

# Indian High Court abets Hindu supremacists with Babri Masjid ruling

**Sarath Kumara, Keith Jones****2 October 2010**

In a shameful decision that legitimizes Hindu supremacist ideology and violence, the Lucknow Bench of the Allahabad High Court ruled Thursday that the site of the razed Babri Masjid mosque in Ayodhya should be divided three ways, with two-thirds of the land, including the most hotly contested portion, awarded to Hindu communalist and fundamentalist organizations. Under the ruling, the Sunni (Muslim) Central Board of Waqfs will be given title to a third of the land.

In December 1992, thousands of right-wing Hindu activists mobilized by the Bharatiya Janata Party (BJP), then as now India's Official Opposition, the VHP (World Hindu Council), and other members of the so-call *sangh parivar* (RSS network) tore down the 450 year-old mosque, triggering the most deadly wave of communal violence in India since the 1947 communal partition of the subcontinent. At least 2,000 and possibly as many as 3,000 people, most of them poor Muslims, were killed.

The destruction of the mosque was the culmination of a foul nationwide campaign led by BJP leader Lal Advani in which it was claimed that replacing the Babri Masjid with a temple to the mythical Hindu god Lord Ram was necessary to demonstrate the dominance of Hindus and Hindu culture in India.

The destruction of the mosque took place in plain view of thousands of security personnel who had effectively been ordered to stand down by the BJP state government of Uttar Pradesh, although it had been expressly ordered by India's Supreme Court to protect the Babri Masjid. The Congress Party, which formed India's national government in 1992, also failed to take action to prevent the razing of the Babri Masjid, using the excuse that under ordinary circumstances the states are constitutionally responsible for public order.

The BJP subsequently came to power in 1998 at the head of a multi-party coalition and for six years led the pro-business and pro-US National Democratic Alliance (NDA) government. But due to the opposition of many of its NDA allies—regional- and caste-based parties who claim to be votaries of secularism and opponents of the BJP's chauvinist *Ramjanmabhoomi* campaign—the BJP was unable to act on its electoral pledge to build a Ram temple on the ashes of the Babri Masjid.

Nevertheless, the BJP and the Hindu right have continued to proclaim the building of a Hindu temple at Ayodhya a major national cause.

From the beginning, the various lawsuits relating to the ownership of the Babri Masjid have been inextricably bound up with the agitation of the Hindu right.

The first suit was filed in January 1950, just weeks after idols of the Hindu gods Ram and Sita had been smuggled into the Babri Masjid as part of a communal campaign organized by the Hindu Mahasabha

(HMS). An ideological precursor of the BJP, the HMS campaigned in the years immediately following partition for India to be declared a Hindu Rashtra (state). V.D. Savarkar, its principal ideologue, had for years argued that Muslims are not part of the Indian nation and should be denied citizenship rights, because their holy land is not to be found on the subcontinent.

In 1949-50 the district collector for Ayodhya was an HMS supporter. He defied an order from the Congress-led state government to remove the idols from the mosque, and instead barred Muslims from coming within 300 yards of them and encouraged Hindus to enter the Masjid and pray before them.

The Congress government responded by sacking the magistrate (he would subsequently be elected as a state assemblyman for the BJP's predecessor, the Jana Sangh), ordered the gates to the Babri Masjid locked, and declared the premises disputed.

Significantly, Thursday's court ruling calls for the Hindu Mahasabha to be given title to the portion of the land where the idols were situated, that is directly under where the Babri Masjid's central dome stood.

The High Court ruling in the Babri Masjid case is all but certain to be appealed to India's Supreme Court.

Nevertheless, the decision and the favorable press and political reaction to it are of historic significance for they demonstrate that India's state institutions, politicians and ruling elite have repudiated the secular-democratic principles that are enshrined in the country's founding constitution.

The legal argument for dispossessing Muslims of the Babri Masjid was based on two utterly reactionary claims:

That the land should and does legally belong to the Hindus:

- because it is the birthplace of Lord Ram, an avatar of Lord Vishnu, one of the three most important gods in the Hindu pantheon;
- and because the mosque built nearly half a millennium ago on the orders of the Moghul Emperor Babur stood on the site of a former Hindu temple or temples.

The three-member Lucknow Bench issued a split 2-1 decision on the question as to who rightfully owns the land. The dissenting judge embraced the claims of the Hindu right even more fully than his colleagues, ruling that all the disputed land should be handed over to Hindu groups and, in wording calculated to offend Muslims, declaring that the Babri Masjid was never a proper mosque.

But whatever their differences, all the judges have given legal force to Hindu supremacist ideology and to religious obscurantism.

The judges unanimously declared that the site of the Babri Masjid is indeed the birthplace of Lord Ram—no matter that he is a mythical entity—and that this had to be taken into account in determining

ownership of the disputed land.

The judges likewise claimed that it was of great legal import whether a Hindu temple ever existed on the site of the Babri Masjid. Not only does this ignore the essential political fact that the dispute over the Babri Masjid has nothing to do with medieval India and everything to do with the emergence of communal politics in 20th century India. It accepts the validity of the Hindu right's insistence on the need to "reconquer" the Babri Masjid. This retrograde conception is based on an ahistorical communal rendition of the history of India that makes the religious affiliation of certain ruling dynasties the pivot of Indian history and with the aim of portraying India's Muslims as "outsiders" and "interlopers," although there have been Muslims in South Asia for over 1,200 years.

Not surprisingly, the BJP and Hindu right have hailed the court judgment.

L.K. Advani, who remains in the top leadership of the BJP, called the ruling a "significant step" towards building a Ram temple in Ayodhya.

The VHP said Hindus' faith had been "endorsed by the judiciary." Hindu communal groups having been given title to two-thirds of the site, VHP leader Pravin Togadia repeated the VHP's call for all of the area in dispute as well as adjacent lands acquired by the central government to be ceded to Hindu communal and fundamentalist groups so that "a grand temple will be built in this total area."

The Congress Party, the dominant force in India's current coalition government, praised the verdict. Congress's chief media spokesman, Janardhan Dwivedi, said, "We should all welcome and respect the judgment"—no matter that it is a gift to the Hindu supremacist and communalists whom the Congress claims to oppose. Acknowledging an elementary legal fact, Dwivedi said anyone who opposes the verdict can appeal it. Asked whether the court ruling effectively justified the demolition of the Babri Masjid, Dwivedi, not wanting to anger the Hindu chauvinists, ducked the question, saying he did not wish to place "any value judgment" on the verdict.

On Friday, Home Minister P. Chidambaram tried to put some distance between the Congress-led government and the High Court ruling, saying that "there is no need for commenting" on it at present, as it will likely be referred to the Supreme Court. He did, however, claim that the judgment in no way changes the fact that the demolition of the Babri Masjid was a "criminal act."

But as the saying goes, the proof is in the pudding. While the Congress will on occasion denounce the BJP for its rabid communalism, its governments have utterly failed in bringing to account those responsible for fomenting and organizing the razing of the Babri Masjid and the 2002 Gujarat pogrom.

The Stalinist Communist Party of India (Marxist), the dominant party in India's Left Front, issued a cowardly statement in response to the High Court judgment. It said the ruling needed to be "fully studied" and that "there *may be* questions on the nature of the verdict" (emphasis added). The statement went on to express full confidence in India's judiciary, which has not only failed to deliver justice to the many victims of Hindu communalism, but has played a major role in the mounting assault on worker and democratic rights: "The CPI(M) maintains that in our constitutional secular democratic system the judicial process which includes recourse to the Supreme Court should be the only way to resolve the issue."

For the most part, India's major newspapers welcomed the court ruling, suggesting that because the judges had partially vindicated the claims of both the Hindu right and the Sunni Waqf board to the Babri

Masjid site there were "no losers."

The reality of course is that the Hindu right's claim to the land is entirely illegitimate and in upholding it the court has compounded the horrific crime of 1992 and given the Hindu right license to trump up new communal demands aimed at putting the Muslims and other minorities "in their place."

The *Times of India* did express grave concern that the court has based its judgment on "faith and belief"—on claims that "have no factual basis," "are above reason," and "if push comes to shove ... aren't answerable to norms of legality laid down by mere mortals."

"Once faith and belief are factored into a resolution of a legal tangle," continued the *Times*, "you embark, swiftly and surely, on the slippery slope of majoritarian conceit."

In an editorial titled "Intriguing Compromise Could Work," the *Hindu*, one of India's most important liberal dailies, conceded that the judgment was not based "on profound legal reflection" and "would seem to stretch the law and, at times, logic as well"—without specifically condemning the court's acceptance of Lord Ram as an historical and legal personage. It also admitted that the "verdict could be viewed as partially rewarding those who placed the idol overnight under the central dome of the mosque (in 1949) and those who in 1992 razed it to the ground." Nevertheless, the *Hindu* welcomed the ruling on the grounds that it has "restrained any party from claiming outright victory or sulking in total defeat," adding that it was time to move on from the sterile Babri Masjid-Ram Mandir (temple) debate.

But justice, let alone communal peace, cannot and will not be served by legitimizing and rewarding reaction.

Moreover the *Hindu*'s claims that the Hindu right and India's Muslims view the judgment as a saw-off is a willful distortion. The former is crowing victory with ever increasing virulence, while Muslims widely and rightly perceive the ruling as further proof that they are second-class citizens in "secular" India.

Mulayam Singh Yadav, the head of the Samajwadi Party, a party that has won the votes of many of Uttar Pradesh's Muslims in recent elections, said yesterday evening, "I am disappointed at the judicial verdict that gives precedence to faith over law and evidence. This does not augur well for the country, the Constitution and the judiciary itself. Muslims in the country are feeling cheated. There is a sense of despair in the entire community."



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