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The Babri Masjid Demolition Case: The Will to Delay and Deflect

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File Photo: The Vishva Hindu Parishad Chief, Vishnu Hari Dalmia, the Bharatiya Janata Party president, M. M. Joshi, BJP leader L. K. Advani and Uma Bharti, BJP MP being produced before the Chief Judicial Magistrate at Akbarpur air strip 65 km from Ayodhya in Faizabad district on December 10, 1992. [The Hindu Archives](#)

*On December 6, 1992 a frenzied mob of kar sevaks pulled down the Babri Masjid in the presence of Lal Krishna Advani and other top Sangh Parivar leaders. The aftermath saw the mob and the leaders become the subject matter of two FIRs . In this article, **V. Venkatesan, Associate Editor, Frontline, and Vidya Subrahmaniam, Senior Fellow, The Hindu Centre for Politics and Public Policy**, trace how the criminal cases arising out of the FIRs were delayed and deflected and connect the dots to show a pattern behind the 25-year long, and continuing, wait for justice. The delay had prompted the Supreme Court in April 2017 to pass*

an extraordinary order to expedite the trial and deliver the judgment "within a period of two years".

In the present case, crimes which shake the secular fabric of the Constitution have allegedly been committed almost 25 years ago. The accused persons have not been brought to book largely because of the conduct of the CBI [Central Bureau of Investigation] in not pursuing the prosecution of the aforesaid alleged offenders in a joint trial, and because of technical defects which were easily curable, but which were not cured by the State Government..."

Further, "There shall be no *de novo* trial. There shall be no transfer of the Judge conducting the trial until the entire trial concludes. The case shall not be adjourned on any ground except when the Sessions Court finds it impossible to carry on the trial for that particular date. In such an event, on grant of adjournment to the next day or a closely proximate date, reasons for the same shall be recorded in writing. The CBI shall ensure that on every date fixed for evidence, some prosecution witnesses must remain present, so that for want of witnesses the matter be not adjourned. The Sessions Court will complete the trial and deliver the judgment within a period of two years from the date of receipt of this judgment..."

This extraordinary order was passed by the Supreme Court of India on April 17 of this year – a quarter century after the demolition of the Babri Masjid on December 6, 1992. The intervening years had seen dramatic twists and turns in the two criminal cases that had emerged out of the demolition, each taking its own tortuous course, when evidence all along pointed to the filing of a single joint case with a strong criminal conspiracy element. As the Supreme Court said: "The Court of Sessions will frame an additional charge under Section 120-B [conspiracy] against L.K. Advani, Vinay Katiar, Uma Bharati, Sadhvi Ritambara, Murli Manohar Joshi and Vishnu Hari Dalmia".

It should be evident from the words of the apex court that this was an instance of justice being delayed, not in the usual, lackadaisical manner that justice is delayed in this country, but because the Uttar Pradesh government over the years and its chief prosecution instrument, the CBI, willed for it to be delayed.

If the demolition of the Babri Masjid was a shame whose terrifying social-communal consequences are still unfolding 25 years after the incident, the failure of the law to bring the offenders to justice within a reasonable time stands as a reminder of how easily the powerful

in this country can subvert the system to suit their own partisan interests. In this case, the interest was quite clearly to save the accused from being tried for conspiracy.

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Indeed, the legal trajectory of the criminal cases registered against the accused once again proves that in a situation where the prosecution (here the CBI) is answerable to those in power, even overwhelming evidence against the accused will not be enough to prosecute them, much less secure their conviction. The close proximity of the accused with the power centres, either at the Centre or in the State or both, virtually means that they can manipulate the system and dodge the long arm of the law.

In the Babri demolition case, voluminous material was available to the prosecution via reports of official agencies and enquiry commissions, among them the Liberhan Commission. These emphatically brought out the conspiracy angle behind the demolition. And the courts themselves accepted the conspiracy aspect at various points.

The Liberhan Commission said in its report ¹ : “Vinay Katiyar, Champat Rai, Acharya Giriraj Kishore, Mahant Avidyanath and D.B. Roy etc had begun plotting for demolishing the disputed structure though secretly right from the beginning. The methodology adopted for the demolition was sudden attack on the disputed structure, sudden simultaneous attack on journalists, proceeding with technical logistics like putting of ropes in the holes and then pulling the wall under the domes.” (Paragraph 61.18)

The Commission added: “The state by its conduct, ensured non-use of force, and even eliminated the chances for the same by resisting the deployment of the central forces, and restraining the use of force against kar sevaks and the leaders of the movement. Failure to prepare any contingency plan to meet various eventualities not only sent a signal that the police, executive and state was supporting the mobilisation, but also that they would ignore any plot hatched. Participation of the Government in levelling of the structures around the disputed structure, construction of the Chabutra in violation of court’s orders, issuance of

specific orders not only not to fire, but also not to use force against kar sevaks emerged from the prognosis of evidence.” (Paragraph 61.19)

The report noted that mobilisation of kar sevaks had started well before December 6 despite the Supreme Court’s instructions to limit activity on the day to a symbolic kar seva, which in turn was based on an undertaking to the same effect by the State Government, then headed by the BJP’s Kalyan Singh. Tragically, the court chose to believe Kalyan Singh over the warnings from various quarters, including from the Attorney General of the Government of India, that the crowds were restive and could go out of control.

In the event, what was feared, and could have been prevented with all the warnings there were, happened. Following the demolition, two First Information Reports were lodged, FIR 197 and FIR 198. Chroniclers documenting the Ayodhya demolition case will record that the two FIRs were tossed from one court to another, at times in a conjoined state and at other times separated. The cases would form a labyrinthine maze as they moved from the day of the demolition through many twists and turns to May 20, 2010, when their relevance all but ended, to their current revival in a single *avatar* under the directions of the Supreme Court. On May 20, 2010, which was the last significant milestone, the (Lucknow Bench) Allahabad High Court dismissed the CBI’s revision petition challenging a special court’s decision to drop conspiracy charges against Lal Krishna Advani and 20 others. In simple words, the May 20, 2010 verdict freed Advani and company from the charge that they were part of the conspiracy to destroy the mosque.

First a flashback to where it all began. FIR 197 was filed in an Ayodhya police station immediately after the Babri Masjid was brutally torn down. Given the surcharged atmosphere and the difficulty in identifying individuals, the FIR was expectedly rudimentary. It blamed the demolition on “lakhs of unknown kar sevaks” and alleged the offences of dacoity, robbery, causing of hurt, injuring/defiling places of public worship, promoting enmity between two groups on grounds of religion, etc. The offences under the IPC were thus under sections 1A, 295, 297, 332, 337, 338, 395 and 397.

A second FIR, 198, was more specific. It charged Lal Krishna Advani and seven of his compatriots from the Sangh Parivar, including Murli Manohar Joshi, Uma Bharti, Mahant A vaidyanath, and the Vishwa Hindu Parishad’s Vishnu Hari Dalmia, and Ashok Singhal with making incendiary speeches leading to the demolition. This FIR alleged offences under sections 153-A, 153-B and section 505 IPC.

Forty-six further FIRs pertaining to cognizable offences and one FIR pertaining to non-cognizable offences were also lodged. Initially, a Special Court set up at Lalitpur in Uttar Pradesh was to try these cases. However, on September 8, 1993, the State Government, at the time under President's Rule, issued a notification in consultation with the High Court, transferring the cases for trial by a Special Court at Lucknow.

For some reason, FIR 198 against the big leaders was not included in the transfer. Thus FIR 197 was assigned to the CBI, while 198 was left to be prosecuted by the State CID in a special court in Rae Bareilly. Months before the transfer of FIR 197 to Lucknow, the Special Magistrate at Lalitpur by an order dated April 13, 1993, had added to it Section 120B of the IPC-dealing with criminal conspiracy. But as the two cases were intrinsically related, the CBI took both under its care, filing a composite charge sheet on October 5, 1993. This is where the conspiracy charge attached itself to Advani and others. The consolidated charge sheet filed by the CBI spoke of a secret meeting at the residence of Bajrang Dal leader Vinay Katiyar one day before the masjid was pulled down, "wherein a final decision to demolish the disputed structure was taken." The charge sheet noted the presence at the meeting of Advani and the seven other parivar leaders.

On October 8, 1993, the State Government amended the notification dated September 9, 1993 inserting FIR No.198 of 1992 against the eight persons named therein, so that all 49 cases could be tried by the Special Court, Lucknow.

In 1996, the CBI filed a supplementary charge sheet against the eight accused at Lucknow. On September 9, 1997, the Special Judge at Lucknow passed an order that there was a prima facie case against all the accused for framing charges of criminal conspiracy under Section 120-B read with various other sections of the IPC. The Court held that all the offences were committed in the course of the same transaction which warranted a joint trial and that the case was exclusively triable by the Court of the Special Judge at Lucknow.

The accused challenged the above order before the Allahabad High Court. By this time governments and Prime Ministers had changed – from the Congress's P.V. Narasimha Rao at the time of the demolition through two Prime Ministers of the United Front Government, H.D. Deve Gowda and I.K. Gujral, to Atal Bihari Vajpayee at the head of the National Democratic Alliance.. Fortuitously for the accused, a technical flaw -- the Uttar Pradesh government had failed to consult the High Court on its decision to transfer the jurisdiction of case 198 from Rae Bareilly to Lucknow -- came up which rendered the merger of FIRs 197 and 198 invalid. On February 12, 2001, Justice Jagdish Bhalla of the Allahabad High Court ordered

the revival of the two cases citing this flaw. Significantly, he did not strike down the conspiracy charge. He upheld the composite charge sheet and advised the government to cure the technical flaw. The High Court in fact emphasised that all the offences were committed in the course of the same transaction and to accomplish a criminal conspiracy. "The evidence for all the offences is almost the same and, therefore, these cannot be separated from each other irrespective of the fact that 49 different FIRs were lodged", the High Court held.

Further, "The offences regarding criminal conspiracy and common object of an unlawful assembly are prima facie made out and since these offences are alleged to have been committed in the course of the same transaction, the Special Court rightly took cognizance of the same and committed the same to the Court of session..."

Had the court's advice been heeded, Advani and others would have been proceeded against for conspiracy in a single consolidated case.

But that was not to be. In a patently half-hearted move, the CBI, on June 16, 2001, requested the Uttar Pradesh Government, then headed by the BJP's Rajnath Singh, to rectify the defect in the October 8, 1993 notification. More than a year later, the Rajnath Singh Government rejected the CBI's appeal to cure the defect. The CBI accepted this and filed a supplementary charge sheet against the eight accused, including Advani, before the Judicial Magistrate at Rae Bareilly. Charges were framed against them but obviously not for conspiracy.

Just how insincere the CBI was in seeking to cure the flaw can be seen from the fact that by the time it moved, the Special Court in Lucknow – in a reversal of its own 1997 order for a joint trial – had already dealt a body blow to the conspiracy charge by accepting that there were in fact two separate cases. This was on May 4, 2001 – a mere two months after the High Court suggested that the flaw be rectified to allow a single joint trial. The Special Judge at Lucknow, now trying only case 197, freed Advani and others from the conspiracy charge on the ground that the FIR alleging demolition was filed against "unknown kar sevaks." He wrote: "Two distinct cases were registered which are different. In the first FIR were kar sevaks who pulled down the structure ... and in the other FIR are conspirators/abettors who instigated the kar sevaks ..." (Frontline, January 2004; A. G Noorani.) In other words, the letter of the Allahabad High Court judgment of February 2001 was seized upon ignoring its spirit.

A revision petition filed by the CBI against the order of May 4, 2001 before the Allahabad High Court, led to the passing of another judgment, almost a decade later, on May 22, 2010. This judgment upheld the Lucknow Special Judge's order of May 4, 2001 holding that there were

two classes of accused, namely, leaders who were on the close-by dais exhorting the kar sevaks and the kar sevaks themselves. The nature of the accusations against both was different and their involvement was for different criminal offences, the Allahabad High Court said. There was no conspiracy charge in case 198, which related to incitement to demolition through speeches, and which was already being tried at Rae Bareilly consequent to the High Court order of February 2001.

A 2010 high point in the Rae Bareilly trial was the testimony by IPS officer Anju Gupta who was Advani's Personal Security Officer at the time of the demolition. Gupta testified that Advani made a *joshila* (fiery) speech which electrified the kar sevaks. She also said that on December 5, 1992, the then Inspector-General of Faizabad Zone, A.K. Sharma, convened a security review meeting where, based on intelligence inputs, he warned of a likely assault on the Babri Masjid the following day.

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The apex court disagreed with the Allahabad High Court's order of 2010 holding that the offences and the offenders could be artificially divided into two groups. Pointing out that the State Government (Uttar Pradesh) did not cure what was only a technical defect – despite a suggestion to this effect by the Allahabad High court itself as early as 2001 -- the Supreme Court moved to transfer the trial proceedings at Rae Bareilly to the Special Court at Lucknow so that a joint trial of all those named in the composite charge sheet filed originally by the CBI could proceed.

The Supreme Court justified its extraordinary intervention to expedite the trial against the accused citing the peculiar developments that had derailed the scope of a joint trial inclusive of the conspiracy charges.

On December 8, 2011, the Allahabad High Court had directed that the matter proceeding at Rae Bareilly be heard everyday until it was concluded. However, less than a hundred witnesses were examined, and CBI and other accused took as many adjournments as possible.

The Supreme Court noted another disturbing feature at Rae Bareilly: The Special Judge carrying on the trial was transferred a number of times, as a result of which the matter could not be taken up on the dates fixed. The Court, therefore, transferred the proceedings in Crime No.198 of 1992 in the Court of the Special Judicial Magistrate at Rae Bareilly, to the Court of Additional Sessions Judge (Ayodhya Matters) at Lucknow.

The Supreme Court granted immunity to the then Chief Minister of Uttar Pradesh and currently, Governor of Rajasthan, Kalyan Singh, under Article 361 of the Constitution, as long as he remains Governor of Rajasthan. "The Court of Sessions will frame charges and move against him as soon as he ceases to be Governor", the Court held.

The Supreme Court directed the Court of Sessions at Lucknow, to hear the case from where the trial proceedings, both at Rae Bareilly and at Lucknow, stood until the conclusion of the trial and to do so expeditiously and continuously. To recapitulate, "There shall be no de novo trial. There shall be no transfer of the Judge conducting the trial until the entire trial concludes. The case shall not be adjourned on any ground except when the Sessions Court finds it impossible to carry on the trial for that particular date. In such an event, on grant of adjournment to the next day or a closely proximate date, reasons for the same shall be recorded in writing. The CBI shall ensure that on every date fixed for evidence, some prosecution witnesses must remain present, so that for want of witnesses the matter be not adjourned. The Sessions Court will complete the trial and deliver the judgment within a period of two years from the date of receipt of this judgment".

Reference:

1. [Report Of The Liberhan Ayodhya Commission of Inquiry](#), Chapter 6, Mobilisation of Karsevaks. Last accessed December 11, 2017.

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