Source : www.thehindu.com Date : 2019-11-13

AYODHYA VERDICT

Relevant for: null | Topic: Regionalism, Communalism & Secularism

The judgment in the hotly contested property dispute of **Ayodhya has finally been delivered by a five-judge Supreme Court Bench**. Though our judges do take an oath to decide on cases without fear or favour, in what looks to be an unprecedented act, the judge who authored this verdict preferred not to reveal his name. Even the author of the 116-page addendum has strangely kept his name secret.

Though the apex court accepted that a wrong had been done when the Babri Masjid was desecrated in 1949 through installation of idols and also held that the demolition of the mosque in 1992 was illegal, in the final order, it had to give the entire disputed site to the Hindu plaintiffs though law of equity says that one who seeks equity must come with clean hands.

In paragraph 799, the court explicitly said that “even as a matter of maintaining public peace and tranquillity, the solution which commended itself to the [Allahabad] High Court [division of the property into three parts] is not feasible. The disputed site measures all of 1500 square yards. Dividing the land will not sub-serve the interest of either of the parties or secure a lasting sense of peace and tranquillity.” This was, thus, the central concern of the court in this historic dispute.

When did the dispute over Ram Janmabhoomi start, and why did it take so long for a resolution?

The defenders of the rule of law, minority rights and secularism in general and Muslims in particular need not feel disappointed with this judgment though it is true that the court, after correctly spelling out the law, wrongly applied them to facts. Here, we will examine the several positive findings and observations of the court that must be welcomed and appreciated, which will help us retain our otherwise shaken confidence in the majesty of law.

Since there is worry about the Vishwa Hindu Parishad (VHP)’s claim in respect of 3,000 other mosques, the court yet again reiterated that secularism is part of the basic structure of the Constitution and that the Places of Worship Act, 1991, protects and secures fundamental values of the Constitution. It went on to say that, “The Places of Worship Act imposes a non-derogable obligation towards enforcing our commitment to secularism under Indian Constitution... [the Act] is thus a legislative intervention which preserves non-retrogression as an essential feature of our secular values.” This assurance by the court must put all apprehensions to rest.

Second, on the topic of freedom of religion under Article 25, the court categorically made a highly appreciable observation that “we must firmly reject any attempt to lead the court to interpret religious doctrine in an absolute and extreme form and question the faith of worshippers. Nothing would be as destructive of the values underlying Article 25...” Accordingly, the argument put forward by some Hindus that the Babri Masjid as per Islamic theology was not a legitimate mosque was rejected. “Faith is a matter for the individual believer,” said the court.

Third, the court accepted the Sunni Waqf Board’s plea that the place of Lord Ram’s birth is not in itself a juristic person. This is a major setback to the Ram Lalla suit and will, in fact, avoid several future religious conflicts. The court said that conferral of such a right will impinge on the rights of people of other faiths. In Para 201, the court observed that “the purpose for which juristic personality is conferred cannot be evolved into a Trojan horse that permits, on the basis of religious faith and belief, the extinguishing of all competing proprietary claims over property...” It said that a method of offering worship unique to one religion cannot result in conferral of an absolute title. In other words, the court made it clear that it could not accord primacy of one faith

over others. This should really be music to the ears of proponents of multiculturalism who are every day feeling the heat of aggressive majoritarianism.

Ayodhya verdict | Supreme Court not to entertain claims against actions of Mughals

Fourth, the court categorically accepted the central argument of the Muslim plaintiffs that the mosque was not constructed after the demolition of a Ram temple. The court has also said that the Archaeological Survey of India (ASI)'s report had not found any evidence of demolition of a temple to construct the mosque. It pointed out that the ASI's findings had an intervening gap of four centuries. Thus, the Hindu right's primary narrative has been clearly rejected.

Fifth, the court also said that as per the ASI report, remnants of a pre-existing structure were not used for the construction of the mosque. Interestingly, even about the black *kasauti* stone pillars, the court held that ASI in fact found no evidence to show that the pillars were relatable to the underlying pillar bases found during the excavation.

Sixth, the argument of the Muslim plaintiffs that a title cannot be decided solely on the basis of faith or archaeological findings too has been accepted and this is not a small victory and will be of great use in future disputes.

Seventh, the Muslim plaintiffs' argument that title of property cannot be decided on the basis of travellers' accounts was also accepted and the court rightly said that some portions of these accounts, including one by the 18th-century Austrian missionary, Joseph Tieffenthaler, were based on hearsay. Ideally, the court should have totally rejected Tieffenthaler's writings, which have many inaccurate descriptions. Even about the Babri mosque, he said that Aurangzeb constructed it.

Eighth, the court also accepted that there is no historical record prior to the 18th century that talked of the demolition of a Ram temple prior to the construction of the Babri mosque. The court noted the evidence of Hindu witnesses who testified that there is no mention of Ram's birthplace either in Valmiki's *Ramayana* or Tulsidas's *Ramcharitmanas*.

Ayodhya case: Supreme Court to pronounce verdict on November 9

This seems to be the most controversial part of the verdict as the court used freedom of religious faith to uphold the Hindu case when it said that "whether a belief is justified lies beyond [the] ken of judicial scrutiny." It went on to hold that "once the witnesses have deposed to the basis of the belief and there is nothing to doubt its genuineness, it is not open to the court to question the basis of belief. Scriptural interpretations are susceptible to a multitude of inferences. The court would do well not to step into the pulpit by adjudging which, if any, of competing interpretations should be accepted." But did not this very court interpret Koran on maintenance in the *Shah Bano* case (1985) and on triple divorce in the *Shayara Bano* case (2017)? Did it not reject the Hanafi interpretation?

Finally, since the Muslim plaintiffs did not claim title in this case, they should be not mind the final outcome. The relief sought by them was just about the "delivery of possession". Since the court did accept that they were wrongly deprived of their possession in 1949, ideally they should have been given possession of the inner courtyard rather than five acres of land elsewhere. Thereafter, the court would have been justified in invoking Article 142 to give the site to Hindus or it may have asked Muslims to give up this land.

Faizan Mustafa is Vice-Chancellor, NALSAR University of Law, where Aymen Mohammed is a research scholar