Gopal Singh Visharad and Ors v. Zahoor Ahmad and Ors., O.S.Nos. 1/1989, 3/1989, 4/1989, 5/1989: A Summary of the Babri Masjid- Ram Janm Bhoomi decision.

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Note

The following is a summary of the decision of the Allahabad High Court in the Babri Masjid- Ram Janm Bhoomi case. There is no attempt to critique or analyse the decision in this note. The only purpose of the summary is to give a brief account of the rather voluminous decision, so as to further informed debate.

A. Facts of the case

The dispute is about a 1500 square yard parcel of land and a disputed structure on it. "Hindu" parties claim that this is the birth place of Ram and therefore they have a right to worship at the site, and that the title and possession of the site itself belongs to the Hindu deities being worshipped at the site. Some of them claim that prior to the 16th century there existed a temple dedicated to Ram at the site and that it was destroyed to build the disputed structure, a mosque. Others claim that the disputed structure was always a temple, and that it had never been a mosque at all. "Muslim" parties claim that the disputed structure was a mosque built by Emperor Babur in 1528, that it had been dedicated as a mosque to the Almighty and that therefore they have a right of worship at the site. Further they claim that as a public wakf, possession, if any, should lie with the Sunni Wakf Board.

It is admitted that at least since the middle of the 19th century in one eastern portion of the property, Hindus have been praying. (Hindus claim this began much earlier). In 1855 a fight broke out between the two groups, after which a partition was constructed dividing the land in two almost equal parts- with the intention that Muslims use the inner portion (called the inner courtyard) and the Hindus the outer portion (the outer courtyard). The first judicial notice of the event occurred in 1885 when permission was sought to build a temple over what was called the Ram Chabootra in the outer portion, by the Hindu Mahant. Documents submitted along in this case showed a division of property along the lines of the post-1855 dispensation. A similar demarcation was noticed and submitted by the Court appointed commissioner in 1950, when the

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current case was first brought to Court. The 1885 suit was contested by the Mutwalli of the Babri Mosque. His claim was that the entire land belonged to the Mosque and merely because Hindus had been allowed to come in and pray in the mosque they could not acquire title over the property. However, the correctness of the maps was not challenged. While the possession of the outer courtyard by the Hindus was accepted, the suit was denied on the public policy ground that the construction of a temple would lead to the blowing of conches and shells, and since Muslims were praying nearby, their service would be interrupted, and might lead to ill-will and rioting between the two communities. The suit was dismissed, as was the appeal against the judgment.

In 1934 there was a riot between Hindus and Muslims at the disputed site, which caused severe damage to the disputed structure. It was averred by some Hindu groups that since then they were in possession of the entire suit property. Muslim parties claimed that they continued to be in possession of, and offer Namaz in the inner courtyard. In 1949 there were a series of disturbances, culminating in the night of 22/23rd December, when a crowd of Hindu worshippers entered the masjid and placed the idols from the outer area into the inner courtyard under the central dome, claiming this to be the exact birthplace of Ram. On 29.12.1949 an order under S. 145 CrPC was issued attaching the disputed property and given over to the receivership of a government appointed receiver. Since 23.12.1949 Muslims have not been able to use the mosque though in the attachment order, pujas were permitted to continue. After demolition in 1992 the idols were put back in the same spot under the central dome.

B. **Timeline of the dispute:**

12th century: Allegedly a Hindu Temple dedicated to "Shri Ram Lalla" stood at the disputed spot, marking his birthplace. Court mandated ASI excavations suggested that a temple stood here before the mosque was built, and that it belonged to this period.

Circa 1528: Commonly believed that Babur ordered a mosque to be built at the site. Some versions suggest that the intention was to destroy the holy place of Hindus and impose Islam. Others suggest that the temple was already in ruins.

Mid-18th century- Travelers' accounts of the existence of a mosque at the spot. Accounts also suggest that Hindus were also worshipping at the site.

1855- Records of rioting between Hindu and Muslim groups at the disputed spot. After this, a railing was constructed, bifurcating the courtyard into the inner and outer courtyards, with Hindus allowed to pray in the outer courtyard and Muslims in the inner one.

1885: The Hindu Mahant in charge of the "Ram Chabootra" in the outer courtyard filed a suit seeking directions to the Government to allow him to build a temple over the Chabootra. This

was denied. On appeal the lower court judgment was affirmed. In this case, documents were filed showing the division of the disputed land as per the 1855 arrangement.

1934: Riots took place at the spot, in which the constructed structure ("Babri Masjid") was damaged. There were apparently some inscriptions on the Mosque stating that the Mosque was constructed on the orders of Babur. These appear to have been destroyed in the riots, though later replaced by new ones. Many Hindu groups claimed before the Court that since this time no Namaz has been offered at the site.

1949: Tensions increased between Hindu and Muslim groups. The authorities were put on guard. On the intervening night between 22/23rd December, a group of Ram devotees entered the inner courtyard and placed the idol from the outer courtyard under the central dome of the mosque.

29th December: The disputed property was ordered to be attached under Section 145 CrPC and went into the Receivership of the state. The order stated the pujas should be allowed to be carried on without hindrance. Thereafter pujas continued but not Namaz.

6.12.1992: Karsevaks destroyed the disputed structure and made a makeshift arrangement to keep the idol on the spot where the inner dome existed.

C. **Claims by parties**

There were 4 suits before the court, which were clubbed together and Suit 4 was made the leading case by agreement.

Suit 1: Filed by a devotee claiming that his right to worship Shri Ram Lalla was being denied to him because of the Section 145 CrPC order, according to which devotees could only do *darshan* from behind a grill/railing.

Suit 2: Withdrawn

Suit 3: Filed by Nirmohi Akhara, claiming that they are a religious order traditionally charged with the maintenance and managed of the Ram Janm Sthan. They sought possession of the entire disputed spot on the ground that the disputed structure had never been a mosque; that it was a temple; and that the Nirmohi Akhara was in charge of its maintenance.

Suit 4: Filed by the Sunni Central Wakf Board seeking a declaration that the disputed structure was a Mosque; and that if deemed appropriate, to hand over possession to the Board.

Suit 5: Filed on behalf of Shri Ram Lalla Virajman, the idol, and the Shri Ram Janm Sthan (claiming that both are juristic entities, as both are deities capable of holding land in their own

name, and of suing and being sued). The deities through their next friend sought title and possession of the disputed property.

The parties that were seeking title and possession can therefore be divided into three as follows:

1. **"Hindu" parties:** As per Justice Khan, "all the Hindu parties have pleaded either solely or in the first instance that the premises in dispute was never constructed as mosque either by Babar or anyone else. However, some of the Hindu parties in the alternative have pleaded that some attempts were made during the period of Babar, to convert the existing temple into a mosque but the attempts did not succeed/ fully succeed. The second alternative case taken by most of the Hindu parties is that even if, it was assumed/ proved that the premises in dispute or the constructed portion and the inner courtyard was a mosque still it ceased to be a mosque since 1934 when during a riot the same was substantially damaged and that thereafter no Muslim offered prayer/ *namaz* in the said premises."[1]
2. **"Muslim" parties:** The Muslim parties claimed that the disputed structure was a mosque constructed by Babur upon either barren land or, in the alternative on the ruins of a temple. They claimed that as a public wakf, the site had been in exclusive possession of Muslim communities, till 1949, when they were dispossessed. They admit that in the outer courtyard there existed a small chabootra on which Hindus were permitted to pray.
3. **Nirmohi Akhara:** The Nirmohi Akhara claimed that the disputed site was always a temple, that it was never a mosque and that the Akhara was charged with the management and upkeep of it. They were the religious sect that managed the Chabootra and other Hindu religious structures in the outer courtyard of the disputed site.

D. Issues to be determined by the Court

I. Whether the disputed site is the birth place of Ram? Its impact on the claims:

One of the core issues before the Court was whether the disputed site was the birth place of Ram. Justice Sharma opined that "[t]here is voluminous evidence available on record both documentary and oral which substantially establish that Lord Ram was born at the place which the Hindus believe to be the Rama Janmasthan since times immemorial. The worship, divine character and sacred status has been recognized not only be the classical literature, tradition but also by series of travel records of foreigners, gazetteers as also foreign authorities."[2]

His finding that the disputed site was the birth place of Lord Ram had important implications for the case. For one thing, the place itself was held to be an object of worship. Justice Sharma finds:

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[1] Per Justice Khan, p. 201.
[2] Per Justice Sharma, p. 105, Vol. 4, O.S. No.4/1989.

"It is manifestly established by public record, gazetteers, history accounts and oral evidence that the premises, in dispute, is the place where Lord Ram was born as son of Emperor Dashrath of solar dynasty. According to the traditions and faith of devotees of Lord Ram, the place where He manifested Himself has ever been called as Sri Ram Janmbhumi by all and sundry through ages. Thus, the Asthan, Ram Janambhumi has been an object of worship as a deity by the devotees of Lord Ram as it personifies the spirit of divine worshipped in the form of Ram Lala or Lord Ram, the child. Ram Janmbhumi is also a deity and a juridical person. It is established from evidence that the Hindus worship the divine place in the form of God. The Hindus can mediate upon the formless and shapeless divine. The spirit of Divine is indestructible. Birth place is sacred place for Hindus and Lord Ram, who is said to be incarnation of God, was born at this place. The Hindus since times immemorial and for many generations constantly hold in great esteem and reverence the Ram Janmbhumi where they believe that Lord Ram was born."[3]

By virtue of this, Justice Sharma opined that the place itself was a deity, which according to Hindu Law is a juristic person, capable of suing and being sued in its name and holding property. As a juristic person of this nature, Justice Sharma found the deity Ram Janm Sthan to be a perpetual minor against whom no claim of adverse possession could be brought.[4] This served to defeat the argument raised by the Muslim parties that by passage of time their possession of the property had perfected into title. (This is also an interesting contrast with Supreme Court decisions like *Ismail Farooqui* where the Court held that Muslim religious properties like mosques can be lost through adverse possession.[5])

Further, the finding that the disputed site was the Ram Janm Bhoomi was used as the lynchpin for the argument that this property could never lose its religious significance and that even the state could not acquire it under the doctrine of eminent domain. Justice Sharma held: "Lord Ram as the avatar of Vishnu having been born at Ayodhya at the Janmasthan is admittedly the core part of Hindu belief and faith which is in existence and practiced for the last thousands of years. The Hindu scriptures also sanctify it. Article 25 of the Constitution being a fundamental right ensures its preservation and no relief can be taken by the court which seeks to restrict or altogether extinguish this right."[6]

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[3] Per Justice Sharma, p. 181-182, Vol. 4, O.S. No.4/1989.

[4] "The deities are perpetual infants and Hindu idol being juridical person is capable of holding properties. Thus, the benefit of Section 6 of Limitation Act is all the time available to minors i.e, deities in this case. They are considered to be under disability. Under Section 6 of the Limitation
Act the ground for extension of limitation are minority, lunacy, and idiocy of the person. In the instant case plaintiff nos. 1 and 2 will be deemed to be disabled on account of their minority. Even in England church has been regarded as under age." Per Justice Sharma, p. 167, O.S. No.5/1989.

[5] Dr. M. Ismail Farooqi v. Union of India, 1994 (6) S.C.C. 360.

[6] Per Justice Sharma, p. 121, Vol. 4, O.S. No.4/1989.

In the same vein he held that, "a sovereign government even by exercising the power of eminent domain cannot exercise the power of acquisition of land or property which extinguishes the core of the faith or the place or the institution which is held to be sacred. What clearly follows is that a sovereign government cannot extinguish the core of the Hindu religion which is the Ram Janambhumi, let alone the same be extinguished through a suit, by transferring the same to some other party in this case the plaintiff thereby ensuring that the said fundamental right to worship at the Ram Janambhumi is extinguished forever."[7]

The reason for finding that the Ram Janm Bhoomi is the "core of the faith" for Hindus lies in the Supreme Court's opinion in *Ismail Farooqi* where the Court held that: "[w]hile offer of prayer or worship is a religious practice, its offering at every location where such prayers can be offered would not be an essential or integral part of such religious practice **unless the place has a particular significance** for that religion **so as to form an essential or integral part thereof. Places of worship of any religion having particular significance for that religion, to make it an essential or integral part of the religion, stand on a different footing** and have to be treated differently and more reverentially."[8] By placing the Ram Janm Bhoomi in the category of an essential part of Hindu religion Justice Sharma seeks to imply that it comes within the protective umbrella of Article 25/26 of the Constitution.

Justice Khan held that Hindu parties were not able to satisfy the court whether by Janm Sthan they meant the exact spot where Kaushalya gave birth to Ram, which could be a very small spot indeed; or the spot where the room in which he was born stood; or where the building stood; or where the town stood. They were not able to clarify the point. Further he cast doubts that Tulsidas, writing Ramcharitramanas within a span of 50 years after the supposed construction of the mosque did not identify the exact spot of Ram's birth. Also, the ASI report stated that there were structural continuities between the 11-12th century and the 16th century in what was found underground. Justice Khan questioned how, if the temple was demolished, its pieces went underground. They would either be reused or discarded. Therefore if the superstructure was found underground it means either it was destroyed by natural causes, or was ruined over centuries. Therefore Justice Khan concluded that there appeared to be no indication that around the time of the construction of the mosque the place was regarded as the birth place of Ram (and

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[7] Per Justice Sharma, p. 144, Vol. 4, O.S. No.4/1989. He also cites with approval the argument that "according to the Holy Devine Srimad Atharv- Ved, Sri Skand Puran, Sri Narsimh Puran,Sri Valmiki Ramayan, Sri Ram-charitmanas etc. a Hindu gets salvation on visiting and having a look of *Sthandil* / *Site* of 'Sri Ramjanamsthan' in Ayodhya as well as by performing customary rituals thereon, pilgrimage to said most holiest place and performing service and worship thereon is integral part of Hinduism guaranteed under Articles 25 and 26 of the Constitution of India deprivation wherefrom would amount to infringement of Fundamental right of freedom of religion of the Hindus and extinction of sacred place of Hiindus which is easiest means of ultimate end of salvation for the Hindus."

[8] Dr. M. Ismail Farooqi v. Union of India, 1994 (6) S.C.C. 360, ¶ 82.

finds it unlikely that Babur would first ascertain where exactly Ram was born and then build a mosque on that exact site). He therefore opined that "[t]he only thing which can be guessed, and it will be quite an informed guess taking the place of finding in a matter, which is centuries old, is that a very large area was considered to be birth-place of Lord Ram by general Hindus in the sense that they treated that somewhere in that large area Lord Ram was born however, they were unable to identify and ascertain the exact place of birth, and that in that large area there were ruins of several temples and at a random small spot in that large area Babar got constructed the mosque in question."[9] The records also seemed to indicate to Justice Khan that the temple whose pieces were used in the construction of the mosque might have been Buddhist temples. Justice Khan also held that for this reason it was not proved that the disputed site was a deity capable of being recognized as a juristic person. However, he concurred that the idol would be recognized as such, though he refuted the contention that according to precedent the idol was a perpetual minor in the eyes of the law.

On the issue of whether the disputed site was the Ram Janm Bhoomi, Justice Agarwal held that this was not a matter of proof but of belief. He held that since there was continuous and long held belief in the Hindu community that the place was the Ram Janm bhoomi, that was enough to deify the place and give it juridical personality. He also held that a deity is a perpetual minor and no limitation can run against it for purposes of adverse possession.[10] He opined that given the

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[9] Per Justice Khan, p. 243.

[10] "We may crystalise hereat what are settled notions qua an idol/deity, its property as also the rights powers and duties of a Shebait as argued by the other side also. They are:
(i) A Hindu idol duly consecrated is a juridical person, can acquire property, sue and be sued and enter into transactions with others like a natural person;
(ii) By its very nature since an idol or deity is a fictitious person cannot act on its own. It has to work on being represented by a natural person. In the case of Hindu idol, it is the Shebait who has right to possess and manage property of the idol and also to discharge duties of daily services to be rendered to the idol. Its position is that of a custodian of a property and the idol itself but it does not mean that he is the owner. In case of necessity, i.e., for the benefit of the idol i.e. for necessity, the property of the idol can be alienated by the Shebait but no more no less. The Shebait is a peculiar kind of office with which attach duties and obligations. Only in a very restricted sense it can be transferred;
(iii) Qua the property of the idol, the position of Shebait is that of a manager or guardian of an infant or minor;
(iv) The position of idol as a minor though recognised for some purposes but not for all purposes since they are considered to be a major from the date of its consecration but for entering into transactions with natural persons it needs to be represented by a natural person, i.e., Shebait
and none else;
(v) The right to file suit for the benefit or on behalf of the idol vests in a Shebait but with certain
exceptions namely, where the Shebait is guilty of maladministration etc. or where there is no Shebait, in such a case a worshipper as a next friend may bring a cause representing the idol but not otherwise;
(vi) The difference between Shebait and next friend is that a Shebait is under an obligation to take such steps as are necessary for the protection of an idol but a worshipper may be permitted to represent idol for

special significance of the Ram Janm Bhoomi for Hindus, if limitation were to be allowed against it, it would violate the right of Hindus under Article 25 of the Constitution, as per the *Ismail Farooqi* dicta.[11]

II. Whether there existed a temple at the spot which was demolished to build the mosque?

Justice Sharma found that there did exist a Ram temple at the disputed spot which was demolished to construct the disputed structure. For this purpose, he relied on the ASI report which he accepted, rejecting the allegations of bias against the agency, as well as the objections to relying on the report without having examined the Commissioner.

The ASI report stated, on the basis of Court- ordered excavations and surveys, that there existed an 11-12th century temple structure below the disputed structure and that material from the previous temple was used in the construction of the disputed structure. From this Justice Sharma inferred that "it can conclusively be held that the disputed structure was constructed on the site of old structure after the demolition of the same. There is sufficient evidence to this effect that the structure was a Hindu massive religious structure."[12] It is pertinent to note though, that the ASI report was very careful to *not* comment on whether the mosque was built after demolishing the temple.

Justice Agarwal also came to the same conclusion as Justice Sharma. On the basis of the ASI report, he stated that: "The ultimate inference, which can reasonably be drawn by this Court from the entire discussion and material noticed above, is:

(i) The disputed structure was not raised on a virgin, vacant, unoccupied, open land.

(ii) There existed a structure, if not much bigger then at least comparable or bigger than the disputed structure, at the site in dispute.

(iii) The builder of the disputed structure knew the details of the erstwhile structure, its strength, capacity, the size of the walls etc. and therefore did not hesitate in using the walls etc. without any further improvement.

(iv) The erstwhile structure was religious in nature and that too non-Islamic one.

(v) The material like stone, pillars, bricks etc. of the erstwhile structure was used in raising the disputed structure.

(vi) The artefacts recovered during excavation are mostly such as are non-Islamic i.e pertaining to Hindu religious places. Even if we accept that some of the items are such which may be used

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its benefit but has no legal obligations as such to do so. Moreover, a worshipper must be such who is a beneficiary and not more benevolent." Per Justice Agarwal, p. 2594-2595.

[11] Per Justice Agarwal, p. 2617.

[12] Per Justice Sharma, p. 104,Vol.1, O.S. No. 4/1989.

in other religions also. Simultaneously no artefacts etc., which can be used only in Islamic religious place, has been found."[13]

However, he went on to observe that "[t]ill date, no person of any other religion except the Hindus have been continuously staking their claim over the site in dispute on the ground that this is the place of birth of Lord Rama and there was a temple. In normal course, there could not have been any reason for such persistent attachment to the site had there been no basis or substance for the same particularly when this kind of persistence is continuing for the last hundreds of years. The various non-Indian writers, who have mentioned these facts, clearly stating that a Hindu temple was demolished for constructing mosque in question, may have some motive if it would have been a case of only post nineteenth century when the British Government virtually came in power and sought to evolve the theory of "Divide and Rule" but even prior thereto, these facts have been noticed and recognized. Tieffenthaler was a missionary have no motive in making such remark when he visited Oudh area between 1766 to 1771 and such work was published in 1786… This belief is existing for the last more than 200 years from the date the property was attached and therefore, having been corroborative by the above it can safely be said that the erstwhile structure was a Hindu temple and it was demolished whereafter the disputed structure was raised."[14]

III. Whether the mosque was built by Babur?

There were doubts raised as to whether the mosque was actually built by Babur. Justices Khan and Agarwal stated that it was not clear on the basis of evidence led that Babur had ordered the building of the mosque. There were some historical indications, based on some inscriptions on the walls of the disputed structure. However, those inscriptions disappeared in 1934, and the records of the inscriptions were all at variance with each other and hence not reliable. Hence, there was no real proof that the Majsid was constructed by Barber. Justice Sharma however held that "during the regime of Babur the mosque was constructed under his command after demolishing the temple against the tenets of Islam by Mir Baqi."[15]

Justice Khan held that several documents indicated that at least since the mid 18th century there was a mosque here called Babri Masjid, including the writings of historians, travelers, gazetteers, etc. Therefore at least since this time, a mosque was in existence.

Justice Agarwal held that it was not evident that the disputed structure was erected by/on orders of Babur or in 1528, as the inscription evidence was not reliable. He felt on the perusal of the

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[13] Per Justice Agarwal, p. 4413-4414.
[14] Per Justice Agarwal, p. 4414-4415.
[15] Per Justice Sharma, p. 359, Vol. 2, O.S. No.4/1989.

evidence that it was likely to have been constructed during Aurengzeb's reign, but it was definitely in existence by the mid-18th century.

IV. Whether the disputed structure was a "valid" mosque? Also, the impact of the 1992 demolition.

Another issue raised by the Hindu parties was whether the mosque was validly constructed and dedicated to the almighty. The attempt here was to show that the construction and dedication of the mosque did not follow the tenets of the Quran, as a result of which it was not a "valid" mosque and therefore Muslim communities did not have a valid right to worship at the disputed site.

Justice Sharma held that the mosque was not constructed according to the tenets of Islam and that therefore it was not a valid mosque. He came to this conclusion on the following grounds:

1. Justice Sharma opined that according to Islamic tenets a mosque has to have minarets. Since the disputed structure did not have minarets it was not a valid mosque.
2. Justice Sharma found that the disputed structure was surrounded on three sides by graveyards, which went against Quranic injunctions on constructing mosques.
3. According to Justice Sharma the finding that the disputed structure was surrounded on all sides by Hindu religious structures violated Islamic precepts on the construction of mosques.
4. The lack of a place for vazoo in the disputed structure was held to violate Islamic precepts.
5. The presence of images/idols on the walls of the disputed structure (from the previous temple that stood at the spot) was held to violate Islamic tenets.
6. Justice Sharma referred to various religious sources and commentaries to opine that a valid wafq cannot be created unless the wakif is the owner of the property being given in wakf. He found that "according to the historical document it may conclusively be observed that the property in suit was in the control of Ibrahim Lodi and Hindus claim that they were having the temple over the property in dispute and Babur cannot acquire title of the said temple at Ayodhya."According to him, "Emperor Babar was a Hanafi Muslim and there is nothing on record to suggest that he acquired the title of the temple. Accordingly, the divine law, he was not in a position to erect a mosque against the tenets of Islam referred to above. Thus against the injunctions of Quran and Hadith, if anything has been done against the spirit of Islam, this Court is not in a position to recognize under the law….[T]he property dedicated by way of waqf must belong to the waqif at the time of dedication….[A]ccordingly in this case to my mind a conqueror was not in a position to erect a building contrary to the religious mandate of Islam. Thus it cannot be construed that there was any valid dedication to the almighty and the building can be treated to be a

waqf property or a valid mosque in accordance with Islam. If anything has been done against the tenets of Islam, it loses the significance under the Mohammedan law."[16]

7. The Demolition: Interestingly Justice Sharma also opined that " the disputed structure has already been demolished. Accordingly, this place cannot be called as a Mosque and Muslims cannot use the open place as a Mosque to offer prayers."[17] Here Justice Sharma is legitimizing the demolition of the mosque by using that as a ground to determine the rights of the parties to this litigation.

Justice Khan held that since title could neither be proved nor disproved given the lapse of time, by virtue of Section 110, of the Evidence Act, title would have to be presumed on the basis of possession. He also felt that the other requirements of having a minaret, vazoo and not being near graveyards, etc were not essential conditions. Even the existence of images and idols would not change the character of the mosque, though it might make it irregular, and it would depend on the conscience of each person on whether to pray at such a mosque or not. The demolition would also not impact a validly dedicated mosque.

Justice Agarwal held that "the question as to whether the building in dispute is a mosque, treated to be a mosque, believed to be a mosque and practiced as a mosque has to be decided not in terms of the tenets of Shariyat whether observed there or not but how the people believed, treated and behaved in the past long time."[18]

V. Whether the mosque has been used continuously for offering Namaz

Based on Supreme Court and Privy Council decisions,[19] Justice Khan stated that "unless it is proved that prayers were being offered in the premises in dispute, or the Hindus had not exclusively possessed the constructed portion and inner court yard it cannot be held to be a mosque or a continuing mosque uptil 22nd/ 23rd December, 1949."[20] Therefore, he examined whether the mosque was continuously being used for offering namaz. "For discontinuance of possession two things are necessary one is abandonment of possession and the other is walking in by some one else."[21] The Muslim parties argued that regular prayers were being offered till 22/23.12.1949. However, according to the Court they were able to show only that the last prayer was offered on the previous Friday. Justice Khan took this to mean that regular prayers were not being offered at the mosque for some time before 22/23.12.1949. He claimed that both parties have been lying to the Court with the Hindus trying to show that no prayers were offered from

[16] Per Justice Sharma, p. 112-113, Vol. 1, O.S. No.4/1989.
[17] Per Justice Sharma, p. 290-291, Vol. 2, O.S. No.4/1989.
[18] Per Justice Agarwal, p. 3315.
[19] Masjid Shahid Ganj v. S.G.P.C. Amritsar AIR 1940 P.C. 116 approved in Dr. M. Ismail Farooqi v. Union of India, 1994 (6) S.C.C. 360.
[20] Per Justice Khan, p.227.
[21] Per Justice Khan, p.228.

1934 onwards, and Muslims trying to convince the Court that prayers were being offered upto 22/23.12.1949. According to Justice Khan all that could be shown was that the last prayer was offered on 16.12.1949 from reports of the officers present at the time. However, this was sufficient to show possession and use.

Justice Agarwal found no proof that namaz was actually being offered in the mosque in all this time. He found proof of worship by Hindus in the inner courtyard because of the continuous complaints being made by Muslims that Hindus were entering into their area. However, Justice Agarwal did not take this to mean that Muslims were similarly exercising their right of worship in the mosque.

Justice Sharma held that there was no reliable evidence that Muslims had continuously been offering prayers at the disputed site.[22] There was no discussion in his judgment on the point and hence it is not clear on what basis he came to this conclusion.

VI. Whether Hindus have continuously been worshipping at the site?

Justice Khan looked into the issue of when the Ram Chabootra, etc came into existence within the disputed site. He stated that "[d]uring arguments learned counsel for Waqf Board and other Muslim parties could not give even a tentative period when Ram Chabutra etc. in the outer courtyard came into existence, however some Muslim parties stated that it was constructed in 1855. Some of the Hindu parties asserted that it was in existence since the time of construction of the building in the premises in dispute. Both the versions are two extremes. Tiffenthaler who visited the area in question in between 1766 to 1771 A.D., noted the existence of the Ram Chabutra. Accordingly, it must have been there since before. Its existence is noticed in several subsequent gazetteers reports etc. On the other hand, it is inconceivable that at the time of construction of mosque simultaneously a worshipping place of Hindus would have been either permitted to remain inside the boundary wall or permitted to be constructed therein. Accordingly, the only thing which can be said is that it came into existence before visit of Joseph Tieffenthaler but after construction of mosque."[23]

All Judges agreed that the idols were placed inside the inner courtyard under the central dome on the intervening night between 22/23. 12.1949.

Justice Agarwal found that documentary and oral evidence indicated that the Ram chabootra existed in the outer courtyard at least since after the 1855 riots, and that the idol of Ram Lalla was located there. This idol was moved to the inner courtyard under the central dome on the

[22] Per Justice Sharma, p. 115-116, Vol. 1, O.S. No.4/1989.
[23] Per Justice Khan, p. 248-249.

night of 22/23.12.1949. However, he held that there was proof that Hindus were visiting and worshipping at the inner courtyard all along.

However, even though all the judges agreed that the idol was placed under the central dome on the intervening night between 22/23.12.1949, and evidently this was the immediate cause of action in the case, none of the judges expressed an opinion on whether this was justified. Similarly none of the judges expresses an opinion on whether the 1992 demolition was justified.

VII. Title and possession

Muslim parties sought to argue that through conquest Babur acquired title to the disputed site, and that he created a public wafq and dedicated the mosque to the Almighty, that ever since Muslims have been worshipping at the mosque and that therefore there is a continuity of title. In the alternative, they argued that even if Babur did not have title over the disputed site, through adverse possession they perfected their title.

Hindu parties argued that Babur did not have title to the land since there was a pre-existing temple at the spot, the property of the temple vests with the deity, and cannot be taken away even by a sovereign. They also argued that the property of a deity cannot be lost through adverse possession because a deity is in the position of a perpetual minor and therefore no period of limitation can run against it. In addition they argued that Muslims had never been in exclusive and adverse possession of the suit property and therefore could not raise a claim of adverse possession in any case. Finally they argued that at least since 1934 Hindu parties were in complete possession over the suit properties and therefore by 1950, when the first suit was filed, they had perfected their title by adverse possession.

Niromhi Akhara argued that the disputed structure had never been a mosque, it had been a temple, and title to the suit property and possession thereof had always been with the Nirmohi Akhara.

On the basis of his finding that at least since the middle of the 18th century both the mosque and the Ram Chabootra existed at the disputed site, Justice Khan held that "[f]rom the above it is quite clear that since much before 1855 both the parties were using the premises in dispute as their religious places. The constructed portion and the entire adjoining land of the premises in dispute was surrounded by a boundary wall having a gate. It was not very big in area (only 1500 square yards). There is no such suggestion on the part of any of the parties that the premises in dispute was used for any other purpose except worship. In such situation, the moment one enters the main gate he is in the premises. Thereafter, it cannot be said that some one is in only part of the premises. For convenient use, different owners/ possessors may exclusively use different

portions of a premises, however it will not mitigate against joint possession. To illustrate if a person dies leaving behind a moderate house and two sons and the sons for the sake of convenience use different portions of the house along with their families, it cannot be said that they are not in joint possession of the entire house. Use and occupation of different portion by each son for the sake of convenience does not amount to formal partition.[24]

On the basis of his finding that both parties were in joint possession of the suit property, Justice Khan held that, "[I]n such situation when both the parties have failed to prove initial title, (commencement of title) it is possession and possession alone which decides the question of title in accordance with Section 110, Evidence Act….Accordingly, in view of the above findings and in accordance with the principle of Section 110, Evidence Act, i.e. title follows possession it is held that both the parties were/ are joint title holders in possession of the premises in dispute."[25]

With respect to the outer courtyard Justice Agarwal held that it was clear that possession had been with the Hindus since after the 1855 riots. He felt that the 1885 case proved the point, and that nothing to the contrary had really been argued by the Muslim parties.

With respect to the inner courtyard, Justice Agarwal felt that "atleast on Friday, if not regularly, then occasionally, muslims had visited disputed building and that visit obviously could be for offering namaz. OPW-9 has also admitted that both communities used to worship in the inner courtyard. We find no reason to disbelieve it. But here is not a case of exclusive possession since the defendant Hindu parties and Hindus in general had also been visiting inner courtyard for darshan and worship according to their faith and belief, hence, it can be said that the inner courtyard was virtually used jointly by the members of both the communities, may be to a large extent by the Hindus since Ayodhya is one of the most prominent, sacred and reverend place for Hindus, being the city of Lord Rama, and the place in dispute, they believe to be the birthplace of Lord Rama, it cannot be doubted that must have been visited in a very large number everyday, swollen multi-fold on special occasions of fares that is Ramnavami etc."[26] For this reason, he held that the Muslim parties could not prove adverse possession. In addition, the ingredients of adverse possession had also not been satisfied by the Muslim parties. On the contrary Justice Agarwal found proof that hindus were also worshipping in the inner courtyard, on the basis that Muslims were constantly complaining to the authorities about it.[27]

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[24] Per Justice Khan, p. 249-250.
[25] Per Justice Khan, p. 252-255.
[26] Per Justice Agarwal, p. 2524.
[27] **"**So far as the premises in the inner courtyard is concerned, it appears to be true that the Britishers divided the premises with the intention that the Muslims shall worship in the inner courtyard and Hindus in the outer courtyard but immediately since thereafter, i.e., from 1858 and onwards we find a lot of documents on record demonstrating that the Hindus continued to enter the premises in the inner courtyard also and offered worship thereat. There was no restriction in the entry inside the inner courtyard in any

Nirmohi Akhara's claim of adverse possession/ ownership of the inner courtyard was also defeated, on the basis that they had pleaded contradictory claims and had also failed to prove the ingredients of adverse possession. However, both Justice Khan and Justice Agarwal accepted its claim of possession of the outer courtyard.

On this basis Justice Agarwal concluded that, "so far as the premises constituting inner courtyard is concerned this much can be said that Muslims and Hindus alike used to go therein and, therefore, possession of premises in the inner courtyard, if technically it can be said, remained with the members of both the communities. But so far as the outer courtyard is concerned, the plaintiffs lost possession thereof atleast from 1856-57 and onwards."[28]

On the issue of Babur's title to the land, Justice Sharma found that there was no evidence of Babur's title to the land. He held that "on the basis of waqf also the Muslims have failed to establish that they have exclusive possession over the property. According to the tenets of Islam the Waqf could not be created… It is also settled that the [Muslim parties] have failed to produce any registered lease deed about the disputed land and thus they cannot claim any relief based on title. I further find that there is no evidence worth the name from the side of the [Muslim parties] to establish their title over the land."[29]

On the issue of adverse possession by Muslim parties Justice Sharma opined that "[t]he concept of adverse possession is based on the facts of dispossession of owner and gaining of legal possession by the dispossessor and negligence on the part of the owner to seek remedial action within a prescribed time. The elements of adverse possession are that the possession is actual, open, notorious, exclusive, hostile, under cover of claim or right and continuous and uninterrupted for the statutory period. In this case the plaintiffs have not furnished any detail as to how their adverse possession based on the fact of dispossession of the owner. Plaintiffs' have not mentioned as to who is the real owner of the property. It has also not been pleaded that the possession of the plaintiff is open, notorious, exclusive and hostile to the true owner. Plaintiffs have not claimed the property under the colour of the title and at present the property is not in the actual use and possession of the plaintiffs. On the contrary, it has been urged from the side of the defendants that the property in suit was never in exclusive use of the plaintiffs. Plaintiffs have not furnished the details as to who is the real owner. It has nowhere been mentioned in the plaint

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manner. The entrance door in the dividing grilled wall was never locked. It is difficult to hold that the possession of the premises inside the inner courtyard remain only with the plaintiffs. Here the "possession" means right possession, uninterfered possession by the unwanted person and capacity to control others interference." Per Justice Agarwal, p. 2894.

[28] Per Justice Agarwal, p. 3962.

[29] Per Justice Sharma, p. 236-237, Vol. 3, O.S. No.4/1989.

as and when the true owner was dispossessed and plaintiff occupied the property exclusively keeping out others and used it as if it was his own. There is no evidence worth the name that the plaintiff remained in possession without challenge or permission from the lawful owner. Here the defendants claimed that charitable religious institutions which is a deity cannot remain under the possession of the plaintiffs and cannot be termed as adverse possession."[30]

To the contrary, Justice Sharma was of the opinion that "Ayodhya and Ramkot belong to emperor Dashrath who was a sovereign King. Thereafter the property passed in the hands of charitable trust and remained under the control of the temple, the same was destroyed and without any formal sanction under the law by way of possession by dispossessing Hindu the plaintiff claim adverse possession. Thus, to my mind the [Muslim parties] have failed to prove adverse possession."[31]

On the issue of adverse possession by the Hindu parties he held that "a mosque if adversely possessed by a Non-Muslim, it will loose it sacred character as a mosque….The [Muslim parties] could not demonstrate that they remained in exclusive possession over the property in suit and the Hindus have come out with a case that from 1934 onwards Muslims were not allowed to enter into the premises in suit. Muslims claim that they have been denied of their entry in December, 1949, but they admit that the mosque was desecrated and damaged in the year 1934 and repairs were made at the cost of the State in the year 1934. Thus, it is admitted to the plaintiffs that the mosque was desecrated and considerably damaged. It leads to an inference that after damage and desecration of the property in suit by Hindus, it remained not in use of the Muslims till it was repaired completely by the State Government…no witness has been produced to establish this fact that at the cost of State Government or at the behest of the State Government the mosque was repaired and it was again given in possession of the Muslims for their exclusive use. I have also gone through the site-plan, prepared by the Vakil Commissioner in O.S.No. 2 of 1950. Sri Sheo Shanker Lal , Pleader prepared the site-plan and also inspected the place of dispute. From his report it also does not transpire that there was any door in the structure or the property was exclusively under the control and possession of Muslims. He has not made any assertion about the possession of Muslims. Thus, the disputed structure was an open place. There was no door. Consequently it was not possible to check the entry of Hindus inside the disputed property….On the contrary, Hindus claim that they were offering prayers and visiting the place till the date of demolition and even after attachment of the property."[32]

He added that "[i]t was an open place which was surrounded by another place of worship where Hindus were offering prayers which is proved from the Judicial record right from 1885 onwards.

[30] Per Justice Sharma, p. 84-85, Vol. 3, O.S. No.4/1989.
[31] Per Justice Sharma, p. 87, Vol. 3, O.S. No.4/1989.
[32] Per Justice Sharma, p. 247-248, Vol. 3, O.S. No.4/1989.

Accordingly assertion of Muslims that they were offering prayers up to 22.12.1949 cannot be accepted for want of proper evidence. The first information report that was lodged to the Police about the installation of deities inside the disputed structure by Hindus even if presumed to be correct, it does not give any inference that the property in suit was place of prayer of Muslims upto 22.12.1949." "It does not appeal to reason as to why any Muslim has not come forward to launch the prosecution against the Hindus about the alleged installation of deities inside the disputed structure which leads to a conclusion that had the inner courtyard been under the control of Muslims, they would have objected and had initiated legal action against Hindus. Thus, the Muslims remained dormant. It has come in oral evidence from Hindu side that the prayers were never offered by Muslims after 1934. It does not appeal to reasons as to why in 1949 action was not initiated by the Muslims against Hindus while they initiated action against Hindus in 1934. This is strong circumstance which is against Muslims that they were offering prayers upto 22.12.1949."[33]

VIII. Relief

In suit 1, the relief claimed was that of right to worship the idol of Ram Lalla Virajman. In suit 3 the relief claimed was the declaration of title and possession on behalf of Nirmohi Akhara. In suit 4 the relief claimed was the declaration of the disputed site as a mosque and delivery of possession to the Sunni Wakf Board if deemed appropriate. In suit 5 the relief claimed was the declaration of title and possession of the suit property in favour of the deities Ram Lalla Virajman and Ram Janm Sthan.

Justice Khan held that in many cases, where the parties fail to prove title or exclusive possession, but it is clear that possession is between the two, the courts have held that they are in joint possession and divide the property accordingly. He therefore proceeded to divide the property one-thirds between Muslims, Hindus and Nirmohi Akhada. This conclusion is a bit puzzling since Justice Khan's reasoning gives scope only for an equal partition between Hindus on the one hand and Muslims on the other. He also held that "[i]n the matter of actual partition it is only desirable but not necessary to allot that part of property to a party which was in his exclusive use and occupation. Accordingly, in view of peculiar facts and circumstances it is held that in actual partition, the portion where the idol is presently kept in the makeshift temple will be allotted to the Hindus and Nirmohi Akhara will be allotted land including Ram Chabutra and Sita Rasoi as shown in the map, plan I. However, to adjust all the three parties at the time of actual partition slight variation in share of any party may be made to be compensated by allotting the adjoining land acquired by the Central Government."[34]

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[33] Per Justice Sharma, p. 257-258, Vol. 3, O.S. No.4/1989.
[34] Per Justice Khan, p. 274-275.

Justice Agarwal granted the same relief. He observed that the Ram Janm Bhoomi as believed by the Hindus lies beneath the central dome and therefore should be handed over to them since it is an essential part of the Hindu religion and therefore has Article 25 protection. He stated that, "A bare reading of all the above statements makes it very clear and categorical that the belief of Hindus by tradition was that birthplace of Lord Rama lie within the premises in dispute and was confined to the area under the central dome of three domed structure, i.e., the disputed structure in the inner courtyard."[35] It is interesting to ask, if the structure had not been demolished would the court have come to the same conclusion and awarded the same relief? If not, then is the court not validating the 1992 demolition?

Justice Sharma held in favour of the deities, and accordingly opined that, "it is manifestly established by public record, gazetteers, history accounts and oral evidence that the premises, in dispute, is the place where Lord Ram was born as son of Emperor Dashrath of solar dynasty. According to the traditions and faith of devotees of Lord Ram, the place where He manifested Himself has ever been called as Sri Ram Janmbhumi by all and sundry through ages. Thus, the Asthan, Ram Janmbhumi, plaintiff no. 2 has been an object of worship as a deity by the devotees of Lord Ram as it personifies the spirit of divine worshipped in the form of Ram Lalla or Lord Ram, the child. I have already observed that Ram Janmbhumi is also a deity and a juridical person. I am also of the opinion that the Hindus worship the divine place in the form of an incarnation and, therefore adopt the form of incarnation as their Ishtdeo... Birth place is sacred place for Hindus and Lord Ram, who is said to be incarnation of God, was born at this place. The Hindus since times immemorial and for many generations constantly hold in great esteem and reverence the Ram Janmbhumi where they believe that Lord Ram was born. It is established by tradition and classical legal literature relating to the Hindus and according to their belief and faith that the place is regarded as a deity. This place, according to Hindu religion is symbol and embodiment of spiritual purpose and the property is dedicated and vested with [Ram Janm Sthan]. This place being worshipped as idol from times immemorial and dedicated property vests in idol as juristic person. According to the religious customs of Hindus and recognition established by courts of law, plaintiff no. 1 [idol of Ram Lalla] is a juristic entity and it has juridical status. Its interests are attended by the person ,i.e, next friend. According to the Smriti, if an image is broken or lost another may be substituted in its place; when so substituted it is not a new personality but the same deity and properties vested in the lost or mutilated idol becomes vested in the substituted deity. Thus, the place according to the Smriti have to be considered as a deity like Agni and Vayu being worshipped. They are shapeless and formless but they attain the divinity. If the public go for worship and consider that there is divine presence then it is temple which has already been held by Hon'ble apex court in 1999(5) SCC page 50 Ram Janki Deity Vs. State of Bihar. In view of the findings referred to above and the assertions in the plaint, the

[35] Per Justice Agarwal, p. 4997-4998.

plaintiff no. 2 [Ram Janm Sthan] is the deity and public is going for worship from times immemorial with a feeling of presence of deity divine. Therefore, it is deemed to be a temple. Even if the temple is destroyed, it would not change the character of the deity and the place will remain a juridical person. Nature of Hindu religion is monism. It believes in one supreme being, who manifests Himself in many form. This is the reason why Hindus start adoring in deity. According to Hindu notion, what is worshipped in a temple , it is not stone image or image made of wood. It is the God behind image which is the object of worship. The real owner of the property dedicated to a temple is deemed to be God himself represented through a particular idol or deity which is merely a symbol vide Gokul Nath Ji Mahraj Vs. Nathji Bhogilal AIR 1953 Allahabad 552. Thus, after the length of time it is impossible to prove by affirmative evidence that there was any consecration ever by faith and belief. It is believed that the place is the place which was considered by all time as a deity and is being worshipped like a deity. Accordingly Asthan is personified as the spirit of divine worshipped as the birth place of Ram Lala or Lord Ram as a child. Spirit of divine ever remains present everywhere at all times for any one to invoke at any shape or form in accordance with his own aspirations. In view of the aforesaid circumstances, the plaintiffs [Ramn Lalla and Ram Janm Sthan] are entitled for the relief claimed."[36]

Finally therefore the decision of the court is that the disputed site will be divided into three. The outer courtyard will go to the Nirmohi Akhara; the inner areas will be divided between the deities and the Muslim groups such that the area under the central dome will remain with the deities. In this process the government has to ensure that the Muslim groups get at least one-third of the entire land. For this purpose additional land may be allotted to them.

IX. Miscellaneous

a. Is the suit maintainable/ within time.

Justice Khan found that the suit was not barred by limitation. However, both the other judges held that it was.

Justice Sharma and Justice Agarwal found that Suit No. 4 was barred by limitation. Justice Sharma also held that the suit was not maintainable at the instance of the Sunni Wakf Board due to non-compliance with procedure under Section 5 (1) of the UP Wakf Act, 1936. Interestingly though, instead of dismissing the plaint and examining the other suits, he continues to treat this suit as the leading case, and in the process places the entire burden of proof on the Muslim parties, often placing them to strict proof while at the same time taking Hindu claims on face value.

[36] Per Justice Sharma, p. 172-174, O.S. No.5/1989.

b. Res judicata: An issue raised by the Muslim parties was that the 1885 suit filed by Mahant Raghubar Dass operated as res judicata in the instant case. All three judges rejected this claim, since neither the parties were common, nor were the issues directly and substantially similar in both cases. Further, it was felt that the issues were not finally decided in the 1885 case, and therefore too, the case would not operate as res judicata for the instant case. However, Justice Khan added that the claims, admissions, etc, made in the 1885 would be admissible in evidence in the present suits as per Section 13 and/or 42 of the Evidence Act.

X. Additional Issues:

Justice Sharma stated that "Needless to say, at this stage, that the Archaeological Survey of India in its report found a massive structure of religious importance. I avail this opportunity to request the Government of India to maintain this national monument under The Ancient Monuments and Archaeological Sites and Remains Act, 1958 to ensure that they are properly maintained. At the cost of repetition, I may further refer that it is mandatory on the part of the Central Government to act in accordance with the provisions of the Ancient Monuments and Archaeological Sites and Remains Act (No.24 of 1958) and ensure to maintain the dignity and cultural heritage of this country."[37] Justice Sharma also found that the disputed structure was a mosque built in the 16th century. This also falls within the definition of an ancient monument and archaeological site under the Act. However, he does not either condemn the demolition, nor does he instruct the government to ensure the proper preservation of the remains of the mosque.

Justice Sharma also seems to indicate that one Muslim can speak for all Muslims. He states that "At this stage, it may further be clarified that there was no even iota of evidence to suggest that 14 members team consisting of officers of highly repute, seniority and expertise, were coming from both the communities. Even the Muslims members have also signed over the report of A.S.I. Thus the cumulative effect is that it is unbiased report based on scientific investigation and without any influence on the body of expert which conducted excavation….It is also not worth believable that certain Muslims members of the team could be forced by the Central Government to sign over the report against their wishes and against the data collected by them."[38]

Justice Sharma also holds that the "[d]ecision of Supreme Court in *Shah Bano's case* was upset by the Parliament on the ground of sensitivities of Muslim Community for Muslim Personal Law. Muslim Personal Law (*Shariat*) Application Act, 1937 was framed to apply personal law to Muslims. Sensitivities of Muslims stand even today in the way of adoption of a Common Civil Code for India envisaged by Article 44 of Directive Principles of State Policy in our Constitution. The Constitutional protection, if any, for such laws should also support special laws

[37] Per Justice Sharma, p. 102, Vol. 1, O.S. No.4/1989.
[38] Per Justice Sharma, p. 95-97, Vol. 1, O.S. No.4/1989.

in the case of Hindu Deity, on principles of equality, particularly in view of Oudh Laws Act 1876 and Article 372(1) of the Constitution."[39]

Justice Khan : "Muslims must also ponder that at present the entire world wants to know the exact teaching of Islam in respect of relationship of Muslims with others. Hostility – peace – friendship – tolerance - opportunity to impress others with the Message - opportunity to strike wherever and whenever possible – or what?"

The Hindu Right attempts to articulate its claim of Hinduism as Indian secularism through this judgment. According to the Hindu Mahasabha pleadings "In the additional pleas, it is said that Bharatvarsh was divided on the basis of the religion. Pakistan was created for Muslims and the rest part of Bharatvarsh remained for Hindus. Consistent with Vedic scriptures, secularism was adopted in the Constitution. The rights of other religions, groups or community are subject to rights of Hindus. Lord Ram, Lord Krishna and Lord Shiva are cultural heritage of India which has been recognized by the Constituent Assembly. In the original Constitution signed by the members, pictures of recognized cultural heritage exist which include scene from Ramayana (conquest over Lanka and recovery of Sita by Lord Ram). Thus the citizens of Country are entitled to pay homage to their Lord at His birth place. Being sacred place for Hindus it cannot belong to Muslims or any other community or religious group. Therefore, the claim of Muslims over the land in question is unconstitutional and is also against Islamic laws. The plaintiffs cannot claim themselves to be Muslims entitled to file suit."[40]

It appears from Justice Agarwal's decision that an important concern for him in reaching his decision is to maintain communal harmony. He states that "a huge religious, cultural literature has been placed suggesting that there is a cemented faith and belief of the community in respect to certain facts about their existence. Such faith and belief may not be tested by a Court of law being beyond the scope judicial review. It is suggested that such faith which is borne out from such ancient literature should be accepted on its face without any tinkering and the matter deserves to be decided accordingly. In a battle simply that of religious historicity, this Court has all odds to ponder over such a controversy. Moreover, considering sensitivity of the matter, the issues have to be analyzed delicately like a surgeon's hand, so as to reach a just decision which may cause harmony amongst the two major communities virtually covering the entire country. It would not be only in the interest of the litigating parties but also necessary for national integration, peace and tranquillity."[41]

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[39] Per Justice Sharma, p. 166, O.S. No.5/1989.
[40] Per Justice Agarwal, p. 69.
[41] Per Justice Agarwal, p. 3502.