjid' vide (khasra nos. 159 and 160) from the present day misnomered Janmasthan (vide Khasra No.146). As a matter of fact, the khasra kishtwar data of the 1861 settlement gives specific area as well as digical geographical directions for each sub-plot in the Janmasthan complex

which comprised the areas of both the portions, i.e., The Ram Janmabhoomi/erstwhile 'Baburi Masjid' and the present day misnomered Janmasthan.

8. As district from the Khasra Kishtwar in the Khasra abadi parts of Nos. 431-456, Makan ( complex) Nos. 92 -93 ( as recorded corresponding tono163 of the former) show abadi (population) in this area. The khasra hadbast of 1861 settlement (No.152) also mentions only makan Janmasthan (mansion of Janmasthan). Apart from it, the khasra abadi shows that the inhabitants of Janmasthan (sakna Janmasthan) also owned other plots/sub-plots (vide khasra Nos. 203, 206,214) or owned musli (taproot) and imli (tamarind) trees in the other plots (vide khasra Nos. 451-52)of the village. This shows that the Janmasthan complex was fairly inhabited and that the mahants/bairagis of Janmasthan, with a network of land-ownership in the village, had a sound financial and social status. None of the khasra abadi Nos., as mentioned above, parallel to the abadi Janmasthan of Khasra kishtwar No.163, does mention the existence of any 'mosque', though in the kaifiyat, they do mention the prevalence of pacca graveyard (qabarqah pukhta), a few imli (tamarind), musli (taproot) trees and makana (houses), etc., on the campus. Even khasra abadi No. 444, conjectured and identified by the amended khasra Nazul record of 1931

being an equivalent to a sub-plot of khasra kishtwar No.163 M of 1861 settlement comprising the Janmasthan, in its kaifiyat describes only ahata pukhta (pacca campus) and two trees (neem and ghauz) in possession of a Thakur of the Village. It nowhere mentions the existence of a 'mosque'.

9. Quite significantly, the hadbast map appended to the Settlement Report (1861) as well as the abadi map of Kot Ram Chander (1866) show only Janmasthan in the abadi Janmasthan complex plot no.163. They do not indicate any 'mosque' therein.
10. Later on at the back of a duplicate of Khasra Kiehtwar map, Muhamad Akbar, darogha of nazul lands, dealing with the issue of rights of the land owners (Malikan) vis-à-vis tenants (muzarian) of the village and also the question whether there was nazul waqf attached to the pacca mosque built by the Emperor Babur and situated on Janmasthan, recorded on 25<sup>th</sup> September, 1878 A.D. categorically that (in the village Ramkot) there was no nazul land/house/garden assigned to Mir Mhammad Asghar (Khattib/Muazzan) for an expenditure on the said mosque. However, he further records, that the latter (Muhammad Asghar) had been granted some cultivable land/garden worth Rupees three hundred and two only (Rs.302/-) in the villages of Bhuaiapur and Sholepur. Apparently, this noting was done by the

darogha nazul in 1878 A.D. as Muhammad Asghar, etc., had already been given conditional land grant by the British Government in 1870, along with malkiyat( Proprietary) rights in land, subject to the rendering of the police and military service.

11. It may be observed that in the absence of the original 1861 settlement hadbast, the recording of a ‘mosque’ at the back of a duplicate settlement map as late as 1878A.D. by a darogha of the Nazul lands is of peripheral nature, especially when the map itself does not comprise any indication of a ‘mosque’ there upon. Even though the physical existence of an extraneous structure believed to be ‘mosque’ built by the Mughal Emperor Babur at the Janmasthan site was undeniable, most significantly, the revenue settlement maps of 1861, 1893 and 1936-37 A.D. do not bear any indicate only the Janmasthan at the site.
12. In the original document of the settlement report of 1861 AD. Available at the District Record Office (Muhafaz Khana)/Tehsil Office, Faizabad, interpolations/additions have been effected in certain columns of the Khasra Kishtwar folios. In the District Record Office document, under column No.2 to the original reading of abadi Janmasthan, the words ‘and juma masjid’ have been added so as to read ‘abadi Janmasthan and juma masjid’ under

column No.3, to the words 'taraf nazul' , the words 'and muafi' have been added so as to read and under column No.4, to the words Sarkar Bahadur, ' and Azhar Hussain' have been added.

13. The above alterations' additions are confirmed by the fact that in the Tehsil Office copy of 1861 settlement, though under column No.2, the words 'and jama masjid' have been added to the original words 'abadi janmasthan' in a very crude manner, the Tehsil copy does not carry any interpolation of 'and muafi'/'and Azhar Hussain' under column Nos. 3 & 4 respectively as done in the case of the District Record Office copy Moreover, the second settlement report of Ramkot dated 1301 F / 1893 -94 even though for Janmasthan, carries the same khasra kishtwar No.163 which due to clubbing of the sub-plots is divided into 5 sub-plots instead of 9 as earlier in the case of 1861 settlement, it does not record the name of 'jama masjid', nor does it put 'muafiti, under the relevant column nos., which have been shown only under Sarkar Bahadur Nazul. However, in sub-plot no.1 163 /3 with an area of 11 biswas, Azhar Hussain and Tahir Hussain have been put as mahaldars whereas Mehta Balram Das has been recorded as subordinate owner (malik matahit), All the same, the word 'muafi' does not occur even in this column no.

14. In the 1301 F/1893 AD. settlement, the khasra No. of

Janmasthan, i.e., 163 remains the same as earlier in the 1861 settlement, though due to clubbing, the number of the sub-plots is reduced from 9 to 5. In the Khasra kishtwar (vide Basta No.132), further endorsed by the Khatauni (vide Form 15), the area of each sub-plot is recorded. As earlier in the 1861 settlement, the total area of the Janmasthan complex is 5 bighas and 4 biswas, of which 4 bighas and 13 biswas is under nazul whereas 11 biswas (vide 163/3) are shown in the mahal of Nazar Hussain and Tahir Hussain (the lambardars). But unlike the 1878 Khatauni (as noted earlier), the 1893 settlement records do not show it in muafi. As per Khasra bandobast and Khatauni documents, the portion of the Janmasthan area i.e., (the proper ‘Ram Janmabhoomi’/ ‘Babari Masjid’ land ) being under mahal nazul Sarkar, comprises two khasra Nos., i.e, 163/1 and 163/2, with an area of 2 bighas -14 biswas and 2 biswas respectively. These are shown under habitation (abadi) and are vested in the subordinate ownership and occupation of the Hindu Mahants Raghvar Das, Gopal Das and Thaurdwara Sita Ram. Khasra No.163/4 with an area of 7 biswas covers the road which separates the Khasra Nos. 163/1-2, i.e., (‘Ram Janmabhoomi’/ ‘Baburi Majid’) of the Janmasthan area from the northern portion of the complex with Khasra No.163/5, named as abadi Stia Rasoi. The latter portion with an area of 1 bigha-10biswas, also being under nazul is vested in the

subordinate ownership of Mahant Kalyan Das. The detailed lists provided in the 1893 settlement records in respect of mosques, waqf, graveyards (qabaristan) and mutations, etc., do not put any of the sub-plots, i.e., 163/1 to 1635 of the Janmasthan complex with either of these categories.

15. The kishtwar map of Kot Ram Chander, Pargana Haveli Awadh, Tehsil and District Faizabad, dated 1894-95 A.D. prepared after the 1893 settlement slightly varies in respect of the division of the janmasthan khasra No.163. It shows all the sub-plots 163/1-5 under habitation (abadi). The road which divides the Khasra Nos. 163/1-2 of Janmasthan from the northern wing with khasra No.163/5 (abadi Sita Rasoi) is shown as Khasra No. nill, i.e., 163/X, whereas khasra no. 163/4 of the 1893 settlement has been shown as a sub-plot with habitation (abadi) to the east of khasra No.163/3. It seems that this redistribution of the Janmasthan sub-plots was effect in the aftermath of the 893 settlement.
16. The above map is significant in many a respect. In its list of depicted symbols, it does not cover the symbol of a Shiwala (temple ) or a mosque. But it does denote the symbols of abadi, road, graveyards (qabaristan), pacca well, nature of land (i.e., parti qadim ) and non-payment of lagan, etc. As such, it shows khasra no.163/1 (i.e., the site of ‘Ram Janamabhoomi’/ ‘Baburi Masjid’) with habitation (abadi)

and a pacca well in then north-eastern direction. The sub-plot no.163/4 has shown with symbols of abadi, orchard (bagh) without the payment of rent (lagan). The sub-plot No. 163/5 (abadi Sita Rasoi) to the north of the dividing road comprises the symbols of abadi along with 3 pacca wells and a portion of self – cultivated land (khud kasht).

17. Above all, most significantly, there is no symbol of a graveyard (Qabaristan) in any of the sub-plots of Khasra No. 163 of the Janmasthan complex, though, there are symbols of graveyards in the neighbouring plots, i.e., Khasra Nos. 161,158, 56-57, etc. Even though earlier in the Khasra kishtwar No.163 of the 1861 settlement relating to Janmasthan, the column(No.16) of the general remarks (kaifiyat) as well as the khasra abadi Nos. 444, 452 of the same settlement do mention about the existence of graveyard (gabargah) in the complex of Janmasthan, it is well confirmed by the above map that by 1894-95 A.d., there is no graveyard in any of the sub-plots of Janmasthan complex, Later on, this position is reiterated by the 1344 F/1936-37 AD. Settlement report and the map appended to it.
18. As distinct for above revenue records, the Nazu department of the District Faizabad d(U.P.) also prepared its own amended Khasra records of the abadi settlements, (tarmimi

khasra abadi) in 1931 A.D. In these revised Khasras of village Ramkot, both 'masjid' and chbutra indicating the temple at Janmasthan have been recorded in Khasra No.583. The 'mosque' has been shown in waqf under column 'Name of the present possessor' (Nam Hal Qabiz). At the same time Mahant Charan Das in 1931 and thereafter Mahant Raghunath Das (1941) have been declared under –proprietor (Malik Matahit) of the entire plot. Moreover, in these Khasra records, Arazi No.586 with an area of 11 biswas, 16 biswanis and 16 kachwanis (11-16-16) being in abadi is shown as graveyard (a pacca qabaristan known as Ganj Shahid) and assigned in waqf (waqf ahad Shahi).

19. A note of caution is necessary with regard to the alleged Khasra and map maintained by the Nazul department in the Faizabad Collect-orate which is relied upon by the plaintiffs of Suit No.12 of 1961 (now O.O.S. 4 of 1989 before the Lucknow Bench of the Allahabad High Court), Sunni Central Board of Waqf and others Vs Gopal Singh Visharad and others. The map maintained by the Nazul Department is not authenticated, nor prepared under any law, nor is it according to any ascertainable scale. The survey made on the basis of the Khasra abadi and that map of the Nazul department at the instance of the Plaintiffs in that Suit has been rejected by the High Court's Full Bench which is trying

the case and a fresh survey has been ordered on the basis of revenue records in order to ascertain the exact situation of the land involved in that Suit. It is noticeable that the plot numbers given in the plaint of that Suit are based on the said khasra abadi of the Nazul department. There is no Fard Mutabigat comparative table between the plot numbers given in the khasra abadi of the Nazul department and the Khasra abadi maintained by the revenue Department of the Government.

20. In fact, the purpose of the Nazul (Municipal) survey and the map prepared in 1931 A.D. was to identify the encroachments made on the Nazul property. Such a survey may cannot take precedence over the regularly conducted revenue settlement operations and the maps prepared thereupon, especially when the title to land is involved. In its order dated 10.1.1990, the High Court directed the Board of Revenue, U.P. Sate, to survey the site and submit report accordingly with the assistance of the Municipal records and such other records which it considered to be useful and in its further order dated 23.5.1990 directed it to execute the commission and locate the plots with reference to documents on record only. The commissioner, Shri J.P. Srivastava, appointed by the Board of Revenue for the purpose, submitted his report on 25.07.1990 wherein he had located

the disputed property with reference to the Nazul map of 1931, even though he conceded that the Nazul map and the settlement maps were on different scales and that it was not possible to juxtapose the two maps and prepare Fard Mutabiqat and correspond the Nazul. Khasra numbers with the settlement khasra numbers. Thereupon, the Hon'ble court passed another order directing the commissioner to submit supplementary report surveying and locating the property with reference to settlement maps of 1861 and 1937 A.D. The commissioner submitted his supplementary report dated 8.2.1991.

21. In fact, the Commissioner instead of surveying the land of his own had just accepted the fresh map supplied by the Plaintiff, which in matters of details offered a completely inaccurate position in respect of Janmasthan/'Baburi Mosque', graveyards, the shilanyas site and various other plots. Such an act on the part of the commissioner for having accepted the Plaintiff's map and adopting it as his own official map for submission to the court was characterized by the latter as "wholly unwarranted".
22. Having gone through the pros and cons of the entire case, the Hon'ble Court in its Judgment on B.B.91, even though it refrained from calling the commissioner's report as 'motivated', described it as "absurd". It refused to accept the

commissioner's view that correct map and report about kot Ram Chandra were possible only in reference to Nazul map and that the settlement maps were not correctly prepared. In its judgment, it refused to keep the report of the commissioner on record in the pending case.

23. As per procedure of the revenue settlement, the  khasra  Numbers in respect of  kishtwar, khewat  and  khata khataunis  often undergo a change due to alteration, addition and clubbing for adjustment with the neighboring plots from one revenue settlement to another. At times, a change in Numbers is effected even during the interregnum of the two settlement operations. However, they are all duly recorded in the Comparative tables of the  Khasra  Numbers ( Fard Mutabiqat ) appended in the ensuring settlement report as well as in the relevant  Khewat  and  Khata Khatuani  numbers. The khasra kishtwar, khewat and khata khataunis adopted in the 1344 F/1936-37 A.D. continue to be in vogue in the latest revenue operations 1989 -92 A.D. However, the mutations effected during the interregnum have been recorded in the relevant revenue documents.

24. According to the 1344F/1936-37A.D. settlement the  Janmasthan  complex plots have been recorded in the  khasra   kishtwar  under nos.159, some portions of 160, 158 (road), 146 and 147 R [i.e., R( ) portion of 147] and the area in

respect of each plot/sub-plot has been provided. The major portion of the Janmasthan complex falls under khasra nos. 159 (declared banjar – the site of Ram Janmabhoomi / ‘Baburi masjid’), 146 and 147 R(Abadi Sita Rasoi, across the road in the North), while some portion is included in Khasra no.160. The Khasra no.158, also forming a part of the area of the Janmasthan complex is recorded as a road (which divides the Khasra Nos. 159 and 160 in the south from 146 and 147 R in the north respectively).

25.As per khewat record the khasra no.159 with an area of 13 biswas is declared banjar land under Nazul vide Khata no.1; no. Khewat Matahitdaran (5a) 20 and Khata Khatauni 58/2. While the superior ownership rests with the Nazul, the subordinate ownership (matahitdar) is vested with ‘Shri Dhanush Dhari Ji Bhagwan Virajman Mandir Bara Astah, Mohalla Ramkot, Shahar Ayodhya’ through the basarbkari of Mehta Raghubar Prasad, disciple of ram Manohar Sahu, Bairagi, resident of the above temple. The khasra no.146 with an ara of 1 bigha, 6 biswas, 7 biswanis (1-6-7) vide khata No.I, No. Khewat (5a) 32, no. Khata Khatauni 70/1 is under abadi. Here too, the superior ownership is with Nazul and subordinate ownership is vested with Har Har Das, Ram Sarn Das, Matahitdar, the resident of jamasthan. The Khewat No.160 (a) with an area of 3 biswas, 13 biswanis (0-3-13)

being under Nazul vide Nazul Khata No.1, No. Khewat 51(21), No. Khata Khatauni 59/1 is vested in the subordinate ownership of the Hindu mahants /bairagis.

26.As regards the Khatauni documents the position of the khasra nos. 159 and 160 (a) is reiterated as already noted in the khasra kishtwar and khata Khatauni. Khasra No.159 vide khata no.1, khata Khatauni no.58/2, being under mahal Nazul with an area of 13 biswas of banjar is put under the subordinate ownership (malik matahit ) of who besides khasra no.159 also owns other Plots (i.e. , and 199 which are not a part of Janmasthan). The Khasra no. 160 (b) is also under mahal Nazul with an area of 1 bigha, 12 biswas.

27.In the Khatauni documents, the jurisdiction of Mahal Azhar Hussain has been shown separately. Of the Janmasthan complex, Khasra No.158 vide Khata Khewat No.2, khata Khatauni no.15 comprising an area of 4 biswas has been shown as a Path (road which divides khasra No.159 in the south from khasra No.160 in the north). To this Path, 3 biswas and 9 biswansi (0-3-9) have been added from non-Janmasthan complex khasra no. 155/2 vide khata No.1, Khata Khatauni No.4, making a total of 7 biswas and 9 biswansi ( 0-7-9) for the Path which has been put under mahal Azhar Hussain. At the same time, some portions of the Janmasthan complex under abadi without rent (lagan) under

khasra  no.160 vide Nos. 160 (Jim),  khata khewat  no.2 ,  Khata Khatauni  no.19/1 with an area of 7 biswas, 3 biswansi (0-7-3) in the subordinate ownership of Rameshwar Das, disciple Gopal Das;  Khasra  No.160(d) vide  khata khewat  No.1,  Khata Khatauni  No.8/1 under  abadi  with an area of 3 biswas, 17 biswanis (0-3-17) under the subordinate ownership of Raghubar Das exempted from rent (lagan) and No.160 M vide  Khata  No.2,  Khata Khatauni  No.14 under  abadi  and an area of  kaacha  village bigha, i.e. , 1 bigha, 6 biswas and 7 biswansi (1-6-7).

28. In the 1344 F/1936-37 A.D. settlement report, of the  khasra  nos. of  kishtwar ,  khewat  and  khata Khatauni  associated with the Janmasthan complex in the mahals of Nazul and Azhar Hussain as detailed above, there is no area in any of the plots/sub-plots, which has been shown as graveyard (qabaristan) or in waqf.

29. The map of  khasra kishtwar  of the village Ramkot dated 1344-F/1937 AD of the settlement depicts the territorial boundaries of the  khasra  plots of the village along with symbols of various categories, viz.,  banjar ,  abadi , roads, temple ( mandir ), graveyards (qabaristan) and  pacca  wells, etc. Of the  khasra  plot nos. of the  Janmasthan  complex, No.159 has a symbol of  banjar  land; no.160 has symbols of  abadi  and a temple in the north-east of the plot (shaksi

temple) along with a well to its east; no.158, a pacca road; no.146 (abadi Sita Rasoi), abadi along with a temple in the north-west and two wells ; no.147 (R) , mostly with a symbol of banjar land In none of the plots /sub-plots of the Janmasthan complex, there is any symbol of a graveyard (qabaristan), even though symbols of graveyards have been shown in the other and neighborly khasra plot nos., i.e., 172,173,168, and 169, etc.

30. In view of the position as available from the above mentioned original records of the 1344 F/1936-37 settlement of the village Ramkot, the Nazul records of 1931 AD which have altogether different khasra Nos. of the Plots, unaccompanied by any table of equivalent khasra Nos. (Fard utabigat) are absolutely unauthentic with regard to waqf land vide khasra no. 583 and qabristan land vide khasra no.586 and other khasra nos. which have been considered to be a part of the Janmasthan complex. As already noted, even the second revised Report of the Survey Commissioner was rejected by the Hon'ble High Court of Allahabad, Lucknow Bench on 8.8.1991.

31. In view of the position as available from the above mentioned original records of the 1344 F/1936-37 settlement of village Ramkot, the Nazul records of 1931 AD which have altogether different khasara Nos. of the plots,

unaccompanied by any table of equivalent khasara Nos. (Fard Mutabiqat) are absolutely unauthentic with regard to waqf land vide khasra no. 583 and qabristan land vide khasara no. 586 and other khasara Nos. which have been considered to be a part of the janmasthan complex. As already noted, even the second revised Report of the Survey Commissioner was rejected by the Hon'ble High Court of Allahabad, Lucknow Bench on 8.8.1991.

32. Since the 1344F/1936-37 settlement, the annual revenue records of the village Ramkot pertaining to khewat and jamabandi, i.e. khata Khatauni have been maintained in the Tehsil Office/ District Record Office, Faizabad for all the years till date. For all the khasara plots of the janamasthan complex, the position stand the same as in the last settlement, excepting that the entries of the names of the succeeding mahants as subordinate owners have been made in the relevant documents. The site on which the shilanyas was performed in November / December, 1989 falls under khasra no. 160, the major portion of which is under mahal Nazul Sarkar Ala. The khasara No. 160 being a large part measuring 5 bighas and 13 biswas, covers both Janmasthan and non – janamasthan areas and falls both under mahal Nazul and mahal Azahar Hussain. In this khasara no. related khata khewat and khata Khatauni Nos., apart from Nazul

(government) owning 3 bighas and 13 biswas, There are three other subordinate owners (malikan-i-mayahit) i.e., Sita Ram Sharan owning 3 biswas and 13 biswanis , Awadh Behari owning 11 biswas, 7 biswanis (1-6-7) respectively. The sub –plot of Sita Ram Sharan vide khata khewat no. 23 and khata Khatauni no. 54/1 falls under mahal Nazul. The sub plot of Ishtiaq Hussain vide khasra no.160 R and khata Khatauni no. 9 is under mahal Azahar Hussain. Here too, the subordinate ownership is vested with Ishtiaq Hussain and no part of his sub- plot has been shown with any grave yard or muafi or waqf.

### **UNAUTHORISED INTERPOLATIONS IN REVENUE RECORDS**

33. In the settlement report of 1861 Ad, interpolations / additions have been effected in certain columns of the khata Kishtwar folios. In village Ramkot the total number of the khata Kishtwar is 167 and as per performa, there are 16 coloumns for each khasra. The first four columns records (i) the serial number, (ii) Name of field (abadi, etc.), (iii) Name of thok/patti (nature of subordinate agency for revenue collection), (iv) name, lineage and caste of the owner (Nam Wa Waldiyat Zat Malik) respectively. The serial number of Janmasthan is 163 with specific description under the columns followed by 9 sub-plots with required description under each column in the copy of the 1861 settlement report available at the District Record Office (muhafaz khana), Faizabad under column No. 2, to the original recording of abadi Janmasthan ; and ‘juma masjid’

Have been added. Under Column No.3, to the words taraf Nazul, and Muafi have been added so as to read and under column No.4, to the wards Sarkar Baharur, ‘ and Azhar Hussain’ have been added

**Evidence for interpolations :**

(1) Under column 2, the words abadi Janmasthan are in thick handwriting. As there was no space below this for writing in a similar way, a small ‘wa’ ( ) has been put to the right of Janmasthan and ‘juma masjid’ has been put above towards the left of abadi. The very crude construction of the sentence shows the later insertions of the above words of wa (‘) and ‘juma masjid’.

(2) In the 1861 settlement copy of the Tehsil office under column No. 2 abadi Janmasthan had been written in thick bold hand and no space was available for further addition in the manner done in the District record. So ‘wa jama masjid’ ( and jama masjid) have been inserted below it but for want of space appear before sub-plot 1, (goshalf) so as to disturb the entire symmetry of the entries made therein.

(3) The Tehsil office copy of 1861 settlement does not carry any incorporation of ‘and muafi’/’and Azhar Hussain under columns nos. 3 and 4 respectively as the case of the District Record Office copy.

(4) The second settlement of 1301 Fasli/1893-94 Ad in the khasra kishtwar record though carrying the same khasra no. 163, due to the clubbing, is divided into 5 sub-plots instead of 9 sub-plots as earlier in the 1861 settlement report. But it does not record the name of ‘jama masjid’, nor

does it put 'muafi' under the relevant columns, which have been shown only under Sarkar Bahadur Nazul. However, in sub-plots No. 163/3 with an area of 11 biswas, Azhar Hussain and Tahir Hussain have been put as mahaldars where as Mehta Balram Das has been recorded as subordinate owner (malik matahit).

(5) In many a other khasra kishtwar Nos. of the 1861 settlement record of the District Record Office, e.g., 16,21,25,29,32 and 167 , there are clear instances of tampering, rubbing off the original entries and overwriting them with others. Ordinarily, such changes are never made in the official revenue records and even when any change has to be effected for the correction of an error, if any, the original words are distinctly struck off to be substituted by other words above it. But rubbing off is never done.

(6) Another evidence for determining the fact as to whether it is a correction of an error by the scribe himself or a later interpolation/ alteration is the ink whether thick or medium or thin, as well as the variation in the handwriting of the letters / words, if any, In the 1861 settlement document of the District record Office, for Khasra Kishtwar No.163, for all the columns, quite thick black ink has been used and the handwriting is also uniform with the use of the same quill (read pen) The thickness of the ink, words and style of writing is uniform. But for the words 'wa Azhar Hussain' (and Azhar Hussain) put below the words of 'Sarkar Bahadur' in column No.4 are absolutely dim in ink. Thereafter the description about all the other sub-plots (goshas ) is again written in thick black ink. At the same time, for all the foios/ Khasra Nos. following khasra No.163 are written in equally black thick ink and uniform handwriting excepting Khasra No.167 wherein again under

column No.3, the words taraf Nazul are in thick ink board handwriting here as the additional words wa muafi (and muafi) are written in rather thin and dim ink. Similarly, under column No.4, the original words ‘Sarkar Bahadur’ are written in thick black ink but the words ‘wa Azhar Hussain’ have been added in dim ink. It is very clear that the words ‘wa muafi’ and ‘wa Azhar Hussain’ under column No.3 and 4 of the both the khasra Nos. 163 and 167 are later additions. All the same, the handwriting of the scribe who made these additions both the Nos. is the same, even though it is apparently quite different from that of the original writing.

He has further submitted that there was no Waqf associated with the Babri mosque. Accordingly, on the basis of waqf no right can accrue to the plaintiffs. His submissions are reproduced as under:-

**NO WAQF ASSOCIATED WITH ‘ BABURI MASJID’**

In the Janmasthan complex as recorded in the 1<sup>st</sup> regular Settlement Report (1861 A.D.), there is no Plot/Sub –Plot which has been put as a waqf attached to ‘ Baburi Masjid’. At that time, Muhammad Asghar claimed himself to be khattib and muazzan ( vide his representation to the British Government , case No.884, Muhalla Kot Ram Chander, Ajodhya dated November 30, 1858 A.D.) of the structure named as ‘ Baburi Mosque’ situated at Janmasthan. According to the Muslim claim, this monument was registered as ‘Mosque’ in 1860 AD. only, i.e., after the 1855 Hindu-Muslim riots and the tussle that followed. In his representation to the British Government, Mir Rajab Ali also designated himself as “Khattib Baburi Mosque’ (vide Application No. 115, Muhalla Kot Ram Chander, Ajodhya

dated November 01, 1860 AD.). All the same, in the Had Bast map appended to 1861 A.D. Settlement Report, the symbol of the 'Mosque' does not figure in the Janmasthan complex ( khasra Kishtwar No. 163/abadi Plot No., 431-56). As a matter of fact, both Muhammad Asghar and Mir Rajab Ali were residents of village Shahanwa (about three miles to the west of village kot Ram Chander/ ajodhya) and were petty zamindars/land holders/lambardars of village Shahanwa. The 1861 settlement Report of village Shahanwa (vide No. Had Bast 571, Village under Khaliasa (Government) and Mohammad Asghar, Mir Rajab Ali and Muhammad Afzal, etc., are shown as pattidars ( vide Exhibit No.'A'). Under the revenue system as inherited from the Mughal and Nawabi Governments, as pattidars /maliks/lambardars, etc., they were entitled to nankar (subsistence allowance) in the shape of nankar/muafi land in the same village. At the same time, they were land holders and their holdings, etc., are recorded in the Settlement Report. But, it is nowhere recorded that they enjoyed any nankar /muafi for the maintenance of the 'Mosque' khattibs and muazzans, etc. However, even though they could not furnish any documentary evidence to the British Government, they continued to claim that during the Nawabi period, their family had been getting the annual grant of Rs. 302/3/6 as nankar and muafi from the revenues of the village Shahanwa for its own maintenance and out of this income, they had been spending only a part of the amount for looking after some of the essential needs of the so-called 'Baburi Mosque' situated at Janmasthan, kot Ram Chander, Pargana Awadh, District Faizabad. After the first war of Independence in 1857 (mentioned as 'Mutiny' in the Report of the District Waqf Commissioner, Faizabad, dated 16.09.38), the British Government, apparently on political

grounds because of the loyalty and services rendered by the land lord / pattidari family of the village Shahanwa, continued the above mentioned amount in cash but from 1863 -64 A.D. onwards, the British Government considered it expedient to commute this cash payment into a conditional (mashrut) muafi land grant-a process which was completed by 1870 A.D. when, as explained further, the revenue-free land grant along with superior proprietor rights was bestowed on Mohammad Asghar and Mohammad Afzal Ali in the villages of Sholapur and Bhaharanpur but not in kot Ram Chander where the Janmasthan 'Mosque' stood. As such, all previous orders regarding the family grant to Muhammad Asghar/ Muhamad Afzal Ali were superseded by the final order passed in 1870 under the authority of the Governor General in council, whereby a sanad for revenue – free land grant was issued by the Chief Commissioner Awadh. On representation from the family, a decree to this effect was also given by the revenue authorities and entries were made in the revenue records accordingly during the same year (1870).

Later on when in 1938 A. D., controversy arose about the nature of the title to the land granted by the British Government for the maintenance of the 'Mosque', Pir Mir Taqi, the khattib and muazzan while tracing the genealogy of his family claimed that the Mugal King Babur built this 'Mosque' situated on the site of Janmasthan and granted an annual amount of Rs. 60/- and some arable land in madad-i-maash in the village Shahanwa to Sayed Abdul Baqi appointed as khattib and muazzan for his subsistence and the maintenance of the 'Mosque'. Later on, after the fall of the Mughal Empire, during the Nawabi period, Nawab Saadat Ali Khan, king of Awadh increased the annual grant to Rs.

302/3 as /6 pies. But as commented by the Waqf Commissioner, District Faizabad on 16.09.38, in this regard, no written accounts were submitted by the khattib and muazzan family to the British Government for the continuation or bestowal of fresh grant for the same purpose.

It has already been observed that although Muhammad Asghar and Rajab Ali claimed to be direct descendants of Sayed Abdul Baqui, the first khattib and muazzan supposed to have been appointed by Babur, no reference of cash assignment or madad-imaash land on hereditary basis can be traced in the first regular Settlement of the Village Shahanwa in 1861 A.D. All the same, on repeated representations to the British Government by Muhammad Asghar and Rajab Ali, the British Government having discontinued the annual cash grant, granted afresh land in muafi in the village of Bhuraipur and Sholapur in 1870 A.D. Later on the sanad issued by the Chief Commissioner clarifies that the cash nankar of Rs. 302/3as/6 pies received by Rajab Ali and Muhammad Asghar as rent-free tenure in Village Shahanwa under the former Government (Nawabi Rule) was being maintained ( as muafi land in the village of Bhuraipur and Sholapur) under the authority of the Governor General-in- Council so long as the object for which the grant had been made was kept up on the conditions that the assignees would surrender all the (previous) sanads, title deeds, and other documents relative to the grant in question and above all, they and their successors would “ strictly perform all the duties of land holders in matters of Police and any Military or Political Service that may be required of them by the Authorities ... If any one of these conditions was broken by Rajub Ally or

Mohammad Usgar or their successors the grant will be immediately resumed”.

A serious controversy about the nature of the land grant in the village of Bhuraipur and Sholapur earlier given by the British Government to the assignees (khattib / muazzan) which was also in a way connected with the ‘Baburi Mosque’ at kot Ram Chander, Ajudhya arose in 938 A.D. The District Waqf Commissioner, Faizabad (Eligible–S.M.Omais) vide his decision dated 16.09.38 while interpreting the sanad earlier given by the British Government to the assigness (khattib / muazzan) maintained that even though the grant was conditional on the performance of duties of land holders in the matter of Police, Military or Political Service, etc., the object for which the grant was made was the maintenance of the ‘Mosque’. He also stressed that the original object of the state grant of Emperor Babur and Nawab Saadat Ali Khan was also continued in the sanad by the British Government after the ‘Mutiny’, i.e., for the maintenance of the ‘Mosque’ and further that the nankar was to be enjoyed by the grantee for so long as the object of the grant, i.e., the ‘Mosque’, was in existence. In view of this, the Commissioner gave a ruling to the effect ‘clearly then the grant to Mohd. Zaki must be regarded as waqf, the purpose of which is the maintenance of the religious building known as the ‘Baburi Mosque’.

Muhammad Zaki, the (khattib /muazzan) ( also mutawalli in case of waqf) raised serious objections to the decision of the Commissioner, waqf Board. He maintained that the particular grant of land in Sholapur and Bhuraipur had been made by the British Government which was a non-Muslim body and hence the grant could not be taken as a muslim waqf. Moreover, as per sanad, it was conditional

grant subject to the performance of military, police and other duties, etc., and in case of non-fulfillment of the latter services, the grant could not be regarded as a Muslim waqf. He contended that after the annexation of Awadh, the British Government in lieu of cash nankar and madad-i-maash (as inherited from the Nawabi period ) granted land to Muhammad Asghar and Muhammad Afzal and in the first Regular Settlement (1861), it was entered in the latter's malkiyat (ownership). Thereafter, on February 03, 1870 AD., Muhammad Asghar and Muhammad Afzal got a decree in their favour whereby they were entered in the revenue records as superior proprietors and possessors in possession of the property ( malik-i-ala qabiz wa mutsarif jadaid) and since then, their descendants have continued with the same status. As such, the property falling in the category of superior proprietorship ( malkiyat-i-ala) did not fall in the definition of the Muslim waqf. He further contended even though, the descendants of Muhammad asghar, etc., had been bearing the expenses for the essential items of expenditure for the maintenance of the 'masjid Baburi', the family property was outside the jurisdiction of the Muslim waqf Act, No.12,1936 as the major amount of the income had been spent by them on their own subsistence as madad-i-maash, etc This had always been recorded in the khewat records as such.

Apart from the above arguments, Muhammad Zaki always maintained that Sayed Abdul Baqui, the First muazzan/khattib of the 'Mosque' appointed by Babur was a Shia and his descendants all through the ages, till date belong to the Shia sect and could not be coerced to accept the spurious contention that the 'Baburi Mosque' might be put under the control of the Sunni Waqf Board. This position

was taken by the (khattib/muazzan) family before the District Waqf Commissioner, Faizabad (1941). However, the latter's Report (dated February 08, 1941) simply reproduced and reiterated the position earlier taken by the District Waqf Commissioner in 1938 A.D. on the contrary, Muhammad Zaki and Malik Hussain, etc., the (khattib/muazzan) vide their Application dated 26<sup>th</sup> September, 1943 AD serial no.26, submitted to the Sunni Central Board of Waqf, U.P., Lucknow, took a clear stand that there was no waqf for their properties in the villages of Baharanpur and Sholepur with total annual income of Rs. 528/14 as (Rupees Five hundred Twenty Eight and Annas Forteen only, i.e., Rupees Three-hundred-fifty-one and Annas six (Rs. 351/6 as ) from the village of Bahoranpur and Rs. 177/8as (Rupees One-hundred, Seventy –Seven and annas eight) from Sholepur. They contended that earlier they had been bestowed grant (atiya) by Shahenshah Babur and Nawab Saadat Ali Khan and in the present case ( i.e. land/income from Baharanpur/Sholepur) they were strictly governed by the sanad nankar granted by the British Government. They further maintained that the khewatdara (i.e., the revenue authorities/ records) did not recognize this as waqf and that it had been recorded in the revenue records only as nankar muafi. Of course, in the past they had been looking after the white washing, lighting arrangements of the 'Mosque' and as well making payment of the salaries of the Muazzans/Imams, etc., Malik Hussain, s/o Syed Muhammad Zaki in his detailed letter No.5607 dated 20.11.43/22.11.43 in response to the Secretary, sunni Waqf Board 's communication vide no. 5272 dated 27 October, 1943, clarified his relation with the 'Baburi Masjid'. He categorically maintained (vide para 5) that there was neither any waqf for the 'masjid', nor there had ever been a

Mutawalli for it. Further, that his family has had muafi land (in the villages of Buhanpur and Sholepur) and being the lambardar ( head ) of the property and being ( good) Muslims, it had been looking after the repair etc. of the same and that he, too, as lambardar had been discharging this obligation since 17 February, 1943 . He stated that the expenditure incurred in this regard was from his family property which was in muafi nankar and not in waqf (Vide paras 8-9 ) . In this letter, he also gave some details about the items of white washing , repair and floor carpet etc relating to the ‘Masjid’ and some expenditure incurred in this regard since October, 1941. ( Vide paras 2-3, 10-11). Not with standing all this, the legal tussle continued and in 1945 A.D. it was considered that the muazzan/khattib family ( At this time kalab Hussain, the brother of the deceased Muhammad Zaki)had been all through Shias, even though the prayers in the past had been offered both by the Shias and the Sunnis.

It is equally important to note that during the 1930’s of the 20<sup>th</sup> century, as per statement of Muhammad Zaki, the Muazzan / Khattib even though he was looking after some of the essential items of the maintenance of the ‘Mosque’(i.e., whitewashing, lighting and flooring, etc.), from the income of the nankar /muafi grant held as malkiyat in perpetuity, he did not spend any money on the repairs of the ‘Mosque’in the aftermath of the riot in Ayodhya in 1934 A.D. The Collectorate and the P.W.D. records of the District Faizabad bear out the fact that the entire expenditure for the repairs of the ‘Mosque’was met by the District administration/PWD. Significantly, in the waqf records of the Sunni/ Shia Boards of waqf or the Collectorate/UP. Government Records, there is no mention

of any Mutawalli or waqf from the income of which the structure of the ' Baburi Mosque' might have been rebuilt. Valuable revenue free grant of land held by Muhammad Zaki etc. in the villages Burhanpur and Sholepur allegedly attached for the maintenance and upkeep of the same.

An elementary knowledge of the Mughal agrarian system/ Nawahi phase and the British administration in India as well as an understanding of the nature of various categories of land grants for administrative purpose or to the religious institutions would clearly show that there has always been a basic difference between nankar (for personal maintenance) and waqf. In this regard, the contentions of the grantees, i.e. Muhammad Asghar, etc. (19<sup>th</sup> Century) and Mohd. Azkil Kalab Hussain/Malik Hussain, etc. have been absolutely correct and tenable that their properties in Shahanwa/Burhanpur/Sholepur could not be categorized as waqf. As such, they do not show any waqf relating to the alleged 'Baburi Masjid'. Even in the Judicial records of the various suits pending before the Lucknow Bench of Allahabad High Court, there is no registration of any waqf having any connection with the alleged 'Baburi Masjid' as per records of the Sunni Central Waqf Board.

After the above mentioned enquiry by the District Waqf Commissioner, his report as prescribed under the U.P. Muslims Waqfs Act, 1936 along with the lists of the Shia Waqfs and Sunni Waqfs was forwarded by the U.P. Government to both the Shia Central Board of Waqfs and Sunni Central Board of Waqfs as each of the two Waqf Boards were to publish the report along with their respective lists in Official Gazette, under sub-section (1) of Section 5 of the Act. In the Shia –Sunni legal Tussle that followed, the Sunni Central Board of Waqf claimed that it was published

as a Sunni 'Mosque' in the U.P. Gazette dated 26.02.1944, even though in reality, the particulars of the ' Baburi Mosque' or the qabaristan ( graveyard) attached to it, do not find any. Place in the list of Waqfs published in the Government Gazette dated 26.02.1944.

As the Shia Board Claimed it to be Shia Waqf, it filed a suit to get over the effect of the Waqf Commissioner report on the assumption that the ' Baburi Masjid' had been notified to be a Sunni Waqf in the above mentioned Gazette notification dated 26.02.1944 under Section 5 (1) of the U.P.Muslim Waqf Act, 1936.

Thus confronted with a faith accompli of the Baburi Masjid having been included in the list of the Sunni Central Board of Waqf by the Chief Commissioner of Waqfs under section 4 of the U.P. Muslims waqf Act ( XIII of 1925 ) as well as by the Sunni Central Board of Waqf, U.P. and also assuming the fact that the same had been published in the Government Gazette dated 26.02.1944, the Shia Central Board of Waqf U.P., as Plaintiffs in the Regular Civil Suit No.29 of 1945, sought a declaration that the 'Mosque' was a Shia Waqf together with the idgah attached to it at Jaipa Nala, Ayodhya, and village Behrampur, Pargana Haveli and 20bighas odd land, known as sholepuri grove, in mahal Bharanapur, in Tehsil and District Faizabad. As a matter of fact, when face to face with the issue that under the law, the 'Mosque' had to be essentially attached with either of the Waqf Boards, i.e. Sunny/Shia, the Waqf Board in the plaint came upwith the contention that Sayid Abdul Baqt ( Mir Bagi), the builder of the mosque', in 1528 AD, during the reign of the Mughal Empror Babur, was a Shia and that being the founder-waqf as well the first Mutawalli of the 'Mosque', followed since then by a lineage of successive

Mutawallias till date (1945) with Kalab Husain as the Mutawali in 1945 after the death (1944) of his brother Mohammad Zaki and as such, the 'Mosque' was a Shia waqf. Even though, as already stated, earlier Mohammad Zaki/Kalab Husain in the official documents submitted to the office of the District / Commissioner of Waqf, had always maintained that there had been no Mutawali since the building of the mosque as they were merely khatibs and muezzins looking after the 'Mosque' by meeting some of the incidental charges from the income of their personal proprietary lands in the village of Sholapuri and Behrampur which were not in waqf now under the compelling circumstances, with a view to tide over the technical, legal difficulty and to get the 'Mosque' legally declared as a Shia Waqf, it was contended for the first time that the cash nankar (Rs. 302/3 as /6 paise) bestowed during the Nawabi period and the properties in Sholepur and Behranpur granted by the British Government, as revenue-free grants, confirmed by a decree in proprietary rights, revenue free now passed in favour of hereditary mutawallies who since then had been observing the terms of the grant and filing accounts before the S.D.O.

It was also claimed by the plaintiffs i.e. the Shia Central Board of Waqf, that its mutawalli was entitled to the supervision of the 'Mosque' as it was Shia Waqf and that the Chief Commissioner of Waqf had not sent the list of Sunni Waqf to them even though the latter had included the 'Mosque' in its list supposed to have been based on the publication in the Gazette.

The Sunni Central Board of Waqf, in its defence statement asserted that the 'Mosque' was founded by Emperor Babur who was a Sunni and that its pheshhawar

khatibs and muezzins had been of the same sect until much later on, one of the phes hawars / mutawallis in the pedigree list i.e. Mohamad Afzal became a convert to Shia during the closing period of the reign of the kings of Awadh, who were Shias. It was also asserted that the 'Mosque' had always been used by the sunnis of Ayodhya for saying their Friday prayer and the Idgah as noted above, was quite independent of the 'Mosque' and was similarly used by the Sunnis for their Id and Baqrid prayers.

In the continued litigation between the above two parties, the Court of the Civil Judge, Faizabad, which tried the case as a preliminary issue, vide-judgment dated 21.04.1966 held that "no valid notification under Section 5(1) of U.P. Muslim Waqf Act No.XIII of 1936 was ever made" relating to the specific disputed property. As such, the judge made it clear that the allege notification of in 26.02.1994 did not specify the property in suit as waqf property and that it was of no legal effect. This finding became final between the two parties. Later on, in the case of Gulam Abbas V. State of U.P. ( vide AIR 1981 S C. 2196, pp. 2217-18, Paragraph 17,) in the case between the Shia and the Sunni Muslims, the Hon'ble Supreme Court of India also found the above mentioned notification of the U.P. Government dated 26.02.1944 to be "of doubtful validity and probative value," and held, it to be of no legal effect. As such, in view of the judgment of the Supreme Court, the said notification dated 26.02. 1944 was involved and that the suit No.29 of 1944 could not have been filed under Section 5(2) of the Waqf Act, with the result that the judgment in that case Date 30.03.1944 **IN THAT SUIT IS WITHOUT JURISDICTION** and the findings recorded therein with regard to the waqf issue are of no legal effect.

The earliest regular Settlement of 1861 A.D. as well as the later reports confirm the fact that these had been prepared taking into consideration the past records of the Nawabi period as well. As a matter of fact, as per the original documents, the entire complex of Janmasthan is covered under khasra No.163 with 9 Plots, with total area of 5 bighas and 4 biswas. However, under column No.16 of Kaifiyat, it is stated that in the area of Janamasthan, there is one pacca well, three whose number is recorded in Kahasra abadi and Khana grave yard ( qabristhan). As district from the khasra kishtwar, in khasra abadi Nos. 431-456, (as recorded corresponding to No.163 of the former) shows abadi (Population) in this area. They do not mention the existence of any 'Mosque', though, in the kaifiyat they mention the prevalence of pacca graveyards imli threes and makans (houses ) etc. in the campus. For 4 bighas and 13 biswas, the superior ownership of the land has been declared in the name of Sarkar Bahadur Nazul ( Government), and vide Khatauni No. I, 1878 11 biswas have been shown a muafi under mahal Azahar Hussain. In the settlement of 1301 Fasli/1893 A.D, in the khasra kishtwar, the same khasra number (163) remains, though the entire area is shown under 5 plots instead of 9 as previously in the 1861 settlement report Both in the khata Khatauni/khewat the Hindu Mahants of Janmasthan have been shown with subordinate proprietary rights as malikan-i- matehit along with their respective shares. But later on these nos. undergo a change during the Fasli 1344/45 /1936-37 AD Settlement Report but the position of 1861 persists even in later Settlements effected from time to time during the 19<sup>th</sup> and 20<sup>th</sup> centuries. It is also clear that the area on which the structure of the ' Baburi Masjid' stood is a part of the Janmasthan and under the subordinate ownership (malik

mataiht ) of a Hindu Mahant.

This position was inherited by the early British administration from the earlier records of the Nawabi and the Mugal periods. However, in the Settlement Record of 1861 of the Mahafazkhana, certain later alternations have been made wherein the name of Jama Masjid and the word muafi has been inserted. In Plot No.163/1 the words JamaiMasjid , uafi and Azhar Hussain under coloumns No.2,3 and 4 respectively have been added. But the copies of the same document prepared during the same year available at the Tehsil office wherein only the word Jamai masjid has been added in column No.2 but not muafi and Azhar Hussain in column nos. 3 and 4 as against Muhafaz Khanna Report clearly prove that the later additions are interpolations, done perhaps during the past few decades of the controversy. This is also confirmed by the fact that the Khasra Kishtwar records of the second Revenue Settlement effected in the year 1301 Fasli (1893 A.D.) do not carry out such alternations or additions. These records still show the area on which 'Baburi Masjid' had been earlier constructed as forming a part of the Janmasthan complex and there is no mention of any 'Mosque' nor any land assigned to it in muafi. It is evident that interpolations in the settlement Report of 1861 of the District Record Office ( Muhafz Khanna), Faizabad have been done for a few other khasra kishtwar nos. as well. All this needs a through probe on scientific basis.

As already stated, according to the revenue Settlement effected in 1861 AD, the total area covered by khasra no.163 relating to Janmasthan has 9 distinct plots. There have been two more settlement operations since then. However, in the revenue settlements effected from time to time, the

khasra/khewat/khata Khatauni Number as well as the nos. of plots undergo a change and there are also adjustments with the neighboring plots. But the table of equivalent past numbers and parts thereof along with the current (ha 1) numbers Fard Mutabaqat )is always appended and forms a part of the Settlement Report. In the latest revenue records of 1397-99 Fasli/1989-92, the erstwhile Janmasthan complex has been shown in four khasra Nos. , i.e., 159,160-,146, and 147. The major portion of the Janmasthan complex comprising Ram Janmabhoomi, the so-called Baburi Masjid as well as the new Janmasthan falls under Khasra Nos. 159,146 (vide khata Khewat No.35) and 147 R wherein the names of the Mahants alongwith the areas in their ownership have been recorded. Only some portion of the complex falls under No.160 which too is shown under mahal Nazul Sarkar. In brief , Janmabhoomi/ ‘ Baburi Masjid’ have been recorded under No.159 and 160. The entire khasra No.159 has been entred in the ownership of ‘ Shri Danesh Dhari Bhagwan Bara Asthan, Ajodhya’ whereas some portion falling in khasra no.160 has been recorded in the ownership of Sarkar Nazul. There is no muafi/waqf of any type associated with the ‘Mosque’.

The entire Revenue records dating from the first Settlement (1861 A.D.) have been examined. There is no record of any of ‘Baburi Masjid’ any where in the documents maintained by the Revenue Department of the Government of U.P. at the Collectorate and the Tahsil at Faizabad.

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Government of U.P. at the Collectorate and the Tehsil at Faizabad.

As distinct from the above mentioned revenue records, the Nazul Department of the District Faizabad, (U.P.) also prepared its own amended Khasra records of the abadi settlements. ( tarmimi khasra abadi ) in 1931 AD. In these revised khasras of village Ramkot, both 'masjid' and chabutra indicating the temple and Janmasthan have been recorded in khasra no.583. The 'Mosque' has been shown in waqf under column 'name of the present possessor' ( Nam Hal Qabij). At the same time, Mahant Charn Das in 1931 and thereafter Mahant Raghu Nath Das in 1941 have been declared under-proprietors (Telir mataht) of the entire plot. Moreover in these khasra records, arazi No.586 with an area of 11 biswas, 16 bishwansi and 16 Kachwanis ( 11-16-16) being in abadi is shown as grave yard ( a pecca qabaristan known as Gang Shahid ) and assigned in waqf (waqf shad Shahi).

A note of caution is necessary with regard to the alleged khasra and map maintained by the Nazul department in the Faizabad Collectorate which is relied upon by the plaintiffs. The map maintained by the Nazul Department is not authenticated, nor prepared under any law, department is not authenticated, nor prepared under any law, nor is it according to any ascertainable scale. The survey made on the basis of the khasra abadi and that map of the Nazul department at the instance of the Plaintiffs in that suit has been rejected by the High Court's Full Bench which is trying the case and a fresh survey has been ordered on the basis of revenue records in order to ascertain the exact situation of the land involved in that suit. It is noticeable that the plot numbers given in the plaint of that suit are based on the said

khasra abadi of the Nazul department. There no Fard Mutabiqat comparative table between the plot numbers given in the khasra abadi of the Nazul department and the khasra abadi maintained by the Revenue Department of the Government.

In fact, the purpose of the Nazul (Municipal) survey and the map prepared in 1931 AD was to identify the encroachments made on the Nazul property. Such a survey map cannot take precedence over the regularly conducted revenue settlement operations and the maps prepared thereupon, especially when the title to land is involved. In its order dated 10.01.1990, the High Court directed the Board of Revenue, U.P. State, to survey the site and make report with the assistance of the municipal records and such other records which it considered to be useful and in its further order dated 23.5.1990 directed it to execute the commission and locate the plots with reference to documents on records only. The commissioner, Shri J.P. Srivastava, appointed by the board of revenue for the purpose, submitted his report on 25.07.1990 wherein he had located the disputed property with reference to the Nazul map of 1931, even though he conceded that the Nazul map and the settlement maps were on different scales and that it was not possible to juxtapose the two maps and prepared fard Mutabiqat and corresponded the Nazul khasra numbers with the settlement khasra numbers. Thereupon, the Hon'ble court passed another order directing the commissioner to submit supplementary report surveying and locating the property with reference to settlement maps of 1861 and 1937 A.D. The commissioner submitted his supplementary report dated 8.2.1991 appended by 14 Annexures, to which serious objections were made by the Defendants.

In fact, the commissioner instead of surveying the land of his own had ' Baburi Mosque' , grave yards, the shilanyas site and various other plots, Such an act on the part of the Commissioner for having accepted the Plaintiff's map and adopting it as his own official map for submission to the court was characterized by the latter as 'wholly unwarranted'.

Having gone through the pros and cons of the entire case, Hon'ble court in its judgment on 8.8.91, even though it refrained from calling the commissioner's report as 'motivate', described it as "absurd". It refused to accept the commissioner's view that correct map and report about kot Ram Chandra were possible only in reference to Nazul map and that the Settlement maps were not correctly prepared. In its judgment, it refused to keep the report of the commissioner on record in the pending case.

Shri H.S. Jain, Advocate has further argued that on the basis of material available on record, it can safely be presumed that there was construction prior to the erection of Babri Mosque. The Temple Janam Sthan was destroyed and it was converted into a mosque. It is further submitted that plaintiffs cannot take any advantage of two inscriptions found inside the mosque to establish that the mosque was not constructed at the site of Ram Janam Bhoomi temple after its demolition. His submissions are as under:-

Now, there were two inscriptions inside the mosque, which were first in a riot in 1934 and subsequently restored from some stamp age alleged to have been preserved. The one which was originally there on the southern side of the pulpit reads as under :

By order of kind Babar whose justice is an edifice meeting the palace of the sky. (1)

This descending place of angels was built by the fortune-favoured noble Mir Baqi. (2)

The good will remain everlasting, and, when I utter the words; The good will remain everlasting', the year of its erection becomes manifest. (3) <sup>1</sup> For the expression, the good will remain everlasting, the Persain original is 'buwad khair baqi', which, rendered into cardinal numbers, comes to 935 A.H./1528 A.D., as under :

b	=	2
w	=	6
d	=	4
kh	=	600
I	=	10
r	=	200
b	=	2
a	=	1
q	=	100
i	=	10
Total		= <u>935</u>

Muslim authors have invariably erred in dating the event as 923 or 930 A.H. instead of 935 A.H. The source of the error is a misreading of the date given above in the form of Arabic /Persian alphabets arranged into words, which are : b u w a d k h a i r b a q i . What they have done about it is to drop ' b u w a d'

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1. Ba- farm udah –I shah-I Babar ki 'adl-ash  
Bina'I 'st ba kash-I gardun mulaqi (1)  
Bina kardah Tn mahbal-I qudsiyan ra  
Amir-I sa' adapt-nishan Mir –Baqt (2)  
Buwad khayr baqt wa sai-T bndyash  
Ayan shud chu guftain, buwad khari baqt (3)

And read only the rest, 'k h a i r b a q i', which does give 923 A.H. Incidentally, the 'u', 'a', 'a', are, in Arabic / Paersain, diacritical marks, which are not counted.

Well, the order constricted or reconstructed inscription reads as under:

In accordance of the wishes of the ruler of the world, Babar, this lasting house (of God), like the palace of the spheres, was founded by the fortune- favoured noble Mir Khan. (1-2)  
May such a founder thereof ever remain, and such as king of the world and age. (3)

8. Sahifah-I Chihal Nasa ih-I Bahadurshahi (the Bahadurshahi Book of Forty Sermons). Besides stating, as well as see in the sequel, on the basis of old records (Kutub-I sabiquah), that the Muslim rulers of the past used to demolish temples and break down idols at Ayodhya in pursuance of their policy of rooting out Infidelity and that Babar did replace the Rama temple by the Babari mosque, Mirza Jan, author of an Urdu work Hadiqah-I Shuhada and an active participant in the crescentade (Jihad) to recapture the Hanumangadhi from the Hindus, harks back to a Persian text entitled Sahifah-I Chihal Nasa'ih-I Bahadurshahi, ascribes it to the daughter (befi) of "Bahadurshah 'Alamgir" (full name Bahadurshah Shah-I Alam, here surnamed 'Alamgir either inadvertently or on the basis of his being Aurangzib 'Alamgir's son", claims to have found a copy of the book made on 15<sup>th</sup> Shaban 1231 A.H./11<sup>th</sup> July 1816 AD in the library of Mirza Hydar Shukoh son of Mirza Sulayman Shukoh (son of Prince Dara Shukoh), and quotes from it verbatim (hub a-hu) a passage in original of some twelve lines setting out the twenty-fifty out of forty sermons, to the effect that, keeping the triumph of Islam in view, devout Muslim rulers should keep all idolaters in subjection to Islam,

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1. Ba-mansha'I Babar Khadiv-I jahan Basani ki ba kakh –I gardun inah (1)  
Bina kardah in khanah-I payaddr  
Amir –I saadat-nishan Mir Khan (2)  
Bi-mandah hamishah chunin bani-ash chuan shahryar-I zami-o zaman (3)

Brook no laxity in realization of fizyah, grant no exemption to Hindu Rajah-s from dancing attendance on Id days and from waiting on foot outside mosques till the end of prayer (namaz) and discourse (Khujbah), and ‘ keep in constant use for Friday and congregational prayer the mosques built up to strengthen Islam after demolishing the temples of the idolatrous Hindus situated at Mathura, Banaras, and Awadh etc., which the wretched infidels have, according to their faith, adjudged to be the birth-place of Kanhaiya in one case, Sita Rasol in another, and Hanuman’s abode in a third and claim that after conquest of Lanka Ramchandra established him there. And, as has been stressed, idol – worship must not continue publicly, nor must the sound of bell reach Muslim ears.<sup>1</sup> It would be pertinent to point out that, as will be borne out by others, too, in the sequel, the mosque became better known as Sita Ki Rasoi mosque, Mirza Jan does not mention the name of Bahadurshah’s daughter (Bahadurshah ‘Alamgir ki beti ), nor does he indicate the date of composition of her work. The king did have a daughter, Dahr Afroz Banu

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1. IBARATI NASIT. AT-I BISTO-O PANJUM AZ SAHIFAH-I CHIHAL NASA’IH-I BAHADURSHAHI KI BA-TARIKH-I PANZADAHAM SHA’BAN 1231 HIJRI NAQL. SHUDAH DAR KUTUBKHANAH-I MIRZA HAYDAR SHUKOH IBN MIRZA SULAYMAN SHUKOH DAKHIL SHUD AZ KITAB-I MADHKURAH NAQL KARDAH SHUD:

‘ Badshahan ulu ‘I , -azm ra iazim ki ...ghalabah-I aim-o Islam Malhaz dashtahhamahmushrikanra ma(i-I Islam daran , wa az akhdh-I jizyah ki bar kuffar-I fujjar ijra yaftah ast dar nah guzaran, wa jami’ rajgan ra az hukm-i-ihqar-I roz-I idayanwa piyadahistadah Mandan bairun-I masjid ki dar ma’ mutah-I khud-ha ba-farman-I badshahi sakhras and ta inqida-i namaz-o khutbah mu ‘af nah darand. Wa mu’ahid –ha-i Munud waqi-i Mathura wa Bandras wa Awadh waghyrah ra ki kuffar-i nabakar ba-I khud-ha jai ia mawaldgah-I Kanhaiya wa maqam-i Sita wa makan-I ra gardgarh-i Hanuan gardr dadah and wa mi – guyand ki bad fath-i Lanka Ramchandra Hanuman ra dar an ja nishanidsh ast mismar gashtah bara’i taqwiyyat-I islam dar zn ham ja masjid ta ‘mir shudah and, zn masjidiz az jum ‘ah –o jama’atkyui nah darand, chunan-ki qadghan ast ki rasm-I buipatasfi ba-i’ tan nah shawad wa sada-i naquas ba gosh-iaht-i

Islam nah rasad.”

Sahifah-I Chihal Nasa'ih-I Bahadushahi, quoted in Mirzaq Jan , Hadiquah-I Shuhada, p. 6

2. Kamalu'd Din Haydar Hasaniyy-u 'i Husayniyy, Qaysaru'i – Tawarikh, otherwise known as Tawarikh-i Awadh, Vol, II, p.117

Begum, who died at the age of forty at Kabul on January 25, 1703, But she is not likely to be the writer of the book, for the simple reason that the date of its composition cannot be supposed to be prior to 1707, when Aurangzib died and was succeeded by his son Bahadurshah. Had it been during Aurangzib's reign, the book would have been titled after the name of Aurangzib rather than of Bahadurshah. According to the Foreign Department Political Consultations, December 28, 1855, No. 450, the Prime Minister of Wajid 'Ali Shah 'referred to a book which existed in the King's library written in the reign of Bahadurshah about the year 1707 A.D. which contained an account of the masajid at Hanumangarhi<sup>1</sup>. The Persian text under examination des contain, inter alia, an account of the mosque built at Hanuman's abode (later named Hanumangadhi). In fact, while quoting the above passage from the work, Mirza Jan prefaces it with a special mention of that mosque thus; In short, these four mosques [Babari mosque, Ram Darbar mosque, fort mosque, and Hanumangadhi mosque] built by the rulers of the past were situated at Ayodhya like four pillars of the faith. And there is clear description thereof in the books of history, particularly (existence of) the Hanumangadhi mosque is established by a passage of the Shifah-I Shahi ( i.e. Sahifah-iChihal Nasa''ih-I Bahadurshahi), which Bahadurshah' Alamgir's daughter has written ( comprising ) forty sermons... <sup>2</sup> This creates a strong presumption in four of the view that it this book which the prime Minister had in mind. Thus, the date of composition of the work transpires to be 1707 A.D. It means that Bahadurshah had an elder daughter, too. Now, Mirza Jan is not the only medieval writer to refer to the work under

consideration. While relating the tale of destruction of the Rama Temple, Mirza

1. G.D. Batnagar, Awadh under Wajid 'Ali Shah, pp. 136-137
2. "Gharad yeh charoh masjidin banwaihu in sala ( in-i-madiyyah ki char arkan-i Imam ki (arah-Awadh meih waqi' thin our kutub-I tawarikh mein taseih hai,khususan Hanuman Gadhi Ki Masjid Barat-I Sahifah-I Shahi se ki BahadurShah Alamgir ki beti ne chihal nasaa ih likhi hai.

Mirza jan, P.6

Raja 'Ali Beg Surur, whom we shall have occasion to notice in the sequel, hints at his sources including this work thus: 'It has been dealt with in the books of history. And in the Sahifah-I Bahadurshahi it has come to be described in detail with reference to year and date. Whoever may choose may look into it. <sup>1</sup> The concluding sentence of the excerpt seems to suggest that the work referred to therein under a shortened title was easily available during the first half of the last century, may be in print.

If the sahfah-I Chihal Nasaih-I Bahadurshahi is extant any where in print or in manuscript, it needs to be traced out and salvaged without loss of time. My personal attempt in this behalf, with the meager resources at my disposal, has not yet borne fruit and I had to make do with furnishing to VHP and through them to AIBMAC only the passage quoted from it by Mirza Jan. Mirza Hayda Shukoh's library must have come into the hands of the British after the 1857turmoil and transferred to some other institution by them. It should not be so difficult for VHP to track it down.

There are over a dozen Urdu sources shedding light on the existence and demolition of the Rama Janmabhumi (Sita Rasoi) temple and erection of the disputed mosque on its site by Babar. Out of these I could lay my hands upon eleven, which are dealt

with below:

9. Application dated November 30, 1858, filed by Muhammad Asghar, Khatib & Mu'adh-hin, 'Babari Masjid', for initiation of judicial proceedings against the 'Bairagiyan-I Janmasthan', calling the mosque 'masjid-I Janmasthan' and the courtyard near the arch and the pulpit within the boundary of the mosque 'maqam Janmasthan ka'. The Bairagi-s had raised a platform in the courtyard which the applicant wanted dismantled. He mentions that the Janmasthan area had been lying unkempt/in disorder (parishan) for hundreds of years and that the Hindus carried on worship there (maqam Janmsthan ka sad-ha baras se parishan para rahta tha. Ahl-I Hunud puja karte the) <sup>2</sup> Well, if the mosque (once described by the applicant as 'masjid'I Babari') is the Janmasthan mosque, its courtyard is the Janmasthan, and the Hindus had all along been carrying on their worship (and all that it implies) there, it can safely be presumed that there used to be some construction there as part of a (Janmsthan) temple, which came partly to be destroyed and partly converted into the existing mosque. And the Hindus had no alternative to making do with the templeless courtyard. It is indeed unthinkable that they might have been carrying on.

1. Mirza Raja b 'Ali Beg Surur, Fasanah-I ibrat, p. 121

2. Sayyid Sabahu 'd-Din 'Abdu'r-Rahman, babari Masjid, pp. 29-30.

Worship without a proper temple at such a sacred place and for such a long time.

10. Lachhmi Narain Sadr Qanungo, assisted by Munshi Mawlawiyy Hashim, Asrar-I Haqiqat, Lucknow, 1923, gives details about the replacement of the temple by the mosque.

11. Muhammad Najmu 'I-Ghani Khan Rampuri, Tarikh-I Awadh, Lucknow, 1919, Vol, V, says: 'At Ajodhya, where there stood the temple of Rachandra Ji's Janmasthan, there is Sita Ji ki Rasoi adjacent to it, King Babar got a magnificent mosque built there, which is the Jami 'Masjid, in 933 A.H. under the patronage of Sayyid Musa' Ashiqan, the date of which is Khayr Baqi (923). Till date the mosque is called Masjid –I Sita Ki Rasoi. And that temple is extant by the side.... Babar got the mosque built after demolishing the Janmasthan, and used in his mosque the stone of the same Janmasthan, which was richly engraved, precious kasauft stone, and which survives even today.' <sup>2</sup>

12. Sayyid Kamalu 'd–din Haydar Hasani-u 'I-Husayni-I 'I-Mashhadi, Qaysar-u 't-Tawarikh, otherwise known as Tawarikh-I Awadh, Lucknow, 1896, Vol. II, locates the mosque in question in Sita Ki Rasoi Temple (jami' masjid jo Sita ki Rasoi mein hai) (p.111) as well as ' in the Janmasthan, namely the birthplace of Rama son of Rajah Dasaratha, adjacent to the house of the Rasoi of Sita wife of the said Rama '(masjid-I jami' bina-i Babar Badshah waqu' Janmasthan ya'ni Masqat-I ras-I Rama pisar-I rajah Dasraatha Mullasi-I makan-I Rasoi-I Sita wife of Ram –i madhkur ) and acknowledges that all the temples of Ayodhya were turned into mosques by the Sultan-s of the past (badshahan-I salf ne tqmami mu abid-I Hunud shahr-I Awadh mein jahan bade butkhane the masjid-I jami ' baja-I butkhanahi mukhtasar banwa kar mudhdhin our jarub-kash muqarrar farmaya). (p.117) <sup>3</sup>

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1. Lachmi Narain, assisted by Munshi Mawlawiyy Hashim, Asrar-i Haqatt.
  2. Allamah Muhammad Najmu 'I –Ghani Khan Rampuri, Tarikh-I Awadh, Vol. V., pp. 200-201.
  3. Sayyid Kamalu'd –Dins, II, pp.110 ff.

Here, it appears, some words are missing in print between 'Jami', and baja-i. Obviously, what is meant to be said is that the Sultan-s replaced big temples by jami' masjid-s and small by samal mosques. And this all is from a lega document dated July 1855 given by the author.

13. Haji Muhammad Hasan, Diya-I Akhtar, Lucknow, 1878, says: Sayyid Musa 'Ashiqan built a mosque after leveling down Rajah Ramachandra's palace and Sita's kitchen by order of Zhiru'd –Din Babar, king of Dihli, in 923 A.H., and king Mihiyy-u'd-Din Aurangzib 'Alamgir built another mosque at the same place. <sup>1</sup>

14. Munshi Ram Sahai Tamanna, *Afgalu't-Tawarikh*, being the 2<sup>nd</sup> volume of his *Ahsanu 't-Tawadrikh* in three volumes, Lucknow, 1879, describes Babar's mosque as 'masjid-I Janmasthan' ( *Baqi-mandgan ne masjid-I Awadh, Janmasthan mein panah ti*). (p-110) <sup>2</sup>

15. *Muraqqahi- Khusrawi*, otherwise know as *Tawarikh-i Awadh*, by Shykh 'Azamat' Ali Kakorawi nami (1811-93), who happened to be an eye-witness to much that passed during kind Wajid 'Ali Shah's regime. The work was completed in 1869 but could see the light of day as late as 1986, short, however, of its section published separately and later, in 1987, under the title *Amir 'Ali Shahid aur Ma'rakah-i Hanumangadhi*, which alone is germane to our enquiry, and the opening paragraph of which is reproduced here in translation, omitting very few details: 'According to old records, it has been a religious rule with Muslim rulers, after the triumph of Sayyid Salar Mas'ud Ghazi, to build mosques, monasteries, and inns, spread islam, and put a stop to blasphemous practices (bid'at), whereeverthey found manifestation [of infidelity]. Accordingly, even as they cleared up Mathura, Bindraban, etc. from the rubbish of non-Islamic practices, the magnificent Babari Mosque (Masjid-I sarbaland-I Bahari) came up in 923 A.H. under the patronage of Sayyid Musd.

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1. Haji Muhammad hasan, *Diya-I Akhtar*, pp.38-39

2. Munshi Ram Sahi Tamanna, *Afdalu 't-Tawarikh*, being the second volume of his three –volume work, *Ahsanu 'i-Tawarikh*, p. 110.

Ashiqan in the Janmasthan temple (butkhane Janmasthan mein) in Faizabad–Awadh which was great place [of idol-worship] and the capital of Rama's father.' <sup>1</sup> Again: "Among the Hindus it was known as Sita Ki Rasoi.' <sup>2</sup>

16. *Fasanah-I Ibrat*, written by Mirza Raja' All Beg Surur (1787-1867) in 1860 circa but published first in 1884. It says that a glorious sky-high mosque was built up during king Babar's regime on the spot where Sita ki Rasoi tomb (?) is situated, in Awadh. During this Babri (dispensation0 the Hindus had noguts to be a match for the Muslims. [The mosque] was built in 923 A.H. under the patronage of Sayyid Mir-Ashiqan...There [on the Hanumangadhi ] Aurangzib constructed a mosque ...The Bairagi-s

effacted the mosque and erected a temple in its place. Then they intruded into the ‘Masjid-I Babari’ where the Sita ki Rasoi’ was situated.-<sup>3</sup> The author adds that ‘formerly, its is shaykh’ Ali Hazin’s observation which held good’ and quotes his Persian couplet:

Bi-bin karamat-I butkhanah-I mara ayshaykh!

Ki Chun kharab shwad khanah-I khuda gardad

Translation: O Shaykh! Witness the miracle of my house of idols: ‘When despoiled, it becomes a house of God (i.e. a mosque):’ Purporting to mean that formerly temples were demolished for construction of mosques, Surqr laments that ‘ties have so changed that now the mosque was demolished for construction of a temple (on the Hanumangadhi)-4

17. A work in Persian, written presumably in early last century, by a Muslim saint Mawalayiy “ Abdu i-karim, who belonged to the line of Sayyid Mir Musa Ashiqan at whose instance/under whose patronage Babar is said to have ordered replacement of the temple by the mosque. It was translated into Urdu and probably enlarged by Mawalayiy’ Abdu’I-Ghaffar

1. Shaykh Muhammad ‘A Zamat ‘Ali Kakorawi Nami, Amir ‘Ali Shahid aur Ma’rakah-I Hanumangadhi , pp.9-10
2. Ibid, p. 10
3. Mirza Rajab’Ali Beg Surur, Fasanah-I Iorat, pp.121-122
4. Ibid. p. 122

Under the title Gumashta Hatat-I Ajodhya Ya ‘ni Tarikh- Parinah-I Madinatu ‘I –Awaliya, which saw the

light of day at Ayodhya before 1932. <sup>1</sup> It was later published by the Nami Press, Lucknow in 1979 and 1981. The first edition –and I have not seen the 1979 edition –carried an account of how Babar decided and proceeded to demolish the Rama Temple and build the mosque on its site under the influence of Sayyid Musa ‘Ashiqan. But the entire account is conspicuous by its absence in at least the 1981 edition. I possess a Xerox copy of the last, 1981 edition as well as page 40 only of an earlier edition. This page contains a reference to the ‘Koji-I Rajah Rama Chandra Ji ( Ramkot), ‘makan-ipaida’ish’ (birth-site), and bawarchikhanah rajah-imawsuf ka ( the said Raja’s Kitchen), and adds: And now they call it Janmasthan and Rasoi-I Sita ji. Having demolished these structures, king Babar got a majestic mosque constructed. The reason for the construction of this mosque will follow in the sequel,’ <sup>2</sup> The tragic tale of vandalism and its subsequent details promised here have been totally excluded from the 1981 edition. If not from the 1979 edition also, which, we have not been able to lay our hands on. The 1981 edition, too, however, contains certain relevant indications. According to it, for example, Babar came all the way from Kabul to Awadh in disguise, donning the garb of a faquir, Qalandar to be precise. Here he met Shah Jalal and Sayyid Musa ‘Ashiqan and took some pledge before these saints in lieu of their blessings to conquer Hindustan. The pledge has not been spelled out here, but it has been made plain that it is in pursuance of this pledge (iqrar) that he got the mosque raised after conquering this country. <sup>3</sup> It is obvious that construction of just a mosque of normal size and shape is nothing compared with the conquest of India to secure which Babar had to undertake the arduous

journey from Kabul to Ayodhya in disguise. We may,

1. Cp Avadh-Vasi Lala Sita Ram, Ayodhya ka Itihasa, p.3
2. Mawalwiyy'Abdu'I-Ghaffar, Gumgashtah Hatat-i-Ajodhya Ya ni-Tarikh-i Parinah-I madinatu ' I-Aliya, some older edition .
3. Ibid, Lucknow, 1981, pp. 61-62.

Therefore, take it for granted that demolition of the Rama temple did form part of the pledge.

The information contained in Mawlawiyy" Abdu 'I-Karim's book is so germane to our enquiry and so pregnant with implications that I consider it necessary to discuss its relevant text in full. The author says: 'when a boy, Sultan Babar, who belong the family of Timur, came from Kabul to the town of Awadh in disguise, donning the garb of an ascetic. Those days, the town of Awadh was under the Sutanate of Sikandar Lodi and the place was a (Second) Capital of the Sultanate. Sultan Babar paid a reverential visit to His Holiness Shah Jalal and Sire Musa' Ashiqan and solicited occult favour from them, so that the ancestral Sultanate of Hindustan might come into his hands thanks to the blessings of those saints. Prince Babnar took leave of those personages, went to Kabul, mustered an army, brought it to Hindustan, and fought with Sultan Sikandar Lodhi (sic) at the (battle) field of Panipat<sup>1</sup>. A little later the author adds: 'Accordingly, in fulfillment of the pledge kind Babar had taken before those saints, Babar appointed Mir Baqi to it and got a magnificent mosque constructed... <sup>2</sup> Here the pledge taken by Babar has not been specified. Avadh-Vasi Lala Sita Ram uses the original edition of the work, from which it appears that the latest, edition leaves out the saints' reaction to Babar's request, which is to this effect:

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1. "Sultan Babar ki jo Amir Timur ki nasi se apne bachpan ke zamqnah meih khu fiyyah ( awr par libas tabdil kar ke

faqiron ki (arah Kabul se – shahr-i Awadh mein qya. Us waqt shahr-i Awadh mein Sikander lodhi ki Saltanat thi our maqam saltanat ka ik sadr maum tha. Sultan Babar ne Shah jalal Sahib gadasah sirru-hu our Hadrat MusaAshiqan ki khidmat mein hadir ho kar ba(ini imdad ( alab ki, ki in buzurgoh ki du'a se abai Saltanat-I Hindustan un ke hath a –ja'i. Shahzadah Babar in ashab se ukhsat ho kar Kabul gaya our wahanfauj muhayya kar ke Hindustan ki taraf gye ourPanipat ke maqam par Sultan Sikandar Lodhi se Lade..." Gumgashah Hatat-I Ajothya Ya ni Tarkh-I Patnah-I Madinatu 'I Awaliya(Lucknow, 1981), p.61

2. Chunanche Babar badshah ne jo iqqrae un buzurgon ke rub a-ru kiya tha Mir Baqi ko us kam parmuqarrar farma kar ek alishan masjid...ta'mirkarai." ibid.p.62

The Faqir-s answered that they would bless him if he promised to build a mosque after demolishing the Janmasthan temple. Babar accepted the faqirs' offer and returned to his homeland.<sup>1</sup>

This anecdote lights up an unsuspected corner of Babar's career, not reflected in his memoirs. Yet it receives confirmation from 'Abdu 'llah's Tarikh-I Da'udi which contains a remarkable account of 'Babar Qalandar's meeting with Sultan Sikandar Lodi. Writes Abdu'Hah: In one of the histories it has come to notice that in those very days Babar Badshah, whose name was Babar Aalandar, came to Delhi adorning himself with the garb of an ascetic and entered the royal palace. One of the courtiers brought it to the royal ears that a qalandar from among sages is standing in the court feasting on the elegance of the sultan. Sultan Sikandar bade some of his courtiers bring him in. When Babar Qalandar emerged from the door, he immediately shook hands with the Sultan, by the Sultan taking his hand into his inferred the greatness of fortune in the Sultan's hand, and felt in his heart that the affluence of his Sutlanate was stillabundant. Sultan Sikandar asked him, "with what are faqir-s exalted?" Babar Qalandar said, "with Qalandar –hood." The Sultan uttered this couplet extempore (rather sardonically) :

Hazar nuktaH-I barik-tar 'zi mu in –ja 'st

Na har ki sar tarashad qalandari danad

(Translation: ‘ Here there are thousand finesses finer than the hair, Not everyone with shaven head knows qalandar-hood.) Babar Qalandar Glanced at the Sultan with the feeling of being humbled and uttere this couplet:

Nahar kasi ki kulah kaj nihad-o tund mashist

‘kulah-dari-o in-in sarwari danad

Translation:- Not everyone who puts on awry cap

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1. “ Faqiran ne uttara diya ki tum janmastha ke mindir ko tod kar masjid banwane ki pratigna karo to ham tumhare liye duea karain. Babar ne fqiran ki bat man our apne desh ko lout gaya. Awadh –Vasi lala Sita Ram, Ayodhya ka Itihasa. P.151

And sits tight knows cap-wearing and the way of kingship.’)

<sup>1</sup> The Sultan was pleased at this and asked his courtiers to take due care of board and lodging of the faqir-s including Babar Qalandar, but the latter had left the very first day. The Sultan began to squeeze his hands in repentance and remarked that Huma (a bird of paradise whose shadow makes one king) had fallen into his hand. <sup>2</sup>

It is interesting to note that Babar is one of the inscriptions of the Babari mosque already quoted by us:

Fasanah dar jahan Babar Qalandar

Daughter Gulbadan Begum, who remarks that the sobriquet was given to him by the people. <sup>3</sup> In fact , Babar hiself appears to be responsible for it, none else whould have dared to call him so . Abu I-Fadi quotes a quatrain of babar which reads as under : 4

Darwishah ra ‘gar-cheh na az khwیشانam Lik az dil –o  
 janmu taqid-I Ishanam Dur ast magu i shahi az darwishi  
 Shah im wall bandah-I darwishinam.

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1. Daryake az tarikh-ha ba –nazar dar amadah ki ham dar in roz-ho Babar badshah ki nqmash Babar Qalandar –I bud khud ra rb –libas –I qlandari arastah, ba Dihli amad wa ba-bargah-I Sultan (Sikandar Lodi) dor amad lam’-I az muqarraban ba-ard rasanidand ki qalandar-i ahl-i ma’rifat ba –darbar tstadah ba nazzdrah –I jamt-I Sultan ast. Sultan Sikandar ba –muqarraban-i Chand hukm farmudand ki ba-durun aqrand, Chun babar Qalandar az dar dar-qnad, fi ‘I-hal ba Sultan musafahah kard, ba mujarrad dast giriftan girant-I iqbal dar dast –I Sultan Sikandarpursid, ‘Daewishan ba cheh musharraf and?’ Babar Qalandar guft, ‘Ba –qalandari.’ Sultan bar bqdih in bait khwand:  
 Hazar, muktab –I bziktar ‘zi mu in ja st  
 Nah har ki sar ba –larqshad qalandar-I danand  
 Babar Qalandar az ru I ghayrat janib-I Sultan nigh numudah in bait khwand:  
 Nah hark as-I ki kulah Raj nihad-o tund nashist  
 Kulahdari-o in –i sarwari danad ‘Abdullah , Tarikh –I Dawudi, p. 63
2. Ibid., pp.63
3. Gulbadan Begum, Humayun Namah, 1903, P.12
4. Abu ‘I-Fadi, Akbar-Namah, Vol. I, Allahabad, N.D. P. 137

Translation: though I do not belong to the fraternity of darwish-es, yet I am their follower with heart and soul. Say not kinship is a far cry from darwish-hood. I am a king but yet a slave of darwish-es.’) It would be pertinent to point out that Firishtah accounts for Babar’s reputation as a qalandar thus: whatever the monarch had amassed over long years, (he) spent out in one sitting, (whereby) the reason of his reputation as a qalandar became known to the world.’ (An-cheh badshahan ba –salha-I daraz andokhtah baudand dar yak majtis sarf numudah wajah-I shuhrat-I In –hadrat ba –qalandari malum-i qlamiyyan gashi.)<sup>1</sup>

Well, yet another version of how Babar wa led to destroy the

Rama temple and erect the existing structure on its site is that he visited Musa' Ashiqan during his stay at Ayodhya in 1528 itself. The faqir asked him to demolish the temple and erect a mosque on its site. Babar was hesitant at first but succumbed to the faqir's wishes on pain of being cursed by the latter. <sup>2</sup>

18. Nizamu'd-Dawalah's statement in the awadh Akhbar, 1876 , confirming the temple demolition and erection of the mosque in its stead. Nizamu 'd-Dawlah, was the Kashmir ambassador to the court of Awadh, according to whom there did stand a temple of Maharajah Ramchandra's birth (Maharaja Ramchandra ke tawallud ka mandir), testified to by Babar Shah's constructing the mosque on the same site ( maqam-I tawallud ka thubut to ist jagah par Babar shah ke masjid bandne par bota hai), while according to the Hindus this sign of birth has been extant for lakhs of years and appear to be so ( jab-ki ba qawal Hunud ke lakhon baras ka yah nishan-i tawallud baqi hai aur ma'lum hota hai). <sup>3</sup>

19. Mirza Jan, Hadiqah-I Shuhada, Lucknow, 1856. <sup>4</sup> Mirza Jan was an eyewitness as well as active participant in the Crescentade (Jihad) led by Amir ' Ali Amehawi

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1. Tarikhi-I Firishtah, Nawalkishore Press, Lucknow, P 206
  2. Avadh-Vasi Lala Sita Ram, Ayodhya ka Itihasa, p. 150
  3. Gumgashtah Hatat-I Ajodhya etc. , p. 20
  4. Mirza Jan, Hadiqah-I Shuhada, pp. 4-5
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During Wajid Ali Shah's regime in 1855 for recapture of Hanumangadhi ( a few hundred yards from the Babari mosque) from the Hindus. The fight spread to the Babari Mosque, which came into repossession of the Hindus for awhile, it seems, From a private letter of the Governor-General, Coonoor, October 6, 1855, it appears that the work was banned immediately at 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 ...under the Governor-General's ordinances. <sup>1</sup> Does it still lie in anyone's mouth to assert that the temple story is a creation of British with a view to setting Hindus and Muslims against each other?

Mirza Jan writes: From old records and the tradition it is gathered ... that, after the triumph of Salar Mas'ud Ghazi, wherever in the territory of heaven –like Hindustan they found magnificent Hindu temples, the Muslim rulers of the pass constructed mosques, monasteries, and inns, greatly spread Mahammadanism by appointing mu'adhdhin-s (callers), teachers, care-takers, devastated the paraphernalia of idolatry and bell –ringing, gave grace and glamour to Islam, and vanquished the army of infidels. And this to such an extent that all over Hindustan no trace of infidelity was left besides Islam and no practice of idol-worship survived besides worship of God. And the few Hindus who remained safe from the hands of the Muslims became the slaves of Islam, began to pay kharaj, became subdued and dross of infidelity, they cleared up Faizabad and Awadh also from the filth of false belief, inasmuch as it is a great place of worship and was the capital of Rama's father. Here they broke the temples and left no stone-hearted idol intact. Where there was a big temple, there they got a big mosque constructed, and, where there was a small pavilion, there they erected a plain camp mosque/enclosure Accordingly, what a majestic mosque Babar Shah has got constructed in 923 AH. Under the patronage of Sayyid MusaAshiqan ! its date is “ Khayr Baqi”. <sup>2</sup> It is still known far and wide as the Sita ki Rasoi mosque. <sup>3</sup>

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1. J.G.A. Baird, Private Letters of the Marquis of Dalhousir, Edinburgh, 1911. pa.357.
  2. Mirza Jan, pp. 4-5
  3. Ibid., p. 5

Sri Jain has further submitted that there is historical backgrounds of continuous attack on temples of the Hindus and the Court can take judicial notice of this fact under Section 57 Rule 13. These are notorious facts of the history and they have to be admitted in toto. Apex Court in **AIR 1977 SC p. 1108 Onkar Nath and others Vs. The Delhi Administration para no.6 held as under:**

One of the points urged before us is whether the courts below were justified in taking judicial notice of the fact that on the date when the appellants delivered their speeches a railway strike was imminent and that such a strike was in fact launched on May 8, 1974. Section 56 of the Evidence Act provides that no fact of which the Court will take judicial notice need be proved. Section 57 enumerates facts of which the Court "shall" take judicial notice and states that on all matters of public history, literature, science or art the Court may resort for its aid to appropriate books or documents of reference. The list of facts mentioned in Section [57](#) of which the Court can take judicial notice is not exhaustive and indeed the purpose of the section is to provide that the Court shall take judicial notice of certain facts rather than exhaust the category of facts of which the Court may in appropriate cases take judicial notice. Recognition of facts without formal proof is a matter of expediency and no one has ever questioned the need and wisdom of accepting the existence of matters which are

unquestionably within public knowledge. (see Taylor 11th edn. pp. 3-12; Wigmore Section 2571 footnote; Stephen's Digest, notes to Article 58; Whitley Stokes' Anglo-Indian Codes Vol. II p. 887). Shutting the judicial eye to the existence of such facts and matters is in a sense an insult to commonsense and would tend to reduce the judicial process to a meaningless and wasteful ritual. No Court therefore insists on formal proof, by evidence, of notorious facts of history, past or present. The date of poll, the passing away of a man of eminence and events that have rocked the nation need no proof and are judicially noticed. Judicial notice, in such matters, takes the place of proof and is of equal force. In fact, as a means of establishing notorious and widely known facts it is superior to formal means of proof. Accordingly, the Courts below were justified in assuming, without formal evidence, that the Railway strike was imminent on May 5, 1974 and that a strike paralyse the civic life of the Nation was undertaken by a section of workers on May 8, 1974.”

Attack demolition and construction of Mosques and Madrsas in place of Temples and Religious Institutions had taken place for the last about 1100 years and is a part of Indian History from 712 A.D. In 712 A.D. Mohd. Bin Qasim an Invador from Iraq attacked Sindh. King Dahir was defeated and forceful conversion of Hindus into Muslims took place and various Hindu religious institutions were demolished. History makes it clear that foreign Muslim invaders demolished thousands of Hindu Temples.

In 1000 A.D. Mahmood Gazanavi attacked India and defeated Raja Jaipal. In 1008 A.D., he won Kangra, in 1011 A.D., Thaneshwar and demolished a number of Hindu Temples including Chakra Swami Temple and a large number of Hindu idols were broken. In 1013 A.D. he also damaged Nandana, in 1016 A.D., Bulandshahr, Mathura and Kannauj and demolished a number of Hindu Temples. He also demolished Som Nath Temple in 1025 A.D., and broken main idol in pieces and sent those pieces of Temple to be placed in foot stairs of Jama Maszid at Gazni. After Mahmood Gazni, Mohd. Gori also destructed Hindu Temples and Idols at Azmer and constructed Mosques and Madrsas in place of Hindu Temples. At Benaras, he demolished a large number of Temples and constructed Mosques in place of Temples. In 1194 A.D., Quttubuddin Aibak attacked Delhi. He demolished 27 Jain Temples at Delhi and constructed Qubbatul Islam Mosque. In 1196 A.D., he attacked Gujrat and in 1202 A.D., Kalinjar where he demolished a large number of Hindu Temples. Mohd. Bakhtiyar Khilji attacked Bihar in 1200 A.D. and demolished a large number of Buddhist Temples at Udantpur and Nadia (Bengal) in 1202 A.D. and demolished a large number of Buddhist Temples and constructed Mosques and other religious places of Muslims in places of Hindu Temples. After Qutubuddin Aibak, Shamsuddin Iltutmish attacked Malva in 1234 A.D. and Vidisha. He demolished a old Hindu Temple of Mahakal, destroyed statute of Vikrmajeet and took away Brass Idols of

Hindu Gods and placed at the foot step of stairs of a Mosque at Old Delhi and asked the people to pass through these Idols of Hindu Gods. After Iltutmish, Balban ruled parts of India. He also attacked Hindus and Hindu Temples in 1254 A.D. In 1321 A.D. Jalaluddin Khilji attacked Fort of Ran Thambore and enroute he damaged and demolished several Hindu Temples. In 1292 A.D., his nephew Allauddin Khilji attacked Bhelsa and he too demolished a large number of Hindu Temples and thrown idols of Hindu Gods. He also proposed to make a Minar taller than the Qutubminar by using materials of demolished Hindu Temples. He also ordered his cousin Ulugh Khan to demolish reconstructed Somnath Temple of Gujrat, who also damaged and demolished a number of Hindu Temples. He also attacked Ujjain and demolished several Hindu Temples at Ujjain. Like wise, he attacked Malva and Chittaur (Rajasthan) where he demolished a large number of Hindu Temples. In 1360 A.D. Firozshah Tughlak another Muslim Sultan attacked and damaged Jagannathpuri Temple (Orissa) by broking idol of Bhagwan Jagannath and thrown at the foot stairs of Muslim Mosques and demolished Jwalamukhi Temple at Nagarkot, Kangra and damaged Temple's idol. Taimur attacked India in 1399 A.D. and started war against Hindus on religious basis. He demolished a large number of Hindu Temples. In 1392 A.D., Muzaffarshah, Governor of Gujrat demolished reconstructed Somnath Temple again and constructed a Mosque within the Temple, but after some time Hindus

reconstructed same Temple. In 1401 A.D., Ahmad, grand son of Muzaffarshah, who took over as Governor of Gujrat appointed a Daroga (Inspector) for demolishing all Hindu Temples of Gujrat. In 1415 A.D., Ahmad attacked and demolished Sidhpur Temple (Rudra Mahalaya) and in its place he constructed a Mosque. From 1389 A.D. to 1431 A.D., Sikandar (Boot Shikan) attacked and demolished a large number of Hindu Temples and idols, who was known for his pleasure by breaking Idols of Hindus. Between 1389 A.D. to 1431 A.D., he demolished Temples of Martand, Vishnu, Ishan, Chakrvarti and Tripureshwar. There were no places in his Empire where his Mantri Suha had not demolished Hindu Temples. Babar, who established Moghul Empire, attacked India and demolished Ram Janma Bhumi Temple at Ayodhya and constructed a Mosque on the same place. After Babar, Humiaun ruled India. It is described in history that Chchatri Temple at Zehanabad was demolished by Humaun and in place of Temple a Mosque was constructed. During the period of Jehangir Sikh Guru Sri Arjun Singhjee was killed, Hindu Durg Temple of Kangra and cows were slaughtered in the Temple. Shahjehan got demolished about 76 Temples of Benaras in 1633 A.D. by ordering to demolish all the newly constructed Hindu Temples. Demolition of Hindu Temples by Aurangjeb is also well known to everyone. When he was only Prince, he demolished Chintamani Temple at Gujrat and in place of Temple he constructed Qubbatul Islam Mosque in 1645 A.D. In 1648 A.D., he sent Mir Jumla to Kooch

Bihar, who demolished several Hindu Temples there and constructed Mosques in place of Hindu Temples. In 1670 A.D., In Mathura, Krishna Janma Bhoomi Temple was demolished by Aurangzeb and a Mosque was constructed in place of Temple. Idols of Temple were placed at the stairs of Janhaara Mosque, Agra. Temple Ram Chandra in Soron, Devi Patan Temple of Gonda, Temples of Ujjain and all the Hindu Temples of Mednipur, Bengal Temples and Idols of Jodhpur were also broken and broken parts of Idols and the Temples were taken away to Delhi. He also demolished Hindu Temples and Idols at Udaipur in 1680 A.D., 62 Temples of Chittaurgarh, 66 Temples of Amber, Someshwar Temple of Mewar, Khanderao Temple of Satara. In 1690 A.D., he demolished Temples of Elora, Trayambakeshwar, Narsingpur, Pandarpur and Bijapur. In 1669 A.D. He also demolished several Hindu Temples at Tattha, Multan and Benaras including famous Kashi Vishwanath Temple at Benaras. Aurangzeb crossed all the limits of communalism and re-imposed Zazia Tax on Hindus if wanted to live as Hindus. Tipu Sultan also got converted Hindus and Christians into Muslims and demolished several Hindu Temples and other religious institutions.

Above facts have been taken from the Books of various Muslim Historians including Book "Tarikhen Yamini" written by Utabi, Historian and Secretary of Mahmood Gaznavi, from the Asarul Bilad of Muslim Historian of Zakaria Al-Qazwani, Muslim

Historian Nizami and Muslim Historian Ibn Assar at the time of Mohd. Gori, Muslim Historian Hasan Nizami, from book Mutkhatat Tavarikh of Muslim Historian Budauini, Book written by Muslim invador Imad Jan Tuzuk Taimuri of Taimur, from the Auto Biography of Babar "Tuzuke Babri", from Zuvadutul-Tavarikh of Muslim Historian Shekh Nurul Haq, from Book Atharuye Sanadid written by Sir Syed Ahmad, from the Book Heroes of Islam of Prof. Fazal Ahmad, from the Book Badshahname of Muslim Historian Abdul Hamid Lahori, from the Book Voice to East Indies written by Barithailomeo, from the Book Bhasha Poshani of Historian Sardar K.M. Panikkar, from the Book of Bil Durent, from the Book Story of 'Islamic Imperialism in India' written by Historian Sri Sitaram Goyal, published by Voice of India. All aforesaid Historical Books are relied upon by Sri Purshottam in his Book 'Muslim Rajnitik Chintan Aur Akanchayen, published by Sumit Prakashan, Maushambagh, Sitapur Road, Lucknow and from other Books of History.

Thus, on the basis of the aforesaid submissions Mr Jain has pointed out that it was not for the first time that Babri Mosque was constructed after demolition of Ram Janm Sthan temple but prior to it thousands of Hindu temples were destroyed . He has referred the history from 712 A.D. and onwards to show that the temples were destroyed prior and afterwards of Ram Janmsthan

temples by Muslims .

### **FUNCTIONS OF THE RULES OF EVIDENCE**

According to WHARTON the main function of the rules of evidence is to narrow down the matter which comes before the Court to the facts relating to those matters which have a logical probative value in determining the fact and to prevent giving judgments based on illogical conclusions or prejudice, and as an aid to the administration of justice.

### **CLASSIFICATION OF EVIDENCE**

Broadly speaking, Evidence can be classified into (1) Direct and Indirect or circumstantial evidence.

- (2) Primary and Secondary Evidence
- (3) Oral and Documentary Evidence
- (4) Real Evidence
- (5) Original and Hearsay Evidence
- (6) Presumptive Evidence.

**(a) Direct Evidence.-** “By direct evidence is meant that the existence of a given thing or fact is proved either by its actual production, or by the testimony or admissible declaration of someone who has himself perceived it.” [(vide Cement Corporation of India Vs. Purya, (2004) 8 SCC 270)].

“Direct evidence is evidence which, if believed, establishes a fact in issue.” [(vide Cement Corporation of India Vs. Purya, (2004) 8 SCC 270)]

“Direct evidence is evidence which requires no mental

process on the part of the tribunal of fact in order to draw the conclusion sought by the proponent of the evidence, other than acceptance of the evidence itself.”

Direct evidence consists either of the testimony of the witness who perceived the fact or the production of the documents which constitute the fact which is in question. This direct evidence is sometimes called original evidence which arises from the personal knowledge of the witness. Direct evidence, if believed, proves the existence of a fact in issue without any inference of presumption.

*Pericipient Evidence.*- “The term direct evidence has a second meaning in the usage of many writers. The alternative term pericipient evidence not only avoids any possibility of confusion, but is also more appropriate to describe the opposite of hearsay evidence.. Pericipient evidence is evidence of facts which a witness personally perceives using any of his senses.”

**(b) Indirect or Circumstantial Evidence.**- Indirect Evidence otherwise known as circumstantial evidence is evidence that gives rise to a logical inference that such a fact does exist. Circumstantial evidence may be either conclusive or presumptive. It is conclusive when there is a connection between the principal fact and the evidentiary fact. It is presumptive where the fact rests on a greater or a less degree of probability. The effect of circumstantial evidence on consideration must be such as not to admit more than one solution, and must be inconsistent with any

explanation that the fact is not true.

“By indirect or presumptive evidence is meant that other facts are thus proved, from which the existence of the given fact may be logically inferred.” [(vide Cement Corporation of India Vs. Purya, (2004) 8 SCC 270)]

“Circumstantial evidence..... consists of evidence of circumstances, none of which speak directly to the facts in issue but from which those facts may be inferred. Feelings of animosity towards the victim, presence in the area of the attack, the victim's blood on the accused clothing- all these build up into a strong but inferential case.”

'Circumstantial evidence'..... may be defined as any fact (sometimes called an 'evidentiary fact', 'factum probans' or 'fact relevant to the issue') from the existence of which the judge or jury may infer the existence of a fact in issue (sometimes called a 'principal fact' or '*factum probandum*').

It is well to remember that in cases where evidence is of circumstantial nature, the circumstances from which the conclusion of the fact is to be drawn should in first instance be fully established, and all the facts so established should be consistent only with hypothesis of the guilt of the wrongdoer. Again, the circumstances should be of conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable

ground for a conclusion consistent with the fact and must be such as to show that within all human probability the act must have been done by the person.”

**ESSENTIAL INGREDIENTS TO PROVE A FACT BY CIRCUMSTANTIAL EVIDENCE ARE:**

- (1) Circumstances from which conclusion is drawn should be fully proved.
- (2) Circumstances should be conclusive.
- (3) All facts so established should be consistent only with the hypothesis of a fact.

**CIRCUMSTANCES SHOULD EXCLUDE THE POSSIBILITY OF ACT OF A PERSON.**

- (1) the circumstances from which an inference of fact is sought to be drawn, must be cogently and firmly established;
- (2) those circumstances should be of a definite tendency unerringly pointing towards the act of the person.
- (3) the circumstances taken cumulatively should form a chain so complete that there is no escape from the conclusion that within all human probability the act was committed by the person and none else; and;
- (4) the circumstantial evidence in order to establish a fact must be complete and incapable of explanation of any other hypothesis than that of the fact.

Again, the circumstances should be of a conclusive nature and tendency and they should be such as to exclude every

circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the person and it must be such as to show that within all human probability, the act must have been done by him.

Alfred Wills' "Wills' Circumstantial Evidence" (Chapter VI) certain rules as to evaluation of Circumstantial Evidence as under :

- (1) the facts alleged as the basis of any legal inference must be clearly proved and beyond reasonable doubt connected with the *factum probandum*;
- (2) the burden of proof is always on the party who asserts the existence of any fact, which infers legal accountability;
- (3) in all cases, whether of direct or circumstantial evidence the best evidence must be adduced which the nature of the case admits;
- (4) in order to justify the inference of guilt, the inculpatory facts must be incompatible with the innocence of the accused and incapable of explanation, upon any other reasonable hypothesis than that of his guilt;
- (5) if there be any reasonable doubt of the guilt of the accused, he is entitled as of right to be acquitted."

The circumstances from which an inference as to the guilt of the accused is drawn have to be proved beyond reasonable doubt

and have to be shown to be closely connected with the principal fact sought to be inferred from those circumstances (vide AIR 2003 SC 3601, State of Rajasthan V. Rajaram).

There is no difference between civil and criminal cases in the application of circumstantial evidence and their admissibility. Regarding the appreciation of circumstantial evidence in civil case, preponderance of probabilities should be looked at in deciding the cases.

It is function of the court to separate the grain from the chaff and accept what appears to be true and reject the rest.

In cases where only circumstantial evidence is available at the outset, one considers the motive and opportunity to commit the act. If the evidence shows that he had a strong enough motive and opportunity to commit the act and the established circumstances on the record considered along with the explanation, if any, of the person exclude the reasonable possibility of anyone else being the real person then the chain of evidence can be considered to be so complete as to show that within all human probability, the act must have been committed by the person.

“Circumstantial evidence in this context means a combination of facts creating a net-work through which there is no escape for the accused, because the facts taken as a whole do not admit of any inference but of his guilt.” BARON PARKE J in *Towell's* case observed “the circumstances may often be so clearly proved, so closely connected with it, or leading to one result in

conclusion, that the mind may be as well convinced as if it were proved by eye-witnesses”.

Parties have placed reliance over Gazetteers and certain other books. They can be admitted in evidence in view of Section 57 of Indian Evidence Act.

**Section 57- Facts of which court must take judicial notice.**

**2. Judicial notice: facts of which Courts may take judicial notice**

Judicial notice is the cognizance taken by the Court itself for certain matters which are so notorious or clearly established that evidence of their existence is deemed unnecessary. The Court is duty bound to find out the law and apply it to the facts of the case. (vide Mazhar Ali V. Hakimuddin, AIR 1965 Patna 489.

In the words of the Supreme Court in Onkar Nath v. Delhi Administration, AIR 1977 SC 1108, “Section 56 of the Evidence Act provides that no fact of which the Court will take judicial notice need be proved. Section 57 enumerate facts of which the Court 'shall' take judicial notice and states that on all matters of public history, literature, science or art the Court may resort for its aid to appropriate books or documents of reference. The list of facts mentioned in section 57 of which the Court can take judicial notice is not exhaustive and indeed the purpose of the section is to provide that the court shall take judicial notice of certain facts rather than judicial notice. Recognition of facts without formal proof is a matter of expediency and no one has ever questioned the

need and wisdom of accepting the existence of matters which are unquestionably within public knowledge.

Shutting the judicial eye to the existence of such facts and matters is in a sense an insult to commonsense and would tend to reduce the judicial process to a meaningless and wasteful ritual. **No Court therefore insists on formal proof, by evidence, of notorious facts of history, past or present. The date of poll, the passing away of a man of eminence and events that have rocked the nation need no proof and are judicially noticed. Judicial notice, in such matters, takes the place of proof and is of equal force. In fact, as a means of establishing notorious and widely known facts it is superior to formal means of proof.**

The list of facts mentioned in section 57 of the Evidence Act of which the Court can take judicial notice is not exhaustive and the purpose of the section is to provide that the Court shall take judicial notice of certain facts rather than exhaust the category of facts of which the Court may in appropriate cases take judicial notice. Recognition of facts without formal proof is matter of expediency and no one has ever questioned the need and wisdom of accepting the existence of matters which are unquestionably within public knowledge.

**Rules of Hindu Law, Mohammadan Law, or custom to be judicially noticed.**

Where the Legislature has declared that the parties will be governed in certain matters by Hindu Law or Mohammadan Law,

as the case may be, the rules of Hindu Law or Mohammadan Law on those matters will be judicially noticed by the Courts.

The personal law will be ascertained by reference to authoritative text books, judicial decisions and the opinions of persons well vested in those systems of law. These authorities are sufficient proof of the general Hindu Law prevailing over large tracts of country and populous communities. Any body living among them must be taken to fall under those general rules of law, unless he can show some valid local, tribal or family custom to the contrary. In order to bring a case under any rule of law laid down by recognized authority for Hindus generally, it is not necessary to give evidence of actual events to show that in point of fact the people subject to that general law regulate their lives by it. Special custom may be pleaded by way of exception, which it is proper to prove by evidence of what actually is done. There is one essential feature in the operation of customs which necessarily differentiates them from the operation of Acts of Legislature. In the case of laws enacted by the Legislature, Courts have to take judicial notice not only of the rules but also of those facts which are necessary for showing that they have the force of law, such facts consisting of the proceedings of the legislative body. In the case of customs, the facts showing that they have the force of law and that they govern the parties or the properties concerned include the fact that the alleged rules of conduct have been uniformly followed by the parties concerned of the community to

which the parties belong. This fact is one of which the Courts cannot take judicial notice, unless it has been so often proved in the Courts as to make further proof unnecessary. Thus, the Courts may take judicial notice of a custom if it is generally prevalent among a certain class of people or is well established by long usage, *e.g.* a customary right of privacy prevailing in Oudh. When the existence of a custom is generally known and judicially recognized it is necessary to prove it by specific evidence. Where a custom is repeatedly brought to the notice of the Courts of a country, the Courts may hold that custom to be introduced into the law without the necessity of proof.

The privy Council in *Raja Rajendra Narain v. Kumar Gangananda*, AIR 1925 PC 213: 1925 MWN 549: 89 IC 737, held that after the existence of a custom for some years has been proved by direct evidence, it can only, as a rule, be shown to be immemorial by hearsay evidence and it is for this reason that such an evidence is allowable as an explanation to the general rule. In *D.C. Bara Banki v. Receiver of the Estate of Choudhry*, AIR 1928 PC 202: 32 CWN 1120: 53 IA 303, it has been held that breach of a custom in a particular instance need not destroy it for all times. In *Effuah Amisah v. Effuah Krabah*, AIR 1936 PC 147: 162 IC 461: 44 MLW 73, it was held that material customs must be proved in the first instance by calling witness acquainted with them until a particular custom has, by frequent proof in the court, become so notorious that the courts take judicial notice of it. A custom cannot

be extended by logical process. In *Saraswativ. Jagadambalal*, AIR 1953 SC 201, it has been held that oral evidence as to instances, which can be proved by documentary evidence, cannot be fairly relied upon to establish custom when no satisfactory explanation for withholding the best evidence is given. Custom cannot be established by analogy and it cannot be established by a *priori* method. *Uzagar Singhv. Mst. Jeo*, AIR 1959 SC 1041, laid down that the ordinary rule is that a custom, general or otherwise, has to be proved under section 57 of the Evidence Act. However, nothing need be proved of which the courts can take judicial notice. When a custom has been judicially recognised by the court then it passes into the law of the land as proof of it becomes unnecessary under section 57(1) of the Evidence Act.

**List of facts enumerated in section 57 not exhaustive of the facts of which Courts may take judicial notice :**

The Maxim *expressio unius exclusio alterius* is often a valuable servant, but a dangerous master to follow in the construction of Statutes. The *exclusion* is often the result of inadvertence or accident and the maxim ought not to be applied when its application, having regard to the subject-matter to which it is to be applied, leads to inconsistency or injustice. This maxim is not applicable to section 57 of the Evidence Act, as it has been held that the list mentioned in the section is not exhaustive of the facts of which the Courts may take judicial notice. It is doubtful

whether an absolutely complete list of the facts of which Courts can take judicial notice could be framed, as it is practically impossible to enumerate everything which is so notorious in itself or so distinctly recorded by public authority that it would be superfluous to prove it. The tendency of modern practice is to enlarge the field of judicial notice, and the penultimate paragraph of this section indicates both an approval of this practice as also the kinds of subjects of which judicial notice may be taken. The Indian case law and practice also appear to have proceeded on a liberal application of the power to take judicial notice. There is, however, this difference between the facts mentioned in section 57 and others which are not so mentioned but of which judicial notice may properly be taken; that, whereas the Court is bound to take judicial notice of the former, the Court has a discretion in the case of the latter, which it may or may not judicially notice, Matters directed by statute to be judicially noticed must be so noticed by the Courts; but beyond this, the Courts have a wide discretion and may notice much which they cannot be required to notice. Section 57 of the Evidence Act makes it obligatory on the part of the Court to take judicial notice of the facts mentioned in clause (1) to clause (13) of section 57. There is nothing in section 57 to indicate that a Court cannot take judicial notice of facts, which are not covered by clause (1) to clause (13) of section 57. Therefore, so far as the power of the Court to take judicial notice of the facts of the case is concerned, section 57 and section 114 of the Evidence Act confer

two different kinds of powers. The distinction between section 57 and section 114 of the Evidence Act is this that if under section 57 of the Evidence Act, relevant fact is covered by one or more of the thirteen clauses of section 57, then the Court is under a legal obligation to take judicial notice of the fact subject to the conditions laid down in section 57 itself. On the other hand, section 114 of the Evidence Act does not make it obligatory on the part of the Court to take judicial notice of any fact, but empowers the Court to take judicial notice of all those facts, which the Court may presume to have happened regard being had to the common course of natural events, human conduct and public and private business in relation to the fact of the particular case.

Thus, the Court may take judicial notice of any fact which, though not mentioned in section 57, is judicially notified by the English Courts, and of other facts which are notorious-*e.g.*, the ordinary course of nature, the standards of weight and measure, the public coin and currency, and its difference of value in early and modern times. That Ramayana is sacrosanct to Hindus, that Rama, Krishna, Brahma, Mahatma Gandhi, to wit only a few, are held in the highest esteem by them are matters of common knowledge and courts can take judicial notice thereof under clause 13 of section 57 of the Evidence Act.

Judicial notice may properly be taken of current events and notorious facts, *e.g.*, like a world-wide economic depression or a

political movement *e.g.*, the "Quit India" campaign and the accompanying disturbances of August, 1942. Courts can take judicial notice of the anti-corruption propaganda carried on by a State Government. A Court can take judicial notice of facts transpiring in Court. A record of custom purporting to be prepared by a public officer is admissible under section 57 without proof that it was prepared by the officer by whom it purports to have been prepared. The extent to which, and the pictorial delineation of a scene are not matters of common knowledge but are matters for experts. Judicial notice may be taken of the fact that original telegrams are destroyed by the Telegraph Department after three months. The Court may take judicial notice of the rules of executive business of the Government. It may also take judicial notice of the fact that the Courts of Wards is much concerned with the welfare of its wards. A Court Martial may take judicial notice of any matter within the general Military knowledge of its members. The Court is justified in taking judicial notice of the practice with the banks of charging interest on the overdrawn amount.

Court can take judicial notice of the fact there is a flourishing colony of *satsangisat* Agra and there are centres in most of the big cities in U.P.

Facts of which judicial notice may be taken are not limited to those of the nature specifically mentioned in clauses (1) to (13)

of this section. These are mentioned because, as regards them, the Court is given no discretion. They must be recognised by the Courts. As to others the Courts have a wide discretion and may notice many facts which they cannot be required to notice. Thus a Court can take judicial notice of "notorious fact," but the question whether a particular fact is a "notorious fact" may be a matter of opinion and somewhat controversial. The Court cannot smuggle into the evidence its own opinion of controversial situation distinguished as notorious facts. The Court must determine in each case, whether the fact is of such well-known and established character as to the proper subject of judicial notice. A proclamation of emergency is a matter of general information of which a Court can take Judicial notice. A matter of public history may be such a fact. Consequently, the rule of exclusion should not be applied in construing statutes, when the application of the rule is likely to lead to injustice.

The list of facts mentioned in the Section 57, of which the Court can take judicial notice, is not exhaustive. Indeed, the purpose of the section is to provide that the Court shall take judicial notice of certain facts, rather than exhaust the category of facts of which the Court may, in appropriate cases, take judicial notice. Recognition of facts, without formal proof, is a matter of expediency, and no one has ever questioned the need and vision of accepting the existence of matters which are unquestionably within public knowledge (vide *Onkarnath v. Delhi Administration*, AIR

1977 SC 1108).

STEPHEN in his DIGEST (7<sup>th</sup> Ed., Notes to XXVI to Article 58 at p. 179) has observed: “It may be doubted whether an absolutely complete list could be framed, as it is practically impossible to enumerate everything which is so notorious in itself, or so distinctly recorded by public authority that it would be superfluous to prove it”.

The following are some instances where the court took judicial notice of facts which do not fall within clauses 1 to 13:-

The Supreme Court held that the court can take judicial notice of the fact that many of the industrial workers are illiterate; hence, where a previously prepared signed statement of a witness was read over to the workmen and they were asked to cross-examine the witness then and there, it amounted to non-compliance with the rules of natural justice (vide *Keshoram Cotton Mills v. Gangadhar*, AIR 1964 SC 708).

Judicial notice can be taken of the low expectation of life of hill tribes (vide *Pati Soura v. State*, ILR 1970 Cut 1165).

The Court can take judicial notice about: Communal disturbances or other disturbances in the country (vide *Shivnath Rajram v. Union of India*, AIR 1965 SC 1666).

Communal disturbances in 1947 after partition of India (vide *Ishar Dass v. Smt. Chetni Bai* (1970) 72 Punj LR17).

**Reference to appropriate books and documents of reference:**

It frequently happens that it is necessary or proper for the Court to refer to sources of information concerning matters which have not been referred in the evidence, in which case it is its duty to reason to any source of information which in its nature is calculated to be trustworthy and helpful, always seeking first for that which is not appropriate. If a party asks the Court to take judicial notice of a matter of which judicial notice may properly be taken, the Court may refuse to take judicial notice unless the party produces any such book or document as the Court may consider necessary to enable it to do so. The Court itself may, without calling upon a party, refer to appropriate books and documents of reference. There is nothing to prevent the Court itself making an inquiry if it has only imperfect information, or none at all, on the subject; and the Courts have in several cases made, or caused to be made, such inquiries. The Court can take judicial notice only if unimpeachable books or documents are put before it or are otherwise accessible for its reference. Under the last paragraph of the section, the Court is given the discretion to refuse to take judicial notice of any fact, unless such person calling upon the Court to take any judicial notice to a fact produces any such book or document as it may be necessary to enable it to do so.

**Matters of public history, literature, science or art, of**

**which judicial notice may be taken; reference to standard works (Section 57 Clause 13)**

The penultimate paragraph of this section does not say whether the Court may or may not take notice of any fact, nor does it say or mean that the Court shall or may take judicial notice of every matter which comes under the heads of description given there. It merely provides that when the Court does take judicial notice of the fact of which it is bound to take judicial notice under clauses 1 to 13, then it may refer to appropriate books of reference about that fact. Matters of history, literature, science and art are not mentioned in the section as matters of which the Court must take judicial notice, but, as pointed out elsewhere, the section is not exhaustive of the facts of which the Court may take judicial notice. The Court can take judicial notice, not of all matters of history, literature, science and art indiscriminately, but only of such matter of public history, literature, science and art as are of such a notoriety that they may be presumed as forming part of the common knowledge of every educated citizen. The Court can take judicial notice only of what may be regarded as notorious facts of public history; it cannot treat letters though 75 years old, without any sort of legal proof, as proof of where certain missionaries were residing and when they died. Before any judicial notice may be taken of any passages in books relating to an alleged tradition, something more than the mere existence of the passages has to be proved before the passages may be regarded as evidence of the

existence of the tradition. It must be shown that the writer had some special knowledge of the alleged tradition. The existence of a national strike of coal-miners is a matter of public history. In *Farzand Aliv. Zafar Ali*, 46 IC 119, it was observed:

"We are inclined to think that the use of the historical works to establish title to the property cannot be justified on the strength of section 57 of the Indian Evidence Act. The question of title between the trustee of a mosque, though an old and historical institution, and a private person, cannot, in our opinion, be deemed to be a 'matter of public history' within the meaning of the said section."

In *Mahant Shri Srinivas Ramanuj Das v. Surjanarayan Das*, AIR 1967 SC 256, it was observed:

"These statements in the Gazetteer are not relied on as evidence of title but as providing historical material and the practice followed by the 'Math' and its head. The Gazetteer can be consulted on matters of public history."

The question whether certain property is wakf or not is not a matter of public history, historical works on such matter cannot, therefore, be referred to. The fact that there has been a political agitation in the country; that certain persons have been deported in consequences of the part said to have been take by them in it, and that such agitation, conduct and deportation were the subject of debates in Parliament, and in a general way what was said in such

debates and therefore became widely known to the alleged cause of deportation, are matters of public history; but the terms of a speech made by a person, who is not yet a historical personage, in the presence of persons who still exists, is not a matter of public history. A judge is entitled to take judicial notice of matters which have reached the Courts, *e.g.*, prosecutions for political crimes or the general trend of evidence adduced for the prosecution and defence in such case. Judicial notice may be taken of the fact that certain district in England had been attacked by aircraft; or that a district had been the scene of recent and frequent dacoities; or that the original records of a district destroyed during the Mutiny of 1857. In *Dorab Ali v. Abdul Aziz* the Privy Council was inclined to treat the fact that the Province of Oudh was not, when first annexed to British India, annexed to the Presidency of Fort William as a fact of which judicial notice could be taken under the Evidence Act. Judicial notice cannot be taken of land revenue reports which must be proved like any other document requiring proof. Judicial notice may be taken of proceedings in the Legislative Assembly, not of the truth of the facts asserted in the speeches but of the fact that such speeches were made. Vernacular histories which have never received any recognition, as historical works of value and reliability relating to matters of public or general interest nor have been referred to in any well-known historical work are inadmissible. Dictionaries may properly be referred to by the Court in order to ascertain not only the meaning

of a word, but also the use to which the thing (if it be a thing) denoted by the word is commonly put. In order to determine the meaning of names and terms used in a particular religion the Court is entitled under section 57 to refer to works dealing with the history and beliefs of that religion. Judicial notice can be taken of economists' definitions but it should be done under exceptional circumstances and with proper safeguards.

Thurston's Castes and Tribes of Southern India cannot be considered to be a conclusive authority in regard to information collected by him.

It may further be necessary to say that the opinion of Historians and Readers fall within the ambit of expert opinion.

In this case parties have placed reliance over the opinion of experts as well as of outstanding Writers of certain books including gazetteers. They fall within the ambit of expert evidence. Section 45 of Indian Evidence Act reads as under;

**Section 45 of the Indian Evidence Act**

As a general rule, the opinion of a witness on a question whether of fact or of law, is irrelevant. A witness has to state the facts which he has seen, heard or perceived, and not the conclusions which he has formed on observing or perceiving them. The function of drawing inferences from facts is judicial function and must be performed by the court. If a witness is permitted to state not only the facts which he has perceived but also the opinion

which he has formed on perceiving them, it would amount to delegation of judicial functions to him and investing him with the attributes of a judge.

To this general rule, however, there are some important exceptions, which are enacted in this set of sections. When "the subject-matter of inquiry is such that inexperienced persons are unlikely to prove capable of forming a correct judgment upon it", or when "it so far partakes of the character of a science or art as to require a course of previous habit or study", the opinions of persons having special knowledge of the subject-matter of inquiry become relevant; for it is very difficult for the Court to form a correct opinion on a matter of this kind, without the assistance of such persons.

**Matters for expert testimony; competency to depose as an expert**

Opinions of experts become relevant only when the Court has to form an opinion upon a point of foreign law, or of science or art, or as to identity of handwriting or finger impressions. This section is, therefore, exhaustive of the matters on which expert testimony can be given, though the expression "science or art" would include almost all branches of human knowledge requiring special study, experience or training. So that a witness may be competent to depose as an expert, he must be shown to have made a special study of the subject or acquired a special experience

therein. In such cases, the question is: "Is he *peritus*? Is he skilled? Has he adequate knowledge?" An expert is a person who has special knowledge and skill in the particular calling to which the inquiry relates. In law, and as applied to a witness, the term "expert" has a special significance, and no witness is permitted to express his opinion, unless he is an expert within the terms of section 45. The fact that the evidence of an expert was accepted in one case is no ground for accepting his evidence in every other case.

The term "expert" has a special significance and no witness is permitted to express his opinion unless he is an expert within the meaning of the term under section 45 Evidence Act. In each case, the Court has to decide whether a person said to be an expert, is really an expert taking into account his skill, study and experience. In many cases, persons having no educational qualification but having knowledge of high order have been treated to be experts. In *Baldev Raj v. Urmila Kumari*, AIR 1979 SC 879, opinion of a doctor who had not specialised in gynecology but had knowledge of high order of midwifery as an obstetrician, was accepted as an expert. Clearly, therefore, what is admissible is the opinion of such an expert in the field in which he or she has acquired special knowledge. Outside specialised field, the opinion of the expert would cease to be expert opinion and fall outside the purview of section 45 of the Evidence Act. In *Deeks v. Wells*, AIR 1933 PC 26, it was held that depositions of expert witnesses as to result of their

opinions, and as to the effect of them, do not come within the domain of expert evidence at all. In *State v. Gaspar*, AIR 1971 Goa 3, opinion of Medical Officer as to mental condition of accused on a particular date on the basis of testimony of witnesses to acts of accused on that date, was not held as the expert opinion but his presumption. There can, however, be no dispute that an expert's evidence is a good evidence and cannot be rejected simply because it may not be decisive. In spite of it, the Court is not bound by the expert opinion though it is bound to consider the same along with other evidence and circumstances appearing in a particular case. In *Haji Mohd. v. State of West Bengal*, AIR 1959 SC 488, the Court held that in the circumstances of a case, the Court can refuse to place any reliance on the opinion of an expert which is unsupported by any reasons. As far as medical evidence is concerned, it has never been considered to be substantive evidence of the charge, but has been accepted as corroborative of the charge. It has been accepted since long that knowledge of medicine and human body is a matter of science and, hence, Courts have treated expert medical opinion with respect. In spite of it, a medical man cannot be allowed to give his opinion on matters, which are within the province of the Courts to decide.

In order to bring the evidence of a witness as that of an expert it has to be shown that he has made a special study of the subject or acquired a special experience therein or in other words that he is skilled and has adequate knowledge of the subject.

An expert is not a witness of fact. His evidence is really of an advisory character. The duty of an expert witness is to furnish the Judge with the necessary scientific criteria for testing the accuracy of the conclusions so as to enable the Judge to form his independent judgment by the application of this criteria to the facts proved by the evidence of the case. The scientific opinion evidence, if intelligible, convincing and tested, becomes a factor and often an important factor for consideration along with the other evidence of the case. The credibility of such a witness depends on the reasons stated in support of his conclusions and the data and material furnished which form the basis of his conclusions.

#### **Opinions of authors in text books**

Though opinions expressed in text books by specialist authors may be of considerable assistance and importance for the court in arriving at the truth, cannot always be treated or viewed to be either conclusive or final as to what such author says to deprive even a court of law to come to an appropriate conclusion of its own on the peculiar facts proved in a given case. In substance, though such views may have persuasive value cannot always be considered to be authoritatively binding, otherwise reasonably required of the guilt of the accused in a given case. Such opinions cannot be elevated to or place on higher pedestal than the opinion of an expert examined in court and the weight ordinarily to which

it may be entitled to or deserves to be given.

**Opinion of the expert.**

The Madras High Court observed that even though there is no bar for the court to compare the admitted signatures with the disputed signatures to come to its conclusion it would be prudent to require assistance of the expert witness. In fact all the judgments cited by both the parties related to signatures and not thumb impressions. It cannot be disputed that thumb impressions would stand on a different footing, when compared to signatures and the variations, in thumb impression cannot be easily judged by naked eyes. The Court remanded the appeal back to the lower court for sending the documents for the opinion of the expert and thereupon take evidence if necessary only in the context of the opinion of the expert and record his findings thereon.

**Court acting as an expert**

The opinion of the Court, itself untrained in medicine and without trained assistance, on questions of medicine is valueless. On questions of handwriting also, the practice of the Court itself acting as an expert has been disapproved. But there is nothing in the so-called science of finger prints which need deter a Court from applying its own magnifying glass or its own eyes and mind to the evidence and verifying the results submitted to it by the witnesses. In trial with the aid of jury, a question of handwriting or thumb-impression is entirely a matter for the jury.

It is also a settled proposition of law that Gazette Notifications are also admissible u/ss.35,45 and 81 of Indian Evidence Act. The Hon'ble Apex Court in *AIR 1995 SC 167, Bala Shanker Maha Shanker Bhattjee and others Versus Charity Commissioner, Gujarat State* at para 22 held as under;

“It is seen that the Gazette of the Bombay Presidency, Vol. III published in 1879 is admissible under Section [35](#) read with Section [81](#) of the Evidence Act, 1872. 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 Section [45](#) and the court may in conjunction with other evidence and circumstance take into consideration in adjudging the dispute in question though may not be treated as conclusive evidence.”

<b>Annexure-IV</b> <b>Gazetteers</b> <b>Pages 34 to 128</b>
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**Gazetteers** : Certain gazetteers have been relied upon by the parties. A gazetteer is a geographical dictionary or directory which provides important reference for information about places and place names including the map or a full atlas. This information is divided into various topics. Gazetteers of ancient Greece, China,

Europe are also available. Of late in this country after arrival of the Britishers the gazetteers were introduced.

In this context it is necessary to mention that certain official gazetteers were published by East India Company and after independence by the Government of India. The official gazette is a Government Book and a publication in the official organ for the publication of Royal proclamation, Government orders, Regulations while the gazetteers is a geographical dictionary or the historic account or the general description of any place or the province, district and provincial gazetteers are quasi Government gazetteers giving important particulars respecting the district or province concerned. In this case parties have relied over gazetting official gazetteers. I have tried to explain the scope of all the 3 publications of the Government.

Gazette generally means the official gazette published under the authority of Government. It is a publication of an official character which contains Government Notifications, list of public appointments and honours, legal notices etc. Official gazetteer is a Government Book. It is the official organ for the publication of royal proclamations, Government orders and regulations, Government circulars, rules bylaws and other public notices.

Needless to say that the Court can take judicial notice u/s 57 of the Gazette, official gazetteers, district and provincial gazetteers. District and Provincial gazetteers provides certain

historic account also. The Court can take judicial notice of historic events vide AIR 1977 SC 1708.

Plaint averments have also to be appreciated while deciding the controversy. The plaintiffs have come out with a case that in the Town of Ayodhya Babri masjid was built by emperor Babur for the use of Muslims in general. As a place of worship and for performance of religious ceremonies and the land adjoining the mosque is the ancient graveyard of the Muslims who fought and died in the battle of Ayodhya between Babur and the previous ruler which are shown in the attached sketch map.

Learned counsel for the plaintiff has relied over certain extract of the books regarding nature of the building. Plaintiffs have filed Ext.82, extract of Memoirs of Babur by F.G.Talbot. Further reliance has been placed on on Ext.85 extract of Mughalkalin Bharat-Babur by S.Athar Abbas Rizvi. Further reliance has been placed on Ext.90, extract of Moghukalin Bharat. Plaintiffs have also relied upon extract of Memoirs of Babur by John Leyden, extract of Baburnama by John Leyden and John Erskine and extract of Baburnama by A.S.Beveridge. The plaintiffs have placed these documents to establish that Babur had camped near Ayodhya, but had not given any order for demolition of any temple and even on his return from the East, when he had called Mir Baqi at a place near Ayodhya, no such mention was made by Mir Baqi that any temple was demolished at Ayodhya or any

mosque was constructed at the site of any such Temple while there is specific mention of the desecration of the nude parts of the idols of Urwa in Babarnama. Thus on the basis of these extracts the plaintiffs have pointed out that Babar never visited Ayodhya and the temple was not demolished at Ayodhya nor any mosque was constructed on the site of any such temple. Needless to say that the plaint averment is contrary to it where it has been specifically said that there was a battle between the then Ruler of Ayodhya and Babur and graves of Muslims who lost lives in the battle were buried in the adjoining graveyard. Thus the mosque has since the time of its construction been used by Muslims for offering prayers and graveyard has been used as a burial ground.

Learned counsel for the plaintiffs has further relied over the extract of *Epigraphia Indica*, extract of *Aine Akbari* and extract of William Finch from the book *Early Travels in India* to show that there is no mention about the construction of Babri Mosque on the alleged site of temple by Babur and Mir Baqi.

Further reliance has been placed on *Moghal India* to show that there is nothing in the book to establish that the mosque was constructed after demolition of any Hindu temple.

On behalf of the plaintiffs following papers were also filed to indicate that upto middle of 19<sup>th</sup> Century there was no such belief that Babri Masjid was constructed after demolition of any Hindu Temple and there was no mention of any such Ram Janam

Bhumi temple in the books of history.

“313C/1/1-14 (Ext D-3) Extract of “British Paramountsey and Indian Renaissance, Part II”, Vol. 10 by R.C.Majumdar.”

198C-2/1-89(Ext.63/D-26) Book on “Ayodhya Archaeology After Demolition” by D.Mandal.”

Plaintiffs have also placed reliance on serial nos. 40,41 and 42 to show that Babri Masjid was not constructed after demolition of Ram Temple. The explanation has also been furnished about “Ayodhya” by Hains Baker book in which it has been mentioned that Babri Masjid was constructed after demolition of Ram Temple only on account of the fact that author was influenced by the belief of local people prevalent in Ayodhya in 1986 and has relied over gazetteers written after 1865. It has further been urged that Ram Janambhoomi by Dr.Radhey Shyam Shukla and extract of Amir Ali book have no relevance because authors of these books were not at all Historians and these books are also not based on any source of history. As such their description is valueless.

Learned counsel for the plaintiffs has further relied over extract of certain gazetteers. Gazetteers of Walter Hamilton, 1815/1828 does not mention Ram Janam Bhoomi temple or destruction of a temple and erection of mosque by Aurangzeb after demolishing a temple and pillars in the Babri mosque were taken from Hindu building and probably these pillars were taken from the ruins of the palace. Edward Thorntone says that falsehood of

the tradition is that the temple was constructed by Vikramaditya and it was demolished by Babar was proved by the inscription on the wall of the mosque, attributing the work to the conqueror Baber. Carnegi in his gazetteer for the first time evolve a theory of Janam Asthan temple and construction of Babri Masjid that too was based on no source of History and rather was based only on local belief. He himself admitted that it was locally affirmed that Emperor Babur built the mosque by demolishing Janan Asthan temple. In two places in Babri mosque the year it was built 935 H., corresponding with 1528 A.D. is carved in stone with inscription. This assertion goes to show that the Babri Masjid was constructed in the year 1528. It is further urged that Babri Masjid being constructed on the site of a temple after its demolition started from the gazetteer of 1870. The assertions in gazetteers of Carnegy were repeated in the reports of Millet, A.Fuhrer and H.R.Nevill. They are referred as Ext. 5 to 7, Ext.7,8,9,11, Ext.10,12 and 13.

In Ayodhya Ka Itihas writer mentions that on the basis of inscriptions Mir Baqi constructed the mosque. Ayodhya Ka Itihas Evam Puratatva Ext.O.O.S 5-3 is not a fare account but it deals with certain extract with surcharged atmosphere as he is deeply interested and involved in this case to support the claim of Hindus.

**RELEVANT FACTS CONTAINED IN GAZETTEERS  
ARE ADMISSIBLE EVIDENCE UNDER THE PROVISIONS  
OF THE INDIAN EVIDENCE ACT, 1872 AS SUCH THE**

**FACTS RELIED ON FROM THE GAZETTEERS  
REFERRED EARLIER ARE ADMISSIBLE EVIDENCE:**

1. In AIR 1951 SC 288 (*Sukdeo Singh. v. Maharaja Bahadoor of Gidhaur*) the Hon'ble Supreme Court has held that the gazetteer is an official document of some value, as it is compiled by experienced official with great care after obtaining the facts from official records. Relevant paragraph 10 of the said judgment reads as follows:

“10. In the case of Fulbati Kumari (supra), to which reference has been made, there was an extract quoted from the Bengal District Gazetteer, Vol. XVII at p. 168, which runs as follows:

"About 1774 the lawless state of this tract led the British to place it in charge of Captain James Browne, who settled the estates with the ghatwals with two exceptions. These two exceptions were Dumri and Mahesri which were settled directly with the proprietors, the story being that the ghatwal tenure holders fled at the approach of Captain Browne their reputation as dacoits and brigands being too strong for them to face a Govt. officer without fear of the consequences. In the case of Dumri however, the Ghatwals finding that in their absence a settlement had been made of their tenure, returned and obtained a squad settling it with them under the Raja of Gidhaur. Of the estates settled with ghatwals only two are now held by their descendants, viz., Tilwa and Kewal. The others have passed into the hands of the Maharaja of Gidhaur, Chetru Rai, Akleswar Prasad and others of Rohini."'

The statement in the District Gazetteer is not necessarily conclusive, but the Gazetteer is an official document of some value, as it is compiled by experienced officials with great care after obtaining the facts from official records. As Dawson-Miller C. J. has pointed out in Fulbati's (supra) case, there are a few inaccuracies in the latter part of the statement quoted above, but so far as the earlier part of it is concerned, it seems to derive considerable support from the documents to which reference has been

made.”

2. In AIR 1995 SC 167 (*Bala Shankar-Maha Shankar Bhattajee. v. Charity Commissioner, Gujrat* ) the Hon’ble Supreme Court has held ‘gazette’ (SIC) ‘gazetteer’ is admissible under Section 35 read with Section 81 of the Indian Evidence Act, 1872 for being official record evidencing public affairs and the Court may presume their contents as genuine. The statements contained therein can be taken into account to discover the historical materials contained therein and facts stated therein is evidence under Section 45 and the Court may in conjunction with other evidence and circumstances take into consideration in adjudging the dispute in question. Relevant paragraph 22 of the said judgment reads as follows:

“22. The contention of Sri Yogeshwar Prasad that the Asstt. Charity Commissioner has failed to prove that Kalika Mataji temple is a public trust; contrarily the evidence on records, namely the 'Will' of Bai Diwali, widow of N. Girijsankar, establishes that the temple and its properties were always treated as private properties. It would get fortified and gets corroborated by decrees in Civil Suit No. 439/1985, one of the legatees sought to annul the Will in Exhibits 10, 59 and the decree in that behalf. The Civil Suits Nos. 353/93, Ex. 24 and the Civil Suit No. 439 of 1885, Ex. 26 and the Civil Suits Nos. 904 of 1903 and 910 of 1903, Ex. 52 and Ex. 54, Civil Suit No. 912 of 1903, Ex. 55 would establish that the appellant's family had always treated the temple and the lands attached to temple as private properties. It has also been further contended that the entry into the temple was subject to permission and the devotees were not allowed to have Pooja, but have Darshan only. These circumstances have duly been taken into consideration by the District Judge while the High Court had not considered them in proper perspective. We find no force in the contention. It is seen that the

Gazette of the Bombay Presidency, Vol. III published in 1879 is admissible under S. 35 read with S. 81 of the Evidence Act, 1872. 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. The recitals in the Gazette do establish that Kalika Mataji is on the top of the hill. Mahakali temple and Bachra Mataji on the right and left to the Kalika Mataji. During Moughal rule another Syed Sadar Peer was also installed there, but Kalika Mataji was the chief temple. Hollies and Bills are the main worshipers. On full Moon of Chaitra (April) and dussehra ( in the month of October), large number of Hindus of all classes gather there and worship Kalika Mataji, Mahakali, etc. After the downfall of Moughal empire, Marathas took over and His Highness Scindia attached great importance to the temple. One of the devotees in 1700 offered silver doors. The British annexed the territory pursuant to the treaty between Her Majesty's Government of India and His Highness Scindia on the 12th December, 1860. A condition was imposed in the treaty for continued payment of fixed cash grants to all the temples from the Treasury and that British emperors accepted the condition. Regular cash grants of fixed sums were given to all the temples by Scindias and British rulers, as evidenced by Exhibits 27, 28, 29 and 30. The historical statement of noted historian, stated by the High Court, by name M.S. Commissionaria in his Vol. 1 of 1938 Edition corroborates the Gazette in the material particulars, which would establish that the temple was constructed on the top of the hill around 14th century and the people congregate in thousands and worship, as of right, to Kalika Mataji and other deities. R.N. Jogelkar's Alienation manual brought up in 1921 in the Chapter 5 Devasthana also corroborates the historical evidence. It is true that Bai Diwali in her Will, Ex. 22 treated the temple and the properties to be private property and bequeathed to her brother and the litigation ensued in that behalf. At that time, as rightly pointed out by the High Court, the concept of public trust and public temple was not very much in vogue. Therefore, the treatment meted out to

these properties at that time is not conclusive. On the other hand the fixed cash grants given by the Rulers Scindias and the successor British emperors, the large endowment of lands given to Kalika Mataji temple by the devotees do indicate that the temple was treated as public temple. The appropriation of the income and the inter se disputes in that behalf are self serving evidence without any probative value. Admittedly, at no point of time, the character of the temple was an issue in any civil proceedings. All the lands gifted to the deity stand in the name of the deities, in particular large extent of agricultural lands belong to Kalika Mataji. The entries in Revenue records corroborated it . The Gazette and the historical evidence of the temple would show that the village is the pilgrimage centre. Situation of the temples on the top of the hill away from the village and worshipped by the people of Hindus at large congregated in the thousands without any let or hindrance and as of right, devotees are giving their offerings in large sums in discharge of their vows, do establish that it is a public temple. It is true that there is no proof of dedication to the public. It is seen that it was lost in antiquity and no documentary evidence in that behalf is available. Therefore, from the treatment meted out to the temple and aforesaid evidence in our considered view an irresistible inference would be drawn that the temple was dedicated to the Hindu public or a section thereof and the public treat the temple as public temple and worship thereat as of right. It is true that there is evidence on record to show that there was a board with inscription thereon that "no entry without permission" and that only Darshan was being had and inside pooja was not permitted. But that is only internal regulation arranged for the orderly Darshan and that is not a circumstance to go against the conclusion that it is a public temple. Enjoyment of the properties and non-interference by the public in the management are not sufficient to conclude that the temple is a private temple. It is found by the District Court and the High Court that the appellants are heredity priests and when the public found that they are in the management of the properties they obviously felt it not expedient to interfere with the management of the temples. It is seen that the High Court considered the evidence placed on record and has drawn the necessary conclusions and inferences from the proved facts that Kalika Mataji temple is a public temple. It is a finding of fact . As regard the

oral evidence the High Court rightly appreciated the evidence and it being a question of fact, we find no error in the assessment of the evidence by the High Court.”

3. Be it mentioned herein that the ‘gazette’ is an official publication which contains government notifications, list of public appointments and honours legal notices etc. which are presumed to be genuine. While ‘gazetteer’ is a publication of official guarantee which contains geographical, historical, political, custom etc. of a particular District, State or Nation. The dictionary meaning of ‘gazette’ and ‘gazetteer’ as given in Mitra’s Legal and Commercial Dictionary, 6<sup>th</sup> Edition, 2006 published by Eastern Law House on page 383 as follows:

“**Gazette.**—It is a publication of an official guarantee which contains government notifications, lists of public appointments and honours, legal notices, etc. which are presumed to be genuine.

The official publication of news of all kinds, the government desires to make known to the public. [General Clauses Act, s.3(39)]

“**Gazetteer.**—A dictionary which contains a historical account, or the general description of any place, district or province; a dictionary of geographical names.”

4. In AIR 1986 SC 1272 (*Umaji Keshao Mishram. v. radhika Bai*) the Hon’ble Apex Court has held that ‘gazetteer

of Bombay Province' in 28 volumes published in 1982-84 under government orders; the 'gazetteer of Bombay city and island' in 3 volumes compiled under government orders and published in 1909; have been found source of much useful information. Relevant extract from paragraph 35 of the said judgment reads as follows:

"35. It is, therefore, necessary to see the jurisdiction and powers which the High Court for the Province of Bombay possessed immediately prior to the commencement of the Constitution, namely, immediately before January 26, 1950, and to ascertain whether the powers specified in Articles 225, 226 and 227 of the Constitution formed part of its existing jurisdiction or were conferred for the first time upon that High Court when it became the High Court for the pre-Reorganization State of Bombay on the Constitution coming into force. This involves tracing in brief the origin and development of judicial institutions and administration of justice in the former Province of Bombay. Apart from the various Charters and Letters Patent granted by the British Crown and the Statutes passed by the British Parliament, much useful information in this regard can be gathered from other sources, particularly "The Imperial Gazetteer of India" published under the authority of the Secretary of State for India in Council; "Gazetteer of the Bombay Presidency" in twenty-eight volumes published in 1882-84 under Government orders; "The Gazetteer of Bombay City and Island" in three volumes compiled under Government orders and published in 1909; and books such as "The Administration of Justice in British India" by William H. Morley published in 1858, Herbert Cowell's Tagore Law Lectures entitled "History and Constitution of the Courts and Legislative Authorities in India" published in 1872, "Bombay in the Making Being Mostly a History of the Origin and Growth of Judicial Institutions in the Western Presidency, 1661-1726" by Phiroze B.M. Malabari published in 1910, "First Century of British Justice in India" by Sir Charles Fawcett (a former Judge of the Bombay High Court) published in 1934 under the patronage of the Secretary of State for India in Council, M. C.

Setalvad's Hamlyn Lecture on "The Common Law in India" published in 1960, "Famous Judges, Lawyers and Cases of Bombay A Judicial History of Bombay during the British Period" by P.B. Vacha published in 1962, "City of Gold The Biography of Bombay" by Gillian Tindall published in 1982, and "The East India Company's Sadar Courts 1801-1834" by Sir Orby Mootham (former Chief Justice of the Allahabad High Court) published in 1982. A judicial decision in which much valuable information can be found is the judgment of Westropp, J., who spoke for the Court in the case of Naoroji Beramji v. Henry Rogers (1866-67) 4 Bom HCR 1."

5. In AIR 1966 SC 1119 (*Shastri Yajnapurushdaji. v. Muldas Bhundardas Vaishya*) in respect of ceremony of initiation of the sect of *Satsangis* the Hon'ble High Court has quoted an extract from Gazetteer of the Bombay Province to judge their custom.

Relevant paragraph 49 of the said judgment reads as follows:

"49. The Gazetteer of the Bombay Presidency has summarised the teachings embodied in the *Shikshapatri* in this way:-

The book of precepts strictly prohibits the destruction of animal life; promiscuous intercourse with the other sex; use of animal food and intoxicant liquors and drugs on any occasion, suicide, theft and robbery; false accusation against a fellow-man; blasphemy; partaking of food with low caste people; caste pollution; company of atheists and heretics, and other practices which might counteract the effect of the founder's teachings (14)."

(14) Gazetteer of the Bombay Presidency, Vol. IX, Part I, Gujrat Population, 1901, p. 537"

It is interesting to notice how a person is initiated into the sect of *Satsangis*. The ceremony of initiation is thus described in the Gazetteer of the Bombay Presidency :-

"The ceremony of initiation begins with the novice offering a palmful of water which he throws on the ground at the feet of the Acharaya saying: I give over to Swami Sahajanand my mind, body, wealth, and sins of (all) births, 'Man', tan, dhan, and janmana pap. He is then given the sacred formula 'Sri Krishna twam gatirmama'. Shri Krishna thou art my refuge. The

notice then pays at least half a rupee to the Acharya. Sometimes the Acharya delegates his authority to admit followers as candidates for regular discipleship, giving them the Panch Vartaman, formula forbidding lying, theft. Adultery, intoxication and animal food. But a perfect disciple can be made only after receiving the final formula from one of the two Acharyas. The distinguishing mark, which the disciple is then allowed to make on his forehead, is a vertical streak of Gopichandan clay or sandal with a round redpowder mark in the middle and a necklet of sweet basil beads (15)."

(15) Gazetteer of the Bombay Presidency, Vol. IX, Part I, Gujrat Population, pp. 538-39"

6. In AIR 1968 SC 1413 (*Gopal Krishnaji Ketkar. v. Mohamed Haji Latif*) the Hon'ble Apex Court has quoted an extract from Gazetteer of Bombay Province in respect of tomb of a Muslim saint and Hindu Prince for its consideration of facts. Relevant paragraph 4 of the said judgment reads as follows:

"4. It is necessary at this stage to set out the origin and history of the Dargah. The Dargah has been in existence for over about 700 years. Its origin is lost in antiquity but the Gazetteer of the Bombay Presidency tells us that the tomb is that of a Muslim saint who came to India as an Arab missionary in the thirteenth century. According to tradition, there are two tombs in the Dargah in one of which is the dead body of a Hindu princess and in the other tomb the dead body of the Muslim saint. The fame of the saint was at its height when the English made their appearance at Kalyan in 1780. As they only stayed for two years, their departure in the year 1782 was ascribed to the power of the dead saint. The Peshwas were then in power in that region and after the departure of the English they sent a thanks offering under the charge of one Kashinath Pant Ketkar, a Kalyan Brahmin. It is said that the offering sent by the Peshwas was a pall of cloth of gold trimmed with pearl, and supported on silver pasta. The tomb was in disrepair and Kashinath started to repair it and according to tradition was miraculously assisted by the dead saint who, without

human aid, quarried and dressed the large blocks of stone which now cover the tomb. It appears that Kashinath was not content to repair the tomb. He also wanted to manage it and this led to a dispute with Kalyan Muslims who resented Brahmin management of a Muslim shrine. Matters came to a head in 1817 and the dispute came before the Collector who declared that the dead saint should settle the affair and that the only way of ascertaining the saint's wishes was by casting lots. This was done and three times the lot fell on the representative of Kashinath and so the matter ended and Kashinath's representative was proclaimed guardian of the tomb.”

7. Be it mentioned herein that as it appears from the above referred three judgments being AIR 1986 SC 1272; AIR 1966 SC 1119 and AIR 1968 SC 1413; the Hon'ble Court in place and stead of 'Gazetteer of Bombay Province' has mentioned 'Gazette of Bombay Province'.

8. In AIR 1967 SC 256 (*Mahant Shrinivas Ramanuj Das. v. Surjanarayn Das*) in paragraph 25 of the said judgment, the Hon'ble Supreme Court quoting with approval the facts from 'Puri Gazetteer' has held that the gazetteers can be consulted in matters of public history and statement in such gazetteer can be relied on as providing historical material, practice followed by Math and its head. Relevant paragraph Nos.25 and 26 of the said judgment read as follows:

“25. The history of the Emar Math, according to the passage in the Puri Gazetteer, fits in with our finding. The High Court has relied on what has been stated in the Puri Gazetteer of O'Malley of 1908, at pp. 112-118. The relevant portion of the passage relied on is the following:

"No account of Jagannath worship would be complete without some account of the Maths in Puri. Maths are monastic houses originally founded with the object of

feeding travellers, beggars and ascetics of giving religious instruction to chelas or disciples, and generally of encouraging a religious life. The heads of these religious houses who are called Mahants or Mathadharis are elected from among the chelas and are assisted in the management of their properties by Adhikaris who may be described as their business managers. They are generally celibates but in certain Maths married men may hold the office.. Mahants are the gurus or spiritual guides of many people who present the Maths with presents of money and endowments in land. Thus the Sriramdas or Dakshinaparwa Math received rich endowments from the Mahrattas its abbot having been the guru of the Niahhatta Governor While the Mahant of Emar Math in the eighteenth century who' had the reputation of being a very holy ascetic, similarly got large offerings frolic his followers. Both Saiva and Vaishava Maths exist in Puri. The lands of the latter are known as Amruta Manohi (literally nectar food), because they were given with the intention that the proceeds thereof should be spent in offering bhoga before Jagannath and that the Mahaprasad thus obtained should be distributed among pilgrims, beggars and ascetics; they are distinct from the Amruta Manohi lands of the Temple itself which are under the superintendence of the Raja. In 1848 Babu Brij Kishore Ghose roughly estimated the annual income of 28 Maths from land alone at Rs. 1,45,400 and this income must have increased largely during the last sixty years.

There are over 70 Maths in Puri Town. The Chief Saiva Maths are located in the sandy tract near Swargadwar, viz., Sankaracharya Math with a fine Library of old manuscripts and Sabkarananda Math which has a branch at Bhubaneshwar. Most of the Maths are naturally Vaishnava. The richest of the latter are Emar, Sriramdas and Raghavadasa the inmates of which are Ramats or followers of Ramananda."

26. It is urged for the appellant that what is stated in the Gazetteer cannot be treated as evidence. These statements in the Gazetteer are not relied on as evidence of title but as providing historical material and the practice followed by the Math and its head. The Gazetteer can be consulted on matters of public history."

9. In AIR 1975 SC 706 (*State of Rajasthan. v. Sajjanlal Panjawat*) the Hon'ble Supreme Court of India has quoted with approval an extract from the Imperial Gazetteer of India in respect of famous giant temple. Relevant paragraph 12 of the said judgment reads as follows:

“12. Apart from a copy of the fireman of Emperor Akbar produced by the respondents to show that Shri Rikhabdevji temple is a Swetamber Jain temple, the authenticity of which has been disputed by the State, there are other documents from which it appears indisputable even as was represented by the State and its predecessors that Shri Rikhabdevji temple is a Jain temple. Annexure-26 -The Imperial Gazetteer of India, Vol. XXI (New Edition 1908 pp. 168-169) describes it as "The famous Jain temple sacred to Adinath or Rakhavnath". It further states that it is annually visited by thousands of pilgrims from all parts of Rajputana and Gujarat, and that it is difficult to determine the age of this building, but three inscriptions mention that it was repaired in the fourteenth and fifteenth centuries. There can be no doubt that it is an ancient temple, though it is not possible to say when and by whom the idols were consecrated. We find as late as in 1958 that Annexure 30 - a Calendar printed and published by the Government of Rajasthan - has a photo of Shri Rikhabdevji temple under which there is a caption "UDAIPUR KE PAS RIKHABDEVJI KA PRASIDH JAIN MANDIR" i. e. famous Jain temple of Rikhabdevji near Udaipur. Annexure 17 is a notification issued by the Mewar Government on Chait Sukla 7 Monday 1982 corresponding to April 19, 1926 A.D. with the heading "Unique Angi Utsav in Shri Dhulevnagar". In it Shri Keshariyanathji Maharaj is described as a holy Jain Tirath which was managed previously by Udaipur Nagar Seth and Seth Jorawarmalji. We are not for the present concerned with the statement contained there in about the misappropriation of the money of the deity in Samvat Year 1934 But this document also shows that the State of Mewar describes it as a holy Jain Tirath. Annexures 2, 3, 4, 6, 7A, 7B and 7C show that some embezzlement of the temple funds was suspected in Samvat Year 1933 (about year 1875-76 AD.) as a

result of which one Molvi Abdul Rehman Khan was deputed by the State of Udaipur to make enquiry and check the accounts. It appears that while this enquiry was - proceeding, one Bhandari Jawanji Khem Raj complained against that Molvi for forcibly breaking open the lock of the Bhandar and taking away the account books and other papers. In that connection he described the temple of Shri Rikhabdevji Maharaj as belonging to the Jain Sangh. Annexure 9 dated January 27, 1878, is a notification of the Government of Udaipur State for the information of the pilgrims and the devotees of Shri Rikhabdevji stating that Bhandaries were removed due to their mismanagement of the temple affairs and that a Committee consisting of five respectable Oswal Mahajans devotees of Shri Rikhabdevji, was appointed. Annexure 10 dated November 22, 1878, is a notice issued by the members of the Committee to dispel doubts about the action taken by the Ruler of the State in appointing a Committee for the management of the temple. It also mentions that- the management has been assigned to a Committee of five or seven big Sahukars who follow Jain religion and lead a religious life. Annexure 24 dated May 29, 1886, is a copy of the report made by Mehta Govind Singh Hakim Magra (an officer having both judicial and magisterial powers) to Mahkama Khas, Udaipur, on an application submitted by some Digamber Jains objecting to the raising of Dhawaja i.e. flag over the 'Jainalaya' by the Swetambar Jains. In that report it was stated that the temple was a Swetamber Jain temple. Annexure 21 dated July 19, 1907, shows that on a complaint that some people had allowed low caste people to perform Puja of Shri Rikhabdevji by taking some illegal gratification, the matter was referred by the officer of the Devasthan Bhandar to Jain Muni Paniyas Nem Kushalji as to what steps be taken for purification of the temple and the reply given by the said Muni. Annexure 28 dated Kartik Sudi 10 Samvat 1979 (1922 A D.) is a copy of the report of the Devasthan Department to Mahkama Khas, Udaipur State, stating that 'Naivedya' should not be offered to the deity Shri Rikhabdevji as neither the Committee no; the Jain Sangh nor the Acharyas of the Jain Sangh are in favour of it, and that the new practice of offering 'Naivedya' for the first time is uncalled for. On this report, the Mahkama Khas ordered that the Devasthan be informed that there is no necessity of offering 'Naivedya'. Annexure 29

dated Samvat 1889 (Sak 1759) (1833 A.D.) is a copy of inscriptions engraved on the main gate in which there is a reference to the performance of the ceremony of Dhwaja-Danda on the temple of Shri Rikhabdevji Maharaj. All these documents, there being no document to the contrary filed by the State of Rajasthan, clearly show that Shri Rikhabdevji temple is a Jain temple.”

10. In AIR 1960 SC 148 (*Shubnath Deogam. v. Ram Narain Prasad*) the Hon’ble Apex Court has quoted with approval an extract from the District Gazetteer in respect of religious practices and sentiments of the *Adibasis*. Relevant paragraph 14 of the said judgment reads as follows:

“14. It also appears from the district Gazetteer quoted in the judgment of the Tribunal that according to the belief of the 'Hos':

"All the spirits if not by nature malignant - and they generally are malignant - require continual propitiation by means of sacrifices, the belief being that unless such offerings are made to them, they are a power for evil. Illness, for instance, is usually regarded as due to the influence of some Bonga; and the more serious and continued the disease, the greater the value of the animal that must be sacrificed. First, they sacrifice a fowl, and then if the offering does no good a goat. If a goat fails to procure relief, they increase the size of the sacrificial animal, immolating one after the other, a sheep, a calf, a cow and a buffalo to appease the ill will of the spirit.....".

The facts stated in the District Gazetteer have been accepted by the Courts below as setting out correctly the religious practices and sentiments of the *Adibasis*.”

11. In AIR 1959 SC 1073 (*State of Bihar. v. Bhabapritananda Ojha*) the Hon’ble Apex Court has extracted facts from the Bihar District Gazetteer placing the history of Shri Baidyanath temple. Relevant paragraphs 2 and 3 of the said judgment read as follows:

“2. For the purposes of this appeal it will be necessary to refer to some earlier litigation about this temple. The history of this temple, it is not disputed, goes back to remote antiquity. According to Hindu tradition referred to in the Siva Purana and Padma Purana, extracts from which, with translations, are given by Dr. Rajendra Lal Mitra in his paper on the Temples of Deoghar (see Journal of the Asiatic Society of Bengal, Part 1, 1883, quoted in the Bihar District Gazetteer relating to Santal Parganas, 1938 edition pp. 373-376), the origin of the temple is traced to the Treta Yuga, which was the second age of the world by Hindu mythology. Side by side with Hindu tradition, there is a Santal tradition of the origin of the temple given by Sir William Hunter (see the Annals of Rural Bengal, p. 191; Statistical Account of Bengal Vol. XIV, p. 323). But these materials afford no evidence as to when and by whom the idol was established or the temple was built.

3. The temple sheltering the "lingam" and dedicated to Mahadeva stands in a stone-paved quadrangular courtyard. The courtyard contains eleven other temples, smaller in size and of less importance than that of Baidyanath. Pilgrims visit the temples in large numbers and make offerings of flowers and money in silver or gold; rich people offer horses, cattle, palaquins, gold ornaments and other valuables and sometimes, rent-free land in support of the daily worship. There is a high or chief priest (Sardar Panda) who it appears used to day a fixed rent to the Rajas of Birbhum during the Muhammadan regime, and the administration of the temple was then left entirely in the hands of the high priest. It may be here stated that about 300 families of "pandas", who belong to a branch of Maithil Brahmins, were attached to the temple and earned their livelihood by assisting pilgrims in performing the various ceremonies connected with the worship of the God. When the British rule began, it was decided to take over the management of the temple, and with this object an establishment of priests, collectors and watchmen was organised in 1787 at Government expense. The revenue soon fell off, as the chief priest beset the avenues to the temples with emissaries, who induced the pilgrims to make their offerings before approaching the shrine. (See the District Gazetteer, *ibid*, p. 383). In 1791 Government relinquished its claim to a share of the offerings and entrusted the management of the temple to the head priest on his

executing an agreement to keep the temples in repair and to perform all the usual ceremonies. This agreement was entered into by Ram Dutt the (ancestor of the present respondent), then high priest of the temple, and Mr. Keating who was then Collector of the district. According to Mr. Keating the income of the temple in 1791 consisted of the offerings of the proceeds of 32 villages and 108 bighas of land which he estimated at Rs. 2,000 a year; some years later the total income was estimated at Rs. 25,000 a year. Under the system introduced by the agreement of 1791, the mismanagement of the temple was a source of constant complaint; the temple and "ghats" were frequently out of repair and the high priest was charged with alienating villages from the temple and treating his situation as a means of enriching himself and his family. On the death of the high priest in 1820 a dispute over the succession arose between an uncle and a nephew. The nephew Nityanand was eventually appointed, but neglected to carry out the terms of his appointment. Finally, Nityanand was charged with malversation of the funds and the uncle Sarbanand was appointed in his stead in 1823. There was a faction which was opposed to Sarbanand's retention in office and asked for Government interference in the internal management of the temple. In 1835 Government declined all interference in the matter and the parties were left to have recourse to the established Courts of law. Sarbanand died in 1837 and Iswaranund Ojha, son of Sarbanand Ojha, was subsequently elected Sardar Panda. Iswaranund was succeeded by his grand-son, Sailajanund Ojha."

9. In AIR 1954 SC 575 (*Choote Khan. v. Mal Khan*) the Hon'ble Apex Court has relied and quoted facts from Gazetteer of Gurgaon District. Relevant paragraphs 4 and 6 of the said judgment reads as follows:

"4. The parties are Meos and the land in dispute is situate in village Manota in Tehsil Ferozepore Jhirka in Gurgaon District. According to the Gazetteer of Gurgaon district (1910) the Meos owned nearly the whole of the Ferozepore Tehsil and various other villages in Gurgaon. They are divided into several sub-tribes, and these sub-tribes possess a strong feeling of unity and the power of corporate action. It

was stated that

" in the Mutiny the members of each sub-division generally acted together and district officers are advised to keep themselves informed of the names and characters of the men, who from time to time possess considerable influence over their fellow-tribesmen." (P. 60).

6. It is common ground that the property was originally granted in 1822 A.D. to Dalmir by Nawab Ahmad Bakhsh Khan Rais of Ferozepore Jhirka. The grant is not in writing and there is no contemporaneous record which could throw any light on its terms. Dalmir claimed to be the sole grantee with full proprietary rights. A number of documents are attached to the Settlement record of 1963. They are important as showing how the property was dealt with by the Settlement authorities from time to time and the State of Revenue records. The earliest document on record appears to be an agreement dated September 28, 1861, which is incorporated in paragraph 18 of the Wazib -ul- arz of village Manota. It says that the tenure of the village is zamindari. Dalmir is entitled to profit and liable for loss in respect of the entire village. The other biswadars are owners of the produce of the land cultivated by them but they pay no revenue. This it is stated, is signed in token (P. 35: D. 11). This document is signed in token of verification by Dalmir Lamberdar, Dilmore, Alif Khan Biswadar, and Phusa Biswadar, who are described as proprietors. Phusa, we are told, is the alias of Chhinga.

There is a report of Mr. John Lawrence (later Lord Lawrence) Settlement Officer referred to in the Gazetteer which says that the arrangement then in vogue was that a few owners shared the profit and loss of the land Revenue and the others were exempted from responsibility. Manota was one of the few villages which continued to follow the system (P. 179)"

10. In AIR 1969 All 43 (*G.S. Chooramoni. v. State of Uttar Pradesh*) the Hon'ble Uttar Pradesh High Court has relied on a district gazetteer in respect of proprietary rights of the government lessees. Relevant paragraph 12 of the said

judgment reads as follows:

“12. In 1965 the State Government appears to have departed from the initial proclaimed purpose that the Thekedari Abolition Act was to apply to the nine districts mentioned by the Hon'ble Revenue Minister. By a notification No. 1683/ IC-340C-65, the State Government extended the provisions of the Act to the areas comprising the district of Naini Tal, with effect from June, 26, 1965. The same day by another notification no. 1688 (ii) IC-340C-65, the State Government ordered that under section 3 of the Thekedari Abolition Act, all leases in respect of Government Estate in 53 Mustajiri villages of the Tarai and Bhabar Government Estate, district Naini Tal, shall with effect from 1-7-1965 be determined. Mustajiri means zamindari. In these villages the Government lessees had proprietary rights (vide District Gazetteer Vol. 34, p. 128). Then, all leases in the Government Estates of 35 other villages in the Tarai and Bhabar area were determined by the impugned notification dated 30th June, 1966. These are non-mustajiri or kham villages, that is, directly managed; the rent being in cash, at Bighawar rate. For the petitioners it was contended that though the leases were terminated under the Thekedari Abolition Act, but the Zamindari Abolition Act has not been extended to the Government Estates in these 35 villages, I asked the learned counsel appearing for the State to verify this and make a statement. The hearing was adjourned to enable him to obtain instructions. Learned counsel then confirmed the fact stated for the petitioners.”

11. In AIR 1983 MP 75 (*Ramdas. v. Vaishnudas*) the Hon'ble Madhya Pradesh High Court has relied on and quoted relevant facts from Madhya Pradesh District Gazetteer of Bilaspur District in respect of historicity and practices followed by Sheorinarayana Math. Relevant paragraph 5 of the said judgment reads as follows:

“5. Before proceeding further, it is necessary to mention briefly the history of the Sheorinarayana Math. The Math is situated in the village

Sheorinarayan, 62.04 kilometers from Bilaspur on the left bank of Mahanadi. It is an ancient Math and us a well-known place of pilgrimage. The entire Chhatisgarh area which includes the District of Bilaspur was ruled by the Kalchuri clan of Rajputs from the 9th century A.D. to the 18th century A.D. The capital of these rulers was at Ratanpur which is at short distance from Bilaspur. The Kalchuries of Ratanpur were all descendants of the Kalchuries of Chedi or Dehala with their capital at Tripuri near Jabalpur. Kalchuries belong to Haihaya race claiming descent from Kartavityarjuna of the Epic and the Puranic fame and are also referred to as Haihayas : (Madhya Pradesh District Gazetteer of Bilaspur District, pp. 56 to 66). The popular belief which is also adverted to in the plaint is that the temple of Narayana which is the principal temple of the Math was constructed during the reign of Jajalladeva II who ruled from 1165 A.D. to 1168 A.D. There are two stone inscriptions which are important for finding out as to when the temple of Narayana in the Math was built. The first inscription which is of the Kalchuri year 898 is incised on the pedestal of the statue of a male person in a small shrine in the courtyard of the temple of Narayana. The corresponding English date of this inscription is 9th Sept. 1146 A.D. The object of the inscription is to record that the statue is of a warrior named Sangramasimha the son of Balesimha and Ananadevi. The praise which is here lavished in the inscription is wholly conventional and has no historical importance: (See Corpus Inscriptionum Indicarum (Inscriptions of the Kalachuri-Chedi Era) Vol. IV, Pt. II, pp. 582 to 584). The only thing of importance in this inscription is the date and the fact that it starts with an invocation to 'Shiv'. The second inscription is of the Kalchuri or Chedi year 919. The stone which bears this inscription is built in the temple of Chandrachudeavars which stands in close vicinity to that of Narayana temple. The date of the inscription is not available but the year corresponds to 1167-68 A. D. The inscription belongs to the reign of Jajalladeva II of the Kalchuri Dynasty of Ratanpur. The immediate object of the inscription is to record the donation of the village Chincheli by Amanadeva, a descendant of a collateral branch of the Kalchuri Dynasty for the purpose of defraying the expenses of worship of God Chandrachude and the erection of a temple of Durga in front of the shrine. The inscription is, however, historically important as it furnishes an

account of the collateral Dynasty of Ratanpur. This inscription also begins with an invocation to Shiv: (Inscriptions of the Kalachuri Chedi Era Pt. II, pp. 519 to 527). It is generally believed that the temple of Narayana was constructed during the same period to which the above inscriptions belong. There is some controversy as to whether the idol in this temple is of Vishnu or Shiva. It is stated in the Archaeological Survey of India Report, Vol. VII, p. 196 that the deity in the temple is Shaivic and not Vaishnavic. The same thing is repeated in the Madhya Pradesh District Gazetteer of Bilaspur District at p. 524. The Survey Report which states that the idol is of Shiv was made by J.D. Beglar, who was Assistant to Major-General A. Cunningham, Director General, Archaeological Survey of India. The inference drawn by Beglar on this point does not appear to be correct. The idol is a figure in a sitting posture and not Shivalingum. The very fact that the idol has been worshipped as Narayana or Vishnu for ages proves that it is of Vishnu and not of Shiv. Probably, the Beglar's report was influenced by the fact that the stone inscriptions which we have referred to above begin with an invocation to Shiva and the Kalchuri Rulers in whose reign the Shrine was founded were also of Saivic faith. In our opinion, however, the correct position is stated by Dr. Mirashi in his introduction to Vol. IV of Corpus Inscriptionum Indicarum (Inscriptions of the Kalachuri-Chedi Era Pt. I, pp. xxiii, cxv, cli and clxiii) that though Saivism was the predominant cult in Dakshina Kosala i.e. Chattisgarh, but Vaishnavism also was prevalent and that the old temple at Sheorinarayan is of Vishnu and was erected by a collateral branch of the royal family of Ratanpur. This is also the view of a modern author as Kalchuri Rulers and their descendants: (See Kalchuri Naresh Aur Unke Vanshaj (1982) p. 33 by Dr. Ram Kumar Singh). The parties have also accepted this position before us.”

12. In AIR 1996 Himachal Pradesh 102 (*Kashmiru. v. Sh. Doud*)

the Hon'ble Himachal Pradesh High Court has quoted and relied on the gazetteer of the Chamba State in respect of customary form of marriage "*Jhanjrara marriage*". Relevant paragraph 11 of the said judgment reads as follows:

“11. It has come in the evidence examined by the parties before the trial Court that plaintiff married Smt. Jugni by way of 'Jhanjrara' marriage which is customary form of marriage. Otherwise also, this customary type of Jhanjrara marriage has been recognised to be a customary marriage prevalent in Chamba District as is evident from the book titled Gazetteer of the Chamba State, Part A-1904, page 126, wherein form of marriages have been described as under :

"Among all castes three kinds of marriages are in vogue : (i) regular (byah); (ii) jhanjrara and (iii) jhind phuk or man-marzi. Regular marriage involves betrothal (mangni) and the orthodox phera and the chhe-chap are essential. In a Jhanjrara the bride puts on ornaments, especially the nose-ring (nath), a red string to bind her hair (dori), and a bodice (choli). In both forms of customary marriage the worship of the family god or of a lamp is essential. The Jhanjrara rite is customary in the remarriage of a widow or of a woman divorced by her former husband, it is called choli-dori. especially in the Sadar and Brahmaur Wizarats and sargudhi in Churah. "

13. Section 35 of the Evidence Act, 1872 says, inter alia, that an entry in any public or other official book stating a fact in issue or relevant fact and made by a public servant in discharge of his official duty is itself a relevant fact. As such, the facts that the Hindus were continuously worshipping in the alleged Babri mosque which was erected over the Ramjanamsthan temple is itself a relevant evidence as recorded in the gazetteers relied by this defendant. The said Section 35 of the Evidence Act, 1872 reads as follows.

**“35. Relevancy of entry in public record, made in performance of duty.—**An entry in any public or other official book, register or record [or an electronic record] <sup>1</sup>, stating a fact in issue or relevant fact, and made by a public servant in the discharge of his official duty, or by any other person in performance of

a duty specially enjoined by the law of the country in which such book, register or record [or an electronic record] <sup>2</sup> is kept, is itself a relevant fact.”

14. That Section 45 of the Evidence Act, 1872 makes opinions of the experts, inter alia, in assistance or law are in question as of entity of hand writings or finger impression are relevant facts and admissible evidence.

“ **45. Opinions of experts.**—When the Court has to form an opinion upon a point of foreign law, or of science, or art, or as to identity of handwriting <sup>1</sup>[or finger impressions], the opinions upon that point of persons specially skilled in such foreign law, science or art, <sup>2</sup>[or in questions as to identity of handwriting] <sup>3</sup>[or finger impressions] are relevant facts. Such persons are called experts.

*Illustrations*

(a) The question is, whether the death of *A* was caused by poison.

The opinions of experts as to the symptoms produced by the poison by which *A* is supposed to have died, are relevant.

(b) The question is, whether *A*, at the time of doing a certain act, was, by reason of unsoundness of mind, incapable of knowing the nature of the act, or that he was doing what was either wrong or contrary to law.

The opinions of experts upon the question whether the symptoms exhibited by *A* commonly show unsoundness of mind, and whether such unsoundness of mind usually renders persons incapable of knowing the nature of the acts which they do, or of knowing that what they do is either wrong or contrary to law, are relevant.

(c) The question is, whether a certain document was written by *A*. Another document is produced which is proved or admitted to have been written by *A*.

The opinions of experts on the question whether the two documents were written by the same person or by different persons, are relevant.”

15. Section 57 of the Evidence Act, 1872, inter alia, says that the Court shall take judicial notice of all laws, public acts, public festivals, fasts and holidays notified in the official gazette as also on all matters of public history, literature, science or arts, the Court may resort for its aid to appropriate books or documents of reference if the Court is called upon by any

person to take judicial notice of any fact. As this defendant has already prayed for taking judicial notices of the books containing present laws of the Hindus and Muslims, others books, historical books, gazetteers etc. and this Hon'ble High Court has allowed the said prayer, the facts stated in those books are admissible as evidence under the relevant provisions of the aforesaid Section. Section 57 of the Evidence Act, 1872 reads as follows:

**“ 57. Facts of which Court must take judicial notice.**—The Court shall take judicial notice of the following facts:

<sup>1</sup>[(1) All laws in force in the territory of India;]

(2) All public Acts passed or hereafter to be passed by Parliament <sup>2</sup>[of the United Kingdom], and all local and personal Acts directed by Parliament <sup>3</sup>[of the United Kingdom] to be judicially noticed;

(3) Articles of War for <sup>4</sup>[the Indian] Army, <sup>5</sup>[Navy or Air Force];

<sup>6</sup>[(4) The course of proceeding of Parliament of the United Kingdom, of the Constituent Assembly of India, of Parliament and of the legislatures established under any laws for the time being in force in a Province or in the State;]

(5) The accession and the sign manual of the Sovereign for the time being of the United Kingdom of Great Britain and Ireland;

(6) All seals of which English Courts take judicial notice: the seals of all the <sup>7</sup>[Courts in <sup>8</sup>[India]] and of all Courts out of <sup>9</sup>[India] established by the authority of <sup>10</sup>[the Central Government or the Crown Representative]: the seals of Courts of Admiralty and Maritime Jurisdiction and of Notaries Public, and all seals which any person is authorised to use by <sup>11</sup>[the Constitution or an Act of Parliament of the United Kingdom or an] Act or Regulation having the force of law in <sup>12</sup>[India];

(7) The accession to office, names, titles, functions and signatures of the persons filling for the time being any public office in any <sup>13</sup>[State], if the fact of their

appointment to such office is notified in <sup>14</sup>[any official Gazette];

(8) The existence, title, and national flag of every State or Sovereign recognized by <sup>15</sup>[the Government of India];

(9) The divisions of time, the geographical divisions of the world, and public festivals, fasts and holidays notified in the official Gazette;

(10) The territories under the dominion of <sup>16</sup>[the Government of India];

(11) The commencement, continuance and termination of hostilities between <sup>17</sup>[the Government of India] and any other State or body of persons;

(12) The names of the members and officers of the Court, and of their deputies and subordinate officers and assistants, and also of all officers acting in execution of its process, and of all advocates, attorneys, proctors, vakils, pleaders and other persons authorized by law to appear or act before it;

(13) The rule of the road <sup>18</sup>[on land or at sea].

In all these cases, and also on all matters of public history, literature, science or art, the Court may resort for its aid to appropriate books or documents of reference. If the Court is called upon by any person to take judicial notice of any fact, it may refuse to do so unless and until such person produces any such book or document as it may consider necessary to enable it to do so.”

16. Section 81 of the Evidence Act, 1872, inter alia, says that the Court shall presume the genuineness of any official gazette, or the government gazette and of every document purporting to be a document directed by any law. Said Section 81 of the Evidence Act, 1872 reads as follows:

**“81. Presumption as to Gazettes, newspapers, private Acts of Parliament and other documents.—** The Court shall presume the genuineness of every document purporting to be the London Gazette or <sup>1</sup>[any Official Gazette, or the Government Gazette] of any colony, dependency or possession of the British

Crown, or to be a newspaper or journal, or to be a copy of a private Act of Parliament <sup>2</sup>[of the United Kingdom] printed by the Queen's Printer and of every document purporting to be a document directed by any law to be kept by any person, if such document is kept substantially in the form required by law and is produced from proper custody."

17. In AIR 1931 PC 212 (*Devasthanam Madura. v. Ali Khan Sahib*)

on its page 215, the Privy Council extracted the facts from Madura Gazetteer in respect of Tirupparankundram temple and also held that though there is a general presumption that waste land are the property of the crown, but it is not applicable where alleged waste is, at all found, physically within a temple. Relevant extracts from pages 214 to 216 of the said judgment read as follows:

Their main criticism of the Subordinate Judge is that "he refused to draw the proper presumption from the admitted facts of the case," and that this vitiates his consideration of all the evidence. The presumption which they draw is that the unoccupied portions of the hill belong to Government, and they appear to base this upon historical grounds.

It is necessary therefore to trace shortly the fortunes of the temple in the 17th and 18th centuries, for which the authorities relied on are principally the "Madura Gazetteer," and Nelson's "Manual of the Madura Country," a compilation of great interest which has frequently been cited before this Board.

There appears to be no doubt that under the Nayakkan Kings of Madura the seven temples in and in the immediate neighbourhood of the capital were endowed with large revenues derived from a number of villages. The temples were known as the Hafta Devasthanam, and included the Tirupparankundram Temple. It seems probable that this endowment was due mainly to the generosity of Tirumala, a famous member of that dynasty who reigned from 1623 to 1659. During the century and a half that followed the history of Madura is a confused record of internecine warfare, in which the incursions of Mahomedan, Mysorean and Mahratta invaders played the largest

part, and these were succeeded by the gradual, but by no means peaceful, penetration of the East India Company. During those troublous times the Hafta Devasthanam lands seem to have disappeared piecemeal. What remained of them when Chanda Sahib, nominally representing the Nawab of Arcot, established himself in Madura in 1738 were then confiscated. His domination was interrupted by another invasion of the Mahrattas, who probably restored a portion of the old endowments. They again were ousted by the Nizam in 1744, and the temples fared no better than before. Then followed the intervention of the East India Company. Madura was eventually subdued by their troops under Mahomed Yusuf Khan, who in due course established himself as ruler. In 1763 he was besieged in Madura by the Company's army, and after a memorable defence was betrayed and executed.

Thenceforward Madura seems to have come gradually under the Company's control, and after the fall of Seringapatam the civil and military administration of the district was formally made over, as part of the Carnatic, to the British under Lord Clive's treaty with Azim-ul-Dowlah of 31st July 1801 (Aitchison's Treaties, Edn. 4, X. 57).

Mahomed Yusuf Khan (above referred to), who was apparently a Hindu by birth, re-established the endowment of the temples by a money grant, possibly derived from the revenues of the confiscated villages but the villages themselves were not restored.

This was the position when Mr. Hurdis, who was already in charge of the adjoining district of Dindigul, became the first British Collector of Madura, and carried out an elaborate survey and settlement of the country. He was in considerable doubt as to the course that should be adopted with regard to the Hafta Devasthanam lands. The Board of Directors ordered their restoration to the temples, but for some unexplained reason this order was never carried out, a *tasdik* or annual allowance in money being paid in lieu thereof to each of the temples. The Tirupparankundram *tasdik*, according to Nelson's account, was a sum of Rs. 2,651-8-3.

Their Lordships will now return to the matter with which the present appeal is immediately concerned. The question is whether any presumption should be drawn from the confiscation of the endowed villages as to the proprietary rights in the waste land situate within the 'ghiri veedhi' and forming part of the

'malaiprakaram.' It is admitted that the village of Tirupparankundram, in which the temple is situated, was part of this endowment.

The Subordinate Judge thought that there was nothing in the long story, which their Lordships have attempted to summarize in the preceding pages, to suggest that the temple had ever been ousted from its possession of the hill. The High Court, on the other hand, took the view that the hill being part of the village, it must be presumed to have been confiscated with the village, and to have become in 1801 Government property.

The conclusion to which their Lordships have come is that the Subordinate Judge was right. There is no trace in the historical works to which they have been referred of any interference by the Mahomedan invaders with the sacred hill or the immediate surroundings of the temple. They and the other predatory forces which established themselves from time to time in Madura, no doubt seized the revenue-producing lands which formed the joint endowment of all the temples, and these must have included the cultivated and assessed lands within the 'ghiri veedhi,' but there seems to be no suggestion that the Tirupparankundram

Temple or any of its adjuncts passed at any time into secular hands. It was probably during some interval of Mahomedan domination that the mosque and some Mahomedan houses were built (though the Mahomedans themselves ascribe the mosque to a much earlier period), but this was an infliction which the Hindu occupants of the hill might well have been forced to put up with ; it is, their Lordships think, no evidence of their expropriation from the remainder.

But the more relevant period to consider is that following the cession of sovereignty in 1801. The only rights which the temple can assert against the respondent are rights which the East India Company granted to them or allowed them to retain : see *Secy. of State v. Bai Rajbai (1)*, and their Lordships think the evidence shows that the temple was left after 1801 in undisturbed possession of all that it now claims. Indeed, the policy of the Directors seems to have been rather to restore to the temples what they had been deprived of in the long years of anarchy which had preceded British rule, than to mulct them of any remnant that was left. It is, in their Lordships' view, hardly, conceivable that the East India Company would have wished, for no gain to themselves, to

appropriate what was plainly the 'prakaram' of an ancient temple studded with shrines, 'inandapams' and other accessories to the worship of its devotees. Nor is there in the reports of Mr. Hurdis, or of any of his successors, which are summarized in the Nelson Manual, any hint of such a policy or of any claim by Government to rights over the hill.

(1)

AIR 1915 PC 59=30 IC 303=42 IA 229=39 Bom. 625(PC).

Their Lordships do not doubt that there is a general presumption that waste lands are the property of the Crown, but they think that it is not applicable to the facts of the present case where the alleged waste is, at all events physically, within a temple enclosure. They see no reason to disagree with the Subordinate Judge's discussion of the authorities on this question. Nor do they think that any assistance can be derived, under the circumstances of this case, from the provisions of the Madras Land Encroachment Act 3 of 1905, on which the respondent has relied.

<p><b>Annexure-V</b>  <b>Twenty lines Inscription</b>  <b>engraved on a slab</b>  <b>Page 45-59</b></p>
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**On 6.12.1992 the disputed structure was demolished and the inscription and several pieces of architectural remains were found. They are the most clinching evidence. Epigraphical documents are considered to be the most valuable evidence. In a 20 line inscription engraved on a slab or tablet it transpires that it measures about 5' in length and 2.25' in width. The language of inscription is Sanskrit. The text is shortly composed. The script in Nagri, written in 11 and 12<sup>th</sup> century AD style. It reveals to an impression that there was a reign of king Govind Chandra, Ram Janam Bhumi temple was built.**

The English translation of 20 line inscription by Dr. K.V.Ramesh reads as under :--

**“Line 1....Obeisance to [Lord]Siva.....**

**Line 1-2,verse 1.[This line is nearly totally erased. But there is enough space for a verse in a lengthy metre such as Sardlavikriditam]**

**Lines 1-2,verse 2....of the physique of [Lord] Trivikrama.....by His height containing within His body the sixteen doctrines (or maha-vidyas).....in Whose palm He holds the universe like (holding) the Moon, whose kulagiri (in the case of Bharata-versa, one of the seven great mountain ranges, viz, Mahendra Malaya, Sahya, Suktimat,Rksa,Vindhya and Pariyatra) whose falling rocks (while striking one another) create noise had, out of wanton arogance.....**

**Lines 2-3,verse 3, The illustrious Bhargava 9 i.e.Parasurama)....an ornament of the earth.....like insects.....with firm hands apraised.....having increased, events brought into existence, barren faces.....**

Lines 3-4, verse 4. during the violent dance of the Lord of (the goddess) Gandi (I.e.Lord Siva), from the rocking head-jewel....genuine reputations which emanated from the opening in the skull-shaped spherical half of the universe..In that family heroestook their birth, who were determined to resurrect the warrior clan which had been rendered weak by the wars waged by Bhargava (Parasurama)(against them).

Lines 4-5,verse 5. Noble was that very family which was the birth place of valour which had successfully removed the sufferings of the other (Ksatriya clans) in which Mame, the abode of thousands of perfect and extremely valorous deeds and who was the utmost favourite of the world.

Line 5,verse 6. That very Son of the Sun (i.e. Karna), Mame, the unequalled hero of the world, uttered everyday the words “may ! Have no mercy on (my) body, may I not hanker for material wealth, may I be diligently disinterested in sensual temptations.....

Lines 5-6, verse 7. The thorny trees, like the sensuous villains, repeatedly wrote (i.e.scratched) on the skins of the breasts and hips and loins of the womenfolk of the tribal villages of the plains and hills who had taken refuge in the thickets as a result of the destruction of their abodes in sportive wars waged by him.

Lines 6-7, verse 8, His fame alone having pervaded till then the heavens, the high-minded [Mame], wishing to go to the heavens in person and reside there in that wonderful world, he bequeathed his entire realm along with all the wealth to his son Sollaksana just as the Sun-god had bequeathed all his lustre to the Fire-god.

Line 7,verse 9. As a result of some unknown power of the gift of that realm, which had no bounds and was other-worldly, a super-human valour manifested itself in Saliaksana; it was indeed an earthly exception.

Lines 7-8, verse 10. The sword was at the tip of his fingers, his hand was verily the great army, his fame, like sumptuously cooked delicacies, were ever palatable; even without a kingdom to rule, these personal instruments enabled him to spread extensively an empire sans worries.

Line 8,verse 11. He who was for long intervals enjoying himself on battle-fields, bore on his head his ruthless sword, which was quick to end the lives (of his enemies).

Lines 8-9,verse 12. Within the serene surroundings of the Malaya mountain, on the banks of the heavenly Ganges, at the entrances of the cave-dwellings of the Himalayas, in the caverns in which the hunter tribes dwelt, the accomplished

womenfolk gaily sing (literally, read) the strings of his eulogy composed for the first time by the semi-divine beings moving about in the skies.

Lines 10-11,verse 13. On the advice tendered by the elders, in the terrains of the Himalayas, in the pristine pure regions of the Malaya (mountains), in the lands along with banks of the heavenly Ganges as well as in other regions the semi-divine unmarried girls, with intent to gain husbands, ever offer worship to the hands of the satiating images sculpted in his (i.e. Sallaksana's) likeness.

Lines 10-11,verse14. He who is to be offered oblations by the beautiful for the realization of their desires.....himself by the worlds.....in whose abode, which is pleasing with wealth and happiness, he is sung about the multitudes of celestial singers.

Lines 11-12,verse 15. The people look upon as a phenomenon the fact that, Sallaksana, who was, through good fortune, enjoying the genuine company of the damsels of the heavens, had happily begotten a son who, by appearance, was no different from his father.

Lines 11-12, verse 16 [That son] Alhana, who was the beloved of the good people, is like pointed saw to the war-mongers. He retrieved the splendour of the habitually fickle-minded Goddess of wealth by means of fair and persuasive means.

Line 12,verse 17, He was indeed extraordinary and whenever he confronted (his foes the heap of their) arrogance, accumulated over a protracted period, melted away. The garb of good deeds and bad deeds (worn by them) slipped away by his mere looks.

Line 13,verse18, He was the destroyer of (his enemies' manliness, and made those who were afraid efferminate, as against the belief among the people, his eminence for

dwarfed that of the lofty mountains.

Lines 13-14,verse 19, His nephew (literally brother's son), the widely celebrated Meghasuta, the illustrious one, who superceded Anayacandra, he earned the lordship of Saketa-mandala through the grace of his elder, the Lord of the earth, Govindacandra.

Line 14,verse 20. Not only did he, who was powerful, put an end to the arrogant warriors who were dancing in unrestrained frenzy in the battles constantly fought by him, but he also gave (to his people) an excellent army which was replete with (soldiers comparable to) the wish-fulfilling trees.

Lines 14-15, verse 21. By him, who was mediating in his mind on the earliest means of quickly jumping across the ocean of worldly attachments, was erected this beautiful temple of (The god) Visnu-Hari, [on a scale] never before done by the preceding kings, compactly formed [i.e. built] with rows and lofty stones which had been sculpted out.

Lines 15-16, verse 22. The position of Alhana, whose tireless shoulders were like safety latches for the stability of the king Govindacandra's empire, was subsequently occupied by his younger (son?) Ayusyacandra.

Line 16,verse 23, Great poets dared not compare him with Sahasanka and Sudraka; out of sheer fear none save the God of Love dared draw the bow-string in his presence.

Line 17,verse 24. By him, who was of good conduct, and abhorred strife, while residing at Ayodhya, which had towering abodes, intellectuals and temples, Saketa-Mandala was endowed with thousands of walls, reservoirs, aims-houses, tanks.

Line 17-18, verse 25. The young damsels, who were as attractive as the female musk-deer and does, while they rested on the cool surfaces of the Himalayan rocks, sang

about his (i.e., Ayusyacandra's) fame.

Line 18, verse 26. Whose bodily splendour, which was ever characterised by glowing eyes, was at all times pleasant with gentle feelings, was a source of salvation for the good just as (the holy pilgrimage centre) Kasi is.

Lines 18-19, verse 27. Separating [the flesh and blood of the demon] Hiranyakasipu from his skeleton, subduing [the demon] Bana in battle, tearing asunder the arms of the [demon-king Bali, and performing many valorous deeds, having killed the evil Ten-headed [demon Ravana].....

Lines 19-20, verse 28. And now, the fierce arms of the ruler.....annihilates even the fear caused by the westerns (i.e., the Islamic invaders from the west). The brilliance of the mighty great ones....east and west....

Line 20, verse 29, Because of the subjects' effective acts of merit, the king being famous in the world.....the illustrious Ayusyacandra.....”

Besides this there are other inscriptions engraved on stones.

They are related to 12<sup>th</sup> century A.D. The clinching evidence of epigraphical record prepared by Rakesh Tewari OPW-14 contains a list of 265 artifacts. After seeing the list it transpires that remains of old Hindu temple were used in construction of mosque. Sri Rakesh Tewari was cross examined. There is not even an iota of evidence to suggest that he had not collected the remains of the disputed structure and prepared inventory containing 265 artifacts. Consequently on the basis of epigraphical evidence it transpires that ornamental pictures, images, parts of the old temple and other religious articles used in the temple were found from the debris of the demolished structure. In view of the inscription referred to

above it is established that there was temple prior to the construction of Babri Mosque. The beautiful verses in Sanskrit leave no room for doubt that the script was prepared in 11<sup>th</sup> and 12<sup>th</sup> century A.D. It is covered in the old writings. It establishes the historical fact of existence of pre-Babri Masjid Hindu temple. There is nothing on record to contradict the same.

<p><b>Annexure-IV</b>  <b>Gazetteers</b>  <b>Page 34 to 128</b></p>
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At the cost of repetition I may refer that Carnegie at volume 20 in O.O.S.5-49 in the year 1870 mentioned that after demolition of Janam Sthan Temple Babri Mosque was constructed in the year 1528. Thereafter Millet, H.R.Nevil. E.B.Joshi in gazetteers at Ext. O.O.S.5-7,5-8,5-9,5-11 & 5-13 acknowledged the view taken by Carnegie and took a view that after the demolition of the temple at Janam Asthan, Babri Mosque was constructed. Alexandar Connigham in O.O.S.5-6 has also mentioned that very heart of the city stand Janam Asthan or birth place temple of Ram. The Encyclopedia of India of Eastern and Southern Asia by Surgeon General Edward Balfour (1885) at page 56 also refers about the

<p><b>Annexure-IV</b>  <b>Ayodhya by Hans Bakker</b>  <b>Pages 14 to 33</b></p>
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moque. Lastly **Hans Bakker in the celebrity book of Ayodhya** at page 46 took view that the original location of Janam Asthan is

comparatively certain since it seems to be attested by the location of the mosque built by Babur, in the building of which materials of a previous Hindu temple were used and are still visible. The mosque is built by general consciousness to occupy the site of the Janam Asthan. In this context it may be clarified that gazetteers are official documents and the Hon'ble Apex Court has relied upon them. They are admissible u/ss.35, 45 and 81 of the Indian Evidence Act. The statement contained in the gazetteers can be taken into account to discover the historical matter contained therein and the facts stated there is evidence u/s 45 and the Court may in continuation with another evidence and circumstance take into consideration the material referred in the gazetteer vide AIR 1995 SC 167 Bala Shanker Bhattjee & Others Versus Charity Commissioner, Gujrat State.

I have already referred the submissions of other Advocates who claim that alleged inscription is false, fabricated and forged and it should not be relied upon. In this context I would like to refer Baburnama by A.S.Beweridge who has dealt this inscription at appendix U at page 27. He has obtained the inscription from Deputy Commissioner, Faizabad. The inscription inside the mosque reveals that "By the command of the Emperor Babur, Mir Baqi built this alighting-place of angels". After considering the entire inscription Beweridge took the view and concluded that "inscription is incomplete"

It is not disputed between the parties that original suit

no.29/1945 was filed by Shia Central Waqf Board against Sunni Central Board of Waqf and the learned Civil Judge had the opportunity to see the inscription on the mosque. He has relied upon gazetteers of settlement report and took a view that when no direct evidence is available then the material in the gazetteer which was compiled after spot inspection assumes great importance. According to the Civil Judge the inscription on the pulpit shows that it was built in 923H while gazetteer show that the mosque was built in 935H. Thus the Civil Judge disbelieved the inscription.

Besides Beveridge even the Civil Judge who visited the site on 26.05.1946 instead of one found two inscriptions, one refers 923 H i.e. 1516-17 AD, another refers 935 H i.e. 1528-29 AD. Deputy Commissioner provided the copy of one inscription to Beveridge. Consequently the plaintiffs are unable to prove before this Court as to what happened with the earlier inscription of showing the date of construction as 923H referred in the judgment. As regards the 2<sup>nd</sup> inscription Beveridge found it incomplete. Thus with all certainty it can be said that inscription is not reliable and on the basis of inscription plaintiffs are unable to establish that Babri Mosque was constructed in the year 1528 A.D. but on historical account it is established that the mosque was constructed after demolishing the temple. Consequently during the regime of Babur the mosque was constructed under his command after demolishing the temple against the tenets of Islam by Mir Baqi.

I have already referred the arguments advanced by Sri Hari

Shanker Jain Advocate. He has pointed out the circumstances which leads to an inescapable conclusion that the temple was destroyed and remains of the temple were re-used in the construction of the mosque. This view gets strength from the Gazetteers as well as from circumstantial evidence, referred to above. In this regard I find recovery of 265 artifacts fully establish that damaged parts of the old Hindu temple in the form of building material were reused in the construction of the mosque against the tenets of Islam.

I have already recorded the findings of issue no. 1-b. A.S.I. report has also confirmed that the disputed building was constructed on the site of old Hindu temple. Statement of O.P.W. 14 Dr Rakesh Tiwari, who prepared the inventory, if read along with A.S.I. report, then the total outcome is that old temple was demolished and at the site disputed structure was constructed.

265 inscriptions found on 6.12.1992 after demolition of the disputed structure along with other architectural remains leave no room for doubt that the inscription is written in the script of Dev Nagri of 11<sup>th</sup> and 12 century. I have also referred English translation of 20 line inscription of Dr. K.B. Ramesh. The aforesaid circumstantial evidence supported by other epigraphical documents are the most valuable evidence which fully corroborate the version of Hindus and belies the version of Muslim that the mosque was not constructed, after demolishing any temple. On the basis of circumstantial evidence, historical accounts, gazetteers

and other epigraphical documents, it is established that after demolishing the temple the disputed structure was constructed as a mosque and even pillars of the old temple were re-used which contained the images of Hindu Gods and Goddesses against the tenets of Islam. Thus, the circumstantial evidence totally contradicts the assertion of Muslims. I have already referred the oral evidence, adduced by the parties in Annexure No.5. I conclude that the oral evidence led by Muslims is not trustworthy. Thus the circumstantial evidence conclusively establish the claim of Hindus about the destruction of old temple and construction of Babri Mosque at the site of the temple which is corroborated by the expert evidence of A.S.I.

As regards revenue entries, the plaintiffs cannot get any advantage for the reasons that there are lot of interpolations. I agree with the analysis of Sri Hari Shanker Jain Advocate.

I have referred in detail that on the basis of revenue records also and other documents, it can conclusively be said that Janmsthan was taken into consideration. Thus, on the basis of the opinion of the experts, evidence on record, circumstantial evidence and historical account from all or any angle, it transpires that the temple was demolished and the mosque was constructed at the site of the old Hindu temple by Mir Baqi at the command of Babur. Issue Nos. 1 and 1(a) are decided in favour of the defendants and against the plaintiffs.